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Interior Department

Air Pollution Control
Environmental Protection Agency

Alcohol and Alcoholic Beverages
Alcohol, Tobacco and Firearms Bureau

Authority Delegations (Government Agencies)
Immigration and Naturalization Service

Aviation Safety
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Freedom of Information
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Marketing Agreements
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Railroads
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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 318

[Docket No. 85-302]

Hawaiian Fruits and Vegetables; Affirmation of Interim Rule

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: This document affirms without change, an interim rule which was published in the **Federal Register** on August 29, 1984, which amended the "Hawaiian Fruits and Vegetables" quarantine and regulations by adding a new approved treatment for certain papayas using a double hot water dip. The regulations require, among other things that papayas be treated in accordance with an approved treatment as a condition of interstate movement from Hawaii. This amendment is necessary to provide an approved treatment for certain papayas that is commercially feasible which will allow the interstate movement of certain papayas from Hawaii to continue.

EFFECTIVE DATE: March 1, 1985.

FOR FURTHER INFORMATION CONTACT: C.M. Amyx, Senior Staff Officer, Technology Assessment and Development Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 600, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8896.

SUPPLEMENTARY INFORMATION:

Background

A document published in the **Federal Register** on August 29, 1984 (49 FR 34195-34197), amended the "Hawaiian Fruits and Vegetables" quarantine and regulations (contained in 7 CFR 318.13 *et seq.*, and referred to below as the regulations) by adding a double hot water dip treatment for papayas that are ¼ ripe or less, that are treated within 18 hours of being picked, and that are kept in an ambient temperature of 18.3 °C (65 °F) or above until treated. The regulations require, among other things, that papayas in a raw or unprocessed state be treated in accordance with an approved treatment specified in the regulations as a condition of interstate movement from Hawaii.

The amendment became effective upon publication. The document explained that the amendment was necessary as an emergency measure in order to continue to allow the interstate movement of papayas from Hawaii.

Comments were solicited for 60 days after publication of the amendment. No comments were received in response to the amendment. The factual situation set forth in the document of August 29, 1984, still provides a basis for the amendment. Accordingly, it has been determined that the amendment should remain effective as published in the **Federal Register** on August 29, 1984.

Executive Order 12291 and Regulatory Flexibility Act

This amendment has been issued in conformance with Executive Order 12291 and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that this amendment will not have a significant effect on the economy; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not have a significant adverse effect on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this rulemaking action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

As explained in the document of August 29, 1984, of the four previously approved treatments, two are no longer commercially feasible, and the remaining two are no longer available for use on papayas. The addition of the double hot water dip treatment has provided a means for the interstate movement of papayas from Hawaii to continue. Further the Department is not aware of any other treatment alternatives which are commercially feasible for papayas.

Presently, there are seven business entities in Hawaii that process and treat papayas for interstate movement. However, none of the seven entities are small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Under the circumstances referred to above, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 318

Agricultural commodities, Plant pests, Plants (Agriculture), Quarantine, Hawaii, Papayas.

PART 318—HAWAIIAN AND TERRITORIAL QUARANTINE NOTICES

Accordingly, the interim rule published at 49 FR 34195-34197 on August 29, 1984, is adopted as a final rule.

(Secs. 8 and 9, 37 Stat. 318, as amended (7 U.S.C. 161, 162); secs. 105, 106, 71 Stat. 32, 33; (7 U.S.C. 150dd, 150ee); 7 CFR 2.17, 2.51, and 371.2(c))

Done at Washington, D.C., this 26th day of February, 1985.

Harvey L. Ford,

Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 85-5055 Filed 2-28-85; 8:45 am]

BILLING CODE 3410-34-M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 505; Lemon Reg. 504, Amdt. 1]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action establishes the quantity of fresh California-Arizona lemons that may be shipped to the fresh market at 275,000 cartons during the

period March 3–9, 1985, and increases the quantity of lemons that may be shipped to 270,000 cartons during the period February 24–March 2, 1985. Such action is needed to provide for orderly marketing of fresh lemons for such periods due to the marketing situation confronting the lemon industry.

DATES: The regulation becomes effective March 3, 1985, and the amendment is effective for the period February 24–March 2, 1985.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This final rule is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based upon the recommendations and information submitted by the Lemon Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy currently in effect. The committee met publicly on February 26, 1985, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommend a quantity of lemons deemed advisable to be handled during the specified weeks. The committee reports that lemon demand is good on mid sizes and easier on the larger and smaller sizes of fruit.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation and amendment are based and the effective date necessary to effectuate the declared policy of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and the amendment relieves restrictions on the handling of lemons. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

PART 910—[AMENDED]

1. Section 910.805 is added to read as follows:

§ 910.805 Lemon Regulation 505.

The quantity of lemons grown in California and Arizona which may be handled during the period March 3, 1985, through March 9, 1985, is established at 275,000 cartons.

2. Section 910.804 Lemon Regulation 504 is revised to read as follows:

§ 910.804 Lemon Regulation 504.

The quantity of lemons grown in California and Arizona which may be handled during the period February 24, 1985, through March 2, 1985, is established at 270,000 cartons.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: February 27, 1985.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 85–5211 Filed 2–28–85; 9:06 am]

BILLING CODE 3410–02–M

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7 CFR Part 1062

[Milk Order No. 62]

Milk in the St. Louis-Ozarks Marketing Area; Order Terminating the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Termination of rules.

SUMMARY: This action terminates the order regulating the handling of milk in the St. Louis-Ozarks marketing area. Termination of the order effective April 1, 1985 was requested by Mid-America Dairymen, Inc., a cooperative association that represents a majority of the producers under the order who produce more than 50 percent of the milk produced for sale in the marketing area. Thus, termination of the order is required under Section 608c(16)(B) of the Agricultural Marketing Agreement Act of 1937, as amended.

EFFECTIVE DATE: April 1, 1985.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, Dairy Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C. 20250, (202) 447–2089.

Determinations. It is hereby determined that termination of the St. Louis-Ozarks order, Part 1062, is favored by a majority of the producers engaged in the production of milk for sale in the marketing area in the representative period, determined to be January 1985, and that such producers produced more than 50 percent of the milk produced for sale in the St. Louis-Ozarks marketing area in such representative period.

It is also determined that notice of proposed rule making and public procedure thereon is impracticable and unnecessary. Section 608(c)(16)(B) of the Agricultural Marketing Agreement Act of 1937, as amended, requires that if a majority of the producers engaged in production of milk for sale in the marketing area in a representative period determined by the Secretary favor termination of the order, and such producers produced more than 50 percent of the milk produced for sale in the marketing area in the representative period, that such order shall be terminated. It is therefore necessary that the provisions of the order, as amended, subject to specific exceptions, be terminated effective April 1, 1985.

Order. Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*) it is hereby ordered that all of the order, as amended, regulating the handling of milk in the St. Louis-Ozarks marketing area (7 CFR Part 1062) except that part of § 1062.1 which incorporates §§ 1000.4 (c) and (d), 1000.5 (b) and (c), and 1000.6 of the General Provisions, is hereby terminated effective April 1, 1985.

List of Subjects in 7 CFR Part 1062

Milk marketing orders, Milk, Dairy products.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Effective date: April 1, 1985.

Signed at Washington, D.C., on February 27, 1985.

Karen K. Darling,

Deputy Assistant Secretary, Marketing & Inspection Services.

[FR Doc. 85–5105 Filed 2–28–85; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 103

Powers and Duties of Service Officers; Availability of Service Records

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rule designates the position of Special Representative of the Commissioner for the Rome, Italy District Office as exercising the full powers and authorities of the position of District Director. The addition of this position is necessary to improve the management of Service programs.

EFFECTIVE DATE: March 1, 1985.

FOR FURTHER INFORMATION CONTACT: Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, NW., Washington, D.C. 20536, Telephone: 633–3291.

SUPPLEMENTARY INFORMATION: Formerly, the position of the ranking INS official in the Rome, Italy District Office was that of District Director. With a view toward more efficient management of INS programs, the Service has created a new position of Special Representative of the Commissioner for the Rome, Italy district. This position will convey the delegation of authority identical to that of Service district directors.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary because this rule relates to agency management.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule does not have a significant economic impact on a substantial number of small entities.

This order is not a rule within the definition of section 1(a) of E.O. 12291 as it relates solely to agency management.

Lists of Subjects in 8 CFR Part 103

Adminstrative practice and procedure, Delegation of authority (government agencies), Organization and functions (government agencies).

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

Accordingly, Chapter 1 of Title 8 of the Code of Federal Regulations is amended as follows:

In § 103.1, a new paragraph (r) is added to read as follows:

§ 103.1 Delegations of Authority.

* * * * *

(r) *Special Representative of the Commissioner.* The Special Representative of the Commissioner, as ranking Immigration and Naturalization Service official in the Rome district, will exercise the full powers and authorities of the position of Distict Director as outlined in paragraph (n) of this section.

(Sec. 103, Immigration and Naturalization Act, as amended, 8 U.S.C. 1103)

Dated: February 20, 1985.

Doris M. Meissner,

Executive Associate Commissioner, Immigration and Naturalization Service.

[FR Doc. 85–4948 Filed 2–28–85; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 84–NM–79–AD; Amdt. 39–5009]

Airworthiness Directives; British Aerospace Model BAe–146 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) applicable to certain BAe–146 airplanes which requires a one-time inspection of the escape chute girt bars on the passenger/service doors to insure they are properly assembled. There have been two reported cases of the girt bar becoming detached from the floor bracket during a demonstration of the escape chute operation, resulting in separation of the chute from the airplane. Loss of the escape chute could prevent safe emergency evacuation of the airplane.

EFFECTIVE DATE: April 1, 1985.

Compliance: Required within the next 30 days after the effective date of this AD (unless already accomplished).

ADDRESSES: The service bulletin specified in this AD may be obtained upon request to British Aerospace, Librarian for Service Bulletins, Box 17414, Dulles International Airport, Washington, D.C. 20041, or may be examined at the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Harold N. Wantiez, Foreign Aircraft Certification Branch; telephone (206) 431–2977. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: The Civil Aviation Authority (CAA), which is the civil airworthiness authority for the United Kingdom, has classified British Aerospace BAe–146 Alert Service Bulletin 52–A14 as mandatory.

There have been two reported cases of the door girt bars becoming detached from the floor brackets during demonstration of escape chute operation resulting in separation of the chute from the aircraft. This was the result of incorrect assembly of one of the girt bar stop bolts. It is necessary to examine all girt bars to ensure that these bolts have been assembled correctly.

A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive requiring disassembly and inspection of the passenger/service door girt bars on BAe–146 airplanes was published in the Federal Register on September 20, 1984 (49 FR 36864). The comment period closed on October 9, 1984, and interested persons have been afforded an opportunity to participate in the making of this amendment. Two comments were received. The first commenter had no objections to the AD. The second commenter stated the AD was unnecessary since all airplanes on U.S. registry have already complied with the service bulletin. The FAA recognizes that all U.S. registered BAe–146 airplanes have been inspected; however, the AD also applies to airplanes not currently on U.S. registry, but eligible for import, as well as to replacement components installed in the future.

All airplanes on the U.S. Register have accomplished the inspection required by this AD; therefore, the AD has no economic impact on the U.S. fleet of BAe–146 airplanes. It is estimated that the inspection would require 10 manhours, at an average labor cost of $40/manhour, for airplanes imported in the future.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because few, if any, BAe Model 146 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket. A copy of it may be obtained be contacting the

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person identified under the caption "FOR FURTHER INFORMATION CONTACT."

Therefore, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

British Aerospace: Applies to Model BAe–146 airplanes as listed in British Aerospace Alert Service Bulletin 52-A14 dated June 6, 1984, certificated in all categories. Compliance is required within 30 days after the effective date of this AD. To prevent loss of the emergency escape chute, accomplish the following, unless previously accomplished:

A. Inspect the passenger/service door girt bars for correct assembly in accordance with British Aerospace Alert Service Bulletin 52–A14, dated June 6, 1984. Reassemble as required by the service bulletin. Prior to installation, replacement girt bars must also be inspected in accordance with the service bulletin.

B. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

This amendment becomes effective April 1, 1985.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983) and 14 CFR 11.89)

Issued in Seattle, Washington, on February 20, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85–4984 Filed 2–28–85; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 84–NM–20–AD; Amdt. 39–5010]

Airworthiness Directives; Lockheed-California Company Model L–1011–385 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) which requires modification to the hydraulic system "C" in Lockheed Model L–1011–385 series airplanes to minimize the probability of loss of three hydraulic systems during takeoff. This action is prompted by a recent incident wherein three of the four hydraulic systems in one airplane were lost when multiple main landing gear tire failures were experienced during the takeoff run. The loss of three hydraulic systems would significantly reduce the capability of the flight control system.

EFFECTIVE DATE: April 1, 1985. Compliance schedule as prescribed in the body of the AD, unless already accomplished.

ADDRESSES: The applicable service information may be obtained from Lockheed-California Company, P.O. Box 551, Burbank, California 91520, Attention: Commercial Support Contracts, Dept. 63–11, U–33, B–1. This information also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Franklin Tiangsing, Aerospace Engineer, Systems & Equipment Branch, ANM–131L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach California 90808; telephone (213) 548–2831.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include a new airworthiness directive (AD) to require modification of the aircraft hydraulic system on all Lockheed-California Company Model L–1011–385 airplanes was published as a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on April 2, 1984 (49 FR 13058). The comment period for the proposal closed on May 21, 1984.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to all comments received. Four comments were received.

One commenter stated that the AD is unwarranted. The FAA does not agree. Failure to protect the elements of the "C" hydraulic system in the area subject to tire fragment damage could subject the aircraft to a significant loss of flight controls.

One commenter agreed with the incorporation of Service Bulletin 093–29–065 "as soon as practical," but did not agree with the mandatory incorporation of Service Bulletin 093–29–085. The FAA has determined that Service Bulletin 093–29–085 should be included in this AD since the prescribed modification will significantly improve the resistance of the "C" system return lines to rupture by tire fragments from tire failures. The hydrualic fuse installation prescribed in Service Bulletin 093–29–065 does not protect the "C" system from loss of fluid if the return lines are ruptured.

Three commenters proposed extensions to the proposed compliance time of 180 calendar days after the effective date of the AD. Commenters suggested extension times varying from one year after issuance of the AD to three years after parts receipt date. In view of the estimated time lapse between the receipt of an order and the shipment of kits by Lockheed, which could be as much as 180 days, the FAA has determined that an extension of the compliance time to one year after issuance of the AD can be granted without compromising safety, and the amendment has been changed accordingly.

Another commenter claimed that "aircraft-out-of-service" costs would be incurred if implementation were required prior to three years after receipt of parts. Since the commenter did not provide any substantiation for those costs, those figures are not included in the total estimated costs associated with this AD.

Approximately 122 airplanes of U.S. registry are affected by this AD. Approximately 20 to 38 manhours per airplane will be required to accomplish the prescribed actions. The average labor charge is $40 per hour and replacement parts can be obtained at an estimated $5,000 to $8,000 per airplane. Based upon these figures, the total economic impact is estimated to be $955,520.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the proposed rule with the changes previously noted.

For these reasons, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact on a substantial number of small entities because few, if any, Model L–1011–385 series airplanes are operated

by small entities. A final evaluation has been prepared for this action and has been placed in the regulatory docket. A copy may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

List of Subjects: 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new Airworthiness Directive:

Lockheed-California Company: Applies to Lockheed Model L–1011–385 series airplanes, certificated in all categories. Compliance required as indicated unless previously accomplished.

To minimize potential for the loss of flight control capability due to the loss of three out of four hydraulic systems accomplish the following:

A. Within one year after the effective date of this AD, modify hydraulic system "C" by installing a hydraulic fuse and associated hydraulic tubing and replace aluminum return lines with steel lines in accordance with Lockheed L–1011 Service Bulletins Number 093–29–065, Revision 4, dated August 9, 1983, and 093–29–085, dated December 8, 1983, or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

B. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to Lockheed-California Company, P.O. Box 551, Burbank, California 91520, Attention: Commercial Support Contracts, Dept. 63–11, U–33, B–1. These documents also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington or the Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California.

This Amendment becomes effective April 1, 1985.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89)

Issued in Seattle, Washington, on February 20, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85–4983 Filed 2–28–85; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 84–CE–21–AD; Amdt. 39–5006]

Airworthiness Directives; Mitsubishi Heavy Industries, Ltd. (MHI), Models MU–2B, –10, –15, –20, –25, –26, –30, –35, and –36 Airplanes and Mitsubishi Aircraft International, Inc. (MAI), Models MU–2B, –25, –26, –26A, –35, –36A, –40 and –60 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts an Airworthiness Directive (AD) applicable to certain serial numbered Mitsubishi Models MU–2B, –10, –15, –20, –25, –26, –26A, –30, –35, –36, –36A, –40 and –60 airplanes manufactured by Mitsubishi Heavy Industries Ltd. (MHI), and Mitsubishi Aircraft International, Inc. (MAI) which would require modifying the pitot system by installing an improved pitot head with a higher heat capacity and mast heater. Since 1975, eighteen pitot/airspeed malfunctions have occurred in either severe icing or extreme cold conditions. The modification will preclude these occurrences by providing a greater heating capacity in the pitot system.

EFFECTIVE DATE: April 5, 1985.

Compliance: On or Before May 31, 1986.

ADDRESSES: Mitsubishi Heavy Industries, Ltd., MU–2 Service Recommendation No. 053, dated January 19, 1979, applicable to this AD may be obtained from Mitsubishi Heavy Industries, Ltd., Nagoya Aircraft Works, 10, Oye-cho, Minato-Ku, Nagoya, Japan, or Mitsubishi Aircraft International, Inc., Post Office Box 3848, San Angelo, Texas 76901. Mitsubishi Aircraft International, Inc., MU–2 Service Recommendation No. SR020/34–005, Revision A, dated July 31, 1979, applicable to this AD, may be obtained from Mitsubishi Aircraft International, Inc., Post Office Box 3848, San Angelo, Texas 76901.

Copies of these service bulletins are also contained in the Rules Docket, Federal Aviation Administration, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: For the MHI series airplane manufactured in Japan: John G. Sullivan, Aerospace Engineer, Western Aircraft Certification Office, ANM–172W, Federal Aviation Administration, Post Office Box 92007, Worldway Postal Center, Los Angeles, California 90009; Telephone (213) 536–6166. For the MAI series airplanes manufactured in the U.S.: Mark R. Schilling, Systems Engineer, Airplane Certification Branch, ASW–150, Federal Aviation Administration, Post Office Box 1689, Fort Worth, Texas 76101; Telephone (817) 877–2598.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations (FAR) to include an AD requiring modification of the pitot head on Mitsubishi Heavy Industries, Ltd. (MHI), Models MU–2B, –10, –15, –20, –25, –26, –30, –35 and –36 airplanes and Mitsubishi Aircraft International, Inc. (MAI), Models MU–2B, –25, –26, –26A, –35, –36A, –40, and –60 airplanes was published in the **Federal Register** on Thursday, September 6, 1984 (49 FR 35128, 35129, 35130). This proposed action was prompted by a Special Certification Review (SCR), conducted by the FAA, that found 18 documented instances during heavy icing or extreme cold conditions when the airspeed indicator gave erroneous readings or dropped to no indicated airspeed.

Interested persons have been afforded an opportunity to comment on the proposal. Only one commenter sent comments regarding the proposed AD. The numerous comments from the one commenter are as follows:

Comment: The "low heat pitot" P/N PH506–1 or –2 is FAA TSO Approved for use on airplanes.

FAA Response: A Technical Standard Order (TSO) approved part is an assurance that each part produced under that TSO authorization will meet a minimum performance standard specified for that part for use on civil aircraft, but it is not an approval for installation on any airplane (FAR 21.601).

Comment: At the time of aircraft certification, the 80 watt "low heat" pitot head was the only one available. In addition, CAR 3 and FAR Part 23 do not have heating capacity requirements.

FAA Response: CAR 3, FAR 23, and FAR 91 do not have specific wattage requirements but do require that the equipment required for safe operation perform adequately their intended functions. At the time of certification, it was determined that the PH506 pitot head performed its intended function; however, service history has shown that ice/water blockage can develop in this pitot head and the installation of the

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PH1100 pitot head will eliminate this possibility.

Comment: If the FAA is establishing a new requirement of pitot heating capacity now, then all airplanes from now on should comply, and it should not be made retroactive.

FAA Response: The FAA is not establishing a new heating capacity requirement by requiring the higher wattage pitot head, but does require the use of a pitot head, regardless of its watt density, that is known to perform its intended function and has no known service difficulties.

Comment: There are other airplanes in the same category as the MU–2 that use 80 watt pitot heads.

FAA Response: The other airplanes that use the 80 watt heaters do not have the pitot heads mounted in the same angular position and/or location as the MU–2. In addition, the FAA does not have any similar documented service difficulties about other airplanes pitot installations.

Comment: The difference between the "low heat" PH506 pitot head and the "high heat" PH1100 pitot head is as follows: PH506—80 watt heater, pressure tube in mast at leading edge surface of mast casting; PH1100—120 watt heater incorporates mast heater, pressure tube located at center of mast cavity adjacent to heater.

Since the location of the pressure tubes within the mast cavity could be greatly affected by any trapped moisture within the mast cavity, it could be that the improvement is due to the change in location of the pressure tube and not the increase in heater wattage.

FAA Response: The reported service difficulties involving the PH506 pitot head indicate that moisture freezing somewhere within the pitot head was the cause of instrument system malfunctions. The PH1100 pitot head has been shown to perform its intended function on this particular airplane installation.

Comment: The deadline of December 1, 1984, will ground the majority of the fleet of MU–2 airplanes because there is a long lead time to get the necessary number of parts.

FAA Response: It is not the FAA's intent to ground the MU–2 fleet. After further checking with the pitot head manufacturer, it has been determined that it may take up to 15 months to produce the number of pitot heads required to modify the entire MU–2 fleet. The FAA will adjust the compliance time of the AD so that no airplanes should be grounded due to lack of parts.

Comment: The reported erratic airspeed indication may be caused by the internal configuration of the pressure tube and water drain hole of the PH506 pitot head and not the heating capacity. The use of the PH506 pitot head is not peculiar to just the MU–2 but is also used on at least one other type airplane. Both heating capacity and pressure tube location inside of mast cavity should be looked at to determine the proper corrective action, then an AD should be issued to correct all airplane types, not just the MU–2.

FAA Response: The FAA agrees that it is possible that the location of the pressure tube within the mast cavity and not the increased heating capacity may be the only change needed; however, there is not a pitot head available that only incorporates the change in location of the pressure tube. The mounting attitude of the pitot head on the MU–2 tends to aggravate the water draining capability of the pitot head mast casting.

The other model airplane, that the commenter suggested, had the same PH506 pitot heads as the MU–2; however, it was mounted in different orientation, thus water drainage from the mast cavity was not nearly as critical.

Finally, further investigation into whether the pressure tube location or heat capacity is the reason for the erratic airspeed is not relevant. A pitot head is not available that only incorporates the pressure tube location change, and, conversely, a pitot head that only incorporates the heat density change is also not available. The PH1100 pitot head incorporates both changes. The FAA and Mitsubishi have received no adverse service history information regarding erratic airspeed indications from those airplanes utilizing the PH1100 pitot head. It can be concluded that changes incorporated in the PH1100 pitot head, have resulted in a cessation of the pitot pressure service difficulty reports.

Comment: The AD will place an undue burden on those operators who have never experienced erratic airspeed indications.

FAA Response: The FAA is not in agreement that those operators who have never experienced an erratic airspeed indication would be burdened by having to change to the PH1100 pitot heads. It has been shown that the PH1100 pitot head can provide accurate instrument pressure information to the pilot; whereas, the PH506 pitot head has a history on the Model MU–2 airplane of giving erratic readings in certain flight regimes which could pose a hazard to safety of flight.

Comment: Since the FAA SCR Report states that no documented service difficulty reports have been received regarding pitot pressure problems since 1979, then why is an AD going to be required now?

FAA Comment: During the SCR investigation the FAA became aware of additional service difficulty problems on the MU–2 pitot pressure system, whereupon it became the FAA's obligation to correct by AD, any potentially hazardous condition that may exist on these airplanes in the field.

Since the manufacturer of the pitot heads will be unable to supply sufficient pitot heads to modify all airplanes by the NPRM proposed date, the compliance time is being extended to May 31, 1986. This should allow time for enough PH1100 pitot heads to be manufactured to permit modification of all affected airplanes.

Accordingly, the proposal is being adopted as proposed except for the adjustment in the compliance time.

Approximately 322 MHI and 120 MAI Model MU–2 airplanes will be affected by this AD. Estmated cost of compliance is $734 for parts and $1,400 for labor for a total of $2,134 per airplane ($943,228 for the fleet). Few, if any, small entities operate the affected airplane and any that may would operate only one airplane. Therefore, the possible cost to any small entity will not exceed the significant threshold cost level for small entities.

Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1969); and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new AD:

Mitsubishi: Applies to Models MU–2B, –10, –15, –20, –25, –26, –26A, –30, –35, –36, –36A, –40 and –60 (Serial Number 1 up to and including 753, with or without the SA

suffix) airplanes certified in any category.

Note: The serial numbers of airplanes manufactured in the United States by Mitsubishi Aircraft International, Inc. (MAI) are suffixed by "SA." The serial numbers of airplanes manufactured in Japan by Mitsubishi Heavy Industries Ltd. (MHI) have no suffix.

Compliance: Required as indicated, unless already accomplished.

To assure anti-ice capability of the pitot tubes, accomplish the following:

(a) On or before May 31, 1986, modify the pitot system of the affected model and serial numbered airplanes in accordance with the applicable service information as follows:

(1) MHI Service Recommendation No. 053 dated January 19, 1979, or

(2) MAI Service Recommendation SR 020/34–005, Revision A, dated July 31, 1979.

(b) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(c) An equivalent method of compliance with this AD may be used on the MHI airplanes, if approved by the Manager, Western Aircraft Certification Office, ANM–170W, Federal Aviation Administration, Post Office Box 92007, Worldway Postal Center, Los Angeles, California 90009, and on the MAI airplanes, if approved by the Manager, Airplane Certification Branch, ASW–150, Federal Aviation Administration, Southwest Region, Post Office Box 1689, Fort Worth, Texas 76101.

(Secs. 313(a), 601 and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); § 11.89 of the Federal Aviation Regulations (14 CFR 11.89))

This amendment becomes effective on April 5, 1985.

Issued in Kansas City, Missouri, on February 19, 1985.

John E. Shaw,

Acting Director, Central Region.

[FR Doc. 85–4982 Filed 2–28–85; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Parts 630, 631 and 652

Job Training Partnership and Wagner-Peyser Acts Funds Availability

AGENCY: Employment and Training Administration, Labor.

ACTION: Interpretation of regulations.

SUMMARY: The Employment and Training Administration (ETA) of the Department of Labor (DOL) is issuing its interpretation and application of the Job Training Partnership Act (JTPA), the Wagner-Peyser Act and regulations, relating to the availability of JTPA/Wagner-Peyser funds. Public comments are being invited.

DATE: Written comments must be received on or before April 1, 1985.

ADDRESS: Send written comments to: Assistant Secretary of Labor for Employment and Training, U.S. Department of Labor, Room 5000—Patrick Henry Building, 601 D Street, NW., Washington, D.C. 20213, attention: Mr. David Henson.

FOR FURTHER INFORMATION CONTACT: Mr. David Henson on (202) 376–6544.

SUPPLEMENTARY INFORMATION: The Department of Labor has received a number of inquiries pertaining to Job Training Partnership Act (20 CFR Parts 630 and 631) and Wagner-Peyser (20 CFR Part 652) carry over funds and fund availability. To resolve the issues raised by these inquiries, the Department is publishing this rule-related notice to establish the Department's resolution of these issues.

Fund Availability Policy

A. Funds Obligated under Governor/Secretary's Agreements.

(1) Fiscal Year 1983 CETA and JTPA funds, which include CETA funds voluntarily transferred to JTPA grants and funds appropriated for Title III dislocated workers programs, are available during the transition period and for the two following program years (PY 1984 and PY 1985).

(2) Transition period JTPA and Wagner-Peyser funds are available for the transition period and the two following program years (PY 1984 and 1985).

(3) Program Year 1984 JTPA and Wagner-Peyser funds are available for expenditure during the program year obligated (1984) and the two succeeding program years (1985 and 1986).

B. The Title III Funds Obligated Outside the Governor/Secretary's Agreement.

(1) FY 1983 Title III formula grant funds may be carried forward and will remain distinct from all other JTPA funds. They will not be merged with any other Title III obligational authority.

(2) FY 1983 and Transition Period JPTA Title III discretionary grant funds may be carried forward and will remain distinct from formula funds.

(3) PY 1984 JPTA Title III discretionary grant funds will be added to the State's Title III formula allotment. There are no separate Program Year (PY) 1984 Title III discretionary grants.

Signed at Washington, D.C., this 22nd day of February, 1985.

Frank C. Casillas,

Assistant Secretary for Employment and Training.

[FR Doc. 85–4965 Filed 2–28–85; 8:45 am]

BILLING CODE 4510–30–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[Docket No. AM701 DE; A–3–FRL–2785–5]

Standards of Performance for New Stationary Sources; Delegation of Authority to the State of Delaware Department of Natural Resources and Environmental Control

AGENCY: Environmental Protection Agency.

ACTION: Rule related notice.

SUMMARY: Section 111(c) to the Clean Air Act permits EPA to delegate to the States the authority to implement and enforce the standards set out in 40 CFR Part 60, Standards of Performance for New Stationary Sources (NSPS). On August 8, 1984, the State of Delaware Department of Natural Resources and Environmental Control (DNREC) requested EPA to delegate to it the authority for additional NSPS source categories. EPA granted the request on October 25, 1984. The State now has the authority to implement and enforce NSPS regulations for Pressure Sensitive Tape and Label Surface Coating Operations, Bulk Gasoline Terminals, and Volatile Organic Compounds in the Synthetic Organic Chemical Manufacturing Industry.

EFFECTIVE DATE: October 25, 1984.

ADDRESSES: Applications and reports required under all NSPS source categories for which EPA has delegated authority to the Delaware DNREC to implement and enforce should be addressed to the State of Delaware, Department of Natural Resources and Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover Delaware 19901, in addition to EPA Region III.

Copies of the delegation and accompanying documents are available for inspection during normal business hours at the Delaware DNREC address given above or at the following offices:

U.S. Environmental Protection Agency, Region III, Curtis Building, Tenth Floor, Sixth and Walnut Streets, Philadelphia, Pennsylvania 19106,

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ATTN: Michael Giuranna (3AM11), Telephone: (215) 597–9189
Public Information Reference Unit, Room 2922—EPA Library, U.S. Environmental Protection Agency, 401 M. Street, SW (Waterside Mall), Washington, DC 20460
The Office of the Federal Register, 1100 L Street, NW, Room 8401, Washington, DC 20408

FOR FURTHER INFORMATION CONTACT: Michael Giuranna of EPA Region III's Air Programs Branch, (215) 597–9189.

SUPPLEMENTARY INFORMATION: The Delaware Department of Natural Resources and Environmental Control DNREC was delegated the authority to enforce the New Source Performance Standards promulgated by EPA in a **Federal Register** Notice dated February 15, 1978 (43 FR 6771). They also requested and were delegated authority for several other NSPS source categories which EPA published notification at 44 FR 70465 (1979), 46 FR 28402 (1981) and 47 FR 17989 (1982). On August 8, 1984, the Delaware DNREC requested EPA to delegate to it authority to implement and enforce an additional three categories.

Delegation of the additional standards was made by the following letter on October 25, 1984:

U.S. Environmental Protection Agency

REGION III

6th and Walnut Streets, Philadelphia, PA 19106

Mr. Robert R. French, *Manager*
Air Resources Section, Delaware Department of Natural Resources and Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19901

Dear Mr. French: This is in response to your letter of August 8, 1984, requesting delegation of authority for the Delaware Department of Natural Resources to enforce New Source Performance Standards for Pressure Sensitive Tape and Label Surface Coating Operations, Bulk Gasoline Terminals, and Volatile Organic Chemicals in the Synthetic Organic Chemical Manufacturing Industry.

We have reviewed the pertinent laws, rules and regulations of the State of Delaware and have determined that they continue to provide an adequate and effective procedure for implementing and enforcing the NSPS. Therefore, we hereby delegate the authority for the implementation and enforcement of the NSPS regulations to the State of Delaware as follows:

Authority for all sources located or to be located in the State of Delaware subject to the Standards of Performance for New Source Performance Standards for Pressure Sensitive Tape and Label Surface Coating Operations (RR), Bulk Gasoline Terminals (XX), and Volatile Organic Chemicals in the Synthetic Organic Chemical Manufacturing Industry (VV).

This delegation is based upon the conditions given in our June 5, 1983 letter to you which delegated 6 additional NSPS source categories to the Delaware Department of Natural Resources and Environmental Control.

If you need any further information, feel free to contact me.

Sincerely,

W. Ray Cunningham,

Director, Air Management Division.

Effective immediately, all applications, reports, and other correspondence required under the NSPS for Bulk Gasoline Terminals (XX), Pressure Sensitive Tape and Label Surface Coating Operations (RR) and Volatile Organic Compounds in the Synthetic Organic Chemical Manufacturing Industry (VV), should be sent to the Delaware Department of Natural Resources and Environmental Control (address above) in addition to the EPA Region III Office in Philadelphia.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Authority: Sec. III(c), Clean Air Act (42 U.S.C. 7411(c)).

List of Subjects in 40 CFR Part 60

Air pollution control, Aluminum, Ammonium sulfate plants, Cement industry, Coal, Copper, Electric power plants, Glass and glass products, Grains, Intergovernmental relations, Iron, Lead, Metals, Motor vehicles, Nitric acid plants, Paper and paper products industry, Petroleum, Phosphate, Sewage Disposal, Steel, Sulfuric acid plants, Volatile organic compounds, Waste treatment and disposal, Zinc.

Dated: February 14, 1985.

Stanley L. Laskowski,

Acting Regional Administrator.

[FR Doc. 85–4880 Filed 2–28–85; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 60

[Docket No. AM701 MD]

Standards of Performance for New Stationary Sources Delegation of Authority to the State of Maryland

AGENCY: Environmental Protection Agency.

ACTION: Rule related notice.

SUMMARY: Section 111(c) of the Clean Air Act permits EPA to delegate to the States the authority to implement and enforce the standards set out in 40 CFR Part 60, Standards of Performance for New Stationary Sources (NSPS).

On October 29, 1984, the Maryland Air Management Administration (AMA) requested EPA to delegate to it the authority for additional NSPS source categories. EPA granted the request on November 29, 1984. The State now has authority to implement and enforce NSPS regulations for Bulk Gasoline Terminals, Pressure Sensitive Tape and Label Surface Coating Operations, Beverage Can Surface Coating Industry, Volatile Organic Compounds in the Synthetic Organic Chemical Manufacturing Industry and Lime Manufacturing Plants.

EFFECTIVE DATE: November 29, 1984.

ADDRESSES: Applications and reports required under all NSPS source categories for which EPA has delegated authority to the Maryland Air Management Administration to implement and enforce should be addressed to the Maryland Air Management Administration, Maryland State Department of Health and Mental Hygiene, 201 West Preston Street, Baltimore, Maryland 21201, in addition to EPA Region III.

Copies of the revision and accompanying documents are available for inspection during normal business hours at the Maryland AMA address given above or at the following offices:

U.S. Environmental Protection Agency, Region III, Curtis Building, Tenth Floor, Sixth and Walnut Streets, Philadelphia, Pennsylvania 19106, ATTN: Michael Giuranna (3AM11), Telephone: (215) 597–9189
Public Information Reference Unit, Room 2922—EPA Library, U.S. Environmental Protection Agency, 401 M Street, SW (Waterside Mall), Washington, DC 20460
The Office of the Federal Register, 1100 L Street, NW, Room 8401, Washington, DC 20408

FOR FURTHER INFORMATION CONTACT: Michael Giuranna of EPA Region III's Air Programs Branch, (215) 597–9189.

SUPPLEMENTARY INFORMATION: On December 3, 1979, the Maryland Air Management Administration was delegated the authority to enforce the New Source Performance Standards promulgated by EPA.

On October 29, 1984, the Maryland AMA requested EPA to delegate to it authority to implement and enforce an additional five (5) categories.

Delegation of the additional standards was made by the following letter on November 29, 1984:

U.S. Environmental Protection Agency

REGION III

6th and Walnut Street, Philadelphia, PA 19106

Mr. George P. Ferreri, *Director,*

Maryland Air Management Administration, Maryland State Department of Health & Mental Hygiene, 201 West Preston Street, Baltimore, MD 21201

Dear Mr. Ferreri: This is in response to your letter of October 29, 1984, requesting delegation of authority for the Maryland Air Management Administration to enforce New Source Performance Standards for Bulk Gasoline Terminals, Beverage Can Surface Coating Industry, Pressure Sensitive Tape, and Label Surface Coating Industry, Volatile Organic Compounds in the Synthetic Organic Chemical Manufacturing Plants.

We have reviewed the pertinent laws, rules and regulations of the State of Maryland and have determined that they continue to provide an adequate and effective procedure for implementing and enforcing the NSPS. Therefore, we hereby delegate the authority for the implementation and enforcement of the NSPS regulations to the State of Maryland as follows:

Authority for all sources located or to be located in the State of Maryland subject to the Standards of Performance for New Stationary Sources for Bulk Gasoline Terminals (XX), Beverage Can Surface Coating Industry (WW), Pressure Sensitive Tape and Label Surface Coating Industry (RR), Volatile Organic Compounds in the Synthetic Organic Chemicals Manufacturing Industry (VV) and Lime Manufacturing Plants (HH).

This delegation is based upon the conditions given in our September 30, 1983 letter to you which delegated 13 additional NSPS source categories to the State of Maryland.

If you need any further information, feel free to contact me.

Sincerely,

W. Ray Cunningham,

Director, Air Management Division.

Effective immediately, all applications, reports, and other correspondence required under the NSPS for Bulk Gasoline Terminals (Subpart XX), Pressure Sensitive Tape and Label Surface Coating Industry (Subpart WW), Volatile Organic Compounds in the Synthetic Organic Chemical Industry (Subpart VV) and Lime Manufacturing Plants (Subpart HH), should be sent to the Maryland Air Management Administration (address above) in addition to the EPA Region III Office in Philadelphia.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Authority: Sec. 111(c), Clean Air Act (42 U.S.C. 7411(c)).

Dated: February 14, 1985.

Stanley L. Laskowski,

Acting Regional Administrator.

[FR Doc. 85-4901 Filed 2-28-85; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 4

Hearings and Appeals Procedures

AGENCY: Office of Hearings and Appeals, Department of the Interior.

ACTION: Final rule.

SUMMARY: The Office of Hearings and Appeals is amending regulation § 4.100(c)(1) in 43 CFR Part 4, Subpart C, Title 43 of the Code of Federal Regulations, to reflect the change of telephone number for the Interior Board of Contract Appeals.

EFFECTIVE DATE: March 1, 1985.

FOR FURTHER INFORMATION CONTACT: Frances A. Patton, 703-235-3810.

SUPPLEMENTARY INFORMATION: Since this is an action reflecting agency management and a change of telephone number which has previously been effected, the proposed rulemaking process is determined to be unnecessary and impractical.

List of Subjects in 43 CFR Part 4

Administrative practice and procedure, Government contracts.

PART 4—[AMENDED]

For the reasons set out above and under authority of the Secretary of the Interior contained in 5 U.S.C. 301, subparagraph (1) of paragraph (c) in § 4.100, Subpart C, Part 4, Title 43 of the Code of Federal Regulations, is amended to show the present telephone number for the Interior Board of Contract Appeals of the Office of Hearings and Appeals, U.S. Department of the Interior, as follows:

§ 4.100 General rules and guidelines.

* * * * *

(c) *Location and organization of the Board.*

(1) * * * Its telephone number is (703) 235-3813.

* * * * *

Dated: February 21, 1985.

Richard R. Hite,

Principal Deputy Assistant Secretary of the Interior.

[FR Doc. 85-4936 Filed 2-28-85; 8:45 am]

BILLING CODE 4310-10-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[RM-3968]

Editorial Amendment; Mexican Border Area; Limits

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Section 73.512 is amended by deleting the provision which limits the rule's applicability in the Mexican border area. As a result, it will become possible for the Commission to implement the special procedures for Class D noncommercial educational FM stations throughout the lower 48 United States.

EFFECTIVE DATE: March 29, 1985.

FOR FURTHER INFORMATION CONTACT: Jonathan David, Mass Media Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Order

In the matter of editorial amendment of § 73.512 of the Commission's Rules; RM-3968.

Adopted: February 13, 1985.
Released: February 20, 1985.

By the Chief, Mass Media Bureau.

1. Under provisions of rules adopted June 7, 1978, published in the **Federal Register** September 8, 1978, (43 FR 39704), Class D noncommercial educational FM stations (those authorized with a transmitter power output of 10 watts or less) were required to comply with certain channel change procedures. If possible, these stations were required to change channel by moving to a frequency in the commercial portion of the FM band. Alternatively, these Class D stations were given an opportunity to file an application to increase power to at least 100 watt effective radiated power in order to be able to continue operating on a reserved noncommercial FM channel.

2. Class D stations within 199 miles of the border with Mexico or within 250 miles of the border with Canada were exempted from the above requirement pending arrangements which would permit 10 watt operation on commercial FM frequencies in these areas.

3. By *Order*, published in the **Federal Register** August 17, 1979, 44 FR 48225, the Commission made an editorial revision of § 73.512 to delete this restriction insofar as it dealt with the

area near the border with Canada. Although the necessary arrangements with Canada had been made, it was not then possible to take the same step with regard to the Mexican border area. In the above-captioned petition for rule making, National Public Radio has asked the Commission to conduct any needed negotiations with Mexico so that the exemption in the rule for the Mexican border area can be deleted.

4. The Commission has been involved in continuing negotiations with Mexico in connection with various matters of common concern, including these affecting the existing bilateral FM Agreement and its interpretations. It has now become possible to implement the provisions of § 73.512 of the Commission's rules in the Mexican border area consistent with FM Agreements with Mexico. As a result, the current restriction in this rule can be removed by making the same editorial change as was made when the reference to the Canadian border area was deleted.[1] With this change, it will become possible to make the provisions relating to Class D stations effective throughout the conterminous 48 United States, as was contemplated when the rule was originally adopted.

PART 73—[AMENDED]

5. Therefore, it is ordered, That pursuant to sections 4(i), 5(a)(1), 303(r), and 307(b) of the Communications Act of 1934, as amended, and § 0.283 of the Commission's rules, § 73.512(a)(1) of the Commission's rules is revised, effective March 29, 1985, to read as follows:

§ 73.512 Special procedures applicable to Class D noncommercial educational stations.

(a) * * *

(1) To the extent possible, each applicant shall select a commercial FM channel on which it proposes to operate in lieu of the station's present channel. The station may select any commercial channel provided no objectionable interference, as set forth in § 73.509(b), would be caused. The application shall include the same engineering information as is required to change the frequency of an existing station and any other information necessary to establish the fact that objectionable interference would not result. If no commerical channel is available where the station could operate without causing such interference, the application shall set forth the basis upon which this conclusion was reached.

* * * * *

6. It is further ordered, That the subject petition for rule making filed by National Public Radio is dismissed.

7. For further information concerning this Order, contact Jonathan David, Mass Media Bureau, (202) 632-7792.

Federal Communications Commission.

James C. McKinney,

Chief, Mass Media Bureau.

[FR Doc. 85-4873 Filed 2-28-85; 8:45 am]

BILLING CODE 6712-01-M

[1] Because it is possible to make this change in the rule through an editorial revision, the NPR petition can be dismissed as moot.

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47 CFR Part 73

[MM Docket No. 84-442; RM 4724]

FM Broadcast Stations, San Clemente, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein at the request of Sunbelt Television, Inc., assigns Channel 285A to San Clemente, California, as that community's second FM broadcast service.

EFFECTIVE DATE: April 3, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (San Clemente, California); MM Docket No. 84-442, RM-4724.

Adopted: February 15, 1985.
Released: February 25, 1985.

By the Chief, Policy and Rules Division.

1. Before the Commission for consideration is the *Notice of Proposed Rule Making*, 49 FR 20311, published May 14, 1984, proposing the assignment of Channel 285A to San Clemente, California, as that community's second FM service. The *Notice* was adopted in response to a petition filed by Sunbelt Television, Inc. ("petitioner"). Supporting comments were submitted by the petitioner reaffirming its intention to apply for the channel, if assigned. Oppositions were filed by the Audio House, Inc. ("Audio"), licensee of Station KCBQ-FM (Channel 287), San Diego, California, and Mount Wilson FM Broadcasters, Inc. ("Mt. Wilson"), licensee of Station KKGO-FM (Channel 286), Los Angeles, to which the petitioner responded.

2. Both oppositions are based on the ground that in 1966 the Commission dismissed a proposal to assign Channel 285A to San Clemente because the only sites which could meet the minimum required spacings were located within the confines of Camp Pendleton, which was not available for civilian use.[1] The opponents argue that sites are still unavailable on the Camp Pendleton Base. Mt. Wilson states that it believes the officials at Camp Pendleton would not grant permission to locate an antenna and transmitter anywhere within the confines of Camp Pendleton.

3. Petitioner submitted an affidavit and a letter from Colonel A.A. Bernotas, Marine Corps, which indicate there is the possibility of an FM broadcast facility being constructed on the milit ıry property of Camp Pendleton. The Marine Corps states that it does in certain cases permit civilian use of military property. However, the proposal to construct an FM Broadcast facility on the federal land would require close evaluation by the Marine Corps.

4. Channel 285A can be assigned to San Clemente in compliance with the minimum distance separation requirements of § 73.207 of the Commission's Rules, with a site restriction of approximately 8.9 kilometers (5.5. miles) southeast of the community.[2] The site restriction meets the spacing requirements to FM Stations KDES (Channel 284) Palm Springs, California, and KCBQ (Channel 287), San Diego, California. Although the only site which could meet the minimum required spacings would have to be located within the confines of Camp Pendleton, the Marine Corps indicated its willingness to evaluate the proposal.

5. Since San Clemente is located within 320 kilometers (199 miles) of the U.S.-Mexican border, the concurrence by the Mexican government has been obtained.

6. We have carefully considered the proposal and found no valid argument against it. On that basis, the Commission believes the public interest would be served by the assignment of

[1] *Report and Order* in Docket No. 16212, 2 FCC 2d 647 (1966).

[2] The petition was filed before the effectiveness of the new spacing requirements adopted in the *Report and Order*, BC Docket No. 80-90, 94 FCC 2d 152 (1983), *recons., Memorandum Opinion and Order*, 49 FR 10260, published March 20, 1984. Therefore, the earlier rules for minimum distance separation requirements are applied.

Channel 285A to San Clemente, in order to provide for a second FM service.

7. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective April 3, 1985, the FM Table of Assignments, § 73.202(b) of the Commission's Rules, is amended for the following community:

City	Channel No.
San Clemente, CA	285A, 300

8. It is further ordered, that this proceeding is terminated.

9. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634–6530.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85–5023 Filed 2–28–85; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 84–498; RM–4677]

FM Broadcast Stations, Caldwell, ID

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein substitutes Channel 277 for Channel 276A at Caldwell, Idaho, and modifies the license of Station KLCI to specify operation on the new channel, in response to a petition filed by Carlson Communications International. (Hayes Broadcasting Co. was the original petitioner and the call sign was changed from KQZQ to KLCI on March 13, 1984.)

EFFECTIVE DATE: April 3, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Caldwell, Idaho); MM Docket No. 84–498, RM–4677.

Adopted: February 15 1985.
Released: February 25, 1985.

By the Chief, Policy and Rules Division.

1. The Commission herein considers its *Notice of Proposed Rule Making*, 49 FR 23896, published June 8, 1984, issued in response to a request filed by Carlson Communications International [1] ("petitioner"), licensee of Station KLCI,[2] Channel 276A, Caldwell, Idaho, proposing the substitution of Class C FM Channel 277 for Channel 276A and modification of the license accordingly. Petitioner filed supporting comments in which it reaffirmed its intention to file for the channel, if assigned. No other comments were received.

2. We believe the public interest would be served by the substitution of Class C Channel 277 for Channel 276A at Caldwell, Idaho, since it could provide Caldwell with its second wide area coverage FM service. The substitution can be made in compliance with the minimum distance separation requirements of Section 73.207 of the Commission's Rules.

3. We have authorized in paragraph 4 a modification of petitioner's license for Station KLCI, Caldwell, Idaho, to specify operation on Channel 277, since there has been no other expression of interest in the Class C Channel. See *Cheyenne, Wyoming*, 62 FCC 2d 63 (1976).

4. Accordingly, pursuant to the authority found in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, that effective April 3, 1985, the FM Table of Assignments, § 73.202(b) of the Commission's Rules, is amended to include the community listed below, as follows:

City	Channel No.
Caldwell, ID	231, 277, and 296A.

5. It is further ordered, pursuant to the authority contained in § 316 of the Communications Act of 1934, as amended, that the license of Station KLCI, Caldwell, Idaho, is modified to specify operation on Channel 277, subject to the following conditions:

(a) The licensee shall file with the Commission a minor change application for construction permit (Form 301), specifying the new facility.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with § 73.1620.

(c) Nothing contained herein shall be construed to authorize a major change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to § 1.1301 of the Commission's Rules.

6. It is further ordered, that this proceeding is terminated.

7. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85–5020 Filed 2–28–85; 8:45 am]

BILLING CODE 6712-01-M

[1] Effective March 2, 1984, Hayes Broadcasting Company (original petitioner) assigned its license to operate on Channel 276A to Boise Area Radio Stations, which in turn transferred the license to Carlson Communications International.

[2] Effective March 13, 1984, the call sign was changed from KQZQ to KLCI.

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47 CFR Part 73

[MM Docket No. 84–463; RM 4650]

FM Broadcast Stations, Deer Lodge, MT

AGENCY: Federal Communication Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns FM Channel 244A to Deer Lodge, Montana, as that community's first FM assignment in reponse to a petition filed by Deer Lodge Broadcasting, Inc.

EFFECTIVE DATE: April 3, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Deer Lodge, Montana); MM Docket No. 84–463, RM–4650.

Adopted: February 15, 1985.
Released: February 25, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 49 FR 21967, published May 24, 1984, proposing the assignment of FM Channel 244A to Deer Lodge,

Montana, as that community's first FM assignment. The *Notice* was adopted in response to a petition filed by Deer Lodge Broadcasting, Inc. ("petitioner") which had previously sought [1] and rejected the assignment at Deer Lodge, Montana. Supporting comments have been filed by petitioner reaffirming its intention to apply for the channel, if assigned. No oppositions or other comments expressing an interest in the proposal were received.

2. The assignment can be made in compliance with the minimum distance separation requirements of § 73.207 of the Rules. Concurrence of the Canadian government has been obtained since FM Channel 244A at Deer Lodge is located within 320 kilometers (200 miles) of the U.S.-Canada border.

3. We believe the public interest would be served by assigning FM Channel 244A to Deer Lodge, Montana, since it could provide a first local FM service to the community. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, that effective April 3, 1985, the FM Table of Assignments, § 73.202(b) of the Commission's Rules, is amended, for the following community:

City	Channel No.
Deer Lodge, MT	244A

4. It is further ordered, that this proceeding is terminated.

5. For further information concerning the above, contact D. David Weston, Mass Media Bureau, (202) 634–6530.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85–5021 Filed 2–28–85; 8:45 am]

BILLING CODE 6712–01–M

[1] See *Report and Order*, BC Docket 82–309, 47 FR 41381, published September 20, 1982.

47 CFR Part 73

[MM Docket No. 84–374; RM–4629, RM–4722]

TV Broadcast Stations, Inverness and Williston, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns UHF television Channel 64 to Inverness, Florida, in response to a proposal submitted by H. James Sharp. The assignment could provide a first TV service to Inverness. In addition, a conflicting proposal to assign Channel 64 to Williston, Florida, at the request of Jim Johnson Enterprises, Inc., is denied.

EFFECTIVE DATE: April 3, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 7

Television broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.606(b), Table of Assignments, TV Broadcast Stations, (Inverness and Williston, Florida); MM Docket No. 84–374, RM–4629, RM–4722.

Adopted: February 15, 1985.
Released: February 25, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has under consideration the *Notice of Proposed Rule Making*, 49 FR 18142, published April 27, 1984, proposing a first television assignment to either Inverness or Williston, Florida.[1] The proceeding was instituted in response to petitions filed by H. James Sharp ("Sharp") and by Jim Johnson Enterprises, Inc. ("Johnson"), respectively. Both petitioners filed comments restating their intent to apply for the channel, if assigned to their requested community. Big Sun Television, Inc. ("Big Sun") submitted comments in support of the Inverness proposal.

2. Inverness (population 4,095),[2] seat of Citrus County (population 54,703), is located in west central Florida, approximately 96 kilometers (60 miles) north of Tampa. Williston (population 2,240) in Levey County (population 19,870) is located in north central Florida. Neither Inverness nor Williston has local television service.

3. In response to the *Notice*, Sharp submits that Inverness is more deserving of the assignment than Williston because that community is presently served by TV Stations WCBJ (Channel 20), Gainesville, WBSP (Channel 51), Ocala, and will soon be served by recently assigned Channel 61 at Gainesville and Channel 53 at High Springs, Florida. By contrast, Sharp claims that Inverness receives network service from Tampa and Orlando only, both of which are 60 miles from Inverness.

4. Comments filed by Johnson, the proponent of a Williston assignment, focused on the location, the population and the possible service area of both communities. Johnson claims that a station operating on TV Channel 64 at Williston could easily provide service to Gainesville and Ocala, as those communities are only 20 air miles from Williston. Johnson also points out that Inverness is not located near any city of significant size, thus eliminating the possibility that Inverness could provide service to a large area or population.

5. In support of the Inverness proposal, Big Sun asserts that the Commission's priorities for the assignment of television channels favor the assignment of Channel 64 to Inverness rather than Williston based on population, geographic location and diversity of available service. We are also told by Big Sun that the qualitative defference between the Williston and Inverness markets show that Williston is now the better served community, and will continue to be so in the future, given the abundant availability of unused assignments in the Williston area.

6. In evaluating the public interest factors to determine which community should receive a first FM television service, the Commission generally considers (1) population, (2) location, and (3) number of reception services.[3] First, Inverness has a larger population than Williston, based on the 1980 U.S. Census. Second, Inverness receives only grade B service from Orlando and Tampa stations, whereas Williston receives grade A service from Gainesville and Ocala stations. Based on these factors, we have determined that Inverness should receive the assignment.

7. Accordingly, pursuant to the authority contained in §§ 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective April 3, 1985, the FM Table of Assignments, § 73.606(b) of the Commission's Rules, is amended as follows:

[1] Inverness and Williston are 38 miles apart instead of the minimum 205 miles as required by § 73.610 of the Rules.

[2] Population figures were extracted from the 1980 U.S. Census.

[3] *Sixth Report and Order on Television Allocations*, 41 F.C.C. 148, 167 (1952).

City	Channel No.
Inverness, FL	64

8. It is further ordered that the counterproposal of Jim Johnson Enterprises, Inc. to assign UHF Television Channel 64 to Williston, Florida, is denied.

9. It is further ordered, that this proceeding is terminated.

10. For further information concerning this proceeding contact Montrose H. Tyree, (202) 634–6530.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85–5022 Filed 2–28–85; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 84–474; RM–4678]

FM Broadcast Stations, Quincy, IL; Addition to Table of Assignment

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action assigns Channel 280A to Quincy, Illinois, in response to a petition filed by Linda Crook. The assignment could provide a third FM service for Quincy.

EFFECTIVE DATE: April 3, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order (Proceeding Terminated)

In the Matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Quincy, Illinois); MM Docket No. 84–474, RM–4678.

Adopted: February 15, 1985.
Released: February 25, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has under consideration its *Notice of Proposed Rule Making*, 49 FR 22510, published May 30, 1984, proposing the assignment of FM Channel 280A to Quincy, Illinois. The *Notice* was issued in response to a petition filed by Linda Crook ("petitioner"), and could provide a third FM service to the community of Quincy. Petitioner filed comments in support of the *Notice* and indicated she would apply for the channel, if assigned. No other comments were received.

2. Channel 280A can be assigned to Quincy, Illinois, in compliance with the minimum distance separation requirements of § 73.207 of the Commission's Rules.

3. In view of the above considerations, we believe the public interest would be served by the assignment of Channel 280A to Quincy, Illinois, since it could provide a third FM broadcast facility for that community.

4. Accordingly, pursuant to the authority contained in §§ 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective April 3, 1985, the FM Table of Assignments, § 73.202(b) of the Commission's Rules, is amended as follows:

City	Channel No.
Quincy, IL	258, 280A, and 288.

5. It is further ordered, that this proceeding is terminated.

6. For further information concerning the above, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85–5016 Filed 2–28–85; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 84–461; RM 4652]

FM Broadcast Stations, Houghton, MI; Addition to Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action assigns Channel 272A to Houghton, Michigan, in response to a petition filed by Norman C. Koski. The assignment could provide a third broadcast service to the community.

EFFECTIVE DATE: April 3, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.202(b), table of assignments, FM Broadcast Stations (Houghton, Michigan); MM Docket No. 84–461, RM–4652.

Adopted: February 15, 1985.
Released: February 25, 1985.

By the Chief, Policy and Rules Division.

1. In response to a petition filed by Norman C. Koski ("petitioner"), the Commission adopted the *Notice of Proposed Rule Making*, 49 FR 21965, published May 24, 1984, proposing the assignment of FM Channel 272A to Houghton, Michigan, as its third FM assignment.[1] Petitioner filed comments indicating that it would file an application to construct and operate on Channel 272A, if assigned. Northern Michigan University filed opposition comments. Petitioner filed reply comments.

2. Northern Michigan University, licensee of noncommerical educational broadcast Station WNMU–FM and broadcast translator Station W272AG, Marquette, Michigan, opposes the proposed allocation of Channel 272A to Houghton. It states that the proposed assignment is not in the best interest of the public served by WNMU–FM and translator W272AG, which provides, for the first time, a clear public radio signal to the citizens of Marquette. The Commission's Rules do not protect translator stations against interference and must terminate use of a frequency if the translator station causes interference to a full broadcast station. However, since the distance between the translator in Marquette and the community of Houghton is approximately 68.5 miles, which exceeds the minimum distance separation requirement of 65 miles for co-channel Class A stations, we expect the citizens of Marquette will continue to receive broadcast service from the translator.

3. The Commission has determined that the public interest would be served by assigning FM Channel 272A to Houghton. The channel can be assigned consistent with the minimum distance separation requirements of § 73.207 of the Commission's Rules. Canadian concurrence has been received.

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[1] In the *Notice of Proposed Rule Making* in this proceeding, released May 17, 1984, paragraph 4 indicated the proposed channels for Houghton as 243, 249A and 272A. Channel 243 should be corrected to Channel 242.

4. Accordingly, pursuant to the authority contained in §§ 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective April 3, 1985, the FM Table of Assignments, § 73.202(b) of the Commission's Rules, is amended as follows:

City	Channel No.
Houghton, MI	242, 294A, and 272A.

5. It is further ordered, That this proceeding is terminated.

6. For further information concerning the above, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85–5019 Filed 2–28–85; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 84–497; RM–4875]

FM Broadcast Stations, Clinton, MO; Addition to Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns Class C Channel 241 to Clinton, Missouri, as that community's second local FM service, in response to a petition filed by B & F Broadcasting, Inc.

EFFECTIVE DATE: April 3, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner or Jeffrey D. Sutherland, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Clinton, Missouri) MM Docket No. 84–497, RM–4675.

Adopted: February 15, 1985.
Released: February 25, 1985.

By the Chief, Policy and Rules Division.

1. The Commission herein considers the *Notice of Proposed Rule Making*, 49 FR 23897, published June 8, 1984, issued in response to a petition filed by B & F Broadcasting, Inc. ("petitioner"), proposing the assignment of Class C Channel 241 to Clinton, Missouri, as that community's second FM allocation. Petitioner filed supporting comments in which it reaffirmed its intention to apply for the channel, if assigned. No oppositions to the proposal were received.

2. In consideration of the above, we believe the public interest would be served by assigning Class C Channel 241 to Clinton, Missouri, since it could provide a first competitive service in the community and an additional nighttime voice for the expression of diverse viewpoints.

3. Channel 241 can be assigned to Clinton consistent with the minimum distance separation requirements of § 73.207(b) of the Commission's Rules provided the transmitter is restricted to an area 12.3 miles east [1] of the community to avoid short spacing to FM Stations KKBL (Channel 240A), Monett, Missouri, and KXTR (Channel 243), Kansas City, Missouri.[2]

4. Accordingly, pursuant to the authority contained in §§ 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That, effective April 3, 1985, the FM Table of Assignments, § 73.202(b) of the Commission's Rules, is amended with respect to the community listed below, as follows:

City	Channel No.
Clinton, MO	237A, and 241.

5. It is further ordered, that this proceeding is terminated.

6. For further information concerning the above, contact Nancy V. Joyner or Jeffry D. Sutherland, Mass Media Bureau, (202) 634–6530.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C 154, 303)

[1] The *Notice* herein is corrected to the extent it indicated that a site restriction 11.5 miles northeast of the community was required to accommodate the proposal.

[2] Under the new rules adopted in BC Docket No. 80–90, effective March 1, 1984, 94 F.C.C. 2d 152 (1983), 49 FR 10260, published March 20, 1984, this assignment does not provide a 16 kilometer buffer to Station KXTR. However, since the petition was filed and accepted prior to the effective date, the revised spacing requirements do not apply. See also, *Public Notice*, dated December 9, 1983.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85–5018 Filed 2–28–85; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 84–471; RM–4664]

FM Broadcast Station Duluth, MN

AGENCY: Federal Communications Commission.

ACTION: Final Rule.

SUMMARY: Action taken herein assigns FM Channel 269A to Duluth, Minnesota, as the community's seventh FM assignment in response to a petition filed by the Freedom Development Corporation.

EFFECTIVE DATE: April 23, 1985.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order (Proceeding Terminated)

In the Matter of Amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Duluth, Minnesota); MM Docket No. 84–471; RM–4664.

Adopted: February 11, 1985.
Released: February 21, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 49 FR 22511, published May 30, 1984, proposing the assignment of FM Channel 269A to Duluth, Minnesota, as that community's seventh FM channel. The *Notice* was adopted in response to a petition filed by Freedom Development Corporation ("petitioner"). Supporting comments were filed by petitioner in which it reaffirmed its intention to apply for the channel, if assigned. No oppositions or other comments expressing an interest in the proposal were received.

2. The assignment can be made in compliance with the minimum distance separation requirements of § 73.207 of the rules, with a site restriction 3.5 miles northwest of Duluth, Minnesota. Concurrence of the Canadian government has been obtained since Duluth is located within 320 kilometers (200 miles) of the U.S.-Canada border.

3. We believe the public interest would be served by assigning FM Channel 269A to Duluth, Minnesota since it could provide a seventh FM service to the community. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective April 23, 1985, the FM Table of Assignments, § 73.202(b) of the Commission's Rules, is amended to incorporate the community listed below, as follows:

City	Channel No.
Duluth, MN	225, 235, 239, 255, 269A, 277, and 286.

4. It is further ordered, That this proceeding IS TERMINATED.

5. For further information concerning the above, contact D. David Weston, Mass Media Bureau, (202) 634–6530.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85–5027 Filed 2–28–85; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 83–754; RM–4448]

FM Broadcast station in Roswell, NM

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns FM Channel 293 to Roswell, New Mexico in response to a petition filed by Enchantment Broadcasting Corporation as that community's fourth FM assignment.

EFFECTIVE DATE: April 23, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order (Proceeding Terminated)

In the Matter of amendment of § 73.202(b), table of assignments, FM Broadcast Stations. (Roswell, New Mexico); MM Docket No. 83–754 RM–4448.

Adopted February 11, 1985.
Released February 22, 1985.
By the Chief, Policy and Rules Division.

1. The Commission has under consideration its *notice of proposed rule making*, 48 FR 36172, published August 9, 1983, in response to a petition filed by Enchantment Broadcasting Corporation ("petitioner"), proposing the assignment of FM Channel 293 [1] to Roswell, New Mexico, as that community's fourth FM broadcast assignment. Supporting comments were filed petitioner reaffirming its intention to apply for the channel, if assigned.

2. The Commission believes that the public interest would be served by the assignment of FM Channel 293 to Roswell, New Mexico since it could provide that community with an additional broadcast service. The assignment can be made in compliance with minimum distance separation requirements of § 73.207 of the Rules. Mexican concurrence in the assignment of 293 to Roswell, New Mexico has been received.

3. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective April 23, 1985, the FM Table of Assignments, § 73.202(b) of the Commission's Rules, is amended for the following city:

City	Channel No.
Roswell, NM	235, 246, 263, and 293

4. It is further ordered, That this proceeding is terminated.

5. For further information concerning this proceeding, contact D. David Weston, Mass Media Bureau, (202) 634–6530.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division Mass Media Bureau.

[FR Doc. 85–5011 Filed 2–28–85; 8:45 am]

BILLING CODE 6712-01-M

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[1] The *Notice* originally proposed Channel 275 for Roswell, New Mexico but that channel was subsequently assigned to Hobbs, New Mexico (MM Docket No. 84–12, RM–4608).

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47 CFR Part 73

[MM Docket No. 84–377; RM–4600, RM–4651]

FM Broadcast Stations, South Padre Island, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns FM Channels 224A and 237A to South Padre Island, Texas, as that community's first and second local FM services in response to petitions filed by Richard Sweetland and Russell B. Bentley, Jr.

EFFECTIVE DATE: April 3, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.202(b), table of assignments, FM Broadcast Stations. (South Padre Island, Texas); MM Docket No. 84–377, RM–4600, RM–4651.

Adopted February 15, 1985.
Released February 25, 1985.
By the Chief, Policy and Rules Division.

1. The Commission has before it the *notice of proposed rule making*, 49 FR 18141, published April 27, 1984, proposing the assignment of FM Channels 224A and 237A to South Padre Island, Texas, as that community's first and second FM allocations. Separate petitions for rule making were filed by Allen Sheets ("Sheets") and Richard Sweetland ("Sweetland") seeking the assignments but only Sweetland submitted comments reaffirming his intention to file for either channel, if assigned. However, additional supporting comments were filed by Russell B. Bentley, Jr. stating his intention to file for either channel, if assigned. No oppositions to these proposals were received.

2. The Commission believes that the public interest would be served by the assignments of FM Channels 224A and 237A to South Padre Island, Texas, in order to provide first and second local FM service to the community. The channels can be assigned in compliance with minimum distance separation and

other technical requirements of the Rules. Concurrence of the Mexican government has been received since South Padre Island is within 320 kilometers (200 miles) of the U.S.-Mexico border.

3. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's rules, it is ordered, That effective April 3, 1985, the FM Table of Assignments, § 73.202(b) of the Commission's rules, is amended, for the following city:

City	Channel Nos.
South Padre Island, TX	224A, and 237A.

4. It is further ordered, That this proceeding is terminated.

5. For further information concerning this proceeding, contact D. David Weston, Mass Media Bureau, (202) 634-6530.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division Mass Media Bureau.

[FR Doc. 85-5010 Filed 2-28-85; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket 84-1124, RM-4548]

FM Broadcast Stations, Kerrville, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns FM Channel 221A to Kerrville, Texas, in response to a petition filed by Werlinger Communications Company as that community's second FM assignment.

EFFECTIVE DATE: April 3, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order (Proceeding Terminated)

In the matter of Amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations, (Kerrville, Texas); MM Docket No. 83-1124, RM-4548.

Adopted February 15, 1985.
Released February 25, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the *Notice of proposed rule making*, 48 FR 49893, published October 28, 1983, proposing the assignment of FM Channel 221A to Kerrville, Texas, as that community's second FM assignment. The *notice* was adopted in response to a petition filed by Werlinger Communications Company ("petitioner"). Supporting comments were filed by petitioner reaffirming his intention to apply for the channel, if assigned.[1] No comments in opposition to the proposal were received.

2. The Commission believes that the public interest would be served by the assignment of FM Channel 221A to Kerrville, Texas, in order to provide that community with its second local FM broadcast service. The assignment can be made in compliance with the minimum distance separation requirements of § 73.207 of the Commission's Rules. Mexican concurrence in the assignment of Channel 221A to Kerrville, Texas, has been received.

3. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's rules, it is ordered, that effective April 3, 1985, the FM Table of Assignments, § 73.202(b) of the Commission's rules, is amended for the following city:

City	Channel No.
Kerrville, TX	221A, and 232A.

4. It is further ordered, That this proceeding is terminated.

5. For further information concerning this proceeding, contact D. David Weston, Mass Media Bureau, (202) 634-6530.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy & Rules Division Mass Media Bureau.

[FR Doc. 85-5012 Filed 2-28-85; 8:45 am]

BILLING CODE 6712-01-M

[1] Petitioner's comments were not timely received. However, they will be accepted for consideration herein to allow petitioner to reaffirm his intention to apply for the channel, if assigned.

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47 CFR Part 73

[MM Docket 84-176, RM-4573, RM-4617]

FM Broadcast Stations, Laramie, WY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns Channel 288A to Laramie, Wyoming, as that community's third FM broadcast service, at the request of Laramie Women's Hispanic Network, Inc. Additionally, the petition of Allen Sheets to assign FM Channel 296A to the same community is dismissed at his request.

EFFECTIVE DATE: April 3, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR 73

Radio broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.202(b), table of assignments, FM Broadcast Stations. (Laramie, Wyoming); MM Docket No. 84-176, RM-4573, RM-4617.

Adopted: February 15, 1985.
Released February 25, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the *notice of proposed rule making*, 49 FR 8263, published March 6, 1984. The *notice* was issued in response to petitions filed by Laramie Women's Hispanic Network, Inc., ("Laramie") and Allen Sheets ("Sheets"), proposing the assignment of FM Channels 288A and 296A, respectively, to Laramie, Wyoming. Supporting comments were filed by Laramie reaffirming its intention to apply for Channel 288A, if assigned. On April 19, 1984, Sheets filed a "Motion to Dismiss" his petition.

2. The Commission believes the public interest would be served by the assignment of Channel 288A to Laramie, Wyoming, as a third FM broadcast service. The assignment can be made in compliance with the minimum distance separation requirements of § 73.207 of the Commission's rules.

3. Commission policy requires a showing of continuing interest before a channel will be assigned. In view of the fact that there is no longer an interest in Channel 296A, no further consideration will be given to that proposal. (See

Appendix to the *notice of proposed rule making.*)

4. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.24(b) and 0.283 of the Commission's rules, it is ordered, That effective April 3, 1985, the FM Table of Assignments is amended with regard to the community listed below:

City	Channel No.
Laramie, WY	238, 275, and 288A.

5. It is further ordered, That the petition filed by Allen Sheets is hereby dismissed and this proceeding is terminated.

6. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634–6530.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85–5013 Filed 2–28–85; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 84–180; RM–4499]

TV Broadcast Station in Porterville, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns UHF Television Channel 61 to Porterville, California, as that community's first commercial television service in response to a petition filed by Stephen J. Mewhort.

EFFECTIVE DATE: April 23, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment to § 73.606(b), table of assignments, TV Broadcast Stations (Porterville, California); MM Docket No. 84–180, RM–4499.

Adopted: February 11, 1985.

Released: February 21, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 49 FR 8285, published March 6, 1984, proposing the assignment of UHF Television Channel 61 to Porterville, California, as that community's first commercial television service. The *Notice* was adopted in response to a petition filed by Stephen J. Mewhort ("petitioner"). Supporting comments were filed by petitioner in which it reaffirmed its intention to apply for the channel, if assigned.

2. The assignment can be made in compliance with the minimum distance separation requirements of § 73.610 and § 73.698 of the Commission's Rules.

3. We believe the public interest would be served by the assignment of UHF Television Channel 61 to Porterville, California, since it could provide a first commercial television service to that community. Accordingly, pursuant to the authority contained in §§ 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, that effective April 23, 1985, the Television Table of Assignments (§ 73.606(b) of the Commission's Rules) is amended to incorporate the community listed below, as follows:

City	Channel No.
Porterville, CA	61

4. It is further ordered, that this proceeding is terminated.

5. For further information concerning the above, contact D. David Weston, Mass Media Bureau, (202) 634–6530.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85–5026 Filed 2–28–85; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 84–501; RM–4706]

TV Broadcast Stations, Live Oak, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action assigns UHF Television Channel 57 to Live Oak, Florida, in response to a petition filed by Live Oak Television, Inc.

EFFECTIVE DATE: April 3, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.606(b), table of assignments, TV Broadcast Stations (Live Oak, Florida); MM Docket 84–501 RM–4706

Adopted February 15, 1985.

Released February 25, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has under consideration the *notice of proposed rulemaking*, 49 FR 24405, published June 13, 1984, proposing the assignment of UHF television Channel 57 to Live Oak, Florida. The *notice* was issued in response to a petition filed by Live Oak Television, Inc. ("petitioner"). Supporting comments were filed by the petitioner reaffirming its intention to apply for the channel, if assigned.

2. We believe that the public interest would be served by assigning UHF TV Channel 57 to Live Oak, since it could provide that community with its first television service. The channel can be assigned in compliance with the Commission's minimum mileage separation requirements.

3. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's rules, it is ordered, That effective April 3, 1985, the TV Table of Assignments, § 73.606(b) of the Commission's rules, is amended with regard to the community listed below:

City	Channel No.
Live Oak, FL	57 –

4. It is further ordered, That this proceeding is terminated.

5. For further information concerning the above, contact Montrose H. Tyree, (202) 634–6530.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85-5014 Filed 2-28-85; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 84-182; RM-4614]

TV Broadcast Stations, Liberal, KS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein, at the request of James P. Young, assigns VHF Television Channel 5 to Liberal, Kansas, as that community's first local television broadcast service.

EFFECTIVE DATE: April 3, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.606(b), table of assignments, Television Broadcast Stations. (Liberal, Kansas); MM Docket No. 84-182, RM-4614.

Adopted February 15, 1985.
Released February 25, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the *notice of proposed rule making*, 49 FR 8267, published March 6, 1984, proposing the assignment of VHF Television Channel 5 to Liberal, Kansas, as that community's first local television broadcast service, at the request of James P. Young ("petitioner"). Petitioner filed supporting comments reaffirming his intention to apply for the channel, if assigned. F. Edward Herns ("Herns") filed late supporting comments.[1]

2. Liberal (population 14,911)[2] the seat of Seward County (population 17,071) is located in southwestern Kansas, approximately 350 kilometers (220 miles) northwest of Oklahoma City, Oklahoma. Presently, Liberal is devoid of any local television service.

3. We believe the public interest would be served by the assignment of VHF Television Channel 5 to Liberal, in order to provide that community with its first local television service. The channel assignment can be made in compliance with the minimum distance separation requirements of §§ 73.610 and 73.698 of the Commission's rules, with a site restriction of 7.8 miles southwest of the community to avoid short-spacing to Station KTVC-TV (Channel 6) in Ensign, Kansas.

4. Accordingly pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Section 0.61, 0.204(b) and 0.283 of the Commission's rules, It is ordered, That effective April 3, 1985, the television table of assignments, § 73.606(b) of the Commission's rules, is amended for the following community:

City	Channel No.
Liberal, KS	5+

5. It is further ordered, That this proceeding is terminated.

6. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634-6530.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85-5017 Filed 2-28-85; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 84-459; RM-4628]

TV Broadcast Stations, Batavia, NY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action assigns UHF television Channel 51 to Batavia, New York, as its first TV channel, in response to a petition filed by William Fortunato.

EFFECTIVE DATE: April 3, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.606(b), table of assignments, TV Broadcast Stations (Batavia, New York); MM Docket 84-459, RM-4628.

Adopted February 15, 1985.
Released February 25, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the *notice of proposed rule making*, 49 FR 21959 published May 24, 1984, requesting comments on the proposal to assign UHF television Channel 51 to Batavia, New York, in response to a petition submitted by William Fortunato ("petitioner"). Supporting comments were filed by the petitioner restating his intention to apply for the channel, if assigned.

2. We believe that the public interest would be served by assigning UHF television Channel 51 to Batavia, New York, as its first television allocation. The assignment can be made in compliance with the minimum distance separation requirements of § 73.610 of the Rules, provided the transmitter site is located 13.2 kilometers (8.2 miles) south of the city.[1]

3. Canadian concurrence has been obtained in the assignment of UHF Television Channel 51 to Batavia.

4. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's rules, it is ordered, That effective April 3, 1985, the TV table of assignments, § 73.606(b) of the Commission's rules, is amended with regard to the following community:

City	Channel No.
Batavia, NY	51-

5. It is further ordered, That this proceeding is terminated.

6. For further information concerning this proceeding, contact Montrose H. Tyree, (202) 634-6530.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

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[1] Since these comments were not accompanied by a petition for their acceptance nor was reason for the lateness of the filing provided they have not been accepted.

[2] Population figures were extracted from the 1980 U.S. Census.

[1] This restriction is necessary to avoid short spacing to Channel 51, Midland, Ontario, and Channel 66, Cobourg, Ontario.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85-5015 Filed 2-28-85; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1152

[Ex Parte No. 274 (Sub-8A)]

Exemption of Out of Service Lines (Discontinuance of Service and Trackage Rights)

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending 49 CFR 1152.50(b) to provide that a complaint regarding a cessation of service over a rail line filed in any U.S. District Court removes the line from eligibility for an exemption under 49 CFR Part 1152 Subpart F. Rule 1152.50(b) is amended as set forth in the Appendix. Amending rule 1152.50(b) as proposed will ensure that the class exemption will not be available where there is a continuing transportation interest on the involved line. It is appropriate that any potentially improper cessation of service bar use of the exemption procedure, no matter where the forum for redress is located, because it preserves the intregrity of the class exemption.

DATE: The rule is effective on April 1, 1985.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer (202) 275-7245.

SUPPLEMENTARY INFORMATION: In a decision served April 20, 1984, *Exemption of Out of Service Rail Lines*, 1 I.C.C. 2d 55 (1984), the Commission exempted from the requirements of 49 U.S.C. 10903-10905 the abandonment or discontinuance of service and trackage rights over rail lines that have been out of service for at least 2 years. The regulations are codified at 49 CFR Part 1152 Subpart F. On October 2, 1984, at 49 FR 39085, October 3, 1984, pursuant to a petition filed by the Utah Department of Business Regulations, Division of Public Utilities, we served a notice and requested comments on a proposed modification of 49 CFR 1152.50(b) that would provide that a complaint filed with any U. S. District Court alleging unlawful cessation of service over a railroad line would remove the line from eligibility for exemption. Our rules currently deny use of the exemption when any such complaint has been filed before the Commission. Comments supporting the proposal have been filed by the Railroad Commission of Texas (RCT), and jointly by the Illinois Commerce Commission and the United Transportation Union. No opposing comments have been filed. The proposed amendment will be adopted.

Amending rule 1152.50(b) as proposed will ensure that the class exemption will not be available where there is continuing transportation interest on the involved line. It is appropriate that any potentially improper cessation of service bar use of the exemption procedure, no matter where the forum for redress is located, because it preserves the integrity of the class exemption.

This action will not significantly affect the quality of the human environment or energy conservation.

The Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities because it gives the same effect to a complaint filed in Federal District Court that is accorded a complaint filed with the Commission.

It is ordered:

1. Rule 1152.50(b) is amended to provide that a complaint filed in United States District Court alleging unlawful cessation of rail service over a rail line removes the line from exemption eligibility, as set forth in the Appendix.

2. This decision and the amended rule are effective on April 1, 1985.

List of Subjects in 49 CFR Part 1152

Administrative practice and procedure, Railroads.

Authority: 49 U.S.C. 10321, 10505, and 5 U.S.C. 553.

Decided: February 19, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley, and Strenio.

James H. Bayne,

Secretary.

Appendix

Title 49 of the CFR is amended as follows:

§ 1152.50 [Amended]

Section 1152.50(b) is amended by adding the phrase "or any U.S. District Court" to the first sentence after the word "Commission".

[FR Doc. 85-4985 Filed 2-28-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 41037-5012]

50 CFR Part 611

Foreign Fishing

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues a final rule to amend the foreign fishing regulations. The final rule establishes for 1985 the foreign fishing permit fee, and the surcharge for the Fishing Vessel and Gear Damage Compensation Fund. Under the final rule, foreign nations will pay $101 per 1985 permit application but will not be required to pay for the Fishing Vessel and Gear Damage Compensation Fund (FVGDCF). This final rule will allow NOAA to recover 1985 administrative costs for issuing permits.

EFFECTIVE DATE: April 1, 1985.

FOR FURTHER INFORMATION CONTACT: John D. Kelly, 202-634-7432.

SUPPLEMENTARY INFORMATION:

Background

NOAA published the fee schedule for 1985 in two segments. A proposed rulemaking (NPR) for the first segment which is the subject of this notice was discussed and published at 49 FR 46177 on November 23, 1984. Public comments were invited on the proposed rule for 30 days ending December 24, 1984. Final 1985 foreign fishing poundage fees were published at 50 CFR 460 on January 4, 1985.

No public comments were submitted on the proposed rule, therefore NOAA is adopting this final rule. By this notice of final rule, NOAA confirms the increase of the 1985 foreign fishing permit fee to $101 per application, and waives the 1985 surcharge fee to capitalize the FVGDCF. All applicants for 1985 permits have already paid or will pay the adopted permit fee.

Classification

The Administrator, NOAA has determined that this action is consistent with the Magnuson Act and other applicable laws. NOAA prepared a regulatory impact review (RIR) that discusses the economic consequences and impacts of proposed 1985 fees. Based on the RIR, NOAA has determined that these regulations do not constitute a major rule under E.O. 12291.

The RIR demonstrates that this final rule complies with the requirements of E.O. 12291.

These regulations will not have a significant impact on a substantial number of small entities, because the only impacts are on foreign entities. The costs of foreign vessels and their owners will be slightly increased, but the increases are only 0.27 percent of the total fishing fees projected to be paid in 1985 to the United States. The General Counsel of the Department of Commerce has certified this to the Small Business Administration.

This final rule has no information collection provisions for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

This action does not constitute a major Federal action significantly affecting the quality of the human environment. These amendments are programmatic functions with no potential for environmental impacts under the National Environmental Policy Act.

List of Subjects in 50 CFR Part 611

Fish, Fisheries, Foreign relations, Reporting requirements.

Dated: February 25, 1985.

Joseph W. Angelovic,

Deputy Assistant Administrator for Science and Technology National Marine Fisheries Service.

PART 611—[AMENDED]

For the reasons stated in the preamble above, 50 CFR 611.22 is proposed to be amended as follows:

1. The authority citation for Part 611 is as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 611.22 paragraph (a)(1)(i) is revised to read as follows:

§ 611.22 Fee Schedule for Foreign Fishing.

(a) * * *

(1) *Permit application fees.* (i) Each vessel permit application submitted under § 611.3 must be accompanied by a fee of $101 per vessel, plus the surcharge if required under paragraph (b) of this section, rounded to the nearest dollar. At the time the application is submitted to the Department of State, a check for the permit fees, made out to Department of Commerce, NOAA must be sent to: Division Chief, Fees, Permits and Regulations Division, F/M12, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Room 414 Washington, D.C. 20235. The permit fee payment must be accompanied by a list of the vessels for which the payment is made.

* * * * *

[FR Doc. 85-4986 Filed 2-28-85; 8:45 am]
BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 50, No. 41
Friday, March 1, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-NM-12-AD]

Airworthiness Directives; Aerospatiale (Sud Nord) Nord 262A Series Airplanes

AGENCY: Federal Aviation Administration (FFA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes an airworthiness directive (AD) that would require certain modifications to correct unsafe conditions in the windshield and engine anti-icing control circuits on certain Aerospatiale Nord Model 262 airplanes. The modifications will ensure that warning is displayed for inoperative windshield deicing system and will prevent a single fault from affecting both engine anti-icing systems.

DATE: Comments must be received no later than April 22, 1985.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-12-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Aerospatiale, Service Commercial N262, Boite Postale 159, 36003 Chareauroux, France, or may be examined at the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Michael P. West, Foreign Aircraft Certification Branch; telephone (206) 431-2909. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-12-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The French Civil Aviation Authority (DGAC) has, in accordance with existing provisions of a bilateral agreement, notified the FAA of possible unsafe conditions in the operation of the original windshield and turbine engine anti-icing control circuitry of the Nord Model 262 series airplane. Instances have occurred where the windshield heating system's transfer relay coil circuit has shorted and caused unannounced failure of the windshield heating system failure warning light. Additionally, simple failures of the engine anti-icing control circuitry have resulted in the de-icing system of both engines not operating. The DGAC made the correction of the unsafe conditions mandatory through issuance of French Airworthiness Directive No. 71-101, dafed September 28, 1971. Aerospatiale subsequently issued Nord Service Bulletin Nos. 30-14 and 30-15, dated September 29, 1971 and October 29, 1971, respectively, which provide corrective measures for the conditions.

Since these conditions are likely to exist in certain airplanes of the same type design registered in the U.S., the proposed AD would require modification of the windshield and engine anti-icing control circuitry in accordance with Nord Service Bulletin Nos. 30-14 and 30-15 on certain Nord Model 262 airplanes.

It is estimated that approximately four airplanes of U.S. registry would be affected by this AD, that approximately 100 manhours would be necessary to accomplish the required modifications, and that the average labor cost would be $40 per hour. Material cost is estimated to be $2,064 per airplane. Based on these figures, the total cost impact of the proposed AD would be approximately $24,256.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Aerospatiale Nord 262A series airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket. A copy may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new airworthiness directive:

Aerospatiale (Sud Nord): Applies to the Nord Model 262A series airplanes, certified in all categories. Compliance required within 90 days after the effective date of this airworthiness directive (AD), unless already accomplished.

To prevent undetected system failures or malfunctions in the windshield and turbine

engine anti-icing systems, accomplish the following:

A. Install additional fuses in the windshield anti-icing control circuitry for all windshield panels in accordance with Nord Service Bulletin No. 30-14, dated September 29, 1971 (which constitutes Nord modification No. 733) on Nord Model 262A series airplanes having serial numbers 6 through 20, 22 through 27, 29 through 35, 37 through 42, 47 through 50, 54, 56, 69, 74, and 84.

B. Accomplish modifications to the turbine engine anti-icing control circuitry described in the planning section, paragraph I.C. of Nord Service Bulletin No. 30-15, dated October 29, 1971, as revised August 27, 1974 (which constitutes Nord modification No. 669). Accomplish the modifications in accordance with the section II, Accomplishment Instructions, of the service bulletin on Nord Model 262A series airplanes having serial numbers 4 through 27, 29 through 35, 37 through 42, 47 through 50, 54, 56, 57, 69, and 84.

C. Alternative means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.85)

Issued in Seattle, Washington, on February 19, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85-4979 Filed 2-28-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 85-NM-08-AD]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This Notice proposes a new airworthiness directive (AD) which would require inspection for cracks in the area of the inboard elevator control rods, inboard elevator Power Control Package (PCP) input rods, and elevator aft quardrant tube on all model 747 series airplanes. The proposed AD is prompted by the recent finding of 12 cracked rods. An undetected crack could result in loss of redundancy in the elevator control.

DATE: Comments must be received on or before April 22, 1985.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-08, 85-NM-08-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124, or may be examined at the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. O.E. Schrader, Airframe Branch, ANM-120S; telephone (206) 431-2923. Mailing Address: Seattle Aircraft Certification Office, FAA Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the rules docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the rules docket.

Availability of NPRM

Any person obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-08-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

Recent inspections have revealed longitudinal cracking in eleven inboard elevator control rods and one inboard elevator PCP input rod. The cracking occurred in the outer tube of the dual load path rod. The cracking was determined to be the result of stress corrosion cracking initiating from extensive corrosion occurring at the mating surfaces of the inner and outer tubes. The aft quadrant tube also has this design. Failure of the outer tube of the control rods or of the aft quadrant tube would lead to loss of redundancy in the control system.

Boeing has issued Service Bulletin 747-27A2253, which defines the specific inspection procedures to be used to check for cracks in the inboard elevator control rods, inboard elevator PCP input rods, and aft quadrant tube on all Model 747 series airplanes.

Since this condition is likely to exist or develop in other airplanes of the same type design, the proposed AD would require inspection, repair, and/or replacement of the inboard elevator control rods, inboard elevator PCP input rods, and aft quadrant tube of all delivered Boeing Model 747 series airplanes.

It is estimated that 160 airplanes of U.S. operators would be affected by this AD, that it would take approximately 5 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD is estimated to be $32,000.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Boeing Model 747 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket. A copy may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, the Federal Aviation Administration proposes to amend

§ 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new airworthiness directive:

Boeing: Applies to all Model 747 series airplanes certificated in all categories. To prevent failure of the inboard elevator control rods, inboard elevator Power Control Package (PCP) input rods, and the aft quadrant tube, accomplish the following, unless already accomplished:

A. Within 6 months after the effective date of this AD or prior to the accumulation of 6 years after the date of manufacture, as shown on the airplane identification plate, whichever occurs later, and thereafter at intervals not to exceed 15 months, visually inspect the inboard elevator control rods, PCP input rods, and aft quadrant tube assembly for cracks or corrosion, in accordance with Boeing Service Bulletin 747-27A2253 dated October 19, 1984, or later FAA approved revisions. Cracked or corroded parts are to be replaced with airworthy parts prior to further flight, and inspections are to be continued as noted above. Terminating action will be defined when improved parts become available.

B. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Aircraft may be ferried to a maintenance base for repair in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations.

D. On request by the operator, an FAA Principal Maintenance Inspector, subject to prior approval of the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, may adjust the inspection times in this AD, if the request contains substantiating data to justify the adjustment period.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and (14 CFR 11.85)

Issued in Seattle, Washington, on February 19, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85-4981 Filed 2-28-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 85-NM-05-AD]

Airworthiness Directives; British Aerospace (BAe) Viscount Models 700 Series and 800 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes an airworthness directive (AD) which would require that Alternators Part Number N0505 or 0505/1 which are installed, or have been installed, at the No. 2 position on Model 800 series aircraft be overhauled before the accumulation of 1250 flying hours. These alternators are the subject of mandatory actions required by the United Kingdom Civil Aviation Authority (CAA). This action is taken to preclude failure of this alternator and loss of de-icing capability.

DATE: Comments must be received no later than April 22, 1985.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-05-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from British Aerospace, Inc., Box 17414, Dulles International Airport, Washington, D.C. 20041, or may also be examined at the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Michael West, Foreign Aircraft Certification Branch; telephone: (206) 431-2909. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-05-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The United Kingdom Civil Aviation Authority (CAA) has, in accordance with existing provisions of a bilateral agreement, notified the FAA of a limitation which they have imposed on the alternators installed on Viscount Models 700 and 800 series airplanes operated under registry of the United Kingdom to correct certain unsafe conditions which may exist.

The requirements presented in this proposed AD are based on the notification from the CAA in accordance with the bilateral agreement and are related to the following unsafe condition.

An incident has occurred on a Model 800 series airplane where a Number 2 power unit de-icing alternator part number N0505/1 (located in zone 3, i.e. aft of the fireproof bulkhead which is not protected by fire detection or extinguishing equipment) suffered a rear bearing failure resulting in break-up of the alternator forward of the end housing. A small fire was started due to ignition of a quantity of lubricating oil which self-extinguished.

Previously reported incidents involving break-up of the alternator body rear end housing due to rear bearing failures have also occurred at the Number 2 position on Model 800 series airplanes. Due to a known high unscheduled removal rate from this position, a mandatory overhaul life has been imposed by the CAA.

Since this condition is likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require a maximum time before overhaul for certain alternators on Viscount airplanes.

It is estimated that one U.S. registered airplane would be affected by this AD. Since this proposal would make mandatory the time-between-overhaul which is currently recommended by the alternator manufacturer, the cost impact is estimated to be negligible.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small

entities because few, if any, Viscount Model 700 and 800 series airplanes are operated by small entities. A copy of a draft regulatory evaluation has been prepared for this action and has been placed in the regulatory docket. A copy may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new airworthiness directive:

British Aerospace Viscount: Applies to Model 700 and 800 series airplanes, certificated in all categories. To prevent failure of Alternators Part Number N0505 or 0505/1 which are or have been installed at the Number 2 position on Model 800 Series airplanes:

A. Replace with a serviceable unit or overhaul in accordance with the Lucas overhaul manual reference 24–20–02 prior to the accumulation of 1250 flying hours or within the next 150 flying hours, whichever occurs later, and thereafter at intervals not to exceed 1250 flying hours.

B. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplane to a base for the accomplishment of inspections and modifications required by this AD.

(Sec. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.85)

Issued in Seattle, Washington, on February 19, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85–4960 Filed 2–28–85; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 85–ASW–4]

Proposed Designation of Transition Area; Bristow, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to designate a transition area at Bristow, OK. The intended effect of the proposed action is to provide controlled airspace for aircraft executing a new standard instrument approach procedure (SIAP) to the Jones Memorial Airport. This action is necessary since a nonfederal nondirectional radio beacon (NDB) is being installed to serve the Jones Memorial Airport.

DATE: Comments must be received on or before April 15, 1985.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Docket No. 85–ASW–4, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

The informal docket may also be examined during normal business hours at the Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: David J. Souder, Airspace and Procedures Branch, ASW–534, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101; telephone: (817) 877–2463.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 85–ASW–4." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, P.O. Box 1689, Fort Worth, TX 76101. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to provide controlled airspace for protection of aircraft arriving and departing Jones Memorial Airport. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 3, 1984.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones, Transition areas.

The Proposed Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend § 71.181 of Part 71 of the Federal

Aviation Regulations (14 CFR Part 71) as follows:

Bristow, OK [New]

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Jones Memorial Airport (latitude 35°48'20" N., longitude 96°25'15" W.) and within 3.5 miles each side of the 183-degree bearing from the airport extending from the 6.5-mile radius area to 13 miles south of the airport.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983)); and 14 CFR 11.65)

Issued in Fort Worth, TX, on February 15, 1985.

F.E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 85-4978 Filed 2-28-85; 8:45 am]

BILLING CODE 4910-13-M

Office of the Secretary

14 CFR Part 303

[Docket 42825—Notice No. 85-1A]

Transfer of Antitrust Authority From the Civil Aeronautics Board to the Department of Transportation

AGENCY: Office of the Secretary, DOT.

ACTION: Extension of comment period.

SUMMARY: The Department grants a request to extend the comment period on regulations it has proposed concerning the review of air carrier agreements, mergers, acquisitions of control, consolidations and interlocking relationships. The regulations would govern the procedures to be employed under certain statutory provisions that were transferred to the Department under the Airline Deregulation Act of 1978 and the Civil Aeronautics Board Sunset Act of 1984. This Notice extends the comment period on the proposed rule, originally set as March 8, until March 18, 1985.

DATE: Comments on the proposed rule must be received on or before March 18, 1985.

ADDRESS: Comments should be directed to the Docket Clerk, Room 4107, Office of Secretary, Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Warren Dean, Assistant General Counsel for International Law, (202) 426-2972, or Vance Fort, Director, Special Programs, Office of Assistant Secretary for Policy and International Affairs, (202) 426-4341, Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590.

SUPPLEMENTARY INFORMATION: In a notice of proposed rulemaking (50 FR 5214, February 8, 1985) the Department proposed procedural regulations to implement authority to approve and grant antitrust immunity to certain aviation-related agreements, mergers, consolidations, acquisitions, of control and interlocking relationships transferred to the Department from the Civil Aeronautics Board on January 1, 1985. The Department originally set March 8, 1985 as the date for filing comments on the proposed regulations.

In a letter dated February 13, 1985, the Air Transport Association of America (ATA) asks for a ten day extension of the time for filing comments. It indicates that this rulemaking proceeding is a matter in which its membership is keenly interested and that it intends to file comments. However, in its view, the current comment schedule does not permit its membership adequate time to meet and formulate comments. Prior to the issuance of the NPRM, ATA scheduled a meeting of its legal officers for March 7, 1985. That meeting will provide a convenient opportunity to discuss the proposed regulations, but the results of that meeting cannot be formalized in time to comply with the current filing deadline—March 8. Consequently, they request a 10 day extension of the time for filing comments.

The request for an extension of time is granted. This rulemaking will establish the procedures under which proceedings involving most aspects of the Department's aviation antitrust authority will be handled. As a result, it is of significant importance to the air transportation industry, in general, and to ATA, in particular. While the Department hopes to implement new procedural rules quickly, the comment period originally contemplated would significantly impair ATA's ability to offer substantive comment. Since ATA has made a timely request, such that other persons planning to file comments will not have expended substantial resources to comply with the earlier deadline, and since the extension requested is of short duration, ATA's request will be granted.

Accordingly, pursuant to 49 CFR 5.25 and under authority delegated to the Assistant General Counsel for Regulation and Enforcement in 14 CFR 385.20, I find that ATA has shown a substantive interest in the proposed rule and good cause for the extension and that the extension is in the public interest. Therefore, the request of the Air Transport Association of America for an extension of time to file comments in Docket 42825 is granted. Comments are now due March 18, 1985.

Issued in Washington, D.C., on February 26, 1985.

Neil Eisner,

Assistant General Counsel for Regulation and Enforcement.

[FR Doc. 85-5051 Filed 2-28-85; 8:45 am]

BILLING CODE 4910-62-M

RAILROAD RETIREMENT BOARD

20 CFR Part 200

Regulation To Govern the Disclosure of Contract Proposals Under the Freedom of Information Act

AGENCY: Railroad Retirement Board.

ACTION: Proposed rule.

SUMMARY: The Railroad Retirement Board (Board) proposes to amend § 200.3 of its regulations, which implements the Freedom of Information Act, to provide certain procedures to be followed by the agency in handling requests for business information. The Freedom of Information Act exempts from mandatory disclosure certain commercial and financial information maintained by agencies. The Board maintains such information primarily in the form of contracts, contract bids, and related materials and occasionally receives from the public requests under the Freedom of Information Act for such information. The proposed amendment would provide that the submitter of business information must be informed when a request for information has been received and that the submitter be provided the opportunity to state his or her opinion as to whether the information should be released or withheld.

DATE: Comments must be submitted on or before April 30, 1985.

ADDRESS: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Steven A. Bartholow, Deputy General Counsel, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751-4935 (FTS 387-4935).

SUPPLEMENTARY INFORMATION: Under the Freedom of Information Act the public may request information maintained by Federal agencies and agencies must grant such requests unless the information falls within one of the exemptions provided in the Act. The Freedom of Information Act provides an exemption for "trade secrets and commercial or financial

information obtained from a person and privileged or confidential." It is not always clear that business information that is requested falls within this exemption and the views of the business submitter is often needed to correctly determine the applicability of this exemption in a particular case. The proposed amendment provides a mechanism for soliciting the views of the submitter in making the determination and requires that such views be considered by the Board in deciding whether to disclose or withhold the information.

The Board has determined that this is not a major rule for purposes of Executive Order 12291. Therefore, no Regulatory Impact Analysis is required. Section 200.3(n)(2) contains a reporting requirement that is subject to OMB review under the Paperwork Reduction Act of 1980. In accordance with section 3504(h) of that Act, the Board will submit this reporting requirement to OMB for review.

Any comments concerning this reporting requirement should be submitted to the Railroad Retirement Board and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, D.C. 20503 (Attention: Robert Fishman, Desk Officer for Railroad Retirement Board).

List of Subjects in 20 CFR Part 200

Railroad retirement, Railroad unemployment insurance, Freedom of information, Government contracts, Government procurement.

Title 20 CFR, Chapter II, is proposed to be amended by adding a new paragraph (n) to § 200.3 to read as follows:

§ 200.3 [Amended]

* * * * *

(n) *Special procedures for handling requests for business information:*

(1) The Freedom of Information Act exempts from mandatory disclosure matters that are "trade secrets and commercial or financial information obtained from a person and privileged or confidential * * *." The Board maintains records that may include information within this exception and to protect the rights of submitters of business information with respect to the confidentiality of such information, all requests for records or information contained in contract bids, contract proposals, contracts, and similar business information documents shall be handled in accordance with the procedures established by this paragraph.

(2) When the Executive Director or an individual authorized to grant or deny requests under the Freedom of Information Act receives a request for business information, the Executive Director or other individual shall promptly provide the person who submitted the information to the Board with written notice that a request for the information has been made. The notice shall specify what record or information has been requested and shall inform the business submitter that the submitter may, within ten working days after the date of the notice, file a written objection to disclosure of the information or portions of the information. The written objection to disclosure shall be addressed to the individual whose name appears in the notification and shall specify the portion or portions of the information that the submitter believes should not be disclosed and state the grounds or bases for objecting to disclosure of such portion or portions. No written notice to the business submitter shall be required under this subparagraph if it is readily determined that the information will not be disclosed or that the information has lawfully been published or otherwise made available to the public.

(3) In determining whether to grant or deny the request for the business information, the official or entity making the determination shall carefully consider any objection to disclosure made by the submitter of the information in question.

(4) If a determination is made to disclose information with respect to which the business submitter has filed an objection to disclosure, the official or entity making the determination shall, no later than ten working days prior to the date on which disclosure of the information will be made, provide the submitter with written notice of the determination to disclose. The written notice shall state the reasons why the submitter's grounds for objecting to disclosure were rejected and inform the submitter of the date on which the information is to be disclosed.

(5) The Board shall promptly notify the business submitter of any suit commenced under the Freedom of Information Act to compel disclosure of information which he or she submitted to the Board.

Dated: February 21, 1985.

By Authority of the Board.

Beatrice Ezerski,

Secretary of the Board.

[FR Doc. 85-4927 Filed 2-28-85; 8:45 am]

BILLING CODE 7905-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 658

[FHWA Docket No. 85-16]

Truck Size and Weight; Revisions

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The FHWA is requesting comments on proposed revisions to certain provisions established by the final rule on truck size and weight published at 49 FR 23302 on June 5, 1984. This notice proposes: (1) To list the grandfathered maximum semitrailer dimensions for each State for the purposes of the grandfather right established in the third sentence of section 411(b) of the Surface Transportation Assistance Act, and (2) to interpret 23 CFR 658.13 such that the combination vehicle described as a truck tractor-semitrailer-semitrailer be considered as a truck tractor-semitrailer-trailer, for the purposes of 23 CFR Part 658.

DATE: Comments on this docket must be received on or before April 30, 1985.

ADDRESS: Submit written comments, preferably in triplicate, to FHWA Docket No. 85-16, Federal Highway Administration, Room 4205, HCC-10, 400 Seventh Street, SW., Washington, D.C. 20590. All comments received will be available for examination at the above address between 7:45 a.m. and 4:15 p.m., ET, Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Harold J. Brown, Office of Traffic Operations, (202) 426-1993 or Mr. David C. Oliver, Office of the Chief Counsel, (202) 426-0825, Federal Highway Administration, 400 Seventh Street, SW., Washington D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., ET Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: A final rule implementing the truck size and weight provisions of the Surface Transportation Assistance Act of 1982, Pub. L. 97-424, 96 Stat. 2097 (STAA), was published in the **Federal Register** at 49 FR 23302, June 5, 1984. This document represented the culmination of major efforts by the Federal Highway Administration to implement the truck size and weight provisions of the STAA. The provisions established in this final rule are contained in 23 CFR Part 658.

However, several issues were not fully resolved in the June 5 rule.

Grandfather Semitrailer Lengths

One issue not completely resolved by the June 5 rulemaking involves the determination of the maximum length of semitrailers and trailers which could legally operate, without special permit, in each State on December 1, 1982 (23 CFR 658.13(c)(2)). Identification of these lengths is important because section 411(b) of the STAA provides for the continued legality of semitrailers and trailers of such dimensions as those in actual and legal use in the State on that date. This grandfather right has been interpreted by FHWA to apply only to those units operating on the Interstate System and designated Federal-aid primary highways. Thus, this grandfather right is only applicable to the National Network. It is FHWA's opinion that the States may continue to regulate semitrailer/trailer length off the Network.

While the dimensions of both semitrailers and trailers that were in actual operation on December 1, 1982, are grandfathered, this rulemaking will address only the identification and establishment of the grandfathered dimensions for semitrailers operating in a truck tractor-semitrailer combination on that date. Information available to FHWA indicates that few, if any, trailers or semitrailers beyond twenty-eight and one-half (28½) feet were operating on December 1, 1982, in truck tractor semi-trailer-trailer combinations. The grandfathered dimensions of these semitrailers/trailers will therefore not be addressed.

Section 411(b) provides that existing semitrailers or trailers, of up to twenty-eight and one-half (28½) feet in length, in a truck tractor-semitrailer-trailer combination actually and lawfully operating on December 1, 1982, within a sixty-five (65)-foot overall length, are also grandfathered. However, one company claims to own over 97 percent of the existing 28½-foot trailers and these are being phased out. Therefore, this rulemaking will not address the issue as to how this existing equipment should be identified.

In the preamble to the June 5 final rule, a listing of the "grandfathered" semitrailer lengths for certain States was provided. However, due to conflicting information for many States, this listing was incomplete. Grandfathered semitrailer lengths were established for the following States according to criteria numbers 1 and 2 below: Alaska, Connecticut, District of Coumbia, Georgia, Hawaii, Kentucky, Louisiana, Maine, Maryland, Michigan, MIssouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oregon, Puerto Rico, Rhode Island, South Carolina, South Dakota, Vermont, Virginia, West Virginia and Wyoming.

The FHWA intends to establish the grandfather lengths in the remaining States through this rulemaking pursuant to the following criteria:

1. No grandfather length limit exists in States where the State and industry (that segment of the transportation community responsible for the movement of goods and services) agree tht no established length limit exceeded 48 feet. These States must permit the operation of 48-foot semitrailers on the National Network.

2. The length listed for States where the State and industry agree that the grandfather length exceeded 48 feet is the agreed upon length.

3. The State's proposed value when supported by State law or regulation, has been used where the State supplied length disagreed with industry claims.

4. In all cases that do not fit within any of the above categories, the FHWA proposes that length limits be established based upon the following guidelines:

a. If a State's truck length regulation prior to the STAA was based on an overall vehicle length limit of 60 feet or less, the FHWA proposes to recognize no grandfather length beyond 48 feet. This is equivalent to assuming that a reasonable estimate of the tractor length in such cases is about 12 feet.

b. If a State's truck length regulation prior to the STAA was based on an overall length limit of more than 60 feet, the FHWA proposes to recognize 53 feet as the grandfathered semitrailer length.

Based on these criteria the proposed grandfathered semitrailer lengths are as follows:

State	Length	Criteria (from above)
Alabama	48	3
Arizona	57'6"	3
Arkansas	48	4
California	48	4
Colorado	57'4"	3
Delaware	48	4
Florida	48	4
Idaho	53	4
Illinois	53	3
Indiana	53	3
Iowa	48	3
Kansas	57'6"	3
Massachusetts	48	1
Minnesota	48	3
Mississippi	50	3
Montana	48	4
Nebraska	53	3
Nevada	53	4
New Mexico	57'6"	3
North Dakota	53	4
Oklahoma	53	4
Pennsylvania	48	4
Tennessee	50	3
Texas	57'	3
Utah	48	3
Washington	48	1
Wisconsin	48	3

The States cannot restrict the operations on the National Network established by 23 CFR Part 658 of semitrailers of such lengths or shorter, by law or regulation. In addition, it should be noted that the right to continued operation applies to all semitrailers of these lengths and not just to specific equipment that was in existence and operation on December 1, 1982. This will require changes in State laws which recognize operating rights for only that equipment in use on December 1, 1982.

Tractor-Semitrailer-Semitrailer

The STAA in section 411 refers to length limits for tractor-semitrailer and tractor-semitrailer-trailer combinations (411(a)). At the same time, the STAA requires States to allow a truck tractor and two trailing units to use the Interstate and designated system (411(c)). Some confusion has arisen as to the scope of these sections with respect to various combinations of a truck tractor and two trailing units. It is FHWA's intent to implement the STAA so that all configurations that offer safety and productivity advantages may be recognized.

One such innovation is the tractor-semitrailer-semitrailer combination vehicle. Essentially, the frame of the first semitrailer is extended to allow for a fifth wheel connection point for the second semitrailer. This combination has one less articulation point than the conventionally connected semitrailer-trailer combination and thus appears to demonstrate increased stability in tracking. This conclusion is drawn from research conducted at the University of Michigan Transportation Research Institute and the National Research Council of Canada.

Many State laws require specific methods of measuring vehicle lengths. for example, some length measurement requirements include the rear frame fifth wheel assembly in the cargo-carrying length determination. This either requres that the cargo van be limited to between 20 and 21 feet in length or that the tractor-semitrailer-semitrailer combinations not be used.

Notwithstanding the fact that a portion of the second semitrailer is resting on a fifth wheel attached to the first semitrailer, the FHWA proposes to

define the fifth wheel assembly at the rear of the first semitrailer in this type of configuration as a length exclusive device as provided in 23 CFR 658.5(e).

Regulatory Impact

The FHWA has considered the impacts of this proposal and has determined that it is not a major rulemaking action within the meaning of E.O. 12291 and not a significant rulemaking under the regulatory policies and procedures of the Department of Transportation (DOT). These determinations by the agency are based on the nature of the rulemaking. The FHWA has determined that this rulemaking proposes to technically amend the June 5 final rule, finalizing certain issues left unresolved at that time. While the particular grandfather lengths proposed for some States are new, the impacts of these changes have already been considered by the previous impact documentation. a Regulatory Impact Analysis has been prepared for the June 5 rulemaking and is available for inspection in the headquarters office of FHWA, 400 Seventh Street. SW., Washington, D.C.

For the same reasons and under the criteria of the Regulatory Flexibility Act, FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

In consideration of the foregoing and under the authority of Section 411 of the Surface Transportation Assistance Act of 1982 (STAA) Pub. L. 97–424, 96 Stat. 2097, 23 U.S.C. 315 and 49 CFR 1.48, the FHWA proposes to amend Chapter 1 of Title 23, Code of Federal Regulations, by amending Part 658 as set forth below.

List of Subjects in 23 CFR Part 658

Grant programs—transportation, Highways and roads, Motor carriers—size and weight.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation and Federal programs and activities apply to this program)

Issued on February 25, 1985.

R.A. Barnhart,

Federal Highway Administrator, Federal Highway Administration.

PART 658—TRUCK SIZE AND WEIGHT ROUTE DESIGNATIONS—LENGTH, WIDTH AND WEIGHT LIMITATIONS—[AMENDED]

Part 658 is amended as follows:

1. In § 658.5, paragraph (e) is revised and paragraph (l) is added as follows:

§ 658.5 Definitions.

* * * * *

(e) *Length exclusive devices.* (1) For purposes of this regulation all appurtenances at the front or rear of a commercial motor vehicle semitrailer or trailer whose function is related to the safe and efficient operation of the semitrailer or trailer. No device excluded from length determination shall be designed or used for carrying cargo. (2) In measuring the length of a semitrailer in any tractor-semitrailer-semitrailer combination, the fifth wheel connection point connected to the frame of the lead semitrailer shall be excluded from the length measurement of both semitrailers.

* * * * *

(l) *Truck tractor and two trailing units.* For purposes of section 411 of the STAA of 1982 and this Part, a truck tractor and two trailing units refers to the following combinations: (1) Truck tractor-semitrailer-trailer and (2) truck tractor-semitrailer-semitrailer.

§ 658.13 [Amended].

2. In § 658.13, the words "truck tractor-semitrailer-semitrailer" are added after the words "truck tractor-semitrailer-trailer" each time they appear in this section.

3. In § 658.13, paragraph (c)(1) is revised to read as follows:

§ 658.13 Length.

* * * * *

(c) (1) For the purpose of the third sentence of Section 411(b) of the STAA, no State shall adopt a semitrailer length limit of less than the length set out in Appendix B to this Part. However, if the state imposed overall length limits on December 1, 1982, on vehicles operating in a truck tractor-semitrailer combination, it may continue to impose the same overall length limitation on vehicles with semitrailers longer than 48 feet.

* * * * *

4. In § 658.13, paragraph (c)(2) is removed and paragraph (c)(3) is redesignated (c)(2).

5. Part 658 is amended by adding Appendix B to read as follows. Appendix B lists the grandfathered maximum semitrailer length limits for each State for the purposes of the grandfather right established in the third sentence of section 411(b) of the STAA.

APPENDIX B.—GRANDFATHERED SEMITRAILER LENGTHS

State	Feet and inches
Alabama	48–0
Alaska	48–0
Arizona	57–6
Arkansas	48–0
California	48–0
Colorado	57–4
Connecticut	48–0
Delaware	48–0
District of Columbia	48–0
Florida	48–0
Georgia	48–0
Hawaii	48–0
Idaho	53–0
Illinois	53–0
Indiana	53–0
Iowa	48–0
Kansas	57–6
Kentucky	53–0
Louisiana	59–6
Maine	48–0
Maryland	48–0
Massachusetts	48–0
Michigan	48–0
Minnesota	48–0
Mississippi	50–0
Missouri	53–0
Montana	48–0
Nebraska	53–0
Nevada	53–0
New Hampshire	48–0
New Jersey	48–0
New Mexico	57–6
New York	48–0
North Carolina	48–0
North Dakota	53–0
Ohio	53–0
Oklahoma	53–0
Oregon	53–0
Pennsylvania	48–0
Puerto Rico	48–0
Rhode Island	48–0
South Carolina	48–0
South Dakota	53–0
Tennessee	50–0
Texas	57–0
Utah	48–0
Vermont	48–0
Virginia	48–0
Washington	48–0
West Virginia	48–0
Wisconsin	48–0
Wyoming	57–4

[FR Doc. 85–5050 Filed 2–28–85; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 223

Implementation of Emergency Stumpage Rate Redeterminations for National Forest Timber Sales in Alaska

Correction

In FR Doc. 85–2738 beginning on page 4992 in the issue of Tuesday, February 5, 1985, make the following corrections:

§ 223.179 [Corrected]

1. On page 4993, third column, third line, "January 1, 1984" should read "January 1, 1974".

2. On the same page, third column, paragraph (e), fifth line, "changes" should read "charges".

BILLING CODE 1505-01-M

POSTAL SERVICE

39 CFR Part 111

Post Office Box Fee Group Application

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This proposed rule change is designed to eliminate inequities in the application of post office box fee groups. It would eliminate using revenue units as a factor in determining post office box fees. By removing the revenue unit factor, and tying the fee group application to the level of free carrier delivery available, the fee will more closely reflect the level of premium service above the level of free delivery. Certain other minor changes are also proposed for purposes of uniformity and consistency, such as the removal of the term "post office box rent" and replacing it with "post office box fee".

DATE: Comments must be received on or before April 1, 1985.

ADDRESS: Written comments should be mailed or delivered to the General Manager, Special Services Division, Rates & Classification Department, Room 8430, 475 L'Enfant Plaza West, SW Washington, DC 20260–5371. Copies of all written comments will be available for inspection and photocopying between 9:00 a.m. and 4:00 p.m., Monday through Friday, in Room 8430 at the above address.

FOR FURTHER INFORMATION CONTACT: Gene Millsap, (202) 245–4565.

SUPPLEMENTARY INFORMATION: Post office box fees are divided into three groups. Group 1 fees (the highest), are now charged for all customers at offices that provide city carrier delivery and at mail processing facilities which are not under the administration of a post office. An exception is given for Group 1 customers who are not eligible for any kind of carrier delivery. They pay the Group 2 fees. This proposed rule change would allow the customers who are ineligible for carrier delivery to pay the nominal Group 3 fees.

Group 2 fees are now charged at non-city delivery offices with more than 35 revenue units. No exceptions ae made for customers who are ineligible for carrier delivery. The proposed rule change would allow the customers who are ineligible for carrier delivery to pay the nominal Group 3 fees. It would also remove the requirement that Group 2 offices must have more than 35 revenue units. The number of revenue units has no bearing on the level of delivery service or post office box service provided.

Group 3 fees are now charged at offices with 35 or fewer revenue units and at community post offices. The proposed rule change would remove the requirement that Group 3 offices have 35 or fewer revenue units and instead provide that customers of any office, including community post offices, be charged the Group 3 fee if they are not eligible for carrier delivery.

The proposed rule change clearly defines the eligibility for the lower Group 2 and 3 box, and Group 2 caller fees.

Accordingly, although exempt from the requirements of the Administrative Procedure Act (5 U.S.C. 553(b)(c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comment on the following proposed revision of the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

List of subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

PART 951—POST OFFICE BOX (P.O. BOX) SERVICE

1. Revise 951.22 to read as follows:

951.2 Rental Fees.

* * * * *

.22 Rental Fee Groups

.221 General Provisions

a. Customers at all facilities under the administration of the same post office are subject to the same post office box fees applicable at the main office. This includes any post office which has been discontinued and reestablished as a station or branch of another post office.

b. Customers who are eligible for Group 2 or Group 3 fees may be charged the lower fees only at their post office of address. If post office box service is desired at any other facility, Group 1 fees must be charged.

c. The qualification of a business, association, organization, church, or other institution to use a box in any fee group, will be determined separately from the qualification of any associated person.

.222 Fee Group Application

a. Group 1 Fees.

(1) Customers at all facilities of city delivery post offices who are eligible for any kind of delivery by postal carrier must be charged Group 1 fees except as provided by 951.222c.

(2) Customers at post offices which establish city carrier delivery service must start paying Group 1 fees, subject to the exclusion of 951.222c, after the beginning of city carrier delivery.

(3) All customers who receive their mail at a mail processing facility which is not under the administration of a post office, must pay Group 1 fees.

b. Group 2 Fees.

(1) Customers at non-city delivery (NCD) offices must be charged Group 2 fees, except as provided by 951.222c.

(2) Customers at an NCD office who are eligible for city delivery service from another facility must pay Group 1 fees.

c. Group 3 Fees.

(1) Customers at all offices including community post offices who are ineligible for and do not receive any delivery by postal carrier must be charged the flat Group 3 fee for one box of any size. (Group 1 fees must be paid for any additional boxes used.)

(2) Customers who are eligible for Group 3 fees may receive the free general delivery service described in 951.24 if they choose not to use post office box service.

.23 Changes in Fees. Revised post office box fees may be required by a general fee change, by a change in carrier service, or by a change in the status of a postal facility. Revised post office box fees are effective on the date of the action which caused the change unless another date is specified in an official announcement. If a post office box fee is increased, no customer will be required to pay at the new rate until the end of the period, (annual or semi-annual), for which they have already paid.

.24 General Delivery. Customers who are eligible to use a post office box at Group 3 fees, but who in fact do not use a box, may receive no more than one separation in general delivery without time limit. Customers who are not eligible to use a post office box at Group 3 fees may not receive general delivery for periods longer than 30 days except as provided in 953.

* * * * *

PART 952 CALLER SERVICE

* * * * *

2. Revise 952.124 and 952.222b (2) to read as follows:

952.124 Caller Service at Group 2 non-city delivery offices is available only as provided by 952.222b. (2).

* * * * *

952.222b (2) Caller Service will be provided for Group 2 non-city delivery

offices only if a customer desires delivery through a post office box and either no post office box or no post office box of appropriate size is available. In that event, a single box number will be assigned and caller service provided. The caller fee will be the same amount as the box fee for the largest box at that facility. Regular caller service fees are charged for any additional separations requested and to customers whose office of address is other than the Group 2 office.

An appropriate amendment to 39 CFR 111.3 to reflect this change will be published if the proposal is adopted.

(39 U.S.C. 401)

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

[FR Doc. 85-5006 Filed 2-28-85; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-9-FRL-2788-1]

Arizona State Implementation Plan; Pima County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: On February 3, 1984, the Arizona Department of Health Services submitted a revision to the carbon monoxide (CO) State Implementation Plan (SIP) for Pima County, Arizona. Today's notice proposes to approve the revisions for several site-specific traffic flow improvement measures. Today's notice also proposes to approve revisions to the Inspection and Maintenance (I/M) program provided the State adopts the legislative and regulatory authority for an expanded I/M program prior to final rulemaking. The overall Plan revision including the demonstration of attainment of the National Ambient Air Quality Standards (NAAQS) and related changes in the nonattainment area boundaries will be addressed in separate actions.

DATE: Comments may be submitted up to April 1, 1985.

ADDRESSES: Comments may be sent to: Regional Administrator, Attn: Air Management Division, Air Programs Branch, State Liaison Section (A-2-2), Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105.

Copies of the proposed revision and EPA's associated Control Measure Evaluation are available for public inspection during business hours at the EPA Region 9 office at the above address, and at the following locations:

Arizona Department of Health Services, 1740 West Adams Street, Phoenix, Arizona 85007

Pima County Health Department, Air Quality Control District, 151 West Congress Street, Tucson, AZ 85701.

FOR FURTHER INFORMATION CONTACT: Wallace D. Woo, Chief, State Liaison Section, Air Programs Branch, Air Management Division, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974-7634, FTS: 454-7634.

SUPPLEMENTARY INFORMATION:

Background

The first Nonattainment Area Plan (NAP) for Carbon Monoxide for the Metropolitan Pima County Area was submitted to EPA as a revision to the Arizona State Implementation Plan (SIP) in 1978. EPA took final rulemaking action to conditionally approve this SIP revision on July 7, 1982 (47 FR 29532) provided local regulations were revised to meet EPA requirements for New Source Review (NSR). On February 3, 1984, the Arizona Department of Health Services (ADHS) submitted proposed revisions to that plan and the Arizona SIP, including an evaluation of control options for Metropolitan Pima County, adjustments to baseline and projected data, and a new section of the Plan dealing with hotspot control. The revisions were intended to update, expand and correct the SIP by incorporating certain of the aforementioned changes.

Proposed Actions

EPA is deferring action at the present on the attainment demonstration as well as the nonattainment area boundaries. EPA is continuing to evaluate these portions of the submittal in order to determine whether additional revisions to the attainment demonstration are needed. However, EPA has determined that the proposed change in the Inspection/Maintenance program (to include vehicles more than 13 years old) along with certain traffic flow improvement measures at the Broadway Boulevard/Wilmot Road Intersection (reinstatement of critical intersection control, Kolb Road improvements, study of additional left turn capacity, and the Broadway corridor study) are approvable. Legal authority for the traffic flow improvements resides with the City of Tucson. However, no legal authority currently exists for the proposed change in the I/M program. EPA therefore proposes to approve the site-specific traffic flow improvements and incorporate these measures into the Arizona SIP. EPA also proposes to approve the expanded I/M program provided the necessary legislative and regulatory authority for the I/M program is adopted and submitted prior to final rulemaking. EPA has determined that these measures are consistent with the Clean Air Act, EPA policy and 40 CFR Part 51.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Regulatory Process

Under 5 U.S.C. section 605(b) I certify that SIP approvals do not have a significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 52

Air pollution control agency, Carbon monoxide, Intergovernmental relations.

Authority: Sections 110, 129, 171 to 178 and 301(a) of the Clean Air Act as amended (42 U.S.C. 7410, 7429, 7501 to 7508, and 7601(a)).

Dated: December 28, 1984.

Harry Seraydarian,

Acting Regional Administrator.

[FR Doc. 85-4991 Filed 2-28-85; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[A-5-FRL-2788-2]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Proposed Rulemaking.

SUMMARY: In the May 15, 1984 **Federal Register** (49 FR 20518), USEPA proposed to disapprove the Occidental Chemical Corporation (OCC) total suspended particulates (TSP) alternative emission control program (bubble), because the OCC bubble failed to meet USEPA's proposed Emission Trading Policy Statement (ETPS) requirements. In response to that Notice of Proposed Rulemaking, comments and data were submitted to support approval as a site-specific State Implementation Plan (SIP) revision, based on a modeled attainment demonstration rather than as a bubble. Based on these new data and its own analysis, USEPA is now proposing to approve this SIP revision which was originally submitted by the State September 2, 1983, and subsequently modified on December 21, 1983.

DATE: Comments on this revision and on the proposed USEPA action must be received by April 30, 1985.

ADDRESSES: Copies of this SIP revision are available at the following addresses for review. (It is recommended that you telephone Uylaine E. McMahan, at (312) 353–0396, before visiting the Region V office).

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604

Indiana Air Pollution Control Division, Indiana State Board of Heatlh, 1330 West Michigan Street, Indianapolis, Indiana 46206.

FOR FURTHER INFORMATION CONTACT: Uylaine McMahan at 312 353–0396.

SUPPLEMENTARY INFORMATION: On September 2, 1983, the Indiana Air Pollution Control Board (Board) submitted a SIP revision in the form of revised operating permits [1] and technical support information for OCC, and requested that USEPA approve them as a bubble under USEPA's proposed ETPS published April 7, 1982 (47 FR 15076). Amendments to these operating permits were submitted by the State on December 21, 1983.

The OCC Jeffersonville Township facility produces phosphoric acid and phosphate salts. This facility is located in the portion of Clark County, Indiana, which is designated as primary nonattainment for TSP.[2]

USEPA published a Notice of Proposed Rulemaking to disapprove the OCC revision on May 15, 1984 (49 FR 20518), because the operating permit and the technical support did not meet the requirements of the proposed ETPS. The reader is referred to the May 15, 1984, Notice of Proposed Rulemaking for a detailed discussion of the deficiencies.

During the public comment period, USEPA received comments from OCC and the State of Indiana. These comments and USEPA's responses are summarized below:

State of Indiana

1. Comment: Indiana objected to the deficiencies cied in the **Federal Register** notice, claiming that the modeling analysis was sufficient and that the revision would not increase allowable or actual emissions.

Response: USEPA disagrees with Indiana that its submittal satisfies the requirements of the ETPS, because an acceptable Level II modeling analysis was not submitted. More importantly, the submittal indicates that there is a net increase in total short-term allowable emissions. As discussed below, however, USEPA will treat the new emission limits for OCC as a site-specific SIP revision based on a modeled attainment demonstration rather than a bubble. USEPA now believes that, based on the modeled attainment demonstration performed by OCC (and USEPA), the new emission limits are adequate to ensure attainment and maintenance of the TSP National Ambient Air Quality Standards (NAAQS) and are, thus, approvable.

Occidental Chemical Corporation

2. *Comment:* OCC claimed that the new emission limits will ensure attainment and maintenance of the TSP NAAQS. To support its claim, OCC submitted on September 13, 1984, a report summarizing a modeling analysis which it performed. On November 6, 1984, OCC submitted some of the computer printouts from this analysis. Based on this information, OCC urged USEPA to approve the new emission limits.

Response: The modeling analysis submitted by OCC does not, by itself, prove that the new emission limits will protect the NAAQS due to errors in the emission inventory and the failure to account for building downwash. To supplement and correct this analysis, USEPA performed a screening analysis. USEPA's screening analysis reexamined the impact of OCC sources accounting for building downwash and using the current, corrected emission inventory. The procedures outlined in Appendix C of USEPA's Regional Workshops on Air Quality Modeling: A Summary Report (April 1981) were followed. This analysis found that the revised 24-hour concentrations were still less than 150 $\mu g/m^3$ (micrograms per cubic meter). In addition, because OCC's modeling indicates that the 24-hour NAAQS is constraining, an emission limit which provides for attainment of the 24-hour NAAQS will ensure attainment of the annual NAAQS. Consequently, the OCC and USEPA analyses together demonstrate that the primary and secondary TSP NAAQS will be protected in all areas in which emissions from the affected lines will have a significant impact. For further discussion concerning the analyses, please consult USEPA's December 13, 1984, Technical Support Document and OCC's comments.

Based on its review of the State's and OCC's comments, USEPA has determined that the emission limits contained in the operating permits can be proposed for approval as a site-specific SIP revision.

The current and proposed limits are:

Source	Current SIP Limits		Proposed SIP Limits	
	gr/dscf	T/yr	gr/dscf	T/y
Thermal Process (Acid Line)	0.023	8.7	[1] 0.122	40
Sodium Phosphate Salt Production Line	0.026	85.2	[1] 0.037	40.9
Potassium Phosphate Salt Production Line		93.9	[1] 0.109	13
Total		93.9		93.9

[1] Based on actual stack test data.

Under 5 U.S.C. Section 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations.

(Sec. 110, 172 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7410, 7502, and 7601(a)))

Dated: December 28, 1984.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 85–4990 Filed 2–28–85; 8:45 am]

BILLING CODE 6560–50–M

[1] These operating permits revise Indiana's Rule 325 IAC 6–1–17.

[2] On September 24, 1984, USEPA proposed to approve the State of Indiana's request to redesignate Jeffersonville Township from primary nonattainment to secondary nonattainment (49 FR 37341).

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 84–177; RM–4622; RM–4623; RM–4660]

FM Broadcast Stations, Casper, WY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; Dismissal of proposal.

SUMMARY: Action taken herein dismisses the petitions filed by Allen Sheets, Charles J. Thompson, and Eagle Broadcasting Co., Inc., to assign Channels 253, 267 and 273, respectively, to Casper, Wyoming for lack of continuing interest.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.202(b) table of assignments, FM broadcast stations (Casper, Wyoming); MM Docket No. 84–177, RM–4622, RM–4623, RM–4660.

Adopted: February 15, 1985.
Released: February 25, 1985.

By the Chief, Policy and Rules Divison.

1. Before the Commission for consideration is the *Notice of Proposed Rule Making*, 49 FR 8282, published March 6, 1984, proposing the assignments of Channels 253, 267, and 273 to Casper, Wyoming. The *Notice* was adopted in response to three separate petitions filed by Allen Sheets ("Sheets"), Charles Joseph Thompson ("Thompson") and Eagle Broadcasting Company, Inc. ("Eagle"), respectively. On April 19, 1984, Sheets motioned for dismissal of his petition. Both of the remaining parties failed to file comments reaffirming their intention to apply for the channels, if assigned. Wyomedia Associates, Inc., ("Wyomedia") licensee of Station KTRS-FM, Casper, Wyoming filed reply comments in opposition to the assignments.

2. Wyomedia states the petitions should be dismissed because there has been no continuing expression of interest in the proposal and the community is in a "depressed economic state."

3. In view of the fact that no one submitted comments reaffirming an interest in applying for use of the channels no further consideration will be given to the assignment of Channels 253, 267 or 273 to Casper, Wyoming. This action is taken in accordance with Commission policy which requires such a statement before a channel will be assigned. See Appendix to the *Notice of Proposed Rule Making*.

4. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, that the petitions of Allen Sheets, Charles J. Thompson, and Eagle Broadcasting Co., Inc., are hereby dismissed.

5. It is further ordered, that this proceeding is terminated.

6. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634–6530.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Divisions, Mass Media Bureau.

[FR Doc. 85–5025 Filed 2–28–85; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 97

[FCC 85–78; PR Docket No. 85–22]

Amateur Radio Service; Frequency Coordination of Repeaters

AGENCY: Federal Communications Commission.

ACTION: Suspension of moratorium.

SUMMARY: This Order rescinds a moratorium on new amateur repeater operation in major metropolitan areas, published at 50 FR 6219, February 14, 1985, which was imposed in the *Notice* in this proceeding because apparent inequities in its implementation outweigh its benefits.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: John J. Borkowski, Private Radio Bureau, Washington, D.C. 20554.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 97

Amateur radio; Repeaters.

Order

In the matter of amendment of Part 97 of the Commission's rules concerning frequency coordination of repeaters in the Amateur Radio Service; PR Docket No. 85–22; FCC 85–78.

Adopted: February 15, 1985.
Released: February 21, 1985.

By the Commission.

1. In a *Notice of Proposed Rule Making* (hereafter *Notice*), FCC 85–40 released January 30, 1985, published at 50 FR 6219, February 14, 1985, we proposed to incorporate the concept of repeater frequency coordination into the amateur rules. We also sought comment on ways the amateur community could improve upon the coordination process.

2. At paragraph ten of the *Notice* we declared a moratorium on new repeater operation in major metropolitan areas. We took this action to forestall a growing number of amateur repeater interference complaints.

3. Filings by the American Radio Relay League (ARRL) and by the Tri-State Amateur Repeater Council (TSARC)) raise serious difficulties with the imposition of the moratorium, including financial hardship to those with repeater construction in process.[1]

4. The problems persuade us to rescind the moratorium. Instead we will seek a permanent solution to repeater problems in this proceeding. We request substantive comment on all issues relevant to solving questions of interference and congestion by and to stations in repeater operation.

5. It is ordered, That the moratorium on new repeater operation described in paragraph ten of the *Notice of Proposed Rulemaking, supra*, is rescinded.

6. It is further ordered, That the Petition for Partial Reconsideration of the American Radio Relay League is granted.

7. It is further ordered, That the Secretary shall cause a copy of this *Order* to be published in the **Federal Register.**

8. For further information contact John J. Borkowski, Federal Communications Commission, Private Radio Bureau, Washington, D.C. 20554,4 (202) 632–4964.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85–4875 Filed 2–28–85; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR 671 and 677

North Pacific Fishery Management Council; Public Hearing

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of public hearing.

SUMMARY: The North Pacific Fishery Management Council and the Alaska Board of Fisheries will hold their annual public hearing to take public testimony on regulatory proposals for the 1985 Bering Sea and Aleutian Islands king crab fishery. Testimony will also be

[1] On February 7, 1985, the ARRL filed a *Petition for Partial Reconsideration* of the *Notice*, seeking to delete from the *Notice* any reference to a moratorium on new repeater operation. TSARC filed comments recommending that the moratorium be lifted for all bands except the two-meter band (144–148 MHz).

accepted on regulatory proposals for the 1985 Tanner crab fisheries off Alaska.

DATE: The hearing will be held on March 2, 1985, and is scheduled to begin at 9:30 a.m.

ADDRESSES: The hearing will be held at the following location: Northwest and Alaska Fisheries Center Auditorium, 2725 Montlake Boulevard East, Seattle, Washington. Copies of the proposals may be obtained from the Alaska Board of Fisheries, P.O. Box 3–2000, Juneau, Alaska 99802.

FOR FURTHER INFORMATION CONTACT: Jim Glock, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, Alaska 99510. Telephone 907–274–4563.

Dated: February 25, 1985.

Joseph W. Angelovic,

Deputy Assistant Administrator, Science and Technology, National Marine Fisheries Service.

[FR Doc. 85–4967 Filed 2–28–85; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 50, No. 41
Friday, March 1, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Select Committee on Uniform Rules of Procedures and Committee on Governmental Processes; Public Meetings

Select Committee on Uniform Rules of Agency Procedures

Date: Wednesday, March 13, 1985. Time: 11:30 AM. Location: 2120 L Street, NW, Suite 500, Washington, D.C. Agenda: Discussion of committee members' attempts to draft uniform/model rules after reviewing agency comments on Department of Labor's consolidated rules of practice. Contact: Jeffrey Lubbers 202–254–7065.

Committee on Governmental Processes

Date: Friday, March 15, 1985. Time: 9:30 AM. Location: Main Conference Room (11th floor), Covington & Burling, 1201 Pennsylvania Avenue, N.W., Washington, D.C. Agenda: Research projects before the committee, Draft report by Professors Barry B. Boyer and Errol E. Meidinger, concerning lawsuits brought by citizens under the federal environmental laws. Conact: David M. Pritzker, 202–254–7065.

Public Participation

Attendance at the committee meetings is open to the public, but limited to the space available. Persons wishing to attend should notify the contact person at least two days in advance of the meeting. The committee chairman may permit members of the public to present appropriate oral statements at the meeting. Any member of the public may file a written statement with a committee before, during, or after the meeting. Minutes of the meetings will be available on request to the contact persons. The contact persons' mailing address is: Administrative Conference of the United States, 2120 L Street, NW, Suite 500, Washington, D.C. 20037. These meetings are subject to the Federal Advisory Committee Act (Pub. L. 92–463).

Richard K. Berg,
General Counsel.
February 26, 1985.
[FR Doc. 85–5024 Filed 2–28–85; 8:45 am]
BILLING CODE 6110–01–M

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

Designation Renewal of Gibson City Grain Inspection Department (IL), Indianapolis Grain Inspection and Weighing Service, Inc. (IN), and Wyoming Department of Agriculture (WY)

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the designation renewal of Gibson City Grain Inspection Department (Gibson City), Indianapolis Grain Inspection & Weighing Service, Inc. (Indianapolis), and Wyoming Department of Agriculture (Wyoming) as official agencies responsible for providing official services under the U.S. Grain Standards Act, as amended (Act).

EFFECTIVE DATE: April 1, 1985.

ADDRESS: James R. Conrad, Chief, Regulatory Branch, Complicance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue SW., Room 1647 South Building, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The October 1, 1984, issue of the **Federal Register** (49 FR 38683) contained a notice from the Federal Grain Inspection Service (FGIS) announcing that Gibson City's, Indianapolis', and Wyoming's designations terminate on March 31, 1985, and requesting applications for designation as the agency to provide official services within each specified geographic area. Applications were to be postmarked by October 31, 1984.

Donald Swanstrom, doing business as Gibson City, and Wyoming were the only applicants for each of their respective designations. There were two applicants for the Indianapolis designation. Indianapolis applied for designation renewal and Dan W. Gross, doing business as Winchester Grain Inspection, also applied for the Indianapolis designation.

FGIS announced the names of these applicants and requested comments on same in the November 28, 1984, issue of the **Federal Register** (49 FR 46774), and as corrected in the December 14, 1984, issue of the **Federal Register** (49 FR 48780). Comments were to be postmarked by January 28, 1985.

No comments were received regarding Gibson City's or Wyoming's designation renewal. Also, no comments were received regarding the designation in the Indianapolis area.

FGIS evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act (7 U.S.C. 71 *et seq.*), and in accordance with section 7(f)(1)(B), decided that Donald Swanstrom, doing business as Gibson City, and Wyoming are able to provide official services in the respective geographic areas for which FGIS is renewing their designations. Using the same criteria and procedures, FGIS decided that Indianapolis is better able than any other applicant to provide official services in the geographic area for which FGIS is renewing its designation. Each assigned geographic area is the entire on previously described in the October 1, **Federal Register** issue.

Effective April 1, 1985, and terminating March 31, 1988, Gibson City, Indianapolis, and Wyoming are responsible to provide official inspection services in their respective specified geographic areas.

A specified service point, for the purpose of this notice, is a city, town, or other location specified by an agency for the performance of official inspection or Class X or Class Y weighing services and where the agency and one or more of its inspectors or weighers is located. In addition to the specified service points within the assigned geographic area, an agency will provide official

services not requiring an inspector or weigher to all locations within its geographic area.

Interested persons may contact the Regulatory Branch, specified in the address section of this notice, to obtain a list of an agency's specified service points. Interested persons also may obtain a list of the specified service points by contacting the agency at the following address:

Gibson City Grain Inspection Department, 207 East 8th Street, P.O. Box 20, Gibson City, IL 60936

Indianapolis Grain Inspection & Weighing Service, Inc., 4804 East Michigan Street, Indianapolis, IN 46201

Wyoming Department of Agriculture, 2219 Carey Avenue, Cheyenne, WY 82001.

(Sec. 8, Pub. L. 94–582, 90 Stat. 2873 (7 U.S.C. 79))

Dated: February 11, 1985.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 85–4970 Filed 2–28–85; 8:45 am]

BILLING CODE 3410–EN–M

Request for Comments on Designation Applicants in the Geographic Areas Currently Assigned to Sioux City Inspection and Weighing Agency, Inc. (IA) and A.V. Tischer and Son, Inc. (IA)

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicants for official agency designation in the areas currently assigned to Sioux City Inspection and Weighing Agency, Inc., and A.V. Tischer and Son, Inc.

DATE: Comments to be postmarked on or before April 15, 1985.

ADDRESS: Comments must be submitted, in writing, to Lewis Lebakken, Jr., Information Resources Management Branch, Resources Management Division, Federal Grain Inspection Service, U.S. Department of Agriculture, Room 0667 South Building, 1400 Independence Avenue SW., Washington, DC 20250. All comments received will be made available for public inspection at the above address during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., telephone (202) 382–1738.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The January 2, 1985, issue of the **Federal Register** (50 FR 136) contained a notice from the Federal Grain Inspection Service requesting applications for designation to provide official services under the U.S. Grain Standards Act, as Amended (7 U.S.C. *et seq.*) in the areas currently assigned to the officiel agencies. Applications were to be postmarked by February 4, 1985.

A.V. Tischer and Son, Inc., the only applicant for its designation, requested designation for the entire geographic area currently assigned to that agency. Two applications were received requesting designation in the Sioux City area. Sioux City Inspection and Weighing Agency, Inc., and David L. and Kenneth W. Ayers, proposing to do business as Siouxland Grain Inspection Agency, Inc., both applied for designation for the entire geographic area currently assigned to Sioux City Inspection and Weighing Agency, Inc.

This notice provides interested persons the opportunity to present their comments concerning the applicants for designation. All comments must be submitted to the Information Resources Management Branch, Resources Management Division, specified in the address section of this notice.

Comments and other available information will be considered in making a final decision. Notice of the final decision will be published in the **Federal Register**, and the applicants will be informed of the decision in writing.

(Sec. 8, Sec. 9, Pub. L. 94–582, 90 Stat. 2873, 2875 (7 U.S.C. 79, 79a))

Dated: February 22, 1985.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 85–4971 Filed 2–28–85; 8:45 am]

BILLING CODE 3410–EN–M

Request for Designation Applicants To Perform Official Services in the Geographic Area Currently Assigned to Kansas State Grain Inspection Department (KS)

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of the U.S. Grain Standards Act, as amended (Act), official agency designations shall terminate not later than triennially and may be renewed in accordance with the criteria and procedures prescribed in the Act. This notice announces that the designation of one agency will terminate, in accordance with the Act, and requests applications from parties, including the agency currently designated, interested in being designated as the official agency to conduct official services in the geographic area currently assigned to the specified agency. The official agency is Kansas State Grain Inspection Department.

DATE: Applications to be postmarked on or before April 1, 1985.

ADDRESS: Applications must be submitted to James R. Conrad, Chief, Regulatory Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue SW., Room 1647 South Building, Washington, D.C. 20250. All applications received will be made available for public inspection at the above address during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act (7 U.S.C. 71 *et seq.*, at 79(f)(1)) specifies that the Administrator of the Federal Grain Inspection Service (FGIS) is authorized, upon application by any qualified agency or person, to designate such agency or person to perform official services after a determination is made that the applicant is better able than any other applicant to provide official services in an assigned geographic area. Kansas State Grain Inspection Department (Kansas), 235 South Topeka Avenue, P.O. Box 1918, Topeka, KS 66601, was designated under the act as an official agency to perform inspection functions on September 1, 1982.

The agency's designation terminates on August 31, 1985. Section 7(g)(1) of the Act states, generally, that official agencies' designations shall terminate no later than triennially and may be renewed according to the criteria and procedures prescribed in the Act.

The geographic area presently assigned to Kansas, pursuant to section 7(f)(2) of the act, and which is the area that may be assigned to the applicant selected for designation, is the entire State of Kansas.

Interested parties, including Kansas, are hereby given opportunity to apply

for designation as the official agency to perform the official services in the geographic area, as specified above, under the provisions of section 7(f) of the Act and § 800.196(d) of the regulations issued thereunder. Designation in the specified geographic area is for the period beginning September 1, 1985, and ending August 31, 1988. Parties wishing to apply for designation should contact the Regulatory Branch, Compliance Division, at the address listed above for forms and information.

Applications submitted and other available information will be considered in determining which applicant will be designated to provide official services in a geographic area.

(Sec. 8, Pub. L. 94–582, 90 Stat. 2873 (7 U.S.C. 79))

Dated: February 11, 1985.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 85–4972 Filed 2–28–85; 8:45 am]

BILLING CODE 3410-EN-M

Voluntary Cancellation of Designation Issued to Winchester Grain Inspection, Interim Assignment of Designation to Eastern Indiana Grain Inspection, Inc., and Request for Designation Applicants (IN)

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces that Dan W. Gross, doing business as Winchester Grain Inspection, is voluntarily cancelling his designation effective March 1, 1985. Mr. Gross will incorporate as Eastern Indiana Grain Inspection, Inc. (Eastern Indiana), and has requested that a designation be granted to that agency. Eastern Indiana will provide official inspection services on an interim basis, from March 1, 1985, to August 31, 1985, in the geographic area specified below. A request for designation applicants is also included in this notice.

DATE: Applications to be postmarked on or before April 1, 1985.

ADDRESS: Applications must be submitted to James R. Conrad, Chief, Regulatory Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue SW., Room 1647 South Building, Washington, DC 20250. All applications received will be made available for public inspection at the above address during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Mr. Dan W. Gross, doing business as Winchester Grain Inspection, requested voluntary cancellation of his designation, effective March 1, 1985. Mr. Gross will incorporate as Eastern Indiana Grain Inspection, Inc. (Eastern Indiana), and has requested that a designation be granted to that agency. Eastern Indiana will provide official inspection services on an interim basis, from March 1, 1985, to August 31, 1985, in the geographic area specified below.

The Administrator of the Federal Grain Inspection Service (FGIS) has determined that interim assignment of this geographic area to Eastern Indiana is consistent with the provisions and objectives of the U.S. Grain Standards Act, as amended (Act) and that this action will facilitate providing official inspection services in the specified geographic area.

Section 7(f)(1) of the Act (7 U.S.C. 71 *et seq.*, at 79(f)(1)) specifies that the FGIS Administrator is authorized, upon application by any qualified agency or person, to designate such agency or person to perform official services after a determination is made that the applicant is better able than any other applicant to provide official services in an assigned geographic area.

The geographic area, in Indiana and Ohio, to be provided service by Eastern Indiana, on an interim basis, and which is available to the applicant selected for the new designation is as follows:

Bounded on the North by the northern Lagrange and Steuben County lines;

Bounded on the East by the eastern Steuben, De Kalb, Allen, Adams, Jay, Randolph, Wayne, and Union County lines;

Bounded on the South by the southern Union and Fayette County lines; the eastern Rush County line south to State Route 244; State Route 244 west to the Rush County line; and

Bounded on the West by the western Rush and Henry County lines; the southern Madison County line west to State Route 13; State Route 13 north to State Route 132; State Route 132 northwest to Madison County; the western and northern Madison County lines; the northern Delaware County line; the western Blackford County line north to State Route 18; State Route 18 west to County Highway 900E; County Highway 900E north to Huntington County; the southern Huntington and Wabash County lines; the western Wabash County line north to State Route 114; State Route 114 northwest to State Route 19; State Route 19 north to Kosciusko County; the western and northern Kosciusko County lines; the western Noble and Lagrange County lines.

The following location, outside of the foregoing contiguous geographic area, is also part of this geographic area assignment: Payne Cooperative Association, Payne, Paulding County, Ohio.

Interested parties, including Eastern Indiana, are hereby given opportunity to apply for designation as the official agency to perform the official services in the geographic area, as specified above, under the provisions of section 7(f) of the Act and § 800.196(d) of the regulations issued thereunder. Designation in the specified geographic area is for the period beginning September 1, 1985, and ending August 31, 1988. Parties wishing to apply for designation should contact the Regulatory Branch, Compliance Division, at the address listed above for forms and information.

Applications submitted and other available information will be considered in determining which applicant will be designated to provide official services in the specified geographic area.

(Sec. 8, Pub. L. 94–582, 90 Stat. 2873 (7 U.S.C. 79))

Dated: February 15, 1985.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 85–4973 Filed 2–28–85; 8:45 am]

BILLING CODE 3410-EN-M

Forest Service

Okanogan National Forest Grazing Advisory Board; Meeting

February 21, 1985

The Okanogan National Forest Grazing Advisory Board will meet at 7:30 p.m., March 19, 1985 at the Supervisor's Office, 1240 South Second Avenue, Okanogan, WA 98840. The purpose of the meeting is Election of Officers and establishing meeting procedures.

The meeting will be open to the public. Persons who wish to attend should notify Don Pridmore, Okanogan National Forest Supervisor's Office, 1240 S. Second Avenue, Okanogan, WA, 509–422–2704. Written statements may be

filed with the committee before or after the meeting.

The committee has established the following rules for public participation: Public comments will be heard during the first 30 minutes of the meeting.

William D. McLaughlin,

Forest Supervisor.

February 21, 1985.

[FR Doc. 85-4929 filed 2-28-85; 8:45 am]

BILLING CODE 3410-11-M

Sierra National Forest Grazing Advisory Board; Meeting

The Sierra National Forest Grazing Advisory Board will meet at 9:00 a.m. on April 10, 1985 in Room 3208 of the Federal Building, 1130 O Street, Fresno, California.

Agenda:

1. Discussion and approval of proposed Range Betterment funded projects FY 1986.
2. Report on Sierra National Forest base property requirements.
3. Update on Sierra National Forest Land Management Plan.
4. Update on Forest Service—Bureau of Land Management land exchange.
5. Election of Officers.
6. General topics of mutal interest.

The meeting will be open to the public. The Committee has established the following rules for public participation: Matters identified by the public will be considered by the board at the close of the planned agenda.

Dated: February 7, 1985.

James L. Boynton,

Forest Supervisor.

[FR Doc. 85-5031 Filed 2-28-85; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

Pacheco Creek RC&D Measure, CA; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

FOR FURTHER INFORMATION CONTACT: Mr. Eugene E. Andreuccetti, State Conservationist, Soil Conservation Service, 2828 Chiles Road, Davis, California 94616; telephone (916) 449-2848.

Notice: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council of Environmental Quality Guidelines. (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Pacheco Creek RC&D Measure, San Benito County, California.

The environmental assessment of this Federal action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Eugene E. Andreuccetti, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for the installation of critical area treatment facilities. The planned works of improvement include loose rock rip-rap, post and wire revetment and vegetation to stabilize eroding creek banks on Pacheco Creek.

The Notice of a Finding of No Significant Impact has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Eugene E. Andreuccetti, State Conservationist, Soil Conservation Service, 2828 Chiles Road, Davis, California 95616, (916) 449-2848. An environmental assessment and finding of no significant impact has been prepared and sent to various Federal, State and local agencies and interested parties. A limited number of copies of the finding of no significant impact are available to fill single copy requests at the above address.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable.)

Eugene E. Andreuccetti,

State Conservationist.

February 21, 1985.

[FR Doc. 85-4932 Filed 2-28-85; 8:45 am]

BILLING CODE 3410-16-M

Westport Flood Prevention RC&D Measure Plan; Westport, WA; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Westport Flood Prevention RC&D Measure Plan, Grays Harbor County, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Lynn A. Brown, State Conservationist, Soil Conservation Service, Room 360 U.S. Courthouse, Spokane, Washington 99201; telephone 509-456-3711.

SUPPLEMENTARY INFORMATION: The environmental assessment and measure plan of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Lynn A. Brown, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for reducing damages to commercial and residential buildings from flooding due to storm runoff and tidal influences on Winter Creek. The planned works of improvement include the include the construction of a dike, outfall structure, floodproofing for 30 residences and 5 businesses, and wetland mitigation for 0.2 acre of type 3 wetland.

The Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Lynn A. Brown.

No administrative action on the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

Dated: February 21, 1985.

Lynn A. Brown,

State Conservationist.

[FR Doc. 85-4933 Filed 2-28-85; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census
Title: Manufacturers' Shipments, Inventories, and Orders
Form Number: Agency—M-3 (SD), M-3 (MD); OMB—0607-0008
Type of Request: Revision of a currently approved collection
Burden: 4,100 respondents; 16,400 reporting hours
Needs and Uses: This is the only survey that provides monthly statistical information to Government and industry on the entire manufacturing sector of the economy. These statistics are an essential part of the development of the gross national product accounts, and the survey is designatetd a "principal Federal economic indicator" by the Office of Information and Regulatory Affairs, OMB
Affected Public: Businesses or other for-profit institutions
Frequency: Monthly
Respondent's Obligation: Voluntary
OMB Desk Officer: Timothy Sprehe, 395-4814.

Agency: Bureau of the Census
Title: 1986 Pretest Address Listing Page
Form Number: Agency—DC-101A, DC-169; OMB—None
Type of Request: New Collection
Burden: 60,000 respondents; 1,650 reporting hours
Needs and Uses: Census is planning to test and evaluate various methods for address list compilation and update methods to be used in the 1990 Decennial Census
Affected Public: Individuals or households
Frequency: Single-time
Respondent's Obligation: Mandatory
OMB Desk Officer: Timonthy Sprehe, 395-4814.

Agency: Minority Business Development Agency
Title: 1982 Characteristics of Business Owners Survey
Form Number: Agency—MB-4; OMB—None
Type of Request: New Collection
Burden: 125,000 respondents; 31,250 reporting hours
Needs and Uses: This survey will collect data which will be used to compare characteristics of minority and women business owners and their businesses with those of all businesses. These data are necessary for evaluating existing Government programs designed to promote minority and women-owned businesses and to plan manage future programs and research efforts
Affected Public: Individuals or households, businesses or other for-profit institutions, small businesses or organizations.
Frequency: Single time
Respondent's Obligation: Mandatory
OMB Desk Officer: Timothy Sphere, 395-4814.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-4217, Department of Commerce, Room 6622, 14th and Constitution Avenue NW., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collections should be sent to Timothy Sprehe, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: February 22, 1985.

Edward Michals,

Departmental Clearance Officer.

[FR Doc. 85-4960 Filed 2-28-85; 8:45 am]

BILLING CODE 3510-CW-M

International Trade Administration

[A-475-401]

Antidumping Duty Order: Certain Brass Fire Protection Products from Italy

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: In separate investigations concerning certain brass fire protection products from Italy, the United States Department of Commerce (the Department) and the United States International Trade Commission (the ITC) have determined that brass fire protection products from Italy, which include single and double clapper siamese fire department connections and pressure restricting valves, are being sold at less than fair value and that sales of these products are materially injuring a United States industry. Therefore, based on these findings, all unliquidated entries, or warehouse withdrawals, for consumption of these products made on or after July 10, 1984, the date on which the department published its preliminary determination of sales at less than fair value in the **Federal Register**, will be liable for the possible assessment of antidumping duties. Further a cash deposit of estimated antidumping duties must be made on all such entries, and withdrawals from warehouse, for consumption made on or after the date of publications of this antidumpting duty order in the **Federal Register**.

SUPPLEMENTARY INFORMATION: The merchandise covered by this investigation is certain brass fire protection products including: fire hose couplings, fog/straight stream nozzles, angle-type hose gate valves, wedge-disc hose gate valves, single and double clapper siamese fire department connections (2½ inch inlets and 4 inch outlets), pressure restricting valves, and pressure regulating valves. This merchandise is currently classified under the following item numbers of the *Tariff Schedules of the United States (Annotated)*: fire hose couplings—657.3540, fog/straight stream nozzles—680.1480, angle-type hose gate valves—680.1440, wedge-disc hose gate valves—680.1430, single and double claper siamese fire department connections—680.1420, pressure restricting valves—680.1440, and pressure regulating valves—680.2740.

In accordance with section 733 of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673b), on July 10, 1984, the Department published its preliminary determination that there was reason to believe or suspect that brass fire protection products from Italy were being sold at less than fair value. On January 9, 1985, the Department published its amended final determination that these imports were being sold at less than fair value.

On February 19, 1985, in accordance with section 735(d) of the Act (19 U.S.C. 1673d), the ITC notified the Department that imports of certain brass fire protection products, which include single and double clapper siamese fire department connections and pressure restricting valves, are materially injuring a United States industry.

The ITC also notified the Department that fire hose couplings, fog/straight stream nozzles, angle-type hose gate valves, wedge-disc hose gate valves, and pressure regulating valves are not materially injuring a United States industry.

Therefore, in accordance with sections 736 and 751 of the Act (19 U.S.C. 1673e and 1675), the Department directs United States Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act (19 U.S.C. 1673e(a)(1)), antidumping duties equal to

the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of certain brass fire protection products, which include single and double clapper siamese fire department connections and pressure restricting valves.

These antidumping duties will be assessed on all unliquidated entries of such merchandise entered, or withdrawn from warehouse, for consumption on of after July 10, 1984, the date on which the Department published its "Preliminary Determination of Sales At less Than Fair Value" notice in the Federal Register.

On and after the date of publication of this notice, United States Customs officers must require, at the same time as importers would normally deposit estimated Customs duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins as noted below:

Manufacturers/producers/exporters	Weighted-average margin (percent)
Rubinetterie A. Giacomini S.P.A	1.28
All Other Manufacturers/Producers/Exporters	1.28

The Department also directs that suspension of liquidation be discontinued for entries of fire hose couplings, fog/straight stream nozzles, angle-type hose gate valves, wedge-disc hose valves and pressure regulating valves. All estimated antidumping duties deposited on such entries shall be refunded and the appropriate bonds or other security released at time of liquidation.

This determination constitutes an antidumping order with respect to certain brass fire protection products, which include single and double clapper siamese fire department connections and pressure restricting valves, from Italy pursuant to section 736 of the act (19 U.S.C. 1673e) and section 353.48 of the Commerce Regulations (19 CFR 353.48). We have deleted from the Commerce Regulations, Annex I of 19 CFR Part 353, which listed antidumping findings and orders currently in effect. Instead, interested parties may contact the Office of Information Services, Import Administration, for copies of the updated list of orders currently in effect.

This notice is published in accordance with sectin 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce regulations (19 CFR 353.48).

February 21, 1985.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-4959 Filed 2-28-85; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

National Marine Fisheries Service; Availability

Pursuant to section 14(b)(2) of the North Pacific Fisheries Act of 1954 as amended (16 U.S.C. 1021 *et seq.*), the National Marine Fisheries Service has released to the general public its Proposed Action Plan for Dall's Porpoise for 1985. The Plan describes research studies conducted on Dall's porpoise, proposed research plans for 1985, and management measures taken to reduce the incidental take of this species in the Japanese high seas salmon fishery.

Copies of this report are available from the Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, Washington, D.C. 20235.

Dated: February 26, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85-5054 Filed 2-28-85; 8:45 am]

BILLING CODE 3510-22-M

Receipt of Permit Applications

This document publishes for public review a summary of applications received by the Secretary of State requesting permits for foreign vessels to fish in the fishery conservation zone under the Magnuson Fishery Conservation and Management Act (Magnuson Act, 16 U.S.C. 1801 *et seq.*)

Send comments on applications to:

Fees, Permits and Regulations Division (F/M12), National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235

or, send comments to the Fishery Management Council(s) which review the application(s), as specified below:

Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway (Route 1), Saugus, MA 01906, 617/231-0422

John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building Room 2115, 300 South New Street, Dover, DE 19901, 302/674-2331

David H.G. Gould, Executive Director, South Atlantic Fishery Management Council, Southpark Building, Suite 306, 1 Southpark Circle, Charleston, SC 29407, 803/571-1366

Omar Munoz-Roure, Executive Director, Caribbean Fishery Management Council, Banco De Ponce Building, Suite 1108, Hato Rey, PR 00818, 809/753-6910

Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Blvd., Tampa, FL 33609, 813/228-2815

Joseph C. Greenley, Executive Director, Pacific Fishery Management Council, 526 SW. Mill Street, Portland, OR 97201, 503/221-6352

Jim H. Branson, Executive Director, North Pacific Fishery Management Council, 411 W. Fourth Avenue, Suite 2D, Anchorage, AK 907/271-4060

Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 164 Bishop Street, Room 1405, Honolulu, HI 96813, 808/523-1368.

FOR FURTHER INFORMATION CONTACT:

John D. Kelley (Fees, Permits, and Regulations Division, 202-634-7432).

The Magnuson Act requires the Secretary of State to publish a notice of receipt of all applications for such permits summarizing the contents of the applications in the Federal Register.

The National Marine Fisheries Service, under the authority granted in a memorandum of understanding with the Department of State effective November 29, 1983, issues the notice on behalf of the Secretary of State.

Individual vessel applications for fishing in 1985 have been received between January 19, 1985 and February 6, 1985 from the Government(s), shown below.

Dated: February 26, 1985.

William G. Gordon,

Deputy Assistant for Fisheries, National Marine Fisheries Service.

Fishery codes and designation of Regional Fishery Management Councils which review applications for individual fisheries are as follows:

Code	Fishery	Regional fishery management councils
ABS	Atlantic billfishes and sharks.	New England, Mid-Atlantic, South Atlantic, Gulf of Mexico, Caribbean.
BSA	Bering Sea and Aleutian Islands groundfish.	North Pacific.
GOA	Gulf of Alaska	Do.
NWA	Northwest Atlantic Ocean	New England, Mid-Atlantic.
SMT	Seamount Groundfish	Western Pacific.
SNA	Snails (Bering Sea)	North Pacific.

Code	Fishery	Regional fishery management councils
WOC	Pacific groundfish (Washington, Oregon and California).	Pacific.
PBS	Pacific billfishes and sharks.	Western Pacific.

Activity codes which specify categories of fishing operations applied for are as follows:

Activity code	Fishing operations
1	Catching, processing and other support.
2	Processing and other support only.
3	Other support only.
4	"Joint venture" in support of U.S. vessels.

Nation/vessel name/ vessel type	Application No.	Fishery	Activity
The Government of Portugal Brites large stern trawler.	PO-85-0018	NWA	1 (4)

German Democratic Republic

Joint Venture—The Government of the German Democratic Republic has applied for fishing permits to engage in joint venture activities in the NWA fishery for 5,000 m.t. of Mackerel during the fishing year April 1, 1985 and March 31, 1986. The American partner will be Joint Trawlers (North America) Ltd. 63, Main Street, Gloucester, MA 01930. Vessels published at 49 FR 47322 will be employed in this joint venture.

Government of Portugal

Joint Venture—The Government of Portugal has applied for a fishing vessel permit to engage in joint venture activities in the NWA fishery. The application requests that the above Portuguese vessel receive 1,000 mt of *Illex* squid and 200 mt of *Loligo* squid between April 1, 1985, and March 31, 1986. The American partner will be Lunds Fisheries, Inc., 997 Ocean Drive, Cape May, New Jersey 08204.

[FR Doc. 85-5046 Filed 2-28-85; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Import Restraint Limit for Certain Man-Made Fiber Textiles Produced or Manufactured in Spain

February 28, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on March 1, 1985. For further information contact Ann Fields, International Trade Specialist (202) 377-4212.

Background

On June 19, 1984 a notice was published in the **Federal Register** (49 FR 25023), which announced that the United States Government, pending consultations with the Government of Spain to reach a mutually satisfactory agreement concerning exports to the United States of other man-made fiber yarn, wholly of noncontinuous filament, in Category 604, produced or manufactured in Spain, had decided to control imports in this category, exported during the twelve-month period which began on March 1, 1984 and extends through February 28, 1985, at a level of 857,396 pounds. That level has been filled. Inasmuch as consultations with the Government of Spain have not yet produced a mutually satisfactory solution concerning Category 604, the United States Government has decided to control imports at a level of 883,118 pounds for the period beginning on March 1, 1985 and extending through February 28, 1986 for goods exported during that period.

On December 24, 1984 a further notice was published in the **Federal Register** (49 FR 49879) announcing that, as of January 1, 1985, the Committee for the Implementation of Textile Agreements (CITA), in order to prevent market disruption, would direct the U.S. Customs Service, as appropriate, to permit entry into the United States for consumption, or withdrawal from warehouse for consumption, of such goods which were exported during a prior restraint period in excess of the restraint limit at a prescribed rate per month during each of the first five months of the following period. CITA has decided, in the case of imports in Category 604 exported from Spain on and after March 1, 1984, to direct Customs to permit entry in amounts not to exceed 176,624 pounds in Category 604 during each of the thirty-day periods beginning on March 1, 1985 and extending through June 29, 1985. The thirty-day periods are stipulated in the letter to the Commissioner of Customs which follows this notice. An overshipment of goods exported during the twelve-month period which began on March 1, 1984 amounting to 174,487 pounds which has previously been permitted entry will be charged to the limit established for the first thirty-day period.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1985).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

February 28, 1985.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles, and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed, effective on March 1, 1985, to permit entry into the United States for consumption and withdrawal from warehouse for consumption of man-made fiber textiles in Category 604, produced or manufactured in Spain and exported during the twelve-month period beginning on March 1, 1985 and extending through February 28, 1986, in excess of 883,118 pounds.

Merchandise in Category 604, exported during the twelve-month period which began on March 1, 1984 and extended through February 28, 1985, which is in excess of the limit established for that period shall be permitted entry into the United States for consumption, or withdrawal from warehouse for consumption, in an amount not to exceed 176,624 pounds during each of the following thirty-day periods:

March 1, 1985 through March 30, 1985
March 31, 1985 through April 29, 1985
April 30, 1985 through May 29, 1985
May 30, 1985 through June 29, 1985

In addition, overshipments in Category 604 amounting to 174,487 pounds, exported during the twelve-month period which began on March 1, 1984, and which have previously been permitted entry, shall be charged to the limit for the thirty-day period beginning on March 1, 1985.

The amount of merchandise in Category 604 which has been exported during the twelve-month period which began on March 1, 1984, plus goods exported in this category during the twelve-month period beginning on March 1, 1985 which are entered for consumption, or withdrawal from warehouse for consumption in the United States, shall not together exceed the limit established for this category during the latter twelve-month period.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in

the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 28622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1985).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreement.

[FR Doc. 85-5222 Filed 2-28-85; 10:07 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1985 Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to Procurement List 1985 services to be provided by workshops for the blind and other severely handicapped.

EFFECTIVE DATE: March 1, 1985.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher (703) 557-1145.

SUPPLEMENTARY INFORMATION: On July 13 and December 7, 1984 the Committee for Purchase from the Blind and Other Severely Handicapped published notices (49 FR 28596, and 49 FR 47890) of proposed additions to Procurement List 1985, October 19, 1984 (49 FR 41195).

Additions

After consideration of the relevant matter presented, the Committee has determined that the servcies listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77 and 41 CFR 51-2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the services listed.

c. The actions will result in authorizing small entities to provide the services procured by the Government.

Accordingly, the following services are hereby added to Procurement List 1985:

SIC 7349

Janitorial Service, Kenneth B. Keating Federal Building and U.S. Courthouse, 100 State Street, Rochester, New York

Janitorial/Custodial, Fort Bliss Exchange, Main Store—Building 1735, Fort Bliss, Texas

C.W. Fletcher,

Executive Director.

[FR Doc. 85-5039 Filed 2-28-85; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1985; Proposed Additions and Deletion

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed Additions to and deletion from Procurement List.

SUMMARY: The Committee has received proposals to add to and delete from Procurement List 1985 services to be provided by workshops for the blind and other severely handicapped.

Comments must be received on or before: April 3, 1985.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77 and 41 CFR 51-2.6. Its purpose is to provide interestd persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following services to Procurement List 1985, October 19, 1984 (49 FR 41195):

SIC 0782

Grounds Maintenance and Sprinkler System Maintenance, Buildings 1609, 2860, 8350, 8351, 8352, 8353, 8354, and 8356, Edwards Air Force Base, California

SIC 7349

Cardboard and Paper Scrap Recovery, Department of Energy, BPA, Portland, Oregon

Janitorial/Custodial, Federal Building, 12th & Chapline Streets, Social Security Administration Building, 16th & Chapline Streets, Wheeling, West Virginia

Deletions

It is proposed to delete the following service from Procurement List 1985, October 19, 1984 (49 FR 41195):

SIC 7389

Repair of Air Cargo Pallet Top and Side Nets McChord Air Force Base, Washington

C.W. Fletcher,

Executive Director.

[FR Doc. 85-5040 Filed 2-28-85; 8:45 am]

BILLING CODE 6820-33-M

COMMODITY FUTURES TRADING COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

AGENCY: Commodity Futures Training Commission.

ACTION: Notice of Information Collection.

SUMMARY: The Commodity Futures Trading Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511.

ADDRESS: Persons wishing to comment on this information collection should contact Katie Lewin, Office of Management and Budget, Room 3235, NEOB, Washington, D.C. 20503, (202) 395-7231. Copies of the submission are available from Joseph G. Salazar, Agency Clearance Officer, (202) 254-9735.

Title: Regulations Pertaining to the Responsibilities of Contract Markets and their Members.

Abstract: The purposes of these regulations are to assure the retention of documents needed for monitoring purposes by self-regulatory organizations and by the Commission, to enable the Commission to determine whether exchange rules proposed to be adopted meet the statutorily prescribed standards, to assure the efficient and fair disposition of appeals and to assure that the futures association is

performing its self-regulatory responsibilities diligently and fairly.

Control No. 3038–0022.

Action: Extension.

Respondents: Businesses (excluding small businesses).

Estimated annual burden: 753,455 hours.

Estimated number of respondents: 410.

Issued in Washington, D.C., on February 25, 1985.

Joan A. Webb,

Secretary of the Commission.

[FR Doc. 85–5033 Filed 2–28–85; 8:45 am]

BILLING CODE 6351–01–M

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of information collection.

SUMMARY: The Commodity Futures Trading Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511.

ADDRESS: Persons wishing to comment on this information collection should contact Katie Lewin, Office of Management and Budget, Room 3235, NEOB, Washington, D.C. 20503, (202) 395–7231. Copies of the submission are available from Joseph G. Salazar, Agency Clearance Officer, (202) 254–9735.

Title: Gross Margining of Omnibus Accounts.

Abstract: A carrying futures commission merchant is required to maintain a written representation from the originating FCM if it allows a person trading through an omnibus account to margin positions in the account at a lower than normal level because a spread or hedge position is involved.

Control No.: 3038–0026.

Action: Extension.

Respondents: Businesses (excluding small businesses).

Estimated annual burden: 500 hours.

Estimated number of respondents: 400.

Issued in Washington, D.C., on Febraury 25, 1985.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 85–5034 Filed 2–28–85; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Cooperative Agreements

AGENCY: Defense Logistics Agency, DOD.

ACTION: Cooperative Agreements; Proposed Procedures.

SUMMARY: These proposed procedure implements Chapter 142, Title 10, United States Code, which authorizes the Secretary of Defense, acting through the Director, Defense Logistics Agency, to enter into cost sharing Cooperative Agreements to support procurement technical assistance programs established by state and local governments and private non-profit organizations. Subpart III of this issuance establishes the administrative procedures proposed to be implemented by the Defense Logistics Agency (DLA) to enter into such agreements for this purpose.

DATES: Comments will be accepted until April 1, 1985. The proposed effective date is April 5, 1985.

ADDRESS: Send comments to the Defense Logistics Agency, ATTN: DLA–US, Cameron Station, Alexandria, VA 22304–6100.

For further information contact: John McCallum, Program Officer, Office of Small Business & Disadvantaged Business Utilization (DLA–US), Defense Logistics Agency, Alexandria, VA 22304–6100, Telephone (202) 274–6471.

SUPPLEMENTARY INFORMATION:

I. Background Information

The Department of Defense (DoD) has developed programs designed to expand the industrial base and increase competition for its requirements for goods and services, thereby reducing the cost of maintaining a strong national security. Its efforts to increase competition among the private sector have been supplemented by many state and local governments and other entities whose interest in improving the business climate and economic development in their communities are compatible with these DoD objectives. To assist in furthering this mutual interest, a Cooperative Agreement program has been established by which the DoD can share the cost of supporting existing procurement technical assistance programs being conducted by state and local governments and private non-profit organizations and encourage other state and local governments and private non-profit organizations to consider establishing similar programs in their communities.

The Fiscal Year 1985 DoD Authorization Act, Pub. L. 98–525, amends Title 10, United States Code, by adding Chapter 142 which authorizes the Secretary of Defense, acting through the Director, Defense Logistics Agency (DLA), to enter into Cooperative Agreements with state and local governments (hereinafter referred to as eligible entities as defined in section 3 of this regulation) to establish and conduct a procurement technical assistance program during FY 1985.

The Congress has authorized a total of $2 million as the Dod share of the costs required to support the program during Fiscal Year 1985, of which $1 million has been reserved to provide financial support to procurement technical assistance programs established by eligible entities prior to FY 1985, and the balance of $1 million to support programs being planned (new starts) by eligible entities. The Act further anticipates a continuation of funding for the program through Fiscal Year 1988, with 75 percent of any funds then made available to be allocated to existing programs, and 25 percent to new starts. Each of the nine Defense Contract Administration Services Regions (DCASRs) within DLA will be authorized to award approximately $220,000 as the DoD share of program costs to applicants within the geographic area under their cognizance to support existing programs and new starts. In cases where the area being or to be serviced by the eligible entity encompasses more than one DCASR's area of geographic cognizance, eligible entities are to submit their applications to the one DCASR having cognizance over the preponderant part of the area being or to be serviced. Only one application will be accepted from a single eligible entity. The address and geographic areas under the cognizance of each of the DCASRs follow:

State or area	DCASR	Associate director
Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, Tennessee, Puerto Rico.	DCASR Atlanta, 805 Walter Street, Marietta, GA 30060.	Mr. Harold Watson, Telephone (404) 429–6195.
Connecticut, Maine, New Hampshire, Massachusetts, New York (all counties except Bronx, Kings, New York, Nassau, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, and Westchester), Rhode Island, Vermont.	DCASR Boston, 495 Summer Street, Boston, MA 02210.	Mr. Edward Fitzgerald, Telephone (617) 451–4318.

State or area	DCASR	Associate director
Illinois (Northern Area), Indiana, Wisconsin	DCASR Chicago, O'Hare Int'l Airport, P.O. Box 66475, Chicago, IL 60666.	Mr. James Kleckner, Telephone (312) 694–6021
Kentucky, Michigan, Ohio	DCASR Cleveland, Federal Office Bldg., 1240 East 9th Street, Room 1861, Cleveland, OH 44199.	Ms. Wilma Combs, Telephone (216) 522–5122.
Arizona, Arkansas, Louisiana, New Mexico, Oklahoma, Texas	DCASR Dallas, 500 South Ervay St., Dallas, TX 75201.	Mr. Ken Strack, Telephone (214) 670–9205.
Alaska, California, Hawaii, Idaho, Montana, Nevada, Oregon, Washington.	DCASR Los Angeles, 11099 South LaCienega Blvd., Los Angeles, CA 90045.	Mr. S. L. Ganalon, Telephone (213) 643–0620.
New Jersey (Northern 12 Counties), New York (Bronx, Kings, New York, Nassau, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, and Westchester Counties only).	DCASR New York, 201 Varick Street, Room 1061, New York, NY 10014.	Mr. John Mulreany, Telephone (212) 806–3050.
Delaware, District of Columbia, Maryland, New Jersey (Except for Northern 12 Counties), Pennsylvania, Virginia, West Virginia.	DCASR Philadelphia, 2800 South 20th St., Philadelphia, PA 19101–8419.	Mr. Roger Rhyner, Telephone (215) 952–4006.
Colorado, Illinois (Southern Half), Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, South Dakota, Utah, Wyoming.	DCASR St. Louis, 1136 Washington Ave., St. Louis MO 63101.	Mr. Thomas Moore, Telephone (314) 263–6617.

Additional limitations placed on these funds follow:

(i) DoD cost sharing shall not exceed 50 percent of the total cost of a single program, excluding any Federal funds, or $150,000, whichever is less.

(ii) Eligible entities are not to subcontract more than 10 percent of their total costs for private consulting services to support the program.

The Department of Defense presently provides procurement and technical assistance to business firms through its network of Small Business Specialists located in industrial centers around the country. The Associate Directors of Small Business located in these industrial centers at the DCASRs will be available to provide applicants such assistance as necessary to understand fully the solicitation requirements when issued and to provide general guidance in preparing applications.

While any procurement technical assistance given to clients in marketing their goods and services to other Federal Agencies and/or state and local governments will not be an evaluation factor in considering applications, the applicant may want to consider supplementing this DoD program to include these other marketing opportunities for business firms in the area being or to be serviced.

The purpose of this proposed procedure is to make available to all eligible entities desiring to enter into Cooperative Agreements with DLA those policies and requirements that are necessary in order for DLA to enter into a Cooperative Agreement. This regulation is necessary since DLA presently has no existing generic regulations governing Cooperative Agreements and expects to make continued use of Cooperative Agreements for this purpose.

Although this procedure will affect all eligible entities desiring to enter into a Cooperative Agreement with DLA, the Defense Logistics Agency has determined that this rule does not involve a substantial issue of fact or law, and that it is unlikely to have a substantial or major impact on the Nation's economy or large numbers of individuals or businesses. This determination is based on the fact that this proposed Cooperative Agreement Regulation implements policies already published by the Office of Management and Budget pursuant to Chapter 63, Title 31, United States Code, Using Procurement Contracts and Grant and Cooperative Agreements. In addition, DLA Cooperative Agreements will be entered into pursuant to the authorities and restrictions in DoD authorization and appropriation acts.

II. Other Information

DLA presently has no existing generic regulations governing Cooperative Agreements. This proposed procedure provides guidance for Cooperative Agreements entered into by the DLA.

DLA has determined that the proposed procedure does not involve substantial issues of fact or law and these procedures are unlikely to have a substantial or major impact on the Nation's economy or large numbers of individuals or businesses. Therefore, public hearings were not conducted.

Since this is DLA's first comprehensive procedure covering Cooperative Agreements pursuant to 31 U.S.C. 6301 et seq, Using Procurement Contracts and Grant and Cooperative Agreements, additional comments are invited on the procedures and are to be submitted to the Defense Logistics Agency, ATTN: DLA–US, Cameron Station, Alexandria, VA 22304–6100. All comments received by 15 March 1985 will be evaluated to determine if any revisions should be made to Subpart III

Issued in Alexandria, VA on February 28, 1985.

For the Defense Logistics Agency.

Ray W. Dellas,

Staff Director, Office of Small and Disadvantaged Business Utilization.

III. Proposed DLA Regulation—Cooperative Agreements

1. Scope.

(a) This regulation establishes requirements for the award and administration of Cost Sharing Cooperative Agreements entered into between DLA and eligible entities. The purpose of these agreements is to increase Department of Defense assistance to eligible entities in furnishing procurement technical assistance to business entities by sharing in the costs of establishing and carrying out new procurement technical assistance programs and in maintaining existing procurement technical assistance programs for this purpose.

(b) A Cooperative Agreement is a legal instrument reflecting a relationship between the DLA and a participant whenever the principal purpose of the relationship is the transfer of money, property, services or anything of value to the participant in order to accomplish a public purpose of support or stimulation authorized by Federal statute and substantial involvement is anticipated between the Defense Logistics Agency (DLA) and the participant during performance of the contemplated activity.

(c) When proposals for Cooperative Agreements are obtained by DLA via a program solicitation, this regulation shall be incorporated into such program solicitation by reference to establish applicable administrative provisions for DLA Cooperative Agreements. Program solicitations may add administrative provisions only when such additional administrative provisions are required by applicable program legislation or program regulation.

2. Policy.

(a) It is DLA policy to encourage and maximize open and fair competition in the award of Cooperative Agreements for establishing or maintaining existing procurement technical assistance programs. DLA will award Cooperative Agreements on a competitive basis to the maximum extent practicable as a result of the issuance of Solicitations for Cooperative Agreement Proposals (SCAPs).

(b) SCAPs that elicit proposals shall be given the widest practical dissemination to all known eligible entities and to those that have requested to be placed on SCAP mailing lists.

(c) Any solicitation issued in accordance with this regulation is not to be considered an offer by the DoD and will not obligate DLA to make any awards under this program. The DoD is also not responsible for any monies expended by applicants before award of any cost-sharing Cooperative Agreement.

(d) Award of any Cooperative Agreement to an eligible entity under this program shall not in any way obligate DoD to enter into any contract or give preference for the award of any contracts to any concern or firm having received services by that entity.

3. Eligible Entities—As used in this regulation, eligible entities include:

(a) State Government, which means a State of the United States, the District of Columbia, a territory or possession of the United States, an agency or instrumentality of a State, and a multi-state, regional, or interstate entity having governmental duties and powers.

(b) "Local government" which means a unit of government in a State, a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, an interstate entity, or another instrumentality of a local government.

(c) Private, non-profit organizations which means any corporation, trust, foundation, or institution which is entitled to exemption under Section 501(c)(3) of the Internal Revenue Code, or which is not organized for profit and no part of the net earnings of which inure to the benefit of any private shareholder or individual.

4. Solicitation for Cooperative Agreement Proposals (SCAP).

(a) The solicitations for Cooperative Agreement Proposals (SCAP) shall be prepared by the HQ DLA program office, with the assistance of counsel and issued through each Defense Contract Administration Services Region (DCASR). The program office will be responsible for development of the proposed effort, specifications, project objectives, and schedule.

(b) The evaluation and selection of proposals submitted in response to a SCAP shall be conducted as detailed below:

(i) Proposals will be evaluated by a specially constituted evaluation panel established at each Defense Contract Administration Services Region (DCASR). The panel will be comprised of a Small Business Specialist, counsel, contract management specialist, comptroller, and others as deemed appropriate by the DCASR Commander.

(ii) Prior to making a comprehensive evaluation of a proposal, the evaluation panel shall make an initial evaluation to determine if the proposal contains sufficient technical, cost, and other required information to enable comprehensive evaluation; has been signed by a responsible official authorized to obligate the eligible entity; and generally meets all other requirements of the SCAP. If the proposal does not meet these requirements, a comprehensive evaluation shall not be made. In such case, a prompt reply shall be sent to the proposer, indicating the reason for its proposal not being acceptable. Revised applications will not be accepted from those rejected after the initial evaluation.

(iii) A list of all proposals which pass initial evaluation will be forwarded from each DCASR to HQ DLA for review to assure that no eligible entity has submitted more than one proposal. If more than one proposal from the same eligible entity is found, the proposer will be required to withdraw all but one proposal.

(iv) Proposals which pass the initial evaluation process will be subjected to a comprehensive evaluation. The basic purpose of the comprehensive evaluation process is to assess the relative merits of proposals passing the initial evaluation to determine which of the proposals offer the greatest likelihood of achieving the stated program objectives, considering technical quality, ability of the proposer, estimated cost, and other relevant factors. Proposal evaluations shall consist of three steps. First, each proposal will be evaluated by the panel in accordance with the stated criteria and ranked in order of excellence. Second, the panel will take into account the relevant program objectives in order to determine the mix of projects which will best further specific program goals. Third, the panel will determine whether sufficient funds have been allocated to the DCASR to cover the DoD share of costs. All findings and selections are to be documented, signed, and retained to provide an adequate record of the proceedings.

(d) Upon completion of its review, the panel will submit the results and its recommendations to HQ DLA for review by the Cooperative Agreement Policy Council and for fund control. Upon completion of the Council's review, the results of the reviews will be submitted to the Commander of the cognizant DCASR for approval of the application.

(e) After approval by the DCASR Commander, the Cooperative Agreement will be executed by the Associate Director of Small Business, who shall not be appointed as a member of the evaluation panel.

5. Program Description.

The objective of the procurement technical assistance program is to assist eligible entities in providing marketing and technical assistance to business firms in selling their goods and services to the DoD, thus assisting the DoD in its acquisition goals and at the same time enhancing the business climate and economies of the communities being served. Specific program requirements to accomplish this objective will vary, depending on locations, the types of industries and business firms within the community, the level of economic activity in the community, and many other factors. However, the SCAP will describe the features that a comprehensive procurement technical assistance program should generally include, as follows:

(a) Personnel—Professional personnel qualified to counsel and advise business firms (hereinafter referred to as clients) regarding DoD procurement policies and procedures as they relate to marketing techniques and strategies, pricing policies and procedures, preaward and postaward contract administration, quality assurance, production and manufacturing, financing, subcontracting requirements, bid preparation, and specialized acquisition requirements for such things as construction, research and development and data processing.

(b) Marketing Tools—These should include, as a minimum, the Commerce Business Daily, Federal Acquisition Regulation, DoD FAR Supplement, Commodity Listings from DoD contracting activities, Federal and Military Specifications and Standards, and other Federal Government publications.

(c) Networking—Techniques for providing assistance throughout the area being serviced by locating assistance offices in areas of industrial concentration, computerized data networks, and other means.

(d) Fees and Service Charges—In the event the applicant presently charges or plans on charging clients a fee or service charge, details as to the basis for and amount of the fee to be charged will be required to be described.

(e) Performance Measurement—The program should include a means of periodically measuring its effectiveness

in achieving the objectives described above. Factors to consider in establishing this performance measurement system should include the number and types of clients assisted, including size and social status; the types of assistance rendered, such as marketing and accounting; the number of clients added to DoD and other Federal Agency bidders mailing lists, the Profile System of the Minority Business Development Act Agency, and the Procurement Automated Source System (PASS) of the Small Business Administration; and the value of prime and subcontract awards received by clients as the result of the program.

6. Evaluation Criteria.

(a) The evaluation criteria shall be specified in the SCAP along with a narrative description of their relative importance. The following items are listed in their order of relative importance that will be considered as evaluation criteria:

(i) The types and qualification of personnel assigned to the program.

(ii) The quality of the procurement technical assistance program.

(iii) The number of clients in the geographic area.

(iv) The percentage of total program costs to be shared by DoD and relation of total program cost to anticipated return.

(v) The level of unemployment in the area.

(vi) The amount of subcontracting to private consultants.

(b) As this program applies both to existing procurement technical assistance programs and to those being planned, certain of these evaluation factors will be applicable on a projected basis to programs being planned. For example, the types and qualifications of personnel assigned will require applicants that do not presently have established but are planning programs to identify the standards to be used in selecting the personnel to be assigned. In addition, the amount of subcontracting to private consultants is limited to no more than 10 percent of total program costs. In evaluating this factor for existing programs the smaller the amount of such subcontracting the greater the weight that will be given. However, in the case of new starts full weight will be given to this factor, subject only to the 10 percent limitation.

7. Cost Sharing Criteria.

(a) This section sets forth the policy on cost sharing by the Government under DLA Cooperative Agreements. Cost sharing is a generic term denoting any situation where the Government does not fully provide the participant with funds for all allowable costs necessary to accomplish the defined project or effort. The term encompasses cost participation, cost matching, cost limitation (direct or indirect), participation in kind, and similar concepts.

(b) The Congress has authorized a total of $2 million as the DoD share of costs required to support the program during Fiscal Year 1985, of which $1 million has been reserved to provide financial support to procurement technical assistance programs established by eligible entities prior to FY 1985, and the balance of $1 million to support programs being planned (new starts) by eligible entities. The Act further anticipates a continuation of funding for the program through Fiscal Year 1986, with 75 percent of any funds then made available to be allocated to existing programs and 25 percent to new starts. Each of the nine DCASRs within DLA will be authorized to award approximately $220,000 as the DoD share of program costs to applicants within the geographic area under their congnizance. In cases where the area being or to be serviced by the eligible entity encompasses more than one DCASR's area of geographic cognizance, eligible entities should submit their applications to the one DCASR having cognizance over the majority of the area being or to be serviced. Only one application may be made by a single eligible entity.

(c) New starts for purposes of this regulation include all eligible entities that have not had an established and on-going program for the 12-month period prior to submission of their application.

(d) Cost contributions may be to either direct or indirect costs, provided such costs are otherwise allowable in accordance with cost principles applicable to the award. Allowable costs which are absorbed by the participant as its share of costs may not be charged directly or indirectly or may not have been charged in the past to the Federal Government under other contracts, agreements, or grants.

(e) The SCAP will require applicants to submit an annualized estimated budget, which may include cash contributions, in-kind contributions, and any other Federal Agency funding (including grants, loans, and cooperative agreements). The type and value of any in-kind contribution will be limited to no more than 25 percent of the total annual budget. However, Federal funds provided under another Federal financial assistance award including loans (but not including loan guarantee agreements since these do not provide for disbursement of Federal funds) are not acceptable for calculating cost contribution of the participants unless the terms of the other award instrument allow such use or written advice from the agency(s) providing such other funds is obtained which would permit such use. Any method used by the participants in providing the required funds which relies upon Federal funds must be disclosed and identified in the application and DLA award instrument.

(f) Participants in Cooperative Agreements shall be required to maintain records adequate to reflect the nature and extent of their costs and to insure that the required cost participation is achieved.

(g) The SCAP will also provide that indirect costs are not to exceed 100 percent of direct costs, and that in the event the applicant charges or plans to charge a fee or service charge for procurement technical assistance given to clients, the estimated amount of such reimbursement is to be credited against total budgeted costs.

(h) The guidelines governing allowability of costs shall be included in the project funding document. The Federal cost principles as stated in the regulations listed below will be used as guidelines to determine allowable costs in performance of the project:

(i) FNC 74–4 (OMB Circular A–87) for State and local government participant and other participants covered by OMB Circular A–102;

(ii) OMB Circular A–21 for Institutions of Higher Education and other participants covered by OMB Circular A–110.

8. General and Special Provisions.

(a) For participants covered by OMB Circular A–102, Uniform Administrative Requirements for Grant-In-Aid to State and Local Governments, or OMB Circular A–110, Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-profit Organizations, the administrative requirements specified in these circulars will apply.

(b) The Federal Acquisition Regulations contain numerous clauses and provisions which provide operational guidance and spell out rights and obligations of parties in Federal procurement transactions. Although the regulation is not applicable per se to Cooperative Agreements, some of the provisions contained in the Regulations may be equally applicable to procurement contracts and Cooperative Agreements or possibly suitable for Cooperative Agreements. The provisions

referenced below, modified as appropriate, shall be contained in the SCAP and made a part of all Cooperative Agreements with participants other than those covered under OMB Circulars A–102 and A–110. The provisions are subject to negotiation unless determined to be mandatory. Provisions considered to be mandatory shall be specifically identified in SCAP. The clauses will only be used if the applicable dollar threshold is met. For example, if there is a $100,000 threshold for applying the clause, that particular clause will only be used in the Cooperative Agreement if the total cost of the project (including both the applicant's and DoD's share of total costs) exceeds that threshold. Substantive changes to any of these clauses, or the addition of any clauses not identified below will be subject to negotiation.

(i) Officials Not to Benefit 52–201–1.
(ii) Gratuities 52.203–3
(iii) Contingent Fee Representation & Agreement 52.203–4
(iv) Covenant Against Contingent Fees 52.203–5
(v) Approval of Contract 52.204–1
(vi) Examination of Records by Comptroller General 52–215–1
(vii) Audit-Negotiation 52.512–2
(viii) Unnecessary Elaborate Proposals or Quotations 52.215–7
(ix) Restriction on Disclosure and Use of Data 52.215–12
(x) Order of Precedence 52.512–18
(xi) Certification of Nonsegregated Facilities 52.222–21
(xii) Previous Contracts and Compliance Reports 52.222–22
(xiii) Affirmative Action Compliance 52.222–25
(xiv) Equal Opportunity 52.222–26
(xv) Affirmative Action for Special Disabled and Vietnam Era Veterans 52.222–35
(xvi) Affirmative Action for Handicapped Workers 52.222–36
(xvii) Disputes 52.233–1
(xviii) Subcontracts Under Cost-Reimbursement and Letter Contracts 52.244–2
(xix) Termination (Personal Services) 52.249–12

9. Administration.

(a) Cooperative Agreements will be assigned to the cognizant DCASR for payment and postward administration by the Associate Director for Small Business.

(b) The Associate Director of Small Business at the cognizant DCASR will be responsible for periodically reviewing awardee performance, to include a review of budgeted versus actual expenditures, progress being made in meeting goals, compliance with certificates and representations, and other performance factors.

[FR Doc. 85–5035 Filed 2–28–85; 8:45 am]
BILLING CODE 3820–01–M

Department of the Navy

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Joint C³ Interoperability Panel of the Naval Research Advisory Committee will meet on March 19–20, 1985, at the Office of Naval Research, Ballston Tower ± 1, 800 North Quincy Street, Arlington, Virginia. The agenda will include technical briefings from the individual military services on their respective command and control systems, requirements and infrastructure capability. The first session will commence at 8:30 A.M. and terminate at 4:30 P.M. on March 19. The second and final session will commence at 8:30 A.M. and terminate at 2:30 P.M. on March 20. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to examine the quality of joint command and control systems, and assess future requirements and infrastructure capability. The entire meeting will consist of classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander M. B. Kelley, U.S. Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217–5000, Telephone number (202) 696–4870.

Dated: February 26, 1985.

William F. Roos, Jr.,
Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 85–5032 Filed 2–28–85; 8:45 am]
BILLING CODE 3810–AE–M

DEPARTMENT OF EDUCATION

Office of Management

Intent To Conduct Productivity Reviews for Fiscal Year 1985

AGENCY: Department of Education.

ACTION: Notice of Intent To Conduct Productivity Reviews for Fiscal Year 1985.

SUMMARY: The Secretary gives notice that, pursuant to revised OMB Circular A–76, dated August 10, 1983, the U.S. Department of Education intends to conduct productivity reviews in Fiscal Year 1985 on the following four activities: (1) Selected Statistical Operations at the National Center for Education Statistics (NCES); (2) Personal Actions Processing Operations; (3) Selected Automated Data Processing (ADP); and (4) Awarding and Negotiating Discretionary Grants in the Assistance Management and Procurement Service (AMPS). Each of these activities is located in Washington, D.C. Each of these reviews is scheduled to begin formally on April 1, 1985. The purpose of a productivity review is to determine the most economical means of performing the work.

FOR FURTHER INFORMATION CONTACT: Fred Bresnick, Management Improvement Service, Office of Management, Department of Education, Room 4428, Switzer Building, 330 C Street, S.W., Washington, D.C. 20202 Telephone: (202) 732–1815.

Dated: February 27, 1985.

Linda M. Combs,
Deputy Under Secretary for Management.

[FR Doc. 85–5170 Filed 2–28–85; 8:45 am]
BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Conduct of Employees; Notice of Waiver

Section 602(a) of the Department of Energy Organization Act (Pub. L. 95–91, hereinafter referred to as the "Act") prohibits a "supervisory employee" (defined in section 601(a) of the Act) of the Department from knowingly receiving compensation from, holding any official relation with, or having pecuniary interest in any "energy concern" (defined in section 601(b) of the Act).

Section 602(c) of the Act authorizes the Secretary of Energy to waive the requirements of section 602(a) in cases of exceptional hardship or where the

interest is a pension, insurance, or other similarly vested interest.

Dr. David L. Hendrie is under consideration for the position of Director of the Nuclear Physics Division of the Department of Energy's Office of Energy Research. Dr. Hendrie has a vested pension interest in the University of California Retirement System as a result of his employment at the Lawrence Berkeley Laboratory, which is operated by the University.

It has been established to my satisfaction that requiring Dr. Hendrie to divest his interest in the University of California Retirement System would impose an exceptional hardship on him and that his interest is a pension, insurance, or other similarly vested interest, within the meaning of section 602(c) of the Act. Accordingly, I am granting Dr. Hendrie a waiver of the divestiture requirements of section 602(a) of the Act with regard to his interest in the University of California Retirement System for the duration of his employment with the Department.

Dated: February 17, 1985.

John S. Herrington,

Secretary of Energy.

[FR Doc. 85-5058 Filed 2-28-85; 8:45 am]

BILLING CODE 6450-01-M

Procurement and Assistance Management Directorate

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice of Restriction of Eligibility for Grant Award.

SUMMARY: DOE announces that it plans to award a grant to the National Council on Radiation Protection and Measurements in the amount of $335,000 in partial support of the development of recommendations for protection against radiation emitted by internally deposited radionucilides. Pursuant to § 600.7(b) of the Financial Assistance Rules, 10 CFR Part 600, DOE has determined that eligibility for this grant award shall be limited to the National Council on Radiation Protection and Measurements.

Procurement Request Number: 01-85ER60317.000.

Project Scope: The National Council on Radiation Protection and Measurements (NCRP) is requesting support to conduct studies through its various committees and subcommittees on problems and concerns reflecting the broard character of radiation protection and measurement, involving both ionizing and non-ionizing radiations. The effort will include collecting, analyzing, developing, and disseminating information on radiation effects, protection practices, and measurement technology. In recent years, emphasis has shifted increasingly to assessments of the state-of-knowledge in critical areas in Radiation science.

The NCRP was chartered by the 88th Congress of the United States of America and was incorporated July 14, 1964, by Pub. L. 88-376 (Quasi-Government) to provide the recognized need for highly qualified, independent studies, assessments, and guidance in the field of radiation protection. The services of NCRP are unique and cannot be provided by any other organization.

The proposed work is essentially a continuation of previous efforts, with gradual evolution of content as various committees and task groups complete existing projects and initiate new ones.

The NCRP is the only source having the necessary organization of qualified Scientific Committees to address the needs and problems of concern to DOE regarding Radiation-Protection and Measurement. The DOE is vitally interested in radiation protection and has determined that this award to the NCRP on a restricted eligibility basis is appropriate.

FOR FURTHER INFORMATION CONTACT: Ron White, MA-452.1, U.S. Department of Energy, Office of Procurement Operations, 1000 Independence Avenue SW., Washington, D.C. 20585.

Issued in Washington, D.C., on February 19, 1985.

Ben Goldman,

Director, Contract Operations Division "A", Office of Procurement Operations.

[FR Doc. 85-5057 Filed 2-28-85; 8:45 am]

BILLING CODE 6450-01-M

Bonneville Power Administration

Direct Service Industries Options; Notice of Intent To Prepare an Environmental Impact Statement and Notice of Public Meeting

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement (EIS). Notice of Public Meeting. Announcement of Scoping Process, and Request for Comment. *BPA File No.:* DSI-O.

SUMMARY: BPA hereby gives public notice of its intent to prepare and consider an EIS on means by which BPA can resolve certain difficulties which have developed with respect to those industrial facilities in the Pacific Northwest to which BPA sells electricity directly, the Direct Service Industries (DSIS). Suggestions and comments on the scope of the EIS—actions, alternatives, and impacts—are invited.

Primary aluminum smelters constitute the major part of the total load of these direct service industries. In recent years the electricity demanded by the DSIs have varied greatly in response to fluctuation in the world aluminum market coupled with other factors, including their rates for electricity. BPA is undertaking a study, known as the DSI Options Study, of various options for reducing the negative effects of this fluctuation on BPA's rates, financial obligation, and resource operation and planning.

It is BPS's intent to use the DSI Options Study as part of the EIS scoping process. The results of the study will be integrated into the draft EIS. The DSI Options Study and the Draft EIS will form the basis for the Administrator's selection of proposed action or actions, if any.

Depending on whether there is a proposal, and if so, what the proposal is, one of three procedures will be followed. First, if BPA elects to make no proposal, the EIS process will be stopped. Second, if BPA elects a proposal which apparently will not significantly affect the quality of the human environment, BPA will stop the EIS process and instead prepare an Environmental Assessment (EA). Third, if the proposal apparently has significant impacts, then the EIS would be completed. (Any BPA proposal may also require procedural implementation steps aside from National Environmental Policy Act (NEPA) compliance, such as Pacific Northwest Power Act section 7(i) rate hearing if the BPA proposal affects rates).

BPA will hold a public scoping meeting (see date below) to clarify the objectives and invite suggestions to assist in defining the scope of the analysis and the issues which should be addressed.

Responsible Official: Mr. Terence G. Esvelt, Assistant to the Power Manager, is the official responsible for the DSI Options Study process. Please contact Mr. Esvelt at 503-230-5708 with any questions.

DATES: The EIS scoping meeting will be: March 14, 1985; 9:30 a.m., Room 464, Bonneville Power Administration Building, 1002 NE. Holladay Street, Portland, Oregon

The comment period will close on March 28, 1985.

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ADDRESS: BPA also welcomes written comments that will help to determine the scope of the EIS and the major issues to be addressed. Written comments should be submitted to Mr. Terry Esvelt, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212. Written comments pursuant to this notice will be accepted through March 28, 1985. Additional opportunities to comment on the scope of the EIS may be identified at some future time.

FURTHER INFORMATION CONTACT: For further information, please call Mr. Esvelt at 503–230–5708 or Ms. Kathy Johnson of BPA's Public Involvement Office, 503–230–3478. Oregon callers may also use 800–452–8429, toll free; callers in California, Idaho, Montana, Nevada, Utah, Washington, and Wyoming may also use 800–547–6048, toll free. Information may also be obtained from:

Mr. Roy B. Fox, Environmental Coordinator, Office of Power and Resources Management, P.O. Box 3621—PGC, Portland, Oregon 97208, (503) 230–4238.

Mr. George Gwinnutt, Lower Columbia Area Manager, Suite 288, 1500 Plaza Building, 1500 NE. Irving Street, Portland, Oregon 97232, 503–230–4551.

Mr. Ladd Sutton, Eugene District Manager, Room 206, 211 East Seventh Avenue, Eugene, Oregon 97401, 503–687–6952.

Mr. Wayne R. Lee, Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509–456–2518.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406–329–3060.

Mr. Ronald K. Rodewald, Wenatchee District Manager, P.O. Box 741, Wenatchee, Washington 98801, 509–662–4377, extension 379.

Mr. Richard D. Casad, Puget Sound Area Manager, 415 First Avenue North, Room 250, Seattle, Washington 98109, 206–442–4130.

Mr. Thomas V. Wagenhoffer, Snake River Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 509–522–6226.

Mr. Robert N. Laffel, Idaho Falls District Manager, 531 Lomax Street, Idaho Falls, Idaho 83401, 208–523–2706.

Mr. Frederic D. Rettenmund, Boise District Manager, Owyhee Plaza, Suite 245, 1109 Main Street, Boise, Idaho 83707, 208–334–9137.

SUPPLEMENTARY INFORMATION:

I. Background

The DSIs are industries in the Northwest to which BPA markets energy directly. Primary aluminum smelters constitute the major part of the DSI market for electric energy. In recent years fluctuations in the operating levels of the aluminum plants have occurred because of aluminum market conditions and other factors. The uncertainty of the DSI load results in major problems. These problems from BPA's perspective are the ability of BPA: (1) To meet its scheduled repayment obligations; (2) to maintain stable and competitive rates for its electric power for all customer groups; (3) to maintain optimum economic use of its power resources while remaining within applicable operating constraints; and (4) in the long-term, to minimize resource planning uncertainty.

The purpose of BPA's analysis of DSI options is to provide the BPA Administrator with an understanding of long-term policy or rate options open to him that pertain to the DSI customer. This analysis will permit the Administrator to develop, if desired, a detailed policy or rate proposal on this topic which would be subjected to further appropriate public review, analysis, and implementation steps.

Any proposal the Administrator may choose to implement consequent to this analysis will have to at least partially mitigate the underlying power system problems pertaining to BPA's relationship to its DSI customers, and ultimately to the DSI customers' respective economics of operation.

Before implementing any proposal with respect to the DSIs, the Administrator will need to consider how other customers would be affected; the overall effects on BPA revenues and rates; effects on operation and development of the Northwest's power system; and related environmental and socioeconomic effects.

II. Alternatives

The alternatives which BPA has identified so far (other than the no-action alternative) consist of variations and/or combinations of four fundamental options. These options are each elaborated upon below.

A Long-term Variable Rate

One option would be a long-term variable rate that would go up and down as the price of aluminum goes up and down. However, there are many factors to consider in such an option. Should the rate apply to aluminum firms only, to individual smelters only (i.e., not rolling mills), or to all DSIs? To what aluminum price index should a variable rate be tied, or should the rate be tied to something else? Should a take-or-pay condition be included? Should there be minimum and maximum rates and, if so, what? How rapidly should the rates change to respond to price changes? Over what time period should the variable rate be effective?

B. Conservation/Modernization

A second option would be for BPA to pay for DSI electric energy conservation or modernization in order to stabilize DSI loads. Such investments would make their Northwest plants more efficient, reduce the costs of production, and should serve to stabilize their load by making them more competitive. Major issues include: What role, if any, should BPA play in financing the moderization? How much should BPA pay for conservation or modernization? Should investment dollars be made available on a first-come first-served basis, be assigned to the most inefficient plants first, or distributed in some other manner? Should BPA pay for conservation efficiencies through fixed payments or as credits to power bills? What guarantees should be required to ensure that BPA's investment is not lost in the event the DSI plant closes even after it has been modernized or conservation measures installed?

C. Service from Others

A third option would allow the DSIs to be served entirely or in part by any other power supplier who could supply electric power at a price lower than BPA's. Major issues include: What limits, if any, should be placed on the amount of DSI load served by other power suppliers? Which portion of the load—the entire load or some or all of the interruptible or firm portions only—would be served by others? What services such as wheeling, load shaping, acting as agent for interruptible replacement energy or advance energy should BPA provide and at what price?

D. Increased Interruptibility

A fourth option under study would offer a near-term reduction in DSI rates for which the industries would relinquish some of their rights to firm service (guaranteed deliveries) when the region no longer has a surplus. That is, during periods of tight power supply that might occur in the future, more of the power sold by BPA directly to industries could be diverted to other customers, instead of acquiring new resources. Major issues include: What portion of an individual DSI load should be converted to interruptible? When should power service be converted to interruptible—some uncertain date in the future when the region or the Federal system needs new power resources, or at some fixed

date? If a fixed date, should it be based on BPA's high, low, or base forecasts of future power needs? What rate discount should be provided prior to the conversion to interruptible?

Other options may be identified during the course of the analysis or through the scoping process. The criteria that BPA will use in deciding to study other alternatives will be: (a) It must be able to be implemented within a reasonable time frame: (b) it must be primarily long term in its nature; and (c) the resources and time required for its analysis must be reasonably encompassed within the scope of this current study.

A decision analysis model is being designed which will enable the large number of potential alternatives, resulting from the many potential combinations and variations of the four basic options listed in the preceding paragraph, to be narrowed to a limited number for more detailed analysis.

III. Issues

A. Economic

The principal issues that have been identified are economic. These include Federal repayment of debt from financing the Federal Columbia River Power System; net economic benefits or costs to various BPA customer groups including public and private utilities in the Northwest, utilities outside the region, the aluminum companies, and the nonaluminum DSI customers; and regional employment.

B. Institutional

The major institutional issue relates to how alternatives might be implemented and how well they might be received by the DSIs and by BPA's other customer groups. Since BPA has existing, long-term contracts with the DSIs, it cannot implement any potential proposals unilaterally. For example, BPA would have to negotiate contract changes to implement a proposal dealing with interruptibility of power to the DSIs. Other proposals would require other implementing steps, such as a 7(i) rate hearing process for any proposal dealing with rates.

C. Environmental

Environmental issues with respect to the range of alternatives under study include:

1. Environmental impact of changes in DSI operations. A proposal the Administrator may select could increase or decrease the level or frequency of operation of specific DSIs, change the technology they use, or even result in continuation of operations of a DSI which would have otherwise closed. These changes may affect the amount of pollutants DSIs release into the environment. All the DSIs are subject to Federal, state, and local environmental regulations which allow them to operate up to a maximum level and to discharge certain quantities of pollutants. How should BPA evaluate changes that occur within the limits?

2. Environmental impacts of changes in operation of existing electrical energy resources. A proposal the Administrator may select may affect both the total demand for energy and the difference between peak and minimum daily loads. Power resources are also subject to limits on their operational and environmental effects. How should BPA evaluate changes that occur within these limits?

3. Environmental impacts of future resource development. A proposal the Administrator may select could change actual DSI loads, either through conservation or through changes in or cessation of operations at one or more plants, could influence load growth of other customers through rate changes, or could shift DSI load partially or completely to other utilities. How would these possibilities affect future resource development and the environmental effects thereof? Since it is not possible to precisely predict what types of resources would be used to meet future loads and where such resources may be located, how should BPA evaluate these impacts?

D. Socioeconomic

A proposal the Administrator may select could increase or decrease cyclical employment patterns for some DSIs, may make closures of some DSIs more or less likely, may affect other sectors of the economy through effects on other electric rates, and may affect tax revenues available to provide governmental services. How should BPA evaluate these effects, and what weight should these factors receive in decisionmaking?

Through this scoping process, BPA is seeking information and comment on the above issues and questions, as well as comment regarding any additional issues that ought to be considered.

Related Issues: There are a number of BPA issues related to the DSI Options Study. Some have already been mentioned in the preceding. These are BPA's rates, BPA's resource strategy, BPA's conservation programs, BPA's power marketing programs for other customer groups, and BPA's power scheduling operations. However, these related issues are generally part of the considerations encompassed within the scope of the study. Two related issues separate from this study are:

1. The DSI Nonfirm Energy Policy. This is a policy currently under development to make BPA nonfirm energy, when available, purchasable by nonaluminum DSIs for purposes of production increases. It is not regarded as a long-term solution to the DSI problem nor does it apply to the aluminum companies which seem to represent the major focus of the problem, so it is being carried forth in a process separate from the DSI Options Study. Separate NEPA compliance activities are being conducted for this policy.

2. Preparation of an EIS on the Initial Offer of Long-Term Power Contracts. BPA was required by the Pacific Northwest Power Act to offer new long-term power contracts to its customers. This was done in August 1981. BPA did not prepare an EIS prior to offering the contracts, and has been ordered by the United States Court of Appeals for the Ninth Circuit to prepare one at this time. *Forelaws on Board* v. *Johnson*, 743.2d677, 21 ERC 1850, No. 82–7319, (9th Cir. Sept. 25, 1984), petition for rehearing denied January 21, 1985.

The Power Contracts EIS will analyze the major policy choices made for the initial contracts, particularly for terms affecting energy conservation, renewable resources, and the protection of fish and wildlife. The Power Contracts EIS will provide information on the environmental consequences of the contract terms as they now exist and of alternative contract terms as they are developed in the scoping process. The alternatives being addressed in the DSI Options Study go beyond what can be addressed in a Power Contracts EIS. For example, the conservation and rate elements of alternatives in the DSI Options Study could not be implemented exclusively through power sales contract changes. Therefore, the Power Contracts EIS is not an appropriate document in which to address the DSI problem.

Related Documents

January 1985—DSI Options Study—Study Plan.

February 1985—Issue Alert, "Can the Pacific Northwest Keep Its Aluminum Plants: A Look at the Policy Options."

March 1985—Issue Backgrounder, "The Northwest Aluminum Industry: Changing Conditions, Changing Needs."

Issued in Portland, Oregon on February 21, 1985.

Robert E. Ratcliffe,

Acting Administrator.

[FR Doc. 85-4869 Filed 2-25-85; 1:18 pm]

BILLING CODE 6455-01-M

Office of Conservation and Renewable Energy

National Energy Extension Service Advisory Board; Change of Meeting Dates and Location

The dates of the meeting of the National Energy Extension Service Advisory Board, previously scheduled for March 6, 7 and 8, 1985 (50 FR 6236, 2-14-85), have been changed to Monday, March 18, Tuesday, March 19, and Wednesday, March 20, 1985. The meeting will be held at the Crystal City Marriott Hotel, 1991 Jefferson Davis Highway, Arlington, Virginia.

Issued at Washington, D.C. on February 25, 1985.

Howard H. Raiken,

Deputy Advisory Committee Management Officer.

[FR Doc. 85-4957 Filed 2-28-85; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

Proposed Consent Order With Atlantic Richfield Co.

AGENCY: Economic Regulatory Administration, Energy.

ACTION: Notice of Proposed Consent Order and Opportunity for Public Comment.

SUMMARY: The Economic Regulatory Administration (ERA) announces a proposed Consent Order between the Department of Energy (DOE) and Atlantic Richfield Company ("ARCO"). The agreement proposes to resolve matters relating to ARCO's compliance with the federal petroleum price and allocation regulations for the period January 1, 1973 to January 28, 1981. ERA has assessed the effects of ARCO's alleged regulatory violations resolved by this proposed agreement, and has determined that the maximum amount ARCO could have overcharged is approximately $66 million. This amount, plus an additional amount for interest, represents ARCO's maximum liability if the government ultimately were to prevail in litigating all of the issues resolved by this Consent Order. ARCO disputes ERA's allegations of regulatory violations and denies any overcharge liability.

ERA is proposing that ARCO's possible liability for overcharges and interest be settled for $65.7 million. The settlement reflects the negotiated compromises present in every settlement, including assessments of litigation risks in the significant areas of dispute between ERA and ARCO.

Upon execution of this proposed Consent Order, ARCO deposited $65.7 million in an interest-bearing escrow account pending public consideration of the settlement. If the Consent Order is made final, ERA will petition the Office of Hearings and Appeals (OHA) to implement a Special Refund Proceeding pursuant to 10 CFR Part 205, Subpart V. In that proceeding, any person who claims to have suffered injury from ARCO's alleged overcharges would have the opportunity to submit a refund claim to OHA.

Pursuant to 10 CFR 205.199J, ERA will receive written comments on the proposed Order for thirty (30) days following publication of this Notice and should be addressed to: ARCO Consent Order Comments, RG-13, Economic Regulatory Administration, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

Following this comment period, on April 4, 1985, at 10:00 a.m. at the Department of Energy Auditorium, Room GE-086, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., ERA will conduct a public hearing to provide interested persons an additional opportunity to present comments, information and recommendations as to whether the settlement should be finalized by DOE.

Requests to make presentations must be received in writing by 5:00 p.m., April 1, 1985 and should be marked "Requests to Make Oral Comments" and forwarded to the same address indicated for written comments.

The request should identify the person (with address and telephone number) who wishes to make a presentation and the amount of time desired. Presentations should be limited to 15 minutes. Persons wishing to participate in the hearing who have not scheduled time will be allowed to make presentations following those who have been scheduled.

ERA will consider the comments, information and recommendations received from the public in finally evaluating the proposed settlement. This will result in one of the following courses of action: Rejection of the settlement; acceptance of the settlement and issuance of a final Order; or renegotiation of the agreement and, if successful, issuance of the modified agreement as a final Order. DOE's final decision will be published in the **Federal Register**, along with an analysis of and response to the significant written and oral comments, as well as any other considerations that were relevant to the decision.

FOR FURTHER INFORMATION CONTACT: Edward Levy, Assistant Special Counsel, Economic Regulatory Administration, Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252-8900.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Results of the Audit
  A. Areas of Dispute
  B. Determination of Maximum Overcharge Liability
III. Determination of Reasonable Settlement Amount
IV. Terms and Conditions of the Consent Order
V. Resolution of Litigation Matters

I. Introduction

ARCO is a major petroleum refiner subject to the audit jurisdiction of ERA to determine compliance with the federal petroleum price and allocation regulations. During the period covered by this proposed Order (January 1, 1973 until January 28, 1981), ARCO engaged in, among other things, the production, importation, refining, and sale of crude oil; the sale of residual fuel oil, motor gasoline, middle distillates, aviation fuel, propane and other refined petroleum products; and the extraction, fractionation and sale of natural gas liquids and natural gas liquid products.

ERA conducted an intensified audit of ARCO's compliance for the period of September 1973 to the date when federal price and allocation controls were ended by the President (January 28, 1981, Executive Order 12287). During this audit, ERA identified areas in the pricing and sales of crude oil and refined petroleum products in which it believes that ARCO had failed to comply with the requirements of the federal price and allocation regulations. A number of issues arose which involved ARCO's accounting procedures in which ERA disagreed with ARCO's calculation of the amounts of increased costs which were incurred and eligible for recovery through product price increases. These apparent cost errors are not the same as and do not necessarily translate into overcharge liabilities.

The regulations governing the pricing of refined petroleum products were complex. The starting point for determining the maximum lawful sales price in any month for products covered by the regulations ("covered products")

was the refiner's May 15, 1973 selling prices to its various classes of purchaser. A refiner was permitted to increase those prices only to the extent necessary to recover specified categories of cost increases incurred as compared to those costs incurred in the month of May, 1973. For example, refiners could recover increased costs of acquiring crude oil and refined products ("product costs"); and their labor, marekting, manufacturing and interest costs ("non-product costs").

If a refiner failed to fully recover the cost increases incurred in the precding month, it could "bank" those unrecovered costs for recovery (subject to certain limitations) in succeeding months. The regulations required refiners to allocate those recoverable costs to product categories, and provided some discretion to refiners to reallocate those costs among product groups.

Having specified the amount of increased costs eligible for recovery, the extent to which unrecouped "banked" costs could be recovered, and the allocation of those increased costs to product categories, the regulations thereby enabled refiners to calculate the maximum amount of increased costs eligible for recovery in each month. Thus, a refiner calculated its maximum lawful sales price for each covered product to each class of purchaser, which was the sum of its May 15, 1973 price plus the increased costs available for recovery. A refiner could recover its increased costs by increasing its prices by any amount up to levels at which the full amount of recoverable increased costs would be recovered in the form of increased prices. A refiner infrequently charged the price it calculated to be its maximum lawful price. As a consequence, an error made in cost calculations for a particular month did not necessarily result in overcharges to purchasers.

Even if the government were to prevail on each of the 44 enforcement issues involving ARCO, ERA determined that ARCO would have had total undisputed recoverable costs which were $272 million in excess of those recovered through product price increases in the 88 months of controls. However, in some of those months, ERA determined that some of ARCO's general refinery product and gasoline prices resulted in the recovery of more costs than it had originally allocated to those categories of products, and therefore resulted in overcharges.

It is the actual overcharges that represent the dollar amount of refund liability under the refiner pricing rules. The fact that the accounting for a particular transaction is not in total conformity with the regulation does not necessarily mean that the refiner received more for its products than it was permitted to charge or that the customer suffered an overcharge. Overcharges by refiners are limited to the amounts that such refiners received from their customers in excess of the refiner's correctly determined maximum lawful prices.

In the case of ARCO, ERA calculated that the alleged overcharges in sales of refined products total, at most, $45 million. In addition, ERA preliminarily determined that ARCO may be liable for a maximum of $21 million in crude oil overcharges. ARCO's potential liability for overcharges, therefore, is believed by ERA to total $66 million. ARCO contends that this amount does not reflect full credits for allowable costs or fair and reasonable application of many regulations, and therefore this amount should be substantially reduced or eliminated altogether.

ERA has preliminarily agreed to the settlement amount after assessing the litigation risks associated with establishing the alleged overcharges, and considering the factual veracity and appropriate settlement compromises related to the many issues. ERA's assessment of the settlement value particularly focused on ten areas of dispute which appeared to relate to 90 percent of ARCO's maximum overcharge liability, and ERA concluded that the government had a limited chance of prevailing on all of those key issues.

The settlement calls for ARCO to pay $65.7 million (plus interest from the date of execution) under the terms of the Consent Order to discharge in full its obligations under the price and allocation regulations, subject to certain stated exclusions. Under the terms of the proposed agreement, the ERA would petition the OHA to implement a Special Refund Proceeding pursuant to 10 CFR Part 205, Subpart V.

II. Results of the Audit

In the negotiation process which led to this proposed settlement, ERA analyzed the results of the audit, the nature of the alleged regulatory violations, and the "banks" of costs that ARCO was entitled to recover in previous months but did not. ERA also considered the extent to which these banks were available to offset the alleged cost and recovery violations and thus prevent the occurrence of overcharges on refined products. The alleged crude oil overcharges were separately considered by ERA in its assessment of the total settlement value.

During the ARCO negotiations, ERA examined all the alleged regulatory violations and the amount of costs it determined ARCO should be allowed in the calculation of the company's maximum lawful prices and total overcharge exposure. ARCO presented factual information relevant to its calculations of increased costs and selling prices. This enabled ERA to correct factual errors in its audit information, which accrued both to the detriment and benefit of ARCO. Additionally, ERA was able to supplement its audit data with other information on the company's business activities relevant to its pricing practices.

A. Areas of Dispute

The two major areas of dispute between ERA and ARCO concern alleged errors in calculating maximum lawful prices for crude oil produced by ARCO, and alleged overstatements of increased costs and/or understated recoveries of such costs which possibly affected the maximum legal prices for refined products.

1. Crude Oil Overcharge Disputes

Several issues concern ARCO's pricing of crude oil. In 1979, ERA issued a Proposed Remedial Order ("PRO") to ARCO in which ERA alleged that ARCO had overcharged for crude oil by approximately $35 million. The $35 million overcharge allegation consisted of two components.

First, based upon its audit, EPA alleged that $18.8 million in audited overchaned had occurred on crude oil sold from 34 of ARCO's crude oil producing properties during the period prior to 1977. ERA alleged that the overcharges appeared to result from ARCO's misapplication of the property definition, improper classification of certain properties as stripper well properties, improper use of certain price bulletins to establish posted prices, and various clerical errors. Second, ERA projected that approximately $10.2 million in additional overcharges had occurred on crude oil sales from certain of the 34 audited properties during the unaudited time period and that another $6.2 million in overcharges might have occurred in the entire audit on crude oil sales from ARCO's unaudited crude oil producing properties. These remaining overcharge allegations consisted of estimated projections and extrapolations derived from ERA's findings on the audited properties.

On March 22, 1984, OHA issued a final Remedial Order regarding ERA's actual audit findings. *Atlantic Richfield*

Co., 11 DOE ¶ 83,027 (1984); *see also* Supplemental Remedial Order issued August 21, 1984, *Atlantic Richfield Co.*, 12 DOE ¶ 83,014 (1984). In the Remedial Order, as supplemented, OHA upheld most of ERA's allegations but accepted certain defenses which, along with amendments to the PRO which had been made by ERA during the course of the proceeding, reduced the amount of the audited overcharges, exclusive of interest, from $18.8 million to $16.2 million.

The Remedial Order did not resolve issues related to the projected or extrapolated overcharges. However, based upon additional information obtained since the issuance of the PRO in 1979 and the Remedial Order findings pertaining to the audited violations, ERA believes that those projected and extrapolated overcharges are not as large as originally estimated.

ERA now believes that ARCO's maximum liability for actual, projected and extrapolated crude oil overcharges, exclusive of interest, is approximately $21 million. Although OHA has issued a Remedial Order on the crude oil violations alleged by ERA, ARCO has the opportunity to appeal that decision to the Federal Energy Regulatory Commission and thence to federal district and appeal courts.

2. Cost and Recovery Disputes

ERA has initiated administrative enforcement proceedings against ARCO in which it currently alleges that ARCO overstated its increased costs for controlled and exempt products by a total of $806 million and overcharged its product purchasers by $29 million during the regulated period. ERA's claims, which were generally quantified based upon extrapolation from sample data and without regard to the portion of costs which would be allocated to exempt products, include alleged overstatements of the increased product costs such as crude oil and natural gas liquids, alleged overstatements of increased non-product costs, allegedly excessive allocations of increased crude oil costs from exempt products to covered products, and alleged incorrect determinations of base period transaction prices for certain of its classes of purchasers.

Based upon correction of some of its audit data, refinement of alleged violation amounts extrapolated from sample audit data, and considering the combined effects of the 44 cost and recovery issues in dispute, ERA determined that if it prevailed on all of those issues ARCO would have to reduce its costs allocable to covered products by $549 million, and also would have overcharged for refined products by approximately $45 million—rather than the $29 million currently alleged in the pending enforcement proceedings.

a. *Product Cost Disputes.* ERA has estimated a total of $169 million in overstated increased crude costs and purchased increased product costs allocable to covered products. The nineteen product cost disputes include restatement of May 1973 cost of "landed" crude oil purchased from foreign affiliates; the interaffiliate transfer prices employed in determining month-of-measurement costs for foreign crude; the company's calculation of the marine transportation element of its landed crude cost; the manner in which ARCO adjusted its increased crude costs to account for crude oil that it purchased overseas for refining but that it subsequently transferred to third parties; the manner in which ARCO accounted for tax-exempt import licenses, import fee refunds and customs duty drawbacks in determining its increased costs of crude oil; and, the manner in which the firm calculated the costs and volumes of natural gas shrinkage associated with the extraction of natural gas liquids, including estimates of similar overstatements by extrapolation to unaudited gas plants and time periods.

b. *Nonproduct Cost Disputes.* ERA estimates that ARCO overstated its increased nonproduct costs allocable to covered products by $85 million during the relevant period. The eighteen areas of nonproduct cost disputes include: The May 1973 cost of refinery fuel used by ARCO; the manner in which the company determined its increased costs in the "other pollution control" category; and the manner in which the amount of interest expense allocable to covered products was determined.

c. *Cost Recovery, Allocation and Reallocation Disputes.* ERA determined that there are seven issues which relate to ARCO's calculation of cost recoveries, allocation of costs to covered products and reallocations of costs from one product cost pool to another. These issues total $295 million in disputed recoveries and available costs. In one instance, ERA disputes ARCO's treatment of a certain product as a "Distillate" rather than as a "General Refinery Product." Another issue centers upon the sequence of calculating "price maintenance" amounts and effecting optional cost reallocations from one product cost pool to another (in ERA's best case, this issue alone involves $11.2 million of possible gasoline overcharges in the one month of February 1975). Another issue is the allegation that ARCO utilized erroneous prices for certain commercial and industrial customers, and therefore calculated understated cost recoveries during the regulatory period. Other issues involve the amounts of product and nonproduct cost increases ARCO allocated to covered products, and ARCO's revisions of its original amounts of costs reallocated from one product to another.

B. Determination of Maximum Overcharge Liability

Utilizing only those costs that ERA determined were proper for ARCO and considering the recoveries or refunds which ERA believed should should have been effected by ARCO, ERA calculated the maximum amount of possible overcharges for which ARCO might be liable during each month of price controls in an effort to determine whether ARCO had overcharged. By comparing ERA's calculations of available costs with the amounts of costs ARCO actually recovered in the sales of its products, the agency was able to determine ARCO's maximum refined product overcharge liability. In addition, ERA considered the overcharges alleged and projected in connection with its crude oil pricing claims against ARCO.

Under the regulations, a refiner was allowed to "bank" any increased costs in a given month that it lawfully could have recovered in its product prices but did not. Costs could be "banked" and used (subject to certain limitations) in later months in pricing products. For the period of controls after early 1975, with few exceptions, ARCO accumulated cost banks on an accelerated basis because the prices ARCO charged were not sufficient to recover all of its claimed costs.

The chart below displays the accumulation of banks claimed by ARCO through the period of controls. The chart also displays the bank levels calculated by ERA, in which costs disputed by ERA are eliminated. Those bank levels calculated by ERA would reduce the the amount of unrecovered costs available to ARCO; however, if *all* of ERA's cost and recovery challenges were sustained in litigation, ARCO would have overcharged no more than $45 million in its sales of refined products.

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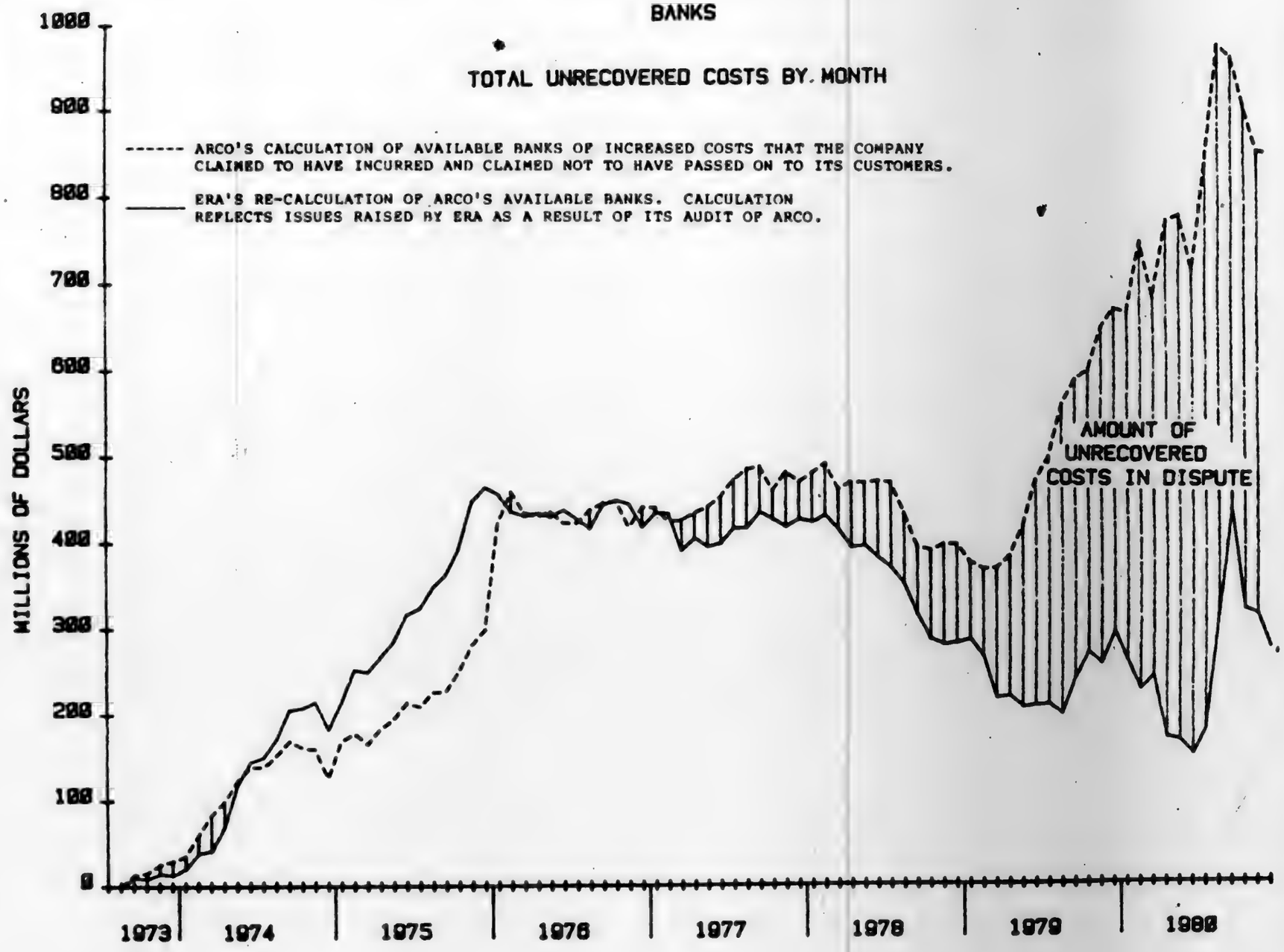
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BANKS

TOTAL UNRECOVERED COSTS BY MONTH

------ ARCO'S CALCULATION OF AVAILABLE BANKS OF INCREASED COSTS THAT THE COMPANY CLAIMED TO HAVE INCURRED AND CLAIMED NOT TO HAVE PASSED ON TO ITS CUSTOMERS.

——— ERA'S RE-CALCULATION OF ARCO'S AVAILABLE BANKS. CALCULATION REPLECTS ISSUES RAISED BY ERA AS A RESULT OF ITS AUDIT OF ARCO.



Generally, the $45 million of refined product overcharges which would have occurred in ERA's most optimistic case appear to have principally affected the prices charged for general refinery products in most of the months in the period November 1973 through December 1974, and for gasoline in February 1975. Different products and months are likely to be affected in a less optimistic case.

Largely based upon OHA's findings ERA determined ARCO's maximum overcharge liability for the crude oil pricing issues by summing the amounts of the alleged violations arising out of the properties actually audited (approximately $16 million) and the additional amounts ($5 million) projected for possible violations on unaudited properties and unaudited time periods.

III. Determination of Reasonable Settlement Amount

In determining a reasonable settlement amount, ERA reviewed its allegations of overcharges, which are made up of two components: $45 million related to the refiner cost and recovery issues, and $21 million related to crude oil pricing issues. These amounts were based on audit samples, estimates, projections and extrapolations. These variables, and the complexity of auditing a company as large as ARCO, make the identification of more precise numbers difficult.

The $66 million represents the maximum recovery, absent interest, that ERA anticipates the government would obtain if *all* issues resolved by this settlement were adjudicated in its favor. The inherent risks in litigation make such an outcome unlikely. In determining an appropriate compromise of ARCO's maximum overcharge liability, ERA considered the probabilities of success as to the significant issues for purposes of proving overcharges. In assessing the issues, ERA found that several significantly affected the amount of ARCO's overcharge liability even when all other issues are considered in the government's favor.

The necessity for the government to prevail in litigation on all of the significant issues in order to achieve the maximum overcharge recovery from ARCO was an important consideration in ERA's preliminary determination that ARCO's agreement to pay $65.7 million is in the public interest. Furthermore, that analysis presupposes that the government will prevail in litigating all other disputes. It is also important to note that successful prosecution of most of these remaining enforcement issues would result only in reductions of ARCO's available cost banks in particular time periods. This, in turn, would require only bookkeeping adjustments in ARCO's records, particularly for those periods in which ARCO did not recover all of its costs.

In arriving at an overall judgment, in addition to the analysis of litigation risks, ERA took into account such factors as the interest which could be added to possible adjudicated refund amounts, the number and complexity of the legal and factual issues, the time and expense required for the government to fully litigate every issue, as well as the operative principle necessary for a successful settlement between capable adversaries—mutual recognition by the parties of the need to reasonably compromise their respective interests and expectations. Based on all of these considerations, ERA concludes that the resolution of these matters for $65.7 million—an amount nearly equal to the maximum possible overcharges—is an appropriate settlement.

IV. Terms and Conditions of the Consent Order

Pursuant to the terms of the proposed Consent Order, ARCO has deposited $65.7 million in an interest-bearing escrow account with Bank of America. Within thirty days of the effective date of the Consent Order, ARCO will pay the principal amount of $65.7 million and the interest accrued in the escrow account to DOE. If the settlement is not made final by May 1, 1985, ARCO may withdraw from the proposed agreement. In that event, the escrowed funds will be returned to ARCO pursuant to the escrow agreement.

If the Consent Order is made final, ARCO's obligation to pay $65.7 million plus accrued interest will be satisfied by the transfer of that amount from the escrow agent to DOE within thirty days. DOE will deposit these funds in an interest-bearing escrow account maintained for DOE by the Department of Treasury. Promptly thereafter, ERA will petition OHA to implement a Special Refund Proceeding under the provisions of Subpart V of the regulations. In the proceeding, OHA will develop procedures for the receipt and evaluation of applications for refund in order to distribute the refund amount. To ensure that OHA has sufficient information to evaluate the claims, the proposed Consent Order requires that ARCO provide necessary information to OHA.

Unless specifically excluded, ARCO and DOE mutually release each other from claims and actions arising under the subject matter covered by the proposed Consent Order. The proposed Order does not affect the right of any other party to take action against ARCO, or of ARCO or the DOE to take action against any other party.

Several matters are excluded from the settlement. The proposed Order does not resolve:

(a) The issues or claims pending or arising out of the subject matter now before the courts in *Atlantic Richfield Co.* v. *Dept. of Energy* CA No. 84–190MMS, (D. Del.);

(b) The issues or claims pending or arising out of the subject matter now before the courts in *Atlantic Richfield Co.* v. *Dept. of Energy*, No. 79–1204 (D.Kan.), consolidated in *In Re The Department of Energy Stripper Well Exemption Litigation*, MDL No. 378 (D.Kan.);

(c) The issues or claims pending or arising out of the subject matter now before the courts in *Texaco, Inc.* v. *Dept. of Energy*, No. 81–99 (D.Del.), and before the OHA in *In Re 341 Tract Unit of the Citronelle Field*, Case Nos. BEN–0078, *et al*;

(d) The issues or claims pending or arising out of the subject matter now before the courts in *Diamond Shamrock Refining and Marketing Co.* v. *Standard Oil Co.*, No. CA–84–1432 (S. D. Ohio);

(e) Any obligation to sell entitlements which may be imposed on ARCO should the entitlements notice of January 1981 by published or any obligation to buy or sell entitlements which may be imposed on ARCO pursuant to the operation of 10 CFR 211.69, including any adjustments made to the entitlements notice for January 1981 or to any notice issued pursuant to 10 CFR 211.69 as a result of the granting of exception relief by the Office of Hearings and Appeals;

(f) Any entitlement obligations or reporting requirements which may be imposed either pursuant to future modification of the requirements of the entitlements program (10 CFR 211.67, *et seq.*) by the DOE on its own initiative, or at the direction of a final judgment of a court of competent jurisdiction;

(g) ARCO's compliance with the federal price and allocation regulations which pertain to the sale or other transfer of lower or upper tier crude oil in transactions which were related by sale, purchase, exchange or other transfer to transactions involving other crude oil. Except for issues or cases specifically excluded, however, DOE would not challenge ARCO's crude oil property determinations, base production control level determinations, or ARCO's classifications of properties

as stripper, marginal or newly discovered.

(h) ARCO's rights or obligations concerning claims under 10 CFR Part 205, Subpart V.

Finally, this agreement only resolves certain civil liabilities and makes no attempt to resolve any criminal liability that might be established by the government against ARCO.

V. Resolution of Litigation Matters

The proposed settlement resolves a number of enforcement matters that are being litigated by ARCO and DOE. This involves administrative and judicial litigation and includes the following cases:

Administrative Litigation

Proposed Remedial Orders HRO–0218; HRO–0219; HRO–0220; HRO–0221; HRO–0222; HRO–0223; HRO–0224; HRO–0225; HRO–0227; BRO–1322; and DRO–0193.

Proposed Orders of Disallowance: HRO–0217; and BRO–1243.

Judicial Litigation

United States v. *Atlantic Richfield Co.*, No. 790027 (D.D.C.)

Atlantic Richfield Co. v. *Dept. of Energy*, No. DC–80 (Temp. Emer. Ct. App.)

Atlantic Richfield Co. v. *Dept. of Energy*, No. 82–2472 (D.C. Cir.)

Submission of Written Comments

The proposed Consent Order cannot be made effective until the conclusion of the public review process, of which this Notice is a part.

Interested persons are invited to submit written comments concerning this proposed Consent Order to the address noted above, and to appear a public hearing, beginning at 10:00 a.m. on April 4, 1985. All comments received by the thirtieth day following publication of this Notice in the **Federal Register**, and all statements made at the hearing, will be considered before determining whether to adopt the proposed Consent Order as a final Order. Any modifications of the proposed Consent Order which significantly alter its terms or impact will be published for additional comment. If, after considering the comments it has received and the comments at the hearing, ERA determines to issue the proposed Consent Order as a final Order, the proposed Order will be made final and effective by publication of a Notice in the **Federal Register.**

Any information or data considered confidential by the person submitting it must be identified as such in accordance with the provisions of 10 CFR 205.9(f).

Issued in Washington, D.C., on February 22, 1985.

M. C. Lorenz,

Special Counsel, Economic Regulatory Administration.

Consent Order With Atlantic Richfield Company by the United States Department of Energy

I. Introduction

¶101. This Consent Order is entered into between Atlantic Richfield Company ("ARCO") and the United States Department of Energy ("DOE"). Except as specifically excluded herein, this Consent Order settles and finally resolves all civil and administrative claims and disputes, irrespective of whether heretofore asserted, between DOE and ARCO, its subsidiaries and affiliates, relating to ARCO's compliance with the Federal Petroleum Price and Allocation Regulations administered and enforced by DOE and its predecessor agencies during the period of January 1, 1973 through January 27, 1981.

II. Jurisdiction, Regulatory Authority, and Definitions

¶201. This Consent Order is entered into by DOE pursuant to the authority conferred upon it by sections 301 and 503 of the Department of Energy Organization Act ("DOE Act"), 42 U.S.C. 7151 and 7193; Executive Order No. 12009, 42 FR 46267 (1977); Executive Order No. 12038, 43 FR 4957 (1978); and 10 CFR 205.199J.

¶202. The Economic Regulatory Administration ("ERA") was created by section 206 of the DOE Act, 42 U.S.C. 7136. In Delegation No. 0204–4, the Secretary of Energy delegated responsibility for the Administration of the Federal Petroleum Price and Allocation Regulations to the administrator of the ERA. In Delegation No. 0204–4A, the administrator delegated to the Special Counsel authority to audit the compliance of refiners with the Federal Petroleum Price and Allocation Regulations and to take appropriate enforcement actions based upon such audits.

¶203. For purposes of this Consent Order, the phrase "Federal Petroleum Price and Allocation Regulations" means all statutory requirements and administrative regulations regarding the pricing and allocation of crude oil and refined petroleum products, including the entitlements and mandatory oil imports programs, administered by DOE. The Federal Petroleum Price and Allocation Regulations include, without limitation, the pricing, allocation, reporting, certification, and recordkeeping requirements imposed by or under the Economic Stabilization Act of 1970, the Emergency Petroleum Allocation Act of 1973, the Federal Energy Administration Act of 1974, Presidential Proclamation 3279; all applicable DOE regulations codified in 6 CFR Parts 130 and 150 and 10 CFR Parts 205, 210, 211, 212, and 213, and all rules, rulings, guidelines, interpretations, clarifications, manuals, decisions, orders, notices, forms, and subpoenas relating to the pricing and allocation of petroleum products. The provisions of 10 CFR 205.199J and the definitions under The Federal Price and Allocation Regulations shall apply to this Consent Order, except to the extent inconsistent herewith. Reference herein to "DOE" includes the Cost of Living Council, the Federal Energy Office, the Federal Energy Administration, the Department of Energy, the Office of Special Counsel ("OSC") and all predecessor agencies. References in this Consent Order to "ARCO" include, without limitation, Atlantic Richfield Company as well as its subsidiaries, affiliates (but only for the acts of such companies while they were subsidiaries or affiliates of ARCO), predecessors, and its petroleum related activities as refiner, producer, operator, reseller, retailer, natural gas processor, or otherwise, and except as provided in Article IV, its directors and employees.

III. Facts

The stipulated facts upon which this Consent Order is based are as follows:

¶301. ARCO is a "refiner" and a "producer" of crude oil as those terms are defined in the Federal Petroleum Price and Allocation Regulations, and is subject to the jurisdiction of the DOE. During the period covered by this Consent Order, ARCO engaged in, among other things, the production, importation, sale, and refining of crude oil, the sale of residual fuel oil, motor gasoline, middle distillates, aviation fuel, propane, and other refined petroleum products, and the extraction, fractionation, and sale of natural gas liquids, and natural gas liquid products.

¶302. In 1973, the DOE began an audit to determine ARCO's compliance with the Federal Petroleum Price and Allocation Regulations. In 1977, pursuant to the mandate of the Secretary of Energy, OSC continued the audit on an intensified basis. The audit encompassed the examination of ARCO's policies and procedures pertaining to, and ARCO's compliance with, the Federal Petroleum Price and Allocation Regulations.

¶ 303. As part of its audit, DOE examined ARCO's books and records relating to ARCO's compliance with the Federal Petroleum Price and Allocation Regulations and the reporting requirements incidental to those regulations. In addition, at DOE's request, ARCO prepared and submitted to DOE's auditors on a continuous basis, specific responses to audit inquiries not necessarily limited to, or readily available from individual books or records.

¶ 304. During the course of its audit, as well as the negotiations that led to this Consent Order. OSC raised certain issues with respect to ARCO's application of the Federal Petroleum Price and Allocation Regulations. OSC has taken various administrative enforcement actions against ARCO, including the issuance of letters, notices of probable violation, notices of proposed disallowance, proposed remedial orders, proposed orders of disallowance, and has filed a judicial enforcement action. ARCO maintains, however, that it has calculated its costs, determined its prices, sold its crude oil and petroleum products, and operated in all other respects in accordance with the Federal Petroleum Price and Allocation Regulations. DOE and ARCO disagree in several respects concerning the proper application of the Federal Petroleum Price and Allocation Regulations to ARCO's activities during the period coverd by this Consent Order, and each believes that its respective legal and factual positions on the matters resolved by this Consent Order are meritorious. These positions were emphasized in the intensive review and exchange of information conducted during the negotiation proces. However, in order to avoid the expense of protracted, complex litigation and disruption of its orderly business functions, ARCO has agreed to enter into this Consent Order. DOE believes this Consent Order constitutes a satisfactory resolution of the matters coverd herein and is in the public interest.

IV. Remedial Provisions

¶ 401. In full and final settlement of all matters coverd by this Consent Order and in lieu of all other remedies which might have been sought by DOE for such matters under 10 CFR 205.199I or otherwise, ARCO shall pay $65,700,000.00 plus interest earned pursuant to ¶ 402, to be disbursed as provided in ¶ 404.

¶ 402. Upon execution of this Consent Order, ARCO shall deposit the $65,700,000.00 in an interest-bearing account pending action to make the Consent Order a final order as provided in ¶ 901. The escrow account shall be governed by the escrow agreement attached hereto as Attachment A.

¶ 403. ARCO agrees to pay the $65,700,000.00, plus interest accrued as prescribed by the escrow agreement, to DOE within 30 days of the effective date of this Consent Order. The escrow agreement shall provide that the funds held in escrow, including interest, shall be paid to DOE upon presentation of notice that the Consent Order has been made effective pursuant to ¶ 901, or to ARCO upon notice that agreement to the Consent Order has been withdrawn prior to the effective date pursuant to ¶ 902, or that ARCO has otherwise satisfied its obligations under the Consent Order.

¶ 404. OSC and ARCO agree that OSC will petition DOE's office of Hearings and Appeals (OHA) to implement special refund procedures pursuant to 10 CFR Part 205, Subpart V to distribute the monies. If requested to do so by OHA, ARCO agrees, notwithstnading ¶ 601, to provide the information from its accounting records to assist OHA in distributing the monies paid pursuant to ¶ 401.

V. Issues Resolved

¶ 501. All pending and potential civil and administrative claims, whether or not known, demands, liabilities, causes of action or other procedings regarding ARCO's compliance with the Federal Petroleum Price and Allocation Regulations during the period covered by this Consent Order, irrespecitve of whether heretofore raised by an issue letter, notice of probable violation, notice of proposed disallowance, proposed remedial order, proposed order of disallowance, remedial order, notice of disallowance, or otherwise, are resolved and extinguished by this Consent Order, except that this consent order does not cover or affect:

(a) The issues of claims pending or arising out of the subject matter now before the courts in *Atlantic Richfield*, et al v. *United States Department of Energy*, et al, CA No. 84–190 MMS (D.Del.)

(b) The issues or claims pending or arising out of the subject matter now before the courts in *Atlantic Richfield Company* v. *Department of Energy*, et al. No. 79–1204 (D. Kan.) consolidated in *In Re The Department of Energy Stripper Well Exemption Litigation*, MDL No. 378 (D.Kan.);

(c) The issues or claims pending or arising out of the subject matter now before the courts in *Texaco* et al. v. *DOE and 341 Tract Unit of the Citronelle Field* No. 81–99 (D. Del.) and before the DOE's Office of Hearings and Appeals in Case Nos. BEN–0078, et al.;

(d) The issues or claims pending or arising out of the subject matter now before the courts in *Diamond Shamrock Refining and Marketing Company* v. *Standard Oil Company, et al.* v. *The United States Department of Energy, et al.*, No. C2–84–1432 (D. S.D. Ohio);

(e) Any obligation or right to sell entitlements which may be imposed or made available to ARCO should the entitlements notice of January, 1982 be published or any obligation to buy or sell entitlements which may be imposed on ARCO pursuant to the operation of 10 CFR 211.69, including any adjustments made to the entitlements notice for January 1981 or to any notice issued pursuant to 10 CFR 211.69 as a result of the granting of exception relief by the Office of Hearings and Appeals;

(f) Any entitlements obligations or reporting requirements which may be imposed either pursuant to future modification of the requirements of the entitlements program (10 CFR 211.67 et seq.") by the DOE on its own initiative, or at the direction of a final judgment of a court of competent jurisdiction;

(g) ARCO's compliance with the Federal Price and Allocation Regulations which pertain to the sale or other transfer of lower or upper tier crude oil in transactions which were related by sale, purchase, exchange or other transfer to transactions involving other crude oil; provided that, except for those matters excluded by subparagraph (b) of this paragraph, DOE will not hereafter challenge ARCO's "property" determinations, "base production control level" determinations, "posted price" determinations, classification of properties as "stripper" "marginal" or "newly discovered;" sales of crude oil pursuant to 10 CFR 211.65, CFR 212.88, and 10 CFR 212.94, or sales of crude oil pursuant to 10 CFR 212.78.

Notwithstanding paragraphs 601 and 602, ARCO agrees to maintain, and to produce on written request, records, documents, data, contracts, correspondence and information, regardless of form in which it is maintained by ARCO, concerning ARCO's importation, purchases, sales, exchanges or other transfers of crude oil, and the consideration, regardless of form, given or received by ARCO sufficient to establish whether any such transfers of crude oil were related to transactions in which lower or upper tier crude oil was transferred by ARCO. Nothing in this paragraph shall be construed to require ARCO to provide documents or other information subject to the protection of attorney-client

communication or attorney work-product privileges.

(h) ARCO's rights or obligations concerning claims under 10 CFR Part 205, Subpart V.

¶502.(a) Except as otherwise provided in this Consent Order, compliance by ARCO with this Consent Order shall be deemed by DOE to constitute full compliance for administrative and civil purposes with all Federal Petroleum Price and Allocation Regulations for the matters covered by this Consent Order. In consideration for performance as required under this Consent Order by ARC, except as to those matters excluded by ¶501, DOE hereby releases ARCO completely and for all purposes from all administrative and civil judicial claims, liabilities, or causes of action, specifically including claims for civil penalties, that DOE has asserted or may otherwise be able to assert against ARCO for alleged violations of the Federal Price and Allocation Regulations with respect to the matters covered by this Consent Order. DOE will not initiate or prosecute any such administrative or civil matter against ARCO or cause or refer any such matter to be initiated or prosecuted, nor will DOE or its successors directly or indirectly aid in the initiation of any such administrative or civil matter against ARCO. DOE will not voluntarily assert in any administrative or civil judicial proceeding that ARCO has violated the Federal Petroleum Price and Allocation Regulations with respect to the matters covered by this Consent Order, or otherwise take action with respect to ARCO in derogation of this Consent Order.

(b) Nothing contained herein shall preclude DOE from defending the validity of the Federal Petroleum Price and Allocation Regulations. DOE also reserves the right to initiate and prosecute enforcement actions against any party other than ARCO for noncompliance with the Federal Petroleum Price Regulations, including, for example, suits against operators for overcharges for crude oil when ARCO is a working or royalty interest owner in such crude oil production. ARCO and DOE agree that the amount paid to DOE pursuant to this agreement is not attributable to ARCO's activities as a working or royalty interest owner on properties on which it is not the operator. Furthermore, ARCO and DOE agree that the Consent Order and the payment hereunder do not resolve, reduce or release the liability of any other party for violations on properties at times during which ARCO is a working or royalty interest owner or affect any rights or obligations between ARCO and such working or royalty interest owners. Except for matters excluded by this paragraph and ¶501, DOE agrees that this Consent Order settles and finally resolves all aspects of ARCO's liability, if any, to DOE under the Federal Petroleum Price and Allocation Regulations in its capacity as a producer, including but not limited to its capacity as an operator or working or royalty interest owner of a crude oil producing property.

(c) DOE expressly agrees that it will not seek or recommend any criminal fines or penalties based solely on the information and evidence presently in its possession for the matters covered by this Consent Order; provided that nothing in the Consent Order precludes DOE from exercising its obligations under law with regard to forwarding information of possible criminal violations of law to the appropriate authorities. Nothing contained herein may be construed as a bar, an estoppel, or a defense against any criminal action, or against any civil action brought by any purchaser of covered products from ARCO, or against any civil action brought by an agency of the United States other than by DOE under (i) Section 210 of the Economic Stabilization Act or (ii) any statute or regulation other than the Federal Petroleum Price and Allocation Regulations. Finally, this Consent Order does not affect or prejudice any private action brought by a third party against ARCO, or by ARCO against any third parties, including an action for contribution.

(d) Nor may this Consent Order be used to establish, enlarge, or abridge the rights of third parties seeking contribution from ARCO, or the rights of ARCO to seek contribution from third parties.

ARCO expressly agrees that in consideration of DOE's performance under the Consent Order, ARCO releases DOE completely and for all purposes from all administrative and civil judicial claims, liabilities or causes of action that ARCO has asserted or may otherwise be able to assert against DOE under the Federal Petroleum Price and Allocation Regulations, except for matters specifically excluded from this Consent Order, ARCO and DOE agree that this Consent Order constitutes a settlement and compromise of complex factual and legal issues, and is entered into in order to avoid the expense of protracted litigation in which those factual and legal issues would otherwise be resolved.

¶ 503(a) ARCO and DOE agree to stipulate to the dismissal with prejudice of *United States* v. *Atlantic Richfield Company*, No. 79–0027 (D.D.C.); within fifteen (15) days after the effective date of this Consent Order, ARCO will execute and deliver to DOE for execution and submission to the District Court for the District of Columbia a stipulation of dismissal in the form attached as Exhibit "B–1".

(b) ARCO and DOE agree to dismissal with prejudice of ARCO's appeal to the Temporary Emergency Court of Appeals in *Atlantic Richfield Company* v. *Department of Energy*, No. DC–90 (TECA); within fifteen (15) days after the effective date of this Consent Order, ARCO will execute and deliver to DOE for execution and submission in the Temporary Emergency Court of Appeals an agreement of dismissal in the form attached as Exhibit "B–2".

(c) ARCO and DOE agree that within 15 days after the effective date of this Consent Order ARCO will dismiss any appeal or petition for reconsideration of the decision of the Court of Appeals for the District of Columbia Circuit in *Atlantic Richfield Company* v. *Department of Energy*, No. 82–2472 (D.C. Cir., December 27, 1984).

¶ 504. Within fifteen (15) days of the execution of this agreement, DOE agrees to join with ARCO in written notification to OHA and the FERC of the fact of the execution of this Consent Order; which notice shall request that each of those bodies stay all further proceedings in administrative actions initiated by DOE against ARCO until such time as DOE shall notify those bodies that the Consent Order has become effective as a final order pursuant to the provisions of ¶ 901, or until such time as DOE provides notice to those bodies that this Consent Order has been withdrawn pursuant to the provisions of ¶ 901.

¶ 505. Within thirty (30) days after the effective date of this Consent Order, OSC will file appropriate pleadings to dismiss with prejudice each proceeding against ARCO now pending before DOE's Office of Hearings and Appeals, and each proceeding now pending before the Federal Energy Regulatory Commission.

¶ 506. Execution of this Consent Order constitutes neither an admission by ARCO nor a finding by DOE of any violation by ARCO of any statute or regulation. DOE has determined that it is not appropriate to seek to impose civil penalties for the matters covered by this Consent Order, and DOE expressly agrees that it will not seek any such civil penalties. None of the payments or

expenditures made by ARCO pursuant to this Consent Order are to be considered for any purpose as penalties, fines, or forfeitures or as settlement of any potential liability for penalties, fines, or forfeitures. Payments made by ARCO pursuant to this Consent Order are attributable only to the matters resolved by this Consent Order which do not include any willful violation of Federal Petroleum Price and Allocation Regulations.

¶ 507. Notwithstanding any other provision herein with respect to the matters covered by this Consent Order, DOE reserves the right to initiate an enforcement proceeding or to seek appropriate penalties for any newly discovered regulatory violations committed by ARCO, if ARCO has knowingly concealed facts relating to such violations. DOE and ARCO also reserve the right to seek appropriate judicial remedies other than full recision of this Consent Order, for any misrepresentation of material fact during the course of the audit or during the course of the negotiations that preceded this Consent Order.

VI. Reporting, Recordkeeping Requirements and Confidentiality

¶ 601. Pursuant to 10 CFR 210.92(d) (1981) and 10 CFR 210.1, ARCO is relieved of its obligation to comply with the recordkeeping requirements of the Federal Petroleum Price and Allocation Regulations relating to the matters covered by this Consent Order. ARCO is not relieved of those requirements for records relating to matters excluded from this Consent Order in ¶ 501. ARCO shall maintain such records as are necessary to demonstrate its compliance with the terms of this Consent Order. Except for the matters excluded in ¶ 501, ARCO will not be subject hereafter to any report orders, subpoenas, or other administrative discovery by DOE relating to ARCO's compliance with the Federal Petroleum Price and Allocation Regulations for the period covered by this Consent Order; provided, however, that ARCO will not invoke this Consent Order as a defense to report orders, subpoenas, and other administrative discovery it may receive regarding other firms subject to DOE's information gathering and reporting authority.

¶ 602. DOE will treat the sensitive commercial and financial information provided by ARCO pursuant to negotiations which were conducted with respect to the settlement agreed to in this Consent Order, or obtained by DOE in its audit of ARCO and related to the matters covered by this Consent Order, as confidential and proprietary and will not disclose such information unless required to do so by law, including a request by a duly authorized committee or sub-committee of Congress. If a request or demand for release of any such information is made pursuant to law, DOE will provide ARCO with ten (10) days actual notice, if possible, of any pending disclosure of any such information, unless prohibited or precluded from doing so by law or written request of Congress. Pursuant to DOE's records retention policy, DOE will retain the audit information which it has acquired during its review of ARCO's compliance with the Federal Petroleum Price and Allocation Regulations. Notwithstanding the otherwise confidential treatment afforded such information by the terms of the Consent Order, DOE will make such information available to the Department of Justice in response to a request by a duly authorized representative pursuant to that department's statutory authority. If so requested by the Department of Justice, DOE shall not disclose that such a request has been made. Nothing in this paragraph shall be deemed to waive or prejudice any right ARCO may have independent of this Consent Order regarding the disclosure of sensitive commercial and financial information.

VII. Contractual Undertaking

¶ 701. It is the understanding and express intention of ARCO and DOE that this Consent Order constitutes a legally enforceable contractual undertaking that is binding on the parties and their successors and assigns. Notwithstanding any other provision herein, ARCO and DOE each reserves the right to institute a civil action in an appropriate United States District Court, if necessary, to secure enforcement of the terms of this Consent Order, and DOE also reserves the right to seek appropriate penalties and interest for any failure to comply with the terms of this Consent Order. Consistent with Departmental policy, DOE will undertake the defense of the Gonsent Order as finalized, in response to any litigation challenging the Consent Order's validity in which DOE is named as a party. ARCO agrees to cooperate with DOE in the defense of any such challenge.

VIII. Final Order

¶ 801. Upon becoming effective, this Consent Order shall be a final order of DOE having the same force and effect as a Remedial Order issued pursuant to section 503 of the DOE Act, 42 U.S.C. 7193, and 10 CFR 205.199B. ARCO hereby waives its right to administrative or judicial review of this Consent Order.

IX. Effective Date

¶ 901. This Consent Order shall become effective as a final order of the DOE upon notice to that effect published in the **Federal Register**. Prior to that date, DOE will publish notice of the proposed Consent Order in the **Federal Register** and, in that notice, will provide not less than thirty (30) days for members of the public to submit written comments to DOE and to appear at a public hearing conducted by ERA. DOE will consider the written comments and statements made at the hearing to determine whether to make the Consent Order effective, to withdraw agreement to the Consent Order, or to attempt to renegotiate the terms of the Consent Order.

¶ 902. Until the effective date, DOE reserves the right to withdraw consent to the Consent Order by written notice to ARCO, in which event this Consent Order shall be null and void. If this Consent Order is not made effective on or before May 1, 1985, ARCO reserves the right, at any time thereafter until the effective date, to withdraw its agreement to this Consent Order by written notice to DOE in which event this Consent Order shall be null and void. In the event either DOE or ARCO withdraw from the proposed Consent Order, the money paid into escrow shall be returned to ARCO as provided in ¶ 403.

Dated: January 23, 1985.

I, the undersigned, a duly authorized representative of ARCO, hereby agree to and accept on behalf or ARCO the foregoing Consent Order.

James S. Morrison,

Senior Vice President, Atlantic Richfield Company and President, ARCO Petroleum Products Company.

Dated: January 23, 1985.

I, the undersigned, a duly authorized representative of DOE, hereby agree to and accept on behalf of DOE the foregoing Consent Order.

Milton C. Lorenz,

Special Counsel, Department of Energy.

Attachment A—Escrow Agreement

This Escrow Agreement is made as of the 23rd day of January 1985, by and among Atlantic Richfield Company ("ARCO"), the U.S. Department of Energy ("DOE"), and Bank of America, as Escrow Agent ("Escrow Agent").

1. ARCO and DOE have entered into a Consent Order subject to various conditions, including the right of interested parties to comment upon the terms and conditions thereof, prior to DOE making the Consent Order final. Pursuant to the Consent Order, ARCO

will deposit with the Escrow Agent, in escrow, the sum of Sixty-Five Million Seven Hundred Thousand Dollars ($65,700,000), plus interest earned from investments in "obligations" on that principal amount from no later than January 29, 1985. The parties understand and agree, however, should DOE decide not to make the Consent Order final or should either ARCO or DOE determine to withdraw from the Consent Order at any time prior to the effective date of the Consent Order, then upon notice from either DOE or ARCO, the Escrow Agent will terminate this Escrow Agreement and disburse the funds of the Escrow Account, including interest, as provided in paragraph 4.

2. The Escrow Agent agrees to accept said sum and to establish and maintain a separate account therefor (the "Escrow Account"). It is understood that the funds on deposit may be commingled by Escrow Agent with its general assets to facilitate handling and reinvestment of the funds as is the customary practice for handling funds held in escrow.

3. The Escrow Agent agrees to invest and reinvest the funds in the Escrow Account at the direction of ARCO during the term of the escrow. Upon written instructions signed by an officer of ARCO, the Escrow Agent shall invest and reinvest the Escrow Account in one or more of the following investments (the "Obligations"):

(A) Direct obligations of, or obligations the principal and interest on which are unconditionally guaranteed by, the United States Government.

No obligation shall have a maturity which exceeds 30 days, except that the initial investments may be for a period of 60 days. Investment and reinvestment of the Escrow Account shall be made only in Obligations.

If at any time there are funds, whether they are funds initially constituting the Escrow Account or funds earned as interest, which when aggregated with any Account, do not total $5,000.00 (the minimum amount that may be invested in Treasury bills) then such funds shall be deposited by the Escrow Agent in an interest-bearing savings account or in a money market fund.

4. The Escrow Agent is authorized to disburse the funds in the Escrow Account to DOE upon notice by DOE to the Escrow Agent and confirmed by ARCO that the Consent Order has been made final, or to ARCO upon notice by ARCO and confirmed by DOE that the Consent Order has been withdrawn; or upon joint notice from DOE and ARCO as they may mutually agree. Upon receipt of such notice the Escrow Agent agrees to sell the Obligations and to pay the funds then in escrow and the proceeds of the Escrow Account as directed. The Escrow Agent shall have no liability for any losses resulting from such sale.

5. (A) ARCO agrees to hold the Escrow Agent harmless and to indemnify the Escrow Agent against any loss, liability, claim or demand arising out of or in connection with the performance of its obligations in accordance with the provisions of this Agreement, except for gross negligence or willful misconduct of the Escrow Agent. The foregoing indemnities in this paragraph shall survive termination of this Agreement.

(B) The Escrow Agent's duties are only such as are specifically provided herein, and the Escrow Agent shall incur no liability whatsoever to ARCO or DOE, except for gross negligence or willful misconduct. The Escrow Agent is not a party to the terms and conditions of the Consent Order referred to herein between ARCO and DOE, and shall have no responsibility other than to follow faithfully the instructions herein contained. The Escrow Agent may consult with counsel and shall be fully protected in any action taken in good faith in accordance with such advice. The Escrow Agent shall be fully protected in acting in accordance with any written instructions given to it hereunder and believed by it to have been executed by the proper parties. The Escrow Agent shall not be liable for interest on the Escrow Account except as specifically agreed upon by the Escrow Agent and the respective parties hereto.

(C) ARCO alone shall be liable for, and agrees to pay the Escrow Agent, a fee of $5,000.00 from and after the date hereof payable in advance, and an annual fee of $200 beginning the second year, as compensation for the ordinary administrative services to be rendered hereunder which shall include monthly reports of all transactions and securities held; and agrees to pay all expenses of the Escrow Agent, including its attorney's fees and expenses, which it may incur in connection with the performance of its duties under the Agreement or under Section 5(A) hereof.

(D) It is understood and agreed that should any dispute arise with respect to the payment and/or ownership or right of possession of the Escrow Account, the Escrow Agent is authorized and directed to retain in its possession, without liability to anyone, all or any part of said Escrow Account until such dispute shall have been settled either by mutual agreement by the parties concerned or by the final order, decree or judgment of a court or other tribunal of competent jurisdiction of the United States of America and time for appeal shall have expired and no appeal have been perfected, but the Escrow Agent shall be under no duty whatsoever to institute or defend any such proceedings.

(E) The Escrow Agent may resign at any time by giving written notice thereof to other parties hereto, but such resignation shall not become effective until a successor escrow agent shall have been appointed and shall have accepted such appointment in writing. If an instrument of acceptance by a successor escrow agent shall not have been delivered to the Escrow Agent within 30 days after the giving of such notice of resignation, the resigning Escrow Agent may at the expense of ARCO petition any court of competent jurisdiction for the appointment of a successor escrow agent.

6. This Agreement shall be construed in accordance with the laws of the State of California. It may be executed in several counterparts, each one of which shall constitute as original, and all collectively shall constitute but one instrument.

7. Any notice, consent or request to be given in connection with any of the terms or provisions of this Agreement shall be in writing and shall be sent by registered mail, postage prepaid, or delivered by hand to all parties to the Escrow Agreement.

(i) To the Escrow Agent at: BANK OF AMERICA #600, 525 South Flower Street, Los Angeles, California 90071, Attention: Escrow Department;

(ii) To Atlantic Richfield Company at its offices at 515 South Flower Street, Los Angeles, California 90071, Attention: Russell S. Young; and

(iii) To The Department of Energy at its offices at 1000 Independence Avenue, SW., Washington, D.C. 20585, Attention: Milton Lorenz, Special Counsel, RG–20.

In Witness Whereof, the parties have dully executed this Escrow Agreement as of the date first above written.

Attest:

Howard L. Edwards,

Secretary.

Attest:

Barbara M. Hines,

Assistant Secretary.

Atlantic Richfield Company.

By:

J.M. Morrison,

Authorized Officer, Bank of America.

By:
Jacquelyn L. Backstrom, Escrow Officer,
Trust Officer.
The Department of Energy.
By:
Milton C. Lorenz,
Special Counsel.

Exhibit "B–1"—U.S. District Court for the District of Columbia

[Civil Action No. 79–0027]

United States Department of Energy, Plaintiffs, v. *Atlantic Richfield Company,* Defendant.

Stipulation of Dismissal

Plaintiffs, United States Department of Energy, Donald Hodel, Secretary of Energy, and the Office of Hearings and Appeals, hereby stipulate as follows:

1. The Department of Energy and Atlantic Richfield Company have entered into a Consent Order, a true copy of which is attached hereto as Exhibit A.

2. The Consent Order has now become a final order and effective pursuant to law.

3. Pursuant to the terms of the Consent Order and Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedure, the Department of Energy and Atlantic Richfield Company hereby stipulate that the instant action be dismissed with prejudice, each party to bear its own costs.

United States Department of Energy.
By: _____
Attorneys for Plaintiffs.
Atlantic Richfield Company.
By: _____
Attorneys for Atlantic Richfield Company.

This —— day of ——————, 1985, the foregoing Stipulation is approved, and
It is so ordered.

_____
United States District Judge.

Exhibit "B–2"—Temporary Emergency Court of Appeals of the United States

[No. DC–80]

Atlantic Richfield Company, plaintiff, v. *Department of Energy, et al.,* defendants.

Stipulation of Dismissal

Plaintiff, Atlantic Richfield Company, and Defendants, the Department of Energy, Donald Hodel, Secretary of Energy, and the Office of Hearings and Appeals, hereby stipulate as follows:

1. Atlantic Richfield Company and the Department of Energy have entered into a Consent Order, a true copy of which is attached hereto as Exhibit A.

2. The Consent Order has now become a Final Order and effective pursuant to law.

3. Pursuant to the terms of the Consent Order and Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedure, Atlantic Richfield Company and the Department of Energy hereby stipulate that the instant action be dismissed with prejudice, each party to bear its own costs.

Atlantic Richfield Company.
By: _____
Attorneys for Atlantic Richfield Company.
United States Department of Energy.
By: _____
Attorneys for Defendants.

This —— day of ——————, 1985, the foregoing Stipulation is approved, and
It is so ordered.

_____
For the Court.

[FR Doc. 85–5059 Filed 2–28–85; 8:45 am]
BILLING CODE 6450–01–M

Union Oil Co. of California; Proposed Consent Order

AGENCY: U.S. Department of Energy (DOE); Economic Regulatory Administration (ERA).

ACTION: Notice of proposed consent order and opportunity for public comment.

SUMMARY: The Economic Regulatory Administration (ERA) hereby gives the notice required by 10 CFR 205.199J that it has entered into a Consent Order with Union Oil Company of California (Union). The Consent Order resolves the issue of Union's compliance with the Department of Energy (DOE) regulations regarding marginal and newly discovered crude oil for the period June 1970 through January 1981. This matter was the subject of a Proposed Remedial Order (PRO) Case Number CUNUC0000. In settlement of allegations contained in the PRO, Union has agreed to pay $4.5 million to be disbursed in a Special Refund Proceeding under 10 CFR Part 205, Subpart V.

As required by §205.199J, ERA will receive comments on the proposed Consent Order for a period of thirty days following publication of this Notice. All comments received within the thirty day period will be considered before determining whether to issue the proposed Consent Order as a final Order of the DOE. Although the Consent Order has been signed by the parties, ERA may, after the expiration of the comment period, withdraw its acceptance of the Consent Order, attempt to obtain a modification of the Consent Order or issue the Consent Order as proposed.

DATE: Comments: To be considered, comments must be received by 5:00 p.m. on thirtieth day following publication of this Notice.

ADDRESS: Address comments to: Union Consent Order Comments, Economic Regulatory Administration, RG–13, U.S. Department of Energy, Washington, DC. 20585.

FOR FURTHER INFORMATION CONTACT: Edward Levy, Assistant Special Counsel, Economic Regulatory Administration, RG–13, U.S. Department of Energy, Washington, DC. 20585, Phone (202) 252–8900.

SUPPLEMENTARY INFORMATION: On June 14, 1982, Union and DOE entered into a comprehensive Consent Order which settled all of DOE's claims against Union under the Federal petroleum price and allocation regulations except for certain matters which were excluded. Union paid $25 million pursuant to the terms of the agreement. One matter excluded from the scope of that Consent Order was Union's compliance with the regulations regarding marginal and newly discovered crude oil which, at that time, had not been audited. ERA subsequently concluded the audit and, on August 29, 1984, ERA issued a PRO to Union alleging violations of the DOE regulations regarding marginal and newly discovered crude oil during the period June 1979 through January 1981. Notice of the issuance of that PRO appeared in the **Federal Register** on October 30, 1984, at 49 FR 43584.

ERA alleged in the PRO that Union sold crude oil improperly classified as marginal or newly discovered at prices in excess of the maximum lawful prices in the amount of $4.3 million, plus interest. As a result of additional factual information provided to ERA by Union, the alleged overcharges were recalculated to be $3.8 million, excluding interest.

While both ERA and Union believe that its respective legal and factual positions are meritorious, Union has agreed, without admitting any violation of any DOE regulations, to enter into this Consent Order to avoid complex litigation and disruption of its business. DOE believes the Consent Order is a satisfactory resolution of the compliance matters raised in the PRO concerning Unon's production and sale of marginal and newly discovered crude oil. Accordingly, the parties have executed a Consent Order settling all ERA's claims against Union regarding

compliance with the DOE regulations governing marginal and newly discovered crude oil for $4.5 million. Union will pay the funds to DOE within 60 days of the effective date of this Consent Order. ERA will petition the DOE Office of Hearings and Appeals to implement a Special Refund Proceeding to distribute the funds under 10 CFR Part 205, Subpart V.

The Consent Order also provides for a release to Union from further liability to DOE on this issue, dismissal of the PRO proceeding, confidentiality of the audit data, future recordkeeping, enforcement of the Consent Order and procedures for making the Consent Order effective. Before becoming effective, ERA will receive and consider written comments for a thirty day period following this **Federal Register** publication. If ERA determines to make the Consent Order final after consideration of public comments, the Consent Order will be a final Order of the DOE to which Union will have waived its right to judicial or administrative review. The Consent Order does not constitute an admission by Union or a finding by DOE of a violation of the federal petroleum price and allocation regulations.

Submission of Written Comments

Interested persons are invited to submit written comments concerning the Consent Order to the address noted above. All comments received by the thirtieth day following publication of this Notice will be considered before determining whether to adopt the Consent Order and issue it as a final Order of DOE. Any modifications of the proposed Consent Order which significantly alter its terms or impact will be published for additional comment. If, after considering the comments, ERA determines to issue the Consent Order as a final Order, the Consent Order will be made final and effective by publication of a Notice to that effect, describing the action taken, in the **Federal Register.**

Any information submitted in a comment which the writer considers confidential must be identified as such in accordance with the procedures of 10 CFR 205.9(f).

Issued in Washington, D.C., on February 22, 1985

M. C. Lorenz,

Special Counsel, Economic Regulatory Administation.

Consent Order With Union Oil Company of California

[Case No. HR00256]

I. Introduction

101. This Consent Order is entered into between Union Oil Company of California ("Union") and the United States Department of Energy ("DOE"), concerning Union's compliance with DOE's regulations regarding marginal and newly discovered crude oil for the period from June 1979 through January 1981. An earlier Consent Order (the "1982 Consent Order"), which was entered into by Union and DOE on June 14, 1982, and became effective as a final order on October 18, 1982, settled and finally resolved all civil and administrative claims and disputes against Union by DOE, except as explicitly excluded therein, concerning events during the period of March 6, 1973, through January 27, 1981, with respect to the federal petroleum price and allocation regulations.

II. Jurisdiction, Regulatory Authority and Definitions

201. This Consent Order is entered into by DOE pursuant to the authority conferred upon it by sections 301 and 503 of the Department of Energy Organization Act ("DOE Act"), 42 U.S.C. 7151 and 7193; Executive Order No. 12009, 42 FR 46267 (1977); Executive Order No. 12038, 43 FR 4957 (1978); and 10 CFR 205.199J.

202. The Economic Regulatory Administration ("ERA") was created by section 206 of the DOE Act, 42 U.S.C. 7136. In Delegation No. 0204–4, the Secretary of Energy delegated responsibility for the administration of the federal petroleum price and allocation regulations to the Administrator of the ERA. In Delegation No. 0204–4A, the Administrator delegated to the Special Counsel authority to audit the compliance of refiners with the federal petroleum price and allocation regulations and to take appropriate enforcement actions based upon such audits.

203. For purposes of this Consent Order, the phrase "federal petroleum price and allocation regulations" means all statutory requirements and administrative regulations regarding the pricing and allocations of crude oil and refined petroleum products, including the entitlements and mandatory oil imports programs administered by DOE. The federal petroleum price and allocation regulations include (without limitation) the pricing, allocation, reporting, certification, and recordkeeping requirements imposed by or under the Economic Stabilization Act of 1970, the Emergency Petroleum Allocation Act of 1973, the Federal Energy Administration Act of 1974, Presidential Proclamation 3279; all applicable DOE regulations codified in 6 CFR Parts 130 and 150 and 10 CFR Parts 205, 210, 211, 212 and 213, and all rules, rulings guidelines, interpretations, clarifications, manuals, decisions, orders, notices, forms, and subpoenas relating to the pricing and allocation of petroleum products. The provisions of 10 CFR 205.199J and the definitions under the federal petroleum price and allocations regulations shall apply to this Consent Order, except to the extent inconsistent herewith. Reference herein to "DOE" includes the Cost of Living Council, the Federal Energy Office, the Federal Energy Administration, the Department of Energy, ERA, the Office of Special Council ("OSC") and all predecessor agencies. References in this Consent Order to "Union" include (without limitation) Unocal Corporation, Union Oil Company of California, and all of their subsidiaries, affiliates (but only for the acts of such companies while they were subsidiaries or affiliates of Union), predecessors, successors in interest, and their petroleum-related activities as refiner, producer, operator, reseller, retailer, natural gas processor, or otherwise, and except for Article IV, *infra*, officers, directors and employees of Union.

III. Facts

The stipulated facts upon which this Consent Order is based are as follows:

301. Union is a "refiner" and a "producer" of crude oil as those terms are defined in the federal petroleum price and allocation regulations, and is subject to the jurisdiction of the DOE. During the period covered by this Consent Order, Union engaged in, among other things, the production, sale, and refining of crude oil.

302. As detailed therein, the 1982 Consent Order concluded a lengthy and comprehensive DOE audit and enforcement process involving virtually all issues regarding Union's compliance with the federal petroleum price and allocation regulations over the period of March 6, 1973 through January 27, 1981.

303. Section 502(c) of the 1982 Consent Order provides that: "Union's compliance with DOE's regulations regarding marginal and newly discovered crude oil since June 1979 has

not been audited and is * * * excluded from this Consent Order." In 1984, DOE concluded an audit and evaluation of Union's compliance with DOE's regulations regarding marginal and newly discovered crude oil ("MND") from June 1979 through January 1981. As part of its audit, DOE examined Union's books and records relating to Union's compliance with the MND regulations. Union cooperated fully in this audit. The audit covered all interests in MND crude oil produced from properties operated by Union—including the interests of working and royalty interests owners—and this Consent Order is intended to conclude all enforcement action with regard to all such interests.

304. During the course of its audit, as well as the negotiations that led to this Consent Order, ERA raised certain issues with respect to Union's compliance with the MND regulations. On August 29, 1984, DOE issued a proposed remedial order to Union regarding these matters. Union maintains, however, that it has determined its prices and sold its crude oil and operated in all other respects in accordance with the MND regulations. DOE and Union disagree in several respects concerning the proper application of the MND regulations to Union's treatment of crude oil during the period covered by this Consent Order, and each believes that its respective legal and factual positions on the matters resolved by this Consent Order are meritorious. These positions were emphasized in the intensive review and exchange of information conducted during the negotiation process. However, in order to avoid the expense of protracted, complex litigation and disruption of its orderly business functions, and without admitting that it has violated any federal petroleum price or allocation regulation, Union has agreed to enter into this Consent Order. DOE believes this Consent Order constitutes a satisfactory resolution of the matters covered herein and is in the public interest.

TERMS AND CONDITIONS

IV. Remedial Provisions

401. In full and final settlement of all matters covered by this Consent Order and in lieu of all other remedies which might have been sought by DOE for such matters under 10 CFR 205.1991 or otherwise, Union shall, within sixty (60) days after this Consent Order becomes effective pursuant to paragraph 901, pay to DOE the total of Four Million, Five Hundred Thousand Dollars ($4,500,000.00), to be disbursed as provided in paragraph 402.

402. ERA and Union agree that ERA will petition DOE's Office of Hearings and Appeals (OHA) to implement special refund procedures pursuant to 10 CFR Part 205, Subpart V to distribute the monies.

V. Issues Resolved

501. All pending and potential civil and administrative claims, whether or not known, demands, liabilities, causes of action or other proceedings by DOE regarding Union's compliance with the federal petroleum price and allocation regulations concerning marginal and newly discovered crude oil during the period covered by this Consent Order, whether or not heretofore raised by an issue letter, Notice of Probable Violation, Proposed Remedial Order, or otherwise are resolved and extinguished by this Consent Order. This Consent Order does not in any other way supercede or revoke the 1982 Consent Order, with which Union has fully complied.

502. (a) Except as otherwise provided in this Consent Order, compliance by Union with this Consent Order shall be deemed by DOE to constitute full compliance for administrative and civil purposes with all federal petroleum price and allocation regulations for the matters covered by this Consent Order. In consideration for performance as required under this Consent Order by Union, DOE hereby releases Union completely and for all purposes from all administrative and civil judicial claims, liabilities, or causes of action, specifically including claims for civil penalties, that DOE has asserted or may otherwise be able to assert against Union for alleged violations of the federal petroleum price and allocation regulations with respect to the matters covered by this Consent Order. DOE will not initiate or prosecute any such administrative or civil matter against Union or cause or refer any such matter to be initiated or prosecuted, nor will DOE or its successors directly or indirectly aid in the initiation of any such administrative or civil matter against Union. DOE will not voluntarily assert in any administrative or civil judicial proceeding that Union has violated the federal petroleum price and allocation regulations with respect to the matters covered by this Consent Order, or otherwise take action with respect to Union in derogation of this Consent Order.

(b) Nothing contained in this Consent Order shall preclude DOE from defending the validity of the federal petroleum price and allocation regulations or from initiating and prosecuting enforcement actions against operators other than Union for overcharges for MND crude oil when Union was a working or royalty interest owner in such crude oil production. Union and DOE agree that the amount paid to DOE pursuant to this Consent Order is not attributable to Union's activities as a working or royalty interest owner in MND crude oil produced from properties on which Union was not the operator and shall not reduce the liability of any other party for violations arising out of such properties. The amount paid to DOE pursuant to this Consent Order is attributable to all interests—including the interests of working and royalty interest owners—in MND crude oil produced from properties on which Union was the operator, including those properties identified in the Proposed Remedial Order issued to Union on August 29, 1984, and in consideration of Union's payment under this Consent Order, DOE will take no further enforcement action against such owners with respect to such properties. DOE agrees that this Consent Order settles and finally resolves all aspects of Union's liability to DOE under the federal petroleum price and allocation regulations regarding MND crude oil, including but not limited to Union's liability as an operator or working interest or royalty interest owner of a crude oil producing property.

(c) DOE expressly agrees that it will not seek or recommend any criminal fines or penalties based solely on the information and evidence presently in its possession for the matters covered by this Consent Order; provided that nothing in this Consent Order precludes DOE from exercising its obligations under law with regard to forwarding information of possible criminal violations of law to the appropriate authorities. Nothing contained herein may be construed as a bar, an estoppel, or a defense against any criminal action or against any civil action brought by any purchaser of covered products from Union or against any civil action brought by an agency of the United States other than DOE under (i) Section 210 of the Economic Stabilization Act or (ii) any statute or regulation other than the federal petroleum price and allocation regulations.

503. Within thirty (30) days after the effective date of this Consent Order, ERA will file appropriate pleadings to dismiss with prejudice the proceedings now pending before DOE's Office of Hearings and Appeals (OHA) with regard to the Proposed Remedial Order issued to Union on August 29, 1984, OHA Case No. HRO-0256.

504. Execution of this Consent Order constitutes neither an admission by Union nor a finding by DOE of any violation by Union of any statute or regulation. DOE has determined that it is not appropriate to seek to impose civil penalties for the matters covered by this Consent Order, and DOE expressly agrees that it will not seek any such civil penalties. None of the payments or expenditures made by Union pursuant to this Consent Order are to be considered for any purpose as penalties, fines, or forfeitures or as settlement of any potential liability for penalties, fines, or forfeitures. Payments made by Union pursuant to this Consent Order are attributable only to the matters resolved by this Consent Order which do not include any willful violation of federal petroleum price and allocation regulations.

505. Notwithstanding any other provision herein, with respect to the matters covered by this Consent Order, DOE reserves the right to initiate an enforcement proceeding or to seek appropriate penalties for any newly discovered regulatory violations committed by Union, if Union has knowingly concealed facts relating to such violations. DOE and Union also reserve the right to seek appropriate judicial remedies, other than full rescission of this Consent Order, for any misrepresentation of material fact during the course of the audit or during the course of the negotiations that preceded this Consent Order.

VI. Reporting and Recordkeeping Requirements and Confidentiality

601. Upon expiration of a period of six months from the date of completion of payment of the amount set forth in paragraph 401, Union is relieved of its obligation to comply with the recordkeeping requirements of the federal petroleum price and allocation regulations relating to the matters covered by this Consent Order, except as otherwise provided in this paragraph. Union is not relieved of those requirements for records relating to matters not covered by this Consent Order and excluded from the 1982 Consent Order. Union shall maintain such records as are necessary to demonstrate compliance with the terms of this Consent Order. Union shall also maintain sales volume data and customers' names and addresses regarding its initial sales of MND crude oil for the period covered by this Consent Order until six months after the date of completion of payment of the amount set forth in paragraph 401, unless DOE notifies Union in writing that this period is extended, in which case Union shall maintain such information until the end of the extension. Union shall make such information available to DOE, if requested, to assist in the distribution of the amount paid pursuant to paragraph 401. Upon completion of payment of the amount set forth in paragraph 401, Union will not be subject to any report orders, subpoenas, or other administrative discovery by DOE relating to Union's compliance with the federal petroleum price and allocation regulations relating to the matters covered by this Consent Order for the period covered by this Consent Order; provided, however, that Union will not invoke this Consent Order as a defense to report orders, subpoenas and other administrative discovery it may receive regarding other firms subject to DOE's information gathering and reporting authority.

602. DOE will treat the sensitive commercial and financial information provided by Union pursuant to this Consent Order, or obtained by DOE in its audit of Union and related to the matters covered by this Consent Order, as confidential and proprietary and will not disclose such information unless required to do so by law including a request by a duly authorized committee or subcommittee of Congress. If a request or demand for release of any such information is made pursuant to law, DOE will provide Union with ten (10) days actual notice, if possible, of any pending disclosure of such information, unless prohibited or precluded from doing so by law or request of Congress. Pursuant to DOE records retention policy, DOE will retain the audit information which it has acquired during its review of Union's compliance with the federal petroleum price and allocation regulations. Notwithstanding the otherwise confidential treatment afforded such information by the terms of this Consent Order, DOE will make such information available to the Department of Justice ("DOJ") in response to a request pursuant to DOJ's statutory authority by a duly authorized representative of the DOJ. If requested by DOJ, DOE shall not disclose that such a request has been made. Nothing in this paragraph shall be deemed to waive or prejudice any right Union may have independent of this Consent Order regarding the disclosure of sensitive commercial and financial information.

VII. Contractual Undertaking

701. It is the understanding and express intention of Union and DOE that this Consent Order constitutes a legally enforceable contractual undertaking that is binding on the parties and their successors and assigns.

Notwithstanding any other provision herein, Union and DOE each reserves the right to institute a civil action in an appropriate United States district court, if necessary, to secure enforcement of the terms of this Consent Order, and DOE also reserves the right to seek appropriate penalties and interest for any failure to comply with the terms of this Consent Order. Consistent with Department policy, DOE will undertake the defense of this Consent Order as finalized, in response to any litigation challenging this Consent Order's validty in which DOE is named as a party. Union agrees to cooperate with DOE in the defense of any such challenge.

VIII. Final Order

801. Upon becoming effective, this Consent Order shall be a final order of DOE having the same force and effect as a remedial order issued pursant to Section 503 of the DOE Act, 42 U.S.C. 7193, and 10 CFR 205.199B. Union hereby waives its right to administrative or judicial review of this Order.

IX. Effective Date

901. This Consent Order shall become effective as a final order of the DOE upon notice to that effect published in the **Federal Register**. Prior to that date, DOE will publish notice of the proposed Consent Order in the **Federal Register** and, in that notice, will provide not less than thirty (30) days for members of the public to submit written comments to DOE. DOE will consider the written comments to determine whether to make the Consent Order effective, to withdraw agreement to the Consent Order or to attempt to renegotiate the terms of the Consent Order.

902. Until the effective date, DOE reserves the right to withdraw consent to this Consent Order by written notice to Union, in which event this Consent Order shall be null and void. If this Consent Order is not made effective on or before May 1, 1985, Union reserves the right, at any time thereafter until the effective date, to withdraw its agreement to this Consent Order by written notice to DOE in which event this Consent Order shall be null and void.

I, the undersigned, a duly authorized representative of Union, hereby agree to and accept on behalf of Union the foregoing Consent Order.

Dated: February 6, 1985.

E. William Cole,

Vice President Union Oil Company of California.

I, the undersigned, a duly authorized representative of DOE, hereby agree to and accept on behalf of DOE the foregoing Consent Order.

Dated: February 6, 1985.

Milton C. Lorenz,

Special Counsel Economic Regulatory Administration Department of Energy.

[FR Doc. 85-5058 Filed 2-28-85; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Administrative Order No. 9]

Designation of Production-Related Costs Board Members

Issued: February 25, 1985.

By order issued September 27, 1983,[1] the Commission established the Production-Related Costs Board and delegated to the Board the authority to resolve certain disputes arising under section 110 of the Natural Gas Policy Act of 1978 (NGPA).[2] The Production-Related Costs Board shall consist of two members, who are hereby designated as follows:

Chairman-Member: Louis Engel
Member: Janet Ardinger
Administrative Officer: Francis Connor

The business of the Production-Related Costs Board will be conducted pursuant to § 271.1105 of the Commission's regulations. The following provisions shall apply to operation of the Board:

(A) Official actions of the Board will be taken on a notational basis. The official date of action by the Board shall be the date of issuance of its decision.

(B) The Administrative Officer is responsible for the administration of the Board activities including the preparation of minutes. Copies of minutes shall be forwarded to the Secretary of the Commission, who will maintain a formal minutes file which shall be available to the public upon request.

(C) The Administrative Officer will prepare all orders of the Board and cause service to be made on all parties.

(D) The Chairman of the Board is authorized to establish such other procedures relating to the administration of the Board's business as are required. The Chairman will schedule such conferences and hearings as are necessary to the timely resolution of issues referred to the Board.

(E) Where it is not possible to resolve disputes or issues through informal proceedings, the Board shall, to the maximum extent practicable, issue its decisions within 60 days after the close of the hearings.

Raymond J. O'Connor,

Chairman.

[FR Doc. 85-4974 Filed 2-28-85; 8:45 am]

BILLING CODE 6717-01-M

[1] Regulations Implementing Refund Procedures Under Subpart K of Part 271 for Production-Related Costs, 48 FR 44492 (Sept. 29, 1983) (Order No. 333) (Codified at 18 CFR 271.1105) (RM83-6-000).

[2] 15 U.S.C. 3320 (1982).

[Project No. 8233-001, et al.]

Hydroelectric Applications (D.S. Pyle & R.H. McConnell, et al.; Application Filed With the Commission

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection:

1 a. Type of Application: Exemption (5 MW or Less).

b. Project No.: 8233-001.

c. Date Filed: September 25, 1984.

d. Applicant: D.S. Pyle and R.H. McConnell.

e. Name of Project: Tallapoosa River.

f. Location: Tallapoosa River in Cleburne County, Alabama.

g. Filed Pursuant to: Energy Security Act of 1980 Section 408 (16 U.S.C. 2705 and 2708).

h. Contact Person: Mr. D.S. Pyle, 2605 Regency Drive, East, Tucker, Georgia 30084.

i. Comment Date: April 5, 1985.

j. Description of Project: The proposed project would consist of: (1) An existing 16-foot-high, 100-foot-long concrete dam owned by Turner Estate (Applicant has a sales agreement with Turner Estate); (2) an existing reservoir with negligible storage capacity at elevation 819 feet msl; (3) an existing powerhouse at the base of the dam containing two existing generating units and one proposed generating unit with a total rated capacity of 400-kW; and (4) a proposed 300-foot-long transmission line tying into the existing Alabama Power Company's system. The Applicant estimates a 2,277,600 kWh average annual energy production.

k. Purpose of Exemption: An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

l. This notice also consists of the following standard paragraphs: A1, A9, B, C, and D3a.

2 a. Type of Application: Major License (<5MW).

b. Project No: 8795-000.

c. Date Filed: December 12, 1984.

d. Applicant: Western Hydropower I, Ltd.

e. Name of Project: Royal Catfish.

f. Location: Near the towns of Jerome and Twin Falls in Jerome County, Idaho.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Vernon F. Ravenscroft, Consulting Associates, Inc. P.O. Box 893, Boise, Idaho 83701.

i. Comment Date: April 19, 1985.

j. Description of Project: The proposed project would consist of: (1) Channeling the outflow from the Royal Catfish Fish Hatchery into a 9,500-foot-long, 7-foot-deep canal; (2) a 340-foot-long, 42-inch-diameter inverted siphon across an existing pond; (3) two 42-inch culverts to accommodate seepage from the canyon wall; (4) a 12-gauge steel pipeline which conveys the canal water to a 150-foot-long, 72-inch-diameter penstock; (5) a powerhouse containing a single generating unit with a capacity of 3,100 KW and an average annual generation of 24,529,000 KWh; and (6) a 0.5-mile-long, 34.5-kV transmission line.

k. Purpose of Project: The project power would be sold.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

3 a. Type of Application: Exemption for Small Conduit Hydroelectric Facility.

b. Project No: 7865-000.

c. Date Filed: November 23, 1983.

d. Applicant: Mr. Orville Nicholson.

e. Name of Project: Nicholson Hydroelectric.

f. Location: On Rocky Run, Uncle Ike Creek and Fallert Springs in Butte County, Idaho, near the Town of Howe.

g. Filed Pursuant to: Energy Security Act, 1980 (16 U.S.C. 2705 and 2708 as amended).

h. Contact Person: Mr. G.L. Smith, P.O. Box 1016, Idaho Falls, Idaho 83401.

i. Comment Date: April 1, 1985.

j. Description of Project: The proposed project would use flows from existing irrigation pipelines and ditches on Rocky Run, Uncle Ike Creek and Fallert Springs, located on land managed by the Bureau of Land Management and would consist of: (1) An 18-inch-diameter, 2,000-foot-long penstock extending from the existing Fallert Springs pipeline; (2) a powerhouse containing a single generating unit with a rated capacity of 350 kW, operating under a head of 800 feet; (3) a tailrace discharging directly

into the existing irrigation system; and (4) a 100 to 300-foot-long transmission line tying into an existing line owned by Utah Power and Light Co.

The average annual energy output would be 274,000 kWh.

k. Purpose of Project: Project power would be sold to Utah Power and Light Company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C and D3b.

4 a. Type of Application: Preliminary Permit.

b. Project No: 8707–000.

c. Date Filed: November 9, 1984.

d. Applicant: Yakima-Tieton Irrigation District.

e. Name of Project: Cle Elum.

f. Location: At the Bureau of Reclamation's Cle Elum Dam, on the Yakima River in Kittitas County, Washington.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Warren E. Dickman, Yakima-Tieton Irrigation District, Route 6, Box 193, Yakima, Washington 98908.

i. Comment Date: April 22, 1985.

j. Competing Application: Project No. 8336, Date Filed: June 1, 1984.

k. Description of Project: The proposed project would utilize the Bureau of Reclamation's Cle Elum Dam and Reservoir and would consist of: (1) A 920-foot-long, 13-foot-diameter steel penstock, lining the existing outlet tunnel; (2) a powerhouse at the base of the spillway, housing a single generating unit with a capacity of 20,000 kW and an average annual generation of 79,000,000 kWh; and (3) upgrading of an existing transmission line.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $50,000. No new roads would be constructed or drilling conducted during the feasibility study.

l. Purpose of Project: Project power would be used by applicant and sold to Northwest utilities and industries.

m. This notice also consists of the following standard paragraphs: A8, A9, B, C, and D2.

5 a. Type of Application: Preliminary Permit.

b. Project No.: 8702–000.

c. Date Filed: November 5, 1984.

d. Applicant: First Fiduciary.

e. Name of Project: Straight Bay Tidal Power.

f. Location: Straight Bay in Washington County, Maine.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Arthur W. Fowler, Jr., First Fiduciary, 31 Central Street, Bangor, Maine 04401.

i. Comment Date: April 19, 1985.

j. Description of Project: The proposed project would utilize tidal power and would consist of: (1) A proposed 750-foot-long, 40-foot-high dam; (2) a proposed reservoir which would fluctuate between 1.2 and 1.8 square miles in surface area, and would have a maximum water level concurrent with the high tide level; (3) a proposed powerhouse containing 1 turbine/generator with an installed capacity of 12.4 MW, operating under a maximum head of 12.3 feet; (4) a proposed 35-mile-long, 34.5kV transmission line; and (5) appurtenant facilities. The average annual generation is 43,500 MWh.

k. Purpose of Project: Project energy would be sold to Bangor Hydro-Electric Company.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 24 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $50,000.

6 a. Type of Application: Minor License.

b. Project No: 5776–001.

c. Date Filed: November 23, 1984.

d. Applicant: Dr. Daniel C. Merrill.

e. Name of Project: Mawah Creek Hydroelectric Project.

f. Location: On Mawah Creek, near town of Weitchpec, in Humboldt County, California.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Dr. Daniel C. Merrill, 2127 Danville Boulevard, Walnut Creek, California 94595.

i. Comment Date: April 22, 1985.

j. Description of Project: The proposed project would consist of: (1) a 4-foot-high, 20-foot-long diversion dam at elevation 910 feet; (2) an 18-inch-diameter, 3,060-foot-long steel penstock; (3) a powerhouse containing one generating unit with a rated capacity of 860 kW operating under a head of 665 feet; and (4) a 6-mile-long, 12-kV transmission line from the powerhouse to connect to an existing Pacific Gas and Electric Company (PG&E) transmission line. The Applicant estimates the average annual energy generation at 3.69 million kWh to be sold to PG&E. The project cost has been estimated to be about $1.0 million. The Applicant does not propose any recreational facilities as part of the project.

k. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

7. a. Type of Application: Major License.

b. Project No: 3752–002.

c. Date Filed: September 26, 1983 and supplemented October 26, 1984.

d. Applicant: Mitex, Inc.

e. Name of Project: Swift Dam.

f. Location: On Birch Creek, partially within U.S. lands administered by Bureau of Land Management near Valier, Pondera County, Montana.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. William S. Fowler, Mitex, Inc., 91 Newbury Street, Boston, Massachusetts 02116.

i. Comment Date: April 22, 1985.

j. Description of Project: The proposed project would consist of: (1) The 560-foot-long, 205-foot-high existing Swift Dam, impounding the existing Swift Reservoir with an active storage capacity of 30,000 acre-feet; (2) two steel penstocks each 48 inches in diameter and 29 feet long; (3) a 50-foot-long, 25-foot-wide powerhouse located at the dam toe directly beneath the existing gatehouse, and containing two generating units with a total installed capacity of 2,420 kW; (4) a switchyard; (5) a 100-foot-long transmission line connecting to an existing Glacier Electric cooperative transmission line; and (6) appurtenant facilities. The Applicant estimates that the average annual energy production would be 7.8 million kWh. The cost to construct the project would be $4,200,000 in 1984 dollars.

k. Purpose of Project: The project would be sold to a local utility.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, And D1.

8. a. Type of Application: Preliminary Permit.

b. Project No.: 8783–000.

c. Date Filed: December 7, 1984.

d. Applicant: Oglethorpe Power Corporation.

e. Name of Project: Frosty Mountain Pumped Storage.

f. Location: In Dawson and Lumpkin Counties on the Crochans Creek in

Georgia on lands managed by the Chattahoochee National Forest.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Danny Dees, Section Manager, Resource Planning, Oglethorpe Power Corporation, 2100 East Exchange Place, P.O. Box 1349, Tucker, Georgia 30085–1349.

i. Comment Date: April 22, 1985.

j. Description of Project: The proposed pumbed storage project would consist of: (1) A proposed 143-acre upper reservoir with a proposed earth and rockfill dam 2,850 feet long and 237 feet high at elevation 3,103 NGVD and a storage capacity of 600 acre-feet flowing into; (2) a proposed 1,400-foot-deep vertical shaft which joins a proposed 5,080-foot-long and 26.0-foot-diameter horizontal power tunnel connected to; (3) three 300-foot-long tunnel penstocks each 15 feet in diameter joining; (4) a proposed underground powerhouse containing three reversible pump/turbines connected to three motor/generators for a total rated capacity of 675 MW; (5) three proposed concrete-lined draft tube tunnels each 371 feet long and 15 feet in diameter which manifold into: (6) a proposed 5,978-foot-long tailrace tunnel with a 26.0 foot diameter which discharges into; (7) a proposed 425-acre lower reservoir formed by a proposed dam 169 feet high and 3,000 feet long including spillway at elevation 1,658 NGVD with a storage capacity of 9,570 acre-feet; (8) a proposed primary transmission line consisting of two double circuit 230-kV lines connected to one single circuit 230-kV line for a total transmission length of 114 miles; and (9) appurtenant facilities. The estimated average annual energy produced by the project would be 590 GWh operating under a gross hydraulic head of 1,483 feet. Project power would be sold to the Applicant's customers.

k. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, and D2.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $3.7 million.

9 a. Type of Application: Preliminary Permit.

b. Project No.: 8784–000.

c. Date Filed: December 7, 1984.

d. Applicant: Oglethorpe Power Corporation.

e. Name of Project: Cole City Pumped Storage.

f. Location: On Cole City Creek in Dade County, Georgia.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Danny Dees, Section Manager, Resource Planning, Oglethorpe Power Corporation, 2100 East Exchange Place, P.O. Box 1349, Tucker, Georgia 30085–1349.

i. Comment Date: April 19, 1985.

j. Description of Project: The proposed pumped storage project would consist of: (1) A proposed 366-acre upper reservoir formed by a proposed earth and rockfill dam 15,450 feet long and 148 feet high at elevation 1528 NGVD and a storage capacity of 3,860 acre-feet flowing into; (2) a proposed 740-foot-deep concrete-lined vertical shaft which joins a proposed 1,000-foot-long and 28-foot-diameter horizontal power tunnel connected to; (3) three proposed tunnel penstocks 300 feet long and 16.1 feet in diameter joining; (4) a proposed underground powerhouse containing three reversible pump/turbines connected to three motor/generators for a total rated capacity of 675 MW; (5) three 25.5-foot-diameter, 650-foot-long horseshoe-shaped, concrete-lined draft tube tunnels terminating in; (6) a reinforced concrete outlet structure which discharges into; (7) a proposed 450-acre lower reservoir formed by a proposed earthfill dam 178 feet high and 2,300 feet long including spillway at elevation 828 NGVD with a storage capacity of 8,430 acre-feet; (8) a proposed primary transmission line consisting of three 230-kV circuit lines each 20 miles long; and (9) appurtenant facilities. The estimated average annual energy produced by the project would be 590 GWh operating under a gross hydraulic head of 768 feet. Project power would be sold to the Applicant's customers.

k. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, and D2.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $2.5 million.

10 a. Type of Application: Preliminary Permit.

b. Project No.: 8785–000.

c. Date Filed: December 7, 1984.

c. Applicant: Oglethorpe Power Corporation.

e. Name of Project: Grassy Mountain Pumped Storage.

f. Location: On Mill Creek in Murray County, Georgia on lands managed by the Chattahoochee National Forest.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Danny Dees, Section Manager, Resource Planning, Oglethorpe Power Corporation, 2100 East Exchange Place, P.O. Box 1349, Tucker, Georgia 30085–1349.

i. Comment Date: April 22, 1985.

j. Description of Project: The proposed pumped storage project would consist of: (1) A proposed 152-acre upper reservior with a proposed earth and rockfill dam 4,400 feet long and 175 feet high at elevation 3,220 NGVD and a storage capacity of 165 acre-feet flowing into; (2) a proposed 2,090-foot-deep vertical shaft which joins a proposed 8,510-foot-long and 21.0-foot-diameter horizontal power tunnel connected to; (3) three 300-foot-long tunnel penstocks each 12.1 feet in diameter joining; (4) a proposed underground powerhouse containing three reversible pump/turbines connected to three motor/generators for a total rated capacity of 675 MW; (5) three proposed concrete-lined draft tube tunnels each 355 feet long and 12.1 feet in diameter which manifold into: (6) a proposed 3,970-foot-long tailrace tunnel with a 21.09 foot diameter which discharges into; (7) a proposed 2,220-acre lower reservoir formed by a proposed earthfill dam 1,220 feet long, and 231 feet high including spillway at elevation 1,172 NGVD with a storage capacity of 8,715 acre-feet; (8) a proposed primary transmission line consisting of two 230-kV circuit lines each 17 miles long; and (9) appurtenant facilities. The estimated average annual energy produced by the project would be 590 GWh operating under a gross hydraulic head of 2,100 feet. Project power would be sold to the Applicant's customers.

k. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, and D2.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued,

does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $3.6 million.

a. Type of Application: Preliminary Permit.

b. Project No: 8689–000.

c. Date Filed: October 29, 1984.

d. Applicant: The Burlington Energy Development Associates.

e. Name of Project: Fort Devens Dam.

f. Location Nashua River in Middlesex and Worcester Counties, Massachusetts.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. John R. Anderson and Mr. Joseph D. Brostmeyer, Burlington Energy Development Associates, 64 Blanchard Road, Burlington, Massachusetts 01803.

i. Comment Date: April 22, 1985.

j. Description of Project: The proposed project would consist of: (1) An existing 11-foot-high, 168-foot-long piled rock and concrete gravity dam; (2) a reservoir with a surface area of 0.7 acre, no usable storage capacity, and a normal water surface elevation of 215 feet m.s.l.; (3) an existing intake structure; (4) an existing powerhouse containing two generating units with a capacity of 200 kW each for a total installed capacity of 400 kW; (5) an existing 50-foot-wide, 390-foot-long concrete tailrace; (6) a new transmission line 100 feet long; and (7) appurtenant facilities. The Applicant estimates the average annual generation would be 2,000,000 kWh. The existing dam is owned by Anna Horgan, Ayer, Massachusetts.

k. Purpose of Project: Project power would be sold to the Massachusetts Electric Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 18 months during which time it would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $18,500.

a. Type of Application: Preliminary Permit.

b. Project No.: 8748–000.

c. Date Filed: November 29, 1984.

d. Applicant: Rocky Mountain Hydro, Inc.

e. Name of Project: Dallas Creek.

f. Location: Uncompahgre River, Ouray County, Colorado.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Michael L. Raisch, Rocky Mountain Hydro, Inc., 4065 South Roslyn Street, Denver, Colorado 80237.

i. Comment Date: April 22, 1985.

j. Description of Project: The proposed project would utilize the Ridgway Dam and Reservoir currently under construction by the U.S. Bureau of Reclamation, and would consist of: (1) An existing 54-inch-diameter bifurcation off the dam outlet works; (2) a proposed powerhouse with a total installed capacity of 4,500 kW; (3) a proposed transmission line about .6 miles long; and (4) appurtenant facilities. The Applicant estimates that the average annual energy production would be 20,000,000 kWh. The project power would be sold to a private or public utility.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 18 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $250,000.

13 a. Type of Application: Minor License.

b. Project No.: 7371–001.

c. Date Filed: August 30, 1984.

d. Applicant: Dayton K. and Frances S. Butler.

e. Name of Project: Little Butte Creek.

f. Location: On Little Butte Creek, near Paradise, in Butte County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Dayton K. Butler, P.O. Box 929, Paradise, California 95969, (916) 877–9606.

i. Comment Date: April 22, 1985.

j. Description of Project: The proposed run-of-the-river project would consist of: (1) A 6-foot-high concrete diversion dam across Little Butte Creek at river mile 3.10; (2) a 42-inch-diameter, 3,200-foot-long pipeline; (3) a 42-inch-diameter, 250-foot-long penstock; (4) a powerhouse located at elevation 895 feet msl containing a single Osberger turbine-generator unit with a rated capacity of 500 KW and an estimated average annual generation of 2.05 GWh; (5) a tailrace discharging water back to Little Butte Creek; and (6) approximately 1,800 feet of transmission line connecting the project to an existing Pacific Gas and Electric Company (PG&E) line. Project power would be sold to PG&E. The project would be located entirely on Applicant lands. No recreational facilities are being proposed.

k. This notice also consists of the following standard paragraphs: A9, B, C and D1

l. License or Conduit Exemption—Any qualified license, conduit exemption, or small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license, conduit exemption, or small hydroelectric exemption application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing application no later than 60 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

This provision is subject to the following exception: if an application described in this notice was filed by the preliminary permittee during the term of the permit, a small hydroelectric exemption application may be filed by the permittee only (license and conduit exemption applications are not affected by this restriction).

m. This application has been accepted for filing as of June 15, 1983, the submittal date of the Applicant's originally accepted exemption application pursuant to the Eagle Power Company, et al., 28 FERC ¶ 61,061 issued July 18, 1984.

14 a. Type of Application: 5MW or less Exemption.

b. Project No.: 5447–003.

c. Date Filed: June 7, 1982.

d. Applicant: D. William Saulsberry.

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e. Name of Project: Little Boulder Creek Hydropower Project.

f. Location: On Little Boulder Creek, near Trinity Center, partly within the Shasta-Trinity National Forest, in Trinity County, California.

g. Filed Pursuant to: Section 408 of the Federal Energy Security Act, 16 U.S.C. 2705 and 2708 *as amended.*

h. Contact Person: Mr. D. William Saulsberry, P.O. Box 68, Trinity Center, California 96091.

i. Comment Date: April 5, 1985.

j. Description of Project: The proposed run-of-river project would consist of: (1) A 4-foot-wide, 20-foot-long inlet structure at elevation 3,540 feet; (2) an 18-inch-diameter, 3,200-foot-long diversion conduit; (3) an 18-inch-diameter, 3,200-foot-long steel penstock; (4) a powerhouse containing one generating unit with a rated capacity of 750 kW operating under a head of 660 feet; and (5) a 7,700-foot-long, 12-kV transmission line from the powerhouse to connect to an existing Pacific Gas and Electric Company (PG&E) transmission line. The Applicant estimates an average annual energy generation at 1.97 million kWh to be sold to PG&E.

k. This notice also consists of the following standard paragraphs: A9, B, C and D3(a).

l. Exemption for Small Hydroelectric Power Project under 5MW Capacity—Any qualified license or conduit exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license or conduit exemption application that proposes to develop at last 7.5 megawatts in that project or a notice of intent to file such an application. Any qualified small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license, conduit exemption, or small hydroelectric exemption application no later than 60 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

m. This application has been accepted for filing as of June 7, 1982, the submittal date of the Applicant's originally accepted exemption application pursuant to the Eagle Power Company, et al, 28 FERC ¶ 61,061, issued July 18, 1984.

15 a. Type of Application: Preliminary Permit.

b. Project No.: 8462–000.

c. Date Filed: July 24, 1984.

d. Applicant: Armand J. Brassard and John S. Woodward.

e. Name of Project: Paris Sawmill Hydro Service.

f. Location: Phillips Brook in Coos County, New Hampshire.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Armand J. Brassard, Paris Road, R.F.D. 2, Box 79, Berlin, New Hampshire 03570.

i. Comment Date: April 26, 1985.

j. Description of Project: The proposed project would consist of: (1) An existing 3-foot-high, 32-foot-long rock filled crib dam owned by International Paper Realty Corporation; (2) an existing reservoir with a surface area of 6,400 square feet and a gross storage capacity of 9,600 cubic-feet at elevation 1,223 feet m.s.l.; (3) a proposed 36-inch-diameter, 500-foot-long penstock; (4) a proposed powerhouse containing a generating unit with a rated capacity of 150-KW; (5) a proposed 500-foot-long transmission line tying into the existing Public Service Company of New Hampshire system. The Applicant estimates a 750,000 KWh average annual energy production.

k. Proposed Scope and Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a periof of 24 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $2,500.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

16 a. Type of Application: Preliminary Permit.

b. Project No: 8778–000.

c. Date Filed: December 6, 1984.

d. Applicant: The Catalyst Energy Development Corporation.

e. Name of Project: Union Pond.

f. Location: Hockanum River in Hartford County, Connecticut.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. John D. Kuhns, Catalyst Energy Development Corporation, 110 Wall Street, New York, New York 10005.

i. Comment Date: April 26, 1985.

j. Description of Project: The proposed project would consist of: (1) An existing 33-foot-high, 590-foot-long earth and concrete gravity dam; (2) a reservoir with a surface area of 51.5 acres, a storage capacity of 515 acre-feet, and a normal water surface elevation of 142.3 feet m.s.l.; (3) a new intake structure; (4) three new 36-inch-diameter, 30-foot-long penstocks; (5) a new powerhouse containing three generating units with a capacity of 48 KW each for a total installed capacity of 144 KW; (6) a new transmission line, 200 feet long; and (7) appurtenant facilities. The applicant estimates the average annual generation would be 704,800 kWh. The existing dam is owned by the Town of Manchester, Connecticut.

k. Purpose of Project: Project power would be sold to Northeast Utilities, an investor owned electric utility company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 30 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $30,000.

17 a. Type of Application: Exemption (5MW or less).

b. Project No: 8791–000.

c. Date Filed: December 12, 1984.

d. Applicant: JK Inc.

e. Name of Project: Starks Project.

f. Location: On the Lemon Stream in Somerset County, Maine.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980, 16 U.S.C. 2705 and 2708 as amended.

h. Contact Person: Mr. Jenness N. Buck, President, JK Inc., P.O. Box 98, Hanover, Maine 04237.

i. Comment Date: April 8, 1985.

j. Description of Project: The proposed project would consist of: (1) An existing 10-foot-high, 85-foot-long concrete and stone gravity dam; (2) a reservoir with a surface area of 0.3 acre, no usable storage capacity, and a normal water surface elevation of 260 feet m.s.l.; (3) re-install 2-foot-high flashboards; (4) a new intake structure; (5) a new 4-foot-diameter, 20-foot-long penstock; (6) a new powerhouse containing one

generating units with a capacity of 30 kW and one generating unit with a capacity of 20 kW for a total installed capacity of 50 kW; (7) a new tailrace; (8) a new transmission line, 30 feet long; and (9) appurtenant facilities. The applicant estimates the average annual generation would be 100,000 kWh. The existing dam is owned by JK Inc., Hanover, Maine.

k. Purpose of Project: The Applicant intends to sell the total output generated to Central Maine Power Company.

l. This notice also consists of the following standard paragraphs: A1, A9, B, C, and D3a.

M. Purpose of Exemption: An exemption, if issued, gives the Exemptee priority, of control, development, and operation of the project under the terms of exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

18 a. Type of Application: License (Under 5 MW).

b. Project No: 8794–000.

c. Date Filed: December 12, 1984.

d. Applicant: New Haven Copper Company.

e. Name of Project: Falls Dam.

f. Location: On the Naugatuck River in New Haven County, Connecticut.

g. Field Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Carlton E. Helming, New Haven Copper Company, 240 East Aurora Street, P.O. Box 550, Waterbury, Connecticut 06720.

i. Comment Date: April 29, 1985.

j. Competing Application: Project No. 8178–000, Filed March 5, 1984

k. Description of Project: The proposed run-of-river project would consist of: (1) The Applicant's 25-foot-high and 280-foot-long masonry and concrete Falls Dam, with a crest elevation of 73.7 feet mean sea level: (2) new 2-foot-high flashboards; (3) a reservoir with a surface area of 10 acres at surface elevation of 75.7 feet msl, on top of the flashboards; (4) an existing intake structure; (5) a new powerhouse with 3 turbine-generator units with a total installed capacity of 900 kW; (6) a new short tailrace; (7) a new 13.2-kV and 300-foot-long transmission line; and (8) other appurtenances. Applicant estimates an average annual generation of 4,135,000 kWh.

l. Purpose of Project: Project energy would be sold to the local utility or consumed by the Applicant.

m. This notice also consists of the following standard paragraphs: A4, B, C, and D1.

19 a. Type of Application: Conduit Exemption.

b. Project No.: 8824–000.

c. Date Filed: December 24, 1984.

d. Applicant: Mutual Energy Company, Inc.

e. Name of Project: Little Anderson.

f. Location: ACID Main Canal and Lateral No. 21 Canal, within the City of Anderson, Shasta County, California.

g. Filed Pursuant to: Section 30 of the Federal Power Act, 16 U.S.C. 823(a).

h. Contact Person: Mr. Bart M. O'Keeffe, President, Mutual Energy Company, Inc., 3451 Longview Drive, Suite 130, North Highlands, California 95660.

Comment Date: APril 8, 1985.

j. Description of Project: The proposed project would utilize the existing Anderson-Cottonwood Irrigation District's (ACID) irrigation canals known as Main Canal and Lateral No. 21, an intake structure diverting 50 cfs intended for Lateral No. 21 of the Main Canal's 400 cfs capacity and located at elevation 126.3 feet, and a 36-inch-diameter, 85-foot-long pipeline/penstock. The proposed project would consist of a powerplant containing a single horizontal Kaplan turbine-generator unit with a rated capacity of 100 KW and producing and estimated average annual generation of 0.576 GWh and a tailrace discharging at the head of Lateral No. 21. A 125-foot-long, 3 phase, 480-volt transmission line would interconnect the project to a 12.5-KV Pacific Gas and Electric Company line. Real property interest is evidenced by a lease granted by ACID.

k. This notice also consists of the following standard paragraphs: A3, A9, B, C and D3b.

Competing Applications

A1. Exemption for Small Hydroelectric Power Project under 5MW Capacity—Any qualified license or conduit exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license or conduit exemption application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such an application. Any qualified small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing small hydroelectric exemption application or a notice of inent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license, conduit exemption, or small hydroelectric exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A2. Exemption for Small Hydroelectric Power Project under 5MW Capacity—Any qualified license or conduit exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license or conduit exemption application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such an application. Submision of a timely notice of intent allows an interested person to file the competing license or conduit exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit and small hydroelectric exemption will not be accepted inresponse to this notice.

A3. License or Conduit Exemption—Any qualified license, conduit exemption, or small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license, conduit exemption, or small hydroelectric exemption application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license, conduit exemption, or small hydroelectric exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

This provision is subject to the following exception: if an application described in this notice was filed by the preliminary permittee during the term of the permit, a small hydroelectric exemption application may be filed by the permittee only (license and conduit exemption applications are not affected by this restriction).

A4. License or Conduit Exemption—Public notice of the filing of the initial license, small hydroelectric exemption or conduit exemption application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing application for license, conduit exemption, small hydroelectric exemption, or preliminary permit, or notices of intent to file

competing applications, must be filed in response to and in compliance with the public notice of the initial license, small hydroelectric exemption or conduit exemption application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit: Existing Dam or Natural Water Feature Project—Anyone desiring to file a competing application for preliminary permit for a proposed project at an existing dam or natural water feature project, must submit the competing application to the Commission on or before 30 days after the specified comment date for the particular application (see 18 CFR 4.30 to 4.33 (1982)). A notice of intent to file a competing application for preliminary permit will not be accepted for filing.

A competing preliminary permit application must conform with 18 CFR 4.33(a) and (d).

A6. Preliminary Permit: No Existing Dam—Anyone desiring to file a competing application for preliminary permit for a proposed project where no dam exists or where there are proposed major modifications, must submit to the Commission on or before the specified comment date for the particular application, the competing application itself, or a notice of intent to file such an application. Submission of timely notice of intent allows an interested person to file the competing preliminary permit application no later than 60 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.33(a) and (d).

A7. Preliminary Permit—Except as provided in the following paragraph, any qualified license, conduit exemption, or small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license, conduit exemption, or small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent to file a license, conduit exemption, or small hydroelectric exemption application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

In addition, any qualified license or conduit exemption applicant desiring to file a competing application may file the subject application until: (1) A preliminary permit with which the subject license or conduit exemption application would compete is issued, or (2) the earliest specified comment date for any license, conduit exemption, or small hydroelectric exemption application with which the subject license or conduit exemption application would compete; whichever occurs first.

A competing license application must conform with 18 CFR 4.33 (a) and (d).

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications on notices of intent. Any competing preliminary permit application, or notice of intent to file a competing preliminary permit application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing preliminary permit applications or notice of intent to file a preliminary permit may be filed in response to this notice.

Any qualified small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent to file a small hydorelectric exemption application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

In addition, any qualified license or conduit exemption applicant desiring to file a competing application may file the subject application until: (1) A preliminary permit with which the subject license or conduit exemption application would compete is issued, or (2) the earliest specified comment date for any license, conduit exemption, or small hydroelectric exemption application with which the subject license or conduit exemption application would compete; whichever occurs first.

A competing license application must conform with 18 CFR 4.33 (a) and (d).

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a license, small hydroelectric exemption, or conduit exemption application, and be served on the applicant(s) named in this public notice.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20425. An additional copy must be sent to: Fred E. Springer, Chief, Project Management Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. *Agency Comments*—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88-29, and other applicable statues. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments with the Commission within the time set for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D2. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. *Agency Comments*—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. *Agency Comments*—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 30 of the Federal Power Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be make. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: February 25, 1985.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-4975 Filed 2-28-85; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-2787-3]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared February 11, 1985 through February 15, 1985 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5075/76. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in 49 FR 41108, dated October 19, 1984.

Draft EISs

ERP No. D-AFS-A82112-00, Rating LO, Gypsy Moth Suppression and Eradication Program, US. Summary: EPA believes that the human exposure estimates and scenarios presented in Appendix F are based on reasonable assumptions and result in prudent estimates of the risks associated with gypsy moth suppressioin and eradication activities. We enclosed technical comments and corrections for the risks analyses. Based on the information available and the preferred alternative of Integrated Pest Management, EPA has no objections to the program as proposed, provided that all appropriate mitigation measures are implemented.

ERP No. D-AFS-E65028-SC, Rating EC2, Sumter Nat'l Forest Land and Resource Mgmt. Plan, SC. Summary: Our review has identified environmental impacts on water quality and the natural environment which we feel should be avoided in order to fully protect the environment. EPA identified alternative "H", rather than the preferred alternative, as the one having the least impacts on water quality and the natural environment.

ERP No. D-AFS-E65029-NC, Rating LO, Nantahala and Pisgah Nat'l Forests, Land and Resource Mgmt. Plan, NC. Summary: EPA's review has not identified any potential environmental impacts requiring substantive changes to the preferred alternative.

ERP No. D-AFS-G65040-NM, Rating LO, Carson Nat'l Forest, Land and Resource Mgmt. Plan, NM. Summary: EPA has not identified any significant potential environmental impacts requiring substantive change to the proposal.

ERP No. D-FHW-E40681-00, Rating Alt. A=EC2/ Alt. B & C=EU2, Bobby Jones Expressway Extension and Improvements, Old Savannah Road to US 1, GA and SC. Summary: Due to Alternatives B and C bisecting Phinizy Swamp, their wetland impacts are considered to be significant and, therefore, are environmentally unsatisfactory. EPA suggested that Alternative A would be acceptable, if it were shifted further out of the Swamp, and that the remaining unavoidable impacts be mitigated.

ERP No. D-FHW-K40135-CA, Rating LO, CA-113 Construction, County Road P27 to I-5, CA. Summary: EPA has no objections to the proposed action.

ERP No. D-IBR-K28009-AZ, Rating EC2, Tucson Aqueduct Phase (B) Construction, Operation and Maintenance, Central Arizona Project (CAP), Colorado River, AZ. Summary: EPA raised concerns with: (1) Impacts on groundwater quality from seepage of saline CAP waters; (2) impacts on surface water quality from project features; (3) impacts on wetlands and special aquatic sites from project features, including impacts on species of wildlife dependent on wetland communities; and (4) project impacts on air quality in the region.

ERP No. DS-NOA-K64005-HI, Rating LO, Hawaiian Monk Seal Critical Habitat, Designation, HI. Summary: EPA reviewed the DSEIS and had no significant comments to offer.

ERP No. D-USA-G10000-TX, Rating LO, Camp Bullis, Combat Assault Landing Strip Operations, Fort Sam Houston, TX. Summary: EPA did not identify any potential environmental impacts requiring substantive changes to the proposal. Final EISs.

ERP No. F-AFS-J65121-CO, Rio Grande Nat'l Forest, Land and Resource Mgmt. Plan, CO. Summary: EPA's concerns with potential water quality

degradation due to proposed water enhancement practices were adequately addressed in the FEIS and Forest Plan. No new issues of concern were identified.

ERP No. F-AFS-L67013-AK, Admiralty Island Nat'l Monument Boundary Adjustment, Tongass Nat'l Forest, AK. Summary: EPA completed it's review of the FEIS and is unable to support the preferred alternative (D). We found the FEIS to be unresponsive to our comments on the draft and revised DEISs. EPA supports Alternative G: Legislative Action Including Compensatory Boundary Adjustment, which best deals with the concerns and issues raised by EPA and other in the draft and revised DEISs.

ERP No. F-FHW-F40251-OH, US 33 Relocation, US 33/CR-28 to US 33/US 36/OH-4, Improvement, OH. Summary: EPA's review of the FEIS did not identify any significant environmental impacts associated with the proposed alternative.

ERP No. F-NRC-C06010-NJ, Hope Creek Generating Station, Operating License, NJ. Summary: EPA's concerns regarding radiological aspects of the project were properly addressed in the FEIS. EPA requested that the lead agency provide additional information concerning fisheries impacts as a result of plant operation. This same information was requested in our September 14, 1984 comment letter on the DEIS.

Dated: February 26, 1985.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 85-5070 Filed 2-28-85; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-2787-1]

Environmental Impact Statements; Notice of Availability

Responsible Agency

Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

Availability of Environmental Impact Statements filed February 18, 1985 through February 22, 1985 pursuant to 40 CFR 1506.9.

EIS No. 850067 DSuppl, COE, AL, GA, Alabama-Coosa Rivers Navigation Channel, Operation and Maintenance, Due: April 15, 1985, Contact: Michael Eubanks (205) 694-3181

EIS No. 850068, Final, BLM, CO, Piceance Basin Resource Management Plan, Rio Blanco and Garfield Counties, Due: April 15, 1985, Contact: Curt Smith (303) 878-3601

EIS No. 850069, Draft, AFS, AR, Ozark-St. Francis National Forests, Land and Resource Management Plan, Due: May 30, 1985, Contact: Elena Green (202) 447-4710

EIS No. 850070, Report, COE, OH, Cleveland Harbor, East Breakwater Major Rehabilitation, Cuyahoga River, Cayahoga County, Contact: Philip Berkeley (716) 876-5454

EIS No. 850071, Draft, BLM, NM, White Sands Area, Resource Management Plan, Otero and Sierra Counties, Due: April 15, 1985, Contact: Larry Nunez (505) 525-8228

EIS No. 850072, DSuppl, COE, AL, Mobile Harbor Channel Improvements, Construction and Maintenance, Offshore Dredged Material Disposal Site, Designation, Mobile Bay, Mobile County, Due: April 15, 1985, Contact: Paul Bradlley (205) 694-3860

EIS No. 850073, FSuppl, COE, LA, Larose to Golden Meadow, Hurricane Protection Project, Lafourche Parish, Due: April 8, 1985, Contact: E. Scott Clark (504) 838-2518

EIS No. 850074, Final, FHW, MN, TH-55/Hiwatha Avenue Reconstructtion, 59th Street South to Franklin Avenue and County State Aid Highway 62/ Crosstown Highway Extension, TH-55 to 46th Avenue, Hennepin County, Due: April 8, 1985, Contact: Stephen Bahler (612) 725-5956

EIS No. 850075, DSuppl, FERC, AK, Bradley Lake Hydroelectric Project, Construction and Operation, Permit, Anchorage, Due: April 15, 1985, Contact: Peter Foote (202) 376-9053

EIS No. 850076, Final, FHW, NC, US 264, Northwest Bypass Improvement, US 264 (Relocated) to Greenville Boulevard/NC-1590 at US 13/NC-11/ Memorial Drive, Greenville, Pitt County, Due: April 8, 1985, Contact: Kenneth Bellamy (909) 755-4346

EIS No. 850077, Draft, UAF, CA, 146th Tactical Airlift Wing, California Air National Guard, Relocation, Point Mugu Naval Air Station, Norton Air Force Base or Air Force Plant No. 42, Los Angeles, San Bernardino and Ventura Counties, Due: April 15, 1985, Contact: Master Sargent Black (818) 781-5980

EIS No. 850078, Draft, FHW, MI, US 31 Improvement, US 31 and US 10 Intersection to US 31 north of Scottville, Mason County, Due: April 15, 1985, Contact: Kenneth Barkema (517) 337-1651

Amended Notice

EIS No. 850056, FSuppl, COE, MS, Mississippi River Bank Restoration, Baton Rouge to the Gulf of Mexico, Plaquemines Parish, Due March 25, 1985, Contact: David Carney (504) 838-2528—Inadvertently omitted from February 22, 1985 Federal Register.

Dated: February 26, 1985.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 85-5071 Filed 2-28-85; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-2787-2]

Intent To Prepare a Draft Supplemental Impact Statement for the Jacksonville Harbor, Ocean Dredged Material Disposal Site, Designation, Duval County, Florida.

AGENCY: U.S. Environmental Protection Agency, Region IV:

Contact Information: Mr. Reginald Rodgers, Ocean Dumping Coordinator, U.S. Environmental Protection Agency, Region IV, 345 Courtland Street NE, Atlanta, Georgia 30365, Phone No: (404) 881-3776

or

Mr. Dan Malanchuk, U.S. Army Engineer District, P.O. Box 4970, Jacksonville, Florida 32232-0019, Phone No: (904) 791-1689, FTS: 946-1691.

SUMMARY: The oceanic areas over the continental shelf off Fernandina Harbor, Florida, and Canaveral Harbor, Florida, are in the same Oceanic Province as the Jacksonville Harbor area, for which the ODMDS designation Final Environmental Impact Statement was filed on February 14, 1983. To avoid repetition of background environmental information, NEPA documentation for the designation of the Fernandina and Canaveral ODMDS will be in the form of a supplement to the Jacksonville Harbor ODMDS Final Environmental Impact Statement.

Final designation of the Fernandina and Canaveral ODMDS is required to insure the availability of the most feasible and environmentally acceptable disposal site for anticipated future work.

The environmental investigations required for final designation will be conducted in accordance with the National Environmental Policy Act of 1969, as amended, (42 U.S.C. 4321 *et seq.*); the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, (86 Stat. 1052, USCA Part 1401 *et seq.*); the Environmental Protection Agency's implementation of the Ocean Dumping Regulations and Criteria (40 CFR Parts 220-229); and other applicable Federal environmental legislation.

The following alternatives are being considered:

1. Continuing to use the interim designated sites.

2. Locating and using alternative ocean disposal sites.

3. No action.

A scoping meeting is not contemplated. Scoping will be accomplished by correspondence with affected Federal, State, and local agencies; and with interested parties.

A draft supplement will be made available to the public in November 1985.

Please address questions and comments concerning the supplement to the above address.

Dated: February 28, 1985.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 85-5069 Filed 2-28-85; 8:45 am]

BILLING CODE 6560-50-M

[Region 6; A-6-FRL-2787-8]

Approval of PSD Permits

Notice is hereby given that the Environmental Protection Agency (EPA), Region 6, has issued Prevention of Significant Deterioration (PSD) permits to the following:

1. PSD-TX-602M-1-Solano Gas Processing, Inc.: Gas processing plant located off FM Road 2522, approximately six miles southeast of Asherton, Dimmit County, Texas. PSD-TX-602M-1 modifies TX-602 to revise Special Provision No. 5 to require a supplemental fuel addition to maintain an opacity of less than 20%. The modified permit was issued on October 2, 1984.

2. PSD-LA-528—Vulcan Chemicals: Chemical plant located in Geismar, Ascension Parish, Louisiana. This permit authorizes the construction of a new cogeneration facility at the existing chemical plant. The permit was issued on October 31, 1984.

3. PSD-TX-613—Basic Resources, Inc.: This permit authorizes the construction of an in situ lignite gasification plant to be located approximately three miles west of Tanglewood, Lee County, Texas. The permit was issued on November 1, 1984.

4. PSD-TX-608M-1—Cities Service Oil and Gas Corporation: Branton Field natural gas facility located on FM Road 1469, approximately five miles southwest of Jewett, Leon County, Texas. TX-608M-1 modifies TX-608 to delete Special Provision 5, because Cities Service is exempt from Subpart LLL of the proposed New Source Performance Standards for Onshore Natural Gas Production. The modified permit was issued on November 7, 1984.

5. PSD-LA-521—Agrifuels Refining Corporation: Fuel-grade anhydrous denatured ethanol production facility located on Highway 344, approximately 3.7 miles east of New Iberia, Iberia Parish, Louisiana. The permit authorizes the modification of the ethanol production procedure and the addition of a CMS boiler. The permit was issued on November 9, 1984.

6. PSD-TX-55M-3—Smackover Shell: Natural gas processing and sulfur recovery plant located approximately four miles southwest of Eustace, Henderson County, Texas. TX-55M-3 modifies TX-55M-2 by deleting the quartely reporting requirement of the average hourly sulfur dioxide emission rate for the plant incinerator. The modified permit was issued on November 19, 1984.

7. PSD-TX-447M-1—Anheuser-Busch Companies, Inc: Brewery located at 775 Gellhorn Drive, Houston, Harris County, Texas. TX-447M-1 modifies TX-447 by deleting the emission test requirement for particulates and SO_2 when firing natural gas in the boilers. The modified permit was issued on November 19, 1984.

8. PSD-TX-638—Southwestern Portland Cement Company: Porland Cement Production facility located adjacent to Interstate Highway 20, approximately 12 miles southwest of Odessa, Ector County, Texas. The permit authorizes the modification of the existing finish mill feed and discharge conveying systems, and the addition of a new finish grinding mill. The permit was issued on November 19, 1984.

9. PSD-TX-119M-2—Amoco Oil Company: Petroleum refinery located at 2401 Fifth Avenue South, Texas City, Galveston County, Texas. TX-119M-2 modifies TX-119M-1 by revising Specific Condition No. 3 to eliminate calculation requirements and to specify H_2S concentration and fuel gas flow rate limits. In addition, Specific Condition No. 1 was revised to reflect each individual emission point covered by TX-119M-2 rather than an overall emission limit for each entire unit. The modified permit was issued on November 19, 1984.

10. PSD-TX-226M-4—Formosa Plastics Corporation, Texas: This is an ethylene dichloride (EDC), vinyl chloride monomer (VCM), and polyvinyl chloride (PVC) production plant located on State Highway 35, near Point Comfort, Calhoun County, Texas. TX-226M-4 modifies TX-226M-3 by adding a third ethylene dichloride cracker, Source No. 1(v), to provide for more consistent production of vinyl chloride monomer. The modified permit was issued on November 20, 1984.

11. PSD-LA-530—Applied Energy Services, Inc: This permit authorizes the construction of a new cogneration facility to be located on 40th Street in Geismar, Ascension Parish, Louisiana. The permit was issued on November 28, 1984.

12. PSD-TX-482M-1—Liquid Energy Corporation: Natural gas processing plant located approximately 5.5 miles southwest of Stinnett, Hutchinson County, Texas. TX-482M-1 modifies TX-482 by substituting a MEP-8 turbocharged 2000 HP compressor engine for one of the permitted Ingersoll Rand 1600 HP 48 KVSR clean burn engines. The modified permit was issued on November 29, 1984.

13. PSD-TX-637—Marathon Oil Company: Natural gas processing plant located approximately 2 miles southwest of Iraan, Pecos County, Texas. The permit authorizes the addition of two 2000 HP gas-fired engines at the existing plant. The permit was issued on November 30, 1984.

14. PSD-TX-416M-1—J. M. Huber Corporation: Carbon black plant located on Highway 135, approximately 1.5 miles west of Borger, Hutchinson County, Texas. TX-416M-1 modifies TX-416 by modifying Special Provision No.2 to authorize the use of a carbon black oil feed with a sulfur content in excess of 3 percent by weight with the provision that the allowable emission rates will not be exceeded. The modified permit was issued on November 30, 1984.

15. PSD-TX-639—Diamond Shamrock Chemicals Company: Chemical manufacturing plant located on Tidal Road, approximately 2.3 miles northeast of Deer Park, Harris County, Texas. The permit authorizes the construction of an electricity/steam cogeneration facility at the existing plant. The permit was issued on December 3, 1984.

16. PSD-TX-371M-1—Houston Lighting and Power: Steam electric generating station located on FM Road 39, approximately 5 miles southeast of Farrar, Limestone County, Texas. TX-371 modifies TX-371 by: (1) modifying Specific Condition 9 (a) to authorize a change in the design of a number of permanent secondary roads to a crushed stone design, and (2) deleting Specific condition No. 10 which required the intallation of a sulfur recovery unit. The modified permit was issued on December 18, 1984.

These permits have been issued under EPA's Prevention of Significant Air Quality Deterioration regulations at 40 CFR 52.21, as amended August 7, 1980. The time period established by the Consolidated Permit Regulations at 40 CFR 124.19 for petitioning the

Administrator to review any condition of the permit decisions has expired. Such a petition to the Administrator is, under 5 U.S.C. 704, a prerequisite to the seeking of judicial review of the final agency action. No petitions for review of these permits have been filed with the Administrator.

Under section 307 (b)(1) of the clean Air Act, judicial review of the approval of these permits is availabe, if at all, only by the filing of a petition for review in the United States Fifth Circuit Court of Appeals within 60 days of March 1, 1985. under section 307 (b)(2) of the Clean Air act, the requirements which are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Documents pertaining to these permits are available for public inspection upon request during regular business hours at the following locations:

Environmental Protection Agency, Region 6, Air and Waste Management Division, 1201 Elm Street, InterFirst Two Building Dallas, Texas 75270
Texas Air Control Board, 6330 Highway 290 East, Austin, Texas 78723.

This notice will have no effect on the National Ambient air Quality Standards

The Office of Mangement and budget has exempted this information notice from the requirement of section 3 of Executive Order 12291

Dated: February 19,1985.

Frances E. Phillips

Acting Regional Administrator, Region 6.

[FR Doc. 85-4993 Filed 2-28-85; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59705; FRL-2786-2]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984 (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. PMNs for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of six such PMNs and provides a summary of each.

DATES: Close of Review Period:

Y 85-18—March 11, 1985.

Y 85-19, 85-20, 85-21, 85-22 and 85-23—March 12, 1985.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street SW., Washington, DC 20460, (202-382-3725).

SUPPLEMENTARY INFORMATION: A nonsubstantive change in the prefixes is being initiated for information published unders sections 5(d)(2) and 5(h)(6) of TSCA. The notices will contain essentialy the same information but the prefixes to the specific number assignment will appear in an abbreviated form. Prefixes under the modified format will use the letters "Y" (POLYMER EXEMPTION), "P" (PMN) and "T" (TMEA). The following notice contains information extracted from the non-confidential version of the submission by the manufacturer on the exemption received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 85-18

Importer. Borden, Inc.
Chemical. (S) Polymer of acrylamide and maleic anhydride.
Use/Import. (G) Additive to paper products. Import range: Confidential.
Toxicity Data. No date submitted.
Exposure. Manfacture: dermal, a total of 2 workers.
Environmental Release/Disposal. Release to water and land. Disposal by publicly owned treatment works (POTW).

Y 85-19

Manufacturer. Confidential.
Chemical. (G) Polymer polyol.
Use/Production. (S) Industrial low shrink additive for thermoset unsaturated polyester molding system. Prod. range: 70,000-1,400,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Y 85-20

Manufacturer. Confidential
Chemical. (G) Vinyl modified alkyd resin,
Use/Production. (S) Industrial coating resin component. Prod. range: 19,000-153,000 kg/yr.
Toxicity Data. No date submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Y 85-21

Manufacturer. Confidential
Chemical. (G) Alkyd resin.
Use/Production. (G) Industrial coating component.. Prod. range: Confidential.
Toxicity Data. No date submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Y 85-22

Manufacturer. Confidential.
Chemical. (G) Polyester diol.
Use/Production. (S) Site-limited base resin used to manufacture copolyester/polyether urethane acrylate blocked for radiation cured master molds. Prod. range: 7,300-22,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Y 85-23

Manufacturer. Confidential
Chemical. (G) Modified styrene copolymer.
Use/Production. (G) Industrial coating. Prod. range: 30,000-102,500 kg/yr.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Dated: February 25, 1985.

Linda A. Travers,

Acting Director, Information Management Division.

[FR Doc. 85-4995 Filed 2-28-85; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51560; FRL-2786-8]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final

rule published in the Federal Register of May 13, 1983 (48 FR 21722). This notice announces receipt of thirty-four PMNs and provides a summary of each.

DATES: Close of Review Period:

P 85–441—April 24, 1985.

P 85–522, 85–523 and 85–524—May 15, 1985.

P 85–525—May 19, 1985.

P 85–526, 85–527, 85–528, 85–529, 85–530, 85–531, 85–532, 85–533, 85–534, 85–535, 85–537, 85–538, 85–539, 85–540, 85–541, 85–542, 85–543, 85–546, 85–547, 85–548, 85–549 and 85–550—May 20, 1985.

P 85–551, 85–552, 85–553, 85–554, 85–555, 85–556, and 85–557—May 21, 1985.

Written comments by:

P 85–441—March 25, 1985.

P 85–522, 85–523 and 85–524—April 15, 1985.

P 85–525—April 19, 1985.

P 85–526, 85–527, 85–528, 85–529, 85–530, 85–531, 85–532, 85–533, 85–534, 85–535, 85–537, 85–538, 85–539, 85–540, 85–541, 85–542, 85–543, 85–546, 85–547, 85–548, 85–549 and 85–550—April 20, 1985.

P 85–551, 85–552, 85–553, 85–554, 85–555, 85–556, and 85–557—April 21, 1985.

ADDRESS: Written comments, identified by the document control number "[OPTS–51560]" and the specific PMN number should be sent to: Document Control Officer (TS–793), Chemical Information Branch, Information Management Division, Office of toxic Substances, Environmental Protection Agency, Rm. E–201, 401 M Street SW., Washington, D.C. 20460, (202–382–3532).

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M Street SW., Washington, D.C. 20460, (202–382–3725).

SUPPLEMENTARY INFORMATION: A non-substantive change in the prefixes is being initiated for information published under sections 5(d)(2) and 5(h)(6) of the Toxic Substances Control act (TSCA). The notices will contain essentially the same information but the prefixes to the specific number assignment will appear in an abbreviated form. Prefixes under the modified format will use the letters "P" (PMN), "T" (TMEA) and "Y" (POLYMER EXEMPTION). The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room E–107 at the above address.

P 85–441

Importer. American Hoechst Corporation.

Chemical. (G) Polymer from N-methyl-N-vinylacetamide, acrylic acid and N-substituted acrylamide.

Use/Import. (G) Open-non-dispersive. Import range: 5,000–15,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Use Dermal, low concentration.

Environmental Release/Disposal. No release.

P 85–522

Importer. Confidential.

Chemical. (G) Polymer of functional acrylates and methacrylates.

Use/Import. (G) Resin for a paint product. Import range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 85–522

Manufacturer. Confidential.

Chemical. (g) Functionally modified urethane.

Use/Production. (G) Coatings resin having a non-dispersive use. Prod. range: 10,000–63,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: Dermal, a total of 18 workers, up to 8 hrs/da, up to 9 da/yr.

Environmental Release/Disposal. 13–117 kg/batch released to land. Disposal by landfill.

P 85–524

Manufacturer. Confidential.

Chemical. (S) Polymer of hydroxy ethyl acrylate, Desmodur W, Duracarb 122 and Jeffamine D230.

Use/Production. (G) The substance will be used in a closed system. Prod. range: 3,000–200,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: Dermal, a total of 6 workers, up to 2 hrs/da.

Environmental Release/Disposal. Minimal release to air. Disposal by licensed landfill.

P 85–525

Manufacturer. Confidential.

Chemical. (G) Modified acrylic terpolymer.

Use/Production. (G) Thickener for aqueous mixtures. Non-dispersive use. Import range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: A total of 4 workers.

Environmental Release/Disposal. Confidential. Disposal by publicly owned treatment works (POTW).

P 85–526

Manufacturer. Confidential.

Chemical. (G) Modified acrylate terpolymer.

Use/Production. (G) Thickening compound for aqueous systems. Dispersive use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: A total of 4 workers.

Environmental Release/Disposal. Confidential. Disposal by publicly owned treatment works (POTW).

P 85–527

Manufacturer. Confidential.

Chemical. (G) Vinyl-epoxy ester.

Use/Production. (S) Commercial injection molding coating and gel coat. Prod. range: 100,000–500,000 lbs/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: Dermal, a total of 5 workers, up to 4 hrs/da, up to 251 da/yr.

Environmental Release/Disposal. Less than 5 kg/batch released to land. Disposal by sawdust landfill.

P 85–528

Manufacturer. Confidential.

Chemical. (G) Anthranilate schiff base.

Use/Production. (G) Highly dispersive end-use. Prod. range: Confidential.

Toxicity Data. Acute oral: >5 g/kg; Irritation: Eye—Nonirritant.

Exposure. Confidential.

Environmental Release/Disposal. Confidential. Disposal by POTW.

P 85–529

Manufacturer. Confidential.

Chemical. (G) Trisubstituted naphthalenecarboxamide.

Use/Production. (G) Chemical intermediate. Prod. range: 1,400–1,800 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and use: Dermal and inhalation, a total of 4 workers, up to 1.5 hrs/da, up to 6 da/yr.

Environmental Release/Disposal. Less than 2 to less than 3 kg/batch incinerated.

P 85–530

Manufacturer. Confidential.

Chemical. (G) Trisubstituted naphthalenecarboxamide.

Use/Production. (G) Chemical intermediate. Prod. range: 1,200-1,500 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and use: Dermal, a total of 2 workers, up to 0.1 hr/da, up to 6 da/yr.

Environmental Release/Disposal. No release.

P 85–531

Manufacturer. Products Research and Chemical Corporation.

Chemical. (S) Prepolymer of ethanol-1,1'-thiobis-, ethanol-2-mercapto, reaction product with propylene oxide, benzene, isocyanato-.

Use/Production. (S) Industrial plasticizer in rubber and sealant compositions. Prod. range: 10,000–200,000 kg/yr.

Toxicity Data. Acute oral: >5 g/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant.

Exposure. Manufacture and processing: dermal, a total of 44 workers, up to 3.0 hrs/da, up to 36 da/yr.

Environmental Release/Disposal. 0.3 to 5 kg/batch released to land. Disposal by landfill.

P 85–532

Manufacturer. The Dow Chemical Company.

Chemical. (G) Modified epoxy resin.

Use/Production. (G) Coatings. Prod. range: Confidential.

Toxicity Data. Acute oral (Female): >5,000 mg/kg; Irritation: Skin—No irritation, Eye—Slight.

Exposure. Manufacture: Dermal, a total of 3 workers.

Environmental Release/Disposal. Release to air. Disposal by incineration.

P 85–533

Manufacturer. The Dow Chemical Company.

Chemical. (G) Aminated epoxy resin.

Use/Production. (S) Industrial manufacture of plastic articles. Prod. range: Confidential.

Toxicity Data. Acute oral (Female): >2,000 mg/kg; Acute dermal: 2,000 mg/kg: Irritation : Skin—No irritation, Eye—No irritation.

Exposure. Manufacture: Dermal.

Environmental Release/Disposal. Release to air and land. Disposal by incineration, landfill and navigable waterway after treatment.

P 85–534

Manufacturer. Diamond Shamrock Chemicals Company.

Chemical. (G) Alkyl sulfonate.

Use/Production. (G) Oil field chemical. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture: Dermal, a total of 5 workers.

Environmental Release/Disposal. Confidential.

P 85–535

Manufacturer. The Dow Chemical Company.

Chemical. (G) Substituted pyridine.

Use/Production. (S) Site-limited chemical intermediate. Prod. range: Confidential.

Toxicity Data. Acute oral: Between 320 and 630 mg/kg.

Exposure. Confidential.

Environmental Release/Disposal. Release to air. Disposal by incineration.

P 85–537

Manufacturer. E. I. du Pont de Nemours and Company, Inc.

Chemical. (S) 1-(1-Phenylethylidene)-2,2-diphenylhydrazine.

Use/Production. (S) Site-limited and industrial intermediate manufacture of 1,2-diphenyl-1H-indole. Prod. range: 20–40 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: Dermal, a total of 3 workers, up to 2 hrs/da, up to 12 da/yr.

Environmental Release/Disposal. 0.1 kg/batch incinerated.

P 85–538

Manufacturer. E.I. du Pont de Nemours and Company, Inc.

Chemical. (S) 2,3,3-trimethyl-5-nitro-3H-indole.

Use/Production. (S) Industrial intermediate for synthesis of photographic sensitizing dye. Prod. range: 6–12 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacturing and processing: Dermal, a total of 4 workers, up to 0.5 hrs/da, up to 6 da/yr.

Environmental Release/Disposal. 0.1 kg/batch incinerated.

P 85–539

Manufacturer. E.I. du Pont de Nemours and Company, Inc.

Chemical. (G) Indolo-isoxazolidinone merocyanine.

Use/Production. (G) Photographic emulsion additive. Prod. range: 10–20 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: Dermal, a total of 67 workers, up to 8 hrs/da, up to 20 da/yr.

Environmental Release/Disposal. 0.002 to 0.003 kg/batch released to water. 0.15 kg/batch incinerated.

P 85–540

Manufacturer. E.I. du Pont de Nemours and Company, Inc.

Chemical. (S) 1,2,3,3-Tetramethyl-5-Nitro-3H-indolium 4-methylbenzene-sulfonate.

Use/Production. (S) Site-limited and industrial intermediate for synthesis of photographic sensitizing dyes. Prod. range: 9–18 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacturing and processing: Dermal, a total of 16 workers, up to 1 hr/da, up to 6 da/yr.

Environmental Release/Disposal. 0.05 kg/batch incinerated.

P 85–541

Manufacturer. E.I. du Pont de Nemours and Company, Inc.

Chemical. (G) Indolo-pyrrolopyridine carbocyanine.

Use/Production. (G) Photographic emulsion additive. Prod. range: 12–24 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: Dermal, a total of 16 workers, up to 1 hr/da, up to 6 da/yr.

Environmental Release/Disposal. 0.05 kg/batch incinerated.

P 85–541

Manufacturer. E. I. du Pont de Nemours and Company, Inc.

Chemical. (G) Indolo-pyrrolopyridine carbocyanine.

Use/Production. (G) Photographic emulsion additive. Prod. range: 12–24 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: Dermal, a total of 67 workers, up to 8 hrs/da, up to 20 da/yr.

Environmental Release/Disposal. 0.002 to 0.003 kg/batch released to water. Disposal by POTW with 0.15 kg/batch incinerated.

P 85–542

Importer. Rohm Tech, Inc.

Chemical. (G) Polymethacrylate cationic polymer.

Use/Import. (S) Industrial and commercial flocculation of suspended solids and dewatering of waste water sludges. Import range: Confidential.

Toxicity Data. No data submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

P 85–543

Importer. Rohm Tech, Inc.

Chemical. (S) 2-Butenedioic acid (Z)-, mono [2-[(1-oxo-2-propenyl)oxy]ethyl]-ester.

Use/Import. (S) Industrial adhesives. Import range: Confidential.

Toxicity Data. Acute oral: 366 mg/kg; Irritation: Skin—Slight, Eye—Irritant.

Exposure. No exposure.

Environmental Release/Disposal. No release.

P 85–546

Importer. Rohm Tech, Inc.
Chemical. (S) 2-Propenoic acid, 2-methyl-, 3,3,5-trimethyl-cyclo hexylester.
Use/Import. (S) Industrial general chemical. Import range: Confidential.
Toxicity Data. Acute oral: >5,000 mg/kg; Irritation: Skin—Mild, Eye—Non-irritant.
Exposure. No exposure.
Environmental Release/Disposal. No release.

P 85–547

Importer. Rohm Tech, Inc.
Chemical. (S) 2-Propenoic acid, 3,3,5-trimethylcyclohexylester.
Use/Import. (S) Industrial general chemical. Import range: Confidential.
Toxicity Data. Acute oral: >5,000 mg/kg; Irritation: Skin—Moderate, Eye—Non-irritant.
Exposure. No exposure.
Environmental Release/Disposal. No release.

P 85–548

Importer. Rohm Tech, Inc.
Chemical. (G) Oligoaminoester.
Use/Import. (S) Industrial adhesion promoter for PVC plastisols to be used as lacquers/coatings. Import range: Confidential.
Toxicity Data. Acute oral: 2,859 mg/kg; Irritation: Skin-Non-irritant, Eye-Slight.
Exposure. No data submitted.
Enviornmental Release/Disposal. No data submitted.

P 85–549

Importer. Rohm Tech, Inc.
Chemical. (G) Poly(methacrylate).
Use/Import. (S) Industrial and commercial viscosity index improver for lubricating oils. Import range: Confidential.
Toxicity Data. Acute oral: >5,000 mg/kg; Acute dermal: >2,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant.
Exposure. No worker exposure anticipated.
Environmental Release/Disposal. No release to air, water and land.

P 85–550

Importer. Rohm Tech, Inc.
Chemical. (G) Poly(methacrylate).
Use/Import. (S) Industrial and commercial improver for lubricating oils. Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. No worker exposure.
Environmental Release/Disposal. No data submitted.

P 85–551

Importer. Aldrich Chemical Company, Inc.
Chemical. (S) 3–Carbomethoxypropionyl chloride.
Use/Import. (S) Industrial intermediate. Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. Processing: A total of 2 workers, up to 1 hr/da, up to 1 da/yr.
Environmental Release/Disposal. Undetermined amount of release to air.

P 85–552

Importer. Peerless Photo Products, Inc.
Chemical. (G) Tetraallyloxyethane/methacrylate polymer.
Use/Import. (S) A commercial antistatic agent used in photographic film and/or paper. Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. Use: Dermal, a total of 6 workers, up to 27 hrs/da, up to 116 da/yr.
Environmental Release/Disposal. No release.

P 85–553

Importer. E.I du Pont de Nemours and Company, Inc.
Chemical. (G) Unsaturated ester.
Use/Import. (G) Ingredient for composite film product. Import range: Confidential.
Toxicity Data. Acute oral: 4,650 mg/kg; Irritation: Skin—Mild to moderate, Eye—Moderate; EC_{50} 48 hr (Daphnia magna): 0.54 mg/L; EC_{50} 48 hr (Daphnia magna) wash water: 0.13%; LC_{50} 96 hr (Fathead minnow): 0.32 mg/L; LC_{50} 96 hr (Fathead minnow) wash water: 2.1%.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 85–554

Importer. E.I. du Pont de Nemours and Company, Inc.
Chemical. (G) Unsaturated ester.
Use/Import. (G) Ingredient for composite film product. Import range: Confidential.
Toxicity Data. Acute oral: 10,000 mg/kg; Irritation: Skin—Mild to moderate, Eye—Moderate; EC_{50} 48 hr (Daphnia magna): 134 to 238 mg/L; EC_{50} 48 hr (Daphnia magna) wash water: 0.013%; LC_{50} 96 (Fathead minnow): 200 mg/L;—LC_{50} 96 hr (Fathead minnow) wash water: 2.1%.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 85–555

Importer. E.I. du Pont de Nemours and Company, Inc.
Chemical. (G) Unsaturated ester.
Use/Import. (G) Ingredient for composite film product. Import range: Confidential.
Toxicity Data. Acute oral male and female). >5,000 mg/kg; EC_{50} 48 h_r (Daphnia magna) wash water: 0.013%; LC_{50} 96 (Fathead minnow) wash water: 2.1%.
Exposure: Confidential.
Environmental Release/Disposal. Confidential

P 85–556

Importer. -Confidential.
Chemical. (S) 1,3,5-Triazine, 2,4,6,-triamine *N,N',N'*-tris(4-aminophenyl)-.
Use/Import. (G) Site-limited intermediate. Import range: 480–800 kg/yr.
Toxicity Data. Acute oral: >5,000 mg/kg; Irritation: Skin-None, Eye-Irritant; Ames Test: Negative; LC_0 96 hr (Zebra fish); 100 parts per million (ppm); IC_{50} 3 hr; >100 mg/1: BOD_5: 0 mg/g 0_2: COD: 1597.4 mg/g0_2.
Exposure. Processing: Inhalation, a total of 1 worker, up to 0.25 hr/da.
Environmental Release/Disposal. Less than 1 kg released to water. Disposal by navigable waterway.

P 85–557

Manufacturer. Confidential
Chemical. (G) Methine dye.
Use/Production. (G) Paper dye. Prod. range: Confidential.
Toxicity Data. Acute oral: >5,000 mg/kg: Irritation: Skin-Non-irritant, Eye-Non-irritant; Ames Test: Negative; IC_{50} 3 hr: >100 mg/1: BOD_5 O mg/g 0_2:COD: 366 mg/g0_2; TL_0 48 & 96 hr (Zebra fish): 30 mg/L, TL_{50} (Zebra fish) @ 48 hr: 59 mg/1 and @ 96 hr: 42 mg/L: TL_{100} 48 & 96 hr (Zebra fish): 100 mg/L.
Exposure. Manufacture: Dermal, a total of 7 workers, up to 3 hrs/da, 5 da/yr.
Environmental Release/Disposal. Less than 0.5 kg to less than 3 kg released to water. Disposal by navigable waterway.

Dated: February 25, 1985.

Linda A. Travers,

Acting Director, Information Management Division.

[FR Doc. 85–4997 Filed 2–28–85 8:45 am]

BILLING CODE 6560-50-M

[OPTS–59185; FRL–2786–1]

Certain Chemicals; Test Marketing Exemption Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5 (a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt, are discussed in EPA's final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722. This notice, issued under section 5(h)(6) of TSCA, announces receipt of four applications for exemption, provides a summary, and requests comments on the appropriateness of granting each of the exemptions.

DATE: Written comments by: March 18, 1985.

ADDRESS: Written comments, identified by the document control number "[OPTS–59185]" and the specific TME number should be sent to: Document Control Officer (TS–793), Chemical Information Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E–4201, 401 M Street, SW., Washington, D.C. 20460 (202–382–3532).

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division, (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M Street, SW., Washington, D.C. 20460 (202–382–3725).

SUPPLEMENTARY INFORMATION: A nonsubstantive change in the prefixes is being initiated for information published under sections 5(d)(2), 5(h)(4), and 5(h)(6) of the Toxic Substances Control Act (TSCA). The notices will contain essentially the same information but the prefixes to the specific number assignment will appear in an abbreviated form. Prefixes under the modified format will use the letters "T" (TMEA), "P" (PMN) and "Y" (POLYMER EXEMPTION). The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the TME received by EPA. The complete non-confidential document is available in the Public Reading Room E–107 at the above address.

T 85–24

Close of Review Period. April 6, 1985.
Manufacturer. Products Research and Chemical Corporation.
Chemical. (G) Polymer of ethanol, 2-mercapto, oxirane extended, hydroxy terminated, reaction product with silane, substituted propyl triethoxy.
Use/Production. (S) To be evaluated as an adhesion promoting ingredient. Prod. range: 1,000 lbs/1 yr.
Toxicity Data. No data submitted.
Exposure. Manufacture and use: Dermal, a total of 124 workers, up to 8 hrs/da, up to 200 da/yr.
Environmental Release/Disposal. No data submitted.

T 85–25

Close of Review Period. April 6, 1985.
Manufacturer. Products Research and Chemical Corporation.
Chemical. (G) Polymer of ethanol 2,2'-thiobis, ethanol, 2-mercapto and oxirane, methyl, reaction product with aliphatic isocyanate and substituted aliphatic amine.
Use/Production. (S) To be evaluated as an adhesion promoting ingredient. Prod. range: 1,000 lbs/1 yr.
Toxicity Data. No data submitted.
Exposure. Manufacture and use: Dermal, a total of 124 workers, up to 8 hrs/da, up to 100 da/yr.
Environmental Release/Disposal. No data submitted.

T 85–26

Close of Review Period. April 6, 1985.
Manufacturer. Products Research and Chemical Corporation.
Chemical. (G) Polymer of ethanol, 2,2'-thiobis, ethanol, 2-mercapto and oxirane, methyl, reaction product with silane, substituted propyl triethoxy.
Use/Production. (S) To be evaluated as an adhesion promoting ingredient. Prod. range: 1,000 lbs/1 yr.
Toxicity Data. No data submitted.
Exposure. Manufacture and use: Dermal, a total of 124 workers, up to 8 hrs/da, up to 100 da/yr.
Environmental Release/Disposal. No data submitted.

T 85–27

Close of Review Period. April 6,1985.
Manufacturer. Products Research and Chemical Corporation.
Chemical. (G) Polymer of ethanol, 2-mercapto, oxirane extended, hydroxy terminated, reaction product with silane, substituted propyl triethoxy.
Use/Production. (S) To be evaluated as an adhesion promoting ingredient. Prod. range: 1,000 lbs/1 yr.
Toxicity Data. No data submitted.
Exposure. Manufacture and use: Dermal, a total of 124 workers, up to 8 hrs/da, up to 200 da/yr.
Environmental Release/Disposal. No data submitted.

Dated: February 25, 1985.

Linda A. Travers,

Acting Director, Information Management Division.

[FR Doc. 85–4996 Filed 2–28–85; 8:45 am]

BILLING CODE 6560–50–M

[OA–FRL–2787–6]

New Programs Offered for Intergovernmental Review Under 40 CFR Part 29 and Subject to Section 204 of the Demonstration Cities and Metropolitan Development Act

The Environmental Protection Agency (EPA) is making available two one-time-only programs for FY 1985 under section 8001 of the Solid Waste Disposal Act, as amended, which States may select for intergovernmental review under a process established in accordance with Executive Order 12372.

These new financial assistance programs, which are available in addition to the list of programs EPA published on January 23, 1985, (50 FR 3025) are: "Implementation of the National Permits Strategy (§ 8001)" and "State/Local Innovative Waste Management Activities (§ 8001)." Since these are one-time-only programs offered during FY 1985, they will not be assigned *Catalog of Federal Domestic Assistance* (CFDA) numbers, and will not be added to EPA's existing list. States choosing to include either of these programs for review under their intergovernmental review process should send written notification within 30 days to the following EPA office: Grants Policy and Procedures Branch, Grants Administration Division (PM–216), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Dated: February 22, 1985.

Howard M. Messner,

Assistant Administrator for Administration and Resources Management.

[FR Doc. 85–4994 Filed 2–28–85; 8:45 am]

BILLING CODE 6560–50–M

[OPP–240058; FRL–2774–6]

State Registration of Pesticides; Arizona, et al.

Correction

In FR Doc. 85–3219 beginning on page 6047 in the issue of Wednesday, February 13, 1985, make the following corrections:

1. On page 6047, in the second column, under the heading "Florida", in the second paragraph, in the fourth line, "aphibs" should read "aphids".

2. Also on page 6047, in the third column, under the heading "Nebraska", the second paragraph should be preceded by the heading "New Jersey".

3. On page 6048, in the First column, under the heading "Oregon", in the First line, "0006" should read "0048."

BILLING CODE 1505-01-M

FEDERAL RESERVE SYSTEM

Commercial Bancshares Inc., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 21, 1985.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Commercial Bancshares Inc.*, Jersey City, New Jersey; to engage *de novo* through its subsidiary, Creditco Inc., Woodbridge, New Jersey, in originating, buying, selling, and servicing loans secured by mortgages primarily on owner-occupied residential properties and selling credit-related life insurance.

B. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Sovran Financial Corporation*, Norfolk, Virginia; to engage *de novo* through its subsidiary, Sovran Securities Corporation, Richmond, Virginia, in underwriting and dealing in, and purchasing, selling, and brokering the purchase and sale of obligations of the United States, general obligation of states and their political subdivisions, and other obligations that state member banks of the Federal Reserve System may by authorized to underwrite and deal in under 12 U.S.C. 24 and 335, including bankers acceptance and certificates of deposit, under the same limitations as would be applicable if the activity were performed by the bank holding company's subsidiary member banks; the provision of investment or financial advice, as authorized by Regulation Y, 12 CFR 225.25(b)(4); and performing functions or activities that may be performed by a trust company (including activities of a fiduciary, agency, or custodial nature), in the manner authorized by federal or state law, subject to all applicable limitations of Regulation Y, 12 CFR 225.25(b)(3).

C. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Oak Brook Bancshares, Inc.*, Oak Brook, Illinois; to engage *de novo* through its subsidiary, F.O.B. Courier Express Corporation, Oak Brook, Illinois, in providing financially related courier services. These activities are to be conducted in the states of Illinois, Indiana and Wisconsin.

D. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *United Community Bancorp, Inc.*, Greenfield, Illinois; to engage *de novo*, in complete data processing services to be performed for an affiliate bank, First National Bank of Bunker Hill, including daily processing of DDA, savings, CD's, loans, general ledger, and preparation of various information reports. These activities are to be conducted in the general trade area of Bunker Hill, Illinois.

Board of Governors of the Federal Reserve System, February 25, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-4944 Filed 2-28-85; 8:45 am]

BILLING CODE 6210-01-M

Firstway Financial, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the, Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 25, 1985.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadephia, Pennsylvania 19105:

1. *Firstway Financial, Inc.*, Waynesboro, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of Firstway National Bank and Trust Co., Waynesboro, Pennsylvania.

B. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Red Bud Bankcorp, Inc.*, Red Bud, Illinois; to become a bank holding company by acquiring 80 percent of the voting shares of First State Bank of Red Bud, Red Bud, Illinois.

C. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *First Western Holding Company*, Carrollton, Texas; to become a bank

holding company by acquiring 100 percent of the voting shares of First Western National Bank of Carrollton, Carrollton, Texas.

Board of Governors of the Federal Reserve System, February 25, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-4945 Filed 2-28-85; 8:45 am]

BILLING CODE 6210-01-M

Norstar Bancrop, Inc., Albany, NY; Proposed Acquisition of Altman & Brown, Inc.

Norstar Bancrop, Inc., Albany, New York, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.23(a) (2) and (3) of the Board's Regulation Y (12 CFR 225.23(a) (2) and (3)), for permission to acquire Altman and Brown, Inc., Albany, New York, and thereby engage in: (a) Designing employee benefit plans, including determining actuarial funding levels and cost estimates; (b) providing assistance in implementing plans, including assistance in the preparation of plan documents and the implementation of employee benefit administration systems; (c) developing employee communication programs with respect to plans; (d) providing administrative services with respect to plans, including record-keeping services, calculating and certifying employee benefits, preparing periodic acturial and other reports and government filings pursuant to ERISA, and assisting legal counsel in labor relations and negotiations; (e) providing expert actuarial opinions (for divorce actions and wrongful death and disability cases), and assisting firms in IRS audits of plans; (f) informing clients of developments in the field of employee benefit programs through newsletters, other correspondence, and participation in seminars, public programs and other forums relating to such developments; and (g) engaging in professional actuarial activities and other activities incidental to the actuarial profession. These services would be provided from offices in Albany, New York, serving customers nationwide.

Section 4(c)(8) of the Bank Holding Company Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." Applicant believes that these activities are so closely related to banking or managing or controlling banks as to be a proper incident thereto, because the activities are, in Applicant's opinion, either provided by banks or functionally similar to services provided by banks.

Interested persons may express their views on whether the proposed activities are "so closely related to banking or managing or controlling banks as to be a proper incident thereto," and whether consummation of the acquisition as a whole can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on these questions must be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than March 22, 1985.

Board of Governors of the Federal Reserve System, February 25, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-4916 Filed 2-28-85; 8:45 am]

BILLING CODE 6210-01-M

F&M Bankshares of Hill City, Inc.; Formation of; Acquisition by; or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than March 8, 1985.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *F&M Bankshares of Hill City, Inc.*, Hill City, Kansas; to become a bank holding company by acquiring 96.9 percent of the voting shares of The Farmers & Merchants Bank of Hill City, Hill City, Kansas.

Board of Governors of the Federal Reserve System, February 27, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-5117 Filed 2-28-85; 8:45 am]

BILLING CODE 6210-01-M

GOVERNMENT PRINTING OFFICE

Depository Library Council to the Public Printer; Meeting

The Depository Library Council to the Public Printer will meet during the period March 27-29, 1985, at The Regent of Albuquerque, Albuquerque, New Mexico.

The purpose of this meeting is to discuss the Depository Library Program.

The meeting will be open to the public. Anyone who wishes to attend should notify the Administrative Librarian, U.S. Government Printing Office, Library Programs Service (SL), Washington, D.C. 20401. Telephone: (202) 275-1109.

General participation by members of the public, or questioning of Council members or other participants, shall be permitted with approval of the Chair.

Ralph E. Kennickell, Jr.,

Public Printer.

[FR Doc. 85-5030 Filed 2-28-85; 8:45 am]

BILLING CODE 1505-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on February 22, 1985.

Public Health Service

Centers for Disease Control

Subject: Regulation—Federal Mine Safety and Health Act of 1977, 42 CFR Part 37, X-Ray Examination Program Reinstatement—(0920–0020).
Respondents: Miners, mine operators and physicians.
OMB Desk Officer: Fay S. Iudicello.

Social Security Administration

Subject: Missing and Discrepant Wage Reports Study Questionnaire SSA 5037, SSA 5038—New.
Respondents: Businesses.

Subject: Application for Special Age 72-or-Over Monthly Payments SSA 19-Extension (0960–0096).
Respondents: Individuals.

Subject: Federal Assistance Application Form—SSA 96-Revision (0960–0184).
Respondents: States, businesses.
OMB Desk Officer: Robert J. Fishman.

Human Development Services

Subject: Survey Instrument for the Evaluation of Performance-Based Contracting in Aging Programs-New.
Respondents: Area Agencies on Aging.
OMB Desk Officer: Robert J. Fishman.

Copies of the above information collection clearance packages can be obtained by calling the HHS Reports Clearance Officer on 202–245–6511.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, D.C. 20503. Attn: (name of OMB Desk Officer).

Dated: February 25, 1985.
Wallace O. Keene,
Acting Deputy Assistant Secretary for Management Analysis and Systems.
[FR Doc. 85–4976 Filed 2–28–85; 8:45 am]
BILLING CODE 4150–04–M

Health Care Financing Administration

Statement of Organization, Functions, and Delegations of Authority

Part F. of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA) (**Federal Register**, Vol. 46, No. 223, pp. 56911–56934, dated Thursday, November 19, 1981; **Federal Register**, Vol. 48, No. 3, pp. 512–518, dated Wednesday, January 5, 1983; and **Federal Register**, Vol. 49, No. 124, pg. 26150, dated Tuesday, June 26, 1984) is amended to reflect the Administrator's approval of a change to the organizational structure of the Office of Research and Demonstrations (ORD). The change involves the establishment of a new Office of Operations Support with two subordinate divisions.

The specific changes to Part F. are detailed below:

• Section FQ.20.B.3. is added to establish a new Office of Operations Support within the Office of Research and Demonstrations, as follows:

3. Office of Operations Support (FQBC).

Provides policy direction, coordination, and control to the Office of Research and Demonstrations in the areas of budget, financial and accounting operations, personnel, management evaluation and analysis, administrative services, project grants, contracting and procurement, and workplanning. Directs and plans ongoing research publications and information resouces programs. Participates with Departmental components in a wide range of experimental health care delivery projects. Performs claims adjudication, reimbursement, and data collection for demonstration projects. Provides a setting for testing proposed policies and procedures which impact on fiscal intermediary operation and provides the capacity for serving specialized providers.

• Section FQ.20.B.3.a. is added to establish a new Divison of Executive Operations (FQBC1) within the Office of Operations Support, as follows:

a. Divison of Executive Operations (FQBC1).

Establishes and manages the Office of Research and Demonstrations (ORD) workplanning system which produces an annual ORD spending plan and workplans for SES and Merit Pay employees for the year. Provides direction and planning to assure proper and efficient control of the budget and financial programs within ORD. Plans, organizes, and administer the extramural ORD research and demonstration (grants and contracts) programs assuring that both technical and administrative requirements are met. Directs staff in providing overall administrative management support activities. Carries out special assignments for the Director, ORD, on matters pertaining to the support of extramural research and demonstration programs, administration, and management. Plans and directs an ongoing publications and information resources program. Provides assistance in the coordination and production of major written documents, plans, and reports.

• Section FQ.20.B.3.b. is added to establish a new Divison of Research and Demonstrations Systems Support (FQBC2), as follows:

b. Division of Research and Demonstrations Systems Support (FQBC2).

Serves as fiscal intermediary for experiments and demonstrations conducted under legislative authorities in the Social Security Act, Public Health Service Act and related legislation. Also serves as fiscal intermediary for former direct-dealing providers who were terminated from the Medicare program and have final cost reports and bills yet to be processed. Performs a wide range of duties related to the development, implementation, and ongoing operation of the demonstrations. Provides technical advice and assistance prior to the start of the demonstrations and throughout the period of the experiment, to other bureaus and agencies in developing service definitions, reimbursements protocols, contracts, and reporting mechanisms. Assists in the design and establishment of information systems for compiling demonstration payment and service data for evaluator use. Develops cost reporting and billing systems. Acts as liaison between governmental agencies, service contractors, and Medicare carriers and intermediaries participating in demonstration activities. Provides systems support to other components of ORD. Performs other support duties as requested. Carries out project management by directing project teams in the analysis, design, and implementation of management

information systems which are ORD program-oriented.

Dated: February 5, 1985.

James L. Scott,

Acting Administrator, Health Care Financing Administration.

[FR Doc. 85-5038 Filed 2-28-85; 8:45 am]

BILLING CODE 4120-03-M

Health Resources and Services Administration

Application Announcement for Grants for Faculty Development in General Internal Medicine and/or General Pediatrics

The Bureau of Health Professions, Health Resources and Services Administration, announces that applications for Fiscal Year 1985 Grants for Faculty Development in General Internal Medicine and/or General Pediatrics are being accepted under the authority of section 784 of the Public Health Service Act, as amended.

Section 784 of the Public Health Service Act authorizes Federal assistance to schools of medicine and osteopathy, public or private nonprofit hospitals or other public or private nonprofit entities for planning, developing and operating programs for the training of physicians who plan to teach in general internal medicine or general pediatrics training programs. These grants are intended to promote the development of faculty skills in physicians who are currently teaching or who plan teaching careers in general internal medicine and/or general pediatrics training programs. These grants also provide direct support in the form of traineeships to physicians in training.

In addition, section 784 authorizes the award of grants to support general internal medicine and/or general pediatrics residency training programs. A separate grant program exists for this purpose.

Requests for application materials and questions regarding grants policy should be directed to: Grants Management Officer (D-28), Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 8C-22, Rockville, Maryland 20857, Telepone: (301) 443-6960.

Questions regarding programmatic information should be directed to: Chief, Primary Care Graduate Medical Education Branch, Division of Medicine, Health Resources and Services Administration, Bureau of Health Professions, 5600 Fishers Lane, Room 4C-04, Rockville, Maryland 20857, Telephone: 443-5590.

Approximately $2.0 million is available for awards in Fiscal Year 1985. Authorization for the current fiscal year is provided by the Department of Labor, Health and Human Services and Education and Related Agencies Appropriations Act, Pub. L. 98-619, enacted on November 8, 1984.

The application deadline date is April 12, 1985. Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date, or

2. Postmarked on or before the deadline date and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

This program has not yet been listed in the *Catalog of Federal Domestic Assistance*. Applications submitted in response to this announcement are not subject to the provisions of Executive Order 12372 Intergovernmental Review of Federal Programs, or 45 CFR Part 100.

Dated: February 22, 1985.

Robert Graham,

Administrator, Assistant Surgeon General.

[FR Doc. 85-4968 Filed 2-28-85; 8:45 am]

BILLING CODE 4160-15-M

National Institutes of Health

Meeting of Board of Scientific Counselors, National Institute of Environmental Health Sciences

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, NIEHS, March 26-27, 1985, in Building 101 Conference Room, South Campus, NIEHS, Research Triangle Park, North Carolina.

This meeting will be open to the public 9 a.m. to 12 noon on March 26, for the purpose of presenting an overview of the organization and conduct of research in the Laboratory of Reproductive & Developmental Toxicology. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6) of Title 5 U.S. Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on March 26 from approximately 1 p.m. to adjournment on March 27, for the evaluation of the programs of the Laboratory of Reproductive & Developmental Toxicology, including the consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Executive Secretary, Dr. Charles E. Carter, Scientific Director, NIEHS Research Triangle Park, N.C. 27709, telephone (919) 541-3205, FTS 629-3205, will furnish summaries of the meeting, rosters of committee members and substantive program information.

Dated: February 19, 1985.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 85-4952 Filed 2-28-85; 8:45 am]

BILLING CODE 4140-01-M

Meetings for the Review of Contract Proposals and Grant Applications

Pursuant to Pub. L. 92-463, notice is hereby given for meetings of three committees of the National Cancer Institute.

These meetings will be open to the public to discuss administrative details or other issues relating to committee business as indicated in the notice. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in sections 552(c)(4) and 552(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, for the review, discussion and evaluations of individual contract proposals, and grant applications. These proposals and applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the proposals and applications the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20205 (301/496-5708) will furnish summaries of meetings and rosters of committee members upon request. Other information pertaining to the meetings can be obtained from the Executive Secretary indicated.

Name of Committee: Developmental Therapeutics Contracts Review Committee

Date: March 8, 1985

Place: Linden Hill Hotel & Racquet Club, 5400 Pooks Hill Road, Bethesda, Maryland 20814

Times:

Open: March 8, 8:30 am—9:00 am.

Agenda: To review administrative details.
Closed: March 8, 9:00 a.m.—5:00 p.m.
Closure Reason: To review contract proposals
Executive Secretary: Dr. Kendall G. Powers, Westwood Building, Room 805, National Institutes of Health Bethesda, Maryland 20205, Phone: 301/496–7575.

Name of Committee: Developmental Therapeutics Contracts Review Committee
Dates: March 18–20, 1985
Place: National Institutes of Health, Building 31, Conference Room 7, Bethesda, Maryland 20205
Times:
Open: March 18, 8:30 a.m.–9:00 a.m.
Agenda: To revieiw administrative details.
Closed: March 18, 9:00 a.m.–5:00 p.m. March 19–20, 8:30 a.m.–5:00 p.m.
Closure Reason: To review contract proposals
Executive Secretary: Dr. Kendall G. Powers, Westwood Building, Room 805, National Institutes of Health, Bethesda, Maryland 20205 Phone: 301/496–7575.

Name of Committee: Cancer Preclinical Program Project Review Committee
Date: March 28, 1985
Place: Linden Hill Hotel, 5400 Pook Hill Road, Bethesda, Maryland 20814
Time:
Open: March 28, 8:30 a.m.–9:30 a.m.
Agenda: A review of administrative details.
Closed: March 28, 9:30 a.m.–Adjournment
Closure Reason: To review grant applications.
Executive Secretary: Dr. Edwin M. Bartos, Westwood Building, Room 836, National Institutes of Health, Bethesda,. Maryland 20205 Phone: 301/496–7565.

Name of Committee: Cancer Center Support Review Committee
Date: March 29, 1985
Place: Holiday Inn-Crown Plaza, 1750 Rockville Pike, Rockville, Maryland 20852
Time:
Open: March 29, 8:30 a.m.–9:00 a.m.
Agenda: To review administrative details.
Closed: March 29, 9:00 a.m.–Adjournment
Closure Reason: To review grant applications.
Executive Secretary: John W. Abrell, Ph.D., Westwood Building, Room 826, National Institutes of Health, Bethesda, Maryland 20205, Phone: 301/496–9767.

Name of Committee: Developmental Therapeutics Contracts Review Committee
Date: April 1, 1985
Place: National Institutes of Health, Building 31, Conference Room 2, Bethesda, Maryland 20205
Times:
Open: April 1, 8:30 a.m.–9:00 a.m.
Agenda: A review of administrative details.
Closed: April 1, 9:00 a.m.–5:00 p.m.
Closure Reason: To review contract proposals
Executive Secretary: Dr. Kendall G. Powers, Westwood Building, Room 805, National Institutes of Health, Bethesda, Maryland 20205, Phone: 301/496/7557.

Dated: February 15, 1985.

Betty J. Beveridge,
Committee Management Officer, NIH.

[FR Doc. 85–4954 Filed 2–28– 85; 8:45 am]
BILLING CODE 4140-01-M

Meeting of the NIDR Special Grants Review Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Institute of Dental Research Special Grants Review Committee, March 27–28, 1985, in Conference Room 7, Building 31–C, National Institutes of Health, Bethesda, Maryland. The meeting will be open to the public from 9:00 a.m. to 9:30 a.m., March 27 for general discussions. Attendance by the public is limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public from 9:30 a.m. March 27 to adjournment March 28 for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. H. George Hausch, Executive Secretary, NIDR Special Grants Review Committee, NIH, Westwood Building, Room 507, Bethesda, MD 20205, (telephone 301 496–7658) will provide summary of meeting, roster of committee members and substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.121-Diseases of the Teeth and Supporting Tissues: Caries and Restorative Materials; Periodontal and Soft Tissue Diseases; 13.122-Disorders of Structure, Function, and Behavior: Craniofacial Anomalies, Pain Control, and Behavioral Studies; 13.845-Dental Research Institutes; National Institutes of Health)

Dated: February 15, 1985.

Betty J. Beveridge,
NIH Committee Management Officer.

[FR Doc. 85–4953 Filed 2–28–85; 8:45 am]
BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Under Secretary

[Docket No. N–85–1506]

Advisory Committee on Contract Document Reform; Meeting

AGENCY: Department of Housing and Urban Development.

ACTION: Notice of meeting of the Advisory Committee on Contract Document Reform.

SUMMARY: The eleventh meeting of the Committee on Contract Document Reform has been scheduled for Tuesday, March 26, 1985 at 10:00 a.m. in the Assistant Secretary for Public and Indian Housing Conference Room (4202) at the Department of Housing and Urban Development, 451 7th Street SW., Washington, D.C. 20410.

The purpose of the meeting is to discuss and analyze suggested amendments to contract document clauses.

This meeting is open to the public. Any interested persons may attend, appear before, or file statements with the Committee. Oral statements may be made at the meeting at the time and in the manner permitted by the Committee.

FOR FURTHER INFORMATION CONTACT: Peter Tropp, Department of Housing and Urban Development, 451 7th Street SW., Washington, D.C. 20410, Telephone: (202) 755–5561 [This is not a toll-free number].

Dated: February 22, 1985.

John Knapp,
Acting Under Secretary, Department of Housing and Urban Development.

[FR Doc. 85–5044 Filed 2–28–85; 8:45 am]
BILLING CODE 4210-32-M

Office of the Regional Administrator—Regional Housing Commissioner, New York Regional Office, Region II

[Docket No. D–84–794; FR–2060]

Delegation of Authority; Director, Office of Public Housing

AGENCY: Office of the Regional Administrator—Regional Housing Commissioner, HUD.

ACTION: Delegation of Authority.

SUMMARY: The Regional Administrator—Regional Housing Commissioner, New York Regional Office (Region II), delegates the authority with respect to public housing management to the Director, Office of Public Housing.

EFFECTIVE DATE: October 31, 1984.

FOR FURTHER INFORMATION CONTACT: Steven Love, Regional Counsel, New York Regional Office, Department of Housing and Urban Development, 26 Federal Plaza, New York, New York 10278, (212) 264–8000. (This is not a toll-free number.)

Authority delegated

The Regional Administrator—Regional Housing Commissioner, New York Regional Office (Region II), hereby delegates the authority to manage public housing to the Director, Office of Public Housing. This authority was formerly exercised by the (a) Director, Office of Regional Housing (New York Regional Office); (b) Director, Housing Division (New York Area Office); and (c) Area Manager (New York Area Office).

Authority: Delegation of Authority, 27 FR 4319 (1962); section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d); and Interim Order II, 31 FR 815 (1966).

Dated: Februry 14, 1985.

Joseph D. Monticciolo,

Regional Administrator, Regional Housing Commissioner.

[FR Doc. 85–5045 Filed 2–28–85; 8:45 am]

BILLING CODE 4210–32–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Debt Collection Policies and Procedures

AGENCY: Office of the Secretary, Interior.

ACTION: Notice.

SUMMARY: The Department of the Interior submits the following public information reflecting its policies and procedures for debt collection. These policies and procedures implement the Federal Claims Collection Act of 1966, as amended by the Debt Collection Act of 1982.

EFFECTIVE DATE: December 3, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. Lee Hiller, Chief, Division of Financial Administration, Office of Financial Management, Department of the Interior, 18th & C Streets, NW., Washington, D.C. 20240, (202) 343–5223.

SUPPLEMENTARY INFORMATION: The Department has in the past implemented policies and procedures concerning debt collection by publication in the *Departmental Manual. Departmental Manual* Part 344 has been revised to reflect the provisions of the Debt Collection Act of 1982, (Pub. L. 97–365) and is now available to the public upon request. Copies of the pertinent *Departmental Manual* chapters (344 DM 1–11, Release No. 2607) can be obtained by contacting the Printing and Publications Division, Office of the Secretary, at the following address: Department of the Interior, Room 1307, 18th & C Streets, NW., Washington, D.C. 20240.

Joseph E. Doddridge, Jr.,

Deputy Assistant Secretary of the Interior.

February 21, 1985.

[FR Doc. 85–4937 Filed 2–28–85; 8:45 am]

BILLING CODE 4310–10–M

Bureau of Indian Affairs

Colorado River Indian Reservation, Arizona and California; Amendment to Federal Indian Liquor Laws

February 4, 1985.

This Notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8, and in accordance with the Act of August 15, 1953, 67 Stat. 586, 18 U.S.C. 1161. I certify that Ordinance No. 84–8 was duly adopted by the Colorado River Tribal Council on July 13, 1984. The Colorado River Liquor Ordinance relates to the application of the Federal Indian Liquor Laws within the areas of Indian country under the jurisdiction of the Colorado River Indian Tribe. The instant ordance amends in part Ordinance No. 82–4, which was published in the **Federal Register** on January 20, 1984, 49 FR 2534. The ordinance reads as follows:

John W. Fritz,

Deputy Assistant Secretary—Indian Affairs.

Ordinance No. 84–8

Be it enacted by the Tribal Council of the Colorado River Indian Tribes, that section 2–208(D) of the Health and Safety Code of the Colorado River Indian Tribes is hereby amended as follows:

(D) An application for the renewal of privileges for an additional year shall be treated as an application for a new license, except that fees shall be as provided by section 2–210, that the requirements of section 2–102 shall be waived and, except for good cause, as determined by the Board, the requirements of section 2–204(B) shall be waived.

Section 2. Section 2–210 of the Health and Safety Code is hereby amended as follows:

(A) Applications for an original license must be accompanied by a nonrefundable application fee of two hundred dollars ($200.00). Applications for the renewal of a license must be accompanied by a nonrefundable application fee of thirty-five dollars ($35.00).

(B) A license fee shall be paid before any license will be issued. The fee for a license shall be:

(1) Class 1 and Class 5 licenses, one thousand dollars ($1,000.00), and thereafter one hundred and fifty dollars ($150.00) per each succeeding year the license is renewed; and

(2) Class 2, Class 3 and Class 4 licenses, five hundred dollars ($500.00), and thereafter seventy-five dollars ($75.00) per each succeeding year the license is renewed.

(C) The Board may, at the request of an applicant, limit a license to some number of months less than twelve (12), in which case the fee shall be one-tenth (1/10) of that provided in Subsection (B) of the section for each month.

Section 3. Section 2–301(A) of the Health and Safety Code is hereby amended as follows:

(A) The Board may issue an on-sale Special Event license to qualified organizations authorizing the sale of liquor for consumption on the premises specified for up to four (4) days. The fee for this license shall be twenty-five dollars ($25.00) per day. Applications must be made on the forms prescribed by the Board, and be accompanied by a nonrefundable application fee of ten dollars ($10.00).

Section 4. Section 2–403(7) of the Health and Safety Code is hereby amended to read as follows:

(7) for a wholesaler, to transport liquor except in a vehicle conspicuously marked on its outside with the name and address of the wholesaler, and the number of his license, in letters at least three (3) inches high.

The foregoing ordinance was on July 13, 1984, duly approved by a vote of 7 for, 0 against and 1 abstaining by the Tribal Council of the Colorado River Indian Tribes, pursuant to authority vested in it by Article VI of the Constitution of the Tribes, ratified by the Tribes on March 1, 1975, and approved by the Secretary of Interior on May 29, 1975, pursuant to section 16 of the Act of June 18, 1934 (38 Stat. 984). This ordinance is effective as of the date of its enactment.

Colorado River Indian Tribes
Colorado River Indian Tribal Council

Anthony Drennan, Sr.,

Chairman.

Elliott L. Booth,

Secretary.

[FR Doc. 85–4938 Filed 2–28–85; 8:45 am]

BILLING CODE 4310–02–M

Announcement of Vacancy; Osage Tribal Education Committee

February 4, 1985.

25 CFR 122.5(e)(5) states that any vacancies shall be filled in the same

manner described by this section for the selection of committee members. The period of time for receiving applications shall not exceed 30 days with the expiration date to be announced by the Assistant Secretary. The purpose of this announcement is to solicit nomination from individuals or from Osage organizations on behalf of nominees for this vacancy.

This notice announces that a vacancy has occured on the Osage Tribal Education Committee. This vacancy is the Member At Large Representative.

The requirements of the Member at Large are:

(a) Must be an adult person of Osage Indian Blood, who is an allottee or a descendant of an allottee; and

(b) May include residents who are living anywhere in the United States.

The nominee or his representative organization should submit a brief statement requesting that he/she be considered as a candidate for the vacancy and the reason for desiring to serve on the committee. If nominated by an Osage organization, a written statement from the nominee stating his/her willingness to serve on the committee must be included with the Osage organization nomination.

Applications and nominations must be made no later than 30 days from the publishing date of this notice and shall be mailed to: Assistant Secretary-Indian Affairs, Attention: Director, Office of Indian Education Programs, Code 500, 18th & C Streets, NW., Washington, D.C. 20240.

This notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

John W. Fritz,

Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 4931 Filed 2–28–85; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

California Desert District; Wind Energy Development Applications, California Desert District, Barstow-Victorville Area; Cancellation

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Cancellation; Call for Applications for Wind Energy Development in the Barstow-Victorville Area.

SUMMARY: This document cancels the Notice for Accepting Applications for Wind Energy Development in the Barstow-Victorville Area that appeared at pages 29957 and 29958 in the **Federal Register** on Wednesday, June 29, 1983 (48 FR 126) and page 34139 in the **Federal Register** on Wednesday, July 27, 1983 (48 FR 145).

This action is necessary to implement changes in the processing procedures for wind energy development on public lands in the California Desert District. All parties which filed prior to, and in response to, the cancelled "Call for Applications" will be notified of the processing procedure change and its effect on their application.

FOR FURTHER INFORMATION CONTACT: Information regarding this cancellation notice and details of the revised processing procedures can be obtained from Mike DeKeyrel, Realty Specialist, at (619) 256–3595.

Dated: February 22, 1985.

H.W. Riecken,

Associate District Manager.

[FR Doc. 85–5114 Filed 2–28–85; 8:45 am]

BILLING CODE 4310-40-M

[INT FES 85–2]

Piceance Basin Resource Management Plan; Availability of Final Environmental Impact Statement (FEIS); Colorado

AGENCY: Bureau of Land Mangement, Interior.

ACTION: Notice of Availability of Volume 3, FEIS on the Piceance Basin Resource Management Plan.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the Department of the Interior, Bureau of Land Management, has prepared a final environmental impact statement (FEIS) on the Piceance Basin Resource Management Plan. Identification, consideration, and designation of special management areas are pursuant to the authority in 43 CFR Part 1610.

DATE: Protests must be received in writing within 30 days of the date the Environmental Protection Agency publishes the notice of receipt of this final environmental impact statement in the **Federal Register.**

ADDRESS: Protests should be sent to the BLM Director, Bureau of Land Management, 18th and C Streets, NW, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Curt Smith, Area Manager, Bureau of Land Management, White River Resource Area, PO Box 928, Meeker, Colorado 81641. Telephone: (303) 878–3601.

SUPPLEMENTARY INFORMATION: The FEIS describes and analyzes five alternatives including the Proposed Resource Management Plan for managing approximately 674,370 acres of public land in the Piceance Basin Planning Area of northwest Colorado. The FEIS consists of three volumes. The draft environmental impact statement (DEIS), consisting of Volume 1—Narrative and Volume 2—Map Addendum, was printed and distributed in April 1984. Volume 3 includes a summary of the five alternatives, a record of the public comments on the DEIS, responses to the comments, and changes resulting from public review and comment. It is necessary to use all three volumes in conjunction.

Public comments received on the DEIS did not require extensive changes in the data, analyses, or conclusions. Therefore, except for the Summary section, the DEIS (Volumes 1 and 2) has not been reprinted, but is incorporated by reference in Volume 3. In most cases, comments required minor corrections or clarifications to the text. These changes have been made and generally clarified the analysis without altering it. In other cases, the analysis has been expanded to add new information in response to comments.

The Proposed Resource Management Plan is the BLM's proposed action. This proposed action may be protected. Protests should be sent to the BLM Director, Bureau of Land Management, 18th and C Streets, NW, Washington, DC 20240, within 30 days of the date the Environmental Protection Agency publishes the notice of receipt of this Final Environmental Impact Statement on the Piceance Basin Resource Management Plan in the **Federal Register** and should include the following information:

Name, mailing address, telephone number, and interest of the person filing the protest.

A statement of the issue or issues being protested.

A statement of the part or parts being protested.

A copy of all documents addressing the issue or issues that were submitted during the planning process by the protesting party or an indication of the date the issue or issues were discussed for the records.

A short concise statement explaining why the BLM Colorado State Director's decision is wrong.

After the end of the 30-day protest period, and following the Governor of Colorado's Consistency Review, the proposed resource management plan—excluding any portions under protest or found inconsistent—shall become final. Approval shall be withheld on any

portion of the plan under protest until final action has been completed on such protest. The approval process and the final resource management plan shall be published with the record of decision in mid-1985. Copies of the FEIS will be available for review at the following locations:

White River Resource Area, Bureau of Land Management, PO Box 928, Meeker, Colorado 81641.

Craig District Office, Bureau of Land Management, 455 Emerson Street, Craig, Colorado 81625.

Colorado State Office, Bureau of Land Management, 2020 Arapahoe Street, Denver, Colorado 80205.

Kannon Richards,

State Director, Colorado.

[FR Doc. 85-3491 Filed 2-28-85; 8:45 am]

BILLING CODE 4310-JB-M

[C-40288]

Colorado; Invitation for Coal Exploration License Application; Getty Coal Company

Pursuant to the Mineral Leasing Act of February 25, 1920, as amended, and to Title 43, Code of Federal Regulations, Subpart 3410, members of the public are hereby invited to participate with Getty Coal Company, a Delaware corporation, in a program for the exploration of unleased coal deposits owned by the United States of America in the following described lands located in Moffat County, Colorado:

Township 3 North, Range 90 West, 6th P.M.
Sec. 2, Lots 1 to 4, S½N½, SW¼, N½SE¼;
Sec. 3, Lots 1 to 4, S½N½, S½;
Sec. 4, Lots 1 to 4, S½N½, S½;
Sec. 5, Lots 1, 2, S½NE¼.
Township 4 North, Range 90 West, 6th P.M.
Sec. 19, Lots 1 to 4, SW¼NE¼, SE¼;
Sec. 20, S½N½, S½;
Sec. 21, S½NW¼, SW¼, S½SE¼;
Sec. 26, SW¼SW¼;
Sec. 27, S½NW¼, S½;
Sec. 28, All;
Sec. 29, All;
Sec. 30, Lots 1, 2, E½, E½ W½;
Sec. 31, Lots 1, 2, E½, E½ W½;
Sec. 32, All;
Sec. 33, All;
Sec. 34, All;
Sec. 35, SW¼NE¼, NW¼, S½.
Township 4 North, Range 91 West, 6th P.M.
Sec. 22, Lots 1 to 15;
Sec. 23, Lots 1 to 16;
Sec. 24, Lots 1 to 12, N½NE¼, SW¼NE¼, NE¼NW¼;
Sec. 25, Lots 1 to 16;
Sec. 26, Lots 1 to 16;
Sec. 27, Lots 1 to 16;
Sec. 35, Lots 1, 2, 7, 8;
Sec. 36, Lots 1 to 8.

The application for coal exploration license is available for public inspection during normal business hours under serial number C-40288 at the BLM Colorado State Office, Public Room 1037 20th Street, Denver, Colorado and at the BLM Craig District Office, 455 Emerson Street, Craig, Colorado.

Any party electing to participate in this program must share all costs on a pro rata basis with the applicant and with any other party or parties who elect to participate. Written Notice of Intent to Participate should be addressed to the following and must be received by them within thirty (30) days after the publication of this Notice of Invitation in the **Federal Register**:

Chief, Mineral Leasing Section, Colorado State Office, Bureau of Land Management, 1037 20th Street, Denver, Colorado 80202, and

J.D. Spaulding, President, Getty Coal Company, 5250 South 300 West, P.O. Box 7900, Salt Lake City, Utah 84107.

Evelyn W. Axelson,

Chief, Mineral Leasing Section.

[FR Doc. 85-4940 Filed 2-28-85; 8:45 am]

BILLING CODE 4310-JB-M

[Serial No. I-18932]

Idaho; Order Providing for Opening of Public Lands

In an exchange of lands made under the provisions of Section 206 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2756, 43 U.S.C. 1716, the following lands have been reconveyed to the United States:

Boise Meridian, Idaho

T. 1 S., R. 8 E.,
Sec. 8, lots 4 to 8, inclusive;
Sec. 15, lots 7, 8;
Sec. 17, lots 1 to 6, incl. and 9, 10, SE¼NW¼, NW¼SE¼;
Sec. 18, lot 7;
Sec. 20, NE¼NE¼;
Sec. 21, NE¼NE¼, NW¼NW¼.

The area described contains 640.86 acres in Elmore County.

Upon acceptance of title to such lands, they became part of the Boise National Forest and are subject to all the laws, rules, and regulations applicable thereto.

At 9:00 a.m. on March 14, 1985, the lands shall be open to such forms of disposition as may by law be made of national forest lands.

Inquiries concerning the lands should be addressed to the Forest Supervisor, Boise National Forest, 1750 Front Street, Boise, Idaho 83702.

Dated: February 19, 1985

Clair M. Whitlock,

State Director.

[FR Doc. 85-4939 Filed 2-28-85; 8:45 am]

BILLING CODE 4310-GG-M

Nevada; Filing of Plats of Survey and Order Providing for Opening of Lands

February 20, 1985.

1. The Plats of Survey of lands described below will be officially filed at the Nevada State Office, Reno, Nevada, effective at 10:00 a.m., on April 1, 1985.

Mount Diablo Meridian, Nevada

T. 9 N., R. 36 E.

2. The land within the above township ranges from about 5,500 to 6,500 ft. above sea level and is rolling to mountainous. The soil is sandy clay loam in the lower elevations and rocky in the higher elevations. Vegetation consists of sagebrush, Brigham tea, rabbit brush and scattered juniper. Numerous trail roads lie throughout the area. Stewart Spring is located in section 39. Principal users of the area are ranchers and miners. Mineral explorations were noted during the survey.

Mount Diablo Meridian, Nevada

T. 10 N., R. 36 E.

3. The land within the above township is about 5,100 to 6,100 ft. above sea level and is rolling to mountainous. The soil is sandy clay loam in the lower elevations and rocky in the higher elevations. Vegetation consists of native grasses, Brigham tea, shadscale, rabbit brush, greasewood and sagebrush. Finger Rock Wash drains northwesterly through section 31. Mineral exploration was noted throughout the subdivision of the Township.

4. Subject to valid existing rights, the provisions of existing withdrawals and classifications, and the requirements of applicable land laws, the lands described above are hereby open to such applications and petitions as may be permitted. All such valid applications received at or prior to 10:00 a.m., on April 1, 1985, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in order of filing. The lands described above have been open and continue to be open to the mining and mineral leasing laws.

5. The Plats of Survey of lands described below were officially filed at the Nevada State Office, Reno, Nevada, effective at 10:00 am., on the dates indicated:

Mount Diablo Meridian, Nevada

T. 11 N., R. 63 E.	Nov. 7, 1984	Dependent Resurvey
T. 2 S., R. 40 E.	Nov. 7, 1984	Supplemental Plat
T. 1 N., R. 67 E.	Jan. 24, 1985	Dependent Resurvey
T. 8 N., R. 36 E.	Feb. 5, 1985	Survey

The purpose of this notice is to inform the public and interested State and local government officials of the filing of plats of survey. Inquiries concerning the surveys shall be addressed to the Nevada State Office, Bureau of Land Management, 300 Booth Street, P.O. Box 12000, Reno, Nevada 89520.

Wm. J. Malencik,

Deputy State Director, Operations.

[FR Doc. 85-4943 Filed 2-28-85; 8:45 am]

BILLING CODE 4310-84-M

[I-20887]

Issuance of Land Exchange Conveyance Document; Exchange of Public and Private Land Blaine County, ID

The United States has issued an exchange conveyance document to Little Fish Creek Grazing Assn., Carey, Idaho, for the following-described lands under section 206 of the Federal Land Policy and Management Act of 1976.

Boise Meridian, Idaho

T. 1 N., R. 21 E.,
Sec. 24, E½SW¼
Containing 80.00 acres of public land.

In exchange for these lands, the United States acquired the following described lands:

Boise Meridian, Idaho

T. 1 N., R. 22 E.,
Sec. 20, SW¼NE¼, E½E½NW¼.
Comprising 80.00 acres of private land.

The purpose of this exchange was to acquire the non-federal land which will improve manageability for livestock grazing and wildlife habitat. The public interest was well served through completion of this exchange.

Dated: February 21, 1985.

Louis B. Bellesi,

Deputy State Director for Operations.

[FR Doc. 85-4941 Filed 2-28-85; 8:45 am]

BILLING CODE 4310-84-M

Realty Action; Recreation and Public Purposes Sale; Public Land in Lee County, FL

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action—R & PP Sale, Public Land, Lee County, Florida.

SUMMARY: The following described lands have been examined and are classified as suitable for sale for recreation and public purposes under the Recreation and Public Purposes Act of 1926 (44 Stat. 741), as amended.

Tallahassee Meridian

T. 46 S., R. 27 E., Sec. 26,
NE¼ SW¼ SW¼, S½ SW¼ SW¼.
The described area aggregates approximately 30.00 acres.

The School Board of Lee County, Florida proposes to use these lands for an Environmental Education and Recreation study site. Development and improvements at the site will be kept to a minimum.

It has been determined that the proposed use is in the public's best interest, and is consistent with the policy of the Bureau of Land Management.

The patent will be subject to all existing rights and reservations of record.

Publication of this Notice will segregate the subject lands from all appropriations under the public land laws, but not the mineral leasing laws. This segregation will terminate upon the issuance of a patent, or 18 months from the date of this Notice, or upon publication of a Notice of Termination. Detailed information concerning the sale, including the environmental assessment and land report, is available for review at the BLM office listed below.

For a period of 45 days after the date of issuance of this notice, the public and interested parties may submit comments to the District Manager, Jackson District Office, P.O. Box 11348, Jackson, Mississippi 39213. Comments will be evaluated by the District Manager, who may vacate or modify this realty Action. In the absence of any action by the District Manager, this Realty Action will become the final determination of the Department of the Interior

FOR FURTHER INFORMATION CONTACT: David L. Gay, (601) 960-4405.

Donald L. Libbey,

District Manager.

[FR Doc. 85-4942 Filed 2-28-85; 8:45 am]

BILLING CODE 4310-84-M

Ely District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given in accordance with Pub. L. 94-579 and 43 CFR Part 1780 that a joint meeting of the Ely District Grazing Advisory Board and the Ely District Advisory Council will be held on Wednesday, April 3, 1985.

The meeting will convene at 9:30 a.m. in the conference room of the Ely District Office, located on the Pioche Highway one mile south of Ely, Nevada.

The main agenda items will be the status of activity planning efforts in the district, discussion of the BLM and U.S. Forest Service Interchange Plan, and projects programmed for feasibility and survey and design studies this fiscal year.

Public comment time is scheduled for 11 a.m. The public is invited to attend this meeting and may, at the designated time, submit written or oral statements for the advisory group's consideration.

Minutes of the meeting will be available for public inspection and reproduction during regular office hours within 30 days following the meeting.

DATE: February 7, 1985.

ADDRESS: Comments and suggestions should be sent to: Bureau of Land Management, Star Route 5, Box 1, Ely, Nevada 89301.

FOR FURTHER INFORMATION CONTACT: Kathy Lindsey, (702) 289-4865.

Dated: February 7, 1985.

Merrill L. DeSpain,

District Manager.

[FR Doc. 85-5041 Filed 2-28-85; 8:45 am]

BILLING CODE 4310-HC-M

Request for Public Comment on Federal Coal Property Appraisal Guide

AGENCY: Bureau of Land Mangement, Interior.

ACTION: Request for comments.

SUMMARY: The Commission on Fair Market Value Policy for Federal Coal Leasing recommended in *Fair Market Value Policy for Federal Coal Leasing* (1984) that Federal coal appraisal techniques be reviewed (Rec. VI-3) and improved (Rec. VI-I). The Commission also recommended that tracts of use only to a neighboring mine or coal owner should be valued on the basis of their value to that owner (Rec. VI-4) and that comparable sales appraisal adjustment procedures should reflect likely purchasers tax loss situations more realistically (Rec. VI-2). On March 19, 1984, the Secretary of the Interior's *Review of Federal Coal Leasing* formally adopted these recommendations. Accordingly, the Department has embodied these recommendations in the draft *A Guide to Federal Coal Property Appraisal.*

The purpose of this Notice is to indicate the availability of and formally

solicit public comment on this draft. An earlier version of this Guide was distributed to organizations and individuals with an interest in the Federal coal management program on November 19, 1984. The current version reflects changes made to that earlier draft. Review of a *Guide to Federal Coal Property Appraisal* is being ecompassed within the comment period for the Draft Environmental Impact Statement (EIS) supplement to the Federal coal management program, released February 8, 1985. Comments will be considered in developing the final Guide and, as applicable, in preparing the final EIS supplement. Copies can be obtained from Erick Kaarlela, Chief, Policy Analysis and Coordination Staff, Bureau of Land Management (501), Department of the Interior, 18th and C Streets, NW, Washington, D.C. 20240, (202–343–5517)

DATES: Written comments will be received on or before 30 days following the date of this Notice.

ADDRESS: Send to Director (500) Bureau of Land Mangement, 18th and C Streets, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Amy Lueders, Policy Analysis and Coordination Staff (501), 202–343–3207

Robert F. Burford,

Director.

February 26, 1985.

[FR Doc. 85–5029 Filed 2–28–85; 8:45 am]

BILLING CODE 4310–84–M

Minerals Management Service

Approval of Outer Continental Shelf Official Protraction Diagrams

February 15, 1985.

1. Notice is hereby given that, effective with this publication, the following revised Outer Continental Shelf Official Protraction Diagrams, approved on the dates indicated, are available at the Minerals Management Service, Alaska OCS Region, Anchorage, Alaska. In accordance with Title 30, Code of Federal Regulations, these protraction diagrams are the basic record for the description of mineral and oil and gas lease offers in the geographic area represented.

OUTER CONTINENTAL SHELF PROTRACTION DIAGRAMS

Description	Revised date
NN 2–4 Okmuk Canyon	Sept. 11, 1984
NN 2–6 Umiak	Do
NN 2–8 Semaiga Island	Do
NN 3–3 Aleutian	Do
NN 3–5 Unalaska	Do
NO 2–6 St. Paul Island	Sept. 10, 1984.

OUTER CONTINENTAL SHELF PROTRACTION DIAGRAMS—Continued

Description	Revised date
NO 2–8 St. George Island	Do

2. Copies of these diagrams are for sale at two dollars ($2.00) per sheet by the Regional Director, Minerals Management Service, Alaska OCS Region, P.O. Box 101159, Anchorage, Alaska 99510–1159.

Checks or money orders should be made payable to the Department of the Interior—Minerals Management Service.

Alan D. Powers,

Regional Director.

[FR Doc. 85–4930 Filed 2–28–85; 8:45 am]

BILLING CODE 4310–MR–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

A.I.D. Mission Director in Egypt; Redelegation of Authority No. 113.3C

AGENCY: Agency for International Development, IDCA.

ACTION: Notice; Correction.

SUMMARY: This document corrects the numeral designation of Redelegation of Authority No. 113.3C.

FOR FURTHER INFORMATION CONTACT: Nancy D. Frame, Assistant General Counsel for Employee and Public Affairs, Agency for International Development, Washington, D.C. 20523 (202) 632–8218.

Effective date: Immediately.

The Agency for International Development is correcting the Redelegation of Authority 113.3C, published at 49 FR 49001, December 17, 1984 to read as follows:

A.I.D. Mission Director in Egypt; Redelegation of Authority No. 113.8

Lisa DeSoto,

Acting Assistant General Counsel, Employee and Public Affairs.

[FR Doc. 85–4956 Filed 2–28–85; 8:45 am]

BILLING CODE 6116–01–M

Assistant Administrator for Near East; Delegation of Authority No. 147

AGENCY: Agency for International Development, IDCA.

ACTION: Notice; Correction.

SUMMARY: This document corrects the language contained in the Notice relating to the Redelegation of Authority No. 147.

FOR FURTHER INFORMATION CONTACT: Nancy D. Frame, Assistant General Counsel for Employee and Public Affairs, Agency for International Development, Washington, D.C. 20523 (202) 632–8218.

Effective date: Immediately.

The Agency for International Development is correcting the Redelegation of Authority 147, published at 49 FR 49000, December 17, 1984 to read as follows:

Assistant Administrator for the Near East; Delegation of Authority No. 147

Furthermore, wherever the word "redelegate" appears in the document the word "delegate" shall be substituted in its stead.

Lisa DeSoto,

Acting Assistant General Counsel, Employee and Public Affairs.

[FR Doc. 85–4955 Filed 2–28–85; 8:45 am]

BILLING CODE 6116–01–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–6 (Sub-220)B]

Rail Carriers; Burlington Northern Railroad Co. Abandonment in Montgomery, Pottawattamie, and Cass Counties, IA; Findings

The Commission has found that the public convenience and nece ity permit Burlington Northern Railroad Company to abandon its 9.95 mile rail line between Red Oak, IA (milespost 3.05) and Elliott, IA (milespost 13.0) in Montgomery, Pottawattamie, and Cass Counties, IA. A certificate will be issued authorizing this abandonment unless the Commission also finds that: (1) A financially responsible person has offered assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the left-hand corner of the envelope containing the offer: "Rail Section, AB–OFA." Any offer previously made must be remade within this 10 day period.

Information and procedures regarding financial assistance for continued rail

service are contained in 49 U.S.C. 10905 and 49 CFR Part 1152.

James H. Bayne,

Secretary.

[FR Doc. 85-4986 Filed 2-28-85; 8:45 am]

BILLING CODE 7035-01-M

Rail Carriers; Release of Waybill Data for Use by the Association of American Railroads

The Commission has received a request from the Association of American Railroads (AAR) to use the Commission's 1983 Waybill Sample tape in their economic and policy research and analysis work.

AAR states that the first and principal use of the tape will be as input to the AAR Intermodal Competition Model which is the chief means by which the AAR and rail industry determine the impact of changes in rail, truck, or barge costs or rail traffic and revenue. AAR points out that the waybill sample tape is the only data base available for this purpose. Specifically, they need access to the six and seven digit Standard Point Location Code (SPLC) and Standard Transportation Commodity Code (STCC), car types, and route miles which are not available in the Public Use Waybill tape. They, however, emphasize that although these data are confidential, the results of their model runs are always reported in an aggregate form so that no single carrier or car owner can be indentified with any given type or volume of traffic.

AAR's second use of the waybill tape will involve a study of the modal distribution of key imported commodities from major ports. AAR states that this is planned as an internal study only and they do not intend to report the data outside of AAR. Also, they note that if their intention changes, they would make sure any data publically reported were aggregated so that no carrier or car owner could be associated with their traffic.

A possible third use of the tape would involve a study of the economies of eliminating cabooses and would deal only with nationwide aggregate data.

The Commission requires rail carriers to file waybill sample information if in any of the past three years, they terminated on their lines at least: (1) 4,500 revenue carloads or (2) 5 percent of revenue carloads in any one State (49 CFR Part 1244). From this waybill information, the Commission has developed a Public Use Waybill File that has satisfied the majority of all our waybill data requests while protecting the confidentiality of proprietary data submitted by the railroads. However, if confidential waybill data are requested, as in this case, we will consider releasing the data only after certain protective conditions are met and public notice is given. More specifically, under the Commission's current policy for handling waybill requests, we will not release any confidential waybill data until after: (1) Certain requirements designed to protect the data's confidentiality are agreed to by the requesting party and (2) public notice is provided so affected parties have an opportunity to object. (48 FR 40328, September 6, 1983).

Accordingly, if any parties object to AAR's request, they should file their objections within 14 calendar days of the date of this notice. They should also include all grounds for objection to the full or partial disclosure of the requested data. The Commission's Director of the Office of Transportation Analysis will consider these objections in determining whether to release the requested waybill data. Any parties who filed objections will be timely notified of the Director's decision.

James H. Bayne,

Secretary.

[FR Doc. 85-4987 Filed 2-28-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging Consent Decree Pursuant To Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on February 8, 1985 a proposed Consent Decree in *United States of America* v. *Amoco Production Co.*, Civil Action No. 85-0217HB, was lodged with the United States District Court for the District of New Mexico. The complaint filed by the United States alleged violations of the Clean Water Act by Amoco Production Company at its Empire ABO Natural Gas Refinery located in Artestia, New Mexico.

The company had failed to obtain a National Pollutant Discharge Elimination System permit for discharges of wastewater consisting of cooling tower and boiler blowdown. The discharge contained salts and sulphates. The complain sought injunctive relief to require the defendant to conform to the Clean Water Act, and civil penalties for past violations.

The Consent Decree provides that all unlawful discharges will cease immediately, and that the company will pay a civil penalty of $26,000 for past violations of the Clean Water Act.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States of America* v. *Amoco Production Co.*, D.J. Ref. 90-5-1-1-2265.

The Proposed Consent Decree may be examined at the office of the United States Attorney, U.S. Courthouse, Room 12020, 500 Gold Avenue, SW., Albuquerque, New Mexico 87103 and at Region VI Office of the Environmental Protection Agency, 1201 Elm Street, Dallas, Texas 75270.

Copies of the proposed Consent Decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, U.S. Department of Justice, Rooms 1512 and 1644, Ninth Street and Pennsylvania Avenue, NW., Washington, D.C. 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, U.S. Department of Justice.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 85-4925 Filed 2-28-85; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

Proposed Termination of Final Judgements; Emhart Industries, Inc., et al.

Notice is hereby given that Emhart Industries, Inc. (formerly Emhart Corporation), Sargent & Company and Eaton Corporation (formerly Eaton Yale & Towne, Inc.) have each filed with the United States District Court for the District of Connecticut a motion to terminate their respective final judgments: *United States* v. *Emhart Corporation*, Civil No. 13262; *United States* v. *Sargent Company*, Civil No. 13263; and *United States* v. *Eaton Yale & Towne, Inc.*, Civil No. 13264. The Department of Justice ("Department"), in stipulations also filed with the court, has consented to termination of the judgments, but has reserved the right to withdraw its consent for at least seventy (70) days after the publication of this notice. The complaints in these cases, which were filed on July 11, 1969, alleged that companies restricted the territories within which and customers to whom their distributors could sell master key systems and extensions to master key systems.

The Emhart judgment (entered on February 23, 1970) and the Sargent judgment (entered on April 8, 1970) enjoin each of the companies from directly or indirectly imposing any restrictions respecting the territories in which, or the persons to whom, any of their distributors may sell master key systems and extensions to such master key systems.

The Eaton judgment, imposed after trial, enjoins the defendant from imposing any restrictions upon its distributors respecting the customers to whom those distributors may sell master key systems.

The Department has filed with the court memoranda setting forth the reasons why the Department believes that termination of the judgments would serve the public interest. Copies of the complaints and final judgments, each of the defendant's motion papers, the stipulations containing the Government's consent, the Department's memoranda and all further papers filed with the court in connection with these motions will be available for inspection in the Legal Procedure Unit of the Antitrust Division, Room 7416, Department of Justice, Tenth Street and Pennsylvania Avenue NW., Washington, D.C. 20530 (telephone: 202–633–2481), and at the Office of the Clerk of the United States District Court for the District of Connecticut, 450 Main Street (2d Floor), Hartford, Connecticut 06103. Copies of any of these materials may be obtained from the Legal Procedure Unit upon request and payment of the copying fee set by Department of Justice regulations.

Interested persons may submit comments regarding the proposed decree terminations to the Department. Such comments must be received within sixty (60) days, and will be filed with the court. Comments should be addressed to Anthony V. Nanni, Chief, Trial Section, Antitrust Divison, Department of Justice, Washington, D.C. 20530 (telephone: 202–633–2541).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 85–5037 Filed 2–28–85; 8:45 am]

BILLING CODE 4410-01-M

National Cooperative Research Notification; Uninet Research and Development Company

Notice is hereby given that pursuant to section 6(a) of the National Cooperative Research Act of 1984, Pub. L. 98–462 (the Act), Uninet Research and Development Company (URDC) has filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to URDC and (2) the nature and objectives of URDC. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to URDC, and its general areas of planned activities, are given below.

URDC is a joint venture partnership, consisting of the following partners:

1. Uninet, Inc. (Uninet), operator of one of the nation's largest public packet-switching networks (80%); and
2. Control Data Corporation (Control Data), international provider of computer systems and services (20%A).

URDC has been formed for the purpose of performing research and development of the basic technology to be incorporated by Uninet and Control Data in advanced, packet-switching data communications networks, which will be implemented in the late 1980's. It is intended that the basic technology to be developed by URDC will enable Uninet and Control Data to provide data communications networks designed to meet the reliability, security, diagnostic, and support features needed by users of such networks through the 1990's. To accommodate the growth and bandwidth demands, the network technology will be based on a distributed architecture. In addition, the technology will make possible the development of networks which will accommodate new user features and will allow interconnection with other network technologies.

The activities of URDC will be limited to development of the basic network technology. Implementation of the technology will be the responsibility of Uninet and Control Data.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 85–5036 Filed 2–28–85; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Forms Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibility under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the proposed forms and recordkeeping requirements that will affect the public.

List of Forms Under Review

On each Tuesday and/or Friday, as necessary, the Department of Labor will publish a list of the Agency forms under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of any particular revision they are interested in.

Each entry will contain the following information:

The Agency of the Department issuing this form.

The title of the form.

The OMB and Agency form numbers, if applicable.

How often the form must be filled out.

Who will be required to or asked to report.

Whether small businesses or organizations are affected.

An estimate of the number of responses.

An estimate of the total number of hours needed to fill out the form.

The number of forms in the request for approval.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the proposed forms and supporting documents may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, Telephone 202–523–6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room S–5526, Washington, D.C. 20210. Comments should also be sent to the OMB reviewer, Arnold Strasser, Telephone 202–395–6880, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, NEOB, Washington, D.C. 20503.

Any member of the public who wants to comment on a form which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Extension

Employment Standards Administration

Housing Terms and Conditions
1215–0146; WH–521, WH–521a, WH–521b
On occasion
Individuals or households; Farms; Businesses or other for-profit; Small businesses or organizations
2,064 responses; 1,032 hours; 3 forms.

The Migrant and Seasonal Agricultural Worker Protection Act (MSPA) requires any farm labor contractor, agricultural employer or agricultural association providing housing to post or present, by written statement, to each migrant agricultural worker the terms and conditions, if any, of occupancy.

Signed at Washington, D.C., this 26th day of February, 1985.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 85–5065 Filed 2–28–85; 8:45 am]

BILLING CODE 4510–27–M

The Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463 as amended), notice is hereby given of a meeting of the Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

Date, time and place: March 12, 1985, 9:30 a.m., Rm. S4215 A & B Frances Perkins, Department of Labor Building, 200 Constitution Avenue NW., Washington, D.C. 20210.

Purpose: To discuss trade negotiations and trade policy of the United States.

This meeting will be closed under the authority of section 10(d) of the Federal Advisory Committee Act. The Committee will hear and discuss sensitive and confidential matters concerning U.S. trade negotiations and trade policy.

For further information, contact: Fernand Lavallee, Executive Secretary, Labor Advisory Committee, Phone: (202) 523–6565.

Signed at Washington, D.C. this 21st day of February 1985.

Robert W. Searby,

Deputy Under Secretary, International Affairs.

[FR Doc. 85–4963 Filed 2–28–85; 8:45 am]

BILLING CODE 4510–28–M

Employment and Training Administration

[TA–W–15,641]

Hanimex Manufacturing, Incorporated; Jackson, MI; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on December 17, 1984 in response to a worker petition received on December 3, 1984 which was filed by the Allied Industrial Workers Union on behalf of workers at Hanimex Manufacturing, Incorporated, Jackson, Michigan.

The Hanimex Manufacturing, Incorporated facility, Jackson, Michigan closed in February 1984.

The closure and the facts involved were fully investigated pursuant to a petition for trade adjustment assistance filed on behalf of the workers (TA–W–15,095). The Department issued a negative determination on TA–W–15,095 on May 17, 1984.

Subsequently, the petitioners applied for reconsideration of the negative determination and that application was dismissed for lack of new evidence on July 5, 1984.

The instant petition TA–W–15,641, was received more than six months before the negative determination was issued by the Department and more than nine months after the plant closed. Under the circumstances, further investigation would be duplicative of TA–W–15,095 and serve no useful purpose. Consequently, the investigation has been terminated.

Signed at Washington, D.C. this 19th day of February 1985.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 85–4964 Filed 2–28–85; 8:45 am]

BILLING CODE 4510–28–M

Occupational Safety and Health Administration

Construction Safety and Health Advisory Committee; Meeting

Notice is hereby given that the Advisory Committee on Construction Safety and Health, established under section 107(e) of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333) and section 7(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656) will meet on March 19, 1985 in Room C–2318, of the Department of Labor Building, 300 Constitution Avenue, N.W., Washington, D.C. 20210. The meeting is open to the public and will begin at 9:30 a.m.

The agenda for the meeting will include the swearing in of members, an update on OSHA health standards, an update of a NIOSH program called "Fatal Accident Circumstances and Epidemiology", a discussion of ground-fault circuit interrupter extension cords in the construction industry, and a general discussion of construction safety and health matters.

Written data, views or comments may be submitted, preferably with 20 copies to the Division of Consumer Affairs. Any such submission received prior to the meeting will be provided to the members of the Committee and will be included on the record of the meeting.

Anyone wishing to make an oral presentation should notify the Division of Consumer Affairs before the meeting. The request should state the amount of time desired, the capacity in which the person will appear, and a brief outline and the content of the presentation.

Oral presentations will be scheduled at the discretion of the Chairman depending on the extent to which time permits. Communications may be mailed to Ken Hunt, Committee Management Officer, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–3662, Washington, D.C. 20210. Telephone: 202–523–8024.

Material provided to members of the Committee are available for inspection and copying at the above address.

Signed at Washington, D.C., this 26th day of February, 1985.

Robert A. Rowland,

Assistant Secretary.

[FR Doc. 85–5143 Filed 2–28–85; 8:45 am]

BILLING CODE 4510–26–M

Office of Pension and Welfare Benefit Programs

[Prohibited Transaction Exemption 85–43; Exemption Application No. D–4941 et al.]

Employee Benefit Plans; Grant of Individual Exemptions; Lehndorff & Babson Property Fund, et al.

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the

Internal Revenue Code of 1954 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Lehndorff & Babson Property Fund (the Fund) Located in Dallas, Texas

[Prohibited Transaction Exemption 85–43; Exemption Application No. D–4941]

Exemption

Section I. Exemption for Certain Transactions Involving the Fund

(a) The restrictions of sections 406(a), 406(b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to the transactions described below if the applicable conditions set forth in Section III are met.

(1) *Transactions Between Parties-In-Interest and the Fund: General.* Any transaction between a party-in-interest with respect to a plan which has an interest in the Fund (a Participating Plan) and the Fund, or any acquisition or holding by the Fund of employer securities or employer real property, if the party in interest is not Lehndorff & Babson Real Estate Counsel, Inc. (Lehndorff) or one of its affiliates, any other Fund maintained by Lehndorff or one of its affiliates, and if, at the time of the transaction, acquisition or holding, the interest of the Participating Plan, together with the interests of any other Participating Plans maintained by the same employer or employee organization in the Fund, does not exceed 10 percent of the total of all assets in the Fund.

(2) *Special Transactions Not Meeting the Criteria of Section I(a)(1) Between Employers of Employees Covered by a Multiemployer Plan and the Fund.* Any transaction between an employer (or an affiliate of an employer) of employees covered by a multiemployer plan (as defined in section 3(37)(A) of the Act and section 414(f)(1) of the Code) that is a Participating Plan, and the Fund, or any acquisition or holding by the Fund of employer securities or employer real property, if at the time of the transaction, acquisition or holding—

The interest of the multiemployer plan in the Fund exceeds 10 percent of the total assets in the Fund, but the employer is not a "substantial employer" with respect to the plan and would not be a "substantial employer" if "5 percent" were substituted for "10 percent" in the definition of "substantial employer."

(3) *Acquisitions, Sales, or Holdings of, Employer Securities and Employer Real Property.* (A) Except as provided in subsection (B) of this section (3), any acquisition, sale or holding of employer securities or employer real property by the Fund which does not meet the requirements of paragraphs (a)(1) and (a)(2) of this Section I, if no commission is paid to Lehndorff or to the employer, or any affiliate of Lehndorff or the employer in connection with the acquisition of sale of employer securities or the acquisition, sale or lease of employer real property; and

(i) In the case of employer real property—

(aa) Each parcel of employer real property and the improvements thereon held by the Fund are suitable (or adaptable without excessive cost) for use by different tenants, and

(bb) The property of the Fund that is leased or held for lease to others, in the aggregate, is dispersed geographically

(ii) In the case of employer securities—

(aa) Neither Lehndorff nor any of its affiliates is an affiliate of the issuer of the security, and

(bb) If the security is an obligation of the issuer, either:

1. The Fund owns the obligation at the time the plan acquires an interest in the Fund, and interests in the Fund are offered and redeemed in accordance with valuation procedures of the Fund applied on a uniform or consistent basis, or

2. Immediately after acquisition of the obligation by the Fund, not more than 25 percent of the aggregate amount of obligations issued in the issue and outstanding at the time of acquisition is held by such plan, and at least 50 percent of the aggregate amount of obligations issued in the issue and outstanding at the time acquisition is held by persons independent of the issuer. Lehndorff, its affiliates and any collective investment fund maintained by Lehndorff or its affiliates shall be considered to be persons independent of the issuer if Lehndorff is not the issuer or an affiliate of the issuer.

(B) In the case of a Participating Plan that is not an eligible individual account plan (as defined in section 407(d)(3) of the Act), the exemption provided in subsection (A) of this section (3) shall be available only if, immediately after the acquisition of the securities or real property, the aggregate fair market value of employer securities and employer real property with respect to which Lehndorff or its affiliate has investment discretion does not exceed 10 percent of the fair market value of all the assets of the Participating Plan with respect to which Lehndorff or its affilitate has such investment discretion.

(C) For purposes of the exemption contained in subsection (A) of this section (3), the term "employer securities" shall include securities issued by, and the term "employer real property" shall include real property leased to, a person who is a party-in-interest with respect to a Participating Plan by reason of a ralationship to the employer described in section 3(14) (E), (G), (H) or (I) of the Act.

(b) The restrictions of section 406(a)(1) (A) through (D) and section 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the transactions

described below, if the conditions of Section III are met.

(1) *Certain Leases and Goods.* The furnishing of goods to the Fund by a party-in-interest wiht respect to a Participating Plan or the leasing of real property owned by the Fund to such party-in-interest and the incidental furnishing of goods to such party-in-interest by the Fund, if—

(A) In the case of goods, they are furnished to or by the Fund in connection with real property by the Fund;

(B) The party-in-interest is not Lehndorff, any affiliate of Lehndorff, or one of the other Funds; and

(C) The amount involved in the furnishing of goods or leasing of real property in any calendar year (including the amount under any other lease or arrangement for the furnishing of goods in connection with the real property investments of the Fund with the same party-in-interest, or any affiliate thereof) does not exceed the greater of $25,000 or 0.5 percent of the fair market value of the assets of the Fund on the most recent valuation date of the Fund prior to the transaction.

(2) *Transactions Involving Places of Public Accommodation.* The furnishing of services, facilities and any goods incidental to such services and facilities by a place of public accommodation owned by the Fund to a party-in-interest with respect to a Participating Plan, if the services, facilities and incidental goods are furnished on a comparable basis to the general public.

(c) The restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to the following transaction if the conditions of Section III are met:

Any transaction between the Fund and a person who is a party in interest with respect to a Participating Plan, if—

(1) The person is a party in interest (including a fiduciary) solely by reason of providing services to the Participating Plan, or solely by reason of a relationship to a service provider described in section 3(14)(F), (G), (H) or (I) of the Act, or both, and the person neither exercised nor has any discretionary authority, control, responsibility or influence with respect to the investment of the Participating Plan's assets in, or held by, the Fund;

(2) At the time of the transaction, the interest of the Participating Plan, together with the interests of any other Participating Plan maintained by the same employer or employee organization in the Fund, does not exceed 20 percent of the total of all assets in the Fund; and

(3) The person is not Lehndorff or an affiliate of Lehndorff.

(d) The restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to the purchase and sale of units of beneficial interest in the Fund if no more than reasonable compensation is paid therefor, each purchase and sale is authorized in writing by a fiduciary of the Participating Plan who is independent of Lehndorff and any of its affiliates, and the applicable conditions of Section III are met.

Section II. Excess Holdings Exemption for Employee Benefit Plans

(a) The restrictions of sections 406(a) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to any acquisition or holding of qualfiying employer securities or qualifying employer real property (other than through the Fund) by a Participating Plan if (1) the acquisition or holding constitutes a prohibited transaction solely by reason of being aggregated with employer securities or employer real property held by the Fund; (2) the requirements of either paragraph (a)(1) or paragraph (a)(2) of Section I of this exemption are met; and (3) the applicable conditions set forth in Section III of this exemption are met.

Section III. General Conditions

(a) At the time the transaction is entered into, and at the time of any subsequent renewal thereof that requires the consent of Lehndorff or its affiliate, the terms of the transaction are not less favorable to the Fund than the terms generally available in arm's-length transactions between unrelated parties.

(b) Lehndorff or its affiliates maintain for a period of six years from the date of the transaction the records necessary to enable the persons described in paragraph (c) of this Section III to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Lehndorff or its affiliates, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (c) below.

(c)(1) Except as provided in section 2 of this paragraph (c) and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (b) of this Section III are unconditionally available at their customary location for examination during normal business hours by:

(A) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(B) Any fiduciary of a Participating Plan who has authority to acquire or dispose of the interests in the Fund of the Participating Plan or any duly authorized employee or representative of such fiduciary,

(C) Any contributing employee to any Participating Plan or any duly authorized employee or representative of such employer, and

(D) Any participant or beneficiary of any Participating Plan, or any duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described in subparagraphs (B) through (D) of this paragraph (c) shall be authorized to examine trade secrets of Lehndorff or its affiliate, or commercial or financial information which is privileged or confidential.

Section IV. Definitions and General Rules

For the purposes of this exemption,

(a) The term "the Fund" shall include any collective investment fund that may hereafter be established, operated and managed by Lehndorff or its affiliate in essentially the same manner as the Lehndorff & Babson Property Fund.

(b) An "affiliate" of a person includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person,

(2) Any officer, director, employee, relative of, or partner in any such person, and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

(c) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) The term "relative" means a "relative" as that term is defined in section 3(15) of the Act (or a "member of the family" as that term is defined in section 4975(e)(6) of the Code), or a

brother, a sister, or a spouse of a brother or sister.

(e) The term "substantial employer" means for any plan year an employer (treating employers who are members of the same affiliated group, within the meaning of section 1563(a) of the Code, determined without regard to section 1563(a)(4) and (e)(3)(c) of the Code, as one employer) who has made contributions to or under a multiemployer plan for each of—

(1) The two immediately preceding plan years, or

(2) The second and third preceding plan years, equaling or exceeding 10 percent of all employer contributions paid to or under that plan for each such year.

(f) The time as of which any transaction, acquisition or holding occurs is the date upon which the transaction is entered into, the acquisition is made or the holding commences. In addition, in the case of a transaction that is continuing, the transaction shall be deemed to occur until it is terminated. If any transaction is entered into, or an acquisition is made, on or after the effective date of this exemption, or a renewal that requires the consent of the Fund occurs on or after the effective date of this exemption, and the requirements of this exemption are satisfied at the time the transaction is entered into or renewed, respectively, or at the time the acquisition is made, the requirements will continue to be satisfied thereafter with respect to the transaction or acquisition and the exemption shall apply thereafter to the continued holding of the property so acquired. Notwithstanding the foregoing, this exemption shall cease to apply to transactions exempt by virtue of subsections I(a)(1) and (I)(c) at such time as the interest of the Participating Plan exceeds the percentage interest limitations set forth in those subsections, unless no portion of such excess results from an increase in the assets allocated to the Fund by the Participating Plan. For this purpose, assets allocated do not include the investment of Fund earnings. Nothing in this paragraph (f) shall be construed as exempting a transaction entered into by the Fund which becomes a transaction described in section 406 of the Act or section 4975 of the Code while the transaction is continuing, unless the conditions of the exemption were met either at the time the transaction was entered into or at the time the transaction would have become prohibited but for this exemption.

(g) Each Participating Plan shall be considered to own the same proportionate undivided interest in each asset of the Fund as its proportionate interest in the total assets of the Fund as calculated on the most recent preceding valuation date of the Fund.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on September 28, 1984 at 49 FR 38384.

Effective Date: This exemption is effective December 12, 1983.

Comment: The only comment received by the Department was from the applicant, Lehndorff. Lehndorff therein requests relief for the exemption retroactive to the date on which the first subscription in the Fund was received from a Plan to which Lehndorff or an affiliate is a party in interest. The applicant states that such a subscription by a Plan may be deemed a "purchase" of an interest in the Fund and thus a prohibited transaction as described in the Act (see Section I(d) of the Exemption). The applicant states that on December 12, 1983, a Plan to which David L. Babson & Co., one of the owners of Lehndorff, is a party in interest, subscribed for units of the Fund. The applicant also states that other subscriptions and transactions have occurred since December 12, 1983, which would be provided relief if the exemption was retroactive to such date.

The Department has considered the comment and has determined that exemptive relief should be retroactive to December 12, 1983.

For Further Information Contact: Mr. David Stander of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

The LaSalle Fund II (the Fund) Located in Chicago, Illinois

[Prohibited Transaction Exemption 85–44; Application No. D–5022]

Exemption

Section I. Exemption for Certain Transactions Involving the Fund [1]

(a) The restrictions of sections 406(a), 406(b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 fo the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the transactions described below if the applicable conditions set forth in Section III are met.

(1) *Transactions Between Parties In Interest and the Fund: General.* Any transaction between a party in interest with respect to a qualified pension or profit sharing plan participating in the Fund (Unitholder) and the Fund, or any acquisition or holding by the Fund of employer real property, if the party in interest is not LaSalle Advisors Inc. (LaSalle), any of its affiliates, or any other group trust managed by LaSalle or any of its affiliates, and if, at the time of the transaction, acquisition or holding, the interest of the Unitholder, together with the interests of any other Unitholders maintained by the same employer or employee organization in the Fund, does not exceed 10 percent of the total of all assets in the Fund.

(2) *Special Transactions Not Meeting the Criteria of Section I(a)(1) Between Employers of Employees Covered by a Multiemployer Plan and the Fund.* Any transaction between an employer (or an affiliate of an employer) of employees covered by a multiemployer plan (as defined in section 3(37)(A) of the Act and section 414(f)(1) of the Code) that is a Unitholder and the Fund, or any acquisition or holding by the Fund of employer real property, if at the time of the transaction, acquisition or holding—

The interest of the multiemployer plan in the Fund exceeds 10 percent of the total assets in the Fund, but the employer is not a "substantial employer" with respect to the plan and would not be a "substantial employer" with respect to the plan and would not be a "substantial employer" if "5 percent" were substituted for "10 percent" in the definition of "substantial employer."

(3) *Acquisitions, Sales, or Holdings of Employer Real Property.* (A) Except as provided in subsection (B) of this section (3), any acquisition, sale or holding of employer real property by the Fund which does not meet the requirements of paragraphs (a)(1) and (a)(2) of this Section I, if no commission is paid to LaSalle or to the employer or to any affiliate of LaSalle or the employer in connection with the acquisition, sale or lease of employer real property; and

(i) Each parcel of employer real property and the improvements thereon held by the Fund are suitable (or adaptable without excessive cost) for use by different tenants, and

(ii) The property of the Fund that is leased or held for lease to others, in the aggregate, is dispersed geographically.

(B) In the case of a Unitholder that is not an eligible individual account plan (as defined in section 407(d)(3) of the Act), the exemption provided in subsection (A) of this section (3) shall be available only if, immediately after the acquisition of the real property, the aggregate fair market value of employer

[1] References in the exemption to the Fund shall also refer to any future group trust structured and operated in a manner identical to the Fund.

real property held by the Fund does not exceed 10 percent of the fair market value of the Unitholder's interest in the Fund.

(C) For purposes of the exemption contained in subsection (A) of this section (3), the term "employer real property" shall include real property leased to a person who is a party in interest with respect to a Unitholder by reason of a relationship to the employer described in section 3(14) (E), (G), (H) or (I) of the Act.

(b) The restrictions of section 406(a)(1) (A) through (D) and section 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the transactions described below, if the conditions of Section III are met:

(1) *Certain Leases and Goods.* The furnishing of goods to the fund by a party in interest with respect to a Unitholder or the leasing of real property owned by the Fund to such party in interest and the incidental furnishing of goods to such party in interest by the Fund, if—

(A) In the case of goods, they are furnished to or by the Fund in connection with real property owned by the Fund;

(B) The party in interest is not LaSalle or any affiliate of LaSalle or one of the other Funds operated by LaSalle; and

(C) The amount involved in the furnishing of goods or leasing of real property in any calendar year (including the amount under any other lease or arrangement for the furnishing of goods in connection with the real property investments of the Fund with the same party in interest, or any affiliate thereof) does not exceed the greater of $25,000 or 0.5 percent of the fair market value of the assets of the Fund on the most recent valuation date of the Fund prior to the transaction.

(2) *Transactions Involving Places of Public Accommodation.* The furnishing of services, facilities and any goods incidental to such services and facilities by a place of public accommodation owned by the Fund to a party in interest with respect to a Unitholder, it the services, facilities and incidental goods are furnished on a comparable basis to the general public.

(c) The restrictions of section 406(a)(1) (A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to the following transaction if the conditions of Section III are met:

Any transaction between the Fund and a person who is a party in interest with respect to a Unitholder, if—

(1) The person is a party in interest (including a fiduciary) solely by reason of providing services to the Unitholder, or solely by reason of a relationship to a service provider described in section 3(14) (F), (G), (H), or (I) of the Act, or both, and the person neither exercised nor has any discretionary authority, control, responsibility or influence with respect to the investment of the Unitholder's assets in, or held by, the Fund;

(2) At the time of the transaction, the interest of the Unitholder, together with the interests of any other Unitholders maintained by the same employer or employee organization in the Fund, does not exceed 20 percent of the total of all assets in the Fund; and

(3) The person is not LaSalle or an affiliate of LaSalle.

(d) The restrictions of section 406(a)(1) (A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to the purchase and sale of units of beneficial interest in the Fund if no more than reasonable compensation is paid therefor, each purchase and sale is authorized in writing by a fiduciary of the Unitholder who is independent of LaSalle and any of its affiliates, and the applicable conditions of Section III are met.

Section II. Excess Holdings Exemption for Employee Benefit Plans

(a) The restrictions of sections 406(a) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to any acquisition or holding of qualifying employer real property (other than through the Fund) by a Unitholder if (1) the acquisition or holding constitutes a prohibited transaction solely by reason of being aggregated with employer real property held by the Fund; (2) the requirements of either paragraph (a)(1) or paragraph (a)(2) of Section I of this exemption are met; and (3) the applicable conditions set forth in Section III of this exemption are met.

Section III. General Conditions

(a) At the time the transaction is entered into, and at the time of any subsequent renewal thereof that requires the consent of LaSalle or its affiliates, the terms of the transaction are not less favorable to the Fund than the terms generally available in arm's-length transactions between unrelated parties.

(b) LaSalle or its affiliates maintain for a period of six years from the date of the transaction the records necessary to enable the persons described in paragraph (c) of this Section III to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of LaSalle or its affiliates, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (c) below.

(c)(1) Except as provided in section 2 of this paragraph (c) and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (b) of this Section III are unconditionally available at their customary location for examination during normal business hours by:

(A) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(B) Any fiduciary of a Unitholder who has authority to acquire or dispose of the interests in the Fund of the Unitholder or any duly authorized employee or representative of such fiduciary,

(C) Any contributing employer to any Unitholder or any duly authorized employee or representative of such employer, and

(D) Any participant of beneficiary of any Unitholder or any duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described in subparagraphs (B) through (D) of this paragraph (c) shall be authorized to examine trade secrets of LaSalle or any of its affiliates, or commercial or financial information which is privileged or confidential.

Section IV. Definitions and General Rules

For the purposes of this exemption,

(a) An "affiliate" of a person includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person,

(2) Any officer, director, employee, relative of, or partner in any such person, and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

(b) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(c) The term "relative" means a "relative" as that term is defined in section 3(15) of the Act (or a "member of the family" as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or sister.

(d) The term "substantial employer" means for any plan year an employer (threating employers who are members of the same affiliated group, within the meaning of section 1563(a) of the Code, determined without regard to section 1563(a)(4) and (e)(3)(c) of the Code, as one employer) who has made contributions to or under a multiemployer plan for each of—

(1) The two immediately preceding plan years, or

(2) The second and third preceding plan years, equaling or exceeding 10 percent of all employer contributions paid to or under that plan for each such year.

(e) The time as of which any transaction, acquisition or holding occurs is the date upon which the transaction is entered into, the acquisition is made or the holding commences. In addition, in the case of a transaction that is continuing, the transaction shall be deemed to occur until it is terminated. If any transaction is entered into, or an acquisition is made, on or after the effective date of this exemption, or a renewal that requires the consent of the Fund occurs on or after the effective date of this exemption, and the requirements of this exemption are satisfied at the time the transaction is entered into or renewed, respectively, or at the time the acquisition is made, the requirements will continue to be satisfied thereafter with respect to the transaction or acquisition and the exemption shall apply thereafter to the continued holding of the property so acquired. Notwithstanding the foregoing, this exemption shall cease to apply to transactions exempt by virtue of subsections I(a)(1) and I(c) at such time as the interest of the Unitholder exceeds the percentage interest limitations set forth in those subsections, unless no portion of such excess results from an increase in the assets allocated to the Fund by the Unitholder. For this purpose, assets allocated do not include the investment of Fund earnings. Nothing in this paragraph (e) shall be construed as exempting a transaction entered into by the Fund which becomes a transaction described in section 406 of the Act or section 4975 of the Code while the transaction is continuing, unless the conditions of the exemption were met either at the time the transaction was entered into or at the time the transaction would have become prohibited but for this exemption.

(f) Each Unitholder shall be considered to own the same proportionate undivided interest in each asset of the Fund as its proportionate interest in the total assets of the Fund as circulated on the most recent preceding valuation date of the Fund.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on October 12, 1984 at 49 FR 40117.

Comments and Hearing Requests: The only comment received by the Department was from the applicant, LaSalle. LaSalle requests relief for the exemption retroactive to the date on which the first subscription in the Fund was received from a plan to which LaSalle or an affilitate was a party in interest. LaSalle states that such a subscription by a plan may be deemed a "purchase" of an interest in the Fund and thus a prohibited transaction as described in the Act (see Section I(d) of this Exemption). The applicant states that on January 6, 1984, LaSalle Street Fund subscribed for units of the Fund. The applicant also states that other subscriptions and transactions have occurred since January 6, 1984, which would be provided relief if the exemption was retroactive to such date. The applicant represents that in the case of each subscription or other transaciton which would be afforded exemptive relief if the exemption were issued retroactively, all of the conditions of the proposed exemption which would be applicable to such subscription or transaction were satisfied on the date which such subscription or other transaction was entered into.

The Department has considered the comment and has determined that exemptive relief should be retroactive to January 6, 1984.

Effective Date: This exemption is effective January 6, 1984.

For further Information Contact: Mr. Alan Levitas of the Department, telephone (202) 523–8971. (This is not a toll-free number.)

Phillips Petroleum Company Retirement Trust Fund (the Fund) Located in New York, New York

[Prohibited Transaction Exemption 85–45; Exemption Application No. D–5178]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (a) through (E) of the Code shall not apply to the cash sale by the Fund on December 28, 1984, of its entire stock ownership in three corporations, Kenai LNG Corporation, Arctic LNG Transportation Company, and Polar LNG Shipping Corporation, to Phillips Petroleum Company (Phillips), the sponsor of the Fund, provided the Fund received not less than the fair market value of the stock on the date of sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on November 2, 1984 at 49 FR 44162.

Effective Date: This exemption is effective December 28, 1984.

Written Comments: The Department received ten written comments with respect to the proposed exemption. Most of the commentators requested assistance from the Department to explain to them the terms and conditions of the proposed exemption. None of the comments contained any information which relates to the merits of the exemption. Two commentators requested a hearing with regard to the proposed exemption. One commentator did not state any reasons for the hearing request and the other withdrew his hearing request. The Department contacted by telephone as many commentators as it could locate and verbally addressed their inquiries.

In addition, the applicant informed the Department that the sale was effected on December 28, 1984. The applicant represents that the Plan made the sale on December 28, 1984, because a sale of the stock in 1985 would have required a reconsideration of the transaction by the board of directors of Phillips. The applicant states in light of recent changes in the oil industry and in the business and affairs of Phillips, a reconsideration by Phillips may have resulted in a reduced price for the stock. Citibank, N.A. (Citibank), the Plan's trustee, represents that the sale of the stock prior to the expiration of the year ensured the Plan a sales price that was the most favorable to the Plan and in the best interest of the Plan's participants.

With regard to the final sales price, the applicant states that such price was increased from the proposed sales price of $13.63 million as stated in the notice of pendency to $14.43 million. The applicant states that such price reflects certain adjustments to the balance sheets of the three corporations such as cash, accounts receivable, accounts payable, etc. that are valued, for purposes of negotiating a sales price, at their balance sheet values. The applicant states that such values change almost daily and consequently it is standard practice in a sale of assets or large blocks of stock to have a purchase price adjustment. The applicant represents that such adjustments would be required by any third-party buyer in an arm's-length sale. The applicant states that the final sales price may be subject to further balance sheet adjustments as described above. Citibank will monitor the purchase price adjustments and ensure that such adjustments are correct.

The Department has reviewed the entire record, including the comments submitted, and has determined that the exemption be granted retroactive to December 28, 1984.

For Further Information Contact: Mr. David Stander of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Krohn Clinic, Ltd. Money Purchase Pension Plan (the Plan) Located in LaCrosse, Wisconsin

[Prohibited Transaction Exemption 85–46; Exemption Application No. D–5370]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) a lease, effective July 1, 1984, of certain improved real property (the Property) by the Plan to Krohn Clinic, Ltd. (the Employer), the sponsor of the Plan; and (2) the potential cash purchase of the Property from the Plan by the Employer pursuant to a provision in such lease; provided that the terms and conditions of such transactions are at least as favorable to the Plan as the Plan could expect in arm's-length transactions with unrelated parties.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on December 4, 1984 at 49 FR 47446.

Effective Date: This exemption is effective July 1, 1984.

For Further Information Contact: Ronald Willett of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

BDP International, Inc. Profit Sharing Plan and Trust (the Plan) Located in Philadelphia, Pennsylvania

[Prohibited Transaction Exemption 85–47; Exemption Application No. D–5433]

Exemption

The restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale of certain real property by the Plan to a partnership, which is a party in interest with respect to the Plan, provided all of the terms of the sale are at least as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party on the date the sale is consummated.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on December 14, 1984 at 49 FR 48822.

For Further Information Contact: Ms. Linda Hamilton of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

William J. Broussard, M.D., Phillip B. Kirk, M.D., M.F. Corcoran, M.D., Andrew Zorbis, M.D., P.A. Pension Trust (the Plan) Located in Palm Bay, FL

[Prohibited Transaction Exemption 85–48; Exemption Application No. D–5728]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed sale by the Plan of certain unimproved real propety (the Property) to a general partnership comprised by Drs. Broussard, Kirk, Corcoran and Zorbis for an amount which is the greater of (1) the fair market value of the Property on the date of sale, or (2) the total of all costs incurred by the Plan in the acquisition and holding of the Property through the date of sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on January 2, 1985, at 50 FR 194.

For Further Information Contact: Ms. Katherine D. Lewis of the Department, telephone (202) 523–8882. (This is not a toll-free number.)

Profit Sharing Plan and Trust of Claremore Surgeons, Inc. (the Plan) Located in Claremore, OK

[Prohibited Transaction Exemption 85–49; Exemption Application No. D–5746]

Exemption

The restrictions of section 406 (a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply, (1) for a period of five years, to the proposed loans (the Loans) by the Plan of up to 25% of its net assets (less outstanding loans to Drs. Larry J. Hrdlicka and Larry I. Young) to Claremore Doctor's Park, Inc., a corporation wholly-owned by Drs. Hrdlicka and Young, parties in interest with respect to the Plan; and (2) for the entire terms of such Loans, to the joint, and several guarantees of the Loans by Drs. Hrdlicka and Young, provided that the terms of the transactions are not less favorable to the Plan than those those obtainable in arm's length transactions with unrelated parties at the time of consummation of each transaction.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on January 2, 1985, at 50 FR 195.

Temporary Nature of Exemption: This exemption is temporary and will expire five years from the date this grant is published in the **Federal Register.** Subsequent to the expiration of this exemption, the Plan may continue to hold Loans originated during the five year period for the remaining terms of such Loans.

For Further Information Contact: Ms. Katherine D. Lewis of the Department, telephone (202) 523–8882. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a

fiduciary or other party in interest or disqualified person from certain other provisions of the act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 26th day of February, 1985.

Elliot I. Daniel,

Acting Assistant Administrator for Regulations and Interpretations, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 85-5067 Filed 2-28-85; 8:45 am]

BILLING CODE 4510-29-M

[Application No. L-5434 et al.]

Employee Benefit Plans; Proposed Exemptions; Retail Clerk's Local 919 Health and Welfare Trust Fund, et al.

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, NW., Washington, D.C. 20216.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Retail Clerks' Local 919 Health and Welfare Trust Fund (Non-Food) (the Non-Food Welfare Plan); Retail Employees' Union Local 919 and Subscribing Employers' Health and Welfare Fund (Food) (the Food Welfare Plan); Retail Employees' Union Local 919 Pension Trust Fund (Non-Food) (the Non-Food Pension Plan); Retail Employees' Union Local 919 (UFCW) and Contributing Employers' Food Pension Fund (the Food Pension Plan); Retail Employees' Union Local 919 (UFCW) and Contributing Employers' (Non-Food) Legal Services Trust Fund (the Non-Food Legal Plan); and Retail Employees' Union Local 919 and Subscribing Employers' Legal Services Trust Fund (Food) (the Food Legal Plan, collectively, the Plans) Located in Hartford, Connecticut

[Application Nos. L-5434 and L-5435]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(b)(2) of the Act shall not apply to: (1) The past lease by the Food Pension Plan, the Non-Food Legal Plan and the Food Legal Plan (the New Plans) of certain real property (the Old Office Space Lease) from Retail Employees' Union Local 919, UFCW (the Union); (2) the past lease by the New Plans of data processing time (the Old Computer Time Lease) from the Union; (3) the new lease by the Non-Food Welfare Plan, acting as lead Plan, of office space (the New Office Space Lease) from the Union; (4) the new lease by all of the Plans, with the Non-Food Welfare Plan acting as lead Plan, of data processing time (the New Computer Time Lease) from the Union; and (5) any future extension or renewal by the Plans of the New Office Space Lease, and the New Computer Time Lease (the New Leases), provided that the terms and conditions of past and future transactions were and will be at least as favorable to the Plans as the Plans could obtain in arm's-length transactions with an unrelated party.

Effective Date: The effective date of the proposed exemption, if granted is February 1, 1984, until June 30, 1984, with respect to the Old Office Space Lease; October 5, 1983, until March 1, 1984, with respect to the Old Computer Time Lease; March 1, 1984, with respect to the New Computer Lease Time; July 1, 1984, with respect to the New Office Space Lease; and the date of grant of

this exemption as to any extensions or renewals of the New Leases.

Summary of Facts and Representations

1. The Plans are jointly administered collectively bargained plans established under section 302(c) of the Labor Management Relations Act of 1947, as amended, providing benefits to employees covered by agreements between participating employers and the Union. As of February 2, 1984, the Non-Food Welfare Plan had approximately 3,227 participants; the Food Welfare Plan had approximately 3,181 participants; the Non-Food Pension Plan had approximately 2,428 participants; the Food Pension Plan had approximately 2,968 participants; the Non-Food Legal Plan had approximately 1,874 participants; and the Food Legal Plan had approximately 3,206 participants. Each Plan is administered by four trustees, two of whom are appointed by the Union (the Union Trustees) and two of whom are appointed by the contributing employers (the Employer Trustees, collectively, the Trustees). The Union Trustees are the same for all of the Plans. The Employer Trustees vary from Plan to Plan.

2. Prior to the enactment of the Act, the Non-Food Welfare Plan, the Food Welfare Plan, the Non-Food Pension Plan and the New England Retail Food Clerks' and Employers' Pension Plan (the New England Plan, collectively, the Original Plans) entered into an office space lease (the Original Office Space Lease) whereby the Original Plans leased space in the Union's building from the Union. In addition, prior to the enactment of the Act, the Original Plans entered into a data processing time lease (the Original Computer Time Lease) whereby the Original Plans leased data processing time from the Union. The applicant represents that under the transitional rules of section 414(c) of the Act, the Original Office Space Lease and the Original Computer Time Lease (the Original Leases) do not constitute prohibited transactions.[1]

3. On October 12, 1979, the Department issued an exemption (PTE 79–56, 44 FR 59,015) from section 406(b)(2) of the Act retroactive to January 1, 1975, permitting the Original Plans' Union trustees to retain the Union to provide goods and services to the Original Plans in connection with the Original Computer Lease. No exemptive relief was proposed wih respect to the Original Leases.

The Food Legal Plan was created in September, 1982. The Non-Food Legal Plan was created in January, 1983. Also in January, 1983, the participants in the New England Plan who were represented by the Union were transferred to the newly created Food Pension Plan with the New England Plan withdrawing from the Original Leases. After their formation, each of the New Plans was located in the Union's building and used the Union's computer at no cost to the New Plans.

4. In early 1983, the Trustees directed the Plans' consultant Mr. Donald Walters, Vice President and National Director of Multiemployer Consulting Services for Alexander & Alexander, Inc., to make recommendations on how the then-existing administrative cost sharing arrangements should be adjusted to reflect the creation of the New Plans. Mr. Walters was directed to study the amount of time each of the Plans' office staff members spent on the business of each of the six Plans and how much use each Plan was making of the Union's computer facilities. He also surveyed the real estate rental market in the community where the Union's building is located to evaluate the market rental rate for office space similar to that occupied by the Plans. Mr. Walters conducted a similar survey of the rates charged by commercial service bureaus for access to a computer system and components similar to those owned by the Union and used by the Plans.

5. In a letter dated October 5, 1983, Mr. Walters advised the Trustees of the preliminary results of his administrative cost sharing and computer time utilization studies and recommended that the New Plans begin to pay the Union for their use of computer time. Mr. Walters advised the Trustees that the cost of computer time, if provided by an unrelated service bureau, ranged from $20 to $22.80 per hour. Mr. Walters recommended that all of the Plans pay $20 per hour for the use of computer time and that the New Plans pay the Union for past computer time used retroactive to January, 1983, on the basis of 75% of the amount reflective of his interim utilization findings. The applicant represents that based on Mr. Walters' recommendation, on October 31, 1983, the New Plans paid the Union for their use of computer time from January, 1983 through November, 1983 and subsequently paid fo their use of computer time in December, 1983 and January and February, 1984, at 75% of their monthly use rate as determined in his preliminary study. Because Mr. Walters' recommendation that the New Plans begin to pay the Union for their use of computer time was made on October 5, 1983, the requested exemption proposd herein with respect to the Old Computer Time Lease would be effective as of that date.

With respect to the space leased to the Plans, in letters dated November 30 and December 15, 1983, Mr. Walters advised the Trustees that the current rental rates for space similar to that leased to the Plans ranged from $15 to $20 per square foot. Mr. Walters determined that the fair market rental rate for the entire space leased by the Plans was $15 per square foot, amountng to $849.38 per month. Mr. Walters recommended that the New Plans make rental payments based on the interim results of his administrative cost sharing study, pending completion of that study, with total rent of $844 per month to be received by the Union from all of the Plans. The applicants represent that all of the Plans made rental payments in the amounts specified by Mr. Walters from February through June, 1984. On February 1, 1984, Mr. Walters completed his administrative cost sharing and computer time utilization studies and issued his final recommendations, all of which were accepted by the Trustees.

6. Based upon Mr. Walters studies and recommendations, on March 1, 1984, the Trustees of each Plan entered into a cost sharing agreement (the Agreement) whereby the Plans share their common expenses on the basis of a formula which reflects the percentage of time which each of the Plans' office staff members spends on the business of each Plan, weighted to reflect each staff member's percentage of the total office payroll. The Agreement designates the Non-Food Health and Welfare Plan as the lead Plan. The applicant represents that to the extent that the Agreement consists of the provision of goods and services by the lead Plan to the other Plans, those transactions are exempted from the prohibited transaction rules of section 406 of the Act by Class Exemption 76–1, Part C (41 FR 12740, March 26, 1974) and by Class Exemption 77–10 (42 FR 33918, July 1, 1977).[2]

7. On March 1, 1984, the Plans and the Union orally entered into the New Computer Time Lease, which was followed by a written contract dated April 25, 1984, and signed by the Union and the Non-Food Welfare Plan, acting as lead Plan. The New Computer Time Lease provides that the Plans will pay

[1] In this proposed exemption, the Department expresses no opinion as to the applicability of section 414(c) of the Act to the Original Leases.

[2] In this proposed exemption the Department expresses no opinion as to the applicability of Class Exemption 76–1 or Class Exemption 77–10 to the Agreement.

the Union $2,860 per month in advance or on the first day of each month and that the Unon will allow the Plans access to and full use of the Union's computer for as much time as the Plans' administrative staff requires. The term of the New Computer Time Lease is for two years. On July 1, 1984, the Non-Food Welfare Plan, acting as lead Plan under the Agreement, entered into the New Office Space Lease with the Union. The New Office Space Lease provides for a three year term and grants the Non-Food Welfare Plan an option to extend the New Office Space Lease ree year terms with the fent to be determined by the Plans' consultant. The New Office Space Lease further provides for monthly rent of $844 during it initial term. The applicant represents that the New Leases are exempt from the prohibited transaction rules of section 406(a) of the Act by reason of section 408(b)(2) of the Act.[3] The applicant further represents that the New Leases fully incorporate Mr. Walters recommendations.

8. Mr. Walters represents that with respect to the matters on which he is directed to provide counsel, he is and has been an independent fiduciary with respect to the Plans since he was retained by the Trustees in June of 1983. On October 18 and 19, 1984, the Trustees of each Plan adopted a resolution formally naming Mr. Walters as independent fiduciary on behalf of the Plans with the power to make all decisions with respect to the monitoring, enforcement and any renewal or extension of the New Leases. Mr. Walters represents that the New Computer Time Lease, whose terms and conditions incorporate his recommendations, is favorable to and protective of the Plans because: (a) The utilization of the Union's computer is necessary for the efficient administration of the Plans; (b) the per minute rate upon which the fee is based is lower than that charged for comparable services in the market place; (c) the use of the flat monthly fee based on the utilization study should result in a lower total cost than a per minute fee arrangement; and (d) the purchase by the Plans of their own computer would require the Plans' staff to spend substantial additional time originating and updating participant records, a task which is currently performed at no expense to the Plans by an employee of the Union requiring approximately 150 hours a month on an ongoing basis.

[3] In this proposed exemption, the Department expresses no opinion as to the applicability of section 408(b)(2) of the Act to the New Leases.

Mr. Walters further represents that the New Office Space Lease, whose terms and conditions are based on his recommendations is favorable to and protective of the Plans because: (a) the leased space is appropriate for the Plans' needs; (b) the lease rate paid by the Plans is less than that of comparable facilities in a comparable location; and (c) the proximity of the Plans' space to that occupied by the Union facilitates the utilization of the Union's Computer and the efficient processing of benefits and is convenient for Plan participants.

9. In summary, the applicant represents that the past and proposed transactions meet the statutory requirements of section 408(a) of the Act because: (a) They are based on the recommendations of Mr. Walters, the Plan's independent fiduciary; and (b) Mr. Walters will monitor and enforce the terms of the New Leases and determine the appropriateness of any renewals.

For Further Information Contact: David M. Cohen of the Department, telephone (202) 523-8671. (This is not a toll-free number.)

Smart Chevrolet Co. Employees' Profit Sharing Retirement Plan (the Profit Sharing Plan) and Smart Chevrolet Co. Employees Retirement Plan (the Retirement Plan) (Collectively, the Plans) Located in Pine Bluff, Arkansas

[Application Nos. D-5669 and D-5670]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1985). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to (1) the proposed loans (the Loans) by the Plans to Motors Finance Company, a party in interest with respect to the Plans, provided that the terms and conditions of the Loans are at least as favorable as those which the Plans could receive in similar transactions with an unrelated party; and (2) the guarantee of the Loans by Smart Chevrolet Company, and the individual partners of Motors Finance Company.

Summary of Facts and Representations

1. The Profit Sharing Plan is a profit sharing plan which, as of March 30, 1984, had 54 participants and assets of $945,588. The Retirement Plan is a defined contribution target benefit money purchase plan which as of March 30, 1984 had nine participants and assets of $581,557. The Retirement Plan was terminated on January 1, 1976, and continues as a frozen plan. The sponsor of the Plans is Smart Chevrolet Company which is engaged in the sale of automobiles. Motors Finance Company is engaged in the business of financing new and used cars which are sold by Smart Chevrolet Company. Certain of the principal owners of Smart Chevrolet Company are also the principal partners of Motors Finance Company. The National Bank of Commerce of Pine Bluff (the Bank) which is located in Pine Bluff, Arkansas is the trustee of the Plans. The Bank represents that none of the partners in Motors Finance Company, the stockholders in Smart Chevrolet Company or the officers and directors of Smart Chevrolet Company are officers or directors of the Bank. In addition, the Bank represents that none of these persons are stockholders of the Bank, except Felix Smart who owns 35 shares, which represents an ownership percentage of the Bank of .466%. Felix Smart owns a 15% partnership interest in Motors Finance Co. The partners of Motors Finance Company, the Smart Chevrolet Company, stockholders and officers and directors of Smart Chevrolet Company do not have any loans or accounts at the Bank, except a non-interest bearing checking account in the names of Mr. and Mrs. Felix Smart. The Bank will act as an independent fiduciary on behalf of the Plans for the transactions which are the subject of this exemption request.

2. The applicant is requesting an exemption which will permit the Loans in an amount of up to 25% of the assets of each of the Plans. Each of the Plans will participate in the Loans on an equal percentage basis. For example, if Motors Finance Company borrows 10% of the assets of the Profit Sharing Plan, it will also borrow 10% of the assets of the Retirement Plan. All Loans will bear interest at a rate which is two percentage points above the federal discount rate and will have a maturity of 90 days. The Loans will be secured by a perfected security interest in all installment sale contracts (Contracts) of Motors Finance Company. If additional financing is needed to finance its business, Motors Finance Company will have the right to have certain Contracts released but the Plans will always be secured by Contracts having a face value of at least 150% of the amount of the Loans. In addition, since Motors Finance Company is a partnership, all of

the partners are jointly and severally liable for the debts of the partnership, specifically including the Loans. The collective net worth of the partners of Motors Finance Company as of December 31, 1983, was $4,927,256. All of the Contracts also are with recourse against Smart Chevrolet Company, which has a net worth as of December 31, 1983 of $1,421,114. The net worth of Motors Finance Company as of the end of its most recent fiscal year, which was September 30, 1983, was $359,059.31. In addition, the notes payable from Motors Finance Company to the partners and related parties will be subordinated to the Loans. The amount of the notes payable to be subordianted as of December 31, 1983, was $987,983. The net worth of the partners of Motors Finance Company includes their respective interests in Motors Finance Company, Smart Chevrolet Company and the notes payable from Motors Finance Company. As of March 31, 1984, Motors Finance Company had 324 Contracts outstanding with balances totaling $1,561,203, with an average balance of $4,819 per Contract.

3. The applicant represents that the wide diversity of customers executing the Contracts significantly spreads the risk of the Plans. In selecting the customers for the Loans, Motors Finance Company will continue to follow its current loan policy in financing vehicles, which includes obtaining a complete credit history for each prospective customer and analyzing the customer's credit history together with the terms of the loans. No loans will be made to persons who currently have a bankruptcy, loan default or other credit problem. Depending on the use of the vehicle, a customer equity of from 10% to 30% will be required and maximum length of contracts will be 48 months on new and current used vehicles, 42 months on one year vehicles, 36 months on two and three year old vehicles, 30 month on four year old vehicles and 24 months on five year old or older vehicles. The applicant also represents that each purchaser is required to carry comprehensive insurance on the vehicle. A collector is employed full time by Motors Finance Company and the applicant represents that strict supervison will be maintained daily in this area. All loan defaults will be paid off immediately by Smart Cheverolet after legal notice is given to the customer under Arkansas law. All of the Loans will be evidenced by a properly executed promissory note. The security interest in the installment sale contracts will be perfected by properly filed financing statements in conformity with the Uniform Commercial Code as adopted in Arkansas. The Bank will verify that the installment sale contracts securing the indebtedness are at all times equal to or greater than 150% of the outstanding balances of the Loans. The Bank will obtain periodic financial statements on Motors Finance Company, Smart Chevrolet Company, and the partners of Motors Finance Company. If there are any material decreases in the net worth of any of the parties involved, the Bank will liquidate the Loans at the next maturity. In the case of a default, the Bank will have the responsibility of enforcing all of the rights of the Plans. Further, if, as determined by the Bank, a rate of two percentage points above the discount rate is not reflective of a reasonable rate of return on a 90 day investment of this type the Loans will be liquidated at the next maturity, or the yield on the Loans will be brought up to a reasonable rate.

4. The Bank has reviewed the proposed transactions and represents that they will be in the best interests of the participants and beneficiaries of the Plans. In its analysis, the Bank represents that taking into account the quality and diversity of the Contracts, the net worth of Motors Finance Company, the net worth of the partners in Motors Finance Company, the net worth of Smart Chevrolet Company, and the subordination of the debts owed by Motors Finance Company to its partners, the Loans are extremely well collateralized and the risk of loss to the Plans almost non-existent. As to liquidity and the rate of return to the Plans, the current investment philosophy of the Plans is to make secure short term investments with fixed yields. The Bank notes that the Loans will have a 90 day maturity. This gives liquidity to the Plans and will enable them to shift their investments away from the Loans in a short period of time if that is determined appropriate. The Bank represents that based on the short maturity of the Loans and almost complete lack of risk of loss, the Bank would consider a rate of return equal to two percentage points over the discount rate an appropriate rate of return. Considering the discount rate from a historical point of view, a rate of return which is two percentage points over the discount rate would have yielded a premium over 90 day certificates of deposits from 0 to 200 basis points in recent years. In the event the discount rate should lag behind increases in interest rates, the Plans can liquidate all or any part of the Loans in a period of 90 days or less. In addition, the Bank represents that it would make the Loans on the same terms, including the interest rate.

5. In summary, the applicant represents that the Loans will satisfy the criteria of section 408(a) of the Act as follows: (1) The trustee of the Plans represents that the Loans will be in the best interests of the participants of the Plans; (2) the Loans will be short term loans limited to 25% of the assets of the Plans; (3) the Bank will monitor the Loan program on behalf of the Plans; (4) the Loans will be secured by the Contracts, Smart Chevrolet Company, Motors Finance Company and the partners of Motors Finance Company, and (5) the Plans will receive a fair market rate of return on the Loans.

For Further Information Contract: Richard Small of the Department, telephone (202) 523–7222. (This is not a toll-free number.)

Tom Shaw, Inc. Retirement Plan (the Retirement Plan) and Tom Shaw, Inc. Profit Sharing Plan (the Profit Sharing Plan) (Collectively, the Plans) Located in Cheboygan, Michigan

[Application Nos. D–5667 and D–5688]

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the loan of $88,500 by the Retirement Plan to Tom Shaw, Inc. (the Plans' Sponsor) and the proposed loan of $26,700 by the Profit Sharing Plan to the Plans' Sponsor, for a ten-year period; and the guarantee of the proposed loans by the Plans' Sponsor and Mr. Tom Shaw, parties in interest with respect to the Plans, provided that the terms of the proposed loans are not less favorable to the Plans than those obtainable in an arm's-length transaction with an unrelated party at the time of its consummation.

Summary of Facts and Representations

1. The Plans are a defined benefit pension plan and a profit sharing plan each with 12 participants. The Retirement Plan had total assets of $354,283 and the Profit Sharing Plan had total assets of $107,073 as of April 30, 1984. The trustee of the Plans is the First of America Bank (the Trustee), which is located in Marquette, Michigan. The Trustee is an independent fiduciary

having trust powers which were granted on June 6, 1983. The Plans' Sponsor is a construction general contractor.

2. The applicant proposes that the Plans make a loan of the total amount of $115,200 (the Loan) to the Plans' Sponsor. The Retirement Plan will loan $88,500 to the Plans' Sponsor, and the Profit Sharing Plan will loan $26,700 to the Plans' Sponsor. These amounts represent 25 percent of the total assets of each of the Plans. The Loan would be amortized over a 10 year period with equal monthly payments of principal and interest. The Loan will bear an initial interest rate of 13 percent for five years and will be readjusted every year thereafter, throughout the remainder of its term. The interest rate will be adjusted to the then current prime borrowing rate plus ½ percent. Such adjustment will be made by the Trustee. In no event will the interest rate be less than 10 percent.

3. The Loan will be guaranteed by the Plans' Sponsor, and Mr. Thomas Shaw, who personally owns 100 percent of the common stock of the Plans' Sponsor. The Plans, Sponsor's net worth is approximately $1,271,069. Mr. Shaw's net worth is approximately $756,736. The Loan will also be secured by certain equipment (the Equipment) owned by the Plans' Sponsor. The Equipment includes barges, tugs, trailers, cranes and loaders used by the Plans' Sponsor in its business. The Equipment has a total fair market value of $1,261,870, and $231,000 of this value will be used as collateral for the Loan. The fair market value of the Equipment was determined by eleven qualified independent appraisers at various times during 1983 and 1984. The Plans' security interest in the Equipment will be properly filed. The Equipment will be properly insured and the policies will have a loss payable clause with the Plans as payee.

4. The Trustee has a de minimus relationship with the Plans' Sponsor. The Plans' Sponsor has an outstanding loan with the Trustee which represents .024 percent of total loans of the Trustee. Cash deposits of the Plans' Sponsor represent .0005 percent of the total cash deposits of the Trustee.

5. The Trustee represents that it has reviewed the terms of the Loan. It has determined that the proposed interest rate for the Loan represents a fair market value interest rate. The Trustee has received and reviewed the independent appraisals of the Equipment and has determined that the amount of the value of the Equipment to be used to secure the Loan exceeds 200 percent of the amount of the Loan. The Trustee will make periodic reviews of the appraised value of the Equipment and will assure that the security for the Loan remains 200 percent of its outstanding balance. Further, the Trustee will institute the necessary procedures for the repayment of the Loan, and monitor its repayment.

6. In summary, the applicant represents that the proposed transaction meets the statutory criteria of section 408(a) because:

(1) The Plans will receive a fair market value interest rate for the Loan;

(2) The Loan will be adequately secured;

(3) The Plans' independent fiduciary will monitor repayment of the Loan; and

(4) The Plans' independent fiduciary has determined that the Loan is in the interests of the Plans and is protective of the rights of their participants and beneficiaries.

For Further Information Contact: Ms. Linda M. Hamilton of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and completed, and that each application accurately describes all material terms of the transaction which is the subject of the exemptions.

Signed at Washington, D.C., this 26th day of February, 1985.

Elliot I. Daniel,

Acting Assistant Administrator for Regulations and Interpretations, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 85-5066 Filed 2-28-85; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-5426]

Withdrawal of the Proposed Exemption Involving the Cogan Management Inc. Pension Trust (the Plan) Located in New York, New York

In the **Federal Register** dated January 29, 1985 (50 FR 3998), the Department of Labor (the Department) published a notice of proposed exemption from the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 and from certain taxes imposed by the Internal Revenue Code of 1954. The notice of pendency concerned an application filed on behalf of the Plan and involved a proposed loan of $330,000 (the Loan) by the Plan to Management Service Company.

By letter dated February 8, 1985, the applicant's representative notified the Department that the applicant was no longer seeking an exemption for the Loan. Therefore, the Department is hereby withdrawing the notice of pendency.

Signed at Washington, D.C., this 26th day of February.

Elliot I. Daniel,

Acting Assistant Administrator for Regulations and Interpretations, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 85-5068 Filed 2-28-85; 8:45 am]

BILLING CODE 4510-29-M

LEGAL SERVICES CORP.

Grant Award Announcement; Atlanta Legal Aid Society

AGENCY: Legal Services Corporation.

ACTION: Notice.

SUMMARY: The Legal Services Corporation (LSC) announces that it is considering awarding a special grant of $62,027 in 1985 to the Atlanta Legal Aid Society for its fund-raising project—The Resources Development Center.

DATE: All comments and recommendations must be received by the Office of Field Services/Grants and Budget Unit of the Legal Services Corporation within thirty (30) calendar days of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Gail D. Francis, Manager, Grants and Budget Unit, Office of Field Services, Legal Services Corporation, 733 Fifteenth Street, N.W., Washington, D.C. 20005; (202) 272–4080.

SUPPLEMENTARY INFORMATION: Atlanta Legal Aid Society was awarded an annualized special needs grant in 1980 to promote and support fund-raising activities of recipients funded by the Corporation which are located in the Atlanta region. This region is composed of the following states: Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee.

Pub. L. 98–411 which appropriates 1985 funding to the Corporation provides for a formula distribution of grant funds to basic field recipients. The bill language also requires a proportional increase in 1985 for grant funds which are not census-based. It is the Corporation's intent to continue funding for these purposes under the proportional funding methodology and award a separate grant to Atlanta Legal Aid Society in 1985 of $62,027.

Interested persons are hereby invited to submit written comments or recommendations concerning the above grant action to: Legal Services Corporation, Office of Field Services, 733 Fifteenth Street, N.W., Washington, D.C. 20005, (202) 272–4080. Attention: Gail D. Francis.

Dated: February 20, 1985.

Thomas J. Opsut,

Interim President.

[FR Doc. 85–4958 Filed 2–28–85; 8:45 am]

BILLING CODE 6820–35–M

MERIT SYSTEMS PROTECTION BOARD

Federal Employees; Review of Arbitration Decisions Meeting Jurisdictional Requirements for Review

AGENCY: Merit Systems Protection Board.

ACTION: Notice of opportunity to file amicus briefs in certain requests for review of final arbitration decisions which meet the jurisdictional requirements for Board review, as set forth in 5 U.S.C. 7121(d).

SUMMARY: The Merit Systems Protection Board provides an opportunity to file amicus briefs on significant issues of law common to a number of cases pending before the Board involving requests for review of final arbitration decisions meeting the jurisdictional requirements of 5 U.S.C. 7121(d).

DATE: Amicus briefs submitted in response to this notice shall be filed with the Clerk of the Board on or before April 1, 1985.

ADDRESS: All briefs shall be captioned "Review of Arbitration Decisions," and entitled "Amicus Brief." All briefs shall also contain separate, numbered headings for each issue discussed. The original and twelve (12) copies of each amicus brief submitted in response to this notice shall be filed with the Office of the Clerk of the Board and addressed to Robert E. Taylor, Clerk, Merit Systems Protection Board, Attn: Review of Arbitration Decisions, 1120 Vermont Avenue, NW., Washington, D.C. 20419.

FOR FURTHER INFORMATION CONTACT: Robert E. Taylor, Clerk, Merit Systems Protection Board, (202) 653–7262. For copies of the arbitration decisions in the referenced cases, contact Information Services Division, Merit Systems Protection Board, (202) 653–7132.

SUPPLEMENTARY INFORMATION: The Merit Systems Protection Board currently has before it certain requests for review of arbitration decisions involving allegations of prohibited discrimination, which requests have been filed pursuant to 5 U.S.C. 7121(d). The Board has identified several cases which raise significant issues of law and finds it appropriate to provide an opportunity for the filing of amicus briefs addressing these issues.

These cases include the following:

Appling v. *Social Security Administration*, MSPB Docket No. HQ75218510001;

Beach v. *Department of Health and Human Services*, MSPB Docket No. HQ71218310020;

Denson v. *Veterans Administration*, MSPB Docket No. HQ71218410020;

Leamon v. *Department of the Army*, MSPB Docket No. AT07528510042;

Robinson v. *Department of Health and Human Services*, MSPB Docket No. HQ71218410007

This notice represents the Board's offer to receive and consider amicus briefs from interested parties on the following issues:

1. Whether the Board is required to provide a *de novo* review of the action in question, including a new hearing;

2. If a *de novo* review is not required, whether the Board should give deference to the arbitrator's decision or whether the Board should apply the standard set forth in 5 CFR 1201.115;

3. If a *de novo* review is not required, what procedure should the Board follow in reviewing the case where the parties have not provided for a transcript or tapes at the arbitration hearing;

4. Whether the Board's scope of review is limited only to allegations of discrimination;

5. If a *de novo* review is not required, whether the Board should remand the case to the arbitrator, or make the needed determination on its own when an arbitrator fails to address all of the material issues presented in the case;

6. Whether arbitrators are bound by Board precedent in deciding appeals, including the Board's scope of review of the agency penalty, and , if so, how should a failure to properly apply Board precedent be viewed;

7. Whether the labor organization may request the Board to review the arbitrator's decision even if the employee chooses not to do so.

Dated: February 25, 1985.

For the Board.

Herbert E. Ellingwood,

Chairman.

[FR Doc. 85–5007 Filed 2–28–85; 8:45 am]

BILLING CODE 7400–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee on ATWS and Electrical Systems; Meeting

The ACRS Subcommittee on ATWS and Electrical Systems will hold a meeting on March 15, 1985, Room 1046, 1717 H Street, NW, Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Friday, March 15, 1985—8:30 a.m. until the conclusion of business

The Subcommittees will review the NRC Staff's activities associated with implementation of the ATWS rule and the status of NRC actions on scram breaker reliability.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the

Committee. Recording will be presented only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Paul Boehnert (telephone 202/634-3267) between 8:15 a.m. and 5:00 p.m., EST. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: February 26, 1985.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 85-5047 Filed 2-28-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-322-OL]

Long Island Lighting Co. (Shoreham, Nuclear Power Station, Unit 1); Continuation of Hearing on Diesel Generator Issues

February 25, 1985.

Before Administrative Judges: Lawrence Brenner, Chairman, Dr. George A. Ferguson, Dr. Peter A. Morris.

The evidentiary hearing on issues in controversy related to the emergency diesel generators manufactured by Transamerica Delaval, Inc. will continue on March 5, 1985, at 1:30 pm, at the New York State Court of Claims, State Office Building, Veterans Memorial Highway, Hauppauge, New York 11787.

The hearings will continue, as necessary, on March 6-8 and 11-15. If necessary, further hearing sessions will be scheduled in March.

The hearings are generally open to the public. However, there will be no opportunity for public participation during these evidentiary hearing sessions.

Dated: February 25, 1985, Bethesda, Maryland.

It is so ordered.

For the Atomic Safety and Licensing Board.

Lawrence Brenner,

Chairman, Administrative Judge.

[FR Doc. 85-5048 Filed 2-28-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 70-143; License No. SNM-124; EA 84-128]

Nuclear Fuel Services, Inc. (Erwin, TN); Order Modifying License

I

Nuclear Fuel Services, Inc. (the licensee) is the holder of Special Nuclear Material License No. SNM-124 which authorizes the licensee to possess and use special nuclear material at the fuel fabrication plant in Erwin, Tennessee.

II

On October 5-18, 1984, a special NRC inspection was conducted to review the safety and safeguards concerns regarding the licensee's discovery of an accumulation of Uranium-235 in the 200 Complex ventilation system. As a result of this inspection, two violations were identified—failure to adequately investigate and determine the source of uranium-bearing solids in the ventilation system despite early indicators of Uranium-235 buildup in the ventilation system, and failure to perform adequate radiological surveys during ventilation system cleanout and subsequent investigation. These violations are described in greater detail in a Notice of Violation and Proposed Imposition of Civil Penalty issued this same date.

Operation of the new ventilation system for the 200 Complex began in March 1983. Within three months of startup, the licensee noted higher than expected levels of Uranium-235 being accumulated in the scrubber and established action limits for the accumulation. Another early indicator of the buildup of uranium in the ventilation system also existed. In July 1983, a heat exchanger was removed and originally estimated to contain about 800 grams of Uranium-235. In May 1984, the license was amended to require the licensee to determine the amount of uranium in the scrubber and lowdown tank, and to take corrective actions when specified action limits were exceeded. Corrective actions include an investigation to determine the cause of exceeding the action limits and correcting the identified problem. (License Amendment No. 25) Between May 1984 and October 1984, these action limits were exceeded at least eight times (on July 30, twice on July 31, and on September 11, 14, 15, 16, and 20, 1984). In two cases no investigation was performed, and in the other cases, the investigation consisted of a form filled out by the production foreman with little or no followup by site management to determine the cause of the condition and no corrective actions to prevent recurrence.

On October 3 and 4, 1984, the licensee detected uranium concentration in the venturi scrubber solution which exceeded the action level and release limits. On October 4, 1984, Nondestructive Assay (NDA) measurements of the venturi scrubber and the blowdown tank showed a buildup of solids containing Uranium-235 which exceeded the 50 gram action limit. Repeated flushings of the system with water did not reduce the accumulation below the action limit. Consequently, the system was shut down, the solution was drained from the scrubber and the inspection port coverplate was removed for a visual inspection of the scrubber internals.

A buildup of solids containing uranium on the wall of the scrubber and on the surfaces of the venturi above the water level was observed. Solids were also observed to have accumulated in the bottom elbow of the S-shaped duct where the air enters the scrubber. NDA measurements of the system revealed approximately 1000 grams of Uranium-235 in the venturi scrubber and 1000 grams of Uranium-235 in the S-shaped duct leading to the scrubber. A criticality analysis performed by the licensee indicated that the cleaning operation could be safely udertaken.

Cleaning of the ventilation system was conducted on October 6 and 7, 1984, after preparation of a procedure and further discussions with NRC. The NRC resident inspector observed and monitored the licensee's activities. After the licensee removed the scrubber top, a worker was placed inside the scrubber to perform the cleaning. During the cleaning of the scrubber, the NRC resident inspector noted and informed the licensee that no air sampling was being performed to determine personnel exposure to airborne uranium and that the operation was being performed without enclosures to prevent releases of airborne radioactivity to the environment. The licensee acknowledged the inspector's concerns and initiated collection of high volume,

lapel, and continous air samples, and used enclosures to prevent further releases to the environment.

After reassembly of the scrubber, the removed materials, which had been placed in safe geometry bottles, were measured as containing 1610 grams of Uranium-235. An additional 598 grams of Uranium-235 were removed from the scrubber in the solution batches of October 3, 4, and 5, 1984. In conjunction with the restarting of the ventilation system, an investigation was initiated by the licensee to determine the causes of the accumulation of Uranium-235.

Preliminary findings from the licensee's investigation indicate that the material removed from the system was a mixture of effluents from essentially all processes in the scrap recovery operation. The most significant sources were the scrap furnace and the scrap dissolvers. In addition, the licensee determined that HEPA filters on the process equipment may have leaked, and a potential existed for liquid to enter the ventilation ducting because of inadequate siphon breaks.

III

The failure of the licensee to recognize early warnings that significant quantities of U-235 were being entrained in the ventilation system, and the lack of an adequate investigation of the sources of this material and subsequent remedial action to stop the sources resulted in: (1) Accumulation of Urainium-235 in excess of the quantity required to form a minimum critical mass although in nonfavorable geometry, (2) the failure to include special nuclear material in the ventilation system on the inventory records, and (3) failure to perform adequate surveys which resulted in inadequate determination of the airborne radioactivity concentrations to which workers were exposed and which were released to an unrestricted area.

Colllectively, these occurrences at the facility represent inadequate planning, design, and control of operational activities involving radiation safety hazards, safeguards controls, and the potential for nuclear criticality.

These occurrences are indicative of programmatic deficiencies in related management controls, and they demonstrate the need for an oversight safety group such as the Licensee's Internally Authorized Change (IAC) Council to prevent similar occurrences. Accordingly, the staff has determined that the IAC Council's function should be enlarged to include the review of all health and safety activities, and selected safeguards activities, and that the license should be modified to clarify the licensee's responsibility to conduct adequate investigations.

IV

In view of the foregoing and pursuant to sections 53, 161(b), 161(o), and 182 of the Atomic Energy Act of 1954 as amended, and the Commission regulations in 10 CFR 2.204 and 10 CFR Part 70, it is hereby ordered that the license is modified to add the following new license conditions:

1. In addition to the membership specified in subsection 250.5 of the license application, dated July 6, 1983, the IAC Council shall include the Managers of Licensing and Safeguards, and of Security.

2. In addition to the requirements specified in subsection 250.1 of the license application dated July 6, 1983, the IAC Council shall review and evaluate all changes to the facility or facility operations which could affect material control and accounting or physical security. As used herein, "facilities" includes but is not limited to: buildings, process equipment with SNM and support systems, nuclear and non-nuclear storage areas (internal and external), landscaping, etc.

3. In addition to the requirements specified in subsection 250.4 of the license application dated July 6, 1983, the IAC Council shall document its review of all proposed changes, conducted pursuant to subsection 250.1 of the license application and Condition 2 above, in a summary report describing the technical basis for accepting the analysis of the change. At a minimum, the report shall contain:

a. A description of the proposed change(s), as well as equipment and location (e.g., building number) involved in the change;

b. The nuclear criticality safety and radiation safety analyses performed by the Nuclear Safety Specialist and Health Physics Analyst respectively and any other supporting analyses presented to the IAC prior to the IAC meeting;

c. Issues discussed by the IAC Council; and

d. The IAC's recommendation concerning the proposed change.

4. In addition to the IAC Council functions outlined in section 250 of the license application dated July 6, 1983, the IAC Council shall meet at least every three months to:

a. Review reports of all health and safety inspections and audits which the license requires be conducted, the semi-annual employee exposure and effluent reports specified by license condition No. 30, and the annual safeguards reviews and audits specified by 10 CFR 70.58(c)(2) and 73.46(g)(6).

b. Review all violations of regulations and license conditions and any unusual events having safety significance, and associated investigation reports. Particular attention should be paid to the corrective actions taken and follow-up evaluations conducted to measure the effectiveness of these corrective actions; and

c. Provide the Plant Manager, and corporate management as appropriate, with written reports of its findings and recommendations within 20 working days of its meetings. The recommended actions shall include recommendations as to how corrective actions and improvements should be accomplished. The responsibility for assuring that necessary corrections and improvements are completed remains with plant or corporate management. The IAC reviews described in section a. above of annual safeguards reviews and audits may satisfy the requirements for reporting to plant and corporate management specified in 10 CFR 70.58(c)(2) and 73.46(g)(6).

5. Notwithstanding the note to Figure 211–1 on page 10 of the application dated October 1, 1984, no individual who performs the initial safety analysis for a proposed change can participate as a member of the IAC Council which reviews that change.

6. The word "investigation" as used in the license application or license conditions is defined as an inquiry to establish the facts and circumstances associated with the matter of interest and to make recommendations for improvement or corrections. Such an investigation shall:

a. Be initiated and completed as soon as practical after the discovery of the event; and

b. Be under the direction of a person designated by the Plant Manager or the Safety and Decommissioning Manager, as approprite.

7. Investigations shall be documented in written reports which shall as a minimum:

a. Include a determination of the cause(s) of the event;

b. Include recommendations for immediate and long-term corrective actions to prevent recurrence; and

c. Be retained for 5 years.

8. If any provision of this Order conflicts with any other condition of the license, the provisions of this Order will be controlling and will supersede the license conditions with which they conflict.

V

The licensee or any other person whose interest is adversely affected by

this Order may request a hearing on this Order. Any request for hearing shall be submitted to the Director, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, within 30 days of the date of this Order. A copy of the request shall also be sent to the Executive Legal Director at the same address and to the Regional Administrator, Region II, 101 Marietta Street, N.W., Atlanta, Georgia 30323.

If a hearing is to be held concerning this Order, the Commission will issue an Order designating the time and place of hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order shall be sustained.

This Order shall become effective upon exporation of the time during which a hearing may be requested or, in the event that a hearing is requested, on the date specified in an order issued following further proceedings on this Order.

Dated at Bethesda, Maryland, this 21st day of February 1985.

For the Nuclear Regulatory Commission.

James M. Taylor,

Director, Office of Inspection and Enforcement.

[FR Doc. 85-5049 Filed 2-28-85; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

White House Science Council (WHSC); Meeting

The White House Science Council, the purpose of which is to advise the Director, Office of Science and Technology Policy (OSTP), will meet on March 13 and 14, 1985, in Room 5104, New Executive Office Building, Washington, D.C. The meeting will begin at 6:00 p.m. on March 13, recess and reconvene at 8:00 a.m. on March 14. Following is the proposed agenda for the meeting:

(1) Briefing of the Council, by the Assistant Directors of OSTP, on the current activities of OSTP.

(2) Briefing of the Council by OSTP personnel and personnel of other agencies on proposed, ongoing, and completed panel studies.

(3) Discussion of composition of panels to conduct studies.

The March 13 session and a portion of the March 14 session will be closed to the public.

The briefing on some of the current activities of OSTP necessarily will involve discussion of material that is formally classified in the interest of national defense or for foreign policy reasons. This is also true for a portion of the briefing on panel studies. As well, a portion of both of these briefings will require discussion of internal personnel procedures of the Executive Office of the President and information which, if prematurely disclosed, would significantly frustrate the implementation of decisions made requiring agency action. These portions of the meeting will be closed to the public pursuant to 5 U.S.C. 552b(c)(1), (2), and 9(B).

A portion of the discussion of panel composition will necessitate the disclosure of information of a personal nature, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Accordingly, this protion of the meeting will also be closed to the public, pursuant to 5 U.S.C. 552b(c)(6).

The portion of the meeting open to the public will begin approximately 10:00 a.m. Because of the security in the New Executive Office Building, persons wishing to attend the open portion of the meeting should contact Annie L. Boyd, Secretary, White House Science Council at (202) 456-7740, prior to 3:00 p.m. on March 12. Ms. Boyd is also available to provide further information regarding this meeting.

Jerry D. Jennings,

Executive Director, Office of Science and Technology Policy.

February 27, 1985.

[FR Doc. 85-5127 Filed 2-28-85; 8:45 am]

BILLING CODE 3170-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 09/09-0353]

Issuance of a Small Business Investment Company License; Equis Investment

On December 21, 1984, a notice was published in the **Federal Register** (49 FR 49956) stating that an application has been filed by Equis Investment, with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1984)) for a license as a small business investment company.

Interested parties were given until close of business January 20, 1985, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(d) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 09/09-0353 on February 12, 1985, to Equis Investment to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: February 22, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85-5004 Filed 2-28-85; 8:45 am]

BILLING CODE 8025-01-M

[Designation of Disaster Loan Area #6247; Amdt. #3]

Nebraska; Declaration of Disaster Loan Area

The above numbered Declaration (50 FR 2640) Amendment #1 (50 FR 2640) and Amendment #2 (50 FR 2750) is hereby amended to include the County of Brown. All other information remains the same, i.e. the termination date for filing applications is the close of business on October 10, 1985.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: February 21, 1985.

James C. Sanders,

Administrator.

[FR Doc. 85-5002 Filed 2-28-85; 8:45 am]

BILLING CODE 8025-01-M

[License No. 09/09-5355]

Issuance of a Small Business Investment Company License; BNK Industry Investment Co.

On December 11, 1984, a notice was published in the **Federal Register** (49 FR 239) stating that an application has been filed by BNK Industry Investment Company, with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1984)) for a license as a small business investment company.

Interested parties were given until close of business January 11, 1985, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(d) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 09/09-5355 on February 15, 1985, to BNK Industry Investment Company to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: February 22, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85-5003 Filed 2-28-85; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice 932]

Certain Nonimmigrant Visas; Validity

Public Notice 913 of August 22, 1984 authorized consular officers to issue, in their discretion, nonimmigrant visas under section 101(a)(15)(B) of the Immigration and Nationality Act valid for an indefinite period of time to otherwise eligible nationals of certain countries which offer reciprocal or more liberal treatment to nationals of the United States who are in a similar class.

This Notice deletes the Central African Republic from the list contained in Public Notice 913 in order to accord its nationals the same reciprocal treatment currently accorded U.S. nationals, and adds Hong Kong to that Notice to conform with present reciprocal or more liberal treatment accorded nationals of the United States who are in a similar class.

This Notice also revises the entry for Bahamas to restrict indefinite nonimmigrant visitor visas to nationals of the Bahamas who wish to enter the United States as temporary visitors for pleasure. This amendment will reflect more closely similar reciprocal treatment offered United States nationals.

This Notice amends Public Notice 913 of August 22, 1984 (49 FR 33392).

Dated: February 19, 1985.

Joan M. Clark,

Assistant Secretary for Consular Affairs.

[FR Doc. 85-4926 Filed 2-28-85; 8:45 am]

BILLING CODE 4710-06-M

[Public Notice CM-8/828]

Secretary of State's Advisory Committee on Private International Law, Study Group on International Business Transactions; Meeting

There will be a meeting of the Study Group on International Business Transactions, a study group of the subject Advisory Committee, at 9:30 a.m. on Friday, March 15, 1985 in Room 1205 of the Department of State in Washington, D.C. Members of the general public may attend up to the capacity of the meeting room and participate in the discussion subject to instructions of the chairman.

The Study Group will review progress made by the working group of the United Nations Commission on International Trade Law (UNCITRAL) that was charged with preparing a legal guide on the drawing up of contracts for the construction of industrial works. The working group, with the participation of U.S. lawyers in private practice experienced in this type of contract negotiation, has identified the 30-40 types of contract provisions in such contracts and the basic issues involved with each such provision. The UNCITRAL secretariat has produced draft chapters on about half of the provisions which have been discussed by government-sent experts at recent meetings of the UNCITRAL working group. The Department's Study Group, on the basis of materials on a representative legal guide chapter, will review what has been produced and discuss the nature of past and recommended future participation by U.S. experts on this project.

It is believed that the UNCITRAL working group will complete its review of the draft legal guide chapters some time in 1986 and that the entire legal guide may be ready for submission to governments in early 1987 for the subsequent review by the Commission itself at its annual meeting in summer, 1987.

Entry to the Department of State building at 22nd and C Streets NW., is controlled and members of the general public planning to attend should, prior to March 14, 1985, notify the Office of the Assistant Legal Adviser for Private International Law, Department of State, (telephone (202) 632-8134) of their name, affiliation, address, and phone number.

Peter H. Pfund,

Assistant Legal Adviser for Private International Law and Vice Chairman, Secretary of State's Advisory Committee on Private International Law.

[FR Doc. 85-5094 Filed 2-28-85; 8:45 am]

BILLING CODE 4710-08-M

SYNTHETIC FUELS CORPORATION

Statement of Objectives and Principles and Phase I Business Plan

AGENCY: United States Synthetic Fuels Corporation.

ACTION: Publication of Statement of Objectives and Principles and Phase I Business Plan Approved by Board of Directors.

SUMMARY: This notice publishes the Statement of Objectives and Principles adopted on January 15, 1985 and the Phase I Business Plan adopted on February 19, 1985 by the Board of Directors of the U.S. Synthetic Fuels Corporation.

FOR FURTHER INFORMATION CONTACT: Ralph Bayrer, Vice President-Projects, U.S. Synthetic Fuels Corporation, 2121 K Street, NW., Washington, D.C. 20586 (202) 822-6436.

For copies of the Statement and/or Business Plan Contact: Catherine McMillan, Director of Public Disclosure, U.S. Synthetic Fuels Corporation, 2121 K Street, NW., Washington, D.C. 20586 (202) 822-6460.

U.S. Synthetic Fuels Corporation.

Leonard Rawicz,

Vice President, General Counsel and Secretary.

February 25, 1985.

U.S. Synthetic Fuels Corporation Board of Directors Statement of Objectives and Principles

The Board of Directors of the U.S. Synthetic Fuels Corporation is reevaluating the SFC program in light of recent Congressional actions and changes in the outlook for synthetic fuels. To help interested parties understand the Board's reasoning as it undertakes this reevaluation, the Board outlines here its views on the energy/economic environment for synfuels, the SFC's operational objectives, and some priniciples that will govern Board decisions.

The Energy/Economic Enviroment

The value of synfuels depends on the supply, demand and price of energy, particularly oil and natural gas. The outlook for these fuels has improved dramatically in recent years, largely as a result of the deregulation of energy markets. At the present time:

- *Market forces are keeping oil and gas prices well below the cost of synfuels, and are expected to continue doing so for a decade or more.* However, sometime around the end of this century, normal supply and demand forces could increase world oil prices enough to make synfuels economically attractive; the faster and more efficiently synfuels production can be expanded at that time, the greater the economic payoff to the nation.
- *Unpredictable changes in energy supply and demand could cause world oil prices to increase sharply at any time.* Synfuels cannot help much with short-term disruptions (i.e., of a year or so), which are better handled with the

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existing strategic reserve program; however, if a price increase is expected to last for several years, production of some types of synfuels might be expanded quickly enough to be of value.

• *Near-term world oil prices are affected by expectations about future supply, demand and price.* There is no economic reason to keep valuable oil in the ground unless it is expected to be worth much more later; therefore, development of credible national synthetic fuels options for the future can help limit current energy prices, whether or not they add significantly to near-term production.

At any likely energy prices, synfuels production will not be able to expand rapidly and efficiently until some pioneer projects have been built and operated. Such plants are necessary to determine which resources, technologies and locations are best, what is environmentally and socially acceptable, how to do what should be done, and what it will cost. Private firms would eventually undertake some projects on their own, for own proprietary purposes; but it would be many years before enough firms knew enough about synfuels to allow national production to expand quickly and efficiently.

These considerations persuade the Board of the following:

• *Synfuels projects are not likely to be attractive as stand-alone investments in the near future;* the economics and the technology data base are both inadequate.

• *A large synfuels industry is not likely to be needed before the end of the century;* however, the energy outlook could change at any time, making it desirable to increase rapidly production from some synfuels options.

• *There is a national interest in a national synthetic fuels capability that the market alone may not fully accomplish;* such a national capability would be valuable if and when energy prices increase enough, and could even help delay and limit energy price increases.

• *The energy outlook, the lead-times invovled in synfuels, and the critical role of pioneer plants suggest that some public investment in synfuels is economically justified now;* however, the timing, number and type of specific projects that should be assisted with public funds depend on the magnitude, likelihood and timing of benefits the nation will obtain from alternative programs, and will be different for each of the synfuels options.

The SFC's Operational Objectives

In light of the energy-economic outlook and the changes Congress has made, *the SFC's basic objectives in its near-term program are to:*

• *Establish a national synfuels capability that will allow private industry to expand production efficiently and in an environmentally acceptable manner* when economics or national interests dictate.

• *Improve the national capability to increase production rapidly from selected synfuels options* in the event of a sudden increase in world oil prices that is expected to persist for several years.

In more operational terms, in pursuit of these basic objectives *the SFC program will be designed to:*

• *Improve the national base of knowledge and experience about both the technological and environmental aspects of selected synfuels options,* in order to reduce the technical and environmental uncertainties that might limit the rate and extent of synfuels production nationally.

• *Assure that commercial-scale processes and projects are designed, built and operated successfully;* however, while experience with commercial-scale facilities is essential, individual SFC-supported projects and the SFC program overall should be no larger or more costly than necessary to accomplish the SFC's basic objectives.

• *Explore a diverse mix of resources, technologies and geographic regions,* because it is unknown at present which options will ultimately prove to be worth commercial development; however, not every idea or option is worth the investment of taxpayers' money and the SFC will make judgments about how much of what kind of diversity should be pursued.

• *Assure that projects continue operating long enough to learn and teach their lessons and that capable people and organizations are developed and maintained;* a real synfuels option for the nation will exist only when, and as long as, commercial projects and experienced people are acting in the industry.

SFC Decision Principles

In defining a strategy and business plan to accomplish the objectives outlined above, the Board will apply the following principles.

• *Market forces should and will determine which synfuels options are expanded, and how fast,* once the base of knowledge and experience has been laid; however, the best synfuels options for the SFC to assist are not necessarily those that are most-nearly profitable in the short term or that are most favored by sponsors seeking SFC support.

• *The SFC will make its decisions and commit its funds when it is most effective and economically efficient to do so,* in light of the likely timing of future energy, technological and business developments; the cumulative development of technical and organizational capability in a timely way requires continuity and a long-term perspective.

• *The SFC will commit no more of the taxpayers' money than necessary to develop synfuels options the nation needs.* This requires that the SFC limit its financial support to those options:

—That, in competition with others, are potentially of national significance as substitutes for natural oil or gas in a reasonable time frame; *and*

—In which the SFC can significantly reduce the inefficiencies and lead-times involved in any future commercial expansion.

No project will be assiste just "because it is there," because the SFC has "enough" money to do it, or because it is different; each project must satisfy both the program principles outlined above and the following project guidelines.

• *Each project assisted must make a cost-effective contribution to the SFC program,* by:

—Adding significant new knowledge and experience about a nationally important synfuels option, with no more duplication than necessary to provide efficient amounts of insurance and competition.

—Assuring that the knowledge and experience generated will be generally available to help subsequent projects by other sponsors.

—Being no larger or more costly than necessary.

—Having the best possible financial terms for the SFC, including equitable sharing of profits from favorable events.

• *Each project assisted must be sound as an industrial undertaking and hence must satisfy stringent criteria,* including criteria regarding:

—*Technology Data Base:* Scale-up of equipment (especially for handling solids) is inherently risky. For first-of-a-kind commercial-scale facilities, extensive technological data is essential to support the design and reduce the risk of plant misoperation or adverse environmental impact.

—*Competence of Sponsor:* Synfuels projects involve design, construction and operation of large, complex plants; demonstrated experience and

commitment from the sponsors' top management are required to assure success.

—*Financial Strength:* Sponsors must have sufficient financial commitment to a project to provide a strong incentive to perform, and must have sufficient financial resources to deal with unforeseen costs.

Conclusions

It is the view of the Board that application of the objectives and principles outlined above will result in a diversified, technically sound and environmentally acceptable synfuels program that will give the nation the synfuels capability it needs, with the funds that are currently available.

U.S. Synthetic Fuels Corporation, Phase I Business Plan, February 19, 1985

Introduction

This Business Plan sets forth the views of the Board of Directors of the U.S. Synthetic Fuels Corporation on the synthetic fuel resources and technologies that are candidates for Corporation support in Phase I—that is, with the Corporation's current obligation authority. In developing this Plan, the Board has been guided by the Statement of Objectives and Principles adopted on January 15, 1985. Future Board decisions on solicitations and projects will determine the allocation of financial assistance among resources and technologies and, ultimately, to specific projects.

In setting its program priorities, the Board began with the primary objective of assuring that the nation will have knowledge about and experience with at least one method of processing each of the most important synthetic fuels resources. Once this is assured, a different technology for processing the same generic resource may be considered if it has the potential for significant economic advantages or is applicable to different and important subcategories of the resource.

The attached table displays, and the text of this document discusses, the combinations of resources and technologies that are candidates for Corporation support in the Phase I program. It is the Board's conclusion that, for some of these combinations, information and experience are adequate for the private sector to develop commercial projects when and as market factors dictate, and hence no further Corporation support is required in Phase I. For other combinations, it is the Board's view that Corporation assistance to the right kind of project could significantly and economically enhance the nation's synthetic fuels capability; for these, the Corporation will specify how and when it intends to solicit and select projects, including any further definition of desired project characteristics. For yet other, lower-priority combinations, the Board sees no need to solicit projects but is willing to consider specific projects that may offer special advantages to the program.

Notwithstanding the Board's expressed desire to develop projects utilizing specific resource-technology combinations, the Corporation will support only projects that meet its standards of technical and financial strength. Furthermore, any project assisted within a resource-technology combination desired by the Board must demonstrate that it can provide the programmatic benefits expected. Competing demands on funds or absence of suitable projects may preclude Corporation assistance for one or more of the combinations that the Board would like to include in its Phase I program.

In some instances, it may be desirable to support more than one project involving the same resource-technology combination—for example, where important subcategories of a generic resource present different technical or environmental problems. Furthermore, for the most important resource-technology combinations, more than one project may be undertaken to enhance competition, to ensure against unforeseen problems, to gain experience with improved processes or to provide continuity in the program.

Regional diversity in projects will result naturally from pursuit of the important synthetic fuels resources, which are widely distributed across the nation. The Board is confident that its program will provide valuable experience with synthetic fuels production in a wide variety of physical, environmental and social settings.

In developing its program, the Board has recognized the need to assure the environmental acceptability of the production and use of synthetic fuels. The limited number of diverse projects expected in Phase I will provide commercial-scale experience with a variety of environmental situations and control measures. The Board will continue to consider environmental factors carefully, to assure that individual projects are environmentally acceptable and that the necessary information about environmental impacts and control technologies is developed.

Coal Resources and Technologies

For analysis of synthetic fuels options, the important coal resources are the bituminous coals of the Midcontinent region, the bituminous coals of the Appalachian region (many of which are more caking and less reactive than Midcontinent coals), and the subbituminous coals and lignites with large concentrations in the western and southern regions. Huge quantities of each of these three coals are readily available and widely distributed. The principal technical approaches to using these coal resources for synthetic fuels are discussed below.

Introductory Comment on Coal Technology: Conversion of coal to gaseous and liquid fuels has been developed along two principal technical routes (plus some other routes, such as coal-liquid slurry fuels). In the "indirect" route, the initial step is gasification of the coal, followed by clean-up and upgrading of the raw gas. The "direct" route adds hydrogen (usually obtained by gasification of coal or process residues) directly to the coal under high pressure. There is no agreement regarding the ultimate superiority of either route; but there is agreement that the indirect route is currently more developed and ready for commercial application. Therefore, the indirect route will receive the major attention in the Corporation's Phase I coal program.

In the indirect conversion of coal to synthetic fuels, the critical step is gasification. Once the coal has been gasified and the raw gas cleaned, a wide range of final products, including gasoline, methanol, turbine and boiler fuels, chemical feedstocks and synthetic natural gas, can be synthesized in a variety of commercial or near-commercial processes. These "down-stream" synthesis processes are essentially independent of the gasifier used, except that they generally operate under pressure, providing a significant economic premium for pressurized gasification. The emphasis in the Corporation's Phase I program will be on assuring that satisfactory technology is in hand to gasify under pressure the major U.S. coal resources, leaving it to the market to determine which final products should be produced in any specific project. However, the Board recognizes the national importance of transportation fuels, and hence will give some preference within the coal program to projects that include production of such fuels.

Fixed Bed Gasification (Dry Bottom): This technology is applicable to subbituminous coal and lignite, which

generally are highly reactive and do not swell and cake during processing; it cannot process all of the coal fines that are a large fraction of all mined coal. There is substantial experience with the Lurgi version in South Africa; the Great Plains project has built such Lurgi gasifiers and is beginning to operate them at capacity. *The Board concludes that this technology is developed to the point where the private sector can develop it as economically justified, and hence there is no need to include in the Phase I program any projects beyond those already under consideration.*

Fixed Bed Gasification (Slagging): This technology evolved from dry bottom fixed bed gasification. It is applicable to less-reactive bituminous coals and can be designed for use with either caking or non-caking coals. A 300 ton per day pilot plant has operated and a larger demonstration plant will soon operate in Great Britain. Compared to other gasification technologies (i.e., entrained flow gasification such as Texaco), this approach may be applicable to fewer types of coal but may ultimately be more economical because it uses substantially less oxygen, a major cost item. *It is the Board's view that a project using this technology would enhance national capability to use plentiful U.S. coals and should be included in the Phase I program.*

Entrained Flow Gasification (Slurry Feed): This technology is represented generically by the Texaco gasifier. In different versions, it can process most bituminous coals and has been extensively tested with lignite. Corporation-assisted projects are employing versions of this technology using bituminous coal (Cool Water) and subbituminous coal (Dow Syngas). Another project (Tennessee-Eastman) is operating commercially without Corporation assistance using bituminous coal. *The Board concludes that this technology is developed to the point where the private sector can develop it as economically justified, and hence there is no need to include further projects using it in the Phase I program.*

Entrained Flow Gasification (Dry Feed): Because this technology does not inject liquid water into the gasifier, it saves on costly oxygen with any coal and can process coals with a high inherent water content (i.e., lignite). Mature versions of the technology have operated only at low pressure; pressurized pilot plants have operated successfully and others are being planned. Compared to other, more mature ways of processing coal under pressure (i.e., fixed bed gasification, such as Lurgi), pressurized versions of this technology may be particularly economic for processing coal containing a large proportion of fines. *It is the Board's view that a project using this technology would enhance national capability to use plentiful U.S. coals and should be included in the Phase I program.*

Fluid Bed Gasification: This technology can process all types of coal, has lower oxygen requirements than entrained flow reactors and may have potential for using very high capacity equipment. Mature versions have operated only at atmospheric pressure; experience with the technology under pressure is limited to small pilot plants, although a larger demonstration plant is scheduled to begin operation soon in German. *It is the Board's view that a project using this technology (and giving special attention to the scale-up risks involved) would enhance national capability to use plentiful U.S. coals and should be included in the Phase I program.*

Direct Hydrogenation: The liquefaction of coal by direct hydrogenation has been extensively piloted in the U.S. and abroad. Compared to other synthetic fuels processes, it is a mechanically difficult process, involving all the costs and problems of coal gasification (because the hydrogen is usually obtained by gasification) plus many others related to the high pressure required in the key step. Although direct hydrogenation may eventually prove to have higher efficiency and greater scale economies than indirect conversion processes, in present conceptions it cannot compete economically with indirect processes. It would be desirable to gain experience with this technology, which has a long record of use with coal and in oil refining. *The Board continues to be interested in direct hydrogenation, but does not consider it likely that viable projects using it will be developed in time to be included in the Phase I program.*

Coal-Water Slurries: Finely-ground coal mixed with water and small amounts of additives can be injected into boilers and other furnaces as a substitute for oil. The market for this use of coal is primarily in existing, large, oil-burning industrial and utility boilers that can be suitably modified. However, potential users, especially utilities, are reluctant to undertake the costs and risks of converting to coal-water slurries until the technology has been demonstrated in utility-scale boilers. The Corporation has received several proposals in response to a solicitation for coal-water slurry projects, and there is interest among some potential suppliers of coal-water fuels in projects that might proceed with little or no Corporation support, particularly in industrial applications. However, recent information concerning the plans and needs of both potential suppliers and potential users of coal-water fuels suggests that there are still significant and unique market obstacles to the commercial application of coal-water fuel technology in utilities. The Corporation may be able to play a useful role in overcoming these obstacles; but, if it is to do so without interfering with the efforts of the private sector, it must develop appropriate, innovative ways to use its authorities. *Therefore, the Board is still considering how best to proceed with coal-water fuels in Phase I.*

Other Coal Resources and Technologies: In addition to the coals and technologies discussed above, there are other coal resources, particularly anthracite and peat, that can be used to produce synthetic fuels and there are other approaches to coal conversion in various stages of development and with varying potential. On the basis of current knowledge and experience, *the Board sees no need actively to seek other resources or technologies for coal conversion, but is open to ideas that have the potential for significant improvements in the nation's ability to produce synthetic fuels in an economic and environmentally acceptable way.*

Oil Shale Resources and Technologies

The U.S. has large quantities of accessible oil shale in western regions and smaller (but still significant) quantities of leaner oil shale accessible via surface mining in the east. The principal technical approaches to mining and processing each of these resources are discussed below.

Oil Shale Mining: Although eastern oil shale can be surface mined, little needs to be learned about this process. Most of the western U.S. shale resource is not accessible via surface mining and hence must be either mined by underground methods or processed in situ. Underground mining of shale is different from coal mining, primarily because of the thickness of shale beds and the huge quantities of rock that must be moved; but it is similar to the mining of other minerals such as copper ore. The Parachute Creek Phase I project is mining shale underground on a commercial scale. *It is the Board's view that, once commercial scale shale mining has been demonstrated by the Parachute Creek Phase I project,*

underground mining technolgy will not be a significant constraint on shale oil production.

Surface Retorting of Western Shale: Any type of oil shale can be mined and then processed in a surface retort. A simple technology (Petrosix) for processing coarse shale has operated successfully in Brazil on shale similar to eastern U.S. shale and could be applied commercially to western or eastern U.S. shales. A commercial-scale project (Parachute Creek Phase I) using a different technolgy (Union B) on coarse western shale has been undertaken and is now going through a difficult start-up period. Neither of these technologies can process all the fine shale produced in the mining process and neither recovers the carbon that remains on the shale after retorting; technologies that can handle fine shale and/or recover the carbon are less proven but should have significant economic advantages. *It is the Board's view that at least one more western shale project (in addition to the Parachute Creek Phase I project) including surface retorting should be assisted in Phase I, provided that it uses retorting technology that is different from and offers advantages over the Union B technology.*

Surface Retorting of Eastern Shale: Eastern U.S. shale can be processed in the same type of retorts applicable to western shale but yields much less oil when treated this way. However, it can be surface mined and is located in regions that are close to skilled labor, transportation, marketing, water, etc., making it possible for shale projects to be costly in the east. On balance, *it is the Board's view that an eastern shale project is not a high priority for the Phase I program, but might be of interest if it promised to overcome some of eastern shale's apparent disadvantages relative to other synthetic fuels resources or if it offered significant experience with retorting technology applicable to western shale.*

True In Situ Retorting of Western Shale: There could be significant economic and environmental advantages to processing oil shale in situ. The technology for deep true in situ processing is still in its infancy and enough minable shale exists to support many decades of large-scale production by surface retorting. However, there are relatively small quantities of shallow shale that may by accessible with small-scale in situ processes; *it is the Board's view that shallow in situ processing of oil shale is worth considering in the Phase I program if a strong, relatively inexpensive project can be developed.*

Modified In Situ Retorting of Western Shale: The modified in situ (MIS) approach to producing shale oil consists of mining some shale for surface retorting and retorting the rest in situ. The technology of underground retorting has been demonstrated but its potential is still uncertain. A MIS project would provide experience with mining, surface retorting and underground retorting. *It is the Board's view that a MIS project should be included in the Phase I program, provided that it utilizes a surface retorting technology that is different from and offers advantages over the Union B technology.*

Heavy Oil/Tar Sands Resources and Technologies

The heavy oil and tar sands resource category includes a wide range of hydrocarbons, some of which can be recovered by in situ processes and some of which require mining and surface processing. The recoverable amount of the resource, while small compared to coal and shale, is comparable to reserves of conventional oil and gas. The resource is of potential interest in Phase I primarily because, once production techniques have been proven, output could be expanded relatively quickly in response to a sudden price increase and could make a significant contribution to national oil supplies for many years.

In Situ Recovery: Heavy oil (and limited amounts of tar sands oil) is being produced economically by processes that inject steam into the oil formation to thin the oil so that it can flow to the well and be pumped. Accordingly, the Energy Security Act allows the Corporation to treat such production as a synthetic fuels process only under certain conditions. The scale of in situ projects and the lead times involved are not necessarily large relative to the private sector's capabilities. *It is the Board's view that, by concentrating on deposits representative of large amounts of the resource and determining how best to produce from these, the Corporation might improve the nation's ability to expand heavy oil/tar sands production in the event of a sudden oil price increase; however, in light of the highly variable nature of the resource and the active interest of the private sector, the Corporation will proceed carefully, to assure that its involvement in any particular case is needed and does add significantly to national capability.*

Mining and Surface Processing. Near-surface formations of rock permeated with hysrocarbons can be mined and treated with solvents and/or heat to yield a heavy, tar-like substance that can be use as-is (e.g., as asphalt) or can be upgraded into lighter products. In Canada, tar sands are mined and processed on a large commercial scale. U.S. tar sands are not nearly as extensive or as easily treated as the Canadian sands, but analogous processes could be undertaken here. *It is Board's view that surface mining and processing of tar sands may be worth pursuing if sound projects at reasonable cost can be developed.*

U.S. SYNTHETIC FUELS CORPORATION PHASE I BUSINESS PLAN PROGRAM PRORITIES

Resource	Primary priority[1]	Secondary priority[2]
Coal	Fixed bed gasification	Direct hydrogenation
	Dry bottom	
	Slagging	
	Entrained flow gasification	Other resources and technologies
	Slurry feed[3]	
	Dry feed	
	Fluid Bed Gasificaton	
Shale	Surface retorting of western shale	True in situ retorting of western shale
	Union B retort[3]	
	Other retorts[3]	
	Modified in situ retorting of western shale	Surface retorting of eastern shale
Heavy oil/tar sands	In Situ Recovery	
	Mining and Surface Processing	

[1] The Corporation will specify how and when it intends to solicit and select projects in this category; however, competing demands on funds or absence of suitable projects may preclude Corporation assistance for one or more of these primary priorities.
[2] The Corporation does not anticipate soliciting projects in this category, but is willing to consider specific projects that may offer special advantages to the program.
[3] Projects underway or being considered by SFC; no projects beyond these are expected to be assisted in Phase I.

[FR Doc. 85-4928 Filed 2-28-85; 8:45 am]
BILLING CODE 000-00-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

DETERMINATION REGARDING THE APPLICATION OF CERTAIN INTERNATIONAL AGREEMENTS

This notice modifies the determination published in the Federal Register of January 4, 1980 (45 FR 1181), as amended by determinations published at 45 FR 18547, 45 FR 36569, 45 FR 63402, 45 FR 85239, 46 FR 24059, 46 FR 46024, 46 FR 46263, 46 FR 48391, 47 FR 16697, and 49 FR 47467.

Under section 1-103(b) of Executive Order 12188 of January 2, 1980, the functions of the President under section 2(b) of the Trade Agreements Act of 1979 (the Act) and section 701(b) of the Tariff Act of 1930 as amended, are delegated to the United States Trade Representative (the Trade Representative), who shall exercise such authority with the advice of the Trade Policy Committee.

Now, therefore, William E. Brock, United States Trade Representative, in conformance with the provisions of Section 2(b) of the Act, section 701(b) of the Tariff Act of 1930 as amended, and section 1-103(b) of Executive Order 12188, does hereby determine, effective on the date of signature of this Notice that:

With respect to the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade (Subsidies Code), Turkey has accepted the obligations of the Agreement with respect to the United States and should not otherwise be denied the benefits of the Agreement.

In accordance with section 702(b) of the Tariff Act of 1930, as amended (19 U.S.C. 1671(b)), as of February 25, 1985, Turkey is a "country under the Agreement."

William E. Brock,

United States Trade Representative.

February 25, 1985.

[FR Doc. 85-4949 Filed 2-28-85; 8:45 am]

BILLING CODE 3190-01-M

Multifiber Arrangement; Soliciting Public Comment

The Multifiber Arrangement, which governs trade in textiles and apparel and to which the United States is a signatory, expires on July 31, 1986. Under Article 10:5 of the Multifiber Arrangement, the GATT Textiles Committee is required to meet one year prior to expiry, or no later than July of this year, to consider whether the Arrangement should be extended, modified or discontinued.

The purpose of this notice is to invite any party wishing to comment on the renewal, modification or discontinuance of the Multifiber Arrangement, or to provide information on domestic production or the availability of textiles and apparel affected by the Arrangement, to submit such comments or information in ten copies to Ambassador Richard H. Imus, Chief Textile Negotiator, Executive Office of the President, Office of the United States Trade Representative, Washington, D.C. 20506.

Comments should be submitted as promptly as possible but in no case later than April 30, 1985. Comments or information submitted in response to this notice will be available for public inspection in the Office of the Chief Textile Negotiator, Room 301, Office of the United States Trade Representative, Executive Office of the President, 600 17th Street NW., Washington, D.C. 20506. Further comment may be invited regarding particular submissions received from the public which the United States Trade Representative considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the Arrangement is not a waiver in any respect of the exemption contained in 5 U.S.C. 533(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Richard H. Imus,

Chief Textile Negotiator.

[FR Doc. 85-4947 Filed 2-28-85; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q of Department of Transportation's Procedural Regulations, Week Ended February 22, 1985; Jim Pattison Industries Ltd., et al.

Subpart Q Applications

The due date for answers, conforming application, or motions to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings (See, 14 CFR 302.1701 et seq.)

Date filed	Docket No	Description
Feb 19, 1985	42878	Jim Pattison Industries Ltd., d/b/a AIRBC, c/o D. Mercier, 4680 Cowley Crescent, Richmond, B.C. V7B 1C1 Application of Jim Pattison Industries Ltd., operating under the firm name and style of AIRBC pursuant to section 402 of the Act and Subpart Q of the Regulations applies for a foreign air carrier permit to operate scheduled foreign air service of persons and property between Victoria, B.C. Canada and Seattle, Washington, U.S.A. Answers may be filed by March 19, 1985
Do	42879	British Airways PLC, c/o William C. Clarke, Barrett Smith Schapiro Simon & Armstrong, 26 Broadway, New York, New York 10004. Application of British Airways PLC pursuant to section 402 of the Act and Subpart Q of the Regulations requests an amendment of the foreign air carrier permit to add authority for the holder to engage in scheduled foreign air transportation of persons, property and mail, conducted with combination aircraft, on the following routes: Pittsburgh-London, Tampa-London, Orlando-London, Tampa-Bermuda and Orlando-Bermuda. Answer may be filed by March 19, 1985
Feb 22, 1985	42893	Temsco Helicopters, Inc., c/o Hank Myers, Myers & Company, P.O. Box 7341, Bellevue, Washington 98008. Application of Temsco Helicopters, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations applies for a certificate of public convenience and necessity for an indefinite term to perform scheduled interstate air transportation of persons, property and mail between the terminal point Ketchikan, Alaska and the terminal point Metlakatla, Alaska Conforming Applications, Motions to Modify Scope and Answers may be filed by March 22, 1985

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 85-5052 Filed 2-28-85; 8:45 am]

BILLING CODE 4910-62-M

Reports, Forms, and Recordkeeping Requirements; Submittals to OMB Jan. 18, 1985–Feb. 20, 1985

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation, during the period Jan. 18, 1985–Feb. 20, 1985, to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

FOR FURTHER INFORMATION CONTACT: John Chandler or Annette Wilson, Information Requirements Division, M–34, Office of the Secretary of Transportation, 400 7th Street SW., Washington, D.C. 20590, telephone (202) 426–1887, or Gary Waxman or Sam Fairchild, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, D.C. 20503, (202) 395–7340.

SUPPLEMENTARY INFORMATION:

Background

Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the **Federal Register**, listing those information collection requests submitted to the Office of Management and Budget (OMB) for initial approval, or for renewal under that Act. OMB reviews and approves agency submittals in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms, reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

Information Availability and Comments

Copies of the DOT information collection requests submitted to OMB may be obtained from the DOT officials listed in the **"For Further Information Contact"** paragraph set forth above. Comments on the requests should be forwarded, as quickly as possible, directly to the OMB officials listed in the **"For Further Information Contact"** paragraph set forth above. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB officials of your intent immediately.

Items Submitted for Review by OMB

The following information collection requests were submitted to OMB from Jan. 18, 1985–Feb. 20, 1985:

DOT No: 2539
OMB No: 2125–0503
By: Federal Highway Administration
Title: Traffic Control Signalization Demonstration Program
Forms: None
Frequency: Upon completion of project
Respondents: State Highway Agencies

Need/Use: To evaluate the benefits derived from demonstration projects under the program, comparing adequate time periods before and after implementation of improved traffic control signalization.

DOT No: 2540
OMB No: 2105–0508
By: Office of the Secretary
Title: Unform Relocation Assistance and Real Property Acquisition Policies—Acquisition of Federal and Federally-Assisted Programs
Forms: None
Frequency: Every three years
Respondents: State Highway Agencies, Transit Agencies, Airport Agencies

Need/Use: Data is needed by DOT to assure prudent expenditure of public funds and to assure protection of the rights of property owners or occupants.

DOT No: 2541
OMB No: 2138–0009 (CAB)
By: Research and Special Programs Administration
Title: Form 298–C—Report of Scheduled Passenger Operations of Commuter Air Carriers
Forms: Form 298–C
Frequency: Quarterly
Respondents: Small certified and commuter air carriers.

Need/Use: Small air carrier traffic levels and service pattern data are needed to: monitor carrier fitness and safety, establish levels of essential air service; set subsidy levels; and to estimate DOT trust fund revenues and airport development funds.

DOT No: 2542
OMB No: 2137–0041
By: Research & Special Programs Administration
Title: New Explosives Approval and Notification
Form(s): None
Frequency: One-time prior to first shipment
Respondents: Manufacturers of explosives.

Need/Use: To assure that explosives and explosive devices are properly classed so that their packaging will maintain a level of safety which will protect the general public and property while it is in transportation channels.

DOT No: 2543
OMB No: 2125–0080
By: Federal Highway Administration
Title: Medical Qualification Requirements
Form(s): None
Frequency: Recordkeeping Requirement. Retain for 3 years.
Respondents: Motor Carrier/Drivers.

Need/Use: To ensure that all drivers employed by motor carriers meet the medical qualification standards. They must have in their possession while driving a physician's medical certificate or a waiver issued by FHWA. Application copies are retained in a driver's qualification file.

The following are the Civil Aeronautics Board's (CAB) information collection requests that were approved before sunset December 31, 1984. The Department of Transportation (DOT) has arranged for them to be listed in the Register.

OMB No: Before sunset 3024–0010. After sunset 2106–0010 (Office of the Secretary)
By: Civil Aeronautics Board
Title: Application for Foreign Aircraft Permit
Forms: Form 272
Frequency: On occasion
Respondents: Foreign Air Carriers.

Need/Use: Section 375.40 of the 49 CFR to regulate the admission to, and navigation in U.S. air space of foreign civil aircraft other than aircraft operated by holders for foreign aircraft permits.

Issued in Washington, D.C., on February 25, 1985.

Jon H. Seymour,
Acting Assistant Secretary for Administration.

[FR Doc. 85–5053 Filed 2–28–85; 8:45 am]

BILLING CODE 4910–43–M

Federal Aviation Administration

Revision of Technical Standard Order C100; Child Restraint Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to revise Technical Standard Order C100 and request for comment.

SUMMARY: The Federal Aviation Administration (FAA) proposes to revise Technical Standard Order (TSO)

C100 so no person may identify or mark a child restraint system with TSO–C100 after the effective date established, and the FAA announces that the National Highway Traffic Safety Administration has amended Federal Motor Vehicle Safety Standard 213 to make it a combined child restraint system standard for motor vehicles and aircraft. This proposed revision to TSO–C100 will assure that only a single standard exists for child restraint systems. Child restraint manufacturers will then comply with amended Standard 213 only and deal only with the National Highway Traffic Safety Administration of the Department of Transportation.

DATES: Comments must be received on or before March 12, 1985. March 15, 1985, is proposed as the effective date of the revision.

ADDRESSES: Send comments on the proposed Technical Standard Order to: Federal Aviation Administration, Policy and Procedures Branch, AWS–110, Aircraft Engineering Division, Office of Airworthiness—File No. TSO–C100, 800 Independence Avenue, SW., Washington, D.C. 20591; or deliver comments to: Room 335, 800 Independence Avenue, S.W., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Bobbie J. Smith, Policyu and Procedures Branch, AWS–110, Aircraft Engineering Division, Office of Airworthiness, Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, D.C. 20591; telephone (202) 426–8395.

Comments received on the proposed Technical Standard Order may be inspected, before and after the comment closing date, at Room 335, FAA Headquarters Building (FOB–10A), 800 Independence Avenue, SW., Washington, D.C. 20591, between 8:30 a.m. and 4:30 p.m.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on this proposed revision by submitting such written data, views, or arguments as they may desire. Communications should identify the Technical Standard Order file number and be submitted in duplicate to the address above. All comments received on or before the closing date for comments will be considered by the Director of Airworthiness before issuing the final Technical Standard Order. The proposals contained in this notice may be changed because of the comments received.

Background

In December 1979 (44 FR 72131), the National Highway Traffic Safety Administration (NHTSA) issued an improved standard (Federal Motor Vehicle Safety Standard (FMVSS) No. 213) for child restraint systems which became effective January 1, 1981 (45 FR 29045). It was an improved standard for child or infant seats because dynamic testing was specified for compliance demonstrations.

In September 1980 (45 FR 65380), the FAA issued a notice of intent to issue a Technical Standard Order (TSO) on child restraint systems. The FAA draft TSO proposed to adopt the improved NHTSA standard and to add additional standards to account for the aircraft environment.

In May 1982, the FAA issued the child restraint system standard, TSO–C100. One of the key factors underlying the development of TSO–C100 was child restraint testing conducted by the Civil Aeromedical Institute in 1974. The results of that testing appeared in an FAA test report: "Child Restraint Systems for Civil Aircraft" (FAA–AM–78–12, March 1978). Another factor was the FAA's determination that differences in the operating environments of aircraft and motor vehicles necessitated establishment of performance standards to address the special safety risks to very young children traveling in aircraft. One of those differences is the characteristic of aircraft seat backs to fold forward with the application of a very low force. The FAA determined that there was a need to control the interaction between a very young child, especially one riding while facing rearward, and a seat back to ensure that the seat back does not apply unacceptable levels of force on the child. The FAA also determined that there was a need to address the danger that in-flight turbulence might throw a child out of his or her child restraint.

Accordingly, TSO–C100 dated May 28, 1982, requires each child restraint intended for use in aircraft to meet the requirements of FMVSS No. 213 and several additional standards. First, while attached by an aircraft safety belt to a representative aircraft passenger seat with a free-folding seat back and occupied by a test dummy, each child restraint must provide protection to an impact producing a 20 mph velocity change. In that impact, the restraint may not fail nor deform in a manner that could seriously injure or prevent subsequent removal of a child occupant. Second, each child restraint must contain its occupant in inversion tests. When the combination of child seat, representative aircraft passenger seat, and test dummy is rotated to an inverted position, there must be neither failure nor deformation that could seriously injure or prevent subsequent removal of a child occupant. Third, each child restraint must withstand the ultimate inertia forces specified in Federal Aviation Regulations (FAR) § 25.561 (14 CFR 25.561) acting separately. Fourth, TSO–C100 (5/28/82) specifies requirements for marking child restraints with assembly and usage instructions, providing a copy of such instructions to child restraint users, and submitting those instructions and various technical information and test results to the FAA. In addition, the TSO procedures in Subpart O of FAR Part 21 (14 CFR Part 21) requires the establishment and maintenance of a manufacturer quality control system.

At this time, in order for a manufacturer's child restraint to be approved for use in aircraft, the manufacturer must submit the specified information to the FAA along with a certifying statement that the restraint meets the requirements of TSO–C100 (5/28/82). Once approved by the FAA, the restraint could be used for infants or children under 2 years of age during all phases of flight, including takeoff and landing. When a particular child restraint model has been approved by the FAA, child restraints of the same make and model that were manufactured prior to the date of approval would be acceptable for use in aircraft during all phases of flight provided those earlier child restraints were substantively identical to the approved one and were properly identified as to make and model by an FMVSS No. 213 label.

In February 1983, the National Transportation Safety Board issued Recommendation A–83–1, which asked the FAA to amend TSO–C100 (5/28/82) so any child or infant restraint device conforming to the existing FMVSS No. 213 could be used in aircraft until the FAA and the NHTSA issued a combined standard for child restraints. The FAA and the NHTSA collaborated to combine all requirements into FMVSS No. 213. The Department of Transportation's (DOT) proposal to amend FMVSS No. 213 to include the optional standards of TSO–C100 for child restraints intended for use in aircraft was published in the **Federal Register** on August 15, 1983 (48 FR 36849).

On August 24, 1984, FMVSS No. 213 was amended (49 FR 34357). FMVSS No. 213, effective February 26, 1985, includes up to date FMVSS No. 213 requirements

and some TSO-C100 optional standards for the aircraft environment and will be enforced by a single agency (NHTSA) of the DOT. FMVSS No. 213, as effective 2/26/85, provides child restraint manufacturers with a choice between certifying their restraints for use in motor vehicles alone or for use in both motor vehicles and aircraft.

The DOT prefers a single standard and a single agency to enforce the certification of child restraints for use in motor vehicles and aircraft. Since all applicable standards are now contained in FMVSS No. 213, TSO-C100 (5/28/82) is no longer needed; however, the FAA will continue to provide assistance to the NHTSA to assure that certified systems are in fact compatible with aircraft in use. Consequently, a revision to TSO-C100 is being proposed to cancel TSO-C100 to specify that no person may identify or mark products with TSO-C100 after the effective date. The proposed revision also announces the need to comply with amended FMVSS No. 213. The proposal, if adopted, will result in a single standard for child restraint systems.

Proposed Technical Standard Order (TSO)—TSO-C100a

TSO-C100a, Child Restraint Systems

(a) *Applicability.*

(1) *Minimum Performance Standards.* Models of child restraint systems that are to be used in aircraft and that are manufactured on or after the date of this revised TSO must meet the requirements set forth in Federal Motor Vehicle Safety Standard No. 213, Child Restraint Systems, effective February 26, 1985 (49 FR 34357).

(2) *Cancellation.* Effective March 15, 1985, TSO-C100 dated May 28, 1982, is cancelled.

(b) *Marking.* After March 15, 1985, no person (including holders of TSO-C100 authorizations) may identify or mark an article with TSO-C100.

(c) *Availability of Reference Documents.*

(1) Copies of Federal Motor Vehicle Safety Standard No. 213 (49 CFR 571.213) may be obtained (or purchased) from the National Highway Traffic Safety Administration, Docket Section, Room 5108, 400 7th Street, S.W., Washington, D.C. 20590.

(2) Federal Aviation Regulations Part 21, (14 CFR Part 21) subpart O, and Advisory Circular 20-110, "Index of Aviation Technical Standard Orders," may be reviewed at the FAA Headquarters in the Office of Airworthiness, Aircraft Engineering Division (AWS-110), and at all Aircraft Certification Offices.

Issued in Washington, D.C. on February 21, 1985.

Joseph A. Pontecorvo,

Deputy Director of Airworthiness.

[FR Doc. 85-4977 Filed 2-28-85; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement; Ottawa County, MI

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for the proposed reconstruction of M-45, 24th Street to 68th Street, Ottawa County, Michigan.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth L. Barkema, District Engineer, Federal Highway Administration, P.O. Box 10147, Lansing, Michigan 48901, Telephone (FTS) 374-1851 or (Commercial) (517) 377-1851 or Mr. Jan Raad, Manager, Environmental Liaison Section Bureau of Transportation Planning, Michigan Department of Transportation, P.O. Box 30050, Lansing, Michigan 48909, Telephone (517) 373-8350.

SUPPLEMENTARY INFORMATION: The Federal Highway Administration, in cooperation with the Michigan Department of Transportation, (MDOT), is preparing an Environmental Impact Statement (EIS) for the proposed reconstruction of M-45 from 24th Street to 68th Street in Ottawa County, Michigan. The proposed project is needed to improve safety and capacity of the existing roadway.

Five alternatives under consideration include A. do nothing; B. low capital improvements; C. widening and reconstruction to four lanes with minor horizontal and vertical alignment corrections including a new structure at Sand Creek and the Grand River; D. widening and reconstruction to five lanes with minor horizontal and vertical alignment corrections including a new structure at Sand Creek and the Grand River; and E. widening and reconstruction to a 4 lane boulevard with 60-foot median and two new structures at the Grand River and Sand Creek.

Both the four and five lane alternatives would be constructed substantially along the existing M-45 alignment. In the vicinity of the Grand River, a new parallel bridge would be constructed immediately south of the existing bridge to serve eastbound traffic. The existing bridge would serve westbound traffic. Both roadways would tie back into the existing M-45 roadway as soon as possible.

The boulevard would also be constructed substantially along the existing M-45 alignment except in the vicinity of the Grand River where it would be constructed on new location approximately 700-feet south of the existing road. The new location would be approximately two miles in length are require two new structures crossing the Grand River. West of the Grand River right-of-way would be acquired generally south of the existing M-45 right-of-way.

Alternates C, D, and E all will require a relocation of M-45 in the vicinity of Sand Creek to improve vertical alignment and sight distance at this location.

Early coordination already conducted with a number of federal, state, and local agencies has identified the more significant issues to be addressed in the EIS. Accordingly, no agency scoping meeting is planned at this time. A Scoping Document has been prepared identifying the alternatives being considered and the social, economic, and environmental issues involved. The Scoping Document is available to all interested agencies, organizations and individuals on request. A pre-study meeting will be held in early 1985 to provide the public an opportunity to discuss the proposed action. Comments on the Scoping Document and issues identified are invited from all interested parties. Requests for a copy of the Scoping Document or any comments submitted should be addressed to the above contact persons. The closing date for comment is April 15, 1985.

The Draft EIS is scheduled for completion in late 1985 and will be available for public and agency review.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The provisions of OMB Circular No. A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects apply to this program.)

Issued on: February 22, 1985.

David A. Merchant,

Division Administrator.

[FR Doc. 85-4935 Filed 2-28-85; 8:45 am]

BILLING CODE 4910-22-M

Federal Railroad Administration

[FRA General Docket No. H-83-2]

Petitions for Waiver of Compliance

The Federal Railroad Administration's Freight Car Safety Standards (49 CFR Part 215) prohibit a railroad from keeping a freight car in service if it has a defective wheel. Since a wheel that has been thermally abused presents a significant risk of sudden failure and consequent derailment, § 215.103(h) defines such wheels as defective.

FRA recently initiated a rulemaking proceeding to improve the clarity of this provision. In response to the notice of proposed rulemaking issued on June 22, 1984, one commenter suggested that FRA's regulatory approach to thermally abused wheels was intrinsically flawed because it relies on a scientifically unjustified detection methodology. This commenter, the Association of American Railroads (AAR), suggested that FRA consider initiating a test program to obtain data about the thermal abuse of freight car wheels. The test program contemplated by the AAR would involve a waiver of compliance with FRA's regulation to permit one type of freight car wheel, generally described as a "curved plate," "S plate," or "low stress" wheel, to remain in service until that wheel displays clear evidence of thermal abuse such as thermal cracking. The service record of these wheels would then be compared to that of wheels removed from service under FRA's rule so as to validate or invalidate the current industry detection approach, which is premised on visual observation of discoloration criteria.

Two railroads, Norfolk Southern Corporation (NS) and Consolidated Rail Corporation (Conrail), have now filed specific proposals with FRA concerning a suggested test program. NS has volunteered the use of its entire fleet of 63,000 open top hopper cars for such a test program if FRA deems a test appropriate. NS notes that these cars are primarily used to haul coal and are never used to haul commodities classified as hazardous materials. Since these cars are primarily operated on its own lines and NS has a computerized data base concerning these cars, NS believes that it is in a unique position to contribute to any possible test program. Similarly, Conrail has volunteered the use of a mixed fleet of approximately 3,400 freight cars for any such test program. Included in the Conrail equipment are 160 flat cars, 400 box cars, 700 covered hopper cars, and 2,140 open top hopper cars. All of these cars are in dedicated service between two locations on Conrail's own system and do not carry commodities that are classified as hazardous materials.

FRA invites interested parties to participate in this proceeding by submitting written comments, data or views on the appropriateness of initiating any test program concerning this topic; the nature and scope of the test program being requested by NS and Conrail, if any test program is deemed appropriate; and the safeguards or conditions needed to assure the safety of operations during any recommended test program. Interested parties also may desire to attend the public hearing scheduled for March 12, 1985. This hearing was announced in the **Federal Register** on December 17, 1984 (49 FR 48952) in connection with FRA's pending proposal to clarify its existing regulatory provision on this issue. FRA anticipates that persons testifying at this hearing will address the topic of initiating the type of test program sought by NS and Conrail as a means of validating or invalidating FRA's regulatory provision. This hearing is scheduled to begin at 10:00 am on March 12, 1985, in Room 8334 of the Nassif Building located at 400 Seventh Street S.W., Washington, D.C.

All communications concerning this proceeding should identify the appropriate docket number (FRA General Docket No. H-83-2) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street S.W., Washington, D.C. 20590. Communications received before April 15, 1985 will be considered by FRA before taking any further action. Comments received after that date will be considered as far as practicable. All written communications concerning this proceeding are available for examination during regular business hours (9 a.m.–5 p.m.) in Room 8201 of the Nassif Building at the above address.

Issued in Washington, D.C., on February 22, 1985.

Joseph W. Walsh,

Associate Administrator for Safety.

[FR Doc. 85-4969 Filed 2-28-85; 8:45 am]

BILLING CODE 4910-06-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation of Authority of December 17, 1982 (47 FR 57600, December 27, 1982), I hereby determine that the objects to be included in the exhibit, "Gallery for a King: Old Master Paintings from Dulwich" (included in the list [1] filed as a part of this determination) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to a loan agreement between the Dulwich Picture Gallery, London, England and the National Gallery of Art. I also determine that the temporary exhibition or display of the listed exhibit objects at the National Gallery of Art, Washington, D.C., beginning on or about April 14, 1985, to on or about September 2, 1985, at the Los Angeles County Museum of Art, Los Angeles, California, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

Dated: February 28, 1985.

Thomas E. Harvey,

General Counsel and Congressional Liaison.

[FR Doc. 85-5247 Filed 2-28-85; 11:48 am]

BILLING CODE 8230-01-M

VETERANS ADMINISTRATION

Advisory Committee on Structural Safety of Facilities; Meeting

The Veterans Administration gives notice under Pub. L. 92-463 that a meeting of the Advisory Committee on Structural Safety of Veterans Administration facilities will be held in Room 442, of the Lafayette Building, 811 Vermont Avenue, NW., Washington, DC on April 5, 1985, at 10 a.m. The committee members will review Veterans Administration construction standards and criteria relating to fire, earthquake and other disaster resistant construction.

The meeting will be open to the public up to the seating capacity of the room. Because of the limited seating capacity, it will be necessary for those wishing to attend to contact Mr. Richard D. McConnell, Director, Civil Engineering Service, Office of Construction, Veterans Administration Central Office (phone 202-389-2864) prior to March 29, 1985.

Dated: February 25, 1985.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 5009 Filed 2-28-85; 8:45 am]

BILLING CODE 8320-01-M

[1] An itemized list of objects included in the exhibit is filed as part of the original document.

Sunshine Act Meetings

Federal Register
Vol. 50, No. 41
Friday, March 1, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

COMMISSION ON CIVIL RIGHTS

PLACE: Fifth Floor Conference Room, 1121 Vermont Avenue, NW., Washington, D.C.

DATE AND TIME: Tuesday, March 5, 1985, 2:00 p.m.—5:00 p.m.

STATUS OF MEETING: Open to the public.

MATTERS TO BE CONSIDERED:

I. Approval of Agenda
II. Approval of Minutes of Last Meeting
III. Staff Director's Report
  A. Status of Funds
  B. Personnel Report
  C. Office Directors' Reports
IV. Consideration of the Grove City Decision
V. SAC Recharters
VI. Civil Rights Developments in the Rocky Mountain Region

PERSON TO CONTACT FOR FURTHER INFORMATION: Barbara Brooks, Press and Communications Division, (202) 376-8312.

Lawrence B. Glick,
Solicitor.
February 27, 1985.
[FR Doc. 85-5171 Filed 2-27-85; 3:25 pm]
BILLING CODE 6335-01-M

2

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:30 a.m., Thursday, February 28, 1985.

PLACE: 2033 K Street, NW., Washington, D.C., 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 85-5083 Filed 2-27-85; 10:06 am]
BILLING CODE 6351-01-M

3

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, March 1, 1985.

PLACE: 2033 K Street, NW., Washington, D.C., 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 85-5084 Filed 2-27-85; 10:06 am]
BILLING CODE 6351-01-M

4

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, March 5, 1985.

PLACE: 2033 K Street, NW., Washington, D.C., 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Financial Review.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 85-5085 Filed 2-27-85; 10:06 am]
BILLING CODE 6351-01-M

5

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, March 8, 1985.

PLACE: 2033 K Street, NW., Washington, D.C., 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 85-5086 Filed 2-27-85; 10:06 am]
BILLING CODE 6351-01-M

6

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, March 15, 1985.

PLACE: 2033 K Street, NW., Washington, D.C., 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 85-5087 Filed 2-27-85; 10:06 am]
BILLING CODE 6351-01-M

7

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, March 19, 1985.

PLACE: 2033 K Street, NW., Washington, D.C., 5th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED: Application for designation as a Contract Market in Eurodollar Options/ Chicago Mercantile Exchange.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 85-5088 Filed 2-27-85; 10:06 am]
BILLING CODE 6351-01-M

8

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, March 22, 1985.

PLACE: 2033 K Street, NW., Washington, D.C., 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

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CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 85–5089 Filed 2–27–85; 10:06 am]

BILLING CODE 6351–01–M

9

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:30 a.m., Friday, March 22, 1985.

PLACE: 2033 K Street, NW., Washington, D.C., 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule Enforcement Review.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 85–5089 Filed 2–27–85; 10:06 am]

BILLING CODE 6351–01–M

10

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 am., Tuesday, March 26, 1985.

PLACE: 2033 K Street, NW., Washington, D.C., 5th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED: Application for designation as a Contract Market in Soybean Meal/ MidAmerica Commodity Exchange

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 85–5091 Filed 2–27–85; 10:06 am]

BILLING CODE 6351–01–M

11

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 am., Friday, March 29, 1985.

PLACE: 2033 K Street, NW., Washington, D.C., 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule Enforcement Review.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 85–5092 Filed 2–27–85; 10:06 am]

BILLING CODE 6351–01–M

12

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, March 29, 1985.

PLACE: 2033 K Street, NW., Washington, D.C., 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 85–5093 Filed 2–27–85; 10:06 am]

BILLING CODE 6351–01–M

13

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: February 19, 1985; 50 FR 7028.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 3:00 pm (Eastern Time), Tuesday, February 26, 1985.

CHANGES IN THE MEETING: The following items were postponed at the February 26, 1985, meeting and rescheduled for the March 5, 1985 Commission Meeting:

1. Proposed Contract for Expert Services in Connection with a Court Case
2. Accrual of Pension Benefits Beyond Normal Retirement Age

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer, Executive Secretariat, at (202) 634–6748.

Dated: February 27, 1985.

Cynthia C. Matthews,

Executive Officer, Executive Secretariat.

[FR Doc. 85–5183 Filed 2–27–85; 3:56 pm]

BILLING CODE 6750–06–M

14

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: Monday, March 11, 1985, 2:00 p.m. (Eastern Time).

PLACE: Clarence M. Mitchell, Jr., Conference Room No. 200–C on the 2nd Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW., Washington, DC 20507.

STATUS: Closed to the public.

MATTER TO BE CONSIDERED:

Closed

Litigation Authorization: General Counsel Recommendations

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission Meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634–6748 at all times for information on these meetings).

Dated: February 27, 1985.

Cynthia C. Matthews,

Executive Officer, Executive Secretariat.

[FR Doc. 85–5184 Filed 2–27–85; 3:56 pm]

BILLING CODE 6570–06–M

15

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: Tuesday, March 12, 1985, 9:30 a.m. (Eastern Time).

PLACE: Clarence M. Mitchell, Jr., Conference Room No. 200–C on the 2nd Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW., Washington, DC 20507.

STATUS: Part will be open to the public and part will be closed to the public.

MATTERS TO BE CONSIDERED:

1. Announcement of Notation Vote(s)
2. A Report on Commissioin Operations (Optional)
3. Proposed Contract for Expert Services Needed in Connection with a Court Case.
4. Proposed Compliance Manual section 894, Referral of Cases to Department of Justice

Closed

Litigation Authorization: General Counsel Recommendations

Note.—Any matter not discussed or concluded may be carried over to a later meeting (In addition to publishing notices on EEOC Commission Meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634–6748 at all times for information on these meetings).

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer, Executive Secretariat, at (202) 634–6748.

Dated: February 27, 1985.

Cynthia C. Matthews,

Executive Officer, Executive Secretariat.

[FR Doc. 85–5185 Filed 2–27–85; 3:56 am]

BILLING CODE 6750–06–M

16

FEDERAL COMMUNICATIONS COMMISSION

February 22, 1985.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Friday, March 1, 1985, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, NW., Washington, D.C.

Agenda, Item No., and Subject

Private Radio—1—Title: Amendment of Part 90 of the Commission's Rules to Prescribe Policies and Regulations to Govern the Interconnection of Private Land Mobile Radio Stations with the Public Switched Telephone Network in the Spectrum Below 800 MHz. Summary: The Commission will consider whether to adopt a Report and Order amending Part 90 of the Commission's rules governing the interconnection of private land mobile radio stations with the public switched telephone network in the spectrum below 800 MHz.

Private Radio—2—Title: Report and Order in the Matter of Amendment of Part 90 of the Commission's Rules and Regulations to Authorize Narrowband Technologies for Base and Mobile Communications in the Private Land Mobile Radio Services. Summary: The FCC will consider whether to adopt rules allowing narrowband operations in the Private Land Mobile Radio Services in the 150 MHz band.

Common Carrier—1—Title: Second Notice of Proposed Rulemaking in Gen. Docket No. 83–989. Subject: Second Notice of Proposed Rulemaking for promulgation of defenses to enforcement of prohibitions against dial-a-porn services, in response to court decision finding earlier regulation unconstitutional.

Common Carrier—2—Title: Report and Order in Docket No. 78–72, in the Matter of MTS and WATS Market Structure Phase III; Establishment of Physical Connections and Through Routes among Carriers; Establishment of Physical Connections by Carriers with Non-Carrier Communications Facilities; Planning among Carriers for Provision of Interconnected Services, and in Connection with National Defense and Emergency Communications Services; and Regulations for and in Connection with the Foregoing. Summary: The Commission will consider recommendations concerning the implementation of equal access by independent telephone companies, and the institutional arrangements for joint planning among the carriers.

Common Carrier—3—Title: Memorandum Opinion and Order regarding the Commission's general policy direction on transatlantic fiber optic submarine cable systems. Summary: The Commission will consider whether to issue a Memorandum Opinion and Order regarding the Commission's general policy direction on transatlantic fiber optic submarine cable systems as proposed in applications filed by Tel-Optik Limited and Submarine Lightwave Cable Company.

Common Carrier—4—Title: Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83–1145, Phase I and Phase II, Part 1. Summary: The Commission will consider the (1) cost and rate level issues presented by the special access tariffs filed December 3, 1984, (2) whether to phase-in special access rates; and (3) Western Union's petition to stay the Commission's November 9 Special Access Order.

Common Carrier—5—Title: Petitions for Waiver of Section 64.702 of the FCC Rules (Computer II) governing Asynchronous/X.25 Protocol Conversion. Summary: The Bell Operating Companies ("BOCs") are subject to structural separation of their enhanced services under the Computer II rules, including protocol conversion. Certain BOCs have petitioned for waiver of the separation requirements with respect to one form of such protocol conversion, asynchronous/X.25 conversion. The Commission will consider whether to grant the requested waivers, and if so on what terms and conditions.

Mass Media—1—Title: Amendment of Part 76 of the Commission's Rules to Implement the Equal Employment Opportunity Provisions of the Cable Communications Policy Act of 1984. Summary: The Commission will consider proposed rule changes to implement the equal employment opportunity provisions of the Cable Commission Policy Act of 1984.

Mass Media—2—Title: (1) Application to transfer control of KADN Broadcasting, Inc., licensee of UHF television station KADN, channel 15, Lafayette, Louisiana, from Sound Electronics, Inc. to Acadiana Group Communicators, Inc.; (2) application to transfer control of Radio KXKW, Inc., licensee of AM station KXKW, Lafayette, Louisiana, from Thomas Galloway and Michael Mitchell to Acadiana Group Communicators, Inc.; and (3) application to transfer control of Radio KSMB, Inc., licensee of FM station KSMB, Lafayette, Louisiana, from Thomas Galloway and Michael Mitchell to Acadiana Group Communicators, Inc. Summary: The Commission will consider the applications of Sound Electronics and Thomas Galloway and Michael Mitchell to combine the ownership, operation and control of stations KADN(TV), KXKW(AM) and KSMB(FM), all allocated to Lafayette, Louisiana, under Acadiana Group Communicators, Inc., which is owned by Sound Electronics (50%) and Thomas Galloway and Michael Mitchell (50%). They request grant of these transfer applications pursuant to Note 4 of Section 73.3555, which permits applications for UHF stations to be considerd by the Commission on a case-by-case basis to determine whether common ownership would be in the public interest.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Judith Kurtich, FCC Office of Congressional and Public Affairs, telephone number (202) 254–7674.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85–5073 Filed 2–27–85; 9:42 am]

BILLING CODE 6712-01-M

17

FEDERAL COMMUNICATIONS COMMISSION

February 22, 1985.

The Federal State Joint Board will hold a meeting on the subject of *MTS and WATS Market Structure and Amendment of Part 67 of the Commission's Rules, CC Docket Nos. 78–72 and 80–286. The Joint Board will consider staff recommendations on a number of outstanding issues concerning jurisdictional separations and access charges.* This meeting is open to the public and will commence at 1:00 P.M., in Room 856, at 1919 M Street, NW., Washington, D.C.

Additional information concerning this meeting may be obtained from Claudia Pabo, Common Carrier Bureau, telephone number (202) 632–9342.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85–5074 Filed 2–27–85; 9:42 am]

BILLING CODE 6712-01-M

18

FEDERAL COMMUNICATIONS COMMISSION

February 22, 1985.

The Federal Communications Commission will hold a Closed Meeting on the subject listed below on Friday, March 1, 1985, following the Open Meeting, which is scheduled to commence at 9:30 A.M., in Room 856, at 1919 M Street, NW., Washington, D.C.

Agenda, Item No., and Subject

Hearing—1—Applications for Review and related pleadings in the Galveston, Texas, comparative UHF-Television proceeding (Docket Nos. 80–445, 80–446 and 80–447).

This item is closed to the public because it concerns Adjudicatory Matters. (See 47 CFR 0.603 (j)).

The following persons are expected to attend:

Commissioners and their Assistants
Managing Director and members of his staff
General Counsel and members of his staff
Chief, Office of Congressional and Public Affairs and members of his staff

Action by the Commission February 7, 1985. Commissioners Fowler, Chairman; Quello, Dawson, Rivera, and Patrick voting to consider this item in Closed Session.

This meeting may be continued the following work day to allow the

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Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Judith Kurtich, FCC Office of Congressional and Public Affairs, telephone number (202) 254–7674.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85–5075 Filed 2–27–85; 9:42 am]

BILLING CODE 6712–01–M

19

FEDERAL MARITIME COMMISSION

TIME AND DATE: 9:00 a.m.—March 7, 1985.

PLACE: Hearing Room One—1100 L Street, NW., Washington, D.C. 20573.

STATUS: Parts of the meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTER TO BE CONSIDERED:

Portions open to the public:

1. Consideration of potential alternatives to certain Commission Regulations applicable to the domestic offshore trades.
2. Docket No. 84–35: Electronic Filing of Tariffs by Common Carriers in the Foreign and Domestic Offshore Commerce of the United States—Consideration of comments received pursuant to Notice of Proposed Rulemaking, and proposed final rules

Portion closed to the public:

1. Agreement No. 202–010025–003: Modification of the Red Sea Rate Agreement to organize the basic agreement into the format required by Commission regulation, insert provisions mandated by the Shipping Act of 1984, and accomplish various other changes.

CONTACT PERSON FOR MORE INFORMATION: Bruce A. Dombrowski Assistant Secretary, (202) 523–5725.

Bruce A. Dombrowski,

Assistant Secretary.

[FR Doc. 85–5172 Filed 2–27–85; 3:25 pm]

BILLING CODE 6730–01–M

20

FEDERAL TRADE COMMISSION

TIME AND DATE: 2:00 p.m., Monday, March 11, 1985.

PLACE: Room 532 (open); Room 540 (closed), Federal Trade Commission Building, 6th Street and Pennsylvania Avenue, NW., Washington, D.C. 20580.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Portions Open to Public:

(1) Oral Argument in Echlin Manufacturing, Docket No. 9157.

Portions closed to the Public:

(2) Executive Session to follow Oral Argument in Echlin Manufacturing, Docket No. 9157.

CONTACT PERSON FOR MORE INFORMATION: Susan B. Ticknor, Office of Public Affairs: (202) 523–1892; Recorded Message: (202) 523–3806.

Emily H. Rock,

Secretary.

[FR Doc. 85–5098 Filed 2–27–85; 10:39 am]

BILLING CODE 6750–01–M

21

NATIONAL SCIENCE FOUNDATION

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Science Foundation announces the following meeting:

NAME: Alan T. Waterman Award Committee.

DATE: Wednesday, March 20, 1985.

TIME: 9 a.m. to 5 p.m.

PLACE: Rm. 1242A, National Science Foundation, 1800 G Street, NW., Washington, D.C. 20550.

TYPE OF MEETING: Closed.

CONTACT PERSON: Mrs. Lois J. Hamaty, Executive Secretary, Alan T. Waterman Award Committee, National Science Foundation, Washington, D.C. 20550. Telephone: 202/357–7512.

PURPOSE OF COMMITTEE: To provide advice and recommendations in the selection of the Alan T. Waterman Award recipient.

AGENDA: To review nominations, with supporting documentation, as part of the selection process for the Award.

REASON FOR CLOSING: The nominations being reviewed include information of a personal nature where disclosure would constitute unwarrantd invasions of personal privacy. These matters are within exemption 6 of 5 U.S.C. 552b(c), Government in the Sunshine Act.

AUTHORITY TO CLOSE MEETING: The determination made on February 20, 1985 by the Director of the National Science Foundation pursuant to the provisions of Section 10(d) of Pub. L. 92–463.

M. Rebecca Winkler,

Committee Management Officer.

February 27, 1985.

[FR Doc. 85–5169 Filed 2–27–85; 3:25 pm]

BILLING CODE 7555–01–M

Federal Register

Friday
March 1, 1985

Part II

Department of the Treasury

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 3, 5, 13, 19, 30, 170, 194, 195, 196, 197, 200, 211, 213, 231, 240, 245, 250, 251, and 252

Implementation of Distilled Spirits Tax Revision Act and Portion of Crude Oil Windfall Profit Tax Act; Final Rule

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DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 3, 5, 13, 19, 30, 170, 194, 195, 196, 197, 200, 211, 213, 231, 240, 245, 250, 251, and 252

[T.D. ATF-198]

Implementing the Distilled Spirits Tax Revision Act of 1979 (Pub. L. 96-39) and Portion of Crude Oil Windfall Profit Tax Act of 1980 (Pub. L. 96-223)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Final rule (Treasury decision).

SUMMARY: This final rule implements: (1) the Distilled Spirits Tax Revision Act of 1979, Subtitle A of Title VIII of the Trade Agreements Act of 1979 (Pub. L. 96-39) and (2) Section 232, Alcohol Fuels, in Part III of Title II of the Crude Oil Windfall Profit Tax Act of 1980 (Pub. L. 96-223).

The Distilled Spirits Tax Revision Act of 1979, Subtitle A of Title VIII of the Trade Agreements Act of 1979 amended or repealed numerous provisions of 26 U.S.C. Chapter 51, in the interest of tax parity for all distilled spirits products, both domestic and imported. The law changes modernized and simplified the distilled spirits tax system by providing for the all-in-bond method of tax determination and changed the method of control of distilled spirits production.

The Crude Oil Windfall Profit Tax Act of 1980 added a new section to Subchapter B of Chapter 51 of 26 U.S.C. New Section 5181 provided for the establishment of distilled spirits plants solely for the purpose of producing, processing and storing, and using or distributing distilled spirits exclusively for fuel use.

EFFECTIVE DATE: June 1, 1985.

FOR FURTHER INFORMATION CONTACT: Richard C. Langford, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226, Telephone 202-566-7531.

For further information concerning alcohol fuels contact: J.R. Whitley, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226, Telephone 202-566-7531.

SUPPLEMENTARY INFORMATION:

I. Rulemaking Background

This document contains rules which supersede and enact into final form, material previously appearing in the following documents:

T.D. ATF-62, 44 FR 71613 (1979), Temporary Regulations Implementing the Distilled Spirits Tax Revision Act of 1979 (Pub. L. 96-39), cross ref. Notice 329, 44 FR 71612 (1979);

T.D. ATF-64, 45 FR 7528 (1980), Temporary Regulations Implementing the Distilled Spirits Tax Revision Act of 1979—Transition to All-in-Bond System;

T.D. ATF-68, 45 FR 26956 (1980), Temporary Regulations Relating to Optional Method of Gauging for Determining Proof of Spirits, cross ref. Notice 329;

T.D. ATF-69, 45 FR 33976 (1980), Temporary Regulations Relating to Reduced Bond Penal Sums for Limited Distilled Spirits Operations, cross ref. Notice 329;

T.D. ATF-71, 45 FR 41638 (1980), Temporary Regulations Implementing a Portion of the Crude Oil Windfall Profit Tax Act of 1980 (Pub. L. 96-223), cross ref. Notice 329;

T.D. ATF-75, 45 FR 70251 (1980), Temporary Regulations Relating to Curtailment and Extension of Distilled Spirits Plant Bonded Premises, cross ref. Notice 329; Notice No. 390, 46 FR 52129 (1981), Production of Vinegar by the Vaporizing Process;

T.D. ATF-114, 47 FR 43944 (1982), Deregulation of Liquor Bottle Manufacturers and Other Miscellaneous Amendments, cross ref. Notice 382, 46 FR 44000 (1981); and

T.D. ATF-123, 48 FR 1290 (1983) Distilled Spirits Plants—Elimination of the Marking Requirement for Devices Used as Alternatives To Strip Stamps, cross ref. T.D. ATF-62 and Notice 329.

II. Distilled Spirits Tax Revision Act of 1979 and All-In-Bond

A. Regulatory Reform Feature

The final regulations implementing Public Law 96-39 represent a significant simplification of regulations in comparison with their predecessors. The simplification is particularly apparent in the new distilled spirits plant regulations in 27 CFR Part 19. The new Part 19 alone represents a net reduction of approximately 130 regulation sections from predecessors regulations in Part 201. This reduction in the number of section is particularly significant since the final regulations in Part 19 contain approximately 60 new sections concerning alcohol fuel plants and 10 sections concerning vinegar plants which did not appear in predecessor regulations. These alcohol fuel plant and vinegar plant regulations do not represent new requirements but instead consolidate existing requirements into the permanent regulations contained in 27 CFR Part 19.

Overall, 20 parts in Title 27 of the CFR were affected in the promulgation of final regulations under Public Law 96-39. The majority of the parts in 27 CFR required only minor conforming changes to the regulations. The temporary rule and the final rule, together, resulted in a total reduction of approximately 260 sections in all parts.

Numerous forms were eliminated by the all-in-bond related regulatory changes. A total of 25 forms were obsoleted by the temporary all-in-bond regulations. An additional 11 forms are obsoleted in the final regulations. While a few forms are retained with respect to distilled spirits plant operations, the retained forms are mostly qualification related, i.e. registration, bond, consent of surety, power of attorney, etc. Only two transaction forms are retained—Form 5100.11 (formerly Form 206), Withdrawal of Spirits, Specially Denatured Spirits, or Wines for Exportation and Form 1473 (Form 5110.16), Shipment and Receipt—Specially Denatured, Tax-Free or Recovered Spirits. These forms were retained as they are multiple-use forms which appear in several parts of the regulations.

Numerous rulings and procedures are either incorporated into regulations or their provisions become obsolete at the time the final all-in-bond regulations become effective. The effect on rulings and procedures is as follows:

Rulings obsoleted: 106.

Procedures obsoleted: 17.

B. Discussion of Comments

ATF received 26 comments concerning temporary rules and notices issued with respect to implementation of the Distilled Spirits Tax Revision Act of 1979 and related All-in-Bond provisions. Comments were received from domestic distilled spirits plant proprietors, trade associations, wineries, foreign embassies, and other interested parties. Commenters included: Ambur Distilled Products, Incorporated; Heublein Spirits Group; Distilled Spirits Council of the United States, Incorporated (DISCUS); Kentucky Distillers Association (KDA); National Distillers and Chemical Corporation; Sazerac Co., Inc.; Aluminum Company of America (Alcoa); Glenmore Distilleries Company; Schenley Industries, Inc.; Jack Daniel Distillery; United Vintners Inc.; Wine Institute; Embassy of Ireland; British Embassy; Italian Embassy; Scotch Whisky Association; Irish Whiskey Distillers Association; and the

Delegation of the Commission of the European Communities.

The comments covered subjects ranging from records, strip stamps, samples, and proof obscuration, to destruction, return to bonded premises, bottle proof and fill, and ATF supervision of distilled spirits plants. While the majority of comments discussed changes that could be accomplished in regulations, many comments contained proposals and recommendations that could be accomplished only through statutory change.

C. Changes to Regulations

Due to the extent of both the temporary rule and comments received, it is impossible to address all subject areas. Therefore, the following summaries are organized by major subject area.

1. *Administrative provisions.* Revisions have been made in the administrative portions of the temporary rule in order that ATF may provide more timely service to the regulated industry. In the temporary rule, the Director could authorize alternate methods or procedures and emergency variation from certain regulatory requirements (§ 19.62). In a related section (§ 19.69), the Director was empowered to grant exemptions to certain regulations in instances of disaster. The Director could also require the discontinuance of storage facilities found to be unsafe or unfit for use (§ 19.71). Finally, the temporary rule (§ 19.75) provided that the regional director (compliance) could assign ATF officers to plants, as necessary to maintain supervision of operations, while specifics with respect to the type of supervision and schedule of operations were prescribed by Subpart E.

The final rule separates provisions for alternate methods and emergency variations (§§ 19.62 and 19.73). The approval authority for alternate methods remains with the Director, while approval authority for emergency variations rests with the regional director (compliance). Approval authority for disaster exemptions has also been given to the regional director (compliance) (§ 19.74). The regional director (compliance) will have the authority to require discontinuance of storage facilities found to be unsafe or unfit for use (§ 19.79).

Regulations concerning supervision of operations are simplified, with Subpart E deleted, and Subpart D simply providing that once ATF officers are withdrawn, the regional director (compliance) will notify the proprietor of the extent of any required on-premises supervision such as assignment of ATF officers (§ 19.75).

The requirement for the proprietor to furnish keys to the plant premises upon request of the regional director (compliance) is eliminated (§ 19.85 temporary rules), since the authority for the Government to require keys when necessary is statutorily provided (26 U.S.C. 5203).

Criteria for approved seals which may be used for securing conveyances are incorporated into the final rule (§ 19.96).

Criteria for approved locks have been retained (§ 19.281), and the use of locks meeting those criteria will provide a presumption of their adequacy in cases of loss by theft.

These changes, initiated by ATF, will provide for increased flexibility and service to the industry.

2. *Qualifying plants.* Extensive comments were received on the temporary rules concerning qualifying plants. Commenters from National Distillers, Schenley, and DISCUS suggested amendment of regulations to permit bottled spirits to be transferred to incoming proprietors when bonded premises are used by alternate proprietors. Heublein supported the proposal to permit alternation of portions of distilled spirits plants between bonded and general premises. DISCUS, Schenley, and National Distillers stated that the requirements for filing corporate documents are too extensive. United Vintners, DISCUS, Glenmore, and National Distillers proposed amendment of regulations to simplify the detail in which distilled spirits plants are required to be described in the notice of registration.

After careful consideration of all comments, the Bureau is adopting more simplified qualification requirements. The final rule provides for the retention of bottled spirits by an incoming proprietor upon issuance of a bond to the incoming proprietor (§ 19.201). Provisions for the alternation between distilled spirits plant bonded premises and general premises as published in T.D. ATF–75 are also incorporated into the final rule (§ 19.205). Most of the qualifying documents required by the temporary rule are retained; however, some of the corporate documents formerly required to be submitted are no longer required unless specifically required by the regional director (compliance) (§ 19.167). Plans are no longer required. Plants are still required to have a description in the registration but not with the particularity required for conveyances of real estate as was prescribed under the temporary (and predecessor) regulations. In addition, the requirement for notification of the regional director (compliance) of certain changes after original qualification has been extended from 10 to 30 days (§§ 19.180, 19.184 and 19.185).

These changes will reduce the qualification costs of distilled spirits plant proprietors.

3. *Proof and fill.* The temporary rules in 27 CFR Part 19 provided that spirits contained in bottles shall agree in proof and quantity with that stated on the label or bottle. Variations in quantity were permitted in the temporary regulations when filling operations were conducted in accordance with good commercial practice with the overall objective of maintaining 100 percent fill for all bottled spirits. A variation in proof was permitted, for a normal drop in proof occurring during bottling operations not to exceed 0.3 of a degree of proof. If variations in quantity or proof are beyond those permitted a proprietor shall rebottle or relabel the spirits (§ 19.397 temporary rule). In T.D. ATF–62, the Bureau stated it would consider allowing a drop in proof during bottling of 0.5 of a degree of proof for products with high solids content.

The Bureau received numerous comments concerning proof and fill for bottled spirits. General support was expressed for allowing a drop in proof tolerance of 0.5 of a degree of proof for products containing over 600 mg per 100 ml of solids. Commenters from the Embassy of Ireland, the British Embassy, Italian Embassy, Scotch Whiskey Association, Irish Whiskey Distillers Association, and the Delegation of the Commission of the European Communities (EC), stressed the need for uniformity between domestic and foreign products and some recommended applying the proof and fill tolerances of the EC to all products. In addition, several foreign commenters proposed expanding the proof tolerance to include a range both above and below stated label proof; while several foreign and domestic commenters favored establishing a quantitative fill tolerance.

The final rule increases the permissible drop in proof during bottling for products containing over 600 mg per 100 ml of solids to 0.5 of a degree of proof (§ 5.37 and § 19.386). In addition, the final rule provides for the applicability of bottling proof tolerances to both imported and domestic products. The final rule continues to provide for uniformity between imported and domestic products with respect to standards of fill (27 CFR Part 5, Subpart E and § 251.202). The Bureau plans a future study to ascertain the viability of both quantitative fill tolerances and

bottling proof tolerances which recognize a range both above and below label proof.

The Bureau also plans a study on the need for and possible consequences of allowing spirits which are subject to abnormal drops in proof, because of the contents of the spirits or the bottling procedure, to be set in the bottling tank at a proof higher than label proof.

4. *Losses.* The temporary rule prescribed a storage account loss limitation of one percent for spirits contained in tanks and bulk conveyances on bonded premises during a calendar quarter. This limitation, however, was deemed to be overly restrictive in view of the like limitation in predecessor regulations of one percent per month; therefore, the final rule raises that limitation to 1½ percent in view of the longer accounting period. While the temporary rule required the proprietor to report excessive intransit losses to the area supervisor, the final rule defines such losses as those which exceed one percent of the quantity shipped or, because of the greater likelihood of loss, two percent of the quantity of wine in a transcontinental shipment (§ 19.562).

5. *Certificate of Origin and Age of Distilled Spirits.* Section 252.104, in the temporary rule provided that Form 2177 (5110.58), United States of America Certificate of Origin and Age of Distilled Spirits, be furnished by the regional director (compliance) upon request by proprietors to evidence the age and origin of spirits to be exported. This was a departure from pre-January 1, 1980 regulations which provided for preparation of the certificate by officers-in-charge.

To streamline the issuance of Form 2177, the final rule provides for that issuance by an ATF officer. The final rule provides for submission of supporting documentation since, in most instances, the issuing officer will not be in a position to physically verify statements of age and origin.

6. *Strip stamps and alternative devices.* The temporary rule authorized domestic bottlers, upon approval by the Director, to use alternative devices in lieu of strip stamps on bottled distilled spirits and proposed extending this option to bottled spirits which are imported or brought into the United States from Puerto Rico or the Virgin Islands. Numerous comments were received concerning strip stamps and alternative devices. The Kentucky Distillers Association proposed reinstating serial numbers on strip stamps, while National Distillers endorsed the removal of serial numbers on strip stamps, as accomplished in the temporary regulations. Foreign commenters, including the Delegation of the Commission of European Communities, British Embassy, Embassy of Ireland, and Scotch Whisky Association, supported the proposal to extend the use of alternative devices to include imported bottled spirits.

In the final rule, provisions for strip stamps and alternative devices contain significant changes from the temporary rule. The authorization to use alternative devices has been extended to imported, Puerto Rican, and Virgin Islands spirits (§§ 250.135, 250.230, 251.61). To relieve the administrative burden of obtaining individual authorizations to use the more common types of alternative devices, the final rule allows the use of those devices which have been announced by the Director to be an approved alternative device (§§ 19.663, 250.144, 250.243, 251.67). Because a detailed accounting of strip stamps was found to be unnecessary and burdensome, these accounting procedures have been reduced to only those necessary to satisfy statutory requirements. The requirement for overprinting of stamps by importers is also eliminated (§ 251.68). The overprinting of stamps or alternative devices with additional information (e.g., serial numbers) is permitted without approval and such information must not conflict with information required by law and regulations or obscure mandatory information or overprinting (§ 19.661).

The final rule also provides for an alternative to distilled spirits stamps. The alternative will consist of marks on containers to indicate the taxpaid or export status of the product (§ 19.670).

These liberalized provisions will greatly reduce the costs connected with the use of strip stamps, alternative devices, and distilled spirits stamps.

7. *Records and reports.* All specifications for records and reports are abstracted from other subparts in Part 19 and consolidated in Subpart W, Records and Reports. The subpart includes all required information but does not generally prescribe forms. While the final rule eliminates most ATF forms, generally the information previously called for on the forms is required record information in Subpart W. The proprietor may use commercial records of any design or format which meets the requirements of these regulations, including the use of existing stocks of the ATF forms being eliminated or reproductions of those forms.

Requirements for records in Subpart W are primarily arranged by basic accounts: production, storage, and processing. Within each account subheading, individual records are specified by operation. The temporary rule contemplated the filing of quarterly operational reports to ease the reporting burden for proprietors. Quarterly reports, however, would provide ATF neither the detail to recognize problems within a specific month nor the timeliness of information necessary to take corrective action. Therefore, operational reports will continue to be required on a monthly basis.

The significant changes in the final rule are:

a. Except for ATF Forms 1473, Shipment and Receipt Specially Denatured, Tax-Free, or Recovered Spirits, and 5100.11, Withdrawal of Spirits, Specially Denatured Spirits, or Wines for Exportation, all ATF transaction forms are eliminated in favor of proprietor's records. Forms eliminated are: 5110.17, Tax Paid Spirits Returned to Bonded Premises; 5110.26 (2629), Gauge Report; 5110.27 (236), Transfer of Spirits or Denatured Spirits in Bond; 5110.29 (2323), Tank Record of Spirits in Storage; 5110.37 (1621), Summary of Deposits and Withdrawals at Bonded Warehouses; and 5110.45 (2630), Package Gauge Report.

b. Requirements for records of samples have been combined in one section in Subpart W, simplified, and clarified. Proprietors may use a schedule of routinely taken samples as the required record (§ 19.766).

c. Requirements for records of strip stamps, alternative devices, and distilled spirits stamps, are placed in one section. Reporting requirements are simplified, since strip stamps and alternative devices are accounted for by the size of the bottle to which affixed. The detailed accounting for strip stamps required by the temporary regulations was found to be unnecessary and burdensome and is therefore eliminated (§ 19.772).

d. Recording of case serial numbers upon withdrawal for tax determination is specifically eliminated unless required by the regional director (compliance). The daily summary of tax determination has been revised by deleting the proprietor's statement and signature under penalties of perjury that he agrees to pay the amount of tax shown on the summary record and that the penal sum of the withdrawal or unit bond is sufficient to cover the amount of tax chargeable against such bond.

e. Proprietors are now required to maintain a record of accountability for securing devices for conveyances (§ 19.775).

f. The recordkeeping requirements for redistillation are simplified. The preparation of dump and batch records for redistillation, for example, in the manufacture of gin or vodka, requires only one record for a series of tanks used to manufacture a given batch (§ 19.748).

g. Daily summary records of tax determinations are required to be calculated in proof gallons, rounded to the nearest tenth of a proof gallon (§ 19.762).

h. The retention period for required records has been reduced to three years (§ 19.723); however, the regional director (compliance) may require records to be kept for up to three additional years if the records are necessary for the conduct of a current examination or investigation.

8. *Use of initial determination of proof.* The final rule enables the use of the initial determination of proof for spirits, which is made on bonded premises, in making any subsequently required gauge of the same spirits at the same plant, so long as no material is added which would change the proof of the spirits (§ 19.92). The initial determination of proof may not be used for determination of tax, or for gauging the contents of bottling tanks. This procedure will provide proprietors greater flexibility of operation by reducing the number of instances in which actual determinations of proof must be made.

9. *Definition of spirits.* The definition of spirits, spirituous liquor, or distilled spirits in recodified Part 30 has been enlarged to include wine and alcoholic flavoring materials. However, wine and alcoholic flavoring materials have been included in the definition *only* for the purpose of providing a uniform method for gauging alcoholic ingredients on the bonded premises of a distilled spirits plant (§ 30.11). The change in no way affects the use of the terms spirits, wine or alcoholic flavoring materials, as found elsewhere in regulations, for any purpose other than gauging on bonded premises. In addition, the definition of spirits in 27 CFR Part 19 is amended to recognize that mixtures which contain more than 50 percent wine on a proof gallon basis and which are bottled at 48 degrees of proof or less, are subject to labeling, advertising, and standards of fill requirements for wine rather than spirits (§ 19.11).

10. *Proof obscuration in processing.* The final rule enables the "constructive" determination of proof obscuration for spirits in processing on the basis of a representative sample of the spirits previously taken from a storage or processing tank. This enables proprietors to determine proof obscuration in advance of setting the proof of spirits in bottling tanks, thereby minimizing the time required to reduce spirits to label proof (§ 19.376). This procedure will provide proprietors greater flexibility of operation by reducing the number of instances in which proof obscuration must be actually determined (§ 19.376). However, it has been determined that the evaporation method of determining proof obscuration as provided in regulations, is only accurate for spirits in the range of 80-100 degrees proof; therefore, the use of that method has been restricted to such spirits (§ 30.32).

11. *Returns to bond.* The Bureau received five comments on provisions in the temporary rule which required the filing of certain documents with ATF Form 5110.17 for spirits returned to bonded premises under 26 U.S.C. 5215 (§ 19.702 temporary rule). Commenters believe the information and documents required to be filed with the Forms 5110.17 in support of claims for credit or refund of tax to be onerous, and beyond the needs of the Government for effective tax administration.

In the final rule, Form 5110.17 is replaced by records and documents that are to be kept at the plant in support of claims on returned spirits (§ 19.682). Pertinent information is shown in claims for refund or credit of tax on returned spirits, but no documents are submitted with the claims. This procedure should result in decreased time necessary for compiling claims for spirits returned to bonded premises and the processing time for such claims without hindering the effective administration of these provisions.

12. *Redistillation.* The final rule provides that either a distiller or processor may redistill spirits, denatured spirits, articles, spirits residues, and distilled spirits products containing wine or alcoholic flavoring materials. Redistillation as a processing operation is no longer restricted to the production of gin or vodka by other than original and continuous distillation. Most redistillation must now be done pursuant to an approved formula on ATF Form 5110.38, whether done as a production or a processing operation (§ 19.331).

13. *Numbering of packages and cases.* One commenter proposed that packages and cases of spirits for industrial use, including denatured spirits, filled in processing be marked with lot identification numbers rather than serial numbers. The Bureau agrees that a lot identification numbering system may be equally useful in tracing spirits, and the final rule provides for such marking of packages and cases of spirits for industrial use, including denatured spirits, filled in processing, as an alternative method which may be utilized without special authorization or approval (§ 19.594).

14. *Recodification of Part 13.* The temporary rules contained in 27 CFR Part 13, Gauging Manual, are recodified into 27 CFR Part 30, continuing a program instituted in 1975 to redesignate ATF regulations.

15. *Other changes.*—a. *Equipment.* Requirements with respect to measuring devices and proofing equipment are clarified to address the testing of gauging instruments to ensure their accuracy (§ 19.277). In addition, the approval authority for use of meters has been placed with the regional director (compliance) (§ 19.277). The requirement for a sperate Government office is eliminated unless supervision by an ATF officer is required on a continuing basis. When such supervision is not required, the regional director (compliance) may require the proprietor to provide a Government cabinet.

b. *Processing.* The formula requirements in 27 CFR Part 5 are referenced in the processing subpart. The final rule provides for the temporary retention of unsealed cases on bonded premises when the bottles do not bear labels or other information (e.g., pending affixing of private labels or state stamps) (§ 19.388).

c. *Transfers and withdrawals.* To facilitate the exportation of bulk spirits, the withdrawal of spirits in wooden packages for exportation without payment of tax on the basis of the production or filling gauge is provided (§ 19.502). The withdrawal of spirits for use by the Untied States is clarified and simplified (§ 19.538).

d. *Liquor bottles.* The regional director (compliance), rather than the Director, is delegated authority to approve the reuse of bottles (§ 19.634). The provisions for the proprietor's notice to the regional director (compliance) for bottles shipped for testing purposes is eliminated (§ 19.636). Disposition of bottles for such purposes is evidenced by records.

e. *Records and reports in 27 CFR Part 240.* The final rule eliminates certain ATF forms for wine spirits in 27 CFR Part 240. ATF Form 5120.38, Withdrawal of Wine Spirits to Bonded Wine Cellar, is eliminated because the Bureau no longer requires prior approval before shipping wine spirits from a distilled spirits plant to a bonded wine cellar (§ 240.823). ATF Form 5120.28, Report of Wine Spirits Added to Wine, is also eliminated. Commercial records are now prescribed to document wine spirits

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additions (§ 240.904a). Also, a commercial gauge record is now used to document the gauging of wine spirits (§ 240.904). ATF Form 5110.26 is no longer required.

The final rule provides that proprietors of distilled spirits plants use a commercial transfer record to cover the withdrawal without payment of tax of wine spirits for use in the production of wine on the bonded premises of a bonded wine cellar (§ 19.533).

f. *Transfer of Puerto Rican, Virgin Islands and imported bulk distilled spirits to domestic distilled spirits plants.* Previous regulations required a proprietor of a domestic distilled spirits plant to secure approval on ATF Form 5100.16, Application for Transfer of Spirits And/Or Denatured Spirits In Bond, before receiving bulk Puerto Rican, Virgin islands or imported spirits from customs custody under 26 U.S.C. 5232. In the final rule, a copy of the transfer record is submitted to ATF, but a proprietor is no longer required to secure approval on ATF Form 5100.16 before receiving such bulk distilled spirits from customs custody (§ 19.506).

g. *Incorporation of Part 195 into Subpart X of Part 19.* These regulations delete 27 CFR Part 195 and redesignate revised regulations for vinegar plants producing vinegar by the vaporizing process to 27 CFR Part 19, Distilled Spirits Plants, Subpart X. ATF published a notice of proposed regulations on October 26, 1981 (Notice No. 390 [46 FR 52129]). No comments were received regarding the notice of proposed rulemaking. The regulations are being adopted as originally proposed.

D. Temporary Regulations Incorporated Into Final Regulations Without Change.

Numerous temporary regulations were adopted as a result of changes necessary to implement the Distilled Spirits Tax Revision Act of 1979 and related all-in-bond changes. The following is a list of temporary regulations in various parts of Title 27 Code of Federal Regulations which are adopted as final regulations with no change:

Part 5. §§ 5.2, 5.22, 5.25, 5.26, 5.28, 5.46, 5.47a.

Part 170. §§ 170.2, 170.3, 170.30, 170.304, 170.611, 170.612, 170.613, 170.614, 170.615, 170.616, 170.617, 170.618, 170.683.

Part 194. §§ 194.11, 194.224, 194.251, 194.256, 194.264, 194.271, 194.281, 194.292, 194.293.

Part 196. §§ 196.5.

Part 197. §§ 197.5, 197.115, 197.133.

Part 211. §§ 211.3, 211.11, 211.42, 211.215.

Part 231. §§ 231.1, 231.30, 231.81, 231.140.

Part 240. §§ 240.1, 240.10, 240.124, 240.142, 240.171, 240.190, 240.198, 240.202, 240.203, 240.204, 240.209, 240.221a, 240.270, 240.281, 240.282, 240.283, 240.286, 240.290, 240.292, 240.296, 240.311, 240.313, 240.352, 240.356, 240.374, 240.381, 240.382, 240.406, 240.411, 240.481, 240.483, 240.484, 240.488, 240.489, 240.490, 240.537, 240.538, 240.562, 240.574, 240.590a, 240.598, 240.599, 240.610, 240.612, 240.613, 240.616, 240.820, 240.821, 240.824, 240.826, 240.836, 240.837, 240.839, 240.840, 240.841, 240.853, 240.890, 240.943, 240.1041, 240.1043.

Part 250. §§ 250.1, 250.36b, 250.36c, 250.40, 250.51 250.52, 250.53, 250.54, 250.55, 250.66, 250.68a, 250.76, 250.77, 250.78, 250.82, 250.87, 250.89, 250.93, 250.95, 250.96, 250.98, 250.104, 250.105, 250.107, 250.108, 250.109, 250.137, 250.196, 250.199, 250.199c, 250.201b, 250.201c, 250.221, 250.222, 250.223, 250.224, 250.225, 250.232, 250.260, 250.261, 250.265, 250.300, 250.304, 250.312.

Part 251. §§ 251.40, 251.43, 251.48, 251.58, 251.63, 251.202.

Part 252. §§ 252.11, 252.22, 252.25, 252.26, 252.27, 252.45, 252.51, 252.56, 252.58, 252.61, 252.62, 252.63, 252.64, 252.67, 252.70, 252.72, 252.73, 252.91, 252.93, 252.94, 252.95, 252.103, 252.105, 252.116, 252.117, 252.118, 252.121, 252.123, 252.125, 252.131, 252.132, 252.133, 252.151, 252.154, 252.162, 252.163, 252.193, 252.216, 252.244, 252.250, 252.261, 252.265, 252.269, 252.275, 252.281, 252.286, 252.302, 252.316, 252.333, 252.334, 252.335.

E. Effect on Rulings and Procedures

The following rulings and procedures have been incorporated into the final rule or their provisions will become obsolete at the time the final rule becomes effective:

Rulings obsoleted: Rev. Rul. 54–507, C.B. 1954–2, 464; Rev. Rul. 54–510, C.B. 1954–2, 562; Rev. Rul. 54–558, C.B. 1954–2, 456; Rev. Rul. 54–559, C.B. 1954–2, 459; Rev. Rul. 54–595, C.B. 1954–2, 460; Rev. Rul. 54–619, C.B. 1954–2, 461; Rev. Rul. 55–115, C.B. 1955–1, 575; Rev. Rul. 55–321, C.B. 1955–1, 572; Rev. Rul. 55–360, C.B. 1955–1, 574; Rev. Rul. 56–79, C.B. 1956–1, 713; Rev. Rul. 56–147, C.B. 1956–1, 710; Rev. Rul. 56–199, C.B. 1956–1, 744; Rev. Rul. 56–200, C.B. 1956–1, 748; Rev. Rul. 56–235, C.B. 1956–1, 704; Rev. Rul. 56–241, C.B. 1956–1, 747; Rev. Rul. 56–279, C.B. 1956–1, 706; Rev. Rul. 56–281, C.B. 1956–1, 735; Rev. Rul. 56–314, C.B. 1956–2, 1023; Rev. Rul. 56–369, C.B. 1956–2, 1028; Rev. Rul. 56–493, C.B. 1956–2, 1034; Rev. Rul. 56–533, C.B. 1956–2, 1017; Rev. Rul. 56–580, C.B. 1956–2, 1045; Rev. Rul. 56–627, C.B. 1956–2, 1043; Rev. Rul. 56–669, C.B. 1956–2, 1017; Rev. Rul. 57–122, C.B. 1957–1, 560; Rev. Rul. 57–123, C.B. 1957–1, 599; Rev. Rul. 57–161, C.B. 1957–1, 602; Rev. Rul. 57–273, C.B. 1957–1, 602; Rev. Rul. 57–274, C.B. 1957–1, 607; Rev. Rul. 57–478, C.B. 1957–2, 976; Rev. Rul. 57–556, C.B. 1957–2, 950; Rev. Rul. 57–559, C.B. 1957–2, 975; Rev. Rul. 58–23, C.B. 1958–1, 604; Rev. Rul. 58–84, C.B. 1958–1, 581; Rev. Rul. 58–88, C.B. 1958–1, 600; Rev. Rul. 58–414, C.B. 1958–2, 959; Rev. Rul. 58–524, C.B. 1958–2, 992; Rev. Rul. 59–24, C.B. 1959–1, 721; Rev. Rul. 59–337, C.B. 1959–2, 516; Rev. Rul. 59–386, C.B. 1959–2, 515; Rev. Rul. 60–92, C.B. 1960–1, 708; Rev. Rul. 60–93, C.B. 1960–1, 709; Rev. Rul. 60–221, C.B. 1960–1, 707; Rev. Rul. 60–265, C.B. 1960–2, 590; Rev. Rul. 60–295, C.B. 1960–2, 510; Rev. Rul. 60–333, C.B. 1960–2, 511; Rev. Rul. 60–341, C.B. 1960–2, 592; Rev. Rul. 60–342, C.B. 1960–2, 592; Rev. Rul. 60–353, C.B. 1960–2, 591; Rev. Rul. 60–361, C.B. 1960–2, 558; Rev. Rul. 60–373, C.B. 1960–2, 589; Rev. Rul. 61–23, C.B. 1961–1, 792; Rev. Rul. 61–37, C B. 1961–1, 799; Rev. Rul. 61–38, C.B. 1961–1, 804; Rev. Rul. 61–43, C.B. 1961–1, 798; Rev. Rul. 61–49, C.B. 1961–1, 789; Rev. Rul. 61–62, C.B. 1961–1, 797; Rev. Rul. 61–63, C.B. 1961–1, 806; Rev. Rul. 61–166, C.B. 1961–2, 267; Rev. Rul. 61–205, C.B. 1961–2, 272; Rev. Rul. 62–7, C.B. 1962–1, 355; Rev. Rul. 62–24, C.B. 1962–1, 350; Rev. Rul. 62–35, C.B. 1962–1, 343; Rev. Rul. 62–37, C.B. 1962–1, 345; Rev. Rul. 62–164, C.B. 1962–2, 371; Rev. Rul. 62–222, C.B. 1962–2, 366; Rev. Rul. 62–255, C.B. 1962–2, 371; Rev. Rul. 63–56, C.B. 1963–1, 396; Rev. Rul. 63–89, C.B. 1963–1, 394; Rev. Rul. 63–141, C.B. 1963–2, 653; Rev. Rul. 63–263, C.B. 1963–2, 651; Rev. Rul. 64–171, C.B. 1964–1, 544; Rev. Rul. 64–265, C.B. 1964–2, 528; Rev. Rul. 64–316, C.B. 1964–2, 533; Rev. Rul. 64–322, C.B. 1964–2, 561; Rev. Rul. 65–159, C.B. 1965–1, 583; Rev. Rul. 66–99, C.B. 1966–1, 315; Rev. Rul. 66–109, C.B. 1966–1, 334; Rev. Rul. 66–192, C.B. 1966–2, 532; Rev. Rul. 68–219, C.B. 1968–1, 603; Rev. Rul. 70–209, C.B. 1970–1, 290; Rev. Rul. 70–352, C.B. 1970–2, 308; Rev. Rul. 70–366, C.B. 1970–2, 305; Rev. Rul. 70–456, C.B. 1970–2, 307; Rev. Rul. 71–9, C.B. 1971–1, 451; Rev. Rul. 71–222, C.B. 1971–1, 452; Rev. Rul. 71–499, C.B. 1971–2, 437; ATF. Rul. 73–17, ATF C.B. 1973, 82; ATF. Rul. 74–9, ATF C.B. 1974, 33; ATF. Rul. 74–16, ATF C.B. 1974, 47; ATF. Rul. 74–28, ATF C.B. 1974, 32; ATF. Rul. 74–31, ATF C.B. 1974, 29; ATF. Rul. 75–1, ATF C.B. 1975, 45; ATF. Rul. 75–4, ATF C.B. 1975, 43; ATF. Rul. 75–6, ATF C.B. 1975, 40; ATF. Rul. 75–9, ATF C.B. 1975, 42; ATF. Rul. 75–25, ATF C.B. 1975, 39; ATF. Rul. 77–3, ATF C.B. 1977, 168; ATF. Rul. 77–8, ATF C.B. 1977, 169; ATF. Rul. 77–11, ATF C.B. 1977, 171; ATF. Rul. 77–18, ATF C.B. 1977, 162; ATF. Rul. 77–19, ATF C.B. 1977, 170; ATF. Rul. 78–1, ATF C.B. 1978, 64; and ATF. Rul. 78–3, ATF C.B. 1978, 63; ATF. Rul. 78–6, ATF C.B. 1978, 61; and ATF. Rul. 79–4, ATF Q.B. 1979–1, 23.

Procedures obsoleted: Rev. Proc. 57–36, C.B. 1957–2, 1109; Rev. Proc. 58–4, C.B. 1958–1, 687; Rev. Proc. 58–11, C.B. 1958–2, 1122; Rev. Proc. 60–13, C.B. 1960–1, 891; Rev. Proc. 60–21, C.B. 1960–2, 991; Rev. Proc. 60–31, C.B. 1960–2, 1010; Rev. Proc. 61–7, C.B. 1961–1, 892; Rev. Proc. 61–16, C.B. 1961–2, 548; Rev. Proc. 61–17, C.B. 1961–2, 549; Rev. Proc. 61–23, C.B. 1961–2, 558; Rev. Proc. 62–4, C.B. 1962–1, 425; Rev. Proc. 63–21, C.B. 1963–2, 754; Rev. Proc. 71–15, C.B. 1971–2, 681; Rev. Proc. 72–32, C.B. 1972–1, 760; ATF. Proc. 73–2, ATF C.B. 1973, 113; ATF. Proc. 73–7, ATF C.B. 1973, 140; ATF. Proc. 73–9, ATF C.B. 1973, 140; and ATF. Proc. 75–2, ATF C.B. 1975, 75.

III. Alcohol Fuel

A. Rulemaking Background

The Bureau of Alcohol, Tobacco and Firearms (ATF) published in the **Federal Register** on June 20, 1980, (45 FR 41838) temporary regulations T.D. ATF–71, entitled "Fuel Use of Distilled Spirits-Implementing a Portion of the Crude Oil Windfall Profit Tax Act of 1980 (Pub. L. 96–223)." The temporary regulations provided for the waiver by the Director of any portion of 26 U.S.C. Chapter 51, except sections requiring payment of tax and the new alcohol fuels section (26 U.S.C. 5181). The temporary regulations provided for the establishment of distilled spirits plants exclusively for the production, processing and storing, and use or distribution of alcohol for fuel purposes, Alcohol Fuel Plants (AFP). In addition, simplified permit application procedures and recordkeeping requirements were provided, along with an exemption from bonding requirements for small plants. Medium and large plants were required to file bonds, with the penal sum based on the tax liability for spirits produced and received by transfers in bond from other plants during a calendar year. The temporary regulations provided for three size categories of alcohol fuel plants:

(1) Small plants produce (including receipts) not more than 10,000 proof gallons of spirits per calendar year;

(2) Medium plants produce (including receipts) more than 10,000 but not more than 500,000 proof gallons of spirits per calendar year; and

(3) Large plants produce (including receipts) more than 500,000 proof gallons of spirits per calendar year.

The temporary regulations allowed a qualified permittee to withdraw alcohol free of tax exclusively for fuel use when rendered unfit for beverage use or to use the alcohol produced for any fuel purpose on the AFP plant premises without rendering it unfit for beverage use

B. Discussion of Comments

During the 60-day comment period, 31 comments were received. The comments received from the public generally reflected the views of four groups: (1) Small independent alcohol fuel producers; (2) large commercial alcohol producers; (3) State regulatory and/or revenue agencies for alcohol; and (4) interested persons who are not producers of alcohol fuels. In addition, comments were received from a private consulting firm and one member of Congress.

The temporary regulations asked for specific responses on two issues:

(1) *Location of plants in dwellings.* ATF received fourteen comments on this issue. Eight commenters were in favor of no restrictions on location of plants in dwellings as currently provided by the temporary regulations and six commenters were in favor of restrictions. The consensus of the commenters in favor of no restrictions was that a requirement to locate production facilities away from dwellings would discourage, rather than encourage production, especially by small plants. All comments in favor of restrictions were submitted by State regulatory and/or revenue agencies for alcohol. These agencies opposed permitting the location of plants in dwellings on the basis of safety and zoning problems.

ATF believes that a single Government regulation covering authorized locations of plants could not be written, implemented, and enforced and at the same time provide equity to all permittees. As of October 31, 1980, there were approximately 7,800 small plants, including experimental distilled spirits plants converted to AFP's. A large portion of the small plants are in dwellings, outbuildings, yards, or enclosures attached to a dwelling. ATF believes that local ordinances, fire codes, and similiar provisions are the appropriate measures to regulate plants at inappropriate locations. Therefore, ATF is adopting the concept in the temporary regulations which placed no restictions on the location of alcohol fuel plants. However, this decision does not relieve a permittee of any obligations imposed by State or local laws.

(2) *Specifications for fuel alcohol and materials authorized for use in rendering spirits unfit for beverage use.* (a) Are minimum proof standards necessary or desirable for fuel alcohol? ATF received ten comments which addressed this question. All ten comments were in favor of not specifying minimum proof standards for fuel alcohol. The commenters suggested that minimum proofs may be necessary in the production of alcohol/gasoline blends due to the phase separation problems which occur if alcohol is less than 193–195° proof. The commenters further recognized that such high proof alcohol is not necessary when fuel alcohol is used straight and is even undesirable for fuel use in certain engines since different applications may require either higher or lower proof alcohol for optimum performance. ATF recognizes it may be desirable to "guarantee" the quality/performance level of fuel alcohol used in the production of alcohol/gasoline blends by prescribing regulations that would establish minimum proof standards; however, we are not adopting this approach. ATF's primary responsibility is to protect tax revenues, and regulations are prescribed for the purpose of carrying out this responsibility. It is not necessary to impose minimum proof standards in order to protect the revenue. ATF, therefore, adopts the concept of the temporary regulations which do not impose minimum proof standards.

(b) Should the list of materials authorized for rendering spirits unfit for beverage use be broadened to include other substances, or should some materials or options permitted under the temporary regulations be deleted?

ATF received ten comments which addressed this question, eight of the comments indicated the list of authorized materials should be broadened to provide maximum flexibility so as to encourage the production of spirits for fuel use. The remaining two comments stated that the current list of materials in the temporary regulations is sufficient. In addition, three comments were received requesting a reduction in the quantity of materials required to render the spirits unfit for beverage purposes.

In an effort to encourage the production of alcohol fuels at minumum cost, ATF has considered various alternatives which incorporate all or part of the above comments. The materials listed in the temporary regulations which render spirits unfit for beverage use are adopted. In addition, Heptane, a petrochemical, is added to the materials listed in the temporary regulations. ATF's laboratory has stated that Heptane renders alcohol unfit equally as well as gasoline and is considerably less expensive (§ 19.1005(c)). Further, the Director will compile and periodically issue a list of materials authorized for rendering the spirits unfit for beverage use. This list will incorporate all materials authorized

under the temporary regulations and any other materials which subsequently are approved for rendering spirits unfit for beverage use (§ 19.1005(b)).

The quantity of materials required to render spirit unfit for beverage use is reduced from the five gallons required by the temporary regulations to two gallons per 100 gallons of alcohol (§ 19.1005(c)). This will lower producer's costs by reducing the quantities of materials which must be purchased, transported, and stored at the plant. The reduction in quantity is the result of extensive testing conducted by industry members and confirmed by the ATF National Laboratory. ATF's laboratory concluded that potable spirits cannot be readily recovered from alcohol fuels without the use of a sophisticated and expensive redistillation process.

(c) Are more detailed specifications for rendering spirits unfit necessary? If adopted, should these specifications be geared to the end use of the fuel alcohol? In response to the first question ATF received seven comments, five opposed detailed specification and two favored this action. The second question was responded to by three commenters, of which two opposed gearing the authorized material to the end use of the fuel alcohol.

In order to provide maximum flexibility in the production of alcohol fuels, ATF is not establishing specifications for the authorized materials used to render spirits unfit. In regard to the question of tailoring the authorized materials to the end use of the alcohol, ATF is not adopting this approach. It is believed that this restriction would not be consistent with the intent of Congress to promote the production of alcohol fuels. Further, since the alcohol fuels program is in its beginning stages, many technological advances will be developed which would outdate regulations which are too restrictive or detailed.

(3) *Other Comments.* (a) A comment was received which requested ATF to allow spirits to be removed and used off the plant premises for fuel use without first being rendered unfit for beverage use. The law, 26 U.S.C. 5181, prohibits the withdrawal of spirits from alcohol fuel plants (AFP) unless rendered unfit for beverage purposes.

(b) A comment suggested that alcohol produced from coal be eligible for use as fuel alcohol. The law, 26 U.S.C. 5181, specifically states that the term "distilled spirits", does not include distilled spirits produced from petroleum, natural gas, or coal.

(c) Various State agencies commented that interchanges of information on AFP's (identities of permittees, inspection reports, and production reports) would be desirable. These commenters stated that interchanges of information would promote coordination of Federal and State regulations and be beneficial on the basis of economy, efficiency, and uniformity. ATF is supportive of this concept and has worked within present legal restraints to cooperate with State agencies. However, until the law (26 U.S.C. 6103) is amended to provide more latitude for cooperation, ATF is generally prohibited from disclosing taxpayer return information. ATF is permitted to disclose taxpayer return information only to State tax agencies for tax administration purposes and to other entities or individuals only upon the written consent of individual permittees. ATF, within the constraints of the law, will take action to promote interchanges of information.

(d) Two comments were received which requested the exemption from bonding requirements for small plants to be raised above the 10,000 proof gallon limit. One comment pointed out that a middle income farmer uses up to 6,000 gallons of fuel (gasoline and/or diesel) per year. If this individual were to produce 200 proof (100%) alcohol, he could not produce sufficient alcohol to accommodate his own needs without being required to have a bond. The other comment pointed out that other governmental agencies generally define small scale producers as those producing less than one million gallons. This comment suggested that ATF redefine small, medium, and large plants to conform with other governmental agencies. The 10,000 proof gallon cut-off is specifically provided by law (26 U.S.C. 5181). It is based on potential losses of tax revenue on alcohol, not the number of employees, net profits, or other criteria which other Federal agencies may use. ATF does not have authority under the law to adjust the 10,000 proof gallon criteria for small plants and cannot adopt this comment.

(e) One comment suggested that ATF provide for multiple permit holders conducting operations at one location (alternating proprietorships). The commenter explained that many individuals could produce spirits from their individually owned stocks of grain or other material, with the cost of constructing a large, more efficient plant being shared. ATF is adopting this suggestion (§ 19.930). However, the flexibilities which allowed permittees to define their bonded premises to include several widely scattered tracts of land are not available. Such plants will have their bonded premises limited to a specific location. All spirits would have to be rendered unfit for beverage use before removal from the premises.

(f) One comment suggested that ATF provide for "nonproducing" AFP's, which would allow gasoline jobbers, gasoline tank farms and others to receive spirits in bond from producing AFP's for subsequent rendering unfit and sale as fuel alcohol or a gasoline/alcohol blend. AFP's are required by 26 U.S.C. 5181 to *produce, process,* and *store,* and *use* or *distribute* distilled spirits exclusively for fuel use. The major emphasis of the law is to encourage the *production of alcohol for fuel use.* Providing for nonproducing AFP's would not be consistent with this emphasis. ATF is therefore unable to accept this suggestion. However, individuals who wish to receive spirits in bond for use in manufacturing blended alcohol fuels, may apply for an operating permit as a warehouseman/processor under 26 U.S.C. 5171.

C. Miscellaneous Amendments

ATF has made other amendments and editorial changes to the regulations. These amendments include:

1. Section 19.902 provides for waiver of most provisions of Part 19 and 26 U.S.C., Chapter 51, with the exception of payment of tax, Section 5181 and applicable penalty, forfeiture and seizure provisions;

2. Sections 19.903 and 19.904 provide for alternate methods or procedures and emergency variations from requirements; and

3. Section 19.990 provides for the return and redistillation at the premises of an AFP of spirits or fuel alcohol.

IV. Drafting Information

The authors of this document are numerous headquarters and field personnel of the Bureau of Alcohol, Tobacco and Firearms, assigned or detailed to the Regulations and Procedures Division (Compliance Operations). Other personnel of the Bureau and the Treasury Department participated in the preparation of this document, both in matters of substance and style.

V. Executive order 12291

It has been determined that this final regulation is not a "major rule" within the meaning of Executive Order 12291 of February 17, 1981, because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local governments agencies, or geographic regions; and it will not have significant adverse effects

on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

VI. Regulatory Flexibility Act

Except for those regulations relating to the production of vinegar by the vaporizing process, this final rule relates to notices of proposed rulemaking published prior to January 1, 1981, and, therefore, is not subject to the authority of the Regulatory Flexibility Act.

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to the final rule on the production of vinegar because the final rule will not have significant economic impact on a substantial number of small entities. Those regulations are not expected to: Have significant secondary or incidental effects on a substantial number of small entities; or impose, or otherwise cause, a significant increase in the reporting, recordkeeping or other compliance burdens on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of Section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that the final rule will not have a significant economic impact on a substantial number of small entities.

VII. List of Subjects

Alcohol and alcoholic beverages, reporting and recordkeeping requirements.

VIII. Authority and Issuance

These regulations are issued under the authority contained in 26 U.S.C. 7805 (68A Stat. 917, as amended) and in 27 U.S.C. 205 (49 Stat. 981, as amended).

Accordingly, Title 27 Code of Federal Regulations is amended as follows:

PART 3—BULK SALES AND BOTTLING OF DISTILLED SPIRITS

Section A. Part 3 is amended as follows:

Section 3.12 is revised to reflect changes in the qualification and operation of distilled spirits plants due to the passage of Public Law 96–39. As revised § 3.12 reads as follows:

§ 3.12 Acquiring or receiving distilled spirits in bulk for redistillation, processing, rectification, warehousing, or warehousing and bottling.

(a) *Proprietors of distilled spirits plants.* Persons holding basic permits (issued under Part 1 of this chapter) authorizing the distilling, processing, rectifying, or warehousing and bottling of distilled spirits, or operating permits (issued under § 19.157 and succeeding sections of this chapter) may acquire or receive in bulk and redistill, warehouse, or porcess distilled spirits, so far as permitted by law.

(b) *Proprietors of class 8 customs bonded warehouses.* If the permittee operates a class 8 customs bonded warehouse, he may acquire or receive in bulk, and warehouse and bottle, imported distilled spirits, so far as permitted by the customs laws.

PART 5—LABELING AND ADVERTISING OF DISTILLED SPIRITS

Section B—Part 5 is amended as follows:

Paragraph 1. The table of sections for Part 5 is amended as follows:

Sec.

* * * * *

5.27 Formulas.

* * * * *

Par. 2. Section 5.11 is amended by revising the definition of "Distilled spirits" to read as follows:

§ 5.11 Meaning of terms.

* * * * *

Distilled spirits. Ethyl alcohol, hydrated oxide of ethyl, spirits of wine, whisky, rum, brandy, gin, and other distilled spirits, including all dilutions and mixtures thereof, for nonindustrial use. The term "distilled spirits" shall not include mixtures containing wine, bottled at 48 degrees of proof or less, if the mixture contains more than 50 percent wine on a proof gallon basis. Such mixtures shall be subject to the formula requirements of this part and the labeling, advertising and standards of fill requirements in 27 CFR Part 4.

* * * * *

Par. 3. Section 5.27 is revised to add a new paragraph (b) and a new paragraph (m) and to redesignate certain paragraphs. As revised, § 5.27 reads as follows:

§ 5.27 Formulas.

Formulas are required for distilled spirits operations which change the character, composition, class or type of spirits as follows:

(a) The compounding of spirits through the mixing of any coloring, flavoring, wine, or other material with distilled spirits;

(b) The manufacture of an intermediate product to be used exclusively in other distilled spirits products on bonded premises;

(c) Any filtering or stabilizing process which results in a product which does not possess the taste, aroma, and characteristics generally attributed to that class or type of distilled spirits; and, in the case of straight whisky, results in the removal of more than 15 percent of the fixed acids, volatile acids, esters, soluble solids, or higher alcohols, or more than 25 percent of the soluble color;

(d) The mingling of spirits (including merchandise returned to bond) produced by different distillers, or at different distilleries, or which differ in class or type of materials from which produced;

(e) The mingling of spirits stored in charred cooperage with spirits stored in plain or reused cooperage, or the mixing of spirits that have been treated with wood chips with spirits not so treated, or the mixing of spirits that have been subjected to any treatment which changes their character with spirits not so treated, unless it is determined that the composition of the spirits is the same, notwithstanding the storage in different kinds of cooperage or the treatment of a portion of the spirits;

(f) The use (except as authorized for production or storage operations as provided by 27 CFR Part 19) of any physical or chemical process or any apparatus which accelerates the maturing of the spirits;

(g) The steeping or soaking of fruits, berries, aromatic herbs, roots, seeds, etc., in spirits or wines;

(h) The artificial carbonating of spirits;

(i) The blending in Puerto Rico of spirits with any liquors manufactured outside of Puerto Rico;

(j) The production of gin by—

(1) Redistillation over juniper berries and other natural aromatics, or the extracted oils of such, of spirits distilled at or above 190 degrees of proof, free from impurities, including spirits of such a nature recovered by redistillation of imperfect gin spirits; and

(2) Mixing gin with other spirits;

(k) The treatment of gin by—

(1) Addition or abstraction of any substance or material other than pure water after redistillation in a manner that would change its class and type designation; and

(2) Addition of any substance or material other than juniper berries or other natural aromatics, or the extracted oils of such, or pure water to the spirits, before or during redistillation, in a manner that would change its class and type designation;

(l) The production of vodka by—

(1) Treatment of neutral spirits with not less than one ounce of activated carbon per 100 wine gallons of spirits;

(2) Redistillation of pure spirits so as to be without distinctive character, aroma, taste, or color;

(3) Mixing with other spirits or with any other substance or material except pure water, after production; and

(m) The recovery of spirits by redistillation from distilled spirits products containing other alcoholic ingredients and from spirits which have previously been entered for deposit. However, no formula shall be required for spirits redistilled into any type of neutral spirits other than vodka or spirits redistilled at less than 190 degrees of proof which lack the taste, aroma and other characteristics generally attributed to whisky, brandy, rum, or gin, and are designated as "Spirits," preceded or followed by a word or phrase descriptive of the material from which produced. Such spirits redistilled on or after July 1, 1972, may not be designated "Spirits Grain" or "Grain Spirits."

Par. 4. Section 5.31 is amended by revising paragraph (b)(2) to read as follows:

§ 5.31 General.

* * * * *

(b) *Alteration of labels.* * * *

(2) When an additional labeling or relabeling of bottled distilled spirits is accomplished with labels covered by certificates of label approval which comply with the requirements of this part and with State law;

* * * * *

Par. 5. Section 5.36 is amended by adding a new paragraph (a)(4) to read as follows:

§ 5.36 Name and address.

(a) *"Bottled by".* * * *

(4) In addition to the requirements of paragraphs (a)(1) and (a)(2) of this paragraph, the labels of bottled in bond spirits shall bear the real name of the distillery or the trade name under which the distillery produced and warehoused the spirits, the number of the plant in which produced and the number of the plant in which bottled.

* * * * *

Par. 6. Section 5.37 is revised to allow for certain proof tolerances for distilled spirits. As revised, § 5.37 reads as follows:

§ 5.37 Alcoholic content.

(a) *Statement.* The alcoholic content shall be stated by proof for distilled spirits except that it may be stated in percentage by volume for cordials and liqueurs, cocktails, highballs, bitters, and such other specialties as may be specified by the Director.

(b) *Tolerances.* The following tolerances shall be allowed (without affecting the labeled statement of alcoholic content) for proof drops occurring during bottling:

(1) Not to exceed five-tenths of a degree of proof for spirits containing solids in excess of 600 mg per 100 ml; and

(2) Not to exceed three-tenths of a degree of proof for all other spirits.

(Approved by the Office of Management and Budget under control number 1512-0461)

Par. 7. Section 5140(a) is amended by revising the paragraph heading and the first full sentence. As revised, the paragraph heading and first sentence of (a) read as follows:

§ 5.40 Statements of age and percentage.

(a) *Statements of age and percentage for whisky.* In the case of straight whisky bottled in conformity with the bottled in bond labeling requirements and of domestic or foreign whisky, whether or not mixed or blended, all of which is 4 years old or more, statements of age and percentage are optional. * * *

* * * * *

Par. 8. Section 5.42(b)(3)(vi) is revised to read as follows:

§ 5.42 Prohibited practices.

* * * * *

(b) *Miscelleaneous.* * * *

(3) * * *

(vi) Bottled at 100 degrees of proof.

* * * * *

Section C. Part 19 is revised in its entirety to read as follows:

PART 19—DISTILLED SPIRITS PLANTS

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19.2 Territorial extent.
19.3 Related regulations.

Subpart B—Definitions

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19.22 Attachment of tax.
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19.36 Tax.

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19.44 Execution of claims and supporting documents.
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Authority: Sec. 7805, 68A Stat. 917; 26 U.S.C. 7805, unless otherwise noted.

Subpart A—Scope

§ 19.1 General.

The regulations in this part relate to the location, construction, equipment, arrangement, qualification, and operation (including activities incident thereto) of distilled spirits plants.

§ 19.2 Territorial extent.

This part applies to the several States of the United States and the District of Columbia.

§ 19.3 Related regulations.

Regulations relating to this part are listed below:

27 CFR Part 1—Basic Permit Requirements Under the Federal Alcohol Administration Act.
27 CFR Part 2—Nonindustrial Use of Distilled Spirits and Wine.
27 CFR Part 3—Bulk Sales and Bottling of Distilled Spirits.
27 CFR Part 4—Labeling and Advertising of Wine.
27 CFR Part 5—Labeling and Advertising of Distilled Spirits.
27 CFR Part 21—Formulas for Denatured Alcohol and Rum.
27 CFR Part 30—Gauging Manual.
27 CFR Part 170—Miscellaneous Regulations Relating to Liquor.
27 CFR Part 194—Liquor Dealers.
27 CFR Part 198—Stills.
27 CFR Part 197—Drawback on Distilled Spirits Used in Manufacturing Nonbeverage Products.
27 CFR Part 200—Rules of Practice in Permit Proceedings.
27 CFR Part 211—Distribution and Use of Denatured Alcohol and Rum.
27 CFR Part 213—Distribution and Use of Tax-Free Alcohol.
27 CFR Part 231—Taxpaid Wine Bottling Houses.
27 CFR Part 240—Wine.
27 CFR Part 250—Liquors and Articles from Puerto Rico and the Virgin Islands.
27 CFR Part 251—Importation of Distilled Spirits, Wines, and Beer.
27 CFR Part 252—Exportation of Liquors.
31 CFR Part 225—Acceptance of Bonds, Notes, or Other Obligations Issued or Guaranteed by the United States as Security in Lieu of Surety or Sureties on Penal Bonds.

Subpart B—Definitions

§ 19.11 Meaning of terms.

When used in this part and in forms prescribed under this part, terms shall have the meaning ascribed in this section. Words in the plural form include the singular, and vice versa, and words indicating the masculine gender include the feminine. The terms "includes" and "including" do not exclude other things not enumerated which are in the same general class.

Alcoholic flavoring materials. The term "alcoholic flavoring materials" means those nonbeverage products on which drawback has been or will be claimed under 26 U.S.C. 5131–5134 or flavors imported free of tax which are unfit for beverage purposes. The term does not include flavorings or flavoring extracts manufactured on the bonded premises of a distilled spirits plant as an intermediate product.

Application for registration. The application required under 26 U.S.C. 5171(c).

Area supervisor. The supervisory officer of the Bureau of Alcohol, Tobacco and Firearms area office.

Article. A product, containing denatured spirits, which was manufactured under 27 CFR Part 211 or this part.

ATF bond. For purposes of this part, ATF bond means the internal revenue bond as prescribed in 26 U.S.C. Chapter 51.

ATF officer. An officer or employee of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any function relating to the administration or enforcement of this part.

Bank. Any commercial bank.

Banking day. Any day during which a bank is open to the public for carrying on substantially all its banking functions.

Basic permit. The document authorizing the person named therein to engage in a designated business or activity under the Federal Alcohol Administration Act.

Bonded premises. The premises of a distilled spirits plant, or part thereof, as described in the application for registration, on which distilled spirits operations defined in 26 U.S.C. 5002 are authorized to be conducted.

Bottler. A proprietor of a distilled spirits plant qualified under this part as a processor who bottles distilled spirits.

Bulk container. Any approved container having a capacity in excess of one wine gallon.

Bulk conveyance. A tank car, tank truck, tank ship, tank barge, or a compartment of any such conveyance, or any other container approved by the Director for the conveyance of comparable quantities of spirits, including denatured spirits, and wines.

Bulk distilled spirits. The term "bulk distilled spirits" means distilled spirits in a container having a capacity in excess of one gallon.

Business day. Any day, other than a Saturday, Sunday, or a legal holiday. (The term legal holiday includes all holidays in the District of Columbia and statewide holidays in the particular State in which the claim, report, or return, as the case may be, is required to be filed, or the act is required to be performed.)

Carrier. Any person, company, corporation, or organization, including a proprietor, owner, consignor, consignee, or bailee, who transports distilled spirits, denatured spirits, or wine in any manner for himself or others.

CFR. The Code of Federal Regulations.

Commercial bank. A bank, whether or not a member of the Federal Reserve system, which has access to the Federal Reserve Communications System (FRCS) or Fedwire. The "FRCS" or "Fedwire" is a communications network that allows Federal Reserve system member banks to effect a transfer of funds for their customers (or other commercial banks) to the Treasury Account at the Federal Reserve Bank of New York.

Container. A receptacle, vessel, or form of bottle, can, package, tank or pipeline (where specifically included) used or capable of being used to contain, store, transfer, convey, remove, or withdraw spirits and denatured spirits.

Denaturant or denaturing material. Any material authorized under 27 CFR Part 21 for addition to spirits in the production of denatured spirits.

Denatured spirits. Spirits to which denaturants have been added as provided in 27 CFR Part 21.

Director. The Director, Bureau of Alcohol, Tobacco and Firearms, the Department of the Treasury, Washington, DC.

Director of the service center. A director of an internal revenue service center.

Distilled spirits operations. Any authorized distilling, warehousing, or processing operations conducted on the bonded premises of a plant qualified under this part.

Distilling material. Any fermented or other alcoholic substance capable of, or intended for use in, the original distillation or other original processing of spirits.

District director. A district director of internal revenue.

Electronic fund transfer or EFT. Any transfer of funds effected by a proprietor's commercial bank, either directly or through a correspondent banking relationship, via the Federal Reserve Communications System (FRCS) or Fedwire to the Treasury Account at the Federal Reserve Bank of New York.

Export or exportation. A severance of goods from the mass of things belonging

to the United States with the intention of uniting them to the mass of things belonging to some foreign country and shall include shipments to any possession of the United States. For the purposes of this part, shipments to the Commonwealth of Puerto Rico, and to the territories of the Virgin Islands, American Samoa, and Guam, shall also be treated as exportations.

Fermenting material. Any material which is to be subjected to a process of fermentation to produce distilling material.

Fiduciary. A guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity for any person.

Fiscal year. The period October 1 of one calendar year through September 30 of the following year.

Gallon or wine gallon. The liquid measure equivalent to the volume of 231 cubic inches.

In bond. When used with respect to spirits, denatured spirits, articles, or wine refers to spirits, denatured spirits, articles, or wine possessed under bond to secure the payment of the taxes imposed by 26 U.S.C. Chapter 51, and on which such taxes have not been determined. The term includes such spirits, denatured spirits, articles, or wine on the bonded premises of a distilled spirits plant, such spirits, denatured spirits, or wines in transit between bonded premises (including, in the case of wine, bonded wine cellar premises). Additionally, the term refers to spirits in transit from customs custody to bonded premises, and spirits withdrawn without payment of tax under 26 U.S.C. 5214, and with respect to which relief from liability has not occurred under the provisions of 26 U.S.C. 5005(e)(2).

Industrial use. As applied to spirits, shall have the meaning ascribed in 27 CFR Part 2.

Intermediate product. Any product manufactured pursuant to an approved formula under 27 CFR Part 5, not intended for sale as such but for use in the manufacture of a distilled spirits product.

I.R.C. The Internal Revenue Code of 1954, as amended.

Kind. As applied to spirits, except as provided in § 19.597, kind shall mean class and type as prescribed in 27 CFR Part 5. As applied to wines, kind shall mean the classes and types of wines as prescribed in 27 CFR Part 4.

Liquor bottle. A bottle made of glass or earthenware, or of other suitable material approved by the Food and Drug Administration, which has been designed or is intended for use as a container for distilled spirits for sale for beverage purposes and which has been determined by the Director to protect the revenue adequately.

Liter. A metric unit of capacity equal to 1,000 cubic centimeters of alcoholic beverage, and equivalent to 33.814 fluid ounces. A liter is divided into 1,000 milliliters. Milliliter or milliliters may be abbreviated as "ml."

Lot identification. The lot identification described in § 19.593.

Mash, wort, wash. Any fermented material capable of, or intended for, use as a distilling material.

Nonindustrial use. As applied to spirits, shall have the meaning ascribed in 27 CFR Part 2.

Operating permit. The document issued pursuant to 26 U.S.C. 5171(d), authorizing the person named therein to engage in the business or operation described therein.

Package. A cask or barrel or similar wooden container, or a drum or similar metal container.

Package identification number. The package identification number described in § 19.593.

Person. An individual, trust, estate, partnership, association, company, or corporation.

Plant or distilled spirits plant. An establishment qualified under this part for distilling, warehousing, processing or any combination thereof.

Plant number. The number assigned to a distilled spirits plant by the regional director (compliance).

Processor. Except as otherwise provided under 26 U.S.C. 5002(a)(6), any person qualified under this part who manufactures, mixes, bottles, or otherwise processes distilled spirits or denatured spirits, or manufactures any article.

Proof. The ethyl alcohol content of a liquid at 60 degrees Fahrenheit, stated as twice the percent of ethyl alcohol by volume.

Proof of distillation. The composite proof of the spirits at the time the production gauge is made,or, if the spirits had been reduced in proof prior to the production gauge, the proof of the spirits prior to such reduction, unless the spirits are subsequently redistilled at a higher proof than the proof prior to reduction.

Proof gallon. A gallon of liquid at 60 degrees Fahrenheit which contains 50 percent by volume of ethyl alcohol having a specific gravity of 0.7939 at 60 degrees Fahrenheit referred to water at 60 degrees Fahrenheit as unity, or the alcoholic equivalent thereof.

Proprietor. The person qualified under this part to operate the distilled spirits plant.

Reconditioning. The dumping of distilled spirits products in bond after their bottling or packaging, for purposes other than destruction, denaturation, redistillation, or rebottling. The term may include the filtration, clarification, stabilization, or reformulation of a product.

Recovered article. An article containing specially denatured spirits salvaged without all of its original ingredients, or an article containing completely denatured alcohol salvaged without all of the denaturants for completely denatured alcohol, under 27 CFR Part 211.

Region. A Bureau of Alcohol, Tobacco and Firearms region.

Region director (compliance). The principal regional official responsible for administering regulations in this part.

Season. The period from January 1 through June 30, is the spring season, and the period from July 1 through December 31 is the fall season.

Secretary. The Secretary of the Treasury or his delegate.

Service center. An Internal Revenue Service Center in any of the Internal Revenue regions.

Spirits or distilled spirits. That substance known as ethyl alcohol, ethanol, or spirits of wine in any form (including all dilutions and mixtures thereof, from whatever source or by whatever process produced), but not denatured spirits unless specifically stated. For the purposes of the requirements of this part relating to liquor bottles, labels, and strip stamps or alternative devices, the term "spirits" or "distilled spirits" shall not include mixtures containing wine, bottled at 48 degrees of proof or less, if the mixture contains more than 50 percent wine on a proof gallon basis. However, distilled spirits products containing wine bottled at 48 degrees of proof or less, if such mixture contains more than 50 percent wine on a proof gallon basis shall be subject to the formula requirements of this part and 27 CFR Part 5 and the labeling, advertising and standards of fill requirements in 27 CFR Part 4.

Spirits residues. Residues, containing distilled spirits, of a manufacturing process related to the production of an article under 27 CFR Part 211.

Tax-determined or determined. When used with respect to the tax on any distilled spirits to be withdrawn from bond on determination of tax, shall mean that the taxable quantity of spirits has been established.

Taxpaid. When used with respect to distilled spirits shall mean that all applicable taxes imposed by law in

respect of such spirits have been determined or paid as provided by law.

This chapter. Title 27, Code of Federal Regulations, Chapter I (27 CFR Chapter I).

Transfer in bond. The removal of spirits, denatured spirits and wines from one bonded premises to another bonded premises.

Treasury Account. The Department of the Treasury's General Account at the Federal Reserve Bank of New York.

Unfinished spirits. Spirits in the production system prior to production gauge.

U.S.C. The United States Code.

Warehouseman. A proprietor of a distilled spirits plant qualified under this part to store bulk distilled spirits.

Wine spirits. The term "wine spirits" means spirits authorized for use in wine production by 26 U.S.C. 5373.

Subpart C—Taxes

Spirits

§ 19.21 Tax.

A tax is imposed by 26 U.S.C. 5001 on all spirits produced in or imported into the United States at the rate prescribed in such section on each proof gallon and a proportionate tax at a like rate on all fractional parts of a proof gallon. Wines containing more than 24 percent of alcohol by volume are taxed as spirits. All products of distillation, by whatever name known, which contain spirits, on which the tax imposed by law has not been paid, and any alcoholic ingredient added to such products, are considered and taxed as spirits.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1314, as amended) (26 U.S.C. 5001))

§ 19.22 Attachment of tax.

Under 26 U.S.C. 5001(b), the tax attaches to spirits as soon as the substance comes into existence as such, whether it be subsequently separated as pure or impure spirits, or be immediately, or at any subsequent time, transferred into any other substance, either in the process of original production, or by any subsequent process.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1314, as amended (26 U.S.C. 5001))

§ 19.23 Lien.

Under 26 U.S.C. 5004, the tax becomes a first lien on the spirits from the time the spirits come into existence as such. The conditions under which the first lien shall be terminated as described in 26 U.S.C. 5004.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1317, as amended (26 U.S.C. 5004))

§ 19.24 Person liable for tax.

(a) *Distilling.* 26 U.S.C. 5005 provides that the distiller of spirits is liable for the tax and that each proprietor or possessor of, and person in any manner interested in the use of, any still, distilling apparatus, or distillery, shall be jointly and severally liable for the tax on distilled spirits produced. However, a person, not an officer or director of a corporate proprietor, owning or having the right of control of not more than 10 percent of any class of stock of that proprietor, is not liable by reason of the stock ownership or control. Persons transferring spirits in bond so liable for the tax are relieved of liability if

(1) The proprietors of transferring and receiving premises are independent of each other and neither has a proprietary interest, directly or indirectly, in the business of the other, and

(2) No person so liable for the tax on the spirits transferred retains any interest in the spirits.

(b) *Storage on bonded premises.* 26 U.S.C. 5005(c) provides that each person operating bonded premises shall be liable for the tax on all spirits while the spirits are stored on the premises, and on all spirits which are in transit to the premises from the time of removal from the transferor's bonded premises, pursuant to an approved application. Liability for the tax continues until the spirits are transferred or withdrawn from bonded premises as authorized by law, or until the liability for tax is relieved under the provisions of 26 U.S.C. 5008(a). Claims for relief from liability for spirits lost are provided for in § 19.41. Voluntary destruction of spirits in bond is provided for in Subpart U of this part.

(c) *Withdrawals without payment of tax.* Under 26 U.S.C. 5005(e), any person who withdraws spirits from the bonded premises of a plant without payment of tax, as provided in 26 U.S.C. 5214, shall be liable for the tax on the spirits from the time of withdrawal. The person shall be relieved of any liability at the time the spirits are exported, deposited in a foreign-trade zone, used in production of wine, deposited in a customs bonded warehouse, laden as supplies upon or used in the maintenance or repair of certain vessels or aircraft, or used for certain research, development or testing, as provided by law.

(d) *Withdrawals free of tax.* Persons liable for tax under paragraph (a) of this section, are relieved of the liability on spirits withdrawn from bonded premises free of tax under this part, at the time the spirits are withdrawn.

(e) *Withdrawn from customs custody without payment of tax.* 26 U.S.C. 5232(a) provides that when imported distilled spirits in bulk containers are withdrawn from customs custody and transferred to the bonded premises of a distilled spirits plant without payment of the tax imposed on imported distilled spirits by 26 U.S.C. 5001, the person operating the bonded premises of the distilled spirits plant to which spirits are transferred shall become liable for the tax on the spirits upon their release from customs custody, and the importer shall thereupon be relieved of liability for the tax.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1318, as amended (26 U.S.C. 5005); Sec. 3, Pub. L. 90–630, 82 Stat. 1328, as amended (26 U.S.C. 5232); Sec. 3, Pub. L. 91–659, 84 Stat. 1965, as amended (26 U.S.C. 5066))

§ 19.25 Time for tax determination.

Except as otherwise provided in this part, the tax on spirits shall be determined when the spirits are withdrawn from bond. The tax on spirits which are to be withdrawn from bonded premises shall be determined upon completion of the gauge for determination of tax and before withdrawal from bonded premises.

(Sec. 201, Pub. L. 85–859, 72 Stat 1320, as amended (26 U.S.C. 5006))

Occupational Taxes

§ 19.26 Liquor dealer's special (occupational) tax.

A proprietor shall be subject to or exempt from a liquor dealer's occupational tax as provided in 27 CFR Part 194.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1340, as amended (26 U.S.C. 5111, 5113))

§ 19.27 Still manufacturer's special tax.

Special occupational tax as a still manufacturer and a commodity tax for each still or condenser manufactured is imposed by 26 U.S.C. 5101 on certain persons who manufacture stills or condensers to be used in distilling. Provisions for occupational and commodity taxes imposed on manufacturers of stills or condensers are contained in 27 CFR Part 196.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1339 (26 U.S.C. 5101))

Assessments

§ 19.31 Production not accounted for.

Where the regional director (compliance) finds that a distiller has not accounted for all spirits produced by him, assessment shall be made for the tax on the difference between the quantity reported and the quantity found to have been actually produced.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1320, as amended (26 U.S.C. 5006))

§ 19.32 Assessment of tax on spirits, denatured spirits, or wines in bond which are lost, destroyed or removed without authorization.

When spirits, denatured spirits, or wines in bond are lost or destroyed (except spirits, denatured spirits, or wines on which the tax is not collectible by reason of the provisions of 26 U.S.C. 5008 (a) or (d) or 26 U.S.C. 5370, as applicable) and the proprietor or other person liable for the tax on the spirits, denatured spirits, or wines fails to file a claim for remission as provided in § 19.41(a) or when the claim is denied, the tax shall be assessed. In any case where spirits, denatured spirits, or wines in bond are removed from bonded premises other than as authorized by law, the tax shall be assessed. In the case of losses under circumstances described in 26 U.S.C. 5006(b) with respect to packages of spirits or denatured spirits on bonded premises, the tax shall be assessed if the tax is not paid upon the demand of the regional director (compliance).

(Sec. 201, Pub. L. 85–859, 72 Stat. 1320, as amended, 1323, as amended, 1381, as amended (26 U.S.C. 5006, 5008, 5370))

Wine

§ 19.36 Tax.

(a) *Imposition of tax.* A tax is imposed by 26 U.S.C. 5041 on wines (including imitation, substandard, or artificial wine, and compounds sold as wine) produced in or imported into the United States. Proprietors of distilled spirits plants may become liable for wine taxes under 26 U.S.C. 5362(b)(3) in connection with wine transferred in bond to a distilled spirits plant.

(b) *Liability for tax.* Except as otherwise provided by law, the liability for tax on wine transferred in bond from a bonded wine cellar to a distilled spirits plant, or transferred in bond between distilled spirits plants, shall continue until the wine is used in a distilled spirits product.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1331, as amended, 1380, as amended (26 U.S.C. 5041, 5362))

Claims

§ 19.41 Claims on spirits, denatured spirits, articles, or wines lost or destroyed in bond.

(a) *Claims for remission.* All claims for remission of tax required by this part, relating to the destruction or loss of spirits, denatured spirits, articles, or wines in bond, shall be filed with the regional director (compliance) and shall set forth the following:

(1) Identification (including serial numbers if any) and location of the container or containers from which the spirits, denatured spirits, articles, or wines were lost, or removed for destruction;

(2) Quantity of spirits, denatured spirits, articles, or wines lost or destroyed from each container, and the total quantity of spirits or wines covered by the claim;

(3) Total amount of tax for which the claim is filed;

(4) Name, number, and address of the plant from which withdrawn without payment of tax or removed for transfer in bond (if claim involves spirits so withdrawn or removed or if claim involves wines transferred in bond) and date and purpose of such withdrawal or removal, except that in the case of imported spirits lost or destroyed while being transferred from customs custody to ATF bond as provided in § 19.481, the name of the customs warehouse, if any, and port of entry will be given instead of the plant name, number, and address;

(5) Date of the loss or destruction (or, if not known, date of discovery), the cause or nature thereof, and all the facts relative thereto;

(6) Name of the carrier, where a loss in transit is involved;

(7) The name and address of the consignee, in the case of spirits withdrawn without payment of tax which are lost before being used for research, development or testing;

(8) If lost by theft, facts establishing that the loss did not occur as the result of any negligence, connivance, collusion or fraud on the part of the proprietor of the plant, owner, consignor, consignee, bailee, or carrier, or the employees or agents of any of them;

(9) In the case of a loss by theft, whether the claimant is indemnified or recompensed for the spirits or wines lost and if so, the amount and nature of indemnity or recompense and the actual value of the spirits or wines, less the tax.

(b) *Claims for abatement, credit or refund.* Claims for abatement of an assessment, or for credit or refund of tax which has been paid or determined, for spirits, denatured spirits, articles, or wines lost or destroyed in bond shall be filed with the regional director (compliance). The claims shall set forth the information required under paragraph (a) of this section and, in addition, shall set forth—

(1) The date of assessment or payment (or of tax determination, if the tax has not been assessed or paid) of the tax for which abatement, credit or refund is claimed, and

(2) The name, plant number, and the address of the plant where the tax was determined, paid, or assessed (or name, address and capacity of any other person who paid or was assessed the tax, if the tax was not paid by or assessed against a proprietor).

(c) *Supporting document.* (1) Claims under paragraphs (a) and (b) of this section shall be supported (whenever possible) by affidavits of persons having personal knowledge of the loss or destruction. For claims on spirits, denatured spirits, articles, or wines lost while being transferred by carrier, the claim shall be supported by a copy of the bill of lading.

(2) For claims pertaining to losses of spirits withdrawn without payment of tax and lost prior to being used for research, development or testing, the claim shall be supported by a copy of the proprietor's sample record prescribed in Subpart W of this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1323, as amended, 1381, as amended (26 U.S.C. 5008, 5370))

§ 19.42 Claims on spirits returned to bonded premises.

(a) Claims for credit or refund of tax on spirits which have been withdrawn from bonded premises on payment or determination of tax and which are returned under 26 U.S.C. 5215 shall be filed with the regional director (compliance) and shall set forth the following:

(1) Quantity of spirits so returned;

(2) Amount of tax for which the claim is filed;

(3) Name, address, and plant number of the plant to which the spirits were returned and the date of the return;

(4) The purpose for which returned; and

(5) The serial number of the gauge record on which the spirits were returned.

(b) If the spirits contain Puerto Rican or Virgin Islands spirits, the claim shall show:

(1) Proof gallons of the finished product derived from Puerto Rican or Virgin Islands spirits; and

(2) The amount of tax imposed by 26 U.S.C. 7652, determined at the time of withdrawal from bond on the Puerto Rican or Virgin Islands spirits contained in the product.

(c) Claims for credit or refund of tax shall be filed by the proprietor of the plant to which the spirits were returned within six months of the date of the return. No interest is allowed on any claims for refund or credit.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1323, as amended (26 U.S.C. 5008); Sec. 807, Pub. L. 96–39, 93 Stat. 285 (26 U.S.C. 5215))

§ 19.43 Claims relating to spirits lost after tax determination.

Claims for abatement, credit, or refund of tax under this part, relating to losses of spirits occurring on bonded premises after tax determination but prior to physical removal from such premises, shall be prepared and filed as provided in, and contain the information called for under § 19.41(b) and be supported by documents as provided under § 19.41(c).

(Sec. 201, Pub. L. 85–859, 72 Stat. 1323, as amended (26 U.S.C. 5008))

§ 19.44 Execution of claims and supporting documents.

All claims shall filed under this part for abatement or refund shall be filed on Form 843. All claims filed under this part for credit or remission of tax shall be filed on Form 2635. Claims for abatement, remission, credit, or refund shall (a) show the name, address, and capacity of the claimant, (b) be signed by the claimant or his duly authorized agent, and (c) be executed under the penalties of perjury as provided in § 19.100. Supporting documents required by this part to be submitted with a claim shall be attached to the claim and shall be deemed to be a part thereof. The regional director (compliance) may require the submission of additional evidence in support of any claim filed under this part when deemed necessary for proper action on the claim.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1323, as amended (26 U.S.C. 5008); Sec. 807, Pub. L. 96–39, 93 Stat. 285 (26 U.S.C. 5215))

§ 19.45 Claims for credit of tax.

Claims for credit of tax, as provided in this part, may be filed after determination of the tax whether or not the tax has been paid. The claimant may not anticipate allowance of a credit or make an adjusting entry in a tax return pending action on the claim.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1323, as amended (26 U.S.C. 5008); Sec. 807, Pub. L. 96–39, 93 Stat. 285 (26 U.S.C. 5215))

§ 19.46 Adjustments for credited tax.

When notification of allowance of credit is received from the regional director (compliance), including notification of credit for tax on spirits exported with benefit of drawback as provided in 27 CFR Part 252, the claimant shall make an adjusting entry and explanatory statement (specifically identifying the notification of allowance of credit) in the next distilled spirits tax return (or returns) to the extent necessary to exhaust the credit.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1323, as amended, 1336, as amended (26 U.S.C. 5008, 5062))

Subpart D—Administrative and Miscellaneous Provisions

Authorities of the Director

§ 19.61 Form prescribed.

(a) The Director is authorized to prescribe all forms required by this part. All of the information required by each form shall be furnished, as indicated by the headings on the form and the instructions thereon or issued in respect thereto, and as required by this part.

(b) "Public Use Forms" (ATF Publication 1322.1) is a numerical listing of forms issued or used by the Bureau of Alcohol, Tobacco and Firearms. This publication is available from the ATF Distribution Center.

(c) Requests for forms should be mailed to the ATF Distribution Center.

(Sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207))

§ 19.62 Alternate methods or procedures.

The proprietor, on specific approval by the Director as provided in this paragraph, may use an alternate method or procedure in lieu of a method or procedure specifically prescribed in this part. The Director may approve an alternate method or procedure, subject to stated conditions, when he finds that—

(a) Good cause has been shown for the use of the alternate method or procedure;

(b) The alternate method or procedure is within the purpose of, and consistent with the effect intended by, the specifically prescibed method or procedure, and affords equivalent security to the revenue; and

(c) The alternate method or procedure will not be contrary to any provision of law, and will not result in an increase in cost to the Government or hinder the effective administration of this part. No alternate method or procedure relating to the giving of any bond or to the assessment, payment, or collection of tax, shall be authorized under this paragraph. Where the proprietor desires to employ an alternate method or procedure, he shall submit a written application to do so to the regional director (compliance), for transmittal to the Director. The application shall specifically describe the proposed alternate method or procedure, and shall set forth the reasons therefor. Alternate methods or procedures shall not be employed until the application has been approved by the Director. The proprietor shall, during the period of authorization of an alternate method or procedure, comply with the terms of the approved application. Authorization for any alternate method or procedure may be withdrawn whenever in the judgment of the Director the revenue is jeopardized or the effective administration of this part is hindered by the continuation of such authorization. As used in this paragraph, alternate methods or procedures shall include alternate construction or equipment.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1353, as amended, 1395, as amended (26 U.S.C. 5178, 5552))

§ 19.63 Pilot operations.

The Director may waive any regulatory provisions of 26 U.S.C. Chapter 51, and of the regulations in this part, for temporary pilot or experimental operations for the purpose of facilitating the development and testing of improved methods of governmental supervision (necessary for the protection of the revenue) over plants. For this purpose, the Director may, with the approval of the proprietor thereof, designate any plant for such operations. The provision of law and regulations waived and the period of time during which such waiver shall continue shall be stated in writing by the Director. The provisions of this section shall not be construed as authority to waive the filing of any bond or the payment of any tax provided for in 26 U.S.C. Chapter 51.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1395, as amended (26 U.S.C. 5554))

§ 19.64 [Reserved]

§ 19.65 Experimental distilled spirits plant.

The Director may authorize the establishment and operation of experimental plants for specific and limited periods of time solely for experimentation in, or development of—

(a) Sources of materials from which spirits may be produced;

(b) Processes by which spirits may be produced or refined; or

(c) Industrial uses of spirits.

The Director may waive any provision of 26 U.S.C. Chapter 51 (other than 26 U.S.C. 5312) and of this part (other than this section and § 19.66) to the extent he deems necessary to effectuate the purposes of 26 U.S.C. 5312(b), except that he may not waive the payment of any tax on spirits removed from such plant.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1375, as amended (26 U.S.C. 5312))

§ 19.66 Application to established experimental plants.

Any person desiring to establish an experimental plant shall make written application to the Director, through the regional director (compliance), and obtain the Director's approval of the

proposed establishment. The applicant shall file with such application a bond in such form and penal sum as required by the Director. The application shall state the nature, extent, and purpose of the operations to be conducted and describe the operations and equipment, the location of the plant (including the proximity to other premises or operations subject to the provisions of 26 U.S.C. Chapter 51) and the security measures to be provided. The Director may require the submission of additional information as he deems necessary. The regional director (compliance) shall not permit operations until he has found that the plant conforms to the specifications set forth in the application, as approved, and the applicant has complied with provisions of 26 U.S.C. Chapter 51, and this part not specifically waived by the Director.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1375, as amended (26 U.S.C. 5312))

§ 19.67 Spirits produced in industrial processes.

(a) *Applicability.* (1) Persons who produce spirits in industrial processes (including spirits produced as a by-product in connection with chemical or other processes) are distillers and are required to qualify under provisions of 26 U.S.C. Chapter 51, and this part.

(2) The Director may, however, waive any provision of 26 U.S.C. Chapter 51, or this part with respect to the production of nonpotable chemical mixtures containing spirits, including any provision relating to qualification, if they are produced:

(i) For transfer to the bonded premises of a distilled spirits plant for completion of distilling; or

(ii) As a by-product which would require expensive and complex equipment for the recovery of spirits.

(3) The waiver under the provisions of paragraph (a)(2)(ii) of this section is further conditioned that such mixture would:

(i) Be destroyed on the premises where produced; or

(11) Contain a minimum quantity of spirits practicable with the procedure employed, not be subjected to further operations solely for the purification or recovery of spirits, and be found by the Director to be as nonpotable and at least as difficult with respect to recovery as completely denatured alcohol.

(b) *Application for waiver.* (1) When the producer of nonpotable mixtures desires to secure a waiver of designated provisions of 26 U.S.C. Chapter 51, or this Part, he shall file an application with the Director through the regional director (compliance).

(2) The application shall include, as applicable—

(i) Name and address of producer;

(ii) Chemical composition and source of the nonpotable mixture;

(iii) Approximate percentages of chemicals and spirits in the mixture;

(iv) Method of operation proposed;

(v) Bonded premises where the mixture will be distilled; and

(vi) Other pertinent information required by the Director.

(c) *Approval.* If the Director finds that the waiver of the requirements, or any of them, will not jeopardize the revenue and will not unduly hinder supervision of the operations, he may approve the application under such terms and conditions as he deems advisable and subject to the furnishing of any bond which he deems necessary.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.68 Other businesses.

The Director may authorize the carrying on of other businesses (not specifically prohibited by 26 U.S.C. 5601(a)(6)) on premises of plants if he finds that those businesses will not jeopardize the revenue, hinder the effective administration of this part, or be contrary to law. The authorization will designate the premises (i.e., bonded or general) on which such other business is to be conducted.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1353, as amended (26 U.S.C. 5178))

§ 19.69 Recovery and reuse of denatured spirits in manufacturing processes.

The following persons are not, by reasons of the activities listed below, subject to the provisions of this part but they shall comply with the provisions of 27 CFR Part 211 relating to the use and recovery of spirits or denatured spirits:

(a) Manufacturers who use denatured spirits, or articles or substances containing denatured spirits in a process wherein any part or all of the spirits, including denatured spirits, are recovered.

(b) Manufacturers who use denatured spirits in the production of chemicals which do not contain spirits but which are used on the permit premises in the manufacture of other chemicals resulting in spirits as a by-product.

(c) Manufacturers who use chemicals or substances which do not contain spirits or denatured spirits (but which were manufactured with specially denatured spirits) in a process resulting in spirits as a by-product.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1372, as amended (26 U.S.C. 5273))

§ 1970 Exemptions to meet the requirements of National defense.

The Director may temporarily exempt proprietors from any provision of the internal revenue laws or this part relating to spirits except those requiring payment of tax thereon whenever in his judgement it is expedient to do so to meet the requirements of the National defense.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1397, as amended (26 U.S.C. 5561))

§ 19.71 Experimental or research operations by scientific institutions and colleges of learning.

(a) *General.* The Director may authorize any scientific university, college of learning, or institution of scientific research to produce, receive, blend, treat, test, and store spirits, without payment of tax, for experimental or research use but not for consumption (other than organoleptic tests) or sale, in quantities as may be reasonably necessary for such purposes. The Director may waive any provision of 26 U.S.C. Chapter 51 (other than 26 U.S.C. 5312), or this part (other than this section) to the extent necessary to effect the purposes of 26 U.S.C. 5312(a), except he may not waive the payment of any tax on distilled spirits removed from any university, college, or institution.

(b) *Qualification.* Any university, college, or institution desiring to conduct any of the experimental or research operations listed in the preceding paragraphs shall make written application, to the Director, through the regional director (compliance), and obtain the Director's approval of the proposed operations. The applicant shall file with the application a bond in a form and penal sum as required by the Director. The application shall state the nature, extent, and purpose of the operations to be conducted and describe the operations and equipment, the location at which operations will be conducted (including identification of the building or buildings, or the portions thereof to be used), and the security measures to be provided. The Director may require any additional information. Operations shall not be commenced until authorized by the Director.

(c) *Records.* Reports concerning the operations need not be submitted unless required by the Director, but records of the quantities of spirits produced, received, and used each day shall be made and retained for inspection by ATF officers.

(d) *Discontinuance of operations.* When operations authorized by the Director are discontinued, all remaining spirits shall be disposed of by

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destruction. When these spirits have been destroyed, notice of the discontinuance of operations shall be given to the regional director (compliance).

(Sec. 201, Pub. L. 85–859, 72 Stat. 1375, as amended (26 U.S.C. 5312))

Authorities of the Regional Director (Compliance)

§ 19.72 Other businesses.

Application to conduct at a distilled spirits plant a type of business other than that of a distiller, warehouseman, or processor may be approved by the regional director (compliance) if the Director has, as provided in § 19.68, authorized the carrying on of a business of the type proposed, unless the regional director (compliance) finds that there are particular conditions in respect to the applicant's plant that would cause the carrying on of such business to be a jeopardy to the revenue or a hindrance to the effective administration of this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1353, as amended (26 U.S.C. 5178))

§ 19.73 Emergency variations from requirements.

The regional director (compliance) may approve construction, equipment, and methods of operation other than as specified in this part, where he finds that an emergency exists and the proposed variations from the specified requirements are necessary, and the proposed variations—

(a) Will afford the security and protection to the revenue intended by the prescribed specifications;

(b) Will not hinder the effective administration of this part; and

(c) Will not be contrary to any provisions of law.

Variations from requirements granted under this paragraph are conditioned on compliance with the procedures, conditions, and limitations with respect thereto set forth in the approval of the application. Failure to comply in good faith with such procedures, conditions, and limitations shall automatically terminate the authority for such variations and the proprietor thereupon shall fully comply with the prescribed requirements of regulations from which the variations were authorized. Authority for any variation may be withdrawn whenever in the judgement of the regional director (compliance) the revenue is jeopardized or the effective administration of this part is hindered by the continuation of such variation. Where the proprietor desires to employ such variation, he shall submit a written application to do so to the regional director (compliance). The application shall describe the proposed variations and set forth the reasons therefor. Variations shall not be employed until the application has been approved.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1353, as amended, 1395, as amended (26 U.S.C. 5178, 5552))

§ 19.74 Disaster exemptions.

The regional director (compliance) may, whenever he finds that it is necessary or desirable, by reason of disaster, temporarily exempt the proprietor of any plant from any provisions of the internal revenue laws and this part relating to spirits, except those requiring the payment of tax on spirits, to the extent he may deem necessary or desirable.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1397, as amended (26 U.S.C. 5562))

§ 19.75 Assignment of officers and supervision of operations.

(a) *General.* The regional director (compliance) may assign such number of ATF officers to distilled spirits plants and utilize controls (including the use of Government locks and seals) as necessary to maintain supervision of operations conducted at such plants. When supervision is necessary:

(1) The regional director (compliance) may require a proprietor to delay any distilled spirits operation so that it may be conducted in the presence of an ATF officer; and

(2) The regional director (compliance) may require the proprietor to submit a schedule of operations to an ATF officer.

(b) *Hours of operation.* When operations at a distilled spirits plant are to be conducted in the presence of an ATF officer, such operations: (1) Shall not be conducted on Sunday unless specifically authorized by the regional director (compliance) in each instance on the showing of an emergency; and (2) Shall be conducted during an 8-hour period between 7 a.m. and 5 p.m. unless, pursuant to the proprietor's application the regional director (compliance) authorizes the performance and supervision of operations during other hours. The regional director (compliance), in administering this provision, shall not restrict such operation or function to a greater extent than did the provisions of internal revenue law and regulations on June 30, 1959.

(c) *Notification of supervision.* (1) When it is determined that supervision of plant operations is necessary, the regional director (compliance) shall notify the proprietor of the extent of ATF supervision.

(2) If supervision of a distilled spirits plant was not terminated as of December 31, 1979, notification is not necessary for continued supervision.

(d) *Withdrawal of supervision.* The regional director (compliance) shall notify the proprietor when ATF supervision of plant operations is to be withdrawn.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1395, as amended (26 U.S.C. 5553); Sec. 806, Pub. L. 96–39, 93 Stat. 279 (26 U.S.C. 5201, 5202))

§ 19.76 Allowance of remission, abatement, credit or refund of tax.

The regional director (compliance) is authorized to allow claims for remission, abatement, credit, and refund of tax, filed under the provisions of this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1323, as amended (26 U.S.C. 5008))

§ 19.77 Installation of meters, tanks and other apparatus.

The regional director (compliance) is authorized to require the proprietor to install meters, tanks, pipes, or any other apparatus which the regional director (compliance) deems advisable for the purpose of protecting the revenue. Any proprietor refusing or neglecting to install such apparatus when so required shall not be permitted to conduct business.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1395, as amended (26 U.S.C. 5552))

§ 19.78 Approval of qualifying documents.

The regional director (compliance) is authorized to approve, except as otherwise provided in this part, all qualifying documents, including bonds and consents of surety, required by this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended, 1394, as amended (26 U.S.C. 5172, 5551); Sec. 805, Pub. L. 96–39, 93 Stat. 275, 276 (26 U.S.C. 5171, 5173))

§ 19.79 Discontinuance of storage facilities.

When the regional director (compliance) finds that any facilities for the storage of spirits on bonded premises are unsafe or unfit for use, or that spirit stored are subject to great loss or wastage, he may require the discontinuance of the use of such facilities and require the spirits contained therein to be transferred to such other storage facilities as he may designate. Such transfer shall be made at such time and under such supervision as the regional director (compliance) may require and the expense of the transfer shall be paid by the owner or the warehouseman of the spirits. Whenever the owner of such spirits or

the warehouseman fails to make such transfer within the time prescribed or to pay the just and proper expense of such transfer, as ascertained and determined by the regional director (compliance), such spirits may be seized and sold in the same manner as goods sold on distraint for taxes, and the proceeds of such sale shall be applied to the payment of the taxes due thereon and the cost and expense of such sale and removal, and the balance shall be paid over to the owner of such spirits.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1369, as amended (26 U.S.C. 5236))

Authorities of ATF Officers

§ 19.81 Right of entry and examination.

Any ATF officer may at all times, as well by night as by day, enter any distilled spirits plant, or any other premises where distilled spirits operations are carried on, or structure or place used in connection therewith for storage or other purposes; to make examination of the materials, equipment, and facilities thereon; and make such gauges and inventories as he deems necessary. Whenever any ATF officer, having demanded admittance, and having declared his name and office, is not admitted into such premises by the proprietor or other person having charge thereof, he may at all times, use such force as is necessary for him to gain entry to such premises.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1357, as amended (26 U.S.C. 5203))

§ 19.82 Detention of containers.

Any ATF officer may detain any container containing, or supposed to contain, spirits when such officer has reason to believe that the tax imposed by law on such spirits has not been paid or determined as required by law or this part, or that such container is being removed in violation of law or this part. Every such container may be held by the ATF officer at a safe place until it shall be determined whether the property so detained is liable by law to be proceeded against for forfeiture. However, such summary detention shall not continue in any case longer than 72 hours without process of law or intervention of the regional director (compliance), unless the person in possession of the container immediately prior to its detention, in consideration of the container being kept on his premises during detention, executes a waiver of the 72-hours limitation on detention of the container.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1375 (26 U.S.C. 5311))

§ 19.83 Samples for the United States.

Any ATF officer is authorized to take samples of spirits, denatured spirits, articles, wines, or any other materials which may be added to such products for analysis, testing, or other determinations to ascertain whether there is compliance with the provisions of law and regulations. When such samples are removed from the bonded premises, the ATF officer shall give the proprietor a receipt covering the sample so removed.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1323, as amended, 1357, as amended, 1362, as amended, 1380, as amended (26 U.S.C. 5201, 5203, 5214, 5362))

§ 19.84 Gauging and measuring equipment.

All gauging and measuring equipment and means required by 27 CFR Part 30 and this part to be furnished by the proprietor for the purpose of ascertaining the quantity, alcoholic content, specific gravity, and producing capacity of any materials, denaturants, mash, wort, or beer, or the quantity and alcoholic content of spirits, denatured spirits, or wines, shall be maintained by the proprietor in accurate and readily usable condition. Any ATF officer may disapprove the use of any equipment or means if such officer finds it would be insufficiently accurate and the proprietor shall promptly provide accurate equipment or means in lieu of the disapproved equipment or means.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1320, as amended, 1358, as amended (26 U.S.C. 5006, 5204))

Entry and Examination of Premises

§ 19.86 Furnishing facilities and assistance.

On the demand of any ATF officer or agent, the proprietor shall furnish the necessary facilities and assistance to enable the officer or agent to gauge the spirits in any container or to examine any apparatus, equipment, containers, or materials on the distilled spirits plant premises. The proprietor shall also, on demand of an ATF officer or agent, open all doors, and open for examination all containers on the plant premises. The proprietor shall, on request of an ATF officer, furnish the exact locations (including the number of containers at each location) of all packages and similar portable approved containers within a given lot, and locations (i.e., buildings, rooms or areas) where spirits in cases are stored.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1357, as amended (26 U.S.C. 5203); Sec. 806, Pub. L. 96–39, 93 Stat. 279 (26 U.S.C. 5202))

Gauging of Spirits, Wines or Alcoholic Flavoring Materials

§ 19.91 Gauging.

(a) *Gauging of spirits and wine.* Gauges shall be made by the proprietor. However, the regional director (compliance) may require that such gauges be made in the presence of and be verified by an ATF officer. Gauges of spirits, denatured spirits, or wine shall be made in accordance with 27 CFR Part 30 and as provided in this part. However, the gauge for wine that is to be transferred to a bonded wine cellar shall be recorded by kind and percent of alcohol by volume. When bulk spirits, denatured spirits, or wines are to be volumetrically measured, the measurement shall be in a tank or bulk conveyance for which a calibration chart is provided, by a meter approved under § 19.277, or, when approved by the Director, by other devices or methods. Calibration charts shall be certified as accurate by persons qualified to calibrate tanks or bulk conveyances. When spirits in bottles are gauged, the gauge may be established on the basis of legible case markings and label information, if (1) the bottles are full, and (2) there is no evidence that the bottles have been tampered with.

(b) *Gauging of alcoholic flavoring materials.* Each alcoholic flavoring material shall be gauged when dumped, except that when received from a manufacturer in a closed nonporous bottle, can, or package such material may be gauged by using the proof derived from the container label or a related statement of the proof from the manufacturer. When proof is determined from a label or manufacturer's statement, the proprietor shall periodically test a sufficient number of samples of the alcoholic flavoring material to verify the accuracy of the proof so determined and shall record the results of those tests on the gauge record. The regional director (compliance) may require that all alcoholic flavoring materials be gauged by the methods provided in 27 CFR Part 30.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended, 1396, as amended (26 U.S.C. 5204, 5559))

§ 19.92 When gauges are required.

(a) *Initial proof.* Except for the gauges of spirits required in § 19.383, or § 19.517, the initial determination of proof for spirits, wine or alcoholic flavoring materials made on the bonded premises of a distilled spirits plant may be used whenever a subsequent gauge is required by this part to be made at the

same plant, provided that no other material has been added which changes the proof of such spirits, wine or alcoholic flavoring materials.

(b) *Required gauges.* Spirits, wine and alcoholic flavoring materials shall be gauged whenever required by this part. Such gauges include:

(1) Entered for deposit,

(2) Filled into packages from storage tanks,

(3) Transferred or received in bond,

(4) Transferred between operational accounts,

(5) Mixed in the manufacture of a distilled spirits product,

(6) Reduced in proof prior to commencement of bottling,

(7) Destroyed,

(8) Removed or withdrawn from bond,

(9) Returned to bond, or

(10) As otherwise required by the regional director (compliance).

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended, 1396, as amended (26 U.S.C. 5204, 5559))

§ 19.93 Quantity determination of spirits in bond.

Where bulk spirits in bond are gauged for determination of tax, or are gauged in packages, the quantity shall be determined by weight pursuant to the provisions of 27 CFR Part 30. In all other instances where spirits are gauged in bond, gauged for denaturation, or are gauged for transfer in bond or for withdrawal from bond free of tax or without payment of tax, the quantity may be determined by weight or volume. Volumetric determinations of quantity may be made by meters approved under § 19.277.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1396, as amended (26 U.S.C. 5559))

Securing of Conveyances Used for Transporting Spirits

§ 19.96 Securing of conveyances.

(a) *Construction for securing.* If a conveyance is required by this part to be secured, the conveyance shall be constructed in such manner that all openings, including valves (if any) on bulk conveyances, may be closed and secured.

(b) *Approval of securing devices.* (1) All seals, locks, or other devices that are required to be used on conveyances in which spirits are transferred in bond, or withdrawn free of tax or without payment of tax, shall be approved by the Director prior to use. However, cap seals, at least ¾ of an inch in diameter, and ball-strap-type (railroad) seals with a strap at least 5/16 of an inch wide may be used on conveyances without prior approval of the Director. Such seals shall:

(i) Be made of durable materials,

(ii) Bear the plant registration number or name, or readily recognizable abbreviation of the name of the proprietor,

(iii) Bear a serial number including letter prefixes or suffixes, that will not be repeated within a six month period,

(iv) Be durably marked in readily legible form, and

(v) Be made so that their being opened will leave evidence thereof.

(2) Seals, locks or other devices that are used on conveyances to transport taxpaid spirits, or denatured spirits transferred in bond or withdrawn free of tax, need not be approved.

(c) *Furnishing and affixing securing devices.* (1) Seals, locks, or other devices for use on conveyances shall be furnished and affixed by the proprietor.

(2) The regional director (compliance) may, if he deems necessary, require conveyances in which spirits are: (i) transferred in bond, (ii) withdrawn free of tax, or (iii) withdrawn without payment of tax, to be secured by seals, locks, or other devices approved and furnished by the Bureau and affixed by an ATF officer.

(3) Seals, locks, or other devices shall be affixed:

(i) As soon as the conveyance is loaded for shipment, and

(ii) In such a manner that access to the contents of the conveyance cannot be gained without showing evidence of tampering.

(4) The openings of bulk conveyances may be secured with permanent seals, locks, or other devices.

(d) *Numbers and marks on proprietor's securing devices.* Seals, locks, or other devices that are furnished by the proprietor for use on conveyances shall be serially numbered. Letter abbreviations of the name of a proprietor may not be used unless approved by the Director pursuant to written application.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended 1410, as amended (26 U.S.C. 5206, 5682))

Conveyance of Spirits or Wines on Plant Premises

§ 19.97 Taxpaid spirits or wines on bonded premises.

Spirits or wines on which the tax has been paid or determined may be conveyed within a plant across bonded premises, but such spirits or wines shall not be stored or allowed to remain on the bonded premises and shall be kept separate and apart from spirits or wines on which the tax has not been paid or determined. However, spirits returned to bonded premises in accordance with the provisions of 26 U.S.C. 5215 shall be allowed to remain on the bonded premises.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended, 1404, as amended, (26 U.S.C. 5201, 5612))

§ 19.98 Conveyance of untaxpaid spirits or wines within a distilled spirits plant.

Untaxpaid spirits or wines may be conveyed between different portions of the bonded premises of the same distilled spirits plant, across any other premises of such plant; or (by uninterrupted transportation) over any public thoroughfare; or (by uninterrupted transportation) over a private roadway if the owner, or lessee, of the roadway agrees, in writing, to allow ATF officers access to the roadway to perform their necessary duties. The conveyance of spirits or wines as authorized in this section is subject to the following conditions:

(a) The spirits or wines are not stored or allowed to remain on any premises of such plant other than bonded premises,

(b) The spirits or wines are kept completely separate and apart from spirits on which the tax has been paid or determined,

(c) A description of the means and route of the conveyance and of the portions of the distilled spirits plant between which spirits or wines will be conveyed, and a copy of any agreement furnished by the owner, or lessee, of a private roadway have been submitted to and approved by the regional director (compliance), and

(d) Consent of surety on the operations or unit bond has been furnished by the proprietor, on Form 1533, extending the terms of the bond to cover conveyance of the spirits or wines.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended, 1398, as amended (26 U.S.C. 5201, 5601))

§ 19.99 Spirits in customs custody.

Spirits in customs custody may be conveyed, when necessary, across distilled spirits plant premises if:

(a) The spirits are not stored or allowed to remain on the premises of the distilled spirits plant,

(b) The spirits are kept separate and apart from other spirits on the premises and are moved expeditiously,

(c) A description of the means and route of conveyance of the spirits across the plant premises has been submitted to and approved by the regional director (compliance), and

(d) Consent of surety on the operations or unit bond has been furnished by the proprietor, on Form

1533, extending the terms of the bond to cover the conveyance of the spirits.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

Penalties of Perjury

§ 19.100 Execution under penalties of perjury.

(a) *Declaration.* When a return, claim, form, or other document called for under this part, or in the instructions thereon, is required to be executed under penalties of perjury, it shall contain the following declaration:

I declare under the penalties of perjury that this (insert type of document, such as report, or claim), including supporting documents, has been examined by me and, to the best of my knowledge and belief, is true, correct, and complete.

(b) *Signing.* The declaration shall bear the signature and title of the proprietor or other duly authorized person.

(Act of August 16, 1954, Pub. L. 591—Chapter 736, 68A Stat. 749 (26 U.S.C. 6065))

Subpart E—[Reserved]

Subpart F—Location and Use

§ 19.131 Restrictions as to locations.

Distilled spirits plants shall not be located in any dwelling house, or in any shed, yard, or enclosure connected with any dwelling house, or on board any vessel or boat, or on premises where beer or wine is produced, or liquors of any description are retailed, or (except as provided in § 19.133) on premises where any other business is conducted.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1353, as amended (26 U.S.C. 5178))

§ 19.132 Continuity of premises.

The continuity of the distilled spirits plant shall be unbroken except for separations by public waterways, thoroughfares, or carrier rights-of-way. However, where there are other separations of the plant premises and all parts of the plant premises are in the same general location, the Director may approve the registration of the distilled spirits plant if he finds no jeopardy to the revenue.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1353, as amended (26 U.S.C. 5178))

§ 19.133 Use of distilled spirits plant premises.

(a) *General.* No business or operation shall be conducted on the premises of a distilled spirits plant other than those authorized in accordance with Subpart D of this Part or those authorized to be carried on or conducted by the notice of registration.

(b) *Bonded premises.* Bonded premises shall be used exclusively for distilled spirits operations. Spirits in packages, cases, or other portable containers on bonded premises shall be stored in a room or building. However, upon application by the proprietor, the regional director (compliance) may approve an alternative method of storage of such spirits if such method is suitable for the protection of the revenue and the effective administration of this Part.

(c) *General premises.* General premises are any portion of the distilled spirits plant described in the notice of registration other than bonded premises. General premises may not be used for any of the operations required to be conducted on bonded premises. Business offices and service facilities may be included as a part of general premises.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1353, as amended (26 U.S.C. 5178))

§ 19.134 Bonded warehouses not on premises qualified for production of spirits.

(a) *Criteria for establishment.* (1) A bonded warehouse, other than one established on the bonded premises of a distilled spirits plant qualified for production of spirits, or contiguous to a distillery operated by the warehouseman, may be established if the need therefor is clearly shown and the prospective needs of the warehouseman will be for the bonded storage of not less than 250,000 wine gallons of bulk distilled spirits.

(2) When commercial bonded warehouses are not available in an area and it is impractical to have a warehouse of 250,000 wine gallon capacity, the regional director (compliance) may approve the establishment of a warehouse without regard to the minimum storage requirements.

(b) *Application.* (1) The application for registration to establish a warehouse shall be accompanied by a separate written application setting forth the necessity for the establishment of the warehouse.

(2) The application shall include:

(i) approximate quantity of bulk spirits that will be received, stored, and withdrawn annually;

(ii) probable number of depositors of spirits;

(iii) approximate number of persons to be served from the warehouse; and

(iv) data or documents indicating the prospective volume of business or need for establishment.

(c) *Approval.* (1) The regional director (compliance) may approve the application for registration if the proposed location of the warehouse will not be a jeopardy to the revenue and there is satisfactory evidence of the need for establishing a warehouse.

(2) The regional director (compliance) may also limit the type of operation to be conducted at a bonded warehouse established with less than the minimum storage requirements.

(d) *Special condition.* The proprietor of a warehouse established for a limited type of operation shall not, in any manner, expand or change his operation to include any other type of operations until, pursuant to written application to make such change, he has obtained the approval of the regional director (compliance).

(Sec. 201, Pub. L. 85–859, 72 Stat. 1353, as amended (26 U.S.C. 5178); Sec. 805a, Pub. L. 96–39, 93 Stat. 275 (26 U.S.C. 5171))

Subpart G—Qualification of Distilled Spirits Plants

§19.151 General requirements for registration.

(a) *Operations.* Except as otherwise provided by law, operations as a distiller, warehouseman, or processor may be conducted ony on the bonded premises of a distilled spirits plant by a person qualified to carry out such operations under this subpart.

(b) *Establishment.* A distilled spirits plant may be established only by a person who intends to conduct at such plant operations as a distiller, as a warehouseman, or as both.

(c) *Registration.* Each person shall, before commencing operations at a distilled spirits plant, make application for and receive notice of registration of his plant with respect to such operations as provided in this part. Application for registration shall be made on Form 5110.41 to the regional director (compliance). Each application shall be executed under penalties of perjury, and all written statements, affidavits, and other documents submitted in support of the application or incorporated by reference shall be deemed to be a part thereof. The regional director (compliance) may, in any instance where the outstanding notice of registration is inadequate or incorrect in any respect, require the filing of an application on Form 5110.41 to amend the notice of registration, specifying the respects in which amendment is required. Within 60 days after the receipt of such notice, the proprietor shall file such application.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended (26 U.S.C. 5172); Sec. 805(a), Pub. L. 96–39, 93 Stat. 275 (26 U.S.C. 5171))

§ 19.152 Data for application for registration.

Application on Form 5110.41 shall include the following information:

(a) Serial number and statement of purpose for which filed.

(b) Name and principal business address of the applicant, and the location of the distilled spirits plant if different from the business address.

(c) Statement of the type of business organization and of the persons interested in the business, supported by the items of information listed in § 19.167.

(d) Statement of the operations to be conducted.

(e) In respect of the plant to which the Form 5110.41 relates, a list of applicant's operating and basic permits, and of the operations, withdrawal, or unit bonds (including those filed with the application) with the name of the surety or sureties for each bond.

(f) List of the offices, the incumbents of which are authorized by the articles of incorporation or the board of directors to act on behalf of the proprietor or to sign the proprietor's name.

(g) Description of the plant (see § 19.168).

(h) List of major equipment (see § 19.166).

(i) Statement of maximum proof gallons that will be produced in the distillery during a period of 15 days, stored on bonded premises, and in transit to the bonded premises. (Not required if the operations or unit bond is in the maximum sum.)

(j) With respect to any distilled spirits plant which was not qualified to operate before June 1, 1985 a certified statement that relevant and material accounting records (including regular books of account and such other records and data as may be necessary to support such records) will be maintained in accordance with generally accepted accounting principles which enable the proprietor to file a correct distilled spirits tax return or determine whether he is liable for distilled spirits taxes.

(k) Statement of physical security measures employed (see § 19.153).

(l) As applicable, the following:

(1) With respect to the operations of a distiller:

(i) Statement of daily producing capacity in proof gallons.

(ii) Statement of production procedure (see § 19.170).

(iii) Statement whether spirits will be redistilled.

(2) With respect to the operations of a warehouseman:

(i) Description of the system of storage.

(ii) Statement of bulk storage capacity in wine gallons.

(3) With respect to the operations of a processor:

(i) Statement whether bottling operations will be conducted.

(ii) Statement whether denaturing operations will be conducted.

(iii) Statement whether articles will be manufactured.

(iv) Statement whether spirits will be redistilled.

(v) Description of the system of storage of spirits bottled and cased or otherwise packaged or placed in approved containers for removal from bonded premises.

(4) If any other business is to be conducted on the distilled spirits plant premises, as provided by Subpart D of this part, a description of the business, a list of the buildings and/or equipment to be used, and a statement as to the relationship, if any, of the business to distilled spirits operations at the plant.

If any of the information required by paragraph (c) of this section is on file with the regional director (compliance), that information, if accurate and complete, may by incorporation by reference, be made part of the application. The applicant shall, when required by the regional director (compliance), furnish as a part of the application for registration, additional information as may be necessary to determine whether the application for registration should be approved.

(68 A Stat. 731, as amended (26 U.S.C. 6001); Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended (26 U.S.C. 5172); Sec. 805(a), Pub. L. 96–39, 93 Stat. 275 (26 U.S.C. 5171))

§ 19.153 Statement of physical security.

(a) *Content.* The statement of security shall include:

(1) A general description of the physical security at the distilled spirits plant, including methods utilized to secure buildings and outdoor tanks;

(2) A statement whether guard personnel are employed;

(3) A statement whether any electronic or mechanical alarm system is used;

(4) A statement certifying that locks used meet the specifications provided in paragraph (e) of § 19.281;

(5) A list of persons by position or title having responsibility for the custody of and access to keys for approved locks used at the distilled spirits plant.

(b) *Changes.* The proprietor shall file an application for amended registration with the regional director (compliance) for any change in personnel or procedures contained in the statement of security.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended (26 U.S.C. 5172); Sec. 805(a), Pub. L. 96–39, 93 Stat. 275 (26 U.S.C. 5171))

§ 19.154 Notice of registration.

The application for registration, when approved, shall constitute the notice of registration of the distilled spirits plant. A distilled spirits plant shall not be registered or reregistered under this subpart until the applicant has complied with all requirements of law and regulations relating to the qualification of the business or operations in which the applicant intends to engage. A plant shall not be operated unless the proprietor has a valid notice of registration covering the businesses and operations to be conducted at such plant. In any instance where a bond is required to be given or a permit is required to be obtained with respect to a business or operation before notice of registration of the plant may be received with respect thereto, the notice of registration shall not be valid with respect to such business or operation in the event that such bond or permit is no longer in effect. An application for reregistration shall be filed and notice of registration again obtained before engaging in such business or operation at such plant. Reregistration is not required when a new bond or a strengthening bond is filed pursuant to § 19.246 or 19.247.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended (26 U.S.C. 5172); Sec. 805a, Pub. L. 96–39, 93 Stat. 275 (26 U.S.C. 5171))

§ 19.155 Maintenance of registration file.

The proprietor shall maintain the registration file in looseleaf form in complete and current condition, readily available at the plant for inspection by ATF officers.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended (26 U.S.C. 5172))

§ 19.156 Powers of attorney.

The proprietor shall execute and file with the regional director (compliance) a Form 1534 (5000.8) for each person authorized to sign or to act on behalf of the proprietor. (Not required for persons whose authority is furnished in the application for registration.)

(See 201, Pub. L. 85–859, 72 Stat. 1349, as amended (26 U.S.C. 5172))

§ 19.157 Operating permits.

(a) *General.* Except as provided in paragraph (b) of this section, each person required to file an application for registration under § 19.151 shall make application for and obtain an operating permit before commencing any of the following operations:

(1) Distilling for industrial use.
(2) Warehousing of spirits for industrial use.
(3) Denaturing spirits.
(4) Warehousing of spirits (without bottling) for nonindustrial use.
(5) Bottling or packaging of spirits for industrial use.
(6) Manufacturing articles.
(7) Any other distilling, warehousing, or processing operation not required to be covered by a basic permit under the Federal Alcohol Administration Act (49 Stat. 978, 27 U.S.C. 203, 204). Application for such operating permit shall be made on Form 5110.25 to the regional director (compliance).

(b) *Exceptions.* The provisions of paragraph (a) of this section shall not apply to any agency of a State or political subdivision thereof, or to any officer or employee of any such agency acting for the agency.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1370, as amended (26 U.S.C. 5271); Sec. 805(a), Pub. L. 96–39, 93 Stat. 275 (26 U.S.C. 5171))

§ 19.158 Data for application for operating permits.

Each application on Form 5110.25 shall be executed under the penalties of perjury, and all written statements, affidavits, and other documents submitted in support of the application shall be deemed to be a part thereof. Applications on Form 5110.25 shall include the following information:

(a) Name and principal business address of the applicant.

(b) Plant address, if different from the business address.

(c) Description of the operation to be conducted for which an operating permit must be obtained.

(d) Statement of type of business organization and of the persons interested in the business, supported by the items of information listed in § 19.167.

(e) Trade names (see § 19.165).

(f) On specific request of the regional director (compliance), furnish a statement as to whether the applicant or any of the persons whose names and addresses are required to be furnished under the provisions of § 19.167(a)(2) and (c) has ever: (1) Been convicted of a felony or misdemeanor under Federal or State law; (2) Been arrested or charged with any violation of State or Federal law (convictions or arrests or charges for traffic violations need not be reported as to paragraphs (f)(1) and (f)(2) of this section, if these violations are not felonies); or (3) Applied for, held, or been connected with a permit, issued under Federal law to manufacture, distribute, sell or use spirits or products containing spirits, whether or not for beverage use, or held any financial interest in any business covered by any such permit, and, if so, give the number and classification of the permit, the period of operation, and state in detail whether the permit was ever suspended, revoked, annulled, or otherwise terminated.

Where any of the information required by paragraph (d) or (f)(3) of this section is on file with the regional director (compliance), the applicant may, by incorporation or by reference, state that the information is made a part of the application for an operating permit. The applicant shall, when required by the regional director (compliance), furnish as a part of his application for an operating permit additional information as may be necessary for the regional director (compliance) to determine whether the applicant is entitled to the permit.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1370, as amended (26 U.S.C. 5271); Sec. 805(a), Pub. L. 96–39, 93 Stat. 275 (26 U.S.C. 5171))

§ 19.159 Issuance of operating permits.

Only one operating permit will be issued for a plant. The operating permit shall designate the operations permitted. All of the provisions of this part relating to the performance of the operations covered by the permit shall be included in the provisions and conditions of the permit. Operating permits shall be kept posted available for inspection at the distilled spirits plant.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1370, as amended (26 U.S.C. 5271); Sec. 805(a), Pub. L. 96–39, 93 Stat. 275 (26 U.S.C. 5171))

§ 19.160 Duration of permits.

Operating permits are continuing, unless automatically terminated by the terms thereof, suspended or revoked as provided in § 19.163, or voluntarily surrendered. The provisions of § 19.181 shall be a part of the terms and conditions of all operating permits issued under this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1370, as amended (26 U.S.C. 5271))

§ 19.161 Denial of permit.

If, on examination of an application for an operating permit (or on the basis of inquiry or investigation), the regional director (compliance) has reason to believe that—

(a) The applicant (including, in the case of a corporation, any officer, director, or principal stockholder, and, in the case of a partnership, a partner) is, by reason of his business experience, financial standing, or trade connections, not likely to maintain operations in compliance with 26 U.S.C. Chapter 51, or regulations issued thereunder; or

(b) The applicant has failed to disclose any material information required, or has made any false statement, as to any material fact, in connection with the application; or

(c) The premises on which the applicant proposes to conduct the operations are not adequate to protect the revenue; the regional director (compliance) may institute proceedings for the denial of the application in accordance with the procedures set forth in 27 CFR Part 200.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1370, as amended (26 U.S.C. 5271))

§ 19.162 Correction of permits.

Where an error in an operating permit is discovered, the proprietor shall, on demand of the regional director (compliance), immediately return the permit for correction.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1370, as amended (26 U.S.C. 5271))

§ 19.163 Suspension or revocation.

Whenever the regional director (compliance) has reason to believe that any person holding an operating permit—

(a) Has not in good faith complied with the provisions of 26 U.S.C. Chapter 51, or regulations issued thereunder; or

(b) Has violated conditions of the permit; or

(c) Has made any false statement as to any material fact in the application therefor; or

(d) Has failed to disclose any material information required to be furnished; or

(e) Has violated or conspired to violate any law of the United States relating to intoxicating liquor or has been convicted of any offense under Title 26, U.S.C. punishable as a felony or of any conspiracy to commit such offense; or

(f) Has not engaged in any of the operations authorized by the permit for a period of more than 2 years; the regional director (compliance) may institute proceedings for the revocation or suspension of the permit in accordance with the procedures set forth in 27 CFR Part 200.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1370, as amended (26 U.S.C. 5271))

§ 19.164 Rules of practice in permit proceedings.

The regulations in 27 CFR Part 200 are made applicable to the procedure and practice in connection with the disapproval of any application for an operating permit required by this subpart, and in connection with the suspension and revocation of such permit.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1370, as amended (26 U.S.C. 5271))

§ 19.165 Trade names.

(a) *Operating permits.* Where a trade name is to be used in connection with the operations of a plant for which an operating permit is required, the proprietor shall list that trade name on Form 5110.25 (showing the operations in which each trade name will be used) and the offices where the trade name is registered, supported by copies of any certificate or other document filed or issued in respect to the trade name.

(b) *Basic permits.* Where any distilling, warehousing, or processing operation is required to be covered by a basic permit under the Federal Alcohol Administration Act (49 Stat. 978; 27 U.S.C. 203, 204), regulations issued under such Act govern the approval and use of trade names for those operations.

(c) *Conditions.* Operations shall not be conducted under a trade name until the proprietor is in possession of an operating or basic permit covering the use of such name.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1370, as amended (26 U.S.C. 5271))

§ 19.166 Major equipment.

The following items of major equipment, if on the plant premises, shall be described in the application for registration:

(a) Tanks (serial number and capacity) used in the production, storage and processing of distilled spirits, wine, denatured spirits and articles;

(b) Stills (serial number, kind, capacity and intended use). The capacity shall be stated as the estimated maximum proof gallons of spirits capable of being produced every 24 hours, or (for column stills) may be represented by a statement of the diameter of the base and number of plates; and

(c) Condensers (serial number).

A statement of certification of accurate calibration shall be included in the description of tanks that are to be used for gauging distilled spirits or wine for any purpose.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended, 1352, as amended (26 U.S.C. 5172, 5179))

§ 19.167 Organizational documents.

The supporting information required by paragraph (c) of § 19.152, and paragraph (d) of § 19.158, includes, as applicable, copies of—

(a) *Corporate documents.* (1) Corporate charter or a certificate of corporate existence or incorporation.

(2) List of directors and officers, showing their names and addresses.

(3) Certified extracts or digests of minutes of meetings of board of directors, authorizing certain individuals to sign for the corporation.

(4) Statement showing the number of shares of each class of stock or other evidence of ownership, authorized and outstanding, and the voting rights of the respective owners or holders.

(b) *Articles of partnership.* Copy of the articles of partnership or association, if any, or certificate of partnership or association where required to be filed by any State, county, or municipality.

(c) *Statement of interest.* (1) Names and addresses of the 10 persons having the largest ownership or other interest in each of the classes of stock in the corporation, or other legal entity, and the nature and amount of the stockholding or other interest of each, whether the interest appears in the name of the interested party or in the name of another for him. If a corporation is wholly owned or controlled by another corporation, those persons of the parent corporation who meet the above standards are considered to be the persons interested in the business of the subsidiary, and the names thereof need be furnished only upon request of the regional director (compliance).

(2) In the case of an individual owner or partnership, the name and address of each person interested in the plant, whether the interest appears in the name of the interested party or in the name of another for that person.

(d) *Availability of additional corporate documents.* The originals of documents required to be submitted under this section and additional documents which may be required by the regional director (compliance) such as the articles of incorporation, bylaws, and State certificate authorizing operations shall be made available to any ATF officer upon request.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended, 1370, as amended (26 U.S.C. 5172, 5271))

§ 19.168 Description of plant.

(a) The application for registration shall include a description of each tract of land comprising the distilled spirits plant.

(b) The description shall:

(1) Clearly indicate the bonded premises and any general premises included as part of the distilled spirits plant; and

(2) Contain directions and distances in sufficient detail to enable ATF officers to readily determine the boundaries of the plant.

(c) Each building and outside tank used for the production, storage and processing of spirits, denatured spirits, articles, or wines shall be described by location, size, construction, and arrangement with reference to each by its designated number or letter.

(d) If a plant includes a room or floor in a building, a description of the building in which the room or floor is situated and its location shall be given.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended (26 U.S.C. 5172))

§ 19.169 Registry of stills.

The provisions of 27 CFR Part 196 are applicable to stills located on plant premises. However, the listing of stills or condensers in the application for registration, and the approval of the application for registration, shall constitute registration of stills or condensers as required by 27 CFR 196.45.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended, 1355, as amended (26 U.S.C. 5172, 5179))

§ 19.170 Statement of production procedure.

The statement of production procedure in the application for registration shall set forth a step-by-step description of the procedure employed to produce spirits from an original source, commencing with the treating, mashing, or fermenting of the raw materials or substances and continuing through each step of the distilling, purifying and refining procedure to the production gauge. The kind and approximate quantity of each material or substance used in producing, purifying, or refining each type of spirits shall be shown.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended (26 U.S.C. 5172))

Changes After Original Qualification

§ 19.180 Application for amended registration.

Where there is a change with respect to the information shown in the notice of registration, the proprietor shall submit, within 30 days of such change (except as otherwise provided in this subpart), an application on Form 5110.41 for amended registration. Such application shall set forth, on sheets appropriately numbered or otherwise identified, the information necessary to make the notice of registration accurate and current. Where the change affects only pages or parts of pages of the notice of registration, such complete pages shall be submitted as will enable the replacement of the pages affected and maintenance of the file as provided in § 19.155.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended (26 U.S.C. 5172); Sec. 805(a), Pub. L. 96–39, 93 Stat. 275 (26 U.S.C. 5171))

§ 19.181 Automatic termination of permits.

(a) *Permits not transferable.* Operating permits issued under this part shall not be transferred. In the event of the lease, sale, or other transfer of such a permit, or of the operations authorized thereby, the permit shall thereupon automatically terminate.

(b) *Corporations.* In the case of a corporation holding an operating permit under this part, if actual or legal control of the permittee corporation changes, directly or indirectly, whether by reason of change in stock ownership or control (in the permittee corporation or in any other corporation), by operation of law, or in any other manner, such permit may remain in effect with respect to the operation covered thereby until the expiration of 30 days after such change, whereupon such permit shall automatically terminate. However, if within such 30 day period an application for a new permit covering such operation is made, then the outstanding operating permit may remain in effect with respect to the continuation of the operation covered thereby until final action is taken on such application. When such final action is taken, such outstanding operting permit shall thereupon automatically terminate.

(c) *Basic permits.* The termination of basic permits is governed by the provisions of 27 CFR Part 1.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1370, as amended (26 U.S.C. 5271))

§ 19.182 Change in name of proprietor.

Where there is to be a change in the individual, firm, or corporate name, the proprietor shall file application to amend the registration and to amend the operating and/or basic permit; a new bond or consent of surety will not be required. Operations may not be conducted under the new name prior to approval of the amended registration and issuance of the amended permit.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended, 1370, as amended (26 U.S.C. 5172, 5271))

§ 19.183 Change of trade name.

If there is to be a change in, or addition of, a trade name, the proprietor shall file application to amend the operating and/or basic permit; a new bond or consent of surety will not be required. Operations may not be conducted under the new trade name prior to issuance of the amended permit.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1370, as amended, (26 U.S.C. 5271))

§ 19.184 Changes in stockholders.

Changes in the list of stockholders furnished under the provisions of § 19.167(c)(1) may, in lieu of submission within 30 days of the change under the provisions of § 19.180, be submitted annually by the proprietor on May 1 or other date approved by the regional director (compliance), except where the sale or transfer of capital stock results in a change in the control or management of the business.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended, 1370, as amended (26 U.S.C. 5172, 5271))

§ 19.185 Changes in officers and directors.

Where there is any change in the list of officers and directors furnished under the provisions of § 19.167(a)(2), the proprietor shall submit, within 30 days of any such change, an application on Form 5110.41 for amended registration, supported by a new list of officers and directors and a statement of the changes relected in such list. Where the proprietor has shown to the satisfaction of the regional director (compliance) that certain corporate officers listed on the original appplication have no responsibilities in connection with the operations covered by the registration, the regional director (compliance) may waive the requirements for submitting applications for amended registration to cover changes of such corporate officers.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended, (26 U.S.C. 5172); Sec. 805(a), Pub. L. 96–39, 93 Stat. 275 (26 U.S.C. 5171))

§ 19.186 Change in proprietorship.

(a) *General.* If there is a change in the proprietorship of a plant qualified under this part, the outgoing proprietor shall comply with the requirements of § 19.211, and the successor shall, before commencing operations, apply for and obtain the required permits, file the required bonds, and file application for and receive notice of registration of the plant in the same manner as a person qualifying as the proprietor of a new plant, except that the successor may, in the manner provided in § 19.187, adopt the approved Forms 5110.38 and 1479–A (5150.9) of the predecessor. Spirits may be transferred from an outgoing proprietor of a plant to a successor in the manner provided in § 19.201.

(b) *Fiduciary.* If the successor to the proprietorship of a plant is an administrator, executor, receiver, trustee, assignee or other fiduciary, he shall comply with the provisions of paragraph (a) of this section except that he may, in lieu of filing a new bond, furnish consent of surety extending the terms of the predecessor's bond, and he may also incorporate by reference in the application for registration on Form 5110.41 any pertinent information contained in the predecessor's notice of registration. The fiduciary shall furnish a certified copy of the order of the court or other pertinent document showing qualification as such fiduciary. The effective dates of the qualifying documents filed by the fiduciary shall be the effective date of the court order, or the date specified therein for him to assume control. If the fiduciary was not appointed by a court, the date of assuming control shall coincide with the effective date of the qualifying documents filed by the fiduciary.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended (26 U.S.C. 5172))

§ 19.187 Adoption of formulas.

(a) *Forms 5110.38.* The adoption by a successor of approved Forms 5110.38 (27–B Supplemental) shall be in the form of an application, filed with the Director. The application shall list the formulas for adoption by (1) formula number, (2) name of product, and (3) date of approval. The application shall clearly show that the predecessor has authorized the use of its previously approved formulas by the successor.

(b) *Forms 1479–A (5150.19).* The adoption by a successor of approved Forms 1479–A (5150.19) shall be in accordance with 27 CFR 211.62.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended (26 U.S.C. 5172))

§ 19.188 Partnerships.

If under the laws of the particular State, the partnership is not terminated on death or insolvency of a partner, but continues until the winding up of the partnership affairs is completed, and the surviving partner has the exclusive right to the control and possession of the partnership assets for the purpose of liquidation and settlement, such surviving partner may continue to operate the plant under the prior qualification of the partnership, provided a consent of surety is filed, wherein the surety and the surviving partner agree to remain liable on the operations or unit bond. If such surviving partner acquires the business on completion of the settlement of the partnership, he shall qualify in his own name from the date of acquisition, as provided in § 19.186(a). The rule set forth in this section shall also apply where there is more than one surviving partner.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended (26 U.S.C. 5172))

§ 19.189 Change in location.

Where there is a change in the location of the plant, the proprietor shall file applications to amend the registration of the plant and the operating and/or basic permit, and either a new bond or a consent of surety on Form 1533. Operation of the plant may not be commenced at the new location prior to approval of the amended registration and issuance of the amended permit.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349 as amended, 1370, as amended (26 U.S.C. 5172, 5271); Sec. 805(c), Pub. L. 96–39, 93 Stat. 276 (26 U.S.C. 5173))

§ 19.190 Changes in premises.

Except as provided in §§ 19.202, 19.203, 19.204, and 19.205, where bonded premises, or any other premises included as a part of the plant are to be extended or curtailed, the proprietor shall file an application for registration, Form 5110.41, to cover such extension or curtailment. Premises and equipment to be included by extension or to be excluded by curtailment shall not, prior to approval by the regional director (compliance) of the requried documents, be used for other than previously approved purposes.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended (26 U.S.C. 5172)

§ 19.191 Change in operations.

If the proprietor proposes to conduct a new business or operation involving spirits, he shall file applications to amend the registration of the plant and the operating and/or basic permit. If the proprietor desires to engage, on the plant premises, in other businesses, as provided in Subpart D, he shall submit an application to amend the registration of the plant to include the information required under § 19.152(1)(4). The additional operation or business may not be carried on prior to approval of the amended registration and (if required) issuance of the amended permit.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended, 1370, as amended, (26 U.S.C. 5172, 5271); Sec. 805(a), Pub. L. 96–39, 93 Stat. 275 (26 U.S.C. 5171))

§ 19.192 Change in production procedure.

If the proprietor desires to produce a new product or make a change in a production procedure which would affect the designation, or substantially affect the character of his product, the proprietor shall file an application to amend the registration of the plant to include the amended or new statement of production procedure. The new or changed procedure may not be used prior to approval of the amended registration.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended, (26 U.S.C. 5172))

§ 19.193 Changes in construction or use of buildings and equipment.

(a) *Changes.* When a material change, affecting the accuracy of the notice of registration, is to be made in the construction or use of buildings or equipment of a plant, other than a change covered by §§ 19.190, 19.202, 19.203, 19.204, or 19.205, the proprietor shall, before making such change, submit a letterhead notice to the regional director (compliance) through the area supervisor.

(b) *Letterhead notice.* The letterhead notice shall:

(1) Describe the proposed change in detail;

(2) Be kept on file with the proprietor's current notice of registration; and

(3) After completion of the change, be incorporated in the next amendment of the notice of registration on Form 5110.41, unless the regional director (compliance) requires immediate amendment.

(c) *Emergency changes.* The proprietor may make emergency material changes without prior notification, but when such emergency changes are made, the proprietor shall promptly report such changes to the area supervisor.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended, (26 U.S.C. 5172))

Operations by Alternating Proprietors

§ 19.201 Procedure for alternating proprietors.

(a) *General.* A plant, or any part thereof which is suitable for qualification as a separate plant, may be operated alternately by proprietors who have filed and received approval of the necessary bonds and applications for registration, and have otherwise qualified under the provisions of this subpart. Where operations by alternating proprietors are limited to parts of the plant, the notice of registration shall describe the areas, rooms or buildings or combination thereof, which will be alternated, and shall be accompanied by special diagrams designating the parts of the plant which are to be alternated. A special diagram shall be submitted for each arrangement under which the premises will be operated. Once such qualifying documents have been approved, and initial operations have been conducted thereunder, the plant, or parts thereof, may be alternated by the proprietor filing notices on Form 5110.34 with the regional director (compliance). Any transfer of spirits, idenatured spirits, and wines shall be indicated on Form 5110.34 filed by each proprietor.

(b) *Production.* Distilling materials and unfinished spirits in any bonded areas, rooms or buildings to be alternated shall be processed to completion by the outgoing proprietor unless transferred to the incoming proprietor. All finished spirits shall be marked and removed by the outgoing proprietor in the name in which produced, before production gauge is made of any spirits by the incoming proprietor.

(c) *Storage.* Spirits and wines in any bonded areas, rooms, or buildings to be alternated shall be transferred in bond to the incoming proprietor. The outgoing proprietor shall execute a consent of surety on Form 1533 (5000.18) to continue in effect the operations or unit bond whenever operation of the areas, rooms, or buildings is to be resumed by him following suspension of operations by an alternate proprietor.

(d) *Processing.* Spirits, denatured spirits, wines and articles in any rooms, areas, or buildings to be alternated shall be processed to completion and removed from the affected areas, rooms, or buildings by the outgoing proprietor prior to the effective date and hours given in the notice unless transferred or retained in locked tanks as provided in this paragraph. Spirits, denatured spirits, and wines may be transferred to the incoming proprietor. Further, the outgoing proprietor shall execute a consent of surety on Form 1533 (5000.18) to continue in effect the operations or unit bond whenever operation of the affected areas, rooms, or buildings is to be resumed by him following suspension of operations by the alternate proprietor. Denatured spirits and articles may be retained in tanks locked by approved locks, the keys to which are in the custody of the outgoing proprietor. In this case, the outgoing proprietor shall execute a consent of surety on Form 1533 (5000.18) to continue liability on the operations or unit bond for the tax on such denatured spirits or articles retained in such tanks, notwithstanding the change in proprietorship.

(e) *Records.* Each proprietor shall maintain separate records and submit separate reports. Records kept by the outgoing proprietor for spirits, wines, and alcoholic flavoring materials may be used by the incoming proprietor. All transfers of distilling materials, unfinished spirits, spirits, denatured spirits, and wines shall be reflected in the records of each proprietor.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended, 1370, as amended (26 U.S.C. 5172, 5271))

Alternate Operations

§ 19.202 Alternate use of premises and equipment for customs purposes.

(a) *General.* The premises of a distilled spirits plant may, as provided in this section, be alternately curtailed and extended to permit the facilities of the distilled spirits plant to be used temporarily by customs officers, under applicable customs law and regulations, for the purpose of gauging or processing distilled spirits. The use of the excluded portion of the premises for customs purposes is subject to the approval of the district director of customs. When it is necessary to convey spirits in customs custody across the premises of a distilled spirits plant, the proprietor shall comply with the provisions of § 19.99. When a portion of the distilled spirits plant premises is first to be excluded as provided in this section, the proprietor shall file with the regional director (compliance) (1) an application for registration, Form 5110.41, to cover alternate curtailment and extension of premises, and (2) a special diagram, in duplicate, delineating the premises as they will exist, both during extension and curtailment, and clearly depicting all buildings, floors, rooms, areas, equipment and spirits lines (identified individually by letter or number) which are to be subject to alternation, in their relative operating sequence. Once such qualifying documents have been approved by the regional director (compliance), the designated premises and equipment may be alternately curtailed or extended pursuant to notice on Form 5110.34. Portions of the premises to be excluded by curtailment or included by extension shall not be used for purposes other than as set forth in the current notice. The proprietor shall remove all spirits from the premises or equipment affected by the notice prior to the effective date and hours of the notice. However, on release by customs, spirits being transferred to bonded premises under 26 U.S.C. 5232, may remain on the premises to be reincluded in bonded premises.

(b) *Separation of premises.* The portion of the premises which is to be excluded from the distilled spirits plant premises as provided in this section shall be separated from the remaining portion of the distilled spirits plant premises in a manner which satisfies the regional director (compliance) that the revenue will not be jeopardized.

(c) *Exception.* Notwithstanding the provisions of paragraphs (a) and (b) of this section, the bonded premises may be used temporarily without filing Form 5110.41 or Form 5110.34, for the sole purpose of gauging bulk distilled spirits to effect their transfer from customs custody to ATF bond.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended, 1358, as amended (26 U.S.C. 5172, 5178))

§ 19.203 Alternation of distilled spirits plant and bonded wine cellar premises.

(a) *General.* A proprietor of a distilled spirits plant operating a contiguous bonded wine cellar desiring to alternate the use of each premises by extension and curtailment shall file necessary qualifying documents with the regional director (compliance).

(b) *Qualifying documents.* The proprietor shall file with the regional director (compliance):

(1) Form 5110.41 and Form 698 (5120.25) to cover the proposed alternation of premises;

(2) A special diagram, in duplicate, delineating the premises as they will exist, both during extension and curtailment and clearly depicting all buildings, floors, rooms, areas, equipment and spirits lines (identified individually by letter or number) which are to be subject to alternation, in their relative operating sequence; and

(3) Evidence of existing bond, consent of surety, or a new bond to cover the proposed alternation of premises.

(c) *Proprietor's responsibility.* After approval of qualifying documents for the alternation of premises, and after initial operations have been conducted thereunder, the proprietor shall execute Form 5110.34 each time the premises are alternated. Prior to the effective hour of the date shown on the Form 5110.34, the proprietor shall remove all spirits, denatured spirits, articles, and wines from the distilled spirits plant premises alternated to bonded wine cellar premises. Any wine on bonded wine cellar premises shall be removed prior to alternation to distilled spirits plant premises unless wine is being simultaneously transferred in bond to the distilled spirits plant.

(d) *Separation of premises.* Separation of distilled spirits plant premises from bonded wine cellar premises after alternation shall be in a manner which satisfies the regional director (compliance) that the revenue will not be jeopardized.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended, 1353, as amended (26 U.S.C. 5172, 5178))

§ 19.204 Alternation of distilled spirits plant and taxpaid wine bottling house premises.

(a) *General.* A proprietor of a distilled spirits plant operating a contiguous taxpaid wine bottling house desiring to alternate the use of each premises by extension and curtailment shall file necessary qualifying documents with the regional director (compliance).

(b) *Qualifying documents.* The proprietor shall file with the regional director (compliance):

(1) Form 5110.41 and Form 2975 (5140.2) to cover the proposed alternation of premises;

(2) A special diagram, in duplicate, delineating the premises as they will exist, both during extension and curtailment and clearly depicting all buildings, floors, rooms, areas, equipment and spirits lines (identified individually by letter or number) which are to be subject to alternation, in their relative operating sequence; and

(3) Evidence of existing bond, consent of surety, or a new bond to cover the proposed alternation of premises.

(c) *Proprietor's responsibility.* After approval of qualifying documents for the alternation of premises, and after initial operations have been conducted thereunder, the proprietor shall execute Form 5110.34 each time the premises are alternated. Prior to the effective hour of the date shown on the Form 5110.34, the proprietor shall remove all spirits, denatured spirits, articles, and wines from the distilled spirits plant premises alternated to taxpaid wine bottling house premises. Any wine on taxpaid wine bottling house premises shall be removed prior to alternation to distilled spirits plant premises.

(d) *Separation of premises.* Separation of distilled spirits plant premises from taxpaid wine bottling house premises after alternation shall be in a manner which satisfies the regional director (compliance) that the revenue will not be jeopardized.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended, 1353, as amended (26 U.S.C. 5172, 5178))

§ 19.205 Alternate curtailment and extension of bonded premises for use as general premises.

(a) *General.* The premises of a distilled spirits plant may, as provided in this section, be alternately curtailed and extended to permit the bonded premises of the distilled spirits plant to be used temporarily as general premises, or to permit the general premises of a distilled spirits plant to be used temporarily as bonded premises.

(b) *Qualifying documents.* When a portion of the distilled spirits plant premises is first to be curtailed or extended as provided in this section, the proprietor shall file with the regional director (compliance)—

(1) An application for registration, Form 5110.41, to cover alternate extension and curtailment of the premises, and

(2) A special diagram, in duplicate, delineating the premises as they will exist, both during extension and curtailment, and clearly depicting all buildings, floors, rooms, areas, equipment and spirits lines (identified individually by letter or number) which are to be subject to alternation, in their relative operating sequence.

(c) *Proprietor's responsibility.* Once such qualifying documents have been approved by the regional director (compliance), the designated premises and equipment may be alternately curtailed or extended pursuant to notice on Form 5110.34. Portions of the premises to be excluded by curtailment or included by extension shall not be used for purposes other than as set forth in the current notice. The proprietor shall remove all spirits, denatured spirits, articles, and wines from the premises or equipment affected by the notice prior to the effective date and hour of the notice, except that—

(1) Bonded spirits on portions of bonded premises that are to be curtailed to general premises need not be removed if the spirits are taxpaid concurrent with the filing of Form 5110.34 to effect curtailment; and

(2) Taxpaid spirits on portions of general premises to be curtailed to bonded premises need not be removed if the spirits are to be immediately dumped and returned to bond under the provisions of Subpart U of this part.

(d) *Separation of premises.* The portion of the premises which is to be curtailed or extended as provided in this section shall be separated from the remaining portion of the distilled spirits plant in a manner which satisfies the regional director (compliance) that the revenue will not be jeopardized.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended, 1353, as amended (26 U.S.C. 5172, 5178))

Permanent Discontinuance of Business

§ 19.211 Notice of permanent discontinuance.

When the proprietor permanently discontinues any or all of the operations listed in the notice of registration, he shall file a Form 5110.41 to show the discontinuance. Form 5110.41 shall be accompanied—

(a) By all permits issued to the proprietor under this subpart covering the discontinued operations, and by his request that such permits be canceled;

(b) By the proprietor's written statement disclosing, as applicable, whether

(1) All spirits, denatured spirits, articles, wines, liquor bottles, strip stamps, and other pertinent items have been lawfully disposed of,

(2) Any spirits, denatured spirits, wines, liquor bottles, or strip stamps are in transit to the premises,

(3) All approved applications for transfer of spirits and denatured spirits to the premises have been secured and returned to the regional director (compliance) for cancellation; and

(c) By pertinent reports covering the discontinued operations (each report shall be marked "Final Report").

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended, 1370, as amended (26 U.S.C. 5172, 5271))

Subpart H—Bonds and Consents of Surety

§ 19.231 Filing of operations or unit bonds.

Every person intending to establish a distilled spirits plant shall file an operations or unit bond as prescribed in this subpart, covering distilled spirits operations at such plant, with the regional director (compliance), at the time of filing the original application for registration of the plant, and at such other times as are required by this part. Such bond shall be conditioned that he shall faithfully comply with all provisions of law and regulations relating to activities covered by such bond, will pay all taxes imposed by 26 U.S.C. Chapter 51, and shall pay all penalties incurred or fines imposed for violation of any such provisions. The regional director (compliance) may require, in connection with any operations or unit bond, a statement, executed under the penalties of perjury, as to whether the principal or any person owning, controlling, or actively participating in the management of the business of the principal has been convicted of or has compromised any offense set forth in § 19.237(a)(1) or has been convicted of any offense set forth in § 19.237(a)(2). In the event the above statement contains an affirmative answer, the applcant shall submit a statement describing in detail the circumstances surrounding such conviction or compromise. No person shall comence of continue distilled spirits operations at such plant unless he has a valid operations or unit bond (and consent of surety, if necessary), as required in respect of such operations by this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1394, as amended (26 U.S.C. 5551); Sec. 805(c), Pub. L. 96–39, 93 Stat. 276 (26 U.S.C. 5173))

§ 19.232 Additional condition of operations bond.

In addition to the requirements of § 19.231, the operations bond shall be conditioned on payment of the tax now or hereafter in force, except as provided by law, including taxes on all unexplained shortages of bottled distilled spirits.

(Sec. 805(c), Pub. L. 96–39, 93 Stat. 276 (26 U.S.C. 5173))

§ 19.233 Corporate surety.

(a) Surety bonds required by this part may be given only with corporate sureties holding certificates of authority from, and subject to the limitations prescribed by, the Secretary as set forth in the current revision of Treasury Department Circular 570 (Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies).

(b) Treasury Department Circular No. 570 is published in the **Federal Register** yearly as of the first workday of July. As they occur, interim revisions of the circular are published in the **Federal Register**. Copies may be obtained from the Audit Staff, Bureau of Government Financial Operations, Department of the Treasury, Washington, DC 20226.

(Ch. 390, Pub. L. 80–280, 61 Stat. 648 as amended (6 U.S.C. 6, 7))

§ 19.234 Deposit of securities in lieu of corporate surety.

In lieu of corporate surety, the principal may pledge and deposit, as surety for his bond, securities which are transferable and are guaranteed as to both interest and principal by the United States, in accordance with the provisions of 31 CFR Part 225.

(Ch. 390, Pub. L. 80–280, 61 Stat. 650 (6 U.S.C. 15))

§ 19.235 Consents of surety.

Consents of surety to changes in the terms of bonds shall be executed on Form 1533 by the principal and by the surety with the same formality and proof of authority as is required for the execution of bonds.

(Sec. 805(c), Pub. L. 96–39, 93 Stat. 276 (26 U.S.C. 5173))

§ 19.236 Filing and execution of powers of attorney.

(a) *Filing.* Each bond, and each consent to changes in the terms of a

bond, shall be accompanied by a power of attorney authorizing the agent or officer who executed the bond or consent to so act on behalf of the surety. The regional director (compliance) who is authorized to approve the bond may require additional evidence of the authority of the agent or officer to execute the bond or consent.

(b) *Execution.* The power of attorney shall be prepared on a form provided by the surety company and executed under the corporate seal of the company. If the power of attorney submitted is other than a manually signed original, it shall be accompanied by certification of its validity.

(Ch. 390, Pub. L. 80–280, 61 Stat. 648 (6 U.S.C. 6, 7))

§ 19.237 Disapproval of bonds or consents of surety.

(a) *Disapproval.* The regional director (compliance) may disapprove any bond or consent of surety submitted in respect to the operations of a distiller, warehouseman, or processor, if the principal or any person owning, controlling, or actively participating in the management of the business of the principal shall have been previously convicted, in a court of competent jurisdiction of—

(1) Any fraudulent noncompliance with any provision of any law of the United States, if such provision related to internal revenue or customs taxation of spirits, wines, or beer, or if such an offense shall have been compromised with the person on payment of penalties or otherwise, or

(2) Any felony under a law of any State or the District of Columbia, or the United States, prohibiting the manufacture, sale, importation, or transportation of spirits, wine, beer, or other intoxicating liquor.

(b) *Appeal.* Where a bond or consent of surety is disapproved by the regional director (compliance), the person giving the bond may appeal to the Director, who will hear such appeal. The decision of the Director shall be final.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1394, as amended (26 U.S.C. 5551))

§ 19.241 Operations bond—distilled spirits plant and adjacent bonded wine cellar.

(a) *General.* A wine cellar under the provisions of 27 CFR Part 240 shall be treated as being adjacent to a distilled spirits plant if—

(1) Such distilled spirits plant is qualified under Subpart G for the production of distilled spirits; and

(2) Such wine cellar and distilled spirits plant are operated by the same person (or in the case of a corporation, by such corporation and its controlled subsidiaries). For the purpose of this section a controlled subsidiary is a corporation where more than 50 percent of the voting power is controlled by the parent corporation.

(b) *Bond in lieu of wine cellar bond.* In the case of an adjacent bonded wine cellar, a bond furnished under this subpart which covers operations at such bonded wine cellar shall be in lieu of any bond which would otherwise be required under 26 U.S.C. 5354 with respect to such wine cellar (other than supplemental bonds required under the second sentence of 26 U.S.C. 5354) and the operations bond listed in § 19.245(a)(1).

(c) *Liability.* Bonds given under this section shall contain the terms and conditions of the bonds in lieu of which they are given. The total amount of such operations bond shall be available for the satisfaction of any liability incurred under the terms or conditions of such bond.

(Sec. 805(c), Pub. L. 96–39, 93 Stat. 276 (26 U.S.C. 5173))

§ 19.242 Area operations bond.

Any person (or, in the case of a corporation, a corporation and its controlled subsidiaries) operating more than one plant in a region may give an area operations bond covering the operation of any two or more of such plants, and any bonded wine cellars which are adjacent to such plants and which otherwise could be covered by an operations bond. For the purpose of this section, a controlled subsidiary is a corporation where more than 50 percent of the voting power is controlled by the parent corporation. Bonds given under this section shall be in lieu of the bonds which would be required under § 19.245(a) and shall contain the terms and conditions of such bonds. If the area operations bond covers the operations of more than one corporation, each corporation shall be shown as principal, and the bond shall be signed for each corporation. The total amount of the area operations bond shall be available for the satisfaction of any liability incurred under the terms or conditions of such bond.

(Sec. 805(c), Pub. L. 96–39, 93 Stat. 276 (26 U.S.C. 5173))

§ 19.243 Withdrawal bond.

Any person (or, in the case of a corporation, a corporation and its controlled subsidiaries) operating one or more distilled spirits plants within a region and who intends to withdraw spirits from bond on determination, but before payment, of the tax shall, before making any such withdrawal, furnish a withdrawal bond to secure payment of the tax on all spirits so withdrawn. Such bond shall be in addition to the operations bond, and if the distilled spirits are withdrawn under the withdrawal bond, the operations bond shall no longer cover liability for payment of the tax on the spirits withdrawn. For the purpose of this section, a controlled subsidiary is a corporation where more than 50 percent of the voting power is controlled by the parent corporation. The bond, if it covers more than one plant, shall show as to each plant covered by the bond the part of the total sum which represents the penal sum (computed in accordance with § 19.245) for each such plant. If the penal sum of the bond covering a plant, or the penal sum allocated to any plant (where the bond covers more than one plant), is in an amount less than the maximum prescribed in § 19.245, withdrawals from such plant shall not exceed the quantity permissible, as reflected by the penal sum in the bond for such plant. Such withdrawal bond shall be conditioned that the total amount of the bond shall be available for satisfaction of any liability incurred under the terms and conditions of such bond.

(Sec. 805(c), Pub. L. 96–39, 93 Stat. 276 (26 U.S.C. 5173))

§ 19.244 Unit bond.

Any person (or, in the case of a corporation, a corporation and its controlled subsidiaries) who would otherwise be required to give bonds for both operations at one or more distilled spirits plants (and any adjacent bonded wine cellars) and withdrawals from one or more distilled spirits plants within a reigon may, in lieu of furnishing separate bonds for operations and withdrawals, furnish a unit bond containing the terms and conditions of the bonds in lieu of which it is given. For the purpose of this section, a controlled subsidiary is a corporation where more than 50 percent of the voting power is controlled by the parent corporation. The unit bond shall show as to each plant covered by the bond the part of the total sum which represents the penal sum (computed in accordance with § 19.245) for operations at and withdrawals from each plant. If the penal sum of the bond covering a plant, or the penal sum allocated to any plant (if the bond covers more than one plant), is in an amount less than the maximum prescribed in § 19.245, operations at and/or withdrawals from such plant shall not exceed the quantity permissible as reflected by the penal sum in the bond for such plant. The unit bond shall be conditioned that the total

amount of the bond shall be available for satisfaction of any liability incurred under the terms and conditions of such bond.

(Sec. 805(c), Pub. L. 96–39, 93 Stat. 276 (26 U.S.C. 5173))

§ 19.245 Bonds and penal sums of bonds.

The bonds, and the penal sums thereof, required by this subpart, are as follows:

PENAL SUM

Type of bond	Basis	Minimum	Maximum
(a) Operations bond:			
(1) One plant bond—			
(i) Distiller	The amount of tax on spirits produced during a period of 15 days	$5,000	$100,000
(ii) Warehouseman:			
(A) General	The amount of tax on spirits and wines deposited in, stored on, and in transit to bonded premises	5,000	200,000
(B) Limited to storage of spirits in packages to a total of not over 500,000 proof gallons	do	5,000	50,000
(iii) Distiller and warehouseman	The amount of tax on spirits produced during a period of 15 days, and the amount of tax on spirits and wines deposited, in stored on, and in transit to bonded premises	10,000	200,000
(iv) Distiller and processor	The amount of tax on spirits produced during a period of 15 days, and the amount of tax on spirits, denatured spirits, articles, and wines deposited in, stored on, and in transit to bonded premises	10,000	200,000
(v) Warehouseman and processor			
(A) General	The amount of tax on spirits, denatured spirits, articles and wines deposited in, stored on, and in transit to bonded premises	10,000	250,000
(B) Limited to storage of spirits or denatured spirits in packages to a total of not over 50,000 proof gallons, and processing of spirits or denatured spirits so stored	do	10,000	50,000
(vi) Distiller, warehouseman, and processor	The amount of tax on spirits produced during a period of 15 days and the amount of tax on spirits, denatured spirits, articles, and wines deposited in, stored on, and in transit to bonded premises	15,000	250,000
(2) Adjacent bonded wine cellars—			
(i) Distiller and bonded wine cellar	The sum of the amount of tax calculated in (a)(1)(i) and with respect to bonded wine cellar operations, the amount of tax on wines and wine spirits possessed and in transit	6,000	150,000
(ii) Distiller, warehouseman and bonded wine cellar	The sum of the amount of tax calculated in (a)(1)(ii) and with respect to bonded wine cellar operations, the amount of tax on wines and wine spirits possessed and in transit	11,000	250,000
(iii) Distiller, processor and bonded wine cellar	The sum of the amount of tax calculated in (a)(1)(iv) and with respect to bonded wine cellar operations, the amount of tax on wines and wine spirits possessed and in transit	11,000	250,000
(iv) Distiller, warehouseman, processor and bonded wine cellar	The sum of the amount of tax calculated in (a)(1)(vi) and with respect to bonded wine cellar operations, the amount of tax on wines and wine spirits possessed and in transit	16,000	300,000
(b) Area operations bond:	The penal sum shall be calculated in accordance with the following table		
Total penal sums as determined under (a)	Requirements for penal sum of area operations bond		
Not over $300,000	100 percent		
Over $300,000 but not over $600,000	$300,000 plus 70 percent of excess over $300,000		
Over $600,000 but not over $1,000,000	$510,000 plus 50 percent of excess over $600,000		
Over $1,000,000 but not over $2,000,000	$710,000 plus 35 percent of excess over $1,000,000		
Over $2,000,000	$1,060,000 plus 25 percent of excess over $2,000,000		
(c) Withdrawal bond:			
(1) One plant qualified for distilled spirits operations	The amount of tax which, at any one time, is chargeable against such bond but has not been paid	1,000	1,000,000
(2) Two or more plants in a region qualified for distilled spirits operations.	Sum of the penal sums for each plant calculated in (c)(1) of this section	(1)	(2)
(d) Unit bond:			
(1) Both operations at a distilled spirits plant (and any adjacent bonded wine cellar) and withdrawals from the bonded premises of the same distilled spirits plant	Total penal sums of (a) and (c)(1) of this section	6,000	1,300,000
(2) Both operations at two or more distilled spirits plants (and any adjacent bonded wine cellar) within the same region and withdrawals from the bonded premises of the same distilled spirits plants.	Total penal sums of (b) and (c)(2) of this section in lieu of which given	(3)	(4)

[1] Sum of the minimum penal sums required for each plant covered by the bond.
[2] Sum of the maximum penal sums required for each plant covered by the bond. (The maximum penal sum for one plant is $1,000,000.)
[3] Sum of the minimum penal sums for operations and withdrawal bonds required for each plant covered by the bond.
[4] Sum of the maximum penal sums for area operations bonds and withdrawal bonds required for the plants covered by the unit bond.

(Sec. 805(c), Pub. L. 96–39, 93 Stat. 276 (26 U.S.C. 5173))

§ 19.246 Strengthening bonds.

In all cases when the penal sum of any bond becomes insufficient, the principal shall either give a strengthening bond with the same surety to attain a sufficient penal sum, or give a new bond to cover the entire liability. Strengthening bonds will not be approved where any notation is made thereon which is intended, or which may be construed, as a release of any former bond, or as limiting the amount of any bond to less than its full penal sum. Strengthening bonds shall show the current date of execution and the effective date.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1394, as amended (26 U.S.C. 5551); Sec. 805(c), Pub. L. 96–39, 93 Stat. 276 (26 U.S.C. 5173))

New or Superseding Bonds

§ 19.247 General.

New bonds shall be required in case of insolvency or removal of any surety, and may, at the discretion of the regional director (compliance), be required in any other contingency affecting the validity or impairing the efficiency of such bond. Executors, administrators, assignees, receivers, trustees, or other persons acting in a fiduciary capacity, continuing or

liquidating the business of the principal, shall execute and file a new bond or obtain the consent of the surety or sureties on the existing bond or bonds. When, under the provisions of § 19.250, the surety on any bond given under this subpart has filed an application to be relieved of liability under said bond and the principal desires or intends to continue the business of operations to which such bond relates, he shall file a valid superseding bond to be effective on or before the date specified in the surety's notice. New or superseding bonds shall show the current date of execution and the effective date.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1353, as amended, 1394, as amended (26 U.S.C. 5175, 5176, 5551); Sec. 805(c), Pub. L. 96–39, 93 Stat. 276 (26 U.S.C. 5173))

§ 19.248 New or superseding bond.

(a) *Operations bond.* When a new or superseding operations bond is not given as required in § 19.247, the principal shall immediately discontinue the business or distilled spirits operations to which such bond relates.

(b) *Withdrawal bond.* When a new or superseding withdrawal bond is not given as required by § 19.247, the principal may not withdraw any distilled spirits from bonded premises (other than distilled spirits withdrawn under 26 U.S.C. 5214 or 7510) except on prior payment of tax.

(c) *Unit bond.* When a new or superseding unit bond is not given as required by § 19.247, the principal shall immediately discontinue the business or distilled spirits operations to which such bond relates and may not withdraw any distilled spirits from bonded premises (other than distilled spirits withdrawn under 26 U.S.C. 5214 or 7510) except on prior payment of tax.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1353, as amended (26 U.S.C. 5175, 5176); Sec. 805(c), Pub. L. 96–39, 93 Stat. 276 (26 U.S.C. 5173))

Termination of Bonds

§ 19.249 Termination of bonds.

Operations, withdrawal, or unit bonds may be terminated as to liability for future withdrawals and/or to future production or deposits.

(a) Pursuant to application of the surety as provided in § 19.250.

(b) On approval of a superseding bond.

(c) On notification by the principal that he has discontinued withdrawals under the bond if such bond was filed solely as a withdrawal bond, or

(d) On notification by the principal that he has discontinued business.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1353, as amended (26 U.S.C. 5175, 5176); Sec. 805(c), Pub. L. 96–39, 93 Stat. 276 (26 U.S.C. 5173))

§ 19.250 Application of surety for relief from bond.

A surety on any operations, withdrawal, or unit bond may at any time in writing notify the principal and the regional director (compliance) in whose office the bond is on file that he desires, after a date named, to be relieved of liability under said bond. Such date shall be not less than 10 days after the date the notice is received by the regional director (compliance) in the case of a withdrawal bond, and not less than 90 days after the date the notice is received in the case of an operations or unit bond. The surety shall also file with the regional director (compliance) an acknowledgment or other proof of service on the principal. If such notice is not thereafter in writing withdrawn, the rights of the principal as supported by said bond shall be terminated on the date named in the notice, and the surety shall be relieved from liability to the extent set forth in § 19.251.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1353, as amended (26 U.S.C. 5175, 5176); Sec. 805(c), Pub. L. 96–39, 93 Stat. 276 (26 U.S.C. 5173))

§ 19.251 Relief of surety from bond.

(a) *General.* The surety on an operations, withdrawal, or unit bond who has filed application for relief from liability as provided in § 19.250 shall be relieved from liability under such bond as set forth in this section.

(b) *Operations or unit bonds.* Where a new or superseding bond is filed, the surety shall be relieved of future liability with respect to production and deposits wholly subsequent to the effective date of the new or superseding bond. Notwithstanding such relief, the surety shall remain liable for the tax on all distilled spirits or wines produced, or for other liabilities incurred, during the term of the bond. Where a new or superseding bond is not filed the surety shall, in addition to the continuing liabilities above specified, remain liable under the bond for all spirits or wines on hand or in transit to the bonded premises or bonded wine cellar, as the case may be, on the date named in the notice until all such spirits or wines have been lawfully disposed of, or a new bond has been filed by the principal covering the same.

(c) *Withdrawal or unit bonds.* The surety shall be relieved from liability for withdrawals made wholly subsequent to the date specified in the notice, or the effective date of a new bond, if one is given.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1353, as amended (26 U.S.C. 5176,); Sec. 805(c), Pub. L. 96–39, 93 Stat. 276 (26 U.S.C. 5173))

§ 19.252 Release of pledged securities.

Securities of the United States pledged and deposited as provided in § 19.234 shall be released only in accordance with the provisions of 31 CFR Part 225. Such securities will not be released by the regional director (compliance) until liability under the bond for which they were pledged has been terminated. When the regional director (compliance) is satisfied that they may be released, he shall fix the date or dates on which a part or all of such securities may be released. At any time prior to the release of such securities, the regional director (compliance) may extend the date of release for such additional length of time as he deems necessary.

(Ch. 290, Pub. L. 80–280, 61 Stat. 650 (6 U.S.C. 15))

Subpart I—Construction, Equipment and Security

§ 19.271 Construction of buildings

Buildings in which spirits, denatured spirits, articles, or wines are produced, stored, or processed shall be constructed with substantial material (e.g., masonry, concrete, wood, metal, etc.), and arranged, equipped, and protected to provide adequate security to the revenue.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1353, as amended) (26 U.S.C. 5178))

§ 19.272 Equipment.

The proprietor shall provide equipment suitable for the operations conducted on the distilled spirits plant. The equipment shall also meet the needs for revenue protection.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1353, as amended) (26 U.S.C. 5178))

§ 19.273 Tanks.

(a) *General.* (1) Tanks used as receptacles for spirits, denatured spirits, or wines shall be located, constructed, and equipped to be suitable for the intended purpose and to allow ready examination.

(2) An accurate means of measuring the contents of each tank shall be provided by the proprietor.

(3) When a means of mearuring is not a permanent fixture of the tank, the tank shall be equipped with a fixed device to allow the approximate contents to be determined readily.

(4) Tanks used for determining the tax imposed by 26 U.S.C. 5001 shall be mounted on scales and an additional

suitable device shall be provided so that the volume of the contents can be quickly and accurately determined.

(5) The proprietor shall install walkways, landings and stairways which will permit safe access to all parts of a tank.

(6) Tanks in which gauges required by this part are to be made shall not be used until they are accurately calibrated and a statement of certification of accurate calibration is included in the notice of registration.

(7) If tanks or their fixed gauging devices are moved in location or position subsequent to original calibration, the tanks shall not be used until recalibrated.

(8) All tanks shall be equipped or situated so that they may be locked or otherwise secured.

(9) Any tank vents, flame arresters, foam devices, or other safety devices shall be constructed to prevent extraction of spirits or wines.

(b) *Scale tanks.*

(1) Beams or dials of scale tanks used for determining the tax imposed by 26 U.S.C. 5001 shall have minimum graduations not greater than the following:

Quantity to be weighed	Minimum graduation
Not exceeding 2,000 pounds	½ pound.
Between 2,000 and 6,000 pounds	1 pound.
Between 6,000 and 20,000 pounds	2 pounds.
Between 20,000 and 50,000 pounds	5 pounds.
Over 50,000 pounds	10 pounds.

(2) For scales having a capacity greater than 2,000 pounds, the minimum quantity which may be entered onto the weighing tank scale for gauging for tax determination shall be the greater of

(i) 1,000 times the minimum graduation of the scale or

(ii) 5 percent of the total capacity of the weighing tank scale.

(3) The weighing of lesser quantities for determination of tax may be authorized by the regional director (compliance) where the beam of the scale is calibrated in ½ pound or 1 pound graduations and it is found by actual test that the scales break accurately at each graduation.

(4) Lots of spirits weighing 1,000 pounds or less shall be weighed on scales having ½ pound graduations.

(c) *Testing of scale tanks.*

(1) Proprietors shall ensure the accuracy of scales used for weighing lots of spirits or denatured spirits through tests conducted at intervals of not more than 6 months, and whenever scales are adjusted or repaired.

(2) Proprietors shall also test, at least once a month, the gallonage represented to be in a scale tank against the gallonage indicated by volumetric determination of the contents of the tank. However, if the scale is not used during a month the volumetric determination need only be verified at the next time actually used.

(3) The volumetric determination shall be made in accordance with 27 CFR Part 30, and if the variation exceeds 0.5 percent of the quantities shown to be in the tank, the proprietor shall take appropriate steps to have the accuracy of the scale verified.

(4) When an ATF officer determines that a tank scale may be inaccurate, the proprietor shall have the accuracy of the scale tested.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1320, as amended, 1358, as amended, 1391, as amended (26 U.S.C. 5006, 5204, 5505))

§ 19.274 Pipelines.

(a) *General.*

(1) Pipelines for the conveyance of spirits, denatured spirits, articles, or wines shall be of permanent character and constructed, connected, arranged, and secured so as to afford adequate protection to the revenue and to permit ready examination. However, the regional director (compliance) may approve pipelines which may not be readily examined if no jeopardy to the revenue is created.

(2) Where a pipeline connection must be flexible, a hose may be used if connected and secured so as to protect the revenue.

(b) *Identification.* The regional director (compliance) may require permanent pipelines for conveyance of spirits or denatured spirits to be color coded to provide identification.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1353, as amended (26 U.S.C. 5178))

§ 19.275 Continuous distilling system.

The distilling system shall be continuous, and designed, constructed, and connected in such a manner as to prevent the unauthorized removal of distilled spirits.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1353, as amended (26 U.S.C. 5178))

§ 19.276 Package scales.

Proprietors shall ensure the accuracy of scales used for weighing packages of spirits through tests conducted at intervals of not more than 6 months or whenever scales are adjusted or repaired. However, if the scales are not used during such period, the scales need only be tested prior to use. Scales used to weigh packages designed to hold 10 wine gallons or less shall indicate weight in ounces or in hundredths of a pound.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5204))

§ 19.277 Measuring devices and proofing instruments.

(a) *General.* Proprietors shall provide for their own use accurate hydrometers, thermometers, and other necessary equipment to determine proof or volume.

(b) *Instruments.* Hydrometers and thermometers used by proprietors to gauge spirits shall show subdivisions or graduations of proof and temperature which are at least as delimitated as those prescribed in 27 CFR Part 30. Proprietors shall make frequent tests of their hydrometers and thermometers, and, if they appear to be in error in excess of one subdivision, the instruments shall not be used until they are further tested and certified as accurate by the manufacturer or another qualified person.

(c) *Meters.* The regional director (compliance) may approve applications to measure spirits by meter for purposes other than tax determination. Applications shall include sufficient technical data, such as the make, model and accuracy tolerance, to enable the regional director (compliance) to evaluate the suitability of the meter for its intended use. Corrections for temperature of the spirits being measured shall be made in conjunction with the volumetric measurement of spirits by meter. If a meter does not have a temperature compensating feature, temperature correction shall be ascertained and made from a representative sample taken from the spirits being measured.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5204))

§ 19.278 Identification of structures, areas, apparatus, and equipment.

(a) Each room or enclosed area where spirits, denatured spirits, articles, wine, distilling or fermenting materials, or containers are held, and each building, within the plant, shall be appropriately marked with a distinguishing number or letter.

(b) Each tank or receptacle for spirits, denatured spirits, or wine shall be marked to show a unique serial number and capacity.

(c) Each still, fermenter, cooker, and yeast tank shall be numbered and marked to show its use.

(d) All other major equipment used for processing or containing spirits, denatured spirits, or wine, or distilling or fermenting material, and all other tanks, shall be identified as to use unless the intended purpose is readily apparent.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1353, as amended (26 U.S.C. 5178))

§ 19.279 Office facilities.

(a) If the regional director (compliance) assigns on a continuing basis an ATF officer to a plant to supervise operations, the proprietor shall provide an office at the distilled spirits plant for the exclusive use of ATF officers in performing their duties. The office shall be provided with adequate office furniture, lighting, ventilation, heating, and toilet and lavatory facilities. A secure cabinet, fitted for locking with a Government lock and of adequate size, shall also be provided by the proprietor. The office, facilities, and equipment provided by the proprietor shall be subject to the approval of the regional director (compliance). Where suitable facilities are otherwise available, the regional director (compliance) may waive the requirements for a separate Government office.

(b) If an ATF officer is not assigned to a plant on a continuing basis, the regional director (compliance) may require the proprietor to provide for Government use a cabinet as specified in paragraph (a) of this section.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1353, as amended (26 U.S.C. 5178))

§ 19.280 Signs.

The proprietor shall place and keep conspicuously on the outside of his place of business a sign showing the name of the proprietor and denoting the business, or businesses, in which engaged.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1355, as amended (26 U.S.C. 5180))

§ 19.281 Security.

(a) *General.* The proprietor shall provide adequate security measures at the distilled spirits plant to protect the revenue.

(b) *Buildings.* The buildings, rooms, and partitions shall be constructed of substantial materials. Doors, windows, or any other openings to the building shall be secured or fastened during times when distilled spirits plant operations are not being conducted.

(c) *Outdoor tanks.* Outdoor tanks containing spirits, denatured spirits, or wine shall be individually locked or locked within an enclosure when they are not in use.

(d) *Indoor tanks.* Indoor tanks containing spirits, denatured spirits, or wines or the rooms or buildings in which they are housed, shall be equipped so that they may be secured.

(c) *Approved locks.* (1) Approved locks shall be used to secure:

(i) outdoor tanks containing spirits in the storage account or on an enclosure around such tanks;

(ii) indoor tanks containing spirits in the storage account or on the door from which access may be gained from the outside to the rooms or buildings in which such tanks are housed; and

(iii) any doors from which access may be gained from the outside to rooms or buildings containing spirits in portable bulk containers in the storage account.

(2) Approved locks shall meet the following minimum specifications:

(i) corresponding serial number on the lock and on the key, except for master key locking systems;

(ii) case hardened shackle at least one-fourth inch in diameter, with heel and toe locking;

(iii) Body width of at least 2";

(iv) captured key feature (key may not be removed while shackle is unlocked);

(v) tumbler with at least 5 pins; and

(vi) lock or key contains no bitting data.

Master key locking systems may be used at the option of the proprietor. Locks meeting the specifications in this section are approved locks for the purpose of 26 U.S.C. 5682. Proprietors who wish to use locks of unusual design, which do not meet the specifications in this part, shall submit an example or prototype of the lock to the Director, through the regional director (compliance), with a request that the lock be approved for use. The Director may require submission of the lock for testing prior to approval.

(f) *Additional security.* Where the regional director (compliance) finds the construction, arrangement, equipment, or protection inadequate, additional security shall be provided (i.e., fences, flood lights, alarm systems, guard services) or changes in construction, arrangement, or equipment shall be made to be extent necessary to protect the revenue.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1353, as amended, 1410, as amended (26 U.S.C. 5178, 5682); Sec. 806. Pub. L. 96–39, 93 Stat. 279 (26 U.S.C. 5202))

§ 19.282 Breaking Government locks.

Where affixed, Government locks shall not be removed without the authorization of the area supervisor or an ATF officer, except where a person or property is in imminent danger from a disaster or other emergency. When a disaster or other emergency occurs, and it is impractical to first obtain authorizaion from an ATF officer, Government locks may be removed, by the proprietor, or by police or firefighters. When such action is taken, the proprietor shall see that security measures are taken to prevent illegal removal of spirits and, as soon as practical, shall notify the area supervisor of the action taken and submit within 5 days a written report, executed under the penalties of perjury, describing the emergency and the action.

(Sec. 806. Pub. L. 96–39, 93 Stat. 279 (26 U.S.C. 5202))

Subpart J—Production

§ 19.311 Notice by proprietor.

(a) *Commencement of operations.* The proprietor shall, before commencing production operations or resuming production operations after having given notice of suspension, file a notice on Form 5110.34 with the area supervisor, specifying the date on which he desires to commence or resume operations for the production of spirits. The notice shall be filed in accordance with the instructions on the form. The proprietor shall not commence or resume operations prior to the time specified in the notice.

(b) *Suspension of operations.* Any proprietor desiring to suspend production operations for a period of 90 days or more shall file notice on Form 5110.34 with the area supervisor specifying the date on which he will suspend operations. The notice shall be filed in accordance with instructions on the form. In case of an accident which makes it apparent that operations cannot be conducted for 90 days or more, the proprietor shall give immediate notice of suspension on Form 5110.34.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1364, as amended (26 U.S.C. 5221))

§ 19.312 Receipt of materials.

The quantities of fermenting and distilling materials (including nonpotable chemical mixtures containing spirits produced in accordance with § 19.67), and of spirits, denatured spirits, articles, and spirits residues, for redistillation, received on bonded premises shall be determined by the proprietor, and reported as provided in Subpart W of this part. Fermented material (except apple cider exempt from tax under 26 U.S.C. 5042(a)(1)) to be used in the production of spirits shall be produced on the bonded premises where used or must be received on the premises from (a) a bonded wine cellar, in the case of wine, or (b) a contiguous brewery where produced, in the case of beer.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended, 1365, as amended (26 U.S.C. 5201, 5222, 5223))

§ 19.313 Use of materials in production of spirits.

The proprietor may produce spirits from any suitable material in accordance with statements of production procedure in his notice of registration. The distillation of nonpotable chemical mixtures received pursuant to application as provided in § 19.67 shall be deemed to be the original and continuous distillation of the spirits in such mixtures and to constitute the production of spirits. Materials from which alcohol will not be produced may be used in production only if the use of the materials is described in approved statements of production procedure.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended, 1353, as amended (26 U.S.C. 5172, 5178))

§ 19.314 Removal of fermenting material.

Material received for use as fermenting material may be removed from or used on bonded premises for other purposes. A record of use or removal shall be kept as provided in Subpart W of this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.315 Removal or destruction of distilling material.

Except as provided in this section, distilling material shall not be removed from bonded premises before being distilled. The proprietor may remove mash, wort, wash or other distilling material—(a) to plant premises, other than bonded premises for use in such businesses as may be authorized under § 19.72; (b) to other premises for use in processes not involving the production of (1) spirits, (2) alcoholic beverages, or (3) vinegar by the vaporizing process; or (c) for destruction. The residue of distilling material not introduced into the production system may be removed from the premises if the liquid is expressed from the material before removal and such liquid is not received at any distilled spirits plant or bonded wine cellar. Residue of beer used as distilling material may be returned to the producing brewery. Distilling material produced and wine and beer received for use as distilling material may be destroyed. A record of removal or destruction shall be kept as provided in Subpart W of this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1365, as amended, 1381, as amended (26 U.S.C. 5222, 5370))

§ 19.316 Distillation.

The distillation of spirits shall be such that the spirits pass through a continuous system from the first still or other production equipment where access to the system would constitute a jeopardy to the revenue until the production of the spirits is completed. The distiller may, in the course of production, convey the product through as many distilling or other production operations as desired, provided the operations are continuous. Distilling operations are continuous when the spirits are conveyed through the various steps of production as expeditiously as plant operation will permit. The collection of unfinished spirits for the purpose of redistillation is not deemed to be a break in the continuity of the distilling procedure. However, the quantity and proof of any unfinished spirits produced from distilling materials, the quantity of which was ascertained in the manner authorized in § 19.732(c) for such materials, shall be determined and recorded before any mingling with other materials or before any further operations involving the unfinished spirits outside the continuous system. Spirits may be held, prior to the production gauge, only for so long as is reasonably necessary to complete the production procedure.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1353, as amended, 1362, as amended, 1365, as amended (26 U.S.C. 5178, 5211, 5222))

§ 19.317 Treatment during production.

Spirits may, in the course of original and continuous distillation, be purified or refined through, or by use of, any material which will not remain incorporated in the finished product. Juniper berries and other natural aromatics, or the extracted oils of such, may be used in the distillation of gin. Spirits may be percolated through or treated with oak chips which have not been treated with any chemical. Materials used in treatment of spirits, and which do not remain in the spirits, shall be destroyed or so treated as to preclude the extraction of potable spirits therefrom.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.318 Addition of caramel to rum or brandy and addition of oak chips to spirits.

Caramel possessing no material sweetening properties may be added to rum or brandy on bonded premises prior to production gauge. Oak chips which have not been treated with any chemical may be added to packages prior to or after production gauge; however, notation to that effect shall be made on the record of production gauge as provided in § 19.319.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.319 Production gauge.

(a) *General.* All spirits shall be gauged by determining quantity and proof within a reasonable time after production is completed. Except as otherwise specifically provided in this section, quantities may be determined by volume or by weight, by approved meter, or, when approved by the Director, by other devices or methods which accurately determine the quantities. If caramel is added to brandy or rum, the proof of the spirits shall be determined after the addition. Spirits in each receiving tank shall be gauged before reduction in proof and both before and after each removal of spirits therefrom. The gauges shall be recorded by the proprietor in the records required by § 19.736.

(b) *Tax to be determined on production gauge.* Tax may be determined on the basis of the production gauge if:

(1) Spirits are weighed into bulk conveyances;

(2) Spirits are uniformly filled by weight into metal packages; or

(3) Spirits are filled by weight into packages for immediate withdrawal from bonded premises and the details of the gauge for each package are recorded on a package gauge record according to § 19.769.

Transaction records shall be marked "Withdrawal on Production Gauge."

(c) *Tax not to be determined on production gauge.* If spirits are drawn from the production system into barrels, drums, or similar portable containers of the same rated capacity and the containers are filled to capacity, and the tax is not to be determined on the basis of the production gauge, the gauge may be made by:

(1) Weighing in a tank, converting the weight into proof gallons, and determining the average content of each container; or

(2) Measuring volumetrically, in a calibrated tank, converting the wine gallons determined into proof gallons, and determining therefrom the average content of each container; or

(3) Converting the rated capacity into proof gallons to determine the average content of each container; or

(4) Determining by a device or method approved under the provisions of paragraph (a) of this section, the total quantity filled into containers, and determining therefrom the average content of each container. Rated capacity of new cooperage shall be as prescribed by specifications of the manufacturer, or in the case of used

cooperage, as determined by the proprietor.

(d) *Records of production gauge.* In computing the production gauge on the basis of average content of packages as provided in paragraph (c) of this section, fractional proof gallons shall be rounded to the nearest one-tenth and the average content so determined and the number of packages filled shall be used in computing the quantity produced. A separate gauge record, as prescribed in § 19.768, shall be prepared for each lot of packages filled (see § 19.593(b)) and for each removal by pipeline or bulk conveyance for deposit in bond on the same plant premises. The gauge record shall indicate "Deposit in storage" or "Deposit in processing." If spirits are to be transferred in bond, or withdrawn from bond, as authorized by this part, the production gauge shall be made on the form or record required by this part for the transaction (accompanied by a package gauge record, if required). Each transaction form or record and each package gauge record, if any, shall show:

(1) The real name (or basic operating name as provided in § 19.280) of the producer, and, if the spirits are produced under a trade name, the trade name under which produced.

(2) For each remnant container, the actual proof gallons in the container.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended, 1362, as amended (26 U.S.C. 5204, 5211))

§ 19.320 Identification of spirits.

At the time of production gauge, containers of spirits shall be identified by the proprietor in accordance with Subpart R of this part. When the proprietor desires to enter spirits into bonded storage for subsequent packaging in wooden packages, he may identify such spirits with the specific designation to which they would be entitled if drawn into wooden packages, followed by the word "Designate," for example, "Bourbon Whisky Designate."

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended, 1360, as amended (26 U.S.C. 5201, 5206))

§ 19.321 Entry.

Pursuant to the production gauge, the proprietor shall make appropriate entry for (a) deposit of the spirits on bonded premises for storage or processing, (b) withdrawal of the spirits on determination of tax, (c) withdrawal of the spirits free of tax, (d) withdrawal of the spirits without payment of tax, or (e) transfer of the spirits for redistillation. Entry for deposit on the bonded premises of the same plant premises shall be made on a gauge record, prepared according to § 19.768. When spirits are entered for deposit on another plant premises or are entered for withdrawal or redistillation, the applicable provisions of Subpart K or Subpart P of this part shall be followed.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1362, as amended (26 U.S.C. 5211))

§ 19.322 Distillates containing extraneous substances.

(a) *Use in production.* Distillates containing substantial quantities of fusel oil, aldehydes, or other extraneous substances may be removed from the distilling system prior to the production gauge for addition to fermenting or distilling material at the distillery where produced. Distillates removed from the distilling system under the provisions of this paragraph shall be added promptly to the fermenting or distilling material.

(b) *Use at bonded wine cellar.* Distillates containing aldehydes may be removed, without payment of tax, to an adjacent bonded wine cellar for use therein for fermentation of wine to be used as distilling material at the distilled spirits plant from which the distillates were removed. The gauge and removal of distillates to an adajcent bonded wine cellar shall be in accordance with applicable provisions of Subpart P of this part relating to withdrawal of wine spirits for use in wine production and the receipt and use of such distillates at an adjacent bonded wine cellar shall be in accordance with the provisions of 27 CFR Part 240.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended, 1365, as amended, 1382, as amended (26 U.S.C. 5201, 5222, 5373))

Formula

§ 19.324 Statement of production procedure or Form 5110.38.

(a) A statement of production procedure is required as provided in § 19.170 for the production of spirits from original sources or substances.

(b) As provided in 27 CFR 5.27, an approved formula on Form 5110.38 is required for the redistillation of spirits in the production account.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended, 1365, as amended, 1395, as amended (26 U.S.C. 5201, 5222, 5223, 5555))

Chemical By-Products

§ 19.326 Spirits content of chemicals produced.

All chemicals produced, including chemical by-products of the spirits production system, shall be substantially free of spirits before being removed from bonded premises. Except as authorized by the Director, the spirits content of such chemicals to be removed from bonded premises shall not exceed 10 percent by volume. Proprietors shall test chemicals for spirits content. Records of the tests will be maintained according to § 19.736.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.327 Disposition of chemicals.

Chemicals meeting the requirements in § 19.326 may be removed from bonded premises by pipeline or in such containers as the proprietor may desire. The quantities of such chemicals removed from bonded premises shall be determined by the proprietor and records of removals maintained according to § 19.736. Packages of such chemicals shall be appropriately marked by the proprietor to show the nature of the contents. Samples of such chemicals may be secured by ATF officers.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended, 1365, as amended (26 U.S.C. 5201, 5222))

§ 19.328 Wash water.

Water used in washing chemicals to remove spirits therefrom may be run into a wash tank or a distilling material tank, or otherwise properly destroyed or disposed of on the premises.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1323, as amended, 1356, as amended (26 U.S.C. 5008, 5201))

Inventories

§ 19.329 Production inventories.

Each distiller shall take a physical inventory of the spirits and denatured spirits in tanks and other vessels in the production account at the close of each calendar quarter and at such other times as the regional director (compliance) may require. The inventory shall show separately spirits and denatured spirits received for redistillation.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

Subpart K—Redistillation

§ 19.331 General.

Distillers or processors may redistill spirits, denatured spirits, articles, and spirits residues. Certain products may only be redistilled pursuant to an approved formula on Form 5110.38, as specified in 27 CFR 5.27.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1365, as amended (26 U.S.C. 5223))

§ 19.332 Receipts for redistillation.

Proprietors may receive and redistill spirits or denatured spirits which (a) have not been removed from bond; (b) have been withdrawn from bond on payment or determination of tax, and

are eligible for return to bond as provided in Subpart U of this part; (c) have been withdrawn from bond free of tax or without payment of tax, and are eligible for return to bond as provided in Subpart U; or (d) have been abandoned to the United States and sold to the proprietor without the payment of tax. Proprietors may also receive and redistill recovered denatured spirits and recovered articles returned under the provisions of § 19.683, and articles and spirits residues received under the provisions of § 19.684.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended, 1365, as amended 1370, as amended (26 U.S.C. 5201, 5223, 5243); Sec. 807, Pub. L. 96–83 Stat. 285 (26 U.S.C. 5215))

§ 19.333 Redistillation.

Spirits shall not be redistilled at a proof lower than that prescribed for the class and type at which such spirits were originally produced, unless the redistilled spirits are to be used in wine production, to be used in the manufacture of gin or vodka, or to be designated as alcohol. Different kinds of spirits must be redistilled separately, or with distilling material of the same kind or type as that from which the spirits were originally produced. However, such restriction shall not apply when (a) brandy is redistilled into "spirits-fruit" or "neutral spirits-fruit" (not for use in wine production), (b) whiskey is distilled into "spirits-grain" or "neutral spirits-grain", (c) spirits originally distilled from different kinds of material are redistilled into "spirits-mixed" or "neutral spirits-mixed", or (d) the spitits are redistilled into alcohol. All spirits redistilled subsequent to production gauge shall be treated the same as if such spirits had been originally produced by the redistiller and all provisions of this part and 26 U.S.C. Chapter 51 (including liability for tax attaching to spirits at the time of production) applicable to the original production of spirits shall be applicable thereto, except that spirits recovered by redistillation of denatured spirits, articles, or spirits residues may not be withdrawn from bonded premises except for industrial use or after denaturation thereof. Nothing in this section shall be construed as affecting any provision of this chapter or of 27 CFR Part 5 relating to the labeling of distilled spirits.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1365, as amended (26 U.S.C. 5223); Sec. 807, Pub. L. 96–39, 93 Stat. 285 (26 U.S.C. 5215))

Subpart L—Storage

§ 19.341 General.

Proprietors who are qualified as warehousemen as provided in this part, and who have otherwise complied with the requirements of this part for the storage of bulk distilled spirits and wines, shall conduct such operations pursuant to the provisions of this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.342 Receipt and storage of bulk spirits and wines.

(a) *Deposit.* All spirits entered for deposit in the storage account after production as provided in Subpart J shall be deposited on the bonded premises designated in the entry for deposit. Spirits withdrawn from customs custody without payment of tax under the provisions of this part shall be received on the bonded premises to which so withdrawn and (unless to be immediately redistilled) shall be deposited on such premises. Spirits transferred in bond as provided in Subpart P shall be deposited on the bonded premises designated on the transfer record.

(b) *Tanks.* If spirits or wines are being deposited in a partially filled tank in storage on bonded premises, simultaneous withdrawals may not be made therefrom unless the flow of spirits or wines into and out of the tank is being measured by meters or other devices approved by the regional director (compliance) which permit a determination of the quantity being deposited and the quantity being removed. Proprietors shall maintain records of spirits or wines in tanks in accordance with Subpart W of this part.

(c) *Storage.* Spirits or wines may be held in the storage account in tanks or portable bulk containers on the bonded premises. When used for such storage, containers shall be kept so that they can be readily inspected or inventoried by ATF officers.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended, 1362, as amended, 1366, as amended, 1398, as amended (26 U.S.C. 5201, 5211, 5212, 5232, 5601); Sec. 806(a), Pub. L. 96–39, 93 Stat. 279 (26 U.S.C. 5202); Sec. 807(a), Pub. L. 96–39, 93 Stat. 286 (26 U.S.C. 5231))

§ 19.343 Addition of oak chips to spirits and addition of caramel to brandy and rum.

Oak chips which have not been treated with any chemical may be added to packages either prior to or after filling. When oak chips are added to packages, notation of such fact shall be made on all transaction records. Caramel possessing no material sweetening properties may be added to rum or brandy in packages or tanks.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

Filling and Changing Packages

§ 19.344 Filling of packages from tanks.

Spirits or wines may be drawn into packages from storage tanks on bonded premises. The spirits or wines in the tank shall be gauged prior to filling of packages, and when only a portion of the contents of the tank is packaged, the spirits or wines remaining in the tank shall be again gauged and such gauges shall be recorded by the proprietor in records required by §§ 19.740 and 19.768. The provisions of § 19.319 regarding the filling of packages and the taking of production gauges of packages shall be applicable to the filling and gauging of packages of spirits under this section.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.345 Change of packages.

Spirits or wines in storage may be transferred from one package to another. Except in the case of spirits of 190 degrees or more proof, each new package shall contain spirits from only one package. Packages shall be marked as provided in Subpart R of this part. In the case of wines, each package shall bear the same marks as the package from which the wine was transferred.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

Mingling or Blending of Spirits

§ 19.346 Mingling of blending of spirits for further storage.

The following mingling or blending operations are permissible in the storage account of a warehouseman:

(a) *Mingling of spirits distilled at 190 degrees or more of proof.* Spirits distilled at 190 degrees or more of proof, whether or not subsequently reduced, may be mingled in storage.

(b) *Mingling of spirits distilled at less than 190 degrees of proof.* Spirits distilled at less than 190 degrees of proof may be mingled for withdrawal or further storage if—

(1) In the case of domestic spirits:

(i) Such spirits are of the same kind; and

(ii) Such spirits were produced by the same proprietor (under his own or any trade name) at the same distillery.

(2) In the case of imported spirits:

(i) Such spirits are of the same kind;

(ii) Such spirits were produced by the same proprietor at the same foreign distillery; and

(iii) such spirits were treated, blended, or compounded at the same foreign plant by the same person, and the duty was paid at the same rate.

(c) *Permissible blending of beverage rums or brandies.* Fruit brandies distilled from the same kind of fruit at not more than 170 degrees of proof may, for the sole purpose of perfecting such brandies according to commercial standards, be blended with each other, or with any blend of such fruit brandies in storage. Rums may, for the sole purpose of perfecting them according to commercial standards, be blended with each other, or with any blend of rums.

(d) *Packaging of mingled spirits or blended rums and brandies.* Packaging after mingling or blending shall be conducted under the provisions of § 19.344. If so desired, the mingled or blended spirits may be returned to the packages from which they were dumped for mingling or blending, or as many of such packages as are necessary.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended, 1362, as amended (26 U.S.C. 5201, 5214))

§ 19.347 Packages dumped for mingling.

When dumping packages of spirits of less than 190 degrees of proof for mingling in the storage account, the proprietor shall record such mingling on the tank record prescribed in § 19.742 covering such tank. When packages of spirits of 190 degrees or more of proof are to be mingled, the proprietor shall record such mingling in the tank summary record prescribed in § 19.743 for all tanks of spirits of 190 degrees or more of proof. Each package of spirits to be mingled under this subpart shall be examined by the proprietor, and if any package bears evidence of loss due to theft or unauthorized voluntary destruction, such package shall not be dumped until the area supervisor has been notified.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.348 Determining age of mingled spirits.

When spirits are mingled, the age of the spirits for the entire lot shall be the age of the youngest spirits contained in the lot.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.349 Mingled spirits or wines held in tanks.

When spirits of less than 190 degrees of proof or wines are mingled in a tank, the proprietor shall gauge the spirits or wines in the tank and record the mingling gauge on the tank record prescribed in § 19.742.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

Inventories

§ 19.353 Storage inventories.

Each warehouseman shall take a physical inventory of all spirits and wines held in the storage account in tanks and other vessels (except packages) at the close of each calendar quarter and at such other times as the regional director (compliance) may require. The inventory shall separately identify spirits and wines. The results of the inventory shall be recorded in accordance with Subpart W of this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

Subpart M—Processing Operations Other Than Denaturation and Manufacture of Articles

§ 19.371 General.

Proprietors, who are qualified as processors as provided in this part, shall conduct operations relating to the manufacture, treatment, mixing or bottling of distilled spirits on bonded premises pursuant to the provisions of this subpart. Proprietors, who conduct operations relating to the denaturation of spirits or the manufacture of articles on bonded premises, pursuant to the provisions of Subpart N of this part, shall be qualified as processors.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

Receipt and Use of Spirits, Wines and Alcoholic Flavoring Materials

§ 19.372 Receipt of spirits, wines, and alcoholic flavoring materials for processing.

(a) Proprietors may receive into the processing account—

(1) Bulk spirits (i) from the production or storage account at the same plant, (ii) by transfer in bond from another distilled spirits plant, or (iii) on withdrawal from customs custody under 26 U.S.C. 5232;

(2) Wines (i) from the storage account at the same plant, or (ii) by transfer in bond from a bonded wine cellar or another distilled spirits plant;

(3) Spirits returned to bond under the provisions of 26 U.S.C. 5215; or

(4) Alcoholic flavoring materials.

(b) Spirits and wines received in bulk containers or conveyances shall be recorded as dumped on receipt, but may be retained in the containers or conveyances in which received until used. Spirits and wines received by pipeline shall be deposited in tanks, gauged by the proprietor, and recorded as dumped. Alcoholic flavoring materials may be retained in the containers in which received or may be transferred to another container if the proprietor marks or otherwise indicates thereon, the full identification of the original container, the date of receipt, and the quantity deposited. Alcoholic flavoring materials and nonalcoholic ingredients shall be considered dumped when mixed with spirits or wines. The proof gallon content of spirits, wines, and alcoholic flavoring materials shall be determined at the time of dumping.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.373 Use of spirits, wines and alcoholic flavoring materials.

A proprietor shall prepare a dump/batch record according to § 19.748 for spirits, wines, alcoholic flavoring materials, and nonalcoholic ingredients used in the manufacture of a distilled spirits product as follows:

(a) *Dump record.* When spirits, wines, or alcoholic flavoring materials are dumped for use in the manufacture of a distilled spirits product, and when spirits are dumped for redistillation in the processing account, the proprietor shall prepare a dump record.

(b) *Batch record.* The proprietor shall prepare a batch record to report:

(1) The dumping of spirits which are to be used immediately and in their entirety in preparing a batch of a product manufactured under an approved formula;

(2) The use of spirits or wines previously dumped, reported on dump records and retained in tanks or receptacles; and

(3) Any combination of ingredients in paragraphs (b)(1) and (2) of this section used in preparing a batch of a product manufactured under an approved formula.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.374 Manufacture of nonbeverage or intermediate products.

Spirits and wines may be used for the manufacture of flavors or flavoring extracts of a nonbeverage nature as intermediate products to be used exclusively in the manufacture of other distilled spirits products on bonded premises. Nonbeverage products (alcoholic flavoring materials) on which drawback under 26 U.S.C. 5131–5134 is to be claimed may not be manufactured on bonded premises. Premises used for the manufacture of nonbeverage products eligible for drawback shall be separated from bonded premises.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

Obscuration

§ 19.376 Determining obscuration.

Proprietors may determine the proof obsecuration as prescribed in 27 CFR § 30.32 of spirits to be bottled on the basis of a representative sample taken (a) from a storage tank incident to the transfer of the spirits to the processing account, or (b) from a tank after the spirits have been dumped for processing, whether or not combined with other alcoholic ingredients. The obscuration shall be determined after the sample has been reduced to within one degree of the proof at which the spirits will be bottled. Only water may be added to a lot of spirits to be bottled for which the determination of proof obscuration is made from a sample under this section. The proof obscuration for products gauged pursuant to this section shall be frequently verified by testing samples taken from bottling tanks prior to commencement of bottling.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5204))

Formulas

§ 19.378 Formula requirements.

An approved formula on ATF Form 5110.38 must be secured for spirits for domestic use or export as provided in 27 CFR 5.26—5.27 before processors may blend, mix, purify, refine, compound or treat spirits in any manner which results in a change of character, composition, class or type of the spirits including redistillation as provided in § 19.331, and the production of gin or vodka by other than original and continuous distillation

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended, 1395, as amended (26 U.S.C. 5201, 5555))

Bottling, Packaging, and Removal of Products

§ 19.381 Removals from processing.

Spirits shall not be transferred from processing to the storage account Processors may remove—

(a) Spirits upon tax determination or withdrawal under the provisions of 26 U.S.C. 5214 or 26 U.S.C. 7510;

(b) Spirits to the production account at the same plant for redistillation;

(c) Bulk spirits by transfer in bond to the production or the processing account at another distilled spirits plant for redistillation or further processing;

(d) Spirits or wines for authorized voluntary destruction; or

(e) Wines by transfer in bond to a bonded wine cellar or to another distilled spirits plant. Spirits may be bottled and cased for removal. Spirits or wines may be removed in any approved bulk container, by pipeline or in bulk conveyances on compliance with the provisions of this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1314, as amended, 1320, as amended, 1323, as amended, 1356, as amended, 1360, as amended, 1362, as amended, 1365, as amended, 1380, as amended (26 U.S.C. 5001 5006, 5008, 5201, 5206, 5212, 5214, 5223, 5362))

§ 19.382 Bottling tanks.

All spirits shall be bottled from tanks listed and certified as accurately calibrated in the notice of registration. However, the regional director (compliance) may authorize bottling from original packages or special containers where it is impracticable to use a bottling tank. Bottlers desiring to bottle from packages or special containers shall file notice with the area supervisor. The notice shall show the necessity for the operations.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.383 Bottling tank gauge.

When a distilled spirits product is to be bottled or packaged, the proprietor shall gauge the product, on completion of any filtering, reduction, or other treatment, and prior to commencement of bottling or packaging. Any gauge made under this section shall be made at labeling or package marking proof while the product is in the tank from which it is to be bottled or packaged, and the details of the gauge shall be entered on the bottling and packaging record prescribed in § 19.749.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.384 Preparation of bottling or packaging record.

The proprietor shall prepare a record for each batch of spirits bottled or packaged according to the specifications in § 19.749.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.385 Labels to agree with contents of tanks and containers.

Labels affixed to containers shall agree in every respect with the spirits in the tanks from which the containers were filled. If they do not the proprietor shall relabel such spirits with a proper label. The proprietor's records shall be such that they will enable ATF officers to readily determine, by case or package serial number, which label was used on any given filled container.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.386 Proof and fill.

(a) *Proof and fill tests.* (1) Proprietors shall test and examine at representative intervals spirits bottled during bottling operations to determine whether the spirits contained in such bottles agree in proof and quantity (fill) with that stated on the label or bottle.

(2) If the regional director (compliance) finds that a proprietor's test procedures do not protect the revenue and ensure the label accuracy of the bottled product, he may require corrective measures.

(b) *Variations in proof and fill.* If the contents do not agree with the respective data on the label or bottle as to:

(1) Quantity (fill), except for such variations in measuring as may occur in filling conducted in compliance with good commercial practice with the overall objective of maintaining 100 percent fill for spirits bottled; and/or

(2) Proof, subject to a normal drop in proof occurring during bottling operations not to exceed five-tenths of a degree of proof for products containing solids in excess of 600 mg per 100 ml or three-tenths of a degree of proof for all other spirits—

the proprietor shall rebottle, recondition, or relabel the spirits in such manner that the label will correctly describe the contents.

(c) *Proof and fill test records.* Proprietors shall record the results of all proof and fill tests conducted on the record specified in § 19.750.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended 1394, as amended (26 U.S.C. 5201, 5301))

§ 19.387 Completion of bottling.

When the contents of a bottling tank are not completely bottled at the close of the day, the bottler shall make entries on the bottling and packaging record covering the total quantity bottled that day from the tank. Entries shall be made not later than the morning of the following business day unless the bottler maintains auxiliary or supplemental records as provided in § 19.731.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.388 Cases.

(a) *General.* (1) On completion of bottling, the filled bottles with labels and properly affixed strip stamps or alternative devices shall be placed in cases, and the cases shall be sealed.

(2) Each case of spirits filled shall be marked as prescribed by Subpart R of this part before removal from such premises.

(b) *Unsealed cases.* (1) Cases may be temporarily retained on bonded premises without being sealed pending the affixing to bottles of any required labels, State stamps, or seals.

(2) Unsealed cases containing bottles without labels shall be marked in accordance with Subpart R of this part, and segregated from other cases on bonded premises pending affixing of the labels, stamps, or seals.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended, 1360, as amended (26 U.S.C. 5201, 5206))

§ 19.389 Remnants.

Where incident to bottling there remain bottles less than the number necessary to fill a case, the bottles, after being stamped or affixed with alternative devices and labeled, may be marked as a remnant case as provided in Subpart R of this part or kept uncased on the bonded premises until spirits of the same kind are again bottled. Appropiate notation shall be made on the bottling and packaging record to cover the bottling and disposition of the remnant. If the remnant is subsequently used to complete the filling of a case, an accounting shall be made on the subsequent bottling and packaging record showing the use of the remnant by adding the remnant gallonage to the quantity to be accounted for together with appropriate notation explaining the transactions.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended, 1360, as amended (26 U.S.C. 5201, 5206))

§ 19.390 Filling packages.

Spirits may be drawn into packages from a tank (conforming to the requirements of § 19.273). Such packages shall be gauged by the proprietor, and he shall report the details of such gauge on a package gauge record, according to § 19.769, and attach a copy of the package gauge record to each copy of the bottling and packaging record covering the product. Such packages shall be marked as prescribed by Subpart R of this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.391 Removals by bulk conveyances or pipelines.

When spirits in the processing account are to be removed in bulk conveyances or by pipeline, the proprietor shall record the filling of the conveyance or the transfer by pipeline on the bottling and packaging record. The spirits shall be removed from bonded premises in accordance with Subpart P of this part. The consignor shall forward to the consignee a statement of composition or a copy of any formula under which such spirits were processed for determining the proper use of the spirits, or for the labeling of the finished product. Bulk conveyances shall be marked as provided in Subpart R of this part, and distilled spirits stamps, if required, or marks in lieu of such stamps shall be affixed to the conveyances as provided in Subpart T of this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.392 Rebottling.

When the spirits are dumped for rebottling, the proprietor shall prepare a bottling and packaging record, appropriately modified. If the spirits were originally bottled by another proprietor, a statement from the original bottler consenting to the rebottling must be secured by the proprietor.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.393 Restamping, reaffixing alternative devices and relabeling.

The proprietor may restamp, reaffix alternative devices, or relabel distilled spirits, either before removal from bonded premises or after return thereto. The restamping, reaffixing of alternative devices, or relabeling of spirits returned to bonded premises shall be done immediately, and the spirits promptly removed. When spirits were originally bottled by another proprietor, the relabeling proprietor shall have on file a statement from the original bottler consenting to the relabeling. When spirits are relabeled, the proprietor shall have a certificate of label approval or certificate of exemption from label approval issued under 27 CFR Part 5 for labels used on relabeled spirits. The proprietor shall prepare a separate record according to § 19.747 to cover the relabeling, restamping, or the reaffixing of alternative devices. For spirits returned to bond under 26 U.S.C. 5215(c), the proprietor shall annotate such information on the record.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended, 1358, as amended (26 U.S.C. 5201, 5205); Sec. 807, Pub. L. 96–39, 93 Stat. 280 (26 U.S.C. 5215))

§ 19.394 Bottled-in-bond spirits.

Spirits which are labeled and stamped as bottled-in-bond for domestic consumption shall meet the requirements in 27 CFR Part 5 and shall be stamped as provided in Subpart T of this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.395 Labels for export spirits.

All bottles containing spirits bottled for export shall have securely affixed thereto a label showing the following:

(a) Kind of spirits;

(b) Proof of the spirits;

(c) Net contents, unless the markings on the bottle indicate such contents; and

(d) The name (or, if desired, the trade name) of the bottler.

The bottler may place on the label any additional information that he may desire if it is not inconsistent with the required information. The label information may be stated in the language of the country to which the spirits are to be exported provided the proprietor maintains on file an English translation of the information. The net contents and proof may be stated in the units of measurement of the foreign country provided the proprietor maintains a record of the equivalent units as they would be required to be expressed if bottled for domestic consumption. The Director may waive the requirement of showing any of the information required by this section, other than the kind of spirits, upon a showing that the country to which the spirits are to be exported prohibits the showing of such information.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended, 1374, as amended (26 U.S.C. 5201, 5301))

§ 19.396 Spirits removed for shipment to Puerto Rico.

Spirits removed for shipment to Puerto Rico with benefit of drawback or without payment of tax under the provisions of 27 CFR Part 252 are subject to the provisions of 27 CFR Part 5 in respect to labeling requirements and standards of fill for bottles.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended, (26 U.S.C. 5201))

§ 19.397 Spirits not originally intended for export.

Spirits manufactured, produced, bottled in bottles, packed in containers, or which are packaged in casks or other bulk containers in the United States, originally intended for domestic use may be exported with benefit of drawback or without payment of tax if:

(a) Strip stamps or alternative devices affixed to bottles are legibly overprinted with the word "Export", if required; and

(b) Cases or bulk containers are marked as required by 27 CFR Part 252. The proprietor may relabel the spirits to show any of the information provided for in § 19.395. When the proprietor desires to file claim for drawback on spirits prepared for export under this section, the provisions of 27 CFR

252.195b shall be followed. When the proprietor desires to withdraw spirits without payment of tax, he shall file a notice in accordance with 27 CFR 252.92.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1336, as amended, 1358, as amended, 1362, as amended (26 U.S.C. 5062, 5205, 5214))

§ 19.398 Alcohol.

(a) *Containers.* Subject to the provisions of Subpart R of this part, alcohol for industrial use may be put in bottles, packages, or other containers. Proprietors shall comply with the provisions in Subpart S of this part when alcohol for nonindustrial domestic use is bottled.

(b) *Stamps.* Strip stamps, alternative devices, distilled spirits stamps, or marks in lieu of distilled spirits stamps shall be imprinted on or affixed to containers of alcohol as provided in Subpart T of this part.

(c) *Bottle labels.* All bottles of alcohol for industrial use shall have affixed thereto a label showing "Alcohol" and the name and plant number of the bottler. The bottler may place on the label additional information, if it is not inconsistent with the required information.

(d) *Case marks.* Each case of bottled alcohol shall bear the marks prescribed therefor in Subpart R of this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended, 1369, as amended (26 U.S.C. 5201, 5206, 5235, 5301))

Records

§ 19.400 Daily summary record of spirits bottled or packaged.

The proprietor shall maintain a separate daily summary record of spirits bottled or packaged as provided in § 19.751.

(Sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207))

Inventories

§ 19.401 Inventories of wines and bulk spirits (except in packages) in processing account.

Each proprietor shall take a physical inventory of wines and bulk spirits (except in packages) in the processing account at the close of each calendar quarter, and at such other time as the regional director (compliance) may require. The results of the inventory shall be recorded in accordance with Subpart W of this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.402 Inventories of bottled and packaged spirits.

(a) *Physical inventories.* (1) Physical inventories of bottled and packaged spirits in the processing account shall be taken for the return periods ending June 30 and December 31 of each year, and for other return periods as may be required by the regional director (compliance).

(2) Physical inventories may be taken within a period of a few days before or after June 30 or December 31 (or other dates approved by the regional director (compliance), if:

(i) Such period does not include more than one complete weekend; and

(ii) Necessary adjustments are made to reflect pertinent transactions, so that the recorded inventories will agree with the actual quantities of bottled or packaged spirits on hand in processing at the prescribed times.

(3) On approval of an application filed with the regional director (compliance), required physical inventories may be taken on dates other than June 30 and December 31 if the dates established for taking such inventories:

(i) Coincide with the end of a return period, and

(ii) Are approximately six months apart.

(4) On approval of the application, the designated inventory dates shall take effect with the first inventory scheduled to be taken within six months of the previous June 30 or December 31 inventory.

(b) *Waiver of physical inventory.* (1) The regional director (compliance), on receipt of an application, may relieve a proprietor of the requirement of taking the June 30 or December 31 physical inventory, (or other date approved under paragraph (a) of this section) if he finds that only one such inventory during any 24 consecutive return periods is necessary.

(2) The regional director (compliance) may reimpose the requirement for the waived inventory if he finds that it is necessary for law enforcement or protection of the revenue.

(c) *Notification of physical inventory.* Whenever a physical inventory of bottled or packaged spirits is to be taken, the proprietor shall, at least 5 business days in advance, notify the area supervisor of the date and time he will take such inventory.

(d) *Supervision of physical inventories.* Physical inventories required under the provisions of this section shall be taken under such supervision, or verified in such manner, as the regional director (compliance) may require.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

Subpart N—Denaturing Operations and Manufacture of Articles

§ 19.451 General.

Authorized proprietors who are qualified as processors may conduct denaturing operations or manufacture articles pursuant to the provisions of this part. Proprietors shall not conduct denaturing operations or manufacture articles except as provided in this part. Records of denaturing operations and the manufacture of articles shall be maintained in accordance with § 19.752 and § 19.753.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1353, as amended (26 U.S.C. 5178); Sec. 807(a), Pub. L. 96–39, 93 Stat. 286 (26 U.S.C. 5241))

Denaturation

§ 19.452 Formulas.

Spirits shall be denatured in accordance with formulas as authorized in 27 CFR Part 21 or their alternatives. Denaturing materials shall be thoroughly mixed with the spirits being denatured.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1369, as amended (26 U.S.C. 5242); Sec. 807, Pub. L. 96–39, 93 Stat. 286 (26 U.S.C. 5241))

§ 19.453 Testing of denaturants.

(a) *Testing.* Proprietors shall ensure that the materials they receive for use in denaturing conform to the specifications prescribed in 27 CFR Part 21. The regional director (compliance) may require the testing of denaturants at any time.

(b) *Samples.* Samples of denaturants shall be taken in such manner as to represent a true composite of the total lot being sampled. When samples are tested by persons other than a proprietor, a copy of the analysis or a statement, signed by the chemist performing the test, shall be secured and filed by the proprietor for each test. Samples of denaturants may be taken by ATF officers at any time for testing by Government chemists.

(c) *Conformity.* When a denaturant does not conform to the specifications prescribed under 27 CFR Part 21, the proprietor shall not use the material unless he treats or manipulates the denaturant to make it conform to such specifications. Such treated or manipulated denaturant shall again be tested.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1369, as amended (26 U.S.C. 5242))

§ 19.454 Gauge for denaturation.

The proprietor shall gauge spirits before denaturation and after denaturation and record each gauge on the record of denaturation as prescribed in § 19.752(b). However, spirits dumped

from previously gauged containers or spirits transferred directly to mixing tanks from gauge tanks where they were gauged, need not again be gauged. Measurements of spirits and denaturants shall be made by volume, weight, by approved meter, or, when approved by the Director, other devices or methods.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5204); Sec. 807, Pub. L. 96–39, 93 Stat. 286 (26 U.S.C. 5241))

§ 19.455 Dissolving of denaturants.

Denaturants which are difficult to dissolve in spirits at usual working temperatures, which are highly volatile, or which become solid at such usual temperatures may be liquefied or dissolved in a small quantity of spirits or water in advance of their use in the production of specially denatured spirits, pursuant to the prescribed formula, so long as the proof of the denatured spirits manufactured does not fall below the proof prescribed for the applicable formula in 27 CFR Part 21. Any spirits used in dissolving denaturants and contained in the resulting solution shall be included as part of the total quantity of spirits denatured in each batch.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1369, as amended (26 U.S.C. 5242))

§ 19.456 Adding denaturants.

Denaturants and spirits shall be mixed in packages, tanks, or bulk conveyances on bonded premises. The regional director (compliance) may, on written application, authorize other methods of mixing denaturants and spirits if he deems such denaturation will not hinder effective administration of this part or jeopardize the revenue. If requested by the regional director (compliance), the proprietor shall submit a flow diagram of the intended process or method of adding denaturants.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1369, as amended (26 U.S.C. 5242))

§ 19.457 Neutralizing denatured spirits.

Proprietors may add trace quantities of compounds such as caustics or acids to certain formulas of denatured spirits to neutralize such spirits, if the intended effect of the denaturants is not reduced. Proprietors who neutralize denatured spirits must record, for each formula the kinds and quantities of compounds used, and the formula number of the denatured spirits neutralized.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1369, as amended (26 U.S.C. 5242); Sec. 807, Pub. L. 96–39, 93 Stat. 286 (26 U.S.C. 5241))

§ 19.458 Restoration and redenaturation of recovered denatured spirits and recovered articles.

Recovered denatured spirits and recovered articles received on bonded premises, as provided in Subpart U of this part, for restoration (including redistillation, if necessary) and/or redenaturation may not be withdrawn from bonded premises except for industrial use or after denaturation thereof. If the recovered or restored denatured spirits or recovered articles are to be redenatured and do not require the full amount of denaturants for redenaturation, a notation to that effect will be made on the record of denaturation required by § 19.752(b).

(Sec. 201, Pub. L. 85–859, 72 Stat. 1369, as amended (26 U.S.C. 5242))

§ 19.459 Mixing of denatured spirits.

(a) Denatured spirits produced under the same formula may be mixed on bonded premises.

(b) Denatured spirits of different formulas may be mixed on bonded premises for immediate redistillation at the same plant or at another plant in accordance with the provisions of Subpart K of this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1369, as amended (26 U.S.C. 5242); Sec. 807, Pub. L. 96–39, 93 Stat. 286 (26 U.S.C. 5241))

§ 19.460 Conversion of denatured alcohol formulas.

(a) *Conversión to Formula No. 1.* Any specially denatured alcohol, except Formulas No. 3–A and No. 30, may be converted into specially denatured alcohol, Formula No. 1, by the addition of methyl alcohol and denatonium benzoate, N.F. (Bitrex) or methyl isobutyl ketone in accordance with the formulations prescribed in § 21.32 of this chapter. For specially denatured alcohol Formulas No. 3–A and No. 30, the methyl alcohol content shall be reduced to the level prescribed for specially denatured alcohol Formula No. 1 by the addition of ethyl alcohol before adding the other ingredient prescribed in 27 CFR 21.32.

(b) *Conversion to Formula No. 29.* Any specially denatured alcohol may be converted to specially denatured alcohol, Formula No. 29, by the addition of acetaldehyde or ethyl acetate, in accordance with the formulations prescribed in 27 CFR 21.56.

(c) *General rule.* In addition to the conversions provided in paragraphs (a) and (b) of this section, any specially denatured alcohol may be converted to another specially denatured alcohol formula, if the resultant alcohol-denaturant mixture contains only the alcohol and denaturant or denaturants in the proportions authorized in 27 CFR Part 21 for the formula to which converted. Specially denatured alcohol which is converted under this paragraph may only be used as authorized in 27 CFR Part 21 for the formula to which converted.

(d) *Conditions governing conversion and use.* The quantities of denaturants required for conversions authorized in paragraphs (a), (b) and (c) of this section shall be determined on the basis of the alcohol in the formulations. Specially denatured alcohol converted to Formula No. 29 may be used as authorized in 27 CFR 21.56(b) except that it shall not be used in the manufacture of vinegar, drugs, or medicinal chemicals, and the conditions governing use provided in 27 CFR 21.56(c) shall apply.

(e) *Conversion to other formulations.* Proprietors desiring to convert specially denatured alcohol other than as provided in paragraphs (a), (b), and (c) of this section shall obtain approval from the Director prior to such conversion.

(f) *Conversion to completely denatured alcohol.* Any specially denatured alcohol not containing methanol or wood alcohol may be converted to any one of the completely denatured alcohol formulas, prescribed in 27 CFR Part 21, by adding the required denaturants.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1369, as amended (26 U.S.C. 5242))

§ 19.461 Receipt and storage of denatured spirits.

(a) *Deposit.* Denatured spirits produced, received in bond as provided in Subpart P or returned to bonded premises as provided in Subpart U of this part, shall be deposited on the bonded premises.

(b) *Tanks.* Proprietors shall maintain a record in accordance with § 19.752 for tanks in which denatured spirits are stored.

(c) *Storage.* Denatured spirits may be stored on bonded premises in any container into which denatured spirits may be filled on bonded premises. Such containers shall be so stored that they can be readily inspected by ATF officers and inventoried. The provisions of § 19.133 are applicable to storage of denatured spirits in portable containers. However, upon application, the regional director (compliance) may authorize the proprietor to store packages and cases in any manner which safeguards the interests of the Government.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.462 Filling of containers from tanks.

Denatured spirits may be drawn into portable containers from tanks on bonded premises. The denatured spirits in the tanks shall be gauged prior to filling of the containers, and when only a portion of the contents of the tank is drawn into containers, the denatured spirits remaining in the tank shall be again gauged and such gauges shall be recorded by the proprietor. The provisions of paragraph (a) and (c) of § 19.319 shall be applicable to the filling and gauging of portable containers, and denatured spirits may be withdrawn from bonded premises for any lawful purpose on the filling gauge.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.463 Containers for denatured spirits.

Packaging of denatured spirits and the marking of portable containers of such denatured spirits shall be in accordance with requirements of Subpart R of this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended (26 U.S.C. 5206))

Inventories

§ 19.464 Denatured spirits inventories.

Each proprietor shall take a physical inventory of all denatured spirits in the processing account at the close of each calendar quarter and at such other times as the regional director (compliance) may require. The results of the inventory shall be recorded as provided in Subpart W of this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

Articles

§ 19.471 Manufacture of articles.

Proprietors shall manufacture, label, mark, and dispose of articles as provided in 27 CFR Part 211.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1372, as amended (26 U.S.C. 5273))

Subpart O—Spirits from Customs Custody

§ 19.481 General.

Spirits imported or brought into the United States in bulk containers may be withdrawn by proprietors from customs custody and transferred in such bulk containers or by pipeline without payment of tax to the bonded premises of their distilled spirits plant. Spirits received on bonded premises as provided in this section may be (a) redistilled or denatured only if 185 degrees or more of proof, and (b) withdrawn for any purpose authorized by 26 U.S.C. Chapter 51, in the same manner as domestic spirits.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1366, as amended (26 U.S.C. 5232))

§ 19.482 Age and fill date.

For the purpose of this part, the age and fill date for spirits that are imported or brought into the United States shall be:

(a) *Age.* The claimed age, which is supported by the documentation required in 27 CFR Part 5.

(b) *Fill date.* The date that packages of spirits are released from customs custody or filled on bonded premises.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.483 Recording gauge.

(a) When packages of spirits are received from customs custody in the storage account, the proprietor shall use the last official gauge to compute and record on the deposit records prescribed in § 19.740 for each entry the average content of the packages being received which shall also provide the basis for entries on the package summary records prescribed in § 19.741. If the last official gauge indicates a substantial variation in the contents of the packages, the proprietor shall group the packages into lots according to their approximate contents, and assign a separate lot identification to each group of packages, based on the date the packages were received on bonded premises.

(b) When packages of spirits are received from customs custody in the processing account, the proprietor shall determine the proof gallons of spirits received in each package. The determination may be made by use of the last official gauge.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended (26 U.S.C. 5232))

Imported Spirits

§ 19.484 Marks on containers of imported spirits.

(a) *General.* Each portable bulk container of spirits shall, when received on bonded premises under the provisions of § 19.481, or when filled on bonded premises, be marked with:

(1) The name of the importer;

(2) The country of origin;

(3) The kind of spirits;

(4) The package identification number as provided in § 19.593 or the package serial number as provided in § 19.594;

(5) If filled on bonded premises, the date of fill;

(6) The proof; and

(7) The proof gallons of spirits in the package. Package identification numbers or package serial numbers shall be preceded by the symbol "IMP" and any distinguishing prefix or suffix used as provided in § 19.594. The proprietor who receives packages of imported spirits under the provisions of § 19.481 shall be responsible for having the required marks placed on such packages. Package identification numbers assigned under the provisions of this section to packages of spirits received from customs custody shall be recorded on the deposit records by the proprietor who receives the spirits.

(b) *Exception.* Proprietors are relieved from placing prescribed marks on packages when the spirits will be removed from the packages within 30 days of the date of receipt at the distilled spirits plant. Packages not dumped as provided in this paragraph within the time prescribed must be promptly marked in the manner required by § 19.595. The provisions of this section shall not be construed to waive, or authorize the waiver of, the requirements of this part for the assigning of package identification numbers or for the recording of such package identification numbers on deposit records, and the required recording of lot identification numbers and related information on other transaction forms, records, or reports.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended (26 U.S.C. 5206))

Puerto Rican and Virgin Islands Spirits

§ 19.485 Marks on containers of Puerto Rican and Virgin Islands spirits.

(a) *Packages received in bond.* (1) When packages of Puerto Rican spirits are received on the bonded premises of a distilled spirits plant under the provisions of this subpart, the markings prescribed by 27 CFR 250.40, modified to show the serial number of the Form 5110.31 prefixed by "Form 5110.31", rather than the serial number and identification of the Form 487–B, shall be accepted in lieu of the markings prescribed in § 19.484. On receipt of packages so marked the proprietor of the distilled spirits plant shall show on such packages of spirits the date of fill as provided in § 19.482, and the words "Puerto Rican" or the abbreviation "P.R.".

(2) When packages of Virgin Islands spirits are received on the bonded premises of a distilled spirits plant under the provisions of this subpart, the markings prescribed by 27 CFR 250.206 that are on such packages shall be accepted in lieu of the markings prescribed in § 19.484. On receipt of packages so marked the proprietor of the distilled spirits plant shall show on such packages of spirits the date of fill as provided in § 19.482, and the words

"VIRGIN ISLANDS" or the abbreviation "V.I."

(b) *Portable bulk containers.* Portable bulk containers of Puerto Rican or Virgin Islands spirits filled in ATF bond shall, in addition to the required marks prescribed in § 19.596, be marked to show the serial number of the approved formula under which produced, and with the words "PUERTO RICAN" or "VIRGIN ISLANDS" or the abbreviation thereof. Portable bulk containers containing spirits received in ATF bond under the provisions of this subpart shall, in addition to other required marks, be marked with the words "PUERTO RICAN" or "VIRGIN ISLANDS" or the abbreviation thereof.

(c) *Cases of bottled alcohol.* In addition to other mandatory marks prescribed by § 19.608 for cases of bottled alcohol, the words "PUERTO RICAN" or "VIRGIN ISLANDS", as appropriate, or the abbreviation "P.R." or "V.I." shall precede or follow the word "alcohol" on cases of alcohol from Puerto Rico or the Virgin Islands that are bottled and cased on bonded premises.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended, 1389, as amended (26 U.S.C. 5206, 5235))

§ 19.486 Additional tax on nonbeverage spirits.

The additional tax imposed by 26 U.S.C. 5001(a)(9), on imported spirits withdrawn from customs custody without payment of tax and thereafter withdrawn from bonded premises for beverage purposes, and the related provisons of § 19.518, are not applicable to Puerto Rican or Virgin Islands spirits brought into the United States and transferred to bonded premises under the provisions of this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.487 Abatement, remission, credit or refund.

The provisions of 26 U.S.C. 5008, authorizing abatement, remission, credit or refund for loss or destruction of distilled spirits, shall apply to spirits brought into the United States from Puerto Rico or the Virgin Islands, with respect to the following:

(a) Spirits lost while in ATF bond;

(b) Voluntary destruction of spirits in bond;

(c) Spirits returned to bonded premises after withdrawal from bonded premises without payment of tax; and

(d) Spirits returned to bonded premises after withdrawal from bonded premises upon tax determination.

Claims relating to spirits lost in bond, in addition to the information required by § 19.41, shall show the name of the producer, and the serial number and date of the formula, where required, under which produced.

(Sec. 201, Pub. L. 95–859, 72 Stat. 1323, as amended (26 U.S.C. 5008); Sec. 807, Pub. L. 96–39, 93 Stat. 285 (26 U.S.C. 5215))

Subpart P—Transfer and Withdrawals

General

§ 19.501 Authority to withdraw.

Spirits, denatured spirits, and wines shall be removed from bonded premises as provided in this subpart. Spirits entered into bonded storage for subsequent packaging in wooden packages, as provided in § 19.320, which have not been drawn into such packages at the time of withdrawal from bond shall be redesignated to conform to the classes and types set out in Subpart R of this part and in 27 CFR Part 5.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended, 1362, as amended (26 U.S.C. 5201, 5212, 5214); Sec. 807(a), Pub. L. 96–39, 93 Stat. 285 (26 U.S.C. 5213))

§ 19.502 Withdrawal of spirits on production or filling gauge.

When the production or filling gauge is made under the provisions of § 19.319(b), spirits may be withdrawn from bonded premises for any lawful purpose on the production or filling gauge. When the production or filling gauge is made under § 19.319(c), spirits may be withdrawn without payment of tax for export on the production or filling gauge. When spirits which are to be withdrawn on determination of tax on the original gauge are transferred in bond, all copies of the transfer record prescribed in § 19.770 shall be marked by the proprietor "Withdrawal on Original Gauge".

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5204))

§ 19.503 Determination of tare.

When packages are to be individually gauged for withdrawal from bonded premises, actual tare shall be determined in accordance with 27 CFR Part 30.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5204))

Transfers Between Bonded Premises

§ 19.505 Authorized transfers.

(a) *Spirits.* Bulk spirits or denatured spirits may be transferred in bond between the bonded premises of plants qualified under 26 U.S.C. 5171 or 26 U.S.C. 5181, in accordance with §§ 19.506 and 19.998, respectively.

(b) *Wine.* (1) Wines may be transferred (i) from a bonded wine cellar to the bonded premises of a distilled spirits plant, (ii) from the bonded premises of a distilled spirits plant to a bonded wine cellar, or (iii) between the bonded premises of distilled spirits plants.

(2) Wines transferred to the bonded premises of a distilled spirits plant may be used in the manufacture of a distilled spirits product, and may not be removed from such bonded premises for consumption or sale as wine.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1362, as amended, 1380, as amended (26 U.S.C. 5212, 5362); Sec. 232, Pub. L. 96–223, 94 Stat. 278 (26 U.S.C. 5181))

§ 19.506 Application to receive spirits in bond.

When a proprietor qualified under 26 U.S.C. 5171 desires to have spirits or denatured spirits transferred to him in bond which shall not include spirits withdrawn from customs custody under 26 U.S.C. 5232, he shall make application for such transfer to the regional director (compliance) on Form 5100.16. Application to receive such spirits by transfer in bond shall not be approved unless the applicant's operations or unit bond is in the maximum penal sum, or, if in less than the maximum penal sum, is sufficient to cover the tax on the spirits or denatured spirits to be transferred in addition to all other liabilities chargeable against such bond. The applicant shall deliver one of the approved copies of the application to the consignor proprietor.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1318, as amended, 1362, as amended (26 U.S.C. 5005, 5112))

§ 19.507 Termination of application.

A proprietor may terminate an approved application, Form 5100.16, at any time by

(a) Retrieving the consignor's copy, and

(b) Returning this copy, together with his own to the regional director (compliance) for cancellation.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1318, as amended (26 U.S.C. 5005))

§ 19.508 Consignor premises.

(a) *General.* (1) A transfer record shall be prepared according to § 19.770 by (i) the consignor proprietor of a distilled spirits plant (A) to cover the transfer of spirits or denatured spirits in bond to another distilled spirits plant, pursuant to an approved application on Form 5100.16, (B) to cover the transfer in bond of spirits or denatured spirits to an alcohol fuel plant, or (C) to cover the transfer of wine in bond to the bonded premises of a distilled spirits plant or

bonded wine cellar; or (ii) the consignor proprietor of an alcohol fuel plant to cover the transfer of spirits to the bonded premises of a distilled spirits plant pursuant to an approved application on Form 5100.16. Except as otherwise provided herein, a transfer record shall be prepared for each conveyance. The proprietor shall also enter on the transfer record the serial numbers of any seals or other devices affixed to a conveyance used for shipment of spirits, or denatured spirits. On completion of lading (or completion of transfer by pipeline), the proprietor shall retain one copy of the transfer record and one copy of any accompanying document for his files and forward the original of the transfer record and any accompanying document to the consignee (to accompany the shipment, if by truck).

(2) Spirits or denatured spirits produced from petroleum, natural gas, or coal may not be transferred to alcohol fuel plants qualified under 26 U.S.C. 5181.

(3) The consignor proprietor may cover on one transfer record all packages of spirits shipped by truck on the same day from his bonded premises to the bonded premises of another plant. In such case, the proprietor shall prepare a shipment and delivery order for each shipment, showing the number of packages, their package identification or serial numbers, the name of the producer, warehouseman, or processor, and the serial numbers of the seals or other devices (if any) applied to the truck. Such shipping and delivery order shall be properly authenticated and shall consititute a complete record of the spirits so transferred in each truck each day. A copy of each shipping and delivery order shall be retained by the consignor. On completion of the lading of the last truck for the day, the proprietor shall retain one copy of the transfer record and one copy of any accompanying document for his files and forward the original of the transfer record and any accompanying document to the consignee.

(b) *Packages.* When spirits are to be transferred in bond in packages, the consignor proprietor shall weigh each package, except (1) when the transfer is to be made in a secured conveyance, (2) when the individual packages have been securely sealed by the proprietor, or (3) when this requirement has been waived by the regional director (compliance) on a finding that, because of the location of the premises and the proposed method of operation, there will be no jeopardy to the revenue. When packages are weighed at the time of shipment, the proprietor shall assign temporary serial numbers to the packages and show for each package its gross shipment weight on a package gauge record prepared according to § 19.769. A copy of the package gauge record shall accompany each copy of the transfer record.

(c) *Bulk conveyances and pipelines.* When spirits, denatured spirits, or wines are to be transferred in bond in bulk conveyances or by pipelines, the consignor shall gauge the spirits, denatured spirits, or wines and record the quantity so determined on the transfer record prescribed in § 19.770. Bulk conveyances of spirits or denatured spirits shall be secured by the proprietor.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1367, as amended, 1380, as amended (26 U.S.C. 5212, 5362))

§ 19.509 Reconsignment.

Where, prior to or on arrival at the premises of a consignee, spirits, denatured spirits, or wines transferred in bond are found to be unsuitable for the purpose for which intended, were shipped in error, or, for any other bona fide reason, are not accepted by such consignee, or are not accepted by a carrier, they may be reconsigned, by the consignor, to himself, or to another consignee. In such case, application to receive spirits or denatured spirits by transfer in bond (on Form 5100.16) shall have been previously approved for the consignee (not required in the case of wines or in the case of alcohol fuel plants receiving spirits or denatured spirits) and the bond of the proprietor to whom the spirits, denatured spirits, or wines are reconsigned shall cover such spirits, denatured spirits, or wines while in transit after reconsignment. Notice of cancellation of the shipment shall be made by the consignor to the consignee. Where the reconsignment is to another proprietor, a new transfer record shall be prepared and prominently marked with the word "Reconsignment".

(Sec. 201, Pub. L. 85–859, 72 Stat. 1367, as amended, 1380, as amended (26 U.S.C. 5212, 5362))

§ 19.510 Consignee premises.

(a) *General.* When spirits, denatured spirits, or wines are received by transfer in bond, the consignee proprietor shall examine each conveyance to determine whether the securing devices, if any, are intact upon arrival at his premises. If the securing devices are not intact, he shall immediately notify the area supervisor before removal of any spirits from the conveyance. The proprietor shall follow the provisions of Subpart Q of this part to determine, record, and report losses, if any. After execution on the transfer record as prescribed in § 19.770 or Form 703, as appropriate, of his receipt of the shipment of spirits, denatured spirits, or wines, the consignee shall retain the original of the transfer record and any accompanying documents for his files, or dispose of Form 703 (in the case of wines from a bonded wine cellar), as provided in the instructions on the form. Retained copies of transfer records and Forms 703 shall become deposit records. Spirits which are produced at alcohol fuel plants shall be separately identified and accounted for as for fuel use, and may not be withdrawn, used, sold or otherwise disposed of for other than fuel use.

(b) *Packages.* When spirits are received in packages, the consignee proprietor shall weigh each package, except: (1) when the transfer is made in a secured conveyance and the securing devices are intact on arrival, (2) when the individual packages have been sealed by the consignor proprietor and are intact on arrival, or (3) when the requirement for weighing the packages at the consignor premises has been waived under the provisions of § 19.508(b)(3). The proprietor shall record the receiving weight of each package on the accompanying package gauge record or on a list with temporary package serial numbers prepared by the consignor. A copy of such package gauge record or list shall remain with the original of the transfer record.

(c) *Bulk conveyances and pipelines.* When spirits, denatured spirits, or wines are received in bulk conveyances or by pipeline, the consignee shall gauge the spirits, denatured spirits, or wines and record the gauge on the transfer record prescribed in § 19.770 or, in the case of wines received from a bonded wine cellar, on Form 703. The consignee shall ensure that each conveyance emptied has been thoroughly drained. The regional director (compliance) may waive the requirement for gauging spirits, denatured spirits, or wines on receipt by pipeline if he finds that because of the location of the premises, there will be no jeopardy to the revenue.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended, 1380, as amended (26 U.S.C. 5204, 5362); Sec. 807(a), Pub. L. 96–39, 93 Stat. 285 (26 U.S.C. 5213))

Withdrawals on Determination and Payment of Tax

§ 19.515 Determination and payment of tax.

(a) *General.* Distilled spirits may be withdrawn from bonded premises on determination of tax in approved containers, or, to the contiguous premises of a manufacturer of

nonbeverage products, by pipeline. All tax which is to be prepaid or deferred shall be determined prior to the physical removal of the spirits from bonded premises. The proprietor shall record the results of each tax determination on a record of tax determination as required by § 19.761.

(b) *Payment of tax.* The tax on the spirits shall be paid on Form 5110.32 before removal of the spirits from bonded premises unless the proprietor has furnished a withdrawal or unit bond to secure payment of the tax. Where such bond is in less than the maximum penal sum, the proprietor shall prepay the tax for any withdrawal which would cause the outstanding liability for tax to exceed the limits of coverage under the bond.

(Sec. 807, Pub. L. 96–39, 93 Stat. (26 U.S.C. 5213))

§ 19.516 Bond account.

Where the proprietor has furnished a withdrawal or unit bond to cover the tax on spirits withdrawn on determination of tax, and such bond is in less than the maximum penal sum, he shall maintain an account of his bond and he shall charge the bond with the amount of liability incurred on each withdrawal on determination of tax. He shall credit the bond on payment of the amount of tax required to be remitted with a return and by authorized credits taken on a return. Where a bond in less than the maximum penal sum has been allocated among two or more plants, as provided in §§ 19.243 and 19.244, the proprietor shall maintain an account at each plant of that part of the penal sum allocated to that plant.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.517 Gauge for tax determination.

(a) *Packages.* When spirits in packages are to be withdrawn from bonded premises on determination of tax on the basis of an individual package gauge, each package shall be gauged unless the tax is to be determined on the production or filling gauge. When packages are gauged, the proprietor shall prepare a package gauge record, according to § 19.769, and attach it to the record of tax determination prescribed in § 19.761.

(b) *Tanks.* Spirits in tanks which are to be withdrawn on determination of tax shall be gauged [by weighing and proofing) as prescribed in § 19.93, and the elements of the gauge shall be recorded on the record of tax determination or on a separate record of the gauge for attachment to the record of tax determination.

(c) *Cases.* Cases of distilled spirits to be withdrawn from bonded premises shall be tax determined on the basis of the contents thereof. The proof gallonage contained in cases shall be determined in accordance with 27 CFR Part 30 and the method prescribed in § 19.722.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358 (26 U.S.C. 5204); Sec. 807, Pub. L. 96–39, 93 Stat. 285 (26 U.S.C. 5213))

§ 19.518 Imported spirits.

When spirits which have been imported for nonbeverage purposes and transferred to bonded premises pursuant to 26 U.S.C. 5232 are withdrawn for beverage purposes, there shall be paid, in addition to the internal revenue tax imposed by 26 U.S.C. 5001, a tax equal to the duty which would have been paid had the spirits been imported for beverage purposes, less the duty already paid thereon. The additional tax shall be referred to as "additional tax—less duty", and shall be paid at the time and in the manner that the basic tax is paid. The total quantity in proof gallons withdrawn shall be the basis of computing the tax at the rates indicated. The amount of the "additional tax—less duty" shall be stated separately and identified as such on the tax return.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1314, as amended (26 U.S.C. 5001))

§ 19.519 Methods of tax payment.

The tax on spirits shall be paid pursuant to a return on Form 5110.32 or on Form 5110.35, filed as provided in § 19.523 or § 19.524 and § 19.525. Except for remittance to be effected by electronic fund transfer under § 19.524, remittance for the tax in full shall accompany the return and may be in any form which the district director is authorized to accept under the provisions of 26 CFR 301.6311–1 (Payment by check or money order) and which is acceptable to him. However, where a check or money order tendered in payment for taxes is not paid on presentment, or where the taxpayer is otherwise in default in payment, any remittance made during the period of such default, and until the regional director (compliance) finds that the revenue will not be jeopardized by the acceptance of a personal check (if acceptable to the district director), shall be in cash or in the form of a certified, cashier's, or treasurer's check drawn on any bank or trust company incorporated under the laws of the United States, or under the laws of any State, Territory, or possession of the United States, or a money order, as provided in 26 CFR 301.6311–1. Checks and money orders shall be made payable to "Internal Revenue Service".

(Act of August 16, 1954, Ch. 736, 68A Stat. 777, as amended (26 U.S.C. 6311); Sec. 201, Pub. L. 85–859, 72 Stat. 1335, as amended (26 U.S.C. 5061))

§ 19.520 Employer identification number.

The employer identification number (defined at 26 CFR 301.7701–12) of the taxpayer who has been assigned such a number shall be shown on each return on Form 5110.32 or Form 5110.35 filed pursuant to the provisions of this part. Failure of the taxpayer to include his employer identification number on Form 5110.32 or Form 5110.35 my result in assertion and collection of the penalty specified in 26 CFR 301.6676–1.

(Sec. 1, Pub. L. 87–397, 75 Stat. 828, as amended (26 U.S.C. 6109, 6676))

§ 19.521 Application for employer identification number.

(a) An employer identification number will be assigned pursuant to application on Form SS–4 filed by the taxpayer. Form SS–4 may be obtained from the director of the service center or from the district director.

(b) An application on Form SS–4 for an employer identification number shall be made by every taxpayer who files a return on Form 5110.32 or Form 5110.35, but who prior to the filing of his first return on Form 5110.32 or Form 5110.35 has neither secured an employer identification number nor made application therefor. Such application on Form SS–4 shall be filed on or before the seventh day after the date on which such first return on Form 5110.32 or Form 5110.35 is filed.

(c) Each taxpayer shall make application for and shall be assigned only one employer identification number, regardless of the number of places of business for which the taxpayer is required to file a tax return under the provisions of this part.

(Sec. 1, Pub. L. 87–397, 75 Stat. 828, as amended (26 U.S.C. 6109))

§ 19.522 Taxes to be collected by returns.

(a) *Semimonthly periods.* The tax on spirits to be withdrawn from bond for deferred payment of tax shall be paid pursuant to a return on Form 5110.35. The periods to be covered by returns on Form 5110.35 shall be semimonthly; such periods to run from the 1st day through the 15th day of each month, and from the 16th day through the last day of each month. A return, Form 5110.35, shall be executed and filed to cover each return period notwithstanding that no tax is due for payment for such period. The proprietor of each bonded premises

shall include, for payment, on his return on Form 5110.35 the full amount of distilled spirits tax determined in respect of all spirits released for withdrawal from the bonded premises on determination of tax during the period covered by the return (except spirits on which tax has been prepaid).

(b) *Conditions under which deferral is denied.* Notwithstanding the posting of a withdrawal or unit bond by the proprietor, the tax shall be prepaid as provided in paragraph (c) of this section—

(1) Where a proprietor has defaulted in any payment of tax under this section, during the period of such default and until the regional director (compliance) finds that the revenue will not be jeopardized by deferral; or

(2) Where a proprietor, who, after having been notified of his deficiency by the regional director (compliance) (i) fails to maintain records required by this part to substantiate the correctness of his tax returns or (ii) otherwise fails to comply with any provisions of this part, is so notified by the regional director (compliance).

(c) *Prepaid taxes.* The tax on distilled spirits shall be paid pursuant to a return on Form 5110.32 in all cases where the tax is required to be paid before the spirits are withdrawn from bond. A single return on Form 5110.32 may cover one or more transactions. The proprietor shall note the serial number of the Form 5110.32 and the date and time such return was filed on the individual record of tax determination.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1335, as amended, 1395, as amended (26 U.S.C. 5061, 5555))

§ 19.523 Time for filing returns.

(a) *Payment pursuant to semimonthly return, Form 5110.35.* Where the proprietor of bonded premises has withdrawn spirits from such premises on determination and before payment of tax, he shall file a tax return covering such spirits on Form 5110.35, and remittance as required by § 19.524 or § 19.525, not later than the last day of the second succeeding return period. Where the due date for filing a return falls on a Saturday, Sunday, or legal holiday, the time for filing is extended to the first succeeding day which is not a Saturday, Sunday, or legal holiday.

(b) *Payment pursuant to prepayment return, Form 5110.32.* If the proprietor of a distilled spirits plant desires to withdraw spirits from bonded premises on determination of tax and does not have on file an approved withdrawal or unit bond of sufficient penal sum to cover the withdrawal, if there is default by him in any payment of tax under this part, or the proprietor is notified by the regional director (compliance) as provided in § 19.522(b)(2), the proprietor shall not remove the spirits from the bonded premises until the tax thereon has been paid. To pay the tax, the proprietor of the bonded premises shall file a prepayment return, Form 5110.32, and remittance as required by §§ 19.523a or 19.524, before removal of the spirits.

(Sec. 201, Pub. L. 85–859, 75 Stat. 1335, as amended (26 U.S.C. 5061))

§ 19.524 Payment of tax by electronic fund transfer.

(a) *General.* (1) Each taxpayer who was liable, during a calendar year, for a gross amount equal to or exceeding five million dollars in distilled spirits taxes combining tax liabilities incurred under this part and Parts 250 and 251 of this chapter, shall use a commercial bank in making payment by electronic fund transfer (EFT) of distilled spirits taxes during the succeeding calendar year. Payment of distilled spirits taxes by cash, check, or money order, as described in § 19.524, is not authorized for a taxpayer who is required, by this section, to make remittances by EFT. For purposes of this section, the dollar amount of tax liability is defined as the gross tax liability on all taxable withdrawals and importations (including distilled spirits products brought into the United States from Puerto Rico or the Virgin Islands) during the calendar year, without regard to any drawbacks, credits, or refunds, for all premises from which such activities are conducted by the taxpayer. Overpayments are not taken into account in summarizing the gross tax liability.

(2) For the purposes of this section, a taxpayer includes a controlled group of corporations, as defined in 26 U.S.C. 1563, and implementing regulations in 26 CFR 1.1563–1–1.1563–4. These criteria are not the same criteria applied to a controlled group of corporations under Subpart H of this part, for the purposes of filing bonds covering more than one distilled spirits plant.

(3) A taxpayer who is required by this section to make remittances by EFT, shall make a separate EFT remittance and file a separate return, ATF F 5110.32 or ATF F 5110.35, for each distilled spirits plant from which spirits are withdrawn upon determination of tax.

(b) *Requirements.* (1) On or before January 10 of each calendar year, except for a taxpayer already remitting the tax by EFT, each taxpayer who was liable for a gross amount equal to or exceeding five million dollars in distilled spirits taxes during the previous calendar year, combining tax liabilities incurred under this part and Parts 250 and 251 of this chapter, shall notify the regional director (compliance), for each region in which taxes are paid. The notice shall be an agreement to make remittances by EFT.

(2) For each return filed in accordance with this part, the taxpayer shall direct the taxpayer's bank to make an electronic fund transfer in the amount of the taxpayment to the Treasury Account as provided in paragraph (e) of this section. The request shall be made to the bank early enough for the transfer to be made to the Treasury Account by no later than the close of business on the last day for filing the return, prescribed in § 19.523. The request shall take into account any time limit established by the bank.

(3) If a taxpayer was liable for less than five million dollars in distilled spirits taxes during the preceding calendar year, combining tax liabilities incurred under this part and Parts 250 and 251 of this chapter, the taxpayer may choose either to continue remitting the tax as provided in this section or to remit the tax with the return as prescribed by § 19.524. Upon filing the first return on which the taxpayer chooses to discontinue remitting the tax by EFT and to begin remitting the tax with the tax return, the taxpayer shall notify the regional director (compliance) by attaching a written notification to ATF F 5110.32 or ATF F 5110.35, stating that no taxes are due by EFT, because the tax liability during the preceding calendar year was less than five million dollars, and that the remittance shall be filed with the tax return.

(c) *Remittance.* (1) Each taxpayer shall show on the return, ATF F 5110.32 or ATF F 5110.35, information about remitting the tax for that return by EFT and shall file the return with the director of the service center, district director, or regional director (compliance), in accordance with the instructions on ATF F 5110.32 or ATF F 5110.35.

(2) Remittances shall be considered as made when a taxpayer unconditionally directs the bank to immediately make an electronic fund transfer in the amount of the taxpayment to the Treasury Account, in accordance with the procedures established by the bank.

(3) When the taxpayer directs the bank to effect an electronic fund transfer message as required by paragraph (b)(2) of this section, any transfer data record furnished to the taxpayer, through normal banking procedures, will serve as the record of payment, and shall be retained as part of required records.

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(d) *Failure to request an electronic fund transfer message.* The taxpayer is subject to a penalty imposed by 26 U.S.C. 5684, 6651, or 6656, as applicable, for failure to make a taxpayment by EFT on or before the close of business on the prescribed last day for filing.

(e) *Procedure.* Upon the notification required under paragraph (b)(1) of this section, the regional director (compliance) will issue to the taxpayer an ATF Procedure entitled, Payment of Tax by Electronic Fund Transfer. This publication outlines the procedure a taxpayer is to follow when preparing returns and EFT remittances in accordance with this part. The U.S. Customs Service will provide the taxpayer with instructions for preparing EFT remittances for payments to be made to the U.S. Customs Service.

(Act of August 16, 1954, 68A Stat. 775, as amended (26 U.S.C. 6302); Sec. 201, Pub. L. 85–859, 72 Stat. 1335, as amended (26 U.S.C 5061))

§ 19.525 Manner of filing returns.

(a) Each return on ATF F 5110.32 or 5110.35 shall be filed with the district director, director of the service center, or regional director (compliance), in accordance with the instructions on the form. If the return and remittance are to be filed with a designated ATF Officer, the proprietor shall file the return and remittance no later than 2:00 p.m. on the date the return is required to be filed.

(b) When the proprietor sends the return on Form 5110.32 or Form 5110.35 by U.S. mail, the official postmark of the U.S. Postal Service stamped on the cover in which the return was mailed shall be considered the date of delivery of the remittance. When the postmark on the cover is illegible, the burden of proving when the postmark was made will be on the proprietor. When the proprietor sends the return with or without remittance by registered mail or by certified mail, the date of registry or the date of the postmark on the sender's receipt of certified mail, as the case may be, shall be treated as the date of delivery of the return and, if accompanied, of the remittance.

(Aug. 16, 1954, ch. 736, 68A Stat. 775, as amended (26 U.S.C. 6302))

§ 19.526 Removal of spirits on tax determination.

No spirits shall be removed from bonded premises, except as otherwise provided by law, unless the tax thereon has been paid or determined. A record of tax determination shall be prepared for each removal of spirits as provided in § 19.76.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5205); Sec. 807, Pub. L. 96–39, 93 Stat. 285 (26 U.S.C. 5213))

Withdrawal of Spirits Without Payment of Tax

§ 19.531 Authorized withdrawals without payment of tax.

Spirits may be withdrawn from bonded premises, without payment of tax for:

(a) Export, as authorized under 26 U.S.C. 5214(a)(4);

(b) Transfer to customs manufacturing bonded warehouses, as authorized under 19 U.S.C. 1311;

(c) Transfer to foreign-trade zones, as authorized under 19 U.S.C. 81c;

(d) Supplies for certain vessels and aircraft, as authorized under 19 U.S.C. 1309;

(e) Transfer to customs bonded warehouses, as authorized under 26 U.S.C. 5066 or 5214(a)(9);

(f) Use in wine production, as authorized under 26 U.S.C. 5373;

(g) Transfer to any university, college of learning, or institution of scientific research for experimental or research use as authorized under 26 U.S.C. 5312(a); or

(h) Research, development or testing, as authorized under 26 U.S.C. 5214(a)(10). The withdrawal of spirits as provided in paragraphs (a) through (e) of this section shall be in accordance with the regulations in 27 CFR Part 252.

(Sec. 311, Tariff Act of 1930, 46 Stat. 691, as amended (19 U.S.C. 1311); Sec. 201, Pub. L. 85–859, 72 Stat. 1362, as amended, 1375, as amended, 1382, as amended (26 U.S.C. 5214, 5312, 5373); Sec. 3, Pub. L. 91–659, 84 Stat. 1965, as amended (26 U.S.C. 5066))

§ 19.532 Withdrawals of spirits for use in wine production.

Wine spirits may be withdrawn to a bonded wine cellar without payment of tax for use in wine production. When wine spirits are consigned, the proprietor shall prepare a transfer record according to § 19.770. Unless wine spirits in packages are to be withdrawn on the production or filling gauge, the proprietor shall prepare a package gauge record according to § 19.769 and attach it to the transfer record.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1362, as amended, 1382, as amended (26 U.S.C. 5214, 5373))

§ 19.533 Withdrawal of spirits without payment of tax for experimental or research use.

Any scientific university, college of learning, or institution of scientific research (which has qualified under the provisions of § 19.71 to withdraw spirits from a bonded premises), desiring to withdraw a specific quantity of spirits for experimental or research use, shall file a letterhead application with the regional director (compliance) of the region in which the applicant's premises are located.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1375, as amended (26 U.S.C. 5312))

Withdrawal of Spirits Free of Tax

§ 19.536 Authorized withdrawals free of tax.

Pursuant to the regulations in this chapter, spirits may be withdrawn from bonded premises free of tax—

(a) On receipt of a valid permit, issued under 27 CFR Part 213, to procure spirits for nonbeverage purposes and not for resale or use in the manufacture of any product for sale, as provided in 26 U.S.C. 5214(a)(3);

(b) On receipt of a valid permit, issued under 27 CFR Part 213, to procure spirits by and for the use of the United States or any governmental agency, any State, any political subdivision of a State, or the District of Columbia, for nonbeverage purposes as provided in 26 U.S.C. 5214(a)(2);

(c) On receipt of a valid permit, issued under this part, to procure spirits by and for the use of the United States, under the provisions of 26 U.S.C. 7510, for purposes other than as provided in paragraph (b) of this section and 26 U.S.C. 5214(a)(2);

(d) After being specially denatured—

(1) On receipt of a valid permit to procure such spirits, issued under 27 CFR Part 211;

(2) For export;

(e) After being completely denatured, for any lawful purpose;

(f) When contained in an article.

(Act of August 16, 1954, Ch. 736, 68A Stat. 900 (26 U.S.C. 7510); Sec. 201, Pub. L. 85–859, 72 Stat. 1362, as amended (26 U.S.C. 5214))

§ 19.537 Withdrawal of spirits free of tax.

Spirits withdrawn free of tax under § 19.536 (a), (b), and (c) shall be withdrawn in approved containers and shipped to the consignee designated in the permit. Unless the spirits are in cases or are to be withdrawn on the production or filling gauge, the proprietor shall gauge each container. If the spirits are in packages which are to be gauged, the proprietor shall prepare a package gauge record according to § 19.769, and attach it to Form 1473. Gauges shall be made in accordance with Part 30 or by other methods approved by the Director. For each shipment, the proprietor shall prepare Form 1473 and distribute the form in

accordance with the instructions thereon. Bulk conveyances used to transport spirits withdrawn free of tax under this section shall be secured in accordance with § 19.96.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1362, as amended (26 U.S.C. 5214))

§ 19.538 Withdrawal of spirits by the United States.

(a) *Application.* (1) Application for permit, Form 1444, shall be filed by the United States or a governmental agency thereof intending to procure spirits free of tax for:

(i) nonbeverage purposes under the provisions of 27 CFR Part 213; or

(ii) other purposes under this part.

(2) The application shall be signed by the head or authorized representative of a department, independent bureau or agency.

(3) Signatory authority for persons authorized to sign in lieu of the agency head shall be submitted with the application.

(b) *Shipments under permit.* (1) The permit, Form 1444, shall be submitted to the distilled spirits plant proprietor at the time the spirits are procured.

(2) The proprietor shall return the permit to the agency at the time of shipment unless authorized by the agency to retain the permit for future shipments.

(3) The agency representative shall execute and distribute Form 1473 in accordance with instructions on the form when a shipment is received.

(c) *Use of spirits.* Agencies shall take appropriate precautions to ensure that spirits will be used only for Government purposes.

(d) *Cancellation of permit.* The agency shall return the permit to the Director for cancellation when the procurement of spirits is discontinued.

(Act of August 16, 1954, Ch. 736, 68A Stat. 900 (26 U.S.C. 7510))

§ 19.539 Disposition of excess spirits.

Any excess spirits in the possession of a governmental agency shall be disposed of to another agency of the United States holding a permit, shall be returned to a plant on approval of the regional director (compliance) of the region in which the plant is located, or shall be disposed of otherwise as may be authorized by the regional director (compliance) of the region where the agency is located. In no case may such spirits be disposed of to the general public, or otherwise, than as provided in this section.

(Act of August 16, 1954, Ch. 736, 68A Stat. 900 (26 U.S.C. 7510))

§ 19.540 Removal of denatured spirits and articles.

(a) *Specially denatured spirits.* Specially denatured spirits withdrawn free of tax under § 19.536(d) shall be shipped in approved containers to the consignee designated in the permit. If such spirits are for export or for transfer to a foreign-trade zone, they shall be withdrawn under the applicable provisions of 27 CFR Part 252. If such spirits are for shipment to a qualified user or a bonded dealer, the proprietor shall prepare a notice of shipment on Form 1473 and distribute the copies of the form in accordance with the instructions thereon. Bulk conveyances used to transport specially denatured spirits shall be secured in accordance with the provisions of § 19.96.

(b) *Completely denatured alcohol.* No permit, application, or notice is required for removal of completely denatured alcohol from bonded premises.

(c) *Samples of denatured spirits.* The proprietor may take samples of denatured spirits free of tax which may be necessary for the conduct of business. The proprietor may furnish samples of specially denatured spirits: (1) To dealers in, and users of, specially denatured spirits in advance of sales; and (2) to users and to applicants or prospective applicants for permits to use specially denatured spirits, for experimental purposes or for use in preparing samples of a finished product for submission to the Director. Samples for these purposes, in excess of 1 quart, shall be furnished only after a permit on Form 1512 is issued to the consignee. Form 1473 shall be prepared to cover shipment of samples of a size in excess of 1 quart. Form 1473 shall show the permit number of the Form 1512. The proprietor shall retain the Form 1512 on file as a part of the record transaction. Records of samples of less than 1 quart shall be maintained as provided in § 19.766.

(d) *Labels for samples of denatured spirits.* Each sample of denatured spirits withdrawn under the provisions of paragraph (c) of this section shall have a label affixed showing the following information: (1) The word "Sample", and the words "Specially Denatured Alcohol", "Specially Denatured Spirits", or "Completely Denatured Alcohol", whichever is applicable; (2) the name, address, and plant number of the proprietor; (3) the formula number; and (4) the name and address of the consignee.

(e) *Articles.* Removal of articles from bonded premises shall be in accordance with the provisions of 27 CFR Part 211.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1382, as amended (26 U.S.C. 5214))

§ 19.541 Reconsignment.

When, prior to or on arrival at the consignee's premises, spirits or specially denatured spirits withdrawn free of tax under § 19.536 are not accepted by the consignee or by a carrier, they may be reconsigned by the proprietor making the shipment on notification to the proprietor's regional director (compliance) of the reconsignment. Such reconsignment may be made to himself or to another proprietor for return to bonded premises under the provisions of § 19.685 or to another person holding an industrial use permit authorizing receipt or use of such spirits or specially denatured spirits. In case of reconsignment to bonded premises, the provisions of § 19.685, relating to consents of surety in respect of return of spirits or denatured spirits withdrawn free of tax shall be applicable. Notice of cancellation of Form 1473 covering the shipment to the original consignee shall be given by the proprietor to each person receiving a copy of the form. When reconsignment is to another person as provided in this section, a new Form 1473 shall be prepared and the word "Reconsignment" placed thereon. The entry on the permit covering the original withdrawal shall be voided.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

Subpart Q—Losses and Shortages

Losses

§ 19.561 Losses in general.

(a) *Allowable losses.* Except as provided in paragraph (b) of this section, tax shall not be collected or, if paid, the tax shall be refunded when spirits, denatured spirits or wines are lost or destroyed while in bond.

(b) *Exceptions.* Tax shall be collected in the case of:

(1) Theft, unless the regional director (compliance) finds that the theft occurred without connivance, collusion, fraud or negligence on the part of the proprietor, owner, consignor, consignee, bailee, or carrier, or the employees or agents of any of them;

(2) Voluntary destruction carried out other than as provided in Subpart U of this part;

(3) Unexplained shortage of bottled spirits.

(c) *Burden of proof.* When it appears that a loss occurred due to theft, the burden of proof shall be on the proprietor or other person liable for the tax to establish to the satisfaction of the regional director (compliance) that the loss did not result from connivance,

collusion, fraud, or negligence on the part of the proprietor, owner, consignor, consignee, bailee, or carrier, or the employees or agents of any of them.

(d) *Claims* for losses allowable under this section shall be filed in accordance with applicable provisions of Subpart C of this part.

(e) *Limitations.* The abatement, remission, credit, or refund of taxes on spirits, denatured spirits, or wines lost by theft shall be allowed only to the extent that the claimant is not indemnified against or recompensed for the taxes.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1323, as amended, 1381, as amended (26 U.S.C. 508.5370))

§ 19.562 Determination of losses in bond.

(a) *General.* (1) Losses (whether by theft, unauthorized voluntary destruction, or otherwise) of spirits, denatured spirits, and wines shall be determined by the proprietor:

(i) Each time a tank or bulk conveyance is emptied;

(ii) On the basis of required physical inventories; and

(iii) Upon discovery of accidents or unusual variations in gauges.

(2) When it appears that any container in bond has sustained a loss resulting from theft or unauthorized voluntary destruction, such loss shall be taxpaid or the container shall be segregated (as necessary) with the loss reported promptly to the area supervisor.

(3) In any instance in which spirits, denatured spirits or wines are lost or destroyed in bond, whether by theft, unauthorized voluntary destruction, or otherwise, the regional director (compliance) may require the proprietor or other person liable for the tax to file a claim for relief from the tax in accordance with § 19.41.

(b) *Missing packages.* Whenever any packages of spirits, denatured spirits, or wine recorded as deposited on bonded premises cannot be located or otherwise accounted for, the proprietor shall promptly report such fact to the area supervisor, and the proprietor shall either pay the tax on the lost spirits, denatured spirits, or wines, or file a claim with respect thereto under the provisions of § 19.41.

(c) *Tampering, material deficiency, or loss of proof.* When it is found that spirits, denatured spirits, or wines in a container have been tampered with, or when a material deficiency in the recorded quantity of such products is found without evidence of loss by leakage or casualty, or when there is a loss of proof of such products not attributable to variations in gauging, the proprietor shall segregate the container (as necessary) and shall promptly report such fact to the area supervisor, unless the proprietor acknowledges liability for the tax on the loss and elects to pay the tax on the quantity lost.

(d) *Excessive in-transit losses.* Losses of spirits, denatured spirits, or wines received in bond in bulk conveyances which exceed one percent of the quantity of a product consigned shall be considered as excessive in-transit losses. However, in the case of transcontinental transfers in bond of wine, only losses in excess of two percent of the quantity of wine consigned shall be considered as excessive in-transit losses. The proprietor shall promptly report all such excessive in-transit losses to the area supervisor.

(e) *Storage account loss limitation.* When the quantity of spirits lost from all the storage tanks and bulk conveyances exceeds 1½ percent of the total quantity contained in the tanks and bulk conveyances during the calendar quarter, the loss shall be taxpaid unless a claim for remission is filed in accordance with the provisions of § 19.41 and is allowed by the regional director (compliance).

(Sec. 201, Pub. L. 85–859, 72 Stat. 1323, as amended, 1381, as amended (26 U.S.C. 5008, 5370))

§ 19.563 Loss of spirits from packages.

(a) *Original quantity.* Where there is evidence satisfactory to the regional director (compliance) that any loss of spirits (including denatured spirits) from any package deposited on bonded premises is due to theft (except where the regional director (compliance) has made the finding provided for in § 19.561(b)) or is due to unauthorized voluntary destruction, the regional director (compliance) may require the immediate tax payment of the quantity of spirits so lost, except where the extent of any loss from causes other than theft or unauthorized voluntary destruction can be established by the proprietor to the satisfaction of the regional director (compliance), the regional director (compliance) may credit the tax on the loss so established against the tax on the original quantity.

(b) *Alternative method.* Where there is evidence satisfactory to the regional director (compliance) that there has been access, other than as authorized by law, to the contents of packages entered for deposit on bonded premises, and the extent of such access is such as to evidence a lack of due diligence or a failure to employ necessary and effective controls on the part of the proprietor, the regional director (compliance) may (in lieu of the procedure prescribed in paragraph (a) of this section) assess an amount equal to the tax on 5 proof gallons of spirits on each of the total number of such packages as determined by him.

(c) *Applicability to packages filled after entry.* The provisions of this section apply to spirits (including denatured spirits) which are filled into casks or packages as authorized by law, after entry and deposit on bonded premises, whether by recasking, filling from tanks, mingling, or otherwise. The quantity filled into those casks or packages is considered to be the original quantity for the purpose of this section in the case of loss from those casks or packages.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1320, as amended (26 U.S.C. 5006))

§ 19.564 Losses after tax determination.

(a) *Applicability.* Pursuant to a claim, the tax on spirits which are lost after determination of tax and before completion of physical removal from bonded premises, may be abated or remitted or refunded or credited without interest to the proprietor of the bonded premises where the loss occurred.

(b) *Conditions.* (1) Claims for losses under this section shall be filed in accordance with Subpart C of this part.

(2) This section shall not apply if the tax would have been collectible by reason of 26 U.S.C. 5008(a)(1) if the loss occurred on bonded premises before determination of tax.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1323, as amended (26 U.S.C. 5006))

Shortages

§ 19.565 Shortages of bottled distilled spirits.

An unexplained shortage of bottled distilled spirits shall be taxpaid: (a) Immediately on Form 5110.32, or (b) on Form 5110.35 for the return period during which the shortage was ascertained. Unexplained shortages shall be determined by comparing the spirits recorded to be on hand with the results of the quantitative determination of the spirits found to be on hand by actual count during the physical inventory required by § 19.402. When the recorded quantity is greater than the quantity determined by the physical inventory, the difference is an unexplained shortage. The records shall be adjusted to reflect the physical inventory.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1323, as amended (26 U.S.C. 5006))

Subpart R—Containers and Marks

Containers

§ 19.581 Authorized containers.

(a) *General.* Proprietors shall use for any purpose of containing, storing, transferring, conveying, removing, or withdrawing spirits or denatured spirits under this part only containers which are authorized by, or under the provisions of this part for such purpose, and a container so authorized will be deemed to be an approved container for such purpose. Except where stated otherwise, the provisions of Part 211 of this chapter apply to containers used for containing, storing and shipping of articles, and the provisions of 27 CFR Part 240 apply to containers used for storage or transfer of wine, Except for liquor bottles, this subpart does not regulate or prohibit the use on plant premises of any container for purposes other than containing alcoholic substances.

(b) *Alternate containers.* In addition to the types of containers specifically authorized by this part for a particular purpose, a container of another type may be authorized for that purpose by the Director on a finding by him that the use of such container will afford protection to the revenue equal to or greater than that afforded by the containers specifically authorized by this part, and that the use will not cause administrative difficulty. If another container is so authorized by the Director, he shall prescribe the detail and manner in which such container shall be constructed, protected, and marked, consistent with the provisions of this part and the extent of such use. Similarly, where a container authorized for a particular purpose is required by this subpart to be made of specified materials, the Director may authorize the use of containers made of other materials which he has found to be suitable for the intended purpose.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended, 1362, as amended, 1374, as amended (26 U.S.C. 5206, 5212, 5214, 5301); Sec. 805, Pub. L. 96–39, 93 Stat. 279 (26 U.S.C. 5002); Sec. 807, Pub. L. 96–39, 93 Stat. 285 (26 U.S.C. 5213))

§ 19.582 Spirits for nonindustrial use.

(a) *Determination of use.* Containers of spirits of a capacity of 1 gallon (3.875 liters) or less are considered to be for nonindustrial use, except for those which contain:

(1) Anhydrous alcohol; or

(2) Alcohol which may be withdrawn from bond free of tax.

(b) *Containers.* If not inconsistent with the provisions in 27 CFR Part 5, spirits for nonindustrial use may be filled into:

(1) Packages, or

(2) Other containers which are filled during processing operations and contain not more than 10 gallons.

(c) *Bottles and labels.* The provisions of Subpart S of this part govern the liquor bottles and labels to be used in bottling spirits for nonindustrial domestic use.

(d) *Cases.* Spirits for nonindustrial use in containers with a capacity of 1 gallon or less shall be placed in cases which afford reasonable protection against breakage. Such cases shall not be transferred in bond.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended, 1374, as amended (26 U.S.C. 5206, 5212, 5301))

§ 19.583 Spirits for industrial use.

(a) *Containers.* (1) Denatured spirits may be filled into glass or metal containers of a capacity not greater than 10 gallons.

(2) Other spirits for industrial use may be filled into

(i) Containers of 1 gallon or less; or

(ii) Glass or metal containers of a capacity of 1 gallon but not greater than 10 gallons.

(b) *Encased containers.* Unlabeled containers holding from 1 to 10 gallons of denatured spirits and spirits of 190 degrees proof or more for industrial use may be encased in wood, fiberboard, or similar material if:

(1) The cases are constructed so that the surface, including the opening, of the container is not exposed;

(2) Required marks and any required stamps are applied to an exterior surface of the case;

(3) The case is constructed so that the portion containing marks andstamps will remain attached to the inner container until all the contents have been removed; and

(4) A statement reading "Do not remove inner container until emptied" or of similar meaning is placed on the portion of the case bearing the marks and stamps.

(c) *Cases.* Except for encased containers, containers for denatured spirits and spirits for industrial use of a capacity of 1 gallon or less shall be placed in cases which afford reasonable protection against breakage.

(d) *Articles.* Articles shall be packaged and labeled in accordance with the provisions of 27 CFR Part 211.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended, 1374, as amended (26 U.S.C. 5206, 5301))

§ 19.584 Packages.

Packages may be used on bonded premises for original entry of spirits, and for packaging from tanks, storing, transferring in bond, and withdrawing from bonded premises of spirits and denatured spirits. Packages shall be constructed so as to be capable of secure closure.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended (26 U.S.C. 5206))

§ 19.585 Bulk conveyances.

Bulk conveyances which conform to the requirements of § 19.588 may be used on bonded premises for original entry of spirits, and for filling from tanks, storing, transferring in bond, and withdrawing taxpaid spirits and denatured spirits. Spirits may be withdrawn free of tax, pursuant to the provisions of this part, in a bulk conveyance only for use of the United States, or if the Director has authorized the proprietor, as provided in § 19.581, to so withdraw such spirits to a specified consignee. Spirits may be withdrawn without payment of tax, pursuant to the provisions of this part, in bulk conveyances for the purposes provided in § 19.531 (a), (b), (c), (e), and (f).

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended (26 U.S.C. 5206))

§ 19.586 Tanks.

Tanks which conform to the requirements of § 19.273 may be used on bonded premises as containers for distilled spirits, denatured spirits, articles, and wines.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended (26 U.S.C. 5206))

§ 19.587 Pipelines.

Pursuant to the provisions of this part, pipelines which conform to the requirements of § 19.274 may be used for (a) the conveyance on bonded premises of spirits, denatured spirits, articles, and wines, and (b) the conveyance to and from bonded premises of spirits, denatured spirits, articles, and wines.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended (26 U.S.C. 5206))

§ 19.588 Construction of bulk conveyances.

(a) *Construction.* All bulk conveyances authorized by this part shall conform to the following:

(1) If the conveyance consists of two or more compartments, each shall be so constructed or arranged that emptying of any compartment will not afford access to the contents of any other compartment.

(2) The conveyance (or in the case of compartmented conveyances, each

compartment) shall be so arranged that it can be completely drained.

(3) Each tank car or tank truck shall have permanently and legibly marked thereon its number, capacity in wine gallons, and the name or symbol of its owner.

(4) If the conveyance consists of two or more compartments, each compartment shall be identified and the capacity of each shall be marked thereon.

(5) A route board, or other suitable device, for carrying required marks and stamps shall be provided on each bulk conveyance.

(6) Calibrated charts showing the capacity of each compartment in wine gallons for each inch of depth, shall be available for use in measuring the contents of each tank truck, tank ship, or barge.

(b) *Proprietor's responsibility.* Before filling any bulk conveyance, the proprietor shall examine it to ascertain that it meets the requirements of this section and is otherwise suitable for receiving the spirits, denatured spirits, or wines, and he shall refrain from, or discontinue, using any such conveyance found by him or by an ATF officer to be unsuitable.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended, 1362, as amended (26 U.S.C. 5206, 5212, 5214); Sec. 807, Pub. L. 96–39, 93 Stat. 285 (26 U.S.C. 5213))

§ 19.589 Restrictions on disposition of bulk spirits.

(a) *For nonindustrial use.* Spirits for nonindustrial use may be sold or disposed of in containers holding more than 1 wine gallon only to the persons and for the purposes set forth in 27 CFR Part 3.

(b) *For industrial use.* Shipment or delivery of spirits (other than alcohol or neutral spirits) withdrawn from bond in containers holding more than 1 wine gallon for industrial use shall, as provided in 27 CFR Part 3, be made directly to the user of the spirits.

(Sec. 201, Pub. L. 85–895, 72 Stat. 1356, as amended (26 U.S.C. 5201))

Marks

§ 19.592 General.

Proprietors shall mark, identify, label, and stamp all containers of spirits or denatured spirits as provided by this part. Containers of wine shall be marked in accordance with 27 CFR Part 240. Containers of articles shall be marked in accordance with 27 CFR Part 211.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended, 1360, as amended (26 U.S.C. 5204, 5206))

§ 19.593 Package identification numbers in production and storage.

(a) *General.* Packages of spirits filled during production or storage operations after December 31, 1979, shall be marked with a lot identification representing the date the package is filled, and consisting, in the order shown, as follows:

(1) The last two digits of the calendar year;

(2) An alphabetical designation from "A" through "L", representing January through December, in that order;

(3) The digits corresponding to the day of the month; and

(4) When more than one lot is filled into packages during the same day, for successive lots after the first lot, a letter suffix, in alphabetical order, with "A" representing the second lot, "B" representing the third lot, and so forth. The first three lots filled into packages on January 2, 1980, would be identified as "80A02", "80A02A", "80A02B".

(b) *Packages constituting a lot.* Packages of spirits received from customs custody or filled during any one day shall be given the same lot identification subject to the following conditions:

(1) They are of the same type and either are of the same rated capacity or are uniformly filled with the same quantity by weight or other method provided in § 19.319;

(2) They are filled with spirits of the same kind and same proof;

(3) They are filled with spirits which are mingled in accordance with § 19.346; and

(4) They are filled with imported spirits, Puerto Rican spirits, or Virgin Islands spirits, as applicable. Any remnant package shall itself constitute a lot.

(c) *Serial numbers.* The regional director (compliance) may require serial numbers on packages of spirits within the same lot in conjunction with the lot identification, at the time of filling, receipt on bonded premises, or withdrawal from bond. Proprietors shall assign temporary serial numbers to packages for control purposes when they are transferred in bond in an unsecured conveyance or gauged after being tampered with in the storage account.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended (26 U.S.C. 5206))

§ 19.594 Numbering of packages and cases in processing.

(a) *General.* Packages of spirits and denatured spirits filled during processing operations and cases containing bottles or other containers of spirits and denatured spirits shall, when filled, be consecutively numbered in a separate series by the proprietor commencing with "1" in each series of serial numbers, except that any series of such numbers in use may be continued. When the numbering in any series reaches "1,000,000", the proprietor may recommence the series. However, a new series for packages of spirits and denatured spirits filled during processing operations shall be given an alphabetical prefix or suffix. For additional identification, separate series of serial numbers, distinguished from each other by the use of alphabetical prefixes or suffixes, may be established to identify size of bottles, brand names, or other information, on written notice to the regional director (compliance). Remnant cases shall be given the serial number of the last full case followed by the letter R. Where there is a change in the individual, firm, corporate name, or trade name, all series in use at that time shall be continued. However, for a change in proprietorship, a new series shall be commenced.

(b) *Alternative method for spirits, including denatured spirits, for industrial use.* Instead of the numbering required by paragraph (a) of this section, packages and cases of spirits, including denatured spirits, for industrial use filled in processing may be marked with lot identification numbers provided in § 19.593.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended (26 U.S.C. 5206))

§ 19.595 Specifications for marks.

(a) *Manner.* (1) The proprietor shall place the prescribed marks on cases, encased containers, and packages of spirits and denatured spirits so that they are:

(i) Of sufficient size to be easily read;

(ii) Of a color distinctly in contrast to that of the background;

(iii) Legible; and

(iv) Durable.

(2) Cases, encased containers or packages may be marked by the use of labels which are legible and securely affixed.

(b) *Location.* The required marks shall be placed on one side or head, as applicable.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended (26 U.S.C. 5206))

§ 19.596 Marks on packages of spirits filled on bonded premises.

(a) *Packages filled in production or storage.* Except as otherwise provided in this part, packages of spirits filled in production or storage shall be marked with:

(1) The name of the producer, or his trade name as required by paragraph (c) of this section;

(2) The plant number of the producer, such as "DSP–KY–708";

(3) The kind of spirits or, in the case of distillates removed under § 19.322, the kind of distillates such as "Grape distillate", "Peach distillate", etc.;

(4) The package identification number;

(5) "BSA" or "OC" when spirits are treated with caramel or oak chips, as the case may be;

(6) The rated capacity of the package in gallons shown as "RC—G".

(7) If packages of spirits of 190 degrees or more of proof are filled by other than the producer, the name (or trade name) and plant number of the packaging proprietor shall be substituted for that of the producer.

(b) *Packages filled in processing.* Except as otherwise provided in this part, packages of spirits filled in processing shall be marked with:

(1) The name of the processor, or his trade name;

(2) The plant number of the processor, such as "DSP–KY–708";

(3) The kind of spirits (in the case of an intermediate, the product name shown on Form 5110.38);

(4) The serial number or lot identification number, as applicable, and date of filling;

(5) Proof of spirits; and

(6) If manufactured under an approved formula, the serial number of the formula.

(c) *Real or trade names.* The producer's real name or any trade name authorized (as provided in § 19.165), at the time of production, may be placed on any package filled at the time of production gauge, or at the time of original packaging of the spirits in wood when, as provided in § 19.320, the spirits were not filled into wooden packages at the time of production gauge. When spirits have been mingled under § 19.346, the proprietor may use any of the names represented in the mingled spirits, but no other name, as the name of the producer to be marked on packages filled with such mingled spirits. However, if the proprietor was the actual producer of the spirits, he may in any case use his real name. The processor's real name or any trade name authorized (as provided in § 19.165) may be placed on any package filled with spirits during processing operations.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended (26 U.S.C. 5206))

§ 19.597 Kind of spirits.

(a) *Designation.* The designations as to kind of spirits required by § 19.596 shall be in accordance with the classes and types of spirits set out in 27 CFR Part 5, except that:

(1) Spirits distilled at more than 160 degrees of proof, which lack the taste, aroma, and other characteristics generally attributed to whisky, brandy, rum, or gin, and which are substantially neutral in character, may be designated as "Alcohol". When alcohol is withdrawn on determination of tax, the designation shall consist of the word "Alcohol" preceded or followed by a word or phrase descriptive of the material from which the alcohol was produced.

(2) The designations for vodka, neutral spirits, or gin shall include a word or phrase descriptive of the material from which the spirits so designated were produced.

(3) Spirits distilled at less than 190 degrees of proof which lack the taste, aroma, and other characteristics generally attributed to whisky, brandy, rum, or gin, may be designated "Spirits", preceded or followed by a word or phrase descriptive of the material from which produced. However, spirits distilled on or after July 1, 1972, as provided in this paragraph may not be designated "Spirits grain" or "Grain spirits".

(4) Spirits distilled from fruit at or above 190 degrees of proof, if intended for use in wine production, shall be designated "Neutral Spirits—Fruit", preceded or followed by the name of the fruit from which produced.

(5) Spirits distilled at not more than 160 degrees of proof from a fermented mash of not less than 51 percent rye, corn, wheat, malted barley, or malted rye grain, packaged in reused cooperage, may be designated "Whisky" if further qualified with the words "Distilled from rye mash" (or bourbon, wheat, malt, or rye malt mash, as the case may be). However, such spirits shall, if distilled from a fermented mash of not less than 80 percent corn, be designated "Corn Whisky."

(b) *Change of designation.* A proprietor may, on written application to, and approval of the regional director (compliance), change the original designation for spirits at any time, before their withdrawal from bonded premises, to a new designation properly describing the spirits in accordance with the provisions of this section.

(c) *Other designations.* If the proprietor proposes to produce spirits for which a designation has not been prescribed, he shall first make written application to the Director for a designation for such spirits and such spirits shall be branded accordingly.

(d) *Spirits for nonindustrial use.* The provisions of this section shall not be construed as authority for applying designations to spirits withdrawn for nonindustrial use which designations do not comply with provisions of 27 CFR Part 5.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended (26 U.S.C. 5206))

§ 19.598 [Reserved]

§ 19.599 Change of packages in storage.

When spirits are transferred from one package to another as authorized in § 19.345, each new package shall be given the same package identification number and marks as the original package. The proprietor shall prepare and sign a label to be affixed to the head of each new package in the manner prescribed for affixing distilled spirits stamps. The label shall be in the following form:

The spirits in this _____ (kind of coperage)_____ (Barrel or drum) package identification No._____, were transferred from a_____ _____, (kind of cooperage)_____, (Barrel or drum) on_____, (Date).

_____

(Proprietor)

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended (26 U.S.C. 5206))

§ 19.600 [Reserved]

§ 19.601 Marks on containers of specially denatured spirits.

(a) *General.* Each package, case, and encased container of specially denatured spirits filled on bonded premises shall be marked or labeled to show:

(1) Quantity in gallons;

(2) Serial number or lot identification number;

(3) Plant number of the proprietor;

(4) Designation or abbreviation of the specially denatured spirits by kind (alcohol or rum);

(5) Formula number; and

(6) Proof of spirits which were denatured at other than 190 degrees of proof.

(b) *Bottles.* Each bottle shall be marked or labeled to show the information prescribed in paragraph (a)(1), (3), (4), (5), and (6) of this section.

(c) *Alternate formulations.* When spirits are denatured under a formula authorizing a choice of types and quantities of denaturants, the container or case shall be marked to show actual types and quantities of denaturants used.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended (26 U.S.C. 5206))

§ 19.602 Marks on containers of completely denatured alcohol.

Each container of completely denatured alcohol, except pipelines and bulk conveyances, shall have marked on the head of the package, or side of the can or carton, the name of the proprietor by whom the containers were filled, the plant number where filled, the contents in wine gallons, the apparent proof, the words "Completely Denatured Alcohol", and the formula number.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended) (26 U.S.C. 5206))

§ 19.603 [Reserved]

§ 19.604 Caution label.

Each container of completely denatured alcohol containing 5 gallons or less, sold or offered for sale, shall be labeled to show in plain, legible letters (red or white) the words "Completely Denatured Alcohol" and the following statement: "Completely denatured alcohol; contains ingredients which render the product wholly unfit for beverage purposes; if taken internally, will cause serious consequences to health." The name and address of the denaturer may be printed on such label, but no other extraneous matter will be permitted thereon without the approval of the Director. The word "pure", qualifying denatured alcohol, will not be permitted to appear on the label or the container.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended (26 U.S.C. 5206))

§ 19.605 Additional marks on portable containers.

(a) In addition to the other marks required by this part, portable containers (other than bottles enclosed in cases) of spirits or denatured spirits to be withdrawn from the bonded premises:

(1) Without payment of tax, for export, transfer to customs manufacturing bonded warehouses, transfer to foreign-trade zones or supplies for certain vessels and aircraft, shall be marked as provided in 27 CFR Part 252; or

(2) Tax-free alcohol shall be marked with the word "Tax-Free."

(b) The proprietor may show other information such as brand or trade name; caution notices and other material required by Federal, State, or local law or regulations; wine or proof gallons; and plant control data. However, marks or attachments shall not conceal, obscure, interfere with or conflict with the markings required by this subpart.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended (26 U.S.C. 5206))

§ 19.606 Marks on bulk conveyances.

(a) The proprietor shall securely attach to the route board, or other suitable device, of each bulk conveyance used to transport spirits or denatured spirits, a label to identify each conveyance or compartment as follows:

(1) Name, plant number, and location of the consignor;

(2) Name, plant number, permit number, or registry number (as applicable), and location of the consignee;

(3) Date of shipment;

(4) Quantity (proof gallons for spirits, wine gallons for denatured spirits); and

(5) Formula number for denatured spirits.

(b) The provisions of paragraph (a) of this section shall not apply when the conveyance is accompanied by documentation which contains the information required by paragraph (a) of this section.

(c) In addition, export shipments shall conform to the requirements of 27 CFR Part 252.

(d) Bulk conveyances used to transport wine and articles shall conform to the requirements of 27 CFR Part 240 and 27 CFR Part 211, respectively.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended (26 U.S.C. 5206))

§ 19.607 Marks on cases.

(a) *Mandatory marks.* Except for cases marked as provided in § 19.608, the following information shall be plainly marked on each case of spirits filled in processing:

(1) Serial number;

(2) Kind of spirits;

(3) Plant number where bottled;

(4) Date filled;

(5) Proof; and

(6) Liters or proof gallons.

Cases removed for export, transfer to customs bonded warehouses or customs manufacturing bonded warehouses, transfer to foreign-trade zones, or for use as supplies on certain vessels and aircraft, shall bear the additional marks required by 27 CFR Part 252.

(b) *Other marks.* In addition to the required marks on cases filled in processing, the proprietor may include other marks such as;

(1) Name or trade name, and location of desired, of the bottler, and in conjunction therewith the word "Bottler";

(2) For products actually distilled or processed by the proprietor, his name or trade name, and location, if desired, and in conjunction therewith the words "Distiller" or "Processor" as applicable;

(3) For products actually imported and bottled by the proprietor, the words "Imported and Bottled By", followed by his name or trade name, and location if desired;

(4) For products bottled for a dealer, the words "Bottled For", followed by the name of such dealer;

(5) Other material required by Federal or State law and regulations; or

(6) Labels or data describing the contents for commercial identification or accounting purposes, or indicating payment of State or local taxes.

The marks authorized by this paragraph shall not interfere with or detract from the mandatory marks prescribed in paragraph (a) of this section.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended (26 U.S.C. 5206); Sec. 3(a), Pub. L. 91–659, 84 Stat. 1965, as amended (26 U.S.C. 5066))

§ 19.608 Cases of industrial alcohol.

(a) Mandatory marks. Each case, including encased containers, of alcohol bottled for industrial use in accordance with Subpart M of this part shall be marked as applicable, to show—

(1) "Alcohol";

(2) Serial number or lot identification number;

(3) Plant number;

(4) Proof;

(5) Proof gallons;

(6) "Tax-Free"; and

(7) Information required by 27 CFR Part 252, for cases withdrawn for export, transferred to customs bonded warehouses, transferred to foreign-trade zones, or supplies for certain vessels and aircraft.

(b) *Other marks.* Cases may be marked with other marks which do not interfere with or detract from mandatory case marks in the manner permitted by § 19.607.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended, 1369, as amended (26 U.S.C. 5206, 5235))

§ 19.609 [Reserved]

§ 19.610 Destruction of stamps and obliteration of marks.

Except as provided in § 19.597(b), the stamps and marks required by this part to be placed on any container or case shall not be destroyed or altered before the container or case is emptied. When the proprietor empties a container, he shall destroy any distilled spirits stamp which was affixed to the container, or he shall obliterate any mark which was placed on the container in lieu of a distilled spirits stamp. The proprietor is not required to obliterate any other marks on a container.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5205))

§ 19.611 Relabeling and restamping off bonded premises.

The proprietor of a distilled spirits plant may relabel, affix brand labels, reaffix alternative devices, or restamp bottled taxpaid spirits on wholesale liquor dealer premises or at a taxpaid storeroom on, contiguous to, adjacent to, or in the immediate vicinity of the plant, if such wholesale liquor dealer premises or taxpaid storeroom is operated in connection with the plant. If products which are relabeled under this section were originally bottled by another proprietor, the relabeling proprietor shall have on file a statement from the original bottler consenting to the relabeling.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5201))

§ 19.612 Authorized abbreviations to identify marks.

In addition to the abbreviations and symbols which are authorized in this part for use in marking containers, the following abbreviations may be used to identify certain marks:

Mark	Abbreviation
Completely Denatured Alcohol	CDA
Distilled Spirits Stamps	DSS
Gallon or Wine Gallon	WG
Gross Weight	G
Proof	P
Specially Denatured:	
Alcohol	SDA
Rum	SDR
Tare	T
Tax Determined	TD
Wine Spirits Addition	WSA

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended (26 U.S.C. 5206))

Subpart S—Liquor Bottle and Label Requirements

§ 19.631 Scope of subpart.

The provisions of §§ 19.632 through 19.639 of this subpart shall apply only to liquor bottles having a capacity of 200 ml or more except where expressly applied to liquor bottles of less than 200 ml capacity. The provisions of §§ 19.641 through 19.650 of this subpart shall apply to all liquor bottles, regardless of size.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended, 1374, as amended (26 U.S.C. 5206, 5301))

Liquor Bottle Requirements

§ 19.632 Bottles authorized.

Liquor bottles for domestic use shall conform to the applicable standards of fill provided in Subpart E of 27 CFR Part 5, including those for liquor bottles of less than 200 ml capacity. The use of any bottle size other than as authorized in Subpart E of 27 CFR Part 5 is prohibited for the bottling of nonindustrial distilled spirits for domestic purposes.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1374, as amended (26 U.S.C. 5301))

§ 19.633 Distinctive liquor bottles.

(a) *Application.* A proprietor desiring approval of domestic liquor bottles of distinctive shape or design, including bottles of less than 200 ml capacity, or, to use such distinctive liquor bottles, shall submit Form 1649/5100.31 to the Director for approval. The applicant shall certify as to the total capacity of a representative sample bottle before closure (expressed in milliliters) on each copy of the form. In addition, the applicant shall affix a readily legible photograph (both front and back of the bottle) to the front of each copy of Form 1649/5100.31, along with the label(s) to be used on the bottle. The applicant shall not submit an actual bottle or an authentic model unless specifically requested to do so.

(b) *Approval.* Properly submitted Forms 1649/5100.31 for approval of distinctive liquor bottles shall be approved by the Director if the bottles are found to—

(1) Meet the requirements of 27 CFR Part 5;

(2) Be distinctive;

(3) Be suitable for their intended purpose;

(4) Not jeopardize the revenue; and

(5) Not be deceptive to the consumer.

The applicant shall keep a copy of the approved Form 1649/5100.31, including an approved photograph (both front and back) of the distinctive liquor bottle, on file at his premises. If Form 1649/5100.31 is disapproved, the applicant shall be notified of the Director's decision and the reasons therefor.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1374, as amended (26 U.S.C. 5301))

§ 19.634 Receipt and storage of liquor bottles.

No proprietor shall accept shipment or delivery of liquor bottles except from the manufacturer thereof, a supplier abroad, or another proprietor. However, the regional director (compliance) may, pursuant to letterhead application, authorize a proprietor to receive and reuse liquor bottles assembled for such proprietor as provided in 27 CFR § 194.263. Liquor bottles, including those of less than 200 ml capacity, shall be stored in a safe and secure place, either on the proprietor's qualified premises or at another location.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1374, as amended (26 U.S.C. 5301))

§ 19.635 Bottles to be used for display purposes.

Liquor bottles may be furnished to liquor dealers for display purposes, provided that each bottle is marked to show that it is to be used for such purpose. Strip stamps may not be used on display bottles. The disposition of such bottles, showing names and addresses of consignees, dates of shipment, and size, quantity, and description of bottles, shall be included in the records required under § 19.747.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1374, as amended (26 U.S.C. 5301))

§ 19.636 Bottles for testing purposes.

Proprietors may ship liquor bottles to persons for testing. The disposition of such bottles, showing the name and address of the person to whom the bottles are shipped, date of shipment, and the size and number of bottles shipped, shall be included in the records required under § 19.747.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1374, as amended (26 U.S.C. 5301))

§ 19.637 Bottles not consitituting approved containers.

The Director shall disapprove for use as a liquor bottle any bottle, including a bottle of less than 200 ml capacity, which he determines to be deceptive. Any such bottle is not an approved container for the purposes of § 19.581 of this part, and shall not be used for packaging distilled spirits for domestic purposes.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1374, as amended (26 U.S.C. 5301))

§ 19.638 Disposition of stocks of liquor bottles.

When a proprietor discontinues operations, or permanently discontinues the use of a particular size or type of liquor bottle, the stocks of such bottles on hand shall either be disposed of to another person authorized to receive liquor bottles, or destroyed, including disposition for purposes which will render them unusable as bottles. However, on approval of a written application by the regional director (compliance) of the region in which the proprietor's plant is located, liquor bottles may be otherwise disposed of.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1374, as amended (26 U.S.C. 5301))

§ 19.639 Use and resale of liquor bottles.

No proprietor shall use any liquor bottle except for packaging distilled spirits, or dispose of any empty liquor

bottle except to another person authorized to receive liquor bottles or as provided in § 19.638. Bottles may be furnished to others for display and testing purposes as provided in §§ 19.635 and 19.636, respectively.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1374, as amended (26 U.S.C. 5301))

Bottle Label Requirements

§ 19.641 Certificate of label approval or exemption.

Proprietors are required by 27 CFR Part 5 to obtain approval of labels, or exemption from label approval, for any label to be used on bottles of spirits for domestic use and shall exhibit evidence of label approval, or of exemption from label approval, on request of an ATF officer.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.642 Statements required on labels under an exemption from label approval.

All labels to be used on bottles of spirits for domestic use under an exemption from label approval shall contain the applicable information required in §§ 19.643 through 19.650. Where a statement of age or age and percentage is required, it shall have the meaning given, and be stated in the manner provided in 27 CFR Part 5.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.643 Brand name, kind, alcohol content, and State of distillation.

The brand name, kind as set out in 27 CFR Part 5, and alcohol content of the distilled spirits, by proof, shall be shown on the label except that on labels for liqueurs, cordials, bitters, cocktails, highballs, or other such specialties, the alcohol content may be stated in percentage by volume. Except in the case of "light whisky", "blended light whisky", "blended whisky", "a blend of straight whiskies", or "spirit whisky", the State of distillation shall be shown on the label of any whisky produced in the United States if the whisky is not distilled in the State given in the address on the brand label. The Director may, however, require the State of distillation to be shown on the label or permit such other labeling as may be necessary to preclude any misleading or deceptive impression which might otherwise be created as to the actual State of distillation. In the case of "light whisky", as defined in 27 CFR 5.22(b)(3), the State of distillation shall not appear in any manner on any label if the Director finds such State is associated by consumers with an American type whisky (as provided in 27 CFR 5.22), except as part of a name and address as set forth in 27 CFR 5.36(a).

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.644 Net contents.

The net contents of liquor bottles shall be shown on the label, unless the statement of the net contents is permanently marked on the side, front, or back of the bottle.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as ameded (26 U.S.C. 5201))

§ 19.645 Name and address of bottler.

There shall be stated on the label of distilled spirits the phrase "Bottled by", "packed by", or "Filled by" immediately followed by the name (or trade name) of the bottler and the place where such spirits are bottled. If the bottler is the actual bona fide operator of more than one distilled spirits plant engaged in bottling operations, there may, in addition, be stated immediately following the name (or trade name) of such bottler the addresses of such other plants. However:

(a) Where distilled spirits are bottled by or for the distiller thereof, there may be stated, in lieu of the phrase "Bottled by", "Packed by", or "Filled by", followed by the bottler's name (or trade name) and address, the phrase "Distilled by", followed by the name (or trade name) under which the particular spirits were distilled, or any trade name shown on the distiller's permit (covering the premises where the particular spirits were distilled), and the address (or addresses) of the distiller;

(b) Where distilled spirits are bottled by or for the proprietor of a distilled spirits plant, there may be stated, in lieu of the phrase "Bottled by", "Packed by", or "Filled by", followed by the bottler's name (or trade name) and address, the phrase "Blended by", "Made by", "Prepared by", "Manufactured by", or "Produced by" (whichever may be appropriate to the process involved), followed by the name (or trade name) and the address (or addresses) of the distilled spirits plant proprietor; and

(c) On labels of distilled spirits bottled for a retailer or other person who is not the actual distilled spirits plant proprietor of such distilled spirits, there may also be stated the name and address of such retailer or other person, immediately preceded by the words "Bottled for", or "Distributed by", or other similar statement.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.646 Age of whisky containing no neutral spirits.

In the case of whisky containing no neutral spirits, statements of age and percentage shall be stated on the label as provided in 27 CFR Part 5.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.647 Age of whisky containing no neutral spirits.

In the case of whisky containing neutral spirits, the age of the whisky or whiskies and the respective percentage by volume of whisky or whiskies and neutral spirits, shall be stated on the label as provided in Part 5 of this chapter.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.648 Age of brandy.

If brandy is aged for a period of less than two years, the age thereof shall be shown on the label.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.649 Presence of neutral spirits and coloring, flavoring, and blending materials.

The presence of neutral spirits or coloring, flavoring, or blending materials shall be stated on labels in the manner provided in 27 CFR Part 5.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.650 Country of origin.

On labels of imported distilled spirits there shall be stated the country of origin in substantially the following form: "Product of _____," the blank to be filled in with the name of the country or origin.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

Subpart T—Stamps

Strip Stamps and Alternative Devices

§ 19.661 General

(a) *Red strip stamps.* Except as provided in paragraph (b) of this section, a red strip stamp or an approved alternative device shall be affixed to each:

(1) Bottle or other container of spirits having a capacity of one gallon or less, except cases, at the time of filling; and

(2) Encased container, metal drum, or other container of spirits having a capacity of more than one gallon but not more than five gallons, before withdrawal, on determination of tax, without payment of tax for the purposes authorized in § 19.531 (a)–(e), or free of

tax for the purposes authorized in § 19.536 (a)–(c).

(b) *Green strip stamps.* A green strip stamp or an approved alternative device shall be affixed to each bottle containing spirits which are labeled as "bottled in bond" under 27 CFR Part 5.

(c) *Overprinting.* (1) Strip stamps or alternative devices affixed to bottles to be exported shall be overprinted with the word "EXPORT." However, upon approval by the Director, strip stamps or alternative devices need not be so overprinted when the label or other information on the bottle clearly indicates that the spirits are intended for export.

(2) Strip stamps or alternative devices may be overprinted with other information if no printing on a strip stamp or mandatory overprinting is obscured, provided that the additional overprinting is otherwise consistent with law and regulations.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended, 1369, as amended (26 U.S.C. 5205, 5235))

§ 19.662 Strip stamp format.

All prescribed strip stamps shall be issued in (a) a standard size for bottles or containers of 200 ml capacity or more, and in (b) a small size for bottles or containers of less than 200 ml capacity.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5205))

§ 19.663 Alternative devices.

(a) *Alternative devices used in lieu of red or green strip stamps.* Distilled spirits plant proprietors who wish to use devices other than red or green strip stamps on containers of distilled spirits may use any device which has been announced by the Director to be an approved alternative device or which has been approved for his use pursuant to application filed in accordance with paragraph (c) of this section.

(b) *Alternative devices.* Alternative devices used in lieu of red or green strip stamps shall be securely affixed to the container, and, unless the container is one that cannot again be used after opening, the alternative devices shall be affixed in such a manner as to leave a portion remaining on the bottle after opening. Alternative devices shall bear no lettering or design which is prohibited by Part 5 of this chapter or which conflicts with information on the label.

(c) *Application.* Distilled spirits plant proprietors who wish to use alternative devices which have not been approved by announcement of the Director shall file application with the Director. The application shall describe the alternative device and the method of affixing it to containers. Two samples of the proposed alternative device, affixed to empty containers, shall accompany the application.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5205))

§ 19.664 Procurement of strip stamps.

(a) *General.* Strip stamps may be obtained, without charge, by the proprietor, in reasonable anticipation of current needs, from the regional director (compliance) of the region in which the plant is located, by requisition on Form 428 (5100.7). Stamps may not be procured by one proprietor from another or transferred to another plant operated by the same proprietor, except on authorization by the regional director (compliance). Requisitions shall be for full sheets of such stamps. On receipt of the stamps the proprietor shall acknowledge receipt, noting any apparent discrepancies, on both copies of Form 428 returned by the regional director (compliance), forward one copy of the Form 428 (5100.7) to the regional director (compliance) and retain one copy on file. The quantity of strip stamps received may be determined by the exterior markings on the cartons in which they are received.

(b) *Alternative method.* When the regional director (compliance) determines that the interests of the Government will be best served, the stamps may be shipped directly to the proprietor from a location other than the office of the regional director (compliance). In that case, the regional director (compliance) shall notify the proprietor that the strip stamps will be delivered by an alternative method and the minimum quantity, if any, of each size stamp which may be requisitioned on any particular Form 428 (5100.7). Upon approval of Form 428 (5100.7), two copies of the form shall be returned to the proprietor. Upon receipt of the stamps, the proprietor shall (1) acknowledge receipt, noting any apparent discrepancies, on both copies of Form 428 (5100.7) and (2) return one copy to the regional director (compliance), and retain one copy. The quantity of strip stamps received may be determined from the exterior markings on the cartons in which they are received.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5205))

§ 19.665 Affixing strip stamps or alternative devices.

Strip stamps or alternative devices shall be securely affixed to containers so as to leave a portion remaining on the container when the container is opened unless the container is one that cannot again be used after opening. Proprietors may trim strip stamps provided no printed (or overprinted) information is cut off. Strip stamps or alternative devices affixed to containers shall not be concealed or obscured in any manner except that (a) the Director may authorize labels or State stamps to be so affixed as to partially obscure strip stamps or alternative devices, if a need exists, and (b) a stamp or alternative device may be covered by a cup, cap, seal, carton, wrapping, or other item which can readily be removed without injury to the stamp or alternative device. ATF officers have the right to open the cartons and wrappings and examine the containers.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5205))

§ 19.666 Restamping.

Bottles of distilled spirits filled on bonded premises may be restamped under the provisions of Subpart M of this part. Bottles of distilled spirits to which strip stamps or alternative devices have been affixed may also be restamped under the provisions of §19.611. Replacement of mutilated or missing strip stamps by persons other than proprietors of plants shall be made in accordance with 27 CFR Part 194.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5205))

Distilled Spirits Stamps

§ 19.668 General.

(a) *Containers to be stamped.* Except for pipelines for the conveyance of spirits, each container filled with more than 5 gallons of spirits shall be:

(1) Stamped with a distilled spirits stamp when withdrawn on determination of tax, or without payment of tax for the purposes authorized in §19.531(a)-(e); or

(2) Marked with the word—

(i) "TAXPAID" when withdrawn on determination of tax for domestic use; or

(ii) "EXPORT" when exported without payment of the tax for the purposes authorized in §19.531(a)-(e) or with benefit of drawback.

(b) *Information on stamp.* The prescribed distilled spirits stamp is serially numbered. It shall be marked, in the space provided, by the proprietor withdrawing or removing the spirits, to show the name and plant number of such proprietor, the date of affixing the stamp to the container, and the serial number or package identification number, as applicable, of the container. When spirits are withdrawn under the provisions of § 19.531(a)-(e), the

proprietor shall insert the word "Export" on the stamp.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended, 1369, as amended (26 U.S.C. 5205, 5235))

§ 19.669 Procurement of distilled spirits stamps.

(a) *General.* Distilled spirits stamps may be obtained by the proprietor, without charge, in reasonable anticipation of current needs, from the regional director (compliance) of the region in which the plant is located, by requisition on Form 428 (5100.7). Such stamps may not be procured by one proprietor from another proprietor or transferred between plants operated by the same proprietor, except on authorization by the regional director (compliance). On receipt of the stamps from the regional director (compliance), the proprietor shall (1) indicate the quantity received, (2) acknowledge receipt thereof, noting any discrepancies on both copies of Form 428 (5100.7) returned by the regional director (compliance), (3) forward one copy of the receipted Form 428 to the regional director (compliance), and (4) retain a copy for his files.

(b) *Alternate method.* When the regional director (compliance) determines that the interests of the Government will be best served, the distilled spirits stamps may be supplied to the proprietor from a location other than the office of the regional director (compliance). In such case, the regional director (compliance) shall notify the proprietor that the stamps will be supplied from an alternate location and inform him of the minimum or maximum quantity, if any, which may be requisitioned on any particular Form 428. Upon approval of Form 428, two copies of the form will be returned to the proprietor. Upon receipt of the stamps, the proprietor shall (1) indicate the quantity received, (2) acknowledge receipt thereof, noting any discrepancies on both copies of Form 428 returned, (3) forward one copy of Form 428 to the regional director (compliance), and (4) retain a copy for his files.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5205))

§ 19.670 Affixing of distilled spirits stamps or alternative marks.

(a) *Distilled spirits stamps.* Distilled spirits stamps shall be affixed and canceled by the proprietor before packages or conveyances are removed from the bonded premises. The stamps shall be securely affixed to the package, or the route board, or other suitable device of the bulk conveyance, or to an appropriate part of any other approved container, and thereupon canceled by drawing or otherwise imprinting a line (not less than one-eighth inch wide) in durable ink diagonally across the stamp. Such stamps (except in the case of packages to be transferred to contiguous premises) shall be covered with a transparent coating of shellac, lacquer, varnish, or equally suitable material to protect the markings on the stamp. Where the bulk conveyance consists of separate compartments, a separate stamp shall be canceled and affixed to the appropriate route board for each compartment. Distilled spirits stamps shall remain on the containers or conveyances until the spirits therein are emptied. Such stamps shall be destroyed, as provided in § 19.610, when the containers are emptied.

(b) *Alternative marks.* Alternative marks shall be imprinted by the proprietor before packages or conveyances are removed from bonded premises. Alternative marks shall be imprinted on the package, or the route board, or other suitable devices of the bulk conveyance, or to an appropriate part of any other approved container. Where the bulk conveyance consists of separate compartments, a separate mark shall be imprinted on the appropriate route board for each compartment. Alternative marks shall remain on the containers or conveyances until the spirits therein are emptied.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5205))

§ 19.671 Restamping packages, conveyances, or other containers.

Any package, conveyance, or other container of spirits which has been duly stamped with a distilled spirits stamp, but from which the stamp has been lost or destroyed by accident, shall, except as otherwise provided in this chapter, be restamped with another distilled spirits stamp.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5205))

Accounting

§ 19.672 Stamp accounting.

Proprietors are responsible for proper control of and accounting for all strip stamps, alternative devices, and distilled spirits stamps. Stamps that have been mutilated shall be destroyed by the proprietor and unused stamps for which the proprietor has no use shall be disposed of in accordance with the instructions of the regional director (compliance). Proprietors shall not transfer or dispose of strip stamps or distilled spirits stamps charged to their account except as provided in this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5205))

Imitation Stamps

§ 19.673 Imitation of prescribed stamps prohibited.

No person shall affix to any container containing or intended to contain distilled spirits, any stamp, mark, brand, or label, in imitation or simulation of any prescribed ATF stamp required to be affixed to any container of distilled spirits.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5205))

Subpart U—Return of Spirits to Bonded Premises and Voluntary Destruction

Returns

§ 19.681 Return of taxpaid spirits to bonded premises.

(a) *General.* This section and § 19.682 pertain only to taxpaid spirits returned to bonded premises under 26 U.S.C. 5215(a). The return of taxpaid bottled spirits to bonded premises solely for relabeling or restamping is covered in § 19.393.

(b) *Return.* Distilled spirits on which the tax has been paid or determined may only be returned to the bonded premises of a distilled spirits plant under this section for:

(1) Destruction, in accordance with § 19.691;

(2) Denaturation, in accordance with Subpart N;

(3) Redistillation, in accordance with Subpart K;

(4) Reconditioning; or

(5) *Rebottling.*

(c) *Claims.* Claims for credit or refund of tax on spirits returned to bonded premises shall be filed as provided in, and accompanied by the information prescribed by, § 19.42.

(d) *Applicability of 26 U.S.C. Chapter 51.* All provisions of 26 U.S.C. Chapter 51 and this part, applicable to spirits in ATF bond, shall be applicable to spirits when returned to bonded premises under this section. The provisions of this subpart do not apply to taxpaid bottled spirits returned to bond solely for relabeling or restamping and under the provisions of Subpart M of this part.

(Sec. 807, Pub. L. 96–39, 93 Stat. 285 (26 U.S.C. 5215))

§ 19.682 Receipt and gauge of returned taxpaid spirits.

(a) *Dump.* Unless returned in the sealed metal drums in which they were withdrawn, spirits returned to bonded premises shall be immediately dumped.

(b) *Gauge.* Spirits returned under § 19.681 shall be gauged upon receipt on bonded premises. Such gauge may be established on the basis of case markings and label information, as provided in § 19.91.

(c) *Supporting documentation.* Proprietors must have on file at the plant where spirits are returned to bond such documentation as is necessary to establish the amount of tax for which a claim for credit or refund may be allowed. Proprietors shall maintain credit memoranda or comparable financial records evidencing the return of each lot of spirits.

(Sec. 807, Pub. L. 96–39, 93 Stat. 285 (26 U.S.C. 5215))

§ 19.683 Return of recovered denatured spirits and recovered articles.

Recovered denatured spirits and recovered articles may be returned for restoration or redenaturation to the bonded premises of any plant authorized to denature spirits, in accordance with the provisions of 27 CFR Part 211. If restoration requires redistillation, the recovered denatured spirits or recovered articles may be returned for that purpose to bonded premises of a plant authorized to produce or process spirits. Recovered denatured spirits or recovered articles shall be gauged on receipt.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1363, as amended, 1372, as amended (26 U.S.C. 5223, 5273))

§ 19.684 Articles and spirits residues received for redistillation.

Articles manufactured under 27 CFR Part 211, and spirits residues of manufacturing processes related thereto, may be received on the bonded premises of a distilled spirits plant authorized to produce or process distilled spirits, for the recovery by redistillation of the distilled spirits contained in those materials. The proprietor shall gauge the materials when received.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1365, as amended (26 U.S.C. 5223))

§ 19.685 Return of recovered tax-free spirits, and spirits and denatured spirits withdrawn free of tax.

(a) *General.* Specially denatured spirits withdrawn free of tax under the applicable provisions of 27 CFR Part 252 for exportation or for deposit in a foreign-trade zone, and spirits or denatured spirits withdrawn free of tax under the applicable provisions of 27 CFR Part 211 or 213, may be returned: (1) To bonded premises of any distilled spirits plant authorized to produce or process distilled spirits, for redistillation; or (2) To any bonded premises of a distilled spirits plant pending subsequent lawful withdrawal free of tax. Recovered tax-free spirits may, as provided in 27 CFR Part 213, be returned for redistillation to bonded premises of any distilled spirits plant authorized to produce or process distilled spirits or to any bonded premises of a distilled spirits plant for restoration (not including redistillation). The return shall be made under the applicable provisions of this part and 27 CFR Part 211, 213, or 252, as appropriate.

(b) *Bonding requirements.* Before spirits or denatured spirits are returned to bonded premises, except spirits or denatured spirits returned for redistillation, the proprietor shall file a consent of surety on Form 1533 to extend the terms of the operations or unit bond to cover the return of the spirits. The proprietor may file one consent of surety on the bond to extend the terms thereof to cover all spirits which may be returned.

(c) *Procedure.* If the shipment was reported on a Form 1473, the proprietor shall execute the certificate of receipt on that form and forward the original to the regional director (compliance). When recovered tax-free spirits, spirits, or denatured spirits are received, they shall be gauged. When containers of spirits removed for export are returned to bond, pending subsequent removal for a purpose other than export, the export marks shall be obliterated.

(Sec. 3, Act of June 13, 1934, 48 Stat. 999, as amended (19 U.S.C. 81c); Sec. 201, Pub. L. 85–859, 72 Stat. 1314, as amended, 1365, as amended (26 U.S.C. 5001, 5223))

§ 19.686 Return of spirits withdrawn without payment of tax.

(a) *Spirits withdrawn for export.* Spirits lawfully withdrawn without payment of tax under the provisions of 27 CFR Part 252 for exportation, or for transfer to a customs bonded warehouse or a customs manufacturing bonded warehouse, or for deposit in a foreign-trade zone, or for use on vessels and aircraft, and not so exported, transferred, deposited, or used (or laden for use) on a vessel or aircraft, may be returned, under the applicable provisions of this part and 27 CFR Part 252: (1) To the bonded premises of any plant authorized to produce or process distilled spirits, for redistillation; or (2) To the bonded premises from which withdrawn pending subsequent removal for a lawful purpose.

(b) *Spirits withdrawn for use in wine production.* Wine spirits withdrawn under § 19.532 for use in wine production, and not so used, may be returned to the bonded premises of a distilled spirits plant. The consignee proprietor shall obtain approval, as provided in § 19.506. The wine spirits shall be removed from the winery in accordance with the provisions of 27 CFR Part 240.

(c) *Spirits withdrawn for research, development, or testing.* Spirits withdrawn without payment of tax, under the provisions of Subpart V of this part, for research, development, or testing may be returned to the bonded premises of the distilled spirits plant from which withdrawn. After returning these spirits to bonded premises, they shall be destroyed, returned to containers, or returned to vessels in the distilling system containing similar spirits.

(d) *Procedure.* When spirits are received, they shall be gauged by the proprietor. When spirits which were removed for exportation are returned to bonded premises pending subsequent removal for a purpose other than exportation, any stamps bearing export marks, and all export marks on the containers in which the spirits are returned shall be obliterated.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1362, as amended, 1365, as amended, 1382, as amended (26 U.S.C. 5214, 5223, 5373); Sec. 3, Pub. L. 91–659, 84 Stat. 1965, as amended (26 U.S.C. 5066))

§ 19.687 Return of spirits withdrawn for export with benefit of drawback.

Subject to the provisions of 27 CFR 252.197–199, whole or partial shipments of spirits withdrawn for export with benefit of drawback may be returned to: (a) The bonded premises of the distilled spirits plant, pursuant to § 19.681, or (b) to a wholesale liquor dealer or taxpaid storeroom. Claims filed by proprietors on ATF Form 5110.30 which include the returned spirits shall be reduced by the amount of tax paid or determined on the returned spirits.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1336, as amended (26 U.S.C. 5062); Sec. 807, Pub. L. 96–39, 93 Stat. 285 (26 U.S.C. 5215))

§ 19.688 Abandoned spirits.

Spirits abandoned to the United States may be sold, without payment of the tax, to a proprietor of a plant for denaturation or for redistillation and denaturation, if the plant is authorized to denature or redistill and denature spirits. These spirits shall be kept apart from all other spirits or denatured spirits until denatured. The receipt and gauging provisions of § 19.683 are applicable to these spirits.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1370, as amended (26 U.S.C. 5243))

Voluntary Destruction

§ 19.691 Voluntary destruction.

(a) *General.* Spirits, denatured spirits, articles, or wines in bond may be voluntarily destroyed as provided in this section. The tax liability on spirits, denatured spirits, articles, or wines so destroyed is extinguished.

(b) *Wine notice.* Wine may be destroyed in bond only after the proprietor has filed notice with the regional director (compliance) stating the kind and quantity of wine to be destroyed and the date and manner in which the wine is to be destroyed. The wine may be destroyed after such notice has been filed.

(c) *Gauging.* A proprietor shall gauge spirits, denatured spirits, articles, or wines to be destroyed. Gauges of spirits in bottles may be established on the basis of legible case markings and label information when:

(1) The bottles are full;

(2) There is no evidence that the bottles have been tampered with.

(d) *Off bonded premises.* Spirits, denatured spirits, articles or wines may be removed and destroyed at a location off bonded premises if the proprietor has filed a consent of surety to cover such removal. If the destruction is accomplished off plant premises, the proprietor shall ensure compliance with applicable Federal, State, and local environmental laws and regulations.

(e) *Record of destruction.* The proprietor shall record the destruction of spirits, denatured spirits, articles, or wines as provided in § 19.767.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1323, as amended, 1381, as amended (26 U.S.C. 5008, 5370))

Subpart V—Samples of Spirits

§ 19.701 Spirits withdrawn from bonded premises.

(a) *Samples withdrawn from bonded premises.* The proprietor may withdraw spirits without payment of tax, or wine spirits or brandy free of tax, to the proprietor's laboratory, the laboratory of an affiliated or subsidiary corporation, or, if approved by the regional director (compliance), to a recognized commercial laboratory for testing or analysis (other than consumer testing or other market analysis) to determine the quality or character of the finished product. The quantity of spirits so withdrawn shall not exceed the amount necessary for conduct of the proprietor's operations.

(b) *Customer samples.* A quantity of spirits not exceeding 1 liter may be furnished to a prospective purchaser for quality testing (other than consumer testing or other market analysis) only if a bona fide written or oral purchase agreement exists which is contingent upon quality approval by the prospective purchaser; except that a sample not to exceed 1 liter may be furnished to a prospective customer for quality testing in anticipation of a purchase agreement if the customer is authorized to receive bulk spirits for industrial use.

(c) *Research or development.* Spirits may be withdrawn without payment of tax for research, development, or testing (other than consumer testing or other market analysis) of processes, systems, materials or equipment relating to distilled spirits or distilled spirits plant operations. The amount withdrawn shall be limited to an amount necessary for conduct of the testing, research or development. If the testing, research or development is to be conducted by other than the proprietor, the proprietor shall secure a written statement, executed by the consignee, agreeing that he will maintain records of the receipt, use, and disposition of all spirits received by him and that those records and operations will be available during regular business hours for inspection by ATF officers.

(d) *Conditions.* (1) Records will be maintained in accordance with § 19.766 of all spirits taken or withdrawn under the provisions of this section.

(2) Remnants or residues of spirits withdrawn but not used during testing, research or development shall be destroyed or returned to the bonded premises for storage with similar products or entry in the continuous distilling system.

(e) *Limitation.* The regional director (compliance) shall proceed to collect the tax on any spirits withdrawn under this section which are found to have been withdrawn, used or disposed of in a manner not authorized by this section.

(f) *Losses.* When spirits are lost prior to being used for the authorized purpose, the proprietor shall either pay the tax or file a claim for remission of tax as prescribed by § 19.41.

(Sec. 201, Pub. L. 86–859, 72 Stat. 1362, as amended, 1382, as amended (26 U.S.C. 5214, 5173))

§ 19.702 Samples used on bonded premises.

The proprietor may take samples of spirits for research, development, testing, or laboratory analysis conducted in a laboratory located on the bonded premises of the distilled spirits plant. The applicable purposes, conditions and limitations for samples taken pursuant to § 19.701 shall also apply to samples taken as authorized by this section.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1362, as amended, 1382, as amended (26 U.S.C. 5006))

§ 19.703 Taxpayment of samples.

When tax is required to be paid on samples:

(a) If the proprietor is qualified to defer payment of tax, the tax shall be included in the proprietor's tax return on Form 5110.35.

(b) If a proprietor is not qualified to defer the payment of tax, the tax shall be prepaid on Form 5110.32.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1335, as amended (26 U.S.C. 5061))

§ 19.704 Labels.

(a) On each container of spirits to be withdrawn under the provisions of § 19.701, the proprietor shall affix a label showing the following information:

(1) Purpose for which withdrawn;

(2) Kind of spirits;

(3) Size and the proof of the sample, if known;

(4) If the spirits are removed to other then adjacent or contiguous premises of the proprietor, the name and address of the consignee;

(5) The proprietor's name, and plant number; and

(6) The date taken.

(b) The labeling required by paragraph (a) of this section is not necessary when sample containers bear an approved label pursuant to 27 CFR Part 5 and Subpart S of this part and the sample is removed from bonded premises to the general premises of the same distilled spirits plant.

(c) Strip stamps or alternative devices affixed to sample bottles shall be marked "sample."

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended, 1362, as amended, 1382, as amended (26 U.S.C. 5206, 5214, 5373))

Subpart W—Records and Reports

General

§ 19.721 Records.

(a) *In General.* (1) The records to be maintained by proprietors shall include:

(i) All individual transaction forms, records, and summaries specifically required by this part;

(ii) All supplemental, auxiliary, and source data utilized in the compilation of required forms, records, and summaries, and for preparation of reports, returns, and claims; and

(iii) Copies of notices, reports, returns, and approved applications and other documents relating to operations and transactions.

(2) The records required by this part may consist of the proprietor's commercial documents, rather than

records prepared expressly to meet the requirements of this part, if such documents contain all the details required by this part to be recorded, are consistent with the general requirements of clarity and accuracy, and do not result in difficulty in their examination.

(b) *Accounts.* The records required by this part to be maintained by proprietors shall be arranged into three primary operational accounts:

(1) Production,
(2) Storage, and
(3) Processing.

Records shall indicate receipts, movements between accounts, transfers in bond, or withdrawals of spirits, denatured spirits, articles, or wines.

(c) *Exceptions.* The term "records" as used in this subpart does not include copies of qualifying documents required under Subpart G,. or of bonds required under Subpart H of this part.

(d) *Special provisions.* See 27 CFR 70.22 for information with respect to ATF examination of financial records and books of account.

(Sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207))

§ 19.722 Conversion between metric and U.S. units.

When liters are converted to wine gallons, the quantity in liters shall be multiplied by 0.264172 to determine the equivalent quantity in wine gallons. Cases containing the same quantity of spirits of the same proof in metric bottles may be converted to U.S. units by multiplying the liters in one case by the number of cases to be converted, as follows: (a) If the conversion from liters to U.S. units is made before multiplying by the number of cases, the quantity in U.S. units shall be rounded to the sixth decimal; or (b) If the conversion is made after multiplying by the number of cases, the quantity in U.S. units shall be rounded to the nearest hundredth. Once converted to wine gallons, the proof gallons of spirits in cases shall be determined as provided in 27 CFR 30.52.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.723 Maintenance and preservation of records.

(a) *Place of maintenance.* Records required by this part shall be prepared and kept by the proprietor at the plant where the operation or transaction occurs and shall be available for inspection by any ATF officer during business hours.

(b) *Reproduction of original records.* (1) Whenever any record, because of its condition, becomes unsuitable for its intended or continued use, the proprietor shall reproduce such record, by a process approved by the regional director (compliance) under § 19.725 for reproducing records, and such reproduction shall be treated and considered for all purposes as though it were the original record.

(2) All provisions of law applicable to the original record shall be applicable to such reproductions.

(c) *Retention of records.* (1) Records required by this part shall be preserved for a period of not less than three years from the date thereof or the date of the last entry required to be made thereon, whichever is later. However, the regional director (compliance) may require records to be kept for an additional period not exceeding three years in any case where such retention is deemed necessary or advisable for the protection of the revenue.

(2) The period for retention of records prescribed in paragraph (c)(1) of this section shall not apply to copies of outstanding approved formulas or to copies of formulas which form the basis for claims for credit or refund of taxes on spirits returned to bonded premises. A copy of any such formula shall be kept by the proprietor at the plant where spirits are processed subject to the formula or at the plant where such spirits are received.

(d) *Data processing.* (1) Notwithstanding any other provision of this section, record data maintained on data processing equipment may be kept at a location other than the plant premises if the original transaction (source) records required by §§ 19.736–19.779 are kept available for inspection at the plant premises.

(2) Data which has been accumulated on cards, tapes, discs, or other accepted record media must be retrievable within five business days.

(3) The applicable data processing program shall be made available for examination if requested by an ATF officer.

(Sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207))

§ 19.724 Modified forms.

(a) *Application.* Proprietors desiring to modify prescribed forms shall submit an application to the Director, through the regional director (compliance). The application shall be accompanied by:

(1) A copy of each proposed form with typical entries; and

(2) A statement showing the need for use of the modified forms. Modified forms shall not be used until approved by the Director.

(b) *Restrictions.* The use of modified forms shall not relieve a proprietor from any requirement of this part. The Director may require a proprietor to immediately discontinue the use of any modified form when such use is found to pose administrative problems.

(Sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207))

§ 19.725 Photographic copies of records.

(a) *Application.* Proprietors who desire to record, copy or reproduce records, required by this part, by any process which accurately reproduces or forms a durable medium for so reproducing the original of such records, shall apply to the regional director (compliance) for permission to do so, describing:

(1) The records to be reproduced,
(2) The reproduction process to be employed,
(3) The manner in which the reproductions are to be preserved, and
(4) The provisions to be made for examining, viewing, and using such reproductions.

(b) *Approval.* The regional director (compliance) shall not approve any application unless the manner of preservation of the reproductions and the provisions for examining, viewing, and using such reproductions are satisfactory.

(c) *Conditions.* Whenever records are reproduced under this section, the reproduced records shall be preserved in conveniently accessible files, and provisions shall be made for examining, viewing, and using the reproduced record the same as if it were the original record, and it shall be treated and considered for all purposes as though it were the original record. All provisions of law and regulations applicable to the original shall be applicable to the reproduced record. As used in this section, "original record" shall mean the record required by this part to be maintained or preserved by the proprietor, even though it may be an executed duplicate or other copy of the document.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1395, as amended, (26 U.S.C 5555))

§ 19.726 Authorized abbreviations to identify spirits.

The following abbreviation may be used, either alone or in conjunction with descriptive words, to identify the kind of spirits on forms or records:

Kinds of spirits	Abbreviations
Alcohol	A
Brandy	BR
Bourbon Whisky	BW
Canadian Whisky	CNW
Completely Denatured Alcohol	CDA
Corn Whisky	CW
Grain Spirits	GS
Irish Whisky	IW

Kinds of spirits	Abbreviations
Light Whisky	LW
Malt Whisky	MW
Neutral Spirits	NS
Neutral Spirits Grain	NSG
Rye Whisky	RW
Scotch Whisky	SW
Specially Denatured Alcohol	SDA
Special Denatured Rum	SDR
Tequila	TEQ
Vodka	V
Whisky	W

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended (26 U.S.C. 5206))

Records

§ 19.731 General.

(a) *Entries.* (1) Each entry required by this part to be made in daily records shall be made on the day on which the operation or transaction occurs.

(2) When the proprietor prepares supplemental or auxiliary records concurrent with the individual operation or transaction, and these records contain all the required information with respect to the operation or transaction, entries in daily records may be deferred not later than the close of business the third business day succeeding the day on which the operation or transaction occurs.

(b) *Content.* (1) All entries in the daily records required by this subpart shall show the date of the operation or transaction.

(2) Daily records shall accurately and clearly reflect the details of each operation or transaction and, as applicable, contain all data necessary to enable:

(i) Identification and proper marking and labeling of spirits, denatured spirits, or wines;

(ii) Proprietors to prepare summaries, reports, and returns required by this part; and

(iii) ATF officers to:

(A) Verify and trace the quantity and movement of materials, spirits, denatured spirits, wines, or alcoholic flavoring materials involved in each transaction or operation;

(B) Verify tax determinations and claims; and

(C) Ascertain whether there has been compliance with law and regulations.

(c) *Format.* (1) Proprietor's copies of prescribed forms which bear all required details shall be utilized as daily records.

(2) In instances when a form is not prescribed, the records required by this subpart shall be those commercial records used by the proprietor in his accounting system and shall bear all required details.

(3) Daily records required by this part shall be so maintained that they clearly and accurately reflect all mandatory information. Where the format or arrangement of the daily records is such that the information is not clearly or accurately reflected, the regional director (compliance) may require a format or arrangement which will clearly and accurately reflect the information.

(Sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207))

§ 19.732 Details of daily records.

The daily records required by this part shall conform to the following requirements:

(a) Spirits shall be recorded by kind and by quantity in proof gallons, except as provided in § 19.751.

(b) Denatured spirits shall be recorded by formula number and by quantity in wine gallons.

(c) Distilling materials produced on the premises shall be recorded by kind and by quantity in wine gallons. Chemical byproducts containing spirits, articles, spirits residues, and distilling materials received on the premises shall be recorded by kind, by percent of alcohol by volume, and by quantity in wine gallons. However, when nonliquid distilling materials which are not susceptible to such quantitative determination are received, the quantity of such materials may be determined by weight and shall be so recorded, and the alcohol content need not be recorded. When it can be shown that it is impractical to weigh or otherwise determine the exact quantity of such nonliquid materials, the proprietor may estimate the weight or volume of the material.

(d) Wines shall be recorded by kind, by quantity in wine gallons, and by percent of alcohol by volume.

(e) Alcoholic flavoring materials shall be recorded by kind, formula number (if any) and by quantity in proof gallons.

(f) Containers (other than those bearing lot identification numbers) or cases involved in each operation or transaction shall be recorded by type, serial number, and the number of containers (including identifying marks on bulk conveyances), or cases. However, spirits withdrawn in cases may be recorded without the serial numbers of the cases, unless the regional director (compliance) requires such recording. Package identification numbers, number of packages, and proof gallons per package shall be recorded on deposit record in the storage account reflecting production gauges or filling of packages from tanks, however, only the lot identification, number of packages, and proof gallons per package need be shown for transactions in packages of spirits unless package identification numbers are specifically required by this part.

(g) Materials intended for use in the production of spirits shall be recorded by kind and by quantity, recording liquids in gallons and other materials in pounds, and giving the sugar content for molasses.

(h) The name and address of the consignee or consignor, and if any, the plant number or industrial use permit number of such person, shall be recorded for each receipt or removal of materials, spirits, denatured spirits, articles, spirits residues, and wine.

(i) The serial number of the tank used shall be recorded for each operation or transaction.

(j) The rate of duty paid on imported spirits shall be shown on the transaction forms or records.

(k) Records shall identify imported spirits, spirits from Puerto Rico, and spirits from the Virgin Islands, or the records shall show that a distilled spirits product contains such spirits.

(l) Records shall identify spirits that are to be used exclusively for fuel use.

(Sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207))

Production Account

§ 19.736 Daily production records.

(a) *Spirits production.* Each proprietor shall maintain daily production account records of production operations showing:

(1) The receipt of fermenting material or other nonalcoholic material intended for use in the production of spirits.

(2) The receipt and use of spirits, denatured spirits, articles, and spirits residues received for redistillation.

(3) The fermenting material set in each fermenter or other material used in the production of spirits.

(4) The distilling material produced, received for production, and used in production of spirits, or destroyed or removed from the premises before being distilled (including the residue of beer returned to the producing brewery).

(5) The gauge of spirits in each receiving tank, the production gauge (in proof gallons) of spirits removed from each tank, and the transaction form or record and its serial number covering each removal. The details of individual packages filled pursuant to production gauge for immediate withdrawal from bonded premises shall also be recorded.

(6) The fermenting materials or other nonalcoholic materials used or removed from the premises.

(7) The quantity and testing for alcoholic content of fuel oil or other chemicals removed from the production

system and the disposition thereof with the name of the consignee, if any.

(8) The kind and quantity of distillates removed from the production system pursuant to § 19.322.

(9) The kind and quantity of spirits, lost or destroyed prior to production gauge. Records pertaining to the production account shall be maintained in such a manner that the spirits produced may be traced through the distilling system to the mash or other material from which produced, and the identity of the spirits thus traced may be clearly established.

(b) *Byproduct spirit production.* Each proprietor who manufactures substances other than spirits, in a process which produces spirits as a byproduct, shall maintain daily production records as to each such process showing:

(1) The kind and quantity of materials received, unless included in records maintained under paragraph (a) of this section.

(2) The spirits produced and disposed of.

(3) The kind and quantity of other substances produced.

(Sec. 807, Pub. L. 96-39, 93 Stat. 284 (26 U.S.C. 5207))

Storage Account

§ 19.740 Daily storage records.

(a) *General.* Proprietors shall maintain daily records in the storage account which shall show for each kind of spirits or wine, as applicable:

(1) Spirits or wines received for deposit in storage;

(2) Spirits mingled;

(3) Spirits in tanks;

(4) Spirits or wines filled into packages from tanks and retained for storage;

(5) Spirits of less than 190 degrees of proof or wines transferred from one tank to another;

(6) Spirits returned to bond;

(7) Spirits or wines voluntarily destroyed;

(8) Spirits or wines lost during storage;

(9) The transfer of spirits or wine from one package to another;

(10) The addition of oak chips to spirits and the addition of caramel to brandy or rum; and

(11) The disposition of spirits or wines.

(b) *Records covering deposits.* The proprietor's copies of gauge records, transfer records, or tank records of wines or spirits of less than 190 degrees of proof covering: deposit in the storage account of spirits received from the production account, from customs custody, or by return to bond under Subpart U of this part, or of wines or spirits from other bonded premises; packages of spirits or wines filled from tanks and retained in the storage account after mingling; and wines or spirits of less than 190 degrees of proof transferred from one tank to another, shall be utilized by the proprietor to record wines or spirits deposited in the storage account. The proprietor shall enter the date of deposit of the spirits in storage on the record. Files of deposit records shall be maintained for spirits in packages and such files shall be arranged by producers (by warehouseman in the case of blended rums or brandies and for spirits of 190 degrees or more of proof, by the warehouseman who received the spirits from customs custody in the case of imported spirits, and by producer in the Virgin Islands or Puerto Rico in the case of Virgin Islands or Puerto Rican spirits), in chronological order according to the date of deposit in the storage account, and, when possible, in sequence by lot identification for packages. (For the purpose of records under this section spirits produced under trade names shall be treated as being produced under the real name of the proprietor [producer].) Also, files of deposit records shall be maintained, in the manner prescribed by 19.742, for wines and for spirits of less than 190 degress of proof in tanks in the storage account with a separate file for each tank of wines or spirits. In the case of spirits of 190 degrees or more of proof deposited in tanks in the storage account, the proprietor shall maintain a separate consolidated file of deposit records for all tanks, separately as to gin, vodka, and other spirits as applicable, of all such domestic spirits; all such imported spirits duty paid at the beverage rate; all such imported spirits duty paid at the nonbeverage rate; all such Virgin Islands spirits; and all such Puerto Rican spirits. Such files shall be arranged chronologically by date of deposit in the warehouse.

(c) *Records covering withdrawals.* When wines or spirits other than spirits of 190 degrees or more of proof in tanks in the storage account, are withdrawn from the storage account the proprietor shall note on the record of deposit, the date and disposition of the spirits so that the files shall currently reflect the spirits remaining in the storage account. When spirits of 190 degrees or more of proof are withdrawn from tanks in the storage account the record of deposit need not be noted, but semi-annually (as of June 30 and December 31) the proprietor shall remove from his consolidated files of active deposit records all such records in excess of those required to cover the quantity of spirits shown as remaining in tanks. The deposit records so removed shall be those covering spirits first deposited in the storage account.

(Sec. 807, Pub. L. 96-39 93 Stat. 284 (26 U.S.C. 5207))

§ 19.741 Package summary records.

(a) *General.* Each warehouseman shall keep current summary records for each kind of spirits or wines in packages, to show the spirits or wines deposited in, withdrawn from, and remaining in the storage account. Separate accounting records shall be kept for domestic spirits, imported spirits, Virgin Islands spirits, Puerto Rican spirits, and wine. Package accounts for spirits may be kept by either the season or the year the packages were filled with spirits.

(b) *Arrangement.* Package summary records shall be prepared and arranged separately:

(1) For domestic spirits of less than 190 degrees of proof, alphabetically by State and numerically by the plant number and name of the producer or warehouseman.

(2) For domestic spirits of 190 degrees or more of proof, alphabetically by State, and numerically by the plant number and name of the warehouseman.

(3) For imported spirits, alphabetically by State and numerically by the plant number and name of the warehouseman who received the spirits from customs custody.

(4) For Puerto Rican or Virgin Islands spirits, alphabetically by the name of the producer in Puerto Rico or the Virgin Islands.

(5) For wine, by kind and tax rate imposed by 26 U.S.C. 5041.

(c) *Details.* Package summary records shall show the following details:

(1) The date the summarized transactions occurred;

(2) For spirits, the number of packages and the proof gallons contained therein;

(3) For wine, the number of packages and the wine gallons contained therein;

(4) Gains or shortages disclosed by inventory or when an account is closed; and

(5) Gallon balances on summary records for spirits and wines remaining in the account at the end of each month.

(d) *Summarization.* Package summary records shall be consolidated at the end of each month, or for lesser periods when required by the regional director (compliance), to show for all types of containers and kinds of spirits, the total proof gallons received in, withdrawn from, and remaining in the storage account.

(Sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207))

§ 19.742 Tank record of wine or spirits of less than 190 degrees of proof.

(a) *General.* Proprietors shall keep a record for each tank (including bulk conveyance) containing wine or spirits of less than 190 degrees of proof to show deposits into, withdrawals from, and the balance remaining in each tank in the storage account. A new record shall be prepared each time wine or spirits are deposited in an empty tank. Except as otherwise provided in this section, each transaction shall be recorded on the day the transaction occurs.

(b) *Arrangement.* Tank records shall be prepared and arranged:

(1) For domestic spirits, alphabetically by State, and numerically by (i) the plant number and name of the producer, or, (ii) for blended rums or brandies, the plant number and name of the warehouseman;

(2) For imported spirits, alphabetically by State, and numerically by the plant number and name of the warehouseman;

(3) For Puerto Rican or Virgin Islands spirits, alphabetically by the name of the producer in Puerto Rico or the Virgin Islands; and

(4) For wine, by kind and tax rate imposed by 26 U.S.C. 5041.

(c) *Details.* Tank records shall show the following details:

(1) Tank record serial number, beginning with "1" for each record initiated on or after January 1;

(2) Date of each transaction;

(3) Identification of the tank;

(4) Kind of wine or spirits;

(5) Number and average proof gallon content of packages of spirits dumped in the tank, or a notation indicating the deposit in the tank of spirits by pipeline;

(6) Wine gallons of wine, or proof gallons of spirits deposited;

(7) If subject to age, the age of the youngest spirits in years, months and days, each time spirits are deposited;

(8) Wine gallons of wine, or proof gallons of spirits withdrawn;

(9) Related transaction form or record and its serial number for deposits or withdrawals;

(10) Wine gallons of wine, or proof gallons of spirits remaining in the tank, recorded at the end of each calendar month; and

(11) Gain or loss disclosed by inventory or on emptying of the tank.

(Sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207))

§ 19.743 Tank summary record for spirits of 190 degrees or more of proof.

(a) *General.* Proprietors shall keep a tank summary record for spirits of 190 degrees or more of proof held in tanks to show the proof gallons deposited into, withdrawn from, and remaining in tanks in the storage account. A separate tank summary record shall be prepared for each kind of spirits of 190 degrees or more of proof. Entries shall be made for each day in which a transaction occurs, and shall be recorded as a summary of the individual transactions shown on the deposit records.

(b) *Arrangement.* Tank summary records shall be prepared and arranged:

(1) For domestic spirits, alphabetically by State, and numerically by the plant number and name of the warehouseman;

(2) For imported spirits, alphabetically by State, and numerically by the plant number of the warehouseman who received the spirits from customs custody; and

(3) For spirits from Puerto Rico or the Virgin Islands, alphabetically by the name of the producer in Puerto Rico or the Virgin Islands.

(c) *Details.* Tank summary records shall show the following details:

(1) Kind of spirits;

(2) Date of transactions summarized;

(3) Proof gallons deposited;

(4) Proof gallons withdrawn;

(5) Proof gallons remaining in tanks; and

(6) Gain or loss disclosed by inventory or on emptying of the tanks summarized on the record.

(Sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207))

Processing Account

§ 19.746 Processing.

Each processor shall maintain daily records of transactions and operations with respect to:

(a) Manufacture of distilled spirits products;

(b) Finished products;

(c) Denaturation of spirits; and

(d) Manufacture of articles.

(Sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207))

§ 19.747 Records of manufacturing.

Each processor shall maintain daily records of the details of manufacturing operations, showing:

(a) The spirits, wines, and alcoholic flavoring materials received. The total receipts shall be summarized showing (1) the spirits received from storage or production at the same plant, (2) the spirits received from other plants by transfer in bond, (3) spirits received from customs custody, (4) wines received from the storage account at the same plant, (5) wines received by transfer in bond, and (6) alcoholic flavoring materials received.

(b) The spirits, wines, alcoholic flavoring materials, and other ingredients used in the manufacture of a distilled spirits products showing the serial number of the dump/batch record covering such dump.

(c) Bottling or packaging of each batch of spirits, showing the serial numbers of the bottling and packaging records covering such bottling or packaging.

(d) The results of bottling proof and fill tests as required by § 19.386.

(e) Receipt, use and disposition of liquor bottles.

(f) The rebottling, relabeling, and restamping (including reaffixing of alternative devices) of bottled products as required by §19.392 and 19.393.

(g) The spirits, wines, and alcoholic flavoring materials removed from the premises.

(h) The spirits moved to the production account for redistillation.

(i) Redistillation of spirits, including the production of gin and vodka by means other than original and continuous distillation.

(j) Record of alcoholic flavoring materials deposited into tanks prior to dumping showing the consignor, the date and quantity received, the name of the product, the date and quantity of each removal from the tank and losses.

(k) Spirits returned to bond.

(l) The voluntary destruction of spirits and wines.

(m) The losses as provided in Subpart Q of this part.

The records required by paragraph (a) of this section shall also show the name and plant number of the producer or processor (warehouseman in the case of blended beverage rums or brandies or spirits of 190 degrees of more of proof received from storage) for domestic spirits, the name of the importer and the country of origin for imported spirits, and the name and address of the producer of wines and alcoholic flavoring materials.

(Sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207))

§ 19.748 Dump/batch records.

(a) *Format of dump/batch records.* Proprietor's dump/batch records shall contain, as applicable, the following:

(1) Serial number;

(2) Name and distilled spirits plant number of the producer;

(3) Kind and age of spirits used with a notation to indicate treatment with oak chips, addition of caramel, imported spirits, and spirits from Puerto Rico and the Virgin Islands;

(4) Serial number of tank or container to which ingredients are added for use;

(5) Serial or identification number of tank or container from which spirits are removed;

(6) Quantity by ingredient of other alcoholic ingredients used, showing wine in wine gallons, percentage of alcohol by volume and proof, and alcoholic flavoring materials in proof gallons;

(7) Serial number of source transaction record (e.g., record covering spirits previously dumped);

(8) Date of each transaction;

(9) Quantity, by ingredient (other than water), of nonalcoholic ingredients used;

(10) Formula number;

(11) Quantity of ingredients used in the batch that have been previously dumped; reported on dump records, and held in tanks or containers;

(12) Total quantity in proof gallons of all alcoholic ingredients used;

(13) Identification of each record to which spirits are transferred;

(14) Quantity in each lot transferred;

(15) Date of each transfer;

(16) Total quantity in proof gallon of product transferred; and

(17) Gain or loss.

(b) *Redistillation.* (1) Dump/batch records shall be prepared to show spirits to be redistilled in the processing account, including the production of gin or vodka by redistillation. A dump record shall also be prepared to record the finished distillate.

(2) When redistillation requires the use of more than one tank or other vessel in a continuous distilling system, the system may be shown on the record in lieu of preparing a separate record to show each movement of spirits between tanks or vessels.

(Sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207))

§ 19.749 Bottling and packaging record.

The bottling and packaging record shall be prepared and contain the following information:

(a) Tank number(s);

(b) Serial number (beginning with "1" at the start of each calendar or fiscal year);

(c) Formula number (if any) under which the batch was produced;

(d) Serial number of the dump/batch record from which received;

(e) Kind of product (including age, if claimed);

(f) Details of the tank gauge (including proof, wine gallons, proof gallons, and, if applicable, obscuration);

(g) The date the bottles or packages were filled;

(h) Size of the bottles or packages filled, number of bottles per case, and number of cases or packages filled;

(i) Serial numbers by brand name of cases or other containers filled;

(j) Proof of the spirits bottled or packaged (if different from subsection (f));

(k) Total quantity bottled, packaged or otherwise disposed of in bulk;

(l) Losses or gains; and

(m) Whether the spirits were labeled as bottled in bond.

(Sec. 807(a), Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207))

§ 19.750 Proof and fill test record.

(a) Proprietors shall record the results of all proof and fill tests conducted.

(b) The record shall be maintained in a manner and provide information that will enable ATF officers to determine whether the proprietor has complied with the provisions of § 19.386 by:

(1) Monitoring operations by conducting proof and fill tests; and

(2) Employing procedures to correct variations in proof and fill.

(c) Proof and fill test records shall contain, at a minimum, the following information:

(1) Date and time of test;

(2) Bottling tank number;

(3) Serial number of bottling record;

(4) Bottling line designation;

(5) Size of bottle;

(6) Number of bottles tested;

(7) Label proof;

(8) Test proof;

(9) Percentage of variation from 100 percent fill; and

(10) Corrective action taken (if any).

(Sec. 201, Pub. L. 85–859, 72 Stat. 1395, as amended (26 U.S.C. 5555); Sec. 807(a), Pub. L. 96–39 (26 U.S.C. 5207))

§ 19.751 Records of finished products.

Each processor shall maintain by proof gallons daily transaction records and a daily summary record of spirits bottled or packaged as follows:

(a) Beginning and ending quantity of bottled or packaged spirits on hand;

(b) Spirits bottled or packaged;

(c) Bottled or packaged spirits disposed of by:

(1) Withdrawal on tax determination;

(2) Transfer in bond;

(3) Withdrawal free of tax or without payment of tax;

(4) Dumping for further processing;

(5) Transfer to the production account for redistillation;

(6) Voluntary destruction;

(7) Accountable losses;

(8) Samples;

(9) Inventory shortages and overages; and

(10) Other dispositions.

In lieu of showing the proof gallons of spirits on daily transaction records of withdrawals from bonded premises, proprietors may show the wine gallons or liters and the proof of spirits in cases. Summary records shall be used to compile the report required by § 19.792.

(Sec. 807, Pub. L. 96–39, 93 Stat. 283, as amended (26 U.S.C. 5207))

§ 19.752 Denaturation records.

(a) *General.* Each processor qualified to denature spirits shall maintain daily records of denaturation showing:

(1) Spirits received for, and used in, denaturation;

(2) Spirits, denatured spirits, recovered denatured spirits, spirits residues, and articles redistilled in the processing account for denaturation;

(3) Kind and quantity of denaturants received, used in denaturation of spirits, or otherwise disposed of;

(4) Conversion of denatured alcohol formulas in accordance with § 19.460;

(5) Denatured spirits produced, received, stored in tanks, filled into containers, removed, or otherwise disposed of;

(6) Recovered denatured spirits or recovered articles received, restored, and/or redenatured;

(7) Packages of denatured spirits filled with a separate record for each formula number and filed in numerical order according to the serial number or lot identification number of the packages;

(8) Losses; and

(9) Disposition of denatured spirits.

(b) *Record of denaturation.* Each time spirits are denatured, a record shall be prepared to show the formula number, the tank in which denaturation takes place, the proof gallons of spirits before denaturation, the quantity of each denaturant used (in gallons, or in pounds or ounces), and wine gallons of denatured spirits produced.

(Sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207))

§ 19.753 Record of article manufacture.

Each processor qualified to manufacture articles shall maintain daily records arranged by the name and authorized use code of the article to show the following:

(a) Quantity, by formula number of denatured spirits used in the manufacture of the article;

(b) Quantity of each article manufactured; and

(c) Quantity of each article removed, or otherwise disposed of, including the name and address of the person to whom sold or otherwise disposed of.

(Sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207))

Tax Records

§ 19.761 Record of tax determination.

A serially numbered invoice or shipping document, signed or initialed by an agent or employee of the proprietor, shall constitute the record of tax determination. While total proof gallons need not be shown on each invoice or shipping document, sufficient information shall be shown to enable calculation of proof gallons. For purposes of this part, the total proof gallons calculated from each invoice or shipping document shall be rounded to the nearest tenth proof gallon and shall constitute a single withdrawal for use in computing the tax.

(Sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207))

§ 19.762 Daily summary record of tax determinations.

Each proprietor of a distilled spirits plant who withdraws distilled spirits on determination, but before payment, of tax shall maintain a daily summary record of tax determinations. The summary record shall show, for each day on which tax determinations occur, (a) the serial number of each record of tax determination, (b) the total proof gallons rounded to the nearest tenth proof gallon on which tax was determined, and (c) the total tax.

(Sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207))

Other Records

§ 19.766 Record of samples.

(a) *Requirement.* The proprietor shall maintain records of all samples taken pursuant to Subpart V of this part.

(b) *Schedule.* (1) When the proprietor takes samples pursuant to an established schedule, such schedule may be maintained as the required record if it contains that information required by paragraphs (c)(2) through (c)(8).

(2) When unanticipated samples are taken, the schedule shall be appropriately supplemented.

(c) *Detail.* Sample records shall show:

(1) Date samples were taken;

(2) Type and identification of container from which taken;

(3) Account from which taken;

(4) Purpose for which taken;

(5) Size and number of samples taken;

(6) Kind of spirits;

(7) Disposition of the sample (e.g., destroyed, returned to containers or the distilling system, retained for library purposes); and

(8) Name and address of the person to whom samples were sent when the samples are to be analyzed or tested elsewhere than at the plant where secured.

(Sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207))

§ 19.767 Record of destruction.

The proprietor shall record details of the voluntary destruction of spirits, denatured spirits, articles, or wines as follows:

(a) Identification of the spirits, denatured spirits, articles, or wines to include, as applicable, kind, quantity, elements of gauge, name and permit number of the producer, warehouseman or processor, and identification and type of container.

(b) The date, time, place and manner of the destruction;

(c) A statement of whether or not the spirits had previously been withdrawn and returned to bond; and

(d) The name and title of the proprietor's representative who accomplished or supervised the destruction.

(Sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207))

§ 19.768 Gauge record.

When gauges are required to be made by this part or by the regional director (compliance), the proprietor shall prepare a gauge record to show:

(a) Serial number, commencing with "1" at the start of each calendar or fiscal year;

(b) Reason for making the gauge:

(1) Production gauge and entry for deposit in the storage or processing account at the plant where produced;

(2) Packaging of spirits or wine filled from a tank in the storage account at the same plant;

(3) Transfer from the processing or storage account to the production account for redistillation;

(4) Repackaging of spirits of 190 degrees or more of proof; or

(5) Gauge on return to bond in the production or processing account of spirits, denatured spirits, recovered spirits, recovered denatured spirits, articles, recovered articles, or spirits residues.

(c) Date of gauge;

(d) Related form or record (identification, serial number and date);

(e) Kind of spirits or formula number of denatured spirits;

(f) Proof of distillation (not required for denatured spirits, spirits for redistillation, or spirits of 190 degrees or more of proof);

(g) When containers are to be filled, the type and number of containers;

(h) Age of spirits;

(i) Name and plant number of the producer or warehouseman; and

(j) Gauge data:

(1) Package identification, tank number, volumetric or weight gauge details, proof, and wine gallons;

(2) Cooperage identification ("C" for charred, "REC" for recharred, "P" for plain, "PAR" for paraffined, "G" for glued, or "R" for reused);

(3) Entry proof for whiskey;

(4) Proof gallons per filled package; and

(5) Total proof gallons of spirits or wine gallons of denatured spirits, recovered denatured spirits, articles, spirits residues, or wine.

(Sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207))

§ 19.769 Package gauge record.

When required by this part and Part 252, a record shall be prepared to document the gauge of packages of spirits and to convey information on package gauges. The following information shall be recorded:

(a) Date prepared;

(b) Identification of the related transaction form or record, and its serial number;

(c) The name and plant number of the producer or processor (For blended rums or brandies enter name(s) and plant number of blending warehouseman. For spirits of 190 degrees or more of proof, name and plant number of the producer or warehouseman, as appropriate; where the packages have already been marked, the name and plant number marked thereon. For imported spirits, the name of the warehouseman who received the spirits from customs custody and name of importer. For Virgin Islands or Puerto Rican spirits, the name of the producer in the Virgin Islands or Puerto Rico);

(d) proof of distillation for spirits not over 190 degrees proof; and

(e) For each package—

(1) Serial or identification number;

(2) Designate wooden barrels as "C" for charred, "REC" for recharred, "P" for plain, "PAR" for paraffined, "G" for glued, "R" for reused, and "PS" if a barrel has been steamed or water soaked before filling;

(3) Kind of spirits;

(4) Gross weight determined at the time of original gauge, regauge, or at time of shipment;

(5) Present tare on regauge;

(6) Net weight for filling gauge or regauge;

(7) Proof;

(8) Proof gallons for regauge;

(9) Original proof gallons;

(10) Distilled spirits stamp serial number; and

(11) Receiving weights, when a material difference appears on receipt after transfer in bond of weighed packages.

(Sec. 807, Pub. L. 93–39, 93 Stat. 284 (26 U.S.C. 5207))

§ 19.770 Transfer record.

(a) *Consignor.* When required by this part, proprietors shall prepare a transfer record.

The transfer record shall show: (1) Serial number, commencing with "1" on January 1 of each year;

(2) Serial number and date of ATF Form 5100.16 (not required for wine spirits withdrawn without payment of tax for use in wine production);

(3) Name and distilled spirits plant number of consignor;

(4) Name and distilled spirits plant number or bonded wine cellar number of the consignee;

(5) Account from which the spirits or wines were removed for transfer (i.e., production, storage, or processing account);

(6) Description of the spirits, denatured spirits, or wine—

(i) Name and plant number of the producer, warehouseman or processor (Not required for denatured spirits or wine. For imported spirits, record the name and plant number of the warehouseman or processor who received the spirits from customs custody. For transfer of imported spirits from customs custody to ATF bond, record the name of the foreign producer. For Virgin Islands or Puerto Rican spirits, show the name of the producer in the Virgin Islands or Puerto Rico. For spirits of different producers or warehousemen which have been mixed in the processing account, record the name of the processor.);

(ii) Kind of spirits or wines (For denatured spirits, show kind and formula number. For alcohol, show material from which produced. For bulk spirits and for alcohol in packages, show kind and proof. For other spirits and wines, use kind designation as defined in 27 CFR Part 4 or 5 as appropriate);

(iii) Age (in years, months, and days) and year of production;

(iv) Number of packages, with their lot identification numbers or serial numbers and date of fill;

(v) Type of container (If spirits, denatured spirits or wines are to be transferred by pipeline, show "P/L".);

(vi) Proof gallons for spirits or wine gallons for denatured spirits or wine; and

(vii) Conveyance identification.

(7) Notation to indicate when spirits are being transferred in bond from production facility to another plant;

(8) Identification of seals, locks or other devices affixed to the conveyance or package (Permanent seals affixed to a conveyance and which remain intact need not be recorded on the transfer record when a permanent record is maintained);

(9) Date; and

(10) Signature and title of the consignor with the penalties of perjury statement required by § 19.100.

(b) *Consignee.* (1) When a proprietor receives wine from a bonded wine cellar, the consignee shall complete Form 703 covering such transfer in accordance with the instructions thereon.

(2) When a proprietor receives spirits from an alcohol fuel plant or from customs custody, or spirits, denatured spirits and wines from the bonded premises of another distilled spirits plant, he shall record the results of such receipt on the related transfer record as follows:

(i) Date of receipt;

(ii) Notation whether the securing devices on the conveyance were or were not intact on arrival (not applicable to spirits transferred in unsecured conveyances or denatured spirits);

(iii) Gauge of spirits, denatured spirits, or wine showing the tank number, proof (percent of alcohol by volume for wine) and elements of the weight or volumetric determination of quantity, wine gallons or proof gallons received, and any losses or gains;

(iv) Notation of excessive in-transit loss, missing packages, tampering, or apparent theft;

(v) Account into which the spirits, denatured spirits or wines were deposited (i.e., production, storage or processing); and

(vi) Signature and title of the consignee with the penalties of perjury statement required by § 19.100.

(Sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207))

§ 19.771 [Reserved]

§ 19.772 Record of stamps and alternative devices.

(a) *Strip stamps and alternative devices.* Each proprietor bottling spirits shall maintain a daily record showing separately by size of bottle, the number of red strip stamps, green strip stamps and alternative devices affixed.

(b) *Distilled spirits stamps.* Each proprietor shall maintain, for each day a transaction in distilled spirits stamps occurs, a record of distilled spirits stamps, showing the number:

(1) Received;

(2) Used, with annotation to show the applicable transaction form or record and its serial number;

(3) Destroyed or otherwise disposed of; and

(4) On hand at both beginning and close of business.

(Sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207))

§ 19.773 Daily record of wholesale liquor dealer and taxpaid storeroom operations.

Where the proprietor, in connection with his plant, conducts wholesale liquor dealer operations, or operates a taxpaid storeroom, on, contiguous to, adjacent to, or in the immediate vicinity of general plant premises, or operates taxpaid storage premises at another location from which distilled spirits are not sold at wholesale, he shall maintain daily records of the receipt and disposition of all distilled spirits and wines at such premises, and of all restamping or relabeling operations. The provisions of this section shall also apply to products returned to a wholesale liquor dealer or taxpaid storeroom from the market. A separate record shall be kept for each such premises. The records in respect of the receipt and disposition of distilled spirits and wines shall contain all data necessary (consisting of or supported by records including bills of lading and invoices) to enable ATF officers to identify and trace such receipts and dispositions and to ascertain whether there has been compliance with all laws and regulations relating thereto. In addition to any other information shown therein, such records shall include:

(a) *For receipts and dispositions—*

(1) The date of the transaction (or date of discovery in the case of casualty or theft);

(2) The name and address of each consignor or consignee, as the case may be;

(3) The brand name;

(4) The kind of spirits;

(5) The actual quantity of distilled spirits involved (proof and proof gallons if in packages, wine gallons or liters and proof if in bottles);

(6) The package identification or serial numbers of packages involved;

(7) The name of the producer; and

(8) The country of origin, if imported spirits.

(b) *For case dispositions*—In addition to the requirements listed in paragraph (a) of this section the regional director (compliance) may, upon notice to the dealer, require the recording of case serial numbers for dispositions.

(c) *For restamping or relabeling operations—*

(1) The date of the transaction;
(2) The serial numbers of cases involved;
(3) The total number of bottles;
(4) The name of the bottler; and
(5) The number and kind of strip stamps used and/or the number of alternative devices used.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1395, as amended (26 U.S.C. 5555))

§ 19.774 Record of inventories.

(a) *General.* Each proprietor shall make a record of inventories of spirits, denatured spirits, and wines required by §§ 19.329, 19.353, 19.401, 19.402, and 19.464. The following information shall be shown:
(1) Date taken;
(2) Identification of container(s);
(3) Kind and quantity of spirits, denatured spirits, and wines;
(4) Losses (whether by theft, voluntary destruction or otherwise), gains or shortages; and
(5) Signature, under penalties of perjury, of the proprietor or person taking the inventory.

(b) *Production.* Each proprietor shall record the quarterly inventory of spirits as provided in paragraph (a) of this section.

(c) *Storage.* (1) Each proprietor shall record the quarterly inventory of spirits and wines (except those in packages) as provided in paragraph (a) of this section.

(2) Gains or losses disclosed for each container shall be recorded on the current tank record (or summary record for spirits of 190 degrees or more of proof).

(d) *Processing.* Each proprietor shall record inventories as provided in paragraph (a) of this section, and for:
(1) Bulk spirits and wines in process, any gains or losses shall be recorded on the individual dump, batch, or bottling record;
(2) Finished products in bottles and packages, any overages, losses, and shortages for the total quantity inventoried shall be recorded in records required by § 19.751; and
(3) Denatured spirits, any gains or losses shall be recorded in the record prescribed by § 19.752.

(e) *Retention.* Inventory records shall be retained by the proprietor and made available for inspection by ATF officers.

(Sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207))

§ 19.775 Record of securing devices.

Each proprietor shall maintain a record of securing devices by serial number showing the number received, affixed to conveyances (in serial order), and otherwise disposed of.

(Sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207))

§ 19.776 Record of scale tests.

Proprietors shall maintain records of results of tests conducted in accordance with § 19.273 and § 19.276.

(Sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207))

§ 19.777 [Reserved]

§ 19.778 Puerto Rican and Virgin Islands spirits.

(a) *Accounting.* Proprietors shall maintain separate accountings, in proof gallons, of Puerto Rican rum, other Puerto Rican spirits, and Virgin Islands spirits received in the processing account for nonindustrial use. Receipts, for the purpose of these accountings, are limited to Puerto Rican rum, other Puerto Rican spirits, and Virgin Islands spirits received in the processing account from the storage account of the same plant, from the storage account of another plant, and from customs custody.

(b) *Adjustment.* Each month proprietors shall determine the percentage of overall monthly processing gains or losses of spirits. The percentage of overall monthly processing gains or losses can be computed by netting the gains and losses on ATF Form 5110.28 (Part I). The proof gallons of Puerto Rican or Virgin Islands spirits accounted for as received in processing during the month shall be adjusted by the percentage of overall monthly processing gains or losses for that month.

(c) *Report.* As required by § 19.792, proprietors shall file monthly reports on ATF Form 5110.28. That report must show separately the adjusted proof gallons of Puerto Rican rum, other Puerto Rican spirits, and Virgin Islands spirits received in processing.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1394, as amended (26 U.S.C. 5555))

§ 19.779 Form 1473.

The proprietor shall prepare Form 1473 when:

(a) Samples of specially denatured spirits are withdrawn in accordance with § 19.540;

(b) Spirits are withdrawn free of tax in accordance with § 19.536(a)–(c); and

(c) Specially denatured spirits are withdrawn free of tax in accordance with § 19.540.

(Sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207))

Submission of Forms and Reports

§ 19.791 Submission of transaction forms.

Completed copies of transaction forms which must be submitted to the regional director (compliance) under the provisions of this part shall be submitted by the proprietor no later than the close of business the third business day succeeding the day of the transaction as provided by this part and by instructions on the individual forms.

(Sec. 807, Pub. L. 97–39, 93 Stat. 284 (26 U.S.C. 5207))

§ 19.792 Reports.

(a) Reports required by this section shall be prepared as of the end of the applicable reporting period. The original shall be submitted to the regional director (compliance) and a copy retained by the proprietor.

(b) Proprietors shall submit the following summary reports of their operations:

Title	Form No.	Reporting period
(1) Production report	5110.40	Monthly.
(2) Storage report	5110.11	Do.
(3) Processing reports—		
(i) Manufacture/bottling	5110.28	Do.
(ii) Denaturation (including articles)	5110.43	Do.
(4) Reports of stamps and their alternatives.	5100.8	Quarterly.

(c) All reports required by this part shall be prepared and submitted to the regional director (compliance) not later than the 15th day of the month following the close of the reporting period.

(Sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207))

Subpart X—Production of Vinegar by the Vaporizing Process

Scope of Subpart

§ 19.821 Production of vinegar by the vaporizing process.

The regulations in this subpart relate to the production of vinegar by the vaporizing process. The regulations cover requirements governing the location, qualification, changes after qualification, construction, equipment, plant operations and records of operations at vinegar plants. Except where incorporated by reference, the provisions of Subpart A through W and Subpart Y of this part do not apply to vinegar plants using the vaporizing process. The following provisions of this part shall apply to this subpart: the meaning of terms, § 19.11; other businesses, § 19.68; right of entry and examination, § 19.81; furnishing facilities and assistance, § 19.86; restrictions as to

location, § 19.131; registry of stills, § 19.169; and maintenance and preservation of records, § 19.723.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1390, as amended, 1391, as amended (26 U.S.C. 5501–5505))

Qualification Documents

§ 19.822 Application.

Each person, before commencing the business of manufacturing vinegar by the vaporizing process shall make written application to the regional director (compliance). The application will include:

(a) The applicant's name and principal business address (including the plant address if different from the principal business address);

(b) Description of the extent of the premises;

(c) Description of the type of operations to be conducted; and

(d) Description of the stills including the name and residence of the owner, the kind of still, its capacity and the purpose for which it was set up.

The applicant shall receive and approved application from the regional director (compliance) prior to commencing business.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1390, as amended, (26 U.S.C. 5502))

§ 19.823 Changes after original qualification.

When there is a change in the information recorded in the original approved application, the proprietor shall make a written notice of the change to the regional director (compliance). The notice will identify the change and the effective date of the change.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1390, as amended, (26 U.S.C. 5502))

§ 19.824 Notice of permanent discontinuance of business.

A proprietor who intends to permanently discontinue operations shall make written notice to the regional director (compliance). The proprietor shall include in the notice a statement of the status of the stills.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1390, as amended, (26 U.S.C. 5502))

Construction and Equipment

§ 19.825 Construction and Equipment.

A proprietor of a vinegar plant shall construct and equip the vinegar plant so that—

(a) The distilled spirits vapors that are separated by the vaporizing process from the mash produced by the manufacturer are condensed only by introducing them into the water or other liquid used in making the vinegar; and

(b) The distilled spirits produced can be accurately accounted for and are secure from unlawful removal from the premises or from unauthorized use.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1390, as amended, (26 U.S.C. 5502))

Plant Operations

§ 19.826 Authorized operations.

Vinegar manufacturers qualified under this subpart are authorized to—

(a) Produce vinegar only by the vaporizing process; and

(b) Produce distilled spirits of 30 degrees of proof or less only for use in the manufacture of vinegar on the vinegar plant premises.

§ 19.827 Conduct of operations.

Vinegar manufacturers qualified under this subpart may—

(a) Separate by a vaporizing process the distilled spirits from the mash produced by him; and

(b) Condense the distilled spirits vapors by introducing them into the water or other liquid used in making the vinegar.

§ 19.828 Removals from the premises.

No person shall remove from the vinegar plant premises vinegar or other fluid or material containing more than 2% alcohol by volume.

Records

§ 19.829 Daily records.

Each manufacturer of vinegar by the vaporizing process shall keep accurate and complete daily records of production operations that include—

(a) The kind and quantity of fermenting or distilling materials received on the premises;

(b) The kind and quantity of materials fermented or mashed;

(c) The proof gallons of distilled spirits produced;

(d) The proof gallons of distilled spirits used in the manufacture of vinegar;

(e) The wine gallons of vinegar produced; and

(f) The wine gallons of vinegar removed from the premises.

Separate government records need not be kept as long as commercial records contain all the required information.

Administrative and Miscellaneous

§ 19.830 Application of distilled spirits tax.

The internal revenue tax must be paid on any distilled spirits produced in or removed from the premises of a vinegar plant in violation of law or this subpart.

Subpart Y—Distilled Spirits For Fuel Use

§ 19.901 Scope of subpart.

This subpart implements 26 U.S.C. 5181, which authorizes the establishment of distilled spirits plants solely for producing, processing and storing, and using or distributing distilled spirits to be used exclusively for fuel use. This subpart relates to the qualification and operation of such distilled spirits plants. Distilled spirits plants established under this subpart are designated as alcohol fuel plants.

(Sec. 232, Pub. L. 96–223, 94 Stat. 278 (26 U.S.C. 5181))

§ 19.902 Waiver for alcohol fuel plants.

All provisions of Subparts A through X of this part and all provisions of 26 U.S.C. Chapter 51 are hereby waived except:

(a) any provision specifically incorporated by reference in this subpart and the cited authority for that provision;

(b) any provision requiring the payment of tax;

(c) any provisions dealing with penalty, seizure, or forfeiture which is applicable to distilled spirits; and

(d) 26 U.S.C. 5181.

(Sec. 232, Pub. L. 93–224, 94 Stat. 278 (26 U.S.C. 5181))

§ 19.903 Alternate methods or procedures.

The proprietor, on specific approval by the Director as provided in this paragraph, may use an alternate method or procedure in lieu of a method or procedure specifically prescribed in this subpart or Subparts A through X of this part where the provisions of those subparts have been incorporated by reference in this subpart. The Director may approve an alternate method or procedure, subject to stated conditions, when he finds that—

(a) Good cause has been shown for the use of the alternate method or procedure;

(b) The alternate method or procedure is within the purpose of, and consistent with the effect intended by, the specifically prescribed method or procedure, and affords equivalent security to the revenue; and

(c) The alternate method or procedure will not be contrary to any applicable provision of law, and will not result in an increase in cost to the Government or hinder the effective administration of this part. No alternate method or procedure relating to the giving of any bond, to the assessment, payment or collection of tax, will be authorized

under this section. Where the proprietor desires to employ an alternate method or procedure, he shall submit a written application to do so to the regional director (compliance), for transmittal to the Director. The application will specifically describe the proposed alternate method or procedure, and will set forth the reasons therefor. The proprietor shall not employ any alternate method or procedure until the application has been approved. The proprietor shall, during the period of authorization of an alternate method or procedure, comply with the terms of the approved application. Authorization for any alternate method or procedure may be withdrawn whenever in the judgment of the Director the revenue is jeopardized or the effective administration of this part is hindered by the continuation of such authorization. As used in this section, alternate methods or procedures include alternate construction or equipment. The proprietor shall retain, as part of the records available for examination by AFT officers, any application approved by the Director under the provisions of this section.

(Sec. 232, Pub. L. 96–223, 94 Stat. 278 (26 U.S.C. 5181))

§ 19.904 Emergency variations from requirements.

The regional director (compliance) may approve construction, equipment, and methods of operation other than as specified in this part, where he finds that an emergency exists and the proposed variations from the specified requirements are necessary, and the proposed variations—

(a) Will afford the security and protection to the revenue intended by the prescribed specifications;

(b) Will not hinder the effective administration of this part; and

(c) Will not be contrary to any applicable provisions of law. Variations from requirements granted under this section are conditioned on compliance with the procedures, conditions, and limitations with respect thereto set forth in the approval of the application. Failure to comply in good faith with such procedures, conditions, and limitations will automatically terminate the authority for such variations and the proprietor thereupon shall fully comply with the prescribed requirements of regulations from which the variations were authorized. Authority for any variation may be withdrawn whenever in the judgment of the regional director (compliance) the revenue is jeopardized or the effective administration of this part is hindered by the continuation of such variation. Where the proprietor desires to employ such variation, he shall submit a written application to do so to the regional director (compliance). The application will describe the proposed variations and set forth the reasons therefor. Variations will not be employed until the application has been approved, except when the emergency requires immediate action to correct a situation that is threatening to life or property. Such corrective action may then be taken concurrent with the filing of the application and notification of the regional director (compliance), via telephone. The proprietor shall retain, as part of the records available for examination by ATF officers, any application approved by the regional director (compliance) under the provisions of this section.

(Sec. 232, Pub. L. 96–223, 94 Stat. 278 (26 U.S.C. 5181))

§ 19.905 Taxes

(a) *Distilled spirits tax.* Distilled spirits may be withdrawn free of tax from the premises of an alcohol fuel plant exclusively for fuel use in accordance with this subpart. Payment of tax will be required in the case of diversion of spirits to beverage use or other unauthorized dispositions. The provisions of Subpart C of this part are applicable to distilled spirits for fuel use as follows:

(1) Imposition of tax liability (§§ 19.21 through 19.25);

(2) Assessment of tax (§§ 19.31 and 19.32); and,

(3) Claims for tax (§§ 19.41 and 19.44).

(b) *Still tax.* A commodity tax is imposed by 26 U.S.C. 5101 on the manufacturer for each still or condenser for distilling made by him. Manufacturers of stills are subject to a special occupational tax. However, a proprietor manufacturing stills or condensers exclusively for use in his plant or plants is exempt from these taxes. In addition, proprietors of alcohol fuel plants are exempt from the requirement of 26 U.S.C. 5105 to file an application and obtain a permit before setting up distilling apparatus. Provisions relating to stills are contained in 27 CFR Part 196.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1314, as amended, 1339 (26 U.S.C. 5001, 5101, 5103); Sec. 232, Pub. L. 96–223, 94 Stat. 278 (26 U.S.C. 5181))

Definitions

§ 19.907 Meaning of terms.

When used in this subpart, and in forms prescribed under this subpart, terms shall have the meaning given in this section. Words in the plural form include the singular and vice versa, and words indicating the masculine gender include the feminine. The terms "includes" and "including" do not exclude things not enumerated which are in the same general class.

Alcohol fuel plant or plant. An establishment qualified under this subpart solely for producing, processing and storing, and using or distributing distilled spirits to be used exclusively for fuel use.

Alcohol fuel producer's permit. The document issued pursuant to 26 U.S.C. 5181 authorizing the person named therein to engage in business as an alcohol fuel plant.

ATF officer. An officer or employee of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any function relating to the administration or enforcement of this subpart.

Bonded premises. The premises of an alcohol fuel plant where distilled spirits are produced, processed and stored, and used or distributed. Premises of small alcohol fuel plants, which are exempt from bonding under § 19.912(b), shall be treated as bonded premises for purposes of this subpart.

CFR. The Code of Federal Regulations.

Director. The Director, Bureau of Alcohol, Tobacco and Firearms, the Department of the Treasury, Washington, DC.

Fuel alcohol. Distilled spirits which have been rendered unfit for beverage use at an alcohol fuel plant as provided in this subpart.

Gallon or wine gallon. The liquid measure equivalent to the volume of 231 cubic inches.

Person. An individual, trust, estate, partnership, association, company or corporation.

Proof. The ethyl alcohol content of a liquid at 60 degrees Fahrenheit, stated as twice the percent of ethyl alcohol by volume.

Proof gallon. A gallon of liquid at 60 degrees Fahrenheit which contains 50 percent by volume of ethyl alcohol having a specific gravity of 0.7939 at 60 degrees Fahrenheit referred to water at 60 degrees Fahrenheit as unity, or the alcoholic equivalent thereof.

Proprietor. The person qualified under this subpart to operate the alcohol fuel plant.

Region. A Bureau of Alcohol, Tobacco and Firearms region.

Regional director (compliance). The principal regional official responsible for administering regulations in this subpart.

Render unfit for beverage use. The addition to distilled spirits of materials

which will not impair the quality of the spirits for fuel use as prescribed and authorized by the provisions of this subpart.

Secretary. The Secretary of the Treasury or his delegate.

Spirits or distilled spirits. That substance known as ethyl alcohol, ethanol, or spirits of wine in any form (including all dilutions and mixtures thereof from whatever source or by whatever process produced), but not fuel alcohol unless specifically stated. For purposes of this subpart, the term does not include spirits produced from petroleum, natural gas, or coal.

This chapter. Title 27, Code of Federal Regulations, Chapter I [27 CFR Chapter I].

Transfer in bond. The transfer of spirits between alcohol fuel plants or the transfer of spirits to or from a distilled spirits plant qualified under 26 U.S.C. 5171 and an alcohol fuel plant.

Type of plant. The following three types of alcohol fuel plants are recognized in this subpart:

(a) *Small plant.* An alcohol fuel plant which produces (including receipts) not more than 10,000 proof gallons of spirits per calendar year.

(b) *Medium plant.* An alcohol fuel plant which produces (including receipts) more than 10,000 and not more than 500,000 proof gallons of spirits per calendar year.

(c) *Large plant.* An alcohol fuel plant which produces (including receipts) more than 500,000 proof gallons of spirits per calendar year.

U.S.C. The United States Code.

Permits

§ 19.910 Application for permit required.

Any person wishing to establish an alcohol fuel plant shall first make application for and obtain an alcohol fuel producer's permit. The application for a permit will be on Form 5110.74. The application, in duplicate, will be submitted to the regional director (compliance). The description of stills on the approved application constitutes registration of stills as required by 27 CFR 196.45. Alcohol fuel producers' permits are continuing unless automatically terminated under § 19.920, suspended or revoked as provided in § 19.950, or voluntarily surrendered.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1355, as amended (26 U.S.C. 5179); Sec. 232, Pub. L. 96–223, 94 Stat. 278 (26 U.S.C. 5181))

§ 19.911 Criteria for issuance of permit.

In general, an alcohol fuel producer's permit will be issued to any person who completes the required application for permit and who furnishes the required bond (if any). However, the regional director (compliance) may institute proceedings for the denial of the application, if the regional director (compliance) determines that:

(a) The applicant (including, in the case of a corporation, any officer, director, or principal stockholder, and in the case of a partnership, a partner) is, by reason of business experience, financial standing, or trade connections, not likely to maintain operations in compliance with 26 U.S.C. Chapter 51, or regulations issued thereunder; or

(b) The applicant has failed to disclose any material information required, or has made any false statement, as to any material fact, in connection with the application; or

(c) The premises on which the applicant proposes to conduct the operations are not adequate to protect the revenue. The procedures applicable to denial of applications are set forth in 27 CFR Part 200.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1370, as amended (26 U.S.C. 5271); Sec. 232, Pub. L. 96–223, 94 Stat. 278 (26 U.S.C. 5181))

§ 19.912 Small plants.

Persons wishing to establish a small plant shall apply for a permit as provided in this section. Except as provided in paragraph (c) of § 19.913, operations may not be commenced until the permit has been issued.

(a) *Application for permit.* The application (Form 5110.74) shall be submitted to the regional director (compliance) and shall set forth the following information:

(1) Name and mailing address of the applicant, and the location of the alcohol fuel plant if not apparent from the mailing address;

(2) A diagram of the plant premises and a statement as to the ownership of the premises (if the premises are not owned by the proprietor, the owner's consent to access by ATF officers must be furnished);

(3) A description of all stills and a statement of their maximum capacity;

(4) The materials from which spirits will be produced; and

(5) A description of the security measures to be used to protect premises, buildings and equipment where spirits are produced, processed, and stored.

(b) *Bond.* No bond is required for small plants.

(Sec. 232, Pub. L. 96–223, 94 Stat. 278 (26 U.S.C. 5181))

§ 19.913 Action on applications to establish small plants.

(a) *Receipt by the regional director (compliance).*

(1) Notice of receipt—Within 15 days of receipt of the application, the regional director (compliance) shall send a written notice of receipt to the applicant. The notice will include a statement as to whether the application meets the requirements of § 19.912. If the application does not meet those requirements, the application will be returned and a new 15-day period will commence upon receipt by the regional director (compliance) of the amended or corrected application.

(2) Failure to give notice—If the required notice of receipt is not sent, and the applicant has a receipt indicating that the regional director (compliance) has received the application, the 45-day period provided for in paragraphs (b) and (c) of this section will commence on the fifteenth day after the date the regional director (compliance) received the application.

(3) Limitation—The provisions of subparagraphs (1) and (2) of this section apply only to:

(i) the first application submitted with respect to any one small plant in any calendar quarter; and

(ii) an amended or corrected first application.

(b) *Determination by the regional director (compliance).* Within 45 days from the date the regional director (compliance) sent the applicant a notice of receipt of a completed application, the regional director (compliance) shall either (1) issue the permit, or (2) give notice in writting to the applicant, stating in detail the reason that a permit will not be issued. Denial of an application will not prejudice any further application for a permit made by the same applicant.

(c) *Presumption of approval.* If, within 45 days from the date of the notice to the applicant of receipt of a completed application, the regional director (compliance) has not notified the applicant of issuance of the permit or denial of the application, the application shall be deemed to have been approved and the applicant may proceed if a permit had been issued.

(Sec. 232, Pub. L. 96–223, 94 Stat. 278 (26 U.S.C. 5181))

§ 19.914 Medium plants.

Any person wishing to establish a medium plant shall make application for and obtain in alcohol fuel producer's permit. Operations may not be commenced until the application has been approved and the permit issued.

(a) *Application for permit.* The application (Form 5110.74) shall be submitted to the regional director

(compliance) and shall set forth the following information:

(1) The information required by § 19.912 (a);

(2) Statement of maximum total proof gallons of spirits that will be produced and received during a calendar year:

(3) Information identifying the principal persons involved in the business and a statement as to whether the applicant or any such person has ever been convicted of a felony or misdemeanor under Federal or State law; and,

(4) Statement of the amount of funds invested in the business and the source of those funds.

(b) *Bond.* A bond of sufficient penal sum, as prescribed in § 19.957, is required. The bond must be submitted on Form 5110.56 and approved before a permit may be issued.

(Sec. 232, Pub. L. 96–223, 94 Stat. 278 (26 U.S.C. 5181))

§ 19.915 Large plants.

Any person wishing to establish a large plant shall make application for and obtain an alcohol fuel producer's permit. Operations may not be commenced until the application has been approved and the permit issued.

(a) *Application for permit.* The application (Form 5110.74) shall be submitted to the regional director (compliance) and shall set forth the following information:

(1) The information required by § 19.912(a);

(2) Statement of the maximum proof gallons of spirits that will be produced and received during a calendar year;

(3) Information identifying the principal persons involved in the business and a statement as to whether the applicant or any such person has ever been convicted of a felony or misdemeanor under Federal or State law;

(4) Statement of the amount of funds invested in the business and the source of those funds;

(5) Statement of the type of business organization and of the persons interested in the business, supported by the items of information listed in § 19.916; and,

(6) List of the offices, the incumbents of which are authorized by the articles of incorporation or the board of directors to act on behalf of the proprietor or to sign the proprietor's name.

(b) *Bond.* A bond of sufficient penal sum, as prescribed in § 19.957, is required. The bond must be submitted on Form 5110.56 and approved before a permit may be issued.

(Sec. 232, Pub. L. 96–223, 94 Stat. 278 (26 U.S.C. 5181))

§ 19.916 Organizational documents.

The supporting information required by paragraph (a)(5) of § 19.915, includes, as applicable, copies of—

(a) *Corporate documents.*

(1) Corporate charter or certificate of corporate existence or incorporation.

(2) List of officers and directors, showing their names and addresses. However, do not list officers and directors who have no responsibilities in connection with the operation of the alcohol fuel plant.

(3) Certified extracts or digests of minutes of meetings of board of directors, authorizing certain individuals to sign for the corporation.

(4) Statement showing the number of shares of each class of stock or other evidence of ownership, authorized and outstanding, and the voting rights of the respective owners or holders.

(b) *Statement of interest.*

(1) Names and addresses of the 10 persons having the largest ownership or other interest in each of the classes of stock in the corporation, or other legal entity, and the nature and amount of the stockholding or other interest of each, whether the interest appears in the name of the interested party or in the name of another for him. If a corporation is wholly owned or controlled by another corporation, those persons of the parent corporation who meet the above standards are considered to be the persons interested in the business of the subsidiary, and the names thereof need be furnished only upon request of the regional director (compliance).

(2) In the case of an individual owner or partnership, the name and address of each person interested in the plant, whether the interest appears in the name of the interested party or in the name of another for that person.

(c) *Availability of additional documents.* The originals of documents required to be submitted under this section and additional items required under § 19.918 such as the articles of incorporation, bylaws, State certificate authorizing operations, or articles of partnership or association (in the case of a partnership where required by State law) shall be made available to any ATF officer upon request.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1370, as amended (26 U.S.C. 5271); Sec. 232, Pub. L. 96–223, 94 Stat. 278 (26 U.S.C. 5181))

§ 19.917 Powers of attorney.

The proprietor of a large plant shall execute and file with the regional director (compliance) a Form 1534 (5000.8), in accordance with instructions on the form, for each person authorized to sign or act on behalf of the proprietor (Not required for persons whose authority is furnished in the application).

(Sec. 201, Pub. L. 85–859, 72 Stat. 1370, as amended (26 U.S.C. 5271))

§ 19.918 Information already on file and supplemental information.

If any of the information required by §§ 19.912 through 19.916 is on file with the regional director (compliance), that information, if accurate and complete, may be incorporated by reference and made a part of the application. When required by the regional director (compliance), the applicant shall furnish as a part of the application for permit, additional information as may be necessary to determine whether the application should be approved.

(Sec. 232, Pub. L. 96–223, 94 Stat. 278, (26 U.S.C. 5181))

Changes Affecting Applications and Permits

§ 19.919 Changes affecting applications and permits.

When there is a change relating to any of the information contained in, or considered a part of, the application on Form 5110.74, the proprietor shall within 30 days file with the regional director (compliance), a written notice, in duplicate, of such change. Where the change affects the terms and conditions of the permit the proprietor shall within 30 days (except as otherwise provided in this subpart), file with the regional director (compliance), in duplicate, an amended application on Form 5110.74.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended, 1370, as amended (26 U.S.C. 5172, 5271); Sec. 232, Pub. L. 96–223, 94 Stat. 278 (26 U.S.C. 5181))

§ 19.920 Automatic termination of permits.

(a) *Permits not transferable.* Permits issued under this subpart shall not be transferred. In the event of the lease, sale, or other transfer of such a permit, or of the authorized operations, the permit automatically terminates.

(b) *Corporations.* In the case of a corporation holding a permit under this subpart, if actual or legal control of the permittee corporation changes, directly or indirectly, whether by reason of change in stock ownership or control (in the permittee corporation or in any other corporation), by operation of law, or in any other manner, the permit may remain in effect until the expiration of 30 days after the change, whereupon the permit will automatically terminate. However, if operations are to be continued after the change in control,

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and an application for a new permit is filed within 30 days of the change, then the outstanding permit may remain in effect until final action is taken on the new application. When final action is taken on the application, the outstanding permit automatically terminates.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1370, as amended (26 U.S.C. 5271))

§ 19.921 Change in type of alcohol fuel plant.

(a) *Small plants.* If the proprietor of a small plant wishes to increase production (including receipts) to a level in excess of 10,000 proof gallons of spirits per calendar year, the proprietor shall first furnish a bond and obtain an amended permit by filing application under § 19.914 or § 19.915, as applicable. Information filed with the original application for permit need not be resubmitted, but may be incorporated by reference in the new application.

(b) *Medium plants.* Where the proprietor of a medium plant intends to increase production (including receipts) above 500,000 proof gallons of spirits per calendar year, the proprietor shall first obtain an amended permit by filing an application under § 19.915. A new or strengthening bond may be required (see § 19.956). Information already on file may be incorporated by reference in the new application.

(c) *Curtailment of activities.* Proprietors of large or medium plants who have curtailed operations to a level where they are eligible to be requalified as medium or small plants may, on approval of a letter of application by the regional director (compliance), be relieved from the additional requirements incident to their original qualification. In the case of a change to small plant status, termination of the bond and relief of the surety from further liability shall be as provided in Subpart H of this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1370, as amended (26 U.S.C. 5271); Sec. 232, Pub. L. 96–223, 94 Stat. 278 (26 U.S.C. 5181))

§ 19.922 Change in name of proprietor.

Where there is to be a change in the individual, firm, or corporate name, the proprietor shall, within 30 days of the change, file an application to amend the permit; a new bond or consent of surety is not required.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended, 1370, as amended (26 U.S.C. 5172, 5271); Sec. 232, Pub. L. 96–223, 94 Stat. 278 (26 U.S.C. 5181))

§ 19.923 Changes in officers, directors, or principal persons.

Where there is any change in the list of officers, directors, or principal persons, furnished under the provisions of § 19.914, § 19.915 or § 19.916, the proprietor shall submit, within 30 days of any such change, a notice in letter form stating the changes in officers, directors, or principal persons. A new list reflecting the changes will be submitted with the letter notice.

(Sec. 232, Pub. L. 96–233, 94 Stat. 278 (26 U.S.C. 5181))

§ 19.924 Change in proprietorship.

(a) *General.* If there is a change in the proprietorship of a plant qualified under this part, the outgoing proprietor shall comply with the requirements of § 19.945 and the successor shall, before commencing operations, apply for and obtain a permit and file the required bond (if any) in the same manner as a person qualifying as the proprietor of a new plant.

(b) *Fiduciary.* A successor to the proprietorship of a plant who is an administrator, executor, receiver, trustee, assignee or other fiduciary, shall comply with the applicable provisions of § 19.186(b).

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended (26 U.S.C. 5172))

§ 19.925 Continuing partnerships.

If under the laws of the particular State, the partnership is not immediately terminated on death or insolvency of a partner, but continues until the winding up of the partnership affairs is completed, and the surviving partner has the exclusive right to the control and possession of the partnership assets for the purpose of liquidation and settlement, the surviving partner may continue to operate the plant under the prior qualification of the partnership. However, in the case of a large or a medium plant, a consent of surety must be filed, wherein the surety and the surviving partner agree to remain liable on the bond. If the surviving partner acquires the business on completion of the settlement of the partnership, he shall qualify in his own name from the date of acquisition, as provided in § 19.924(a). The rule set forth in this section will also apply where there is more than one surviving partner.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended (26 U.S.C. 5172); Sec. 232, Pub. L. 96–223, 94 Stat. 278 (26 U.S.C. 5181))

§ 19.926 Change in location.

Where there is a change in the location of the plant or of the area included within the plant premises, the proprietor shall file an application to amend the permit and, if a bond is required, either a new bond or a consent of surety on Form 1533 (5000.18). Operation of the plant may not be commenced at the new location prior to issuance of the amended permit.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended, 1370, as amended (26 U.S.C. 5172, 5271); Sec. 805(c), Pub. L. 96–39, 93 Stat. 276 (26 U.S.C. 5173); Sec. 232, Pub. L. 96–223, 94 Stat. 278 (26 U.S.C. 5181))

Alternate Operations

§ 19.930 Alternating proprietorship.

(a) *General.* (1) An alcohol fuel plant, or a part thereof, may be operated alternately by proprietors if—

(i) The alcohol fuel plant and the proprietors are otherwise qualified under the provisions of this subpart, and

(ii) The necessary operations bonds (if any) and applications covering such operations have been filed with and approved by the regional director (compliance).

(2) Where alternating proprietorship is to be limited to a part of a plant, that part must be suitable for qualification as a separate plant.

(b) *Qualifying Documents.* Each person desiring to operate an alcohol fuel plant as an alternating proprietor shall file with the regional director (compliance):

(1) An application on Form 5110.74 to cover the proposed alternation of premises.

(2) Diagram of premises, in duplicate, showing the arrangement under which the premises will be operated. Diagrams will be prepared in accordance with paragraph (c) of this section.

(3) Evidence of existing operations bond (if any), consent of surety, or a new operations bond to cover the proposed alternation of premises.

(4) When required by the regional director (compliance), additional information as may be necessary to determine whether the application should be approved.

(c) *Diagram of premises.* Each person filing an application for operation of a plant as an alternating proprietor shall submit a diagram of the premises. Where operations by alternating proprietors are limited to parts of a plant, a diagram which designates the parts of the plant that are to be alternated will be submitted. A diagram will be submitted for each arrangement under which the premises will be operated. The diagram will be in sufficient detail to establish the boundaries of the plant or any part thereof which is to be alternated.

(d) *Alternation Journal.* Once the applications have been approved and

initial operations conducted thereunder, the plant, or parts thereof, may be alternated. The outgoing and incoming proprietor shall enter into an alternation journal the following information:

(1) Name or trade name;

(2) Alcohol fuel plant permit number;

(3) Date and time of alternation; and

(4) Quantity of spirits transferred in proof gallons.

The alternation journal will remain in the possession of the incoming proprietor until the premises are again alternated whereupon it will be transferred to the new incoming proprietor.

(e) *Commencement of operations.* Except for spirits transferred to the incoming proprietor, the outgoing proprietor shall remove all spirits from areas, rooms, or buildings to be alternated, prior to the effective date and time shown in the alternation journal. Fuel alcohol may be either transferred to the incoming proprietor or may be retained by the outgoing proprietor in areas, rooms, or buildings to be alternated when the areas, rooms, or buildings are secured with locks, the keys to which are in the custody of the outgoing proprietor. Whenever operation of the areas, rooms, or buildings is to be resumed by a proprietor following suspension of operations by an alternating proprietor, the outgoing proprietor (except proprietors of small plants) must furnish a consent of surety on Form 1533 (5000.18) to continue in effect the operations bond covering his operations. This is to be done prior to alternating the premises.

(f) *Records.* Each proprietor shall maintain separate records and submit separate reports. All transfers of spirits will be reflected in the records of each proprietor. The quantity of spirits and fuel alcohol transferred will be shown in the production and disposition records of the outgoing proprietor. The quantity of spirits transferred will be shown in the receipt record of the incoming proprietor. Each outgoing and incoming proprietor shall include spirits transferred in determinations of plant size and bond amounts. The provisions of § 19.921 regarding change in type of plant are applicable to each proprietor. Entries into these records will be in the manner prescribed in §§ 19.982, 19.984, and 19.986.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended, 1370, as amended (26 U.S.C. 5172, 5271; Sec. 805(a), Pub. 96–39, 93 Stat. 275 (26 U.S.C. 5171); Sec. 232 Pub. L. 96–223, 94 Stat. 278 (26 U.S.C. 5181))

Permanent Discontinuance of Business

§ 19.945 Notice of permanent discontinuance.

A proprietor who permanently discontinues operations as an alcohol fuel plant shall, after completion of the operations, file a letterhead notice with the regional director (compliance). The notice shall be accompanied—

(a) By the alcohol fuel producer's permit, and by the proprietor's request that such permit be canceled;

(b) By a written statement disclosing, as applicable, whether (1) all spirits (including fuel alcohol) have been lawfully disposed of, and (2) any spirits are in transit to the premises; and

(c) By a report covering the discontinued operations (the report shall be marked "Final Report").

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended, 1370, as amended (26 U.S.C. 5172, 5271); Sec. 232, Pub. L. 96–223, 94 Stat. 278 (26 U.S.C. 5181))

Suspension or Revocation of Permits

§ 19.950 Suspension or revocation.

Whenever the regional director (compliance) has reason to believe that any person holding an alcohol fuel producer's permit—

(a) Has not in good faith complied with the applicable provisions of 26 U.S.C. Chapter 51, or regulations issued thereunder; or

(b) Has violated conditions of the permit; or

(c) Has made any false statements as to any material fact in the application therefor; or

(d) Has failed to disclose any material information required to be furnished; or

(e) Has violated or conspired to violate any law of the United States relating to intoxicating liquor or has been convicted of any offense under Title 26, U.S.C. punishable as a felony or of any conspiracy to commit such offense; or

(f) Has not engaged in any of the operations authorized by the permit for a period of more than 2 years; the regional director (compliance) may institute proceedings for the revocation or suspension of the permit in accordance with the procedures set forth in 27 CFR Part 200.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1370, as amended (26 U.S.C. 5271))

Bonds

§ 19.955 Bonds.

An operations bond is required for medium and large plants. The bond will be executed, in duplicate, on Form 5110.56. Surety bonds may be given only with corporate sureties holding certificates of authority from, and subject to the limitations prescribed by, the Secretary as set forth in the current revision of Treasury Department Circular 570. However, in lieu of corporate surety the proprietor may pledge and deposit as surety for his bond, securities which are transferable and are guaranteed as to both interest and principal by the United States, in accordance with the provisions of 31 CFR Part 225. The regional director (compliance) will not release such securities until liability under the bond for which they were pledged has been terminated.

(Sec. 805(c), Pub. L. 96–39, 93 Stat. 276 (26 U.S.C. 5173); CH. 390, Pub. L. 80–280, 61 Stat. 648, 650 (6 U.S.C. 6, 7, 15); Sec. 232, Pub. L. 96–223, 94 Stat. 278 (26 U.S.C. 5181))

§ 19.956 Amount of bond.

The penal sum of the bond is based on the total quantity of distilled spirits to be produced (including receipts) during a calendar year. If the level of production and/or receipts at the plant is to be increased, and the bond is not in the maximum penal sum, a new or strengthening bond shall be obtained.

(a) *Medium plants.* A medium plant which will produce (including receipts) between 10,000 and 20,000 proof gallons of spirits per year requires a bond in the amount of $2,000. For each additional 10,000 proof gallons (or fraction thereof), the bond amount is increased $1,000. The maximum bond for a medium plant is $50,000.

(b) *Large plants.* The minimum bond for a large plant is $52,000 (more than 500,000, but not more than 510,000 proof gallons annual production (including receipts)). For each additional 10,000 (or fraction) proof gallons, the amount of the bond is increased $2,000. The maximum bond for a large plant is $200,000 (more than 1,240,000 proof gallons).

(Sec. 805(c), Pub. L. 96–39, 93 Stat. 276 (26 U.S.C. 5173); Sec. 232, Pub. L. 96–233, 94 Stat. 278 (26 U.S.C. 5181))

§ 19.957 Instructions to compute bond penal sum.

(a) *Medium plants.* To find the required amount of your bond, estimate the total proof gallons of spirits to be produced and received in a calendar year. The amount of the bond is $1,000 for each 10,000 proof gallons (or fraction), subject to a minimum of $2,000 and a maximum of $50,000. The following table provides some examples:

ANNUAL PRODUCTION AND RECEIPTS IN PROOF GALLONS

More than	But not over	Amount of bond
10,000	20,000	$2,000
20,000	30,000	3,000
90,000	100,000	10,000
190,000	200,000	20,000
490,000	500,000	50,000

(b) *Large plants.* To find the required amount of your bond, estimate the total proof gallons of spirits to be produced and received in a calendar year. The amount of the bond is $50,000 plus $2,000 for each 10,000 proof gallons (or fraction) over 500,000. The following table provides some examples:

ANNUAL PRODUCTION AND RECEIPTS IN PROOF GALLONS

More than	But not over	Amount of bond
500,000	510,000	$52,000
510,000	520,000	54,000
740,000	750,000	100,000
990,000	1,000,000	150,000
1,240,000		200,000

(Sec. 805(c), Pub. L. 96-39, 93 Stat. 276 (26 U.S.C. 5173; Sec. 232, Pub. L. 96-223, 94 Stat. 278 (26 U.S.C. 5181))

§ 19.958 Conditions of bond.

The bond shall be conditioned on payment of all taxes (including any penalties and interest) imposed by 26 U.S.C. Chapter 51, on compliance with all requirements of law and regulations, and on payment of all penalties incurred or fines imposed for violations of any such provisions.

(Sec. 805(c), Pub. L. 96-39, 93 Stat. 276 (26 U.S.C. 5173); Sec. 232, Pub. L. 96-223, 94 Stat. 278 (26 U.S.C. 5181))

§ 19.959 Additional provisions with respect to bonds.

Subpart H of this part contains further provisions applicable to bonds which, where not inconsistent with this subpart, are applicable to bonds of alcohol fuel plants.

Construction, Equipment and Security

§ 19.965 Construction and equipment.

Buildings and enclosures where distilled spirits will be produced, processed, or stored shall be constructed and arranged to enable the proprietor to maintain security adequate to deter diversion of the spirits. Distilling equipment shall be constructed to prevent unauthorized removal of spirits, from the point where distilled spirits come into existence until production is complete and the quantity of spirits has been determined. Tanks and other vessels for containing spirits shall be equipped for locking and be constructed to allow for determining the quantities of spirits therein.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1353, as amended (26 U.S.C. 5178))

§ 19.966 Security.

Proprietors shall provide security adequate to deter the unauthorized removal of spirits. The proprietor shall store spirits either in a building, a storage tank, or within an enclosure, which the proprietor will keep locked when operations are not being conducted.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1353, as amended (26 U.S.C. 5178); Sec. 806, Pub. L. 96-39, 93 Stat. 279 (26 U.S.C. 5202))

§ 19.967 Additional security.

If the regional director (compliance) finds that security is inadequate to deter diversion of the spirits, as may be evidenced by the occurrence of break-ins or by diversion of spirits to unauthorized purposes, additional security measures may be required. Such additional measures may include, but are not limited to, the following:

(a) The erection of a fence around the plant or the alcohol storage facility;

(b) Flood lights;

(c) Alarm systems;

(d) Watchman services; or,

(e) Locked or barred windows.

The exact additional security requirements would depend on the extent of the security problems, the volume of alcohol produced, the risk to tax revenue, and safety requirements.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1353, as amended (26 U.S.C. 5178); Sec. 806, Pub. L. 96-39, 93 Stat. 279 (26 U.S.C. 5202))

Supervision

§ 19.970 Supervision of operations.

The regional director (compliance) may assign ATF officers to premises of plants qualified under this subpart. The authorities of ATF officers, provided in §§ 19.81 through 19.84, and the requirement that proprietors furnish facilities and assistance to ATF officers, provided in § 19.86, apply to plants qualified under this subpart. The provisions of § 19.75 of this part pertaining to the assignment of ATF officers and hours of operation, to the extent deemed necessary by the regional director (compliance), are applicable to plants qualified under this subpart.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1320, as amended, 1356, as amended, 1357, as amended, 1358, as amended, 1375, as amended, 1396, as amended (26 U.S.C. 5006, 5201, 5203, 5204, 5213, 5555); Sec. 806, Pub. L. 96-39, 93 Stat. 279 (26 U.S.C. 5202); Sec. 807, Pub. L. 96-39, 93 Stat. 284 (26 U.S.C. 5207))

Accounting for Spirits

§ 19.980 Gauging.

(a) *Equipment and method.* Proprietors shall gauge spirits by accurately determining the proof and quantity of spirits. The proof of the spirits shall be determined using a glass cylinder, hydrometer, and thermometer. Proprietors may account for fuel alcohol in wine gallons. Unless proprietors desire to do so, it is not necessary to determine the proof of fuel alcohol manufactured, on-hand, or removed. The Proprietor may determine quantity either by volume or weight. A tank or receptacle with a calibrated sight glass installed, a calibrated dipstick, conversion charts, meters (subject to approval by the regional director (compliance)), or other devices or methods approved by the Director, may be used to determine quantity by volume. The proprietor shall ensure that hydrometers, thermometers, and other equipment used to determine proof, volume, or weight are accurate. From time to time ATF officers shall verify the accuracy of such equipment. Detailed procedures for gauging spirits are provided in 27 CFR Part 30.

(b) *When Required.* Proprietors shall guage spirits and record the results in their records at the following times:

(1) On completion of production of distilled spirits;

(2) On receipt of spirits at the plant;

(3) Prior to the addition of materials to render the spirits unfit for beverage use;

(4) Before withdrawal from plant premises or other disposition of spirits (including fuel alcohol); and

(5) When spirits are to be inventoried.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1356, as amended, 1358, as amended (26 U.S.C. 5201, 5204))

§ 19.981 Inventories.

Proprietors shall take actual physical inventory of all spirits (including fuel alcohol) on bonded premises at least once during each period for which a report is required by § 19.988. The results of the inventory shall be posted in the applicable records required by § 19.982.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§ 19.982 Records.

(1) *All plants.* All proprietors shall maintain records with respect to: (1) The quantity and proof of spirits produced; (2) The proof gallons of spirits on-hand and received; (3) The quantities and types of materials added to render the

spirits unfit for beverage use; (4) The quantity of fuel alcohol manufactured; and, (5) All dispositions of spirits (including fuel alcohol). Fuel alcohol may be recorded in wine gallons.

(b) *Medium and large plants.* Proprietors of medium and large plants shall also record the kind and quantity of materials used to produce spirits.

(c) *General requirements.*

(1) The records must contain sufficient information to allow ATF officers to determine the quantities of spirits produced, received, stored, or processed and to verify that all spirits have been lawfully disposed of or used.

(2) Records which the proprietor prepares for other purposes (i.e. invoices or other commercial records) may be used to meet the record requirements of this subpart, so long as they show the required information.

(3) Where the format or arrangement of the record is such that the information is not clearly or accurately reflected, the regional director (compliance) may require a format or arrangement which will clearly and accurately reflect the information.

(4) Entries required by this subpart to be made into records will be made on the day on which the operation or transaction occurs. However, these entries may be deferred until the third business day succeeding the day on which the operation or transaction occurs when the proprietor prepares commercial records concurrent with the individual operation or transaction.

(Sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207))

§ 19.983 Spirits rendered unfit for beverage use in the production process.

Where spirits are rendered unfit for beverage use before removal from the production system, the proprietor shall enter into the production records, in addition to the quantity and proof of spirits produced, the kind and quantity of materials added to each lot of spirits. In such a case, a separate record under § 19.985 is not required. The quantity of spirits produced will be determined by substracting the quantity of materials added to render the spirits unfit for beverage use from the quantity of fuel alcohol produced and multiplying the resulting figure by the proof of each lot of spirits. The proprietor shall determine the proof of each lot of spirits. The proprietor shall procure a representative sample of each lot, prior to the addition of any material for rendering the spirits unfit for beverage use, and proof the sample in accordance with the provisions of § 19.980(a). This paragraph applies to in-line addition of materials and to systems in which, before any spirits come off the production equipment, the proprietor adds materials for rendering the spirits unfit for beverage use to the first receptacle where spirits are to be deposited.

(Sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207); Sec. 232, Pub. L. 96–222, 94 Stat. 278 (26 U.S.C. 5181))

§ 19.984 Record of spirits received.

The proprietor's copy of the consignor's invoice or other document received with the shipment, on which the proprietor has noted the date of receipt and quantity received, constitutes the required record.

(Sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207))

§ 19.985 Record of spirits rendered unfit for beverage use.

The proprietor shall record the kind and quantity of materials added to render each lot of spirits unfit for beverage use and the quantity of fuel alcohol manufactured (which may be given in wine gallons).

Sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207))

§ 19.986 Record of dispositions.

(a) *Fuel alcohol removed.* For fuel alcohol removed from the plant premises, the commercial record or other document required by § 19.997 constitutes the required record.

(b) *Spirits transferred.* For spirits transferred in bond (including transfers from small plants) to a distilled spirits plant qualified under Subpart G of this part or to another alcohol fuel plant, the commercial invoice or other document required by §§ 19.508 and 19.999 constitutes the required record.

(c) *Other dispositions.* For spirits or fuel alcohol used or otherwise disposed of (e.g., lost, destroyed, redistilled) on the premises of the alcohol fuel plant, the proprietor shall maintain a record as follows:

(1) the quantity of spirits (in proof gallons) or fuel alcohol (in gallons) and the date of disposition; and,

(2) the purpose for which used or the nature of the other disposition.

(d) *Separate records.* Records for dispositions of fuel alcohol and spirits will be maintained separately.

(Sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207); Sec. 232, Pub. L. 96–223, 94 Stat. 278 (26 U.S.C. 5181))

§ 19.987 Maintenance and retention of records.

The proprietor shall retain at the plant where an operation or transaction occurs the records required by this subpart for a period of not less than three years from the date thereof or from the date of the last entry made thereon, whichever is later. Whenever any record because of its condition becomes unsuitable for its intended or continued use the proprietor shall reproduce the record by a process approved by the regional director (compliance) under the provisions of § 19.725. The records shall be available for inspectin by any ATF officer during business hours. For records maintained on data processing equipment, the provisions of § 19.723 apply.

(Sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207))

§ 19.988 Reports.

Proprietors shall file reports of their operations, depending on the type of plant, as follows:

Type of plant	Frequency	Closing date of reporting period
Small	Annually	December 31.
Medium	Semiannually	June 30 and December 31
Large plant	Quarterly	Close of each calendar quarter.

The proprietor shall submit each required report to the regional director (compliance) within 30 days after the close of the applicable reporting period. The report shall be submitted on Form 5110.75.

(Sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207))

Redistillation

§ 19.990 Redistillation of spirits or fuel alcohol received on the plant premises.

(a) *Receipts for redistillation.* Proprietors of alcohol fuel plants may receive and redistill spirits. Fuel alcohol may be received on the premises of an alcohol fuel plant for the recovery by redistillation of the spirits contained therein. Spirits and fuel alcohol received for redistillation will be identified as such and will be kept separate from other spirits and fuel alcohol on the premises until redistilled. Spirits originally produced by the plant and subsequently recovered by redistillation will not be included in determinations of plant size and bond amounts. Spirits originally produced at other plants and subsequently recovered by redistillation will be included in determinations of plant size and bond amounts.

(b) *Recordkeeping.*

(1) The proprietor shall record in a separate record the following information for spirits and fuel alcohol received for redistillation.

(i) Date received;

(ii) Whether fuel alcohol or spirits;

(iii) Quantity received;

(iv) From whom received;
(v) Reason for redistillation;
(vi) Date redistilled; and
(vii) Quantity of spirits recovered by redistillation.

(2) The proprietor's commercial record required for spirits by § 19.999 or for fuel alcohol by § 19.997 and any other commercial record received covering spirits or fuel alcohol to be redistilled will be filed separately from other records. These records may be used in lieu of the record required by paragraph (b)(1) of this section when any missing information required to be shown has been entered upon the commercial record by the proprietor.

(c) *Status.* Spirits recovered by redistillation will be treated the same as spirits which have not been redistilled. All provisions of this subpart and 26 U.S.C. Chapter 51 (including liability for tax) applicable to spirits when originally produced are applicable to spirits recovered by redistillation.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1365, as amended, 1370, as amended (26 U.S.C. 5223, 5243); Sec. 232, Pub. L. 96–223, 94 Stat. 278 (26 U.S.C. 5181))

Uses, Withdrawals and Transfers

§ 19.995 Use on premises.

Spirits may be used as a fuel on the premises of the alcohol fuel plant at which produced and need not be rendered unfit for beverage use. Proprietors using spirits on the plant premises shall keep the applicable records concerning such dispositions as provided in § 19.986(c).

(Sec. 232, Pub. L. 96–223, 94 Stat. 278, (26 U.S.C. 5181))

§ 19.996 Withdrawal of spirits.

Before spirits may be withdrawn from the premises of an alcohol fuel plant, they must be rendered unfit for beverage use as provided in this subpart. Spirits rendered unfit for beverage use (fuel alcohol) may be withdrawn free of tax from plant premises exclusively for fuel use.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1362, as amended (26 U.S.C. 5214); Sec. 232, Pub. L. 96–223, 94 Stat. 278 (26 U.S.C. 5181))

§ 19.997 Withdrawal of fuel alcohol.

For each shipment or other removal of fuel alcohol from the plant premises the consignor shall prepare a commercial invoice, sales slip, or similar document. The consignor shall enter on the document the date, the quantity of fuel alcohol removed, a description of the shipment (for example, number and size of containers, tank truck, etc.), and the name and address of the consignee. The consignor shall retain a copy of the document as a record.

(Sec. 232, Pub. L. 96–223, 94 Stat. 278 (26 U.S.C. 5181))

§ 19.998 Transfer in bond of spirits.

(a) *Transfer between alcohol fuel plants.* A proprietor may remove spirits from the bonded premises of an alcohol fuel plant (including the premises of a small plant) for transfer in bond to another alcohol fuel plant. Bulk conveyances in which spirits are transferred shall be secured with locks, seals or other devices as prescribed by § 19.96. The spirits need not be rendered unfit for beverage use prior to transfer. Spirits so transferred may not be withdrawn, used, sold, or otherwise disposed of for other than fuel use.

(b) *Transfer to or from other distilled spirits plants.* Spirits (not including spirits produced from petroleum, natural gas, or coal) may be transferred in bond from distilled spirits plants qualified under Subpart G of this part to alcohol fuel plants. Alcohol fuel plants may transfer spirits in bond to distilled spirits plants qualified under Subpart G of this part. Bulk conveyances in which spirits are transferred shall be secured with locks, seals, or other devices as prescribed by § 19.96. The spirits need not be rendered unfit for beverage use prior to transfer. Spirits so transferred may not be withdrawn, used, sold, or otherwise disposed of for other than fuel use.

(c) *Transfer procedures.* The procedures in §§ 19.999 through 19.1001 pertain only to the transfer of spirits between alcohol fuel plants. The procedures in §§ 19.506 through 19.509 and 19.770 pertain to the transfer of spirits from an alcohol fuel plant to a distilled spirits plant qualified under 26 U.S.C. 5171. The alcohol fuel plant transferring in bond spirits filled into portable containers to the bonded premises of a distilled spirits plant qualified under 26 U.S.C. 5171 shall mark each container as required by § 19.1008(b). The procedures in §§ 19.508, 19.510 and 19.770 pertain to the transfer of spirits from a distilled spirits plant to an alcohol fuel plant.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1362, as amended (26 U.S.C. 5212); Sec. 232, Pub. L. 96–223, 94 Stat. 278 (26 U.S.C. 5181))

§ 19.999 Consignor premises.

The consignor shall prepare, in duplicate, a commerical invoice or shipping document to cover each shipment of spirits. The consignor shall enter on the document the quantity of spirits transferred, the proof of the spirits transferred, a description of the shipment (for example, number and size of drums or barrels, tank truck, etc.), the name, address, and permit number of the consignor and of the consignee, and the serial numbers of seals, locks, or other devices used to secure the conveyance. The consignor shall forward the original of the document to the consignee with the shipment and retain the copy as a record.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1362, as amended (26 U.S.C. 5212))

§ 19.1000 Reconsignment in transit.

When, prior to or on arrival at the premises of a consignee, spirits transferred in bond are found to be unsuitable for the intended purpose, were shipped in error, or, for any other bona fide reason, are not accepted by such consignee, or are not accepted by a carrier, they may be reconsigned, by the consignor, to himself, or to another qualified consignee. In such case, the bond, if any, of the proprietor to whom the spirits are reconsigned shall cover such spirits while in transit after reconsignment. In addition, if the spirits are reconsigned to a distilled spirits plant qualified under Subpart G of this part, an application to receive spirits by transfer in bond (on Form 5100.16) must have been previously approved for the consignee. Notice of cancellation of the shipment shall be made by the consignor to the consignee and the consignor shall note the reconsignemnt on his copy of the document covering the original shipment. Where the reconsignment is to another proprietor, a new document shall be prepared and prominently marked with the word "Reconsignment".

(Sec. 201, Pub. L. 85–859, 72 Stat. 1362, as amended, (26 U.S.C. 5212); Sec. 232, Pub. L. 96–223, 94 Stat. 278 (26 U.S.C. 5181))

§ 19.1001 Consignee premises.

(a) *General.* When spirits are received by transfer in bond, the proprietor shall examine each conveyance to determine whether the locks, seals, or other devices are intact upon arrival at his premises. If the locks, seals or other devices are not intact, he shall immediately notify the area supervisor, before removal of any spirits from the conveyance. The consignee shall determine the quantity of spirits received and record the quantity and the date received on the document received with the shipment. The consignee shall retain the document as the record of receipt required by § 19.984.

(b) *Portable containers.* When spirits are received in barrels, drums, or similar portable containers, the proprietor shall examine each container and, unless the transfer was made in a secured conveyance and the seals or other devices are intact on arrival, verify the

contents of each container. The proprietor shall record the quantity received for each container on a list, and shall attach a copy of the list to the invoice or other document received with the shipment.

(c) *Bulk conveyances and pipelines.* When spirits are received in bulk conveyances or by pipeline, the consignee shall gauge the spirits received and shall record the quantity so determined on the invoice or other document received with shipment. However, the regional director (compliance) may waive the requirement for gauging spirits on receipt by pipeline if, because of the location of the premises, there will be no jeopardy to the revenue.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended, 1362, as amended (26 U.S.C. 5204, 5212); Sec. 232, Pub. L. 96–223, 94 Stat. 278 (26 U.S.C. 5181))

§ 19.1002 Prohibited uses, transfers, and withdrawals.

No person shall withdraw, use, sell, or otherwise dispose of distilled spirits (including fuel alcohol) produced under this subpart for other than fuel use. The law imposes criminal penalties on any person who withdraws, uses, sells or otherwise disposes of distilled spirits (including fuel alcohol) produced under this subpart for other than fuel use.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1398, as amended (26 U.S.C. 5601); Sec. 232, Pub. L. 96–223, 94 Stat. 278 (26 U.S.C. 5181))

Materials for Rendering Spirits Unfit for Beverage Use

§ 19.1005 Authorized Materials.

(a) *General.* The Director shall determine and authorize for use materials for rendering spirits unfit for beverage use which will not impair the quality of the spirits for fuel use. Spirits treated under this section will be considered rendered unfit for beverage use and eligible for withdrawal as fuel alcohol.

(b) *List.* The Director will compile and issue periodically a list of materials authorized for rendering spirits unfit for beverage use. The list will specify for each material (1) name and (2) quantity required to render spirits unfit for beverage use. The list may be obtained at no cost upon request from the ATF Distribution Center, 3800 South Four Mile Run Drive, Arlington, Virginia 22206.

(c) *Authorized material.* Until issuance of the initial list of materials authorized for rendering spirits unfit for beverage use, proprietors are authorized to add to each 100 gallons of spirits any of the following materials in the quantities specified.

(1) 2 gallons or more of—

(i) Gasoline or automotive gasoline (for use in engines which require unleaded gasoline Environmental Protection Agency and manufacturers specifications may require that unleaded gasoline be used to render the spirits unfit for beverage use).

(ii) Kerosene,

(ii) Deodorized kerosene,

(iv) Rubber hydrocarbon solvent,

(v) Methyl isobutyl ketone,

(vi) Mixed isomers of nitropropane,

(vii) Heptane, or,

(viii) Any combination of (i) through (vii); or

(2) ⅛ ounce of denatonium benzoate N.F. (Bitrex) and 2 gallons of isopropyl alcohol.

(Sec. 232, Pub. L. 96–223, 94 Stat. 278 (26 U.S.C. 5181))

§ 19.1006 Other materials.

If a proprietor desires to use a material not authorized under § 19.1005 to render spirits unfit for beverage use, the proprietor shall submit an application to the Director. The application must state the name of the material and the quantity of material that the proprietor proposes to add to each 100 gallons of spirits. The proprietor may be required to submit an 8 ounce sample of the material with the application. Material that impairs the quality of the spirits for fuel use will not be approved. The proprietor shall not use any proposed material prior to its approval. Materials approved for use under this section will appear in the next subsequent issuance of the list of materials authorized for rendering spirits unfit for beverage use provided for under § 19.1005. The proprietor shall retain as part of the records available for inspection by ATF officers, any application approved by the Director under the provisions of this section.

(Sec. 232, Pub. L. 96–233, 94 Stat. 278 (26 U.S.C. 5181))

§ 19.1007 Samples.

A proprietor may take samples of spirits and fuel alcohol for testing and analysis. Samples of spirits may not be removed from the premises of the alcohol fuel plant. Samples of fuel alcohol may be removed from the premises of the alcohol fuel plant to a bona fide laboratory for testing and analysis. The proprietor shall indicate on sample containers that the spirits or fuel alcohol contained therein is a sample. The proprietor shall account for samples in the record provided for in § 19.986.

(Sec. 232, Pub. L. 96–223, 94 Stat. 278 (26 U.S.C. 5181))

Marks

§ 19.1008 Marks.

(a) *Fuel alcohol.* The proprietor shall conspicuously and permanently mark or securely label each container of fuel alcohol containing 55 gallons or less that will be withdrawn from the plant premises, as follows:

WARNING

FUEL ALCOHOL

MAY BE HARMFUL OR FATAL IF SWALLOWED

The mark or label shall be placed on the head or side of the container, and shall be in plain legible letters. Proprietors may place other marks or labels on containers so long as they do not obscure the required mark.

(b) *Spirits.* When barrels, drums or similiar portable containers of spirits are to be transferred by a proprietor to a distilled spirits plant qualified under subpart G of this part, each container will be marked or labeled in plain legible letters on the side or head to show the following information:

(1) Quantity in wine gallons;

(2) Proof;

(3) Serial number of container;

(4) Name, address (city or town and State) and permit number of the alcohol fuel plant; and

(5) The words "Spirits-For Alcohol Fuel Use Only".

Proprietors may place other marks or labels on such containers so long as they do not obscure the required mark. Serial numbers will be assigned consecutively commencing with "1". When the numbering of any series reaches "1,000,000", the proprietor may recommence the series. The recommenced series will be given an alphabetical prefix or suffix. Where there is a change in proprietorship, or in the individual, firm, corporate name or trade name, the series in use at the time of the change may be continued.

(Sec. 232, Pub. L. 96–233, 94 Stat. 278, (26 U.S.C. 5181); Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended (26 U.S.C. 5206))

Subpart Z—Paperwork Reduction Act

§ 19.1010 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

(a) *Purpose.* This subpart displays the control numbers assigned to information collection requirements in this part by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96–511. The Department intends that this subpart comply with the requirements of section 3507(f) of the Paperwork Reduction Act, which requires that agencies display a

current control number assigned by the Director of the Office of Management and Budget for each agency information collection requirement.

(b) *Display.*

Section where identified	Current OMB control No.
19.41	1512-0141
	1512-0203
19.42	1512-0141
	1512-0203
19.43	1512-0141
	1512-0203
19.44	1512-0141
	1512-0203
19.45	1512-0203
19.46	1512-0203
19.62	1512-0206
19.66	1512-0206
19.67	1512-0206
19.68	1512-0462
19.71	1512-0206
19.72	1512-0206
19.73	1512-0206
19.75	1512-0206
19.91	1512-0206
	1512-0250
19.92	1512-0250
19.93	1512-0250
19.96	1512-0206
19.98	1512-0206
19.99	1512-0206
19.133	1512-0206
19.134	1512-0206
19.151	1512-0206
19.152	1512-0206
19.153	1512-0206
19.154	1512-0206
19.155	1512-0206
19.157	1512-0195
19.158	1512-0195
19.159	1512-0195
19.162	1512-0195
19.165	1512-0195
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19.167	1512-0206
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19.187	1512-0206
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19.192	1512-0206
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19.204	1512-0202
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19.205	1512-0202
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19.211	1512-0206
19.249	1512-0206
19.250	1512-0206
19.251	1512-0206
19.273	1512-0250
19.274	1512-0460
19.276	1512-0250
19.277	1512-0206
19.278	1512-0460
19.280	1512-0460
19.281	1512-0206
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19.314	1512-0205
19.315	1512-0205
19.316	1512-0205
19.318	1512-0250
19.319	1512-0250
19.320	1512-0192
	1512-0250
19.321	1512-0250
19.322	1512-0250
19.324	1512-0204
	1512-0206
19.326	1512-0205
19.327	1512-0205
	1512-0461
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	1512-0189
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19.682	1512-0203
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19.685	1512-0067
19.686	1512-0191
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19.688	1512-0250
19.691	1512-0250
19.701	1512-0206
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19.702	1512-0250
19.703	1512-0203
19.704	1512-0461
19.721	1512-0189
	1512-0192
	1512-0198
	1512-0203
	1512-0205
	1512-0207
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19.723	1512-0189
	1512-0192
	1512-0198
	1512-0203
	1512-0205
	1512-0207

Section where identified	Current OMB control No.
	1512-0250
	1512-0462
19.724	1512-0206
19.725	1512-0206
19.731	1512-0189
	1512-0192
	1512-0198
	1512-0203
	1512-0205
	1512-0207
	1512-0250
	1512-0189
19.732	1512-0192
	1512-0198
	1512-0203
	1512-0205
	1512-0207
	1512-0250
19.736	1512-0205
19.740	1512-0192
19.741	1512-0192
19.742	1512-0192
19.743	1512-0192
19.747	1512-0198
19.748	1512-0198
19.749	1512-0198
19.750	1512-0198
19.751	1512-0198
19.752	1512-0207
19.753	1512-0207
19.761	1512-0203
19.762	1512-0203
19.766	1512-0250
19.767	1512-0250
19.768	1512-0250
19.769	1512-0250
19.770	1512-0215
	1512-0250
19.772	1512-0189
19.773	1512-0198
19.774	1512-0250
19.775	1512-0250
19.776	1512-0250
19.778	1512-0198
19.779	1512-0067
19.791	1512-0067
	1512-0190
19.792	1512-0189
	1512-0192
	1512-0198
	1512-0205
	1512-0207
19.821	1512-0462
19.822	1512-0462
19.823	1512-0462
19.824	1512-0462
19.829	1512-0462
19.903	1512-0215
19.904	1512-0215
19.905	1512-0141
19.910	1512-0214
19.912	1512-0214
19.914	1512-0214
19.915	1512-0214
19.916	1512-0214
19.919	1512-0215
19.921	1512-0214
	1512-0215
19.922	1512-0214
19.923	1512-0215
19.924	1512-0214
19.926	1512-0214
19.930	1512-0215
19.945	1512-0215
19.980	1512-0215
19.981	1512-0215
19.982	1512-0215
19.983	1512-0215
19.984	1512-0215
19.985	1512-0215
19.986	1512-0215
19.987	1512-0215
19.988	1512-0215
19.990	1512-0215
19.995	1512-0215
19.997	1512-0215
19.998	1512-0191
	1512-0215
19.999	1512-0215
19.1000	1512-0215
19.1001	1512-0215
19.1005	1512-0215
19.1006	1512-0215
19.1007	1512-0215
19.1008	1512-0215

PART 13—[REVISED AND REDESIGNATED AS PART 30]

Section D. Part 13 is revised and redesignated as Part 30 as follows:

1. The regulations in this part supersede 27 CFR Part 13 in its entirety.

2. These regulations do not affect any act done or any liability or right accruing, or accrued, or any suit or proceeding had or commenced before the effective date of these regulations.

PART 30—GAUGING MANUAL

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Subpart B—Definitions

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Authority: Sec. 7805, 68A Stat. 917; 26 U.S.C. 7805, unless otherwise noted.

Subpart A—Scope of Regulations

§ 30.1 Gauging of distilled spirits.

(a) *General.* This part relates to the gauging of distilled spirits. The term "gauging" means the determination of the proof and the quantity of distilled spirits. The procedures prescribed in or authorized under the provisions of this part, except as may be otherwise authorized in this chapter, shall be followed in making any determination of quantity or proof of distilled spirits required by or under the authority of regulations in this chapter. The tables referred to in Subpart E of this part appear in the "Gauging Manual Embracing Instructions and Tables for Determining Quantity of Distilled Spirits by Proof and Weight" as incorporated by reference in this part (see paragraph (c) of this section). These tables, together with their instructions, shall be used, wherever applicable, in making the necessary computations from gauge data.

(b) *Tables referred to in Subpart E of this part.* Table 1 provides a method of correcting hydrometer indications at temperatures between 0 and 100 degrees Fahrenheit to true proof. If distilled spirits contain dissolved solids, temperature correction of the hydrometer reading by the use of this table would result in apparent proof rather than true proof. Tables 2 and 3 show the gallonage of spirituous liquor according to weight and proof. Table 4 shows the gallons per pound at each one-tenth proof from 1 to 200 proof. Table 5 shows the weight per wine gallon and proof gallon at each proof. Table 6 shows the volumes of alcohol and water and the specific gravity (air and vacuum) of spirituous liquor at each proof. Table 7 provides a means of ascertaining the volume (at 60 degree Fahrenheit) of spirits at various temperatures ranging from 18 degrees through 100 degrees Fahrenheit.

(c) *Incorporation by reference.* The "Gauging Manual Embracing

Instructions and Tables for Determining Quantity of Distilled Spirits by Proof and Weight" (ATF Publication 5110.6; November 1978) is incorporated by reference in this part. This incorporation by reference was approved by the Director of the Federal Register on March 23, 1981. This publication may be inspected at the Office of the Federal Register, Room 8401, 1100 L Street, NW, Washington, DC, and is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5204); 80 Stat. 383, as amended (5 U.S.C. 552(a)))

Subpart B—Definitions

§ 30.11 Meaning of terms.

When used in this part, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, terms shall have the meanings ascribed in this section. Words in the plural form shall include the singular, and vice versa, and words importing the masculine gender shall include the feminine. The terms "includes" and "including" do not exclude things not enumerated which are in the same general class.

ATF officer. An officer or employee of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any function relating to the administration or enforcement of this part.

Bulk conveyance. Any tank car, tank truck, tank ship, tank barge, or other similar container approved by the Director, authorized for the conveyance of spirits (including denatured spirits) in bulk.

CFR. The Code of Federal Regulations.

Container. Any receptacle, vessel, or form of package, bottle, tank, or pipeline used, or capable of use, for holding, storing, transferring or conveying distilled spirits.

Denatured spirits or denatured alcohol. Spirits to which denaturants have been added pursuant to formulas prescribed in 27 CFR Part 21.

Director. The Director, Bureau of Alcohol, Tobacco and Firearms, the Department of the Treasury, Washington, DC.

Gallon or wine gallon. The liquid measure equivalent to the volume of 231 cubic inches.

I.R.C. The Internal Revenue Code of 1954, as amended.

Package. Any cask, barrel, drum, or similar container approved under the provisions of this chapter.

Proof. The ethyl alcohol content of a liquid at 60 degrees Fahrenheit, stated as twice the percent of ethyl alcohol by volume.

Proof gallon. A United States gallon of proof spirits, or the alcoholic equivalent thereof.

Proof spirits. That liquid which contains one-half its volume of ethyl alcohol of a specific gravity of seven thousand nine hundred and thirty-nine ten-thousandths (0.7939) in vacuum at 60 degrees Fahrenheit referred to water at 60 degrees Fahrenheit as unity.

Regional director (compliance). The principal ATF regional official responsible for administering regulations in this part.

Spirits, spirituous liquor, or distilled spirits. That substance known as ethyl alcohol, ethanol, or spirits of wine in any form, including all dilutions and mixtures thereof, from whatever source or by whatever process produced, but not denatured spirits unless specifically stated. For the sole purpose of gauging wine and alcoholic flavoring materials on the bonded premises of a distilled spirits plant, such alcoholic ingredients shall have the same meaning described herein to spirits, spirituous liquor, or distilled spirits.

This chapter. Title 27, Code of Federal Regulations, Chapter I (27 CFR Chapter I).

U.S.C. The United States Code.

Subpart C—Gauging Instruments

§ 30.21 Requirements.

(a) *General.* The proof of distilled spirits shall be determined by the use of gauging instruments as prescribed in this part.

(b) *Proprietors.* Proprietors shall use only accurate hydrometers and thermometers that show subdivisions or graduations of proof and temperature which are at least as delimitated as the instruments described in § 30.22.

(c) *ATF Officers.* ATF officers shall use only hydrometers and thermometers furnished by the Government. However, where this part requires the use of a specific gravity hydrometer, ATF officers shall use precision grade specific gravity hydrometers conforming to the provisions of § 30.24, furnished by the proprietor. However, the Director may authorize ATF officers to use other instruments approved by the Director as being equally satisfactory for determination of specific gravity and for gauging. From time to time ATF officers shall verify the accuracy of hydrometers and thermometers used by proprietors.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5204))

§ 30.22 Hydrometers and thermometers.

The hydrometers furnished to ATF officers are graduated to read the proof of aqueous alcoholic solutions at 60 degrees Fahrenheit; thus, they read, 0 for water, 100 for proof spirits, and 200 for absolute alcohol. Because of temperature-density relationships and the selection of 60 degrees Fahrenheit for reporting proof, the hydrometer readings will be less than the true percent of proof at temperatures below 60 degrees Fahrenheit and greater than the true percent of proof at temperatures above 60 degrees Fahrenheit. Hence, corrections are necessary for hydrometer readings at temperatures other than 60 degrees Fahrenheit. Precision hydrometers shall be used for gauging spirits. Hydrometers and thermometers shall be used and the true percent of proof shall be determined in accordance with § 30.31. Hydrometers are designated by letter according to range of proof and are provided in ranges and subdivisions of stems as follows:

Precision	Range	Subdivision
F	0 to 20	0.2°
G	20 to 40	0.2°
H	40 to 60	0.2°
I	60 to 80	0.2°
K	75 to 95	0.2°
L	90 to 110	0.2°
M	105 to 125	0.2°
N	125 to 145	0.2°
P	145 to 165	0.2°
Q	165 to 185	0.2°
R	185 to 206	0.2°

Thermometers are designated by type according to range of degrees Fahrenheit and are provided in ranges and subdivisions of degrees as follows:

Type	Range	Subdivision
Pencil type	10° to 100°	1°
V-back	10° to 100°	1°
Glass shell (earlier model)	40° to 100°	½°
Glass shell (later model)	40° to 100°	¼°

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5204))

§ 30.23 Use of precision hydrometers and thermometers.

Care should be exercised to obtain accurate hydrometer and thermometer readings. In order to accomplish this result, the following precautions should be observed. Bulk spirits should be thoroughly agitated so that the test samples will be representative of the entire quantity. The hydrometers should be kept clean and free of any oily substance. Immediately before readings are taken, the glass cylinder containing the thermometer should be rinsed

several times with the spirits which are to be gauged so as to bring both the cylinder and the thermometer to the temperature of the spirits (if time permits, it is desirable to bring both the spirits and the instruments to room temperature). If the outer surface of the cylinder becomes wet, it should be wiped dry to avoid the cooling effect of rapid evaporation. During the readings the cylinder should be protected from drafts or other conditions which might affect its temperature or that of the spirits which it contains. The hands should not be placed on the cylinder in such a manner as to warm the liquid contained therein. The hydrometer should be inserted in the liquid and the hydrometer bulb raised and lowered from top to bottom 5 or 6 times to obtain an even temperature distribution over its surface, and, while the hydrometer bulb remains in the liquid, the stem should be dried and the hydrometer allowed to come to rest without wetting more than a few tenths degrees of the exposed stem. Special care should be taken to ascertain the exact point at which the level of the surface liquid intersects the scale of proof in the stem of the hydrometer. The hydrometer and thermometer should be immediately read, as nearly simultaneously as possible. In reading the hydrometer, a sighting should be made slightly below the plane of the surface of the liquid and the line of sight should then be raised slowly, being kept perpendicular to the hydrometer stem, until the appearance of the surface changes from an ellipse to a straight line. The point where this line intersects the hydrometer scale is the correct reading of the hydrometer. When the correct readings of the hydrometer and the thermometer have been determined, the true percent of proof shall be ascertained from Table 1. Another sample of the spirits should then be taken and be tested in the same manner so as to verify the proof originally ascertained. Hydrometer readings should be made to the nearest 0.05 degree and thermometer readings should be made to the nearest 0.1 degree, and instrument correction factors, if any, should be applied. It is necessary to interpolate in Table 1 for fractional hydrometer and thermometer readings.

Example. A hydrometer reads 192.85° at 72.10° F. The correction factors for the hydrometer and the thermometer, respectively are minus 0.03° and plus 0.05°. The corrected reading, then, is 192.82° at 72.15° F.

From Table 1:	
193.0° at 72.0° F. =	190.2°
192.0° at 72.0° F. =	189.1°
Difference = 1.1°	
192.0° at 72.0° F. =	189.1°
192.0° at 73.0° F. =	189.9°
Difference =	0.2°

The hydrometer difference (1.1°) multiplied by the fractional degree of the hydrometer reading (0.82°) = 0.902.

The temperature difference (0.2°) multiplied by the fractional degree of the temperature reading (0.15°) = 0.03°.

Proof at 60° F. = 189.1 + 0.902 − 0 .03 = 189.972° = 190.0°.

As shown, the final proof is rounded to the nearest tenth of a degree of proof. In such cases, if the hundredths decimal is less than five, it will be dropped; if it is five or over, a unit will be added.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5204))

§ 30.24 Specific gravity hydrometers.

(a) The specific gravity hydrometers furnished by proprietors to ATF officers shall conform to the standard specifications of the American Society for Testing and Materials (ASTM) for such instruments. Such specific gravity hydrometers shall be of a precision grade, standardization temperature 60°/60° F., and provided in the following ranges and subdivisions:

Range	Subdivision
1.0000 to 1.0500	0.0005
1.0500 to 1.1000	0.0005
1.1000 to 1.1500	0.0005
1.1500 to 1.2000	0.0005
1.2000 to 1.2500	0.0005

No instrument shall be in error by more than 0.0005° specific gravity.

(b) A certificate of accuracy prepared by the instrument manufacturer for the instrument shall be furnished to the ATF officer.

(c) *Incorporation by reference.* The "Standard Specification for ASTM Hydrometers," (E 100–72 (1978)), published in the "1980 Annual Book of ASTM Standards" (STP 25 1062 (1980)), is incorporated by reference in this part. This incorporation by reference was approved by the Director of the Federal Register on March 23, 1981. This publication may be inspected at the Office of Federal Register, Room 8401, 1100 L Street, NW, Washington, DC, and is available from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5204); 80 Stat. 383, as amended (5 U.S.C. 552(a)))

§ 30.25 Use of precision specific gravity hydrometers.

The provisions of § 30.23 respecting the care, handling, and use of precision instruments shall be followed with respect to the care, handling, and use of precision grade specific gravity hydrometers. Specific gravity hydrometers shall be read to the nearest subdivision. Because of temperature density relationships and the selection of the standardization temperature of 60°/60° F., the specific gravity readings will be greater at temperatures below 60 degrees Fahrenheit and less at temperatures above 60 degress Fahrenheit. Hence, correction of the specific gravity readings will be made for temperature other than 60 degrees Fahrenheit. Such correction may be ascertained by dividing the specific gravity hydrometer reading by the applicable correction factor in Table 7.

Example: The specific gravity hydrometer reading is 1.1525, the thermometer reading is 68 degrees Fahrenheit, and the true proof of the spirits is 115 degrees. The correct specific gravity reading will be ascertained as follows:

(a) From Table 7, the correction factor for 115° proof at 68° F. is 0.996.

(b) 1.1525 divided by 0.996 = 1.1571, the corrected specific gravity.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5204))

Subpart D—Gauging Procedures

§ 30.31 Determination of proof.

(a) *General.* The proof of spirits shall be determined to the nearest tenth degree which shall be the proof used in determining the proof gallons.

(b) *Solids content not more than 600 milligrams.* Except as otherwise authorized by the Director, the proof of spirits containing not more than 600 milligrams of solids per 100 milliliters of spirits shall be determined by the use of a hydrometer and thermometer in accordance with the provisions of § 30.23 except that if such spirits contain solids in excess of 400 milligrams but not in excess of 600 milligrams per 100 milliliters at gauge proof, there shall be added to the proof so determined the obscuration determined as prescribed in § 30.32.

(c) *Solids content over 600 milligrams.* If such spirits contain solids in excess of 600 milligrams per 100 milliliters at gauge proof, the proof shall be determined on the basis of true proof determined as follows:

(1) By the use of a hydrometer and a thermometer after the spirits have been distilled in a small laboratory still and restored to the original volume and

temperature by the addition of pure water to the distillate; or

(2) By a recognized laboratory method which is equal or superior in accuracy to the distillation method.

(d) *Initial proof.* Except when the proof of spirits is used in making the guage prescribed in 27 CFR 19.383 or in making a gauge for determination of tax, the initial determination of proof made on the bonded premises of a distilled spirits plant for such spirits may be used whenever a subsequent gauge is required to be made at that same plant provided that no material has been added to change the proof of the spirits.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended, 1362, as amended (26 U.S.C. 5204, 5211))

§ 30.32 Determination of proof obscuration.

(a) *General.* Proof obscuration of spirits containing more than 400 but not more than 600 milligrams of solids per 100 milliliters shall be determined by one of the following methods. The evaporation method may be used only for spirits in the range of 80–100 degrees at gauge proof.

(b) *Evaporation method.* Evaporate the water and alcohol from a carefully measured 25 milliliter sample of spirits, dry the residue at 100 degrees centigrade for 30 minutes and then weigh the residue precisely. Multiply the weight of the residue by 4 to determine the weight of solids in 100 milliliters. The resulting weight per 100 milliliters multiplied by 4 will give the obscuration. Experience has shown that 0.1 gram (100 milligrams) of solids per 100 milliliters of spirits in the range of 80–100 degrees proof will obscure the true proof by 0.4 of one degree of proof. For example, if the weight of solids remaining after evaporation of 25 milliliters 0.125 gram, the amount of solids present in 100 milliliters of the spirits is 0.50 gram (4 times 0.125). The obscuration is 4 times 0.50, which is two degrees of proof. This value added to the temperature corrected hydrometer reading will give the true proof.

(c) *Distillation method.* Determine the apparent proof and temperature of the sample of spirits and then distill a carefully measured sample in a small laboratory still, and collect a quantity of the distillate, 1 or 2 milliliters less than the original sample. The distillate is adjusted to the original temperature and restored to the original volume by addition of distilled water. The proof of the restored distilate is then determined by use of a precision hydrometer and thermometer in accordance with the provisions of § 13.23 to the nearest 0.1 degree of proof. The difference between the proof so determined and the apparent proof of the undistilled sample is the obscuration; or

(d) *Pycnometer method.* Determine the specific gravity of the undistilled sample, distill and restore the samples as provided in paragraph (c) of this section and determine the specific gravity of the restored distillate by means of a pycnometer. The specific gravities so obtained will be converted to degrees of proof by interpolation of Table 6 to the nearest 0.1 degree of proof. The difference in proof so obtained is the obscuration.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5204))

Determination of Quantity

§ 30.36 General requirements.

The quantity determination of distilled spirits that are withdrawn from bond in bulk upon tax determination or payment shall be by weight. The quantity of other distilled spirits or denatured spirits may be determined by weight or by volume. When the quantity of distilled spirits or denatured distilled spirits is determined by volume, such determination may be by meter as provided in 27 CFR Part 19, or when approved by the Director, another method or device.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5204))

Determination of Quantity by Weight

§ 30.41 Bulk spirits.

When spirits (including denatured spirits) are to be gauged by weight in bulk quantities, the weight shall be determined by means of weighing tanks, mounted on accurate scales. Before each use, the scales shall be balanced at zero load; thereupon the spirits shall be run into the weighing tank and proofed as prescribed in § 30.31. However, if the spirits are to be reduced in proof, the spirits shall be so reduced before final determination of the proof. The scales shall then be brought to a balanced condition and the weight of the spirits determined by reading the beam to the nearest graduation mark. From the weight and the proof thus ascertained, the quantity of the spirits in proof gallons shall be determined by reference to Table 4. However, in the case of spirits which contain solids in excess of 600 milligrams per 100 milliliters, the quantity in proof gallons shall be determined by first ascertaining the wine gallons per pound of the spirits and multiplying the wine gallons per pound by the weight, in pounds, of the spirits being gauged and by the true proof (determined as prescribed in § 30.31) and dividing the result by 100. The wine gallons per pound of spirits containing solids in excess of 600 milligrams per 100 milliliters shall be ascertained by:

(a) Use of a precision hydrometer and thermometer, in accordance with the provisions of § 30.23, to determine the apparent proof of the spirits (if specific gravity at the temperature of the spirits is not more than 1.0) and reference to Table 4 for the wine gallons per pound, or

(b) Use of a specific gravity hydrometer, in accordance with the provisions of § 30.25, to determine the specific gravity of the spirits (if the specific gravity at the temperature of the spirits is more than 1.0) and dividing that specific gravity (corrected to 60 degrees Fahrenheit) into the factor 0.120074 (the wine gallons per pound for water at 60 degrees Fahrenheit). When withdrawing a portion of the contents of a weighing tank, the difference between the quantity (ascertained by proofing and weighing) in the tank immediately before the removal of the spirits and the quantity (ascertained by proofing and weighing) in the tank immediately after the removal of the spirits shall be the quantity considered to be withdrawn.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5204))

§ 30.42 Denatured spirits.

The quantity, in gallons, of any lot or package of specially denatured spirits may be determined by weighing it and then dividing its weight by the weight per gallon of the formula concerned, as given in the appropriate tables in Subpart H of 27 CFR Part 21. In the case of completely denatured spirits, the gallonage of any lot or package may be ascertained by determining its weight and apparent proof (hydrometer indication, corrected to 60 degrees Fahrenheit) and then multiplying the weight of the wine gallons per pound factor shown in Table 4 for the (apparent) proof.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5204))

§ 30.43 Packaged spirits.

When the quantity of spirits (including denatured spirits when gauged by weight) in packages, such as barrels, drums, and similar portable containers, is to be determined by gauge of the individual packages, such quantity shall, except as provided in paragraph (b) of this section, be determined by weighing each package on an accurate weighing beam or platform scale having a beam or dial showing weight in pounds and half pounds, where packages having a capacity in excess of 10 wine gallons are to be gauged, or in pounds and ounces,

or pounds and hundredths of a pound, where packages designed to hold 10 wine gallons or less are to be gauged. In either case the tare must be determined and subtracted from the gross wight to obtain the net weight. From the proof and weight ascertained, the quantity of the spirits in proof gallons shall be determined by reference to Table 2, 3, or 4. However, if the spirits contain solids in excess of 600 milligrams per 100 milliliters, the proof gallons shall be determined as prescribed for such spirits in § 30.41. Notwithstanding the provisions of this section or of § 30.44, (a) gross weights and tares of packages being filled need not be taken in any case where the gauge of the spirits is not derived from such weights under the gauging procedure being utilized, and (b) meters, other devices, or other methods may be used for determining the quantity of spirits in individual packages, when such meter is used as provided in 27 CFR Part 19, or, when such other device or method has been approved by the Director.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended, 1362, as amended (26 U.S.C. 5204, 5211))

§ 30.44 Weighing containers.

(a) *Weighing containers of more than 10 wine gallons.* The weight of containers having a capacity in excess of 10 wine gallons shall be determined and recorded in pounds and half pounds.

(b) *Weighing containers of 10 wine gallons or less.* The weight for containers of a capacity of 10 wine gallons or less shall be determined in pounds and ounces, or pounds and hundredths of a pound, and shall be recorded in pounds and hundredths of a pound. The equivalent pounds and hundredths of pounds and the corresponding wine gallons and proof gallons shall be expressed as shown in the following table for the respective weights in pounds and ounces and proofs shown therein or, as applicable, computed in accordance with rules in this section.

WEIGHT OF CONTENTS

Size of container, wine gallons	Pounds	Ozs.	Weight in pounds and hundredths of a pound	Contents in wine gallons	Proof gallons
190 proof spirits:					
1	6	13	6.81	1	1.9
2	13	10	13.63	2	3.8
5	34	00	34.00	5	9.5
10	68	00	68.00	10	19.0
192 proof spirits:					
1	6	13	6.81	1	1.9
2	13	9	13.56	2	3.8

WEIGHT OF CONTENTS—Continued

Size of container, wine gallons	Pounds	Ozs.	Weight in pounds and hundredths of a pound	Contents in wine gallons	Proof gallons
5	33	13	33.81	5	9.6
10	67	10	67.63	10	19.2
200 proof spirits:					
1	6	10	6.63	1	2.0
2	13	4	13.25	2	4.0
5	33	1	33.06	5	10.0
10	66	2	66.12	10	20.0

(c) *Containers of other proofs or sizes.* Where containers of proofs or sizes not shown above are to be filled, the following rule may be used for ascertaining the weight of the spirits to be placed in the container: Divide the number of gallons representing the quantity of spirits to be placed in the container by the fractional part of a gallon equivalent to 1 pound, to obtain the weight of the spirits in pounds and fractions of a pound to two decimal places. Reduce the decimal fraction of a pound to ounces by multiplying by 16, calling any fraction of an ounce a whole ounce. The pounds and ounces thus obtained will determine the point to which the spirits must be weighed to produce the results desired. If the weight must be marked on the container in pounds and decimal fractions of a pound, it will be necessary to convert the ounces to hundredths of a pound. The fraction of a gallon equivalent to 1 pound at any given proof shall be ascertained by reference to Table 4. However, if the spirits contain solids in excess of 600 milligrams per 100 milliliters, the fraction of a gallon equivalent to 1 pound shall be determined as prescribed for such spirits in § 30.41.

Example. It is desired to fill a 1-gallon can with precisely 1 wine gallon of 194 proof spirits:

1.00 divided by 0.14866 = 6.73 pounds.

0.73 multiplied by 16 = 11.68 ounces, rounded to 12 ounces.

Weight of spirits—6 pounds, 12 ounces.

Weight, if required, to be marked on can—6.75 pounds.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended, 1362, as amended (26 U.S.C. 5204, 5211))

§ 30.45 Withdrawal gauge for packages.

When wooden packages are to be individually gauged for withdrawal, actual tare of the packages shall be determined. The actual tare of a package shall be determined by weighing it after its contents (including rinse water, if any) have been temporarily removed to a separate container or vessel. Where the contents of packages have been temporarily removed for determination of tare, the proof, if any rinse water is added to the spirits, shall be determined after a thorough mixing of the rinse water and the spirits and before return of the spirits to the rinsed packages, and the gross weight shall be determined after the spirits and any added rinse water have been returned to the packages. In the case of metal packages the tare established at the time of filling may be used unless it appears to be incorrect. From the proofs and the net weights of the packages, the wine gallons (if desired) and the proof gallons of spirits shall be determined by the use of Table 2. However, if the spirits contain solids in excess of 600 milligrams per 100 milliliters, the wine gallon and proof gallon contents shall be determined as prescribed for such spirits in § 30.41. If either the weight or the proof is beyond the limitations of Table 2, either Table 3 or Table 4 may be used.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5204))

Determination of Quantity by Volume

§ 30.51 Procedures for measurement of bulk spirits.

Where the quantity of spirits (including denatured spirits) in bulk is to be determined by volume as authorized by this chapter, the measurement shall be made in tanks, by meters as provided in 27 CFR Part 19, or by other devices or methods authorized by the Director, or as otherwise provided in this chapter, or such measurement may be made in tank cars or tank trucks if calibration charts for such conveyances are provided and such charts have been accurately prepared, and certified as accurate, by engineers or other persons qualified to calibrate such conveyances. Volumetric measurements in tanks shall be made only in accurately calibrated tanks equipped with suitable measuring devices, whereby the actual contents can be correctly ascertained. If the temperature of spirits (including denatured spirits) is other than the standard of 60 degrees Fahrenheit, gallonage determined by volumetric measurements shall be corrected to the standard temperature by means of Table 7. In the case of denatured spirits, the temperature-correction factor for the proof of the spirits used in denaturation will give sufficiently accurate results, except that the temperature-correction factor used for specially denatured spirits, Formula No. 18, should be that given in Table 7 for 100 proof spirits. When the quantity of spirits, in wine gallons, has been determined by

volumetric measurement, the number of proof gallons shall be obtained by multiplying the wine gallons by the proof of the spirits as determined under § 30.31.

Example

Gauge glass reading inches—88.
Wine gallons per inch—48.96.
Temperature °F—72.
Proof of spirits—868.
Temperature correction factor (Table 7)—995.
48.96 W.G. × 88 = 4308.48 wine gallons.
4308.48 W.G. × 0.995 = 4286.94 wine gallons.
4286.94 W.G. × 0.868 = 3721.06392 = 3721.1 proof gallons.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5204))

§ 30.52 Procedure for measurement of cased spirits.

Where the quantity of spirits in a case is to be determined by volume, such determination shall be made by ascertaining the contents of one bottle in the case and multiplying that figure by the number of bottles in the case. For cases containing bottles filled according to the metric system of measure, the quantity determined shall be converted to wine gallons, as provided in § 19.722 of this chapter. The wine gallons of spirits thus determined for one case may then be multiplied by the number of cases containing spirits at the same proof when determining the quantity of spirits for more than one case. The proof gallons of spirits in cases shall be determined by multiplying the wine gallons by the proof (divided by 100).

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5204))

Subpart E—Prescribed Tables

Note.—The tables referred to in this subpart appear in their entirety in the "Gauging Manual Embracing Instructions and Tables for Determining Quantity of Distilled Spirits by Proof and Weight" which is incorporated by reference in this part (see § 30.1).

§ 30.61 Table 1, showing the true percent of proof spirit for any indication of the hydrometer at temperatures between zero and 100 degrees Fahrenheit.

This table shows the true percent of proof of distilled spirits for indications of the hydrometer likely to occur in practice at temperatures between zero and 100 degrees Fahrenheit and shall be used in determining the proof of spirits. The left-hand column contains the reading of the hydrometer and on the same horizontal line, in the body of the table, in the "Temperature" column corresponding to the reading of the thermometer is the corrected reading or "true percent of proof." The table is computed for tenths of a percent.

Example.

Temperature, °F	75
Hydrometer reading	193
True percent of proof	189.5

Where fractional readings are ascertained, the proper interpolations will be made (see § 30.23). If the distilled spirits contain dissolved solids, temperature-correction of the hydrometer reading by the use of this table would result in apparent proof rather than true proof.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5204))

§ 30.62 Table 2, showing wine gallons and proof gallons by weight.

The wine and proof gallon content by weight and proof of packages of distilled spirits usually found in actual practice will be ascertained from this table. The left-hand column contains the weights. The true percent of proof is shown on the heading of each page in a range from 90 degrees to 200 degrees. Under the true percent of proof and on the same horizontal line with the weight will be found the wine gallons (at 60 degrees Fahrenheit) and the proof gallons respectively. Where either the weight or the proof of a quantity of spirits is beyond the limitations of this table, the number of proof gallons may be ascertained by reference to Table 3. This table may also be used to ascertain the wine gallons (at 60 degrees Fahrenheit) and proof gallons of spirituous liquor containing dissolved solids where the weight, apparent proof (hydrometer indication corrected to 60 degrees Fahrenheit), and obscuration factor have been determined.

Example.

334 lbs. of distilled spirits.
Apparent proof—96.0°.
Obscuration—0.8°.
True Proof 96.0° + 0.8° = 96.8°.
334 lbs. at 96.0° apparent proof = 42.8 wine gallons.
42.8 wine gallons x 96.8° = 41.4 proof gallons.

In addition this table may be used to obtain the wine gallons, at the prevailing temperature, of most liquids within the range of the table, from the weight of the liquid and the uncorrected reading of the hydrometer stem. An application of this would be in determining the capacity of a package.

Example. It is desired to determine, or to check the rated capacity of a package having a net weight of 395 pounds when completely filled with spirits having an uncorrected hydrometer reading of 113.0°. The full capacity of the package, 51.5 wine gallons, would be found by referring to the table at 395 pounds and 113° proof (hydrometer reading).

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended, 1362, as amended (26 U.S.C. 5204, 5211))

§ 30.63 Table 3, for determining the number of proof gallons from the weight and proof of spiritous liquor.

When the weight or proof of a quantity of distilled spirits is not found in Table 2, the proof gallons may be ascertained from Table 3. The wine gallons (at 60 degrees Fahrenheit) may be ascertained by dividing the proof gallons by the proof.

Example. A tank car of spirits of 190 degrees of proof weighed 60,378 pounds net. We find—

	Proof gallons
60,000 pounds equal to	16,778.4
300 pounds equal to	83.9
70 pounds equal to	19.6
8 pounds equal to	2.2
Total	16,884.1

That is, the total weight of 60,378 pounds of spirits at 190 proof is equal to 16,884.1 proof gallons. The equivalent gallonage for 70 pounds is found from the column 700 pounds by moving the decimal point one place to the left; that for 8 pounds from the column 800 pounds by moving the decimal point two places to the left.

Example. A package of spirits at 86 proof weighed 321½ pounds net. We find—

	Proof gallons
300 pounds equal to	32.7
20 pounds equal to	2.2
1 pound equal to	1
½ pound equal to	.1
Total	35.1

That is, 321½ pounds of spirits at 86 proof is equal to 35.1 proof gallons. The equivalent gallonage for 20 pounds is found from the column 200 pounds by moving the decimal point one place to the left; that for 1 pound from the column 100 pounds by moving the decimal point two places to the left; that for the ½ pound from the column 500 pounds by moving the decimal point three places to the left.

Fractional gallons beyond the first decimal ascertained through use of this table will be dropped if less than 0.05 or will be added as 0.1 if 0.05 or more. The wine gallons (at 60 degrees Fahrenheit) may be determined by dividing the proof gallons by the proof. For example: 35.1 divided by 0.86 equals 40.8 wine gallons.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C.5204))

§ 30.64 Table 4, showing the fractional part of a gallon per pound at each percent and each tenth percent of proof of spirituous liquor.

This table provides a method for use in ascertaining the wine gallon (at 60 degrees Fahrenheit) and/or proof gallon contents of containers of spirits by multiplying the net weight of the spirits by the fractional part of a gallon per pound shown in the table for spirits of the same proof. Fractional gallons beyond the first decimal will be dropped if less than 0.05 or will be added as 0.1 if 0.05 or more.

Example. It is desired to ascertain the wine gallons and proof gallons of a tank of 190 proof spirits weighing 81,000 pounds.

81,000 × 0.14718 = 11,921.58 = 11,921.6 wine gallons.

81,000 × 0.27964 = 22,650.84 = 22,650.8 proof gallons.

This table may also be used for ascertaining the quantity of water required to reduce to a given proof. To do this, divide the proof gallons of spirits to be reduced by the fractional part of a proof gallon per pound of spirits at the proof to which the spirits are to be reduced, and subtract from the quotient the net weight of the spirits before reduction. The remainder will be the pounds of water needed to reduce the spirits to the desired proof.

Example. It is desired to ascertain the quantity of water needed to reduce 1,000 pounds of 200 proof spirits, 302.58 proof gallons, to 190 proof:

302.58 divided by 0.27964 equals 1,082.03 pounds, weight of spirits after reduction.

1,082.03 minus 1,000 equals 82.03 pounds, weight of water required to reduce to desired proof.

The slight variation between this table and Tables 2, 3, and 5 on some calculations is due to the dropping or adding of fractions beyond the first decimal in those tables. This table may also be used to determine the wine gallons (at 60 degrees Fahrenheit) of distilled spirits containing dissolved solids from the total weight of the liquid and its apparent proof (hydrometer indication, corrected to 60 degrees Fahrenheit). The proof gallons may then be found by multiplying the wine gallons by the true proof.

Example.

5,350 pounds of blended whisky containing added solids

Temperature °F	75.0°
Hydrometer reading	92.0°
Apparent proof	85.5°
Obscuration	0.5°
True proof	86.0°

5,350.0 lbs. × 0.12676 (W.G. per pound factor for apparent proof of 85.5°) = 678.2 wine gallons

678.2 W.G. × 0.86 = 583.3 proof gallons

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended 1362, as amended (26 U.S.C. 5204, 5211))

§ 30.65 Table 5, showing the weight per wine gallon (at 60 degrees Fahrenheit) and proof gallon at each percent of proof of spirituous liquor.

This table may be used to ascertain the weight of any given number of wine gallons (at 60 degrees Fahrenheit) or proof gallons of spirits by multiplying the pounds per gallon by the given number of gallons of the spirits. The table should be especially useful where it is desired to weigh a precise quantity of spirits.

Example. It is desired to ascertain the weight of 100 wine gallons of 190 proof spirits:

6.79434 × 100 equals 679.43 pounds, net weight of 100 wine gallons of 190 proofs spirits.

Example. It is desired to ascertain the weight of 100 proof gallons of 190 proof spirits.

3.57597 × 100 equals 357.60 pounds, net weight of 100 proof gallons of 190 proof spirits.

The slight variation between this table and Tables 2 and 3 on some calculations is due to dropping or adding of fractions beyond the first decimal on those tables. This table also shows the weight per wine gallon (at the prevailing temperature) corresponding to each uncorrected reading of a proof hydrometer.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5204))

§ 30.66 Table 6, showing respective volumes of alcohol and water and the specific gravity in both air and vacuum of spirituous liquor.

This table provides an alternate method for use in ascertaining the quantity of water needed to reduce the strength of distilled spirits by a definite amount. To do this, divide the alcohol in the given strength by the alcohol in the required strength, multiply the quotient by the water in the required strength, and subtract the water in the given strength from the product. The remainder is the number of gallons of water to be added to 100 gallons of spirits of the given strength to produce a spirit of a required strength.

Example. It is desired to reduce spirits of 191 proof to 188 proof. We find that 191 proof spirits contains 95.5 parts alcohol and 5.59 parts water, and 188 proof spirits contains 94.0 parts alcohol and 7.36 parts water.

95.5 (the strength of 100 wine gallons of spirits at 191 proof) divided by 94.0 (the strength of 100 wine gallons of spirits at 188 proof) equals 1.01.

7.36 (the water in 188 proof) multiplied by 1.01 equals 7.43.

7.43 less 5.59 (the water in 191 proof spirits) equal 1.84 gallons of water to be added to each 100 wine gallons of 191 proof spirits to be reduced.

This rule is applicable for reducing to any proof; but when it is desired to reduce to 100 proof, it is sufficient to point off two decimals in the given proof, multiply by 53.73, and deduct the water in the given strength. Thus, to reduce 112 proof spirits to 100 proof:

1.12 × 53.73–47.75 equals 12.42 gallons of water to be added to each 100 wine gallons of spirits to be reduced.

This table may also be used to obtain the proof gallonage of spirituous liquor according to weight and percent of proof.

Example. It is desired to determine the number of gallons in 400 pounds of spirits of 141 percent of proof. Multiply the weight of one gallon of water in air by the specific gravity in air of the spirits—8.32823 by 0.88862—the product (7.40063) divided into 400 gives 54.049 wine gallons, which rounded to the nearest hundredth is 54.05 and multiplied by 1.41 gives 76.2 proof gallons. In rounding off where the decimal is less than five, it will be dropped; if it is five or over a unit will be added.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5204))

§ 30.67 Table 7, for correction of volume of spirituous liquors to 60 degrees Fahrenheit.

This table is prescribed for use in correcting spirits to volume at 60 degrees Fahrenheit. To do this, multiply the wine gallons of spirits which it is desired to correct to volume at 60 degrees Fahrenheit by the factor shown in the table at the percent of proof and temperature of the spirits. The product will be the corrected gallonage at 60 degrees Fahrenheit. This table is also prescribed for use in ascertaining the true capacity of containers where the wine gallon contents at 60 degrees Fahrenheit have been determined by weight in accordance with Tables 2, 3, 4, or 5. This is accomplished by dividing the wine gallons at 60 degrees Fahrenheit by the factor shown in the table at the percent of proof and temperature of the spirits. The quotient will be the true capacity of the container.

Example. It is desired to ascertain the volume at 60 degrees Fahrenheit of 1,000 wine gallons of 190 proof spirits at 76 degrees Fahrenheit:

1,000 × 0.991 equals 991 wine gallons, the corrected gallonage at 60 degrees Fahrenheit.

Example. It is desired to ascertain the capacity of a container of 190 proof spirits at 76 degrees Fahrenheit, shown by Table 2 to contain 55.1 wine gallons at 60 degrees Fahrenheit:

55.1 divided by 0.991 equals 55.6 wine gallons, the true capacity of the container when filled with spirits of 60 degrees temperature.

It will be noted the table is prepared in multiples of 5 percent of proof and 2 degrees temperature. Where the spirits to be corrected are of an odd temperature, one-half of the difference, if any, between the factors for the next higher and lower temperature, should be added to the factor for the next higher temperature.

Example. It is desired to correct spirits of 180 proof at 51 degrees temperature:

1.006 (50°) − 1.005 (52°) = 0.001 divided by 2 = 0.0005

0.0005 + 1.005 = 1.0055 correction factor at 51 °F.

Example. It is desired to correct spirits of 180 proof at 53 degrees temperature:

1.005 (52°) − 1.003 (54°) = 0.002 divided by 2 = 0.001

0.001 + 1.003 = 1.004 correction factor at 53 °F.

Where the percent of proof is other than a multiple of five, the difference, if any, between the factors for the next higher and lower proofs should be divided by five and multiplied by the degrees of proof beyond the next lower proof, and the fractional product so obtained should be added to the factor for the next lower proof (if the temperature is above 60 degrees Fahrenheit, the fractional product so obtained must be subtracted from the factor for next lower proof), or if it is also necessary to correct the factor because of odd temperature, to the temperature corrected factor for the next lower proof.

Example. It is desired to ascertain the correction factor for spirits of 112 proof at 47 degrees temperature:

1.008 (46°) − 1.005 (48°) = 0.001 divided by 2 = 0.0005

0.0005 + 1.005 = 1.0055 corrected factor at 47 °F.

1.007 (115 proof) − 1.006 (110 proof) = 0.001

0.001 divided by 5 = 0.0002 (for each percent of proof) × 2 (for 112 proof) = 0.0001

0.0004 = 1.0055 (corrected factor at 47 °F.) = 1.0059 correction factor to be used for 112 proof at 47 °F

Example. It is desired to ascertain the correction factor for spirits of 97 proof at 93 degrees temperature:

0.986 (92°) − 0.985 (94°) = 0.001 divided by 2 = 0.0005

0.0005 + 0.985 = 0.9855 corrected factor at 93 °F.

0.986 (95 proof) − 0.985 (100 proof) = 0.001

0.001 divided by 5 = 0.0002 (for each percent of proof) × 2 (for 97 proof) = 0.0004

0.9855 (corrected factor at 93 °F.) = 0.0005 = 0.9851 correction factor to be used for 97 proof at 93 °F.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5204))

Subpart F—Optional Gauging Procedures

§ 30.71 Optional method for determination of proof for spirits containing solids of 400 milligrams or less per 100 milliliters.

The proof of spirits shall be determined to the nearest tenth degree which shall be the proof used in determining the proof gallons and all fractional parts thereof to the nearest tenth proof gallon. The proof of spirits containing solids of 400 milligrams or less per 100 milliliters shall be determined by the use of a hydrometer and a thermometer in accordance with the provisions of § 30.23. However, notwithstanding the provisions of § 30.31, the proprietor may, at his option, add to the proof so determined the obscuration determined as prescribed in § 30.32.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended, 1362, as amended (26 U.S.C. 5211))

§ 30.72 Recording obscuration by proprietors using the optional method for determination of proof.

Any proprietor using the optional method for determination of proof for spirits containing solids of 400 milligrams or less per 100 milligrams as provided in § 30.71 shall record the obscuration so determined on the record of gauge required by 27 CFR Part 19.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended, 1362, as amended (26 U.S.C. 5211))

PART 170—MISCELLANEOUS REGULATIONS RELATING TO LIQUOR

Section E. Part 170 is amended as follows:

Section 170.303 is amended by revising the defintions of Tax and United States to read as follows:

§ 170.303 Meaning of terms.

* * * * *

Tax. (a) With respect to distilled spirits, "tax" means the internal revenue tax that is paid or determined on the spirits.

(b) With respect to wines, "tax" means the internal revenue tax that is paid or determined on the wine.

(c) With respect to beer, "tax" means the internal revenue tax that is paid or determined on the beer.

United States. When used in a geographical sense includes only the States and the District of Columbia.

* * * * *

PART 194—LIQUOR DEALERS

Section F. Part 194 is amended as follows:

Paragraph 1. The table of sections is amended to reflect a change in title in § 194.254, and the deletion of § 194.255.

Sec.

* * * * *

194.254 Affixing strip stamps on containers found to have missing strip stamps.

194.255 [Removed]

* * * * *

Par. 2. Section 194.231 is revised to read as follows:

§ 194.231 Conversion between metric and U.S. units.

When liters are converted to wine gallons, the quantity in liters shall be multiplied by 0.264172 to determine the equivalent quantity in wine gallons. Cases containing the same quantity of spirits of the same proof in metric bottles may be converted to U.S. units by multiplying the liters in one case by the number of cases to be converted, as follows:

(a) If the conversion from liters to U.S. units is made before multiplying by the number of cases, the quantity in U.S. units shall be rounded to the sixth decimal.

(b) If the conversion is made after multiplying by the number of cases, the quantity in U.S. units shall be rounded to the nearest hundredth.

Once converted to wine gallons, the proof gallons of spirits in cases shall be determined as provided in 27 CFR 30.52.

Par. 3. Sections 194.252, 194.253 and 194.254 are revised to read as follows:

§ 194.252 Breaking of strip stamp or alternative device on opening bottle.

The strip stamp or alternative device affixed to a container of distilled spirits (whether affixed over the mouth of the container or in some other authorized manner) shall be broken on opening the container.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5205))

§ 194.253 Mutilated or missing strip stamps or alternative devices.

Any unopened bottle or other approved container of distilled spirits—

(a) From which the strip stamp or alternative device is missing,

(b) On which the strip stamp or alternative device is mutilated to the extent that the genuineness of the stamp or device cannot be determined, or

(c) The contents of which are accessible without breaking the stamp or device, shall be: (1), in the case of strip stamps, restamped under § 194.254, or returned to a distilled spirits plant for restamping, and (2), in the case of alternative devices, returned to a distilled spirits plant to have alternative

devices replaced. Where the containers of distilled spirits are to be returned to a distilled spirits plant for restamping or to have devices replaced, the dealer shall record the transaction in his record of disposition and include in this record an accurate description of the containers of distilled spirits to be restamped or to have devices replaced, and the name and address of the proprietor who has agreed to accept the liquors for restamping or for reaffixing alternative devices.

(Approved by the Office of Management and Budget under control number 1512-0353)

(Sec. 201, Pub. L. 85-859, 72 Stat. 1358, as amended (26 U.S.C. 5205))

§ 194.254 Affixing strip stamps on containers found to have mutilated or missing strip stamps.

Containers requiring restamping with strip stamps, as described in § 194.253, shall be set aside by the dealer and an application for necessary stamps submitted with Form 428 (5100.7), Requisition for Bottle Strip Stamps, to the regional director (compliance). Copies of Form 428 may be obtained from the regional director (compliance). The application shall state the cause of mutilation or absence of stamps and contain evidence that the spirits are eligible for stamping under 26 U.S.C. 5205. The evidence may consist of invoices covering purchase of the spirits, in addition to other available documents. The application shall be signed by the dealer or his authorized agent under the penalties of perjury immediately below a declaration, worded as follows:

I declare under the penalties of perjury that I have examined this application and to the best of my knowledge and belief it is true and correct.

If the regional director (compliance) is satisfied from the evidence submitted that the mutilation or absence of the strip stamps has been satisfactorily explained, he will approve the requisition for stamps, Form 428, and deliver the stamps to the applicant by mail or by a representative of his office.

(Approved by the Office of Management and Budget under control number 1512-0056)

(Sec. 201, Pub. L. 85-859, 72 Stat. 1358, as amended (26 U.S.C. 5205))

§ 194.255 [Removed]

Par. 4. Section 194.255 is removed.

PART 195—[REMOVED]

Section G. Part 195 is removed.

Section H. Part 197 is amended as follows:

PART 197—DRAWBACK ON DISTILLED SPIRITS USED IN MANUFACTURING NONBEVERAGE PRODUCTS

Paragraph 1. Sections 197.112 and 197.113 are revised to read as follows:

§ 197.112 Distilled spirits received in tank cars or tank trucks.

Each claim covering distilled spirits received in tank cars or tank trucks shall be accompanied by a statement showing in respect of each shipment received: The date of receipt; the name and address of the vendor; the number or other identification mark of the tank car or tank truck; the name of the producer or warehouseman, and the kind, quantity, and proof of the spirits. If the tank car or tank truck is received without a distilled spirits stamp affixed or without being marked with the word "TAXPAID," the vendee shall note the fact on the bill of lading and immediately notify the regional director (compliance). (When the tank car or tank truck is emptied, any distilled spirits stamps or marks in lieu of distilled spirits stamps (i.e., the word "TAXPAID") shall be obliterated.)

(Approved by the Office of Management and Budget under control number 1512-0378)

§ 197.113 Distilled spirits received in barrels, drums, or other portable containers.

Each claim covering distilled spirits received in barrels, drums, or other portable containers shall be accompanied by a statement showing: the date of receipt; the name and address of the vendor; the serial number, if any, of the container; the name of the producer or warehouseman as shown on the commercial invoice provided for in § 197.130b; and the kind, quantity, and proof of the spirits. (When the container is emptied, any distilled spirits stamp or mark in lieu of a distilled spirits stamp (i.e., the word "TAXPAID") shall be obliterated.)

(Approved by the Office of Management and Budget under control number 1512-0379)

Par. 2. Paragraph (c) of § 197.130 is revised to read as follows:

§ 197.130 Nature of records.

* * * * *

(c) Kind and serial or package identification number of container (such as tank car, drum, case of bottles.)

* * * * *

§ 197.130a [Amended]

Par. 3. Paragraph (b) of § 197.130a is amended to remove the phrase "Part 13 of this chapter and § 13.67" and to insert in lieu thereof the phrase "Part 30 of this chapter and § 30.67".

Par. 4. Section 197.130b is amended by revising (a)(5) and (a)(6) and by removing (a)(7) to read as follows:

§ 197.130b Evidence of tax payment of distilled spirits.

(a) *Domestic spirits.*

* * * * *

(5) The serial or package identification number of the container; and

(6) The kind of spirits, proof, and proof gallons in the container.

* * * * *

PART 200—RULES OF PRACTICE IN PERMIT PROCEEDINGS

Section I. Part 200 is amended as follows:

Section 200.5 is amended by revising the definition of *Permit* to read as follows:

§ 200.5 Meaning of terms.

* * * * *

Permit—(a) *Alcohol fuel permit.* "Alcohol fuel permit" shall mean the document issued pursuant to 26 U.S.C. 5181, authorizing the person named therein to engage in the business described therein.

(b) *Basic permit.* The document authorizing the person named therein to engage in a designated business or activity under the Federal Alcohol Administration Act.

(c) *Industrial use permit.* A document issued pursuant to 26 U.S.C. 5271(a), authorizing a person named therein to use distilled spirits free of tax, deal in or use specially or completely denatured spirits, as described therein.

(d) *Operating permit.* "Operating permit" shall mean the document issued pursuant to 26 U.S.C. 5171, authorizing the person named therein to engage in the business described therein.

(e) *Tobacco permit.* The document issued pursuant to 26 U.S.C. 5713(a), authorizing the person named therein to engage in the business described therein.

(f) *Withdrawal permit.* The document issued pursuant to 26 U.S.C. 5271(a), authorizing the person named therein to withdraw tax-free spirits or specially denatured spirits, as specified therein.

* * * * *

PART 211—DISTRIBUTION AND USE OF DENATURED ALCOHOL AND RUM

Section J. Part 211 is amended as follows:

Paragraph 1. The table of sections is revised to reflect the removal of § 211.114 and the addition of § 211.245.

Sec

* * * * *

211.114 [Removed]

* * * * *

211.245 Claims for incomplete shipments.

* * * * *

§ 211.114 [Removed]

Par. 2. Section 211.114 which prescribed an application requirement for a consignee receiving completely denatured spirits by pipeline from a denaturer is removed.

§ 211.185a [Amended]

Par. 3. Section 211.185a(c) is amended to replace "Form 1480" with "Form 1480/5150.20 or the operations or unit bond required by 27 CFR Part 19".

Par. 4. Section 211.219 is revised to read as follows:

§ 211.219 Shipment of articles and spirits residues for redistillation.

Articles, containing denatured spirits, manufactured under this part, and spirits residues of manufacturing processes related thereto, may be shipped to a distilled spirits plant for redistillation. Packages of articles or spirits residues shall be identified as to contents and shall otherwise be marked and serially numbered in the manner provided in § 211.217. Notice of shipment shall be prepared on Form 1473 (5110.16), appropriately modified, in the manner provided in § 211.218.

(Approved by the Office of Management and Budget under control number 1512-0067)

(Sec. 201, Pub. L. 85-859, 72 Stat. 1365, as amended (26 U.S.C. 5223))

Par. 5. A new § 211.245 is added to permit the shipper of specially denatured spirits to file claim for losses in transit if the shipment is returned to him. That section reads as follows:

§ 211.245 Claims for incomplete shipments.

Subject to the provisions of this part and Part 19 of this chapter, when containers of specially denatured spirits have sustained losses in transit other than by theft, and the shipment will not be delivered to the consignee, the carrier may return the shipment to the shipper. When shipments are returned to a bonded dealer, the dealer shall file a consent of surety as required in § 211.252. When shipments are returned to a distilled spirit plant, the proprietor of the distilled spirits plant shall file a consent of surety as required in § 19.685 of this chapter. Consents of surety for specially denatured spirits returned under this paragraph must further stipulate that the dealer or proprietor will be liable under his bond for all taxes for which he may become liable on the quantity of alcohol originally shipped from his premises. Subject to the limitations for loss prescribed in § 211.242, the dealer or proprietor shall file claim for allowance of the entire quantity lost, in the same manner provided in that section. The claim shall include the applicable data in § 211.244.

(Approved by the Office of Management and Budget under control number 1512-0141)

Par. 6. Section 211.252 is amended by revising the first sentence and reads as follows:

§ 211.252 Return to denaturer or bonded dealer.

When specially denatured spirits are to be returned to a denaturer or bonded dealer the permittee shall obtain the denaturer's or bonded dealer's agreement to accept the return of the specially denatured spirits, and the regional director (compliance) permission to so return such spirits. * * *

PART 213—DISTRIBUTION AND USE OF TAX-FREE ALCOHOL

Section K. Part 213 is amended as follows:

Paragraph 1. The table of sections is amended to reflect the addition of § 213.155.

Sec

* * * * *

213.155 Claims for incomplete shipments.

* * * * *

Par. 2. Section 213.3 is revised due to recodification of Part 13 as 27 CFR Part 30. As revised, § 213.3 reads as follows:

§ 213.3 Related regulations.

Regulations related to this part are listed below:

27 CFR Part 19—Distilled Spirits Plants.
27 CFR Part 30—Gauging Manual.
27 CFR Part 196—Stills.
27 CFR Part 200—Rules of Practice in Permit Proceedings.
27 CFR Part 250—Liquors and Articles from Puerto Rico and the Virgin Islands.
27 CFR Part 251—Importation of Distilled Spirits, Wines, and Beer.
31 CFR Part 225—Acceptance of Bonds, Notes, or Other Obligations Issued or Guaranteed by the United States as Security in Lieu of Surety or Sureties on Penal Bonds.

Par. 3. A new § 213.155 is added to permit the shipper of tax-free alcohol to file claim for losses in transit if the shipment is returned to the distilled spirits plant.

§ 213.155 Claims for incomplete shipments.

Subject to the provisions of this part and Part 19 of this chapter, when containers of tax-free alcohol have sustained losses in transit other than by theft, and the shipment will not be delivered to the consignee, the carrier may return the shipment to the shipping plant. The consent of surety required in § 19.685 of this chapter must further stipulate that the proprietor will be liable under his bond for all taxes for which he may become liable on the quantity of alcohol originally shipped from his distilled spirits plant. Subject to the limitations for loss prescribed in § 213.152, the proprietor shall file claim for allowance of the entire quantity lost, in the same manner provided in that section for in-transit losses. The claim shall include the applicable data in § 213.154.

(Approved by the Office of Management and Budget under control number 1512-0141)

PART 240—WINE

Section L. Part 240 is amended as follows:

Paragraph 1. The table of sections is amended to reflect a change in the wording of a subpart and sections, and the removal of several sections.

Sec

* * * * *

240.617 [Removed]

* * * * *

Subpart OO—Return of Taxpaid Wine

Return of Unmerchantable Taxpaid Wine To Bonded Wine Cellar

240.800 General.

* * * * *

240.809 Insurance coverage.

Return of Taxpaid Wine Withdrawn for Export

240.810 Return of taxpaid wine withdrawn for export with benefit of drawback.

* * * * *

240.822 Withdrawal from distilled spirits plant.

Receipt of Wine Spirits

240.823 Record of receipt.
240.824 Transfer of wine spirits by pipeline for immediate use.

* * * * *

240.828 Receipt of wine spirits in packages.

* * * * *

240.832 Report of addition of wine spirits.

Disposition of Unused Wine Spirits

240.836 Application to dispose of wine spirits.

* * * * *

240.904 Gauge record.
240.904a Record of wine spirits added to wine.

* * * * *

240.1042 [Removed]

* * * * *

Par. 2. Section 240.130 is revised to read as follows:

§ 240.130 Activity on bonded wine cellar premises.

Except as authorized in this subpart, bonded wine cellar premises shall be used exclusively for (a) the receipt, production, blending, packaging, repackaging and removal of untaxpaid wine, and (b) the receipt, preparation, use, or removal of fruit, concentrated or unconcentrated fruit juice, or other materials authorized by this part or an approved formula under Subpart U of this part, for use in the production and cellar treatment of wine.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1378, as amended, 1386, as amended (26 U.S.C. 5351, 5361))

Par. 3. Section 240.140 is revised to give proprietors flexibility in separating wine cellar premises from other adjacent premises. As revised, § 240.140 reads as follows:

§ 240.140 Buildings or rooms of bonded wine cellars.

Bonded wine cellars shall be so located, constructed, and equipped, subject to approval by the regional director (compliance), as to be suitable for the production or storage of wine, and to afford protection to the revenue. The buildings, outside tanks, or rooms in which wines are stored or treated shall be securely constructed of substantial material. All doors, windows, or other openings shall be so arranged that they may be locked or fastened, and shall be kept locked in the absence of the proprietor or his agents. The wine cellar shall be separated from adjacent premises in a manner which satisfies the regional director (compliance) that the revenue will not be jeopardized.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended (26 U.S.C. 5357))

Par. 4. Section 240.143 is revised to liberalize the requirements for the location of Government cabinets for proprietors of bonded wine cellars using wine spirits. As revised, § 240.143 reads as follows:

§ 240.143 Office facilities.

Where wine spirits are to be used in the production of wine, other than use in small quantities for dosages or preparation of essences, the proprietor shall provide and maintain on the wine cellar premises, or the premises of an adjacent distilled spirits plant, in a convenient location a secure cabinet of adequate strength and size, suitably equipped for locking with a Government lock, for use in safe-guarding Government property. Each cabinet shall contain shelving or compartments of proper size for the filing of Government records. The cabinet shall be subject to approval by the regional director (compliance).

(Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended (26 U.S.C. 5357))

Par. 5. Section 240.169 is revised to delete the requirement for brazing or welding joints in pipelines for wine spirits. As revised, § 240.169 reads as follows:

§ 240.169 Wine spirits pipelines.

Pipelines used for the conveyance of wine spirits from the bonded premises of a distilled spirits plant to wine spirits storage tanks, measuring tanks, weighing tanks, and wine spirits addition tanks shall be constructed in accordance with the requirements of regulations prescribed in 27 CFR Part 19. If wine spirits are to be received by tank car or tank truck, a secure pipeline shall be provided from the unloading point to the storage tank, measuring tank, weighing tank, or wine spirits addition tank. Where wine spirits are stored in wine spirits storage tanks, a fixed pipeline, unbroken except for necesary short hose connections to pumps or weighing tanks, shall be provided from the wine spirits storage tank to the wine spirits addition tank. Valves, suitably equipped for locking, shall be provided to control the flow of the wine spirits from or into each tank.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1395, as amended (26 U.S.C. 5552))

§ 240.221 [Amended]

Par. 6. Section 240.221 is amended to replace the phrase "authorized to be withdrawn under approved applications" with the term "withdrawn".

§ 240.460 [Amended]

Par. 7. Section 240.460 is amended to replace "§ 240.131" with the phrase "the regional director (compliance) in § 240.131".

Par. 8. Section 240.491 is revised to reflect the elimination of Form 5120.38. As revised, § 240.491 reads as follows:

§ 240.491 Notice to use distillates containing aldehydes.

Where a distillate containing aldehydes is to be used in fermentation of wine to be used as distilling material, the proprietor of the bonded wine cellar, unless he is also the proprietor of the distilled spirits plant from which the distillates are to be withdrawn, shall submit a notice to the regional director (compliance) stating: (a) The name, address, and registry number of the distilled spirits plant from which the distillate is to be withdrawn, (b) the kind of distillate, (c) the kind of wine in which the distillate will be used, and (d) a statement describing the method by which the distillate will be added in fermentation of wine to be used as distilling material. Distillates containing aldehydes shall be received and used as provided by Subpart YY of this part. Record of receipt and use of distillates shall be kept in accordance with Subpart UU of this part and report on Form 5120.17(702).

Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended 1382, as amended (26 U.S.C. 5367, 5373))

(Approved by the Office of Management and Budget under control number 1512–0292)

§ 240.615 [Amended]

Par. 9. Section 240.615 is amended to replace "Form 5110.27" with the phrase "the transfer record as prescribed in Subpart W of 27 CFR Part 19", and the notation "(Approved by the Office of Management and Budget under control number 1512–0298)" is added at the end of the section.

§ 240.617 [Removed]

Par. 10. Section 240.617 is removed.

Par. 11. Section 240.618 is revised to make minor clarification changes. As revised, § 240.618 reads as follows:

§ 240.618 Reconsignment by consignor.

When a consignor reconsigns a shipment of wine while in transit, the consignor shall notify the regional director (compliance) of the consignor region by preparing a new Form 703 and attaching a statement of diversion. The substitute consignee is liable for the tax on all losses sustained in shipment, and shall file a consent of surety with the regional director (compliance) of his region, in accordance with § 240.231, extending the terms of his bond to cover any losses.

(Approved by the Office of Management and Budget under control number 1512–0061)

(Sec. 201, Pub. L. 85–859, 72 Stat. 1380, as amended (26 U.S.C. 5362))

§ 240.619 [Amended]

Par. 12. Section 240.619 is amended to replace "Form 5110.27" with the phrase "the transfer record as prescribed in Subpart W of 27 CFR Part 19", and the notation "(Approved by the Office of Management and Budget under control number 1512–0298.)" is added at the end of the section.

§ 240.634 [Amended]

Par. 13. Section 240.634 is amended to remove the term "standard wine" and to insert in lieu thereof the phrase

"standard wine or wine made with materials not authorized for use in standard wine".

Par. 14. Section 240.783 is revised to provide for flexible scheduling of actual inventories of untaxpaid wine. As revised, § 240.783 reads as follows:

§ 240.783 Losses during a year.

Any losses on bonded wine cellar premises during the year shall be entered on monthly report Form 5120.17 (702) when determined. The proprietor shall take an actual inventory of all untaxpaid wine on-hand in the bonded wine cellar as of the close of business June 30 of each year or where a period different from July 1 to June 30 has been established, the inventory shall be taken at the end of that period. Inventories may be taken within a period of a few days before or after June 30 or the end of the established period, if such period does not include more than one weekend. In each case, necessary adjustments must be made to reflect pertinent transactions so that the recorded inventories will agree with the actual quantities of wines on hand at the prescribed times. The inventory shall be recorded as required by § 240.903, and losses disclosed by an inventory shall be reported on Form 5120.17 (702) for the appropriate month. No claim for allowance of loss is required for losses in production or storage provided (a) there are no circumstances indicating that all or a part of the wine reported lost was unlawfully removed, and (b) the loss did not exceed 3 percent of the aggregate quantity of wine on-hand at the beginning of the year and received in bond during the year, 6 percent of the still wine produced by fermentation, 6 percent of the sparkling wine produced by fermentation in bottles, 3 percent of the special natural wine produced under § 240.444 or wine produced under § 240.488, 3 percent of the artificially carbonated wine produced, and 3 percent of the bulk process sparkling wine produced, at the bonded wine cellar during the annual period.

(Approved by the Office of Management and Budget under control number 1512–0216 and 1512–0298)

(Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5367))

Par. 15. The title of Subpart OO is revised, and an undesignated center heading is added immediately after the title of Subpart OO. As revised and added, the title of Subpart OO and the new undesignated center heading read as follows:

Subpart OO—Return of Taxpaid Wine

Return of Unmerchantable Taxpaid Wine To Bonded Wine Cellar

Par. 16. A new undesignated center heading and a new § 240.810 are added immediately following § 240.809. As added, the undesignated center heading and § 240.810 read as follows:

Return of Taxpaid Wine Withdrawn for Export

§ 240.810 Return of taxpaid wine withdrawn for export with benefit of drawback.

Subject to the provisions in 27 CFR 252.219–252.221, whole or partial shipments of wine withdrawn for export with benefit of drawback may be returned to a taxpaid storeroom at a bonded wine celler. Claims filed by exporters on ATF Form 5110.30 which include the returned wine shall be reduced by the amount of tax paid or tax determined on the returned wine.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1336, as amended (26 U.S.C. 5062))

Par. 17. Section 240.822 is revised to read as follows:

§ 240.822 Withdrawal from distilled spirits plant.

The proprietor of any bonded wine cellar may withdraw and receive wine spirits without payment of tax from the bonded premises of a distilled spirits plant for: (a) Use in the production of natural wine, special natural wine, sparkling wine, artifically carbonated wine, or any other wine products for which wine spirits are required for dosage; (b) Preparation of approved essences or similar approved flavorings; (c) Addition to concentrated or unconcentrated juice for use in wine production; or (d) Other use as authorized in this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1382, as amended 1383, as amended (26 U.S.C. 5373, 5382))

Par. 18. A new undesignated center heading is added immediately following § 240.822, and § 240.823 is revised. As added and revised, the center heading and § 240.823 read as follows:

Receipt of Wine Spirits

§ 240.823 Record of receipt.

When wine spirits are received at the bonded wine celler, the proprietor shall satisfy himself that the wine spirits are the same as described on the transfer record prescribed by 27 CFR 19.770. A copy of the transfer record, annotated to show any difference between the description of spirits and spirits received, shall be maintained by the properietor as a record of receipt.

(Approved by the Office of Management and Budget under control number 1512–0298)

Par. 19. The undesignated center heading, "RECEIPT OF WINE SPIRITS," immediately following § 240.823 is removed.

§ 240.825 [Amended]

Par. 20. Section 240.825 is amended to replace "adjacent bonded premises" with "bonded premises".

§ 240.827 [Amended]

Par. 21. Section 240.827 is amended to replace "Form 5110.26" with the phrase "a copy of the transfer record (prescribed in Subpart W of 27 CFR Part 19) accompanying the shipment", and the notation "(Approved by the Office of Management and Budget under control number 1512–0298.)" is added at the end of the section.

Par. 22. Sections 240.828, 240.830, 240.831 and 240.832 are revised to read as follows:

§ 240.828 Receipt of wine spirits in packages.

The proprietor shall examine packages of wine spirits received at the bonded wine cellar to determine if the packages are the same as those described on the transfer record (prescribed in Subpart W of Part 19) accompanying the shipment. Any package which appears to have been tampered with or from which wine spirits appear to have been removed or lost shall be gauged by the proprietor, and the proprietor shall prepare and submit to the regional director (compliance) a statement setting forth fully the circumstances and apparent cause of any loss.

(Approved by the Office of Management and Budget under control numbers 1512–0292 and 1512–0298)
(Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended, 1382, as amended (26 U.S.C. 5367, 5368, 5373))

§ 240.830 Wine spirits added to wine.

Prior to the addition of wine spirits, the wine shall be placed in tanks (approved for the addition of wine spirits) located, equipped, and calibrated as provided in Subpart F of this part. The proprietor shall accurately measure the wine, determine its alcohol content, determine the proof of the wine spirits to be added, calculate the quantity of wine spirits required, and enter the details on the record of wine spirits added to wine. The alcohol content of the wine after the addition of

wine spirits shall not exceed 24 percent by volume.

(Approved by the Office of Management and Budget under control number 1512–0298

(Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended, 1382, as amended (26 U.S.C. 5367, 5373))

§ 240.831 Gauge of wine spirits.

(a) If the wine spirits to be used are in a wine spirits storage tank on the bonded wine cellar premises, or received immediately prior to use from a distilled spirits plant not adjacent to the bonded wine cellar, the proprietor shall determine the proof of the spirits and the quantity used, by volume gauge or by weight. Upon completion of the transfer of wine spirits from the wine spirits storage tank to the wine spirits addition tank, the proprietor shall lock the wine spirits storage tank. The proprietor shall prepare a gauge record as prescribed in Subpart UU of this part.

(b) If the wine spirits are received from the adjacent bonded premises of a distilled spirits plant and are transferred directly into a wine spirits addition tank, the gauge of the wine spirits made on the distilled spirits plant premises shall be used. The proprietor at the distilled spirits plant premises shall deliver a transfer record as prescribed in Subpart W of 27 CFR Part 19 to the proprietor of the bonded wine cellar who shall acknowledge receipt of the wine spirits on such transfer record.

(c) If the wine spirits are received in packages, and the quantity of wine spirits needed for the addition is not equal to the contents of full packages, a portion of one package may be used and the remnant package returned to the wine spirits storage room. The proprietor shall gauge the remnant package and attach to it a label showing the date of gauge, serial number of the record of wine spirits added to wine, the gross weight, and proof. The remnant package shall be used at the first opportunity. The proprietor shall prepare a gauge record each time wine spirits are used.

(Approved by the Office of Management and Budget under control number 1512–0298)

(Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended, 1382, as amended (26 U.S.C. 5367, 5368, 5373))

§ 240.832 Report of addition of wine spirits.

After the wine spirits have been added to the wine, the proprietor shall thoroughly agitate the contents of the tank to assure a complete mixture of the wine and wine spirits. The proprietor shall then measure the quantity of wine in the tank, take a representative sample of the wine, and test for alcohol content. The result of the measurement and test and the quanity of wine spirits added as shown by the gauge record or transfer record shall be recorded on the record on wine spirits added to wine. The quantity of wine and wine spirits used, and the quantity of wine resuting from addition of wine spirits, shall be entered in the cellar records.

(Approved by the Office of Management and Budget under control number 1512–0298)

(Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended, 1382, as amended, 1383, as amended (26 U.S.C. 5367, 5373, 5382))

Center Heading and § 240.835 [Removed]

Par. 23. The undesignated center heading immediately preceding § 240.835, and § 240.835 are removed.

Par. 24. A new undesignated center heading is added immediately preceding § 240.836. As added the new undesignated center heading immediately preceding § 240.836 reads as follows:

Disposition of Unused Wine Spirits

§ 240.838 [Amended]

Par. 25. Section 240.838 is amended to replace "shipped and whether the spirits will be used for beverage or nonbeverage purposes" with "shipped".

Par. 26. Section 240.854 is revised to delete Form 5110.26 and provide for a gauge record. As revised, § 240.854 reads as follows:

§ 240.854 Losses in wine cellar.

Losses by theft, or from other causes, in the bonded wine cellar, shall be determined and reported at the time the losses are discovered. A physical inventory of wine spirits storage tanks shall be taken at the close of the month during which wine spirits are used in wine production, or upon completion of the use for the month and at any other time required by the regional director (compliance). Any losses which have not previously been reported shall be determined by the inventory. Where a loss is discovered requiring filing of a claim as provided in § 240.855, the proprietor shall gauge the contents of the container from which the loss occurred and record such gauge on the gauge record prescribed in Subpart UU of this part.

(Approved by the Office of Management and Budget under control number 1512–0298)

(Sec. 201, Pub. L. 85–859, 72 Stat. 1323, as amended (26 U.S.C. 5008))

Par. 27. Section 240.904 is revised to read as follows:

§ 240.904 Gauge record.

Each proprietor of a bonded wine cellar using wine spirits in the production of wine shall prepare a gauge record at the time wine spirits are gauged. Gauge records for wine spirits shall show the date, related transfer or wine spirits addition record, quantity and proof of spirits by container serial number, and all necessary data respecting the gauge, including weight or volume information. Gauge records shall be serially numbered beginning with "1" each January 1.

(Approved by the Office of Management and Budget under control number 1512–0298)

(Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5367))

Par. 28. Section 240.904a is added to read as follows:

§ 240.904a Record of wine spirits added to wine.

Proprietors of bonded wine cellars shall prepare a record of wine spirits added to wine for each day wine spirits are added to wine. A separate record will be used for each kind (grape, apple, berry, etc.) of wine. Each record of wine spirits added to wine shall contain the following information:

(a) Date;

(b) Serial number of each wine spirits addition, commencing with "1" on July 1 of each year;

(c) Tank number;

(d) Wine used by:

(1) Kind (i.e., Port, Blackberry, Sherry, Orange, etc.);

(2) Registry number of bonded premises where wine was produced;

(3) Wine gallons;

(4) Percent of alcohol; and

(5) Desired percent of alcohol in the finished product;

(e) Wine spirits used by wine gallons and proof gallons and the serial number of gauge record or, if the wine spirits are received from adjacent distilled spirits plant premises and used immediately, the serial number of the transfer record;

(f) Wine produced (i.e., after the addition of wine spirits to wine) in wine gallons and percent of alcohol by volume.

(Approved by the Office of Management and Budget under control number 1512–0298)

(Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5367))

§ 240.1042 [Removed]

Par. 29. Section 240.1042 is removed.

PART 245—BEER

Section M. Part 245 is amended as follows:

Section 245.210 is revised to delete any reference to ATF officers supervising certain operations. As revised, § 245.210 reads as follows:

§ 245.210 Beer removed to contiguous distilled spirits plants.

Beer may be conveyed by pipeline without tax payment from the brewery to the bonded premises of a distilled spirits plant which is authorized to produce distilled spirits and which is located contiguous to the brewery. The quantity of beer conveyed to a contiguous distilled spirits plant shall be included in the brewer's daily records of both production and removals. If any residue is returned from such plant to the brewery, the brewer's daily records of cereal beverage transactions shall reflect the quantity thereof. The totals of the various quantities involved shall be appropriately reported on Form 103.

(Approved by the Office of Management and Budget under control number 1512-0333)

(Sec. 201, Pub. L. 85-859, 72 Stat. 1365, as amended, 1389, as amended (26 U.S.C. 5222, 5412))

PART 250—LIQUORS AND ARTICLES FROM PUERTO RICO AND THE VIRGIN ISLANDS

Section N. Part 250 is amended as follows:

Paragraph 1. The table of sections for Part 250 is amended as follows:

Sec.

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250.66a [Removed]

* * * * *

250.79 Inspection or gauge and computation of tax.

* * * * *

250.91a Alternative marks.

* * * * *

250.127 Report of red strip stamps or alternative devices used.

250.128 * * *

Subpart G—Procurement and Use of Red Strip Stamps or Alternative Devices for Distilled Spirits from Puerto Rico

250.135 Containers of distilled spirits to bear red strip stamps or alternative devices.

250.136 Persons authorized to affix red strip stamps or alternative devices.

250.137 * * *

250.138 Affixing strip stamps or alternative devices.

* * * * *

250.144 Alternative devices.

250.145 [Reserved]

250.146 Record and report of red strip stamps or alternative devices.

* * * * *

250.164a Package gauge record.

* * * * *

250.198 [Reserved]

* * * * *

250.199e [Reserved]

* * * * *

Subpart L—Red Strip Stamps or Alternative Devices for Distilled Spirits From the Virgin Islands

General

250.230 Containers of distilled spirits to bear red strip stamps or alternative devices.

250.231 Persons authorized to affix red strip stamps or alternative devices.

250.232 * * *

250.233 Affixing strip stamps or alternative devices

250.234 * * *

250.235 Disapproval of strip stamp requisitions.

* * * * *

250.242 [Reserved]

250.243 Alternative devices.

250.244 [Reserved]

250.245 Strip stamps on distilled spirits deposited in a foreign-trade zone.

250.246–250.251 [Reserved]

* * * * *

Red Strip Stamps and Alternative Devices To Be Affixed at Port of Entry Under Customs Supervision

250.255 Conditions.

250.256 * * *

250.258 Expense of affixing red strip stamps or alternative devices.

Disposition of Red Strip Stamps

250.259 Procedure.

Subpart M—* * *

* * * * *

Subpart N—* * *

Record and Report of Red Strip Stamps and Alternative Devices

250.270 Record of strip stamps and alternative devices.

250.271 Report of stamps and alternative devices, Form 5110.6.

* * * * *

250.273a Transfer record.

250.273b Package gauge record.

* * * * *

250.276 * * *

Subart O—* * *

* * * * *

250.301 Preparation of transfer record.

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250.305 Receipt by consignee.

* * * * *

Par. 2. Section 250.11 is amended by revising the definitions of *Article, Chief, Puerto Rico Operations, Denatured spirits, Industrial spirits,* and *Red strip stamps* and by adding the definition of *kind* to read as follows:

§ 250.11 Meaning of terms.

* * * * *

Article. Any preparation unfit for beverage use, made with or containing:

(1) Wine or beer;

(2) Distilled spirits or industrial spirits; or

(3) Denatured spirits when such preparation is not manufactured under the provisions of this chapter.

* * * * *

Chief, Puerto Rico Operations. The primary representative in Puerto Rico of the Bureau of Alcohol, Tobacco and Firearms. His complete address is: Chief, Puerto Rico Operations, Bureau of Alcohol, Tobacco and Firearms, U.S. Courthouse and Federal Building, Room 329, Avenida Carlos Chardon, Hato Rey, Puerto Rico 00919.

* * * * *

Denatured spirits. Industrial spirits denatured in accordance with approved formulas in distilled spirits plants established and operated under the provisions of this chapter relating to the establishment and operation of plants qualified to denature spirits in the United States or, in respect of a product of the Virgin Islands, shall also mean spirits denatured in accordance with approved formulas in plants established under the provisions of the Virgin Islands regulations and shall include, unless otherwise limited, both completely and specially denatured spirits.

* * * * *

Industrial spirits. As to products of Puerto Rico, distilled spirits produced and warehoused at and withdrawn from distilled spirits plants established and operated under the provisions of this chapter relating to the establishment of such plants and the production, bonded warehousing, and withdrawal from bond of distilled spirits in the United States, or as to products of the Virgin Islands, distilled spirits produced, warehoused, and withdrawn under Virgin Islands regulations.

* * * * *

Kind. As applied to spirits, kind shall mean class and type as prescribed in 27 CFR Part 5. As applied to wines, kind shall mean the classes and types of wines as prescribed in 27 CFR Part 4.

Red strip stamps. The stamp prescribed under the authority of 26 U.S.C. 5205.

* * * * *

§ 250.36a [Amended]

Par. 3. Section 250.36a is amended to remove the term "subchapter" wherever it appears and insert, in lieu thereof the term "chapter".

Par. 4. Section 250.41 and 250.42 are revised to read as follows:

§ 250.41 Destruction of marks and brands.

The marks, brands, and serial numbers required by this part to be placed on barrels, casks, or similar

containers, or cases, shall not be removed or obscured or obliterated before the contents thereof have been removed.

(Sec. 201, Pub. L. 85–859, 1358, as amended, 26 U.S.C. 5205)

§ 250.42 Destruction of stamps

All stamps or alternative marks used in lieu of distilled spirits stamps, must remain on packages until the contents are emptied. When a package of distilled spirits is emptied, the internal revenue stamp or alternative mark thereon must be completely effaced and obliterated.

(68A Stat. 830, 72 Stat. 1358; 26 U.S.C. 6804, 5205)

Par. 5. Section 250.50 is revised to read as follows:

§ 250.50 Formula for liquors.

(a) *Distilled spirits products.* Except for products which are exempt from tax, as specified in § 250.36, formulas are required by Part 5 of this chapter for distilled spirits products shipped to the United States from Puerto Rico. If a formula is submitted to cover only the production of spirits which are to be transferred to the bonded premises of a DSP under 26 U.S.C. 5232, the formula shall include a statement to that effect. If any product contains liquors made outside of Puerto Rico, the country of origin for each such liquor shall be stated on the formula. These formulas shall be submitted on ATF Form 5110.38, in accordance with § 250.54.

(b) *Wine.* Persons in Puerto Rico who ship wine to the United States shall comply with the formula requirements of 27 CFR Part 240. If any wine contains liquors made outside of Puerto Rico, the country of origin for each such liquor shall be stated on the formula. All formulas required by this paragraph shall be submitted on ATF Form 698 Supplemental, in accordance with § 250.54.

(Approved by the Office of Management and Budget under control number 1512–0204)

§ 250.66a [Removed]

Par. 6. Section 250.66a is removed as it applies to an obsolete transitional rule in the conversion to all-in-bond.

Par 7. Section 250.79 is revised to read as follows:

§ 250.79 Inspection or gauge and computation of tax.

On receipt of permit to compute the tax on ATF Form 5110.51, the revenue agent shall:

(a) In the case of spirits in packages, prepare a gauge record as provided in § 250.164a in quintuplicate, compute the tax thereon, and attach all copies of the gauge record to ATF Form 5110.51;

(b) In the instance of spirits in cases, verify by inspection the quantity of spirits described on the form; or

(c) In the case of spirits in a bulk conveyance, verify by gauge or inspection the quantity of spirits described on the form.

If the revenue agent determines any variation between his gauge and the quantity of spirits described on Form 5110.51, he shall amend and initial the data in Part I of the form. The revenue agent shall deliver all copies of Form 5110.51 and any accompanying package gauge record to the proprietor. The proprietor shall then compute and enter the amount of tax on all copies of Form 5110.51.

(Approved by the Office of Management and Budget under control number 1512–0250)

Par. 8. Sections 250.80 and 250.81 are revised to eliminate ATF Form 5110.45 and to remove forms filing instructions. As revised, §§ 250.80 and 250.81 read as follows:

§ 250.80 Deferred payment of tax—release of spirits.

(a) *Action by proprietor.* Where the proprietor has furnished bond on ATF Form 5110.50, and payment of the tax is to be deferred, he shall execute an agreement on ATF Form 5110.51 to pay the amount of tax which has been computed and entered on the form. He shall also certify, under the penalties of perjury, that he is not in default of any payment of tax chargeable against his bond, and that his bond is in the maximum penal sum, or that it is sufficient to cover the amount of tax on the distilled spirits described on the form in addition to all other amounts chargeable agains this bond. The proprietor shall deliver all copies of ATF Form 5110.51 and any package gauge record as provided in §250.164a to the revenue agent.

(b) *Action by revenue agent.* On receipt of ATF Form 5110.51 and any package gauge record, the revenue agent shall verify the computation of the tax entered on the ATF Form 5110.51, and if the proprietor has on file a good and sufficient bond, ATF Form 5110.50, so indicate on ATF Form 5110.51. The revenue agent shall then execute his report of release on the ATF Form 5110.51 and release the spirits for shipment to the United States. He shall distribute ATF Form 5110.51 and any package gauge record according to the instructions of ATF Form 5110.51. Where the revenue agent finds that the proprietor does not have good and sufficient bond coverage, or where the revenue agent has received information that the proprietor is in default of payment of any taxes previously charged to his bond, he shall return all copies of ATF Form 5110.51 and any package gauge record to the proprietor, giving his reasons for such action.

(Approved by the Office of Management and Budget under control number 1512–0250)

§ 250.81 Prepayment of tax and release of spirits.

(a) *Action by proprietor.* Where the distilled spirits are to be released after payment of the computed tax, the proprietor shall enter the amount of such computed tax on all copies of ATF Form 5110.51 and execute the statement that such tax is being prepaid. He shall then prepare ATF Form 5110.53 in quadruplicate, and send the original and two copies, with all copies of ATF Form 5110.51 and any package gauge record as provided in § 250.164a and his remittance in full for the tax, to the Officer-in-Charge.

(b) *Action by Officer-in-Charge.* On receipt of ATF Forms 5110.51, 5110.53, and any package gauge record, with remittance covering prepayment of tax, the Officer-in-Charge shall execute his receipt on all copies of ATF Form 5110.53 and his report of prepaid taxes on all copies of ATF Form 5110.51. He shall then distribute the forms according to the instructions on the respective forms.

(c) *Action by revenue agent.* On receipt of ATF Form 5110.51 executed by the Officer-in-Charge to show receipt of ATF Form 5110.53 and remittance, and a copy of the ATF Form 5110.53, the revenue agent shall execute his report of release on the ATF Form 5110.51 and release the spirits for shipment to the United States. He shall distribute the forms according to the instructions on the respective forms.

(Approved by the Office of Management and Budget under control number 1512–0210 and 1512–0212)

Par. 9. Section 250.84, relating to the stamping of bottles is revised to clarify language relating to strip stamps. As revised, § 250.84 reads as follows:

§ 250.84 Stamping of bottles and bulk containers.

(a) *Bottles.* Every bottle of distilled spirits of Puerto Rican manufacture to be shipped to the United States shall be affixed with a red strip stamp or alternative device.

(b) *Bulk containers.* Where taxpaid distilled spirits intended for shipment to the United States are in containers of more than 1 gallon (3.785 liters), distilled spirits stamps shall be procured and

affixed as provided in §§ 250.88 through 250.91a.

(Approved by the Office of Management and Budget under control number 1512-0189)

(Sec. 201, Pub. L. 85-859, 72 Stat. 1358, as amended (26 U.S.C. 5205))

Par. 10. Section 250.91a is added to authorize the use of alternative marks in lieu of distilled spirits stamps as follows:

§ 250.91a Alternative marks.

Notwithstanding other provisions of this part, the proprietor may, in lieu of affixing distilled spirits stamps to containers of more than 1 gallon which are taxpaid for shipment to the United States, mark such containers with the word, "TAXPAID."

(Approved by the Office of Management and Budget under control number 1512-0189)

Par. 11. Section 250.110 is revised to reflect the elimination of ATF Form 5110.45 and replacement of the form number with "package gauge record". As revised, § 250.110 reads as follows:

§ 250.110 Release of articles or liquors.

After determining that the proprietor has good and sufficient bond coverage, or, in the case of prepayment, on receipt of ATF Form 5110.51 or Form 2900 executed by the Officer-in-Charge to show receipt of ATF Form 5110.53, 2928, or 2930, and remittance, the revenue agent shall execute his report of release on ATF Form 5110.51 or Form 2900 and release the articles containing distilled spirits, or release the wine and/or beer for use in the manufacture of articles. He shall forward one copy of ATF Form 5110.51 or Form 2900, and any package gauge record as provided in § 250.164a, to the Bureau of Alcoholic Beverage Taxes and one copy of each to the District Revenue Agent (Commonwealth of Puerto Rico), deliver one copy of each to the applicant, and retain one copy of each for his file. In the case of deferred payment, the original ATF Form 5110.51 or Form 2900 and any package gauge record shall be forwarded to the Officer-in-Charge. A permit shall be obtained as provided in §§ 250.114 through 250.116 before the articles manufactured from such liquors may be shipped to the United States.

(Approved by the Office of Management and Budget under control numbers 1512-0149, 1512-0151, 1512-0153, 1512-0210, 1512-0212 and 1512-0250)

Par. 12. Section 250.112(f) is revised to delete references to return periods. As revised, paragraph (f) of § 250.112 reads as follows:

§ 250.112 Taxes to be collected by returns for semimonthly periods.

* * * * *

(f) *Last day for filing ATF Form 5110.52.* The last day for filing ATF Form 5110.52, distilled spirits deferred tax return, shall be not later than the last day of the second succeeding return period.

* * * * *

§ 250.113 [Amended]

Par. 13. Section 250.113(c) is amended to replace "Form 2925" with "Form 5110.53".

Par. 14. Section 250.126 is revised to read as follows:

§ 250.126 Taxpayment in Puerto Rico.

Liquors upon which all Federal internal revenue taxes have been paid in Puerto Rico may be brought into the United States for personal consumption without payment of additional taxes. Red strip stamps on bottles in possession of tourists shall be evidence to customs authorities at the port of departure and at the port of arrival that the tax on the spirits has been paid. When distilled spirits, wines, or beer are purchased by a tourist for consumption in the United States, the internal revenue tax due may be paid to the United States Internal Revenue Service office, and an internal revenue receipt obtained, or the tax may be paid to the U.S. Customs authorities, who will issue a customs receipt. The tax on articles purchased by tourists may be paid in the same manner. The receipt received from the United States Internal Revenue Service office or from the customs officer shall be presented, as required, as evidence that the tax has been paid.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1335, as amended, 1358, as amended (26 U.S.C. 5061, 5205))

Par. 15. Sections 250.127 and 250.128 are revised to allow the use of alternative devices. As revised §§ 250.127 and 250.128 read as follows:

§ 250.127 Report of red strip stamps or alternative devices used.

The insular revenue agent will record and report the use of red strip stamps or alternative devices on taxpaid spirits bottled for sale to tourists in Puerto Rico as provided in § 250.146.

§ 250.128 Taxpayment at port of arrival.

If the internal revenue tax on liquors and articles is not paid in Puerto Rico, it shall be paid by the tourists at the port of arrival prior to release of the liquors or articles from customs custody. The tax may be paid to the district director of internal revenue, and an internal revenue receipt obtained, or the tax may be paid to the director of customs, who will issue a customs receipt. If payment is to be made to the district director of internal revenue, the director of customs will notify the district director of the amount of tax due. On payment of the tax to the director of customs, or on submission to him of the internal revenue receipt for the tax, the director of customs will release the liquors or articles. Liquors brought into the United States by tourists for personal consumption are not required to have strip stamps or alternative devices placed on the containers when taxpaid by the tourist, whether at the port of departure in Puerto Rico or on arrival in the United States.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1335, as amended, 1358, as amended (26 U.S.C. 5061, 5205))

Par. 16. Sections 250.135, 250.136, 250.138, 250.143, 250.144, 250.146 and the heading of Subpart G are revised to allow the use of alternative devices. In addition, § 250.143 is amended to clarify form requirements. As revised, the sections and title read as follows:

Subpart G—Procurement and Use of Red Strip Stamps or Alternative Devices for Distilled Spirits From Puerto Rico

§ 250.135 Containers of distilled spirits to bear red strip stamps or alternative devices.

Containers of 1 gallon (3.785 liters) or less of distilled spirits, upon which all Federal internal revenue taxes have been paid or deferred in Puerto Rico under the provisions of this part, shall have red strip stamps or alternative devices affixed in accordance with the provisions of this part, prior to shipment to the United States.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1358, as amended (26 U.S.C. 5205))

§ 250.136 Persons authorized to affix red strip stamps or alternative devices.

Red strip stamps or alternative devices shall be affixed to containers of distilled spirits by the distiller, bottler, or rectifier in Puerto Rico as prescribed in §§ 250.141 through 250.146.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1358, as amended (26 U.S.C. 5205))

§ 250.138 Affixing strip stamps or alternative devices.

Strip stamps or alternative devices shall be securely affixed to containers so as to leave a portion remaining on the container when the container is opened unless the container is one that cannot again be used after opening. Portions of strip stamps may be trimmed provided

no printed (or overprinted) information is cut off. Strip stamps or alternative devices affixed to containers shall not be concealed or obscured in any manner except that (a) the Director may authorize labels to be affixed so as to partially obscure strip stamps or alternative devices, if a need exists, and (b) any such stamp or alternative device may be covered by a cup, cap, seal, carton, wrapping, or other item which can be readily removed without injury to the stamp or alternative device. ATF and customs officers have the right to open such cartons or wrappings and examine the container.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended) (26 U.S.C. 5205))

§ 250.143 Procurement and custody of red strip stamps.

(a) *General.* The distiller, rectifier, or boottler, or his duly authorized agent, shall submit the original and two copies of the approved Form 428 (5100.7) to the Chief, Puerto Rico Operations, who will issue the quantity of stamps coverd by the approved requisition, enter the quantity of stamps issued, and stamp the date of issue on all copies of Form 428. The issuing office will retain the original for its files, send one copy with the strip stamps to the revenue agent at the bottling plant, and one copy to the Secretary. The revenue agent will issue stamps to the bottler for affixing to bottles of taxpaid distilled spirits as desired upon application from the proprietor.

(b) *Alternative method.* When the Chief, Puerto Rico Operations, determines that the interest of the Government will be best served, the stamps may be shipped directly to the Commonwealth revenue agent at the plant from a location other than the office of the Chief, Puerto Rico Operations. In such case, the Chief, Puerto Rico Operations shall notify the distiller, rectifier, or bottler, or his duly authorized agent, that the stamps will be supplied from an alternative location and inform him of the minimum or maximum quantity, if any, which may be requisitioned on any particular Form 428.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended) (26 U.S.C. 5205))

§ 250.144 Alternative devices.

(a) *Alternative devices used in lieu of red or green strip stamps.* Distillers, bottlers or rectifiers who wish to use devices other than red or green strip stamps on containers of distilled spirits may use any device which has been announced by the Director to be an approved alternative device or which has been approved for his use pursuant to application filed with the Director.

(b) *Alternative devices.* Alternative devices used in lieu of red or green strip stamps shall be securely affixed to the bottle in such a manner as to leave a portion of the device remaining on the bottle after opening, unless the container is one that cannot again be used after opening. Alternative devices shall bear no lettering or design which is prohibited by Part 5 of this chapter or which conflicts with information on the label.

(c) *Application.* Distillers, bottlers or rectifiers who wish to use alternative devices which have not been approved by announcement of the Director shall file application with the Director. The application shall describe the alternative device and the method of affixing it to containers. Two samples of the proposed alternative device, affixed to empty containers, shall accompany the application.

(Approved by the Office of Management and Budget under control number 1512–0206)

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5205))

§ 250.146 Record and report of red strip stamps or alternative devices.

Revenue agents shall maintain, for each day a transaction in red strip stamps or alternative devices occurs, a daily record of such stamps or alternative devices showing the number and size of bottles to which stamps or alternative devices were affixed. No form is prescribed for the daily records but such records shall be in sufficient detail and retained to support the quarterly report. Within 15 days following the close of business March 31, June 30, September 30, and December 31, of each year, the revenue agent will prepare a separate report of the strip stamps or alternative devices used during the period on Form 5100.8.

(Approved by the Office of Management and Budget under control number 1512–0352)

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5205))

§ 250.164 [Amended]

Par. 17. Section 250.164 is amended to replace "subchapter" with "chapter."

Par. 18. Section 250.164a is added immediately following § 250.164 to set forth the requirements for the package gauge record. As added, § 250.164a reads as follows:

§ 250.164a Package gauge record.

When required in this part, with respect to Puerto Rican spirits, a package gauge record shall be prepared to show:

(a) The date prepared;

(b) The related transaction form and its serial number;

(c) The producer or rectifier (processor) of the spirits, and his name, address, and plant registration number; and

(d) For each package, the:

(1) Package identification or serial number;

(2) Kind of spirits;

(3) Gross weight;

(4) Tare;

(5) Net weight;

(6) Proof gallons; and

(7) Proof.

(Approved by the Office of Management and Budget under control number 1512–0250)

§§ 250.191 and 250.193 [Amended]

Par. 19. Sections 250.191 and 250.193 are amended to replace "subchapter" with "chapter".

Par. 20. Section 250.197 is revised to read as follows:

§ 250.197 Furnishing formula to consignee.

Prior to the first shipment, the person shipping the spirits to the United States shall furnish a reproduced copy of the approved formula covering such spirits to the regional director (compliance) of each region in which a consignee's distilled spirits plant is located, and to the proprietor of each distilled spirits plant to receive the spirits.

(Approved by the Office of Management and Budget under control number 1512–0204)

§§ 250.198 and 250.199e [Removed]

Par. 21. Sections 250.198 and 250.199e are removed.

Par. 22. Sections 250.199a, 250.199b, 250.199d and 250.199f are revised to reflect the elimination of "ATF Form 5110.45"and the replacement of the form number with "package gauge record". As revised, the sections read as follows:

§ 250.199a Action by revenue agent.

(a) *Gauge.* Puerto Rican spirits to be withdrawn for shipment to the United States as provided in this subpart shall be gauged by the revenue agent prior to withdrawal from the consignor premises. The revenue agent shall record the quantity and proof of the spirits gauged on ATF Form 5110.31. If the spirits are in packages, the revenue agent shall prepare in sextuplicate a package gauge record according to § 250.164a, attach the package gauge record to ATF Form 5110.31, and dispose of the form (and any attachments) according to the instructions thereon.

(b) *Sealing bulk conveyances.* When a shipment is made in a tank, van, or other bulk conveyance (other than barrels,

drums, or similar packages that are not containerized), all openings affording access to the spirits shall be sealed by the Puerto Rican revenue agent is such manner as will prevent unauthorized removal of spirits without detection.

(Approved by the Office of Management and Budget under control number 1512–0250)

§ 250.199b Issuance and disposition of permit.

When the Secretary receives an application on ATF Form 5110.31 and he finds that the applicant is in compliance with law and regulations, he will execute the permit to ship on all copies of ATF Form 5110.31, retain one copy, and any accompanying package gauge record as provided in § 250.164a, and return the remaining copies to the consignor who shall distribute them in accordance with the instructions on ATF Form 5110.31.

(Approved by the Office of Management and Budget under control number 1512–0250)

§ 250.199d Customs inspection and release.

On receipt of a properly executed ATF Form 5110.31 from the consignor, the customs officer at the port of arrival in the United States shall inspect the corresponding shipment of spirits:

(a) If a shipment is in a bulk conveyance, and:

(1) The seals are intact, he shall release the shipment; or

(2) If the seals are broken, he shall, before release of the spirits, affix customs seals.

(b) If a shipment in packages does not arrive in a sealed conveyance, the packages shall be inspected, and if it appears that any package has sustained a loss, the package shall be weighed and its new gross weight shall be entered in contrasting color on the package gauge record attached to the related ATF Form 5110.31. The serial numbers of any seals affixed by the customs officers shall be reported on ATF Form 5110.31 under remarks with an explanation and description of any evidence of loss. After completing his inspection, the customs officer shall execute his certificate on each copy of ATF Form 5110.31 and show thereon any exceptions found at the time of his release for transfer of the spirits to internal revenue bond. Missing packages should be reported separately from packages which have sustained losses. The customs officer shall then release the spirits to the consignee's representative and distribute all forms in accordance with the instructions on ATF Form 5110.31.

(Approved by the Office of Management and Budget under control number 1512–0250)

§ 250.199f Consignee premises.

(a) *General.* When Puerto Rican spirits are received from customs custody under the provisions of this subpart, the consignee proprietor shall execute the certificate of receipt on ATF Form 5110.31 and examine all containers for evidence of loss. If it appears that spirits were lost by theft or unusual event, the proprietor shall determine the quantity of spirits lost and report the loss according to 27 CFR 19.562.

(b) *Packages.* Packages shall be received on bonded premises by the proprietor on the basis of the most recent official gauge.

(c) *Distribution of forms.* The proprietor shall retain the original of ATF Form 5110.31 (and any attachments) and submit the copy of each to the regional director (compliance).

(Approved by the Office of Management and Budget under control numbers 1512–0200 and 1512–0250)

§ 250.201a [Amended]

Par. 23. Section 250.201a is amended to delete the term "subchapter" wherever it appears and insert, in lieu thereof, the term "chapter".

Par. 24. A new section 250.204 is added, and section 250.205 is revised to read as follows:

§ 250.204 Regauge.

Distilled spirits withdrawn from insular bonded warehouses for shipment to the United States may be gauged at the time of withdrawal by an insular gauger. When such gauges are made, a record of gauge shall be prepared by the insular gauger showing the name of the distiller; and the serial number, the proof of the spirits, and the wine and proof gallon contents of each package gauged. The report of gauge shall be attached to the certificate prescribed in § 250.205.

(Approved by the Office of Management and Budget under control number 1512–0250)

§ 250.205 Certificate.

Every person bringing liquors or articles under this part into the United States from the Virgin Islands, except tourists, shall obtain a certificate in the English language from the manufacturer showing, for each shipment, the following information:

(a) The name and address of the consignee;

(b) The kind and brand name;

(c) The quantity thereof as follows:

(1) If distilled spirits, the proof gallons, or liters and degree of proof.

(2) If wine, the taxable grade and wine gallons.

(3) If beer, the gallons, liquid measure, and the percent of alcohol by volume.

(4) If articles, the kind, quantity, and proof of liquors used therein.

(d) The number and date of the approved formula;

(e) A declaration that it has been manufactured in accordance with the formula;

(f) The name and address of the person filing such formula;

(g) A certification by the insular gauger that the spirits covered by such certificate were or were not regauged by him when withdrawn from the insular bonded warehouse and, if regauged, were at that time at the proofs indicated on the attached record of gauge.

(h) The name and address of the producer;

(i) For liquor or articles containing liquors produced outside of the Virgin Islands, the country of origin for each such liquor. The person bringing the liquors or articles into the United States shall file the certificate and record of gauge with the district director of customs at the port of entry, as provided in §§250.260 and 250.302.

(Approved by the Office of Management and Budget under control number 1512–0352)

Par. 25. Sections 250.270 and 250.208 are revised to read as follows:

§ 250.207 Destruction of marks and brands.

The marks, brands, and serial numbers required by this part to be placed on barrels, casks, or similar containers, or cases, shall not be removed, obscured or obliterated before the contents thereof have been removed.

§ 250.208 Destruction of stamps.

All stamps or alternative marks used in lieu of distilled spirits stamps, must remain on packages until the contents are emptied. When a package of distilled spirits is emptied, the internal revenue stamp or alternative mark thereon must be completely effaced and obliterated.

(68A Stat. 830, 72 Stat. 1358; (26 U.S.C. 6804, 5205))

§ 250.220 [Amended]

Par. 26. Section 250.220 is amended to replace "Form 698–A" with "Form 698".

Par. 27. The heading of Subpart L and the introductory text of § 250.230 are revised to allow the use of alternative devices. As revised, the title of Subpart L and the introductory text of § 250.230 read as follows. The undesignated center heading "General" remains unchanged.

Subpart L—Red Strip Stamps or Alternative Devices for Distilled Spirits From the Virgin Islands

General

§ 250.230 Containers of distilled spirits to bear red strip stamps or alternative devices.

No person shall transport, possess, buy, sell, or transfer any distilled spirits brought into the United States from the Virgin Islands unless the immediate container has a red strip stamp or alternative device evidencing the determination or payment of all internal revenue taxes. The provisions of this section shall not apply to:

* * * * *

§ 250.231 [Amended]

Par. 28. Section 250.231 is amended to replace "stamps", wherever it appears, with "stamps or alternative devices".

Par. 29. Section 250.233 is revised to allow the use of alternative devices. As revised, § 250.233 reads as follows:

§ 250.233 Affixing strip stamps or alternative devices.

Strip stamps or alternative devices shall be securely affixed to containers so as to leave a portion remaining on the container when the container is opened unless the container is one that cannot again be used after opening. Portions of strip stamps may be trimmed provided no printed (or overprinted) information is cut off. Strip stamps or alternative devices affixed to containers shall not be concealed or obscured in any manner except that (a) the Director may authorize labels to be affixed so as to partially obscure strip stamps or alternative devices, if a need exists, and (b) any such stamp or alternative device may be covered by a cup, cap, seal, carton, wrapping, or other item which can be readily removed without injury to the stamp or alternative device. ATF and customs officers have the right to open such cartons or wrappings and examine the container.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5205))

§ 250.234 [Amended]

Par. 30. Section 250.234 is amended to replace "Form 96" and "Forms 96" wherever they appear, with "Form 5100.8" and "Forms 5100.8" respectively.

Par. 31. Section 250.235 is revised to reflect the use of alternative devices. As revised, § 250.235 reads as follows:

§ 250.235 Disapproval of strip stamps requisitions.

The regional director (compliance) shall refuse to approve any further requisition, Form 428 (5100.7), when he has knowledge that the importer has failed to satisfactorily report the use of strip stamps or alternative devices, as prescribed in this part, or has failed to comply with any of the provisions of this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5205))

§ 250.237 [Amended]

Par. 32. Section 250.237 is amended by removing the last sentence.

Par. 33. Sections 250.240 and 250.240a are revised to modify forms requirements. As revised, these sections read as follows:

§ 250.240 Approval of requisition and issuance of stamps.

The regional director (compliance) will approve Form 428 (5100.7) and issue the stamps if he:

(a) Is satisfied that the importer is the holder of an importer's permit issued under the Federal Alcohol Administration Act and the regulations in Part 1 of this chapter;

(b) Believes that the quantity requisitioned is reasonable and necessary; and

(c) Has no information on which a denial of requisition should be made under the provisions of § 250.235.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5205))

§ 250.240a Alternative method for issuance of stamps.

(a) *Action by regional director (compliance).* When the regional director (compliance) determines that the interest of the Government will be best served thereby, strip stamps may be shipped directly to the applicant, as shown on Form 428, from a location other than the office of the regional director (compliance). In such case, the regional director (compliance) shall notify the applicant that strip stamps will be delivered by an alternative method and inform him of the minimum quantity, if any, of each size of stamps which may be requisitioned on any particular Form 428. Upon approval of Form 428, the distribution will be in accordance with the instructions on the form.

(b) *Action by applicant.* Upon receipt of the stamps, the applicant shall (1) acknowledge receipt of the stamps, noting any apparent discrepancies, on both copies of Form 428, and (2) return one copy to the regional director (compliance) to whom the Form 428 was submitted for approval and, if an agent, one copy to the importer.

(Approved by the Office of Management and Budget under control number 1512–0056)

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5205))

§ 250.242 [Removed]

Par. 34. Section 250.242 is removed.

Par. 35. Section 250.243 is added to allow the use of alternative devices. As added, § 250.243 reads as follows:

§ 250.243 Alternative devices.

(a) *Alternative devices used in lieu of red or green strip stamps.* Importers or owners who wish to use devices other than red or green strip stamps on containers of distilled spirits may use any device which has been announced by the Director to be an approved alternative device or which has been approved for his use pursuant to application filed with the Director.

(b) *Alternative devices.* Alternative devices used in lieu of red or green strip stamps shall be securely affixed to the bottle in such a manner as to leave a portion of the device remaining on the bottle after opening, unless the container is one that cannot again be used after opening. Alternative devices shall bear no lettering or design which is prohibited by Part 5 of this chapter or which conflicts with information on the label.

(c) *Application.* Importers who wish to use alternative devices which have not been approved by announcement of the Director shall file application with the Director. The application shall describe the alternative device and the method of affixing it to containers. Two samples of the proposed alternative device, affixed to empty containers, shall accompany the application.

(Approved by the Office of Management and Budget under control number 1512–0352)

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5205))

Par. 36. Section 250.245 is revised to delete the requirement for Form 1627. As revised, § 250.245 reads as follows:

§ 250.245 Strip stamps on distilled spirits deposited in a foreign-trade zone.

When red strip stamps are affixed in the Virgin Islands to containers of distilled spirits and, on arrival in the United States, the spirits are deposited in a foreign-trade zone, the importer or his agent shall ensure that the stamps will be effectively destroyed or voided under customs supervision prior to exportation. The district director of customs will not approve exportation and will not execute a permit of delivery until the stamps have been effectively destroyed or voided as provided in § 250.252a.

(Sec. 3, Act of June 18, 1934, 48 Stat. 999, as amended (19 U.S.C. 81c); Sec. 201, Pub. L. 85–

859, 72 Stat. 1358, as amended (26 U.S.C. 5205))

§§ 250.246 and 250.249 [Removed]

Par. 37. Sections 250.246 and 250.249 are removed.

Par. 38. Section 250.252 is revised to modify forms requirements. As revised, § 250.252 reads as follows:

§ 250.252 Destruction or transfer of red strip stamps in the Virgin Islands.

When for any reason a Virgin Islands bottler or exporter has on hand a quantity of red strip stamps which are not to be affixed to containers for shipment to the United States, and it is impractical to return the stamps to the importer from whom they were received or to transfer them to another bottler or exporter conducting operations for the importer, the Virgin Islands bottler or exporter may destroy the stamps.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5205))

Par. 39. Sections 250.255 and 250.258 and the undesignated center heading immediately preceding § 250.255 are revised to allow the use of alternative devices. As revised, the undesignated center heading and §§ 250.255 and 250.258 read as follows:

Red Strip Stamps and Alternative Devices To Be Affixed at Port of Entry Under Customs Supervision

§ 250.255 Conditions.

Distilled spirits in containers coming into the United States from the Virgin Islands without having red strip stamps or alternative devices attached may not be released from customs custody until a stamp or alternative device has been affixed to each container, under the supervision of a customs officer.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5205))

§ 250.258 Expense of affixing red strip stamps or alternative devices.

Expenses of cartage, storage, repacking, handling, or other labor connected with the opening of cases and affixing of red strip stamps or alternative devices to the containers shall be borne by the importer, or by the person having title to the distilled spirits, as the case may be.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5205))

Par. 40. A new center heading and § 250.259 are added to Subpart L to read as follows:

Disposition of Red Strip Stamps

§ 250.259 Procedure.

The importer who discontinues or sells his business shall:

(a) Destroy the stock of unused stamps, or

(b) Request instructions from the regional director (compliance) on the disposition of such stamps.

The same procedure may be followed by an importer who has unused stamps for which he has no further use for any reason.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5205))

§ 250.262 [Amended]

Par. 41. Section 250.262 is amended to replace the phrase "covers distilled spirits" with the phrase "covers distilled spirits and such distilled spirits are not being transferred under Subparts O or Oa of this part".

§ 250.266 [Amended]

Par. 42. Section 250.266 is amended to replace the word "liquors" with the phrase "liquors (except spirits transferred under Subparts O or Oa of this part)".

Par. 43. Sections 250.270 and 250.271 and the undesignated center heading immediately preceding § 250.270 are revised to include alternative devices. As revised, the undesignated center heading and §§ 250.270 and 250.271 read as follows:

Record and Report of Red Strip Stamps and Alternative Devices

§ 250.270 Record of strip stamps and alternative devices.

(a) *General.* Each importer shall maintain a daily record of red strip stamps and alternative devices covering all locations where the importer or his agent brings Virgin Islands spirits into the United States.

(b) *Shipments.* The record shall show the number of red strip stamps by size (small or standard) sent to bottlers or exporters in the Virgin Islands to be affixed to bottles of spirits.

(c) *Stamps and devices affixed.* (1) The record shall account for strip stamps and alternative devices affixed to bottles under customs supervision and affixed to bottles that are otherwise brought into the United States.

(2) Accounting shall show strip stamps and alternative devices separately, by the number affixed to bottles.

(Approved by the Office of Management and Budget under control number 1512–0352)

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5205))

§ 250.271 Report of stamps and alternative devices, Form 5100.6.

The importer shall prepare Form 5100.6 for the periods ending March 31, June 30, September 30, and December 31. The report shall cover all locations where the importer or his agents bring Virgin Islands spirits into the United States. The report shall be submitted to the regional director (compliance) of the region in which the importer's principal place of business is located.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5205))

Par. 44. Sections 250.273a and 250.273b are added to provide requirements for the details of the transfer record and package gauge record which replaces ATF Forms 5110.27 and 5110.45 respectively. As added, §§ 250.273a and 250.273b read as follows:

§ 250.273a Transfer record.

The transfer record for Virgin Islands spirits prescribed in § 250.301 shall show the:

(a) Date prepared;

(b) Serial number of the transfer record, beginning with "1" each January 1;

(c) Name of the proprietor and distilled spirits plant number to which consigned;

(d) Name and address of the consignor;

(e) Kind of spirits;

(f) Name of the producer;

(g) Age (in years, months and days) of the spirits;

(h) Proof of the spirits;

(i) Type and serial number of containers; and

(j) Proof gallons of spirits in the shipment.

(Approved by the Office of Management and Budget under control number 1512–0250)

(Sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207))

§ 250.273b Package gauge record.

When required in this part with respect to Virgin Islands spirits, a package gauge record shall be prepared to show:

(a) The date prepared;

(b) The related transaction record and its serial number;

(c) The producer, his name and address; and

(d) For each package, the:

(1) Package identification or serial number;

(2) Kind of spirits;

(3) Gross weight;

(4) Tare;

(5) Net weight;

(6) Proof gallons; and

(7) Proof.

(Approved by the Office of Management and Budget under control number 1512–0250)

Center Heading and § 250.277 [Removed]

Par. 45. The undesignated center heading immediately preceding § 250.277 and § 250.277 are removed.

Par. 46. Section 250.301 is revised to provide for the preparation of a transfer record and to delete the requirement for ATF Form 5110.16. As revised, § 250.301 reads as follow:

§ 250.301 Preparation of transfer record.

The person bringing spirits into the United States from the Virgin Islands under this subpart shall prepare a transfer record, in triplicate, according to § 250.273a, and present the record to the customs officer responsible for inspection and release of the spirits. A separate transfer record shall be prepared for each conveyance.

(Approved by the Office of Management and Budget under control number 1512–0250)

Par. 47. Section 250.302 is revised to reflect the elimination of ATF Form 5110.27. As revised, § 250.302 reads as follows:

§ 250.302 Gauge and certification.

(a) *Gauge.* If Virgin Islands spirits to be transferred from customs custody to internal revenue bond as provided in this subpart are not gauged by an insular gauger at the time of their withdrawal from an insular bonded warehouse, as provided in § 250.204 of this chapter, the insular consignor shall effect a gauge of each bulk container and shall prepare a record of such gauge, in duplicate, and attach both copies to the certificate required by § 250.205 of this chapter. If the gauge is made by the insular gauger his record of gauge shall be prepared in duplicate and both copies shall be attached to the certificate.

(b) *Certification.* The certification prescribed by § 250.205 of this chapter shall be prepared in duplicate if the Virgin Islands spirits are to be transferred from customs custody to internal revenue bond. Both copies of the certificate, with the applicable record of gauge attached, shall be filed with the district director of customs at the port of entry. The original of the certificate and related record of gauge shall be attached by the customs officer to the original of the transfer record received as provided in § 250.301 from the importer.

(Approved by the Office of Management and Budget under control number 1512–0250)

Par. 48. Section 250.303 is revised to reflect the elimination of ATF Forms 5110.27 and 5110.45. As revised, § 250.303 reads as follows:

§250.303 Customs inspection and release.

The customs officer shall not release distilled spirits under this subpart until he inspects the spirits, and, if it appears that losses in transit were sustained from any container, he shall gauge the spirits in such container. If the spirits are in a bulk conveyance, the customs officer shall record the elements of his gauge on the transfer record, or, if the spirits are in packages, on the gauge record required by § 250.302, and attach it to the transfer record. The customs officer shall also record on the transfer record the port of entry, carrier identification, and warehouse entry number. When the consignee has complied with all customs requirements, the customs officer shall release the spirits for transfer to the distilled spirits plant, by dating and signing the transfer record with his title the statement: "To the best of my knowledge the information hereon is accurate and the spirits are released". The customs officer shall retain a copy of the transfer record and any attachment, forward a copy of the transfer record and any attachments to the regional director (compliance), and give the original of the transfer record with any attachments to the consignee.

Par. 49. Section 250.305 is revised to read as follows:

§ 250.305 Receipt by consignee.

Proprietors of distilled spirits plants who receive Virgin Islands spirits under this subpart shall follow the requirements in 27 CFR Part 19 for spirits received by transfer in bond. However, proprietors are not required to file application on ATF Form 5100.16 to receive Virgin Islands spirits from customs custody.

PART 251—IMPORTATION OF DISTILLED SPIRITS, WINES AND BEER

Section O—Part 251 is amended as follows:

Paragraph 1. The table of sections for Part 251 is amended as follows:

Sec.

* * * * *

251.60 * * *

Red Strip Stamps or Alternative Devices for Containers of Distilled Spirits

251.61 Containers of distilled spirits to bear red strip stamps or alternative devices.
251.62 Persons authorized to affix red strip stamps or alternative devices.

* * * * *

251.67 Alternative devices.
251.68 [Reserved]

Sec.

251.69 Affixing strip stamps or alternative devices.

* * * * *

251.73 Withdrawal free of tax: red strip stamps.

Exemptions

251.74 Exemption from requirements pertaining to stamps or alternative devices, marks, bottles, and labels.
251.75 * * *

Subpart F—Red Strip Stamps or Alternative Devices To Be Affixed in a Foreign Country

251.80 * * *
251.85a Strip stamps on distilled spirits deposited in a foreign-trade zone.
251.89a * * *
251.92 Disapproval of strip stamp requisitions.

Subpart G—Red Strip Stamps or Alternative Devices Affixed Under Customs Supervision

* * * * *

251.112 Expense of affixing red strip stamps or alternative devices.

* * * * *

251.122 Red strip stamps or alternative devices.

Subpart I—* * *

Record and Report of Red Strip Stamps and Alternative Devices

251.130 Record of strip stamps and alternative devices.
251.131 Report of strip stamps and alternative devices, Form 5100.6.

* * * * *

251.137 * * *

Other Records

251.138 Transfer record.
251.139 Package gauge record.

* * * * *

251.172 Preparation of transfer record and package gauge record.
251.173 Inspection and release.

* * * * *

251.175 Receipt by consignee.

* * * * *

251.184 Tank cars and tank trucks to be secured.
251.185 Release from Customs Custody.
251.186 [Removed]

* * * * *

Par. 2. Section 251.11 is amended by revising the definitions of *Distilled spirits or spirits and red strip stamps* and by adding a *definition of Kind* to read as follows:

§ 251.11 Meaning of terms.

* * * * *

Distilled spirits or spirits. That substance known as ethyl alcohol, ethanol, or spirits of wine, and all mixtures or dilutions thereof, from whatever source or by whatever process produced, including alcohol, whisky, brandy, gin, rum, and vodka, but not

including wine as defined in this subpart.

* * * * *

Kind. As applied to spirits, kind shall mean class and type as prescribed in 27 CFR Part 5. As applied to wines, kind shall mean the classes and types of wines as prescribed in 27 CFR Part 4.

* * * * *

Red strip stamps. The stamps prescribed under the authority of 26 U.S.C. 5205.

* * * * *

§ 251.56 [Amended]

Par. 3. Section 251.56 is amended to replace "stamped" with "stamped or have alternative devices affixed".

Par. 4. The introductory text of § 251.61 and the undesignated center heading immediately preceding § 251.61 are revised to allow the use of alternative devices. As revised, the undesignated center heading and the introductory text of § 251.61 read as follows:

Red Strip Stamps or Alternative Devices for Containers of Distilled Spirits

§ 251.61 Containers of distilled spirits to bear red strip stamps or alternative devices.

No person shall transport, buy, possess, sell, or transfer any imported distilled spirits, unless the immediate container thereof is stamped with a red strip stamp or has affixed thereto an alternative device, evidencing the determination or payment of all internal revenue taxes. The provisions of this section shall not apply to:

* * * * *

§ 251.62 [Amended]

Par. 5. Section 251.62 is amended to replace "stamps", wherever it appears, with "stamps or alternative devices".

§ 251.64 [Amended]

Par. 6. Section 251.64 is amended by removing the last sentence.

§ 251.64a [Amended]

Par. 7. Section 251.64a is amended to replace "Form 96", wherever it appears, with "Form 5100.6".

Par. 8. Sections 251.66 and 251.66a are revised to eliminate filing instructions for Form 428. Sections 251.66 and 251.66a, as revised, read as follows:

§ 251.66 Approval of requisition and issuance of stamps.

The regional director (compliance) will approve Form 428 (5100.7) and issue the stamps if:

(a) The importer is the holder of an importer's permit issued under the Federal Alcohol Administration Act and the regulations in 27 CFR Part 1;

(b) The quantity requisitioned is reasonable and necessary; and

(c) There is no information on which a denial of a requisition should be made under the provisions of § 251.92.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5205))

§ 251.66a Alternative method for issuance of stamps.

(a) *Action by regional director (compliance).* When the regional director (compliance) determines that the interest of the Government will be best served, strip stamps may be shipped directly to the applicant, as shown on Form 428 (5100.7), from a location other than the office of the regional director (compliance). In that case, the regional director (compliance) shall notify the applicant that strip stamps will be delivered by an alternative method and state the minimum quantity, if any, of each size of stamp which may be requisitioned on any particular Form 428 (5100.7). Upon approvl of Form 428, distribution will be in accordance with the instructions on the form.

(b) *Action by applicant.* Upon receipt of the stamps, the applicant shall (1) acknowledge receipt of the stamps, noting any apparent discrepancies, on both copies of Form 428, and (2) return one copy to the regional director (compliance) to whom the Form 428 was submitted for approval and, if an agent, one copy to the importer.

(Approved by the Office of Management and Budget under control number 1512–0056)

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5205))

Par. 9. A new § 251.67 has been added to permit the use of alternative devices by importers. As added, § 251.67 reads as follows:

§ 251.67 Alternative devices.

(a) *Alternative devices used in lieu of red or green strip stamps.* Importers who wish to use devices other than red strip stamps on containers of distilled spirits may use any device which has been announced by the Director to be approved alternative device or which has been approved for his use pursuant to application filed with the Director.

(b) *Alternative devices.* Alternative devices used in lieu of red strip stamps shall be securely affixed to the bottle in such a manner as to leave a portion of the device remaining on the bottle after opening, unless the container is one that cannot again be used after opening. Alternative devices shall bear no lettering or design which is prohibited by Part 5 of this chapter or which conflicts with information on the label.

(c) *Application.* Importers who wish to use alternative devices which have not been approved by announcement of the Director shall file application with the Director. The application shall describe the alternative device. Two samples of the proposed alternative device affixed to empty containers, shall accompany the application.

(Approved by the Office of Management and Budget under control number 1512–0352)

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5205))

§ 251.68 [Removed]

Par. 10. Section 251.68 is removed.

§ 251.73 [Amended]

Par. 11. Section 251.73 is amended to replace "without payment" with "free".

Par. 12. Sections 251.69, 251.74, and 251.75 have been revised to permit the use of alternative devices by importers. As revised, §§ 251.69, 251.74 and 251.75 read as follows:

§ 251.69 Affixing strip stamps or alternative devices.

Strip stamps or alternative devices shall be securely affixed to containers so as to leave a portion remaining on the container when the container is opened unless the container is one that cannot again be used after opening. Portions of strip stamps may be trimmed provided no printed information is cut off. Strip stamps or alternative devices affixed to containers shall not be concealed or obscured in any manner except that (a) the Director may authorize labels to be affixed so as to partially obscure strip stamps or alternative devices, if a need exists, and (b) any such stamp or alternative devices may be covered by a cup, cap, seal, carton, wrapping, or other item which can be readily removed without injury to the stamp or alternative device. ATF and customs officers have the right to open such cartons or wrappings and examine the container.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5205))

§ 251.74 Exemption from requirements pertaining to stamps or alternative devices, marks, bottles, and labels.

The provisions of this part relating to the affixing of red strip stamps or alternative devices and the labeling of containers as prescribed by 27 CFR Part 5 are not applicable to imported distilled spirits (a) not for sale or for any other commercial purpose whatever; (b) on which no internal revenue tax is required to be paid or determined on or

before withdrawal from customs custody; (c) for use as ship stores; or (d) for personal use. Samples of distilled spirits, other than those provided for in § 251.49 and § 251.75, imported for any purpose are not exempt from the requirements pertaining to stamps or alternative devices, marks, bottles, and labels. Samples of wine and beer brought into the United States pursuant to § 251.49 are exempt from the labeling requirements of 27 CFR Parts 4 and 7, respectively. Exemptions from the requirement that imported distilled spirits, wines, and beer be marked to indicate the country of origin are set forth in customs regulations (19 CFR Part 11).

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended, 1374, as amended (26 U.S.C. 5205, 5301))

§ 251.75 Samples of distilled spirits, wine, and beer for quality control purposes.

Samples of distilled spirits, wine, and beer in containers of a capacity of not more than 1.75 liters, imported solely for quality control purposes (laboratory testing and analysis) and not for sale or for use in the manufacture or production of any article for sale, shall be exempt from any requirements relating to stamps or alternative devices, marks, bottles, labels, and standards of fill. Samples imported for quality control purposes shall not be exempt from the payment of any internal revenue tax imposed on, or by reason of, importation.

Par. 13. The heading of Subpart F is revised to include alternative devices. As revised, the title of Subpart F read as follows:

Subpart F—Red Strip Stamps or Alternative Devices To Be Affixed in a Foreign Country

Par. 14. Section 251.85a is revised to eliminate Form 1627 and strip stamp accounting in foreign trade zones. As revised, § 251.85a reads as follows:

§ 251.85a Strip stamps on distilled spirits deposited in a foreign-trade zone.

When red strip stamps are affixed abroad to containers of imported distilled spirits and, on arrival in the United States, the spirits are deposited in a foreign-trade zone, the importer or his agent shall ensure that the stamps will be effectively destroyed or voided under customs supervision prior to exportation. The district director of customs will not approve such exportation and will not execute a permit of delivery until the stamps have been effectively destroyed or voided as provided in § 251.72.

(Sec. 3, Act of June 18, 1934, 48 Stat. 999, as amended, (19 U.S.C. 81c); Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5205))

§§ 251.86 and 251.88 [Removed]

Par. 15. Sections 251.86 and 251.88 are removed to reflect the elimination of unnecessary records requirements.

Par. 16. Section 251.89a is revised to reflect the elimination of Form 1627. As revised § 251.89a reads as follows:

§ 251.89a Destruction or transfer of red strip stamps abroad.

When for any reason a foreign bottler or exporter has on hand a quantity of red strip stamps which are not to be affixed to containers for export to the United States, and it is impractical to return the stamps to the importer from whom they were received or to transfer them to another bottler or exporter conducting operations for the importer, the foreign bottler or exporter may destroy the stamps.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5205))

Par. 17. Section 251.92 is revised to remove unnecessary accounting procedures for strip stamps. As revised § 251.92 reads as follows:

§ 251.92 Disapproval of strip stamps requisitions.

The regional director (compliance) shall refuse to approve any further requisitions, Form 428 (5100.7), when he has knowledge that the importer has failed to satisfactorily report the use of strip stamps or alternative devices, as prescribed in this part, or has failed to comply with any of the provisions of this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5205))

Par. 18. Section 251.110 and the heading for Subpart G are revised to permit the use of alternative devices. As revised, § 251.110 and the title for Subpart G read as follows:

Subpart G—Red Strip Stamps or Alternative Devices Affixed Under Customs Supervision

§ 251.110 Conditions.

Distilled spirits in containers imported without having red strip stamps or alternative devices attached may not be released from customs custody until a stamp or alternative device has been affixed to each container, under the supervision of a customs officer.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5205))

§ 251.111 [Amended]

Par. 19. Section 251.111 is amended to replace "§ 251.66a, and § 251.68" with "§ 251.66a".

Par. 20. Sections 251.112 and 251.122 are revised to reflect the use of alternative devices and eliminate the reference to overprinting. As revised, these sections read as follows:

§ 251.112 Expense of affixing red strip stamps or alternative devices.

Expenses of cartage, storage, repacking, handling, or other labor connected with the opening of cases and affixing of red strip stamps or alternative devices to the containers, shall be borne by the importer, or by the subsequent purchaser of the distilled spirits, as the case may be.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5205))

§ 251.122 Red strip stamps or alternative devices.

Red Strip stamps or alternative devices shall be affixed to containers of imported distilled spirits bottled in a class 8 customs bonded warehouse.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5205))

Par. 21. Sections 251.130, 251.131, and the undesignated center heading immediately preceding § 251.130 are revised to reflect simplification of recordkeeping requirements for strip stamps and to provide for alternative devices. As revised, the sections and center heading read as follows:

Record and Report of Red Strip Stamps and Alternative Devices

§ 251.130 Record of strip stamps and alternative devices.

(a) *General.* Each importer shall maintain a daily record of strip stamps and alternative devices covering all locations where the importer or his agent imports spirits into the United States.

(b) *Shipments.* The record shall show the number of strip stamps by size (small or standard) sent to bottlers or exporters in a foreign country to be affixed to bottles of spirits.

(c) *Stamps and devices affixed.* (1) The record shall account for strip stamps and alternative devices affixed to bottles under customs supervision and affixed to bottles that are otherwise imported into the United States.

(2) Accounting shall show strip stamps and alternative devices separately, by the number affixed to bottles.

(Approved by the Office of Management and Budget under control number 1512–0352)

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5205))

§ 251.131 Report of strip stamps and alternative devices, Form 5100.6.

The importer shall prepare Form 5100.6 for the periods ending March 31, June 30, September 30, and December 31. The report shall cover all locations where the importer or his agents imported spirits into the United States. The report shall be submitted to the regional director (compliance) of the region in which the importer's place of business is located.

(Approved by the Office of Management and Budget under control number 1512–0049)

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5205))

Par. 22. Sections 251.138, 251.139 and an undesignated center heading immediately preceding § 251.138 are added to Subpart I to provide requirements for the details of the transfer record and package gauge record which replaces ATF Forms 5110.27 and 5110.45 respectively. As added, the sections and the undesignated center heading read as follows:

Other Records

§ 251.138 Transfer record.

The transfer record for imported spirits prescribed in § 251.172 shall show the:

(a) Date prepared;

(b) Serial number of the transfer record, beginning with "1" each January 1;

(c) Name and distilled spirits plant number of the proprietor who received the spirits from customs custody;

(d) Country of origin;

(e) Name of foreign producer;

(f) Kind of spirits;

(g) Age, in years, months and days of the spirits;

(h) Proof of the spirits;

(i) Type and number of containers; and

(j) Proof gallons of spirits in the shipment.

(Approved by the Office of Management and Budget under control number 1512–0250)

§ 251.139 Package gauge record.

When required in this part, a package gauge record shall be prepared to show:

(a) The date prepared;

(b) The related transaction record and its serial number; and

(c) For each package:

(1) Package identification or serial number;

(2) Kind of spirits;

(3) Gross weight;

(4) Proof;

(5) Proof gallons;

(6) Name of warehouseman who received the spirits from customs custody; and

(7) Name of importer.

(Approved by the Office of Management and Budget under control number 1512–0250)

Par. 23. Section 251.160 is revised to reflect the simplification of records of destruction for strip stamps. As revised, § 251.160 reads as follows:

§ 251.160 Disposition of strip stamps.

The importer who discontinues or sells his business shall; (a) destroy the stocks of unused stamps, or (b) request instructions from the regional director (compliance) on the disposition of such stamps. The same procedure may be followed by an importer who has unused stamps for which he has no further use for any reason.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5205))

§ 251.171 [Amended]

Par. 24. Section 251.171 is amended to replace "Part 19 of this chapter. The" with "27 CFR Part 19. However, distilled spirits plant proprietors are not required to file application on ATF Form 5100.16 to receive imported spirits from customs custody. The".

Par. 25. Section 251.172 is revised to provide for the preparation of a transfer record and to delete the requirement for ATF Form 5100.16. As revised, § 251.172 reads as follows:

§ 251.172 Preparation of transfer record and package gauge record.

The person importing spirits under this subpart shall prepare a transfer record according to § 251.138. A separate transfer record shall be prepared for each conveyance. If the spirits are in packages he shall prepare a package gauge record according to § 251.139 and attach it to the transfer record. The transfer record and the package gauge record shall be prepared in triplicate, and, upon release of the spirits from customs custody one copy will be given to the customs officer, one copy will be forwarded to the regional director (compliance) of the region in which the consignee is located, and the original will be forwarded to the consignee.

(Approved by the Office of Management and Budget under control number 1512–0250)

Par. 26. Section 251.173 is revised to reflect the elimination of ATF Forms 5110.27 and 5110.45. As revised, § 251.173 reads as follows:

§ 251.173 Inspection and release.

The customs officer shall not release distilled spirits under this subpart until he inspects the spirits. If it appears that losses in transit were sustained from any container, the customs officer shall gauge the spirits in such container and enter the elements of gauge on the transfer record if the spirits are in a bulk conveyance or on the package gauge record if the spirits are in packages. The customs officer shall enter on the transfer record the port of entry, carrier identification, warehouse entry number, applicable rate of duty, and serial number of any customs seals affixed to bulk conveyances. When all customs requirements are complied with, he shall release the spirits for transfer to the distilled spirits plant by dating and signing on the transfer with his title the statement: "To the best of my knowledge the information hereon is accurate and the spirits are released." The original of the transfer record with any attachments shall be retained by the consignee.

(Sec. 3, Pub. L. 90–630, 82 Stat. 1328, as amended (26 U.S.C. 5232))

Par. 27. Section 251.175 is revised to read as follows:

§ 251.175 Receipt by consignee.

Proprietors of distilled spirits plants who receive imported spirits under this subpart shall follow the requirements in 27 CFR Part 19 for spirits received by transfer in bond. However, proprietors are not required to file application on ATF Form 5100.16 to receive imported spirits from customs custody.

Par. 28. Sections 251.182, 251.184 and 251.185 are revised to reflect the elimination of ATF Form 5110.26. As revised, the sections read as follows:

§ 251.182 Application and permit, Form 1444.

(a) *Application.* (1) Application on Form 1444 shall be filed by the United States or a governmental agency thereof for a permit to procure and withdraw imported spirits free of tax for nonbeverage use.

(2) A separate application shall be filed for each port of entry.

(3) The application shall be signed by a person authorized to sign for the department or agency. Documentation of authority to sign shall be furnished with the application.

(b) *Use of spirits.* Agencies shall ensure that spirits are used only for Government purposes.

(c) *Cancellation of permit.* All permits on Form 1444, shall remain in force until surrendered or canceled.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1375, as amended (26 U.S.C. 5313))

§ 251.184 Tank cars and tank trucks to be secured.

When a shipment of distilled spirits from customs custody is made in a tank car or tank truck, all openings affording access to the spirits shall be secured in such manner as will prevent unauthorized removal of spirits through such openings without detection.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1375, as amended (26 U.S.C. 5313))

§ 251.185 Release from customs custody.

(a) *Release.* When the appropriate Form 1444 is filed with the district director of customs, spirits may be released free of tax to the United States or governmental agency named in the permit.

(b) *Shipments under permit.* When the spirits are released from customs custody for shipment, Form 1473 shall be prepared and distributed as follows:

(1) A copy to the consignee agency; and

(2) A copy for the Customs files.

If the customs officer gauged the spirits, he shall certify and distribute the report of gauge as required in § 251.173 with Form 1473.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1375, as amended (26 U.S.C. 5313))

§ 251.186 [Removed]

Par. 29. Section 251.186 is removed.

PART 252—EXPORTATION OF LIQUORS

Section P. Part 252 is amended as follows:

Paragraph 1. The table of sections for Part 252 is amended as follows:

Sec.

* * * * *

252.99 [Reserved]
252.100 [Reserved]

* * * * *

252.104a Certificate of authenicity.

* * * * *

252.195 [Reserved]

* * * * *

252.197 Return of spririts withdrawn for export with benefit of drawback.
252.198 Notice of return.
252.199 Responsibility for return of spirits withdrawn for export with benefit of drawback.

* * * * *

252.219 Return of wine withdrawn for export with benefit of drawback.
252.220 Notice of return.
252.220a Responsibility for return of wine withdrawn for export with benefit of drawback.

* * * * *

252.263 [Reserved]

* * * * *

Customs Gauge

252.291 Customs Form 6001.

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Par. 2. Section 252.3 is revised due to recodification of Part 13 as 27 CFR Part 30. As revised, § 252.3 reads as follows:

§ 252.3 Related regulations.

Procedural and substantive instructions dealing with operations which are related to the regulations in this part will be found in the regulations listed below:

19 CFR Chapter I—Customs Regulations
27 CFR Part 19—Distilled Spirits Plants
27 CFR Part 21—Formulas for Denatured Alcohol and Rum
27 CFR Part 30—Gauging Manual
27 CFR Part 194—Liquor Dealers
27 CFR Part 211—Distribution and Use of Denatured Alcohol and Rum
27 CFR Part 231—Taxpaid Wine Bottling Houses
27 CFR Part 240—Wine
27 CFR Part 245—Beer
27 CFR part 1—Basic Permit Requirements Under the Federal Alcohol Administration Act
27 CFR Part 4—Wine Labeling and Advertising
31 CFR Part 225—Acceptance of Bonds, Notes, or Other Obligations Issued or Guaranteed by the United States as Security in Lieu of Surety or Sureties on Penal Bonds.

§ 252.36 [Amended]

Par. 3. Section 252.36 is amended to replace "1582–B, 1629" with "1582–B."

§ 252.65 [Amended]

Par. 4. Section 252.65 is amended to eliminate "Form 1582" and substitute "ATF Form 5110.30" in lieu thereof wherever it appears and to eliminate ",252.201," wherever it appears.

§ 252.71 [Amended]

Par. 5. Section 252.71 is amended to eliminate "252.201," wherever it appears.

Par. 6. Section 252.92 is revised to delete unnecessary forms instructions. As revised, § 252.92 reads as follows:

§ 252.92 Application or notice, ATF Form 5100.11.

(a) *Export, use on vessels and aircraft, and transfer to a foreign-trade zone or a customs bonded warehouse.* Application for or notice of the withdrawal of distilled spirits without payment of tax for exportation from the United States, or for use on vessels and aircraft, or for transfer to a customs bonded warehouse or a foreign-trade zone, shall be made by the exporter on ATF Form 5100.11. If the exporter is not the proprietor of the bonded premises of the distilled spirits plant from which the spirits are to be withdrawn, the exporter shall prepare ATF Form 5100.11 as an application, in accordance with the instructions on the form, and shall forward all copies of the form to the regional director (compliance) of the region in which the distilled spirits plant is located. If the exporter is the proprietor of the bonded premises of the distilled spirits plant from which the spirits are withdrawn, the exporter shall prepare ATF Form 5100.11 as a notice in accordance with the instructions on the form.

(b) *Manufacturing bonded warehouse.* Application for the withdrawal of distilled spirits without payment of tax for transportation to and deposit in a manufacturing bonded warehouse shall be made by the proprietor of such warehouse on ATF Form 5100.11, in accordance with the instructions on the form.

(Approved by the Office of Management and Budget under control number 152–0190)

(Sec. 201, Pub. L. 85–859, 72 Stat. 1362, as amended (26 U.S.C. 5214); Sec. 3, Pub. L. 91–659, 84 Stat. 1965, as amended (26 U.S.C. 5066))

§ 252.96 [Amended]

Par. 7. Section 252.96 is amended to replace "If" with "When filed as an application, and".

Par. 8. Section 252.98 is revised to delete ATF Form 5110.45, which is eliminated, and substitute, in lieu thereof, reference to the package gauge record and to clarify the language. As revised, § 252.98 reads as follows:

§ 252.98 Inspection and regauge.

The proprietor shall inspect all containers to be withdrawn pursuant to ATF Form 5100.11 and shall regauge all packages, except those which are to be withdrawn on the filling or production gauge as authorized in 27 CFR Part 19. If the withdrawal is to be made subject to regauge, the proprietor shall prepare a package gauge record as provided in 27 CFR Part 19, enter the total proof gallons regauged on ATF Form 5100.11, and attach a copy of the package gauge record to each copy of ATF Form 5100.11. If a proprietor wishes to reduce the proof of spirits contained in packages to be withdrawn pursuant to ATF Form 5100.11, he shall make such proof reduction incident to regauge of the packages.

(Approved by the Office of Management and Budget under control number 1412–0190 and 1512–0250)

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5204))

§§ 252.99 and 252.100 [Removed]

Par. 9. Sections 252.99 and 252.100 are removed.

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Par. 10. Section 252.101 is revised to allow for export marks to be placed on containers in lieu of distilled spirits stamps. As revised, § 252.101 reads as follows:

§ 252.101 Packages to be stamped.

Each package and authorized bulk conveyance of spirits (including tank cars and tank trucks but not pipelines) withdrawn without payment of tax under the provisions of this subpart shall be stamped with a distilled spirits stamp or marked with the word "EXPORT" in accordance with the provisions of 27 CFR Part 19 prior to its removal from the bonded premises.

(Approved by the Office of Management and Budget under control number 1512–0189)

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5205))

Par. 11. Section 252.102 is revised to provide an exemption from overprinting strip stamps or alternative devices in certain instances. As revised, § 252.102 reads as follows:

§ 252.102 Bottles to be stamped or have alternative devices affixed.

Every bottle containing distilled spirits to be withdrawn under the provisions of this subpart shall have a strip stamp or alternative device procured and affixed in accordance with the provisions of 27 CFR Part 19. The strip stamp or alternative device shall be legibly and permanently overprinted or stamped with the work "EXPORT". However, upon approval by the Director, strip stamps or alternative devices need not be so overprinted when the label or other information on the bottle clearly indicates that the spirits are intended for export.

(Approved by the Office of Management and Budget under control number 1512–0189)

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5205))

Par. 12. Section 252.14 is revised to delegate the certification of Form 2177 to ATF officers and to clarify language. As revised, § 252.104 reads as follows:

§ 252.104 Certificates of origin.

The entry of distilled spirits at ports in certain foreign countries is permitted only upon the filing by the importer of an official certificate showing the origin and age of such spirits. An ATF officer may, on request of the applicant, furnish a certificate showing the origin and age of the spirits described on ATF Forms 5100.11 or 5110.30. The issuing officer may require supporting documentation to be provided by the applicant. Certificates of origin and age shall be furnished on Form 2177. Form 2177 may also be issued for distilled spirits removed to a foreign-trade zone, in which case the number and location of the foreign-trade zone shall be shown on the form in lieu of the name of the foreign country.

Par. 13. Section 252.107 is revised to delete "ATF Form 5110.45", which is obsolete, and substitute in lieu thereof, "package gauge record". As revised, § 252.107 reads as follows:

§ 252.107 Disposition of forms.

ATF Form 5100.11 and any accompanying package gauge record shall be distributed by the proprietor in accordance with the instruction on ATF Form 5100.11.

(Approved by the Office of Management and Budget under control number 1512–0250)

(Sec. 201, Pub. L. 85–859, 72 Stat. 1362, as amended (26 U.S.C. 5214))

Par. 14. Section 252.115 is revised to liberalize the requirements for returning spirits to a distilled spirits plant after withdrawal for exploration. As revised § 252.115 reads as follows:

§ 252.115 General.

Spirits which have been lawfully withdrawn without payment of tax under the provisions of this subpart for exportation, or for deposit in a foreign-trade zone, a manufacturing bonded warehouse, or a customs bonded warehouse, or for use on vessels and aircraft may, subject to the requirements of § 252.116, be returned:

(a) To the bonded premises of a distilled spirits plant for redistillation; or

(b) To the bonded premises from which withdrawn, pending subsequent removal for lawful purposes. However, such spirits may only be returned before they are exported, deposited in a foreign-trade zone, a manufacturing bonded warehouse, or a customs bonded warehouse, or laden as supplies upon or used on vessels or aircraft, as the case may be.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1362, as amended, 1365 as amended (26 U.S.C. 5214, 5223); Sec. 3, Pub. L. 91–659, 84 Stat. 1365, as amended (26 U.S.C. 5066))

Par. 15. Section 252.122 is revised to delete unnecessary forms instructions. As revised § 252.122 reads as follows:

§ 252.122 Application or notice, ATF Form 5100.11.

(a) *Export, use on vessels and aircraft, transfer to a customs bonded warehouse, and transfer to a foreign-trade zone.* The exporter shall, where he is not the proprietor of the bonded wine cellar from which the wine is to be withdrawn, make application on ATF Form 5100.11 to the regional director (compliance) of the region in which the bonded wine cellar is located, for approval of the withdrawal. Where the exporter is the proprietor of the bonded wine cellar from which the wine is to be withdrawn, he shall, at the time of withdrawal of the wine, prepare a notice of the withdrawal and shipment on ATF For 5100.11. Prior approval by the regional director (compliance) is not required when the withdrawal is by the proprietor of the bonded wine cellar.

(b) *Manufacturing bonded warehouse.* Application for the withdrawal of wine without payment of tax for transportation to and deposit in a manufacturing bonded warehouse, shall be made by the proprietor of such warehouse on ATF Form 5100.11. The proprietor shall forward all copies of the application to the regional director (compliance) of the region in which is located the bonded wine cellar from which the wine is to be withdrawn, for approval prior to withdrawal of the wine.

(c) *Action by regional director (compliance).* Where, under the provisions of paragraphs (a) and (b) of this section, an ATF Form 5100.11 is submitted to the regional director (compliance) for approval, the regional director (Compliance) shall, if satisfied that the application is in order and that the applicant has on file a good and sufficient bond, approve the application and forward it to the proprietor of the premises from which the wines are to be withdrawn.

(d) *Restriction on shipment.* Where, under the provisions of paragraphs (a) and (b) of this section, prior approval of ATF Form 5100.11 by the regional director (compliance) is required, the proprietor of the bonded wine cellar may not ship the wine until the approved ATF Forms 5100.11 have been received by him. In such cases, the proprietor of the bonded wine cellar shall, on removal of the wines, execute his certificate of removal on ATF Form 5100.11.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1380, as amended (26 U.S.C. 5326))

Par. 16. Section 252.152 is revised to delete unnecessary forms instructions and to clarify language. As revised, § 252.152 reads as follows:

§ 252.152 Notice, ATF Form 5100.11.

Notice of withdrawal of specially denatured spirits, as authorized in § 252.151 shall be made on ATF Form 5100.11 by the proprietor of the distilled spirits plant from which the denatured spirits are to be withdrawn., Upon removal of the denatured spirits from the bonded premises, a copy of the form

shall be submitted to the regional director (compliance).

Par. 17. Section 252.160 is revised to liberalize the requirements for returning denatured spirits to a distilled spirits plant after withdrawal for exportation. As revised, § 252.160 reads as follows:

§ 252.160 General.

Specially denatured spirits, which have been lawfully withdrawn free of tax under the provisions of this part for exportation, or for deposit in a foreign-trade zone, may, subject to the requirements of § 252.161, be returned:

(a) To the bonded premises of a distilled spirits plant for redistillation; or

(b) To the bonded premises of any distilled spirits plant pending subsequent lawful withdrawal free of tax. However, such specially denatured spirits may only be returned before they are exported, or deposited in a foreign-trade zone. If the specially denatured spirits are to be returned to bonded premises for storage without redistillation, the proprietor shall also execute a consent of surety Form 1533 to extend the terms of his operations or unit bond to cover the return and storage of such specially denatured spirits.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1362, as amended, 1365, as amended (26 U.S.C. 5214, 5223))

Par. 18. Section 252.161 is amended to remove the flush paragraph at the end of the section .

Par. 19. The introductory text of § 252.171 is revised to reflect the use of export markings in lieu of distilled spirits stamps on containers of distilled spirits. As revised, the introductory text of § 252.171 reads as follows:

§ 252.171 General.

Distilled spirits manufactured, produced, bottled in bottles, packed in containers, or packaged in casks or other bulk containers in the United States on which an internal revenue tax has been paid or determined, and which have been marked or stamped, including the affixing of alternative devices, under the provisions of 27 CFR Part 19 and of this part, as applicable, especially for export with benefit of drawback may be:

* * * * *

Par. 20. Section 252–190 is revised to eliminate unnecessary forms instructions. As revised, § 252.190 reads as follows:

§ 252.190 Notice, ATF Form 5110.30.

Notice of shipment of distilled spirits for export, for use as supplies on vessels or aircraft, for deposit in a foreign-trade zone, or for deposit in a customs bonded warehouse, shall be prepared by the exporter on ATF Form 5110.30, in accordance with the instructions on the form.

(48 Stat. 690, as amended, 48 Stat. 999, as amended, 72 Stat. 1336, as amended, 84 Stat. 1965; 19 U.S.C. 1309, 81c, 26 U.S.C. 5062, 5066)

Par. 21. Section 252.192 is revised to read as follows:

§ 252.192 Packages of distilled spirits to be gauged.

Except for spirits which may be tax determined on the basis of the original gauge, spirits in packages which are to be removed for export with benefit of drawback, shall be gauged by the distilled spirits plant proprietor prior to preparation of notice on ATF Form 5110.30. When spirits in packages are gauged, a package gauge record shall be prepared by the proprietor, as provided in 27 CFR Part 19, and a copy of the package gauge record shall be attached to each copy of ATF Form 5110.30 and considered a part of the claim.

(Approved by the Office of Management and Budget under control number 1512–0250 and 1512–0199)

(Sec. 201, Pub. L. 85–859, 72 Stat. 1336, as amended (26 U.S.C. 5062))

§ 252.195 [Removed]

Par. 22. Section 252.195 is removed.

Par. 23. Section 252.195a is revised to eliminate forms filing instructions. As revised, § 252.195a reads as follows:

§ 252.195a Claims on spirits tax determined before January 1, 1980.

The bottler or packager of the spirits shall compute the drawback rate, unless the regional director (compliance) established a standard drawback rate before January 1, 1980. The bottler or packager shall complete Parts II and III on both copies of ATF Form 5110.30. If a standard drawback rate was established, the date of approval of the formula and the number shall be shown in any available space in Part II of ATF Form 5110.30. The bottler or packager shall file one copy as the claim for drawback of tax with the regional director (compliance) of the region in which the claimant's premises are located, and retain one copy on file. Each claim on ATF Form 5110.30 shall be supported by applicable records and supporting documents are required by the instructions on the form.

(Approved by the Office of Management and Budget under control number 1512–0250 and 1512–0199)

(Sec. 201, Pub. L. 85–859, 72 Stat. 1336, as amended (26 U.S.C. 5062))

Par. 24. Section 252.195b is revised to delete "ATF Form 5110.45", which is obsolete, and substitute, in lieu thereof, "package gauge record", and to clarify language. As revised, § 252.195b reads as follows:

§ 252.195b Claims on spirits tax determined on and after January 1, 1980.

(a) *Preparation.* Claims for drawback of tax on spirits tax determined on and after January 1, 1980, and withdrawn for any purpose authorized by § 252.171, shall be prepared in duplicate by the bottler or packager on Parts II and III of ATF Form 5110.30.

(b) *Supporting documents.* Each claim shall be supported by an invoice, bill of lading or other document which identifies the date of tax determination, unless the bill of lading required by § 252.250 identifies this date. Additional supporting documents are required if the claim covers distilled spirits products on which the claimed drawback rate exceeds $10.50 per proof gallon (e.g., a product containing alcoholic flavoring materials on which drawback has been claimed by the manufacturer of the material under 26 U.S.C. 5131–5134). For each such product, the additional supporting documents shall consist of a copy of each related dump and batch record, package gauge record as prescribed in 27 CFR Part 19, and/or bottling and packaging record. The regional director (compliance) may also require these or other supporting documents for any distilled spirits product.

(c) *Filing.* One copy of the claim, with supporting documents, if required, shall be filed with the regional director (compliance). The bottler or packager shall retain the other copy on file.

(Approved by the Office of Management and Budget under control number 1512–0198)

(Sec. 201, Pub. L. 85–859, 72 Stat. 1336, as amended (26 U.S.C. 5062))

Par. 25. Sections 252.197, 252.198 and 252.199 are added to Subpart I to incorporate provisions for the return by exporters of spirits that were withdrawn on determination of tax for export with benefit of drawback, to the bonded premises of the plant where bottled or packaged or to the wholesale liquor dealer premises or taxpaid storeroom operated in conjunction with such plant. As added, §§ 252.197, 252.198 and 252.199 read as follows:

§ 252.197 Return of spirits withdrawn for export with benefit of drawback.

When notice is filed by an exporter as provided in § 252.198, spirits on which the tax has been paid or determined, and which were withdrawn especially for export with benefit of drawback as provided in § 252.171, but which spirits have not been laden for export, laden

for use, or deposited in a customs bonded warehouse or foreign-trade zone, may for good cause be returned under the applicable provisions of this part and 27 CFR Part 19:

(a) To the bonded premises of the distilled spirits plant for purposes authorized under 26 U.S.C.; or

(b) To a wholesale liquor dealer; or

(c) To a taxpaid storeroom.

The export marks on spirits returned under this section shall be removed by obliteration, restamping, relabeling or recasing.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1336, as amended (26 U.S.C. 5062))

§ 252.198 Notice of return.

If an exporter desires to return spirits to a distilled spirits plant, wholesale liquor dealer or taxpaid storeroom, as provided in § 252.197, he shall file a notice, executed under the penalties of perjury, with the regional director (compliance) for the region in which the claim for drawback of tax was filed. The notice shall be prepared in triplicate for submission to the customs official as required in § 252.199. The notice shall show the:

(a) Name, address, and plant number of the distilled spirits plant which packaged or bottled the spirits;

(b) Date and serial number of the ATF Form 5110.30 on which the spirits were withdrawn;

(c) Present location of the spirits to be returned;

(d) Number, size and identification of the containers;

(e) Proof of spirits;

(f) Reason for the return; and

(g) Planned disposition of the returned spirits.

(Approved by the Office of Management and Budget under control number 1512–0206)

(Sec. 201, Pub. L. 85–859, 72 Stat. 1336, as amended (26 U.S.C. 5062))

§ 252.199 Responsibility for return of spirits withdrawn for export with benefit of drawback.

The exporter shall be responsible for arranging the return of the spirits under this subpart to the proprietor or wholesale liquor dealer who will receive them. The exporter or his agent shall submit the original and copies of the notice required by § 252.198 to the appropriate customs official. If the spirits are returned before ATF Form 5110.30 has been filed with the customs official, the exporter shall submit Form 5110.30 with the notice. The customs officer shall, if the spirits are eligible for return under § 252.197, accept the notice as authority for the return of the spirits to the premises identified in the notice. The customs official shall acknowledge receipt on the notice, retain a copy, and return the original and one copy of the notice to the exporter. The exporter shall retain the copy of the notice and file the original of the notice with the regional director (compliance) identified thereon.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1336, as amended (26 U.S.C. 5062))

Par. 26. Sections 252.219, 252.220 and 252.220a are added to Subpart K to incorporate provisions in regulations for the return by exporters of wine that was withdrawn on determination of tax for export with benefit of drawback, to a taxpaid storeroom on the bonded wine cellar from which withdrawn, or to a wholesale liquor dealer. As added §§ 252.219, 252.220 and 252.220a read as follows:

§ 252.219 Return of wine withdrawn for export with benefit of drawback.

When notice is filed by an exporter as provided in § 252.220, wine on which the tax has been paid or determined, and which was withdrawn especially for export with benefit of drawback as provided in § 252.211, but which wine has not been laden for export, laden for use, or deposited in a foreign-trade zone, may for good cause be returned under the applicable provisions of this part and 27 CFR Part 240:

(a) To a taxpaid storeroom at a bonded wine celler; or

(b) To a wholesale liquor dealer.

The export marks on wines returned under this section shall be removed from the containers.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1336, as amended (26 U.S.C. 5062))

§ 252.220 Notice of return.

If an exporter desires to return wine to a bonded wine cellar or wholesale liquor dealer as provided in § 252.119, he shall file a notice, executed under the penalties of perjury, with the regional director (compliance) for the region in which the claim for drawback of tax was filed. The notice shall be prepared in triplicate for submission to the customs official as required in § 252.220a. The notice shall show the:

(a) Name, address, and registration number of the bonded wine cellar from which withdrawn;

(b) Date and serial number of the Form 1582–A on which the wine was withdrawn;

(c) Present location of the wine to be returned;

(d) Number, size and identification of the containers;

(e) Total wine gallons for each tax class of wine; and

(f) Reason for the return.

(Approved by the Office of Management and Budget under control number 1512–0292)

(Sec. 201, Pub. L. 85–859, 72 Stat. 1336, as amended (26 U.S.C. 5062))

§ 252.220a Responsibility for return of wine withdrawn for export with benefit of drawback.

The exporter shall be responsible for arranging the return of wine under this subpart to the proprietor or wholesale liquor dealer receiving the wine. The exporter or his agent shall submit the original and copies of the notice required by § 252.220 to the appropriate customs official. If the wine is returned before Form 1582–A has been filed with the customs official, the exporter shall submit ATF Form 1582–A with the notice. The customs officer shall, if the wine is eligible for return under § 252.219, accept the notice as authority for the return of the wine to the premises identified in the notice. The customs officer shall acknowledge receipt of the notice, retain a copy, and return the original and one copy of the notice to the exporter. The exporter shall retain the copy and file the original of the notice with the regional director (compliance) identified thereon.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1336, as amended (26 U.S.C. 5062))

§ 252.263 [Removed]

Par. 27. Section 252.263 is removed.

Par. 28. Section 252.264 is revised to read as follows:

§ 252.264 Lading for exportation.

On receipt of the notifcation required in § 252.261, the district director of customs shall deliver both copies of the application, claim, or notice, ATF Form 5100.11, 5110.30, 1582–A, 1582–B, or 1689, as the case may be, covering the shipment, together with any forms which may be attached thereto, to a customs officer for inspection and supervision of lading. Such shipment shall be subject to the same requirements for inspection and supervision of lading at the port of exportation as may be required by Customs Regulations (19 CFR Ch. I) in the case of similar shipments of imported merchandise to be exported in customs bond. When an inspection of the shipment is made before it is laden on board the exporting carrier and such inspection discloses any discrepancy, the customs officer shall make note of the nature and extent of the discrepancy on each copy of the application, claim, or notice, ATF Form 5110.11, 5110.30, 1562–A, 1582–B, or 1689, as the case may be, and where the discrepancy involves one or more packages of distilled spirits or wine, he shall prepare customs Form

6001 in accordance with the instructions in § 252.291, and attach the original and copy of customs Form 6001 to the original and copy of the appropriate transaction form. The forms shall be disposed of according to the instructions thereon.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1334, as amended, 1335, as amended, 1336, as amended, 1362, as amended, 1380, as amended (26 U.S.C. 5053, 5055, 5062, 5214, 5362))

Par. 29. Section 252.267 is revised to reflect the removal of § 252.263. As revised, § 252.267 reads as follows:

§ 252.267 Exportation from interior port.

Where a shipment made under this part is to be exported to a contiguous foreign country through a frontier port, and it is desired to avoid the delay of customs inspection at such port, the shipment may, subject to approval of the district director of customs, be entered for exportation at an interior customs port. Subject to such approval, the inspection and supervision of lading, and the affixing of customs seals, shall be done by a customs officer in accordance with the provisions of U.S. Customs regulations (19 CFR Chapter I). On completion of the lading, the seals shall be affixed and the customs officer shall execute the certificate of lading on both copies of the application, notice, or claim, ATF Form 5100.11, 5110.30, 1582–A, 1582–B or 1689, as the case may be, and forward them, with attachments (if any), to the district director of customs at the interior port of entry. The district director of customs shall forward both copies of the form, with attachments (if any), to the customs officer at the frontier port. When the customs officer at the frontier port is satisfied that the shipment as described on the appropriate form has been exported, he shall execute his certificate on both copies of the form and return them with attachments (if any), to the district director of customs at the interior port of entry.

Par. 30. Section 252.285 is revised to delete "ATF Form 5110.45", which is obsolete, and substitute, in lieu thereof, "package gauge record". As revised § 252.285 reads as follows:

§ 252.285 Receipt in manufacturing bonded warehouse.

On receipt of the distilled spirits or wines, the related ATF Form 5100.11 (with any attachments), such inspection as is necessary will be made to establish that the shipment corresponds with its description on ATF Form 5100.11 (and any attachments) and customs Form 6001 will be prepared according to § 252.291. Any discrepancy disclosed by the inspection and gauge will be noted on each copy of ATF Form 5100.11. When the shipment corresponds with the description of ATF Form 5100.11 (and any attachments), the certificate of deposit will be executed on both copies of ATF Form 5100.11 and the original of ATF Form 5100.11 (and any attachments) and the original of his customs Form 6001 will be forwarded to the regional director (compliance). The remaining copies shall be kept on file.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1362, as amended, 1380, as amended (26 U.S.C. 5214, 5362))

Par. 31. Section 252.290 is revised to read as follows:

§ 252.290 Receipt in foreign trade zone.

On receipt at the zone, the shipment shall be inspected by the customs officer in charge of the zone who shall determine if the shipment agrees with the description thereof on the application, notice, or claim, ATF Form 5100.11, 5110.30, 1582–A, 1582–B, or 1689, as the case may be. If the customs officer regauges spirits or wine in the course of his inspection, he shall prepare customs Form 6001 according to § 252.291. The customs officer shall note on both copies of the ATF Form 5100.11, 5110.30, 1582–A, 1582–B, or 1689, as the case may be any deficiency in quantity or discrepancy between the merchandise inspected or gauged and that described in the form. Where the inspection or gauge discloses no loss, or where a loss is disclosed by such inspection or gauge and there is no evidence to indicate fraud, the officer shall execute his certificate on both copies of the form covering the deposit, and forward to the regional director (compliance):

(a) Original of the deposit from (with any attachments); and

(b) Original of the officer's customs Form 6001, if any. The remaining copy of the deposit form (with any attachments), and the copy of any customs Form 6001, shall be retained by the customs officer for his files.

(48 Stat. 999, as amended (19 U.S.C. 81c); Sec. 201, Pub. L. 85–859, 72 Stat. 1336, as amended, 1362, as amended, 1380, as amended (26 U.S.C. 5062, 5214, 5362))

Par. 32. A new center heading and § 252.291 are added to Subpart N immediately after § 252.290 to provide for a gauge record for use by customs officers. As added, the new centerheading and § 252.291, read as follows:

Customs Gauge

§ 252.291 Customs Form 6001.

When spirits or wines are gauged as required in §§ 252.264, 252.285, or 252.290, the customs officer shall prepare in duplicate customs Form 6001 to show:

(a) Date;

(b) Name of exporter;

(c) Serial number and designation of the related transaction form;

(d) Kind of liquor (show whether alcohol, whiskey, brandy, rum, gin, vodka, wine, etc.);

(e) Name and registry number of producer;

(f) If gauged under § 252.264, the location of the port;

(g) If gauged under § 252.285, the location and number of the manufacturing bonded warehouse;

(h) If gauged under 252.290, the location and number of the foreign-trade zone;

(i) Kind and serial numbers or lot identification numbers of containers; and

(j) For each container:

(1) Proof of spirits, or percent of alcohol by volume in wine;

(2) Proof gallons, if spirits;

(3) Wine gallons, if wine; and

(4) Variation from the last gauge (proof, percent of alcohol by volume or wine gallons).

Signed: July 3, 1984.

W.T. Drake,

Acting Director.

Approved: September 7, 1984.

John M. Walker, Jr.,

Assistant Secretary (Enforcement and Operations).

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Part III

Department of Labor

Employment Standards Administration, Wage and Hour Division

Minimum Wage for Federal and Federally Assisted Construction; General Wage Determination Decisions; Notice

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DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations. Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Orders 9–83, 48 FR 35736 (1983), and 6–84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations. Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Orders 6–84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Program Operations, Division of Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

New General Wage Determination Decisions

Idaho: ID85–5013; ID85–5014

Modifications to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

Iowa:	
IA84–4043	June 15, 1984.
IA84–4109	Dec. 21, 1984.
Louisiana: LA84–4055	Sept. 28, 1984.
New Mexico: NM84–4099	Oct. 19, 1984.
Minnesota: MN84–5015	May 25, 1984.
Nevada:	
NV84–5012	May 18, 1984.
NV84–5014	June 8, 1984.
NV84–5017	June 29, 1984.
NV83–5121	Sept. 23, 1983.
New York: NY84–3045.1	Dec. 7, 1984.
Pennsylvania:	
PA84–3015	June 1, 1984.
PA84–3002	Feb. 10, 1984.
PA84–3017	June 15, 1984.

Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the number of the decisions being superseded.

North Dakota: ND81–5131 (ND85–5009)	July 6, 1981

Cancellation of General Wage Determination Decision

General Wage Determination NY84–3048, dated January 11, 1985, in 49 FR 47963 is cancelled. Agencies with construction projects pending to which the cancelled decision would have been applicable should utilize the project determination procedure by submitting form SF–308. See Regulations Part 1 (29 CFR 1.5). Contracts for which bids have been opened shall not be affected by this notice. Also consistent with 29 CFR, 1.6(a)(2)(i)(A), the incorporation of the cancelled decisions in contract specifications, the opening of bids which is within ten (10) days of this notice, need not be affected.

Signed at Washington, D.C. this 22nd day of February 1985.

James L. Valin,

Assistant Administrator.

BILLING CODE 4510-27-M

NEW DECISION

STATE: IDAHO
DECISION NUMBER: ID85-5013
DESCRIPTION OF WORK: Building projects (does not include single family homes and apartments up to and including 4 stories)

COUNTIES: *SEE BELOW
DATE: Date of Publication

* ADAMS, BANNOCK, BEAR LAKE, BINGHAM, BLAINE, BOISE, BONNEVILLE, BUTTE, CAMAS, CARIBOU, CASSIA, CLARK, CUSTER, ELMORE, FRANKLIN, FREMONT, GEM, GOODING, IDAHO (South of the 46th Parallel), JEFFERSON, JEROME, LEMHI, LINCOLN, MADISON, MINIDOKA, ONEIDA, OWYHEE, PAYETTE, POWER, TETON, TWIN FALLS, VALLEY, and WASHINGTON

	Basic Hourly Rates	Fringe Benefits
BRICKLAYERS:		
Area 1	$10.00	
Area 2	11.75	
CARPENTERS:		
Area 1	9.91	1.92
Area 2	11.70	4.02
CEMENT MASONS:		
Area 1	8.00	2.41
Area 2	10.91	3.27
ELECTRICIANS:		
Area 1	12.04	1.13
Area 2	15.75	2.68
GLAZIERS:		
Area 2	8.00	1.25
LABORERS:		
Area 1	8.17	
Area 2	7.54	
PAINTERS:		
Area 1	10.46	
PLUMBERS:		
Area 1	11.53	
Area 2	10.34	3.41
ROOFERS:		
Area 1	11.76	2.05
Area 2	12.95	1.55
SHEET METAL WORKERS:		
Area 1	11.05	1.19
Area 2	11.90	2.36
POWER EQUIPMENT OPERATORS:		
Area 2:		
Backhoes	14.70	4.20
Cranes	13.60	
Loaders and Rollers	10.00	1.39
TRUCK DRIVERS:		
Area 2	8.40	1.39
WELDERS receive rate for craft performing operation to which welding is incidental		

AREA DEFINITIONS

AREA 1:

Adams, Blaine, Boise, Camas, Cassia, Elmore, Gem, Gooding, Idaho (South of the 46th Parallel), Jerome, Lincoln, Minidoka, Owyhee, Payette, Twin-Falls, Valley, and Washington Counties

AREA 2:

Bannock, Bear Lake, Bingham, Bonneville, Butte, Caribou, Custer, Clark, Franklin, Fremont, Jefferson, Lemhi, Madison, Oneida, Power, and Teton

UNLISTED CLASSIFICATIONS NEEDED FOR WORK NOT INCLUDED WITHIN THE SCOPE OF THE CLASSIFICATIONS LISTED MAY BE ADDED AFTER AWARD ONLY AS PROVIDED IN THE LABOR STANDARDS CONTRACT CLAUSES (29 CFR, 5.5(a)(1)(ii)

NEW DECISION

STATE: IDAHO
DECISION NUMBER: ID85-5014
DECRIPTION OF WORK: Building projects (does not include single family homes and apartments up to and including 4 stories)

COUNTIES: ADA AND CANYON
DATE: Date of Publication

	Basic Hourly Rates	Fringe Benefits
BRICKLAYERS:		
Area 1	$14.08	$2.40
Area 2	11.73	
CARPENTERS:		
Area 1 (See footnote"a")	13.17	5.08
Area 2 (See footnote"a")	13.17	5.08
CEMENT MASONS:		
Area 1 (See footnote"a")	12.52	5.07
Area 2 (See footnote"a")	12.52	5.07
DRYWALL HANGERS & FINISHERS:		
Area 1		
Hangers	10.00	
Finishers	12.25	
Area 2		
Finishers	12.25	.99
ELECTRICIANS:		
Area 1	15.05	2.25+4%
Area 2	11.18	1.50
ELEVATOR CONSTRUCTORS:		
Area 1:		
Mechanics	15.95	3.29+b
Helpers	70%JR	3.29+b
Probationary Helpers	50%JR	
GLAZIERS:		
Area 1	14.16	1.32
IRONWORKERS:		
Area 1	16.12	3.19
LABORERS:		
Area 1 (See footnote"a"):		
General Laborers, Asphalt Laborer, Landscaper	10.92	4.84
Air Tampers	11.02	4.84
Pipelayer, Jackhammer, Gunnite Gunman, Vibrator (4" and over)	11.12	4.84
Hod Carrier, Mason Tender, Plaster Tender, Tile Setter Tender	11.22	4.84
Area 2 (See footnote"a")		
General Laborer, Asphalt Laborer, Landscaper	10.92	4.84
Air Tampers	11.02	4.84
LABORERS (CONT'D)		
Pipelayer, Jackhammer, Gunnite Gunman, Vibrator (4" and over)	$11.12	$4.84
Hod Carrier, Mason Tender, Plaster Tenders, Tile Setter Tender	11.22	4.84
PAINTERS:		
Area 1	12.25	1.78
Area 2	12.25	1.78
PLUMBERS:		
Area	14.17	3.86
Area 2	14.05	
ROOFERS:		
Area 1	13.90	2.15
Area 2	13.90	2.15
SHEET METAL WORKERS:		
Area 1	16.97	2.29+3%
Area 2	12.00	1.22
TILE SETTERS: Area 1	12.59	1.64
POWER EQUIPMENT OPERATORS:		
Area 1: (See footnote"a")		
Air Compressor, Rubber Tired Tractor with attachments	13.55	4.05
Front-end & Overhead Loaders up to 4 yds, Spreaders;Tractor, rubber tired with backhoe; Trenching machine	14.23	4.05
Power Shovels & Draglines under 1 yd	14.40	4.05
Asphalt Paver self propelled;Cranes up to 50 tons; Derrick, Loaders (Front-end & Overhead) over 4 yds to 7 yds, Shovels & Draglines 1 yd to 3½ yds, Crawler type tractor w/attachments	14.58	4.05
TRUCK DRIVERS:		
Area 1	10.18	
Area 2	12.23	
SOFT FLOOR LAYERS:		
Area 1	10.91	

DECISION NO. ID85-5014 Page 2

AREA DEFINITIONS

AREA 1: Ada County

AREA 2: Canyon County

a. On all projects involving one or more of the components listed below where the dollar value of the component is less than the amount shown, the rate to be paid for work on that component shall be 85% of the basic hourly rate plus full fringe benefits; any other component in excess of the amounts shown shall be paid the full rate on that component.

Paving	$2,000,00
Crushing	2,000,000
Grading & Clearing	2,000,000
Bridges & Related Work	2,000,000
Utilities	Unlimited (Pipelines & Dams excluded)
Buildings	2,000,000 (Excluding mechanical & electrical)

b. Employer contributes 8% of basic hourly rate for vacation pay credit for employees with 5 or more years of service and 6% for 6 months to 5 years of service. Paid Holidays: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, The Friday after Thanksgiving Day, and Christmas Day.

UNLISTED CLASSIFICATIONS NEEDED FOR WORK NOT INCLUDED WITHIN THE SCOPE OF THE CLASSIFICATIONS LISTED MAY BE ADDED AFTER AWARD ONLYAS PROVIDED IN THE LABOR STANDARDS CONTRACT CLAUSES (29 CFR, 5.5(a)(1)(ii)

MODIFICATIONS P. 1

DECISION #IA84-4043-MOD.#6 (49 FR 24856 - 6/15/84)	Basic Hourly Rates	Fringe Benefits
Black Hawk, Cerro Gordo, Clinton, Des Moines, Dubuque, Johnson, Linn, and Polk Counties, Iowa		
CHANGE:		
Carpenters:		
All other construction: Millwrights		
Zone 3	$16.48	$3.25
Zones 6 and 7	15.48	3.25
Electricians:		
Zone 6	14.90	2.35+ 3.75%
Elevator Constructors:		
Zones 1,5,6, and 7:		
Mechanics	12.69	3.29 + a
Helpers	70%JR	"
Helpers (Prob.)	50%JR	"
Ironworkers		
Zone 3 & Southeast part of Dubuque	16.20	3.335
Line Construction (excluding Zones 3 and 5)		
Group 1	16.74	1.25+c +7.5%
Group 2	13.39	"
Group 3	13.89	"
Group 4	11.13	"
Group 5	11.05	"
Group 6	10.71	"
Group 7	12.89	"
Plasterers		
Zones 6 and 7	14.04	.57
Plumbers and Pipefitters		
Zones 6 and 7	14.05	2.27
Sheet Metal Workers		
Zones 2 and 8	16.13	2.44
Zones 3,4, and 5	14.02	3.08 + 3%

DECISION #IA84-4109-MOD. # 1 (49 FR 49811-Dec. 21, 1984)	Basic Hourly Rates	Fringe Benefits
SCOTT COUNTY, IOWA		
CHANGE:		
Carpenters:		
All other work: Millwrights	$16.48	$3.25
Ironworkers	16.20	3.335
Sheet Metal Workers	14.02	3.08 + 3%

DECISION #LA84-4055-MOD.#2 (49 FR 38445-9/28/84)	Basic Hourly Rates	Fringe Benefits
STATEWIDE, LOUISIANA		
CHANGE:		
Cement Masons		
Zone 3	$13.15	$1.90
Asbestos Workers		
Zone 4	14.94	2.05
Plumbers and Pipefitters		
Zone 5	12.46	3.00
Roofers		
Zone 1		
New Construction:		
Roofers	15.06	.20
Roofer's helpers remove old roofing, hustle material and cleanup under supervision of a journeyman.	11.79	.20
All Other Construction:		
Roofers	12.90	.20
Roofer's helpers remove old roofing, hustle material and cleanup under supervision of a journeyman	8.10	.20

DECISION #NW84-4088-MOD. #3 (49 FR 41[illegible] - [illegible] 12, 1984)	Basic Hourly Rates	Fringe Benefits
Statewide (excluding Eddy and Lea Cos. for Building Construction in New Mexico)		
ADD:		
Plumbers, Pipefitters, and Leadburners:		
Light Commercial - all remodel work up to $120,000 in volume, motels not over 2 stories in height, refrigeration-limited to 40 tons per unit or less for comfort refrigeration only, or a project of 150 fixture units or less:		
Bernalillo County	$10.00	$2.31
Remainder of New Mexico	9.00	2.31
All Irrigation and Lawn Sprinkler Work	7.00	2.31

DECISION NUMBER MW85-5006 - MOD. #2 (50 FR 4837 - February 1, 1985) Anoka, Benton, Carlton, Carver, Cook, Dakota, Hennepin, Itasca, Koochiching, Lake, Ramsey, St. Louis, Scott, Sherburne, Stearns, & Washington Counties, Minnesota	Basic Hourly Rates	Fringe Benefits
Change:		
Carpenters; Millwrights; Piledrivermen; & Soft Floor Layers:		
Building Construction:		
Area 2:		
Millwrights	16.36	3.87

DECISION NO. NV84-5012 - MOD. #1 (49 FR 21261 - May 18, 1984) Nevada Test Site including Tonopah Test Range in Clark, Lincoln and Nye Counties, Nevada	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Asbestos Workers	$20.12	$4.51
Carpenters:		
Change Fringe Benefits for all classifications to read		4.05
Cement Masons	13.42	6.95
Elevator Constrators:		
Mechanics	23.14	3.29+a
Mechanics' helpers	16.20	3.29+a
Probationary helpers	11.57	
LABORERS:		
Group 1	$13.19	$5.22
Group 2	13.24	5.22
Group 3	13.27	5.22
Group 4	13.29	5.22
Group 5	13.31	5.22
Group 6	13.32	5.22
Group 7	13.34	5.22
Group 8	13.37	5.22
Group 9	13.38	5.22
Group 10	13.40	5.22
Group 11	13.45	5.22
Group 12	13.48	5.22
Group 13	13.50	5.22
Group 14	13.53	5.22
Group 15	13.55	5.22
Group 16	13.62	5.22
Group 17	13.64	5.22
Group 18	13.71	5.22

DECISION NUMBER MW84-5015 - MOD. #3 (49 FR 22134 - May 25, 1984) Aitkin, Becker,...Wright and Yellow Medicine Counties, Minnesota	Basic Hourly Rates	Fringe Benefits
Change:		
Bricklayers; Stonemasons:		
Area 11	$12.86	$1.10
Carpenters; Millwrights; Piledrivermen; & Soft Floor Layers:		
Area 25:		
Millwrights	16.36	3.87
Cement Masons; Plasterers:		
Area 15	12.10	1.10

DECISION NO. NV84-5014 - MOD. #1 (49 FR 23988 - June 8, 1984) Statewide (does not include the Nevada test site and Tonopah test range, and Highway Construction in Douglas County), Nevada	Basic Hourly Rates	Fringe Benefits
Change:		
Bricklayers; Stonemasons:		
Area 2	$15.65	$2.06
Sheet Metal Workers:		
Area 1	20.24	6.37
Area 2	16.94	10%+6.08
Omit:		
Roofers:		
Area 1		
Add:		
Terrazzo Finishers:		
Douglas, Lyon, Storey and Washoe Counties		
Terrazzo Finishers	16.02	3.95
Base Machine Operator	16.72	3.95

DECISION NO. NV84-5017 - MOD. #4 (49 FR 26874 - June 29, 1984) Washoe County, Nevada	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Bricklayers; Stonemason	$13.65	$2.66
Sheet Metal Workers	16.94	6.08+10%

DECISION NO. PA84-3017 MOD. NO. 3 (49 FR 24859 - June 15, 1984) Berks, Lehigh & Northampton Counties, Pennsylvania	Basic Hourly Rates	Fringe Benefits
CHANGE:		
CARPENTERS		
ZONE 1	13.18	2.22
Millwrights		
ZONE 2	15.70	2.22
SOFT FLOOR LAYERS		
ZONE 1	13.18	2.22

DECISION NO. NV83-5121 - MOD. #7 (48 FR 43532 - September 23, 1983) Clark County (does not include the Nevada test site), Nevada	Basic Hourly Rates	Fringe Benefits
Change:		
Sheet Metal Workers	$20.24	$5.17
Omit:		
Roofers		

DECISION NO. NY84-3045 - MOD. #2 (49 FR 47964 - December 7, 1984) ST. LAWRENCE, LEWIS & JEFFERSON COUNTIES, NEW YORK	Basic Hourly Rates	Fringe Benefits
OMIT:		
JEFFERSON COUNTY from the Counties to which the decision applies		

DECISION NO. PA84-3015 MOD. NO. 6 (49 FR 22976 - June 1, 1984) Cumberland, Dauphin, Perry, Juniata, New Cumberland Depot in York County, Pennsylvania	Basic Hourly Rates	Fringe Benefits
CHANGE:		
CARPENTERS	$14.50	2.55

DECISION NO. PA84-3002 MOD. NO. 8 (49 FR 5295 - February 10, 1984) Adams & York Counties, Pennsylvania	Basic Hourly Rates	Fringe Benefits
ADD:		
ROOFERS:		
Slate	14.35	1.74

SUPERSEDEAS DECISION

STATE: North Dakota
DECISION NO. ND85-5009
Supersedes Decision No. ND81-5131 dated July 6, 1981, in 46 FR 35008.
DESCRIPTION OF WORK: Building Projects (does not include single family homes and apartments up to and including 4 stories)

COUNTIES: Burleigh, Morton & Ward
DATE: Date of Publication

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	$18.38	1.88
BOILERMAKERS	17.345	2.25
BRICKLAYERS: STONEMASON		
Burleigh & Morton Cos.	13.81	.50
Ward County	13.90	.80
CARPENTERS		
Burleigh & Morton Cos.	11.87	.67
Ward County	11.75	2.43
CEMENT MASONS:		
Burleigh & Morton Cos.	13.15	
Ward County	9.50	
ELECTRICIANS		
Burleigh, Morton & Ward Cos.		
Electricians	14.00	10%+ 1.90
Cable Splicers	14.40	10%+ 1.90
ELEVATOR CONSTRUCTORS	17.99	2.68+a
ELEVATOR CONSTRUCTORS HELPERS	70%JR	
ELEVATOR CONSTRUCTORS PROBATIONARY HELPERS	50%JR	
GLAZIERS		
Burleigh and Morton Cos.	3.91	.30
IRONWORKERS:		
Ornamental, Reinforcing & Structural	14.63	3.16
MILLWRIGHTS	16.36	3.62
LABORERS:		
Group 1	9.00	.95
Group 2	9.10	.95
Group 3	9.20	.95
PAINTERS:		
Burleigh & Morton Cos.		
Brush, Roller	12.16	.20
Spray	13.40	.20
Ward County		
Brush	9.75	
Spray	10.10	
PLASTERERS:		
Burleigh and Morton Cos.	11.00	
Ward County	9.50	
PLUMBERS:		
Burleigh & Morton Cos.	15.26	1.84
Ward County	15.40	2.30
ROOFERS	12.50	
SHEET METAL WORKERS	15.29	3%+1.73
SOFT FLOOR LAYERS		
Burleigh County	8.80	
SPRINKLER FITTERS	15.47	3.23
TRUCK DRIVERS:		
Group 1:		
Off road heavy duty and dump over 20 yrds.	11.45	1.25
Group 2:		
Low boy	11.00	1.25
Group 3:		
Slide off box	10.85	1.25
Group 4:		
Agitator; Dumpcrete off road heavy duty and dump under 20 yrds., Ready-mix truck and tandem axle semi	10.80	1.25
Group 5:		
Farm tractor op.(when used in pulling a tractor for purpose of hauling material; Fuel truck-single axle semi; Tandem truck; Warehouse fork-lift op.(within ware-house or warehouse yard	10.65	1.25
Group 6:		
Pick-up Truck	10.30	1.25

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

DECISION NO. ND85-5009

	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS		
Building Construction		
Group 1	12.07	1.35
Group 2	10.96	1.35
Group 3	10.25	1.35
Group 4	9.08	1.35
Site Preparation Excavation and Incidental Paving		
Group 1	11.22	1.35
Group 2	11.05	1.35
Group 3	10.88	1.35
Group 4	10.82	1.35
Group 5	10.53	1.35
Group 6	10.26	1.35
Group 7	9.18	1.35
Group 8	9.00	1.35
Group 9	8.88	1.35
Group 10	8.48	1.35

LABORERS
Burleigh, Morton and Ward Counties

Group 1: Laborers, Concrete Bucket Man

Group 2: All power tool Operators of tools that come under the Laborers' jurisdiction; Mortar Mixer; Brick and Plasterer Tenders

Group 3: Hod Carriers, Non-metallic Pipelayers; Gas Line Wrapping or Taping; Cutting Torch for demolition

POWER EQUIPMENT OPERATORS
Building Construction

Group 1: Helicopter Operator, hoisting material; Truck and Crawler Cranes over 150 ft. boom, excluding jib; Traveling Tower Cranes

Group 2: Derrick, Guy or Stiff Leg; Tower Cranes; Overhead Cranes; Hoist Operator - 2 drums or more; All-Terrain Vehicle Cranes (Cherry Picker, etc.); Tractors with boom attachments; Drill Rigs - Rotary or Churn; Locomotive Operators; Hydraulic and Cable-type Backhoes 3/4 yards and over; Truck and Crawler Cranes 150 ft. boom and under, excluding jibs

Group 3: Mechanic Welder; Hoist Operator 1 drum; Boom Truck Operators; Tractor over 75 HP; Straddle Carrier or Forklift, 3,000 lbs. or over; Concrete Batch Plant Operator; Concrete Batch Mixer or Concrete Pump Operator; Boiler Operator; R/T Tractor Backhoe, 3/8 or 3/4 yards; Front End Loader Operator over 1-1/2 yards; Any air compressor operation over 300; Well Points; Power Plant Engineer, Oiler

POWER EQUIPMENT OPERATORS (Cont'd)
Building Construction (Cont'd)

Group 4: Greaser; Forklift under 3,000 lbs., Self-propelled Scissor Jax; Front End Loader 1½ yards and under; Self-propelled Compactors; Tractor 75 HP and under; Pickup Sweeper; Pump Operator over 3"; Gunite Operator; Brakeman; Air Compressor 300 and under

Site Preparation Excavation and Incidental Paving

Group 1: Cableway Operator; Crane Operator with over 135' boom, all types; Derrick (Guy and Stiff Leg) (power) (skids and stationary); Front End Loader, over 10 cu. yds.; Gantry Crane Operator; Helicopter Operator; Hole Operator, including power supply or Tunnel Mucking Machine; Power Shovel and/or other equipment with shovel type controls 3½ cu. yds.

Group 2: Concrete Mixer Stationary Plant Operator over 34E; Dredge Operator (power and engineer); Elevator Grader Operator; Locomotive, Crane Operator; Master Mechanic; Mixer (paving); Concrete Paving Operator, road; Power Shovel and/or other equipment with Shovels, and/or other equipment with shovel type controls up to 3½ cu. yds.; Scraper Tandem; Tandem Pusher, Quad 9 or similar; Tractor Operator (pipeline); Side Boom; Truck Crane Hydrocrane Operator, 15 ton and over

Group 3: Dope Machine Operator (pipeline); Drill Rigs, Heavy Duty Rotary or Churn or Cable Drill; Front End Loader Operator, 6 cu. yds. and over; Locomotive, all types; Pipeline wrapping, cleaning, and bending Machine Operator; Power actuated Horizontal Boring Machine, over 6" Operator (pipeline); Pumpcrete Operator; Refrigeration Plant Engineer; Slip Form Operator (power driven) (paving); Tandem Scraper - twin engine, 50 cu. yds. struck and over

Group 4: Asphalt Paving Machine Operator, Asphalt Plant Operator and Console Board Operator; CMI Grading Operator; Crushing Plant Operator (gravel and stone or gravel washing, crushing and screening Plant Operator); Front End Loader Operator, 1 cu. yd. up to 6 cu. yds.; Grader or Motor Patrol, finishing earth work and bituminous; Mechanic or Welder (heavy duty); Rubber-tired Industrial Tractor with Backhoe attachment (water main sanitary sewer and storm sewer, truck line construction); Scraper Operator; Tractor type or rubber tired Dozer, D-6 and over; Trenching Machine Operator, sewer and water (except Ditch Witch or similar, use Oiler rates); Turnapull Operator (or similar type)

POWER EQUIPMENT OPERATORS (Cont'd)
Site Preparation Excavation and Incidental Paving (Cont'd)

Group 5: Concrete Distributor and Spreader Operator, Finishing Machine Longitudinal Float Operator, Ft. Machine Operator and Spray Operator, Concrete Mixer Operator on job site 16S or over Paving Breaker or Tamping Machine Operation including Machine with power shovel attachment (power driven), power actuated Jack Operator, Power Plant Engineer 10 K.W.H. and over (when an Engineer is in charge of crushing or blacktop plant with the operation of these plants no poere plant engineer shall be required); Push Tractor, self-propelled Traveling Soil Cement Stabilizer, Truck Machanic

Group 6: Concrete Saw Operator (multiple blade)(power operated); Distributor Operator; Fine Grade Machine; Roller, steel and self-propelled rubber, on hot mix asphalt paving; Sheepsfoot Raker with Dozer attachment tractor type or rubber tired Dozer under D-6 HP

Group 7: Brakeman or Switchman; Concrete Batch Plant Operator (cement, rock and sand); Electronic; Concrete Mixer Operator on job site under 16S; Crane Truck Oiler; Grader Operator (Motor Patrol)(hauling road); Gravel Screening Plant Operator (portable unit, crushing or washing); Greaser (truck or tractor); Gunnite Operator, gunall; Hoist Engineer (power); Launchman (Tankerman or Pilot license); Pick-up Sweeper, 1 yd. and over Hopper capacity; Shouldering Sand Chip Spreader; Flaherty or similar; Sheepsfoot Roller or Compactor (self-propelled)

Group 8: Boom Truck Operator, Crawler type and/or Steiger or similar tractor pulling compaction or areating equipment, farm type rubber tired tractor with Backhoe attachment, off-road self-propelled rubber, on other than hot mix asphalt paving self-propelled Vibrating Packer Operator, pad type 35 HP and over)

Group 9: Concrete Batch Operator (cement, rock and sand)(manual); Form Trench Digger (power); Front and Loader Operator, up to 1 cu. yd.; Hyster Carrier or Forklift, Leverman; Oiler (power Shovel, Crane, Dragline); Pugmill Operator; Pump Operator (Well Points); Self-propelled Broom

Group 10: Conveyor Operator; Curb Machine Operator (manual); Dredge Deck, hand; Farm Tractors, rubber-tired for compacting and areating; Front End Loader (Farm type rubber tired tractor); Paint Machine Striping Operator, Stump Chipper Operator; Tie Tamper and Ballast Machine Operator

Unlisted classifications needed for work not included witnin the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii))

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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 226

Child Care Food Program; Miscellaneous Amendments

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule makes several editorial changes and clarifications to the Child Care Food Program (CCFP) regulations. In addition, some substantive changes to those regulations are made to improve program administration. Restrictions on sponsoring organizations' use of interest bearing accounts are removed. The institution appeal process is clarified and made more flexible. Family-style meal service is presented as an option for institutions. Limitations are placed on the State agency's authority to waive certain overclaims. Certain institution responsibilities with respect to licensing and tax-exempt status are emphasized. State agencies' administrative flexibility is increased in several areas. The application of alternate approval procedures in backlog situations is rescinded. These changes will have the effect of clarifying and streamlining the CCFP.

EFFECTIVE DATE: This final rule is effective April 3, 1985.

FOR FURTHER INFORMATION CONTACT: Lou Pastura or James C. O'Donnell, Policy and Program Development Branch, Child Nutrition Division, FNS, USDA, Alexandria, Virginia 22302, (703) 756–3620.

SUPPLEMENTARY INFORMATION:

Classification

This rule making has been reviewed in accordance with Executive Order 12291 and has not been classified as major because it will not have an annual effect on the economy of $100 million, will not cause a major increase in costs or prices, and will not have a significant economic impact on competition, employment, investment, productivity, innovation or the ability of U.S. enterprises to compete with foreign-based enterprises. This rule has also been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The Administrator of the Food and Nutrition Service (FNS) has certified that this rule does not have a significant economic impact on a substantial number of small entities.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) the reporting or recordkeeping requirements that are included in this final rule have been submitted to the Office of Management and Budget (OMB) and have been approved under clearance 0584–0055.

Background

The CCFP is authorized by Section 17 of the National School Lunch Act (42 U.S.C. 1766). On May 13, 1983, the Department published at 48 FR 21587 a proposed rule to clarify certain aspects of the CCFP regulations, allow greater flexibility for administering agencies, and enhance Program accountability. The Department established a 60 day period during which interested parties could submit comments for the Department's consideration. During this comment period, the Department received 42 comments from FNS Regional Offices, State administering agencies, participating institutions and other interested parties. Most of the comments approved of the proposed changes. Some commentors, however, expressed disapproval or concern with some of the amendments. Other commentors suggested technical modifications to the proposed language; and some commentors requested clarification on some provisions. In addition, some commentors appeared to have misunderstood aspects of certain proposals.

In developing this final regulation, the Department considered all comments, and this preamble summarizes and discusses the significant issues raised by commentors. The Department wishes to emphasize that this preamble does not generally repeat in detail the reasons for each amendment originally proposed. Therefore, interested parties may wish to refer to the preamble of the proposed rule for a more thorough discussion of the background. For convenience, the Department will discuss the final provisions in the same order as in the preamble to the proposed rule.

1. Review Requirements

Thirty-one commentors addressed the proposal to amend § 226.6(k) to allow State agencies to reduce the number of facilities which must be visited as part of their reviews of sponsors. Of these comments, 16 were opposed; 11 were in favor; and four commented without expressing approval or disapproval. In general, opponents of this proposal believed that such reductions would impair the Program in two ways. First, State agencies would have less opportunity to learn of deficiencies which must be corrected. Secondly, the assistance which States render to providers during visits to facilities would be reduced. Two commentors apparently believed erroneously that the Department was eliminating the specific numerical requirement for performing institution reviews. Other commentors, while not necessarily disapproving of the proposal, recommended that the Department specifically require State agencies to reallocate any resources that may be available due to these reductions. Finally, some commentors found the proposed formulas to be overly complicated.

The Department initially proposed this provision in the belief that the number of facilities which State agencies must review as part of their review of a sponsoring organization might be reduced without impairing program accountability or assistance. In view of the concerns expressed by commentors, the Department has reconsidered this action. The significant reductions under the proposal would have occurred with respect to sponsors of large numbers of facilities (e.g., sponsors with over 200 homes or 25 centers). Consequently, few State agencies would have realized any significant change in their administrative responsibilities. Moreover, while States with large sponsors would have had their review requirements reduced somewhat, the Department's recent experiences with some larger sponsors suggest that a relaxation of review activity would not

be in the best interests of the Program at this time. For these reasons, the Department has withdrawn the proposal.

The Department also proposed to amend § 226.6(k) to replace the list of program areas to be reviewed with a more general requirement that in conducting program reviews State agencies assess compliance with the CCFP regulations and applicable instructions. Four commentors approved of this change, while nine disapproved. Those disapproving generally maintained that all CCFP reviews should adhere to the same standards nationwide. There was some concern that the proposed amendment could lead to relaxation of standards on the one hand and harassment of institutions and facilities on the other.

The Department proposed this amendment in order to conform the CCFP to other FNS programs. It should be noted that specific review standards are not included in the existing CCFP provisions; there is only a list of general Program areas to be reviewed. Since in any case State agencies, institutions and facilities are responsible for meeting all requirements set forth in the CCFP regulations and instructions, the Department does not consider that the proposed amendment will result in decreased accountability or harassment of institutions and facilities. Therefore, the Department is adopting the proposed change.

The Department received 30 comments on the proposal to amend §226.16(d)(4)(ii) to permit sponsors of day care homes to make an *average* of three visits per home each year in certain circumstances, rather than requiring *each* home to be visited three times per year. Eleven commentors approved of the proposal, while 19 disapproved. The Department believes, however, that many disapproving commentors misunderstood the nature of the proposed change. Many of those who disapproved appeared to believe that the Department was reducing the overall monitoring requirement for sponsoring organizations.

However, sponsors will perform just as many total annual reviews under the proposed system as they must currently perform. For example, if a sponsor operates 100 day care homes, that sponsor must perform a minimum of 300 annual visits regardless of whether each home is visited three times or an *average* of three visits per home is made each year. The only change is that sponsors can vary the number of annual visits to individual homes to allow for a greater number of visits to homes that need additional guidance and a lesser number of visits to homes with fewer deficiencies.

The Department also wishes to emphasize that sponsors may not exercise this option unless the State agency approves and FNS concurs with the approval. As stated in the preamble to the proposed rule, approval of a request to exercise this option will be based on a finding that the sponsor will be able to allocate its resources more efficiently and to provide better assistance where it is most needed. Approval would not be granted, for example, merely to enable a sponsor to reduce its travel expenses associated with monitoring. It should also be noted that State agencies are not required to permit this option. Moreover, those State agencies which do permit the option may only give approval on a case-by-case basis. In any case, at the minimum each day care home must be reviewed twice per year. For these reasons, the Department does not consider that this option will lead to reduced oversight of day care homes. Finally, one commentor suggested that the Department should modify its requirement that not longer than six months elapse between home reviews.

However, the Department considers that the six-month requirement will be increasingly important for any homes that may be visited only twice a year. Therefore, the proposed rule is adopted without relaxing the requirement that not more than six months elapse between reviews.

2. Interest Bearing Accounts

Twenty commentors addressed the proposal to delete the provision requiring sponsors to maintain Program payments in non-interest bearing accounts for the period between receipt and disbursement. Thirteen commentors (representing State agencies, FNS Regional Offices, institutions and other interested parties) approved of the proposed rule. Four commentors disapproved, and three parties commented on aspects of the proposal without expressing clear-cut approval or disapproval. As the Department noted in the preamble to the proposed rule, § 3015.46 of the Department's Uniform Federal Assistance Regulations (7 CFR Part 3015) exempts State agencies and their subrecipients (i.e. sponsors, institutions and child care facilities) from the general rule requiring the return of interest earned on advances to the Federal government. Deleting the provision on non-interest bearing accounts allows sponsors to earn interest on advances of Program funds and brings the CCFP regulations into conformity with 7 CFR Part 3015.

In the absence of any Federal restriction, State law and policy governs the use of interest earned by sponsors, institutions and child care facilities on advances of Program funds, unless they are in a program directly administered by FNS. These final regulations amend § 226.7(i) to require State agencies to maintain a statement of the State's law and policy on file. In the States where FNS administers the CCFP directly, interest earned on advances must be returned to FNS, as required by the general rule of 7 CFR 3015.46(a).

Those commentors who disapproved of the proposal were generally concerned that institutions located in some States might benefit from laws which are less stringent than those of other States or the Federal government. However, the Department does not believe that a nationwide requirement would be consistent with 7 CFR Part 3015. States are free to regulate this matter. For this reason, the Department is deleting this provision as provided in the proposed rule. However, States are reminded that 7 CFR Part 3015 instructs them to minimize the time between the disbursement of advances to a recipient and the recipient's need for such monies.

3. Appeals Procedures

The Department proposed six amendments to the institution appeal process in § 226.6(j). First, the State agency would be permitted to be represented at hearings, and as a result, a second proposal would require that the State agency, as well as the appellant, be given 10 days notice of the time and place of the hearing. The third proposal was that institutions would receive no reimbursement for meals served during an appeal of a termination unless they win the appeal. Fourth, the Department proposed to allow State agencies to use their own appeals procedures rather than the CCFP procedures under certain conditions. The fifth proposal would require State agencies to advise institutions of the full appeal process at least once each year, rather than requiring a full description with each notice of an adverse action. Finally, the Department reiterated that State agencies would be accountable for claims based on Federal audits even if a State appeals officer held that the institution was not liable.

There was no disagreement with the proposals to amend § 226.6(j)(3) and (4) to ensure that the State agency has the opportunity to be represented at hearings. These proposed amendments, therefore, are being adopted for the reasons stated in the preamble accompanying the proposal.

Commentors tended to be evenly divided on the other proposals. These provisions are discussed below.

The Department proposed an amendment to § 226.6(j)(9) to reimburse institutions for meals served during an appeal of a termination action only if their appeal is successful. Eleven commentors approved of this proposal, and ten disapproved. In general, those who disapproved were concerned that this policy might discourage institutions from either exercising their right to an appeal or from continuing to serve meals which meet CCFP requirements pending a decision on the appeal. Some commentors noted that institutions are sometimes terminated, not for fraud or health violations, but for cash flow problems. Consequently, there were suggestions for modifying this provision to allow institutions to receive continuous reimbursement if the termination action is for mismanagement of funds but to apply the proposed provision if the termination action is for meal pattern violations. Also, one commentor who basically approved of the proposal suggested a modification for sponsors of homes, whereby operating reimbursement for home providers would continue to be paid regardless of the outcome of the appeal, while administrative reimbursement would be paid only if the sponsor wins its appeal.

As the Department noted in the preamble to the proposed rule, termination actions are taken on the basis of serious deficiencies, generally involving financial mismanagement or fraud. Therefore, unless a review officer determines that the State agency's action in terminating the sponsor was improper, the Department does not believe terminated institutions should continue to receive funds. The Department wishes to emphasize that terminations are the result of *serious* problems. Cash flow difficulties, for example, may be the symptom of underlying management deficiencies and cannot be automatically treated as minor. Moreover, the Department does not believe that the proposed rule would limit an institution's access to an appeal. This policy is in effect in the Summer Food Service Program. The Department is not aware that it has resulted in a diminished number of sponsors pursuing their appeal rights.

The Department also does not concur with commentors' recommendations for the alternate procedures discussed above. Fiscal mismanagement is a serious problem. If the institution in question were to continue to receive reimbursement for meals served regardless of the outcome of the appeal, the State agency would have to either increase its monitoring during the period of the appeal to assure itself of proper management, or risk having to lodge an overclaim against the institution after the appeal. In either event, the administrative cost and complexity would be increased for the State agency without providing additional protection for improperly terminated institutions. Consequently, the Department is adopting this amendment as proposed.

Twenty commentors addressed the proposal to allow State agencies to use their own appeal procedures as long as these procedures conform to certain criteria. Eleven commentors approved of the proposed changes, and nine disapproved. Those who disapproved tended to be concerned that this action might afford institutions less protection than they currently enjoy under the CCFP regulations. Some commentors asserted that the CCFP, as a Federal program, must have a uniform appeals procedure. One commentor suggested that this amendment could permit State agencies to vary their procedures from one institution to another. Finally, one party appeared to believe that the Department was proposing to delete the list of appealable actions currently included in this passage.

The Department does not believe the proposed amendment would result in less protection for institutions. This change was proposed to alleviate those situations in which review officials must follow CCFP guidelines despite the fact that the State has procedures which are followed for appeals in other programs. The Department believes that the criteria which must be met by State appeal procedures will ensure the rights of appellants. It should also be noted that most of the differences between CCFP and State appeal procedures involve time limits for accomplishing certain actions. Essential protections such as the right to a review or hearing, the right to counsel and the right to an impartial review officer are required to be a part of the State procedure substituted for the CCFP system. Moreover, since all appeals must be decided on the basis of the Program regulations and instructions, the uniformity of Program policy will not be undermined. The only change will be in the area of non-substantive appeal procedures. The final rule has been amended to make it clear that State agencies must apply the same procedures to all appellants in the State. Finally, the amendatory directions clearly state that the proposed language replaces only the last sentence of Paragraph (j). The first sentence, which lists appealable actions, has not been altered. In response to one comment, however, the Department is establishing a time limit of 120 days for the entire appeal process to be completed. The Department believes this modification will ensure a speedy review while still allowing flexibility for State agencies. For these reasons, the Department is adopting this amendment.

Commentors were also divided on the proposal to require State agencies to advise institutions of the appeal procedures only once each year. Eleven commentors approved, and seven disapproved of this provision. As the Department stated in the preamble to the proposed rule, State agencies will still be required to advise institutions of their right to appeal each time an appealable action is taken. The intent of the proposal was to remove the burden of decribing the entire appeals procedure each time an adverse action is taken. Some commentors objected to the proposal on the grounds that participants might forego their appeal rights if they are not aware of the procedures for an appeal. The Department wishes to emphasize, however, that the procedures for filing appeals must still be made available to institutions at least once each year. Further, in response to a comment, the Department is adopting the language of the Summer Food Service Program regulations, which require State agencies to provide this information each year when the institution's application for participation in the Program is received. Moreover, the final rule has been amended to provide that this information must be provided at other times during the year to institutions who request it. Therefore, the Department is adopting this amendment, with the changes noted.

Finally, the Department proposed to add a paragraph (j)(12) to clarify the Department's policy that State agencies are liable for overclaims established in Federal audits, even though a State review officer dismisses the overclaim against the institution(s) involved. The Department received 15 comments on this provision, with seven commentors approving and eight disapproving. Those who disapproved tended to believe that it would be unfair to hold State agencies liable for overclaims if the State agency is not able to collect the money from the institution. Commentors were concerned, moreover, that if this situation did exist, review officers may not be free to render an impartial decision. Finally, some commentors suggested that in order to implement this

provision, the Department must establish an appeal system for Federal audits.

Once a Federal claim has been established against a State agency based on Federal audit findings, only the Department has the authority to adjust, settle, compromise or deny that claim. The actions of State review officers cannot, therefore, overrule the findings of an audit. The Department does not believe that this provision will result in unfair decisions against institutions that are appealing Federal audit findings. This provision emphasizes the policy which is already in effect, although perhaps not currently understood. Review officers have traditionally been characterized by impartiality, and the Department expects this pattern to continue.

Further, the Department does not agree that this provision is necessarily unfair to State agencies. There are situations in which the State agency, rather than the institution, is responsible for an overclaim cited in a audit. For example, if the violation of Program requirements giving rise to the claim occurred because of improper guidance provided by the State agency, a review officer could properly rule that the institution did not have to repay the State agency for the loss. In such a situation, the State agency is responsible for the action giving rise to the audit claim and the Department can assert the overclaim against the State agency pursuant to § 226.14(c).

Finally, although there is no formal appeal mechanism for Federal audits, the Department believes the audit closure process affords ample opportunity for a just determination of audit findings. Before audit findings become final, representatives of the Office of the Inspector General, FNS and the State agency meet to discuss preliminary findings and recommendations. During this phase of the audit process, the State agency reviews all findings and evidence and presents its own documentation for any findings it believes to be erroneous. A final audit report is issued only after this phase has been completed. Because this process assures the State agency of the right to comment on findings and to present evidence in its behalf, the Department does not consider that an additional level of hearings is needed. For these reasons, the Department is adopting this provision as proposed.

4. Audit Disregard

Fifteen commentors addressed the proposal to allow FNS or the Office of the Insepctor General to disregard an overpayment which does not exceed $100. All fifteen approved of this increase. Some commentors, in fact, suggested an ever higher disregard limit. The Department proposed this increase from the former $35 limit because it is not cost effective to pursue overpayments of less than $100. The Department does not consider, however, that the limit could be further increased at this time without sacrificing accountability. The proposed amendment to § 226.8(e) has been modified slightly to make clear that the language allowing State agencies to disregard certain overpayments refers to overpayments identified in State agency sponsored audits. FNSROs which act as State agencies may disregard overpayments less than $100, while State agencies in State administered programs must follow State law on the subject. It was brought to the Department's attention, however, that the word "any" had been inadvertently omitted from immediately before the word "overpayment" in the proposed rule. Therefore, this word has been restored in the final rule.

5. Meal Requirements

The Department received 12 comments on the proposed clarifications to the snack requirements in § 226.20(a)(3) and § 226.20(d)(2). Sixteen commentors addressed the addition of § 226.20(o), which clarifies that family-style meal service may be employed by institutions. All comments on all three proposals were favorable. Some commentors did suggest that the regulations should outline specific requirements for family-style meals. However, the Department believes such details are more appropriate to guidance materials. Therefore, these three amendments are adopted as proposed.

6. Waiver of Claims

The Department proposed to amend § 226.14(b) to stipulate that State agencies may not accept corrective action in lieu of collection of overpayments for meal pattern violations by institutions which prepare their own meals if the overpayment has been established by a Federal audit. Seven commentors approved of this provision; two disapproved; and two commented on the general desirability of accepting corrective action in such situations.

One disapproving commentor believes that losses of less than $100 should be disregarded. The other questioned the extension of this policy to situations in which an overclaim based on a Federal audit has been dismissed by a State review officer. One approving commentor also stipulated that institutions must be allowed to appeal overclaims. The Department wishes to emphasize that this limitation applies only to claims arising out of Federal audits. As noted in the discussion on appeals, overclaims established by Federal audits may not be waived by State agencies under any circumstances. The Department believes it is consistent with this limitation to require State agencies to pursue collection efforts for all overclaims, as the State agency will be held accountable for any uncollected amounts unless FNS and the Office of the Inspector General waive the loss. As clarified in the new paragraph (j)(11) of § 226.6, this accountability extends to situations in which a claim based on a Federal audit against an institution has been dismissed by a review officer. State agencies continue to have the latitude to accept corrective action in lieu of pursuing overclaim established by means other than Federal audits. For these reasons, this amendment is adopted as proposed.

7. Eligibility Requirements

The Department proposed two amendments which affect institutions' eligibility. The first of these, § 226.6(d)(1)(i) addressed the continued CCFP eligibility of institutions admitted to the CCFP on the basis of participation in another Federal program. The proposal would require those institutions admitted to the other Federal programs on the basis of having valid licenses to maintain those licenses in order to continue to be eligible for the CCFP. This proposal received overwhelming approval from commentors. Seventeen commentors approved, while only two disapproved. The Department noted, however, that approving and disapproving commentors alike appeared to misunderstand the extent to which the proposed amendment would apply. Many commentors believed the proposal would adherence to licensing standards as an absolute condition of eligibility for institutions admitted into the CCFP on the basis of participation in another Federal program. Consequently, opposing commentors were concerned that many safe, well-operated Head Start establishments in their States might be forced out of the CCFP because they were note licensed child care centers. Because of the apparent misunderstanding, the Department wishes to reiterate the application the application and intent of this provision.

By law, facilities which have been approved for another Federal program, primarily Head Start, are eligible to participate in the CCFP as well.

regardless of whether or not they are licensed by State or local authorities.

This consideration is based on the fact that institutions must meet certain performance standards to be admitted to Head Start, and these standards require participants to obtain State or local licensing, where available. If licensing is not available, Head Start applies its own facility standards. The proposed provision would *not* apply to facilities admitted under Head Start's own standards. It has happened, however, that facilities admitted to Head Start on the basis of licenses have occasionally continued to participate in Head Start after having lost their licenses. Since these facilities had not yet been terminated from Head Start, they maintained that they were still eligible to participate in the CCFP. This situation clearly has the potential of permitting participation by institutions whose environments may be detrimental to the health and safety of enrolled children, and the Department believes that it has an obligation to ensure that Program benefits are made available only to institutions which offer high quality child care.

For this reason, the Department proposed that institutions admitted to a Federal program such as Head Start on the basis of licensing would not be eligible for the CCFP if they lose their licenses, even if they have not yet been terminated from that program. In reviewing the preamble to the proposed rule, the Department considers that commentors may have misunderstood the Department's intent. However, the Department does not believe it is necessary to repropose this amendment. The only disapproving commentors were those who thought the proposal could result in the disqualification from the CCFP of numerous high quality Head Start facilities which, for one reason or another, are not licensed. The Department again wishes to provide assurance that licensing is not a condition of CCFP eligibility for these institutions unless it was the basis for admission to Head Start. Approving commentors agreed with the general principle of the amendment. Therefore, the Department is adopting the proposed amendment with language changes to clarify the intent of this passage.

The Department also proposed to amend § 226.15(a) to clarify that the institution, not the State agency, is responsible for documenting compliance with Internal Revenue Service (IRS) requirements when it has been allowed to participate in the CCFP on the basis that it is moving toward obtaining tax-exempt status. Twelve commentors approved of the proposal; one disapproved; and one raised some questions without expressing clear approval or disapproval. Some commentors, while approving of the provision, suggested shortening the length of time an institution can remain on the Program while awaiting IRS approval. Additionally, some commentors requested further clarification on whether institutions in this category could participate for longer than 12 months pending IRS approval of tax-exempt status, and some questions were raised about appeal rights. The Department wishes to emphasize that no change was proposed to this paragraph other than to add the sentence specifying that documentation of compliance with IRS requirements is the institution's responsibility. The Department is not contemplating any further changes to the procedures outlined in this paragraph. State agencies will continue to observe the time limits currently established, and institutions will continue to enjoy the current appeal rights. Therefore, the Department is adopting this amendment as proposed.

8. Administrative Flexibility/Program Simplification

a. *Readmission of seriously deficient institutions.* Nine commentors approved of the Department's proposal to amend § 226.6(c) by deleting the reference to a three year waiting period for readmission of institutions which have been found to be seriously deficient in their operation of any Federal child nutrition program. Two commentors disapproved on the grounds that State agencies would be able to deny readmission indefinitely even though the institution has corrected its deficiencies. These commentors recommended that the passage be revised to require the immediate readmission of institutions which have taken corrective action. The Department wishes to point out that the proposed amendment places the emphasis on corrective action as a precondition of readmission to the Program. However, all other Program requirements must still be met before an institution can be readmitted. Therefore, the Department is adopting the amendment as proposed. The Department also notes that the proposed rulemaking established an inconsistency by not also deleting the three year waiting period for entering into agreements with any institution which had, in the past, been seriously deficient in its operation of one or more child nutrition programs. The Department did not intend this inconsistency. Therefore, this final rule further revises this paragraph to clarify the policy that corrective action is a precondition of approval for any institution which has experienced serious deficiencies.

b. *Health/sanitation and fire/safety inspections.* The Department proposed to define a "current" health, fire or safety permit as one issued within the past 36 months, rather than the past 12 months as presently required under § 226.6(d)(2)(i)(C)*(1)* and *(2)*. This proposal was intended to alleviate the difficulties some jurisdictions experience in attempting to obtain annual inspections. Of 22 comments received on this proposal, 16 disapproved, representing all quarters of the Program. In general, commentors acknowledged that annual permits are occasionally difficult to obtain; nevertheless, the consensus was that the proposed change could be detrimental to the health and safety of children participating in the CCFP. In view of this widespread concern, the Department is withdrawing this proposed amendment.

c. *Commodities/cash-in-lieu of commodities.* Nine commentors approved of the proposed amendment to § 226.6(g), deleting the provision permitting institutions to request a switch from commodities to cash-in-lieu or vice versa during the school year. One commentor disapproved, and one commentor recommended an additional restriction. The disapproving commentor expressed concern that by requiring institutions to elect to receive commodities at the start of the school year, they might not receive the full value of cash-in-lieu because there can be a lack of variety of available foods at that time of the year. While the variety may be limited in July, over the course of the year an ample variety of foods will be available to institutions. One commentor, while not disapproving of the proposal, recommended that no institution, newly admitted or otherwise, should be allowed to elect to receive commodities after June 1. However, the statutes governing the program require that all institutions be accorded the opportunity to receive commodities, except in limited situations. Moreover, the administrative burden is not primarily caused by institutions which are admitted to the program after June 1, but by institutions which desire to change their decision after the State distribution agency has acted. For these reasons, the Department is adopting this provision as proposed.

d. *Corrective action plans.* Thirteen commentors responded to the proposal to modify § 226.7(c) by adding a good cause exception to the 60-day time limit for State agencies to submit corrective

action plans. Ten commentors approved, and three disapproved. In general, those who disapproved believed State agencies should be held to standards for corrective action as stringent as those imposed on institutions. It was also suggested that delays by the State agency in accomplishing corrective action could be detrimental to participating institutions in the State. The Department believes, however, that correcting deficiencies at the State level often involves more planning time and deals with more complex issues than at the institution level. It will frequently be necessary for the State agency to receive commitments for funding and staff or to coordinate activities with other agencies of the State in order to deal effectively with many deficiencies. Consequently, the Department continues to believe that development of an effective plan will sometimes require longer than 60 days and that a good cause exception should apply in these instances. The Department wishes to emphasize that it has no intention of relaxing its requirements for corrective action. The amendment merely allows FNS and State agencies to exercise greater flexibility in developing a workable plan and does not affect timeframes for the actual completion of the corrective action. For these reasons, the Department is adopting the provision as proposed.

e. *Sponsor/home agreements.* The Department proposed two amendments dealing with agreements between sponsoring organizations and their day care homes. The first proposal would amend § 226.18(b) to allow State agencies the option of either developing these agreements themselves or requiring their sponsors to formulate their own agreements, subject to State agency approval. Ten commentors approved of this proposal, and five disapproved. Those who disapproved noted that this proposal could increase the administrative burden both for sponsors, who would be responsible for developing the agreements, and State agencies, who would have to review them. In proposing this amendment, the Department intended to increase flexibility and reduce burden by permitting State agencies the option of allowing sponsors which have developed their own agreements to use them, as long as all CCFP requirements were included. State agencies would not, however, be required to extend this consideration to their sponsors. The decision to do so is entirely a State agency option. The Department agrees, however, that it would be unfair for State agencies to require sponsors to develop their own agreement. Such a requirement would be especially burdensome for very small sponsors that lack the resources to develop and print their own forms. Therefore, the Department is modifying the proposed amendment to allow State agencies to approve sponsors' requests to use their own agreements as long as all CCFP requirements are included. The Department is also incorporating this amendment in §226.6(n). The proposed rule excluded this conforming amendment through oversight, and the Department is correcting this omission in the final rule.

The Department also proposed to amend § 226.18(b)(8) to allow State agencies to stipulate limits or procedures for terminations of agreements between sponsors and day care homes for convenience. Ten commentors approved of the proposal, while three disapproved. One State agency was concerned that the proposal could interject State agencies into disputes between sponsors and day care homes by requiring the State agency to determine whether there was sufficient cause for termination. Another disapproving commentor was concerned that the proposal could limit the ability of sponsors to deal with homes which may be violating program requirements. The third opposing commentor was concerned that this provision might enable State agencies to confer monopolies upon selected sponsors. The Department emphasizes that any limitation would be at the State agency's option. State agencies are not required to act in this area. Secondly, the revision does not affect the right of either party to terminate the agreement for cause, which would include instances of program violations. Finally, since agreements are effective only for one year, it is not possible to employ this provision as a means of restricting competition among sponsoring organizations. Therefore, the Department is adopting the amendment as proposed.

f. *Alternate approval in backlog situations.* Eleven commentors addressed the proposal to delete § 226.6(b)(4), which permits State agencies to employ alternate procedures for approving child care centers, outside-school-hours centers and day care homes which have not been previously licensed in situations of backlogs at the licensing agency. Nine commentors approved; one disapproved; and one requested some additional clarification. The one disapproving commentor believed that rescission of alternate approval in these backlog situations may create delays in participation for some providers. The Department does not consider, however, that this effect would be widespread. Moreover, as the Department noted in the preamble to the proposed rule, this provision has created a significant administrative burden for State agencies and has placed State agencies in the untenable position of deciding on the adequacy of facilities when an official licensing agency is available. The Department continues to believe that this responsibility should rest solely with licensing agencies when they exist. One commentor also asked whether or not this elimination of the backlog provision would extend to institutions which are reapplying but have not yet had their licenses officially renewed. The backlog provision in § 226.6(d)(4) was never intended to apply to license renewal situations. In cases in which licensing is available, § 226.6(d)(1) requires the State agency to ensure only that child care centers, outside-school-hours centers and day care homes are either licensed or complying with procedures to renew licensing in situations where the State agency has no information that licensing or approval will be denied. For these reasons, the Department is adopting the proposal to delete this provision. The final regulation also adopts the proposal to delete the reference to this provision in § 226.6(d)(3)(iii) and § 226.6(m).

9. Clarifications/Editorial Changes

The Department proposed two editorial amendments. The first of these specified in § 226.6(m) that institutions are responsible for ensuring that all deficiencies identified during reviews are corrected. The Department proposed this minor change to clarify that institutions have the primary responsibility for maintaining compliance with child care standards. Eight commentors approved of this amendment, and one disapproved. It appears, however, that the one disapproving commentor may have misunderstood the nature of the amendment. The commentor was concerned that the Department was requiring State agencies to review against licensing standards. The amendment merely adds the clause at the end of the first sentence specifying that "the institution shall ensure that all violations are corrected." The remainder of the sentence was unchanged. It should be noted, moreover, that the State agency's review responsibilities in this passage extend only to facilities admitted to the Program under the alternate approval provisions of

§ 226.6(d)(3). Therefore, the Department is adopting this amendment as proposed. The Department does wish to emphasize, however, that ultimate responsibility for compliance with this provision rests with the State agency, and language to this effect has been inserted in the regulation.

The second editorial amendment was to streamline the regulations by deleting the list of items in § 226.6(b) which are required to be considered during the application approval process. Eight commentors approved, and three disapproved. The disapprovals were based on the fact that this provision is not entirely duplicated by a similar provision in § 226.6(e), contrary to the statement made in the preamble to the proposed rule. Consequently, these commentors believed State agencies might not have sufficient guidance on what to consider in approving applications. The Department regrets having made this error in the preamble and agrees that deletion of this list could leave State agencies with insufficient direction with respect to certain annual requirements. Therefore, the Department is withdrawing the proposal to delete these items from the regulations.

10. State Agency Review Systems

Although no specific amendment was proposed, the Department solicited comments on the question of whether or not State agencies should be permitted to substitute their own review systems for the review requirements of § 226.6(k), provided FNS approved of the State agency's system. The intent of any such amendment would be to allow a certain degree of flexibility with respect to frequency of review when the State agency could demonstrate good cause.

Commentors were fairly evenly divided, with six (mostly States) approving of the change and four (mostly institutions) disapproving. Those disapproving were generally concerned with the possibility that State agencies might depart from the Program standards set forth in the regulations. The Department wishes to reiterate, however, that any such proposal would be directed specifically at review systems and issues such as determining standards for frequency of reviews or methods of selecting institutions for review. The reviews would still have to assess compliance with program regulations. The Department is taking all comments under consideration.

List of Subjects in 7 CFR Part 226

Day care, Food assistance programs, Grant programs-health, Infants and children, Reporting and recordkeeping requirements, Surplus agricultural commodities.

Accordingly, Part 226 is being amended as follows:

1. In § 226.6, by revising the first three sentences of the introductory text of paragraph (c); revising paragraph (d)(1)(i); revising the second sentence of (d)(3); removing paragraph (d)(4); revising paragraph (g); adding two sentences after the first sentence and revising the last sentence of the introductory text of (j); revising the second sentence of paragraph (j)(1); revising the last sentence and adding a new sentence at the end of (j)(3); revising paragraph (j)(4); placing a period after the word "action," in the third sentence; removing the word "and," and adding a sentence at the end of paragraph (j)(9); adding paragraph (j)(12); revising the third sentence of paragraph (k); revising the first and fourth sentences of paragraph (m); and adding a new sentence between the first and second sentence of paragraph (n) to read as follows:

§ 226.6 State agency administrative responsibilities.

* * * * *

(c) *Denial of applications and termination of institutions.* The State agency shall not enter into an agreement with any applicant institution identifiable through its corporate organization, officers, employees, or otherwise, as an institution which participated in any Federal child nutrition program at any time and which was seriously deficient in its operation of any such program unless the deficiencies have been corrected to the satisfaction of the State agency, with FNS concurrence. The State agency shall terminate the program agreement with any institution which it determines to be seriously deficient. Following such termination, the institution shall not be eligible to participate in the program until such time as the State agency, with FNS concurrence, determines that the institution has taken appropriate corrective actions to prevent recurrence of the deficiencies that led to a termination from the program. * * *

(d) *Licensing/Approval.* * * *

(1) *General.* * * *

(i) Are licensed or approved by Federal, State, or local authorities, provided that institutions which are approved for Federal programs on the basis of State or local licensing shall not be eligible for the Child Care Food Program if their licenses lapse or are terminated; or

* * * * *

(3) * * * Licensing or approval is not available when (i) no Federal, State, or local licensing/approval standards have been established for child care centers, outside-school-hours care centers, or day care homes; or (ii) no mechanism exists to determine compliance with licensing/approval standards. * * *

* * * * *

(g) *Commodity distribution.* The State shall annually inquire as to the preference of each institution for commodities or cash-in-lieu of commodities. Each institution electing cash-in-lieu of commodities shall receive such payments. Each institution which elects to receive commodities shall have commodities provided to it unless the State agency, after consultation with the State commodity distribution agency, demonstrates to FNS that distribution of commodities to the number of such institutions would be impracticable. The State agency may then, with the concurrence of FNS, provide cash-in-lieu of commodities for all institutions. A State agency request for cash-in-lieu of all commodities shall be submitted to FNS not later than May 1 of the school year preceding the school year for which the request is made. The State agency shall, by June 1 of each year, submit a list of institutions which have elected to receive commodities to the State commodity distribution agency, unless FNS has approved a request for cash-in-lieu of commodities for all institutions. The list shall be accompanied by information on the average daily number of lunches and suppers to be served to children by each such institution.

* * * * *

(j) *Institution appeal procedures.* * * * State agencies may use their own State appeal procedures provided the same procedures are applied to all appellants in the State and the procedures meet the following requirements: appellants are assured of a fair and impartial hearing before an independent official at which they may be represented by legal counsel; decisions are rendered in a timely manner not to exceed 120 days from the date of the receipt of the request for review; appellants are afforded the right to either a review of the record with the right to file written information, or a hearing which they may attend in person; and adequate notice is given of the place, date and procedures of the hearing. The appeal procedures adopted by the State agency shall be made available in writing each year to all institutions at the time of application for participation in the Program and upon

request. If the State has not established its own appeal procedures or the procedures do not meet the above listed criteria, the State agency shall observe the following procedures at a minimum:

(1) * * * The notice of action, which shall be sent by certified mail, return receipt requested, shall also include a statement indicating that the institution has the right to appeal the action;

* * * * *

(3) * * * Failure of the appellant institution's representative to appear at a scheduled hearing shall constitute the appellant institution's waiver of the right to a personal appearance before the review official, unless the review official agrees to reschedule the hearing. A representative of the State agency shall be allowed to attend the hearing to respond to the appellant's testimony and to answer questions posed by the review official;

(4) If the appellant has requested a hearing, the appellant and the State agency shall be provided with at least 10 calendar days advance written notice, sent by certified mail, return receipt requested, of the time and place of the hearing;

* * * * *

(9) * * * If the institution or facility has been terminated for this reason, the State agency shall so specify in its notice of action. Institutions electing to continue operating while appealing terminations shall not be reimbursed for any meals served during the period of the appeal if the State agency's action is upheld; and

* * * * *

(12) In cases where an appeal results in the dismissal of a claim against an institution which was asserted by the State agency based upon Federal audit findings, FNS may assert a claim against the State agency in accordance with the procedures outlined in § 226.14(c).

(k) *Program Assistance.* * * * Program reviews shall assess institutional compliance with the provisions of this Part and with any applicable instructions of FNS and the Department. * * *

* * * * *

(m) *Child Care Standards Compliance.* The State agency shall, when conducting administrative reviews of child care centers, outside-school-hours care centers, and day care homes approved by the State agency under paragraph (d)(3) of this section, determine compliance with the child care standards used to establish eligibility, and the institution shall ensure that all violations are corrected and the State shall ensure that the institution has corrected all violations. * * * If, during an administrative review of a child care center, outside-school-hours care center, or day care home not approved by the State agency under paragraph (d)(3) of this section, the State agency observes violations of applicable health, safety, or staff-child ratio standards, or attendance in excess of licensed capacity, the State agency shall promptly refer such violations to the appropriate authority. * * *

(n) * * * However, the State agency may, at the request of the sponsor, approve an agreement developed by the sponsor. * * *

2. In § 226.7, paragraph (c), a new sentence is added between the second and third sentences, and in paragraph (i) a new sentence is added to the end of the text to read as follows:

§ 226.7 State agency responsibilities for financial management.

* * * * *

(c) *Management Evaluations and Audits.* * * * If a State agency makes a showing of good cause, however, FNS may allow more than 60 days in which to submit a plan. * * *

* * * * *

(i) * * * The State agency shall maintain on file a statement of the State's law and policy governing the use of interest earned on advance funds by sponsors, institutions and child care facilities.

* * * * *

3. In § 226.8(e), revising the first sentence to read as follows:

§ 226.8 Audits.

* * * * *

(e) In conducting management evaluations or audits for any fiscal year, FNS or OIG may disregard any overpayment which does not exceed $100. In conducting State agency sponsored audits in State administered programs, the State agency may disregard any overpayment which does not exceed the amount established by State law, regulations or procedures as a minimum for which claims will be made for State losses generally. * * *

* * * * *

4. § 226.14 is amended by adding a new sentence to the end of paragraph (b), to read as follows:

§ 226.14 Claims against institutions.

* * * * *

(b) * * * However, the State agency shall not disregard any overpayments or waive collection action arising from the findings of Federal audits.

* * * * *

5. § 226.15, paragraph (a) is amended by adding a new sentence between the second and third sentence to read as follows:

§ 226.15 Institution provisions.

(a) *Tax-exempt status.* * * * It shall, however, be the responsibility of the institution to document that it has complied with all requirements of IRS and has provided all information requested. * * *

* * * * *

6. § 226.16, paragraph (d)(4)(ii) is revised to read as follows; paragraph (j) is removed, and paragraph (k) is redesignated as paragraph (j).

§ 226.16 Sponsoring organization provisions.

* * * * *

(d) * * *

(4) * * *

(ii) Three times each year at each day care home, provided at least one review is made during each day care home's first four weeks of Program operations and not more than six months elapse between reviews. However, based on case-by-case findings by the State agency that improved efficiency and more effective management will result and subject to FNSRO approval, State agencies may allow some or all of their sponsors to conduct reviews an average of three times each year per day care home, provided that each day care home is reviewed at least twice each year, at least one review is made during each day care home's first four weeks of Program operations, and no more than six months elapse between reviews; and

* * * * *

7. In § 226.18, the second sentence of paragraph (b) is revised and a new sentence after the second sentence has been added; and paragraph (b)(8) is revised to read as follows:

§ 226.18 Day care home provisions.

* * * * *

(b) * * * Sponsoring organizations shall enter into a written agreement with each sponsored day care home which specifies the rights and responsibilities of both parties. This agreement shall be developed by the State agency, unless the State agency elects, at the request of the sponsor, to approve an agreement developed by the sponsor. At a minimum, the agreement shall embody:

* * * * *

(8) The right of the sponsoring organization or the day care home to terminate the agreement for cause or, subject to stipulations by the State agency, convenience; and

* * * * *

8. § 226.20 is amended by removing the words "be served between other

meal types and" from paragraph (a)(3); by revising the paragraph heading of (d)(2); and by adding paragraph (o), to read as follows:

§ 226.20 Requirements for meals.

(a) * * *

(3) Supplemental food shall contain two of the following four components:

* * * * *

(d) *Additional food.* * * *

(2) *Lunch, supper or supplemental food.* * * *

* * * * *

(o) *Family-style meal service.* Meals may be served in a family-style setting.

(Sec. 2, Pub. L. 95–627, 92 Stat. 3603, 42 USC 1766 and Pub. L. 97–35)

Dated: February 19, 1985.

Robert E. Leard,

Administrator, Food and Nutrition Service.

[FR Doc. 85–5201 Filed 3–1–85; 8:45 am]

BILLING CODE 3410-30-M

Farmers Home Administration

7 CFR Parts 1807, 1822, 1902, 1930, 1944, 1951, 1955, and 1965

Predetermined Amortization Schedule System (PASS)

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) implements a new regulation and related changes in other regulations governing loan payments and servicing in the new Automated Multiple Housing Accounting System (AMAS) which incorporates a Predetermined Amortization Schedule System (PASS) as the payment application method. The present daily interest accrual system (DIAS) for payment application applies subsidized loan payments as if they are amortized at the subsidized (interest credit) rate usually 1 percent. This creates an inequity because principal for subsidized loans is reduced faster than principal for nonsubsidized loans. This action is taken in response to general public requests for a payment application method and other loan servicing functions consistent with practices in the private sector and Office of Inspector General (OIG) audits suggesting change in FmHA payment application methods so subsidized and nonsubsidized loans are treated equitably. The effect of this regulation will be a change from DIAS to PASS as the method of applying loan payments for all new loans, transfers, reamortizations and voluntarily converted loans after the effective date of the regulation. The related changes allowed by an improved accounting system are better services to borrowers and more efficient money management by FmHA.

EFFECTIVE DATE: The effective date of this regulation will be May 1, 1985.

FOR FURTHER INFORMATION CONTACT: Jeanine L. Johnson, Senior Loan Specialist, Multiple Family Housing Servicing and Property Management (MHSPM) Division, Room 5321–S, Farmers Home Administration, 14th and Independence Avenue, SW., Washington, D.C. 20250, Telephone: (202) 382–9728.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1 which implements Executive Order 12291, and has been determined "nonmajor." It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export markets.

This document has been reviewed according to 7 CFR, Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of human environment and according to the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

The FmHA programs and projects which are affected by this regulation are subject to intergovernmental consultation in the manner delineated in FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities," available in any FmHA Office.

CFDA numbers and titles: 10.405, Farm Labor Housing Loans and Grants; 10.415, Rural Rental Housing Loans; 10.411, Rural Housing Site Loans; and, 10.427 Rural Rental Assistance Payments.

FmHA implements a new Automated Multiple Housing Accounting System (AMAS) with borrower payments applied on PASS, to provide a loan accounting system consistent with the private sector and to provide incentive for borrowers to make timely loan payments. The design of AMAS incorporates recommendations in the President's Private Sector Survey on Cost Control (PPSSCC); requirements of Pub. L. 97–365 known as the Debt Collection Act of 1982; "Reform 88"; and Office of Management and Budget and Government Accounting Office requirements for government accounting system and automated data processing system design.

The benefits to the government from AMAS include better cash management, better control of subsidy funds, better data on use of loan and grant funds, improved account servicing to borrowers, more effective reports available to Congress and FmHA National, State and District Offices on funds and services provided to the public and equitable application of borrower payments whether subsidized or nonsubsidized.

Benefits to borrowers include easier understanding of FmHA's payment application method; ability to project payment applications to interest and principal; and ability to deduct rental assistance from payments made to FmHA.

This action incorporates new and improved administrative procedures made possible by the design of AMAS. The major changes are: Payments based on PASS; computer based use of funds and project data maintained by State and District Offices; computer based tracking of rental assistance; obligation and use of rental assistance maintained by fiscal year of obligation; payment notices for borrowers; better disclosure of payment application including application of subsidy; suspension of rental assistance in problem cases; and transfer of unused rental assistance between projects.

The proposed rule published April 18, 1984, included authority to suspend rental assistance in problem cases or credit sales and authority to reinstate to the present borrower, or a new borrower in the case of a credit sale, so the rental assistance is not lost to the project. Pub. L. 98–181 dated November 30, 1983, requires that, "the Secretary (of Agriculture) shall transfer rental assistance contract authority under this section (Section 521 of the Housing Act of 1949, as amended) from projects where such authority is unused after initial renting and not needed because of a lack of eligible tenants in the area to projects where such authority is needed." The originally proposed language of paragraph XV of Exhibit E of Subpart C of Part 1930 has been revised to incorporate this provision of Pub. L. 98–181.

This action does not incorporate the tenant files and direct billing system described in the proposed rule published April 18, 1984, of § 1951.506 of Subpart K of Part 1951 of Chapter XVIII Code of Federal Regulations. Review of the interim system FmHA proposed to use until the District Offices had computer terminals revealed that the interim system is not feasible. Mailing the tenant data to the Finance Office does not allow enough time to input the data and produce an accurate billing. FmHA will delay implementing tenant files until the District Offices have terminals, proposed sometime in 1985. At that time, a second "final rule" on these regulations will be published and comments received on tenant files will be addressed at that time.

A proposed rule to implement regulations governing AMAS and PASS was published in the **Federal Register** for a sixty (60) day comment period on April 18, 1984, 49 FR 15212. Nine comments were received. All comments received through June 19, 1984, were considered. Five were from borrowers or associations of borrowers, three were from FmHA employees and one was from the Office of Inspector General, USDA.

Discussion of Comments

Five of the nine comments received expressed direct support for the new system. While the other four comments were not negative about the system, they expressed specific concerns about the proposed policies regarding the direct billing and payment system which was proposed.

1. Changes are being made in twelve FmHA administrative regulations to implement improvements related to AMAS.

2. Tenant certification and recertification. Four of the respondents felt the requirement in proposed paragraph VII F3 to Exhibit B to Subpart C of Part 1930 was unfair. It required the borrower to pay overage for a tenant with an expired tenant certification and the overage could not be passed on the the tenant. Several situations were given where it would be beyond the borrower's control to get recertification.

FmHA reviewed the comments and felt they were valid. Paragraph VII F has been rewritten to provide notification to the borrower by the District Office that the tenant certification will expire in 90 days. The borrower must give the tenant notification at 90 days and 30 days prior to expiration of the tenant certification. If the tenant fails to respond, the borrower may charge the tenant market rent if the proper notifications have been made. The borrower will be required to pay overage if a proper tenant certification is not provided.

3. Late fee charges not chargeable to project. Four respondents commented on this provision in paragraph XIII B2 a (4) of Exhibit B of Subpart C of Part 1930. One borrower felt this was unfair because projects with financial difficulties often do not have other resources from which the late fees can be paid.

Two respondents felt FmHA should allow late fees to be paid by the project if there was adequate income to cover the expenses or FmHA should allow payments to be paid from reserves. One respondent fully supported charging late fees and not allowing them to be charged to the project account.

FmHA has not changed the regulations. For projects with financial difficulties there is a provision for excepting late fees in § 1951.510(c)(2)(v) of Subpart K of Part 1951.

Under PASS, a borrower has 40 days from the date rents are due until a late fee is assessed on the account. If there is a reason why sufficient rents are not being generated to make the payment and pay the operating expenses, the borrower should meet with FmHA and develop a plan to correct the problem. If late fees are assessed because of poor financial management by the borrower, the tenants should not be required to bear the cost of late fees in the form of increased rent to pay increased operating costs. Loan agreements allow for the release of reserve funds to make loan payments with District Director approval.

4. The Finance Office deducting payment from rental assistance. One borrower commented that when a project has financial difficulties, the rental assistance is needed for operating costs but the borrower might be paying other costs and deferring payment to FmHA. Failure to receive all rental assistance could force the account into foreclosure.

A provision has been made in paragraph X B 1 of Exhibit E to Subpart C to Part 1930 for the District Director to release a portion of the rental assistance to a delinquent borrower based on a servicing plan for the project.

5. Assigning rental assistance other than the first of the month. One respondent requested interpretation of present paragraph XI C to Exhibit E to Subpart C of Part 1930 since all rental assistance requests must now be based on residency as of the first day of each month.

FmHA agrees that this paragraph has caused an inconsistency so the paragraph has been revised to make adjustments to an existing tenant's contribution to coincide with the first day of the month.

6. Capitalizing construction interest on multiple advance loans. Two borrowers commented on the problem in § 1944.176(d)(3) of Subpart D of Part 1944 (and § 1944.212(m) of Subpart E of Part 1944) related to capitalizing interest on multiple advance loans rather than loaning funds to pay this interest. For accounting purposes this seems to deny them a tax deduction.

Capitalizing construction interest in multiple advance loans has been FmHA practice on single family loans since 1976. However, this was not available on multiple family housing loans until AMAS was designed. This is a good money management practice for FmHA since loan funds are conserved. Also, the government does not have funds in transit from the U.S. Treasury to the borrower and back to the U.S. Treasury as an interest payment.

At the suggestion of one respondent, we have revised § 1944.212(m) of Subpart E to Part 1944 to require the District Director to report to the borrower the amount of interest accruing monthly upon request from the borrower.

7. Escrow accounts for rents collected before a project is ready for occupancy. One respondent questioned if the escrow account specified in paragraph VI C of Exhibit B to Subpart E of Part 1944 is the same as the general operating account (formerly the general fund account) required by the borrower's loan agreement.

As originally written, this was a separate account. However, another account seemed burdensome since the borrower already has a general fund account for this purpose. The regulations are revised.

8. Payment Due Dates. One association of borrowers requested clarification about administratively changing payment due dates to the first day of the month when loans convert to PASS on the effective date of the regulation.

FmHA needs to change all payment due dates to the first day of the month to implement PASS and the direct billing system. Terms of promissory notes will not be changed for borrowers who have not signed a conversion agreement. However, FmHA has administratively determined that borrowers will not be determined delinquent until after the first day of the month. Prior to the effective date of this regulation all FmHA borrowers affected by AMAS will be notified that the payment due for a given month can be deferred until the first day of the following month.

Thereafter, all payments will be requested to be paid on the first day of the month. (For example: A payment due in November will be due December 1.) Final due dates for loans will not be changed.

9. Late fee exceptions. Two borrowers felt State Directors authority to make an exception for late fees should include all borrowers.

This change has been made in §1951.510(c)(2)(v) of Subpart K of Part 1951.

10. Treasury Ruling. Two borrowers urged FmHA not to implement AMAS until the U.S. Treasury Department has determined the tax impact of PASS.

FmHA has designed AMAS, including PASS, for several compelling reasons as stipulated at the beginning the **SUPPLEMENTARY INFORMATION.** It would not be in the best interest of the government to delay implementing AMAS. FmHA will start applying payments on PASS when AMAS is implemented to provide equitable treatment to subsidized and nonsubsidized borrowers.

11. Changes from DIAS to PASS. One borrower organization requested that we require approval of requests for conversion from DIAS to PASS provided all conditions in the regulation are met.

This change has been made in § 1951.517(b)(2) of Subpart K of Part 1951.

List of Subjects

7 CFR Part 1807

Loan programs—Agriculture, Loan programs—Housing and community development, Mortgages.

7 CFR Part 1822

Loan programs—Housing and community development, Low and moderate income housing, Mortgages, Nonprofit organizations, Rural housing.

7 CFR Part 1902

Accounting, Banks, banking.

7 CFR Part 1930

Accounting, Administrative practice and procedure, Loan programs—Housing and community development, Low- and moderate-income housing—Rental, Reporting and recordkeeping requirements.

7 CFR Part 1944

Administrative practice and procedure, Aged, Farm Labor Housing, Handicapped, Loan programs—Housing and community development, Low- and moderate-income housing—Rental, Migrant labor, Mortgages, Nonprofit organizations, Rent subsidies, Rural housing.

7 CFR Part 1951

Account servicing, Credit, Loan programs—Agriculture, Loan programs—Housing and community development, Low and moderate income housing loans—Servicing, Mortgages.

7 CFR Part 1955

Foreclosure, Government acquired property.

7 CFR Part 1965

Administrative practice and procedure, Low and moderate income housing—Rental, Mortgages.

Accordingly, Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

PART 1807—TITLE CLEARANCE AND LOAN CLOSING

1. Section 1807.1 (d) is amended in the first sentence following the words "requirements of" by removing the reference "§ 1822.95 (a) of this chapter" and inserting in its place the reference "§ 1944.236 (a) of Subpart E of Part 1944 of this chapter."

2. Section 1807.1 (e) is amended by removing the reference in the last sentence from "Subpart C of Part 1918 of this chapter" and inserting in its place the reference "Subpart E of Part 1924 of this chapter."

3. In § 1807.2, paragraph (f)(3) is removed and paragraphs (f)(4) through (f)(13) are redesignated as (f)(3) through (f)(12) respectively.

PART 1822—[AMENDED]

Subpart G—Rural Housing Site Loan Policies, Procedures, and Authorizations

4. Section 1822.271 paragraphs (d), (e), and (g) introductory text are revised to read as follows:

§ 1822.271 Processing applications.

* * * * *

(d) *Preparation of docket forms.*—(1) *Request for obligation of funds and fund analysis.* Forms FmHA 1944–50, "Multiple Family Housing Borrower/Project Characteristics," and FmHA 1944–51, "Multiple Family Housing Obligation-Fund Analysis," will be completed in accordance with the Forms Manual Insert (FMI).

(2) *County committee certification or recommendation.* County committees will not be used to review RHS loan applications.

(e) *Assembly, review and distribution of complete loan docket items.* When all items required for the complete loan docket have been furnished, they will be examined thoroughly to make sure they are properly and accurately prepared and are complete in all respects, including dates and signatures. The loan docket items will be assembled in the following order and distributed as follows:

Form No.	Name of form or document	Total No. of copies	Signed by borrower	Number for loan docket	Copy for borrower
	Application Letter and Attachments	2		1-O	1-C
	Evidence of Legal Authority (copy or citation of specific provisions of State statutory authority).	2	1	1-O	1-C
	Proof of Organization (certified copy of Articles of Incorporation)	2	1	1-O	1-C
	Certified copy of Bylaws	2	1	1-O	1-C
	List of names and addresses of officers, directors and members	2	1	1-O	1-C
	Narrative plan and other supporting information	2	1	1-O	1-C
	Evidence of Need				
	Certified Copy of Loan Resolution	1	1	1-O	
FmHA 440-4	Assurance Agreement	2	1	1-O	1-C
FmHA 400-1	Equal Opportunity Agreement (when applicable)	2	1	1-O	1-C
FmHA 400-3	Notice to Contractors and Applicants	3		1-C	1-C
FmHA 400-6	Compliance Statement (when applicable)	3		1-C	1-C
	Survey of land given as security, plans specifications, cost estimates, and proposed manner of development	3	1	1-O	1-C
	Operating budget (if administrative expenses are to be included in loan).	2	1	1-O	1-C
	Appraisal Report with Attachments	1		1-O	
	Preliminary Title Opinion and a Final Title Opinion or a title insurance binder and a mortgage title insurance policy.				
	Option or copy of deed, purchase contract, or other instruments of ownership.				
FmHA 1944-50	Multiple Family Housing Borrower/Project Characteristics	1		[1]	
FmHA 1944-51	Multiple Family Housing Obligation-Fund Analysis	2	2	[1]	1

[1] Data input to Finance Office through field office terminals.

* * * * *

(g) *Loan approval authority and State Office action.* The State Director is authorized to approve loans in accordance with this Subpart and Subpart A of Part 1901 of this chapter.

As soon as it is evident that a loan will be approved, the State Director will complete Exhibit A to Subpart C of Part 2015 of this chapter and submit to the FmHA Finance Office through field office terminals that information contained in Form FmHA 1944–50, "Multiple Family Housing Borrower/Project Characteristics." The State Director may redelegate approval authority to qualified State Office employees. When a docket or preliminary application is received in the State Office, the State Director will:

* * * * *

5. In § 1822.274, paragraph (c) is revised to read as follows:

§ 1822.274 Loan closing.

* * * * *

(c) *Promissory note.* Form FmHA 1944–52, "Promissory Note," will be used. Instructions for preparation will be in accordance with the FMI and the following:

(1) The total amount to be shown in the note will be the amount of the loan shown on Form FMHA 1944–51. The note will be dated the date of the loan closing.

(2) The note will be signed in accordance with FmHA Instruction 427.1 and the FMI for Form FmHA 1944–52.

(3) Payments shall not be deferred.

* * * * *

6. In § 1822.278, paragraph (f) is revised to read as follows:

§ 1822.278 Special requirements for RHS, section 523 loans (loans to organizations providing sites for self-help housing).

* * * * *

(f) *Note forms.* Form FmHA 1944–52, "Multiple Family Housing Promissory Note," will be used. See § 1822.274 (c).

* * * * *

PART 1902—SUPERVISED BANK ACCOUNTS

Subpart A—Loan and Grant Disbursement

7. In § 1902.1 paragraphs (a) and (b) are revised to read as follows:

§ 1902.1 General.

(a) Forms FmHA 1940.1, "Request for Obligation of Funds" and FmHA 1944–51, "MFH Obligation—Fund Analysis," provide for: (1) Obligation only, (2) obligation and check request for the full amount of the loan or grant, and (3) obligation and check request for a partial amount of the loan or grant except for MFH. The instructions on when and how to use these forms are contained in the Forms Manual Inserts (FMI) for these forms. Instructions for using Form FmHA 1944–51 for obligation and check request via computer terminal may also be found in the "Multiple Family Housing User Procedures."

(b) Forms FmHA 440–57, "Acknowledgement of Obligated Funds/Check Request" and FmHA 1944–57, "MFH Acknowledgement of Obligated Funds/Check Request," provide for: (1) The initial loan check, (2) all subsequent loan checks, (3) making corrections on the data in the loan account as reflected on the form, (4) notifying the Finance Office of the loan closing date and the loan amortization effective date, and (5) providing requested information from the Finance Office; and, (6) for Multiple Family Housing (MFH) loans providing Maximum Debt Limit and Appraised Value. The instructions on when and how to use these forms are contained in the FMI for the forms. However, for MFH loans and grants whenever possible, check obligation requests and loan closings should be done via the field office computer terminal. Instructions may be found in the "Multiple Family Housing User Procedures."

* * * * *

§ 1902.2 [Amended]

8. Section 1902.2(a)(2) is amended by adding "or Form FmHA 1944.57" after "Form FmHA 440–57" in the last sentence.

9. Section 1902(b) is revised to read as follows:

§ 1902.2 Policies concerning disbursement of funds

* * * * *

(b) For all construction loans and those loans using multiple advances, only the actual amount to be disbursed at loan closing will be requested either through the initial submission of Form FmHA 1940–1 or 1944–50 through Form FmHA 440–57 or 1944–57. Subsequent checks will be ordered as needed by submitting Form FmHA 440–57 or Form FmHA 1944–57 to the Finance Office. All obligations, check request and loan closing data for MFH loans must be accomplished through field office terminals. Requesting checks using Form FmHA 1944–57 is authorized only when the system is expected to be down for an extended period.

* * * * *

10. In § 1902.2, paragraph (c) is amended by adding after the last sentence, "For all RRH, RCH, LH or RHS loans, interest will accrue from the date of the check."

11. Section 1902.2, paragraph (d) is amended by adding "(and Form FmHA 1944–51, for multiple family housing)" after "Form FmHA 1940–1" in the first sentence.

12. In § 1902.2, paragraph (e) is amended by adding "or Form FmHA 1944–53, 'MFH Cancellation of Checks and/or Obligations'" after "FmHA 1940–10, 'Cancellation of U.S. Treasury Check and/or Obligations'" for multiple family housing loans in the first sentence.

13. Section 1902.3, paragraph (a) is amended by changing the end of the sentence after "FMI" to read ". . . Forms FmHA 1940–1, FmHA 1944–51, FmHA 440–57 and FmHA 1944–57."

PART 1930—GENERAL

Subpart C—Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients

14. Exhibit A is amended by adding paragraph III H to read as follows:

Exhibit A of Subpart C—Steps for FmHA Personnel in Conducting Annual Analysis of Rental Operations

* * * * *

III. * * *

H. Did the borrower charge late fees to project accounts?

* * * * *

15. Exhibit B is amended by revising paragraph VII F and adding paragraph XIII B 2 a (4) to read as follows:

Exhibit B of Subpart C—Multiple Housing Management Handbook

* * * * *

VII. * * *

F. *Certification of tenant income.* 1. The borrower must initially submit Form FmHA 444–8, or for tenants receiving section 8 Assistance, the acceptable Department of Housing and Urban Development (HUD) tenant certification form to the District Office for each tenant. The initial signed tenant certification must be submitted to the FmHA District Office on or before the day the tenant occupies the unit. The District Office will review the tenant certification and verify that the information contained on the form is complete and correctly computed based on information contained on the form.

2. Each tenant must be recertified within twelve months of the previous certification. Tenants receiving section 8 assistance will be recertified according to HUD regulations.

a. Ninety (90) days prior to the required recertification, the District Office will notify the borrower in writing that a tenant recertification is required and specify the due date. The due date will be the first day of the month following the expiration date of the tenant certification. Failure to receive the notification does not relieve the borrower of responsibility to provide the recertification under the requirements of this regulation and Covenant 3 of Form FmHA 1944–7, "Multiple Family Housing Interest Credit and Rental Assistance Agreement."

b. The borrower must:

(1) Notify the tenant that a current tenant certification and income verification is required before the due date and explain the procedure necessary to accomplish recertification:

(2) Process the appropriate tenant certification and verification of income: and

(3) Submit the completed and signed recertification to the District Office by the due date.

c. The borrower must provide a second written notice to the tenant 30 days prior to the due date if the tenant has not responded. The second notice must advise the tenant that without a current tenant certification, the tenant will be required to pay market rent and that eviction proceedings may be started as of the due date since an annual recertification is required for continued occupancy. If the tenant has rental assistance (RA), the tenant must be advised that without a current tenant certification, the tenants RA will be cancelled and may not be immediately available for reinstatement should a proper tenant certification be provided at a later date.

3. The borrower must submit Form FmHA 1944–29, "Project Worksheet for Interest Credit and Rental Assistance," to the District Office with each payment, report of overage or request for RA as required in paragraph XIII C 1 b of this Exhibit. The calculations on Part II of the form must be for tenants in residence on the first day of the month for which the payment or request is submitted. All calculations will be made as if the tenant will be in residence for the full month. Adjustments will not be made to the borrower's subsidy, payment or charges for overage for tenants moving in or out after the first of the month.

4. On form FmHA 1944–29, the District Director will authorize interest credit and RA *only* for tenants with current tenant certifications. For tenants without current tenant certifications, the borrower must pay overage to FmHA.

A. When the borrower provides evidence that the tenant has been properly notified as required by paragraph 2. b. and c. above, and the tenant has failed to respond, the District Director may authorize the borrower in writing, to charge the cost to the tenant. The authorization may be by separate letter or by a signed statement on a copy of the Form FmHA 1944–29 submitted by the borrower. The borrower must continue to charge the tenant market rent until the tenant provides an acceptable tenant certification or the tenant vacates the unit. Any unpaid overage will continue to be unpaid rent owed by the tenant to the borrower.

b. If the tenant is receiving RA and has not submitted the required recertification by the due date, the RA will be reassigned using priorities in paragraph XI B of Exhibit E to this subpart.

* * * * *

XIII * * *

B. * * *

2. * * *

a. * * *

(4) *Unauthorized Disbursements.* Late fees charged the borrower according to Subpart K of Part 1951 of this chapter, may not be paid from project income. When late fees are deducted by FmHA from payments made from project income, the project General Operating Account must be reimbursed from nonproject income of the owner or management agent or deducted from the owner's return on investment.

* * * * *

16. Exhibit B is further amended in paragraph XIII. c. 1. b. by removing the last sentence.

17. Exhibit E is revised to read as follows:

Exhibit E of Subpart C—Rental Assistance Program

Exhibit E—Rental Assistance Program

I. *General.* The objective of the rental assistance program is to reduce rents paid by low-income households. This Exhibit sets forth the policies and procedures and delegates authority under which rental assistance (RA) will be extended to eligible tenants occupying eligible Rural Rental Housing (RRH) and Rural Cooperative Housing (RCH) projects financed by FmHA. This Exhibit also applies to Farm Labor Housing (LH) projects when the borrower is a broadly-based nonprofit organization, nonprofit organization of farmworkers, or a State or local public Agency. Rental assistance will supplement the benefits available to tenants under the interest credit program outlined in Exhibit B to Subpart E of Part 1944 of this chapter.

II. *Definitions.*

A. *Eligible Tenants.* Any low-income household, handicapped person, or senior citizen meeting the following requirements:

1. The household adjusted annual income must not exceed the low income limit established for the area as indicated in Exhibit C to Subpart A of Part 1944 of this chapter.

2. The household must be unable to pay the approved rental rate plus utility allowance within 25 percent of their adjusted monthly income.

3. The household must meet the occupancy standard stated in Exhibit B to this Subpart and in the borrower's RA agreement, except:

a. Tenants occupying an inappropriate size unit, who are covered by paragraph VI B 2 e of Exhibit B to this Subpart, are considered eligible tenants for RA provided they agree, in writing, to move at their own expense to the next available unit of appropriate size. If the project does not contain a unit of appropriate size, the tenant may occupy an inappropriate size unit and receive RA.

b. Tenants who initially occupied an apartment unit prior to November 14, 1977, and who were determined eligible for occupancy at that time under guidelines then in effect, may remain in that apartment for an indefinite period and receive RA (and interest credit benefits) even though they do not meet the present occupancy standards, as long as they remain in the same unit and are income eligible under current FmHA regulations. Such tenants may receive RA if it becomes available to them without meeting the present occupancy standard.

c. Ineligible tenants, with State Director approval, who are income eligible but occupancy ineligible, may receive RA as long as they are permitted to occupy a unit as an ineligible tenant.

B. *Eligible Project.*

1. All projects must operate under Interest Credit Plan II RA to be eligible to receive RA, except LH loans, direct RRH, and insured RRH loans approved prior to August 1, 1968, which must operate under Plan RA. To be eligible for RA the project must have a:

a. RRH insured or direct loan made to a broadly-based nonprofit organization, or State or local agency, including Senior Citizen Housing (SCH), or

b. RRH insured loan to an individual or organization who has or will execute a Loan Resolution or Loan Agreement agreeing to operate the housing on a limited profit basis as defined in § 1944.205(r) of Subpart E to Part 1944 of this chapter, or

c. RCH insured or direct loan, or

d. LH loan, or an LH loan and grant combination, made to a broadly-based nonprofit organization or nonprofit organization of farmworkers or a State or local public Agency.

2. Borrowers may utilize HUD's Section 8 Housing Assistance Payments Program for existing housing and FmHA RA for other eligible households in the same project.

3. Projects with all or a part of the rental units under contract with the Department of Housing and Urban Development (HUD) developed under the Section 8 program for new construction or rehabilitation, by either the dual or single track processing procedures will not be considered an eligible project for RA.

C. *Operational Project.* Any FmHA financed project which has been occupied by tenants for at least 90 days. This may also include newly constructed projects in which a diligent effort has been made to rent the units and at least some units have been occupied.

D. *New Project.* Any FmHA financed, newly constructed project or a project which meets the definition of major rehabilitation in § 1944.212 of Subpart E of Part 1944 of this chapter.

E. *Rental Assistance.* Rental assistance (RA), as used in this Exhibit, is the difference between 25 percent of the household's adjusted monthly income and the approved rental rate (including the approved utility allowance, when applicable) for the rental unit being occupied by the household. When the household's adjusted monthly income is less than the approved utility allowance which is billed directly to and paid by the tenant, the owner will pay the household that difference according to paragraph IX A 2 of this Exhibit. Rental assistance is further defined as:

1. For projects operating on Interest Credit Plan II RA, the difference between 25 percent of the household's adjusted monthly income and the basic rent, including utilities for the rental unit.

2. For projects operating on Plan RA, the difference between 25 percent of the household's adjusted monthly income and the approved market rental rate, including utilities for the rental unit.

F. *Approved Rental Rate.* The approved rental rates (basic and/or market rent) are

those shown on the budget for the year and approved according to § 1930.124 of this Subpart plus utility allowances, when required, which have been determined and approved according to Exhibit A–5 to Subpart E of Part 1944 of this chapter. Any change in rental rates or utility allowance must be processed according to Exhibit C to this Subpart.

G. *Utility Allowances.* The allowance approved by FmHA according to Exhibit A–5 to Subpart E of Part 1944 of this chapter, to cover the cost of utilities which are payable directly by the households.

H. *Replacement Units.* RA units which replace RA units in RA agreements expiring because obligated funds have been fully disbursed.

III. *Utilization of Rental Assistance.* All borrowers with eligible projects as defined in paragraph II B of this Exhibit are encouraged to utilize the RA program and receive RA payments on behalf of low-income tenants. Generally, the borrower, or the borrower's approved management agent, will initiate the processing of a RA application.

IV. *Priority of Rental Assistance Applications.* The National Office may establish a State quota on the number of RA units that may be approved and obligated in any fiscal year. The State Director will limit the approval of RA to no more than the number of units allocated to the State. Unless otherwise stated by the National Office, the State allocation will indicate the number of RA units for operational projects and the number of RA units to be used for new construction. Priority in allocating RA units will be as follows:

A. *Allocation to Projects Within a State.* The State Director will distribute any RA units allocated to the State according to any specific guidance established by the National Office. When no specific guidance is established by the National Office the State Director will approve requests for RA to projects according to the provisions of this Exhibit.

1. *Replacement Units:* The State Director will distribute or reserve RA units and give priority to projects needing replacement units before any initial or additional units are allocated to other new or operational projects. The State Director should ascertain how many RA units are expected to expire in each District Office during the current fiscal year and the first quarter of the following fiscal year.

2. *Operational Housing:* The State Director will distribute any remaining RA units allocated to the State for initial or additional units in operational RRH, RCH, and LH projects based on Forms FmHA 1944–25, "Request for Rental Assistance," that have been submitted by eligible borrowers. Priority will be given to projects based on the earliest date that Forms FmHA 1944–25 and other information is received by the State Director in acceptable form. The number of RA units granted in any project will be based on the number of households in the project eligible for RA up to the maximum allowed, including exceptions granted by the State Director and National Office. The National Office will notify the State Director each year of any specific date by which all requests for RA must be submitted to FmHA for consideration.

3. *New Housing:* Any RA units allocated to the State for new construction will be distributed on a priority basis in the following order:

a. RRH or RCH projects to be provided in areas where HUD Section 8 units under the FmHA set-aside are not available.

b. Applications for RRH and RCH loans where the market survey information indicates that without RA, a large percentage of the prospective tenants will be paying in excess of 25 percent of their adjusted monthly income for rent including utilities. When the number of RA units available is inadequate to cover all such applications, the units will be distributed giving priority to those projects located in areas identified as having the greatest housing needs and selected for funding in accordance with § 1944.231(c) of Subpart E of Part 1944 of this chapter.

c. For LH projects, RA units will be allocated by the National Office on a case-by-case basis at the time the projects are considered for funding at the National Office level.

4. *Limitation on number of units of rental assistance in each project:* The maximum number of rental units in a project to obtain RA is limited to the following:

a. No limitation for eligible LH loan and grant projects.

b. No limitation for RRH, RCH or SCH projects designed and limited to housing for the senior citizen or handicapped, except that the State Director may limit the percentage of RA units granted to no more than 40 percent of the number of rental units if it appears that the number of RA units distributed to the State will not be adequate to approve all requests for RA.

c. An RCH or RRH project designed and/or primarily occupied by low- and moderate-income households will be limited to not more than 40 percent of the total number of rental units in the project.

d. An RCH or RRH project originally planned and designed for a mix of senior citizens or handicapped persons and low- and moderate-income households will be limited to not more than 40 percent of the total number of rental units designed for low- and moderate-income households but there will be no limitation on the rental units designed for and occupied by senior citizens or handicapped persons.

B. *Granting Exceptions.*

1. *State Directors Authority.* An exception to the 40 percent limitation indicated in paragraphs IV A 4 c and d of this Exhibit may be granted by the State Director for up to 70 percent of the rental units in any particular project. (Number of units × 70 percent = number of RA units rounded to the next higher whole number.) However, the total number of units of RA granted by the State Director, including exceptions, cannot exceed the number of RA units allocated to that State. Exceptions will be granted only when RA units are available, or can be made available, and the following conditions exist:

a. When more than 40 percent of the rental units are occupied by households who are paying more than 25 percent of their ajdusted income for rent, including utilities, and such units are no larger than needed to meet the household's need, or

b. Other tenants in a project that is being assisted at the 40 percent level experience a hardship as a result of an income decrease or a rental increase and must obtain RA to remain in the project, or

c. The project is located in or is being developed in an area or community having a low median per capita income based on the county data in accordance with Exhibit C of Subpart A of Part 1944 of this chapter (available in any FmHA Office). Also, the majority of the proposed tenants are now or will be paying in excess of 25 percent of their income for rent including utilities.

2. *Replacement Agreements.* The State Director may approve RA agreements for replacement units which exceed his/her approval authority, provided the units were intitially authorized in writing by the National Office.

3. *National Office Authority.* The National Office may authorize the State Director to approve RA up to 100 percent of the rental units in family and mixed projects on a case-by-case basis. The project must be located in or proposed in an area or community having a low mediam per capita income based on the county data in accordance with Exhibit C of Subpart A of Part 1944 of this chapter (available in any FmHA office.) Also, the majority of the tenants are now, or will be, paying in excess of 25 percent of their income for rent including utilities. Exception requests must be submitted to and aproved by the National Office prior to approving the loan or requesting obilgation of rental assistance for more than 70 percent of the rental units in the projects.

C. *Processing Exception Requests.* A request for an exception to the 40 percent limitation will be submitted by the borrower to the District Director. After reviewing the request for completeness, accuracy, and sufficient documentation to fully support the request, the District Director will submit the request with the documentation and recommendations to the State Office by memorandum for approval. Included in the memorandum will be the number and percentage of rental units in excess of the 40 percent limit and justification for the approval. When National Office authorization is required to exceed the 70 percent limitation, the State Director will request this authorization by memorandum and will submit the following:

1. Operational Projects

a. Form FmHA 1944–25,

b. Form FmHA 1944–29, "Project Worksheet for Interest Credit and Rental Assistance," with all columns completed for each tenant in the project,

c. A copy of the project's waiting list for occupancy identifying eligible prospective tenants on the top of the waiting list whose incomes have been verified and who are willing to occupy vacant units if an exception to the 70 percent limitation is made,

d. A copy of any existing RA agreement and modifications thereto which may be in effect on the project,

e. The comments of the District Director, and

f. The comments and recommendations of the State Director.

2. New Projects

a. Form FmHA 1944–25,

b. Complete data and documentation on the rental housing market,

c. Complete data and documentation on the income of the households likely to be served,

d. The comments of the District Director, and

e. The comments and recommendations of the State Director.

V. *Processing of Rental Assistance Applications.* All requests for RA will be processed according to this paragraph and may be approved by the State Director.

A. *Operational Projects.*

1. A borrower with an eligible project in which there are tenants paying in excess of 25 percent of their adjusted income for rent is encouraged to file Form FmHA 1944–25, with the District Director. A separate Form FmHA 1944–25 will be submitted for each project. The borrower should include the following with each request.

a. Form FmHA 1944–29, with all columns completed for each tenant in the project. (All Forms FmHA 444–8, "Tenant Certification," must be current.)

b. Approved or proposed budget for the year on Form FmHA 1930–7, with Exhibit A–5 to Subpart E of Part 1944 of this chapter attached, when applicable.

2. Prior to the full disbursement of obligated funds on any agreement, a borrower or approved management agent may submit a request for replacement RA units. This request should contain all the material requested in paragraph V A 1 of this Exhibit and should be submitted no later than three (3) months prior to the expected full disbursement of obligated funds, to allow time for processing the request. The number of replacement units may not exceed the number of units that are expiring. Once replacement units have been requested, additional units may not be requested until Form FmHA 1944–51, "Multiple Family Housing Obligation—Fund Analysis", is received obligating the replacement units. Form FmHA 1944–51 requesting the additional units must be coded sequentially as required in paragraph V C 5.

3. The District Director will review the budget, Exhibit A–5, Form FmHA 1944–29, and Form FmHA 1944–25 submitted by the borrower to assure that the items are complete and accurate. The District Director will complete Form FmHA 1944–25 and submit all data provided by the borrower to the State Director with appropriate comments and recommendations.

B. *Projects to be Funded.*

1. Applicants requesting funding for new projects who are planning to utilize the RA program, should submit a completed Form FmHA 1944–25 to the County Supervisor or District Director, as appropriate, when submitting a preapplication or application for funding.

2. The number of units of RA requested should be based on the market data for the area, the proposed rental rates as reflected in a budget for the project, and the income levels of the prospective tenants.

C. *State Director Action on Requests for Rental Assistance.* Only the State Director or delegated members of the State Office staff may approve or disapprove rental assistance requests.

1. *Approval Actions.* When the State Director determines that RA can be obligated or transferred, Part III of Form FmHA 1944–51, "Multiple Family Housing Obligation—Fund Analysis," for obligation, or Form FmHA 1944–55, "Multiple Family Housing Transfer of Rental Assistance," for transfers, will be prepared and distributed according to the FMI. Form FmHA 1944–27, "Rental Assistance Agreement," will not be executed or amended until the obligation or transfer is verified by the Finance Office. The State Office will verify the obligation or transfer via the computer terminal, on the day following the request.

2. *Completing Agreements.* When the State Director verifies that RA units have been obligated or transferred by the Finance Office, the State Director will forward a copy of either Form FmHA 1944–51 or Form FmHA 1944–55 to the District Director. The District Director will complete Form FmHA 1944–27, and attach the appropriate copies of Form FmHA 1944–51 on Form FmHA 1944–55 according to the FMI.

a. *Initial Agreements.* The District Director will prepare an original and two copies of Form 1944–27. When the project does not have a Form FmHA 1944–7, "Multiple Family Housing Interest Credit and Rental Assistance Agreement" in effect, the District Director will prepare an original and three copies. The District Director and the borrower will then execute the originals and all copies of Form FmHA 1944–27 and Form FmHA 1944–7. The forms will be distributed according to their FMIs.

b. *Replacement or Modified Agreements.* When an RA agreement initiated prior to May 1, 1985, is replaced or modified, a new Form FmHA 1944–27 will be prepared and distributed according to the FMI. For every replacement or modification after May 1, 1985, the original and all copies of the affected RA agreement will be notated, assembled and distributed by the District Director according to the FMI.

3. *Modification of an Existing Agreement.* After any request for a change in the amount of RA has been obligated by the Finance Office, the Form FmHA 1944–27 will be prepared, signed and distributed according to the FMI. A new Form FmHA 1944–7 is not required.

4. *Denial of Rental Assistance Request.* If RA cannot be provided, the State Director will inform the borrower, in writing, of the reasons. The borrower will be given appeal rights according to Subpart B of Part 1900 of this chapter in all cases except when RA is not available from the State's allocation or the National Reserve.

5. *Rental Assistance Agreement Numbers.*

a. Each RA agreement will be assigned a six digit Rental Assistance Agreement Number by the Finance Officer as follows:

(1) First two digits—Fiscal Year (FY in which the funds were obligated, i.e., 85, 86, etc.

(2) Second two digits—Initial obligation for the project will be coded 01. Renewal obligations will be coded sequentially starting with 02.

(3) Third two digits—Initial obligation will be coded 00. Each modification where units are added to the agreement by obligation will be coded sequentially starting with 01.

b. RA Agreements with units obligated before FY 1985 will be coded as follows:

(1) First two digits—FY initial obligation was made on the project, i.e., 78, 79, 80, etc.

(2) Second two digits—Will always be "00."

(3) Third two digits—Indicate the number of modifications plus 1. (RA Agreement with two modifications on September 30, 1984, will be designated "03.")

c. The Finance Office will assign RA agreement number when RA is obligated on Form FmHA 1944–51 or transferred on Form FmHA 1944–55. The Finance Office will also track RA agreements by number and notify the District Office on Form FmHA 1951–53, "Multiple Family Housing Transaction Record."

VI. *Terms of the Rental Assistance Agreement.*

A. *Effective Date.* Each "Rental Assistance Agreement" will be effective the first day of the month in which it is executed. If assistance is granted to a project under an appeal according to paragraph XVI of this Exhibit, the effective date will be retroactive to the first day of the month in which the assistance was denied, provided the borrower agrees to make any appropriate refunds to tenants who would have been entitled to RA during the retroactive period.

B. *Term.*

1. *Twenty (20) Year Agreement.* Twenty (20) year agreements are restricted to new projects or modifications of existing twenty (20) year agreements. The agreement shall be effective for twenty (20) years form the effective date of the agreement. This agreement may be modified or terminated in accordance with the terms of the RA agreement. The agreement will expire when the funds obligated for the RA units described in Section 1 of the agreement are fully disbursed. This can be any time before or after the end of the 20-year term. Upon expiration of the agreement, a replacement agreement may be executed. If a replacement agreement is considered, it will be for a five (5) year period.

2. *Five (5) Year Agreement.* Five (5) year agreements may be used for operational projects, or for new projects when twenty (20) year units are not available. The agreement shall be effective for five (5) years from the effective date of the agreement. This five (5) year agreement may be modified or terminated in accordance with the terms of the RA agreement. The agreement will expire when the funds obligated for the RA units described in Section 1 of the agreement are fully disbursed. This can be any time before or after the end of the five (5) year period.

3. *Modification of Agreements.* RA agreements may be modified:

a. To add or subtract RA units assigned to the project through obligation or through transfer from another rental assistance agreement;

b. To reinstate a suspended RA agreement to a new borrower in the same project after a voluntary conveyance or a foreclosure and a credit sale within the Multi-Family Housing program; or

c. To transfer a suspended RA agreement to a new borrower and a different project after liquidation of the project assets or after the loan is paid in full.

4. *Amendment of Agreements.* Any existing RA agreement executed prior to the effective date of this regulation, which will have a remaining obligation balance at the end of the 5-year or 20-year expiration date stated in Section 9, "Term of the Agreement," may be modified by the use of Form FmHA 444–27A, "Amendment to Rental Assistance Agreement." The amended agreement will expire when the obligated funds are fully disbursed.

5. *Replacement Agreements.* Replacement RA agreements for either 5-year or 20-year agreements will be for a five (5) year period. All requirements in paragraph VI B 2 and 3 of this exhibit apply. Expiring RA agreements and replacement RA agreements may run concurrently for one month so any undisbursed obligation balance on the expiring RA agreement can be liquidated.

VII. *Recordkeeping Responsibilities.*

A. The State Director will maintain Form FmHA 444–28, "Record of Rental Assistance Agreements." Any changes which are made in the number of rental units assisted will be recorded on Form FmHA 444–28.

B. The Finance Office (FO) will track the use of RA and ensure that RA is not disbursed or credited to a borrower's account in excess of the RA obligation. Quarterly and annually, the FO will provide the District Director with an RA payment and obligation status report for each project. The annual version of this report will be filed in Position 2 of the project case file and maintained indefinitely.

C. The District Director will notify the borrower to apply for replacement RA units when the RA Undisbursed Balance reaches a level sufficient to cover approximately 6 months of RA requests. This figure will be based on the project's average monthly request for RA.

D. Information on FmHA Rental Assistance on Form FmHA 2033–42, "Multi-Family Housing Information Status Tracking and Retrieval System," (MISTR) regarding balance of RA funds must be updated annually at the end of each fiscal year by the District Director and State Director.

VIII. *Responsibilities of Borrower in Administering the Rental Assistance Program.* The borrower and management agent for each project receiving RA should fully understand the responsibilities and requirements of carrying out the program. The following guidelines will be followed:

A. RA payments will not be made directly to eligible tenants receiving RA except as specified in paragraph IX A. The borrower will maintain an accurate accounting of each tenant's utility allowance and payments made to tenants. All other RA payments will be recorded as a credit to the tenant's monthly rental payment.

B. The borrower must submit Form FmHA 444–8 for each tenant as required in paragraph VII F of Exhibit B to this Subpart (Management Handbook).

C. The incomes reported by the tenants must be verified by the borrower in accordance with paragraph VII of Exhibit B to this Subpart (Management Handbook).

D. Borrowers utilizing RA must comply with § 1930.124 of this Subpart. RA will not be approved for a project until the operating budget has been approved by the FmHA State Office or the District Director. District Directors, with assistance from the State Office, must closely supervise and assist borrowers in complying with all accounting and management requirements.

E. A borrower participating in the RA program must have an FmHA approved lease with the assisted household. All leases must comply with the provisions of paragraph VIII of Exhibit B to this Subpart (Management Handbook).

F. The borrower will be responsible to FmHA for any errors made in the administration of the RA program which are made by the borrower or the borrower's authorized management agent. Errors in computation or other unauthorized use of RA will require, at a minimum, the repayment of any incorrectly advanced RA funds. If the error or unauthorized use of RA appears to be deliberate or intentional, the State Director will refer the case to the Office of Inspector General according to Subpart B of Part 2012 (available in any FmHA Office).

IX. *Handling Utility Allowances.*

A. *Payment of Utilities.*

1. When the tenant is billed directly for utilities, rent paid by the tenant receiving RA will be the difference between the established utility allowance and 25 percent of the household's adjusted monthly income.

2. When utilities are paid by the household receiving RA and 25 percent of the household's monthly adjusted income is less than the allowance for utilities, the borrower will pay the household the difference between the utility allowance and 25 percent of the household's adjusted monthly income.

3. In a project where the owner pays all utilities, the tenant rent will be the full 25 percent of the adjusted monthly income up to the approved rent for the rental unit being occupied.

B. *Determining the Allowance.* The utility allowance will be determined and recorded by the use of Exhibit A–5 to Subpart E of Part 1944 of this chapter.

C. *Changes in Allowances.* The utility allowance should be reviewed annually and adjusted if there are substantial changes in utility and public service rates. Normally, allowances will be adjusted on an annual basis if necessary when the owner submits a new budget for approval. Changes in utility allowance which will result in changed rent paid by tenants will be processed according to Exhibit C to this Subpart.

X. *Method of Payment of Rental Assistance to Borrower.*

A. Regular monthly rental assistance payments.

1. *Borrower Responsibilities.*

a. Any RA due the borrower will be deducted from the balance of scheduled loan payments, any delinquent payments, and other charges due on Form FmHA 1944–29, "Project Worksheet for Interest Credit and Rental Assistance," and the remaining balance must be submitted to the District Office. If the RA due the borrower exceeds the balance of scheduled loan payments, delinquent payments and other charges, an RA check for the excess will be issued by the Finance Office.

b. Each month the borrower must forward to the District Director a separate Form FmHA 1944–29 and any new Form FmHA 444–8, for each project according to the instruction attached to the form.

2. *District Director Responsibilities.*

a. When a Form FmHA 1944–29 and new Form FmHA 444–8 are received, the District Director will:

(1) Review Form FmHA 444–8 and verify that the information contained on the form is complete and correctly computed based on information contained in the form.

(2) Review Form FmHA 1944–29 and ensure that entries are supported by the current Form FmHA 444–8.

(3) Submit the borrower's payment and payment data to the Finance Office using Form FmHA 1944–9, "Multiple Family Housing Certification and Payment Transmittal."

b. The District Director should verify the accuracy of the borrower's servicing address shown on the Finance Office record. When the address shown is incorrect, Form FmHA 1944–50, "Multiple Family Housing Borrower/Project Characteristics" will be prepared and the Finance Office record corrected via a field computer terminal. File Form FmHA 1944–50 in the borrower casefile.

B. When a project loan account is delinquent, the District Director should counsel with the borrower and develop a servicing plan in accordance with § 1965.85(b) of Subpart B of Part 1965 of this chapter. This plan should incorporate detailed provisions for continuing operation of the project and paying the account current.

1. As part of the servicing plan, the District Director may agree to releasing a portion of the monthly RA for project operation. This amount will be shown in the "Amount of Rental Assistance Check" block on Form FmHA 1944–9. The check will be delivered to the District Director.

2. The RA Check may be released to the borrower according to the servicing plan.

C. An RA payment request must be based on actual occupancy as of the first day of the month, except for the initial month of rent-up in a new project. During the initial month of participation by a new project in the RA program, the borrower must collect RA on a prorata basis for eligible tenants occupying the project. This initial RA request may be submitted with the borrower's first payment and subtracted from the payment due.

XI. *Assigning Rental Assistance To Tenants:*

A. *New Project.* Applications for occupancy should be accepted during the construction phase of the project and placed on a waiting list. During initial rent-up period the following priorities will apply:

1. Until all the RA units have been assigned, a number of apartment units in the project equal to the number of RA units will

be initially reserved for applicant households who qualify for RA as defined in paragraph II A of this Exhibit. Applications qualifying for RA will be considered on a first come, first served basis, by-passing those applicants on the waiting list whose income is above the low-income limit for the area. The balance of the apartment units will be rented simultaneously to other tenants on a first come, first served basis. The District Director may grant a written waiver to this requirement when review of the borrower's method of advertising the rental units satisfactorily demonstrates that households eligible for RA are not available or do not desire occupancy.

2. If there are still vacant units, those applicants by-passed because they did not qualify for RA will be considered for occupancy on a first-come first-served basis.

3. After the project is fully occupied, or when the District Director determines that the initial rent-up period is ended, the priority procedures in paragraph XI B for operational projects will be followed.

B. *Operational Project.* To determine priority for assigning an available RA unit in an operational project, the latest Form FmHA 1944–29 must be updated as of the date the unit is available, assuring that columns 3 through 9 are current and accurate.

1. Priority for assigning RA is as follows:

a. *Eligible tenant in project. First priority* will be given to eligible households in residence paying the highest percentage of annual adjusted income for rent plus utilities.

b. *Eligible applicants from waiting list. Second priority* will be given to eligible applicants on the waiting list. All tenants will be selected on a first come, first served basis as provided in paragraph VI E of Exhibit B to this Subpart (Management Handbook). No eligible household occupying a rental unit in the project may be required to move from the project to allow an applicant on the waiting list who is eligible for RA, to move in.

c. *Ineligible tenants: Third priority* for RA will be given to occupancy ineligible households living in the project with State Director approval. The requirement of paragraph II A 3 c of this Exhibit must be met.

2. When the project has vacancies and RA is not available, an applicant who is eligible for RA may elect to accept occupancy without the benefit of RA. After occupancy, the household will be considered for RA according to paragraph XI B 1 of this Exhibit. If the applicant elects not to accept occupancy because RA is not available, their application will retain its priority date on the waiting list if the rental agent determines that a hardship to the applicant will exist according to paragraph VI E 2 of Exhibit B to this Subpart.

3. Eligible tenants receiving the benefits of RA may continue receiving such benefits as long as they remain eligible for rental assistance and there is an RA agreement in effect.

C. *Assigning Rental Assistance Other Than The First of The Month:*

1. When a tenant receiving RA vacates before the end of the month, the RA unit should be immediately reassigned to another tenant or an applicant using the priorities given in paragraph XI B of this exhibit.

2. When RA is assigned to an applicant and the applicant initially enters the project on a day other than the first of the month, the applicant's tenant contribution for housing costs will be prorated for the remaining portion of the month the same as if the tenant was receiving RA. [Example: Basic rent of $200 and the tenants monthly contribution with RA would be $120, the pro rata amount for ½ month would be $60.]

3. When RA is assigned to a tenant other than the first of the month, no adjustment to their tenant contribution on Form 1944–29 for that month will be made. The tenant will begin to receive the benefits of RA as of the first day of the next month.

4. No adjustment will be made on Form FmHA 1944–29 to request additional RA payment or to refund any excess RA payment or overage when RA is reassigned other than the first of the month.

XII. *Rental Assistance Assigned to Wrong Household:* When the tenant has correctly reported income and household size, but RA was assigned to a household in error, that tenant's RA benefit should be cancelled and reassigned. Incidents involving incorrect reporting are addressed in paragraph IX C of Exhibit B to this Subpart (Management Handbook).

A. Before the borrower notifies the tenant, the borrower or management agent shall review the case with the District Director. If the District Director verifies that an error has been made based on information available at the time the unit was assigned, the tenant will be given 30 days written notice that the unit was assigned in error and that the RA benefit will be cancelled effective on the next monthly rental payment due date after the end of the 30 day notice period. The tenant will also be notified in writing that:

1. The tenant has the right to cancel the lease based on the error made by the borrower and the loss of benefit to the tenant.

2. The RA granted in error will not be recaptured.

3. The tenant may meet with management to discuss the cancellation and the facts on which the decision was based. If the facts are accurate and the tenant cannot produce further evidence proving eligibility for RA, there will be no appeal from the decision. If the tenant feels there is justification for further review the borrower must give the tenant appeal rights under Subpart L of Part 1944 of this chapter.

B. Reassigning rental assistance:

1. The RA unit will be reassigned to the household which was erroneously denied the RA unit. The assignment will be based on the Form FmHA 1944–29 from which the original priority was established, when the unit was erroneously assigned. The RA will not be retroactive unless the reassignment was based on an appeal by the tenant. Retroactive RA may not exceed the project's remaining RA obligation balance.

2. If the originally denied household now has RA, or is no longer a resident, the RA will be assigned based on a current Form FmHA 1944–29 and the priorities in paragraph XI of this Exhibit.

XIII. *Rental Assistance Payment Cancellation:* When a RA check must be cancelled, the following procedure will be followed:

A. *Return of the original rental assistance Treasury Check:* The District Office will prepare Form FmHA 1944–53, as specified in the FMI and mail it to the MFH Unit in the Finance Office.

B. *Return of all or a portion of the monthly rental assistance payment or refund of rental assistance previously advanced:* A check from the borrower made payable to Farmers Home Administration (FmHA) will be submitted to the MFH Unit in the Finance Office on Form FmHA 1944–53, completed according to the FMI.

XIV. *Terminating Existing Rental Assistance Agreements Obligated in Prior and/or Current Fiscal Years.*

A. When a project's obligated funds are fully disbursed under any given RA agreement number, RA will be automatically terminated by the Finance Office. The Finance Office will notify the District Office on Form FmHA 1951–51, "Multiple Family Housing Transaction Record." The District Office will notate Form FmHA 1944–27 according to the FMI to indicate that a termination has occurred. The District Director will notify the borrower in writing that the obligation under the RA agreement number has expired and the RA agreement number must be stricken from the agreement.

1. *For all RA obligations before FY 1985.* RA is considered fully disbursed by the Finance Office when all RA funds obligated before FY 1985 are disbursed.

2. *For all RA obligations after FY 1984.* RA is considered fully disbursed by the Finance Office when all RA funds obligated in a particular FY are disbursed. This includes RA transferred from a different MFH project.

3. When an RA agreement (Form FmHA 1944–27) consists of several different obligations (Form FmHA 1944–51, Part III, or Form FmHA 1944–55) identified by different RA agreement numbers, and the obligations will not be fully disbursed at the same time, only those RA agreement numbers with fully disbursed obligation will be terminated.

B. Prior to Full Disbursement of Obligated Funds:

1. *Prior Fiscal Year Obligations.* Prior fiscal year (FY) obligations *will not* be terminated. They will be suspended by the State Director using procedures in paragraph XV of this exhibit.

2. *Current Fiscal Year Obligations.* The State Director is authorized to terminate RA agreements prior to the disbursement of obligated funds if the funds were obligated during the current FY. The undisbursed funds for the RA obligation will be returned to the current FY obligation authority.

XV. *Suspending or Transferring Existing Rental Assistance Agreements.*

A. RA may be suspended or transferred according to the requirements for each situation described in Paragraph XV B and the following:

1. *Suspension.*

a. The State Director may approve a suspension of a project's RA agreement and obligation as a result of the servicing actions described in Paragraph XV B 2, 3, and 4 of this exhibit. The State Director will maintain records and control of the suspended RA.

b. The District Director will notify the borrower in writing and the Finance Office by memorandum.

c. After notification, the Finance Office will suspend all RA payments to the affected project.

d. The State Director may reinstate the RA to the same borrower in the same project, by memorandum to the Finance Office.

2. *Transfer.*

a. Only the State Director may approve a RA transfer.

b. RA may be transferred to any borrower with an RA eligible project according to the priorities established by this Exhibit or the National Office.

c. The amount of RA which may be transferred must be:

(1) A specific unit and dollar amount. The dollar value of each RA unit to be transferred will be determined by dividing the transferring project's total remaining RA obligation(s) balance in the transferring RA agreement by the total number of obligated RA units in the RA agreement.

(2) A unit and dollar value equal to or less than those shown on the current RA agreement for the transferring project for example, a portion of an RA agreement unit and remaining obligation dollar value may be transferred.

d. RA units identified by different RA agreement numbers must be transferred with separate RA agreement numbers on Form FmHA 1944–55.

e. When the State Director approves an RA transfer, Form FmHA 1944–55 completed according to the FMI, wil be used to notify the Finance Office except as noted in Paragraph XV B 1 below.

f. Form FmHA 1944–27, with Form FmHA 1944–55, attached will be completed according to the FMI for each transferee. The transferors RA agreement will be modified by attaching a copy of Form FmHA 1944–55 according to the FMI to indicate that a portion of the agreement has been transferred. When all the RA units on a RA agreement have been transferred, the transferor's present agreement will be so documented.

B. RA may be suspended and/or transferred in the following situations according to the following directions:

1. *RA transfer accompanying a loan transfer.* When a loan is transferred to an eligible borrower, the transferee may assume the transferor's RA agreement. The RA will be transferred using Form FmHA 1944–55 which will be forwarded to the Finance Office with Form FmHA 1965–9, "Multiple Family Housing Assumption Agreement" as required in § 1965.65 (c)(11) of Subpart B of Part 1965 of this chapter.

2. *Suspension and transfer after a voluntary conveyance.* When a project with RA is voluntarily conveyed to the Government, the RA will be suspended rather than cancelled. When Form FmHA 1965–19, "Multiple Family Housing Advice of Mortgaged Real Estate Acquired" is sent to the Finance Office. Form FmHA 1944–55 must be attached indicating the Code 4 status of the suspended RA units according to the FMI. If the project is sold through a credit sale within the program, the suspended RA may be transferred to the project's new borrower, or a different project if it is not needed.

3. *Suspension and transfer after a liquidation.* When a project with RA is liquidated through sale outside of the program or the loan is paid in full, the RA will be suspended and, subsequently, transferred to a different FmHA financed project.

4. *Suspension and transfer or reinstatement due to a servicing action.* When servicing a project's account according to § 1965.85 of Subpart B of Part 1965 of this chapter and the account is accelerated, the RA will be suspended and either:

a. Transferred with the project to a new borrower when all appeals and redemption periods of the defaulting borrower have expired and a credit sale is to be completed, or

b. Transferred to a different project if the defaulting project is subsequently sold outside the program, or

c. Reinstated to the same project when the defaults are corrected and the State Director reinstates the borrower's account.

5. *Transfer of unused RA.* When RA is unused after initial rent-up and not needed because of a lack of eligible potential tenants in the area, all or a portion of it may be transferred when the State Director determines that the following conditions have been met:

a. The borrower demonstrates that:

(1) The original market survey completed according to Exhibit A–6, Subpart E of Part 1944 of this chapter clearly indicates no significant need for rental housing by households in the market area that would require RA for occupancy, and that there are no eligible tenants in the project not receiving RA or there are no eligible applicants on the waiting list who could use RA when obtaining occupancy. The State Director may require a new market survey for the project to make this determination if the original market survey for the project does not adequately address potential very low-income tenants in the area, or does not reflect current market conditions.

(2) When the market survey indicates that there are a significant need for rental housing by households in the market area that would have required RA for occupancy, but all or a substantial portion of the RA units available remain unused after a two year period since initial availability, the borrower must demonstrate that:

(i) a good faith effort was made to market the project to RA eligible applicants;

(ii) the waiting list does not contain RA eligible applicants and the project is not occupied by RA eligible tenants who do not receive RA; and

(iii) project management has not used a policy of discouraging RA eligible households from applying for or obtaining tenancy in the project.

(3) Rent increases anticipated for the following two years will not prompt a request for RA according to the provision of Exhibit C of this subpart.

b. The District Director recommends the RA transfer after reviewing documentation submitted by the borrower and finding that the applicable conditions of Paragraph XV B 5 of this exhibit have been met.

6. *Transfer due to an uncloseable loan.* When RA will be unused because the loan to which it was obligated will not be closed, or the RA agreement is not signed, the RA obligation may not be transferred except as provided under the conditions of § 1944.235 (b) of this chapter. However, if this situation occurs during the same FY of obligation, the obligation should be cancelled and reobligated immediately using current authorities. Obligations from prior fiscal year must be cancelled and will be lost unless the conditions of § 1944.235 (b) of Subpart E of Part 1944 of this chapter exist.

XVI. *Rights for Appeal if Rental Assistance is not Granted or is Cancelled by Farmers Home Administration.*

A. Borrowers who have requested RA in writing and are denied such assistance (whether in whole or in part) by Farmers Home Administration, or when RA is cancelled, will be notified in writing of the specific reasons why they have been denied RA as specified in Subpart B of Part 1900 of this chapter.

B. If at any time a borrower or a household is granted RA under an appeal, the borrower or household will receive the next available RA unit.

C. Borrower denial of RA to tenants will be handled according to Subpart L of Part 1944 of this chapter.

XVII. *Forms and Exhibits.* Exhibit A–5 to Subpart E of Part 1944 of this chapter and Form FmHA 1944–7 are to be used in determining the amount of rental assistance to be provided.

Exhibit E of Subpart C—[Removed]

18. Exhibit E–1 is removed.

PART 1944—HOUSING

Subpart D—Farm Labor Housing Loan and Grant Policies, Procedures and Authorizations

19. In § 1944.157, paragraph (a)(7)(iii) is revised to read as follows:

§ 1944.157 Eligibility requirements.

(a) * * *

(7) * * *

(iii) The amount of the labor housing (LH) loan against the property will not exceed the maximum security value or Maximum Debt Limit (MDL) determined in accordance with Subpart A of Part 1809 (FmHA Instruction 422.1), or Subparts B and C of Part 1922 of this chapter, as appropriate.

* * * * *

20. In § 1944.158, paragraph (j) is revised to read as follows:

§ 1944.158 Loan and grant purposes.

* * * * *

(j) Pay interest which will accrue during the estimated construction period if interim financing is used [or if loan will be closed using multiple advances

on daily interest accrual (DIAS) with annual installment and deferred principal]. In the case of multiple advances when the loan is closed on a predetermined amortization schedule system (PASS) or on DIAS with monthly installments, loan funds will not be used for construction interest. Accrued interest during the construction period will be capitalized when construction is substantially complete and the project is ready for full operation.

* * * * *

21. Section 1944.159 is amended by adding paragraph (c) to read as follows:

§ 1944.159 Rates and terms.

* * * * *

(c) *Amortization schedule.* LH loans, including subsequent loans closed after May 1, 1985, must be on PASS if the project has year-round occupancy and monthly income. LH loans requiring annual installments due to seasonal income may be closed on the daily interest accrual system (DIAS) with monthly or annual payments. All loans on any project receiving a subsequent loan on or after May 1, 1985, must be converted to PASS if the subsequent loan is on PASS. Accounting and processing payments for PASS loans will be handled under Subpart K of Part 1951 of this chapter.

§ 1944.171 [Amended]

22. In § 1944.171, paragraph (d), the list of loan and/or grant docket items is amended by removing the entries for Form FmHA 444–5, "Multiple Family Housing Fund Analysis" and Form FmHA 1940–1, "Request for Obligation of Funds," from the list and inserting in their place:

Form No.	Name of form or document	Total number of copies	Signed by borrower	Number for docket	Copy for borrower
FmHA 1944-50	Multiple Family Housing Borrower/Project Characteristics	1		1-0	
FmHA 1944-51	Multiple Family Housing obligation—Fund Analysis	3	3-0 & 2C	1-0	1

23. Section 1944.171 is amended by revising paragraph (e) and adding paragraph (h) to read as follows:

§ 1944.171 Preparation of completed loan and/or grant docket.

* * * * *

(e) *Submission of docket to State Office.* (1) The loan and/or grant docket needing State Office approval, including comments and recommendations by the District Director, will be submitted to the State Office. The State Director will prepare and include in the docket a memorandum to the District Director which will either require additional information if the material submitted is inadequate or will set forth the conditions of loan approval. The proposed conditions of loan approval must indicate if construction will be financed by multiple advances or interim financing if the loan will be closed on DIAS or PASS, and when the payment will be made, if an annual payment is indicated due to seasonal income.

(i) Loans for multiple advance construction on PASS or DIAS monthly installments will include the cost of construction *less* the cost of interest during construction. To determine the recommended loan amount the District Director should determine the authorized loan amount including construction interest, then subtract the estimated construction interest from the loan amount. Interest during construction will be capitalized as authorized in § 1944.158 (j) of this Subpart.

(ii) Loans for interim financed construction may include the cost of interest during construction as authorized in § 1944.158 (j) of this Subpart.

(iii) Loans for multiple advance construction on DIAS, with annual installment and deferred principal payments, may include the cost of interest during construction as authorized in § 1944.158 (j).

(2) The advice of the Office of the General Counsel (OGC) should be obtained for all loans and/or grants to organizations and associations of farmers and their comments included in the memorandum to the State Director. If the State Director determines that the loan and/or grant should be approved, the State Director will approve the loan and/or grant and sign the memorandum to the District Director as required by paragraph (e)(1) of this Section.

* * * * *

(h) *Establishing borrower/project data.* Prior to loan approval, the State Director, District Director or a designee will input into the accounting system through field office terminals, the information contained in Form FmHA 1944–50.

24. In § 1944.173, paragraph (b) is revised to read as follows:

§ 1944.173 Loan and grant approval-delegation of authority.

* * * * *

(b) *Approval of loan or grant.* When a loan or grant is approved:

(1) The approving official will prepare and sign Form FmHA 1944–51 in an original and one copy. The State Director, District Director or a designee will record the obligation of loan and/or grant funds for the project through a field office terminal in accordance with the FMI for Form FmHA 1944–51 and the MFH User Procedure.

(2) The individual obligating the loan or grant will record the date and time of the obligation and sign Form FmHA 1944–51 in accordance with the FMI.

(3) The obligation date of loan and/or grant funds will be confirmed through use of field terminals the following work day.

(4) The Finance Office will mail the State Office Form FmHA 1944–57, "MFH Acknowledgement of Obligated Funds/Check Request," confirming the reservation of funds with the obligation date inserted as required by the FMI for Form FmHA 1944–57. Form FmHA 1944–57 will be prepared and distributed in accordance with the FMI.

(5) Form FmHA 1944–51 *will not* be mailed to the Finance Office unless there is an excessive time period in which the terminals are not operable. Immediately after confirming the reservation of funds for not-for-profit organizations and public bodies, through use of the terminal operating station, the State Director will call the Information Division in the National Office as required by Subpart C of Part 2015 of this Chapter. Notice of approval to the applicant will be accomplished by mailing the applicant's signed copy of Form FmHA 1944–51 on the obligation date. The State Director, District Director or a designee will record the actual date of applicant notification on the original of Form FmHA 1944–51 and include the original of the form as a permanent part of the District Office project file with a copy in the State Office file.

(6) Determine the maximum rental rates to be charged domestic farm labor for occupancy of the housing, and advise the applicant, in writing, of these maximum rates. In determining the maximum rental rates due consideration must be given to the income and earning capacity of the prospective occupants of the housing and the cost of operating and maintaining such housing. As a general guide, the rental charges should not exceed 25 percent of the occupant

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families' estimated adjusted annual income.

* * * * *

§ 1944.173 [Amended]

25. Section 1944.173 is further amended in paragraph (c) by removing in the first and second sentences the references to "Form FmHA 440–1" and inserting in their place "Form FmHA 1944–51."

§ 1944.175 [Amended]

26. Section 1944.175, paragraph (a)(2) is amended in the first sentence by removing the reference to "Form FmHA 440–57" and inserting in its place the reference "Form FmHA 1944–57."

27. Section 1944.175 is further amended by revising paragraphs (b)(2), (b)(3), (c), (e)(1) and (e)(2) to read as follows:

§ 1944.175 Actions subsequent to loan and/or grant approval.

* * * * *

(b) * * *

(2) Except as indicated in paragraph (b)(1) of this section, advances will be made only as needed to cover disbursements required by the borrower for a 30-day period. Normally, the advances should not exceed 24 in number or extend longer than 2 years beyond loan closing. The retained percentage withheld from the contract or to assure that construction will be completed in accordance with the contract documents will ordinarily be included in the last advance. Advances will be requested in sufficient amounts to insure that ample funds will be on hand to pay costs of construction, land purchase, legal, engineering, or architectural costs, interest when authorized, and other expenses, as needed. The borrower will prepare Form FmHA 440–11, "Estimate of Funds Needed for 30-day Period Commencing ———," modified as needed, to show the amount of funds required during the 30-day period. This form will be approved by the District Director. After the District Director determines that the estimates prepared by the borrower are adequate, the District Director will indicate the amount on Form FmHA 1944–57 in accordance with the FMI and request the amount through field office terminals in accordance with MFH User Procedures. As an example, for a loan and/or grant of $100,000, the advances may be made as follows: Assuming that the loan and/or grant will be closed on July 1, the borrower will complete Form FmHA 440–11 in sufficient time so that the the funds will be available on the day of loan closing. The estimates should be broken down for the first advance in a manner similar to the following:

Construction	$30,000
Land acquisition	5,000
Architectural	4,000
Legal	1,000
Total	40,000

An advance in the amount of $40,000 would then be available on July 1, the date of loan closing. The second advance will also be based on the borrower's estimate prepared on Form FmHA 440–11, and will be prepared in sufficient time so that the estimate of funds might be broken down as follows:

Construction	$20,000
Architectural	1,000
Total	21,000

The amount will be indicated on Form FmHA 1944–57 and requested through field office terminals. The same procedure will be followed for each advance until the project is completed.

(3) Any deviation from the multiple advance procedure must have the prior approval of the National Office.

(c) *Requesting a Check.* When loan approval conditions can be met, including any real estate lien required, and a date for loan closing has been agreed upon, the District Director will determine the amount of funds needed in accordance with either paragraphs (a) or (b) of this Section. The District Director's delegate will then order the loan and/or grant check through the field office terminal so that it will be available on or just before the date set for loan closing.

* * * * *

(e) * * *

(1) The District Director will prepare Form FmHA 1944–53, "Multiple Family Housing Cancellation of U.S. Treasury Check and/or Obligation," in an original and three copies (4 copies if the check is received in the District Office from the Regional Disbursing Office). The original and copies will be sent to the State Director with the reasons for requesting cancellation. If the State Director approves the request for cancellation, he/she will make appropriate adjustments in the records to control loan allocations and submit cancellation of the obligation through field office terminals in accordance with the MFH User Procedure. Forms FmHA 1944–53 will be distributed in accordance with the FMI.

(2) If the loan or grant check is received in the District Office, the District Director will return it to the Finance Office with original and one copy of Form FmHA 1944–53.

* * * * *

28. In § 1944.176, paragraph (d) is revised to read as follows:

§ 1944.176 Loan and/or grant closing.

* * * * *

(d) *Promissory note.* (1) Form FmHA 1944–52, "Multiple Family Housing Promissory Note," will be used for all LH loans except those secured by bonds. Payments on LH loans will be scheduled on a monthly or annual basis in accordance with the expected schedule of income from the project. If periodic payments are desired on an annual note they may be scheduled on Form FmHA 440–9.

(2) The note will be dated the date of loan closing as authorized in § 1807.2(f)(8) of Part 1807 of this chapter (paragraph II F 8 of FmHA Instruction 427.1).

(3) In the case of multiple advances on PASS or DIAS monthly installments, payments will be deferred for the period of construction and any remaining period until the project is operational. When construction is substantially complete and/or the project is ready for full operation or interest plus principal reaches the "Maximum Debt Limit (MDL) at Amortization Effective Date (AED)," the accrued interest on advances will be capitalized establishing a new loan amount. The MDL at AED will be established according to § 1944.157(a)(7)(iii) of this Subpart. The borrower's payment of principal and interest will be established according to the FMI, for Form FmHA 1944–52, "Multiple Family Housing Promissory Note." At loan closing the Finance Office will be notified of the projected AED and the MDL at AED on Form FmHA 1944–57. When the MDL at AED is reached or the loan is fully advanced, Finance Office will:

(i) Capitalize the construction interest. When there is a remaining obligation balance, the remaining obligation will be cancelled by the Finance Office.

(ii) Notify the District Office of the new loan amount and the borrower's scheduled loan payment.

(iii) Prepare and forward to the District Office Form FmHA 1944–7, "Multiple Family Housing Interest Credit and Rental Assistance Agreement" if RA has been obligated for the project.

(iv) The District Office will complete Forms FmHA 1944–52 and FmHA 1944–7 according to the FMI's.

(4) Deferred principal payments may be permitted up to 2 years when determined to be necessary and advisable. Accrued interest must be paid annually when the loan is closed on DIAS; however, smaller than regular payments of principal or no payments of principal may be provided for the first and second installments after loan closing.

(5) The promissory note(s) will be signed in accordance with Part 1807 of this chapter (FmHA Instruction 427.1) and any supplemental instructions from OGC.

(6) After loan closing the original note and copies will be distributed according to the FMI. The loan closing information will be transmitted via the field office terminals when the loan is closed with a promissory note.

(7) For a loan to a public body, the forms of obligation will be determined in accordance with Exhibit H to this of Subpart.

* * * * *

§ 1944.176 [Amended]

29. Section 1944.176(f)(2) is amended by removing the reference "FmHA Instruction 405.1" and inserting in its place "FmHA Instruction 1905–A."

§ 1944.177 [Amended]

30. Section 1944.177 is amended by removing the references in the last sentence "Forms FmHA 440–1, FmHA 440–57 and FmHA 444–5" and inserting in their place "Forms FmHA 1944–51 and FmHA 1944–57."

31. In Exhibit H, paragraphs (5)(i) and (5)(ii) are revised to read as follows:

Exhibit H—Information Pertaining to Preparation of Notes of Bonds and Bond Transcript Documents for Public Body Applicants

* * * * *

(5) * * *

(i) *First preference—Form 1944–52.* If legally permissible, use Form FmHA 1944–52, "Multiple Family Housing Promissory Note."

(ii) *Second preference—single instrument with amortized installments.* If Form FmHA 1944–52 is not legally permissible, use a single instrument showing on the face the full amount of the loan and providing for amortized installments with provisions for entering the date and amount of each FmHA advance on the reverse thereof or an attachment to the instrument. Form FmHA 1944–52 should be followed to the extent possible. The first amortized payment will be due one amortized payment period following the AED.

See the FMI for Form FmHA 1944–52 for specific instructions.

* * * * *

Exhibit I—[Amended]

32. In Exhibit I the reference in the fourth paragraph of the guide letter "Form FmHA 440–57, 'Acknowledgement of Obligated Fund/ Check Request,' " is removed and the reference "Form FmHA 1944–57, 'Multiple Family Housing Acknowledgement of Obligated Funds/ Check Request,' " is inserted in its place.

Subpart E—Rural Rental Housing Loan Policies, Procedures, and Authorizations

33. In § 1944.212, paragraph (m) is revised to read as follows:

§ 1944.212 Loan purposes.

* * * * *

(m) Pay construction interest as follows:

(1) In the case of multiple advances, loan funds will not be used to pay construction interest. Accrued interest during construction will be capitalized when construction is substantially complete and the project is ready for full operation. When requested by the borrower, each month the District Director shall provide the borrower monthly computations of the amount of interest that is accruing during the construction period.

(2) Interest accrued on projects using interim financing may be included in the loan amount.

* * * * *

34. In § 1944.213, paragraph (a)(3) is added to read as follows:

§ 1944.213 Limitations.

(a) * * *

(3) For all applicants, the amount of the loan after capitalized construction interest is considered will not exceed the loan limits in paragraphs (a)(1) and (a)(2) of this section. All borrowers must agree in writing to provide funds from their own resources to pay any cost for completing construction after the maximum debt limit (MDL) is reached.

* * * * *

35. In § 1944.215, paragraphs (c) and (d) are revised to read as follows:

§ 1944.215 Special conditions.

* * * * *

(c) *Deferred principal payments.* (1) In the case of multiple advances only, payments for principal may be deferred for the period of construction. Accrual of interest may not be deferred. When construction is substantially complete and the project is ready for full operation or interest plus principal reaches the "Maximum Debt Limit (MDL) at Amortization Effective Date (AED)" the accrued interest on advances will be capitalized establishing a new loan amount. The MDL at AED will be established according to § 1944.213(a) of this subpart. The borrower's monthly payment of principal and interest will be established according to the FMI for Form FmHA 1944–52, "Multiple Family Housing Promissory Note."

(2) At loan closing the Finance Office will be notified of the projected AED and the MDL at AED on Form FmHA 1944–57, "Multiple Family Housing Acknowledgement of Obligated Funds/ Check Request." When the final advance on the loan is issued or the MDL at AED is reached, the Finance Office will:

(i) Accrue construction interest through the last day of the month and capitalize the interest as of the first day of the following month. When there is a remaining obligation balance, the remaining obligation will be cancelled by the Finance Office.

(ii) Notify the District Office of the new loan amount and the borrower's monthly loan payments.

(iii) Prepare and forward to the District Office Form FmHA 1944–7, "Multiple Family Housing Interest Credit and Rental Assistance Agreement," if interest credit was indicated on Form FmHA 1944–51, "Multiple Family Housing Obligation-Fund Analysis." Interest credit will not be implemented until the District Office notifies the Finance Office of the effective date.

(3) The District Office will contact the borrower and complete Forms FmHA 1944–52 and FmHA 1944–7 according to the FMIs.

(d) *Refinancing loans.* Each borrower must agree to refinance the unpaid balance of the loan at the request of FmHA whenever it appears to FmHA that the borrower is able to obtain a loan from responsible cooperative or private credit sources at rates and terms which FmHA considers reasonable, and still rent the units to eligible occupants at rental rate within their payment ability. The refinancing of a loan must comply with the restrictions indicated in § 1944.236(b)(4) of this Subpart. For all loans closed prior to December 21, 1979, the State Director shall comply and the borrower agrees to the restrictive provisions of § 1965.90(b) of Subpart B of Part 1965 of this chapter as a condition for the State Director's approval or acceptance of prepayment of the FmHA loan.

* * * * *

36. In § 1944.231 paragraphs (b)(5)(ii)(A)(3), (c)(3)(i), and (c)(3)(ii)(C) are revised to read as follows:

§ 1944.231 Processing preapplications.

* * * * *

(b) * * *

(5) * * *

(ii) * * *

(A) * * *

(*3*) Original and one copy of Form FmHA 1940–21, "Environmental Assessment for Class I Action" or Exhibit H, dependent on whether the assessment is a Class I or Class II action in accordance with Subpart G of Part 1940 of this chapter.

* * * * *

(c) * * *

(3) * * *

(i) In States that allocate funds to the District as prescribed by the National Office, the State Director will notify the District Director of the review results. The State Director will return the preapplication information and the executed original Form FmHA 1940–21 or Exhibit H of Subpart G of Part 1940 of this chapter, as appropriate, to the District Office with authorization for the District Director to prepare and issue Form AD 622.

(ii) * * *

(C) The State Director will notify the District Director of the review results. The State Director will return the preapplication information and the executed original Form FmHA 1940–21 or Exhibit H of Subpart G of Part 1940 of this chapter, as appropriate, to the District Office with authorization for the District Director to prepare and issue Form AD 622.

* * * * *

37. Section 1944.232 is amended by revising paragraphs (d)(1) and the first two entries in the table in paragraph (d)(2) and adding paragraph (h) to read as follows:

§ 1944.232 Preparation of completed loan docket.

* * * * *

(d) * * *

(1) Prior to presenting the properly assembled application to the approval official, the District Director will:

(i) Provide comments and recommendations for loan approval. Proposed conditions of loan approval must indicate if construction will be financed by multiple advances or interim financing.

(ii) Obtain the written analysis and recommendations of the FmHA State Office Architect/Engineer.

(iii) Obtain the analysis and recommendations of a member of the State Office Rural Housing staff. This analysis will include a review of and recommendation concerning the proposed conditions of loan approval.

(A) Loans for multiple advance construction will include the cost of construction *less* the estimated cost of interest during construction. To determine the recommended loan amount the District Director should determine the authorized loan amount including construction interest, then subtract the estimated construction interest from the loan amount. Interest during construction will be capitalized as authorized in § 1944.212(m) of this subpart.

(B) Loans for interim financed construction may include the cost of interest during construction as authorized in § 1944.212(m) of this subpart.

(2) * * *

Form No	Name of form or document	Total number of copies	Signed by borrower	Number for loan docket	Copy for Borrower
FmHA 1944–50	Multiple Family Housing Borrower/Project Characteristics	1		1–0	
FmHA 1944–51	Multiple Family Housing Obligation—Fund Analysis	3	3–0 and 2C	1–0	1

* * * * *

(h) *Establishing borrower/project data.* Prior to loan approval, the State Director/District Director or a designee will establish on the Finance Office accounting record through field office terminals, that information contained in Form FmHA 1944–50, "MFH Borrower/Project Characteristics" as indicated in the FMI and MFH User Procedures.

38. In § 1944.233, paragraph (b)(2)(i)(A) is revised, paragraph (b)(2)(i)(B) and (b)(2)(i)(G) are removed and paragraphs (b)(2)(i)(C) through (b)(2)(i)(F) are revised and redesignated as (b)(2)(i)(B) through (b)(2)(i)(E) respectively, and paragraphs (b)(2)(ii) and (b)(3) are revised to read as follows:

§ 1944.233 Loan approval.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(A) The loan approval official will prepare and sign Form FmHA 1944–51 in an original and two copies. The State Director, District Director or a designee will establish through field office terminals obligation of loans and/or grant funds for the project in accordance with the FMI and the MFH User Procedures.

(B) The individual making the request will record the date and time of request and sign Form FmHA 1944–51.

(C) The obligation date of loan and grant funds will be confirmed through use of field office terminals the following work day by the State Director, District Director or a designee. If funds cannot be reserved for a project because funds are not available within the State allocation, the system will not update. The State Office should call the Multiple Family Housing Unit in the Finance Office to resolve any apparent problem.

(D) The Finance Office will mail Form FmHA 1944–57 to the State Office confirming the reservation of funds with the obligation date inserted.

(E) Form FmHA 1944–51, will *not* be mailed to the Finance Office. An exception to this policy will be made only when field office terminals are inoperable and prior authorization has been obtained from the State Director or a designee. Immediately after confirming, through use of the field office terminals, the State Director will call the Information Division in the National Office as required by Subpart C of Part 2015 of this chapter (FmHA Instruction 2015–C). Notice of approval to the applicant will be accomplished by mailing the applicant's signed copy of Form 1944–51 on the obligation date. The State Director or his/her designee will record the actual date of the applicant's notification on the original of the form as a permanent part of the District Office project file and place a copy in the State Office file.

(ii) Disapproval. If a loan is disapproved after the docket has been developed, the reason for such action will be shown on the original Form 1944–51 and the form will be initialed and dated. The District Director will notify the applicant of the disapproval of the loan and the reasons therefore. The disapproved docket will then be handled in accordance with Subpart A of Part 2033 of this chapter (FmHA Instruction 2033–A). If disapproval is not at the applicant's request or by mutual agreement, the applicant will be notified that he/she may request a further review of the decision in accordance with Subpart B of Part 1900 of this chapter (FmHA Instruction 1900–B).

(3) *Distribution of items.* After the loan is approved, the contents of the docket will be distributed as follows:

(i) After being processed, an original and copy of Form FmHA 1944–57 will be processed and distributed by the Finance Office.

(ii) To the State Office: One copy of Form FmHA 1944–51.

(iii) To the District Office: The original Form FmHA 1944–51 will be retained in the borrower's case folder.

(iv) To the applicant: Signed copy of Form FmHA 1944–51.

* * * * *

§ 1944.235 [Amended]

39. § 1944.235 is amended by removing the reference "Form FmHA 440–57" in the first sentence of paragrpah (c)(1)(ii) and inserting in its place, "Form FmHA 1944–57."

40. § 1944.235 is further amended by revising paragraphs (c)(2)(ii), (d) and (f) to read.

§ 1944.235 Actions subsequent to loan approval.

* * * * *

(c) * * *

(2) * * *

(ii) Except as indicated in paragraph (c)(2)(i) of this section, advances will be made only as needed to cover disbursements required by the borrower for a 30-day period. Normally, the advances should not exceed 24 in number or extend longer than 2 years beyond loan closing. The retained percentage withheld from the contract to assure that construction will be completed in accordance with the contract documents will ordinarily be included in the last advance. Advances will be requested in sufficient amounts to insure that ample funds will be on hand to pay costs of construction, land purchase, legal, engineering, or architectural costs, and other expenses as needed. The borrower will prepare Form FmHA 440–11, "Estimate of Funds Needed for 30-day Period Commencing ———," modified as needed, to show the amount of funds required during the 30-day period. This form will be approved by the District Director or the District Director's designee. After it is determined that the estimate prepared by the borrower is adequate, the advance will be requested through field office terminals and recorded on Form FmHA 1944–57, in accordance with the FMI and the MFH User Procedure. As an example, for a loan of $100,000, the advances may be made as follows: Assuming that the loan will be closed on July 1, the borrower will complete Form FmHA 440–11 in sufficient time so that the funds will be available on the day of loan closing. The estimates should be broken down for the first advance in a manner similar to the following:

Construction	$30,000
Land acquisition	5,000
Architectural	4,000
Legal	1,000
Total	40,000

An advance in the amount of $40,000 would then be available on July 1, the date of loan closing. The second advance will also be based on the borrower's estimate prepared on Form FmHA 440–11, and will be prepared in sufficient time so that the estimated amount of funds will be available on August 1. This estimate of funds might be broken as follows:

Construction	$20,000
Architectural	1,000
Total	21,000

Form FmHA 1944–57, specifying the amount of the second advance will be prepared and funds will be requested through field office terminals. The same procedure will be followed for each advance until the project is completed.

* * * * *

(d) *Requesting check.* When loan approval conditions can be met, including any real estate lien required, and a date for FmHA loan closing has been agreed upon, the District Director will determine the amount of funds needed in accordance with either paragraph (c)(1) or (2) of this section. The District Director or the District Director's delegate will then order the loan check through field office terminals so that it will be available on or just before the date set for loan closing.

* * * * *

(f) *Cancellation of loan.* Loans may be cancelled after approval and before loan closing as follows:

(1) The District Director will prepare Form FmHA 1944–53, "Multiple Family Housing Cancellation of U.S. Treasury Checks and/or Obligation," in an original and three copies (4 copies if the check is received in the District Office from the Regional Disbursing Office). The original and copies will be sent to the State Director with the reasons for requesting cancellation. If the State Director approves the request for cancellation, the State Director will make appropriate adjustments in the records to control loan allocations and submit the cancellation of the obligation through field office terminals in accordance with the terminal operating manual.

(2) Form FmHA 1944–53 will be distributed in accordance with the FMI.

(3) If the loan check is received in the District Office, the District Director will return the check using paragraphs (f)(3)(i) or (ii) of this section depending on the methods by which the check was issued.

(i) *Treasury Check Method.* Return it to the Finance Office with an original and one copy of Form FmHA 1944–53, except if the check was issued by the National Finance Center the cancellation will be performed in accordance with the procedures contained in FmHA Instruction 2024–P.

(ii) *Electronic Wire Transfer Method.* Request that the financial institution mark it "void" and issue a check payable to FmHA. This check will be endorsed and deposited through the Concentration Banking System. An original and one copy of Form FmHA 1944–53 completed in accordance with the FMI will be forwarded to the Finance Office.

(4) All interested parties will be notified of the cancellation as provided in Part 1807 of this Chapter (FmHA Instruction 427.1). Unless the cancellation of the loan is by mutual agreement, the applicant will be notified that the decision may be appealed in accordance with Subpart B to Part 1900 (FmHA Instruction 1900–B).

* * * * *

41. In § 1944.236, paragraph (c) is revised to read as follows:

§ 1944.236 Loan closing.

* * * * *

(c) *Promissory note.* (1) Form FmHA 1944–52 will be used. Regular amortized payments for principal and interest will be scheduled on a monthly basis. Instruction for preparation in the FMI for the note will be followed.

(2) The amount to be shown on the note will be the same as shown on Form FmHA 1944–51 or the new adjusted amount of the loan after increase or decrease as appropriate. The note will be dated the date of loan closing except as authorized in Part 1807 of this chapter (FmHA Instruction 427.1). If the first day of the month falls on Saturday, Sunday or a holiday, the note may be dated the first, loan closing will be the last working day prior to the first and the closing documents will be filed on the first working day following the first.

(3) Payments of rental rural housing (RRH) loans will be scheduled on the note in accordance with the FMI. As provided in § 1944.215 (c) of this Subpart, the principal installments may be deferred until construction is substantially complete and the project is ready for full operation.

(4) The note(s) will be signed in accordance with the FMI and Part 1807 of this chapter (FmHA Instruction 427.1).

(5) On or after May 1, 1985, all loans will be closed on a Predetermined

Amortization Schedule System (PASS) as described in Subpart K of Part 1951 of this chapter. If the loan is a subsequent loan, all other loans on the project must be converted to PASS.

(6) All RRH loans to be secured by revenue bonds or other forms of security other than a real estate mortgage or deed of trust will be forwarded to the National Office prior to loan approval with all necessary information for review and further instructions.

* * * * *

42. Section 1944.238 is revised to read as follows:

§ 1944.238 Assigning case numbers, project numbers and initial and subsequent loan codes.

A borrower may obtain financing for more than one project. The borrower's social security or tax identification number must be provided with each loan application

(a) The loan approval official will assign the borrower's case number using the State and county codes where the project will be located and the borrower's social security number or tax identification number. See the FMI for Form FmHA 1944–51 for specific instructions.

(b) Each project will be assigned a project number by the Finance Office. When the same social security or tax identification number is identified in a future case number anywhere in the nation, the Finance Office will assign project numbers sequentially.

(c) When the total number of units financed are built or purchased at one place at one time, the loan will be coded as the initial loan on the project.

(d) A subsequent loan will be coded when an additional loan or loans are necessary to complete, improve, repair and/or expand the project initially financed as indicated in § 1944.237 of this subpart.

43. In Exhibit A, under the heading "APPLYING FOR A LOAN" numbered paragraph 1 is revised to read as follows:

Exhibit A of Subpart E—How To Bring Rental Housing to Your Town

* * * * *

Applying for a Loan

* * * * *

1. *Identification of the applicant.* The name, social security or tax identification number, address, and occupation of an individual or organization applying for an insured RRH loan must be provided. Providing the social security or tax identification number is mandatory and a loan may be denied for refusal to furnish the number. Organizations should attach a certified copy of their charter or article of incorporation and bylaws, names of members of the board of directors, and a list of names and addresses of stockholders, partners, or members showing their percentage interest in ownership of the organization. Groups being organized should list the names and addresses of the organizers, their proposed percentage interest in ownership, and the type of organization they plan to form.

* * * * *

44. In Exhibit A–6 numbered paragraph 1.f. is revised and numbered paragraph 8 is added to read as follows:

EXhibit A–6 of Subpart E—Information To Be Submitted With Preapplication for Rural Rental Housing (RRH) Loan

* * * * *

1. * * *

f. The social security or tax identification number will be required in all cases. The loan will be denied for refusal to furnish the required social security or tax identification number.

(i) In the case of an individual, the social security number of the applicant must be provided and also that of the spouse, when they have joint responsibility for the loan.

(ii) In the case of a partnership, the tax identification number of the partnership must be provided whenever available, and also the social security numbers of all the general partners and their spouses.

(iii) In the case of a limited partnership, the tax identification number of the limited partnership, is required. The social security number of all the general partners and their spouses should be secured, if at all possible.

(iv) In the case of a company, corporation, or nonprofit organization the tax identification number of the organization is required. The social security number of the officers should be secured, if at all possible.

(v) If an organization does not have a tax identification number, the social security number of one of the officers must be used.

* * * * *

8. *Projects of 25 units or more:* Comments must be submitted in accordance with 7 CFR, part 3015, "Intergovernmental Review of Department of Agriculture Programs and Activities." See FmHA Instruction 1940–J, available in any FmHA office.

45. Exhibit B is amended by adding paragraph II G and revising paragraphs III A, VI C and VII A and VII C to read as follows:

Exhibit B—Interest Credits on Insured RRH and RCH Loans

* * * * *

II. * * *

G. *"Surcharge."* Twenty-five (25) percent of the established rent in a Plan I project which is added to the rent of an ineligible tenant.

III. * * *

A. Plan I will be only to broadly based nonprofit corporation and consumer cooperatives. Except for subsequent loans to projects approved before August 1, 1968, Plan I interest credit will no longer be available for new loans after October 27, 1980. All borrowers operating on Plan I as of October 27, 1980, may continue operating under it according to the applicable requirements of this Exhibit and of this subpart.

* * * * *

VI. * * *

C. Vacancies. When all construction is not completed but, some units are ready for occupancy and the contractor consents in writing to permit occupancy, the State Director may authorize the rental of those completed units to eligible tenants at the rent they would be paying should the FmHA loan be closed. A prerent-up conference is required according to § 1944–235 (i) of this Subpart. All income generated must be deposited in the General Operating Account and used for management and operation of the units.

* * * * *

VII. * * *

A. *Interest Credit and Rental Assistance Agreement.*

(1) Multiple Advance Loans. Interest credit may become effective the first day of the month following substantial completion of construction when the project is ready for full operation, which is the AED. When the District Director determines that the project is ready for full operation the borrower and the District Director should execute Form FmHA 1944–7. A separate Form FmHA 1944–7 will be executed for each loan on the project.

(2) Interim Financing and Servicing. Effective dates for interim financed loans and servicing actions will be according to the FMI for Form 1944–7.

* * * * *

C. *Borrowers who are not receiving interest credit.* If an eligible borrower did not execute a Form FmHA 1944–7 according to paragraph VII A of this exhibit, interest credit may be instituted at any time during the life of the loan provided the borrower agrees to the requirements of Form FmHA 1944–7 and this exhibit. When Form FmHA 1944–7 is executed it will be effective for the next monthly payment due.

* * * * *

46. In Exhibit D the fourth paragraph is amended by removing the form reference "Form FmHA 440–57, Acknowledgement of Obligated Funds/ Check Request" in the last sentence and inserting in its place "Form FmHA 1944–57, Multiple Family Housing Acknowledgement of Obligated Funds/ Check Request."

47. In § 1944.554, paragraph (a)(7) is revised to read as follows:

§ 1944.554 Reasons for grievance and appeal.

(a) * * *

(7) Denials of RA.

* * * * *

PART 1951—SERVICING AND COLLECTIONS

Subpart A—Account Servicing Policies

48. Section 1951.3 is revised as follows:

§ 1951.3 Authorities and responsibilities.

County Supervisors and District Directors are responsible for servicing all FmHA accounts serviced by the County Office and District Office as prescribed by this Subpart under the general guidance and supervision of District Directors and State Office personnel. Full use will be made of the Office Management System in account servicing. For the purpose of this Subpart, all references to "County Supervisor" shall be construed to mean "District Director" for all loans serviced by the District Office.

49. In 1951.6, paragraphs (g) and (h) are added to read as follows:

§ 1951.6 Handling payments.

* * * * *

(g). *Borrowers with Rural Rental Housing (RRH), Rural Cooperative Housing (RCH) or Labor Housing (LH) loans on a Predetermined Amortization Schedule System (PASS).* Loans on PASS will be administered under Subpart K of this Part.

(h) *Borrowers with RRH, RCH, LH, Rural Housing Site Loans (RHS) and Site Option (SO) loans administered under this Subpart.* RRH, RCH, LH, RHS and SO loans on a daily interest accrual system (DIAS) for applying payments administered under this Subpart are subject to the direct billing and payment requirements in § 1951.506 of Subpart K of this Subpart. All payments are requested to be paid on the first day of the month following the date shown on the promissory note, except loans with principal and interest bonds issued before May 1, 1985. All payments are considered delinquent for reporting purposes on the 15th day of the month following the requested payment date if the unpaid portion of the payment exceeds $15.00

50. In § 1951.7, a new paragraph (b)(5)(v) and a new paragraph (g) are added to read as follows:

§ 1951.7 Accounts of borrowers.

* * * * *

(b) * * *

(5) * * *

(v) For collection only accounts in District Offices, the State Director will review the accounts as required in paragraphs (b)(5)(i) through (b)(5)(iv) of this section and the District Director will serve the account.

* * * * *

(g) *Inquiry for Multiple Family Housing (MFH) Loans.* Inquiry for all RRH, RCH, LH, RHS and SO loans and grants will be made through field terminals using procedures in the "MFH Users Procedures" manual or by contacting the MFH Unit in the Finance Office.

51. Subpart K is addded to Part 1951 to read as follows.

PART 1951—SERVICING AND COLLECTIONS

* * * * *

Subpart K—Predetermined Amortization Schedule System (PASS) Account Servicing

Sec

1951.501 General.
1951.502 [Reserved]
1951.503 Authorities and responsibilities.
1951.504 Definitions and statements of policy.
1951.505 [Reserved]
1951.506 Processing payments.
1951.507 Maintaining borrower accounts.
1951.508–1951.509 [Reserved]
1951.510 Payment application.
1951.511 [Reserved]
1951.512 Changes in the application of loan payments.
1951.513 Overpayments and refunds to borrowers.
1951.514 Recoverable and nonrecoverable cost charges.
1951.515 Promissory notes for borrowers who convert to PASS.
1951.516 [Reserved]
1951.517 Conversion from DIAS to PASS.
1951.518–1951.547 [Reserved]
1951.548 Exception authority.
1951.549 [Reserved]
1951.550 OMB Control Number.

Authority: 42 U.S.C. 1980; 7 CFR 2.23; 7 CFR 2.70.

Subpart K—Predetermined Amortization Schedule System (PASS) Account Servicing

§ 1951.501 General.

(a) This subpart prescribes the policies, authorizations, and procedures for implementing and servicing PASS for all of the following Farmers Home Administration (FmHA) Multiple Family Housing (MFH) loan recipients which includes Farm Labor Housing (LH) and Rural Rental Housing (RRH) including Rural Cooperative Housing (RCH) and Congregate Housing and includes:

(1) All MFH loans, credit sales, reamortizations, and transfers closed on or after May 1, 1985, and

(2) All MFH loan recipients converting from the Daily Interest Accrual System (DIAS) to PASS according to § 1951.517 of this subpart, except:

(i) Seasonal LH and LH loans to individual farmers may be closed on monthly or annual payment schedules and also may be closed on Daily Interest Accrual under Subpart A of Part 1951 of this chapter. Instructions for scheduling payments are according to the Forms Manual Insert (FMI) for Form FmHA 1944–52, "Multiple Family Housing Promissory Note."

(ii) Rural Housing Site (RHS) loans and Site Option (SO) loans will be closed and serviced on Daily Interest Accrual under Subpart A of Part 1951 of this chapter. Payment billing and application are subject to § 1951.506 and § 1951.510 of this subpart.

(b) All MFH loan recipients not described in paragraph (a) of this section will continue to be subject to the servicing and collection requirements of Subpart A of Part 1951 of this chapter. For the purposes of this subpart, all references to "County Supervisor" in Subpart A of Part 1951 shall be construed to mean "District Director."

§ 1951.502 [Reserved]

§ 1951.503 Authorities and responsibilities.

District Directors are responsible for administering this subpart under the general guidance and supervision of the State Director. The District Office Management System will be fully used to accomplish this responsibility.

§ 1951.504 Definitions and statements of policy.

(a) *Advance regular payment.* Regular payments made at election of the borrower to pay the account ahead of schedule. These payments may be either full or partial payments and will be applied to the amortized payment schedule by the Finance Office.

(b) *Amortization schedule.* An amortization schedule is the projected application of periodic payments to principal and interest at the promissory note rate so the debt will be paid in full over the number of periods specified in the promissory note, assumption agreement (new terms), or reamortization agreement. Computation is based on a 30-day month and a 360-day year.

(c) *Audit receivables.* Loan, grant or subsidy funds which were used by the borrower for unauthorized purposes; have been identified by the Office of Inspector General (OIG) in an audit; and, which FmHA is requiring the borrower to repay.

(d) *Conversion.* The act of changing a borrower's account from DIAS to PASS.

(e) *Daily Interest Accrual System (DIAS).* A system whereby interest is charged daily from the date a payment is received in the District Office to the next date a payment is received. A daily interest accrual factor is computed by multiplying the outstanding principal balance by the effective interest rate and dividing by 365 days. Computation is always based on a 365 day year. Interest on each payment is charged on the actual number of days that a principal balance is outstanding.

(f) *District Director.* For the purpose of this subpart the term includes the Assistant District Director, and other qualified District staff who may be delegated responsibilities according to § 1930.143 of Subpart C of Part 1930 of this chapter, and the provisions of Subpart F of Part 2006 of this chapter (available in any FmHA office). In the case of LH loans still being serviced in the County Office, this definition also includes qualified County Office staff. This definition further includes the Area Loan Specialists in Alaska, Island Directors in Hawaii, Directors of Western Pacific Territories, and other qualified staff members in Alaska, Hawaii, and Western Pacific Territories, respectively.

(g) *Extra payment.* Extra payments are applied all to principal on the end of the loan and are funds derived from:

(1) Sale of basic chattel or real estate security, including rental or lease of real estate security of a depreciating or depleting nature.

(2) Refinancing of real estate debt.

(3) Mineral royalties.

(4) Cash proceeds of real property insurance as provided in Subpart A of Part 1806 of this chapter (FmHA Instruction 426.1).

(5) Sale of real estate not mortgaged to the Government, pursuant to a condition of loan approval.

(6) Transactions of a similar nature which reduce the value of the security for the loan(s).

(h) *Project late fee.* The amount charged a borrower's project account for a delinquent payment according to § 1951.510(c)(2) of this subpart, or when an uncollectible regular payment has been processed according to § 1951.506(c) of this subpart.

(i) *Overage.* This term refers to both "overage" and "surcharge" described in Exhibit B to Subpart E of Part 1944 of this chapter.

(j) *Payment effective date.* The payment effective date is the day of the month on which payments will be effectively applied to the account by the Finance Office for the month payment is due regardless of the payment reception date. On PASS all payments will be applied as of the first day of the month.

(k) *Payment reception date.* The day of the month the payment is received in the District Office.

(l) *Predetermined Amortization Schedule System (PASS).* System whereby FmHA will apply loan payments based on an amortization schedule.

(m) *Promissory note installment.* The unrounded amortized installment shown on the promissory note, conversion agreement, assumption agreement or reamortization agreement, whichever is currently in effect.

(n) *Recoverable costs.* Additional project costs such as vouchered insurance or taxes which FmHA requires a borrower to pay.

(o) *Refund payment.* Payments from unused loan funds which are applied to principal on the end of the loan account.

(p) *Regular payment.* All monthly payments scheduled according to PASS. Does not include extra payments, advance regular payments, refund payments or voluntary additional principal payments.

(q) *Subsidized installment.* The promissory note installment reduced by the terms of Form FmHA 1944–7, "Multiple Family Housing Interest Credit and Rental Assistance Agreement." The subsidized installment is the unrounded amortized installment computed at the subsidized interest rate.

(r) *Subsidy credit.* The difference between a borrower's monthly promissory note installment and the monthly subsidized installment.

(s) *Voluntary additional principal payment.* Payments applied all to principal which are made at the election of the borrower in addition to regularly scheduled payments and with FmHA approval. Such payments will not affect the schedule payment status or change the amount of the regular monthly payments. Funds for voluntary additional principal payments are derived from sources other than extra payment sources. Payments will be applied to current loans only.

§ 1951.505 [Reserved]

§ 1951.506 Processing payments.

(a) *Regular payments.* Regular payments and advance regular payments will be processed as follows:

(1) All payments will be based on tenants occupying the units as of the first day of the month for which the payment statement is generated.

(2) The borrower must mail all Forms FmHA 444–8, "Tenant Certification," or for tenants receiving Section 8 assistance, the acceptable Department of Housing and Urban Development (HUD) form, to the District Director on the same day, or before, the tenant occupies the unit. The District Director will verify the information on the tenant certification as required in paragraph VII F of Exhibit B to Subpart C of Part 1930 of this chapter. The data from the verified tenant certifications should be entered on a "master" Form FmHA 1944–29, "Project Worksheet for Interest Credit and Rental Assistance" filed with the current tenant certifications in the District Office servicing file. Only tenants with current tenant certifications shown on this "master" list may be certified for interest credit or rental assistance.

(3) On the 20th day of each month, the Finance Office will generate and mail to each borrower Form FmHA 1944–9A, "Multiple Family Housing Statement of Payment Due," showing the current monthly payment due, unpaid late fees, any other charges to the account, and delinquent payments, if any, due on the first day of the following month. This payment statement will be determined from current Finance Office records but will not reflect overage due from the borrower or rental assistance due the borrower.

(4) Upon receipt of Form FmHA 1944–9A, the borrower will submit to the District Office Form FmHA 1944–29 with the payment indicated or adjusted as indicated in paragraph (a)(5) of this section.

(5) Form FmHA 1944–29, prepared by the borrower must reflect the following:

(i) Only tenants occupying units the first day of the month for which payment is due.

(ii) If tenants are listed on Form FmHA 1944–29 for the payment month for whom the District Office does not have current tenant certifications, supporting tenant certifications must be attached.

(iii) Interest credit and rental assistance may be claimed only for tenants with current tenant certification as specified in paragraph VII F 4 of Exhibit B to Subpart C of Part 1930 of this chapter.

(iv) Overage up to the market rent must be paid to FmHA by the borrower for tenants without current tenant certifications. The District Director may determine that the tenant may be required to reimburse the borrower for that overage as allowed in paragraph VII F 4 a of Exhibit B to Subpart C of Part 1930 of this chapter.

(v) The borrower may subtract any rental assistance due the project (supported by current tenant certifications) from the payment due and

remit a "net" payment. Calculations supporting the "net" payment must be shown on Part I of Form FmHA 1944–29.

(6) The District Director will verify that data on current tenant certifications held in the District Office supports claims on Form FmHA 1944–29. The District Director will prepare and forward Form FmHA 1944–9, "Multiple Family Housing Certification and Payment Transmittal," to the Finance Office with the borrower's payment.

(b) *Other payments.* Payments made through the District Office will be processed according to Subpart B of Part 1951 of this chapter (available in any FmHA office).

(c) *Uncollectible payment.* Uncollectible's will be handled under Subpart A of this Part or if a payment transmittal system using local banking facilities is in effect, the local financial institution contracted to accept collectibles from the District Office will prepare a debit voucher for all items returned as uncollectible and will provide the local FmHA office with a copy of the debit voucher and the item. The FmHA office will verify the information and send one copy to the Finance Office using procedures established for concentration banking. Delays of more than one day in sending these items must be explained in a letter to the Director, Finance Office. Prompt action will be taken to obtain a valid replacement collection item from the borrower. When received, the replacement item will be scheduled on a Form FmHA 1944–9. The payment effective date for payments other than refunds and extra payments will be the first day of the month during which the replacement payment is received in the District Office.

§ 1951.507 Maintaining borrower accounts.

(a) *Accounts of active borrowers.* The foundation for proper and timely debt payment is sound budgeting and monthly review of income and expenses by the borrower and, as necessary, the District Office staff. Account maintenance, therefore, must begin with initial planning and must be an integral part of ongoing analysis, planning and folllow-up management assistance.

(b) *Accounts of collection-only borrowers.* Collection only accounts will be serviced according to § 1951.7(b) of Subpart A of this part.

(c) *Notifying borrowers of late fees and past due payments.* The Finance Office will automatically notify each borrower of late fees for payments which were unpaid on the 10th day of the month. A copy of the notice will be mailed to the District Office servicing the account.

(d) *Subsequent servicing.* Delinquent accounts will be serviced according to the respective program requirements. Accounts will also be serviced under Subpart B of Part 1965 of this chapter.

(e) *Maintaining records of accounts in District Offices.* Records of accounts will be maintained in the District Office. Form FmHA 1905–6, "Managment System Card—Multifamily Housing," or other systems authorized by FmHA regulations will be maintained for each project.

(1) The Finance Office will provide Form FmHA 1951–53 "Multiple Family Housing Transaction Record," for each transaction on the borrower's account, including all loan payments, overage or surcharges, rental assistance, project late fee charges, recoverable cost charges, and corrections to the account required in § 1951.506 of this subpart. These transaction records will be retained in the project servicing file until Form FmHA 1951–54, "Multiple Family Housing Annual Statement of Loan Account From ——— To ———," is received and all transactions are accounted for and reconciled with District Office records.

(2) Form FmHA 1905–6 for projects on PASS will be flagged with an orange signal between Position "5" and "RRH".

§§ 1951.508–1951.509 [Reserved]

§ 1951.510 Payment application.

(a) *Regular payment due date.* The regular payment due date is the first day of each month. All months will be counted as 30 days (360 day year).

(b) *First regular payment.*

(1) The first regular amortized payment after loan closing for transfers (new terms), reamortizations, voluntary conversions, credit sales, or loans closed after interim financing *must* be at least one (1) month from closing. For example, if a loan is closed on January 31, the first regular amortized payment will be due March 1. For multiple advance loans the first payment must be at least one (1) month after the final advance.

(2) For transfers (same terms) payments on loans already on PASS will be due on the next scheduled due date.

(3) Transfers (same terms) converting from DIAS to PASS are loans retaining the same interest rate and final due date and regular amortized payments will be due 30 days form either the date of closing or the interest only installment, whichever is later.

(c) *Delinquent payments.*

(1) A loan payment is considered delinquent the first day following the due date if it is not received by the District Office. However, borrowers will be allowed a ten (10) day grace period following the due date to make their payment. Late fees will be charged, effective on the eleventh (11th) day of the month. Thereafter, late charges will be assessed as described in paragraphs (c) (2) and (3) of this section.

(2) The project account will be charged a late fee when the regular payment is not received in the District Office by the tenth (10) day of the month the payment is due or when the payment is applied by the Finance Office and does not fully pay the regular payment and other charges for each project loan. Late fees collected by the Finance Office will be deposited in the Rural Housing Insurance Fund (RHIF).

(i) The project late fee is six percent of the total regular payment(s) due shown on the promissory note(s), conversion agreement(s), assumption agreement(s) or reamortization agreement(s).

(ii) A project late fee will be charged for any unpaid portion of the regular payment(s) exceeding $15.00.

(iii) A project late fee will be charged one time only, for each regular payment.

(iv) Project late fees may not be paid from project income as specified in paragraph XIII.B.2.a.(4) of Exhibit B to Subpart C of Part 1930 of this chapter.

(v) Exceptions may be made to late fee charges only as follows:

(A) The State Director may allow an exception for any project for three (3) monthly project late fee charges in any calendar year, based on the State Director's determination that the late fees place an unfair burden on the project. For each exception requested, the borrower must provide a written explanation of the circumstances which caused the late payment and what actions will be taken to bring the account current.

(B) The National Office may authorize exceptions to late fees for borrowers who have late fees exceeding the State Director's exception authority. When the State Director determines that the application of a late fee would place an unfair burden on the borrower, the State Director may submit a request for an exception to the late fee to the National Office. The request will include an explanation of the circumstances, a recommendation for action and all relevant case file material. The National Office will review the request and notify the State Director what action should be taken on the account.

(C) When an exception to late fees is granted, the State Director will notify the Finance Office and the borrower on Form FmHA 1951–51, "Multiple Family

Housing Exception to Late Fees," completed according to the FMI.

(D) When an application for late fee exception is denied the State Director must give the borrower appeal rights under Subpart B of Part 1900 of this chapter.

(3) When a regular payment continues to be delinquent on the first of the month following the delinquent payment due date, interest will be charged on the unpaid principal at the note rate until all regular payments, recoverable cost charges and late fees have been paid current in accordance with the number of full installments required by the promissory note. This interest will be in addition to the scheduled interest of the regular payment. The account will no longer be on the previous amortization schedule. The account may be brought back on the previous amortization schedule by making a voluntary additional principal payment in an amount equal to the scheduled principal that was used to pay the additional interest charged.

(d) *Subsidy credit.* When the Finance Office receives the regular payment, subsidy credit will be applied to the loan account before any payment or other credit is applied to the account. Subsidy credit will be applied first to accrued interest and then to principal after all interest is paid. Subsidy credit will not be applied to late fees, audit receivables, or recoverable cost charges.

(e) *Regular payments.* Regular payments will be applied in the following priority:

(1) Amortized audit receivables.
(2) Unamortized audit receivables.
(3) All project late fees due
(4) Recoverable costs due
(5) Overage.
(6) All other interest due
(7) Principal.
(8) Any remaining regular payment will be applied as an advance regular payment unless specifically designated otherwise.

(f) *Advance regular payments.* These payments affect the payment status of the loan. The loan account must be current before a payment can be applied as an advance payment. The payment effective date will be the due date of the next regular payment which is not fully paid.

(g) *Extra and refund payments.* Both will be applied as principal to the last installment to become due under the note.

(h) *Voluntary additional principal payments.* These payments will only be credited to the account when all regularly scheduled payments on the account have been paid. Voluntary additional principal payments are credited all to principal, as of the payment effective date, and do not affect the payment status of the loan.

(i) *Projects with initial and subsequent loan(s).* Regular payments on projects with an initial and subsequent loan(s) will be applied according to the priorities listed in § 1951.510(e) of this subpart. Each priority item will be paid for all project loans before moving to the next item. Payments will be applied for each priority item in accordance with the loan number, beginning with the initial loan and ending with the highest numbered subsequent loan.

(j) *Final payments.* Final payments will be applied on the next payment due date or the final due date shown on the promissory note, assumption agreement or reamortization agreement, whichever is sooner. The District Office must contact the Finance Office for the amount of the final payment. Final payment should be accepted under conditions specified in § 1965.90 of Subpart B to Part 1965 of this chapter.

§ 1951.511 [Reserved]

§ 1951.512 Changes in the application of loan payments.

(a) *Authority to change payments.* District Office employees with State Director authorization according to § 1930.143 of Subpart C to Part 1930 of this chapter are authorized to approve reapplication of loan payments between accounts when payments have been applied in error. All authorization for reapplication of payments must conform to the policies expressed in this subpart. No change may be made if the loan is paid in full, the cancelled note or notes have been returned to the borrower, and the security instruments have been satisfied.

(b) *Method for changing application of loan payments.*

(1) The District Office will make a copy of Form FmHA 1944–9 which submitted the original payment to the Finance Office.

(2) The required changes should be marked on Form FmHA 1944–9 in red and the form should be marked "CORRECTED COPY".

(3) The reason for the required change should be noted on the form.

(4) Copies of any justifying documentation should be attached to the corrected copy. (Copies should also be maintained in the District Office files.)

(5) The bottom right hand corner of the form should be signed:

"Approved by:
(Signature of authorizing person)"
Title: _____

(6) The corrected copy and all attached documentation should be mailed in a separate envelope to the Finance Office, Multifamily Housing Unit, marked "Open Addressee Only".

(7) A copy of the corrected form should be retained in the District Office until the change in application has been processed.

(c) *Changes by the Finance Office in application of remittance.*

(1) Reapplication of collections will be made when processing Forms FmHA 1944–9 or other effective date transactions that are dated prior to the date of last payment on the borrower account. Form FmHA 1951–53 will be forwarded to the District Office to show the reapplication.

(2) When necessary, the Finance Office will correct improperly prepared Forms FmHA 1944–9. If necessary the Finance Office will contact the District Office for correct data to ensure correct application of payments.

§ 1951.513 Overpayments and refunds to borrowers.

Overpayments and refunds to borrowers will be processed according to § 1951.13 of Subpart A of this part.

§ 1951.514 Recoverable and nonrecoverable cost charges.

The District Director will service recoverable and nonrecoverable cost items according to § 1951.14 of Subpart A of this part.

§ 1951.515 Promissory notes for borrowers who convert to PASS.

Promissory notes in the hands of investors when a loan is converted to PASS will be repurchased by the Finance Office and forwarded to the District Office for storage.

§ 1951.516 [Reserved]

§ 1951.517 Conversion from DIAS to PASS.

(a) *Conversion prior to May 1, 1985.* The account of any existing RRH loan recipient who elected to convert to PASS before October 31, 1983, by following instructions prescribed by FmHA, and who signed their conversion documents before May 1, 1985, or any recipient of a new loan, credit sale, or transfer (new terms) closed between November 1, 1983, and April 30, 1985, who elected to convert to PASS, will be converted on May 1, 1985, as if the loan has been on an amortization schedule from the date of the loan, transfer (new terms), or reamortization (new terms), whichever occurred later.

(b) *Conversion on or after May 1, 1985.*

(1) *Required conversion.* After *May 1, 1985,* all MFH loans, transfers or reamortizations must be closed on PASS, except LH loans specified in § 1951.501(a)(3) of this Subpart. All borrowers receiving subsequent loans or reamortizations must convert all initial and subsequent loans on the project to PASS. If the subsequent loan and conversion are not closed on the first of the month, the interest from the date of closing to the first of the month will be capitalized. Recoverable costs and unpaid interest may be capitalized on coversions required by subsequent loans or reamortization of one loan on the project account.

(2) *Voluntary conversion.* District Directors shall approve voluntary conversion of any account from DIAS to PASS upon a request by the borrower, when the following conditions are met:

(i) The loan account and reserve account are current less any authorized withdrawals at the time of conversion.

(ii) Conversion does not result in a rent increase.

(iii) The conversion is effective the first day of the month.

(3) *Processing conversions.* The following actions must be taken to convert an account from DIAS to PASS:

(i) Form FmHA 1951–50, "Multiple Family Housing Conversion Agreement," will be completed according to the FMI except loans converted on Form FmHA 1965–9, "Multiple Family Housing Assumption Agreement," or FmHA 1965–16, "Multiple Family Housing Reamortization Agreement." The terms of Forms FmHA 1965–9 and FmHA 1965–16 convert the account to PASS.

(ii) When the borrower will continue to receive interest credit following conversion, the current interest credit agreement will be cancelled by preparing and submitting a new Form FmHA 1944–7. Form FmHA 1944–7 should be attached to Form FmHA 1951–50, and submitted to the Finance Office, Attention: Multiple Family Housing Unit.

(iii) On the back of the original note or assumption agreement (new terms), below all signatures and endorsements, the District Director will insert the following: "A Form FmHA 1951–50 dated ——— 198–, in the principal sum of $———, has been given to modify the payment schedule of the note.

(4) *Principal balance to be converted.* For transfers and reamortizations, the applicable transfer or reamortization form will convert the account. The principal balance converted to PASS will be established according to the FMI for Forms FmHA 1965–9, or FmHA 1965–16, and the following:

(i) For transfers (new terms), any unpaid interest to the date of closing may be capitalized. When the transfer is other than the first day of the month, the interest from closing to the first of the following month will be established as an "interest only" installment due on the first of the following month. The interest only installment should be collected at transfer closing. See FMI for Form 1965–9 for details.

(ii) For transfer (same terms), interest will not be capitalized. Accrued interest from the last payment to the date of closing will be collected at closing. If the transfer is other than the first of the month, the interest from the previous payment to date of closing will be paid by the transferor and an interest only installment will be established for the balance of the month based on PASS. The interest only installment will be due on the first of the following month by the transferee and must be collected at transfer closing. To establish the interest only installment, use the formula shown on the FMI for Form FmHA 1965–9.

(iii) Reamortizations will always be closed the first day of the month. Unpaid interest to the date of closing may be capitalized.

(iv) Audit receivables may not be transferred or reamortized.

(5) *Terms of Conversion.* All conversion on Form FmHA 1951–50 will be at the interest rate and within the remaining terms shown on the converting promissory note, assumption agreement (new terms) or reamortization agreement (new terms).

§§ 1951.518–1951.547 [Reserved]

§ 1951.548 Exception authority.

The Administrator of the Farmers Home Administration may, in individual cases, make an exception to any requirements of this Subpart not required by the authorizing statute if the Administrator finds that application of such requirement would adversely affect the interest of the Government. The Administrator will exercise the authority only at the request of the State Director. The District Director will submit the request supported by data: demonstrating the adverse impact; identifying the particular requirement involved; showing proper alternative courses of action; and, identifying how the adverse impact will be eliminated.

§ 1951.549 [Reserved]

§ 1951.550 OMB Control Number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget and have been assigned OMB Control Number 0575–0106.

PART 1955—PROPERTY MANAGEMENT

Subpart A—Liquidation of Loans and Acquisition of Property

52. Section 1955.10 is amended by revising the third entry in the list of forms in paragraph (f)(1), by adding two additional forms after Form FmHA 465–8 in the list of forms in paragraph (f)(1), and by revising paragraphs (f)(2), (f)(3), (h)(1)(ii), (j)(2), (j)(3), (j)(4) and (j)(5) to read as follows:

§ 1955.10 Voluntary conveyance of real estate and related security.

* * * * *

(f) * * *

(1) * * *

Form No. and Name of Form	Number of copies	Signed by borrower	Voluntary conveyance docket
* *	*	*	*
1922–7—Appraisal Report for Multi Unit Housing.	1	.....	1—Original.
* *	*	*	*
1965–18—Multiple Family Housing Release from Personal Liability.	2	.....	2—Original and Copy.
1965–19—Multiple Family Housing Advice of Mortgage Real Estate Acquired.	2	1—Original.....	2—Original and Copy.
* *	*	*	*

(2) If the present market value of security property does not equal or exceed the total FmHA debt, and if the voluntary conveyance involves a release from liability, the County Supervisor will obtain a current financial statement and information about the present income of the borrower and any cosigner. If financial information cannot be obtained, the voluntary conveyance offer must be reviewed and approved by the District Director prior to acceptance. The County Supervisor will execute Form *FmHA 465–8* after voluntary conveyance has been approved and the determination made to release the borrower from personal liability. The District Director will execute Form FmHA 1965–18 for multiple family housing loans.

(3) For multiple housing facilities, the District Director will, whenever possible, obtain a statement from the borrower as to any income or expenses related to the property which are due but unpaid, such as rent or lease proceeds, security deposits, and utility bills.

* * * * *

(h) * * *

(1) * * *

(ii) After the designated attorney, title insurance company, or OGC determines that the transaction has been properly closed, all documents will be returned to the initiating office with the notation of date when title to the property was vested in the Government. The County Supervisor (or District Director) will forward copies of this Form FmHA 465–6 (Form 1965–19 for MFH cases) according to the FMI. The County Supervisor will notify the District Director of completion of any conveyance which the District Director approved. For Multiple Family Housing projects with rental assistance (RA), Form FmHA 1944–55, "Multiple Family Housing Transfer of Rental Assistance" must be attached indicating status of the RA while the property is in inventory.

* * * * *

(j) * * *

(2) *Completing Form 465–6, "Advice of Mortgaged Real Estate Acquired" or Form FmHA 1965–19, "Multiple Family Housing Advice of Mortgaged Real Estate Acquired."* Immediately after the transaction is closed in accordance with the closing instructions and the amount of credit to be allowed on the account is determined, the County Supervisor will complete and send Form FmHA 465–6 according to the FMI. The District Director will complete Form FmHA 1965–19 for multiple family housing properties and distribute according to the FMI. The value of acquired real property entered into the inventory account in all cases will be the present market value. The County Supervisor (or District Director for MFH loans) will inventory and appraise acquired personal property and submit a list of the property to the Finance Office with Form FmHA 465–6, or Form FmHA 1965–19 prepared by the District Director for MFH properties. For Multiple Family Housing projects with RA, Form FmHA 1944–55 must be attached indicating status of the RA while property is in inventory.

(3) *Leases.* (i) The County Supervisor (or District Director) will send a copy of any assigned agricultural, mineral, or other lease on the property to the Finance Office with Form FmHA 465–6. (Form FmHA 465–19 will be used for MFH cases). If an oral lease on the property or on a portion of it existed, a new lease will be executed in writing on Form FmHA 465–2, "Lease of Security Property," or other form approved by OGC. The lessee and the County Supervisor (for FmHA lessor) will execute the form. The County Supervisor will assign a number to the lease. The number for an individual will consist of the FmHA State and County codes, the last digit of the fiscal year, and a sequential number beginning with 001, e.g., 48–71–6001. Each fiscal year the sequential number will begin again with 001. For an organization or business it will be the FmHA State and County Code and Internal Revenue Service employer number. The County Supervisor will send a copy of the lease to the Finance Office. After assigning an advice number to Form 465–6 (Form FmHA 1965–19 for MFH Cases), the Finance Office will advise the County Supervisor (or District Director) by memorandum, with a copy to the State Director, of such identification of the inventory property and lease.

(ii) The County Supervisor (or District Director) will collect payments due and payable after the Government inventory conveyance is closed and deposit them in a Treasury general account or forward them to the Finance Office as miscellaneous collections in accordance with the Forms Manual Insert (FMI) for Form FmHA 451–2, "Schedule of Remittances," or Form FmHA 1944–9, "Multiple Family Housing Certification and Payment Transmittal," for MFH loans. Receipt for collections made in accordance with this Subpart will be issued to: Lease proceeds from property formerly owned by (borrower's name and case number) and leased to (name of lessee)."

(4) *Satisfied account.* The Finance Office, the County Supervisor (or District Director), as appropriate, will stamp the borrower's note "satisfied by surrender of security and release from liability," when the account is fully satisfied. The County Supervisor (or District Director) will release the lien of record and deliver the satisfied note and Form FmHA 465–8, "Release from Personal Liability," (Form FmHA 1865–18, "Multiple Family Housing Release from Personal Lability" for MFH cases) to the borrower.

(5) *Unsatisfied account.* When the account is not satisfied and the debt cannot be settled according to Part 1864 of this Chapter, the borrower will be classified as "collection only" by processing Form FmHA 404–1, "Case Reclassification," and Form FmHA 450–10, "Multiple Family Housing Change Borrowers Name/Address Case Number/Project Number/Loan Number," and submitting them to the Finance Office with Form FmHA 465–6. (Forms FmHA 1944–54, "Borrower's Address or Name Change" and FmHA 1965–19 will be used for MFH cases). The remaining amount will be accelerated by written notice. The Finance Office will send the County Supervisor (or District Director) a current transaction record. The loan record card will be reconciled with the transaction record or Form FmHA 451–11 and the account service for collection under § 1951.7(b) of Subpart A of Part 1951 of this Chapter. In such cases, the FmHA mortgage will be released of public record, but not satisfied. The type of release will be prescribed by a State Supplement approved by OGC and cleared as required by Subpart B of Part 2006 of this chapter.

53. In § 1955.15 paragraphs (d)(12) through (d)(15) are revised to read as follows:

§ 1955.15 Foreclosure of loans secured by real estate.

* * * * *

(d) * * *

(12) *Completion of Form FmHA 465–6 or Form FmHA 1965–19.* If FmHA is the successful bidder at the foreclosure sale, the County Supervisor (or District Director) will complete and forward Form FmHA 465–6 (Form FmHA 1965–19 for MFH cases) according to the FMI. The form will be completed without waiting for the final report on acquired property from OGC and will be dated as of the date of sale.

(13) *Appraising personal property.* The County Supervisor (or District Director) will inventory and appraise personal property acquired at the foreclosure sale with the real estate and submit a list of such items to the Finance Office with Form FmHA 465–4 (Form FmHA 1965–19 in MFH cases). A copy of the list will be sent to the State Director.

(14) *Leases.* If the sale is made subject to an agricultural, mineral, or other lease in which the lessor's interest is acquired by FmHA through the sale, the County Supervisor (or District Director) will submit a copy of the lease to the Finance Office with Form FmHA 465–6, (Form FmHA 1965–19 for MFH cases). If a lease is terminated on act of sale, a new lease may be considered as provided by §1955.63(a)(1) of Subpart B of this part. For lease numbering see § 1955.10(j)(3) of this subpart.

(i) Any oral lease in effect at the time the Government acquires the property will be reduced to writing on Form FmHA 465–2 or other form approved by OGC. If a written lease cannot be obtained, request assistance from OGC. The lessee and County Supervisor or District Director (for FmHA lessor) will execute the form. The County Supervisor (or District Director) will notify any lessee in writing that the Government has acquired the former lessor's rights under any lease and will

direct the lessee to remit all payments to the County Supervisor (or District Director).

(ii) Payments to FmHA under a lessee which were due and payable before the date of the foreclosure sale will be applied first on any balance remaining on the debt after foreclosure and then on any other FmHA claim against the borrower. Any surplus remaining will be remitted to the borrower.

(15) *Deficiency Judgment.* (i) If a deficiency judgment is obtained under paragraph (b)(2) of this section, the account will be classified as a judgment case and the County Supervisor will send Form FmHA 455–20, "Notice of Judgment," to the Finance Office. (For MFH cases the District Director should contact the State Office or MFH Unit in the Finance Office for instructions on altering Form 455–20 to meet the requirements of the Automated Multiple Housing Accounting System (AMAS)). The account will be serviced in accordance with Section 1962.49(e) of *Subpart A of Part 1962* of this chapter. When action to obtain a deficiency judgment is pending at the time Form FmHA 465–6 (Form FmHA 1965–19 for MFH cases) is sent to the Finance Office, the action will be indicated on the form.

(ii) If a deficiency judgment is not obtained and the debt cannot be settled under Part 1864 of this chapter (FmHA Instruction 456.1), the County Supervisor (or District Director) will submit Forms FmHA 404–1 and FmHA 450–10 (Form FmHA 1944–54 for MFH cases) to the Finance Office to reclassify the account to collection only in accordance with FmHA Instruction 404.1 available in all FmHA Offices.

* * * * *

Subpart B—Management of Property

54. In § 1955.54, paragraph (a) is revised to read as follows:

§ 1955.54 Authorities and responsibilities.

(a) *Line authority.* This authority is from the Administrator to State Director, District Director, and County Supervisor. Assistance, guidance and counsel are available from the Property Management Specialist and Program Staff in the State Office and from the appropriate program divisions and Property Management Staff in the National Office. Full use will be made of these resources. County Supervisor means District Director or a designee in the case of a multiple family housing loan.

* * * * *

Subpart C—Disposal of Acquired Property

55. In § 1955.104, paragraph (a) is revised to read as follows:

§ 1955.104 Authorities and responsibilities.

(a) *Line authority.* This authority is from the Administrator to State Director, District Director, and County Supervisor. Assistance, guidance, and counsel are available from the Property Management Specialist and Program Staff in the State Office and from the appropriate program divisions in the National Office. Full use shall be made of these resources. County Supervisor is to mean District Director or a designee in the case of a multi-family housing loan.

* * * * *

56. In § 1955.116, paragraphs (a)(2)(vi)(C) and (b)(4)(iv) are revised to read as follows:

§ 1955.116 Sale of real estate that was acquired pursuant to the Consolidated Farm and Rural Development Act (CONACT).

* * * * *

(a) * * *
(2) * * *
(vi) * * *

(C) When the transaction is closed, the County Supervisor will send the original and one copy of Form FmHA 465–6A, "Advice of Mortgaged Real Estate Sold" (Form FmHA 1965–20, "Multiple Family Housing Advice of Mortgaged Real Estate Sold," in MFH cases), to the Finance Office and a copy to the State Director. When rental assistance (RA) has been in suspense for an acquired property, disposition of the RA must be indicated on Form FmHA 1944–55, "Multiple Family Housing Transfer of Rental Assistance," and a copy of Form FmHA 1944–55 must be forwarded to the Finance Office with Form FmHA 1965–20.

(b) * * *
(4) * * *

(iv) *Organization property.* Upon acceptance of the bid or offer, the State Director will forward the original Form FmHA 465–10, the names and legal description to be placed in the deed, the amount and terms of the note and mortgage, and other pertinent material to OGC requesting that they provide the appropriate legal instruments and instructions for closing the transaction. The State Director will execute and acknowledge the Quitclaim Deed. Deed execution may not be redelegated. When the transaction is closed, the County Supervisor will send the original and copy of Form FmHA 465–6A (Form FmHA 1965–20 in MFH Cases with Form FmHA 1944–55 when appropriate).

57. In § 1955.117, paragraphs (e)(6)(i) and (f)(7) are revised to read as follows:

§ 1955.117 Sale of real estate that secured Rural Housing (RH) loans.

* * * * *

(e) * * *
(6) * * *

(i) The property will be conveyed by a Quitclaim Deed. The State Director with the assistance of OGC, will develop a Quitclaim Deed. Deed execution, by the State Director may not be redelegated. When the transaction is closed, the County Supervisor will send the original and copy of Form FmHA 465–A (Form FmHA 1965–20 in MFH cases) to the Finance Office and a copy to the State Director.

* * * * *

(f) * * *

(7) After the transaction is closed, the County Supervisor will send the original and one copy of the Form FmHA 465–6A (Form FmHA 1965–20, "Multiple Family Housing Advice of Mortgage Real Estate Sold," will be prepared by the District Director in MFH cases) to the Finance Office and a copy to the State Director. Any RA held in suspense by the Finance Office must be transferred to an eligible borrower under the authorities in paragraph XV of Exhibit E to Subpart C of Part 1930 of this chapter. A copy of Form FmHA 1944–55 transferring the RA must be attached to Form FmHA 1965–20.

PART 1965—REAL PROPERTY

Subpart B—Security Servicing for Multiple Housing Loans

58. Section 1965.65 is amended by adding paragraphs (a)(9) and (b)(12) and revising paragraphs (b)(8), (c)(10) and (c)(11) to read as follows:

§ 1965.65 Transfer of real estate security and assumption of loans.

(a) * * *

(9) All transfers are subject to the payment application system conversion requirements in Subpart K of Part 1951 of this chapter.

(b) * * *

(8) When the spouse of a deceased individual borrower is not currently liable for the indebtedness, a transfer and assumption to the spouse can be accomplished through use of Form FmHA 1965–9, "Multiple Family Housing Assumption Agreement," on the same rates and terms if the account is current or new rates and terms if the account is not current. If the spouse is determined to be an eligible applicant according to

applicable provisions of the respective loan program and this Subpart, the approval official may waive the submission by the assuming spouse of any form or material not required by OGC to complete the assumption, if the present forms and materials in the current casefile are otherwise acceptable.

* * * * *

(12) Forms FmHA 1944–50, "Multiple Family Housing Borrower/Project Characteristics" and 1944–51, "Multiple Family Housing Obligation—Fund Analysis" must be processed in accordance with their respective FMIs for all transferees to update the accounting system.

(c) * * *

(10) If the transfer involves an RRH or RCH loan using interest credit with a Form FmHA 1944–7 or 444–7, "Interest Credit and Rental Assistance Agreement" in effect, the transferee may also receive interest credit by executing a new Form FmHA 1944–7 effective the date of transfer. RRH and RCH loans will not be converted from a subsidized (interest credit) basis to a nonsubsidized (full profit) basis as part of the transfer process. If the transfer is to be made on a nonprofit or limited profit basis, the transferee may receive interest credit if the loan is eligible for interest credit according to Exhibit B to Subpart E of Part 1944 of this Chapter. A new Form FmHA 1944–7 will be executed by the transferee, attached to Form FmHA 1965–9, "Multiple Family Housing Assumption Agreement" and a copy of Form FmHA 1944–50, "Multiple Family Housing Borrower/Project Characteristics" and forwarded to the Finance Office, MFH Unit, when the transfer is closed. The borrower project data on Form FmHA 1944–50 should have been established when the transfer was approved.

(11) A transferee may participate in the RA program if the transferor's project is an eligible project and the transferee is an eligible borrower according to Exhibit E to Subpart C of Part 1930 of this chapter. If the transferor participates in the RA programs, the transferee may assume the remaining portion of the transferor's RA agreement when the transferee is eligible. When the transferee is assuming the transferor's RA agreement, Form FmHA 1944–55, "Multiple Family Housing Transfer of Rental Assistance," will be executed and attached to the new or existing Form FmHA 1944–27. A copy of Form FmHA 1944–55 and a copy of Form FmHA 1944–50 will be attached to Form FmHA 1965–9 and forwarded to the Finance Office. If the transferee will not be assuming an existing RA agreement, the agreement will be suspended by memorandum to the Finance Office. Subsequently, the State Director must transfer the suspended RA unit(s) to another project(s), using Form FmHA 1944–55, in accordance with Exhibit E of Subpart C of Part 1930 of this chapter.

* * * * *

§ 1965.65 [Amended]

59. Section 1965.65 is further amended in paragraph (d)(3) by changing the reference in the last sentence from "Form FmHA 460–5" to "Form FmHA 1965–9."

60. Section 1965.65 is further amended by revising paragraphs (f)(1) and (f)(2) to read as follows:

§ 1965.65 Transfer of real estate security and assumption of loans.

* * * * *

(f) * * *

(1) Form FmHA 465–5, "Transfer of Real Estate Security," must be completed to reflect the agreement between the transferor and transferee. The form will be prepared to show all agreements involved such as the proration of taxes and insurance, title, legal and filing fees, equity and method of payment, charges to the loan account other than principal and interest, future dated payments presently credited to the account, assignment of project accounts and leases, and other appropriate items. Additional information may also be attached to this form when necessary to fully describe the proposed transaction. The transfer will become effective the data Form FmHA 1965–9 is executed.

(2) Form FmHA 1965–9 will be executed according to the FMI. The unpaid principal balance and accrued interest to be shown on Form FmHA 1965–9 will be determined by accessing the project account record via field terminal. When this is not possible, the unpaid principal balance, accrued interest, and any other charges will be computed from Form FmHA 1951–53, "Multiple Family Housing Transaction Record" or Form FmHA 451–11, "Statement of Account." The transferee will be advised of the total amount paid as of the closing date which has not been credited to the account, the payment required to place the account on schedule as of the previous installment due date and, any payments required to bring any monthly or annual payments current, and the amount needed to bring the reserve account current less any authorized withdrawals. If the loan account or the reserve account cannot be brought current or less than the total debt is assumed, the transfer will be closed on new terms at the note rate or the current interest rate, whichever is greater.

* * * * *

61. Section 1965.65 is further amended by redesignating paragraph (f)(6)(iii) as paragraph (f)(6)(iv), by revising paragraph (f)(6)(ii), and by adding a new paragraph (f)(6)(iii) to read as follows:

§ 1965.65 Transfer of real estate security and assumption of loans.

* * * * *

(f) * * *

(6) * * *

(ii) Loans for RRH and RCH projects which are amortized on an annual payment basis and transferred through the use of Form FmHA 1965–9 shall be converted to a monthly payment amortization and are subject to PASS.

(iii) LH loans may continue to be transferred on a DIAS basis or may be converted to PASS when the approval official determines such a conversion will not be detrimental to the successful operation of the project.

* * * * *

§ 1965.65 [Amended]

62. In the following places in § 1965.65(f), change the reference from "Forms FmHA 460–5" or "FmHA 460–9" to "Form FmHA 1965–9":

Paragraph (5) first sentence.

Paragraph (6) introductory text, first sentence.

Paragraph (6)(iv) second sentence.

Paragraph (7) first sentence.

63. In § 1965.65 (f)(11) the table of forms is amended by changing the reference from "Form FmHA 1940–1, 'Request For Obligation of Funds' " to "FmHA 1944–51, 'Multiple Family Housing Obligation/Fund Analysis' "; by changing the reference from Form FmHA 460–9, 'Assumption Agreement "(Same Terms) (Eligible Transferee)' " to "FmHA 1965–9, 'Multiple Family Housing Assumption Agreement' "; by removing the reference to Form FmHA 460–5, "Assumption Agreement" (new terms); by changing the reference to "Form FmHA 465–6, 'Release from Personal Liability' " to "FmHA 1965–18, 'Multiple Family Housing Release from Personal Liability' " and by adding the following entry between the reference to Forms FmHA 440–4 and FmHA 1944–51.

Form No.	Name of form or document	Total number of copies	Signed by borrower	Number for loan docket	Copy for borrower
FmHA 1944-50	Multiple Family Housing Borrower/Project Characteristics.	3		1	

64. Section 1965.65 is further amended by revising paragraph (f)(13)(i) to read as follows:

§ 1965.65 Transfer of real estate security and assumption of loans.

* * * * *

(f) * * *

(13) * * *

(i) *Identification.* Payments received on the date of transfer will be remitted on Form FmHA 1944–9, "Multiple Family Housing Certification and Payment Transmittal," prepared to show "Transfer in process for account owned by (borrower's name, case number and project number) to be transferred to (name of transferee case number and project number assigned by the Finance Office upon input of Form FmHA 1944–50 data)."

* * * * *

65. Section 1965.68 is amended by revising paragraphs (a)(1)(viii), and (a)(2)(vi) to read as follows:

§ 1965.68 Consolidation.

(a) * * *

(1) * * *

(viii) Rental assistance (RA) agreements will not be consolidated. The Finance Office will track each RA agreement under a separate RA agreement number.

* * * * *

(2) * * *

(vi) RA agreements will not be consolidated with the consolidation of loan agreements/resolutions. The Finance Office will track each RA agreement under a separate RA agreement number.

* * * * *

66. Section 1965.68 is further amended by revising paragraph (b)(1)(i), by redesignating paragraphs (b)(1)(ii) through (b)(1)(v) as paragraphs (b)(1)(iii) through (b)(1)(vi) respectively, by adding a new paragraph (b)(1)(ii), by revising paragraph (b)(1)(iii), by redesignating paragraph (b)(2)(v) as paragraph (b)(2)(vi), and by adding a new paragraph (b)(2)(v) to read as follows:

§ 1965.68 Consolidation.

* * * * *

(b) * * *

(1) * * *

(i) Form FmHA 1944–52, "Multiple Family Housing Promissory Note," will be prepared for the notes or assumption agreements being consolidated according to the FMI. If the District Office does not have possession of the original note or assumption agreement, the District Director will call the Finance Office to request the return of the original form so it is in the District Office before a new Form FmHA 1944–52 is processed. A copy of the new Form FmHA 1944–52 will be sent to the Finance Office according to the FMI. All promissory notes will be prepared on a monthly payment basis. A new Form FmHA 1944–7 will also be prepared and submitted to the Finance Office in accordance with this FMI.

(ii) Form FmHA 1965–17 will be completed to show all of the notes which have been consolidated in the new Form FmHA 1944–52. A copy of the completed Form FmHA 1965–17 will also be sent to the Finance Office according to the Forms Manual Insert (FMI). Form FmHA 1944–50 will also be completed and submitted in accordance with the FMI to reflect the nature of the new project.

(iii) The original and District Office copies of all notes or assumption agreements that are consolidated, will be stamped "Consolidated," by the District Office. The original instruments being consolidated will be filed with the borrower's new consolidated note and a copy will be filed in the borrower's case file. When the consolidated or rescheduled note has been paid in full or otherwise satisfied, it and all other instruments will be handled according to the provisions of 1951.15 of Subpart A of Part 1951.

* * * * *

(2) * * *

(v) Form FmHA 1965–17A will be completed to show pertinent information on the loan agreements/resolutions being consolidated in accordance with the FMI. A copy of the completed Form FmHA 1965–17A, together with a Form FmHA 1944–50 reflecting the "new project" will be sent to the Finance Office according to the respective FMI.

* * * * *

67. Section 1965.70 is amended by revising paragraph (d)(1) to read as follows:

§ 1965.70 Reamortization.

* * * * *

(d) * * *

(1) Form FmHA 1965–16, "Multiple Family Housing Reamortization Agreement," will be completed according to the FMI. The effective date and the due date for all payments will be the first of the month, except for LH loans whose due date will be established in accordance with the FMI.

* * * * *

§ 1965.70 [Amended]

68. Section 1965.70 is further amended in paragraphs (d)(7) and (d)(8) by changing the reference from "Form FmHA 452–2" to "Form FmHA 1965–16."

69. Section 1965.85(b)(1)(i) is amended by adding classification number C5 between classification number C4 and X1 to read as follows:

§ 1965.85 Default and liquidation.

* * * * *

(b) * * *

(1) * * *

(i) * * *

C5—Requesting an exception to the late fee charged to the account according to Subpart K of Part 1951 of this chapter, when appropriate.

* * * * *

§ 1965.90 [Amended]

70. Section 1965.90(c)(5) is amended in the second sentence by changing the reference from "Form FmHA 460–5 or 9" to "Form FmHA 1965–9."

These amendments are issued under the authority of 42 U.S.C. 1980; 7 CFR 2.23; 7 CFR 2.70.

Dated: November 13, 1984.

Charles W. Shuman,

Administrator, Farmers Home Administration.

[FR Doc. 85–4923 Filed 3–1–85; 8:45 am]

BILLING CODE 3410–07–M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 1 and 53

Criteria and Procedures for Determining the Adequacy of Available Spent Nuclear Fuel Storage Capacity

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule; correction.

SUMMARY: In a notice published in the **Federal Register** February 11, 1985 (50 FR 5548), the Nuclear Regulatory Commission established in a final rule procedures and criteria for determining whether a person owning or operating a civilian nuclear power reactor cannot reasonably provide adequate spent nuclear fuel storage capacity. The rule implemented NRC responsibilities under

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sections 135 (b) and (g) of the Nuclear Waste Policy Act. This document corrects minor typographical errors published in that notice of final rulemaking.

FOR FURTHER INFORMATION CONTACT: D.R. Hopkins, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Telephone: (301) 443–7878.

SUPPLEMENTARY INFORMATION: The corrections to that notice follow:

1. On page 5563, in the List of Subjects for 10 CFR Part 53, "Spent nuclear fuel" should read "Spent fuel."

2. On page 5564, in § 53.11(b)(1), "1980" should read "1990."

3. On page 5564, in § 53.12(c)(3), the word "fuel" should be added to line 8 so that it reads, "uranium (MTU) of spent nuclear fuel and."

4. On page 5565, in the § 53.13 heading, "alternatives" should be capitalized so that it reads "Alternatives."

5. On page 5566, in § 53.30(a)(8), the word "is" should be added to the last line so that it reads "additional storage capacity is needed."

Dated at Washington, DC this 26th day of February 1985.

For the Nuclear Regulatory Commission

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 85–5193 Filed 3–1–85; 8:45 am]

BILLING CODE 7590–01–M

EXPORT–IMPORT BANK

12 CFR Part 407

Regulations Governing Public Observation of Eximbank Meetings; Change in Room Number

AGENCY: Export-Import Bank of the United States (Eximbank).

ACTION: Final rule.

SUMMARY: Pursuant to the "Government in the Sunshine Act, 5 U.S.C. 552b, notice is hereby given that the Office of the Secretary of Eximbank has moved from Room 1207 to Room 935.

EFFECTIVE DATE: February 27, 1985.

FOR FURTHER INFORMATION CONTACT: Joseph H. Gainer, Jr., Acting General Counsel, (202) 566–8334.

SUPPLEMENTARY INFORMATION:

PART 407—[AMENDED]

§ 407.3 [Amended]

This rule amends the following: 12 CFR 407.3(a) by removing "(Room 1207)," and adding in lieu thereof "(Room 935),"

List of Subjects in 12 CFR Part 407

Sunshine Act.

Joseph H. Gainer, Jr.,

Acting General Counsel, Export-Import Bank of the United States.

[FR Doc. 85–5186 Filed 3–1–85; 8:45 am]

BILLING CODE 6690–01–M

DEPARTMENT OF HEALTH AHD HUMAN SERVICES

Food and Drug Administration

21 CFR Part 573

[Docket No. 82F–0232]

Food Additives Permitted in Feed and Drinking Water of Animals; Salts of Volatile Fatty Acids; Correction

AGENCY: Food and Drug Administration

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting the final rule that amended the food additive regulations to provide for safe use of a blend of ammonium or calcium salts of certain mixed volatile fatty acids as a nutrient supplement in dairy cattle feed (49 FR 45124; November 15, 1984). The statement for ammonium salts of volatile fatty acids contains an error. This document corrects that error.

EFFECTIVE DATE: November 15, 1984.

FOR FURTHER INFORMATION CONTACT: William D. Price, Center for Veterinary Medicine (HFV–221), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5362.

SUPPLEMENTARY INFORMATION: In FR Doc. 84–29871, appearing on page 45124 in the **Federal Register** of Thursday, November 15, 1984, the following correction is made: On page 45125, in the middle column in § 573.914 *Salts of volatile fatty acids*, in paragraph (d)(2), the statement for ammonium salts of volatile fatty acids is corrected by changing "120 grams" to read "160 grams."

Dated February 27, 1985.

Lester M. Crawford,

Director, Center for Veterinary Medicine

[FR Doc. 85–5224 Filed 3–1–85; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 0

[Order No. 1083–85]

Delegating to the Assistant Attorney General for the Land and Natural Resources Division the Duties Imposed Upon the Attorney General by Section 115(b) of the "Uranium Mill Tailings Radiation Control Act of 1978"

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: Section 115(b) of the Uranium Mill Tailings Radiation Control Act of 1978, requires that the Attorney General conduct studies to determine who owned, operated or controlled sites where uranium was mined or processed and were residual radioactive materials remain. The purpose of the studies is not only to identify such persons, but also to determine if they have any legal responsibility for any reclamation or other remedial action which might be required with respect to such sites and, based upon the studies, to take appropriate legal action to require such persons to pay all or part of any costs incurred by the United States for such remedial action for which the Attorney General determines such person is liable. The Act further requires the Attorney General to publish the results of the studies and provide copies of them to the Congress.

This Order delegates to the Assistant Attorney General of the Land and Natural Resources Division the authority provided for in section 115(b) of the Act.

EFFECTIVE DATE: February 15, 1985.

FOR FURTHER INFORMATION CONTACT: Anne H. Shields, Acting Chief, Policy, Legislation and Special Litigation Section, Land and Natural Resources Division, U.S. Department of Justice, Washington, D.C. (202/633–2586).

SUPPLEMENTARY INFORMATION: The order delegates specific duties of the Attorney General to the Assistant Attorney General for the Land and Natural Resources Division, and is, therefore, a necessary act of internal management of the Department of Justice. The Order is not a rule within the meaning of either Executive Order 12291, section 1(a), or the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

List of Subjects in 28 CFR Part 0

Authority delegations (Government agencies), Organization and functions (Government agencies).

By virtue of the authority vested in me by 5 U.S.C. 301 and 28 U.S.C. 509, 510, § 0.65 of Subpart M of Part 0 of Chapter 1 of Title 28, Code of Federal Regulations is amended as follows:

PART 0—[AMENDED]

1. The authority citation for Part 0 reads as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510, unless otherwise noted.

§ 0.65 [Amended]

2. Section 0.65 is amended by redesignating paragraph (i) as paragraph (j).

3. Section 0.65 is amended by adding a new paragraph (i) as follows:

* * * * *

(i) Conducting the studies of processing sites required by section 115(b) of the Uranium Mill Tailings Radiation Control Act of 1978, publishing the results of the studies and furnishing the results thereof to the Congress.

* * * * *

Dated: February 15, 1985.

William French Smith,

Attorney General.

[FR Doc. 85-5109 Filed 3-1-85; 8:45 am]

BILLING CODE 4410-01-M

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28 CFR Part 0

[Order No. 1084-85]

Amendment of Organization of the Department

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This order amends Subpart X, Part 0, Title 28 of the Code of Federal Regulations, to remove § 0.139. This amendent is necessary to remove a regulation that is not consistent with the Department's reorganization of its procurement function. This reorganization has created a separate Procurement Executive to replace the Contract Review Committee.

EFFECTIVE DATE: February 21, 1985.

FOR FURTHER INFORMATION CONTACT: Janis A. Sposato, General Counsel, Justice Management Division, Department of Justice, Room 1226, 10th and Constitution Avenue, NW., Washington, D.C. 20530 (202-633-3452).

SUPPLEMENTARY INFORMATION: The Office of Federal Procurement Policy Act Amendments of 1983, Pub. L. 98-191, 97 Stat. 1325 (1983), amended 41 U.S.C. 414 to require all Federal agencies and departments to "establish clear lines of authority, accountability, and responsibility for procurement decision making * * *" within the department or agency and to "designate a senior procurement executive who shall be responsible for management direction of the procurement system of the executive agency, including implementation of the unique procurement policies, regulations, and standards * * *" of the department or agency. These statutory mandates are consistent with Executive Order 12352 and 3 CFR Part 137 (1983).

As part of its concerted effort to meet the requirements of the cited statute, Executive order and regulations, the Department has established a full-time Procurement Executive with responsibility for management direction of the Department's procurement function. As a part of this change, the Contract Review Committee referenced in 28 CFR 0.139 (a) and (b) is being abolished, and its staff and function are being transferred to the new Procurement Executive. Additionally, the new Procurement Executive is responsible for promulgating amendments to the Justice Acquisition Regulations (JAR), 48 CFR Chapter 28, to incorporate the remaining provisions of § 0.139; provide other changes to the JAR to fully implement the reorganization of the Department's procurement function; and locate all pertinent procurement regulations in 48 CFR Chapter 28.

This regulatory change is exempt from the requirements of Executive Order 12291, since it is related to agency organization and management. Furthermore, this regulatory change is not a rule as defined within the Regulatory Flexibility Act, 5 U.S.C. 601. Section 302(a) of the Small Business and Federal Procurement Competition Enhancement Act of 1984, Pub. L. 98-577, 98 Stat. 3066 (1984), is not applicable because this regulatory change will not have a significant effect beyond the internal operating procedures of this Department.

List of Subjects in 28 CFR Part 0

Government employees, Organization and functions (Government agencies), Authority delegations (Government agencies) and Intergovernmental relations.

PART 0—[AMENDED]

By virtue of the authority vested in me as Attorney General by 28 U.S.C. 509 and 510 and 5 U.S.C. 301, 28 CFR Part 0 is hereby amended as follows:

1. The authority citation for Part 0 reads as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510, unless otherwise noted.

§ 0.139 [Removed]

2. In Part 0, Subpart X is amended by removing § 0.139.

Dated: February 21, 1985.

William French Smith,

Attorney General.

[FR Doc. 85-5145 Filed 3-1-85; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

28 CFR Part 0

Redelegation of Functions; Section 5, Legal Functions; Delegation of Authority to DEA Officials

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Final rule.

SUMMARY: The DEA is amending its regulations relating to the redelegation of legal functions to authorize its Chief Counsel to pay all tort claims which arise in foreign countries in connection with DEA operations abroad.

EFFECTIVE DATE: March 4, 1985.

FOR FURTHER INFORMATION CONTACT: Joseph R. Davis, Chief Counsel, Drug Enforcement Administration, Department of Justice, 20537, (202) 633-1276.

SUPPLEMENTARY INFORMATION: 21 U.S.C. section 904 authorizes the Attorney General to pay for tort claims when such claims arise in foreign countries in connection with Drug Enforcement Administration operations abroad. 28 CFR Subpart R vests this power in the Administrator of DEA. The Administrator of DEA is authorized by 28 CFR 0.104 to redelegate to his subordinates any of the powers vested in him by 28 CFR Subpart R.

By virtue of the authority vested in me as the Administrator of DEA by 28 CFR 0.100 and 0.104, the following amendment is made to Title 28, Appendix to Subpart R, Redelegation of Functions, of the Code of Federal Regulations.

List of Subjects in 28 CFR Part 0

Authority delegation, Organization and functions.

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

Subpart R—Drug Enforcement Administration

Appendix to Subpart R—Redelegation of Functions

Section 5, Legal Functions, of the Appendix to Subpart R, Part 0, is

amended by adding to the first sentence of the section, before the phrase "and to conduct enforcement hearings under 21 U.S.C. 883": "to adjust, determine, compromise, and settle any tort claims when such claims arise in foreign countries in connection with Drug Enforcement Administration operations abroad."

Dated: February 8, 1985.

Francis M. Mullen, Jr.,

Administrator.

[FR Doc. 85-5118 Filed 3-1-85; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF JUSTICE

28 CFR Part 42

[Attorney General Order No. 992-83]

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1691

Procedures for Complaints of Employment Discrimination Filed Against Recipients of Federal Financial Assistance; Modification of Limitation on Participation of the Department of Education

AGENCY: Department of Justice and Equal Employment Opportunity Commission.

ACTION: Rule related notice.

SUMMARY: This notice revises limitations placed on the participation of the Department of Education (ED) in some of the procedures prescribed by a joint rule of the Department of Justice (DOJ) and the Equal Employment Opportunity Commission (EEOC) for complaints of employment discrimination filed against recipients of Federal financial assistance. 28 CFR Part 42, 29 CFR Part 1691. The court in *Adams* v. *Bell*, C.A. No. 3095-70 and *Women's Equity Action League* v. *Bell*, C.A. No. 74-1720 (D.D.C., Order January 17, 1985 on defendant's motion for interim relief) has permitted ED to refer individual, as opposed to systemic, complaints of employment discrimination to the EEOC in compliance with the DOJ/EEOC procedures. Effective March 4, 1985, ED shall fully apply the joint rule to individual complaints as described below.

FOR FURTHER INFORMATION CONTACT:
Stuart Frisch, Assistant Legal Counsel for Coordination, Office of the Legal Counsel, Equal Employment Opportunity Commission, 2401 "E" Street, NW., Washington, D.C. 20507, (202) 634-7581; or
David L. Rose, Chief, Employment Litigation Section, Civil Rights Division, Department of Justice, Washington, D.C. 20530, (202) 633-3831

SUPPLEMENTARY INFORMATION: On January 25, 1983, the Department of Justice (DOJ) and the Equal Employment Opportunity Commission (EEOC) jointly published a rule entitled, "Procedures for Complaints of Employment Discrimination Filed Against Recipients of Federal Funds." 28 CFR Part 42, 29 CFR Part 1691. The rule requires Federal agencies that grant financial assistance to refer to EEOC certain complaints of employment discrimination against individuals, filed on or after March 28, 1983, for investigation and conciliation, unless special circumstances warrant the agency processing of particular complaints.

By virtue of an order of the United States District Court in *Adams* v. *Bell*, C.A. No. 3095-70 and *Women's Equity Action League* v. *Bell*, C.A. No. 74-1720 (D.D.C., Order of December 29, 1977, as modified by D.D.C., Order of March 11, 1983) *(Adams)*, the Department of Education (ED) was obliged to process complaints of discrimination within time limits specified by the court. Those time limits did not have general applicability to EEOC or to other agencies that grant financial assistance, nor were they required by the procedures of the rule. As a result, DOJ and EEOC published a rule related notice on limiting ED's participation in the referral of employment discrimination complaints to EEOC under the procedures of the rule. 48 FR 29,686 (June 28, 1983).

On January 17, 1985, in response to defendant's motion for interim relief, the court in *Adams* modified its order permitting ED "to refer individual, as opposed to systemic, complaints of employment discrimination under Title VI and Title IX to the Equal Employment Opportunity Commission in compliance with regulations of government-wide applicability. Attorney General Order No. 993-83; 28 CFR Part 42 (1983) and 29 CFR Part 1691 (1984)." Therefore, effective March 4, 1985, ED shall fully follow and implement the rule, except that until the court allows ED to comply with the rule in every respect:

ED shall not determine that "special circumstances" warrant referral to EEOC of any complaints alleging a pattern or practice of employment discrimination pursuant to sections 5(f) and 5(g) (28 CFR 42.605(f) and (g), 29 CFR 1691.5(f) and (g)).

For the Department of Justice.

Dated: February 15, 1985.

Wm. Bradford Reynolds,

Assistant Attorney General.

For the Commission.

Dated: February 26, 1985.

Clarence Thomas,

Chairman.

[FR Doc. 85-5119 Filed 3-1-85; 8:45 am]

BILLING CODE 6570-06-M

DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 20

Debt Collection Act of 1982; Final Rule; Disclosure of Information to Credit Reporting Agencies

Correction

In FR Doc. 85-2970 beginning on page 5202 in the issue of Wednesday, February 6, 1985, make the following corrections: On page 5203, in the second column, in § 20.4(a), in the twenty-first line, "it" should read "if"; also in the second column, in § 20.4(a), in the last line, "proceded" should read "preceded".

BILLING CODE 1505-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

Approval of Permanent Program Amendment From the Commonwealth of Kentucky Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: OSM is announcing the approval of a program amendment submitted by Kentucky as an amendment to the State's permanent regulatory program (hereinafter referred to as the Kentucky program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment revises the definition of "principal shareholder" to satisfy condition (n) imposed by the Secretary of the Interior on the approval of the Kentucky program, and alters the definition of "surface coal mining operations" to exclude coal exploration activities and coal extraction incidental to the extraction of other minerals.

Kentucky submitted the proposed program amendment on October 12, 1984. OSM published a notice in the **Federal Register** on November 8, 1984 (49 FR 44653) announcing receipt of the amendment and inviting public comment on its adequacy. The public comment period ended December 10, 1984. Since no one requested an opportunity to testify, the public hearing scheduled for December 3, 1984, was not held.

After providing opportunity for public comment and conducting a thorough review of the program amendment, the Director has determined that the amendment meets the requirements of SMCRA and the Federal regulations, and is approving it. The Federal rules at 30 CFR Part 917 codifying decisions concerning the Kentucky program are being amended to implement this action.

This final rule is being made effective immediately to expedite the State program amendment process and encourage States to conform their programs with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

EFFECTIVE DATE: March 4, 1985.

FOR FURTHER INFORMATION CONTACT: W.H. Tipton, Director, Lexington Field Office, Officer of Surface Mining Reclamation and Enforcement, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504. Telephone: (606) 233-7327.

SUPPLEMENTARY INFORMATION:

I. Background

On December 30, 1981, Kentucky resubmitted its proposed regulatory program to OSM. The Kentucky program was conditionally approved by the Secretary of the Interior subject to the correction of 12 minor deficiencies. The approval was effective upon publication of the notice of conditional approval in the May 18, 1982 **Federal Register** (47 FR 21404-21435). Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Kentucky program can be found in the May 18, 1982 **Federal Register.**

II. Submission of Program Amendments

By letter dated October 12, 1984 (Administrative Record No. KY 604), Kentucky submitted certain revisions to the Kentucky Administrative Regulations (KAR). The modifications are intended (1) to satisfy condition (n) placed on the approval of the Kentucky program, and (2) to implement recent revisions to Chapter 350 of the Kentucky Revised Statutes.

Condition (n) was placed on the approval of the Kentucky program in the May 13, 1983 **Federal Register** (48 FR 21574). Paragraph (n)(1)(i) required that Kentucky submit an amendment to KAR 350.060(5)(g) by May 1, 1984. This portion of the condition was removed on August 22, 1984, following Kentucky's submission of the required amendment (49 FR 33244). Paragraph (n)(1)(ii) of the condition at that time became paragraph (n)(1). Kentucky has submitted this current amendment in part to satisfy paragraph (n)(1) of condition (n) which requires an amendment to provide a definition of "principal shareholder" no less effective than the Federal definition.

Condition (n)(2) required that in the interim (until condition (n)(1)(i) and (n)(1)(ii) were corrected) the State must require: (i) reporting in a manner consistent with SMCRA Section 507(b)(4); and (ii) corporate operators to amend their permit applications to include the identification of appropriate individuals. Removal of condition (n)(2) is also addressed in this approval notice.

The May 13, 1983, and August 22, 1984, issues of the **Federal Register** (48 FR 21574 and 49 FR 33244) contain a full discussion of condition (n) as originally imposed and subsequently modified.

III. Secretary's Findings

The Secretary finds, in accordance with SMCRA and 30 CFR 732.15 and 732.17, that the program amendment submitted by Kentucky on October 12, 1984, meets the requirements of SMCRA and 30 CFR Chapter VII, as discussed below.

A. Satisfaction of Condition (n)

Condition (n)(1) required that by October 31, 1984, Kentucky amend its regulations at 405 KAR 7:020 section 1 (87) [identified at 30 CFR 917.11(n)(1) as 405 KAR 7:020 section 1 (86)] to provide a definition of the term "principal shareholder" which is no less effective than the Federal definition at 30 CFR 701.5. In the condition at 30 CFR 917.11(n)(1), the Federal cite given for this definition is 30 CFR 770.5. The definition was moved to 30 CFR 701.5 by a Federal rulemaking on September 28, 1983 (48 FR 44344). In its amendment Kentucky modified 405 KAR 7:020 section 1(87) to define "principal shareholder" as "any person who is the record or beneficial owner of ten (10) percent or more of any class of voting stock of the applicant." The previous definition used the term "interest" in place of "of any class of voting stock." The Secretary finds that the revised definition of "principal shareholder" at 405 KAR 7:020 section 1(87) is consistent with SMCRA section 507(b)(4), is no less effective than the Federal definition at 30 CFR 701.5 and that it therefore, satisfies condition (n)(1).

Condition (n)(2)(i) requires that, until the revised definition is approved, the Commonwealth must require permit applicants to report ownership information in a manner consistent with SMCRA section 507(b)(4). Condition (n)(2)(ii) requires Kentucky to require corporate operators to amend their permit applications to include identification of all appropriate individuals as listed in SMCRA section 507(b)(4). Kentucky adopted the revised definition of "principal shareholder" effective October 8, 1984, thus rendering condition (n)(2)(i) moot. OSM has conducted a review of Kentucky's permitting actions, and has determined that the Commonwealth has required the permit amendments mandated by condition (n)(2)(ii).

Therefore, the Secretary finds that Kentucky has complied with the provisions of condition (n)(2), and that, with the approval of the revised definition, the Commonwealth has fully satisfied condition (n).

B. Incidental Extraction and Exploration Exemptions

Kentucky has revised the definition of "surface coal mining operations" at 405 KAR 7:020 section 1(118) to provide that these activities shall not include coal exploration activities or mining operations where the extraction of coal is incidental to the extraction of other minerals and where coal does not exceed 16⅔ percent of the tonnage of minerals removed for the purpose of commercial use or sale. The Commonwealth has also amended 405 KAR 7:030 section 3(1)(e) to provide for the incidental extraction exemption and to establish certain criteria and procedures to govern its application. The revisions incorporate the Federal provisions on this subject (49 FR 19338) by reference, and further define "incidental" as meaning that "removal of the coal seam is physically necessary for the extraction of the other mineral." Both modifications implement revisions to section 350.010 of the Kentucky Revised Statutes, which OSM approved on August 22, 1984 (49 FR 33244).

The Secretary finds that the revised definition of "surface coal mining operations" at 405 KAR 7:020 section 1(118) is no less effective than the Federal definition at 30 CFR 700.5, and that the incidental extraction exemption

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provisions of 405 KAR 7:030 section 3(1)(e) are no less effective than the corresponding Federal regulations at 30 CFR 700.11(a)(4).

IV. Disposition of Public Comments

None of the Federal agencies invited to comment on this proposed amendment provided any response. Disclosure of Federal agency comments is made pursuant to SMCRA section 503(b) (1) and (2) and 30 CFR 732.17(h)(10)(i).

One commenter endorsed all provisions of the amendment, but stated that condition (n)(2) should not be lifted until Kentucky demonstrates complete implementation.

As discussed under the Findings section, OSM has conducted a permit review and has found that the Commonwealth is now in compliance with this condition. No additional changes are necessary; condition (n) is now satisfied in its entirety.

No other comments were received in response to the proposed rulemaking published in the November 8, 1984, **Federal Register** (49 FR 44653)

V. Secretary's Decision

The Secretary, based on the above findings, is approving the October 12, 1984 amendment to the Kentucky program. The Secretary is amending Part 917 of 30 CFR Chapter VII to reflect approval of the above State program modificaton and removal of condition (n) placed upon the approval of the Kentucky program.

VI. Additional Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need to be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibililty Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 917

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated February 26, 1985.

J. Steven Griles,

Assistant Secretary for Land and Minerals Management.

PART 917—KENTUCKY

§ 917.11 [Amended]

1. 30 CFR 917.11 is amended by removing and reserving paragraph (n).

2. 30 CFR 917.15 is amended by adding a new paragraph (k) as follows:

§ 917.15 Approval of regulatory program amendments.

* * * * *

(k) The following amendment submitted to OSM on October 12 1984, is approved effective March 4, 1985 revisions to the Kentucky Administration Regulations (KAR) altering the definition of "principal shareholder" at 405 KAR 7:020 section 1(87); adding language to the definition of "surface coal mining operations" at 405 KAR 7:020 section 1(118) to provide that these activities shall not include coal exploration and incidental extraction operations; and adding the exemption for incidental extraction operations at 405 KAR 7:030 section 3(1)(e).

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

[FR Doc. 85–5174 Filed 3–1–85; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE TREASURY

Office of Revenue Sharing

31 CFR Part 51

Financial Assistance to Local Governments

AGENCY: Office of Revenue Sharing, Treasury.

ACTION: Final rule; correction.

SUMMARY: This document corrects the final rule concerning financial assistance to local governments published in the **Federal Register** on Thursday, January 24, 1985 at 50 FR 3454.

FOR FURTHER INFORMATION CONTACT: Richard S. Isen, Chief Counsel, Office of Revenue Sharing, or Jacqueline L. Jackson, Attorney Advisor. Telephone: (202) 634–5182.

SUPPLEMENTARY INFORMATION: Accordingly, the following corrections are made in FR Doc. 85–1524 beginning on page 3454 in the issue of January 24, 1985, as follows:

1. On page 3454, first column, in the **SUMMARY**, seventh line, "1980" should read "1983".

2. On the same page, second column, fourth line, remove the words "contained in Appendix A"; and in the first complete paragraph, 24th and 25th lines, remove the words "contained in Appendix A".

§ 51.3 [Corrected]

3. On page 3457, first column, § 51.3(b), first line, "of" should read "or"

§ 51.30 [Corrected]

4. On page 3466, first column, § 51.30(e), seventh line, "for" should read "of"; second column, § 51.32(d)(1), line three, "villages" should read "village".

§ 51.55 [Corrected]

5. On page 3470, in the first column, after § 51.55(b)(1)(viii)(C) and before paragraph (2), insert "(ix). [Reserved]".

6. On page 3470, in the first column, in § 51.55(b)(4), fifteenth line, "typed" should have read "taped."

7. On page 3472, in the third column, in § 51.55(k)(4)(ii), second line, "excepts" should have read "except".

8. On page 3473, in the first column, in § 51.55(k)(5), sixth line, "of" should have been inserted between "year" and "the".

9. On page 3473, in the second column, in §51.55(k)(7), first line, "building" should be deleted.

§ 51.56 [Corrected]

10. On page 3473, in the third column, in § 51.56(a), fifth line "1985" should have read "1975."

11. On page 3474, in the second column, in § 51.56(d)(3), ninth line, the following phrase should have been added between the words "and" and "program": "substantial relationship to the normal operation of the".

12. On page 3474, in the third column, in §51.56(h)(4), ninth line, the following phrase should have been added between the words "agreement" and "possible": "or make an informed judgment that an agreement is not".

13. On page 3474, in the third column, in § 51.56(h)(5), tenth line, "of" should have read "on".

§ 51.59 [Corrected]

14. On page 3475, in the second column, in § 51.59(a), first line, the word "*In*" should have been added before the word "General", and the word "General" should be in lower case.

15. On page 3475, in the second column, in § 51.59(b)(2), second line, "have" should have read "has".

§ 51.60 [Corrected]

16. On page 3476, in the first column, in § 51.60(c)(2), second line "have" should have read "has".

§ 51.102 [Corrected]

17. On page 3479, in the third column, in § 51.102(a)(2), sixth line from the bottom, "and" should have read "or".

18. On page 3480, in the first column, in § 51.102, paragraph (d) should have been deleted.

§ 51.200 [Corrected]

19. On page 3481, in the second column, in § 51.200, third line from the bottom, "hearing" should have read "hearings".

§ 51.218 [Corrected]

20. On page 3484, in the third column, in § 51.218(a)(2)(ii), third line, the word "to" should have been deleted.

Appendix A—[Corrected]

21. On page 3486, in the first column, in Appendix A, Age Distinction in Revenue Sharing Act, fourth line from the botton "decisions" should have read "decision".

22. Appendix A, Critical Issues Concerning Age Discrimination Prohibition on page 3486, in the first column, initial paragraph, fourth line, the cite "31 CFR part 90" should have read "45 CFR Part 90, published in the **Federal Register** on June 12, 1979 (44 FR 33771)".

23. Appendix A, Critical Issues Concerning Age Discrimination Prohibition on page 3486, in the third column, second full paragraph, first line, "the" should have read "that".

24. Appendix A, Critical Issues Concerning Age Discrimination Prohibition on page 3486, in the third column, fourth full paragraph, fourth line, a period should have been placed after "regulations" and the following phrase should have been inserted before "in": "Supporters of including regulations".

25. Appendix A, Critical Issues Concerning Age Discrimination Prohibition on page 3487, in the first column, in section 1, "Federal statutes", third line, "prove" should have read "provide".

26. Appendix A, Critical Issues Concerning Age Discrimination Prohibition on page 3487, in the first column, in section 1, third line from the bottom, the following phrase should have been inserted before "without": "young people are used in the statute".

27. Appendix A, Critical Issues Concerning Age Discrimination Prohibition on page 3487, in the first column, in section 2, third line, "of" should have read "or".

28. Appendix A, Critical Issues Concerning Age Discrimination Prohibition on page 3487, the first column, the following paragraph should have been inserted between paragraph 2 and Note:

3. *Local statutes or ordinances.* Age limitations on consuming alcoholic beverages or possessing firearms are not covered by the Act as long as these are adopted by an elected general purpose legislative body.

29. Appendix A, Critical Issues Concerning Age Discrimination Prohibition on page 3487, in the first column, paragraph 4, second full paragraph, sixth line, the first "or" should have read "of".

30. Appendix A, Critical Issues Concerning Age Discrimination Prohibition on page 3487, in the second column, paragraph (4), sixth line, there should have been a period after "regulations" and the following phrase should have been inserted beginning a new paragraph: "Section 90.49 of these regulations".

31. Appendix A, Critical Issues Concerning Age Discrimination Prohibition on page 3487, in the second column, paragraph (5)(a), the second full paragraph, seventh line, the following phrase should have been added between "these" and "statutory objective": "statutory exceptions is the definition of".

32. Appendix A, Critical Issues Concerning Age Discrimination Prohibition on page 3487, in the third column, paragraph (5)(b)(d), fourth paragraph beginning with the word "Thus", sixth line, the following paragraphs should have been inserted after the word "other" and before the word "recipient's":

characteristic must be necessary for "normal operation"; or for the achievement of a "statutory objective"; (c) the other characteristic must be capable of being reasonably approximated by age; and (d) the other characteristic must be impractical to measure directly on an individual basis.

The test set out in § 90.14 is designed to require careful scrutiny of age distinctions in programs receiving Federal financial assistance. It is not intended to serve as a basis for permitting continued use of age distinctions for the sake of administrative convenience if this results in denial or limitation of services on the basis of age.

HEW encourages recipients to apply age distinctions flexibly; that is, to permit a person, upon a proper showing of the necessary characteristic to participate in the activity or program even though he or she would otherwise be barred by the age distinction. Other things being equal, an age distinction is more likely to qualify under one of the statutory exceptions if it does not automatically bar all those who do not meet the age requirements.

Examples: * "Necessary to the Normal Operation of the Program."

1. A youth organization receiving Federal financial assistance imposes a maximum age limitation on membership. The organization claims that it has as an objective the training, education and character development of youth. The use of a maximum age limit is necessary to the normal operation of the recipient's program because:

(a) Age is used as a measure of the need for training, education, and character building experiences preparing for the assumption of adult responsibility; and

(b) The need for the service must be measured in order for the youth organization's objective to be met; and

(c) Age is highly related to the need for this service and is thus a reasonable measure of it; and

(d) It is not practical to measure this need on an individual basis (i.e., while some persons over the age limit might benefit from the service and some persons under the age limit might not need it, there is no practical way to identify them on an individual basis).

2. A medical school receiving Federal financial assistance generally does not admit anyone over 35 years of age, even though this results in turning away highly qualified applicants over 35.

The school claims that it has an objective, the teaching of qualified medical students who upon graduation, will practice as long as possible. The school believes that this objective requires it to select younger applicants over older ones.

The use of such an age distinction is not necessary to the normal operation of the .

33. Appendix A, Critical Issues Concerning Age Discrimination Prohibition on page 3488, in the first column, paragraph No. 2 beginning with "The purpose of the Adult Education Act", the seventh line, the following sentence should have been added at the end of the paragraph: "The Act defines adult as 'any individual who has attained the age of 16' (20 U.S.C. 1201(a))".

34. Appendix A, Critical Issues Concerning Age Discrimination Prohibition on page 3488, in the second

* The examples illustrate general situations in which the regulations are applied to hypothetical recipients.

column, fifth full paragraph beginning with the word "Use", second line, "of" should have been inserted between the words "use" and "factors".

35. Appendix, A. Critical Issues Concerning Age Discrimination Prohibition on page 3488, in the second column, paragraph beginning "Examples . . .", number 1, ninth line, "characteric" should have read "characteristic".

36. Appendix A. Critical Issues Concerning Age Discrimination Prohibition on page 3489, in the second column, second full paragraph, seventh line, the word "standard" should have read "standards".

37. On page 3490, in column one, in the section-by-section analysis for Subpart B, Section 51.10, fourth line, the word "were" should have been inserted between "use report" and "also".

38. On page 3490, in column one, in the section-by-section analysis for Subpart B, Section 51.11, seventeenth line, the word "of" should have been inserted between "retention" and "documentation".

39. On page 3491, in column two, in the section-by-section analysis for Subpart E, Section 51.56, paragraph two, third line, "§ 56.56" should have read "§ 51.56".

40. On page 3491, in column three, in the section-by-section analysis, first full paragraph, third and second lines from the bottom, the words "is created" should have been deleted.

41. On page 3491, in column three, in the section-by-section analysis, third full paragraph, tenth line, the word "recipients" should have been inserted between "provision" and "are"; seventh line from the bottom, the word "a" should have been inserted between "and" and "case"; sixth line from the bottom, "governments" should have read "government".

Richard S. Ison,

Chief Counsel, Office of Revenue Sharing, Department of the Treasury.

[FR Doc. 85-5128 Filed 3-1-85; 8:45 am]

BILLING CODE 4810-25-M

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31 CFR Part 51

Financial Assistance to Local Governments

Correction

In FR Doc. 85-1524 beginning on page 3454 in the issue of Thursday, January 24, 1985, make the following corrections:

§ 51.3 [Corrected]

1. On page 3457, first column, in § 51.3(b), first line, "of" should read "or".

§ 51.26 [Corrected]

2. On page 3463, third column, in § 51.26(c), second line from the bottom, "amount to" should read "amount of".

3. On the same page, same column, in § 51.26(d)(1), fourth line, "of" should read "or". In the same column, in § 51.26(d)(2), fourth line, "adjustment" should read "adjustments".

§ 51.27 [Corrected]

4. On page 3464, first column, in § 51.27(a), fourth line, insert the word "funds" between "which" and "were".

5. On page 3464, second column, in § 51.27(b)(2)(i), fifth line, "is" should read "its".

§ 51.30 [Corrected]

6. On page 3466, first column, in § 51.30(c)(3), fourth line, "governmemt" should read "government". Also, in the seventh line, "the" should read "that".

§ 51.51 [Corrected]

7. On page 3467, third column, in § 51.51(h), eighth line, insert the word "to" between "is" and "the".

8. On the same page, same column, in § 51.51(j), second line, "of" should read "or".

§ 51.52 [Corrected]

9. On page 3468, first column, in § 51.52(a), second line, "or" should read "on".

10. On the same page, same column, in § 51.52(b)(1)(v), third line, insert a comma after the word "admission".

11. On the same page, second column, in § 51.52(b)(3), third line, "methods or" should read "methods of".

§ 51.53 [Corrected]

12. On page 3469, first column, in § 51.53(d), four lines from the bottom, "is" should read "in".

§ 51.55 [Corrected]

13. On page 3470, first column, in § 51.55(b)(4), fourth line from the bottom of the column, "is" should read "in".

14. On the same page, second column, in § 51.55(c)(4), sixth line, "(c)(l)" should read "(c)(1)"

15. On page 3472, third column, in § 51.55(k)(3), third line from the bottom, "provides" should read "providers".

§ 51.56 [Corrected]

16. On page 3474, third column, in § 51.56(h)(3), fourth line, "is" should read "in".

17. In the same column, in § 51.56 (h)(4), ninth line, "if" should read "is not".

§ 51.57 [Corrected]

18. On page 3475, first column, in § 51.57 second line, "discrimination of" should read "discrimination on".

§ 51.62 [Corrected]

19. On page 3476, second column, in § 51.62(a), third line from the bottom, "natue" should read "nature".

§ 51.64 [Corrected]

20. On page 3477, first column, in § 51.64(c), third line, "extend" should read "extent".

21. In the same column, the section designated "§ 51.56" should read "§ 51.65".

§ 51.101 [Corrected]

22. On page 3479, first column, in § 51.101(b), eighth line, "of" should read "or".

§ 51.102 [Corrected]

23. On page 3480, first column, in § 51.102(c), second line from the bottom, "th" should read "the".

§ 51.212 [Corrected]

24. On page 3483, second column, in § 51.212, fifth line, "repect" should read "respect".

§ 51.218 [Corrected]

25. On page 3484, third column, in § 51.218(a)(1)(i), seventh line, "Director of" should read "Director or".

26. In the same column, in § 51.218 (a)(1)(ii), first line, "paragraph (1)" should read "paragraph (a)". In the second line, "and" should read "that".

27. On page 3490, first column, fifth line, "subsection (l)" should read "subsection (1)".

BILLING CODE 1505-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 126 and 160

[CGD 84-039]

Radioactive Materials

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This rulemaking revises the regulations defining the terms "cargo of particular hazard" and "certain dangerous cargo". It is necessary because the term "large quantity" radioactive shipment used in these definitions was deleted in a recent change to 49 CFR Parts 171 through 178. The intended effect of the regulations is

to substitute the new term "highway route controlled quantity" for the obsolete term "large quantity".

EFFECTIVE DATE: April 3, 1985.

FOR FURTHER INFORMATION CONTACT: Lieutenant Michael V. Franchini, Project Manager, Office of Marine Environment and Systems, telephone 202–426–1450. Normal working hours are between 7:00 a.m. and 3:30 p.m. Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: The proposed rulemaking was published on pages 45597–45598 of the **Federal Register** of November 19, 1984, and invited comments for 45 days ending January 3, 1985. No comments were received. No changes were made to the proposed rule.

Drafting Information

The principal persons involved in drafting this proposed rulemaking are Lieutenant Michael V. Franchini, Project Manager, of the Office of Marine Environment and Systems, and Mr. Michael N. Mervin, Project Counsel, of the Office of Chief Counsel.

Background

On March 10, 1983 the Research and Special Programs Administration (RSPA) of the Department of Transportation published a final rule in the **Federal Register** (48 FR 10218) making a number of changes in the regulations governing shipment of radioactive materials. These changes were intended to maintain consistency between U.S. regulations and those of the International Atomic Energy Agency. Regulations contained in 49 CFR Parts 173 and 176 apply to marine-mode transportation of hazardous materials, and are cross-referenced in the Coast Guard's definitions of "cargo of particular hazard" (33 CFR 126.10) and "certain dangerous cargo" (33 CFR 160.203).

Two changes in 49 CFR Part 173 affect 33 CFR 126.10(c) and 33 CFR 160.203. The "Fissile Class III" package classification now appears in 49 CFR 173.455(a)(3), rather than 49 CFR 173.389(a)(3). In addition to renumbering the section, there are minor editorial changes.

The other change, from the term "large quantity" to "highway route controlled quantity", is a change in substance as well as terminology. Under the previous regulatory scheme the "large quantity" classification entailed additional packaging and handling requirements for radioactive materials. The use of operational controls has essentially been abandoned in the U.S. as well as world-wide. The package itself must be capable of maintaining its integrity without human intervention. The only remaining use for the term "large quantity" involved rules governing highway routing. For these reasons the term was changed to "highway route controlled". In addition, the technical classification system for radionuclides used previously for "large quantity", the "transport group" system, was changed to the "A_1A_2" system for the new "highway route controlled quantity". The A_1A_2 criteria were selected to duplicate the previous criteria as closely as practicable while establishing a more uniform level of safety.

This rulemaking retains highway route controlled quantities of radioactive materials as cargoes of particular hazard and certain dangerous cargoes. Ports are frequently near major population centers and the restrictions applied to cargoes of particular hazard and certain dangerous cargoes provide a margin of safety similar to RSPA highway route restrictions.

Regulatory Evaluation

These regulations are considered to be non-major under Executive Order 12291 and nonsignificant under the DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this rule has been found to be so minimal that a full regulatory evaluation is unnecessary. RSPA expects (48 FR 10221) that some "special form radioactive materials" (defined in 49 CFR 173.403(z)), previously large quantity radioactive materials, will not be highway route controlled quantity radioactive materials. These materials therefore would not be cargoes of particular hazard and certain dangerous cargoes under this rule. RSPA further expects that some normal form alpha-emitting nuclides that were not previously large quantity radioactive materials will be highway route controlled quantity radioactive materials. These materials would become cargoes of particular hazard and certain dangerous cargoes under this rule. The Coast Guard expects that the net result of these countervailing effects would be either a small net cost reduction or a small net cost increase and, in any case, a minimal economic impact.

Regulatory Flexibility Act Certification

The agency certifies that this rule will not have a significant economic impact on a substantial number of small entities. As noted above, the changes would be countervailing and the net economic impact of the regulations on waterfront facilities, both "large" and "small", would be minimal.

Environmental Assessment

Because of the small volume of radioactive materials shipped and the rarity of incidents involving radioactive material, this change would have little or no effect on the environment. According to the U.S. Army Corps of Engineers report, *Waterborne Commerce of the United States*, radioactive materials accounted for 531,600 of the 20,111,500,000 short tons, or .003%, of cargo shipped by water in the U.S. between 1971 and 1981. They accounted for .06% of the 851,585,415 tons of chemicals over this period. For the same period, RSPA's Hazardous Materials Incident Reporting System (HMIRS) shows two incidents involving radioactive materials out of the 257 involving waterborne transportation of hazardous materials, of which one occurred in the United States. These incidents involved a total of 3 pounds of radioactive materials, or .00006% of the approximately 4,890,000 pounds of hazardous materials involved in incidents reported in the HMIRS over that period. Although there is not enough data for any kind of statistical significance, the proportion of radioactive materials spilled, 1,000 times less than the proportion of radioactive materials shipped, appears to indicate that the previous regulatory system functioned well. This action would be an improvement to this system.

An environmental assessment and a Finding of No Significant Impact were prepared.

List of Subjects

33 CFR Part 126

Hazardous Materials Transportation, Harbors, Cargo Vessels, Marine Safety.

33 CFR Part 160

Hazardous Material Transportation, Harbors, Cargo Vessels, Marine Safety, Navigation (water).

PART 126—[AMENDED]

In consideration of the preceding, Chapter I, Title 33 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 126 reads as follows:

Authority: Sec. 2, 92 Stat. 1471 (33 U.S.C. 1221); 49 CFR 1.46(n)(4).

2. By revising § 126.10(c) of Subchapter L to read as follows:

§ 126.10 Cargo of particular hazard.

* * * * *

(c) Highway route controlled quantity radioactive material, as defined in 49 CFR 173.403(1), or Fissile Class III shipments of fissile radioactive material, as defined in 49 CFR 173.455(a)(3).

* * * * *

PART 160—[AMENDED]

3. The authority citation for Part 160 reads as follows:

Authority: Sec. 2, 92 Stat. 1471 (33 U.S.C. 1221); 49 CFR 1.46(n)(4).

4. Be revising § 126.203 of Subchapter P to read as follows:

§ 126.203 Definitions.

* * * * *

(c) Highway route controlled quantity radioactive material, as defined in 49 CFR 173.403(1), or Fissile Class III shipments of fissile radioactive material, as defined in 49 CFR 173.455(a)(3).

* * * * *

Dated: February 27, 1985.

J. W. Kime,

Commodore, U.S. Coast Guard Chief, Office of Marine Environment and Systems.

[FR Doc. 85-5176 Filed 3-1-85; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-4-FRL-2789-7]

Approval and Promulgation of Implementation Plans, Federal Assistance Limitations; State of Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: This notice implements EPA's proposal to limit certain federal funding assistance for Jackson County, Oregon. These limitations apply to funds provided under the Clean Air Act (herein after referred to as the Act), the Clean Water Act, and the Surface Transportation Assistance Act. EPA has taken this action pursuant to Sections 176(a) and 316(b) of the Act, because the State of Oregon failed to submit and is not making reasonable efforts to submit a legally enforceable State Implementation Plan (SIP) revision for Jackson County that would provide for attainment of the National Ambient Air Quality Standard (NAAQS) for carbon monoxide prior to December 31, 1987. The funding limitations are effective in 60 days and apply to all of Jackson County.

EFFECTIVE DATE: May 3, 1985.

ADDRESS: Copies of the materials submitted to EPA may be examined during normal business hours at: Air Programs Branch (10A-84-8), Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Loren McPhillips, Air Programs Branch, M/S 532, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101, (206) 442-7369, (FTS) 399-7369.

SUPPLEMENTARY INFORMATION:

I. Background

On June 24, 1980, (45 FR 42278), EPA approved the first phase of the Medford Carbon Monoxide (CO) Attainment Plan. At that time EPA also approved an extension of the attainment date for the CO standard to a date beyond December 31, 1982, but before December 31, 1987.

The second phase of the Medford CO Attainment Plan was submitted to EPA on October 20, 1982. That plan indicated that, in order to attain the CO standard by December 31, 1987, it would be necessary to implement an automobile inspection and maintenance (I/M) program prior to January 1984. On February 3, 1983 (48 FR 5131), EPA proposed to approve this second phase with the understanding that EPA would not finally approve the SIP until after I/M was officially adopted and resource commitments were obtained. The 1983 State of Oregon Legislature authorized the implementation of a local I/M program in Jackson County. However, since that time the original schedules and commitments for implementation of an I/M program in Medford have been abandoned.

On March 14, 1984 (49 FR 9582), EPA reversed its original proposal and proposed to disapprove the plan and initiate construction moratorium on major stationary sources of CO because the plan did not contain an enforceable commitment to I/M. On March 27, 1984, the residents in Jackson County, Oregon, voted against the establishment of an I/M program. Since the election nothing has happened to change EPA's conclusions. Clearly, the current CO attainment plan does not provide for attainment of the CO standards prior to December 31, 1987. Since the requirements of Section 172(b)(10) of the Act were not fulfilled, EPA then, on September 11, 1984, finalized the disapproval of the plan (49 FR 35662) and construction moratorium, and initiated the Sections 176(a) and 316(b) sanction process (49 FR 35631). These limitations would impact certain identified funds provided under the Clean Air Act, Clean Water Act and the Surface Transportation Assistance Act.

II. Response to Comments

EPA's September 11, 1984, proposal established a 30-day comment period which ended on October 11, 1984. Comments were received from 18 private citizens, 4 local agencies, 1 county agency and 2 state agencies. Although most commentors were against the implementation of I/M and sanctions, a few supported EPA's proposal and some insisted that EPA take a more aggressive stand. Complete copies of the comments are available for inspection at the addresses identified in this notice. The following is a summary of the major comments received and EPA's response to them.

Reasonable Efforts To Submit A SIP

EPA concluded that the State of Oregon (and Jackson County) is no longer making reasonable efforts to submit a plan that includes control measures necessary to attain the CO standard prior to December 31, 1987. One commenter disagreed, asserting that Oregon has made reasonable efforts to submit a plan. The question of when a state is no longer making reasonable efforts pursuant to Section 176(a) is essentially a judgment that can be made only after due consideration of the factors involved in each case.

In the case of Medford, Oregon, local and state officials developed a CO attainment plan that relied heavily upon the implementation of an I/M program. The Oregon State Legislature then approved a Bill which gave Jackson County authority to implement a program. However, based upon the result of a ratification vote on March 27, 1984, local officials decided not to implement the program. The effect of the decision is that the State of Oregon has not submitted an approvable Part D SIP. The statutory deadline for submittal of an approvable SIP was July 1, 1982.

Because of the state and local official's continuing inability to implement I/M, the continuing health threat posed by the area's poor air quality, and the need to act in an equitable manner with respect to all of the other states that adopted I/M, EPA has concluded that the State of Oregon is not making reasonable efforts to submit an approvable plan.

Sanctions are Unconstitutional

Several commentors suggested that the funding limitations proposed by EPA were unconstitutional because they

would interfere with state governmental functions.

Under the traditional test used to examine the constitutionality of Congressional action under the spending clause of the U.S. Constitution, Sections 176(a) and 316(b) are a permissible exercise of that Congressional power. A condition attached by Congress to grants available to the states which is rationally related to a legitimate national purpose does not go beyond the bounds of the federal government's authority under the spending clause. (*Steward Machine Co.* v. *Davis*, 301 U.S. 548 (1937).) It is clear that the construction and operation of highways have a substantial relationship to the generation of air pollution. Similarly, new residential and industrial growth fostered by new sewage treatment capacity will also result in an increase in air pollution. Thus, there is a rational relationship between the legitimate national goal of clean air and the funding limitations incorporated in Sections 176(a) and 316(b) and no constitutional defect exists.

Geographical Area.

Comments were received requesting EPA to both shrink and expand the boundaries of the affected areas. As stated in Section 176(a) of the Act, specific categories of federal funds are to be withheld in an air quality control region (AQCR) for which the Governor has not submitted a plan or for which reasonable efforts are not being made to submit a plan considering each of the elements required by Section 172 of the Act. The EPA–DOT policy and procedures memorandum implementing Section 176(a) (April 10, 1980; 45 FR 24692) states that: "Generally, the area affected will be the air quality control region [AQCR]. However, EPA will consider applying the federal assistance limitations to portions of an AQCR * * * if the purpose of the limitation would be better served through more selective application." As previously stated, EPA has proposed the funding limitations for Jackson County, Oregon, an area smaller than the AQCR.

EPA has decided to leave the boundaries of the affected area as proposed in the Notice of Proposed Rulemaking. The basis for this decision is that Jackson County had the legal authority to implement I/M but failed to do so. Other counties in the AQCR had no direct control over the outcome. Accordingly, the sanctions should be limited to Jackson County.

EPA Promulgation of I/M

Several commentors asserted that, pursuant to Section 110(c) of the Act, the Administrator is required to promulgate a revised SIP instead of requiring Oregon or Jackson County to adopt an I/M program. The overall statutory scheme of the Act, and in particular the 1977 Amendments, is premised on the paramount role of the states in carrying out the objectives of the Act. While detailed evaluation of Federal promulgation is proceeeding, it is not directly related to the issue of sanctions and therefore, is not addressed in this rulemaking.

Identification of Specific Projects

The decision made today will result in limiting certain federal funds to Jackson County. Some commentors were concerned that specific water quality projects in Jackson County might be impacted. It should be noted that actual withholding of funds will occur on a case-by-case basis as application for individual grants are made. Therefore at this time it is not possible to precisely identify specific projects affected by this action.

The criteria and procedures to be used in applying funding limitations were published in the **Federal Register** on April 10, 1980 (45 FR 24692) and August 11, 1980 (45 FR 53382). Specifically, funds for sewage treatment works projects may be withheld only when a state does not have an approved air quality plan that compensates for the adverse air quality impacts caused by the increased growth resulting from increases in sewage treatment capacity. The procedures adopted by the Administrator for implementing Section 316 of the Act allow exemptions from funding limitations for the following: 1) those sewage treatment works that are needed for relief of an immediate health hazard but do not expand usable capacity by more than one million gallons per day; and 2) those projects which improve treatment capability but do not expand capacity for future growth (45 FR 53382).

Air Grants

EPA finds that the Section 105 grants are, in principle, sanctionable. Because Section 105 grant funds have already been awarded to the State of Oregon for FY 85, EPA is taking no action at this time.

Quantify Economic Impact

A few commentors indicated that EPA must do an economic analysis of the impact of the funding limitations, and that actions under the Act are subject to the Regulatory Flexibility Act.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the Agency is required to prepare a regulatory flexibility anaiysis assessing the impact of any proposal or final rule on small entities. Under 5 U.S.C. 605(b), this requirement may be waived if the Agency certifies that the rule will not have a significant economic effect on a substantial number of small entities. Small entities include small business, small not-for-profit enterprises, and governmental entities with jurisdiction over populations of less than 50,000.

By taking final action finding that the State of Oregon is not making reasonable efforts to submit an approvable SIP for Medford, certain highway construction funds, air quality planning funds, and sewage treatment grants for Jackson County will be withheld. Thus some small entities may be affected.

EPA can not reliably predict the impacts of the Act restrictions under Section 176(a) because of the exemptions authorized for highway safety and air quality planning projects. Careful review and evaluation of each highway and sewage treatment project at the time of grant application is necessary to determine whether or not a project is exempt. Consequently, EPA is unable to make a quantified assessment of the potential economic impact on small entites that may result from today's proposal.

Furthermore, although EPA believes that a final action might have some impact on small entities, this impact cannot affect the Agency's actions. Under the Act, the imposition of the funding restrictions in Section 176(a) are automatic and mandatory whenever the Agency determines that a state has not submitted, or is not making reasonable efforts to submit, a SIP which considers each of the elements of Section 172.

Similarly, EPA can not reliably predict the impacts of the Clean Water Act restrictions under Section 316(b), because growth projections specifically related to impacted projects are not available.

Under Executive Order 12291, major actions (economic impacts greater than $100 million per year) are subject to the requirement of a Regulatory Impact Analysis. The maximum funds that could be affected by this action amount to $21 million in highway, sewage treatment and air grant funds. Today's action is not major since it will not have an economic impact exceeding $100 million per year.

Technical Issues

Several commentors indicated that there is not an air quality problem, that there are solutions other than I/M, and that the CO monitor is not

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representative of the air quality problem in Medford.

Monitoring data collected over the past several years indicates that Medford has one of the most severe CO problems in the United States. The CO monitoring location meets EPA siting criteria and the State of Oregon's quality assurance program confirms the accuracy of the monitoring data. Special air monitoring studies have also been conducted and results from these studies support the same conclusion.

Based upon this information, detailed air quality projections were made by the state and local agencies and a separate analysis was prepared by EPA. Again, the same conclusion was reached. The consensus is that the CO problem in Medford is severe enough to warrant the implementation of an I/M program. No other viable solutions are available that would bring the area into compliance.

I/M Effectiveness

Many commentors indicated that I/M programs do not work and would not solve the CO problem in Jackson County. Results from actual I/M programs confirm the effectiveness of implementing an I/M program. For example, in Portland, Oregon, an exhaustive study of that city's I/M program indicates that on a fleet-wide annualized basis, Portland has experienced a 20% reduction in motor vehicle hydrocarbon exhaust emission levels and a 36% reduction in CO exhaust emission levels due to I/M alone. Also, studies from Washington and New Jersey have shown that their I/M programs have resulted in substantial reductions of CO emissions (16 to 20 percent).

III. Final Action

In view of the facts presented in this notice and contained in the docket files, the Administrator finds that the State of Oregon has failed to submit, and is not making reasonable efforts to submit, an approvable 1982 SIP for Medford, Oregon, which considers each of the elements required by Sections 172 and 110 of the Act.

EPA, by this notice, imposes limits on certain types of federal assistance for Jackson County. According to Section 176(a) of the Act, the Secretary of Transportation shall not approve any projects or award any grants under the Surface Transportation Assistance Act (23 U.S.C. 101 et seq.) except for safety, mass transit, or transportation improvement projects related to air quality improvement or maintenance. EPA Region 10 and the Federal Highway Administration have developed interagency procedures and project criteria for making case-by-case determinations as projects are submitted for funding. The project criteria are merely refinements of those mentioned in the EPA–DOT policy and procedures memorandum for implementing Section 176(a) (45 FR 24692, April 10, 1980).

Also potentially affected will be the award of certain state Section 105 Air Grants for Jackson County, which are authorized under the Act (42 U.S.C. 7401 et seq.). Because Section 105 grant funds have already been awarded to the State of Oregon for FY 1985, EPA is taking no action at this time.

Finally, EPA will also withhold certain grants for the construction of sewage treatment works available under Section 201(g) of the Clean Water Act (33 U.S.C. 1251 et seq.) to municipalities, sanitation districts, or other eligible grantees located in the affected basins. The EPA Administrator may fund specific sewage treatment works projects which are needed for relief of an immediate public health hazard but will not expand usable capacity by more than one million gallons per day, or projects which will improve treatment capability but will not expand usable capacity for future growth.

In order to remove the limitations on Federal assistance, the Oregon Department of Environmental Quality would have to officially submit to EPA a SIP revision which meets all of the requirements necessary to expeditiously implement an I/M program in Jackson County or to other equally effective control measures that would bring the area into attainment prior to December 31, 1987 [See January 22, 1981, **Federal Register** (46 FR 7182)]. Once a SIP is submitted, EPA would then propose to remove the funding limitations in the **Federal Register**. After evaluation of public comments, and if EPA decides to remove the limitations, EPA would publish a Notice of Final Rulemaking that authorizes rescission of the federal assistance limitations. The limitations, however, would remain in effect until publication of the notice of final rulemaking.

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from today). This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

This action has been submitted to the Office of Management and Budget (OMB) for review. Any comments from OMB to EPA and any EPA response are available for public inspection at the EPA Region 10 Office listed in the beginning of this notice.

Authority: Sections 110, 172, 176(a), 301 and 316 of the Clean Air Act, as amended (42 U.S.C. 7410, 7502, 7506(a), 7601 and 7616).

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

Dated: February 25, 1985.

Lee M. Thomas,

Administrator.

[FR Doc. 85–5203 Filed 3–1–85; 8:45 am]

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40 CFR Part 52

[A–6–FRL–2787–7]

Federal Assistance Limitations and Construction Moratorium; State of NM

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On September 4, 1984, the Environmental Protection Agency (EPA) proposed to disapprove the inspection and maintenance (I/M) portion of the New Mexico State Implementation Plan (SIP) for attainment of the Carbon Monoxide (CO) National Ambient Air Quality Standard (NAAQS) in Bernalillo County, New Mexico. The EPA also proposed to limit certain federal funding assistance and prohibit the construction or modification of major sources of CO in Bernalillo County as mandated by the Clean Air Act (CAA).

A public hearing was held on December 4, 1984, to receive comment on EPA's proposed actions. The EPA is finalizing these actions because the I/M portion of the SIP does not meet the requirements of Section 172 of the CAA and reasonable efforts toward submitting such a plan have not been made.

The EPA will remove the funding restrictions when either of the following conditions are met:

(a) The State submits evidence that it has taken concrete steps toward restarting its I/M program in an expeditious manner, including the submittal of adequate legal authority and the institution of an adequate funding mechanism, or

(b) The County is formally redesignated by EPA to attainment for CO.

EPA will decide if it is appropriate to withhold federal assistance for

construction of sewage treatment facilities in Bernalillo County, at a later date.

EFFECTIVE DATE: April 3, 1985.

ADDRESSES: Copies of all materials relating to EPA's action may be inspected during normal business hours at the following locations:

Air Branch (6AW–AP), Environmental Protection Agency, Region 6, 1201 Elm Street, Dallas, Texas 75270
Public Information Reference Unit, Room 2404 (EPA Library), 401 M Street SW., Washington, D.C. 20460
Air Quality Bureau, Environmental Improvement Division, 725 St. Michael's Dr., Crown Building, Santa Fe, New Mexico 87504–0968
Air Pollution Control Division, 924 Park SW., Albuquerque, New Mexico 87103.

FOR FURTHER INFORMATION CONTACT: Robert R. Broyles, Environmental Protection Agency, Region 6, 1201 Elm Street, Dallas, Texas 75270, (214) 767–2742.

SUPPLEMENTARY INFORMATION:

A. Background

Pursuant to section 172(a) of the CAA, the State of New Mexico submitted a Part D SIP in January 1979, which demonstrated that the CO standard could not be attained by December 31, 1982, in Bernalillo County. (A Part D SIP is a SIP submitted by the State in order to meet the requirements of Part D of Title I of the Clean Air Act, as amended in 1977.) Consequently, New Mexico requested and received an extension for attainment of the CO standard in this area. The State was then required to submit a SIP revision in 1982 which would demonstrate attainment of the CO standard by December 31, 1987. The SIP was required to include an I/M program that met EPA's program specifications as outlined in the January 22, 1981 policy for extension area SIPs (47 FR 7182).

The State of New Mexico submitted the 1982 SIP for attainment of the CO NAAQS in Bernalillo County on June 28, 1982. On July 1, 1983, (48 FR 30365), EPA approved the 1982 SIP for attainment of the CO NAAQS in Bernalillo County, including the provisions for an I/M program in Bernalillo County. The approved 1982 CO SIP for Bernalillo County contained City and County ordinances requiring all 1968 and newer gasoline powered light duty vehicles to participate in the program and provided for penalties for noncomplying vehicles owners. The SIP also contained the Albuquerque/Bernalillo County Air Quality Board Regulations governing the I/M program and the Albuquerque Traffic Code amendment pertaining to enforcement of the I/M ordinances.

B. I/M Program Disapproval

On January 3, 1983, the I/M program in Bernalillo County began operation. However, on January 4, 1983, a suit was filed in the New Mexico District Court to stop the I/M program on both statutory and constitutional grounds. The New Mexico Supreme Court issued a final ruling on the suit in March 1984 which included a finding that the City of Albuquerque/Bernalillo County did not have the authority to collect an inspection fee. Based on the finding that no I/M fee could be collected, the Albuquerque City Council revoked ordinance No. 49–1969, governing the operation of the I/M program, on March 26, 1984. The inspection facilities for the I/M program subsequently closed on March 28, 1984. A detailed chronology of the events leading to the closing of the inspection facilities was included in the September 4, 1984, **Federal Register** notice (49 FR 34866) proposing disapproval of the I/M program, and will not be repeated here.

In response to the above events, EPA notified the Governor of New Mexico on March 29, 1984, of EPA's intent to propose disapproval of the I/M portion of the SIP and possible sanction actions. The Governor's response indicated that the State, City and County were exploring methods to reestablish the I/M program. However, as of September 1984, EPA determined that no formal action had been taken by the City/County or the State to reestablish the I/M program. Therefore, on September 4, 1984, EPA published a notice in the **Federal Register** (49 FR 34866) proposing to disapprove the I/M portion of the 1982 CO SIP for Bernalillo County and impose funding sanctions under section 176(a) of the CAA and a construction ban under section 110(a)(2)(I).

On October 25, 1984, the EPA announced its intention to hold a public hearing on the proposal in response to requests by the City of Albuquerque, State of New Mexico and other interested parties (49 FR 42958). The public hearing was scheduled for December 4, 1984. This notice also extended the public comment period until 30 days after the date of the public hearing, i.e., to January 3, 1985. Meetings were held between EPA and City/County and State public officials and other interested parties on November 28–30, 1984, to discuss the proposed SIP disapproval actions and a public workshop was held on December 4, 1984, in preparation for the public hearing. Summaries of the meetings and the workshop are contained in the docket (Docket No. NM–85–1). The docket also includes a technical support document which contains a detailed description of all comments received and EPA's response.

The September 4, 1984, notice proposed disapproval of the I/M portion of the 1982 Bernalillo County SIP. The proposal was based on the finding that the SIP revision did not meet the requirements of section 172 of the Act. The June 28, 1982, SIP submittal appeared to have satisfied all section 172 requirements, including the identification of and a commitment to financial and manpower resources, when it was submitted. However, the New Mexico Supreme Court ruled the requirement imposing motor vehicle inspection fee being used to finance the vehicle I/M program is invalid under state law. The Supreme Court decision therefore means the SIP revision submitted to EPA did not contain the legal authority to meet the financial resource considerations of section 172(b)(7). This situation was further aggravated when the City Council revoked Ordinance No. 49–1969, which provided legal authority for implementing the program. Section 172(b)(10) of the Act requires that the SIP contain all legal authority needed to implement appropriate elements of the plan.

No comments were received regarding the proposed finding that the SIP did not meet section 172 requirement. Therefore, EPA is required to disapprove the portion of the New Mexico SIP which provides for attainment and maintenance of the CO NAAQS in Bernalillo County.

C. Construction Ban and Funding Restrictions

The September 4 notice proposed a construction ban and funding restrictions in Bernalillo County, as mandated by Congress under sections 110(a)(2)(I) and 176(a) of the CAA and requested comments on funding limitations under section 316(b) for sewage treatment facilities construction grants. The individual sanctions and EPA final findings are discussed below.

Construction Ban: Under section 110(a)(2)(I) of the Clean Air Act, if the emissions of a new or modified source of an air pollutant would cause or contribute to a violation of a NAAQS, then construction of the new source or the modification may not begin until the SIP meets the requirements of Part D. The present notice finds that the I/M portion of the New Mexico CO SIP for Bernalillo County does not meet the section 172 requirements of Part D.

Therefore, a construction ban under section 110(a)(2)(I) is required.

Section 176(a) Sanctions: Under section 176(a) of the Clean Air Act, certain restrictions on grants of federal air pollution control funds and highway funds are also imposed since the SIP does not meet the requirements of Part D, and the City, the County and the State are not making reasonable efforts toward submitting such a SIP. These restrictions are mandatory in areas in which a primary NAAQS has not been attained and in which transportation control measures such as I/M are necessary for attainment of the NAAQS. Specifically, the provisions of Section 176(a) are triggered by the following:

(1) The primary NAAQS for CO is not being met in Bernalillo County.

(2) Transportation control measures, including I/M for light duty vehicles, are necessary to reduce the CO emissions because the majority of the CO emissions result from the operation of such vehicles.

(3) The SIP submitted by the Governor did not adequately "consider" all elements of section 172 of the Clean Air Act and reasonable efforts toward submitting such a plan are not being made.

The final policies and procedures governing imposition of the Section 176(a) funding restrictions were published on April 10, 1980, (45 FR 24692), after prior notice and public comment. The notice discussed what adequate consideration of all the required elements in Section 172 would entail, pointing out that the State has an affirmative duty to investigate and compile data on the required elements, analyze that data, and consider and incorporate the required elements into the SIP in a manner consistent with the intent and purpose of the Act [45 FR 24692]. In this case the New Mexico SIP does not adequately consider a requirement of Section 172 because the SIP does not provide for the financial resources or legal authority necessary to implement the plan.

With respect to the reasonable effort requirements, the evidence presently available to EPA does not support a finding of reasonable efforts. The basis for this finding which is described in detail in the September 4 notice, was that although the City/County is giving consideration to reestablishing the I/M program, no formal commitments necessary for reestablishment of the program have been made and formal actions taken by the City Council and State Legislature appear to hamper reestablishment of the program.

Comments received from the City of Albuquerque and the State of New Mexico indicate that they are devoting considerable effort to the reestablishment of an I/M program which they consider to meet the reasonable efforts requirements. The City pointed out that Council Resolution No. R-194 and Bernalillo County Resolution No. 92-84 have been passed requesting support from the legislature to reestablish the I/M program. However, the resolutions are non-binding on the legislature. Further, the City/County staff submitted extensive working papers on the program costs, legal authority, enforcement, and other technical issues, as well as a draft I/M ordinance for City Council consideration. However, at this time, no formal action has been taken by the City/County on an I/M ordinance or any other formal I/M commitment which would clearly indicate its intent to reestablish the program.

The New Mexico Environmental Improvement Division (EID) indicated that they have continued to advise and assist the City/County in resolving questions related to reestablishment of the I/M program. Further, the State has developed a working draft of regulations for establishment of an I/M program. However, the regulations have not been adopted by the New Mexico Environmental Improvement Board (EIB) and if adopted by the EIB the regulations would only be applicable as a contingency if the City/County does not act. Further, the State must acquire additional authority for funding the I/M program from the State Legislature before it can implement a program.

Several other commenters did not believe the City, the County or the State made reasonable efforts to reinstate the I/M program. Several commenters also indicated that the affected agencies and the State Legislature probably would not take positive action until EPA imposes sanctions.

The Federal Highway Administration (FHWA) questioned the applicability of imposing section 176(a) sanctions in Bernalillo County. They believe since the SIP was submitted to EPA, approved by EPA, and the I/M program was in operation for over a year, section 176(a) does not apply. This issue was discussed by EPA and FHWA in November 1984. However, as previously established, because of the Supreme Court ruling, the SIP revision did not contain the legal authority to commit the financial resources necessary to implement the plan when submitted to EPA. Therefore, the State did not submit a SIP which considered all elements of section 172 as required by section 176(a).

A meeting was held with FHWA staff on April 6, 1984, to review the procedure for imposing highway funding limitations. Several issues relating to the procedures for imposing the limitations remain unresolved and further meetings are to be scheduled to finalize the procedures.

In summary, after review of recent activities related to reestablishment of the I/M program and analysis of comments and evidence received, it appears to EPA that formal actions have not been taken which clearly demonstrate an intent to reestablish the I/M program. EPA feels that sufficient time has elapsed since the closure of the I/M program for responsible local agencies to complete formal steps related to the development of the I/M program. Therefore, it is EPA's judgment that reasonable efforts have not been made to implement an I/M program and submit an approvable SIP, as required by section 176 of the Act.

With regard to the restriction of federal air pollution control funds, EPA proposed several methods for determining the amount of such funds to be withheld in the September 4, 1984 notice.

The preferred method described in the September 4, 1984 notice was as follows. The EPA will add all CAA funds which would normally be awarded to all levels of government in the State, and would withhold from that total a percentage which is equal to the percentage of the State population residing in the I/M urbanized area. Direct grants made to the local government agency responsible for I/M implementation will be affected first, with any remaining restrictions to be applied against State section 105 funds.

No comments were received which directly addressed the proposed formula for withholding CAA funds. However, the State of New Mexico indicated that State section 105 funds should not be withheld since EPA's grant conditions have never placed any I/M responsibility with the State agency. Additionally, the State indicated that EPA had recognized Albuquerque as the sole responsible agent for the program.

EPA's authority to withhold Section 105 funding is mandated by section 176(a) of the Clean Air Act and is not limited to grant conditions. EPA recognizes that the City/County agency had been responsible for the operation of the I/M program. However, according to the New Mexico Air Quality Control Act the State agency has the authority to act if the City/County does not do so. Therefore, the State agency is also responsible for the submission of the SIP

and will also be affected by the withholding of section 105 grant funds.

After due consideration of comments received and methods proposed, EPA plans to use the method that was indicated as the EPA preferred method.

Section 316(b) Sanctions: Section 316(b) of the Clean Air Act allows EPA to withhold, condition or restrict funds for the construction of sewage treatment works under certain circumstances, as described in the September 4, 1984, proposed rulemaking. EPA will decide if it is appropriate to withhold these funds in Bernalillo County at a later date and will publish a notice in the **Federal Register** if section 316(b) sanctions are to be proposed.

D. Summary of Other Comments

EPA's technical support document contains a detailed description of all comments received, EPA's response, and a transcript of the testimony received at the public hearing. The technical support document is available for inspection at the addresses listed above.

Generally the comments pertained to: (1) The need for an I/M program in Albuquerque, (2) the imposition of sanctions, (3) the need for land use planning and growth control, including indirect source control, (4) the need to determine the emission contribution from wood burning in stoves and fireplaces, (5) the use of alternate fuels in automobiles, and (6) EPA's obligation to promulgate an I/M program.

1. I/M Program Requirements

As indicated in Section A, the State was required to submit a SIP which included an I/M program. Any area which requested and received an extension until December 31, 1987, to attain the CO or ozone standard was required to implement an I/M program in the extension areas. The Albuquerque area received such an extension.

Further, I/M programs have been implemented in 26 other areas nationwide and are recognized as an effective method of reducing CO emissions from automobiles. Therefore, since a significant percentage of CO emissions in Bernalillo County are from automobiles, EPA believes that an I/M program is a reasonable control for this area.

2. Imposition of Sanctions

A discussion of the major comments on the imposition of sanctions is contained in Section C under each separate funding restriction topic.

3. Land Use Planning

In the 1977 Clean Air Act Amendments, Congress removed EPA's authority to impose land use controls. EPA also does not have the authority to require SIPs to contain indirect source controls, except for federally assisted highways, airports, and other federally assisted indirect sources and federally owned or operated indirect sources.

4. Emission Contribution of Wood Burning

EPA believes that wood burning may contribute to the CO problems in the area. However, EPA believes that automobiles are the major source of CO emission in Albuquerque and this measure would be the most effective and expeditious method to attain the CO standard. In any case, the I/M program is mandatory under the CAA requirements for areas that received extensions. The EPA is providing some funding to help the State determine the contribution of CO from stoves and fireplaces. After the study is completed, the State may wish to impose some types of controls in the future. However, this effort cannot replace controls which are needed now for known sources of CO.

5. Alternate Fuels

EPA believes alternate fuels can be environmentally worthwhile; however, these types of programs cannot take the place of an I/M program. The current fleet in Albuquerque cannot be run entirely on alternate fuel sources without completely changing the engines. At this time the fleet could use a combination of gasoline and alcohol but this does not correct all problems since the major portion of the vehicles would still use gasoline.

6. EPA's Obligation To Promulgate an I/M Program

Several commenters indicated that EPA should promulgate a revised SIP instead of requiring the City, County, or State to adopt an I/M program. The overall statutory scheme of the Clean Air Act and in particular the 1977 amendments are premised on the paramount role of the States in carrying out the objectives of the Act. To help encourage State participation and insure that air quality will not deteriorate, the Act conditions the receipt of certain federal funds upon State action. The present action to withhold certain funding as mandated by Congress, is to focus State and local attention on the seriousness of the situation and to emphasize that EPA will enforce the non-implementation of I/M program. The issue of Federal promulgation does not affect the decision regarding the SIP disapproval and imposition of sanctions, and it will not be addressed in this rulemaking.

E. Finding and Action

(1) Disapproval of the I/M Portion of the SIP

Based on New Mexico's failure to submit a SIP which meets the requirements of Part D, section 172, EPA is disapproving the New Mexico SIP for CO for Bernalillo County. However, all previously approved requirements for CO remain federally enforceable.

(2) Clean Air Act Funds

Pursuant to section 176(a) of the Act, EPA is withholding CAA section 105 funds from the Albuquerque/Bernalillo County Air Quality Control Board and the New Mexico Health and Environment Department, the agencies which are responsible for the SIP in Bernalillo County.

(3) Federal Highway Funds

Pursuant to section 176(a) of the CAA, EPA is imposing certain federal highway grants restrictions. Upon publication of this notice, the Secretary of Transportation shall not approve any projects or award any grants under Title 23, United States Code, other than for safety, mass transit, or transportation improvement projects related to air quality improvement or maintenance in Bernalillo County, New Mexico.

(4) Construction Moratorium

Effective immediately, EPA is prohibiting, as mandated by Section 110(a)(2)(I), and as implemented at 40 CFR 52.24, the construction or modification of stationary sources which will cause or contribute to high concentrations of CO in Bernalillo County. The ban applies to the construction and/or modification of all major stationary sources of CO. The ban affects only those sources which have not yet submitted a complete application for preconstruction permits required under the City/County new source review program for the nonattainment area [See 40 CFR 52.24(a)].

A major stationary source is defined at 40 CFR 52.24(f)(4) and generally includes any source which emits, or has the potential to emit, 100 tons per year or more of a pollutant. The moratorium also prohibits major modifications to existing stationary sources. A major modification is defined at 40 CFR 52.24(f)(5) and generally includes any physical change in a source or change in the operation of a source that would

result in a significant net increase of a pollutant. A significant net increase of CO is an increase in emissions of 100 tons per year or more.

F. Miscellaneous

Under Executive Order 12291, today's action is not "major". It has been submitted to the Office of Management and Budget (OMB) for review. Any comments from OMB to EPA and any EPA response are available for public inspection at the Region 6 address listed above.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from today). This action may not be challenged later in proceedings to enforce its requirements (section 307(b)(2)).

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the Agency must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. Under 5 U.S.C. 605(b), this requirement may be waived if the agency certifies that the rule will not have a significant economic effect on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and governmental entities with jurisdiction over populations of less than 50,000.

EPA's final action to disapprove the I/M portion of the SIP imposes several sanctions as outlined below:

(1) A moratorium on the construction and modification of major stationary sources of CO will go into effect immediately in Bernalillo County as required by section 110(a)(2)(I) of the CAA. The moratorium prohibits the construction of sources which would emit, or have the potential to emit, 100 tons of CO per year. The moratorium also prohibits major modifications to existing stationary sources of CO, that would result in a significant net increase of CO [40 CFR 52.24(f) (4) and (5)].

EPA does not have sufficient information to determine the impacts a moratorium may have on small entities because it is difficult to obtain reliable information on future plans for business growth. Since the moratorium affects major stationary sources of carbon monoxide, which are historically rare in Bernalillo County, we do not expect a substantial number of small entities to be affected. No comments were received to indicate that this sanction will affect small entities.

(2) Clean Air Act funds will be withheld from the Albuquerque/Bernalillo County Air Quality Control Board and the New Mexico Health and Environment Department, as required by section 176(a) of the CAA. This sanction will not directly affect a small entity, as the two agencies are part of governments responsible for populations of over 50,000.

(3) A limitation will be placed on federal highway funds in Bernalillo County, as required by section 176(a) of the CAA. Bernalillo County includes numerous small jurisdictions with populations of less than 50,000. However, a determination of the effect of this sanction on small entities is difficult to make until all highway projects are evaluated to determine if they are for safety, mass transit or related to air quality improvement or maintenance, since these types of transportation projects would be exempt. EPA recognizes that a final action would be likely to have some impact on small entities.

Although EPA believes that final action would be likely to have some impact on small entities, this impact cannot affect some of the Agency's actions. Under the CAA, the imposition of the construction moratorium and the withholding of air grant funds and highway grant funds is automatic and mandatory whenever the Agency makes the necessary findings.

List of Subjects of 40 CFR Part 52.

Air pollution control, Carbon monoxide, Intergovernment relations.

This notice of disapproval is issued under the authority of section 110, 172, 176(a) and 301 of the Clean Air Act, as amended, 42 U.S.C. 7410, 7502, 7506(a) and 7601.

Dated: February 23, 1985.

Lee M. Thomas,

Administrator.

PART 52—[AMENDED]

Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart GG—New Mexico

1. Section 52.1620 is amended by adding a new sentence to paragraph (c)(34) to read as follows:

* * * * *

(c) * * *

(34) * * *

On March 4, 1985, the vehicle inspection and maintenance portion of the SIP providing for attainment of the standard for Carbon Monoxide in Bernalillo County was disapproved.

* * * * *

2. Section 52.1627 is added to read as follows:

§ 52.1627 Control strategy and regulations: Carbon monoxide.

(a) Part D disapproval. The Bernalillo County carbon monoxide plan is disapproved for failure to meet the resource requirements of Section 172 of the Clean Air Act. As a consequence of the disapproval the following limitations are effective:

(1) No person shall construct or modify a major stationary source in Bernalillo County, New Mexico, if the emissions from such facility will cause or contribute to concentrations of carbon monoxide in Bernalillo County. The provisions of 40 CFR 52.24 (e), (f), (g), (h), and (i) apply to stationary sources of carbon monoxide in Bernalillo County.

(2) EPA is withholding funds, provided under section 105 of the Clean Air Act, pursuant to section 176(a), from the Albuquerque/Bernalillo County Air Quality Control Board and the New Mexico Health and Environment Department. The amount withheld is based on the proportion of the State's population, determined by the 1980 Census, residing in the Albuquerque urbanized area.

(3) The Secretary of Transportation shall not approve any projects or award any grants under the Title 23, United States Code, other than for safety, mass transit, or transportation improvement projects related to air quality improvement or maintenance, in Bernalillo County, New Mexico.

[FR Doc. 85-5141 Filed 3-1-85; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Parts 60 and 61

[Docket No. AM705 PA]

Standards of Performance for New Stationary Sources and National Emission Standards for Hazardous Air Pollutants; Delegation of Authority to the City of Philadelphia Department of Public Health

AGENCY: Environmental Protection Agency.

ACTION: Rule related notice.

SUMMARY: Section 111(c) and section 112(d) of the Clean Air Act permit EPA to delegate to the States the authority to implement and enforce the standards set out in 40 CFR Part 60, Standards of Performance for New Stationary Sources (NSPS), and in 40 CFR Part 61, National Emission Standards for Hazardous Air Pollutants (NESHAPs).

On June 25, 1984, the City of Philadelphia Department of Public Health (Department) requested EPA to

delegate to it the authority for two (2) additional NSPS source categories. EPA granted the request on October 4, 1984. On October 12, 1984, the Department requested EPA to delegate to it the authority for two (2) additional NESHAPs source categories. EPA granted the request on December 3, 1984. The Department now has the authority to implement and enforce NSPS regulations for Metallic Mineral Processing Plants and Synthetic Fiber Production Facilities and NESHAPs regulations for Equipment Leaks (Fugitive Emission Sources) of Benzene and Equipment Leaks (Fugitive Emission Sources).

EFFECTIVE DATES: October, 4, 1984 and December 3, 1984.

ADDRESSES: Applications and reports required under all NSPS and NESHAPS source categories for which EPA has delegated authority to the Department to implement and enforce should be addressed to the Philadelphia Department of Public Health, Air Management Services (AMS), 500 S. Broad Street, Philadelphia, PA. 19146, in addition to EPA Region III.

Copies of the revision and accompanying documents are available for inspection during normal business hours at the Philadelphia AMS address given above or at the following offices:

U.S. Environmental Protection Agency, Region III, Curtis Building, Tenth Floor, Sixth and Walnut Streets, Philadelphia, Pennsylvania 19106, Attn: Michael Giuranna (3AM11), Telephone: (215) 597–9189

Public Information Reference Unit, Room 2922—EPA Library, U.S. Environmental Protection Agency, 401 M Street, SW., (Waterside Mall), Washington, DC 20460

The Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, DC 20408

FOR FURTHER INFORMATION CONTACT: Michael Giuranna of EPA Region III's Air Programs Branch, (215) 597–9189.

SUPPLEMENTARY INFORMATION: On June 25, 1984, the Department requested that EPA delegate to it the authority to implement and enforce additional NSPS source categories. The Department requested these delegations to supplement the delegations for other source categories which the Department had already received and which EPA published in the **Federal Register** at 42 FR 6886 on February 4, 1977.

In response to the Department's request of June 25, 1984, delegation of authority was granted by the following letter of October 4, 1984:

Dr. Stuart H. Shapiro,
Health Commissioner, City of Philadelphia, Municipal Services Building, Room 540, Philadelphia, Pennsylvania 19107

Dear Dr. Shapiro: This is in response to your letter of June 25, 1984, requesting delegation of authority for the Philadelphia Air Management Services to enforce New Source Performance Standards for Metallic Mineral Processing Plants and Synthetic Fiber Production Facilities.

We have reviewed the pertinent laws, rules and regulations of the City of Philadelphia and have determined that they continue to provide an adequate and effective procedure for implementing and enforcing the NSPS. Therefore, we hereby delegate the authority for the implementation and enforcement of the NSPS regulations to the City of Philadelphia as follows:

Authority for all sources located or to be located in the City of Philadelphia subject to the Standards of Performance for New Stationary Sources for Metallic Mineral Processing Plants (LL) and Synthetic Fiber Production Facilities (HHH).

This delegation is based upon the conditions given in our June 30, 1983 letter to you which delegated 7 additional NSPS source categories to the City of Philadelphia.

If you need any further information, feel free to contact me.

Sincerely,

W. Ray Cunningham,
Director, Air Management Division.

In response to the Department's request of October 12, 1984, delegation of authority was granted by the following letter:

Dr. Stuart H. Shapiro,
Health Commissioner, City of Philadelphia, Municipal Services Building, Room 540, Philadelphia, Pennsylvania 19107

Dear Dr. Shapiro: This is in response to your letter of October 12, 1984, requesting delegation of authority for the Philadelphia Air Management Services to enforce the National Emission Standards for Hazardous Air Pollutants Regulations for Equipment Leaks (Fugitive Emission Sources) of Benzene (Subpart J) and Equipment Leaks (Fugitive Emission Sources) of Volatile Hazardous Air Pollutants (Subpart V).

We have reviewed the pertinent laws, rules and regulations of the City of Philadelphia and have determined that they continue to provide an adequate and effective procedure for implementing and enforcing the NESHAPs. Therefore, we hereby delegate the authority for the implementation and enforcement of the NESHAPs regulations to the City of Philadelphia as follows:

Authority for all sources located or to be located in the City of Philadelphia subject to the National Emission Standards for Hazardous Air Pollutants for Equipment Leaks (Fugitive Emission Sources) of Benzene (Subpart J) and Equipment Leaks (Fugitive Emission Sources) of Volatile Hazardous Air Pollutants (Subpart V).

This delegation is based upon the conditions given in our December 30, 1982 letter to you which delegated the NESHAPs regulation for Vinyl Chloride to the City of Philadelphia.

If you need any further information, feel free to contact Jim Sydnor at (215) 597–9075.

Sincerely,

W. Ray Cunningham,
Director, Air Management Division.

For all sources located or to be located in the City of Philadelphia, effective immediately, all applications, reports, and other correspondence required under the NSPS requirements in 40 CFR Part 60 for Metallic Mineral Processing Plants (LL) and Synthetic Fiber Production Facilities (HHH) and under the NESHAPs requirements in 40 CFR Part 61 for Equipment Leaks (Fugitive Emission Sources) (V) should be sent to the City of Philadelphia, Department of Public Health (address above) in addition to the EPA Region III Office in Philadelphia.

The Office of Management and Budget has exempted this action from the requirements of section 3 of Executive Order 12291.

Authority: (Sec. 111(c) and 112(d), Clean Air Act (42 U.S.C. 7411(c)).

Dated: February 14, 1985.

Stanley L. Laskowski,
Acting Regional Administrator.

[FR Doc. 85–4899 Filed 3–1–85; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 775

[OPTS–60006; FRL–2789–5]

Storage and Disposal of Waste Material; Correction of Cross References

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action corrects a cross reference which appears twice in 40 CFR Part 775.190(a)(2). Since the issuance of Part 775 EPA recodified 40 CFR Part 761, as published in the **Federal Register** of May 6, 1982 (47 FR 19527). Inadvertently, some cross references to Part 761 contained in 40 CFR 775 were not revised at the time of the recodification. This action corrects the oversight and makes references to Part 761 contained in Part 775 reflect the recodification. Since this is a nonsubstantive amendment to a rule, the notice and comment provisions of the Administrative Procedure Act do not apply.

DATE: This amendment becomes effective March 4, 1985.

FOR FURTHER INFORMATION CONTACT: John. A. Richards, Chief, Federal Register Staff (TS–788), Office of Pesticides and Toxic Substances,

Environmental Protection Agency, Rm. E-603, 401 M Street SW., Washington, D.C. 20460 (202-382-2253).

List of Subjects in 40 CFR Part 775

Environmental protection, Hazardous substances, Waste treatment and disposal.

Dated: February 28, 1985.

Edwin F. Tinsworth,

Acting Director, Office of Toxic Substances.

PART 775—[AMENDED]

Therefore, 40 CFR Part 775 is amended as follows:

§775.190 [Amended]

In § 775.190(a)(2), the two cross references to "§ 761.41(b)" are corrected to read "§ 761.75(b) of this chapter."

(Sec. 6, Pub. L. 94-469, 90 Stat. 2020 (15 U.S.C. 2605))

[FR Doc. 85-5138 Filed 3-1-85; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Ch. 101

[FPMR Temp. Reg. A-23, Supp. 1]

Use of Carrier Contractors for Express Small Package Transportation

AGENCY: Office of Federal Supply and Services, GSA.

ACTION: Temporary regulation.

SUMMARY: This supplement amends FPMR Temp. Reg. A-23 by incorporating the provisions of the new express small package contract effective October 1, 1984. Accordingly, this supplement (a) extends the regulations to include the Legislative and Judicial Branches of the U.S. Government and cost-reimbursable contractors for civilian executive agencies as voluntary users of the contractor at the contract rate; (b) redefines "special service"; (c) redefines "standard service" to include desk pickup and desk delivery; (d) identifies additional articles which agencies are restricted from shipping under this regulation; (e) removes the exemption granted to mandatory users; (f) prescribes the notation required on commercial shipping documents when service is provided to cost-reimbursable contractors; (g) provides additional guidance to agencies regarding payment responsibilities; (h) provides that the contractor will, on request, furnish agencies special services as may be available to and at the same service charge applicable to its commercial customers; (i) revises attachment A to identify the contractor and the new nationwide contract prices; and (j) revises attachment B to update the ZIP code for GSA Region 2 and the telephone numbers of GSA Regions 2, 3, 8, and 9.

DATES: Effective date: October 1, 1984.

Expiration date: September 30, 1985, unless otherwise canceled or extended.

ADDRESS: Comments should be addressed to: General Services Administration, Office of Transportation (FT), Washington, DC 20406.

FOR FURTHER INFORMATION CONTACT: Charles T. Angelo, Travel and Transportation Services Division (FTE), FTS 557-1261/(703) 557-1261.

SUPPLEMENTARY INFORMATION: GSA has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more, a major increase in costs to consumers or others, or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 101-40

Freight, Government property management, Moving of household goods, Office relocation, Transportation.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c))

In 41 CFR Chapter 101, the following temporary regulation is added to the appendix at the end of Subchapter A to read as follows:

January 22, 1985.

Federal Property Management Regulations

Temporary Regulation A-23 Supplement 1

To: Heads of Federal agencies

Subject: Use of carrier contractors for express small package transportation

1. *Purpose.* This supplement amends FPMR Temp. Reg. A-23 by incorporating provisions of the new express small package contract effective October 1, 1984. Paragraph 5 is amended by adding the Legislative and Judicial Branches of the U.S. Government and cost-reimbursable contractors as voluntary users of the contractor at the contract rate. In paragraph 6, subparagraph d is revised to identify additional restricted articles, subparagraph g is revised to redefine "special service," and subparagraph h is revised to redefine "standard service" as including desk pickup and desk delivery. Subparagraph 7c is revised to remove the agency exemption provision and to prescribe the notation required on commercial shipping documents when cost-reimbursable contractors make shipments under this regulation. The provisions of subparagraph 7e are removed and the subparagraph is reserved. Paragraph 9 is revised to provide additional guidance to agencies regarding payment responsibilities. Subparagraph 11d is revised to provide that the contractor will furnish on request such special services as may be available to and at the same service charges applicable to its commercial customers. Attachment A is revised to identify the contractor and the nationwide contract prices. Attachment B is revised to update the ZIP code for GSA Region 2 and the telephone numbers of GSA Regions 2, 3, 8, and 9.

2. *Effective date.* This regulation is effective October 1, 1984.

3. *Expiration date.* This regulation expires September 30, 1985, unless other wise canceled or extended.

4. *Explanation of changes.*

a. Par. 5 is revised to read as follows:

"5. *Scope.* This regulation is mandatory for all civilian executive agencies pursuant to section 201(a) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 481(a)), as amended, and may be used by (1) cost-reimbursable contractors working for these agencies and (2) members or employees of the Legislative and Judicial Branches of the U.S. Government."

b. Par. 6 is amended by revising subpars. d, e, g, and h to read as follows:

"d. "Express small package" means a package weighing 50 pounds or less, measuring a maximum of 108 inches in length and girth combined, and containing general commodities except:

(1) Letters, unless adhering to the criteria established by the U.S. Postal Service as specified in par. 7a, below;

(2) Hazardous materials as defined in 49 CFR 172.101;

(3) Property of extraordinary value;

(4) Live animals or plants;

(5) Precious metals or stones;

(6) Weapons or firearms;

(7) Liquor or tobacco products;

(8) Currency, including money orders;

(9) Narcotics or other controlled substances unless otherwise accepted by the contractor; and

(10) Any other article which the contractor restricts the commercial customers from shipping;"

"e. "Geographical areas" means the base cities indicated in attachment A, municipalities contiguous to the base cities, and all other municipalities and unincorporated areas adjacent to the base cities depending on distance and population. For purposes of this regulation, the geographical area of a city is the commercial zone of a city as defined in Part 1048 of Title 49 of the Code of Federal Regulations;"

"g. "Special service" means any other agency required services, such as weekend delivery, escorted courier service, proof of delivery, additional air-bill copies, etc., which, if requested, will be subject to the same fees charged to commercial customers; and

"h. "Standard service" means pickup and/or delivery service (including desk pickup and desk delivery) between the hours of 8 a.m. and 4 p.m. (local time), Mondays through Fridays except holidays."

c. Par. 7 is amended by revising subpars. c and e to read as follows:

"c. To the extent cost-reimbursable contractors are authorized by an agency to ship under this regulation and are reimbursed the transportation costs as direct allowable costs, the contract rates and services provided in this regulation apply to cost-reimbursable contractors. Agencies shall instruct their cost-reimbursable contractors that before a shipment is made under this regulation the commercial shipping document must be annotated with either of the following notations, as appropriate:

(1) *When the Government is shown as the consignee*—'Transportation is for the (name of specific agency) and the actual total transportation charges paid to the carrier by the consignor is assignable to, and shall be reimbursed by, the Government'; or

(2) *When the Government is not shown as either the consignor or consignee*—'Transportation is for the (name of specific agency) and the actual total transportation charges paid to the carrier by the consignor or consignee shall be reimbursed by the Government, pursuant to cost-reimbursement contract number ————. This may be confirmed by contacting (name and address of the contract administration office listed in the contract)'."

"e. Reserved."

d. Par. 9 is revised to read as follows:

"9. *Payment responsibilities.*—In accordance with the terms of the contract, payments to the contractor will be due on the 30th day after the date of actual receipt of a proper invoice. The date of the check issued in payment or the date of payment by wire transfer through the Treasury Financial Communications System shall be considered to be the date the payment is made. The Prompt Payment Act (Pub. L. 97–177, 31 U.S.C. 3902, May 21, 1982) provides for the assessment of interest penalties when payments are overdue. A claim for reimbursement of paid transportation charges shall be filed against the contractor when it is determined that the contractor failed to furnish next day delivery as provided in subpar. 8a.

a. GSA has determined that the contractor's invoice form meets the requirements of 41 CFR 101–41.304–2(d)(2) regarding payment of charges and is a proper invoice for payment and for the purposes of implementing the Prompt Payment Act. Accordingly, agencies should establish simplified procedures to ensure prompt payment to the contractor. If agencies do not have an effective payment system to achieve this purpose, they should consider requiring the shipper and/or consignee to forward a copy of the DHL airbill to the appropriate paying office for payment or reconciliation.

b. Agencies shall instruct their cost-reimbursable contractors shipping under this regulation to ensure that the commerical document bears a proper "bill to" address and appropriate account reference(s) to facilitate the prompt processing and payment of the contractor's invoice by the due date."

e. Subparagraph 11d is revised to read as follows:

"d. Agencies requiring special services may use the contractor or any other carrier that can provide the special services needed. When the contractor is used and special services are requested, the contractor will furnish those special services described in its commercial tariff or service guide at the lowest charge applicable to its commercial customers for similar services."

f. Attachment A is revised to provide the contractor's name, the contract prices, and the contractor or GSA offices where service information may be obtained.

g. Attachment B is revised to update the ZIP code for GSA Region 2 and the telephone numbers of GSA Regions 2, 3, 8, and 9.

Ray Kline,

Acting Administrator of General Services.

Attachment A—Contractor, Contract Prices, and Geographical Areas

Contractor code and name: DHL–DHL Airways, Incorporated.

Base price for first pound: $3.00.

Price for each additional pound: $1.45.

EXAMPLES OF COMPUTING SHIPPING COSTS

1-pound shipment	4-pound shipment
1 pound at $3.00 = $3.00	1 pound at $3.00 = $3.00 3 pounds at $1.45 = $4.35
Total	$7.35

Geographical Areas Served

The DHL contract rates listed above apply to all geographical areas in the United States, including Alaska and Hawaii, which DHL identifies in its publication, "DHL Express Guide for U.S. Federal Government Shippers," or subsequently identifies, as being served next day to the extent provided in paragraph 8 of this regulation. The DHL guide will list approximately 25,000 "next day" points; DHL will identify additional points as its operations are expanded. Since it would be impracticable to print a current area listing in this regulation, agencies may determine up-to-date areas of service and obtain other information by contacting either the DHL offices listed in this attachment or the appropriate GSA regional office listed in attachment B. DHL will furnish its guide to agencies upon request.

DHL Offices

Alabama

Birmingham, (800) 231–3391
Huntsville, (800) 231–3391
Mobile, (800) 231–3391
Montgomery, (800) 231–3391

Alaska

Anchorage, (907) 243–1503
Fairbanks, (907) 456–1707
Juneau, (907) 789–2691
Kenai, (907) 283–4650
Ketchikan, (907) 225–5777
Kodiak, (907) 486–5354
Prudhoe Bay, (907) 659–2547
Sitka, (907) 747–3063

Arizona

Phoenix, (602) 275–5424
Tucson, (602) 792–9424

Arkansas

Little Rock, (800) 231–3391

California

Bakersfield, (805) 392–0183
Fresno, (209) 454–0535
Los Angeles, (213) 973–7300
Sacramento, (916) 929–1112
San Diego, (619) 293–3906
San Francisco, (415) 697–9025
San Jose, (408) 947–8820
Santa Barbara, (805) 687–4205

Colorado

Colorado Springs, (303) 630–1119
Denver, (303) 388–9212

Connecticut

Hartford, (203) 683–2014

Delaware

(215) 461–8111

District of Columbia

Washington, D.C., (703) 684–8733

Florida

Ft. Lauderdale, (305) 763–5400
Ft. Myers, (800) 231–3391
Jacksonville, (800) 231–3391
Miami, (305) 592–8795
Orlando, (800) 231–3391
Pensacola, (800) 231–3391
Sarasota, (813) 886–5889
Tallahassee, (800) 231–3391
Tampa, (813) 886–5889
West Palm Beach, (305) 737–2922

Georgia

Atlanta, (404) 997–1635
Savannah, (800) 231–3391

Hawaii

Hilo, (808) 836–0441
Honolulu, (808) 836–0441
Kaanapali, (808) 836–0441
Kahului, (808) 836–0441
Kailua/Kona, (808) 836–0441
Lihue, (808) 836–0441

Idaho

Boise, (208) 322–1466
Idaho Falls, (800) 227–6308
Lewiston, (800) 227–6308
Pocatello, (800) 227–6308
Twin Falls, (800) 227–6308

Illinois

Chicago, (312) 456–3200
Moline, (800) 942–0503
Peoria, (800) 942–0503
Springfield, (800) 942–0503

Indiana

Fort Wayne, (800) 231–3391
Indianapolis, (800) 231–3391
South Bend, (800) 231–3391

Iowa

Cedar Rapids, (800) 231–3391
Des Moines, (800) 231–3391

Kansas

Kansas City, (913) 621–0900
Wichita, (316) 263–8300

Kentucky

Lexington, (800) 231–3391
Louisville, (800) 231–3391

Louisiana

Baton Rouge, (800) 231–3391
Lafayette, (800) 231–3391
New Orleans, (504) 464–0231
Shreveport, (800) 231–3391

Maine

Portland, (800) 645–6510

Maryland

Baltimore, (301) 768–3730

Massachusetts

Boston, (617) 846–8900

Michigan

Battle Creek, (800) 446–6650
Detroit, (313) 388–6810
Flint, (800) 446–6650
Grand Rapids, (800) 446–6650
Jackson, (800) 446–6650
Lansing, (800) 446–6650

Michigan

Saginaw (800) 446–6650

Minnesota

Duluth, (800) 272–1825
Minneapolis/St. Paul, (612) 944–9780
Rochester, (800) 272–1825
St. Cloud, (800) 272–1825

Mississippi

Gulfport, (800) 231–3391
Jackson, (800) 231–3391

Missouri

Kansas City, (913) 621–0900
St. Louis, (314) 423–8663

Montana

Billings, (800) 227–6308

Nebraska

Lincoln, (800) 231–3391
Omaha, (800) 231–3391

Nevada

Las Vegas, (800) 227–6308
Reno (702) 358–0545

New Hampshire

Manchester, (800) 645–6510

New Jersey

Newark, (201) 382–6333
Teterboro, (201) 382–6333
Trenton, (800) 645–6510

New Mexico

Albuquerque, (505) 292–7699

New York

Albany, (800) 632–3301
Buffalo, (716) 436–7031
Elmira, (800) 632–3301
Farmingdale, (212) 917–8000
New York City, (212) 917–8000
Rochester, (716) 436–7031
Syracuse, (800) 632–3301
White Plains, (914) 683–1183

North Carolina

Charlotte, (704) 527–1699
Greensboro, (919) 299–8117
Highpoint, (919) 889–6177
Raleigh/Durham, (919) 299–8117
Winston-Salem, (919) 748–1078

North Dakota

Bismarck, (612) 944–9707 (call collect)

Ohio

Akron, (216) 671–4700
Cincinnati, (606) 331–7777
Cleveland, (216) 671–4700
Columbus, (800) 231–3391
Dayton, (513) 252–3773
Toledo, (419) 866–1560

Oklahoma

Oklahoma City, (405) 682–8088
Tulsa, (918) 836–4288

Oregon

Eugene, (503) 257–3551
Medford, (503) 257–3551
Portland (503) 257–3551
Redmond, (503) 257–3551

Pennsylvania

Allentown/Bethlehem/Easton, (800) 654–6510
Philadephia, (215) 461–8111
Pittsburgh, (412) 262–2764
York, (301) 768–3730

Rhode Island

Providence, (800) 645–6510

South Carolina

Charleston, (800) 231–3391
Columbia, (800) 231—3391
Greenville/Spartanburg, (800) 231–3391

South Dakota

Sioux Falls, (605) 335–8053 + dial tone + 889–8888

Tennessee

Chattanooga, (800) 231–3391
Knoxville, (800) 231–3391
Memphis, (800) 231–3391
Nashville, (800) 231–3391

Texas

Amarillo, (713) 442–5456 (call collect)
Austin, (713) 442–5456 (call collect)
Beaumont/Pt. Authur, (713) 442–4500
Corpus Christi, (713) 442–5456 (call collect)
Dallas/Ft. Worth, (817) 481–7874
El Paso, (713) 442–5456 (call collect)
Harlingen/McAllen/Brownsville, (713) 442–5456 (call collect)
Houston, (713) 442–4500
Lake Jackson, (713) 442–4500
Laredo, (713) 442–5456 (call collect)
Longview/Tyler, (713) 442–5456 (call collect)
Lubbock, (713) 442–5456 (call collect)
Midland, (713) 442–5456 (call collect)
San Antonio, (512) 491–0430

Utah

Ogden, (801) 621–5085
Provo, (801) 373–2072
Salt Lake City, (801) 539 8900

Virginia

Charlottesville, (800) 645–6510
Norfolk, (804) 857–6116
Richmond, (800) 645–6510
Roanoke, (800) 645–6510

Washington

Pasco, (206) 763–4222
Seattle, (206) 763–4222
Spokane, (509) 456–6200
Yakima, (206) 763–4222

West Virginia

Charleston, (800) 645–6510

Wisconsin

Appleton, (800) 242–5243
Madison, (800) 242–5243
Milwaukee, (414) 483–2933

Wyoming

Casper, (800) 227–6308
Cheyenne, (800) 227–6308

Attachment B—Areas of Jurisdiction

GSA Regional Customer Service Bureau Transportation Services Branch

Region and jurisdiction	Address	Telephone
1—CT, MA, ME, NH, RI, VT	GSA (1FBT), J.W. McCormack, Post Office and Court House, Boston, MA 02109.	FTS 223–2735; COML 617–223–2735
2—NJ, NY, Puerto Rico, and Virgin Islands	GSA (2FBT), 26 Federal Plaza, New York, NY 10278	FTS 264–1259; COML 212–264–1259
3—DE, MD (note A), PA, VA (note B), WV	GSA (3FBT), 9th & Market Streets, Philadelphia, PA 19107	FTS 597–1073; COML 215–597–1073
4—AL, FL, GA, KY, MS, NC, SC, TN	GSA (4FBT), 75 Spring Street, SW., Atlanta, GA 30303	FTS 242–5121; COML 404–221–5121
5—IL, IN, MI, MN, OH, WI	GSA (5FBT), 230 S. Dearborn Street, Chicago, IL 60604	FTS 353–5375; COML 312–353–5375.
6—IA, KS, MO, NE	GSA (6FBT), 1500 E. Bannister Road, Kansas City, MO 64131	FTS 926–7519; COML 816–926–7519.
7—AR, LA, NM, OK, TX	GSA (7FBT), 819 Taylor St., Fort Worth, TX 76102	FTS 334–2733; COML 817–334–2733.
8—CO, MT, ND, SD, UT, WY	GSA (8FBT), Denver Federal Center, Building 41, Denver, CO 80225	FTS 776–7676; COML 303–236–7676
9—American Somoa, AZ, CA, GU, HI, NV, Northern Mariana Islands, and Pacific Trust Territories.	GSA (9FBT), 525 Market Street, San Francisco, CA 94105	FTS 454–9266; COML 415–974–9266
10—AK, ID, OR, WA	GSA (10FBT), GSA Center, Auburn, WA 98002	FTS 396–7455; COML 206–931–7455.
NCR—DC, MD (note C), VA (note D)	GSA (WFBT), 7th and D Streets SW., Washington, DC 20407	FTS 472–1626; COML 202–472–1626

Note A.—Except for those counties under NCR jurisdiction as listed in Note C.

Note B.—Except for those cities and counties under NCR jurisdiction as listed in Note D.

Note C.—Counties of Prince Georges and Montgomery only.

Note D.—Cities of Alexandria, Fairfax, Manassas, and Manassas Park, and counties of Arlington, Fairfax, Loudoun, and Prince William only.

[FR Doc. 85–5112 Filed 3–1–85; 8:45 am]
BILLING CODE 6820–24–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3400, 3410, 3420, 3430, 3450, 3460 and 3470

[Circular No. 2561]

Coal Management—General; Exploration Licenses; Competitive Leasing; Noncompetitive Leases; Management of Existing Leases; Environment; and Coal Management Provisions and Limitations; Final Rulemaking Making Administrative Corrections in Group 3500

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: Secretarial Order No. 3087, issued December 2, 1982, transferred all onshore management functions of the Minerals Management Service not relating to royalty management to the Bureau of Land Management. Notice of this transfer of management functions was published in the **Federal Register** on March 2, 1983 (48 FR 8982). In accordance with the Secretarial Order, the regulations in 43 CFR Parts 3400, 3410, 3420, 3430, 3450, 3460 and 3470 are changed by this final rulemaking to reflect the merger and to reflect the redesignation of the regulations in 30 CFR Part 211 as 43 CFR Part 3480.

EFFECTIVE DATE: March 4, 1985.

ADDRESS: Any suggestions or inquiries should be sent to: Director (650), Bureau of Land Management, 1800 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Tom Walker (202) 343–4636.

SUPPLEMENTARY INFORMATION: This final rulemaking makes changes that reflect the transfer of functions from the Minerals Management Service to the Bureau of Land Management set out in Secretarial Order 3087, as well as changes necessitated by the redesignation of the regulations in 30 CFR Part 211 as 43 CFR Part 3480 to reflect the merger and to reflect the redesignation of the regulations in 30 CFR Part 211 as 43 CFR Part 3480. All of the changes made by this final rulemaking are administrative and reflect actions that have already taken place. The changes have no environmental impact on management of coal and no action is required under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

Because this final rulemaking is an administrative action that will have no impact on the public, it requires no action under either Executive Order 12291 or the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

This final rulemaking imposes no additional information collection requirements on the public that requires the approval of the Office of Management and Budget under 44 U.S.C. 3507.

The principal author of this final rulemaking is Carole Smith, Division of Solid Mineral Leasing, Bureau of Land Management, assisted by the staff of the Office of Legislation and Regulatory Management, Bureau of Land Management.

Under the authority of the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands, as amended (30 U.S.C. 351–359), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.), the Multiple Mineral Development Act (30 U.S.C. 521–531), the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the Federal Coal Leasing Amendments Act of 1976, as amended (90 Stat. 1083–1092) and the Act of October 30, 1978 (92 Stat. 2073–2075), Group 3400, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations is amended as follows.

J. Steven Griles,
Deputy Assistant Secretary of the Interior.

February 26, 1985.

List of Subjects

43 CFR Part 3400

Coal, Intergovernmental relations, Mines, Public lands—classification, Public lands—mineral resources.

43 CFR Part 3410

Coal, Environmental protection, Mines, Public lands—mineral resources, Surety bonds.

43 CFR Part 3420

Administrative practice and procedure, Coal, Environmental protection, Intergovernmental relations, Mines, Public lands—mineral resources.

43 CFR Part 3430

Administrative practice and procedure, Coal, Environmental protection, Intergovernmental relations, Mines, Public lands—mineral resources, Public lands—rights-of-way.

43 CFR Part 3450

Coal, Mines, Public lands—mineral resources, Surety bonds.

43 CFR Part 3460

Coal, Environmental protection, Mines, Public lands—classification, Public lands—mineral resources.

43 CFR Part 3470

Coal, Mineral royalties, Mines, Public lands—mineral resources, Surety bonds.

PART 3400—[AMENDED]

§ 3400.0–5 [Amended]

1. Section 3400.0–5 is amended by:

(a) Amending paragraph (k) by removing the citation "30 CFR 211.2" where it appears and replacing it with the citation "§ 3480.0–5(a)(17) of this title";

(b) Amending paragraph (m) by removing the citation "30 CFR 211.2" where it appears and replacing it with the citation "§ 3480.0–5(a)(18) of this title";

(c) Amending paragraph (v) by removing the citation "30 CFR 211.2" where it appears and replacing it with the citation "§ 3480.0–5(a)(22) of this title";

(d) Amending paragraph (w) by removing the citation "30 CFR 211.2" where it appears and replacing it with the citation "§ 3480.0–5(a)(23) of this title";

(e) Amending paragraph (x) by removing the citation "30 CFR 211.2" where it appears and replacing it with the citation "§ 3480.0–5(a)(24) of this title";

(f) Amending paragraph (z) by removing the citation "30 CFR 211.2" where it appears and replacing it with the citation "§ 3480.0–5(a)(39) of this title";

(g) Amending paragraph (aa) by removing the phrase "District Mining Supervisor, Minerals Management Service" where it appears and replacing it with the phrase "authorized officer"; and

(h) Amending paragraph (hh) by removing the citation "30 CFR 211.2" where it appears and replacing it with the citation "§ 3480.0–5(a)(37) of this title".

PART 3410—[AMENDED]

§ 3410.2–1 [Amended]

2. Section 3410.2–1 is amended by:

(a) Amending paragraph (a)(3) by removing the citation "30 CFR 211.10(a)" where it appears and replacing it with the citation "§ 3482.1(a) of this title"; and

(b) Amending paragraph (c)(1) by removing the phrase "Minerals Management Service and Bureau of Land Management offices" where it appears and replacing it with the phrase "Bureau of Land Management office".

§ 3410.2–2 [Amended]

3. Section 3410.2–2(a) is amended by removing the phrase "in coordination with the Minerals Management Service" where it appears in the first sentence.

§ 3410.3–1 [Amended]

4. Section 3410.3–1 is amended by:

(a) Amending paragraph (c) by removing the phrase "exploration plan approved by Minerals Management Service" where it appears and replacing it with the phrase "approved exploration plan";

(b) Amending paragraph (f) by removing the phrase "Mining Supervisor" where it appears and replacing it with the phrase "authorized officer"; and

(c) Amending paragraph (g)(2) by removing the phrase "Mining Supervisor" where it appears and replacing it with the phrase "authorized officer".

§ 3410.3–3 [Amended]

5. Section 3410.3–3 is amended by removing the phrase "Minerals Management Service (30 CFR Part 211)" where it appears in the first sentence thereof and replacing it with the phrase "Bureau of Land Management (43 CFR Part 3480)" and by removing the phrase "Mining Supervisor" where it appears in the second sentence thereof and replacing it with the phrase "authorized officer".

§ 3410.3–4 [Amended]

6. Section 3410.3–4 is amended by:

(a) Amending paragraph (b) by removing the phrase ", after consultation with the Mining Supervisor," where it appears; and

(b) Amending paragraph (c) by removing the phrase ", with the consent of the Mining Supervisor," where it appears.

§ 3410.4 [Amended]

7. Section 3410.4(b) is amended by removing the phrase "Mining Supervisor" from the four places it appears and replacing it with the phrase "authorized officer" and by removing the citation "(30 CFR 211.6, 43 CFR 2.20)" where it appears and replacing it with the citation "(43 CFR 2.20 and 3481.3)".

PART 3420—[AMENDED]

§ 3420.1–2 [Amended]

8. Section 3420.1–2(b) is amended by removing the phrase "Minerals Management Service" where it appears and replacing it with the phrase "authorized officer".

§ 3420.1–4 [Amended]

9. Section 3420.1–4 is amended by:

(a) Amending paragraph (b)(3) by removing the citation "43 CFR Part 1600" where it appears and replacing it with the phrase "this section and 43 CFR Part 1600."; and

(b) Amending paragraph (e)(1) by removing the phrase "Minerals Management Service" in the two places it appears and replacing it with the phrase "Bureau of Land Management".

§ 3420.2 [Amended]

10. Section 3420.2(a)(4)(ii) is amended by removing the phrase "and the Minerals Management Service" where it appears.

§ 3422.1 [Amended]

11. Section 3422.1 is amended by:

(a) Amending paragraph (a) by removing the phrase "Minerals Management Service" where it appears and replacing it with the phrase "Bureau of Land Management"; and

(b) Amending paragraph (b) by removing the phrase "request the Minerals Management Service to submit in writing a" where it appears and replacing it with the phrase "prepare a written".

PART 3430—[AMENDED]

§ 3430.6–3 [Amended]

12. Section 3430.6–3 is amended by removing the citation "30 CFR 211.2." where it appears and replacing it with the citation "§ 3483.1 of this title."

§ 3435.4 [Amended]

13. Section 3435.4(c) is amended by removing the phrase ", 30 CFR Chapter VII, Subchapter D and 30 CFR Part 211, as appropriate." where it appears and replacing it with the phrase "and 30 CFR Chapter VII, Subchapter D, as appropriate."

PART 3450—[AMENDED]

§ 3451.2 [Amended]

14. Section 3451.2(e) is amended by removing the citation "30 CFR Part 211." where it appears and replacing it with the citation "part 3480 of this title."

§ 3452.1–1 [Amended]

15. Section 3452.1–1 is amended by removing the citation "30 CFR Part 211." where it appears and replacing it with the citation "part 3480 of this title."

PART 3460—[AMENDED]

§ 3461.5 [Amended]

16. Section 3461.5(a) is amended by removing the citation "subpart 3410 of this title and under 30 CFR 211.2(a)." where it appears and replacing it with the citation "subpart 3410 and part 3480, both of this title."

§ 3465. [Amended]

17. Section 3465.1(a) is amended by removing the citation "(30 CFR Part 211 and 741)." at the end thereof and replacing it with the citation (43 CFR 3482.1(b) and 30 CFR Part 741)."

§ 3465.2–1 [Amended]

18. Section 3465.2–1 is amended by removing the phrase ", Mining Supervisor, or their authorized representatives," where it appears and replacing it with the phrase ", or his/her authorized representative,".

§ 3465.2–2 [Amended]

19. Section 3465.2–2(a) is amended by removing the phrase ", or to the Mining Supervisor" where it appears and replacing it with the phrase ", or take remedial action".

§ 3465.2–3 [Amended]

20. Section 3465.2–3 is amended by removing the phrase "30 CFR Part 211 or 30 CFR Chapter VII, Subchapter D, or by the Mining Supervisor in accordance with 30 CFR Part 211," where it appears and replacing it with the phrase "Part 3480 of this title or 30 CFR Chapter VII, Subchapter D, or by the authorized officer in accordance with part 3480 of this title,".

PART 3470—[AMENDED]

§ 3472.1–1 [Amended]

21. Section 3472.1–1(e) is amended by removing the phrase "30 CFR Part 211, in commercial quantities as that term is defined in 30 CFR Part 211." where it appears and replacing it with the phrase "§ 3483.4 of this title, in commercial quantities as that term is defined in § 3480.0–5(a)(7) of this title."

§ 3473.3–2 [Amended]

22. Section 3473.3–2 is amended by:

(a) Amending paragraph (a) by removing from subparagraph (3) the phrase "Minerals Management Service" where it appears and replacing it with the phrase "authorized officer" and by removing from subparagraph (4) the citation "30 CFR 211.03." where it appears and replacing it with the citation "§ 3483.4 of this title.";

(b) Amending paragraph (b) by removing the phrase "Mining Supervisor" where it appears and replacing it with the phrase "authorized officer" and by removing the citation "30 CFR Part 211." and replacing it with the citation "§ 3485.2 of this title."; and

(c) Amending paragraph (d) by removing the phrase "Mining Supervisor in accordance with 30 CFR Part 211." where it appears at the end of the paragraph and replacing it with the phrase "authorized officer in accordance with part 3480 of this title."

§ 3473.2 [Amended]

23. Section 3473.2 is amended by removing the phrase "Mining Supervisor." where it appears at the end of paragraphs (c)(1) and (c)(2) and replacing it with the phrase "authorized officer."

§ 3475.5 [Amended]

24. Section 3475.5 is amended by removing from the introductory paragraph the citation "30 CFR Part 211," and replacing it with the citation "part 3480 of this title,".

§ 3475.6 [Amended]

25. Section 3475.6(a) is amended by removing the phrase "by the Minerals Management Service in accordance with 30 CFR 211.80." and replacing it with the phrase "in accordance with § 3487.1 of this title."

[FR Doc. 85–5173 Filed 3–1–85; 8:45 am]

BILLING CODE 4310–84–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[CC Docket No. 81–893; FCC 85–60]

Procedures for Implementing the Detariffing of Customer Premises Equipment and Enhanced Services (Second Computer Inquiry)

AGENCY: Federal Communications Commission.

ACTION: Order Delegating Authority (Order).

SUMMARY: In the Third Report and Order *(Third Order)* in CC Docket 81–893 released October 26, 1984, the Commission established criteria and procedures to allow states to deregulate embedded customer premises equipment owned by Independent telephone companies and tariffed at the state level. The framework established by the Commission requires that each state file a certification by September 1, 1985, which details how the state will detariff the embedded CPE consistent with the requirements established in the *Third Order.* As specified in the *Third Order,* Commission action is required for approval or disapproval of certifications of state plans. In light of the large number of state certifications to be filed and the limited time for review, the *Order* provides for a delegation of authority to the Chief, Common Carrier Bureau to approve or deny state certifications of state plans.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Rose Crellin (202) 632–9342.

Order Delegating Authority

In the matter of procedures for implementing the detariffing of customer premises equipment and enhanced services (second computer inquiry); CC Docket No. 81–893.

Adopted February 5, 1985.
Released February 6, 1985.

By the Commission.

1. In our *Third Report and Order* in this proceeding,[1] we established criteria and procedures to allow states to deregulate embedded customer premises equipment owned by Independent telephone companies and tariffed at the state level. The framework established by the Commission requires that each

[1] Third Report and Order, FCC 84–483, Mimeo No. 35148 (released October 26, 1984), *reconsideration petition pending,* Public Notice No. 1491, 49 FR 49906 (released December 24, 1984) (hereinafter *Order*).

state file a certification by September 1, 1985, which details how the state will detariff the embedded CPE consistent with the requirements established in the *Order*. As indicated in the *Order*, state certification, due September 1, 1985, will be deemed approved if the Commission does not notify the state otherwise within 90 days after receipt by the Commission. States which do not have state certifications approved by the Commission by January 1, 1986, will be required to follow the plan established for American Telephone and Telegraph (AT&T).[2]

2. The review of state certifications could involve substantial discussion and negotiation with individual states to ensure that Commission policies established in the *Order*, and related Commission actions, are followed. We anticipate receiving fifty-two such certifications by September 1, 1985. As specified in the *Order*, Commission action is required to notify a state that certification is approved prior to the expiration date of 90 days or denied. In light of the large number of state certifications to be filed and the limited time for review, a delegation of authority is needed to enable the Chief, Common Carrier Bureau to approve or deny the state certifications in a timely manner.

3. Accordingly, it is ordered, pursuant to § 0.201(d)(2) of the Commission's rules, that the Chief, Common Carrier Bureau is delegated authority to approve or deny state certifications of state plans to deregulate embedded customer premises equipment owned by Independent telephone companies and tariffed at the state level. This Order shall become effective immediately.[3]

3. It is further ordered, That the Secretary shall cause a copy of this order to be published in the **Federal Register**.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85-5076 Filed 3-1-85; 8:45 am]

BILLING CODE 6712-01-M

[2] CC Docket 81-893, Report and Order, 95 FCC 2d 1276 (1983), *reconsideration petitions pending*, Public Notice No. 1445, 49 FR 5672 (released Feb 8, 1984), Memorandum Opinion and Order on Reconsideration, FCC 85-35 (released January 29, 1985).

[3] Our action today concerns agency procedure and practice, rather than a substantial rule, because it affects only the delegation of authority to the chief of the Common Carrier Bureau. Therefore, there is no need for publication or service prior to the effective date of this order.

47 CFR Part 73

Oversight of the Radio and TV Broadcast Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Order amends broadcast regulations in Part 73 of the rules of the FCC. Amendments are made to delete regulations that are no longer necessary, correct inaccurate rule texts, contemporize certain requirements and to execute editorial revisions as needed for purposes of clarity and ease of understanding.

EFFECTIVE DATE: April 3, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Steve Crane, Policy and Rules Division, Mass Media Bureau, (202) 632-5414.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio, Television broadcasting.

Order

In the matter of oversight of the radio and TV Broadcast rules.

Adopted February 21, 1985.
Released February 26, 1985.
By the Chief, Mass Media Bureau.

1. In this *Order*, the Commission focuses its attention on the oversight of its radio and TV broadcast rules. Modifications are made herein to update, delete, clarify or correct broadcast regulations as described in the following amendment summaries:

(a) The local public inspection file rules for commercial stations (§ 73.3526) and noncommercial stations (§ 73.3527) have been modified in the past year in the following docketed proceedings:

The Report and Order in MM Docket 83-670, Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial TV stations, 49 FR 33588, August 23, 1984; and the Report and Order in MM Docket 81-496, Revision of Program Policies and Reporting Requirements Related to Public Broadcasting Licensees, 49 FR 33658, August 24, 1984; and Memorandum Opinion and Order in BC Docket 79-219, Deregulation of Radio, 49 FR 43474, October 29, 1984.

(b) In addition to the above three Commission actions, corrective amendments were made to both §§ 73.3526 and 73.3527 in the Order adopted January 24, 1984, 49 FR 4208, February 3, 1984; and in the Erratum released September 11, 1984, which made several editorial corrections in the Report and Order in MM Docket 83-670, 49 FR 36651, September 19, 1984.

(c) The changes, deletions and additions made in the above actions have left the rules with inadvertent errors which are corrected herein.

In § 73.3526

(d) Paragraph (a) presently bears a cross reference to subparagraph (a)(9). (a)(9) was removed in the Report and Order in MM Docket 83-670. The cross reference to it has remained in the opening text of (a). Its retention has created an additional obfuscation: another rule modification in this Docket redesignated former (a)(13) as (a)(9). The text of (a)(13) was marked "[Reserved]", so the cross reference to (a)(9) "[Reserved]" caused some bewilderment. Since subparagraph (a)(9) is marked "[Reserved]", and is serving no purpose valid to this rule, it will be removed as a "[Reserved]" rule portion, and paragraphs (a) (10) and (11) will be designated (a) (9) and (10) via this Order.

(e) Another cross reference in the introductory text of (a) directs the rule user to (a)(10). This paragraph, prior to its removal, provided for public inspection of TV station program logs; it was also removed via MM Docket 84-670. But, like the cross reference to (a)(9), the rule drafted in the Report and Order omitted eliminating it.

We now have cross references to (a)(9) and (a)(10) that apparently should be removed. However, with the redesignation of (a)(10) and (a)(11) as (a)(9) and (a)(10), the cross references in opening paragraph (a) are perfectly correct. We give this rather precise detailing of these modifications so that some future rules' researcher may be helped along this otherwise labyrinthine way. The changes, reflected in the rules appendix herein, will redesignate paragraphs (a)(10) and (11) to (a)(9) and (10); revise the reference to (a)(11) in the introductory part of paragraph (a) to the newly redesignated (a)(10); and change any cross references to (a)(10) or (a)(11) to (a)(9) and (10) as they are used in all parts of the rule.

(f) Prior to the rule amendments in MM Docket 83-670, there were two Notes following paragraph (a)(12). Note 2 stated an exemption to the regulations in (a)(11) and (12). These two paragraphs set forth the FCC's requirements for ascertainment interviews with community leaders and members of the general public. With the removal of these requirements via the Report and Order, Note 2 was appropriately dispatched. Note 1, which followed paragraph (a)(12) gave relief to

licensees from filing certain engineering sections of applications mentioned in paragraphs (a)(1) and (2). Unfortunately, Note 1 was inadvertently dispatched along with Note 2. It is returned herein, thus retaining a filing relief for licensees which we, in no way, meant to eliminate. It will be located following paragraph (a)(2) to which it properly belongs.

(g) A minor change in § 73.3526 was made in the Memorandum Opinion and Order adopted October 17, 1984 [1] in which the filing date for the issues/programs list for commercial radio stations was changed from the first day of each calendar quarter to the tenth day, thereby providing licensees more adequate time to prepare their lists. The amendment to § 73.3526 in the rules appendix of the Memorandum Opinion and Order revised the rule correctly, but assigned it the paragraph designation of (a)(14). Unfortunately this designation was changed in the Report and Order in MM Docket 83–670 to paragraph (a)(10). (Which we have just amended, in this Order, to (a)(9).) The rules appendix in this Order will correct the mis-designation of (a)(14) to (a)(10) and then reflect the change of (a)(10) to (a)(9) as described in paragraph (e) above.

(h) Paragraph (e) of § 73.3526 defines the period of retention for each record the licensee is required to place in the public file. This paragraph uses copious cross references to other paragraphs of the rule. The changes described herein will be reflected in paragraph (e) to conform to the new paragraph designations. Another revision will be made in paragraph (e) to correct a mis-stated rule section. In the Erratum released September 11, 1984 [2] to the Report and Order in MM Docket 83–670, the reference to retention of letters received by a station stated it is "for the period specified in § 73.202." It should be § 73.1202, and is corrected herein.

(i) See items 1 and 2 of the attached rules' appendix for the amendments to § 73.3526 described in paragraphs 1.(a) through 1.(i) above.

In § 7.3527

(j) The introductory part of paragraph (a) presently requires maintenance of a file "containing material described in paragraph (a)(9) of this section." Paragraph (a)(9) formerly required filing of a copy of portions of exclusivity contracts between TV stations and CATV systems. This requirement was removed in the Report and Order in Dockets 20988 and 21284, In the Matter of Cable TV Syndicated Program Exclusivity Rules, 79 FCC 2d 663. However, the Report and Order failed to delete the text from § 73.3527. It *was* removed from (a)(9) and the paragraph was marked "[Reserved]" in the Order adopted January 24, 1984, 49 FR 4208, February 3, 1984. *But*, that Order, while it deleted the non-applicable text from (a)(9), left the cross reference to it in the introductory part of paragraph (a). That reference is deleted herein. Since paragraph (a)(9), marked "[Reserved]", serves no regulatory purpose, it is deleted here, and paragraph (a)(10) is redesignated (a)(9), which requires an additional revision to the introductory part of paragraph (a). Now, the second sentence in paragraph (a) will be changed to state that the public inspection file will contain "the material described in paragraphs (a)(1) through (9) of ths section," instead of stating "(a)(1) through (8)". It is interesting to note that former (a)(10), (changed to (a)(9) in this Order), has never before enjoyed a reference in the introductory part of paragraph (a). The text of newly designated (a)(9) refers to the requirement to place a statement in the public file certifying compliance with § 73.3580 (h), pertaining to pre- and post-filing announcements at the time the renewal application is filed. Formerly, the certification was part of the license renewal application. While the text of former (a)(10) was added to § 73.3527, it was never entered in the file maintenance list referenced in the introductory part of paragraph (a).

(k) Prior to the elimination of the obligation of noncommercial stations to carry out formal ascertainment procedures, applicants for *new* stations (as well as permittees and licensees) were required to determine the significant problems and needs of the area served by the station and the programs proposed to be broadcast in the initial license term in response to them. With the deregulatory measures adopted in MM Docket 81–496, Revision of Program Policies and Reporting Requirements Related to Public Broadcasting Licensees,[3] the Commission stated "ascertainment obligations will no longer be applied to public stations.

Simultaneously, the provisions of paragraph (a)(7), the Problems-programs lists, were removed, relieving permittees and licensees *and* applicants for new stations of these ascertainment requirements. However, a reference in the introductory part of paragraph (a) still states that an applicant for a new noncommercial educational station must maintain a file containing the material in paragraph (a) . . . (7), *i.e.*, his ascertained problems and his proposed programming pertaining to them. The removal of this reference was an oversight and is accomplished herein.[4]

(l) In the rule amendments adopted in MM 81–496 [5], paragraphs (b) and (c), pertaining to noncommercial radio and TV station ascertainment efforts were removed and marked "[Reserved]". As part of tidying up this rule, we will herein remove the "[Reserved]" designations from paragraphs (b) and (c) and redesignate paragraphs (d) as (b), (e) as (c), (f) as (d), (g) as (e) and (h) as (f).

(m) The rule defines as "exempt" FM applicants, permittees or licensees, those whose facilities are designated as "Class D" FM stations. When we drafted the new requirement for the listing and filing of issues and programs, we intended to give the same exemption for issues/programs lists and files to Class D operators as we had historically given them from ascertainment and the listing and filing of problems-programs records. Inadvertently, we failed to do this and the exemption was not written into the rule in the newly adopted Report and Order in public station regulatory relief. That relief is restored herein, and paragraph (a)(7) is amended to include it. We also will restore the Note, defining Class D FM stations, after amending it for corrective purposes immediately following paragraph (a)(7) and designate it as Note 2. The present Note describing the schedule of filings of issues/programs lists is designated Note 1.

(n) Another Note, which was mistakenly removed in the rule drafting process in the Public Broadcast Station regulatory relief proceeding [6] is restored herein, also. It was formerly designated as Note 1, and followed paragraph (a)(7), in the pre-amended rule. It gave relief to licensees from filing certain engineering sections of applications. The Note is returned via this Order, thus retaining a filing relief for licensees which we mistakenly eliminated. It will be located following paragraph (a)(2) to which it properly belongs.

(o) The period of retention paragraph, formerly (g), redesignated herein as (e), bears, in part, text referring to "contracts" between certain parties. These were syndicated exclusivity

[1] See paragraph (a) above
[2] See paragraph (b) above
[3] See paragraph (b) above.
[4] It should be noted that the application Form 340 which also contains this problems-programs list requirement for new noncommercial stations, is under revision and will be released soon.
[5] See paragraph (a) above.
[6] Id

arguments between cable operators and TV licensees. This requirement expired with the elimination of the syndicated exclusivity rules in the Report and Order in Dockets 20988 and 21284.[7] This paragraph, relating to such "contracts," was deleted from § 73.3527 in the Order adopted January 24, 1984.[8] It was also deleted from the period of retention paragraph. Unfortunately, when the rule was drafted in the Report and Order in MM Docket 81–496 [9], the old, incorrect text ("contracts") was reintroduced into the period of retention paragraph (g). When the incorrect "contracts" text was removed from paragraph (g) in the January 24, 1984 Order, text regarding a filing certification of pre- and post-filing announcements was inserted into the paragraph. (It had not been written into the rule previously at paragraph (g) when the pre- and post-filing relaxation had been adopted.) That certification retention requirement is now re-inserted into (old) paragraph (g), redesignated as (e) in this Order.

(p) Another problem in this "Period of Retention" paragraph is the lack of a time-of-retention directive for public stations' issues/programs lists. When § 73.3527 was amended to include the new requirement in the Report and Order in MM Docket 81–496, it was designated as paragraph (a)(7); however, the rule drafter failed to add it to the period of retention paragraph which states the various retention periods of the various files. It is inserted, via this Order, designating the retention period as the "entire license period," *i.e.*, 5 years for TV stations and 7 years for radio stations as stated in paragraph (a)(7).

(q) A clarification is made to paragraph (f), former (h), by adding the modifying words "noncommercial educational" to the text as follows:

"Copies of any material required to be in the public file of any [noncommercial educational] TV or radio station * * *."

(r) See item 3 of the attached rules' appendix for the amendments described in paragraphs 1.(j) through 1.(q) above.

2. In General Docket 84–361, 49 FR 17045, April 23, 1984, the Commission gave public notice of rules to be reviewed in 1984 pursuant to Section 610 of the Regulatory Flexibility Act of 1980. 5 U.S.C. 610. The purpose of the review is to determine whether such rules imposed a significant economic impact on a substantial number of small entities. The rule evaluations have been completed for the 1984 review period. Our cumulative review evaluations over the past three years have surveyed Subparts A, B, C and F of Part 73; all of Part 74; FCC Forms used pursuant to Parts 73 and 74; most of Part 76; and all of Parts 78 and 100. In 1985, the review and evaluation of our rules, pursuant to Regulatory Flexibility Act requirements, continue and will include Subparts E and H of Part 73; and the very small number of unreviewed rules in Part 76.

3. No substantive changes are made herein which impose additional burdens or remove provisions relied upon by licensees or the public. We conclude, for the reasons set forth above, that these revisions will serve the public interest.

4. These amendments are implemented by authority designated by the Commission to the Chief, Mass Media Bureau. Inasmuch as these amendments impose no additional burdens and raise no issue upon which comments would serve any useful purpose, prior notice of rule making, effective date provisions and public procedure thereon are unnecessary pursuant to the Administrative Procedure and Judicial Review Act provisions of 5 U.S.C. 553(b)(3)(B).

5. Since a general notice of proposed rulemaking is not required, the Regulatory Flexibility Act does not apply.

6. Therefore, it is ordered, That pursuant to sections 4(i), 303(r) and 5(c)(1) of the Communications Act of 1934, as amended, and §§ 0.61 and 0.283 of the Commission's rules, Part 73 of the FCC Rules and Regulations is amended as set forth in the attached Appendix, effective April 3, 1985.

7. For further information on this *Order*, contact Steve Crane, (202) 632–5414, Mass Media Bureau.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 305)

Federal Communications Commission.

James C. McKinney,

Chief, Mass Media Bureau.

Appendix

PART 73—[AMENDED]

1. In the Memorandum Opinion and Order released October 23, 1984 (BC Docket 79–219) and published in the **Federal Register** on October 29, 1984 at 49 FR 43474, (FR Doc. 84–28445), the appendix amending § 73.3526 inadvertently designated "paragraph (a)(14)" as the paragraph to the revised. It should have been paragraph (a)(10). The amendatory language and the subject paragraph are corrected herein to read:

47 CFR 73.3526 is amended by revising paragraph (a)(10) to read as follows:

§ 73.3526 Local public inspection file of commercial stations.

(a) * * *

(10) For AM and FM broadcast stations every three months a list of at least 5 to 10 community issues addressed by the station's programming during the preceding 3 month period. This list is to be filed the tenth day of each calendar quarter (e.g. January 10, April 10, July 10 and October 10). The list shall include a brief narrative describing how each issue was treated, i.e., public service announcements or programs, giving a description of the programs including time, date and duration of each program. These lists are to be retained for the entire license renewal period.

* * * * *

2. Section 73.3526 is amended by revising introductory paragraph (a); by restoring a Note to follow paragraph (a)(2); by redesignating paragraphs (a)(10) [see item 1 above] and (11) as (a)(9) and (10) respectively; and by revising paragraphs (e) and (f). As revised, the rule will read as follows:

§ 73.3526 Local public inspection file of commercial stations.

(a) *Records to be maintained.* Every applicant for a construction permit for a new station in the commercial broadcast services shall maintain for public inspection a file containing the material described in paragraph (a)(1) of this section. Every permittee or licensee of an AM, FM or TV station in the commercial broacast services shall maintain for public inspection a file containing the material described in paragraphs (a)(1), (2), (3), (4), (5), (6), (7) and (10) of this section. In addition, every permittee or licensee of a TV station shall maintain for public inspection a file containing material described in paragraph (a)(8) of this section; every permittee or licensee of an AM or FM station shall maintain for public inspection a file containing material described in paragraph (a)(9) of this section. The material to be contained in the file is as follows:

(1) A copy of every application tendered for filing, with respect to which local public notice is required to be given under the provisions of § 73.3580 or § 73.3594; and all exhibits, letters and other documents tendered for filing as part thereof; all amendments thereto, copies of all documents incorporated therein by reference, all correspondence between the FCC and the applicant pertaining to the application after it has been tendered for filing, and copies of Initial Decisions and Final Decisions in hearing cases pertaining thereto, which

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[7] In the Matter of Cable TV Syndicated Program Exclusivity Rules. 79 FCC 2d 663.

[8] See paragraph (b) above.

[9] See paragraph (a) above.

according to the provisions of §§ 0.451 through 0.461 of the rules are open for public inspection at the offices of the FCC. Information incorporated by reference which is already in the local file need not be duplicated if the entry making the reference sufficienty identifies the information so that it may be found in the file, and if there has been no change in the document since the date of filing and the applicant, after making the reference, so states. If petitions to deny are filed against the application, and have been duly served on the applicant, a statement that such a petition has been filed shall appear in the local file together with the name and address of the party filing the petition. The file shall also contain a copy of every written citizen agreement. For purposes of this section, a citizen agreement is a written agreement between a broadcast applicant, permittee, or licensee, and one or more citizens or citizen groups, entered for primarily noncommercial purposes. This definition includes those agreements that deal with goals or proposed practices directly or indirectly affecting station operation in the public interest, in areas such as—but not limited to—community ascertainment, programming, and employment. It excludes common commercial agreements such as advertising contracts; union, employment, and personal services contracts; network affiliation, syndication, program supply contracts and so on. However, the mere inclusion of commercial terms in a primarily noncommercial agreement—such as a provision for payment of fees for future services of the citizen-parties (see "Report and Order," Docket 19518, 57 FCC 2d 494 1976)}—would not cause the agreement to be considered commercial for purposes of this section.

Note.—Applications tendered for filing on or before May 13, 1965, which are subsequently designated for hearing after May 13, 1965, with local notice being given pursuant to the provisions of § 73.3594, and material related to such applications, need not be placed in the file required to be kept by this section. Applications tendered for filing after May 13, 1965, which contain major amendments to applications tendered for filing on or before May 13, 1965, with local notice of the amending application being given pursuant to the provisions of § 73.3580, need not be placed in the file requred to be kept by this section.

(2) A copy of every application tendered for filing by the licensee or permittee for such station which is not included in paragraph (a)(1) of this section and which involves changes in program service, which requests an extension of time in which to complete construction of a new station, or which requests consent to involuntary assignment or transfer, or to voluntary assignment or transfer not resulting in a substantial change in ownership or control and which may be applied for on FCC Form 316; and copies of all exhibits, letters, and other documents filed as part thereof, all amendments thereto, all correspondence between the FCC and the applicant pertaining to the application after it has been tendered for filing, and copies of all documents incorporated therein by reference, which according to the provisions of §§ 0.451 through 0.461 of the rules are open for public inspection at the offices of the FCC. Information incorporated by reference which is already in the local file need not be duplicated if the entry making the reference sufficiently identifies the information so that it may be found in the file, and there has been no change in the document since the date of filing and the licensee, after making the reference, so states. If petitions to deny are filed against the application, and have been duly served on the applicant, a statement that such a petition has been filed shall appear in the local file together with the name and address of the party filing the petition.

Note.—The engineering section of the applications mentioned in paragraphs (a)(1) and (2) of this section, and material related to the engineering section, need not be kept in the file required to be maintained by this paragraph. If such engineering section contains service contour maps submitted with that section, copies of such maps and information (State, county, city, street address, or other identifying information) showing main studio and transmitter location shall be kept in the file.

(3) A copy of every ownership report or supplemental ownership report filed by the licensee or permittee for such station after May 13, 1965, pursuant to the provisions of this part; and copies of all exhibits, letters, and other documents filed as part thereof, all amendments thereto, all correspondence between the permittee or licensee and the FCC pertaining to the reports after they have been filed, and all documents incorporated therein by reference, including contracts listed in such reports in accordance with the provisions of § 73.3615(a)(4)(i) and which according to the provisions of §§ 0.451 through 0.461 of the rules are open for public inspection at the offices of the FCC. Information incorporated by reference which is already in the local file need not be duplicated if the entry making the reference sufficiently identifies the information so that it may be found in the file, and if there has been no change in the document since the date of filing and the licensee or permittee, after making the reference, so states.

(4) Such records as are required to be kept by § 73.1940 concerning broadcasts by candidates for public office.

(5) A copy of every annual employment report filed by the licensee or permittee for such station pursuant to the provisions of this part; and copies of all exhibits, letters and other documents filed as part thereof, all amendments thereto, and all correspondence between the permittee or licensee and the FCC pertaining to the reports after they have been filed and all documents incorporated therein by reference and which according to the provisions of §§ 0.451 through 0.461 of the rules are open for public inspection at the offices of the FCC.

(6) The Public and Broadcasting—A Procedure Manual (see FCC 74-942, 39 FR 32288, September 5, 1974).

(7) Letters received from members of the public as are required to be retained by § 73.1202.

(8) For commercial TV broadcast stations every three months a list of at least 5 to 10 community issues addressed by the station's programming during the preceding 3 month period. The list is to filed by the tenth day of each calendar quarter (e.g. July 10, October 10, January 10 and April 10) and should include a record of programming for the 3 preceding calendar months (e.g., the list filed by October 10 would be a record of programming from July 1 through September 30). The list shall include a brief narrative describing how each issue was treated. The description of the program should include, but is not limited to, the time, date and duration of each program, the title, and the type of programming in which the issue was treated. (e.g., public service announcements, a call-in program with a public official, etc.). These lists are to be retained for the entire license renewal period.

Note.—The first quarterly filing is to include at least the past three months of a station's programming performance. If the last annual problems/programs list was filed more than three months prior to October 1, 1984, the licensee must place in its public inspection file an issues/programs list encompassing the period of time between its last annual filing and October 1, 1984.

(9) For commercial AM and FM broadcast stations every three months a list of at least 5 to 10 community issues addressed by the station's programming during the preceding 3 month period. The list is to be filed by the tenth day of each calendar quarter (e.g. January 10, April 10, July 10, and October 10). The list shall include a brief narrative

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describing how each issue was treated, i.e., public service announcements or programs, giving a description of the programs including time, date and duration of each program. These lists are to be retained for the entire license renewal period.

Note.—The first quarterly filing is to include at least the past 3 months of a station's programming performance. If the last annual issues/programs list was filed more than 3 months prior to July 1, 1984, the licensee must place in its public inspection file an issues/programs list encompassing the period of time between its last annual filing and July 1, 1984.

(10) Each applicant for renewal of license shall, within 7 days of the last day of broadcast of the local public notice of filing announcements required pursuant to § 73.3580(h), place in the station's local public inspection file a statement certifying compliance with this requirement. The dates and times that the pre-filing and post-filing notices were broadcast and the text thereof shall be made part of the certifying statement.

(b) *Responsibility in case of assignment or transfer.* (1) In cases involving applications for consent to assignment of broadcast station construction permits or licenses, with respect to which public notice is required to be given under the provisions of § 73.3580 or § 73.3594, the file mentioned in paragraph (a) of this section shall be maintained by the assignor. If the assignment is consented to by the FCC and consummated, the assignee shall maintain the file commencing with the date on which notice of the consummation of the assignment is filed with the FCC. The file maintained by the assignee shall cover the period both before and after the time when the notice of consummation of assignment was filed. The assignee is responsible for obtaining copies of the necessary documents from the assignor or from the FCC files.

(2) In cases involving applications for consent to transfer of control of a permittee or licensee of a broadcast station, the file mentioned in paragraph (a) of this section shall be maintained by the permittee or licensee.

(c) *Station to which reports pertain.* The file need contain only applications, ownership reports, and related material that concern the station for which the file is kept. Applicants, permittees, and licensees need not keep in the file copies of such applications, reports, and material which pertain to other stations with regard to which they may be applicants, permittees, or licensees, except to the extent that such information is reflected in the materials required to be kept under the provisions of this section.

(d) *Location of records.* The file shall be maintained at the main studio of the station, or any accessible place (such as a public registry for documents or an attorney's office) in the community to which the station is or is proposed to be licensed, and shall be available for public inspection at any time during regular business hours.

(e) *Period of retention.* The records specified in paragraph (a)(4) of this section shall be retained for periods specified in § 73.1940 (2 years). The manual specified in paragraph (a)(6) of this section shall be retained indefinitely. The letters specified in paragraph (a)(7) of this section shall be retained for the period specified in § 73.1202 (3 years). The issues/program list specified in paragraphs (a) (8) and (9) of this section shall be retained for the term of license (5 and 7 years for TV and radio, respectively). The certification specified in paragraph (a)(10) of this section shall be retained for the period specified in § 73.3580 (for as long as the application to which it refers). The records specified in paragraphs (a) (1), (2), (3), and (5) of this section shall be retained as follows:

(1) The applicant for a construction permit for a new station shall maintain such a file so long as the application is pending before the FCC or any proceeding involving that application is pending before the courts. (If the application is granted, paragraph (e)(2) of this section shall apply.)

(2) The permittee or licensee shall maintain such a file so long as an authorization to operate the station is outstanding, and shall permit public inspection of the material as long as it is retained by the licensee even though the request for inspection is made after the conclusion of the required retention period specified in this paragraph. However, material which is voluntarily retained after the required retention time may be kept in a form and place convenient to the licensee, and shall be made available to the inquiring party, in good faith after written request, at a time and place convenient to both the party and the licensee. Applications and related material placed in the file shall be retained for a period of 7 years from the date the application is tendered for filing with the FCC with two exceptions: First, engineering material pertaining to a former mode of operation need not be retained longer than 3 years after a station commences operation under a new or modified mode; and second, all of the material shall be retained for whatever longer period is necessary to comply with the following requirements:

(i) Material shall be retained until final FCC action on the second renewal application following the application or other material in question; and

(ii) Material having a substantial bearing on a matter which is the subject of a claim against the licensee, or relating to an FCC investigation or a complaint to the FCC of which the licensee has been advised, shall be retained until the licensee is notified in writing that the material may be discarded, or, if the matter is a private one, the claim has been satisfied or is barred by statute of limitations. Where an application or related material incorporates by reference material in earlier applications and material concerning programming and related matters (section IV and related material), the material so referred to shall be retained as long as the application referring to it. If a written agreement is not incorporated in an application tendered for filing with the FCC, the starting date of the retention period for that agreement is the date the agreement is executed.

(f) Copies of any material required to be in the public file of any applicant for a construction permit, or permittee or licensee of any commercial TV or radio station shall be available for machine reproduction upon request made in person, provided the requesting party shall pay the reasonable cost of reproduction. Requests for machine copies shall be fulfilled at a location specified by the applicant, permittee or licensee, within a reasonable period of time which, in no event, shall be longer than seven days unless reproduction facilities are unavailable in the applicant's, permittee's, or licensee's community. The applicant, permittee or licensee is not required to honor requests made by mail, but may do so if it chooses.

3. Section 73.3527 is amended by revising introductory paragraph (a); restoring a note to follow paragraph (a)(2); by revising paragraph (a)(7); by redesignating the note following paragraph (a)(7) as Note 1, and adding a note to follow it, designated Note 2; by redesignating paragraph (a)(10) as (a)(9); by redesignating paragraphs (d) as (b), (e) as (c), (f) as (d), (g) as (e) and (h) as (f); and by revising (new) paragraphs (e) and (f). As revised the rule will read as follows:

§ 73.3527 Local public inspection file of noncommercial educational stations.

(a) *Records to be maintained.* Every applicant for a construction permit for a

new station in the noncommercial educational broadcast servcies shall maintain for public inspection a file containing the material in paragraph (a)(1) of this section. Every permittee or licensee of a station in the noncommercial educational broadcast services shall maintain for public inspection a file containing the material described in paragraphs (a) (1) through (9) of this section. The material to be contained in the file is as follows:

(1) A copy of every application tendered for filing with respect to which local public notice is required to be given under the provisions of § 73.3580 or § 73.3594; and all exhibits, letters and other documents tendered for filing as part thereof, all amendments thereto, copies of all documents incorporated therein by reference, all correspondence between the FCC And the applicant pertaining to the application after it has been tendered for filing, and copies of Initial Decisions and Final Decisions in hearing cases pertaining thereto, which according to the provisions of §§ 0.451 through 0.461 of the rules are open for public inspection at the offices of the FCC. Information incorporated by reference which is already in the local file need not be duplicated if the entry making the reference sufficiently identifies the information so that it may be found in the file, and if there has been no change in the document since the date of filing and the applicant, after making the reference, so states. If petitions to deny are filed against the application, and have been duly served on the applicant, a statement that such a petition has been filed shall appear in the local file together with the name and address of the party filing the petition.

Note.—Applications tendered for filing on or before May 13, 1965, which were subsequently designated for hearing after May 13, 1965, with local notice being given pursuant to the provisions of § 73.3594, and material related to such applications, need not be placed in the file required to be kept by this section. Materials tendered for filing after May 13, 1965, whihc contain major amendments to applications tendered for filing on or before May 13, 1965, which local notice of the amending application being given pursuant to the provisions of § 73.3580 need not be placed in the file required to be kept by this section.

(2) A copy of every application tendered for filing by the licensee or permittee for such station after May 13, 1965, pursuant to the provisions of this part, which is not included in paragraph (a)(1) of this section and which involves changes in program service, which requests an extension of time in which to complete construction of a new station, or which requests consent to involuntary assignment or transfer, or to voluntary assignment or transfer not resulting in a substantial change in ownership or control and which may be applied for on FCC Form 316; and copies of all exhibits, letters, and other documents filed as part thereof, all amendments thereto, all correspondence between the FCC and the applicant pertaining to the application after it has been tendered for filing, and copies of all documents incorporated therein by reference, which according to the provisions of §§ 0.451 through 0.461 of the rules are open for public inspection at the offices of the FCC. Information incorporated by reference which is already in the local file need not be duplicated if the entry making the reference sufficiently identifies the information so that it may be found in the file, and there has been no change in the document since the date of filing and the licensee, after making the reference so states. If petitions to deny are filed against the application, and have been duly served on the applicant, a statement that such a petition has been filed shall appear in the local file together with the name and address of the party filing the petition.

Note.—The engineering section of the applications mentioned in paragraphs (a) (1) and (2) of this section, and material related to the engineering section, need not be kept in the file required to be maintained by this paragraph. If such engineering section contains service contour maps submitted with that section, copies of such maps and information (State, county, city, street address, or other identifying information) showing main studio and transmitter location shall be kept in the file.

(3) A copy of contracts listed in ownership reports filed in accordance with the provisions of § 73.3615(e) and which according to the provisions of §§ 0.451 through 0.461 of the rules are open for public inspection at the offices of the FCC. Information incorporated by reference which is already in the local file need not be duplicated if the enty making the reference sufficiently identifies the information so that it may be found in the file, and if there has been no change in the document since the date of filing and the licensee or permittee, after making the reference, so states.

(4) Such records as are required to be kept by § 73.1940, "Broadcasts by candidates for public office.

(5) A copy of every annual employment report filed by the licensee or permittee for such station pursuant to the provisions of this Part; and copies of all exhibits, letters and other documents filed as part thereof, all amendments thereto, all correspondence between the permittee or licensee and the FCC pertaining to the reports after they have been filed and all documents incorporated therein by reference and which, according to the provisions of §§ 0.451 through 0.461 of the rules, are open for public inspection at the office of the FCC.

(6) The Public and Broadcasting: Revised Edition (see FCC 74–942, 39 FR 32288, September 5, 1974).

(7) For nonexempt noncommercial educational broadcast stations, every three months at list of at least 5 to 10 community issues addressed by the station's programming during the preceding 3 month period. The list is to be filed by the tenth day of each calendar quarter (e.g., July 10, October 10, January 10 and April 10) and should include a record of programming for the 3 preceding calendar months (e.g., the list filed by July 10 would be a record of programming from April 1 through June 30). This list shall include a brief narrative describing how each issue was treated. The description of the program should include, but is not limited to, the time, date and duration of each program, the title, and the type of programming in which the issue was treated, (e.g., public service announcements, a call-in program with a public official, etc.). These lists are to be retained for the entire license period.

Note 1.—The first quarterly filing is to include at least the past three months of a station's programming performance. If the last annual issues/programs list was filed more than three months prior to October 1, 1984, the licensee must place in its public inspection file an issues/programs list encompassing the period of time between its last annual filing and October 1, 1984.

Note 2.—For purposes of paragraph (a)(7) of this section, exempt applicants, permittees or licensees include those whose existing or prospective facilities are Class D FM stations or whose programming is wholly "Instructional."

(8) The lists of donors supporting specific programs.

(9) Each applicant for renewal of license shall, within 7 days of the last day of broadcast of the local public notice of filing announcements required pursuant to § 73.3580(h), place in the station's public inspection file a statement certifying compliance with this requirement. The dates and times that the pre-filing and post-filing notices were broadcast and the text thereof shall be made part of the certifying statement.

(b) *Responsibility in case of assignment or transfer.* (1) In cases involving applications for consent to assignment of broadcast station

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construction permits or licenses, with respect to which public notice is required to be given under the provisions of § 73.3580 or § 73.3594, the file mentioned in paragraph (a) of this section shall be maintained by the assignor. If the assignment is consented to by the FCC, and consummated, the assignee shall maintain the file commencing with the date on which notice of the consummation of the assignment is filed with the FCC. The file maintained by the assignee shall cover the period both before and after the time when the notice of consummation of assignment was filed. The assignee is responsible for obtaining copies of the necessary documents from the assignor or from the FCC files.

(2) In cases involving applications for consent to transfer of control of a permittee or licensee of a broadcast station, the file mentioned in paragraph (a) of this section shall be maintained by the permittee or licensee.

(c) *Station to which records pertain.* The file need contain only applications, ownership reports, and related material that concern the station for which the file is kept. Applicants, permittees and licensees need not keep in the file copies of such applications, reports and material which pertain to other stations with regard to which they may be applicants, permittees, or licensees, except to the extent that such information is reflected in the materials required to be kept under the provisions of this section.

(d) *Location of records.* The file shall be maintained at the main studio of the station, or at any accessible place (such as a public registry for documents or an attorney's office) in the community to which the station is or is proposed to be licensed, and shall be available for public inspection at any time during regular business hours.

(e) *Period of retention.* The records specified in paragraph (a)(4) of this section shall be retained for the period specified in § 73.1940 (two years). The manual specified in paragraph (a)(6) of this section shall be retained indefinitely. The issues/programs list specified (a)(7) shall be retained for the term of the license (5 years and 7 years for TV and radio respectively). The donor lists specified in paragraph (a)(8) of this section shall be retained for two years. The certification specified in paragraph (a)(9) of this section shall be retained for the period specified in § 73.3580 (for as long as the application to which it refers). The records specified in paragraphs (a)(1), (2), (3), and (5) of this section must be retained as follows:

(1) The applicant for a construction permit for a new station shall maintain such a file so long as the proceeding in which that application was filed is pending before the FCC or any proceeding involving that application is pending before the courts. (If the application is granted, paragraph (e)(2) of this section shall apply.)

(2) The permittee or licensee shall maintain a file of such records so long as an authorization to operate the station is outstanding, and shall permit public inspection of the material as long as it is retained by the licensee even though the request for inspection is made after the conclusion of the required retention period specified in this subparagraph. However, material which is voluntarily retained after the required retention time may be kept in a form and place convenient to the licensee, and shall be made available to the inquiring party, in good faith after written request, at a time and place convenient to both the party and the licensee. Applications and related material placed in the file shall be retained for a period of 7 years from the date the application is tendered for filing with the FCC, with two exceptions: First, engineering material pertaining to a former mode of operation need not be retained longer than 3 years after a station commences operation under a new or modified mode; and second, all of the material shall be retained for whatever longer period is necessary to comply with the following requirements:

(i) Material shall be retained until final FCC action on the second renewal application following the application or other material in question; and

(ii) Material having a substantial bearing on a matter which is the subject of a claim against the licensee, or relating to an FCC investigation or a complaint to the FCC of which the licensee has been advised, shall be retained until the licensee is notified in writing that the material may be discarded, or, if the matter is a private one, the claim has been satisfied or is barred by statutes of limitations. Where an application or related material incorporates by reference material in an earlier application and material concerning programming and related matters (section IV and related material), the material so referred to shall be retained as long as the application referring to it.

(f) Copies of any material required to be in the public file of any applicant for a construction permit, or permittee or licensee of any noncommercial educational TV or radio station shall be available for machine reproduction upon request made in person, provided the requesting party shall pay the reasonable costs of reproduction. Requests for machine copies shall be fulfilled at a location specified by the applicant, permittee or licensee, within a reasonable period of time which, in no event, shall be longer than seven days unless reproduction facilities are unavailable in the applicant's, permittee's or licensee's community. The applicant, permittee or licensee is not required to honor requests made by mail but may do so if it chooses.

[FR Doc. 85-5077 Filed 3-1-85; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR PART 73

[MM Docket No. 84-640; RM-4714]

FM Broadcast Station in Texarkana, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns Channel 292A to Texarkana, Arkansas, as that community's second FM broadcast service, in response to a petition filed by Charles D. Smith.

EFFECTIVE DATE: April 23, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Texarkana, Arkansas); MM Docket No. 84-640 RM-4714.

Adopted February 11, 1985.
Released February 22, 1985.
By the Chief, Policy and Rules Division.

1. Before the Commission for consideration is the *notice of proposed rule making*, 49 FR 27956, published July 9, 1984, issued in response to a petition filed by Charles D. Smith ("petitioner"), proposing the assignment of Channel 292A to Texarkana, Arkansas, as that community's second FM service. Comments in support of the proposal were filed by the petitioner in which he reiterated his intention to apply for the channel, if assigned. No oppositions to the proposal were received.

2. We believe the public interest would be served by assigning Channel 292A to Texarkana since it could provide a first competitive service in the community and an additional nighttime voice for the expression of diverse viewpoints.

3. Channel 292A can be assigned to Texarkana consistent with the minimum distance separation requirements of § 73.207(b) of the Commission's Rules provided the transmitter is restricted to an area 6.9 miles southeast of the community to avoid a co-channel conflict with Station KKBI(FM) in Broken Bow, Oklahoma.[1]

4. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Commission's Rules, It is ordered, That effective April 23, 1985, the FM Table of Assignments, § 73.202(b) of the Commission's Rules, is amended with respect to the community listed below, as follows:

City	Channel No.
Texarkana, Arkansas	292A, 295A

5. It is further ordered, That this proceeding is terminated.

6. For further information concerning the above, contact Nancy V. Joyner, Mass Media Bureau, (202) 634–6530.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division Mass Media Bureau.

[FR Doc. 85–5078 Filed 3–1–85; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 173

[Docket No. HM–174; Amdt. 173–183]

Coupler Vertical Restraint Systems

AGENCY: Materials Transportation Bureau (MTB), Research and Special Programs Administration, DOT.

ACTION: Emergency final rule.

SUMMARY: This amendment modifies § 173.31(a)(7) to permit certain tank cars to continue in service after February 28, 1985, without coupler vertical restraint systems conforming to 49 CFR 179.105–6. These provisions apply only to tank cars loaded before March 1, 1985, and to so-called empty tank cars subject to § 173.29. This action is necessary on an emergency basis because the MTB has been advised that a small percentage of the tank cars subject to the coupler requirement have not been retrofitted and are loaded and in transit, or are empty, but not cleaned and purged. MTB and FRA believe these remaining cars should be authorized to be moved, but not reloaded until they have been retrofitted with the required couplers.

EFFECTIVE DATE: February 28, 1985.

FOR FURTHER INFORMATION CONTACT: Philip Olekszyk (Office of Safety), Federal Railroad Administration, 400 Seventh Street, SW., Washington, D.C. 20590, (202) 426–0897.

SUPPLEMENTARY INFORMATION: On January 16, 1981, the Materials Transportation Bureau issued a final rule under Docket HM–174 (Amdt. No 173–145, 46 FR 8005) requiring, *inter alia*, that all DOT Specification tank cars be equipped with coupler vertical restraint systems in accordance with newly adopted requirements specified in 49 CFR 179.105–6. The required compliance date is February 28, 1985. Recently, MTB received six petitions for exemption requesting up to six additional months to retrofit approximately 4,100 remaining cars out of approximately 200,000 tank cars subject to the rule. The petitions were denied. Upon further consideration, MTB and the Federal Railroad Administration (FRA) believe some limited relief is warranted and that it should be provided by an amendment to the rule rather than by individual exemptions.

The limited relief provided by this emergency rule allows a tank car subject to the rule to be transported to destination for unloading if it was loaded prior to March 1, 1985. It also authorizes movement of empty cars that are subject to § 173.29. These exceptions are necessary because of the high probability that a significant number of the unretrofitted cars will be in transit after February 28, 1985, and some provision for their removal from transportation will be necessary. This situation is addressed on an emergency basis because the railroads, even though not responsible for retrofitting the cars involved, may be in violation of the rule upon its effective date merely because they are in possession of the cars at that time. For this reason, and due to possible safety problems in attempting to retrofit or clean and purge empty cars in consignee facilities, MTB and FRA believe there is merit in granting immediately the relief provided in this amendment.

List of Subjects in 49 CFR Part 173

Packaging and containers.

In consideration of the foregoing, § 173.31 of Part 173 of Title 49, Code of Federal Regulations, is amended as follows:

PART 173—SHIPPERS—REQUIREMENTS FOR SHIPMENTS AND PACKAGING

1. In § 173.31, paragraph (a)(7) is revised to read as follows:

§ 173.31 Qualification, maintenance, and use of tank cars.

(a) * * *

(7) After February 28, 1985, no person may load a DOT Specification tank car unless it is equipped with a coupler vertical restraint system in accordance with § 179.105–6 of this subchapter.

* * * * *

(49 U.S.C. 1803, 1804, 1808; 49 CFR 1.53, Appendix A to Part 1)

Note.—The Materials Transportation Bureau has determined that this emergency amendment is not a major rule under the terms of Executive Order 12291 or significant under DOT's regulatory procedures (44 FR 11034), and does not require a Regulatory Impact Analysis, nor does it require an environmental impact statement under the National Environmental Policy Act (42 U.S.C 4231, *et seq.*). A regulatory evalution was not prepared prior to consideration of issuance of this rule.

Based on information available concerning size and nature of entities likely to be affected, I certify that these amendments will not, as promulgated, have a significant economic impact on a substantial number of small entities.

Based on the potential adverse impact on rail carriers in possession of the subject tank cars should relief from the compliance date not be granted, I have determined that, under 5 U.S.C. 553(b)(3)(B), public notice and an opportunity to comment would not be in the public interest, and this rule may be made effective in less than 30 days.

Issued in Washington, D.C. on February 27, 1985.

L.D. Santman,

Director, Materials Transportation Bureau.

[FR Doc. 85–5137 Filed 3–1–85; 8:45 am]

BILLING CODE 4910–60–M

[1] The proposal herein does not provide for the 16 kilometers (10 miles) buffer to Station KYKX(FM) (Channel 289), Longview, Texas, since the petition was filed prior to the effective date of the new rules (March 1, 1984). See, *Memorandum Opinion and Order* in BC Docket No. 80–90, 49 FR 10260, published March 20, 1984.

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 21

Granting Accredited Institutional Members of the American Association of Zoological Parks and Aquariums a General Exception to the Migratory Bird Permit Requirements

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service amends its regulations promulgated under authority of the Migratory Bird Treaty Act to permit accredited institutional members of the American Association of Zoological Parks and Aquariums (AAZPA) to qualify for a general exception to the migratory bird permit requirements. This final rule enables zoological parks and aquariums that are accredited institutional members of AAZPA to acquire by gift or to purchase, possess, or transport, and by gift or sale dispose of lawfully acquired migratory birds or their progeny, parts, nests, or eggs without a permit, subject to the restrictions of 50 CFR 21.12(b). These actions should benefit the migratory bird resource through the production of captive-bred stock, thereby promoting knowledge useful to their conservation and reducing the demand for taking such species from the wild.

EFFECTIVE DATE: April 3, 1985.

FOR FURTHER INFORMATION CONTACT: Richard T. Marks, Branch of Investigations, Division of Law Enforcement, Fish and Wildlife Service, U.S. Department of the Interior, P.O. Box 28006, Washington, D.C. 20005, telephone: (202) 343–9242.

SUPPLEMENTARY INFORMATION:

Background

On June 7, 1984 (49 FR 23665), the Fish and Wildlife Service (Service) proposed the following amendment to federal regulations that allow general exceptions to the migratory bird permit requirements (50 CFR 21.12):

Amendment: To add "accredited institutional members of the American Association of Zoological Parks and Aquariums" to the list of exceptions noted in section 21.12(b) of Title 50, Code of Federal Regulations.

The proposed rule invited comments for thirty days ending August 6, 1984. During this time, seven comments were received from private individuals, individuals associated with AAZPA, and representatives of other special interest groups. Each comment has been considered in preparing this final rule. In addition, the Service has relied upon its substantial experience in developing and implementing programs affecting migratory birds.

The comments are summarized by topic and discussed in detail below, including the Service's response to them.

Using Accredited Institutional Membership in AAZPA As Exception Criterion

All of the three comments received in opposition to the proposed rule voiced dissatisfaction with using accredited institutional membership in AAZPA as the criterion to extending a general exception to migratory bird permit requirements.

The Service believes that the accredited institutional program of AAZPA which is set out in its Charter and Bylaws represents a set of sound and professionally based standards which serve the interests of both the public and the migratory bird resource. Article IV, Section 2 of AAZPA's bylaws defines "institutional members" as zoological parks, aquariums, wildlife parks, or oceanariums open to the general public with regular and predictable hours that constitute substantially more than a token opening so that access is reasonably convenient to the general public. Article III of AAZPA's charter further defines zoological parks and aquariums as permanent-type establishments, open to and administered for the public to provide education, recreation, and cultural enjoyment through the exhibition, conservation and preservation of the earth's fauna.

AAZPA requires that applicants for institutional membership must be sponsored by three Professional Fellows possessing extensive work and/or educational credentials and who are not employed at the applicant institution. Sponsorships must include written statements regarding the current animal care standards, exhibition techniques, educational programs, philosophies, and objectives of the institution, submitted within six months of the sponsor's visit to the institution. Applicants for institutional membership must also apply and qualify for accreditation. This process involves a thorough inspection of the applicant's facility to determine if the applicant has established and is maintaining professional standards and has met the qualitative evaluation of AAZPA's Accreditation Commission in light of these standards. The Accreditation Commission consists of nine Professional Fellow members of AAZPA who serve three year appointed terms. This Commission reviews periodically, but at least once every five years, the continuance of accreditation of all accredited institutions.

While the Service could establish standards and accreditation programs similar to those employed by AAZPA, such an action would not be feasible or desirable at the present time for the following reasons: First, the authorized personnel strength of the Division of Law Enforcement is such that the Division would not be able to implement such a national accreditation program in terms of processing applications, conducting on-site physical inspections, interviewing applicants, and periodically reviewing qualifications for relicensing and monitoring purposes. Such a labor-intensive function in light of present personnel strength and other responsibilities would adversely affect the quality of such a program.

Second, in view of the present de-emphasis on the role of government in the area of regulation, there is considerable merit to any self-regulating scheme which is considered effective and realistic towards helping to meet the responsibilities of the Service in terms of properly safeguarding the migratory bird resource. In this area AAZPA has taken the lead and established an accreditation program for zoological parks and aquariums during 1972, with the first accredited facilities receiving that status in 1974.

Granting Special Benefits to One Group

The general counsel for the Wildlife Coalition International also expressed a concern that the proposed rule grants a special benefit to the members of one private organization (AAZPA) at the expense of others.

While the Service recognizes that under the proposed rule special benefits would accrue to some accredited institutional members of AAZPA, this action should be viewed in light of the responsibilities the Service has to the migratory bird resource. In proposing this rule the Service determined that there are several zoological parks and aquariums that do not qualify for the general exception to the migratory bird permit requirements under present regulations but whose propagation of various migratory bird species (i.e., flamingos, ibises, etc.) benefits the migratory bird resource through the production of captive-bred birds, thereby reducing the demand for taking such species from the wild. The Service wants to encourage these zoological parks and aquariums, such as Sea World, Busch Gardens, and Discovery Island (Disney World), to continue these

activities by including them in the general exception to the migratory bird permit requirements. With such an exception, they would be authorized to buy and sell lawfully acquired migratory birds and their progeny, subject to the restrictions of 50 CFR 21.12(b), and recover expenses incurred to propagate them.

Furthermore, precedent does exist for extending benefits to certain private groups in the interest of benefiting the migratory bird resource. For example, in addition to 50 CFR 21.12(b), the Service has in place other regulations that enable certain migratory birds to be sold for profit: captive-reared mallard ducks (50 CFR 21.13), other captive-reared migratory waterfowl (50 CFR 21.14 and 21.15), and captive-bred raptors (50 CFR 21.30). The key element in each regulation, however, is that there is a system in place to try to insure that the privilege is not abused. In this regulatory exception, the AAZPA accreditation program provides such a system.

Additionally, while the soundness and professionalism of AAZPA's ten-year accreditation program is the basis for using accredited institutional membership in their organization as the criteria for this amendment to the general exception to the migratory bird permit requirements, this does not prevent other groups or organizations which have similar proven programs, histories, performance standards, and professional guidelines from fulfilling a similar function and responsibility by demonstrating the soundness of their program to the Service.

Delegation of Governmental Authority and Implication of the Power Such Delegation Will Grant to AAZPA

Amendment to the general exception to the migratory bird permit requirements will result only in the broadening of the criteria for the exception; it will not broaden the scope of commercial opportunities now permissible to organizations under the general exception. Thus, organizations which will qualify under this amendment will be authorized to buy and sell only lawfully acquired migratory birds and their progeny and only under restrictions imposed by 50 CFR 21.12(b). Excepted organizations continue to be required to purchase from, or sell to, only those persons or institutions holding appropriate MBTA permits or that qualify under applicable MBTA exemptions. Accurate records of all transactions conducted under authority of 50 CFR 21.12(b) must be kept and those records are subject to examination by the Service. It should also be noted that the general permit exception under the MBTA does not apply to bald and golden eagles. Nor does the general permit exception relieve anyone from restrictions, conditions, or requirements that may apply under other applicable laws. For instance, bald and golden eagles or birds listed as endangered or threatened under the Endangered Species Act of 1973 are still subject to the requirements found in 50 CFR Parts 22 and 17 respectively.

Additionally, AAZPA's institutional accreditation program, as well as its charter and bylaws which give rise to the accreditation program, will be continually reviewed by the Service. If changes should occur in any of these areas that would prove detrimental to the migratory bird resource, immediate and appropriate action would be taken by the Service.

Similarly, should the small number of organizations that would be extended an exception to the migratory bird permit requirements under this amendment abuse such an exception, the existence and purpose of the exception itself would be reexamined by the Service.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq. and 5 CFR Part 1320, "Controlling Paperwork Burdens on the Public".

Primary Author

The primary author of this final rule is Richard T. Marks, Division of Law Enforcement, U.S. Fish and Wildlife Service, Washington, D.C.

Determinations of Effects of Rules

The Department of the Interior has determined that this is not a major rule under Executive Order 12291. The Department has also certified that the rule will not have significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 801 et seq.).

Only a very small number of zoological parks and aquariums operated for profit are expected to qualify under these amendments for an exception to the migratory bird permit requirements. Based upon staff discussions and information received from representatives of AAZPA, no more than ten zoological parks and aquariums should be added to those already excepted. The net effect, of the regulatory change, however, should be a reduction in price that all zoological institutions pay for those migratory birds they are authorized to buy and sell. Zoological parks and aquariums operated for profit have already demonstrated that they have the resources and expertise available, and under this proposal would have additional incentive to establish propagation projects for species of migratory birds that have high interest among zoological parks generally.

The economic effect of this action is minimal because only a select group engaged in a narrow range of commercial activities is affected. Further, it is anticipated that the zoological parks and aquariums that meet the new criteria for exception to the general permit requirements will not actively or massively propagate migratory birds for commercial purposes. The mere broadening of the criteria for exception to the general permit requirements without broadening the scope of commercial opportunities should not create a sizeable market or cause any other significant economic effect on the entities engaged in the commercial activities permitted under the present regulations. The primary economic effect on the entities affected by this action would be on their ability to recover some of the costs involved in the propagation of migratory birds for exhibition, education, conservation, and scientific purposes.

These determinations are discussed in more detail in a Determination of Effects which has been prepared by the Service. A copy of that document may be obtained by contacting the person identified above under the caption "**FOR FURTHER INFORMATION CONTACT**".

National Environmental Policy Act

An environmental assessment was prepared in conjunction with this action. It is on file in the Service's Division of Law Enforcement, 1375 K Street, N.W., Suite 300, Washington, D.C. 20005, and may be examined during regular business hours. Single copies are also available upon request by contacting the person identified above under the caption "**FOR FURTHER INFORMATION CONTACT**". This assessment forms the basis for the decision that this final rule is not a major Federal action which would significantly affect the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969.

List of Subjects in 50 CFR Part 21

Exports, Imports, Reporting and recordkeeping requirements, Wildlife.

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Regulation Promulgation

For the reasons set out in the preamble, Subchapter B, Chapter I of Title 50, Code of Federal Regulations is amended as follows:

PART 21—MIGRATORY BIRD PERMITS

1. The authority citation for Part 21 reads as follows:

Authority: Migratory Bird Treaty Act, sec. 3, Pub. L. 65–186, 40 Stat. 755 (16 U.S.C. 704); sec. 3(h)(3), Pub. L. 96–616, 92 Stat. 3112 (16 U.S.C. 712).

§ 21.12 [Amended]

2. Amend § 21.12, paragraph (b) by adding the phrase "*accredited institutional members of the American Association of Zoological Parks and Aquariums (AAZPA)*" after the phrase "public zoological parks," and before the phrase "and public scientific or educational institutions."

Dated: January 2, 1985.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85–5106 Filed 3–1–85; 8:45 am]

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Proposed Rules

Federal Register
Vol. 50, No. 42
Monday, March 4, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Trade Time-Sequencing Standards and Exchange Audit Trail Systems

AGENCY: Commodity Futures Trading Commission.

ACTION: Extension of comment period.

SUMMARY: The Commodity Futures Trading Commission is extending the comment period on proposed amendments to regulations on trade time-sequencing standards and exchange audit trail systems from February 25, 1985, to April 26, 1985. This action is being taken to ensure that all interested parties have an opportunity to submit comments.

DATES: Notice is hereby given that all comments on the Commission's proposed amendments to regulation 1.35(g) (49 FR 50190, December 27, 1984) must be submitted by April 26, 1985.

FOR FURTHER INFORMATION CONTACT: Thomas M. McGivern, Attorney-Advisor, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Telephone: (202) 254–8955.

SUPPLEMENTARY INFORMATION: On December 27, 1984, the Commodity Futures Trading Commission ("Commission") published in the **Federal Register** proposed amendments to Commission regulation § 1.35(g). 49 FR 50190. The proposed amendments would require each contract market, within ninety days following the effective date of final regulations in this regard, to adopt and submit for Commission approval rules which would require the contract market to implement trade reconstruction systems consisting of the verifiable mechanical or electronic recordation of the time of trade execution to the nearest minute by or for each party to every transaction. The proposed amendment also would permit those contract markets which could not, within ninety days following the effective day of regulations adopted in this regard, adopt and submit for Commission approval rules for a verifiable mechanical or electronic trade reconstruction system, to instead submit for Commission approval interim rules which provide for an alternative trade reconstruction system which includes recordation by both parties to each transaction of the trade execution time to the nearest minute. The comment period on the proposed amendments to regulation § 1.35(g) expired on February 25, 1985.

By letter dated February 14, 1985, the Futures Industry Association and a number of commodity exchanges requested that the comment period be extended to permit an opportunity to address more adequately the issues raised by the Commission's proposal. In order to ensure that all interested parties have an opportunity to submit comments, the Commission has determined to grant a sixty-day extension of the comment period.

The Commission reemphasizes that commenters should specifically address the following substantive and implementation-related issues raised in the Commission's original **Federal Register** release, including, but not limited to, the following: (1) The standards set by the performance criteria established in the proposed amendments; (2) the adequacy of the time frames provided for implementation by exchanges of the required rules and systems; (3) whether the proposed alternative two-step implementation process is appropriate or a one step proposal is preferable; (4) the type and scope of research and development each exchange anticipates for full implementation of the amendments; (5) appropriate standards for Commission review of specific exchange plans for implementation of audit trail systems meeting Commission performance criteria; and (6) methods of verifying the accuracy of trade execution times captures under the proposed amendments which are currently available and which can be developed. The Commission again requests that comments directly relate to the commenter's particular situation. In the case of exchanges, comments should specifically relate to the various contracts and the operations of that exchange. In addition, the Commission again invites comments on any other methods of establishing an audit trail that could achieve a high degree of accuracy and reasonably independent verifiability.

Issued in Washington, D.C. on February 27, 1985, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 85–5146 Filed 3–1–85; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 154, 155, 156, 157, and 284

[Docket No. RM85–1–000, Phases II & III]

Natural Gas Pipeline Ratemaking, Risk, and Financial Implications After Partial Wellhead Decontrol

Issued: February 27, 1985.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Supplement to Notice of Inquiry and Notice of Public Conference.

SUMMARY: On January 18, 1985, the Federal Energy Regulatory Commission (Commission) issued a notice that deals with the next two phases of its inquiry into the effects on the natural gas industries of the Congressionally mandated transition to competitive pricing of natural gas at the wellhead. 50 FR 3801 (Jan. 28, 1985). The first notice sought information concerning the effect of partial decontrol of natural gas prices on the Commission's regulation of the interestate transportation of natural gas on behalf of non-owner shippers, that is, shippers who seek transportation on a pipeline system in which they do not have an ownership interest. The last notice combined phases two and three of the inquiry. The second phase covers issues relating to ratemaking and the third phase covers issues relating to risk and the financial implications for regulated pipelines.

In addition to permitting anyone to file written comments, the notice of inquiry for Phases II and III also invites interested persons to participate in a

public conference. This notice informs interested persons of the time, place and format of this public conference. This notice also supplements the last notice by requesting interested persons to include an executive summary of their comments and providing general format requirements for filed comments.

DATE: The public conference will be held on March 28 and 29 and will convene at 9 a.m. on each day. Requests to participate and the amount of time requested must be directed to the Secretary in writing on or before March 20, 1985. This request must be filed separately from any comments filed in this proceeding. Comments must be filed by 4:30 p.m. EST on March 11, 1985.

ADDRESS: The hearing will be held at: Hearing Room A Federal Energy Regulatory Commission 825 North Capitol Street, NE., Washington, D.C. 20426.

Requests to participate and questions regarding participation should be directed to: The Office of the Secretary, Federal Energy Regulatory Commission 825 North Capitol Street, NE. Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Kenneth Plumb, Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357-8400.

SUPPLEMENTARY INFORMATION: On January 18, 1985, the Commission issued a Notice of Inquiry that deals with the next two phases of its inquiry on transportation of natural gas for others.[1] The first phase of the inquiry requested comments and information concerning the effect of partial decontrol of natural gas prices on the Commission's regulation of the interstate transportation of natural gas on behalf of non-shipper shippers.[2] A non-owner shipper is a shipper who seeks transportration on a pipeline system in which it does not have an ownship interest. This notice was the first phase of an inquiry into the effects on the natural gas industries of the Congressionally mandated transition to competitive pricing of natural gas at the wellhead. The second phase of the inquiry seeks comments and information concerning the ratemaking issues surrounding the transportation of natural gas for others. Similarly, the third phase of the inquiry seeks comments and information concerning the risk and financial implication of transporting natural gas for others.

To facilitate the Commission's preparation for the public conference, commenters are urged to provide a 3-5 page executive summary of their positions on the issues raised in Phases II and III of this inquiry. Additionally, commenters should single space their comments, provide a concise description identifying the commenter, use the same numbering system as the Commission's inquiry when answering questions, and indicate by "N/A" when they have not answered a question.

In addition to permitting anyone to file written comments, the notice invites interested persons to participate in a public conference that will be held on March 28 and 29 and will convene at 9 a.m. on each day. The public conference will not be of a judicial or evidentiary nature. Persons requesting to speak will be divided into participant panels and will be permitted time to present prepared remarks. There will be no cross examination of persons presenting statements. However, the Commissioners may question these persons. In addition, anyone may submit to the presiding officer questions to be asked of persons on the participant panels. The presiding officer will determine whether the question is relevant and whether the time limitations permit it to be presented. Any further procedural rules will be announced by the presiding officer at the hearing. Transcripts of the hearing will be available in the public file for this proceeding, Docket No. RM85-1-000 (Phase II or Phase III) in the Commission's Office of Public Information, and may be ordered from that office.

As stated in the January 18, 1985, Notice, requests to participate in the hearing should be submitted in writing on or before March 20, 1985, to the Office of the Secretary, and it should request the amount of time required for the oral presentation. This request must be filed separately from any comments filed in this proceeding. Persons participating at the hearing should, if possible, bring 50 copies of their statement to be conference. A list of the participants in the conference will be available in the Commission's Office of Public Information and at the hearing room on the morning the conference is convened.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-5150 Filed 3-1-85; 8:45 am]

BILLING CODE 6717-01-M

[1] Natual Gas Pipeline Ratemaking, Risk, and Financial Implications After Partial Wellhead Decontrol, 50 FR 3801 (Jan. 28, 1985).

[2] Interstate Transportation of Gas for Others, 50 FR 114 (Jan. 2, 1985) (Notice of Inquiry, Phase I).

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD8-84-21]

Anchorage Ground, Lower Mississippi River

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering amending the achorage regulations on the Lower Mississippi River by enlarging the permanent anchorages in the vicinity of Ama, Louisiana, and Kenner, Louisiana. They will continue to be called the Ama and Kenner Bend Anchorages. This action is necessary to provide needed additional anchorage space for deep draft vessels.

DATE: Comments must be received on or before April 18, 1985.

ADDRESS: Comments should be mailed to Captain of the Port, New Orleans, LA, U.S. Coast Guard, 4640 Urquhart Street, New Orleans, LA 70117. The comments will be available for inspection or copying at the above address. Normal office hours are between 7:00 a.m. and 3:30 p.m. Monday through Friday, except holidays. Comments may also be hand delivered to this address.

FOR FURTHER INFORMATION CONTACT: LCDR R.E. FORD, Port Safety Officer, Captain of the Port, New Orleans, LA, U.S. Coast Guard, 4640 Urquhart Street, New Orleans, LA 70117, Tel: (504) 589-7118 .

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD8-84-21), the specific section of the proposal to which their comments apply, and give the reasons for each comment. Receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed.

The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The Principal persons involved in drafting this notice are LT T.L. McCARTY, Project Officer, c/o Commander, Eighth Coast Guard District (mps) and LT R.M. WALLAR, Project Attorney, c/o Commander, Eighth Coast Guard District (dl), Hale Boggs Federal Bldg., 500 Camp Street, New Orleans, LA 70130.

Discussion of Proposed Rule

In recent years, the Lower Mississippi River in general, particularly the New Orleans to Baton Rouge segment, has experienced considerably increased commercial development. As a result of this development, vessel traffic has increased on the narrow, twisting waterway which is affected by strong currents. In an effort to ease navigation in the area and to increase safety and facilitate commerce it is necessary that anchorages be relatively close to, and downriver from, the berths they serve. Because it is extremely difficult to predict when a vessel will actually vacate a berth, an incoming vessel may find no open berths upon arrival. If a vessel is then left with no downstream anchorage space, a hazardous situation may result. In addition, a greater distance between the anchorage and the berth provides a greater amount of non-productivity while the berth awaits arrival of the next vessel.

The expansion of the Ama and Kenner Bend Anchorages will increase anchorage space downriver from an area that contains many facilities. Anchoring upriver from facilities is unacceptable because vessels would have to "round down" and proceed past the facility and then turn back upriver. Rounding a vessel on a major waterway is an inherently hazardous maneuver that should be avoided when possible. Anchoring above a facility creates an unnecessary element of risk.

In addition, enlarging the Ama and Kenner Bend Anchorages will reduce overcrowding of the anchorages between New Orleans and Baton Rouge. The greater the occupancy of the anchorage, the closer together vessels must anchor. Because of the limited maneuverability of most merchant vessels, the risk of accident increases as vessels anchor closer to each other.

Economic Assessment and Certification

These Proposed Regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. This regulation will only slightly lengthen two existing anchorages (Kenner Bend by .4 mile, and Ama by .3 mile). The added length is not expected to have any significant effect on navigation and therefore it is determined that the impact will be minimal. It is believed, however, that any economic impacts provided by this regulation are expected to be positive as the lengthening of these anchorages should decrease vessel transit time and facilitate midstream cargo operations.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

PART 110—[AMENDED]

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 110 of Title 33, Code of Federal Regulations, as follows:

(1) By revising 33 CFR 110.195 (a)(17) and (a)(18) as follows:

§ 110.195 Mississippi River below Baton Rouge, LA including South and Southwest Passes.

(a) * * *

(17) Kenner Bend Anchorage. An area 0.9 miles in length along the right descending bank of the river, 700 feet wide, extending from mile 114.7 to mile 115.6 above Head of Passes.

(18) Ama Anchorage. An area 1.8 miles in length along the left descending bank of the river, 700 feet wide, extending from mile 115.5 to mile 117.3 above Head of Passes.

Authority: (33 U.S.C. 471; 49 CFR 1.46(c)(1); 33 CFR 1.05–1(g)).

Dated: February 27, 1985.

W. H. Stewart,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 85–5175 Filed 3–1–85; 8:45 am]

BILLING CODE 4910–14–M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 105–64

[ADM 7900.4]

Privacy Act of 1974

AGENCY: General Services Administration.

ACTION: Proposed rule.

SUMMARY: The General Services Administration proposes to amend 41 CFR Part 105–64 to clarify and modify certain provisions of the GSA regulations implementing the Privacy Act of 1974 and to reflect organizational changes within GSA. These changes will help individuals requesting records and offices handling these requests.

DATE: Comments are due by April 3, 1985.

ADDRESSES: Send comments to: General Services Administration (ATRIA), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Mr. William W. Hiebert, GSA Privacy Act Officer (202–535–7647).

SUPPLEMENTARY INFORMATION: Under § 105–64.201, Conditions of disclosure, the paragraph permitting certain records to be disclosed to a consumer reporting agency without written consent is added. On November 4, 1983, a new system of records was published in the **Federal Register** to allow GSA to assemble information on individuals who are indebted to the Government. This system allows disclosure of records to consumer reporting agencies.

On April 23, 1979, GSA published a final rule in the **Federal Register** (44 FR 23835) amending 41 CFR Part 105–64 to exempt the system of records GSA/ADM–24, Investigation and Personnel Security Case Files, from subsections of the Privacy Act of 1974.

On February 8, 1980, GSA published a notice in the **Federal Register** (45 FR 8722) to divide these systems into two systems. Investigation case files are still covered by GSA/ADM–24, while personnel security case files are covered by GSA/HRO–37, Security Staff Files. On November 30, 1981, the name was changed from Security Staff Files to Security Files (46 FR 58185). Exemptions for security files authorized by 41 CFR Part 105–64 were included in the system of records notice for GSA/HRO–37, but a revision to 41 CFR 105–64.602, identifying the new system of records was not made.

The General Services Administration has determined that this rule is not a major rule for the purpose of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or other; on significant adverse effects. The General Services Administration has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this

rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 105–64

Privacy.

For the reasons set forth in the preamble, 41 CFR Part 105–64 is revised as follows:

PART 105–64—REGULATIONS IMPLEMENTING THE PRIVACY ACT OF 1974

1. The authority citation for 41 CFR Part 105–64 reads as follows:

Authority: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)); 88 Stat. 1897 (5 U.S.C. 552a).

2. Part 105–64 is revised to read as follows:

Sec.

105–64.000 Scope of part.
105–64.001 Purpose.
105–64.002 Definitions.

Subpart 105–64.1—General Policy

105–64.101 Maintenance of records.
105–64.101–1 Collection and use.
105–64.101–2 Standards of accuracy.
105–64.102–3 Rules of conduct.
105–64.101–4 Safeguarding systems of records.
105–64.101–5 Inconsistent directives of GSA superseded.
105–64.102 Records of other agencies.
105–64.103 Subpoenas and other legal demands.

Subpart 105–64.2—Disclosure of Records

105–64.201 Conditions of disclosure.
105–64.202 Procedures for disclosure.
105–64.203 Accounting of disclosure.

Subpart 105–64.3—Individual Access to Records

105–64.301 Access procedures.
105–64.301–1 Form of requests.
105–64.301–2 Special requirements for medical records.
105–64.301–3 Granting access.
105–64.301–4 Denials of access.
105–64.301–5 Appeal of denial of access within GSA.
105–64.301–6 Geographic composition; addresses and telephone numbers of regional Administrative Services Division directors.
105–64.302 Fees.
105–64.302–1 Records available at a fee.
105–64.302–2 Additional copies
105–64.302–3 Waiver of fee.
105–64.302–4 Prepayment of fees over $25.
105–64.302–5 Form of payment.
105–64.302–6 Reproduction fee schedule.

Subpart 105–64.4—Requests to Amend Records

105–64.401 Submission of requests to amend records.
105–64.402 Review of requests to amend records.
105–64.403 Approval of requests to amend.
105–64.404 Denial of requests to amend.
105–64.405 Agreement to alternative amendments.
105–64.406 Appeal of denial of request to amend a record.
105–64.407 Statements of disagreement.
105–64.408 Judicial review.

Subpart 105–64.5—Reporting on New Systems and Altering Existing Systems

105–64.501 Reporting requirement.
105–64.502 **Federal Register** notice of establishment of new system or alteration of existing system.
105–64.503 Effective date of new systems of records or alteration of an existing system of records.

Subpart 105–64.6—Exemptions

105–64.601 General exemptions.
105–64.602 Specific exemptions.

Subpart 105–64.7—Assistance and Referrals

105–64.701 Requests for assistance and referral.

PART 105–64—REGULATIONS IMPLEMENTING THE PRIVACY ACT OF 1974

§ 105–64.000 Scope of part.

The policies and procedures for collecting, using, and disseminating records maintained by GSA are subject to 5 U.S.C. 552a, and defined in § 105–64.002. Policies and procedures governing availability of records in general are in Parts 105–60 and 61 of this chapter. This part also covers exemptions from dislosing personal information; procedures guiding persons who wish to obtain information, or to inspect or correct the content of records; accounting for disclosure of information; requirements for medical records; and fees.

§ 105–64.001 Purpose.

This part implements 5 U.S.C. 552a (Pub. L. 93–579), known as the Privacy Act of 1974 (referred to as the Act). This part states procedures for notifying an individual of a GSA system of records containing a record pertaining to him or her, procedures for gaining access to or contesting the content of records, and other procedures for carrying out the Act.

§ 105–64.002 Definitions.

For the purposes of Part 105–65; the terms listed below are defined as follows:

(a) Agency means agency as defined in 5 U.S.C. 552(e);

(b) Individual means a citizen of the United States or a legal alien admitted for permanent residence;

(c) Maintain means keep, collect, use, and disseminate;

(d) A record means any item, collection, or grouping of information an agency maintains about a person, including, but not limited to, his or her educational background, financial transactions, medical history, and employment or criminal history, and that contains his or her name or other identifying number or symbol such as a fingerprint, voiceprint, or photograph;

(e) A system of records means any group of records under the control of the agency from which information is retrieved by a person's name or by an identifying number, symbol, or other identifiers assigned to that individual;

(f) A Statistical record means an item of information maintained for statistical research or reporting purposes that is not used in making any determination about an identifiable person, except as provided by Section 8 of Title 13 U.S.C.;

(g) Routine use means using a record for the purpose for which it was intended;

(h) System manager means the GSA employee who maintains a system or records and who collects, uses, and disseminates the information in it;

(i) The subject individual means the person named or discussed in a record or the person to whom a record refers;

(j) Disclosure means transferring a record, a copy of a record, or the information contained in a record to someone other than the subject individual, or the reviewing of a record by someone other than the subject individual;

(k) Access means a transfer of a record, a copy of a record, or the information in a record to the subject individual, or the review of a record by the subject individual; and

(l) Solicitation means a request by an officer or employee of GSA for a person to provide information about himself or herself.

Subpart 105–64.1—General Policy

§ 105–64.101 Maintenance of records.

§ 105–64.101–1 Collection and use.

(a) *General.* The system manager (also called the manager) should collect information used for determining an individual's rights, benefits, or privileges under GSA programs directly from the subject individual if practical. The system manager should ensure that information collected is used only as intended by the Act and these regulations.

(b) *Soliciting information.* Managers must ensure that when information is solicited, the person is informed of the

authority for collecting it; whether providing it is mandatory or voluntary; the purpose for which it will be used; routine uses of the information; the effect on the individual, if any, of not providing the information. Heads of Service and Staff Offices and Regional Administrators must ensure that forms used to solicit information comply with the Act and these regulations.

(c) *Soliciting a social security number.* Before requesting a person to disclose his or her social security number, ensure either:

(1) The disclosure is required by Federal statute, or;

(2) Disclosure is required under a statute or regulation adopted before January 1, 1975, to verify the person's identity, and that it was part of a system of records in existence before January 1, 1975.

If soliciting a social security number is authorized under paragraph (c)(1) or (2) of this section, inform the person beforehand whether the disclosure is mandatory or voluntary, by what legal or other authority the number is requested, and the use that is to be made of it.

(d) *Soliciting information from third parties.* Officers or employees must inform third parties requested to provide information about another person of the reason for collecting the information.

§ 105–64.101–2 Standards of accuracy.

Managers should ensure that the records used by the agency to make determinations about an individual are maintained with the accuracy, relevance, timeliness, and completeness needed to ensure fairness to the individual.

§ 105–64.101–3 Rules of conduct.

Those who design, develop, operate, or maintain a system of records, or any record, must review 5 U.S.C. 552a and the regulations in this part and follow 41 CFR Part 105–735, Standards of Conduct, for protecting personal information.

§ 105–64.101–4 Safeguarding systems of records.

Managers must ensure that administrative, technical, and physical safeguards are established to ensure the security and confidentiality of records and to protect against possible threats or hazards which could be harmful, embarrassing, inconvenient, or unfair to any individual. They must protect personnel information contained in manual and automated systems of records by using the following safeguards:

(a) Storing official personnel folders and work folders in a lockable filing cabinet when not in use. The system manager may use an alternative storage system if it provides the same security as a locked cabinet.

(b) Designating other sensitive records that need safeguards similar to those described in paragraph (a) of this section.

(c) Permitting access to and use of automated or manual personnel records only to persons whose official duties require it, or to a subject individual or to his or her representative.

§ 105–64.101–5 Inconsistent directives.

Part 105–64 applies or takes precedence when any GSA directive disagrees with it.

§ 105–64.102 Records of other agencies.

(a) *Other agencies' records managed and administered by GSA.* Rules governing the maintenance of systems of records of agencies other than GSA, or held in the National Archives of the United States and in Federal records centers, are in Part 105–61 (Public use of records, donated historical materials, and facilities in the National Archives and Records Service).

(b) *Current records of other agencies.* If a GSA employee receives a request to review records that are the primary responsibility of another agency, but are maintained by or in the temporary possession of GSA, the employee refers the request to the other agency. Records in the custody of GSA that are the responsibility of the Office of Personnel Management (OPM) are governed by rules issued by OPM under the Privacy Act.

§ 105–64.103 Subpoenas and other legal demands.

Access to systems of records by subpoena or other legal process must meet the provisions of Subpart 105–60.6 of this title.

Subpart 105–64.2—Disclosure of Records

§ 105–64.201 Conditions of disclosure.

GSA employees may not disclose any record to a person or another agency without the express written consent of the subject individual unless the disclosure is:

(a) To GSA officials or employees who need the information to perform their official duties;

(b) Required by the Freedom of Information Act;

(c) For a routine use identified in the **Federal Register**;

(d) For Bureau of the Census use under Title 13 of the United States Code;

(e) To someone who has assured GSA in writing that the record is to be used solely for statistical research or reporting, and if it does not identify an individual;

(f) To the National Archives of the United States as a record that has historical or other value warranting permanent retention, or for evaluation by the Administrator of General Services or a designee to see whether the record has such value;

(g) To another agency or instrumentality under the jurisdiction or control of the United States for a civil or criminal law enforcement activity, if the head of the agency or instrumentality or the designated representative has made a written request to GSA specifying the part needed and the law enforcement agency seeking it;

(h) To a person showing compeling circumstances affecting someone's health and safety not necessarily the subject individual (Upon disclosure, a notification must be sent to the subject individual's last known address);

(i) To either House of Congress or to a committee or subcommittee (joint or of either House), to the extent that the matter falls within its jurisdiction;

(j) To the Comptroller General or an authorized representative while performing the duties of the General Accounting Office;

(k) Under an order of a court of competent jurisdiction; or

(l) To a consumer reporting agency under section 3(d) of the Federal Claims Collection Act of 1966 (31 U.S.C. 3711(f)(1)).

§ 105–64.202 Procedures for disclosure.

(a) On receiving a request to disclose a record, the manager should verify the requester's right to obtain the information under § 105–64.201. Upon verification, the manager must make the records available.

(b) If the manager decides the record can't be disclosed, he or she must inform the requester in writing and state that the denial can be appealed to the GSA Privacy Act Officer, General Services Administration (ATRAI), for a final decision.

§ 105–64.203 Accounting of disclosures.

(a) Except for disclosures made under § 105–64.201(a) and (b), an accurate account of each disclosure is kept and retained for 5 years or for the life of the record, whichever is longer. The date, reason, and type of information disclosed, as well as the name and address of the person or agency to whom you disclosed it are noted.

(b) The manager also keeps with the account of information disclosed:

(1) A statement justifying the disclosure;

(2) Any documentation related to disclosing a record for statistical or law enforcement use; and

(3) The written consent of the person concerned.

(c) Except when records are disclosed to agencies or instrumentalities for law enforcement under § 105–64.201(g) or from exempt systems (see Subpart 105–64.6), accounts of information disclosed must be opened to the person concerned, upon request. Procedures to request such access are given in the following subpart.

Subpart 105–64.3—Individual Access to Records

§ 105.64.301 Access procedures.

§ 105.64.301–1 Form of requests.

(a) A person who wants to see a record or any information concerning him or her that is contained in a system of records maintained in the GSA Central office should send a written request to the GSA Privacy Act Officer, General Services Administration (ATRAI), Washington, DC 20405. For records maintained in GSA regional offices, send the request to the Director, Administrative Services Division at the address shown in § 105–64.301–6.

(b) Requests must be made in writing and must be labeled Privacy Act Request both on the letter and on the envelope. The letter should contain the full name and identifying number of the system as published in the **Federal Register**; the full name and address of the subject individual; a brief description of the nature, time, place, and circumstances of the person's association with GSA; and any other information that would indicate whether the information is in the system of records. The 10-workday time limit for the agency to reply under § 105–64.301–3, begins when a request is received in the office of the official identified in this section.

(c) Managers may accept oral requests for access, if the requester is properly identified.

§ 105.64.301–2 Special requirements for medical records.

(a) A manager who receives a request for access to official medical records belonging to the Office of Personnel Management and described in Chapter 339, Federal Personnel Manual (records about entrance qualification, fitness for duty, or records filed in the official personnel folder), should refer the matter to a Federal medical officer for a decision under this section. If no medical officer is available, the manager should send the request and the medical reports to the Office of Personnel Management for a decision.

(b) If, the Federal medical officer believes the medical records requested by the subject individual discuss a condition that a physician would hesitate to reveal to the person, the manager may release the information only to a physician designated in writing by the subject individual, his or her guardian, or conservator. If the records contain information the physician would likely disclose to the person, the information may be released to anyone the person authorizes in writing to receive it.

§ 105–64.301–3 Granting access.

(a) Upon receiving a request for access to nonexempt records, the manager must make them available to the subject individual or acknowledge the request within 10 workdays after it is received, stating when the records will be available.

(b) If the manager expects a delay of more than the 10 days allowed, he should state the reason why in the acknowledgment.

(c) If a request for access does not contain enough information to find the records, the manager should request additional information from the individual and is allowed 10 more workdays after receiving it make the records available or to acknowledge receiving the request.

(d) Records are available during normal business hours at the offices where the records are maintained. Requesters should be prepared to identify themselves by signature and to show other identification verifying their signature.

(e) Managers may permit an individual to examine the original of a nonexempt record and, if asked, provide the person with a copy of the record. Fees are charged only for copies given to the person, not for copies made for the agency's convenience.

(f) A requester may pick up a record in person or receive it by mail, directed to an address provided in the request. The manager should not give a record to a third party to deliver to the subject individual, except medical records as outlined in § 105–43.301–2 or as described in paragraph (g) of this section.

(g) If a person wants to have someone else accompany him or her while reviewing a record or when obtaining a copy of it, he or she must first sign a statement authorizing the disclosure of the record. The system manager shall maintain this statement with the record.

(h) The procedure to review the account of disclosures is the same as the procedure for reviewing a record.

§ 105–64.301–4 Denials of access.

(a) A manager may deny access to a record only if rules published in the **Federal Register** state that it is in a system of records that may not be disclosed. These systems are described in Subpart 105–64.6.

(b) If a manager receives a request for access to a record in an exempt system of records, he or she should forward it to the Head of the Service or Staff Office or Regional Administrator, attaching an explanation and recommending the request be denied or granted.

(c) If the manager is the Head of a Service or Staff Office or a Regional Administrator, he or she retains the responsibility for granting or denying the request.

(d) The Head of the Service or Staff Office or Regional Administrator, in consultation with legal counsel and other officials concerned, should decide whether the requested record is exempt from disclosure and:

(1) If the record is not exempt, notify the system manager to grant the request under § 105–64.301–3; or

(2) If the record is part of an exempt system he or she should:

(i) Notify the requester that the request is denied, explain why it is denied, and inform the requester of his or her right to have GSA review the decision; or

(ii) Notify the manager to make the record available under § 105–64.301–3, even though it is in an exempted system.

(e) A copy of any denial of a request should be sent to the GSA Privacy Act Officer (ATRAI).

§ 105–64.301–5 Appeal of denial of access within GSA.

(a) A requester who is denied access, in whole or in part, to records pertaining to him or her may file an administrative appeal. Appeals should be addressed to the GSA Privacy Act Officer, General Services Administration (ATRAI), Washington, DC 20405, regardless whether the denial was made by a Central Office or a regional official.

(b) Each appeal to the Privacy Act Officer must be in writing. The appeal should be marked Privacy Act-Access Appeal, on the face of the letter and on the envelope.

(c) On receiving an appeal, the Privacy Act Officer consults with the manager, the official who made the denial, legal counsel, and other officials concerned. If the Privacy Act Officer, after consultation, decides to grant the

request, he or she notifies the manager in writing to grant access to the record under § 105–64.301–3, or grants access himself or herself and notifies the requester of that action.

(d) If the Privacy Act Officer decides the appeal should be rejected, he or she sends the request file and any appeal, with a recommendation, to the deputy Administrator for a final administrative decision.

(e) If the Deputy Administrator decides to grant a request, he or she promptly instructs the system manager in writing to grant access to the record under § 105–645.301–3. The Deputy Administrator sends a copy of the instructions to the Privacy Act Officer, who notifies the requester.

(f) If the Deputy Administrator rejects an appeal, he or she should promptly notify the requester in writing. This action constitutes the final administrative decision on the requst and should state:

(1) The reason for rejecting the appeal; and

(2) That the requester has the right to have a court review the final decision under § 105–64.408.

(g) The final decision must be made within 30 workdays from the date the appeal is received by the Privacy Act Officer. The Deputy Administrator may extend the time limit by notifying the requester in writing before the 30 days are up. The Deputy Administrator's letter should explain why the time was extended.

§ 105–64.301–6 Geographic composition; addresses and telephone number for regional Administrative Services Division directors.

Region 1

Boston (includes Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont) Telephone: 617–223–5212

Director, Administrative Services Division, General Services Administration (1BR), John W. McCormack Post Office and Courthouse, Boston, MA 02109

Region 2

New York (includes New Jersey, New York, the Commonwealth of Puerto Rico, and the Virgin Islands) Telephone: 212–264–8262

Director, Administrative Services Division, General Services Administration (2BR), 26 Federal Plaza, New York, NY 10278

Region 3

Philadelphia (includes Delaware, Maryland, Pennsylvania, Virginia, and West Virginia with the exception of the National Capital Region) Telephone: 215–597–7926

Director, Administrative Services Division, General Services Administration (3BR), Ninth and Market Streets, Philadelphia, PA 19107

Region 4

Atlanta (includes Alabama, Florida, Georgia, Kentucky, Mississipi, North Carolina, South Carolina, and Tennessee) Telephone: 404–221–3240

Director, Administrative Services Division, General Services Administration (4BR), 75 Spring Street, SW, Atlanta, GA 30303

Region 5

Chicago (includes Illinois, Indiana, Michigan, Ohio, Minnesota, and Wisconsin) Telephone: 312–353–8421

Director, Administrative Services Division, General Services Administration (5BR), 230 South Dearborn Street, Chicago, IL 60604

Region 6

Kansas City (includes Iowa, Kansas, Missouri, and Nebraska) Telephone: 816–374–7581

Director, Administrative Services Division, General Services Administration (6BR), 1500 East Bannister Road, Kansas City, MO 64131

Region 7

Forth Worth (includes Arkansas, Louisiana, New Mexico, Texas, and Oklahoma) Telephone: 817–334–2350

Director, Administrative Services Division, General Services Administration (7BR), 819 Taylor Street, Fort Worth, TX 76102

Region 8

Denver (includes Colorado, North Dakota, South Dakota, Montana, Utah, and Wyoming) Telephone: 303–776–2231

Director, Administrative Services Division, General Services Administration (8BR), Building 41, Denver Federal Center, Denver, CO 80225

Region 9

San Francisco, (includes Hawaii, California, Nevada, and Arizona) Telephone: 415–556–9130

Director, Administrative Services Division, General Services Administration (9BR), 525 Market Street, San Francisco, CA 95105

Region 10

Auburn, (includes Alaska, Idaho, Oregon, and Washington) Telephone: 206–931–7128

Director, Administrative Services Division, General Services Administration (10BR), GSA Center, Auburn, WA 98002

National Capital Region

Washington, DC (includes the District of Columbia, the counties of Montgomery and Prince Georges in Maryland; the city of Alexandria and the counties of Arlington, Fairfax, Loudoun, and Prince William in Virginia) Telephone: 202–472–1650

Director, Administrative Services Division, General Services Administration (WBR), Seventh and D Streets, SW, Washington, DC 20407

§ 105–64.302 Fees.

§ 105–64.302–1 Records available at a fee.

The manager shall provide one copy of a record to a requester for the fee stated in § 105–64.302–6.

§ 105–64.302–2 Additional copies.

A reasonable number of additional copies shall be provided for a fee if a requester cannot get copies made commercially.

§ 105–64.302–3 Waiver of fee.

The manager should make a copy of a record of up to 50 pages at no charge to a requester who is a GSA employee. The manager may waive the fee if the cost of collecting it is nearly as large as or greater than the fee, or if furnishing the record without charge is customary or in the public interest.

§ 105–64.302–4 Prepayment of fees over $25.

If a fee is likely to exceed $25, the manager notifies the person to pay the fee before GSA can make the records available. GSA will remit any overpayment or will send the requester a bill for any charge over the amount paid.

§ 105–64.302–5 Form of payment.

Copies must be paid for by check or money order made out to the General Services Administration and addressed to the system manager.

§ 105–64.302–6 Reproduction fee schedule.

(a) The fee for copying a GSA record (by electrostatic copier) of 8½ by 14 inches or less is 10 cents a page.

(b) The fee for copying a GSA record more than 8½ by 14 inches or one that does not permit copying by routine procedures is the same as that charged commercially.

Subpart 105–64.4—Requests To Amend Records

§ 105–64.401 Submission of requests to amend records.

A person who wants to amend a record containing personal information should send a written request to the GSA Privacy Act Officer. A GSA employee who wants to amend personnel records should send a written request to the General Services Administration, Director of Personnel (EP), Washington, DC 20405. It should show evidence of and justify the need to amend the record. Both the letter and the envelope should be marked "Privacy Act—Request to Amend Record".

§ 105–64.402 Review of requests to amend records.

(a) Managers must acknowledge a request to amend a record within 10 workdays after receiving it. If possible, the acknowledgment should state

whether the request will be granted or denied, under § 105–64.404.

(b) In reviewing a record in response to a request to amend, the manager should weigh the accuracy, relevance, timeliness, and completeness of the existing record compared to the proposed amendment to decide whether the amendment is justified. On a request to delete information, the manager should also review the request and the existing record to decide whether the information is needed by the agency under a statute or an Executive Order.

§ 105–64.403 Approval of requests to amend.

If a manager decides that a record should be amended, he must promptly correct it and send the person a corrected copy. If an accounting of disclosure has been kept, anyone who previously received the record must be informed of the substance of the correction and sent a copy of the corrected record. The manager should advise the Privacy Act Officer that the request to amend was approved.

§ 105–64.404 Denial of requests to amend.

(a) If a manager decides that amending a record is improper or that it should be amended in a different way, he or she refers the request and his or her recommendation to the Head of the Service or Staff Office or Regional Administrator through channels.

(b) If the Head of the Service or Staff Office or Regional Administrator decides to amend the record as requested, he or she should promptly return the request to the manager with instructions to make the amendment under § 105–64.403.

(c) If the Head of the Service or Staff Office or Regional Administrator decides not to amend the record as requested, he or she should promptly advise the requester in writing of the decision. The letter shall (1) state the reason for denying the request; (2) include proposed alternate amendments; (3) state the requester's right to appeal the denial; and (4) tell how to proceed with an appeal.

(d) The Privacy Act Officer must be sent a copy of the original denial of a request to amend a record.

§ 105–64.405 Agreement to alternative amendments.

If the letter denying a request to amend a record proposes alternate amendments and the requester agrees to them, he or she must notify the official who signed the letter. The official should promptly instruct the manager to amend the record under § 105–64.403.

§ 105–64.406 Appeal of denial of request to amend a record.

(a) A requester who is denied a request to amend a record may appeal the denial. The appeal should be sent to the General Services Administration, Privacy Act Office (ATRAI), Washington, DC 20405. If the request involves a record in a GSA employee's official personnel folder, as described in Chapter 293 of the Federal Personnel Manual, the appeal should be addressed to the Director, Bureau of Manpower Information Systems, Office of Personnel Management, Washington, DC 20415.

(b) The appeal to the Privacy Act Officer must be in writing and be received within 30 calendar days after the requester receives the letter stating the request was denied. It should be marked "Privacy Act—Appeal," both on the front of the letter and the envelope.

(c) On receiving an appeal, the Privacy Act Officer should consult with the manager, the official who made the denial, legal counsel, and other officials involved. If the Privacy Act Officer, after consulting with these officials, decides that the record should be amended as requested, he or she must promptly inform the manager to amend it under § 105–64.403 and shall notify the requester.

(d) If the Privacy Act Officer, after consulting with the officials listed in the above paragraph, decides to reject an appeal, he or she should send the file, with a recommendation, to the Deputy Administrator for a final administrative decision.

(e) If the Deputy Administrator decides to change the record, he or she should promptly instruct the manager in writing to amend it under § 105–64.403 and send a copy of the instruction to the Privacy Act Officer, who shall notify the requester.

(f) If the Deputy Administrator rejects an appeal, he or she should promptly notify the requester in writing. This is the final administrative decision on the request and should include:

(1) Why the appeal is rejected;

(2) Alternate amendments that the requester may accept under § 105–64.405;

(3) Notice of the requester's right to file a Statement of Disagreement that must be distributed under § 105–64.407; and

(4) Notice of the requester's right to seek court review of the final administrative decision under § 105–64.408.

(g) The final agency decision must be made within 30 workdays from the date the Privacy Act Officer receives the appeal. In unusal circumstances, the Deputy Administrator may extend this time limit by notifying the requester in writing before the 30 days are up. The notice should explain why the limit was extended.

§ 105–64.407 Statements of disagreement.

On receiving a final decision not to amend a record, the requester may file a Statement of Disagreement with the manager. The statement should explain why the requester believes the record to be inaccurate, irrelevant, untimely, or incomplete. The manager must file the statement with the record and include a copy of it in any disclosure of the record. The manager must also provide a copy of the Statement of Disagreement to any person or agency to whom the record has been disclosed if the disclosure was made under the accounting requirements of § 105–64.202.

§ 105–64.408 Judicial review.

For up to 2 years after the final administrative decision under § 105–64.301–4 or § 105–64.406, a requester may seek to have the court overturn the decision. A civil action must be filed in the Federal District Court where the requester lives or has his or her principal place of business, where the agency records are maintained, or in the District of Columbia.

Subpart 105–64.5—Reporting New Systems and Altering Existing Systems

§ 105–64.501 Reporting requirement.

(a) At least 90 calendar days before establishing a new system of records, the manager must notify the Associate Administrator for Policy and Management Systems. The notification must describe and justify each system of records. If the Associate Administrator decides to establish the system, he or she should submit a proposal, at least 60 days before establishing the system, to the President of the Senate, the Speaker of the House of Representatives, and the Director of the Office of Management and Budget for evaluating the effect on the privacy and other rights of individuals.

(b) At least 90 calendar days before altering a system of records, the responsible manager must notify the Associate Administrator for Policy and Management Systems. The notification must describe and justify altering the system of records. If the Associate Administrator decides to alter the system, he or she should submit a proposal, least 60 calendar days before altering the system, to the President of the Senate, the Speaker of the House of Representatives, and the Director of the

Office of Management and Budget for evaluating the effect on the privacy and other rights of individuals.

(c) Reports required by this regulation are exempt from reports control.

§ 105-64.502 Federal register notice of establishment of new system or alteration of existing system.

The Associate Administrator for Policy and Management Systems must publish in the **Federal Register** a notice of intent to establish or alter a system of records:

(a) If he or she receives notice that the Senate, the House of Representatives, and the Office of Management and Budget (OMB) do not object to establishing or altering a system of records, or

(b) If 30 calendar days after submitting the proposal neither OMB nor the Congress objects.

§ 105-64.503 Effective date of new systems of records or alteration of an existing system of records.

Where there is no objection to establishing or changing a system or records, it becomes effective 30 calendar days after the notice is published in the **Federal Register**.

Subpart 105-64.6—Exemptions

§ 105-64.601 General exemptions.

The following systems of records are exempt from the Privacy Act of 1974, except subsections (b); (c)(1) and (2); (e)(4)(A) through (F); (e)(6), (7), (9), (10), and (11); and (i) of the Act:

(a) Incident Reporting System, GSA/PBS-3.

(b) Investigation Case Files, GSA/ADM-24.

The systems of records GSA/PBS-3 and GSA/ADM-24 are exempt to the extent that information in them relates to enforcing the law, including police efforts to prevent, control, or reduce crime or to apprehend criminals; to the activities of prosecutors, courts, and correctional probation, pardon, or parole authorities; and to (1) information compiled to identify criminal offenders and alleged offenders, consisting of records of arrests, disposition of criminal charges, sentencing, confinement, release, parole, and probation; (2) information compiled for a criminal investigation, including reports of informants and investigators that identify a person; or (3) reports that identify a person and were prepared while enforcing criminal laws, from arrest or indictment through release from parole. The law exempts these systems to maintain the effectiveness and integrity of the Federal Protective Service and the Office of Inspector General.

§ 105-64.602 Specific exemptions.

The following systems of records are exempt from subsections (c)(3); (d); (e)(1); (e)(4)(G), (H), and (I); and (f) of the Privacy Act of 1974:

(a) Incident Reporting System, GSA/PBS-3.

(b) Investigation Case Files, GSA/ADM-24.

(c) Security Files, GSA/HRO-37.

The systems are exempt (1) if they contain investigatory material compiled for law enforcement. However, if anyone is denied a right, privilege, or benefit for which they would otherwise be eligible because of the material, it should be provided to the person, except if it discloses the identity of a Government source of information which there is an express promise of confidentiality or before the effective date of this section, under an implied promise of confidentiality and (2) investigatory material compiled solely to decide suitability, eligibility, or qualification for Federal employment, military service, Federal contracts, or access to classified information, when disclosing the material would reveal the identity of a confidential Government informant, or prior to the effective date of this section, under an implied promise that their identity is to be held in confidence. The systems are exempted to maintain the effectiveness and integrity of investigations conducted as part of the Federal Protective Service, Office of Inspector General, and Office of Internal Security law enforcement duties or their responsibilities in the areas of Federal employment, Government contracts, and access to security classified information.

Subpart 105-64.7—Assistance and Referrals

§ 105-64.701 Requests for assistance and referral.

Requests for assistance and referral to a system manager or other GSA employee charged with implementing these regulations are made to the GSA Privacy Officer (ATRAI), General Services Administration, Washington, DC 20405.

Dated: February 5, 1985.

William A. Clinkscales,

Associate Administrator for Policy and Management Systems.

[FR Doc. 85-5113 Filed 3-1-85; 8:45 am]

BILLING CODE 6820-34-M

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Notices

Federal Register
Vol. 50, No. 42
Monday, March 4, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

International Trade Administration

The MCTL Implementation Technical Advisory Committee; Partially Closed Meeting

A meeting of the MCTL Implementation Technical Advisory Committee will be held March 20, 1985, 9:30 a.m., Herbert C. Hoover Building, Room 6802, 14th Street and Constitution Avenue, N.W., Washington, D.C. The Committee will advise and assist the Office of Export Administration in the implementation of the Military Critical Technologies List (MCTL) into the Export Administration Regulations and provide for continuing review to update the Regulations as needed.

General Session

1. Opening remarks by Deputy Assistant Secretary Walter J. Olson.
2. Overview of Export Administration: Director, Office of Export Administration, John K. Boidock.
3. Election of Chairman.
4. Presentation of papers or comments by the public.
5. MCTL Project—Department of Defense.
6. Review of Department of Commerce MCTL Implementation Program.
7. Scientific communications/GTDA: OSTP, A. Pettifor.
8. Report on ICOTT activities—MITAC Chairman

Executive Session

9. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 19, 1985, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government In The Sunshine Act, Pub. L. 94–409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in U.S.C. 552b(c) (1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Telephone: 202–377–4217. For further information or copies of the minutes contact Margaret A. Cornejo 202–377–2583.

Dated: February 27, 1985.

Milton M. Baltas,

Director, Technical Programs Staff, Office of Export Administration.

[FR Doc. 85–5154 Filed 3–1–85; 8:45 am]

BILLING CODE 3510–DT–M

Decision on Application for Duty-Free Entry of Scientific Instrument; Decision on Application

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No. 84–299. Applicant: Boston University School of Medicine, Boston, MA 02118. Instrument: Inductively Coupled Plasma Mass Spectrometer. Manufacturer: SCIEX, Inc., Canada. Intended use: See notice at 49 FR 40069.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides measurements of isotope ratios of iron, copper or zinc, at natural abundance in solution, with a standard deviation no larger than 1.0 percent. The National Institutes of Health advises in its memorandum dated January 3, 1985 that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 85–5151 Filed 3–1–85; 8:45 am]

BILLING CODE 3510–DS–M

Decision on Application for Duty-Free Entry of Scientific Instrument; Cornell University

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed beteen 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No. 84–307. Applicant: Cornell University, Ithaca, NY 14853. Instrument: UHV 3-Axis Sample Manipulator. Manufacturer: High Voltage Engineering Europa B.V., The Netherlands. Intended use: See notice at 49 FR 42775.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign article is an accessory, to be used in an ultra-high vacuum chamber, providing a sample positioning accuracy (angular non-

linearity) of ±0.05 degrees and a reproducibility of 0.03 degrees over a 25 degree range of rotation. The National Bureau of Standards advises in its memorandum dated January 7, 1985 that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 85-5152 Filed 3-1-85; 8:45 am]

BILLING CODE 3510-DS-M

Decision on Application for Duty-Free Entry of Scientific Instrument; University of Wisconsin-Madison

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No. 84-322. Applicant: University of Wisconsin-Madison, Madison, WI 53706. Instrument: Infrared Interferometer System, Model BBDA 2.01-1. Manufacturer: Bomem, Inc., Canada. Intended use: See notice at 49 FR 42775.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides high-resolution interferometric measurements of temperature and humidity from a geostationary-altitude platform. The National Bureau of Standards advises in its memorandum dated December 5, 1984 that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 85-5153 Filed 3-1-85; 8:45 am]

BILLING CODE 3510-DS-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Import Limit and Certification Requirements for Certain Cotton, Wool, and Man-Made Fiber Sweaters Assembled in Guam From Imported Parts

February 27, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on April 15, 1985. For further information contact Claire McDermott, International Trade Specialist (202) 377-4212.

Background

Effective on April 15, 1985, cotton, wool and man-made fiber sweaters in Categories 345, 445, 446, 645 and 646, which are determined by the U.S. Customs Service to be products of foreign countries or foreign territories and exported from the U.S. insular possession of Guam and are certified to have been assembled in Guam, may be entered into the United States for consumption, or withdrawn from warehouse for consumption, in an amount not to exceed 160,000 dozen. This limited exception will be effective for sweaters exported from Guam during the period which began on November 1, 1984 and extends through October 31, 1985.

A certification will be required and will be issued by the authorities in Guam prior to exportation as verification of assembly in Guam. A facsimile of the certification stamp is published as an enclosure to the letter to the Commissioner of Customs which follows this notice.

For those sweaters properly certified, no export visa or license will be required from the country of origin of the merchandise, and imports entered under this procedure will not be charged to limits established for exports from the country of origin. Exports of sweaters in Categories 345, 445, 446, 645 and 646, which are not accompanied by a certification and those in excess of 160,000 dozen, will require the appropriate visa or export license from the country of origin and will be subject to any other applicable restriction.

This is an interim arrangement which is subject to change pending further review, including necessary changes which may result from the issuance of final Customs regulations on country of origin determinations.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1985).

To facilitate transition to the new procedure, importers entering or withdrawing goods from warehouse for consumption in the United States before April 15, 1985, which have been exported on and after November 1, 1984, can obtain waivers from the certification requirement by addressing a request to: Office of Textiles and Apparel, International Agreements and Monitoring Division, Room 3110, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, D.C. 20230, Attention: Waivers.

The following information should be included:

Port of Entry (indicating whether seaport or airport)
Name and Address of Importer
Name and Telephone Number of Customs Broker
Description of Merchandise
Category and TSUSA Number
Quantity (Units as set out in TSUSA)
Entry Number or Bill of Lading Number
Name of Carrier
Date of Export
Exporter.

Any waiver will be subject to the Office of Textiles and Apparel receiving confirmation from proper authorities in Guam. Information included in any request for a waiver is subject to Section 1001 of Title 181 of the U.S. Code, which provides penalties for making false

statements to any department of the United States Government.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

February 27, 1985.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

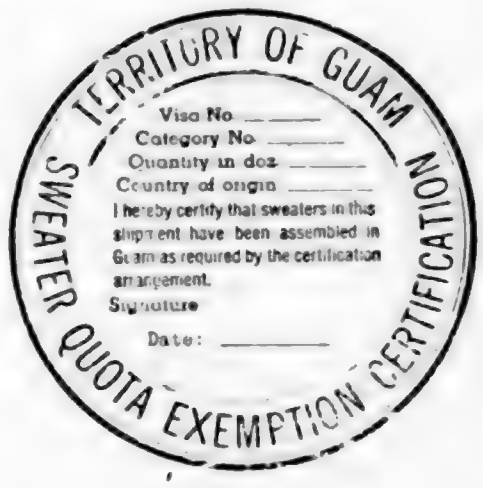
Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, effective on April 15, 1985, you are directed to permit entry or withdrawal from warehouse for consumption in the United States of 180,000 dozen of cotton, wool and man-made fiber textile products in Categories 345, 445, 446, 645, and 646, the product of any foreign country or foreign territory, as determined under Customs Regulation Part 12, Section 12.130, and which have been certified as assembled in Guam and exported to the United States during the twelve-month period which began on November 1, 1984 and extends through October 31, 1985. You are directed not to require any otherwise applicable export visa or license and not the charge against any otherwise applicable import restriction sweaters subject to this provision. A certification will be issued by the aurthorties in Guam prior to exportation as verification of assembly in Guam. A facsimile of the certification stamp is enclosed.

Imports of cotton, wool and man-made fiber textile products in Categories 345, 445, 446, 645 and 646 assembled on Guam, but not of Guam origin, which are not accompanied by a certification and those in excess of 180,000 dozen which have been exported during the twelve-month period which began on November 1, 1984 and extends through October 31, 1985 will require the appropriate visa or export license from the country of origin and will be charged to any applicable quota.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26822), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1985).

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,
Walter C. Lenahan,
Chairman, Committee for the Implementation of Textile Agreements.



[FR Doc. 85-5155 Filed 3-1-85; 8:45 am]
BILLING CODE 3510-DR-M

Import Limit and Certification Requirements for Certain Cotton, Wool, and Man-Made Fiber Sweaters Assembled in the Commonwealth of the Northern Marianas Islands (CNMI) From Imported Parts

February 27, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on April 15, 1985. For further information contact Claire McDermott, International Trade Specialist, (202) 377–4212.

Background

Effective on April 15, 1985, cotton, wool and man-made fiber sweaters in Categories 345, 445, 446, 645 and 646, which are determined by the U.S. Customs Service to be products of foreign countries or foreign territories and exported from the Commonwealth of the Northern Marianas Islands (CNMI) and are certified to have been assembled in the CNMI, may be entered into the United States for consumption, or withdrawn from warehouse for consumption, in an amount not to exceed 70,000 dozen. This limited exception will be effective for sweaters exported from the CNMI during the period which began on November 1, 1984 and extends through October 31, 1985.

A certification will be required and will be issued by the authorities in the CNMI prior to exportation as verification of assembly in the CNMI. A facsimile of the certification stamp will be published in the **Federal Register** as soon as it is received from DNMI authorities.

For those sweaters properly certified, no export visa or license will be required from the country of origin of the merchandise, and imports entered under this procedure will not be charged to limits established for exports from the country of origin. Exports of sweaters in Categories 345, 445, 446, 645 and 646, which are not accompanied by a certification and those in excess of 70,000 dozen, will require the appropriate visa or export license from the country of origin and will be subject to any other applicable restriction.

This is an interim arrangement which is subject to change pending further review, including necessary changes which may result from the issuance of final Customs regulations on country of origin determination.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26822), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1985).

To facilitate transition to the new procedure, importers entering or withdrawing goods from warehouse for consumption in the United States before April 15, 1985, which have been exported on and after November 1, 1984, can obtain waivers from the certification requirements by addressing a request to: Office of Textiles and Apparel, International Agreements and Monitoring Division, Room 3110, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, D.C. 20230, Attention: Waivers.

The following information should be included:

Port of Entry (indicating whether seaport or airport)
Name and Address of Importer
Name and Telephone Number of Customs Broker
Description of Merchandise
Category and TSUSA Number
Quantity (Units as set out in TSUSA)

Entry Number or Bill of Lading Number
Name of Carrier
Date of Export
Exporter.

Any waiver will be subject to the Office of Textiles and Apparel receiving confirmation from proper authorities in the CNMI. Information included in any request for a waiver is subject to Section 1001 of Title 181 of the U.S. Code, which provides penalties for making false statements to any department of the United States Government.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

February 27, 1985.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, effective on April 15, 1985, you are directed to permit entry or withdrawal from warehouse for consumption in the United States of 70,000 dozen cotton, wool and man-made fiber textile products in Categories 345, 445, 446, 645, and 646, the product of any foreign country or foreign territory, as determined under Customs Regulation Part 12, section 12.130 and which have been certified as assembled in the Commonwealth of the Northern Marianas Islands (CNMI) and exported to the United States during the twelve-month period which began on November 1, 1984 and extends through October 31, 1985. You are directed not to require any otherwise applicable export visa or license and not to charge against any otherwise applicable import restriction sweaters subject to this provision. A certification will be issued by the authorities in the CNMI prior to exportation as verification of assembly in the CNMI. A facsimile of the certification stamp will be provided when received from authorities in the CNMI.

Imports of cotton, wool and man-made fiber textile products in Categories 345, 445, 446, 645 and 646 assembled in the CNMI, but not of CNMI origin, which are not accompanied by a certification and those in excess of 70,000 dozen, which have been exported during the twelve-month period which began on November 1, 1984 and extends through October 31, 1985 will require the appropriate visa or export license from the country of origin and will be charged to any applicable quota.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1985).

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-5156 Filed 3-1-85; 8:45 am]

BILLING CODE 3510-DR-M

Requesting Public Comment on Bilateral Consultations With the Government of the People's Republic of China Concerning Category 359pt. (Cotton Vests)

February 27, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on March 5, 1984. For further information contact Jane Corwin, International Trade Specialist (202) 377-4212.

Background

On January 31, 1985, pursuant to the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983 between the Governments of the United States and the People's Republic of China, the Government of the United States requested consultations concerning imports into the United States of cotton vests in Category 359pt. (only TSUSA numbers 379.0654, 379.0258, 379.3949, 379.5700, 379.5820, 383.0648, 383.0652, 383.4200 and 383.4320), produced or manufactured in China and exported to the United States. A summary market disruption statement concerning this category follows this notice.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1985).

Anyone wishing to comment or provide data or information regarding the treatment of this category under the agreement with the People's Republic of China, or on any other aspects thereof, or to comment on domestic production or availability of textile products included in this category, is invited to submit such comments or information in ten copies to Mr. Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C., and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Pursuant to the terms of the bilateral agreement, the People's Republic of China is obligated under the consultation provision to limit its exports to the United States of this product during the ninety-day period which began on January 31, 1985 and extends through May 1, 1985 to the following amount:

Category	90-day level
359pt	293,421 pounds (Jan. 31-May 1, 1985).

The People's Republic of China is also obligated under the bilateral agreement, if no mutually satisfactory solution is reached during consultations, to limit its exports to the United States during the twelve months following the ninety-day consultation period to the following amount:

Category	12-month level
359pt	879,414 pounds (May 2, 1985-May 1, 1986).

The United States Government has decided, pending a mutually satisfactory solution, to control imports of textile products in Category 359pt., exported during the ninety-day period at the level described above. The United States

remains committed to finding a solution concerning this category. Should such a solution be reached in consultations with the Government of the People's Republic of China, further notice will be published in the **Federal Register**.

In the event the limit established for Category 395pt. for the ninety-day period is exceeded, such excess amounts, if allowed to enter at the end of the restraint period shall be charged to the level (described above) defined in the agreement for the subsequent twelve-month period.

SUPPLEMENTARY INFORMATION: On December 28, 1984 a letter to the Commissioner of Customs was published in the **Federal Register** (49 FR 50432) from the Chairman of the Committee for the Implementation of Textile Agreements which established restraint limits for certain categories of cotton, wool and man-made fiber textile products, produced or manufactured in the People's Republic of China and exported during 1985. The notice document which preceded that letter referred to the consultation mechanism which applies to categories of textile products under the bilateral agreement, such as Category 359pt. which is not subject to a specific ceiling and for which a level may be established during the year. In the letter published below, pursuant to the bilateral agreement, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption, or withdrawl from warehouse for consumption, of apparel products in Category 359pt., produced or manufactured in the People's Republic of China and exported during the indicated ninety-day period, in excess of the designated level.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

China—Market Statement

Category 359pt.—Cotton Vests

January 1985.

Cotton vest imports in Category 359pt. from China tripled during the fist eleven months of 1984 to 92,614 dozen and was eight times greater than the 11,496 dozen imported in 1981. China accounted for 14 percent of the Category 359pt. increase from all sources during January–November 1984. The increase in these imports from China alone was twice as large as total U.S. cotton vest production. The import to production ratio was 965.6 percent in 1983 compared to 205.3 percent in 1981.

February 27, 1985.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983, between the Governments of the United States and the People's Republic of China; and in accordance with the provisions in Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on March 5, 1985, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Category 359pt., [1] "produced or manufactured in the People's Republic of China and exported during the ninety-day period which began on January 31, 1985 and extends through May 1, 1985, in excess of the following level of restraint:

Category	90 day level [2]
359pt. [1]	293,421 pounds.

[1] In Category 359, only TSUSA numbers 379.0654, 379.0258, 379.3949, 379.5700, 379.5820, 383.0648, 383.0652, 383.4200 and 383.4320.
[2] The level has not been adjusted to reflects any imports exported after January 30, 1985.

Textile products in Category 359pt.,[1] which have been exported to the United States prior to the first day of the indicated ninety-day period shall not be subject to this directive.

Textile products in Category 359pt.[1] which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1848(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1984 (48 FR 56607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1985).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign exception to the rulemaking provisions of 5 U.S.C. 553.

[1] In Category 359, only TSUSA numbers 379.0654, 379.0258, 379.3949, 379.5700, 379.5820, 383.0648, 383.0652, 383.4200 and 383.4320.

Sincerely,

Walter C. Lenaham,

Chairman, Committee for the Implementation of Textile Agreements

[FR Doc. 85–5157 Filed 3–1–85; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Blue Ribbon Panel on Sizing DoD Medical Treatment Facilities; Open Meeting

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of section (a) of section 10 of Pub. L. 92–463, as amended by section 5 of Pub. L. 94–409, notice is hereby given that an open meeting of the Blue Ribbon Panel on Sizing DoD Medical Treatment Facilities has been scheduled as follows:

DATE: March 14, 1985, 8:30 a.m. to 5:00 p.m.

ADDRESS: Crystal City Marriott Hotel, 1999 Jefferson Davis Hwy, Arlington, VA. Please call (202) 653–0080 for reservation.

FOR FURTHER INFORMATION CONTACT: LTC Michael Averbuch, Deputy Staff Director, Blue Ribbon Panel on Sizing DoD MTF c/o ASD (HA), Room 3E349, The Pentagon, Washington, D.C. 20301 [(202) 653–0080/0081].

SUPPLEMENTARY INFORMATION: The panel meeting will concentrate on presentation of information related to costs and productivity in the Military Health Care System. The meeting is open to the public.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

February 27, 1985.

[FR Doc. 85–5142 Filed 3–1–85; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirements Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number, if applicable; (3) Abstract statement of the needs for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the

number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

Revision

DoD Far Supplement Part 28 and Related Clauses in Part 52.228

Information concerns certain data required to enable processing and/or monitoring of accident reports/insurance claims relating to various insurance provisions including but not limited to war hazard losses, aircraft/missile accidents, and munitions accidents.

Reporting is necessary to permit government followup actions and/or processing of claims.

Business or others for profit/small businesses or organizations.
Responses 1,850.
Burden hours 1,850.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone number (202) 746–0933.

FOR FURTHER INFORMATION CONTACT: Mr. Fred J. Kohout, OUSDRE(AM)CP, Room 3D116, Pentagon, Washington, D.C. 20301, telephone (202) 697–8334. This is a revision of an existing collection.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Mr. Kohout.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 85–5123 Filed 3–1–85; 8:45 am]

BILLING CODE 3810–01–M

DEARTMENT OF DEFENSE

Department of the Air Force

Public Information Collection Requirements Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number, if appliable; (3) Abstract statement of the needs for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

Extension

Air Force Academy Request for Secondary School Transcript (USAFA Form 146)

USAFA Form 146 is used to collect information about the personal background of applicants for admission to the Air Force Academy. The information is collected from the applicants and is used by Academy officials in the selection of candidates for admission to the Academy.

Individuals
Responses 9400
Burden hours 4700.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Office, Room 3235, New Executive Officer Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone number (202) 746–0933.

FOR FURTHER INFORMATION CONTACT: Major Daniel E. Hancock, HQ USAFA/RR, Colorado Springs, CO 80840–5651, telephone number (303) 472–2520.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Major Hancock.

Linda M. Lawson,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

February 26, 1985.

[FR Doc. 85–51222 Filed 3–1–85; 8:45 am]

BILLING CODE 3810–01–M

Public Information Collection Requirements Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number, if applicable; (3) Abstract statement of the needs for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of reponses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

Extension

Air Force Academy Request for Secondary School Transcript (USAFA Form 148)

This form is used to collect information about the academic background of applicants for admission to the Air Force Academy. Information is collected from the candidates and their high schools. The information is used to determine the applicants' high school academic performance and to facilitate the selection of candidates for admission to the Academy.

Individuals
Responses 9400
Burden hours 3300.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitello, DoD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone number (202) 746–0933.

FOR FURTHER INFORMATION CONTACT: Major Daniel E. Hancock, HQ USAFA/RR, Colorado Springs, CO 80840–5651, telephone number (303) 472–2520.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Major Hancock.

Linda M. Lawson,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

February 26, 1985.

[FR Doc. 85–5121 Filed 3–1–85; 8:45 am]

BILLING CODE 3810–01–M

Public Information Collection Requirements Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information

Collection and Form Number, if applicable; (3) Abstract statement of the needs for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

Extension

Air Force Academy Request for Secondary School Transcript (USAFA Form 148)

USAFA Form 147 is used to collect information about the high school activities of applicants for admission to the Air Force Academy. Information about the candidates athletic and non-athletic school activities is collected from the candidates and verified by school officials. The information is used by the Air Force Academy in selecting appointees to the Academy.

Individuals
Responses 9400
Burden hours 4700.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone number (202) 746–0933.

FOR FURTHER INFORMATION CONTACT: Major Daniel E. Hancock, HQ USAFA/RR, Colorado Springs, CO 80840–5651, telephone number (303) 472–2520.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Major Hancock.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

February 26, 1985.

[FR Doc. 85–5124 Filed 3–1–85; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Public Information Collection Requirements Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number, if applicable; (3) Abstract statement of the needs for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

New

Delayed Program Attrition Study

This project requires telephonic interviews with 510 persons who dropped out of the Army's Delayed Entry Program and 255 persons who did not complete their terms of active duty service. Information will be used to establish policies aimed at reducing the attrition rate for the Delayed Entry Program.

Individuals
Responses 765
Burden hours 102.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1240, Arlington, Virginia 22202–4302, telephone number (202) 746–0933.

FOR FURTHER INFORMATION CONTACT: Major Daniel E. Hancock, HQ USAFA/RR, Colorado Springs, CO 80840–5651, telephone number (303) 472–2520.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Mr. David O. Cochran, DAIM-ADI, Room 1D667, The Pentagon, Washington, DC 20310–0700, telephone (202) 695–5111.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

February 26, 1985.

[FR Doc. 85–5125 Filed 3–1–85; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF ENERGY

National Petroleum Council; Oil Supply/Demand Task Group; Meeting

Notice is hereby given that the Oil Supply/Demand Task Group will meet in March 1985. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Oil Supply/Demand Task Group will address previous Council refining studies and evaluate further refinery operations and their impact on petroleum markets. Its analysis and findings will be based on information and data to be gathered by the various task groups.

The Oil Supply/Demand Task Group will hold its fourth meeting on Thursday, March 14, 1985, starting at 9:00 a.m., in the Bridgeport Room of the Four Seasons Hotel, Houston Center, 1300 Lamar Street, Houston, Texas.

The tenative agenda for the Oil Supply/Demand Task Group meeting follows:

1. Opening remarks by the Chairman and Government Co-Chairman.
2. Review the work of the Task Group.
3. Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

The meeting is open to the public. The Chairman of the Oil Supply/Demand Task Group is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Oil Supply/Demand Task Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Carolyn B. Klym, Office of Oil, Gas, Shale and Coal Liquids, Fossil Energy, 301/353–2709, prior to the meeting and reasonable provision will be made for their appearance of the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E–190, DOE Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between the hours of 9:00 a.m., and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on February 21, 1985.

William A. Vaughan,

Assistant Secretary, Fossil Energy.

[FR Doc. 85–5115 Filed 3–1–85; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER85-275-000, et al.]

Electric Rate and Corporate Regulation Filings; Northeast Utilities, et al.

Take notice that the following filings have been made with the Commission:

1. Northeast Utilities

[Docket No. ER85-275-000]

February 25, 1985.

Take notice that on February 7, 1984, Western Massachusetts Electric Company (WMECO), on behalf of itself and the Connecticut Light and Power Company (CL&P) submitted for filing a Notice of Termination of WMECO Rate Schedule FPC Nos. 83, 87 and 130.

Comment date: March 7, 1985, in accordance with Standard Paragraph E at the end of this notice.

2. Southwestern Public Service Company

[Docket No. ER85-156-001]

February 25, 1985.

Take notice that on January 31, 1985, Southwestern Public Service Company (Southwestern) submitted for filing a compliance report pursuant to the Commission's deficiency letter dated January 3, 1985.

Southwestern submitted an Experimental Adjustment clause (EAC) rider to be incorporated into its wholesale rate schedules.

Comment date: March 8, 1985, in accordance with Standard Paragraph H at the end of this notice.

3. Massachusetts Refusetech, Inc.

[Docket No. ER85-301-000]

February 25, 1985.

Take notice that on February 14, 1985, Massachusetts Refusetech, Inc. (MRI), a Delaware corporation, tendered for filing proposed MRI Rate Schedule No. 1, applicable to sales of energy by MRI to New England Power Company (NEP) from a solid waste resource recovery and electric generating facility to be located in North Andover, Massachusetts (the "facility"). The Federal Energy Regulatory Commission (Commission or FERC) has issued an order stating that the facility is a qualifying small power poduction facility within the meaning of Section 201 of the Public Utility Regulatory Policies Act of 1978 (PURPA).[1]

The proposed initial rate is set forth in the Power Purchase Agreement dated January 6, 1981 between MRI and NEP. Under the Power Purchase Agreement, the rate for sales of electric energy by MRI to NEP, for each kWh delivered during any month in which MRI does not exercise its "Steam Utilization Right" equals 90% of NEP's incremental fuel costs. For each kWh delivered during any month in which MRI does exercise such right, the purchase rate for a specified portion MRI's sales is equal to NEP's average cost of fuel, while the rate for the balance of MRI's sales to NEP remains at 90% of NEP's incremental cost.

Sales from the MRI facility will commence upon completion of the facility, now scheduled for June 1985. In the event that commencement of service occurs at a later date, MRI requests waiver of the Commission's rule requiring that rate schedules be filed no more than one hundred twenty (120) days prior to the date on which service is to commence under an initial rate schedule. The Commission's rules provide that this rate will be waived when a rate schedule is predicated on the construction of new facilities.

MRI seeks waiver of the Commission's regulations regarding cost-of-service documentation. The Commission has recognized that the cost-of service data requirements contained in §§ 35.12 and 35.13 of its regulations are irrelevant insofar as they would require a qualifying small power producer to substantiate its cost-of-service.[2] MRI accordingly seeks waiver of 18 CFR 35.12(b) (5), which requires the submission of cost-of-service and rate design information not relevant in the case of a rate based on the buyer's cost of generating electric energy.

MRI also requests that the Commission waive its regulations recording accounting practices, reporting requirements, annual charges, dispositions of property and consolidations, securities issuances and assumptions of liability, and the holding of interlocking directorate positions as they might apply to the facility. The commission has granted similar requests for waivers for qualifying small power production facilities with a capacity greater than 30 MW, [3] and has indicated that such waivers will be available to the MRI facility.

Comment date: March 7, 1985, in accordance with Standard Paragraph E at the end of this notice.

4. Vermont Yankee Nuclear Power Corporation

[Docket No. ER85-300-000]

February 25, 1985.

Take notice that on February 13, 1985, Vermont Yankee Nuclear Power Corporation (Vermont Yankee) tendered for filing proposed changes in its cost of service tariff. The proposed changes would increase the rate of return earned on the Vermont Yankee's common equity capital to 18%, modify the remaining depreciable lives of certain components of the Vermont Yankee's plant in service, and amend its Power Contracts with its Sponsors to conform to the Commission's current regulations regarding the inclusion of construction work in progress in rate base and treatment of deferred taxes. The proposed changes would increase revenues from jurisdictional sales and service by $4,450,000 based on the 12-month period ending December 31, 1985.

The sponsoring utilities of the Company's plant are:

Central Vermont Public Service Corporation
New England Power Company
Green Mountain Power Corporation
The Connecticut Light & Power Company
Central Maine Power Company
Public Service Company of New Hampshire
Western Massachusetts Electric Company
Montaup Electric Company
Cambridge Electric Light Company

Copies of the filing were served upon the Company's sponsoring utilities and the pertinent state public service commissions.

Comment date: March 8, 1985, in accordance with Standard Paragraph E at the end of this notice.

5. Pacific Power & Light Company, an assumed business name of PacifiCorp

[Docket No. BR85-305-000]

February 26, 1985.

Take notice that on February 15, 1985, Pacific Power & Light Company, an assumed business name of PacifiCorp, tendered for filing Notice of Cancellation of Rate Schedule FPC No. 44. Pacific states that this Rate Schedule has expired by its own terms.

Pacific requests an effective date of sixty (60) days after date of filing.

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[1] "Order Granting in Part and Denying in Part Petition for Declaratory Order", FERC 61,406 (1983) (MRI)

[2] "Declaratory Order," Wheelbrator-Frye Inc., 19 FERC ¶ 61,516 (1982).

[3] *See, e.g.*, "Order Granting in Part and Denying in Part Request for Waivers," Resources Recovery (Dade County), Inc., 20 FERC ¶61, 138 (1982).

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Notice of the proposed cancellation has been served upon the following parties:

The Washington Water Power Company
Puget Sound Power & Light Company
Montana Power Company
Portland General Electric Company
Aluminum Company of America
P.U.D. No. 1 of Chelan County
P.U.D. No. 2 of Grant County
P.U.D. No. 1 of Pend Oreille County
Eugene Water & Electric Board
Bonneville Power Administration
U.S. Army Corps of Engineers
Public Utility Commissioner of Oregon
Washington Utilities and Transportation Commission.

Comment date: March 13, 1985, in accordance with Standard Paragraph E at the end of this notice.

6. Southwestern Electric Power Company

[Docket No. BR85-303-000]

February 26, 1985.

Take notice that on February 14, 1985, Southwestern Electric Power Company (SWEPCO) tendered for filing notice of cancellation of Rate Schedule No. 70. SWEPCO requests an effective cancellation date of May 1, 1977.

Comment date: March 12, 1985, in accordance with Standard Paragraph E at the end of this notice.

7. Upper Peninsula Power Company

[Docket No. BR85-304-00]

February 26, 1985.

Take notice that on February 15, 1985, Upper Peninsula Power Company (UPPCO) tendered for filing an Agreement For Wholesale Electric Power Service between UPPCO and the Village of Barago dated February 11, 1985. UPPCO states that this agreement replaces the existing agreement between UPPCO and the Village of Barago dated March 1, 1951. UPPCO states that the the rate schedule designation for the existing contract is FERC No. 6. UPPCO requests an effective date of April 1, 1985.

Comment date: March 12, 1985, in accordance with Standard Paragraph E at the end of this notice.

8. Dayton Power & Light Company

[Docket No. BR85-302-000]

February 26, 1985.

Take notice that on February 14, 1985, Dayton Power & Light Company (DP&L) tendered for filing Notice of Cancellation of FERC Electric Tariff Original Volume 2, Original Sheet Nos. 24 and 25. DP&L requests an effective date of June 1, 1985.

Comment date: March 12, 1985, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

H. Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before the comment date. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-5149 Filed 3-1-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-7-20-000 and TA85-7-20-001]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

February 26, 1985.

Take notice that Algonquin Gas Transmission Company ("Algonquin Gas") on February 20, 1985, tendered for filing Third Revised Sheet No. 203 and Twelfth Revised Sheet No. 213 to its FERC Gas Tariff, Second Revised Volume No. 1.

Algonquin Gas states that the above-mentioned tariff sheets are being filed to reflect in Algonquin Gas' Rate Schedule F-2 and Rate Schedule S-IS decreases in Consolidated Gas Transmission Corporation's ("Consolidated") underlying Rate Schedule RQ and Rate Schedule E.

Algonquin Gas requests that the Commission accept Third Revised Sheet No. 203 and Twelfth Revised Sheet No. 213 to be effective March 1, 1985 to coincide with the proposed effective date of Consolidated's rate change.

Algonquin Gas notes that a copy of this filing is being served upon each affected party and interested state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protest should be filed on or before March 5, 1985. Protest will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-5158 Filed 3-1-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-4452-000, et al.]

Amoco Production Co., et al.; Applications for Certificates, Abandonments of Service and Petitions To Amend Certificates[1]

February 22, 1985.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before March 11, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,
Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price Per 1,000 ft.³	Pressure base
G–4452–000, C, Jan. 9, 1985	Amoco Production Company, P.O. Box 3092, Houston, Texas 77253.	Mississippi River Transmission Corporation, Woodland Field, Harrison County, Texas.	[1]	14.73
C185–172–000, E, Jan. 17, 1985	Coastal Oil & Gas Corporation (Successor In Interest To Pacific Northwest Pipeline Corporation) Nine Greenway Plaza Houston, Texas 77046.	Northwest Pipeline Corporation, San Juan Basin, New Mexico and Colorado.	[2]	14.73
C185–178–000, A, Jan. 30, 1985	Mobil Oil Exploration & Producing Southeast Inc., Nine Greenway Plaza, Suite 2700, Houston, Texas 77046.	ANR Pipeline Company, West Cameron 71 Field, Offshore Louisiana.	[3]	15.025
C185–179–000, E, Jan. 31, 1985	Texaco Producing Inc. (Successor In-Interest to Getty Oil Company), P.O. Box 52332, Houston, Texas 77052.	Florida Gas Transmission Company, Matagorda Island Block 555, Offshore Texas.	[4]	14.73
C185–180–000, E, Jan. 31, 1985	Pogo Producing Company (Successor In-Interest To Mesa Petroleum Co.), P.O. Box 61289, Houston, Texas 77026.	Sea Robin Pipeline Company, Block 330, Eugene Island Area, Offshore Louisiana.	[5]	15.025
C185–181–000, A, Feb. 1, 1985	McMoRan Offshore Exploration Co., Post Office Box 8500, Metairie, Louisiana 70009.	Transcontinental Gas Pipe Line Corporation, Matagorda Island Area, Block 700, Offshore, Texas.	[6]	14.73
C185–182–000, A, Jan. 31, 1985	Union Oil Company of California, Union Oil Center, Room 904, P.O. Box 7600, Los Angeles, California 90051.	ANR Pipeline Company, Block A–494, High Island Block A–494 Field, South Addition, High Island Area, Offshore Texas.	[7]	14.73
C185–184–000, A, Feb 1, 1985	Exxon Corporation, P.O. Box 2180, Houston, Texas 77252–2180.	Southern Natural Gas Company, Big Escambia Creek Field, Escambia County, Alabama.	[8]	14.73
C185–224–000, A, Feb. 6, 1985	Union Oil Company of California, Union Oil Center, Room 904, P.O. Box 7600, Los Angeles, California 90051.	Texas Gas Transmission Corporation, Block 65, Vermilion Area, Offshore Louisiana.	[9]	15.025
G–15250–000, E, Feb. 11, 1985	Orlando-SOI Partnership (Succ. In Interest To Shell Offshore Inc.), P.O. Box 4480, Houston, Texas 77210.	Tennessee Gas Pipeline Company, East Cameron Block 82, Offshore Louisiana.	[10]	14.73
G–18402–000, E, Feb. 11, 1985	....do	Transcontinental Gas Pipe Line Corporation, Eugene Island Block 100, Offshore Louisiana.	[10]	14.73
C161–1066–000, E, Feb. 11, 1985	....do	Transcontinental Gas Pipe Line Corporation, Eugene Island Block 126 Field, Offshore Louisiana.	[10]	14.73
C170–398–000, E, Feb. 11, 1985	....do	Texas Eastern Transmission Corporation, East Cameron Block 82, Offshore Louisiana.	[10]	14.73
C185–223–000, E, Feb. 6, 1985	Union Texas Products Corporation (Successor In Interest To Farmland Industries, Inc.), P.O. Box 2120, Houston, Texas 77252.	Arkla Energy Resources, a Division of Arkla, Inc., Lamont Gas Plant, Garfield and Grant Counties, Oklahoma.	[11]	14.73
C185–223–000, F, Feb. 7, 1985	Texas Gas Exploration Corporation (Partial Successor In Interest To Columbia Gas Development Corporation), P.O. Box 4326, Houston, Texas 77210–4236.	Columbia Gas Transmission Corporation, Block 314, Eugene Island Area, South Addition, Offshore Louisiana.	[12]	15.025
C185–234–000, F, Feb. 7, 1985	Texas Gas Exploration Corporation (Partial Successor In Interest To Forest Oil Corporation), P.O. Box 4326, Houston, Texas 77210–4326.	Columbia Gas Transmission Corporation, Block 314, Eugene Island Area, South Addition, Offshore Louisiana.	[13]	15.025
C185–234–000, F, Feb. 14, 1985	Orlando-SOI Partnership (Partial Successor In Interest To Shell Offshore Inc.), P.O. Box 4480, Houston, Texas 77210.	ANR Pipeline Company, Eugene Island Block 188, Offshore Louisiana.	[10]	14.73

[1] Applicant is filing to add additional acreage.
[2] Effective January 1, 1985 Northwest coveys an undivided fifty-four percent of the working interest in the properties covered by PLA–1, the properties subject to the 1953 Agreement to Coastal.
[3] Applicant is filing under Gas Purchase Contract dated July 1, 1984.
[4] Under date of December 4, 1984, Applicant entered into the abovementioned contract with Florida Gas covering the sale of Getty Oil Company's interest in Matagorda Island Block 555 (OCS–G3070) Offshore, Texas
[5] Pogo has acquired by assignment the undivided five percent interest in Block 330, Eugene Island Area, Offshore Louisiana, previously owned by Mesa.
[6] Applicant is filing under Gas Purchase Contract dated January 10, 1985.
[7] Applicant is filing under Gas Purchase Contract dated December 4, 1985.
[8] Applicant is filing under Gas Purchase Contract dated December 1, 1972.
[9] Applicant is filing under Gas Purchase Contract dated January 17, 1985.
[10] Effective as of April 1, 1983, SOI assigned to Orlando Oil Company an undivided 49% of SOI's interest in, inter alia. The remaining 51% of SOI's interest in the leases was assigned directly by SOI to OSP, effective April 2, 1983.
[11] By assignment dated July 16, 1984 Farmland Industries, Inc. transferred its interest in the leases to Union Texas Products Corporation.
[12] By instrument titled Assignment of Oil & Gas Lease dated January 30, 1984, Development, as assignor, transfered and assigned to Texas Gas Exploration Corporation, as assignee, a portion of its right, title and interest in the oil, gas and mineral lease covering the north half of Block 314, Eugene Island Area, South Addition, Offshore Louisiana.
[13] By instrument titled Assignment of Interest In Oil & Gas Lease dated March 28, 1984, Forest, as assignor, trasferred and assigned to Texas Gas Exploration all its right, title and interest in the oil, gas and mineral lease covering Block 314, Eugene Island Area, South Addition, Offshore Louisiana.

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 85–5159 Filed 3–1–85; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 7541–001]

Buckhorn Associates; Surrender of Preliminary Permit

February 26, 1985.

Take notice that Buckhorn Associates, Permittee for the proposed Buckhorn Hydro Project No. 7541, has requested that its preliminary permit be terminated. The permit was issued on July 20, 1984, and would have expired December 31, 1985. The project would have been located on the Kentucky River, near Buckhorn, Perry County, Kentucky. The Permittee cites that the proposed project is not economically feasible as the basis for the surrender request.

The Permittee filed the request on February 1, 1985, and the preliminary permit for Project No. 7541 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,
Secretary.

[FR Doc. 85–5160 Filed 3–1–85; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 8090-001]

Cherry Creek Associates; Surrender of Preliminary Permit

February 26, 1985.

Take notice that Cherry Creek Associates, Permittee for the proposed Eileen Little Project No. 8090, has requested that its preliminary permit be terminated. The preliminary permit was issued on September 17, 1984, and would have expired February 28, 1988. The project would have been located on the Cherry Creek in Arapahoe County, Colorado. The Permittee study found that the project would not be economically feasible to develop at this time.

The Permittee filed the request on February 1, 1985, and the preliminary permit for Project No. 8090 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-5161 Filed 3-1-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-101-000]

Colorado Interstate Gas Co.; Filing

February 26, 1985.

TAKE NOTICE that on February 15, 1985, Colorado Interstate Gas Company (Applicant), tendered for filing Initial Rate Schedule EUS-2 for its FERC Gas Tariff, Orginal Volume No. 1. Original Sheet Nos. 33G and 33H establish Rate Schedule EUS-2 for transportation for off-system end-users. An effective date of March 18, 1985, is requested.

Rate Schedule EUS-2 contains a rate of 35.88 cents per Mcf at 14.65 p.s.i.a. or 36.08 cents per Mcf at 14.73 p.s.i.a., which is Applicant's system-wide transportation rate as settled in Docket No. RP82-54. The charge shall be increased by 1.25 cents per Mcf, when appropriate, to reflect the Gas Research Institute Funding Fee. Applicant's rate may require change from time to time to reflect changes in related costs or changes in method of computation. In such case, the rate shall change to reflect such cost-of-service methodology.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.214, or 385.211). All such motions or protests should be filed on or before March 5, 1985. Protest will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-5162 Filed 3-1-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-2-2-000 and TA85-2-2-001]

East Tennessee Natural Gas Co.; Tariff Filing

February 26, 1985.

Take notice that on February 19, 1985, East Tennessee Natural Gas Company (East Tennessee) tendered for filing the following tariff sheets to its FERC Gas Tariff:

Original Volume No. 1

Second Substitute Tenth Revised Sheet No. 4

First Revised Sheet No. 134

East Tennessee states that the purpose of Second Substitute Tenth Revised Sheet No. 4 is to reflect a reduction in pipeline supplier rates originally tracked in East Tennessee's November 30, 1984 filing in Docket No. TA85-1-2-000. The proposed effective date of this tariff sheet is January 1, 1985.

East Tennessee states that the purpose of First Revised Sheet No. 134 is to reflect that GRI collections are to be remitted to GRI within fifteen days of receipt as required by Ordering Paragraph (C) of the Commission's Opinion No. 226 issued September 28, 1984, in *Gas Research Institute*, Docket No. RP84-85-000. The proposed effective date of this filing sheet is March 21, 1985.

East Tennessee states that copies of this filing have been mailed to all affected customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or portests should be filed on or before March 5, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-5163 Filed 3-1-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GT85-12-000]

Equitable Gas Co.; Cancellation of Rate Schedule GS-2

February 26, 1985.

Take notice that on February 15, 1985, Equitable Gas Company (Equitable) tendered for filing Second Revised Sheet No. 10-B to its FERC Gas Tariff, First Revised Volume No. 1. Equitable states that this tariff sheet gives notice of the cancellation of its Rate Schedule GS-2. Equitable further states that when sales ceased on October 31, 1984, New Jersey Natural was the sole purchaser under this schedule.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before March 5, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-5164 Filed 3-1-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA85-2-5-002, RP85-102-000 and TA85-3-5-000, TA85-3-5-001]

Midwestern Gas Transmission Co.; Tariff Filing

February 28, 1985.

Take notice that on February 20, 1985, Midwestern Gas Transmission Company (Midwestern) tendered for filing the following sheets to its FERC Gas Tariff:

Original Volume No. 1

First Revised Sheet No. 185
Thirteenth Revised Sheet No. 5

Midwestern states that the purpose of First Revised Sheet No. 185 is to reflect that GRI collections are to be remitted to GRI within fifteen days of receipt as required by Ordering Paragraph (C) of the Commission's Opinion No. 226 issued September 28, 1984, in *Gas Research Institute*, Docket No. RP84-85-000. The proposed effective date of this tariff sheet is March 22, 1985.

Midwestern states that the purpose of Thirteenth Revised Sheet No. 5 is to reflect a reduction in pipeline supplier rates originally tracked in Midwestern's November 30, 1984 filing in Docket No. TA85-2-5-000. The proposed effective date of this tariff sheet is January 1, 1985.

In addition, take notice that on February 20, 1985, Midwestern Gas Transmission Company (Midwestern) tendered for filing the following sheets to its FERC Gas Tariff:

Original Volume No. 1

Original Sheet No. 169-B
First Revised Sheet Nos. 83, 85-B, 85-C, 85-D, 86-A, 98, 99, 165, 166, 169-A, 170, 188
Second Revised Sheet Nos. 86, 167, 169
Third Revised Sheet No. 85-A
Fourth Revised Sheet Nos. 84, 168
Fifth Revised Sheet No. 85
Eighth Revised Sheet No. 6
Thirteenth Revised Sheet No. 6
Fourteenth Revised Sheet No. 6

Original Volume No. 2

First Revised Sheet Nos. 68-D and 68-E
Eleventh Revised Sheet No. 37

Midwestern requests effective dates of February 1, 1985 for Fourteenth Revised Sheet No. 6 and November 1, 1984 for the other sheets.

Midwestern states that the purpose of these tariff sheets is two-fold: first, to reflect fully in Midwestern's Northern System tariff the amendments to Midwestern's gas purchase contracts with TransCanada Pipelines Ltd. (the Amended TransCanada Contracts) and to a related agreement between Midwestern, TransCanada and ANR Pipeline Company (the Amended Three-Party Agreement), all of which became effective as of November 1, 1984, subject to government approvals satisfactory to the parties; and, second, to implement a Purchased Gas Adjustment (PGA) rate change in conformance with the revisions to Midwestern's Northern System PGA clause.

Midwestern states that in order to reflect the tems of the Amended TransCanada Contracts and the Amended Three-Party Agreement, the filing includes Thirteenth Revised Sheet No. 6, Eighth Revised Sheet No. 6 and changes to Rate Schedules CD-2, I-2, T-2 and T-9 and to Midwestern's Northern System PGA and incremental pricing surcharge provisions contained respectively in Articles XVIII and XXIII of the General Terms and Conditions proposed to be effective November 1, 1984. Midwestern further states that Fourteenth Revised Sheet No. 6 proposed to be effective February 1, 1985, implements a transitional ten-month Surcharge of 4.10 cents per Dekatherm to Amortize the Unrecovered Purchased Gas Cost Account as of October 31, 1984, the day before the Amended TransCanada Contracts became effective. Midwestern explains that, because TransCanada, the sole supplier of gas to the Northern System, has not changed its rates for sales to Midwestern since Midwestern's November 23, 1984 rate filing in Docket No. TA85-1-005, there is no current Purchased Gas Cost Rate Adjustment applicable to the Northern System.

Midwestern proposes to flow through to ANR under Rate Schedule CD-2 each month the actual demand and commodity cost of gas paid by Midwestern for purchases for service to ANR under the Amended TransCanada Contracts, adjusted for under- and overruns, plus the actual cost of fuel allocated to Rate Schedule CD-2. Midwestern similarly proposes to flow through the actual cost of fuel allocated to Rate Schedules T-2 and T-9. Midwestern also proposes to change the effective dates of Northern System PGA rate filings from January 1 and July 1 to April 1 and November 1 of each year consistent with the price structure of the Amended TransCanada Contracts. In addition, Midwestern proposes to allocate the balance in the Unrecovered Purchased Gas Cost Account for the Northern System as of October 31, 1984 between ANR under Rate Schedule CD-2 and Midwestern's other Northern System sales customers and to bill ANR for its proportionate share of the outstanding balance in Midwestern's first invoice after the tariff sheets become effective. Midwestern requests waiver of §§ 154.38(d)(1) and 154.38(d)(4) of the Commission's Regulations and any other waivers necessary to implement these changes.

Midwestern states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before March 5, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-5165 Filed 3-1-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP83-68-006]

Natural Gas Pipeline Company of America; Change in FERC Gas Tariff

February 26, 1985.

Take notice that on February 21, 1985, Natural Gas Pipeline Company of America (Natural) submitted for filing as part of its FERC Gas Tariff, revised tariff sheets to be effective February 1, 1985.

Natural states that the purpose of this filing is to implement the settlement rates effective pursuant to Natural's Docket No. RP83-68 Stipulation and Agreement approved by Commission order issued December 19, 1984.

A copy of this filing has been mailed to Natural's jurisdictional customers, interested state regulatory agencies, and all parties on the official service list at Docket Nos. RP83-68, *et al.*

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before March 5, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to

intervene. Copies of this filing are on file with the Commission and are available of public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-5166 Filed 3-1-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. C164-865-000, et al.]

Sun Exploration and Production Company, et al.; Applications for Abandonment of Service

February 22, 1985.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before March 12, 1985, file the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price Per 1,000 ft³	Pressure base
C164-865-000, D, Feb. 11, 1985	Sun Exploration and Production Company P.O. Box 2880, Dallas, Texas 75221-2880.	Northwest Central Pipeline Corporation, N.E. Waynoke Field, Woods County, Oklahoma	[1]	
C165-1236-000, D Feb. 11, 1985	do	Northwest Central Pipeline Corporation, S. Bishop Field, Ellis County, Oklahoma.	[2]	
C166-831-000, D, Feb. 11, 1985	do	Texas Eastern Transmission Corporation, May Field, Kleberg County, Texas.	[3]	
C167-152-003, D, Feb. 11, 1985	do	Panhandle Eastern Pipe Line Company, Ellis and Roger Mills Counties, Oklahoma.	[4]	
C167-1609-000, D, Feb. 11, 1985.	do	United Gas Pipe Line Company, Bayou St. Vincent Field, Assumption Parish, Louisiana.	[5]	
C165-241-000, B, Feb. 11, 1985	do	Northwest Central Pipeline Corporation, N. Coyle Field, Payne County, Oklahoma.	[6]	
C165-242-000 (C164-573), B, Feb. 11, 1985.	Gulf Oil Corporation, P.O. Box 2100, Houston, Texas 77252.	Columbia Gas Transmission Company, Depp Lake Field, Cameron Parish, Louisiana.	[7]	
C165-245-000, (C176-502), B Feb. 15, 1985.	do	Tennessee Gas Pipeline Company, Blue Basin Field, Wharton County, Texas.	[8]	
D-6354-000, D, Feb. 15, 1985	Conoco Inc., P.O. Box 2197, Houston, Texas 77252	United Gas Pipe Line Company, Eugene Island Area, Offshore Louisiana.	[9]	
G-2978-000, D, Feb. 14, 1985	Sun Exploration and Production Company	El Paso Natural Gas Company, Spraberry Trend Field, Midland and Reagan Counties, Texas.	[10]	
G-10621-001, D, Feb. 14, 1985	do	do	[11]	
G-10621-003, D, Feb. 14, 1985	do	Northwest Central Pipeline Corporation North Rhodes Field, Barber County, Kansas.	[12]	

[1] Partial Assignment and Bill of Sale executed on 8-16-84, effective 8-1-84, Sun Exploration and Production Company assigned its interest in said property to Kaiser-Francis Oil Company.
[2] Assignment and Bill of Sale executed on 7-30-84, effective 8-1-84, Sun Exploration and Production Company assigned its interest in said property to Oilsearch Corporation.
[3] Partial Assignment and Bill of Sale executed on 1-4-84, effective 12-1-83, Sun Exploration and Production Company assigned its interest in said property to Egret Energy Corporation.
[4] Partial Assignment and Bill of Sale executed on 8-28-84, effective 7-1-84, Sun Exploration and Production Company assigned its interest in said property to Egret Energy Corporation.
[5] Partial Assignment and Bill of Sales executed on 11-29-84, effective 12-1-84, Sun Exploration and Production Company assigned its interest in said property to Seleco Resources Inc.
[6] On 12-1-82, Sun became a successor in interest to Corpening Enterprises under a contract between Corpening and Cities Services Gas Company (now Northwest Central). The two wells committed under the subject contract have not produced gas in commercial quantities and Sun has not purchased any gas from the operators of these dedicated wells from the date which Sun succeeded Corpening's interest.
[7] The last producing well on acreage covered by the contract dated 3-15-57, as amended, in which Applicant owns a working interest was plugged and abandoned on 5-21-84 and contract canceled.
[8] A portion of the leases subject to Rate Schedule No. 106 have expired.
[9] Contract expired and Applicant no longer owns an interest in the natural gas production from the acreage which was subject to this contract.
[10] Partial Assignment and Bill of Sales executed on 11-14-84, effective 10-1-84, wherein Sun Exploration and Production Company assigned its interest in said property to Kenneth W Cory.
[11] Partial Assignment and Bill of Sale executed on 11-1-83, effective 11-1-83, wherein Sun Exploration and Production Company assigned its interest in said property to Robert Cantor, Edrie Cantor and Royce Scott.
[12] Partial Assignment and Bill of Sale executed on 11-5-84, effective 10-1-84, wherein Sun Exploration and Production Company assigned its interest in said property to Ruben Gomez.
[13] Partial Assignment and Bill of Sale executed on 12-3-84, effective 12-1-84, wherein Sun Exploration and Production Company assigned its interest in said property to Adams Oil.
[14] Partial Assignment and Bill of Sale executed on 11-26-84, effective 12-1-84, wherein Sun Exploration and Production Company assigned its interest in said property to McCoy Petroleum Corporation.

Filing Code: A—Initial Service; B—Abandonment, C—Amendment to add acreage, D—Amendment to delete acreage, E—Total Succession, F—Partial Succession.

[FR Doc. 85-5167 Filed 3-1-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 7542-001]

Woodbury Associates; Surrender of Preliminary Permit

February 26, 1985.

Take notice that Woodbury Associates, Permittee for the proposed Woodbury Hydro Project No. 7542, has requested that its perliminary permit be terminated. The permit was issued on July 20, 1984, and would have expired June 30, 1986. The project would have been located on the Green River near Woodbury, Butler County, Kentucky. The Permittee cites that the proposed project is not economically feasible as the basis for the surrender request.

The Permittee filed the request on February 1, 1985, and the preliminary permit for Project No. 7542 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided

for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-5168 Filed 3-1-85; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy has adopted the appropriate procedures to be followed in refunding $16,520,152.24 in consent order funds to members of the public. This money is being held in escrow following the settlement of enforcement proceedings brought by the Economic Regulatory Administration of the Department of Energy involving the 26 firms named below. The DOE indicated that refund claims with respect to these funds may now be filed.

DATE AND ADDRESS: Applications for refund must be filed within 90 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, D.C. 20585. All comments should conspicuously display a reference to case numbers HEF-0221, *et al.*

FOR FURTHER INFORMATION CONTACT: Virginia A. Lipton, Assistant Director, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252-2400.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order relates to consent orders entered into by the DOE and the 26 firms set out in the Appendix below.

The Decision and Order sets forth the procedures and standards that the DOE has formulated to distribute the contents of escrow accounts funded by these firms pursuant to the consent orders. The DOE has decided that Applications for Refund should be accepted from firms and individuals that purchased crude oil or covered products from any of the 26 named firms during the relevant consent order period set forth in the Appendix. The Decision and Order provides that in order to receive a portion of the settlement funds, a purchaser must furnish the DOE with evidence that it was injured by the allegedly unlawful prices for covered products charged by the relevant consent order firm. This evidence should include specific documentation concerning the date, price, and volume of product purchased, indicate whether the increased costs were absorbed by the claimant or passed through to other purchasers, and state the extent of any injury alleged to have been suffered. However, the Decision indicates that no separate, detailed showing of injury will be required of end-users of the relevant product, or of firms which file refund claims amounting to $5,000 or less. According to the Decision and Order, the amount of the refund will generally be a pro rata share of the funds made available by the relevant consent order firm, plus a pro rata share of any interest accrued on those funds. The DOE further indicated that it would determine at a future date the proper disposition of any funds remaining after all meritorious claims of purchasers have been paid.

Applications for refund must be filed within 90 days of publication of this notice in the **Federal Register**, and should be sent to the address set forth at the beginning of this notice. Refund applicants should file two copies of their submission. All applications received in this proceeding will be available for public inspection between the hours of 1:00 to 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue SW., Washington, D.C. 20585.

Dated: February 22, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Special Refund Procedures

Names of Cases: Seminole Refining, Inc., *et al.*

Date of Filing: October 13, 1983.

Case Numbers: HEF-0221, *et al.*

Under the procedural regulations of the Department of Energy, the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals formulate and implement special procedures to make refunds, in order to remedy the effects of alleged violations of the DOE regulations. *See* 10 C.F.R. Part 205, Subpart V.

In accordance with these regulatory provisions, the ERA filed Petitions for the Implementation of Special Refund Proceedings in connection with consent orders entered into with the 26 firms set forth in the exhibits to the Appendix to this Decision. Audits of the records of those firms revealed possible pricing violations with respect to their sales of natural gas liquids (NGLs), natural gas liquid products (NGLPs), crude oil and refined petroleum products during the periods indicated in the exhibits.[1] In order to settle all claims and disputes with the DOE regarding their sales of these products during their respective audit periods, the firms entered into consent orders. The amount of funds made available by those firms that is subject to distribution in this proceeding is $16,520,152.24.

I. Jurisdiction and Authority to Fashion Refund Procedures

The procedural regulations of the DOE set forth general guidelines by which the Office of Hearings and Appeals may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 C.F.R. Part 205, Subpart V. The Subpart V process may be use in situations where the DOE is unable to readily identify persons who may have been injured as a result of alleged regulatory violations resolved by a DOE consent order or remedial order or where the DOE is unable to readily ascertain the amount of each person's injuries. For a more detailed discussion of Subpart V and the authority of the Office of Hearings and Appeals to fashion procedures to distribute refunds obtained as part of settlement agreements, *see Office of Enforcement*, 9 DOE ¶ 82,553 (1982); *Office of Enforcement*, 9 DOE ¶ 82,508 (1981); *Office of Enforcement*, 8 DOE ¶ 82,597 (1981).

On December 17, 1984, the Office of Hearings and Appeals issued a Proposed Decision and Order in which we tentatively concluded that the implementation of Subpart V proceedings was appropriate with respect to the 26 consent order firms referred to in the exhibits to the Appendix to this Decision. *Seminole Refining, Inc.*, No. HEF-0221, (December 17, 1984) (proposed decision). We found that there was a considerable degree of difficulty in locating most of the persons who were injured by the alleged overcharges. We have received no comments challenging our authority to

[1] NGLPs include propane, butane, ethane and natural gasoline.

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fashion special refund procedures with respect to the funds provided by the 26 consent order firms. Accordingly, the ERA Petitions will be granted.

II. Proposed Refund Procedures

In the December 17 Proposed Decision we pointed out that the operations of the 26 consent order firms involved in this proceeding included producing and selling crude oil and condensate, as well as refining, reselling and retailing of petorleum products, NGLs and NGLPs. Therefore, we stated that it is likely that customers of these firms, and thus the protential refund applicants in this proceeding, will themselves be engaged in a variety of business operations. For example, potential refund applicants might be refiners, resellers, retailers, end-users engaged in businesses unrelated to the petroleum industry, or ultimate consumers that purchased petroleum products for personal use. We pointed out that in view of the wide variety of petential refund claimants, different showings would be required depending on an individual applicant's business operations, the type of product purchased and the use of the product.

A. Purchasers of Curde Oil

In the December 17 Order, we proposed that refund applications based on claims of purchases of crude oil or condensate be considered based on the standards enunciated in *A. Johnson & Co.*, 12 DOE ¶ 85,012 (1984); *Office of Enforcement*, 9 DOE ¶ 82,553 (1982) and *Office of Enforcement*, 9 DOE ¶ 82,521 (1982). We also stated that any claimant that filed a refund application in any of these three proceedings that was pending as of the date of the *Seminole* Proposed Order, and which was based on claims of injury experienced as a result of participation in the Entitlements Program, would be deemed to have filed a similar application in the Seminole proceeding. Such an applicant would therefore not need to file this type of claim in the present proceeding. However, firms that believe that they are entitled to refunds based on actual purchases of crude oil from a consent order firm named in the Appendix to this Decision should file a refund claim and follow the applicable procedures set forth in Part IV of this determination.

B. Purchasers of Refined Products and NGLs

With respect to applicants filing claims in connection with other products covered by the relevant consent orders, we stated in the December 17 Proposed Decision that in so far as possible the available funds should be distributed to direct or indirect purchasers of product sold by the 26 consent order firms.

We pointed out that it may be difficult for refund applicants that purchased refined petroleum products or NGLs to measure precisely the extent of an alleged overcharge. We tentatively determined that successful refund applicants of this type would generally be entitled to a pro rata share of the refund pool. We indicated that we would multiply the number of gallons of product purchased by a successful applicant by a volumetric refund figure. The volumetric refund figure would be calculated by dividing the total amount of the consent order fund provided by the individual consent order firm by the total sales in gallons of all products covered by the relevant consent order. However, we noted that some purchasers may wish to file refund applications based on claims of alleged violations of the DOE's allocation regulations. We stated that this type of claim would be evaluated under the standards set forth in such cases as *Aztex Energy Co.*, 12 DOE ¶ 85,116 (1984) and *OKC Corp./Town & Country Markets, Inc.*, 12 DOE ¶ 85,094 (1984).

We further stated in the December 17 Proposed Order that an applicant claiming alleged overcharges will generally be required to establish that it was injured as a result of the alleged overcharges. While there are a variety of ways in which a showing of injury may be made, we found that applicants that are resellers or refiners would generally be expected to show not only that they had banks of unrecovered costs, but also to provide evidence that they did not pass through to their own customers the additional costs associated with the alleged overcharges. We suggested that such applicants might establish that they absorbed the alleged overcharges by showing, for example, that due to market conditions they could not pass through the additional costs. *Office of Enforcement*, 10 DOE ¶ 85,056 (1983); *Office of Enforcement*, 10 DOE ¶ 85,029 (1982); *Office of Enforcement*, 9 DOE ¶ 82,508 (1981).

We further tentatively determined that a detailed showing of injury would not be necessary for applicants that were ultimate consumers. However, with respect to consumer claimants, we stated that the opportunity to make this less-detailed showing would be limited to those applicants that purchased product for their own personal use and to those whose business operations were not subject to DOE regulations. It is evident that applicants that purchased product for their own use would have had no opportunity to pass through additional costs associated with alleged overcharges. With respect to applicants that were consumers of covered product in connection with a business which was not subject to DOE regulations, we have indicated on several occasions that it would be beyond the scope of a Subpart V proceeding to analyze the impact of increased costs of petroleum products on the final prices of these types of businesses. *E.g.*, *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984). Therefore, we tentatively decided in the Proposed Order that these types of consumer applicants need only demonstrate that they purchased a specific quantity of product that was sold by one or more of the 26 identified consent order firms during the relevant time period.

On the other hand, as we pointed out in the *Seminole* Proposed Order, refund applicants whose business operations were subject to the DOE regulatory program and which purchased petroleum products consumed as fuel or as raw material will not be considered as consumers for purposes of the showing of injury. Since we are better able to analyze the impact of increased costs of petroleum products on their operations, we suggested that these applicants should be required to established injury.

We pointed out, however, that a separate, detailed showing of injury may be complicated and burdensome for firms, such as refiners and resellers, which purchased relatively small amounts of covered product, and which are therefore claiming smaller refunds. With respect to smaller refund claims, we believe that the costs incident to filing and processing applications setting forth a detailed demonstration of injury may outweigh the benefits which might be obtained by receiving this additional, detailed data. Moreover, the small claims procedure permits the Office of Hearings and Appeals to use its own resources more efficiently. *Peoples Energy Corp.*, 12 DOE ¶ 85,129 (1984). Therefore, we proposed that any applicant claiming a refund of $5,000 or less from any single consent order firm identified in the exhibits to the Appendix need not make a separate, detailed showing of injury in order to be eligible to receive a refund. Such an applicant would only be required to submit proof of the amount of product purchased during the consent order period.

We sent a copy of our Proposed Order to numerous potential refund claimants. Many of those potential claimants were listed in ERA audit files as purchasers of the consent order firms. We informed

these purchasers that they could submit comments on the refund mechmanism. We further published a notice in the **Federal Register** announcing that we were seeing comments regarding the proposed refund mechanism. 49 FR 50094 (December 26, 1984). We provided a 30 day period in which comments could be submitted. That period has now elapsed.

The purpose of this Decision is to address the comments received regarding the December 17 Proposed Order and to establish procedures to be used for filing and processing claims in the first stage of the refund process relating to the consent order firms listed in the Appendix. The Decision sets forth the information that a purchaser must submit in order to establish eligibility for a portion of the available funds

III. Analysis of Comments

We have reviewed the comments submitted, and we find that the procedures set forth in the Proposed Order should be adopted. However, we believe that some clarification is warranted. We received consolidated comments from a group of individual marketers that purchased product from four of the consent order firms involved in the Proposed Order (the Marketers' Group).[2] The Marketers' Group specifically refers to the provision in the *Semoinole* Proposed Order that applicants requesting refunds greater than $5000 should submit banks of unrecouped costs as part of a detailed showing of injury. The Group claims that calculating banks is an arduous task whose cost is often greater than the refund that the claimant would be eligible to receive. The Marketers' Group therefore asks that we permit claimants to use an alternative methodology. Specifically, the Group suggests that we consider information comparing a claimant's average margins during May 1973 or all of 1973 with the claimant's average monthly or yearly margins for the periods for which a refund is claimed. The Marketers' Group asserts that if the per gallon margin during the period for which a refund is claimed is lower than the 1973 margin, it can be presumed that alleged overcharges were absorbed by the claimant.

The Marketers' Group seems to have misconstrued the showing required by the Proposed Order. In the December 17 Order we stated:

> While there are a variety of ways in which a showing of injury may be made, applicants that are resellers or refiners will generally be expected to show not only that they had banks of unrecovered costs, but also to provide evidence that they did not pass through to their own customers the additional costs associated with the alleged overcharges.

We thus explicitly provided that a showing of banks was one method among a variety of possible means of establishing injury. Furthermore, while we indicated that applicants might show "banks of unrecovered costs," we never provided a specific format in which such banks must be set forth. We are willing to accept information establishing with reasonable likelihood that a claimant had banks of unrecovered costs. Thus, an applicant must simply persuade us as to the existence of banks in an amount at least equal to the value of its refund claim. However, the applicant need not necessarily provide a detailed calculation of those banks. We believe that the margin comparison methodology proposed by the Marketers' Group might be an appropriate alternative to the showing of banks. Other possible methodologies for establishing injury might be, for example, a demonstration of reduced market share or reduced sales volume data. The determination as to whether in a particular refund application the methodology and supporting data are convincing would, of course, be made on a case by case basis.

The Marketers' Group also states that in some instances a refund applicant may have lost some or all of its invoices supporting its purchases. The Group asks that we indicate whether we are willing to consider other forms of evidence documenting refund claims, such as purchase tabulations and daily sales sheets. We wish to emphasize that it is the burden of an applicant to establish that it is entitled to a refund. *Office of Enforcement,* 9 DOE ¶ 82,521 (1982). The applicant should therefore submit the best supporting evidence available. We will then determine on a case by case basis whether the data submitted is sufficiently persuasive.

Finally, the Marketers' Group points out that the settlements involving Witco Chemical Corporation (Exhibit 24) and Little America Refining Company (Larco) (Exhibit 23) were global, and thus included the activities of subsidiaries of those firms: Pasco Marketing, Inc. and Sinclair Oil Corporation (Larco) and Kendall Oil (Witco).[3] We agree with the Marketers' Group that firms that purchased product from these subsidiaries should also be eligible to file refund claims in this proceeding.

We also received comments from the Sun Company, Inc., proposing a different methodology for determining injury experienced by refiners. Sun calls its proposal a "regulatory methodology" and it is set forth in detail in the firm's brief in *In Re: Stripper Well Exemption Litigation* (Case No. HRH–0026). We have reviewed Sun's regulatory methodology" and find that it constitutes nothing more than an evaluation of a firm's banks. As we have stated on numerous occasions, we do not find that cost banks alone are a sufficient demonstration as to whether a refund claimant experienced injury. *E.g., Palo Pinto Oil & Gas/Gulf Oil Corp.,* 10 DOE ¶ 85,049 (1983); *Office of Special Counsel for Compliance,* 10 DOE ¶ 85.048 (1982). Accordingly, we will not adopt Sun's "regulatory methodology" proposal.

IV. Application for Refund Procedures

After having considered all the comments received concerning the first-stage procedures tentatively adopted in our December 17 Proposed Decision, we have concluded that applications for refunds should now be accepted from parties that purchased petroleum products sold to them either directly or indirectly by any named consent order firm during the relevant consent order period. Applications must be filed within 90 days after publication of this Decision and Order in the **Federal Register.** *See* 10 CFR 205.283. An application must be in writing, signed by the applicant, and specify the name and case number of the consent order firm to which it pertains.

All applications for refund must be filed in duplicate. A copy of each application will be available for public inspection in the Public Docket Room of the Office of Hearings and Appeals, Room 1E–234, 1000 Independence Avenue SW., Washington, D.C. Any applicant that believes that its application contains confidential information must so indicate on the first page of its application and submit two additional copies of its application from which the information which the applicant claims is confidential has been deleted, together with a statement specifying why any such information is privileged or confidential. Each

[2] The consent order firms named by the Marketers' Group are: Little America Refining Company (including its subsidiaries Pasco Marketing, Inc. and Sinclair Oil Corporation), Seminole Refining, Inc., U.S. Oil Company, and Witco Chemical Corporation.

[3] A similar comment referring solely to Larco's subsidiaries was filed by the law firm of Barrett & Hanna.

application must indicate whether the applicant or any person acting on its instructions has filed or intends to file any other application or claim of whatever nature regarding the matters at issue in the underlying enforcement proceeding. Each application must also include the following statement: I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief. *See* 10 CFR 205.283(c); 18 U.S.C. 1001. In addition, the applicant should furnish us with the name, title and telephone number of a person who may be contacted by the OHA for additional information concerning the application. All applications should be sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585. All applications for refund received within the time limit specified will be processed pursuant to 10 CFR 205.284 and the procedures set forth in this Decision and Order.

Claimants applying for refunds from more than one consent order fund involved in this proceeding shall submit a separate application for each fund from which they are requesting a refund. The following subjects should be covered in each application:

A. Each applicant should provide data establishing the volumes of product that it purchased which were sold by a named consent order firm and the dates of those purchases. The applicant should indicate the types of business records currently in existence from which the figures were derived. If the applicant was a purchaser of NGLs or NGLPs, it should also indicate the gas plant from which the product originated. However, if this latter data is unavailable, the applicant shall explain why it is unable to retrieve this information. If the product was not purchased directly from a consent order firm, the applicant should state the manner in which it determined that the product originated from a consent order firm.

B. Each applicant should specify the type of business it operated, including how it used the products—e.g., whether it was a reseller, a refiner using the products in its own operations, or an ultimate consumer.

C. If the applicant is a reseller or refiner that wishes to claim a refund in excess of $5,000 from a single consent order fund, it must also provide the following information:

(i) The applicant shall state whether it maintained banks of unrecouped product cost increases from the date of the alleged violation until the product was decontrolled, and if so, furnish OHA with quarterly bank calculations. If a claimant is unable to develop bank data, it may submit other persuasive evidence that it was unable to pass through the alleged overcharges. An applicant whose refund claim is based on NGL or NGLP purchases shall submit evidence of the quarterly prices it paid during the applicable periods for the products for which it is claiming a refund and locations of such purchases.

(ii) The applicant shall provide sufficient corporate information to identify its parent corporation, the corporation selling or processing the product, and the corporation actually purchasing the product, and describe their corporate relationship.

(iii) The applicant shall state whether it or any of its affiliates filed any other applications for refund in which it has referred to its banks to demonstrate injury.

D. The applicant should report whether it is or has been involved as a party in any DOE or private section 210 enforcement actions. If these actions have terminated, the applicant should furnish a copy of any final order issued in the matter. If the action is ongoing, the applicant should briefly describe the action and its current status. Of course, the applicant is under a continuing obligation to keep the OHA informed of any change in status during the pendency of its application for refund. *See* 10 CFR 205.9(d).

We will also establish a minimum amount of $15 for first stage refund claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds of less than $15 are sought outweighs the modest benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982). *See also* 10 CFR 205.286(b). Successful applicants will also receive a pro rata portion of any interest accrued on the relevant consent order fund.

V. Second Stage Refund Procedures

As a final matter, in the Proposed Order we stated that we would consider at a future date the appropriate disposition of any funds remaining after refunds to all successful purchasers have been effected. Several states filed comments regarding the Proposed Order and have suggested methods for distributing any funds remaining after refunds to identifiable purchasers have been completed.[4] These comments generally advocate that state governments, rather than the United States Treasury, are the appropriate recipients of these funds. In several refund proceedings, we have adopted just such an approach. *E.G., Belridge Oil Co.*, 11 DOE ¶ 85,197 (1983); *Palo Pinto Oil & Gas*, 11 DOE ¶ 85,034 (1983). However, it is the DOE's position currently that legislative guidance should be sought from the Congress on the question of ultimate disposition of second-stage consent order funds, provided the impact of the alleged overcharges was national rather than local or regional in scope. In any case, it would be premature at this time to reach a determination regarding disbursement of second stage refund monies, since we cannot foresee the size of the pool available for refund after all meritorious refund claims of purchasers have been satisfied. Consequently, we will not adopt the states' suggestion at this time.

It is therefore ordered, That:

(1) Applications for refunds from the funds remitted to the Department of Energy by the consent order firms listed in the Appendix to this Decision and Order may now be filed.

(2) All applications must be filed no later than 90 days after publication of this Decision and Order in the **Federal Register**.

Dated: February 22, 1985.

George B. Breznay

Director,

Office of Hearings and Appeals.

Case Names

Firm and Case No.

Seminole Refining, Inc., HEF-0221
Roberts Oil Company, Inc., HEF-0167
Internorth, Inc., HEF-0255
Swifty Oil Company, Inc., HEF-0175
Lakeside Refining Company and Crystal Refining Company, Inc., HEF-0214
Sanesco Oil Company, Inc., HEF-0170
Truckstops Corporation of America, HEF-0183
Warrior Asphalt Company of Alabama, Inc., HEF-0226
Franks Petroleum, Inc., HEF-0208
Northwest Pipeline Corporation, HEF-0264
Kansas-Nebraska Natural Gas Co., Inc., HEF-0257
Rockwood Oil Terminals, Inc., HEF-0168
Schroeder Oil Company, HEF-0171
Speedway Petroleum Company, Inc., HEF-0173
JOC Oil, Inc., HEF-0176
A. Tarricone, Inc., HEF-0177
R. V. Whitmer Thermogas Co., HEF-0178
Ropet Incorporated, HEF-0169
Tippins Oil and Gas Co., Inc., HEF-0181
Daniel J. Turco d/b/a Turco's 129 Exxon and Turco's Shell, HEF-0184
U.S. Oil Company, Inc., HEF-0185
United Petroleum, Inc., HEF-0187
Little America Refining Company, HEF-0215

[4] The states that filed comments regarding the *Seminole* Proposed Order are: Arkansas, Delaware, Kansas, Iowa, Louisiana, North Dakota, Rhode Island, West Virginia, New Mexico, and Florida.

Witco Chemical Corporation, HEF–0227
Aminoil U.S.A., Inc., HEF–0229
Stinnes Interoil, Inc., HEF–0174

Index to Exhibits

Exhibit and Firm

1—Seminole Refining, Inc.
2—Roberts Oil Company, Inc.
3—Internorth, Inc.
4—Swifty Oil Company, Inc.
5—Lakeside Refining Company and Crystal Refining Company
6—Sanesco Oil Company
7—Truckstops Corporation of America
8—Warrior Asphalt Company of Alabama, Inc.
9—Franks Petroleum, Inc.
10—Northwest Pipeline Corporation
11—Kansas-Nebraska Natural Gas Co., Inc.
12—Rookwood Oil Terminals, Inc.
13—Schroeder Oil Company
14—Speedway Petroleum Company, Inc.
15—JOC Oil, Inc.
16—A. Tarricone, Inc.
17—R.V. Whitmer Thermogas Co.
18—Ropet Incorporated
19—Tippins Oil and Gas Co., Inc.
20—Daniel J. Turco d/b/a Turco's 129 Exxon and Turco's Shell
21—U.S. Oil Company, Inc.
22—United Petroleum, Inc.
23—Little America Refining Company
24—Witco Chemical Corporation
25—Aminoil U.S.A., Inc.
26—Stinnes Interoil, Inc.

Exhibit 1

Name of Consent Order Firm: Seminole Refining, Inc., St. Marks, FL.
Type of Operation: Refiner of covered products.
Consent Order Case Numbers: ERA: 411S00023; N00S80119; N00S80131, OHA: HEF–0221.
Consent Order Period: December 1, 1973–August 13, 1980.
Consent Order Fund: $1,900,000.*

Alleged Overcharges:

No. 2 Fuel Oil	$259,383.00
No. 5 Fuel Oil	166,752.49
Jet Fuel	212,552.75
Tractor Fuel	19,192.34
P–9 Oil	14,093.00
Subtotal	671,953.58
Entitlements Program	1,330,000.00
Total	2,001,953.58

Gallons Sold:

No. 2 Fuel Oil	26,817,951
No. 5 Fuel Oil	31,198,961
Jet Fuel	27,699,860
Tractor Fuel	1,746,415
P–9 Oil	3,586,168
Total	91,049,355

Per Gallon Refund Amount: $.006260.
Identified Purchasers:

No. 2 Fuel Oil (Resellers/End-Users)

1. Couch Construction
2. McKenzie Construction
3. Oxford Construction
4. Milwhite Company
5. Coleman Evans
6. Wright Construction
7. Southern Terminal
8. Three Country Petroleum
9. Autry Petroleum
10. Big Bend
11. Dixie Oil
12. Couch Asphalt
13. W. J. Holland
14. Summer Construction
15. Waverly Minerals
16. Industrial Service
17. Colonial Oil
18. Haugabook Oil
19. Murphy Oil
20. Clyde Smith
21. Tallahassee Memorial
22. St. Joe Paper
23. Temko Oil
24. Geophysical Services
25. Frank Lawhorn
26. Manor Timber
27. Williams Services
28. Mileage Oil
29. O'Neal Construction Co.
30. Georgia Medicaid
31. E.W. Patterson
32. Sullivan
33. Griffin Farms
34. A. J. Singletary
35. Baily & Whitaker
36. Turner Oil Co.

No. 5 Fuel Oil (Resellers/End-Users)

1. Columbia Paving
2. Dowes Silica
3. Englehard Minerals
4. Graceville Oil
5. Oil Dri
6. Rocky Creek Mineral
7. Hammons Asphalt
8. Moody Construction
9. Florida A & M
10. Cape Rendering
11. Southeastern Asphalt
12. Flint River Mills
13. Americus Wood
14. Henry Country Line
15. Baxter Asphalt
16. Amoco Oil Company
17. Sing Oil Company
18. Jasper Laundry
19. White Construction
20. National Line Service
21. Houdaille D–W
22. Dotham Oil Mill

Jet Fuel (Resellers/End-Users)

1. Moody Air Force Base
2. Grumman
3. Michael Avimo

Tractor Fuel (Resellers)

1. R.P. Williams
2. Union 76
3. Waldron
4. Pickins
5. T. J. Campbell
6. M.C. Sullivan
7. Morris Adams

P–9 Oil (End-Users)

1. Sanford Chemicals
2. Vulcan Asphalt
3. McCrannie Bros.

Comments:

*Of the total Seminole consent order fund, $1,330,000 was related to the firm's alleged crude oil pricing violations. In *a. Johnson & Co.*, 12 DOE ¶85,102 (1984), we provided that applications for refund from the Seminole fund filed in connection with alleged crude oil pricing violations, would be considered based on the procedures set forth in *Office of Enforcement*, 9 DOE ¶82,521 (1982) and *Office of Enforcement*, 9 DOE ¶82,553 (1982). Therefore, the standards enunciated in the present Proposed Order are applicable only to Seminole's sales of the refined products listed in the exhibit. Accordingly, the per gallon (volumetric) refund amount set forth in this exhibit is based only on alleged over-charges related to refined products.

Exhibit 2

Name of Consent Order Firm: Roberts Oil Company, Inc., Albuquerque, NM 87108.
Type of Operation: Reseller/retailer of refined petroleum products.
Consent Order Case Numbers: ERA: OHA: 400H00215 (RE: 673H00321), HEF-0167.
Consent Order Period: April 1, 1979–August 31, 1979.
Consent Order Fund: $14,393.72.
Alleged Overcharges: $37,878.21.
Gallons Sold: Gasoline (Regular, Unleaded and Premium), 8,180,280.
Per Gallon Refund Amount: $.001759.
Identified Purchasers:

1. Clark Oil Co., 10710 Menaul, N.E., Albuquerque, NM 87112
2. Simon Gonzales, 544 Main Street, N.W., Albuquerque, NM 87112
3. Art Wallace, 3001 Coors, S.W., Albuquerque, NM 87112
4. Ever Ready Oil Co., 101 Anderson, S.E., Albuquerque, NM 87112
5. Octopus, East Central, S.E., Albuquerque, NM 87109
6. State Oil Co., Raton, NM 87740
7. Felix Baca, Los Lunas, NM 87031
8. Bill Upchurch, Albuquerque, NM 87112
9. Horizon Oil Co.

Exhibit 3

Name of Consent Order Firm: Internorth, Inc., Omaha, NE.
Type of Operation: Producer of condensate.
Consent Order Case Numbers: ERA: 730V02000, OHA: HEF–0255.
Consent Order Period: September 1, 1973–January 28, 1981.
Consent Order Fund: $1,500,000.
Alleged Overcharges: Condensate: $2,919,329.73.*

	Consent order period estimate	Annual sales estimate
Gallons sold:		
Condensate	177,391,774	23,917,992

Identified Purchasers:

1. Apco Oil Corporation, Oklahoma City, OK
2. Permian Corporation, P.O. Box 1183, Houston, TX 77001
3. Koch Industries, Inc., P.O. Box 2256, Wichita, KS 67201
4. Diamond Shamrock Corporation, P.O. Box 631, Amarillo, TX 79173

5. Dorchester Gas Corporation, 5735 Pineland Drive, P.O. Box 31049, Dallas TX 75231
6. Tesoro Petroleum Corporation, 8700 Tesoro Drive, San Antonio, TX 78286
7. Petro Sands, Inc., Enid, OK
8. General Petroleum, Inc., Hobbs, NM
9. Summit Gas Company, Houston, TX

Comments:

*Of the $3,275,415.91 in total alleged overcharges, Internorth, Inc. refunded $301,250.68 and $54,835.52 directly to Apco Oil Corporation and Diamond Shamrock Corporation, respectively, for the express purpose of refunding amounts which the firm had allegedly overcharged. Accordingly, the amount available for distribution in this proceeding is $2,919,329.73. As indicated in the above determination, refunds involving condensate sales will be considered based on the standards enunciated in *Alkek, Adams,* and *Johnson.*

Exhibit 4

Name of Consent Order Firm: Swifty Oil Company, Inc., Seymour, IN 47274.

Type of Operation: Reseller/retailer of motor gasoline.

Consent Order Case Numbers: ERA: 550H00337, OHA: HEF-0175.

Consent Order Period: August 1, 1979–April 30, 1980.

Consent Order Fund: $65,000.

Locations of Gasoline Stations Owned and/or Operated by Swifty Oil Company, Inc.*

1. Service Station No. 4, Fort Wayne, IN
2. Service Station No. 5, Shelbyville, IN
3. Service Station No. 10, Henderson, KY
4. Service Station No. 11, Charlestown, IN
5. Service Station No. 16, Madison, IN
6. Service Station No. 18, North Vernon, IN
7. Service Station No. 19, Dayton, OH
8. Service Station No. 20, Covington, KY
9. Service Station No. 21, Columbus, IN
10. Service Station No. 22, Louisville, KY
11. Service Station No. 25, Fern Creek, KY
12. Service Station No. 26, Fairfield, OH
13. Service Station No. 27, Richmond, IN
14. Service Station No. 31, Owensboro, KY
15. Service Station No. 34, Nashville, TN
16. Service Station No. 37, Chattanooga, TN
17. Service Station No. 39, Carrollton, KY
18. Service Station No. 40, Bedford, IN
19. Service Station No. 41, Chillicothee, OH
20. Service Station No. 42, Columbus, OH
21. Service Station No. 44, Bloomington, IN
22. Service Station No. 45, Dayton, OH
23. Service Station No. 49, Columbus, OH
24. Service Station No. 101, Marion, OH
25. Service Station No. 102, Greenfield, IN
26. Service Station No. 103, Greensburg, IN
27. Service Station No. 104, Columbus, OH
28. Service Station No. 105, Lapaz, IN
29. Service Station No. 111, Clarksville, IN
30. Service Station No. 113, Roanoke, VA
31. Service Station No. 116, Huntsville, AL
32. Service Station No. 117, Tuscaloosa, AL
33. Service Station No. 123, Seymour, IN
34. Service Station No. 124, Lawrence, IN
35. Service Station No. 127, Lexington, KY
36. Service Station No. 130, Delphi, IN

Alleged Overcharges:	
Regular Gasoline	$283,540.87
Unleaded Gasoline	248,558.24
Gasohol	50,681.57
Total	582,780.68

Gallons Sold:	
Consent order period estimate	*30,000,000
Annual sales estimate	40,000,000

Per Gallon Refund Amount: $.002166.
Identified Purchasers:

Resellers-Retailers and/or Retailers**

1. Consumer's Petroleum 610 Magaxine Street, Box 23309, Nashville, TN 37202
2. Orbit Oil Company, 1420 West 25th Street, Cleveland, TN 37311
3. R. W. Wogaman Oil Company, 71 North Main Street, West Alexandria, OH 45381
4. Wayne Burton, Driftwood Auto Center, Edinburg, IN
5. Excel Products, 3601 Hobson Road, Suite 110, Ft. Wayne, IN 46815
6. Gene Carey c/o Dowds Sunoco, Scottsburg, IN
7. Mid-State Oils, Inc., Post Office Box 379, Shelbyville, TN 37160
8. Rocket Oil Co., Inc., 1150 South Main Street, Madisonville, KY 42431
9. Little Champ Oil Company, Post Office Box 823, Columbus, IN 47201
10. Southern Pantry, Inc., 925 South Memorial Drive, Prattyville, AL 36067
11. Hume Oil & Gas Company, Post Office Box 397, Henderson, KY 42420
12. Yeager Petroleum, Inc., I-74 & State Road 267, Brownsburg, IN 46112
13. Harry E. Crocker, d/b/a Markland Station, Clarksville, TN 37040

Comments:

*During the consent order period, Swifty Oil Company, Inc. owned and/or operated 36 retail outlets in six states (Indiana, Ohio, Tennessee, Alabama, Kentucky and Virginia). The sales through these outlets comprised 98.5% of the sales volume of the firm.

**All sales, other than those made through the retail outlets, represented direct shipments from Swifty's suppliers to Swifty's customers (reseller-retailers and/or retailers).

Exhibit 5

Name of Consent Order Firm: Lakeside Refining Company and Crystal Refining Company, Smithfield, MI.

Type of Operation: Refiner of covered products.

Consent Order Case Numbers: ERA: 540S00276, OHA: HEF-0214.

Consent Order Period: August 19, 1973–January 27, 1981.

Consent Order Fund: $200,000.*

Alleged Overcharges: Entitlements Program: $200,000.

Comments:

*The Lakeside/Crystal consent order required refunds totaling $675,000. The firms agreed to make direct refunds of $475,000 through credit memoranda and/or cash payments over a period of three years to eleven identified purchasers of refined petroleum products. The firms refunded $200,000 directly to the DOE, in full settlement of DOE's challenges to the amount of Lakeside/Crystal's purchases and sales of crude oil entitlements. It is this $200,000 that is subject to the present refund proceeding. Since the alleged violations involve the DOE Crude Oil Entitlements Program, refund claims in connection with this fund will be evaluated based on the standards set forth in *Alkek, Adams* and *Johnson.*

Exhibit

Name of Consent Order Firm: Sanesco Oil Company, Escondido, CA 92025.

Type of Operation: Reseller/retailer of refined petroleum products.

Consent Order Case Numbers: ERA: 930H00306, OHA: HEF-0170.

Consent Order Period: April 1, 1979–June 30, 1979.

Consent Order Fund: $51,703.77.

Locations of Gasoline Stations:

Company-Operated Stations

1. 6839 Imperial Avenue, San Diego, CA 92114
2. 3911 University Avenue, San Diego, CA 92105
3. 3010 Market Street, San Diego, CA 92102
4. 5415 South Woodruff, Lakewood, CA 90714
5. 8510 East Rosecrans, Paramount, CA 90723
6. 3398 Atlantic Avenue, Long Beach, CA 90807

Dealer-Operated Stations

1. 710 Second Street, El Cajon, CA 92020
2. 1202 South Main Street, Fallbrook, CA 92028
3. 555 West Grand Avenue, Escondido, CA
4. 470 N. Escondido Boulevard, Escondido, CA
303 S. Escondido Boulevard, Escondido, CA
5. 1116 West Mission Avenue, Escondido, CA
7. 710 First Street, Encinitas, CA
8. 880 Elm Street, Carlsbad, CA
9. 2440 East Anaheim, Long Beach, CA
10. 2340 E. Pacific Coast Highway, Long Beach, CA
11. 3631 Santa Fe, Long Beach, CA
12. 12462 Poway Road, Poway, CA
13. 2413 Pacific Coast Highway, Lomita, CA
14. 1943 South Hill Street, Oceanside, CA
15. 2207 West 190th Street, Torrance, CA
16. 235 South 47th Street, San Diego, CA
17. 535 North Santa Fe, Vista, CA
18. 730 South Santa Fe, Vista, CA
19. 27406 Valley Center Road, Valley Center, CA

Alleged Overcharges: Motor Gasoline: $111,458.96.

	Consent order period estimate	Annual sales estimate
Gallons Sold:		
Motor gasoline	3,775,000	15,100,000

Per Gallon Refund Amount: $.013696.
Identified Purchasers:

1. Union Oil Co. of California, P.O. Box 7600, Los Angeles, CA 90051
2. Shell Oil Company, P.O. Box 2463, 1 Shell Plaza, Houston, TX 77001
3. Mobil Oil Corporation, 3225 Gallows Road, Fairfax, VA 22037
4. Atlantic Richfield Company, 515 South Flower Street, P.O. Box 2679–T.A., Los Angeles, CA 90071

5. Mohawk Petroleum Corporation, P.O. Box 1476, Bakersfield, CA 93302

Exhibit 7

Name of Consent Order Firm: Truckstops Corporation of America, Nashville, TN.
Type of Operation: Retailer of refined petroleum products.
Consent Order Case Numbers ERA: 430K00031, OHA: HEF-0183.
Consent Order Period: November 1, 1973–June 30, 1976.
Consent Order Fund: $486,430.
Alleged Overcharges: $3,509,834.89.
Gallons Sold: * 388,360,892.
Per Gallon Refund Amount: $.001252.
Identified Purchasers: Unidentified.
Comments:
*The specific products sold by Truckstops were not identified in the audit files we were able to examine. However, we believe it is likely that the products sold by the firm were motor gasoline and diesel fuel.

Exhibit 8

Name of Consent Order Firm: Warrior Asphalt Company of Alabama, Inc., Tuscaloosa, AL.
Type of Operation: Refiner of covered products.
Consent Order Case Numbers: ERA: 420S00193, OHA: HEF-0226.
Consent Order Period: August 19, 1973–June 30, 1976.
Consent Order Fund: $404,287.*
Location of Refinery: Tuscaloosa, AL.

Alleged Overcharges:	
Diesel	$775,503
Other Covered Products	210,000
Total	985,503
Gallons Sold:	
Average Runs to Stills	2,000 BPD
Consent Order Period Estimate	57,120,000

Per Gallon Refund Amount: $.007077.
Identified Purchasers:
1. Alabama Feed Mills
2. AL. Oil of Etowah, Inc.
3. AL. Oil of Sheffield, Inc.
4. Allied Products Co.
5. Armstrong Oil Co.
6. Bains Oil Co.
7. Ballew & Roberts Const. Co.
8. Belcher Oil Co.
9. Chilton County
10. Cowart Oil Company
11. Druid Hills Oil Co.
12. Drummond Coal Co.
13. G&W Asphalt Co.
14. Guthrie Oil Co.
15. Hager Oil Co.
16. Hicks Oil Co.
17. J&J Oil Co.
18. Kuykendall & Powell
19. Lambert Materials Co.
20. Larkin Oil Co.
21. McCord Oil Co.
22. National Refining Co.
23. Osteen Oil Co.
24. Philrich, Inc.
25. Raines Lumber Co.
26. Rhodes & Mcleod
27. Ross Neely Express
28. Rutland Oil Co.
29. Sentell Oil Company
30. St. of AL. Inst. for Deaf
31. Stroup Oil Company
32. Sumter County
33. Taylor Oil Company
34. Charles Tenerson
35. Thompson & Swain
36. Vaughn Oil Co.
37. Williams Bros. Oil Co.
38. Windham Distrib.
39. Wright Truck Lines
40. Wyatt Oil Co.

Comments:
Warrior agreed to make direct refunds of $26,713 by cash or credit memoranda to 16 end-users and it also agreed to pay a civil penalty of $25,000 to settle any and all other civil liability relating to the period covered by this consent order. Accordingly, of the total consent order fund of $456,000, the firm refunded directly to the DOE the amount of $404,287. It is this $404,287 that is subject to the present refund proceeding.

Exhibit 9

Name of Consent Order Firm: Franks Petroleum, Inc., Shreveport, La.
Type of Operation: Reseller of refined petroleum products.
Consent Order Case Numbers: ERA: 641S00421, OHA: HEF-0208.
Consent Order Period: January 1, 1973–January 27, 1981.
Consent Order Fund: $135,000.
Names of Plants:
1. Kerr-McGee Plant
2. Claiborne Plant

Alleged Overcharges:	
Propane	$1,619,480
Butane	2,167,661
Premium Gasoline	156,200
Regular Gasoline	4,489,129
Gas Oil	93,842
Diesel	68,394
Condensate	53,267
Total	8,647,973
Gallons Sold:	
Propane	18,447,215
Butane	13,510,693
Premium Gasoline	3,254,444
Regular Gasoline	25,723,374
Kerosene	742,196
Gas Oil	947,343
Diesel	703,970
Condensate	474,871
Total	63,804,106

Per Gallon Refund Amount: $.002115.

Exhibit 10

Name of Consent Order Firm: Northwest Pipeline Corporation, Salt Lake City, UT.
Type of Operation: Gas plant operator, Producer of condensate.
Consent Order Case Numbers: ERA: 710V03015, OHA: HEF-0264.
Consent Order Period: February 1, 1974–January 28, 1981.
Consent Order Fund: $1,500,000.
Locations of Gas Plants Operated by Consent Order Firm:
1. Ignacio, CO
2. Opal, WY

Alleged Condensate Overcharges: $768,865.35.*
Gallons Sold: 6,021,763.
Per Gallon Refund Amount: $.121415.**
Identified Purchasers:
1. Delgado Oil Co.
2. Amoco Oil Company, 200 East Randolph Drive, Chicago, IL 60601

Comments:
*As we suggested in our determination, refund claims filed in connection with condensate sales will be considered prusuant to the standards set forth in the *Johnson, Alkek* and *Adams* cases. In the present case, the refund amount available for applicants that were condensate purchasers is $765,865.35. Accordingly, of the $1,500,000 consent order fund, $731,134.65 will be available for applicants whose refund claims are based on purchases of NGLs.
**This volumetric amount was derived by dividing the portion of the funds allocated to NGLs, $731,134.65, by the number of gallons of NGLs sold, 6,021,763.

Exhibit 11

Name of Consent Order Firm: Kansas-Nebraska Natural Gas Co., Inc., Hastings, NE 68901.
Type of Operation: Producer of condensate.*
Consent Order Case Numbers: ERA: 730V01244, OHA: HEF-0257.
Consent Order Period: September 1, 1973–September 30, 1979.
Consent Order Fund: $406,578.25.

Alleged overcharges by Installation:	
Sabine Street Drip #18307	$462.35
Drip Tank #849	4,562.27
Danville Drip #19455	17,441.17
Tyrone Gas Plant	14,567.42
R. Lacy Estate #04437	389,545.04
Total	406,578.25

Condensate Barrels Sold: 218,571.
Identified Purchasers:
1. Scurlock
2. Permian Corporation, P.O. Box 1183, Houston, TX 77001

Comments:
*Refund claims will be considered based on the standards enunciated in *Johnson, Alkek* and *Adams*.

Exhibit 12

Name of Consent Order Firm: Rookwood Oil Terminals, Inc., Cincinnati, OH.
Type of Operation: Reseller of refined petroleum products.
Consent Order Case Numbers: ERA: 533H00008, OHA: HEF-0188.
Consent Order Period: November 1, 1973–April 30, 1974.
Consent Order Fund: $156,662.75.
Alleged Overcharges: $628,128.29.

	Consent order period estimate	Annual sales estimate
Gallons sold	150,000,000	300,000,000

Per Gallon Refund Amount: $.001045.
Identified Purchasers: Unidentified.

Comments:

Rookwood Oil Termianls, Inc. (ROT) is a reseller of petroleum products, including gasoline, No. 2 fuel oil, No. 2 diesel fuel and kerosene. ROT operates terminal facilities on the Ohio River in Cincinnati, Ohio. They also have three wholly-owned subsidiaries as follows:

1. Oil Transit Inc.—This subsidiary accounts for the largest volume of sales of any part of ROT. The firm's sales territory is 12 midwestern and southern states.

2. Houston Oil Company—This subsidiary normally makes sales directly from one of five ARCO Terminal sites in North Carolina, South Carolina and Georgia.

3. Oil Transit of Colorado, Inc.—This subsidiary operates in Colorado and Wyoming. The principal product involved is gasoline.

Exhibit 13

Name of Consent Order Firm: Schroeder Oil Company, Carroll, IA 51901.

Type of Operation: Reseller/retailer of refined petroleum products.

Consent Order Case Numbers: ERA: 733H02025, OHA: HEF-0171.

Consent Order Period: May 1, 1979–July 31, 1979.

Consent Order Fund: $16,351.40.

Alleged Overcharges:

Motor Gasoline: $76,461.34

	Consent Order penod estimate	Annual sales estimate
Gallons sold:		
Motor gasoline	1,450,000	5,800,000

Per Gallon Refund Amount: $.011276.
Identified Purchasers:

1. Al's Corner
2. Baker Petroleum
3. Ball Oil
4. Booth Oil
5. Bushy John's
6. Cal Bliss Enterprises
7. Dedham Oil
8. Don's DX
9. Doonan Oil Company
10. Eberle Brothers
11. Elite Ltd
12. Greteman Oil
13. Halbur Oil Company
14. Hunt Oil Company
15. Kelly Oil Company
16. Koren Garage
17. Manning Oil Company
18. Reise Mobil Service
19. Tjaden Oil Company
20. Tractor Service Company
21. Westside Oil Company
22. Casey's General Store
23. Robo Car Wash
24. Vail

Exhibit 14

Name of Consent Order Firm: Speedway Petroleum Company, Inc., Fitchburg, MA.

Type of Operation: Reseller/retailer of motor gasoline.

Consent Order Case Numbers: ERA: 110H00289, OHA: HEF-0173.

Consent Order Period: April 1, 1979–April 30, 1980.

Consent Order Fund: $50,000.

Names and Locations of Service Stations: Twenty company-operated retail outlets located in Maine, New Hampshire and Massachusetts:

1. York
2. Kings Cornor
3. Kingston
4. Buzzard Bay
5. Baker
6. Rochester
7. Taunton
8. Bass River
9. No. Adams
10. Keene
11. Portsmouth
12. Ogunguit
13. Chelmsford
14. Clinton
15. Office
16. Hyannis #1
17. Towsend
18. Winchendon
19. Hyannis #2
20. Kittery #2

Service station operated on a consignment basis: 1. Athol, Massachusetts.

Alleged Overcharges: Motor Gasoline: $107,632.29.

	Consent order period estimate	Annual sales estimate
Gallons sold:		
Motor gasoline	13,000,000	12,000,000

Per Gallon Refund Amount: $.003846.
Indentified Purchasers: Unidentified.

Exhibit 15

Name of Consent Order Firm: JOC Oil, Inc., New York, NY.

Type of Operation: Reseller/retailer of refined petroleum products.

Consent Order Case Numbers: ERA: 240H00047, OHA: HEF-0176.

Consent Order Period: November 1, 1973–June 30, 1974.

Consent Order Fund: $313,069*.

Alleged overcharges:	
No. 2 Heating Oil	$610,052
No. 6 Fuel Oil	338,068
Total	948,120
Gallons sold:	
No. 2 Heating Oil	5,529,720
No. 6 Fuel Oil	29,987,076
Total	35,516,796

Per Gallon Refund Amount: $.008814.
Identified Purchasers:

1. Kaiser Trading Co.
2. Commonwealth of Virginia
3. Queens Petroleum
4. Patchogue Oil Terminal
5. New England Electric
6. Howard Fuel Co.
7. Amerada Hess Corporation, 1185 Avenue of the Americas, New York, New York, NY 10036
8. Getty Oil Company, P.O. Box 1650, Tulsa, OK 74102
9. Tenneco Oil Company, P.O. Box 2511, Houston, TX 77001

Comments:

*Beginning on the 15th day following the effective date of the Consent Order and continuing on the basis of 24 equal monthly installments, the firm agreed to make refunds in the amount of $294,739 to an end-user customer, Commonwealth of Virginia. Accordingly, of the total consent order fund of $607,808, JOC Oil, Inc., refunded only $313,069 directly to the DOE and it is this $313,069 that is subject to the present refund proceeding.

Exhibit 16

Name of Consent Order Firm: A. Tarricone, Inc., Yonkers, NY 10710.

Type of Operation: Reseller/retailer of No. 2 heating oil.

Consent Order Case Numbers: ERA: OHA: None, HEF-0177.

Consent Order Period: November 1, 1973–December 31, 1974.

Alleged Overcharges: No. 2 Heating Oil: $1,126,287.

	Consent order period estimate	Annual sales estimate
Gallon sold:		
No. 2 Heating Oil	36,166,666	31,000,000

Per Gallon Refund Amount: $.010101.
Identified Purchasers: Tenneco Oil Company, P.O. Box 2511, Houston, TX 77001.

Comments:

*Beginning on August 1, 1979 and continuing until August 1, 1983, the firm agreed to refund or issue credit memoranda to seven classes of purchasers of No. 2 heating oil for the express purpose of refunding $34,646 which the firm had allegedly overcharged. Accordingly, of the total consent order fund of $400,000, A. Tarricone, Inc. refunded only $365,354 directly to the DOE and it is this $365,354 that is subject to the present proceeding.

Exhibit 17

Name of Consent Order Firm: R.V. Whitmer Thermogas Co., Wauseon, OH.

Type of Operation: Reseller/retailer of propane.

Consent Order Case Numbers: ERA: 530E00176, OHA: HEF-0178.

Consent Order Period: November 1, 1973–January 28, 1981.

Consent Order Fund: $60,000.

Alleged Overcharges: Propane: $79,844.05.

	Consent order period estimate	Annual sales estimate
Gallons sold:		
Propane	5,068,096	899,048

Per Gallon Refund Amount: $.011838.
Identified Purchasers:

1. M. Altman
2. J. Batdorf
3. E. Bates
4. Donald Belman
5. M. Callendar
6. Camp Palmer
7. C. Canfield
8. C. Carr
9. H. Cass
10. D. Colon
11. A. Creager
12. R. Daugherty
13. R. Deleon
14. C. Dennis
15. H. Dennis
16. C. Diaz
17. R. Derringer
18. W. Dunn
19. L. Durbin
20. E. Gerdeman
21. F. Grabanczyk
22. J. Green
23. J. Grim
24. L. Gunn
25. F. Haupright
26. C. Haven
27. Health Food Stand
28. M. Henry
29. R. Hildneth
30. C. Hile
31. N. Humbert
32. A. Hutchinson
33. E. Miller
34. C. Mock
35. D. Parchen
36. H. Pfund
37. Pike School
38. B. Rieneke
39. R. Roth
40. Dr. Rupp
41. W. Sager
42. B. Shaffer
43. G. Smith
44. R. Stunnard
45. A. Swanz
46. G. Taylor
47. M.T. Tipton
48. United Telephone

Name of Consent Order Firm: Ropet Incorporated Corapolis, PA 15108.
Type of Operation: Reseller/retailer of refined petroleum products.
Consent Order Case Numbers: ERA: 340H00262, OHA: HEF–0169.
Consent Order Period: November 1, 1973–April 30, 1974.
Consent Order Fund: $99,025.*

Alleged overcharges:

Propane	$60,000
No. 2 Oil	256,012
Motor Gasoline	89,462
Total	405,474

	Consent order period estimate	Annual sales estimate
Gallons sold	9,504,828	19,009,656

Per Gallon Refund Amount: $.010418.
Identified Purchasers:
End Users:

1. Plumbers Equipment
2. Allied Chemical
3. U.S. Steel
4. Russel Burdsall
5. A & S Railroad
6. PPG Industries
7. Wheeling Pittsburg

Utility Firm: Duquesne Light Company

Comments:
*The firm agreed to make refunds in the amount of $105,858 to seven end-users shown above. In the event that reasonable efforts by the consenting firm did not result in payments to those end-user customers, the amount owed to the customers was to be paid to the DOE. Accordingly, of the total consent order fund of $204,883, Ropet Incorporated refunded only $99,025 directly to the DOE and it is this $99,025 that is subject to the present refund preceeding.

Exhibit 19

Name of Consent Order Firm: Tippins Oil and Gas Co., Inc., Richmond, MO.
Type of Operation: Reseller/retailer of motor gasoline.
Consent Order Case Numbers: ERA: 710H02502, OHA: HEF–0181.
Consent Order Period: March 1, 1979–December 31, 1979.
Consent Order Fund: $12,000.
Alleged Overcharges: Motor Gasoline $90,948.82.

	Consent order period estimate	Annual sales estimate
Gallons sold:		
Motor gasoline	7,350,426	8,767,665

Per Gallon Refund Amount: $.001632.
Identified Purchasers: Unidentified.

Exhibit 20

Name of Consent Decree Firm: Daniel J. Turco d/b/a Turco's 129 Exxon, Route 129, Billerica, MA and Turco's Shell, Nashua Road, North Billerica, MA.
Type of Operation: Retailer of motor gasoline.
Consent Decree Case Numbers: Civil Action No.: 80–1311–N, OHA: HEF–0184.
Consent Decree Period: August 1, 1979–January 27, 1981.
Consent Decree Fund: $510.46 (Includes Interest of $54.69).
Alleged Overcharges: Motor Gasoline: $455.77.

	Consent order period estimate	Annual sales estimate
Gallons sold:		
Motor gasoline	1,749,505	1,171,687

Per Gallon Refund Amount: $.000291.
Identified Purchasers: Unidentified.

Exhibit 21

Name of Consent Decree Firm: U.S. Oil Company, Inc., Combined Locks, WI 54113.
Type of Operation: Reseller/retailer of refined petroleum products.
Consent Order Case Numbers: ERA 570H00207, OHA: HEF–0185.
Consent Order Period: March 1, 1979–August 31, 1979.
Consent Order Fund: $50,776.89.

Alleged overcharges:

Regular Gasoline	$63,246.32
Unleaded Gasoline	188,658.69
Premium Gasoline	3,730.15
Total	255,635.16

	Consent order period estimate	Annual sales estimate
Gallons sold:		
Motor gasoline	35,000,000	70,000,000

Per Gallon Refund Amount: $.001450.
Identified Purchasers: Unidentified.

Exhibit 22

Name of Consent Order Firm: United Petroleum, Inc., Tampa, FL 33610.
Type of Operation: Reseller/retailer of refined petroleum products.
Consent Order Case Numbers: ERA: 420H00277, OHA: HEF–0187.
Consent Order Period: October 1, 1979–December 31, 1979.
Consent Order Fund: $22,375.
Alleged Overcharges: No. 4 Oil: $87,681.

	Consent order period estimate	Annual sales estimate
Gallons sold:		
No. 4 Oil	1,152,997	4,611,987

Per Gallon Refund Amount: $.019405.
Identified Purchasers:

1. St. Catharine's Church
2. Chandler Engineering
3. ARC Builders
4. ADCO Chemicals
5. Wakefern Foods
6. Rollins Terminal
7. Addressograph
8. Sheridan Gardens
9. Julyet Gardens
10. EDC
11. Swan Cleaners
12. Ever Ready Label
13. Lampert Dairy Farms
14. Estate of Krininger
15. Robert Schwarz
16. Walnut Assoc.
17. Mary Seidman
18. G. Moskowitz
19. Hunt Ltd.
20. Davanne Realty
21. First Raritan Gardens
22. Ivory Dry Cleaners
23. Plymouth Invest
24. G & B Holding

25. Red Hill Assoc.
26. Diplomat Assoc.
27. Parker Wholesale Florist
28. Apex Rendezvous
29. Greenfield Gardens

Exhibit 23

Name of Consent Order Firm: Little America Refining Company, Salt Lake City, UT 84131.

Type of Operation: Refiner of covered products.

Consent Order Case Numbers: ERA: 830S00012; OHA: HEF-0215.

Consent Order Period: August 19, 1973–January 27, 1981.

Consent Order Fund: $2,175,000.

Alleged overcharges:

No. 2 Oils	$1,949,524
Aviation Fuels	66,382
Motor Gasoline	5,140,012
General Refinery Products	46,212
Total	7,202,130

	Consent order period estimate	Annual sales estimate
Gallons sold	847,976,631	66,772,900

Per Gallon Refund Amount: $.003356.

Identified Purchasers:

1. Al Park Dist. Inc., P.O. Box 728, Elko, NV 89801
2. A & A Oil Co., Box 1325, Cheyenne, WY 82001
3. Aire Flow Heating, P.O. Box 15508, Salt Lake City, UT 84115
4. American Linen Supply, 33 East 6th South, Salt Lake City, UT 841111
5. Arrow Service, Box 425, Upton, WY 82730
6. Atlas Electric Co., 4995 S. 3rd W., Murray, UT 84107
7. Automotive Safety, 2695 S. 9th E., Salt Lake City, UT 84106
8. Auto-Tron, Box 886, La Junta, CO 81050
9. Bangerter, J. C., 1265 N. Main Street, Bountiful, UT 84010
10. Bate, R. H., 88 West Main, American Fork, UT 84003
11. Beehive Clothing, 1665 Bennett Road, Salt Lake City, UT 84104
12. Bennett Leasing, P.O. Box 126, Salt Lake City, UT 84110
13. Big 8 Full Tire Service, 1820 Aultman, Ely, NV 89301
14. Big Verns Service, 345 No. Main, Clearfield, UT 84015
15. Beal Service Stations, Interstate 80, Brule, NE 69127
16. Big D Oil Co., P.O. Box 1378, Rapid City, SD 57701
17. Birch Construction, Lyman, WY 82937
18. Blaze Oil Co., P.O. Box 2571, Casper, WY 82601
19. Blue & White Transport, 914 Royal Blvd., Boise, ID 83706
20. Boise Cascade, 205 N. 3rd W., P.O. Box 1530, Salt Lake City, UT 84103
21. Bosen Distributing, Preston, ID 83263
22. Brice, Cliff, 300 Moffat Ave., Pueblo, CO 81003
23. Bronco Oil Co., Box 1592, Jackson, WY 83001
24. Brown Floral Co., 5th S. and 10th West, Salt Lake City, UT 84104
25. Buehner Block Co., 2800 S West Temple, Salt Lake City, UT 84115
26. Burton Oil Co., 7709 Redwood Rd., West Jordan, UT 84084
27. Cache Valley Dairy, Logan, UT 84321
28. Calder Bros., P.O. Box 1903, Provo, UT 84601
29. Century Petroleum, Box 6192 Cherry Cr. Sta., Denver, CO 80206
30. Chipman Oil Co., P.O. Box 1363, Salt Lake City, UT 84110
31. Collier Motors, Mel, 555 S. Wolcott, Casper, WY 82601
32. Colorado Petro. Prods., 4080 Globeville Rd., Denver, CO 80216
33. Continental Baking Co., Box 108, Ogden, UT 84402
34. Consolidated Frtwys., P.O. Box 3197, Portland, OR 97208
35. Contractors Supply, Box 550, Newcastle WY 82701
36. Cook Construction Co., P.O. Box 16146, Salt Lake City, UT 84116
37. Cottonwood Mortuary, 4670 Highland Drive, Salt Lake City, UT 84117
38. Crown Stations c/o Ed Wright, 2384 Camino Way, Salt Lake City, UT 84121
39. Crude Company, The, P.O. Box 1968, Casper, WY 82602
40. CY Car Wash, 2839 Cy Ave., Casper, WY 82601
41. D & G, Hay Springs, NE 69347
42. Davis Bros. Service, 358 6th Ave., Midvale, UT 84147
43. Delta Fire Sprinkler, 1507 Pioneer Rd., Salt Lake City, UT 84104
44. Desert Oil Co., P.O. Box 1259, Rock Springs WY 82901
45. Detlefsen Oil Co., P.O. Box 728, North Platte, NE 69101
46. Diesel Service, 4235 So. 500 West, Salt Lake City, UT 84107
47. Direct Sales Inc., 9251 E. 104th Ave., Henderson, CO 80640
48. Dixon Bros., P.O. Drawer 8, Newcastle, WY 82701
49. Eager Beaver c/o Don Bentz, 701 W. Collins Dr. Casper, WY 82601
50. Eaton Metal Products, 844 Chestnut St., Salt Lake City, UT 84104
51. Economy Builders, 3232 So 4th East, Salt Lake City, UT 84115
52. Eldredges Pioneer Ser., 3925 RIverdale Road So., Ogden, UT 84401
53. Evans Supply Co., P.O. Box 16005, Salt Lake City, UT 84116
54. Fearless Farris Whlse., P.O. Box 7627, Boise, ID 83707
55. Fire Engineering 3389 S. 700 West.Salt Lake City, UT 84119
56. Flash Oil Co., 775 Carondelet, St. Louis, MO 63105
57. Food Machinery Corp., Box 872, Garden River, WY 82935
58. Forrest Concrete Pump, 1630 Beck St., Salt Lake City, UT 84116
59. Fox Valley Leather, 633 W. Center St., No. Salt Lake City, UT 84054
60. Fulkerson Oil Co., P.O. Box 808, Gillette, WY 82716
61. Fur Breeders Co-Op, 8400 S. Main, Midvale, UT 84047
62. Gearys Conoco, Coalville, UT 84017
63. Gem Grocery & Meat, 702 Third Ave., Salt Lake City, UT 84103
64. Gordon Refining Co., Box 118, Denver, CO 80201
65. Grandmas Tires, 49 E. 9th South, Salt Lake City, UT 84111
66. Greer Oil Co., Heber City, UT 84032
67. Haddocks Inc., 1704 Elk St., Rock Springs, WY 82901
68. Hall Process Co., AMF Box 43, Salt Lake City, UT 84101
69. Hansen Service Inc. c/o L. Ray Hansen, 206 North 200 West, Salt Lake City, UT 84103
70. Harmony Floors, 2245 So. Redwood Rd., Salt Lake City, UT 84119
71. Harpel Oil Co., Box 16686 Stockyard, Denver, CO 80216
72. Harrington & Co., P.O. Box 25723, Salt Lake City, UT 84125
73. Highland Petroleum, 1601 S. Federal Blvd., Denver, CO 80219
74. Hill Oil Co., 2380 S. Hancock Expressway., Colorado Springs, CO 80910
75. Holdings Little Amer. Cheyenne, Box 1529, Cheyenne, WY 82001
76. Horman, Charles Const., 1760 S. State St., Salt Lake City, UT 84115
77. Horman Const. Co., 1760 S. State St., Salt Lake City, UT 84115
78. Huber & Rowland Const., P.O. Box 16001, Salt Lake City, UT 84116
79. Imperial Wholesale Spl., P.O. Box 25605, Salt Lake City, UT 84125
80. Industrial Communicatn., 1171 South West Temple, Salt Lake City, UT 84101
81. Intermtn. Spec. Const. Co., 3075 South Main, Salt Lake City, UT 84115
82. Intermountain Farmers, P.O. Box 27166, Salt Lake City, UT 84125
83. Jansco, Div. of Scott Oil Co., Inc., P.O. Box 842, North Platte, NE 69101
84. Johnson, Marcus Plumb. 222 E. 4050 South, Salt Lake City, UT 84107
85. Johnson Service, Laketown, UT 84038
86. Johnstons Fuel Lines, Box 100, Newcastle, WY 82701
87. K & M Specialties, 1605 Chicago St., Salt Lake City, UT 84116
88. Kairab Industries, Attn: Debbie Larimer, P.O. Box 20506, Phoenix, AZ 85036
89. Keil, Martin, 6092 S. 1700 West, Murray, UT 84107
90. Kirby Co., P.O. Box 15426, Salt Lake City, UT 84115
91. Kleins Tri-Cove, 1030 S. 700 West, Salt Lake City, UT 84104
92. L & M Sales, Box 445, Cheyenne, WY 82001
93. LAC OIL, c/o Charles Chesarek, Drawer 428, Evansville, WY 82636
94. Larson Oil Co., P.O. Box 128, Brule, NE 69127
95. Leatham Bros., P.O. Box 16026, Salt Lake City, UT 84116
96. Lemco Corp., 5201 S. 3rd West, Salt Lake City, UT 84107
97. Leonard Paving, 737 So. 10th, Douglas, WY 82633
98. Leonard Paving, Box 860, Douglas, WY 82633
99. Little America Flagstaff, P.O. Box 850, Flagstaff, AZ 86001
100. Little America Salt Lake, P.O. Box 206, Salt Lake City, UT 84111
101. Little America West, P.O. Box 1, Little America, WY 82929

102. Lockhardt Gas & Milk, c/o S. Dan Lockhart, 1292 N. Redwood Rd., Salt Lake City, UT 84116
103. Lyman County, Box 93, Kennebec, SD 57544
104. Lynch Oil Co., P.O. Box 790, Burley, ID 83318
105. MacKay & Sons, A. J., 3435 W. 900 South, Salt Lake City, UT 84104
106. Mac Oil Inc., 5655 Gray St., Arvada, CO 80002
107. Mansco Inc., P.O. Box 1186, Laramie, WY 82070
108. Marshall, A. W., 437 N. 500 West, P.O. Box 16127, Salt Lake City, UT 84116
109. McGarvin & Moberly, Box 1166, Worland, WY 82401
110. McGarvin-Moberly Construction Co., P.O. Box 1166, Wortland, WY 82401
111. Metro Oil Products Inc., 2021 N. Redwood Rd., Salt Lake City, UT 84116
112. Metropolitan Laundry, 2253 S. 5th East, Salt Lake City, UT 84106
113. Miles Bay Service, P.O. Box 528, Fleming, CO 80728
114. Milford Store, Rte. 61, Box 260, Lander, WY 82520
115. Miller Bros. Co., Inc., Hyrum, UT 84319
116. Minit Market, 2314 Highland Dr., Salt Lake City, UT 84105
117. Morgan Co., 495 Bramwell Green River, WY 82935
118. Morton Salt Co., Saltaire Plant, AMF Box 22054, AMF Salt Lake City, UT 84122
119. Moyle Petroleum Co., Box 2860, Rapid City, SD 57701
120. Murray Laundry, 4200 S. State St., Murray, UT 84107
121. Nebraska Pub. Pwr. Dist., Box 241, Scottsbluff, NE 69361
122. Neuman Transit Co., Inc., P.O. Box 38, Rawlins, WY 82301
123. Nichols, Art, 1656 Mill Creek Way, Salt Lake City, UT 84106
124. Nielson & Sons Co., Box 20826, Billings, MT 59104
125. Noble, Glen, P.O. Box 294, Pleasant Grove, UT 84062
126. Northwest Motor Welding, 5300 West 9200 South, West Jordan, UT 84084
127. OK Service, Payson, UT 84651
128. Oil City Service, P.O. Box 1017, Price, UT 84501
129. Okland Construction Co., P.O. Box 15448, Salt Lake City, UT 84115
130. Ora Lee Milk & Gas, 2983 W. 3500 South, Salt Lake City, UT 84119
131. P & B Oil Co., Div. Bailey Enterprises, P.O. Box 1326, Riverton, WY 82501
132. P & C Petroleum Inc., Box 887, North Platte, NE 69101
133. P T E, Bulk Commodities Div., 701 Center St., N. Salt Lake, UT 84054
134. Pacific Fruit & Produce Co., 1855 So. 2nd West, Salt Lake City, UT 84115
135. Parco, A Division of Max Nielsen & Sons Co., 2525 W. Main, Suite 203, Rapid City, SD 57701
136. Pearce Equipment Co., 1225 Beck St., Salt Lake City, UT 84118
137. Peerless Laundry, 1184 E. 21st South, Salt Lake City, UT 84105
138. Pester Colorado Corp., P.O. Box 10006, Des Moines, IA 50306
139. Petco, 7627 Dahlia, Commerce City, CO 80037
140. Pioneer Petroleum Inc., 1025 East 334d South, Salt Lake City, UT 84106
141. Pitcher's Inc., 435 So. Main, Smithfield, UT 84335
142. Pitts, Bob, P.O. Box 1733, Greeley, CO 80631
143. Plains Inc., Box 215, Wauneta, NE 69045
144. Premium Oil Co., 2005 South 300 West, Salt Lake City, UT 84115
145. Rapps Inc., 811 S. Main, Brighton, CO 80601
146. Ray & Tobys Service, 11999 So. 1700 West, Riverton, UT 84065
147. Raymond Int'l Builders, P.O. Box 736, Shawnee Mission, KS 66201
148. Redwood Self Service, 1332 Devonshire Dr., Salt Lake City, UT 84108
149. Rio Vista Oil Ltd., 808 East South Temple, Salt Lake City, UT 84102
150. Richins, John, Echo Junction, UT 84024
151. Rissler & McMurry Co., P.O. Box 2499, Casper, WY 82602
152. Rogers Ford Co., P.O. Box 149W, Douglas, WY 82633
153. Rolands Service, P.O. Box 5, Paradise, UT 84328
154. Safeway Stores Inc., P.O. Box 1680, Salt Lake City, UT 84110
155. St. Theresa Catholic c/o Evelyn Sanchez, 1654 W. 7525 S., West Jordan, UT 84084
156. Salt Lake Sanitation, P.O. Box 1231, Salt Lake City, UT 84110
157. Salt Lake Suburban Sanitary District, 3844 S. 11th East, Salt Lake City, UT 84106
158. Sav-O-Mat, Box 9006, Denver, CO 80209
159. Scholl Oil & Trans., P.O. Box 148, Holyoke, CO 80734
160. Self Service c/o Tony Herman, P.O. Box 665, Broomfield, CO 80020
161. Seven Up Bottling Co., 959 South 800 West, Salt Lake City, UT 84104
162. Shoppers Service, P.O. Box 26828, Salt Lake City, UT 84125
163. Silco Oil Co., P.O. Box 16528, Denver, CO 80216
164. Skyline Self Service, 1332 Devonshire Dr., Salt Lake City, UT 84108
165. Smart, Ivan, 3725 E. Lil. Cottonwood, Sandy, UT 84070
166. Smartline Dairy, Smart Bros., 8000 S. 1000 East, Sandy, UT 84070
167. Smiths Independent, 499 East 27th South, Salt Lake City, UT 84115
168. Solo Oil Co., P.O. Box 2853, Casper, WY 82602
169. Space Oil Co., 105 S. Cherokee St., Denver, CO 80223
170. Specialty Supply Co., 1358 Indiana Ave., Salt Lake City, UT 84104
171. Spruce Oil Co., P.O. Box 5568 TA, Denver, CO 80217
172. Star Service & Petro., 800 No. Skinker Blvd., St. Louis, MO 63130
173. Sterling Gas & Oil, P.O. Box 989, Sterling, CO 80751
174. Sugar House Park Auth., 1330 E. 21st South, Salt Lake City, UT 84106
175. Super G Oil Co., P.O. Box 2860, Rapid City, SD 57701
176. Taggart Service, Morgan, UT 84050
177. Taylor & Bullock, P.O. Box 315, Mountain View, WY 82939
178. Telum Inc., P.O. Box 449, Provo, UT 84601
179. Terrace Garage, P.O. Box 2213, Salt Lake City, UT 84110
180. Towne Pump Stations, 2892 Highland Dr., Salt Lake City, UT 84106
181. Transcon, 101 Continental Blvd., El Segundo, CA 90245
182. Triangle Oil Co., 598 W. 2600 South, Bountiful, UT 84010
183. Triangle Refining Co., P.O. Box 3367, Houston, TX 77001
184. Triple C Trucking c/o Roy Cassity, 777 E. 4500 South, Salt Lake City, UT 84107
185. Tri valley Dist., E. Highway 40, Herber City, UT 84032
186. Utah, State of, State Office Building, Salt Lake City, UT 84114
187. Utah Package Express, 961 W. 1820 South, Salt Lake City, UT 84104
188. Utah Valley Transit, P.O. Box 1905, Provo, UT 84601
189. Ute Cab Co., 267 West 3rd South, Salt Lake City, UT 84101
190. Valley Feed & Coal, 197 West 39th South, Salt Lake City, UT 84107
191. Valley Oil Co., Inc., P.O. Box 229, Springville, UT 84663
192. Valley Service, Box 148, La Barge, WY 83123
193. Victor Land and Livestock, Snowville, UT 84336
194. Ward Transport, Box 735, Pueblo, CO 80202
195. Warner Ford, 47 West 6th South, Salt Lake City, UT 84101
196. Wasatch Land, 3401 Highland Dr., Salt Lake City, UT 84106
197. Watson, Jess Transfer, 230 S. 4th West, Salt Lake City, UT 84101
198. Welling Ford Sales, P.O. Box 700, Evanston, 82930
199. Western Engineering Co., Box 350, Harlan, IA 51537
200. Western Genral Diary, P.O. Box 307, Midvale, UT 84047
201. Western Sports Center, 8925 S. 255 West, Sandy, UT 84070
202. Western Self-Service 1223 No. State St., Orem, UT 84057
203. Western States Petro, P.O. Box 2488, Ogden, UT 84404
204. Westminister College, 1840 South 13th East, Salt Lake City, UT 84106
205. Wilcox Oil Company, P.O. Box 487, Rock Springs, WY 82901
206. Wiles Oil Co., 50 East Fort Union Blvd. Midvale, UT 84047
207. Wilford C. Wood Furs, 3697 S. Orchard Dr., Bountiful, UT 84010
208. Williams Oil company, P.O. Box 1687, Salt Lake City, UT 84110
209. Wirthlins Market, 812 E. 2nd South, Salt Lake City, UT 84107
210. Wright Engineering Co., 4205 S. Main St., Salt Lake City, UT 84107
211. Wright, Lester, Teckla Rt. Box 2408, Gillette, WY 82716
212. Yellow Freight Lines, Box 7270, Shawnee Mission, KS 66207

Exhibit 24

Name of Consent Order Firm: Witco Chemical Corporation, New York, NY.

Type of Operation: Refiner of covered products.

Consent Order Case Numbers: ERA: 240S00054, OHA: HEF-0227.

Consent Order Period: August 19, 1973–January 28, 1981.

Consent Order Fund: $4,500,000.

Alleged Overcharges: $22,200,000.

	Consent order period estimate	Annual sales estimate
Gallons sold:	1,752,000,977	234,616,803

Per Gallon Refund Amount: $.002568.
Identified Purchasers:

1. Parts & Equipment, Tampa, FL
2. Beam Oil Co., Atlanta, GA
3. Thom Oil Distributing, Ft. Worth, TX
4. Gemeg Oil Co., Houston, TX
5. Carse Oil Co., Orlando, FL
6. Dabrusin Motors, Newburgh, NY
7. Wholesale Tire Co., Inc., S. Charlestown, WV
8. Automotive Whse. Dist., Clarksburg, WV
9. Middle Atlantic Whse. Dist., Butler, PA
10. Middle Atlantic Whse. Dist., Scranton, PA
11. Taylors, Inc., Lexington, KY
12. Valley Auto Supply, Inc., Edinburg, TX
13. Holston Auto Supply, Rogersville, TN
14. Cactus Oil Co., San Angelo, TX
15. Ideal Gas Inc., Levelland, TX
16. Myles Auto Stores, Cleveland, OH
17. McIntosh Oil Co., Canton, OH
18. Pinwheel Oil Co., Cleveland, OH
19. Norwood Motor Parts Co., Bruction, MA
20. Young Oil Co., Pompano Beach, FL
21. Oak Auto Supply, Seaford, NY
22. Kirby Auto Supply, Stuart, FL
23. Sovereign Oil Co., Chicago, IL
24. Dade Tire Co., Miami, FL
25. Associated Parts Corp., Cambridge, MA
26. Consolidated Oil Co., Miami, FL
27. Truck Parts Inc., Hamden, CT
28. Aquidneck Auto Supply, Newport, RI
29. Harry Amalie Dist., Franklin, PA
30. Middle Atlantic Whse. Dist., Beaver Falls, PA
31. Tri State Dist., Philadelphia, PA
32. Motive Parts Whse., Hartford, CT
33. Don Elliot Pet. Dist., Syracuse, NY
34. Marsan Ind., Biddeford, ME
35. Middle Atlantic Whse. Dist., Rochester, NY
36. Snug Fit Marine, Miami, FL
37. Jim Wimett, Rush, NY
38. Stereo Pak, Cincinnati, OH
39. Eastern Hills Tire Co., Cincinnati, OH
40. Brackeen Oil Co., Paris, TX
41. Healdton Oil Co., Healdton, OK
42. Walter Butler Oil Sales, Odessa, TX
43. Royal Supply Co., Oklahoma City, OK
44. Toba Sales Co., Longview, TX
45. Smithco Oil Corp., Tulsa, OK
46. Caruthers Oil Co., Denton, TX
47. O. L. Kimbrough, Longview, TX
48. J. C. Penny Co., Inc., Hialeah, FL
49. A. F. Schmalzried, Dallas, TX
50. Industrial Lubricants, San Antonio, TX
51. Centex Distributors, Waco, TX
52. Campbell Oil & Supply, Maple Hgts., OH
53. Mid. Atlantic Dist., Niagara Falls, NY
54. Roy D. Frank, Painesville, OH
55. Carroll Equipment, Huntington, WV
56. Wentz Bros., Anna, OH
57. Fort Meyer, Fort Wayne, IN
58. General Auto Supply Co., Worchester, MA
59. Pacemaster Oil Corp., Plant City, FL
60. Ruwet Sibley, Inc., Torrington, CT
61. Mid. Atlantic Dist., Providence, RI
62. Joseph L. Werner, Baltimore, MD
63. Triple A Oil Co., Dallas, TX
64. Horn Bros. Oil Co., Greenville, TX
65. Griffin Oil Co., Lubbock, TX
66. Budai Oil Company, Ennis, TX
67. Sims Super Service, Childress, TX
68. Holman Boiler Works, Dallas, TX
69. Rogersnap Business Forms, Carrolton, TX
70. Davis Motor Crane Service, Dallas, TX
71. Allied Sales Co., Houston, TX
72. Duffie Munroe & Sons, Rosenberg, TX
73. Harris County Oil Co., Rosenberg, TX
74. Neches Oil Distributors, Beaumont, TX
75. Grozier & Mann Oil Co., Wichita Falls, TX
76. V. J. Oil Co., Abilene, TX
77. Cleburne Oil Co., Cleburne, TX
78. Porter Oil & LPG Co., McAllen, TX
79. M & H Oil & Butane Co., San Benito, TX
80. Creem Automotive Ser., New London, CT
81. Ed's Lawn Service & Supply, Dallas, TX
82. John M. Clark, Dallas, TX
83. Allied Sales Co., Austin, TX
84. Automotive Supply Assoc., Concord, NH
85. Radio Oil Co., Worchester, MA
86. Baas Auto Supply, Leesburg, FL
87. Mid. Atlantic Whse. Dist., New Haven, CT
88. GoCo Inc., Texas City, TX
89. Lincoln Oil Co., Detroit, MI
90. Mid. Atlantic Dist. Co., Carlisle, PA
91. CJG Corp., Valhalla, NY
92. Truck Wheel & Tool Inc., Watertown, MA
93. Air Speed Oil Co., Amarillo, TX
94. Roberts & Son, Ft. Smith, AR
95. Stokes Oil Co., Henderson, TX
96. Sizer's Auto Service, Dallas, TX

Exhibit 25

Name of Consent Order Firm: Aminoil U.S.A., Inc., Houston, TX 77092.
Type of Operation: Producer of condensate.*
Consent Order Case Numbers: ERA: 740V01315, OHA: HEF-0229.
Consent Order Period: September 1, 1973–April 30, 1980.
Consent Order Fund: $1,600,000.
Comments:
*Refund claims will be considered based on the *Johnson*, *Alkek* and *Adams* standards.

Exhibit 26

Name of Consent Order Firm: Stinnes Interoil, Inc., New York, NY 10017.
Type of Operation: Reseller of refined petroleum products.
Consent Order Case Numbers: ERA: 240H00519, OHA: HEF-0174.
Consent Order Period: January 10, 1978–September 30, 1979.
Consent Order Fund: $435,435.
Alleged Overcharges: Motor Gasoline: $1,280,974.

	Consent order period estimate	Annual sales estimate
Gallons sold: Motor gasoline	314,746,534	182,726,580

Per Gallon Refund Amount: $.001383.
Identified Purchasers:

1. Tesoro Petroleum Corporation, P O. Box 744, San Antonio, TX 78293
2. Northville Industries Corporation, 1 Huntington Quadrangle, Suite 4C01, Huntington Station, NY 11746
3. Sun Oil Trading Company, 200 West Lancaster Ave., Wayne, PA 19087
4. Mobil Oil Corporation, P.O. Box 900, Dallas, TX 75221
5. Amoco Oil Company, 200 East Randolph Drive, Chicago, IL 60601
6. Atlantic Richfield Company, P.O. Box 2819, Dallas, TX 75221
7. Chevron USA, Inc., P.O. Box 8643, San Francisco, CA 94120
8. Exxon Company, USA, P.O. Box 2180, Houston, TX 77001
9. Getty Refining & Marketing, P.O. Box 1650, Tulsa, OK 74102
10. Good Hope Refineries, Inc., 916 West Airline Highway, 120 Mallard Drive, St. Rose, LA 70087
11. Gulf States Oil & Ref. Co., 2000 South Street, P.O. Box 53137, Houston, TX 77002
12. United Refining Company, P.O. Box 780, Warren, PA 16365
13. Apex Oil Company, 212 South Central, St. Louis, MO 63105
14. Puritan Oil Company
15. Scallop Petroleum
16. Bulk Sales Corporation
17. Van Gold Corporation
18. NE Petroleum Corporation
19. Mt. Air Refinery
20. Anschutz

[FR Doc. 85-5116 Filed 3-1-85; 8:45 am]
BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ORD-FRL-2785-6]

Mutagenicity and Carcinogenicity Assessment of 1,3-Butadiene

AGENCY: Environmental Protection Agency.

ACTION: Notice of Availability of External Review Draft.

SUMMARY: This notice announces the availability of an external review draft of the Mutagenicity and Carcinogenicity Assessment of 1,3-Butadiene.

DATES: The Agency will make this document available for public review and comment on or about Monday, March 4, 1985. Comments must be postmarked by Wednesday, April 3, 1985.

ADDRESSES: To obtain a copy of the draft ducument, interested parties should contact the ORD Publications Center, CERI-FRN, U.S. Environmental Protection Agency, 26 W. St. Clair Street, Cincinnati, Ohio 45268, (513) 684-7562, and request the external review draft of the Mutagenicity and Carcinogenicity Assessment of 1,3-Butadiene, EPA document number EPA-600/8-85-004A. Please provide your name, mailing address, and the EPA document number when requesting a copy of the draft document.

The draft document will also be available for public inspection and copying at the EPA Library, EPA headquarters, Waterside Mall, 401 M Street SW., Washington, D.C. 20460.

Comments on the draft document should be sent to: Project Manager for 1,3-Butadiene, Carcinogen Assessment Group (RD–689), Office of Health and Environmental Assessment, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Technical Information Staff, Office of Health and Environmental Assessment (RD–689), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, 202/382–7345.

SUPPLEMENTARY INFORMATION: The objective of the Mutagenicity and Carcinogenicity Assessment of 1,3-Butadiene is to provide EPA with a scientific basis for regulatory decision making under the Clean Air Act.

Dated: February 21, 1985.

Donald J. Ehreth,

Assistant Administrator for Research and Development.

[FR Doc. 85–4877 Filed 3–1–85; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–4–FRL–2788–8]

Registration of Pesticide-Producing Establishments, Submission of Pesticides Reports, and Labeling

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to cancel pesticide-producing establishments' registrations.

SUMMARY: EPA today gives notice that the registration of certain pesticide-producing establishments is to be cancelled for failure to file the annual production report required under 40 CFR Part 167.

EFFECTIVE DATE: This cancellation will be effective on April 3, 1985 unless these establishments respond to this notice before that date.

FOR FURTHER INFORMATION CONTACT: Roy P. Clark, Chief, Pesticides and Toxic Substances Branch, Region IV, Environmental Protection Agency, 345 Courtland Street, Atlanta, Georgia 30365.

SUPPLEMENTARY INFORMATION: Section 7 of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) requires that establishments which have been registered by EPA to produce pesticide products, report their production to EPA annually.

The establishments listed below have failed to submit the required production report, and EPA today gives notice that their registration will be cancelled unless they inform EPA by April 3, 1985, of their intent to remain registered pursuant to the requirements of 40 CFR Part 167.

Registration No.	Registrant
34805–AL–01	Old South Sales Co., 800 East Andrews, Andalusia, AL 36420.
40959–AL–01	Chemical Solvent Co., 4817 1st Ave., Birmingham, AL 35222.
42354–AL–01	International Production and Development, 1333 Meridian North, Huntsville, AL 35801.
50047–AL–01	Chemway-South, 521 Creekwood Place, Birmingham, AL 35226.
35509–FL–02	Ihnen Pool Service and Supply, Inc., 3041 N.W. 23rd Way, Lauderdale Lakes, FL 33311.
35947–FL–01	Aqua Purifications Systems, Inc., 938 N.W. 44th St., Ft Lauderdale, FL 33309.
37839–FL–01	Sunshine Pools, Inc., 2801 N.W. 22nd Ave., Miami, FL 33142.
40628–FL–01	Advance Enterprises, Inc., 911 N.W. 21st Terrace, Miami, FL 33127.
41863–FL–01	West Boca Lawn and Garden, Inc., 23001 S. State Road, Boca Raton, FL 33433.
42039–FL–01	Little Bird Nursery, 8427 Bird Road, Miami, FL 33155.
42532–FL–01	Sigma 2 Chemical and Research Corp., 1614 N.W. 10th St., Gainesville, FL 32601.
43003–FL–01	Trojan Pet Supply, Inc., 1830 Sheridan, Apt. 6, Hollywood, FL 33020
43136–FL–01	Electronic Exterminators, Inc., 1442 10th Court, Lake Park, FL 33403.
45325–FL–01	Swim Tron Pools, 204 West Meridian, Dade City, FL 33525.
45490–FL–01	Blue Pools, Inc., 120 U.S. Hwy. 1, Juno Beach, FL 33408.
45558–FL–01	Garin Associates, Inc., 17070 Collins Ave., Miami, FL 33160
47118–FL–01	Ideal Pool Corp. of Florida, 8160 South Blvd., West Palm Beach, FL 33409.
47676–FL–01	Starr Pools, 500 Third St., S.W., Winter Haven, FL 33880.
48006–FL–01	Brainerd Chemical, Inc., 8860 Old Kings, Apt. 63, Orange Park, FL 32073.
48939–FL–01	Parkway Pool Supply, 5585 Golden Gate Parkway, Napels, FL 33999.
48975–FL–01	Bishop and Associates Distributors, P.O. Box 598, Lady Lake, FL 32659.
49744–FL–01	Pools and Spas by Sylvia, Inc., 187 East Blue Heron Blvd., Riviera Beach, FL 33404.
49823–FL–01	Cushing Pool and Patio, 12794 Forest Hill Blvd., W. Palm Beach, FL 33411.
40630–GA–01	Cole Lab, Route 2, Box 40, Vidalia, GA 30474.
42268–GA–01	Sentinel Chemical, Inc., 3166 Oakcliff Ind. St., Doraville, GA 30340.
46588–GA–01	Best Manufacturing for Reactor Products, Inc., P.O. Box 8, Menlo, GA 30731.
42292–MS–01	Missco Laboratories, 113 Duncan St., Jackson, MS 39202.
44947–TN–01	Ridd-A-Roach, 1612 Riverdale Rd., Germantown, TN 38138.
44947–TN–01	Ridd-A-Roach, P.O. Box 38095, Germantown, TN 38138.
45003–TN–01	Jim Walker, 1612 Riverdale Rd., Germantown, TN 38138.
49154–TN–01	J.J. and Co., 31 Cleveland Ave., Nashville, TN 37210.

(Section 7 of the Federal Insecticide, Fungicide, and Rodenticide Act [FIFRA])

Dated: February 20, 1985.

Regional Administrator.

Charles R. Jeter,

[FR Doc. 85–5140 Filed 3–1–85; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

February 21, 1985.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511.

Copies of the submission are available from Terry Johnson, Agency Clearance Officer, (202) 634–1535. Persons wishing to comment on this information collection should contact David Reed, Office of Management and Budget, Room 3235 NEOB, Washington, D.C. 20503, (202) 395–7231.

OMB Number: 3060–0268

Title: Section 81.704, Alaska-public fixed station records

Action: Revision

Respondents: Individuals or households, state or local governments, businesses (including small businesses), and non-profit

Estimated Annual Burden: 6 Recordkeepers; 108 Hours.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85–5079 Filed 3–1–85; 8:45 am]

BILLING CODE 6712–01–M

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

February 25, 1985.

The following information collection requirement has been approved by the Office of Management and Budget. For further Information contact Doris Peacock, (202) 632–7513.

OMB No. 3060–0108

Title: Emergency Broadcast System (EBS) Activation Report

Form No.: FCC 201.

The approval on FCC 201 has been extended through 2/29/88. The January 1982 edition with an OMB expiration

date of 12/31/84 will remain in use until updated forms are available.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85-5080 Filed 3-1-85; 8:45 am]

BILLING CODE 6712-01-M

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

February 25, 1985.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511.

Copies of the submission are available for Terry Johnson, Agency Clearance Officer, (202) 634-1535. Persons wishing to comment on this information collection should contract David Reed, Office of Management and Budget, Room 3235 NEOB, Washington, D.C. 20503, (202) 395-7231.

OMB No. 3060-0292
Title: Part 69, Access Charges
Action: Extension
Respondents: Telephone companies
Estimated Annual Burden: 1,458 Recordkeepers; 177,876 Hours.

William J. Tricarico,

Secretary, Federal Communication Commission.

[FR Doc. 85-5081 Filed 3-1-85; 8:45 am]

BILLING CODE 6712-01-M

[Report No. 1499]

Petitions for Reconsideration of actions in Rulemaking Proceedings

February 25, 1985.

The following listings of petitions for reconsideration filed in Commission rulemaking proceedings is published pursuant to CFR § 1.429(e). Oppositions to such petitions for reconsideration must be filed within 15 days after publication of this Public Notice in the **Federal Register**. Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor. (CC Docket No. 79-252)
Filed by: Peter Tannenwald, Vonya B. McCann & Kevin C. Boyle, Attorneys for Teltec Saving Communications Co., on 2-11-85.

Subject: Amendment of Sec 76.51, Major Television Markets. (Orlando-Daytona Beach, Melbourne, and Cocoa, Florida) (MM Docket No. 84-111, RM-4557)
Filed by: John R. Wilner, Attorney for American Television and Communications Corporation, Joseph R. Reifer, Attorney for Micro-Cable Communications Corporation, David J. Saylor & Paul Glist, Attorneys for Group W Cable, Inc. & Brenda L. Fox & Carol A. Melton, Attorneys for National Cable Television Association, Inc., on 2-19-85.

Subject: Amendment of Parts 2, 73, and 76 of the Commission's Rules to Authorize the Offering of Data Transmission Services on the Vertical Blanking Interval by TV Stations. (MM Docket No. 84-168)
Filed by: Janice E. Kerr, J. Calvin Simpson & Gretchen Dumas, Attorneys for the Public Utilities Commission of the State of California on 2-19-85.

Subject: Amendment of the Amateur Rules to Make Certain Changes in the Volunteer Examination Program (FCC 85-45).
Filed by: Frederick O. Maia, W5YI, Volunter Examiner Coordinator, on 2-21-85.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85-5082 Filed 3-1-85; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL RESERVE SYSTEM

First Antlers Bancorporation, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (49 FR 794) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in §225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweight possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 25, 1985.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *First Antlers Bancorporation, Inc.*, Antlers, Oklahoma; to become a bank holding company by acquiring at least 80 percent of the voting shares of First Antlers Bancshares, Inc., Antlers, Oklahoma, and thereby acquiring First National Bank at Antlers, Antlers, Oklahoma.

First Antlers Bancorporation, Inc., Antlers, Oklahoma also proposes to acquire First Antlers Insurance Agency, Inc., Antlers, Oklahoma (which is a wholly owned subsidiary of First Antlers Business Trust, Antlers, Oklahoma), to indirectly engage in the sale of credit life and accident and health insurance in connection with extensions of credit by First National Bank of Antlers, Antlers, Oklahoma, pursuant to § 225.25(B)(8)(i)(a). The geographic area to be served will be the Southern three-fourths of Pushmataha County, Oklahoma.

Board of Governors of the Federal Reserve System, February 26, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-5128 Filed 3-1-85; 8:45 am]

BILLING CODE 6210-01-M

Park Financial Corporation, et al.; Applications To Engage De Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 25, 1985.

A. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Park Financial Corporation*, St. Louis Park, Minnesota; to engage *de novo* through its subsidiary, Park Investment Co., St. Louis Park, Minneosta, in underwriting and dealing in obligations of the United States and general obligations of states and their political subdivisions as authorized by § 225.25(d)(6).

B. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *United City Corporation*, Plano, Texas; to engage *de novo* in providing securities brokerage including certain securities credit and incidental activities pursuant to § 225.25(b)(15) of Regulation Y.

C. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Security Pacific Corporation*, Los Angeles, California; to acquire 80 percent of the stock of Century Credit Corporation, Linthicum, Maryland, a corporate joint venture organized *de novo* by Security Pacific Corporation and Frederick Weisman Company, the holder of the remaining 20 percent of the stock, and thereby engage in motor vehicle consumer finance and leasing, motor vehicle inventory finance and incidental dealer-related commercial lending pursuant to § 225.25(b) (1) and (5) of Regulation Y, from an office of Century Credit Corporation located in Linthicum, Maryland. Applicant will engage in these activities in the states of Maryland, Pennsylvania, Virginia, West Virginia, and the District of Columbia.

Board of Governors of the Federal Reserve System, February 26, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-5129 Filed 3-1-85; 8:45 am]

BILLING CODE 6210-01-M

Sovran Financial Corporation, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than March 15, 1985.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd street, Richmond, Virginia 23261:

1. *Sovran Financial Corporation*, Norfolk, Virginia; to acquire by merger into its subsidiary, Sovran Life Insurance Company, Phoenix, Arizona, 100 percent of the voting securities of its indirect subsidiary, Security Atlantic Life Insurance Company (a subsidiary of Sovran Bank, N.A.) Phoenix, Arizona; both of which are engaged in acting as underwriter for credit life and credit accident and health insurance that is directly related to an extension of credit by the bank holding company system.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Comprehensive Investment Company*, Coon Rapids, Iowa; to acquire Siedhoff Insurance Agency, Bayard, Iowa, and thereby engage in acting as insurance agent or broker in offices at which the holding company or its subsidiaries are otherwise engaged in business (or in an office adjacent thereto) with respect to any insurance sold by a bank holding company or a nonbanking subsidiary in a community that has a population not exceeding 5,000 (as shown by the last preceding decennial census), if the principal place of business of the bank holding company is located in a community having a population not exceeding 5,000, pursuant to § 225.25(b)(8)(ii), except as prohibited in Title VI of the Garn-St Germain Depository Institutions Act of 1982 (12 U.S.C. 1843(c)(8)).

Board of Governors of the Federal Reserve System, February 26, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-5130 Filed 3-1-85; 8:45 am]

BILLING CODE 6210-01-M

Western Kansas Investment Corporation, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company; Correction

The company listed in this notice has applied under § 225.14 of Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (49 FR 794) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 22, 1985.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Western Kansas Investment Corporation, Inc.*, Winona, Kansas; to acquire 24.9 percent of the voting shares of Selden Investment, Inc., Selden, Kansas, and thereby indirectly acquiring Selden State Bank, Selden, Kansas.

Western Kansas Investment Corporation, Inc. through its acquisition of Selden Investment, Inc., Selden, Kansas, also proposes to indirectly acquire Selden State Bank Agency, Selden, Kansas, and engage in acting as insurance agent or broker for any insurance sold by a bank holding company or a nonbanking subsidiary in a community that has a population not exceeding 5,000, pursuant to § 225.25(B)(8)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, February 26, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-5131 Filed 3-1-85; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

[GSA Bulletin FPMR A-40, Supp. 13]

Change to Federal Travel Regulations

AGENCY: Office of Federal Supply and Services, GSA.

ACTION: Notice of changes to Federal Travel Regulations (FTR).

SUMMARY: GSA has issued GSA Bulletin FPMR A-40, Supplement 13, revising the eligibility criteria for Presidental appointees who may be authorized reimbursement of allowable travel and transportation expenses to their first official station.

EFFECTIVE DATE: The revised provisions of Chapter 2, transmitted by Supplement 13 are effective for certain Presidential appointees whose effective date of appointment is on or after October 12, 1984. For purposes of these regulations, the effective date of appointment is the date the new appointee reports for duty at the first official station.

FOR FURTHER INFORMATION CONTACT: Staff members, Travel and Transportation Regulations Division, (703) 557-1253 or 557-1256.

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this rule is not a major rule for the purpose of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. The General Services Administration has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

Background

a. Section 118 of Pub. L. 98-151, November 14, 1983, amended 5 U.S.C. 5723 to provide authority for payment of travel and transportation expenses to the first official station for any persons appointed by the President, by and with the advice and consent of the Senate, to a position with a pay rate equal to or higher than GS-16.

b. Section 120 of Pub. L. 98-473, October 12, 1984, further amended 5 U.S.C. 5723 by deleting the condition that any person appointed by the President must be "by and with the advice and consent of the Senate" to be eligible for payment of travel and transportation expenses to the first official station.

Explanation of Changes

Supplement 13 amends the FTR as follows:

a. Paragraph 2-1.3c is amended to: (1) Clarify that eligible new appointees shall be issued a written travel authorization prior to reporting to their first official station; (2) include that instructions to be provided on the Federal procedures for procurement of travel and transportation services; and (3) add a cross-reference to paragraph 2-1.5f(2).

b. Paragraph 2-1.5f(1)(e) is amended by deleting the phrase . . . "by and with the advice and consent of the Senate" . . . in accordance with Pub. L. 98-473 to encompass additional eligible Presidential appointees who may be authorized travel and transportation expenses to their first official station.

c. Paragraph 2-1.5f(2)(b) is amended by adding a statement and reference to a Comptroller General decision that entitlement to travel and transportation expenses is contingent upon actual appointment of the individual concerned.

d. Paragraph 2-1.5f(4) is amended to add relocation services as an expense not allowable to new appointees and student eligible under 2-1.5f for travel and transportation expenses to their first official station. The effective date

of this revision is November 14, 1983, since the change was omitted under issuance of GSA Bulletin A–40 Supplements 10 and 11 to the Federal Travel Regulations.

e. The table of allowances in appendix 2–A is amended to reflect the revised eligibility criteria for Presidential appointees. (This change is not published in the **Federal Register.**)

Accordingly the Federal Travel Regulations are amended as follows:

Chapter 2. Relocation allowances

Part 1. Applicability and General Rules.

1. **Authority:** (Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c)); 5 U.S.C. 5707, Executive Order No. 11069, July 22, 1971, and No. 12486, February 27, 1984.

2. Paragraph 2–1.3 is amended by revising subparagraph 2–1.3c to read as follows:

2–1.3. *General Provisions*

* * * * *

c. *Travel authorization.* When it is determined that a relocation will be authorized at Government expense, a written authorization shall be issued to the new appointee or employee prior to reporting to the first or new official station. The agency should advise the employee, or individual selected for appointment, not to incur relocation expenses in anticipation of a relocation until he/she has received written notification. The travel auhorization shall indicate the specific allowances which are authorized as provided in these regulations and provide instructions on the Federal procedures for procurement of travel and transportation services. The guidelines in 1–1.5 on issuance of travel authorizations shall be followed. See also 2–1.5f(2) for procedural requirements applicable to new appointees.

* * * * *

3. Paragraph 2–1.5 is amended by revising subparagraph 2–1.5f(1)(e), 2–1.5f(2)(b), and 2–1.5f(4) to read as follows:

2–1.5 Eligibility and Conditions

* * * * *

f. * * *

(1) * * *

(d) * * *

(e) *Presidential appointees.* Any person appointed by the President to a position for which the rate of pay is equal to or higher than the minimum rate of pay prescribed for GS–16 is eligible for travel and transportation to his/her official station at Government expense provided that the effective date of appointment (see 2–1.4j) is on or after October 12, 1984. A Presidential appointee to a similar position whose effective date of appointment was on or after November 14, 1983 through October 11, 1984, is also eligible for travel and transportation to his/her first official station provided that the appointment is by and with the advice and consent of the Senate.

(2) * * *

(a) * * *

(b) *Travel before appointment.* Authorized expenses may be paid even though the individual concerned has not been appointed at the time travel to the first official station is performed. However, entitlement to such expenses does not vest by virtue of selection for the position or authorization for travel as provided in 2–1.3c but vest only upon appointment of the individual concerned (see Comp. Gen. decision B–206048, June 28, 1982).

(c) * * *

(3) * * *

(4) *Expenses not allowable.* Items of expenses not listed in (3), above, which are authorized for reimbursement in case of transfers under these regulations; for example, per diem for family, cost of house-hunting trip, subsistence while occupying temporary quarters, miscellaneous expense allowance, residence sale and purchase expenses, lease-breaking expenses, and relocation services are NOT allowable to appointees and student trainees eligible under 2–1.5f.

* * * * *

Dated: January 28, 1985.

Ray Kline,

Acting Administrator of General Services.

[FR Doc. 85–5111 Filed 3–1–85; 8:45 am]

BILLING CODE 6820–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 82N–0381]

Notice to Manufacturers and Importers of Confectioneries Containing Alcohol

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: In a notice published in the **Federal Register** of April 26, 1983 (48 FR 18896), the Food and Drug Administration (FDA) reminded manufacturers of confectioneries of the requirements for confectioneries containing alcohol. In that notice, FDA identified the official method of the Association of Official Analytical Chemists (AOAC) for determining the alcohol in liquid or semi-liquid filling in confectionery as the method of preference for the analysis of alcoholic confectionery. Subsequently, a method of analysis has been developed that can be used to identify and quantitate alcohol in solid, as well as liquid or semi-liquid, confectionery. This notice announces the availability of the newer method, which uses elements of currently recognized AOAC methods, as an acceptable method for analysis of alcoholic confectionery for regulatory purposes. This newer method is to be the subject of an AOAC collaborative study.

ADDRESS: Single copies of the analytical procedure may be obtained from the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857. Requests must reference the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Elizabeth J. Campbell, Center for Food Safety and Applied Nutrition (HFF–312), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–485–0175.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 26, 1983 (48 FR 18896), FDA published a notice to manufacturers and importers of confectioneries containing alcohol. In that notice, FDA reaffirmed that confectionery containing alcohol is specifically prohibited by Federal law (21 U.S.C. 342(d)(2)) unless the alcohol is derived solely from the use of flavoring extracts and is present not in excess of ½ of 1 percent by volume. That notice also announced that the method described in the "Official Methods of Analysis of the Association of Official Analytical Chemists," 13th Ed. (1980), section 31.106, was the procedure of choice for determining the alcohol content of the confectionery. That AOAC method is specifically for determining the alcohol contained in the liquid or semi-liquid centers of filled confectionery. The alcohol content of the analyzed center is obtained on a volume basis from the alcohol tables in the AOAC reference cited above, calculated to the weight of the entire confectionery and reported as "volume/weight percent."

In an effort to analyze solid confectionery as well as the liquid center, FDA has developed a method which distills the alcohol along with other volatile substances from the confectionery and then isolates the alcohol from the other volatiles. The method is a modification of two AOAC methods. The determination procedure is gas liquid chromatography. The gas chromatographic method will be subjected to collaborative study.

The agency has determined that the gas chromatographic method provdes a reliable and more accurate determination of the alcohol in solid confectionery when performed using an internal standard and recovery analysis. Results of analysis by the method will be sufficient for regualtory action against those confectioneries found to contain alcohol in excess of ½ of 1 percent (0.5 milliliter per 100 grams, volume/weight percent).

Dated: February 22, 1985.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-5148 Filed 3-1-85; 8:45 am]

BILLING CODE 4160-01-M

Public Health Service

National Committee on Vital and Health Statistics (NCVHS); Meeting

Pursuant to the Federal Advisory Act (Pub. L. 92-463), notice is hereby given that the National Committee on Vital and Health Statistics (NCVHS) Subcommittee on Disease Classification and Automated Coding of Medical Diagnoses established pursuant to 42 U.S.C. 242k, section 306(k)(2) of the Public Health Service Act, as amended, will convene on Tuesday, March 26, 1985 from 9:00 a.m. to 5:00 p.m. in Room 337-339A of the Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, D.C. 20201.

The Subcommittee will hear presentations from experts bearing on several critical issues in disease classification, medical nomenclature, automated coding systems, and diagnostic related groups.

Further information regarding this meeting of the Subcommittee may be obtained by contacting William F. Stewart, National Center for Health Statistics, Room 2-28, Center Building, 3700 East-West Highway, Hyattsville, Maryland 20782, telephone (301) 436-7122.

Dated: February 22, 1985.

Manning Feinleib,

Director, National Center for Health Statistics.

[FR Doc. 85-5182 Filed 3-1-85; 8:45 am]

BILLING CODE 4160-17-M

National Committee on Vital and Health Statistics (NCVHS); Meeting

Pursuant to the Federal Advisory Act (Pub. L. 92-463), notice is hereby given that the National Committee on Vital and Health Statistics (NCVHS) established pursuant to 42 U.S.C. 242K, section 306(k)(2) of the Public Health Service Act, as amended, will convene on Wednesday, March 27 and Thursday, March 28, 1985 from 9:00 a.m. to 5:00 p.m. both days in Room 800 of the Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, D.C. 20201.

The Committee will hear reports from the Subcommittee on Uniform Minimum Health Data Sets, the Subcommittee on Disease Classification and Automated Coding of Medical Diagnoses, the Subcommittee on Statistical Aspects of Physician Payment Systems; and the Work Group on Minority Health Data Needs will also report.

Further information regarding the Committee may be obtained by contacting Gail F. Fisher, Ph.D., Executive Secretary, National Committee on Vital and Health Statistics, Room 2-28, Center Building, 3700 East-West Highway, Hyattsville, Maryland 20782, telephone (301) 436-7050.

Dated: February 22, 1985.

Manning Feinleib,

Director, National Center for Health Statistics.

[FR Doc. 85-5181 Filed 3-1-85; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Colorado; Filing of Plats of Survey

February 22, 1985.

The plats of survey of the following described land will be officially filed in the Colorado State Office, Bureau of Land Management, Denver, Colorado, effective 10:00 a.m., February 22, 1985.

The plat representing the dependent resurvey of a portion of the subdivisional lines, T. 25 S., R. 68 W., *Sixth Principal Meridian, Colorado,* Group No. 553, was accepted January 31, 1985.

The plat representing the dependent resurvey of a portion of the south and west boundaries, and subdivisional lines, T. 26 S., R. 68 W., *Sixth Principal Meridian, Colorado,* Group No. 553, was accepted January 31, 1985.

The plat representing the dependent resurvey of a portion of the Fifth Standard Parallel South (south boundary), T. 25 S., R. 69 W., *Sixth Principal Meridian, Colorado,* Group No. 553, was accepted January 31, 1985.

The plat representing the dependent resurvey of a portion of the north boundary and subdivisional lines, T. 28 S., R. 70 W., *Sixth Principal Meridian, Colorado,* Group No. 493, was accepted January 31, 1985.

The plat representing the dependent resurvey of a portion of the north boundary and subdivisional lines, and the survey of the subdivision of section 11, T. 25 S., R. 72 W., *Sixth Principal Meridian, Colorado,* Group No. 510, was accepted January 31, 1985.

These surveys were executed to meet certain administrative needs of the U.S. Forest Service.

The plat representing the dependent resurvey of a portion of the south and west boundaries, and subdivisional lines, and the survey of the subdivision of certain sections, T. 47 N., R. 18 W., *New Mexico Principal Meridian, Colorado,* Group No. 779, was accepted February 5, 1985.

This survey was executed to meet certain administrative needs of the Bureau of Reclamation.

The plat of survey of the following described land will be officially filed in the Colorado State Office, Bureau of Land Management, Denver, Colorado, effective 10:00 a.m., April 17, 1985.

The plat representing the retracement of a portion of the First Standard Parallel South (south boundary), a portion of the *Eleventh Guide Meridian West* (east boundary, T. 5 S., R. 89 W.), the dependent resurvey of a portion of the First Standard Parallel South (south boundary), a portion of the *Eleventh Guide Meridian West* (east boundary, T. 5 S., R. 89 W.); the survey of a portion of the Sectional Guide Meridian, a portion of the subdivisional lines, and the survey of Tracts 49 and 50, T. 5 S., R. 88 W., *Sixth Principal Meridian, Colorado,* Group No. 709, was accepted January 30, 1985.

This survey was executed to meet certain administrative needs of the U.S. Forest Service.

All inquiries about these lands should be sent to the Colorado State Office, Bureau of Land Management, 2020 Arapahoe Street, Denver, Colorado 80205.

Duane E. Olsen,

Acting Chief Cadastral Surveyor for Colorado.

[FR Doc. 85-5110 Filed 3-1-85; 8:45 am]

BILLING CODE 4310-84-M

Moab District Grazing Advisory Board; Meeting

February 22, 1985.

AGENCY: Bureau of Land Management, Interior.

ACTION: Moab District Grazing Advisory Board Meeting.

SUMMARY: Notice is hereby given in accordance with Pub. L. 92–463 that a meeting of the Moab District Grazing Advisory Board will be held on March 20, 1985. The meeting will begin at 10:30 a.m. in the conference room of the Bureau of Land Management, Price River Resource Area office of 900 North 7th East, Price, Utah.

The Agenda for the meeting will include:

1. Discuss the criteria for spending Grazing Advisory Board funds.
2. Discuss the BLM/USFS Interchange.
3. Discuss the grazing fee issue.
4. Update on the district's planning efforts.
5. Discuss the Price River R. A. project package.

The meeting is open to the public. Interested persons may make oral statements to the Board between 2:00 p.m. and 3:00 p.m. on March 20, 1985, or file written statements for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, P.O. Box 970, Moab, Utah 84532, by March 14, 1985.

Summary minutes of the Board meeting will be maintained in the Moab District Office and will be available within thirty (30) days following the meeting.

Gene Nodine,

District Manager.

[FR Doc. 85–5107 Filed 3–1–85: 8:45 am]

BILLING CODE 4310-DQ-M

[NM–58571 (OK); NM–58573 (OK)]

Public Land Sale; Ellis and Roger Mills Counties, OK

AGENCY: Bureau of Land Management, Interior.

ACTION: Sale of Public Land in Ellis and Roger Mills Counties, Oklahoma, Encompassing 77.55 acres.

SUMMARY; The following described lands have been examined and identified as suitable for disposal by sale under section 203 of the Federal Land Policy and Management Act (FLPMA) of 1976 (90 Stat. 2743, 43 U.S.C. 1711) at no less than the appraised fair market value:

Tract	Legal description	Acres	Value
Ellis County (EL):			
EL–5	T. 17 N., R. 25 W., I.M. Sec. 5, SW¼NW¼	40.00	$4,000
EL–6	T. 17 N., R. 25 W., I.M. Sec. 7, Lot 1	[1] 6.25	1,650
Roger Mills County (RM):			
RM–12	T. 16 N., R. 26 W., I.M. Sec. 3, Lot 4	[1] 31.30	8,400

[1] Plus accretions.

The lands described comprise approximately 77.55 acres plus accretions.

The proposed sales is consistent with the Bureau's planning system and the FLPMA of 1976. Public interest will be served by disposition of these isolated tracts that are difficult and uneconomical to manage as part of the public lands, and are not suitable for management by another Federal department or agency.

Patents, when issued, will contain the following reservations:

1. All minerals (or partial or specific mineral interests, where applicable) shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals. A more detailed description of this reservation, which will be incorporated in the patent document, is available for review at this Bureau of Land Management office.

2. The sale of the land will be subject to all valid existing rights and reservations of record.

3. The tracts will be subject to a floodplain restriction under Executive Order 11988.

4. Portions of the above described public lands contain wetlands. The patents to all of these tracts of land will contain wetland protection patent restrictions. The type, location, and size of each wetland will appear in the patent as well as the following restrictive language:

In accordance with section 209 of the FLPMA of 1976, 43 U.S.C. 1718 (1976) and section 4 of Executive Order 11990 (1978), 3 Code of Federal Regulations 121 (1978), the patentee's use of the patented lands is restricted as follows:

a. Restrictions on use of wetlands contained in applicable federal, state, or local wetlands regulations are incorporated hereby as if set forth fully herein.

b. The patentee may not use the patented land, or authorize its use, in such a manner that would directly or indirectly result in an adverse alteration of the wetland characteristics or category of that portion of the lands identified above as wetlands.

The patent restrictions are binding upon the patentee and his successors, heirs, and assigns.

The identified tracts will be sold under modified competitive bidding procedures. Bidding for Tracts EL–5, EL–6, and RM–12 will be restricted to adjoining land owners at no less than the appraised fair market value, as indicated. The designated bidders for Tract EL–5 are Clark F. Gray, Georgia Keifer Brooks, Elliot Davis, Higra Company, and the O. A. Cargill Estate. The designated bidders for Tract EL–6 are Clark F. Gray and the O. A. Cargill Estate. The designated bidders for Tract RM–12 are Glenn W. Cecil and Sylvester Churchill. Failure to submit bids by any of the above named bidders shall constitute a waiver of such right. Modified competitive bidding procedures are being used to recognize historical land uses, consideration for the lack of legal access to these lands, and the needs of adjoining land owners. Tracts that are not sold to the identified bidders will be reoffered for sale on a competitive basis.

The tracts offered for disposal will be sold by sealed bid. Sealed written bids will be considered only if received by the Bureau of Land Management, Oklahoma Resource Area Headquarters, 200 N.W. Fifth Street, Room 548, Oklahoma City, Oklahoma 73102, prior to 10:00 a.m., Wednesday, May 1, 1985. The tract number should be printed on the lower left hand corner of the mailing envelope (example, Land Sale—Tract DW–10). Each written sealed bid must be accompanied by a certified check, postal money order, bank draft, or cashiers check made payable to the Department of the Interior, Bureau of Land Management for at least twenty percent of the amount bid. The written, sealed bids will be opened and publicly declared at the beginning of each sale. If two or more envelopes containing valid bids of the same amount are received, the determination of which is to be the highest bid shall be by drawing.

Once a high bid price is accepted, the successful bidder shall submit the remainder of the full bid price within 180 days of the sale. Failure to pay the full bid price within 180 days shall result in cancellation of the sale of the tract, and the deposit shall be forfeitd and disposed of as other receipts of sale. All bids will be either returned, accepted, or rejected within 30 days of the sale date.

DATE: For a period of 45 days from the date of this Notice, interested parties may submit comments to the District Manager. Any adverse comments will be evaluated by the District Manager, Tulsa District Office, Bureau of Land Management, 6136 East 32nd Place, Tulsa, Oklahoma 74135, who may vacate or modify this realty action and issue a

final determination. In the absence of any action by the District Manager, this realty action will become the final determination of the Department of the Interior

ADDRESS: Comments and suggestions should be sent to: District Manager, Bureau of Land Management, Tulsa District Office, 6136 East 32nd Place Tulsa, Oklahoma 74135.

FOR FURTHER INFORMATION CONTACT: Hans Sallani, (405) 231–5491

Jim Sims,

District Manager.

[FR Doc. 85–5108 Filed 3–1–85; 8:45 am]

BILLING CODE 4310–84–M

Richfield District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Richfield District Grazing Advisory Board Meeting.

SUMMARY: Notice is hereby given, in accordance with Pub. L. 94–579 that a meeting of the Richfield District Grazing Advisory Board will be held April 5, 1985 at 9:00 A.M. in the BLM District Office, 150 East 900 North, Richfield, Utah 84701.

Agenda for the Board Meeting will be:

1. Weed Control.
2. Project Maintenance Policy—Sevier River Resource Area.
3. BLM/FS Interchange Update
4. Grazing Fee Study.
5. Wild Horse Program.
6. Grazing on Capitol Reef National Park—Jeffery Ranches.
7. Arrange Next Meeting.

This meeting is open to the public. Interested persons may make oral statements to the Board between 1:00 p.m. and 2:00 p.m. or file written statements for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 150 East 900 North, Richfield, Utah 84701.

Summary minutes of the Board Meeting will be maintained in the District Office and will be available for public inspection and reproductions during regular business hours within 30 days following the meeting.

Donald L. Pendleton,

District Manager.

February 22, 1985.

[FR Doc. 85–5147 Filed 3–1–85; 8:45 am]

BILLING CODE 4310–DQ–M

National Park Service

Availability of Finding of No Significant Impact for the General Management Plan, Environmental Assessment; Fort Union National Monument, Mora County, NM

Pursuant to the National Environmental Policy Act of 1969, and Title 40 of the Code of Federal Regulations, the National Park Service has prepared a Finding of No Significant Impact for the General Management Plan, Environmental Assessment, Fort Union National Monument, Mora County, New Mexico.

Based on public review comments received and on management decisions, the proposal has been selected as the basis for the final plan. The proposal best provides an effective management and development strategy for resource management, visitor use, and operations at Fort Union National Monument.

It is the conclusion of the National Park Service that the proposal is not a major Federal action that will significantly affect the human environment. Therefore, an environmental impact statement will not be prepared. The National Park Service will proceed with development of a final General Management Plan.

Copies of the Finding of No Significant Impact for the General Management Plan Environmental Assessment are available from Capulin Mountain, Fort Union National Monuments, Capulin, New Mexico 88414; and the Southwest Regional Office, National Park Service, Post Office Box 728, Santa Fe, New Mexico 87501, and will be sent upon request.

Dated: February 14, 1985

Robert Kerr,

Regional Director, Southwest Region

[FR Doc. 85–5099 Filed 3–1–85; 8:45 am]

BILLING CODE 4310–70–M

United States World Heritage Nomination Process; Calendar Year 1985

AGENCY: National Park Service, Interior.

ACTION: Public Notice and Request for Comment.

SUMMARY: The Department of Interior, through the National Park Service, announces the process that will be used in calendar 1985 to identify possible U.S. nominations to the World Heritage List. This notice lists the properties that are included in the Inventory of Potential Future U.S. World Heritage Nominations, and solicits public comments and suggestions on properties that should be considered as potential U.S. World Heritage nominations this year. This notice identifies the requirements that U.S. properties must satisfy to be considered for nomination, and references the rules that the Department of the Interior has adopted to implement the World Heritage Convention. In addition, this notice contains the criterai which cultural or natural properties must satisfy for World Heritage status, and the 14 U.S. properties inscribed on the World Heritage List as of January 1, 1985.

DATE: Comments or suggestions of cultural or natural properties as potential 1986 U.S. World Heritage nominations must be received within 60 days of this notice. Comments should pertain to the merts of properties included on the draft inventory or others which the respondent believes should be considered for nomination to the World Heritage List in 1986. Comments should also specify how the recommended property satisfies one or more of the World Heritage criteria. The Department will decide the issue of nominations for this year and will publish the decision in the **Federal Register**, with a request for further public comment in the event that potential nominations are identified. Comments on potential U.S. nominations which may be listed must be received within 30 days of the second notice. In the event that nominations are favorably identified and received, the Department of Interior will subsequently publish in the **Federal Register** a final list of proposed 1986 World Heritage nominations. A detailed nomination document will be prepared for each such proposed nomination. In November, the Federal Interagency Panel for World Heritage will review the accuracy and completeness of draft 1986 U.S. nominations, and will make recommendations to the Department of Interior. The Assistant Secretary for Fish and Wildlife and Parks will subsequently transmit approved nomination(s) on behalf of the United States to the World Heritage Committee Secretariat, through the Department of State, by December 15, 1985, for evaluation by the World Heritage Committee in a process that could lead to inscription on the World Heritage List by fall 1986.

ADDRESS: Written comments or recommendations should be sent to the Director, National Park Service, U.S. Department of the Interior, Washington, D.C. 20240. Attention: World Heritage Convention-773.

FOR FURTHER INFORMATION CONTACT: Mr. David G. Wright, Associate Director,

Planning and Development, National Park Service, U.S. Department of the Interior, Washington, D.C. 20240 (202/343–6741).

SUPPLEMENTARY INFORMATION: The Convention Concerning the Protection of the World Cultural and Natural Heritage, ratified by the United States and 82 other countries, has established a system of international cooperation through which cultural and natural properties of outstanding universal value to mankind may be recognized and protected. The Convention seeks to put into place an orderly approach for coordinated and consistent heritage resource protection and enhancement throughout the world. The Convention complements each participating nation's heritage conservation programs, and provides for:

(a) The establishment of an elected 21-member World Heritage Committee to further the goals for the Convention and to approve properties for inclusion of the World Heritage List;

(b) The development and maintenance of a World Heritage List to be comprised of natural and cultural properties of outstanding universal value;

(c) The preparation of a List of World Heritage in Danger;

(d) The establishment of a World Heritage Fund to assist participating countries in identifying, preserving, and protecting World Heritage properties;

(e) The provision of technical assistance to participating countries, upon request; and

(f) The promotion and enhancement of public knowledge and understanding of the importance of heritage conservation at the international level.

Participating nations identify and nominate their sites for inclusion on the World Heritage List. The World Heritage Committee reviews and evaluates all nominations against established criteria. Under the Convention, each participating nation assumes responsibility for taking appropriate legal, scientific, technical, administrative, and financial measures necessary for the identification, protection, conservation, and rehabilitation of World Heritage properties situated within its borders.

In the United States, the Department of the Interior is responsible for directing and coordinating U.S. participation in the World Heritage Convention. The Department implements its responsibilities under the Convention in accordance with the statutory mandate contained in Title IV of the National Historic Preservation Act Amendments of 1980 (Pub. L. 96–515; 16 U.S.C. 470a-1, a-2). On May 27, 1982, the Interior Department published in the **Federal Register** the policies and procedures which will be used to carry out this legislative mandate (47 FR 23392). The rules contain additional information on the Convention and its implementation in the United States, and identify the specific requirements that U.S. properties must satisfy before they can be nominated for World Heritage status, i.e., the property must have previously been determined to be of national significance, its owner must concur in writing to its nomination, and its nomination must include evidence of such legal protections as may be necessary to ensure preservation of the property and its environment.

The Federal Interagency Panel for World Heritage assists the Department in implementing the Convention by making recommendations on U.S. World Heritage policy, procedures, and nominations. The Panel is chaired by the Assistant Secretary for Fish and Wildlife and Parks, and includes representatives from the Office of the Assistant Secretary for Fish and Wildlife and Parks, the National Park Service, and the U.S. Fish and Wildlife Service within the Department of the Interior; the President's Council on Environmental Quality; the Smithsonian Institution; the Advisory Council on Historic Preservation; National Oceanic and Atmospheric Administration, Department of Commerce; Forest Service, Department of Agriculture; the U.S. Information Agency; and the Department of State.

I. Potential U.S. World Heritage Nominations

The Department encourages any agency, organization, or individual to submit written comments on how one or more properties on the U.S. World Heritage Indicative Inventory which follows, or other qualified property, relates to and satisfies one or more of the World Heritage criteria (Section II of this notice). In order for a United States property to be considered for nomination to the World Heritage List, it must satisfy the requirements set forth earlier, i.e., (a) it must have previously been determined to be of national significance, (b) its owner must concur in writing to such nomination, and (c) its nomination document must include evidence of such legal protections as may be necessary to preserve the property and its environment. Information provided by interested parties will be used in evaluating the World Heritage potential of a particular cultural or natural property.

The following properties were published in the **Federal Register** on May 6, 1982, as the Inventory of Potential Future U.S. World Heritage Nominations (47 FR 19648) and amended in (48 FR 38100). The inventory discusses briefly the significance of each site, and identifies the specific World Heritage criteria that the sites appear to satisfy. the properties included on the inventory minus properties nominated in intervening years are as follows:

Natural

Acadia National Park, Maine
Aleutian Islands Unit of the Alaska Maritime National Wildlife Refuge, Alaska
Arches National Park, Utah
Arctic National Wildlife Refuge, Alaska
Big Bend National Park, Texas
Bryce Canyon National Park, Utah
Canyonlands National Park, Utah
Capitol Reef National Park, Utah
Carlsbad Caverns National Park, New Mexico
Colorado National Monument, Colorado
Crater Lake National Park, Oregon
Death Valley National Monument, California
Denali National Park, Alaska
Gates of the Arctic National Park, Alaska
Glacier Bay National Park, Alaska
Grand Teton National Park, Wyoming
Guadalupe Mountains National Park, Texas
Haleakala National Park, Hawaii
Hawaii Volcanoes National Park, Hawaii
Joshua Tree National Monument, California
Katmai National Park, Alaska
Mount Rainier National Park, Washington
North Cascades National Park, Washington
Okefenokee National Wildife Refuge, Georgia-Florida
Organ Pipe Cactus National Moument/ Cabeza Prieta National Wildlife Range, Arizona
Point Reyes National Seashore, California
Rainbow Bridge National Monument, Utah
Rocky Mountain National Park, Colorado
Saguaro National Monument, Arizona
Sequoia/Kings Canyon National Park, California
Virginia Coast Reserve, Virginia
Zion National Park, Utah

Cultural

Aleutian Islands Unit of the Alaska Maritime National Wildife Refuge (Fur Seal Rookeries), Alaska

Auditorium Building, Illinois—Chicago
Bell Telephone Laboratories, New York—New York City
Brooklyn Bridge, Brooklyn, New York
Cape Krusenstern Archaeological District, Kotzebue, Alaska
Carson, Pirie, Scott and Company Store, Chicago, Illinois
Casa Grande National Monument, Coolidge, Arizona
Chapel Hall, Gallaudet College, District of Columbia
Eads Bridge, Illinois-Missouri
Fallingwater, Mill Run, Pennsylvania
Frank Lloyd Wright Home and Studio, Oak Park, Illinois
General Electric Research Laboratory, Schenectady, New York
Goddard Rocket Launching Site, Auburn, Massachusetts
Hohokam Pima National Monument, Arizona
Leiter II Building, Chicago, Illinois
Lindenmeier Site, Colorado
Lowell Observatory, Flagstaff, Arizona
Marquette Bulding, Chicago, Illinois
McCormick Farm and Workshop, Walnut Grove, Virginia
Monticello, Charlottesville, Virginia
Mound City Group National Monument, Ohio
Moundville Site, Alabama
New Harmony Historic District, New Harmony, Indiana
Ocmulgee National Monument, New Mexico
Poverty Point, Bayou Macon, Louisiana
Prudential (Guaranty) Building, Buffalo, New York
Pupin Physics Laboratories, Columbia University, New York
Reliance Building, Chicago, Illinois
Robie House, Chicago, Illinois
Rookery Building, Chicago, Illinois
San Xavier Del Bac, Tucson, Arizona
Savannah Historic District
South Dearborn Street-Printing House Row North Historic District, Chicago, Illinois
Taliesin, Spring Green, Wisconsin
Taos Pueblo, Taos, New Mexico
Trinity Site, Bingham, New Mexico
Unity Temple, Oak Park, Illinois
University of Virginia Historic District, Charlottesville, Virginia
Ventana Cave, Arizona
Wainwright Building, St. Louis, Missouri
Warm Springs Historic District, Georgia
Washington Monument, District of Columbia

Additional information on each of the properties listed above may be found in the May 6, 1982, **Federal Register** notice (47 FR 19648), which includes a description of the properties on the U.S. World Heritage inventory. This notice is available from the National Park Service (see addresses). Written comments are welcome on these and other qualified properties.

II. World Heritage Criteria

The following criteria are used by the World Heritage Committee in evaluating the World Heritage potential of cultural and natural properties nominated to it:

A. Criteria for the Inclusion of Cultural Properties on the World Heritage List

(1) A monument, group of buildings or site which is nominated for inclusion on the World Heritage List will be considered to be of outstanding universal value for the purposes of the Convention when the Committee finds that it meets one or more of the following criteria *and* the test of authenticity. Each property nominated should therefore:

(i) Represent a unique artistic achievement, a masterpiece of the creative genius; or

(ii) Have exerted great influence, over a span of time or within a cultural area of the world, on developments in architecture, monumental arts or townplanning and landscaping; or

(iii) Bear a unique or at least exceptional testimony to a civilization which has disappeared; or

(iv) Be an outstanding example of a type of structure which illustrates a significant stage in history; or

(v) Be an outstanding example of a traditional human settlement which is representative of a culture and which has become vulnerable under the impact of irreversible change; or

(vi) Be directly or tangibly associated with events or with ideas or beliefs of outstanding universal significance. (The Committee considers that this criterion should justify inclusion in the List only in exceptional circumstances or in conjunction with other criteria); and

In addition, the property must meet the test of authenticity in design, materials, workmanship, or setting.

(2) The following additional factors will be kept in mind by the Committee in deciding on the eligibility of a cultural property for inclusion on the List:

(i) The state of preservation of the property should be evaluated relatively, that is, it should be compared with that of other property of the same type dating from the same period, both inside and outside the country's borders, and

(ii) Nominations of immovable property which is likely to become movable will not be considered.

(B) Criteria for the Inclusion of Natural Properties on the World Heritage List

(1) A natural heritage property which is submitted for inclusion in the World Heritage List will be considered to be of outstanding universal value for the purposes of the Convention when the Committee finds that it meets one or more of the following criteria and fulfills the conditions of integrity set out below. Properties nominated should therefore:

(i) Be outstanding examples representing *the major stages of the earth's evolutionary history;* or

(ii) Be outstanding examples representing *significant ongoing geological processes, biological evolution, and man's interaction with his natural environment;* as distinct from the periods of the earth's development, this focuses upon ongoing processes in the development of communities of plants and animals, landforms, and marine areas and fresh water bodies; or

(iii) *Contain superlative natural phenomena, formations or features,* for instance, outstanding examples of the most important ecosystems, areas of exceptional natural beauty or exceptional combinations of natural and cultural elements; or

(iv) *Contain the foremost natural habitats where threatened species of animals or plants of outstanding universal value* from the point of view of science or conservation still survive.

(2) In addition to the above criteria, the sites should also fulfill the conditions of integrity:

(i) The sites described in (i) above should contain all or most of the key interrelated and interdependent elements in their natural relationships; for example, an "ice age" area would be expected to include the snow field, the glacier itself, and samples of cutting patterns, deposition, and colonization (striations, moraines, pioneer stages of plant succession, etc.).

(ii) The sites described in (ii) above should have sufficient size and contain the necessary elements to demonstrate the key aspects of the process and to be self-perpetuating. For example, an area of "tropical rain forest" may be expected to include some variation in elevation above sea level, changes in topography and soil types, river banks or oxbow lakes, to demonstrate the diversity and complexity of the system.

(iii) The sites described in (iii) above should contain those ecosystem components required for the continuity of the species or of the other natural elements or processes objects to be conserved. This will vary according to individual cases; for example, the protected area of a waterfall would include all, or as much as possible, of

the supporting upstream watershed; or a coral reef area would include the zone necessary to control siltation or pollution through the stream flow or ocean currents which provide its nutrients.

(iv) The sites containing threatened species as described in (iv) above should be of sufficient size and contain necessary habitat requirements for the survival of the species.

(v) In the case of migratory species, seasonal sites necessary for their survival, wherever they are located, should be adequately protected. The Committee must receive assurances that the necessary measures be taken to ensure that the species are adequately protected throughout their full life cycle. Agreements made in this connection, either through adherence to international conventions or in the form of other multilateral or bilateral arrangements, would provide this assurance.

(3) The property should be evaluated relatively, that is, it should be compared with other properties of the same type, both inside and outside the country's borders, within a biogeographic province, or migratory pattern.

III. World Heritage List

As of January 1, 1985, the World Heritage Committee had approved the following 14 cultural and natural properties in the United States for inscription of the World Heritage List. (The World Heritage List currently includes 186 properties worldwide.)

Cahokia Mounds State Historic Site
Everglades National Park
Grand Canyon National Park
Great Smoky Mountains National Park
Independence Hall
Mammoth Cave National Park
Mesa Verde National Park
Olympic National Park
Redwood National Park
San Juan National Historic Site and La Fortaleza
The Statue of Liberty
Wrangell-St. Elias National Park
Yellowstone National Park
Yosemite National Park.

Dated: February 21, 1985.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85-5100 Filed 3-1-85; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-55 (Sub-136X)]

Rail Carriers; Seaboard System Railroad, Inc.; Abandonment Exemption; in Polk County, FL; Exemption

Applicant has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon its 5.3-mile line of railroad between milepost AY-878.0 near Agricola, FL and milepost AY-883.3 near Ft. Meade, FL.

Applicant has certified (1) that no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line or may be rerouted, (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective April 3, 1985 (unless stayed pending reconsideration). Petitions to stay must be filed by March 14, 1985, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by March 25, 1985, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Charles M. Rosenberger, 500 Water St., Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: February 20, 1985.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85-5013 Filed 3-1-85; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-120)]

Rail Carriers; Seaboard System Railroad, Inc.; Abandonment; in Nassau, Baker, Union, and Alachua Counties, FL; Findings

The Commission has found that the public convenience and necessity permit the Seaboard System Railroad, Inc., to abandon its 44.7-mile rail line between milepost ASG-659.8 at Mattox, and milepost ASG-704.5, at Hainesworth, in Nassau, Baker, Union and Alachua Counties, FL.

A certificate will be issued authorizing this abandonment unless within 15 days after this publication the Commission also finds that: (1) A financially responsible person has offered assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section AB-OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

James H. Bayne,

Secretary

[FR Doc. 85-5104 Filed 3-1-85; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-26 (Sub-29)]

Rail Carriers; Southern Railway Company; Abandonment; in Hawkins County, TN; Findings

The Commission has issued a certificate authorizing Southern Railway Company to abandon its 5.0-mile rail line between Coran (milepost 0.6TD) and Rogersville (milepost 5.6TD) in Hawkins County, TN. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from

publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB–OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR Part 1152.

James H. Bayne,

Secretary.

[FR Doc. 85–5102 Filed 3–1–85; 8:45 am]

BILLING CODE 7034-01-M

Rail Carriers; Release of Waybill Data for Use in Analyzing the PRORAIL Proposal

The Commission has received a request from The Woodside Counseling Group (Woodside) to use the Commission's 1983 Carload Waybill Sample. Woodside states that it has been retained by the Chicago & North Western Transportation Company to analyze the PRORAIL proposal in response to the proposed acquisition of Conrail by Norfolk Southern (NS). The PRORAIL system proposed by the Grand Trunk Western Railroad and Pittsburgh and Lake Erie Railroad involves the use or transfer of certain lines from a consolidated NS-Conrail system to a separate entity to ensure continued competitive access to key markets and gateways served by regional carriers.

The Commission requires rail carriers to file waybill sample information if in any of the past three years they terminated on their lines at least: (1) 4,500 revenue carloads or (2) 5 percent of revenue carloads in any one State (49 CFR Part 1244). From this waybill information, the Commission has developed a Public Use Waybill File that has satisfied the majority of all our waybill data requests while protecting the confidentially of proprietary data submitted by the railroads. However, if confidential waybill data are requested, as in this case, we will consider releasing the data only after certain protective conditions are met and public notice is given. More specifically, under the Commission's current policy for handling waybill requests, we will not release any confidential waybill data until after: (1) Certain requirements designed to protect the data's confidentiality are agreed to by the requesting party and (2) public notice is provided so affected parties have an opportunity to object. (48 FR 40328, September 6, 1983).

Accordingly, if any parties object to Woodside's request, they should file their objections within 14 calendar days of the date of this notice. They should also include all grounds for objection to the full or partial disclosure of the requested data. The Commission's Director of Office of Transportation Analysis will consider these objections in determining whether to release the requested waybill data. Any parties who objected will be timely notified of the Director's decision.

James H. Bayne,

Secretary.

[FR Doc. 85–5101 Filed 3–1–85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Attorney General's Commission on Pornography; Establishment

AGENCY: Department of Justice.

ACTION: Notice of establishment.

SUMMARY: This notice sets forth the purpose and composition of the Attorney General's Commission on Pornography. Notice of the establishment of this Commission is required under the Federal Advisory Committee Act.

FOR FURTHER INFORMATION CONTACT: Committee Management Liaison Officer, Attorney General's Commission on Pornography, U.S. Department of Justice, 10th & Constitution Ave., NW., Washington, D.C. 20530; phone: 724–7837.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App. 1, Supp. II), and with the concurrence of the General Services Administration, the Attorney General has determined that establishment of the Attorney General's Commission on Pornography ("Commission") is in the public interest in connection with the performance of duties imposed on the Department of Justice by law.

The Commission is being established to make recommendations to the Attorney General to address the serious national problem of pornography. Specifically, the Commission is charged to study the dimensions of the problem of pornography, particularly visual and graphic pornography, including changes over the last several years in the nature of pornography, its volume, the impact of new technolgy, and pornography that relates to children; examine the means of production and distribution of pornographic materials, specifically including the role of organized crime in the pornography business; a review of the available empirical and scientific evidence on the relationship between exposure to pornographic materials antisocial behavoir, and on the impact of the creation and dissemination of both adult and child pornography upon children, including, as appropriate, the commissioning of new research on these subjects; review national, State, and local efforts, whether by the government or others, to curb pornography; and explore and, where appropriate, recommend possible roles and initiatives that the Department of Justice and agencies of local, State, and Federal government could pursue in controlling, consistent with constitutional guarantees, the production and distribution of pornography.

The Commission shall consist of eleven members from public and private life covering a wide range of expertise in fields related to law enforcement, social sciences, community services, and pornography and its effects. Members shall be appointed by the Attorney General.

The Commission shall function solely as an advisory body in full compliance with provisions of the Federal Advisory Committee Act. Its charter shall be filed under the Act fifteen days from the date of the publication of this notice.

Interested persons are invited to submit comments regarding the establishment of the Commission and its areas of concern to the Committee Management Liaison Officer at the above address and phone number.

William French Smith,

Attorney General.

February 22, 1985.

[FR Doc. 85–5144 Filed 3–1–85; 8:45 am]

BILLING CODE 4410-01-M

MERIT SYSTEMS PROTECTION BOARD

Cessation of Board Publication of Decisions Volumes and Availability of Similar Service From Other Services

AGENCY: Merit Systems Protection Board.

ACTION: Notice that the Board is ceasing publication of its decisions and availability of similar service from other sources.

SUMMARY: The Board announces that it will no longer publish the full text of its decisions in bound volumes, but that other organizations provide a similar service.

EFFECTIVE DATE: March 4, 1985.

FOR FURTHER INFORMATION CONTACT: Ada R. Kimsey, Office of the Clerk of the Board, Merit Systems Protection Board, (202) 653–7200.

SUPPLEMENTARY INFORMATION: With the publication of Volume 13, *Decisions of the United States Merit Systems Protection Board*, covering the period January through March 1983 (*see* 49 FR 49188), the Board ceased publication of its final orders and precedential interlocutory orders. Of the series of Board decisions volumes, Volume 12 (October through December 1982), as well as Volume 13, is in print. Both may be obtained from the Superintendent of Documents. The ordering information is: Volume 12: stock number 062–000–00017–1, $16; and Volume 13: stock number 062–000–00018–0, $11.

The Board continues to publish *The Digest*, a monthly summary and listing of opinions and orders, and "Federal Employee Appeals Decisions," quarterly microfiche with paper index of initial decisions issued in its 11 regional offices. Further, the Board has published a special microfiche edition of initial decisions resulting from the air traffic controller strike of 1981: "Federal Employee Appeals Decisions, Air Traffic Controller Cases."

Meanwhile, researchers may contact the following organizations which offer a variety of services regarding Board decisions:

Federal Merit Systems Reporter, Labor Relations Press, 1725 K St., NW., Washington, D.C. 20006, (202) 833–1122

FLITE (Federal Information Through Electronics),[1] HQUSAF/JAS, Denver, CO 80279–5000, (303) 370–7531, AUTOVON: 926–7531

The Hawkins Merit Systems Protection Board Service, Hawkins Publishing Co., Inc., Suite 220, 933 N. Kenmore St., Arlington, VA 22201, (703) 525–9090

Lexis, Mead Data Central, 1050 Connecticut Ave., NW., Suite 1090, Washington, D.C. 20036, (202) 785–3550

Merit Systems Protection Board Case Service, Information Handling Services, 1700 N. Moore St., Suite 2100, Arlington, VA 22209, (703) 524–9602

United States Merit Systems Protection Board Reporter, West Publishing Co., P.O. Box 64526, St. Paul, MN 55164–0526, 1–800–328–9352

Dated: February 26, 1985.

[1] FLITE is available only to Federal agencies.

For the Board.

Herbert E. Ellingwood,

Chairman.

[FR Doc. 85–5120 Filed 3–1–85; 8:45 am]

BILLING CODE 7400–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Combined Extreme External Phenomena, Structural Engineering, and Diablo Canyon; Open Meetings

The ACRS Subcommittees on Extreme External Phenomena, Structural Engineering, and Diablo Canyon will hold a combined meeting on March 21 and 22, 1985, at the Pacifica Hotel, 6161 Centinela Avenue, Culver City, CA.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, March 21, 1985—8:30 a.m. until the conclusion of business

Friday, March 22, 1985—8:30 a.m. until the conclusion of business

The Subcommittees will discuss the status of the NRC Staff seismic design margins programs and PG&E's program plan for a seismic reevaluation of Diablo Canyon.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Elpidio E. Igne (telephone 202/634–1413) between 8:15 a.m. 5:00 p.m., e.s.t. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: February 26, 1985.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 85–5194 Filed 3–1–85; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Combined Subcommittees on GESSAR II, Reliability and Probabilistic Assessment and Safeguards and Security; Notice of Meetings

The ACRS Subcommittees on GESSAR II, Reliability and Probabilistic Assessment and Safeguards and Security will hold a combined meeting on March 27, 28 and 29, 1985, at the Sandia National Laboratory, Albuquerque, NM.

To the extent practical the meeting will be open to public attendance. However, portions of the meeting will be closed to discuss proprietary information relating to the GESSAR probabilistic risk assessment and plant security.

The agenda for subject meeting shall be as follows:

Wednesday, March 27, 1985—8:30 a.m. until the conclusion of business

Thursday, March 28, 1985—8:30 a.m. until the conclusion of business

Friday, March 29, 1985—8:30 a.m. until the conclusion of business

The Subcommittees will continue their review of GESSAR II for a Final Design Approval applicable to future plants, and review design features for protection against sabotage at commercial nuclear power reactors. The principal topics to be discussed are plant security and the GESSAR II and probabilistic risk assessment.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify

the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Richard Major (telephone 202/634–1414) between 8:15 a.m. and 5:00 p.m., e.s.t. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: February 27, 1985

Morton W. Libarkin,

Assistant, Executive Director for Project Review.

[FR Doc. 85–5195 Filed 3–1–85; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Subcommittee on Electrical Systems; Open Meeting

The ACRS Subcommittee on Electrical Systems will hold a meeting on March 20, 1985, Room 1046, 1717 H Street, NW, Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, March 20, 1985—8:30 a.m until the conclusion of business

The Subcommittee will discuss recent NRC actions related to diesel generator reliability.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. M. El-Zeftawy (telephone 202/634–3267) between 8:15 a.m. and 5:00 p.m., e.s.t. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: February 27, 1985.

Morton W. Libarkin,

Assistant Executive Director for Project Review

[FR Doc. 85–5196 Filed 3–1–85; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Subcommittee on Class 9 Accidents; Open Meeting

The ACRS Subcommittee on Class 9 Accidents will hold a meeting on March 14, 1985, Room 1046, 1717 H Street, NW, Washington, DC.

The entire metting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, March 14, 1985—1:00 p.m until 7:00 p.m.

The Subcommittee will discuss New York Power Authority's Source Term studies.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtajned by a prepaid telephone call to the cognizant ACRS staff member, Mr. A. Wang (telephone 202/634–3267) between 8:15 a.m. and 5:00 p.m., e.s.t. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: February 27, 1985.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 85–5197 Filed 3–1–85; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Subcommittee on Reliability Assurance; Open Meeting

The ACRS Subcommittee on Reliability Assurance will hold a meeting on March 19, 1985, Room 1046, 1717 H Street, NW, Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, March 19, 1985—8:30 a.m. until the conclusion of business

The Subcommittee will begin its investigation of value reliability. Programs under way by various NRC offices will be discussed. A presentation by industry on methods to enhance the reliability of motor operated valves is anticipated. The Subcommittee Will also discuss several opertional occurrences that involved the failure of valves. It is expected that the Subcommittee will plan its future activities.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee

Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and to other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Richard Major (telephone 202/634–1414) between 8:15 a.m. and 5:00 p.m., e.s.t. Persons planning to attend this meting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: February 27, 1985.

Morton W. Libarkin,

Assistant, Executive Director for Project Review.

[FR Doc. 85–5198 Filed 3–1–85; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–416]

Mississippi Power and Light Co. et al.; Temporary Exemption From Compliance

In the Matter of Mississippi Power & Light Co. Middle South Energy, Inc., and South Mississippi Electric Power Association (Grand Gulf Nuclear Station, Unit 1).

I

Mississippi Power & Light Company, Middle South Energy, Inc., and South Mississippi Electric Power Association (the Licensees) are the holders of Facility Operating License No. NPF–29, issued November 1, 1984, which authorizes full power operation of the Grand Gulf Nuclear Station, Unit 1 (the facility). A superseded license, NPF–13, issued June 16, 1982, authorized licensees to operate the facility at steady-state reactor power levels not in excess of 191 megawatts thermal. These licenses provide, among other things, that they are subject to all rules, regulations and Orders of the Commission.

II

Section 50.71(e)(3)(i) of 10 CFR Part 50 requires the licensees of nuclear power reactors to submit an Updated Final Safety Analysis Report (UFSAR) within 24 months of either July 22, 1980, or the date of issuance of the operating license, whichever is later. The above regulation would have required submittal of the UFSAR for Grand Gulf Unit 1 by June 16, 1984.

By letter dated February 6, 1984, licensees requested an exemption to 10 CFR 50.71(e) which would have deferred submittal of the UFSAR until 12 months after Unit 2 was licensed on the basis that the FSAR is written for both Unit 1 and Unit 2 of GGNS. By letter dated June 26, 1984, the NRC staff denied that request because Unit 2 is scheduled to be completed after 1990; and the staff requested the licensees to provide a modified exemption request. By letter dated December 31, 1984, the licensees requested an exemption to defer submittal of the UFSAR for Unit 1 of GGNS until December 1, 1985, on the basis that licensees' engineering personnel, who will be involved in the engineering review of the UFSAR, are needed to support startup testing of Grand Gulf Unit 1 now in progress.

The NRC staff has reviewed the licensees' request for an extension of the Grand Gulf Unit 1 UFSAR submittal date to December 1, 1985. The extension is needed for Grand Gulf Unit 1 because of the long interval between issuance of the low power license and authorization of full power operation. For most plants, ample time is available after completion of startup testing for updating the FSAR within the 24 month interval allowed in 10 CFR 50.71(e). However, for Grand Gulf, power ascension testing started September 1, 1984, about 26 months after issuance of the low power license. Startup testing is expected to be completed in April 1985. It is desirable to complete low power and power ascension testing before updating the FSAR so that design modifications found necessary by testing can be incorporated and so that licensees' engineering personnel who are heavily involved in the support of startup testing and resultant plant modifications can be used in preparing and reviewing the updated FSAR. Thus, for Grand Gulf Unit 1, good cause has been shown for the requested extension of the date for submittal of the updated Final Safety Analysis Report. The requested extension to December 1, 1985 (8 months after startup testing is scheduled to be completed) will allow the licensees' engineering personnel necessary and sufficient time to complete startup testing and resultant design changes before conducting the engineering review associated with the preparation of the UFSAR.

The NRC staff considered safety aspects of the requested extension to the UFSAR submittal date. During the long interval of low power and power ascension testing to date, Mississippi Power & Light Company (MP&L) has submitted four FSAR amendments and other licensing documents providing information regarding changes in plant design, plant procedures, and safety analyses. MP&L will continue to provide information and analyses needed for accurate and timely evaluation of matters of safety significance, pending submittal of the UFSAR. MP&L has also implemented a system to make controlled copies of principal design drawings available to reactor control room operators and emergency response facility staff. Thus, the granting of the requested extension will have no significant impact on plant safety.

The public interest will be served by granting the exemption since licensees can continue to use engineering personnel to support startup testing, thus, assuring completion of startup testing and start of commercial operation sooner than would be the case if engineering personnel were diverted to update the FSAR.

Based on its review, the staff concludes that issuance of this exemption will have no significant effect on plant safety. Further, this action is in the public interest and good cause has been shown to support the exemption. Therefore, an 18 month exemption from the date of compliance is acceptable.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of this exemption will have no significant impact on the environment (50 FR 5830).

III

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, an exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest. Therefore, the Commission hereby approves the following temporary exemption from compliance with the

June 18, 1984, date for submitting an UFSAR:

An updated FSAR (UFSAR) containing those original pages of the FSAR that are still applicable plus new replacement pages shall be filed by December 1, 1985. This UFSAR shall bring the FSAR up to date as of a maximum of 6 months prior to the date of filing the UFSAR. The first revision of the UFSAR shall be filed no later than December 1, 1986, with subsequent revisions no less frequently than annually thereafter. Dated at Bethesda, Maryland, this 28th day of February 1985.

For the Nuclear Regulatory Commission.

Hugh L. Thompson,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 85-5200 Filed 3-1-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-305]

Wisconsin Public Service Corp.; Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendment to Facility Operating License No. DPR-43, issued to Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin.

The amendment would provide relief from a restriction in the plant Technical Specifications on hydrotesting of the secondary side with the primary side above 350 °F in accordance with the licensee's application for amendment dated February 7, 1985.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the request for amendment involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility or a new or different kind of accident from any accident previously evaluate; or (3) involve a significant reduction in a margin of safety.

The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (48 FR 14870) of actions likely to involve no significant hazards consideration. One example of actions involving no significant hazards consideration is a change that relates to "(vi) A change which either may result in some increase to the probability or consequences of a previously-analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan: For example, a change resulting from the application of a small refinement of a previously used calculational model or design method." The proposed hydrotest of the secondary side with the primary side above 350 °F is within the bounds of previous safety analyses performed for the Kewaunee Plant and other similar plants. Operation in this manner has previously been approved and in affect at the Kewaunee plant and has been found to be acceptable at other plants. While this change may reduce in some way a safety margin, the results of this change are clearly within the acceptance criteria required in the Standard Review Plan Section 10.3 for safety valve relief capacity. We conclude the requested change is similar to the Commission's example (vi).

Since the application for amendment involves proposed changes that are similar to an example for which no significant hazards consideration exists, the staff has made a proposed determination that the application for amendment involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attn: Docketing and Service Branch.

By April 3, 1985, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to a least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the

hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Att: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW, Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union operator at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Steven A. Varga, Branch Chief, Operating Reactors Branch No. 1, Division of Licensing: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of the Federal Register notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Steven E. Keane, Esquire, Foley and Lardner, 777 East Wisconsin Avenue, Milwaukee, Wisconsin 53202, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for the amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

Dated at Bethesda, Maryland, this 25th day of February 1985.

For the Nuclear Regulatory Commission.

Daniel G. McDonald,

Acting Branch Chief, Operating Reactors Branch No. 1, Division of Licensing.

[FR Doc. 85–5199 Filed 3–1–85; 8:45 am]

BILLING CODE 7590-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Coal Options Task Force; Regular Meeting Notice

AGENCY: Coal Options Task Force of the Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1–Activities will include:

- Approval of minutes from the meeting of February 13, 1985
- Progress on the assessment of comment on the draft paper, "Potential Effect on Clean Air Act and Clean Water Act Regulations on Proposed Coal Options".
- Generic coal plant preliminary cost, schedule and performance assumptions.
- Issue Paper—Cost and Availability of Resource.
- Other business.
- Next meeting.
- Public comment.

Status: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its Coal Options Task Force.

DATE: Friday, March 8, 1985. 9:00 a.m.

ADDRESS: The meeting will be held at the Council Central Office at 850 S.W. Broadway; Suite 1100, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Jeff King, (503) 222–5161.

Edward Sheets,

Executive Director.

[FR Doc. 85–5095 Filed 3–1–85; 8:45 am]

BILLING CODE 0000-00-M

Demand Forecasting Advisory Committee; Regular Meeting Notice

AGENCY: Demand Forecasting Advisory Committee of the Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1–4. Activities will include:

- Approval of minutes of February 13, 1985 meeting.
- Discussion of preliminary demand forecasts.
- Adjourn meeting.

Status: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its Demand Forecasting Advisory Committee.

DATE: Thursday, March 7, 1985, 9:00 a.m.

ADDRESS: The meeting will be held at the Council's Central Office, 850 SW. Broadway; Suite 1100, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Terry Morlan, (503) 222–5161.

Edward Sheets,

Executive Director.

[FR Doc. 85–5096 Filed 3–1–85; 8:45 am]

BILLING CODE 0000-00-M

Conservation Programs Task Force; Regular Meeting Notice

AGENCY: Programs Task Force of the Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1–4. Activities will include:

- Residential sector.
- Commercial sector.

• Irrigation sector.
Status: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its Conservation Programs Task Force.

DATE: Thursday, March 7, 1985, 8:30 am–5:30 pm.

ADDRESS: The meeting will be held at the Council's Central Office, 850 S.W. Broadway; Suite 1100, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Mark Cherniack, (503) 222–5161.

Edward Sheets,
Executive Director.

[FR Doc. 85–5097 Filed 3–1–85; 8:45 am]
BILLING CODE 0000-00-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–23613; 70–7085]

Middle South Services, Inc. and Middle South Utilities, Inc.; Proposed Issuance and Sale of Note by Subsidiary and Acquisition Thereof by the Holding Company

February 25, 1985.

Middle South Utilities, Inc. ("Middle South"), a registered holding company, and its subsidiary service company, Middle South Services, Inc. ("Services") 225 Baronne Street, New Orleans, Louisiana 70112, have filed an application-declaration with this Commission pursuant to sections 6(a), 7, 9(a), and 10 of the Public Utility Holding Company Act of 1935 ("Act").

Services proposes to borrow and reborrow from Middle South pursuant to a loan agreement from time to time through December 31, 1987, up to an aggregate principal amount of $30,000,000 at any one time outstanding. These borrowings will be in addition to borrowings by Services from time to time through the Middle South Utilities System money pool (File No. 70–6923), provided, however, that: (1) The aggregate principal amount of borrowings by Services outstanding at any one time pursuant to the loan agreement, through the money pool, and through such other borrowing arrangements as may hereafter be entered into by Services shall not exceed $30,000,000 and (2) the aggregate principal amount of borrowings by Services outstanding at any one time through the money pool shall not exceed an amount equal to the aggregate unused portion of the line(s) of credit then available to Services pursuant to the loan agreement and/or such other borrowing arrangements as may hereafter be entered into by Services.

The borrowings will be evidenced by a note of Services representing the obligation of Services to pay the full amount of the loan commitment ($30,000,000) or, if less, the aggregate upaid principal amount of all loans made by Middle South thereunder, plus accrued interest. The note will mature on December 31, 1987, and will bear interest at the prime rate of Manufacturers Hanover Trust Company, New York, New York (currently 10½% per annum). Services may at any time, without premium or penalty, prepay in whole or in part the unpaid principal amount of the note.

Services intends to use the proceeds of the proposed borrowings for the repayment from time to time of borowings effected by Services through the Money Pool (which borrowings aggregated $8,700,000 as of February 1, 1985), for the repayment of other borrowings effected by Services from time to time, for the acquisition of capital assets, including leasehold improvements, for working capital purposes, and for other corporate purposes.

The application-declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested person wishing to comment or request a hearing should submit their views in writing by March 21, 1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicants-declarants at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,
Secretary.

[FR Doc. 85–5188 Filed 3–1–85; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 35–23589; 70–6711]

New England Electric System and NEES Energy, Inc.; Proposal for Capital Contributions and/or Loans From Parent to Subsidiary Guarantee of Performance Bonds

February 4, 1985.

The New England Electric System ("NEES"), a registered holding company, and its energy management subsidiary, NEES Energy, Inc. ("NEES Energy"), have filed an application-declaration with this Commission pursuant to sections 6(a), 7, 9(a), 10, and 12 of the Public Utility Holding Company Act of 1935 ("Act") Rule 45 thereunder.

By order dated November 19, 1982 (HCAR No. 22719) this Commission authorized the organization of NEES Energy to provide Management Services ("EMS"). EMS is described as the providing of services to reduce the total amount of cost of energy comsumption by the customer over the term of a contract. NEES Energy was intially financed through the acquisition by NEES of 100 shares of NEES Energy's common stock for $100,000 and capital contribution not to exceed $1,900,000.

The applicants now seek authorization through 1987 for NEES to make capital contributions now to NEES Energy of up to $23 million, such capital contributions being in addition to the $2 million of common stock and capital contributions previously authorized. Alternatively, the applicants request authority for NEES to provide loans not to exceed $23 million outstanding at any one time, for any combination of capital contributions and loans not to exceed that amount outstanding at any one time. Such loans would be in the form of subordinated notes issued by NEES Energy to mature in 10 years. The loans will be non-interest bearing, and they will be prepayable by NEES Energy at or prior to maturity from funds accumulated from its operations, and from proceeds of such bank loans or other financing as may be arranged by NEES Energy and authorized by this Commission.

NEES Energy is currently examining alternative sources of capital. Any financing arrangements made to provide such additional capital will be the subject of a later filing with this Commission.

In the course of EMS business activities, NEES Energy may be required to provide performance bonds, surety bonds, or other similar forms of performance or credit support. To facilitate the providing of such bonds by NEES Energy, applicants request that

NEES be authorized to provide guarantees to third parties as necessary for this purpose provided that the total of common stock of NEES Energy owned by NEES plus capital contributions and/or loans and/or guarantees outstanding shall not exceed $25 million in aggregate.

The application-declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by March 21, 1985, to the Secretary, Securities and Exchange Commisison, Washington, D.C. 20549, and serve a copy on the applicants at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application-declaration, as filed or as it may be amended, may be authorized.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-5187 Filed 3-1-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-21794; SR-CBOE-84-22 and 85-1, SR-PSE-85-2, SR-Phlx-8426]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc., et al.; Filing of Proposed Rule Changes and Amendment No. 1 to Proposed Rule Changes; Order Granting Accelerated Approval to Proposed Rule Changes and Partial Accelerated Approval of Proposed Rule Change

The Chicago Board Options ("CBOE"), LaSalle at Van Buren, Chicago, IL 60605, Pacific ("PSE"), 618 Spring Street, Los Angeles, CA 90014, and Philadelphia Stock Exchanges, Inc. ("Phlx"), 1900 Market Street, Philadelphia, PA 19103, have submitted proposed rule changes and amendments thereto, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] to amend certain of their rules and policies regarding exercise prices.[3]

I. Description of the Proposals, Their Purpose and Statutory Basis

A. Proposals Being Approved in This Release

(1) Index Options

CBOE and PSE propose to amend their rules to allow the addition of series of index options up to the fifth business day prior to expiration of the series.[4] CBOE and PSE also propose to allow the listing of two in-the-money and two out-of-the-money exercise prices for index options upon the introduction of a new expiration month, and to add strike prices in response to changes in the underlying index so as to maintain two in-the-money and two out-of-the-money strike prices at all times until the last day for adding new strike prices. The maintenance of two in-the-money and two out-of-the-money strikes is achieved under these proposals by adding strike prices that are two strike price intervals (or $10.00) above (or below) the underlying index value when the index value rises (or falls) to an existing strike price. For example, under these proposals, when an index rises to 100, strike prices of 110 could be added. In addition, CBOE and PSE propose to allow additional series of index options up to three strike prices above and below the current index value in "unusual market conditions."[5]

(2) Individual Stock Options

CBOE, PSE and Phlx propose to allow the introduction of series of stock options with strike prices of $5.00, so long as the underlying stock has not met delisting requirements, and also would allow strike price intervals of $5.00 for options on stock trading between $100.00 and $200.00 per share.[6]

CBOE also proposes to codify its existing policy with respect to the introduction and subsequent addition of series of individual stock options. Under this policy, if the price of the underlying stock is within two precent of a strike price interval, three strike prices are listed upon the the introduction of a new expiration month, one strike price closest to the price of the underlying stock price and one strike price above and below that one. If the price of the underlying stock is more than two percent away from a strike price interval, two strike prices, one above and one below the stock price, are listed upo the introduction of a new expiration cycle. When the price of the underlying stock rises (or falls) to an existing strike price, a new strike price one strike price interval above (or below) that price is added.

Except for CBOE's proposal concerning its existing policy with respect to the introduction and subsequent addition of series of individual stock options, the proposals described above are essentially identical to an American Stock Exchange, Inc. ("Amex") proposal the Commission recently approved, and the Exchanges' statements of the purpose of and statutory basis for their proposed rule changes reflects the discussion contained in the order approving the Amex proposal.[7] The purpose of CBOE's proposal relating to introduction and subsequent addition of series of individual stock options is to codify CBOE's existing policy, a portion of which previously was approved by the Commission.[8]

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[1] 15 U.S.C. 78s(b)(1) (1984).

[2] 17 CFR 240.19b-4 (1984).

[3] CBOE's and Phlx's proposed rule changes concerning index options (SR-CBOE-84-22 and SR-Phlx-84-26) were submitted on August 8 and October 29, 1984, respectively. CBOE submitted Amendment No. 1 to its filing on September 13, 1984. These proposals were noticed in Securities Exchange Act Release Nos. 21362 and 21502, September 28 and November 30, 1984, 49 FR 39135 and 47146, respectively. No comments were received in response to the publication of these notices. Amendment No. 2 to CBOE's and Amendment No. 1 to Phlx's proposal are being noticed in this release. PSE's proposed rule change and Amendment No. 1 thereto were submitted on January 29, and February 8, 1985, and are being noticed in this release. CBOE's proposal concerning individual stock options (CBOE-85-1) was submitted on January 24, 1985, and an amendment to the rule filing was submitted on February 20, 1985. The rule proposal is being noticed in this release.

[4] This portion of CBOE's proposal was submitted in Amendment No. 2 to File No. SR-CBOE-84-22. CBOE and PSE currently prohibit the addition of new series of index options after the first calendar day of the month in which the series expires. Because index options expire on the third Saturday following the third Firday of their expiration month, this means that under CBOE's and PSE's current rules new series of index options cannot be added for the last 16-21 calendar days prior to expiration.

[5] COBE originally proposed to codify its existing practice, which is to allow the introduction and maintenance of three in-the-money and three out-of-the-money strike prices. In Amendment No. 2 CBOE changed its proposal to read as described in the text above. PSE currently allows the introduction and maintenance of only one in-the-money and out-of-the-money strike price for index options.

[6] CBOE, PSE and Phlx currently require strike price intervals of $10.00 or more for options on stocks trading over $100.00 per share. CBOE and Phlx originally proposed strike price intervals of $5.00 for all stock options, regardless of the price per share of the underlying stock. In Amendment No. 1 to each of their rule filings, CBOE and Phlx changed their proposals to read as described in the text above.

[7] *See* File No. SR-Amex-84-31, Securities Exchange Act Release No. 21644, January 9, 1985, 50 FR 2360, January 16, 1985.

[8] In Securities Exchange Act Release No. 17238, October 22, 1980, 45 FR 71543, the Commission

Continued

B. Proposals Only Being Notices in This Release

CBOE is also proposing to allow: (1) Strike price intervals of $2.50 for individual stock options with strike prices of $25.00 or less; and (2) the addition of series of individual stock options until the first calendar day of the month in which the options expire, or until the fifth business day prior to expiration in "unusual market conditions." CBOE's rules, as approved in this release, require strike price intervals of $5.00 for stocks trading below $200.00 and $10.00 for stocks trading at $200.00 or more. CBOE's rules also currently allow the introduction of new series of individual stock options until the forty-fifth calendar day prior to expiration. CBOE states that permitting strike price intervals of $2.50 for options with strike prices of less than $25.00 would enhance liquidity in lower priced options by making at-the-money or near-the-money puts and calls on these options more readily available. According to CBOE, permitting the addition of new series of individual stock options until the beginning of the month in which they expire is consistent with the policy the Commission recently approved for adding series of index options.[9] In addition, CBOE argues that permitting the introduction of new series of individual stock options until the fifth business day prior to expiration in "unusual market conditions" would "cure the problem encountered when a stock makes a dramatic move several days before expiration, leaving investors with only deep in-the-money calls and far out-of-the-money puts or vice versa in the near-term cycle." [10] CBOE states that the statutory basis for all three proposals is section 6(b)(5) of the Act.

II. Solicitation of Comments

The Commission is publishing this release to solicit comment on the proposed rule changes described in sections I.A. and I.B., above. Persons interested in commenting on these proposals should submit six copies of their comments within 21 days from the date of publication of this notice in the **Federal Register**. Comments should be sent to the Secretary of the Commission, 450 Fifth Street, N.W., Washington, DC 20549. Copies of the proposed rule changes, including amendments, and all documents relating to the proposed rule change, except those that may be withheld from the public pursuant to 15 U.S.C. 552, are available for inspection and copying at the Commission's Public Reference Room. Copies of the filings are also available at the CBOE, PSE and Phlx, respectively.

III. Date of Effectiveness of the Proposed Rule Changes Described in Section I.B. and Timing for Commission Action on These Proposals

With respect to the proposed rule changes described in section I.B., within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period: (1) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (2) as to which the self-regulatory organization consents, the Commission will either by order approve such proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Approval of Proposals Described in Section I.A.

As indicated above, CBOE's and PSE's proposals concerning index options, PSE's and Phlx's proposals concerning stock options and certain portions of CBOE's proposal concerning stock options noted above, are essentially identical to an Amex proposal the Commission recently approved.[11] For the reasons discussed in the order approving that Amex proposal, the Commission finds that the CBOE, Phlx, and PSE proposals are consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges and, in particular, the requirements of section 6. The Commission finds good cause for approving these proposed rule changes prior to the thirtieth day after the date of publication of notice of filing thereof, in that over 30 days ago the Commission published an order approving substantially identical proposals submitted by the Amex and no adverse comments were submitted in response to that publication.

The Commission also finds that the codification of CBOE's policy regarding the introduction and subsequent addition of series of individual stock options is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges and, in particular, the requirements of section 6. The Commission finds good cause for approving this portion of CBOE's proposal prior to the thirtieth day after the date of publication of notice thereof in that it consists solely of the codification of an existing CBOE policy, a portion of which the Commission previously approved, and the other portion of which the CBOE and other options exchanges have followed with the Commission's acquiesence for over six years.[12] Accordingly, the Commission finds that additional notice of that portion of the CBOE proposed rule change is unnecessary.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule changes described in section I.A. above are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 26, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-5191 Filed 3-1-85; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Applications

February 25, 1985.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stock:

Astrotech International Corporation
Common Stock, $.30 Par Value, File No. 7-8323

This security is listed and registered on one or more other national securities exchanges and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 18, 1985, written data, views and arguments concerning the above-referenced applications. Persons desiring to make

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approved proposals to add new strike prices when the price of the underlying stock reaches an existing strike price. The Commission has never formally approved CBOE's policy regarding the number of series of individual stock options that may be listed upon the introduction of a new expiration month, but CBOE and the other options exchanges have followed this policy with the Commission's knowledge and acquiescence since 1978. *See* Memorandum from Marc Berman, Vice President and General Counsel, Options Clearing Corporation, to the options exchanges, dated August 2, 1978.

[9] In Securities Exchange Act Release No. 21362, September 28, 1984, 49 FR 39135, the Commission approved a CBOE rule allowing the addition of series of index options until the first calendar day of the month in which the option expires. As described above, CBOE is now proposing, and the Commission is approving below in this release, the addition of series of index options until the fifth business day prior to expiration.

[10] CBOE filing at 4.

[11] *See* note 7, *supra*.

[12] *See* note 8, *supra*.

written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-5190 Filed 3-1-85; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Applications

February 25, 1985.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stock:

USG Corporation

Common Stock, $4.00 Par Value, File No. 7-8324

This security is listed and registered on one or more other national securities exchanges and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 18, 1985, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-5189 Filed 3-1-85; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

Public Information Collection Requirements Submitted to OMB for Review

February 27, 1985.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB (listed by submitting bureau(s)), for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of these submissions may be obtained by calling the Treasury Bureau Clearance Officer listed under each bureau. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of each bureau's listing and to the Treasury Department Clearance Officer, Room 7221, 1201 Constitution Avenue, N.W., Washington, D.C. 20220.

Internal Revenue Service

OMB Number: 1545-0008
Form Number: IRS Forms: W-2, W-2P, W-2AS, W-2GU, W-2VI, W-3, W-3c W-3cPR, W-3PR, W-3AA, and W-3S&L
Type of Review: Extension
Title: Wage and Tax Statement

OMB Number: 1545-0230
Form Number: IRS Form 6458
Type of Review: Extension
Title: Certification and Election Form

OMB Number: 1545-0367
Form Number: IRS Forms 4804 and 4802
Type of Review: Reinstatement
Title: Transmittal of Information Returns Reported on Magnetic Tape (4804) and Multiple Payer Transmittal for Magnetic Media Reporting (4802)

OMB Number: 1545-0150
Form Number: IRS Forms 2848 and 2848-D
Type of Review: Revision
Title: Power of Attorney and Declaration of Representative; Tax Information Authorization and Declaration of Representative

Clearance Officer: Garrick Shear (202) 566-6254, Room 5571, 1111 Constitution Avenue, N.W., Washington, D.C. 20224

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

Office of the Secretary

OMB Number: 1505-0016
Form Number: BQ-1
Type of Review: Extension
Title: Part 1. Reporting Bank's Own Claims, and Selected Claims of Broker or Dealer, on "Foreigners" and Part 2. Domestic Customers' Claims on "Foreigners" Held by Reporting Bank, Broker or Dealer, Payable in Dollars

OMB Number: 1505-0018
Form Number: BL-2/BL-2(SA)
Type of Review: Extension
Title: Custody Liabilities of Reporting Banks, Brokers and Dealers to "Foreigners," Payable in Dollars

OMB Number: 1505-0019
Form Number: BL-1/BL-1(SA)
Type of Review: Extension
Title: Reporting Bank's Own Liabilities, and Selected Liabilities of Broker or Dealer, to "Foreigners," Payable in Dollars

OMB Number: 1505-0020
Form Number: BQ-2
Type of Review: Extension
Title: Part 1. Liabilities to, and Claims on, "Foreigners" of Reporting Bank, Broker or Dealer and Part 2. Domestic Customers' Claims on "Foreigners" Held by Reporting Bank, Broker or Dealer, Payable in Foreign Currencies

Clearance Officer: Ira Schoen (202) 535-6020, Office of the Secretary, Room 7221, ICC Building, 1201 Constitution Avenue, N.W., Washington, DC 20220

OMB Reviewer: Judy McIntosh (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

Joseph F. Maty,

Departmental Reports, Management Office.

[FR Doc. 85-5043 Filed 3-1-85; 8:45 am]

BILLING CODE 4810-25-M

UNITED STATES INFORMATION AGENCY

Bureau of Educational and Cultural Affairs; Grant Program; Summer Institute in American Studies

The United States Information Agency (USIA) plans to sponsor a Summer Institute in American Studies for twenty-five to thirty secondary school teachers of English, History, and Social Studies. Participants will come from western European countries, Australia, New Zealand and Israel. USIA has invited proposals from selected institutions which have an acknowledged reputation in American Studies and special expertise in handling cross-cultural programs.

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Other interested academic institutions should request detailed information from: Bureau of Educational and Cultural Affairs, (ATTN. Division for the Study of the U.S., Office of Academic Programs), United States Information Agency, 301 4th St. S.W., Washington, D.C. 20547, or call (202) 485–2553.

Proposal deadline is March 25, 1985.

Dated: February 25, 1985.

Carl Schultz,

Chief, Division for the Study of the U.S.

[FR Doc. 85–5293 Filed 3–1–85; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 42
Monday, March 4, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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Consumer Product Safety Commission	1

1

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 9:30 a.m. Wednesday, March 6, 1985.

LOCATION: Third Floor Hearing Room, 1111–18th Street, NW., Washington, D.C.

STATUS: Closed to the Public.

MATTERS TO BE CONSIDERED:
Commission Procedures Review.

The Commission and staff will review internal procedures relating to Commission decisionmaking.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301–492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301–492–6800.

Sheldon D. Butts,

Deputy Secretary.

February 27, 1985.

[FR Doc. 85–5256 Filed 2–28–85; 12:28 pm]

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Part II

Department of the Interior

Office of the Secretary

Availability of Draft Maps of Areas Under Consideration for Inclusion in the Coastal Barrier Resources System; Notice

DEPARTMENT OF THE INTERIOR

Availability of Draft Maps of Areas Under Consideration for Inclusion in the Coastal Barrier Resources System

AGENCY: Office of the Secretary, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of section 10 of the Coastal Barrier Resources Act of 1982 (16 U.S.C. 3509), the Secretary of the Interior is required to provide recommendations to the Congress for additions to, or deletions from, the Coastal Barrier Resources System, and for modifications to the boundaries of System units. Recommendations made by the Secretary will be advisory only; any changes to the System will require an act of Congress. This notice is to announce the availability of draft maps with supporting draft definitions, delineation criteria and information summaries for public review and comments prior to transmittal of the Secretary's final decisions on recommendations to the Congress.

DATE: Comments should be received no later than June 30, 1985.

ADDRESS: Coastal Barriers Study Group, U.S. Department of the Interior, National Park Service—498, P.O. Box 37127, Washington, D.C. 20013–7127.

FOR FURTHER INFORMATION CONTACT: Mr. Frank McGilvrey, Coastal Barriers Coordinator, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240, (202) 343–2618.

SUPPLEMENTARY INFORMATION: On October 18, 1982, President Reagan signed the Coastal Barrier Resources Act (CBRA) into law (Pub. L. 97–348). Section 4 of CBRA establishes the Coastal Barrier Resources System as referred to and adopted by Congress, and sections 5 and 6 prohibit all new Federal expenditures and financial assistance within the units of that System unless specifically excepted by the Act. These provisions of the Act became effective immediately. The Act also amends and conforms to the Federal flood insurance provisions of the Omnibus Budget Reconciliation Act of 1981 pertaining to undeveloped coastal barriers. The statutory ban on the sale of new Federal flood insurance for new construction or substantial improvements within the System went into effect on October 1, 1983.

Section 10 of CBRA requires the Secretary of the Interior to submit to Congress within three years of passage of the Act a report regarding the Coastal Barrier Resources System. Among other things, section 10 requires recommendations on additions to, or deletions from, the System. Section 10 also requires a summary of the comments received from the Governors of the States, State coastal zone management agencies, other government officials, and the public regarding the System. The Secretary is to consult with the Governors of the affected States regarding proposed recommendations. To this end, the Secretary will invite comments from each affected governor. The governors' comments will be forwarded to the Congress as a part of the report.

To facilitate maximum public discussion of proposed recommendations for expansion of the System, the Department's Coastal Barriers Study Group has expanded and elaborated on the criteria previously used by the Department for delineation of undeveloped coastal barriers **Federal Register:** 8/16/82 47 FR, 35696). These revised criteria are discussed in Appendix B.

Congressional, Federal Executive and Gubernatorial requests for deletions to units of the System are provided in the individual map volumes. The Secretary will consider all public comments regarding these requests in his recommendations to Congress.

It cannot be emphasized too strongly that *any* modifications to the System require legislative amendment to CBRA. The Secretary has no authority to modify the System.

Since over 1400 areas on over 1,000 maps have been identified as meeting the criteria, it is impractical to publish the maps or list the unit designations in a **Federal Register** notice. Accordingly, draft maps, along with the draft text, are being sent to a number of recipients with special interest in this issue. The Secretary of the Interior suggests that these recipients seek the widest possible distribuition of these documents. The classes of recipients include:

Senators and Members of Congress from the 32 affected states, territories and the Commonwealth of Puerto Rico.
—U.S. Fish and Wildlife Service.
  —Washington Office
  —Regional Offices
  —Ecological Services Field Offices
—National Park Service
  —Washinton Office
  —Regional Offices
—Federal Emergency Management Agency
—U.S. Army Corps of Engineers
—Environmental Protection Agency
—Department of Agriculture
—Department of Transportation
—Department of Defense
—Department of Housing and Urban Development
—Governors of the 32 affected States, Territories, and Commonwealth of Puerto Rico
—Barrier Island Coalition
—National Wildlife Federation
—National Realtors Association

To facilitate public review, anyone interested in learning where the nearest set of maps can be examined may call the National Park Service at (202) 343–8115 or FTS: 8–343–8115 between the hours of 8:00 a.m. and 4:00 p.m. (Eastern Time) Monday through Friday. A list of Fish and Wildlife Service Regional and Field Offices and National Park Service Regional Offices where maps can be reviewed is in Appendix A.

Please Note: Maps cannot be ordered by telephone. However, the National Park Service will provide Xerox copies of individual maps for an area not greater than a county if requested *by mail.* (See *Address* provided above.

The original maps may be inspected at, and hand delivered comments may be taken to, the National Park Service, 1100 L Street, N.W., Room 3319, Washington, D.C.

Dated: February 28, 1985.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

APPENDIX A

Location of maps available for review	States
U.S. Fish and Wildlife Service—Regional Offices	
Assistant Regional Director—Habitat Resources, 500 N.E. Multnomah Street, Portland, Oregon 97232 (503) 231–6159	Hawaii, California, Oregon, and Washington.
Assistant Regional Director—Habitat Resources, P.O. Box 1306, Albuquerque, New Mexico 87103, (505) 474–2914	Texas.
Assistant Regional Director—Habitat Resources Federal Building, Fort Snelling, Twin Cities, Minnesota 55111, (612) 725–3536	Minnesota, Wisconsin, Indiana, Michigan, and Ohio.
Assistant Regional Director—Habitat Resources, Richard B Russell Federal Building, 75 Spring Street S.W., Suite 1276, Atlanta, Georgia 30303, (404)242–6343.	North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Puerto Rico, and Virgin Islands.
Assistant Regional Director—Habitat Resources, One Gateway Center, Newton Corner, Massachusetts 02158, (617) 829–9382.	Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, Pennsylvania, New Jersey, Delaware, Maryland, and Virginia.
Assistance Regional Director—Habitat Resources, 1011 East Tudor Road, Anchorage, Alaska 99503, (907) 786–3700.	Alaska.

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APPENDIX A—Continued

Location of maps available for review	States
U.S. Fish and Wildlife Service—Ecological Services Field Stations	
Project Leader, 300 Ala Moana Boulevard, Rm. 6307, P.O. Box 50167, Honolulu, Hawaii 96850, (808) 546–7530.	Hawaii and American Samoa.
Field Supervisor, 2625 Parkmont Lane, S.W., Bldg. B3, Olympia, Washington 98502, (206) 753–9440.	Washington.
Field Supervisor, 727 N.E. 24th Avenue, Portland, Oregon 97232, (503) 231–6179.	Oregon.
Field Supervisor, 2800 Cottage Way, Rm. E1803, Sacramento, California 95825, (916) 484–4731.	California, Monterey County, North.
Field Supervisor, Federal Building, 24000 Avila Road, Laguna Niguel, California 92677, (714) 643–4270.	California, San Luis Obispo County, South.
Field Supervisor, Corpus Christi State University, Campus Box 338, 6300 Ocean Drive, Corpus Christi, Texas 78412, (512) 888–3346.	Texas, Calhoun County, South.
Field Supervisor, 17629 El Camino Real, Suite 211, Houston, Texas 77058, (713) 229–3681.	Texas, Matagorda County, North.
Field Supervisor, 718 North Walnut Street, Bloomington, Indiana 47401, (812) 334–4261.	Indiana.
Field Supervisor, P.O. Box 3990, Columbus, Ohio 43216–5000, (614)231–3416.	Ohio.
Field Supervisor, 301 Manly Miles Boulevard, 1405 South Harrison Road, East Lansing, Michigan 48823, (517) 337–6650.	Michigan.
Field Supervisor, University of Wisconsin, Green Bay, Room SE 480, Green Bay, Wisconsin 54302, (414) 465–2682.	Wisconsin.
Field Supervisor, 570 Nal Pak Boulevard, 333 Sibley Street, St. Paul, Minnesota 55101, (612) 725–7131.	Minnesota.
Field Supervisor, P.O. Box 3005, Manna Station, Mayaguez, Puerto Rico 00708, (809) 833–5760.	Puerto Rico and Virgin Islands.
Field Supervisor, Postal Square Building, Room 102, 103 E. Cypress Street, Lafayette, Louisiana 70502, (318) 234–7478.	Louisiana.
Field Supervisor, 2001 Daphne East Office Plaza, Highway 98, Daphne, Alabama 36526, (205) 262–1880.	Alabama and Mississippi.
Field Supervisor, 1612 June Avenue, Panama City, Florida 32405, (904) 769–0552.	Florida, West Coast, Pasco County, West.
Field Supervisor, 1323 21st Street, Vero Beach, Florida 32960, (305) 562–3902.	Florida, all of East Coast, West Coast North to and including Pinellas County.
Field Supervisor, 901 Gloucester Street, Brunswick, Georgia 31520, (912) 265–9336.	Georgia.
Field Supervisor, 217 ft Johnson Road, Charleston, South Carolina 29412, (803) 724–4707.	South Carolina.
Field Supervisor, Federal Building, Room 468, 310 New Bern Avenue, Raleigh, North Carolina 27601, (919) 755–4520.	North Carolina.
Biologist, Virginia Institute of Marine Sciences, Williams House, Gloucester Point, Virginia 23062, (804) 642–4800.	Virginia.
Field Supervisor, 1825–B Virginia Street, Annapolis, Maryland 21401, (301) 269–5448.	Maryland and Delaware.
Assistant Field Supervisor, 705 White Horse Pike, P.O. Box 534, Absecon, New Jersey 08201, (609) 646–9310.	New Jersey.
Field Supervisor, 315 S. Allen Street, Suite 322, State College, Pennsylvania 16801, (814) 234–4090.	Pennsylvania.
Field Supervisor, 100 Grange Place, Rm. 202, Cortland, New York 13045, (607) 753–9334.	New York—Great Lakes Region.
Assistant Field Supervisor, Brookhaven National Laboratory, Building 134, Upton, New York 11973, (516) 345–3300.	New York—Long Island.
Field Supervisor, 55 Pleasant Street, Concord, New Hampshire 03301, (603) 224–2585.	Maine, New Hampshire, Massachusetts, Rhode Island, and Connecticut.
National Park Service (Regional Offices)	
Director, Alaska Regional Office, National Park Service, 2525 Gambell Street, Anchorage, Alaska 99503, (907) 271–4195.	Alaska.
Director, Mid-West Regional Office, National Park Service, 1709 Jackson Street, Omaha, Nebraska 68102, (402) 221–3431.	Minnesota, Wisconsin, Michigan, Indiana, and Ohio.
Director, Mid-Atlantic Regional Office, National Park Service, 143 South Third Street, Philadelphia, Pennsylvania 19106, (215) 597–7013.	New Jersey, Delaware, Pennsylvania, Maryland, and Virginia.
Director, Southeast Regional Office, National Park Service, 75 Spring Street, SW., Atlanta, Georgia 30303, (404) 221–5185.	North Carolina, South Carolina, Georgia, Florida, Alamaba, Mississippi, Puerto Rico, and Virgin Islands.
Director, Southwest Regional Office, National Park Service, P.O. Box 728, Santa Fe, New Mexico 87501, (505) 988–6388.	Texas and Louisiana.
Director, Western Regional Office, National Park Service, 450 Golden Gate Avenue, P.O. Box 36063, San Francisco, California 94102, (415) 556–4196.	Hawaii, California, and American Samoa.
Director, Pacific Northwest Regional Office, National Park Service, Westin Building—Room 1920, 2001 6th Avenue, Seattle, Washington 98121, (206) 442–5565.	Washington and Oregon.
Director, North Atlantic Regional Office, National Park Service, 15 State Street, Boston, Massachusetts 02109, (617) 223–3769.	Maine, New Hampshire, Massachusetts, Connecticut, Rhode Island, and New York.

Appendix B—Definition of Coastal Barriers for Purposes of the Study

This section presents a statement of definitions used to identify undeveloped and/or otherwise protected coastal barriers for the purposes of the Report to Congress required by section 10 of CBRA. The study's definition is based on guidance provided by section 3 of CBRA and is supported by definitions used previously by the Department of the Interior (**Federal Register**: 8/16/82, 47 FR 35696) as well as the legislative history of CBRA. The definition has been expanded from that used to identify the original CBRA units. The interpretation of the definitions has been broadened to reflect the resource conservation goals of CBRA (section 2). The following points of clarification and amplification enable accurate and consistent identification of undeveloped coastal barriers in specific situations.

A. General Definition

Based on the definition of a coastal barrier contained in section 3 of the CBRA, a coastal barrier is a depositional geologic feature (such as a bay barrier, tombolo, barrier spit, or barrier island) which:

- Consists of unconsolidated sedimentary materials;
- Is subject to wave, tidal, and wind energies;
- Protects landward aquatic habitats including the adjacent wetlands, marshes, estuaries, inlets, and nearshore waters.

Coastal barriers are found on the coastlines including major embayments and the Great Lakes of the United States and its territories.

B. Types of Coastal Barriers

Coastal barriers may be described generally, as in the CBRA definition, with respect to their relationships to the mainland as bay barriers, tombolos, barrier spits, and barrier islands. The "mainland" includes the continental landmass as well as large islands such as Long Island, New York, and Martha's Vineyard, Massachusetts. The accepted scientific classification is:

1. *Bay Barriers*—coastal barriers that connect two headlands, and enclose a pond, marsh, or other aquatic habitat. The terms bay mount bar or bay bar are considered to be synonymous.

2. *Tombolos*—sand or gravel beaches that connect one or more offshore islands to each other or to the mainland. Coastal barriers of this type occur principally in New York and New England. The terms connecting bar, tie bar, and tying bar are synonymous.

3. *Barrier Spits*—coastal barriers that extend into open water and are attached to the mainland at only one end. They can develop into bay barriers if they grow completely across a bay or other aquatic habitat. On the other hand, bay barriers can become spits if an inlet is created.

4. *Barrier Islands*—coastal barriers completely detached from the mainland. Barrier spits may become barrier islands if their connection to the mainland is severed by creation of a permanent inlet. The barrier island represents a broadened barrier beach, commonly sufficiently above high tide to have dunes, vegetated zones, and wetland areas.

C. Composition of Coastal Barriers

Generally, coastal barriers consist entirely of unconsolidated sediment.

composed of sand or gravel, but sometimes include silt, cobbles, or large rocks. For the purposes of this study, additional areas that function as coastal barriers are also included. These other classes are:

1. Areas containing carbonate-cemented deposits, such as:

a. Local deposits of *beach rock*—found in tropical and semi-tropical regions, consisting of carbonate-cemented gravel and/or beach sand underlain or overlain by unconsolidated sediment occurring on a coastal barrier.

b. *Cemented dunes*—found as local features in Puerto Rico where a carbonate-cemented dune line is located immediately seaward of a more or less typical coastal barrier, consisting of a beach (which may extend seaward to the cemented dune), dune and mangrove.

c. Islands in *the Florida Keys*—which substantially consist of limestone, are particularly subject to the wind, wave, and tidal energies of major storms and protect extensive and significant landward aquatic habitats.

2. Areas consisting primarily of silt and clay:

a. *Fringing mangroves*—nearshore deposits of silt and clay stabilized by mangroves as islands (a.k.a. overwash mangroves) and bands of mangrove along subtropical or tropical mainland shores in areas of low wave energy. Many of these areas are located behind coral reefs, which, together with the mangroves themselves, afford significant protection for the mainland from storm impact.

b. *Cheniers*—a narrow wooded beach ridge generally following the shoreline and parallel to and enclosing marsh and mud-flat sediments on the landward side. Fine-grained shoreline sediments are typically seaward of the chenier. The plain extending along the coast of south-western Louisiana is characterized by a series of these cheniers.

3. Areas containing glacial and bedrock deposits:

Discontinuous outcrops of bedrock and coarse glacial deposits that comprise less than 25 percent of the coastal barrier landform above mean high water.

D. Factors That Shape Coastal Barriers

Wind, waves, and tides are the immediate forces that maintain and modify coastal barriers. The action of wind, wave (directly and by creating littoral, onshore-offshore or other currents), and tidal energy on unconsolidated sedimentary materials generally results in continuous linear or curvilinear features—a beach ridge or berm located along the unprotected side of the coastal barrier. The criterion is not rigidly applied; irregularities in the shape of the beach and breaks in the continuity of the linear/curvilinear features are admissible. Such breaks in linearity are found most often in coastal barriers located in embayments, tide dominated barrier systems, and chenier shorelines.

Where a suitable sediment source and sufficient wind, wave and tidal energy exist, secondary coastal barriers occasionally develop on the mainland side of large bays or lagoons behind coastal barrier systems. These secondary coastal barriers are included in the inventory.

E. Associated Aquatic Habitat

Associated aquatic habitat includes wetland (e.g., tidal flats, swamps, and marshes), lagoons, estuaries, coves, inlets, the nearshore waters seaward of the coastal barrier, including, in some tropical areas, fringing and barrier reefs. This is an expanded definition reflecting the specific conservation purposes of CBRA to protect the fish, wildlife, and other natural resources of coastal barriers. All such associated aquatic habitats are inseparable parts of the coastal barrier ecosystem. All aquatic habitat between a coastal barrier and the mainland is protected by the coastal barrier from the direct wave attack. Protection of this habitat and the mainland itself from wave attack during major storms has long been recognized as a fundamental function of coastal barriers. Although the amount of protection of landward aquatic habitat from wave attack diminishes with increasing distance behind the coastal barrier, this condition does not preclude the basic protection function. Under normal weather conditions, only aquatic habitat immediately adjacent to the coastal barrier is afforded protection from wave attack. However, major coastal storms routinely affect the entire landward aquatic habitat, which is protected in varying degrees during these events by the coastal barrier. The protected area is considered to comprise the area subject to diminished wind, wave, and tidal energy due to presence of the coastal barrier during a storm.

Fringing mangroves and associated coral reef systems are considered as coastal barriers in tropical and subtropical areas because the protection afforded the associated aquatic habitat and mainland are comparable to coastal barriers that contain a linear or curvilinear beach.

Definition of "Undeveloped"

A coastal barrier is considered undeveloped if it contains less than one (1) structure per five (5) acres that is "roofed and walled" and covers at least 200 square feet. Once a coastal barrier has been identified, the development status of the unit is determined utilizing such terms included in CBRA as follows:

A. Few Man-Made Structures

As noted, a unit is considered undeveloped if it contains fewer than one structure per five acres of fastland. A man-made structure is defined as a walled and roofed building constructed in conformance with Federal, state, or local legal requirements, with a projected ground area exceeding two hundred square feet.

B. The Structures and Man's Activities Do Not Significantly Impede Geomorphic and Ecological Processes

If a unit contains fewer than roughly one structure per five acres of fastland, it is considered undeveloped except when geomorphic ecological processes are altered to the extent that the long-term perpetuation of the coastal barrier is threatened by one or more of the following:

(a) Extensive shoeline manipulation or stabilization;

(b) Pervasive canal construction and maintenance;

(c) Major dredging projects and resulting sedimentary deposits;

(d) Intensive capitalized development projects, such as condominiums, which effectively establish a commitment to stabilize an area, even though there are few actual structures.

C. Any Portion Thereof

The Act does not require an entire coastal barrier to be included, and specifically allows for inclusion of undeveloped portions of coastal barriers. An undeveloped portion of a coastal barrier is included if there exists a minimum of approximately one-quarter mile of shoreline on the unprotected (seaward) side of the coastal barrier. Each unit must include an undeveloped area extending through the fastland from the beach to the associated landward aquatic habitat, and must independently satisfy the definitional criteria in section 3 (1)(A) of the Act. However, at the request of Rhode Island and Connecticut, areas including a beach length less than ¼ mile have been included in the draft inventory. Further, because of the massive scale of coastal barrier systems and the small scale of available topographic maps in Alaska, the

minimum shoreline length for coastal barriers there is one mile.

Definition of "Otherwise Protected"

In accordance with the Secretary of the Interior's recommendation in the August 15, 1982 Report to the Congress, coastal barriers held for conservation purposes are identified. A coastal barrier or portion thereof is defined as "otherwise protected" if it has been withdrawn from the normal cycle of private development and dedicated for conservation, wildlife management, public recreation, or scientific purposes. Protected status requires that there be evidence of an intent on the part of the administrator to protect the coastal barrier. This definition includes:

(1) Areas established under a Federal, State, or local law which stipulates the purpose(s) of protection; or

(2) Areas established by a Presidential Proclamation under the Antiquities Act of 1906, or under a Federal, State, or local executive directive which has its basis in law; or

(3) Areas subject to deed restriction or a conservation easement which withdraws it from the normal development cycle and establishes the purposes of protection; or

(4) Areas administered by an agency of the Federal, State, or local government under a lease which stipulates the purposes of protection; or

(5) Areas held by an organization within the scope of section 170 (h)(3) of the Internal Revenue Code of 1954, primarily for wildlife refuge, sanctuary, recreational, or natural resource conservation purposes; or

(6) Areas where the owner has established the intent to protect the area through a master plan or similar document establishing the purpose of the area; or

(7) Areas where the owner has provided a written statement documenting the intention to protect the area.

Delineation of Coastal Barrier Study Areas

Once a coastal barrier has been identified as "otherwise protected" according to the definition above, boundary delineation of the coastal barrier units is made in the following manner:

A. Delineation of the Landward Boundary

On the landward side, the boundary is a line that encompasses the fastland core of the coastal barrier itself as well as associated aquatic habitat consisting of wetland (including tidal flats), shoals, islands, channels, and open water landward of the fastland portion of the coastal barrier.

In general, the landward boundary of coastal barriers, as defined to include associated aquatic habitats, follows some natural or cultural feature within or landward of the aquatic system. Such features should be recognizable on available maps or aerial photographs as well as on the ground.

Two basic types of aquatic environments, or combinations thereof, occur landward of coastal barriers. Each requires a somewhat different application of the general "landward boundary delineation" rule. These aquatic environments and the specific applications of the "landward boundary delineation" rule are as follows:

(1) General case

The landward boundary is a continuous line that follows the interface between the aquatic habitat and the mainland, as defined on topographic maps and/or aerial photographs by a change in vegetation. The boundary is drawn not more than five miles landward of the mean high water line on the unprotected side of the coastal barrier.

(2) Special conditions

(a) Landward aquatic habitat

• *Open water body greater than one mile wide landward of coastal barrier.* The boundary is drawn through the open water approximately one mile landward of the farthest landward extent of wetlands on the protected side of the coastal barrier. If a discernible natural channel, man-made channel, or political boundary exists in the open water approximately one mile landward of the coastal barrier, such a feature is used to delineate the landward boundary. For natural and man-made channels, the boundary is drawn along the side nearest the coastal barrier.

An exception has been made for Alaska. Because only small-scale topographic maps were available for the entire coast of Alaska, and because of the very large size of coastal barriers in this area, the boundary through open water was drawn as far as five miles landward of the mean high water line on the unprotected side of the coastal barrier (i.e., general case criterion applied).

• *Continuous wetlands that extend more than five miles landward of the coastal barrier.* The boundary is generally drawn through the wetlands along an identifiable natural channel, artificial channel, or political boundary nearest to the five mile limit in the manner described in the general case (1). If such features are lacking, the boundary is drawn through the wetland generally parallel to and five miles landward of the mean high water line on the unprotected side of the coastal barrier.

• *Watercourses that flow into the aquatic habitat from the mainland.* The boundary is drawn at the first natural or artificial constriction within the drainage landward of the coastal barrier.

• *Coastal barriers within large embayments and secondary coastal barriers within bays and lagoons.* Because of limited energy affecting these coastal barriers, the boundary is drawn as described in the general case (1), but not more than one mile landward of the mean high water line on the unprotected side of the coastal barrier.

(b) Other coastline

• *Steep coastal topography* (Pacific Coast, Great Lakes, Puerto Rico). In areas of tectonic uplift or glacial rebound, the wetland-mainland boundary is normally drawn not to exceed an elevation of 20 feet above the mean high water level of the system. In a few instances in the Great Lakes States, where continuous landward aquatic habitat extends to a higher elevation, the boundary is locally extended to as much as 40 feet above mean high water, where this allows for inclusion of the entire aquatic habitat. In Alaska, available 1:250,000 scale topographic maps generally have a resolution of 50 feet. The boundary was drawn along the 50-foot contour in cases where no other natural or artificial boundary could be used.

• *Coastal barriers located at the mouths of intermittent streams* (Pacific Coast). In areas of intermittent stream flow, sand plugs frequently form during periods of low flow. These plugs may divert the stream for some distance parallel to the shoreline, creating a landward aquatic habitat. The boundary is drawn along the 20-foot contour on the mainland side of the aquatic habitat, as defined by the maximum documented extent of the stream channel or natural impoundment.

B. Delineation on Seaward Side

The unit contains the entire sand-sharing system, including the beach, shoreface, and offshore bars. The sand-sharing system of coastal barriers is normally defined by the 30-foot bathymetric contour. In the Great Lakes and in large coastal embayments (e.g., Chesapeake Bay, Delaware Bay, Narragansett Bay, Puget Sound), the sand-sharing system is more limited in

extent. In these cases, the sand-sharing system is defined by the 20-foot bathymetric contour or a line approximately one mile seaward of the shoreline, whichever is nearer the coastal barrier.

Delineation of Undeveloped Coastal Barriers

Undeveloped coastal barriers, or portions thereof, are delineated using U.S. Geological Survey topographic quadrangle maps and, when available, recent aerial photography. Development status is determined solely on the basis of the density of visible structures. The following delineation criteria are used:

A. Undeveloped Area Adjoins Continuous Development

The boundary is generally drawn perpendicular to the unprotected shoreline across the entire coastal barrier and the associated landward aquatic habitat at the break in development.

B. Undeveloped Area Contains Isolated Clusters of Structures

Clusters of approximately 10 or more structures are specifically excluded from the unit where the impact of the development on geological and ecological processes is local and confined primarily to the fastland on which the structures are located. A boundary is drawn around the cluster of development to exclude it from the unit.

C. Partially Undeveloped Coastal Barriers: Inclusion of Associated Aquatic Habitat

The entire associated aquatic habitat is included in cases where the coastal barrier is 50 percent or more undeveloped, as determined by the perpendicular projection of developed versus undeveloped portions on the unprotected shoreline. The boundary of the associated aquatic habitat is delineated in accordance with criteria in the previous section, except that the boundary on the protected side of the developed portion(s) is drawn along the interface between the aquatic habitat and the fastland portion on the coastal barrier. In cases where the coastal barrier is less than 50 percent undeveloped, the boundary is drawn as in (A) above.

D. Undeveloped Area Adjoining Intensively Capitalized Areas

The undeveloped area immediately adjoining condominiums and similar intensively capitalized sites is excluded because it is considered committed to stabilization. The boundary is drawn to exclude the area of significant impact due to the development activity. Property lines are used where known and reasonably reflective of the area of significant impact.

Delineation of "Otherwise Protected" Coastal Barriers

Once a coastal barrier or portion thereof has been identified as protected in accordance with one of the previous criteria, boundary delineation is made as follows:

A. Size

A protected area is included if its area is ten (10) acres or more, excluding submerged areas of open water.

B. Location

A protected area is included if it is anywhere on a coastal barrier, provided the minimum acreage requirement is satisfied. Protected areas include adjacent wetlands and minor portions on the adjacent mainland which may be included in their entirety for administrative convenience. An exception is made for State and municipal beaches fronting on developed coastal barriers. Where protection is limited to the beach and berm, these are not included. Where such beaches front on an undeveloped coastal barrier, they are included.

C. Development

The development threshold of one walled and roofed structure per five acres of fastland applies.

An exception is made for certain protected coastal barriers, or portions thereof, that contain both developed and undeveloped private tracts which are not protected by their owners. For purposes of delineating the protected unit, the legally authorized boundaries were used without regard to the nature or level of development.

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Price	Revision Date
1, 2 (2 Reserved)	$6.00	Jan. 1, 1984
3 (1983 Compilation and Parts 100 and 101)	7.00	Jan. 1, 1984
4	12.00	Jan. 1, 1985
5 Parts:		
1–1199	13.00	Jan. 1, 1984
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*1200–End, 6 (6 Reserved)	7.50	Jan. 1, 1985
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*1060–1119	9.50	Jan. 1, 1985
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*8	7.50	Jan. 1, 1985
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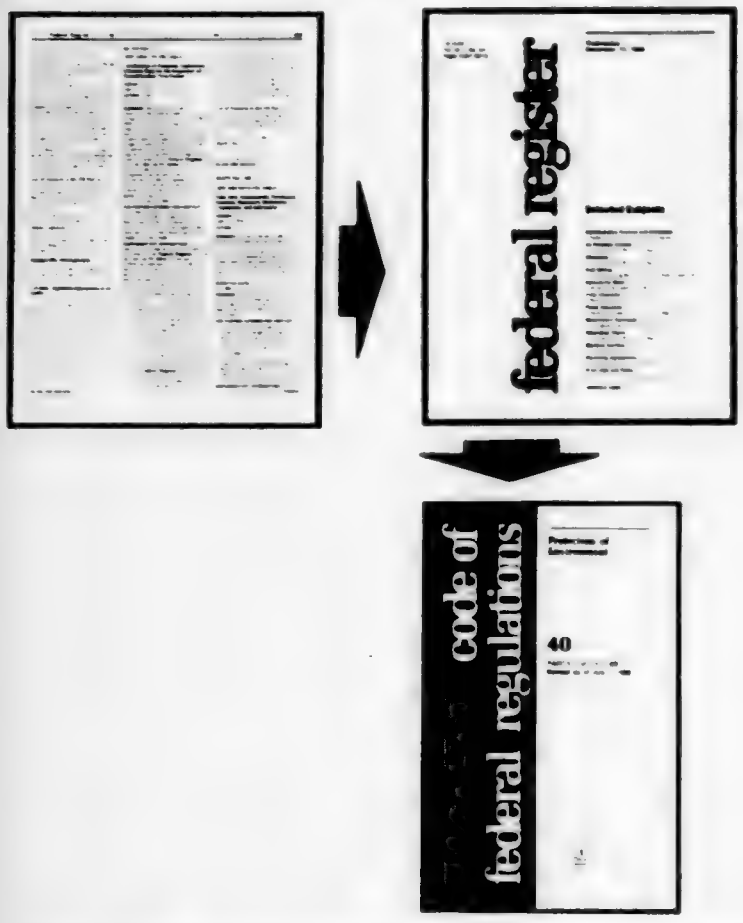
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Rules and Regulations

Federal Register
Vol. 50, No. 43
Tuesday, March 5, 1985

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 84-328]

Khapra Beetle; Affirmation of Interim Rule

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: This document affirms without change an interim rule published in the **Federal Register** on January 16, 1984, which amended the "Khapra Beetle" regulations by designating the following items as restricted articles: (1) Cumin seeds (*Cuminum cyminum*) in jute or burlap bags if from Pakistan; (2) seeds of the plant family Cucurbitaceae if in shipments greater than two ounces, if not for propagation, and if from Afghanistan, Algeria, Bangladesh, Burma, Cyprus, Egypt, India, Iran, Iraq, Israel, Libya, Mali, Mauritania, Morocco, Niger, Nigeria, Pakistan, Saudi Arabia, Senegal, Sri Lanka, Sudan, Syria, Tunisia, Turkey, or Upper Volta; (3) goatskins, lambskins, and sheepskins which are salted but not moist if from Sudan or India; and (4) used burlap bagging not containing cargo and used jute bagging not containing cargo if from Libya, Saudi Arabia or Syria. Additionally, the document amended the provisions concerning phytosanitary certificates of inspection for certain restricted articles to reflect statutory requirements and provided that a phytosanitary certificate of inspection must be issued not more than 15 days prior to the shipment of the restricted article from the country in which grown, in order for the certificate to be valid.

EFFECTIVE DATE: March 5, 1985.

FOR FURTHER INFORMATION CONTACT: Charles E. Miller, Staff Specialist, Biological Assessment Support Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 631, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8367.

SUPPLEMENTARY INFORMATION:

Executive Order 12291 and Regulatory Flexibility Act

The amendment has been issued in conformance with Executive Order 12291, and has been determined to be not a "major rule." Based on information compiled by the Department it has been determined that the amendment will not have a significant effect on the economy; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this rulemaking action, the Office of Managment and Budget has waived the review process required by Executive Order 12291.

With respect to cumin seed, an importer can avoid these seeds being designated as restricted articles if they are shipped from Pakistan in other than jute or burlap bagging. Further, these seeds are used as spices and represent an insignificant amount of the spices imported into the United States.

Almost all Cucurbitaceae seeds designated as restricted articles would be imported for food and would compete on the market with other types of seeds used as food. These imported Cucurbitaceae seeds represent an insignificant amount of total Cucurbitaceae seeds and other types of seeds used for food in the United States.

Under the amendment, goatskins, lambskins, and sheepskins from Sudan or India are not designated as restricted articles if they are salted and moist upon importation. In order to avoid having such salted skins designated as restricted articles, such skins can be shipped moist. Shipping such skins moist would not have a significant effect on the cost of preparing and shipping these skins. Further, it is a common practice in the industry to ship salted skins moist.

There is little, if any, importation of used jute or burlap bagging from Libya, Saudi Arabia, and Syria.

The amendment will not have a significant economic effect on United States importers and sellers of the affected articles. Almost all such importers and sellers are involved with a wide range of commodities. Activities involving these articles comprise an insignificant portion of such businesses.

Under the circumstances explained above, the Administrator of the Animal and Plant Health Inspection Service, has determined that this action will not have a significant economic impact on a substantial number of small entities.

Background

A document published in the **Federal Register** on January 16, 1984 (49 FR 1872-1876) set forth an interim rule amending the "Khapra Beetle" regulations (7 CFR 319.75 *et seq.*) by designating the following items as restricted articles: (1) Cumin seeds (*Cuminum cyminum*) in jute or burlap bags if from Pakistan; (2) seeds of the plant family Cucurbitaceae if in shipments greater than two ounces, if not for propagation, and if from Afghanistan, Algeria, Bangladesh, Burma, Cyprus, Egypt, India, Iran, Iraq, Israel, Libya, Mali, Mauritania, Morocco, Niger, Nigeria, Pakistan, Saudi Arabia, Senegal, Sri Lanka, Sudan, Syria, Tunisia, Turkey, or Upper Volta; (3) goatskins, lambskins, and sheepskins which are salted but not moist if from Sudan or India; and (4) used burlap bagging not containing cargo and used jute bagging not containing cargo if from Libya, Saudi Arabia or Syria.

The above referenced articles have been designated as restricted articles, because, based on pest interception records, it has been determined that they have a significant risk of carrying khapra beetle at the time of importation.

The regulations provide that restricted articles are allowed to be imported only if they are imported by the Department for experimental or scientific purposes under certain conditions, or if imported in accordance with requirements concerning permits, methyl bromide treatments, marking and identity, arrival

notification, costs and charges, ports of entry, and phytosanitary certificates of inspection.

Additionally, the document amended the provisions concerning phytosanitary certificates of inspection for certain restricted articles to reflect statutory requirements and provided that a phytosanitary certificate of inspection must be issued not more than 15 days prior to the shipment of the restricted article from the country in which grown, in order for the certificate to be valid.

The amendment became effective on the date of publication. The document provided that the amendment was necessary as an emergency measure in order to protect against the introduction into the United States of the khapra beetle, (*Trogoderma granarium* Everts)

Comments were solicited for 60 days after publication of the amendment. No comments were received in response to the amendment. The factual situations which were set forth in the document of January 16, 1984, still provide a basis for the amendment. Accordingly, it has been dertermined that the amendment should remain effective as published in the **Federal Register** on January 16, 1984.

Also, it should be noted that published elsewhere in the final rule section of this issue of the **Federal Register** is another amendment to the Khapra Beetle regulation which adds additional articles to the list of regulated articles.

List of Subjects in 7 CFR Part 319

Agricultural Commodities, Imports, Plant Diseases, Plants (Agriculture), Quarantines, Transportation, Nursery stock.

PART 319—FOREIGN QUARANTINE NOTICES

Accordingly, the interim rule published at 49 FR 1872–1876 on June 16, 1984 is adopted as a final rule.

Authority: Secs. 5 and 9, 37 Stat. 316, 318, (7 U.S.C. 159, 162); Secs. 105, 106, and 107; 71 Stat. 32–34; (7 U.S.C. 150dd, 150ee, 150ff; 7 CFR 2.17, 2.51, and 371.2(c)).

Done at Washington, D.C. this 27th day of February, 1985.

Harvey L. Ford,

Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 85–5179 Filed 3–4–85; 8:45 am]

BILLING CODE 3410-34-M

7 CFR Part 319

[Docket No. 84–363]

Khapra Beetle

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends the khapra beetle regulations by designating as restricted articles: (1) plant gums shipped as bulk cargo (in an unpackaged state) if from Afghanistan, Algeria, Bangladesh, Burma, Cyprus, Egypt, India, Iran, Iraq, Israel, Libya, Mali, Mauritania, Morocco, Niger, Nigeria, Pakistan, Saudi Arabia, Senegal, Sri Lanka, Sudan, Syria, Tunisia, Turkey, or Upper Volta ("khapra beetle infested countries"), (2) used jute or burlap bagging from a khapra beetle infested country that contains cargo, and the cargo in such bagging, and (3) used jute or burlap bagging from a khapra beetle infested country that is used as packing material (such as filler, wrapping, ties, lining, matting, moisture retention material, or protection material), and the cargo for which the used jute or burlap bagging is used as a packing material.

The effect of these amendments is to require that the articles added to the list of restricted articles meet certain restrictions as a condition of importation. These amendments are necessary to protect against the introduction of khapra beetle into the United States.

EFFECTIVE DATE: April 4, 1985.

FOR FURTHER INFORMATION CONTACT: Charles E. Miller, Staff Specialist, Biological Assessment Support Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 631, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8367.

SUPPLEMENTARY INFORMATION:

Background

A document published in the **Federal Register** on July 31, 1984 (49 FR 30475–30480) proposed to amend the khapra beetle regulations (contained in 7 CFR 319.75 *et seq.*, and referred to below as the regulations). The regulations were established to protect against the introduction into the United States of khapra beetle (*Trogoderma granarium* Everts).

The regulations are designed to impose restrictions on those articles which are determined to present a significant risk of carrying the khapra beetle at the time of importation, and which require special restrictions in order to protect against the introduction of the khapra beetle. The articles subject to restrictions are designated as restricted articles.

The document published on July 31, 1984, proposed to designate the following items as restricted articles: (1) Plant gums shipped as bulk cargo (in an unpackaged state) if from Afghanistan, Algeria, Bangladesh, Burma, Cyprus, Egypt, India, Iran, Iraq, Israel, Libya, Mali, Mauritania, Morocco, Niger, Nigeria, Pakistan, Saudi Arabia, Senegal, Sri Lanka, Sudan, Syria, Tunisia, Turkey, or Upper Volta ("khapra beetle infested countries"), (2) used jute or burlap bagging from a khapra beetle infested country that contains cargo, and the cargo in such bagging, and (3) used jute or burlap bagging from a khapra beetle infested country that is used as packing material (such as filler, wrapping, ties, lining, matting, moisture retention material, or protection material), and the cargo for which the used jute or burlap bagging is used as a packing material.

Comments

The document of July 31, 1984, provided that comments would be accepted until October 1, 1984. In response to the proposal, nine comments were received. Recommended modifications to the proposal were submitted by four commenters, and are discussed below. Five comments were submitted in support of the proposal. For the reasons set forth in the proposal and this document, the proposed rule is adopted as a final rule without change.

Two comments were received regarding shipments of guar gum in bulk. One commenter requested that guar gum shipped as bulk cargo either not be designated as a restricted article, or, alternatively, be exempted from the requirement that it be fumigated at the port of entry if the cargo had been fumigated in the exporting country at a schedule at least equal to that proposed by the Department. Another commenter requested that, prior to publishing a final rule, the Department review fumigation procedures that exist in foreign countries with regard to guar gum in bulk to determine whether they are adequate to prevent the introduction of khapra beetle into the United States. No changes have been made in the final rule based on these comments.

Guar gum shipped in bulk from a khapra beetle infested country is a known carrier of khapra beetle, and, as such, presents a significant risk of introducing khapra beetle into the United States. Further, guar gum shipped in bulk is very difficult to inspect and it

is almost impossible to determine by inspection alone whether a shipment is infested with khapra beetle. Fumigation with methyl bromide, as prescribed in the proposal, has been shown to be adequate to destroy any life stages of khapra beetle that might be present in a shipment of bulk guar gum. It appears that this is the only feasible treatment available for ensuring that infestations of khapra beetle are not introduced in the United States through guar gum shipped in bulk. Therefore, it is necessary to designate guar gum shipped in bulk from khapra beetle infested countries as a restricted article and to require that it be fumigated with methyl bromide as a condition of importation into the United States.

The regulations in § 319.75–4 require that fumigation be conducted "under the supervision of an inspector" in order to assure compliance with the fumigation procedures. Therefore, guar gum must be fumigated at the port of entry under the supervision of an inspector as a condition of importation into the United States, since the Department does not have the resources available at this time, to supervise fumigation other than at the port of entry in the United States.

One commenter raised concerns with respect to turkish tobacco packed in new jute or burlap bagging. Under the proposal, tobacco packed in jute or burlap bagging from khapra beetle infested countries would be required to be fumigated only if packed in used jute or burlap bagging. The commenter was concerned that port inspectors might misidentify new jute or burlap bagging as used jute or burlap bagging and unnecessarily require fumigation of the tobacco packed in new jute or burlap bagging. The commenter also asserted that tobacco was not a host of khapra beetle and requested that tobacco packed in jute or burlap bagging not be designated as a restricted article to avoid inadvertent and unnecessary fumigation.

No changes have been made in the final rule based on this comment. Tobacco (or any other commodity) if packed in used jute or burlap bagging has been designated as a restricted article because of the likelihood that it will become infested if packed in a jute or burlap which is infested. It has been demonstrated that used jute or burlap bagging is a host of khapra beetle, and that commodities carried in an infested jute or burlap bag can also become infested and a carrier of khapra beetle. As such, both the jute or burlap bag and the commodity contained in the bag present a significant risk of introducing khapra beetle into the United States, and are inseparable for regulatory purposes. Therefore, tobacco packed in used jute or burlap bagging from a khapra infested beetle country, is designated as a restricted article and will be required to be fumigated as a condition of entry into the United States. With regard to distinguishing new from used bagging, the Department has the expertise and experience to determine whether jute or burlap bagging is new or used.

Another commenter recommended that all agricultural products, especially spices, from khapra beetle infested countries, be designated as restricted articles and be required to be fumigated as a condition of entry into the United States.

No changes have been made in the final rule based in this comment. There is not basis at this time for designating all agricultural products as restricted articles. The Department currently designates agricultural products as restricted articles if it has shown that they present a significant risk of introducing khapra beetle into the United States. Agricultural products currently designated as restricted articles include seeds of the plant family Cucurbiticeae, whole chilies, whole red peppers, and cumin seed in jute or burlap bags if from Pakistan. Action will be taken to designate additional agricultural products as restricted articles if it appears necessary to prevent the introduction of khapra beetle into the United States.

Executive Order 12291 and Regulatory Flexibility Act

This rule is adopted in conformance with Executive Order 12291 and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that this rule, will not have a significant effect on the economy; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Alternatives were considered in connection with this rule. Alternatives considered were (1) to rely on inspection of the articles designated as restricted articles for determinations as to whether they are infested with khapra beetle and to treat only those found to be infested with khapra beetle, (2) to prohibit the importation of such articles, or (3) to designate such articles as restricted articles and to thereby allow the importation of such articles only in accordance with certain restrictions as indicated above.

Alternative (1) has not been adopted because inspections are not adequate to always detect the khapra beetle when present.

Alternative (2) has not been adopted because it is unnecessarily restrictive.

Alternative (3) has been adopted because it is adequate to prevent a significant risk of introducing khapra beetle into the United States while still allowing such articles to be imported.

It appears that the benefits of adopting the rule far outweigh any costs of compliance, and it appears that the rule maximizes net benefits to society at the lowest net cost.

Almost all of the additional costs for the importation of the articles added to the list of restricted articles are costs associated with fumigation. Further, prior to the effective date of these regulations, these articles were being inspected under authority of the Federal Plant Pest Act (7 U.S.C. 151 *et seq.*) at time of importation, and many were required to be fumigated because of a finding of khapra beetle. Importers of cargo designated as restricted articles can avoid such fumigation costs by shipping with bagging made of other than used jute or burlap, such as new jute or burlap, fiber, paper, or polypropelene.

The articles added to the list of restricted articles are imported by a large number of importers; most of which import numerous other items not included as restricted articles. Also, a large portion of the articles designated as restricted articles are used as ingredients in products, and the costs associated with fumigation would not significantly increase the cost of the finished products.

Further, it is anticipated that fumigation costs would not be passed on to processors or other users of used jute or burlap bagging.

Bert W. Hawkins, Administrator of the Animal and Plant Health Inspection Service, has determined that, under the circumstances explained above, it is anticipated that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

In accordance with section 3504(h) of the Paperwork Reduction Act of 1980, [44 U.S.C. 3504(h)], the information collection provisions included in 7 CFR Part 319.75 have been approved by the Office of Management and Budget and

have been assigned OMB Control Number 0579–0049.

List of Subjects in 7 CFR Part 319

Agricultural Commodities, Imports, Nursery Stock, Plant Pests, Plants (Agriculture), Quarantine, Transportation.

PART 319—FOREIGN QUARANTINE NOTICES

Accordingly, under the circumstances referred to above, the "Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products" regulations in 7 CFR Part 319 (7 CFR 319.37 *et seq.*) and the "Khapra Beetle" regulations in 7 CFR Part 319 (7 CFR 319.75 *et seq.*) are amended, as follows:

1. The definition of the term "Restricted article" in 7 CFR 319.37–1 is revised to read as follows:

§ 319.37–1 Definitions.

* * * * *

Restricted article. Any class of nursery stock or other class of plant, root, bulb, seed, or other plant product, for or capable of propagation, excluding any prohibited articles listed in § 319.37–2 (a) or (b) of this subpart, excluding any articles subject to any restricted entry orders in 7 CFR Part 321. (i.e., potatoes), and excluding any articles regulated in 7 CFR 319.8 through 319.34 or 319.41 through 319.74–7.

* * * * *

2. In § 319.75–1, all of the definitions remain but the letters (a) through (j) are removed, the definitions of "Inspector" and "Import" are rearranged in alphabetical order, and the following terms are added in alphabetical order:

* * * * *

Nursery stock. All field-grown florist's stock, trees, shrubs, vines, cuttings, grafts, scions, buds, fruit pits, and other seeds of fruit and ornamental trees or shrubs, and other plants and plant products for propagation, except field, vegetable and flower seeds, bedding plants, and other herbaceous plants, bulbs, and roots.

* * * * *

Plant gum. Any of numerous colloidal polysaccharide substances of plant origin that are gelatinous when moist but harden on drying. Plant gums include but are not limited to acacia gum, guar gum, gum arabic, locust gum and tragacanth gum.

* * * * *

3. Section 319.75–2 is revised to read as follows:

§ 319.75–2 Restricted articles.[1]

(a) The following articles from the specified localities or countries are restricted articles:

(1) Seeds of the plant family Cucurbitaceae[2] if in shipments greater than two ounces, if not for propagation, and if from a country listed in paragraph (b) of this section;

(2) Brassware and wooden screens from Bombay, India;

(3) Goatskins, lambskins, and sheepskins (excluding goatskins, lambskins, and sheepskins which are fully tanned, blue-chromed, pickled in mineral acid, or salted and moist) from Sudan or India;

(4) Plant gums shipped as bulk cargo (in an unpackaged state) if from a country listed in paragraph (b) of this section;

(5) Used jute or burlap bagging not containing cargo if from a country listed in paragraph (b) of this section;[3]

(6) Used jute or burlap bagging from a country listed in paragraph (b) of this section that contains cargo, and the cargo in such bagging;[3]

(7) Used jute or burlap bagging from a country listed in paragraph (b) of this section that is used as a packing material (such as filler, wrapping, ties, lining, matting, moisture retention material, or protection material), and the cargo for which the used jute or burlap bagging is used as a packing material;[3] and

(8) Whole chilies (*Capsicum* spp.), whole red peppers (*Capsimcum* spp.), and cumin seeds,(*Cuminum cyminum*) in new jute or burlap bags from Pakistan.

(b) Afghanistan, Algeria, Bangladesh, Burma, Cyprus, Egypt, India, Iran, Iraq, Israel, Libya, Mali, Mauritania, Morocco, Niger, Nigeria, Pakistan, Saudi Arabia, Senegal, Sri Lanka, Sudan, Syria, Tunisia, Turkey, and Upper Volta.

§ 319.75–4 [Amended]

4. The heading *"Treatments."* for § 319.75–4 is changed to *"Treatments.*[6]*"* and a corresponding footnote is added to read as follows:

"[6] There is a possibility that some articles, especially live plants, could be damaged by fumigation."

5. Section 319.75–4 is amended by revising the introductory text in paragraph (a), revising the introductory text in paragraph (b), and by adding a new paragraph (c) to read as follows:

§ 319.75–4 Treatments

* * * * *

(a) Brassware; wooden screens; goatskins; lambskins; sheepskins; plant gums; seeds of the plant family cucurbitaceae; jute or burlap bagging that contains cargo, and the cargo in such bagging (except for articles specified in paragraphs (b) and (c) of this section); and jute or burlap bagging that is used as a packing material, and the cargo for which the jute or burlap bagging is used as a packing material (except for articles specified in paragraphs (b) and (c) of this section).

* * * * *

(b) Burlap bagging and jute bagging not containing cargo; and flour or finely ground oily meals, and the jute or burlap bagging used as a container or packing material for such flour or meals.

* * * * *

(c) Baled cotton lint, cotton linters, cotton waste, and cotton piece goods; and the jute or burlap bagging used as a container or packing material for such baled cotton lint, cotton linters, cotton waste, or cotton piece goods.

(1) Fumigation with methyl bromide under a tarpaulin or in a chamber at normal atmospheric pressure at one of the following schedules:

(i) 128 g/m^3 (8 lb/1000 ft^3) for 24 hours at 15.5°C 60°F or above
(25 g (oz.) concentration in commodity 4–24 hrs.)
(65 g (oz.) concentration in space 4–12 hrs.)
(35 g (oz.) concentration in space 12–24 hrs.)

(ii) 176 g/m^3 (11 lb/1000 ft^3) for 24 hrs. at 4.5°–15°C (40°–59°F)
(30 g (oz.) concentration in commodity 4–24 hrs.)
(95 g (oz.) concentration in space 4–24 hrs.)
(50 g (oz.) concentration in space 12–24 hrs.)

Note.—Maximum volume of commodity being treated under subsection (1) shall not exceed 50% of the total volume of chamber. Concentration readings may be omitted for chamber fumigations.

(2) Fumigation with methyl bromide in a chamber at 660mm (26 inch) vacum at one of the following schedules:

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[1] The importation of restricted articles may be subject to prohibitions or restrictions under other provisions of 7 CFR Part 319. For example, fresh whole chilies (*Capsicum* spp.) and fresh whole red peppers (*Capsicum* spp.) from Pakistan are prohibited from being imported into the United States under the provisions of 7 CFR 319.56 *et seq.*

[2] Seeds of the plant family Cucurbitaceae include but are not limited to: Benincasa hispida (wax gourd), Citrullus Lanatus (watermelon) Cucumis melon (muskmelon, cantaloup, honeydew), Cumumis sativius (cucumber), Cucurbita pepo (pumkin, squashes, vegetable marrow), Lagenaria siceraria (calabash, gourd), Luffa cylindrica (dishcloth gourd), Mormoridica charantia (bitter melon), and Sechium edule (chayote).

[3] Such bagging may be subject to additional restrictions under the provisions in 7 CFR 319.8 *et seq*

(i) 128 g/m³ (8 lb/1000 ft³) for 3 hrs. at 15.5°C (60°F) or above.
(ii) 144 g/m³ (9 lb/1000 ft³) for 3 hrs. at 4.5°–15°C (40°–59°F).

Note.—Maximum volume of commodity being treated under subsection (2) shall not exceed 75% of the total volume of chamber.

6. The following note is added at the end of § 319.75–4(b)(3)(ii):

"**Note.**—Maximum volume of commodity being treated under subsection (3) shall not exceed 75% of the total volume of chamber."

7. Section 319.75–9 is revised to read as follows:

§ 319.75–9 Inspection and phytosanitary certificate of inspection.

(a) Any nursery stock, plant, fruit, vegetable, root, bulb, or other plant product designated as a restricted article and grown in a country maintaining an official system of inspection for the purpose of determining whether such article is free from injurious plant diseases, injurious insect pests, and other plant pests shall be accompanied by a phytosanitary certificate of inspection from the plant protection service of such country at the time of importation or offer for importation into the United States. Such certificate may cover more than one article and more than one container kept together during shipment and offer for importation.

(b) Any nursery stock, plant, fruit, vegetable, root, bulb, seed, or other plant product designated as a restricted article which is accompanied by a valid phytosanitary certificate of inspection is subject to inspection by an inspector at the time of importation into the United States for the purpose of determining whether such article is free of injurious plant diseases, injurious insect pests, and other plant pests, and whether such article is otherwise eligible to be imported into the United States.

(c) Any nursery stock, plant, fruit, vegetable, root, bulb, seed, or other plant product designated as a restricted article and grown in a country not maintaining an official system of inspection for the purpose of determining whether such article is free from injurious plant diseases, or injurious insect pests, and other plant pests shall be inspected by an inspector at the time of importation into the United States for the purpose of determining whether such article is free of such diseases and pests and whether such article is otherwise eligible to be imported into the United States.

(Secs. 5 and 9; 37 Stat. 316; 318; 7 U.S.C. 159, 162; secs. 105, 106, and 107; 71 Stat. 32–34; 7 U.S.C. 150dd, 150ee, 150ff; 7 CFR 2.17, 2.51, and 371.2(c))

Done at Washington, D.C., this 27th day of February, 1985.

William F. Helms,

Associate Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 85–5180 Filed 3–4–85; 8:45 am]

BILLING CODE 3410–34–M

FEDERAL RESERVE SYSTEM

12 CFR Part 202

[Reg. B; Docket No. R–0540]

Equal Credit Opportunity; Administrative Enforcement; Technical Amendment

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Administrative enforcement, technical amendment.

SUMMARY: The Board is making a technical amendment to Regulation B (Equal Credit Opportunity) to indicate that the Department of Transportation has assumed the enforcement responsibilities for the regulation previously carried out by the Civil Aeronautics Board.

EFFECTIVE DATE: March 4, 1985.

FOR FURTHER INFORMATION CONTACT: Lynn C. Goldfaden, Staff Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, (202) 452–3867.

SUPPLEMENTARY INFORMATION: (1) Section 202.1(b)(1) and Appendix A of Regulation B refer to the Civil Aeronautics Board as one of the agencies responsible for administrative enforcement of the regulation. As of January 1, 1985, the Department of Transportation assumed the enforcement responsibilities previously carried out by the Civil Aeronautics Board, an agency no longer in existence. Therefore, the Board is amending its Regulation B to accurately reflect the change in enforcement authority.

List of Subjects in 12 CFR Part 202

Banks, banking, Civil rights, Consumer protection, Credit, Federal Reserve System, Marital status discrimination, Minority groups, Penalties, Religious discrimination, Sex discrimination, Women.

PART 202—[AMENDED]

Pursuant to section 703 of the Equal Credit Opportunity Act (15 U.S.C. 1691(b)), the Board amends Regulation B, 12 CFR Part 202, as follows:

§ 202.1 [Amended]

1. In § 202.1(b)(1), remove the words "Civil Aeronautics Board" and insert, in their place, the words "Secretary of Transportation."

Appendix A—[Amended]

2. In Appendix A, remove the words "Creditors Subject to Civil Aeronautics Board" and the address of that agency, and insert, in their place, the words "Air Carriers" and the following address: Assistant General Counsel for Aviation Enforcement and Proceedings, Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590.

Board of Governors of the Federal Reserve System, February 27, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85–5220 Filed 3–4–85; 8:45 am]

BILLING CODE 6210–01–M

12 CFR Part 205

[Reg. E; Docket No. R–0540]

Electronic Fund Transfers; Administrative Enforcement; Technical Amendment

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Administrative enforcement, technical amendment.

SUMMARY: The Board is making a technical amendment to Regulation E (Electronic Fund Transfers) to indicate that the Department of Transportation has assumed the enforcement responsibilities for the regulation previously carried out by the Civil Aeronautics Board.

EFFECTIVE DATE: March 4, 1985.

FOR FURTHER INFORMATION CONTACT: Lynn C. Goldfaden, Staff Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, (202) 452–3867.

SUPPLEMENTARY INFORMATION: (1) Section 205.13(a)(1) and Appendix B of Regulation E refer to the Civil Aeronautics Board as one of the agencies responsible for administrative enforcement of the regulation. As of January 1, 1985, the Department of Transportation assumed the enforcement responsibilities previously carried out by the Civil Aeronautics Board, an agency no longer in existence. Therefore, the Board is amending its Regulation E to accurately reflect the change in enforcement authority.

List of Subjects in 12 CFR Part 205

Banks, Banking, Consumer protection, Electronic fund transfers, Federal Reserve System, Penalties.

PART 205—[AMENDED]

Pursuant to section 904 of the Electronic Fund Transfer Act (15 U.S.C. 1693b), the Board amends Regulation E, 12 CFR Part 205, as follows:

1. In § 205.13(a)(1), remove the words "Civil Aeronautics Board" and insert, in their place, the words "Secretary of Transportation."

2. In Appendix B, remove the words "Creditors Subject to Civil Aeronautics Board" and the address of that agency, and insert, in their place, the words "Air Carriers" and the following address: Assistant General Counsel for Aviation Enforcement and Proceedings, Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590.

Board of Governors of the Federal Reserve System, February 27, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85-5221 Filed 3-4-85; 8:45 am]

BILLING CODE 6210-01-M

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12 CFR Part 213

[Reg. M; Docket No. R-0540]

Consumer Leasing; Administrative Enforcement; Technical Amendment

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Administrative enforcement, technical amendment.

SUMMARY: The Board is making a technical amendment to Regulation M (Consumer Leasing) to indicate that the Department of Transportation has assumed the enforcement responsibilities for the regulation previously carried out by the Civil Aeronautics Board.

EFFECTIVE DATE: March 4, 1985.

FOR FURTHER INFORMATION CONTACT: Lynn C. Goldfaden, Staff Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, (202) 452-3867.

SUPPLEMENTARY INFORMATION: (1) Appendix D of Regulation M refers to the Civil Aeronautics Board as one of the agencies responsible for administrative enforcement of the regulation. As of January 1, 1985, the Department of Transportation assumed the enforcement responsibilities previously carried out by the Civil Aeronautics Board, an agency no longer in existence. Therefore, the Board is amending its Regulation M to accurately reflect the change in enforcement authority.

List of Subjects in 12 CFR Part 213

Advertising, Banks, banking, Consumer protection, Federal Reserve System, Leasing, Penalties, Truth in lending.

PART 213—[AMENDED]

Appendix D—[Amended]

Pursuant to section 105 of the Truth in Lending Act (15 U.S.C. 1604 as amended), the Board amends Appendix D of Regulation M, 12 CFR Part 213, by removing the words "Those Subject to Civil Aeronautics Board" and the address of that agency, and inserting, in their place, the words, "Air Carriers" and the following address: Assistant General Counsel for Aviation Enforcement and Proceedings, Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590.

Board of Governors of the Federal Reserve System, February 27, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85-5219 Filed 3-4-85; 8:45 am]

BILLING CODE 6210-01-M

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12 CFR Part 226

[Reg. Z; Docket No. R-0540]

Truth in Lending; Administrative Enforcement; Technical Amendment

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Administrative enforcement, technical amendment.

SUMMARY: The Board is making a technical amendment to Regulation Z (Truth in Lending) to indicate that the Department of Transportation has assumed the enforcement responsibilities for the regulation previously carried out by the Civil Aeronautics Board.

EFFECTIVE DATE: March 4, 1985.

FOR FURTHER INFORMATION CONTACT: Lynn C. Goldfaden, Staff Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, (202) 452-3867.

SUPPLEMENTARY INFORMATION: (1) Appendix I of Regulation Z refers to the Civil Aeronautics Board as one of the agencies responsible for administrative enforcement of the regulation. As of January 1, 1985, the Department of Transportation assumed the enforcement responsibilities previously carried out by the Civil Aeronautics Board, an agency no longer in existence. Therefore, the Board is amending its Regulation Z to accurately reflect the change in enforcement authority.

List of Subjects in 12 CFR Part 226

Advertising, Banks, banking, Consumer protection, Credit, Federal Reserve System, Finance, Penalties, Truth in lending.

PART 226—[AMENDED]

Appendix I—[Amended]

Pursuant to section 105 of the Truth in Lending Act (15 U.S.C. 1604 as amended), the Board amends Appendix I of Regulation Z, 12 CFR Part 226, by removing the words "Creditors Subject to Civil Aeronautics Board" and the address of that agency, and inserting, in their place, the words "Air Carriers" and the following address: Assistant General Counsel for Aviation Enforcement and Proceedings, Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590.

Board of Governors of the Federal Reserve System, February 27, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85-5218 Filed 3-4-85; 8:45 am]

BILLING CODE 6210-01-M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 701 and 741

Supervisory Committee Audits and Verifications

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: This rule is a revision of § 701.12 of the National Credit Union Administration Rules and Regulations. The rule, consistent with other deregulation actions, removes the requirement that a specific manual or guideline be followed in the conduct of audits or other supervisory committee functions. Instead, the determination of the scope of audit is to be the responsibility of individual federal credit unions, with some general requirements. In addition, the rule addresses the requirement of verifying member accounts for federal credit

unions as well as federally insured state credit unions and incorporates language from a previous interpretive ruling allowing the use of sampling in satisfying the member account verification requirement.

EFFECTIVE DATE: March 28, 1985.

ADDRESS: National Credit Union Administration, 1776 G Street, NW., Washington, D.C. 20456.

FOR FURTHER INFORMATION CONTACT: Louis P. Acuna, Director, or Donald W. Sorrels, Department of Supervision and Examination. Telephone Number: (202) 357–1065.

SUPPLEMENTARY INFORMATION:

Background

The primary responsibility of the supervisory committee is to ensure that the books and records accurately and fairly report the financial condition of the credit union. Heretofore, the committee's statutorily prescribed minimum duties of an audit and verification of members' accounts have been regulated through the *Supervisory Committee Manual for Federal Credit Unions.*

However, in view of the statutory and regulatory changes governing credit union activities and the evolution of diverse operating and business activities since the manual was last updated in 1976, it is no longer feasible to issue a manual which statutorily mandates the frequency and detail of the supervisory committee's activities. Just as the operating and business activities of individual credit unions have evolved and become more diverse, so have the audit and review requirements become more widely varying for each credit union's supervisory committee.

On September 7, 1983, the NCUA Board approved the issuance of a Request for Comments on Rules Governing Audits of Federal Credit Unions. The 126 comment letters received supported the position that the supervisory committee should determine the scope of audit using guidance provided by the accounting as well as the credit union industry. The comments also supported updating the Supervisory Committee Manual but stated it should be a guideline as opposed to a regulatory prescription of audit detail.

On April 18, 1984, the NCUA Board issued a proposed change to § 701.12 of the NCUA Rules and Regulations removing the requirement to follow a specific manual or guideline and invited public comment over the proposed changes. Of the 95 comment letters received, 82 percent supported the premise that regulation of this nature is no longer considered sufficient. The Federal Credit Union Act clearly lists the supervisory committee's audit and member account verification requirements, and since the committee is responsible for the audit, it should determine the scope of the work to be performed based upon the risk, exposure, and other circumstances of the individual credit union.

Audits

Some commenters expressed concern with the deregulation of the Supervisory Committee Manual stating that the action does not consider the needs of smaller credit unions and volunteers. Some other commenters suggested the regulation should contain minimum audit standards.

The revised rule, while deregulating the Supervisory Committee Manual, in no way lessens the responsibilities of the committee. Rather, it recognizes that a credit union's audit and reviews must reflect the business activities and financial and operating condition of the individual credit union. Subsection (b) of the rule does contain, in abbreviated form, the following broad categories which are the minimum objectives that must be covered by the audit.

—Determination of existence of assets and liabilities at a given date and occurrence of recorded transactions during a given period.
—Determination of completeness of financial statement presentation.
—Determination of ownershp of all assets and of liability obligations.
—Determination of appropriateness of the valuation or allocation of the financial statement components.
—Determination of proper classification, description, and disclosure of financial statement components.
—Determination of existence and appropriateness of internal controls.

The revised rule eliminates the regulation of audit scope and specific audit steps and workpapers, thereby giving supervisory committees and auditors for all types and sizes of credit unions the flexibility they need to devise the most effective audit program for their particular credit union.

Deregulation of the Supervisory Committee Manual does not eliminate it as a resource for supervisory committee volunteers and auditors. Various audit procedures and guidelines are available. Primary among these are the generally accepted auditing standards of the American Institute of Certified Public Accountants. The instructional text, "Credit Union Auditing" developed by the Credit Union National Association as well as the to-be-published "deregulated" *Supervisory Committee Guide for Federal Credit Unions* can also be used to assist in determining the audit's scope and developing an audit program.

Verifications

Section 115 of the Federal Credit Union Act requires the supervisory committee to verify members accounts not less frequently than once every two years. After many years of consistently interpreting the statute to require the supervisory committee to verify "all" members' accounts (active and closed) once every two years, the NCUA Board modified the Agency's position on this issue in 1981. Interpretive Ruling and Policy Statement (IRPS 80–12) dated January 28, 1981, allowed statistical sampling to be used to satisfy the verification requirement with certain minimum standards including parameters needed for determining sample size. The final rule eliminates the need for that interpretive ruling by incorporating its intent and part of its language into the regulations. Accordingly, IRPS 80–12 is rescinded in conjunction with the issuance of this rule.

Also, consistent with the intent of deregulation of the supervisory committee activities, certain specific minimum standards that were included in the interpretive ruling are not included in this final rule. These mimimum standards, however, should be used to provide assurance that the General Ledger accounts are fairly stated and that members' accounts are properly safeguarded when the verification is not done in conjunction with an opinion audit that is unqualified with respect to members' accounts. They include: (1) An error (occurrence) rate of 0.5 percent; a precision level of 1 percent; and a confidence level of 95 percent.

Several commenters suggested that a minimum number or percentage of accounts to be verified be specified for verification by sampling. Inclusion of these types of numbers in the rule would not be consistent with deregulating supervisory committee activities. There are a number of texts available on statistical sampling that describe the types of sampling plans that would be acceptable in the verification process to detect fraud or manipulation of members' accounts.

Other Comments

A number of commenters expressed concern or opposition to the language in subsection (a) of the proposed rule which stated: "The supervisory committee is also responsible for

providing adequate safeguards against error, carelessness, fraud, and self-dealing (conflicts of interest)." The commenters argued that establishing such policies is the responsibility of the board of directors and management. The Agency agrees that the original wording was not clear and the language has been modified.

A definition of "members of their immediate families" has been included in subsection (d) of the rule.

Regulatory Procedures

The NCUA Board hereby certifies that this final rule will not have a significant economic impact on a substantial number of small credit unions. The regulation eliminates the need to perform audits in accordance with the Supervisory Committee Manual and, therefore, provides supervisory committees with greater flexibility in performing audits required by the Federal Credit Union Act. Therefore, a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

This regulation has been submitted to the Office of Management and Budget for approval of the collection of information contained herein and has been approved (approved for use through 10/31/86, OMB No. 3133–0075).

List of subjects.

12 CFR Part 701

Credit unions, Supervisory committee audits and verifications.

12 CFR Part 741

Requirements for insurance, Voluntary termination of insurance.

By the National Credit Union Administration Board on the 27th day of February, 1985.

Rosemary Brady,

Secretary of the Board.

1. NCUA Interpretive Ruling and Policy Statement 80–12—Verification of Member Accounts is rescinded.

2. Section 701.12 is revised to read as follows:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

§ 701.12 Supervisory committee audits and verifications.

(a) The supervisory committee is responsible to determine that the financial condition of the credit union is accurately and fairly presented in the credit union's statements and that management practices and procedures are sufficient to safeguard members' assets. To accomplish this responsibility, the supervisory committee shall determine that the credit union's accounting records and reports are prepared promptly and accurately reflect operations and results, that internal controls are established and effectively maintained to safeguard the credit union's assets, and that the plans, policies, and procedures established by the board of directors are being properly administered. The supervisory committee is also responsible for reviewing policies and control procedures to safeguard against error, carelessness, fraud, and self-dealing (conflict of interest). The audit and verification of members' accounts, mandated in the Act, are the activities generally used to carry out these responsibilities; however, the committee is expected to exercise such other tests and reviews as may be necessary in the committee's judgment to meet its responsibilities.

(b) An audit of each Federal credit union shall occur at least once every calendar year and shall cover the period elapsed since the last audit. The audit shall be made using generally accepted auditing procedures and standards. However, each Federal credit union's annual audit shall, as a minimum, test the Federal credit union's assets, liabilities, equity, income, and expenses for existence, proper cut off, valuations, ownership, disclosures and classification, and internal controls. Upon completion, a report of the audit shall be made promptly to the board of directors of the Federal credit union and, upon request, to the National Credit Union Administration's regional director. It is the responsibility of the supervisory committee to ensure that the completion of the annual audit is timely, that generally accepted auditing procedures are used, that adequate audit of the credit union records is made, and that the audit report is promptly prepared and reported to the board of directors.

(c) The supervisory committee and/or its independent auditors shall be responsible for the preparation and the maintenance of workpapers used to support each audit. Such workpapers shall be made available by the supervisory committee and its independent auditors for review by any authorized employee of the National Credit Union Administration.

(d) Federal credit union compensated auditors, performing audits for supervisory committees, must be independent of the credit union's employees, members of the board of directors, supervisory and credit committees and/or the credit union's loan officers, and members of their immediate families. "Members of their immediate families" means a spouse, or a child, parent, grandchild, grandparent, brother or sister, or the spouse of any such individual.

(e) The verification of members' accounts shall be made using any of the following methods:

(1) A controlled verification of 100 percent of members' share and loan accounts;

(2) A controlled random statistical sampling method that accurately tests sufficient accounts in both number and scope to provide assurance that the General Ledger accounts are fairly stated and that members' accounts are properly safeguarded. The sampling procedure must provide each member account an equal chance of being selected.

Records of those accounts verified will be maintained and will be retained until the next verification of members' accounts is completed.

PART 741—[AMENDED]

§ 741.2 [Amended]

3. Additionally, 12 CFR 741.2 is amended with the addition of the following sentence: * * * Information on the verification procedures can be found in § 701.12(e).

(12 U.S.C. 1761, 1761d, 1766(a), and 1789(a)(11))

[FR Doc. 85–5244 Filed 3–4–85; 12:32 pm]

BILLING CODE 7535–01–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 6, 12, 18, 19, 141, 143, 144, and 146

[T.D. 85–38]

Customs Regulations Amendments Relating to Textiles and Textile Products

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: Section 204 of the Agricultural Act of 1956 grants authority to the President to negotiate agreements with foreign governments limiting exports of textiles and textile products from such countries into the U.S. The Act also grants authority to issue regulations governing the entry into the U.S. of articles covered by the agreements. This regulation amends the Customs Regulations to prevent

circumvention or frustration of visa or export license requirements contained in multilateral and bilateral agreements to which the U.S. is a party in order to facilitate the efficient and equitable administration of the U.S. Textile Import Program.

DATE: This regulation is effective on April 4, 1985.

FOR FURTHER INFORMATION CONTACT:

Operational Aspects:

Parts 6, 18: Kent Parsell; Inspection and Control Division (202–566–2140);

Parts 12, 141, 143: William L. Marchi; Duty Assessment Division (202–566–2957);

Parts 19, 144, 146: John Holl, Office of Cargo Enforcement Facilitation (202–566–8151);

Legal Aspects:

Entry Matters: Jerry Laderberg, Entry Procedures and Penalties Division (202–566–5765);

Classification Matters: Philip Robins, Classification and Value Division (202–566–8181);

U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229.

SUPPLEMENTARY INFORMATION:

Background

In order to implement import policies with respect to textiles and textile products, Congress provided authority to the President to negotiate textile restraint agreements in section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and authority to carry out such agreements by issuing regulations governing the entry of merchandise covered by the agreements into the United States.

In December, 1973, representatives of 50 nations meeting under the General Agreement on Tariff and Trade (GATT) aegis, negotiated the Multi-Fiber Arrangement Regarding International Trade in Textiles. The arrangement is usually known as the Multi-Fiber Arrangement, or MFA, and came in force on January 1, 1974. It was subsequently renewed and next expires on July 31, 1986.

Under the MFA, the U.S. has negotiated numerous bilateral restraint agreements. The U.S. also has several bilateral agreements with MFA non-signatories. The Committee for the Implementation of Textile Agreements (CITA) was established by Executive Order 11651 on March 3, 1972, to supervise the implementation of textile agreements. The future administration of these agreements was severely jeopardized by the decision of the United States Court of International Trade in *Cardinal Glove Co.*, v. *United States*, 4 C.I.T. 41, which concluded that, absent specific regulatory authority to the contrary, the bilateral textile agreement at issue therein was applicable only to textile products in which the agreement country was the "country of exportation." Furthermore, the U.S. Customs Service was faced with an ever increasing number and variety of instances where attempts had been made to circumvent the textile import program.

In part because of these problems and in order to prevent circumvention or frustration of the various multilateral and bilateral agreements to which the U.S. is a party and to facilitate efficient and equitable administration of the U.S. Textile Import Program, the President signed Executive Order 12475 on May 9, 1984. Under the Executive Order the Secretary of the Treasury was required to promulgate regulations governing the entry of textiles and textile products subject to section 204, Agricultural Act of 1956 within 120 days of the May 11, 1984, effective date of the Executive Order. Interim Customs Regulations implementing the Executive Order were published in the **Federal Register** on August 3, 1984 as T.D. 84–171 (49 FR 31248). Customs further requested public comment on the interim regulations. Over 650 comments were received in response to the solicitation of comments. A discussion of the interim regulations, comments received, changes made to the interim regulations during the comment period and further changes made by this document as a result of the comments are set forth below.

Discussion of Comments

Section 12.130

The interim regulations amended Part 12, Customs Regulations (19 CFR Part 12), by adding a new § 12.130 which provided specific regulatory authority mandating that "country of origin" rules be applied in determining whether textiles or textile products are subject to any of the multilateral or bilateral textile agreements negotiated by the U.S. pursuant to section 204, Agricultural Act of 1956.

For purposes of § 12.130, paragraph (a) defined country of origin. Under that paragraph, textiles or textile products subject to section 204, Agricultural Act of 1956, imported into the customs territory of the U.S. are a product of a particular foreign territory on country insular possession or of the U.S. if the article is wholly the growth, product, or manufacture of that foreign territory or country or insular possession. In the case of an article which consists, in whole or in part, of materials which originated or were processed in another foreign territory or country, the article must have been substantially transformed by means of a substantial manufacturing or processing operation into a new and different article of commerce with a name, character, or use distinct from the article or material from which it was so transformed to be a product of the latter territory or country or insular possession.

Paragraph (b) of interim § 12.130 listed criteria for determining whether there has been a substantial manufacturing or processing operation and whether a new and different article has resulted. It was indicated that the criteria set forth were not meant to be exhaustive. As the circumstances warrant, fewer than all, or additional factors could be considered determinative. However, paragraph (b) specifically stated that no article or material would be considered to have been substantially transformed in a particular foreign territory, country, or insular possession of the U.S. by virtue of having merely undergone any of the following: (i) simple combining or packaging operations, (ii) joining together by sewing, looping, linking or other means of attaching otherwise completed component parts, (iii) cutting or otherwise separating of articles from materials which have previously been marked with cutting lines or which contain lines of demarcation of any type, commercially requiring that material to be cut in a certain manner, or (iv) processing, such as dyeing, printing, showerproofing, superwashing, or other finishing operations.

It was stated that to determine whether there has been a substantial manufacturing or processing operation under paragraph (b)(2) a comparison would be made between the article or material before the manufacturing or processing operation and the article in its condition after the manufacturing or processing operation. The following criteria would be considered under paragraph (b)(2):

(i) Material costs,

(ii) Direct labor costs,

(iii) Other direct processing or manufacturing costs,

(iv) Time involved in the manufacturing or processing operation,

(v) Complexity of the manufacturing or processing operation,

(vi) Level or degree of skill or technology required in the manufacturing or processing operation,

(vii) Physical change of the material or article at each stage in the manufacturing or processing operation.

Paragraph (b)(3) of the interim regulation set forth criteria which would be used to determine whether, as a result of the manufacturing or processing operation, a new and different article has been produced. These criteria included such things as a change in (i) commercial designation or identity, (ii) essential character, (iii) commercial use.

To ensure that appropriate facts are available and to assist otherwise in the identification of the country of origin, the interim regulation provided that all importations of textiles or textile products subject to section 204, be accompanied by a declaration. If the textiles or textile products are wholly the growth, product, or manufacture of a single foreign territory or country or insular possession, the declaration set forth in paragraph (c)(1) of the interim regulation was required. If the textiles or textile products were subjected to manufacturing or processing operations in more than one foreign country or territory or insular possession, the declaration set forth in paragraph (c)(2) was required. The declaration required a description of the manufacturing and/or processing operations, materials used, costs involved and the identity of the country, territory or insular possession involved. In some cases, where mixed shipments are involved both declarations would be required. The interim regulations stated that the declaration(s), could be prepared by the manufacturer, producer, exporter or importer, and must be filed with the entry. If multiple manufacturers, producers, or exporters are involved, the interim regulations indicated that a separate declaration prepared by each could be filed with the entry. Under the interim regulations the determination of country of origin would normally be based upon the information contained in the declaration(s). The declaration(s) would not be treated as a missing document for which a bond could be filed. The interim regulations stated that entry of the merchandise would be denied unless accompanied by the declaration(s).

Customs recognized that importers would not be in a position to always get sufficient information to complete the declaration(s). Accordingly, under paragraph (d) of the interim regulations, if the district director determined that the information required by the declaration(s) was incomplete or insufficient and the importer was unable to provide the required information, the importer could submit to Customs with the declaration(s), a certification which stated that in the exercise of due diligence he was unable to obtain all of the information required.

If the district director was unable to determine the country of origin because of incomplete or insufficient information in the declaration, under the provisions of paragraph (e) of the interim regulations, release of the merchandise from Customs custody would be denied until a determination of country of origin was made based upon the best information available. In this regard, the interim regulations authorized the district director to consider the experience and costs of domestic industry in similar manufacturing or processing operations.

The interim regulation went on to state that although the rule of origin set forth in § 12.130 would determine the country of origin of textiles and textile products subject to section 204, the rule did not change the "foreign article" status of textiles or textile products under Headnote 2, Part 1, Schedule 8, TSUS (19 U.S.C. 1202). Under Headnote 2 any product of the U.S. which is returned after having been advanced in value or improved in condition abroad by any process of manufacture or other means, or any imported article which has been assembled abroad in whole or in part of products of the U.S., will be treated for purposes of the Tariff Act of 1930, as amended, as a "foreign article".

Date of exportation was defined in paragraph (f) of the interim regulation. Under this paragraph, for quota, visa or export license requirements and statistical purposes, the date of exportation for textiles and textile products, subject to section 204, was established as the date the vessel or carrier left the last port in the country of origin as defined by § 12.130. Contingency of diversion in another foreign territory or country would not change the date of exportation for quota, visa or export license requirements or for statistical purposes. The inclusion of this definition was necessary to ensure enforcement of the date of export provisions contained in various bilateral agreements.

Numerous comments were received with respect to the provisions of § 12.130. These comments fell into the following areas:

Insular Possessions

Many of the commenters expressed the belief that the interim regulation was inconsistent with the language and intent of General Headnote 3(a), TSUS, relating to products of insular possessions. The commenters stated that the legislative history of that Headnote indicates Congress wanted to encourage light industry and assembly operations in the insular possessions. Moreover, certain commenters pointed out that the preferences under General Headnote 3(a) are destroyed by repealing a statutory 50 percent test and imposing a new origin test. Other commenters noted an apparent conflict between section 204 which authorizes negotiations with foreign governments and regulation of trade with foreign countries and the Territorial Clause of the U.S. Constitution encompassing insular possessions which are considered to be part of the U.S. In addition, one commenter mentioned that the interim regulation is in contravention of an established practice whereby an article is considered to be a product of an insular possession within the meaning of General Headnote 3(a), TSUS, if substantial processing operations are performed in the insular possession. Another commenter opposed exemption of the insular possessions on the grounds that textile operations would be established in the insular possessions to avoid quota.

First, it should be pointed out that neither the interim nor the final regulation changes in any way the requirements of General Headnote 3(a), which grants preferential tariff treatment to insular possessions of the U.S. By the wording of that Headnote, to achieve the preferential tariff treatment, merchandise must both be the growth or product of the insular possession and satisfy a specified percentage of its value derived from that insular possession. Section 12.130 is concerned only with defining whether, in the case of General Headnote 3(a), merchandise is the growth or product of an insular possession. It does not, as one commenter noted, regulate imports from insular possessions, but, rather provides a rule of origin which allows Customs to determine in which foreign territory or country, or insular possession imported merchandise actually originated. To achieve this result, the regulations must cover all foreign territories or countries, or insular possessions outside the U.S. customs territory. General Headnote 2, TSUS, indicates that the customs territory of the U.S. includes only the states, the District of Columbia, and Puerto Rico. Therefore, the regulations apply to textiles and textile products that are imported into the customs territory of the U.S. from the insular possessions. To exempt the insular possessions from coverage under the regulations would grant them a preferential status not authorized by law.

Applicability to U.S. Articles Sent Abroad

Various comments were received concerning the treatment of articles assembled abroad from U.S. components and imported under item 807.00, TSUS. The proviso contained in § 12.130(a) of the interim regulations reflects the intent to retain the "foreign article" status of textiles or textile products under Headnote 2, Part 1, Schedule 8, TSUS. Several commenters noted that the "foreign article" proviso in the interim regulations conflicts with the rule of origin contained in § 12.130. Other commenters requested confirmation that the quota status of 807 and non 807-merchandise cut in the U.S. and assembled in a foreign country remains unaffected by § 12.130. Some commenters suggested amending the interim regulations to provide that textiles processed from U.S. components that have not been substantially transformed whether or not subsequently entered under 807 procedures are not subject to quotas. Other commenters suggested that reliance on Headnote 2, Part 1, Schedule 8 is not sufficient to ensure that the "foreign article" status of textiles and textile products entered under Schedule 8 is applicable for purposes of section 204.

Headnote 2, Part 1, Schedule 8, TSUS, provides that any product of the U.S. which is returned after having been advanced in value or improved in condition abroad, or assembled abroad shall be a foreign article for the purposes of the Tariff Act of 1930. Customs agrees that the applicability of the proviso in § 12.130(a) of the interim regulations is not sufficiently clear and should be amended.

The language of Headnote 2, Part 1, Schedule 8, is clear and unambiguous. It applies, without regard to degree of advancement in value, improvement in condition, or assembly, to such merchandise for duty and marking purposes. It is recognized that it is not, on its face, applicable to matters, such as country of origin determinations for quota purposes, which do not fall within the purview of any of the provisions contained in the Tariff Act of 1930, as amended.

Customs believes that Congress, by using similar language in statutes dealing with the origin of merchandise, clearly intended that there should be only one rule for determining the country of origin of merchandise, without regard to the particular statute requiring that determination. Therefore, it is believed that Congress did not intend for Customs to apply one rule of origin for duty and marking purposes and a different rule of origin for the purposes of section 204. In order to avoid this inconsistency, the proviso concerning the foreign status of U.S. articles sent abroad has been amended to state clearly that although Headnote 2 is not directly applicable to merchandise subject to section 204, Customs will apply the headnote to that merchandise in order to achieve the Congressionally intended result of a single rule for determining the country of origin of imported merchandise.

Customs recognizes that the language of Headnote 2 sets out a principle of origin that is not consonant with the original rules contained in the interim regulations. In this regard, Headnote 2, in and of itself, is not a rule of origin; rather, it is a statutory enactment by the Congress exempting a certain class of merchandise from the normal rules of origin. In order to achieve a single rule of origin, Customs believes that it is appropriate to extend this exemption to merchandise subject to section 204.

Customs also has been advised by the CITA that when the various bilateral agreements to which the U.S. is a party were negotiated, merchandise classifiable in item 807.00, TSUS (i.e. U.S. products assembled abroad) was considered for quota, visa, and export license purposes to be a product of the assembling country and not the U.S.

The final rule incorporates the modified language relating to Headnote 2, Part 1, Schedule 8, TSUS, in a new section 12.130(c).

Finishing Operations

Many commenters criticized the interim regulations on the grounds that finishing operations on greige goods are significant and substantial manufacturing processes that create a new and distinct final product. Other commenters pointed out that printing requires sophisticated machinery and advanced design. Some commenters suggested that § 12.130(b)(4) of the interim regulations refers to specific dyeing or printing operations and not to the entire process by which greige goods are transformed.

Other commenters in opposition observed that the term "other finishing operations" lacks precision. Several commenters noted that showerproofing and superwashing can be marginal operations, but the term "finishing" usually connotes sophisticated processing. One commenter recommended that a substantial transformation should not result from "minor processing, such as showerproofing and superwashing, which merely alter previously finished fabric or yarn". Some commenters pointed out that the courts have long recognized that finishing can result in a new and different article of commerce. In their view, the application of a *per se* rule with regard to finishing is contrary to law. One commenter observed that dyeing and printing adds 100 percent value to greige goods. This same commenter noted that dyeing and printing is considered by the European Economic Community (EEC) to connote origin.

Customs believes it is appropriate to amplify on the dyeing or printing example in the interim regulations to provide better guidance on the type or types of operations that will result in a change in the country of origin. Three examples concerning finishing operations have been inserted in the final regulations which are more specific and convey Customs views that, in the case of fabrics, usually any finishing operations short of a combination of both dyeing and printing together with at least two other major finishing operations will not result in a substantial transformation of the fabric.

To satisfy the objections of some commenters that certain marginal processing should not result in a substantial transformation, Customs has added language in § 12.130(e)(2) in the final rule indicating that dyeing or printing, or dyeing and printing of fabrics and yarns, or one or more finishing operations on yarns, fabrics, or garments, such as showerproofing, superwashing, bleaching, decating, fulling, shrinking, mercerizing, or similar operations, will not usually result in a substantial transformation.

Very few commenters touched on yarns and, therefore, that area was not addressed in the examples in the final rule of what finishing operations yarns must be subjected to in order to have a change in their country of origin. This area, as any other factual situation not specifically set out in the regulations, will be ruled upon by Customs in accordance with the general principles of origin in § 12.130, as the situations arise.

It is axiomatic, moreover, that because of the evolution of country of origin principles, as evidenced by longstanding American judicial and administrative precedent, it is not proper to resort to other countries or organizations rules of origin, such as the EEC, in defining U.S. rules of origin.

Cutting

Numerous commenters deem the concept of country of origin in the interim regulations to constitute a

critical departure from longstanding judicial precedent and existing administrative practice.

A considerable number of commenters regard cutting of fabric as a minor process in relation to the manufacture of a garment. Other commenters stated that cut parts are not articles of commerce even though a new and different article is created. Quite apart from this view are the statements of some commenters that cutting by itself, which requires great skill, can be a substantial transformation. Some commenters recommended removing the distinction between marked and unmarked fabric, because they consider marking a minor operation. This approach as noted by some commenters, is fully consistent with *Belcrest Linens* v. *United States*, Appeal No. 84–734 (Fed. Cir. August 21, 1984), in which the court found that the cutting and sewing operations which occur in the manufacturing of a pillowcase subsequent to the marking of fabric, resulted in a new and different article. The same commenters go on to say that the court indicated the marking of the fabric did not result in a dedication to use of the fabric as pillowcases.

Those commenters who contend that cutting does not substantially transform fabric misconstrue the principle of substantial transformation derived from court decisions and administrative practice. Cutting garment parts from fabric will result in a substantial transformation of the fabric. This is not to say, however, that the cut pieces will not undergo a later substantial transformation. Axiomatic to Customs definition of country of origin is the notion that in the case of textiles and textile products which consist of materials produced or derived from, or processed in, more than one foreign territory or country, or insular possession, the imported merchandise shall be a product of that foreign territory or country, or insular possession, where it last underwent a substantial transformation (see § 12.130(b) of the final rule).

In determining the country of origin of pre-marked fabric that is further processed in one or more countries, Customs will be guided by the facts in each particular case and by the principles developed in the *Belcrest Linens* decision and contained in § 12.130.

In this regard Customs has included two examples in §§ 12.130(e)(1)(iv) and (e)(2)(ii) in the final regulations which specifically deal with cutting. The first example is where fabric is cut into component parts and those parts are assembled in the same country into a completed article. In that example, the country where the article is cut and assembled is the country of origin of that article. The second example is where fabric which is readily identifiable as being intended for a particular commercial use (*e.g.* towelling or bed linen material) is merely cut to length or to width, with the edges then being either hemmed or overlocked. In this example, the foreign territory or country, or insular possession which produced the fabric is the country of origin, and not the country where the fabric was cut.

Uniform and Established Practice

A number of commenters have pointed out that the interim regulations, in effect, change various uniform and established practices and marking requirements. Section 315(d), Tariff Act of 1930, as amended (19 U.S.C. 1315(d)), provides that Customs may not administratively change an established and uniform practice of classification if that change will result in the imposition of a higher rate of duty without a publication in the **Federal Register** providing at least a 30-day notice of such change. Section 177.10(c), Customs Regulations (19 CFR 177.10(c)), further requires that a preliminary notice be published in the **Federal Register** giving interested parties an opportunity to make written submissions with respect to the correctness of the proposed change. It is contended that the interim regulations are violative of both the statute and the regulation.

The interim regulations and the final regulations have as their authority section 204, which authorizes the President to enter into international agreements to control the importation of textiles and textile products and to issue regulations to effectuate those agreements. In order to avoid circumvention of our international agreements, the President, by Executive Order 12475 of May 9, 1984, directed the Secretary of the Treasury to make clarifications in, or revisions to, country of origin rules for textiles and textile products subject to section 204.

Therefore, the origin rules in § 12.130 are effective only for textile restraint purposes. However, it is Customs' view that the origin rules in § 12.130 are derived from Customs' interpretation of various court cases, most particularly *Uniroyal, Inc.* v. *United States*, 3 C.I.T. 220, 542 F. Supp. 1026 (1982). Therefore, the principles of origin contained in § 12.130 are applicable to merchandise for all purposes, including duty and marking. Nevertheless, Customs recognizes that there are a few instances where the application of those principles will cause an increase in the rate of duty for merchandise subject to established and uniform practices. In those instances Customs will not apply the principles of origin in § 12.130 for duty purposes until such time as the formalized changes in practice have been effectuated. Customs will also continue its previous marking requirements pending the changes in practice. Section 12.130 will be used in determining the country of origin of textiles and textile products for quota, visa, and export license purposes. This latter application is not prevented by either 19 U.S.C. 1315(d) or § 177.10(d), Customs Regulations, because it does not raise the applicable rate of duty.

Assembly of Knit-to-Shape Garment Parts

Significant differences emerged among the numerous commenters on the issue of the joining together by looping or linking of knit-to-shape panels produced in a single country. Some commenters observed that the essential character and shape of a knit-to-shape garment is derived from the knitting. It was noted, too, that full fashion knit sweaters are produced using a labor intensive process known as "handlooming" whereby it takes one skilled laborer a full day to produce the component parts for one sweater. One commenter recommended that for garments made from knit-to-shape components produced in two countries, origin should be defined according to the portion knit in each country. Contrary to these statements are the claims of other commenters who contend that the panels which constitute approximately ten percent of the cost of a completed garment, do not resemble a sweater until they are joined together. Similarly, some commenters assert that the knitting of panels is an uncomplicated process that requires little skill. Compared to knitting, these commenters state that looping is a highly skilled process for which it takes up to 2 years to train an operator on more complicated and costly machines. Furthermore, it is contended that looping and related finishing processes represent proportionately the largest percentage of the total cost of the sweater.

Customs is well aware that the interim regulations have engendered much debate on the subject of the assembly of knit-to-shape components. Customs has thoroughly studied the submitted comments and remains convinced that the joining together by looping, linking, sewing, or other means, of knit-to-shape components produced

in a single country, even when accompanied by other processes (i.e., washing, drying, mending, etc.) normally incident to the assembly process, will not usually cause a substantial transformation. The evidence before us establishes that based on time, value added by processing at each stage, complexity, etc. such an assembly process does not cause the knit-to-shape components to be substantially transformed. The assembly of knit-to-shape component parts is a relatively simple processing operation that does not require a great deal of time. Therefore, one of the examples included in § 12.130(e)(2)(iii) in the final regulations as not constituting a change in the country of origin is the assembly into a completed garment of knit-to-shape component parts.

Assembly by Sewing

Virtually all of the comments received concerning garments made from cut pieces of fabric opposed the interim regulations. Many of the commenters observed that garments made of cut pieces that are sewn together derive much of their style from the multiplicity of small parts and the manner in which they are assembled. Similar statements running through the comments suggested that the essence of a garment is created by joining the pieces together. Consistent with the concept of substantial transformation articulated by the court in *Anheuser-Busch* v. *United States*, 207 U.S. 556, *Cardinal Glove Co., Inc.* v. *United States*, 4 C.I.T. 41, and *Uniroyal, supra*, these commenters argued that the sewing of components constitutes a substantial transformation so that the country of assembly is the country of origin of the completed garment. Only the assembly of incidental components, it was recommended, should not result in a substantial transformation. It was proposed that labor costs should not be considered as a criterion in the origin rule, but, rather, for garments assembled from cut pieces, the country of origin should be the country where at least 60 percent of direct labor in minutes of production time is expended in converting the finished fabric into a completed garment. If no country satisfies the 60 percent requirement, then it was suggested the country of origin should be the country where the majority of the labor in minutes was performed.

It is believed that the adoption of an arbitrary rule of origin based solely on the minutes of production in each country would be clearly contrary to judicial precedent. Customs believes that factors such as time, the nature of the sewing operation, and the skill required to sew together a tailored garment should be considered in determining whether the merchandise was substantially transformed.

After reviewing all the information available, Customs is persuaded that the assembly of all cut pieces making up a garment is sufficiently more complex and requires greater skill, time, and effort, than the assembly of knit-to-shape components into a garment to warrant a distinction between the two assembly operations. Accordingly, Customs believes that the assembly of all the cut pieces of a garment usually is a substantial manufacturing process that results in an article with a different name, character, or use than the cut pieces. It should be noted that not all assembly operations of cut garment pieces will amount to a substantial transformation of those pieces. Where either less than a complete assembly of all the cut pieces of a garment is performed in one country, or the assembly is a relatively simple one, then Customs will rule on the particular factual situations as they arise, utilizing the criteria in § 12.130(d).

To avoid confusion in this area, an example has been inserted in § 12.130(1)(e)(v) of the final regulation which states that a substantial assembly of all the cut pieces of a garment into the completed garment will be a substantial transformation. To further clarify additional examples, of some of the types of garments which Customs believes involve a substantial assembly have been included.

Substantial Transformation Criteria

Several commenters perceived § 12.130(a) of the interim regulations as instituting a two-step test for an article produced by multi-country operations, whereby such an article will be considered to have undergone a substantial transformation if it has been transformed by means of substantial manufacturing or processing operations into a new and different article of commerce.

Other commenters point out that the establishment in the interim regulations of separate criteria for determining substantial manufacturing or processing operations and a new and different article creates an inconsistency to these commenters who believe not all substantial transformations result in a new and different article. They have suggested that the concept of a "new and different article" should be replaced by the phrase "change in character and/or quality".

One commenter pointed out that the criteria for a new and different article are not found in the *Belcrest Linens* decision. Another commenter suggested eliminating the term "essential" in the phrase "essential character", because the term is defined in the case of *United China & Glass Co.* v. *United States*, 61 Cust. Ct. 386, C.D. 3637 (1968) as that which is indispensable to an article.

One commenter advised changing "substantial manufacturing or processing operation" to "further work or material", because it is the transformation and not the processing that is important. Some of these commenters argued that the criteria are too subjective and not definitive, because Customs officers may consider additional unstated factors.

There was little disagreement among the commenters that the detailed cost information required for determining whether a substantial manufacturing or processing operation occurred represented an arduous and formidable impediment to importers.

Many commenters opposed the specific provisions in the interim regulations which stated that certain operations would not result in substantial transformations. These commenters contended that the Customs Service is inconsistent by requiring country of origin determinations to be made on the basis of factual evidence and specific criteria, but then stating that certain operations will never result in a substantial transformation.

Customs submits that those commenters who state that Customs has fashioned a new two-step test to determine country of origin for articles produced in multi-country operations have overlooked past court decisions. For example, the court in *Belcrest Linens* stated that the name, character, or use of an article must be changed in order to have a substantial transformation. In determining whether the processing performed on the merchandise in that case constituted a substantial transformation, the court maintained that the issue is "the extent of the operations performed" and whether the merchandise subject to those operations loses its identity by becoming a new article.

In *Uniroyal* v. *United States*, the court characterized the attachment of the outsole to the upper as a "minor manufacturing or combining process which leaves the identity of the upper intact". The court went on to say that to consider attachments of this kind to be a "substantial transformation" would be to open the door wide to frustration of the entire marking statute.

It follows that the courts have determined that the concepts of a new

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and different article and a substantial manufacturing or processing operation are particular aspects of a substantial transformation. In this regard, a specific statement defining substantial transformation in these terms has been inserted into the final regulations (see § 12.130(b)).

In order to provide guidance to both Customs officers who must make decisions on the country of origin of imported merchandise, and all other interested parties, the more important factors to be considered in determining whether merchandise has been subjected to substantial manufacturing or processing operations and whether a new and different article has been produced have been listed in the final regulations (see § 12.130(d)). These criteria are not intended to be all inclusive and any one, a combination, or other factors not listed may be controlling.

Customs agrees that the phrase "essential character" must be modified because of its particular significance in Customs parlance. Therefore, the word "essential" does not appear in the final regulations, and, in its place, the word "fundamental" is used (see § 12.130(d)(1)(ii)).

Customs has been persuaded that the cost information criteria listed in the interim regulations is not readily available to importers and, when that information is furnished by manufacturers, it may not be complete or entirely accurate. Accordingly, although the various costs of producing merchandise may be pertinent in determining the country of origin of that merchandise, the criterion of cost information has been dropped in the final regulations. However, if a district director deems cost information to be necessary to a country of origin determination in a particular case, he may still request the importer, manufacturer, or exporter to furnish that information.

In place of the deleted cost factors, a value added criterion has been inserted in the final regulations (see § 12.130(d)(2)(v)). Where appropriate, Customs will consider the value contributed to the imported merchandise in each country performing processing or manufacturing operations on that merchandise. It is recognized that this information may, in some instances, also be difficult to obtain, but it is believed that it will be much more readily available and more reliable than manufacturers' costs data.

The suggestions by several commenters that the list in the interim regulations of processing or manufacturing operations which do not constitute substantial transformations be expanded and that positive examples be included have been adopted in the final regulations (see § 12.130(e)(2)). These examples are also intended to provide guidance to Customs officers and other interested parties. Obviously, the examples represent clear factual situations where the country of origin of the imported merchandise is easily ascertainable. The examples are illustrative of how Customs, given factual situations which fall within those examples, would rule after applying the criteria listed in § 12.130(d). Any factual situation not squarely within those examples will be decided by Customs in accordance with the provisions of § 12.130 (b) and (d).

Scope of the Regulations

Relatively few comments were received concerning which tariff items are covered by the regulations. One commenter suggested limiting the scope of the regulations to wearing apparel. Another commenter noted that it is not the intent of the regulations to cover doll clothing. In light of the fact that the MFA was negotiated to prevent market disruption, and doll clothing is not manufactured by domestic industry, this same commenter states that the MFA does not apply to doll clothing. Moreover, this commenter noted that the tariff provision for doll clothing is eligible for duty-free treatment under the Generalized System of Preferences (GSP). Eligibility under GSP is significant according to the commenter because 19 U.S.C. 2463(c)(1)(A) prohibits textile and apparel articles which are subject to textile agreements from the GSP. Another commenter made a similar observation that the inclusion of artificial flowers must have been inadvertent, because artificial flowers are subject to GSP treatment. By contrast, a commenter suggested expanding the coverage of the regulations to include non-MFA fiber products. The commenter believes this is appropriate under section 204 because that section gives the President broad authority to negotiate and implement agreements on all textiles and textile products.

In *Mast Industries, Inc., et al.*, v. *Regan, et al.*, —— C.I.T. —— Slip Op. 84–111 (October 4, 1984), the court held that section 204 is a valid delegation of power to the President to limit textile imports, and that the interim regulations fall within this delegated authority.

Pursuant to section 204, the U.S. entered into a multilateral international agreement known as the "Arrangement Regarding International Trade in Textiles" (MFA) on January 1, 1974. The MFA provides a framework for the U.S. to negotiate bilateral agreements to limit textile imports.

Article 12 of the MFA defines the term "textile" to include tops, yarns, piece goods, made-up articles, garments and other textile manufactured products (being products which derive their chief characteristics from their textile components) of cotton, wool, man-made fibers, or blends thereof, in which any or all of those fibers in combination represent either the chief value of the fibers or 50 percent or more by weight (or 17 percent or more by weight of wool) of the product.

Under Article 12, the term "textiles" is defined to include the subject articles if they are composed of textile materials.

Although these articles are not subject to restraints under current bilateral agreements, restraints may be imposed in the future under the authority of the MFA.

In *Luggage and Leather Goods Manufacturers of America, Inc. and International Leather Goods, Plastics and Novelty Workers' Union, AFL–CIO* v. *United States et. al.*, —— C.I.T. —— Slip Op. 84–53 (May 11, 1984), the court determined that the MFA is a textile agreement within the meaning of section 2463(c)(1)(A), which is concerned with eligibility requirements for duty-free treatment under GSP. Furthermore, the court found the President's designation of flat goods covered by item 706.39, TSUS, as eligible articles under the GSP was contrary to law.

In sum, the decisions in *Luggage and Leather Goods Manufacturers* and *Mast, supra*, establish that any article that is subject to the MFA may be covered by the interim regulations. Nevertheless, to limit the uncertainty faced by the importer in ascertaining whether merchandise will be subject to the regulations, Customs has included in § 12.130(a) of the final regulations a specific statement concerning the coverage of the regulations. In essence, the new provision provides that the regulations are applicable to a textile or textile article if it is classifiable in any of the tariff item numbers specifically listed in General Headnotes 3(g)(iii)(C)(1), 3(g)(iii)(C)(2), and 3(g)(iii)(E), TSUS, which exempts those textile and textile articles from coverage of the Caribbean Basin Economic Recovery Act (CBERA) (19 U.S.C. 2701 et seq.), and any other TSUS provisions which have been assigned textile category designations. Those TSUS provisions were determined by the President not to be subject to the CBERA because, pursuant to section 2703, CBERA (19 U.S.C. 2703(b)(1)), they

cover textile and apparel articles which are subject to textile agreements.

Customs does not believe the suggestion that the regulations cover non-MFA products has merit. Section 204 authorizes the President to issue regulations to carry out bilateral and multinational agreements that have been entered into pursuant to that section. There are no such agreements which cover non-MFA products. Therefore, there is no authority to include non-MFA products within the scope of these regulations, except insofar as information is required to distinguish those products from MFA products.

Other Country of Origin Comments

A few commenters regard the interim regulations as adding confusion to the area because of various definitions of the term "country of origin" used by GSP, CBI and other programs. Some of these commenters proposed exempting CBI nations and factories that have been established under the existing definition.

The interim regulations governing textiles and textile products which define when an article is considered to be "a product of" a particular country apply to all imports into the customs territory of the U.S. As noted in the discussion on insular possessions, the commenters have failed to recognize that the GSP and CBI statutes each require that merchandise be a "product of" the affected country. The CBI statute uses the phrase "growth, product, or manufacture", which is stated in *Belcrest Linens* to mean "product of". In this regard, the CBI and GSP programs begin from a common point of requiring an article to be "a product of" a specific country.

Customs believes it is improper to exempt, without specific authority, countries or manufacturers from the coverage of these regulations.

One commenter suggested issuing a public notice and comment period for all rulings requesting a country of origin determination, in addition to notifying CITA of such requests.

This proposal cannot be adopted. Section 177.1(d), Customs Regulations (19 CFR 177.1(d)), defines the term "ruling" in the following manner:

> (d) Definitions. (1) A "ruling" is a written statement issued by the Headquarters Office or the Regional Commissioner, Region II, that interprets and applies the provisions of the Customs and related laws to a specific set of facts.

Under 5 U.S.C. 551(b) "rule making" is defined as an "agency process for formulating, amending, or repealing a rule". Sections 553 (b) and (c) of title 5, contemplate the application of the notice and comment period to rule making proceedings and not to requests for rulings of the type covered by Part 177, Customs Regulations.

With specific reference to the comment about advising CITA regarding requests for rulings on country of origin determinations, section 2(c) of Executive Order 12475 states that the Department of Treasury shall, to the extent practicable, inform CITA of all rulings requests on matters that may reasonably affect the Textile Import Program and to take into consideration any comments on such requests that CITA may submit. That requirement of the Executive Order has been complied with administratively. Executive Order 12475 does not require such a procedure to be incorporated in the Customs Regulations and Customs can see no valid purpose to be served by doing so.

Declaration Requirements

Numerous comments were received on the documentary evidence of country of origin requirements set forth in § 12.130 (c) and (d) of the interim regulations. Several commenters stated that the declaration requires the disclosure of confidential business information concerning costs, which if revealed to the importer, could place the manufacturer/exporter at a competitive disadvantage. Some commenters recommended that only a description of the manufacturing or processing operation should be required on the declaration and not cost data.

Based on the comments received and Customs own evaluation it has been decided to modify the declaration requirements. Customs will not require that the direct costs of manufacturing and/or processing operations and cost or value of materials to be set forth on the declaration. If cost information is required by Customs at the time of entry of the merchandise to determine country of origin, the manufacturer or exporter in the country of origin or exportation must be prepared to submit directly to the district director, upon request, all pertinent cost information concerning the production or manufacture of the merchandise. He must also be prepared to provide the district director with any other information (e.g., time involved in the manufacturing or processing operation) considered necessary to determine the country of origin. With the elimination of the cost data requirement, the importer should have no difficulty in obtaining and providing on the declaration a complete description of the manufacturing and/or processing operation performed in each country involved in producing the article. Because of this Customs considers the importer's certification required by § 12.130(d) of the interim regulations to be unnecessary and has deleted it from the final rule.

Several commenters stated that Customs should establish guidelines for completing the declaration and state which products and types of transactions are subject to the requirements. Other commenters indicated the regulations should apply to products subject to visa requirements. Still others believed non-quota countries should be excluded from the declaration requirements.

Customs believes that guidelines can more properly be addressed in detail in administrative and operational instructions and rulings. With respect to product coverage, as stated earlier a new § 12.130(a) has been added to the final rule which addresses this matter. The country of origin rules and declaration requirements of § 12.130 must apply to textiles and textile products from all countries not just countries with which the U.S. has bilateral agreements or quotas since the rules followed to determine the country of origin are the same for all merchandise. Since merchandise is frequently processed in several countries Customs must have complete information in order to determine the correct country of origin.

One commenter suggested that the declaration be related to the commercial invoice and not the entry since an entry could cover merchandise from more than one declaration. The commenter stated that the manufacturer/exporter who executes the declaration prior to exportation will have no way of relating the declaration to an entry.

Customs agrees that this could be the case. However, upon review it is believed to be the better approach to allow the declaration to be related to either the invoice or entry at the declarant's option. Accordingly, the wording of the declarations have been changed to indicate that the declaration may be related to either the invoice or the entry.

Several commenters stated that they should be authorized to treat the declaration as a missing document for which a bond may be filed.

The main purpose of the textile regulations is to prevent circumvention of multilateral and bilateral agreements. In order to carry out this mandate Customs must have all the necessary documentation prior to release of the merchandise to determine the correct country of origin. The declaration must be presented at the time of entry so that a determination of the country of origin

can be made for quota and or visa purposes, when that is required. In addition, accurate trade statistics are needed for all importations of textiles and textile articles from all countries for monitoring and negotiating purposes. If the importer were allowed to present the declaration anytime after entry and the information reveals a different country of origin from that reported at the time of entry the trade statistics would reflect incorrect information. Also, the additional work involved in backlogging entries and the double handling of documents is too great to permit bonding for the declaration. With elimination of the cost data requirement, there appears little reason why the importer would be unable to provide the declaration at the time of entry. Consequently, the declaration (like the visa or export license) will not be treated as a missing document for which a bond may be filed.

The European Economic Community (EEC) should be considered as a single entity for purposes of filing the declaration thereby permitting the use of the single country declaration for products made in several EEC countries according to some commenters. Other commenters made the same recommendation with respect to the Nordic countries of Finland, Norway and Sweden.

Customs can not adopt this suggestion since a single country of origin must be determined for each imported article. The detailed declaration is necessary to make this determination when several countries are involved in the production of the article. Further, when negotiating textile agreements the U.S. does so with individual countries and not associations of countries.

Other commenters recommended that a third declaration be added for use when goods are cut and sewn in one country from fabric imported from another country. As opposed to this, another commenter wanted to eliminate the declaration requirement in these cut and sew operations.

Even though it may appear that there is no doubt as to the identity of the country of origin in these cases, it is still the responsibility of the Customs officer to make that determination. This can only be done if he has all the facts. Accordingly, Customs has not adopted either suggestion.

The declaration requirement is a non-tariff barrier according to several commenters.

Customs believes the requirement to file a declaration serves a legitimate purpose in ensuring that the correct country of origin is identified for each shipment. Rather than being a non-tariff barrier it will enable the manufacturer, importer and Customs to be certain of the country of origin and facilitate the release of goods to the importer.

The determination of the country of origin is being transferred exclusively to U.S. authorities according to some commenters. These commenters believe the regulations give substantial discretion to individual U.S. Customs officers and will lead to subjective judgments being made.

Customs officers have always had the final responsibility and authority for determining the country of origin of imported merchandise. The interim regulations did not change that responsibility. In fact, the regulations codify court decisions and Customs administrative rulings thereby allowing greater certainty by all parties in the determination of the country of origin. Further, the district director's decision on origin, if protested, is subject to review by higher authority.

Other commenters stated that trim (underlinings, loops, buttons, sways, tapes, zippers, etc.) should not have to be reported on the declaration as they are insignificant compared to the assembly of the overall garment.

Customs agrees that it is unlikely that trim will be a consideration in determining the country of origin. However, the identification of which items constitute trim is a matter for Customs to determine through the administrative ruling process. This should not be the subject of regulations. Customs has previously stated that trim need not be reported when it is from a country not directly concerned with the manufacture of the product. However, non-textile materials (not trim) must be reported on the declaration.

Many manufacturers ship identical merchandise over extended periods of time and must make repetitive filings of the same declaration. This serves no purpose according to one commenter who recommended that the district director be authorized to waive the production of the declaration. In the alternative the commenter recommended that the importer be permitted to submit one declaration for each product and have the responsibility for updating the data.

Adoption of this recommendation could result in non-uniform application by the various Customs field offices. In addition, it would require each office to keep a separate declaration on file for the thousands of textile manufacturers, exporters, importers, and styles and types of merchandise being imported. This increased workload would be unacceptable. Finally, each entry of merchandise must stand on its own for entry admissibility purposes.

Where the value of material originating in a second country is *de minimis* (*e.g.* 5 percent), one commenter believes the short form (single country) declaration would be appropriate. An example of this *de minimis* principle would be where a small label on the textile article is produced in a second country.

Customs is opposed to attempting to establish a *de minimis* criterion at this time. In order to determine the origin of the material that was used in the article, Customs must have all pertinent facts. At some later date it may be appropriate to issue administrative guidelines with respect to the reporting of trim and other minor parts of garments.

According to one commenter shipments of textiles and textile products should be detained only when Customs can demonstrate a clear likelihood that the country or origin reflected in the declaration and/or export license or visa is incorrect.

This suggestion would place an unacceptable burden on Customs. It is incumbent upon the importer to provide the necessary documentary proof of origin.

Several other commenters maintained that requiring the declaration will cause delays in the release of shipments to importers.

With the elimination of the cost requirement from the declaration in the final rule, it should be easy to comply with the declaration requirement. The importer should be able, in most instances, to supply the information, without consulting the manufacturer or exporter. Consequently, delays in releasing shipments should be relatively rare.

Another commenter suggested that Customs allow the use of the single country of origin declaration when raw materials are imported into a country and all manufacturing operations are performed in that country.

Customs has already liberalized the reporting requirements by saying that in most instances, in regard to completed garments the information on the declaration should go back as far as the manufacture of the fabric. In regard to fabric, information on the yarn is required, and if yarn is being imported, the declaration should provide information on the fibers. This information is necessary only if the materials at the preceding stage were imported into the country of manufacture.

The declaration, according to other commenters, should be amended to

require only a simple statement of the country of origin. Customs publication and clarification of the criteria will enable most manufacturers, exporters or importers to declare the correct origin of their products. Companies seeking to avoid quota restrictions will not be deterred by the declaration requirements. The commenters maintain that a single statement of country of origin, subject to Customs audit, will relieve Customs officials of the burden of reviewing the information that must be submitted.

Requiring only a simple statement of origin by the manufacturer would nullify the intent of the regulations which is to provide Customs with sufficient information to make the determination of where the final substantial transformation took place. Far from relieving Customs of a burden the suggestion would require further investigation to make this determination.

Still other commenters maintain that the certificate of origin issued by the exporting country provides a guarantee that appropriate officials of that country have determined the correct country of origin. This certificate should be accepted in lieu of the declaration.

Only U.S. Customs can make the final country of origin decision based on judicial and administrative precedent. The certificate of origin does not provide the information necessary to make that determination.

Customs has received numerous inquiries from the importing public regarding whether a declaration is required with an informal entry. In light of the concern in this area a new paragraph (h) has been added to § 12.130 which states that while a declaration is not required for shipments covered by an informal entry, the district director may require such other evidence of the country of origin as deemed necessary. The provision further states that the filing of the appropriate declaration will be required in a case involving consolidation of individual shipments under §§ 12.131 and 143.22, Customs Regulations (19 CFR 12.131, 143.22).

While no comments were received on § 12.130 (f) of the interim regulations (this section has been redesignated as § 12.130(i) in the final rule) which relates to the date of exportation, Customs believes it worthwhile to repeat the information set forth in the interim regulation relating to the placement of date of exportation data on the Customs Form 7501, Entry/Entry Summary.

The Customs Form 7501, was revised by T.D. 84–129 which was published in the **Federal Register** on June 5, 1984 (49 FR 23161). As a January 1, 1985, the new Customs Form 7501 has been in use. On the revised form, the date of exportation, as defined by § 12.130, for quota, visa or export license requirements and statistical purposes, will be listed in block 34, the TSUSA, ADA/CVD, IRC rate, and/or visa number block, below the identified visa number. If a visa or export license is not required for the merchandise the date of exportation will be the last item identified for each line item. The alphabetical designation "DOE" will be placed in front of the identified date of exportation.

The foregoing does not change or modify the date of exportation required to be placed in the date of exportation block on the Customs Form 7501.

Even though the date of exportation appears on the revised Customs Form 7501 in block 34, based upon Customs review it has been determined that a need exists for this data on the declaration. Accordingly, Customs has modified the declaration forms to require the date of export from the first country and any subsequent country where further manufacturing and/or processing operations are involved. The final determination of which country is the country of origin for quota/visa purposes, i.e., whether a substantial transformation has taken place in this regard, is the responsibility of Customs and cannot be delegated to the importer. Listing these dates of export on the textile declaration provides Customs with necessary data to verify the importer's date of export declaration on the CF 7501. It insures that Customs will be able to furnish the Commerce Department with more accurate trade statistics for trade policy purposes as well as for its own trade enforcement purposes. At the same time, this requirement benefits the importer since he will seldom have to obtain further information in this matter if Customs questions the date of export shown on the Customs Form 7501.

It has become apparent that a cause of concern to both importers and Customs field officers is the problem of possible delays in the release of non-MFA textiles and textile products from Customs custody. This is due to uncertainties in identifying merchandise subject to the MFA for which a textile declaration is required to be filed prior to release of merchandise and merchandise not subject to the MFA for which, under the interim regulations, no declaration is required.

To assist Customs in distinguishing between the two classes of merchandise, Customs has decided to require the submission of a negative declaration, prior to release of the shipment, for products not subject to section 204, Agricultural Act of 1956.

Customs examination of merchandise, document review and timely release of cargo will be facilitated by use of the negative declaration. The uncertainty over whether a declaration is required will be removed and the number of shipments detained for documentation purposes and those shipments ordered to be redelivered to Customs will be greatly reduced. This new declaration is set forth in § 12.130(f)(3) of the final rule.

Textile Shipments Under $250

A new §12.131 was added to Part 12 by the interim regulations. This section requires that separate shipments of textiles and textile products, including samples, the country of origin of which is a country subject to visa or export license requirements, arriving in the customs territory of the U.S. for one consignee on the same conveyance on the same day, the combined value of which is over $250, to be entered under a formal entry. A consignee for purposes of this section is the ultimate consignee and does not include a freight forwarder or Customs broker not importing for its own account.

These provisions were necessary to prevent the splitting of shipments to circumvent visa or export license requirements. Importers were frequently entering shipments well in excess of $250 shipped on the same carrier, on the same day, from the same country, but from allegedly different manufacturers and using the informal entry procedures for the split shipments.

For purposes of this section, the interim document stated that separate unincorporated divisions or departments of the same U.S. corporation or company will be treated as one consignee for visa or export license purposes. It was further indicated that separate U.S. corporations of the same U.S. conglomerate will generally be treated as separate entities and therefore, separate consignees. Other forms of business organizations will be handled on a case-by-case basis. It was stated that Customs officers will look at the facts and circumstances involved in the importation before making a final decision.

Numerous comments were received in response to this provision. One commenter stated that textile shipments under $250 each for separate divisions of the same corporation arriving in the U.S. on the same carrier, the same day, from the same country should be treated as importations for separate consignees for visa or licensing purposes. According

to the commenter there could be freight consolidations for economy in shipping cost only.

Section 12.131 is necessary to prevent the splitting of shipments to circumvent visa or export licensing requirements. The bilateral textile agreements also require that shipments for the same consignee valued over $250 require a formal visa or export license. In addition, 19 U.S.C. 1484 states that all of the merchandise arriving in the U.S. on the same conveyance for the same consignee must be entered on one entry. Lastly, since separate unincorporated divisions of the same corporation are not separate legal entities, they may not be treated as separate consignees.

While freight consolidations by exporters to reduce cost is an important factor for them it cannot take precedence over the intent of the bilateral agreements and statutory requirements of 19 U.S.C. 1984.

However, if a freight forwarder is a consignee, for purposes of these textile provisions, he may designate a Customs broker to file a consolidated formal entry (where separate under $250 shipments to various ultimate purchases are involved). The entry must be accompanied by a visa(s) in the case of countries subject to visa requirements. If the freight forwarder is not the consignee for purposes of these textile provisions, he may not designate a Customs broker to file either a consolidated formal entry or separate informal entries for these under $250 shipments. In the latter case, the various ultimate purchasers must make their own arrangements for entry of their merchandise.

One commenter suggests that the § 12.131 definition for consignee should only include divisions of the same company or corporation where such divisions are importing goods on the same conveyance on the same day whose combined value totals more than $250 and fall in the same textile category number. Furthermore, where information for such shipments for separate divisions of the same corporation indicates that these divisions are operating independently of each other, e.g., separate trade names, distinctive differences in the goods, or separate imported samples for each division, the "one consignee" definition of this section should not be followed.

The bilateral textile agreements, the statutory language of 19 U.S.C. 1484, and the fact that there is no showing of separate legal entities involved under the circumstances set forth by the commenter argue forcefully for the enforcement of the "one consignee" definition found in § 12.131.

Section 12.131 according to one commenter should be amended to require formal entry only in instances where shipments from the same manufacturer arrive on the same day, on the same conveyance for the same U.S. consignee, and Customs determines that the shipments are intended to be consolidated for commercial sale.

The statutory language of 19 U.S.C. 1484 precludes the adoption of the commenter's suggestion.

The regulations for consolidating shipments are costly and overly broad according to another commenter.

The need to effectively and uniformly enforce the bilateral textile agreements and the formal entry requirements for importations pursuant to 19 U.S.C. 1484 dictate Customs policy in this matter. Moreover, because of recent attempts to circumvent quota/visa requirements by splitting shipments the necessity to take appropriate action to prevent these violations has become evident.

In light of the foregoing discussion and analysis Customs has concluded that no change in the provisions of § 12.131, is warranted. Accordingly, the section is adopted in the form set forth in T.D. 84–171 in the August 3, 1984 **Federal Register** document (49 FR 31248 at 31253).

In Bond Transportation

In the interim regulations it was stated that because of the numerous instances identified by Customs in which the provisions of the Customs Regulations relating to in-bond transportation had been used to frustrate and circumvent the textile products visa or export license requirements, district directors were advised to strictly enforce the provisions of § 18.11(h), Customs Regulations (19 CFR 18.11(h)). To insure the applicability of the § 18.11(h) requirements, § 18.11(e) was amended to incorporate the provisions of § 18.11(h). In addition, § 18.11(e) was amended to require the visa or export license, if applicable, to be presented with the entry. Section 6.18, Customs Regulations (19 CFR 6.18), relating to documentation for transit air cargo, was amended to cross-reference the requirements of §§ 18.11 (e) and (h).

Section 141.52, Customs Regulations (19 CFR 141.52), sets forth the circumstances under which district directors may authorize separate entries for different portions of all the merchandise arriving on one vessel or vehicle and consigned to one consignee. Section 143.21, Customs Regulations (19 CFR 143.21), sets forth the types of merchandise for which an informal entry may be used and § 143.22, Customs Regulations (19 CFR 143.22), sets forth the circumstances for which a formal entry may be required. Since both §§ 141.52 and 143.21 have been cited by importers as justification for attempts to circumvent the visa or export license requirements, §§ 141.52 and 143.22 were amended by the interim regulations to indicate that use of the provisions of § 141.52 and § 143.21 will be denied if use of the informal entry provisions would prejudice import admissibility enforcement efforts (i.e., visa or export license requirements). A cross-reference to the requirements of §§ 141.52 and 143.22 was included in § 143.21.

Customs received numerous comments in response to the solicitation of comments provision of the interim regulations regarding the presentation of the visa or export license prior to movement of textiles and textile products under the in-bond procedures. The **Federal Register** document containing the interim Customs regulations indicated that during the comment period an ongoing review would be made to determine if any situation arose which required action before the final rule was published. Based upon this ongoing review of public comments, it was concluded that compliance with this requirement of the interim regulations would be difficult. Accordingly, Customs deleted the requirement by notice published in the **Federal Register** on September 28, 1984, as T.D. 84–207 (49 FR 38245).

Further, the commenters expressed concern about the example of the rated invoice used in the interim regulations to indicate the type of evidence the district director could use to satisfy himself of the approximate correctness of the value and quantity stated in the in-bond entry. The rated invoice was chosen as an example not because of a need for this particular document but because it contained most of the information necessary for Customs to accurately assess the risk of possible diversion during the in-bond movement. Because the example generated so much adverse comment and concern, it was decided to delete it from the interim regulation and specifically list, by way of example, the information which Customs will use in making the determination of whether or not to examine the merchandise and whether or not to approve the in-bond movement. This information was also published in the September 28, 1984 **Federal Register** document. It includes the following:

(a) Detailed quantity description (e.g., 14 cartons, 2 dozen per carton),

(b) Detailed description of the textiles products including type of commodity

and chief fiber content (e.g., men's cotton jeans or women's wool sweaters),

(c) Net weight of the textiles or textile products, (including immediate packing but excluding pallets),

(d) Total value of the textiles or textile products,

(e) Manufacturer or supplier,

(f) Country of origin,

(g) Name(s) and address(es) of the person(s) to whom the textiles and textile products are consigned, and

(h) Harmonized code tariff number (when available).

It was stated that the harmonized code tariff number, if provided, would greatly assist Customs in determining the proper classification of the merchandise and the visa requirements. Customs further pointed out that not providing any one item or all of the listed information would not in and of itself result in a denial of the in-bond movement or examination of the merchandise. It would, however, be a factor considered by the district director along with all other facts and circumstances available as to the risk to the revenue, potential for diversion of the merchandise, and proper enforcement of the Textile Import Program.

Customs stated that the information could be provided by the carrier or his agent or the importer. If this information is available on existing documentation such as an invoice, a bill of lading, etc., providing a copy of that document would assist Customs in the consideration of whether or not to approve the movement or to examine the merchandise. In lieu of the foregoing, it was stated that the information could be included on the in-bond document itself. This flexible approach would allow the importer to determine the manner in which the information would be supplied.

In addition, Customs also decided that to effectively enforce the interm regulations and ensure that shipments of textiles and textile products arrive intact, no diversion from the destination, as shown on the in-bond document, would be allowed without the permission of the district director at the port of origin of the in-bond movement. This requirement which was included in the September 28, 1984, **Federal Register** notice as an amendment to § 18.5, Customs Regulations (19 CFR 18.5), provides Customs with the administrative control over shipments of textiles and textile products necessary to effectively ensure that those products subject to quota are not diverted into the commerce of the U.S. in violation of the quota.

One commenter believed that the change in § 18.5 was superfluous. This commenter was under the impression that diversions are not allowed for cargo moving in-bond.

This is not the case. Cargo entered for in-bond movement may be diverted to a port other than that shown on the in-bond documents. Since Customs will be examining selected textile shipments prior to in-bond movement, it was essential to the enforcement effort that the cargo be delivered to the port originally designated on the in-bond documents. This interim amendment now requires that diversions be approved by the district director at the port of origin of the in-bond movement.

Many commenters interpreted the interim regulations to mean that Customs would examine all textiles at the port of arrival. Customs does not intend to examine all textiles at the port of arrival. Customs has been examining and will continue to examine selected shipments at the port of arrival. These examinations will be based upon the information available to Customs with regard to the cargo, the carrier involved, the mode/method of transportation, and the importer of record. Cargo that is described sufficiently for the district director to determine the duty and taxes will remain in the custody of the importing carrier or his agent and will not generally be subject to examination at the port of arrival.

Some commenters questioned the need for a specific list of requested information. In the September 28, 1984, **Federal Register** document Customs removed the requirement for presentation of certain documents prior to approval of the in-bond movement. In its place Customs listed under §18.11(e) the information felt necessary for determining whether or not an examination prior to movement would be necessary. The commenters stated that while it was helpful to remove the requirement, when viewed in connection with statements by Customs in the documents removing the requirement that certain types of movements will be considered low risk and therefore exempt from the request for information substituted for the requirement, importers will not know when and if they should supply the requested information. This will result in confusion in the transportation and brokerage communities according to the commenters. Some commenters believed the list should be removed from the regulations.

Customs agrees with the commenters that some uncertainty may result in not knowing if the information may or may not be requested. However, it is better for the public to be aware of what information Customs needs to determine whether or not to approve the in-bond movement. Accordingly, the list has been retained.

In light of the foregoing the regulations amendments relating to §§ 6.18(d), 141.52, 143.21 and 143.22 (19 CFR 6.18(d), 141.52, 143.21 and 143.22) contained in T.D. 84–171 which was published in the **Federal Register** on August 3, 1984 (49 FR 31248) are adopted without change. Further, the amendments made to §§ 18.5(a), 18.5(f) and 18.11(e) (19 CFR 18.5(a), 18.5(f) and 18.11(e)) by T.D. 84–207, published in the **Federal Register** on September 28, 1984, are also adopted without change.

Bonded Warehouses and Foreign Trade Zones

Some importers have been using the bonded warehouse to circumvent or frustrate the visa or export license requirements. For example, suits which are in a specific textile category from a country subject to visa or export license requirements were entered into warehouse and separated into coats and pants which are in different textile categories. To prevent this type of practice which frustrates and circumvents agreements, § 144.38, Customs Regulations (19 CFR 144.38), which relates to withdrawals from warehouse for consumption was amended by the interim regulations by adding a new paragraph (f) relating to textiles and textile products. The new subsection indicated that textiles and textile products subject to visa or export license requirements in their condition at the time of importation may not be withdrawn from warehouse for consumption, if, during the warehouse period, there has been a change by manipulation or other means (1) in the country of origin of the merchandise, (2) to exempt from quota or visa or export license requirements other than a change brought about by statute, treaty, executive order or Presidential proclamation, or (3) from one textile category to another textile category.

Section 19.11(g), Customs Regulations (19 CFR 19.11(g)), which relates to withdrawals from warehouse, was also amended to cross-reference the restrictions contained in § 144.38 on withdrawal for consumption of manipulated textiles and textile products.

The enterim regulations published on August 3, 1984, also contained an amendment to the foreign-trade zones regulations found in Part 146, Customs Regulations (19 CFR Part 146), to prevent use of foreign-trade zones to frustrate or

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circumvent quota or visa or export license requirements. The provision set forth in § 146.49 specifically provided that textiles and textile products admitted into a foreign-trade zone, regardless of whether the merchandise has privileged or nonprivileged foreign status, which would have been subject to quota or visa or export license requirements in their condition at the time of importation if entered for consumption rather than admitted to a foreign-trade zone, may not be subsequently transferred into the customs territory for consumption if during the time the merchandise is in the foreign-trade zone there has been a change by manipulation, manufacture, or other means.

(a) In the country of origin of the merchandise as defined by section 12.130 of the interim regulations,

(b) To exempt from quota or visa or export license requirements other than a change brought about by statute, treaty, executive order or Presidential proclamation, or

(c) From one textile category to another textile category.

Based upon public comment and after consultation with the Foreign-Trade Zones Board, it was decided to modify the foreign-trade zone provisions of the interim regulations to include a phrase which recognized the existing statutory authority of the Foreign-Trade Zones Board. The change was set forth as an amendment to § 146.49 of the interim regulations by **Federal Register** notice on September 28, 1984 as T.D. 84–207 (49 FR 38245).

One commenter indicated that the regulations would exclude manipulation of goods inside bonded warehouses and foreign trade zones that would change the duty classification of goods when they are brought into U.S. customs territory.

The exclusion in the interim regulations does not deal with tariff classification and dutiability, but rather with quota and/or visa status and admissibility. The only changes excluded are those affecting the textile category, country of origin, or exemption from quota and/or visa status. Other kinds of changes in tariff classification would continue to be permitted.

One commenter indicated it was unsure whether the Foreign-Trade Zones Board may approve an exception from the exclusion if it is in the public interest.

As pointed out above, the interim regulations were amended on September 28, 1984 by T.D. 84–207 to recognize the authority of the Foreign-Trade Zones Board in administering the Foreign Trade Zones Act, which could authorize exceptions in the public interest. However, Executive Order 12475 established a presumption that it is in the public interest not to allow the operations set forth in § 146.49 of the interim regulations. Accordingly, any person seeking an exception to § 146.49 would have a substantial burden of proof to overcome this presumption.

Another commenter stated that the exclusion of textile manufacturing and manipulation sets an unfortunate precedent that could lead to fragmentation of duty preference and deferral laws by rules and regulations created under pressure from protectionist special interest groups.

The exclusion in the interim regulations was made pursuant to section 204 and Executive Order 12475. The basis for an exception for other commodities would have to be found in legislation, executive order or proclamation.

Another commenter stated the exclusion would even cover the manufacture of wearing apparel from piece goods, nullifying one of the main purposes of foreign-trade zones, which is to encourage U.S. manufacturing. The commenter opined that textile manufacturing operations that result in products of the U.S. should not be excluded from foreign-trade zones.

The exclusion is not against textile manufacturing in zones, but against the entry for consumption in the U.S. of textile articles which would amount to a circumvention of quota and/or visa requirement. Zone firms may continue to manufacture textile articles for consumption if there is no circumvention of the quota, or for exporation in any case. If it is deemed to be in the public interest in selected instances for merchandise to be manufactured in a zone for U.S. consumption, the Foreign-Trade Zones Board may specifically grant an exception from the exclusion.

In light of the foregoing, the regulation amendment relating to bonded warehouses contained in § 144.38 (f) as set forth in T.D. 84–171, which was published in the **Federal Register** on August 3, 1984 (49 FR 31248 at 31253), is adopted without change. In addition, the amendment made to § 146.49 relating to foreign-trade zones as set forth in T.D. 84–171 and amended by T.D. 84–207, which was published in the **Federal Register** on September 28, 1984 (49 FR 38245), is adopted without further change.

Regulations Violate MFA

A few commenters expressed concern that the country of origin regulations violate the MFA and the various bilateral agreements negotiated by the U.S. under the aegis of the MFA to limit textile imports. This concern was also raised by the plaintiffs seeking to enjoin implementation of the interim regulations in *Mast Industries Inc., et al. v. Regan, et al.*, —— C.I.T. —— Slip Op. 84–111 (October 4, 1984). The plaintiffs therein argued that because "the interim regulations issued by Customs violate the MFA and the bilaterals and, therefore, do not 'carry out' [those] agreements," the "interim regulations are [invalid because they are] ultra vires." The *Mast Industries* court dismissed that argument, holding that the interim regulations were validly issued pursuant to the authority delegated to the President by section 204, the statute upon which the entire U.S. textile import program rests.

The *Mast Industries* decision which sustained the President's authority to promulgate origin regulations pursuant to section 204 is wholly consistent with the principles underlying our international agreements. The MFA, as well as any bilateral agreements negotiated thereunder, is expressly "determined to have full regard to the principles and objectives of the General Agreement on Tariffs and Trade (GATT)."

The GATT grappled with the issues involved in a country's determinations of origin in the 1950's but did nothing then and has not since been willing to define any specific or uniform rule, recognizing the essentially subjective nature of criterion of "substantial transformation" or any other criterion used for the determination of origin. The definitive statement by GATT draftsmen in 1947 on this issue has not, therefore, been changed by any subsequent GATT decision, and reflects the current status of origin rules as follows:

> it is within the province of each importing member country to determine, in accordance with the provisions of its law, for the purpose of applying the most-favored-nation provision, whether goods do in fact originate in a particular country. (UN DOC. EPCT/174 at pg. 3 (1947))

This right of each GATT member to determine origin on its own has been recognized with respect to all GATT agreements or obligations that depend on the origin of products. Consequently, there is no GATT, MFA, or bilateral agreement provision defining country of origin or restricting such definition. These agreements reflect the long-standing right of GATT members to determine their own origin rules.

Impairment of Contracts

Some commenters alleged that the interim regulations are a retroactive

impairment of contracts in violation of the impairment of contracts clause of the U.S. Constitution. The court in *Mast Industries* addressed this issue and held that the "impairment of contracts clause has never been interpreted to apply to the federal government. See *Washington Star Co.* v. *International Typographical Union Pension Plan*, 729 F. 2d 1502, 1507 (D.C. Cir. 1984)."

Customs, however, recognized that a problem existed with respect to existing contracts. Accordingly, to alleviate unnecessary hardships on persons in the U.S. who had made binding commitments for a fixed quantity of merchandise prior to publication of the interim regulations, the effective date for that merchandise was delayed from September 7, 1984 to October 31, 1984 by T.D. 84–190, published in the **Federal Register** on August 29, 1984 (49 FR 34199).

Unconstitutional Delegation of Authority

Other commenters contended that section 204 is an unconstitutional delegation of legislative authority to the President. The Court in *Mast Industries* disagreed and held that the authority of Congress to regulate foreign commerce and delegate significant portions of that power to the Executive is well established. Statutes granting broad discretion to the President to implement trade agreements are common and often contain language similar to section 204. The Court stated that in a constitutional delegation of powers Congress must state a policy or objective for the President to execute and also that it must establish a standard that makes clear when action is proper. The congressional policy expressed in section 204 is the limitation of the importation of textiles and agricultural commodities into the U.S. Where Congress has given the President discretion in delegating authority in international trade, the courts have uniformly sustained action taken by the Executive Branch against a claim that it has exceeded the delegated authority.

Accordingly, the court held that the President had the authority to issue the interim regulations and further held that the President acted within the scope of the authority constitutionally given him by Congress.

Inapplicability of Notice

Public notice is inapplicable to the regulations relating to country of origin and manipulation of textiles because they are promulgated pursuant to section 204, Agricultural Act of 1956, as amended (7 U.S.C. 1854), and are thus within the foreign affairs function of the U.S. and the foreign affairs exemption of 5 U.S.C. 553(a)(1). These regulations are necessary to prevent circumvention or frustration of multilateral and bilateral agreements to which the U.S. is a party and to facilitate efficient and equitable administration of the U.S. Textile Import Program as authorized in section 204. For the above reasons pursuant to 5 U.S.C. 553(b)(B), notice and public procedures are impracticable, unnecessary and contrary to the public interest. The regulations relating to in-bond transportation are within the general statements of policy exemption to 5 U.S.C. 553 found in 5 U.S.C. 553(b)(A) and are thus exempt from prior notice and comment. The authority to promulgate these regulations was delegated by the President to the Secretary of the Treasury by Executive Order 12475.

Executive Order 12291

This regulation is not a "major rule" as defined by section 1(b) of Executive Order 12291. Accordingly, a regulatory impact analysis is not required under E.O. 12291.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this document because the provisions of the Administrative Procedure Act, 5 U.S.C. 553, are not applicable to these regulations. However, in the interim regulation Customs requested public comment on the effects, with numerical estimates, of the amendments on costs, profitability, competitiveness, and employment in small entities. While numerous commenters alleged economic impact little economic data was provided.

Paperwork Reduction Act

The interim regulation is subject to the Paperwork Reduction Act of 1980, Pub. L. 96–511. Accordingly, applicable sections of the interim regulation have been cleared by the Office of Management and Budget and assigned control number 1515–0140.

Drafting Information

The principal author of this document was John Elkins, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects

19 CFR Part 6

Air carriers, Air transportation, Customs duties and inspection, Imports.

19 CFR Part 12

Customs duties and inspection, Imports, Textile products and apparel.

19 CFR Part 18

Common carriers, Customs duties and inspection, Freight forwarders, Imports.

19 CFR Parts 19 and 144

Customs duties and inspection, Imports, Warehouses.

19 CFR Parts 141 and 143

Customs duties and inspection, Imports.

19 CFR Part 146

Customs duties and inspections, Foreign-trade zones, Imports.

William von Raab,
Commissioner of Customs.

Approved: February 27, 1985.
John M. Walker, Jr.,
Assistant Secretary of the Treasury.

Amendments to the Regulations

PARTS 6, 12, 18, 19, 141, 143, 144 AND 146—[AMENDED]

Accordingly, 19 CFR Parts 6, 12, 18, 19, 141, 143, 144 and 146 are amended as follows:

1. The interim amendments to §§ 6.18, 19.11, 141.52, 143.21, 143.22, 144.38, and 146.49 and the addition of § 12.131, as published at 49 FR 31248, August 3, 1984 are adopted with change.

2. The interim amendments to §§ 18.5, 18.11 and 146.49 as published at 49 FR 38245, September 28, 1984 are adopted without change.

PART 12—SPECIAL CLASSES OF MERCHANDISE

3. Part 12 is amended by adopting as final and revising § 12.130 to read as follows:

Textiles and Textile Products

§ 12.130 Textiles and textile products country of origin.

(a) *General.* Textiles or textile products subject to section 204, Agricultural Act of 1956, as amended (7 U.S.C. 1854) include merchandise subject to General Headnote (3)(g)(iii)(C)(1) of the Tariff Schedules of the U.S. (TSUS) (19 U.S.C. 1202) and merchandise:

(1) In chief value of cotton, wool, man-made fibers, or blends thereof in which those fibers, in the aggregate, exceed in value each other single component fiber thereof, or

(2) In which either the cotton context or the man-made fiber content equals or

exceeds 50 percent by weight of all component fibers thereof, or

(3) In which the wool content exceeds 17 percent by weight of all component fibers thereof, or

(4) Containing blends of cotton, wool, or man-made fibers, which fibers, in the aggregate, amount to 50 percent or more by weight of all component fibers thereof, and

(5) Which is classified in the tariff item numbers provided for in General Headnotes (3)(g)(iii)(C)(2) or (3)(g)(iii)(E), TSUS.

(b) *Country of origin.* For the purpose of this section and except as provided in paragraph (c), a textile or textile product, subject to section 204, Agricultural Act of 1956, as amended, imported into the customs territory of the United States, shall be a product of a particular foreign territory or country, or insular possession of the U.S., if it is wholly the growth, product, or manufacture of that foreign territory or country, or insular possession. However, except as provided in paragraph (c), a textile or textile product, subject to section 204, which consists of materials produced or derived from, or processed in, more than one foreign territory or country, or insular possession of the U.S., shall be a product of that foreign territory or country, or insular possession where it last underwent a substantial transformation. A textile or textile product will be considered to have undergone a substantial transformation if it has been transformed by means of substantial manufacturing or processing operations into a new and different article of commerce.

(c) *Applicability to U.S. articles sent abroad.* Headnote 2, Part 1, Schedule 8, TSUS, provides that any product of the U.S. which is returned after having been advanced in value or improved in condition abroad, or assembled abroad, shall be a foreign article for the purposes of the Tariff Act of 1930, as amended. In order to have a single definition of the term "product of" and, therefore, a single country of origin for a textile or textile product, notwithstanding paragraph (b), merchandise which falls within the purview of Headnote 2, Part 1, Schedule 8, TSUS, may not, upon its return to the U.S., be considered a product of the U.S.

(d) *Criteria for determining country of origin.* The criteria in paragraphs (d) (1) and (2) of this section shall be considered in determining the country of origin of imported merchandise. These criteria are not exhaustive. One or any combination of criteria may be determinative, and additional factors may be considered.

(1) A new and different article of commerce will usually result from a manufacturing or processing operation if there is a change in:

(i) Commercial designation or identity,

(ii) Fundamental character or

(iii) Commercial use.

(2) In determining whether merchandise has been subjected to substantial manufacturing or processing operations, the following will be considered:

(i) The physical change in the material or article as a result of the manufacturing or processing operations in each foreign territory or country, or insular possession of the U.S.

(ii) The time involved in the manufacturing or processing operations in each foreign territory or country, or insular possession of the U.S.

(iii) The complexity of the manufacturing or processing operations in each foreign territory or country, or insular possession of the U.S.

(iv) The level or degree of skill and/or technology required in the manufacturing or processing operations in each foreign territory or country, or insular possession of the U.S.

(v) The value added to the article or material in each foreign territory or country, or insular possession of the U.S., compared to its value when imported into the U.S.

(e) *Manufacturing or processing operations.* (1) An article or material usually will be a product of a particular foreign territory or country, or insular possession of the U.S., when it has undergone prior to importation into the U.S. in that foreign territory or country, or insular possession any of the following:

(i) Dyeing of fabric and printing when accompanied by two or more of the following finishing operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing;

(ii) Spinning fibers into yarn;

(iii) Weaving, knitting or otherwise forming fabric;

(iv) Cutting of fabric into parts and the assembly of those parts into the completed article; or

(v) Substantial assembly by sewing and/or tailoring of all cut pieces of apparel articles which have been cut from fabric in another foreign territory or country, or insular possession, into a completed garment (*e.g.* the complete assembly and tailoring of all cut pieces of suit-type jackets, suits, and shirts).

(2) An article or material usually will not be considered to be a product of a particular foreign territory or country, or insular possession of the U.S. by virtue of merely having undergone any of the following:

(i) Simple combining operations, labeling, pressing, cleaning or dry cleaning, or packaging operations, or any combination thereof;

(ii) Cutting to length or width and hemming or overlocking fabrics which are readily identifiable as being intended for a particular commercial use;

(iii) Trimming and/or joining together by sewing, looping, linking, or other means of attaching otherwise completed knit-to-shape component parts produced in a single country, even when accompanied by other processes (*e.g.* washing, drying, mending, etc.) normally incident to the assembly process;

(iv) One or more finishing operations on yarns, fabrics, or other textile articles, such as showerproofing, superwashing, bleaching, decating, fulling, shrinking, mercerizing, or similar operations; or

(v) Dyeing and/or printing of fabrics or yarns.

(f) *Declaration of manufacturer, producer, exporter, or importer of textiles and textiles products.* All importations of textiles and textiles products subject to section 204, Agricultural Act of 1956, as amended, shall be accompanied by the appropriate declaration(s) set forth in paragraph (f)(1) or (f)(2) of this section. All importations of textiles and textile products covered by General Headnotes (3)(g)(iii)(C)(2) or (3)(g)(iii)(E), TSUS, and not subject to section 204 shall be accompanied by the declaration set forth in paragraph (f)(3) of this section. The declaration(s) shall be filed with the entry. The declaration(s) may be prepared by the manufacturer, producer, exporter or importer of the textiles and textile products. If multiple manufacturers, producers, or exporters are involved, a separate declaration prepared by each may be filed. A separate declaration may be filed for each invoice which is presented with the entry. The determination of country of origin, other than as set forth in paragraph (g) of this section, will be based upon information contained in the declaration(s). The declaration(s) shall not be treated as a missing document for which a bond may be filed. Entry will be denied unless accompanied by a properly executed declaration(s).

(1) *Single foreign territory or country, or U.S. insular possession.* Textiles or textile products which are wholly the growth, product, or manufacture of a single foreign territory or country, or insular possession of the U.S., or assembled in a single foreign territory or

country, or insular possession of the U.S. of fabricated components which are in whole the product of the U.S. and/or the single foreign territory or country, or insular possession of the U.S. shall be identified in a declaration which is substantially in the following form:

SINGLE COUNTRY DECLARATION

I, _____ (name), declare that the articles listed below and covered by the invoice or entry to which this declaration relates are wholly the growth, product, or manufacture of a single foreign territory or country, or insular possession of the U.S., or were assembled in the single foreign territory or country, or insular possession of the U.S. of fabricated components which are in whole the product of the U.S. and/or the single foreign territory or country, or insular possession of the U.S. as identified below. I declare, that the information set forth in this declaration is correct and true to the best of my information, knowledge, and belief.

A ..... (country*)
B ..... (country*)
C ..... (country*)
D ..... (country*)

etc.

Marks of identification, numbers	Description of article and quantity	Country* of origin	Date of exportation

Date _____
Name _____
Signature _____
Title _____
Company _____
Address _____

*Country when used in this declaration includes territories and U.S. insular possessions. If the entry or invoice to which the declaration relates covers merchandise from more than one country each country will be identified in the declaration by the alphalbetical designation appearing next to the named country. In the case of an assembly operation of U.S. components, both the country of assembly and the U.S. shall be reported (e.g. Haiti/U.S.) along with the date of exportation from the country of assembly.

(2) *More than one foreign territory or country, or U.S. insular possession.* Textiles and textiles products which were subjected to manufacturing or processing operations in, and/or incorporate materials originating in more than one foreign territory or country, or an insular possession of the U.S. or were assembled in, and/or incorporate fabricated components which are the product of the U.S. and more than one foreign territory, country or insular possession of the U.S., shall be identified in a declaration which is substantially in the following form:

MULTIPLE COUNTRY DECLARATION

I, _____ (name), declare that the articles described below and covered by the invoice or entry to which this declaration relates were exported from the country* identified below on the dates listed and were subjected to assembling, manufacturing or processing operations in, and/or incorporate materials originating in, the foreign territory or country* or countries*, or the U.S. or an insular possession of the U.S., identified below. I declare that the information set forth in this declaration is correct and true to the best of my information, knowledge, and belief.

A ..... (country*)
B ..... (country*)
C ..... (country*)
D ..... (country*)

etc.

Marks of identification, numbers	Description of article and quantity	Description of manufacturing and/or processing operations	Date and country of manufacture and/or processing		Materials		
			Country	Date of exportation	Description of material	Country of production	Date of exportation

Date _____
Name _____
Signature _____
Title _____
Company _____
Address _____

*Country or countries when used in this declaration includes territories and U.S. insular possessions. The country will be identified in the above declaration by the alphabetical designation appearing next to the named country.

(3) *Textiles and textile products not subject to section 204.* Textiles and textile products not subject to section 204, Agricultural Act of 1956, as amended, (see paragraph (a) of this section for products subject to section 204), shall be accompanied by the declaration set forth below:

NEGATIVE DECLARATION

I, _____ (name), declare that the articles described below and covered by the invoice or entry which this declaration relates are not subject to section 204, Agricultural Act of 1956, as amended (7 U.S.C. 1854) and the information set forth in this declaration is correct and true to the best of my information, knowledge, and belief.

Marks of identification, numbers	Description of article and quantity	Country of origin

Date _____
Name _____
Signature _____
Title _____
Company _____
Address _____

(g) *Incomplete or insufficient information.* If the district director is unable to determine the country of origin of an article from the information set forth in the declaration, the declarant shall submit such additional information as requested. Release of the article from Customs custody will be denied until the determination is made based upon the information provided or the best information available. In this regard if incomplete or insufficient information is provided, the district director may consider the experience and costs of domestic industry in similar manufacturing or processing operations.

(h) *Shipments covered by an informal entry.* While a declaration is not required for shipments covered by an informal entry, the district director may require such other evidence of the country of origin as deemed necessary. The filing of the appropriate declaration will be required in a case involving consolidation of individual shipments under §§ 12.131 and 143.22 of this chapter.

(i) *Date of exportation.* For quota, visa or export license requirements, and statistical purposes, the date of exportation for textiles or textile products, subject to section 204, Agricultural Act of 1956, as amended, shall be the date the vessel or carrier leaves the last port in the country of origin, as defined by this section. Contingency of diversion in another foreign territory or country shall not change the date of exportation for quota, visa or export license requirements or for statistical purposes.

(R.S. 251, as amended, section 484, 46 Stat. 722, as amended, section 624, 46 Stat. 759,

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section 204, 70 Stat. 200, as amended (19 U.S.C. 66, 1484, 1624, 7 U.S.C. 1854) OMB approval #1515-0140)

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BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404 and 416

[Reg. Nos. 4 and 16]

Disability Insurance and Supplemental Security Income; Determining Disability and Blindness; Multiple Impairments

AGENCY: Social Security Administration, HHS.

ACTION: Interim regulations with request for comments.

SUMMARY: To be found eligible for Social Security disability benefits, a person must be found to have a medically determinable physical or mental impairment(s) of such severity that he or she cannot work, i.e, engage in substantial gainful activity (SGA) (Sections 223(d) and 1614(a)(3) of Social Security Act (the Act)). The decision process used to determine such eligibility is a sequential one (20 CFR 404.1520 and 416.920). If a disability applicant is not working, the next step in the process is to determine if the individual has a severe impairment, i.e., one that significantly limits his or her physical or mental ability to do basic work activities. The decision at this step in the sequential evaluation process is based on medical considerations alone.

Under present Social Security Administration (SSA) general policy, if medical evidence establishes multiple impairments, none of which is considered severe, the *combined effect* of such impairments is considered to be not severe, i.e., to produce no significant limitation on a person's physical or mental ability to do basic work activities.

Section 4 of Pub. L. 98-460 (the Social Security Disability Benefits Reform Act of 1984) requires that in determining the degree of medical severity of an individual's physical or mental impairment(s), we must consider the combined effect of all the individual's impairments, regardless or whether such impairment, if considered separately, would be found severe. If all impairments considered together, irrespective of individual impairment severity, significantly limit a person's physical or mental ability to do basic work activities, the adjudicator must consider such combined effects throughout the disability determination (sequential evaluation) process.

The provision of the law implemented by these interim regulations is effective December 1, 1984.

DATES: These interim regulations are effective upon publication. Written comments may be submitted by May 6, 1985.

ADDRESSES: Send your written comments to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21203, or deliver them to the Office of Regulations, Social Security Administration, 3-A-3 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: William J. Ziegler, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone 301-594-7415.

SUPPLEMENTARY INFORMATION: The enactment of section 4 of Pub. L. 98-460 requires SSA, when adjudicating claims of disability, to consider the combined effect of impairments which, when evaluated singly, might be found not severe but which, when combined, might be determined to be severe and thus require the adjudicator to consider that severity throughout the sequential evaluation process.

We believe Congress made three things clear in the statement and legislative history of section 4. See H. Conf. Rep. No. 98-1039, 98th Cong., 2nd Sess. 30 (1984):

- That if a person has multiple impairments, even if each impairment alone is not severe, the combined effect of all such impairments must be considered in determining whether there are significant limitations on the person's ability to do basic work activities;
- That if medical evidence does establish significant limitations on basic work activities resulting from an impairment or combination of impairments, the sequential evaluation process will be continued;
- That if medical evidence does not establish significant limitations on basic work activities resulting from an impairment or combination of impairments, a decision of "not disabled" may be made based solely on medical considerations.

These new regulations state that the combined effect of *all* impairments, regardless of their individual severity, must be evaluated to determine whether they result in significant limitations on the person's physical or mental ability to do basic work activities and thus may be of sufficient severity to be the basis of a finding of disability. If they are of such severity, we will proceed further through the sequential evaluation process to the point of allowance or denial, as appropriate. If the combined effect does not significantly limit the individual's physical or mental ability to do basic work activities, the claim will be denied at this point, based on medical considerations alone, just as a claim of an individual with a single impairment which is not severe is denied on medical considerations alone.

The members of the Conference Committee on the bill which became Pub. L. 98-460 expressed a belief that the change in the law provided by section 4 was needed because the evaluation policy SSA had been using might preclude realistic assessment of those cases involving individuals who have several impairments which in combination may be disabling. Their report further states, however, that the changed criteria for evaluating multiple impairments is not intended to eliminate or impair the use of the sequential evaluation process.

Present Policy

Since a not severe impairment is defined in existing regulations at §§ 404.1520(c) and 416.920(c) as one which produces no significant limitation on one's physical or mental ability to do basic work activities, SSA's general policy has been that two or more such impairments would not produce significant limitation.

New Policy

The new policy will carry out the terms and intent of the law by making clear the requirement that the combined effects of all impairments must be considered in deciding whether there is sufficient severity to be the basis of a finding of disability, even though any such impairment, if considered separately, might be found to be not severe.

It should be noted, however, that the Conference Report stated "that in the interests of reasonable administrative flexibility and efficiency, a determination that an individual is not disabled may be based on a judgment that an individual has no impairment, or that the medical severity of his or her impairment or combination of

impairments is slight enough to warrant a presumption, even without a full evaluation of vocational factors, that the individual's ability to perform SGA is not seriously affected. The current 'sequential evaluation process' allows such a determination, and the conferees do not intend to either eliminate or impair the use of that process." (Conference Report on H.R. 3755, H. Rep. No. 98–1039, 98th Cong., 2nd Sess. 30 (1984).)

In 20 CFR Parts 404 and 416, we are redesignating § 416.923 as § 416.924 and adding new §§ 404.1523 and 416.923 to implement the multiple impairments provision of the Social Security Disability Benefits Reform Act of 1984. Sections 404.1520 and 416.920 are revised to introduce in the general discussion of evaluation of disability the adjudicative consideration of multiple impairments and their combined effect. Sections 404.1521 an 416.921 are revised to include consideration of a "combination of impairments" where appropriate. Sections 404.1522 and 416.922 are revised to clarify those situations involving unrelated severe impairments or concurrent not severe impairments which may pose questions as to whether the 12-month duration requirement (i.e., that the impairment(s) has lasted or is expected to last for a continuous period of 12 months) is met in initial claims.

Section 4 of Pub. L. 98–460 is applicable to all title II and title XVI disability determinations made on or after December 1, 1984. Therefore, these regulations which implement section 4, are effective upon publication.

We are publishing these amendments to the regulations as interim final rules instead of proposed rules. The Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), provides exceptions to its notice and public comment rulemaking procedures when an agency finds that there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We find that at this time publication of a Notice of Proposed Rulemaking is impracticable and contrary to the public interest under the APA. The purpose of these regulations is to implement section 4 of Pub. L. 98–460, which Congress has mandated to be effective on December 1, 1984, only a brief period of time after the date of enactment, October 9, 1984. There was not sufficient time to publish final regulations before the effective date of the statute after publication of a Notice of Proposed Rulemaking with an appropriate comment period. Moreover, to hold cases affected by section 4 until regulations are finalized after a notice and comment period would leave individual claimants unable to pursue their claims during that period. Such an alternative would be contrary to the public interest.

Although we are publishing these regulations to be effective upon publication on an interim basis, we are asking for comments concerning these rules from members of the public. After the end of the comment period, we will carefully consider any comments we receive in order to determine whether any changes are necessary.

Regulatory Procedures

Executive Order 12291: These regulations will not result in an annual effect on the economy of $100 million or more or otherwise meet the criteria for a major rule described in Executive Order 12291. Title II and SSI program costs are estimated to be less than $5 million and negligible, respectively, for fiscal year 1985, and less than $5 million and $1 million, respectively, for fiscal year 1986. Medicaid costs are estimated to be negligible for fiscal year 1985 and $1 million for fiscal year 1986. Administrative costs are estimated to be $1.2 million for fiscal year 1985 and $1.7 million for fiscal year 1986. Based on these estimates, we have determined that this is not a major rule and that a regulatory impact analysis is not required.

Regulatory Flexibility Act: We certify that these regulations will not have a significant economic impact on a substantial number of small entities because they only affect a small number of disability claimants under title II and title XVI of the Act.

Paperwork Reduction Act: These interim regulations impose no reporting/recordkeeping requirements necessitating clearance by the Office of Management and Budget.

(Catalog of Federal Domestic Program Nos. 13.802, Social Security Disability Insurance; 13.807, Supplemental Security Income Program)

List of Subjects

20 CFR Part 404:

Administrative practice and procedure, Death benefits, Disability benefits, Old-Age, Survivors and Disability Insurance.

20 CFR Part 416:

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income (SSI).

Dated: November 30, 1984.

Martha A. McSteen,

Acting Commissioner of Social Security.

Approval: December 24, 1984.

Margaret M. Heckler,

Secretary of Health and Human Services.

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–2—)

For the reasons set out in the preamble, Part 404, Subpart P, Chapter III of Title 20, Code of Federal Regulations, is amended as set forth below.

20 CFR Part 404, Subpart P is amended as follows:

1. The authority citation for Subpart P is amended as follows:

Authority: Secs. 202, 205, 216, 221, 222, 223, 225 and 1102 of the Social Security Act, as amended; 49 Stat. 623, as amended, 53 Stat. 1368, as amended, 68 Stat. 1080, 1081 and 1082 as amended, 70 Stat. 815 and 817, as amended, 49 Stat. 647, as amended (42 U.S.C. 402, 405, 416, 421, 422, 423, 425 and 1302); Sec. 505 (a) and (c) of Pub. L. 96–265, 94 Stat. 473; sec. 4 of Pub. L. 98–460, 98 Stat. 1800.

2. Section 404.1520 is revised to read as follows:

§ 404.1520 Evaluation of disability in general.

(a) *Steps in evaluating disability.* We consider all material facts to determine whether you are disabled. If you are doing substantial gainful activity, we will determine that you are not disabled. If you are not doing substantial gainful activity, we will first consider your physical or mental impairment(s). Your impairment(s) must be severe and meet the duration requirement before we can find you to be disabled. We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity and your age, education, and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review further.

(b) *If you are working.* If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your medical condition or your age, education, and work experience.

(c) *You must have a severe impairment.* If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are; therefore, not disabled. We will not consider your age, education, and

work experience. However, it is possible for you to have a period of disability for a time in the past even though you do not have a severe impairment.

(d) *When your impairment(s) meets or equals a listed impairment in Appendix 1.* If you have an impairment(s) which meets the duration requirement and is listed in Appendix 1 or is equal to a listed impairment(s), we will find you disabled without considering your age, education, and work experience.

(e) *Your impairments(s) must prevent you from doing past relevant work.* If we cannot make a decision based on your current work activity or on medical facts alone, and you have a severe impairment(s), we then review your residual functional capacity and the physical and mental demands of the work you have done in the past. If you can still do this kind of work, we will find that you are not disabled.

(f) *Your impairment(s) must prevent you from doing any other work.* (1) If you cannot do any work you have done in the past because you have a severe impairment(s), we will consider your residual functional capacity and your age, education, and past work experience to see if you can do other work. If you cannot, we will find you disabled.

(2) If you have only a marginal education, and long work experience (i.e., 35 years or more) where you only did arduous unskilled physical labor, and you can no longer do this kind of work, we use a different rule (see § 404.1562).

3. Section 404.1521 is revised to read as follows:

§ 404.1521 What we mean by an impairment(s) that is not severe.

(a) *Non-severe impairment(s).* An impairment or combination of impairments is not severe if it does not significantly limit your physical or mental ability to do basic work activities.

(b) *Basic work activities.* When we talk about basic work activities, we mean the abilities and aptitudes necessary to do most jobs. Examples of these include—

(1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;

(2) Capacities for seeing, hearing, and speaking;

(3) Understanding, carrying out, and remembering simple instructions;

(4) Use of judgment;

(5) Responding appropriately to supervision, co-workers and usual work situations; and

(6) Dealing with changes in a routine work setting.

4. Section 404.1522 is revised to read as follows:

§ 404.1522 When you have two or more unrelated impairments—initial claims.

(a) *Unrelated severe impairments.* We cannot combine two or more unrelated severe impairments to meet the 12-month duration test. If you have a severe impairment(s) and then develop another unrelated severe impairment(s) but neither one is expected to last for 12 months, we cannot find you disabled, even though the two impairments in combination last for 12 months.

(b) *Concurrent impairments.* If you have two or more concurrent impairments which, when considered in combination, are severe, we must also determine whether the combined effect of your impairments can be expected to continue to be severe for 12 months. If one or more of your impairments improves or is expected to improve within 12 months, so that the combined effect of your remaining impairments is no longer severe, we will find that you do not meet the 12-month duration test.

5. A new § 404.1523 is added to read as follows:

§ 404.1523 Multiple impairments.

In determining whether your physical or mental impairment or impairments are of a sufficient medical severity that such impairment or impairments could be the basis of eligibility under the law, we will consider the combined effect of all of your impairments without regard to whether any such impairment, if considered separately, would be of sufficient severity. If we do find a medically severe combination of impairments, the combined impact of the impairments will be considered throughout the disability determination process. If we do not find that you have a medically severe combination of impairments, we will determine that you are not disabled (see § 404.1520).

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

For the reasons set out in the preamble, Part 416, Subpart I, Chapter III of Title 20, Code of Federal Regulations, is amended as set forth below.

20. CFR Part 416, Subpart I is amended as follows:

1. The authority citation for Subpart I is amended as follows:

Authority: Secs. 1102, 1614, and 1631 of the Social Security Act; 49 Stat. 647, as amended, 86 Stat. 1471, as amended by 86 Stat. 52, 86 Stat. 1475; 42 U.S.C. 1302, 1382c, and 1383; sec. 4 of Pub. L. 98-460, 98 Stat. 1800.

2. Section 416.920 is revised to read as follows:

§ 416.920 Evaluation of disability in general.

(a) *Steps in evaluating disability.* We consider all material facts to determine whether you are disabled. If you are doing substantial gainful activity, we will determine that you are not disabled. If you are not doing substantial gainful activity, we will first consider your physical or mental impairment(s). Your impairment(s) must be severe and meet the duration requirement before we can find you to be disabled. We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity and your age, education, and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review further.

(b) *If you are working.* If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your mental condition or your age, education, and work experience.

(c) *You must have a severe impairment.* If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled. We will not consider your age, education, and work experience.

(d) *When your impairment(s) meets or equals a listed impairment in Appendix 1.* If you have an impairment(s) which meets the duration requirement and is listed in Appendix 1 or is equal to a listed impairment(s), we will find you disabled without considering your age, education, and work experience.

(e) *Your impairment(s) must prevent you from doing past relevant work.* If we cannot make a decision based on your current work activity or on medical facts alone, and you have a severe impairment(s), we then review your residual functional capacity and the physical and mental demands of the work you have done in the past. If you can still do this kind of work, we will find that you are not disabled.

(f) *Your impairment(s) must prevent you from doing other work.* (1) If you cannot do any work you have done in the past because you have a severe impairment(s), we will consider your residual functional capacity and your age, education, and past work experience to see if you can do other

work. If you cannot, we will find you disabled.

(2) If you have only a marginal education, and long work experience (i.e., 35 years or more) where you only did arduous unskilled physical labor, and you can no longer do this kind of work, we use a different rule (see § 416.962).

3. Section 416.921 is revised to read as follows:

§ 416.921 What we mean by an impairment(s) that is not severe.

(a) *Non-severe impairment(s).* An impairment or combination of impairments is not severe if it does not significantly limit your physical or mental ability to do basic work activities.

(b) *Basic work activities.* When we talk about basic work activities, we mean the abilities and aptitudes necessary to do most jobs. Examples of these include—

(1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;

(2) Capacities for seeing, hearing, and speaking;

(3) Understanding, carrying out, and remembering simple instructions;

(4) Use of judgment;

(5) Responding appropriately to supervision, co-workers and usual work situations; and

(6) Dealing with changes in a routine work setting.

4. Section 416.922 is revised to read as follows:

§ 416.922 When you have two or more unrelated impairments—initial claims.

(a) *Unrelated severe impairments.* We cannot combine two or more unrelated severe impairments to meet the 12-month duration test. If you have a severe impairment(s) and then develop another unrelated severe impairment(s) but neither one is expected to last for 12 months, we cannot find you disabled, even though the two impairments in combination last for 12 months.

(b) *Concurrent impairments.* If you have two or more concurrent impairments which, when considered in combination, are severe, we must also determine whether the combined effect of your impairments can be expected to continue to be severe for 12 months. If one or more of your impairments improves or is expected to improve within 12 months, so that the combined effect of your remaining impairments is no longer severe, we will find that you do not meet the 12-month duration test.

§ 416.924 [Redesignated from § 416.923]

5. Existing § 416.923 is redesignated as § 416.924.

6. A new § 416.923 is added to read as follows:

§ 416.923 Multiple impairments.

In determining whether your physical or mental impairment or impairments are of a sufficient medical severity that such impairment or impairments could be the basis of eligibility under the law, we will consider the combined effect of all of your impairments without regard to whether any such impairment, if considered separately, would be of sufficient severity. If we do find a medically severe combination of impairments, the combined impact of the impairments will be considered throughout the disability determination process. If we do not find that you have a medically severe combination of impairments, we will determine that you are not disabled (see § 416.920).

[FR Doc. 85-5260 Filed 3-4-85; 8:45 am]

BILLING CODE 4190-11-M

Food and Drug Administration

21 CFR Part 864

[Docket No. 83N-0196]

Denial of Request To Change Classification of the Calibrator for Hematocrit Measurement

Correction

In FR Doc. 85-3020 beginning on page 5352 in the issue of Thursday, February 7, 1985, make the following correction: On page 5352, in the second column, in the heading "Government" should read "Governing".

BILLING CODE 1505-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD Regulation 6010.8-R, Amdt. No. 24]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); CHAMPUS and Medicare Eligibility in Relation to Age and End Stage Renal Disease

AGENCY: Office of the Secretary, DoD.

ACTION: Correction of amendment of final rule.

SUMMARY: This corrects Amendment No. 24 to the CHAMPUS Regulation, DoD 6010.8-R (32 CFR 199), published May 30, 1984 (49 FR 22475), pertaining to Medicare and CHAMPUS eligibility and the Medicare end stage renal disease program. This correction changes the effective date of the provisions given in the May 30, 1984 amendment affected by Pub. L. 95-292 from July 1, 1978 to October 1, 1978, revises the previously published language concerning attainment of age 65 under Medicare, and provides more detail concerning Medicare eligibility.

EFFECTIVE DATE: The effective date of Amendment 24 (published May 30, 1984, on page 22475) is corrected to read as follows. The provision of this technical change concerning the age limitation is effective retroactively to June 1, 1977. The provisions affected by Pub. L. 95-292, End Stage Renal Disease Program, are effective October 1, 1978.

FOR FURTHER INFORMATION CONTACT: Charles E. Guidice, Policy Branch, OCHAMPUS, telephone (303) 361-3586.

SUPPLEMENTARY INFORMATION: In FR Doc. 77-7834, appearing in the **Federal Register** on April 4, 1977, (42 FR 17972), the Office of the Secretary of Defense published its regulation, DoD 6010.8-R, "Implementation of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)," as part 199 of this title.

Amendment No. 24 published in the **Federal Register** on May 30, 1984 (49 FR 22475), intended to bring the CHAMPUS Regulation up to date with current provisions of Medicare regulations concerning eligibility, contains technical errors which have been corrected by this change.

The provisions affected by Pub. L. 95-292 were erroneously published as being effective on July 1, 1978, and should have been effective October 1, 1978 the effective date of the law.

In addition, there were a number of other technical changes dealing with CHAMPUS and Medicare eligibility under the Medicare end stage renal disease program that required change in order to bring CHAMPUS in consonance with Medicare regulations.

Amendment No. 24 failed to indicate that for Medicare purposes a beneficiary attains age 65 on the day preceding his or her actual date of birth. This method of determining when age is attained for coverage purposes affects the CHAMPUS termination date in cases where the beneficiary is born on the first day of a month. This revised amendment reconciles the CHAMPUS termination date and the Medicare age determination date.

This correction also adds further detail concerning CHAMPUS and

Medicare coverage under the end stage renal disease program by adding a statement concerning termination of Medicare coverage with the twelfth (12th) month after dialysis is discontinued and a statement concerning when Medicare coverage begins when a transplant is delayed more than 2 months after preparatory hospitalization.

All other provisions previously published as Amendment No. 24 remain the same and are published with this correction for clarity.

List of Subjects in 32 CFR Part 199.

Health insurance, Military personnel, Handicapped.

Accordingly, 32 CFR, Chapter I is amended as follows:

PART 199—IMPLEMENTATION OF THE CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES

1. Section 199.9 is amended by revising paragraph (e)(3)(vi) introductory text, (e)(3)(vi)(*a*), (*b*)(*i*), (*c*)(*i*) and (*c*)(*ii*), to read as follows:

§ 199.9 Eligibility.

* * * * *

(e) * * *

(3) * * *

(vi) *Attainment of entitlement to hospital insurance benefits (Part A) under Medicare.* Retirees and all other CHAMPUS eligible persons except dependents of active duty members lose their eligibility for CHAMPUS if they become eligible for Hospital Insurance Benefits (Part A) of Medicare. This is true even though the persons attaining such status live outside the United States where Medicare benefits are not available.

(*a*) *Loss of CHAMPUS eligibility: Age* All CHAMPUS beneficiaries, except dependents of active duty members, and beneficiaries not eligible for Part A of Medicare, lose CHAMPUS eligibility at midnight on the last day of the month preceding the month of attainment of age 65. (For Medicare purposes, an individual attains age 65 the day before his or her 65th birthday.) If the person is not eligible to Part A of Medicare, he or she must file a Social Security Administration "Notice of Disallowance" certifying to that fact with the Uniformed Service responsible for the issuance of his or her identification card so a new card showing CHAMPUS eligibility can be issued.

(*b*) *Loss of CHAMPUS eligibility: End stage renal disease and disability.*—(*i*) *End stage renal disease.* Medicare coverage begins with the third (3rd) month after the month a course of maintenance dialysis begins or with the first month of dialysis if the individual participates in a self-dialysis training program during the 3-month waiting period, or with the month in which a patient enters the hospital to prepare to receive a transplant (providing the transplant is performed within the following two months. If a transplant is delayed more than 2 months after the preparatory hospitalization, Medicare coverage will begin with the second month prior to the month of transplant. All beneficiaries, except dependents of active duty members, lose their CHAMPUS eligibility when Medicare coverage becomes available to a person because of chronic renal disease.

* * * * *

(*c*) *Reinstatement of CHAMPUS eligibility.*—(*i*) *Age limitation.* Beneficiaries who lose their CHAMPUS eligibility because they reached the age limitation and were eligible for Part A, cannot be reinstated under CHAMPUS.

(*ii*) *End Stage Renal Disease.* Medicare coverage ceases for end stage renal disease patients with the thirty-sixth (36th) month after the month in which a successful kidney transplant takes place or with the 12th month after the month in which the course of maintenance dialysis ends. At this point CHAMPUS eligibility resumes if the person is otherwise still eligible. He or she is required to take action to be reinstated as a CHAMPUS beneficiary and to obtain a new identification card.

* * * * *

2. Section 199.10 is amended by revising paragraph (e)(5)(iii)(*b*) to read as follows:

§ 199.10 Basic program benefits.

* * * * *

(e) * * *

(5) * * *

(iii) * * *

(*b*) In most instances, for costs related to kidney transplants, Medicare (not CHAMPUS) benefits will be applicable. If a CHAMPUS beneficiary participates as a kidney donor for a Medicare beneficiary, Medicare will pay for expenses in connection with the kidney transplant to include all reasonable preparatory, operation and postoperation recovery expenses associated with the donation (postoperative recovery expenses are limited to the actual period of recovery). (Refer to paragraph (e)(3)(vi) "Eligibility.")

* * * * *

(10 U.S.C. 1079, 1086; 5 U.S.C. 301)

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

February 27, 1985.

[FR Doc. 85-5250 Filed 3-4-85; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 153 and 154

[CGD 81-052]

Compliance Procedures for Self-Propelled Foreign Flag Vessels Carrying Hazardous Liquids and Bulk Liquefied Gases

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This Amendment revises the rules for self-propelled foreign flag vessels carrying bulk hazardous liquids and liquefied gases. It simplifies the examination and certification procedures for these vessels and makes them more consistent with the procedures for other tankers. It also reduces the amount of information the vessel owner must supply to Commandant (G-MTH) with the initial application. For the required examinations of a vessel accepted on the basis of an International Maritime Organization (IMO) Certificate of Fitness, the Amendment makes two important changes; it requires that the vessel owner request the examination directly with the Officer in Charge, Marine Inspection instead of through Commandant (G-MTH) and it reduces the advance notice for the request from fourteen to seven days. The fourteen day advance notice to Commandant (G-MTH) required previously is now required only for vessels accepted on the basis of Coast Guard plan review. In order to correspond with terminology used in the law, the Amendment replaces Letter of Compliance with Certificate of Compliance as the name of the document required for a foreign flag tanker carrying Subchapter O cargo in United States waters; however, until the new Certificate of Compliance is developed, the Letter of Compliance form will continue to be issued to fulfill the requirement for a Certificate of Compliance.

DATES: This Amendment is effective on April 19, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. E.P. Pfersich, Office of Merchant Marine Safety, (202) 426-1217.

SUPPLEMENTARY INFORMATION: On May 10, 1982, the Coast Guard published a proposal in the **Federal Register** (47 FR 20084) to revise the regulations governing self-propelled vessels carrying hazardous liquids and bulk liquefied gases. Intersted persons were given an opportunity to submit written comments to the Coast Guard concerning the proposal until August 9, 1982. On July 8, 1982 the Coast Guard received verbal comments from members of the Chemcial Carriers Association at the Association's meeting in New York, N.Y. A summary of the issues discussed at this meeting was placed in the public docket. A discussion of comments received is contained in the following paragraphs.

Discussion of Comments on Specific Sections

Section 1.01(b)(1) Organization. Reorganization of the Cargo and Hazardous Materials Division and the Merchant Marine Technical Division to form the Marine Technical and Hazardous Materials Division eliminated the need to revise subsection (iv) as proposed.

Section 153.1 Applicability. This section has been revised to be consistent with the authority citation for this part. Also, the footnote to this section has been removed since it is not essential to the understanding of the section. A new footnote 1 has been added. For further discussion of the new footnote see the preamble discussion of sections 153.9 and 154.5.

Section 153.9 Foreign flag vessel endorsement application and 154.5 Foreign flag vessel Certificate of Compliance endorsement application. One comment suggested that the Coast Guard specify a lead time for submission of the application for a Certificate of Compliance endorsed to authorize carriage of Subchapter O cargo. This is not necessary and is not the normal practice since the lead time needed depends on the relative completeness of an application. For a properly prepared, complete application it is usually possible for the Coast Guard to prepare a reply within five working days. A vessel owner may use that figure along with the time needed to transmit and receive exchanges of correspondence to estimate the lead time needed to complete the endorsement application process. The lead time required to request an examination for a Certificate of Compliance after the endorsement application is completed is specified in the regulations. To prevent delays to a vessel intended for service to the United States, it is good practice for the vessel owner to submit the application to the Coast Guard as soon as all of the application materials are available.

To conform with 46 U.S.C. 3711, this amendment replaces Letter of Compliance with Certificate of Compliance as the name of the document required for a foreign flag tanker carrying hazardous cargo. To minimize administrative changes the Coast Guard has chosen not to develop a new form entitled Certificate of Compliance at this time. This will be done at a later date. In the interim, the Letter of Compliance form will continue to be used and will serve the purpose of the Certificate of Compliance. The endorsement for the carriage of Subchapter O cargo will be the Cargoes and Restrictions List issued as an enclosure to the Letter of Compliance. To explain that the endorsed Letter of Compliance will be used in place of an endorsed Certificate of Compliance until the Certificate of Compliance form is developed, a new footnote 1 and footnote designations have been added to the following sections: 153.9, 153.900, 154.5 and 154.1802.

Sections 153.10 Equivalent standards and 153.214 Personnel emergency and safety equipment. The references to the "Letter of Compliance" were overlooked during drafting of the proposed rule. In this Amendment "Letter of Compliance" is changed to "Certificate of Compliance."

Sections 153.809 and 154.151 Procedures for having the Coast Guard examine a vessel for a Certificate of Compliance. The Coast Guard received six comments stating that twenty-four hours notice was not sufficient to arrange the examinations required by Section 153.808 and Section 154.150. The comments suggested forty-eight or seventy-two hours notice. An additional factor taken into account is the delayed capability in the Coast Guard's Marine Safety Information System (MSIS) to store the Cargoes and Restrictions list information needed by the Marine Inspection Offices. Until this capability is available, alternative methods for providing any outstanding information to the Marine Inspection Office before an examination necessitate a greater advance notice for the examination. Subsections 153.809(b)(2) and 154.151(b)(2) therefore have been revised to require seven days advance notice to request an examination for issue of a Certificate of Compliance. These subsections also have been revised to clarify that the examination request is separate from any other pre-arrival notice to the Coast Guard. When the capability of the MSIS is improved, the Coast Guard plans to reduce the required advance notice.

One comment stated that leaving the requirement for submission of plans before the examination to the discretion of the Officer in Charge, Marine Inspection, would be a hardship as an owner would not know from port to port whether or not plans would be required. This comment suggested that for examinations the required plans should be submitted twenty-four hours in advance. Two comments stated that it would be an unreasonable burden on foreign owners to deliver plans to the Officer in Charge, Marine Inspection, and that this provision alone might cause vessel delays greater than those experienced under the existing system. The Coast Guard agrees with the latter viewpoint. The original purpose of providing plans for the required examination was to make sure that the vessel was constructed to the plans approved during plan review; this is no longer necessary. The Coast Guard feels that the plans available on board a chemical or liquefied gas tanker should be sufficient to allow a Marine Inspector to conduct the required examination. Two additional comments were received supporting this position. Consequently, the Coast Guard has rewritten subsections 153.809(b)(3) and 154.151(b)(3) to require the specified plans to be available on board the vessel for the use of the Marine Inspector before the beginning of the examination required by sections 153.808 and 154.150.

In the proposed rule, sections 153.809(c) and 154.151(c) were written to require a 14 day advance notice to Commandant (G-MTH) only for the initial U.S. arrival of a vessel accepted on the basis of Coast Guard plan review. For subsequent examinations the proposed rule would have permitted the advance notice from the vessel owner to be sent directly to the cognizant Marine Inspection Office. Since such vessels will be subject to continued review of alterations and repairs by Commandant (G-MTH), the text of sections 153.809(c) and 154.151(c) has been revised to require the 14 day advance notice to Commandant (G-MTH) for any Certificate of Compliance examination of a plan review vessel; rather than just the initial examination. Thus for plan review vessels the present requirements for advance notice are retained; however, since virtually no vessels subject to Part 153 or Part 154 are accepted on the basis of plan review, there is no significant consequence to this approach.

Sections 153.900 Certificates, letters, endorsements required and 154.1802 Certificates, letters, and endorsements: Foreign flag vessels. One comment pointed out that with the removal of sections 153.811 and 154.153 foreign flag ships are prohibited from entering U.S. ports with Subchapter O cargo on board if they do not possess a valid Certificate of Compliance endorsed to authorize carriage of Subchapter O cargo. As stated in the preamble of the Notice of Proposed Rulemaking, the Coast Guard considers it unnecessarily burdensome to require a vessel to sail to a U.S. port without cargo on board solely for the purpose of being examined for issue of a Certificate of Compliance. Accordingly, sections 153.900 and 154.1802 have been revised to permit a vessel without a valid Certificate of Compliance to enter U.S. waters with Subchapter O cargo on board, when entry is for the purpose of being examined under 153.808 or 154.150.

Sections 153.900 and 154.1802 have been revised by adding reference to a footnote explaining that the Letter of Compliance endorsed to authorize carriage of Subchapter O cargo will be used in place of an endorsed Certificate of Compliance until the Certificate of Compliance form is developed. For further discussion see the preamble to sections 153.9 and 154.5.

Sections 153.903 Expiration of IMO Certificates and 154.1803 Expiration of Certificates of Compliance. As proposed, sections 153.903 and 154.1803 stated that upon expiration of a vessel's IMO Certificate of Fitness, its Certificate of Compliance becomes invalid for the carriage of cargoes listed in Table I of 46 CFR 153 or Table 4 of 46 CFR 154. Two comments pointed out that the Coast Guard frequently authorizes new cargoes for carriage before they are incorporated into Table I of 46 CFR 153 or Table 4 of 46 CFR 154. This carriage is authorized under sections 153.5(b) or 154.12 as appropriate. Sections 153.903 and 154.1803 have been revised to state that should a vessel's IMO Certificate of Fitness expire, its Certificate of Compliance becomes invalid for the carriage of cargoes authorized under 153.5(b) or 154.12 as well as those listed in Table I or Table 4.

Appendix I—List of Cargoes Not Regulated Under Part 153 or Subchapter D. The description of Table II has been reworded to describe more clearly its contents and to change "Letter of Compliance" to "Certificate of Compliance."

In this Amendment "Commandant (G-MHM)" has been changed to "Commandant (G-MTH)" to reflect the new organization of the Coast Guard's Office of Merchant Marine Safety. Throughout this Amendment "IMCO" has been changed to "IMO". IMO is the abbreviation for International Maritime Organization which was formerly the Intergovernmental Maritime Consultative Organization (IMCO). Finally, several typographical errors in the proposed rule have been corrected in this Amendment.

Several comments were received which addressed requirements in 46 U.S.C. 3703. Since legislative changes are beyond the scope of this rulemaking, these comments have not been addressed in the preamble. They have been retained on file for use in any legislative changes which may be undertaken in the future.

Regulatory Evaluation

This final rule is considered to be non-major under Executive Order 12291 and non-significant under the DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). A final regulatory evaluation has been prepared and placed in the rulemaking docket. It may be inspected or copied in Room 2110, 2100 Second Street, S.W., Washington, D.C. from 8:00 a.m to 3:30 p.m. Copies may also be obtained by contacting the Executive Secretary, Marine Safety Council, U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, D.C. 20593 (202-426-1477). The principal benefit of this rulemaking will be reduced vessel delays associated with examination arrangements; this is estimated to be $1.2 million per year. Additional benefits will include an estimated 364 hour reduction in annual paperwork burden resulting in savings of $13,000 to the Coast Guard.

Regulatory Flexibility Evaluation

The agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities. We do not expect this rulemaking to impose any new costs on vessel owners and operators. The $1.2 million per year benefits which will result from reduced vessel delays equals $2,400 per vessel per year which is only 10 percent of one day's operating costs. Though beneficial, we do not consider the impact significant.

Environmental Analysis

This regulation has been evaluated in accordance with DOT order 5610.IC National Environmental Policy Act Implementing Procedures and has been found to be Categorically Excluded from further environmental documentation. A copy of the Categorical Exclusion Determination statement has been placed in the public docket.

Paperwork Reduction Act

This rulemaking contains information collection requirements. These items have been submitted to the Office of Management and Budget for review under the Paperwork Reducton Act (44 USC 3501) and have been approved by OMB. The section numbers and the corresponding OMB approval number are as follows: sections 153.9, 153.809 and 153.901 under OMB approval number 2115-0089; sections 154.5, 154.151 and 154.1802 under OMB approval number 2115-0113. These numbers will be added to the display table in § 150.105 in a subsequent document.

Drafting Information

The principal persons involved in drafting this rulemaking are: Mr. E.P. Pfersich, Project Manager, Office of Merchant Marine Safety and Mr. Michael N. Mervin, Project Attorney, Office of the Chief Counsel.

List of Subjects

46 CFR Part 153

Tank vessels, Barges, Hazardous materials transportation.

46 CFR Part 154

Natural gas vessels, Gases, Hazardous materials transportation, Marine safety, Foreign trade, Harbors.

Accordingly, Title 46 of the Code of Federal Regulations is hereby amended as follows:

PART 153—SAFETY RULES FOR SELF-PROPELLED VESSELS CARRYING HAZARDOUS LIQUIDS

1. By revising the authority citation for Part 153 to read as follows:

Authority: 46 U.S.C. 3703, 49 U.S.C. 1801-11; 49 CFR 1.46 (n)(4) and (t).

2. By removing footnote 1 to § 153.1 and revising § 153.1 to read as follows:

§ 153.1 Applicability.

This part prescribes rules that apply to tankships that have on board the cargoes described in § 153.5 for the purpose of implementing the laws governing vessels having on board hazardous liquid cargoes in bulk.

§ 153.2 [Amended].

3. By removing the definition for "Letter of Compliance" from § 153.2

4. By amending § 153.2 by adding in alphabetical sequence the following definitions:

"Certificate of Compliance" means a certificate issued by the Coast Guard that a foreign flag vessel had been examined and found to comply with the regulations in this chapter.

"Officer in Charge, Marine Inspection," is defined in § 1.05(b) of this chapter.

5. By revising § 153.7(a)(1) and adding (a)(3) to read as follows:

§ 153.7 Existing tankships.

(a) * * *

(1) "Permit" means a Certificate of Inspection, Letter of Compliance, or Certificate of Compliance.

* * * * *

(3) "Letter of Compliance" in this section means a letter issued by the Coast Guard before 27 December 1977 which permitted a foreign flag tankship to carry a bulk cargo regulated under this part.

6. By revising § 153.9, adding a new footnote 1 and revising footnote 2, to read as follows:

§ 153.9 Foreign flag vessel endorsement application.

(a) *Application for a vessel whose flag administration issues IMO Certificates.* A person who desires a Certificate of Compliance [1] endorsed with the name of a cargo in Table I of this part, as described in § 153.900, must submit to Commandant (G–MTH) an application which includes a copy of the IMO Certificates [2] issued by the vessel's flag administration with:

(2) An additional classification society statement that the vessel complies with § 153.370, § 153.371, and § 153.438 if a person desires a Certificate of Compliance endorsed with the name of a cargo whose vapor pressure exceeds 100 kPa absolute at 37.8 °C (approximately 14.7 psia at 100 °F).

(b) *Application for a vessel whose flag administration does not issue IMO Certificates.* A person who desires a Certificate of Compliance [1] endorsed with the name of a cargo in Table I of this part, as described in § 153.900, must submit an application to Commandant (G–MTH) that includes the following information:

* * * * *

(c) *Conditions applying to all Certificate of Compliance applications.*

(1) If requested by the Commandant (G–MTH), a person desiring a Certificate of Compliance for a vessel must furnish any other vessel information such as plans, design calculations, test results, certificates, and manufacturer's data, that the Coast Guard needs to determine that the vessel meets the standards of this part.

(2) Correspondence with the Coast Guard and vessel information submitted under this part must be in English except IMO Certificates which may be in French.

7. By revising § 153.10(a) to read as follows:

§ 153.10 Equivalent standards.

(a) A vessel that does not meet each standard required in this part for an endorsement on a Certificate of Inspection or Certificate of Compliance may meet an alternate standard if the Commandant (G–MTH) finds that the alternate standard provides an equivalent or greater level of protection for the purpose of safety.

* * * * *

8. By revising the introductory text of § 153.16 to read as follows:

§ 153.16 Requirements for foreign flag vessel permits.

To have its Certificate of Compliance endorsed with the name of a cargo listed in Table I, a foreign flag vessel must:

* * * * *

9. By revising § 153.214(b)(2) to read as follows:

§ 153.214 Personal emergency and safety equipment.

* * * * *

(b) * * *

(2) A set of overalls or large apron, boots, long sleeved gloves, and goggles, each made of materials resistant to the cargoes in Table I that are endorsed on the Certificate of Inspection or Certificate of Compliance.

* * * * *

10. By revising § 153.808 to read as follows:

§ 153.808 Examination required for a Certificate of Compliance.

Before a vessel receives either an initial or a reissued Certificate of Compliance endorsed with the name of a cargo from Table I of this part, the vessel must call at a U.S. port for an examination during which the Officer in Charge, Marine Inspection, determines whether or not the vessel meets the requirements of this chapter.

11. By revising the introductory text and paragraphs (b) and (c) in § 153.809 to read as follows:

§ 153.809 Procedures for having the Coast Guard examine a vessel for a Certificate of Compliance.

To have the Coast Guard examine the vessel for a Certificate of Compliance, as required in § 153.808, the owner of a foreign flag vessel must proceed as follows:

* * * * *

(b) Except when paragraph (c) of this section applies,

(1) after receiving notification from Commandant (G–MTH) that review is complete and the application is acceptable, dispatch the vessel to a United States port;

(2) notify the Officer in Charge, Marine Inspection, for the port where the vessel is to be inspected at least seven days before the vessel arrives and arrange the exact time and other details of the examination. This notification is in addition to any other pre-arrival notice to the Coast Guard required by other regulations and must include:

(i) The name of the vessel's first U.S. port of call;

(ii) the date the vessel is scheduled to arrive;

(iii) the name and telephone number of the owner's local agent; and

(iv) the names of all cargoes listed in Table I of this part that are on board the vessel;

(3) make sure that the following plans are available on board the vessel for the use of the Marine Inspector before beginning the examination required by § 153.808:

(i) a general arrangement (including the location of firefighting, safety, and lifesaving gear);

(ii) a capacity plan;

(iii) a schematic diagram of cargo piping on deck and in tanks (including the location of all valves and pumps); and

(iv) a schematic diagram of cargo tank vent piping (including the location of relief valves and flame screens).

(c) If the vessel was accepted for U.S. service on the basis of Coast Guard plan review under § 153.9(b), the vessel owner shall notify Commandant (G–MTH) fourteen days prior to the vessel's arrival at a U.S. port. This notification must include:

(1) The name of the vessel's first U.S. port of call;

(2) the date the vessel is scheduled to arrive;

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[1] Until the Certificate of Compliance form is developed, the Letter of Compliance with a Subchapter O endorsement for the carriage of hazardous liquids will serve the purpose of the endorsed Certificate of Compliance.

[2] Generally, the IMO Certificate is sufficient for the Coast Guard to endorse the vessel's Certificate of Compliance with the names of those cargoes in Table I that are listed on the IMO Certificate. The IMO Certificate would not be sufficient when the Certificate authorized a cargo that is not permitted in U.S. waters, when the Certificate is in error or waives part of the Code, or when the regulations in this part exceed those of the Code.

(3) the name and telephone number of the owner's local agent; and

(4) the names of all cargoes listed in Table I of this part that are board the vessel.

§ 153.810 [Removed]

12. By removing § 153.810.

§ 153.811 [Removed]

13. By removing § 153.811.

14. By revising § 153.900 (b) (1) and (2) and (c) (1) and (2) to read as follows:

§ 153.900 Certificates, letters, endorsements required.

* * * * *

(b) * * *

(1) An IMO Certificate issued by the flag administration and, except when entering United States waters to be examined as required by § 153.808, a Certificate of Compliance issued and endorsed under this part with the name of the cargo; or

(2) prior written authorization under § 153.5(b) from the Commandant (G–MTH).

(c) * * *

(1) Except when entering United States waters to be examined as required by § 153.808, a Certificate of Compliance issued and endorsed under this part with the name of the cargo; or

(2) written authorization under § 153.5(b) from the Commandant (G–MTH).

15. By revising § 153.901 to read as follows:

§ 153.901 Certificates or letters required to be on bridge.

No person may operate a U.S. flag tankship unless the endorsed Certificate of Inspection is posted in a conspicuous place in the wheelhouse.

16. By revising § 153.902 to read as follows:

§ 153.902 Expiration of Certificates of Compliance.

A Certificate of compliance expires after a period not to exceed twenty-four months from the date of examination under § 153.808.

17. By adding a new § 153.903 to read as follows:

§ 153.903 Expiration of IMO Certificates.

If a vessel's IMO Certificate expires or otherwise becomes invalid, its Certificate of Compliance becomes invalid for the carriage of cargoes listed in Table I of this part or authorized under § 153.5(b). To maintain the validity of the Certificate of Compliance, the vessel's owner must submit a copy of any revised or reissued IMO Certificate to Commandant (G–MTH).

18. By revising § 153.904 to read as follows:

§ 153.904 Limitations in the endorsement.

No person may operate a tankship unless that person complies with all limitations in the endorsement on the tankship's Certificate of Inspection or Certificate of Compliance.

19. By revising the introductory text of Appendix I to read as follows:

Appendix I—List of Cargoes Not Regulated Under Subchapter D or Under Subchapter O

The following bulk liquid cargoes may be carried in a vessel which does not have a Certificate of Inspection or a Certificate of Compliance endorsed under Subchapter D nor under Subchapter O of this chapter:

* * * * *

PART 154—SAFETY STANDARDS FOR SELF-PROPELLED VESSELS CARRYING BULK LIQUEFIED GASES

20. By revising the authority citation to read as follows:

Authority: 46 U.S.C. 3703, 49 U.S.C. 1801–11; 49 CFR 1.46(n)(4) and (t).

§ 154.3 [Amended]

21. By removing the definition of "Letter of Compliance" from § 154.3.

§ 154.3 [Amended]

22. By amending § 154.3 by adding in alphabetical sequence the following definitions:

"Certificate of Compliance," means a certificate issued by the Coast Guard that a foreign flag vessel had been examined and found to comply with the regulations in this chapter.

"Officer in Charge, Marine Inspection," is defined in § 1.05(b) of this chapter.

23. By revising the introductory text of paragraph (a) and (a)(9) and paragraphs (b) and (c) in § 154.5 to read as follows:

§ 154.5 Foreign flag vessel: Certificate of Compliance endorsement application.

(a) A person who desires an endorsed Certificate of Compliance [1] required under § 154.1802(a) for a foreign flag vessel, whose flag administration issues IMO Certificates, must submit to the Commandant (G–MTH), U.S. Coast Guard, Washington, D.C., 20593, an application which includes a copy of the IMO Certificate issued to the vessel with:

* * * * *

(9) Any additional plans, certificates, and information that the Commandant (G–MTH) may request.

(b) A person who desires an endorsed Certificate of Compliance [1] required under § 154.1802(b) for a foreign flag vessel, whose flag administration does not issue IMO Certificates, must submit to the Commandant (G–MTH) the plans, calculations, and information under § 154.4(b).

(c) Correspondence to the Coast Guard and vessel information submitted under this part must be in English, except IMO Certificates which may be in French.

24. By deleting the existing footnote 1 and adding a new footnote 1 to read as follows:

[1] Until the Certificate of Compliance form is developed, the Letter of Compliance with a Subchapter C endorsement for the carriage of liquefied gases will serve the purpose of the endorsed Certificate of Compliance.

25. By revising the undesignated center heading preceding § 154.150 to read as follows:

Examination Requirements for Foreign Flag Vessels

26. By revising § 154.150 to read as follows:

§ 154.150 Examination required for a Certificate of Compliance.

Before a vessel receives an initial or reissued Certificate of Compliance endorsed with the name of a cargo from Table 4 of this part, the vessel must call at a United States port for an examination, during which the Officer in Charge, Marine Inspection, determines whether or not the vessel meets the requirements of this chapter.

27. By revising § 154.151 to read as follows:

§ 154.151 Procedures for having the Coast Guard examine a vessel for a Certificate of Compliance.

To have the Coast Guard examine the vessel for a Certificate of Compliance, as required in § 154.150, the owner of a foreign flag vessel must proceed as follows:

(a) After submitting an application under § 154.5, await notification by the Commandant (G–MTH) that review of the vessel's plans or IMO Certificate and supporting documents is complete.

(b) Except when paragraph (c) of this section applies,

(1) after receiving notification from Commandant (G–MTH) that review is complete and the application is acceptable, dispatch the vessel to the United States port;

(2) notify the Officer in Charge, Marine Inspection, for the port where the vessel is to be inspected at least seven days before the vessel arrives and arrange the exact time and other details of the examination. This notification is

in addition to any other pre-arrival notice to the Coast Guard required by other regulations and must include:

(i) The name of the vessel's first U.S. port of call;

(ii) the date the vessel is scheduled to arrive;

(iii) the name and telephone number of the owner's local agent; and

(iv) the names of all cargoes listed in Table 4 of this part that are on board the vessel;

(3) make sure that the following items are available on board the vessel for the use of the Marine Inspector before beginning the examination required by § 154.150:

(i) A general arrangement (including the location of firefighting, safety, and lifesaving gear); and

(ii) the cargo manual required by § 154.1810.

(c) if the vessel was accepted for U.S. service on the basis of Coast Guard plan review under § 154.5(b), the vessel owner must notify Commandant (G–MTH) fourteen days prior to the vessel's arrival at a U.S. port. This notification must include:

(1) the name of the vessel's first U.S. port of call;

(2) the date the vessel is scheduled to arrive;

(3) the name and telephone number of the owner's local agent; and

(4) the names of all cargoes listed in Table 4 of this part that are on board the vessel;

§ 154.152 [Removed]

28. By removing § 154.152.

§ 154.153 [Removed]

29. By removing § 154.153.

30. By revising § 154.1802(a) (1) and (2) and § 154.1802(b) (1) and (2) to read as follows:

§ 154.1802 Certificates, letters, and endorsements: Foreign flag vessels.

(a) * * *

(1) an IMO Certificate issued by the flag administration that is endorsed with the name of the cargo that it is allowed to carry, and, except when entering United States waters to be examined as required by § 154.150, a Certificate of Compliance [1] issued by the Coast Guard endorsed under this part with the name of the cargo that it is allowed to carry; or

(2) special approval under § 154.12.

(b) * * *

(1) except when entering United States waters to be examined as required by § 154.150, a Certificate of Compliance [1] issued by the Coast Guard endorsed under this part with the name of the cargo it is allowed to carry; or

(2) special approval under § 154.12.

* * * * *

31. By revising § 154.1803 to read as follows:

§ 154.1803 Expiration of Certificates of Compliance.

(a) A Certificate of Compliance expires after a period not to exceed twenty-four months from the date of the examination under § 154.150.

(b) If a vessel's IMO Certificate of Fitness expires or otherwise becomes invalid, its Certificate of Compliance becomes invalid for the carriage of cargoes listed in Table 4 of this part or authorized by special approval under § 154.12. To maintain the validity of the Certificate of Compliance, the vessel's owner must submit a copy of any revised or reissued IMO Certificate to Commandant (G–MTH).

32. By revising § 154.1808 to read as follows:

§ 154.1808 Limitations in the endorsement.

No person may operate a vessel unless that person complies with all limitations in the endorsement on the vessel's Certificate of Inspection or Certificate of Compliance.

Dated: February 27, 1985.

B.G. Burns,

Captain, U.S. Coast Guard, Acting Chief, Office of Merchant Marine Safety.

[FR Doc. 85–5177 Filed 3–4–85; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 651

[Docket No. 31230–252]

Atlantic Groundfish (Cod, Haddock, and Yellowtail Flounder); Technical Amendment

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule; technical amendments.

SUMMARY: NOAA issues this final rule implementing technical amendments to the final regulations for the Interim Fishery Management Plan for Atlantic Groundfish (Interim Plan). Paragraphs of § 651.20 Large mesh area and § 651.21 Closed areas must be revised in relation to the new boundary between the United States and Canada in the Gulf of Maine announced on October 22, 1984, by the International Court of Justice. The intended effect is to present the new boundaries for the Large mesh area and Closed area II in the fishery conservation zone in the Gulf of Maine.

EFFECTIVE DATE: March 5, 1985.

FOR FURTHER INFORMATION CONTACT: William B. Jackson, 202–634–7432.

SUPPLEMENTARY INFORMATION: NOAA published a final rule on October 31, 1984, (49 FR 43676) to implement an amendment establishing the new boundary between the United States and Canada in the Gulf of Maine. A full discussion is found at 49 FR 43676 and is not repeated here. The boundary technical amendment was effective October 26, 1984 and was effective for 50 CFR Part 611, §§ 611.9, 611.50, 611.60, and 611.61 only.

NOAA issued final rules to implement the Interim Plan on October 4, 1982 (47 FR 43705). Points delineating by latitude and longitude parts of the Large-mesh area at § 651.20(a) (17) and (18) and parts of Closed area II § 651.21(2)(i)–(vi) now lie within Canadian waters.

NOAA, therefore, issues this final rule to revise those points of reference found at §§ 651.20(a) and 651.21(2), as discussed above, to alleviate any possible confusion that might occur as to the current lines of delineation for the Large mesh area and Closed area II.

List of Subjects in 50 CFR Part 651

Fish, Fisheries, Reporting and recordkeeping requirements.

Dated: February 27, 1985.

William G. Gordon,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

PART 651—[AMENDED]

For the reason set forth in the summary, 50 CFR Part 651 is amended as follows:

1. The authority citation for Part 651 is as follows:

Authority: 16 U.S.C. 1801 *et seq.*

§ 651.20 [Amended]

2. In § 651.20, paragraphs (a) (17) and (18) are revised to read as follows:

§ 651.20 Large-mesh area and gear limitations.

(a) * * *

(17) 42°10′ N. latitude, 67°09′ W. longitude;

(18) 41°00′ N. latitude, 66°10′ W. longitude;

* * * * *

§ 651.21 [Amended]

3. In § 651.21, paragraphs (a)(2)(i)–(iv) are revised and paragraphs

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(a)(2)(v)–(vi) are removed to read, as follows:

§ 651.21 Closed areas.

(a) * * *

(2) * * *

(i) 41°59′ N. latitude, 67°00′ W. longitude;

(ii) 41°15′ N. latitude, 67°00′ W. longitude;

(iii) 41°15′ N. latitude, 66°22′ W. longitude; and

(iv) 41°59′ N. latitude, 67°00′ W. longitude.

* * * * *

[FR Doc. 85–5272 Filed 3–4–85; 8:45 am]

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Proposed Rules

Federal Register
Vol. 50, No. 43
Tuesday, March 5, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Reg. Z; Doc. No. R-0539]

Truth in Lending; Intent To Make Determination of Effect on State Laws; Arizona

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of intent to make preemption determinations.

SUMMARY: The Board is publishing for comment a proposed determination as to whether certain provisions in the law of Arizona are inconsistent with the Truth in Lending Act or Regulation Z and therefore preempted. A determination that the provisions are preempted, which would trigger the prohibition against giving such preempted disclosures, would have an effective date of October 1, 1986, although creditors would have the option of complying from the date of the Board's determination.

This notice also includes a discussion of the procedures that the Board follows upon receipt of a request for a determination and a statement of the principles used in making preemption determinations.

DATE: Comments must be received on or before May 6, 1985.

ADDRESS: Comments should be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, or delivered to Room B-2223, 20th and Constitution Avenue, NW., Washington, D.C., between 8:45 a.m. and 5:15 p.m. Comments may be inspected in Room B-1122 between 8:45 a.m. and 5:15 p.m.

FOR FURTHER INFORMATION CONTACT: Margaret Stewart, Senior Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, at (202) 452-2412.

SUPPLEMENTARY INFORMATION:

(1) General

The Board has received a request for a determination as to whether certain provisions of Arizona law are inconsistent with the Truth in Lending Act and Regulation Z, and therefore, preempted. Section 111(a)(1) of the Truth in Lending Act authorizes the Board to determine whether any inconsistency exists between Chapters 1, 2, and 3 of the Federal act or regulation and any state law relating to the disclosure of information in connection with consumer credit transactions. These proposed preemption determinations are issued under authority delegated to the Director of the Division of Consumer and Community Affairs, as set forth in the Board's Rules Regarding Delegation of Authority (12 CFR 265.2(h)(2)).

The procedures for requesting a determination and the general procedures followed in making a determination are contained in Appendix A to 12 CFR Part 226. In addition, in order to obtain information and comment from interested parties as early as possible in the course of making determinations, the Board (1) forwards copies of requests for determinations to the attorneys general of the states involved and to the Federal Reserve Banks in whose districts the states are located, and (2) sends copies of the proposed determinations and final determinations directly to the requesting party, the State attorney general, and the Federal Reserve Bank.

(2) Principles Followed in Preemption Analysis

In determining whether a state law is inconsistent with the Federal provisions, § 226.28(a)(1) of Regulation Z, which implements section 111 of the act, provides that State requirements are inconsisent with the Federal provisions if the State law requires a creditor to make disclosures or take actions that contradict the Federal law. A State law is contradictory, and therefore preempted, if it significantly impedes the operation of the Federal law or interferes with the purposes of the Federal statute. Two examples of contradictory State laws are included in § 226.28(a)(1). They are (1) a law that requires the use of the same term for a different amount or a different meaning than the Federal law, or (2) a law that requires the use of a different term than the Federal term to describe the same item.

In previous preemption determinations (48 FR 4454, February 1, 1983) the Board developed the following principles that were applied in making the current proposed determinations:

- For purposes of making preemption determinations, State law is deemed to require the use of specific terminology in the State disclosures if the statute uses certain terminology in the disclosure provision.
- A State disclosure does not "describe the same item," under § 226.28(a)(1), if it is not the functional equivalent of a Federal disclosure.
- Preemption occurs only in those transactions in which an actual inconsistency exists between the State law and the Federal law.
- A State law is not inconsistent merely because it requires more information than Federal law or requires disclosure in transactions where Federal law requires none.

In general, preemption determinations will be limited to those provisions of State law identified in the request for a determination. At the Board's descretion, however, other State provisions that may be affected by the Federal law will also be addressed.

(3) Effect of Preemption Determination

If the Board determines that a state-required disclosure is inconsistent with the Federal law, the State law is preempted to the extent of the inconsistency. Creditors in that State may not make disclosures using the inconsistent term or form, even on a separate document from the Federal disclosures. Preemption determinations have an effective date of the October 1 that follows the determination by at least 6 months, as required by section 105(d) of the act. Since a final determination is not expected before April 1, 1985, the proposed determination, if adopted, will have an effective date of October 1, 1986, although creditors could begin complying with the determination before that time.

A determination on provisions in the law of one state will have no effect on the validity of similar provisions in other states.

(4) Discussion of Specific Request and Proposed Determination

The Board has been asked to examine section 6-621A.2 of Arizona's Small Loans Act as amended April 24, 1984. The requesting party believes that several requirements imposed by this provision in Arizona's law are inconsistent with section 128 of the federal act and §§ 226.18 and 226.27 of Regulation Z.

The pertinent provisions of the state statute (which became effective January 1, 1985) are as follows:

6-621. *Requirements for loan transactions*

A. Every licensee shall

* * * * *

2. Give to the borrower, or if there are two borrowers, to one of them, a statement written in both English and Spanish which shall read as follows:

I understand that the documents I have signed in this transaction obligate me to pay to ——— (Name of Lender) the total sum of $——— And that I am required to make a total of ——— payments of $——— each and ——— payments of $——— to be paid ——— (Weekly or Monthly) over the life of the loan. I further understand that, in the event that I fail to make the payments according to the terms contained in these documents, I may lose the property which I have given as security for this loan which is the following:

(Description of Property Given as Security)

Borrower

Borrower

The requesting party has asked for a determination as to whether the Spanish language requirement imposed by this section contradicts § 226.27 of Regulation Z, which provides that all of the disclosures required by the regulation be made in the English language (except in the Commonwealth of Puerto Rico). Since the State requires that the prescribed notice be given in both Spanish and English, the Board proposes to determine that the State's Spanish language requirement does not contradict and is not preempted by the Federal law because under the regulation Spanish translations are permissible as additional information. (See Regulation Z Official Staff Commentary § 226.27-2.)

The requesting party also argues that two terms required to be used in the prescribed notice are preempted by the Federal act and regulation. The term "Total Sum of $———" corresponds to § 226.18(h) of Regulation Z, which requires disclosure of the total dollar amount owed, using the term "total of payments." Because the state law requires the use of a different term than Federal law to describe the same item, the Board proposes to determine that the State disclosure is preempted.

The second term that the requesting party believes is preempted is the term "Total of ——— payments," because it allegedly requires the use of the federally prescribed term "total of payments" to represent a different meaning from the Federal law. The Board believes that the State term is not the same as the federally required "total of payments" disclosure because it requires the number of payments to be substituted for the blank shown in the phrase, clearly distinguishing it from the federal term, both in language and meaning. For instance, an example of the state disclosure would be "Total of 60 Payments" while the Federal term would appear as "total of payments = $10,000." Because the State law does not in this instance prescribe a Federal term, the Board proposes to determine that the State disclosure does not contradict Federal law and is therefore not preempted.

(5) Comment requested

Interested persons are invited to submit comments regarding the proposed determinations. After the close of the comment period and analysis of the comments received, notice of final action on the proposals will be published in the **Federal Register**.

List of Subjects in 12 CFR Part 226

Advertising, Banks, banking, Consumer protection, Credit, Federal Reserve System, Finance, Penalties; Truth in lending.

Board of Governors of the Federal Reserve System, February 27, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85-5214 Filed 3-4-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 84-ANM-27]

Proposed Amendment to VOR Federal Airways, Aspen, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend segements of VOR Federal Airways V-108, V-134, V-361 and V-421. This action is proposed due to the commissioning of the Red Table, CO, very high frequency omni-directional radio range and distance measuring equipment (VOR/DME).

DATES: Comments must be received on or before April 19, 1985.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Northwest Mountain Region, Attention: Manager, Air Traffic Division, Docket No. 84-ANM-27, Federal Aviation Administration, 17900 Pacific Highway South, C-68966, Seattle, WA 98168.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Burton Chandler, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing to FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 84-ANM-27." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket

both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426–8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend segments of VOR Federal Airways V–108, V–134, V–361 and V–421 due to the commissioning of the Red Table, CO, VOR-DME. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 3, 1984.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

VOR Federal Airways, Aviation safety.

PART 71—[AMENDED]

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

V–108 [Amended]

By removing the words "Linden, CA. From Colorado Springs, CO;" and substituting the words "Linden, CA. From Meeker, CO; via Red Table, CO; Colorado Springs, CO;"

V–134 [Amended]

By removing the words "to INT Grand Junction 075° and Kremmling 203° radials." and substituting the words "Red Table, CO; Denver, CO."

V–361 [Amended]

By removing the words "From Kremmling, CO," and by substituting the words "From Farmington, NM, via Montrose, CO; INT Montrose 024 °T(010 °M) and Red Table, CO, 224 °T (211 °M) radials; Red Table; Kremmling, CO;"

V–421 [Amended]

By removing the words "INT Gunnison 010° and Kremmling, 203° radials, to Kremling." and by substituting the words "Red Table, CO; to Kremling, CO."

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1346(a) and 1354(A)); (49 U.S.C. 106(g) Revised, Pub. L. 97–449, January 12, 1983)); and 14 CFR 11.65)

Issued in Washington, D.C., on February 26, 1985.

John W. Baier,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 85–5209 Filed 3–4–85; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 85–ANM–6]

Proposed Removal of the Rifle; Colorado Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposed to remove the Rifle, Colorado, Transition Area. This transition area was established to ensure segregation of aircraft operating in instrument weather conditions, and other aircraft operating in visual weather conditions. It was established in anticipation of instrument approach procedures to the Garfield County Airport using the Rifle NDB. However, the Rifle NDB has failed certification tests despite efforts to correct the deficiencies and approach procedures cannot be authorized. Therefore, the transition area is no longer necessary.

DATES: Comments must be received on or before April 8, 1985.

ADDRESSES: Send comments on the proposal to: Manager, Airpace and Procedures Branch, ANM–530 FAA, Northwest Mountain Region, Docket No. 85–ANM–6, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

The official docket may be examined in the Office of Regional Counsel at the same address.

An informal docket may also be examined during normal business hours in the Airspace and Procedures Branch at the same address.

FOR FURTHER INFORMATION CONTACT: Art Corwin, Airspace and Procedures Specialist, ANM–532, at the same address. The telephone number is (206) 431–2532.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspect of the proposal. Communications should identify the airspace docket and be submitted to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 85–ANM–6." The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Airspace & Procedures Branch, 17900 Pacific Highway South, Seattle, Washington, 98168, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal

Aviation Administration, at the addresses listed above. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure:

The proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to remove the Rifle, Colorado, transition area and thereby release that airspace below 1,200 feet above the ground level for other than instrument weather operations. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 3, 1984.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Transition areas, Aviation safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.181 of Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

Remove the Rifle, Colorado, transition area.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983)); and 14 CFR 1.65)

Issued in Seattle, Washington, on February 14, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85-5210 Filed 3-4-85; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 275

[Release No. IA 956; File No. S7-7-85]

Definition of "Client" of Investment Adviser for Certain Purposes Relating to Limited Partnerships

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is publishing for public comment a rule that would specify certain stituations in which a limited partnership, rather than each of its limited partners, would be counted as a "client" of a general partner acting as investment adviser to the partnership, for purposes of an exemption from registration provided by the Investment Advisers Act. By creating a safe harbor, the proposed rule is intended to provide investment advisers with greater certainty in determining the circumstances under which they may rely on that exemption.

DATE: Comments must be received on or before April 26, 1985.

ADDRESSES: Send comments in triplicate to John Wheeler, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Comments should refer to File No. S7-7-85 and will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Thomas P. Lemke, Chief Counsel (202) 272-2030, Stanley B. Judd, Deputy Chief Counsel (202) 272-2079, or Thomas S. Harman, Attorney (202) 272-2030, Office of Chief Counsel, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission is publishing for public comment proposed rule 203(b)(3)-1 under the Investment Advisers Act of 1940 ("Advisers Act").[1] The proposed rule would specify certain circumstances in which a limited partnership, rather than each of its individual limited partners, would be counted as a "client" of a general partner or other person acting as investment advisor to the partnership, for purposes of section 203(b)(3) of the Advisers Act.[2] That section exempts from the registration requirement of the Advisers Act, but not from the antifraud provision of that act, any investment adviser[3] who during the course of the preceding 12 months has had fewer than 15 clients and who neither holds himself out generally to the public as an investment adviser nor acts as an investment adviser to any investment company registered under the Investment Company Act of 1940 ("Investment Company Act")[4] or a business development company ("BDC") which has elected to be regulated as such under the Investment Company Act. Thus, in reliance on the rule, a general partner acting as investment adviser to fewer than 15 partnerships (or other clients) could determine not to register even if there were 15 or more limited partners in any or all such limited partnerships. By creating a "safe harbor," the proposed rule is intended to provide investment advisers to limited partnerships with greater certainty in determining the circumstances under which they may rely on section 203(b)(3).[5]

The rule would be available to any (1) general partner or (2) any other person who is an investment adviser to the limited partnership (collectively referred to sometimes as the "general partner"), subject to three conditions. First, the limited partnership interests must be securities. Second, the general partner must provide investment advice to the partnership based on the investment objectives of the limited partners as a group. Third, the general partner or other person acting as investment

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[1] 15 U.S.C. 80b-1 *et seq.*

[2] Section 203(b)(3) [15 U.S.C. 80b-3(b)(3)] exempts any investment adviser who during the course of the preceding twelve months has had fewer than fifteen clients and who neither holds himself out generally to the public as an investment adviser nor acts as an investment adviser to any investment company registered under title I of this Act, or a company which has elected to be a business development company pursuant to section 54 of title I of this Act and has not withdrawn its election. For purposes of determining the number of clients of an investment adviser under this paragraph, no shareholder, partner, or beneficial owner of a business development company, as defined in this title, shall be deemed to be a client of such investment adviser unless such person is a client of such investment adviser separate and apart from his status as a shareholder, partner, or beneficial owner.

[3] Section 202(a)(11) [15 U.S.C. 80b-2(a)(11)] of the Advisers Act, in relevant part, defines an investment adviser as any person who, for compensation, engages in the business of advising others, ether directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities.

[4] 15 U.S.C. 80a-1 *et seq.*

[5] Because the proposed rule is drafted as a safe harbor for general partners in certain circumstances, it is not intended to prescribe the exclusive means for a partnership, rather than each partner, to be counted as client of a general partner.

adviser to the partnership must not be the alter ego of a registered investment adviser. The proposed rule also defines certain other situations in which the safe harbor would not be available.

Background

Although section 203(b)(3) generally exempts certain investment advisers with fewer than 15 clients from the registration requirements of the Advisers Act, it does not specify whether a partnership, or each of its individual limited partners, should be counted as a "client" of the adviser for purposes of the exemption. In *Abrahamson* v. *Fleschner* [6], the Second Circuit held that the general partner of a limited partnership whose business is investing in securities is an investment adviser for purposes of the Advisers Act.[7] The Second Circuit originally characterized the individual limited partners as the "clients" of the general partner,[8] but it later withdrew this characterization,[9] leaving unanswered the question of whether the partnership, or each of the limited partners, should be counted as a client.

Whether the partnership of each limited partner should be counted as a client is significant primarily because it may determine whether the general partner must register under the Advisers Act. If it must register, the general partner will be subject to all provisions of the Advisers Act, including section 205(1),[10] which would limit the general partner's ability to charge a fee based on a share of capital gains or capital appreciation of a client's fund (a "performance fee"). In addition, the general partner would have to make certain disclosures mandated by the "brochure rule," [11] and would be required to keep books and records in accordance with rule 204–2 under the Advisers Act.[12]

Discussion

Where an adviser to an investment pool manages the assets of the pool on the basis of the investment objectives of participants as a group, it appears appropriate to view the pool—rather than each participant—as a client of the adviser. Thus, for example, an investment company organized as a corporation, rather than each of its stockholders, is generally regarded as the client of the company's investment adviser.

While a different approach could be followed in counting clients in the case of a limited partnership, the 1980 Amendments to the Advisers Act [13] provide that under certain circumstances a partnership itself, and not each limited partner, should be counted as a client of a general partner acting as investment adviser to the partnership. Among other things, the 1980 Amendments revised section 203(b)(3) to provide that, for purposes of counting the clients of an investment adviser to a privately-held BDC, it is the BDC, rather than each owner of an interest in the BDC, which is to be counted as a client of the adviser.[14] Although the 1980 Amendments expressly avoided resolving the question of whether a partnership that is not a BDC, or each limited partner thereof, should be counted as a client of the partnership's adviser,[15] it does not appear that the Commission should distinguish such a limited partnership from a business development partnership and, thus, treat such a limited partnership's partners differently from the partners of a BDC. Accordingly, the Commission has determined to incorporate the approach of the 1980 Amendments into a limited partnership rule, as discussed below.

1. The Proposed Rule

Paragraph (b)(1) of the proposed rule sets forth the general proposition of the safe harbor that, for purposes of section 203(b)(3), a limited partnership shall be counted as a client of any general partner or other person acting as investment adviser to the partnership. Paragraph (b)(2) sets forth the corresponding proposition that a limited partner of such a partnership shall not be counted as a client of the general partner provided that three conditions are met. The first condition, paragraph (b)(2)(i), requires that the limited partnership interests must be securities [16] subject to the antifraud provisions of the federal securities laws.[17]

Second, since the proposed rule is intended to be available to a general partner acting as an investment adviser to a limited partnership that in fact is a collective investment vehicle, rather than one which is merely a device for providing individualized investment advice, paragraph (b)(2)(ii) limits the availability of the rule to situations where the general partner advises the partnership based on the investment objectives of the limited partners as a group. That is, advice must be provided to the partnership as a common investment vehicle. This ensures that, like the investment company organized as a corporation, the limited partnership is in reality the client. Moreover, this condition would prevent a general partner, in contravention of section 208(d) of the Advisers Act,[18] from using the partnership to do what it could not do directly itself, namely, provide individualized investment advice to 15 or more clients without registering as an investment adviser.

The third condition, set forth in paragraph (b)(2)(iii), limits the availability of the proposed rule to situations where the general partner is not the alter ego of a registered investment adviser. In the absence of separate and distinct operations of the general partner and a related registered adviser, section 208(d) requires the two entities to be viewed as a single entity for purposes of section 203(b)(3). On the other hand, the fact that the general partner is related to a registered investment adviser is not itself sufficient to preclude reliance on the proposed rule, if the entities in fact are operated independently. For example, a general partner subsidiary of a registered investment adviser parent could not rely on the rule unless the entities are operated separately.[19] Similarly, the

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[6] 568 F.2d 862 (2d Cir. 1977), *cert. denied*, 436 U.S. 913 (1978).

[7] In *Wang* v. *Gordon*, 715 F.2d 1187 (7th Cir. 1983), a subsequent case in which limited partners sued a general partner on the theory that they were his investment advisory clients, the Seventh Circuit held that the general partner was not an investment adviser under the Advisers Act. The court distinguished *Abrahamson* on the ground that the case before it involved a real estate partnership rather than a securities investment partnership. *Id.* at 1192.

[8] [1976–1977] Fed. Sec. L. Rep. (CCH) ¶ 95,889, at 91,282 n. 16.

[9] 568 F.2d at 872 n. 16.

[10] 15 U.S.C. 80b–5(1).

[11] Rule 204–3 [17 CFR 275.204–3].

[12] 17 CFR 275.204–2.

[13] The Small Business Investment Incentive Act of 1980, Pub. L. No. 94–477, 94 Stat. 2275 (1980).

[14] In addition to counting the BDC as a client, the 1980 Amendments specify that each owner of an interest in a privately-held BDC shall be counted as a client of the adviser if such owner is an client of the adviser separate and apart from his status as an owner.

[15] *See* H.R. Rep. No. 1341, 96th Cong., 2nd Sess. 27 62 (1980).

[16] Limited partnership interests are generally considered securities. *See Goodman* v. *Epstein*, 582 F.2d 388 (7th Cir. 1978), *cert. denied*, 440 U.S. 939 (1979).

[17] Additional protections for limited partners will be provided by general partnership law. For example, under the Uniform Limited Partnership Act, a general partner has a fiduciary duty similar to that owed by corporate directors to shareholders. Furthermore, under general partnership law, a general partner is liable for partnership debts.

[18] Section 208(d) [15 U.S.C. 80b–8(d)] of the Advisers Act makes it unlawful for any person indirectly, or through or by any other person, to do any act which it would be unlawful for such person to do directly under the provisions of the Advisers Act or any rule or regulation thereunder.

[19] In Richard Ellis/R.E. Holdings Ltd. (pub. avail. Sept. 17, 1981), the staff stated that a subsidiary

Continued

proposed rule would not be available to a general partner under common control with a registered investment adviser unless the facts demonstrate that the entities are operated separately.[20]

Paragraph (b)(3) limits the availability of the safe harbor in certain respects. As discussed above, where the only investment advisory relationship between a limited partner and a general partner is that arising in connection with the limited partnership, the proposed rule would permit the general partner to count the limited partnership as the client and not to count the limited partners individually. In some cases, however, a limited partner may have an additional investment advisory relationship with the general partner, or with a "related person," [21] that would make it inappropriate to include that limited partner within the safe harbor. Accordingly, paragraph (b)(3) provides that the safe harbor provided by paragraph (b)(2) would not include a limited partner who, separate and apart from his status as a limited partner, is an "investment advisory client" (*see* discussion below) of the general partner or of a related person. Of course, the fact that a particular limited partner may be excluded from the safe harbor by paragraph (b)(3) would not affect the applicability of the safe harbor provided by paragraph (b)(2) to other limited partners in the partnership, provided they do not come within paragraph (b)(3).

The term "investment advisory client" is defined in paragraph (a)(2) of the proposed rule. Paragraph (a)(2) provides that a limited partner is an investment advisory client of another person (i) if the limited partner receives investment advice of a character that would make the person giving the advice an investment adviser under section 202(a)(11) of the Advisers Act or (ii) if the limited partner receives advice to transfer his assets from one limited partnership to another, regardless of whether the person giving the advice is or would be an investment adviser under section 202(a)(11). A proviso to paragraph (a)(2) makes clear, however, that a limited partner does not become an investment advisory client solely because of the activities of the general partner or a related person in connection with the offer, promotion, or sale of limited partnership interests to a prospective limited partner.

Finally, since the proposed rule is intended to be a safe harbor, it must be emphasized that the rule is not intended to specify the exclusive method for counting clients. Nor is it intended to create any presumptions about the status of any general partner not relying on, or unable to rely on, the rule. Thus, the fact that paragraph (b)(3) might preclude a particular limited partner from relying on the safe harbor provided by paragraph (b)(2) does not automatically mean that such limited partner must be counted as a client of a general partner. In such a case, the status of that limited partner must be determined on the basis of the facts and circumstances involved.

2. Limitations on the Availability of the Proposed Rule

Various provisions of the Advisers Act and Investment Company Act may limit the availability of the proposed rule. First, because of section 203(b) itself, the proposed rule would not be available to a general partner who holds himself out to the public as an investment adviser or who is an investment adviser to a registered investment company or to a BDC which has elected to be treated as such under the Investment Company Act. Second, where the limited partnership is an investment company required to be registered but for the exception provided by section 3(c)(1) of the Investment Company Act,[22] that section would restrict the limited partnership to no more than one hundred limited partners. Section 3(c)(1) also might, the absence of material differences between partnerships, similarly limit the total number of partners in all partnerships advised by a general partner.[23]

Finally, the non-public offering requirements of section 3(c)(1) [24] would, as a practical matter, limit participation to investors who, by themselves or with personal representatives, are sophisticated or who are accredited investors.[25]

3. Request for comments

The Commission requests public comment on proposed rule 203(b)(3)-1. Specific comment is invited on whether the condition in the proposed rule are appropriate, whether more restriction conditions are needed, or whether less restrictive conditions would be adequate.

List of Subjects in 17 CFR Part 275

Investment advisers, Reporting and recordkeeping requirements, Securities.

Text of Proposed Rule

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

It is proposed that Part 275 of Chapter II, Title 17 of the Code of Federal Regulations be amended by adding § 275.203(b)(3)-1 as set forth below:

§ 275.203(b)(3)–1 Definition of "Client" of an investment adviser for certain purposes relating to limited partnerships.

(a) As used in this section:

(1) A "related person" of another person is any person controlling, controlled by, under common control with, or any employee or employer of, such other person; and

(2) A limited partner is an "investment advisory client" of a general partner or other person acting as investment adviser to the partnership, or any related person of the foregoing persons,

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would be considered separate from its parent if it (1) is adequately capitalized, (2) has a buffer, such as a board of directors a majority of whose members are independent of the parent, between the subsidiary's personnel and the parent, (3) has employees, officers, and directors who, if engaged in providing advice in the day-to-day business of the subsidiary entity, are not otherwise engaged in an investment advisory business of the parent, (4) itself makes the decisions as to what investment advice is to be communicated to, or is to be used on behalf of, its clients and uses sources of information not limited to its parent, and (5) keeps its investment advice confidential until communicated to its clients.

[20] *See* Prudential-Bache Special Situations Fund (pub. avail. Oct. 8, 1984); Davis, Skaggs & Co., Inc. (pub. avail. Aug. 21, 1981).

[21] Paragraph (a)(1) defines a "related person" as any person controlling, controlled by, under common control with, or any employee or employer of, such other person.

[22] Section 3(c)(1) [15 U.S.C. 80a-3(c)(1)] excepts from the definition of investment company any issuer whose outstanding securities (other than short-term paper) are beneficially owned by not more than 100 persons and which is not making and does not presently propose to make a public offering of its securities.

[23] Different partnerships may be aggregated for purposes of section 3(c)(1) if a partnership interest in one partnership is not materially different from a partnership interest in another partnership. Factors to be considered in determining whether partnership interests are materially different include the partnerships' investment objectives, their portfolio securities, and their portfolio risk return characteristics. Santa Barbara Securities (pub. avail April 8, 1983). Factors relevant in an integration analysis under section 4(2) of the Securities Act of 1933 [15 U.S.C. 77d(2)] may also be considered such as whether (1) the difference offerings are part of a single plan of financing, (2) the offerings involve issuance of the same class of securities, (3) the offerings are made at or about the same time, (4) the same type of consideration is received, and (5) the offerings are made for the same general purpose. William E. Hart (pub. avail. May 6, 1979). *See also* Securities Act Release No. 4552 (November 6, 1962).

[24] A non-public offering under section 4(2) of the Securities Act of 1933 would generally be regarded as a non-public offering for purposes of section 3(c)1) of the Investment Company Act. Rule 506 of Regulation D [17 CFR 230.506], adopted pursuant to section 4(2), provides objective standards for identifing those offers or sales by an issuer which will be deemed to be non-public.

[25] Rule 501(a) of Regulation D [17 CFR 230.501(a)] defines the term "accredited investor."

if the limited partner receives from any of those persons (i) investment advisory services of a nature that the person providing the services would be an investment adviser, as defined in section 202(a)(11) of the Act or (ii) investment advice to transfer his assets from one limited partnership to another one; *Provided, however,* That a limited partner is not an investment advisory client of a person solely because such person offers, promotes, or sells interests in the limited partnership to the limited partner.

(b) For purposes of section 203(b)(3) of the Act:

(1) A limited partnership shall be counted as a client of any general partner or other person acting as investment adviser to the partnership; and

(2) A limited partner shall not be counted as a client of any general partner or other person acting as investment adviser to the partnership if:

(i) The limited partnership interests are securities;

(ii) The general partner or other person provides investment advice to the partnership based on the investment objectives of the limited partners as a group; and

(iii) The general partner or other person is not the alter ego of an investment adviser registered under the Act.

(3) Paragraph (b)(2) of this section shall not be available with respect to a limited partner who is, separate and apart from his status as a limited partner, an investment advisory client of (i) a general partner or other person acting as investment adviser to the partnership, or (ii) any related person thereof.

Summary of Regulatory Flexibility Analysis: Pursuant to section 605(b) of the Regulatory Flexibility Act, the Chairman of the Commission has certified that the rule proposed will not, if promulgated, have a significant economic impact on a substantial number of small entities. This certification, including the reasons therefor, is attached to this release.

Statutory Authority: Proposed rule 203(b)(3)–1 would be adopted by to that act because it does not involve an information collection requirement.

Statutory Authority: Proposed rule 203(b)(3)–1 would be adopted by the Commission pursuant to the authority granted the Commission in sections 206A [15 U.S.C. 80b–6A] and 211(a) [15 U.S.C. 80b–11(a)] of the Advisers Act.

Dated: February 25, 1985.

John Wheeler,

Secretary.

Regulatory Flexibility Act Certification

I, John S.R. Shad, Chairman of the Securities and Exchange Commission, hereby certify pursuant to 5 U.S.C. 605(b) that 203(b)(3)–1 under the Investment Advisers Act of 1940 [15 U.S.C. 80b–1 *et seq.*], will not have a significant economic impact on a substantial number of small entities. The reason for this certification is that, whether or not a substantial number of general partners managing limited partnerships investing in securities rely on the safe harbor provided by the rule, the economic impact of the rule, if any, on any general partner managing such partnerships, will not be significant; because the rule would, in large part, codify the rationale underlying the Commission's previous policy regarding such limited partnerships. The added certainty given by the rule may result in more of these limited partnerships being created, but the general conditions for application of the securities laws will remain the same.

Date: February 22, 1985.

John S.R. Shad,

Chairman.

[FR Doc. 85–5294 Filed 3–4–85; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 600 and 660

[Docket No. 83N–0169]

Additional Standards for Diagnostic Substances for Laboratory Tests; Proposed Amendment of Requirements for Blood Grouping Serum

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its additional standards for Blood Grouping Serum as part of the agency's retrospective review of current regulations. FDA is making the standards more flexible and is revising the regulations to reflect recent scientific knowledge and experience in the use of Blood Group Serum.

DATES: Comments by May 6, 1985. FDA is propsing that any final rule based on this proposal be effective 30 days after the date of publication of the final rule in the **Federal Register**, except that labeling requirements would be effective 1 year after the date of publication.

ADDRESS: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joseph Wilczek, Center for Drugs and Biologics (HFN–368), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1306.

SUPPLEMENTARY INFORMATION: Blood Grouping Serum is a sterile preparation of serum or protein-rich fluid containing one or more blood grouping antibodies that is used to detect ABO, Rh, or other antigens or red blood cells. The preparation is an in vitro diagnostic product that usually is produced from high-titered human serum, with or without stimulation by the injection of group-specific red blood cells or blood group substances.

The additional standards for Blood Grouping Serum now in 21 CFR 660.20 through 660.29 were published in the **Federal Register** of October 7, 1977 (42 FR 54534). In the **Federal Register** of May 25, 1982 (47 FR 22519), the potency requirements for Blood Grouping Serum in § 660.25 were revised to permit use of chemically modified Blood Grouping Serum by adding new paragraph (d) *Equivalent methods.*

In the **Federal Register** of July 14, 1981 (46 FR 36333), FDA announced its plan for undertaking a systematic review of its existing rules in accordance with the requirements of the Regulatory Flexibility Act and Executive Order 12291. The notice also solicited data, information, and views from the public to assist the agency in identifying unduly burdensome regulations and in establishing an appropriate review schedule. In the **Federal Register** of July 2, 1982 (47 FR 29004), FDA announced its priorities for reviewing the agency's existing rules. Among the regulations listed as high priorities for review was Part 660—Additional Standards for Diagnostic Substances for Laboratory Tests, including Subpart C—Blood Grouping Serum.

During public meetings held on April 12, 13, 20, and 21, 1982, FDA received recommendations from the regulated industry and other interested persons on how the regulations on blood and blood products should be revised to relieve any unnecessary regulatory burdens or to increase flexibility (see 47 FR 12358; March 23, 1982). FDA presented the most controversial and scientifically significant of these recommendations to

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the Blood Products Advisory Committee for its consideration during a June 3 and 4, 1982 open meeting. The written minutes of that meeting are on file in FDA's Dockets Management Branch.

The agency has completed its retrospective review of the regulations for this blood product and is proposing to amend the additional standards for Blood Grouping Serum. The following proposed amendments would relieve certain unnecessary regulatory burdens and increase the flexibility of the regulations without adversely affecting the purity, potency, or effectiveness of Blood Grouping Serum.

Current Requirements Regarding Sterility of Blood Grouping Serum

FDA's regulations in Subpart C of 21 CFR 660 currently require that Blood Grouping Serum be sterile. Manufacturers are required to sterilize the product by sterile-filtration, collect samples of each lot and, as required in § 610.1, perform final product sterility testing of each lot using procedures in § 610.12. Further, manufacturers of Blood Grouping Serum must comply with the current good manufacturing practice (CGMP) regulations for medical devices in 21 CFR Part 820, including validation of the sterilization process. Sterile process validation consists of careful attention to a number of factors including selecting of quality materials, adequate process design, control of the process, and in-process and final product testing. During sterile process validation, sterilization is challenged with a microbially contaminated product to determine whether the sterilization procedure eliminates microbial contamination. Sterile process validation is necessary because no sampling plan applying sterility tests to a specified proportion of discrete units in a lot is capable of showing with complete assurance that all of the untested units are in fact sterile. In the **Federal Register** of July 19, 1984 (49 FR 29272), FDA announced the availability of a working draft guideline entitled "Guideline on General Principles of Process Validation" (March 1984).

Further, FDA advises that it requires manufacturers of Blood Grouping Serum to add a preservative to the in vitro diagnostic product to prevent development of any microbial contamination during use of the product. In FDA's CGMP regulations for blood and blood components (21 CFR 606.65(c)), the agency also requires that blood banks perform daily checks for potency and specificity of Blood Grouping Serum to assure that the product continues to perform properly

1. In proposed § 660.20(a), FDA is proposing to require that Blood Grouping Serum be "manufactured by a method demonstrated to yield consistently a sterile product," instead of defining the product as a "sterile preparation." Under procedures in § 610.12(g)(4), FDA also is proposing to allow manufacturers of Blood Grouping Serum to submit data to FDA and request that FDA exempt the product from final product sterility tests. Where a manufacturer submits data which the Director, Office of Biologics Research and Review (HFN-800), finds adequate to establish that a manufacturer's methods of preparation and process controls for Blood Grouping Serum assure its safety and effectiveness without the manufacturer performing a final product sterility test on each lot, the Director may exempt the from the sterility testing requirements, subject to any conditions necessary to assure the safety, purity, and potency of the product. If FDA granted a manufacturer of Blood Grouping Serum an exemption under the proposed procedures above, the manufacturer still would be required to (1) assure the product is sterile, (2) perform scheduled final product sterility tests of certain lots of Blood Grouping Serum to show that the sterile process is validated as required by the CGMP regulations; and (3) add a preservative to the in vitro diagnostic product to prevent development of microbial contamination.

Accordingly, FDA is proposing to amend § 660.20(a) to provide that where a manufacturer submits data which FDA finds adequate to establish that the manufacturer's methods of preparation of Blood Grouping Serum assure the sterility of the product without performance of a final product sterility test on each lot, FDA may exempt the manufacturer from performing the final product sterility test on each lot that is required by § 610.12. The agency also is proposing to remove from § 660.21(a)(3) the phrase "and that each sublot is sterile as specified in § 610.12 of this chapter" and remove the word "sterile" from § 660.21(d) (redesignated § 660.21(c)), because the language is unnecessary.

FDA believes that implementation of these proposed exemption procedures would not reduce current levels of consumer protection and may reduce manufacturer's costs.

2. FDA is proposing to revise the definition of "source" in § 660.20(b) to allow the use of protein-rich fluid as a source of the product. This fluid may be derived from immunoglobulin-secreting cell lines maintained either in tissue cultures or in secondary hosts. The proposed revised definition of the term "source" allows the future use of monoclonal antibodies as a substitute for human or animal serum.

3. The agency is proposing to clarify § 660.21(a)(1) by cross-referencing the current requirements in 21 CFR 601.2 that stability testing be performed on representative samples of each group of Blood Grouping Serum manufactured in the same manner. The requirements in § 601.2 are intended to ensure the continued effectiveness of a biologic drug product, such as Blood Grouping Serum, throughout its dating period.

4. The agency is proposing to amend § 660.21(a)(2) to permit the preparation of sublots directly at the time of filtration. The current regulation, which prohibits the filtering of Blood Grouping Serum directly into sublot containers, is based on the concern that filtering the material may affect its potency and, therefore, the preparation of sublots at the time of filtration would create sublots of varying potencies. The proposed amendment would permit the bulk material that has been fully processed to be mixed in a single vessel prior to filtration and then filtered directly into more than one sublot vessel.

Experience in testing lots of Blood Grouping Serum since the additional standards were published in 1977 demonstrates that the passage of the product through filters subject to current FDA approvals does not significantly alter the product's potency. Filters currently used are unlikely to cause any significant dilution of the product in the first vessel filled during the filtration process. Accordingly, the proposed amendment would permit a lot of bulk material to be filtered directly into more than one sublot vessel.

5. The agency is proposing to delete from § 660.21(b) the restriction preventing the addition of color to the product to code certain types of Blood Grouping Sera. This restriction was imposed because of a concern that color additives might affect adversely the stability or performance of the product. The color restriction was also based on a concern that a technologist might identify a product solely by the color of the reagent. Recent experience has shown, however, that the antibody designation in large type on the container label eliminates the likelihood that the product would be identified solely by the color of the product. Furthermore, the addition of color to the product helps assure that automated equipment used by blood banks in processing large numbers of units is

properly adding the reagent. Therefore, proposed § 660.21(b) would create flexibility for manufacturers by permitting coloring in Blood Grouping Sera if the manufacturer can demonstrate that the added color additive does not affect adversely the stability or performance of the product and use of the color additive has been approved by the Director, Office of Biologics Research and Review, before it is used.

6. FDA is proposing to delete § 660.21(c) and to redesignate § 660.21(d) through (f) as § 660.21(c) through (e). Current section 660.21(c) requires that dropper bulbs be black in color if the dropper bulbs are not color coded to match the color of the label of each antiserum.

This requirement was imposed because the color white was being reserved for furture use with the container dropper bulbs for Anti-Human Globulin Serum. However, the proposed additional standards for Anti-Human Globulin Serum, published in the **Federal Register** of April 30, 1982 (47 FR 18623), do not require the use of white dropper bulbs so there is no need to continue the requirement that non-color coded dropper bulbs used with Blood Grouping Sera containers be colored black.

Current § 660.21(c) also contains language permitting the container dropper bulb to be color coded to match the color of the label of each antiserum. In proposing to delete current § 660.21(c), FDA does not intend to prohibit such color coding, which would continue to be permissible. The agency merely believes that this option need not be stated in the biologics regulations. Although the agency is proposing no further amendments to this paragraph, the agency advises that if a manufacturer chooses to color-code final container tops (caps) to match final container labels, the tops should be color-coded to match final container labels as specified in proposed § 660.28(a)(1). If a manufacturer chooses not to color-code final container tops, the tops should be either white or black. The agency believes that this restriction is necessary to avoid confusion and to avoid inadvertent contamination problems.

7. Current § 660.21(e) lists a volume restriction for final containers of Blood Grouping Serum to minimize the potential for errors in labeling and the potential for contamination that accompany the transfer of reagents from larger to smaller containers more suited for daily use. FDA has reconsidered this requirement and believes that the daily performance checks now required under § 606.65(c) are adequate for detecting any errors in labeling or inadvertent contamination. Accordingly, FDA is proposing to amend § 660.21(e) (redesignated § 660.21(d)) to delete restrictions on final product volume. FDA is proposing to require that the manufacturer identify in its product license application the acceptable final container volumes.

8. In § 660.21(f) (redesignated § 660.21(e)), FDA is proposing to clarify the regulation by specifying the date of manufacture as the date the manufacturer begins the last entire group of potency tests. The current text of this regulation defines the date of manufacture as the date of initiation by the manufacturer to the last valid potency test. The proposed language would preclude a manufacturer from postponing the date of manufacture thereby extending indefinitely the apparent shelf life of the product by performing one last potency test long after all other final potency tests are completed. The proposed revised text is not intended to be a change in FDA policy and would assure that the date of manufacture reflects the date of the last group of potency tests required for certain Blood Grouping Sera when tested with various red blood cell suspensions.

9. FDA is proposing to amend §§ 660.22 and 660.24 through 660.27 concerning the use of reference Blood Grouping Sera and procedures for potency tests, specificity tests, and avidity tests. In place of many of the existing codified testing requirements and in accordance with procedures in §10.90(b)(10) of its administrative practices and procedures regulations, FDA is making available for public examination at the Dockets Management Branch (address above) its recommended testing procedures in a document entitled "Docket No. 84S–0181 Recommended Methods for Blood Grouping Sera Evaluation." The document includes a list of reference Blood Grouping Sera preparations and describes FDA's recommended procedures for potency tests, specificity tests, and avidity tests. FDA is making available its recommended methods in accordance with procedures in § 10.90(b)(10) to make the regulations more flexible and to facilitate expeditious changes in testing procedures consistent with advances in science.

FDA is proposing the following specific changes in the current regulations.

9a. In § 660.22 *Reference preparations*, FDA is proposing to add new paragraph (a) to ensure the potency of Blood Grouping Serum. The proposed requirement specifies that a potency titer value at least equal to that of the reference serum is required for products for which reference Blood Grouping Sera are available.

9b. FDA is proposing to delete § 660.23 *Red blood cell preparations* and § 660.24 *Potency test with reference preparations*. These sections will not be necessary because the information related to preparation of cell suspensions and potency testing with reference preparations are included in the "Recommended Methods for Blood Grouping Sera Evaluaton" document described above in paragraph 9.

9c. In § 660.25 *Potency test without reference preparations*, for the reasons given above in paragraph 9b, FDA is proposing to delete the specific testing steps in paragraph (a)(1) through (4) and redesignate paragraph (a)(5), which specifies the required results of such potency testing, as paragraph (a). The information being deleted is included in the "Recommended Methods for Blood Grouping Sera Evaluation" document.

9d. FDA is proposing to delete the specific testing procedures in § 660.26 *Specificity tests*, and § 660.27 *Avidity test*, and add new § 660.26 *Specificity tests and avidity tests*. New § 660.26 would require that specificity and avidity tests be performed by test procedures approved by FDA. Recommended test methods for both procedures are included in the "Recommended Methods for Blood Grouping Sera Evaluation" document.

10. The agency is clarifying § 660.25(c) on use of Blood Grouping Sera in automated systems. The agency is proposing this revision to allow manufacturers greater flexibility in performing potency tests while assuring that the Blood Grouping Serum is sufficiently potent to detect weakly reacting blood group antigens.

11. The agency is proposing to amend § 660.28(b)(13) by revising the current labeling statement required by this section, "In-Vitro Diagnostic Reagent For Professional Use Only" to read "For In Vitro Diagnostic Use." The revised labeling statement would then be consistent with the medical device labeling requirement in 21 CFR 809.10(a)(4). Blood Grouping Sera are medical devices that will continue to be regulated by the Center for Drugs and Biologics in accordance with a working agreement between the Center for Drugs and Biologics and the Center for Devices and Radiological Health (formerly the National Center for Devices and Radiological Health), as announced in

the Federal Register of April 9, 1982 (47 FR 15412).

12. The agency is proposing to delete all synonyms used to identify blood group specificities currently listed in § 660.28(d). The agency is proposing this change in response to a consensus concerning blood group terminology reached in June 1983, at the International Conference of Investigative Immunohematologists at the Springhill Conference Center, Wayzota, MN. The recommendations from the conference were published in the scientific journal, *Transfusion* (Issit, P. D., and M. C. Crookston, "Invited Review—Blood Group Terminology; Current Conventions," January-February 1984, Vol. 24:1, p. 2). The agency agrees with the recommendation made at this meeting to use only one name for each blood group specificity to more clearly identify the product and reduce the possibility of confusion. The attendees at that conference also recommended deletion of the bar line over the letter in the name of each of the blood group specificities Anti-c, Anti-k, and Anti-s, when the name of each of these blood group specificities is used on a final container label. However, the agency disagrees with this recommendation. To avoid confusion with blood group specificities Anti-C, Anti-K, and Anti-S, FDA believes that, when the name of each of these three blood group specificities is used on a final container label, the bar line should continue to be used over the letter in the name.

Accordingly, the agency is proposing to amend § 660.28(d) by removing the optional synonyms for the package label and the package insert. On final container labels, FDA is proposing to continue to require that blood group specificities Anti-c, Anti-k, and Anti-s have a bar line over the letter in the name (i.e., the name on the final container label would be Anti-c̄, Anti-k̄, or Anti-s̄).

13. FDA believes that the specific lost release requirements in § 660.29 for Blood Grouping Serum products are no longer necessary to ensure safe, pure, potent, and efficacious products. The specific lot release requirements for Blood Grouping Serum products supplement the general lot release requirements in 21 CFR 610.1 and 610.2(a) that are applicable to any biological product. The general lot release regulations authorize the agency to require official lot release for any biological product at any time the agency believes lot release is necessary. To allow the agency the flexibility to modify or waive lot release requirements for Bood Grouping Serum products, the agency is proposing to delete the specific requirements for samples, protocols, and official release for such products now in § 660.29 and instead to use when necessary the authority for lot release in §§ 610.1 and 610.2(a) of the general biologics regulations.

14. FDA recently issued a rule (April 18, 1984, 49 FR 15186) to establish a new section "Equivalent methods" in 21 CFR 610.9. The new section allows manufacturers to use test procedures or manufacturing processes for any biological product that are different from those in the additional standards, when such different procedures or processes have been determined by the Director, Office of Biologics Research and Review (HFN-800), Center for Drugs and Biologics, Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20205, to provide equal to or greater assurance of the safety and effectiveness of the product than the requirement in the additional standards. For a series of biological products, the agency also removed from the additional standards the separate provisions for equivalent methods, because such separate provisions now are unnecessary. Accordingly, in the rule FDA removed the equivalent methods provisions for Blood Grouping Serum which were in § 660.25(d).

In addition to the changes proposed above, the agency is proposing to make other minor clarifying changes in the regulations, such as making typographical corrections and adding three antibodies to its listing of Blood Grouping Serum antibodies in proposed § 660.28 (Anti-Co^b, Anti-Js^b, and Anti-Wr^a). For easier review, FDA has included in the proposed codified language both the proposed revisions to the regulations and any current codified language FDA proposes to continue without revision.

The agency has determined pursuant to 21 CFR 25.24(d)(10) (proposed December 11, 1979; 44 FR 71742) that this proposed action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an evironmental impact statement is required.

Sections 660.21, 660.22, 660.25, 660.26, and 660.28 of this proposed rule contain collection of information requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980, FDA has submitted a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of these collection of information requirements. Other organizations and individuals desiring to submit comments on the collection of information requirements should direct them to FDA's Dockets Management Branch (address above) and to the Office of Information and Regulatory Affairs, OMB, Rm. 3208, New Executive Office Bldg., Washington, DC 20503, Attn: Bruce Artim.

The agency has examined the economic consequences of this proposed rulemaking and has determined that it does not require either a regulatory impact analysis, as specified in Executive Order 12291, or a regulatory flexibility analysis, as defined in the Regulatory Flexibility Act (Pub. L. 96-354). The proposed amendments to the additional standards are expected to be beneficial to manufacturers of Blood Grouping Serum because the proposed changes relieve certain burdens on the industry, such as deletion of the specific lot release requirements. Other proposed changes in the current biologic regulations are intended to allow manufacturers of these products greater flexibility and greater discretion in manufacturing and marketing their products while maintaining the same level of consumer protection. There are eight licensed manufacturers of Blood Grouping Sera. The agency estimates that annual sales of Blood Grouping Sera exceed $25 million. The proposed amendments to the additional standards will offer important, but difficult to measure, cost savings to manufacturers of these products. The agency concludes that the proposed rule is not a major rule as defined by Executive Order 12291. Further, the agency certifies that the proposed rule, if implemented, will not have a significant impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act.

List of Subjects

21 CFR Part 600

Biologics.

21 CFR Part 660

Biologics, Labeling.

Therefore, under the Public Health Service Act (sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), it is proposed that Parts 600 and 660 be amended as follows:

PART 600—BIOLOGICAL PRODUCTS: GENERAL

1. In Part 600 by adding new § 600.1 to read as follows:

§ 600.1 Scope.

(a) The regulations regarding licensing of biological establishments and biological products in Parts 600, 601, and 610 shall apply to any manufacturer of a biological product intended for human use that is subject to licensure under section 351 of the Public Health Service Act, and where applicable, to unlicensed biological products or devices, to biological source materials, and to testing laboratories approved by the Food and Drug Administration. All of the regulations in Subchapter F—Biologics (Parts 606 through 680) shall be considered to supplement the regulations in Parts 600 and 601.

(b) The regulations in Part 606 regarding current good manufacturing practice for blood and blood components and Parts 207 and 607 regarding establishment registration and product listing shall be considered to supplement Parts 600 and 601 and apply to manufacturers that produce licensed blood and blood components and manufacturers that produce nonlicensed blood and blood components (such as manufacturers that ship blood and blood components only in intrastate commerce).

(c) The regulations in Parts 210 and 211 regarding current good manufacturing practice for drugs shall be considered to supplement, not supersede, Parts 600, 601, and 606. Parts 210 and 211 shall be considered to apply to manufacturers of a blood and blood component and manufacturers of a biologic product other than a blood and blood component, such as manufacturers of a poliomyelitis vaccine or an allergenic extract.

(d) The regulations in Part 820 regarding current good manufacturing practices for medical devices shall apply to manufacturers of those biological products that are also medical devices.

(e) In the event it is impossible to comply with two or more applicable regulations, the regulation specifically applicable to the biological product in question shall apply.

(f) References in Subpart F—Biologics to regulatory sections of the Code of Federal Regulations are to Chapter I of Title 21 unless otherwise noted.

PART 660—ADDITIONAL STANDARDS FOR DIAGNOSTIC SUBSTANCES FOR LABORATORY TESTS

2. By revising Part 660, Subpart C, consisting of §§ 660.20 through 660.28, as follows:

Subpart C—Blood Grouping Serum

Sec.
660.20 Blood Grouping Serum.
660.21 Processing.
660.22 Potency requirements with reference preparations.
660.25 Potency tests without reference preparations.
660.26 Specificity tests and avidity tests.
660.28 Labeling.

Subpart C—Blood Grouping Serum

§ 660.20 Blood Grouping Serum.

(a) *Proper name and definition.* The proper name of this product shall be Blood Grouping Serum and it shall consist of an antibody-containing fluid prepared by a method demonstrated to yield consistently a sterile product and containing one or more of the blood grouping antibodies listed in § 660.28(d). Under procedures in § 610.12(g)(4), where a manufacturer submits data which FDA finds adequate to establish that the manufacturer's methods of preparation of Blood Grouping Serum assure the sterility of the product without performance of a final product sterility test on each lot, the Director, Office of Biologics Research and Review, may exempt the manufacturer from performing the final product sterility test on each lot that is required by § 610.12.

(b) *Source.* The source of this product shall be blood, plasma, serum, or protein-rich fluids, such as those derived from stable immunoglobulin-secreting cell lines maintained either in tissue cultures or in secondary hosts.

§ 660.21 Processing.

(a) *Processing method.* (1) The processing method shall be one that has been shown to yield consistently a specific, potent final product, free of properties that would affect adversely the intended use of the product throughout its dating period. Stability testing shall be performed on representative samples of each group of products manufactured in the same fashion, as required in § 601.2.

(2) Only that material that has been fully processed, thoroughly mixed in a single vessel, and sterile filtered shall constitute a lot.

(3) A lot may be subdivided into clean, sterile vessels. Each subdivision shall constitute a sublot. If lots are to be subdivided, the manufacturer shall include this information in the license application. The manufacturer shall describe the test specifications to verify that each sublot is identical to other sublots of the lot.

(4) Each lot of Blood Grouping Serum shall be identified by a lot number. Each sublot shall be identified by that lot number to which a distinctive prefix or suffix shall be added. Final container and package labels shall bear the lot number and all distinctive prefixes and suffixes that have been applied to identify the sublot from which filling was accomplished.

(b) *Color coding of antisera.* Blood Grouping Sera may be colored provided the added color additive does not adversely affect the stability or performance of the product.

(c) *Final containers and dropper assemblies.* Final containers and dropper pipettes shall be colorless and sufficiently transparent to permit observation of the contents to detect particulate matter or increased turbidity during use.

(d) *Volume of final product.* Each manufacturer shall identify the possible final container volumes in the product license application.

(e) *Date of manufacture.* The date of manufacture shall be the date the manufacturer begins the last entire group of potency tests.

§ 660.22 Potency requirements with reference preparations.

(a) *Potency requirements.* Products for which reference Blood Grouping Sera are available shall have a potency titer value at least equal to that of the reference sera.

(b) *Reference preparations.* Reference Blood Grouping Sera shall be obtained from the Office of Biologics Research and Review (HFN–890), Center for Drugs and Biologics, Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20205, and shall be used as described in the accompanying package insert for determining the potency of Blood Grouping Sera.

§ 660.25 Potency tests without reference preparations.

Products for which Reference Blood Grouping Sera are not available shall be tested for potency by a method approved by the Director, Office of Biologics Research and Review (HFN–800), Center for Drugs and Biologics, Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20205.

(a) *Potency requirements.* Blood Grouping Sera recommended for the test tube methods, including the indirect antiglobulin tests, shall have the following potency titer value, unless other values are approved by the Director, Office of Biologics Research and Review (HFN–800), Center for Drugs and Biologics, Food and Drug Administration, 8800 Rockville Pike, Bethedsa, MD 20205.

(1) For Anti-K, Anti-k, Anti-Jk^a, Anti-Fy^a, Anti-C^w, at least 1+ reaction with a 1:8 dilution of antiserum.

(2) For Anti-S, Anti-ŝ, Anti-P_1, Anti-M, Anti-I, Anti-e (saline), Anti-c̄ (saline), and Anti-A_1, at least 1+ reaction with a 1:4 dilution of the antiserum.

(3) For Anti-U, Anti-Kp^a, Anti-Kp^b, Anti-Js^a, Anti-Js^b, Anti-Fy^b, Anti-N, Anti-Le^a, Anti-Le^b, Anti-Di^a, Anti-M^g, Anti-JK^b, Anti-Co^b, Anti-Wr^a, and Anti-Xg^a, at least 2+ reaction with undiluted serum.

(b) *Products recommended for slide tests.* Blood Grouping Serum recommended for slide test methods shall produce clumps of agglutinated cells that provide a clearly positive, macroscopic result when both undiluted serum and a 1:2 dilution of serum are tested by all methods recommended in the manufacturer's package insert using red blood cells heterozygous for the corresponding antigen. The dilution shall be made with an equal volume of compatible serum or approved diluent.

(c) *Products recommended for use in an automated system.* The manufacturer of Blood Grouping Serum that is recommended for use in an automated system shall demonstrate that its product satisfactorily performs when tested with antigens representing the lower extremes of phenotypic expression.

§ 660.26 Specificity tests and avidity tests.

Specificity and avidity tests shall be performed using test procedures approved by the Director, Office of Biologics Research and Review (HFN-800), Center for Drugs and Biologics, Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20205.

§ 660.28 Labeling.

In addition to the applicable labeling requirements of §§ 610.62 through 610.65 and § 809.10, and in lieu of the requirements in §§ 610.60 and 610.61, the following requirements shall be met:

(a) *Final container label*—(1) *Color coding.* The final container label of all Blood Grouping Sera shall be completely white, except that all or a portion of the final container label of the following antisera may be color coded with the specified color which shall be a visual match to a specific color sample designated by the Director, Office of Biologics Research and Review (HFN-800), Center for Drugs and Biologics, Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20205. Printing on all final container labels shall be in solid black.

Blood grouping serum	Color of lable paper
Anti-A	Blue
Anti-B	Yellow
Slide and rapid tube test sera only:	
Anti-C	Pink.
Anti-D	Gray
Anti-E	Brown
Anti-CDE	Orange.
Anti-c	Lavender
Anti-e	Green

(2) *Required information.* The proper name "Blood Grouping Serum" need not appear on the final container label provided the final container is distributed in a package and the package label bears the proper name. The final container label shall bear the following information.

(i) Name of the antibody or antibodies present as set forth in paragraph (d) of this section.

(ii) Name, address (including ZIP Code), and license number of the manufacturer.

(iii) Lot number, including sublot designations.

(iv) Expiration date.

(v) Source of product if other than human.

(vi) Test method(s) recommended.

(vii) Recommended storage temperature in degrees Celsius.

(viii) Volume of product if a liquid, or equivalent volume for a dried product if it is to be reconstituted.

(ix) If a dried product, to remind users to record the reconstitution date on the label, the statement "RECONSTITUTION DATE . EXPIRES 1 YEAR AFTER RECONSTITUTION DATE."

(3) *Lettering size.* The type size for the specificity of the antibody designation on the labels of a final container with a capacity of less than 5 milliliters shall be not less than 12 point. The type size for the specificity of the antibody designations on the label of a container with a capacity of 5 milliliters or more shall be not less than 18 point.

(4) *Visual inspection.* When the label has been affixed to the final container, a sufficient area of the container shall remain uncovered for its full length or no less than 5 millimeters of the lower circumference to permit inspection of the contents.

The label on a final product container for antibodies Anti-c, Anti-k, or Anti-s shall display a bar immediately over the specificity letter used in the name, i.e., Anti-c̄, Anti-k̄, or Anti-s̄.

(b) *Package label.* The following information shall appear either on the package label or on the final container label if it is visible within the package.

(1) Proper name of the product.

(2) Name of the antibody or antibodies present as set forth in paragraph (d) of this section.

(3) Name, address (including ZIP Code), and license number of the manufacturer.

(4) Lot number, including sublot designations.

(5) Expiration date.

(6) Preservative used and its concentration.

(7) Number of containers, if more than one.

(8) Volume or equivalent volume for dried products when reconstituted, and precautions for adequate mixing when reconstituting.

(9) Recommended storage temperature in degrees Celsius.

(10) Source of the product if other than human.

(11) Reference to enclosed package insert.

(12) If a dried product, a statement indicating the period within which the product may be used after reconstruction.

(13) The statement: "FOR IN VITRO DIAGNOSTIC USE."

(14) The statement: "MEETS FDA POTENCY REQUIREMENTS."

(15) If human blood was used in manufacturing the product, the statement: "CAUTION: SOURCE MATERIAL FROM WHICH THIS PRODUCT WAS DERIVED WAS FOUND NONREACTIVE FOR HB_sAg WHEN TESTED WITH LICENSED REAGENTS. NO KNOWN TEST METHOD CAN OFFER ASSURANCE THAT PRODUCTS DERIVED FROM HUMAN BLOOD WILL NOT TRANSMIT HEPATITIS." or "CAUTION: SOURCE MATERIAL FOR THIS PRODUCT WAS REACTIVE WHEN TESTED FOR HB_sAg AND MAY TRANSMIT HEPATITIS," whichever is applicable. If the source material is nonreactive in a test for HB_sAg and there is insufficient space on the package label to include the entire statement, the required statement may be included in the package insert and the statement: "CAUTION: HANDLE AS IF CAPABLE OF TRANSMITTING HEPATITIS" shall be used on the package label.

(16) A statement of an observable indication of an alteration of the product, e.g., turbidity, color change, precipitate, that may indicate possible deterioration of the product.

(c) *Package insert.* Each final container of Blood Grouping Serum shall be accompanied by a package insert meeting the requirements of § 809.10. If two or more final containers requiring identical package inserts are placed in a single package, only one package insert per package is required.

(d) *Names of antibodies.*

Blood group designation for container label	
Anti-A	
Anti-A_1	
Anti-B	
Anti-A,B	
Anti-Co^a	
Anti-Di^a	
Anti-Fy^a	
Anti-Fy^b	
Anti-I	
Anti-Jk^a	
Anti-Jk^b	
Anti-Js^a	
Anti-Js^b	
Anti-K	
Anti-k	
Anti-Kp^a	
Anti-Kp^b	
Anti-Le^a	
Anti-Le^b	
Anti-M	
Anti-N	
Anti-M^a	
Anti-P_1	
Anti-D	
Anti-CD	
Anti-DE	
Anti-CDE	
Anti-C	
Anti-E	
Anti-c	
Anti-e	
Anti-C^w	
Anti-S	
Anti-s	
Anti-U	
Anti-Wr^a	
Anti-Xg^a	

Interested persons may, on or before May 6, 1985 submit to the Dockets Management Branch (address above), written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 31, 1984.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 85-5225 Filed 3-4-85; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR-134-84; LR-167-84]

Foreign Management and Foreign Economic Processes Requirements of a Foreign Sales Corporation and FSC General Rules, Requirements, Definitions, and Special Rules; Public Hearing

AGENCY: Internal Revenue Service, Treasury Department.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to foreign management and foreign economic processes requirements of a foreign sales corporation, and relating to the requirements that a corporation must meet to be a foreign sales corporation (FSC) (or small FSC) and tax treatment of a FSC (or small FSC) and specific rules regarding the requirements for FSC or small FSC status, the methods of electing and terminating FSC status, and the definition of and computation of carrying charges on sales of property by a FSC.

DATES: The public hearing will be held on Monday, May 13, 1985, beginning at 10:00 a.m. Outlines of oral comments must be delivered or mailed by Monday, April 29, 1985.

ADDRESS: The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, D.C. The requests to speak and outlines of oral comments should be submitted to the Commissioner of Internal Revenue, Attn: CC:LR:T (LR-134-84, LR-167-84), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: B. Faye Easley of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, telephone 202-566-3935 (not a toll-free call).

SUPPLEMENTARY INFORMATION: One of the two subjects of the public hearing is proposed regulations under sections 924, 925 and 927 of the Internal Revenue Code of 1954. The proposed regulations appeared in the **Federal Register** for Wednesday, December 12, 1984 (49 FR 48321).

The second subject of the public hearing is proposed regulations under sections 921, 922, and 927 of the Internal Revenue Code of 1954. The proposed regulations appeared in the **Federal Register** for Wednesday, December 12, 1984 (49 FR 48322).

The rules of § 601.601 (a)(3) of the "Statement of Procedural Rules" (26 CFR 601) shall apply with respect to the public hearing. Persons who have submitted comments within the time prescribed in the notices of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit, not later than Monday, April 29, 1985, an outline of the oral comments to be presented at the hearing and the time they wish to devote to each subject.

Each speaker will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Peter K. Scott,

Acting Director, Legislation and Regulations Division.

[FR Doc. 85-5202 Filed 3-4-85; 8:45 am]

BILLING CODE 4830-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL-2790-4]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Proposed rulemaking.

SUMMARY: USEPA announces today proposed rulemaking on a revision to the ozone portion of the Ohio State Implementation Plan (SIP) for volatile organic compound (VOC) for Harrison Radiator, General Motors Corporation (Harrison Radiator) North and South facilities located in Montgomery County, Ohio. This revision will provide for an inter-facility alternative emission control program plan (bubble) between seven metal coating lines and eight degreasers. USEPA's action is based upon a revision which was submitted by the State.

DATE: Comments on this revision and on the proposed USEPA action must be received by April 4, 1985.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review. (It is recommended that you telephone Uylaine E. McMahan, at (312) 353-0396 before visiting the Region V office).

Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604

Ohio Environmental Protection Agency, Office of Air Pollution Control, 361 East Broad Street, Columbus, Ohio 43216

Comments on this proposed rule should be addressed to: (Please submit an original and ten copies if possible) Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR–26), USEPA, Region V, 230 South Dearborn, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Uylaine McMahan (312) 353–0396.

SUPPLEMENTARY INFORMATION: On April 7, 1982 (47 FR 15076), the Environmental Protection Agency issued a proposed "Emissions Trading Policy Statement" (ETPS) which sets forth general principles for the creation, banking and use of emission reduction credits. This statement indicated that it is the policy of USEPA to encourage use of emissions trades to achieve more flexible, rapid and efficient attainment of national ambient air quality standards. It describes emissions trading, sets out general principles USEPA will use to evaluate emissions trades under the Clean Air Act, and expands opportunities for States and industry to use these less costly control approaches. The April 7, 1982, notice noted that, until USEPA takes final action on its policy statement, State actions involving emission trades would be evaluated under the provisions set forth in the proposed statement.

On November 25, 1983, May 6, 1983, and April 6, 1984, the Ohio Environmental Protection Agency (OEPA) submitted materials constituting a proposed revision to its ozone SIP for Harrison Radiator. Harrison Radiator has two metal coating facilities, one is the North facility located in downtown Dayton and the other is the South facility located in the City of Moraine. Both are located in Montgomery County, Ohio, which is an urban nonattainment area.

Under the existing federally approved SIP, each metal coating line is subject to the control requirements contained in Ohio Administrative Code (OAC) Rule 3745–21–09(U)(1)(a)(iii). Rule 3745–21–09(U)(1)(a)(iii) requires an emission rate of 3.5 pounds of VOC per gallon of coating, excluding water. USEPA approved these rules as meeting the Clean Air Act's reasonably available control technology (RACT) requirements on June 29, 1982.

In lieu of limitations contained in the SIP, the State is proposing an interfacility bubble between seven metal coating lines located at Harrison Radiator's north facility and south facility and eight degreasers located at the north facility. The VOC emissions from the seven metal coating lines will be offset by eliminating organic emissions from eight degreasers at the north facility. The emissions reductions beyond RACT from the degreasers provide the necessary offsets for this revision.

RACT Baseline

Ohio's degreaser regulations, which are comparable to the CTG requirements, consist of work practices and equipment standards. OEPA considers 50 percent control as the RACT baseline for those Harrison Radiator degreasers which provide the offsets. RACT for degreasers is comprised of control equipment and/or operating requirements. Degreasers L002, L003, L004, L005, L006, L009 and L010 are conveyorized degreasers.

The USEPA document "Control of Volatile Organic Emissions from Solvent Metal Cleaning" describes RACT for degreasers and estimates the resulting control efficiency. The RACT control efficiency for conveyorized degreasers is estimated at 25 to 60 percent in this document.

Source L014 is a cold dip degreaser. The estimated RACT control efficiency for cold cleaners (based upon the above mentioned USEPA document) is 50 to 53 percent.

Therefore, an overall RACT baseline of 50 percent is reasonable.

The coating lines currently employ a single coating air-dry enamel coating 4.77 pounds of VOC per gallon of coating, excluding water. On a solids basis, daily VOC emissions from the air-dry enamel paints and a compliance coating differ by 1758.23 pounds of VOC; the annual difference is 219.78 tons of VOC emissions. Therefore, an adequate alternative emission control strategy must demonstrate emission reduction credits in excess of these two quantities. The source is required to notify the OEPA immediately if any new coating other than the one they are currently using (4.77 lbs of VOC coating per gallon, excluding water) is employed in its metal coating lines.

Proposed emission reductions from the degreasers have been accomplished through solvent replacement and solvent elimination. All of the emission reduction measures were installed after the year 1980. The eight degreasers have previously used stoddard solvent. The eight stoddard units have either undergone organic solvent replacement with a water wash, or do not employ any type of degreasing agent.

A description of the eight stoddard units, along with their previous permitted usage, is presented below:

L003	Mar. 1982	Using Conveyor Tracks Only, No Solvent	63.8 Tons per year.
L004	May 1982	Converted to 1–3 percent Washing Oil Water Wash.	63.8 Tons per year.
L005	Sept. 1981	Using Blow-Off Conveyor Only, No Solvent	63.8 Tons per year.
L006	Sept. 1981	Converted to 1–3 percent Washing Oil Water Wash.	63.8 Tons per year.
L009	Mar. 1982	Converted to 1–3 percent Washing Oil Water Wash.	63.8 Tons per year.
L010	Sept. 1981	Converted to 1–3 percent Washing Oil Water Wash.	63.8 Tons per year.
L002	June 1981	Converted to Machine Cleaner Water Wash	(1)
L014	Apr. 1981	Converted to Machine Cleaner Water Wash	(1)

[1] L002 and L014 combined permitted usage is 63.8 Tons per year

Stoddard units L003, L004, L005, L006, L009, and L010 have been restricted to zero emissions. (See Ohio EPA's May 6, 1983, Director's Final Findings and Orders.) The OEPA submitted revised Findings and Orders on September 10, 1984, which would restrict degreasers L002 and L014 to zero VOC emissions.

There are 263.33 tons/year (2194.4 lbs/day) of offsets available from the eight degreasers. This is more than sufficient to offset the increased allowable paint system emissions of 219.78 tons/year and 1758.23 lbs/day. Information regarding the quantification of emission reductions for this revision are available in the April 5, 1984, technical support document for this action.

USEPA has determined that the proposed bubble is consistent with USEPA's April 7, 1982, proposed bubble policy. Therefore, USEPA is proposing to approve the Harrison Radiator bubble as a revision to the Ohio State Implementation Plan.

USEPA is providing a 30-day comment period on this notice of proposed rulemaking. Public comments received on or before April 4, 1985 will be considered in USEPA's final rulemaking. All comments will be available for inspection during normal business hours at the Region V office listed at the front of this notice.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

(Secs. 110 and 172 of the Clean Air Act, as amended (42 U.S.C. 7410, 7502, and 7601(a)))

Dated: June 29, 1984.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 85-5264 Filed 3-4-85; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Parts 52 and 81

[EPA Action MO 1699; A-7-FRL-2790-5]

Designation of Areas for Air Quality Planning Purposes; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: Section 107(d) of the Clean Air Act, as amended, provides for the designation of areas as either attainment, nonattainment, or unclassified with respect to the National Ambient Air Quality Standards (NAAQS). EPA today proposes to redesignate the New Madrid, Missouri, area from secondary nonattainment to attainment with respect to the NAAQS for total suspended particulates (TSP). This proposal is based on a request from the Missouri Department of Natural Resources (MDNR).

DATE: Public comments should be received by April 4, 1985.

ADDRESSES: Public comments should be sent to Daniel J. Wheeler, Environmental Protection Agency, 324 East 11th Street, Kansas City, Missouri 64106. The State submitted information and the EPA prepared Technical Support Document are available for inspection during normal business hours at the above address, and at the Missouri Department of Natural Resources, 1101 Rear Southwest Boulevard, Jefferson City, Missouri.

FOR FURTHER INFORMATION CONTACT: Daniel J. Wheeler at (816) 374-3791 or FTS 758-3791.

SUPPLEMENTARY INFORMATION: In response to section 107(d) of the Clean Air Act, as amended, EPA and the State of Missouri have designated all areas of the State as attaining the NAAQS, not attaining the NAAQS, or having insufficient data to make a determination. An attainment area is one in which the air pollution does not exceed the standards. A nonattainment area is one in which air quality is worse than the standards. An unclassified area is one for which there are insufficient data to determine whether the area is attainment or nonattainment. At 40 CFR Part 81, Subpart C, the areas of the State which are nonattainment for one or more pollutants are identified.

On December 17, 1984, the MDNR submitted a request to redesignate the New Madrid area from secondary nonattainment to attainment with respect to the NAAQS for TSP. The secondary NAAQS for TSP is a 24-hour value of 150 micrograms per cubic meter, not to be exceeded more than once per year.

The current Section 107 designation policy is summarized in a memorandum from EPA's Office of Air Quality Planning and Standards (OAQPS), dated April 21, 1983. The agency redesignation policy is further clarified in a December 23, 1983, memorandum from the Control Programs Operations Branch of OAQPS. In general, eight quarters of monitoring data should be used to support redesignation requests. There should also be evidence of an EPA approved State Implementation Plan (SIP) control strategy. In the absence of an approved SIP, permanent and/or federally enforceable emission reductions, which would have the same impact as an approved SIP, can be used to support redesignation requests.

The New Madrid area was designated nonattainment for primary and secondary TSP standards on March 3, 1978 (43 FR 8962), based on the recommendation of the MDNR and on air quality data available at that time. The primary nonattainment designation was removed, and the secondary nonattainment designation retained, on September 22, 1980 (45 FR 62811) on the basis of 1977-1978 air quality data. Since that time, however, significant federally enforceable emission reductions have occurred at the two major TSP sources which impact the designated area. Although the State did not submit a revised control strategy for the nonattainment area, as contemplated by Part D of the Clean Air Act, these emission reductions have had the same impact as a Part D SIP, and are federally enforceable as they were achieved pursuant to the EPA approved 1972 SIP (see 37 FR 10875, May 31, 1972).

There are eight quarters (1982-1983) of monitoring data which show attainment at the four sites located within the designated area. During this period, eight exceedances (four each year) of the secondary standard occurred at a monitor site located about one mile outside of the designated area. The State has demonstrated that the two major TSP sources did not contribute significantly to the exceedances. The problem is attributed to rural fugitive and agricultural emissions. For this reason, and because the State did not request designation of a new nonattainment area, EPA does not believe that it would be appropriate to change the boundary to designate a nonattainment area around the monitoring site where the exceedances occurred. On the basis of the preceding discussion, the State's request satisfies EPA redesignation policy.

Therefore, EPA proposes to redesignate the New Madrid area from secondary nonattainment to attainment for TSP.

EPA is also proposing to clarify the applicability of the State's permitting rules to New Madrid. On June 22, 1982 (47 FR 26833), EPA approved a new Missouri Rule 10 CSR 10-6.060, Permits Required, and amendments to Rule 10 CSR 10-6.020, Definitions, involving the review and permitting of new sources of air pollution. Because the State had not designated New Madrid nonattainment, EPA took no action on these rules insofar as they pertain to the New Madrid TSP nonattainment area. EPA now proposes to remove the "no action" provision, thus the New Madrid area will become subject to these rules as a result of this redesignation.

Under 5 U.S.C. 605(b), I certify that this redesignation will not have a significant economic impact on a substantial number of small entities.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

This notice of proposed rulemaking is issued under the authority of sections 107, 110 and 301 of the Clean Air Act, as amended (42 U.S.C. 7407, 7410 and 7601).

List of Subjects in 40 CFR Parts 52 and 81

Air pollution control agency, Particulate matter.

Dated: January 28, 1985.

Morris Kay,

Regional Administrator.

[FR Doc. 85-5263 Filed 3-4-85; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR 31

Federal Acquisition Regulation (FAR); Contract Cost Principles and Procedures

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Defense Acquisition Regulatory Council and the Civilian Agency Acquisition Council are considering a revision of the Federal Acquisition Regulation (FAR) at FAR 31.109, Advance agreements, and FAR 31.205–46, Travel costs.

Recent studies by Government contract administration activities identified problems being experienced in establishing the reasonableness of the cost of corporate aircraft. Accordingly, the Defense Acquisition Regulatory Council and the Civilian Agency Acquisition Council have concluded that revisions to FAR 31.205–46 are necessary.

DATE: Comments on the proposed revisions should be submitted in writing to the FAR Secretariat at the address shown below on or before May 6, 1985, to be considered in the formulation of the final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, Attn: FAR Secretariat (VR), 18th & F Streets, NW, Room 4041, Washington, DC 20405.

Please cite FAR Case No. 85–7 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Roger M. Schwartz, Director, FAR Secretariat, (202) 523–4755.

SUPPLEMENTARY INFORMATION: FAR 31.205–46(e)(2) presently contains five factors to be considered in determining the necessity of corporate aircraft. In their place, we are proposing the single criterion that the use of corporate aircraft is justifiable only when such use is specifically required for contract performance. Where such a contract requirement exists, the allowability of the costs of corporate aircraft will be subject to the general reasonableness test. In those cases where the use of corporate aircraft is not required in the performance of contracts, the allowability of flight costs will be limited to standard commercial equivalent fare, unless the excess costs are specifically approved by the administrative contracting officer. To make clear that an advance agreement may be used for formalizing contracting officer approval of costs in excess of coach or standard fares, we are proposing that FAR 31.109(h) be amended to include the costs of travel via corporate aircraft. The proposed language also requires that manifest/logs for all flights on company aircraft must be maintained and made available as a condition of allowability.

Contract administration problems have also been reported concerning the method of measuring the amount of unallowable cost when commercial air travel is via premium air accommodations. FAR 31.205–45(d) now states that the difference in cost between first-class air accommodations and less than first-class air accommodations is unallowable. We are proposing that the wording be amended to state that airfare costs in excess of coach or standard fare are unallowable. This change does not, in our view, represent any change in policy.

List of subjects in 48 CFR Part 31

Government procurement.

Therefore, it is proposed that 48 CFR Part 31 be amended as follows:

1. The Authority for Part 31 is:

Authority: 40 U.S.C. 486(c); Chapter 137, 10 U.S.C.; 42 U.S.C. 2453(c)).

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

2. Section 31.109 is amended by revising paragraph (h)(8) to read as follows:

31.109 Advance agreements.

* * * * *

(h) * * *

(8) Travel and relocation costs, as related to special or mass personnel movements and, as related to travel via contractor-owned, -leased, or -chartered aircraft;

* * * * *

3. Section 31.205–46 is amended by revising paragraphs (d) and (e) to read as follows:

31.205–46 Travel costs.

* * * * *

(d) Airfare costs in excess of coach or standard fare are unallowable except when such accommodations: require circuitous routing; require travel during unreasonable hours; excessively prolong travel; result in increased cost that would offset transportation savings, would offer accommodations not reasonably adequate for the physical or medical needs of the traveler, or are not reasonably available to meet necessary mission requirements. However, in order for airfare costs in excess of coach or standard fare to be allowable, the contractor must justify and document the applicable condition(s) set forth above.

(e) Costs of travel via contractor-owned, -leased, and -chartered aircraft are subject to the following:

(1) The cost of travel by contractor-owned, -leased, or -chartered aircraft as used in this paragraph, includes the cost of lease, charter, operation (including personnel), maintenance, depreciation, insurance, and other related costs. The cost is allowable when:

(i) The contractor makes available documentation as set forth in (3) below; and

(ii) The use of such aircraft is specifically required for contract performance.

(2) When a contractor-owned, -leased, or -chartered aircraft is not specifically required for contract performance, allowable travel costs shall be limited to the standard or coach fare for the flight destination, unless a higher amount is otherwise approved by the contracting officer based upon the facts and circumstances of the situation.

(3) In all cases, and whether or not the costs are claimed, the contractor is required to maintain and make available manifest/logs for *all* flights on company aircraft. As a minimum, the manifest/log shall indicate:

(i) Date, time, and points of departure;

(ii) Destination, date, and time of arrival;

(iii) Name of each passenger and relationship to the contractor;

(iv) authorization for trip; and

(v) Purpose of trip.

Dated: February 27, 1985.

Eugene M. Feinberg,

Acting Director, FAR Secretariat.

[FR Doc. 85–5212 Filed 3–4–85; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 33

Refuge Specific Fishing Regulations

Correction

In FR Doc. 85–4003, beginning on page 7079 in the issue of Wednesday, February 20, 1985, make the following corrections:

§ 33.2 [Corrected]

1. On page 7082, in the second column, the last line of paragraph (e) of § 33.2 should read, "codified in §§ 33.5 through 33.54."

§ 33.4 [Corrected]

2. On page 7082, in the second column, the last line of § 33.4 should read, "§§ 33.1, 33.2, and 33.5 through 33.54."

§ 33.5 [Corrected]

3. On page 7082, in the second column, in § 33.5, the first paragraph should be designated "(a)" rather than "(1)".

BILLING CODE 1505-01-M

Notices

Federal Register
Vol. 50, No. 43
Tuesday, March 5, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

AFRICAN DEVELOPMENT FOUNDATION

Advisory Council Meeting

Time: 12:00 p.m.
Place: The Embassy Row Hotel.
Date: Monday, 18 March 1985.
Status: Open.
Matter To Be Considered: 1. ADF Orientation of New Advisory Council members.

Contact Person for More Information: Ms. Marjorie S. Cook (634–9853).

Leonard H. Robinson, Jr.,
President
ADF Agency Number 11010006
ADF BOAC Number 953901

[FR Doc. 85–5372 Filed 3–4–85; 8:45 am]
BILLING CODE 8116–01–M

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

Natural Resource Management Guide Meeting; Columbia, SC

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice of meeting.

SUMMARY: This Farmers Home Administration (FmHA) State Office located in Columbia, South Carolina, is announcing a public information meeting to discuss its draft Natural Resource Management Guide.

DATES: Meeting on March 19, 1985, 10:00 a.m. to 12:00 noon. Comments must be received no later than April 18, 1985.

ADDRESS: Meeting location at Room 925, Federal Building, 1835 Assembly Street, Columbia, South Carolina.

Written Comments and Further Information Will Be Addressed to: State Director, FmHA, 1835 Assembly Street, Columbia, South Carolina 29201, (803) 765–5879.

All written comments will be available for public inspection during regular work hours at the above address.

SUPPLEMENTARY INFORMATION: FmHA's South Carolina State Office has prepared a draft Natural Resource Management Guide. The Guide is a brief document describing the major environmental standards and review requirements that have been promulgated at the Federal and local levels and that affect the financing of FmHA activities in South Carolina. The purpose of the meeting is to discuss the Guide as well as to consider comments and questions from interested parties. Copies of the Guide can be obtained by writing or telephoning the above contact.

Department of Agriculture

Any person or organization desiring to present formal comments or remarks during the meeting should contact FmHA in advance, if possible. It will also be possible at the start of the meeting to make arrangements to speak. Time will be available during the meeting to informally present brief, general remarks or pose questions. Additionally, a 30-day period for the submission of written comments will follow the meeting.

Dated: February 26, 1985.

Glendon D. Deal,
Acting Director, Program Support Staff.

[FR Doc. 85–5246 Filed 3–4–85; 8:45 am]
BILLING CODE 3410–07–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–043]

Printed Vinyl Film From Brazil; Preliminary Results of Administrative Review of Antidumping Finding and Tentative Determination to Revoke

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Administrative Review of Antidumping Finding and Tentative Determination to Revoke.

SUMMARY: The Department of Commerce has conducted an administrative review of the antidumping finding on printed vinyl film from Brazil. The review covers Vulcan Material Plastico, S.A., the one known manufacturer and/or exporter of this merchandise to the United States currently covered by the finding, and the period August 1, 1983 through July 31, 1984. There were no known shipments of this merchandise to the United States during the period and there are no known unliquidated entries.

As a result of the review, the Department has tentatively determined to revoke the finding. There have been no known shipments of this merchandise to the United States by Vulcan Material Plastico, S.A. for over eight years. Interested parties are invited to comment on these preliminary results and tentative determination to revoke.

EFFECTIVE DATE: March 5, 1985.

FOR FURTHER INFORMATION CONTACT: Arthur N. DuBois or J. Linnea Bucher, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone: (202) 377–1130/5255.

SUPPLEMENTARY INFORMATION: .

Background

On August 21, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 33158) the final results of its last administrative review of the antidumping finding on printed vinyl film from Brazil (38 FR 22794, August 24, 1973) and announced its intent to conduct the next administrative review. The Department has now conducted that administrative review.

Scope of the Review

Imports covered by the review are shipments of printed vinyl film, also known as printed polyvinyl chloride sheeting, currently classifiable under item 771.4312 of the Tariff Schedules of the United States Annotated.

The review covers the one known manufacturer and/or exporter of Brazilian printed vinyl film to the United States currently covered by the finding, Vulcan Material Plastico, S.A., and the period August 1, 1983 through July 31, 1984. There were no known shipments of this merchandise to the United States during the period and there are no known unliquidated entries.

Preliminary Results of Review and Tentative Determination to Revoke

Vulcan requested revocation of the finding. As provided for in §353.54(e) of the Commerce Regulations, Vulcan has agreed in writing to immediate suspension of liquidation and reinstatement of the finding under circumstances as specified in the written agreement. Vulcan has not shipped this merchandise to the United States for over eight years.

Therefore, we tentatively determine to revoke the finding on printed vinyl film from Brazil. If this revocation is made final it will apply to all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice.

Interested parties may submit written comments on these preliminary results and tentative determination to revoke within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. The Department will publish the final results of the administrative review, including the results of its analysis of any such comments or hearing.

This administrative review, tentative determination to revoke, and notice are in accordance with sections 751 (a)(1) and (c) of the Tariff Act of 1930 (19 U.S.C. 1675 (a)(1), (c)) and §§ 353.53 and 353.54 of the Commerce Regulations (19 CFR 353.53, 353.54).

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

February 27, 1985.

[FR Doc. 85–5270 Filed 3–4–85; 8:45 am]

BILLING CODE 3510–DS–M

[C–351–405]

Final Affirmative Countervailing Duty Determination; Cast-Iron Pipe Fittings from Brazil

February 25, 1985.

AGENCY: Imports Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that certain benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Brazil of cast-iron pipe fittings The net subsidy is 18 percent *ad valorem* and 14.17 percent *ad valorem* for bonding purposes. We have notified the United States International Trade Commission (ITC) of our determination. We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of cast-iron pipe fittings from Brazil that are entered or withdrawn from warehouse, for consumption, after December 12, 1984, and to require a cash deposit or bond on entries of these products in the amount equal to the net subsidy.

EFFECTIVE DATE: March 5, 1985.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita or Vincent Kane, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 377–3530 (LaCivita) or (202) 377–5414 (Kane).

SUPPLEMENTARY INFORMATION:

Final Determination

Based upon our investigation, we determine that certain benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Brazil of cast-iron pipe fittings. For purposes of this investigation, the following programs are found to confer subsidies:

- IPI Export Credit Premium;
- Exemption for Export Earnings Income Tax;
- Working Capital Financing for Exports (Resolutions 674 and 882/950);
- Export Financing Under the CIC–CREGE 14–11 Circular;
- The CDI Program—Exemption of IPI Taxes and Customs Duties on Imported Equipment;
- The BEFIEX Program;
- The CIEX Program;
- Long-Term Loans under the ADTEN (Apoio ao Desenvolvimento Tecnologico da Empresa Nacional) of FINEP (Finaciadora de Estudos e Projetos).

We determine the net subsidy to be 18 percent *ad valorem* and 14.17 percent *ad valorem* for bonding purposes.

Case History

On September 18, 1984, we received a petition from the Cast-Iron Pipe Fittings Committee, on behalf of the U.S. industry producing certain cast-iron pipe fittings. In compliance with the filing requirements of § 355.26 of our regulations (19 CFR 355.26), the petition alleged that manufacturers, producers, or exporters in Brazil of certain cast-iron pipe fittings directly or indirectly receive benefits which constitute subsidies within the meaning of section 701 of the Act, and that these imports materially injure or threaten material injury to a U.S. industry.

We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation, and on October 9, 1984, we initiated such an investigation (49 FR 28290). We stated that we expected to issue a preliminary determination by December 12, 1984.

Since Brazil is a "country under the Agreement" within the meaning of section 701(b) of the Act, an injury determination is required for this investigation. Therefore, we notified the ITC of our initiation. On November 2, 1984, the ITC determined that there is a reasonable indication that these imports materially injure or threaten material injury to a U.S. industry (49 FR 37856).

We presented a questionnaire concerning the allegations to the government of Brazil in Washington, D.C. on October 18, 1984.

On November 26, 1984, we received a response to the questionnaire. On the basis of information contained in this questionnaire response, we made a preliminary determination on December 12, 1984.

We verified the response of the government of Brazil in Rio de Janeiro, from January 14, 1985 to January 23, 1985.

At the request of both petitioner and respondents, we held a hearing on January 28, 1985, to allow the parties an opportunity to address the issues arising in the investigation. Both petitioner and respondents filed briefs discussing these issues before and after the hearing.

Scope of the Investigation

The products covered by this investigation are certain cast-iron pipe fittings, which are defined for purposes of this proceeding as: cast-iron fittings, not malleable, other than alloy cast iron and other than for use with cast-iron soil pipe; or cast-iron fittings, malleable, advanced in condition by operations or processes subsequent to the casting process, or if not advanced, of other than alloy cast-iron as currently provided for in items 610.6240, 610.6500, 610.7000 and 610.7400 of the *Tariff Schedules of the United States, Annotated (TSUSA).*

The only known producer and exporter in Brazil of certain cast-iron pipe fittings to the United States is Fundicao Tupy S.A., for which we have received information from the government of Brazil. For purposes of this final determination, the period for which we are measuring subsidization ("the review period") is Fundicao Tupy

S.A.'s 1984 fiscal year—April 1, 1983, to March 31, 1984.

Analysis of Programs

Throughout this notice, we refer to certain general principles applied to the facts of the current investigation. These principles are described in the "Subsidies Appendix" attached to the notice of "Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina; Final Affirmative Countervailing Duty Determination and Countervailing Duty Order," which was published in the April 26, 1984, issue of the **Federal Register** (49 FR 18006).

Based upon our analysis of the petition, the response to our questionnaire, our verification, and comments filed by petitioners and respondents, we determine the following:

I. Programs Determined To Confer Subsidies

We determine that subsidies are being provided to manufacturers, producers, or exporters in Brazil of cast-iron pipe fittings under the following programs:

A. *IPI Export Credit Premium and Export Tax.* Brazilian exporters of manufactured products are eligible for a tax credit on the Imposto sôbre Produtos Industrializados (Industrialized Products Tax, or IPI). The IPI export credit premium, a cash reimbursement paid to the exporter upon the export of otherwise taxable industrial products, has been found to confer a benefit in previous countervailing duty investigations. After suspending this program in December 1979, the government of Brazil reinstated it on April 1, 1981, in accordance with Ministry of Finance "Portaria" (Notice) No. 270 (amended by Portaria No. 252 on November 29, 1982).

Subsequent to April 1, 1981, this export credit premium was partially phased out in accordance with Brazil's commitment pursuant to Article 14 of the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade ("the Subsidies Code"). The government of Brazil gradually reduced the benefit from 15 percent in 1981 to 11 percent on September 30, 1982.

Fundicao Tupy S.A. received benefits under this program. We divided the credits earned in fiscal year 1984 over the value of its cast-iron pipe fittings exports in that year, and calculated a net subsidy of 10.53 percent *ad valorem*.

It is our policy to take into account program-wide changes announced before the preliminary determination. On September 12, 1984, the government of Brazil instituted Portaria No. 176 which reduced the IPI Export Credit Premium to 7 percent effective on December 1, 1984. We verified that these changes occurred, and determine that the rate shall be 6.70 percent *ad valorem* for cash deposit or bonding purposes.

B. *Income Tax Exemption for Export Earnings.* Under Decree-Laws 1158 and 1721, exporters of cast-iron pipe fittings are eligible for exemption from income tax on a portion of profits attributable to export revenue. Because this exemption is tied to exports and is not available for domestic sales, we determine it to confer a subsidy. Fundicao Tupy S.A. took an exemption from income tax payable in 1983 on a portion of export profits earned in 1982. We multiplied that portion by the nominal corporate tax rate, and allocated the benefit over the total value of fiscal 1984 exports to calculate a subsidy rate of 0.48 percent *ad valorem*.

C. *Working Capital Financing for Exports (Resolutions 674 and 882/950).* Resolution 882 financing, administered by the Carteira do Comercio Exterior (CACEX) of the Banco do Brasil, provides short-term working capital to purchase inputs for the production of goods destined for export. On January 1, 1984, Resolution 882 superseded Resolution 674, under which such financing was previously granted. On August 21, 1984, Resolution 882 was modified by Resolution 950. Eligibility for 674/882/950 financing is based on the company's past export performance or on an acceptable export plan. The amount available for financing is calculated by making a series of adjustments to the dollar value of exports.

Following CACEX approval of their applications, participants receive certificates which represent portions of the total dollar amount for which they are eligible. Exporters may present the certificates to banks in return for cruzeiro loans at the exchange rate in effect on that date. Use of a certificate establishes a loan obligation with a term of up to one year (360 days). Certificates must be used within 12 months of the date of issue, and loans incurred as a result of their use must be repaid within 18 months of that date.

During the review period, the interest ceiling on loans obtained under the program was raised from 40 to 60 percent. Resolution 882 changed the interest rate to full monetary correction plus three percent, with the interest and principal payable on the expiration date of the loan. Resolution 950 changed the interest ceiling again to full monetary correction plus an interest rate such that the maximum difference between that interest rate and the prevailing interest rate is 10 percent. Since 674/882/950 financing is contingent on export performance, and provides funds to participants at interest rates lower than those available from commercial sources, we determine that this program confers an export subsidy.

To calculate the benefit, we compared the interest rates charged with the appropriate benchmark (the compounded minimum discount rate on accounts receivable) and applied the difference to the principal amounts, based on the date that interest was paid. We allocated the benefit over the total value all exports, and calculated a subsidy rate of 3.20 percent *ad valorem*.

D. *Export Financing Under the CIC–CREGE 14–11 Circular.* Under its CIC–CREGE 14–11 circular ("14–11"), the Banco do Brasil provides 180- and 360-day cruzeiro loans for export financing, on the condition that companies applying for these loans negotiate fixed-level exchange contracts with the bank. Companies obtaining a 360-day loan must negotiate exchange contracts with the bank in an amount equal to twice the value of the loan.

Companies obtaining a 180-day loan must negotiate an exchange contract equal to the amount of the loan. In addition to requiring exchange contracts, the Banco do Brasil requires that these loans be fully secured by collateral in the form of tangible property. The bank normally requires that the value of collateral equal at least 130 percent of the amount of the loan. The bank also charges a commission on all such loans.

All exporters of manufactured products with production cycles of less than 180 days may apply for these loans. The maximum level of eligibility is based on the value of the applicant's exports in the previous year. Companies that also receive Resolution 882 financing have a maximum eligibility of 10 percent; all others have a maximum eligibility of 15 percent.

Although this program does in certain aspects appear to operate on a commercial basis, the government of Brazil did not supply sufficient data to support its assertion that commissions, exchange contract requirements and collateral requirements serve to raise the effective rates on these loans to a level of comparability with those on short-term loans from other commercial sources. Without sufficient information with which to quantify these additional charges, we must compare unadjusted nominal rates on 14–11 loans with our commercial benchmark, *i.e.*, the nominal discount rate of accounts receivable, as

the best information available. This comparison shows that the rate on 14–11 loans is below the benchmark.

Fundicao Tupy S.A. obtained loans under this program. To calculate the benefit, we compared the interest rates charged with the appropriate benchmark and applied the difference to the principal amounts. We then allocated the benefit over the total value of Fundicao Tupy's exports, which resulted in a subsidy rate of 2.40 percent *ad valorem*.

E. *The CDI Program—Exemption of IPI Tax and Customs Duties on Imported Equipment.* Under Decree-Law 1137 and its successor Decree-Law 1428, the Conselho do Desenvolvimento Industrial (Industrial Development Council, or CDI) provides for the exemption of 80 to 100 percent of the customs duties and 80 to 100 percent of the IPI tax on certain imported machinery for projects approved by the CDI. The recipient must demonstrate that the machinery or equipment for which an exemption is sought was not available from a Brazilian producer. The investment project must be deemed feasible and the recipient must demonstrate that there is a need for added capacity in Brazil.

CDI Resolution 22 of October 24, 1972, extended these benefits to "pilot industries" and permitted the CDI to recommend pilot industrial projects for financing by the National Economic Development Bank (FUNTEC), the Financier of Studies and Projects (FINEP), and by the National Fund for Scientific and Technological Development (FNDCT). Resolution 1428 extended the right to grant exemptions from customs duties and from the IPI tax on imported equipment to other agencies within the government (CIEX among them).

Decree Law 1726 of December 7, 1979 repealed this program. Subsequently, no new projects were eligible for these benefits. However, companies whose projects were approved prior to repeal still receive these benefits pending completion of the project.

In prior cases (Certain Carbon Steel Products from Brazil; Final Affirmative Countervailing Duty Determination (49 FR 17988), it was determined that the CDI exemption from customs duties and the IPI tax on imported equipment is limited to projects in fourteen industries approved by the government. Based on the record of this and earlier Brazilian countervailing duty investigations, we have no evidence that this requirement does not allow the government to target benefits to particular companies. For this reason, we determine that the CDI program confers a subsidy on the products under investigation. Neither the government of Brazil nor Fundicao Tupy S.A. provided sufficient evidence to establish that benefits were not provided to Fundicao Tupy S.A. under the CDI program during the review period. Therefore, we used the best information available, which in this case is information supplied by petitioner, to determine a subsidy of 0.38 percent *ad valorem*.

F. *The BEFIEX Program.* The Comissao para a Concessao de Beneficios Fiscais a Programas Especiais de Exportacao (Commission for the Granting of Fiscal Benefits to Special Export Programs, or BEFIEX) grants at least three categories of benefits to Brazilian exporters:

- Under Decree-Law 77.065, BEFIEX may reduce by 70 to 90 percent import duties and the IPI tax on the importation of machinery, equipment, apparatus, instruments, accessories and tools necessary for special export programs approved by the Ministry of Industry and Trade, and may reduce by 50 percent import duties and the IPI tax on imports of components, raw materials and intermediary products;
- Under article 13 of Decree No. 72.1219, BEFIEX may extend the carry-forward period of tax losses from 4 to 6 years; and
- Under article 14 of the same decree, BEFIEX may allow special amortization of pre-operational expenses related to approved projects.

This program has been found to confer a subsidy in the past, and neither the government of Brazil nor Fundicao Tupy S.A. provided sufficient information to establish that this program was not used. Therefore, we used the best information available, which in this case is information supplied by petitioner, to determine a subsidy of 0.50 percent *ad valorem*.

G. *The CIEX Program.* Decree-Law 1428 authorized the Comissao para Incentivos à Exportaçao (Commission for Export Incentives, or CIEX) to reduce import taxes and the IPI tax up to 10 percent on certain equipment for use in export production. This program has been found to confer a subsidy in previous investigations. Because neither the government of Brazil no Fundicao Tupy S.A. provided sufficient information to verify that this program was not used, we used the best information available, which in this case is information supplied by petitioner, to determine subsidy of 0.25 percent *ad valorem*.

H. *Long-Term Loans Under the ADTEN (Apoio ao Desenvolvimento Technologico da Empresa Nacional) of FINEP (Financiadora de Estudos e Projetos).* During the course of the investigation, we discovered and verified that Fundicao Tupy S.A. received a number of long-term loans from FINEP, a government agency charged with promoting scientific and technological development in Brazil.

FINEP works in conjunction with the CNPq of (Conselho Nacional de Desenvolvimento Cientifico e Technologico) to approve and grant loans through state-owned regional development banks in conformity with the Secretaria de Planejamento (SEPLAN) and to implement the objectives of the Third Basic Plan of Scientific and Technological Development (III BPDCT). FINEP has a number of loan programs, the largest of which is ADTEN. ADTEN grants loans for projects which: develop new products; adapt and absorb new technology; train human resources to absorb new technology; commercialize new products and implement management techniques to employ new technology; develop quality control techniques; establish new research and development centers in the country; and engage in pure research. Companies negotiate the terms of each loan with the regional development banks with whom they deal. They must submit to the terms of the loan imposed by the bank and by FINEP, which disburses the funds in allotment, and maintains project oversight throughut the life of the loan. These loans are granted at preferential rates of interest and are partially indexed to inflation. Moreover, the Brazilian government was unable to demonstrate that these loans were not provided to specific enterprises, industry or group of enterprises or industries. Therefore, we determine that these loans are countervailable.

Fundicao Tupy S.A. had a number of commercial loans which were fully indexed to inflation and granted at rates of interest that were higher than those charged on FINEP loans. We used these as our benchmark. We calculated the reductions in: (1) The rate of interest payable and (2) the increase in principal outstanding resulting from the partial indexation, and found a subsidy of 0.26 percent *ad valorem*.

II. Programs Determined not to Confer Subsidies

A. *Income Tax Deductions for Foreign Selling Expenses.* Petitioner alleged that the govenment of Brazil offers companies income tax deductions for selling expenses incurred or export sales. but does not offer comparable deductions for domestic selling expenses. At verification we found that

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income tax deductions for foreign selling expenses are granted under the same general criteria as equivalent domestic expenses; such expenses are deductible regardless of whether the expense was for domestic or export purposes. Therefore, we determine this program not to confer a subsidy.

III. Programs Determined not To Be Used

We determine that manufacturers, producers or exporters in Brazil of certain cast-iron pipe fittings did not use the following programs listed in our notice, Initiation of a Countervailing Duty Investigation: Cast-Iron Pipe Fittings from Brazil (49 FR 40431):

A. *IPI Tax Rebates for Capital Investment.* Decree-Law 1547, enacted in April 1977, provides funding for approved expansion projects in the Brazilian steel industry through a rebate of the IPI, a value-added tax imposed on domestic sales.

We verified that producers of pipe fittings are not eligible for IPI rebates under Decree-Law 1547. Accordingly, we determine that this program was not used by the producer of the products under investigation.

B. *Resolution 330 of the Banco Central do Brasil.* Resolution 300 provides financing for up to 80 percent of the value of the merchandise placed in a specified bonded warehouse and destined for export. Exporters of cast-iron pipe fittings would be eligible for financing under this program. However, we verified that Fundicao Tupy S.A. did not participate in this program during the review period.

C. *Resolution 68 (FINEX) Financing.* Resolution 68 of the Conselho Nacional do Comercio Exterior (COCEX) provides that CANCEX may draw upon the resources of the Fundo de Financiamento a Exportacao (FINEX) to extend dollar-denominated loans to foreign buyers of Brazilian goods. Financing is granted on a transaction-by-transaction basis.

We verified that Fundicao Tupy S.A. did not receive Resolution 68 financing on transactions with the United States during the review period.

D. *Accelerated Depreciation for Capital Goods Manufactured in Brazil.* Pursuant to Decree-Law 1137, any company which purchases Brazilian-made capital equipment and has an expansion project approved by the CDI may depreciate this equipment at twice the rate normally permitted under Brazilian tax laws. We verified that Fundicao Tupy S.A. did not participate in this program during the review period.

E. *Local Tax Incentives.* Petitioner alleges that the respondent benefited from certain unspecified local tax measures and incentives in Brazil. We verified that Fundicao Tupy S.A. did not receive any local tax benefits.

F. *Incentives for Trading Companies* Petitioner alleges that the respondent distributes its export sales through such intermediaries as trading companies, and that under Resolution 643 of the Banco Central do Brasil, trading companies can obtain export financing similar to that obtained by manufacturers under Resolution 674/682. We verified that Fundicao Tupy S.A. did not use this program.

G. *Government Guarantees on Long-Term Loans.* Petitioner alleges that the respondents benefited from certain government guarantees on long-term foreign-currency loans. We verified that Fundicao Tupy S.A. did not use this program.

H. *The PROEX Program.* Petitioner alleges that short-term credits for exports were established under the Programa de Financiamento a Producao para a Exportacao (PROEX), previously referred to as the Apoio a Exportacao program during the review period. We verified that Fundicao Tupy S.A. did not use this program.

IV. Programs Determined Not To Exist

A. *The Foundry Plan.* Petitioner alleges that Fundicao Tupy S.A. receives incentives under the "Foundry Plan" of the Third Basic Plan of Scientific and Technological Development—1980–1985 (III–PBDCT). That plan calls for the "strengthening of indigenous foundries with the active participation of the government."

We verified that the III–PBDCT provides neither financial benefits nor any other types of assistance. It is simply a policy statement intended to stimulate the use of available public sector resources for scientific and technological development. Funds are provided through on-going programs of various Brazilian government ministries and agencies. An example of this is the long-term financing through FINEP which we have found to be countervailable in this determination. We found no evidence to the contrary at verification and therefore determine that this program, as alleged, does not exist.

Petitioner's Comments

Comment 1: Petitioner claims that, based on information in the petition, the Department should not have accepted the Brazilian government's response that the Foundry Plan does not provide benefits for purposes of the preliminary determination. Petitioner contends that the Department's practice of accepting this type of response rewards evasive and otherwise uncooperative respondents.

DOC Position: Unless we have persuasive evidence to the contrary, we accept a foreign government's denial that a program exists or its statement that a particular firm does not receive benefits under a program for purposes of the preliminary determination. In the case of the Foundry Plan, we requested further information to explain the discrepancy between petitioner's claims and the Brazilian government's response. For the final determination, we have verified that the Foundry Plan, as alleged, does not exist.

Comment 2: With regard to any grant or loan received by Fundicao Tupy S.A. for research and development, petitioner contends that these benefits are not generally available, that the results of the R&D would not have broad applicability, and should be considered countervailable.

Respondents rebut petitioner's contention by arguing that the research and development assistance received by Fundicao Tupy S.A. is not countervailable because it is for research and development of a product unrelated to cast iron pipe fittings. However, even if the benefits could be tied to the product under investigation, similar assistance is provided to a variety of industries and the results of the research and development will have wide application and be available to the public. Finally, they contend that no commercial benefit is conferred by this program.

DOC Position: We have countervailed against those partially-indexed FINEP loans which we found to be related to cast iron products. We did not receive sufficient evidence that these loans were generally available or that the results of the R&D projects have been disseminated to the public.

Comment 3: Petitioner argues that program-wide changes, such as those effected by the phase-out of the IPI export credit premium, should not be taken into account if they occur after the period of investigation. Moreover, should the Department accept the program-wide change, petitioner believes that the November and December 1984 reductions cannot be documented because of the delay of receipt of the IPI payment.

DOC Position: As a general rule, we take into account program-wide changes that occur after the period of investigation and prior to a preliminary determination if we have verified information on the change and the

magnitude of the resulting subsidy. Our practice reflects our concern that bonding/deposit rates correspond as nearly as possible to the eventual duty liability and that the petitioners have an opportunity to make comments on the program-wide changes during the investigation. Therefore, when a program-wide change occurs after the period of review and before the preliminary determination and where that change is verifiable, our net subsidy calculation is adjusted to reflect the change. With regard to the November and December 1984 IPI reductions, our practice is to calculate the benefit on the basis of the IPI that is applied for or earned, not on the amount of IPI received. We verified that the amounts applied for in November and December 1984, were consistent with the announced reductions.

Comment 4: Petitioner claims that the Department should have investigated the upstream subsidy allegedly conferred on producers of cast-iron pipe fittings through purchases of subsidized pig iron. In particular, petitioner contends that because Brazilian pig iron producers receive domestic subsidies, the price paid for the pig iron should be adjusted upwards to reflect these subsidies. Also, petitioner objects to the Department's test of the effect of the pig iron subsidy on the cost of producing cast iron pipe fittings.

DOC Position: We declined to initiate an investigation of upstream subsidies in this case because we determined that petitioners did not demonstrate that domestic subsidies to Brazilian pig iron producers conferred a competitive benefit on Brazilian cast-iron pipe fittings or that the subsidies to the pig iron producers had a significant effect on the cost of producing cast-iron pipe fittings. In the first instance, the mere existence of a domestic subsidy is not sufficient to demonstrate that this subsidy is passed on, *i.e.*, that it confers a competitive benefit. With regard to the significant effect test, we have determined that a potential cost savings of less than 1 percent on an input that accounts for only 30–40 percent of the value of the final product is not significant.

Comment 5: Petitioner contends that there is sufficient evidence on the record on which to make a determination that imports of certain cast-iron pipe fittings have been massive over a relatively short period of time. Hence, the Department should make a final affirmative determination of critical circumstances in this case.

DOC Position: IM–146 statistics demonstrate that the volume of cast-iron pipe fittings from Brazil declined 8.5 percent in the three-month period following the filling of the petition and was 35 percent lower in the second half of 1984 than in the second half of 1983. Expressed as a percentage of total U.S. cast-iron pipe fittings imports, imports from Brazil dropped 51 percent in the same period. On the basis of that data, we determine that imports were not massive over a relatively short period of time, and therefore, that critical circumstances do not exist.

Comment 6: Petitioner argues that exemption of export credits and export insurance from indirect taxes constitutes a countervailable subsidy, because only indirect taxes on physically incorporated inputs may be rebated.

DOC Position: The IOF tax is included in the benchmark for short-term export financing and hence captures the additional benefit conferred by the tax exemption.

Respondents' Comments

Comment 1: Respondents claim that, based on its verification, the Department should conclude that Fundicao Tupy S.A. receives no benefits under the Basic Plan of Scientific and Technological Development (the Foundry Plan). They further contend that even if benefits were available they would not be countervailable because they are provided to more than a specific industry, enterprise or group of industries or enterprises.

DOC Position: See section IV(A) and Petitioner's Comment 1 of this notice.

Comment 2: Respondents argue that in its final determination, the Department should provide for decreases in the bonding/deposit rate corresponding to reductions in the IPI export credit premium rate scheduled for January 1, 1985 through May 1, 1985. They claim that it is not lawful to continue to assess duties or require deposits at levels in effect before the date of any reduction.

DOC Position: We cannot take into account program-wide changes that have not yet been implemented. As stated in our response to Petitioner's Comment 3, we calculate the bonding/deposit rate to correspond as closely as possible to the eventual assessment rate. Nevertheless, we must balance the desire for accuracy with the need to base our final determination on verified information and the need to allow petitioners an opportunity to comment on the alleged program-wide range. As a result, our "cut-off" date for taking into account program-wide changes has been the date of the preliminary determination. Verified post-preliminary program-wide changes will be taken into account in any administrative review that may occur under section 751 of the Act.

Comment 3: Respondents claim that the value of the subsidy arising from the IPI export credit premium should be based on the firm's actual utilization of the program rather than on the total amount available.

DOC Position: We agree. The bonding/deposit rate reflects the amount of the IPI export credit premium for which Fundicao Tupy S.A. applied.

Comment 4: Fundicao Tupy S.A. argues that in calculating the net subsidy conferred by the IPI export credit premium the Department should deduct the loss in value resulting from the government-mandated delay in receipt of the payment.

DOC Position: Under section 771(6)(B) of the Act, an offset is allowed for "any loss in the value of the subsidy resulting from its deferred receipt if the deferral is mandated by Government order." In the case of the IPI export credit premium, no such government mandate exists. Delays in a company's receipt of IPI credits are administrative, the result of a lengthy application and approval process. No offset is allowed in this case.

Comment 5: Respondents argue that the effective rather than the nominal corporate tax rate should be used in valuing the benefit from the income tax exemption for export earnings.

DOC Position: We verified that Fundicao Tupy S.A.'s effective tax rate is the same as its nominal tax rate, 35 percent.

Comment 6: Respondents claim that for short-term export financing the Department should calculate the benefit based on the changes effected by Resolutions 882 and 950, which came into force on January 1, 1984, and August 21, 1984, respectively.

DOC Position: As discussed elsewhere in this notice, we attempt to take into account program-wide changes that occur prior to our preliminary determination when the changes can be verified. However, for certain types of programs this is not possible. For example, modifications in short-term financing regimes can result in changed utilization rates and changed benchmarks. The effects of these changes are not easily quantified, nor do they occur immediately. A mechanical computation of benefits, based on assumptions such as those suggested by respondents, is unacceptable in these circumstances. Moreover, Fundicao Tupy S.A.'s experience under Resolution 950 is extremely limited and therefore does not form an adequate basis for calculating a bonding/deposit rate. Therefore, we have calculated the

subsidy based on Fundicao Tupy S.A.'s actual experience during the period of investigation. If the level of benefit has changed as a result of Resolution 950, this will be taken into account in any eventual 751 review.

Comment 7: Respondents argue that the benefits from Resolution 674/882/950 short-term export financing should be allocated by product and market because the bulk of Fundicao Tupy S.A's exports are to Europe and Southwest Asia.

DOC Position: While it is possible to tie the amount of financing a company qualifies for to its export of a specific product, it is not possible to attribute the use of working capital loans to a specific product destined for a specific market. Therefore, we allocate the benefit received from all loans over the value of all exports.

Comment 8: Respondents contend that the Department should use Fundicao Tupy S.A.'s monthly receivable discount rate as the benchmark for short-term export financing.

DOC Position: As stated in the Subsidies Appendix, we do not calculate company-specific benchmarks for short-term financing programs.

Comment 9: Respondents argue that the Department should use the effective interest rates on 674/882/950 loans, reflecting partial payment of interest during the term of the loan.

DOC Position: We agree.

Comment 10: For short-term export financing under Resolution 674/882/950 and CIC–CREGE 14–11, respondents claim that the Department erred in considering 1984 loans in calculating the subsidy.

DOC Position: The period of investigation is April 1, 1983 through March 31, 1984. Therefore, any loans on which interest was paid during the period are properly included in our calculations.

Comment 11: Respondents claim that the Department should allocate the benefits under CIC-CREGE 14–11 over the value of total exports.

DOC Position: We agree and have allocated the benefits over Fundicao Tupy S.A.'s fiscal 1984 export sales.

Comment 12: Respondents ask that the Department take into account any collateral requirements, foreign exchange contracts and the related costs of financing in computing the effective cost of CIC-CREGE 14–11 loans.

DOC Position: We could not verify these costs and hence did not include them.

Comment 13: Respondents have made additional comments claiming that: (1) The exemption from the IOF tax on export loans is not a countervailable subsidy, (2) the use of unweighted, average benchmarks is incorrect, and (3) the CIC-CREGE 14–11 financing is not countervailable because it is not a government program, and because it operates on a commercial basis, consistent with the standards enunciated in the Subsidies Code.

DOC Position: The Department's positions on these issues were most recently stated in the Final Affirmative Countervailing Duty Determination on Oil Country Tubular Goods from Brazil. Respondents have provided no new information which would cause us to change those positions.

Verification

In accordance with section 776(a) of the Act, we verified all the information used in making our final determinations.

Suspension of Liquidation

In accordance with section 703(d) of the Act, on December 12, 1984, we instructed the U.S. Customs Service to suspend liquidation of all entries of cast-iron pipe fittings from Brazil (49 FR 49319). As of the date of publication of this notice in the **Federal Register**, the liquidation of all entries, or withdrawals from warehouse, for consumption of this merchandise will continue to be suspended and the Customs Service shall require an *ad valorem* cash deposit or bond for each such entry of this merchandise as follows:

Manufacturers, producers and exporters	Ad valorem rate (percent)
Fundicao Tupy S.A	14.17
All other manufacturers/producers/exporters	14.17

This suspension will remain in effect until further notice.

Final Negative Determination of Critical Circumstances

Petitioner alleged that critical circumstances exist within the meaning of section 705(a)(1) of the Act, with respect to cast-iron pipe fittings from Brazil. In determining whether critical circumstances exist, we examine whether:

(a) The alleged subsidy is inconsistent with the agreement, and

(b) There have been massive imports of the subject merchandise over a relatively short period.

In the case, information on the record does not indicate that there have been massive imports of the merchandise under investigation over a relatively short period of time within the meaning of section 705(a)(1) of the Tariff Act of 1930. Therefore, we determine that critical circumstances do not exist with regard to cast-iron pipe fittings from Brazil.

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-confidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

The ITC will determine whether these imports materially injure or threaten material injury to, a U.S. industry within 45 days of the publication of this notice.

If the ITC determines that material injury or the threat of material injury does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or cancelled. If, however, the ITC determines that such injury does exist, we will issue a countervailing duty order, directing Customs officers to assess a countervailing duty on cast-iron pipe fitings from Brazil entered, or withdrawn from warehouse, for consumption after the suspension of liquidation, equal to the net subsidy amount indicated in the "Suspension of Liquidation" section of this notice.

This notice is published pursuant to section 705(d) of the Act (19 U.S.C. 1671(d)).

February 25, 1985.

William T. Archey,

Acting Assistant Secretary for Trade Administration.

[FR Doc. 85–5271 Filed 3–4–85; 8:45 am]

BILLING CODE 3510-DS-M

National Bureau of Standards

Accreditation Guideline Implementing Federal Standards Policy

AGENCY: National Bureau of Standards Department of Commerce.

ACTION: Notice of Laboratory Accreditation Guideline Implementing Federal Standards Policy.

SUMMARY: This notice announces the approval by the Secretary of Commerce of a Federal guideline on the selection and use of laboratory accreditation systems that has approved by the Interagency Committee on Standards Policy. This guideline implements the Federal Standard Policy which is set out

in Office of Management and Budget (OMB) Circular A–119, dated October 26, 1982 (47 FR 49496–49499, November 1, 1982).

Interagency Committee on Standards Policy (ICSP) was established by the Secretary of Commerce under paragraph 8.a(2) of OMB Circular A–119. The guidance document adopted by the ICSP is a voluntary consensus standard developed and published by the American Society for Testing and Materials. This standard is described later in the notice.

Federal agencies are urged to consider this guideline when developing and implementing their system for accrediting laboratories or when choosing laboratory accreditation systems for use in fulfilling their programmatic responsibilities.

FOR FURTHER INFORMATION CONTACT: Contact Dr. Stanley I. Warshaw, Director, Office of Product Standards Policy, National Bureau of Standards, Gaithersburg, MD 20899 (301–921–3751). Dr. Warshaw chairs the Interagency Committee on Standard Policy.

Dated: February 28, 1985.

Ernest Ambler,

Director, National Bureau of Standards.

Federal Guideline for Recognizing Laboratory Accreditation Systems

Introduction

The Federal Standards Policy, as set out in OMB Circular A–119, "Federal Participation in the Development and Use of Voluntary Standards" October 26, 1982, published at 47 FR 49496–49499, Nov. 1, 1982, encourages Federal agencies to rely on voluntary standards whenever feasible and consistent with law. Adoption of such standards is viewed as supporting the policy of reliance on the private sector to supply Government needs for goods and services, as set out in OMB Circular A–76.

The Interagency Committee on Standards Policy (ICP) developed, and the Secretary of Commerce approved, two guideline documents pertaining to Federal agency use of private sector certification for determining the conformance of products and services to standards and specifications promulgated by Federal agencies. These documents, "Guidelines for Federal Agency Use of Private Sector Third-Party Certification Programs" and "Guidelines for Federal Agency Use of Self-Certification by Producer or Supplier", were published in the **Federal Register** at 49 FR 5792–5803, Feb. 15, 1984.

The Interagency Committee has now adopted a guidance document which sets out criteria for recognition of laboratory accreditation systems by Federal agencies. This guidance document was developed by a voluntary consensus committee (E–36) of the American Society for Testing and Materials (ASTM), with input from representatives from several Federal agencies.

The Federal guideline adopted by the ICSP for recognizing laboratory accreditation system is set out in ASTM Standard E–994–84, "Standard Guide for Laboratory Accreditation System." This standard, published by ASTM, is available from ASTM Customer Services, 1916 Race Street, Philadelphia, PA 19103, (215–299–5585). It will appear in Volume 14.02 of the Annual Book of ASTM Standards.

The ASTM E–994–84 standard identifies important features of systems which accredit testing laboratories, inspection bodies, or other organizations involved in testing, measuring, inspecting, and calibrating activities.

Practices addressed in the standard include:

(1) System features including published rules on operations, accreditation criteria, scope of accreditation, proficiency testing, laboratory assessment, revocation and appeal mechanisms;

(2) Assessor qualifications, records, and acceptability;

(3) On-site assessment procedures including assessor responsibility, preparation for assessment, conduct of an on-site assessment, assessor reports, and follow-up assessments;

(4) Proficiency testing including the types of proficiency and the design of proficiency testing programs with specific guidance on sample selecting, handling, and preparation, recording of results, analysis, and reporting questionnaries and their use; and

(5) Guidance on laboratory evaluation procedures, the accreditation decision process, awarding accreditation, and notifying the public.

[FR Doc. 85–5289 Filed 3–4–85; 8:45 am]

BILLING CODE 3510–13–M

National Technical Information Service

Government-Owned Inventions; Availability for Licensing

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

Technical and licensing information on specific inventions may be obtained by writing to: Office of Federal Patent Licensing, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virginia 22151.

Please cite the number and title of inventions of interest.

Douglas J. Campion,

Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

Department of Agriculture

SN 6–436,541 (4,495,207)
Production of Food-Grade Corn Germ Product by Supercritical Fluid Extraction

SN 6–534,015 (4,493,854)
Production of Defatted Soybean Products by Supercritical Fluid Extraction

SN 6–680,615
Output Responsive Field Control for Wind-Driven Alternators and Generators

Department of Health and Human Services

SN 6–402,352 (4,495,279)
Isoelectric Focussing-Polynucleotide/Polyacrylamide Gel Electrophoresis

SN 6–687,370
Enzyme-Linked Immunosorbent Assay (ELISA) for Determining Antibodies Against Herpes Simplex Virus (HSV) Types I and II in Human Sera

Department of the Army

SN 6–311,371 (4,493,930)
Medicinal 2-Acetyl-and 2-Propionylpyridine Thiosemicarbazones and Preparation Thereof

Department of the Interior

SN 6–473,294 (4,494,894)
Extensible Brattice Support System for Mine Face Ventilation

[FR Doc. 85–5285 Filed 03–04–85; 8:45 am]

BILLING CODE 3510–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Soviet Imprecisely Located Targets for Strategic Systems; Meetings

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Soviet Imprecisely Located Targets for Strategic Systems will meet in closed session on 9–10 April 1985 in the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will continue their study on how to hold Soviet imprecisely located targets at risk.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II (1982)), it has been determined that this DSB Panel meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

February 28, 1985.

[FR Doc. 85–5251 Filed 3–4–85; 8:45 am]

BILLING CODE 3810-01-M

The President's Blue Ribbon Panel Task Group on Nuclear Weapons Program Management; Closed Meeting

AGENCY: The President's Blue Ribbon Panel Task Group on Nuclear Weapons Program Management.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to 5 U.S.C. App. I, notice is hereby given that the President's Blue Ribbon Task Group on Nuclear Weapons Program Management will meet on March 4–6, 1985 in offices at 1717 "H" Street, NW., Washington, D.C. Room 738. Additional meetings are scheduled March 25–27, April 29–30, May 30–31, and June 20–21. These meetings will be closed to the public.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

February 28, 1985.

[FR Doc. 85–5249 Filed 3–4–85; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Army Science Board; Meeting Cancellation

The following joint meeting of the Army Science Board Functional Subgroup on Human Capabilities and Resources and the Ad Hoc Subgroup on Soldier Research Issues which was originally announced in the **Federal Register** issue of Tuesday, 19 February 1985 (50FR6980), FR Doc # 85–3951, has been cancelled.

Meeting Dates: Tuesday, 12 March through Friday, 15 March 1985 (12–14 March for Human Capabilities and Resources; 14–15 March for Soldier Research Issues).

Place: The Presidio of Monterey in Monterey, California.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 85–5257 Filed 2–28–85; 12:33 pm]

BILLING CODE 3710-08-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation; Information Collection Activities Under OMB Review

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulations (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve a proposal for information collection.

ADDRESSES: Send comments to Franklin S. Reeder, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Victoria Moss, Office of Federal Acquisition and Regulatory Policy, 202–523–4799.

SUPPLEMENTARY INFORMATION: a. *Purpose:* This request covers recordkeeping requirements and the collection of information to assure that costs of travel by contractor—owned, leased, or chartered aircraft are properly charged against Government contracts and to assure that directly associated costs of unallowable activities are not charged to Government contracts.

b. *Annual reporting burden:* This is estimated as follows: Recordkeepers, 3,000; and recordkeeping hours 18,000.

Obtaining Copies of Proposals: Requestors may obtain copies from the FAR Secretariat (VR), Room 4041, GS Building, Washington, DC 20405, telephone 202–523–4755.

Dated: February 25, 1985.

Eugene M. Feinberg,

Acting Director, FAR Secretariat.

[FR Doc. 85–5213 Filed 3–4–85; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Shell Oil Co.; Proposed Remedial Order

AGENCY: Department of Energy.

ACTION: Notice of proposed remedial order to Shell Oil Company and notice of opportunity for objection.

SUMMARY: Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA), Department of Energy, hereby gives Notice that it issued a Proposed Remedial Order to Shell Oil Company (Shell), Houston, Texas on November 8, 1984. The Proposed Remedial Order sets forth findings of fact and conclusions of law concerning Shell's pricing, in excess of maximum lawful prices, of first sales of crude oil produced and sold in the United States. Such pricing was in violation of the Phase IV Petroleum Price Regulations, formerly at 6 CFR Part 150, and the Mandatory Petroleum Price Regulations as they appeared in 10 CFR Parts 210, 211, and 212. These regulations were in effect prior to January 28, 1981. The amount of overcharges by Shell on properties the ERA audited, during the period September 1, 1973 through May 31, 1979, and interest thereon through October 31, 1984, totals not less than $190,559,081.84.

In accordance with 10 CFR 205.192(c), any person may obtain from the ERA a copy of the Proposed Remedial Order with confidential information, if any, deleted.

Within 15 days after the date of publication of this notice, any aggrieved person may file a Notice of Objection in accordance with 10 CFR 205.193. A person who fails to file a Notice of Objection shall be determined to have admitted the findings of fact and conclusions of law as stated in the Proposed Remedial Order. If a Notice of Objection is not filed as provided by 10 CFR 205.193, the Proposed Remedial Order may be issued as a final order. Such Notice should be filed with: Office of Hearings and Appeals, Department of Energy, Room 6F–055, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

Copies of the Proposed Remedial Order may be obtained by written request addressed to: Carole J. Gorry.

Acting Chief, Freedom of Information and Privacy Acts Activities Branch, Department of Energy, Forrestal Building, MA-232.1, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

Copies of the Proposed Remedial Order may be obtained in person from: Office of Freedom of Information, Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

Issued in Washington, D.C. February 19, 1985.

Avrom Landesman,

Director, Office of Enforcement Programs, Economic Regulatory Administration, Department of Energy.

[FR Doc. 85-5252 Filed 3-4-85; 8:45 am]

BILLING CODE 6450-01-M

Texaco, Inc.; Proposed Remedial Order

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of proposed remedial orders to Texaco, Inc.—ERA Case Nos. RTXM01103/01105, RTXM00105/00106, RTXM01106, RTXM01104/00702, RTXM01107/00703.

SUMMARY:

I. Introduction

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives Notice of five (5) Proposed Remedial Orders (PRO) which were issued to Texaco, Inc., 2000 Westchester Avenue, White Plains, New York, on February 7, 1985.

II. Issuance of Proposed Remedial Orders

ERA has audited Texaco's compliance with the mandatory petroleum price regulations formerly contained in 6 CFR Part 150, Subpart L and 10 CFR Part 212 (the regulations) during the period September 1973 through December 1980 (audit period). ERA's audit focused on the May 15, 1973 prices that Texaco used in computing base prices and maximum allowable prices for covered products during the audit period. As a result of its audit, ERA determined that Texaco incorrectly calculated its May 15, 1973 prices in violation of the regulations and consequently used incorrect May 15, 1973 prices in its computation of base prices, maximum allowable prices, and selling prices to certain customers during the audit period.

In ERA Case No. RTXM01103/01105, ERA determined that Texaco calculated and applied unlawfully high May 15, 1973 prices in sales of motor gasoline, middle distillates, kerosene, and other covered products during the audit period to identified and unidentified customers, which had purchased those products in May 1973 from Texaco's Atlanta, Houston, and Los Angeles sales regions and from its Paragon Oil Division pursuant to written variable-priced contracts. In ERA Case No. RTXM00105/00106, ERA determined that Texaco calculated and applied unlawfully high May 15, 1973 prices in sales of motor gasoline and middle distillates during the audit period to identified and unidentified consumer, retailer, and distributor customers, which had purchased those products in May 1973 in Texaco's sales regions pursuant to fixed-price contracts. In ERA Case No. RTXM01106, ERA determined that Texaco calculated and applied unlawfully high May 15, 1973 prices in sales of middle distillates during the audit period to specifically identified Philadelphia area wholesale customers of Paragon Oil Company, a Texaco subsidiary. In ERA Case No. RTXM01104/00702, ERA determined that Texaco calculated and applied unlawfully high May 15, 1973 prices in sales of propane during during the audit period to identified and unidentified customers, which purchased propane in May 1973 pursuant to written variable-priced contracts. In ERA Case No. RTXM01107/00703, ERA determined that Texaco calculated and applied unlawfully high May 15, 1973 prices in sales of propane during the audit period to Dow Chemical Company at Texaco's Floodway gas plant and Sea Robin gas plant and to Enterprise Products Company at Texaco's Encinitas gas plant.

The PROs allege that as a result of these regulatory violations, Texaco's calculated base prices and maximum allowable prices in regulated transactions during the audit period were excessive. The PROs also allege that Texaco's actual sales prices were improperly based upon excessive May 15, 1973 prices. Finally, the PROs allege that by using excessive May 15, 1973 prices in the calculation of maximum allowable prices, Texaco may have charged its customers prices in excess of the maximum allowable price.

III. Proposed Remedy

The PROS propose as a remedy for Texaco's regulatory violations that Texaco: (1) Identify, in three out of the five PROs, other customers in addition to those named in the PRO which paid prices that included excessive May 15, 1973 prices, (2) calculate the violation amounts resulting from its use of excessive May 15, 1973 prices, and (3) refund such amounts to the DOE for distribution.

PRO Case Nos. RTXM01106 and RTXM01107/00703 allege that specified customers paid amounts for covered products on the basis of excessive May 15, 1973 prices. No systematic violations of any other similarly situated customers are alleged. In PRO Case Nos. RTXM01104/00702, RTXM01103/01105, and RTXM01105/00106, however, the customers that have been identified appear to represent only a sample of the customers to which Texaco systematically applied its improper pricing practices throughout its nationwide-marketing system during the entire period of price controls from August 19, 1973 through January 28, 1981. The PROs therefore allege that not only customers specified by name therein but also other unidentified customers purchasing under similar conditions were charged excessive prices as a result of Texaco's use of improperly high May 15, 1973 prices. For this reason, the ERA proposes in these PROs that Texaco be ordered to identify all similarly situated customers—*i.e.*, customers which purchased the same products under the same types of contracts and whose prices Texaco determined in the same manner.

Once these customers have been identified, the five (5) PROs require that Texaco determine the amount of the violation resulting from its use of excessive May 15, 1973 prices. Instead of a transaction-by-transaction calculation of the correct maximum allowable price in all hundreds of thousands, or, indeed millions, of sales to all purchasers of the covered products involved in the five (5) PROs during the entire regulatory period, the ERA has proposed three options for achieving restitution. The first option, if adopted, would require the calculation of the difference between the incorrect and correct May 15, 1973 prices in all sales of the covered products, as described in the PROs, which Texaco used in an unlawfully high May 15, 1973 price. The difference would be ordered refunded, and no other calculations would be required. The second option, if adopted, would require the calculation of correct maximum allowable prices for sales only with those customers who paid prices for covered products, as described in the PROs, that included an unlawfully high May 15, 1973 price. Also, recoveries in all sales of the covered product—both sales involving and not involving excessive May 15, 1973 prices—would be determined, and resultant overrecoveries would be

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determined. Overcharges resulting from both of these calculations would be ordered refunded. The third option, if adopted, would require for the period prior to September 1974, the calculations described by the second option and for the period September 1974 forward the calculations described by the first option. In the opinion of the ERA, the proposed remedies are more properly focused on persons directly affected by Texaco's violations and require less burdensome calculations for detemining the refund amount than the transaction-by-transaction calculations described above.

ERA has proposed that Texaco shall deliver a certified check, made payable to the United States Department of Energy, in the amount of the violation, as ultimately determined, plus interest. Delivery shall be to the Controller, Office of Washington Financial Services, Cash Management Division, P.O. Box 500, Germantown, Maryland 20874–0500. The ERA shall direct that these monies be deposited in a suitable account in order that the monies may be distributed in a just and equitable manner.

IV. Notice of Objection

In accordance with 10 CFR 205.193, any aggrieved person may file a Notice of Objection to any or all aspects of the Proposed Remedial Orders described above with DOE's Office of Hearings and Appeals. A person who fails to file a Notice of Objection to any of the Proposed Remedial Orders shall be deemed to have admitted the findings of fact and conclusions of law stated in that proposed Order. If a Notice of Objection is not filed in accordance with § 205.193, the proposed Order may be issued as a final Remedial Order. The Notice must be filed, in duplicate, by 4:40 p.m. e.s.t. on or before the fifteenth (15th) day after publication of this Notice, or the first federal workday thereafter. No data or information which is confidential shall be included in any Notice of Objection.

All Notices of Objection, Statements of Objections, Responses, Replies, Motions, and other documents required to be filed with the Office of Hearings and Appeals shall be sent to: Office of Hearings and Appeals, U.S. Department of Energy, Room 6F–005, 1000 Independence Avenue, S.W., Washington D.C. 20585.

Copies of all Notices of Objection, Statements of Objections and all other documents filed by an aggrieved person or other participants shall be served on the same day as filed, on the following person pursuant to 10 CFR 205.193(c): Carl A. Corrallo, Chief Counsel for Administrative Litigation, Economic Regulatory Administration, United States Department of Energy, 1000 Independence Avenue, S.W., Room 3H–017, Washington, D.C. 20585.

Requests for a copy of the proposed Orders with confidential information deleted, should be identified by ERA Case No. and be directed to: Freedom of Information Reading Room, Forrestal Building, 1000 Independence Avenue, S.W., Room 1E–190, Washington, D.C. 20585.

Issued in Washington, D.C., this 22nd day of February 1985.

Avrom Landesman,

Director, Enforcement Programs, Economic Regulatory Administration.

[FR Doc. 85–5253 Filed 3–4–85; 8:45 am]

BILLING CODE 6450–01–M

[ERA Docket No. 84–09–LNG]

Cabot Energy Supply Corp.; Order Granting Authorization To Import Liquefied Natural Gas for Spot and Short-Term Sales

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of issuance of opinion and order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that on February 26, 1985, the ERA Administrator issued an Opinion and Order granting Cabot Energy Supply Corporation (CESCO) authority to import liquefied natural gas (LNG) for short-term and spot market sales. The approval authorizes CESCO to import up to the equivalent of five cargo ships of LNG per year for a two-year period beginning on the date of first delivery to an LNG Facility in the U.S., with the total LNG to be imported in each year not to exceed 15 trillion Btu.

The text of the Opinion and Order follows.

FOR FURTHER INFORMATION CONTACT:

Robert M. Stronach (Natural Gas Division, Office of Fuels Programs), Economic Regulatory Administration, Forrestal Building, Room GA–007, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–9622

Michael T. Skinker (Office of General Counsel, Natural Gas and Mineral Leasing), U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–6667

Issued in Washington, D.C. on February 26, 1985.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

Order Granting Authorization To Import Liquefied Natural Gas for Short-Term and Spot Market Sales, and Granting Interventions

[DOE/ERA Opinion and Order No. 72]

February 26, 1985.

I. Background

On August 31, 1984, Cabot Energy Supply Corporation (CESCO) filed an application with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE), pursuant to Section 3 of the Natural Gas Act, for a blanket authorization to import up to five cargoes of liquefied natural gas (LNG) (125,000 m^3 ships or their equivalent) in a 12-month period. The total LNG proposed to be imported in any 12-month period would not exceed 15 trillion Btu, and the agreement executed by CESCO with its supplier(s) under such authorization would not exceed five years in duration. Although the application does not identify specific suppliers or customers, CESCO intends to import the LNG only pursuant to specific supplier and customer agreements. CESCO expects that its customers under the requested authorization would include distribution companies, pipelines, industrial users and other end users. While some agreements could require only one shipload, it expects that most deliveries would supply short-term market needs for one or two heating seasons.

CESCO claims that its application for a blanket authorization is in harmony with the Secretary of Energy's policy guidelines [1] emphasizing competitive pricing and responsiveness to changing market conditions. It proposes to fulfill its obligations as an importer under the guidelines "by ascertaining the reliability of the source and the need for and marketability of the LNG." CESCO asserts that the LNG would be purchased from a reliable source such as Sonatrach, the Algerian national oil company, and sold to customers having short-term requirements. CESCO proposes to enter into specific agreements which will include price, quantity, delivery schedule, and market-responsive provisions as appropriate, and to file a copy of each agreement with the ERA as well as notify the ERA that an import is taking place before the initial ship under each arrangement sails

[1] 49 FR 6684, February 22, 1984

for the U.S. Only existing facilities would be used for the importation and sale of the LNG. CESCO believes that this procedure will eliminate the need for a public notice and regulatory proceeding before each individual import takes place, and that such short-term arrangements will not be inconsistent with the public interest.

In CESCO's opinion, the existence of an agreement with a potential customer will establish the presumption of need and marketability of the import and that, in dealing with reliable sources to meet short-term needs, security of supply will not be an issue. In addition, it believes that the procedures outlined in its application meet both the requirements of the DOE policy guidelines for importing natural gas and Section 3 of the Natural Gas Act.

II. Interventions and Comments

On October 24, 1984, a notice was issued by the ERA inviting protests or motions to intervene by December 3, 1984.[2] The ERA received five timely motions to intervene, one being a joint motion by nine intervenors, and two late filings, one being comments from Sun Exploration and Production Company (Sun) which were filed on December 10, 1984, and the other a motion to intervene filed by Pacific Gas Transmission Company (PGT) on December 12, 1984. CESCO was the only party to file reply comments. Sun did not move to intervene and is therefore not a party to this proceeding. There was no opposition to any of the motions for intervention. None of the intervenors protested the application or asked for further procedures. With regard to the late filing by PGT, no delay in the proceeding or prejudice to any party will result from granting intervention. Therefore, the PGT late filing is accepted and this order grants intervention with respect to all movants.[3]

The joint petitioners, nine of the 11 distribution companies which now purchase all of the LNG imported by a CESCO affiliate, Distrigas Corporation (Distrigas), and sold to them by another CESCO affiliate, Distrigas of Massachusetts Corporation (DOMAC), raised the issue of allocating the costs of a DOMAC-owned LNG terminalling facility at Everett, Massachusetts, if LNG for short-term sales is brought in by CESCO at this facility. Both CESCO and DOMAC are wholly-owned subsidiaries of Cabot Corporation and the costs of the Everett facility are presently being paid for by the 11 customers of DOMAC through terminalling service charges regulated by the Federal Energy Regulatory Commission (FERC).

Boston Gas, another of the 11 DOMAC customers, also raised the issue of cost allocation at the Everett facility. Boston Gas expressed concern that approval of CESCO's application may jeopardize Boston Gas' DOMAC supply since there are no details as to how it might affect the availability of volumes to DOMAC. It also noted that no mention is made of how CESCO volumes might be transported from the Everett facility to the ultimate buyer, but recognized that many of these issues would be the subject of FERC proceedings.

Brooklyn Union, also a DOMAC customer, requested that the ERA impose the following condition if it grants the authorization sought by CESCO:

> CESCO import arrangements authorized hereby shall be without detriment or disadvantage to customers of existing import projects who are dependent upon such existing projects' gas supplies.

All of the DOMAC customers were concerned about the potential adverse impact of the short-term blanket supplies on their long-term LNG arrangements. They were concerned about the need for a proper allocation of costs of the DOMAC facilities that are presently paid for by DOMC's customers through terminalling services provided by DOMAC under its FERC gas tariff. Furthermore, they expressed concern about the possible impact that this transaction may have upon DOMAC's overall operations and rates to its customers.

CESCO, in its answer, contends that the condition proposed by Brooklyn Union, and, by inference, the concerns raised by DOMAC's other customers, are inappropriate and unnecessary. CESCO contends that DOMAC and Distrigas have permanent certificates of convenience and necessity, and that DOMAC is legally required to serve Brooklyn Union and its other customers, regardless of CESCO's actions.

Brooklyn Union and the other DOMAC customers did not make it clear to the ERA how such an adverse circumstance could occur, or how such a condition would remedy it. However, in the event such a problem were to arise, the FERC, through its certification and ratemaking processes, provides sufficient protection and remedies to DOMAC's customers. Since the allocation of costs of the Everett terminalling facilities between present DOMAC customers and CESCO customers is also regulated by the FERC, any issues in this regard should be brought before the FERC, not the ERA. Hence, the proposed condition is unnecessary.

Brooklyn Union also states that sufficient information has not been provided to enable the ERA or anyone else to determine if all proposed sales are in the public interest and would not be to the detriment of customers with existing gas import projects. Brooklyn Union proposes that, if granted, the authorization should require that the ERA issue a notice and provide a comment period upon receipt of a copy of each letter agreement and gas purchase contract with a U.S. purchaser. After the comment period, Brooklyn Union proposes that the transaction would take place unless the ERA issues an order, before the sailing of the first ship delivering supplies under each arrangement, disapproving or modifying the arrangement. The comments made by PGT would appear to support this proposal because PGT is concerned that the ERA retain for itself the ability to determine that consumers are protected and that the Secretary of Energy's gas import guidelines are satisfied.

CESCO, in its answer, contends that to allow notice and comment could mire CESCO in procedures which might last so long that the intended purchaser would not longer need the LNG by the time the authorization was granted. CESCO notes that it has proposed to notify the ERA before the ship sails, and to file the relevant contracts with the ERA.

The ERA understands the concern that lies behind the request for a review and comment period before individual transactions are executed. Brooklyn Union, and PGT by inference, want to ensure that the ERA has the opportunity to intervene and stop an unacceptable transaction before it occurs rather than have to attempt, after the fact, to mend an adverse situation. However, it appears to the ERA that this approach assumes that the government knows better than the parties involved the best terms, use, and timing of an arrangement. It assumes that the parties involved in the transaction have neither the good economic sense nor the legal tools to operate in their own best interest. The ERA does not accept either

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[2] 49 FR 44011, November 1, 1984.

[3] Intervenors are: Bay State Gas Company,* Berkshire Gas Company,* Boston Gas Company, Brooklyn Union Gas Company, Colonial Gas Company, Connecticut Light & Power Company,* Essex County Gas Company,* Fall River Gas Company,* New Jersey Natural Gas Company,* Pacific Gas Transmission Company, Providence Gas Company,* South Jersey Gas Company,* Tennessee Gas Pipeline Company, Valley Gas Company.*

The joint petitioners are shown by an asterisk (*).

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of these assumptions. As stated in the policy guidelines, "[t]he market, not government, should determine the price and other contract terms of imported gas." [4] Moreover, the situation underlying proposed blanket authorizations for short-term sales is one in which the market demands quick responses or the transactions do not occur. Although the lead time for LNG shipments is somewhat longer than for overland deliveries of gas, the buyer-seller dynamics are the same. The transactions which would occur under blanket authorizations would be short-term with market-responsive prices and terms. Furthermore, no party is locked into long-term sales nor any terms to which they themselves have not agreed.

PGT intervened as a mojor importer of natural gas from Canada into the northern California market. PGT suggests that the ERA consider what impacts short-term imports have on the competitiveness of long-term, firm imports. Specifically, PGT cites as an example the proposal made by Northwest Alaskan Pipeline Company (Northwest Alaskan) in its application for blanket authorization to make spot sales.[5] Northwest Alaskan asserted that sales under the blanket authorization would not displace other Canadian sales. PGT contends that this type of safeguard should also be imposed on the CESCO authorization.

In its answer, CESCO states that PGT's concern appears to be that CESCO will compete in the marketplace. CESCO states that it intends to do so. CESCO goes on to say, however, that it does not propose to supplant long-term supplies. Rather, CESCO proposes to bridge short-term gaps which may occur in the fluctuating supply and demand for gas. CESCO further states that PGT's concern about the need for more safeguards is answered by the proposed structure of the blanket authorization which will ensure that only market-responsive transactions will occur.

PGT raises the important issue of long-term versus short-term imports, and, by inference, requests the ERA to protect long-term imports. The ERA is not persuaded to take such action. As the Secretary of Energy's policy guidelines recognize both short-term and long-term projects have roles to play in the marketplace. Each type of project—long-term and short-term—has different components which make up the competitive package; that package will be more or less appealing to a particular customer depending upon that customer's needs. If a customer finds a short-term purchase more attractive than an existing long-term arrangement, that is a signal that the long-term arrangement should be restructured or renegotiated to remain competitive. While the need for assured long-term supplies often overrides the desire for short-term savings, this is not always the case, and participants in the changing natural gas market must be sufficiently flexible to respond to competition in the various forms it takes in order to retain their position in that market. Thus, the ERA is disinclined to impose conditions on this authorization to protect long-term arrangements from competition, even in the short-term.

Sun filed comments protesting the application and requesting that the ERA deny it. Sun alleges that (1) there is no current need for the LNG when significant surplus supplies are available; (2) the cost of the LNG would likely be in the range of $7.00 to $9.00 per MMBtu which is substantially higher than the cost of available domestic and Canadian gas and alternate energy supplies; (3) the balance of trade would be adversely impacted by $250–$300 million; and (4) failure to establish need and consumer benefits is contrary to the policies established in DOE/ERA Opinion and Order No. 50 in the Trunkline LNG Company case.[6] Sun thus concludes that the application is not in the public interest.

Althouth Sun filed comments opposing the application, Sun did not file a motion to intervene or in any way petition to become a party to this proceeding. The basis for its protest, that the arrangement does not comply with Order No. 50, is, however, erroneous. The findings and criteria used in Order No. 50 apply only to the factual circumstances of that case, not to any other import application. As stated in the **Federal Register** notice of this application, the Secretary of Energy's policy guidelines on gas imports establish the policy which the ERA intends to follow in its decision on the factual circumstances of this case. Sun did not directly address the issue of competitiveness in the marketplace which is key to our decision on an import application, although it stated that there is no current need for the LNG. Sun has not demonstrated that the import would be uncompetitive, and thus has not overcome the presumption of need based on competitiveness as set forth in the policy guidelines. Sun's concern about whether there is sufficient information for the ERA to determine that the import is not inconsistent with the public interest is addressed below in the discussion of the decision.

CESCO in its reply comments stated that many of the "disputable statements of movants" were not premised upon the new policy guidelines which emphasize competition, pricing and responsiveness to changes in market conditions. CESCO stated that none of the intervenors has demonstrated that the import arrangement is not consistent with the public interest, and emphasized that its application addresses the considerations of competitiveness, need, and security of supply by which an import arrangement would be judged. CESCO therefore reiterated that the ERA should grant the authorization.

III. Decision

The CESCO application has been evaluated in accordance with the Administrator's authority to determine if the proposed import arrangement meets the public interest requirements of Section 3 of the Natural Gas Act. Under section 3, an import is to be authorized unless there is a finding that it "will not be consistent with the public interest." [7] The Administrator is guided by the Secretary of Energy's policy guidelines relating to the regulation of natural gas imports. Under these guidelines, the competitiveness of an import arrangement in the markets served is the primary consideration for meeting the public interest test.

This decision recongnizes recent institutional changes in the natural gas industry, particularly the development of the spot market. An active spot market, along with more flexible long-term contracts, are among the new market mechanisms that are allowing pipeline and distribution companies, producers, and consumers to adjust more rapidly to changing market conditions.[8] The DOE's policy is to foster full development of a spot market as an integral part of a properly functioning market for natural gas, while assuring that unexpected, market-disruptive consequences do not occur during this transitional period to a deregulated market. Furthermore, a spot market helps achieve the policy goal for

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[4] 49 FR 6685, February 22, 1984.

[5] Filed October 18, 1984, in ERA Docket No. 84-16-NG.

[6] FERA ¶ 70,117, *Federal Energy Guidelines*

[7] 15 U.S.C. § 717b.

[8] In *Increasing Competition in the Natural Gas Market: Second Report required by Section 123 of the Natural Gas Policy Act of 1978*, submitted in January 1985, the DOE observed that an active spot market will allow the natural gas market to allocate risks efficiently and will help minimize price and supply fluctuations as the market moves from a tightly regulated environment towards fully competitive market conditions. *See* Summary, pp. S-1 and S-5, and Chapter 8, p. 75.

gas imports of having "a supply of natural gas supplemental to domestic production available on a competitive, market-responsive basis. . . ."[9]

In its comments, PGT recommends that in granting an authorization the ERA should reserve for itself the ability to determine that the DOE import policy guidelines will be satisfied by structuring such blanket arrangements to contain adequate safeguards to assure that any adverse impacts are avoided. Several other intervenors, and Sun, expressed concern that there is not sufficient information on individual transactions to ascertain that they are not inconsistent with the public interest. While the ERA does not agree with the specific conditions recommended by PGT and Brooklyn Union, the ERA does agree that some safeguards are warranted.

Spot market sales by their nature are quick, short-term transactions designed to adapt gas sales to changing market conditions. Accordingly, requiring each spot sale to be considered individually with a notice and comment period would defeat this purpose since the opportunity to make the sale could pass before the required administrative procedures are completed. The time required by the administrative process necessitates that, if quick, short-term, spot transactions are to be approved at all, they must be reviewed as a group or on a blanket basis using information presented about the type of transaction and the circumstances under which such transactions would be undertaken.

Moreover, the nature of spot sales arrangements—that each spot sale is voluntarily negotiated, short-term, and frequently executed on an interruptible, best-efforts basis—provides assurance that such transactions will be consistent with the policy guidelines and in the public interest. Thus, the series of spot sales transactions proposed by CESCO can be evaluated and found to be in the public interest without knowing the precise terms of each sale, inasmuch as each sale is freely negotiated and would not take place if the gas was not marketable, not competitively priced, and not needed. It is not essential to know in advance the terms of each sale as long as the parameters for each sale are known.

However, the ERA does have the responsibility of ensuring that the parameters surrounding each sale are in the public interest. Therefore, the ERA does believe that some conditions are necessary to provide safeguards against unintended and unanticipated results because the blanket authorization mechanism is a new and untried concept. Such safeguards should include a reporting requirement and a limitation on the term of the authorization. The latter will provide an opportunity for review of the blanket authorization mechanism and its impacts after a reasonable period of time.

Accordingly, the ERA is limiting CESCO's blanket authorization to a two-year period. The two-year period would begin on the date of first delivery. The limitation is imposed in recognition of the fact that a blanket authorization for short-term, spot market sales is new and experimental. Two years or less is the typical length of a spot market sale. Contracts of up to five years, as requested by CESCO, would not be consistent with the purpose of this blanket authorization. A two-year limit on the term will provide the ERA the opportunity to review the impacts of the program before any lengthier authorization is considered. Assuming the spot market and the blanket authorization operate as envisaged, it should not be difficult for CESCO to request and receive an extension of the blanket authorization.

Furthermore, to facilitate the review of spot market sales transacted under this authorization, the ERA has concluded that a quarterly reporting requirement is required. As a result, submission of the individual contracts as proposed by CESCO will not be required, although in accordance with the application, no gas is to be imported without completed buyer-seller contracts. Quarterly reporting is consistent with that required in other recently issued import authorizations. Under this requirement, CESCO must report whether a spot sale has been made, and if so, report the details of each spot sale transaction during the preceding quarter, including the purchase and sales price, volume, contract adjustment and take provisions, duration of the agreement, ultimate suppliers and purchasers, and markets served. The ERA reserves the right to amend or further condition the import authorization based upon periodic review of the spot market sales effected. The ERA believes that these conditions will provide the information needed to evaluate the impact of spot market sales under the CESCO proposal on a timely basis. This will allow the ERA to adequately protect the public interest.

No intervenor has claimed that CESCO's proposed arrangement does not conform to the DOE policy guidelines. At most, intervenors have raised concerns that there was not sufficient information in the record to enable the ERA to ascertain compliance with the guidelines. However, the ERA has concluded that the information CESCO has presented demonstrates that the spot sales arrangements entered into under CESCO's proposal—would be freely negotiated, and would not take place if they were not competitive arrangements.

As set forth in the gas import policy guidelines, the need for an import is recognized to be a function of its competitiveness. Under the competitive arrangement proposed by CESCO, it will purchase LNG only to the extent it needs the gas to serve specifically defined short-term customers. No intervenor challenged the need for the gas. Only Sun claimed there is no need, but failed to make an adequate demonstration consistent with the Secretary of Energy's policy guidelines.

In short-term, spot arrangements, the ERA has taken the position that security of supply is not an issue of significance. This is such a short-term supply situation, where CESCO expects to supply market needs on a short-term, spot basis for only one or two heating seasons.

After taking into consideration all information in the record of this proceeding, I find that the authorization requested by CESCO, limited as discussed above, is not inconsistent with the public interest and should be granted.[10]

Order

For the reasons set forth above, pursuant to Section 3 of the Natural Gas Act, it is ordered that:

A. Cabot Energy Supply Corporation (CESCO) is authorized to import up to the equivalent of five cargoes of LNG (125,000 m^3 ships or their equivalent) each year during the two-year period beginning on the date of first delivery to an LNG facility in the U.S. with the total LNG imported in each year not to exceed 15 trillion Btu, all to be imported under specific short-term, spot sale supply and customer agreements in accordance with the provisions stipulated in CESCO's application filed with the ERA on August 31, 1984, as modified by this Order.

[9] 49 FR 6687, February 22, 1984.

[10] Because the proposed importation of LNG will use existing facilities, DOE has determined that granting this application is not a Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act (42 U.S.C 4321, *et seq.*) and therefore an environmental impact statement or environmental assessment is not required.

B. CESCO shall notify the ERA in writing of the date of first delivery of LNG imported under Ordering Paragraph A above within two weeks after the date of the first delivery.

C. With respect to the LNG authorized to be imported by this Order, CESCO shall file with the ERA in the month following each calendar quarter, quarterly reports showing, by month, whether spot sales have been made, and if so, the details of each spot sale. The details reported shall include the purchase and sales price, volume, contract adjustment and take provisions, duration of the agreement, ultimate sellers and purchasers, and markets served.

D. The motions for leave to intervene, as set forth in this Opinion and Order, are hereby granted subject to the Administrative procedures in 10 CFR Part 590, provided that participation of the intervenors shall be limited to matters affecting asserted rights and interests specifically set forth in their motions for leave to intervene and not herein specifically denied, and that the admission of such intervenors shall not be construed as recognition that they might be aggrieved because of any order issued in these proceedings.

Issued in Washington, D.C., February 26, 1985.

Rayburn Hanzlik,

Administrator, Economic Regulatory Administration.

[FR Doc. 85-5305 Filed 3-4-85; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 84-16-NG]

Northwest Alaskan Pipeline Co.; Order Granting Authorization To Import Natural Gas for Spot and Short-Term Sales

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of issuance of opinion and order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that on February 26, 1985, the ERA Administrator issued an Opinion and Order granting Northwest Alaskan Pipeline Company authority to import natural gas for short-term sales on the spot market. The order amends two existing Northwest Alaskan Pipeline Company long-term authorizations to permit spot market sales of Canadian natural gas not taken by its long-term customers for a two-year period, up to the total existing limit of 1,040,000 Mcf on an annual average daily basis.

The text of the Opinion and Order follows.

FOR FURTHER INFORMATION CONTACT:

Stanley C. Vass (Natural Gas Division, Office of Fuels Programs), Economic Regulatory Administration, Forrestal Building, Room GA-007, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-9482.

Diane J. Stubbs (Office of General Counsel, Natural Gas and Mineral Leasing), U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-6667.

Issued in Washington, D.C., on February 25, 1985.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

Order Amending Authorizations To Import Natural Gas From Canada, Allowing Spot Market Sales, and Granting Interventions

[DOE/ERA Opinion and Order No. 73]

February 26, 1985.

I. Background

On October 16, 1984, Northwest Alaskan Pipeline Company (Northwest Alaskan) filed an application with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE), pursuant to Section 3 of the Natural Gas Act, Section 9 of the Alaska Natural Gas Transportation Act (ANGTA), and DOE Delegation Order No. 0204-111[1] to amend its existing import authorizations to include a "blanket" authorization to make spot or short-term sales of Canadian natural gas in the United States from authorized volumes not purchased by its long-term contract customers. All such sales would be made on an interruptible or best-efforts basis and, according to the application, would not preempt Northwest Alaskan's firm requirements or displace other Canadian gas sales. Northwest Alaskan asserts that it intends to use the existing prebuilt facilities of the Alaska Natural Gas Transportation System (ANGTS) for spot sales arrangements to the maximum extent possible.

Under the blanket authority requested, Northwest Alaskan wants to be able to negotiate individual spot sales contracts within the limits of the existing authorizations without prior ERA authorization for each sale. The specific terms and conditions for each sale, including the price, volume, and duration would be determined by negotiation between Northwest Alaskan, Northwest Alaskan's Canadian supplier, Pan-Alberta Gas Ltd. (Pan-Alberta), and the ultimate purchaser. Northwest Alaskan proposes to report the details of any spot sales arrangements effected in a semi-annual report filed with the ERA within 40 days after January 1 and July 1 of each year.

Northwest Alaskan is currently authorized to import up to 240,000 Mcf of Canadian natural gas on an annual average daily basis through the import point near Kingsgate, British Columbia, during a term ending October 31, 2001. This gas is resold to Pacific Interstate Transmission Company (PIT) and transported over the Western Leg of the prebuilt portions of the ANGTS, and through other pipelines for eventual sale in southern California. In addition, Northwest Alaskan is currently authorized to import up to 800,000 Mcf of Canadian natural gas on an annual average daily basis through the import point near Monchy, Saskatchewan, over a term ending October 31, 2002. This gas is transported over the Eastern Leg of the ANGTS prebuild and resold to three purchasers, Nothern Natural Gas Company, a Division of InterNorth, Inc. (Northern), Panhandle Eastern Pipe Line Company (Panhandle), and United Gas Pipe Line Company (United).[2]

Northwest Alaskan maintains that granting its request to amend its existing authorizations to permit spot sales of Canadian gas not taken by its long-term contract customers is in the public interest for several reasons. First, spot sales of Canadian gas utilizing the ANGTS prebuilt facilities will lower the unit costs of transporting Canadian gas to U.S. markets through the ANGTS. Such transportation cost reductions, according to Northwest Alaskan, would benefit Northwest Alaskan's U.S. contract purchasers as well as any other U.S. purchasers who receive this gas. Second, spot sales would provide an economical, interruptible supply of gas

[1] On February 15, 1984, the Secretary of Energy in Delegation Order No. 0204-111, delegated the authority to the Administrator of the ERA to regulate the importation and exportation of natural gas under Section 3 of the Natural Gas Act, including imports through the Alaska Natural Gas Transportation System (49 FR 6690, February 22, 1984).

[2] In separate proceedings, the ERA removed certain conditions and extended the terms of Northwest Alaskan's existing authorizations to October 31, 2002 (Eastern Leg), and October 31, 2001 (Western Leg), in DOE/ERA Opinion and Order Nos. 67 and 68, respectively, issued on December 13, 1984. *See* 1 ERA ¶ 70,579 and ¶ 70,580.

which might enable Northwest Alaskan's contract customers to recapture customers that have left their systems in recent years and to maintain customers that might otherwise leave their systems for alternative fuels. Thus, Northwest Alaskan says, the facilities of the U.S. contract customers would be more fully utilized to the benefit of customers of these pipeline systems. Recapturing and maintaining gas loads, it continues, would benefit U.S. consumers by ensuring access to a long-term secure supply of Canadian natural gas for U.S. gas markets, which would be available long after the current short-term surplus has dissipated.

II. Interventions and Comments

On November 2, 1984, the ERA issued a notice inviting protests, motions to intervene, and written comments by December 19, 1984.[3] In response to the notice, the ERA received ten timely motions to intervene, including one joint motion by two intervenors, a motion by Transwestern Pipeline Company (Transwestern) filed one day late. There was no opposition to any of the motions for intervention. Further, no delay in the proceeding or prejudice to any party will result from granting Transwestern's late intervention. Accordingly, this order grants intervention to all persons who moved to intervene.[4] Pan-Alberta filed an answer to El Paso's intervention 13 days late, opposing El Paso's request for a trial-type hearing. There was no opposition to Pan-Alberta's late filing. Since no delay in the proceeding or prejudice to any party will result, this order accepts Pan-Alberta's late filing.

El Paso Natural Gas Company (El Pase), who intervened as a competing pipeline providing domestic natural gas in the southern California market, requests a trial-type hearing to determine (1) whether a need for additional Canadian gas exists in the market areas served by the Western Leg of the ANGTS vis-a-vis the availability of domestic gas supplies in these same areas; (2) the extent of the alleged cost reductions for Canadian gas supplied by Northwest Alaskan under long-term import arrangements; and (3) the effect on domestic suppliers forced to compete with Canadian spot-sales gas at essentially subsidized prices. Specifically, El Paso alleges that, under this arrangement, purchasers of the proposed short-term, spot-sale supplies will be subsidized at the expense of long-term purchasers because the tariffs paid by long-term purchasers recover all of the fixed costs associated with imported gas delivered through the ANGTS. El Paso contends that such price discrimination would operate to the detriment of domestic gas suppliers, including El Paso, to the extent that such suppliers are forced to complete with Canadian spot-sale gas at subsidized prices. Finally, El Paso contends that the ERA does not have sufficient information about the terms of the proposed short-term spot sales arrangements and how the blanket sales program would be implemented to support a reasoned desicison.

Pan-Alberta states in answer to El Paso's intervention and request for hearing that a trial-type hearing on the issue of need is not required since need for the gas is presumptively shown by the fact that spot sales are entered into voluntarily and El Paso has not presented any information refuting that presumption. Pan-Alberta also points out that a trial-type hearing on the extent of cost savings to Northwest Alaskan's long-term customers resulting from increased use of the ANGTS due to spot market sales would not be appropriate because jurisdiction over tariffs charged for transportation of natural gas within the United States lies with the Federal Energy Regulatory Commission (FERC) and not the ERA.

Pacific Gas Transmission Company (PGT), owner and operator of the Western Leg of the ANGTS and supplier of Canadian gas to the northwern and central California markets, indicated that the ERA may have to attach conditions to any authorization granted in order to carry out its statutory responsibilities without a case-by-case review. While not opposing the application, PGT suggests that the ERA must retain the ability to determine whether spot sales authorized on a blanket basis conform to the Secretary of Energy's import guidelines.[5] PGT states that the ERA should consider what impact blanket proposals have on the ability to maintain competitive terms for long-term, firm supplies of imported gas in markets that would be affected. PGT observes that Northwest Alaskan's proposed semi-annual reporting procedure and its stipulation that any sales outside of it present firm customers' market would not displace other Canadian gas are among the safeguards needed to permit the ERA to proceed without a case-by-case review of each spot sale import.

Both El Paso and PGT focus their concern on the competitive impact of the requested blanket authorization, and suggest such competition would be unfair to domestic suppliers in El Paso's case and long-term importers in PGT's case. The ERA believes that domestic supply systems can adjust to any increased competition by crafting arrangements responsive to the marketplace without government assistance or interference. Domestic supply systems may have to reduce their prices, change other contract terms, or offer enhanced availability of supplies over the long term to compete. However, the advent and impact of spot sales of Canadian gas is not different from the burgeoning domestic spot sales market. In both cases, domestic suppliers must compete in order to continue to participate in the market.

The subsidiary issue of need raised by EP Paso has already been decided. First, need for this quantity of gas has already been determined by the FERC and most recently by the ERA in Opinion and Order Nos. 67 and 68 when it extended Northwest Alaskan's authorizations. Second, as noted by Pan-Alberta in its answer to EL Paso, need is a function of competitiveness and is a rebuttable presumption. El Paso failed to demonstrate that the transactions conducted under the blanket authorization would not be competitive, and thus failed to rebut the presumption that the gas will be needed.

The subsidiary issues of how the price components for spot sales arrangements are structured under this blanket authorization and their impacts are legitimate concerns. Spot sales will increase the utilization of the ANGTS, and hence lower unit costs to all ANGTS users, as long as the price structure for the spot sales includes an amount to cover a share of the fixed costs of transportation over the ANGTS. There is no information in the record, however, indicating how the price for spot sales would be structured. What is in the record is that, however structured, each spot sale, including the price, would be freely negotiated, and therefore can be presumed to be competitive. However, if the tariff structure for long-term contract gas could operate to subsidize spot market purchasers to the detriment of competing domestic suppliers, the FERC, which has jurisdiction over tariff and rate matters for imported gas, must

[3] 49 FR 45643, November 19, 1984.

[4] Intervenors are: United Gas Pipe Line Company, Inter-City Gas Corporation, Pan-Alberta Gas Ltd., Panhandle Eastern Pipe Line Company, El Paso Natural Gas Company, Pacific Gas Transmission Company, Northern Border Pipeline Company, Pacific Interstate Transmission Company, Northern Natural Gas Company, Division of InterNorth, Inc., Pacific Lighting Gas Company, Southern California Gas Supply Company, and Transwestern Pipeline Company.

[5] 49 FR 6684, February 22, 1984.

decide what adjustments, if any, are appropriate.

Accordingly, El Paso's request for a trial-type hearing is denied on the grounds that EL Paso failed to identify material and relevant factual issues genuinely in dispute, and that there is no need for such a hearing to enable the ERA to make a decision on this application.

PGT supports a requirement in this blanket authorization, as Northwest Alaskan has stipulated, that spot sales under the arrangement will not displace other Canadian gas nor preempt Northwest Alaskan's firm contract requirements. PGT is concerned that the spot sales under this blanket authorization might otherwise have a detrimental impact on long-term imports of Canadian gas. While Northwest Alaskan and PGT have indicated their desire to protect long-term contracts for Canadian gas from competition from the spot market, we have a different perspective. Both short-term and long-term imports have roles to play in the marketplace. Each type of supply has different components and the arrangement will be more or less appealing to a particular customer depending upon that customer's needs. If the customer finds a short-term purchase more attractive than an existing long-term arrangement, that represents a signal that the long-term arrangement should be restructured or renegotiated to remain competitive. While the need for assured long-term supplies often overrides the desire for short-term savings, this is not always the case, and participants in the changing natural gas market must be sufficiently flexible to respond to competition in the various forms it takes in order to retain their position in that market. The ERA sees no need to impose conditions on this authorization to protect long-term arrangements from competition, even in the short term. This, however, would not prevent Northwest Alaskan from imposing such limitations on its own initiative.

United, a long-term customer of Northwest Alaskan who intervened in support of the application, states that spot sales would lower United's cost of transporting Canadian gas through the ANGTS and may enable Northwest Alaskan's existing customers to retain customers that might otherwise be lost to alternative fuels.

Pan-Alberta, Northwest Alaskan's supplier who intervened in support of the import proposal, contends that sales under the requested blanket authorization will necessarily be competitive because they will occur only under terms voluntarily negotiated by suppliers and purchasers.

III. Decision

Northwest Alaskan's application has been reviewed to determine if amendment of its import authorizations to allow spot market sales of gas not taken by its long-term contract purchasers meets the public interest requirements of Section 3 of the Natural Gas Act. Under section 3, an import is to be authorized unless there is a finding that the import "will not be consistent with the public interest." [6] In making this finding, the Administrator is guided by the Secretary of Energy's policy relating to the regulation of natural gas imports. Under this policy, competitiveness of an import arrangement in the markets served is the primary consideration for meeting the public interest test.

Another factor influencing this decision is the special circumstance of the prebuilt portion of the ANGTS, which Northwest Alaskan states would be used to the maximum extent possible in moving spot sales gas to market. The DOE policy guidelines recognize the uniqueness of the ANGTS prebuild. Futhermore, in DOE/ERA Opinion and Order Nos. 67 and 68, the ERA made a finding that Northwest Alaskan's applications were related to the construction and initial operation of ANGTS within the meaning of Section 9 of ANGTA. The same volumes are involved in the instant application, and sale of those volumes on the spot market does not affect the applicability of ANGTA.

In addition, this decision recognizes recent institutional changes in the natural gas industry, particularly the development of the spot market. An active spot market, along with more flexible long-term contracts, are among the new market mechanisms that are allowing pipeline and distribution companies, producers, and consumers to adjust more rapidly to changing market conditions.[7] The DOE's policy is to foster full development of a spot market as an integral part of a properly functioning market for natural gas, while assuring that unexpected, market-disruptive consequences do not occur during this transitional period to a deregulated market. Furthermore, a spot market helps achieve the policy goal for imports of having "a supply of natural gas supplemental to domestic production available on a competitive, market-responsive basis. . . ." [8]

In its comments, PGT recommends that in granting an authorization the ERA should reserve for itself the ability to determine that the DOE import policy guidelines will be satisified by structuring such blanket arrangements to contain adequate safeguards to assure that any adverse impacts are avoided. While the ERA does not agree with the specific conditions recommended by PGT, the ERA does agree with PGT that some safeguards are warranted.

Spot market sales by their nature are quick, short-term transactions designed to adapt gas sales to changing market conditions. Accordingly, requiring each spot sale to be considered individually with a notice and comment period would defeat this purpose since the opportunity to make the spot sale could pass before the required administrative procedures are completed. The time required by the administrative process necessitates that, if quick, short-term, spot transactions are to be approved at all, they must be reviewed as a group or on a blanket basis using information presented about the type of transaction and the circumstances under which such transactions would be undertaken.

Moreover, the nature of spot sales arrangements—that each spot sale is voluntarily negotiated, short-term, executed on an interruptible, best-efforts basis—and, in Northwest Alaskan's case, the fact that they are made from volumes already authorized for import but not taken by Northwest Alaskan's long-term purchasers, provide assurance that such transactions will be consistent with the policy guidelines and in the public interest. Thus, the series of spot sales transactions proposed by Northwest Alaskan can be evaluated and found to be in the public interest without knowing the precise terms of each sale, inasmuch as each sale is freely negotiated and would not take place if the gas was not marketable, not competitive, and not needed. It is not essential to know in advance the terms of each sale as long as the parameters for each sale are known.

However, the ERA does have the responsibility of ensuring that those parameters are in the public interest. Therefore, the ERA does believe that some conditions are necessary to

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[6] 15 U.S.C. 717b.

[7] In *Increasing Competition in the Natural Gas Market: Second Report Required by Section 123 of the Natural Gas Policy Act of 1978*, submitted in January 1985, the DOE observed that an active spot market will allow the natural gas market to allocate risks efficiently and will help minimize price and supply fluctuations as the market moves from a tightly regulated environment towards fully competitive market conditions. *See* Summary, pp. S-1 and S-5, and Chapter 6, p. 75

[8] *Op cit.*, 6687.

provide safeguards against unintended and unanticipated results because the blanket authorization mechanism is a new and untried concept. Such safeguards should include a reporting requirement and a limitation on the term of the authorization. The latter will provide an opportunity for review of the blanket authorization mechanism and its impacts after a reasonable period of time.

Accordingly, the ERA is limiting the blanket authorization requested by Northwest Alaskan to make spot market sales of Canadian gas to a two-year period. The two-year period would begin on the date of first delivery under this authorization. This limitation is imposed in recognition that a blanket authorization for short-term, spot market sales is new and experimental. Two years or less is the typical length of a spot market sale. Granting the blanket authorization as requested by Northwest Alaskan would allow long-term transactions to be negotiated. A two-year limit on the term will provide the ERA the opportunity to review the impacts of the program before any lengthier authorization is considered. Assuming the spot market and the blanket authorization operate as envisaged, it should not be difficult for Northwest Alaskan to request and receive an extension of the blanket authorization.

Furthermore, to facilitate the review of spot market sales transacted under this authorization, the ERA has concluded that a quarterly reporting requirement rather than the semi-annual requirement proposed by Northwest Alaskan is required. This frequency of reporting is consistent with that required in other recently issued import authorizations. Under this requirement, Northwest Alaskan must report whether a spot sale has been made, and if so, the details of each spot sale transaction during the preceeding quarter, including the purchase and sales price, volume, contract adjustment and take provisions, duration of the agreement, ultimate suppliers and purchasers, and markets served. The ERA reserves the right to amend or further condition the blanket import authorization based upon periodic review of the spot market sales effected. The ERA believes that these conditions will provide the imformation needed to evaluate the impact of spot market sales under the Northwest Alaskan proposal on a timely basis. This will allow the ERA to adequately protect the public interest.

No intervenor has claimed that Northwest Alaskan's proposed arrangement does not conform to the DOE policy guidelines. At most, intervenors have raised concerns that there was not sufficient information in the record to enable the ERA to ascertain compliance with the guidelines. The ERA has concluded that the information Northwest Alaskas has presented demomstrates that the spot sales arrangements entered into under Northwest Alaskan's proposal would be freely negotiated, and would not take place if the were not competitive arrangements.

Need and security of supply are not issues in this case. As discussed above, the ERA made findings on the need for and security of supply of the volumes under consideration in this docket in Opinion and Order Nos. 67 and 68, issued December 14, 1984.

After taking into consideration all information in the record of this proceeding, I find that amendment of the existing authorizations to provide the blanket import authority requested by Northwest Alaskan, limited as discussed above, is not inconsistent with the public interest and should be granted.[9]

Order

For the reasons set forth above, pursuant to Section 3 of the Natural Gas Act and Section 9 of the Alaska Natural Gas Transportation Act, it is ordered that:

A. The import authorization previously issued by the Federal Energy Regulatory Commission (FERC) to Northwest Alaskan Pipeline Company (Northwest Alaskan) under Docket Nos. CP 78–123, *et al.*, on April 28, 1980 (11 FERC ¶61,088), and June 20, 1980 (11 FERC ¶61,302), as amended in Docket Nos. CP 78–123–021, *et al.*, on December 15, 1983 (25 FERC ¶61,384), as amended in DOE/ERA Opinion and Order No. 67 (Eastern Leg), issued December 13, 1984, in ERA Docket No. 84–14–NG (1 ERA ¶70,579), is hereby further amended to permit Northwest Alaskan to make spot or short-term sales of authorized volumes not taken by Northwest Alaskan's long-term contract purchasers, Northern Natural Gas Company, a Division of InterNorth, Inc., Panhandle Eastern Pipe Line Company, and United Gas Pipe Line Company, to the extent that these purchasers do not take their full contract amount during any contract year, consistent with the terms set forth in the application submitted in the this docket, as modified by this Order.

B. The import authorization previously issued by the FERC to Northwest Alaskan under Docket Nos. CP 78–123, *et al.*, on January 11, 1980 (10 FERC ¶61,032), and Docket Nos. CP 78–123 *et al.*, on June 13, 1980 (11 FERC ¶ 61,279), as amended in Docket Nos. CP–781–123–021, *et al.*, on December 15, 1983 (25 FERC ¶61,384), as amended in DOE/ERA Opinion and Order No. 68 (Western Leg), issued December 13, 1984, in ERA Docket No. 84–15–NG (1 ERA ¶70,580) is hereby further amended to permit Northwest Alaskan to make spot or short-term sales of authorized volumes not taken by Northwest Alaskan's long-term contract purchaser, Pacific Interstate Transmission Company, Inc., (PIT), to the extent that PIT does not take its full contract amount during any contract year, consistent with the terms set forth in the application submitted in this docket, as modified by this Order.

C. The authority to make spot market sales of natural gas contained in Ordering Paragraphs A and B of this Order is granted for a period of two years beginning with the date of first delivery of natural gas imported for sale on the spot market pursuant to this Order.

D. Northwest Alaskan shall notify the ERA in writing of the date of first delivery of natural gas imported under Ordering Paragraphs A and B above within two weeks after the date of the first delivery.

E. With respect to the spot market sales authorized by this Order, Northwest Alaskan shall file with the ERA in the month following each calendar quarter, quarterly reports showing, by month, whether spot sales have been made, and if so, the details of each spot sale, The details reported shall include the purchase and sales price, volumes, contract adjustment and take provisions, duration of the agreement, ultimate sellers and purchasers, and markets served.

F. The motions for leave to intervene, as set forth in this Opinion and Order, are hereby granted, subject to the administrative procedures in 10 CFR Part 590, provided that participation of the intervenors shall be limited to matters affecting asserted rights and interests specifically set forth in their motions for leave to intervene and not herein specifically denied, and that the admission of such intervenors shall not be construed as recognition that they might be aggrieved because of any order

[9] The DOE has detemined that, because existing pipeline facilities will be used, granting authorization to import and export the requested volumes of natural gas is clearly not a Federal action significantly affecting the quality of the human environment withing the meaning of the National Environmental POlicy Act (42 U.S.C. 4321, *et seq.*0 and therefore an environmental impact statement or environmental assessment is not required.

issued in these proceedings. Further, the late answer filed by Pan-Alberta Gas Ltd. is hereby accepted and is included in the official record of this proceeding.

Issued in Washington, D.C., February 26, 1985.

Rayburn Hanzlik,

Administrator, Economic Regulatory Administration.

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BILLING CODE 6450-01-M

[ERA Docket No. 85-04-NG]

Northern Natural Gas Co., Division of InterNorth, Inc.; Emergency Interim Order Granting Temporary Increase Daily Limit on Import of Natural Gas from Canada

AGENCY: Department of Energy, Economic Regulatory Administration.

ACTION: Notice of Application and Emergency Order Granting Temporary Authorization to Increase Daily Limit on Natural Gas Imported from Canada.

SUMMARY: On February 25, 1985, Northern Gas Company, Division of InterNorth, Inc. (Northern), filed an application with the Economic Regulatory Administration (ERA) requesting emergency interim approval to increase its imports of natural gas by 100,000 Mcf per day during the period March 1, 1985, through March 31, 1985. Currently, the maximum daily volume Northern is authorized to purchase from its supplier, Consolidated Natural Gas Limited (Consolidated), is 200,000 Mcf per day. Beginning April 1, 1985, imports will revert to the daily rate previously authorized. The application is filed with the ERA pursuant to Section 3 of the Natural Gas Act. Protests or petitions to intervene are invited.

On February 28, 1985, the ERA Administrator issued Opinion and Order No. 75 authorizing, on an emergency, interim basis, the requested increase in volumes during the month of March 1985.

DATES: Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed no later than 4:30 p.m., on March 20, 1985.

FOR FURTHER INFORMATION CONTACT:

Olga T. Ronkovich (Natural Gas Division, Office of Fuels Programs), Economic Regulatory Administration, Forrestal Building, Room GA-007, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252-9482;

Diana J. Stubbs (Office of General Counsel, Natural Gas and Mineral Leasing), U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue SW., (202) 252-6667.

SUPPLEMENTARY INFORMATION:

I. Background

On February 25, 1985, Northern requested emergency interim authorization to begin importing up to 100,000 Mcf of natural gas per day during the period March 1, 1985, through March 31, 1985, in addition to the 200,000 Mcf per day currently authorized for import from Consolidated. The additional daily volumes will begin to flow upon approval by the ERA and the Canadian National Energy Board (NEB). The additional volumes would be imported on a best-efforts, interruptible basis, at a price of not more than $3.50 (U.S.) per MMBtu nor less than $2.70 (U.S.) per MMBtu in accordance with the terms of Northern's gas purchase contract as amended November 1, 1984. On February 28, 1985, Northern filed a supplement clarifying the pricing provisions of the amending agreement.

Northern states that the interim emergency authorization of these increased volumes would allow the company to minimize its take-and-pay and take-or-pay exposure with its suppliers and to reduce the chance of a related, possible shutdown of domestic gas production fields in the summer, thereby avoiding the negative impacts of these situations on the cost of its gas supplies in 1985. The additional volumes requested would be imported at a point near Emerson, Manitoba.

In support of its request for an emergency interim authorization, Northern states that it serves a temperature-sensitive market with significantly greater winter requirements than summer requirements. Northern states that because of annual contract obligations, it is necessary that Northern be able to import maximum volumes during the heating period (November through March) so that summer production cut-backs can be managed to avoid operational problems such as possible shut-ins of domestic fields, while still enabling Northern to meet minimum purchase requirements throughout its traditional U.S. supply areas. Under its contract with Consolidated, Northern has a minimum purchase obligation of 40.15 Bcf of natural gas for the 1984-85 contract year. The mid-January NEB approval of Northern's renegotiated contract with Consolidated precluded Northern from maximizing its imports under the contract during the early part of the winter heating season and thus jeopardized its ability to fulfill its minimum purchase obligation for the 1984-85 contract year. The proposed increase would enable Northern to accelerate its daily purchases of Canadian gas under the authorization without increasing the annual authorized volumes. As of April 1, 1985, imports will revert to the daily rate previously authorized.

In view of the above considerations, the Administrator determined that granting an emergency order to Northern was not inconsistent with the public interest. While noting that the ERA ordinarily does not act on a request for authorization until expiration of the notice and comment period, the order emphasized Northern's need to maximize takes during the remainder of the winter heating season in order to avoid operational problems during the summer and to avoid potential take-or-pay liabilities. Issued on February 28, 1985, the emergency order approved the increase in maximum daily volumes by 100,000 Mcf during the period March 1, 1985, through March 31, 1985.

Other Information

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received by persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions, to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-033-B, RG-23, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585. They must be filed no later than 4:30 p.m., March 20, 1985.

A decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided,

such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR Part 590.316.

A copy of Northern's application is available for inspection and copying in the Natural Gas Division Docket Room, GA–033–B, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., on February 28, 1985.

Robert L. Davies,

Director, Coal and Electricity Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 85–5352 Filed 3–4–85; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Project No. 8590–001]

Buck Rock Hydro, Ltd.; Surrender of Preliminary Permit

February 28, 1985.

Take notice that Buck Rock Hydro, Ltd., Permittee for the proposed Buck Rock Hydro Project No. 8590, has requested that its preliminary permit be terminated. The preliminary permit was issued on January 15, 1985, and would have expired June 30, 1986. The project would have been located on Willow Creek in Tehama County, California.

The Permittee filed the request on February 13, 1985, and the preliminary permit for Project No. 8590 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–5232 Filed 3–4–85; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 7915–001]

Calero Associates; Surrender of Preliminary Permit

February 27, 1985.

Take notice that Calero Associates, the Permittee for the Colleen Dam Project No. 7915, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 7915 was issued on August 2, 1984, and would have expired on January 31, 1986. The project would have been located on Calero Creek in Santa Clara County, California. The Premittee states that a preliminary study found that the project would not be economically feasible to develop at this time.

The Permittee filed the request on February 1, 1985, and the preliminary permit for Project No. 7915 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this propject site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–5233 Filed 3–4–85; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 6321–002]

County of Tuolumne; Surrender of Preliminary Permit

February 27, 1985.

Take notice that County of Tuolumne, Permittee for the Pilot Ridge Project, FERC No. 6321, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 6321 was issued on October 18, 1982, and would have expired on September 30, 1985. The project would have been located on South Fork of Tuolumne River, in Tuolumne County, California.

The Permittee filed the request on January 31, 1985, and the preliminary permit for Project No. 6321 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–5234 Filed 3–4–85; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 8439–001]

Eden Valley Hydro, Ltd.; Surrender of Preliminary Permit

February 28, 1985.

Take notice that Eden Valley Hydro, Ltd., Permittee for the proposed Eden Valley Hydro Project No. 8439, has requested that its preliminary permit be terminated. The preliminary permit was issued on November 13, 1984, and would have expired April 30, 1986. The project would have been located on Eden Creek in Mendocino County, California.

The permittee filed the request on February 13, 1985, and the preliminary permit for Project No. 8439 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–5235 Filed 3–4–85; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 8586–001]

Golden Wheel Hydro, Ltd.; Surrender of Preliminary Permit

February 28, 1985.

Take notice that Golden Wheel Hydro, Ltd., Permittee for the proposed Golden Wheel Project No. 8586, has requested that its preliminary permit be terminated. The preliminary permit was issued on January 15, 1985, and would have expired June 30, 1986. The project would have been located on Rock Creek in Siskiyou County, California.

The permittee filed the request on February 13, 1985, and the preliminary permit for Project No. 8586 shall remain

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in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-5236 Filed 3-4-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP84-63-002]

Mississippi River Transmission Corp.; Proposed Changes in FERC Gas Tariff

February 27, 1985.

Take notice that on February 15, 1985, Mississippi River Transmission Corporation ("Mississippi") tendered for filing revised tariff sheets to its FERC Gas Tariff as listed on the attached Appendix, and a Refund Report.

Mississippi states the purpose of the tariff filing is to implement the applicable provisions of the Stipulation and Agreement ("Agreement") at Docket No. RP84-63, which was approved by Commission letter order dated January 11, 1985. The revised tariff sheets reflect settlement Base Tariff Rates and currently effective Purchased Gas Cost Adjustments approved at Docket No. TA84-2-25-002.

The Refund Report sets forth the cash distribution made to Mississippi's jurisdictional sales customers affected by the Agreement.

Mississippi states that copies of its filing have been served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 6, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-5238 Filed 3-4-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL84-32-001, et al.]

Plains Electric Generation and Transmission Cooperative, Inc., et al; Compliance Filing

February 26, 1985.

In the matter of Plains Electric Generation and Transmission Cooperative, Inc. v. Public Service Company of New Mexico, Docket No. EL84-32-001; Public Service Company of New Mexico, Docket No. EL84-35-001; Texas-New Mexico Power Co. v. Public Service Company of New Mexico Docket No. EL84-36-001.

Take notice that on February 14, 1985, Public Service Company of New Mexico submitted for filing its revised refund proposal in compliance with the Commission's order dated December 31, 1984 in Docket Nos. EL84-32-000 *et al.* 29 FERC ¶ 61,374. As required by the Commission's order, the allocation of refunds arising out of the settlement of *In re New Mexico Natural Gas Antitrust Litigation*, MDL No. 403 (D. Colo.), is based on historic rather than prospective usage.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 15, 1985. Protests will be considered by the Commission in determining the appropriate action to take, but will not serve to make protestants parties to the proceedings. Any person wishing to be a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-5237 Filed 3-4-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 8500-001]

New Valley Hydro Ltd.; Surrender of Preliminary Permit

February 28, 1985.

Take notice that New Valley Hydro Ltd., Permittee for the New Valley Hydroelectric Project, FERC No. 8500, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 8500 was issued on December 20, 1984, and would have expired on May 31, 1986. The project would have been located on Big Creek, in Trinity County, California.

The Permittee filed the request on February 12, 1985, and the preliminary permit for Project No. 8500 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-5239 Filed 3-4-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 8128-000]

Rogerson Assoc.; Surrender of Preliminary Permit

February 28, 1985.

Take notice that Rogerson Associates, Permittees for the Salmon Falls Dam Project No. 8128, have requested that their preliminary permit be terminated. The preliminary permit for Project No. 8128 was issued on August 2, 1984, and would have expired on January 31, 1986. The project would have been located on Salmon Falls Creek in Twin Falls County, Idaho.

The Permittee filed the request on February 1, 1985, and the preliminary permit for Project No. 8128 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-5240 Filed 3-4-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP85-15-000]

Transcontinental Gas Pipe Line Corp.; Complaint and Petition for Declaratory Order

February 26, 1985.

On January 23, 1985, Transcontinental Gas Pipe Line Corporation (Transco) filed a Complaint and Petition for Declaratory Order with the Federal Energy Regulatory Commission (Commission) under 18 CFR 385.206 and 207 against the Superior Oil Company (Superior).

Transco requests the Commission find that a violation of section 504(a)(1) of the Natural Gas Policy Act of 1978 (NGPA)[1] would occur if Superior were to receive certain take-or-pay payments for natural gas it has demanded. Furthermore, Transco requests that the Commission issue a declaratory order terminating the controversy between Transco and Superior and removing uncertainty.

Transco states that it has entered into several contracts for the sale of gas with Superior.[2] All of these contracts contain take-or-pay provisions which Superior alleges obligates Transco to either take the specified amount of gas required by the contract or to pay for any gas not taken up to the specified amount.

Transco asserts that it has been unable to take delivery of all gas tendered by Superior under these agreements due to a change in circumstances such as loss of market and a dramatic increase in system deliverability of gas. According to Transco, Superior's deliverability under the subject leases is grossly disproportionate to the producing life of the reserves and the historical production rates. Transco fears that payment under the take-or-pay provisions would violate section 504 of the NGPA. Under its contract with Superior, Transco has a five year period over which it can "make-up" gas paid for but not taken. Transco believes that the reserves will be depleted before it can make up gas paid for but not taken.

Transco also seeks a declaratory order to remove uncertainty as to whether maximum lawful prices established under Title I of the NGPA would be exceeded if Superior were to receive take-or-pay payments for natural gas, even if such payments were made up. Transco argues that a violation occurs because the seller has the interest free use of the amounts paid until the gas is taken. Transco also requests the Commission to find that the take-or-pay provisions contained in its contract with Superior do not comply with the spirit or intent of § 154.103 of the Commission's regulations.

Any person desiring to participate in this proceeding must file a petition to intervene or a protest with the Commission, 825 North Capitol St., N.E. Washington, D.C. 20426 under Rule 211 or 214. The petition or protest must be filed within 15 days of publication of this notice in the **Federal Register**. Only a petition to intervene will make a person a party to this proceeding. Copies of the petition are on file with the Commission and available for public inspection. Superior's answer to the complaint shall be due on or before March 27, 1985.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-5241 Filed 3-4-85; 8:45 am]

BILLING CODE 6717-01-M

[1] 15 U.S.C. 3301-3432 (1983).

[2] These contracts cover gas produced from the Brazos Area, Block 578 field; Vermilion Area, Block 58 field; West Cameron Area, Block 486 field; Eugene Island Area, Block 105 Field; and the Schwarz Field in Webb County, Texas.

[Docket No. TA85-2-49-000; TA85-2-49-001]

Williston Basin Interstate Pipeline Co.; Purchased Gas Cost Adjustment Filing

February 27, 1985.

Take notice that on February 22, 1985, Williston Basin Interstate Pipeline Company (Williston) submitted for filing as part of its FERC Gas Tariff the following tariff sheets:

Original Volume No. 1

Substitute Original Sheet No. 10

Original Volume No. 2

Substitute Original Sheet No. 10

The proposed effective date of Williston's PGA filing is January 1, 1985.

Williston states that this filing is being made outside the normal PGA adjustment dates to immediately reflect gas cost reductions achieved as a result of contract renegotiation efforts with its suppliers. Williston has requested waivers to vary from the normal effective dates. The proposed changes include a cumulative gas cost adjustment of (10.681) cents per Mcf for Rate Schedules G-1, PR-1, I-1, and X-1. No change is proposed to the surcharge adjustment. These changes represent a net decrease in rates for Rate Schedules G-1, PR-1 and I-1 of 20.276 cents per Mcf, and a decrease for Rate Schedule X-1 of 20.276 cents per Mcf, from the rates currently in effect.

The proposed changes are supported by exhibits attached to the filing.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before March 6, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-5242 Filed 3-4-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2245-002, -003]

City of Vanceburg, KY; Application for Surrender of License, Request for Withdrawal of Application for Surrender and Application for Partial Transfer and Amendment of License

February 28, 1985.

Take notice that the City of Vanceburg, Kentucky, Licensee for the Cannelton Project, FERC No. 2245, on March 1, 1984, filed an application for surrender of the project license. The Cannelton Project is located at the U.S. Corps of Engineer's Cannelton Locks and Dam on the Ohio River in Hancock County, Kentucky.

The license for Project No. 2245 was issued on March 29, 1976. The proposed project would consist of a powerplant containing three generating units with a total installed capacity of 70,560 kilowatts. No part of the proposed permanent project works has been constructed by the Licensee. In its application for surrender of its license, the City of Vanceburg cited difficulties in securing financing and marketing of the project power as reasons for its filing. By letter of October 12, 1984, the District Engineer, Louisville District, U.S. Corps of Engineers, stated that the project site is in a condition which is satisfactory to the U.S. Corps of Engineers.

On January 17, 1985, Vanceburg filed another application for partial transfer of the license, withdrawal of application for surrender of license, and an application for amendment of license. Vanceburg now proposes to transfer the license from itself to itself, the

Cannelton Hydroelectric Limited Partnership and the Cannelton Hydroelectric Company. Applicants claim that the transfer is necessary to execute a successful financing arrangement to complete construction of the project. Applicants claim that construction of the project was commenced in a timely manner and that an additional 42 months should be granted to complete project construction. Finally, Vanceburg requests withdrawal of its previously filed surrender of license. As to this last request, the Commission suspended the automatic grant of withdrawal on February 1, 1985, so that the matter could be reviewed further in the context of the entire proceeding.

Comments, Protests, or Motions to Intervene: Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests or motions to intervene must be received on or before April 8, 1985.

Filing and Service of Responsive Documents: Any filings must hear in all capital letters the title "COMMENTS" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Director, Division of Project Management, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB, at the above address.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-5289 Filed 3-4-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP85-169-003, et al.]

Natural Gas Certificate Filings; Columbia Gas Transmission Corp., et al.

Take notice that the following filings have been made with the Commission:

1. Columbia Gas Transmission Corporation, Columbia Gulf Transmission Company.

[Docket No. CP84-169-003]

February 25, 1985.

Take notice that on February 5, 1985, Columbia Gas Transmission Corporation (Columbia Gas), P.O. Box 1273, Charleston, West Virginia 25325, and Columbia Gulf Transmission Company (Columbia Gulf), P.O. Box 683, Houston, Texas 77001, (referred to jointly as Columbia), filed jointly in Docket No. CP84-169-003 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to continue to transport up to 3 billion Btu of natural gas per day on behalf of Proctor and Gamble Manufacturing Company (P&G) through June 30, 1985, under the certificates issued in Docket Nos. CP83-76-000 and CP83-496-000, respectively, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Columbia states that the current authorization to transport gas to P&G's Baltimore, Maryland, plant expired November 1, 1984. Columbia further states that in all other respects the transportation arrangement would remain the same.

Comment date: April 11, 1985, in accordance with Standard Paragraph E at the end of this notice.

2. Columbia Gas Transmission Corporation

[Docket No. CP85-258-000]

February 25, 1985.

Take notice that on January 31, 1985, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP85-258-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Aluminum Ring Company (Aluminum Ring), Metallurgical Exoproducts Corporation (Metallurgical) and Metscrap Division (Metscrap) under the certificate issued in Docket No. CP83-76-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Columbia proposes to transport up to 309 million Btu of natural gas per day, less retainage, for Aluminum Ring; 226 million Btu of natural gas per day of natural gas, less retainage, for Metallurgical; and 165 million Btu per day of natural gas, less retainage, for Metscrap through June 30, 1985, or for a one year-term effective the date deliveries of gas commence hereunder. Columbia states that the gas to be transported hereunder would be used as process gas in Aluminum Ring's, Metallurgical's, and Metscrap's plants in McKees Rocks, Pennsylvania.

Columbia indicates that the gas to be purchased involves gas supplies released by Columbia and that such supplies are subject to the ceiling price provisions of sections 107 and 108 of the Natural Gas Policy Act of 1978. It is further stated that Columbia would receive the gas at existing delivery points in various counties in Pennsylvania and redeliver such gas to Columbia Gas of Pennsylvania, Inc. (distribution company) which in turn redelivers the gas to the three end-users above.

Columbia states that it would charge either (1) its current rates of 21.16 cents and 29.9 cents per dt equivalent of volumes that are within the distribution company's total daily entitlemenmt, or (2) its current rates of 32.50 cents and 41.27 cents per dt equivalent of volumes that are in excess of distribution customer's total daily entitlement, exclusive of company-use and unaccounted-for gas. It is further stated that Columbia would retain for company-use and unaccounted-for gas a percentage of the gas delivered hereunder as reflected in Columbia's rate filing; this percentage is currently 2.43 percent.

Columbia also requests flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by the end-user. The flexible authority requested applies only to points related to sources of gas supply not to delivery points in the market area. Columbia will file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

Comment date: April 11, 1985, in accordance with Standard Paragraph G at the end of this notice.

3. Sea Robin Pipeline Company

[Docket No. CP77-410-005]

February 26, 1985.

Take notice that on January 30, 1985, Sea Robin Pipeline Company (Sea Robin), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP77-410-005

a petition pursuant to section 7(c) of the Natural Gas Act to amend the order issued November 2, 1977, in Docket No. CP77–410 so as to authorize new points of receipt on its existing offshore system of natural gas to be transported by Sea Robin for United Gas Pipe Line Company (United), all as more fully described in the petition to amend which is on file with the Commission and open to public inspection.

Sea Robin states that the proposed additional points of delivery would be at the inlet side of existing measuring stations located at Eugene Island area Blocks 197 and 313, offshore Louisiana. It is explained that the gas received is produced in Blocks 181, 182 and 312.

Sea Robin further states that the gas would be transported pursuant to Sea Robin's FERC Rate Schedule X–17 and redelivered to United at the authorized redelivery point near Erath, Louisiana. The total volume of gas to be transported by Sea Robin would remain at the currently authorized volume of 40,000 Mcf per day.

Comment date: March 18, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

4. Southern Natural Gas Company

[Docket No. CP85–262–000]

February 26, 1985

Take notice that on February 1, 1985, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202, filed in Docket No. CP85–262–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas on behalf of Gulf Oil Corporation (Gulf), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern requests authority to transport for Gulf on a best-efforts basis up to 15 billion Btu of natural gas per day of such greater quantity as Southern may accept from time to time. Gulf would deliver natural gas to Southern at an existing interconnection of facilities located on the production platform operated by Gulf in Main Pass Area Block 77, offshore Louisiana, it is explained. Southern states it would redeliver by displacement the daily quantity of gas delivered by Gulf, less a percentage thereof (initially 1 percent) as Gulf's share of gas used as compressor fule, company-used and unaccounted-for gas, less any shrinkage, fule or loss resulting from or consumed in the processing of the gas transported by Southern, and less Gulf's share of gas lost or vented during transportation, at the existing point of interconnection between the outlet of Gulf's Venice processing plant, Plaquemines Parish, Louisiana, and the measurement facilities of Southern. Southern states that it would charge Gulf a transportation charge of 28.3 cents per MMBtu. Southern states that the proposed transportation will provide Gulf with a means of transporting its Main Pass Area Block 77 gas during periods that Southern purchases less than 100 percent of Gulf's entitlement and will help prevent drainage of Gulf's gas reserves.

Comment date: March 18, 1985, in accordance with Standard Paragraph F at the end of this notice.

5. El Paso Natural Gas Company

[Docket Nos. CP76–37–008 and CP78–443–006]

February 26, 1985.

Take notice that on January 24, 1985, El Paso Natural Gas company (El Paso), Post Office Box 1492, El Paso Texas, 79978, filed at Docket Nos. CP76–37–008 and CP78–443–006, pursuant to section 7(c) of the Natural Gas Act a petition to amend the Commission's orders issued December 3, 1975, in Docket No. CP76–37, as amended, and January 12, 1979, in Docket No. CP78–443, as amended, all as more fully set forth in the Petition to amend which is on file with the Commission and open to public inspection.

El Paso state that by order issued December 3, 1975, as amended, in Docket No. CP76–37, it received permanent certificate authorization for the transportation of up to 70,000 Mcf of natural gas per day and the delivery of such quantity of natural gas, less shrinkage, to Southwest Gas Corporation (Southwest), at various existing points of delivery within the State of Arizona and at the Arizona-Nevada boundary by means of its existing interstate pipeline transmission system. It is explained that such transportation arrangement is presently governed by the terms and conditons of a gas transportation agreement dated May 9, 1975, as amended, between El Paso and Southwest which comprises special Rate Schedule T–4 to El Paso's FERC Gas Tariff, Third Revised Volume No. 2 (hereinafter referred to as the T–4 Arrangement). Additionally, by order issued January 12, 1979, as amended, in Docket No. CP78–443, El Paso states that it received permanent certificate authorization for the transportation of up to 2,500 Mcf of natural gas per day and the delivery of such natural gas, less shrinkage, to Southwest, on a best-efforts basis, at various existing delivery points on El Paso's existing interstate pipeline transmission system situated within the State of Arizona and at the Arizona-Nevada boundary. El Paso states that such transportation and delivery service is presently governed by the provisions of a gas transportation agreement, dated June 30, 1978, as amended, between El Paso and Southwest and is on file with the Commission as special Rage Schedule T–15 to El Paso's FERC Gas Tariff, Third Revised Volume No. 2 (hereinafter referred to as the T–15 arrangement).

El Paso further states that Southwest and Arizona Public Service Company (APS) entered into an agreement in principle dated October 20, 1984, which provided for the sale by APS and the purchase by Southwest of the natural gas assets owned and utilized by APS in its natural gas distribution operations, effective as of November 1, 1984. It is indicated that such assets include all the franchises, pipelines, meter stations and other appurtenances and, generally, all of the natural gas utility assets of APS and that the sale and purchase was approved by the Arizona Corporation Commission by Decision Nos. 54056, 54057 and 54058 issued May 30, 1984, in Docket Nos. U–1345–84–284 (APS) and U–1551–83–284 (Southwest). Accordingly, in light of the recent acquisition by Southwest of APS' natural gas utility assets, it is explained that Southwest has advised El Paso that it is desirous of including, as a part of both the T–4 and T–15 arrangements, the existing points of delivery acquired by Southwest from APS. El Paso states that inasmuch as such delivery points are currently existing points of delivery under the service agreement dated August 15, 1970, between El Paso and Southwest, as successor-in-interest to APS, the addition of said points of delivery to the T–4 and T–15 arrangements would enable Southwest to have greater operational flexibility to utilize its existing natural gas supplies as well as it existing transportation arrangements with El Paso in serving the natural gas requirements of the newly acquired market.

El Paso states further that it and Southwest have entered into two amendatory agreements each dated December 18, 1984, which amend the T–4 and T–15 arrangements, *inter alia*, to provide for the addition of the points of delivery acquired by Southwest from APS as new El Paso delivery points on the Exhibit A attached to each respective gas transportation agreement. It is asserted that the natural gas facilities necessary to effectuate the transportation and delivery of natural

gas to Southwest at the additional points of delivery are existing and no new or additional facilities would be required by El Paso in order to effectuate the addition of such points to both the T–4 and T–15 arrangements as contemplated herein. El Paso asserts that the addition of such existing points of delivery to the T–4 and T–15 arrangements would not cause an increase in the quantities of natural gas presently authorized to be transported and delivered by El Paso to Southwest under either the T–4 arrangement certificated in Docket No. CP76–37 nor the T–15 arrangement certificated in Docket No. CP78–443.

Accordingly, El Paso requests that the Commission further amend its orders in Docket Nos. CP76–37 and CP78–443, respectively, in order to permit it to add the points of delivery which have been acquired by Southwest form APS to the T–4 and the T–15 arrangements.

Comment date: March 18, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

6. United Gas Pipe Line Company

[Docket No. CP85–261–000]

February 26, 1985.

Take notice that on February 1, 1985, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP85–261–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Chevron Chemical Company (Chevron), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that pursuant to a gas transportation agreement dated November 1, 1984, United proposes to transport up to 30,000 Mcf of natural gas per day for Chevron. It is indicated that Chevron would deliver the gas to United at an existing interconnection between the facilities of United and Natural Gas Pipeline Company of America at Texaco's Henry plant in Vermilion Parish, Louisiana. United states that it would deliver the gas to Chevron at existing points of interconnection on United's 30-inch Lirette-Mobile line in St. Charles Parish, Louisiana. United further states that it would charge Chevron the transportation rate in effect from time to time in United's southern rate zone.

Comment date: March 18, 1985, in accordance with Standard Paragraph F at the end of this notice.

7. K N Energy, Inc.

[Docket No. CP85–260–000]

February 27, 1985.

Take notice that on February 1, 1985, K N Energy, Inc. (K N), P.O. 15265, Lakewood, Colorado 80215, filed in Docket No. CP85–260–000 a request pursuant to § 157.205(b) of the Regulations under the Natural Gas Act [18 CFR 157.205(b)] for authorization to construct and operate nine sales taps for the delivery of gas to domestic, agricultural and small commercial end-users under the certificate issued in Docket No.s CP83–140–000, CP83–140–001 and CP83–140–002 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

K N proposes the construction and operation of nine sales taps to various end-users in Kansas and Nebraska along its jurisdictional pipeline system. K N states that the proposed sales taps are not prohibited by any of its existing tariffs and that the additional taps would have no significant impact upon K N's peak day and annual deliveries. K N indicates that the quantity of gas to be sold to each customer would be under 10,000 Mcf per year.

Comment date: April 15, 1985, in accordance with Standard Paragraph G at the end of this notice.

8. Northern Natural Gas Company, Division of InterNorth, Inc.

[Docket No. CP85–283–000]

February 27, 1985.

Take notice that on February 14, 1985, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP85–283–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Northern Petrochemical Company (Shipper) under the certificate issued in Docket No. CP82–401–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern proposes to transport up to 20,000 Mcf of natural gas per day and up to 5,840,000 Mcf of natural gas per year on behalf of Shipper. It is stated that Shipper is purchasing gas from Northern Gas Marketing, Inc., and would cause the natural gas to be delivered to Northern at 13 receipt points in Kansas and Oklahoma as designated in the gas transportation agreement dated December 14, 1984. Northern proposes to transport and deliver thermally equivalent volumes to an existing interconnection located in Jo Davies County, Illinois, between Northern and Northern Illinois Gas Company (Northern Illinois). Northern Illinois would then transport these volumes directly to Shipper's plant located in Morris, Illinois, it is asserted.

Northern also requests flexible authority to add or delete receipt/delivery points associated with sources of natural gas acquired by the Shipper and deliveries of natural gas to Northern Illinois. Northern asserts that any changes in receipt and/or delivery points would be on behalf of the Shipper at the same end-use location and under the same terms and conditions as would be authorized herein. Northern would file a report providing certain information with regard to the addition or deletion of receipt and/or delivery points as further detailed in the request and any additional sources of gas would be obtained to constitute the transportation quantities herein and not to increase those quantities, it is stated.

Northern explains that its proposed transportation charge would be based upon Northern's Rate Schedule EUT–1 and there would be no added incentive charge.

Shipper would utilize the natural gas transported for boiler fuel use, fuel for cracking furnaces, fuel for the pilot of a flare providing safety and pollution control functions and fuel for building heating demands, it is stated. Northern further states that it would not construct or add to its existing facilities to provide this transportation service. Northern proposes to perform this service for a term not to extend beyond June 30, 1985.

Comment date: April 15, 1985, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs:

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to

intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-5287 Filed 3-4-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-306-000, et al.]

Electric Rate and Corporate Regulation Filings; Public Service Co. of Indiana, Inc., et al.

Take notice that the following filings have been made with the Commission:

1. Public Service Company of Indiana, Inc.

[Docket No. ER85-306-000]

February 28, 1985.

Take notice that on February 19, 1985, Public Service Company of Indiana, Inc. (PSCI) tendered for filing pursuant to the Power Coordination Agreement between PSCI and Wabash Valley Power Association, Inc. (WVPA) a Fourth Supplemental Agreement to become effective January 1, 1985.

Said Agreement cancels the Second Supplemental Agreement dated August 3, 1983 and provides for the following changes to the Interim Power Rate Schedule.

1. Makes WVPA's utilization of interim power applicable outside the PSCI control area.

2. Changes the maximum reservation of interim power from 225 MW to 450 MW.

3. Eliminates the requirement that WVPA provide its own bulk transmission service.

4. Changes the demand charge for interim power from $0.33 per kilowatt per week to a charge not to exceed $0.88 per kilowatt per week and incorporates PSCI's Order 84 language for third party transactions.

PSCI requests an effective date of January 1, 1985, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing were served upon Wabash Valley Power Association, Inc. and the Public Service Commission of Indiana.

Comment date: March 13, 1985, in accordance with Standard Paragraph E at the end of this notice.

2. West Texas Utilities Company

[Docket No. ER85-81-002]

February 27, 1985.

Take notice that on February 14, 1985, West Texas Utilities Company (WTU) submitted for filing a compliance filing that supersedes the compliance filing issued under Docket No. ER85-81-001 on January 28, 1985.

West Texas Utilities submitted revised rates and cost of service applicable to Texas-New Mexico Power Company and the Cities of Brady and Coleman, Texas. The revised rates replace and correct revised rates filed January 14, 1985, pursuant to the Commission's December 8, 1984 suspension order in this proceeding.

West Texas Utilities states that copies of the filing have been served on the customers of WTU affected by the filing and upon the Public Utility Commission of Texas.

Comment date: March 14, 1985, in accordance with Standard Paragraph E at the end of this notice.

3. Southwestern Electric Power Company

[Docket No. ER85-314-000]

February 27, 1985.

Take notice that on February 20, 1985, Southwestern Electric Power Company (SWEPCO) tendered for filing a notice of cancellation of Rate Schedule FERC No. 73. SWEPCO requests an effective cancellation date of June 1, 1984.

Comment date: March 14, 1985, in accordance with Standard Paragraph E at the end of this notice.

4. Alabama Power Company

[Docket No. ER85-312-000]

February 27, 1985.

Take notice that on February 20, 1985, Alabama Power Company (Alabama) tendered for filing a contract executed between it and the Administrator of the Southeastern Power Administration (SEPA) acting on behalf of the United States Government, Department of Energy. The contract is filed with the Federal Energy Regulatory Commission because certain of its provisions provide for the payment of a transmission charge by the Government for transmission of capacity and energy to certain preference customers designated by the Government.

Alabama requests an effective date of February 1, 1985, and therefore requests waiver of the Commission's notice requirements.

Comment date: March 14, 1985, in accordance with Standard Paragraph E at the end of this notice.

5. Southern Company Services, Inc.

[Docket No. ER85-311-000]

February 27, 1985.

Take notice that on February 20, 1985, Southern Company Services, Inc. on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company and Mississippi Power Company (Southern Companies), tendered for filing Amendment No. 2 to an interchange contract between Southern Companies and the City of Tallahassee, Florida (City).

The amendment to the interchange contract provides for additional long term power sales from Southern companies to City which are scheduled to commence on January 1, 1987.

Comment date: March 14, 1985, in accordance with Standard Paragraph E at the end of this notice.

6. Union Electric Company

[Docket No. ER85-310-000]

February 27, 1985.

Take notice that on February 19, 1985, Union Electric Company (Union) tendered for filing Fourth Amendment dated February 11, 1985, to the Interconnection Contract of September 18, 1979 between City of Columbia, Missouri, and Union.

Union states the purpose of the Amendment is to provide for a new Service Schedule F.

Union requests an effective date of March 1, 1985, and therefore requests waiver of the Commission's notice requirements.

Comment date: March 13, 1985, in accordance with Standard Paragraph E at the end of this notice.

7. Dayton Power and Light Company

[Docket No. ER85-307-000]

February 27, 1985.

Take notice that on February 19, 1985, Dayton Power and Light Company (DP&L) tendered for filing an executed Purchase and Resale Agreement (Agreement) between DP&L and the City of St. Marys (St. Marys), Ohio.

DP&L states that the proposed Agreement allows St. Marys to purchase energy requirements from third parties who will use existing Interconnection Agreement Rate schedules to deliver the energy requirements to DP&L for delivery to St. Marys.

DP&L requests the Commission waive its notice and filing requirements and permit the proposed Agreement to become effective April 1, 1985.

Comment date: March 13, 1985, in accordance with Standard Paragraph E at the end of this notice.

8. West Texas Utilities Company

[Docket No. ER83-694-004]

February 27, 1985.

Take notice that on February 14, 1985, West Texas Utilities Company (WTU) submitted for filing a refund compliance filing pursuant to the Commission's letter order dated January 11, 1985.

WTU's compliance filing included tabulations for each wholesale customer sharing the monthly billing determinants, revenue receipt dates and revenues under prior, interim and settlement rates; the monthly revenue refunds, the monthly interest and a summary of all refunds, and workpapers underlying the interest calculations.

Comment date: March 14, 1985, in accordance with Standard Paragraph H at the end of this notice.

9. Superior Water, Light and Power Company

[Docket No. ER85-309-000]

February 28, 1985.

Take notice that on February 15, 1985, Superior Water, Light and Power Company (SWL&P) tendered for filing a proposed rate schedule W-11, incorporating a Wisconsin license fee adjustment procedure in SWL&P's current rate schedule with its single jurisdictional customer, Dahlberg Light & Power Company (DP&L).

SWL&P states that the license fee adjustment will increase annual revenues from DP&L by $28,772 based upon estimated billing determinants for the 12-month period ending December 31, 1985.

DP&L requests an effective date of January 1, 1985, and therefore requests waiver of the Commission's notice requirements.

SWL&P states that copies of the filing were sent to DL&P and the Public Service Commission of Wisconsin.

Comment date: March 13, 1985, in accordance with Standard Paragraph E at the end of this notice.

10. Public Service Company of New Mexico

[Docket No. ER85-313-000]

February 28, 1985.

Take notice that on February 20, 1985, Public Service Company of New Mexico (PNM) tendered for filing as a rate schedule change for Service Schedule I to the Interconnection Agreement between PNM and the Incorporated County of Los Alamos, New Mexico (County), dated November 26, 1984 (PNM Rate Schedule FERC No. 60). Service Schedule I provides for the interruptible sale of PNM surplus energy to County between April 1, 1985 and December 31, 1992.

PNM requests a waiver of the Commission's notice requirements so that Service Schedule I may become effective as of April 1, 1985.

PNM is an electric utility incorporated in the State of New Mexico, with its principal office in Albuquerque, New Mexico.

Copies of the filing were served upon the County and the New Mexico Public Service Commission.

Comment date: March 14, 1985, in accordance with Standard Paragraph E at the end of this notice.

11. Consolidated Edison Company of New York, Inc.

[Docket No. ER85-308-000]

February 28, 1985.

Take notice that on February 19, 1985, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing two supplements (Supplement No. 3 and No. 4) to its Rate Schedule FERC No. 62, an agreement to provide transmission service to Orange and Rockland Utilities, Inc. (O&R). Supplement No. 3 increases the transmission charge from 2.6 mills to 2.7 mills per kilowatthour for interruptible transmission of power and energy purchased by O&R from Pennsylvania Power & Light Company and from the companies of the Northeast Utilities system. The Supplement would increase annual revenues from jurisdictional service during Period I by $2,306.50.

Supplement No. 4 adds the companies of the General Public Utilities System as an additional source of power and energy to be transmitted to O&R under the Rate Schedule.

Con Edison requests that the Commission waive the notice requirements of its regulations and permit Supplement No. 3 and 4 to become effective as of September 15, 1984 and February 14, 1985, respectively.

Con Edison states that a copy of this filing has been served upon O&R.

Comment date: March 13, 1985, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practices and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

H. Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before the comment date. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the

Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-5291 Filed 3-4-85; 8:5 am]

BILLING CODE 6717-01-M

[Docket No. CS85-30-000, et al.]

Triumph Energy, Inc., et al.; Applications for "Small Producer" Certificates [1]

February 28, 1985.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7(c) of the Natural Gas Act and § 157.40 of the Regulations thereunder for a "small producer" certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make protest with reference to said applications should on or before March 18, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

Docket No.	Date filed	Applicant
CS85-30-000	Jan. 18, 1985	Triumph Energy, Inc., P.O. Box 53944, Lafayette, Louisiana 70505.
CS85-31-000	...do	Colony Energy Corporation, P.O. Box 50550, Midland, Texas 79710.
CS85-32-000	Feb. 1, 1985	R.A. Miller Energy, Inc., 1121 North Longview, Kilgore, Texas 75662.
CS85-33-000	Feb. 8, 1985	Jack D. Cook, Tully & Cunningham, P.A., P.O. Box 268, Farmington, New Mexico 87499-0268.
CS85-34-000	...do	Max D. Webb, Tully & Cunningham, P.A., P.O. Box 268, Farmington, New Mexico 87499-0268.
CS85-35-000	Feb. 11, 1985	Bill H. Peal Productions, Inc., 11005 Timbergrove, Corpus Christi, Texas 78410.
CS85-36-000	...do	Shanley Oil Company, 9400 N. Central Expressway, No. 313, Dallas, Texas 75231.
CS72-512	Dec. 28, 1984 [1]	Gruss Petroleum Corp. (Evmar Oil Corp.) (Joseph Oil Corporation), 450 Park Avenue, Suite 1801, New York, New York 10022.
CS72-1036	Feb. 4, 1985 [2]	Mrs. J.F. Hickman, as personal representative of the estate of J.F. Hickman, deceased (J.F. Hickman), Post Office Box 2168, Albuquerque, New Mexico 87103-2168

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

[1] On February 1, 1985, this filing was noticed to reflect that Evmar Oil Corp. has changed its name to Gruss Petroleum Corp. This filing is hereby renoticed to reflect that Joseph Oil Corporation has merged with Gruss Petroleum Corp., ceased to exist as a corporation entity, and all sales formerly made by Joseph are now made by Gruss.

[2] Ltr. rec'd dated January 29, 1985, requesting that Mrs. J. F. Hickman, as the personal representative of Mr. Hickman's estate, be included under the certificate as a condition for the transfer of payment from Mr. Hickman to Mrs. Hickman.

[FR Doc. 85-5289 Filed 3-4-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA85-18-000]

Western Gas Supply Co.; Petition of Western Gas Supply Company for Interim Relief and Adjustment from Incremental Pricing

Issued February 28, 1985.

On February 6, 1985, Western Gas Supply Company (Western),[1] 15th Street, Suite 1150, Denver, Colorado 80202, filed with the Federal Energy Regulatory Commission (Commission) a petition for a staff adjustment under section 206(d) of the Natural Gas Policy Act of 1978 (NGPA) [2] and the Commission's Rules of Practice and Procedure.[3] Western requests that the Commission grant both an adjustment from its regulations implementing incremental pricing and interim relief retroactive to November 26, 1984.

Western states that it sells gas to PABCO [4] for use at PABCO's non-exempt industrial boiler fuel facility. PABCO has informed Western that it will purchase its gas at a lower price from an alternative source [5] unless it is able to acquire an exemption from incremental pricing for the gas in question. Western seeks a staff adjustment to exempt its sales of natural gas to PABCO from incremental pricing.

Western states that an unfair distribution of burdens will fall upon its remaining customers if PABCO discontinues purchasing gas from Western. Western states that its remaining customers will be forced to share a larger burden of its fixed costs. Furthermore, the subject gas is sold under a gas purchase contract with take-or-pay requirements. Western states that it has no alternative market for this gas. Western argues that if it loses the PABCO sale, it will incur take-or-pay liabilities which will ultimately result in higher gas costs to its remaining customers.

Any person desiring to participate in this adjustment proceeding shall file a motion to intervene in accordance with Rule 1105 of the Commission's rules of practice and procedure. All motions to intervene must be filed within 15 days after publication of this notice in the **Federal Register.**

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-5290 Filed 3-4-85; 8:45 am]

BILLING CODE 6717-01-M

[1] Western is a subsidiary of the Public Service Company of Colorado.

[2] 15 U.S.C. 3301-3432 (1983).

[3] 18 CFR 385.1101-117 (1983).

[4] PABCO is a division of the Fiber Board Corporation which is a subsidiary of the Louisiana-Pacific corporation.

[5] Sales from the alternative source are exempt from incremental pricing.

ENVIRONMENTAL PROTECTION AGENCY

[A-4-FRL-2790-1]

Hialeah, FL; PSD Permit Modification for Lonestar Florida/Pennsuco, Inc.

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Prevention of Significant Deterioration (PSD) permit (PSD-FL-050) issued to Lonestar Florida/Pennsuco, Inc., for Cement Kiln Nos. 1, 2, and 3, at their Hialeah, Florida, facility, on July 8, 1980, was modified by letter on December 28, 1984.

DATES: This permit modification is effective as of December 28, 1984.

ADDRESSES: Copies of the PSD permit, permit revision letter, and general files are available for public inspection upon request at the following locations:

Environmental Protection Agency, Region IV, Air Management Branch, Air, Pesticides, and Toxics Management Division, 345 Courtland Street, N.E., Atlanta, Georgia 30365
Bureau of Air Quality Management, Florida Department of Environmental Regulation, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32301

FOR FURTHER INFORMATION CONTACT: Michael Brandon of the EPA—Region IV, Air Management Branch at the Atlanta address given above, telephone 404/881–4552 (FTS: 257–4552).

SUPPLEMENTARY INFORMATION: On July 8, 1980, the Administrator for EPA–Region IV issued a PSD construction permit for modification of three oil-fired kilns to fire pulverized coal at the Lonestar Florida/Pennsuco facility in Hialeah, Florida. By letter dated March 23, 1984, the company requested EPA to modify the company's PSD permit to increase sulfur dioxide emissions from the coal-fired Kiln No. 3 from 26.3 pounds per hour to 400 pounds per hour. Emissions increases of sulfur dioxide from proposed kilns Nos. 1 and 2 from 56.7 pounds per hour each to 125 pounds per hour each were also requested.

The original Best Available Control Technology (BACT) determination of sulfur dioxide (SO_2) emissions was based in part on emission measurements from oil-fired kilns. The predicted removal efficiency did not hold true for coal firing and thus the company requested an increase in the SO_2 emissions limits for all three kilns. Subsequent analysis of the National Ambient Air Quality Standards (NAAQS) and increment consumption yielded a violation of a local ambient air quality standard (Dade County, Florida). An additional provision was added to the permit limiting the total number of kilns which can be fired simultaneously to two in order to protect the local air quality standards. As a result, no NAAQS, increment, or local standard will be violated by this permit modifications.

In addition, no Class I area or nonattainment area will be adversely affected by the increased of emissions sulfur dioxide.

The permit was modified reflecting the above changes by letter to the company on December 28, 1984, and is considered effective on that date. The terms and conditions specified in the original July 8, 1980, federal PSD permit are still in force and effect, except for the modifications specified in the December 28, 1984, letter. If construction does not commence within 18 months after this effective date (December 28, 1984), or if construction is discontinued for a period of 18 months or more, or if construction is not completed within a reasonable time, the modified permit shall expire and authorization to construct shall become invalid.

(Secs. 160–169 of the Clean Air Act (42 U.S.C. 7470–7479))

Dated: February 19, 1985.

John A. Little,

Acting Regional Administrator.

[FR Doc. 85–5282 Filed 3–4–85; 8:45 am]

BILLING CODE 6560–50–M

[OPP–66106B; FRL–2791–2]

Dibromochloropropane; Open Panel Meeting on the Use of Existing Stocks

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of a Public Information-gathering Meeting.

SUMMARY: This notice announces that the Environmental Protection Agency and the State of Hawaii (DBCP Use Panel) will hold a 1-day public information-gathering meeting to deliberate on a request to use existing stocks of dibromochloropropane (DBCP) submitted by the Maui Pineapple Company.

DATE: The open meeting will be held by the DBCP Use Panel on March 20, 1985, from 1 p.m. to 8 p.m.

ADDRESS: The meeting will be held at: The Kahului Library Conference Room, 90 School St., Kahului, Maui, Hawaii.

The Maui Pineapple Company's request to use DBCP and the Agency's preliminary use determination (Technical Support Document) are available for public inspection at:

(1) The Kahului Library, 90 School Street, Kahului, Maui, Hawaii (808–877–5048), from Mrs. Mary McMullen
(2) Information Services Section, Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, Virginia

Copies of the Technical Support Document and use determination request can be obtained by contacting:

(3) Environmental Protection Agency, Pacific Islands Contact Office, Rm. 1302, PJK Federal Building, 300 Ala Moana Blvd., Honolulu, Hawaii, from Vicki Tsuhako (808–546–8910).
(4) Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, D.C. 20460, from Betty Shackleford
Office location and telephone number: Rm. 717, CM #2, 1921 Jefferson Davis Highway, Arlington, Virginia (703–557–7400)

FOR FURTHER INFORMATION CONTACT: Betty Shackleford, (703–557–7400).

SUPPLEMENTARY INFORMATION: The Office of Pesticide Programs, EPA, has developed a Technical Support Document (TSD) which describes the evaluation criteria and preliminary findings made by the EPA and the State of Hawaii on the application submitted by Maui Pineapple Company. Copies of the TSD may be obtained in advance of the public meeting from the contact persons specified in 3 and 4 above. A limited number of copies of the TSD will also be available at the public meeting.

I. Background

EPA cancelled the remaining registration for use of DBCP as a soil fumigant in Hawaii pineapple culture because ground-water monitoring indicated DBCP had contaminated ground water on Oahu and Maui and because continued use of the pesticide over a long period of time would pose unreasonable adverse effects to man and the environment. However, the Agency believes use of a limited amount of existing stocks for a short period under stringently controlled conditions may be possible with little risk of contaminating potable (fit to drink) ground water. Therefore, in its Notice of Intent to Cancel, published in the **Federal Register** of January 9, 1985 (50 FR 1122), the Agency created a procedure for persons to qualify and seek permission to use existing stocks of DBCP in Hawaii. A DBCP Use Panel was established and given authority to review applications and decide whether to approve use of existing stocks of DBCP on Maui, Hawaii. The Use Panel will convene a public meeting on Maui to receive written and oral comment from the public and local and State government officials. The panel's determinations and the reasons for the decision will be published in the **Federal Register**.

II. Qualified Existing Stocks

In accordance with the provisions set out in the January 9 Notice of Intent to Cancel, qualified existing stocks of DBCP are held by Gowan Company, Yuma, Arizona (155,073 pounds of DBCP active ingredient (Prokil Nematocide EM 12.1)); Southern Farmers Association, North Little Rock, Arkansas (6,156 pounds of DBCP active ingredient (Amvac's Nematocide Solution 17.1)); and the Maui Pineapple Company, Honolulu, Hawaii (27, 951 pounds of

DBCP active ingredient (Amvac's Nematocide Solution 12.1)). These qualified existing stocks may be used only in accordance with the requirements of the Federal Insecticide, Rodenticide, and Fungicide Act (FIFRA) and related regulations, the terms and conditions set out in the January 9 Notice of Intent to Cancel, and any additional restrictions required by the DBCP Use Panel.

III. Use Determination Requests

A request for a use determination has been submitted by the Maui Pineapple Company, the only user of DBCP since 1981. Maui Pineapple Company has applied to use DBCP on a total of 29 fields on Maui, Hawaii. In their application, three fields on the Haliimaile Plantation (fields numbered—213, 216 and 220) totaling 346 acres and nine fields on the Honolua Plantation (fields numbered—10, 17, 18, 27 (bottom), 48, 51, 53, 55 and 64) totaling 573 acres have been identified for the 1985 planting season as possible fumigation sites. This request for use represents 43 percent of the total acreage identified by the Maui Pineapple Company as treatable in 1985.

For the 1986 planting season, the Maui Pineapple Company has applied to use DBCP on 4 fields on the Haliimaile Plantation totaling 362 acres (fields numbered—217–1,2; 218; 219; and 223) and 13 fields on the Honolua Plantation (numbered—19, 23, 28 (bottom), 29, 30, 32, 33 (bottom), 34, 38, 39 (bottom), 47, 56, and 63) totaling 865 acres. The application submitted by the Maui Pineapple Company indicates no field will be treated more than once.

IV. Public Information Gathering Meeting

On March 20, 1985, representatives of the Environmental Protection Agency and the State of Hawaii (DBCP Use Panel) will convene a public information-gathering meeting on the Maui Pineapple Company request for permission to use existing stocks of DBCP.

The purpose of the meeting is to provide the affected public with an opportunity to present information which will assist the DBCP Use Panel in determining which fields, if any, may be treated with DBCP on Maui without the likelihood of contaminating present or future potable ground water. Therefore, participants in the public meeting will be asked to limit their oral statements and written submissions to matters which bear directly on this issue. The following list identifies specific issues on which the panel would like comments and will consider in making its decision; the public is encouraged to use this list for guidance in preparing comments and written submissions which may be submitted in advance to the contact person identified in 4 above.

(1) The proximity of the treatment site to potential potable water supplies.

(2) Mapping information.

(3) Maui monitoring data.

(4) Maui soil leaching studies.

(5) Water use information.

(6) Recharge (water that is replenished to the aquifer).

(7) Hydrogeology of the aquifer(s) underlying Maui pineapple fields.

V. Use Panel Procedures

Persons wishing to make an oral statement at the public meeting should notify the Agency in advance of the meeting to ensure time on the agenda. Interested persons should contact either of the EPA offices listed in this notice (see items (3) and (4) above). Copies of the agenda will be made available at the public meeting. Generally, speakers will be allocated 10 minutes for their statements; however, additional time may be allocated on a case-by-case basis to those persons who have demonstrated "good cause" in their advance notification to the Agency. The DBCP Use Panel may ask questions of a speaker following his or her presentation. If time permits, comments from persons not on the agenda may be heard by the panel at the end of the meeting.

The public meeting will be divided into an afternoon and an evening session. The afternoon session will begin with an opening statement by the Agency followed by a presentation summarizing the preliminary findings described in the TSD. Questions addressing materials contained in the TSD, arising from the Agency's oral statement, or the administrative record will be heard by the DBCP Use Panel immediately following the Agency's statement of preliminary findings. After the use panel has addressed questions from the public, the next 30 minutes will be reserved for comments from State and local government authorities should they elect to present information. The remainder of the afternoon session and entire evening session will be reserved for comments from the public. Comments made during the meeting will be considered by the use panel with other materials in rendering a determination on the Maui Pineapple Company application.

The use panel will also consider written comments on the issues raised at the public meeting; these comments must be submitted to Betty Shackleford, EPA, on or before March 28, 1985.

The use panel's decision on the Maui Pineapple Company application will be based on a determination of whether use of DBCP would be likely to result in the contamination of potable water supplies. The use panel will take into consideration whether the particular field is upgrade of a potable water supply, whether pumping potable water may influence the flow of the DBCP leachate from the particular pineapple field, and such other factors as the panel may deem appropriate. Present and future uses of the water will be considered. All decisions for continued use of DBCP must be made by unanimous agreement of the DBCP Use Panel comprised of one voting representative each from the State of Hawaii and the EPA. The use panel's decision and basis for the determination will be published in the **Federal Register**.

Dated: March 1, 1985.

Steven Schatzow,

Director, Office of Pesticide Programs.

[FR Doc. 85–5400 Filed 3–4–85; 8:45 am]

BILLING CODE 6560–50–M

FARM CREDIT ADMINISTRATION

[Farm Credit Administration Order No. 854; Revocation of FCA Order No. 849]

Authority Delegations; Officers To Act as Governor

ACTION: Notice.

SUMMARY: The Governor of the Farm Credit Administration has issued Order No. 854 authorizing certain officers of the Farm Credit Administration to act as Governor in the event the Governor is absent or unable to perform the duties of the office. The text of the Order is as follows:

1. In the event that the Governor of the Farm Credit Administration is absent or is not able to perform the duties of the office for any other reason, the officer of the Farm Credit Administration who is highest on the following list and who is available to act is hereby authorized to exercise and perform all functions, powers, authority, and duties pertaining to the Office of Governor of the Farm Credit Administration:

(a) Senior Deputy Governor;

(b) Deputy Governor, Office of Examination and Supervision, and Chief Examiner;

(c) Deputy Governor, Office of Administration;

(d) General Counsel;

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(e) Any other officer of the Farm Credit Administration designated by the Governor.

2. This Order shall be effective on March 1, 1985, and supersedes Farm Credit Administration Order No. 849, dated October 1, 1984 (49 FR 39913, 10/11/84).

Donald E. Wilkinson,

Governor, Farm Credit Administration.

[FR Doc. 85-5248 Filed 3-4-85; 8:45 am]

BILLING CODE 6705-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

Title of Information Collection: Annual Report of Trust Assets (OMB No. 3064-0024).

Background: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget, Standard Form 83, "Request for OMB Review", for the information collection system identified above.

ADDRESS: Written comments regarding the submission should be addressed to Judy McIntosh, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 and to John Keiper, Office of the Executive Secretary, Federal Deposit Insurance Corporation, Washington, D.C. 20429.

FOR FURTHER INFORMATION CONTACT: Requests for a copy of the submission should be sent to John Keiper, Office of the Executive Secretary, Federal Deposit Insurance Corporation, Washington, D.C. 20429, telephone (202) 389-4351.

SUMMARY: The FDIC is requesting OMB to extend the expiration date of the current form used in the Annual Report of Trust Assets (OMB No. 3064-0024) from March 31, 1985 to February 28, 1987. The form, FFIEC 001, is currently being revised by an interagency committee of the Federal Financial Institutions Examination Council. The drafting committee will seek public comment on the revisions before requesting OMB approval. FDIC regulation 12 CFR 304.3(1) requires all insured state nonmember commercial and savings banks operating trust companies or granted FDIC consent to exercise trust powers to submit the Annual Report of Trust Assets, Form FFIEC 001, no later than February 1 of each year. The reporting burden on the current Form FFIEC 001 is approximately 3.3 hours per report.

Dated: February 26, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-5282 Filed 3-4-85; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL HOME LOAN BANK BOARD

[84-145]

Monthly Financial Survey

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The public is advised that the Federal Home Loan Bank Board has submitted a revised information collection request, "Monthly Financial Survey (OMB No. 3068-0506)", to the Office of Management and Budget for expedited approval in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Comments: Comments on the information collection request are welcome and should be submitted within 10 days of publication of this notice in the **Federal Register.** Comments regarding the paperwork-burden aspects of the request should be directed to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, D.C. 20503. Attention: Desk Officer for the Federal Home Loan Bank Board.

The Board would appreciate commenters sending copies of their comments to the Board.

Requests for copies of the proposed information collection request and supporting documentation are obtainable at the Board addressd given below: Director, Information Services Section, Office of Secretariat, Federal Home Loan Bank Board, 1700 G Street, N.W., Washington, D.C. 20552. Phone: 202-377-6933.

FOR FURTHER INFORMATION CONTACT: Richard C. Pickering, Office of Policy and Economic Research. Phone: 202-377-6770.

Dated: February 28, 1985.

By the Federal Home Loan Bank Board.

J.J. Finn,

Secretary.

[FR Doc. 85-5284 Filed 3-4-85; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

American Automar Inc. et al.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreeement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commissison, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 217-010658-001.

Title: Automar/Atlantic Container Line Cooperation Agreement.

Parties:

American Automar, Inc.

Automar II Corporation

Atlantic Container Line, GIE

Synopsis: The proposed amendment would modify the cooperative working arrangement between the parties to incorporate various provisions relating to ACL's chartering of space to American Automar, Inc. on the M/V American Condor. It would provide that carriage of all types of cargo is permitted on the M/V American Condor, and also modify the agreement to conform with the format requirements of the Commission's regulations. The parties have requested a shortened review period.

Agreement No.: 202-010689-001.

Title: Transpacific Westbound Rate Agreement.

Parties:

American President Lines, Ltd.

Barber Blue Sea

The East Asiatic Company

Evergreen Marine Corp. (Tiawan), Ltd.

Hanjin Container Lines, Ltd.

Hapag-Lloyd Trans-Pacific Service

Japan Line, Ltd.

Kawasaki Kisen Kaisha, Ltd.

Korea Marine Transport Co., Ltd.

Lykes Brothers Steamship Co., Inc.

A.P. Moller—Maersk Line
Mitsui O.S.K. Lines, Ltd.
Neptune Orient Lines, Ltd.
NYK Line
Sea-Land Service, Inc.
Showa Line, Ltd.
United States Lines, Inc.
Yamashita-Shinnihon Steamship Co., Ltd.
Orient Overseas Container Line, Inc.
Zim Israel Navigation Co., Ltd.

Synopsis: The proposed amendment would modify the voting provisions of the agreement to provide voting representation in each voting group and provide that rate initiatives would become effective ten calendar days from the Agreement Manager's receipt of the original notice. It would also modify the independent action provisions to provide that any party's local representative may authorize independent action to follow that taken by another party. It would also permit the parties to create a separate Canada voting group or groups. The parties have requested a shortened review period.

Agreement No.: 202–010693–001.
Title: Florida/Caribbean Liner Association.
Parties:
Bernuth Lines, Ltd.
Calypso Lines
West India Shipping Co.
Tropical Shipping and Construction Co., Ltd.
Saquenay Shipping, Ltd.
TEC Lines, Ltd.

Synopsis: The proposed amendment would add Sea-Land Service, Inc., Concorde/Nopal Lines and the Shipping Corporation of Trinidad and Tobago as parties to the agreement. The parties have requested a shortened review period.

Agreement No.: 224–010727.
Title: Oakland Terminal Agreement.
Parties:
The Port of Oakland (Port)
Hyundai Merchant Marine Co., Ltd. (Hyundai)

Synopsis: The agreement between the parties is a terminal use agreement providing the Hyundai shall have nonexclusive right to premises at the Port's 7th Street Public Container Terminal. Hyundai will use the premises for the berthing, loading and discharging of its vessels and related operations in its transpacific container service. Hyundai agrees that the assigned premises shall be its published, regularly scheduled Northern California port of call. Hyundai will pay to the Port 95 percent of the tariff dockage and wharfage revenues. If Hyundai continues to use the assigned premises during the full term of the agreement, they will pay to the Port 90 percent of dockage and wharfage revenue. If Hyundai's usage of the premises generates an excess of 31,000 revenue tons in a contract year, wharfage payments for such tonnage in excess of the amount will be refunded to Hyundai. The term of the agreement commences upon the first of the month following the Commission's determination of effectiveness and terminates January 31, 1990.

Agreement No.: 224–010728.
Title: Oakland Terminal Agreement.
Parties:
The Port of Oakland (Port)
Johnson Scanstar, Euro-Pacific Service and Pacific Europe Express (USER)

Synopsis: The agreement between the parties is a terminal user agreement providing that the USER shall have the nonexclusive right to premises at the Port's Charles P. Howard Terminal for the berthing, boarding and discharging of its vessels in its "all-water" European/Mexican/West Coast of North America container service. USER agrees that the assigned premises shall be its published, regularly scheduled Northern California port of call. USER will pay to the Port 90 percent of tariff dockage and wharfage revenues. If USER's usage generates in excess of 31,000 revenue tons per acre in a contract year, wharfage payments for such tonnage in excess of the amount will be refunded to USER. If USER'S regularly scheduled vessel calls exceed 72 per contract year USER shall not have to pay dockage on vessel calls in excess of 72. For USER's non regularly scheduled charter vessels calls USER will pay dockage equal to 70 percent of said vessel calls. The term of the agreement commences upon the first of the month following determination of the effective date by the Commission and terminates December 1, 1989.

Agreement No.: 224–010730.
Title: Los Angeles Terminal Agreement.
Parties:
The City of Los Angeles (City)
L. A. Cruise Ship Terminals, Inc. (LACST)

Synopsis: Agreement No. 224–010730 provides for the granting by the City to LACST preferential use of Berths 91–93 in the Port of Los Angeles for passenger operations. The term of the agreement is for five years. The facilities include the renovation of an existing passenger terminal at Berth 93 A&B, the construction of a new passenger terminal at Berth 91–92, and the construction of a new wharf and passenger terminal at Berth 93 D&E.

By Order of the Federal Maritime Commission.

Dated: February 28, 1985.
Bruce A. Dombrowski,
Assistant Secretary.
[FR Doc. 85–5297 Filed 3–4–85; 8:45 am]
BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

First National Corp. of Jacksonville, et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 25, 1985.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *First National Corporation of Jacksonville,* Jacksonville, Alabama; to acquire 100 percent of the voting shares of Bank of Anniston, Anniston Alabama.

2. *Repton Supply Co., Inc.,* Brewton Alabama; to become a bank holding company by acquiring 11.8 percent of the voting shares of Bank of Brewton, Brewton, Alabama.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First United Financial Services, Inc.* Arlington Heights, Illinois; to retain 14.07 percent of the voting shares of Unibancorp, Inc., Chicago, Illinois, thereby indirectly retain its interest in UnibancTrust Company, Chicago.

Illinois and Hawthorne Bank of Wheaton, Wheaton, Illinois.

C. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *First White Oak Bancshares, Inc.* White Oak, Texas; to become a bank holding company by acquiring 80 percent of the voting shares of White Oak State Bank, White Oak, Texas.

2. *Haltom City Bancshares, Inc.*, Dallas, Texas; to acquire 100 percent of the voting shares of American Bank of Commerce, Grapevine, Texas.

Board of Governors of the Federal Reserve System, February 26, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-5215 Filed 3-4-85; 8:45 am]

BILLING CODE 6210-01-M

Gulf Coast Holding Corp. ESOT, et al.; Formations of, Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 27, 1985.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Gulf Coast Holding Corporation ESOT*, Panama City, Florida; to become a bank holding company by acquiring 25 percent of the voting shares of Gulf Coast Holding Corporation, Panama City, Florida.

2. *St. Mary Holding Corporation*, Franklin, Louisiana; to become a bank holding company by acquiring 100 percent of the voting shares of The St. Mary Bank and Trust Company, Franklin, Louisiana.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Chicago Commerce Bancorporation*, Chicago, Illinois; to become a bank holding company by acquiring 97 percent of the voting shares of Chicago Bank of Commerce, Chicago, Illinois.

C. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *First Kentucky National Corporation*, Louisville, Kentucky; to acquire 100 percent of the voting shares of Bank of Commerce and Trust Company, Lexington, Kentucky.

D. **Federal Reserve Bank of San Francisco** (Harry W. Green Vice President) 101 Market Street, San Francisco, California 94105:

1. *SCB Bancorp*, Costa Mesa, California; to become a bank holding company by acquiring 80.1 percent of the voting shares of South Coast Bank, Costa Mesa, California.

Board of Governors of the Federal Reserve System, February 27, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-5216 Filed 3-4-85; 8:45 am]

BILLING CODE 6210-01-M

Peoples Bankshares, Inc; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) of (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holdings companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 27, 1985.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Peoples Bankshares, Inc.*, Waterloo, Iowa; to acquire Bankers Plus, Inc., Minneapolis, Minnesota, and thereby engage in the leasing of personal and real property throughout the United States. The authority for the nonbanking activity is found in § 225.25(5) of Regulation Y.

Board of Governors of the Federal Reserve System, February 27, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-5217 Filed 3-4-85; 8:45 am]

BILLING CODE 6210-01-M

Southwest Financial Corp.; Formation of, Acquisition By, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. § 1842) and section 225.14 of the Board's Regulation Y (12 C.F.R. 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. § 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board

of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than March 11, 1985.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Southwest Financial Corporation*, Evergreen Park, Illinois; to acquire 100 percent of the voting shares of Hickory Creek Bank of New Lenox, New Lenox, Illinois.

Board of Governors of the Federal Reserve System, March 1, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-5422 Filed 3-4-85; 10:16 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

National Institute for Occupational Safety and Health; Surveillance Cooperative Agreements Between NIOSH and States; Availability of Funds for Fiscal Year 1985

The National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control (CDC), announces the availability of funds for Fiscal Year 1985 to continue the Surveillance Cooperative Agreements Between NIOSH and States (SCANS). Assistance will be limited to those five states that presently have a cooperative agreement. The cooperative agreements are authorized by section 20(a)(1) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 669(a)(1)). No new applications are being accepted in Fiscal Year 1985.

It is expected that approximately $310,000 will be available in Fiscal Year 1985 to support five cooperative agreements. The funding estimate may vary and is subject to change. Continuation awards within the project period are made on the basis of satisfactory performance and on the availability of funds.

For Further Information Contact: Leo A. Sanders, Chief, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, N.E., Room 321, Atlanta, Georgia 30305. Telephone: (404) 262-6575 or FTS 236-6575.

Dated: February 26, 1985.

J. Donald Millar,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 85-5277 Filed 3-4-85; 8:45 am]

BILLING CODE 4160-19-M

Public Health Service

Health Maintenance Organizations

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice; qualified health maintenance organizations.

SUMMARY: This notice sets forth the name, addresses, service areas, and dates of qualification of entities determined by the Secretary to be federally qualified health maintenance organizations (HMOs).

FOR FURTHER INFORMATION CONTACT: Frank H. Seubold, Ph.D., Associate Director for Health Maintenance Organizations, Bureau of Health Maintenance Organizations and Resources Development, Room 9-05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-4106.

SUPPLEMENTARY INFORMATION: Regulations (42 CFR 110.605(d)) issued under Title XIII of the Public Health Service Act (the Act) require that a list and description of all newly qualified HMOs be published on a periodic basis in the **Federal Register**. This notice is an accumulation of information regarding those HMOs that have been qualified since the last such list was published on October 3, 1984. There are three categories of qualified HMOs: Operational, transitionally qualified, and preoperational (see CFR 110.602 and 110.603).

The following entities have been determined to be qualified HMOs under section 1310(d) of the Act (42 U.S.C. 300e-9(d)):

Operational Qualified Health Maintenance Organizations: 42 CFR 110.603(a)

1. Health Plan of Mid America (Individual Practice Association Model, see section 1310(b)(2)(A) of the Act), 4510 Bellview, Suite 104, Kansas City, Missouri 64111. The service area comprises the counties of Johnson, Leavenworth, and Wyandotte in Kansas; the counties of Jackson, Clay, and Platte in Missouri; and zip codes 64087 and 64102 in Cass County, Missouri.

Date of qualification: September 1, 1984. (Achieved preoperational qualification on July 24, 1984.)

2. Health Plus, Inc. (Individual Practice Association Model, see section 1310(b)(2)(A) of the Act), 6611 Kenilworth Avenue, Riverdale, Maryland 20737. The service area comprises the District of Columbia and the following zip codes in the following counties in Maryland:

Prince Georges County

20331	20712	20748
20390	20715	20769
20601	20716	20770
20607	20722	20772
20608	20735	20781
20613	20737	20782
20623	20740	20783
20705	20743	20784
20706	20744	20785
20707	20745	20786
20708	20746	20903
20710	20747	20912

Montgomery County

20815	20903	20910
20895	20904	20912
20901	20906	
20902	20907	

Anne Arundel County

21035	21114	21401
21054	21140	21403

Date of qualification: September 12, 1984.

3. Healthcare Corporation of the Mid-Atlantic (Medical Group Model, see section 1310(b)(1) of the Act), 1005 North Point Boulevard, Baltimore, Maryland 21224. On June 22, 1984, the for-profit entity, Healthcare Corporation of the Mid-Atlantic, a wholly-owned subsidiary of Healthcare Corporation America, assumed the assets and liabilities of Metropolitan Baltimore Health Care, Inc. (MBHC), a federally qualified HMO. Subsequently, Healthcare Corporation of the Mid-Atlantic was approved for Federal qualification and the Federal qualification of MBHC was voluntarily reliquished. The service area comprises the following zip codes in Maryland:

20701	21022	21051
20707	21023	21052
20755	21024	21053
20759	21025	21054
20777	21027	21055
20781	21028	21056
20794	21029	21057
20863	21030	21061
21001	21031	21071
21005	21032	21074
21009	21034	21076
21010	21036	21077
21012	21040	21078
21013	21043	21080
21014	21044	21082
21017	21045	21083
21018	21046	21084
21019	21047	21085
21020	21048	21087
21021	21050	21088

21080	21202	21404
21092	21203	21405
21093	21204	21723
21101	21205	21725
21102	21206	21735
21104	21207	21737
21105	21208	21738
21107	21209	21757
21108	21210	21764
21111	21211	21765
21112	21212	21768
21113	21213	21771
21114	21214	21776
21117	21215	21784
21120	21216	21787
21122	21217	21791
21127	21218	21794
21128	21219	21797
21130	21220	21801
21131	21221	21902
21132	21222	21903
21133	21223	21904
21136	21224	21911
21139	21225	21912
21144	21226	21913
21146	21227	21914
21150	21228	21915
21152	21229	21916
21153	21230	21917
21154	21231	21918
21155	21234	21919
21156	21236	21920
21157	21237	21921
21160	21239	21930
21161	21240	17321
21162	21401	17363
21163	21402	
21201	21403	

Date of qualification: October 29, 1984.

4. HealthWays, Inc. (Individual Practice Association Model, see section 1310(b)(2)(A) of the Act), 485 U.S. Route 1, Parkway Towers, Iselin, New Jersey 08830. On October 26, 1984, the for-profit entity, HealthWays, Inc., agreed to purchase the assets and assume the liabilities of the not-for-profit HealthWays, Inc., a federally qualified HMO comprising two regional components. Sebsequently, the for-profit HealthWays, Inc., was approved for Federal qualification, and the Federal qualification of the former, not-for-profit corporation, HealthWays, Inc., was voluntarily relinquished. The service area for the Iselin regional component comprises Middlesex and Union Counties. The service area for the Mercer regional component (see number 15 following) comprises Mercer County.

Date of qualification: November 2, 1984.

5. TAKECARE Prepaid Health Services of Oklahoma, Inc. (Direct Contract Model, see section 1310(b)(2)(B) of the Act), 5110 South Yale, Suite 201, Tulsa, Oklahoma 74135. The service area comprises Tulsa County and the following zip codes in the following other counties of Oklahoma:

Creek County

Glenpool 74033
Kelleyville 74039
Kiefer 74041
Mannford 74044
Mounds 74047
Oakhurst 74050
Sapulpa 74066

Muskogee County

Haskell 74436

Osage County

New Prue 74060

Rogers County

Catoosa 74015
Claremore 74017
Inola 74036
Oologah 74053

Wagoner County

Coweta 74429

Washington County

Vera 74082

Date of qualification: November 5, 1984.

6. Health Care Plus, Inc. (Individual Practice Association Model, see action 1310(b)(2)(A) of the Act), 7701 East Kellogg, P.O. Box 18008, Wichita, Kansas 67218. On September 1, 1984, the for-profit entity, Health Care Plus, Inc., a federally qualified HMO comprising four regional components, became a new, wholly-owned subsidiary corporation of Health Care Plus of America, Inc. Subsequent to this reorganization, the new Health Care Plus, Inc. was approved for Federal qualification, and the Federal qualification of the former Health Care Plus, Inc. was voluntarily relinquished. The service areas for the four regional components are:

Regional Component and Service Area

Wichita, Sedgwick County
Lawrence, Douglas County
Hutchinson, Reno County
Salina, Saline County

Date of qualification: November 8, 1984.

7. Summa Health Plan (Direct Contract Model, see section 1310(b)(2)(B) of the Act), 3425 North First Street, Fresno, California 93726. The service area comprises Fresno and Madera Counties.

Date of qualification: November 16, 1984.

8. Physicians Health Plan of Nothern Indiana, Inc. (Direct Contract Model, see section 1310(b)(2)(B) of the Act), 2410 Coliseum Boulevard North, Suite 110, Fort Wayne, Indiana 46805. The service area comprises the following zip codes in the following counties in Indiana:

Adams County

46740	46772
46769	46780
46711	46782

Allen County

46704	46773
46741	46774
46743	46777
46745	46801–46899 (Fort Wayne)
46748	
46765	

De Kalb County

46706	46783
46721	46788
46738	

Huntington County

46702	46783
46750	46792

Jay County

47326	47371
47336	47373

Wells County

46714	46778
46731	46781
46759	46791
46766	46799
46770	

Whitley County

46723	46787
46726	

Date of qualification: November 26, 1984.

9. Health Circle (Individual Practice Association Model, see section 1310(b)(2)(A) of the Act), 3624 South Westnedge, Kalamazoo, Michigan 49008. The service area comprises the following counties in Michigan: Allegan, Barry, Branch, Calhoun, Cass, Kalamazoo, St. Joseph, and Van Buren.

Date of qualification: December 6, 1984.

10. Kaiser Foundation Health Plan of North Carolina (Medical Group Model, see section 1310(b)(1) of the Act), P.O. Box 95163, 2900 Highwoods, Raleigh, North Carolina 27625. The service area comprises the following counties in North Carolina: Chatham, Durham, Franklin, Granville (except zip codes 27565 and 27315), Harnett, Johnston, Nash, Orange (except zip codes 27231, 27278, and 27243), and Wake.

Date of qualification: December 31, 1984.

Transitionally Qualified Health Maintenance Organizations; 42 CFR 110.603(b)

11. Central Texas Health Plan (Direct Contract Model, see section 1310(b)(2)(B) of the Act), 3307 Northland Drive, Suite 300, Austin, Texas 78731. The service area comprises the following counties in Texas: Bastrop, Burnet, Caldwell, Hays, Lee, Travis, and Williamson.

Date of qualification: October 10, 1984.

12. Dean Health Plan, Inc. (Medical Group Model, see section 1310(b)(1) of the Act), 6515 Grand Teton Plaza, P.O.

Box 56099, Madison, Wisconsin 53706. The service area comprises the following counties in Wisconsin: Columbia, Dane, Dodge, Green, Iowa, Jefferson, Marquette, Rock, and Sauk.

Date of qualification: November 6, 1984.

Qualified Regional Components: 42 CFR 110.603(e)

13. Tampa Bay Health Plan, Ltd., Palm Beach County, Florida (Direct Contract Model, see section 1310(b)(2)(B) of the Act), an operational qualified regional component of Tampa Bay Health Plan, Ltd., of St. Petersburg, Florida 33702. The service area comprises Palm Beach County.

Date of qualification: September 6, 1984.

14. Maxicare, Marin County, California (Individual Practice Association Model, see section 1310(b)(2)(A) of the Act), an operational qualified regional component of Maxicare, Hawthorne, California 90250. The service area comprises Marin County.

Date of qualification: September 11, 1984.

15. Healthways, Inc., Mercer County, New Jersey (Individual Practice Association Model, see section 1310(b)(2)(A) of the Act), an operational qualified regional component of Healthways, Inc., Iselin, New Jersey 08830. The service area comprises Mercer County.

Date of qualification: October 2, 1984.

16. Prudential Health Care Plan, Inc., Jacksonville, Florida (Medical Group Model, see section 1310(b)(1) of the Act), an operational qualified regional component of Prudential Health Care Plan, Inc., Roseland, New Jersey 07068. The service area comprises zip code 32082 in St. John's County and all of Nassau, Dural, Baker, and Clay Counties.

Date of qualification: October 3, 1984.

17. Peak Health Plan, Ltd., Northern Colorado (Medical Group Model, see section 1310(b)(1) of the Act), an operational qualified regional component of Peak Health Plan, Ltd., Colorado Springs, Colorado 80909. The service area comprises Larimer County.

Date of qualification: November 19, 1984.

18. Sanus Texas Health Plan, Inc., Houston, Texas (Direct Contract Model, see section 1310(b)(2)(B) of the Act), an operational qualified regional component of Sanus Texas Health Plan, Inc., Irving, Texas 75063. The service area comprises Harris County, plus the following zip codes:

77373	77478	77565
77380	77479	77573
77388	77511	77578
77390	77518	77581
77459	77545	77584
77477	77546	77598

Date of qualification: December 7, 1984.

19. TakeCare Corporation, Santa Cruz County, California (Individual Practice Association Model, see section 1310(b)(2)(A) of the Act), an operational qualified regional component of TakeCare Corporation, Oakland, California 94659. The service area comprises the following zip codes in California:

Aptos	95003
Ben Lomond	95005
Boulder Creek	95006
Brookdale	95007
Capitola	95010
Davenport	95017
Felton	95018
Freedom	95019
Mt. Hermon	95041
Santa Cruz	95060–66
Scotts Valley	95066
Soquel	95073
Watsonville	95076
La Selva Beach	95076

Date of qualification: December 10, 1984.

20. United Health Plan of Virginia, Inc., Hampton Roads, Virginia (Direct Contract Model, see section 1310(b)(2)(B) of the Act), an operational qualified regional component of United Health Plan of Virginia, Inc., Glenn Allen, Virginia 23060. The service area comprises the following zip codes:

Battery Park	23304
Carrollton	23314
Carrsville	23315
Chesapeake	23320 through 23325
Crafton	23692
Ft. Monroe	23651
Hampton	23661 through 23670
Isle of Wight	23397
Lackey	23694
Lightfoot	23090
Newport News	23601 through 23607
Norfolk	23501 through 23514
Norfolk	23516
Norfolk	23517
Norfolk	23518
Norfolk	23520
Norfolk	23521
Norfolk	23523
Norge	23127
Portsmouth	23701 through 23705
Portsmouth	23707
Portsmouth	23708
Portsmouth	23709
Poquoson	23662
Rescue	23424
Seaford	23696
Smithfield	23430
Suffolk	23432 through 23438
Toano	23168
U.S. Naval Weapons	23691
Virginia Beach	23450 through 23464
Williamsburg	23185
Windsor	23487
Yorktown	23690
Zuni	23898

Date of qualification: December 11, 1984.

21. Prudential Health Care Plan, Inc., San Antonio, Texas (Individual Practice Association Model, see section 1310(b)(2)(A) of the Act), an operational qualified regional component of Prudential Health Care Plan, Inc., Roseland, New Jersey 07068. The service area comprises Bexar County, plus the

following zip codes: 78004, 78006, 78108, 78123, 78124, 78130, 78154, and 78155.

Date of qualification: December 28, 1984.

22. Matthew Thornton Health Plan, Manchester County, New Hampshire (Medical Group Model, see section 131(b)(1) of the Act), an operational qualified regional component of Matthew Thornton Health Plan, Nashua, New Hampshire 03060. The service area comprises the following towns in New Hampshire: Manchester, Allenstown, Auburn, Bedford, Candia, Chester, Deerfield, Derry, East Candia, Goffstown, Hooksett, New Boston, Pembroke, Raymond, Suncook and Weare.

Date of qualification: December 28, 1984.

Files containing detailed information regarding qualified HMOs will be available for public inspection between the hours of 8:30 a.m. and 4:30 p.m. on Tuesdays and Thursdays, except for Federal holidays, in the Office of Health Maintenance Organizations, Bureau of Health Maintenance Organizations and Resources Development, Department of Health and Human Services, Rm. 9-11 Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Questions about the qualification review process or requests for information about qualified HMOs should be sent to the same office.

Dated: February 25, 1985.

Robert Graham,

Administrator, Assistant Surgeon General.

[FR Doc. 85-5287 Filed 3-4-85; 8:45 am]

BILLING CODE 4160-16-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[DOCKET No. N-85-1511; FR-2057]

Availability of Funding From the Solar Energy and Energy Conservation Bank; Solicitation of Program Proposals

AGENCY: Solar Energy and Energy Conservation Bank, HUD.

ACTION: Notice of Fund Availability and Notice of Solicitation of Program Proposals.

SUMMARY: The Solar Energy and Energy Conservation Bank has approximately $15 million available to be awarded for its financial assistance program in Fiscal Year 1985. A proposed revision of the current 24 CFR 1800.95 concerning allocation of such funds among States, as required by section 104(d)(2) of the Housing and Community Development Technical Amendments Act of 1984, has been published elsewhere in today's issue of the **Federal Register**

The revision will not become effective until it is published as a final rule after public comment and funds will not be allocated until then. However, the Bank requires any States without current cooperative agreements with the Bank which desire to receive Fiscal Year 1985 funds to submit program proposals in accordance with this Notice to permit timely Bank review. This Notice sets forth the approximate allocations of funds which will be available to new State participants in Fiscal Year 1985 if the proposed § 1800.95 becomes a final rule without substantial change. This notice also sets forth the required contents of program proposals.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Francis, Manager, Solar Energy and Energy Conservation Bank, Room 7110, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410. Telephone: 202-755-7166. (This is not a toll-free number.)

Proposal due Date: Proposals from States without current cooperative agreements must be received by the Bank within 60 days of publication of this Notice.

SUPPLEMENTARY INFORMATION:

Tenative Allocations

If the proposed § 1800.95 becomes a final rule without substantial change, the tentative allocation of funds for new State participants will be approximately as follows:

Alaska	$120,000
South Dakota	$120,000
Trust Territory of the Pacific Islands	$120,000
Virgin Islands	$120,000
Wyoming	$120,000

The Bank cannot estimate the Fiscal Year 1985 allocation for other States until it receives and reviews the State semi-annual reports due at the end of July 1985, which will serve as the basis for applying the performance-based criteria listed in § 1800.95(a) of the proposed rule. New State participants will be given no points under any of the performance-based criteria since they are relevant only for operating programs. All States will be notified of the tentative allocation of funds when calculated after publication of a final rule which revises 24 CFR 1800.95. The Bank cannot estimate what amount of funds, if any, will be tentatively allocated for new States participants if substantial change to the proposed § 1800.05 is made.

How New States Receive Tentative Allocations

Any State which does not have a cooperative agreement with the Bank may receive its tentative allocation for Fiscal Year 1985 by submitting a written program proposal which is acceptable to the Bank. The program proposal should contain, as a minimum, the following.

(1) A narrative description of the specific financial assistance program proposed and the tenchiques to be used to interrelate ongoing energy-related activities with Bank-provided funding and relevant local or private resources available;

(2) A description of the organizational framework of the lead agency for implementing the proposed program including the administrative, managerial or regulatory relationships between the lead agency and any planned local or private agency participants, which identifies the lead agency key personnel, their proposed role(s), and their qualifications for the job;

(3) A statement of program general objectives and specific goals, the rationale for the energy conservation and/or solar program(s) and building eligibility proposed, as well as any geographic areas or income groups targeted for priority attention;

(4) A proposed timetable for implementation and operation of the program, assuming a cooperative agreement with the Bank is in effect in September 1985;

(5) A proposed budget onthe funding for proposed activities based on the Bank's estimated allocation and any planned sources of funding other than the Bank, with a breakdown of planned expenditures and explanation of how they were derived by type of assistance proposed, including estimated administrative and promotional expenses (see 24 CFR 1800.99 for limitations);

(6) A statement on existing financial assistance programs and assurance that the proposed use of Federal funds will not overlap, duplicate, or displace such existing programs;

(7) Proposed quality assurance activities, *e.g.*, random post-installation inspections;

(8) A statement that the proposal is in response to this Notice and submitted by a State that is currently not a program participant, which is signed by a duly authorized individual; and

(9) The identification of a person or persons (including telephone numbers and addresses) who may be contacted to provide further information to the Bank's staff concerning the proposal.

and the name, telephone number and address of the person to whom a cooperative agreement from the Bank would be directed.

If a program proposal is acceptable, the Bank will prepare a cooperative agreement for obligation of the State's tentative allocation when the exact allocation is determined under a final version of the revised 24 CFR 1800.95. If a program proposal is unacceptable, the Bank will inform the State of deficiencies which must be corrected before a cooperative agreement can be prepared. A new State participant with an acceptable proposal must complete and return the cooperative agreement to the Bank within 60 days of the time the cooperative agreement is provided by the Bank or by September 15, 1985, whichever is sooner.

Environmental Review

A Finding of No Significant Impact with respect to the environment under regulations implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) is unnecessary, since approval of State programs and allocation of funds to States is categorically excluded under HUD regulations (24 CFR Part 50) as adopted by the Bank at 24 CFR 1800.135(b).

OMB Control Number

The reporting provisions that are included in this Notice have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–1111) and have been assigned OMB control number 2504–0003. This control number has an expiration date of May 31, 1986.

(Subtitle A, Title V, Energy Security Act of 1980; Pub. L. 96–294; 12 U.S.C. 3601 *et seq.*)

Dated: February 26, 1985.

Richard H. Francis,

Manager, Solar Energy and Energy Conservation Bank.

[FR Doc. 85–5299 Filed 3–4–85; 8:45 am]

BILLING CODE 4210–32–M

Office of the Secretary

[Docket No. N–85–1509]

Privacy Act of 1974; Proposed Amendment to System of Records

AGENCY: Department of Housing and Urban Development.

ACTION: Notice of proposed amendment to existing system of records.

SUMMARY: The Department is giving notice that it intends to amend the Section 8 Program Research Data Files (HUD/PD&R–7) system of records.

EFFECTIVE DATE: The amendment shall become effective 30 calendar days from the date of publication of this notice unless comments are received on or before that date which will result in a contrary determination.

ADDRESS: Rules Docket Clerk, Room 1027, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410.

FOR FURTHER INFORMATION CONTACT: Arthur L. Stokes, Departmental Privacy Act Officer, Telephone: (202) 755–6374.

SUPPLEMENTARY INFORMATION: The Section 8 Program Research Data Files (HUD/PD&R–7) will be used to support the Housing Voucher Demonstration Evaluation research project. The project will provide a side-by-side comparison of the impact of the Housing Voucher Program on the Section 8 Existing Housing Program. Comparisons will be made in success rates, moving rates, turnover rates, rent burdens and housing quality for families in the two programs. The evaluation will also compare administrative costs in the two programs.

To be consistent with the Housing Voucher Demonstration Evaluation Project, the system location is changed to delete Boone, North Carolina; the "Categories of Records in the System" section is modified without expansion; and the retention and disposal period of personnel identifiers is extended from four months to four years.

The Section 8 Program Research Data Files System (HUD/PD&R–7) was established at 44 FR 72306 (December 13, 1979) and amended at 45 FR 35426 (May 27, 1980). The system is published below in its entirety as amended.

Authority: 5 U.S.C. 552(a), 88 Stat. 1896; sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

Issued at Washington, D.C., February 26, 1985.

Donald J. Keuch, Jr.,

Deputy Assistant Secretary for Administration.

HUD/PD&R–7

SYSTEM NAME:

Section 8 Program Research Data Files.

SYSTEM LOCATION:

Cambridge, Massachusetts.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Families selected in a random sample of applicants to and certificate holders in the Section 8 Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, household demographics (age, sex, race, income, handicapped status), condition of pre-program housing units, condition of program housing units, program status information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sec. 501, 502, Housing and Urban Development Act of 1970 (Pub. L. 91–609), 12 U.S.C. 1701z–1, 1701z–2.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

In filed folders and on magnetic tape/disc/drum.

RETRIEVABILITY:

Name, address.

SAFEGUARDS:

Manual files will be kept in lockable cabinets in a secured area; computer records will be maintained in a separate secured area. Access to either type of record will be limited to authorized personnel.

RETENTION AND DISPOSAL:

All personal identifiers will be destroyed approximately four years after the system is created.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Housing Assistance Research Division, TRH Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410.

NOTIFICATION PROCEDURE:

For information, assistance, or inquiry about existence or records, contact the Privacy Act Officer at the Headquarters locations, in accordance with 24 CFR Part 16. This location is given in Appendix A.

RECORD ACCESS PROCEDURES:

The Department's rules for providing access to records to the individual concerned appear in 24 CFR Part 16. If additional information or assistance is required, contact the Privacy Act Officer at the Headquartrs location. This location is given in Appendix A.

CONTESTING RECORD PROCEDURES:

The Department's rules for contesting the contents of records and appealing initial denials, by the individual

concerned, appear information or assistance is needed, it may be obtained by contacting: (i) In relation to contesting contents of records, the Privacy Act Officer at the headquarters location. This location is given in Appendix A; (ii) in relation to appeals of initial denials, the HUD Departmental Privacy Appeals Officer, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410.

RECORD SOURCE CATEGORIES:

Subject.

[FR Doc. 85-5301 Filed 3-4-85; 8:45 am]

BILLING CODE 4210-33-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Baker Resource Management Plan; Notice of Intent, Preliminary Issues and Public Involvement Opportunity

AGENCY: Bureau of Land Management, U.S. Department of the Interior.

ACTION: Notice of intent and availability of Baker Resource Area issues and notice of public opportunity for participation in the Baker resource management planning process.

SUMMARY: Pursuant to section 43 CFR 1610 regulations for resource management planning, the Department of the Interior, Bureau of Land Management, Vale District Office, has developed preliminary issues to facilitate the preparation of the Baker Resource Management Plan (RMP) and Environmental Impact Statement (EIS). A newsletter with a map, program summaries, and proposed list of issues is available and an open house has been scheduled to answer questions and receive input.

SUPPLEMENTARY INFORMATION: The plan will result in land use allocations and resource management directions for approximately 426,000 acres of BLM-administered land in the Baker Resource Area. The planning area is located in Morrow, Umatilla, Union, Wallowa, Baker, and Malheur counties in Oregon and portions of Asotin and Garfield counties in Washington. When completed in late 1986, the plan will supercede the existing BLM Grande Ronde and Blue Mountain management framework plans (MFPs). It will amend the Baker management framework plan except for those issues which were addressed in the Ironsides Grazing Management Environmental Impact Statement and related decision documents. Wilderness designation will be addressed separately in the Oregon Statewide Wilderness Environmental Impact Statement.

Preliminary issues which the plan will address include:

1. Grazing management and forage use by livestock and wildlife (including riparian zones and wildlife habitat) for the BLM lands in Morrow, Umatilla, Union, Wallowa, Asotin, and Garfield counties only.
2. Land tenure adjustments throughout the resource area.
3. Designation and management direction for special areas, including potential Areas of Critical Environmental Concern, throughout the resource area.
4. Fire management including wildfire suppression and prescribed fire.

The following programs will be addressed but are not considered major resource allocation issues at this time:

1. Geothermal and oil and gas leasing,
2. Grande Ronde river corridor management,
3. Timber management on all commercial forest lands in the district.
4. Cultural resources,
5. Air and water quality, and
6. Utility or transportation corridors.

Disciplines to be represented on the interdisciplinary team will include forestry, wildlife biology, range management, lands and realty, minerals, recreation, soils science, hydrology, geology, archaeology, and economics. The resource specialists represented in these disciplines will assist the Baker Area Manager in developing planning criteria which will be used to draft an array of land use and resource management alternatives. These alternatives will be summarized and published in September or October 1985 for public review and comment to facilitate scoping of the EIS and development of the preferred alternative. The draft plan and EIS will be available for public review in the spring of 1986 and the final plan and EIS are scheduled to be completed in the fall of 1986. A record of decision and rangeland program summary will be completed in the winter of 1986-87.

Copies of the preliminary issues and a map have been sent to the resource area's current mailing list. Copies are also available at the resource area and district offices. In addition, the resource area office will hold an open house on March 1, 1985, from 8:00 a.m. to 4:00 p.m. to provide additional opportunities for public input.

Public involvement will be a key part of the planning process. Public announcements and notices in local newspapers, along with published BLM planning documents, will provide schedules and locations for meetings associated with the planning process and document review and comment opportunites.

DATE: The public is invited to submit written comments by april 1, 1985, on: (1) site-specific issues which should be addressed in the plan and the EIS, (2) criteria which should be used in the formulation of proposed alternatives, and (3) nominations of Areas of Critical Environmental Concern. Anyone wishing to comment, or be added to the Baker RMP mailing list should contact Jack Albright, Baker Resource Area Manager, Bureau of Land Management, Federal Building, P.O. Box 987, Baker, Oregon 97302, or call (503) 523-6391. Planning documents will also be available for public review during normal working hours at the Bureau of Land Management, Vale District Office, 100 Oregon St., P.O. Box 700, Vale, Oregon 97918, telephone (503) 473-3144.

Dated: February 28, 1985.

Fearl M. Parker,

District Manager, Vale.

[FR Doc. 85-5228 Filed 3-4-85; 8:45 am]

BILLING CODE 4310-85-M

[A-7057]

Arizona; Termination of Designation of Big Sage Research Area

February 22, 1972.

1. On October 3, 1971 (FR Doc. 72-16778 on page 20731), the land described below was designated as the Big Sage Research Natural Area:

Gila and Salt River, Meridian

T. 40 N., R. 1 E.,
Sec 28, NE¼.

The area contains 160 acres of public lands.

2. The designation of the above described land has no further justification or need. Therefore, pursuant to the authority delegated by BLM Manual, Section 1203 (48 FR 85), the designation is hereby terminated in its entirety.

R. Keith Miller,

Deputy State Director, Division of Operations.

[FR Doc. 85-5230 Filed 3-4-85; 8:45 am]

BILLING CODE 4310-32-M

[PHX-077993]

Arizona; Order Providing for Opening of Public Lands; Correction

February 20, 1985.

1. On January 7, 1985, an Order providing for the opening of public lands was published in **Federal Register** Volume 50, Number 4, Page 895. The subject Order is hereby amended as follows:

2. In an exchange of land made under the provisions of section 3 of the Act of June 14, 1934 (48 Stat. 960), the following land has been reconveyed to the United States under the serial number listed below:

PHX-077993

T. 41 N., R. 1 E., GSR Mer., Arizona,
Sec. 31, NE¼, SW¼.

The area described contains 480 acres in Coconino County.

3. At 9 a.m. on April 5, 1985, the land described in Paragraph 2 will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable laws. All valid applications received at or prior to 9 a.m. on April 5, 1985 shall be considerd as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

4. At 9 a.m. on April 5, 1985, the land described in Paragraph 2 will be opened to location under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable laws. Appropriation under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

5. At 9 a.m. on April 5, 1985, the land described in Paragraph 2 will be opened to applications and offers under the mineral leasing laws, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable laws. All applications and offers received prior to 9 a.m. on April 5, 1985 will be considered as simultaneously filed as of that time and date, and a drawing will be held in accordance with 43 CFR 1821.2–3, if necessary. Those applications and offers received thereafter shall be considered in the order of filing.

Inquiries concerning the land should be addressed to the Chief, Branch of Lands and Minerals Operations, Arizona State Office, Bureau of Land Management, P.O. Box 16563, Phoenix, Arizona 85011.

Don R. Mitchell,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 85–5229 Filed 3–4–85; 8:45 am]

BILLING CODE 4310-32-M

Realty Action, as Amended; Sale of Public Land, Shasta County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Amendment to notices of realty action, sale of public lands.

SUMMARY: This action amends Notices of Realty Action proposing the sale of certain parcels of public land administered by the Redding Resource Area, originally published in the **Federal Register** at 48 FR 43225, Sept. 22, 1983, Vol. 48 No. 185 and 49 FR 14207, Apr. 10, 1984, Vol. 49 No. 70. Twenty-five parcels remain available for sale. The current fair market value, sale methodology, segregative effect, and patent reservations are described herein.

The following described lands will be offered for sale, by sealed bid only, at 10:00 a.m. on May 1, 1985, and on subsequent first Wednesdays of each month at 10:00 a.m. until the parcels have been sold or the segregation expires.

The sealed bids will be opened at 10:00 a.m. on the day of sale at the Redding Resource Area Office, Bureau of Land Management, 355 Hemsted Drive, Redding, California 96002. Sealed bids shall be considered only if received at the above address prior to 10:00 a.m. on the date of sale.

Each sealed bid shall be accompanied by certified check, postal money order, bank draft or cashier's check made payable to the Department of Interior—BLM, for not less than one-fifth of the bid. The sealed bid envelopes must be marked on the front left corner "Redding Resource Area, Shasta Land Sale, Parcel Number ——."

If 2 or more envelopes containing valid bids of the same amount are received, the determination of which is to be considered the highest bid shall be by supplemental biddings. The designated high bidders shall be allowed to submit oral or sealed bids as designated by the authorized officer. Interested parties and the public in general may attend the sealed bid sales to be held at the above referenced time and place.

A bid on parcels determined to contain "no known mineral value" will also constitute an application for conveyance of those mineral interests offered for conveyance in the sale. The declared high bidder will be required to deposit a $50.00 non-refundable filing fee (43 CFR 2720.1–2(c)), and the mineral estate will be sold simultaneously with the surface estate.

The successful bidder shall submit the remainder of the full bid price prior to the expiration of 180 days from the date of sale.

Upon publication of this Notice of Realty action in the **Federal Register**, the subject public lands shall be segregated to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. The segregative effect shall terminate upon issuance of patent, upon publication in the **Federal Register** of a termination of the segregation or 270 days from the date of publication, whichever occurs first.

All other terms and conditions cited in the previously published Notice of Realty Action, and amendment remain in effect. All patents issued will be subject to prior existing rights.

Detailed information regarding these actions may be obtained from the Redding Resource Area Office, 355 Hemsted Drive, Redding, California 96002.

Case No.	Acres	Fair market value	R–O–W	Mineral	Oil and gas lease	Power-site	Wetland/ riparian
CA 14247	40	$12,600	A–1	B			
CA 14248	43.79	75,000	A–1, A–3	B	C		
CA 14249	40	40,500	A–1, A–6	B	C		
CA 14250	40	43,000	A–1	B			
CA 14251	40	36,000	A–1	B	C	E–2	
CA 14252	80	62,000	A–1	B	C		
CA 14253	40	30,000	A–1	B	C		
CA 14254	40	36,000	A–1	B	C		D–1
CA 14255	40	36,800	A–1	B	C		D–2
CA 14256	60.60	58,500	A–1, A–3	B	C	E–2	
CA 14257	40.70	44,500	A–1	B	C		D–3
CA 14258	40	22,200	A–1	B			
CA 14260	40	26,500	A–1, A–3*, A–6	B			

Case No.	Acres	Fair market value	R-O-W	Mineral	Oil and gas lease	Power site	Wetland/ riparian
CA 14261	160	22,000	A-1	B	C		
CA 14269(a)	4.56	23,500	A-1, A-3*	B			
CA 14269(b)	22.67	39,710	A-1, A-3*, A-6	B			
CA 14270(a)	0.47	735	A-1	B			
CA 14271	0.08	100	A-1	B			
CA 14272	0.01	100	A-1	B			
CA 14273	5	26,000	A-1, A-3	B			
CA 14274	7.5	59,000	A-1, A-3*, A-6	B			
CA 14278	17.31	26,000	A-1	B			
CA 14282	14.74	1,500	A-1	B			
CA 14283	24.59	2,500	A-1	B			
CA 14285	10	14,500	A-1	B			

Patent Reservations

A–1. Excepting and reserving to the United States from the land so granted a right-of-way thereon for ditches or canals constructed by the authority of the United States. Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

A–3. Subject to a right-of-way not exceeding * * * feet in width, for roadway and public utility purposes, to be located * * *

A–6. Subject to that (right-of-way) and all appurtenances thereto, constructed by the United States through, over, or upon the land herein described and the right of the United States, its agents or employees, to maintain, operate, repair, or improve the same so long as needed or used for or by the United States.

B. All minerals (or partial or specific mineral interests, where applicable) shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals. A more detailed description of this reservation, which will be incorporated in the patent document, is available for review at this BLM office.

C. Subject to those rights granted by an oil and gas lease under the terms and provisions of the Act of February 25, 1920, 41 Stat. 437, 30 U.S.C. 181, as amended.

D–1. In accordance with Executive Order No. 11988 and 11990 and Shasta County Zoning Ordinance Code Sections 4353 and 5354, the patentee and his successors shall undertake no construction which is not in compliance with Shasta County floodplain zoning criteria in effect at the time such construction is undertaken or which will reduce the vegetative cover within the canyon containing the North Fork Battle Creek (i.e., all lands south of the creek of the rim and from the creek level to the 1360 foot elevation level on the north side of the creek (approximately 200 feet).

D–2. In accordance with Executive Order No. 11988 and Shasta County Zoning Ordinance Code Sections 4353 and 5354, the patentee and his successors shall undertake no construction activities within 100 feet of the unnamed tributary to Lack Creek running from the north-east corner to the south-west corner of this parcel, which are not in compliance with Shasta County floodplain zoning criteria in effect at the time such construction is undertaken.

D–3. In accordance with Executive Order No. 11988 and 11990 and Shasta County Zoning Ordinance Code Sections 4553 and 5354, the patentee and his successors shall undertake no construction which is not in compliance with Shasta County floodplain zoning criteria in effect at the time such construction is undertaken or which will reduce the vegetative cover within the canyon containing Bailey Creek (i.e., all lands from the creek level to the 3,000 foot elevation level both north and south of the creek).

E–2. The right to the United States, its permittees or licensees, the right to enter upon, occupy and use, any part or all of (said land) (that portion of) lying within ——— feet of the centerline of the transmission line right-of-way of the (named company) project No., if any, or land office No. if any), for the purposes set forth in and subject to the conditions and limitations of Section 24 of the Federal Power Act of June 10, 1920, 41 Stat. 1075, as amended (16 U.S.C. 818).

DATE: Comments should be submitted no later than April 1, 1985.

ADDRESS: Comments should be sent to: State Director, California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Sacramento, CA 95825.

Comments will be evaluated by the State Director who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become a final determination for the Bureau of Land Management.

FOR FURTHER INFORMATION CONTACT: Robert J. Bainbridge, (916) 246–5325.

Robert J. Bainbridge,

Redding Area Manager.

[FR Doc. 85–5265 Filed 3–4–85; 8:45 am]

BILLING CODE 4310–40–M

Proposed Amselco and California Gold Properties Colosseum Gold Mining and Milling Project; Draft Environmental Impact Statement and Report

AGENCY: Bureau of Land Management, California Desert District.

ACTION: Notice of Availability of the Draft Environmental Impact Statement and Environmental Impact Report (EIS/EIR).

SUMMARY: Pursuant to section 102(C) of the National Environmental Policy Act of 1969, a Draft EIS/EIR has been prepared for the proposed Amselco Colosseum Project.

SUPPLEMENTARY INFORMATION: A Draft EIS/EIR has been prepared by the BLM, in cooperation with the County of San Bernardino, California, for the Amselco Colosseum Project.

Amselco's proposed Colosseum Project would be located about 10 miles north of Interstate Highway 15 in California, about 50 miles southwest of Las Vegas. It would be in the Clark Mountain Range. The project would consist of a 60-acre open pit, 130-acre waste rock dumps, 15 acres for low grade ore storage, 275 acres for tailings disposal facility and associated areas, 16 acres for the crusher, mill, office complex, and 60 acres for roads, transmission and water line corridors and substations. Approximately six million tons of material would be removed from the pit each year over the 9-year life of the project. The material would be processed at the mill site. The project is expected to yield about 750,000 ounces of gold over the 9-year period.

The Draft EIS/EIR was prepared under contract by Environmental Monitoring and Services, Inc.

Two public hearing will be held along with one public meeting to receive comments on the scope of the Draft EIS/EIR and the adequacy of the impact analysis. They will be held at the following locations:

Public Hearing Location and Date:

San Bernardino County Government Board Hearing Chambers, 385 North Arrowhead Avenue, San Bernardino, CA 92415—April 2, 9:00 a.m.

San Bernardino County Government Board Hearing Chambers, same address as above—May 7th, 9:00 a.m.

Public Meeting and Date:
Baker Community Hall, Baker Blvd., Baker, CA 82309—April 2, 6:00 p.m.

FOR FURTHER INFORMATION CONTACT:
Roger Britton, Project Leader, Bureau of Land Management, Needles Resource Area, 901 3rd Street, Needles, CA 92363, telephone (619) 326–3896.

A limited number of copies of the DEIS/EIR may be obtained by contacting the Needles Resource Area at the above address.

Copies of the Draft EIS/EIR may be inspected at the following locations:

Bureau of Land Management, California Desert District, 1695 Spruce Street, Riverside, CA 92507
Bureau of Land Management, Needles Resource Area, 901 3rd Street, Needles, CA 92363
County of San Bernardino, Office of Planning, 3rd Floor, 385 N. Arrowhead, San Bernardino, CA 92415
Clark County Library, 1401 Flamingo Avenue, Las Vegas, NV 89101
Los Angeles City Central Library, 630 West 5th, Los Angeles, CA 90071
San Bernardino Central Library, 401 North Arrowhead, San Bernardino, CA 92415
Bureau of Land Management, Public Affairs, Interior Bldg., 18th and C Streets, NW., Washington, D.C. 20240
Bureau of Land Management, State Office, Federal Bldg., 2800 Cottage Way, Rm E–2841, Sacramento, CA 95825

DATE: The review period runs for 45 days from the date of this notice. Written comments must be submitted within this 45-day period.

ADDRESS: Comments should be addressed to: Nelson Leonard, Environmental Analyst, Office of Planning, County of San Bernardino, 385 North Arrowhead Avenue, 3rd Floor, San Bernardino, CA 92415–0182, telephone (714) 383–3976.

Dated: February 26, 1985.

Gerald E. Hillier,
District Manager.

[FR Doc. 85–5258 Filed 3–4–85; 8:45 am]
BILLING CODE 4310–40–M

[Colorado 31030]

Proposed Reinstatement; Archuleta County, CO

Notice is hereby given that a petition for reinstatement of oil and gas lease C–31030 for lands in Archuleta County, Colorado was timely filed and was accompanied by all the required rentals and royalties accruing from October 1, 1984, the date of termination.

The lessee has agreed to new lease terms for rentals and royalties at rates of $5.00 and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee for the lease and has reimbursed the Bureau of Land Management for the estimated cost of this **Federal Register** notice.

Having met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920, as amended, (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective October 1, 1984, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Questions concerning this notice may be directed to Karen Purvis of the Colorado State Office at (303) 294–7600.

Evelyn W. Axelson,
Chief, Mineral Leasing Section.

[FR Doc. 85–5279 Filed 3–4–85; 8:45 am]
BILLING CODE 4310–JB–M

[NM–A 19739—(Texas)]

New Mexico; Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Pub. L. 97–451, Mobil Producing Texas & New Mexico Inc., petitioned for reinstatement of oil and gas lease NM–A 19739—(Texas) covering the following described lands:

Davy Crockett National Forest in Houston County, Texas 2,560.00 acres, being the 188.00 acres in Tract Kld, the 831.00 acres being Tract K1–1, the North 1,209.00 acres of Tract K1c and 332.00 acres in the Southwesterly part of Tract K–1–II, described by metes and bounds.

It has been shown to my satisfaction that failure to make timely payment of rental was due to inadvertence.

No valid lease has been issued affecting the lands. Payment of back rentals and administrative cost of $500.00 has been paid. Future rentals shall be at the rate of $5.00 per acre per year and royalties shall be at the rate of 16⅔ percent. Reimbursement for cost of the publication of this notice shall be paid by the lessee.

Reinstatement of the lease will be effective as of the date of termination, January 1, 1984.

Dated: February 25, 1985.

Richard N. Wilson,
Acting State Director.

[FR Doc. 85–5280 Filed 3–4–85; 8:45 am]
BILLING CODE 4310–FB–M

[OR 23918]

Realty Action; Exchange of Public and State Lands in Klamath County, OR; Correction

In FR Doc. 84–9098 appearing at page 13599 in the issue of April 5, 1984, the first paragraph is corrected to read as follows: "The following described lands have been determined to be suitable for disposal by exchange under Section 4(b)(3) of the Act of October 15, 1966; 80 Stat. 926, 16 U.S.C. 668dd:"

Dated: February 22, 1985.

Jerry Asher,
District Manager.

[FR Doc. 85–5278 Filed 3–4–85; 8:45 am]
BILLING CODE 4310–33–M

[F–14862–A]

Alaska Native Claims Selection; Kuitsarak, Inc.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of sec. 12(a) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1611, will be issued to the Kuitsarak, Inc. for approximately 0.64 acre. The lands involved are in the vicinity of Goodnews Bay.

A portion of U.S. Survey No. 2024 of the U.S. School Reserve situated at Goodnews Bay, Territory of Alaska.

Containing approximately 0.64 acre.

A notice of the decision will be published once a week for four (4) consecutive weeks, in the TUNDRA DRUMS. Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513 ((907) 271–5960).

Any part claiming a property interest which is adversely affected by the decision shall have until April 4, 1985 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E (1983) (as amended, 49 FR 6371,

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February 21, 1984) shall be deemed to have waived their rights.

Ruth Stockie,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 85-5286 Filed 3-4-85; 8:45 am]

BILLING CODE 4310-JA-M

Fish and Wildlife Service

Kenai National Wildlife Refuge Comprehensive Conservation Plan/ Environmental Impact Statement and Wilderness Review, Alaska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service has prepared for public review a final Comprehensive Conservation Plan, Environmental Impact Statement (CCP/EIS), and Wilderness Review for the Kenai National Wildlife Refuge, Alaska, pursuant to sections 304(g)(1) and 1317 of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA), section 3(d) of the Wilderness Act of 1964, and section 102(2)(C) of the National Environmental Policy Act of 1969. The final CCP/EIS describes five alternative strategies for long-term management of the 1.97 million-acre refuge. The plan also reviews about 620,000 acres of non-wilderness lands on the refuge as to their suitability under each management alternative for possible addition to the National Wilderness Preservation System.

DATES: Comments on the final CCP/EIS must be submitted on or before May 6, 1985, to receive consideration by the Regional Director.

ADDRESS: Comments should be addressed to: Regional Director, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503 (Attn: William Knauer).

FOR FURTHER INFORMATION CONTACT: William Knauer, Wildlife Resources, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503, telephone (907) 786-3399.

A final CCP/EIS has been prepared for general distribution. Copies of the final comprehensive plan will be sent to all persons and organizations who participated in either the scoping, alternative workshops, and/or public review process. Copies of the final CCP/EIS have been sent to all agencies that participated in the public review process and to agencies and persons who have already requested copies. Those wishing to receive a copy of the final may obtain one by contacting Mr. Knauer. Copies of the final CCP/EIS are also available for review at the above location, at the Kenai National Wildlife Refuge Office, Soldotna, Alaska, and at the following locations:

U.S. Fish and Wildlife Service, Division of Refuge Management, 18th and C Streets, NW, Department of the Interior, Washington, D.C. 20240

U.S. Fish and Wildlife Service, Wildlife Resources, Lloyd 500 Building, Suite 1692, 500 NE Multnomah Street, Portland, OR 97232

U.S. Fish and Wildlife Service, Wildlife Resources, 500 Gold Avenue SW, Room 1306, Albuquerque, NM 87103

U.S Fish and Wildlife Service, Wildlife Resources, Federal Building, Fort Snelling, Twin Cities, MN 55111

U.S. Fish and Wildlife Service, Wildlife Resources, Richard B. Russell Federal Building, 75 Spring Street, Atlanta, GA 30303

U.S. Fish and Wildlife Service, Wildlife Resources, One Gateway Center, Suite 700, Newton Corner, MA 02158

U.S. Fish and Wildlife Service, Wildlife Resources, 134 Union Boulevard, Lakewood, CO 80225

SUPPLEMENTARY INFORMATION: The final CCP/EIS for the Kenai National Wildlife Refuge was developed by the U.S. Fish and Wildlife Service, Department of the Interior, to fulfill the requirements of section 304 of ANILCA relating to preparation of comprehensive conservation plans and the requirements of section 1317(A) of ANILCA and section 3(D) of the Wilderness Act relating to general wilderness suitability review of non-wilderness refuge lands.

Major issues addressed by the plan include fish and wildlife management, access, recreation and public use, oil and gas exploration and leasing, and wilderness mangement. The final CCP/EIS addresses five alternatives for long-range management of the refuge including one that would continue current management (the non-action alternative). The other four alternatives cover a broad spectrum of management emphasis ranging from maximum to minimum use of refuge resources. A preferred alternative, representing an intermediate or balanced approach to management of the refuge, is identified.

The plan also addresses the general wilderness suitability of 620,000 acres of non-wilderness refuge lands under each management alternative. This complies with section 1317(a) of ANILCA which requires the Secretary of the Interior to review, in accordance with section 3(d) of the Wilderness Act, all non-wilderness refuge lands in Alaska as to their suitability for preservation as wilderness and report his recommendations to the President by 1985.

The final CCP/EIS includes a number of changes resulting from the review of the draft plan. Based on public comment, the following major changes have been made:

(1) The section dealing with the acquisition of inholdings has been rewritten to reflect current Service policy and incorporate the "willing seller" concept;

(2) The status of Caribou Island has been changed to "Private Holdings" on the five alternative maps;

(3) Refuge lands selected by Village Corporations and Native Groups under the provisions of section 22(g) of Alaska Native Claims Settlement Act have been identified on the five alternative maps;

(4) The "Accessible Wilderness" management category has been eliminated and "aircraft access areas" have been identified within the Wilderness Management category;

(5) Areas in Minimal Management have been clearly identified as the areas recommended for designation as wilderness in each alternatives;

(6) Sections of the wilderness review previously found in the Technical Supplement have been added to the text of the plan, which now constitutes the complete Wilderness Review document for the Kenai Refuge;

(7) The special values section has been expanded to include the Chickaloon Watershed and Estuary, the Lowland Lakes and Canoe System, and the Skilak Loop area; and

(8) The Chickaloon Flats have been identified as a separate habitat class—Estuary—with its own representative species, the lesser Canada goose.

The following changes have been made in Alternative C, which has been reaffirmed as the Service's Preferred Alternative:

(1) Special restrictions on hunting and trapping will be applied to the proposed Skilak Loop Special Management Areas, which will be managed to provide enhanced wildlife viewing opportunities;

(2) The proposed closure on the upper Kenai River has been moved one mile downstream from the mouth of the Russian River;

(3) Fourteen lakes or clusters of lakes—representing popular fishing lakes and those containing fly-in tent camps—located outside the Swanson River and Swan Lake Canoe Routes have been identified as "aircraft access areas" within the Lowlands Wilderness unit;

(4) Lands surrounding the Moose Research Center have been changed

from Intensive to Moderate Management;

(5) Lands in the Chickaloon Watershed and Estuary were changed from Traditional to Minimal Management, closed to oil and gas leasing, and recommended for designation as wilderness; and

(6) Lands surrounding the outlet of Tustumena Lake were changed from Traditional to Minimal Management and recommended for designation as wilderness.

The Notice of Intent to prepare the CCP/EIS and Wilderness Review was published in the February 11, 1981, **Federal Register**. Other government agencies and the general public contributed to the development of this final CCP/EIS and Wilderness Review. After dissemination of the draft version on January 17, 1984, public meetings were held in Soldotna, Homer, and Seward, Alaska, on February 28, February 29, and March 1, 1984. A public hearing was held in Anchorage, Alaska, on March 6, 1984.

Dated: February 26, 1985.

David L. Olsen,

Regional Director.

[FR Doc. 85-5245 Filed 3-4-85; 8:45 a.m.]

BILLING CODE 4310-55-M

Minerals Management Service

Development Operations Coordination Document; Pennzoil Exploration and Production Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Pennzoil Exploration and Production Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 5040, Block 361, Eugene Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Intracoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on February 25, 1985.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms Angie Gobert; Minerals Management Service, Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: February 25, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-5281 Filed 3-4-85; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Willow Beach Resort, Inc.; Intention To Extend Concession Contract

Pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that sixty (60) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to extend a concession contract with Willow Beach Resort, Inc., authorizing it to continue to provide lodging, food and beverage, merchandising and marine facilities and services for the public at Lake Mead National Recreation Area for a period of three (3) years from January 1, 1986, through December 31, 1988, or until a new contractual document is executed, whichever occurs first.

This contract extention has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act, and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expires by limitation of time on December 31, 1985, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract as defined in 36 CFR Part 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated. The National Park Service has determined that 60 days is sufficient time to prepare and submit offers by the deadline because no additional requirements above and beyond those stated in the current concession contract are called for pursuant to this extension.

Interested parties should contact the Regional Director, Western Regional Office, 450 Golden Gate Avenue, San Francisco, California 94102, for information as to the requirements of the proposed contract.

Dated: February 20, 1985.

Howard H. Chapman,

Regional Director, Western Region.

[FR Doc. 85-5205 Filed 3-4-85; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before February 23, 1985. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by March 20, 1985.

Carol D. Shull,

Chief of Registration, National Register.

INDIANA

Allen County

Fort Wayne vicinity, *Robinson, Horney, House*, 7320 Lower Huntington Rd.

Delaware County

Muncie, *Roots, Francis T., Building*, 115-119 E. Charles St.

Knox County

Vincennes, *Ebner-Free House*, 120 Locust

Madison County

Anderson, *Carnegie Public Library*, 32 W. 10th St.

Chesterfield, *Makepeace, George, House*, 5 W. Main St.

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Marion County

Indianapolis, *Christamore House*, 502 N. Tremont St.

Montgomery County

Crawfordsville, *Saint John's Episcopal Church*, 212 S. Green St.

St. Joseph County

South Bend vicinity, *Water Street/Darden Road Bridge*, Over St. Joseph River at Darden Rd.
South Bend, *Leeper, Samuel, Jr., House*, 113 W. North Shore Dr.

Vigo County

St. Mary-of-the-Woods, *Foley Hall*, St. Mary of the Woods College Campus, Off US 150

Washington County

Salem, *First Baptist Church*, 201 N. High St

MAINE

Androscoggin County

Durham, *Osgood, Nathaniel, House*, ME 136
Lewiston, *Holland, Captain, House*, 142 College St.
Mechanic Falls, *Elms*, Elm St

Cumberland County

Portland, *Fort McKinley Historic District*, Great Diamond Island
Portland, *Portland City Hospital*, Brighton Ave.
South Harpswell, *Auburn-Harpswell Association Historic District*, ME 123

Lincoln County

Bristol, *Pemaquid Point Light*, Pemaquid Point

Sagadahoc County

Georgetown, *Grey Havens Inn*, Reid Park Rd.

Waldo County

Islesboro, *Drexel Estate*, The Bluff

York County

York, *Cape Neddick Light Station*, Cape Neddick

MISSISSIPPI

Copiah County

Hazlehurst vicinity, *Mount Hope*, Off Rt. 2 across from Mt. Hope Cemetery

MISSOURI

Greene County

Springfield, *Walnut Street Historic District*, Roughly bounded by McDaniel, Walnut and Elm Sts. and Sherman Pkwy.

New Jersey

Monmouth County

Cream Ridge vicinty, *Coward-Hendrickson House*,

New Mexico

Rio Arriba County

Los Ojos vicinity, *Becker, George, House, Bunk House and Barn (La Tierra Amarilla MRA)*, E. of La Puente Rd. and S. of Hatchery Rd.
Los Ojos vicinity, *Blanton Log House (La Tierra Amarilla MRA)*, E. of La Puente Rd. and S. of Hatchery Rd.
Los Ojos vicinity, *Burns Lake Bungalow (La Tierra Amarilla MRA)*, ½ mile S. of E. end of Hatchery Rd.
Los Ojos vicinity, *Casados House (La Tierra Amarilla MRA)*, Off junction of U.S. 84 and NM 95
Los Ojos vicinity, *La Puente Historic District (La Tierra Amarilla MRA)*, Roughly bounded by Main Rd. in La Puente from drop-off of 2nd to 1st plateau E. to Church on West.
Los Ojos vicinity, *Los Brazos Historic District (La Tierra Amarilla MRA)*, Roughly bounded by US 84, North Rd., fence line and drop-off to Rio Brazos
Los Ojos vicinity, *Los Ojos (Parkview) Fish Hatchery (La Tierra Amarilla MRA)*, E. end of Hatchery Rd.
Los Ojos vicinity, *Los Ojos (Parkview) Historic District (La Tierra Amarilla MRA)*, Roughly bounded by US 84, junction of Old Hwy w/US 84, drop-off from 1st plateau to Chama River Valley and the East West Hatchery Rd.
Los Ojos vicinity, *Martinez, Gilbert, Barn (La Tierra Amarilla MRA)*, E. of La Puente Rd. and S. of Hatchery Rd.
Los Ojos vicinity, *Martinez, Teodoro, House (La Tierra Amarilla MRA)*, E. of La Puente Rd. and N. of Hatchery Rd.
Los Ojos vicinity, *Sanchez-March House (La Tierra Amarilla MRA)*, W. of US 84 and N. of NM 95
Los Ojos vicinity, *Trujillo, Manuelita, House (La Tierra Amarilla MRA)*, Off US 84 S. of Los Brazos River
Los Ojos vicinity, *Trujillo, Sr., Fernando, House (La Tierra Amarilla MRA)*, W. of US 84 and N. of NM 95

NEW YORK

Broome County

Binghamton, *Dunk, Alfred, House*, 4 Pine St.

Chautauqua County

Jamestown, *Euclid Avenue School*, 26 Euclid Ave.

Livingston County

Geneseo, *Main Street Historic District (Boundary increase)*, Roughly bounded by NY 39, Temple Hills Cemetery, South St. and Main

Onondaga County

Cicero, Brewerton vicinity, *Robinson Site (NYSDHP Unique Site No. AO67-02-0001)*, Kathan Rd.

Schoharie County

Schoharie vicinity, *Sternbergh House*, Oak Hill Rd.

Suffolk County

Westhampton Beach, *Crowther House*, 97 Beach Lane

RHODE ISLAND

Washington, County

Wakefield, South Kingstown, *Miller, William, Davis, House*, 130 Main St.

TENNESSEE

Davidson County

Nashville, *Davidson County Courthouse*, Public Square

Knox County

Knoxville, *Ossoli Circle Clubhouse*, 2511 W Cumberland Ave.

Marshall County

Cornersville, *Baird-Welch House*, Water St.

Van Buren County

Crain Hill, *Crain Hill School and Church*, Crain Hill Rd.

WISCONSIN

Door County

Ephraim, *Anderson Dock Historic District (Ephraim MRA)*, Roughly bounded by Anderson Lane and North Water St.
Ephraim, *Ephraim Moravian Church (Ephraim MRA)*, 9970 Moravia St.
Ephraim, *Ephraim Village Hall (Emphraim MRA)*, 9996 S. Water St.
Ephraim, *Free Evangelical Lutheran Church (Ephraim MRA)*, 3028 Church St.
Ephraim, *Gibraltar District School No. 2 and Goodletson, Thomas, Cabin (Ephraim MRA)*, 9988 Moravia St.
Ephraim, *Hillside Hotel (Ephraim MRA)*, 9980 S. Water St.
Ephraim, *Peterson, Peter, House (Ephraim MRA)*, 10020 N. Water St.
Washington Island vicinity, *Thordarson Estate Historic District (Chester H. Thordarson Estate TR)*, Rock Island State Park
Washington Island vicinity, *Water Tower (Chester H. Thordarson Estate TR)*, Rock Island State Park

Milwaukee County

Milwaukee, *Milwaukee County Dispensary and Emergency Hospital*, 2430 W. Wisconsin Ave.

Correction: This corrects pending nomination which appeared in **Federal Register** dated Tuesday, February 26, 1985 for *Rock Island Depot*. It should read as follows:

OKLAHOMA

Grady County

Chickasha, *Rock Island Depot*, Chickasha Ave.

[FR Doc. 85-5204 Filed 3-4-85; 8:45 am]
BILLING CODE 4310-70-M

Bureau of Reclamation

[INT-DES 85-8]

Lake Andes-Wagner Unit, South Dakota Pumping Division, Pick-Sloan Missouri Basin Program, South Dakota; Availability of Draft Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the Department of the

Interior has prepared a proposed planning report/draft environmental statement on the development of the Lake Andes/Wagner Unit. This unit includes irrigation development of 45,000 acres and a fish rearing pond for enhancement of the fishery in Lake Francis Case. Written comment may be submitted to the Regional Director by May 29, 1985.

Copies are available for inspection at the following locations:

Director, Office of Environmental Affairs, Room 7624, Bureau of Reclamation, Washington, D.C. 20240, Telephone: (202) 343–4991

Bureau of Reclamation Library, Code 962, Engineering and Research Center, Denver Federal Center, Denver, Colorado 80225, Telephone: (303) 236–6963

Regional Director, Bureau of Reclamation, Upper Missouri Region, P.O. Box 2553, Billings, Montana 59103, Telephone: (406) 657–6214.

Single copies of the statement may be obtained on request to the Director, Office of Environmental Affairs, or the Regional Director, at the above address. Copies will also be available for inspection in libraries in the project vicinity.

Dated: February 28, 1985.

Robert A. Olson,

Acting Commissioner.

[FR Doc. 85–5292 Filed 3–4–85; 8:45 am]

BILLING CODE 4310–09–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Voluntary Foreign Aid Advisory Committee; Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of a meeting of the Advisory Committee on Voluntary Foreign Aid (ACVFA) on *AID's Management of PVO Programs*, which will be held in the Loy Henderson International Conference Room, Department of State, Washington, D.C., March 18–19, 1985. To enter the building, use C Street (Diplomatic Entrance) between 21st and 23rd Streets, NW., Washington, D.C.

Monday, March 18, 1985: 9:00 a.m. Registration. 10:00 a.m.—Introductions and Opening Remarks. 10:15 a.m.—*A Congressional Perspective on the Public-Private Partnership in Development.* 10:45 a.m.—Brief statements and discussions of policies which govern AID's management of PVO programs. 12:45 p.m.—Lunch Break. 2:15 p.m—Brief statements and discussions of policies which govern AID's management of PVO programs. 4:30 p.m.—Coffee Break. 4:45 p.m.—Review of Discussion.

Tuesday, March 19, 1985: 8:00 a.m.—Registration. 8:30 a.m.—Briefing for the ACVFA's Africa meeting. 9:30 a.m.—*Food for Peace Subcommittee:* Update on AID/PVO Response to the African crisis; Review of major issues to be considered during Congress' reauthorization of Pub. L. 480. 11:15 a.m.—*PVO/University Relations Subcommittee:* Presentation of the Report on PVO-University Collaboration prepared for the ACVFA; Discussion of the Subcommittee's agenda for 1985. 12:45 p.m.—Lunch Break. Meeting information for the rest of the Subcommittees (Health, Development Education, PVO-Corporation Relations, Women in Development, and PVO Policy) will be announced at a later date. 3:00 p.m.—ACVFA Business Session. 5:00 p.m.—Adjournment.

The meeting is open to the public. Any interested person may attend, request to appear before, or file statements with the Advisory Committee. Written statements should be filed prior to the meeting and should be available in twenty five copies.

Persons not registered and wishing to attend the ACVFA meeting must call (703) 235–2708, or 3336, NLT March 13, 1985, to arrange entrance to the State Department Building.

There will be AID representatives at the meeting. Those desiring further information may call (703) 235–2708 or 3336, or contact by mail, the Advisory Committee on Voluntary Foreign Aid, Room 227, SA–6, Agency for International Development, Washington, D.C. 20523.

Dated: February 15, 1984.

Julia Chang Bloch,

Assistant Administrator, Bureau for Food for Peace and Voluntary Assistance.

[FR Doc. 85–5259 Filed 3–4–85; 8:45 am]

BILLING CODE 8116–01–M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 458]

Railroad Cost of Capital—1984

AGENCY: Interstate Commerce Commission.

ACTION: Extension of time to file initial statements in notice of institution of limited revenue adequacy proceeding.

SUMMARY: In the **Federal Register** of January 4, 1985 (50 FR 553), the due date for initial statements by the railroads was established to be March 1, 1985. The Association of American Railroads has requested that the due date be extended to March 15, 1985. The petition shall be granted. Additional time is necessary to prepare and coordinate the initial statements.

DATES: Initial statements by the railroads are due March 15, 1985.

ADDRESSES: Send an original and 15 copies of comments to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Ward L. Ginn, Jr., (202) 275–7489.

Dated: February 27, 1985.

By the Commission, Reese H. Taylor, Jr., Chairman.

James H. Bayne,

Secretary.

[FR Doc. 85–5296 Filed 3–4–85; 8:45 am]

BILLING CODE 7035–01–M

[I.C.C. Order No. P–80]

Union Pacific Railroad Co.; Passenger Train Operation

It appearing, that the National Railroad Passenger Corporation (Amtrak) has established through passenger train service between Chicago, Illinois and San Francisco, California. The operation of these trains requires the use of the tracks and other facilities of Southern Pacific Transportation Company (SP). A portion of the SP tracks at Donner Pass, California, are temporarily out of service because of heavy snow. An alternate route is available via the Union Pacific Railroad Company between Winnemucca, Nevada and Sacramento, California.

It is the opinion of the Commission that the use of such alternate route is necessary in the interest of the public and the commerce of the people; that notice and public procedure herein are impracticable and contrary to the public interest; and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered,

(a) Pursuant to the authority vested in me by order of the Commission decided April 29, 1982, and of the authority vested in the Commission by Section 402(c) of the Rail Passenger Service Act of 1970 (45 USC 562(c)), the Union Pacific Railroad Company (UP), is directed to operate trains of the National Railroad Passenger Corporation (Amtrak) between

Winnemucca, Nevada, and a connection with Southern Pacific Transportation Company (SP) at Sacramento, California.

(b) In executing the provisions of this order, the common carriers involved shall proceed even though no agreements or arrangements now exist between them with reference to the compensation terms and conditions applicable to said transportation. The compensation terms and conditions shall be, during the time this order remains in force, those which are voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, the compensation terms and conditions shall be as hereafter fixed by the Commission upon petition of any or all of the said carriers in accordance with pertinent authority conferred upon it by the Interstate Commerce Act and by the Rail Passenger Service Act of 1970, as amended.

(c) *Application.* The provisions of this order shall apply to intrastate, interstate and foreign commerce.

(d) *Effective date.* This order shall become effective at 11:00 a.m., EST, February 8, 1985.

(e) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., PST, February 11, 1985, unless otherwise modified, amended, or vacated by order of this Commission.

This order shall be served upon Union Pacific Railroad Company and upon National Railroad Passenger Corporation (Amtrak), and a copy of this order shall be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., February 8, 1985.

Interstate Commerce Commission.

John H. O'Brien,

Agent.

[FR Doc. 85-5295 Filed 3-4-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

Program Plan for Fiscal Year 1985

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice and Publication of the Office of Juvenile Justice and Delinquency Prevention Program Plan for Fiscal Year 1985.

SUMMARY: Notice is given that the Office of Juvenile Justice and Delinquency Prevention (OJJDP) is planning for implementation of programs funded under Title II of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended (hereinafter JJDP Act), in Fiscal Year 1985.

The Office of Juvenile Justice and Delinquency Prevention is established by Title II of the Juvenile Justice and Delinquency Prevention Act of 1974. The Title II assistance program consists of formula grants awarded to the States and research, training, information, statistics, technical assistance, and Special Emphasis categorical awards made directly to eligible recipients.

FOR FURTHER INFORMATION CONTACT: Alfred S. Regnery, Administrator, Office of Juvenile Justice and Delinquency Prevention, Telephone: (202) 724-7751.

Note.—Dollar figures have been omitted pending final determination of the amount of funds available for Fiscal Year 1985.

Dated: February 28, 1985.

Alfred S. Regnery,

Administrator, OJJDP.

I. Special Emphasis Funds

A. continuation Projects

1. *Habitual Serious and Violent Juvenile Offender.* This is a continuation of the 13 grants that were awarded under this initiative. This program targets those youth who exhibit a repetitive pattern of serious delinquent behavior for more intensive prosecutorial and correctional intervention. The goals of this initiative are to reduce the propensity of habitual juvenile offenders to sustain a criminal lifestyle and to increase public security. Attainment of these goals will be through expeditious prosecution and enhanced treatment of juvenile offenders whose juvenile histories indicate repeat commission of serious and violent delinquent acts, including robbery, burgulary, forcible sexual offenses, aggravated assault, and recidivist homicide.

2. *Violent Juvenile Offender Program: Part II.* This is a continuation of sites that were previously funded under this initiative. The Violent Juvenile Offender Program, Part II is a research and development effort testing a program model designed to prevent and reduce violent juvenile crime within selected neighborhoods. It is to increase the knowledge of factors associated with violent juvenile crime, which can be used to aid in the design and implementation of future programs and policies aimed at reducing violent youth crime.

3. *Delinquency Prevention and Runaway Children.* This is a continuation of the Covenant House Program to continue the operation of emergency crisis intervention centers for runaway and homeless youth in Houston, Texas, and to establish a shelter in Fort Lauderdale, Florida.

This program is a replication of the Under 21 New York runaway shelter opened by Covenant House in April, 1977.

4. *Juvenile Justice Assistance Project.* This is a continuation grant to the Center for Community Change (CCC). The Center will continue to provide training and technical assistance to the neighborhood based organizations funded under the Violent Juvenile Offender (R&D) Program, Part II. In addition, CCC will respond to *ad hoc* training and technical assistance requests as directed and/or approved by OJJDP.

5. *National Branching Project.* This is an continuation grant to Partners, Inc. The project creates a partnership between an adult (senior partner) and a youth (junior partner) who is in trouble with the law, having difficulties in school, at home, or with peers.

Youth between the ages of 10 and 18 are accepted into the program. They are referred to the program by juvenile court, police, schools, or other human service agencies. This special relationship offers each youngster in the program an opportunity to strengthen feelings of self-worth, improve academics, decrease delinquent behavior, and increase abilities to cope with stressful situations.

6. *Technical Assistance Voucher Demonstration Project.* This is a continuation of a program operated by the National Center for Neighborhood Enterprise.

The objective of this program is to provide neighborhood based organizations the capability to secure technical assistance and information for serving high risk youth. This program will provide vouchers to the neighborhood based organizations to enable them to acquire needed technical assistance to develop the neighborhood based services. The grantee will negotiate agreements with 15–25 neighborhood groups that will allow them the control of the design and implementation of individualized technical assistance voucher agreements. The vouchers will be for amounts ranging from $1,000–$10,000 and will be used to expand the capacity or development potential of the organizations.

7. *Serious Habitual Offender & Drug Involved (SHO/DI).* The SHO/DI program is a continuation of a five site initiative begun in FY 83. It focuses on demonstrating how law enforcement agencies can, through selective data

gathering and analysis processes and the subsequent direction of limited law enforcement resources, expedite the apprehension and processing of serious habitual offenders and as a result impact on the treatment and deterence of youth from criminal activity. The program is based on the concept that the police, prosecutors, courts, social agencies and community groups must work closely together to focus effectively on two major areas of community concern—serious crime and drugs.

8. *Project Helping Hand.* This is a continuation of a grant to Project Helping Hand. The project stresses the original goals of the diversion concept including: (1) Reduce adjudication of juveniles; (2) increase community involvement; (3) more appropriately meet the needs of troubled youths; and, (4) to free the juvenile justice system to concentrate on more serious crime through introduction of significant private sector involvement. It also provides assistance to communities replicating the successful methodologies of those diversion projects through training and management assistance; and, establishing diversion projects funding from non-public sources.

B. New Projects

1. *Probation.* The Special Emphasis Division in fiscal year 1985 will develop and implement a probation program to demonstrate and assess the effectiveness of privatizing a variety of probation services or functions that have traditionally been implemented through public service delivery mechanisms. The Office will publish a request for contract action (RCA) to provide comprehensive training, technical assistance and other assistance to jurisdictions interested in the privatization of all or some of their probation functions.

2. *Specialized Training.* This comprehensive training program will utilize and encourage the use of methodologies of at least three Special Emphasis Division Programs: The Violent Juvenile Offender, Part I program; the Serious Habitual Offender, Drug Involved program, and Habitual Serious and Violent Offender program. This program will provide assistance to local communities wishing to develop comprehensive system wide programs (i.e. law enforcement adjudication and corrections) for violent and serious juvenile offenders. The communities will be encouraged to use the suggested approaches as a comprehensive approach or as discreet program activities to deal with serious offender groups. Trainees will be managers of law enforcement agencies, district attorneys, judges, and correctional system policy makers.

3. *Private Sector Corrections.* OJJDP will fund a number of private sector corrections projects in order to evaluate their relative efficiency and effectiveness in dealing with serious offenders. All participating projects will be analyzed by an independent evaluator using a generic experimental design. It is anticipated that three grants will be made. Guidelines for this program were published in the **Federal Register** in FR 1984.

C. Further Information: Special Emphasis

For further information on the Special Emphasis Program, please contact: Terrence Donahue, Acting Director, Special Emphasis Division, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue, NW., Washington, D.C. 20531, (202) 724–5929.

II. Research and Program Development Programs

Section 241(e)(4) of the JJDP Act authorizes "contracts with public or private agencies, organizations, or individuals, for the partial performance of any of the functions of the Institute . . .". The statutory functions of NIJJDP are: Information (section 242), Research, Demonstration, and Evaluation (section 243), Training (section 244).

A. Continuation Projects

1. *Follow-up to Delinquency in a Birth Cohort.* Utilizing the 1958 Philadelphia Birth Cohort (29,000 males and females), this study will consist of a follow-up of a sample of the cohort age 25. A self-report survey and an archival search of official justice system records will form the basis of the analyses on desistance or the transition from delinquency to adult crime.

2. *The Relationship of Foster Care to Delinquency.* This is a study of foster care and its relationship to juvenile delinquency. The purpose is in part to determine the correlation between foster care experiences and subsequent delinquent behavior and other social problems.

3. *The Impact of Juvenile Court Intervention.* This project involves an examination of the various levels of court intervention on delinquent behavior, attitudes of juvenile offenders and juvenile justice costs. Special attention is focused on identifying factors which predict recidivism among probationers. This study also provides an opportunity to replicate the UDIS evaluation, which documented notable effects of recidivism on a range of correctional interventions.

4. *Evaluation of the Habitual Serious and Violent Juvenile Offender Program and Operation Hardcore Program.* This study will provide an assessment of the implementation and efficacy of program strategies designed to increase the capacity of the justice system to more effectively prosecute, adjudicate and rehabilitate those juveniles who repeatedly engage in serious criminal activities. The implementation of enhanced victim/witness services will also be assessed.

5. *Violent Juvenile Offender R&D Program: Part I and Part II Evaluation.* This is a supplement to the ongoing evaluation of an innovative intervention model for the treatment and reintegration of violent juvenile offenders. This study includes: an examination of the program development and implementation process; an assessment of target offender characteristics; and a client impact study which compares the relative efficacy of the experimental intervention, traditional juvenile corrections, and transfer to the criminal justice system.

Part II of this evaluation is focused on assessing the capability of neighborhood-based organizations to mobilize residents to prevent juvenile involvement in violent crime. The program model is being implemented in high crime neighborhoods.

6. *Evaluation of the Private Sector Correctional Program for Serious Offenders.* This is an evaluation of the special emphasis corrections initiative. It will focus on testing the capability of the private sector to develop and operate effective correctional programs for serious juvenile offenders.

7. *Executive Sessions and Research Examining the Juvenile Court Program.* The purpose of this project is to create a forum for the discussion of basic and critical issues facing the juvenile justice system. Federal, state and local public and private experts will be convened to establish an on-going dialogue regarding the philosophical underpinnings of the juvenile justice system and social policies, affecting families, schools, communities, etc. related to juvenile crime.

B. New Projects

1. *Program of Research on the Causes and Correlates of Delinquency.* The purpose of this program of research is to provide for a coordination of efforts to enhance the existing knowledge base regarding causes and correlates of delinquent behavior. The strategy calls

for building on previous longitudinal studies, by increasing the comprehensiveness of research in terms of the variety of factors examined simultaneously; improving the measurement of these factors and by supporting the establishment of unprecedented, rich longitudinal data bases on youth.

2. *School Crime and Discipline Research and Development Project.* The purpose of this project is to identify, develop and test promising strategies for the reduction of school crime and enhancement of disciplinary procedures and school climate. The major objective is to develop program strategies which offer promise in terms of cost effectiveness, suitability for replication and institutionalization within our school systems.

3. *Research on Legal Issues Involving Juvenile Justice.* The major purpose of this project is to investigate criminal, legal and related social science issues involving juvenile justice. Short and long term research on legal issues in the field of juvenile justice and deliquency prevention will be conducted. Relevant social and legal research on each issue will be collected and analyzed. The results of the analysis will be synthesized and implications for policy and programming discussed.

C. Further Information: Research and Program Development

For further information on the National Institute of Juvenile Justice and Deliquency Prevention, Research and Program Development projects contact: Ms. Pamela Swain, Director, Research and Program Development Division, Office of Juvenile Justice and Deliquency Prevention, 633 Indiana Avenue, NW., Washington, D.C. 20531, (202) 724-7560.

III. Training, Dissemination and Standards Division

A. Continuation Projects

1. *Permanent Families for Abused and Neglected Children.* The major goals of the "Permanent Families for Abuse and Neglected Children" project are to provide permanent homes for abused and neglected children; provide training and technical assistance to key state legislators, state supreme court judges, juvenile and family court judges, volunteers, and state social services representatives; and to establish well-organized and effective programs in each state. To assist OJJDP in obtaining these goals, a contract has been awarded to the National Court Appointed Special Advocates (CASA) Association to recruit, train and establish more state and local associations.

2. *Law Related Education.* This program trains, assists, disseminates information to state and local school jurisdictions to incorporate specific curriculum materials in all grades to help youth understand and appreciate the fundamentals, principles and processes of the justice system and its relevance to their everyday life. Curricula are reviewed and revised as necessary.

3. *Training of The Learning Disabled.* The project will conduct training modules to address the results and implications of forerunner research which investigated the link between learning disabilities (LD) and juvenile delinquency (JD) and the evaluation of remediation for jurvenile offenders. The remediation treatment program will be demonstrated.

4. *Juvenile Prosecutor Services.* The National District Attorneys Association (NDAA) will (1) expand and broaden access of district attorneys in the United States to experts and other professionals and private citizens concerned with issues of juvenile justice and delinquency prevention; (2) make available to district attorneys through formal training, newsletters, publications, and technical assistance, state-of-the-art information on current research, national trends, standards, model legislation, promising programs and other topics of special importance to the field of juvenile justice and delinquency prevention; and (3) assist in preparing district attorneys to assume a more active role locally in the formation of juvenile justice policy.

5. *National Criminal Justice Reference Service/Juvenile Justice Clearinghouse.* This is a continuation of the effort to serve as an information clearinghouse in support of OJJDP programs. In order to accomplish these goals, the activities of the Clearinghouse include: The capability of reference specialists to respond to information requests from the juvenile justice community through the use of an "800" toll-free number and an information hotline; the maintenance of mailing lists; the preparation of editing of documents for printing; and the support of special programs sponsored by OJJDP.

6. *Juvenile Court Management and Administration.* The National Center for State Courts/Institute for Court Management will conduct training seminars for juvenile justice personnel on management training, policy and program strategies relating to serious and repetitive juvenile offenders, juvenile justice management and juvenile court intake.

7. *Printing.* In order "to serve as a clearinghouse and information center", NIJJDP has established mechanisms to review, assess, and market, through a continuum of dissemination options, OJJDP documents for publication to appropriate audiences in the most cost-effecitve and cost-recovery methods. This aspect of the OJJDP program will serve to print and disseminate those documents to the juvenile justice community.

8. *Juvenile and Family Court Training Project.* This is a continuation grant to the National Council of Juvenile and Family Court Judges (NCJFCJ). The goals of this project are to: supplement NCJFCJ and law school curricula and to provide training for juvenile and family court judges and court related personnel; provide judges with current information on important developments in juvenile and family case law and ever changing, ever increasing options for sentencing and treatment.

9. *The National School Safety Center.* The National School Safety Center, operated by Pepperdine University, assists school boards, educators, law enforcers, and the public to make schools safe, secure and tranquil places of learrning. States are assisted in establishing state centers. Assistance is in the form of information of all types, based upon research conducted by the Center.

10. *Children In Custody.* This continuation of the work on the 1982/3 and 1984/5 censuses of public and private juvenile detention, correctional and shelter care facilities. Work on this project will be carried out under an interagency agreement with the Bureau of Justice Statistics and will include publications of the findings from the 1982/3 census and the field work for the 1984/5 census. This census has been conducted biennially since 1971 (with interruption in 1981) and is the only national source of routinely collected information on youth in custody in juvenile correctional institutions and community-based programs.

11. *Juvenile Detention Resource Centers.* The American Correctional Association will continue the program of training in detention management at three selected detention center host sites. The ACA and OJJDP will train the staff at the resource centers to provide training and technical assistance on policies, precedures, programs, and operation of detention centers.

B. New Projects

1. *State Legislators Training.* This program will serve to inform state legislators and legislative staff of

committees who deal with juvenile justice issues about recent trends and developments in juvenile justice based on national statistical data on youth cirme.

The activities of the project will include: a national survey of the opinions of jurists, legislators and other experts as to how best to deal with juvenile crime; a review and analysis of the legal codes in each of the fifty states to determine the approaches taken in dealing with juvenile crime; the development of a model code to guide states in dealing with juvenile crime; the designing of training materials to guide legislators and others in implementing new approaches to juvenile crime; and the presentation of one national and three regional conferences.

2. *American Bar Association Commission: Youth, Alcohol and Drug Problems.* The Commission, comprised of legal and other experts, will examine how law and the juvenile justice system can be effectively used to reduce the incidence, prevalence, and morbidity of adolescent alcohol and drug abuse and its effects upon juvenile delinquency. Particular attention will be paid to the enhancement of prevention, early identification, diagnosis, parental relations, and the removal of legal barriers to treatment. The objectives will be achieved through a program of research and hearings conducted by the Commission in several cities.

3. *Court-Appointed Special Advocates (CASA) Training.* To provide training for the CASA volunteers in the organization and implementation of CASA programs. The project would also provide ongoing training to volunteers in various developments in the law and fields related to representing abused and neglected children.

C. Further Information: Training, Dissemination and Standards Division

For further information on the National Institute of Juvenile Justice and Delinquency Prevention's Training, Dissemination and Standards projects contact: Mr. Irving Slott, Acting Director, Training, Dissemination and Standards Divison, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue, NW., Washington, D.C. 20531, (202) 724–5940.

IV. Formula Grants and Technical Assistance Division

Technical Assistance is provided to Federal, State and local governments, courts, public and private agencies, institutions, and individuals in the planning, establishment, funding, operation, or evaluation of juvenile delinquency programs.

The States have initial responsibility for planning technical assistance to assure close coordination with state plans and attention to local needs. The Office of Juvenile Justice and Delinquency Prevention is responsible for developing a national technical assistance plan, using as a prime consideration those needs for which states do not have resources.

The Technical Assistance Program is planned and directed to achieve a positive change which, in turn, contributes to the achievement of the goals and priorities of the Office. Furthermore, to use its limited resources effectively, OJJDP focuses its assistance on the development and implementation of programs with the greatest potential for reducing juvenile crime, while enhancing juvenile justice.

A. Continuation Projects

1. *Courts Improvement.* Juvenile courts will receive TA in a program that will continue to focus on those concerns that are central to judges and juvenile court administrators and that are at the heart of court operation.

2. *Technical Assistance by OJJDP Staff.* Staff personnel of the Formula Grant and Technical Assistance Division as well as other OJJDP staff have specialized experience and are particularly capable of providing TA in various areas of juvenile justice and delinquency prevention and in improving the operations of State and local agencies. Funds will support their travel for TA purposes.

B. New Projects

1. *Law Enforcement.* A program of technical assistance to public law enforcement in handling juvenile delinquency, delinquency prevention, records management, status offenses, and inter-agency coordination.

2. *Technical Assistance to States for Compliance with the JJDP Act.* The purpose of this procurement is to provide nationwide technical assistance from OJJDP in improving detention practices, policies, facilities, alternative services and other issues related to the juvenile justice system's preadjudicatory handling of juveniles. It will provide technical assistance support for Office programs and policies with particular emphasis on needs and issues related to complying with section 223(a)(12), (13), (14), and (15) of the Act and provides assistance and support to the State Advisory Groups and State Planning Agencies in carrying out their operational and management responsibilities.

3. *Corrections.* This project provides technical assistance to public and private secure and non-secure juvenile correctional (post disposition) agencies; to develop and test a seminar series for policy makers on major policy issues in juvenile corrections; to promote more efficient use of existing training resources; and to help develop and strengthen the national network of juvenile correctional leaders through activities such as an annual forum.

4. *State Advisory Group Conference.* This project would provide support for the planning and implementation of the annual State Advisory Group conference for purposes of advising the President, Congress, and the Office of Juvenile Justice and Delinquency Prevention.

C. Further Information: Formula Grants and Technical Assistance Division

Ms. Emily Martin, Acting Director, Formula Grants and Technical Assistance Division, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue, NW., Washington, D.C. 20531, (202) 724–5921.

V. Concentration of Federal Effort

Concentration of Federal Effort funds are utilized by the Office of Juvenile Justice and Delinquency Prevention for activities authorized under sections 204, 205 and 206 of the JJDP Act, as amended. Funds provide operational support for the Coordinating Council on Juvenile Justice and Delinquency Prevention (CC), as well as provide for the funding of interagency projects and activities intended to coordinate the overall Federal effort to prevent delinquency and improve the juvenile justice system in the United States.

A. Concentration of Federal Effort Projects: New Project

Support Concentration. OJJDP will issue a request for contract to provide technical assistance, program development assistance, and support to OJJDP/NIJJDP, and their grantees, the Coordinating Council on Juvenile Justice and Delinquency Prevention, the Missing Children's Program, and the Missing Children's Advisory Group in all research, program development, evaluation, training, and research utilization activities.

B. Further Information: Concentration of Federal Effort

For further information on the Concentration of Federal Effort Program please contact: Ms. Roberta Dorn, Acting Director, Concentration of Federal Effort Program, Office of Juvenile Justice and Delinquency

Prevention, 633 Indiana Avenue, NW., Washington, D.C. 20531, (202) 724–7655.

[FR Doc. 85–5307 Filed 3–4–85; 8:45 am]
BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Employment and Training Administration

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance, E.M. Kelley, et al.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period February 18, 1985–February 22, 1985.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–15, 565; E.M. Kelley d.b.a. Miss Kelley and Miss Kelley II, Fort Bragg, CA

TA–W–15, 644; PBI Industries, Williamsport, PA

TA–W–15, 613; Terada Manufacturing Co., Elizabeth, NJ

In the following cases the investigation revealed that criterion (3) has not been met for the reasons specified.

TA–W–15, 622; U.S. Steel Corp., Tin Finishing Dept., Pittsburg Works, Pittsburg, CA

Separations for the subject firm were seasonal in nature.

TA–W–15, 528; Fairfield Garment, Fairfield, IL

Separations for the subject firm resulted from a transfer of production to another domestic facility.

Affirmative Determinations

TA–W–15, 595; Motion Control Industries, Ridgway, PA

A certification was issued covering all workers separated on or after November 1, 1984.

TA–W–15, 555; Craddock-Terry Shoe Corp., Dillwyn, VA

A certification was issued covering all workers separated on or after October 29, 1983 and before February 1, 1985.

TA–W–15, 556; Craddock-Terry Shoe Corp., Blackstone, VA

A certification was issued covering all workers separated on or after October 29, 1983 and before February 1, 1985.

TA–W–15, 660; Bonnie Lynne, Inc., North Bergen, NJ

A certification was issued covering all workers separated on or after November 9, 1983 and before December 15, 1984.

TA–W–15, 612; North Star Steel Texas, Beaumont, TX

A certification was issued covering all workers separated on or after October 1, 1984.

TA–W–15, 594; McNally Mountain States Steel Co., Lindon, UT

A certification was issued covering all workers separated on or after October 1, 1984.

TA–W–15, 564; Dale Garment Co., Inc., Lynchburg, VA

A certification was issued covering all workers separated on or after March 1, 1984 and before October 31, 1984.

TA–W–15, 515; Waldo Shoe Corp., Belfast, ME

A certification was issued covering all workers separated on or after October 12, 1983.

TA–W–15, 515A; Dorson-Fleisher, Inc., Manchester, NH

A certification was issued covering all workers separated on or after October 12, 1983.

TA–W–15, 491; Leckenby Co., Seattle, WA

A certification was issued covering all workers separated on or after August 1, 1984.

TA–W–15, 511; Moose River Moccasin, Skowhegan, ME

A certification was issued covering all workers separated on or after October 4, 1983 and before November 31, 1984.

TA–W–15, 544; R.A.M. Enterprises, Inc., Gonic, NH

A certification was issued covering all workers separated on or after October 15, 1983 and before October 21, 1984.

TA–W–15, 535; Bendey Shoe, Inc., Bangor, ME

A certification was issued covering all workers separated on or after October 26, 1983.

TA–W–15, 552; Century Brass Products, Inc., Waterbury, CT

A certification was issued covering all workers at the Casting Shop and the Rod Operation separated on or after September 1, 1984 and before June 1, 1985.

TA–W–15, 553; Century Brass Products, Inc., New Milford, CT

A certification was issued covering all workers of the New Milford, CT plant of the Metals Div. of Century Brass Products, Inc., separated on or after January 1, 1985.

I hereby certify that the aforementioned determinations were issued during the period February 18, 1985–February 22, 1985. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street, NW., Washington, D.C. 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: February 26, 1985.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 85–5306 Filed 3–4–85; 8:45 am]
BILLING CODE 4510–30–M

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a new guide planned for its Regulatory Guide Series together with a draft of the associated value/impact statement. This series has been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

The draft guide, temporarily identified by its task number, FC 406–4 (which should be mentioned in all correspondence concerning this draft

guide), is entitled "Guide for the Preparation of Applications for Licenses and Approvals to Authorize Distribution of Various Items to Group Medical Licenses" and is intended for Division 10, "General." It is being developed to provide guidance in conformance with the new NRC Form 313 for preparing applications for licenses and approvals for distribution of various items to group medical licensees.

This draft guide and the associated value/impact statement are being issued to involve the public in the early stages of the development of a regulatory position in this area. They have not received complete staff review and do not represent an official NRC staff position.

Public comments are being solicited on both drafts, the guide (including any implementation schedule) and the draft value/impact statement. Comments on the draft value/impact statement should be accompanied by supporting data. Comments on both drafts should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, by May 3, 1985.

Although a time limit is given for comments on these drafts, comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. Requests for single copies of draft guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Technical Information and Document Control. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Silver Spring, Maryland this 26th day of February 1985.

For the Nuclear Regulatory Commission.

Denwood F. Ross,

Deputy Director, Office of Nuclear Regulatory Research.

[FR Doc. 85-5302 Filed 3-4-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 70-2968]

Finding of No Significant Impact; Issuance of Special Nuclear Material License No. SNM-1928 to Cleveland Electric Illuminating Co., Lake County, OH

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of Special Nuclear Material License No. SNM-1928 to permit the receipt, possession, inspection, and storage of unirradiated nuclear fuel assemblies at the Perry Nuclear Plant in Lake County, Ohio. The unirradiated fuel assemblies will be for eventual use in the Perry Nuclear Power Plant, Unit 1, once its operating license is issued.

The Commission's Division of Fuel Cycle and Material Safety has prepared an Environmental Assessment related to the issuance of Special Nuclear Material License No. SNM-1928. On the basis of this assessment, the Commission has concluded that the environmental impact created by the proposed licensing action would not be significant and does not warrant the preparation of an Environmental Impact Statement. Accordingly, it has been determined that a Finding of No Significant Impact is appropriate. The Environmental Assessment is available for public inspection and copying at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. Copies of the Environmental Assessment may be obtained by calling (301) 427-4510 or by writing to the Uranium Fuel Licensing Branch, Division of Fuel Cycle and Material Safety, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Dated at Silver Spring, Maryland this 27th day of February 1985.

For the Nuclear Regulatory Commission.

W.T. Crow,

Acting Chief, Uranium Fuel Licensing Branch Division of Fuel Cycle and Material Safety, NMSS.

[FR Doc. 85-5303 Filed 3-4-85; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-23615; 70-7003]

Central Power and Light Co.; Pollution Control Financing

February 26, 1985.

Central Power and Light Company ("CP&L"), 120 North Chaparral Street, Corpus Christi, Texas 78401, a wholly owned subsidiary of Central and South West Corporation, a registered holding company, has filed a post-effective amendment to its application-declaration pursuant to sections 6(a), 7, 9(a), 10 and 12 of the Public Utility Holding Company of 1935 ("Act") and Rules 44 and 50(a)(5) thereunder.

An aggregate of $250.9 million principal amount of Matagorda County Navigation District Number One Adjustable Rate Collateralized Pollution Control Revenue Bonds Series 1984 and 1984A (the "Series 1984 Bonds" and "Series 1984A Bonds") was issued October 25, 1984 and December 11, 1984 pursuant to orders of the Commission (HCAR Nos. 23462 and 23524). CP&L now requests authority to issue through December 31, 1986, in one or more additional series, up to $150 million aggregate principal amount of pollution control bonds ("New Bonds"), which amount includes the $48.3 million over which the Commission reserved jurisdiction in the December 11 order. The New Bonds will have substantially the same terms as the Series 1984A Bonds previously approved, or may be issued as conventional 5-30 year fixed interest term bonds ("Term Bonds"). Based on market conditions, the first date on which the initial interest rate may be changed and the first right of bondholders to cause redemption of or put the New Bonds (the "Initial Put Date") may be earlier than the five years applicable for the Series 1984A Bonds. The initial interest rate, the specific interest payment dates, interest adjustment dates and other similar dates will, be determined by market conditions. For the period until the Initial Put Date, market conditions may also require that the New Bonds have protection against refunding through the issuance of debt securities at a lower interest cost than the New Bonds; or, refunding may be prohibited at any interest cost until a specified date.

CP&L ALSO REQUESTS THE OPTION TO ISSUE FIRST MORTGAGE BONDS ("Bonds") as security for the payment of one or more series of the New Bonds. CP&L will issue the Bonds, subject to applicable indenture restrictions to the Trustee for the New Bonds (RepublicBank Dallas, N.A.) who will hold them solely for the benefit of the holders of such New Bonds. The Bonds will not be transferable except to a successor Trustee. Payments on the New Bonds will be used to make the necessary payments of interest and principal on the Bonds in respect thereof. Each series of the Bonds will mirror such series of New Bonds and therefore will not have sinking fund provisions unless such series of New

Bonds has sinking fund provisions. Term Bonds may also have Bonds issued as security thereof.

The application-declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by March 25, 1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant-declarant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application-declaration, as filed or as it may be amended, may be permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-5255 Filed 3-4-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-21724; SR-OCC-84-20]

Self-Regulatory Organizations; Proposed Rule Change by Options Clearing Corporation Relating To the Modification of Its System for Processing Random Assignment of Exercise Notices

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on January 2, 1985, The Options Clearing Corporation filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed random assignment system will provide uniform distribution of assignments among Clearing Members because it will assign exercised contracts in standardized lots, with a uniform "skip interval" between assigned positions, instead of assigning each exercise notice individually.

Under the proposed system, all short positions in a given series are totalled. Next, the number of exercised contracts of that series is totalled. If the number of exercised contracts is less than the number of open short positions,[1] it is subdivided into standardized "assignment increments." OCC has determined that initially the assignment increment for all option exercises will be 25 contracts. However, OCC may in the future determine to use different assignment increments for options on different underlying interests. The next step is to calculate a "skip interval".[2]

Next, the system chooses a random starting point for the first assignment. The first 25 contracts are then assigned to the 25 positions beginning with the randomly selected starting position. After assignment of these 25 contracts, the system skips to the short position whose number equals the number of the randomly selected starting position plus the predetermined skip interval, and assigns another 25 contracts. This process continues until all exercised contracts have been assigned. Note that the skip is from the first position assigned within any group of contracts. The assignment increment and skip interval eliminate the need for multiple random numbers; only one random number is chosen to begin the process. Also, the entire assignment process requires only one turn of the "assignment wheel".

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to provide more unformity in the distribution of assignments. It does this in two ways: by assigning exercised contracts in standardized lots ("assignment increments"), rather than assigning each exercise notice individually, and by using uniform skip intervals. As a result, the new system will assure that disproportionately large segments of the open interest will not be assigned as a block.

Furthermore, the new system will operate in a substantially more efficient manner. Since only one random number is chosen, and only one turn of the "assignment wheel" is necessary, significant savings in processing time and expense will be realized. The current system takes approximately 90 minutes to run. The proposed system should take only 20–30 minutes to accomplish the same task.

OCC intends to implement the new assignment system as soon as possible. However, since OCC uses different processing systems for equity and non-equity options, the non-equity system will be modified first, followed by the equity system within several months.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period: (i) As the Commission may designate up to 90 days if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

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[1] If the number of contracts being exercised is equal to the number of open short positions, the entire open interests for that series will be assigned automatically.

[2] The skip interval is calculated as follows:

$$\text{SKIP INTERVAL} = \frac{\frac{T}{S+1-1}^{*}}{I}$$

* (With decimal points truncated).

S = The total number of contracts being exercised for the particular series.
T = The total number of contracts on the wheel for a particular series.
I = The assignment increment.

All submissions should refer to the file number in the caption above and should be submitted by March 26, 1985.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-5254 Filed 3-4-85; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1-8709]

Issuer Delisting; Application To Withdraw From Listing and Registration; United Stockyard Corp.

February 26, 1985.

The above named issuer has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the specified security from listing and registration on the American Stock Exchange, Inc. ("Exchange").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

(1) The $.01 par value common stock of the Registrant has been listed for trading on the Exchange and, pursuant to a registration statement of Form 8-A, which became effective on February 7, 1985, the New York Stock Exchange ("NYSE"). Trading in the Registrant's common stock on the NYSE commenced at the opening of business on February 11, 1985, and concurrently therewith such stock was suspended from trading on the Exchange.

(2) The Board of Directors of the Registrant determined that, in view of the listing of the Company's common stock on the NYSE, it was advisable for the Company to withdraw from listing on the Exchange.

(3) The Exchange has informed the Registrant that it has no objection to the withdrawal of the Registrant's common stock from listing on the Exchange.

Any interested person may, on or before March 19, 1985, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-5192 Filed 3-4-85; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Presidential Advisory Committee on Small and Minority Business Ownership; Public Meeting

The Presidential Advisory Committee on Small and Minority Business Ownership, located in Washington, D.C., will hold a public meeting at 9:00 a.m. until 5:00 p.m., Monday, March 11, 1985, at the Small Business Administration, 1441 L Street, N.W., Second Floor Conference Room #214, Washington, D.C. 20416, to discuss such business as may be presented by the Committee members. The meeting is open to the interested public, however, space is limited.

Persons wishing to present written statements should notify Mrs. Maurine Fisher, Committee Coordinator, Office of Private Industry Programs, Small Business Administration, Room 602, 1441 L Street, N.W., Washington, D.C. 20416 in writing no later than March 8, 1985.

Dated: February 22, 1985.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 85-5276 Filed 3-4-85; 8:45 am]

BILLING CODE 8025-01-M

Region I Advisory Council Meeting; Concord, NH

The U.S. Small Business Administration Region I Advisory Council, located in the geographical area of Concord, New Hampshire, will hold a public meeting at 10:00 a.m., on Wednesday, March 20, 1985, in the Concord National Bank Board Room, Concord National Bank, 43 N. Main and Warren Streets, Concord, New Hampshire, to discuss such matters as May be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call William Phillips, District Director, U.S. Small Business Administration, 55 Pleasant Street, Cocnord, New Hampshire 03301, (603) 224-4041.

Jean M. Nowak,

Director, Office of Advisory Councils.

February 25, 1985.

[FR Doc. 85-5273 Filed 3-4-85; 8:45 am]

BILLING CODE 8025-01-M

Region I Advisory Council Meeting; Montpelier, VT

The U.S. Small Business Administration Region I Advisory Council, located in the geographical area of Montpelier, Vermont, will hold a public meeting at 10:00 a.m., March 15, 1985, at the Lobster Pot Meeting and Banquet Room, 118 Main Street, in Montpelier, Vermont (Banquet Room entrance on School Street behind the Howard Drive-In-Bank), to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call David C. Emery, District Director, U.S. Small Business Administration, Federal Building, 87 State Street, P.O. Box 605, Montpelier, Vermont 05602, (802) 229-0538.

Jean M. Nowak,

Director, Office of Advisory Councils.

February 28, 1985.

[FR Doc. 85-5274 Filed 3-4-85; 8:45 am]

BILLING CODE 8025-01-M

National Advisory Council Meeting; Washington, D.C.

The U.S. Small Business Administration, Office of Advisory Councils, located in the geographical area of Washington, D.C., will hold its semiannual National Advisory Council meeting from 8:30 a.m., Monday, April 1, to 12 noon, Tuesday, April 2, 1985, at the Washington Plaza Hotel, Massachusetts and Vermont Avenues, N.W., Washington, D.C. 20005 to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Jean M. Nowak, Director, U.S. Small Business Administration, Office of

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Advisory Councils, 1441 L Street, N.W., Washington, D.C. 20416, (202) 653–6748.

Joan M. Nowak,

Director, Office of Advisory Councils.

February 26, 1958.

[FR Doc. 85–5275 Filed 3–4–85; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Radio Technical Commission for Aeronautics (RTCA) Executive Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 1) notice is hereby given of a meeting of the RTCA Executive Committee to be held on March 22, 1985, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, D.C. commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Opening Remarks (2) Approval of Minutes of Meeting Held on January 25, 1985; (3) Chairman's Report on RTCA Administration and Activities; (4) Special Committee Activities Report for January and February 1985; (5) Briefing on the Satellite Search and Rescue (SARSAT) Program; (6) Consideration of Proposals to Establish New Special Committees; (7) Consider Approval of Special Committee 152 (SC–152) Report on Software Considerations in Airborne Systems and Equipment Certification; (8) Consider Approval of Change 1 to RTCA Document DO–186 "Minimum Operational Performance Standards for Radio Communications Equipment Operating Within the Radio Frequency Range 117.975–137.000 MHz"; (9) Consider Approval of Change 1 to RTCA Document DO–185 "Minimum Operational Performance Standards for Traffic Alert and Collision Avoidance System (TCAS) Airborne Equipment; and (10) Other Business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, D.C. 20005, (202) 682–0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, D.C. on February 25, 1985.

Karl F. Bierach,

Designated Officer.

[FR Doc. 85–5208 Filed 3–4–85; 8:45 am]

BILLING CODE 4910–13–M

Radio Technical Commission for Aeronautics (RTCA) Special Committee 153—Airborne VOR Equipment; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 1) notice is hereby given of a meeting of the RTCA Special Committee 153 on Airborne VOR Equipment to be held on March 25–26, 1985, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, D.C. commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Introductory Remarks; (2) Approval of Minutes of the Fifth Meeting Held on December 12–14, 1984; (3) Consideration of Proposed Changes to the Sixth Draft of the Committee Report on Minimum Operational Performance Standards for Airborne VOR Equipment; (4) Review and Discuss European Organization for Civil Aviation Electronics (EUROCAE) Activities; (5) Review the First Draft of the Committee Report on Minimum Performance Standards for Instrument Landing System (ILS) Airborne Localizer Equipment; (6) Review Progress on Drafting the Committee Report on Minimum Operational Performance Standards for Instrument Landing System (ILS) Airborne Glide Slope Equipment; and (7) Other Business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, D.C. 20005, (202) 682–0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, D.C. on February 25, 1985.

Karl F. Bierach,

Designated Officer.

[FR Doc. 85–5207 Filed 3–4–85; 8:45 am]

BILLING CODE 4910–13–M

Radio Technical Commission for Aeronautics (RTCA); Renewal

Notice is hereby given of the renewal of the Radio Technical Commission for Aeronautics (RTCA) as an advisory committee utilized by the Federal Aviation Administration (FAA) and other Government agencies. The Associate Administrator for Development and Logistics, Federal Aviation Administration, is the sponsor.

The membership of RTCA comprises over 140 Government and industry organizations. At this time, eight Government agencies, the Departments of State, Commerce, Army, Navy and Air Force; the Federal Aviation Administration (FAA) and U.S. Coast Guard of the Department of Transportation; and the National Aeronautics and Space Administration (NASA), participate in RTCA. Private sector members include Aeronautical Radio, Incorporated (ARINC); Air Line Pilots Association (ALPA); Air Transport Association of America (ATA); Aircraft Owners and Pilots Association (AOPA); National Business Aircraft Association (NBAA); General Aviation Manufacturers Association (GAMA); Electronics Industries Association (EIA) Members; and Affiliated Independent Members.

The objective of RTCA is to advance the art and science of aeronautics through the investigation of all available or potential applications of the telecommunication art, their coordination with allied arts, and the adaptation thereof to recognized operational requirements. To achieve this objective, the RTCA through its special committees seeks solutions to problems involving the application of electronics and telecommunications to aeronautical operations and frequently recommends technical performance standards and operational requirements for consideration by Government, industry and aviation users.

The Secretary of Transportation has determined that the utilization of RTCA is necessary in the public interest in connection with the performance of duties imposed on the Federal Aviation Administration by law. Except as provided in section 10(d) of the Federal Advisory Committee Act (86 Stat. 770), meetings of all RTCA committees when utilized as an advisory committee, will be open to the public.

Issued in Washington, D.C., on February 15, 1985.

A.P. Albrecht,

Associate Administrator for Development and Logistics.

[FR Doc. 85-5206 Filed 3-4-85; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement: Logan County, KY

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA, in cooperation with the Kentucky Transportation Cabinet, intends to prepare an EIS for a proposed highway project located in McCracken County, just east and south of Paducah, Kentucky. The highway proposal involves the reconstruction of KY 1954 (Husband Road) to a 4-lane connector route between I-24 to the south and US 60-62, Downtown Business Loop on the north.

Six (6) alternates are under consideration at this time which include the "do nothing" option and a "one-way couplet" option. The one-way couplet option would utilize the exiting roadway of KY 1954 in conjunction with a new two (2) lane roadway to complete the couplet.

Proposed Scoping Process: An Interdisciplinary Team Meeting (IDT) was held on January 28, 1985, by the Kentucky Transportation Cabinet. The input received at the IDT meeting was useful in determining what alternatives would be considered viable for study in the draft environmental impact. Early public information meetings will be held as well as formal location/design public hearing.

FOR FURTHER INFORMATION CONTACT: Robert E. Johnson, Division Administrator, FHWA, P.O. Box 536, Frankfort, Kentucky 40602, Phone (502) 227-7321, FTS 352-5468. To ensure that a full range of issues related to this proposed action are addressed and all significant impacts are identified, suggestions are invited from all interested parties. Comments or questions should be directed to the above person.

Issued: February 22, 1985.

Robert E. Johnson,

Division Administrator.

[FR Doc. 85-5231 Filed 3-4-85; 8:45 am]

BILLING CODE 4910-22-M

Research and Special Programs Administration

Grants and Denials of Applications for Exemptions

Correction

The FR document number for the DOT/RSPA notice beginning on page 7437 in the issue of Friday, February 22, 1985, should have read "FR Doc. 85-4084" in the file line at the end of the document on page 7442.

BILLING CODE 1505-01-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Supplement to Department Circular; Public Debt Series—No. 6-85]

Notes; Series J-1990

The Secretary announced on February 26, 1985, that the interest rate on the notes designated Series J-1990, described in Department Circular—Public Debt Series—No. 6-85 dated February 21, 1985, will be 11⅜ percent. Interest on the notes will be payable at the rate of 11⅜ percent per annum.

Carole Jones Dineen,

Fiscal Assistant Secretary.

February 27, 1985.

[FR Doc. 85-5226 Filed 3-4-85; 8:45 am]

BILLING CODE 4810-40-M

VETERANS ADMINISTRATION

Paramus, NJ; State Veterans Nursing Facility; Finding of No Significant Impact

The Veterans Administration (VA) has assessed the potential environmental impacts that may occur as a result of the proposed construction of a State Veterans Nursing Facility at Paramus, New Jersey. This project is being considered for federal assistance under the grants to State Homes Program and involves the construction of a new facility that will accommodate a 300-bed nursing home care unit. The estimated project cost is $20 million. This is a magnitude estimate and is subject to revision.

A beneficial impact will be achieved through the addition of 300 beds which will provide expanded health care service to New Jersey veterans. The project will also provide additional employment and income to the local area surrounding the facility.

Construction related traffic may affect the flow of on-site traffic, and construction noise associated with the development of the new nursing home wing may cause annoyance to occupants of adjacent residences. Complaints about noise usually give rise to a controversial situation. The impact of dust and fumes that will exist during construction will be of short effect lasting only during the construction phase of project development.

In relation to both construction and operation, the new facility will be built in accordance with applicable Federal, State and local air quality standards.

The significance of the identified impacts has been evaluated relative to the considerations of both context and intensity, as defined by the Council on Environment Quality (Title 40, § 1508.27).

This Environmental Assessment has been performed in accordance with the requirements of the National Environmental Policy Act Regulations, §§ 1501.3 and 1508.9, Title 40, Code of Federal Regulations. A "Finding of No Significant Impact" has been reached based on the information presented in this assessment.

The assessment is being placed for public examination at the Veterans Administration, Washington, D.C. Persons wishing to examine a copy of that document may do so at the following office:

Director, Office of Environmental Affairs (10A4A4), room 601, Veterans Administration, 810 Vermont Avenue, N.W., Washington, D.C. (202/389-3544). Questions or requests for single copies of the Environmental Assessment may be addressed to the above.

Dated: February 26, 1985.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

[FR Doc. 85-5227 Filed 3-4-85; 8:45 am]

BILLING CODE 8320-01-M

Medical Research Service Merit Review Boards; Meetings

The Veterans Administration gives notice pursuant to Pub. L. 92-463 of the meetings of the following Merit Review Boards.

Merit review board	Date	Time	Location
Surgery	Apr. 1, 1985	8 a.m. to 5 p.m.	Room 817, VA Central Office [1]
Oncology	Apr. 2, 1985	do	Room 119, VA Central Office.
Cardiovascular Studies	Apr. 11, 1985	do	Room 119, VA Central Office.
Do	Apr. 12, 1985	do	Do
Respiration	Apr. 14, 1985	7 p.m. to 11 p.m.	Soup San Room, General Scott Inn.[2]
Do	Apr. 15, 1985	8 a.m. to 5 p.m.	Do.
Mental Health and Behavioral Sciences.	Apr. 17, 1985	do	Soup San Room, General Scott Inn.
Do	Apr. 18, 1985	do	Do.
Alcoholism and Drug	Apr. 19, 1985	do	Do.
	Apr. 21, 1985	do	San Clemente Room, Disneyland Hotel.[3]
Hematology	Apr. 27, 1985	do	San Cruz Room, Disneyland Hotel.
Basic Sciences	Apr. 29, 1985	do	Room 119, VA Central Office.
Do	Apr. 30, 1985	do	Do
Immunology	May 2, 1985	do	Room 119, VA Central Office
Infectious Deseases	May 1, 1985	7 p.m. to 10 p.m.	Soup San Room, General Scott Inn.
Do	May 2, 1985	8 a.m. to 5 p.m.	Do.
Gastroenterology	May 3, 1985	do	Room 119, VA Central Office.
Nephrology	May 7, 1985	do	Soup San Room, General Scott Inn.
Do	May 8, 1985	do	Do
Endocrinology	May 7, 1985	do	Room 119, VA Central Office.
Do	May 8, 1985	do	Do
Neurobiology	May 13, 1985	do	Soup San Room, General Scott Inn.
Do	May 14, 1985	do	Do.
Do	May 15, 1985	do	Do.

[1] Veterans Administration Central Office, 810 Vermont Avenue, NW, Washington, DC 20420
[2] General Scott Inn, 1464 Rhode Island Avenue, NW, Washington, DC 20005.
[3] Disneyland Hotel, 1150 West Cerritos, Anaheim, CA 92803.

These meetings will be for the purpose of evaluating the scientific merit of research conducted in each specialty by Veterans Administration investigators working in Veterans Administration Medical Centers and clinics.

The meetings will be open to the public up to the seating capacity of the rooms at the start of each meeting to discuss the general status of the program. All of the Merit Review Board meetings will be closed to the public after approximately one-half hour from the start, for the review, discussion and evaluation of initial, and renewal research projects.

The closed portion of the meeting involves: Discussion, examination, reference to, and oral review of site visits, staff and consultant critiques of research protocols, and similar documents. During this portion of the meeting, discussion and recommendations will deal with qualifications of personnel conducting the studies, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, as well as research information, the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action regarding such research projects. As provided by subsection 10(d) of Pub. L. 92–463, as amended by Pub. L. 94–409, closing portions of these meetings are in accordance with 5 U.S.C. 552(c) (6) and (9)(B). Because of the limited seating capacity of the rooms, those who plan to attend should contact Mr. Howard M. Berman, Chief, Program Review Division, Medical Research Service, Veterans Administration, Washington, DC, (202) 389–5065 at least five days prior to each meeting. Minutes of the meetings and rosters of the members of the Boards may be obtained from this source.

Dated: February 28, 1985.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 85–5243 Filed 3–4–85; 8:45 am]

BILLING CODE 8320–01–M

Advisory Committee on Readjustment Problems of Vietnam Veterans; Meeting

The Veterans Administration gives notice under Pub. L. 92–463 that a meeting of the Advisory Committee on the Readjustment Problems of Vietnam Veterans will be held in the Omar Bradley Conference Room, VA Central Office, 810 Vermont Avenue, NW, Washington, DC, on March 14 and 15, 1985. These meetings will begin at 9:00 a.m. and conclude at 4:30 p.m.

Both meetings will be open to the public to the seating capacity of the conference room. Anyone having questions concerning the meetings may contact Mr. Edward Lord, Assistant Director for Administration and Development, Readjustment Counseling Service, Veterans Administration Central Office at phone number 202/389–5410/5419.

This notice not appear in the **Federal Register** at least 15 days prior to the date of the first meeting due to delays in administrative proceeding.

Dated: February 28, 1985.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 85–5268 Filed 3–4–85; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 43
Tuesday, March 5, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL COMMUNICATIONS COMMISSION

Joint Board Meeting Deferred (CC Docket Nos. 78-72 and 80-286)

The Joint Board meeting scheduled for Friday, March 1, 1985 (50 FR 8435; March 1, 1985) has been deferred. A new meeting date will be announced in the near future.

For further information contact Claudia Pabo or Margot Bester (202) 632-6363.

William J. Tricarico,
Secretary, Federal Communications Commission.
[FR Doc. 85-5320 Filed 3-1-85; 11:32 am]
BILLING CODE 6712-01-M

2

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION.

February 27, 1985.

TIME AND DATE: 10:00 a.m., Wednesday, March 6, 1985.

PLACE: Room 600, 1730 K St., N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission consider and act on the following:

1. U.S. Steel Mining Co., Inc., Docket No. PENN 82-322; (Issues include whether the administrative law judge erred in concluding that a violation of 30 CFR 75.515, dealing with suitable cable fittings and bushings was "significant and substantial".)

2. Kenneth A. Wiggins v. Eastern Associated Coal Corp., Docket No. WEVA 82-300-D; (Issues include whether the administrative law judge erred in concluding that the miner was discharged in violation of section 105(c)(1) of the Mine Act and whether the judge awarded appropriate remedial relief.)

Any person intending to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Thus, the Commission may, subject to the limitations of 29 CFR 2706.150(a)(3) and 2706.160(e), ensure access for any handicapped person who gives reasonable advance notice.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen, (202) 653-5632.

Jean H. Ellen,
Agenda Clerk.
[FR Doc. 85-5370 Filed 3-1-85; 3:19 pm]
BILLING CODE 6735-01-M

3

FEDERAL RESERVE SYSTEM

Board of Governors

TIME AND DATE: 11:00 a.m., Monday, March 11, 1985.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Implementation of the Board's Program Improvement Project.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: March 1, 1985.

James McAfee,
Associate Secretary of the Board.
[FR Doc. 85-5394 Filed 3-1-85; 4:00 pm]
BILLING CODE 6210-01-M

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Federal Register

Tuesday
March 5, 1985

Part II

Department of the Interior

National Park Service

National Registry of Natural Landmarks; Annual Supplemental Listing of Natural Landmarks; Notice

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DEPARTMENT OF THE INTERIOR

National Park Service

National Registry of Natural Landmarks

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: This notice lists all natural landmarks designated by the Secretary of the Interior between October 1, 1983 and September 30, 1984 and included on the National Registry of Natural Landmarks. The listing published in the **Federal Register** on March 1, 1983 (48 FR 8682) contains all natural landmarks designated prior to that date and should be retained for reference purposes. The listing published in the **Federal Register** on February 7, 1984 (49 FR 4605) contains all natural landmarks designated between March 1, 1983 and September 30, 1983. All listings provide information on each landmark's location, natural values, designation date, ownership, and the owner's voluntary commitment to protect the landmark's natural resources. Federal agencies should consider the existence and location of natural landmarks when assessing the impact of their actions on the environment under section 102(2)(c) of the National Environmental Policy Act of 1969 (83 Stat. 852; 42 U.S.C. 4321).

FOR FURTHER INFORMATION CONTACT: Mr. Arthur L. Stewart, Acting Chief, Natural Landmarks Branch, Interagency Resources Division, National Park Service, Washington, D.C. 20240. (202) 343–9525.

SUPPLEMENTARY INFORMATION: The Secretary of the Interior established the National Natural Landmarks Program in 1962 to identify and encourage the preservation of nationally significant examples of the full array of ecological and geological features that represent the Nation's natural heritage. Potential natural landmarks are identified through studies conducted by the National Park Service, evaluated by natural scientists, and, if judged nationally significant, designated as National Natural Landmarks by the Secretary of the Interior. Areas so designated are included on the National Registry of Natural Landmarks. Through September 30, 1984 there were 551 sites listed on the National Registry of Natural Landmarks. The National Natural Landmarks Program is administered by the National Park Service.

Natural landmark designation is not a land withdrawal and affects neither the ownership nor management and use of a site. Natural landmark preservation is often ensured through cooperative commitment of public and private owners toward protection of the area's nationally significant features. This commitment is voluntary and is exercised through a nonbinding agreement with the National Park Service to protect the National Natural Landmark. Owners who elect to enter into such an agreement are eligible to receive a certificate signed by the Secretary of the Interior which recognizes the special status of the area. A bronze plaque may also be presented for appropriate display on the site.

In addition, Federal agencies must consider the existence and location of National Natural Landmarks when they assess the effects of their actions on the environment under section 102(2)(c) of the National Environmental Policy Act of 1969 (83 Stat. 852; 42 U.S.C. 4321).

The Secretary of the Interior transmits annually to the Congress a report on those National Natural Landmarks with known damage or threats to the integrity of their nationally significant features (90 Stat. 1940; 16 U.S.C. 1a–5). This report is prepared for the Secretary by the National Park Service.

National Registry of Natural Landmarks

The National Registry of Natural Landmarks is the Nation's official list of those nationally significant natural areas representative of the ecological and geological heritage of this country. Of the 551 sites listed on the National Registry of Natural Landmarks, over one-half are administered solely by public agencies at the Federal, State, county, or municipal government levels. Almost one-third of the National Natural Landmarks are owned entirely by private parties. The remaining National Natural Landmarks are owned or administered by a mixture of public and private owners.

The following list contains all National Natural Landmarks added to the National Registry of Natural Landmarks between October 1, 1983 and September 30, 1984. The sites are arranged alphabetically by State and county. A description of each landmark's location, significance, designation date and ownership is provided. Designation dates are enclosed in parentheses. Ownership data are arranged in the following arbitrary order and do not reflect the relative amount of land owned by any party: Federal, State, County, Municipal, Private. An asterisk (*) indicates that the owner(s) of a landmark have voluntarily agreed to protect the nationally significant features.

Because many natural landmarks are privately owned and/or not managed for public access, landowner permission must first be obtained before visits are planned to those areas. The specific locations of certain landmarks are not provided because of owner request for minimum publicity and/or because of the fragility of the natural features.

Dated: January 16, 1985.

Russell E. Dickenson,

Director, National Park Service.

MAINE

Knox County

Appleton Bog Atlantic White Cedar Stand—Four miles southeast of Liberty in southeastern Maine. Largest and best of the few remaining virgin stands of Atlantic white cedar in the northeasternmost extension of its range. Large and undisturbed peatland with a continuous forest covering a classic hummock-and-hollow topography. (January 1984) Owner: Private

Somerset County

* No. 5 Bog and Jack Pine Stand—13 miles southeast of the Quebec border in northwestern Maine. One of the larger peatlands in Maine and the only intermontane peatland in the northern Appalachian Mountains. It has the greatest abundance and variety of string patterns of any U.S. peatland east of the Northern Great Lakes. The jack pine forest and well-defined surficial glacial features coupled with the many botanical species and geological features located here constitute a diversity of natural features found nowhere else in the northern United States. (August 1984) Owner: Private, State

NEW JERSEY

Passaic County

Great Falls of Paterson-Garrett Mountain—Adjacent to the city of Paterson. Garrett Mountain is an expansion of Great Falls of Paterson National Natural Landmark (April 1967). Together Great Falls of Paterson and Garrett Mountain provide an excellent illustration of the jointed basaltic lava flow which began a period of extrusion and intrusion throughout eastern North America in the early Mesozoic, influencing present day landforms in this region. (January 1984) Owner: Municipal

SOUTH CAROLINA

Lancaster County

Flat Creek Natural Area and 40 Acre Rock—54 miles northeast of Columbia. Contains the largest remaining undisturbed granitic flat-rock outcrop in the Carolina Piedmont. Flat-rock vegetation is in good condition, including 13 rare or endemic species and 20 other species characteristic of these outcrops. Chestnut, oak, mockernut, hickory, sweetgum and pignut hickory trees abound on the southeast facing slopes. Flat Creek Dike is one of the thickest in eastern North America (1,123 feet). Taken together, these geological and biological features in such close proximity represent an unusual outdoor laboratory. (August 1984) Owner: Private

The following are corrections to the list of natural landmarks included on the National Registry of Natural Landmarks and published in the **Federal Register**, Part III, March 1, 1983 on page 8702.

SOUTH DAKOTA

Marshall County

* Sica Hollow—(previously listed as Sico Hollow)

SOUTH DAKOTA

Roberts County

* Sica Hollow—(previously listed as Sico Hollow)

WEST VIRGINIA

Pendleton County

Sinnett-thorn Mountain Cave System—(previously listed as Sennett-Thorn Mountain Cave System)

[FR Doc. 85-5005 Filed 3-4-85; 8:45 am]

BILLING CODE 4310-70-M

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federal register

Tuesday
March 5, 1985

Part III

Department of the Interior

National Park Service

National Register of Historic Places; Annual Listing of Historic Properties; Notice

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Annual Listing of Historic Properties

The National Historic Preservation Act of 1966, as amended (80 Stat. 915, 16 U.S.C. 470 et seq.), authorizes the Secretary of the Interior to expand and to maintain a National Register of districts, sites, buildings, structures and objects significant in American history, architeture, archeology, engineering and culture. The National Park Service expands and maintains the National Register of Historic Places for the Secretary.

It is purpose of this notice, though publication of the information included herein, to apprise the public, as well as governmental agencies associations, and all other organizations and individuals interested in historic preservation, of the properties added to the National Register between October 1, 1983, and September 30, 1984 and those omitted in the list published February 7, 1984.

For a cumulative listing comprising all properties on the National Register, we recommend that users retain the **Federal Register**, listings from February 6, 1979 (Vol. 44, No. 26, Part II); March 18, 1980 (Vol. 45, No. 54, Part II); February 3, 1981 (Vol. 45, No. 54, Part II); February 2, 1982 (Vol. 47, No. 22, Part III); March 1, 1983 (Vol. 48, No. 41, Part II) and February 7, 1984 (Vol. 49, No. 26, Part IV). Together these listings provide information for all National Register properties and for properties determined eligible for inclusion on the National Register through September 1984. A limited number of copies of the 1979, 1980, 1981, 1982, 1983, and 1984 issues of the **Federal Register**, is available from the Department of the Interior, National Park Service, National Register of Historic Places, 18th and C Sts., NW., Washington, DC 20240.

Dated: January 16, 1985.

Russell E. Dickenson,

Director.

ALABAMA

Autauga County

Prattville, *Daniel Pratt Historic District*, Roughly bounded by Northington Rd., 1st, 6th, Bridge, and Court Sts. (08/30/84)

Calhoun County

Anniston, *McKleroy-Wilson-Kirby House*, 1604 Quintard Ave. (08/30/84)
Piedmont, *Southern Railway Depot*, 200 N. Center Ave. (01/05/84)

Coffee County

Elba vicinity, *Pea River Power Company Hydroelectric Facility*, S of Elba (08/01/84)

Colbert County

Sheffield, *Nitrate Village No. 1 Historic District*, Roughly bounded by Wilson Dam Circle, Wheeler and Wilson Dam Aves., Fontana and Pickwick Sts. (08/30/84)
Tuscumbia, *Norman, Felix Grundy, House*, 401 N. Main St. (04/12/84)

Covington County

Andalusia, *Central of Georgia Depot*, 125 Central St. (08/30/84)

Cullman County

Cullman, *Ave Maria Grotto*, St. Bernard Abbey (01/19/84)
Cullman, *Cullman Historic District*, Roughly bounded by 1st and 8th Aves., 3rd and 9th Sts. (08/30/84)
Cullman, *Stiefelmeyer's*, 202 — 1st Ave. SE (12/22/83)

DeKalb County

Mentone, *Mentone Springs Hotel*, AL 117 (10/20/83)

Etowah County

Gadsden, *Eleventh Street School*, 1026 Chestnut St. (05/10/84)

Greene County

Eutaw, *Pierce, William F., House*, 309 Womack Ave. (11/17/83)
Forkland vicinity, *Thornhill*, NW of Forkland (05/10/84)

Jefferson County

Birmingham, *Age-Herald Building*, 2107 — 5th Ave. N (08/30/84)
Birmingham, *Bank of Ensley*, 19th St. and Ave. E (06/21/84)
Birmingham, *Claridge Manor Apartments (Apartment Hotels in Birmingham, 1900–1930, TR)*, 1100 — 27th St. S (05/17/84)
Birmingham, *Exclusive Furniture Shop*, 704 — 29th St. S (08/30/84)
Birmingham, *Glen Iris Park Historic District*, 1–20 Glen Iris Park (08/30/84)
Birmingham, *Highland Plaza Apartments (Apartment Hotels in Birmingham, 1900–1930, TR*, 2250 Highland Ave. S. (05/17/84)
Birmingham, *Quinlan Castle*, 2030 — 9th S (09/13/84)
Birmingham, *Ridgely Apartments (Apartment Hotels in Birmingham, 1900–1930, TR)*, 608 — 21st St. N (05/17/84)
Birmingham, *West Park*, 5th Ave. and 16th St. (05/24/84)
Birmingham, *Windham Construction Office Building*, 528 — 8th Ave. N (08/09/84)

Lee County

Opelike, *Railroad Avenue Historic District*, Roughly bounded by 7th and 10th Sts., 1st Ave. and Ave. B (08/30/84)

Limestone County

Athens vicinity, *Blackburn House*, W of Athens (09/20/84)
Athens, *Robert Beaty Historic District*, Roughly bounded by Louisville and Nashville RR, Forrest, East, and Washington Sts. (08/30/84)

Macon County

Tuskegee, *Main Street District*, Main St. (03/12/84)

Madison County

Huntsville, *Building at 105 N. Washington Street (Downtown Huntsville MRA)*, 105 N. Washington St. (05/23/84)
Huntsville, *Hutchens, W.T., Building (Downtown Huntsville MRA)*, 100 — 104 S. Jefferson St. (12/28/83)
Huntsville, *White-Turner-Sanford House*, 601 Madison St. (04/2/84)
Madison, *Bibb, James H., House*, 11 Allen St. (04/12/84)

Marengo County

Demopolis, *Demopolis Public School*, 601 S. Main Ave. (10/28/83)
Demoplis, *US Post Office*, 100 W. Capitol St. (07/28/84)

Marshall County

Guntersville, *Saratoga Victory Mill*, 1821 Gunter Ave. (04/12/84)

Mobile County

Mobile, *Church Street Historic District (Boundary Increase)*, Roughly bounded by Broad, Conti, Water, Claiborne, and Canal Sts. (01/13/84)
Mobile, *Dahm House*, 7 N. Claiborne St. (01/05/84)
Mobile, *Davis Avenue Branch, Mobile Public Library*, 564 Davis Ave. (12/22/84)
Mobile, *Denby House*, 558 Conti St. (01/05/84)
Mobile, *Fire Station No. 5*, 7 N. Lawrence St. (12/22/83)
Mobile, *Hawthorn House*, 352 Stanton Rd. (05/21/84)
Mobile, *Meaher-Zoghby House*, 5 N. Claiborne St. (01/05/84)
Mobile, *Metzger House*, 7 N. Hamilton St. (01/05/84)
Mobile, *Monterey Place*, 1552 Monterey Pl. (01/05/84)
Mobile, *Neville House*, 255 St. Francis St. (01/05/84)
Mobile, *Old Dauphin Way Historic District*, Roughly bounded by Springhill Ave., Broad, Government, and Houston Sts. (08/30/84)
Mobile, *Phillipi House*, 53 N. Jackson St. (01/05/84)
Mobile, *Scottish Rites Temple*, 351 St. Francis St. (01.05/84)
Mobile, *St. Francis Street Methodist Church*, 15 N. Joachim St. (01/95/84)
Mobile, *Vickers and Schumacher Buildings*, 707–709 and 711 Dauphin St. (12/22/83)

Montgomery County

Montgomery, *Court Square-Dexter Avenue Historic District*, Roughly Dexter Ave., Perry, Court, and Monroe Sts. (08/30/84)
Montgomery, *Garden District*, Roughly bounded by Norman Bridge Rd., Court St., Jeff Davis, and Fairview Aves. (09/13/84)
Montgomery, *Jackson, Jefferson Franklin, House*, 409 S. Union St. (05/17/84)
Montgomery, *North Lawrence-Monroe Street Historic District*, 132–148, 216, 220 Monroe St. and 14, 22, 28–40, 56 N. Lawrence St. (08/30/84)

Montgomery, *South Perry Street Historic District*, Roughly Perry St. between Washington St. and Dexter Ave. (08/30/84)

Morgan County

Decatur, *Rhea-McEntire House*, 1105 Sycamore St. (08/30/84)

Perry County

Uniontown, *Pitts' Folly*, Old Cahaba Rd. (08/09/84)
Uniontown, *Westwood*, AL 61 (03/15/84)

Pike County

Troy, *Troy High School*, 436 Elm St. (08/30/84)

Russell County

Phenix City, *Brooks-Hughes House (Phenix City MRA)*, 1010 Sandfort Rd. (11/03/83)
Phenix City, *Brownville-Summerville Historic District (Phenix City MRA)*, Roughly bounded by 15th and 23rd Sts., and 6th and 11th Aves. (11/03/83)
Phenix City, *Floyd-Newsome House (Phenix City MRA)*, 900 — 22nd St. (11/03/83)
Phenix City, *Girard High School (Phenix City MRA)*, Sandfort Rd. (11/03/83)
Phenix City, *Girard Historic District (Phenix City MRA)*, Roughly bounded by 8th Pl., 10th St., 5th, and 8th Aves. (11/03/83)
Phenix City, *Kid Alley Residential Historic District (Phenix City MRA)*, 11th Ave. at 9th Pl. (11/03/83)
Phenix City, *Lower Twentieth Street Residential Historic District (Phenix City MRA)*, 20th St. from 2nd to 6th Aves. (11/03/83)
Phenix City, *Morgan-Curtis House (Phenix City MRA)*, 1815 Abbott Dr. (11/03/83)
Phenix City, *Shapre-Monte House (Phenix City MRA)*, 726 — 6th Ave. (11/03/83)
Phenix City, *Smith Residential Historic District (Phenix City MRA)*, 20th St., 7th Ave., and 6th Court (11/03/83)
Phenix City, *Snow Valley Residential Historic District (Phenix City MRA)*, 11th and 12th Sts. at 11th Ave. (11/03/83)
Phenix City, *Upper Twentieth Street Residential Historic District (Phenix City MRA)*, 1201–1217 W. 20th St. (11/03/83)

Talladega County

Talladega, *First Presbyterian Church*, 130 North St. E (11/17/83)

Tuscaloosa County

Tuscaloosa, *Bama Theatre-City Hall Building*, 600 Greensboro Ave. (08/30/84)
Tuscaloosa, *Searcy House*, 815 Greensboro Ave. (09/14/84)

Wilcox County

Camden, *Liberty Hall*, AL 221 (01/05/84)

ALASKA

Anchorage Division

Anchorage, *Lathrop Building*, 801 W. 4th Ave. (02/22/84)

Barrow-North Slope Division

Barrow, *Utkeagvik Church Manse*, Off Momegana St. (10/06/83)

Fairbanks Division

Fairbanks vicinity, *Goldstream Dredge No. 8*, Steese Hwy. (02/28/84)

ARIZONA

Cochise County

Douglas, *El Paso and Southwestern Railroad YMCA*, 1000 Pan American Ave. (03/01/84)

Coconino County

Flagstaff vicinity, *Coyote Range*, N of Flagstaff on US 180 (05/14/84)
Williams vicinity, *Laws Spring*, Kaibab National Forest (07/05/84)

Gila County

Glove vicinity, *Besh-Ba-Gowah*, S of Globe (05/09/84)
Globe, *Holy Angels Church*, 231 S. Broad St. (12/01/83)

Maricopa County

Phoenix vicinity, *Hedgpeth Hills Petroglyph Site*, N of Beardsley Rd. and 43rd Ave. (02/16/84)
Phoenix, *Anderson, Helen, House (Roosevelt Neighborhood MRA)*, 149 W. McDowell Rd. (11/30/83)
Phoenix, *Celora Stoddard/Lon Harmon House (Roosevelt Neighborhood MRA)*, 801 N. 1st Ave. (11/30/83)
Phoenix, *Chelsea Place Historic District (Roosevelt Neighborhood NRA)*, Roughly bounded by W. Lynwood and W. Willetta Sts. between Central and 3rd Aves. (11/30/83)
Phoenix, *Concrete Block House (Roosevelt Neighborhood MRA)*, 640 N. 6th Ave. (11/30/83)
Phoenix, *Concrete Block House (Roosevelt Neighborhood MRA)*, 618–620 N. 4th Ave. (11/30/83)
Phoenix, *Concrete Block House (Roosevelt Neighborhood MRA)*, 614 N. 4th Ave. (11/30/83)
Phoenix, *Dunlap, Charles H., House (Roosevelt Neighborhood MRA)*, 650 N. 1st Ave. (11/30/83)
Phoenix, *Elizabeth Seargeant/Emery Oldaker House (Roosvelt Neighborhood MRA)*, 649 N. 3rd Ave. (11/30/84)
Phoenix, *Ellis-Shackelford House (Roosevelt Neighborhood MRA)*, 1242 N. Central Ave. (11/30/83)
Phoenix, *Encanto-Palmcroft Historic District*, Bounded by N. 7th and N. 15th Aves., McDowell and Thomas Rds. (02/16/84)
Phoenix, *Humbert, William K., House*, 2238 N. Alvarado Rd. (12/01/03)
Phoenix, *Kenilworth Historic District (Roosevelt Neighborhood MRA)*, Roughly bounded by W. Lynwood and W. Willetta Sts. between 3rd and 7th Aves., and W. Culver between 5th and 7th Aves. (11/30/83)
Phoenix, *Phoenix LDS Second Ward Church (Roosevelt Neighborhood MRA)*, 1120 N. 3rd Ave. (11/30/83)
Phoenix, *Pierce, Harry E., House (Roosevelt Neighborhood MRA)*, 632 N. 3rd Ave. (11/30/83)
Phoenix, *Pieri-Elliot House*, 767 E. Moreland St. (12/29/83)
Phoenix, *Portland Street Historic District (Roosevelt Neighborhood MRA)*, W. Portland St. between 3rd and 7th Aves. (11/30/83)
Phoenix, *Rancho Joaquina House*, 4630 E. Cheery Lynn Rd. (07/09/84)
Phoenix, *Roosevelt Historic District (Roosevelt Neighborhood MRA)*, Roughly bounded by Roosevelt St. between 1st and 7th Aves., 6th Ave. Between Roosevelt and McKinley, 5th Ave. between Roosevelt and Fillmore, and Portland St. Between Central and 3rd Aves. (11/30/83)
Phoenix, *San Carlos Hotel*, 202 N. Central Ave. (12/08/83)
Tempe, *Elias-Rodriguez House (Tempe MRA)*, 927 E. 8th St. (05/07/84)
Tempe, *Elliott House (Tempe MRA)*, 1010 Maple Ave. (05/07/84)
Tempe, *Gonzales-Martinez House* (Tempe MRA), 320 W. 1st St. (05/07/84)
Tempe, *Goodwin Building (Tempe MRA)*, 512–518 S. Mill Ave. (05/07/84)
Tempe, *Harrington-Birchett House (Tempe MRA)*, 202 E. 7th St. (05/07/84)
Tempe, *Hiatt House (Tempe MRA)*, 1104 Ash Ave. (05/07/84)
Tempe, *Kloss, Rev. Daniel, House (Tempe MRA)*, 202 E. 6th St. (05/07/84)
Tempe, *Laird, Hugh, House (Tempe MRA)*, 821 S. Farmer (05/07/84)
Tempe, *Miller Block (Farmers and Merchants Bank) (Tempe MRA)*, 418–422 Mill Ave. (05/07/84)
Tempe, *Miranda, Jesus, Homestead (Tempe MRA)*, 1992 E. University. (05/07/84)
Tempe, *Moeru, W.A., House (Tempe MRA)*, 850 Ash Ave. (05/07/84)
Tempe, *Morrow-Hudson House (Tempe MRA)*, 1203 E. Alameda Dr. (05/07/84)
Tempe, *Mullen, C.P., House (Tempe MRA)*, 918 Mill Ave. (05/07/84)
Tempe, *Ollerton House (Tempe MRA)*, 1004 S. Mill Ave. (05/07/84)
Tempe, *Openshaw, Samuel, House (Tempe MRA)*, 104 W. 6th St. (05/07/84)
Tempe, *Redden, Byron, House (Tempe MRA)*, 948 Ash Ave. (05/07/84)
Tempe, *Sampson House (Tempe MRA)*, 109 W. 6th St. (05/07/84)
Tempe, *Scudder, B.H., Rental House (Tempe MRA)*, 919 S. Maple Ave. (05/07/84)
Tempe, *Steward House (Tempe MRA)*, 612 Maple St. (05/07/84)
Tempe, *Tempe Concrete Arch Highway Bridge (Tempe MRA)*, Mill Ave. and Salt River (05/07/84)
Tempe, *Tempe Cotton Exchange Cotton Gin Seed Storage Building (Tempe MRA)*, 215 W. Seventh St. (05/07/84)
Tempe, *Walker, Harry, House (Tempe MRA)*, 118 E. 7th St. (05/07/84)

Mohave County

Littlefield vicinity, *Horse Valley Ranch*, Lake Mead National Recreation Area (04/12/84)
Moccasin, *Big House*, Main Rd. (10/20/83)

Navajo County

Homolovi I Ruin, (06/04/84)
Winslow vicinity, *Chevelon Creek Bridge*, Chevelon Creek, SE of Winslow (12/08/83)
Winslow vicinity, *Chevelon Ruin*, SE of Winslow (03/01/84)
Winslow vicinity, *Homolovi III*, N of Winslow (03/01/84)

Pima County

Valencia Site (BB:13:15;BB:13:74), (05/17/84)
Tucson, *University Heights Elementary School*, 1201 N. Park Ave. (10/06/83)

Pinal County

Oracle, *Acadia Ranch*, AZ 77 (02/22/84)
Oracle, *All Saint's Church*, AZ 77 (05/03/84)

Yavapai County

Prescott, *Hill, Samuel, Hardware Company Warehouse*, 232 N. McCormick St. (09/13/84)
Prescott, *Hotel Vendome*, 230 S. Cortez (11/25/83)
Prescott, *Mormon Church*, 126 N. Marina St. (12/22/83)

Yuma County

Yuma, *Lee Hotel (Yuma MRA)*, 390 Main St. (04/12/84)
Yuma, *Masonic Temple (Yuma MRA)*, 153 S. 2nd Ave. (04/12/84)
Yuma, *San Carlos Hotel (Yuma MRA)*, 106 — 1st St. (04/12/84)

ARKANSAS

Bradley County

Warren, *Ederington House*, 326 S. Main St. (06/21/84)

Calhoun County

Calion vicinity, *Ouachita River Lock and Dam No. 8*, SE of Calion (12/19/83)

Crittenden County

Marion, *Crittenden County Bank and Trust Company*, Military Rd. (04/19/84)

Dallas County

Carthage vicinity, *Garrison Place (Dallas County MRA)*, S of AR 48 (10/28/83)
Carthage vicinity, *Hampton Springs Cemetery (Black Section) (Dallas County MRA)*, Off AR 48 (10/28/83)
Carthage vicinity, *Mt. Zion Methodist Church (Dallas County MRA)*, NE of Carthage (10/28/83)
Dalark, *Atchley, Henry, House (Dallas County MRA)*, Off AR 8 (10/28/83)
Fairview, *Thomas Homestead (Dallas County MRA)*, Off AR 7 (03/27/84)
Fordyce, *Amis House (Dallas County MRA)*, 2nd St. (10/28/83)
Fordyce, *Brewster House (Dallas County MRA)*, US 79 (10/28/83)
Fordyce, *Dallas County Courthouse (Dallas County MRA)*, 3rd and Oak Sts. (3/27/84)
Fordyce, *Elliott House (Dallas County MRA)*, 309 Pine St. (03/27/84)
Fordyce, *Fielder House (Dallas County MRA)*, US 79B (10/28/83)
Fordyce, *First Presbyterian Church (Dallas County MRA)*, AR 79B (10/28/83)
Fordyce, *First United Methodist Church (Dallas County MRA)*, E. 4th and Spring Sts. (10/28/83)
Fordyce, *Koonce Building (Dallas County MRA)*, 3rd St. (10/28/83)
Fordyce, *Old Fordyce Post Office (Dallas County MRA)*, E. 2nd St. (10/28/83)
Fordyce, *Rock Island Railway Depot (Dallas County MRA)*, 3rd St. (10/28/83)
Fordyce, *Russell, John, House (Dallas County MRA)*, 904 Charlotte St. (10/28/83)
Fordyce, *Smith, Jessie B., House (Dallas County MRA)*, Off US 79 (10/28/83)
Fordyce, *Wynne House (Dallas County MRA)*, 4th St. (10/28/83)
Holly Springs, *Goodgame, Capt., House (Dallas County MRA)*, AR 128 (10/28/83)
Jacinto, *Mt. Carmel Methodist Church (Dallas County MRA)*, AR 9 (10/28/83)
Pine Grove, *Brazeale Homestead (Dallas County MRA)*, SE of AR 128 (10/28/83)
Pine Grove, *Knight, Ed, House (Dallas County MRA)*, Off AR 128 (10/28/83)
Princeton vicinity, *Princeton Cemetery (Dallas County MRA)*, Off AR 9 (03/27/84)
Princeton, *Mallett, George W., House (Dallas County MRA)*, Off AR 8 (10/28/83)
Princeton, *Princeton Methodist Church (Dallas County MRA)*, AR 9 (10/28/83)
Sparkman, *Sardis Methodist Church (Dallas County MRA)*, NE of Pine Grove off AR 128 (10/28/83)
Tulip vicinity, *Butler-Matthews Homestead (Dallas County MRA)*, SW of Tulip off AR 9 (10/28/83)
Tulip, *Tulip Cemetery (Dallas County MRA)*, Off Ar 9 (10/28/83)

Drew County

Monticello, *Lambert House*, 204 W. Jackson St. (12/22/83)

Howard County

Nashville, *Holt, Elbert W., House*, 902 N. Main St. (09/20/84)

Independence County

Batesville, *Batesville East Main Historic District*, Main St. between 7th and 11th Sts. (12/22/83)

Pulaski County

Little Rock, *Gans, Solomon, House*, 1010 W 3rd St. (03/29/84)
Little Rock, *Mann, George R., Building*, 115 E. 5th St. (12/29/83)

Stone County

Marcella, *Hess, Thomas E., House*, AR 14 (12/27/83)

Union County

El Dorado, *El Dorado Apartments*, 420 Wilson Pl. (12/01/83)

Washington County

Fayetteville, *Guisinger Building*, E. Mountain St. (09/20/84)

CALIFORNIA

Alameda County

Oakland, *Oakland YWCA Building*, 1515 Webster St. (09/20/84)

Amador County

Volcano, *St. George Hotel*, 2 Main St. (09/07/84)

Calaveras County

Angels Camp, *Choy, Sam, Brick Store*, Bird Way (09/20/84)
Angels Camp, *Utica Mansion*, 1103 Bush St. (05/31/84)
San Andreas, *Snyder, John J., House*, 247 W. St. Charles St. (08/02/84)

Contra Costa County

Clayton, *Clayton Vineyards-DeMartini Winery*, 5919 Clayton Rd. (08/30/84)

El Dorado County

Placerville, *Fountain-Tallman Soda Works*, 524 Main St. (09/13/84)

Fresno County

Fresno, *Fresno Brewing Company Office and Warehouse*, 100 M St. (01/05/84)
Reedley, *Reedley Opera House Complex*, 10th and G Sts. (04/05/84)

Humboldt County

Arcata, *Hotel Arcata*, 708 — 9th St. (01/05/84)
Ferndale, *Shaw House*, 703 Main St. (09/13/84)

Kern County

Bakersfield, *Tevis Block*, 1712 — 19th St. (03/29/84)

Los Angeles County

Lloyd, Harold, Estate (Greenacres), (02/09/84)
Claremont, *Scripps College for Women*, Columbia and 10th St. (09/20/84)
Long Beach, *Reeve, Jennie A., House*, 4260 Country Club Dr. (06/21/84)
Los Angeles, *Alvarado Terrace Historic District*, Alvarado Terr., Bonnie Brae and 14th Sts. (05/17/84)
Los Angeles, *American Trona Corporation Building*, Pacific Ave. (08/30/84)
Los Angeles, *Federal Reserve Bank of San Francisco*, 409 W. Olympic Blvd. (09/20/84)
Los Angeles, *Friday Morning Club*, 938–940 S. Figueroa St. (05/17/84)
Los Angeles, *Hacienda Arms Apartments*, 8439 Sunset Blvd. (12/15/83)
Los Angeles, *Heinsbergen Decorating Company Building*, 7415 Beverly Blvd. (09/20/84)
Los Angeles, *Highland Park Police Station*, 6045 York Blvd. (03/22/84)
Los Angeles, *Los Angeles Memorial Coliseum*, 3911 S. Figueroa St. (7/27/84) NHL
Los Angeles, *Title Guarantee and Trust Company Building*, 401–411 W. 5th St. (07/26/84)
Pasadena, *Evanston Inn*, 385–395 S. Marengo Ave. (09/13/84)
Pasadena, *Lukens, Theodore Parker, House*, 267 N. El Molino Ave. (03/29/84)
Pasadena, *Villa Verde*, 800 S. San Rafael (09/13/84)
Redondo Beach, *Woman's Club of Redondo Beach*, 400 S. Broadway (04/19/84)
Torrance, *Auditorium (Torrance High School Campus TR)*, 2200 W. Carson (10/13/83)
Torrance, *Home Economics Building (Torrance High School Campus TR)*, 2200 W. Carson (10/13/83)
Torrance, *Main Building (Torrance High School Campus TR)*, 2200 W. Carson (10/13/83)
Torrance, *Torrance School (Torrance High School Campus TR)*, 2200 W. Carson (10/13/83)

Marin County

Larkspur, *Alexander-Acacia Bridge*, Alexander Ave. between Acacia and Monte Vista Aves. (01/05/84)
San Rafael, *San Rafael Improvement Club*, 1800 Fifth Ave. (03/29/84)

Merced County

Merced, *Merced County High School*, 2125 M St. (05/31/84)

Monterey County

Salinas, *Black, Samuel M., House,* 418 Pajaro St. (09/20/84)

Napa County

Napa, *Hackett House,* 2109 — 1st St. (04/19/84)

Orange County

Balboa, *Balboa Pavilion,* 400 Main St. (05/17/84)
Brea, *Brea City Hall and Park,* 401 S. Brea Blvd. (05/24/84)
Fullerton, *Fullerton Union Pacific Depot,* 100 E. Santa Fe Ave. (10/12/83)
Laguna Beach, *Mariona (Villa Rockledge),* 2529 S. Coast Hwy. (03/29/84)
Tustin, *Stevens, Sherman, House,* 228 W. Main St. (01/05/84)

Sacramento County

Sacramento, *Alkali Flat Central Historic District,* Roughly E and F Sts. between 9th and 12th Sts. (07/26/84)
Sacramento, *Alkali Flat North Historic District,* D and 11th Sts. (04/19/84)
Sacramento, *Alkali Flat West Historic District,* E, F, and 8th Sts. (07/26/84)
Sacramento, *Calpak Plant No. 11,* 1721 C St. (05/17/84)
Sacramento, *Capitol Extension District,* Capitol Mall (05/24/84)

San Benito County

San Juan Bautista, *Marentis House,* 45 Monterey St. (09/13/84)

San Diego County

Jacumba vicinity, *Table Mountain District,* NE of Jacumba (10/28/83)
San Diego, *Moylan, Major Myles, House,* 2214–2224 — 2nd Ave. (03/22/84)
San Diego, *Panama Hotel,* 105 W. F St. (03/22/84)

San Francisco County

San Francisco, *Aquatic Park Historic District,* Bounded by Van Ness Ave., Hyde and Polk Sts. (01/26/84)
San Francisco, *Chambord Apartments,* 1298 Sacramento St. (09/20/84)
San Francisco, *Dallam-Merritt House,* 2355 Washington St. (04/19/84)
San Francisco, *Koshland House,* 3800 Washington St. (01/05/84)
San Francisco, *Wapama (steam schooner),* Hyde St. Pier (04/24/73) NHL
San Francisco, *Warren, Russell, House,* 465–467 Oak St. and 368 Lily St. (12/12/83)

San Joaquin County

Lodi vicinity, *Terminous Culling Chute,* 14900 W. CA 12 (04/19/84)

San Mateo County

San Carlos, *Southern Pacific Depot,* 559 El Camino Real (09/20/84)

Santa Barbara County

Santa Maria, *Minerva Club of Santa Maria,* 127 W. Boone St. (09/20/84)

Santa Clara County

Santa Clara, *Santa Clara Verein* 1082 Alviso St. (01/19/84)

Santa Cruz County

Aptos vicinity, *Valencia Hall,* Valencia Rd. (09/20/84)
Santa Cruz vicinity, *Glen Canyon Covered Bridge,* Branciforte Dr. (05/17/84)
Watsonville, *Madison House,* 335 East Lake (02/02/84

Sonoma County

Santa Rosa, *Gables, The,* 4257 Petaluma Hill Rd. (09/20/84)

Trinity County

Helena, *Helena Historic District,* N of US 299 W, on North Fork of Trinity River (05/24/84)

Tuolumne County

Sonora, *Sugg House,* 37 Theall St. (09/13/84)

Ventura County

Santa Paula, *Glen Tavern Hotel,* 134 N. Mill St. (07/26/84)

COLORADO

Arapahoe County

Aurora, *Melvin School,* 4950 S. Laredo St. (01/05/84)
Parker vicinity, *Seventeen Mile House,* 8181 S. Parker Rd. (10/06/83)

Boulder County

Boulder vicinity, *Swedish Evangelical Lutheran Church of Ryssby,* N. 63rd St. (02/16/84)
Boulder vicinity, *Walker Ranch Historic District,* W of Boulder (06/14/84)
Hygiene vicinity, *Church of the Brethern,* 17th Ave. (01/05/84
Longmont, *Empson Cannery,* 15 — 3rd. Ave. (01/05/84)

Chaffee County

Salida, *Salida Downtown Historic District,* Roughly bounded by Arkansas River, RR track, 3rd, and D Sts. (06/14/84)

Clear Creek County

Idaho Springs, *Idaho Springs Downtown Commercial District,* Roughly bounded by Center Alley, 14th Ave., Riverside Dr., and Idaho St. (01/05/84)

Delta County

Hotchkiss, *Hotchkiss Hotel,* 101 Bridge St. (09/20/84)

Denver County

Denver, *Carter-Rice Building* 1623–1631 Blake St. (09/20/84)
Denver, *Crocker, F.W., and Company Steam Cracker Factory (Nabisco Company Building),* 1860 Blake St. (06/21/84)
Denver, *Denver City Railway Company Building,* 1635 — 17th St., 1734–1736 Wynkoop St. (06/04/84)
Denver, *Dunning-Benedict House,* 1200 Pennsylvania St. (09/20/84)
Denver, *Eppich Apartments,* 1266 Emerson St. (01/05/84)
Denver, *McPhee and McGinnity Building,* 2301 Blake St. (09/20/84)
Denver, *Norman Apartments,* 99 S. Downing St. (12/22/83)
Denver, *Orlando Flats,* 2330 Washington St. (02/16/84)
Denver, *Pacific Express Stable,* 2363 Blake St. (09/20/84)
Denver, *Smith, Pierce T., House,* 1751 Gilpin St. (09/20/84)
Denver, *Stonemen's Row Historic District,* South side 28th Ave. Between Umatilla and Vallejo Sts. (01/05/84)
Denver, *Weckbaugh House,* 1701 E. Cedar Ave. (01/16/84)

Douglas County

Castle Rock, *Castle Rock Elementary School,* 3rd and Cantril Sts. (09/20/84)

El Paso County

Colorado Springs, *Emmanuel Presbyterian Church,* 419 Mesa Rd. (05/17/84)
Colorado Springs, *Hagerman Mansion,* 610 N. Cascade Ave. (09/20/84)
Manitou Springs, *Manitou Springs Histroic District (Manitou Springs MRA),* Roughly bounded by El Paso Blvd., Ruxton Ave., US 24, and Iron Mt. Ave. (10/07/83)

Fremont County

Canon City, *Canon City Downtown Historic District,* Roughly Main St. from 3rd to 9th Sts. and Macon Ave. (10/20/83)

Gunnison County

Gunnison vicinity, *Curecanti Archeological District,* W of Gunnison (08/15/84)
Gunnison, *Fisher-Zugelder House and Smith Cottage,* 601 N. Wisconsin St. (01/05/84)
Gunnison, *Webster Building,* 229 N. Main St. (05/17/84)

Jefferson County

Golden vicinty, *Lorraine Lodge (Charles Boettcher Summer Home),* SW of Golden (01/16/84)

Kit Carson County

Burlington, *Burlington State Armory,* 191 — 14th St. (09/20/84)

Larimer County

Estes Park, *Park Theatre,* 130 Moraine Ave. (06/14/84)
Fort Collins, *Collins Municipal Railway Birnery Safety Streetcar No. 21,* 1801 W. Mountain Ave. (01/05/84)

Logan County

Sterling vicinty, *Luft, Conrad Sr., House,* 1429 CO 14 (05/17/84)
Sterling, *Harris, W.C., House,* 102 Taylor St. (05/17/84)

Mesa County

Grand Junction, *North Seventh Street Historic Residential District,* 7th St. between Hill and White Aves. (01/05/84)

Montezuma County

Dolores vicinity, *Anasazi Archeological District,* S of Dolores (07/19/84)

Otero County

La Junta, *Finney, Dr. Frank, House,* 608 Belleview Ave. (05/17/84)
La Junta, *Sciumbato, Daniel, Grocery Store,* 706 Second St. (05/17/84)

Ouray County

Ouray, *Ouray Historic District,* US 550 (10/06/83)

Pueblo County

Pueblo, vicinty, *Butler House*, 6916 Broadacre Rd. (08/16/84)
Pueblo, *Henkel-Duke Mercantile Company Warehouse*, 212–222 W. 3rd Ave. (05/17/84)
Pueblo, *Rood Candy Company Building*, 408–416 W. 7th St. (05/17/84)
Pueblo, *Star Journal Model Home*, 2920 High St. (02/16/84)
Pueblo, *Streit, J.L., House*, 2201 Grand Ave. (09/20/84)
Pueblo, *Walter, Martin, House*, 300 W. Abriendo Ave. (05/17/84)

Teller County

Goldfield, *Goldfield City Hall and Fire Station*, Victor Ave. and 9th St. (05/17/84)
Victor, *Midland Terminal Railroad Depot*, 230 N. 4th St. (05/17/84)

Weld County

Greeley, *Woodbury, Joseph A., House*, 1124 — 7th St. (05/17/84)
Longmont vicinity, *Sandstone Ranch*, E of Longmont off CO 119 (01/23/84)

CONNECTICUT

Fairfield County

Bridgeport, *Perry, Davy, House* 531 Lafayette St. (03/22/84)
Bridgeport, *St. John's Episcopal Church*, 768 Fairfield Ave. (08/02/84)
Bridgeport, *United Congregational Church*, 877 Park Ave. (07/19/84)
Danbury, *Main Street Historic District*, Boughton, Elm, Ives, Keeler, Main, West, and White Sts. (11/29/83)
Norwalk, *Loth, Joseph, Company Building*, 25 Grand St. (05/17/84)
Ridgebury, *Ridgebury Congregational Church*, Ridgebury Rd. and George Washington Hwy. (03/01/84)
Ridgefield, vicinity, *West Mountain Historic District*, CT 102 (02/23/84)
Ridgefield, *Hyatt, Thomas, House*, 11 Barlow Mountain Rd. (02/16/84)
Ridgefield, *June, Lewis, House*, 478 N. Salem Rd. (02/16/84)
Ridgefield, *Ridgefield Center Historic District*, Roughly bounded by Pound St., Fairview Ave., Prospect, Ridge, and Whipstick Rds. (09/07/84)
Ridgefield, *Weir, J. Alden, Farm (District)*, Nod Hill Rd. and Pelham Lane (01/05/84)
Stamford, *Downtown Stamford Historic District*, Atlantic, Main, Bank, and Bedford Sts. (10/06/83)
Stamford, *St. Andrew's Protestant Episcopal Church*, 1231 Washington Blvd. (12/06/83)
Stratford, *Stratford Center Historic District*, Roughly bounded by E. Broadway, Ferry Blvd., Housatonic River, Connecticut Tnpke, Birdseye and Main Sts. (07/05/84)
Westport, *Bradley-Wheeler House*, 25 Avery Pl. (07/05/84)
Westport, *National Hall Historic District*, Riverside Ave., Wilton and Post Rds. (09/13/84)
Wilton, *Marvin Tavern*, 405 Danbury Rd. (04/26/84)

Hartford County

East Hartford, *Gilman-Hayden House*, 1871 Main St. (08/16/84)
East Hartford, *St. John's Episcopal Church*, 1160 Main St. (11/28/83)
Farmington, *Pequabuck Bridge*, Meadow Rd. at Pequabuck River (07/19/84)
Glastonbury, *Glostonbury Historic District*, Roughly Main St. from Hebron Ave. to Talcott Rd. (08/02/84)
Hartford, *Ann Street Historic District*, Allyn, Ann, Asylum, Church, Hicks and Pearl Sts. (11/28/83)
Hartford, *Christ Church*, 955 Main St. (12/29/83)
Hartford, *Clay Hill Historic District (Boundary Increase)*, 8 Florence St. (02/16/84)
Hartford, *Elm Street Historic District*, 71–166 Capitol Ave., 55–97 Elm St., 20–30 Trinity St. (06/28/84)
Hartford, *Frog Hollow Historic District (Boundary Increase)*, Bounded by Park Terr., Hillside Ave., Hamilton, and Summit Sts. (03/01/84)
Hartford, *Parkside Historic District*, 176–230 Wethersfield Ave. (05/01/84)
Hartford, *Polish National Home*, 60 Charter Oak Ave. (10/20/83)
Hartford, *Sigourney Square Historic District (Boundary Increase)*, 216–232 Garden St. (12/21/83)
Hartford, *St. Paul's Methodist Episcopal Church*, 1886–1906 Park St. (08/02/84)
Hartford, *Wethersfield Avenue Car Barn*, 331 Wethersfield Ave. (11/28/83)
New Britain, *Holmes, Francis H., House*, 349 Rocky Hill Ave. (06/28/84)
New Britain, *Washington School*, High and Carmody Sts. (07/19/84)
Simsbury, *Drake Hill Road Bridge*, Drake Hill Rd. at Farmington River (07/19/84)
West Hartford, *Mount St. Joseph Academy*, 235 Fern St. (12/22/83)

Litchfield County

Milton, *Welch, David, House*, Potash and Milton Rds. (02/16/84)
New Milford, *Housatonic Railroad Station*, Railroad St. (03/01/84)
Norfolk, *Low House (Taylor Alfredo, S. G., TR)*, Highfield Rd. (02/17/84)
Norfolk, *Moseley House/Farm (Taylor, Alfredo, S. G., TR)*, Greenwoods Rd. (02/17/84)
Norfolk, *Mulville House (Taylor, Alfredo, S. G., TR)*, Mountain Rd. (02/17/84)
Norfolk, *Noble House (Taylor, Alfredo, S. G. TR)*, Highfield Rd. (02/17/84)
Norfolk, *Norfolk Downs Shelter (Taylor, Alfredo, S. G., TR)*, Gold Rd. (02/22/84)
Norfolk, *Sports Building (Taylor, Alfredo, S. G., TR)*, Windrow Rd. (02/22/84)
Norfolk, *Thumb, Tom, House (Taylor, Alfredo, S. G., TR)*, Windrow Rd. (02/22/84)
Norfolk, *World War I Memorial (Taylor, Alfredo, S. G., TR)*, Greenwoods Rd. West and North Sts. (02/17/84)
Salisbury, *Lime Rock Historic District*, Roughly White Hollow, Elm, Lime Rock, Norton Hill, and Furnace Rds. (07/05/84)
Salisbury, *Scoville Powerhouse*, Twin Lakes and Beaver Dam, Rds. (02/16/84)
Thomaston, *Trinity Church*, Main St. (08/01/84)
Torrington, *Warner Theater*, 68–82 Main St. (02/16/84)
Winchester, *Winchester Soldiers' Monument*, Crown St. (01/26/84)
Winsted, *Camp, Moses, House*, 682 Main St. (05/10/84)

Middlesex County

Deep River, *Doris (sailing yacht)*, Connecticut River off River Rd. (05/31/84)
Deep River, *Pratt, Read and Company Factory Complex*, Main St. between Bridge and Spring Sts. and 5 Bridge St. (08/30/84)
Middle Haddam, *Middle Haddam Historic District*, Moodus and Long Hill Rds. (02/03/84)

New Haven County

Naugatuck, *Salem School*, 124 Meadow St, (11/03/83)
New Haven, *Ninth Square Historic District*, Roughly bounded by Church, State, George, and Court Sts. (05/03/84)
New Haven, *Chapel Street Historic District*, Roughly bounded by Park, Chapel, Temple, George, and Crown Sts. (04/05/84)
New Haven, *Cook, John, House*, 35 Elm St. (11/03/83)
New Haven, *Lighthouse Point Carousel*, Lighthouse Point Park, Lighthouse Ave. (12/15/83)
New Haven, *Lincoln Theatre*, 1 Lincoln St. (03/01/84)
New Haven, *Quinnipiac River Historic District*, Roughly bounded by Quinnipiac Ave., Lexington, Chapel, Ferry, Pine, Front, and Lombard Sts. (06/28/84)
New Haven, *Upper State Street Historic District*, Roughly State St. from Bradley St. to Mill River St. (09/07/84)
Seymour, *Seymour High School and Annex*, 100 Bank St. (11/17/83)

New London County

East Lyme, *Gorton, William, Farm*, 14 West Lane (04/05/84)
Groton, *Brandford House*, Shennecosset and Eastern Point Rds. (01/23/84)
Norwich, *Broad Street School*, 100 Broad St. (01/19/84)
Norwich, *Norwich Town Hall*, Union St. and Broadway (12/22/83)
Norwich, *Telephone Exchange Building*, 23 Union St. (11/23/83)

Tolland County

Rockville, *Rockville Historic District*, Roughly bounded by Snipsic St., Davis Ave., West and South Sts. (09/13/84)
Rockville, *Saxony Mill*, 66 West St. (11/10/83)
Vernon, *Minterburn Mill*, 215 E. Main St. (02/16/84)

Windham County

Woodstock, *Woodstock Academy Classroom Building*, Academy Rd. (02/16/84)

DELAWARE

Kent County

Smyrna vicinity, *Cook, Gov. John, House*, S of Smyrna (10/06/83)
Smyrna vicinity, *Cummins, David J., House*, E of Smyrna (10/06/83)
Smyrna vicinity, *Cummins, Timothy, House*, E of Smyrna (10/06/83)
Smyrna vicinity, *Short's Landing Hotel Complex*, NE of Smyrna (10/17/83)

Smyrna vicinity, *Voshell, John M., House*, E of Smyrna (10/06/83)

New Castle County

Delaware City, *Delaware City Historic District*, Roughly bounded by the Delaware River, Dragon Creek, DE 9, and the Delaware and Chesapeke Canals (12/15/83)
Middletown vicinity, *Pharo House*, Odessa and Silver Lake Rds. (08/09/84)
Odessa vicinity, *Fairview*, SE of Odessa (05/03/84)
Odessa, *Odessa Historic District (Boundary Increase)*, Roughly Main and High Sts. between Appoquinimink River and DE 4 (08/09/84)
Talleyville vicinity, *Hicklen, William, House*, (10/06/83)
Wilmington vicinity, *Brandywine Powder Mills District*, DE 141 and Brandywine River (05/03/84)
Wilmington, *Cool Spring Park Historic District*, Bounded by Park Pl., Jackson, Van Buren, and 10th Sts. (12/27/83)
Wilmington, *Eighth Street Park Historic District (Boundary Increase)*, Broom and 10th Sts. (05/03/84)
Wilmington, *Mount Lebanon Methodist Episcopal Church*, 850 Mount Lebanon Rd. (05/03/84)
Wilmington, *Shipley Run Historic District*, Roughly bounded by Adams, 11th, Jefferson, and 7th Sts. (08/09/84)
Wilmington, *St. Anthony's Roman Catholic Church*, W. Ninth and N. duPont Sts. (05/03/84)
Wilmington, *Trinity Episcopal Church*, 1108 N. Adams St. (08/16/84)

Sussex County

Bridgeville, *Old Bridgeville Fire House*, 102 William St. (08/09/84)
Greenwood vicinity, *Richards Historic District*, County Rd. 34 (12/15/83)

DISTRICT OF COLUMBIA

Bowen, Anthony, YMCA, 1816 — 12th St. NW (10/03/83)
Buildings at 1000 Block of Seventh Street, and 649–651 New York Avenue NW, 1005–1035 — 7th St., and 649–651 New York Ave. NW (02/02/84)
Church of the Ascension, 1215 Massachusetts Ave. NW (01/19/84)
Mayflower Hotel, 1127 Connecticut Ave. NW (11/14/83)
Union Trust Building, 740 — 15th St. NW (01/19/84)
Wardman Park Annex and Arcade, 2600 Woodley Rd. NW (01/31/84)
Wheatley, Phyllis, YWCA, 901 Rhode Island Ave. NW (10/06/83)
Wardman Row, 1416–1440 R St. NW (07/27/84)

FLORIDA

Alachua County

Micanopy, *Micanopy Historic District*, Roughly Cholokka Blvd. from US 441 to Ocala St. then Smith St. W to Okehumkee St. (10/28/83)

Brevard County

Cocoa vicinity, *Cape Canaveral Air Force Station*, Launch Pads 5, 6, 13, 14, 19, 26, 34 and Mission Control Center (04/16/84) NHL
Melbourne Beach, *Melbourne Beach Pier*, Ocean Ave., and Riverside Dr. (04/12/84)

Broward County

Ft. Lauderdale, *Bonnet House*, 900 Birch Rd. (07/05/84)
Pompano Beach, *Sample Estate*, 3161 N. Dixie Hwy. (03/01/84)

Collier County

Hinson Mounds (8CR180), (12/29/78)

Dade County

Kampong, (03/01/84)
Offshore Reefs Archeological District, (08/24/84)
Coral Gables, *Coral Gables House (Merrick Manor)*, 907 Coral Way (09/09/84)
Homestead vicinity, *Rock Gate (Coral Castle)*, 28655 S. Federal Hwy. (05/10/84)
Miami, *Fire Station No. 4*, 1000 S, Miami Ave. (03/08/84)
Miami, *Olympia Theater and Office Building*, 174 E. Flager St. (03/08/84)
Miami, *US Post Office and Courthouse*, 300 NE 1st Ave. (10/14/83)

DeSoto County

Arcadia, *Arcadia Historic District*, Roughly bounded by Lee and Miles Aves., Imogene, Cypress, Pine, and Magnolia Sts. (05/10/84)

Duval County

Jacksonville, *Florida Baptist Building*, 218 W. Church St. (01/12/84)

Gadsden County

Quincy, *Gregory, Willoughby, House*, Hwy. 274 and Krausland Rd. (12/16/83)

Gulf County

White City vicinity, *US Montgomery (Snagboat)*, S of White City on Intracoastal Waterway (11/28/83)

Hillsborough County

Plant City, *Hillsboro State Bank Building*, 121 N. Collins St. (08/01/84)
Tampa, *West Tampa Historic District*, Roughly bounded by Cypress and Ivy Sts., Fremont and Habana Aves. (10/18/83)

Lee County

Fort Myers, *Murphy-Burroughs House*, 2505 — 1st St. (08/01/84)

Leon County

Tallahassee, *Bradley's County Store Complex*, Moccasin Gap Rd. (04/12/84)
Tallahassee, *Magnolia Heights Historic District*, 701–1005 E. Park Ave., and Cadiz St. (08/29/84)

Marion County

McIntosh, *McIntosh Historic District*, Roughly bounded by RR Right-of-way, 10th St., Aves. C and H (11/18/83)
Ocala, *Ocala Historic District*, Roughly bounded by Broadway, SE 8th St., Silver Springs Pl., SE 3rd, 13th, and Watula Aves. (01/12/84)

Monroe County

Key West, *US Naval Station*, Roughly bounded by Front, Whitehead, Eaton, and Caroline Sts. (05/08/84)
Key West, *Western Union (schooner)*, Pier A, Truman Annex (05/16/84)

Orange County

Orlando, *Bridges, J.J., House*, 704 S. Kuhl Ave. (01/26/84)

Palm Beach County

Palm Beach, *Warden, William Gray, House*, 112 Seminole Ave. (08/01/84)
West Palm Beach, *Hibiscus Apartments*, 619 Hibiscus St. (05/10/84)

Pinellas County

St. Petersburg, *Central High School*, 2501 — 5th Ave. N (08/01/84)
Tarpon Springs, *Arcade Hotel*, 210 Pinellas Ave. (01/12/84)

Putnam County

Palatka, *Palatka North Historic District*, Roughly bounded by St. John's River, Bronson, N. 1st, N. 5th, and Main Sts. (11/17/83)
Palatka, *Palatka South Historic District*, Roughly bounded by St. John's River, Oak, S. 9th, and Morris Sts. (11/17/83)

Sarasota County

Sarasota, *Atlantic Coast Line Passenger Depot (Sarasota MRA)*, 1 S. School Ave. (03/22/84)
Sarasota, *Bacon and Tomlin, Inc. (Sarasota MRA)*, 201 S. Palm Ave. (03/22/84)
Sarasota, *Bay Haven School (Sarasota MRA)*, 2901 W. Tamiami Circle (04/23/84)
Sarasota, *Burns Court Historic District (Sarasota MRA)*, 400–446 Burns Court and 418, 426, and 446 S. Pineapple Ave. (03/22/84)
Sarasota, *City Waterworks (Sarasota MRA)*, 1015 N. Orange Ave. (04/23/84)
Sarasota, *DeCanizares, F.A., House (Sarasota MRA)*, 1215 N. Palm Ave. (03/22/84)
Sarasota, *DeMarcay Hotel (Sarasota MRA)*, 27 S. Palm Ave. (03/22/84)
Sarasota, *Edwards Theatre (Sarasota MRA)*, 57 N. Pineapple Ave. (03/22/84)
Sarasota, *El Vernona Apartments-Broadway Apartments (Sarasota MRA)*, 1133 — 4th St. (03/22/84)
Sarasota, *Frances-Carlton Apartments (Sarasota MRA)*, 1221–1227 N. Palm Ave. (03/22/84)
Sarasota, *Halton, Dr. Joseph, House (Sarasota MRA)*, 308 Cocoanut Ave. (03/22/84)
Sarasota, *Kress, S.H., Building (Sarasota MRA)*, 1442 Main St. (03/22/84)
Sarasota, *Purdy, Capt. W.F., House (Sarasota MRA)*, 3315 Bayshore Rd. (03/22/84)
Sarasota, *Roth Cigar Factory (Sarasota MRA)*, 30 Mira Mar Court (03/22/84)
Sarasota, *Sarasota County Courthouse (Sarasota MRA)*, 2000 Main St. (03/22/84)
Sarasota, *Sarasota Herald Building (Sarasota MRA)*, 539 S. Orange Ave. (03/22/84)
Sarasota, *Sarasota High School (Sarasota MRA)*, 1001 S. Tamiami Trail (03/22/84)
Sarasota, *Sarasota Times Building (Sarasota MRA)*, 1214–1216 — 1st St. (03/22/84)
Sarasota, *South Side School (Sarasota MRA)*, 1901 Webber St. (09/14/84)
Sarasota, *US Post Office-Federal Building (Sarasota MRA)*, 111 S. Orange Ave. (03/22/84)

Sarasota, *William, H.B., House (Sarasota MRA)*, 1509 S. Orange Ave. (03/22/84)
Sarasota, *Wilson, Dr. C.B., House (Sarasota MRA)*, 235 S. Orange Ave. (03/22/84)
Venice, *Hotel Venice*, 200 N. Nassau St. (02/06/84)

Seminole County

Longwood, *Longwood Hotel*, Old Dixie Highway (05/10/84)

St. Lucie County

Fort Pierce, *St. Lucie High School*, 1100 Delaware Ave. (01/26/84)
Ft. Pierce, *Casa Caprona*, 2605 St. Lucie Blvd. (06/07/84)

Volusia County

Ormond Beach, *Anderson-Price Memorial Library Building*, 42 N. Beach St. (01/26/84)

Washington County

Vernon vicinity, *Moss Hill Church*, Vernon-Greenhead Rd. (11/07/84)

GEORGIA

Barrow County

Russell, *Russell Homeplace Historic District*, US 29 (09/07/84)
Winder, *Brood Street Commerical Historic District*, Broad and Athens Sts. (07/26/84)
Winder, *Jackson Street Commerical Historic District*, Roughly bounded by Jackson, Athens, Candler, and Broad Sts. (07/26/84)
Winder, *North Broad Street Residential Historic District*, Roughly bounded by Woodlawn Ave., Center, Broad, and Stephens Sts. (07/26/84)

Bartow County

Cartersville, *Grand Theater*, 2 Wall St. (06/28/84)

Camden County

St. Marys vicinity, *Duck House (Cumberland Island National Seashore MRA)*, Cumberland Island (02/13/84)
St. Marys vicinity, *Dungeness Historic District (Cumberland Island National Seashore MRA)*, Cumberland Island (02/13/84)
St. Marys vicinity, *Main Road (Cumberland Island National Seashore MRA)*, Cumberland Island (02/13/84)
St. Marys vicinity, *Rayfield Archeological District (Cumberland Island National Seashore MRA)*, Cumberland Island (02/13/84)

Carroll County

Carrollton, *South Carrollton Residential Historic District*, Roughly bounded by RR tracks, Harmon and West Aves, Bradley, Mill, and Garrett Sts., Tillman and Hill Drs (06/28/84)

Chatham County

Savannah vicinity, *Isle of Hope Historic District*, Roughly bounded by Skidaway River, Parkersburg Rd., Island, Cornus, and Noble Glen Drs. (09/02/84)
Savannah, *St. Philip AME Church*, 613 W. Broad St. (08/02/84)

Cherokee County

Canton, *Canton Commerical Historic District*, Roughly bounded by Main, Church, Archer, and Marietta Sts. (01/12/84)

Clarke County

Athens vicinity, *Chestnut Grove School*, 610 Epps Bridge Rd. (06/28/84)
Athens, *Downtown Athens Historic District (Boundary Increase)*, Roughly bounded by Hancock Ave., Foundry, Mitchell, Broad, and Lumpkin Sts. (05/31/84)

Clay County

Fort Gaines, *Fort Gaines Historic District*, Roughly bounded by Chattahoochee River, GA 37, GA 39, College, Commerce and Jefferson Sts. (05/17/84)

Clayton County

Lovejoy vicinity, *Crawford-Dorsey House and Cemetery*, Freeman and McDonough Rds. (07/05/84)

Cobb County

Marietta, *Braswell-Carnes House*, 2430 Burnt Hickory Rd., NW (03/01/84)

Colquitt County

Moultrie vicinity, *Coleman, James W., House*, GA 33 (12/22/84)

Crisp County

Cordele, *US Post Office*, 102–104 — 6th St. (06/29/84)

Dougherty County

Albany, *Albany District Pecan Growers' Exchange*, 211–213 Roosevelt Ave. (05/10/84)
Albany, *Davis-Exchange Bank Building*, 100–102 N. Washington St. (02/23/84)

Fulton County

Atlanta, *Burns Cottage*, 988 Alloway Pl. SE (12/01/84)
Atlanta, *Ford Motor Company Assembly Plant*, 899 Ponce de Leon Ave. (05/10/84)
Atlanta, *Peachtree Christian Church*, 1580 Peachtree St. NW (05/17/84)
Atlanta, *Sciple, Charles, E., House*, 1112 Peachtree St. (03/01/84)
Atlanta, *Thorton Building*, 10 Pryor St. (10 Park Place South) (02/23/84)
Fairburn vicinity, *Beavers, John F., House*, NW of Fairburn off GA 92 (03/29/84)
Palmetto, *Arnold, Thomas P., House*, 518 S. Main St. (05/10/84)

Gwinnett County

Buford, *Allen, John Quincy, House* 345 E. Main St. (01/12/84)

Habersham County

Cornelia vicinity, *Chenocetah Fire Tower*, Chenocetah Mountain (06/11/84)
Cornelia, *Irvin General Merchandise Store*, Irvin St. (07/26/84)

Hancock County

White Plains vicinity, *Jackson, John S., Plantation House and Outbuildings*, Off GA 16 (06/28/84)

Jefferson County

Wadley vicinity, *Cunningham-Coleman House*, SE of Wadley (09/07/84)

Long County

Ludowici, *Ludowici Well Pavilion*, McQueen St. (09/07/84)

Lowndes County

Valdosta, *Carnegie Library of Valdosta*, 305 W. Central Avenue (01/12/84)
Valdosta, *Crestwood*, 502 Eager Rd. (01/12/84)
Valdosta, *Fairview Historic District*, W. Central, Floyd, River, Varnedoe, and Wells Sts. (06/28/84)
Valdosta, *North Patterson Street Historic District*, 1003–1111 N. Patterson St. (06/28/84)

Madison County

Colbert, *Colbert Historic District*, Roughly bounded by 4th and 5th Sts., 4th and 8th Aves. (05/31/84)

Marion County

Buena Vista vicinity, *Shiloh-Marion Baptist Church and Cemetery*, GA 41 (05/17/84)
Friendship vicinity, *Champion-McGarrah Plantation*, Off GA 30 (06/28-84)

Meriwether County

Greenville, *Render Family Homestead*, GA 18 (03/01/84)
Odessadale, *Jones-Florence Plantation*, Off GA 109 (03/29/84)

Mitchell County

Baconton vicinity, *Bacon Family Homestead*, W. Durham St. and Albany Bainbridge Stage Rd. (11/25/83)
Baconton vicinity, *Baconton Commercial Historic District (Baconton MRA)*, E. Walton and E. Durham Sts., N. Railroad and S. Railroad Aves., and GA 3 (12/01/83)
Baconton vicinity, *Jackson, George W., house (Baconton MRA)*, 102 S. Jackson St. (12/01/83)
Baconton vicinity, *Mount Enon Church and Cemetery*, Old Stage Coach Rd. (12/22/83)
Baconton vicinity, *South Railroad Historic District (Baconton MRA)*, S. Railroad Ave., GA 3, and Seaborad Coast Line RR tracks (12/01/83)
Baconton vicinity, *Walton Street-Church Street Historic District (Baconton MRA)*, Walton and Church Sts. (12/01/83)

Muscogee County

Columbus, *Adams Cotton Gin Building*, 6601 Hamilton Rd. (05/17/84)
Columbus, *Liberty Theater*, 821 — 8th Ave. (05/22/84)
Columbus, *Waverly Terrace*, Roughly bounded by Hamilton Rd., Peabody Ave., 27th and 30th Sts. (12/01/83)

Oglethorpe County

Smithonia, (06/21/84)

Pickens County

Jasper, *Pickens County Jail*, N. Main St. (01/12/84)

Sumter County

Plains, *Plains Historic District*, Roughly bounded by Buena Vista Rd., Hospital, Clark, Main, Thomas, Paschal, and Bond Sts. (06/28/84)

Thomas County

Thomasville, *Dawson Street Residential Historic District*, Roughly bounded by North Blvd., Madison, Jackson, and Hansell Sts. (09/07/84)
Thomasville, *East End Historic District*, Roughly bounded by Metcalf, Loomis, Colton, and Blackshear Sts. (09/07/84)
Thomasville, *Paradise Park Historic District*, Roughly bounded by Metcalf Ave., Colton, Broad, and Loomis Sts. (09/07/84)
Thomasville, *Thomasville Commercial Historic District*, Roughly bounded by N. Stevens, N. Madison, N. Broad, Remington, Jackson, and Jefferson Sts. (09/07/84)
Thomasville, *Tockwotton-Love Place Historic District*, Roughly bounded by McLean Ave., Hansell, Jackson, and Seward Sts. (09/07/84)

Troup County

LaGrange, *Broad Street Histoic District*, Roughly bounded by McLendon Circle, Gordon St., Vernon Rd., and Wavely Way (01/12/84)
LaGrange, *Vernon Road Historic District*, Vernon Rd. from Jenkins St. to Forrest Ave. incl. Ferrel Dr., Broad and Carter Sts. (01/12/84)

Walton County

Jersey, *Bank of Jersey*, Main St. (03/07/84)
Monroe, *Boss, A.J., House (Monroe MRA)*, 324 Edwards St. (12/28/83)
Monroe, *Chick, Tom, House (Monroe MRA)*, 1102 E. Church St. (12/28/83)
Monroe, *East Church Street Historic District (Monroe MRA)*, E. Church St. and S. Madison Ave. (12/28/83)
Monroe, *East Marable Street Historic District (Monroe MRA)*, E. Marable St. (12/28/83)
Monroe, *McDaniel Street Historic District (Monroe MRA)*, S. Broad and McDaniel Sts. (12/28/83)
Monroe, *Monland Place Historic District (Monroe MRA)*, Alvoca St. and Blvd. (12/28/83)
Monroe, *Monroe City Hall (Monroe MRA)*, 227 S. Broad St. (12/28/83)
Monroe, *Monroe Commercial Historic District (Monroe MRA)*, Spring and Broad Sts. (12/28/83)
Monroe, *Monroe and Walton Mills Historic District (Monroe MRA)* S. Broad St., S. Madison Ave., and Georgia RR Line (12/28/83)
Monroe, *North Broad Street Historic District (Monroe MRA)*, N. Broad and Walton Sts. (12/28/83)
Monroe, *South Broad Street Historic District (Monroe MRA)*, S. Broad St. (12/28/83)
Monroe, *South Madison Avenue-Pannel Road Historic District (Monroe MRA)*, S. Madison Ave. and Pannell Rd. (12/28/83)
Monroe, *Walton County Jail (Monroe MRA)*, 203 Milledge Ave. (12/28/83)
Monroe, *Williamson House (Monroe MRA)*, 925 E. Church St. (12/28/83)

Wheeler County

Lumber City vicinity, *Woodland*, GA 19 (06/21/84)

White County

Sautee vicinity, *Harshaw-Stovall House*, GA 255 (06/28/84)

Whitfield County

Dalton, *Berry, Thomas A., House*, 506 Hawthorne St. (04/05/84)

GUAM

Tamuning, *Ypao Beach Archeological Site*, San Vitores Rd. (05/24/84)

HAWAII

Hawaii County

Kii Petroglyphs, (07/12/84)

Honolulu County

Honolulu, *Battery Hasebrouck (Artillery District of Honolulu TR)*, Ft. Kamehameha (06/05/84)
Honolulu, *Battery Hawkins (Artillery District of Honolulu TR)*, 440 Nelson Ave. (06/05/84)
Honolulu, *Battery Hawkins Annex (Artillery District of Honolulu TR)*, Ft. Kamehameha (06/05/84)
Honolulu, *Battery Jackson (Artillery District of Honolulu TR)*, Ft. Kamehameha (06/05/84)
Honolulu, *Battery Randolph (Artillery District of Honolulu TR)*, 32 Kalia Rd. (06/05/84)
Honolulu, *Battery Selfridge (Artillery District of Honolulu TR)*, Ft. Kamehameha (06/05/84)
Honolulu, *Cooke, Grace, House*, 2365 Oahu Ave. (10/24/83)
Honolulu, *Sinclair, Dr. Archibald Neil, House*, 2728 Hillside Ave. (10/13/83)

IDAHO

Ada County

Boise vicinity, *MacMillan Chapel*, W of Boise (09/07/83)

Adams/Idaho/Nez Perce Counties

Hells Canyon Archeological Distirct, Both sides of Snake River from Hells Canyon Dam to Cougar Rapids (08/10/84)

Bannock County

Pocatello, *Idaho State University Neigborhood Historic District*, Roughly bounded by 6th, 9th, Carter, and Center Sts. (09/07/84)

Benewah County

St. Maries, *St. Maries 1910 Fire Memorial (North Idaho 1910 Fire Sites TR)*, St. Maries Cemetery (09/20/84)

Bingham County

Fort Hall, *Ross Fork Oregon Short Lines Railroad Depot*, Agency Rd. (09/07/84)

Boise County

Placerville, *Placerville Historic District*, Roughly bounded by townsite limits (09/07/84)

Bonner County

Sandpoint, *Sandpoint Historic District*, Roughly 1st and 2nd Aves., Main and Cedar Sts. (09/07/84)

Bonneville County

Idaho Falls, *Bonneville Hotel (Idaho Falls Downtown MRA)*, 400 blk. W. C St. (08/30/84)
Idaho Falls, *Douglas-Farr Building (Idaho Falls Downtown MRA)*, 493 N. Capital Ave. (08/30/84)
Idaho Falls, *Farmers and Merchants Bank Building (Idaho Falls Downtown MRA)*, 383 W. A St. (08/30/84)
Idaho Falls, *Hasbrouck Building (Idaho Falls Downtown MRA)*, 362 Park Ave. (08/30/84)
Idaho Falls, *Hotel Idaho (Idaho Falls Downtown MRA)*, 482 W. C St. (08/30/84)
Idaho Falls, *I.O.O.F. Building (Idaho Falls Downtown MRA)*, 393 N. Park Ave. (08/30/84)
Idaho Falls, *Idaho Falls City Building (Idaho Falls Downtown MRA)*, 308 W. C St. (08/30/84)
Idaho Falls, *Idaho Falls Public Library (Idaho Falls Downtown MRA)*, Elm and Eastern Sts. (08/30/84)
Idaho Falls, *Kress Building (Idaho Falls Downtown MRA)*, 451 N. Park Ave. (08/30/84)
Idaho Falls, *Montgomery Ward Building (Idaho Falls Downtown MRA)*, 504 Shoup Ave. (08/30/84)
Idaho Falls, *Rocky Mountain Bell Telephone Company Building (Idaho Falls Downtown MRA)*, 246 W. Broadway Ave. (08/30/84)
Idaho Falls, *Shane Building (Idaho Falls Downtown MRA)*, 381 N. Shoup Ave. (08/30/84)
Idaho Falls, *Underwood Hotel (Idaho Falls Downtown MRA)*, 343–349 W. C St. (08/30/84)

Boundary County

Bonners Ferry, *Fry's Trading Post*, Off US 95 (09/07/84)

Camas County

Fairfield vicinity, *Skillern, John, House*, NW of Fairfield (05/14/84)

Clearwater County

Weippe, *Brown's Creek CCC Camp Barracks*, 105 — 1st St. E (07/05/84)

Custer County

Mackay, *Mackay Methodist Episcopal Church*, Custer St. and Park Ave. (09/07/84)
Stanley vicinity, *Redfish Archeological District*, S of Stanley (12/29/83)

Elmore County

Glenns Ferry, *Glenns Ferry School*, Cleveland St. (09/07/84)
Mountain Home, *Turner Hotel*, 140–170 E. Jackson St. (09/07/84)

Gooding County

Bliss vicinity, *Teater, Archie, Studio*, SE of Bliss (09/13/84)

Jerome County

Jerome vicinity, *Canyonside School (Lava Rock Structures in South Central Idaho TR)*, S of Jerome (10/14/83)

Kootenai County

Post Falls vicinity, *Post Falls Community United Presbyterian Church*, 4th and William Sts. (09/07/84)

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Nez Perce County

Lewiston, *Lewiston Historic District (Boundary Increase)*, Roughly bounded by 1st, B, 6th, and F Sts. (09/07/84)

Shoshone County

Avery vicinity, *Bullion Tunnel (North Idaho 1910 Fire Sites TR)*, E of Avery (09/20/84)
Avery vicinity, *Cedar Snags (St. Joe North Fork) (North Idaho 1910 Fire Sites TR)*, N of Avery (09/20/84)
Avery vicinity, *Grand Forks (North Idaho 1910 Fire Sites TR)*, E of Avery (09/20/84)
Avery vicinity, *Mallard Peak Lookout*, SE of Avery (04/12/84)
Avery, *Avery Depot (North Idaho 1910 Fire Sites TR)*, Chicago, Milwaukee, St. Paul, and Pacific RR track (09/20/84)
Red Lives vicinity, *Halm Creek, Bean Creek Fire (North Idaho 1910 Fire Sites TR)*, S of Red Ives (09/20/84)
Wallace vicinity, *Pulaski, Edward, Tunnel and Placer Creek Escape Route (North Idaho 1910 Fire Sites TR)*, SW of Wallace (09/20/84)
Wallace vicinity, *Wallace 1910 Fire Memorial (North Idaho 1910 Fire Sites TR)*, N of Wallace (09/20/84)

Teton County

Driggs vicinity, *Pierre's Hole 1832 Battle Area Site*, S of Driggs (09/07/84

ILLINOIS

Adams County

Clayton vicinity, *Lewis Round Barn (Round Barns in Illinois TR)*, NW of Clayton (08/16/84)
Golden, *Ebenezer Methodist Episcopal Chapel and Cemetery*, NW of Golden (06/04/84)
Quincy, *One Thirty North Eighth Building*, 130 N. 8th St. (02/09/84)

Christian County

Assumption, *Illinois State Bank Building*, 201 N. Chestnut St. (08/16/84)

Coles County

Charleston, *Will Rogers Theatre and Commercial Block*, 705–715 Monroe Ave. (01/12/84)

Cook County

Chicago, *Belmont-Sheffield Trust and Savings Bank Building*, 1001 W. Belmont Ave. and 3146 N. Sheffield Ave. (03/01/84)
Chicago, *Biograph Theater Building*, 2433 N. Lincoln Ave. (05/17/84)
Chicago, *Buena Park Historic District*, Roughly bounded by Rapid Transit, Marine Dr., Iving Park Rd., and Montrose Ave. (07/13/84)
Chicago, *Chicago Harbor Lighthouse (US Coast Guard Lighthouses and Light Stations on the Great Lakes TR)*, N Breakwater (07/19/84)
Chicago, *Conway Building*, 111 W. Washington St. (02/09/84)
Chicago, *Hyde Park-Kenwood Historic District (Boundary Increase)*, 821–829 and 816–828 E. 49th St. (08/16/84)
Chicago, *Loucks, Charles N., House*, 3926 N. Keeler Ave. (02/09/84)
Chicago, *Malden Towers*, 4521 N. Malden St. (12/08/83)
Chicago, *New Michigan Hotel*, 2135 S. Michigan Ave. (12/08/83)
Chicago, *North Wells Street Historic District*, 1240–1260 N. Wells St. (05/03/84)
Chicago, *Oliver Building*, 159 N. Dearborn St. (12/08/83)
Chicago, *S/S CLIPPER*, Navy Pier 600 E. Grand Ave. (12/08/83)
Chicago, *Soldier Field*, 425 E. 14th St. (08/09/84)
Evanston, *Andridge Apartments (Suburban Apartment Buildings in Evanston TR)*, 1627–1645 Ridge Ave., 1124–1136 Church St (03/15/84)
Evanston, *Building at 1101–1113 Maple Avenue (Suburban Apartment Buildings in Evanston TR)*, 1101–1113 Maple Ave. (03/15/84)
Evanston, *Building at 1209–1217 Maple Avenue (Suburban Apartment Buildings in Evanston TR)*, 1209–1217 Maple Ave. (03/15/84)
Evanston, *Building at 1301–1303 Judson Avenue (Suburban Apartment Buildings in Evanston TR)*, 1301–1303 Judson Ave. (04/27/84)
Evanston, *Building at 1305–1307 Judson Avenue (Suburban Apartment Buildings in Evanston TR)*, 1305–1307 Judson Ave. (04/27/84)
Evanston, *Building at 1316 Maple Avenue (Suburban Apartment Buildings in Evanston TR)*, 1316 Maple Ave. (03/15/84)
Evanston, *Building at 1401–1407 Elmwood Avenue (Suburban Apartment Buildings in Evanston TR)*, 1401–1407 Elmwood Ave. (03/15/84)
Evanston, *Building at 1505–1509 Oak Avenue (Suburban Apartment Buildings in Evanston TR)*, 1505–1509 Oak Ave. (03/15/84)
Evanston, *Building at 1929–1931 Sherman Avenue (Suburban Apartment Buildings in Evanston TR)*, 1929–1931 Sherman Ave. (03/15/84)
Evanston, *Building at 2517 Central Street (Suburban Apartment Buildings in Evanston TR)*, 2517 Central St. (03/15/84)
Evanston, *Building at 2519 Central Street (Suburban Apartment Buildings in Evanston TR)*, 2519 Central St. (03/15/84)
Evanston, *Building at 2523 Central Street (Suburban Apartment Buildings in Evanston TR)*, 2523 Central St. (03/15/84)
Evanston, *Building at 417–419 Lee Street (Suburban Apartment Buildings in Evanston TR)*, 417–419 Lee St. (03/15/84)
Evanston, *Building at 548–606 Michigan Avenue (Suburban Apartment Buildings in Evanston TR)*, 548–606 Michigan Ave. (03/15/84)
Evanston, *Building at 813–815 Forest Avenue (Suburban Apartment Buildings in Evanston TR)*, 813–815 Forest Ave. (03/15/84)
Evanston, *Building at 923–925 Michigan Avenue (Suburban Apartment Buildings in Evanston TR)*, 923–925 Michigan Ave. (03/15/84)
Evanston, *Building at 999 Michigan, 200 Lee (Suburban Apartment Buildings in Evanston TR)*, 999 Michigan Ave., 200 Lee St. (03/15/84)
Evanston, *Building at 815–817 Brummel and 819–821 Brummel (Suburban Apartment Buildings in Evanston TR)*, 815–817, and 819–821 Brummel (03/15/84)
Evanston, *Castle Tower Apartments (Suburban Apartment Buildings in Evanston TR)*, 2212–2226 Sherman Ave. (03/15/84)
Evanston, *Colonnade Court (Suburban Apartment Buildings in Evanston TR)*, 501–507 Main St. and 904–908 Hinman Ave. (03/15/84)
Evanston, *Evanston Towers (Suburban Apartment Buildings in Evanston TR)*, 554–602 Sheridan Sq. (03/15/84)
Evanston, *Forest, The, and Annex (Suburban Apartment Buildings in Evanston TR)*, 901–905 Forest Ave. (03/15/84)
Evanston, *Fountain Plaza Apartments (Suburban Apartment Buildings in Evanston TR)*, 830–856 Hinman Ave. (03/15/84)
Evanston, *Greenwood, The (Suburban Apartment Buildings in Evanston TR)*, 425 Greenwood St. (03/15/84)
Evanston, *Hillcrest Apartment (Suburban Apartment Buildings in Evanston TR)*, 1509–1515 Hinman Ave. (03/15/84)
Evanston, *Hinman Apartments (Suburban Apartment Buildings in Evanston TR)*, 1629–1631 Hinman Ave. (03/15/84)
Evanston, *Judson, The (Suburban Apartment Buildings in Evanston TR)*, 1243–1249 Judson Ave. (03/15/84)
Evanston, *Lake Shore Apartments (Suburban Apartment Buildings in Evanston TR)*, 470–498 Sheridan Rd. (03/15/84)
Evanston, *Maple Court Apartments (Suburban Apartment Buildings in Evanston TR)*, 1115–1133 Maple Ave. (03/15/84)
Evanston, *Melwood Apartments (Suburban Apartment Buildings in Evanston TR)*, 1201–1213 Michigan Ave. and 205–207 Hamilton (03/15/84)
Evanston, *Michigan-Lee Apartments (Suburban Apartment Buildings in Evanston TR)*, 940–950 Michigan Ave. (03/15/84)
Evanston, *Oak Ridge Apartments (Suburban Apartment Buildings in Evanston TR)*, 1615–1625 Ridge Ave. (03/15/84)
Evanston, *Oakton Gables (Suburban Apartment Buildings in Evanston TR)*, 900–910 Oakton and 439–445 Ridge (03/15/84)
Evanston, *Ridge Boulevard Apartments (Suburban Apartment Buildings in Evanston TR)*, 843–849 Ridge Ave. and 1014–1020 Main St. (03/15/84)
Evanston, *Ridge Grove (Suburban Apartment Buildings in Evanston TR)*, 1112 Grove St. (03/15/84)
Evanston, *Ridge Manor (Suburban Apartment Buildings in Evanston TR)*, 1603–1611 Ridge Ave. and 1125 Davis St. (03/15/84)
Evanston, *Rookwood Apartments (Suburban Apartment Buildings in Evanston TR)*, 718–734 Noyes St. (03/15/84)
Evanston, *Sheridan Square Apartments (Suburban Apartment Buildings in Evanston TR)*, 620–638 Sheridan Sq. (03/15/84)
Evanston, *Stoneleigh Manor (Suburban Apartment Buildings in Evanston TR)*, 904–906 Michigan Ave. and 227–229 Main St. (03/15/84)

Evanston, *Tudor Manor (Suburban Apartment Buildings in Evanston TR)*, 524 Sheridan Sq. (03/15/84)
Evanston, *Westminster (Suburban Apartment Buildings in Evanston TR)*, 632–640 Hinman Ave. (03/15/84)
Lemont vicinity, *St. James Catholic Church and Cemetery*, 106th St. and Archer Ave. (08/16/84)
Oak Park, *Ridgeland-Oak Park Historic District*, Roughly bounded by Austin Blvd., Harlem, Ridgeland, and Chicago Aves., Lake and Madison Sts. (12/08/83)
Wilmette, *Linden Avenue Terminal*, 330 Linden Ave. (02/08/84)

DeKalb County

Earlville vicinity, *Nisbet Homestead Farm*, Suydam Rd. (05/31/84)

Edgar County

Paris vicinity, *Pine Grove Community Club*, NW of Paris (03/30/84)

Henry County

Bishop Hill, *Bishop Hill Historic District*, Off US 34 (04/17/70) NHL

Jefferson County

Belle vicinity, *Judd, C.H., House*, Ina-Belle Rive Rd. (12/08/83)

Jo Daviess County

Galena vicinity, *Wenner, Charles, House*, Rocky Rd. (08/22/84)

Kane County

Aurora, *Aurora College Complex (Eckhart, Davis and Wilkison Halls)*, 347 S. Gladstone Ave. (02/16/84)
Aurora, *GAR Memorial Building*, 23 E. Downer Pl. (08/23/84)
Geneva, *Fabyan Villa*, 1511 S. Batavia Ave. (02/09/84)
St. Charles, *Beith, William, House*, 6 Indiana St. (12/07/83)

Lake County

Highland Park vicinity, *Fort Sheridan Historic District*, Off IL 22 (09/29/80)NHL
Highland Park, *Linden Park Place/Belle Avenue Historic District (Highland Park MRA)*, Roughly bounded by Sheridan Rd., Elm Pl., Linden, Park, and Central Aves. (12/13/83)
Lake Bluff, *Armour, Lester, House*, Sheridan Rd. (05/03/84)
Libertyville, *Public Service Building*, 344–354 N. Milwaukee Ave. (12/08/83)

Logan County

Lincoln, *Foley, Stephan A., House*, 427 Tremont St. (05/03/84)

McLean County

Bloomington, *Holy Trinity Church Rectory and Convent*, 704 N. Main and 108 W. Chestnut Sts. (12/08/83)
Holder vicinity, *Benjaminville Friends Meetinghouse and Burial Ground*, N of Holder (12/13/83)

Montgomery County

Virden vicinity, *Thomas, Lewis H., House*, N. Virden Rd. (12/07/83)

Ogle County

Stillman Valley, *Stillman's Run Battle Site*, Roosevelt and Spruce Sts. (12/08/83)

Peoria County

Peoria, *North Side Historic District*, Roughly bounded by Perry, Caroline, Madison and Fayette Sts. (11/21/83)

Sangamon County

Chatham vicinity, *Caldwell Farmstead*, IL 4 (08/16/84)
Springfield *Maid-Rite Sandwich Shop*, 118 N. Pasfield St. (08/16/84)
Springfield, *Yates, Gov. Richard, House*, 1190 Willaims Blvd. (03/01/84)

Stephenson County

Dakota, *Leek, Clyde, Round Barn (Round Barns in Illinois TR)*, N. Dakota Rd. (02/23/84)
Eleroy vicinity, *Harbach, Gerald, Round Barn (Round Barns in Illinois TR)*, US 20 (02/23/84)
Eleroy vicinity, *Otte, Dennis, Round Barn (Round Barn in Illinois TR)*, E of Eleroy (02/23/84)
Freeport vicinity, *Bruce, James, Round Barn (Round Barn in Illinois TR)*, S of Freeport (02/23/84)
Freeport, *Taylor, Oscar, House*, 1440 S. Carroll Ave. (05/11/84)
Lena vicinity, *Jensen, Chris, Round Barn (Round Barn in Illinois TR)*, 11723 W. Galena Rd. (02/23/84)
Orangeville vicinity, *Fehr, Charles, Round Barn (Round Barn in Illinois TR)*, NE of Orangeville (02/23/84)

White County

Burnt Praire, *Old Morrison Mill*, Off Liberty Rd. (07/11/84)

Will County

Lockport vicinity, *Fitzpatrick House*, IL 53 (02/09/84)

Winnebago County

Durand vicinity, *Weber, Robert, Round Barn (Round Barns in Illinois TR)*, E. of Durand (02/23/84)

INDIANA

Benton County

Oxford, *Presbyterian Church Building*, NW of Benton and Justus Sts. (03/01/84)

Brown County

Nashville, *Taggart, F.P., Store*, Main and VanBuren Sts. (12/22/83)

Carroll County

Delphi, *Niewerth Building*, 124 E. Main St. (05/24/84)

Clark County

Jeffersonville, *Louisville Municipal Bridge, Pylons and Administration Building*, Spans Ohio River Between Louisville, KY and Jeffersonville, IN (03/08/84)

Clinton County

Colfax, *Rosenberger Building*, 83 Old Main St. (05/03/84)

Dearborn County

Aurora, *George Street Bridge (County Bridge No. 159)*, George, Main, and Importing Sts. (03/01/84)
Lawrenceburg, *Downtown Lawrenceburg Historic District*, Roughly bounded by ConRail tracks, Charlotte, Tate, Williams, and Elm Sts. (03/01/84)

Delaware County

Muncie, *Boyce Block*, 216–224 E. Main St. (03/01/84)
Muncie, *Jones, Margaret and George Riley, House*, 315 E. Charles St. (09/27/84)
Muncie, *Masonic Temple*, 520 E. Main St. (09/27/84)
Muncie, *Moore-Youse-Maxon House*, 122 E. Washington St. (05/24/84)
Muncie, *Rose, F.D., Building*, 121 E. Charles St. (03/01/84)

Elkhart County

Goshen vicinity, *Violett, William N., House*, 3004 S. Main St. (09/20/84)

Floyd County

Galena vicinity, *Jersey Park Farm*, Off Cunningham Sarles and Borden Rds. (03/01/84)
New Albany, *New Albany and Salem Railroad Station*, Pearl and Oak Sts. (01/12/84)

Fulton County

Rochester, *Brackett, Lyman M., House*, 328 W. 9th St. (09/27/84)

Gibson County

Princeton, *Gibson County Courthouse*, Town Square (09/27/84)

Hamilton County

Noblesville, *Harrell, Dr. Samuel, House*, 399 N. 10th St. (03/01/84)

Hendricks County

Danville, *Wilson-Courtney House*, 10 Cartersburg Rd. (02/09/84)

Henry County

Knightstown, *Hinshaw, Elias, House*, 16 W. Main St. (05/03/84)
Shirley vicinity, *Whitelock, Henry F., House and Farm*, IN 38 (12/22/83)

Howard County

Kokomo, *Haynes, Elwood, House*, 1915 S. Webster St. (09/20/84)
Kokomo, *Learner Building*, 107–111 E. Sycamore St. (09/20/84)

Huntington County

Huntington, *Hotel LaFontaine*, 200 W. State St. (02/09/84)

Kosciusko County

Warsaw, *Warsaw Cut Glass Company*, 505 S. Detroit St. (03/01/84)

LaPorte County

LaPorte vicinity, *Orr, William, House*, 4076 W. Small Rd. (03/22/84)

Lake County

Dyer, *Meyer, Joseph Ernest, House*, 1370 Joliet St. (03/01/84)

Gary, *Knights of Columbus Building*, 333 W. 5th Ave. (03/01/84)
Gary, *West Fifth Avenue Apartments Historic District*, Roughly 5th Ave. from Taft to Pierce St. (05/17/84)
Hammond, *State Bank of Hammond Building*, 5444–5446 Calumet Ave. (09/27/84)
Hobart, *Pennsylvania Railroad Station*, 1001 Lillian St. (03/01/84)

Madison County

Anderson, *Anderson Bank Building*, 931 Meridan St. (08/30/84)

Marion County

Indianapolis, *Administration Building, Indiana Central University*, Otterbein and Hanna Ave. (03/15/84)
Indianapolis, *Butler Fieldhouse (Hinkle Fieldhouse)*, Butler University campus, 49th St., and Boulevard Pl. (12/22/83)
Indianapolis, *Cotton-Ropkey House*, 6360 W. 79th St. (03/22/84)
Indianapolis, *Fletcher, Calvin I., House*, 1031 N. Pennsylvania St. (03/01/84)
Indianapolis, *General German Protestant Orphans Home*, 1404 S. State St. (05/17/84)
Indianapolis, *Independent Turnverein*, 902 N. Meridan St. (12/22/83)
Indianapolis, *Indianapolis News Building*, 30 W. Washington, St. (03/01/84)
Indianapolis, *Moore, Thomas, House*, 4200 Brookville Rd. (03/15/84)
Indianapolis, *Northside Historic District (Boundary Increase)*, Pennsylvania and 16th Sts. (09/27/84)
Indianapolis, *Pearson Terrace*, 928–940 N. Alabama St. (03/01/84)
Indianapolis, *Rink's Womens Apparel Store*, 29 N. Illinois St. (09/27/84)
Indianapolis, *Selig's Dry Goods Company Building*, 20 W. Washington St. (05/17/84)
Indianapolis, *Taylor Carpet Company Building*, 28 W. Washington St. (03/01/84)
Indianapolis, *Vera and The Olga*, 1440 and 1446 N. Illinois St. (09/27/84)
Lawrence, *Fort Harrison Terminal Station*, Building 616, Fort Harrison (03/16/84)

Miami County

Peru vicinity, *Godfroy, Francis, Cemetery*, IN 124 (03/01/84)
Peru, *Cole, James Omar, House*, 27 E. 3rd St. (03/01/84)

Monroe County

Bloomington, *Nichols, J.L., House and Studio*, 820 N. College Ave. (09/27/84)

Noble County

Ligonier vicinity, *Stone's Trace*, US 33 and IN 5 (05/24/84)

Perry County

St. Croix vicinity, *Rickenbaugh House*, SW of St. Croix in Hoosier National Forest (04/06/84)

Pike County

Winslow, *Palace Lodge (Robling Building)*, Center and Main Sts. (02/23/84)

Porter County

Hebron vicinity, *Gilson, Clinton D., Barn*, 522 W. 650 S (09/20/84)
Valparaiso, *Porter County Memorial Hall*, 104 Indiana Ave. (05/24/84)

Posey County

New Harmony, *Bentel, George, House*, Brewery and Granary St. (09/20/84)
New Harmony, *Epple, Ludwig, House*, 520 Granary St. (06/21/84)

Pulaski County

Winamac, *Thompson, Dr. George W., House*, 407 N. Market St. (09/27/84)

Putnam County

Greencastle, *Courthouse Square Historic District*, Roughly bounded by College Ave., Walnut, Market, and Franklin Sts (03/01/84)
Greencastle, *Van Arsdel, William C., House*, 125 Wood St. (09/20/84)
Putnamville, *Putnamville Presbyterian Church (Putnamville Methodist Church)*, IN 243 (03/01/84)
Stilesville vicinity, *McHaffie, Melville F., Farm*, US 40 (12/22/83)

Rush County

Carthage vicinity, *Walnut Ridge Friends Meetinghouse*, W of Carthage (03/01/84)
Rushville vicinity, *Hall-Crull Octagonal House*, N of Rushville (05/10/84)

Shelby County

Edinburgh vicinity, *St. George Lutheran Church*, IN 252 (05/24/84)
Shelbyville, *Shelbyville Commercial Historic District*, Roughly bounded by Broadway, Tompkins, Mechanic, and Noble Sts. (08/09/84)

Spencer County

Santa Claus vicinity, *Deutsch Evangelische St. Paul's Kirche*, S of Santa Claus on Sante Fe Rd. (09/27/84)

St. Joseph County

South Bend, *Kelly-Fredirckson House and Office Building*, 233 N. Lafayette Blvd. and 314 W. LaSalle St. (05/24/84)
South Bend, *O'Brien Electric Priming Company*, 2001 W. Washington St. (12/28/83)

Tippecanoe County

Lafayette, *Ball, Judge Cyrus, House*, 402 S. 9th St. (05/03/84)
Lafayette, *Enterprise Hotel*, 1015 Main St. (06/21/84)
Lafayette, *Scott Street Pavilion*, Columbian Park (09/27/84)
Lafayette, *Waldron-Beck House and Carriage House*, 829 N. 21st St. (02/09/84)

Tipton County

Tipton, *Tipton County Court House*, Public Sq. (03/01/84)
Tipton, *Tipton County Jail and Sheriff's Home*, 203 S. West St. (05/17/84)

Vanderburgh County

Evansville, *Auto Hotel Building (Downtown Evansville MRA)*, 111–115 SE 3rd St. (04/06/84)
Evansville, *Barrett's Britz Building (Downtown Evansville MRA)*, 415 Main St (04/06/84)
Evansville, *Conner's Bookstore (Dallas Music) (Downtown Evansville MRA)*, 611–613 Main St. (04/06/84)
Evansville, *Culver Historic District*, Roughly bounded by Madison Ave., Riverside Dr., Emmett and Venice Sts. (06/01/84)
Evansville, *Evansville Municipal Market*, 813 Pennsylvania St. (12/22/83)
Evansville, *Fellwock Garage (Glass Specialty Company) (Downtown Evansville MRA)*, 315 Court St. (04/06/84)
Evansville, *Firestone Tire and Rubber Store (Downtown Evansville MRA)*, 900 Main St. (04/06/84)
Evansville, *Gemcraft-Wittmer Building (Downtown Evansville MRA)*, 609 Main St. (04/06/84)
Evansville, *Helfrich, Michael D., House*, 700 Helfrich Lane (05/24/84)
Evansville, *Huber Motor Sales Building (Downtown Evansville MRA)*, 215–219 SE 4th St. (04/06/84)
Evansville, *Kuebler-Artes Building (Downtown Evansville MRA)*, 327 Main St. (04/06/84)
Evansville, *Lockyear College (Downtown Evansville MRA)*, 209 NW 5th St. (04/06/84)
Evansville, *Old Fellwock Auto Company (Downtown Evansville MRA)*, 214 NW 4th St. (04/06/84)
Evansville, *Pearl Steam Laundry (Downtown Evansville MRA)*, 428 Market St. (04/06/84)
Evansville, *Roelker, John H., House (Downtown Evansville MRA)*, 555 Sycamore St. (04/06/84)

Vigo County

Terre Haute, *Terre Haute Post Office and Federal Building (Downtown Terre Haute MRA)*, 7th and Cherry Sts. (08/13/84)

Wabash County

Wabash, *Amoss, James M., Building*, 110 S. Wabash St. (08/30/84)
Wabash, *Wilson, Solomon, Building*, 102 S. Wabash St. (08/30/84)

Warren County

Williamsport, *Kent House and Hitchens House*, 500 Main and 303 Lincoln Sts. (03/01/84)

Wayne County

Centerville vicinity, *Jones, Lewis, House*, College Corner and Eliason Rds. (06/07/84)

Wells County

Bluffton vicinity, *Bethel Methodist Episcopal Church*, SE of Buffton 03/01/84
Bluffton, *Grove, John A., House*, 521 W. Market St. (12/22/83)

IOWA

Allamakee County

Postville, *Postville Public School*, Ogdon and Post Sts. (04/12/84)

Appanoose County

Centerville, *Sturdivant-Sawyer House*, 707 Drake Ave. (01/12/84)

Black Hawk County

Cedar Falls, *Central Hall (Administration Building)*, University of Northern Iowa campus (01/18/84)
Waterloo, *Highland Historic District*, Roughly bounded by Independence Ave., Steely, Idaho, and Vine Sts. (09/24/84)

Cass County

Atlantic, *Martin, S.F., House*, 419 Poplar St. (01/12/84)

Clay County

Spencer, *Adams-Higgins House*, 1215 N. Grand Ave. (09/27/84)

Clayton County

Guttenberg, *Eckert House (Guttenberg MRA)*, 413 S. 1st St. (09/24/84)
Guttenberg, *Front Street (River Park Drive) Historic District (Guttenberg MRA)*, River Park Dr. between Lessing and Pearl Sts. (09/24/84)
Guttenberg, *Fuerst House (Guttenberg MRA)*, 503 S. 1st St. (09/24/84)
Guttenberg, *Guttenberg Corn Canning Co. (Guttenberg MRA)*, 413 N. 3rd St. (09/24/84)
Guttenberg, *Guttenberg State Bank (Guttenberg MRA)*, 15 Goethe St. (09/24/84)
Guttenberg, *Kolker House (Guttenberg MRA)*, 110 Goethe St. (09/24/84)
Guttenberg, *Mott-Bahls House (Guttenberg MRA)*, 615 S. 3rd St. (09/24/84)
Guttenberg, *McClaine House (Guttenberg MRA)*, 300 S. 1st St. (09/24/84)
Guttenberg, *Moser Stone House (Guttenberg MRA)*, 211 S. 1st St. (09/24/84)
Guttenberg, *Nieland House (Guttenberg MRA)*, 715 S. 1st St. (09/24/84)
Guttenberg, *Parker House (Guttenberg MRA)*, 1015 S. 2nd St. (09/24/84)
Guttenberg, *Stone Barn (Guttenberg MRA)*, 12 Goethe St. (09/24/84)
Guttenberg, *Weber House (Guttenberg MRA)*, 822 S. River Park Dr. (09/24/84)
Guttenberg, *Wehmer House (Guttenberg MRA)*, 910 S. River Park Dr. (09/24/84)

Fayette County

Oelwein, *Hanson, Alfred, House*, 403 N. Frederick Ave. (07/12/84)

Grundy County

Wellsburg, *Neessen, Chris, House*, 601 E. 4th (01/12/84)

Jackson County

Bellevue, *Potter's E.G., Jasper Flour Mill*, South and 2nd Sts. (04/19/84)

Jasper County

Colfax, *Hall, James Norman, House*, 416 E. Howard St. (07/12/84)

Jefferson County

Fairfield, *Architecture of Henry K. Holsman Historic Campus District*, Bounded by Merrill St., IA 1, and Carter Memorial Dr. (10/31/83)

Johnson County

Iowa City, *Close, M.T., and Company Flaxseed Warehouse*, 521 S. Gilbert St. (07/12/84)
North Liberty, *White, H.A., General Store and House*, 10 W. Cherry St. (01/12/84)

Lee County

Fort Madison, *Cattermole Memorial Library (Public Buildings in Iowa TR)* 614 — 7th St. (04/05/84)
Keokuk, *Harrison, E.H., House*, 220 N. 4th St. (01/12/84)

Madison County

Macksburg, *Craven, J.D., Women's Relief Corps Hall*, South St. (01/19/84)
Winterset vicinity, *Schoenenberger, Nicholas, House and Barn*, Off 1A 169 (07/12/84)

Mahaska County

Oskaloosa, *Shoemake, John H., House*, 116 — 2nd Ave. W. (03/22/84)
Oskaloosa, *Stock Judging Pavilion*, Southern Iowa Fairgrounds (04/12/84)

Marion County

Knoxville
Knoxville, *Hays, E.R., House*, 301 N. 2nd St. (09/27/84)

Marshall County

Marshalltown, *Binford, Thaddeus, House*, 110 N. 2nd Ave. (01/12/84)

Monroe County

Albia, *Nobel-Kendall House*, 209 E. Benton Ave. (04/12/84)

Montgomery County

Red Oak, *Hebard, Alfred, House*, 700 — 8th St. (04/12/84)

Page County

Shenandoah, *Women's Christian Temperance Union Public Foundation*, Clarinda and Sheridan Sts. (09/27/84)

Polk County

Des Moines, *First Methodist Episcopal Church*, 10th and Pleasant Sts. (04/12/84)
Des Moines, *Mahnke House*, 2707 High St. (10/13/83)
Des Moines, *Northwestern Hotel*, 321 E. Walnut (01/12/84)
Des Moines, *West Chester*, 3520 Grand Ave. (01/19/84)

Pottawattamie County

Council Bluffs, *Cavin, Thomas E., House*, 150 Park Ave. (09/27/84)
Council Bluffs, *Hughes, Martin, House*, 903 — 3rd St. (09/27/84)
Council Bluffs, *State Savings Bank*, 509 W. Broadway (06/04/84)

Scott County

Bettendorf, *Bettendorf-Washington School*, 533 — 16th St. (07/12/84)
Davenport, *Adams, Walker, House (Davenport MRA)*, 1009 College Ave. (07/27/84)
Davenport, *Ball-Waterman House (Davenport MRA)*, 616 Kirkwood Blvd. (07/27/84)
Davenport, *Bridge Avenue Historic District (Davenport MRA)*, Bridge Ave. from River Dr. to 9th St. (11/28/83)
Davenport, *Building at 202 W. Third Street (Davenport MRA)*, 202 W. 3rd St. (04/05/84)
Davenport, *Burdick, Anthony, House (Davenport MRA)*, 833 College Ave. (07/27/84)
Davenport, *Busch, Diedrich, House (Davenport MRA)*, 2340 E. 11th St. (07/27/84)
Davenport, *Cameron, W.S., House (Davenport MRA)*, 623 Kirkwood Blvd. (07/27/84)
Davenport, *Cawley, James, House (Davenport MRA)*, 1406 Esplanade (07/27/84)
Davenport, *City Market (Davenport MRA)*, 120 W. 5th St. (04/05/84)
Davenport, *College Square Historic District (Davenport MRA)*, Roughly bounded by Brady, Main, Harrison, 11th, and 15th Sts. (11/18/83)
Davenport, *College Square Historic District (Davenport MRA)*, Roughly bounded by Brady, Main, Harrison, 11th, and 15th Sts. (11/18/83)
Davenport, *Copeland, George, House (Davenport MRA)*, 929 College Ave. (07/27/84)
Davenport, *Cork Hill District (Davenport MRA)*, Perry, Pershing, Iowa, 11th, 12th, and 13th Sts. (05/16/84)
Davenport, *Davenport Hose Station No. 3 (Davenport MRA)*, 326 E. Locust St. (07/27/84)
Davenport, *Davenport Water Co. Pumping Station No. 2 (Davenport MRA)*, 1416 Ripley St. (04/05/84)
Davenport, *Davison, Abner, House (Davenport MRA)*, 1234 E. River Dr. (07/27/84)
Davenport, *East 14th Street Historic District (Davenport MRA)*, 14th St. from Pershing to Arlington Ave. (11/18/83)
Davenport, *Ebeling, Arthur, House (Davenport MRA)*, 1106 W. 15th St. (07/27/84)
Davenport, *Ebeling, Henry, House (Davenport MRA)*, 1623 W. 6th St. (07/27/84)
Davenport, *Eldridge, D.C., House (Davenport MRA)*, 1333 E. 10th St. (07/27/84)
Davenport, *Eldridge, Theodore, House (Davenport MRA)*, 1404 E. 10th St. (07/27/84)
Davenport, *Fennern, Henry P., House (Davenport MRA)*, 1332 W. 4th St. (04/05/84)
Davenport, *First Church of Christ, Scientist (Davenport MRA)*, 636 Kirkwood Blvd. (07/27/84)
Davenport, *Grant, W.T., Company Building (Davenport MRA)*, 226 W. 2nd St. (04/07/84)
Davenport, *Grilk, Charles, House (Davenport MRA)*, 2026 Main St. (07/27/84)
Davenport, *Guy Finley, Building (Davenport MRA)*, 310 E. Locust St. (07/27/84)
Davenport, *Hall, Israel, House (Davenport MRA*, 1316 E. 10th St. (07/27/84)
Davenport, *Hamburg Historic District (Davenport MRA)*, Roughly bounded by 5th, Vine, Ripley, and 9½ Sts. (11/18/83)
Davenport, *Heinz, Bonaventura, House (first) (Davenport MRA)*, 1128 W. 5th St. (04/05/84)
Davenport, *Holbrook, William, House (Davenport MRA)*, 804 Kirkwood Blvd. (07/27/84)
Davenport, *House at 919 Oneida Street (Davenport MRA)*, 919 Oneida St. (04/05/84)
Davenport, *Iowa Reform Building (Davenport MRA)*, 526 W. 2nd St. (11/18/83)
Davenport, *Kiene, Albert, House (Davenport MRA)*, 1321 W. 8th St. (07/27/84)
Davenport, *Klindt, Henry, House (Davenport MRA)*, 834 Marquette St. (07/27/84)

Davenport, *Koch Drug Store (Davenport MRA)*, 1501 Harrison St. (07/27/84)
Davenport, *Lend-A-Hand Club (Davenport MRA)*, 105 S. Main St. (04/05/84)
Davenport, *Linden Flats (Davenport MRA)*, 219 Scott St. (11/28/83)
Davenport, *Lindsay, James E., House (Davenport MRA)*, 911 College Ave. (07/27/84)
Davenport, *Lueschen, John, House (Davenport MRA)*, 1628–1632 Washington St. (07/27/84)
Davenport, *McCarthy, Patrick F., House (Davenport MRA)*, 942 Marquette St. (07/27/84)
Davenport, *Meadly House (Davenport MRA)*, 1425 W. 10th St. (07/27/84)
Davenport, *Motie, Joseph, House (Davenport MRA)*, 421 E. 10th St. (11/18/83)
Davenport, *Murray, Thomas, House (Davenport MRA)*, 628 Kirkwood Blvd. (07/27/84)
Davenport, *Nighswander, Benjamin, House (Davenport MRA)*, 1011 Kirkwood Blvd. (07/27/84)
Davenport, *Northwest Davenport Savings Bank (Davenport MRA)*, 1529 Washington St. (07/27/84)
Davenport, *Ockershausen, Henry, House (Davenport MRA)*, 1024 Charlotte St. (04/05/84)
Davenport, *Palmer, B.J., House (Davenport MRA)*, 808 Brady St. (07/27/84)
Davenport, *Peters' Barber Shop (Davenport MRA)*, 1352 W. 3rd St. (04/05/84)
Davenport, *Peters, J.C., House (Davenport MRA)*, 1339 W. 13th St. (07/27/84)
Davenport, *Picklum, Frank, House (Davenport MRA)*, 1340 W. 7th St. (07/27/84)
Davenport, *Plambeck, Joachim, House (Davenport MRA)*, 1421 W. 14th St. (07/27/84)
Davenport, *Pohlmann, Elizabeth, House (Davenport MRA)*, 1403 W. 13th St. (07/27/84)
Davenport, *Pohlmann, Henry, House (Davenport MRA)*, 1204 W. 13th St. (07/27/84)
Davenport, *Potter-Williams House (Davenport MRA)*, 427 E. 7th St. (04/05/84)
Davenport, *Quickel, Jacob, House (Davenport MRA)*, 1712 Davenport St. (07/27/84)
Davenport, *Radcliff, William, House (Davenport MRA)*, 904 College Ave. (07/27/84)
Davenport, *Raible, F.J., House (Davenport MRA)*, 1537 W. 3rd St. (11/28/84)
Davenport, *Roberts, Edward C., House (Davenport MRA)*, 918 E. Locust St. (07/27/84)
Davenport, *Rowhouses at 702—712 Kirkwood Boulevard (Davenport MRA)*, 702—712 Kirkwood Blvd. (07/27/84)
Davenport, *Sacred Heart Roman Catholic Cathedral Complex (Davenport MRA)*, 406 and 422 E. 10th St. and 419 E. 11th St. (04/05/84)
Davenport, *Shaw, E.A., House (Davenport MRA)*, 1102 College Ave. (07/27/84)
Davenport, *Smith, James, House (Davenport MRA)*, 1037 E. 18th St. (07/27/84)
Davenport, *Smith, William G., House (Davenport MRA)*, 1002 Bridge St. (04/05/84)
Davenport, *St. Anthony's Roman Catholic Church Complex (Davenport MRA)*, 407 and 417 Main St. (04/05/84)
Davenport, *St. Katherine's Historic District (Davenport MRA)*, 901 Tremont St. (04/05/84)
Davenport, *St. Mary's Academy (Davenport MRA)*, 1334 W. 8th St. (07/27/84)
Davenport, *St. Mary's Roman Catholic Church Complex (Davenport MRA)*, 516, 519, 522, and 525 Fillmore St. (04/05/84)
Davenport, *Struck, Dr. Kuno, House (Davenport MRA)*, 1645 W. 12th St. (07/27/84)
Davenport, *Untiedt, Claus, House (Davenport MRA)*, 1429 W. 14th St. (07/27/84)
Davenport, *Von Ach, Frank, J., House (Davenport MRA)*, 1618 Davenport St. (07/27/84)
Davenport, *Walsh Flats/Langworth Building (Davenport MRA)*, 320—330 W. 4th St. (04/05/84)
Davenport, *Washington Flats (Davenport MRA)*, 1415—1431 Washington St. (07/27/84)
Davenport, *Washington Gardens (Davenport MRA)*, 1301 W. 13th St. (07/27/84)
Davenport, *Werthman Grocery (Davenport MRA)*, 1402 W. 7th St. (07/27/84)
Davenport, *West Third Street Historic District (Davenport MRA)*, Roughly 3rd St. between Ripley and Myrtle Sts. (11/18/83)
Davenport, *Westphal-Schmidt House (Davenport MRA)*, 432 S. Fairmount St. (07/27/84)
Davenport, *Wilkinson, Thomas C., House (Davenport MRA)*, 118 McManus St. (07/27/84)
Davenport, *Wolters Filling Station (Davenport MRA)*, 1229 Washington St. (07/27/84)

Story County

Sheldahl, *Sheldahl First Norwegian Evangelical Lutheran Church*, 3rd and Willow Sts. (05/11/84)

Van Buren County

Mount Zion vicinity, *Martin, Abner, House*, S of Mount Zion off IA 1 (04/12/84)

Wapello County

Ottumwa, *Ottumwa Public Library*, 129 N. Court St. (04/27/84)

Winnebago County

Forest City, *Forest City Public Library (Public Library Buildings in Iowa TR)*, E. I St. and Clark (04/05/84)

Winneshiek County

Decorah, *Koren Library*, Luther College campus (01/12/84)
Freeport vicinity, *Freeport Bowstring Arch Bridge*, Spans Upper Iowa River (04/19/84)

Woodbury County

Sioux City, *St. Thomas Episcopal Church*, 1200 Douglas St. (09/27/84)
Smithland vicinity, *Benson Archeological Site (13WD50)*, N of Smithland (04/24/84)

KANSAS

Cowley County

Arkansas City, *Arkansas City Commercial Historic District*, Summit St. and 5th Ave. (10/28/83)

Douglas County

Lawrence, *Miller, Robert H., House*, 1111 E. 19th St. (06/14/84)

Labette County

Harmon Site No. 2 (14LT323), (05/07/84)

Reno County

Hutchinson, *Terminal Station*, 111 — 2nd Ave. East (10/13/83)

Shawnee County

Berryton vicinity, *Lyons, Horace G., House*, 4831 SE 61st St. (08/01/84)

Wyandotte County

Kansas City, *Huron Building*, 905 N. 7th St. (07/05/84)
Kansas City, *Shawnee Street Overpass*, NW of US 35 (03/08/84)

KENTUCKY

Boone County

Petersburg vicinity, *Rogers Site*, (10/31/83)

Boyd County

Ashland, *Henry Clay Hotel (Ashland MRA)*, 1736 Winchester Ave. (08/03/84)

Bracken County

Augusta, *Augusta Historic District (Augusta MRA)*, Roughly bounded by Riverside Dr., 5th, Frankfort, and Williams Sts. (03/13/84)
Augusta, *Brothers-O'Neil House (Augusta MRA)*, 308 Seminary St. (05/22/84)
Augusta, *Griffith's, Evan, Grocery (Augusta MRA)*, 415 Railroad Ave. (05/22/84)
Augusta, *McKibben, Alfonso, House (Augusta MRA)*, 202 — 4th St. (05/22/84)
Augusta, *Minor, J.R., House (Augusta MRA)*, 204 — 2nd St. (05/22/84)
Augusta, *Weldon, James, House (Augusta MRA)*, 417 Railroad St. (05/22/84)
Augusta, *Wells-Keith House (Augusta MRA)*, 411–413 — 3rd St. (05/22/84)

Campbell County

Newport, *Wiedemann, Charles, House*, 1102 Park Ave. (08/16/84)

Christian County

Hopkinsville, *Higgins, E.H., House (Christian County MRA)*, 1530 E. 7th St. (01/03/84)

Daviess County

Owensboro vicinity, *McKay-Thornberry House*, S. Hampton Rd. (05/03/84)
Owensboro, *St. Joseph Church*, 4th and Clay Sts. (11/03/83)

Fayette County

Lexington, *Kinkead, Henry P., House*, 403 Walnut St. (07/12/84)
Lexington, *North Limestone Commercial District*, N. Limestone St. between Church and 3rd Sts. (11/03/83)
Lexington, *Southeast Lexington Residential and Commercial District*, Roughly bounded by High St., Rose Lane, Lexington and Woodland Aves. (08/01/84)

Fulton County

Adams Site (15 FU 4), (03/15/84)

Garrard County

Lancaster, *Ball, Billy House (Lancaster MRA)*, 209 Richmond St. (03/26/84)
Lancaster, *Denny Place (Lancaster MRA)*, 217 Lexington St. (03/26/84)
Lancaster, *Garrard County Jail (Lancaster MRA)*, Stanford St. (03/26/84)
Lancaster, *Garrard Mills (Lancaster MRA)*, 205 E. Buford St. (03/26/84)
Lancaster, *Hamilton House (Lancaster MRA)*, 107 Maple Ave. (03/26/84)
Lancaster, *Hemphill, J.C., House (Lancaster MRA)*, 211 Lexington St. (03/26/84)
Lancaster, *Hill, Dr. Oliver Perry, House (Lancaster MRA)*, 106 Hill Court (03/26/84)
Lancaster, *Lancaster Cemetery (Lancaster MRA)*, Campbell, Crab Orchard, and Richmond Sts. (03/26/84)
Lancaster, *Lancaster Commercial Historic District (Lancaster MRA)*, Danville, Lexington, Richmond, and Stanford Sts., (03/26/84)
Lancaster, *Lear, Judge V.A., House (Lancaster MRA)*, 222 Lexington St. (03/26/84)
Lancaster, *Male Academy (Lancaster MRA)*, 108 S. Campbell St. (03/26/84)
Lancaster, *Mason, Sue Shelby, House (Lancaster MRA)*, 213 Lexington St. (03/26/84)
Lancaster, *Methodist Episcopal Church (Lancaster MRA)*, Stanford St. (07/02/84)
Lancaster, *Peacock House (Lancaster MRA)*, 215 Buford St. (03/26/84)
Lancaster, *Peacock-Miller House (Lancaster MRA)*, 212 Danville St. (03/26/84)
Lancaster, *Petrie House (Lancaster MRA)*, 404 Danville St. (03/26/84)
Lancaster, *Wearren Place (Lancaster MRA)*, Stanford St. (03/26/84)
Lancaster, *Wherritt House (Lancaster MRA)*, 210 Lexington St. (03/26/84)

Graves County

Mayfield, *Mayfield Downtown Commercial District*, Roughly bounded by North, Water, 5th and 9th Sts. (08/16/84)

Green County

Campbellsville vicinity, *Livesay House (Green County MRA)*, Off KY 208 (08/24/84)
Creal, *Creal Store (Green County MRA)*, KY 61 (08/24/84)
Donansburg vicinity, *Montgomery House (Green County MRA)*, Off KY 1484 (08/24/84)
Donansburg vicinity, *Sandidge House (Green County MRA)*, KY 88 (08/24/84)
Donansburg, *Chewning House (Green County MRA)*, KY 88 (08/24/84)
Exie vicinity, *Edwards House (Green County MRA)*, KY 745 (08/24/84)
Exie vicinity, *Edwards, David, House (Green County MRA)*, Off KY 745 (08/24/84)
Exie, *Whitlock Log Cabin (Green County MRA)*, US 68 (08/24/84)
Greensburg vicinity, *Brents-Lisle House (Green County MRA)*, US 68 (08/24/84)
Greensburg vicinity, *Ebenezer School (Green County MRA)*, Off KY 61 (08/24/84)
Greensburg vicinity, *Emory-Blakeman-Penick House (Green County MRA)*, Off KY 487 (08/24/84)
Greensburg vicinity, *Hilliard, David, House (Green County MRA)*, Off KY 487 (08/24/84)
Greensburg vicinity, *Mears House (Green County MRA)*, KY 61 (08/24/84)
Greensburg vicinity, *Montgomery's Mill (Green County MRA)*, Off KY 88 (08/24/84)
Greensburg vicinity, *Woodward House (Green County MRA)*, Off US 68 (08/24/84)
Greensburg, *L & N Passenger Depot (Green County MRA)*, 103 N. Depot St. (08/24/84)
Greensburg, *Wilson, R.H., House (Green County MRA)*, 402 N. Water St. (08/24/84)
Gresham vicinity, *Groves-Cabell House (Green County MRA)*, Off KY 61 (08/24/84)
Haskingsville vicinity, *Anderson House (Green County MRA)*, KY 1913 (08/24/84)
Haskingsville vicinity, *Christie, Christopher Columbus, House (Green County MRA)*, KY 1915 (08/24/84)
Haskingsville vicinity, *Keltner House (Green County MRA)*, KY 1913 (08/24/84)
Haskingsville vicinity, *Mt. Gilead Baptist Church (Green County MRA)*, KY 767 (08/24/84)
Pierce vicinity, *Wallace, Napoleon, House (Green County MRA)*, Off KY 218 (08/24/84)
Summersville vicinity, *Elmore-Carter House (Green County MRA)*, KY 793 (08/24/84)
Summersville vicinity, *Williams, Daniel Motley, House (Green County MRA)*, KY 323 (08/24/84)
Webbs vicinity, *Simpson Log House (Green County MRA)*, KY 1464 (08/24/84)
Webbs, *Webbs Female Academy (Green County MRA)*, Off KY 88 (08/24/84)

Hancock County

Hawesville, *Hawesville Historic District*, Main, Water, Main Cross, and Clay Sts. (04/12/84)
Lewisport, *Hayden, Isaac B., House (Lewisport MRA)*, Pell St. (08/01/84)
Lewisport, *Henderson, Tom, House (Lewisport MRA)*, 4th St. (08/01/84)
Lewisport, *Lewisport Masonic Lodge (Lewisport MRA)*, 4th St. (08/01/84)
Lewisport, *Patterson, Horace, House (Lewisport MRA)*, Market St. (08/01/84)
Lewisport, *Pell, Joe, Building (Lewisport MRA)*, Pell St. (08/01/84)
Lewisport, *Taylor, J.B., and Son Feed Store (Lewisport MRA)*, 307 — 4th St. (08/01/84)

Hart County

Munfordville, *Munford Inn (Munfordville MRA)*, 109 Washington St. (03/19/84)
Munfordville, *Munfordville School (Munfordville MRA)*, 3rd and Washington Sts. (03/19/84)

Jefferson County

Anchorage vicinity, *Forrester House (Jefferson County MRA)*, 1103 Evergreen Rd. (04/09/84)
Louisville, *Ballard, Rogers Clark, Memorial School*, 4200 Lime Kiln Ln. (12/08/83)
Louisville, *Brandeis House*, 310 E. Broadway (03/01/84)
Louisville, *Caperton Block*, 564–574 — 4th Ave. (07/12/84)
Louisville, *First Street District (North Old Louisville MRA)*, Roughly bounded by E. Breckinridge, E. Kentucky, and I–65 (07/12/84)
Louisville, *Gaffney House (Jefferson County MRA)*, River Rd. (12/08/83)
Louisville, *Haldeman House (Jefferson County MRA)*, 3609 Glenview Ave. (12/08/83)
Louisville, *Limerick Historic District (Amended)*, Between Breckinridge and Oak, 5th and 8th St. (12/23/83)
Louisville, *Louisville Municipal Bridge, Pylons and Administration Building*, Spans Ohio River between Louisville, KY and Jeffersonville, IN (03/08/84)
Louisville, *Old Louisville Residential District (Boundary Increase)* (07/12/84)
Louisville, *Thornburgh House (West Louisville MRA)*, 376 N. 26th St. (12/08/83)
Louisville, *Tingley, George H., Elementary School*, 1311–1317 S. Preston St. (07/12/84)
Lyndon vicinity, *Nachand House (Jefferson County MRA)*, Off Westport Rd. (07/26/84)
Middletown vicinity, *Middletown Inn (Jefferson County MRA)*, 11705 Main St. (04/09/84)
Middletown, *Beynroth House*, 11503 Main St. (05/31/84)
St. Matthews vicinity, *Lewis, Dr. John, House (Jefferson County MRA)*, 220 Ridgeway Ave. (04/09/84)
St. Matthews vicinity, *Taylor, Zachary, National Cemetery/Taylor Burial Ground (Jefferson County MRA)*, 4701 Brownsboro Rd. (11/03/83)
Valley Station vicinity, *Kosmosdale Dale (Jefferson County MRA)*, Off Dixie Hwy. (04/09/84)

Jessamine County

Bethel Academy Site (15JS80) (03/15/84)
Keene vicinity, *Burrier House (Jessamine County MRA)*, N of Keene (07/13/84)
Keene vicinity, *Hughes House (Jessamine County MRA)*, KY 169 (07/05/84)
Keene vicinity, *Locust Grove Stock Farm (Jessamine County MRA)*, N of Keene (07/05/84)
Keene vicinity, *Mt. Pleasant Baptist Church (Jessamine County MRA)*, N of Keene (07/05/84)
Keene vicinity, *Pleasant Grove (Jessamine County MRA)*, N of Keene (07/05/84)
Keene vicinity, *Keene Springs Hotel (Jessamine County MRA)*, KY 1267 (07/05/84)
Nicholasville vicinity, *Ashurst, Craig, House (Jessamine County MRA)*, Off US 27 (07/05/84)
Nicholasville vicinity, *Barkley House (Jessamine County MRA)*, US 68 (07/05/84)
Nicholasville vicinity, *Barkley, Isaac, House (Jessamine County MRA)*, KY 169 (07/05/84)
Nicholasville vicinity, *Brick House on Shun Pike (Jessamine County MRA)*, Off KY 1268 (07/05/84)
Nicholasville vicinity, *Bryan, George and Betty, House (Jessamine County MRA)*, US 68 (07/05/84)
Nicholasville vicinity, *Butler's Tavern (Jessamine County MRA)*, US 27 (07/05/84)
Nicholasville vicinity, *Chrisman, Joseph, House (Jessamine County MRA)*, US 27 (07/05/84)
Nicholasville vicinity, *Duncan, J.W., House (Jessamine County MRA)*, KY 169 (07/05/84)
Nicholasville vicinity, *Hoover House (Jessamine County MRA)*, US 27 (07/05/84)

Nicholasville vicinity, *Knight, Grant, House (Jessamine County MRA)*, KY 169 (07/05/84)
Nicholasville vicinity, *Log House on Shun Pike (Jessamine County MRA)*, Off KY 1268 (07/05/84)
Nicholasville vicinity, *Lowry, William C., House (Jessamine County MRA)*, Off KY 169 (07/05/84)
Nicholasville vicinity, *Marshall-Bryan House (Jessamine County MRA)*, US 27 (07/05/84)
Nicholasville vicinity, *Martin, James G., House (Jessamine County MRA)*, Tates Creek Rd. (07/05/84)
Nicholasville vicinity, *Nave-Brown House (Jessamine County MRA)*, KY 29 (07/05/84)
Nicholasville vicinity, *Providence Church (Jessamine County MRA)*, US 27 (07/05/84)
Nicholasville vicinity, *Roberts Chapel (Jessamine County MRA)*, US 27 (07/05/84)
Nicholasville vicinity, *Sandy Bluff (Jessamine County MRA)*, Off KY 1268 (07/13/84)
Nicholasville vicinity, *Scott, John Harvey, House (Jessamine County MRA)*, Off US 27 (07/13/84)
Nicholasville vicinity, *Sunnyside Farm House (Jessamine County MRA)*, US 27 (07/05/84)
Nicholasville vicinity, *Thornwood (Jessamine County MRA)*, Baker Lane (07/13/84)
Nicholasville vicinity, *Venable-Todhunter Houses (Jessamine County MRA)*, Tates Creek Rd. (07/05/84)
Nicholasville vicinity, *Woodland (Jessamine County MRA)*, US 68 (07/05/84)
Nicholasville vicinity, *Young House (Jessamine County MRA)*, KY 29 (07/13/84)
Nicholasville, *Bronaugh, J.S., House (Jessamine County MRA)*, 103 N. 2nd St. (07/05/84)
Nicholasville, *McConnell-Woodson-Philips House (Jessamine County MRA)*, 303 S. Main St. (07/05/84)
Nicholasville, *Nicholasville Historic District (Jessamine County MRA)*, Court Row, Maple and Main Sts. (07/19/84)
Spears vicinity, *Newman, Davis, House (Jessamine County MRA)*, W of Spears (07/13/84)
Spears, *Grubb, A., House (Jessamine County MRA)*, KY 169 (07/05/84)
Wilmore vicinity, *Bicknell House (Jessamine County MRA)*, KY 29 (07/05/84)
Wilmore vicinity, *Curd House (Jessamine County MRA)*, KY 29 (07/13/84)

Kenton County

Covington, *Patton, Robert, House (John G. Carlisle House)*, 1533 Garrard St. (03/01/84)
Covington, *West Side/Main Strasse Historic District*, Roughly bounded by C & O Railroad, 6th, Philadelphia, Dalton, Pike, and Robbins Sts. (11/10/83)

Knox County

Barbourville, *Barbourville Commerical District*, Roughly bounded by Daniel Boone Dr., Liberty, High, and Jail Sts. (08/02/84)
Barbourville, *Mitchell Building-First State Bank Building*, 222 Knox St. (08/01/84)
Barbourville, *Soldiers and Sailors Memorial Gymnasium*, Union College Campus (08/01/84)

Madison County

Richmond, *Arlington (Richmond MRA)*, Lexington Rd. (10/13/83)
Richmond, *Blair Park (Richmond MRA)*, 108 Rosedale St. (10/13/83)
Richmond, *Bronston Place (Richmond MRA)*, Woodland Ave. (10/13/83)
Richmond, *Burnawood (Richmond MRA)*, Burnam Court (01/03/84)
Richmond, *Eastern Kentucky University Historic District (Richmond MRA)*, Lancaster, Crabbe St., and University Dr. (01/03/84)
Richmond, *Holloway, William, House (Rosehill) (Richmond MRA)*, Hillsdale St. (10/13/83)
Richmond, *Mt. Pleasant (Richmond MRA)*, 2nd and Water Sts. (10/13/83)
Richmond, *Richmond Cemetery (Richmond MRA)*, E. Main St. (10/13/83)
Richmond, *Squire Turner House (Richmond MRA)*, 302 N. 2nd St. (10/13/83)
Richmond, *Taylor House (Richmond MRA)*, 216 Water St. (10/13/83)
Richmond, *Walker House (Richmond MRA)*, 315 Lancaster Ave. (10/13/83)
Richmond, *West Richmond Historic District (Richmond MRA)*, Roughly W. Main St. between Church and Norwood Sts. (01/12/84)

Mason County

Pyles Site (15MS28), (04/05/84)
Maysville, *Armstrong Row*, 207–227 W. 2nd St. (03/01/84)

McCraken County

Paducah, *Anderson-Smith House*, Lone Oak Rd. (03/01/84)

Meade County

Brandenburg, *Brandenburg Methodist Episcopal Church (Brandenburg MRA)*, 215 Broadway (08/14/84)
Brandenburg, *Goff-Baskett House (Brandenburg MRA)*, 550 Lawrence St. (08/14/84)
Brandenburg, *Jones-Willis House (Brandenburg MRA)*, 321 Main St. (08/14/84)
Brandenburg, *Meade County Clerk Office-Rankin House (Brandenburg MRA)*, 205 Lafayette St. (08/14/84)
Brandenburg, *Meade County Jail (Brandenburg MRA)*, 125 Main St. (08/14/84)
Brandenburg, *Richardson House (Brandenburg MRA)*, 547 Lawrence St. (08/14/84)
Brandenburg, *Yeakel, Edward, House (Brandenburg MRA)*, 116 Decatur St. (08/14/84)

Mercer County

Harrodsburg vicinity, *Burrus, Nathaniel, House*, 955 Vanarsdall Rd. (08/01/84)
Harrodsburg vicinity, *Fairview* 2408 Lexington Rd. (08/01/84)

Nelson County

Bardstown vicinity, *Sisters of Charity of Nazareth Historic District*, N of Bardstown off US 31E (03/15/84)
Bloomfield vicinity, *Stone, John, House*, US 62 (07/12/84)

Ohio County

Wallace, Charles, House, (03/15/84)

Oldham County

Brownsboro vicinity, *Yewell-Snyder House*, 6206 N. Hitt Lane (11/03/83)

Owen County

Owenton, *Central Owenton Historic District (Owenton MRA)*, Roughly Bryan, Madison, Seminary, and Thomas Sts. (09/04/84)
Owenton, *Cox, L.O., House (Owenton MRA)*, 311 N. Main St. (09/04/84)
Owenton, *Ford House (Owenton MRA)*, 311 S. Main St. (09/04/84)
Owenton, *Linsey, William, House (Owenton MRA)*, 220 W. Seminary St. (09/04/84)
Owenton, *McKay House (Owenton MRA)*, 105 E. Adair St. (09/04/84)
Owenton, *North Main-North Adams Historic District (Owenton MRA)*, N. Main, N. Adams, Bryan, and North Sts. (09/04/84)
Owenton, *Settle, E.E., House (Owenton MRA)*, 403–405 N. Adams St. (09/04/84)

Pike County

Pikeville, *College Street Historic District (Pikeville MRA)*, Roughly College St. from Elm St. to Huffman Ave. (09/20/84)
Pikeville, *Commercial Historic District (Pikeville MRA)*, Main St. and Division Ave. (09/20/84)
Pikeville, *Greer, R.T., and Company (Pikeville MRA)*, Auxier St. (09/20/84)
Pikeville, *Huffman Avenue Historic District (Pikeville MRA)*, Hufman Ave. and Main St. (04/26/84)
Pikeville, *Odd Fellows Building (Pikeville MRA)*, 333 — 2nd St. (04/26/84)
Pikeville, *Scott Avenue Historic District (Pikeville MRA)*, Scott Ave., 6th and 7th Sts. (09/20/84)
Pikeville, *Third Street Historic District (Pikeville MRA)*, 3rd St. and Scott Ave. (09/20/84)
Pikeville, *York House (Pikeville MRA)*, Main St. (04/26/84)
Pikeville, *York Mansion (Pikeville MRA)*, 209 Elm St. (04/26/84)

Pulaski County

Burnside, *Boland House (Pulaski County MRA)*, Lakeshore Dr. (08/14/84)
Burnside, *Burnside Historic District (Pulaski County MRA)*, Lakeshore Dr. and French Ave. (08/14/84)
Burnside, *Burnside Lodge (Pulaski County MRA)*, Off US 27 (08/14/84)
Dabney, *Dabney Post Office (Pulaski County MRA)*, KY 39 (08/14/84)
Eubank, *Payne Mill (Pulaski County MRA)*, Off SR 1247 (08/14/84)
Somerset vicinity, *Buck-Mercer House (Pulaski County MRA)*, Waynesburg Rd. (08/14/84)
Somerset, *City Hall (Pulaski County MRA)*, 400 E. Mt. Vernon St. (08/14/84)
Somerset, *Crawford House (Pulaski County MRA)*, 121 Maple St. (08/14/84)
Somerset, *Harvey's Hill Historic District (Pulaski County MRA)*, 401–527 N. Main St. and 402–526 N. Main St. (08/14/84)
Somerset, *Hotel Beecher (Pulaski County MRA)*, 203 S. Main St. (08/14/84)
Somerset, *Morrow House (Pulaski County MRA)*, 208 E. Oak St. (08/14/84)

Somerset, *North Main Street Historic District (Pulaski County MRA)*, N. Main and Columbia Sts. (08/14/84)
Somerset, *Richardson House (Pulaski County MRA)*, 206 N. Vine St. (08/14/84)
Somerset, *Robinson Mill (Pulaski County MRA)*, S. Main St. (08/14/84)
Somerset, *Scott, Dill, House (Pulaski County MRA)*, 200 N. Main St. (08/14/84)
Somerset, *Smith House (Pulaski County MRA)*, 200 N. College St. (08/14/84)
Somerset, *Smith, Beecher, House (Pulaski County MRA)*, 405 College St. (08/14/84)
Somerset, *South Courthouse Square Historic District (Pulaski County MRA)*, Public Sq., Zachary Way, W. Mt. Vernon, S. Main, and S. Maple Sts. (08/14/84)
Somerset, *Waddle-Prather House (Pulaski County MRA)*, 311 N. College St. (08/14/84)
Somerset, *West Columbia Street District (Pulaski County MRA)*, 201–303 W. Columbia St. (08/14/84)
Somerset, *Withers House (Pulaski County MRA)*, 116 Maple St. (08/14/84)

Rockcastle County

Mt. Vernon, *Mt. Vernon Commercial District*, Main St. from Church to Richmond Sts. (11/10/83)

Scott County

Georgetown vicinity, *Craig, Newton, House and Penitentiary Buildings Complex*, US 460 (07/19/84)
Georgetown vicinity, *Edge Hill Farm*, 1661 Payne's Depot Pike (03/01/84)
Georgetown vicinity, *Johnson, James, Quarters (Early Stone Buildings of Central Kentucky TR)*, Off KY 227 (10/11/83)
Georgetown vicinity, *Lane's Run Historic District*, Old Oxford Road., US 62 and US 460 (01/12/84)
Georgetown, *First African Baptist Church and Parsonage*, 209–211 W. Jefferson St. (03/01/84)
Midway vicinity, *Weisenberger Mills and Related Buildings*, Off US 421 (also in Woodford County) (08/16/84)

Shelby County

Lincoln Ridge vicinity, *Young, Whitney M. Jr., Birthplace and Boyhood Home*, Lincoln Institute campus (04/27/84) NHL
Shelbyville vicinity *Allen Dale Farm*, Off US 60 (11/17/83)
Shelbyville vicinity *Threlkeld, Thomas, House*, Benson Pike (05/14/84)
Shelbyville, *Bayne House (Shelbyville MRA)*, 37 Main St. (09/28/84)
Shelbyville, *Bethel AME Church (Shelbyville MRA)*, 414 Henry Clay St. (09/28/84)
Shelbyville, *Church of Annunication (Shelbyville MRA)*, 105 Main St. (09/28/84)
Shelbyville, *Saffell Funeral Home (Shelbyville MRA)*, 4th and Caly Sts. (09/28/84)
Shelbyville, *St. John United Methodist Church (Shelbyville MRA)*, College St. (09/28/84)
Shelbyville, *Tevis Cottage (Shelbyville MRA)*, 607 Washington St. (09/28/84)
Shelbyville, *Wickland (Shelbyville MRA)*, 169 Kentucky St. (09/28/84)

Todd County

Elkton vicinity, *Reeves, W.L., House*, KY 102 (02/02/84)

Trimble County

Bedford vicinity, *Bates House (Trimble County MRA)*, New Hope Rd. (04/09/84)
Bedford vicinity, *Logan, W.W., House (Trimble County MRA)*, Sulpher-Bedford Pike (04/09/84)
Bedford, *Hancock House (Trimble County MRA)*, Main St. (04/09/84)
Bedford, *House Tm–B–7 (Trimble County MRA)*, Main St. (04/09/84)
Bedford, *Peak House (Trimble County MRA)*, Spring and West Sts. (04/09/84)
Bedford, *Trimble County Jail (Trimble County MRA)*, Main St. (04/09/84)
Milton vicinity, *House on Kentucky Highway 1492 (Trimble County MRA)*, KY 1492 (04/09/84)
Milton vicinity, *Moreland School (Cooper's Bottom School) (Trimble County MRA)*, Cooper's Bottom Rd. (04/09/84)
Milton vicinity, *Neal House (Trimble County MRA)*, US 421 (04/09/84)
Milton vicinity, *Page (Trimble County MRA)*, Cooper's Bottom Rd. (04/10/84)
Milton vicinity, *Rowlett House (Trimble County MRA)*, KY 625 (04/09/84)
Milton, *House Tm–M–27 (Trimble County MRA)*, KY 36 (04/09/84)
Milton, *House Tm–M–28 (Trimble County MRA)*, KY 36 (04/09/84)
Milton, *Third Street Historic District (Trimble County MRA)*, Third St. at US 421 (04/10/84)
Wise Landing, *Yeager General Store (Trimble County MRA)*, Barebone Rd. (07/21/83)

Union County

Morganfield, *Morganfield Commericial District*, Main, Court, and Morgan Sts. (07/19/84)

Warren County

Bowling Green vicinity, *Walnut Lawn (Warren County MRA)*, W. of Bowling Green on Morgantown Rd. (10/20/83)
Bowling Green, *St. James Apartments (Warren County MRA)*, 1133 Chestnut St. (08/02/84)

LOUISIANA

Ascension Parish

Donaldsonville, *Donaldsonville Historic District*, Roughly bounded by Bayou Lafourche, the Mississippi River levee, Jackson Ave., Marchand Dr., and Monroe and Church Sts. (01/19/84)
Prairieville, *Kraemer House*, Off US 61 (08/02/84)

Avoyelles Parish

Bunke, *Epps, Edwin, House*, US 71 (04/12/84)

Caddo Parish

Shreveport, *Davidson House*, 654 Wichita Ave. (12/22/84)
Shreveport, *Holy Trinity Catholic Church*, 315 Marshall St. (09/27/84)
Shreveport, *Sprague Street Houses*, 1100–1118 Sprague St. (10/03/83)

Calcasieu Parish

Lake Charles, *Episcopal Church of the Good Sheperd*, 715 Kirkman St. (12/22/83)

Claiborne Parish

Arizona, *Arizona Methodist Church*, LA 806 (12/22/83)

East Baton Rouge Parish

Baton Rouge, *Beauregard Town Historic District (Boundary Increase/Armour Building)*, Mayflower St. (10/11/83)
Baton Rouge, *Baton Rouge Junior High School*, 1100 Laurel St. (09/27/84)
Baton Rouge, *Central Fire Station*, 427 Laurel St. (04/05/84)
Baton Rouge, *Planter's Cabin*, 7815 Highland Rd. (08/23/84)
Zachary, *Zachary Railroad Depot*, 4434 W. Central Ave. (12/28/83)

East Feliciana Parish

Clinton, *St. Andrew's Episcopal Church*, Church and St. Andrew's Sts. (06/21/84)
Clinton, *Wall House*, Woodville St. (05/31/84)

Grant Parish

Boyce vicinity, *Kateland*, N of Boyce off LA 8 (04/12/84)

Iberia Parish

Jeanerette vicinity, *Alice*, LA 87 (06/14/84)

Jackson Parish

Chatham vicinity, *Brooklyn Church and Cemetery*, SE of Chatham off LA 4 (06/02/84)

Lafayette Parish

Lafayette, *Daigle House*, 1022 S. Washington St. (06/14/84)
Lafayette, *Elrose*, 217 W. University Ave. (06/14/84)
Lafayette, *First United Methodist Church*, 703 Lee Ave. (06/21/84)
Lafayette, *Lafayette Elementary School*, 1301 W. University Ave. (06/14/84)
Lafayette, *Lafayette Hardware Store*, 121 W. Vermilion St. (06/14/84)
Lafayette, *Old Guaranty Bank Building*, 500 Jefferson St. (07/12/84)
Lafayette, *Roy, J. Arthur, House*, 1204 Johnston St. (06/14/84)
Lafayette, *Salles House and Office*, 512 and 514 S. Buchanan St. (07/19/84)
Lafayette, *Sterling Grove Historic District*, Roughly bounded by Evangeline Thwy., E. Simcoe, Chopin, and N. Sterling Sts. (07/26/84)

Lincoln Parish

Ruston, *First Presbyterian Church*, 212 N. Bonner St. (01/12/84)
Ruston, *Kidd-Davis House*, 609 N. Vienna St. (03/29/84)

Natchitoches Parish

Natchitoches, *Natchitoches Historic District*, (06/05/74) NHL
Natchitoches, *President's Home, Northwestern State University*, College Ave. (07/19/84)
Natchitoches, *Women's Gymnasium, Northwestern State University*, College Ave. (06/21/84)

Orleans Parish

New Orleans, *Criminal Courts Building*, 2700 Tulane Ave. (01/12/84)

New Orleans, *Hart House*, 2108 Palmer Ave. (06/07/84)
New Orleans, *Newberger House*, 1640 Palmer Ave. (09/27/84)

Pointe Coupee Parish

Batchelor vicinity, *Lakeside*, LA 419 (03/29/84)
Oscar, *Pleasant View Plantation House*, LA 1 (04/05/84)

Rapides Parish

Alexandria, *Bolton High School*, 2101 Vance Ave. (01/09/84)
Alexandria, *Hemenway Furniture Co. Building*, 3rd and Jackson Sts. (10/04/83)
Alexandria, *St. Francis Xavier Cathedral Complex*, 626 — 4th St. (03/29/84)

St. Landry Parish

Opelousas vicinity, *Lamorandier-Prudhomme-Jackson House*, Off US 167 (12/22/83)
Eunice, *Midland Branch Railwood Depot*, 1st and North Sts. (09/27/83)

St. Martin Parish

Breaux Bridge vicinity, *Pellerin-Chauffe House*, S of Breaux Bridge on LA 347 (04/05/84)
Breaux Bridge vicinity, *Fontenette-Durand Maison Dimanche*, LA 94 (04/19/84)

St. Tammany Parish

Madisonville, *Madisonville Bank*, 400 Cedar St. (12/28/83)

Tangipahoa Parish

Amite vicinity, *Epney*, Off LA 445 (06/21/84)
Loranger vicinity, *Zemurray Gardens Lodge Complex*, LA 40 (10/03/83)

Terrebonne Parish

Houma, *Houma Historic District*, Roughly bounded by East Park Ave., Main, Roussell, Goode, School, Belanger, Church, Verret, Grinage, Lafayette, and Canal Sts. (12/08/83)
Schriever vicinity, *Armitage*, LA 20 and Colonial Dr. (04/12/84)

West Feliciana Parish

St. Francisville vicinity, *Catalpa*, US 61 (07/12/84)

MAINE

Androscoggin County

Auburn, *Androscoggin County Courthouse and Jail*, 2 Turner St. (12/29/83)
Auburn, *Auburn Public Library*, 49 Spring St. (03/22/84)
Lewiston, *Jordan School*, 35 Wood St. (03/22/84)
Poland, *Poland Spring Bottling Plant and Spring House*, Ricker Rd. (03/22/84)

Aroostook County

Island Falls, *Island Falls Opera House*, Patten Rd. and Sewall St. (07/19/84)

Cumberland County

Bridgton vicinity, *Walker Memorial Hall*, Lower Ridge Rd. (12/29/83)
Bridgton, *Stone House*, Burnham Rd. (07/19/84)
Cumberland Center vicinity, *Winn Road School*, Winn Rd. (03/22/84)
Gorham vicinity, *Longfellow, Stephen, House*, Longfellow Rd. (03/22/84)
Portland, *Griffin House*, 200 High St. (07/19/84)
Portland, *Western Promenade Historic District*, Roughly bounded by Western Promenade and Bramhall, Brackett, Emery, and Danforth Sts. (02/16/84)
West Baldwin, *Burnell Tavern*, ME 113 (12/29/83)

Franklin County

Farmington, *Franklin County Courthouse*, Main and Anson Sts. (10/06/83)
Rangeley vicinity, *Oquossoc Log Church*, ME 4 (07/19/84)

Hancock County

Blue Hill, *Peters, John, House*, Off ME 176 (10/06/83)

Kennebec County

Augusta, *Fuller-Weston House*, 11 Summer St. (03/22/84)
Augusta, *St. Mark's Episcopal Church*, 9 Summer St. (07/19/84)
Augusta, *Vickery Building*, 261 Water St. (03/22/84)
North Vassalboro, *Mill Agent's House*, ME 32 (10/06/83)
Readfield vicinity, *Lee, Jesse, Church*, ME 17 and Plains Rd. (07/19/84)
South China vicinity, *Jones, Eli and Sybil, House*, Dirigo Corner (03/22/84)
Vassalboro vicinity, *Leach, Philip House*, Hussey Hill Rd. (10/20/83)
Winthrop, *Cobbossee Lighhouse*, Ladies Delight Island (01/12/84)

Knox County

Allen's Island, (12/15/83)
Mullen's Cove, (03/30/84)
Camden, *Stephen Taber (schooner)*, Camden Harbor (07/30/84)
Vinalhaven, *Union Church of Vinalhaven*, E. Main St. (07/19/84)

Lincoln County

Archeological Site 16.175 (Boothbay Region Prehistoric Sites TR), (06/29/84)
Archeological Site 16.198 (Boothbay Region Prehistoric Sites TR), (06/29/84)
Archeological Site 16.20 (Boothbay Region Prehistoric Sites TR), (06/29/84)
Archeological Site 16.21 (Boothbay Region Prehistoric Sites TR), (06/29/84)
Archeological Site 16.37, Area I and II (Boothbay Region Prehistoric Sites TR), (06/29/84)
Archeological Site 16.38 (Boothbay Region Prehistoric Sites TR), (06/29/84)
Archeological Site 16.47 (Boothbay Region Prehistoric Sites TR), (06/29/84)
Archeological Site 16.68 (Boothbay Region Prehistoric Sites TR), (06/29/84)
Archeological Site 16.73 (Boothbay Region Prehistoric Sites TR), (06/29/84)
Archeological Site 16.8 (Boothbay Region Prehistoric Sites TR), (06/29/84)
Archeological Site 26.27 (Boothbay Region Prehistoric Sites TR), (06/29/84)
Taylor Site 16.65 (Boothbay Region Prehistoric Sites TR), (06/29/84)
Edgecomb vicinity, *Parsons, Stephen House*, SW of Edgecomb (10/06/83)
Monhegan, *Influence*, Monhegan Island (12/29/83)

Oxford County

Vail Site 81.1 (Boundary Increase) (01/11/84)
Fryeburg, *District No. 1 Schoolhouse*, 98 Main St. (07/19/84)
Hartford, *Irish, J. & O., Store*, ME 140 (12/29/83)

Penobscot County

Maine Archeological Survey Site, (01/26/84)
Bangor, *Connors House*, 277 State St. (10/06/83)
Bangor, *Great Fire of 1911 Historic District*, Harlow, Center, Park, State, York, and Central Sts. (06/14/84)

Piscataquis County

Monson, *Swedish Lutheran Church*, Wilkins and Hebron Sts. (07/19/84)

Sagadahoc County

Hunter Site, (01/26/84)

Somerset County

Athens, *Somerset Academy*, Academy St. (07/19/84)
Skowhegan, *History House (Aaron Spear House)*, 40 Elm St. (12/29/83)
Skowhegan, *Skowhegan Fire Station*, Island Ave. (10/20/83)

Waldo County

Northport vicinity, *Cobe Estate*, N of Northport on Bluff Rd. (10/20/83)
Searsport, *McGilvery, Capt. John, House*, E. Main St. (12/29/83)
Searsport, *McGilvery, Capt. William, House*, E. Main St. (12/29/83)

Washington County

Cherryfield, *Campbell, David W., House*, Main St. (07/19/84)
Eastport, *Boynton Street Historic District*, 13–26 Boynton St. (07/19/84)
Lubec, *Fowler, Jeremiah, House*, 35 School St. (12/29/83)
Lubec, *Young, Daniel, House*, 34 Main St. (03/22/84)
Robbinston, *Brewer, Henrietta, House*, US 1 (10/06/83)
Robbinston, *Brewer, John N.M., House*, US 1 (10/06/83)

York County

Biddleford, *St. Joseph's School*, Birch St. (12/29/83)
Cornish, *Odd Fellows-Rebekah Hall*, High St. (12/29/83)
Goodwins Mills, *Foss, Levi, House*, ME 35 (03/22/84)
Kennebunkport, *Cape Arundel Summer Colony Historic District*, Roughly bounded by Chick's Creek, Ocean Ave., S. Main St., Endcliff Rd., and Walkers Point (08/16/84)
Limerick, *Limerick Upper Village Historic District*, ME 5 (04/05/84)
Ogunquit, *Ogunquit Memorial Library*, Shore Rd. (12/29/83)
South Berwick, *Jewett-Eastman House*, 37 Portland St. (12/29/83)
Wells vicinity, *Laudholm Farm*, Laudholm Farm Rd. (10/20/83)
York, *York Cliffs Historic District*, Agamenticus Ave. (07/26/84)

MARYLAND

Allegany County

Cumberland vicinity, *Big Bottom Farm*, Hazen Rd. (06/07/84)
Frostburg vicinity, *Borden Mines Superintendent's House*, MD 36 (03/22/84)
Westernport, *Waverly Street Bridge*, Waverly St. at Georges Creek (09/07/84)

Anne Arundel County

Annapolis Junction vicinity, *Grassland*, MD 32 (09/13/84)
Annapolis, *Annapolis Historic District*, Roughly bounded by Spa Creek, Southgate Ave., Hanover and West Sts. (09/29/84)
Annapolis, *Helianthus III (yacht)*, Hilton Inn dock (08/09/84)
Annapolis, *Stanton Center*, 92 W. Washington St. (12/01/83)
Crofton vicinity, *Linthicum Walks*, 2295 Davidsonville Rd. (09/09/84)
Edgewater, *Gresham*, 784 Mayo Rd. (09/07/84)
Galesville vicinity, *Norman's Retreat*, 5325 Muddy Creek Rd. (09/07/84)
Millersville vicinity, *Abington Farm*, 1761 Severn Chapel Rd. (09/13/84)

Baltimore (Independent City)

Charles Village-Abell Historic District, Roughly bounded by University Pkwy., Guilford Ave., and 25th, Mace, Charles, and Barclay Sts. (12/15/83)
Hutzler Brothers Palace Building, 210–218 N. Howard St. (06/07/84)
Paca Street Firehouse, 106 N. Paca St. (10/28/83)
Rieman Block, 617–631 W. Lexington St. (06/07/84)
Rowhouse at 303–327 East North Avenue, 303–327 E. North Ave. (09/13/84)
Dundalk *Dundalk Historic District*, Roughly bounded by Liberty Pkwy., Dunman, Dundark, Willow Spring and Sunship Rds., Colgate, Chesapeake and Patapsco Aves. (12/08/83)

Baltimore County

Cantonsville, *St. Charles College Historic District*, 711 Maiden Choice Lane (09/30/83)
Kingsville vicinity, *Jericho Farm*, 12230 Jericho Rd. (09/07/84)
Parkton, *Parkton Hotel*, York Rd. (12/08/83)

Calvert County

Solomons, *Lore, J.C., Oyster House*, MD 2 (03/22/84)

Caroline County

Denton, *Denton Historic District*, Roughly bounded by 1st, 10th, Gay, High Franklin and Sunnyside Sts. (12/01/83)

Carroll County

Eldersburg vicinity, *Wesley Chapel Methodist Episcopal Church*, Liberty and Johnsville Rds. (03/22/84)
Mount Airy, *Mount Airy Historic District*, Roughly Main, Church, Maple, Park, Hill, and Warfield Sts. (also in Frederick County) (09/13/84)

Cecil County

Bumpstead Archeological Site (Delaware Chalcedony Complex TR), (12/16/83)
Heath Farm Camp Archeological Site (Delaware Chalcedony Complex TR), (12/16/83)
Heath Farm Jasper Quarry Archeological Site (Delaware Chalcedony Complex TR), (12/16/83)
Iron Hill Cut Jasper Quarry Archeological Site (Delaware Chalcedony Complex TR), (12/16/83)
McCandless Archeological Site (Delaware Chalcedony Complex TR), (12/16/83)
Elkton vincinity, *Elk Landing*, Landing Lane (09/07/84)
Elkton vicinity, *Rock United Presbyterian Church*, MD 273 at Rock Church Rd. (12/01/83)
Harrisville, *Harris, Nathan and Susannah, House*, 541 Rising Sun Rd. (03/22/84)
Port Deposit vicinity, *Snow Hill Site*, Off US 222 (04/27/84)
Port Deposit vicinity, *Tome School for Boys Historic District*, Bainbridge Naval Training Grounds (05/16/84)
St. Augustine vicinity, *Great House*, 284 Great House Farm Rd. (06/07/84)

Charles County

La Plata vicinity, *Exchange, The*, Spring Hill-Newtown Rd. (06/07/84)
La Plata vicinity, *Oak Grove*, Turkey Hill Rd. (11/23/83)

Dorchester County

Cambridge, *Christ Episcopal Church and Cemetery*, High St. (04/12/84)

Frederick County

Emmitsburg, *St. Euphemia's School and Sisters' House*, 5052 DePaul St. (09/13/84)
Frederick, *Spring Bank*, 7945 Worman's Mill Rd. (09/07/84)

Garrett County

Accident vicinity, *Koese Mill*, N of Accident (09/13/84)
Deer Park vicinity, *Glamorgan*, MD 135 (09/13/84)
Oakland, *Oakland Historic District*, Roughly bounded by Oak, 8th, High, 3rd, Omaha, and Bartlet Sts. (01/26/84)
Selbysport vicinity, *Mercy Chapel at Mill Run*, Mill Run Rd. (09/07/84)
Swanton, *Anderson Chapel*, Swanton Hill and Pine Hill Rds. (06/07/84)

Harford County

Aberdeen vicinity, *Chestnut Ridge, 3850 W. Chapel Rd.* (12/01/83)
Darlington vicinity, *Silver Houses Historic District*, S of Darlington on MD 161 (09/07/84)

Howard County

Woodbine vicinity, *Hobson's Choice*, 2921 Florence Rd. (09/13/84)

Kent County

Betterton, *Betterton Historic District*, Roughly bounded by Sassafras River, Gut Marsh, 6th, and Ericsson Aves. (06/07/84)
Chestertown, *Chestertown Historic District (Boundary Increase)*, Roughly bounded by Chester River, Lynchberg, and Cannon Sts., College Ave., Philosophers and Riverside Terrs. (09/13/84)

Montgomery County

Gaithersburg, *Belt, J.A., Building*, 227 E. Diamond Ave. (08/09/84)
Glen Echo, *Glen Echo Park Historic District*, MacArthur Blvd. (06/08/84)

Prince Georges County

Upper Marlboro, *Traband, John H., House*, 14204 Marlboro Pike (03/22/84)

Queen Annes County

Centreville vicinity, *Bachelor's Hope*, MD 18 (05/03/84)
Centreville vicinity, *Lansdowne*, MD 305 (06/07/84)
Sudlersville, *St. Andrew's Episcopal Chapel*, Church St. and Maple Ave. (09/07/84)

Somerset County

Manokin vicinity, *Waters' River*, Hood Rd. (08/09/84)
Marion Station vicinity, *Williams' Conquest*, Charles Cannon Rd. (05/03/84)
Marion vicinity, *Lankford House*, MD 667 (08/09/84)
Marion vicinity, *Pomfret Plantation*, MD 667 (09/07/84)
Princess Anne vicinity, *White Hall*, Cooley Rd. (06/07/84)
Rehobeth vicinity, *Caldicott*, SW of US 13 (12/22/83)
Rehobeth vicinity, *Coventry Parish Ruins*, Off MD 667 (08/09/84)
Upper Fairmount Vicinity, *Academy Grove Historic District*, MD 361 (05/03/84)
Upper Fairmount vicinity, *Schoolridge Farm*, MD 361 (09/07/84)
Ventor, *Panther's Den*, Drawbridge Rd. (03/22/84)
Westover vicinity, *Beauchamp House*, Old Westover-Marion Rd. (08/09/84)

Talbot County

Wye Mills, *Old Wye Church*, Queenstown-Easton Rd. (08/09/84)

Washington County

Hagerstown, *Western Maryland Railway Steam Locomotive No. 202*, City Park (06/07/84)

Worcester County

Berlin vicinity, *Henry's Grove*, MD 611 (09/13/84)

MASSACHUSETTS

Berkshire County

Dalton, *Dalton Grange Hall No. 23*, South St. and Grange Hall Rd. (11/10/83)
Great Barrington, *Monument Mills*, Park and Front Sts. (11/29/83)
Monterey, *Brewer, Capt. John, House*, Main Rd. (03/29/84)
New Marlborough, *Shepard, Thomas, House*, East Hill Rd. (05/31/84)
North Adams, *Sherman, Eber, Farm*, 1010 State Rd. (10/06/83)
North Adams, *St. Joseph's School*, Eagle St. (12/22/83)
Pittsfield, *Morewood School*, S. Mountain Rd. (05/31/84)
South Egremont, *South Egremont Village Historic District*, MA 23/41, Buttonball Lane, Sheffield, and Pinecrest Hill Rds. (05/31/84)

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Stockbridge, *Villa Virginia*, Ice Glen Rd. (11/29/83)
Williamstown, *Mill Village Historic District*, Cole Ave., Mill, Arnold, and Elm Sts. (10/06/83)

Bristol County

Attleboro, *Hebronville Mill Historic District*, Knight Ave., Read and Phillip Sts. (05/17/84)
Easton, *Furnace Village Historic District*, MA 106/123 (10/06/83)
Fall River, *Lower Highlands Historic District (Fall River MRA)*, Roughly bounded by Cherry, Main, Winter, and Bank Sts. (01/10/84)
New Bedford, *Smith, Bradford, Building*, 1927–1941 Purchase St. (05/17/84)
Taunton, *Atwood, Charles R., House (Taunton MRA)*, 30 Dean St. (07/05/84)
Taunton, *Barnum School (Taunton MRA)*, Barnum St. (07/05/84)
Taunton, *Bartlett, J.C., House (Taunton MRA)*, 12 Walnut St. (07/05/84)
Taunton, *Bassett, C.J.H., House (Taunton MRA)*, 20 Chestnut St. (07/05/84)
Taunton, *Beattie, W.C., House (Taunton MRA)*, 289 W. Brittania St. (07/05/84)
Taunton, *Brow's Tavern (Taunton MRA)*, 211 Tremont St. (07/05/84)
Taunton, *Brownell, Henry G., House (Taunton MRA)*, 119 High St. (07/05/84)
Taunton, *Building at 80 and 88 W. Brittania St. (Taunton MRA)*, 80 and 88 W. Brittania St. (07/05/84)
Taunton, *Capron, George, House (Taunton MRA)*, 6 N. Pleasant St. (07/05/84)
Taunton, *Central Fire Station (Taunton MRA)*, Leonard and School Sts. (07/05/84)
Taunton, *Colby, Samuel, House (Taunton MRA)*, 74 Winthrop St. (07/05/84)
Taunton, *Dean, Abiezar, House (Taunton MRA)*, 57 Summer St. (07/05/84)
Taunton, *Dean, George, House (Taunton MRA)*, 135 Winthrop St. (07/05/84)
Taunton, *Dean, Jonathan, House (Taunton MRA)*, 175 Dean St. (07/05/84)
Taunton, *Dean, Lloyd, House (Taunton MRA)*, 164 Dean St. (07/05/84)
Taunton, *Dean, Theodore, House (Taunton MRA)*, 26 Dean St. (07/05/84)
Taunton, *Dean-Barstow House (Taunton MRA)*, 275 William St. (07/05/84)
Taunton, *Dean-Hartshorn House (Taunton MRA)*, 68 Dean St. (07/05/84)
Taunton, *East Taunton Fire Station (Taunton MRA)*, Middleboro Ave. (07/05/84)
Taunton, *Eldridge House (Taunton MRA)*, 172 County St. (07/05/84)
Taunton, *Fairbanks-Williams House (Taunton MRA)*, 19 Elm St. (07/05/84)
Taunton, *Field, Albert, Tack Company (Taunton MRA)*, 19 Spring St. (07/05/84)
Taunton, *Fuller-Dauphin Estate (Taunton MRA)*, 145 School St. (07/05/84)
Taunton, *Godfrey, Gen. George, House (Taunton MRA)*, 125 County St. (07/05/84)
Taunton, *Godfrey, Richard, House (Taunton MRA)*, 62 County St. (07/05/84)
Taunton, *Harris Street Bridge (Taunton MRA)*, Spans Taunton River at Dean and Harris Sts. (07/05/84)
Taunton, *Haskins, Sarah A., House (Taunton MRA)*, 18 Harrison St. (07/05/84)
Taunton, *Higgins-Hodgeman House (Taunton MRA)*, 19 Cedar St. (07/05/84)
Taunton, *Hodges House (Taunton MRA)*, 41 Worcester St. (07/05/84)
Taunton, *Hopewell Mills District (Taunton MRA)*, Bay St. and Albro Ave. (07/05/84)
Taunton, *Hopewell School (Taunton MRA)*, Monroe St. (07/05/84)
Taunton, *Kilmer Street Fire Station (Taunton MRA)*, Oak and Kilmer Sts. (07/05/84)
Taunton, *King Airfield Hanger (Taunton MRA)*, Middleboro Ave. (07/05/84)
Taunton, *Knapp, Job, House (Taunton MRA)*, 81 Shores St. (07/05/84)
Taunton, *Leonard School (Taunton MRA)*, W. Brittania St. (07/05/84)
Taunton, *Leonard, James, House (Taunton MRA)*, 3 Warren St. (07/05/84)
Taunton, *Lincoln, Ambrose Jr., House (Taunton MRA)*, 1916 Bay St. (07/05/84)
Taunton, *Lincoln, Asa, House (Taunton MRA)*, 171 Shores St. (07/05/84)
Taunton, *Lincoln, Gen. Thomas, House (Taunton MRA)*, 104 Field St. (07/05/84)
Taunton, *Lord-Baylies-Bennett House (Taunton MRA)*, 66 Winthrop St. (07/05/84)
Taunton, *Lothrop Memorial Building-G.A.R. Hall (Taunton MRA)*, Washington and Governor Sts. (07/05/84)
Taunton, *Lothrop, H.B., Store (Taunton MRA)*, 210 Weir St. (07/05/84)
Taunton, *Macomber, Calvin T., (Taunton MRA)*, 312 W. Brittania St. (07/05/84)
Taunton, *Marvel, Theodore L., House (Taunton MRA)*, 188 Berkley St. (07/05/84)
Taunton, *Mason, N.S., House (Taunton MRA)*, 58 Tremont St. (07/05/84)
Taunton, *McKinstrey House (Taunton MRA)*, 115 High St. (07/05/84)
Taunton, *Morse House (Taunton MRA)*, 6 Pleasant St. (07/05/84)
Taunton, *Morse, Henry, House (Taunton MRA)*, 32 Cedar St. (07/05/84)
Taunton, *North Taunton Baptist Chruch (Taunton MRA)*, 1940 Bay St. (07/05/84)
Taunton, *Old Colony Iron Works-Nemasket Mills Complex (Taunton MRA)*, Old Colony Ave. (07/05/84)
Taunton, *Old Colony Railroad Station (Taunton MRA)*, 40 Dean St. (07/05/84)
Taunton, *Old Weir Stove Company (Taunton MRA)*, W. Water St. (07/05/84)
Taunton, *Paull, Alfred, House (Taunton MRA)*, 467 Weir St. (07/05/84)
Taunton, *Pilgrim Congregational Church (Taunton MRA)*, 45 Broadway (07/05/84)
Taunton, *Reed and Barton Complex (Taunton MRA)*, W. Brittania and Danforth Sts. (07/05/84)
Taunton, *School Street School (Taunton MRA)*, School and Fruit Sts. (07/05/84)
Taunton, *St. Mary's Complex (Taunton MRA)*, Broadway and Washington St. (07/05/84)
Taunton, *St. Thomas Episcopal Chruch (Taunton MRA)*, 115 High St. (07/05/84)
Taunton, *Staples, Sylvanus N., (Taunton MRA)*, 21 Second St. (07/05/84)
Taunton, *Stone House (Taunton MRA)*, 15–17 Plain St. (07/05/84)
Taunton, *Sweet, Albert, House (Taunton MRA)*, 179 Highland St. (07/05/84)
Taunton, *Taunton Alms House (Taunton MRA)*, Norton Ave. (07/05/84)
Taunton, *Taunton Public Library (Taunton MRA)*, Pleasant St. (07/05/84)
Taunton, *Thomas, H.P., House (Taunton MRA)*, 322 Somerset Ave. (07/05/84)
Taunton, *Tisdale-Morse House (Taunton MRA)*, 17 Fayette Pl. (07/05/84)
Taunton, *Union Congregational Church (Taunton MRA)*, W. Brittania and Rockland Sts. (07/05/84)
Taunton, *Union Mission Chapel-Historical Hall (Taunton MRA)*, Cedar St. (07/05/84)
Taunton, *Vickery, Capt. David, House (Taunton MRA)*, 33 Plain St. (07/05/84)
Taunton, *Vickery-Baylies House (Taunton MRA)*, 56 Summer St. (07/05/84)
Taunton, *Walker School (Taunton MRA)*, Berkley St. (07/05/84)
Taunton, *Walker, Peter, House (Taunton MRA)*, 1679 Somerset Ave. (07/05/84)
Taunton, *Washburn, Samuel, House (Taunton MRA)*, 68 Winthrop St. (07/05/84)
Taunton, *Washington School (Taunton MRA)*, 40 Vernon St. (07/05/84)
Taunton, *Weir Engine House (Taunton MRA)*, 530 Weir St. (07/05/84)
Taunton, *Westville Congregational Church (Taunton MRA)*, Winthrop and N. Walker Sts. (07/05/84)
Taunton, *White, William L. Jr., House (Taunton MRA)*, 242 Winthrop St. (07/05/84)
Taunton, *Whittenton Fire and Police Station (Taunton MRA)*, Bay St. (07/05/84)
Taunton, *Whittenton Mills Complex (Taunton MRA)*, Mill River and Whittenton St. (07/05/84)
Taunton, *Williams, Abiathar King, House (Taunton MRA)*, 43 Ingell St. (07/05/84)
Taunton, *Williams, Enoch, House (Taunton MRA)*, 616 Middleboro Ave. (07/05/84)
Taunton, *Williams, Francis D., House (Taunton MRA)*, 3 Plain St. (07/05/84)
Taunton, *Williams, N.S., House, (Taunton MRA)*, 1150 Middleboro Ave. (07/05/84)
Taunton, *Willis, Joseph, House (Taunton MRA)*, 28 Worcester St. (07/05/84)
Taunton, *Winslow Congregational Church (Taunton MRA)*, 61 Winthrop St. (07/05/84)
Taunton, *Winthrop Street Baptist Church (Taunton MRA)*, 58 Winthrop St. (07/05/84)

Dukes County

Edgartown, *Edgartown Village Historic District*, Bounded by Water St. (North and South) and Peases Point Way (North and South) (12/09/83)
West Tisbury, *Old Mill*, Edgartown-West Tisbury Rd. (03/29/84)

Essex County

Beverly, *Beverly Center Business District*, Roughly bounded by Chapman, Central, Brown, Dane, and Essex Sts. (07/05/84)
Danvers, *State Lunatic Hospital at Danvers*, 450 Maple St. (01/26/84)
Marblehead, *Marblehead Historic District*, Roughly bounded by Marblehead Harbor, Waldron Court, Essex, Elm, Pond, and Norman Sts. (01/10/84)
Methuen, *Barker, Stephen, House (Methuen MRA)*, 165 Haverhill St. (01/20/84)
Methuen, *Buswell, J.E., House (Methuen MRA)*, 535–537 Prospect St. (01/20/84)
Methuen, *Daddy Frye's Hill Cemetery (Methuen MRA)*, East and Arlington Sts. (01/20/84)
Methuen, *Dolan, Terence, House (Methuen MRA)*, 478 Prospect St. (01/20/84)
Methuen, *Double-arch Sandstone Bridge (Methuen MRA)*, Hampshire Rd. (06/20/84)

Methuen, *Emerson House (Methuen MRA)*, 58 Ayers Village Rd. (01/20/84)
Methuen, *Emerson, Capt. Oliver, Homestead (Methuen MRA)*, 133 North St. (01/20/84)
Methuen, *Emmons, G.B., House (Methuen MRA)*, 283 Broadway (01/20/84)
Methuen, *First Baptist Church (Methuen MRA)*, 253 Lawrence St. (01/20/84)
Methuen, *Hardy, Urias, House (Methuen MRA)*, 50 Brown St. (01/20/84)
Methuen, *House at 10 Park Street (Methuen MRA)*, 10 Park St. (01/20/84)
Methuen, *House at 113–115 Center Street (Methuen MRA)*, 113–115 Center St. (01/20/84)
Methuen, *House at 13 Annis Street (Methuen MRA)*, 13 Annis St. (01/20/84)
Methuen, *House at 136 Hampstead Street (Methuen MRA)*, 136 Hampstead St. (06/20/84)
Methuen, *House at 15–19 Park Street (Methuen MRA)*, 15–19 Park St. (01/20/84)
Methuen, *House at 23 East Street (Methuen MRA)*, 23 East St. (01/20/84)
Methuen, *House at 262–264 Pelham Street (Methuen MRA)*, 262–264 Pelham St. (01/20/84)
Methuen, *House at 306 Broadway (Methuen MRA)*, 306 Broadway (01/20/84)
Methuen, *House at 4 Birch Avenue (Methuen MRA)*, 4 Birch Ave. (01/20/84)
Methuen, *House at 491 Prospect Street (Methuen MRA)*, 491 Prospect St. (01/20/84)
Methuen, *House at 50 Pelham Street (Methuen MRA)*, 50 Pelham St. (01/20/84)
Methuen, *House at 526 Prospect Street (Methuen MRA)*, 526 Prospect St. (01/20/84)
Methuen, *House at 9 Park Street (Methuen MRA)*, 9 Park St. (01/20/84)
Methuen, *Johnson House (Methuen MRA)*, 8 Ditson Pl. (01/20/84)
Methuen, *Lawrence Street Cemetery (Methuen MRA)*, Lawrence St. (01/20/84)
Methuen, *Methuen Water Works (Methuen MRA)*, Cross St. (01/20/84)
Methuen, *Morse, Moses, House (Methuen MRA)*, 311 Pelham St. (01/20/84)
Methuen, *Nevins Memorial Library (Methuen MRA)*, 305 Broadway (01/20/84)
Methuen, *Nevins, Henry C., Home for Aged and Incurables (Methuen MRA)*, 110 Broadway (01/20/84)
Methuen, *Old Town Farm (Methuen MRA)*, 430 Pelham St. (01/20/84)
Methuen, *Park Lodge (Methuen MRA)*, 257 Lawrence St. (01/20/84)
Methuen, *Perkins, Joseph, House (Methuen MRA)*, 297 Howe St. (01/20/84)
Methuen, *Pleasant-High Historic District (Methuen MRA)*, Roughly bounded by Broadway, High, Vine, Charles, and Pleasant Sts. (06/20/84)
Methuen, *Searles High School (Methuen MRA)*, 41 Pleasant St. (01/20/84)
Methuen, *Simpson, James E., House (Methuen MRA)*, 606 Prospect St. (01/20/84)
Methuen, *Spicket Falls Historic District (Methuen MRA)*, Roughly bounded by Spicket River, Railroad, Pelham, Hampshire, Broadway, and Osgood Sts. (06/20/84)
Methuen, *Swan, Asie, House (Methuen MRA)*, 669 Prospect St. (01/20/84)
Methuen, *Tenny Castle Gatehouse (Methuen MRA)*, 37 Pleasant St. (01/20/84)
Methuen, *Turnpike House (Methuen MRA)*, 314 Broadway (01/20/84)
Methuen, *Waldo, George A., House (Methuen MRA)*, 233 Lawrence St. (01/20/84)
Methuen, *Walnut Grove Cemetery (Methuen MRA)*, Grove and Railroad Sts. (01/20/84)
Newburyport, *Newburyport Historic District*, Roughly bounded by Merrimack River, Plummer Ave., Marlboro, Parker, State and High Sts. (08/02/84)
Peabody, *Southwick House*, 151 Lowell St. (11/29/83)
Salem, *Downtown Salem District (Downtown Salem MRA)*, Roughly bounded by Church, Central, New Derby, and Washington Sts. (10/18/83)

Franklin County

Greenfield, *Leavitt-Hovey, House*, 402 Main St. (12/22/83)

Hampden County

Holyoke, *Maplewood Hotel*, 328–330 Maple St. (11/10/83)
Monson, *Memorial Town Hall*, Main St. (05/17/84)
Monson, *Norcross, William, House*, 14 Cushman St. (03/29/84)
Springfield, *Masonic Temple*, 339–341 State St. (11/10/83)
Westfield, *United States Whip Company Complex*, 24 Main St. (11/29/83)

Hampshire County

Amherst, *Strong House*, 67 Amity St. (07/05/84)
Goshen, *Mountain Rest*, Spruce Corner Rd. (11/10/83)
South Hadley, *Woodbridge Street Historic District*, 3 and 7 Silver St., 25–82 Woodbridge St. (11/14/83)

Middlesex County

Billerica, *Billerica Mills Historic District*, Roughly bounded by Concord River, Treble Cove Terr., Kohlrausch Ave., Indian Rd., Holt Ruggles, and Rogers Sts. (11/10/83)
Cambridge, *Homer-Lovell House (Cambridge MRA)*, 11 Forest St. (12/22/83)
Framingham, *Ellis, Moses, House*, 283 Pleasant St. (11/29/83)
Lowell, *Hoyt-Shedd Estate*, 386–396 Andover St., 569–579 E. Merrimack St. (05/17/84)
Lowell, *Worcester House*, 658 Andover St. (12/22/83)
Marlborough, *Cotting, John, House*, 74 Main St. (08/16/84)
Medford, *Old Medford High School*, 22–24 Forest St. (10/06/83)
Melrose, *Larrabee's Brick Block*, 500–504 Main St. (03/29/84)
Newton, *Claflin School*, 110–112 Washington Park (08/16/84)
Newton, *East Parish Burying Ground*, Centre and Cotton Sts. (11/23/84)
Reading, *Bancroft, Joseph, House (Reading MRA)*, 101 Lowell St. (07/19/84)
Reading, *Bancroft, Samuel, House (Reading MRA)*, 232 West St. (07/19/84)
Reading, *Bancroft, Wendell, House (Reading MRA)*, 20 Washington St. (07/19/84)
Reading, *Bassett, Edwin, House (Reading MRA)*, 115 Prescott St. (07/19/84)
Reading, *Batchelder House (Reading MRA)*, 607 Pearl St. (07/19/84)
Reading, *Batchelder, Alden, House (Reading MRA)*, 797 Main St. (07/19/84)
Reading, *Batchelder, George, House (Reading MRA)*, 127–129 Franklin St. (07/19/84)
Reading, *Batchelder, Nathaniel, House (Reading MRA)*, 71 Franklin St. (07/19/84)
Reading, *Battell House (Reading MRA)*, 293 Haverhill St. (07/19/84)
Reading, *Beard, Benjamin, House (Reading MRA)*, 251 Ash St. (07/19/84)
Reading, *Boston and Maine Railroad Depot (Reading MRA)*, Lincoln St. (07/19/84)
Reading, *Bowser Gazebo (Reading MRA)*, 25 Linden St. (07/19/84)
Reading, *Brackett House (Reading MRA)*, 276 Summer Ave. (07/19/84)
Reading, *Brande House (Reading MRA)*, 54 Woburn St. (07/19/84)
Reading, *Brooks, Francis, House (Reading MRA)*, 78–80 Prescott St. (07/19/84)
Reading, *Carroll-Hartshorn House (Reading MRA)*, 572 Haverhill St. (07/19/84)
Reading, *Carter Mansion (Reading MRA)*, 89 Woburn St. (07/19/84)
Reading, *Coggin, Gilman, House (Reading MRA)*, 123 Prescott St. (07/19/84)
Reading, *Cook, Asa M., House (Reading MRA)*, 81 Prospect St. (07/19/84)
Reading, *Damon, Joseph, House (Reading MRA)*, 178 South St. (07/19/84)
Reading, *Damon, Washington, House (Reading MRA)*, 38 Salem St. (07/19/84)
Reading, *Dewey Place (Reading MRA)*, 176 Summer Ave. (07/19/84)
Reading, *Durgin House (Reading MRA)*, 66 Prospect St. (07/19/84)
Reading, *Eaton-Prescott House (Reading MRA)*, 284 Summer Ave. (07/19/84)
Reading, *Elliott, Luther, House (Reading MRA)*, 309 Haven St. (07/19/84)
Reading, *Hall, Stephen, House (Reading MRA)*, 64 Minot St. (07/19/84)
Reading, *Hartshorn, Timothy, House (Reading MRA)*, 379 Haverhill St. (07/19/84)
Reading, *Hartwell House (Reading MRA)*, 121 Willow St. (07/19/84)
Reading, *Highland School (Reading MRA)*, 64 Middlesex Ave. (07/19/84)
Reading, *House at 11 Beech Street (Reading MRA)*, 11 Beech St. (07/19/84)
Reading, *House at 1177 Main Street (Reading MRA)*, 1177 Main St. (07/19/84)
Reading, *House at 129 High Street (Reading MRA)*, 129 High St. (07/19/84)
Reading, *House at 16 Mineral Street (Reading MRA)*, 16 Mineral St. (07/19/84)
Reading, *House at 199 Summer Avenue (Reading MRA)*, 199 Summer Ave. (07/19/84)
Reading, *House at 206 West Street (Reading MRA)*, 206 West St. (07/19/84)
Reading, *House at 242 Summer Avenue (Reading MRA)*, 242 Summer Ave. (07/19/84)
Reading, *House at 26 Center Avenue (Reading MRA)*, 26 Center Ave. (07/19/84)
Reading, *House at 322 Haven Street (Reading MRA)*, 322 Haven St. (07/19/84)
Reading, *House at 42 Salem Street (Reading MRA)*, 42 Salem St. (07/19/84)
Reading, *House at 44 Temple Street (Reading MRA)*, 44 Temple St. (07/19/84)

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Reading, *House at 483 Summer Avenue (Reading MRA)*, 483 Summer Ave. (07/19/84)
Reading, *House at 57 Woburn Street (Reading MRA)*, 57 Woburn St. (07/19/84)
Reading, *House at 77 Howard Street (Reading MRA)*, 77 Howard St. (07/19/84)
Reading, *House at 79–81 Salem Street (Reading MRA)*, 79–81 Salem St. (07/19/84)
Reading, *Kemp Barn (Reading MRA)*, 186 Summer Ave. (07/19/84)
Reading, *Kemp Place (Reading MRA)*, 186 Summer Ave. (07/19/84)
Reading, *Lewis House (Reading MRA)*, 276 Woburn St. (07/19/84)
Reading, *Manning, Charles, House (Reading MRA)*, 145 Salem St. (07/19/84)
Reading, *Manning, Jacob, House (Reading MRA)*, 140 High St. (07/19/84)
Reading, *Masonic Block (Reading MRA)*, 600–622 Main St. (07/19/84)
Reading, *Nichols, Daniel, Homestead (Reading MRA)*, 434 Haverhill St. (07/19/84)
Reading, *Nichols, James, House (Reading MRA)*, 273 Pearl St. (07/19/84)
Reading, *Nichols, Jerry, Tavern (Reading MRA)*, 51 Mill St. (07/19/84)
Reading, *Nichols, Richard, House (Reading MRA)*, 483 Franklin St. (07/19/84)
Reading, *Octagon House (Reading MRA)*, 97 Pleasant St. (07/19/84)
Reading, *Old Hose House (Reading MRA)*, 1249 Main St. (07/19/84)
Reading, *Parker House (Reading MRA)*, 52 Salem St. (07/19/84)
Reading, *Parker House (Reading MRA)*, 316 Haven St. (07/19/84)
Reading, *Parker, Capt. Nathaniel, Red House (Reading MRA)*, 77–83 Ash St. (07/19/84)
Reading, *Parker, Joseph, House (Reading MRA)*, 107 Grove St. (07/19/84)
Reading, *Parker, Joseph, House (Reading MRA)*, 420 Franklin St. (07/19/84)
Reading, *Parker, Samuel, House (Reading MRA)*, 132 West St. (07/19/84)
Reading, *Parker, Stillman, House (Reading MRA)*, 484 Summer Ave. (07/19/84)
Reading, *Parker, William, House (Reading MRA)*, 55 Walnut St. (07/19/84)
Reading, *Pierce House (Reading MRA)*, 128 Salem St. (07/19/84)
Reading, *Pierce Organ Pipe Factory (Reading MRA)*, 10–12 Pierce St. (07/19/84)
Reading, *Pratt House (Reading MRA)*, 456 Haverhill St. (07/19/84)
Reading, *Pratt, Stillman, House (Reading MRA)*, 472 Summer Ave. (07/19/84)
Reading, *Reading Municipal Building (Reading MRA)*, 49 Pleasant St. (07/19/84)
Reading, *Reading Municipal Light and Power Station (Reading MRA)*, 226 Ash St. (07/19/84)
Reading, *Roberts House (Reading MRA)*, 59 Prospect St. (07/19/84)
Reading, *Rowhouses at 256–274 Haven Street (Reading MRA)*, 256–274 Haven St. (07/19/84)
Reading, *Sanborn, Rev. Peter, House (Reading MRA)*, 55 Lowell St. (07/19/84)
Reading, *Symonds, Thomas, House (Reading MRA)*, 320 Haverhill St. (07/19/84)
Reading, *Temple, Joseph, House (Reading MRA)*, 42 Chute St. (07/19/84)
Reading, *Temple, Mark, House (Reading MRA)*, 141 Summer Ave. (07/19/84)
Reading, *Walnut Street School (Reading MRA)*, 55 Hopkins St. (07/19/84)
Reading, *Wells, Charles, House (Reading MRA)*, 99 Prescott St. (07/19/84)
Reading, *Weston, Ephrain, House (Reading MRA)*, 229 West St. (07/19/84)
Reading, *Weston, Jabez, House (Reading MRA)*, 86 West St. (07/19/84)
Reading, *Wisteria Lodge (Reading MRA)*, 146 Summer Ave. (07/19/84)
Somerville, *Carr, Martin W., School*, 25 Atherton St. (07/05/84)
Stoneham, *Almshouse (Stoneham MRA)*, 136 Elm St. (04/13/84)
Stoneham, *Beard, Padilla, House (Stoneham MRA)*, 18 Maple St. (04/13/84)
Stoneham, *Boston and Maine Railroad Depot (Stoneham MRA)*, 36 Pine St. (04/13/84)
Stoneham, *Bottume, John, House (Stoneham MRA)*, 4 Woodland Rd. (04/13/84)
Stoneham, *Brown, C.H., Cottage (Stoneham MRA)*, 34 Wright St. (04/13/84)
Stoneham, *Bryant, William, Octagon House (Stoneham MRA)*, Spring and Washington Sts. (04/13/84)
Stoneham, *Buck, Charles, House (Stoneham MRA)*, 68 Pleasant St. (04/13/84)
Stoneham, *Buswell, Clara, House (Stoneham MRA)*, 481 Main St. (04/13/84)
Stoneham, *Chamberlain, Samuel, House (Stoneham MRA)*, 3 Winthrop St. (04/13/84)
Stoneham, *Cogan, Bernard, House (Stoneham MRA)*, 10 Flint St. (04/13/84)
Stoneham, *Cogan, James, House (Stoneham MRA)*, 48 Elm St. (04/13/84)
Stoneham, *Colonial Beacon Gas Station (Stoneham MRA)*, 474 Main St. (04/13/84)
Stoneham, *Cowdrey, George, House (Stoneham MRA)*, 42 High St. (04/13/84)
Stoneham, *Daniels, Blake, Cottage (Stoneham MRA)*, 111–113 Elm St. (04/13/84)
Stoneham, *Dean, Silas, House (Stoneham MRA)*, 8 Pine St. (04/13/84)
Stoneham, *Dow Block (Stoneham MRA)*, Central Square (04/13/84)
Stoneham, *Durgin, E.A., House (Stoneham MRA)*, 113 Summer St. (04/13/84)
Stoneham, *Farrier, Amasa, Boardinghouse (Stoneham MRA)*, 280 Main St. (04/13/84)
Stoneham, *Farrier, Amasa, House (Stoneham MRA)*, 55 Central St. (04/13/84)
Stoneham, *First Baptist Church (Stoneham MRA)*, 461 Main St. (04/13/84)
Stoneham, *First Congregational Church (Stoneham MRA)*, Main and Church Sts. (04/13/84)
Stoneham, *First Unitarian Church (Stoneham MRA)*, Central and Common Sts. (04/13/84)
Stoneham, *Foley, Michael, Cottage (Stoneham MRA)*, 14 Emerson St. (04/13/84)
Stoneham, *Foster, Walter K., House (Stoneham MRA)*, 57 Central St. (04/13/84)
Stoneham, *Fuller, Enoch, House (Stoneham MRA)*, 72 Pine St. (04/13/84)
Stoneham, *Fuller, William Griffin, House (Stoneham MRA)*, 32 Franklin St. (04/13/84)
Stoneham, *Gill, Charles, House (Stoneham MRA)*, 76 Pleasant St. (04/13/84)
Stoneham, *Gilmore, Onslow, House (Stoneham MRA)*, 477 Main St. (04/13/84)
Stoneham, *Green, Jonathan, House (Stoneham MRA)*, 63 Perkins St. (04/13/84)
Stoneham, *Hawkins, Lorenzo D., House (Stoneham MRA)*, 1 Cedar St. (04/13/84)
Stoneham, *Hibbard, Benjamin, House (Stoneham MRA)*, 5–7 Gerry St. (04/13/84)
Stoneham, *Hill, Sidney A., House (Stoneham MRA)*, 31 Chestnut St. (04/13/84)
Stoneham, *House at 107 William Street (Stoneham MRA)*, 107 William St. (04/13/84)
Stoneham, *House at 114 Marble Street (Stoneham MRA)*, 114 Marble St. (04/13/84)
Stoneham, *House at 19 Tremont St. (Stoneham MRA)*, 19 Tremont St. (04/13/84)
Stoneham, *House at 269 Green Street (Stoneham MRA)*, 269 Green St. (04/13/84)
Stoneham, *House at 391 Williams Street (Stoneham MRA)*, 391 Williams St. (04/13/84)
Stoneham, *House at 6 S. Marble St. (Stoneham MRA)*, 6 S. Marble St. (04/13/84)
Stoneham, *Jenkins, Franklin B., House (Stoneham MRA)*, 35 Chestnut St. (04/13/84)
Stoneham, *Jenkins, Franklin B., House (Stoneham MRA)*, 2 Middle St. (04/13/84)
Stoneham, *Jones, John, House (Stoneham MRA)*, 1 Winthrop St. (04/13/84)
Stoneham, *Jones, Thomas W., House (Stoneham MRA)*, 34 Warren St. (04/13/84)
Stoneham, *Keene, Walter, House (Stoneham MRA)*, 28 High St. (04/13/84)
Stoneham, *Kenney, David, House (Stoneham MRA)*, 67 Summer St. (04/13/84)
Stoneham, *Lamson, Newton, House (Stoneham MRA)*, 33 Chestnut St. (04/13/84)
Stoneham, *Locke-Baldwin-Kinsey House (Stoneham MRA)*, 45 Green St. (04/13/84)
Stoneham, *Lyon, T.U., House (Stoneham MRA)*, 9 Warren St. (04/13/84)
Stoneham, *Metropolitan District Commission Pumping House (Stoneham MRA)*, Woodland Rd. (04/13/84)
Stoneham, *Millard-Souther-Green House (Stoneham MRA)*, 218 Green St. (04/13/84)
Stoneham, *Oddfellows Building (Stoneham MRA)*, Central Square (04/13/84)
Stoneham, *Old Burying Ground (Stoneham MRA)*, Pleasant and William Sts. (04/13/84)
Stoneham, *Shoe Shop-Doucette Ten Footer (Stoneham MRA)*, 38 William St. (04/13/84)
Stoneham, *South School (Stoneham MRA)*, 9–11 Gerry St. (04/13/84)
Stoneham, *Steele, John, House (Stoneham MRA)*, 2–4 Montvale St. (04/13/84)
Stoneham, *Stoneham Firestation (Stoneham MRA)*, Central and Emerson Sts. (04/13/84)
Stoneham, *Stoneham Public Library (Stoneham MRA)*, Main and Maple Sts. (04/13/84)
Stoneham, *Tay, Jesse, House (Stoneham MRA)*, 51 Elm St. (04/13/84)
Stoneham, *Turnbull, R.P., House (Stoneham MRA)*, 6 Pine St. (04/13/84)
Stoneham, *Wiley, Caleb, House (Stoneham MRA)*, 125 North St. (04/13/84)
Stoneham, *Williams, Micah, House (Stoneham MRA)*, 342 William St. (04/13/84)
Stoneham, *Williams-Linscott House (Stoneham MRA)*, 357 William St. (04/13/84)

Stoneham, *Wood, Charles, House (Stoneham MRA)*, 34 Chestnut St. (04/13/84)
Stoneham, *Wright, Elisha, Homestead (Stoneham MRA)*, 170 Franklin St. (04/13/84)

Norfolk County

Canton, *Canton Viaduct*, Neponset and Walpole Sts. (09/20/84)
Foxboro, *Boyden, Seth, House*, 135 Oak St. (11/10/83)
Quincy, *Cranch School*, 270 Whitwell St. (07/05/84)
Randolph, *Gills Farm Archeological District*, (10/24/83)
Sharon, *Stoughtonham Furnace Site*, 195 Furnace St. (08/16/84)
Wrentham, *Roebuck Tavern*, 21 Dedham St. (05/17/84)

Plymouth County

Conant's Hill, (11/25/83)
Brockton, *South Street Historic District*, Roughly South St. from Main St. to Warren Ave. (10/06/83)
Plymouth, *Bradford-Union Street Historic District*, Bradford, Union, Emerald, Water Cure, and Freedom Sts. (11/10/83)
Scituate, *James, Capt. Benjamin, House* 301 Driftway (11/29/83)

Suffolk County

Boston, *(Codman Building) 10 Liberty Square Building*, 55 Kilby St. (10/19/83)
Boston, *Fenway-Boylston Street District*, Fenway, Boylston, Westland, and Hemenway Sts. (09/04/84)
Boston, *LUNA (tugboat)*, Boston Harbor (10/06/83)
Boston, *Leather District*, Roughly bounded by Atlantic Ave., Kneeland, Lincoln, and Essex Sts. (12/21/83)
Boston, *Moreland Street Historic District*, Roughly bounded by Kearsarge, Blue Hill Aves., Warren, Waverly, and Winthrop Sts. (03/29/84)

Worcester County

Clinton, *Bigelow Carpet Company Woolen Mills*, Main St. (10/06/83)
Clinton, *Bowers School*, 411 Water St. (11/10/83)
Leominster, *Wellington Piano Case Company Building*, 54 Green St. (05/31/84)
Sturbridge, *Tantiusques Reservation*, Leadmine Rd. (10/06/83)
Uxbridge, *Adams, Benjamin, House (Uxbridge MRA)*, 81 N. Main St. (10/07/83)
Uxbridge, *Albee, E., House (Uxbridge MRA)*, Highland St. (10/07/83)
Uxbridge, *Aldrich, Daniel, Cottage and Sawmill (Uxbridge MRA)*, Aldrich St. (10/07/83)
Uxbridge, *Aldrich, J., House (Uxbridge MRA)*, Aldrich St. (01/20/84)
Uxbridge, *Aldrich, S., House (Uxbridge MRA)*, Aldrich St. (10/07/83)
Uxbridge, *Aldrich, W., House (Uxbridge MRA)*, Henry St. (10/07/83)
Uxbridge, *Bank Building (Uxbridge MRA)*, 40–44 S. Main St. (10/07/83)
Uxbridge, *Brown, E., House (Uxbridge MRA)*, 3 Sutton St. (10/07/83)
Uxbridge, *Butler Block (Uxbridge MRA)*, 210 Linwood St. (10/07/83)
Uxbridge, *Capron, Charles, House (Uxbridge MRA)*, 2 Capron St. (10/07/83)
Uxbridge, *Carpenter, George, House (Uxbridge MRA)*, 67 S. Main St. (10/07/83)
Uxbridge, *Central Woolen Mills District (Uxbridge MRA)*, Mendon and Cross Sts. (01/20/83)
Uxbridge, *Chapin, A., House (Uxbridge MRA)*, 26 Pleasant St. (10/07/83)
Uxbridge, *Cook, A. E., House (Uxbridge MRA)*, Aldrich St. (10/07/83)
Uxbridge, *Deane, Francis, Cottage (Uxbridge MRA)*, 58 N. Main St. (10/07/83)
Uxbridge, *Farnum Block (Uxbridge MRA)*, 2–6 N. Main St. (10/07/83)
Uxbridge, *Farnum, Moses, House (Uxbridge MRA)*, MA 146 (10/07/83)
Uxbridge, *Farnum, R., House (Uxbridge MRA)*, 20 Oak St. (10/07/83)
Uxbridge, *Farnum, William and Mary, House (Uxbridge MRA)*, Albee Rd. (01/20/84)
Uxbridge, *Granite Store (Uxbridge MRA)*, 112–116 Hecla St. (10/07/83)
Uxbridge, *Hall, S.A., House (Uxbridge MRA)*, 133 N. Main St. (10/07/83)
Uxbridge, *Hayward, William, House (Uxbridge MRA)*, 77 N. Main St. (10/07/83)
Uxbridge, *Holbrook, Sylvanus, House (Uxbridge MRA)*, Albee Rd. (10/07/83)
Uxbridge, *Ironstone Mill Housing and Cellar Hole (Uxbridge MRA)*, Ironstone St. (10/07/83)
Uxbridge, *Judson-Taft House (Uxbridge MRA)*, 30 Pleasant St. (10/07/83)
Uxbridge, *Kensely, J., House (Uxbridge MRA)*, Chestnut St. (10/07/83)
Uxbridge, *North Uxbridge School (Uxbridge MRA)*, 87 E. Hartford Ave. (10/07/83)
Uxbridge, *Richardson, Dexter, House (Uxbridge MRA)*, South St. (10/07/83)
Uxbridge, *Richardson, Joseph, House (Uxbridge MRA)*, Chockalog St. (10/07/83)
Uxbridge, *Rivulet Mill Complex (Uxbridge MRA)*, 60 Rivulet St. (10/07/83)
Uxbridge, *Sayles, Richard, House (Uxbridge MRA)*, 80 Mendon St. (10/07/83)
Uxbridge, *Southwick, Elisha, House (Uxbridge MRA)*, Chockalog St. (10/07/83)
Uxbridge, *Southwick, Israel, House (Uxbridge MRA)*, 70 Mendon St. (10/07/83)
Uxbridge, *Taft Brothers Block (Uxbridge MRA)*, 2–8 S. Main St. (10/07/83)
Uxbridge, *Taft, Aaron, House (Uxbridge MRA)*, Hazel St. (10/07/83)
Uxbridge, *Taft, Bazaleel, Jr., House and Law Office (Uxbridge MRA)*, 147 S. Main St. (10/07/83)
Uxbridge, *Taft, George, House (Uxbridge MRA)*, Richardson St. (10/07/83)
Uxbridge, *Taft, Hon. Bazaleel, House (Uxbridge MRA)*, S. Main St. (10/07/83)
Uxbridge, *Taft, Moses, House (Uxbridge MRA)*, 86 S. Main St. (10/07/83)
Uxbridge, *Taft, Samuel, House (Uxbridge MRA)*, Sutton St. (10/07/83)
Uxbridge, *Taft, Zadock, House (Uxbridge MRA)*, 112 S. Main St. (10/07/83)
Uxbridge, *Thomson, C.R., House and Barn (Uxbridge MRA)*, Chockalog St. (10/07/83)
Uxbridge, *Uxbridge Common District (Uxbridge MRA)*, Main, Court, and Douglas Sts. (01/20/84)
Uxbridge, *Uxbridge Passenger Depot (Uxbridge MRA)*, 28 S. Main St. (10/07/83)
Uxbridge, *Uxbridge Town Hall (Uxbridge MRA)*, 45 S. Main St. (10/07/83)
Uxbridge, *Waucantuck Mill Complex (Uxbridge MRA)*, Mendon and Patrick Henry Sts. (01/20/84)
Uxbridge, *Wheelockville District (Uxbridge MRA)*, Mendon and Henry Sts. (01/20/84)
Uxbridge, *Whipple, A., House (Uxbridge MRA)*, Sutton St. (10/07/83)
Uxbridge, *Williams, N., House (Uxbridge MRA)*, Rawson St. (10/07/83)
Worcester, *Robinson and Swan Blocks*, 104–108 Pleasant St. and 1–3 Irving St. (03/05/80)

MICHIGAN

Alcona County

Harrisville vicinity, *Sturgeon Point Light Station (US Coast Guard Lighthouses and Light Stations on the Great Lakes TR)*, Point Rd. (07/19/84)

Alpena County

Alpena vicinity, *Thunder Bay Island Light Station (US Coast Guard Lighthouses and Light Stations on the Great Lakes TR)*, Thunder Bay Island (07/19/84)
Alpena, *Alpena County Court House*, 720 Chisholm Ave. (12/08/83)

Baraga County

Pelkie vicinity, *Hanka, Herman and Anna, Farm*, NE of Pelkie (07/19/84)

Bay County

Bay City, *Saginaw River Light Station (Rear Range Light) (US Coast Guard Lighthouses and Light Stations on the Great Lakes TR)*, Coast Guard St. (07/19/84)

Benzie County

Frankfort, *Point Betsie (Point aux Becs Scies) Light Station (US Coast Guard Lighthouses and Light Stations on the Great Lakes TR)*, Point Betsie (07/19/84)

Calhoun County

Battle Creek, *Battle Creek City Hall*, 103 E. Michigan Ave. (04/05/84)
Marshall, *Brooks, Harold C., House (Jabez S. Fitch House) (Boundary Increase)*, 310 N. Kalamazoo Ave. (04/18/84)

Chippewa County

Sault St. Marie, *Chippewa County Courthouse*, Court St. (09/13/84)

Delta County

Fairport vicinity, *St. Martin Island Light Station (US Coast Guard Lighthouses and Light Stations on the Great Lakes TR)*, St. Martin Island (07/19/84)

Emmet County

Cross Village vicinity, *Skillagalee Light Station (US Coast Guard Lighthouses and Light Stations on the Great Lakes TR)*, SW of Waugoshance Island (07/19/84)
Mackinaw City vicinity, *White Shoal Light Station (US Coast Guard Lighthouses and Light Stations on the Great Lakes TR)*, NW of Waugashance Island (07/19/84)

Genesee County

Flint, *Industrial Savings Bank Building*, 432 N. Saginaw St. (04/19/84)
Flint, *Paterson, William A., Factory Complex*, 126 E. 3rd St. (02/16/84

Huron County

Port Austin, *Learned, Charles G., House*, 8544 Lake St. (05/31/84)

Ingham County

Lansing, *Brown-Price House*, 1003 N. Washington Ave. (03/22/84)
Lansing, *State Office Building*, 316 S. Walnut St. (05/17/84)

Ionia County

Ionia, *Ionia Downtown Commercial Historic District*, Roughly W. Main and Washington Sts., from Dexter to Library Sts. (09/13/84)
Ionia, *Ionia Historic District*, Roughly bounded by Summit, Pleasant, Jefferson and Main Sts. (09/13/84)

Iosco County

East Tawas, *Tawas Point (Ottowa Point) Light Station (US Coast Guard Lighthouses and Light Stations on the Great Lakes TR)*, Tawas Point Rd. (07/19/84)

Iron County

Alpha, *Alpha Public Buildings Historic Complex (Iron County MRA)*, 404 Main St. (12/22/83)
Alpha, *First National Bank Building (Iron County MRA)*, 303 Main St. (12/22/83)
Amasa vicinity, *Triangle Ranch Headquarters Historic District (Iron County MRA)*, N of Amasa (12/29/83)
Amasa, *Amasa Historic Business District (Iron County MRA)*, 100, 200, and 300 block of Pine St. (12/22/83)
Amasa, *Bowers, Joseph, House (Iron County MRA)*, 318 Hemlock Ave. (12/22/83)
Amasa, *Jacobson, Jacob, House (Iron County MRA)*, 327 Maple Ave. (12/22/83)
Amasa, *Pork City Historic District (Iron County MRA)*, Park City and DNR Rds. (12/22/83)
Caspian, *Caspian Community Center (Iron County MRA)* 404 Brady Ave. (12/22/83)
Caspian, *Caspian Mine Headframe (Iron County MRA)*, N of Caspian Rd. (12/22/83)
Caspian, *Dober Mining Company House (Iron County MRA)*, 1 — 19th St. (12/22/83)
Caspian, *Italian Society Duke of Abruzzi Hall (Iron County MRA)*, E of McGillis Ave. between Morgan and Sawyer Sts. (12/22/83)
Crystal Falls, *Cole, Frank W., House (Iron County MRA)*, 121 — 3rd St. (12/22/83)
Crystal Falls, *Courthouse Residential Historic District (Iron County MRA)*, Roughly bounded by Crystal and Michigan Aves., Iron and 5th Sts. (12/29/83)
Crystal Falls, *Crystal Falls Dam and Power Plant (Iron County MRA)*, Pine St. (12/22/83)
Crystal Falls, *Crystal Inn (Iron County MRA)*, 400 Superior Ave. (12/22/83)
Crystal Falls, *Diele, Ernest, House (Iron County MRA)*, 213 Marquette Ave. (12/22/83)
Crystal Falls, *Falls Location Historic District (Iron County MRA)*, at Paint River (12/22/83)
Crystal Falls, *Finnish and Swedish Mercantile Association Building (Iron County MRA)*, 336 Superior Ave. (12/22/83)
Crystal Falls, *Harte, H.W., Block-Crystal Falls Village Hall (Iron County MRA)*, 414–418 Superior Ave. (12/22/83)
Crystal Falls, *Hasselstrom, John, House (Iron County MRA)*, 400 Crystal Ave. (12/22/83)
Crystal Falls, *Huse, Frank C., House (Iron County MRA)*, 408 — 5th St. (12/22/83)
Crystal Falls, *Murphy Timothy, House (Iron County MRA)*, 17 N. 4th St. (12/22/83)
Crystal Falls, *Parks, John H., Company-Wills Hardware Building (Iron County MRA)*, 319 Superior Ave. (12/22/83)
Crystal Falls, *Rau, Herman, House (Iron County MRA)*, 309 Marquette Ave. (12/22/83)
Crystal Falls, *Ross, David M., House (Iron County MRA)*, 120 S. 4th St. (12/22/83)
Crystal Falls, *Royce, Steven, House (Iron County MRA)*, 920 Forest Pkwy. (12/22/83)
Crystal Falls, *Russell, William, House (Iron County MRA)*, 209 Michigan Ave. (12/22/83)
Crystal Falls, *Soderman, John, Farmhouse (Iron County MRA)*, North 6th St. (12/22/83)
Iron River, *Beechwood Store (Iron County MRA)*, 215 Beechwood Rd. (12/22/83)
Iron River, *Bethany Lutheran Church (Iron County MRA)*, 184 Beechwood Rd. (12/22/83)
Iron River, *Byers, Isaac W., House (Iron County MRA)*, 5 N. 8th Ave. (12/22/83)
Iron River, *Cloverland Hotel (Iron County MRA)*, 423 — 3rd St. (12/22/83)
Iron River, *Ericson, Rudolf, House (Iron County MRA)*, 628 W. Boyington St. (12/22/83)
Iron River, *Fisher, Nelson E., House-High Banks (Iron County MRA)*, US 2 (12/22/83)
Iron River, *Frailing, Henry H., House (Iron County MRA)*, 19 W. Cuyuga St. (12/22/83)
Iron River, *Haggerty, Dennis J., House (Iron County MRA)*, 7 N. 7th Ave. (12/22/83)
Iron River, *Hane, Gottfried, House (Iron County MRA)*, 703 W. Cayuga St. (12/22/83)
Iron River, *Iron County Fair Exhibition Hall (Iron County MRA)*, Franklin St. (12/22/83)
Iron River, *Iron River Creamery (Iron County MRA)*, 5 W. Cayuga St. (12/22/83)
Iron River, *Iron River Town Hall (Iron County MRA)*, 106 W. Genesee St. (12/22/83)
Iron River, *Joseph, Joseph, House (Iron County MRA)*, 105 — N. 8th Ave. (12/22/83)
Iron River, *Lincoln School (Iron County MRA)*, NW of Madison St. and 2nd Ave. (12/22/83)
Iron River, *MacKinnon, Alexander, House (Iron County MRA)*, 134 Cayuga St. (12/22/83)
Iron River, *MacKinnon, Donald C., House (Iron County MRA)*, 411 N. 9th St. (12/22/83)
Iron River, *Moss, William, House (Iron County MRA)*, 528 W. Genesee St. (12/22/83)
Iron River, *Munro-M.A. Hanna Mining Company Office Building (Iron County MRA)*, 702 N. 4th St. (12/22/83)
Iron River, *Scalcucci's Grocery (Iron County MRA)*, 2102 River Ave. (12/22/83)
Iron River, *St. Mary's Assumption Catholic Church (Iron County MRA)*, 105 — 5th Ave. (12/22/83)
Iron River, *Sturgeon, Robert H., House (Iron County MRA)*, 112 Cayuga St. (12/22/83)
Iron River, *Tully, William J., House (Iron County MRA)*, 419 W. Cayuga St. (12/22/83)
Iron River, *Van Ornum's Addition Historic District (Iron County MRA)*, 927, 937, 941, 947, and 953 — 4th Ave. (12/22/83)
Iron River, *Van Wagner, Harvey, House (Iron County MRA)*, 103 N. 7th Ave. (12/22/83)
Iron River, *Wall-Seppanen House (Iron County MRA)*, 21 N. 7th Ave. (12/22/83)
Iron River, *Windsor, Joseph, House (Iron County MRA)*, 629 W. Genesee St. (12/22/83)
Mansfield, *Mansfield Mine Location Historic District (Iron County MRA)*, Stream Rd. (12/22/83)
Mineral Hills, *James Mine Historic District (Iron County MRA)*, Mineral Ave. and Mower St. (12/22/83)
Mineral Hills, *Spies Boardinghouse (Iron County MRA)*, 700 Grant St. (12/22/83)
Stambaugh, *Cooks Run Trout Feeding Station (Iron County MRA)*, 180 Cooks Run Rd. (12/22/83)
Stambaugh, *Hamilton, George, House (Iron County MRA)*, 504 Selden Rd. (12/22/83)
Stambaugh, *Hanna, M.A., Company Michigan District Superintendent's House (Iron County MRA)*, 506 Selden Rd. (12/22/83)
Stambaugh, *Hanson, John W., House (Iron County MRA)*, 601 Roosevelt Ave. (12/22/83)
Stambaugh, *Harris, Jospeh, House (Iron County MRA)*, 615 Washington Ave. (12/22/83)
Stambaugh, *Hiawatha Mine Number One Complex (District) (Iron County MRA)*, W of Selden Rd. (12/22/83)
Stambaugh, *Holmes, Nels A., Farmstead (Iron County MRA)*, Off MI 189 (12/22/83)
Stambaugh, *House at 902 Seldon Road (Iron County MRA)*, 902 Seldon Rd. (12/22/83)
Stambaugh, *Levine, Louis, House (Iron County MRA)*, 502 Seldon Rd. (12/22/83)
Stambaugh, *McLean, John S., House (Iron County MRA)*, 230 — 4th St. (12/22/83)
Stambaugh, *McQuown, Lafayette, House (Iron County MRA)*, 411 Adams St. (12/22/83)
Stambaugh, *Stolberg, Charles, House (Iron County MRA)*, 411 — 3rd St. (12/22/83)
Stambaugh, *Swanson, John, House (Iron County MRA)*, 228 — 4th St. (12/22/83)
Stambaugh, *Van Platen-Fox Lumber Camp Historic Complex (District) (Iron County MRA)*, 281 University Rd. (12/22/83)

Jackson County

Grass Lake, *Grass Lake Public School*, 661 E. Michigan Ave. (05/31/84)

Keweenaw County

Copper Harbor Vicinity, *Gull Rock Light Station (US Coast Guard Lighthouses and Light Stations on the Great Lakes TR)*, Gull Rock (07/19/84)
Copper Harbor Vicinity, *Manitou Island Light Station (US Coast Guard Lighthouses and Light Stations on the Great Lakes TR)*, Manitou Island (07/19/84)
Eagle Harbor, *Eagle Harbor Light Station (US Coast Guard Lighthouses and Light Stations on the Great Lakes TR)*, Eagle Harbor (07/19/84)

Eagle River, *Eagle River Historic District*, Roughly Front, 2nd, 3rd, 4th, 5th, and Main Sts. (09/13/84)
Isle Royale National Park, *Algoma (Shipwrecks of Isle Royale National Park TR)*, Offshore of Mott Island (06/14/84)
Isle Royale National Park, *America (Shipwrecks of Isle Royale National Park TR)*, North Gap Channel (06/14/84)
Isle Royale National Park, *Chester A. Congdon (Shipwrecks of Isle Royale National Park TR)*, Congdon Shoal (06/14/84)
Isle Royale National Park, *Cumberland (Shipwrecks of Isle Royale National Park TR)*, SW of Rock of Ages Reef (06/14/84)
Isle Royale National Park, *Emperor (Shipwrecks of Isle Royale National Park TR)*, Canoe Rocks, (06/14/84)
Isle Royale National Park, *George M. Cox (Shipwrecks of Isle Royale National Park TR)*, SW of Rock of Ages Reef (06/14/84)
Isle Royale National Park, *Glenlyon (Shipwrecks of Isle Royale National Park TR)*, Glenlyon Shoal (06/14/84)
Isle Royale National Park, *Henry Chisholm (Shipwrecks of Isle Royale National Park TR)*, SW of Rock of Ages Reef (06/14/84)
Isle Royale National Park, *Kamloops (Shipwrecks of Isle Royale National Park TR)*, Kamloops Point (06/14/84)
Isle Royale National Park, *Monarch (Shipwrecks of Isle Royale National Park TR)*, S of Blake's Point (06/14/84)

Lenawee County

Tecumseh, *Tecumseh Historic District*, W. Chicago Blvd. and Union St. (09/13/84)

Lapeer County

Columbiaville, *Detroit-Bay City Railroad Company Columbiaville Depot*, 4643 — 1st St. (04/05/84)
Metamora, *Metamora Crossroads Historic District*, Oak and High Sts. (07/19/84)

Leelanau County

Northport, *Grand Traverse (Cat's Head Point) Light Station (US Coast Guard Lighthouses and Light Stations on the Great Lakes TR)*, Leenanau Peninsula (07/19/84)
South Manitou Island, *South Manitou Island Lighthouse Complex and Life-Saving Station Historical District*, Sandy Point (10/28/83)

Marquette County

Marquette, *Marquette Harbor Light Station (US Coast Guard Lighthouses and Light Stations on the Great Lakes TR)*, Marquette Harbor (07/19/84)

Monroe County

Monroe vicinity, *Loranger, Edward, House*, 7211 S. Stony Creek Rd. (05/31/84)

Oakland County

Novi, *Yerkes, Joseph D., House*, 42580 Eight Mile Rd. (01/26/84)
Pontiac, *Central School*, 101 E. Pike St. (02/16/84)
Pontiac, *Eagle Theater*, 11–15 S. Saginaw St. (02/16/84)
Pontiac, *Grinnell Brothers Music House*, 27 S. Saginaw St. (04/19/84)
Ponitac, *Pontiac Commercial Historic District*, 1–29 N. Saginaw St., 5–29 W. Lawrence St., and 10–18 W. Pike St. (02/16/84)

Oceana County

Golden Township, *Little Sable Point (Petite Point au Sable) Light Station (US Coast Guard Lighthouses and Light Stations on the Great Lakes TR)*, Little Sable Point (07/19/84)

Ottawa County

Holland, *Cappon, Issac, House*, 228 W. 9th St. (01/26/84)

Presque Isle County

Alpena vicinity, *Forty Mile Point Light Station (US Coast Guard Lighthouses and Light Stations on the Great Lakes TR)*, Presque Isle County Park (07/19/84)

Sanilac County

Port Sanilac, *Port Sanilac Light Station (US Coast Guard Lighthouses and Light Stations on the Great Lakes TR)*, Lake St. (07/19/84)

Schoolcraft County

Manistique vicinity, *Seul Choix Pointe Light Station (US Coast Guard Lighthouses and Light Stations on the Great Lakes TR)*, County Rd. 431 (07/19/84)

Shiawassee County

Byron, *Byron Historic Commercial District*, Roughly Saginaw St. from Maple to Water Sts. (09/13/84)

Wayne County

Detroit, *Belcrest Hotel*, 5440 Cass Ave. (05/31/84)
Detroit, *Cary Building*, 229 Gratiot Ave. (11/25/83)
Detroit, *Croul-Palms House*, 1394 E. Jefferson Ave. (12/20/83)
Detroit, *Cultural Center Historic District*, 5200–5201 Woodward Ave. and 100 Farnsworth Ave. (11/21/83)
Detroit, *Fort Shelby Hotel*, 525 W. Lafayette St. (11/25/83)
Detroit, *Garfield, James A., School*, 840 Waterman St. (01/26/84)
Detroit, *Merchants Building*, 206 E. Grand River Blvd. (11/25/83)
Detroit, *Michigan Soldiers' and Sailors' Monument*, Woodward Ave. at Campus Martius (05/31/84)
Grosse Pointe Park, *Stratton, William B. and Mary Chase, House*, 938 Three Mile Dr. (05/24/84)
Hamtramck, St. *Florian Historic District*, Roughly bounded by Joseph Campau Ave., Holbrook Ave., Dequindre, Norwalk, Lumkin and Yemans Sts. (09/13/84)
Wyandotte, *MacNichol, George P., House*, 2610 Biddle Ave. (05/24/84)

MINNESOTA

Carlton County

Cloquet vicinity, *Sts. Joseph and Mary Church*, Mission Rd. (03/29/84)

Fillmore County

Wykoff, *Bartlett, Francis H., House*, Gold and Pearl Sts. (05/24/84)

Freeborn County

Albert Lea, *Albert Lea City Hall*, 212 N. Broadway Ave. (05/17/84)

Hennepin County

Minneapolis, *Architects and Engineers Building*, 1200 2nd Ave. S. (02/23/84)
Minneapolis, *Augsburg Old Main*, 731 — 21st Ave. S. (10/06/83)
Minneapolis, *Bardwell-Ferrant House*, 2500 Portland Ave. S. (08/09/84)
Minneapolis, *Chadwick, L.L., Cottages*, 2617 W. 40th St. (02/08/84)
Minneapolis, *Coe, Amos B., House*, 1700 S. 3rd Ave. (01/13/84)
Minneapolis, *Farmers and Mechanics Savings Bank*, 115 S. 4th St. (01/12/84)
Minneapolis, *Fisk, Woodbury, House*, 424 SE 5th St. (10/06/83)
Minneapolis, *Gethsemane Episcopal Church*, 901–905 — 4th Ave. S (03/08/84)
Minneapolis, *Hinkle-Murphy House*, 619 — 10th St. S (09/20/84)
Minneapolis, *Lakewood Memorial Chapel*, 3600 Hennepin Ave. (10/20/83)
Minneapolis, *Owre, Dr. Oscar, House*, 2625 Newton Ave. S (03/08/84)
Minneapolis, *University of Minnesota Old Campus Historic District*, University Ave. and 15th Ave. (08/23/84)
Minneapolis, *Washburn Park Water Tower*, 401 Prospect Ave. (10/06/83)
Minneapolis, *Wesley United Methodist Church*, 101 E. Grant St. (02/09/84)
Minneapolis, *Willey, Malcolm, House*, 255 Bedford St., SE (02/23/84)

Hubbard County

Park Rapids, *Hubbard County Courthouse*, Court St. (03/08/84)

Kittson County

Caribou vicinity, *St. Nicholas Orthodox Church*, W of Caribou (03/08/84)

Lake County

Two Harbors, *Two Harbors Light Station (US Coast Guard Lighthouses and Light Stations on the Great Lakes TR)*, Agate and Burlington Bays (07/19/84)

Mahnomen County

Mahnomen, *Mahnomen County Courthouse*, Main St. at Washington Ave. (02/16/84)

McLeod County

Glencoe, *American House Hotel*, 12th and Ford Sts. (08/23/84)
Glencoe, *McLeod County Courthouse*, 830 — 11th St. E (08/23/84)

Meeker County

Litchfield vicinity, *Ames, Henry, House*, MN 24 (08/09/84)

Nobles County

Worthington, *Hotel Thompson*, 300–310 — 10th St. (02/16/84)

Otter Tail County

Elizabeth, *Elizabeth City Hall and Jail*, Broadway Ave. (02/16/84)
Fergus Falls, *Fergus Falls City Hall*, 112 W. Washington Ave. (05/10/84)
Fergus Falls, *Otter Tail County Courthouse*, Court St. at Junius Ave. (05/10/84)

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Pelican Rapids, *Blyberg, O.A.E., House*, 22 — 5th Ave. SW (02/16/84)
Phelps, *Phelps Mill District*, SR 45 (05/10/84)

Pennington County

Thief River Falls, *Thief River Falls Public Library*, 102 N. Main Ave. (10/06/83)

Polk County

Crookston, *Crookston Carnegie Public Library*, N. Ash St. at 2nd Ave. (05/10/84)
Crookston, *Davis, E.C., House*, 406 Grant St. (05/10/84)
East Grand Forks, *Hamm Brewing Company Beer Depot*, 401 DeMers Ave. (09/20/84)

Pope County

Villard, *Northern Pacific Depot*, Off Washington Ave. (10/06/83)

Ramsey County

St. Paul, *Arlington Hills Library (Carnegie Libraries of St. Paul TR)*, 1105 Greenbrier St. (02/10/84)
St. Paul, *Davern, William and Catherine, Farm House*, 1173 S. Davern St. (10/06/83)
St. Paul, *Lee, Olaf, House*, 955 N. Jessie St. (02/16/84)
St. Paul, *Riverview Branch Library (Carnegie Libraries of St. Paul TR)*, 1 E. George St. (02/10/84)
St. Paul, *Schneider, Charles W., House*, 1750 E. Ames Pl. (02/16/84)
St. Paul, *Schornstein Grocery and Saloon*, 707 E. Wilson Ave. and 223 N. Bates Ave. (08/21/84)
St. Paul, *St. Anthony Park Branch Library (Carnegie Libraries of St. Paul TR)*, 2245 W. Como Ave. (02/10/84)
St. Paul, *Vienna and Earl Apartment Buildings*, 682–688 Holly Ave. (04/10/84)

Redwood County

Delhi, *Delhi Coronet Band Hall*, 3rd St. (05/17/84)

St. Louis County

Duluth, *Fitger Brewing Company*, 600 E. Superior St. (02/09/84)

Stearns County

St. Cloud, *Pan Motor Company Office and Sheet Metal Works*, 435–437 — 33rd Ave. N. (01/31/84)

Stevens County

Morris, *Morris Industrial School for Indians Dormitory*, University of Minnesota campus (05/10/84)

Wabasha County

Lake City, *Williamson-Russell-Rahilly House*, 304 Oak St. (03/08/84)

Washington County

St. Croix River Access Site (08/23/84)

Watonwan County

Madelia, *Flanders' Block*, 30 W. Main St. (03/08/84)

Winona County

Rollingstone, *Holy Trinity Catholic Church*, Rollingstone Rd. and MN 25 (08/09/84)
St. Charles, *St. Charles City Bakery*, 501 Whitewater Ave. (08/09/84)
St. Charles, *Trinity Episcopal Church*, 805 St. Charles Ave. (08/09/84)
St. Charles, *Whitewater Avenue Commercial Historic District*, 900–1012 Whitewater Ave. (08/09/84)
Stockton, *Trinity Protestant Episcopal Church*, E. Main St. and Broadway (08/09/84)
Utica, *Ellsworth, Benjamin, House*, US 14 (08/09/84)
Winona, *Winona and St. Peter Engine House*, 75 Gould St. (01/12/84)
Winona, *Winona and St. Peter Railroad Freight House*, Front and Center Sts. (01/26/84)

MISSISSIPPI

Adams County

Traveller's Rest, (05/03/84)
Natchez, *Upriver Residential District*, Roughly bounded by Pine, Monroe, Elm/Bishop, and Ridge/Maple Sts. (12/01/83)
Natchez, *White Cottage (Twin Oaks)*, 71 Homochitto St. (10/13/83)

Amite County

Gloster vicinity, *Talbert-Cassels House*, Off MS 574 (03/01/84)
Liberty vicinity, *Butler, Decatur N., House*, Off MS 567 (05/01/84)
Liberty vicinity, *McGehee House*, SE of Zion Hill (11/25/83)
Liberty vicinity, *Pinewood*, S of Liberty off Greensburg Rd. (07/05/84)
Liberty vicinity, *Webb, George, House*, E of Old Zion Hill Rd. (11/17/83)
Magnolia vicinity, *Felder-Richmond House*, Off I–55 (07/12/84)
Magnolia vicinity, *Lea, Hampton, House*, Lea Rd. (07/12/84)

Attala County

Kosciusko, *Jackson-Niles House*, 121 N. Wells St. (09/27/84)

Coahoma County

Barner Site (22Co542), (03/08/84)
Salomon (Salmon) Site, (03/08/84)

Copiah County

Crystal Springs, *Parsons, C.H., House*, 208 W. Georgetown St. (09/07/84)
Hazlehurst, *Cook House*, 222 Extension St. (12/08/83)
Hazlehurst, *Covington, Robert L., House*, 240 S. Extension St. (03/01/84)

Harrison County

Biloxi, *Bailey House (Biloxi MRA)*, 1333 E. Beach Blvd. (05/18/84)
Biloxi, *Barq, E., Pop Factory (Biloxi MRA)*, 224 Keller Ave. (05/18/84)
Biloxi, *Biloxi's Tivoli Hotel (Biloxi MRA)*, 863 E. Beach Dr. (05/18/84)
Biloxi, *Bond House (Biloxi MRA)*, 925 W. Howard Ave. (05/18/84)
Biloxi, *Brielmaier House (Biloxi MRA)*, 436 Main St. (05/18/84)
Biloxi, *Brunet-Fourchy House (Biloxi MRA)*, 138 Magnolia St. Mall (05/18/84)
Biloxi, *Church of the Redeemer (Biloxi MRA)*, Bellman St. (05/18/84)
Biloxi, *Clemens House (Biloxi MRA)*, 120 W. Water St. (05/18/84)
Biloxi, *Fisherman's Cottage (Biloxi MRA)*, 262 E. Bayview Ave. (05/18/84)
Biloxi, *Gulf Coast Center for the Arts (Biloxi MRA)*, 138 Lameuse St. (05/18/84)
Biloxi, *Hermann House (Biloxi MRA)*, 523 E. Beach Blvd. (05/18/84)
Biloxi, *House at 121 W. Water Street (Biloxi MRA)*, 121 W. Water St. (05/18/84)
Biloxi, *Nativity BVM Cathedral (Biloxi MRA)*, W. Howard Ave. and Fayard St. (05/18/84)
Biloxi, *Peoples Bank of Biloxi (Biloxi MRA)*, 318 Lameuse St. (05/18/84)
Biloxi, *Redding House (Biloxi MRA)*, 126 W. Jackson St. (05/18/84)
Biloxi, *Saenger Theater (Biloxi MRA)*, 416 Reynoir St. (05/18/84)
Biloxi, *Scherer House (Biloxi MRA)*, 206 W. Water St. (05/18/84)
Biloxi, *Seashore Campground School (Biloxi MRA)*, Leggett Dr. and Chalmers St. (05/18/84)
Biloxi, *Suter House (Biloxi MRA)*, 165 Suter Pl. (05/18/84)
Biloxi, *Swetman, Glenn, House (Biloxi MRA)*, 2770 Wilkes Ave. (05/18/84)
Biloxi, *West Beach Historic District (Biloxi MRA)*, Roughly US 90 between Rosell and Chalmers Ave. (05/18/84)
Biloxi, *West Central Historic District (Biloxi MRA)*, Roughly bounded by US 90, Hopkins Blvd., Howard and Benachi Aves. (05/18/84)
Gulfport, *US Post Office and Customhouse*, 2421 — 13th St. (03/19/84)

Hinds County

Jackson, *Armour Company Smokehouse and Distribution Plant*, 320 W. Pearl St. (11/25/83)
Jackson, *Belhaven Heights Historic District*, Roughly bounded by Bellevue Place, N. Jefferson, Madison, and Morningside Sts. (11/25/83)
Jackson, *Virden-Patton House*, 512 N. State St. (12/16/83)
Raymond vicinity, *Magnolia Vale*, Off MS 18 (11/17/83)
Terry, *Jones, Dudley, House*, 115 Railroad Ave. (08/02/84)

Jackson County

Pascagoula, *Front Street Historic District*, 2810, 2816, 2905, 2914, 2916 Front St. (05/17/84)

Jefferson County

Church Hill vicinity, *Richland*, Off MS 553 (07/05/84)

Jones County

Ellisville, *Deason, Amos, House*, 410 N. Deason St. (07/05/84)
Laurel, *Pinehurst Hotel*, 318 — 5th Ave. (03/01/84)

Lauderdale County

Meridian, *US Post Office and Courthouse*, 2100 — 9th St. (05/17/84)

Lee County

Saltillo, *Burrow, Barlow, House*, 157 N. 2nd St. (03/01/84)

Leflore County

Greenwood, *Whittington, W.M., House*, 401 E. Market St. (07/19/84)

Lincoln County

Brookhaven, *US Post Office*, 201 W. Cherokee St. (10/28/83)

Madison County

Puckshunubbee-Haley Site (05/09/84)
Tilda Bouge (12/09/83)
Madison, *Montgomery House*, Main St. (09/07/84)
Byhalia, *Byhalia United Methodist Church (Johnson, Andrew, Architecture in North Mississippi TR)*, College Ave. (04/09/84)

Monroe County

Aberdeen, *Mobile and Ohio Railroad Depot*, 612 W. Commerce St. (12/08/83)

Oktibbeha County

Starkville, *Magruder-Newsom House*, 306 S. Jackson St. (08/30/84)

Panola County

Batesville, *Lee House (Johnson, Andrew, Architecture in North Mississippi TR)*, 201 Booth St. (04/09/84)
Como, *Craig-Seay House (Johnson, Andrew, Architecture in North Mississippi TR)*, Craig St. (04/09/84)
Como, *Popular Price Store (Johnson, Andrew, Architecture in North Mississippi TR)*, Railroad St. (04/09/84)
Como, *Tait-Taylor House (Johnson, Andrew, Architecture in North Mississippi TR)*, Oak Ave. (04/09/84)
Como, *Taylor-Falls House (Johnson, Andrew, Architecture in North Mississippi TR)*, Pointer Ave. (04/09/84)
Como, *Taylor-Mansker House (Johnson, Andrew, Architecture in North Mississippi TR)*, Railroad St. (04/09/84)
Como, *Wardlaw-Swango House (Johnson, Andrew, Architecture in North Mississippi TR)*, Railroad St. (04/09/84)
Crenshaw, *Crenshaw House (Johnson, Andrew, Architecture in North Mississippi TR)*, MS 310 (04/09/84)
Sardis, *Ballentine-Bryant House (Johnson, Andrew, Architecture in North Mississippi TR)*, 506 Butler St. (04/09/84)
Sardis, *Ballentine-Seay House (Johnson, Andrew, Architecture in North Mississippi TR)*, Pocahontas St. (04/09/84)
Sardis, *Hall-Henderson House (Johnson, Andrew, Architecture in North Mississippi TR)*, Sycamore St. (04/09/84)
Sardis, *Hall-Roberson House (Johnson, Andrew, Architecture in North Mississippi TR)*, 510 S. Main St. (04/09/84)
Sardis, *Hufft House (Johnson, Andrew, Architecture in North Mississippi TR)*, 117 Pocahontas St. (04/09/84)
Sardis, *Johnson-Tate Cottage (Johnson, Andrew, Architecture in North Mississippi TR)*, Stonewall St. (04/09/84)
Sardis, *Kyle-Spencer House (Johnson, Andrew, Architecture in North Mississippi TR)*, 16 McLaurin St. (04/09/84)
Sardis, *Taylor-Wall-Yancy House (Johnson, Andrew, Architecture in North Mississippi TR)*, 114 Sycamore St. (04/09/84)
Sardis, *Walton-Howry House (Johnson, Andrew, Architecture in North Mississippi TR)*, 306 S. Main St. (04/09/84)

Scott County

Lake, *Lake Railroad Station*, Brook St. (07/19/84)

Walthall County

Tylertown vicinity, *China Grove Methodist Church*, MS 585 (07/05/84)

Warren County

Redbone vicinity, *Hullum-Mallett-Brewer House*, Redbone Rd. (07/05/84)
Vicksburg vicinity, *Fonsylvania*, Fisher Ferry Rd., S of Vicksburg (09/07/84)
Vicksburg vicinity, *Yokena Presbyterian Church*, S of Vicksburg on US 61 (09/07/84)
Vicksburg, *1300 Grove Street House*, 1300 Grove St. (11/29/83)
Vicksburg, *Craig-Flowers House*, 2011 Cherry St. (08/02/84)
Vicksburg, *Magruder-Morrissey House*, 1117 Cherry St. (05/24/84)
Vicksburg, *McDermott House*, 1100 South St. (07/12/84)
Vicksburg, *Shlenker House*, 2212 Cherry St. (11/17/83)

Washington County

Greenville, *Griffin-Spragins House*, SW of Greenville off US 82 (04/05/84)
Greenville, *Washington Avenue-Main Street Historic District*, Roughly bounded by RR tracks, Yerger, Arnold Ave., and Cherry St. (05/03/84)

Webster County

Mathiston, *Wood Home for Boys*, Horton St. (04/05/84)

MISSOURI

Adair County

Kirksville vicinity, *Bear Creek Baptist Church*, N of Kirksville off US 63 (03/29/84)

Atchison County

Rock Port, *Dopf, John Dickinson, Mansion*, 407 Cass St. (02/08/84)

Cape Girardeau County

Cape Girardeau, *Reynolds, James, House*, 623 N. Main St. (10/13/83)

Crawford County

Sullivan, *Harney, Maj. Gen. William S., Summer Home*, 332 S. Mansion Ave. (04/19/84)

Franklin County

Labadie, *North, James, House*, MO T (04/05/84)
Pacific vicinity, *Grauer, Gustav, Farm*, N of Pacific (09/06/84)
Washington, *Schwegmann, John F., House*, 438 W. Front St. (03/22/84)
Washington, *Thias, Henry C., House*, 304 Elm St. (09/20/84)

Greene County

Springfield, *Keet-McElhany House*, 435 E. Walnut St. (03/22/84)

Grundy County

Trenton, *Norris, Jewett, Library*, 1331 Main St. (09/07/84)

Harrison County

Bethany vicinity, *Slatten House*, MO 4 (07/09/84)

Jackson County

Independence, *Minor, Charles, House*, 314 N. Spring St. (03/22/84)

Kansas City, *Bonfils Building*, 1200 Grand Ave. (03/22/84)
Kansas City, *Kansas City Live Stock Exchange*, 1600 Genessee St. (04/05/84)
Kansas City, *Simpson-Yeomans Country Side Historic District*, Roughly bounded by 51st Terr., Wornall Rd., Wyandotte, and 54th Sts. (09/06/84)

Laclede County

Lebanon, *Wallace House*, 230 Harwood Ave. (03/22/84)

Marion County

Hannibal vicinity, *Barkley, Levi, House*, W. of Hannibal (03/02/84)
Hannibal vicinity, *Hendren Farm*, Off US 61 (08/22/84)
Hannibal Vicinity, *Masterson, Robert, House*, NW of Hannibal (04/05/84)
Hanniball, *Hannibal Lime Company Office*, 623 Collier St. (09/06/84)
Palmyra, *Walker-Woodward-Schaffer House*, 1425 S. Main St. (02/16/84)

Moniteau County

California, *Gray-Wood Buildings*, 401–407 N. High St. (01/19/84)

Newton County

Pierce City vicinity, *Jolly Mill*, SW of Pierce City (10/13/83)

Pike County

Clarksville, *Clifford-Wyrick House*, 105 S. 2nd St. (07/09/84)

Ralls County

Hannibal, *Brown, James B., House*, 2400 Carrs Lane (01/26/84)

Saline County

Marshall, *Buckner House*, 125 N. Brunswick Ave. (04/19/84)

Scott County

Sikeston, *Marshall Hotel*, 103 E. Malone Ave. (03/22/84)

St. Francois County

Bonne Terre, *Bonne Terre Depot*, Oak St. (04/05/84)
Bonne Terre, *St. Joe Lead Company Administration Building*, Elm St. (04/05/84)

St. Louis (Independent City)

Beaumont Medical Building, 3714–26 Washington Ave. (01/19/84)
Blind Girls' Home, 5235 Page Blvd. (08/23/84)
Buildings at 2327–31 and 2333–35 Rutgers Street, 2327–31 and 2333–35 Rutger St. (01/19/84)
Clemens House-Columbia Brewery District, Roughly bounded by Maiden Lane, Cass Ave., 21st, Helen, and Howard Sts. (07/19/84)
Dolman Row, 1424–1434 Dolman St. (01/19/84)
Forest Park Hotel, 4910 W. Pine Blvd. (03/22/84)
Lennox Hotel, 823–827 Washington Ave. (09/06/84)
Liggett and Myers (Rice-Stix) Building, 1000 Washington Ave. (02/16/84)
Louise Apartments, 3900 Lindell Blvd. and Vandeventer Ave. (08/23/84)

McKinley Fox District, Roughly bounded by 18th St., I–44, Jefferson and Gravois Aves. (09/07/84)
Majestic Hotel, 1017–23 Pine St. and 200–10 N. 11th St. (01/26/84)
Murphy-Blair District, Roughly bounded by I–70, Florissant Ave., Chambers and Branch Sts. (01/26/84)
Peters Shoe Company Building, 1232–36 Washington Ave. (01/26/84)
Robert, Johnson and Rand-International Shoe Company Complex, Mississippi and Hickory Sts. (08/23/84)
Schollmeyer Building, 1976–1982 Arsenal St. (09/28/84)
Seventh District Police Station, 2800 S. Grand Ave. (03/22/84)
St. Louis Post-Dispatch Printing Building, 1111 Olive St. (08/29/84)
Sugar Loaf Mound, 4414 and 4420 Ohio Ave. (02/17/84)
Union Market, Broadway and Lucas Ave. (01/16/84)
YWCA, Phyllis Wheatley Branch, 2709 Locust St. (07/24/84)

St. Louis County

Ferguson, *Church Street Commercial District*, 2–100 Church St. (08/23/84)
Ferguson, *Ferguson School-Central School*, 201 Wesley Ave. (09/07/84)
Kirkwood, *Mudd's Grove*, 302 W. Argonne Dr. (04/05/84)
Ladue, *Plant, Samuel, House*, 800 Cella Rd. (04/19/84)
Pine Lawn, *Pine Lawn Cariage House*, 6292–94 Stillwell Dr. (02/16/84)
St. Louis vicinity, *Jarville*, 1723 Mason Rd., (02/16/84)
University City, *B'nai Amoona Synogogue*, 524 Trinity Ave. (04/22/84)
University City, *Donaldson Court Apartments*, 601–615 Westgate Ave. (10/13/84)
University City/St. Louis (Independent City), *Delmar Loop-Parkview Gardens Historic District*, Roughly bounded by Kingsland Ave., North Dr., Delmar Blvd., and Eastgate (02/16/84)
Webster Groves, *Ferguson, Charles W., House*, 15–17 W. Lockwood Ave. (09/18/84)
Webster Groves, Tuxedo Park Station, 643 Glen Rd. (03/22/84)

Stoddard County

Bloomfield, *Stoddard County Courthouse*, Prairie and Court Sts. (09/18/84)

Taney County

Walnut Shade vicinity, *Bonniebrook Homestead*, US 65 (04/20/84)

MONTANA

Beaverhead County

Dillon, *Hotel Metlen*, 5 S. Railroad Ave. (12/13/83)
Wisdom vicinity, *Big Hole National Battlefield*, W. of Wisdom on MT 43 (08/03/84)

Carbon County

Red Lodge, *Red Lodge Commercial Historic District (Boundary Increase)*, Roughly Broadway from 8th to 13th Sts. (05/31/84)

Cascade County

Cascade vicinity, *St. Peter's Mission Church and Cemetery*, W of Cascade (08/03/84)
Great Falls, *Margaret Block*, 413–415 Central Ave. (08/02/84

Deer Lodge County

Anaconda, *Durston Block and Annex*, 201–205½ Main St. (01/18/84)

Flathead County

Apgar, *Bull Head Lodge and Studio*, off Going-to-the-Sun-Rd. (02/06/84)

Gallatin County

Bozeman, *Hotel Baxter*, 105 W. Main St. (04/19/84)
Bozeman, *Spieth and Krug Brewery (Maxey Block)*, 238–246 E. Main St. (04/16/84)

Lake County

Linderman, Frank Bird, House, (02/22/84)
Bigfork vicinity, *Kottenai Lodge Historic District*, Sunburst Dr. (01/17/84)
Swan Lake vicinity, *Swan Lake Rock House Historic District*, Off MT 83 (08/01/84)

Lewis & Clark County

Marysville, *Methodist-Episcopal Church of Marysville*, 3rd St. (01/05/84)
Gilman, *Gilman State Bank*, Main St. (12/01/83)
Helena, *Murphy, John T., House*, 418 N. Benton Ave. (08/01/84)

Madison County

Twin Bridges, *Madison County Fairgrounds*, MT 41 (08/03/84)

Missoula County

Missoula, *Johnston, John S., House*, 412 W. Alder St. (08/02/84)

Stillwater County

Absarokee, *Hovda, Oliver H., House*, N. Woodward St. (08/16/84)

NEBRASKA

Antelope County

Neligh, *Neligh Mill Elevators (Boundary Increase)*, 111 W. Second (12/15/83)

Cherry County

Valentine, *Valentine Public School*, 3rd and Macomb Sts. (08/14/84)

Clay County

Sutton, *Clark, Isaac Newton, House*, 468 Cedar St. (12/15/83)

Dixon County

Indian Hill Archeological District, (07/06/84)

Douglas County

Omaha, *Malcolm X House Site*, 3448 Pinkney St. (03/01/84)
Omaha, *Monmouth Park School*, 4508 N. 33rd St. (12/15/83)
Omaha, *Redick Tower*, 1504 Harney St. (08/21/84)

Fillmore County

Fairmont, *Fairmont Creamery Company Building*, SE of 6th Ave. and F St. (12/15/83)

Greeley County

O'Connor, *Church of the Visitation of the Blessed Virgin Mary*, off NE 56 (02/23/84)
Spalding, *St. Michael's Catholic Church Complex*, NE of Greeley Ctr. (12/15/83)

Hamilton County

Aurora, *Hearn, Kathleen, Building*, 10th and O Sts. (08/01/84)

Lancaster County

Lincoln, *Bell, Jasper Newton, House*, 2212 Sheldon St. (08/21/84)
Lincoln, *College View Public Library*, 3800 S. 48th St. (08/28/84)
Lincoln, *Harris House (proposed move)*, 17th and K Sts. (03/23/84)
Lincoln, *Hotel Capital*, 139 N. 11th St. (12/05/83)
Lincoln, *Lincoln YWCA Building*, 1432 N St. (08/21/84)

Merrick County

Chapman, *Cahow Barber Shop*, SW. Main St. (01/12/84)

Nemaha County

Brownville vicinity, *Bennett, John W., House*, Off NE 67 (09/16/83)

Valley County

Ord, *People's Unitarian Church*, 1640 N St. (08/14/84)

York County

Bradshaw, *Bradshaw Town Hall*, Off US 34 (05/31/84)

NEVADA

Carson City (Independent City)

Wabuska Railroad Station, S. Carson St. (08/30/84)

Churchill County

Lovelock Cave, (05/24/84)

Lincoln County

Pioche, *Brown's Hall-Thompson's Opera House*, N. Main St. (08/16/84)

Lyon County

Yerington, *Yerington Grammar School*, 112 N. California St. (08/16/84)

Nye County

Round Mountain, *Berg, William H., House*, Mariposa and Davis Sts. (01/11/84)

Washoe County

Reno, *Burke, Charles H., House*, 36 Stewart St. (05/31/84)
Reno, *El Cortez Hotel*, 239 W. 2nd St. (08/13/84)
Reno, *Giraud, Joseph, House*, 442 Flint St. (04/05/84)
Reno, *Mapes Hotel and Casino*, 10 N. Virginia St. (05/04/84)
Reno, *McCarthy-Platt House*, 1000 Plumas St. (05/31/84)

White Pine County

East Ely, *East Ely Depot*, 11th St. (04/12/84)

NEW HAMPSHIRE

Belknap County

Alton, *Monument Square Historic District*, Main, Factory, Church, and Depot Sts. (03/15/84)
Sanbornton, *Bay Meeting House and Vestry*, Upper Bay and Steele Rds. (06/07/84)

Carroll County

Ossipee, *First Free Will Baptist Church*, Granite Rd. (03/15/84)
Ossipee, *Whittier Bridge*, NH 25 (03/15/84)
Sandwich, *Center Sandwich Historic District*, Roughly bounded by Skinner, Grove, Church, Maple, and Main Sts., and Creamery Brook and Quimby Field Rds. (12/22/83)
Wakefield, *St. John's Church, Rectory, and Parish Hall*, High St. (06/07/84)
Wakefield, *Wakefield Village Historic District*, off NH 153 (03/15/84)
Wolfeboro Centre, *Wolfeboro Centre Community Church*, NH 109 (03/15/84)

Cheshire County

Chesterfield, *Asbury United Methodist Church*, NH 63 (12/21/83)
Dublin, *Allison, Capt. Samuel, House (Dublin MRA)*, Keene Rd. (12/18/83)
Dublin, *Amory House (Dublin MRA)*, Off Old Troy Rd. (12/15/83)
Dublin, *Appleton Farm (Dublin MRA)*, Hancock Rd. (12/18/83)
Dublin, *Appleton-Hannaford House (Dublin MRA)*, Hancock Rd. (12/15/83)
Dublin, *Ballou-Newbegin House (Dublin MRA)*, Old Marlborough Rd. (12/18/83)
Dublin, *Beech Hill (Dublin MRA)*, Off New Harrisville Rd. (12/15/83)
Dublin, *Brackett House (Dublin MRA)*, High Ridge Rd. (12/18/83)
Dublin, *Burpee Farm (Dublin MRA)*, Burpee Rd. (12/18/83)
Dublin, *Cabot, Louis, House (Dublin MRA)*, Windmill Hill Rd. (12/18/83)
Dublin, *Cabot, T.H., Cottage (Dublin MRA)*, Snow Hill Rd. (12/15/83)
Dublin, *Corey Farm (Dublin MRA)*, Parsons Rd. (12/15/83)
Dublin, *Dublin Lake Historic District (Dublin MRA)*, Lake, E. Lake, W. Lake, and Old Harrisville Rds. (12/18/83)
Dublin, *Dublin Village Historic District (Dublin MRA)*, Old Common and Harrisville Rds., and Main and Church Sts. (12/15/83)
Dublin, *Eveleth Farm (Dublin MRA)*, Burpee Rd. (12/18/83)
Dublin, *Far Horizons (Dublin MRA)*, Learned Rd. (12/15/83)
Dublin, *Fisk Barn (Dublin MRA)*, Gerry Rd. (12/18/83)
Dublin, *Foothill Farm (Dublin MRA)*, Old Troy Rd. (12/15/83)
Dublin, *Frost Farm (Dublin MRA)*, Old Marlborough Rd. (12/15/83)
Dublin, *Frost Farm (Dublin MRA)*, Korpi Rd. (12/18/83)
Dublin, *Gowing, James, Farm (Dublin MRA)*, Page Rd. (12/18/83)
Dublin, *Gowing, Joseph, Farm (Dublin MRA)*, Page Rd. (12/15/83)
Dublin, *Greenwood, Isaac, House (Dublin MRA)*, Peterborough Rd. (12/18/83)
Dublin, *Greenwood, Moses, House (Dublin Inn) (Dublin MRA)*, Pierce and Old County Rds. (12/15/83)
Dublin, *Ivanov-Rinov House (Dublin MRA)*, Pierce Rd. (12/18/83)
Dublin, *Knollwood (Dublin MRA)*, Windmill Hill Rd. (12/18/83)
Dublin, *Lattice Cottage (Dublin MRA)*, Off Old Troy Rd. (12/15/83)
Dublin, *Learned Homestead (Dublin MRA)*, Upper Jaffrey Rd. (12/15/83)
Dublin, *Learned, Amos, Farm (Dublin MRA)*, NH 137 (12/15/83)
Dublin, *Learned, Benjamin, House (Dublin MRA)*, Upper Jaffrey Rd. (12/18/83)
Dublin, *Markham House (Dublin MRA)*, Snow Hill Rd. (12/18/83)
Dublin, *Marshall, Benjamin, House (Dublin MRA)*, Peterborough Rd. (12/15/83)
Dublin, *Martin, Micajah, Farm (Dublin MRA)*, Old Peterborough Rd. (12/18/83)
Dublin, *Mason House (Dublin MRA)*, Snow Hill Rd. (12/15/83)
Dublin, *McKenna Cottage (Dublin MRA)*, Windmill Hill Rd. (12/18/83)
Dublin, *Moore Farm and Twitchell Mill Site (Dublin MRA)*, Off Page Rd. (12/18/83)
Dublin, *Morse, Asa, Farm (Dublin MRA)*, NH 101 (12/15/83)
Dublin, *Morse, Capt. Thomas, Farm (Dublin MRA)*, Old Marlborough Rd. (12/15/83)
Dublin, *Morse, Eli, Sawmill Foundations (Dublin MRA)*, Off Old Marlborough Rd. (12/18/83)
Dublin, *Mountain View Farm (Dublin MRA)*, Upper Jaffrey Rd. (12/18/83)
Dublin, *Parsons Studio and Casino (Dublin MRA)*, Parsons Rd. (12/18/83)
Dublin, *Perry, Ivory, Homestead (Dublin MRA)*, Corner Valley and Dooe Rds. (12/15/83)
Dublin, *Perry, John, Homestead (Dublin MRA)*, Dooe Rd. (12/18/83)
Dublin, *Piper, Rufus, Homestead (Dublin MRA)*, Pierce Rd. (12/15/83)
Dublin, *Piper, Solomon, Farm (Dublin MRA)*, Valley Rd. (12/18/83)
Dublin, *Pumpelly Studio (Dublin MRA)*, Snow Hill Rd. (12/15/83)
Dublin, *Richardson, Abijah Sr., Homestead (Dublin MRA)*, Hancock Rd. (12/18/83)
Dublin, *Richardson, Deacon Abijah, House (Dublin MRA),)* Hancock Rd. (12/15/83)
Dublin, *Richardson, John, Homestead* (Dublin MRA), (12/18/83)
Dublin, *Richardson, Luke, House (Dublin MRA)*, Hancock Rd. (12/15/83)
Dublin, *Robbe, James Jr., House (Dublin MRA)*, Old Peterborough Rd. (12/18/83)
Dublin, *Spur House (Dublin MRA)*, Off Old Common Rd. (12/15/83)
Dublin, *Stone Farm (Dublin MRA)*, Old Marlborough Rd. (12/18/83)
Dublin, *Stone-Darracott House (Dublin MRA)*, Old Marlborough Rd. (12/15/83)
Dublin, *Stonehenge (Dublin MRA)*, Windmill Hill Rd. (12/18/83)
Dublin, *Strong, Capt. Richard, House (Dublin MRA)*, Peterborough Rd. (12/18/83)
Dublin, *Strong, Richard, Cottage (Dublin MRA)*, Off Peterborough Rd. (12/15/83)
Dublin, *Strongman, Henry, House (Dublin MRA)*, Peterborough Rd. (12/15/83)
Dublin, *Strongman, William, House (Dublin MRA)*, Old County Rd. (12/18/83)
Dublin, *Townsend Farm (Dublin MRA)*, E. Harrisville Rd. (12/15/83)
Dublin, *Wales, Mary Anne, House (Dublin MRA)*, Snow Hill Rd. (12/18/83)
Dublin, *Weldwood (Dublin MRA)*, Old Troy Rd. (12/15/83)
Dublin, *Windmill Hill (Dublin MRA)*, Windmill Hill Rd. (12/18/83)
Dublin, *Wood House (Dublin MRA)*, NH 101 and 137 (12/15/83)
Marlow, *Jones Hall*, Church St. (06/07/84)

Coos County

Shelburne, *Philbrook Farm Inn*, North Rd. (03/15/84)
Stark, *Stark Union Church*, NH 110 (12/08/83)

Grafton County

Kent, Moses, House, (06/07/84)
Bath vicinity, *Hutchins, Jeremiah, Tavern*, NE of Bath on US 302 (09/07/84)
Bethlehem vicinity, *Rocks Estate*, W of Bethlehem on US 302 (09/07/84)
Plymouth vicinity, *Trinity Church*, E of Plymouth on NH 175 (09/07/84)

Hillsborough County

Goffstown, *Kennedy Hill Farm*, Kennedy Hill Rd. (06/07/84)
Greenfield, *Greenfield Meeting House*, Forest Rd. (12/08/83)
Hudson, *Hills Memorial Library*, 18 Library St. (06/07/84)
Lyndeborough Center, *Lyndeborough Center Historic District*, Center Rd. (06/07/84)

Merrimack County

Boscawen, *Morrill-Lassonde House*, E of King St. (03/15/84)
Concord, *Concord Civic District*, 107 N. Main St., 25 Capitol St., 39–45 Green St., 20–30 Park St., and 33 N. State St. (12/22/83)
Concord, *Crippen, Henry J., House*, 189–191 N. Main St. (12/22/83)
Concord, *Pleasant View Home*, 227 Pleasant St. (09/19/84)
Concord, *Rollins, Gov. Frank West, House*, 135 N. State St. (03/15/84)
Northfield, *Northfield Union Church*, Sondogardy Pond Rd. (03/15/84)

Rockingham County

Kingston, *Sanborn Seminary*, 178 Main St. (03/15/84)
Portsmouth, *Franklin Block*, 75 Congress St. (06/07/84)

Strafford County

Dover, *Back River Farm*, Bay View Rd. (06/22/84)
Dover, *St. Thomas Episcopal Church*, 5 Hale St. (06/07/84)

Sullivan County

Acworth, *Acworth Silsby Library*, Intersection of Cold Pond and Lynn Hill Rds. (12/08/83)
Charlestown, *Charlestown Town Hall*, N of Summer St., off Main St. (03/15/84)
Newport, *Richards Free Library*, 58 N. Main St. (09/07/84)

NEW JERSEY

Alantic County

Atlantic City, *Segal Building*, 1200 Atlantic Ave. (02/09/84)

Somers Point vicinity, *Jeffries, Capt. John, Burial Marker*, Palestine Bible Church Cemetery, NJ 559 (08/14/84)

Bergen County

Alpine, *Blackledge-Kearney (Stone Houses of Bergen County TR)*, Alpine Landing (07/24/84)
Cresskill, *Demarest-Atwood House (Stone Houses of Bergen County TR)*, 84 Jefferson Ave. (07/24/84)
Demarest, *Demarest, Samuel R., House (Stone Houses of Bergen County TR)*, 212 County Rd. (07/24/84)
Englewood, *Van Horn-Newcomb House (Stone Houses of Bergen County TR)*, 303 Tenafly Rd. (07/24/84)
Fairlawn, *Radburn-Fair Lawn Station (Operating Passenger Railroad Stations TR)*, Pollitt Dr. (08/22/84)
Franklin Lakes, *Storms House (Stone Houses of Bergen County TR)*, 1089 Franklin Lake Rd. (07/24/84)
Franklin Lakes, *Van Blarcom House (Stone Houses of Bergen County TR)*, 834 Franklin Lake Rd. (07/24/84)
Franklin Lakes, *Van Koert-Winters House (Stone Houses of Bergen County TR)* 615 Franklin Ave. (07/24/84)
Franklin Lakes, *Van Winkle House (Stone Houses of Bergen County TR)*, 798 Franklin Lake Rd. (07/24/84)
Franklin Lakes, *Winters, Aaron, House (Stone Houses of Bergen County TR)*, 358 Woodside Ave. (07/24/84)
Hackensack, *Doremus House (Stone Houses of Bergen County TR)*, 73 Main St. (07/24/84)
Hakensack, *Anderson Street Station (Operating Passenger Railroad Stations TR)*, Anderson St. (08/22/84)
Hillsdale, *Hillsdale Station (Operating Passenger Railroad Stations TR)*, Broadway and Hillsdale Ave. (08/22/84)
Hillsdale, *Vanderbeek House (Stone Houses of Bergen County TR)*, 126 Weirimus Rd. (07/24/84)
Montvale, *Forshee-Van Orden House (Stone Houses of Bergen County TR)*, 109 Summit Ave. (07/24/84)
Oradell, *Oradell Station (Operating Passenger Railroad Stations TR)*, 400 Maple Ave. (08/22/84)
Paramus, *Zabriskie Tenant House (Stone Houses of Bergen County TR)*, 273 Dunkerhook Rd. (07/24/84)
Park Ridge, *Park Ridge Station (Operating Passenger Railroad Stations TR)*, Hawthorne and Park Ave. (08/22/84)
Ridgewood, *Archibald-Vroom House (Stone Houses of Bergen County TR)*, 180 E. Ridgewood Ave. (07/24/84)
Ridgewood, *Ridgewood Station (Operating Passenger Railroad Stations TR)*, Garber Sq. (08/22/84)
Rutherford, *Rutherford Station (Operating Passenger Railroad Stations TR)*, Station Sq. (08/22/84)
Saddle River, *Hopper House (Stone Houses of Bergen County TR)*, 45 W. Saddle River Rd. (07/24/84)
Tenafly, *Brinkerhoff House (Stone Houses of Bergen County TR)*, 1 Tenafly Rd. (07/24/84)
Woodcliff Lake, *Cadmus House (Stone Houses of Bergen County TR)*, 264 Glen Rd. (07/24/84)
Wyckoff, *Van Voorhis-Quackenbush House (Stone Houses of Bergen County TR)*, 625 Wyckoff Ave. (07/24/84)

Camden County

Cherry Hill, *Bonnie's Bridge*, 350 Wayland Rd. (09/13/84)
Merchantville, *Collins and Pancoast Hall*, 4–8 S. Centre St. (02/16/84)

Cape May County

Dennisville, *Townsend, William S., House*, 96 Delsea Dr. (04/05/84)
Ocean City, *Ocean City 34th Street Station (Operating Passenger Railroad Stations TR)*, 34th St. (08/22/84)
Ocean City, *Ocean City Tenth Street Station (Operating Passenger Railroad Stations TR)*, Between 9th and 10th Sts. (08/22/84)
Tuckahoe, *Tuckahoe Station (Operating Passenger Railroad Stations TR)*, Railroad Ave. (08/22/84)

Essex County

Bloomfield, *Bloomfield Station (Operating Passenger Railroad Stations TR)*, Washington St. and Glenwood Ave. (08/22/84)
East Orange, *Ampere Station (Operating Passenger Railroad Stations TR)*, Ampere Plaza and Whitney Pl. (08/22/84)
East Orange, *Brick Church Station (Operating Passenger Railroad Stations TR)*, Brick Church Plaza (08/22/84)
East Orange, *East Orange Station (Operating Passenger Railroad Stations TR)*, 65 City Hall Plaza (08/22/84)
Montclair, *Watchung Avenue Station (Operating Passenger Railroad Stations TR)*, Park St. (08/22/84)
Newark, *Griffith Building*, 605–607 Broad St. (05/24/84)
Newark, *Lincoln Park Historic District*, Lincoln Park, Clinton Ave., and Spruce and Broad Sts. (10/05/84)
Newark, *Mutual Benefit Life Insurance Company*, 300 Broadway and 2nd St. (11/17/83)
Newark, *Newark Broad Street Station (Operating Passenger Railroad Stations TR)*, Broad and University Sts. (08/22/84)
Orange, *Orange Station (Operating Passenger Railroad Stations TR)*, 73 Lincoln Ave. (08/22/84)
South Orange, *Mountain Station (Operating Passenger Railroad Stations TR)*, 449 Vose Ave. (09/29/84)
South Orange, *South Orange Station (Operating Passenger Railroad Stations TR)*, 19 Sloan St. (08/22/84)
Upper Montclair, *Mountain Avenue Station (Operating Passenger Railroad Stations TR)*, 451 Upper Mountain Ave. (08/22/84)
Upper Montclair, *Upper Montclair Station (Operating Passenger Railroad Stations TR)*, 275 Bellvue Ave. (08/22/84)

Hudson County

Hoboken, *Assembly of Exempt Fireman Building (Hoboken Firehouses and Firemen's Monument TR)*, 213 Bloomfield St. (03/30/84)
Hoboken, *Engine Company No. 2 (Hoboken Firehouses and Firemen's Monument TR)*, 1313 Washington St. (03/30/84)
Hoboken, *Engine Company No. 3 (Hoboken Firehouses and Firemen's Monument TR)*, 201 Jefferson St. (03/30/84)
Hoboken, *Engine Company No. 4 (Hoboken Firehouses and Firemen's Monument TR)*, 212 Park Ave. (03/30/84)
Hoboken, *Engine Company No. 5 (Hoboken Firehouses and Firemen's Monument TR)*, 412 Grand St. (03/30/84)
Hoboken, *Engine Company No. 6 (Hoboken Firehouses and Firemen's Monument TR)*, 801 Clinton St. (03/30/84)
Hoboken, *Engine House No. 3, Truck No. 2 (Hoboken Firehouses and Firemen's Monument TR)*, 501 Observer Hwy. (03/30/84)
Jersey City, *Ficken's Warehouse*, 750–766 Grand St. (06/14/84)
Jersey City, *Labor Bank Building*, 26 Journal Sq. (06/14/84)
Jersey City, *Lembeck and Betz Eagle Brewing Company District*, Bounded by 9th, 10th, Grove, and Henderson Sts. (06/21/84)

Hunterdon County

Oldwick vicinity, *Kline Farmhouse (Cold Spring Cottage)*, NJ 517 (07/11/84)
Pittstown vic., *Rockhill Agricultural Historic District*, N of Pittstown on SR 513 (04/05/84)
White House, *White House Station (Operating Passenger Railroad Stations TR)*, Main St. (06/22/84)

Mercer County

Ewing, *Trenton Jewish Community Center Bath House and Day Camp*, 999 Lower Ferry Rd. (02/23/84)
Hopewell, *Hopewell Station (Operating Passenger Railroad Stations TR)*, Railroad Pl. (06/22/84)
West Trenton, *West Trenton Station (Operating Passenger Railroad Stations TR)*, Sullivan Way (08/22/84)

Middlesex County

Raritan Landing Archeological District (Boundary Increase), (02/10/84)
Kingstown, *Withington Estate*, Spruce Lane (09/27/84)
New Brunswick, *Main Post Office*, 86 Bayard St. (07/18/84)
New Brunswick, *New Brunswick Station (Operating Passenger Railroad Stations TR)*, Eaton Ave. and Albany St. (06/22/84)
Perth Amboy, *Perth Amboy Station (Operating Passenger Railroad Stations TR)*, Between Smith and Market Sts. (06/22/84)

Monmouth County

Asbury Park vincinity, *Allgor-Barkalow Homestead*, New Bedford Rd. (06/21/84)
Bradley Beach, *Bradley Beach Station (Operating Passenger Railroad Stations TR)*, Between LaReine and Brimley Aves. (06/22/84)
Little Silver, *Little Silver Station (Operating Passenger Railroad Stations TR)*, Sycamore and Branch Aves. (06/22/84)
Matawan, *Matawan Station (Operating Passenger Railroad Stations TR)*, Between Main and Atlantic Aves. (06/22/84)
Roosevelt, *Jersey Homesteads Historic District*, All that area within the corporate

boundaries of the Borough of Roosevelt (12/05/83)

Morris County

Florham Park, *Hancock, Rev. John, House, Cider Mill and Cemetery*, 45 Ridgedale Ave. (08/30/84)
Madison, *Madison Station (Operating Passenger Railroad Stations TR)*, Kings Rd. (06/22/84)
Millington, *Millington Station (Operating Passenger Railroad Stations TR)*, Long Hill Rd. (06/22/84)
Morris Plains, *Morris Plains Station (Operating Passenger Railroad Stations TR)*, Speedwell Ave. (06/22/84)

Passaic County

Paterson, *Danforth Memorial Library*, 250 Broadway (03/01/84)

Somerset County

Bernardsville, *Bernardsville Station (Operating Passenger Railroad Stations TR)*, US 202 (06/22/84)
Bound Brook, *Bound Brook Station (Operating Passenger Railroad Stations TR)*, E. Main St. (06/22/84)
Far Hills, *Far Hills Station (Operating Passenger Railroad Stations TR)*, US 202 (06/22/84)
Gladstone, *Gladstone Station (Operating Passenger Railroad Stations TR)*, Main St. (06/22/84)
Griggstown, *Griggstown Historic District*, Roughly Canal Rd. from Old Georgetown Rd. to Ten Mile Run (08/02/84)
Lamington, *Lamington Historic District*, Lamington, Black River, Rattlesnake Bridge, and Cowperthwaite Rds. (06/21/84)
Lyons, *Lyons Station (Operating Passenger Railroad Stations TR)*, Lyons Rd. (06/22/84)
Raritan, *Raritan Station (Operating Passenger Railroad Stations TR)*, Anderson and Thompson Sts. (06/22/84)

Sussex County

Millville, *Millville Historic and Archaeological District*, River and Millville Rds. (01/30/84)

Union County

Elizabeth, *Elizabeth Station (Operating Passenger Railroad Stations TR)*, Morris Ave., and Broad St. (09/29/84)
Murray Hill, *Murray Hill Station (Operating Passenger Railroad Stations TR)*, The Circle (06/22/84)
Plainfield, *Netherwood Station (Operating Passenger Railroad Stations TR)*, Between North and South Aves. (06/22/84)
Plainfield, *North Avenue Commercial Historic District*, Park, North, and Watchung Aves. (03/29/84)
Plainfield, *Plainfield Station (Operating Passenger Railroad Stations TR)*, North Ave. (06/22/84)

NEW MEXICO

Bernalillo County

Albuquerque, *Anaya, Gavino, House (Albuquerque North Valley MRA)*, 2939 Duranes Rd., NW (02/09/84)
Albuquerque, *Barela, Adrian, House (Albuquerque North Valley MRA)*, 7618 Guadalupe Trail, NW (02/09/84)
Albuquerque, *Candelarias Chapel-San Antonio Chapel*, 1934 Candelaria Rd., NW (02/09/84)
Albuquerque, *Chavez, Juan de Dios, House (Albuquerque North Valley MRA)*, 205 Griegos Rd., NW (02/09/84)
Albuquerque, *Chavez, Juan, House (Albuquerque North Valley MRA)*, 7809 4th St., NW (02/09/84)
Albuquerque, *Dietz, Robert, Farmhouse (Albuquerque North Valley MRA)*, 4117 Rio Grande Blvd., NW (02/09/84)
Albuquerque, *Duranes Chapel (Albuquerque North Valley MRA)*, 2601 Indian School Rd. NW (02/09/84)
Albuquerque, *Eller Apartments*, 113–127 — 8th St. SW (01/12/84)
Albuquerque, *Foraker, C.M., Farmhouse (Albuquerque North Valley MRA)*, 905 Menaul Blvd. NW (02/09/84)
Albuquerque, *Gomez, Refugio, House (Albuquerque North Valley MRA)*, 7604 Guadalupe Trail, NW (02/09/84)
Albuquerque, *Grande, Charles, House (Albuquerque North Valley MRA)*, 4317 Grande St. NW (02/09/84)
Albuquerque, *Hilton Hotel*, 125 — 2nd St. NW (03/02/84)
Albuquerque, *Kress, S.H. Building*, 414–416 Central Ave. SW (04/19/84)
Albuquerque, *Los Griegos Historic District (Albuquerque North Valley MRA)*, Griegos Rd. and Rio Grande Blvd. (02/09/84)
Albuquerque, *Los Tomases Chapel (Albuquerque North Valley MRA)* 3101 Los Tomases NW. (02/09/84)
Albuquerque, *Lucero y Montoya, Franscisco, House (Albuquerque North Valley MRA)*, 9742 — 4th St. NW (02/09/84)
Albuquerque, *Nordhaus, Robert, House (Albuquerque North Valley MRA)*, 6900 Rio Grande Blvd. NW (02/09/84)
Albuquerque, *Our Lady of Mt. Carmel Church (Albuquerque North Valley MRA)*, 7813 Edith Blvd. NE (02/09/84)
Albuquerque, *Romero, Felipe, House (Albuquerque North Valley MRA)*, 7522 Edith Blvd. NE (02/09/84)
Albuquerque, *Shalit, Samuel, House (Albuquerque North Valley MRA)*, 5209 — 4th St. NW (02/09/84)
Albuquerque, *Zeiger, Charles, House (Albuquerque North Valley MRA)*, 3200 Edith Blvd. NE (04/27/84)

Eddy County

Artesia, *Acord, John, House (Artificial Stone Houses of Artesia TR)*, 801 W. Main St. (03/02/84)
Artesia, *Atkeson, Willie D. House (Artificial Stone Houses of Artesia TR)*, 303 W. Grand Ave. (03/02/84)
Artesia, *Baskin, William, House (Artificial Stone Houses of Artesia TR)*, 811 W. Quay Ave. (03/02/84)
Artesia, *Gesler, Edward R., House (Artificial Stone Houses of Artesia TR)*, 411 W. Missouri Ave. (03/02/84)
Artesia, *Hodges-Runyan-Brainard House (Artificial Stone Houses of Artesia TR)*, 504 W. Quay Ave. (03/02/84)
Artesia, *Hodges-Sipple House (Artificial Stone Houses of Artesia TR)*, 804 W. Missouri Ave. (03/02/84)
Artesia, *Lukins, F.L., House (Artificial Stone Houses of Artesia TR)*, 801 W. Richardson Ave. (03/02/84)
Artesia, *Mauldin-Hall House (Artificial Stone Houses of Artesia TR)*, 501 S. Roselawn Ave. (03/02/84)
Artesia, *Moore-Ward Cobblestone House*, 505 W. Richardson Ave. (02/16/84)
Artesia, *Robert, Sallie Chisum, House (Artificial Stone Houses of Artesia TR)*, 801 W. Texas St. (03/02/84)
Artesia, *Ross, Dr. Robert M., House (Artificial Stone Houses of Artesia TR)*, 1002 S. Roselawn Ave. (03/02/84)

Grant County

Pinos Altos, *Pinos Altos Historic District*, Roughly bounded by Gold Ave., Cherry, Main, Church, and Silver Sts. (05/21/84)
Silver City, *Chihuahua Hill Historic District*, Bounded by Cooper, Spring, Bullard, and Chihuahua Sts. (01/23/84)
Silver City, *Silver City Water Works Building*, Little Walnut Rd. (01/26/84)

Quay County

Nara Visa, *Nara Visa School*, US 54 (10/31/83)

Rio Arriba County

Leaf Water Pueblo (LA 300) (12/01/83)
Tsama Pueblo, (11/17/83)
Dulce, *Jicarilla Apache Historic District*, Main St. NM 17, Apache, Keliiaa, and Sand Hill Drs. (03/01/84)
Los Luceros vicinity, *Los Luceros Hacieda*, Off NM 389 (10/20/83)

San Miguel County

Pecos, *Valencia Ranch Historic Archaeological District*, Off NM 63 (02/09/84)
San Geronimo, *San Geronimo Historic District*, Off NM 283 (11/15/83)
Las Vegas, *Las Vegas Amory*, 917 Douglas Ave. (10/28/83)
Las Vegas, *Old Town Residential Historic District*, roughly bounded by Perey St. to Mills Ave. and from New Mexico to Gonzales Sts. (10/28/83)

Sandoval County

Amoxiumqua Site (FS–530, LA481) (Jemez Springs Pueblo Sites TR), (05/21/84)
Archeological Site FS–18, LA–5920 (Jemez Springs Pueblo Sites TR), (05/21/84)
Archeological Site FS–199, LA–135 (Jemez Springs Pueblo Sites TR), (05/21/84)
Archeological Site FS–3 (Jemez Springs Pueblo Sites TR), (05/21/84)
Archeological Site FS–535, LA–385 (Jemez Springs Pueblo Sites TR), (05/21/84)
Archeological Site FS–554, LA–386 (Jemez Springs Pueblo Sites TR), (05/21/84)
Archeological Site FS–574 (Jemez Springs Pueblo Sites TR), (05/21/84)
Archeological Site FS–575 (Jemez Springs Pueblo Sites TR), (05/21/84)
Archeological Site FS–580, LA–137 (Jemez Springs Pueblo Sites TR), (05/21/84)
Archeological Site FS–647, LA–128 (Jemez Springs Pueblo Sites TR), (05/21/84)
Archeological Site FS–688 (Jemez Springs Pueblo Sites TR), (05/21/84)
Archeological Site FS–689, LA–403 (Jemez Springs Pueblo Sites TR), (05/21/84)
Archeological Site FS–8 (Jemez Springs Pueblo Sites TR), (05/21/84)

Astialakwa Archeological District (FS–360, LA–1825) (Jemez Springs Pueblo Sites TR), (05/21/84)
Boletsakwa Site (FS–2, LA–136) (Jemez Springs Pueblo Sites TR), (05/21/84)
Espinaso Ridge Pueblo, (01/27/84)
Guacamayo Site (FS–572, LA–189) (Jemez Springs Pueblo Sites TR), (05/21/84)
Hanakwa Site (FS–578) (Jemez Springs Pueblo Sites TR), (05/21/84)
Hot Springs Pueblo (FS–505, BJ–73) (Jemez Springs Pueblo Sites TR), (05/21/84)
Kiashita Site (FS–1, LA–484) (Jemez Springs Pueblo Sites TR), (05/21/84)
Kiatsukwa Site (FS–31 and 504, LA–132 and 133)(Jemez Springs Pueblo Sites TR), (05/21/84)
Kwastiyukwa Site (FS–11, LA–482) (Jemez Springs Pueblo Sites TR), (05/21/84)
Nanishagi Site (FS–320, LA–541) (Jemez Springs Pueblo Sites TR), (05/21/84)
Patokwa Site (FS–5, LA–96) (Jemez Springs Pueblo Sites TR), (05/21/84)
Pejunkwa Site (FS–571, LA–130) (Jemez Springs Pueblo Sites TR), (05/21/84)
Pueblo Tuerto, (01/19/84)
Tonque Pueblo, (01/12/84)
Totaskwinu Site (FS–579, LA–479) (Jemez Springs Pueblo Sites TR), (05/21/84)
Tovakwa Site (FS–576, LA–483) (Jemez Springs Pueblo Sites TR), (05/21/84)
Tovakwa Site (FS–7, LA–483) (Jemez Springs Pueblo Sites TR), (05/21/84)
Unshagi Site (FS–337, LA–123) (Jemez Springs Pueblo Sites TR), (05/21/84)
Wabakwa Site (FS–400, LA–478) (Jemez Springs Pueblo Sites TR), (05/21/84)
Wahajhamka (FS–573) (Jemez Springs Pueblo Sites TR), (05/21/84)

Santa Fe County

La Bajada Mesa Agricultural Site, (12/15/83)
Santa Fe, *Alarid, Ricardo, House,* 534 Alarid St. (08/30/84)

Socorro County

Socorro vicinity, *Teypama Piro Site,* (10/21/83)

Taos County

Los Cordovas, *San Ysidro Oratorio,* NM 240 (01/05/84)
Red River vicinity, *Mallette, Orin, Cabin (Red River MRA),* W of Red River (02/23/84)
Red River vicinity, *Mallette, Sylvester M., Cabin (Red River MRA),* River St. and Copper King (02/23/84)
Red River vicinity, *Melson-Oldham Cabin (Red River MRA),* SE of Red River (02/23/84)
Red River vicinity, *Pierce-Fuller House (Red River MRA),* High St. (02/23/84)
Red River vicinity, *Red River Schoolhouse (Red River MRA),* High St. (02/23/84)
Red River vicinity, *Young, Brigham J., House (Red River MRA),* Main St. (02/23/84)

Valencia County

Belen, *Harvey, Belen, House,* 104 N. 1st St. (10/28/83)

NEW YORK

Albany County

Albany, *South End-Groesbeckville Historic District,* Roughly bounded by Elizabeth, 2nd, and Morton Aves., Pearl and Franklin Sts. (08/13/84)
Albany, *Ten Broeck Historic District (Boundary Increase),* Roughly Ten Broeck Pl., 1st, 2nd, and Swan Sts. (09/29/84)
Cohoes, *Downtown Cohoes Historic District,* Roughly bounded by Oneida, Van Rensselaer, Columbia, Main, and Olmstead Sts. (09/13/84)

Bronx County

Bronx, *High Pumping Station,* Jerome Ave. (11/10/83)
New York, *Public School 17,* 190 Fordham St. (09/27/84)

Broome County

Binghamton, *Court Street Historic District,* Roughly bounded by the Chenango River, Carroll, Henry, and Hawley Sts. (09/07/84)

Chautauqua County

Dunkirk, *Dunkirk Light (US Coast Guard Lighthouses and Light Stations on the Great Lakes TR),* Dunkirk Harbor (07/19/84
Westfield, *Atwater-Stone House (Westfield Village MRA),* 29 Water St. (12/16/83)
Westfield, *East Main Street Historic District (Westfield Village MRA),* E. Main St. (12/16/83)
Westfield, *French Portage Road Historic District (Westfield Village MRA),* E. Main and Portage Sts. (12/16/83)
Westfield, *Lake Shore & Michigan Southern Railroad Station (Westfield Village MRA),* English St. (12/16/83)

Chemung County

Elmira, *Elmira College Old Campus,* Roughly bounded by College and W. Washington Aves. N. Main St., and Park Pl. (08/23/84)
Elmira, *Howell, F.M., and Company,* 79–105 Pennsylvania Ave., 50 Pennsylvania Ave. (08/27/84)
Elmira, *Near Westside Historic District,* Roughly bounded by Chemung River, College Ave., 2nd and Hoffman Sts. (12/22/83)
Horseheads, *Teal Park (Zim TR),* Steuben, Pine, and W. Main Sts. (10/07/83)
Horseheads, *Zimmerman House (Zim TR),* 601 Pine St. (10/07/83)

Chenango County

Greene vicinity, *Bates Round Barn (Central Plan Dairy Barns of New York TR),* NY 12 (09/29/84)
Greene vicinity, *Young Round Barn (Central Plan Dairy Barns of New York TR),* NY 12 (09/29/84)

Columbia County

Clermont, *Bouwerie (Clermont MRA),* Buckwheat Bridge Rd. (10/07/83)
Clermont, *Brodhead, Thomas, House (Clermont MRA),* US 9 (10/07/83)
Clermont, *Clarkson Chapel (Clermont MRA),* NY 9G (10/07/83)
Clermont, *Clermont Academy (Clermont MRA),* US 9 (10/07/83)
Clermont, *Coons House (Clermont MRA),* NY 9G (10/07/83)
Clermont, *Hickory Hill (Clermont MRA),* Buckwheat Bridge Rd. (10/07/83)
Clermont, *Old Parsonage (Clermont MRA),* Buckwheat Bridge Rd. (10/07/83)
Clermont, *St. Luke's Church (Clermont MRA),* US 9 (10/07/83)
New Lebanon Center, *Gilbert, Elisha, House,* US 20 (09/07/84)

Cortland County

Cincinatus, *Cincinnatus Historic District,* Main St. and Taylor Ave. (09/07/84)

Delaware County

Andes, *Andes Historic District,* Delaware Ave., Main and High Sts., and Tremperskill Rd. (06/28/84)
Bloomville vicinity, *McArthur-Martin Hexadecagon Barn (Central Plan Dairy Barns of New York TR),* McArthur Hill Rd. (09/29/84)
Franklin, *Franklin Village Historic District,* Wakeman and Institute Aves., Main, Center, Maple, Water, 2nd, 3rd, and West Sts. (09/07/84)
Halcottsville vicinity, *Kelly Round Barn (Central Plan Dairy Barns of New York TR),* NY 30 (09/29/84)
Walton, *Gardiner Place Historic District,* Gardiner Pl. (05/24/84)

Dutchess County

Staatsburg, *Hendricks, John, House and Dutch Barn,* Old Post Rd. (09/07/84)
Wappingers Falls, *Bain Commercial Building (Wappingers Falls MRA),* 59–61 W. Main St. (09/29/84)
Wappingers Falls, *Duchess Company Superintendent's House (Wappingers Falls MRA),* 120 Market St. (09/29/84)
Wappingers Falls, *Mulhern House (Wappingers Falls MRA),* 14–16 Market St. (09/29/84)
Wappingers Falls, *Wappingers Falls Historic District (Wappingers Falls MRA),* Roughly bounded by South Ave., Elm, Main, Park, Walker, Market, and McKinley Sts. (09/29/84)

Erie County

Buffalo, *Buffalo Main Light (US Coast Guard Lighthouses and Light Stations on the Great Lakes TR),* Buffalo River (07/19/84)
Buffalo, *New York Central Terminal,* 495 Paderewski Dr. (09/07/84)
North Collins vicinity, *Gamel Hexadecagon Barn (Central Plan Dairy Barns of New York TR),* Shirley Rd. (09/29/84)

Essex County

Willsboro, *Willsboro Congregational Church,* NY 22, (05/31/84)

Genesee County

Corfu, *Mount Pleasnant,* 2032 Indian Falls Rd. (08/09/84)

Greene County

Coxsackie vicinity, *Bronck Farm 13-sided Barn (Central Plan Dairy Barns of New York TR),* Old Kings Rd. (09/29/84)

Herkimer County

Ilion, *Richardson, Thomas, House,* 317 W. Main St. (09/07/84)
Jordanville, *Jordanville Public Library,* Main St. (05/24/84)
Newville vicinity, *Zoller-Frasier Round Barn (Central Plan Dairy Barns of New York TR),* Fords Bush Rd. (09/29/84)

Jefferson County

Cape Vincent, *Tibbetts Point Light (US Coast Guard Lighthouses and Light Stations on the Great Lakes TR)*, Tibbetts Point (07/19/84)
Oxbow, *Benton, Dr. Abner, House*, Main St. (08/23/84)
Watertown, *Public Square Historic District*, Roughly Court, Arsenal, Washington, Franklin and State Sts. (09/07/84)

Kings County

New York City, *Weir Greenhouse*, 750–751 — 5th Ave. (05/10/84)
New York, *Buildings at 375–379 Flatbush Avenue and 185–187 Sterling Place*, 375–379 Flatbush Ave. and 185–187 Sterling Pl. (09/07/84)
New York, *Fort Greene Historic District (Boundary Increase)*, Roughly bounded by Ashland Pl., DeKalb Ave., Hanson Pl., and Oxford St., Adelphi, Vanderbilt and Myrtle Aves. (09/07/84)
New York, *Public School 7*, 131–143 York St. (11/03/83)
New York, *Rockwood Chocolate Factory Historic District*, 54–88 Washington, 13–53 Waverly, and 255–275 Park Aves. (10/06/83)

Madison County

Hamilton, *Hamilton Village Historic District*, Roughly Kendrick Ave., Broad, Payne, Hamilton, Madison, Pleasant, and Lebanon Sts. (09/13/84)
Peterboro, *Peterboro Land Office*, Peterboro Rd. (09/07/84)

Monroe County

Gates, *Hinchey, Franklin, House*, 634 Hinchey Rd. (11/10/83)
Pittsford, *Pittsford Village Historic District*, Roughly bounded by the Canal, Jefferson Ave., Sutherland, and South Sts. (09/07/84)
Rochester, *Nazareth House*, 94 Averill Ave. (04/12/84)
Rochester, *Shingleside*, 476 Beach Ave. (09/13/84)
Rochester, *Vanderbeck House*, 1295 Lake Ave. (04/09/84)

Nassau County

Long Beach, *Granada Towers*, 310 Riverside Blvd. (05/31/84)

New York County

New York City, *Riverside Drive-West 80th-81st Streets Historic District*, Riverside Dr., W. 80th and W. 81st Sts. (05/10/84)
New York City, *St. Cecilia's Church and Convent*, 112–120 E. 160th St. (02/02/84)
New York, *Ambrose (lightship)*, Pier 16, East River, Manhattan (09/07/84)
New York, *Apollo Theater*, 253 W. 125th St. (11/17/83)
New York, *College of the City of New York*, Bounded by Amsterdam Ave., St. Nicholas Terr., W. 138th, and W. 140th Sts. (09/07/84)
New York, *Film Center Building*, 630 — 9th Ave. (09/07/84)
New York, *John A. Lynch (ferry boat)*, Pier 15, East River, Manhattan (09/07/84)
New York, *Lettie G. Howard-Mystic C (schooner)*, Pier 16, East River, Manhattan (09/07/84)
New York, *Level Club*, 253 W. 73rd St. (04/09/84)
New York, *Lever House*, 390 Park Ave. (10/02/83)
New York, *Mecca Temple*, 131 W. 55th St. (09/07/84)
New York, *Rowhouses at 322–344 East 69th Street*, 322–344 E. 69th St. (09/07/84)
New York, *Sofia Warehouse*, 43 W. 61st St. (09/27/84)
New York, *St. Vincent Ferrer Church and Priory*, 869 and 871 Lexington Ave. (06/14/84)
New York, *Upper East Side Historic District*, Roughly bounded by 3rd and 5th Aves., 59th and 79th Sts. (09/07/84)
New York, *Webster Hotel*, 40 W. 45th St. (09/07/84)

Niagara County

Somerset, *Thirty Mile Point Light (US Coast Guard Lighthouses and Light Stations on the Great Lakes TR)*, Niagara River (07/19/84)
Youngstown, *Fort Niagara Light (US Coast Guard Lighthouses and Light Stations on the Great Lakes TR)*, Niagara River (07/19/84)

Onondaga County

Skaneateles, *Skaneateles Historic District*, Jordan, Fennell, E. and W. Genesee Sts. (05/10/84)
Syracuse, *Armory Square Historic District*, S. Clinton, S. Franklin, Walton, W. Fayette, and W. Jefferson Sts. (09/07/84)
Syracuse, *Stickley, Gustav, House*, 438 Columbus Ave. (08/23/84)

Ontario County

Canandaigua, *Adelaide Avenue School (Canandaigua MRA)*, 108–116 Adelaide Ave. (04/26/84)
Canandaigua, *Benham House (Canandaigua MRA)*, 280–282 S. Main St. (04/26/84)
Canandaigua, *Brigham Hall (Grove Home) (Canandaigua MRA)*, 229 Bristol St. (09/29/84)
Canandaigua, *Building at 426 South Main Street (Canandaigua MRA)*, 426 S. Main St. (04/26/84)
Canandaigua, *Canandaigua Historic District (Canandaigua MRA)*, Roughly Main St. from Chapel to Saltonstall Sts.; Howell, Gibson, Gorham, Bristol, Bemis, and Center Sts. (04/26/84)
Canandaigua, *Chapin, Thaddeus, House (Canandaigua MRA)*, 128 Thad Chapin St. (04/26/84)
Canandaigua, *Cobblestone Manor (Canandaigua MRA)*, 495 N. Main St. (04/26/84)
Canandaigua, *Granger Cottage (Canandaigua MRA)*, 80 Granger St. (04/26/84)
Canandaigua, *Granger, Francis, House (Canandaigua MRA)*, 426 N. Main St. (04/26/84)
Canandaigua, *Marshall House (Canandaigua MRA)*, 274 Bristol St. (04/26/84)
Canandaigua, *Saltonstall Street School (Canandaigua MRA)*, 47 Saltonsall St. (04/26/84)
Geneva vicinity, *Nester House*, 1001 Lochland Rd. (04/09/84)

Orange County

Balmville, *Maple Lawn*, 24 Downing Ave. (06/28/84)
Middletown, *Oliver Avenue Bridge*, Oliver Ave. (07/19/84)
Warwick, *Warwick Village Historic District*, Roughly bounded by NY 17A, High, and South Sts., Oakland, Maple, and Colonial Aves. (09/07/84)

Otsego County

Garrattsville vicinity, *Lunn-Musser Octagon Barn (Central Plan Dairy Barns of New York TR)*, S of Garrattsville (09/29/84)
Oneonta, *Ford Block*, 188–202 Main St. (09/07/84)
Oneonta, *Bresee Hall*, Hartwick Dr. (04/12/84)
Richfield Springs vicinity, *Baker Octagon Barn (Central Plan Dairy Barns of New York TR)*, NY 28 (09/29/84)

Queens County

Douglaston, *Van Wyck, Cornelius, House*, 128 West Dr. (10/06/83)
New York City, *Lent Homestead and Cemetery*, 78–03 19th Rd. (02/02/84)
New York, *Fort Tilden Historic District*, Rockaway Beach Blvd. (04/20/84)
New York, *Sunnyside Gardens Historic District*, Roughly bounded by Queens Blvd., 43rd and 52nd Sts., Barnett and Skillman Aves. (09/07/84)

Richmond County

New York, *Poillon-Seguine-Britton House*, 360 Great Kills Rd. (02/02/84)
New York, *Staten Island Borough Hall and Richmond County Courthouse*, Richmond Terr. (10/06/83)

Rockland County

Haverstraw, *Homestead*, 143 Hudson Ave. (11/10/83)
West Haverstraw vicinity, *Commander*, Haverstraw Marina (09/27/84)
West New Hempstead, *Brick Church Complex*, Brick Church Rd. and NY 306 (09/07/84)

Schenectady County

Schenectady, *Barney, H.S., Building*, 217–229 State St. (07/19/84)
Schenectady, *Stockade Historic District (Boundary Increase)*, 16, 18, and 20 S. Church St. (09/07/84)

Schoharie County

Jefferson vicinity, *Parker 13-sided Barn (Central Plan Dairy Barns of New York TR)*, NY 10 (09/29/84)

Schuyler County

Catherine vicinity, *Lattin-Crandall Octagon Barn (Central Plan Dairy Barns of New York TR)*, E of Catherine (09/29/84)

St. Lawrence County

Raymondville, *Raymondville Parabolic Bridge*, Grant Rd. over Raquette River (09/07/84)

Suffolk County

Amagansett, *Pleasants House*, NY 27 (02/02/84)

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Greenport, *Greenport Village Historic District*, Roughly bounded by Stirling Basin, Main, Monsell, 2nd, and Fronts Sts. (09/13/84)
Montauk, *Montauk Manor*, Fairmont Ave. (08/23/84)
Northville, *Hallock Homestead*, 163 Sound Ave. (06/07/84)
Orient, *Terry-Mulford House*, NY 25 (02/07/84)
Patchogue, *United Methodist Church*, S. Ocean Ave. and Church St. (04/19/84)
Water Mill, *Water Mill*, Old Mill Rd. (10/13/83)

Sullivan County

Glen Wild, *Glen Wild Methodist Church*, Old Glen Wild Rd. (05/10/84)
Narrowsburg, *Kirk House*, Kirk's Rd. (05/10/84)
Rockland, *Rockland Mill Complex*, Palen Pl. (06/23/84)

Tioga County

Berkshire, *Akins, Lyman P., House (Berkshire MRA)*, W. Creek Rd. (07/02/84)
Berkshire, *Akins, Robert, House (Berkshire MRA)*, Main St. (07/02/84)
Berkshire, *Ball, J., House (Berkshire MRA)*, NY 38 (07/02/84)
Berkshire, *Ball, Levi, House (Berkshire MRA)*, NY 38 (07/02/84)
Berkshire, *Ball, Stephen, House (Berskshire MRA)*, Main St. (07/02/84)
Berkshire, *Belcher Family Homestead and Farm (Berkshire MRA)*, NY 38 (07/02/84)
Berkshire, *Berkshire Village Historic District (Berkshire MRA)*, Main St. and Leonard Ave. (07/02/84)
Berkshire, *Buffington, Calvin A., House (Berkshire MRA)*, Depot St. and Railroad Ave. (07/02/84)
Berkshire, *Collins, Nathaniel Bishop, House (Berkshire MRA)*, NY 38 (07/02/84)
Berkshire, *East Berkshire United Methodist Church (Berkshire MRA)*, E. Berkshire Rd. (07/02/84)
Berkshire, *First Congregational Church (Berkshire MRA)*, Main St. (07/02/84)
Berkshire, *Ford, Lebbeus, House (Berkshire MRA)*, Jewett Hill Rd. (07/02/84)
Berkshire, *Royce, Deodatus, House (Berkshire MRA)*, NY 38 (07/02/84)
Berkshire, *Royce, J.B., House and Farm Complex (Berkshire MRA)*, NY 38 (07/02/84)

Tompkins County

Dryden, *Clarke, Luther, House (Dryden Village MRA)*, 39 W. Main St. (06/08/84)
Dryden, *Dryden Historic District (Dryden Village MRA)*, Roughly bounded by E. Main, James, South, and Lake Sts. (06/15/84)
Dryden, *Jennings-Marvin House (Dryden Village MRA)*, 9 Library St. (06/08/84)
Dryden, *Lacy-Van Vleet House (Dryden Village MRA)*, 45 W. Main St. (06/08/84)
Dryden, *Methodist Episcopal Church (Dryden Village MRA)*, 2 North St. (06/08/84)
Dryden, *Rockwell House (Dryden Village MRA)*, 52 W. Main St. (06/08/84)
Dryden, *Southworth House (Dryden Village MRA)*, 14 North St. (06/08/84)
Dryden, *Southworth Library (Dryden Village MRA)*, 24 W. Main St. (06/08/84)
Ithaca, *Bailey Hall (New York State College of Agriculture TR)*, Cornell University campus (09/24/84)
Ithaca, *Caldwell Hall (New York State College of Agriculture TR)*, Cornell University campus (09/24/84)
Ithaca, *Comstock Hall (New York State College of Agriculture TR)*, Cornell University campus (09/24/84)
Ithaca, *East Robert Hall (New York State College of Agriculture TR)*, Cornell University campus (09/24/84)
Ithaca, *Fernow Hall (New York State College of Agriculture TR)*, Cornell University campus (09/24/84)
Ithaca, *Rice Hall (New York State College of Agriculture TR)*, Cornell University campus (09/24/84)
Ithaca, *Roberts Hall (New York State College of Agriculture TR)*, Cornell University campus (09/24/84)
Ithaca, *Stone Hall (New York State College of Agriculture TR)*, Cornell University campus (09/24/84)
Ithaca, *Wing Hall (New York State College of Agricultue TR)*, Cornell University campus (09/24/84)

Ulster County

Napanoch, *Hoornbeek Store Complex*, Main St. between Clinton & Church Sts. (02/09/84)
Saugerties vicinity, *Wynkoop House*, NY 32 (09/07/84)
Saugerties, *Loerzel Beer Hall*, 213 Partition St. (09/07/84)

Warren County

Glens Falls, *18th Separate Company Armory (Glens Falls MRA)*, 147 Warren St. (09/29/84)
Glens Falls, *Argent Apartments (Glens Falls MRA)*, 17–18 Sherman Ave. (09/29/84)
Glens Falls, *Bemis Eye Sanitarium Complex (Glens Falls MRA)*, Glen St. (09/29/84)
Glens Falls, *Birdsall, Stephen T., House (Glenn Falls MRA)*, 186–192 Ridge St. (09/29/84)
Glens Falls, *Burnham, Thomas, House (Potter, Ephraim, B., Buildings TR) (Glens Falls MRA)*, 195 Ridge St. (09/29/84)
Glens Falls, *Colvin, Addison B., House (Glens Falls MRA)*, 453–455 Glen St. (09/29/84)
Glens Falls, *Cowles, W.T., House (Potter, Ephraim B., Buildings TR) (Glens Falls MRA)*, 43–47 William St. (09/29/84)
Glens Falls, *Cunningham House (Bigelow, Henry Forbes, Buildings TR) (Glens Falls MRA)*, 169 Warren St. (09/29/84)
Glens Falls, *Delong, Zopher, House (Glens Falls MRA)*, 348 Glen St. (09/29/84)
Glens Falls, *Dix, James L., House (Glens Falls MRA)*, 191 Ridge St. (09/29/84)
Glens Falls, *Ferguson, Dr. James, Office (Glens Falls MRA)*, 5 Culvert St. (09/29/84)
Glens Falls, *First Presbyterian Church (Glens Falls MRA)*, 402–410 Glen St. (09/29/84)
Glens Falls, *Foster, Dr. Charles A., House (Glens Falls MRA)*, 162–164 Warren St. (09/29/84)
Glens Falls, *Fredella Avenue Historic District (Fredella Concrete Block Structures TR) (Glenn Falls MRA)*, 15–21R Fredella Ave. (09/29/84)
Glens Falls, *Fredella, Joseph J., House and Garage (Fredella Concrete Block Structures TR) (Glens Falls MRA)*, 15–17 Mohican St. (09/29/84)
Glens Falls, *Glens Falls High School (Potter, Ephraim B., Buildings TR) (Glens Falls MRA)*, 421–433 Glen St. (09/29/84)
Glens Falls, *Glens Falls Home for Aged Women (Glens Falls MRA)*, 178–186 Warren St. (09/29/84)
Glens Falls, *Goodman, Stephen L., House (Glens Falls MRA)*, 65–67 Park St. (09/29/84)
Glens Falls, *Hoopes House (Bigelow, Henry Forbes, Buildings TR) (Glens Falls MRA)*, 153 Warren St. (09/29/84)
Glens Falls, *House at 216 Warren Street (Glens Falls MRA)*, 216 Warren St. (09/29/84)
Glens Falls, *Hyde House (Bigelow, Henry Forbes, Buildings TR) (Glens Falls MRA)*, 161 Warren St. (09/29/84)
Glens Falls, *Joubert and White Building (Glens Falls MRA)*, 79 Warren St. (09/29/84)
Glens Falls, *Krum, Hiram, House (Glens Falls MRA)*, 133 Warren St. (09/29/84)
Glens Falls, *Little, Russell M., House (Glens Falls MRA)*, 17 Center St. (09/29/84)
Glens Falls, *McEchron, William, House (Glens Falls MRA)*, 65 Ridge St. (09/29/84)
Glens Falls, *Ordway, Jones, House (Glens Falls MRA)*, 142 Warren St. (09/29/84)
Glens Falls, *Parks, George H., House (Glens Falls MRA)*, 444 Glen St. (09/29/84)
Glens Falls, *Parry, John E., House (Potter, Ephraim B., Buildings TR) (Glens Falls MRA)*, 146 Warren St. (09/29/84)
Glens Falls, *Peyser and Morrison Shirt Company Building (Potter, Ephraim B., Buildings TR) (Glens Falls MRA)*, 211–217 Warren St. (09/29/84)
Glens Falls, *Potter, Ephraim B., House (Potter, Ephraim B., Buildings TR) (Glens Falls MRA)*, 15 Sherman Ave. (09/29/84)
Glens Falls, *Rosekrans, Enoch, House (Glens Falls MRA)* 62 Warren St. (09/29/84)
Glens Falls, *Rugge, A.S., House (Glens Falls MRA)*, 428 Glen St. (09/29/84)
Glens Falls, *Smith Flats (Glens Falls MRA)*, 53–61 Bay St. (09/29/84)
Glens Falls, *Society of Friends Hall (Glens Falls MRA)*, 172–174 Ridge St. (09/29/84)
Glens Falls, *St. Mary's Academy (Glens Falls MRA)*, 10–12 Church St. (09/29/84)
Glens Falls, *Stilwell, Thomas, House (Glens Falls MRA)*, 134 Maple St. (09/29/84)
Glens Falls, *Three Squares Historic District (Glens Falls MRA)*, Roughly South, Glen, Maple, and Ridge Sts. (09/29/84)
Glens Falls, *Wait, F.W., House (Glens Falls MRA)*, 173–175 Ridge St. (09/29/84)
Glens Falls, *Wilmarth, Martin L.C., House (Potter, Ephraim B., Buildings TR) (Glens Falls MRA)*, 528 Glen St. (09/29/84)
Glens Falls, *Wing, Helen, House (Potter, Ephraim B., Buildings TR) (Glens Falls MRA)*, 126 Warren St. (09/29/84)
Lake George, *Peabody, Royal C., Estate*, Lake Shore Dr. (06/21/84)

Westchester County

East Irvington, *East Irvington School*, Taxter Rd. (10/06/83)
Mount Kisco vicinity, *Merestead (Sloane Estate)*, Byram Lake Rd. (09/27/84)

New Rochelle, *Pioneer Building*, 14 Lawton St. (12/29/83)
Ossining, *Scarborough Historic District*, US 9 (09/07/84)
Port Chester, *Capitol Theater*, 147–151 Westchester Ave. (06/07/84)
Tarrytown, *Washington Irving High School*, 18 N. Broadway (04/26/84)
Yonkers, *Sherwood House*, 340 Tuckahoe Rd. (05/10/84)

NORTH CAROLINA

Alamance County

Burlington, *Alamance Hotel (Burlington MRA)* Maple Ave. and S. Main St. (05/31/84)
Burlington, *Atlantic Bank and Trust Company Building (Burlinton MRA)*, 358 S. Main St. (05/31/84)
Burlington, *Efird Building (Burlington MRA)*, 133 E. Davis St. (05/31/84)
Burlington, *First Baptist Church (Burlington MRA)*, 400 S. Broad St. (05/31/84)
Burlington, *First Christian Church of Burlington (Burlington MRA)*, 415 S. Church St. (05/31/84)
Burlington, *Holt-Frost House (Burlington MRA)*, 130 Union Ave. (05/31/84)
Burlington, *Horner Houses (Burlington MRA)*, 304 and 308 N. Fisher St. (05/31/84)
Burlington, *Lakeside Mills District (Burlington MRA)*, 404–418 Lakeside Ave., Kent Ave., and 428–437 Hatch St. (05/31/84)
Burlington, *Moore-Holt-White House (Burlington MRA)*, 520 Maple Ave. (05/31/84)
Burlington, *Stagg House (Burlington MRA)*, 317 N. Park Ave. (05/31/84)
Burlington, *Windsor Cotton Mills Office (Burlington MRA)*, Market and Gilmer Sts. (05/31/84)
Mebane vicinity, *Cross Roads Presbyterian Church and Cemetery and Sainback Store*, N of Mebane at SR 1910 and SR 1912 (05/22/84)

Buncombe County

Alexander Inn, (05/31/84)
Asheville, *Reynolds House*, 100 Reynolds Hgts. (09/13/84)
Asheville, *Richmond Hill House*, 45 Richmond Hill Rd. (proposed move) (03/15/84)

Burke County

Morganton, *Avery, Alphonso Calhoun, House*, 408 N. Green St. (07/12/84)

Cabarrus County

Concord, *Stonewall Jackson Training School Historic District*, SR 1157 (03/15/84)

Camden County

Camden, *Camden County Jail*, NC 343 (05/03/84)
Camden, *Widow's Son Masonic Lodge No. 75*, NC 343 (05/03/84)

Chatham County

Newkirk State (Site 31 CH 366), (11/14/83)
Goldston, *Paschal-Womble House*, 421 Main St. (04/26/84)

Cherokee County

Murphy, *Harshaw Chapel and Cemetery*, Church and Central Sts. (04/05/84)

Cumberland County

Falcon, *Falcon Tabernacle*, West St. (10/11/83)
Grays Creek vicinity, *Cape Fear Baptist Church*, SR 2233 (10/13/83)

Davidson County

Arcadia vicinity, *Hampton House (Davidson County MRA)*, SR 1485 (07/10/84)
Arnold, *Everhart, Riley, Farm and General Store (Davidson County MRA)*, SR 1468 (07/10/84)
Denton vicinity, *Adderton-Badgett House (Davidson County MRA)*, SR 2529 (07/10/84)
Denton, *Mount Ebal Methodist Protestant Church (Davidson County MRA)*, SR 2518 (07/10/84)
High Point vicinity, *Moore, Eli, House (Davidson County MRA)*, SR 1741 (07/10/84)
High Point vincinity, *Spring Hill Methodist Protestant Church Cemetery (Anglo-German Cemeteries TR) (Davidson County MRA)*, SR 1755 (07/10/84)
Lexington vicinity, *Junior Order United American Mechanics National Orphans Home (Davidson County MRA)*, NC 8 (07/10/84)
Lexington vicinity, *Pilgrim Reformed Church Cemetery (Anglo-German Cemeteries TR) (Davidson County MRA)*, SR 1843 (07/10/84)
Lexington vicinity, *Shoaf, Henry, Farm (Davidson County MRA)*, NC 64 (07/13/84)
Lexington, *Welborn, John Henry, House (Davidson County MRA)*, 511 S. Main St. (07/10/84)
Linwood vicinity, *Beallmont (Davidson County MRA)*, SR 1133 (07/10/84)
Linwood vicinity, *Jersey Settlement Meeting House (Davidson County MRA)*, SR 1272 (07/10/84)
Linwood, *Jersey Baptist Church Cemetery (Anglo-German Cemeteries TR) (Davidson County MRA)*, SR 1272 (07/10/84)
Midway vicinity, *Bethany Reformed and Lutheran Church Cemetery (Anglo-German Cemeteries TR) (Davidson County MRA)*, SR 1716 (07/10/84)
Midway vicinity, *Everhart, Hamilton, Farm (Davidson County MRA)*, US 52 (07/10/84)
Reedy Creek vicinity, *Grimes-Crotts Mill (Davidson County MRA)*, SR 1445 (07/10/84)
Silver Hill vicinity, *Beck's Reformed Church Cemetery (Anglo-German Cemeteries TR) (Davidson County MRA)*, SR 2250 (07/10/84)
South Thomasville, *Fair Grove Methodist Church Cemetery (Anglo-German Cemeteries TR) (Davidson County MRA)*, NC 109, SR 2072 and 2070 (07/10/84)
Thomasville vicinity, *Abbott's Creek Primitive Baptist Church Cemetery (Anglo-German Cemeteries TR) (Davidson County MRA)*, SR 1743 (07/10/84)
Thomasville vicinity, *Emanuel United Church of Christ Cemetery (Anglo-German Cemeteries TR) (Davidson County MRA)*, SR 2060 (07/10/84)
Thomasville vicinity, *Lambeth, Shadrach, House (Davidson County MRA)*, SR 2062 (07/10/84)
Tyro vicinity, *Haden Place (Davidson County MRA)*, SR 1156 (07/10/84)
Tyro vicinity, *Koonts, Capt. John Jr., Farm (Davidson County MRA)*, SR 1186 (07/10/84)
Tyro vicinity, *St. Luke's Lutheran Church Cemetery (Anglo-German Cemeteries TR) (Davidson County MRA)*, SR 1183 (07/10/84)
Tyro, *Tyro Tavern (Davidson County MRA)*, NC 150 (08/16/84)
Wallburg, *Wall, George W., House (Davidson County MRA)*, NC 109 and SR 1723 (07/10/84)
Welcome vicinity, *Beulah Church of Christ Cemetery (Anglo-German Cemeteries TR) (Davidson County MRA)*, SR 1457 (07/10/84)
Welcome vicinity, *Good Hope Methodist Church Cemetery (Anglo-German Cemeteries TR) (Davidson County MRA)*, NC 150 and SR 1445 (07/10/84)
Welcome vicinity, *Waggoner Graveyard (Anglo-German Cemeteries TR) (Davidson County MRA)*, SR 1814 (07/10/84)

Durham County

Durham, *Watts and Yuille Warehouses*, 905 W. Main St. (04/05/84)

Edgecombe County

Battleboro vicinity, *Old Town Plantation*, Off NC 97 (12/01/83)

Forsyth County

Richmond Courthouse Site, (01/05/84)
Winston-Salem, *Bland, Joseph Franklin, House*, 1809 Virginia Rd. (08/21/84)
Winston-Salem, *O'Hanlon Building*, 103 W. 4th St. (07/12/84)
Winston-Salem, *Sosnik-Morris-Early Commercial Block*, 500 W. 4th St. (04/05/84)
Winston-Salem, *Spruce Street YMCA*, 315 N. Spruce St. (07/12/84)
Winston-Salem, *Washovia Bank and Trust Company Building*, 8 W. 3rd St. (05/31/84)

Gates County

Gatesville vicinity, *Roberts-Carter House*, Off NC 37 (03/01/84)

Graham County

Topton vicinity, *George, Charles Noden, House*, Off US 129 (04/05/84)

Guilford County

Gibsonville, *Smith, Francis Marion, House*, 204 Railroad Ave. (07/12/84)
Greensboro vicinity, *Scott, Thomas, House* SR 1001 (07/12/84)
Greensboro, *Revolution Cotton Mills*, Roughly bounded by Southern RR, N. Buffalo Creek, Yanceyville and 9th Sts. (03/01/84)
Greensboro, *Weir, Dr. David P., House*, 223 N. Edgeworth St. (07/12/84)

Harnett County

Dunn, *Lee, Gen. William C., House*, 209 W. Divine St. (11/25/83)

Hayood County

Cruso vicinity, *Gwyn, James M., House*, NC 276 (07/12/84)

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Jackson County

Dillsboro, *Mount Beulah Hotel (Jarrett Springs Hotel)*, US 23 and 44 (03/01/84)

Madison County

Mars Hill vicinity, *California Creek Missionary Baptist Church*, US 23 (07/12/84)

Mecklenburg County

Charlotte, *Carey, Philip, Building*, 301 E. 7th St. (03/01/84)
Charlotte, *Charlotte Supply Company Building*, 500 S. Mint St. (03/01/84)
Charlotte, *Merchants and Farmers National Bank Building*, 123 E. Trade St. (03/01/84)
Charlotte, *Morrocroft*, 2525 Richardson Dr. (11/28/83)
Charlotte, *VanLandingham Estate*, 2010 The Plaza (10/13/83)
Huntersville vicinity, *St. Mark's Episcopal Church*, SR 2004 (03/01/84)

Person County

Roxboro, *Roxboro Commercial Historic District*, Roughly bounded by Courthouse Sq., Court, Abbitt, Reams, Depot, N. and S. Main Sts. (03/01/84)

Richmond County

Rockingham, *Rockingham Historic District (Rockingham MRA)*, Roughly bounded by LeGrand and Brookwood Aves., Leak and Ann Sts. (11/21/83)

Robeson County

Orrum vicinity, *Williams-Powell House*, SR 2256 (04/09/84)

Rockingham County

Cross Rock Rapid Sluice (Dan River Navigation System in North Carolina TR), (03/19/84)
Dead Timber Ford Sluices (Dan River Navigation System in North Carolina TR), (06/29/84)
Eagle Falls Sluice (Dan River Navigation System in North Carolina TR), (03/19/84)
Gravel Shoals Sluice (Dan River Navigation System in North Carolina TR), (03/19/84)
Jacob's Creek Landing (Dan River Navigation System in North Carolina TR), (03/19/84)
Mayo River Sluice (Dan River Navigation System in North Carolina TR), (03/19/84)
Roberson's Fish Trap Shoal Sluice (Dan River Navigation System in North Carolina TR), (03/19/84)
Site 31RK1, (05/24/84)
Slink Shoal Sluice and Wing Dams (Dan River Navigation System in North Carolina TR), (03/19/84)
Tanyard Shoal Sluice (Dan River Navigation System in North Carolina TR), (03/19/84)
Three Ledges Shoal Sluice (Dan River Navigation System in North Carolina TR), (03/19/84)
Wide Mouth Shoal Sluice (Dan River Navigation System in North Carolina TR), (03/19/84)
Reidsville, *Penn House*, 324 Maple Ave. (11/25/83)

Rowan County

China Grove, *China Grove Roller Mill*, 308 N. Main St. (12/29/83)
Mill Bridge, *Thyatira Presbyterian Church, Cemetery, and Manse*, Off NC 150 (02/17/84)
Mt. Ulla vicinity, *Back Creek Presbyterian Church and Cemetery*, SR 1763 (12/29/83)
Salisbury, *Grimes Mill*, 600 N. Church St. (02/06/84)

Sampson County

Newton Grove vicinity, *Williams, Issac, House*, NC 55 (03/01/84)

Scotland County

Wagram vicinity, *Shaw Family Farms*, SR 1405 (10/13/83)

Stanly County

Hardaway Site (31ST4), (03/01/84)
Badin, *Badin Historic District (Badin MRA)*, Roughly bounded by NC 740, Pine St., and County Club property line (10/12/83
Badin, *Narrows Dam and Power Plant Complex (Badin MRA)*, Yadkin River and SR 1704 (10/12/83)
Badin, *West Badin Historic District (Badin MRA)*, Roughly bounded by Sims, Lincoln, Marion, and Lee Sts. (10/12/83)

Vance County

Stone, Daniel, Plank House, (07/12/84)

Wake County

Cary vicinity, *Jones, Nancy, House*, NC 54 (03/01/84)
Raleigh, *Masonic Temple Building*, 427 S. Blount St (05/03/84)
Raleigh, *Spring Hill*, 705 Barbour Dr. (12/29/83)

Warren County

Oakville vicinity, *Hebron Methodist Church*, SR 1308 (04/19/84)

Wayne County

Goldsboro, *Lee, Harry Fitzhugh, House*, 310 W. Walnut St. (03/01/84)
Goldsboro, *Weil, Solomon, House*, 205 W. Chestnut St. (Proposed Move) (11/19/83)

Wilson County

Wilson vicinity, *Williams, Olzie Whitehead, House*, SR 1332 (12/19/83)

NORTH DAKOTA

Burleigh County

Bismarck, *Van Horn Hotel (Prince Hotel)*, 114 N. 3rd St. (05/10/84)
Bismarck, *Webb Brothers Block*, 317 E. Main Ave. (10/13/83)

Cass County

Fargo, *Cass County Court House, Jail, and Sheriff's House*, S. 9th St. between S. 2nd and 3rd Aves. (12/22/83)
Fargo, *Downtown Fargo District*, Roughly Roberts St., from S. 1st Ave. to 5th Ave. N., and Main Ave. (10/13/83)

Emmons County

Hague, *St. Mary's Church Non-Contiguous Historic District*, Off ND 11 (10/13/83)

Richland County

Wahpeton, *Red River Valley University (Old Main)*, N. 6th St. (04/26/84)

Ward County

Minot, *Carr, Andrew Sr., House*, 510 — 4th Ave., NW (04/26/84)
Minot, *Tufveson House*, 426 — 4th Ave. NW (04/12/84)

NORTHERN MARIANA ISLANDS

Saipan, *Unai Lagua Japanese Defense Pillbox*, Unai Lagua (06/01/84)

OHIO

Belmont County

Barnesville, *Barnesville Historic District*, Roughly bounded by Arch, Main, Gardner, Chestnut, Bond, and Cherry Sts. (07/19/84)

Butler County

Trenton vicinity, *Augspurger, Frederick, Farm (Augspurger Amish/Mennonite Settlement TR)*, 1856 Wayne-Madison Rd. (08/03/84)
Trenton vicinity, *Augspurger, John, Farm No. 1 (Augspurger Amish/Mennonite Settlement TR)*, 2731 Woodsdale Rd. (08/03/84)
Trenton vicinity, *Deuscher, Henry P., House*, 2385 Woodsdale Rd. (02/09/84)
Trenton vicinity, *Ehresman, Christian, Farm (Augspurger Amish/Mennonite Settlement TR)*, 900 Woodsdale Rd. (08/03/84)
Trenton vicinity, *Iutzi, Christian Farm (Augspurger Amish/Mennonite Settlement TR)*, 2180 Woodsdale Rd. (08/03/84)
Trenton vicinity, *Kennel, John Jr., Farm (Augspurger Amish/Mennonite Settlement TR)*, 2251 Wayne-Madison Rd. (08/03/84)
Trenton vicinity, *Kennel, John Sr., Farm (Augspurger Amish/Mennonite Settlement TR)*, 5506 Kennel Rd. (08/03/84)

Champaign County

Urbana, *Scioto Street Historic District*, Scioto St. from Locust to E. Lawn Ave. (02/09/84)
Urbana, *Urbana Monument Square Historic District*, Roughly bounded by Market, Walnut, Church, and Locust Sts. (03/01/84)

Clark County

Springfield, *South Fountain Avenue Historic District*, Roughly Fountain Ave. and Limestone St. from Perrin to Monroe Sts. (12/29/83)

Cuyahoga County

Bolton, Chester and Frances, House, (03/29/84)
Cleveland Heights, *Temple on the Heights*, 3130 Mayfield Rd. (03/29/84)
Cleveland, *Beehive School*, 4345 Lee Rd. (04/05/84)
Cleveland, *Brooklyn Bank Building*, 3764 W. 25th St. (07/19/84)
Cleveland, *Dall, Andrew Jr. and James, Houses*, 2225 and 2229 E. 46th St. (07/19/84)
Cleveland, *Doan School*, 1350 E. 105th St. (08/23/84)
Cleveland, *Erie Railroad Cleveland Powerhouse*, 1246 River Rd. (07/19/84)
Cleveland, *Jennings Apartments*, 2711 W. 14th St. (03/29/84)
Cleveland, *Miller Block*, 3202–3214 Lorain Ave. (07/19/84)
Cleveland, *Shaker Square*, Shaker and Moreland Blvd. (12/09/83)

Rocky River, *Westlake Hotel*, 19000 Lake Rd. (10/20/83)
Shaker Heights, *Shaker Village Historic District*, Roughly bounded by Fairmount and Lomond Blvds., Green, Warrensville Center, Becket, and Coventry Rds. (05/31/84)
South Euclid, *Notre Dame College of Ohio*, 4545 College Rd. (12/08/83)

Darke County

Greenville, *Greenville South Broadway Commercial District*, Roughly S. Broadway from Main to Washington and Martin Sts. (03/01/84)

Delaware County

Delaware, *Van Deman, Henry, House*, 6 Darlington Rd. (05/31/84)

Erie County

Sandusky, *Cedar Point Light (US Coast Guard Lighthouses and Light Stations on the Great Lakes TR)*, Cedar Point (07/19/84)

Franklin County

Bexley, *Ducan, Robert P., House*, 333 N. Parkview Ave. (08/23/84)
Columbus, *Columbus Near East Side Historic District—Parsons Avenue (Boundary Increase)*, 43–125 Parsons Ave. including 684 Oak St. and 690 Franklin Ave. (12/09/83)
Columbus, *Felton School*, Leonard Ave. and N. Monroe St. (05/31/84)
Columbus, *Orton Memorial Laboratory*, 1445 Summit St. (11/25/83)
Columbus, *Pythian Temple and James Pythian Theater*, 861–867 Mt. Vernon Ave. (11/25/83)
Columbus, *Seneca Hotel*, 361 E. Broad St. (12/29/83)
Columbus, *South High Street Commercial Grouping*, Bounded by Pearl, Mound, Main, and High Sts. (12/29/83)
Columbus, *York Lodge No. 563*, 1276 N. High St. (07/19/84)
Marble Cliff, *Miller, J.F., House*, 1600 Roxbury Rd. (05/31/84)

Gallia County

Vinton vicinity, *Evans House*, Coal Valley Rd. (07/19/84)

Geauga County

Lost Lane Farm, (08/30/84)
Novelty, *Tambling, Lucius T., House*, 14025 Chillicothe Rd. (03/15/84)

Greene County

Cedarville, *Cedarville Opera House*, 78 N. Main St. (02/09/84)

Hamilton County

Cincinnati, *Betts-Longworth Historic District*, Roughly bounded by Ezzard Dr., Central Ave., and Mound and Old Court Sts. (11/29/83)
Cincinnati, *Gilbert-Sinton Historic District*, Roughly bounded by Morris, Gilbert and Sinton Aves. (10/06/83)
Cincinnati, *Goodall Building*, 324 W. 9th St. (02/09/84)
Cincinnati, *St. Francis Hospital*, 1860 Queen City Ave. (04/19/84)
Cincinnati, *Times-Star Building*, 800 Broadway (11/25/83)
Finneytown, *Smith-Jessop House*, 1038 W. North Bend Rd. (08/23/84)
Newtown, *Martin, Joseph, House*, 3727 Church St. (01/15/84)

Hardin County

Kenton, *Kenton Courthouse Square Historic District*, Roughly Main, Detroit, Market, Columbus and Franklin Sts. (08/23/84)
Kenton, *Kenton Public Library*, 121 N. Detroit St. (12/29/83)

Highland County

Hillsboro, *Hillsboro Historic Business District*, Roughly bounded by Beech, Walnut, East, and West Sts. (04/19/84)
Hillsboro, *Morrow-Overman-Fairley House*, 404 N. High St. (05/31/84)

Holmes County

Millersburg, *Adams, G., House (Millersburg MRA)*, 103 N. Clay St. (07/17/84)
Millersburg, *Cary, G.W., House (Millersburg MRA)*, 200 N. Washington St. (07/17/84)
Millersburg, *Cary, Hiram W., House (Millersburg MRA)*, 101 N. Clay St. (07/17/84)
Millersburg, *Disciple/Christian Church (Millersburg MRA)*, 100 N. Clay St. (07/17/84)
Millersburg, *Koch, John E., Jr., House (Millersburg MRA)*, 107 N. Washington St. (07/17/84)
Millersburg, *Millersburg Historic District (Millersburg MRA)*, Jackson, Clay, and Washington Sts. (07/17/84)
Millersburg, *United Methodist Church (Millersburg MRA)*, N. Washington St. (07/17/84)

Huron County

New London, *Gregory House*, 1 E. Main St. (02/24/84)

Jackson County

Petersburg vicinity, *Johnson Road Covered Bridge*, SW of Petersburg (08/23/84)

Lake County

Grantham, Norman, Site (33-La-139), (05/31/84)
Kirtland, *Whitney, Newel K., Store*, 8881 Chilicothe Rd. (08/30/84)

Licking County

Pataskala, *Elliot House (Pataskala MRA)*, 301 S. Main St. (11/14/83)
Pataskala, *Pataskala Presbyterian Church (Pataskala MRA)*, Atkinson and Main Sts. (11/14/83)

Lorain County

Wellington vicinity, *Avery, Carlos, House*, OH 58 (05/31/84)

Lucas County

Maumee, *Maumee Uptown Historic District*, Conant, Wayne and Dudley Sts. (02/01/84)
Toledo, *Birckhead Place District*, Birckhead Pl. (10/13/83)
Toledo, *Old West End Historic District (Boundary Increase/Decrease)*, Roughly bounded by Glenwood, Glover, Ashland, Collingwood, and Central Aves. (03/30/84)
Toledo, *Tinity Episcopal Church*, 316 Adams St. (12/29/83)

Mahoning County

Poland Village, *White Bridge*, Off OH 616 crossing Yellow Creek (12/11/83)
Poland, *Poland Center School*, US 224 and Struthers Rd. (05/31/84)
Struthers vicinity, *Lake Hamilton Dam*, Off OH 616 (05/07/84)
Youngstown, *Liberty Theatre*, 142 Federal Plaza W. (02/09/84)
Youngstown, *Stambaugh, Henry H., Memorial Auditorium*, 1000 5th Ave. (02/09/84)

Miami County

Casstown, *Casstown Lutheran Stone Church*, 11 S. Main St. (05/31/84)

Montgomery County

Centerville vicinity, *Normandy Farms*, 450 W. Alex-Bell Rd. (11/25/83)
Dayton, *Dayton Motor Car Company Historic District*, 15, 101, 123–5; 101 Bainbridge; 9–111 and 122–124 McDonough (05/31/84)
Dayton, *Dayton Terra-Cotta Historic District*, S. Ludlow and W. 5th Sts. (05/31/84)
Dayton, *Dayton View Historic District*, Roughly bounded by Broadway, Harvard Blvd., Superior and Salem Aves. (07/19/84)
Dayton, *Joyce, Jacob O., House*, 6 Josie St. (11/25/83)
Dayton, *South Park Historic District*, Roughly bounded by Park, Morton, Hickory, and Wayne Ave. (08/23/84)

Muskingum County

Zanesville, *Baltimore and Ohio Depot (Zanesville Historic Railroad Depots TR)*, Market St. (03/24/83)

Pickaway County

Circleville vicinity, *Lawndale Farm Complex*, 26476 Gay Dreisbach Rd. (04/19/84)
Circleville vicinity, *Peters, Stevenson, House*, OH 188 (02/09/84)

Richland County

Mansfield, *Building at 252–254 Park Avenue West (Park Avenue West MRA)*, 252–254 Park Ave. W. (02/02/84)
Mansfield, *Building at 309 Park Avenue West (Park Avenue West MRA)*, 309 Park Ave. W. (02/02/84)
Mansfield, *Building at 415 Park Avenue West (Park Avenue West MRA)*, 415 Park Ave. W. (02/02/84)
Mansfield, *Gilbert, F.A., House (Park Avenue West MRA)*, 343 Park Ave. W. (02/02/84)

Scioto County

Portsmouth, *Second Street Historic District*, 2nd St. (11/30/83)

Shelby County

Sidney, *Sidney Walnut Avenue Historic District*, Walnut Ave. from Poplar to Michigan Sts., and 228, 228½, and 238 W. North St. (12/29/83)

Summit County

Akron, *Carkhuff, Stacy G., House*, 1225 W. Market St. (08/30/84)
Akron, *Grace Reformed Church*, 172 W. Bowery St. (07/19/84)
Akron, *Westmont Building*, 22 Rhodes Ave. (05/31/84)

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Trumbell County

Niles, *Ward-Thomas House*, 503 Brown St. (02/09/84)

Tuscarawas County

Johnson Site II, (02/09/84)

Warren County

Franklin vicinity, *Deardoff, Daniel L., House*, 4374 Union Rd. (05/31/84)

Wayne County

Wooster, *Overholt House*, 1473 Beall Ave. (12/08/83)
Wooster, *Walnut Street School*, 237 S. Walnut St. (03/01/84)

Williams County

Bryan, *Bryan Downtown Historic District*, Roughly bounded by Walnut, Beech, Maple, and Bryan Sts. (12/29/83)

Wood County

Wayne, *Graham, William, House*, 7056 Jerry City Rd. (03/01/84)

OKLAHOMA

Adair County

Stilwell, *Adair County Courthouse (County Courthouses of Oklahoma TR)*, Division St. (08/23/84)
Westville, *Buffington Hotel*, Main St. (02/23/84)
Westville, *Opera Block*, Main St. (02/23/84)

Alfalfa County

Aline, *Aline IOOF Lodge No. 263 (IOOF Buildings in Alfalfa County TR)*, Off Main and Broadway (03/08/84)
Carmen vicinity, *Carmen, IOOF Home (IOOF Buildings in Alfalfa County TR)*, N of Carmen (03/08/84)
Carmen, *Carmen IOOF Lodge No. 84 (IOOF Buildings in Alfalfa County TR)*, Main and 4th St. (03/08/84)
Cherokee, *Alfalfa County Courthouse (County Courthouses of Oklahoma TR)*, Grand Ave. (08/23/84)
Cherokee, *Cherokee IOOF Lodge No. 219 (IOOF Buildings in Alfalfa County TR)*, Grand Ave. and 2nd St. (03/08/84)
Cherokee, *Farmers' Federation Elevator (Clay Tile Grain Elevators in Northwestern Oklahoma TR)*, Ohio Ave. and 4th St. (10/07/83)
Goltry, *Farmers' Exchange Elevator (Clay Tile Grain Elevators in Northwestern Oklahoma TR)*, OK 45 (10/07/83)
Ingersoll, *Ingersoll Tile Elevator (Clay Tile Grain Elevators in Northwestern Oklahoma TR)*, Off US 64 (10/07/83)

Beaver County

Beaver, *Beaver County Courthouse (County Courthouses of Oklahoma TR)*, Off US 270 (08/23/84)
Floris, *Floris Grain Elevator (Woodframe Grain Elevators of Oklahoma Panhandle TR)*, Off US 64 (10/07/83)

Beckham County

Elk City, *Storm House*, 721 W. Broadway (10/06/83)
Sayre, *Beckham County Courthouse (County Courthouses of Oklahoma TR)*, Courthouse Square (08/23/84)

Blaine County

Watonga, *Blaine County Courthouse (County Courthouses of Oklahoma TR)*, N. Weigle St. (08/23/84)

Bryan County

Durant, *Bryan County Courthouse (County Courthouses of Oklahoma TR)*, 4th Ave. and Evergreen St. (08/23/84)

Canadian County

Union City, *Richardson Building*, NE of Main and Division (10/06/83)
Yukon, *Yukon Public Library*, 512 Elm St. (02/02/84)

Carter County

Ardmore, *Black Theater of Ardmore*, 536 E. Main St. (06/22/84)
Ardmore, *Douglass High School Auditorium*, 800 M NE. St. (07/11/84)
Ardmore, *Dunbar School*, 13 6th St. SE (06/22/84)

Cimarron County

Boise City, *Cimarron County Courthouse (County Courthouses of Oklahoma TR)*, Cimarron Ave. (08/23/84)

Cotton County

Walters, *Cotton County Courthouse (County Courthouses of Oklahoma TR)*, 301 N. Broadway (08/23/84)

Craig County

Vinita, *Craig County Courthouse (County Courthouses of Oklahoma TR)*, 214 W. Canadian Ave. (08/23/84)

Custer County

Clinton, *Crawford House*, 600 N. 13th St. (03/18/84)
Weatherford, *Science Building (Old)*, State St. (02/23/84)

Dewey County

Seiling, *Seiling Milling Company*, 4th and Orange St. (12/08/83)

Ellis County

Fargo, *Stock Exchange Bank (Banking Facilities in Ellis County TR)*, Main St. (10/07/83)
Gage, *Bank of Gage (Banking Facilities in Ellis County TR)*, 18 Main St. (10/07/83)
Shattuck, *First State Bank (Banking Facilities in Ellis County TR)*, 239 S. Main St. (10/07/83)
Shattuck, *Shattuck National Bank Building (Banking Facilities in Ellis.County TR)*, 100 S. Main St. (10/07/83)

Garfield County

Covington vicinity, *Kimmell Barn*, NE of Covington (01/23/84)
Enid, *Garfield County Courthouse (County Courthouses of Oklahoma TR)*, W. Broadway (08/23/84)
Hunter, *Bank of Hunter*, Cherokee and Main Sts. (06/22/84)

Grant County

Deer Creek, *Deer Creek General Merchandise Store*, S. Main St. (03/08/84)
Medford, *Grant County Courthouse (County Courthouses of Oklahoma TR)*, W. Guthrie St. (08/23/84)

Harmon County

Hollis, *Harmon County Courthouse (County Courthouses of Oklahoma TR)*, W. Hollis St. (08/23/84)

Harper County

Buffalo, *Farmers' Co-op Elevator (Clay Tile Grain Elevators in Northwestern Oklahoma TR)*, Off US 64 (10/07/83)
Buffalo, *Feuquay Elevator (Clay Tile Grain Elevators in Northwestern Oklahoma TR)*, Off US 64 (10/07/83)
Buffalo *Harper County Courthouse (County Courthouses of Oklahoma TR)*, Elm, Maple, 1st, and 2nd Sts. SE (08/23/84)
Laverne, *Clover Hotel (Laverne's Early Commercial Development MRA)*, Main St. and Oklahoma Ave. (03/08/84)
Laverne, *Laverne's North Main Street District (Laverne's Early Commercial Development MRA)*, Main St. and Broadway (03/08/84)
Laverne, *M.K. and T. Depot in Laverne (Laverne's Early Commercial Development MRA)*, Main St. (03/08/84)
Laverne, *Sharp Lumberyard (Laverne's Early Commercial MRA)*, 124 N. Broadway (03/08/84)

Haskell County

Stigler, *Haskell County Courthouse (County Courthouses of Oklahoma TR)*, 202 E. Main St. (08/23/84)

Jackson County

Altus, *Jackson County Courthouse (County Courthouses of Oklahoma TR)*, Main St. and Broadway (08/23/84)

Jefferson County

Waurika, *Jefferson County Courthouse (County Courthouses of Oklahoma TR)*, N. Main St. (08/23/84)

Johnston County

Tishomingo, *Murray, Gov. William H., House*, Off OK 78 (08/02/84)

Kay County

Newkirk, *Kay County Courthouse (County Courthouses of Oklahoma TR)*, Courthouse Sq. (08/23/84)
Newkirk, *Newkirk Central Business District*, Main and 7th Sts. (02/23/84)
Ponca City vicinity, *Big V Ranch House (Ranching Properties in Northwestern Oklahoma TR)*, Off OK 156 (08/23/84)
Tonkawa, *Mahoney House and Garage*, 302 N. Main Ave. (07/03/84)

Kingfisher County

Hennessey, *Farmers and Merchants National Bank*, 197 S. Main St. (02/23/84)

Kiowa County

Hobart, *Kiowa County Courthouse (County Courthouses of Oklahoma TR)*, Courthouse Sq. (08/23/84)

LeFlore County

Poteau, *LeFlore County Courthouse (County Courthouses of Oklahoma TR)*, Courthouse Sq. (08/23/84)

Lincoln County

Chandler, *Boston Store (Territorial Commercial Buildings of Chandler TR)*, 917 Manvel Ave. (04/05/84)
Chandler, *Chandler Bookstore (Territorial Commercial Buildings of Chandler TR)*, 713 Manvel Ave. (04/05/84)
Chandler, *Clapp-Cunningham Building (Territorial Commercial Buildings of Chandler TR)*, 1021 Manvel Ave. (04/05/84)
Chandler, *Conklin House (Territorial Homes of Chandler TR)*, 206 W. 8th St. (09/28/84)
Chandler, *First Presbyterian Church of Chandler (Territorial Era Carpenter Gothic Churches TR)*, 8th and Blaine Sts. (09/28/84)
Chandler, *Johnson House (Territorial Homes of Chandler TR)*, 503 Manvel Ave. (09/28/84)
Chandler, *Murphy Building (Territorial Commercial Buildings of Chandler TR)*, 717–719 Manvel Ave. (04/05/84)
Chandler, *Oleson-Crane Building (Territorial Commercial Buildings of Chandler TR)*, 721 Manvel Ave. (04/05/84)
Chandler, *St. Cloud Hotel (Territorial Commercial Buildings of Chandler TR)*, 1216 Manvel Ave. (04/05/84)
Chandler, *Wolcott Building (Territorial Commercial Buildings of Chandler TR)*, 725 Manvel Ave. (04/05/84)
Prague, *ZCBJ Lodge No. 46*, S. Barta Ave. (03/08/84)
Stroud, *Stroud, James W., House*, 110 E. 2nd St. (03/08/84)

Logan County

Guthrie, *Logan County Courthouse (County Courthouses of Oklahoma TR)*, 301 E. Harrison St. (08/23/84)
Marshall, *Methodist Church of Marshall (Territorial Era Carpenter Gothic Churches TR)*, Off OK 74 (09/28/84)
Mulhall, *Mulhall United Methodist Church*, Bryant and Craig Sts. (06/22/84)
Mulhall, *Oklahoma State Bank Building*, Baty and Main Sts. (06/22/84)

Love County

Marietta, *Love County Courthouse (County Courthouses of Oklahoma TR)*, 100 S. 4th St. (08/23/84)

Major County

Fairview, *Major County Courthouse (County Courthouses of Oklahoma TR)*, Courthouse Sq. (08/23/84)

Marshall County

Madill, *Marshall County Courthouse (County Courthouses of Oklahoma TR)*, Courthouse Sq. (08/23/84)

McClain County

Purcell, *McClain County Courthouse (County Courthouses of Oklahoma TR)*, Courthouse Sq. (08/23/84)

McIntosh County

Vernon, *Rock Front*, Broadway (06/22/84)

Murray County

Sulphur, *Murray County Courthouse (County Courthouses of Oklahoma TR)*, Wyandotte Ave. (08/23/84)

Muskogee County

Muskogee, *Central Baptist Church (Black Protestant Churches of Muskogee TR)*, 515 N. 4th St. (09/25/84)
Muskogee, *Coss, V.R., House (Territorial Homes of Muskogee TR)*, 1315 W. Okmulgee St. (05/02/84)
Muskogee, *First Baptist Church (Black Protestant Churches of Muskogee TR)*, 6th and Denison Sts. (09/25/84)
Muskogee, *Fite, F.B., House and Servant's Quarters*, 443 N. 16th St. (10/06/84)
Muskogee, *Manual Training High School for Negroes*, 704 Altamont St. (06/22/84)
Muskogee, *Murphy, George A., House (Territorial Homes of Muskogee TR)*, 1321 W. Okmulgee St. (05/02/84)
Muskogee, *Muskogee County Courthouse (County Courthouses of Oklahoma TR)*, 216 State St. (08/23/84)
Muskogee, *Patterson, A.W., House (Territorial Homes of Muskogee TR)*, 1320 W. Okmulgee St. (05/02/84)
Muskogee, *Pre-Statehood Commercial District*, Main, Broadway, Okmulgee, and Second Sts. (10/06/83)
Muskogee, *Trumbo, A.C., House (Territorial Homes of Muskogee TR)*, 1321 W. Broadway St. (05/02/84)
Muskogee, *Ward Chapel AME Church (Black Protestant Churches of Muskogee TR)*, 319 N. 9th St. (09/25/84)
Muskogee, *Welch, J.C., House (Territorial Homes of Muskogee TR)*, 1403 W. Okmulgee St. (05/02/84)
Summit, *DuBois, W.E.B., School (Educational Resources of All-Black Towns in Oklahoma TR)*, Off US 69 (09/28/84)
Taft, *Taft City Hall (Historic Government Buildings in Oklahoma's All-Black Towns TR)*, Elm and Seminole Sts. (09/28/84)

Noble County

Billings, *Renfrow Building (Renfrow, T.F., Historic Properties TR)*, 127 W. Main St. (09/28/84)
Billings, *Renfrow House (Renfrow, T.F., Historic Properties TR)*, Graves St. and Broadway (09/28/84)
Morrison, *Morrison Baptist Church (Territorial Era Carpenter Gothic Churches TR)*, 202 3rd St. (09/28/84)
Perry, *Noble County Courthouse (County Courthouses of Oklahoma TR)*, Courthouse Sq. (08/23/84)

Nowata County

Nowata, *Nowata County Courthouse (County Courthouses of Oklakoma TR)*, 229 N. Maple St. (08/23/84)

Okfuskee County

Okemah, *Okfuskee County Courthouse (County Courthouses of Oklahoma TR)*, 3rd and W. Atlanta (08/23/84)

Oklahoma County

Oklahoma City, *First Christian Church*, 1104 N. Robinson Ave. (03/08/84)
Oklahoma City, *Pilgrim Congregational Church*, 1433 Classen Dr. (02/23/84)

Okmulgee County

Okmulgee, *Okmulgee Black Hospital*, 320 N. Wood Dr. (06/22/84)
Okmulgee, *Okmulgee County Courthouse (County Courthouses of Oklahoma TR)*, 300 W. 7th St. (08/23/84)

Osage County

Fairfax, *First National Bank and Masonic Lodge*, 301 N. Main St. (06/22/84)
Pawhuska, *Osage County Courthouse (County Courthouses of Oklahoma TR)*, 8th and Grandview Sts. (08/23/84)

Pawnee County

Blackburn, *Blackburn Methodist Church (Territorial Era Carpenter Gothic Churches TR)*, D St. and 4th Ave. (09/28/84)
Cleveland, *Mullendore Mansion*, 910 N. Phillips St. (06/22/84)
Pawnee, *Pawnee County Courthouse (County Courthouses of Oklahoma TR)*, Courthouse Sq (08/23/84)

Payne County

Stillwater, *Payne County Courthouse (County Courthouses of Oklahoma TR)*, 606 S. Husband St. (08/23/84)

Pittsburg County

McAlester, *Pittsburg County Courthouse (County Courthouses of Oklahoma TR)*, Washington Ave. (08/23/84)

Pontotoc County

Ada, *Pontotoc County Courthouse (County Courthouses of Oklahoma TR)*, 12th and Broadway (08/24/84)

Pottawatomie County

Shawnee, *Pottawatomie County Courthouse (County Courthouses of Oklahoma TR)*, 300 N. Broadway (08/24/84)

Seminole County

Lima, *Rosewald Hall (Educational Resources of All-Black Towns in Oklahoma TR)*, College St. (09/28/84)
Wewoka, *Seminole County Courthouse (County Courthouses of Oklahoma TR)*, S. Wewoka St. (08/24/84)

Sequoyah County

Sallisaw, *Hines Round Barn*, 401 S. Adams St. (03/08/84)

Texas County

Guymon, *Texas County Courthouse (County Courthouses of Oklahoma TR)*, 319 N. Main St. (08/24/84)
Mouser, *Mouser Grain Elevator (Woodframe Grain Elevators of Oklahoma Panhandle TR)*, Off SR 136 (10/07/83)
Texhoma vicinity, *CCC Ranch Headquarters*, W of Texhoma (12/01/83)
Texhoma, *Penick House*, 218 N. East St. (09/28/84)

Tillman County

Frederick, *Tillman County Courthouse (County Courthouses of Oklahoma TR)*, Gladstone and Main Sts. (08/24/84)
Frederick vicinity, *Laney, J.D., House*, SW of Frederick (02/03/84)

Tulsa County

Tulsa, *Oklahoma Natural Gas Company Building (Zig-Zag Art Deco Style Public Utility Buildings TR)*, 624 S. Boston Ave. (04/10/84)

Tulsa, *Public Service of Oklahoma Building (Zig-Zag Art Deco Style Public Utility Buildings TR)*, 600 S. Main St. (04/10/84)
Tulsa, *Southwestern Bell Main Dial Building (Zig-Zag Art Deco Style Public Utility Buildings TR)*, 424 S. Detroit Ave. (06/22/84)

Wagoner County

Red Bird, *Miller-Washington School (Educational Resources of All-Black Towns in Oklahoma TR)*, Market St. (09/28/84)
Red Bird, *Red Bird City Hall (Historic Government Buildings in Oklahoma's All-Black Towns TR)*, Boston St. (09/28/84)

Washita County

Cordell, *Washita County Courthouse (County Courthouses of Oklahoma TR)*, Courthouse Sq. (08/24/84)

Woods County

Alva, *Branson Building (Territorial Buildings in Downtown Alva TR)*, 531 Barnes St. (01/05/84)
Alva, *Building at 405–407 College Avenue (Territorial Buildings in Downtown Alva TR)*, 405 College Ave. (01/05/84)
Alva, *Building at 409 College Avenue (Territorial Buildings in Downtown Alva TR)*, 409 College Ave. (01/05/84)
Alva, *Building at 500 Flynn Street (Territorial Buildings in Downtown Alva TR)*, 500 Flynn St. (01/05/84)
Alva, *Central National Bank (Territorial Buildings in Downtown Alva TR)*, 401 College Ave. (01/05/84)
Alva, *IOOF Hall (Territorial Buildings in Downtown Alva TR)*, 527 Barnes St. (01/05/84)
Alva, *Kavanaugh and Shea Building (Territorial Buildings in Downtown Alva TR)*, 403 College Ave. (01/05/84)

Woodward County

Woodward, *Stein, L.L., House (Woodward MRA)*, 1001 10th St. (10/07/83)

OREGON

Benton County

Corvallis, *Burnap-Rickard House*, 518 SW 3rd St. (08/01/84)
Corvallis, *Julian Hotel*, 105 SW 2nd St. (03/22/84)

Clackamas County

West Linn, *Walden, Nicholas O., House*, 1847 SE 5th Ave. (09/07/84)

Clatsop County

Astoria, *Astor Building*, 1203 Commercial St. (09/07/84)
Astoria, *Astoria City Hall*, 1618 Exchange St. (09/07/84)
Astoria, *Astoria Fire House No. 2*, 2968 Marine Dr. (09/07/84)
Astoria, *Astoria Wharf and Warehouse Company*, Water St. (06/14/84)
Astoria, *Cherry, Peter L., House*, 836 15th St. (09/07/84)
Astoria, *Clatsop County Courthouse*, 749 Commercial St. (04/05/84)
Astoria, *Ferguson, Albert W., House*, 1661 Grand Ave. (09/07/84)
Astoria, *Grace Episcopal Church and Rectory*, 1545 Frankin Ave. (09/07/84)
Astoria, *Gray, Capt. J.H.D., House*, 1687 Grand Ave. (09/07/84)
Gearhart, *Latourette, Charles David, House*, 683 D St. (03/22/84)
Knappa vicinity, *Hlilusqahih Site (35CLT37)*, N of Knappa (04/26/84)
Svensen vicinity, *Indian Point Site (35CLT34)*, E of Svensen (05/09/84)

Coos County

Bandon, *Coquille River Life Boat Station*, 390 SW 1st St. (08/03/84)
Coos Bay, *Chandler Hotel and Annex*, 107 W. Central Ave. (06/14/84)
Coos Bay, *Marshfield Hotel*, 275 Broadway (03/22/84)
Coos Bay, *Tower-Flanagan House*, 476 Newmark Ave. (02/16/84)

Deschutes County

Bend, *Bend Amateur Atheletic Club Gymnasium*, NE of Wall and Idaho Sts. (11/25/83)
Bend, *Smith, N. P., Pioneer Hardware Store*, 935–937 NW Wall St. (04/05/84)

Douglas County

Canyonville vicinity, *Weaver-Worthington Farmstead*, E of Canyonville (08/01/84)
Canyonville, *Canyonville Methodist Church*, 2nd and Pine Sts. (04/05/84)
Roseburg vicinity, *Curry, Nathaniel, House*, 1458 Quail Lane (11/25/83)
Sutherlin, *Sutherlin Bank Building*, 101 W. Central Ave. (08/01/84)

Grant County

Dayville vicinity, *Cant, James, Ranch Historic District*, OR 19 (08/21/84)

Hood River/Multnomah/Wasco Counties

Troutdale, Cascade Locks, Hood River, and Mosier, *Columbia River Highway Historic District*, Roughly follows the Columbia River from Troutdale to Chenoweth Creek (12/12/83)

Jackson County

Ashland, *Trinity Episcopal Church*, 44 N. Second St. (04/05/84)
Medford vicinty, *Hanley, Michael, Farmstead*, 1053 Hanley Rd. (11/25/83)
Medford, *Barnum Hotel*, 204 N. Front St. (03/22/84)
Medford, *Hillcrest Orchard Historic District*, 3285 Hillcrest Rd. (02/16/84)

Josephine County

Grants Pass, *Grants Pass City Hall and Fire Station*, 4th and H Sts. (09/07/84)
Grants Pass, *McLean, Robert and Lucy, House*, 724 NW 4th St. (04/05/84)

Lane County

Coburg, *Mathews, Nelson and Margret, House*, 231 E. Pearl St. (06/14/84)
Eugene, *Lane County Clerk's Building*, 740 W. 13th Ave. (11/25/84)
Eugene, *Shelton-McMurphy House and Grounds*, 303 Willamette St. (06/14/84)

Linn County

Albany, *First Evangelical Church of Albany*, 1120 SW 12th Ave. (08/01/84)

Malheur County

Vale, *Vale Hotel and Grand Opera House*, 123 S. Main St. (08/01/84)

Marion County

Gervais vicinity, *Beers, Oliver, House (Methodist Mission Site)*, 10802 Wheatland Rd. (08/01/84)
Gervais vicinity, *Willamette Station Site, Methodist Mission in Oregon*, Willamette Mission State Park (08/01/84)
St. Paul vicinity, *Champoeg State Park Historic Archeological District*, NE of St. Paul (08/01/84)

Multnomah County

Portland, *Calumet Hotel*, 620 SW Park St. (09/21/84)
Portland, *Commodore Hotel*, 1609 SW Morrison St. (06/27/84)
Portland, *Harmon-Neils House*, 2642 NW Lovejoy St. (02/16/84)
Portland, *Jewish Shelter Home*, 4133 SW Corbett Ave. (06/14/84)
Portland, *New Heathman Hotel*, 712 SW Salmon St. (02/16/84)
Portland, *Taylor, Peter, House and Haehlen, Gotlieb, House*, 2806 and 2816 SW 1st Ave. (08/01/84)
Portland, *Vista Avenue Viaduct*, SW Vista Ave. (04/26/84)
Portland, *West, Nathaniel, Buildings*, 711–727 SE Grand Ave. (04/26/84)
Portland, *Williams, George H., Townhouses*, 133 NW 18th Ave. (03/22/84)
Troutdale, *Harlow, Fred, House*, 726 E. Columbia St. (02/16/84)

Washington County

Beavertown, *Fanno, Augustus, Farmhouse*, 8385 SW Hall Boulevard (04/05/84)
Forest Grove vicinity, *Beeks, Silas Jacob N., House*, NE of Forest Grove (06/14/84)
Hillsboro, *Linklater, Zula, House*, 230 NW 2nd Ave. (08/01/84)

PENNSYLVANIA

Allegheny County

Oakmont Country Club Historic District, (08/17/84)
Pittsburgh, *Deustschtown Historic District*, Roughly bounded by Cedar Ave., Knoll, East, and Pressley Sts. (11/25/83)
Pittsburgh, *East Carson Street Historic District*, Roughly E. Carson St. from 9th to 24th Sts. (11/17/83)
Pittsburgh, *Houses at 2501–2531 Charles Street*, 2501–2531 Charles St. (03/15/84)
Pittsburgh, *Houses at 838–862 Brightridge Street*, 838–862 Brightridge St. (03/01/84)
Pittsburgh, *Longfellow School (Deniston School)*, Monroe St. and McClure Ave. (06/28/84)

Bedford County

Site 36BD90, (06/04/84)
Bedford, *Bedford Historic District*, Roughly bounded by East, West, and Watson, Sts., and the Raystown Branch of Juniata River (12/22/83)

Berks County

Gibraltar vicinity, *Allegheny Aqueduct*, PA 724 and Allegheny Creek (02/23/84)
Maxatawney vicinity, *Siegfried's Dale Farm*, Siegfried's Rd. (05/10/84)
Reading, *Foos, Charles S., Elementary School*, Douglass and Weiser Sts. (11/10/83)

Reading, *Metropolitan Edison Building*, 412 Washington St. (10/28/83)

Bucks County

Paxson, Isaiah, Farm, (08/23/84)
Croyden, *White Hall of Bristol College*, 701–721 Shadyside Ave. (01/12/84)
Hartsville vicinity, *Bridge Valley Bridge (Bettit's Bridge)*, Span Neshaminy Creek N of Hartsville (05/10/84)
Langhorne, *Tomlinson-Huddleston House*, 109 W. Maple Ave. (11/10/83)
Lumberville, *Lumberville Historic District*, Fleecy Dale, Carversville, River, and Green Hill Rds. (08/09/84)
Taylorsville vicinity, *Burroughs, John, Homestead*, Wrightstown-Taylorsville Rd. (03/05/84)

Cambria County

Ebensburg, *Noon, Philip, House*, 114 E. High St. (08/23/84)

Chester County

Rothrock, Joseph, House, (09/06/84)
Coatesville, *Caln Meeting House*, 901 Caln Meeting House Rd. (05/03/84)
Exton, *Colebrook Manor (West Whiteland Township MRA)*, 637 W. Lincoln Hwy. (09/06/84)
Exton, *Exton Hotel (West Whiteland Township MRA)*, 423 E. Lincoln Hwy. (11/10/83)
Exton, *Lewis, Evan, House (West Whiteland Township MRA)*, 117 N. Ship Rd. (08/02/84)
Exton, *Ship Inn (West Whiteland Township MRA)*, 100 N. Ship Rd. (08/02/84)
Exton, *St. Paul's Church (West Whiteland Township MRA)*, 901 E. Lincoln Hwy. (09/06/84)
Exton, *West Whiteland Inn (West Whiteland Township MRA)*, 609 W. Lincoln Hwy. (08/02/84)
Kirkland, *Rush, Benjamin, House (Chesteridge) (West Whiteland Township MRA)*, Boot Rd. (08/02/84)
Malvern vicinity, *Sugartown Historic District*, Sugartown, Boot, Spring, Dutton Mill, and Providence Rds. (09/07/84)
Phoenixville vicinity, *Coates, Moses Jr., Farm*, 1416 State Rd. (05/03/84)
Phoenixville, *Gay Street School*, Gay and Morgan Sts. (11/10/84)
Strafford, *Strafford Railroad Station*, Old Eagle School Rd. (07/26/84)
Wagontown vicinity, *Hatfield-Hibernia Historic District*, N of Wagontown (06/20/84)
West Chester, *Buckwalter Building*, 11–13 S. High St. (02/22/84)
West Chester, *Sharples Separator Works*, N. Franklin and Evans Sts. (06/28/84)
West Whiteland Township, *Grove Historic District (West Whiteland Township MRA)*, S. Whitford Rd. (08/02/84)
West Whiteland, *Autun (West Whiteland Township MRA)*, 371 E. Boot Rd. (09/06/84)
West Whiteland, *Bell, John, Farm (West Whiteland Township MRA)*, 463 N. Ship Rd. (09/06/84)
West Whiteland, *Boyer, Riter, House (West Whiteland Township MRA)*, 350 W. Boot Rd. (11/10/83)
West Whiteland, *Cox, Hewson, House (West Whiteland Township MRA)*, Church Farm Rd. (08/02/84)
West Whiteland, *Everhart, William, House (West Whiteland Township MRA)*, S. Ship and Boot Rds. (08/02/84)
West Whiteland, *Fox Chase Inn (West Whiteland Township MRA)*, 613 Swedesford Rd. (09/06/84)
West Whiteland, *Greenwood School (West Whiteland Township MRA)*, 700 King Rd. (11/10/83)
West Whiteland, *Hoffman, George, House (West Whiteland Township MRA)*, 1311 Grove Rd. (08/02/84)
West Whiteland, *Jacobs, Benjamin, House (West Whiteland Township MRA)*, 325 N. Ship Rd. (08/02/84)
West Whiteland, *Kennedy, Francis W., House (West Whiteland Township MRA)*, 1417 Highland Ave. (08/02/84)
West Whiteland, *Kinbawn (West Whiteland Township MRA)*, 405 Highland Ave. (09/06/84)
West Whiteland, *Kirkland Station (West Whiteland Township MRA)*, 1370 Kirkland Ave. (11/10/83)
West Whiteland, *Lochiel Farm (West Whiteland Township MRA)*, 111A N. Ship Rd. (09/06/84)
West Whiteland, *Meredith, Daniel, House (West Whiteland Township MRA)*, 1358 Glen Echo Rd. (08/02/84)
West Whiteland, *Newlin Miller's House (West Whiteland Township MRA)*, 1240 Samuel Rd. (09/06/84)
West Whiteland, *Oaklands (West Whiteland Township MRA)*, 349 W. Lincoln Hwy. (09/06/84)
West Whiteland, *Pennypacker, Benjamin, House (West Whiteland Township MRA)*, 800 E. Swedesford Rd. (08/02/84)
West Whiteland, *Price, Joseph, House (West Whiteland Township MRA)*, 401 Clover Mill Rd. (09/06/84)
West Whiteland, *Sleepy Hollow Hall (West Whiteland Township MRA)*, 109 E. Lincoln Hwy. (08/02/84)
West Whiteland, *Solitude Farm (West Whiteland Township MRA)*, Church Farm Rd. (08/02/84)
West Whiteland, *Thomas Marble Quarry Houses (West Whiteland Township MRA)*, Quarry Lane (08/02/84)
West Whiteland, *Thomas Mill and Miller's House (West Whiteland Township MRA)*, 130 W. Lincoln Hwy. (09/06/84)
West Whiteland, *Thomas, Charles, House (West Whiteland Township MRA)*, 225 N. Whitford Rd. (09/06/84)
West Whiteland, *Wee Grimmet (West Whiteland Township MRA)*, 624 W. Lincoln Hwy. (08/02/84)
West Whiteland, *White, Hannah, Log House (West Whiteland Township MRA)*, 545 W. Boot Rd. (08/02/84)
West Whiteland, *Whitford Garne (West Whiteland Township MRA)*, 201 W. Boot Rd. (09/06/84)
West Whiteland, *Whitford Hall (West Whiteland Township MRA)*, 145 W. Lincoln Hwy. (09/06/84)
West Whiteland, *Whitford Station House (West Whiteland Township MRA)*, 405 S. Whitford Rd. (08/02/84)
West Whiteland, *Woodland Station (West Whiteland Township MRA)*, 408 King Rd. (09/06/84)
West Whiteland, *Zook House (Boundary Increase) (West Whiteland Township MRA)*, 300 Exton Sq. (08/02/84)

Crawford County

Meadville, *Shippen, Judge Henry, House*, 403 Chestnut St. (06/06/84)

Cumberland County

Shippensburg, *Shippensburg Historic District*, Roughly bounded by Lutz Ave., Kenneth, Spring, and Fort Sts. (06/07/84)

Dauphin County

Harrisburg, *Old Downtown Harrisburg Commercial Historic District (Boundary Increase)*, Roughly Market St. from 3rd to 4th and 3rd St. from Walnut to Chestnut Sts. (03/22/84)

Delaware County

Chanticleer, (07/24/84)
Newtown Square, *Square Tavern*, Newtown Street Rd. and Goshen Rd. (09/07/84)

Erie County

Erie, *Federal Row*, 148–162 E. 5th St.; 424–430 Holland St. (05/17/84)

Fayette County

Deffenbaugh Site (36FA57), (05/14/84)
Francis Farm Petroglyphs Site (36FA35), (05/10/84)
Dawson, *Cochran, Philip G., Memorial United Methodist Church*, Howell and Griscom Sts. (06/04/84)

Franklin County

Mercersburg, *Mercersburg Academy*, PA 16 (06/21/84)

Greene County

Garards Fort vicinity, *Corbly, John, Farm*, N of Garards Fort (05/03/84)
Holbrook vicinity, *Foley, Richard T., Site (36GR52)*, W of Holbrook (05/10/84)
Waynesburg Borough, *Waynesburg Historic District*, Roughly bounded by 2nd Alley, Cherry Ave., East and Bowlby Sts. (03/01/84)

Huntingdon County

Shirleysburg, *Leas, Benjamin B., House*, US 522 (02/23/84)

Jefferson County

Brookville, *Brookville Historic District*, Roughly bonded by RR tracks, Franklin Ave., Church and Main Sts. (06/07/84)

Lackawanna County

Scranton, *Florence Apartments*, 843 Adams Ave. (01/05/84)
Scranton, *Grand Army of the Republic Building*, 303 Linden St. (05/17/84)
Scranton, *Lackawanna Avenue Commercial Historic District*, Roughly bounded by Adams, Franklin, Bogart Pl., and Spruce Sts. (11/10/83)

Lancaster County

Duncan Island (36LA60,61), (05/10/84)
Blainsport vicinity, *Walter, Henry, House*, Greenville Rd. (07/26/84)
East Earl, *Spring Grove Forge Mansion*, Spring Grove Rd. (07/11/84)

Lancaster, *Hamilton Apartments*, 247–249 N. Duke St. and 104–118 E. Walnut St. (06/28/84)
Lancaster, *Lancaster Historic District (Boundary Increase)*, E. King St. (06/21/84)
Lancaster, *Lancaster Historic District (Boundary Increase)*, Bounded by E. Vine, S. Christian, Washington, S. Duke, and Church Sts. (11/10/83)
Lancaster, *Lancaster Trust Company*, 37–41 N. Market St. (11/03/83)
Lancaster, *Reilly Brothers and Raub Building*, 44–46 N. Queen St. and 45 N. Market St. (11/03/83)
Lancaster, *Wagner's, Charlie, Cafe*, 30 E. Grant St. (12/29/83)
Lancaster, *West Lawn*, 407 W. Chestnut St. (05/03/84)
Lititz, *Werner, William, House*, 66 E. Main St. (05/10/84)
Marietta, *Marietta Historic District (Boundary Increase)*, Bounded by Waterford Ave., Clay, Propect, and Front Sts. (05/17/84)

Lehigh County

Allentown, *Americus Hotel*, 541 Hamilton St. (06/23/84)
Allentown, *Hotel Sterling*, 343–345 Hamilton St. (05/03/84)
Catasauqua, *Biery's Port Historic District*, Roughly bounded by Pineapple, Front, Race, and Mulberry Sts. (08/09/84)
Catasauqua, *Catasauqua Residential Historic District*, Roughly bounded by Howertown Rd., Railroad Ave., Oak and Bridge Sts. (05/10/84)
Macungie, *Weaver, Valentine, House*, 146 S. Church St. (06/28/84)

Luzerne County

Hazelton, *Pardee, Israel Platt, Mansion*, 235 N. Laurel St. and 28 Aspen St. (01/12/84)

Lycoming County

Williamsport, *Hart Building*, 26–30 W. 3rd St. (09/07/84)

McKean County

Kane, *New Thomson House (Penn-Kane Hotel)*, 2 Greeves St. (05/03/84)

Mifflin County

Lewistown, *Montgomery Ward Building*, 3–7 W. Market St. (09/07/84)
Lewistown, *Wollner Building*, 16 W. Market St. (06/23/84)

Monroe County

Stroudsburg, *Kitson Woolen Mill*, 411 Main St. (01/12/84)

Montgomery County

Bryn Mawr, *Idlewild Farm Complex*, 617 Williamson Rd. (01/20/84)
Conshohocken, *Lee Tire and Rubber Company*, 1100 Hector St. (06/23/84)
Haverford, *Whitehall Apartments* 410 W. Lancaster Ave. (12/28/83)
Pottstown, *Reading Railroad Pottstown Station*, High St. between Hanover and York Sts. (01/12/84)

Northampton County

Bethlehem, *Lehigh Valley Railroad Headquarters Building*, 425 Brighton St. (05/24/84)

Northumberland County

Sunbury, *Sunbury Historic District*, Roughly bounded by Arch, Chestnut, Front, and 5th Sts. (11/03/83)

Philadelphia County

Philadelphia, *1616 Building*, 1616 Walnut St. (10/17/83)
Philadelphia, *26th District Police and Patrol Station*, 2136–2142 E. Dauphin St. (07/12/84)
Philadelphia, *Baird, Matthew, Mansion*, 814 N. Broad St. (12/29/83)
Philadelphia, *Broad Street Historic District*, Roughly bounded by Juniper, Cherry, 15th, and Pine Sts. (04/06/84)
Philadelphia, *East Center City Commercial Historic District*, Roughly bounded by 6th, Juniper, Market, and Locust Sts. (07/05/84)
Philadelphia, *Elk's Lodge BPOE No. 2*, 306–320 N. Broad St. (08/23/84)
Philadelphia, *Estey Hall*, 1701 Walnut St. (10/28/83)
Philadelphia, *Garden Court Historic District*, Roughly bounded by Larchwood Ave., 46th, 50th, and Pine Sts. (07/05/84)
Philadelphia, *Heywood Chair Factory*, 1010–1014 Race St. (08/23/84)
Philadelphia, *Holman, A.J., and Company*, 1222–26 Arch St. (05/17/84)
Philadelphia, *Parkside Historic District*, Bounded by Penn-Central RR track, 38th St., Girard, Parkside, and Belmont Aves. (11/17/83)
Philadelphia, *Ridge Avenue Farmers' Market*, 1810 Ridge Ave. (03/05/84)
Philadelphia, *Washington Avenue Historic District*, Roughly bounded by Carpenter, Washington, 10th, and Broad Sts. (09/07/84)
Philadelphia, *Washington Square West Historic District*, Roughly bounded by 8th, Locust, Broad, and Lombard Sts. (09/20/84)
Philadelphia, *Wesley Building*, 1701–1709 Arch St. (05/10/84)
Philadelphia, *Wills Hospital*, 1601 Spring Garden St. (07/12/84)
Philadelphia, *Wissahickon*, Schuyler & Queen Sts. (11/25/83)
Philadelphia, *Sharpless, William C., House*, 5446 Wayne Ave. (12/29/83)

Venango County

Indian God Rock Petroglyphs Site (36VE26), (05/14/84)
Franklin, *Franklin Historic District*, Roughly bounded by Miller Ave., Otter, 6th, Buffalo, and 16th Sts. (01/26/84)

York County

Leibhart, Oscar, Site (36YO9), (05/24/84)
Emigsville, *Emig Mansion*, 3342 N. George St. (09/07/84)
Goldsboro, *Goldsboro Historic District*, Roughly bounded by North, 3rd, Fraser, and Railroad Sts. (06/14/84)
Hanover Junction, *Hanover Junction Railroad Station*, PA 616 (12/29/83)
Railroad, *Railroad Borough Historic District*, Shaub Rd. N., E., and S. Main St. (03/22/84)
Shrewsbury, *Shrewsbury Histric District*, Roughly bounded by Highland, Sunset Drs., Park Ave., Church, and Pine Sts. (03/22/84)
Spring Grove, *Spring Grove Borough Historic District*, Roughly bounded by College Ave., Jackson, Water, East, and Church Sts. (05/25/84)
York, *Stevens School*, 606 W. Philadelphia St. (12/29/83)

PUERTO RICO

Aguadilla County

Aguadilla, *Church San Carlos Borromeo of Aguadilla (Historic Churches of Puerto Rico TR)*, De Diego St., Town Plaza (09/18/84)
Camuy, *Antiguo Casino Camuyano*, Estrella and Munoz Rivera Sts. (01/26/84)
Maricao, *Church San Juan Bautista of Maricao (Historic Churches of Puerto Rico TR)*, Baldorioty St., Town Plaza (09/18/84)
Quebradillas vicinity, *Puente Blanco*, NE of Quebradillas off PR 485 (02/23/84)
San Sebastian, *Church San Sebastian Martir of San Sebastian (Historic Churches of Puerto Rico TR)*, Severo Arana St., Town Plaza (09/18/84)
Isabela, *Hermitage of San Antonio de Padua de la Tuna*, Bo. Coto, Sector Pueblo Viejo (12/02/83)

Arecibo County

Manati, *Church Nuestra Senora de la Candelaria y San Matias of Manati (Historic Churches of Puerto Rico TR)*, Patriota Pozo St., Town Plaza (09/18/84)
Vega Alta, *Church Inmaculada Concepcion of Vega Alta (Historic Churches of Puerto Rico TR)*, Town Plaza (09/18/84)
Vega Baja, *Church Santa Maria del Rosario of Vega Baja (Historic Churches of Puerto Rico TR)*, Town Plaza (09/18/84)
Vega Baja, *Panteon Otero-Martinez*, Old Bega Baja Cemetery, PR 670 (07/30/84)

Guayama County

Barranquitas, *Casa Natal de Luis Munoz Rivera*, Munoz Rivera and Manuel Torres Sts. (09/04/84)
Guayama, *Casa Cautino*, Vicente Pales Ares St. (06/11/84)

Humacao County

Fajardo, *Church Santiago Apostol of Fajardo (Historic Churches of Puerto Rico TR)*, Town Plaza (09/18/84)
Gurabo, *Church San Jose of Gurabo (Historic Churches of Puerto Rico TR)*, Santiago and Eugenio Sanches Lopez Sts. (09/18/84)
Humacao, *Church Dulce Nombre de Jusus of Humocao (Historic Churches of Puerto Rico TR)*, Town Plaza (09/18/84)
San Lorenzo, *Las Mercedes*, Colon St. (12/08/83)

Mayaguez County

Guanica vicinity, *Hacienda Santa Rita*, PR 116 (01/05/84)

Ponce County

Ponce, *Cementerio Antiguo de Ponce*, Torres #1 and Frontispicio St. (01/05/84)
Ponce, *Parque de Bombas de Ponce*, Plaza Las Delicias (07/12/84)
Ponce, *Villaronga House*, 108 Reina St. (08/24/84)

San Juan County

Bayamon, *Casa Natal Dr. Jose Celso Barbosa*, 13 Barbosa St. (08/24/84)
Bayamon, *Church Santa Cruz of Bayamon (Historic Churches of Puerto Rico TR)*, Plaza de Hostos (09/18/84)

Carolina, *Church San Fernando of Carolina (Historic Churches of Puerto Rico TR)*, Munoz Rivera St., Town Plaza (09/18/84)
Carolina, *Edificio Alcaldia*, Calle Ignacio Arzuaga, Esq. De Diego (12/28/83)
Guaynabo, *Caparra*, PR 2 (02/28/84)
Puerta de Tierra, *Biblioteca Carnegie*, Ponce de Leon Ave. (10/20/83)
Rio Piedras, *University of Puerto Rico Tower and Quadrangle*, Ponce de Leon Ave. (05/17/84)
San Juan, *El Falansterio de Puerta de Tierra District*, Bounded by RR Right-of-Way, Fernandez Juncos Ave., Matias Ledesma and San Juan Bautista Sts. (05/03/84)
San Juan, *Fortin de San Geronimo de Boqueron*, Puerta de Tierra (10/11/83)
Santurce, *Administration Building*, (10/26/83)
Santurce, *Miami Building*, 868 Ashford Ave. (08/23/84)
Santurce, *Nuestra Senora de Lourdes Chapel*, Ponce de Leon and Miramar Aves. (09/27/84)
Santurce, *Polvorin de Miraflores*, Antigua Base Naval de Miramar (03/09/84)
Toa Alta, *Church Nuestra Senora de la Concepcion y San Fernando of Toa Alta (Historic Churches of Puerto Rico TR)*, Ponce de Leon St., Town Plaza (09/18/84)

RHODE ISLAND

Kent County

Lambert Farm Site, (11/03/83)
Meadows Archeological District, (11/03/83)
Trafalgar Site, (11/03/83)
Warwick, *Apponaug Historic District (Warwick MRA)*, 3376, 3384, 3387, 3391, 3397–3399, and 3404 Post Rd. (02/23/84)
Warwick, *Buttonwoods Beach Historic District (Warwick MRA)*, Roughly bounded by Brush Neck Cove, Greenwich Bay, Cooper and Promenade Aves. (02/23/84)
Warwick, *Forge Road Historic District (Warwick MRA)*, Forge Rd. from Ives Rd. to the Potowomut River (02/23/84)
Warwick, *Knight Estate (Warwick MRA)*, 486 East Ave. (02/23/84)
West Warwick, *Valley Queen Mill*, 200 Providence St. (01/19/84)

Newport County

Pine Hill Archeological Site, (11/03/83)
Middletown, *Bailey Farm*, 373 Wyatt Rd. (06/04/84)

Providence County

Foster, *Hopkins Mills Historic District*, Old Danielson Pike, US 6, Maple Rock and Rams Tail Rds. (05/10/84)
Harrisville, *Harrisville Historic District*, Roughly bounded by Wood and Sherman Rds., East Ave., Main, Chapel, School, and River Sts. (03/21/84)
Johnston, *Cornell-Randall-Bailey Roadhouse*, 2737 Hartford Ave. (05/10/84)
Lincoln, *Albion Historic District*, Roughly Berkshire Dr., Willow Lane, Ledge Way, Kennedy Blvd., School, and Main Sts. (07/19/84)
Lincoln, *Ballou House (Lincoln MRA)*, Albion Rd. (08/30/84)
Lincoln, *Elliott-Harris-Miner House (Lincoln MRA)*, 1406 Old Louisquisset Pike (08/30/84)
Lincoln, *Jenckes House (Lincoln MRA)*, 81 Jenckes Hill Rd. (08/30/84)
Lincoln, *Lime Kilns (Lincoln MRA)*, Off Louisquisset Pike, Sherman and Dexter Rock Rds. (08/30/84)
Lincoln, *Old Ashton Historic District (Lincoln MRA)*, Lower River Rd. and Blackstone Canal towpath (08/30/84)
Lincoln, *Pullen Corner School (Lincoln MRA)*, Angell and Whipple Rds. (08/30/84)
Lincoln, *Saylesville Historic District (Lincoln MRA)*, Roughly bounded by Memorial Ave., Scotts Pond, Industrial Circle, Smithfield Ave., and Woodland Court (08/30/84)
Lonsdale, *Lonsdale Historic District*, Lonsdale Ave., Blackstone Ct., Front, Main, Cook, Broad, Mill, Cross, and Blackstone Sts. (05/25/84)
Pawtucket, *Adams, John F., House (Pawtucket MRA)*, 11 Allen Ave. (11/18/83)
Pawtucket, *Bridge Mill Power Plant (Pawtucket MRA)*, 25 Roosevelt Ave. (11/18/83)
Pawtucket, *Burnham, E.A., House (Pawtucket MRA)*, 17 Nickerson St. (11/18/83)
Pawtucket, *Childs-Brown House (Pawtucket MRA)*, 172 Pine St. (11/18/83)
Pawtucket, *Collyer Monument (Pawtucket MRA)*, Mineral Spring Park (11/18/83)
Pawtucket, *Conant Thread/Coats & Clark Mill Complex District (Pawtucket MRA)*, Roughly bounded by Lonsdale Ave., Pine, Conant, Carpenter, and Rand Sts. (11/18/83)
Pawtucket, *Division Street Bridge (Pawtucket MRA)*, Division St. at Seekonk River (11/18/83)
Pawtucket, *Fifth Ward Wardroom (Pawtucket MRA)*, 47 Mulberry St. (11/18/83)
Pawtucket, *Fire Station No. 4 (Pawtucket MRA)*, 474 Broadway (11/18/83)
Pawtucket, *First Ward Wardroom (Pawtucket MRA)*, 171 Fountain St. (11/18/83)
Pawtucket, *Foster-Payne House (Pawtucket MRA)*, 25 Belmont St. (11/18/83)
Pawtucket, *Fuller Houses (Pawtucket MRA)*, 339–341 and 343–345 Broadway (11/18/83)
Pawtucket, *Gilbane's Service Center Building (Pawtucket MRA)*, 175–191 Pawtucket Ave. (11/18/83)
Pawtucket, *Kotzow, Louis, House (Pawtucket MRA)*, 641 East Ave. (11/18/83)
Pawtucket, *Main Street Bridge (Pawtucket MRA)*, Main St. at Pawtucket Falls (11/18/83)
Pawtucket, *Mitchell-Arnold House (Pawtucket MRA)*, 41 Waldo St. (11/18/83)
Pawtucket, *Montgomery, Nathaniel, House*, 178 High St. (01/19/84)
Pawtucket, *Pawtucket Armory (Pawtucket MRA)*, 172 Exchange St. (11/18/83)
Pawtucket, *Pawtucket City Hall (Pawtucket MRA)*, 137 Roosevelt Ave. (11/18/83)
Pawtucket, *Pawtucket Elks Lodge Building (Pawtucket MRA)*, 27 Exchange St. (11/18/83)
Pawtucket, *Pawtucket Times Building (Pawtucket MRA)*, 23 Exchange St. (11/18/83)
Pawtucket, *Pawtucket West High School (Pawtucket MRA)* 485 East Ave. (11/18/83)
Pawtucket, *Payne, Charles, House (Pawtucket MRA)*, 25 Brown St. (11/18/83)
Pawtucket, *Potter-Collyer House (Pawtucket MRA)*, 67 Cedar St. (11/18/83)
Pawtucket, *Quality Hill Historic District (Pawtucket MRA)*, Roughly bounded by I–95, Cottage, Lyon, Bend, and Potter Sts. (04/13/84)
Pawtucket, *Riverside Cemetery (Pawtucket MRA)*, 724 Pleasant St. (11/18/83)
Pawtucket, *Scholze-Sayles House (Pawtucket MRA)*, 625 East Ave. (11/18/83)
Pawtucket, *South Street Historic District (Pawtucket MRA)*, Roughly South St. between Meadow and Fruit Sts. (11/18/83)
Pawtucket, *St. John the Baptist Church (Pawtucket MRA)*, 68 Slater St. (11/18/83)
Pawtucket, *St. Mary's Church of the Immaculate Conception Complex (Pawtucket MRA)*, 103 Pine St. (11/18/83)
Pawtucket, *St. Paul's Church (Pawtucket MRA)*, 50 Park Pl. (11/18/83)
Providence, *Andrew Dickhaut Cottages Historic District*, 115–141 Bath St., 6–18 Duke St., and 377 Orms St. (02/23/84)
Providence, *Dowler, Charles, House*, 581 Smith St. (02/23/84)
Providence, *Downtown Providence Historic District*, Roughly bounded by Washington, Westminister, Empire and Weybosset Sts. (02/10/84)
Providence, *Gloria Dei Evangelical Lutheran Church*, 15 Hayes St. (02/23/84)
Providence, *Rhode Island Medical Society Building*, 106 Francis St. (06/04/84)
Providence, *Smith Street Primary School*, 396 Smith St. (02/23/84)
Providence, *Wanskuck Historic District*, Roughly bounded by Branch Ave., Louisquisset Pike, and town boundary (12/01/83)

Washington County

Bull, Jireh, Blockhouse Historic Site, (11/03/83)
Hamilton, *Hamilton Mill Village Historic District*, Boston Neck and Martha Rds., Salisbury and Web Aves. (11/03/83)
Narragansett, *Gladstone Springhouse and Bottling Plant*, 145a Boon St. (05/10/84)
Westerly, *Westerly Downtown Historic District*, Railroad Ave., High, Canal, Broad, Union, and Main Sts. (07/19/84)

SOUTH CAROLINA

Abbeville County

Abbeville, *Abbeville Historic District (Boundary Increase/Decrease)*, Roughly bounded by Livingston, Chestnut, Walnut, and Long Branch Sts. (05/07/84)

Aiken County

North Augusta, *Georgia Avenue—Butler Avenue Historic District*, Georgia, Butler Aves. and Martintown Rd. (04/05/84)

Anderson County

Anderson, *Prevost, Nick, House*, 105 N. Prevost St. (07/10/84)

Charleston County

Charleston, *Charleston Historic District (Boundary Increase)*, King and Calhoun Sts. (08/02/84)

Charleston/Dorchester County

Summerville vicinity, *Ashley River Road*, SC 61 between Church Creek and SC 165 (11/21/83)

Darlington County

Hartsville, *Davidson Hall, Coker College,* College Ave. (11/10/83)
Hartsville, *Hart, John L., House,* Home Ave. (11/10/83)

Dillon County

Floydale vicinity, *Meekins Barn (Flue-Cured Tobacco Production Properties TR),* Off SC 9 (08/03/84)
Latta, *Latta Historic District No. 1 (Latta MRA),* Church, Marion, Bethea, Rice, Dew, Mauldin, and Main Sts. (05/17/84)
Latta, *Latta Historic District No. 2 (Latta MRA),* Richardson St., Bamberg to Oak Sts. (05/17/84)
Latta, *McMillan House (Latta MRA),* 206 Marion St. (05/17/84)

Edgefield County

Edgefield, *Simkins, Paris, House,* 202 Gary St. (04/05/84)

Florence County

Florence vicinity, *Young Farm,* W of Florence on US 76 (11/10/83)

Georgetown County

Georgetown, *Rainey, Joseph H., House,* 909 Prince St. (04/20/84) NHL
Murrells Inlet vicinity, *Atalaya,* Off US 17 (09/07/84)

Greenwood County

Greenwood, *Lander College Old Main Building,* Stanley Ave. and Lander St. (08/02/84)

Horry County

Conway, *Burroughs School,* 801 Main St. (08/02/84)

Lancaster County

Lancaster, *Lancaster Downtown Historic District,* S. Main, Gay, and Catawba Sts. (08/09/84)

Lexington County

Batesburg vicinity, *Barr, D.D.D., House (Lexington County MRA),* Off SC 245 (11/22/83)
Cayce, *Still Hopes (Gabriel Alexander Guignard House) (Lexington County MRA),* Off 7th St. (11/22/83)
Gilbert vicinity, *Griffith, David Jefferson, House (Lexington County MRA),* (11/22/83)
Gilbert vicinity, *Music Hall Evangelical Lutheran Church (Lexington County MRA),* (11/22/83)
Irmo vicinity, *Dreher, Jacob Wingard, House (Lexington County MRA),* Off SC 6 (11/22/83)
Lexington vicinity, *Ballentine-Shealy House (Lexington County MRA),* SR 1323 (11/22/83)
Lexington vicinity, *Bank of Western Carolina (Lexington County MRA),* 126 Main St. (11/22/83)
Lexington vicinity, *Berly, W.Q.M., House (Lexington County MRA),* 122 Berly St. (11/22/83)
Lexington vicinity, *Corley, C.E., House (Lexington County MRA),* 806 S. Lake Dr. (11/22/83)
Lexington vicinity, *George's Grist and Flour Mill (Lexington County MRA),* Gibson's Pond Rd. (11/22/83)
Lexington vicinity, *Harman, James, Building (Lexington County MRA),* Gantt St. (11/22/83)
Lexington vicinity, *Hendrix, John Solomon, House (Lexington County MRA),* Old Cherokee Rd. (11/22/83)
Lexington vicinity, *Hite, John Jacob, Farm (Lexington County MRA),* (11/22/83)
Lexington vicinity, *Home National Bank (Lexington County MRA),* Main St. and North Lake Dr. (11/22/83)
Lexington vicinity, *Lybrand, Henry, Farm (Lexington County MRA),* (11/22/83)
Lexington vicinity, *Rauch, Charlton, House (Lexington County MRA),* Main and Cedar Sts. (11/22/83)
Lexington vicinity, *Rawl, David, House (Lexington County MRA),* 210 W. Main St. (11/22/83)
Lexington vicinity, *Simmons-Harth House (Lexington County MRA),* 102 Gantt St. (11/22/83)
Lexington vicinity, *Stewart, James, House (Lexington County MRA),* (11/22/83)
Lexington vicinity, *Timmerman Law Office (Lexington County MRA),* 207 E. Main St. (11/22/83)
Lexington vicinity, *Wessinger, Vastine, House (Lexington County MRA),* (11/22/83)

Marion County

Mullins, *Buchan, A.H., Company Building (Flue-Cured Tobacco Production Properties TR),* Laurel St. (08/03/84)
Mullins, *Imperial Tobacco Company Building (Flue-Cured Tobacco Production Properties TR),* 416 N. Mullins St. (08/03/84)
Mullins, *Liberty Warehouse (Flue-Cured Tobacco Production Properties TR),* Park St. (08/03/84)
Mullins, *Neal and Dixon's Warehouse (Flue-Cured Tobacco Production Properties TR),* S. Main St. (08/03/84)
Mullins, *Old Brick Warehouse (Flue-Cured Tobacco Production Properties TR),* Main and Wine Sts. (08/03/84)
Zion vicinity, *Dew Barn (Flue-Cured Tobacco Production Properties TR),* NW of Zion (08/03/84

Marlboro County

Bennettsville, *Robertson-Easterling-McLaurin House,* W of Bennettsville off SC 912 (04/05/84)

Richland County

Columbia, *Fair-Rutherford and Rutherford Houses,* 1326 and 1330 Gregg St. (04/05/84)
Columbia, *Richland Cotton Mill,* 211–221 Main St. (11/10/83)
Columbia, *Wardlaw Junior High School (Columbia MRA),* 1003 Elmwood Ave. (09/13/84)

York County

Rock Hill, *Stokes-Mayfield House,* 353 Oakland Ave. (05/17/84)

SOUTH DAKOTA

Beadle County

Site 39BE14 (James River Basin Woodland Sites TR), (01/30/84)
Site 39BE15 (James River Basin Woodland Sites TR), (01/30/84)
Site 39BE23 (James River Basin Woodland Sites TR), (01/30/84)
Site 39BE46 (James River Basin Woodland Sites TR), (01/30/84)
Site 39BE48 (James River Basin Woodland Sites TR), (01/31/84)
Site 39BE57 (James River Basin Woodland Sites TR), (01/31/84)
Site 39BE64 (James River Basin Woodland Sites TR), (01/31/84)

Bon Homme County

Scotland, *Koobs House,* 431 — 4th St. (08/01/84)

Brookings County

Brookings, *Trygstad Law and Commerce Building,* 401 Main Ave. (02/23/84)

Brown County

Finnish Apostolic Lutheran Church, (05/31/84)
Aberdeen, *Dakota Farmer Building,* 1216 S. Main St. (08/01/84)
Aberdeen, *Simmons House,* 1408 S. Main St. (08/01/84)

Brule County

Kimball vicinity, *Holy Trinity Church (Church of the Blessed Trinity),* Off I-90 (11/15/83)

Butte County

Newell, *Kenaston, William G., House,* 301 Dartmouth (02/23/84)
Vale, *Vale School,* Off SD 79 (08/01/84)

Custer County

Custer vicinity, *Wind Cave National Park Historic District,* E of Custer off US 385 (07/11/84)
Hot Springs vicinity, *Beaver Creek Bridge,* SD 87, Wind Cave National Park (08/08/84)

Davison County

Site 39DV24 (James River Basin Woodland Sites TR), (01/31/84)
Site 39DV9 (James River Basin Woodland Sites TR), (01/31/84)

Douglas County

Slettebak Groceries, Hardware and Opera House, (02/23/84)

Edmunds County

Eisenbeis, John, House (German-Russian Folk Architecture TR), (08/13/84)
Roscoe, *Roscoe Community Hall,* 202 Mitchell St. (08/01/84)

Fall River County

Allen Bank Building and Cascade Springs Bath House-Sanitarium, (02/23/84)
Hot Springs, *Wesch, Phillip, House,* 2229 Minnekahta (02/23/84)

Grant County

Stockholm vicinity, *Brown Earth Presbyterian Church,* NE of Stockholm (08/29/84)

Hand County

Archeological Site 39HD22 (Petroforms of South Dakota TR), (02/23/84)

Hanson County

Fort James (39HS48), (03/15/84)
Goehring Site (39HS23), (03/15/84)

Site 39HS3 (James River Basin Woodland Sites TR), (01/31/84)

Hughes County

Archeological Site 39HU189 (Petroforms of South Dakota TR), (02/23/84)
Archeological Site 39HU201 (Petroforms of South Dakota TR), (02/23/84)
Archeological Site 39HU66 (Petroforms of South Dakota TR), (02/23/84)

Hutchinson County

Deckert, Ludwig, House (German-Russian Folk Architecture TR), (08/13/84)
Grosz, Martin and Wilhelmina, House-Barn (German-Russian Folk Architecture TR), (08/13/84)
Hofer, Michael, House (German-Russian Folk Architecture TR), (08/13/84)
Schatz, Jacob, House (German-Russian Folk Architecture TR), (08/13/84)
Site 39HT14 (James River Basin Woodland Sites TR), (01/31/84)
Site 39HT27 (James River Basin Woodland Sites TR), (02/01/84)
Site 39HT29 (James River Basin Woodland Sites TR), (02/01/84)
Site 39HT30 and 39HT202 (James River Basin Woodland Sites TR), (02/01/84)
Vetter, George, House (German-Russian Folk Architecture TR), (08/13/84)
Ziegler, Wilhelm, House-Barn (German-Russian Folk Architecture TR), (08/13/84)

Jerauld County

Archeological Site 39JE10 (Petroforms of South Dakota TR), (02/23/84)
Archeological Site 39JE11 (Petroforms of South Dakota TR), (02/23/84)

Lincoln County

Canton, *Isakson, John, House,* 504 E. 3rd St. (08/01/84)
Lennox, *Harney Hospital,* 305 S. Main St. (08/01/84)

McPherson County

Wittmayer, Peter, House-Barn (German-Russian Folk Architecture TR), (08/13/84)

Meade County

Sturgis, *Erskine School,* Sherman St. (08/16/84)

Minnehaha County

Dell Rapids, *Dell Rapids Water Tower,* 10th and Orleans (02/23/84)
Sioux Falls, *All Saints Historic District,* Roughly Main to 2nd Ave. from 14th to 23rd Sts., and 18th to 21st Sts. to 5th Ave. (02/23/84)
Sioux Falls, *McKennan Park Historic District,* McKennan Park, 2nd and 4th Aves. from 21st to 26th Sts., and 21st St. from Phillips to 7th Aves. (06/06/84)
Sioux Falls, *Queen Bee Mill,* N. Weber Ave., Falls Park (08/01/84)
Sioux Falls, *Security Bank Building,* 101 S. Main Ave. (02/23/84)
Sioux Falls, *South Side Fire Station No. 3,* 1324 S. Minnesota Ave. (02/23/84)

Pennington County

Rapid City, *First Congregational Church,* 715 Kansas (02/23/84)
Rapid City, *Gambrill Storage Building,* 822 Main St. (02/23/84)
Rapid City, *Rapid City Garage,* 827–829 Main St. (08/01/84)

Sanborn County

Site 39SB15 (James River Basin Woodland Sites TR), (02/01/84)
Site 39SB18 (James River Basin Woodland Sites TR), (02/01/84)
* *Site 39SB31 (James River Basin Woodland Sites TR),* (02/01/84)

Spink County

Site 39SP12 (James River Basin Woodland Sites TR), (02/01/84)
Site 39SP19 (James River Basin Woodland Sites TR), (02/01/84)
Site 39SP2 (James River Basin Woodland Sites TR), (02/01/84)
Site 39SP37 (James River Basin Woodland Sites TR), (02/01/84)
Site 39SP46 (James River Basin Woodland Sites TR), (02/01/84)

Turner County

Archeological Site 39TU5 (Petroforms of South Dakota TR), (02/23/84)
Weins, Jacob, House-Barn (German-Russian Folk Architecture TR), (08/13/84)

Walworth County

Ochszner, Jacob Sr., House (German-Russian Folk Architecture TR) (08/13/84)

TENNESSEE

Bedford County

Wartrace, *Walking Horse Hotel,* Spring St. (07/19/84)

Bradley County

Charleston, *Charleston Cumberland Presbyterian Church,* Railroad St. (07/12/84)
Cleveland, *Broad Street United Methodist Church,* 263 Broad St. NW (04/05/84)

Campbell County

Jellico, *US Post Office and Mine Rescue Station,* Main and 2nd Sts. (02/10/84)

Chester County

Jacks Creek vicinity, *Hamlett-Smith House,* Jacks Creek-Mifflin Rd. (12/01/83)

Coffee County

Noah vicinity, *Farrar Distillery,* Noah Fork Rd. (09/27/84)

Davidson County

Nashville, *Belle Meade Apartments,* 715 Belle Meade Blvd. (04/19/84)
Nashville, *Bennie-Dillon Building,* 702 Church St. (08/16/84)
Nashville, *Buchanan, James, House,* 2910 Elm Hill Pike (03/29/84)
Nashville, *Cummins Station,* Demonbreun and 10th Ave. S. (11/17/83)
Nashville, *Elm Street Methodist Church (Nineteenth Century Churches of South Nashville TR),* 616 — 5th Ave. S. (05/15/84)
Nashville, *Fifth Avenue Historic District,* Roughly bounded by Church and Union Sts., 4th, 5th, and 6th Aves. (12/05/83)
Nashville, *Glen Oak,* 2012 25th Ave. S (11/17/83)
Nashville, *Grassmere,* Nolensville Rd. (07/19/84)
Nashville, *Lindsley Avenue Church of Christ (Nineteenth Century Churches of South Nashville TR),* 3 Lindsley Ave. (05/15/84)
Nashville, *Longleat,* 5819 Hillsboro Rd. (02/16/84)
Nashville, *Overbrook,* 4218 Harding Rd. (03/29/84)
Nashville, *Primitive Baptist Church (Nineteenth Century Churches of South Nashville TR),* 627–629 — 3rd Ave. S. (05/15/84)
Nashville, *Southern Methodist Publishing House,* 810 Broadway (09/13/84)
Nashville, *St. Ann's Episcopal Church,* 419 Woodland St. (11/18/83)
Nashville, *St. Patrick's Catholic Church and Rectory (Nineteenth Century Churches of South Nashville TR),* 1219 — 2nd Ave. S. (05/15/84)
Nashville, *Treppard-Baldwin House,* 3338 Whites Creek Pike (10/28/83)
Pasquo, *Smith Farmhouse,* TN 100 (11/17/83)
Whites Creek, *Whites Creek Historic District,* Whites Creek Pike and Old Hickory Blvd. (08/16/84)

Davidson/Williamson Counties

Nashville, *Warner Park Historic District,* Roughly bounded by Little Harpeth River, Belle Meade Blvd., TN 100, and Chickering Rd. (01/20/84)

DeKalb County

Smithville, *Evans Block,* 101 and 103 N. 4th St. (08/30/84)

Fentress County

Jamestown, *Old Fentress County Jail,* N. Smith St. and TN 52 (05/24/84)

Giles County

Pulaski vicinty, *Milky Way Farm,* US 31 (09/27/84)
Riverburg vicinty, *Olivet United Methodist Church, Parsonage and School,* Columbia Pike (07/19/84)

Greene County

Greeneville vicinity, *Wayside,* E of Greeneville off US 411 (03/22/84)

Hamilton County

Hampton Place Archeological Site (40HA146) (Moccasin Bend MRA), (05/22/84)
Mallards Dozen Archeological Site (40HA147) (Maccasin Bend MRA), (05/22/84)
Stringer Ridge Historic District (Moccasin Bend MRA), (05/22/84)
Vulcan Archeological Site (40HA140) (Moccasin Bend MRA), (05/22/84)
Woodland Mound Archeological District (Moccasin Bend MRA), (05/22/84)
Chattanooga, *Crane Building,* 1317 Chestnut St. (11/10/83)
Chattanooga, *King, M.L., Boulevard Historic District,* Roughly M.L. King Blvd, between Browns and Unviersity Sts. (03/20/84)
Chattanooga, *Market Street Warehouse Historic District,* 1118–1148 Market St. (04/05/84)
Chattanooga, *Schwartz, Robert, and Company Building,* 736–738 Cherry St. (07/19/84)

Hickman County

Centerville, *Fairview School*, 113 E. Hackberry St. (12/08/83)

Knox County

Knoxville, *Caswell-Taylor House*, 803 N. 4th St. (11/10/83)
Knoxville, *Cowan, McClung and Company Building*, 500-504 Gay St. (07/12/84)
Knoxville, *Knoxville Post Office*, 501 Main St. (05/31/84)
Knoxville, *Knoxville YMCA Building*, 605 Clinch Ave. (11/17/83)
Knoxville, *McCammon, Samuel, House (James White's House Site)*, 1715 Riverside Dr. (03/01/84)
Knoxville, *Medical Arts Building*, 603 Main Ave. (05/24/84)

Lawrence County

Lawrenceburg, *Garner Mill*, Garner Lane (07/12/84)

Lewis County

Napier vicinity, *Tate, Netherland, House*, Napier Rd. (08/09/84)

Lincoln County

Fayetteville, *McDonald-Bolner House*, 400 S. Elk Ave. (05/31/84)
Fayetteville, *Mulbery-Washington-Lincoln Historic District*, Roughly Bright, Elk, Green, Main, Lincoln, Mulberry, and Washington Sts. (05/31/84)

Loudon County

Loudon vicinity, *Robinson Mill*, TN 72 (04/05/84)

Madison County

Jackson, *St. Luke Episcopal Church*, 309 E. Baltimore St. (05/24/84)

Marshall County

Belfast, *Belfast Railroad Depot*, US 431 (08/09/84)
Berlin, *Berlin Historic District*, US 431 (08/30/84)
Chapel Hill, *Swaim House*, Main St. (07/12/84)
Cornersville vicinity, *Valley Farm*, Cornersville Rd. (04/05/84)
Lewisburg vicinity, *Ewing Farm*, Franklin Rd. (04/05/84)

Maury County

Ashwood vicinity, *Pine Hill*, Old Zion Lane (12/15/83)
Columbia vicinity, *Pillow Place*, Campbellsville Pike (12/08/83)
Columbia, *Columbia Commercial Historic District*, Roughly bounded by 7th, 8th, Woodland, and High Sts. (08/16/84)
Columbia, *First United Methodist Church of Columbia*, 222 W. 7th St. (08/30/84)
Columbia, *Maguire, Patrick, House*, 105 N. Campbell Blvd. (12/15/83)
Columbia, *Rally Hill*, 319 W. 8th St. (08/16/84)
McCains, *Amis, Jonathan, House*, Covey Hollow Rd. (04/26/84)
Mt. Pleasant, *Walnut Grove*, 510 N. Main St. (03/08/84)
Spring Hill, *Spring Hill Presbyterian Church*, S. Main St. (07/19/84)
Spring Hill, *White Hall*, Duplex Rd. (04/05/84)
Williamsport vicinity, *Webster, George, House*, Sawdust Rd. (04/05/84)

McMinn County

Athens, *Lowry, William, House*, 405 E. Madison Ave. (07/19/84)
Athens, *Old College*, College St., Tennessee Wesleyan College campus (12/29/83)

Montgomery County

Clarksville, *Clarksville High School*, Greenwood Ave. (12/08/83)

Obion County

Union City, *Deering Building*, 106 — 1st St. (11/25/83)
Union City, *US Post Office*, 114 W. Washington (05/31/84)

Polk County

Parksville vicinity, *Copeland House*, Cookson Creek Rd. (04/05/84)

Scott County

Robbins, *Barton Chapel*, US 27 (07/12/84)

Sevier County

Gatlinburg, *Mountain View Hotel*, 400 Parkway (09/13/84)

Shelby County

Memphis, *Austin, John Alexander, House*, 290 S. Front St. (07/12/84)
Memphis, *Clancy, Cornelius Lawrence, House*, 911 Kerr Ave. (11/25/83)
Memphis, *Dermon Building*, 46 N. 3rd St. (03/15/84)
Memphis, *Gartly-Ramsay Hospital*, 696 Jackson Ave. (07/12/84)
Memphis, *Greenlaw Addition Historic District*, Roughly bounded by Bethel, Thomas, 7th, Auction, and 2nd Sts. (08/16/84)
Memphis, *Medical Arts Building and Garage*, 248 Madison Ave. and 11 N. 4th St. (08/16/84)
Memphis, *Richards, Newton Copeland, House*, 975 Peabody Ave. (07/12/84)
Memphis, *Lowenstein, Abraham, House*, 217 N. Waldran Blvd. (01/05/84)

Summer County

Hendersonville, *Hazel Path*, 175 E. Main St. (04/05/84)

Tipton County

Covington vicinity, *Mt. Carmel Presbyterian Church*, Mt. Carmel Rd. (07/12/84)
Mason, *Trinity Church*, Main St. (03/15/84)

Warren County

McMinnville, *Black House*, 301 W. Main St. (11/17/83)

Washington County

Johnson City, *Range, Peter, Stone House*, 307 Twin Falls Dr. (12/15/83)
Limestone vicinity, *Copper, Isaac, House*, Glendale Rd. (09/07/84)

Weakley County

Gleason, *Bandy, Dr. Robert W., House*, College St. (08/09/84)

Williamson County

College Grove vicinity, *Cannon, Newton, House*, Taliaferro Rd. (04/19/84)
College Grove vicinity, *Parks Place*, Cox Rd. (09/27/84)
Franklin vicinity, *Cedarmont*, Off TN 96 (07/12/84)
Franklin, *Cool Springs Farm*, Jordan Rd., S of Moore's Lane (11/10/84)

TEXAS

Aransas County

Kent-Crane Shell Midden, (06/21/84)

Armstrong County

Palo Duro Pen (41AM5) (New Mexican Pastor Sites in Texas Panhandle TR), (07/12/84)
Palo Duro Shelter (41AM6) (New Mexican Pastor Sites in Texas Panhandle TR), (07/12/84)

Austin County

Nelsonville vicinity, *Roesler House*, W of Nelsonville on TX 159 (05/10/84)

Bell County

Salado, *Barbee-Berry Mercantile Building (Salado MRA)*, Main and Royal St. (08/22/84)
Salado, *Salado United Methodist Church (Salado MRA)*, Thomas Arnold Rd. and Church St. (08/22/84)
Temple, *Barclay-Bryan House*, 804 S. 25th St. (05/10/84)

Bexar County

Leon Springs vicinity, *Plehwe Complex*, W of Leon Springs on Boerne Stage Rd. (12/15/83)
San Antonio, *Alamo National Bank Building*, 316 E. Commerce St. (01/05/84)
San Antonio, *Partee, Hiram, House*, 605 Belknap Pl. (09/20/84)
San Antonio, *Stevens Building*, 315 E. Commerce St. (05/10/84)

Calhoun County

Port Lavaca, *Louwien, A.C., Bakery*, 223 Main St. (08/09/84)
Port O'Connor vicinity, *Matagorda Island Lighthouse*, Matagorda Island (09/18/84)

Cameron County

Brownsville, *La Nueva Libertad*, 1301 E. Madison St. (08/14/84)

Cherokee County

Jacksonville, *Aber and Haberle Houses*, 823 and 833 S. Bolton St. (08/21/84)

Cooke County

Gainesville, *Davis, William and Anna, House*, 505 S. Denton St. (05/10/84)
Gainesville, *Santa Fe Passenger Depot*, 505 E. Broadway (10/06/83)

Dallas County

Dallas *Houston Street Viaduct*, Houston St. roughly between Arlington St. and Lancaster Ave. (08/09/84)
Dallas, *Viola Courts Apartments*, 4845 Swiss Ave. (01/19/84)
Dallas, *Winnetka Heights Historic District*, Roughly bounded by Davis and 12th Sts., and Rosemont and Willomet Aves. (11/03/83)

Dimmit County

Carrizo Springs, *Dimmit County Courthouse*, Public Square (08/14/84)

El Paso County

El Paso, *Martin Building*, 215 N. Stanton St. (08/08/84)
El Paso, *Old Bnai Zion Synagogue*, 906 N. El Paso St. (08/16/84)
El Paso, *US Post Office*, 219 Mills Ave. (07/19/84)

Fannin County

Honey Grove, *Trout, Thomas and Katherine, House*, 705 Poplar St. (08/23/84)

Floyd County

Floyd County Stone Corral (New Mexican Pastor Sites in Texas Panhandle TR), (09/27/84)

Galveston County

Galveston, *Building at 1921–1921½ Avenue D (Central Business District MRA)* 1921–1921½ Ave. D (08/14/84)
Galveston, *Building at 1925–1927 Market Street (Central Business District MRA)*, 1925–1927 Market St. (08/14/84)
Galveston, *City Hall (Central Business District MRA)*, 823 25th St. (08/14/84)
Galveston, *City National Bank (Central Business District MRA)*, 2219 Ave. D (08/14/84)
Galveston, *Eiband's (Central Business District MRA)*, 2001 Central Plaza (08/14/84)
Galveston, *First Evangelical Lutheran Church (Central Business District MRA)*, 2401 Ave. G (08/14/84)
Galveston, *House at 2017–2023 Avenue I (Central Business District MRA)*, 2023 Ave. I (08/14/84)
Galveston, *House at 2528 Postoffice St. (Central Business District MRA)*, 2528 Postoffice St. (08/14/84)
Galveston, *IOOF Lodge (Central Business District MRA)*, 505 20th St. (08/14/84)
Galveston, *Jean Lafitte Hotel (Central Business District MRA)*, 2105 Ave. F (08/14/84)
Galveston, *Marschner Building (Central Business District MRA)*, 1914–1916 Mechanic St. (08/14/84)
Galveston, *Model Laundry (Central Business District MRA)*, 513–523 25th St. (08/14/84)
Galveston, *Moser House (Central Business District MRA)*, 509 19th St. (08/14/84)
Galveston, *Pix Building (Central Business District MRA)*, 2128 Postoffice St. (08/14/84)
Galveston, *Reedy Chapel AME Church*, 2013 Broadway (09/14/84)
Galveston, *Robinson Building (Central Business District MRA)*, 2009–2011 Postoffice St. (08/14/84)
Galveston, *Rosenberg Library (Central Business District MRA)*, 2310 Sealy St. (08/14/84)
Galveston, *Scottish Rite Cathedral (Central Business District MRA)*, 2128 Church St. (08/14/84)
Galveston, *Shaw, M.W., Building (Central Business District MRA)*, 2427 Ave. D (08/14/84)
Galveston, *Star Drug Store (Central Business District MRA)*, 510 23rd St. (08/14/84)
Galveston, *Texas Building (Central Business District MRA)*, 2200 Central Plaza (08/14/84)
Galveston, *Texas Heroes Monument (Central Business District MRA)*, 25th and Broadway (08/14/84)
Galveston, *US National Bank (Central Business District MRA)*, 2201 Ave. D (08/14/84)

Gillespie County

Enchanted Rock Archeological District, (also in Llano County) (08/29/84)

Grayson County

Denison, *Denison Commercial Historic District*, Roughly Woodward, Main and Chestnut Sts. (11/10/83)

Guadalupe County

Seguin, *Seguin Commercial Historic District*, Roughly bounded by Camp, Myrtle, Washington, and Crockett Sts. (12/15/83)

Harris County

Barker-Cypress Archeological Site (41HR436), (04/24/84)
Houston, *Barker House (Houston Heights MRA)*, 121 E. 16th St. (05/14/84)
Houston, *Borgstrom House (Houston Heights MRA)*, 1401 Cortlandt St. (05/14/84)
Houston, *Clayton, William L., Summer House*, 3376 Inwood Dr. (02/02/84)
Houston, *Coop, Dr. B.F., House (Houston Heights MRA)*, 1536 Heights Blvd. (05/14/84)
Houston, *DePelchin Faith Home*, 2700 Albany St. (08/09/84)
Houston, *Dexter House (Houston Heights MRA)*, 224 W. 17th St. (05/14/84)
Houston, *Ezzell House (Houston Heights MRA)*, 1236 Rutland St. (05/14/84)
Houston, *Gillette House (Houston Heights MRA)*, 301–303 E. 15th St. (05/14/84)
Houston, *Hawkins House (Houston Heights MRA)*, 1015 Heights Blvd. (05/14/84)
Houston, *Heights Boulevard Esplanade (Houston Heights MRA)*, Heights Boulevard from White Oak Bayou to 20th St. (05/14/84)
Houston, *House at 1111 Heights Boulevard (Houston Heights MRA)*, 1111 Heights Blvd. (05/14/84)
Houston, *House at 112 W. 4th Street (Houston Heights MRA)*, 112 W. 4th St. (05/14/84)
Houston, *House at 1210 Harvard Street (Houston Heights MRA)*, 1210 Harvard St. (05/14/84)
Houston, *House at 122 East Fifth Street (Houston Heights MRA)*, 122 E. 5th St. (05/14/84)
Houston, *House at 1227 Rutland Street (Houston Heights MRA)*, 1227 Rutland St. (05/14/84)
Houston, *House at 1230 Oxford Street (Houston Heights MRA)*, 1230 Oxford St. (05/14/84)
Houston, *House at 1304 Cortlandt Street (Houston Heights MRA)*, 1304 Cortlandt St. (05/14/84)
Houston, *House at 217 E. 5th Street (Houston Heights MRA)*, 217 E. 5th St. (05/14/84)
Houston, *House at 444 West 24th Street (Houston Heights MRA)*, 444 W. 24th St. (05/14/84)
Houston, *House at 505 W. 18th Street (Houston Heights MRA)*, 505 W. 18th St. (05/14/84)
Houston, *House at 917 Heights Boulevard (Houston Heights MRA)*, 917 Heights Blvd. (05/14/84)
Houston, *Houston Public Library (Heights Branch) (Houston Heights MRA)*, 1302 Heights Blvd. (05/14/84)
Houston, *Keller House (Houston Heights MRA)*, 1448 Heights Blvd. (05/14/84)
Houston, *Macatee Building*, 101 Austin St. (05/24/84)
Houston, *Main Street/Market Square Historic District (Boundary Increase)* (02/23/84)
Houston, *Meitzen House (Houston Heights MRA)*, 725 Harvard St. (05/14/94)
Houston, *Miller House (Houston Heights MRA)*, 1245 Yale St. (05/14/84)
Houston, *Miller, Ezekial and Mary Jane, House*, 304 Hawthorne St. (10/06/83)
Houston, *Milroy-Muller House (Houston Heights MRA)*, 1602 Harvard St. (05/14/84)
Houston, *Mulcahy House (Houston Heights MRA)*, 1046 Harvard St. (05/14/84)
Houston, *Otto House (Houston Heights MRA)*, 835 Rutland St. (05/14/84)
Houston, *Schlesser-Burrows House (Houston Heights MRA)*, 1123 Harvard St. (05/14/84)
Houston, *Sheridan Apartments*, 802–804 McGowen St. (08/02/84)
Houston, *Temple Beth Israel*, 3517 Austin St. (03/01/84)
Houston, *Webber House (Houston Heights MRA)*, 1011 Heights Blvd. (05/14/84)
Houston, *Wilkins House (Houston Heights MRA)*, 1541 Ashland St. (05/14/84)
Houston, *Wilson House (Houston Heights MRA)*, 1206 Cortlandt St. (05/14/84)
Houston, *Wimberly House (Houston Heights MRA)*, 703 Harvard St. (05/14/84)
Houston, *Wisnoski House (Houston Heights MRA)*, 1651 Columbia St. (05/14/84)
Houston, *Woodard House (Houston Heights MRA)*, 740 Rutlant St. (05/14/84)
Spring, *Wunsche Bros. Saloon and Hotel*, 103 Midway St. (02/16/84)

Hartley County

Proctor Pen I (41HT13) (New Mexican Pastor Sites in Texas Panhandle TR), (07/12/84)
Tofoya, Miguel, Place (41HT17) (New Mexican Pastor Sites in Texas Panhandle TR), (07/12/84)

Hays County

San Marcos, *Belvin Street Historic District (San Marcos MRA)*, 700, 800, 900 blocks of Belvin St., and 227 Mitchell St. (12/01/83)
San Marcos, *Cemetery Chapel, San Marcos Cemetery (San Marcos MRA)*, TX 12 (12/01/83)
San Marcos, *Fort Street Presbyterian Church (San Marcos MRA)*, 516 W. Hopkins St. (03/23/84)
San Marcos, *Hofheinz, Walter, House (San Marcos MRA)*, 819 W. Hopkins St. (12/01/83)
San Marcos, *Kone-Cliett House (San Marcos MRA)*, 724 Burleson St. (12/01/83)
San Marcos, *McKie-Bass Building (San Marcos MRA)*, 111 N. Guadalupe St. (12/01/83)

San Marcos, *Negro School (Dunbar School) (San Marcos MRA)*, Comal and Endicott Sts. (03/23/84)
San Marcos, *San Marcos Milling Company (San Marcos MRA)*, Nicola Alley (12/01/83)

Hill County

Hillsboro, *Farmers National Bank (Hillsboro MRA)*, 68 W. Elm St. (03/30/84)
Hillsboro, *Gebhardt Bakery (Hillsboro MRA)*, 119 E. Franklin St. (03/30/84)
Hillsboro, *Grimes Garage (Hillsboro MRA)*, 110 N. Waco St. (03/30/84)
Hillsboro, *Grimes House (Hillsboro MRA)*, Country Club Rd. and Corporation St. (03/30/84)
Hillsboro, *Hillsboro Cotton Mills (Hillsboro MRA)*, 220 N. Houston St. (03/30/84)
Hillsboro, *Hillsboro Residential Historic District (Hillsboro MRA)*, Roughly bounded by Country Club Rd., Thompson, Corsicana, Pleasant, Franklin, and Elm Sts. (07/09/84)
Hillsboro, *Old Rock Saloon (Hillsboro, MRA)*, 58 W. Elm St. (03/30/84)
Hillsboro, *Sturgis National Bank (Hillsboro MRA)*, S. Waco and W. Elm Sts. (03/30/84)
Hillsboro, *Tarlton Building (Hillsboro MRA)*, 110 E. Franklin St. (03/30/84)
Hillsboro, *Western Union Building (Hillsboro MRA)*, 107 S. Covington St. (03/30/84)

Jasper County

Jasper, *Jasper County Courthouse*, Public Square (09/06/84)

Kendall County

Boerne, *Dienger, Joseph, Building*, 106 W. Blanco Rd. (01/19/84)

Kerr County

Kerrville, *Masonic Building*, 211 Earl Garrett St. (01/12/84)

Liberty County

Liberty, *Cleveland-Partlow House*, 2131 Grand Ave. (02/16/84)

McLennan County

Waco, *Praetorian Building*, 601 Franklin Ave. (07/26/84)

Nolan County

Sweetwater, *Sweetwater Commercial Historic District*, Roughly between 1st and 5th, and Ash and Texas and Pacific RR tracks (06/07/84)

Ochiltree County

Buried City Site (41 OC1), (09/13/84)

Oldham County

Chavez City Ruins (41OL253) (New Mexican Pastor Sites in Texas Panhandle TR), (07/12/84).
Chavez Suburbs East and West (41OL254) (New Mexican Pastor Sites in Texas Panhandle TR), (07/12/84)
Green No. 5 (41OL257) (New Mexican Pastor Sites in Texas Panhandle TR), (07/12/84)
Griffin Site (41OL246) (New Mexican Sites in Texas Panhandle TR), (07/12/84)
Mansfield I (41OL50) (New Mexican Pastor Sites in Texas Panhandle TR), (07/12/84)
Maston I (41OL256) (New Mexican Pastor Sites in Texas Panhandle TR), (07/12/84)
Maston No. 52 (41OL235) (New Mexican Pastor Sites in Texas Panhandle TR), (07/12/84)
Maston No. 13 Stone Wall (41OL249) (New Mexican Pastor Sites in Texas Panhandle TR), (09/10/84)
Stone Corrals No. 1–6 (41OL250) (New Mexican Pastor Sites in Texas Panhandle TR), (07/12/84)

Palo Pinto County

Mineral Wells, *Weatherford-Mineral Wells and Northwestern Railroad Depot*, S. Oak St. (01/05/84)

Refugio County

Bayside, *Wood, John Howland, House*, 1 Capano Bay St. (10/13/83)

Starr County

Roma-Los Saenz, *Roma-San Pedro International Bridge*, SW of Hidalgo St and Bravo Alley (03/23/84)

Tarrant County

Arlington, *Hutcheson-Smith House*, 312 N. Oak St. (08/02/84)
Fort Worth, *Blackstone Hotel*, 601 Main St (02/02/84)
Fort Worth, *Bryce Building*, 909 Throckmorton St. (02/23/84)
Fort Worth, *Bryce, William J., House (Fairview)*, 4900 Bryce Ave. (03/01/84)
Fort Worth, *First Christian Church*, 612 Throckorton St. (10/06/83)
Fort Worth, *Fort Worth Elks Lodge 124*, 512 W. 4th St. (02/16/84)
Fort Worth, *Fort Worth Public Market*, 1400 Henderson St. (01/05/84)
Fort Worth, *Johnson-Elliott House*, 3 Chase Court (05/10/84)
Fort Worth, *St. Mary of the Assumption Church*, 501 W. Magnolia Ave. (05/10/84)

Tom Green County

San Angelo, *Hilton Hotel (Hotel Cactus)*, 36 E. Twohig St. (09/20/84)

Travis County

Long Hog Hollow Archeological District, (05/25/84)
Austin, *Batts, Judge Robert Lynn, House*, 15105 Windsor Rd. (08/22/84)

Victoria County

Victoria, *Phillips, Judge Alexander H., House*, 705 N. Craig St. (11/03/83)

Wichata County

Wichita Falls, *Hamilton, William Benjamin, House*, 1106 Brook Ave. (10/28/83)

Young County

Graham, *Street, Spencer Boyd, Houses*, 800 and 804 — 3rd St. (08/16/84)

UTAH

Beaver County

Beaver, *Ashworth, John, House (Beaver MRA)*, 115 S. 200 West (11/29/83)
Beaver, *Ashworth, John, House (Beaver MRA)*, 110 S. 1st West (11/29/83)
Beaver, *Baldwin, Caleb, House (Beaver MRA)*, 195 S. 400 East (11/30/83)
Beaver, *Beaver Relief Society Meetinghouse (Beaver MRA)*, 35 N. 1st East (11/29/83)
Beaver, *Bradshaw, George Albert, House (Beaver MRA)*, 265 N. 200 West (11/29/83)
Beaver, *Burt, William, House (Beaver MRA)*, 515 E. Center St. (11/30/83)
Beaver, *Cox, Silas, House (Beaver MRA)*, 1st South and 4th East (11/29/83)
Beaver, *Fernley, Edward, House (Beaver MRA)*, 215 E. 200 North (02/23/84)
Beaver, *Fernley, William, House (Beaver MRA)*, 1045 E. 200 North (11/30/83)
Beaver, *Frazer, David I., House (Beaver MRA)*, 817 E. 200 North (11/30/83)
Beaver, *Gale, Henry C., House (Beaver MRA)*, 495 N. 1st East (11/29/83)
Beaver, *Hawkins, William and Eliza, House (Beaver MRA)*, 95 E. 200 North (11/29/83)
Beaver, *House at 110 S. 3rd West (Beaver MRA)*, 110 S. 3rd West (11/30/83)
Beaver, *House at 325 S. Main St. (Beaver MRA)*, 325 S. Main St. (11/30/83)
Beaver, *Jackson, Samuel, House (Beaver MRA)*, 215 S. 2nd East (11/30/83)
Beaver, *Low Hotel (Beaver MRA)*, 95 N. Main St. (11/29/83)
Beaver, *Maeser, Reinhard, House (Beaver MRA)*, 295 E. 200 North (11/29/83)
Beaver, *Mansfield, Murdock and Co. Store (Beaver MRA)*, W. Center and N. Main Sts. (11/29/83)
Beaver, *Moyes, William, Jr., House (Beaver MRA)*, 395 N. 100 West (11/29/83)
Beaver, *Murdock, Almira Lott, House (Beaver MRA)*, 85 W. 1st North (11/29/83)
Beaver, *Murdock, John Riggs and Mae Bain, House (Beaver MRA)*, 94 W. Center St. (11/29/83)
Beaver, *Murdock, John Riggs and Wolfenden Mary Ellen, House (Beaver MRA)*, 90 W. 1st North (11/29/83)
Beaver, *Nowers, Wilson G., House (Beaver MRA)*, 195 E. 1st North (11/29/83)
Beaver, *Odd Fellows Hall (Beaver MRA)*, 33–35 N. Main St. (11/29/83)
Beaver, *Olcott, Frances A., House (Beaver MRA)*, 590 E. 100 North (11/30/83)
Beaver, *Orwin, Jessie, House (Beaver MRA)*, 390 W. 800 North (11/29/83)
Beaver, *Puffer, Ephraim Orvel, House (Beaver MRA)*, 195 S. 2nd East (11/29/83)
Beaver, *Reeves, Sylvester H., House (Beaver MRA)*, 90 N. 2nd West (11/29/83)
Beaver, *Robinson, William, House (Beaver MRA)*, E of Beaver on UT 153 (11/30/83)
Beaver, *School House (Beaver MRA)*, 325 N. 200 West (11/29/83)
Beaver, *Skinner, Horace A., House (Beaver MRA)*, 185 S. Main St. (11/29/83)
Beaver, *Smith, Ellen, House (Beaver MRA)*, 395 N. 300 West (11/29/83)
Beaver, *Smith, William P., House (Beaver MRA)*, 130 E. Center St. (11/29/83)
Beaver, *Stephens, Mitchell M., House (Beaver MRA)*, 495 N. 200 East (11/29/83)
Beaver, *Stoney, Robert W., House (Beaver MRA)*, 305 W. 300 North (11/30/83)
Beaver, *Tanner, Jake, House (Beaver MRA)*, 580 S. 200 West (11/30/83)
Beaver, *Thompson, Mary I., House (Beaver MRA)*, 25 N. 400 East (11/30/83)
Beaver, *Tolton, J. F., Grocery (Beaver MRA)*, 25 N. Main St. (11/29/83)
Beaver, *Tolton, Walter S, House (Beaver MRA)*, 195 W. 500 North (11/29/83)
Beaver, *Twitchell, Ancil, House (Beaver MRA)*, 100 S. 200 East (02/23/84)

Beaver, *Tyler, Daniel, House (Beaver MRA)*, 310 N. Main St. (11/29/83)
Beaver, *White, Maggie Gillies, House (Beaver MRA)*, 200 North (02/23/83)
Beaver, *White, Samuel, House (Beaver MRA)*, 315 N. 100 East (11/29/83)
Beaver, *White, William H., House (Beaver MRA)*, 510 N. 100 East (02/23/84)
Beaver, *Willden, Charles, House (Beaver MRA)*, 180 E. 300 South (11/30/83)
Beaver, *Willden, Elliot, House (Beaver MRA)*, 340 S. Main St. (11/30/83)
Beaver, *Willden, Feargus O'Connor, House (Beaver MRA)*, 120 E. 1st South (11/29/83)
Beaver, *Yardley, John, House (Beaver MRA)*, 210 S. 1st West (11/29/83)

Davis County

Centerville, *Capener, William, House*, 252 North 400 East (01/05/84)

Duchesne County

Roosevelt, *Toyack Future Farmers of America Chapter House*, 340 N. 300 West (05/18/84)

Grand County

Moab vicinity, *Dewey Bridge*, NE of Moab on UT 128 (07/12/84)

Iron County

Cedar City, *Cedar City Railroad Depot*, 220 N. Main St. (08/09/84)
Cedar City, *Old Main and Science Buildings*, Southern Utah State College campus (08/21/84)

Salt Lake County

Salt Lake City, *Cummings, Byron, House (Perkins Addition Streetcar Suburb TR)*, 936 E. 1700 S. (10/13/83)
Salt Lake City, *Dininny, Harper J., House (Perkins Addition Streetcar Suburb TR)*, 925 E. Logan Ave. (10/13/83)
Salt Lake City, *Fairbanks, J. Leo, House*, 1228 Bryan Ave. (04/26/84)
Salt Lake City, *Ferry Hall-Westminster College*, 1840 S. 1300 East (10/13/83)
Salt Lake City, *Gibbs-Thomas House*, 137 NW Temple St. (07/12/84)
Salt Lake City, *Judd, John W., House (Perkins Addition Streetcar Suburb TR)*, 918 E. Logan Ave. (10/13/83)
Salt Lake City, *Luce, Henry, House (Perkins Addition Streetcar Suburb TR)*, 921 E. 1700 S. (10/13/83)
Salt Lake City, *Mabry-Van Pelt House (Perkins Addition Streetcar Suburb TR)*, 946 E. 1700 S. (10/13/83)
Salt Lake City, *Mitchell, Alexander, House (Perkins Addition Streetcar Suburb TR)*, 1620 S. 1000 E. (10/13/83)
Salt Lake City, *Pearsall, Clifford R., House (Perkins Addition Streetcar Suburb TR)*, 950 E. Logan Ave. (10/13/83)
Salt Lake City, *Weeks, Charles H., House (Perkins Addition Streetcar Suburb TR)*, 935 E. Logan Ave. (10/13/83)
Salt Lake City, *Yardley, Thomas, House (Perkins Addition Streetcar Suburb TR)*, 955 E. Logan Ave. (10/13/83)
Sandy, *Jordan High School*, 9351 S. State St. (05/17/84)

Summit County

Francis, *Mitchell, Byron T., House*, US 189 and UT 35 (05/18/84)

Park City, *Austin, William, House (Mining Boom Era Houses TR)*, 247 Ontario Ave. (07/11/84)
Park City, *Barnes, Charles, House (Mining Boom Era Houses TR)*, 413 Ontario Ave. (07/12/84)
Park City, *Barrett, Richard, House (Mining Boom Era Houses TR)*, 36 Prospect Ave. (07/11/84)
Park City, *Barry, George J., House (Mining Boom Era Houses TR)*, 250 Grant Ave. (07/12/84)
Park City, *Beggs, Ellsworth J., House (Mining Boom Era Houses TR)*, 703 Park Ave. (07/11/84)
Park City, *Brown, Otis L., House (Mining Boom Era Houses TR)*, 713 Woodside Ave. (07/11/84)
Park City, *Buck, John W., House (Mining Boom Era Houses TR)*, 1110 Woodside Ave. (07/12/84)
Park City, *Campbell, William, House (Mining Boom Era Houses TR)*, 164 Norfolk St. (07/11/84)
Park City, *Carling, Benedictus, House (Mining Boom Era Houses TR)*, 660 Rossie Hill Dr. (07/12/84)
Park City, *Cassidy, James, House (Mining Boom Era Houses TR)*, 33 King Rd. (07/11/84)
Park City, *Cavanaugh, James, House (Mining Boom Era Houses TR)*, 584 Woodside Ave. (07/12/84)
Park City, *Clark, Peter, House (Mining Boom Era Houses TR)*, 1135 Park Ave. (07/11/84)
Park City, *Condon, David F. and Elizabeth, House (Mining Boom Era Houses TR)*, 1304 Park Ave. (07/12/84)
Park City, *Cunningham, John F., House (Mining Boom Era Houses TR)*, 606 Park Ave. (07/11/84)
Park City, *Cunningham, Thomas, House (Mining Boom Era Houses TR)*, 139 Main St. (07/12/84)
Park City, *Durkin Boarding House (Mining Boom Era Houses TR)*, 176 Main St. (07/12/84)
Park City, *Durkin, Joseph, House (Mining Boom Era Houses TR)*, 22 Prospect Ave. (07/11/84)
Park City, *Farthelos, Peter, House (Mining Boom Era Houses TR)*, 1150 Park Ave. (07/12/84)
Park City, *Frkovich, Mike, House (Mining Boom Era Houses TR)*, 162 Daly Ave. (07/12/84)
Park City, *Gray, Levins, D., House (Mining Boom Era Houses TR)*, 355 Ontario Ave. (07/12/84)
Park City, *Hansen, Frank, House (Mining Boom Era Houses TR)*, 1025 Park Ave. (07/12/84)
Park City, *Harris, Joseph D., House (Mining Boom Era Houses TR)*, 959 Park Ave. (07/12/84)
Park City, *Harris, William H., House (Mining Boom Era Houses TR)*, 39 King Rd. (07/12/84)
Park City, *Haumann, Harry W., House (Mining Boom Era Houses TR)*, 939 Empire Ave. (07/12/84)
Park City, *Hinsdill, Henry M., House (Mining Boom Era Houses TR)*, 662 Norfolk St. (07/12/84)
Park City, *Holman, Samuel, House (Mining Boom Era Houses TR)*, 307 Norfolk St. (07/12/84)
Park City, *House at 1101 Norfolk Avenue (Mining Boom Era Houses TR)*, 1101 Norfolk Ave. (07/12/84)
Park City, *House at 343 Park Avenue (Mining Boom Era Houses TR)*, 343 Park Ave. (07/12/84)
Park City, *House at 555 Deer Valley Road (Mining Boom Era Houses TR)*, 555 Deer Valley Rd. (07/12/84)
Park City, *House at 577 Deer Valley Road (Mining Boom Era Houses TR)*, 577 Deer Valley Rd. (07/12/84)
Park City, *House at 62 Daly Avenue (Mining Boom Era Houses TR)*, 62 Daly Ave. (07/12/84)
Park City, *House at 622 Rossie Hill Drive (Mining Boom Era Houses TR)*, 622 Rossie Hill Dr. (07/12/84)
Park City, *IOOF Relief Home (Mining Boom Era Houses TR)*, 232 Woodside Ave. (07/12/84)
Park City, *Jenkins, Joseph J., House (Mining Boom Era Houses TR)*, 57 Prospect Ave. (07/12/84)
Park City, *Johnson, Carl G., House (Mining Boom Era Houses TR)*, 147 Grant Ave. (07/12/84)
Park City, *Jones, Elizabeth M., House (Mining Boom Era Houses TR)*, 412 Marsac Ave. (07/12/84)
Park City, *Kimball, Burt, House (Mining Boom Era Houses TR)*, 817 Park Ave. (07/12/84)
Park City, *Kimball, Ernest Lynn, House (Mining Boom Era Houses TR)*, 911 Empire Ave. (07/12/84)
Park City, *Lindorff, Alfred, House (Mining Boom Era Houses TR)*, 40 Sampson Ave. (07/12/84)
Park City, *Meadowcroft, Charles, House (Mining Boom Era Houses TR)*, 951 Woodside Ave. (07/12/84)
Park City, *Morgan, Jesse, House (Mining Boom Era Houses TR)*, 1027 Woodside Ave. (07/12/84)
Park City, *Murdock, Jack M., House (Mining Boom Era Houses TR)*, 652 Rossie Hill Dr. (07/12/84)
Park City, *Murray, George, House (Mining Boom Era Houses TR)*, 44 Chambers Ave. (07/12/84)
Park City, *Raddon, LaPage H., House (Mining Boom Era Houses TR)*, 817 Woodside Ave. (07/12/84)
Park City, *Raddon, Samuel L., House (Mining Boom Era Houses TR)*, 325 Park Ave. (07/12/84)
Park City, *Richardson, Jacob F., House (Mining Boom Era Houses TR)*, 205 Park Ave. (07/12/84)
Park City, *Snyder, Wilson I., House (Mining Boom Era Houses TR)*, 1010 Woodside Ave. (07/12/84)
Park City, *Streeter, Eugene, House (Mining Boom Era Houses TR)*, 335 Ontario Ave. (07/12/84)
Park City, *Sullivan, James R. and Mary E., House (Mining Boom Era Houses TR)*, 146 Main St. (07/12/84)
Park City, *Sutton, Ephraim D. and William D. House (Mining Boom Era Houses TR)*, 713 Norfolk St. (07/12/84)
Park City, *Thomas, Milton and Minerva, House (Mining Boom Era Houses TR)*, 445 Park Ave. (07/12/84)

Park City, *Tretheway, William, House (Mining Boom Era Houses TR)*, 335 Woodside Ave. (07/12/84)
Park City, *Urie, Matthew, House (Mining Boom Era Houses TR)*, 157 Park Ave. (07/12/84)
Park City, *Walker, Samuel D., House (Mining Boom Era Houses TR)*, 1119 Park Ave. (07/12/84)
Park City, *Watson, Irinda, House (Mining Boom Era Houses TR)*, 610 Park Ave. (07/12/84)
Park City, *Welch-Sherman House (Mining Boom Era Houses TR)*, 59 Prospect Ave. (07/12/84)
Park City, *Wells, Hannah, House (Mining Boom Era Houses TR)*, 1103 Woodside Ave. (07/12/84)
Park City, *Wilcocks, Walter and Ann, House (Mining Boom Era Houses TR)*, 363 Park Ave. (07/12/84)
Park City, *Wilkinson-Hawkinson House (Mining Boom Era Houses TR)*, 39 Sampson Ave. (07/12/84)
Park City, *Williams, Nathaniel J., House (Mining Boom Era Houses TR)*, 945 Norfolk Ave. (07/12/84)
Park City, *Williams, Reese, House (Park City Hospital) (Mining Boom Era Houses TR)*, 421 Park Ave. (07/12/84)
Park City, *Willis, Joseph S., House (Mining Boom Era Houses TR)*, 1062 Park Ave. (07/12/84)
Park City, *Wilson-Shields House (Mining Boom Era Houses TR)*, 139 Park Ave. (07/12/84)

Tooele County

Grantsville, *Rich, John T., House*, 275 W. Clark St. (05/02/84)
Tooele, *Tooele Valley Railroad Complex*, 35 N. Broadway (05/17/84)
Vernon, *Sharp, John C., House*, Off UT 36 (07/13/84)

Utah County

Lehi, *Cutler, Thomas R., Mansion*, 150 E. State St. (07/12/84)
Provo, *Frisby, Joseph H., House*, 209 N. 400 West (07/13/84)
Provo, *Provo West Co-op*, 450 W. Center St. (07/13/84)
Provo, *Roberts, William D., House*, 212 N. 500 West (07/24/84)
Provo, *Startup Candy Factory*, 534 S. 100 West (10/28/83)
Springville, *Kelly, T.R., House*, 164 W. 200 South (12/09/83)

Washington County

St. George, *Butler, William F., House*, 168 S. 300 West (07/13/84)

Weber County

Ogden, *Cross, Charles W., House*, 451 17th St. (07/12/84)

VERMONT

Bennington County

Manchester, *Manchester Village Historic District*, US 7A, Union St., and Taconic Ave. (01/26/84)

Caldeonia County

Barnet, *Barnet Center Historic District*, Off US 5 (07/12/84)
Danville, *Grouselands (Waterman Farm)*, Town Hwy. #28 (12/22/83)
Danville, *Whittier House*, Off US 2 (08/23/84)

Chittenden County

Burlington, *Battery Street-King Street Historic District (Boundary Increase)*, Roughly bounded by Brown's Court, King, Adams, and S. Union Sts. (06/28/84)
Charlotte, *Charlotte Center Historic District*, Church Hill and Hinesburg Rds. (07/19/84)
Huntington, *Huntington Lower Village Church*, Richmond-Huntington Rd. (08/23/84)
Shelburne, *Tracy, Lee, House*, US 7 (12/22/83)

Orange County

Thetford vicinity, *Peabody Library*, VT 113 (09/27/84)

Orleans County

Newport, *Goodrich Memorial Library*, Main and Field Sts. (11/23/83)
Westmore, *Fox Hall*, VT 56 (09/27/84)

Rutland County

Clarendon, *Clarendon Congregational Church*, Middle Rd. (07/12/84)

Washington County

Plainfield, *Allenwood Farm*, US 2 (12/22/83)

Windham County

Bellows Falls, *Moore and Thompson Paper Mill Complex*, Bridge St. (03/16/84)
Brattleboro, *Brattleboro Retreat*, Linden St. and Upper Dummerston Rd. (04/12/84)

Windsor County

Weston, *Wilder, John, House*, Lawrence Hill Rd. (11/10/83)

VIRGINIA

Albemarle County

Charlottesville vicinity, *Faulkner House*, 2201 Old Ivy Rd. (05/03/84)
Crossroads, *Crossroads Tavern*, VA 692 (08/16/84)
Ivy vicinity, *Spring Hill*, VA 637 and 786 (11/21/83)

Alexandria (Independent City)

Alexandria City Hall, 301 King St. (03/08/84).

Bath County

Hot Springs, *Homestead, The*, US 220 (05/03/84)

Charlottesville (Independent City)

Dabney-Thompson House (Charlottesville MRA), 1602 Gordon Ave. (01/10/84)
Hard Bargain (Charlottesville MRA), 1105 Park St. (01/10/84)
Morea, 209–211 Sprigg Lane (05/03/84)
Rugby Road-University Corner Historic District, Roughly bounded by University Ave., Wayside Pl., 14th St., and US 29 (02/16/84)
Stonefield (Charlottesville MRA), 1204 Rugby Rd. (01/10/84)
Timberlake-Branham House (Charlottesville MRA), 1512 E. Market St. (01/10/84)

Culpeper County

Lignum vicinity, *Madden's Tavern*, VA 610 (08/16/84)

Fauquier County

Middleburg vicinity, *Mill House*, US 50 (01/12/84)
Warrenton, *Warrenton Historic District*, Roughly Main, Waterloo, Alexandria, Winchester, Culpeper, High, Falmouth, Lee, and Horner Sts. (10/13/83)

Fredericksburg (Independent City)

Presbyterian Church, SW of Princess Anne and George Sts. (03/01/84)

Gloucester County

Zanoni vicinity, *White Hall*, VA 668 (08/16/84)

Halifax County

Halifax, *Mountain Road Historic District*, Roughly Mountain Rd. from Mimosa Dr. to Academy St. (10/06/83)

Hampton (Independent City)

Clark, Reuben, House, 125 S. Willard Ave. (08/16/84)

Loudoun County

Bluemont, *Bluemont Historic District*, VA 734 and 760 (02/23/84)
Leesburg vicinity, *Ball's Bluff Battlefield and National Cemetery*, Ball's Bluff (04/27/84) NHL
Middleburg vicinity, *Benton* VA 744 (06/14/84)

Madison County

Madison, *Madison County Courthouse Historic District*, Main St. (08/16/84)

Norfolk (Independent City)

Auslew Gallery Building (Virginia Bank and Trust Building), 101 Granby St. (02/23/84)

Northumberland County

Reedville, *Reedville Historic District*, VA 644 at VA 722 (08/16/84)

Orange County

Hampstead Farm Archeological District, (08/16/84)
Gordonsville, *Gordonsville Historic District*, VA 15 and vicinity (10/13/83)

Portsmouth (Independent City)

Porthsmouth Historic District (Boundary Increase), Green and Queen Sts. (10/06/83)

Prince Edward County

Farmville vicinity, *Longwood House*, Johnson Dr. (03/08/84)

Prince William County

Leesylvania Archeological Site (44PW7), (09/13/84)
Occoquan, *Occoquan Historic District*, Poplar Alley, Ellicott, Mill, Commerce, and Washington Sts. (10/06/83)

Richmond (Independent City)

Branch House, 2501 Monument Ave. (02/23/84)
Monroe Park Historic District, Roughly bounded by Belvidere, Main, Cherry, Park, Laurel, and Franklin Sts. (07/05/84)
Richmond Academy of Medicine, 1200 E. Clay St. (08/16/84)

Stonewall Jackson School, 1520 W. Main St. (05/03/84)
Young Women's Christian Association, 6 N. 5th St. (05/03/84)

Roanoke (Independent City)

Boxley Building, 416 Jefferson St. SW (03/08/84)

Rockingham County

Dayton, *Dayton Historic District*, Roughly bounded by Main, Mason, Walnut, Summit, and Bowman Sts. (08/16/84)

Shenandoah County

Edinburg vicinity, *Hockman, Dr. Christian, House*, US 11 (02/23/84)
Strasburg, *Strasburg Historic District*, Roughly bounded by RR tracks, 3rd, High, and Massanutten Sts. (08/16/84)

Stafford County

Accokeek Furnace Archeological Site (44ST53), 05/15/84)

Stauton (Independent City)

Steephill, 200 Park Blvd. (02/23/84)
Stuart Addition Historic District, Roughly bounded by Augusta, Sunnyside, Market, and New Sts. (05/03/84)

Surry County

Second Southwark Church Archeological Site (44SY65), (02/23/84)

WASHINGTON

Cowlitz County

Longview, *Tennant, J.D., House*, 420 Rutherglen Rd. (04/12/84)

Grays Harbor County

Aberdeen, *Finch Building*, Heron and H Sts. (10/13/83)

King County

Enumclaw, *Enumclaw High School*, 2222 Porter St. (08/30/84)
Enumclaw, *Olson, Louis and Ellen, House*, 1513 Griffin Ave. (08/30/84)
Seattle, *Church of the Blessed Sacrament, Priory, and School*, 5040–5041 9th Ave. NE (01/12/84)
Seattle, *Cobb Building*, 1301–09 4th Ave. (08/30/84)
Seattle, *Seattle, Chief of the Suquamish Statue*, 5th Ave., Denny Way, and Cedar St. (04/19/84)
Seattle, *Seattle Electric Company Georgetown Steam Plant*, King County Airport (07/05/84) NHL
Seattle, *Temple de Hirsch*, 15th Ave. and E. Union St. (01/05/84)
Seattle, *Volker, William, Building*, 1000 Lenora St. (10/13/83)

Mason County

Shelton, *Simpson Logging Company Locomotive No. 7 and Peninsular Railway Caboose No. 700*, 3rd and Railroad Aves. (01/12/84)

Pierce County

Ashford, *Ashford House*, Off WA 5 (08/30/84)
Orting, vicinity, *Woolrey-Koehler Hop Kiln*, 176th St., East (Leach Rd.) (10/13/83)
Tacoma, *Fireboat No. 1*, 302 E. 11th St. (12/02/83)
Tacoma, *Nihon Go Gakko*, 1715 S. Tacoma Ave. (08/30/84)
Tacoma, *Old Main (Harstad Hall)*, Park Ave. S. and Garfield St. (01/27/84)

San Juan County

Friday Harbor, *San Juan County Courthouse*, 350 W. Court St. (04/12/84)

Spokane County

Cheney, *Lowe, David, House*, 306 F St. (10/13/83)
Spokane, *Holley-Mason Building*, 157 Howard (10/13/83)
Spokane, *Peaceful Valley Historic District*, Roughly bounded by the Spokane River, Wilson Ave., Elm, and Cedar Sts. (04/19/84)
Spokane, *US Post Office, Courthouse and Custom House*, West 904 Riverside Ave. (12/08/83)

Thurston County

Olympia, *Hale, Calvin and Pamela, House*, 902 NE Tullis St. (01/12/84)
Tumwater, *Tumwater Methodist Church*, 219 W. B St. (01/12/84)

Walla Walla County

Walla Walla, *Osterman House*, 508 Lincoln St. (10/19/83)

Whatcom County

Bellingham, *Bellingham National Bank Building*, 101–111 E. Holly St. (10/13/83)

Yakima County

Yakima, *Larson, A.E., Building*, 6 S. 2nd St. (09/11/84)
Yakima, *Lund Building*, 5 N. Front St. (10/13/83)

WEST VIRGINIA

Barbour County

Elk City, *Crim, J.N.B., House*, WV 57 (08/24/84)
Philippi, *Peck-Crim-Chesser House*, 14 N. Walnut St. (08/23/84)

Berkeley County

Bedington vicinity, *Lick Run Plantation*, Off US 11 (01/12/84)
Bunker Hill vicinity, *Rees, John, David, and Jacob, House*, Off US 11 (01/12/84)
Bunker Hill vicinity, *Morgan Chapel and Graveyard*, Off US 11 (01/12/84)
Bunker Hill vicinity, *Morgan, William G., House*, W of Bunker Hill (01/12/84)
Gerrardstown vicinity, *Gold, Washington, House*, S of Gerrardstown (01/12/84)
Gerrardstown vicinity, *McKown, Gilbert and Samuel, House*, WV 51 (01/12/84)
Gerrardstown vicinity, *Wilson, William, House*, WV 51 (01/12/84)
Hedgesville vicinity, *Hedges, Decatur, House*, WV 9 (01/12/84)
Hedgesville vicinity, *Tabb, Edward, House*, Off WV 9 (01/12/84)
Martinsburg vicinity, *VanDoren, Jacob, House*, E of Martinsburg (01/12/84)

Braxton County

Napier vicinity, *Cunningham House and Outbuildings (Bulltown MRA)*, E of Napier (03/21/84)
Napier vicinity, *Union Civil War Fortification (Bulltown Civil War Site) (Bulltown MRA)*, E of Napier (03/21/84)
Telsa vicinity, *Windy Run Grade School*, Off US 19 (01/12/84)

Fayette County

Thurmond, *Thurmond Historic District*, WV 25 at New River (01/27/84)

Harrison County

Clarksburg, *Trinity Memorial Methodist Episcopal Church*, 420 Ben St. (04/26/84)

Jefferson County

Charles Town vicinity, *Belvedere*, 811 Belvedere Farm Dr. (01/12/84)
Charles Town vicinity, *Jacks-Manning Farm*, US 340 (01/12/84)
Halltown, *Halltown Union Colored Sunday School*, Off US 340 (01/12/84)

Kanawha County

Charleston, *Daniel Boone Hotel*, 405 Capitol St. (08/21/84)
Charleston, *Grosscup Road Historic District (South Hills MRA)*, Grosscup, Roscommon, Roller, and Bridge Rds. (01/26/84)
Hansford, *Hansford, Felix G., House*, Centre and 14th Sts. (01/12/84)
Pratt, *Pratt Historic District*, Roughly bounded by Ferry St., Kanawha River, Charles and Pratt Aves., incl. cemetery (01/12/84)

Mason County

Southside vicinity, *Couch-Artrip House*, US 35 (08/23/84)

Monongalia County

Morgantown, *Cox, Judge Frank, House*, 206 Spruce St. (01/12/84)
Morgantown, *Harner Homestead*, 1818 Listravia St. (01/12/84)
Morgantown, *Metropolitan Threatre*, 371 S. High St. (01/12/84)

Monroe County

Union vicinity, *Estill, Wallace Sr., House*, WV 122 (04/09/84)

Morgan County

Berkeley Springs vicinity, *Quick, John Herbert, House*, Off US 522 (08/23/84)
Berkeley Springs, *Sloat-Horn-Rossell House*, 415 Fairfax St. (08/23/84)

Ohio County

Wheeling, *Centre Market Square Historic District*, Roughly Market St. between 20th and 23rd Sts. (01/12/84)
Wheeling, *Chapline Street Row Historic District*, 2301–2323 Chapline St. (01/12/84)

Raleigh County

Sandstone vicinity, *St. Colman's Roman Catholic Church and Cemetery*, WV 26 (08/23/84)

Randolph County

Elkins, *Davis Memorial Presbyterian Church*, 450 Randolph Ave. (04/20/84)

Summers County

Hinton, *Hinton Historic District*, Roughly bounded by C & O RR, James St., 5th Ave. and Roundhouse (02/17/84)

Taylor County

Grafton, *Grafton Downtown Commercial Historic District*, Main and Latrobe Sts. between bridge and St. Mary's (04/09/84)

Tucker County

Parsons, *Tucker County Courthouse and Jail*, 1st and Walnut Sts. (08/23/84)

Wood County

Parkersburg, *Jackson Memorial Fountain*, Park Ave. and 17th St. (08/23/84)

WISCONSIN

Ashland County

Ashland, *West Second Street Historic District*, W. 2nd St. from Ellis Ave. to 6th Ave. (02/02/84)

Bayfield County

Washburn, *Washburn Public Library*, Washington Ave. and W. 3rd St. (03/01/84)

Crawford County

Prairie du Chien, *Old Rock School*, S. Marquette Rd. at Parrish St. (12/01/83)

Dane County

Black Earth, *Heiney's Meat Market*, 1221 Mills St. (09/27/84)
Fitchburg vicinity, *Fox Hall*, 5183 County Hwy. M (12/01/83)
Madison, *Agricultural Dean's House*, 10 Babcock Dr. (09/20/84)
Madison, *Brown, Charles E., Indian Mounds*, University of Wisconsin Arboretum (01/05/84)
Madison, *Fire Station No. 4*, 1329 W. Dayton St. (03/01/84)
Madison, *Lamb Building*, 114 State St. (08/02/84)
Madison, *Quisling Towers Apartments*, 1 E. Gilman St. (01/09/84)
Madison, *Thompson's Block*, 119 E. Main St. (06/07/84)
Mount Horeb vicinity, *Donald Farm*, 1972 WI 92 (08/07/84)
Stoughton, *Roe, Ole K., House*, 404 S. 5th St (09/07/84)

Door County

Gills Rock vicinity, *Pilot Island Light*, Porte des Morts Passage (11/21/83)
Gills Rock vicinity, *Plum Island Range Rear Light (US Coast Guard Lighthouses and Light Stations on the Great Lakes TR)*, Plum Island (07/19/84)
Sturgeon Bay, vicinity, *Sherwood Point Light Station (US Coast Guard Lighthouses and Light Stations on the Great Lakes TR)*, Sherwood Point Rd. on Green Bay (07/19/84)
Sturgeon Bay vicinity, *Sturgeon Bay Canal Lighthouse (US Coast Guard Lighthouses and Light Stations on the Great Lakes TR)*, Sturgeon Bay Canal (07/19/84)
Sturgeon Bay *Third Avenue/Downtown Historic District*, Roughly bounded by Kentucky St., N. 2nd, N. 3rd, and S. 3rd Aves. (10/06/83)

Eau Claire County

Eau Claire, *Kline's Department Store (Eau Claire MRA)*, 6–10 S. Barstow St. (06/14/84)

Fond du Lac County

Fond du Lac, *Hotel Retlaw*, 15 E. Division St. (09/07/84)
Ripon, *Horner, John Scott, House*, 336 Scott St. (09/27/84)

Jefferson County

Fort Atkinson, *Hoard Mound Group (47JE33)*, Koshkonong Mounds Rd. (05/10/84)
Fort Atkinson, *Main Street Historic District*, Roughly Main St. from Sherman Ave. to S. 3rd St. (06/07/84)
Jefferson, *Puerner Block-Breunig's Brewery*, 101–115 E. Racine, 110–112 N. Main St. (06/14/84)
Jefferson, *Smith, Richard C., House*, 332 E. Linden St. (04/19/79)

Juneau County

Cranberry Creek Archeological District, (07/19/84)

La Crosse County

Sand Lake Archeological District, (04/20/84)
La Crosse, *Powell Place*, 200–212 Main St. (12/22/83)
La Crosse, *Roosevelt, W.A., Company*, 230 N. Front St. (02/16/84)

Langlade County

Antigo, *Antigo Opera House*, 1016 5th Ave. (01/12/84)

Manitowoc County

Newton vicinity, *Lutze Housebarn*, 13634 S. Union Rd. (06/07/84)
Two Rivers vicinity, *Rawley Point (Twin River Point) Light Station (US Coast Guard Lighthouses and Light Stations on the Great Lakes TR)*, Point Beach State Forest (07/19/84)

Marathon County

Maine Site (47MR22), (07/19/84)
Wausau, *Andrew Warren Historic District*, Roughly bounded by Fulton, Grant, 4th, and 7th Sts. (01/05/84)

Milwaukee County

Milwaukee, *Astor on the Lake*, 924 E. Juneau Ave. (09/06/84)
Milwaukee, *Baasen House-German YMCA (Brewers' Hill MRA)*, 1702 N. 4th St. (08/02/84)
Milwaukee, *Fourth Street School (Brewers' Hill MRA)*, 333 W. Galena St. (08/02/84)
Milwaukee, *Gallun Tannery Historic District (Brewers' Hill MRA)*, Holton and Water Sts. (08/02/84)
Milwaukee, *Historic Third Ward District*, Bounded by the Milwaukee River, C and NW RR, and E. St. Paul and N. Jackson Sts. (03/08/84)
Milwaukee, *Ketter, Frederick, Warehouse (Brewers' Hill MRA)*, 325 W. Vine St. (08/02/84)
Milwaukee, *Mayer Boot and Shoe Company Building (Brewers' Hill MRA)*, 116 E. Walnut St. (08/02/84)
Milwaukee, *North First Street Historic District (Brewers' Hill MRA)*, Roughly 1st and 2nd Sts. between North and Center Sts. (08/02/84)
Milwaukee, *North Point Lighthouse (US Coast Guard Lighthouses and Light Stations on the Great Lakes TR)*, Wahl St. at Terrace (07/19/84)
Milwaukee, *North Third Street Historic District (Brewers' Hill MRA)*, Roughly N. 3rd St. between N. 3rd Ave. and Vine St. (08/02/84)
Milwaukee, *Public School No. 27 (Brewers' Hill MRA)*, 2215 N. 4th St. (08/02/84)
Milwaukee, *Shorecrest Hotel*, 1962 N. Prospect Ave. (09/07/84)
Milwaukee, *State Bank of Wisconsin (Bank of Milwaukee Block)*, 210 E. Michigan St. (03/08/84)
Milwaukee, *Vine-Reservoir Historic District (Brewers' Hill MRA)*, Vine, Reservoir, Palmer, 1st, 2nd, and Brown Sts. (08/02/84)
Shorewood, *Shorewood Village Hall*, 3930 N. Murray Ave. (09/07/84)
Whitefish Bay, *Uhlein, Herman, House*, 5270 N. Lake Dr. (12/22/83)
Wood, *Ward Memorial Hall*, 5000 W. National Ave. (09/06/84)

Oneida County

Jennings, *Mecikalski General Store, Saloon, and Boardinghouse*, 465 Max Rd. (03/22/84)

Outagamie County

Appleton, *Washington School*, 818 W. Lorain St. (06/07/84)
Kaukauna, *Black, Merritt, House (Kaukauna MRA)*, 104 River Rd. (03/29/84)
Kaukauna, *Brokaw, Norman, House (Kaukauna MRA)*, 714 Grignon St. (03/29/84)
Kaukauna, *Fargo's Furniture Store (Kaukauna MRA)*, 172–176 W. Wisconsin Ave. (03/29/84)
Kaukauna, *Free Public Library of Kaukauna (Kaukauna MRA)*, 111 Main Ave. (03/29/84)
Kaukauna, *Holy Cross Church (Kaukauna MRA)*, 309 Desnoyer St. (03/29/84)
Kaukauna, *Klein Dairy Farmhouse (Kaukauna MRA)*, 1018 Sullivan Ave. (03/29/84)
Kaukauna, *Kuehn Blacksmith Shop-Hardware Store (Kaukauna MRA)*, 148–152 E. 2nd St. (03/29/84)
Kaukauna, *Lindauer and Rupert Block (Kaukauna MRA)*, 137–141 E. 2nd St. (03/29/84)
Kaukauna, *Martens, Julius J., Company Building (Kaukauna MRA)*, 124–128 E. 3rd St. (03/29/84)
Kaukauna, *Meade, Capt. Matthew J., House (Kaukauna MRA)*, 309 Division St. (03/29/84)
Kaukauna, *Nicolet Pulic School (Kaukauna MRA)*, 109 E. 8th St. (03/29/84)
Kaukauna, *St. Andrews, Frank, House (Kaukauna MRA)*, 320 Dixon St. (03/29/84)
Kaukauna, *St. Mary's Catholic Church (Kaukauna MRA)*, 119 W. 7th St. (03/29/84)
Kaukauna, *Stribley, Charles W., House (Kaukauna MRA)*, 705 W. Wisconsin Ave. (03/29/84)

Ozaukee County

Port Washington, *Dodge, Edward, House (proposed move)*, 146 S. Wisconsin St. (04/05/84)
Port Washington, *HOffman House Hotel*, 200 W. Grand Ave. (03/01/84)

Pierce County

Prescott, *Smith, Daniel, House*, 331 N. Lake St. (03/15/84)

Polk County

St. Croix Falls, *Thompson, Thomas Henry, House*, 205 N. Adams St. (03/08/84)

Racine County

Racine, *Racine Elks Club, Lodge No. 252*, 601 Lake Ave. (09/07/84)
Racine, *United Laymen Bible Student Tabernacle*, 924 Center St. (12/08/83)
Racine, *Wind Point (Racine Point) Light Station (US Coast Guard Lighthoues and Light Stations on the Great Lakes TR)*, Windridge Dr. at Lake Michigan (07/19/84)

Rock County

Janesville, *Randall, Brewster, House*, 1412 Ruger Ave. (03/01/84)

Taylor County

Medford, *Benn, J.W., Building (Medford Post Office)*, 202–204 S. Main St. (12/22/83)
Westboro vicinity, *Mondeaux Dam Recreation Area*, Roughly bounded by Mondeaux River and Forest Rd. 106 (08/21/84)

Trempealeau County

Galesville, *Bartlett Blacksmith Shop-Scandinavian Hotel (Galesville MRA)*, 218 E. Mill Rd. (09/18/84)
Galesville, *Bohrnstedt, John, House (Galesville MRA)*, 830 Clark St. (09/18/84)
Galesville, *Cance, John F., House (Galesville MRA)*, 807 W. Ridge Ave. (09/18/84)
Galesville, *Downtown Historic District (Galesville MRA)*, Roughly Gale Ave., Main and Davis Sts. (09/18/84)
Galesville, *Jensen, Tollef, House (Galesville MRA)*, 806 W. Gale Ave. (09/18/84)
Galesville, *Ridge Avenue Historic District (Galesville MRA)*, Roughly Ridge Ave. from 4th to 6th Sts. (09/18/84)

Walworth County

Lake Geneva, *Redwood Cottage*, 327 Wrigley Dr. (09/07/84)

Washburn County

Spooner vicinity, *Polson, Mrs. Richard, House*, N of Spooner (02/08/84)

Washington County

Germantown vicinity, *Christ Evangelical Church*, N of Germantown on Fond du Lac Ave. (11/09/83)
Germantown vicinity, *Schunk, Jacob, Farmhouse*, Donges Bay Rd. (12/08/83)

Waukesha County

Delafield, *Bishopstead*, 153 W. Oakwood Dr. (03/01/84)
Waukesha, *Arcadian Bottling Works (Waukesha MRA)*, 900 N. Hartwell Ave. (10/28/83)
Waukesha, *Blair, Sen. William, House (Waukesha MRA)*, 434 Madison St. (10/28/83)
Waukesha, *College Avenue Historic District (Waukesha MRA)*, Fountain St., S. East and College Aves. (10/28/83)
Waukesha, *Cook, Alexander, House (Waukesha MRA)*, 600 E. North St. (10/28/83)
Waukesha, *Cutler, Morris, House (Waukesha MRA)*, 401 Central Ave. (10/28/83)
Waukesha, *Downtown Historic District (Waukesha MRA)*, Roughly bounded by Broadway, Grand Ave., Clinton and South Sts. (10/28/83)
Waukesha, *Dwinnell, George, House (Waukesha MRA)*, 442 W. College Ave. (10/28/83)
Waukesha, *Elliott, Dr. F.C., House (Waukesha MRA)*, 501 Dunbar Ave. (10/28/83)
Waukesha, *First Baptist Church (Waukesha MRA)*, 247 Wisconsin Ave. (10/28/83)
Waukesha, *First Methodist Church (Waukesha MRA)*, 121 Wisconsin Ave. (12/01/83)
Waukesha, *Frame, Andrew, House (Waukesha MRA)*, 507 N. Grand Ave. (10/28/83)
Waukesha, *Grace, Perry, House (Waukesha MRA)*, 307 N. West Ave. (10/28/83)
Waukesha, *Grand View Health Resort (Waukesha MRA)*, 500 Riverview Ave. (01/31/84)
Waukesha, *Hemlock, David J., House (Waukesha MRA)*, 234 Carroll St. (12/01/83)
Waukesha, *Howitt, John, House (Waukesha MRA)*, 407 N. Grand Ave. (10/28/83)
Waukesha, *Jones, Robert O., House (Waukesha MRA)*, 501 W. College Ave. (10/28/83)
Waukesha, *Laflin Avenue Historic District (Waukesha MRA)*, W. Laflin and Garfield Aves. (10/28/83)
Waukesha, *Mann, William G., House (Waukesha MRA)*, 346 Maple Ave. (10/28/83)
Waukesha, *McCall Street Historic District (Waukesha MRA)*, McCall and James Sts., and N. East and Hartwell Aves. (12/01/83)
Waukesha, *Moore, Dr. Volney L., House (Waukesha MRA)*, 307 E. Main St. (10/28/83)
Waukesha, *National Hotel (Waukesha MRA)*, 235 W. Main St. (10/28/83)
Waukesha, *Nickell, William A., House (Waukesha MRA)*, 511 Lake St. (10/28/83)
Waukesha, *Pokrandt Blacksmith Shop (Waukesha MRA)*, 128 E. St. Paul Ave. (10/28/83)
Waukesha, *Pratt, Hannah, House (Waukesha MRA)*, 501 Barney St. (10/28/83)
Waukesha, *Putney, Frank H., House (Waukesha MRA)*, 223 Wisconsin Ave. (10/28/83)
Waukesha, *Resthaven Hotel (Waukesha MRA)*, 915 N. Hartwell Ave. (10/28/83)
Waukesha, *Sanger, Caspar M., House (Waukesha MRA)*, 507 E. College Ave. (10/28/83)
Waukesha, *Silurian Mineral Springhouse (Waukesha MRA)*, Post Office Circle (01/31/84)
Waukesha, *Sloan, William P., House (Waukesha MRA)*, 912 N. Barstow St. (10/28/83)
Waukesha, *Smith, Camillia, House (Waukesha MRA)*, 603 N. West Ave. (10/28/83)
Waukesha, *St. Joseph's Catholic Church Complex (Waukesha MRA)*, 818 N. East Ave. (10/28/83)
Waukesha, *St. Matthias Episcopal Church (Waukesha MRA)*, 111 E. Main St. (10/28/83)
Waukesha, *Totten-Butterfield House (Waukesha MRA)*, 515 N. Grand Ave. (01/31/84)
Waukesha, *Waukesha Post Office (Waukesha MRA)*, 235 W. Broadway Ave. (10/28/83)
Waukesha, *Waukesha Pure Food Company (Waukesha MRA)*, 550 Elizabeth St. (10/28/83)
Waukesha, *Welch, C.A., House (Waukesha MRA)*, 1616 White Rock Ave. (10/28/83)
Waukesha, *Wisconsin Avenue Historic District (Waukesha MRA)*, Wisconsin and Maple Aves. (10/28/83)
Waukesha, *Yanke, Louis, Saloon (Waukesha MRA)*, 200 Madison Ave. (10/28/83)

Waupaca County

Fremont vicinity, *Sanders Site (47WP26 and 47WP70)*, Off WI 110 (02/09/84)
Waupaca, *Shearer-Cristy House*, 315 E. Lake St. (12/22/83)

Winnebago County

Clayton, *Larson Brothers Airport*, WI 150 (04/05/84)
Menasha, *Menasha City Hall*, 124 Main St. (03/15/84)
Neenah vicinity, *Brainerd Site (47WP289)*, (09/07/84)
Neenah, *Vining, Gorham P., House*, 1590 Oakridge Rd. (12/08/83)
Neenah, *Wisconsin Avenue Historic District*, 106–226 W. Wisconsin Ave., 110 Church St. (06/14/84)
Oshkosh, *Guenther, Richard, House*, 1200 Washington Ave. (03/01/84)
Oshkosh, *Morgan, John R., House*, 234 Church Ave. (10/14/83)

WYOMING

Albany County

Laramie, *St. Matthew's Cathedral Close*, 104 S. 4th St. (04/12/84)
Laramie, *St. Paulus Kirche*, 602 Garfield (11/25/83)

Carbon County

Arlington, *Arlington*, S of I–80 (11/25/83)
Baggs vicinity, *Divide Sheep Camp*, NE of Baggs (02/09/84)
Baggs, *First State Bank of Baggs*, 10 S. Miles St. (09/13/84)
Hanna, *Hanna Community Hall*, Front St. (11/28/83)
Rawlins, *France Memorial United Presbyterian Church*, 3rd and Cedar Sts. (05/14/84)
Saratoga, *Hugus Hardware*, 123 E. Bridge St. (04/05/84)

Converse County

Glenrock, *Hotel Higgins*, 416 W. Birch (11/25/83)

Crook County

Sundance, *Sundance State Bank*, 301 Main St. (03/23/84)

Goshen County

Jay Em, *Jay Em Historic District*, Main St. (04/12/84)

Hot Springs County

Thermopolis, *Downtown Thermopolis Historic District*, Broadway, 5th and 6th Sts. (05/10/84)

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Johnson County

Buffalo, *Main Street Historic District*, Main St. (04/12/84)

Laramie County

Cheyenne, *Hynds Lodge*, Curt Gowdy State Park (03/23/84)
Horse Creek vicinity, *Dereemer Ranch Historic District*, E of Horse Creek (11/25/83)

Natrona County

Casper, *Midwest Oil Company Hotel*, 136 E. 6th St. (11/17/83)
Casper, *Townsend Hotel*, 115 N. Centre St. (11/25/83)

Platte County

Chugwater vicinity, *Diamond Ranch*, NW of Chugwater (09/28/84)

Sheridan County

Big Horn, *Johnson Street Historic District*, Johnson, 1st, and 2nd Sts. (04/09/84)
Clearmont, *Clearmont Jail*, Water St. (05/14/84)
Dayton, *Wissler, Susan, House*, 406 Main St. (03/06/84)

Sweetwater County

South Superior, *South Superior Union Hall*, Main and Bridge Sts. (11/25/83)

Uinta County

Evanston, *Downtown Evanston Historic District*, Roughly bounded by Center, 9th, 11th, and Front Sts. (11/25/83)
Evanston, *Quinn, A.V., House*, 1049 Center St. (09/13/84)

The following properties were omitted from a previous annual list of the National Register of Historic Places.

NEW YORK

Queens County

New York, *Stockholm-DeKalb-Hart Historic District (Ridgewood MRA)*, DeKalb and Woodward Aves., Stockholm and Hart Sts. (09/30/83)

WEST VIRGINIA

Wood County

Parkersburg, *Guaranty Building (Downtown Parkersburg MRA)*, 217 4th St. (10/08/82)

The following properties have been demolished and/or removed from the National Register of Historic Places.

COLORADO

Denver County

Denver, *Ghost Building*, 500–518 15th St. (06/06/84)

GEORGIA

Thomas County

Thomasville, *Thomasville Historic District*, Roughly bounded by North Blvd., Loomis, Hansell, and Oak Sts. (09/07/84)

IDAHO

Idaho County

Grangeville vicinity, *Wylies Peak Lookout*, E of Grangeville in Nez Perce National Forest (10/17/83)

ILLINOIS

Mercer County

Keithsburg, *United Presbyterian Church*, Main and 8th Sts. (07/17/84)

Morgan County

Jacksonville, *Jacksonville State Hospital Main Building*, 1201 S. Main St. (04/18/84)

IOWA

Boone County

Boone, *Finnegan Flats*, 710–718 7th St. (04/28/83)

Polk County

Des Moines, *Des Moines Rapid Transit Company Car Barn*, 24th and Ingersoll Ave. (11/30/83)

MINNESOTA

Brown County

New Ulm, *Ruemke Mercantile Store (Brown County MRA)*, 226 N. Minnesota (05/04/84)

McLeod County

Hutchinson, *Maplewood Academy*, 700 N. Main St. (03/12/84)

Murray County

Slayton, *Murray County Courthouse*, Main and 7th Sts. (03/12/84)

Olmsted County

Rochester, *Cutting, Lucius, Barn*, 3210 19th St. NW (05/04/84)

Stearns County

St. Cloud, *St. Cloud Public Library (Stearns County MRA)*, 124 Fifth Ave. S. (03/12/84)

NEW JERSEY

Mercer County

Lawrenceville vicinity, *Princessville Inn*, E of Lawrenceville at 3510 Princeton Pike (06/11/82)

NEW MEXICO

McKinley County,

Gallup, *Cotton, C.N., House*, 406 W. Aztec Ave. (09/05/84)

OHIO

Allen County

Delphos vicinity, *Moenter Round Barn (Round Barns in the Black Swamp of Northwest Ohio TR)*, E of Delphos (05/05/84)

Cuyahoga County

Cleveland, *Cuyahoga Building*, 216 Superior Ave. NE (05/05/83)
Cleveland, *Sterling School*, 2104 E. 30th St. (05/05/84)

Erie County

Sandusky, *Baltimore and Ohio Railroad Company Depot*, Washington and Warren Sts. (05/05/83)

Jefferson County

Smithfield, *Smithfield School*, High St. (05/05/83)

Lucas County

Toledo, *Manhattan Building*, 518 Jefferson Ave. (05/05/83)
Toledo, *St. Paul's United Methodist Church*, Madison and 13th Sts. (05/05/83)
Toledo, *Toledo City Market*, 237 S. Erie St. (05/05/83)
Toledo, *Toledo News-Bee Building*, 604 Jackson St. (05/05/83)

Morrow County

Cardington, *Exchange Hotel*, W. Main St. (05/05/83)

Summit County

Twinsburg vicinity, *Herrick, Jonathan, House*, 8327 Darrow Rd. (05/05/83)

OREGON

Benton County

Monroe vicinity, *Belknap, Ransom A., House*, W of Monroe (05/14/82)

Marion County

Silverton vicinity, *McCorkle, George F., House*, W of Silverton (02/08/84)

TEXAS

Dallas County

Sallas, *Trinity Methodist Episcopal Church*, 2120 McKinney Ave. (11/09/83)

Parker County

Tin Top vicinity, *Tin Top Suspension Bridge*, S of Tin Top on FM 1884 (11/09/83)

UTAH

Salt Lake County

Salt Lake City, *Salt Lake Stamp Company Building (Salt Lake City Business District MRA)*, 43 W. 300 (11/17/83)

Utah County

Springville, *Houtz, Jacob, House*, 980 N. Main St. (11/30/83)

WASHINGTON

Pierce County

Tacoma, *North 4th and Dock Street Bridge (Historic Bridges/Tunnels in Washington State TR)*, Dock St. (03/13/84)

WEST VIRGINIA

Jackson County

Ravenswood, *Old Ravenswood School*, Henry St. (04/16/84)

WISCONSIN

Brown County

Green Bay, *East Moravian Church*, 512 Moravian St. (11/03/83)
Green Bay, *Knap's Restaurant*, 212–214 N. Washington St. (03/29/84)

Milwaukee County

St. Francis, *Old St. Peter's Church*, 3257 S. Lake Dr. (11/03/83)

Outagamie County

Appleton, *Volksfreund Building*, 200 E. College Ave. (03/29/84)

Rock County

Milton vicinity, *Dean-Armstrong-Englund Octagonal Barn (Centric Barns in Rock County TR)*, NE of Milton (03/30/84)

Washburn County

Shell Lake, *Salem Lutheran Church*, 301 8th Avenue, West (09/06/84)

Waukesha County

Muskego, *Philadelphia Toboggan Company Carousel No. 15*, Janesville Rd. (05/07/84)

The following properties have been determined to be eligible for inclusion in the "National Register." Determinations of eligibility are made at the request of the concerned Federal Agency under the authority in section 2(b) and 1(3) of Executive Order 11593, and the National Historic Preservation Act of 1966, as amended. Determinations of eligibility are also made on nominations for privately owned property where the owner or a majority of owners for properties with multiple owners object to listing.

Historic properties which are determined to be eligible for inclusion in the National Register of Historic Places are entitled to protection pursuant to section 106 of the National Historic Preservation Act or 1966, as amended, and the procedures of the Advisory Council on Historic Preservation, 36 CFR, Part 800. Before an agency of the Federal Government may undertake any project which may have an effect on such an eligible property, the Advisory Council on Historic Preservation shall be given an opportunity to comment on the proposal.

ALABAMA

Coffee County

Elba Dam and Powerhouse, (10/20/83)

Jefferson County

Birmingham, *Ridgely Apartment Building*, (04/02/84)

Mobile County

Mobile, *Mobile National Cemetery*, (06/27/84)

Montgomery County

Montgomery, *East Dexter Avenue Historic District*, 201–255 Dexter Ave. (odds only) (09/16/84)

ALASKA

Fairbanks Division

Fairbanks, *Coal Bunkers*, 270 Illinois St. (07/12/84)
Fairbanks, *Fairbanks Exploration Co. Industrial Complex*, 700 Blk Illinois St. (07/12/84)
Fairbanks, *Fairbanks Exploration Company Housing*, 507 and 521 Illinois St. (07/12/84)
Fairbanks, *Rose Building*, 520 Church St. (07/12/84)
Fairbanks, *Sexton House*, 315 Illinois St. (07/12/84)
Fairbanks, *White House (Sisters' Convent)*, 757 Illinois St. (07/12/84)

Kodiak Division

Sitkinak Island, *Site XTI–052*, (02/23/84)

Seward Division

Archeological Site SEW–187, (08/13/84)

ARIZONA

Coconino County

Archeological Sites AZJ18–2 and AZJ18–3, also in Navajo County (03/06/84)
Archeological Sites AZJ19–3, 8, 9, 10, 11, and 12, also in Navajo County (03/06/84)
Archeological Sites AZJ31–2, 3, 5, 6, 7, 8, and 9, also in Navajo County (03/06/84)

Gila County

Shoofly Village Ruin (AR–03–12–04–20), Tonto National Forest (06/05/84)
Payson vicinity, *Archeological Sites AR–03–12–04–52, 113, 118, 139, 141, 142, 210, 256, 470, 471, 487, 488, 489, 490, 491, 511, 516, 525, 534, 535, 536, 537, 541, 542, and 543*, (06/05/84)

Maricopa County

Phoenix, *DeMkund, Herman P., House (Roosevelt Neighborhood MRA)*, (11/30/83)
Phoenix, *Greystone Apartments (Roosevelt Neighborhood MRA)*, 645–649 N. 4th Ave. (11/30/83)
Phoenix, *Hanny's Clothing Store*, (08/24/84)
Phoenix, *Knights of Pythias Building (Roosevelt Neighborhood MRA)*, (11/30/83)
Tempe, *Cooper, J.D., Saloon (Tempe MRA)*, (05/08/84)
Tempe, *Moeur, Gov. Benjamin B., House (Tempe MRA)*, (05/07/84)
Tempe, *Moeur, Sidney B., House (Tempe MRA)*, (05/07/84)
Tempe, *Murphy, E.A., House (Tempe MRA)*, (05/07/84)
Tempe, *Sachs, Wolf, House (Tempe MRA)*, (05/07/84)

Mohave County

Horse Valley Ranch (Waring Ranch), (01/27/84)

ARKANSAS

Independence County

Batesville, *Lock and Dam No. 1*, (03/14/84)

CALIFORNIA

Alameda County

Oakland, *Preservation Park Historic District (CHD)*, Bounded by Grove, 11th, Castro and 14th Sts. (09/05/84)
Oakland, *Victorian Row-Old Oakland Historic District (CHD)*, Bounded by 7th, Broadway, 10th and Clay Sts. (09/05/84)

Contra Costa County

Pittsburg, *New York Landing Historic District (CHD)*, E. 3rd, E. 4th and Railroad Ave. (09/05/84)
Walnut Creek, *Civic Park Bridge*, (06/07/84)

Del Norte County

Crescent City vicinity, *Archeological Site CA–DNO–53*, (08/28/84)

Fresno County

Balch Camp, *Archeological Sites CA–FRE–502, 503, 504, 505, 506 and 507*, (07/30/84)

Humbolt County

Archeological Site CA–HUM–700, (04/24/84)
Archeological Site CA-HUM–204/112, (12/09/83)
Pilot Ridge Archeological/Historical District, (05/07/84)

Lake County

Cache Creek Bridge, (12/08/83)

Lassen County

Archeological Site CA–LAS–587, (12/19/83)
Archeological Site CA–LAS–916, (12/19/83)

Los Angeles County

Downey, *McDonald's Drive-In Restaurant and Sign*, (01/19/84)
Hancock Park, *Rancho La Brea Fossil Deposits*, (01/30/84)
North Hollywood, *El Portal Theatre*, (02/10/84)
North Hollywood, *Paperback Shack Books Building*, (02/10/84)
North Hollywood, *Phil's Diner*, (02/10/84)

Marin County

Sausalito, *Sausalito Central Business Historic District (CHD)*, 558–789 Bridgeway, El Portal and Princess St., portions of Bulkley Ave. (09/05/84)

Mendocino County

Archeological Site CA–MEN–1802, (10/24/83)

Placer County

Wise Powerhouse, (03/14/83)

Plumas County

Nelson Creek Bridge, (11/28/83)

San Diego County

Archeological Site (SDI–9203), (12/19/83)
Archeological Site (SDI–9207), (12/19/83)
Archeological Site (SDI–9208), (12/19/83)
Archeological Site (SDI–9209), (12/19/83)
Archeological Site (SDI–9212), (12/19/83)
Archeological Site CA–SDI–4782, (03/12/84)
Archeological Site CA–SDI–5589, (05/08/84)
La Mesa, *La Mesa Depot*, (07/03/84)

Santa Clara County

Pacheco Creek Bridge, (01/25/84)
San Jose, *Southern Pacific Depot*, (01/17/84)

Shasta County

Archeological Site CA–SHA–1169, (12/09/83)
Archeological Site CA–SHA–1170, (12/09/83)
Archeological Site CA–SHA–1175, (12/09/83)
Archeological Site CA–SHA–1176, (12/09/83)
Archeological Site CA–SHA–476, (12/09/83)
Archeological Site CA–SHA–511, (12/09/83)
Harlan D. Miller Bridge (CA–SHA–1060) (Dog Creek Bridge), (05/29/84)

Siskiyou County

Meek Archeological Site (CA–SIS–900), (08/06/84)

Solano County

Archeological Site CA–SOL–313, (08/14/84)

Trinity County

CA–TRI–429 (Leldin Village), (12/09/83)

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South Fork Trinity River Bridge No. 4–50. (12/09/83)

Ventura County

San Buenaventura, *San Buenaventura Historic District (CHD).* Plaza Park and properties south of the park in the 600 blk of E. Thompson Blvd. (09/05/84)

COLORADO

Boulder County

Boulder, *Mapelton Hill Historic District (CHD).* Roughly bounded by Mountain View Rd, 11th and Dewey Sts. (09/05/84)

Grand County

Berthound Pass Chairlift (5GA742). (12/30/83)

La Plata County

Durango Rock Shelters Archeological Site. (06/26/84)

Larimer County

Alta Vista Neighborhood (5LR990). (05/02/84)
Breniman Farm (5LR993). (05/02/84)
Mandeville Farm (5LR789). (01/27/84)
Milk House (5LR964). (01/27/84)
Plummer School (5LR778). (05/02/84)

Otero County

Swink Bridge (5OT217). Arkansas River (03/27/84)

Pitkin County

Aspen, *Aspen Historic District (CHD).* Roughly bounded by Durant Ave., Main, Monarch, and Hunter Sts. (09/05/84)

CONNECTICUT

Fairfield County

New Canaan, *New Canaan Historic District (CHD).* Roughly bounded by Oenoke Lane, Heritage Hill and the S side of Seminary St. containing properties on both sides of Oenoke Ridge, Main and Park Sts. (09/05/84)

Hartford County

Hartford, *Phelps, Antoinette Randolph, House,* 276 Washington St. (02/11/84)
Hartford, *Royal Typewriter Company Building,* 150 New Park Ave. (02/13/84)

Middlesex County

Durham, *Durham Public Library.* (06/04/84)

New Haven County

Housatonic Water Power Company Dam and Canals, also in Fairfield County (02/08/84)
Branford, *Malleable Iron Fittings Company,* Maple Ave. (05/03/84)
Branford, *US Post Office-Branford,* (06/26/84)
New Haven, *Imperial Granum-Joseph Parker Building,* (04/06/84)
New Haven, *Lighthouse Point Park Carousel Bldg.* (02/09/84)

Windham County

Putnam, *Powhatan Mill Complex,* (11/17/83)

DELAWARE

New Castle County

Wilmington, *Delaware Avenue Historic District (CHD).* Roughly bounded by N. Broom St. and Harrison St. on Delaware Ave. (09/05/84)
Wilmington, *Eastside Historic District,* (10/18/83)

Sussex County

Rehoboth Avenue Bridge, (01/26/84)

DISTRICT OF COLUMBIA

Riggs-Tompkins Building, 14th St. and Park Rd. NW (08/30/84)

FLORIDA

Dade County

Fort Lauderdale, *Fort Lauderdale Historic District (CHD).* Roughly bounded by Broward Blvd., SW 2nd Ave., New River Dr., and SW 5th Ave. (09/05/84)
Miami Beach, *Fire Station No. 2 (Dade Blvd. Fire Station).* (11/17/83)

DeSoto County

Mizell Mound "A" (APLS #15). (11/22/83)
Mizell Mound "C" 8DE33 (APLS #17). (11/22/83)

Duval County

Barsco Supply Company. (01/20/84)
US Post Office (West Boy Annex). (01/20/84)

Escambia County

Pensacola, *North Hill Historic District (CHD).* Roughly bounded by Moreno, Gillemard, Wright, and De Villiers Sts. (09/05/84)

Hillsborough County

Muck Pond Site (8HI515). (01/20/84)

Lee County

Fort Myers, *Fort Myers Downtown Commercial District,* (06/11/84)
Fort Myers, *Fort Myers Residential Historic District,* (06/11/84)

Manatee County

Airstrip Village 8MA181 (APLS #41). (11/22/83)
Sugarbowl Mound 8MA64 (APLS #1). (11/22/83)
Bradenton, *Downtown Bradenton Historic District (CHD).* Roughly bounded by 3rd Ave. W., 9th St. W, 8th Ave. W., 14th St. W (09/05/84)
Bradenton, *Old Manatee Historic District (CHD).* Roughly bounded by E. 3rd, 9th, 4th, Manatee Ave., 10th, 8th and 9th St. E. (09/05/84)

Orange County

Orlando *Downtown Historic District (CHD).* Roughly bounded by Jefferson and South Sts., Rosaland, S. Bryan and N. Gertrude Aves., and W. Central Blvd. (09/05/84)
Orland, *Lake Cherokee Historic District (CHD).* Roughly bounded by East-West Exp., S. Summerlin Ave., Lake Davis, E. Gore, Euclid, S. Delaney and S. Orange Aves. (09/05/84)

Palm Beach County

Boca Raton, *Administration Building,* 2 Camino Real (05/24/84)

Polk County

Lakeland, *Lake Munn Historic District (CHD).* Roughly bounded by Bay and Orange Sts., Massachusetts/Iowa, and Missouri Aves., Lake Mirror Shoreline (09/05/84)

Sarasota County

Sarasota, *Bay Haven Hotel (John Ringling School of Art) (Sarasota MRA).* (03/22/84)
Sarasota, *Burns Realty Co./Karl Bickel House (Sarasota MRA).* (03/22/84)
Sarasota, *City Electric Light and Power Plant (Sarasota MRA).* (09/14/84)
Sarasota, *Cunliff Residence (Bay View Cottage) (Sarasota MRA).* (03/22/84)
Sarasota, *El Vernona Hotel (John Ringling Hotel) Sarasota MRA).* (03/22/84)
Sarasota, *Gillespie House (Sarasota MRA).* (03/22/84)
Sarasota, *Iwersen Block (Sarasota MRA).* 1367 & 1369 Main St. (04/23/84)
Sarasota, *Reagin, L. D., House (Sarasota MRA).* (03/22/84)

Volusia County

Tarragona Arch. (10/12/83)

GEORGIA

Clarke County

Tallassee Shoals, also in Jackson County (11/18/83)
Athens, *Oconee Hill Cemetery,* (04/16/84)

DeKalb County

Moreland Historic District, also in Fulton County (11/28/83)
North Highland/North Avenue Historic District, also in Fulton County (11/28/83)
Chamblee, *Nancy Creek Primitive Baptist Church Cemetery,* (06/29/84)
Chamblee, *Samuel House and Plantation,* (06/29/84)
Decatur, *Candler Hotel.* (01/10/84)

Dougherty County

Archeological Site GPDU01. (01/06/84)
Archeological Site GPDU02. (01/06/84)

Floyd County

Rome, *Hamilton-Bass-Burnes House,* (05/15/84)
Rome, *High Acres,* (05/15/84)
Rome, *Seven Oaks,* (05/15/84)
Rome, *Thornwood.* (05/15/84)

Fulton County

East Point, *Jefferson Park District.* (04/27/84)
East Point, *Martin Street Industrial District,* (04/27/84)

Gwinnett County

Lawrenceville, *Smith-Cleveland-Vaughan House.* (04/26/84)

Jefferson County

Bridge #081/00255/X/00059, over Rocky Comfort Creek (07/17/84)

Richmond County

Augusta, *Augusta Historic Preservation District (CHD).* Roughly bounded by 7th, Telfair, Walker Sts. and Gordon Hwy. (09/05/84)

Walton County

Between, *Upshaw, James Berrier, Homeplace,* (11/28/83)

GUAM

Asan Village, *Asan Village Site*, (12/09/83)

HAWAII

Hawaii County

Hawaii, *Kohala Foreign Church*, Hawi Rd. (07/09/84)

Honolulu County

Honolulu, *Fort Kamehameha Historic District*, (01/24/84)
Oahu, *Mokapu Peninsula Fishpond Complex (Nuupia Ponds)*, Kaneohe Bay (08/08/84)

Maui County

Molokai, *Archeological Site 50-60-03-927*, (01/25/84)
Molokai, *Archeological Sites 50-60-03-913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, and 925*, (01/25/84)
Molokai, *Archeological Sites 50-60-03-928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, and 945*, (01/25/84)
Molokai, *Archeological Sites 50-60-03-947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, and 970*, (01/25/84)

IDAHO

Fremont County

Buffalo Ranger Station, Targhee National Forest (01/17/84)

ILLINOIS

Cook County

Evanston, *Abbey Garth Apartments (Suburban Apartment Bldgs in Evanston TR)*, (03/15/84)
Evanston, *Boylston Flats (Suburban Apartment Bldgs in Evanston TR)*, (03/15/84)
Evanston, *Chateau de Chaumont (Suburban Apartment Bldgs in Evanston TR)*, (03/15/84)
Evanston, *Churchview (Suburban Apartment Bldgs in Evanston TR)*, (03/15/84)
Evanston, *Evanston (Suburban Apartment Bldgs in Evanston TR)*, (03/15/84)

DuPage County

Hinsdale, *Highlands Passenger Station*, 95 Highlands Rd. (09/13/84)

Kane County

Aurora, *Near Eastside Historic District (CHD)*, Roughly bounded by Marve Ave., Anderson and LaSale (09/05/84)

Lake County

Highland Park, *Old Briargate Station (Highland Park MRA)*, 1495 Old Deerfield Rd. (12/13/83)
Waukegan, *Waukegan Public Library*, (12/07/83)

Livingston County

Vieley Bridge, Over the north fork of the Vermillion River (10/06/83)

Madison County

North Alton Confederate Cemetery, (12/22/83)

INDIANA

Floyd County

New Albany National Cemetery, (08/07/84)

IOWA

Henry County

Lowell vicinity, *Boyleston Bridge*, (02/21/84)

Jones County

Fremont Mill Bridge, Buffalo Creek (06/12/84)

Scott County

Davenport, *Aschermann Bros. Grocery (Davenport MRA)*, 1509 Harrison (07/27/84)
Davenport, *Cora Lee Roy Apartments (Davenport MRA)*, 600-608 Brady St. (07/24/84)
Davenport, *Nutting Carriage House (Davenport MRA)*, 1326 E. River Dr. (07/24/84)

Washington County

Archeological Site 13WS122, (08/28/84)
Archeological Site 13WS126, (08/02/84)
Archeological Site 13WS61, (08/02/84)
Archeological Site 13WS65, (08/02/84)

Webster County

Fort Dodge, *Hawkeye Avenue Bridge*, Over Des Moines River (02/02/84)

Woodbury County

Sioux City, *St. Monica Hospital*, 4500 Hamilton Blvd. (04/05/84)

KANSAS

Bourbon County

Fort Scott National Cemetery, (05/03/84)

Butler County

Gordon vicinity, *Gordon Bridge*, (05/23/84)

Leavenworth County

Leavenworth, *Fort Leavenworth National Cemetery*, (11/23/83)

Pottawatomie County

Manhattan, *Manhattan Downtown Historic District (CHD)*, Roughly bounded by Anderson Ave., 7th and 3rd Sts. and Griffith Ball Park (09/05/84)

KENTUCKY

Green County

Roachville, *Buchanan House (Green County MRA)*, KY 208 (08/24/84)

Jefferson County

Zachary Taylor National Cemetery, (12/22/83)

Madison County

Richmond, *Clay, Pattie Field, House (Richmond MRA)*, (03/27/84)
Richmond, *Elmwood (Richmond MRA)*, (03/26/84)
Richmond, *Woodlawn (Richmond MRA)*, (03/19/84)

Owen County

Owenton, *Gibson House (Owenton MRA)*, 120 S. Main St. (09/04/84)

LOUISIANA

East Baton Rouge Parish

Baton Rouge National Cemetery, (10/26/83)

Lafourche Parish

M/V Fox (Boat), (06/19/84)

Orleans Parish

New Orleans, *Lafayette Square Historic District (CHD)*, Roughly bounded by O'Keefe and St. Joseph Aves., Poydras and Magazine Sts. (09/05/84)
New Orleans, *Lower Garden Historic District (CHD)*, Roughly bounded by St. Charles Ave., US 10, Tchoupitoulas, Race and Philip Sts. and Mississippi River (09/05/84)
New Orleans, *Picayune Place Historic District (CHD)*, Roughly bounded by St. Charles Ave., and Common, Tchoupitoulas, and Poydras Sts. (09/05/84)
New Orleans, *St. Charles Avenue Historic District (CHD)*, Roughly bounded by Carondolet, Prytania, Jena Sts. and Jackson Ave. (09/05/84)
New Orleans, *Warehouse Historic District (CHD)*, Roughly bounded by Magazine, Poydras, and S. Front Sts., Howard Ave. (09/05/84)

Rapides Parish

Alexandria National Cemetery, (04/20/84)

MAINE

Androscoggin County

Lewiston, *Kennedy Park (CHD)*, Roughly bounded by Pine, Blake, Birch and the alley W of Park St. (09/05/84)
Lewiston, *Lewiston Waterpower System*, (12/09/83)

Hampden County

Springfield, *Ridgewood Historic District (CHD)*, Roughly bounded by Union St., Mulberry St., and School St. (09/05/84)

Penobscot County

Bangor, *Bangor Theological Seminary (CHD)*, Roughly bounded by Union St., Hammond St., and Cedar St. (09/05/84)
Bangor, *Broadway Historic District (CHD)*, Roughly bounded by Garland St., Pine St., State St. and Broadway (09/05/84)
Bangor, *High Street Historic District (CHD)*, Roughly bounded by Hammond St., N. High St., Union St., and High St. (09/05/84)
Bangor, *Whitney Park Historic District (CHD)*, Roughly bounded by 8th St., Union St., Pond St. and Hayford Rd. (09/05/84)

MARYLAND

Allegany County

Paw Paw Village Site (18AG144), (03/21/84)

Anne Arundel County

Crofton, *Linthicum Walks*, (11/25/83)

Baltimore (Independent City)

East Baltimore/Butcher's Hill District, (12/30/83)
Eutaw Place/Madison Avenue Historic District (CHD), Properties on Eutaw Pl. and Madison Ave. between Druid Park Lake Dr. and North Ave. (09/05/84)

Harlem Park/Lafayette Sq. Historic District, (10/12/83)
Madison Park Historic District (CHD), Roughly bounded by North Ave., Morris St., Laurens St., and Tiffany St. (09/05/84)
Mt. Royal Terrace Historic District (CHD), Roughly bounded by Reservoir St., Park Ave., North Ave., and Mt. Royal Terrace (09/05/84)
Mt. Vernon Historic District (Expanded) (CHD), Roughly bounded by Mt. Royal Ave., Howard St., Gilford St., and Hamilton St. (09/05/84)
Otterbein Historic District (CHD), Roughly bounded by W. Barre St., S. Hanover St., W. Hughes St., and S. Sharp St. (05/02/84)
Parkway Theatre, (03/19/84)
Seton Hill Historic District (Expanded) (CHD), East side of 600 blk. of N. Eutaw St. (09/05/84)
Sterling Street Historic District (CHD), Bounded by Monument, Ensor, and Mott Sts. and Flatiron Alley (09/05/84)
Union Square Historic District (CHD), Roughly bounded by Fulton Ave., Baltimore, Schroder, Carey, and Pratt Sts. (09/05/84)
Waverly Historic District (CHD), Roughly 600 Blk. of 34th St. (09/05/84)

Cecil County

Messina Archeological Site (Delaware Chalcedony Complex TR), (12/16/83)
Elkton, *US Post Office-Elkton,* (10/28/83)

Frederick County

Frederick, *Birely Tannery Site,* (03/02/84)
Frederick, *Frederick Historic District (South Addition) (CHD),* Roughly bounded by E. 7th St., East St., Clarke Pl., E. South and North Bentz Sts. (09/05/84)

Montgomery County

Llewelyn Fields, (04/10/84)
Pleasant View Farm, (04/10/84)
Spencerville Historic District, (04/10/84)
Rockville, *Lyddane/Bradley Farm,* (04/09/84)

Prince Georges County

Hyattsville, *Hardware Store,* (04/10/84)
Hyattsville, *Hyattsville Post Office,* (04/10/84)
Hyattsville, *Professional Building,* (04/10/84)
Hyattsville, *Suburban Bank Building,* (04/10/84)
Hyattsville, *US Post Office-Hyattsville,* (10/28/83)

Somerset County

Fairmount, *Upper Fairmount Historic District,* (01/10/84)

Washington County

Williamsport Historic District, (01/30/84)

Wicomico County

Salisbury, *Downtown Historic District (CHD),* Roughly bounded by US Rt. 50, US Rt. 13, the Wicomico River, and Lake St. (09/05/84)
Salisbury, *Newtown Historic District (CHD),* Roughly bounded by Mill St., North St., Broad St., and Chestnut St. (09/05/84)

MASSACHUSETTS

Berkshire County

Lenox, *Lenox Historic District (CHD),* Properties along both sides of Main St. from Greenwood to West Sts., Franklin, Housatonic, Church and Walker Sts. (09/05/84)

Bristol County

Fall River, *Border City Mills (Fall River MRA),* (12/11/83)
New Bedford, *Bedford Landing-Waterfront Historic District (CHD),* Roughly bounded by Elm and Rodman Sts., Front St., Commercial St., Union St. and Acushnet Ave. (09/05/84)

Hampden County

Springfield, *Forest Park Heights Historic District (CHD),* Roughly bounded by Riverview and Westernview Sts., Fairfield St., Litchfield St., Sumner Ave., Forest Park Ave., Washington Blvd., and Longhill St. (09/05/84)
Springfield, *Lower Maple Historic District (CHD),* Roughly bounded by State St., School St., Union St., and Maple St. (09/05/84)
Springfield, *Maple Hill Historic District (CHD),* Roughly bounded by Cemetery Ave., Madison St., Pine St., Mill St., and Maple St. (Ames Hill and Crescent Hill) (09/05/84)
Springfield, *Ridgewood Historic District (CHD),* Roughly bounded by Union St., Mulberry St., and School St. (09/05/84)

Hampshire County

Ware, *Casino Theatre,* (01/03/84)
Ware, *Guild Block,* 66–80 Main St. (01/27/84)
Ware, *Houses at 6–12, 14–20, 22–28 Otis Avenue,* (01/27/84)
Ware, *Kaplan Block,* 91 Main St. (01/27/84)
Ware, *Robinson-Hitchcock Block,* 112–114 Main St. (01/27/84)
Ware, *Unitarian Church,* Main St. (01/27/84)

Middlesex County

Carlisle, *Carlisle Historic District (CHD),* Properties extending out from the Monument juncture on Lowell and East Sts., Bedford Rd., School St., Concord and Westford Rds. (09/05/84)
Framingham, *804 Edgell Road (Nobscot Grange Hall),* (01/12/84)
Stoneham, *Lang, William Bailey, House (Stoneham MRA),* Lakeview Dr. at Woodland (04/13/84)
Stoneham, *Martin-Maxwell Estate (Stoneham MRA),* 58 Elm St. (04/13/84)
Stoneham, *Sweetser, Warren, House (Stoneham MRA),* 434 Main St. (04/13/84)

Norfolk County

Quincy, *Souther Tide Mill,* (07/26/84)

Suffolk County

Boston, *Bay State Road/Back Bay West Historic District (CHD),* Bounded by W. Charlesgate, Newberry, Graham, alley S. of Bay State Rd., Bay State Rd., and Back St. (09/05/84)
Boston, *St. Botolph Street Historic District (CHD),* Bounded by Harcourt, alley E of Huntington, alley N of Mass. Ave., and NY, NH & Hartford R.O.W. (09/05/84)

Worcester County

Uxbridge, *Sprague, Albert, House (Uxbridge MRA),* 88 Mendon St. (10/07/83)

MICHIGAN

Genesee County

Linden, *Linden Downtown Historic District,* Roughly bounded by the Shiawassee River, N. Main St., Hickory St., S. Bridge and N. Bridge Sts. (09/05/84)

Houghton County

Houghton, *1017 College Avenue,* (10/11/83)
Houghton, *1101 College Avenue,* (10/11/83)
Houghton, *Alumni Building (Michigan Technological University),* Mich. Technological Univ. campus (10/11/83)
Houghton, *C.C. Douglass-Alf Labine Residence,* 1019 College Ave. (10/11/83)
Houghton, *Douglass, W. Corbin, Residence,* 1210 College Ave. (10/11/83)
Houghton, *Duggan, Leo F., Residence,* 916 College Ave. (10/11/83)
Houghton, *Duluth, South Shore and Atlantic RR Depot,* Lake St. at Huron St. (10/11/83)
Houghton, *Edwards, R.M., Residence,* 1020 College Ave. (10/11/83)
Houghton, *Gual, Jane V., Residence,* 1206 College Ave. (10/11/83)
Houghton, *Hoar, John Jr., Residence,* 1109 College Ave. (10/11/83)
Houghton, *Pryor, Reginald, Residence,* 1015 College Ave. (10/11/83)
Houghton, *Reese, Allen F., Residence,* 916 College Ave. (10/11/83)

Iron County

Elmwood Camp (201058), Ottawa National Forest (08/02/84)

Kent County

Grand Rapids, *Heartside Historic District (CHD),* Roughly bounded by Louis St., Division Ave., Cherry St., and Ionia Ave. (09/05/84)

Muskegon County

Muskegon, *Clay-Western Historic District (CHD),* Western Ave., 4th St., Clay Ave., 6th St., Webster St., and 7th St. (09/05/84)

Oakland County

Holly, *Central Downtown Historic District (CHD),* Washinton St., Martha St., S. Broad, E. Maple to N. Saginaw, Front St. to Railroad St. (09/05/84)
Holly, *District #2 (CHD),* North and South lots on Maple St. between Cogshall and Washington St.; West lots on College between Main and Maple St. (09/05/84)

Saginaw County

Township Wastewater Plant Site (20SA620), (08/30/84)
Saginaw, *Old Saginaw City Historic District (CHD),* S. Michigan to N. Michigan to Cleveland St. to Saginaw River to Van Buren St. to Michigan (09/05/84)

Washtenaw County

Lima, *South Lima Rural Historic District,* (04/19/84)
Ypsilanti, *Ypsilanti Historic District (CHD),* Roughly bounded by Forest St., Prospect

St., Michigan St., Buffalo St. and N. Hamilton St. (09/05/84)

Wayne County

Detroit, *Adair Warehouse*, (05/29/84)
Detroit, *Berry Historic District (CHD)*, Roughly bounded by E. Jefferson Ave., Parkview Dr., the Detroit River, and Fiske St. (09/05/84)
Detroit, *Murphy Ironworks Office Building*, (05/29/84)
Detroit, *New Center Historic District (CHD)*, Roughly bounded by Euclid, Woodward, 2nd, Lothrop and 3rd Aves. (09/05/84)

MINNESOTA

Aitkin County

Archeological Site 21AK29, (01/12/84)

Goodhue County

Red Wing, *Downtown Historic District (CHD)*, Roughly bounded by Bush, Main, and Broad Sts. (09/05/84)

Hennepin County

Lower St. Anthony Falls Hydrostation, (01/30/84)
Minneapolis, *Barry, Margaret, Settlement House*, 759 Pierce St. NE (01/18/84)
Minneapolis, *Northwestern Bell Telephone Company Building*, 224 5th St., South (01/18/84)
Minneapolis, *Rand Tower*, 527–529 Marquette Ave. (01/18/84)
Minneapolis, *Southeast Fifth Street Historic District (CHD)*, Along 5th St. between 9th and 4th Ave. (09/05/84)
Minneapolis, *Warehouse Historic District (CHD)*, Roughly bounded by 1st., Washington, 6th and 3rd Aves. (09/05/84)
Minneapolis, *Warehouse Preservation District*, (01/03/84)
Minneapolis, *Washburn Fair Oaks Historic District (CHD)*, Roughly bounded by 26th St., Franklin, 4th and Lincoln Aves. (09/05/84)

Kittson County

Hallock vicinity, *Hill, James J., Worthcote Farm*, (10/20/83)

Olmsted County

Oronoco, *Oronoco Bridge No. 448*, (02/06/84)

Otter Tail County

Perham vicinity, *Schroeder's Brewery*, US 10 (03/04/84)

Ramsey County

St. Paul, *Heimbach, Edward and Elizabeth, House and Carriage House*, 64 W. Delos St. (10/20/83)

Rice County

Faribault, *Faribault Heritage Preservation District (CHD)*, Roughly bounded by Central Ave., 4th and Division Sts. and 1st Ave. (09/05/84)

St. Louis County

Duluth, *St. Louis Courthouse*, (07/05/84)

MISSOURI

Andrew County

St. Joseph vicinity, *Archeological Site 23AN56*, (07/10/84)

Buchanan County

St. Joseph, *Old City Auditorium*, 4th and Faraon Sts. (04/24/84)

Clay County

Kansas City, *Nelle E. Peters Historic District (CHD)*, 3600 Summit and portions of the 700 blk of W. 37th (09/05/84)

Greene County

Archeological Site 23GR535, (02/16/84)

Jackson County

Kansas City, *1219 Main Street*, (02/23/84)
Kansas City, *1221–23 Main Street*, (02/23/84)
Kansas City, *Armour/Gillham Historic District (CHD)*, Roughly bounded by north side of East Blvd., between Warwick, and Locust St. (09/05/84)
Kansas City, *Bonfils Building*, (02/23/84)
Kansas City, *Dixon Inn*, (02/23/84)
Kansas City, *Downtown Retail Historic District*, (02/23/84)
Kansas City, *Miller Plaza/Warner Plaza Historic District (CHD)*, Roughly bounded by Main St., Walwick Blvd. on E. 32nd St. (09/05/84)
Kansas City, *North Hyde Park Historic District (CHD)*, Roughly bounded by 3300 blks. of Harrison and Campbell, the 3400 blk. of Campbell and the residence of 3402 Harrison (09/05/84)
Kansas City, *Old General Hospital*, (03/30/84)

Scott County

Site 23ST196 (Neck-in-the-Woods Site), (06/04/84)
Site 23ST204 (Wild Bob Site), (06/04/84)
Site 23ST205 (Mule Lip Site), (06/04/84)

St. Louis County

St. Louis, *Central West End Historic District (CHD)*, Roughly bounded by Boyle Ave., Lindall Blvd., Baleviere and Belmar (09/05/84)
St. Louis, *Compton Hill Historic District (CHD)*, Roughly bounded by Sidney, S. Grand Blvd., Coplin and Shenandoah (09/05/84)
St. Louis, *Hyde Park Historic District (CHD)*, Roughly bounded by Palm St., 11th Ave., Florissant and Grand Blvd. (09/05/84)
St. Louis, *Lafayette Park Historic District (CHD)*, Roughly bounded by Jefferson Ave., Simpon Pl. and Dolman St. (09/05/84)
St. Louis, *Soulard Historic District (CHD)*, Roughly bounded by Broadway, Compton Ave., Arsenal St. and Delaware Blvd. (09/05/84)
St. Louis, *Visitation Park Historic District (CHD)*, Roughly bounded by Union Blvd., from Delmar to Cabanne (09/05/84)

MONTANA

Big Horn County

Youngs Creek Archeology District, (03/22/84)

Blaine County

Hogeland, *Burlington Northern Railroad Depot*, (01/17/84)
Turner, *Burlington Northern Railroad Depot—Turner*, (01/17/84)

Broadwater County

Archeological Site 24BW182, (12/12/83)
Lombard Coke Oven Site (24BW180), (12/12/83)

Chouteau County

Loma, *Burlington Northern Loma Bridge No. 62.5*, (02/02/84)

Granite County

Copper State Mine (24GN423), (09/24/84)
Emmetsburg Cemetery & Monument (24GN392), (09/24/84)
Erick Peterson Stock-Raising Homestead (24GN386), (09/24/84)
Sunrise Mine (24GN391), (09/24/84)
Walter Olson Homestead (24GN390), (09/24/84)
Ruby Site (24GN203), (09/24/84)

Jefferson County

Site 24 JF 726 (The Park Ditch), Helena National Forest (08/09/84)

Lewis and Clark County

RV/Cody Ranch (O'Connell Ranch) (Amendment), US 12 (12/30/83)
Site 24 LC 1048 (The Park Ditch), Helena National Forest (08/09/84)

Lincoln County

Site 24LN122, (01/31/84)
Site 24LN125, (01/31/84)
Site 24LN127, (01/31/84)
Site 24LN258, (01/31/84)
Site 24LN263, (01/31/84)
Site 24LN264, (01/31/84)
Site 24LN728, (01/31/84)

Mineral County

Keystone Historic District (24MN135), (09/24/84)
Mullan Road Segment (24MN133), (09/24/84)
William A. Berg Homestead (24MN129), (09/24/84)

Missoula County

Emmett P. Rickard Homestead (24MO190), (09/24/84)
Isaac Eddy Ranch (24MO191), (09/24/84)

Phillips County

Loring, *Burlington Northern Railroad Depot—Loring*, (01/17/84)

Powell County

Gustavus H. Wisner Cabin (24PW249), (09/24/84)
Pioneer Historic District (24PW210), (09/24/84)

Sanders County

Bend Guard Station, Lolo National Forest (04/18/84)

NEBRASKA

Lancaster County

Lincoln, *Haymarket Historic District (CHD)*, Roughly bounded by R and O Sts. and the Railroad (09/05/84)

NEVADA

Carson City

Carson City, *Carson City Historic District (CHD)*, Roughly bounded by Curry St., John, 5th and Iris Sts. (09/05/84)

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Clark County

Quartette Mining Company Railroad, (01/27/84)
US Government Construction Railroad, (01/27/84)
Willow Beach Gauging Station, (01/27/84)

Lyon County

Yerington, *US Post Office-Yerington*, (09/05/84)

Pershing County

Lovelock, *US Post Office-Lovelock*, (10/13/83)

NEW HAMPSHIRE

Belknap County

Guilford, *Guilford Public Library*, (05/07/84)

Cheshire County

Dublin, *Amory Ballroom (Dublin MRA)*, Off Old Troy Rd. (12/18/83)
Dublin, *Amory-Appel Cottage (Dublin MRA)*, Off Old Troy Rd. (12/18/83)
Dublin, *Parsons Barn (Dublin MRA)*, Parsons Rd. (12/18/83)
Dublin, *Stanley, Joshua, Farm (Dublin MRA)*, Goldmine Rd. (12/18/83)

Grafton County

Littleton, *US Post Office-Littleton*, (03/28/84)

Hillsborough County

Manchester, *First Universalist Church*, 30 Lowell St. (06/26/84)
Manchester, *Young's Block (Mickey Finn's)*, 1133–1139 Elm St. (06/26/84)

Merrimack County

Concord Bridge No. 186/103, (05/31/84)

Strafford County

Dover, *2–4 School Street*, (09/24/84)
Dover, *Watson Road Bridge (No. 079/140)*, (07/10/84)
Somersworth, *Green Street School (Union School)*, (07/27/84)

NEW JERSEY

Bergen County,

Edgewater, *Spencer Kellogg and Sons Pier and Transit Shed*, (07/03/84)
Mahwah (Ramsey), *Young House (Stone Houses of Bergen County TR)*, 81 Youngs Rd. (07/24/84)

Burlington County

Beverly, *Beverly National Cemetery*, (01/12/84)
Burlington, *High Street Historic District (CHD)*, High St. between Broad and Pearl; Broad St. between High and Stacy (09/05/84)

Camden County

Camden, *Cooper Plaza Historic District (CHD)*, Roughly bounded by S. Broadway, Benson, S. 7th, and Berkley, including Washington between 7th and Haddon and Haddon from Washington to Newton (09/05/84)
Camden, *Newton Avenue Garage*, (09/24/84)

Cumberland County

Indian Head Multiple Resource District, (01/03/84)

Hudson County

Delaware Lackawanna and Western Coal Pier #5, (06/26/84)
Erie Terminal Station of Hudson and Manhattan Railroad Company, (06/26/84)
Hoboken, *Southern Hoboken Historic District (CHD)*, Roughly bounded by 4th, Hudson, and 1st Sts., Erie-Lackawanna Train Yards, Washington St. and Bloomfield St. (09/05/84)

Mercer County

Trenton, *Yard Avenue Historic District (CHD)*, Properties along Yard Ave. and E. State St. between Ewing, S. Clinton and Fairview (09/05/84)

Monmouth County

Marlin Estates Site (28MO125), (03/28/84)
Asbury Park, *US Post Office—Asbury Park*, (06/21/84)
Long Branch, *US Post Office—Long Branch*, (06/21/84)

Salem County

Salem, *Broadway Historic District (CHD)*, Properties on E. and W. Broadway from Front St. to Keasbey and Yorke St. (09/05/84)

Union County

Plainfield, *Van Wyck Brooks Historic District (CHD)*, Roughly bounded by Park Ave., W. 7th, Plainfield Ave., Stelle Ave., Randolph, and Arlington Ave. (09/05/84)

NEW MEXICO

Bernalillo County

Albuquerque, *Allen, W.P., House (Albuquerque North Valley MRA)*, 3609 12th St. NW (02/09/84)
Albuquerque, *Indian Health Services Building #233*, (06/07/84)

McKinley County

Archeological Site LA–16128, (08/12/84)

Otero County

Alamogordo, *Fairchild Archeological Site (Boundary Increase)*, White Sands National Monument (06/20/84)

San Juan County

Archeological Site NM–01–30539 (Ute Mountain Exchange), (05/21/84)
San Juan and Rio Arriba Counties, Archeological Sites SJC–064, 846, 847, 887, 888, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 901, 902, 903, 905, 906, 907, 908, 909, 911, 912, 914, 915, 916, 917, 918 and 931, (09/14/84)

San Miguel County

Las Vegas, *Elks Lodge Building*, 819 Douglas Ave. (11/19/83)

NEW YORK

Albany County

Champlain-Oneida Street #87, (03/27/84)
Albany, *Capitol Hill Historic District (Center Sq./Hudson Park) (CHD)*, Roughly bounded by Millet, Spring, and S. Swan Sts., Park, Ware and Madison Aves. (09/05/84)
Albany, *Clinton Avenue/North Pearl Street Historic District (CHD)*, Properties along Clinton Ave. between Quail St. and N. Pearl; and along N. Pearl between Clinton and Livingston Ave. (09/05/84)
Albany, *South End-Groesbeckville Historic District (CHD)*, Roughly bounded by Elizabeth, Morton, Franklin, Basset, Vine, S. Pearl and 2nd (09/05/84)
Albany, *South Pearl Street Commercial Row Historic District (CHD)*, East side of S. Pearl St. between Hudson Ave. and Beaver St. (09/05/84)
Albany, *The Mansions Historic District (CHD)*, Roughly bounded by Eagle St., Madison Ave., S. Pearl St. and Park Ave. (09/05/84)

Broome County

Binghamton, *33 Properties in Binghamton*, 1–20 Dickson, 2–14 Clinton St., 184–186½ Oak St., and 207–225 Front St. (09/08/83)
Binghamton, *Parlor City Center Historic District (CHD)*, Roughly bounded by Court, State, and Hawley Sts. (09/05/84)
Dickinson, *Broome Tech Site (A007–06–0006)*, (10/24/83)

Bronx County

South Bronx, *Oak Point Link Project*, (10 Properties), (10/12/83)

Chenango County

Norwich, *Jamba Site*, (01/18/84)

Dutchess County

Bowdoin Farm Archeological Site, (04/25/84)

Erie County

Buffalo, *Delaware Avenue Historic District (CHD)*, Properties on W. Delaware Ave. between Bryant and North St. (09/05/84)
Buffalo, *Linwood Historic District (CHD)*, Roughly bounded by Delaware Ave. and Linwood Ave., North and W. Ferry Sts. (09/05/84)
Buffalo, *Main Street Historic District*, (11/25/83)
Buffalo, *West Village Historic District (CHD)*, Roughly bounded by Tracy, S. Elmwood, Huron, Niagara and Carolina Sts. (09/05/84)

Kings County

Brooklyn, *Fort Greene Historic District (CHD)*, Roughly bounded by Ft. Greene Pl., Fulton St., Vanderbilt Ave., and Myrtle Ave. (09/05/84)

Monroe County

Rochester, *Convention Hall/Naval Armory*, (11/09/83)

New York County

New York, *Mount Neboh Synagogue*, 130 W. 79th St. (05/31/84)
New York, *Our Lady of Lourdes Roman Catholic Church*, 467 W. 142 St. (02/17/84)

Onondaga County

Syracuse, *Sedgwick-Highland-James Historic District (CHD)*, Bounded roughly by Rugby St., Brattle Rd., Teall Ave., James, Graves, and Dewitt Sts. (09/05/84)

Rensselaer County

Pleasantdale Prehistoric Site, (07/09/84)

Suffolk County

Huntington, *Cold Spring Harbor Historic District (CHD)*, Properties on Harbor, Main and Hill between Saw Mill Rd. and Huntington Rd and along Shore Rd and Spring St. (09/05/84)

Sullivan County

Cochecton, *Schultz 15-sided Barn (Central Plan Dairy Barns of New York TR)*, (09/29/84)

Warren County

Glen Falls, *Finch, Pruyn and Co. Office Building (Bigelow, Henry Forbes, Buildings TR) (Glen Falls MRA)*, 1 Glen St. (09/29/84)

Westchester County

Tarrytown, *Main Street Historic District (CHD)*, Properties on Main St. between Windle Park and S. Broadway (09/04/84)

NORTH CAROLINA

Chatham County

Lockville Dam and Powerplant, also in Lee County (10/25/83)

Craven County

New Bern, *New Bern National Cemetery*, (04/04/84)

Guilford County

Greensboro, *College Hill Historic District (CHD)*, Roughly bounded by W. Friendly Ave., S. Spring, W. Lee, Tate and McIver Sts., Freeman Mill Rd. (09/05/84)

Onslow County

Permuda Island, (02/24/84)

Rockingham County

Madison, *Decatur-Hunter Historic District (CHD)*, Roughly bounded by Carter, Market, W. Academy and Wilson Sts., and US 220 (Business) (09/05/84)

Rowan County

Salisbury, *Salisbury National Cemetery*, (10/20/83)

Wake County

Raleigh, *Blount Street Historic District (CHD)*, Roughly bounded by Franklin, Person, Jones, and Halifax Sts. (09/05/84)

OHIO

Clermont County

Old Lock and Dam No. 34, (11/28/83)

Cuyahoga County

Cleveland, *Cedar Apartments*, 2202 E. 20th St. (12/19/83)
Cleveland, *Hessler Road/Hessler Court Historic District (CHD)*, Bounded by Ford, Bellflower, E. 115th and Euclid Ave. (09/05/84)
Cleveland, *Market Square Historic District (CHD)*, Bridge Ave., W. 24th St., Lorain Ave., W. 25th St., United Ct., 28th St., to 28th St. (09/05/84)

Fairfield County

Lancaster, *US Post Office—Lancaster*, (10/28/83)

Franklin County

Columbus, *Bldg. at 736–40 East Long Street*, (02/17/84)

Hamilton County

Addyston, *Houses at 120, 124, 126, 128, 130, 132, 138, and 140 First Street*, (12/30/83)
Cincinnati, *Lincoln-Melrose Historic District (CHD)*, N. side of Lincoln between 820 Lincoln and Gilbert Ave.; between Lincoln and Beecher (09/05/84)
Cincinnati, *Northside Historic District (CHD)*, Hamilton Ave. between Cooper/Spring Grove and Hobart (09/05/84)

Henry County

Johnson Site (33HY207), (02/10/84)

Holmes County

Millersburg, *Forlow, Louis, House (Millersburg MRA)*, 104 N. Clay St. (07/17/84)

Jackson County

Jackson, *Grand Trunk Western Railroad Depot*, (08/07/84)

Lake County

Painesville, *East Main Street Bridge*, (10/13/83)

Logan County

Bellefontaine, *Railroad YMCA*, (07/10/84)

Lucas County

Toledo, *114–126 N. Superior Street (APCOA Garage)*, (01/03/84)
Toledo, *119 N. St. Clair Street (Toledo General District)*, (01/03/84)
Toledo, *121–23 N. St. Clair Street (Galliers District Company)*, (01/03/84)
Toledo, *22–46 N. Summit Street (Bostwick-Braun)*, (01/03/84)
Toledo, *28–32 N. St. Clair (Spangler Candy)*, (01/03/84)
Toledo, *34–36 N. St. Clair Street (Consumers Plumbing)*, (01/03/84)
Toledo, *410–412 Monroe Street (Wasserstrom Warehouse)*, (01/03/84)
Toledo, *505 Jefferson Avenue (Commodore Perry Hotel)*, (01/03/84)
Toledo, *Cumberland Street Historic District*, (01/04/84)
Toledo, *Washington Street Bridge over Swan Creek*, (01/03/84)

Mahoning County

Damascus Schoolhouse, (01/25/84)
Canfield, *Canfield Township Hall*, (09/17/84)
Youngstown, *Mahoning Avenue and CR–319 Bridge*, (10/13/83)

Montgomery County

Dayton, *Lindsey Building*, 25 Main St. (03/19/84)

Morgan County

Chesterhill, *Downtown Chesterhill Historic District*, (04/11/84)

Portage County

Kent, *300 N. Water Street (Sunburst Solar Systems Bldg.)*, (11/17/83)

Putnam County

Ottawa, *Ohio National Guard Armory*, (01/30/84)

Seneca County

Fostoria, *US Post Office—Fostoria*, (10/28/83)

Wyandot County

Carey, *Carey Railroad Depot*, (02/02/84)

OKLAHOMA

Garfield County

Enid, *Enid Masonic Temple*, W. Broadway (07/02/84)

Roger Mills & Ellis Counties

Packsaddle Bridge, (07/24/84)

OREGON

Harney County

Squaw Pit Village Site (35HA1038), (11/02/83)

Linn County

Thomas Creek (Jordan) Bridge, (02/08/84)

Malheur County

Adrian vicinity, *Owyhee Dam*, Owyhee River (06/26/84)

Tillamook County

Tillamook, *US Post Office—Tillamook*, (09/05/84)

Wasco County

White Rivers Fall Power Plant, (07/12/84)

PENNSYLVANIA

Allegheny County

St. Thomas Roman Catholic Church, (10/13/83)
Pittsburgh, *Manchester Historic District (CHD)*, Roughly bounded by Chateau, Franklin, Fulton, Hamlin, Fontella, Stedman, Bidwell and Faulsey (09/05/84)
Pittsburgh, *Mexican War Streets Historic District (CHD)*, Bounded by Buena Vista, Samsonia, Sherman and North (09/05/84)

Berks County

Reading, *Callowhill Historic District (Extension) (CHD)*, Area at the intersection of Penn and 4th Sts. (09/05/84)
Reading, *Centre Park Historic District (CHD)*, Roughly bounded by Church, Robeson, Center, 3rd and Greenwich (09/05/84)
Reading, *Prince Street Historic District (CHD)*, Roughly bounded by 7th, Cherry, Pearl and Willow (09/05/84)

Chester County

Asbridge, Richard, House, West Whiteland Township MRA), (08/02/84)
Colebrook Farm (West Whiteland Township MRA), (08/02/84)
Cuthbert, John, House (West Whiteland Township MRA), (08/02/84)
Downing, Hunt, House (West Whiteland Township MRA), (09/06/84)
Halfway House (West Whiteland Township MRA), (11/10/83)
Ivy Cottage (West Whiteland Township MRA), (09/06/84)
Konnagee, Joseph, House (West Whiteland Township MRA), (09/06/84)
Site 36–CH–128, (04/30/84)
Site 36–CH–332 (Locus 8), (04/30/84)

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Site 36–CH–335 (Locus 11), (04/30/84)
Site 36–CH–198, (04/30/84)
St. Mary of the Immaculate Conception (West Whiteland Township MRA), (08/02/84)
Trimble Mill (West Whiteland Township MRA), (11/10/83)
Turnpike Station House (West Whiteland Township MRA), (11/10/83)
Whitford Lodge (West Whiteland Township MRA), (09/06/84)
West Whiteland Township, *Arrandale (Site #46),* (01/25/84)
West Whiteland Township, *Asbridge, Richard, House (Indiana Run Farm) (Site #49),* (01/25/84)
West Whiteland Township, *Church Farm School (Site #30),* (01/25/84)
West Whiteland Township, *Colebrook Manor (Site #38),* (01/25/84)
West Whiteland Township, *Exton Hotel (Site #2),* (01/25/84)
West Whiteland Township, *House at Turnpike Station (Site #6),* (01/25/84)
West Whiteland Township, *Ivy Cottage (Site #33),* (01/25/84)
West Whiteland Township, *John Roberts Thomas Tenant Farmstead (Site J),* (01/25/84)
West Whiteland Township, *Konnagee, Joseph, House (Circle C) (Site #25),* (01/25/84)
West Whiteland Township, *Lochiel Farm (Site #7),* (01/25/84)
West Whiteland Township, *Malvern Federal Building (Site #11),* (01/25/84)
West Whiteland Township, *Norris Hotel (Site C),* (01/25/84)
West Whiteland Township, *Norris, Thomas, House (Site 8),* (01/25/84)
West Whiteland Township, *Oaklands (Site #41),* (01/25/84)
West Whiteland Township, *Sleepy Hollow Hall (Site #6),* (01/25/84)
West Whiteland Township, *St. Mary's Chapel (Site #29),* (01/25/84)
West Whiteland Township, *St. Paul's Church (Site #13),* (01/25/84)
West Whiteland Township, *The Ship Inn (Site #1),* (01/25/84)
West Whiteland Township, *Thomas Marble Quarry Complex (Site #43),* (01/25/84)
West Whiteland Township, *Thomas Mill and Miller's House (Site #42),* (01/25/84)
West Whiteland Township, *Wee Grimmet (Site #47),* (01/25/84)
West Whiteland Township, *West Whiteland Inn (Site #36),* (01/25/84)
West Whiteland Township, *Whitford Hall (Site #31),* (01/25/84)
West Whiteland Township, *Whitford Lodge (Site #32),* (01/25/84)
West Whiteland Township, *William's Deluxe Cabins (Site G),* (01/25/84)

Columbia County

Cattawissa River Bridge, (01/06/84)
Site 36 Co 9, (01/06/84)

Delaware County

Delaware County National Bank, (12/12/83)
Pennell, Abraham, Mansion, 411 N. Middletown Rd. (10/13/83)
Second Street Bridge, (12/12/83)
Site #1 (Sandelands House), (12/12/83)
Site #13 (The Mather (Lafayette) House), (12/12/83)
Site #20 (The Market House), (12/12/83)
Site #21 (William Kerlin House), (12/12/83)
St. Pauls Episcopal Graveyard, (12/12/83)
Nether Providence, *Community Arts Center (The Gables),* (04/02/84)

Lancaster County

Strasburg, *Strasburg Historic District (CHD),* Main St. from Clearview Dr. to Georgetown/Gap (09/05/84)

Lehigh County

Allentown, *Old Allentown Historic District (CHD),* Bounded by Hall, Turner, Fountain, Linden, Howard, Court, Blank, 12th and Liberty Sts. (09/05/84)
Allentown, *Old Fairgrounds Historic District (CHD),* Bounded by Tilghman, Levan, Gordon and Morris (09/05/84)

Montgomery County

Hughes, John, Farmstead, (03/13/84)

Montour County

Washingtonville Bridge, (07/10/84)

Philadelphia County

Philadelphia, *Manayunk Canal,* (12/08/83)

York County

Leibhart, Byrd, Site (36YO170), (05/24/84)

PUERTO RICO

Ponce County

Ponce vicinity, *Quintan Thermal Baths,* (08/15/84)

San Juan County

Ateneo Puertorriqueno, (03/19/84)

RHODE ISLAND

Washington County

Bouchard Site (RI–1025), (04/30/84)
Shannock Historic District, (10/05/83)
South Kingstown, *Site RI 781,* (08/02/84)

SOUTH CAROLINA

Barnwell County

Archeological Sites 38BR259, 273, 274, 277, 283, 291, 494, 495, 527 and 38BR528, (07/16/84)

Lexington County

Leaphart-Harmon House (Lexington County MRA), (11/22/83)
Lorick, Samuel T., House (Lexington County MRA), (11/22/83)
Mathias, John W., House (Lexington County MRA), (11/22/83)
Smith Henry David, House (Lexington County MRA), (12/22/83)
St. Michael's Lutheran Church (Lexington County MRA), (12/16/83)
Lexington, *Roof, W. Pickens, House (Lexington County MRA),* 122 W. Main St. (11/22/83)

Hutchinson County

Freeman vicinity, *Waldner-Tschetter House (German-Russian Folk Architecture TR),* (08/13/84)

SOUTH DAKOTA

McPherson County

Long Lake vicinity, *Miller, Phillip, Summer Kitchen (German-Russian Folk Architecture TR),* (08/13/84)

Yanton County

Midway Stores vicinity, *Rempfer, Johann C., House (German-Russian Folk Architecture TR),* (08/13/84)

TENNESSEE

Franklin County

Boulevard Bridge, Wagner Creek (02/27/84)
Huntland vicinity, *Mann and David Mills Historic District,* (01/30/84)

Hamblen County

Morristown, *Harris, Dr. Crampton, House,* (06/15/84)

Lincoln County

Fayetteville, *Fayetteville Historic District (CHD),* Roughly bounded by Lincoln Ave., Edison, Franklin and Campbell Sts. (09/05/84)

TEXAS

Bastrop County

Prehistoric Site 41 BP 191, (01/16/84)
Prehistoric Site 41 BP 192, (01/16/84)

Bell County

W. Jarvis Henderson Site, Fort Hood (02/02/84)
Belton, *Main Post Office (Belton),* 200 N. Main St. (04/23/84)

Bexar County

San Antonio, *Alamo Plaza Historic District (CHD),* Roughly bounded by Houston, E. Commerce, Broadway and N. Presa (09/05/84)
San Antonio, *Fairmount Hotel,* (07/05/84)
San Antonio, *Franklin, Thomas H., House,* 105 E. French Pl. (04/27/84)

Chambers County

Willisville Archeological District, also in Liberty County (01/23/84)

Crosby County

Smith, Hank, Homestead, (07/06/84)

DeWitt County

Cuero, *Federal Building,* (04/26/84)

El Paso County

El Paso, *Plaza Theatre,* 125 Pioneer Plaza (06/14/84)

Harris County

Houston, *Doyle House (Houston Heights MRA),* 945 Heights Blvd. (05/14/84)
Houston, *House at 943½ Cortlandt Street (Houston Heights MRA),* (05/14/84)

Hidalgo County

Edinburg, *Old Pan American College Buildings,* (08/06/84)
Weslaco, *Weslaco City Hall,* (02/16/84)

Hill County

Hillsboro, *Hill County Cotton Oil Company (Hillsboro MRA),* Franklin St. (03/30/84)

Kent County

Archeological Site 41KT32, (01/12/84)

Polk County

Crawford Site (41PK69), (12/27/83)

Potter County

Corsino Plaza (41PT84) (New Mexican Pastor Sites in Texas Panhandle TR), (07/12/84)
Little Indian Creek Rock Pen (41PT87) (New Mexican Pastor Sites in Texas Panhandle TR), (07/12/84)

San Patricio County

Archeological Site 41SP11, (01/04/84)
Archeological Site 41SP123, (01/04/84)
Archeological Site 41SP124, (01/04/84)
Archeological Site 41SP40, (01/04/84)
Archeological Site 41SP43, (01/04/84)
Archeological Site 41SP72, (01/04/84)
Old Ingleside Townsite, (01/04/84)

Tarrant County

Fort Worth, *Atelier Building,* 209 W. 8th St. (08/17/84)

Travis County

Archeological Site 41TV291, (08/09/84)
Archeological Site 41TV383, (12/02/83)

Wichita County

Wichita Falls, *Depot Square Historic District (CHD),* Roughly bounded by the FW&D Railroad, Indian Ave., 7th and 8th Sts. (09/05/84)

Williamson County

Site 41 WM 8, (03/12/84)

UTAH

Davis County

Centerville, *Smith, William R. and Amelia Cherry, House,* 129 North Main (05/24/84)

Duchesne & Uintah Counties

Irrigation Canals in the Uintah Basin Thematic Resources, (43 canals submitted, 40 determined eligible on this date) (07/05/84)

San Juan County

Blanding vicinity, *Blanding Navajo Ethnoarchaeological District,* (04/17/84)

Summit County

Park City, *Boarding House (Mining Boom Era Houses TR),* 125 Main (07/12/84)
Park City, *Daly-Judge Mine Superintendent's House (Mining Boom Era Houses TR),* (07/12/84)
Park City, *Doyle, John, House (Mining Boom Era Houses TR),* 339 Park (07/12/84)
Park City, *Frankel, Julius, House (Mining Boom Era Houses TR),* 539 Park (07/12/84)
Park City, *Gibson, James, House (Mining Boom Era Houses TR),* 835 Park (07/12/84)
Park City, *Goodwin, Dr. Harold I., House (Mining Boom Era Houses TR),* 1100 Woodside (07/12/84)
Park City, *Gordon-Ledingham House (Mining Boom Era Houses TR),* 145 Daly (07/12/84)
Park City, *Hansen, Arthur E., House (Mining Boom Era Houses TR),* 1215 Park (07/12/84)
Park City, *Heath, Charles, House (Mining Boom Era Houses TR),* 364 Park (07/12/84)
Park City, *Houston, Nathaniel L., House (Mining Boom Era Houses TR),* 1049 Park (07/12/84)
Park City, *Kimball Double Dwelling House No. 1 (Mining Boom Era Houses TR),* 890 Park (07/12/84)
Park City, *Kimball Double Dwelling House No. 2 (Mining Boom Era Houses TR),* 807 Park (07/12/84)
Park City, *Larson, Fred, House (Mining Boom Era Houses TR),* 920 Norfolk (07/12/84)
Park City, *Lindsay, Mrs. J.S., House (Mining Boom Era Houses TR),* 51 Prospect (07/12/84)
Park City, *Louder, James H., House (Mining Boom Era Houses TR),* 170 Main (07/12/84)
Park City, *Lowry, Thomas S., House (Mining Boom Era Houses TR),* 329 Ontario (07/12/84)
Park City, *Matson, John, House (Mining Boom Era Houses TR),* 147 Anchor (07/12/84)
Park City, *Maxwell, Elmer H., House (Mining Boom Era Houses TR),* 1328 Park (07/12/84)
Park City, *McDonald, J.R., House (Mining Boom Era Houses TR),* 297 Daly (07/12/84)
Park City, *McDonald, Thomas J., House (Mining Boom Era Houses TR),* 733 Woodside (07/12/84)
Park City, *Norbisrath, Clement, House (Mining Boom Era Houses TR),* 291 Daly (07/12/84)
Park City, *Shields, John, House (Mining Boom Era Houses TR),* 416 Park (07/12/84)
Park City, *Smith, Evans L., House (Mining Boom Era Houses TR),* 64 Chambers (07/12/84)
Park City, *Smith, Vincent A., House (Mining Boom Era Houses TR),* 264 Ontario (07/12/84)
Park City, *Stromberg, Matilda M., House (Mining Boom Era Houses TR),* 222 Sandridge (07/12/84)
Park City, *Webser, A. W., House (Mining Boom Era Houses TR),* 317 Ontario (07/12/84)
Park City, *Weeter, John C., House (Mining Boom Era Houses TR),* 843 Norfolk (07/12/84)
Park City, *Young, Brigham D., House (Mining Boom Era Houses TR),* 623 Deer Valley Rd. (07/12/84)
Park City, *Young, J. Oluf, House (Mining Boom Era Houses TR),* 416 Harsac (07/12/84)

Tooele County

Clover, *Davis, David E., House,* Off UT 199 (07/13/84)

VERMONT

Windsor County

Windsor, *Houses at 37, 42 and 45 Bridge Street,* (04/23/84)

VIRGINIA

Augusta County

Staunton vicinity, *Frank's Mill,* (09/04/84)

Fairfax County

Archeological Site 44FX457, (01/12/84)
Site 44FX660 (Pope Head Creek Prehistoric Site), (01/12/84)
Site 44FX663 (Kernan Run Prehistoric Site), (01/12/84)
Site 44FX664 (Fort Belvoir-Accotink Prehistoric Site), (01/12/84)

Henrico County

Archeological Site 44HE321, (03/30/84)

Lee County

Archeological Site 44LE71, (03/07/84)

Norfolk (Independent City)

Ghent Historic District (CHD), Roughly bounded by Dundaff, Olney, Duke, Grace, Virginia Beach Blvd., Brambleton and Yarmouth (09/05/84)
West Freemason Historic District (CHD), Roughly bounded by Brambleton Ave., Bousch St., W. Freemason St. and the Eastern Branch of the Elizabeth River (09/05/84)

Petersburg (Independent City)

Old Town Historic District (CHD), Roughly bounded by the Appomattox River, 5th St., West Bank St., Commerce St., and Canal St. (09/05/84)

Roanoke (Independent City)

Market Area Historic District (CHD), Roughly bounded by Williamson, Church, Jefferson, and Norfolk (09/05/84)

WASHINGTON

Chelan County

Crow Cabin, (08/02/84)

Clark County

Vancouver, *US National Bank Building,* 601 Main St. (04/12/84)

King County

Seattle, *1411 Fourth Avenue Building,* (04/18/84)
Seattle, *Ben Bridge Jewelers Clock,* (04/18/84)
Seattle, *Black Manufacturing Building,* 1130 Rainier Avenue, South (07/17/84)
Seattle, *Bogardus-Elliott Building (Ethelton Hotel),* (04/18/84)
Seattle, *Camlin Hotel,* (04/18/84)
Seattle, *Carroll's Jeweler's Clock,* (04/18/84)
Seattle, *Central Building,* (04/18/84)
Seattle, *Chamber of Commerce Building,* (04/18/84)
Seattle, *Cobb Medical-Dental Arts Building,* (04/18/84)
Seattle, *Decatur Building,* (04/18/84)
Seattle, *Dexter Horton Building,* (04/18/84)
Seattle, *Earlington Apts,* (04/18/84)
Seattle, *Fischer Studio Building,* (04/18/84)
Seattle, *Great Northern Building,* (04/18/84)
Seattle, *Great Northern Railroad Tunnel (BN Tunnel),* (04/18/84)
Seattle, *Holland Building,* (04/18/84)
Seattle, *Hotel Bybee,* (04/18/84)
Seattle, *Joseph Vance Building,* (04/18/84)
Seattle, *Joshua Green Building,* (04/18/84)
Seattle, *Leamington Hotel-Apartments,* (04/18/84)
Seattle, *Liggett Building,* (04/18/84)
Seattle, *Lyon Building,* (04/18/84)
Seattle, *Mann Building,* (04/18/84)
Seattle, *New Richmond Hotel/Downtowner Apartments,* (04/18/84)
Seattle, *Northern Securities Building,* (04/18/84)
Seattle, *Northold Inn,* (04/18/84)

Seattle, *Old National Bank*, (04/18/84)
Seattle, *Olive Tower*, (04/18/84)
Seattle, *Pacific Telephone and Telegraph Building*, (04/18/84)
Seattle, *Republic Building*, (04/18/84)
Seattle, *Savenac Nursery*, Lolo National Forest (04/18/84)
Seattle, *Shafer Building*, (04/18/84)
Seattle, *YMCA Buildings*, (04/18/84)

Whatcom County

Glacier vicinity, *Nooksack Falls Historic District*, (10/20/83)

Yakima County

Sunnyside Diversion Dam and Canal Headworks, (06/12/84)
Yakima-Tieton Irrigation District, (10/03/83)

WISCONSIN

Dane County

Madison, *Mansion Hill Historic District (CHD)*, Roughly bounded by Lake Mendota, Butler, Gorham, Gilman, Henry, and Carroll Sts. (09/05/84)

Dodge County

Fox Lake, *Elmwood Island Site (47DO47)*, (01/10/84)
Fox Lake, *Indian Point Site (47DO54)*, (01/10/84)
Fox Lake, *North Shore Village (47DO39)*, (01/10/84)

Grant County

Osceola Site (47GT24), (03/19/84)

Lafayette County

Carey Site II (47LT143), (11/16/83)

Marathon County

Archeological Site PLJF 2–3, (04/23/84)

Milwaukee County

Milwaukee, *Schlitz, Joseph, Brewing Company Historic District (Brewers' Hill MRA)*, (08/02/84)
Milwaukee, *St. Francis of Assisi Historic District (Brewers' Hill MRA)*, (08/02/84)
Milwaukee, *St. John De Nepomuc Rectory (Brewers' Hill MRA)*, (08/02/84)

Trempealeau County

Galesville, *Gale College Historic District (Galesville MRA)*, (09/18/84)

Vernon County

LaFarge vicinity, *Upper Kickapoo Valley Prehistoric Archeological District*, (11/15/83)

Waukesha County

Waukesha, *Buchner, John P., House (Waukesha MRA)*, 609 E. Broadway Ave. (10/28/83)
Waukesha, *Carroll, William, House (Waukesha MRA)*, 142 W. Main St. (10/28/83)
Waukesha, *Hatfield, Joseph Jackson, House (Waukesha MRA)*, 710–712 N. East St. (10/28/83)
Waukesha, *James, Samuel D., House (Waukesha MRA)*, 726 N. East Ave. (10/28/83)
Waukesha, *White Rock Mineral Spring Company (Waukesha MRA)*, 1702 White Rock Ave. (10/28/83)

Winnebago County

Oshkosh, *Oshkosh Grass Matting/Deltox Company Bldgs*, (03/21/84)

The following properties were demolished and/or removed from the list of Determinations of Eligibility.

ARKANSAS

Randolph County

Fourche Creek Watershed Sites 3RA76, 3RA77, 3RA82, 3RA204, 3RA289, 3RA306, and 3RA307,

CALIFORNIA

Los Angeles County

Los Angeles, *Goodyear Tire and Rubber Plant*,

FLORIDA

Citrus County

Iverness, *1911 Building (Site 8CI183)*,

GEORGIA

Dougherty County

Albany, *300–308, 320–324 Mercer Avenue and 503, 505 and 507 South Jackson (Mercer-S. Jackson Historic District)*,

ILLINOIS

Lake County

Chicago, *North Chicago Veteran's Administration Medical Center*,

MARYLAND

St. Mary's County

Cedar Point Lighthouse,

MICHIGAN

Kalamazoo County

Kalamazoo, *Cobb, James B., House*, 526 S. Burdick St.

MISSOURI

Middle Bridge (Harry S. Truman Dam and Reservoir),

NEW YORK

Allegany County

Hume, *Fillmore Bridge*,

OHIO

Hamilton County

Cincinnati, *Avondale Historic District*,

Stark County

Third Street Bridge,

PENNSYLVANIA

Erie County

Erie, *Frank's Hotel*,

UTAH

Utah County

Perry, Philander J., House,

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federal register

Tuesday
March 5, 1985

Part IV

Department of Labor

48 CFR Ch. 29

Acquisition Regulations; Implementation; Final Rule

VOL 50 ISS 43 MR 5 1985 UMI

DEPARTMENT OF LABOR

48 CFR Ch. 29

Acquisition Regulations; Implementation

AGENCY: Department of Labor.

ACTION: Final rule.

SUMMARY: The Department of Labor Acquisition Regulation (DOLAR) is established to implement and supplement the Federal Acquisition Regulation (FAR). The DOLAR replaces the Department of Labor Procurement Regulations (DOLPR), 41 CFR Ch. 29, and is applicable to solicitations and contracts awarded on or after the effective date of the FAR (April 1, 1984). The DOLPR will remain in full force and effect for solicitations issued and contracts and contract modifications entered into prior to April 1, 1984.

EFFECTIVE DATE: April 1, 1984.

FOR FURTHER INFORMATION CONTACT: Adam W. Hare, Office of Procurement and Grant Policy, Directorate of Procurement and Grant Managment, Office of the Assistant Secretary for Administration and Management, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 (202) 523–9174.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Requirements.
A. Executive Order 12291.
B. Regulatory Flexibility Act.
C. Paperwork Reduction Act.
II. Public Comments.

I. Statutory and Regulatory Requirements.

A. Executive Order 12291

This Executive Order, entitled "Federal Regulation," requires that certain rules be reviewed by the Office of Management and Budget prior to promulgation. This final rule has been reviewed by the Office of Management and Budget in accordance with the requirements of Executive Order 12291.

B. Regulatory Flexibility Act

This final rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96–354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. DOL certifies that this final rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

C. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by OMB under 44 U.S.C. 3501 *et. seq.* The rule does not impose additional recordkeeping or reporting requirements beyond those contained in the FAR for which OMB control numbers have been assigned. (See 49 FR 12973, Friday, March 30, 1984, for listing of OMB approval numbers by FAR segment.) This rule provides uniformity with other Federal agencies and reduces the administrative impact on bidders as set forth in OFPP Policy Letter 83–2.

II. Public Comments

The DOLAR was published as a proposed rule at 49 FR 25160 on June 19, 1984. The notice invited public comments for a 30-day period ending July 18, 1984, but no comments were received. A key change made in the final version was the transfer of responsibility for DOL procurement operations from that of the Procurement Executive (otherwise referred to as the Director, Directorate of Procurement and Grant Management) to a newly established National Capital Service Center. This change is reflected in DOLAR Subpart 2901.603–1(b)(10). The Procurement Executive retains responsibility for all other DOL acquisition and grant management programs. Other changes were primarily editorial in nature and internal to DOL and will have no impact on the public. There are no other significant differences between the proposed rule and the final rule.

List of Subjects in 48 CFR Ch. 29

Government procurement.

Title 48 of the Code of Federal Regulations is amended by establishing Chapter 29 to read as set forth below.

Signed at Washington, D.C., this 25th day of February, 1985.

W. Spence Filleman,

Director, Directorate of Procurement and Grant Management.

Thomas C. Komarek,

Assistant Secretary for Administration and Management.

CHAPTER 29—DEPARTMENT OF LABOR

SUBCHAPTER A—GENERAL

Part 2901—Department of Labor Acquisition Regulation System
Part 2902—Definition of Words and Terms
Part 2903—Improper Business Practices and Personal Conflicts of Interest
Part 2904—Administrative Matters
Part 2905—Publicizing Contract Actions

SUBCHAPTER B—ACQUISITION PLANNING

Part 2907—Acquisition Planning
Part 2908—Required Sources of Supplies and Services
Part 2909—Contractor Qualifications
Part 2910—Specifications, Standards, and other Purchase Descriptions

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

Part 2913—Small Purchase and other Simplified Purchase Procedures
Part 2914—Formal Advertising
Part 2915—Contracting by Negotiation
Part 2916—Type of Contracts
Part 2917—Special Contracting Methods

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

Part 2919—Small Business and Small Disadvantaged Business Concerns
Part 2920—Labor Surplus Area Concerns
Part 2922—Application of Labor Laws to Government Acquisitions
Part 2923—Environment, Conservation, and Occupational Safety
Part 2924—Protection of Privacy and Freedom of Information
Part 2925—Foreign Acquisition

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

Part 2928—Bonds and Insurance
Part 2929—Taxes
Part 2930—Cost Accounting Standards
Part 2931—Contract Cost Principles and Procedures
Part 2932—Contract Financing
Part 2933—Disputes and Appeals

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

Part 2935—Research and Development Contracting
Part 2936—Construction and Architect-Engineer Contracts
Part 2937—Service Contracting

SUBCHAPTER G—CONTRACT MANAGEMENT

Part 2942—Contract Administration
Part 2943—Contract Modifications
Part 2945—Government Property
Part 2948—Value Engineering
Part 2949—Termination of Contracts
Part 2951—Use of Government Sources by Contractors

SUBCHAPTER H—CLAUSES AND FORMS

Part 2952—Solicitation Provisions and Contract Clauses
Part 2953—Forms

SUBCHAPTER A—GENERAL

PART 2901—DEPARTMENT OF LABOR ACQUISITION SYSTEM

Subpart 2901.1—Regulation System

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2901.100 Scope of subpart.
2901.101 Purpose.
2901.102 Authority.
2901.103 Applicability.
2901.103–70 Exclusions.
2901.104 Issuance.

2901.104–1 Publication and code arrangement.
2901.104–2 Arrangement of regulations.
2901.104–3 Copies

Subpart 2901.2—Administration

2901.201 Maintenance of the FAR.
2901.201–1 The two councils.

Subpart 2901.3—Agency Acquisition Regulations

2901.301 Policy.
2901.302 Limitations.
2901.303 Codification and public participation.
2901.304 Agency control and compliance procedures.

Subpart 2901.4—Deviations From FAR and DOLAR.

2901.403 Individual deviations.
2901.404 Class deviations.
2901.405 Deviations pertaining to treaties and executive agreements.

Subpart 2901.6—Contracting Authority and Responsibilities

2901.601 General.
2901.602 Contracting officers.
2901.602–1 Authority.
2901.603 Selection, appointment, and termination of appointment.
2901.603–1 General.
2901.603–70 Modification of appointment.
2901.603–71 Ratification of unauthorized contrct awards.
2901.603–72 Responsibility of other Government personnel.
2901.603–73 Contracting officer's representatives.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 2901.1—Regulation System

2901.100 Scope of subpart.

This subpart sets forth introductory information pertaining to the Department of Labor Acquisition Regulation, referred to as the DOLAR. This subpart explains the relationship of the DOLAR to the Federal Acquisition Regulation (FAR) and explains the DOLAR's purpose, authority, applicability, exclusions, and issuance.

2901.101 Purpose.

(a) This subpart establishes Chapter 29, the Department of Labor Acquisition Regulation, within Title 48, the Federal Acquisition Regulations System, of the Code of Federal Regulations.

(b) The purpose of the DOLAR is to implement the FAR, where further implementation is needed, and to supplement the FAR when coverage is needed for subject matter not covered in the FAR. The DOLAR is not by itself a complete document as it must be used in conjunction with the FAR.

2901.102 Authority.

The DOLAR and amendments thereto are issued by the Procurement Executive pursuant to a delegation from the Secretary in accordance with the authority of DOL Temporary Regulation Number 44, dated February 18, 1983, in accordance with section 1 of the Act of March 4, 1913 (29 U.S.C. 551, 37 Stat. 736), as amended; 5 U.S.C. 301, and the Federal Property and Administrative Services Act of 1949, as amended, and other applicable law.

2901.103 Applicability.

The FAR and DOLAR apply to all DOL acquisitions of supplies and services which obligate appropriated funds unless otherwise specified in this regulation.

2901.103–70 Exclusions.

Certain DOL policies and procedures which might otherwise come within the scope of this regulation may be excluded from the DOLAR where there is appropriate justification, such as:

(a) Subject matter that is procedural in nature and internal to the operation of the Department. These matters are contained in the Department of Labor Manual Series (DLMS).

(b) Instructional or training material that more fully explains matters covered in the FAR and DOLAR.

(c) Unless otherwise specifically stated, subject matter which deals with assistance programs where the award instruments are other than acquisition contracts. Administrative requirements governing all grants and agreements by which Department of Labor agencies award funds to State and Federal Governments, Indian and Native American entities, public and private institutions of higher education and hospitals, and other quasi-public and private nonprofit organizations are codified separately at Part 29–70 of Title 41 of the Code of Federal Regulations.

2901.104 Issuance.

2901.104–1 Publication and code arrangement.

(a) The DOLAR and its subsequent changes are published when issued in daily issues of the **Federal Register** and in cumulative form in the Code of Federal Regulations.

(b) The DOLAR is issued as Chapter 29 of Title 48 of the Code of Federal Regulations.

2901.104–2 Arrangement of regulations.

(a) *General.* The DOLAR is divided into the same parts, subparts, sections, subsections and paragraphs as is the FAR. However, when the FAR coverage is adequate by itself, there will be no corresponding DOLAR part, subpart, etc.

(b) *Numbering.* Where DOLAR implements the FAR, the implementing part, subpart, section or subsection of the DOLAR will be numbered and captioned, to the extent feasible, the same as the FAR part, subpart, section or subsection being implemented except that the implementation will be preceded with a 29 or a 290 such that there will always be four numbers to the left of the first decimal. For example, the DOLAR implementation of FAR 1.104–1 is shown as 2901.104–1 and DOLAR implementation of FAR subpart 24.1 is shown as subpart 2924.1. Material which supplements the FAR will be assigned the numbers 70 and up. For example, DOL regulations governing appointment and termination of appointment of contracting officers' representatives is identified as 2901.603–70.

(c) *References and citations.* (1) This regulation may be referred to as the Department of Labor Acquisition Regulation or the DOLAR.

(2) References to FAR materials within this regulation will include FAR and the identifying number, for example, FAR 1.104–2(c)(2). References to DOLAR materials within the regulation will simply cite the identifying number, for example, 2901.104–2(c)(2).

2901.104–3 Copies.

Copies of the DOLAR published in the **Federal Register** or Code of Federal Regulations may be purchased from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Requests should reference the DOLAR as Chapter 29 of Title 48. The Code of Federal Regulations is printed in paperback edition with updates as needed, and revised as of October 1 of each year. Requests for the CFR version of the DOLAR should reference Chapter 29 of Title 48.

Subpart 2901.2—Administration

2901.201 Maintenance of the FAR.

2901.201–1 The Civilian Agency Acquisition Council.

(a) The Department of Labor shall be represented on the Civilian Agency Acquisition Council by a staff member of the Office of Procurement and Grant Policy, Directorate of Procurement and Grant Management, Office of the Assistant Secretary for Administration and Management, appointed for that purpose by the Director, Directorate of Procurement and Grant Management.

(b) The Office of Procurement and Grant Policy will be responsible for coordination with all interested DOL elements regarding proposed FAR revisions and advocating revisions sought by DOL.

Subpart 2901.3—Agency Acquisition Regulations

2901.301 Policy.

(a) The Department of Labor Acquisition Regulation (DOLAR) System consists of policies, procedures and regulations which implement or supplement the FAR at specific levels within the Department of Labor. The Federal Acquisition Regulation (FAR) and the DOLAR System govern the contracting process and control contracting relationships between contractors and the Departments' agencies and offices.

(b) The DOLAR is issued pursuant to the authority of the Secretary of Labor under 5 U.S.C. 301, 29 U.S.C. 551, 40 U.S.C. 486(c), and other authority specifically stated, and is subject to the overall authority of the Administrator of General Services. See FAR 1.301(c)(3).

2901.302 Limitations.

DOLAR System issuances are limited to:

(a) Published, codified, Department-wide regulations which implement or supplement FAR policies and procedures and which affect organizations or individuals seeking to contract with the Department;

(b) Published, codified, lower-level regulations of agencies and offices which contain additional policies and procedures that supplement the FAR to satisfy the specific and unique needs of the agency or office.

2901.303 Codification and public participation.

(a) Published issuances under the DOLAR are codified under Chapter 29 in Title 48, Code of Federal Regulations and parallel the FAR in format, arrangement and numbering system.

(b) Regulations codified under Chapter 29 are limited to those affecting private or public, profit or not for profit concerns, organizations or individuals desiring to enter into contracts with the Department. Public participation procedures used in the promulgation of codified regulations under the DOLAR System will follow procedures of FAR Subpart 1.5.

2901.304 Agency control and compliance procedures.

(a) The DOLAR System is under the direct oversight and control of the Director, Directorate of Procurement and Grant Management. Procedures for review and approval of issuances under the DOLAR System comply with FAR Subparts 1.3 and 1.4. These procedures are contained in 2901.6.

(b) DOLAR System issuances shall comply with the restrictions in FAR 1.304(b) and the limitations in 2901.302. DOL Agencies and offices may implement or supplement the FAR or DOLAR with internal instructions not applicable DOL-wide. Additionally, they may request publication in the DOLAR of procurement instructions and other procurement material considered of interest to the general public. Such instructions shall not duplicate higher-level coverage and shall be numbered in accordance with FAR 1.104–2 except that the numbers prescribed there and in 2901.104–2 shall be suffixed by the alphabetic abbreviation or other symbol of the respective Agency issuing the instructions. Each DOL Agency and office shall establish, at the headquarters level, review and approval procedures for maintaining oversight and control of all DOLAR System issuances for their respective Agency or office. These procedures shall include methods to prevent unnecessary duplication of higher-level coverage; ensure consistency and uniformity among issuances; control the number of directives issued; update directives; and distribute copies.

(c) DOL Agencies and offices shall submit all proposed instructions and materials that implement or supplement the DOLAR to the Director, Directorate of Procurement and Grant Management, for review in conjunction with the Solicitor prior to their publication. All issuances, whether or not published as a part of the DOLAR System, shall be submitted for review. In the case of internal procurement instructions, the purpose of the review is to ascertain that such instructions are consistent with the FAR and the DOLAR and that they do not contain information which should be issued as the DOLAR.

Subpart 2901.4—Deviations From the FAR and DOLAR

2901.403 Individual deviations.

(a) The Director, Directorate of Procurement and Grant Management, is authorized to approve deviations from FAR provisions (see FAR 1.403) or DOLAR provisions which affect only one contracting action.

(b) Requests for deviations under (a) above shall be submitted by the head of the contracting activity and include justification as to why the deviation is required.

(c) A copy of the approved deviation shall be included in the contract file.

2901.404 Class deviations.

(a) The Director, Directorate of Procurement and Grant Management, is authorized to approve class deviations of FAR or DOLAR provisions which affect more than one contracting action.

(b) Requests for deviations under (a) above shall be submitted by the head of the contracting activity and include justification as to why the deviation is required and the number of contracting actions which will be affected.

(c) A copy of each approved class deviation shall be referenced in the contract file.

(d) Recommended revisions to the FAR and a copy of each approved class FAR deviation shall be transmitted to the FAR Secretariat by the Director, Directorate of Procurement and Grant Management, as required in FAR 1.404.

2901.405 Deviations pertaining to treaties and executive agreements.

(a) The Director, Directorate of Procurement and Grant Management, is responsible for transmitting to the FAR Secretariat the information required in FAR 1.405 (d) and (e).

Subpart 2901.6—Contracting Authority and Responsibilities

2901.601 General.

This subpart deals with contracting authority and responsibilities of the head of the agency as defined in 2901.1 and 2902.1, FAR Subpart 1.6 and this Subpart.

2901.602 Contracting officers.

2901.602–1 Authority.

Information on the limits of contracting officers' authority shall be maintained by the head of each contracting activity as required in FAR 1.601–1. The Directorate of Procurement and Grant Management shall also maintain this information.

2901.603 Selection, appointment, and termination of appointment.

2901.603–1 General.

(a) *First tier delegation.* The Assistant Secretary for Administration and Management (ASAM), acting through the Procurement Executive, is the chief departmental official for all acquisition and grant matters as outlined in Secretary's Order 4–76, for:

(1) Prescribing policies, procedures, and standards regarding the solicitation, award, and administration of all DOL acquisitions and grants for financial assistance (*e.g.*, cooperative agreements, grants, and similar instruments) obligating Federal funds for the purpose of:

(i) Obtaining property and services for the DOL and/or third parties.

(ii) Promoting DOL programs and objectives through financial assistance.

(2) Acquiring property and services for the United States Government under Title I of the Federal Property and Administrative Services Act of 1949 (63 Stat. 379).

(3) Establishing reporting requirements necessary for effective departmental acquisitions and grant management and for complying with data needs promulgated by the Office of Management and Budget (OMB), the General Services Administration (GSA), the General Accounting Office (GAO), and other agencies. This includes the SF-1099 report, "Income Other Than Wages," and input for "Federal Procurement Data System" (FPDS) and "Federal Assistance Award Data System" (FAADS) input.

(b) In the Department of Labor, contracting officer and grant officer authority and responsibility have been delegated from the Secretary of Labor through the Assistant Secretary for Administration and Management (ASAM) to the following officials or officers acting in their behalf:

(1) The Assistant Secretary for Employment and Training.

(2) The Assistant Secretary for Occupational Safety and Health.

(3) The Deputy Under Secretary for Employment Standards.

(4) The Assistant Secretary for Mine Safety and Health.

(5) The Deputy Under Secretary for International Affairs.

(6) The Commissioner of Labor Statistics.

(7) The Inspector General.

(8) The Regional Administrators—OASAM.

(9) The Director, National Capital Service Center, OASAM.

(c) *Delegations and limitations.* Subject to the limitations set forth in this paragraph and paragraph (g), the officials designated in paragraph (b) possess full authority to obligate the U.S. Government through the use of contracts, agreements, orders, grants, and/or other similar instruments. This authority includes obligating Federal funds for the purpose of obtaining property and services for the government and/or third parties, or for the purpose of promoting DOL programs or objectives through financial assistance. Each official designated in paragraph (b) (except the Inspector General), is delegated authority and responsibility for issuing purchase orders for purchases under GSA Federal Supply Schedules, FEDSTRIP, and from open-market sources not to exceed the small purchases limitation. Acquisition of typewriters, office copiers, adding machines, and calculators must be written against blanket purchase orders maintained for such equipment by the National Capital Service Center, OASAM. Acquisitions of copier equipment require prior approval of the Directorate of Administrative Services and Safety and Health Programs. Paragraph (g)(2) outlines limitations on the purchase, lease and renewal of lease(s) of ADP equipment, software and services. Approval authority for competitive acquisition of consulting and related services costing less than $50,000 cannot be redelegated by the head of the contracting activity. Other delegations in this section may be further redelegated by the designated officials within their areas of assigned responsibility, except that small purchase authority delegated to the Assistant Secretary for Employment and Training, the Assistant Secretary for Occupational Safety and Health, the Deputy Under Secretary for Employment Standards, and the Commissioner of Labor Statistics is limited to the National Office only and may not be redelegated to the Regional Offices. Before issuing redelegations, contracting officers should consider the following factors to determine the extent to which authority shall be redelegated: Volume of contracting programs; presence of, or capability of obtaining adequately trained personnel; consolidation of smaller contracting programs and offices on a geographical basis; and the overall strengthening of the acquisition process by the selection of qualified personnel. Criteria for selection, appointment and termination of Contracting/Grant Officers are contained in the Department of Labor Manual Series (DLMS-2) Chapter 800. Copies of the DLMS Chapter may be obtained upon written request from the Office of Procurement and Grant Policy, Directorate of Procurement and Grant Management, Office of the Assistant Secretary for Administration and Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210. An information copy of every further redelegation must be furnished to the OASAM, Directorate of Procurement and Grant Management.

(d) *Responsibilities.* The following redelegations are made subject to the requirements and exceptions outlined in paragraph (g) regarding prior approval requirements and the limitations on authority to issue purchase orders and contracts for the purchase, lease and renewal of lease(s) for ADP equipment, software and services; and acquisition of consulting and related services.

(1) The Assistant Secretary for Employment and Training, or an officer acting in that capacity, is delegated authority and responsibility for:

(i) Obtaining all program property and services required to fulfill the statutory and regulatory responsibilities imposed on the Assistant Secretary for Employment and Training.

(ii) Approval of all grantee acquisitions of ADP equipment, software and services using grants-in-aid to State and local governments.

(iii) Establishing and maintaining an imprest fund.

(2) The Assistant Secretary for Occupational Safety and Health, or an officer acting in that capacity, is delegated authority and responsibility for:

(i) Issuance of grant agreements with States as required under the statutory and regulatory requirements imposed on the Assistant Secretary for Occupational Safety and Health.

(ii) Reimbursements to States, pursuant to section 7(c)(1) of the Occupational Safety and Health Act of 1970 (OSH Act of 1970) (29 U.S.C. 656(c)(1)) for State services, facilities, and personnel used to carry out the statutory and regulatory responsibilities imposed on the Assistant Secretary for Occupational Safety and Health.

(iii) Issuance of grants, pursuant to section 21(b) of the OSH Act of 1970 (29 U.S.C. 670(b)) for short term training of personnel.

(iv) Issuance of grants to nonprofit organizations for implementation of the expanded Employer-Employee Training Program under section 21(c) of the OSH Act of 1970 (29 U.S.C. 670(c)).

(3) The Deputy Under Secretary for Employment Standards, or an officer acting in that capacity, is delegated authority and responsibility for:

(i) Entering into agreements with States to enhance Federal/State cooperative efforts for the administration of comparable employment standards programs.

(ii) Procuring medical services necessary for the adjudication of claims for injury and occupational disease filed by Federal employees in accordance with the Federal Employees Compensation Act (5 U.S.C. 8101, et seq.) and the Federal Coal Mine Health and Safety Act of 1969, as amended (Pub. L. 91-173, 83 Stat. 742).

(4) The Assistant Secretary for Mine Safety and Health, or an officer acting in that capacity, is delegated authority and responsibility for:

(i) Acquisition of all program property and services required to fulfill the statutory and regulatory responsibilities imposed on the Assistant Secretary for Mine Safety and Health.

(ii) Issuing grants as required by the Mine Safety and Health Act of 1977 (30 U.S.C. 801 *et seq.*).

(iii) The purchase, lease, or renewal of lease(s) of ADP equipment and software costing $50,000 or less without prior approval of the Director, Information Technology (DIT), OASAM. ADP equipment or software costing more than $50,000, and requests for all ADP services require prior approval of DIT. Prior approval of ADP services costing less than $50,000 is also required whenever a Delegation of Procurement Authority (DPA) or sharing clearance is required from the General Services Administration (GSA).

(5) The Deputy Under Secretary for International Affairs, or an officer acting in that capacity, is delegated authority and responsibility for:

(i) Acquisition of supplies and services required in support of training and orientation of foreign nationals.

(ii) Acquisition of supplies and services required in support of overseas exhibitions required under statutory and regulatory responsibilities imposed on the Deputy Under Secretary for International Affairs.

(iii) International responsibilities not funded by an annual appropriation.

(6) The Commissioner of Labor Statistics, or an officer acting in that capacity, is delegated authority and responsibility for:

(i) Acquisition of supporting statistical economic research services, required under the statutory and regulatory responsibilities imposed on the Commissioner of Labor Statistics.

(ii) Selling special statistics developed by the Bureau of Labor Statistics in accordance with the Act of April 13, 1934 (29 U.S.C. 9 *et seq.*).

(7) The Inspector General, or an officer acting in that capacity, is delegated authority and responsibility for contracting with State and local agencies for audit services in accordance with section 4 of the Federal Grant and Cooperative Agreement Act of 1977 (41 U.S.C. 503).

(8) The Regional Administrators—OASAM, or officers acting in that capacity, are delegated authority and responsibility within their respective regions, for:

(i) The acquisition of property and services required for the Regional Offices, including all imprest fund purchases, GSA Federal Supply Schedule purchases, and open-market purchases. The acquisition of records equipment when the cost does not exceed the small purchases limitation for a single system. Purchases for typewriters, office copiers, adding machines, and calculators must be written against blanket purchase orders maintained for such equipment by the National Capital Service Center, OASAM. The purchase of copiers equipment requires prior approval of the Directorate of Administrative Services and Safety and Health Programs.

(ii) Contracting for ADP operational services to support regional remote job entry capabilities. This authority does not include the purchase, lease, or renewal of lease(s) for ADP equipment or software. Prior approval of ADP operational services is required from DIT whenever a Delegation of Procurement Authority (DPA) or sharing clearance is required from the General Services Administration (GSA).

(9) The Director, National Capital Service Center, OASAM, or an officer acting in that capacity, is delegated authority and responsibility for acquisition of all property and services on behalf of DOL activities except for those contracting and grant responsibilities designated above. This includes (except for the Mine Safety and Health Administration (MSHA) acquisition authority for the purchase, lease, and renewal of lease(s) of all ADP equipment, software and all ADP services where Agencies have obtained prior approval from the Directorate of Information Technology (DIT), OASAM, as appropriate.

(e) *Compliance responsibilities.* Each official designated in paragraph (b) is responsible for:

(1) Complying with the policies, procedures and reporting requirements established by the ASAM.

(2) Complying with the policies, procedures and other requirements prescribed by OMB, GSA, and other central agencies, and such implementing instructions as the Department may issue. This specifically includes competition for services and products within the small purchases limitation and restrictions on the use of consultant contracts, audiovisual productions, etc.

(3) Within the limitations specified in this subpart, obtaining all property and services required to fulfill the statutory and regulatory responsibilities of the Agency or Office.

(f) *Policy responsibilities.* The following officials have acquisition policy responsibilities within the DOL:

(1) The Director, Directorate of Procurement and Grant Management, OASAM, or an officer acting in that capacity, is responsible for:

(i) Developing and publishing guidelines, policies, and regulations for DOL acquisition and grant operations.

(ii) Reviewing and evaluating administrative procedures for DOL acquisition and grant operations.

(iii) Providing technical advice and assistance to those DOL officials and officers with acquisition and grant responsibilities. This includes interpreting the Federal Acquisition Regulations and the Department of Labor Acquisition Regulations and obtaining legal advice and assistance from the Solicitor of Labor as required.

(iv) Providing continuous coordination with appropriate DOL and Federal Agencies to ensure compliance with procurement and grant regulations.

(v) Providing technical advice and support to the ASAM in complying with the reporting requirements outlined in paragraph (a)(3).

(2) The Director, Information Technology (DIT), OASAM, or an officer acting in that capacity, is responsible for:

(i) Reviewing and providing prior approval for the purchase, lease or renewal of lease(s) of ADP equipment, software and services costing $50,000 or more (the purchase price is to be used to determine inclusion in this paragraph regardless of whether the item is to be purchased or leased), and for all ADP services. Prior approval of ADP services costing less than $50,000 is required whenever a Delegation of Procurement Authority (DPA) or sharing clearance is required from the General Services Administration (GSA).

(ii) Providing oversight, including periodic system reviews, to ensure sound DOL-wide ADP methodologies and developmental practices.

(iii) Reviewing ADP procurement requests for conformance with procurement policies, standards, and regulations.

(iv) Reviewing, on a periodic basis, the scope and technical merit of ADP proposals and recommending approval or disapproval, as appropriate.

(v) Representing the Department and Agencies in the Department in liaison with GSA and OMB on ADP matters.

(vi) Developing and publishing guidelines, policies and regulations for DOL ADP activities.

(3) The Director, Office of Small and Disadvantaged Business Utilization (OSDBU), is responsible for:

(i) Assuring participation of the Department in the Federal Small and Disadvantaged Business Program as specified in section 8(a) (small disadvantaged business set-asides) and section 15 (procurement in labor surplus areas) of the Small Business Act, as amended (15 U.S.C. 637(a) and 644), and Executive Orders 11625 (Minority Business Enterprises) and 12138 (Women-Owned Business Enterprises).

(ii) Assuring participation and input of each Program Agency in establishing DOL goals for increased opportunities for small and disadvantaged business concerns to participate in the Department's procurement and grant activities.

(iii) Providing technical advice and assistance to Program Agencies in establishing Agency goals for utilizing small and disadvantaged businesses.

(iv) Developing systematic procedures, guidelines and regulations for assuring the effective implementation of the provisions of the Small Business Act, as amended, and Executive Orders 11625 and 12138.

(v) Maintaining liaison with the Small Business Administration (SBA) on matters regarding sections 8 and 15 of the Small Business Act, as amended (15 U.S.C. 637(a) and 644), and Executive Order 12138, and the Department of Commerce on matters relating to Executive Order 11625.

(4) The Director, Office of Information and Public Affairs (OIPA), is responsible for:

(i) Reviewing all purchase orders, requisitions and contracts for audiovisual productions including those which contain an audiovisual component along with other activities before the request is processed and approved by OASAM or another Agency to assure compliance with DOL and OMB requirements. All types of audiovisual productions are covered, including projects for training, education, internal communications, and/or public information purchases. Training and education products will not be reviewed for content but rather for the professional quality, effectiveness and cost of the communications material being produced. (See Guidelines for Management of Departmental Audiovisual Activities, issued pursuant to OMB Circular A–114 and Secretary's Order 5–79.)

(ii) Reviewing all purchase orders, requisitions, and contracts for the rental or purchase of major audiovisual equipment to be used in production work before the request is processed and approved by OASAM or another DOL Agency to assure compliance with DOL and OMB requirements. Production equipment includes motion picture and videotape cameras, editing equipment and duplication equipment for videotape and film. Review is not necessary for such equipment as still cameras, projectors and tape players, cassette tape players, *etc.*

(5) The Procurement Review Board is responsible for:

(i) Reviewing all requests to award contracts, grants, agreements, or modifications thereto (as described in this paragraph (f)(5)) and recommending approval or disapproval to the ASAM:

(A) Requests for noncompetitive procurements, discretionary grants and agreements exceeding the small purchases limitation;

(B) Noncompetitive consulting and related services requests, including purchase orders, and personnel appointments of consultants and experts;

(C) Competitive procurements for consulting and related services costing $50,000 or more and modifications thereto as described in paragraph (g), below;

(D) Major procurements and those with high waste vulnerability; and

(E) Requests for noncompetitive research, evaluation and demonstration projects after prior review by the Assistant Secretary for Policy.

(ii) Assuring compliance with the scope of the Board's authority, with OMB and DOL guidelines for use of consulting and related services and other special acquisitions.

(iii) Approval by the ASAM of requests identified in this paragraph (f)(5) do not constitute award of a contract. The contracting officer has final approval authority.

(g) *Exceptions to delegations of authority.* The assignment of procurement responsibilities described in paragraph (b) are subject to the exclusions listed below:

(1) *Procurement of consulting and related services.* (i) The ASAM retains authority and responsibility for approval of requests for consulting and related services for individuals and organizations under the following circumstances:

(A) When acquisitions by either contract or purchase order are to be awarded without competition, regardless of amount, or for those competitive actions costing $50,000 or more; and

(B) When modifications involving changes in dollar amounts, deliverables under contracts or (under rare circumstances) extensions to existing consulting and related services contracts are required.

(ii) The heads of the contracting activities retain approval authority for the acquisition of consulting and related services costing less than $50,000 which are obtained through competitive procedures.

(2) *Automated data processing (ADP).* The following requirements and limitations exist for the purchase or lease of ADP equipment, software and services.

(i) Authority to issue purchase orders and contracts is limited only to those officials in paragraph (b) whose procurement responsibility explicitly includes this authority.

(ii) Acquisition of ADP equipment and software costing $50,000 or more and all ADP services requires prior approval of DIT, OASAM, before the request can be forwarded to the National Capital Service Center, OASAM (except for MSHA).

(iii) Agencies can forward requisitions for ADP equipment and software costing less than $50,000 to the National Capital Service Center, OASAM (except for MSHA), without prior approval of DIT, OASAM, provided that records are maintained in accordance with procedures prescribed by DIT.

(3) *Records equipment.* The purchase of records equipment; defined as file cabinets, shelf files, visible files, mechanized files, files guides, folders jackets, wallets, and similar items used in the creation and maintenance of records and in mail handling requires special authority. Federal Property Management Regulation 101–11.306 as implemented by the Department of Labor Manual Series (DLMS–1) requires that: Form DL 1–194 be completed by the Agency Records Officer and forwarded to the Departmental Records Officer, Directorate of Management Policy and Systems, OASAM, for approval prior to acquisition. Regional Administrators—OASAM are delegated this approval authority for their respective regions. In keeping with GSA Bulletins FPMR B–120 and B–122 which discourage the use of legal-size files, no new legal size records equipment is to be purchased.

(4) The OSDBU will periodically monitor DOL Agency acquisition and grant functions which relate to the preferential programs to determine their effectiveness and adherence to Federal and DOL requirements.

(5) The Assistant Inspector General for Audit will periodically audit Agency acquisition and grant functions to determine compliance with governing regulations, policies and procedures.

(h) *Rescission of authority.* The ASAM acting through the Director, Directorate of Procurement and Grant Management, reserves the right to rescind the acquisition and grant authority delegated herein if it is determined that such action is in the best interest of the Government.

2901.603-70 Modification of appointment.

To modify a contracting officer's authority, the present appointment shall be revoked and a new certificate issued.

2901.603-71 Ratification of unauthorized contract awards.

(a) The Government is not generally bound by agreements or contractual commitments made to contractors or prospective contractors by persons to whom acquisition authority has not been delegated. Such unauthorized acts may be in violation of the Federal Property and Administrative Services Act of 1949, other Federal laws, the FAR, the DOLAR, and good acquisition practice; *e.g.*, certain requirements of law and regulation necessary for the proper establishment of a contractual obligation may not be met, such as certification of the availability of funds, determinations and findings, competition of sources, determination of contractor responsibility, price/cost analysis, administrative approvals, negotiations of appropriate contract clauses, *etc.*

(b) Unauthorized commitments shall not be ratified unless it would have been otherwise proper to enter into a contract prior to the commitment. As used herein, the phrase "otherwise proper" means that a ratification of an unauthorized commitment can be made only if there occurred no violation of any substantive legal requirements; *e.g.*, there can be no ratification unless a sole source can be justified; a determination made that the contractor is not debarred or otherwise ineligible for award; the Organizational Conflict of Interest reviews and determinations, if required, are completed; and where all other substantive legal requirements have been met. Whenever it is discovered that any person is performing work as a result of an unauthorized commitment, that person shall be advised that such work is being performed at their own risk pending establishment of valid contractual coverage. The Head of the Contracting Activity (HCA) shall then be notified of the circumstances. If the HCA agrees that the work appears to be without valid authorization, the Director, Directorate of Procurement and Grant Management, shall be notified by the HCA in accordance with the procedures outlined in (c) below.

(c) Requests received by contracting officers for ratification of commitments made by personnel lacking contracting authority shall be processed as follows:

(1) The individual who made the unauthorized contractual commitment shall furnish the contracting officer all records and documents concerning the commitment and a complete, written statement of facts, including, but not limited to, a statement as to why the acquisition office was not used, why the proposed contractor was selected and a list of other sources considered, description of work to be performed or products to be furnished, estimated or agreed contract price, citation of appropriation available, and a statement as to whether the contractor has commenced performance. Under exceptional circumstances, such as when the person who made the unauthorized commitment is no longer available to attest to the circumstances of the unauthorized commitment, the Director, Directorate of Procurement and Grant Management, may waive the requirement that the responsible employee initiate and document the request; *Provided* the Head of the Contracting Activity determines in writing that the commitment was in fact made by an employee who shall be identified in the determination.

(2) The request for ratification, an approved justification for noncompetitive acquisition, and the information required by (c)(1) above must be forwarded to the HCA for concurrence, together with recommended corrective actions to preclude recurrence.

(3) If the HCA concurs with the request for ratification, the request and concurrence shall be forwarded to the Director, Directorate of Procurement and Grant Management, for review by the Procurement Review Board (PRB). The PRB will review the request, the Justification for Non-Competitive Acquisition, any comments or information submitted by the contracting officer which should be considered in evaluation of the request, and the information submitted in accordance with (c)(2) above. Based upon this review and advice from the Office of the Solicitor, the PRB will proceed as follows:

(i) If the request submitted does not appear to be justified, it will be returned to the concurring HCA without approval with an explanation of the decision not to ratify.

(ii) If the request and the recommended corrective actions appear justified and adequate, the PRB may ratify the action, with the concurrence of the Assistant Secretary for Administration and Management, return the file to the contracting officer for action, and monitor the implementation of the corrective action plan. The contracting officer shall direct the disposition of all products and deliverables received by the Government as a result of an unauthorized commitment.

(iii) A detailed record of the review shall be maintained for audit purposes.

2901.603-72 Responsibility of other Government personnel.

(a) Responsibility for the decision of what to buy and when to buy rests with program and certain staff offices and the head of the agency or designee. Responsibility for determining how to buy, the conduct of the buying process, and execution of the contract rests with the contracting officer.

(b) Personnel responsible for making decisions to buy should maintain a close and continuous relationship with their acquisition activity to ensure that acquisition personnel are made aware of contemplated acquisition actions. This will be mutually beneficial in terms of better planning for acquisition action and more timely, efficient and economical acquisition.

(c) Personnel not delegated contracting authority may not commit the Government, formally or informally, to any type of contractual obligation. However, program personnel who must use the contracting process to accomplish their programs, must support the contracting officer in ensuring that:

(1) Requirements are clearly defined and specified;

(2) Competitive sources are solicited, evaluated, and selected;

(3) Quality standards are prescribed, and met;

(4) Performance or delivery is timely;

(5) Files are documented to substantiate the judgments, decisions, and actions taken.

2901.603-73 Contracting officer's representatives.

(a) A contracting officer may designate other Government personnel to act as authorized representatives for such functions as technical monitoring, inspection, approval of shop drawings, testing, approval of samples, and other functions of a technical nature not involving a change in the scope, price, terms or conditions of the contract or order. Such designation shall be in writing and shall contain specific instructions as to the extent to which the representative may take action for the contracting officer, but will not contain authority to sign contract documents. The responsibilities and limitations of the contracting officer's representatives may be set forth in the contract or in a separate letter, a copy of which shall be furnished to the contractor.

(b) A person assigned to a contracting office and performing primary duties in a position within a contracting office, and under the supervision of a

contracting officer, does not require written designation as a representative of the contracting officer nor designation in a contractual document to perform assigned duties. Such a person is considered to be an employee of the contracting officer, acting in the latter's behalf and, as such, has the authority and responsibility to perform, under the terms and conditions of employment, and to act as assigned by the contracting officer. The contracting officer, however, shall not authorize such as employee, acting as a representative for the contracting officer, to sign any contractual documents or letter in those instances where the signature of a contracting officer is required.

PART 2902—DEFINITIONS OF WORDS AND TERMS

Subpart 2902.1—Definitions

2902.101 Definitions.

As used throughout this regulation, the following words and terms are used as defined in this subpart unless (a) the context in which they are used clearly requires a different meaning, or (b) a different definition is prescribed for a particular part or portion of a part:

"Automated Data Processing (ADP)" means equipment, related services and software. Equipment includes computers and auxiliary equipment, such as terminals, printers, plotters, modems, data conversion equipment, source data automation recording equipment (optical character recognition devices), word processing equipment, computer input/output microfilm, and computer performance evaluation equipment. It also includes data transmission or communications equipment, including front-end processors, terminals, and other similar devices, designed primarily for use with a configuration of ADP equipment.

"Contracting activity" means an agency or office within the Department with delegated procurement authority to manage contracting functions associated with its mission. Within the Office of the Assistant Secretary for Administration and Management, the National Capital Service Center is the contracting activity.

"Head of the agency" (also called "agency head") means the Assistant Secretary for Administration and Management.

"Head of the contracting activity (HCA)" means the Assistant Secretary for Administration and Management; the Director, National Capital Service Center, and the head of each DOL Agency and Office listed in 2901.603–1(b) who has overall responsibility for managing the contracting activity.

"Procurement Executive" means the Director, Directorate of Procurement and Grant Management.

(5 U.S.C. 301; 40 U.S.C. 486(c))

PART 2903—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 2903.1—Safeguards

Sec.
2903.101 Standards of conduct.
2903.101–3 Agency regulations.

Subpart 2903.2—Contractor Gratuities to Government Personnel

2903.203 Reporting suspected violations of the gratuities clause.
2903.204 Treatment of violations.

Subpart 2903.3—Reports of Identical Bids and Suspected Antitrust Violations

2903.302 Reporting identical bids.
2903.302–2 Reporting requirements.

Subpart 2903.4—Contingent Fees

2903.409 Misrepresentation or violation of the Covenant against Contingent Fees.

Subpart 2903.5—Other Improper Business Practices

2903.502 Subcontractor kickbacks.

Subpart 2903.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

2903.602 Exceptions.
2903.603 Responsibilities of the Contracting officer.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 2903.1—Safeguards

2903.101 Standards of conduct.

2903.101–3 Agency regulations.

All DOL personnel engaged in acquisition related activities shall conduct such activities in a manner above reproach in every respect. See Part 0 of Title 29, CFR. Transactions relating to expenditure of public funds require the highest degree of public trust to protect the interests of the Government. See 2903.6 for requirements concerning contracting with current or former DOL employees.

Subpart 2903.2—Contractor Gratuities to Government Personnel

2903.203 Reporting suspected violations of the Gratuities clause.

(a) *Action official.* The Director, Directorate of Procurement and Grant Management, is the DOL official authorized to take action pursuant to FAR 3.204(c) against a contractor if it is determined that a violation of the clause at FAR 52.203–3, Gratuities, has occurred. This authority may not be redelegated.

(b) *Referral.* Whenever a suspected violation of the clause at FAR 52.203–3, Gratuities, becomes known to a DOL employee, the matter shall be reported to the cognizant contracting officer. The report shall be in writing and shall clearly state the circumstances surrounding the incident or incidences where it is alleged that the contractor offered or gave a gratuity to a DOL employee and intended by the gratuity to obtain a contract or favorable treatment under a contract. The date(s), location(s), and name(s) of all parties involved in the incident shall be included in the report. The report shall also include a recommended course of action in accordance with FAR 3.204(c) and shall be submitted through the head of the contracting activity to the Director, Directorate of Procurement and Grant Management for disposition.

2903.204 Treatment of violations.

(a) *Notice of contractor.* Afer review of the report and consultation with the Office of the Solicitor and Office of the Inspector General, as appropriate, the Director, Directorate of Procurement and Grant Management shall determine further action to be taken. If requested, the contractor shall be provided with a formal notice which summarizes the events involving the suspected violations and affords the contractor the opportunity to take the action(s) listed under FAR 3.204(b). The notice shall contain a reasonable time limit for reply and shall be sent by certified mail, return receipt requested.

(b) *Action.* Based on the contractor's response to the notice; the results of any further discussions with the contractor, the counsel, or witnesses; the review of additional documentary evidence; and other pertinent information, the Director, Directorate of Procurement and Grant Management, shall make a final and binding decision on the action to be taken in accordance with FAR 3.204(c) and shall provide the contractor with a formal notice of such action.

Subpart 2903.3—Reports of Identical Bids and Suspected Antitrust Violations

2903.302 Reporting identical bids.

2903.302–2 Reporting requirements.

Potential anti-competitive practices, such as described in FAR 3.301, and antitrust law violations as described in FAR 3.303, evidenced in bids or proposals shall be reported to the Office of the Solicitor through the Head of the Contracting Activity with a copy to the

Director, Directorate of Procurement and Grant Management. The Office of the Solicitor will provide reports to the Attorney General as appropriate.

Subpart 2903.4—Contingent Fees

2903.409 Misrepresentation or violation of the Convenant Against Contingent Fees.

(a) Suspected misrepresentation or violations of the Convenant Against Contingent Fees shall be documented and reported promptly to the contracting officer for review and action under FAR 3.409.

(b) Suspected fraudulent or criminal violations shall be documented in a report and submitted by the contracting officer to the Office of the Solicitor prior to initiation of any actions outlined in FAR 3.409(b). A copy of the report shall be submitted to the Director, Directorate of Procurement and Grant Management.

Subpart 2903.5—Other Improper Business Practices

2903.502 Subcontractor kickbacks.

(a) Reports on suspected violations of the Antikickback Act as required by FAR 3.502(b) shall be prepared by the contracting officer and submitted by the head of the contracting activity to the Office of the Solicitor for further action. A copy of the report shall be submitted to the Director, Directorate of Procurement and Grant Management.

(b) The head of the contracting activity may initiate debarment or suspension action in accordance with FAR 9.406–2 or 9.407–2 and 2909.4 of this chapter.

Subpart 2903.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

2903.602 Exceptions.

(a) The Assistant Secretary for Administration and Management is authorized to except a contract from the policy in FAR 3.601.

(b) Negotiated contracts or grants or amendments to existing contracts or grants which constitute new acquisition (including those for the rental of real or personal property) may be entered into with former employees of DOL or with firms in which former employees are known to have a substantial interest, within a period of 1 year subsequent to the termination of the individual's employment by DOL, only with the prior written approval of the Assistant Secretary for Administration and Management.

2903.603 Responsibilities of the contracting officer.

Approval of a decision to grant an exception as provided in 2903.602 shall be documented by a written determination and findings prepared by the contracting officer for signature by the Assistant Secretary for Administration and Management. The determination and findings shall document compliance with FAR 3.603 and 2909.5; specify the compelling reason(s) for award; and be placed in the contract file.

PART 2904—ADMINISTRATIVE MATTERS

Subpart 2904.6—Contract Reporting

2904.601 Federal Procurement Data System.

(a) DOL's data collection point is the Office of Procurement and Grant Policy, Directorate of Procurement and Grant Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

(b) The SF 279, Individual Contract Action Report (over $10,000), and SF 281, Summary of Contract Actions of $10,000 or less, are due monthly on the tenth day of the month.

(5 U.S.C. 301; 40 U.S.C. 486(c))

PART 2905—PUBLICIZING CONTRACT ACTIONS

Subpart 2905.4—Release of Information

Sec.
2905.403 Requests from Members of Congress.
2905.404 Release of long-range acquisition estimates.
2905.404–1 Release procedures.

Subpart 2905.5—Paid Advertisements

2905.502 Authority.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 2905.4—Release of Information

2905.403 Requests from Members of Congress.

In addition to having access to the information available to the general public, Members of Congress shall, upon their request, be given full and detailed information regarding any particular DOL procurement. The information provided shall be fully responsive to the member's request unless such a response would disclose classified matter, information not to be released pursuant to law, business confidential information or information which would be prejudicial to the competitive process. The contracting officer shall promptly consult with the Office of the Solicitor and the Office of Legislative and Intergovernmental Affairs to determine whether circumstances exist which will allow the release of additional information. In such instances, the Congressional requestor shall be furnished an interim reply providing the information which is readily releasable. The interim reply shall describe the problem which precludes release of any requested materials and describe generally what steps, if any, are being taken to make such information available.

2905.404 Release of long-range acquisition estimates.

2905.404–1 Release procedures.

(a) Heads of contracting activities are authorized to release long-range acquistion estimates under the conditions in FAR 5.404–1.

(b) Offices contemplating the release of long-range acquisition planning estimates shall coordinate with the Office of Information and Public Affairs in advance of the release of such planning estimates.

Subpart 2905.5—Paid Advertisements

2905.502 Authority.

When it is deemed necessary to use paid advertisements in newspapers and trade journals, written authority for such publication shall be obtained from the Head of the Contracting Activity or designee.

SUBCHAPTER B—ACQUISITION PLANNING

PART 2907—ACQUISITION PLANNING

Subpart 2907.1—Acquisition Plans

Sec.
2907.102 Policy.

Subpart 2907.3—Contractor Versus Government Performance

2907.307 Appeals.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 2907.1—Acquisition Plans

2907.102 Policy.

DOL Agencies and Offices shall develop acquisition plans for major system acquisitions and major projects in accordance with FAR Subpart 7.1 when the potential benefit justifies their development. The Directorate of Procurement and Grant Management and the Procurement Review Board will review each DOL Agency/Office Annual Advance Procurement Plan to ensure compliance with this subpart.

Subpart 2907.3—Contractor Versus Government Performance

2907.307 Appeals.

An appeal of a decision to convert to contract or to continue in-house performance may be made by an affected party. Appeals shall be made in writing, be based only on specific alleged material deviation (or deviations), from OMB Circular A–76, and be supported by appropriate documentation. Appeals must be delivered within 15 working days of the announced decision, through the contracting officer and the Director, Directorate of Procurement and Grant Management, to the Under Secretary.

PART 2908—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Subpart 2908.8—Acquisition of Printing and Related Supplies

2908.802 Policy.

(a) The Office of Printing, Directorate of Administrative Services and Safety and Health Programs, has been designated as the DOL liaison with the Joint Committee on Printing (JCP) and the Public Printer, Government Printing Office (GPO), on all matters related to printing.

(b) Except as provided in paragraphs 35–2 through 35–4 of the "Government Printing and Binding Regulations" of the Congressional Joint Committee on Printing, inclusion of printing as defined in FAR 8.801 in contracts for supplies and services is prohibited unless specifically approved in writing by the Directorate of Administrative Services and Safety and Health Programs.

(5 U.S.C. 301; 40 U.S.C. 486 (c))

PART 2909—CONTRACTOR QUALIFICATIONS

Subpart 2909.1—Responsible Prospective Contractors

Sec.
2909.105 Procedures.
2909.105–1 Obtaining information.

Subpart 2909.4—Debarment, Suspension, and Ineligibility

2909.400 Scope of subpart.
2909.404 Consolidated List of Debarred, Suspended, and Ineligible Contractors.
2909.405 Effect of listing.
2909.405–1 Continuation of current contracts.
2909.406 Debarment.
2909.406–1 General.
2909.406–3 Procedures.
2909.407 Suspension.
2909.407–1 General.
2909.407–3 Procedures.

Subpart 2909.5—Organizational Conflicts of Interest

2909.503 Waiver.
2909.507 Procedures.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 2909.1—Responsible Prospective Contractors

2909.105 Procedures.

2909.105–1 Obtaining information.

(a) In addition to the sources of information listed in FAR 9.105–1(c) to support determinations of responsibility or nonresponsibility, the contracting officer shall use, if available, performance evaluation reports on section 8(a) contractors (section 8(a) of the Small Business Act as amended (15 U.S.C. 637(a)) and construction and architect-engineer contractors (see 2936.201 and 2936.604).

(b) Using on-line terminals, contracting officers may obtain credit reports prior to the issuance of any loan, loan guarantee, contract or grant through the credit bureau service. The Office of Procurement Operations, National Capital Service Center, will award and administer a contract for the credit bureau service for use by all DOL contracting offices or will establish a procedure to obtain the services through an established GSA Federal Supply Schedule.

Subpart 2909.4—Debarment, Suspension, and Ineligibility

2909.400 Scope of subpart.

This subpart prescribes DOL policies and procedures governing the debarment and suspension of contractors, the listing of debarred and suspended contractors, contractors declared ineligible (see FAR 9.403) and distribution of the list.

2909.404 Consolidated List of Debarred, Suspended, and Ineligible Contractors.

(a) The Directorate of Procurement and Grant Management, is responsible for accomplishing the actions required in FAR 9.404(c).

(b) The Directorate of Procurement and Grant Management, upon receipt of monthly issues of the consolidated list from GSA, shall distribute the issues to the heads of contracting activities.

(c) Weekly supplements to monthly lists shall be furnished to the heads of contracting activities by the Directorate of Procurement and Grant Management.

2909.405 Effect of listing.

The Director, Directorate of Procurement and Grant Management, is authorized to make the determinations listed in FAR 9.405(a). Requests for such determinations shall be submitted by the head of the contracting activity to the Director, Directorate of Procurement and Grant Management.

2909.405–1 Continuation of current contracts.

The Director, Directorate of Procurement and Grant Management, is authorized to take the actions listed in FAR 9.405–1.

2909.406 Debarment.

2909.406–1 General.

(a) The Director, Directorate of Procurement and Grant Management, is the debarring official for DOL and is authorized to debar a contractor for any of the causes in FAR 9.406–2, using the procedures in 2909.406–3.

(b) Exceptions to debarment made by another Executive Agency shall be made by the Director, Directorate of Procurement and Grant Management, in accordance with the conditions in FAR 9.406–1(c).

2909.406–3 Procedures.

(a) *Investigation and referral.* Whenever a cause for debarment, as listed in FAR 9.406–2, becomes known to a DOL employee, the head of the contracting activity affected shall be notified. The head of the contracting activity shall consult with the Office of the Solicitor and the Office of the Inspector General, as appropriate, and submit a formal recommendation which documents the cause for debarment to the Director, Directorate of Procurement and Grant Management.

(b) *Notice of proposal to debar.* Based upon review of the recommendation to debar and consultation with the Office of the Solicitor and Office of the Inspector General, as appropriate, the Director, Directorate of Procurement and Grant Management, shall initiate proposed debarment by taking the actions listed in FAR 9.406–3(c) and advising the contractor of DOL's rules under 2909.4.

(c) *Factfinding proceedings.* For actions listed under FAR 9.406–3(b)(2), the Director, Directorate of Procurement and Grant Management, shall afford the contractor the opportunity to appear at an informal factfinding as required by FAR 9.406–3(b)(2)(i). The hearing shall be conducted by the Office of Administrative Law Judges and shall be held at a date and location convenient to the parties concerned. Subject to the provisions of 29 CFR Part 18, the contractor and any specifically named affiliates, may be represented by counsel or any duly authorized representative. Witnesses may be called

by either party. The proceedings shall be conducted expeditiously and in such a manner that each party will have a full opportunity to present all information considered pertinent to the proposed debarment. A transcript of the proceedings shall be made available to the contractor under the conditions in FAR 9.406–3(b)(2)(ii).

(d) *Decision and notice.* The Director, Directorate of Procurement and Grant Management, shall make a decision on imposing debarment in accordance with the procedures in FAR 9.406–3(d), findings of fact of the Administrative Law Judge, and the conditions in FAR 9.406–4 and 9.406–5. Notice of the decision shall be provided to the contractor and any affiliates involved in accordance with the procedures in FAR 9.406–3(e).

2909.407 Suspension.

2909.407–1 General.

(a) The Director, Directorate of Procurement and Grant Management, is the suspending official for DOL and is authorized to suspend a contractor for any of the causes in FAR 9.407–2, using the procedures in 2909.407–3.

(b) The Director, Directorate of Procurement and Grant Management, is authorized to make the statement regarding suspension by another agency suspending official under the conditions in FAR 9.407–1(d).

2909.407–3 Procedures.

(a) *Investigation and referral.* Whenever a cause for suspension, as listed in FAR 9.406–2, becomes known to a DOL employee, the head of the contracting activity affected shall be notified. The head of the contracting activity shall consult with the Office of the Solicitor and the Office of the Inspector General, as appropriate, and submit a formal recommendation, which documents the cause for suspension, to the Director, Directorate of Procurement and Grant Management.

(b) *Notice of suspension.* Based upon review of the recommendation to suspend and consultation with the Office of the Solicitor and the Office of the Inspector General, as required, the Director, Directorate of Procurement and Grant Management, shall initiate suspension by taking the actions listed in FAR 9.407–3(c) and advising the contractor of DOL's rules under 2909.4.

(c) *Factfinding proceedings.* For actions listed under FAR 9.407–3(b)(2), the Director, Directorate of Procurement and Grant Management, shall afford the contractor the opportunity to appear at an informal hearing as required by FAR 9.407–3(b)(2)(i). The hearing shall be conducted under the conditions in 2909.407–3(c).

(d) *Suspension decisions.* The Director, Directorate of Procurement and Grant Management, shall make a final decision on suspension as prescribed in FAR 9.407–3(d). Notice of the decision shall be provided to the contractor and any affiliates involved in accordance with the provisions in FAR 9.407–3(d)(4).

Subpart 2909.5—Organizational Conflicts of Interest

2909.503 Waiver.

(a) The Director, Directorate of Procurement and Grant Management, is authorized to waive any general rule or procedure in FAR 9.5 when its application in a particular situation would not be in the Government's interest. Pursuant to FAR 9.503, this authority may not be redelegated.

(b) Requests for waivers shall be made by the head of the contracting activity to the Director, Directorate of Procurement and Grant Management. Each request shall include:

(1) An analysis of the facts involving the potential or actual conflict including benefits and detriments to the Government and prospective contractors;

(2) A discussion of the factors which preclude avoiding, neutralizing, or mitigating the conflict; and

(3) Identification of the provision(s) in FAR Subpart 9.5 to be waived.

(c) In making determinations under 2909.503(a), the Director, Directorate of Procurement and Grant Management, shall request the opinion of the Office of the Solicitor.

2909.507 Procedures.

(a) If a prospective contractor disagrees with the decision of a contracting officer regarding an organizational conflict of interest provision and requests higher level review in accordance with FAR 9.507(c)(4) the matter shall be referred to the Director, Directorate of Procurement and Grant Management for review and final decision.

(b) Referrals shall be made by the head of the contracting agency concerned and include the contracting officer's decision and the position of the prospective contractor.

(c) In making determinations under 2909.507(a), the Director, Directorate of Procurement and Grant Management, shall request the opinion of the Office of the Solicitor.

PART 2910—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

Sec.

2910.004 Selecting specifications or descriptions for use.
2910.004–70 Brand name products or equal.
2910.007 Deviations.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

2910.004 Selecting specifications or descriptions for use.

(a) In accordance with FAR 10.1004(b)(2), purchase descriptions shall not specify a product, or specific feature of a product, peculiar to a manufacturer unless it is determined in writing by the Office initiating the purchase request that the product, or specific product feature, is essential to the Government's requirements and other similar products will not meet these requirements. This determination shall be in writing and shall accompany the purchase requisition.

(b) A "brand name or equal" purchase description shall be used only under the conditions listed in FAR 10.004(b)(3) and in accordance with the policies and procedures in 2910.004–70.

2910.004–70 Brand name products or equal.

(a) *Limitations on use.* The identification of a requirement in a purchase description by use of one or more brand name products followed by the words "or equal" shall be used only under the conditions listed in FAR 10.004(b)(3). A "brand name product" means a current commercial product of a manufacturer described by its brand name, make, model number, catalog designation, or other description by which it is regularly offered for sale to the public in the commercial market place.

(b) *Invitation requirements.* (1) "Brand name or equal" purchase descriptions in invitations shall identify salient characteristics of the product (see 2910.004–70(b)(2)) and contain the following information to describe the specific item:

(i) Identification of the item by generic descriptions;

(ii) Make, model number, catalog designation (or other description), and identification of commercial catalog where it is listed; and

(iii) Name of manufacturer, producer, or distributor of the item and complete address.

(2) In accordance with the policy in FAR 10.002, whenever a "brand name or equal" purchase description is used, offerors shall be given the opportunity to offer products equal to the brand name

if those products (including modifications thereto) satisfy the minimum needs of the Government. Therefore, all salient characteristics of the "brand name or equal" product which are determined by the office initiating the purchase request to be essential to the Government's minimum needs shall be identified separately under the heading of "Salient Characteristics" and included in the purchase description contained in the solicitation so the offeror understands the information to be submitted with its bid when offering an "equal" product for evaluation. In addition, the following certification shall be included at the end of each "brand name or equal" description in a solicitation for an offeror to identify its "equal" product:

Offerors proposing to furnish an "equal" product, in accordance with the "Brand Name or Equal" provision of this solicitation, shall insert the following description for the product.

Bidding on: _____

Manufacturer's Name: _____

Address: _____

Product Name (if any): _____

Product make, model, or catalog description:

_____

Offerors shall also be responsible for submitting all additional information on the above product necessary for the Government to determine whether the product offered meets the salient characteristics of the "brand name" as listed in the solicitation.

2910.007 Deviations.

(a) Heads of contracting activities are authorized to approve deviations and exceptions to specifications or standards listed in the Index of Federal Specifications and Standards when the exceptions listed under FAR 10.006 do not apply. The Director, Directorate of Procurement and Grant Management, shall be notified formally and provided a copy of each deviation or exception approved.

(b) Heads of contracting activities are responsible for accomplishing the actions required under FAR 10.007.

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 2913—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

Subpart 2913.1—General

Sec.

2913.106 Competition and price reasonableness.

2913.107 Solicitation and evaluation of quotations.

Subpart 2913.3—Fast Payment Procedure

2913.301 General.

Subpart 2913.4—Imprest Fund

2913.403 Agency responsibilities.

Subpart 2913.5—Purchase Orders

2913.503 Obtaining contractor acceptance and modifying purchase orders.

2913.503–70 Duplicate purchase orders.

2913.505 Purchase order and related forms.

2913.505–2 Agency order forms in lieu of optional forms 347 and 348.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 2913.1—General

2913.106 Competition and price reasonableness.

When other than the lowest responsive quotation from a responsible supplier is used as the basis for the purchase, the Contracting Officer shall include in the purchase file documentation of the reason(s) for rejecting any lower quotation and the name of the individual responsible for making the determination to reject such quotation.

2913.107 Solicitation and evaluation of quotations.

Standard Form 18, Request for Quotations, shall be used as prescribed in FAR 13.107(a) unless an agency equivalent form has been authorized for use by the Director, Directorate of Procurement and Grant Management.

Subpart 2913.3—Fast Payment Procedure

2913.301 General.

The fast payment procedure delineated in FAR Subpart 13.3 shall not be utilized by DOL.

Subpart 2913.4—Imprest Fund

2913.403 Agency responsibilities.

The DOL "Imprest Fund Handbook" incorporated in the Department of Labor Manual System (DLMS 6, Chapter 1900, Handbook DLMS 6–5) contains internal DOL procedures for establishment, maintenance and use of imprest funds. Copies of the handbook may be obtained upon written request from the Directorate of Procurement and Grant Management, Office of the Assistant Secretary for Administration and Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

Subpart 2913.5—Purchase Orders

2913.503 Obtaining contractor acceptance and modifying purchase orders.

2913.503–70 Duplicate purchase orders.

If the vendor reports non-receipt, loss or other inability to locate an original purchase order and requests another copy, the purchasing officer may issue to the vendor a duplicate copy as the vendor's basis of performance. This second issue should be conspicuously marked "Duplicate Copy." To avoid the possibility of a duplicate shipment, a letter of transmittal or a notation on the purchase order should read as follows:

This is a duplicate copy of the lost orginal purchase order, furnished in accordance with your request of _____ (Date). The Government will not be responsible for duplicate shipment.

2913.505 Purchase order and related forms.

2913.505–2 Agency order forms in lieu of optional forms 347 and 348.

Department of Labor Form 1–90 (DL Form 1–90), entitled "Purchase Order" may be used by DOL in lieu of Optional Forms 347 and 348 prescribed in FAR 13.505.

PART 2914—FORMAL ADVERTISING

Subpart 2914.2—Solicitation of Bids

Sec.

2914.203 Methods of soliciting bids.

2914.203–2 Dissemination of information concerning invitation for bids.

2914.205 Solicitation mailing lists.

2914.205–1 Establishment of lists.

Subpart 2914.4—Opening of Bids and Award of Contract

2914.406 Mistakes in bids.

2914.406–3 Other mistakes disclosed before award.

2914.406–4 Disclosure of mistakes after award.

2914.407 Award.

2914.407–8 Protests against award.

2914.407–70 Award when only one bid is received.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 2914.2—Solicitation of Bids

2914.203 Methods of soliciting bids.

2914.203–2 Dissemination of information concerning invitation for bids.

Procedures for obtaining approval for paid advertisements in newspapers are contained in 2905.502.

2914.205 Solicitation mailing lists.

2914.205–1 Establishment of lists.

In accordance with FAR 14.205–1(b), prospective bidders which submit solicitation mailing list applications shall be notified by the Contracting Activity when added to a mailing list unless the bidder is expected to be issued a solicitation within thirty days after Government receipt of the application.

Subpart 2914.4—Opening of Bids and Award of Contract

2914.406 Mistakes in bids.

2914.406–3 Other mistakes disclosed before award.

(a) The Director, Directorate of Procurement and Grant Management, is authorized to make the administrative determinations under FAR 14.406–3. This authority may not be redelegated except as set forth in paragraph (b) of 2914.406–3.

(b) If (1) a bidder requests permission to withdraw a bid rather than correct it, and (2) the evidence is determined convincing as to the mistake or (3) the evidence reasonably supports the existence of a mistake but is not clear and convincing, the head of the contracting office is authorized to make a written determination permitting the bidder to withdraw the bid after review, in accordance with established procedures, and concurrence by the appropriate Office of the Solicitor. Copies of all determinations made pursuant to this authority shall be promptly transmitted to the Director, Directorate of Procurement and Grant Management. If evidence of the intended bid is clear and convincing, even though the bidder has not requested permission to correct the bid, the case shall be processed in accordance with paragraph (c) of 2914.406–3.

(c) Suspected or alleged mistakes in bids shall be processed in accordance with the requirements of FAR 14.406–3(g). The contracting officer shall submit a report together with the supporting data described in FAR 14.406–3(g)(3) through the head of the contracting activity to the Director, Directorate of Procurement and Grant Management.

(d) The Director, Directorate of Procurement and Grant Management, is responsible for maintaining records of administrative determinations as required in FAR 14.406–3(h).

2914.406–4 Disclosure of mistakes after award.

(a) The head of the contracting activity is authorized to make the administrative determinations in FAR 14.406–4 after concurrence is received from the Office of the Solicitor as required by FAR 14.406–4(d). This authority may not be redelegated.

(b) The contracting officer shall process a mistake and prepare a case file in accordance with the requirements of FAR 14.604–4(e). The file shall be submitted to the head of the contracting activity for determination.

2914.407 Award.

2914.407–8 Protests against award.

(a) *Responsibility.* The Director, Office of Procurement and Grant Policy, shall be responsible for handling bid protests lodged with the General Accounting Office (GAO). All communications relative to protests at the GAO shall be coordinated with the Office of Procurement and Grant Policy.

(b) *Determination to make award.* (1) If a written protest before award has been lodged with the contracting activity only, the appropriate procedures of FAR 14.407–8 (a) and (b) shall be followed. Prior to making an award of a contract under the circumstances in FAR 14.407–8(b)(4), the contracting officer shall consult with the Director, Office of Procurement and Grant Policy.

(2) If a protest before award has been lodged directly with the GAO and the contracting officer determines in writing that it is necessary to make an award under the circumstances in FAR 14.407–8(b)(4), such determination must be submitted by the head of the contracting activity concerned to the Director, Office of Procurement and Grant Policy, for approval before award of the contract. The Director, Office of Procurement and Grant Policy, shall be responsible for coordination with GAO as required in FAR 14.407–8(b)(3).

(c) *Notice of protest.* Upon being advised by the GAO of the receipt of a protest before or after award, the Office of Procurement and Grant Policy will inform the appropriate contracting activity which will immediately notify the contracting officer. As required by FAR 14.407–8(a)(3), the contracting officer shall then promptly notify all interested persons, including bidders (or the contractor if the protest is after award) involved in or affected by the protest, that a protest has been lodged with the GAO and the basis for the protest. A written record of such telephonic notices shall be placed in the contract file. After receiving a copy of the protest from GAO and its request for an administrative report, the Office of Procurement and Grant Policy, will promptly furnish the same to the contracting activity involved which shall, in turn, promptly transmit copies to the contracting officer and request a written report. The contracting officer shall promptly transmit by letter a copy of the protest to all interested persons previously notified and include a statement requiring furnishing of views and information directly to the GAO. Copies of such cover letters shall be sent concurrently to the director, Office of Procurement and Grant Policy. Cover letters shall contain the advice contained in FAR 14.407–8(a)(3), including instructions that any comments submitted to GAO should also be submitted to the contracting officer and the Director, Office of Procurement and Grant Policy.

(d) *Submission of report.* All personnel shall handle protests on a priority basis. The administrative report responsive to the protest shall be appropriately titled and dated, shall cite the GAO file number, shall include the documents and statements required by FAR 14.407–8(a)(2) and shall be signed by the contracting officer. Reports shall be prepared with the assistance of the local attorney/advisor of the Office of the Solicitor. If appropriate, the report shall contain a statement regarding any urgency for the procurement and the extent to which a delay in award may result in significant performance difficulties or additional expense to the Government. If award is not urgent, a statement shall be included giving an estimate of the length of time an award may be delayed without significant expense or difficulty in performance. The contracting activity shall submit an original and one complete copy of the contracting officer's report to the Director, Office of Procurement and Grant Policy, plus one complete copy for each interested person. Contracting officers must assure that no trade secrets or commercial or financial information which is privileged or confidential is disclosed to unauthorized parties.

2914.407–70 Award when only one bid is received.

When only one bid is received in response to an invitation for bids, such bid may be considered and accepted if the contracting officer makes a written determination that (a) the specifications used in the invitation were not unduly restrictive, (b) adequate competition was solicited and it could have been reasonably assumed that more than one bid would have been submitted, (c) the price is reasonable, and (d) the bid is otherwise in accordance with the invitation for bids. Such a determination shall be placed in the contract file.

PART 2915—CONTRACTING BY NEGOTIATION

Subpart 2915.1—General Requirements for Negotiation

Sec.

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Subpart 2915.2—Negotiation Authorities

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2915.804–3 Exemptions from or waiver of submission of certified cost or pricing data.
2915.805 Proposal analysis.
2915.805–5 Field pricing support.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 2915.1—General Requirements for Negotiation

§ 2915.105 Competition.

(a)(1) Negotiated acquisition shall be on a competitive basis to the maximum practical extent (FAR 15.105) and reasonable competition shall be obtained in making small purchases over $1,000 (FAR 13.106). There are, however, circumstances where one source (or group of resources) has exclusive capability to perform the work within the time required and at reasonable prices; e.g., by reasons of experience, specialized facilities, or technical competence. In such a circumstance, the initiating program office may conclude that only one source (or groups of sources) is qualified to perform the work, and therefore, may recommend that a contract be negotiated only with that source or group. (In the case of a "group sole source" situation, a justification is required for limiting competition to that group and for the allocation of work among members of the group.) The recommendation, in writing, shall be contained in a separate document entitled "Justification for Noncompetitive Procurement," and shall examine the reasons for the acquisition being noncompetitive in accordance with paragraph (c) below.

(2) For noncompetitive acquisition, a recommended justification shall be attached to the acquisition request when the request is sent to a contracting officer for action.

(3) A justification for noncompetitive acquisition is also required where "new" acquisitions (i.e., outside the contractual scope of work) are initiated through modifications to existing contracts. Such justification shall be made a part of the permanent contract file (see FAR 4.8).

(b) The provisions of this regulation do not apply to:

(1) Acquisitions of electric power or energy, gas (natural or manufactured), water or other utility;

(2) Acquisitions of educational services from nonprofit institutions; and

(3) Acquisitions from or through other Government agencies.

(c) Justification for noncompetitive procurement.

(1) The document entitled "Justification for Noncompetitive Procurement" shall be prepared for all noncompetitive acquisitions exceeding the small purchases limitation. Noncompetitive acquisitions within the small purchases limitation shall be handled in accordance with small purchase procedures as defined in FAR 13.106.

(2) Each justification shall set forth enough facts and circumstances to clearly and convincingly establish that competition would not have been feasible or practicable. The following considerations shall be made in preparing the justification.

(i) Description of supplies or services to be procured.

(A) A brief, general nontechnical description and statement of the general application and particular significance or specialized character of the acquisition.

(B) A description of all associated supplies or services, and so forth, to be procured.

(ii) Acquisition history, estimated future requirements, and long-range acquisition objectives.

(A) A brief statement of the technical and contractual evolution of the supplies or services being procured from initiation to present status.

(B) A brief statement as to whether the work is a continuation of previous effort performed by the proposed contractor.

(C) A reference should be made to any advance planning information previously prepared or furnished, together with information with respect to any changes proposed in the present justification which represent a departure or modification of prior acquisition plans, including a statement of the effect of the changes, if any, on scheduled milestones.

(D) A brief statement as to what actions have been taken to develop competition and elimination of a noncompetitive situation in future acquisitions of the proposed supplies or services.

(iii) Estimated costs.

(A) The estimated cost of the acquisition and brief description of the assumptions made and data used by the initiating program office to develop the estimate.

(B) The estimated cost listed by fiscal year.

(C) Whether the proposed contractor has a substantial investment of some kind that would have to be duplicated at Government expense by another source.

(iv) Schedule requirements.

(A) The basis for establishing schedule requirements.

(B) An explanation of the urgency, if any, of the requirement. Describe why the schedules are critical and why only the proposed contractor can meet them.

(C) Describe what significant cost savings or other benefits could result if schedules could be relaxed and whether competition could thus be obtained.

(v) Exclusive capability.

(A) Does the proposed contractor have personnel considered unquestionably predominant experts in the particular field?

(B) What prior experience of a highly specialized nature does the source exclusively have that is complex or specialized and vital to the effort?

(C) What facilities and test equipment does the source exclusively have that are complex or specialized and vital to the effort?

(D) Is competition precluded because of the existence of patent rights, copyrights, secret processes, trade secrets, technical data, or other proprietary data?

(E) What other capacity does the proposed contractor have that is necessary for the specific effort and makes it clearly the only source that can perform the work on the required time schedule without incurring clearly unreasonable costs?

(vi) Other.

(A) If lack of drawings and/or specifications is a constraining factor, why is the proposed contractor clearly best able to perform under these

circumstances? Why are the drawings and specifications lacking? What is the lead time required to get drawings and specifications suitable for competition?

(B) Are parts or components being procured as replacement parts in support of equipment specially designed by a manufacturer, where data available is not adequate to assure that the parts or components obtained from another source would perform the same function?

(d) Review and approval. The justification shall contain a recommendation, concurrence (when needed), and approval as follows: (In the case of cost-shared contracts, review levels shall be based on the sum of the contractor and Government shares.)

(1) Concurrences in the recommendation shall be obtained within the initiating office at such levels as are deemed appropriate by the Head of the Contracting Activity. The objective of maximizing the use of competitive acquisition procedures as well as the complexity or cost of an acquisition should be used as a guide in establishing the appropriate level of responsibility for approval of noncompetitive recommendations.

(2) To ensure that DOL conforms fully with the basic policy prescribing competition, any proposed noncompetitive acquisitions is excess of the small purchases limitation must be fully justified, submitted to the Procurement Review Board and approved by the Assistant Secretary for Administration and Management and, in the case of research contracts, by the Assistant Secretary for Policy. The contracting officer is responsible for assuring that proposed noncompetitive acquisitions below these dollar levels are in compliance with FAR and DOLAR requirements regarding maximum competition.

Subpart 2915.2—Negotiation Authorities

2915.213 Technical equipment requiring standardization and interchangeability of parts.

The Directorate of Procurement and Grant Management is responsible for the reviews required in FAR 15.213(b)(5) and maintenance of the lists required in FAR 15.213(c)(4).

2915.270 Use of negotiation authorities.

Negotiation authorities under FAR Subpart 15.2 requiring written D&F's shall be exercised in accordance with the signatory levels in 2915.307 and Appendix A—Signatory Authority Matrix.

Subpart 2915.3—Determinations and Findings to Justify Negotiations

2915.304 Content.

2915.307 Signatory authority.

(a) When a written D&F is required under FAR Subpart 15.2, it shall be signed by the authority listed in Appendix A.

(b) For D&F's requiring the signature of the Head of the Agency under Appendix A the D&F shall be submitted by the Head of the Contracting Activity to the Directorate of Procurement and Grant Management for review and further action.

APPENDIX A.—SIGNATORY AUTHORITY MATRIX

Negotiation authority (FAR Subpart 15.2)	Signatory authority	
	Individual D&F	Class D&F
Public Exigency (FAR 15.202).	Contracting Officer	Head of Contracting Activity
Medicines or Medical Supplies (FAR 15.207)	Contracting Officer	Head of Contracting Activity
Supplies purchased for authorized resale (FAR 15.208)	Contracting Officer	Head of Contracting Activity
Impractical to secure competition by formal advertising (FAR 15.210)	Contracting Officer	Head of Contracting Activity
Experimental, developmental or research work (FAR 15.211).	Assistant Secretary for Administration and Management.	Assistant Secretary for Administration and Management.
Purchases not to be publicly disclosed (FAR 15.212)	Assistant Secretary for Administration and Management.	Assistant Secretary for Administration and Management.
Technical equipment requiring standardization and interchangeability or parts (FAR 15.213)	Assistant Secretary for Administration and Management.	Assistant Secretary for Administration and Management.
Negotiation after advertising (FAR 15.214)	Head of Contracting activity	Head of Contracting Activity

Subpart 2915.4—Solicitation and Receipt of Proposals and Quotations

2915.404 Presolicitation notices and conferences.

A presolicitation conference (see FAR 15.404) shall not be used unless approved by the Head of the Contracting Activity or designee in accordance with Agency or Office procedures.

2915.405 Solicitations for information or planning purposes.

2915.405.1 General.

The written determination justifying use of a solicitation for information or planning purposes under FAR 15.405–1 shall be approved by the Head of the Contracting Activity before issuance of the solicitation.

2915.413 Disclosure and use of information before award.

2915.413–1 Alternate I.

The Department of Labor shall employ the procedures in FAR Alternate I regarding disclosure and use of information.

Subpart 2915.5—Unsolicited Proposals

2915.505 Content of Unsolicited proposals.

2915.505–1 Unsolicited research proposals.

In addition to the contents required by FAR 15.505, unsolicited proposals for research should contain a commitment to provide cost-sharing.

2915.506 Agency procedures.

(a) The contact points for submission of unsolicited proposals are those officials (Heads of Contracting Activities) with program responsibility listed in Subpart 2901.6.

(b) Heads of Contracting Activities shall assure that unsolicited proposals are controlled, evaluated, safeguarded and disposed of in accordance with FAR Subpart 15.5

Subpart 2915.6—Source Selection

2915.607 Disclosure of mistakes before award.

The Head of the Contracting Activity is authorized to make the determination permitting proposal correction in accordance with the conditions in FAR 15.607(c)(3) and consultation with the Office of the Solicitor.

2915.612 Formal source selection.

(a) The Head of the Contracting Activity shall determine when a formal source selection process shall be used

and shall establish procedures for implementing the requirements in FAR 15.612.

(b) The procedures established under (a) above shall be forwarded for the review and approval of the Director, Directorate of Procurement and Grant Management.

Subpart 2915.8—Price Negotiation

2915.803 General

(a) Where the contractor insists on a price or demands a profit or fee that the contracting officer considers unreasonable, and the contracting officer has taken all authorized actions to resolve the matter (see FAR 15.803), the contract action shall be referred to the Head of the Contracting Activity for final resolution.

(b) Resolution under (a) above shall be documented and signed by the Head of the Contracting Activity, and included in the contract file.

2915.804 Cost or pricing data.

2915.804-3 Exemptions from or waiver of submission of certified cost or pricing data.

(a) The Head of the Contracting Activity is authorized to approve the contracting officer's finding supporting the unreasonableness of the lowest price (see FAR 15.804-3(b)(2)(iii).

(b) The Director, Directorate of Procurement and Grant Management, is authorized to waive the requirement for submission of certified cost or pricing data.

(c) Requests for waiver under (b) above shall be submitted in writing by the Head of the Contracting Activity and shall contain a statement as to the reasons the waiver is necessary and the efforts made to obtain the data from the contractor or prospective contractor.

2915.805 Proposal analysis.

2915.805-5 Field pricing support.

(a) As prescribed in FAR 15.805-5(c), the contracting officer shall initiate a cost or pricing review by sending a written request to the Director, Directorate of Procurement and Grant Management, OASAM. The contracting officer shall allow at least 30 calendar days when assigning a deadline for receipt of the cost and price analysis report.

(b) Upon receipt of the cost or pricing review report, the contracting officer and the price analyst (if assigned) shall discuss any questions regarding the contents of the report with the reviewer. If a question cannot be resolved, or agreement cannot be reached on a recommendation in the report, the contracting officer shall prepare a written statement for the contract file which discusses the issue(s) in question and supports a final decision on the matter. An information copy of the statement shall be promptly forwarded to the Director, Directorate of Procurement and Grant Management.

PART 2916—TYPES OF CONTRACTS

Subpart 2916.2—Fixed Price Contracts

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2916.203 Fixed-price contracts with economic price adjustment.
2916.203-4 Contract clauses.

Subpart 2916.6—Time-and-Materials, Labor-Hour, and Letter Contracts

2916.603 Letter contracts.
2916.603-2 Application.

Subpart 2916.7—Agreements

2916.702 Basic agreements.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 2916.2—Fixed Price Contracts

§ 2916.203 Fixed-price contracts with economic price adjustment.

§ 2916.203-4 Contract clauses.

An economic price adjustment clause based on cost indexes of labor or material may be used under the conditions listed in FAR 16.203-4(d) after approval by the Director, Directorate of Procurement and Grant Management, is obtained.

Subpart 2916.6—Time-and-Materials, Labor-Hour, and Letter Contracts

2916.603 Letter contracts

2916.603-2 Application

The Head of the Contracting Activity is authorized to extend the period for definitization of a letter contract required by FAR 16.603-2(c) in extreme cases where it is determined in writing that such action is in the best interest of the Government.

Subpart 2916.7—Agreements

2916.702 Basic agreements

Copies of basic agreements negotiated with contractors in accordance with FAR 16.702 shall be furnished by the Head of the Contracting Activity to the Director, Directorate of Procurement and Grant Management, promptly after execution by the Government.

PART 2917—SPECIAL CONTRACTING METHODS

Subpart 2917.2—Options

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2917.203 Solicitations.
2917.206 Evaluation.

Subpart 2917.4—Leader Company Contracting

2917.402 Limitations.

Subpart 2917.5—Interagency Acquisitions Under the Economy Act

2917.502 General.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 2917.2—Options

2917.203 Solicitations.

Option quantities in excess of the 50 percent limit prescribed in FAR 17.203(g)(2) may, in unusual circumstances, be approved by the Head of the Contracting Activity. The documentation required by FAR 17.205(a) shall include a written justification to fully support the need for such action.

2917.206 Evaluation.

The Head of the Contracting Activity shall make the written determination required by FAR 17.206(a). This determination is required before use of the solicitation provision at FAR 52.217-5, Evaluation of Options, is authorized. See FAR 17.208(c).

Subpart 2917.4—Leader Company Contracting

2917.402 Limitations.

Use of leader company contracting for a product, subject to the limitations in FAR 17.402, shall require the advance authorization of the Director, Directorate of Procurement and Grant Management. Authorization requests shall document the circumstances requiring such action and shall be submitted by the Head of the Contracting Activity.

Subpart 2917.5—Interagency Acquisitions Under the Economy Act

2917.502 General.

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 2919—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

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2919.202 Specific policies.
2919.201-1 Encouraging small business participation in acquisitions.
2919.202-2 Locating small business sources.
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2919.202-70 Annual plans and program goals.

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2919.501 General.
2919.503 Setting aside a class of acquisitions.
2919.503–70 Class set-aside for construction acquisitions.
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Subpart 2919.6—Certificates of Competency and Determinations of Eligibility

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2919.705 Responsibilities of the contracting officer under the subcontracting assistance program.
2919.705–3 Solicitations.
2919.705–4 Reviewing the subcontracting plan.
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Subpart 2919.8—Contracting With the Small Business Administration

2919.802 Selecting firms for DOL acquisitions.
2919.803 Selecting acquisitions for the 8(a) program.
2919.810 Contract administration.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 2919.2—Policies

2919.201 General policy.

(a) The Director, Office of Small and Disadvantaged Business Utilization (OSDBU), is responsible for performing all functions and duties prescribed in FAR 19–201(c) and for:

(1) Developing and monitoring policies, procedures and regulations for effective administration of the Department's small business and small disadvantaged business program;

(2) Coordinating issues with the small and disadvantaged business specialist (SDBS) in each contracting office regarding the Department's small and small disadvantaged business program;

(3) Conducting surveys and reviews of DOL contracting offices related to the small business and small disadvantaged business program, recommending changes and corrective action, as appropriate; and

(4) Representing the Department before other Government agencies on matters primarily affecting small business, small disadvantaged business, women-owned business, historically black colleges and universities (HBCU), and advising the Under Secretary and other officials on matters relating to the program.

(b) The Head of the Contracting Activity, or designee, in addition to the requirements of FAR 19.201(b), shall be responsible for:

(1) Establishing annual goals for the small disadvantaged business programs; and

(2) Appointing, as prescribed in FAR 19.201(d), a small and disadvantaged business specialist (SDBS) for each contract office.

(c) The small and disadvantaged business specialist (SDBS) shall serve as advisor to the Head of the Contracting Activity, and shall be the contracting activity's central point of contact for inquiries and advice pertaining to the small business and small disadvantaged business program. The SDBS shall be responsible for:

(1) Maintaining a program to locate capable small business, small disadvantaged business, and women-owned business sources to fulfill the Department's acquisition requirements;

(2) Coordinating inquiries and requests for advice from small business, small disadvantaged business, women-owned business concerns and HBCU on DOL contracting and subcontracting opportunities and other acquisition matters;

(3) Ensuring that contracting offices are kept abreast of new or revised small business, small disadvantaged business, women-owned business and HBCU regulations, policies, procedures and other related information;

(4) Assisting in the Agency's advance acquisition planning process;

(5) Reviewing all requirements to assure that small business, small disadvantaged business, women-owned business, businesses located in labor surplus areas (LSA) and HBCU will be afforded an equitable opportunity to compete, and as appropriate, initiating recommendations for small business set-asides;

(6) Reviewing proposed requirements for possible breakout of items or services suitable for acquisition from participants of the small and disadvantaged business programs;

(7) Attending, as appropriate, debriefings to unsuccessful small business and small disadvantaged business concerns to assist those firms in understanding requirements for responsiveness and responsibility so that the firm may be able to better qualify for future awards;

(8) Participating in the evaluation of small business and small disadvantaged business subcontracting plans for prime contractors and other evaluation activities, as appropriate;

(9) Maintaining a list of products and services which have been placed as repetitive small business set-asides;

(10) Developing and maintaining records necessary to demonstrate maximum support for DOL's preferential programs, ensuring compilation of current, accurate, and complete data; and preparing all reports pertaining to program activities;

(11) Participating in the development, implementation, and review of automated source systems to assure that the interest of small business, small disadvantaged business, women-owned business, and HBCU are fully considered;

(12) Participating, as required, in governmental-industry conferences to assist small business, disadvantaged business, women-owned business, and HBCU, including Congressionally-sponsored Federal acquisition conferences, minority business enterprises acquisition seminars, and business opportunity committee meetings;

(13) Initiating action, in writing, with appropriate personnel to assure the availability of adequate specifications and drawings, when necessary, to obtain small business, small disadvantaged business, women-owned business and HBCU participation in current and future acquisitions.

2919.202 Specific policies.

2919.202–1 Encouraging small business participation in acquisitions.

In addition to the requirements prescribed by FAR 19.202–1, contracting officers shall:

(a) Afford the SBA Procurement Center Representative (PCR) an opportunity to review all solicitations expected to exceed $2,500 which have not been set aside for small business, prior to release to the public. The SBA PCR shall be allowed a period of two working days to review the solicitation, depending on the complexity of the individual acquisition;

(b) Synopsize all proposed acquisitions expected to exceed $10,000 in the Commerce Business Daily (CBD) in accordance with the requirements of Pub. L. 98–72 and FAR Subpart 5.2;

(c) Synopsize subcontract opportunities in the CBD in accordance with the requirements in FAR 5.206, where applicable, including Numbered Note 65 or 100, when appropriate, in the CBD synopsis message; and

2919.202-2 Locating small business sources.

(a) It is the policy of the DOL to utilize the services of the SBA Procurement Automatic Source System (PASS) to identify small and small disadvantaged business sources. Obtaining sources from PASS or from local mailing lists does not negate the requirement that the contracting officer advertise the acquisition in accordance with FAR 5.

(b) Historically black colleges and universities shall be considered as sources for fulfilling requirements except for small business set-asides.

2919.202-5 Data collection and reporting requirements.

In addition to the requirements of FAR 19.202-5, DOL Agencies/Offices shall accurately measure the extent of participation by historically black colleges and universities in their acquisitions in terms of the total value of contracts placed with such organizations during each fiscal year, and report data to the OSDBU at the end of the second and fourth quarters of each fiscal year. The OSDBU shall forward the Department's consolidated data to the Department of Education.

2919.202-70 Annual plans and program goals.

(a) Heads of Contracting Activities shall develop annual goals for each category of the small business and small disadvantaged business utilization programs, which shall include projected acquisition awards to small businesses, minority businesses, 8(a) concerns, women-owned businesses, and HBCU.

(1) To the greatest extent possible, the goals shall be based on advance procurement plans, budget justifications, and past performance.

(2) Goals must comply with the criteria established by OSDBU.

(b) Goals are to be submitted to the OSDBU upon request of the Director. OSDBU shall analyze and evaluate proposed goals, consolidate departmental goals and forward such to the Small Business Administration (SBA), the General Services Administration (GSA), and the Minority Business Development Agency (MBDA), Department of Commerce.

(c) OSDBU may be required to negotiate final departmental goals, depending on SBA, GSA, and/or MBDA concurrence or nonconcurrence.

Subpart 2919.5—Set-Asides for Small Business

2919.501 General.

(a) The SDBS shall review individual requirements prior to issuance of solicitations to determine the suitability of the acquisition for award to the SBA under the section 8(a) Program (see FAR 19.803).

(b) When the requirement cannot be awarded under section 8(a) procedures, the SDBS shall review individual requirements to determine the feasibility of small business set-asides in the order of precedence set forth in FAR 19.504. The SDBS recommendation shall be entered on Form DL1-2004, "Small Business Determination," with the reasons for the "pro" or "con" set-aside recommendation. The form shall be placed in the contract file.

(c) Upon receipt of the SDBS recommendation, the contracting officer shall promptly approve or disapprove the SDBS recommendation, stating in writing the reasons for any disapproval. If the contracting officer disapproves the SDBS recommendation, the proposed acquisition shall be promptly referred to the SBA PCR where available, for review; or where no SBA PCR is available, to the Head of the Contracting Activity. All negative recommendations shall be forwarded concurrently to the OSDBU.

(d) All requirements expected to exceed $10,000 which have not been set-aside for small business shall be further reviewed by the SBA PCR, who shall indicate approval or disapproval of the SDBS/contracting officer's negative recommendation on Form DL 1-2004. If the SBA disapproves the SDBS/contracting officer's recommendation, the proposed action shall be appealed as provided in FAR 19.402(c)(3).

(e) All future requirements for products or services previously acquired on a small business set-aside basis and which are not subject to simplified small purchase procedures, shall be acquired on the basis of a repetitive set-aside.

2919.503 Setting aside a class of acquisitions.

2919.503-70 Class set-aside for construction acquisitions.

(a) Each requirement for construction, alterations, maintenance, and repair (including architect-engineer services), estimated to cost up to $2 million shall be set aside for exclusive small business participation. Such set-asides shall be considered to be unilateral small business set-asides, and shall be withdrawn only in accordance with the procedures of FAR 19.506 and 2919.506 if found not to serve the best interest of the Government.

(b) Small business set-aside preferences for construction acquisitions in excess of $2 million shall be considered on a case-by-case basis under conditions prescribed in FAR 19.502-2.

2919.505 Rejection of set-aside recommendations.

The Under Secretary of Labor shall make final decisions on any appeals of the Administrator of SBA concerning a DOL contracting officer's adverse set-aside recommendation. The contracting officer's written justification in support of the decision to reject the set-aside recommendation shall be approved by the Head of the Contracting Activity. The justification shall then be forwarded for review through the Director, Directorate of Procurement and Grant Management, and the Director, OSDBU, to the Under Secretary of Labor.

2919.506 Withdrawal or modification of set-asides.

Disagreements between the contracting officer and the SDBS concerning withdrawals or modifications of individual or class set-asides shall be resolved by the SBA PCR in the National Office, or by the Head of the Contracting Activity where no SBA PCR is available. The SDBS shall concurrently notify the OSDBU of such disagreements.

Subpart 2919.6—Certificates of Competency and Determinations of Eligibility

2919.602 Procedures.

2919.602-1 Referrals.

Referrals by the contracting officer in accordance with FAR 19.602-1 shall be approved by the head of the contracting activity prior to submission to the appropriate SBA office. The contracting officer shall forward copies of each referral to the Director, OSDBU.

Subpart 2919.7—Subcontracting With Small Business and Small Disadvantaged Business Concerns

2919.705 Responsibilities of the contracting officer under the subcontracting assistance program.

2919.705-3 Solicitations.

The contracting officer shall forward to the OSDBU any solicitation expected to result in a contract exceeding $500,000 ($1 million for construction of a public facility) prior to release to the public to ensure that appropriate subcontracting provisions are included in the Request for Proposals or Invitations for Bids. The OSDBU shall be allowed up to five working days for review of the solicitation, depending on the circumstances and complexity of the individual procurement.

2919.705–4 Reviewing the subcontracting plan.

The OSDBU shall be afforded the opportunity to review subcontracting plans submitted by apparent successful offerors to determine if small and small disadvantaged businesses are afforded the maximum practicable opportunity to participate as subcontractors. OSDBU shall recommend to the contracting officer needed changes to subcontracting plans determined to be unacceptable.

2919.705–5 Awards involving subcontracting plans.

The contracting officer shall forward for review, upon request of the Director, OSDBU, any acquisition package prior to execution of any negotiated contractual document requiring subcontracting plans.

2919.705–6 Postaward responsibilities of the contracting officer.

(a) The contracting officer shall forward to the Director, OSDBU, a copy of any subcontracting plan that was incorporated into a contract or contract modification.

(b) The contracting officer shall maintain a list of active prime contracts containing a subcontracting plan.

(c) Contracting officers shall collect quarterly and semi-annually subcontracting data from contractors required to establish subcontracting plans in support of small and small disadvantaged business concerns. Copies of the semi-annual report, Standard Form 294 (Subcontracting Report for Individual Contracts), and the quarterly report, Standard Form 295 (Summary Subcontracting Report), shall be forwarded to the Director, OSDBU, not later than the 30th day of the month following the close of the reporting period.

2919.708 Solicitation provisions and contract clauses.

Advance approval is required prior to including any small and small disadvantaged business concerns incentive subcontracting provisions in any contract. Requests for approval shall be submitted by the Head of the Contracting Activity through the Director, Directorate of Procurement and Grant Management, to the Director, OSDBU.

Subpart 2919.8—Contracting With the Small Business Administration

2919.802 Selecting firms for DOL acquisitions.

Contracting opportunities marketed by individual 8(a) firms may be reserved for the firm or group of firms which identified the opportunity; however, each 8(a) firm or group of firms nominated by DOL for a specific requirement must be approved by SBA for that particular requirement prior to any DOL technical discussions with the firm(s).

2919.803 Selecting acquisitions for the 8(a) program.

(a) Each DOL Agency shall identify in tentative Annual Advance Procurement Plans acquisitions to be fulfilled by 8(a) firms. Such tentative plans shall provide detailed descriptions of the nature of the services or work, or any other information pertinent to the requirement.

(b) Project officers shall also be responsible for cooperating with the OSDBU to actively locate and identify qualified 8(a) sources and to structure and tailor acquisitions to permit their participation.

2919.810 Contract administration.

(a) Contracting officers, or designees, shall conduct periodic evaluations relative to the performance of an 8(a) contract at various stages of the contract period of performance. Any problems encountered during the performance evaluation which cannot be resolved shall be referred to OSDBU for subsequent review and discussion with the appropriate SBA official.

(b) The OSDBU and SBA are to be notified at least 45 days prior to initiating final action to terminate a section 8(a) contract.

PART 2920—LABOR SURPLUS AREA CONCERNS

Subpart 2920.1—General

Sec.
2920.102 General policy.

Subpart 2920.2—Set-Asides

2920.201 Set-asides for labor surplus area concerns.
2920.201–1 Total set-asides.
2920.201–70 Set-asides for construction acquisitions.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 2920.1—General

2920.102 General policy.

It is the policy of the Department of Labor (DOL) to award acquisitions with eligible labor-surplus area (LSA) concerns in accordance with FAR Part 20. Responsibility for implementing the DOL LSA program is assigned to the Office of Small and Disadvantaged Business Utilization.

Subpart 2920.2—Set-Asides

2920.201 Set-asides for labor surplus area concerns.

2920.201–1 Total set-asides.

Acquisitions shall be reviewed for potential combined small business/LSA set-aside consideration in accordance with FAR 19.501 and 2919.501.

2920.201–70 Set-asides for construction acquisitions.

(a) As prescribed in 2919.503–70, all acquisitions for construction, alterations, maintenance and repair (including architect-engineer services) estimated to cost up to $2 million shall be set-aside on a class basis for combined small business/LSA concern when the construction site is located in a LSA.

(b) Small business/LSA set-aside preference for construction acquisitions in excess of $2 million shall be considered on a case-by-case basis under conditions prescribed in FAR 20.201–1.

PART 2922—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subpart 2922.1—Basic Labor Policies

Sec.
2922.101 Labor relations.
2922.101–3 Reporting labor disputes.
2922.101–4 Removal of items from contractor facilities affected by work stoppage.
2922.103 Overtime.
2922.103–4 Approvals.

Subpart 2922.6—Walsh-Healy Public Contracts Act

2922.604 Exemptions.
2922.604–2 Regulatory exemptions.
2922.606 Procedures.
2922.606–4 Award pending final determination.

Subpart 2922.8—Equal Employment Opportunity

2922.804 Affirmative action programs.
2922.804–2 Construction.
2922.805 Procedures.
2922.807 Exemptions.

Subpart 2922.13—Special Disabled and Vietnam Era Veterans

2922.1303 Waivers.
2922.1306 Complaint procedures.

Subpart 2922.14—Employment of the Handicapped

2922.1403 Waivers.
2922.1406 Complaint procedures.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 2922.1—Basic Labor Policies

2922.101 Labor relations.

2922.101-3 Reporting labor disputes.

Potential or actual labor disputes that may interfere with contract performance shall be reported by the contracting activity to the Office of the Solicitor for legal advice or assistance.

2922.101-4 Removal of items from contractor facilities affected by work stoppage.

Prior to initiating any action under FAR 22.101-4 for removal of items from contractors' facilities, the contracting officer shall obtain legal advice from the Office of the Solicitor.

2922.103 Overtime.

2922.103-4 Approvals.

The Head of the Contracting Activity is authorized to approve the use of overtime in accordance with the limitations in FAR 22.103-4(a).

Subpart 2922.6—Walsh-Healy Public Contracts Act

2922.604 Exemptions.

2922.604-2 Regulatory exemptions.

The Secretary of Labor may exempt contracts from the Walsh Healy Public Contracts Act under FAR 22.604(c). A written finding justifying the exemption (see FAR 22.604-2(c)) shall be submitted by the Head of the Contracting Activity to the Director, Directorate of Procurement and Grant Management, for further action.

2922.608 Procedures.

2922.608-4 Award pending final determination.

The contracting officer's certification for award under FAR 22.608-4(a) shall be approved by the Head of the Contracting Activity.

Subpart 2922.8—Equal Employment Opportunity

2922.803 Responsibilities.

Matters involving the applicability of Executive Order 11246 and implementing regulations of the Secretary of Labor to an acquisition or a class of acquisitions shall be reduced to writing by the contracting officer and forwarded through the Head of the Contracting Activity to the Director, Directorate of Procurement and Grant Management, for resolution.

2922.804 Affirmative action programs.

2922.804-2 Construction.

Heads of Contracting Activities are responsible for maintaining lists of geographical areas subject to affirmative action requirements under FAR 22.804-2. Lists of areas for which OFCCP has designated specific affirmative action requirements are available through OFCCP. The list, including updates or revisions, shall be distributed to all contract offices which acquire construction.

2922.805 Procedures.

The contract office shall maintain ample supplies of the poster (OFCCP-1420) entitled, "Equal Opportunity is the Law" for use as required in FAR 22-805(b). The poster (stock number 7690-00-926-8988) may be ordered from the nearest regional GSA Supply Depot.

2922.807 Exemptions.

(a) The Assistant Secretary for Administration and Management shall make the determinations in FAR 22.807(a)(1).

(b) Requests for exemptions under FAR 22.807 (a)(1), (a)(2), and (b)(5) shall be submitted in writing in accordance with FAR 22.807(c) by the contracting officer, through the Head of the Contracting Activity, to the Director, Directorate of Procurement and Grant Management, for further action.

Subpart 2922.13—Special Disabled and Vietnam Era Veterans

2922.1303 Waivers.

(a) The Assistant Secretary for Administration and Management is authorized to (1) waive any or all terms of the clause at FAR 52.222-35, Affirmative Action for Special Disabled and Vietnam Era Veterans, under the conditions prescribed in FAR 22.1303(a) and (2) waive any requirement in FAR Subpart 22.13 as prescribed in FAR 22.1303(b).

(b) Requests for waivers under (a) above shall be made in writing by the contracting officer and submitted through the Head of the Contracting Activity to the Director, Directorate of Procurement and Grant Management, for further action.

2922.1306 Complaint procedures.

The contracting office shall forward complaints received about the Administration of the Vietnam Era Veterans Readjustment Assistance Act of 1972 directly to the Assistant Secretary for Veteran's Employment Service, DOL, as prescribed in FAR 22.1306.

Subpart 2922.14—Employment of the Handicapped

2922.1403 Waivers.

(a) The Assistant Secretary for Administration and Management is authorized to (1) waive any or all of the terms of the clause at FAR 52.222-36, Affirmative Action for Handicapped Workers, under the conditions prescribed in FAR 22.1403(a) and (2) waive any requirement in FAR Subpart 22.14 as prescribed in FAR 22.1403(b).

(b) Requests for waivers under (a) above shall be made in writing by the contracting officer and submitted through the Head of the Contracting Activity to the Director, Directorate of Procurement and Grant Management.

2922.1406 Complaint procedures.

The contracting office shall forward complaints received about administration of section 503 of the Rehabilitation Act of 1973, as amended, directly to the OFCCP as prescribed in FAR 22.1406.

PART 2923—ENVIRONMENT, CONSERVATION, AND OCCUPATIONAL SAFETY

Subpart 2923.1—Pollution Control and Clean Air and Water

Sec.

2923.104 Exemptions.
2923.107 Compliance responsibilities.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 2923.1—Pollution Control and Clean Air and Water

2923.104 Exemptions.

(a) The Assistant Secretary for Administration and Management is authorized to exempt controls from the requirements of FAR Subpart 23.1 under the conditions in FAR 23.104(c).

(b) Requests for exemption shall be made in writing by the contracting officer and forwarded through the Head of the Contracting Activity to the Director, Directorate of Procurement and Grant Management, for further action.

2923.107 Compliance responsibilities.

Conditions involving noncompliance with clean air or water standards in facilities used in performing nonexempt contracts shall be reported in writing by the contracting officer to the Head of the Contracting Activity for transmittal directly to the EPA Administrator in accordance with FAR 23.107. A copy of the report shall be promptly sent to the Director, Directorate of Procurement and Grant Management.

PART 2924—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 2924.1—Protection of Individual Privacy

Sec.
2924.103 Procedures.

Subpart 2924.2—Freedom of Information Act

2924.202 Policy.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 2924.1—Protection of Individual Privacy

2924.103 Procedures.

See 29 CFR Part 70a.—Protection of Individual Privacy on Records, for the DOL Regulations relating to the maintenance or disclosure of information from systems of records on individuals.

Subpart 2924.2—Freedom of Information Act

2924.202 Policy.

See 29 CFR Part 70—Examination and Copying of Department of Labor Records, for the DOL regulations implementing the Freedom of Information Act.

PART 2925—FOREIGN ACQUISITION

Subpart 2925.1—Buy American Act—Supplies

Sec.
2925.102 Policy.
2925.105 Evaluating offers.
2925.108 Excepted articles, materials, and supplies.

Subpart 2925.2—Buy American Act—Construction Materials

2925.202 Policy.
2925.203 Evaluating offers.
2925.204 Violations.

Subpart 2925.3—Balance of Payments Program

2925.302 Policy.
2925.304 Excess and non-excess foreign currencies.

Subpart 2925.7—Restrictions on Certain Foreign Purchases

2925.703 Exceptions.

Subpart 2925.9—Omission of the Examination of Records Clause

2925.903 Conditions for omission.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 2925.1—Buy American Act—Supplies

2925.102 Policy.

(a) The Assistant Secretary for Administration and Management shall make the determinations prescribed in FAR 25.102 (a)(2) and (a)(3).

(b) The Director, Directorate of Procurement and Grant Management, shall make the determination prescribed in FAR 25.102(a)(4) in accordance with the procedures in 2925.108.

(c) Determinations under (a) above shall be prepared by the contracting officer and submitted by the Head of the Contracting Activity to the Director, Directorate of Procurement and Grant Management, for further action.

2925.105 Evaluating offers.

(a) In unusual circumstances, the Assistant Secretary for Administration and Management may determine to use evaluation differentials other than those prescribed in FAR 25.105 for a particular acquisition.

(b) Requests for use of other evaluation differentials shall be directed by the Head of the Contracting Activity to the Director, Directorate of Procurement and Grant Management for further action.

2925.108 Excepted articles, materials, and supplies.

(a) Determinations for additional articles, materials, and supplies not included in the list under FAR 25.108(d) shall be made by the Director, Directorate of Procurement and Grant Management.

(b) Determinations shall be prepared by the contracting officer and submitted by the Head of the Contracting Activity for approval.

(c) Contracting activities which have information justifying the removal of an item from the list under FAR 25.108(d) shall submit such information to the Director, Directorate of Procurement and Grant Management, for further disposition as prescribed in FAR 25.108(c).

Subpart 2925.2—Buy American Act—Construction Materials

2925.202 Policy.

(a) The Assistant Secretary for Administration and Management shall make the determinations prescribed in FAR 25.202(a)(2) and 2925.203.

(b) The Director, Directorate of Procurement and Grant Management, shall make the determination prescribed in FAR 25.202(a)(3) in accordance with the procedures in 2925.108.

(c) Determinations under (a) above shall be prepared by the contracting officer and submitted by the Head of the Contracting Activity to the Director, Directorate of Procurement and Grant Management, for further action.

2925.203 Evaluating offers.

Unless the Assistant Secretary for Administration and Management determines otherwise, when the cost of a comparable domestic construction material exceeds by more than 6 percent for large business or 12 percent for small business or labor surplus area set-aside the cost of a foreign construction material proposed in an offer, use of the domestic construction material would unreasonably increase the cost of the contract and use of the foreign construction material is authorized and acceptable. This evaluation shall be made for each foreign construction material proposed in an offer and not specifically excepted by the solicitation. The cost of construction material shall be computed to include all delivery costs to the construction site, and the cost of foreign construction material shall also include any applicable duty (whether or not a duty-free entry certificate may be issued). The acceptable offer that remains low after adding (for evaluation purposes only) 6 percent or 12 percent, as applicable, of the cost of all foreign construction materials shall be considered the successful offer. The contract awarded under these circumstances shall contain a list of the authorized foreign construction materials as required by FAR 25.202(c) and the clause at FAR 52.225–5, Buy American Act—Construction Materials.

2925.204 Violations.

Failure of the contractor to comply with the clause at FAR 52.225–5, Buy American Act—Construction Materials, shall be documented in a report by the contracting officer and submitted to the Head of the Contracting Activity for initiation of debarment action in accordance with Subpart 2909.4.

Subpart 2925.3—Balance of Payments Program

2925.302 Policy.

(a) The Director, Directorate of Procurement and Grant Management, shall make the determination prescribed in FAR 25.302(b)(3) and 25.304(c). Differentials greater than 50 percent may be authorized as prescribed in FAR 25.302(c).

(b) Determinations under (a) above shall be prepared by the contracting officer and submitted by the Head of the Contracting Activity to the Director, Directorate of Procurement and Grant Management, for further action.

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2925.304 Excess and non-excess foreign currencies.

The Director, Directorate of Procurement and Grant Management, shall consult with the Office of Management and Budget as required in FAR 25.304(c) prior to making the determination in 2925.302(a).

Subpart 2925.7—Restrictions on Certain Foreign Purchases

2925.703 Exceptions.

(a) The Assistant Secretary for Administration and Management is authorized to approve exceptions, as prescribed in FAR 25.703, for all contracts other than small purchases.

(b) Determinations under (a) above shall be prepared by the contracting officer and submitted by the Head of the Contracting Activity to the Director, Directorate of Procurement and Grant Management, for further action.

Subpart 2925.9—Omission of the Examination of Records Clause

2925.903 Conditions for omission.

(a) The Assistant Secretary for Administration and Management shall make the determination prescribed in FAR 25.903 (a)(1) and (a)(2).

(b) Determinations under (a) above shall be prepared by the contracting officer in accordance with the requirements of FAR 25.904 and submitted by the Head of the Contracting Activity to the Director, Directorate of Procurement and Grant Management, for further action.

(c) The report required by FAR 25.903(b) shall be prepared and forwarded by the Directorate of Procurement and Grant Management.

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 2928—BONDS AND INSURANCE

Subpart 2928.2—Sureties

2928.203 Options in lieu of sureties.

Upon receipt of any of the types of securities listed in FAR 28.203–1 (except bonds or notes received in the District of Columbia) or FAR 28.203–2, the contracting officer shall turn the securities over to the finance office.

(5 U.S.C. 301; 40 U.S.C. 486(c))

PART 2929—TAXES

Subpart 2929.1—General

Sec.

2929.101 Resolving tax problems.
2929.303 Applications of State and local taxes to Government contractors and subcontractors.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 2929.1—General

2929.101 Resolving tax problems.

Contract tax problems or questions shall be referred by the contracting officer to the Office of the Solicitor for resolution.

Subpart 2929.3—State and Local Taxes

2929.303 Applications of State and local taxes to Government contractors and subcontractors.

(a) Contractors to be treated as agents of the Government for the purposes set forth in FAR 29.303(a) shall require the written review and approval of the Assistant Secretary for Administration and Management.

(b) Requests for approval under (a) above shall be submitted by the Head of the Contracting Activity, through the Office of the Solicitor, to the Director, Directorate of Procurement and Grant Management, for further action.

PART 2930—COST ACCOUNTING STANDARDS

Subpart 2930.3—CAS Contract Requirements

2930.304 Waiver.

(a) The Director, Directorate of Procurement and Grant Management, is authorized to waive CASB requirements as provided in FAR 30.304(c).

(b) Requests for waivers under (a) above shall be prepared by the contracting officer as prescribed in FAR 30.304(a) and submitted by the Head of the Contracting Activity.

(5 U.S.C. 301; 40 U.S.C. 486(c))

PART 2931—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 2931.1—Applicability

2931.101 Objectives.

Individual and class deviations concerning cost principles in FAR Part 31 shall be processed as prescribed in Subpart 2901.4.

(5 U.S.C. 301; 40 U.S.C. 486(c))

PART 2932—CONTRACT FINANCING

Subpart 2932.1—General

Sec.

2932.102 Description of contract financing methods.
2932.402 General.
2932.502 Preaward matters.
2932.502–2 Contract finance office clearance.
2932.605 Responsibilities and cooperation among Government officials.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 2932.1—General

2932.102 Description of contract financing methods.

(a) Progress payments based on a percentage or stage of completion accomplished are authorized for use in contracts for construction, alteration, or repair.

(b) The Head of the Contracting Activity, or designee, is authorized to approve the use of progress payments based on percentage or stage of completion accomplished for contracts other than those listed in (a) above.

(c) Requests for approval under (b) above shall be in the form of a written determination by the contracting officer that:

(1) Use of progress payments based on costs (see FAR Subpart 32.5) is impracticable; and

(2) Adequate measures exist for determining percentage or stage of completion as a basis for determining payment.

Subpart 2932.4—Advance Payments

2932.402 General.

(a) The Director, Directorate of Procurement and Grant Management, is authorized to approve findings and determinations and contract terms for advance payments as prescribed in FAR Subpart 32.4.

(b) The contracting officer shall review and analyze the contractor's application for advance payments to determine if it meets the information requirements of FAR 32.408. Applications which do not contain the required information shall not be processed until such information is obtained from the contractor.

(c) The contracting officer shall submit a recommendation for approval or disapproval of the contractor's request through the Head of the Servicing Finance Office (see FAR 32.402(e)(2)) to the Head of the Contracting Activity for transmittal to the Director, Directorate of Procurement and Grant Management, under (a) above. Recommendations which do not

contain the information required by FAR 32.409–1 or FAR 32.409–2 will not be processed by the Directorate of Procurement and Grant Management.

Subpart 2932.5—Progress Payments Based on Costs

2932.502 Preaward matters.

2932.502–2 Contract finance office clearance.

(a) The contracting officer shall obtain the approval of the Head of the Contracting Activity before providing a progress payment rate higher than the customary rates prescribed in FAR 32.501–1.

(b) For deviations to progress payment terms prescribed under FAR Part 32, the contracting officer shall obtain approval as prescribed in 2901.403.

(c) The contracting officer shall obtain the approval of the servicing finance office for the contract before taking the action in FAR 32.502–2.

Subpart 2932.6—Contract Debts

2932.605 Responsibilities and cooperation among Government officials.

(a) The DOL contracting officer has primary responsibility for determining the amount of contract debt and notifying the cognizant finance office of such debt due the Government. The servicing DOL finance office making payments under the contract has primary responsibility for debt collection.

(b) Each DOL Agency/Office is responsible for developing an internal debt collection system and prescribing internal procedures for collection of debts, including contract debts covered under FAR Subpart 32.6. Agency/Office procedures should be in conformance with policies and procedures issued by DOL.

PART 2933—DISPUTES AND APPEALS

Sec.
2933.003 Applicability.
2933.003–70 Department of Labor Board of Contract Appeals.
2933.009 Suspected fraudulent claims.
2933.011 Contracting officer's decision.
2933.012 Contracting officer's duties upon appeal.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

2933.003 Applicability.

(a) The Assistant Secretary for Administration and Management shall make the determination prescribed under FAR 33.003(b).

(b) Determinations under (a) above shall be submitted by the Head of the Contracting Activity to the Director, Directorate of Procurement and Grant Management, for further action.

2933.003–70 Department of Labor Board of Contract Appeals.

(a) The Department of Labor Board of Contract Appeals (LBCA) is authorized by the Secretary to consider and determine appeals from decisions of contracting officers arising under a contract or relating to a contract made by the Department or any other executive agency when such agency or the Administrator of the Office of Federal Procurement Policy has designated the LBCA to decide the appeal.

(b) The address of the LBCA is 1111 20th Street, NW., Washington, DC 20036.

(c) The LBCA rules of procedure are contained in 41 CFR Part 29–60.

2933.009 Suspected fraudulent claims.

The contracting officer shall refer all matters relating to suspected fraudulent claims by a contractor under the conditions in FAR 33.009 to the Office of the Inspector General for further action or investigation.

2933.011 Contracting officer's decision.

The written decision required by FAR 33.011(a)(4) shall include, in the paragraph listed under FAR 33.011(a)(4)(v), specific reference to the Department of Labor Board of Contract Appeals (LBCA), 1111 20th Street, NW., Washington, DC 20036, and its procedures under 41 CFR Part 29–60. The LBCA optional small claims (expedited) procedures and accelerated procedures under 41 CFR 29–60.211 shall also be referenced as required by FAR.

2933.012 Contracting officer's duties upon appeal.

(a) When a notice of appeal has been received, the contracting officer shall endorse on the appeal the date of mailing (or the date of receipt if the notice was not mailed) and forward it to the LBCA by certified mail within five (5) days of receipt. The Solicitor of Labor shall also be notified of the appeal by the contracting officer. See 41 CFR 29–60.203.

(b) The contracting officer shall prepare and transmit the data, documentation, and information required by 41 CFR 29–60.205 in the form of an appeal file and appellant or appellants counsel within 30 days after receipt of a notice of appeal or advice that an appeal has been docketed by the LBCA.

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 2935—RESEARCH AND DEVELOPMENT CONTRACTING

Sec.
2935.015 Contracts for research with educational institutions and nonprofit organizations.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

2935.015 Contracts for research with educational institutions and nonprofit organizations.

(a) Heads of contracting activities shall furnish to the Director, Directorate of Procurement and Grant Management, copies of basic agreements pertaining to R&D with educational institutions and nonprofit organizations in accordance with 2916.702.

(b) The Director, Directorate of Procurement and Grant Management, shall furnish the list required under FAR 35.015(b)(3) to the FAR Secretariat.

PART 2936—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart 2936.2—Special Aspects of Contracting for Construction

Sec.
2936.201 Evaluation of contractor performance.
2936.202 Specifications.
2936.209 Construction contracts with architect-engineer firms.

Subpart 2936.5—Contract Clauses

2936.516 Quantity surveys.

Subpart 2936.6—Architect-Engineer Services

2936.602 Selection of firms for architect-engineer contracts.
2936.602–1 Selection criteria.
2936.602–2 Evaluation boards.
2936.602–3 Evaluation based functions.
2936.602–4 Selection authority.
2936.602–5 Short selection processes for contracts not to exceed $10,000.
2936.603 Collecting data on and appraising firms' qualifications.
2936.604 Performance evaluation.
2936.606 Negotiations.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 2936.2—Special Aspects of Contracting for Construction

2936.201 Evaluation of contractor performance.

(a) The Head of the Contracting Activity shall establish procedures to evaluate construction contractor performance and prepare performance reports as required by FAR 36.201. Normally, the performance report shall be prepared by the contracting officer's authorized representative or other official who was responsible for

monitoring contract performance and who is qualified to evaluate overall performance. DOL Agency/Office procedures shall prescribe instructions for review of the report, prior to distribution, as prescribed in FAR 36.201(b).

(b) Performance reports shall be made using Standard Form 1420, Performance Evaluation (Construction), as prescribed in FAR 36.701(e). Details concerning unsatisfactory performance including Government notification to the contractor as required by FAR 36.201(a)(3), and written comments by the contractor, shall also be included in the report.

(c) Performance reports shall be distributed to the Heads of Contracting Activities or designee for filing and other points required by DOL Agency/Office procedures. Copies of all reports shall also be promptly forwarded to the Director, Office of Procurement and Grant Policy, Directorate of Procurement and Grant Management, for central filing. All reports shall be retained for six years after the date of the report by the Office of Procurement and Grant Policy.

(d) Before making a determination of prospective contractor responsibility, the contracting officer may contact the Office of Procurement and Grant Policy, Directorate of Procurement and Grant Management, for information regarding performance evaluation reports on file, unless other procedures are prescribed in DOL Agency/Office instructions.

2936.202 Specifications.

When "brand name or equal" product descriptions are necessary, the requirements of 2910.004–70 shall be followed.

2936.209 Construction contracts with architect-engineer firms.

(a) As required by FAR 36.209, no contract for construction of a project shall be awarded to the firm that designed the project or its subsidiaries or affiliates without the written approval of the Director, Directorate of Procurement and Grant Management.

(b) Requests for approval under (a) above shall be made by the Head of the Contracting Activity, through the appropriate Office of the Solicitor, to the Director, Directorate of Procurement and Grant Management. The request shall include the reason(s) why award to the design firm is required; an analysis of the facts involving potential or actual organizational conflicts of interest including benefits and detriments to the Government and the prospective contractor; and the measures which are to be taken to avoid, neutralize, or mitigate conflicts of interest.

Subpart 2936.5—Contract Clauses

2936.516 Quantity surveys.

The Head of the Contracting Activity is authorized to make the determination regarding the impracticability of Government performance of original and final surveys as prescribed in FAR 36.516.

Subpart 2936.6—Architect-Engineer Services

2936.602 Selection of firms for architect-engineer contracts.

2936.602-1 Selection criteria.

Heads of contracting activities are authorized to approve the use of design competition under the conditions in FAR 36.602–1(b).

2936.602-2 Evaluation boards.

Heads of Contracting Activities shall establish procedures for providing permanent or ad hoc architect-engineer evaluation boards as prescribed in FAR 36.602–2. DOL Agency/Office procedures shall provide for the appointment of private practitioners of architecture, engineering, or related professions when such action is determined by the Head of the Contracting Activity to be essential to meet the Government's minimum needs.

2936.602-3 Evaluation based functions.

The selection report required in FAR 36.602–3(d) shall be prepared for the approval of the Head of the Contracting Activity.

2936.602-4 Selection authority.

The Head of the Contracting Activity is authorized to serve as the designated selection authority in accordance with FAR 36.602–4.

2936.602-5 Short selection processes for contracts not to exceed $10,000.

The selection process prescribed in FAR 36.602–5(b) shall be used for architect-engineer contracts not expected to exceed $10,000.

2936.603 Collecting data on and appraising firms' qualifications.

(a) Heads of Contracting Activities which acquire architect-engineer services shall establish procedures to comply with the requirements of FAR 36.603.

(b) Copies of procedures established under (a) above shall be submitted to the Director, Directorate of Procurement and Grant Management, for review and approval. These procedures shall include a list of names, addresses, and telephone numbers of offices or boards assigned to maintain architect-engineer qualification data files. The list shall be updated annually and submitted to the Director, Directorate of Procurement and Grant Management, no later than 30 days after the beginning of each fiscal year.

2936.604 Performance evaluation.

(a) The Head of the Contracting Activity shall establish procedures to evaluate architect-engineer contractor performance as required in FAR 36.604. Normally, the performance report shall be prepared by the contracting officer's authorized representative or other official who was responsible for monitoring contract performance and who is qualified to evaluate overall performance. DOL Agency/Office procedures shall prescribe instructions for review of the report, prior to distribution, as prescribed in FAR 36.604(b).

(b) Performance reports shall be made using Standard Form 1421, Performance Evaluation (Architect-Engineer) as prescribed in FAR 36.702(c). Details covering unsatisfactory performance including Government notification to the contractor as required by FAR 36.604(a)(3) and written comments by the contractor shall also be included in the report.

(c) Performance reports shall be distributed to the Head of Contracting Activities for filing, distribution points in FAR 36.604(c), and other points required by DOL Agency/Office procedures. Copies of all reports shall also be promptly forwarded to the Director, Office of Procurement and Grant Policy, Directorate of Procurement and Grant Management, for central filing. All reports shall be retained by the Office of Procurement and Grant Policy for six years after date of the report.

(d) Evaluation boards or contracting offices may contact the Office of Procurement and Grant Policy, Directorate of Procurement and Grant Management, for information regarding performance evaluation reports on file, unless other procedures are prescribed in DOL Agency/Office instructions.

2936.606 Negotiations.

When a proposal is solicited from an architect-engineer firm selected for negotiations, the contracting officer shall include in the request for proposals a reference to 2936.209 of this title as required by FAR 36.606(c).

PART 2937—SERVICE CONTRACTING

Subpart 2937.1—Service Contracts—General

Sec.
2937.103 Contracting officer responsibility

Subpart 2937.2—Consulting Services

2937.205 Management controls.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 2937.1—Service Contracts—General

2937.103 Contracting officer responsibility.

Personal services contracts (see FAR 37.104) are not authorized.

Subpart 2937.2—Consulting Services

2937.205 Management controls.

(a) Heads of contracting activities having a requirement for consulting or related services by either contract or purchase order to be awarded without competition (regardless of dollar amount) and competitive actions ($50,000 or more) are required to prepare a written justification for such services. This written justification shall be submitted to the Procurement Review Board (PRB) at least 60 days prior to the proposed effective date of the contract. Generally, requests for such services will be scheduled for review by the PRB within 21 working days. Heads of Contracting Activities retain final approval authority for all competitive acquisitions under $50,000. However, a copy of the justification for competitive acquisitions under $50,000 must be forwarded to the Assistant Secretary for Administration and Management and the Inspector General within ten days of approval. Regardless of the type of action planned, the justification shall include the following:

(1) A statement of need which certifies that the requested services do not unnecessarily duplicate any previously performed work.

(2) Nature and scope of the problem, the results expected, and the manner in which the project will relate to an impact on the Contracting Activity administration and/or program management.

(3) That the services described in the request are not prohibited by OMB Circular A–120.

(4) Extent to which in-house staff availability was assessed, and the reasons why procurement of outside services are necessary.

(5) Any additional information or data which support the requirement for a contract.

(6) Name(s) and title(s) of official(s) who will be assigned as project officer(s) to work with the contractor, and who can be contacted for additional information.

(b) In accordance with FAR 37.205(b)(7), all purchase requests for consulting services initiated in the fourth quarter of the fiscal year must be submitted to the Procurement Review Board for action and subsequent approval by the Assistant Secretary for Administration and Management.

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 2942—CONTRACT ADMINISTRATION

Subpart 2942.2—Assignment of Contract Administration

Sec.
2942.202 Assignment of contract administration.
2942.203 Retention of contract administration.

Subpart 2942.6—Corporate Administrative Contracting Officer

2942.602 Assignment and location.

Subpart 2942.7—Indirect Cost Rates

2942.703 Policy.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 2942.2—Assignment of Contract Administration

2942.202 Assignment of contract administration.

Unless otherwise prescribed in DOL Agency/Office procedures, the Head of the Contracting Activity is authorized to make the decision on withholding functions in FAR 42.202(b)(2).

2942.203 Retention of contract administration.

Unless otherwise prescribed in DOL Agency/Office procedures, the Head of the Contracting Activity is authorized to perform the review in FAR 42.203(b).

Subpart 2942.6—Corporate Administrative Contracting Officer

2942.602 Assignment and location.

The Head of the Contracting Activity is authorized to approve the need for a corporate administrative contracting officer as prescribed in FAR 42.602(a)(2).

Subpart 2942.7—Indirect Cost Rates

2942.703 Policy.

The Office of Cost Determination, Directorate of Procurement and Grant Management, is responsible for establishing billing rates and indirect cost rates as prescribed in FAR Subpart 42.7.

PART 2943—CONTRACT MODIFICATIONS

Subpart 2943.2—Change Orders

2943.205 Contract clauses.

Heads of Contracting Activities may establish procedures, when appropriate, for authorizing the contracting officer to vary the 30-day period for submission of adjustment proposals to the clauses prescribed by FAR 43.205 (a)(1), (b)(1), (c), and (d).

(5 U.S.C. 301; 40 U.S.C. 486(c))

PART 2945—GOVERNMENT PROPERTY

Subpart 2945.3—Providing Government Property to Contractors

Sec.
2945.302 Providing facilities.
2945.302–1 Policy.

Subpart 2945.4—Contractor Use and Rental of Government Property

2945.403 Rental—Use and Charges clause.
2945.405 Contracts with foreign governments or international organizations.
2945.407 Non-Government use of plant equipment.

Subpart 2945.6—Reporting, Redistribution, and Disposal of Contractor Inventory

2945.608 Screening of contractor inventory.
2945.608–6 Waiver of screening requirements.
2945.610 Sale of surplus contractor inventory.
2945.610–2 Exemptions from sale by GSA.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 2945.3—Providing Government Property to Contractors

2945.302 Providing facilities.

2945.302–1 Policy.

The Head of the Contracting Activity is authorized to make the determination for providing facilities to a contractor as prescribed in FAR 45.302–1(a)(4).

Subpart 2945.4—Contractor Use and Rental of Government Property

2945.403 Rental—Use and Charges Clause.

The Head of the Contracting Activity is authorized to make the determination for changing rent on the basis of use under the clause at FAR 52.245–9 as prescribed in FAR 45.403(a).

2945.405 Contracts with foreign governments or international organizations.

The Head of the Contracting Activity shall establish procedures, when required, for processing requests of

foreign governments or international organizations to use Government property and for recovering costs for such use (see FAR 45.405).

2945.407 Non-Government use of plant equipment.

(a) The Director, Directorate of Procurement and Grant Management, is authorized to approve the non-Government use of plant equipment as prescribed in FAR 45.407.

(b) Requests for approval under (a) above shall be submitted by the Head of the Contracting Activity.

Subpart 2945.6—Reporting, Redistribution, and Disposal of Contractor Inventory

2945.608 Screening of contractor inventory.

2945.608-6 Waiver of screening requirements.

(a) The Director, Directorate of Procurement and Grant Management, is authorized to waive screening requirements as prescribed in FAR 45.608-6.

(b) Requests for waiver shall be submitted by the Head of the Contracting Activity.

2945.610 Sale of surplus contractor inventory.

2945.610-2 Exemptions from sale by GSA.

(a) The Assistant Secretary for Administration and Management is authorized to seek exemptions from sale as prescribed in FAR 45.610-2.

(b) Requests for exemptions shall be submitted by the Head of the Contracting Activity to the Director, Directorate of Procurement and Grant Management, for further action.

PART 2948—VALUE ENGINEERING

Subpart 2948.1—Policies and Procedures

2948.102 Policies.

(a) The Head of the Contracting Activity is authorized to make the determination to extend the sharing base of a value engineering change proposal (VECP) as prescribed in FAR 48.102(e).

(b) The Head of the Contracting activity is authorized to extend the sharing base of a VECP to include the entire contracting activity or any part of it (see FAR 48.102(e)).

(c) When the sharing base is extended under (a) or (b) above, the contracting officer shall specify the base in the contract schedule as required in FAR 48.104-1(a).

(5 U.S.C. 301; 40 U.S.C. 486(c))

PART 2949—TERMINATION OF CONTRACTS

Subpart 2949.1—General Principles

Sec.
49.106 Fraud or other criminal conduct.
49.111 Review of proposed settlements.
49.111-70 Settlement review boards.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 2941.1—General Principles

2949.106 Fraud or other criminal conduct.

(a) Whenever fraud, such as falsified documents, false statements, or other criminal conduct related to the settlement of a terminated contract is suspected, the contracting officer shall discontinue negotiations and prepare a report of the facts. The report shall be submitted by the Head of the Contracting Activity to the Assistant Inspector General for Investigations along with copies of documents or other information connected with the suspected violation(s). A copy of the report shall also be submitted to the Director, Directorate of Procurement and Grant Management.

(b) Depending on the findings of the Assistant Inspector General for Investigations, the Head of the Contracting Activity may initiate suspension or debarment action as prescribed in FAR Subpart 9.4 and Supart 2909.4.

2949.111 Review of proposed settlements.

All proposed settlement agreements shall be reviewed by the Office of the Solicitor and approved at a level higher than the contracting officer in accordance with DOL Agency procedures. Settlement agreements of $50,000 or more shall be approved by the Head of the Contracting Activity.

2949.111-70 Settlement review boards.

(a) Heads of Contracting Activities shall establish settlement review boards for the review of each termination settlement or determination of amount due under the termination clause of a contract or approval or ratification of a subcontract settlement when the action involves $50,000 or more.

(b) Settlement review boards may be established for actions below $50,000 when considered desirable by the Head of the Contracting Activity or when specifically requested by the contracting officer.

PART 2951—USE OF GOVERNMENT SOURCES BY CONTRACTORS

Subpart 2951.1—Contractor Use of Government Supply Sources

Sec.
2951.101 Policy.
2951.102 Authorization to use Government supply sources.
2951.102-70 Exclusive use on Government work.

Subpart 2951.2—Contractor Use of Interagency Motor Pool Vehicles

2951.201 Policy.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 2951.1—Contractor Use of Government Supply Sources

2951.101 Policy.

It is DOL policy that cost-type contractors should meet their requirements from Government sources of supply when these sources are available to them, and if it is economically advantageous or otherwise in the best interest of the Government.

2951.102 Authorization to use Government supply sources.

(a) The Head of the Contracting Activity may authorize cost-type contractors and subcontractors, where all higher tier contracts and subcontracts are cost-type, to use Government supply sources in accordance with the requirements and procedures in FAR Subpart 51. This authority may be redelegated to the level of contracting officer.

(b) If the contracting officer decides to authorize a contractor to use Government supply sources under the conditions prescribed in FAR 51.102, a written request for a FEDSTRIP activity address code (see FPMR 101-26.203) shall be made directly to the DOL Agency, Headquarters Property Management Office.

2951.102-70 Exclusive use on Government work.

Materials, supplies, and equipment acquired from Government sources of supply under the procedures described herein must be used exclusively in connection with Government work, except as otherwise authorized by the Head of the Contracting Activity.

Subpart 2951.2—Contractor Use of Interagency Motor Pool Vehicles

2951.201 Policy.

If it is in the Government's interest, the contracting officer may authorize cost-reimbursement contractors to obtain, for official purposes only, as

defined in FAR 51.201(a), interagency motor pool vehicles and related services for short-term use under Federal Supply Schedule Industrial Group 751.

SUBCHAPTER H—CLAUASE AND FORMS

PART 2952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Sec.
2952.000 Scope of part.

Subpart 2952.1—Instructions for Using Provisions and Clauses

2952.102–1 Incorporation by reference.
2952.170 Deviations.

Authority: (5 U.S.C. 301; 40 U.S.C. 486(c)).

2952.000 Scope of part.

This part implements FAR Part 52 which sets forth contract clauses for use in connection with the acquisition of personal property and nonpersonal services (including construction).

Subpart 2952.1—Instructions for Using Provisions and Clauses

2952.102–1 Incorporation by reference.

(a) Preprinted standard general provisions sets will be maintained by the Office of Procurement and Grant Policy, Directorate of Procurement and Grant Management, and distributed to DOL contracting activities for use during the initial FAR and DOLAR familiarization period. Contracting activities will be responsible for inserting necessary additions and alterations into individual contracts to ascertain that the general provisions are current and appropriate to the circumstances of the individual contract.

(b) At a later date, when the FAR general provisions are familiar to both DOL personnel and the Department's contractors, the general provisions will be incorporated by reference.

2952.170 Deviations.

(a) Individual or class deviations of provisions and clauses in FAR Part 52 shall be authorized by the Director, Directorate of Procurement and Grant Management, as prescribed in Subpart 2901.4.

(b) Any FAR provision or clause used with a deviation authorized in accordance with (a) above shall be identified as prescribed in FAR 52.103.

PART 2953—FORMS

Sec.
2953.000 Scope of part.

Subpart 2953.1—General

2953.103 Exceptions.
2953.108 Recommendations concerning forms.
2953.170 Forms for collection of information.

Subpart 2953.2—Prescription of Forms

2953.200 Department of Labor forms.

Subpart 2953.3—Illustration of Forms

2953.300 Scope of subpart.
2953.303 Agency forms.
2953.303–DL 1–1 Department of Labor Form DL 1–1, Requisition for Equipment, Supplies, or Services
2953.303–DL 1–90 Department of Labor Form DL 1–90, Purchase Order
2953.303–DL 1–194 Department of Labor Form DL 1–194, Certification Prior to Acquisition of Filing Equipment
2953.303–DL 1–2004 Department of Labor Form DL 1–2004, Small Business Procurement Determination.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

2953.000 Scope of part.

This part (a) prescribes Department of Labor (DL) forms for use in acquisition, (b) illustrates these forms, and (c) contains procedures for exceptions to forms prescribed in FAR Part 53 or this Part 2953.

Subpart 2953.1—General

2953.103 Exceptions.

(a) Requests for exceptions to standard forms in FAR Part 53 shall be submitted, as prescribed in FAR 53.103, to the Director, Directorate of Procurement and Grant Management, for further action.

(b) Requests for exceptions to Department of Labor (DL) forms in Part 2953 shall be handled as deviations (see Subpart 2901.4).

2953.108 Recommendations concerning forms.

Recommendations concerning forms (see FAR 53.108) shall be made as prescribed in 2901.304(e).

2953.170 Forms for collection of information.

In accordance with the Paperwork Reduction Act of 1980 and 5 CFR Part 1320, DOL Agencies/Offices imposing forms under contracts or subcontracts requiring the collection of information on identical items from 10 or more members of the public must obtain approval from the Office of Management and Budget.

Subpart 2953.2—Prescription of Forms

2953.200 Department of Labor forms.

This subpart prescribes Department of Labor (DL) forms for use in acquisition. Consistent with the approach used in FAR Subpart 53.2, this subpart is arranged by subject matter, in the same order as, and keyed to, the parts of the DOLAR in which the form usage requirements are addressed.

Subpart 2953.3—Illustrations of Forms

2953.300 Scope of subpart.

This subpart contains illustrations of Department of Labor (DL) forms used in acquisition.

2953.303 Agency forms.

This section illustrates Department of Labor (DL) forms specified by the DOLAR for use in acquisitions. The forms are illustrated in numerical order. The subsection numbers correspond with the DL form numbers.

BILLING CODE 4510-23-M

2953.303–DL 1–1 Department of Labor Form DL 1–1, Requisition for Equipment, Supplies, or Services.

U.S. DEPARTMENT OF LABOR REQUISITION FOR EQUIPMENT, SUPPLIES, OR SERVICES (Note General Instructions for Preparation on Reverse Side of Part 1.)	1. REQUISITION NO.	2. BUREAU
	3. PAGE NO. OF_____PAGES	4. DATE
5. ALLOTMENT AND APPROPRIATION	6. DELIVER TO: *(Specify if inside delivery is required)*	
7. FOR INFORMATION CALL *(Name, Ext.)*		
8. SIGNATURE AND TITLE OF APPROVING OFFICER		

9. ITEM NO.	10. STOCK NO.	11. DESCRIPTION OF ARTICLES OR SERVICES *(Double space between items)*	12. QUANTITY	13. UNIT OF ISSUE	14. UNIT PRICE	15. AMOUNT	

TO BE COMPLETED BY SUPPLY ACTIVITY

16. SHIPPED VIA ☐ Freight ☐ Parcel Post ☐ Mail	17. FILLED BY_____ DATE_____	18. PACKED BY_____ DATE_____	19. CHECKED BY_____ DATE_____
20. DATE OF SHIPMENT	21. BILL OF LADING NUMBER	22. ESTIMATED COST OF SHIPMENT	

TO BE COMPLETED BY RECEIVING ACTIVITY (Optional – See Instruction No. 6 on Reverse)

23.

SIGNATURE_____ TITLE_____ DATE_____

DL FORM 1-1, REV. OCTOBER 1968

2963.303–DL 1–90 Department of Labor Form DL 1–90, Purchase Order.

Purchase Order

U.S. Department of Labor

Method of Purchase
Form Approved
Budget Bureau No. 48-R101

(See F.S.S. Cir. Ltr. No. B-89)

1 Federal Supply Schedule
2 Federal Supply Service Stock
3 Excess Property Transfer
4 Advertising (R.S. 3709)
5 Sole Property Negotiations
6 (Other Exemptions from R.S. 3709)
7 Miscellaneous

This number must appear on all packages and papers relating to this order!

Order No. (33-40) Date

Requisition No. Agency

Form 1099 Required ..... No ☐
Soc. Sec. # Yes ☐

Page of

To

Ship To

Invitation No. Contract No. Time for Delivery Discount Terms

FOB Point Ship Via Gov't B/L No.

Item No.		Quantity	Unit	Unit Price	Amount
				Total	

22-DIGIT ACCOUNTING CODE
10-31

Payment will be made after receipt of articles ordered and upon proper completion and submission of invoice in triplicate to:

Signature

Name

Title

(Authorized Purchasing Officer)

Original

DL Form 1-90
(Rev. Jan. 1976)

PURCHASE ORDER TERMS AND CONDITIONS

52.252-2	CLAUSES INCORPORATED BY REFERENCE (Apr 1984) - This contract incorporates the following clauses by reference with the same force and effect as if they were given in full text. Upon request the Contracting Officer will make their full text available:

FEDERAL ACQUISITION REGULATION (48 CFR CHAPTER 1) CLAUSES

52.203-1	Officials Not to Benefit (Apr 1984)
52.203-3	Gratuities (Apr 1984)
52.203-4	Covenant Against Contingent Fees (Apr 1984)
52.212-9	Variation in Quantity (Apr 1984) (In the preceding clause, the permissible variations are stated in the schedule)
52.215-1	Examination of Records by the Comptroller General
52.219-13	Utilization of Women-Owned Small Businesses
52.222-3	Convict Labor (Apr 1984)
52.222-4	Contract Work Hours and Safety Standards Act - Overtime Compensation - General (Apr 1984)
52.222-20	Walsh-Healey Public Contracts Act
52.222-26	Equal Opportunity (Apr 1984)
52.222-36	Affirmative Action for Handicapped Workers (Apr 1984)
52.222-40	Service Contract Act of 1965 - Contracts of $2,500 or Less (Apr 1984)
52.222-41	Service Contract Act of 1965 (Apr 1984)
52.225-3	Buy American Act - Supplies (Apr 1984)
52.232-1	Payments (Apr 1984)
52.232-8	Discounts for Prompt Payment (Apr 1984)(With Alternate 1)
52-233-1	Disputes (Apr 1984)
52.243-1	Changes - Fixed Price (Apr 1984)
52.249-1	Termination for Convenience of the Government (Fixed Price)(Short Form)(Apr 1984)

2953.303–DL 1–194 Department of Labor Form DL 1–194, Certification Prior to Acquisition of Filing Equipment.

Certification Prior to Acquisition of Filing Equipment

U.S. Department of Labor

1 Requisition Number

Instructions

For standards and procedures pertaining to the disposition of records and utilization of filing equipment, refer to DLMS Chapter 1-Records Management.

Prepare original and attach to requisition. Requests originating in the National Office will be routed to Division of Information Storage and Disposition Policy, DMPS, OASAM. Field locations will route requests to the RA-OASAM.

To:

3. From: (Requesting Office)

This request pertains to: (Check One) ☐ A. Acquisition of filing cabinets

☐ B. Acquisition of other filing equipment

Certification

I hereby certify that actions prerequisite to requesting excess, rehabilitated, or new filing equipment have been completed as indicated below:

☐ a. Agency records have been disposed of in accordance with the General Records Schedules or approved Agency Records Schedules.

☐ b. Retention periods for records no longer required have been reduced to the absolute minimum.

☐ c. Inactive records have been retired to the Federal Records Centers.

☐ d. Contents of filing cabinets have been rehoused in more economical equipment where appropriate.
(For example: shelf filing for records; shelving, storage cabinets, and similar equipment for stocks of forms, publications and office supplies.)

☐ e. Filing cabinets are being fully utilized, including top and bottom drawers, for housing records.
(Drawers filled to optimum extent - usually 3/4 full to permit ready filing and finding; contents of cabinets that are less than half full have been consolidated.)

☐ f. Filing cabinets have been redistributed within the Agency to meet needs for special types and sizes of cabinets.

☐ g. Stocks of filing cabinets have been reduced to immediate needs and any unneeded cabinets have been reassigned to points of shortage within the Agency or reported as excess to OASAM.

☐ h. The requested equipment will not be used to house records that are eligible for disposition or retirement.

Signature of Agency Records Officer (or Agency Regional Administrator)

Date

Approved:

Signature of Departmental Records Officer or Regional Administrator—OASAM

Date

DL Form 1-194 (Rev. June 1983)

2953.303–DL 1–2004 Department of Labor Form DL 1–2004, Small Business Procurement Determination.

Small Business Procurement Determination

U.S. Department of Labor

Procurement Office

Name and address of Contracting Officer | Telephone Number

Number and Date of Requisition

Procurement Control Number

1. Description of proposed product and/or service

3. Estimated Cost

4. Proposed period of performance

2. Proposed method of procurement

(a) _____ 8(a) Procedures
(b) _____ 100% Small business/labor surplus area set-aside
(c) _____ 100% Small business set-aside
(d) _____ Partial small business/labor surplus area set-aside
(e) _____ Partial small business set-aside
(f) _____ 100% Labor surplus area set-aside/large business
(g) _____ Unrestricted—proprietary item (explain below)
(h) _____ Unrestricted—Insufficient small business competition (explain below)
(i) _____ Other (specify)

Comments:

5. Has exact item/service been procured previously?

6. Previous contract number:

7. Date of previous award:

8. Previous method of procurement:

9. Total number of responses received:

10. Number of responses from small business:

11. Name and location of previous contractor: ☐ Small business ☐ Large business

12. Total price:

Signature of Contracting Officer | Date

Review by Small and Disadvantaged Business Specialists

_____ I concur with the recommendations of the Contracting Officer
_____ I do not concur with the recommendations of the Contracting Officer

Comments:

Signature of Small and Disadvantaged Business Specialist | Date

Review by the Small Business Administration's Procurement Center Representative

_____ I concur with the recommendations
_____ Please solicit additional sources attached
_____ I do not concur with the recommendations and request suspension of this procurement action pending an appeal under FPR 1-1.706-2 (a) (1). SBA Form 70 is attached.

Signature of Small Business Administration's Procurement Center Representative | Date

[FR Doc. 85–5060 Filed 3–4–85; 8:45 am]
BILLING CODE 4510–23–C

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Part V

Department of Transportation

Federal Aviation Administration

14 CFR Part 23

Airworthiness Standards; Crash-Resistant Fuel Systems; Proposed Rule

VOL 50 ISS 43 MR 5 1985 UMI

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. 24494; Notice No. 85-7]

Airworthiness Standards; Crash-Resistant Fuel Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: This advance notice (1) announces the FAA's intent to incorporate airworthiness standards for crash-resistant fuel systems into Part 23 of the Federal Aviation Regulations (FAR), and (2) invites interested persons to submit specific comments, suggestions, and recommendations to assist the FAA in determining the future course of action regarding this rulemaking activity.

DATE: Comments must be received on or before July 3, 1985.

ADDRESS: Comments on this notice may be mailed in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-204), Docket No. 24494, 800 Independence Avenue, SW., Washington, D.C. 20591, or delivered in duplicate to: Room 916, 800 Independence Avenue, SW., Washington, D.C. 20591. Comments delivered must be marked Docket No. 24494. Comments may be inspected in Room 916 between 8:30 a.m. and 5:00 p.m. on weekdays, except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Oscar E. Ball, Aerospace Engineer, Regulations and Policy Office (ACE-110), Aircraft Certification Division, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106. Commercial telephone (816) 374-5688, or FTS 758-5688.

SUPPLEMENTARY INFORMATION:

Comments Invited

This ANPRM is issued under the FAA's policy of soliciting early public participation in rulemaking proceedings. Interested persons are invited to participate in these preliminary rulemaking procedures by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address above. All communications received on or before the closing date for comments will be considered by the Administrator before taking further rulemaking action. Persons wishing the FAA to acknowledge receipt of their comments submmitted in response to this notice must submit with those comments a pre-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 24494." The postcard will be date stamped and returned to the commenters. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket. If it is determined to be in the public interest to proceed with further rulemaking after considering the available data and comments received in response to this advance notice, a Notice of Proposed Rulemaking will be issued.

Availability of ANPRM

Any person may obtain a copy of this ANPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center (APA-430), 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 426-0858. Communications must identify the notice number of this ANPRM. Persons interested in being placed on the mailing list for future ANPRMs and NPRMs should also request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

This action is taken in the continuing pursuit of improved aviation safety through advances in modern technology and in response to safety recommendations A-80-90 through -95 of the National Transportation Safety Board (NTSB). The NTSB recommended that the FAA:

(1)"Amend the airworthiness regulations to incorporate the latest technology for flexible, crash-resistant fuel lines and self-sealing, frangible fuel line couplings at least equivalent in performance to those used in FAA tests and described in Report No. FAA-RD-78-28 for all newly certificated general aviation aircraft (A-80-90)."

(2) "Amend the airworthiness regulations to incorporate the latest technology for light weight, flexible, crash-resistant fuel cells at least equivalent in performance to those used in FAA tests and described in Report No. FAA-RD-78-28 for newly certificated general aviation aircraft having nonintegral fuel tank designs (A-80-91)."

(3) "Require after a specified date that all newly manufactured general aviation aircraft comply with the amended airworthiness regulations regarding fuel system crashworthiness (A-80-92)."

(4) "Fund research and development to develop the technology and promulgate standards for crash-resistant fuel systems for general aviation aircraft having integral fuel tank designs equivalent to the standards for those aircraft having nonintegral fuel tank designs (A-80-93)."

(5) "Assess the feasibility of requiring the installation of selected crash-resistant fuel system components, made available in kit form from manufacturers, in existing general aviation aircraft on a retrofit basis and promulgate appropriate regulations (A-80-94)."

(6) "Continue to fund research and development to advance the state-of-the-art with the view toward developing other means to reduce the incidence of post-crash fire in general aviation aircraft (A-80-95)."

Report No. FAA-RD-78-28, entitled "Tests of Crash-Resistant Fuel Systems for General Aviation Aircraft," dated March 1978, is available to the public from the National Technical Information Service, Springfield, Virginia 22161.

The U.S. Army has crash-resistant fuel systems in some helicopters and small airplanes, and has been using crash-resistant fuel systems in such aircraft since 1970, apparently with considerable success. Army Document USARTL-TR-79-22E, "Aircraft Crash Survival Design Guide, Volume V—Aircraft Post-Crash Survival", provides information and data pertinent to aircraft crashworthiness and recommends applicable design conditions and criteria.

The FAA Technical Center, Atlantic City, New Jersey, has conducted full-scale crash tests which have demonstrated that fuel system installations with improved crash-resistant bladder cells with crash-resistant flexible hose assemblies and frangible fittings will provide improved crash protection for small airplanes. This testing resulted in the report referenced in the NTSB Recommendations.

Discussion

Based on the foregoing background information and preliminary investigations, the FAA is considering amending Part 23 of the Federal Aviation Regulations (FAR) to require

that airplanes for which new or amended type certificate application is received after the effective date of the amendment, comply with new crash-resistant fuel system airworthiness type certification requirements. The desirability of proposing these new rules results from independent FAA research and testing and in response to NTSB safety recommendations numbered (1), (2), and (3) in the preceding Background paragraph of this ANPRM. In the future, separate rulemaking action may be undertaken to implement NTSB recommendation number (5) on those individual airplane designs determined to require modifications and where those modifications are justified on a cost-benefit basis. The results of ongoing research and development may lead to further rulemaking designed to implement NTSB recommendation numbers (4) and (6).

However, before issuing a Notice of Proposed Rulemaking (NPRM) which would implement NTSB safety recommendations numbered (1), (2), and (3), the FAA has concluded that additional technical and economic data are necessary. Comments are requested concerning a proposed rule or rules based upon the safety recommendations previously cited in this ANPRM.

As the Aviation community is aware, the FAA is considering initiating rulemaking to require improved cabin environment for occupants of small airplanes. It is the intent of any rulemaking to be developed from this ANPRM to improve the fuel system safety to match the crashworthiness of the improved cabin environment. An occupant who survives a crash impact by virtue of an improved cabin environment should not subsequently perish because of inadequate fuel system crash resistance. Comments should consider those fuel system improvements necessary to increase fuel system crash resistance to at least the same level that will result from the improved cabin environment.

After an impact survivable crash, the fuel system should not release a hazardous quantity of fuel which could contact an ignition source. A hazardous quantity of fuel has been defined in specific locations as one quart; however, in cabin areas, the permissible quantity may be reduced.

Economic Impact

It is important to estimate the probable benefits and costs of adopting new rules for fuel systems crash resistance. The FAA requests any estimates available in these areas.

The anticipated benefits will be realized through a reduction in loss of life and property due to post-crash fires. A general study conducted by the NTSB has indicated that the likelihood of fatalities when fire follows a crash is four times greater than if there is no fire.[1] FAA invites submission to the docket of any studies of fatalities and injuries caused by fire occurring after crashes of airplanes which were certificated under Part 23 of the FAR.

The anticipated costs of compliance with a crashworthiness rule for fuel systems would involve five basic areas: certification engineering and testing; actual hardware and material requirements; any incremental labor costs; penalties associated with increased weight, if applicable; and finally, any incremental maintenance expense associated with new fuel systems. These costs for newly type certificated airplanes will differ from the cost for currently certificated airplanes that will need to incorporate fuel system changes on the production line. At this time FAA does not contemplate a general retrofit requirement for aircraft in the present general aviation fleet. However, FAA expects that aircraft produced after a date to be determined will have to satisfy a crash resistance requirement identical to, or similar to, any basic rule adopted for newly certificated aircraft.

The three likely components of crash-resistant fuel system technology to be considered in complying with possible rulemaking are (1) flexible, crash-resistant fuel lines; (2) self-sealing frangible fuel line couplings; and (3) lightweight, flexible, crash-resistant fuel cells. Comments are requested on costs, benefits, and likely effectiveness of these and any other component of such systems. In complying with any rule in this area, it is likely that all will be used in some combination. No determination has been made of specific components of fuel systems that will be required, for either newly certificated aircraft or previously certificated aircraft. It is likely that any rule adopted will set performance standards, rather than specify system components that must be used.

The economic impact of a rule is measured in the net cost of compliance. Net cost is the difference between design, parts, and installation cost for a fuel system meeting any higher certification standard, compared to a system which meets present certification requirements.

[1] *General Aviation Accidents: Post-crash Fires and How to Prevent or Control Them.* NTSB–AAS–80–2. August 1980.

In summary, the FAA invites the public to submit information, views, etc., on the following:

1. Cost estimates pertaining to the design, manufacture, and installation of proposed crash-resistant fuel system installations.

a. Commenters should identify whether the cost estimates relate to new type certification programs or to amendments to type certificates for aircraft in production.

b. Each estimate should identify the aircraft engine type and number installed, the number and type of fuel cells, the number of hoses, fittings, and valves which make up the fuel system.

c. Cost estimates should isolate net costs of compliance. For example, a currently produced aircraft may cost the manufacturer $20,000 to install fuel cells, lines, fittings, valves and other elements of the fuel system. The net cost of compliance would be any increment above this amount, rather than the gross cost of a fuel system which complies with a higher crash-resistant standard.

d. Commenter should assume the maximum use of analysis with specific testing of fuel cell designs (such as a drop test).

e. Cost should be detailed and show their relationship to the total cost for testing and certification, as well as a projection of the aircraft unit impact, giving the number of aircraft units over which the cost is amortized.

f. Commenters should indicate any changes they foresee in maintenance expense as a result of a proposed higher fuel system standard.

2. Total annual costs of complying with an improved fuel system proposal should be provided.

3. Availability of crash-resistant components to comply with an improved fuel system rule.

4. Estimates of weight increase penalties, if any, that may result from new fuel system requirements.

5. Suggestions concerning specific requirements to be proposed in the subsequent rulemaking proceeding.

6. Crash resistance limits to be met, such as crash impact speeds, deceleration forces, etc.

7. Information derived from private studies of fatalities and injuries caused by fires occurring after crashes of Part 23 airplanes.

8. Other means available for achieving the objective of the proposed rulemaking that would be potentially less costly than crash-resistant fuel systems.

CONCLUSION: The FAA has determined that this advanced notice of proposed rulemaking action is not considered significant under DOT

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Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). It is premature at this time for the FAA to accurately evaluate the costs and benefits of complying with a proposed airworthiness standard for crash-resistant fuel systems in small airplanes. A full regulatory evaluation will be prepared with the assistance of comments received as a result of this advance notice in conjunction with any notice or proposed rulemaking that may be issued on this subject.

List of Subjects in 14 CFR Part 23

Aviation safety.

(Secs. 313(a) and 601, Federal Aviation Act of 1953, as amended (49 U.S.C. 1354(a) and 1421), 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983))

Issued in Kansas City, Missouri on January 22, 1985.

John E. Shaw,

Acting Director, Central Region.

[FR Doc. 85-5306 Filed 3-4-85; 8:45 am]

BILLING CODE 4910-13-M

federal register

Tuesday
March 5, 1985

Part VI

The President

Department of Transportation

Office of the Secretary

Uniform Relocation Assistance and Real Property Acquisition

Presidential Memorandum

DOT Final Rule and Proposed Rule

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Presidential Documents

Title 3—

The President

Memorandum of February 27, 1985

Memorandum for the Heads of Executive Departments and Agencies

The purpose of this Memorandum is to improve administration and implementation of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

Specifically, I hereby direct the following actions:

1. The Presidential Memorandum of September 6, 1973 on this subject is superseded.

2. As with other Administration management improvement initiatives, a lead agency, the Department of Transportation (DOT), is designated to coordinate and monitor implementation of the Act, and consult periodically with State and local governments and other organizations and interest groups affected by administration of the Act.

3. DOT, jointly with the Department of Housing and Urban Development, shall interact with the principal executive departments and agencies affected by the Act in developing Administration policy.

4. Within 90 days of the date of this Memorandum, all affected executive departments and agencies shall propose common regulations under the Act. Within one year of the date of this Memorandum, such departments and agencies shall issue common regulations under the Act. Such regulations shall be consistent with the model policy promulgated by DOT, in consultation and coordination with other affected agencies, and published in final form in the **Federal Register** simultaneously with this Memorandum.

5. DOT shall report annually to the President's Council on Management Improvement, through the Office of Management and Budget, on implementation of the Act.

Ronald Reagan

THE WHITE HOUSE,
Washington, February 27, 1985.

[FR Doc. 85-5296
Filed 2-28-85; 4:14 pm]
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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 25

[OST Docket No. 79; Amdt. 25-3 (Ref. Notice No. 83-11)]

Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act); Acquisition for Federal and Federally-Assisted Programs

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Final rule.

SUMMARY: This regulation establishes uniform cost-effective policies and procedures governing the implementation of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act) (42 U.S.C. 4601) for all programs within the Department of Transportation. This regulation is applicable to both direct Federal programs and projects and to federally-assisted programs and projects undertaken by State and local governments. This regulation also simplifies existing policies and procedures and reduces costs. Further, this rule increases the latitude of State and local government agencies in carrying out the policies set forth in the Uniform Act.

DATES: This regulation is effective July 3, 1985. At the option of the displacing agency, this regulation may be made effective at an earlier date which is not prior to the date of publication in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Mr. Wayne Kennedy, Director, Office of Right-of-Way, FHWA, (202-426-0342); Mr. Reid Alsop, Office of Chief Counsel, FHWA, (202-426-0800); or Mr. Joseph F. Canny, Acting Director, Office of Transportation Regulatory Affairs, OST, (202-426-4220); Department of Transportation, 400 7th Street, SW., Washington, D.C. 20590. Office hours (FHWA) Monday through Friday from 7:45 a.m. to 4:15 p.m., ET. Office hours (OST) Monday through Friday 9:00 a.m. to 5:30 p.m., ET.

SUPPLEMENTARY INFORMATION: In May 1982, the Office of Management and Budget (OMB) formed a Uniform Act Interagency Regulatory Review Working Group to review existing Federal Agency regulations and to develop recommendations for uniform regulations to be issued by each covered agency to implement the Act. In addition to the Working Group, the OMB also established a policy level Interagency Regulatory Review Steering Group. The Steering Group and the Working Group, both chaired by OMB, included representatives from the Department of Housing and Urban Development, the Department of Transportation, the Department of the Interior and the Department of the Army (Corps of Engineers). The Working Group also included the Environmental Protection Agency.

Following its review of the Working Group's recommended model regulation, the policy-level Steering Group recommended that it be published as a proposed regulation for public comment. The Department of Transportation, at the request of the Office of Management and Budget, published the proposed regulation in the **Federal Register** on Thursday, April 14, 1983, at 48 FR 16197.

One hundred thirty one (131) submissions to the docket were received. Commenters represented Federal, State and local agencies, consultants, State highway agencies, private citizens, and professional organizations.

Comments received were reviewed by the Working Group and a recommended final rule was submitted to the policy-level Steering Group. The Steering Group reviewed this proposed final rule and recommended that it be published.

This regulation is being published by DOT to be used as a model regulation by all other affected agencies. The ultimate goal is to eliminate the present inconsistencies in the treatment of persons whose property is acquired for a Federal or federally-assisted project and ensure that persons displaced by such a project will be treated equitably.

Two appendices are attached to this regulation. Appendix A provides a statement of the Department's intention or interpretation for certain sections of this regulation. Appendix B contains instructions for reporting statistical data.

A Subpart-by-Subpart discussion of comments on the April 14, 1983 notice of proposed rulemaking follows:

Subpart A—General

General Comments.

Two commenters recommended that § 25.10, Definitions, be renumbered and placed immediately following § 25.1, Purpose. This action would place the definition of terms in a more logical order and facilitate the use of the regulations. This recommendation has been adopted. Section 25.10 in the proposed rule has been renumbered as § 25.2 and the remainder of Subpart A renumbered accordingly.

Section 25.2(b) Business.

Several comments were received on the definition of a "business". One commenter suggested that the definition be deleted since it duplicated the definition in the Uniform Act. The other commenters generally favored tightening the definition. The Department believes there is no basis for the suggested changes to the definition as it parallels section 101(7) of the Uniform Act and that the agencies have sufficient latitude within the existing definition to determine whether an "activity" qualifies as a business.

Section 25.2(c) Comparable replacement dwelling.

Numerous comments recommended changes in various parts of this definition. Each of these parts is discussed individually. A number of commenters indicated that defining a comparable replacement dwelling as one which "meets or exceeds" certain requirements was too expensive and would lead to confusion and excessive payments. While the Department intended the language in the proposed rule to cover situations in which housing meeting those requirements is not available, it agrees that confusion might result. Therefore, the Department has deleted reference to housing which exceeds requirements in the final rule.

Other commenters suggested that the use of the "make whole" approach to replacement housing payments makes unnecessary the use of a financial means criterion for comparable replacement housing in § 25.2(c)(6). The Department believes this reflects a slight misunderstanding. The "make whole" approach is the *method* this rule uses to meet the Act's *requirement* that replacement housing must be within a displaced person's financial means in order to be comparable. Other methods are conceivable, e.g., replacement housing cost as a percentage of the displaced person's income. However, the Department has chosen the "make whole" approach. This reflects its view that if a displaced person is made whole, then the replacement housing is within his/her financial means.

A number of comments revolved around the proposed requirement that replacement dwellings must be "functionally equivalent" to the displacement dwelling. These comments both supported and opposed this concept. Those who opposed it indicated that it would result in excessive requirements for comparable replacements housing, (e.g., as in the case of an elderly person living alone in

a large house), or that it would make finding comparable replacement housing very difficult since it would require replacement housing identical to the displacement dwelling.

This latter interpretation was not the Department's intention. Accordingly, it has revised this provision to read, "Functionally similar to the displacement dwelling with particular attention to the number of rooms and living space." (See also Appendix A, Subpart A, § 25.9(c)(2).)

The former objection is based on the view that comparable replacement housing need be only adequate in size to accommodate the displaced person. The Department cannot support this view in light of the statutory provision that the purpose of relocation assistance is that displaced persons "* * * shall not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole."

Commenters also objected on a closely related matter—whether replacement housing for tenants must meet the standard of comparability, or a standard that it be decent, safe, and sanitary and adequate in size to meet their needs. The Department believes that it was the intent of Congress that the former standard be adopted for both tenants and owners and the regulation reflects this position in § 25.2(c)(2).

Numerous commenters objected to the use of the term "currently available" in § 25.2(c)(5) as a requirement for a comparable replacement dwelling. The intent of the word "currently" is merely to require that replacement housing actually be available to a displaced person when it is presented as a referral. Thus, a unit available prior to referral but not available at the time of referral does not meet this requirement.

A large number of commenters indicated that the reference to adverse environmental conditions in § 25.2(c)(3) should be dropped because they considered the requirement to be administratively burdensome. The Department carefully considered these comments, but it decided to retain this language. The Department believes that this is consistent with Congresssional intent that factors beyond the physical condition of the dwelling itself should be considered when determining the acceptablility of a replacement dwelling. One purpose of the requirement is to provide the opportunity to ameliorate minority concentrations.

Section 25.2(d) Contributes materially.

Numerous commenters expressed concern about the meaning and application of this term. Therefore, the Department has provided a definition of the term which includes a method for determining material contribution.

Section 25.2(e) Decent, safe, and sanitary dwelling.

A number of commenters suggested changes to the definition of a decent, safe, and sanitary dwelling. One commenter suggested that the definition include a requirement that the dwelling be checked for any possible lead-based paint problems. This had been considered by the Department at the time the proposed rule was being prepared, and it was determined that such a specific requirement was not necessary as it would typically be covered by applicable local housing and occupancy code requirements. Upon further review, it was again decided not to include any specific requirement for checking for lead-based paint problems.

One commenter recommended that the regulation indicate that an Agency's inspection of a dwelling unit is made in connection with determining a displaced person's eligibility for a replacement housing payment and not to assure or guarantee that there will not be deficiencies in the dwelling which may develop at a later date. It has been the position of most Agencies that their inspection does not guarantee that a dwelling has no deficiencies. The Department recognizes that the primary purpose of the inspection concerns eligibility for payment, but it does not believe it is necessary to make such a declaration in the regulations. It does recommend, however, that an Agency should include in its relocation material provided to displaced persons information that clearly describes the nature and purpose of its inspection.

Three comments were received concerning the provision at § 25.2(e)(3) that requires a heating system capable of maintaining a temperature of approximately 70 degrees. It was proposed that the provision be revised to exclude specific reference to a degree level and should be based on normal requirements of the area. The Department believes that there is sufficient flexibility in the regulation to adequately cover the concerns of the commenters and the provision is not changed.

One commenter suggested that the wording "adequate in size" is indefinite and that a more definite criteria be used, such as the square foot requirements in accepted codes. This change was not considered necessary as a "decent, safe, and sanitary dwelling" must meet applicable housing and occupancy codes which normally provide the criteria sought by the commenter.

There were three comments concerning the means of egress from a dwelling unit in a multi-story building. The commenters believed that the provision in the regulation was too restrictive. In the final rule, the Department has revised this provision to require only one means of egress in multi-story buildings, where access is from a common corridor that has at least two means of egress.

Section 25.2(f) Displaced person.

A large number of comments were received concerning the extent of eligibility of a "displaced person" (particularly, a displaced business) for relocation payment when there is a partial acquisition of the real property for the project. The commenters suggested that the regulations be modified to permit an Agency to determine the extent of eligibility of displaced persons for relocation payments when there is a partial acquisition. The Department has considered these comments and agrees with them. The final rule has been modified to adopt the suggestion by addition of a parenthetical sentence at the end of § 25.2(f)(i).

Several comments were received which questioned the need for identifying persons not displaced in § 25.2(f)(2). After consideration, the Department decided to retain the provision stated in the proposed rule in order to avoid confusion, and maximize consistent application of eligibility requirements.

Section 25.2(k) Initiation of negotiations

The definition of "initiation of negotiations" has been revised to accommodate the considerations of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (Pub. L. 96–510, "Superfund"). Under Executive Order 12316 (45 FR 42237, August 20, 1981), the Federal Emergency Management Agency (FEMA) is charged with responsibility for providing for the permanent relocation of residents, business, and community facilities where, due to the presence of a hazardous substance, such relocation is necessary to protect the public health or welfare.

It is not at all unusual for those whose property will be purchased under Superfund to have moved from such property once the presence of a hazardous substance is formally identified or a Federal permanent

relocation (buyout) is announced. The Federal Government may well encourage these individuals to leave and will probably provide temporary relocation for them. At the time of enactment of the Uniform Relocation Act of 1970, Superfund had not been passed and the prospect of permanent relocation by the Federal Government in connection with the presence of a hazardous substance was not specifically contemplated. However, it would be inconsistent with both Superfund and the Uniform Act to deny relocation assistance to such individuals for failure to satisfy Uniform Act occupancy requirements solely because they evacuated an area prior to the Agency's develivery to the owner of the initial written offer to purchase real property.

In circumstances where a permanent relocation under Superfund has been formally announced or there has been a Federal or federally coordinated health advisory, and a permanent relocation is later undertaken by the Federal Government, "initiation of negotiations" occurs at the time of such announcement or health advisory. As a result of so defining "initiation of negotiations" owners and tenants will not be prevented from satisfying the 180 day (for owners) and the 90 day (for tenants) occupancy requirements necessary to be eligible for relocation assistance. These occupancy requirements appear at §§ 25.401(a)(1) and 25.402(a)(1) for conventional housing and §§ 25.503(a) and 25.504(a) for mobile homes.

Section 25.2(1) Owner of displacement dwelling.

In reponse to several comments and to increase consistency within the rule, we have moved the definition of an owner of a displacement dwelling from § 25.403(c) to the definitions section. This parallels the inclusion of a definition for a tenant found in the proposed rule.

Other Definitions

A number of commenters suggested that additional definitions in the rule, such as 180-day homeowner, replacement dwelling, displacement dwelling, etc. be included. The Department believes that these terms are self-explanatory and do not require definitions.

Section 25.3 No duplication of payments.

The word "or" has been changed to "and" to be consistent with statutory language. Also, there were Federal Agency comments on this section (formerly numbered § 25.2) Please note a supplemental notice of proposed rulemaking, published elsewhere in today's **Federal Register**, that requests public comment on a change to this section that would preclude duplicate payments under any Federal, state, or local law that would have the same purpose and effect as payments under the Uniform Act.

Section 25.4 Assurances, monitoring and corrective action.

(a) *General.* Six comments were received recommending that assurances of compliance with the Uniform Act only be required on a one time basis rather than on a project basis. This recommendation was adopted in part to permit a one time assurance if, in the judgment of the Federal funding agency, such an assurance will serve to assure compliance with the Uniform Act.

(b) *Prevention of fraud, waste, and mismanagement.* Several commenters noted that this paragraph did not indicate the type of controls considered adequate to prevent waste, fraud, and mismanagement, and they recommended that specific controls be included. The Department believes that the selection and implemention of such controls should be left to the displacing agencies to administer in accordance with applicable State law. Therefore, no change was made in this provision.

Section 25.5 Manner of notices.

Many commenters objected to the need for this section. In recognition of the crucial role of notices in assuring successful relocation of displaced persons, and as an additional source of documentation for agency files, the Department decided to retain this requirement.

Section 25.6 Administration of jointly funded projects.

A number of commenters questioned the reference to policies and procedures in addition to these regulations. They felt that the reference was not needed since these regulations were intended to have government-wide application. While these regulations implement the Uniform Act, agency activities are affected by other statutory and administrative requirements, and, therefore, the reference to them has been retained.

It also was suggested that any agreement between Federal agencies designating a cognizant Federal agency should be made in consultation with the acquiring agencies. While it is expected that this will be done to insure coordination and consultation among involved agencies, the Department has determined that the final designation of a cognizant agency should be done by the involved Federal agencies.

Section 25.9 Recordkeeping and reports.

A number of commenters questioned the requirement to maintain separate files for each acquisition of real property and for each person displaced. The Department is in agreement and it has modified paragraph (a) to require only such records as are sufficient to demonstrate compliance with these regulations.

It was pointed out that § 25.9(b) apparently conflicts with § 25.10(e) regarding confidentiality of records. The wording of § 25.9(b) has been changed to provide that the subject records are confidential only in that they are not to be considered public information.

It also was suggested that § 25.9(c) should be deleted because there is no statutory basis for requiring reports. In order to minimize the reporting burden on agencies implementing the Act, we have limited this requirement so that a report may be required no more frequently than every three years. In addition, we have provided (in Appendix B) a standard report form. This form involves only the basic information needed for effective program management. With only minor modifications, all agencies will be able to use this form for reporting activities under the Uniform Act.

Section 25.10 Appeals.

The final language reflects the following actions taken regarding the wording of the proposed rule:

(a) The consensus of those commenting on this section was that it was unduly restrictive by not allowing agencies with established, workable procedures to continue to use them in an objective review that is an administrative rather than a judicial process. The Department agrees and it has changed the regulation to allow this.

(b) Commenters were virtually unanimous in their objections to including as appealable, issues not so identified in Section 213(b)(3) of the Uniform Act. The Department agrees and, in the final rule, has limited the actions which may be appealed to the eligibility for, or the amount of, a payment.

(c) In response to numerous comments, the minimum time limit for filing appeals has been reduced from 180 days to 60 days after the Agency's determination on the claim. The Department made this change to expedite the appeals process and the

disposition of cases. It believes this allows sufficient time for displacees to prepare appeals. If circumstances make compliance with this timetable unreasonable, the Agency may allow additional time.

(d) A number of commenters objected to the requirements contained in § 25.10(d) through (o) as burdensome and unnecessary. The Department has considered these objections and, in general, agrees. Therefore, it has either eliminated these provisions or substantially simplified them in order to reduce the administrative burden of the regulation.

Section 25.10(b) Actions which may be appealed.

Four commenters specifically questioned if payments made under § 25.106, Expenses Incidental to Transfer of Title to the Agency, and § 25.107, Certain Litigation Expenses, were appealable as indicated in former § 25.9(b), because they relate to compensation under Title III of the Uniform Act, and not Title II.

The Department has made no change. Under Section 303 of the Uniform Act, the displacing agency is required to reimburse the owner for incidental title transfer expenses "to the extent the head of such agency deems fair and reasonable." Similarly in Section 304(c) of the Uniform Act, when the displacing agency attempts to effect a settlement of an inverse condemnation suit outside of court, it is required to include reimbursement for "reasonable attorney, appraisal and engineering fees actually incurred." In both situations, a displacing agency has the discretion to determine what is reasonable under the facts and circumstances of an individual case.

Since section 213(b)(3) of the Uniform Act provides for an appeal as to the eligibility for or the amount of "a payment authorized by this *Act* " (emphasis supplied), and not just Title II of the Act, the Department could not adopt the change proposed.

Subpart B—Real Property Acquisition

Section 25.101(a) General.

Of the 15 parties who commented, 13 opposed and 2 supported the provision which stated that Subpart B (and thus Title III of the Uniform Act) would not apply where the Agency informed an owner that the Agency would not exercise its power of eminent domain and would not acquire the property if a mutually satisfactory agreement could not be reached. Some expressed concern for uninformed property owners. The Department of Interior objected because the national parks contain many private holdings which are purchased on a voluntary basis, and such owners should be entitled to the benefits and protections of Subpart B.

It was apparent from the comments that the Department had not adequately conveyed its intention regarding this provision. As a consequence, § 25.101(a) has been amended to state that Subpart B applies to any acquisition for a Federal or federally-assisted project, except for voluntary transactions. The Appendix to this regulation addresses this matter at length, including criteria for voluntary transactions.

Subpart B clearly applies to acquisitions carried out under the threat of eminent domain, including amicable agreements under such threat. It is the Department's position that Subpart B also applies where there is an intended, planned, or designated project area, and all or substantially all of the property in that area is eventually to be acquired. In this situation, the absence or presence of the threat to use the power of eminent domain is not relevant. The primary determinant is the intention to acquire all or most of the property within a project area.

Where no particular property is required because of the availability of alternative sites, where there is no intention to acquire all or most of the property within a project area, and the owner (or owners) voluntarily reaches an amicable settlement with the acquiring Agency, the Department intends that an Agency may determine, at its option, that the requirements of this Subpart do not apply. In such situations, an owner is free to sell or not to sell, as in the case of a private sector transaction. If an agency wishes to purchase more than one property in a general geographic area on a "voluntary transaction" basis, the Department intends that all owners be treated similarly with respect to eligibility for benefits under the Uniform Act.

Section 25.101(b) Less-than-full-fee interest in real property.

Several comments were made about the use of a specific 50-year or longer term where an Agency is, in effect, acquiring a property through a long-term lease arrangement (in contrast to an acquisition in fee or other permanent interest). Some recommended a shorter time period, and others were, in essence, concerned about setting a specific time limit in this context. It was also apparent that the intent of this paragraph, as written, was not clear.

The Department believes that it is advisable to address the matter of acquisition by leasing in fairly specific terms, and that a specified time period is essential. It is the Department's intention that the 50-year time period be interpreted as a minimum point beyond which the provisions of these regulations are clearly applicable. Fifty years was chosen because that figure was used in a House Report, No. 91–1656, in a related context.

The Department further intends that good judgment be used in dealing with long-term leases which fall short of the 50-year minimum. Generally, it would not be in the public interest to determine that these regulations do not apply solely because the terms of the lease fell marginally short of the 50-year point.

There were two objections to the application of Subpart B to acquisition of easements for rural water systems and other utility systems in low density areas because of the cost impact. One party estimated a 60 to 80 percent increase in the cost of many water system projects.

The Department does not have the authority under the Uniform Act to exempt such projects from the requirements of these regulations and the Uniform Act. However, we would point out that § 25.106, Donations, is designed to deal with such situations. A property owner may decide that the benefits of a new water system far outweigh the damages to his or her property caused by acquisition of an easement to lay the necessary pipe and, as a consequence, could release the Agency from its obligation to either make an appraisal or pay just compensation, or both. The Department emphasizes that this is a property owner option, and not that of the Agency. The United States Constitution guarantees the right to payment of just compensation for the taking of private property for a public purpose.

Section 25.101(c) Federally-assisted projects.

This paragraph addresses the effect of State law on the provisions of Subpart B in the context of federally-assisted projects. The recommendation was made that the Title III assurances to be submitted by a State agency (see § 25.4(a)) include specific reference to State law on which an exception to these requirements is based.

The Department agrees with the intent of the comment. An assurance from a State agency must contain reference to the authority which the State agency believes provides an exemption from the requirements of section 301 and section 302 of the Uniform Act in order to be complete and acceptable. However, the Department believes this is inherent in

the assurance requirement, and that it is not necessary to include a specific regulatory requirement on the point.

Section 25.102(b) Notice to owner.

There were a large number of objections to this paragraph which would require that an owner be given written notice of the Agency's interest in acquiring the owner's real property. Some recommended deletion of the entire paragraph, and others suggested deletion of the "in writing" provision. The most frequently given reason was that the mandatory public hearings, other written notices, and personal contacts by Agency personnel made this requirement redundant, administratively burdensome, and costly.

The Department believes that an owner of real property to be acquired should be informed of that probability as early as is feasible, and should further be informed of the protections provided by law and these regulations.

However, the Department also recognizes that there are several ways of providing this information, and that this will vary depending on the type and size of the project and other circumstances particular to a given situation.

As a consequence, the basic requirement to provide such information has been retained, but the "in writing" proviso has been deleted. This provides an Agency the discretion to determine how it will provide the intended notice.

Section 25.102(c). Appraisal and invitation to owner.

A few commenters expressed the concern that, as written, this action required the Agency to make extraordinary efforts to accommodate an uncooperative owner by providing that owner an opportunity to accompany the appraiser during the inspection of the property.

The Department does not intend that this provision be interpreted in this manner. The statutory requirement is that an owner or designated representative "shall be given an opportunity to accompany the appraiser * * *." The Department does not intend that this opportunity be presented to the owner on a one-time, take-it-or-leave-it basis by the Agency or the appraiser. Nor is it intended to impose an unreasonable burden on the Agency or the appraiser in order to accommodate an owner. Because there is an obligation on the part of both the Agency and the owner to act in a reasonable manner, the Department has decided to retain the wording proposed.

Section 25.102(d) Establishment of offer of just compensation.

One commenter recommended that this paragraph be reworded to require that the offer be in writing and may not be less than the Agency's approved "Report of Review Appraiser."

The Department believes that the intent of this comment has been accomplished by the reference to § 25.104, Review of Appraisals. In addition, the wording used better accommodates those agencies which utilize a multi-level review process. The review process establishes the approved appraisal, and the offer to the owner may not be less than that amount. The offer may exceed the amount of the approved appraisal if, in the judgment of Agency officials, the higher offer reflects just compensation for the property.

Section 25.102(e) Summary statement.

In paragraph (e)(1), it was suggested that the words "if any" should be added between "damages" and "to the remaining real property" to avoid misunderstanding of this requirement. The Department agreed, and made the revision.

Regarding paragraph (e)(3), the question was asked why it was necessary to identify to the fee owner items which he or she has already disclaimed as belonging to a tenant-owner. Another related comment concerned identifying separately held interests in residential property.

The Department believes that it is essential that an Agency's formal offer make it very clear what is included and what is not included in the offer. The example used in paragraph (e)(3) is just one of several that could have been used. The purpose of this requirement is to assure that an owner is adequately informed and has a clear understanding of the Agency's offer. The Department does not intend that minute detail be provided where this would serve no reasonable purpose.

Section 25.102(f) Basic negotiation procedures.

It was noted that this paragraph strongly implies that negotiation contacts must be face-to-face and should be revised to permit negotiations by mail, particularly when an owner lives out-of-State.

While the Department believes that a personal contact is often the most effective way of presenting an offer and answering an owner's questions, it was not intended that negotiation contacts always be limited to a personal, face-to-face conversation. The Department is aware that, on occasion, some Agencies first mail out a written offer and explanatory information, and later follow up with telephone calls or personal visits. Further, it would be unreasonable to require a personal visit to an owner who lives a great distance from the property being acquired. The Department recognizes that there are many ways to assure that the offer is adequately presented and that the owner is properly informed.

One commenter stated that the concept of requesting owners to suggest modifications in the terms and conditions of the purchase will extend most negotiations interminably.

It is not the Department's intention that the Agency solicit suggestions for modification of the terms and conditions of the purchase. However, where the owner volunteers information which he or she believes is important under the circumstances, it is only reasonable and equitable that the Agency give it the consideration it warrants. Further, it is important that an owner be given a reasonable period of time to consider the offer. What is reasonable will obviously depend on a number of things such as the value and complexity of the acquisition, the purpose of the project (which might be of an emergency nature), or the need for an owner to seek assistance because of age or health.

Section 25.102(g) Updating offer of just compensation.

Two commenters recommended that a "significant delay," (following which the appraisals would have to be updated) should refer to a definite 6-month time period.

The Department has not adopted the use of any specific time period following which appraisals would automatically have to be updated or new appraisals obtained. The reasons which cause changes in property value are so varied, and the speed with which they affect value are so different, that any one time period cannot be suitable for all occasions. This is a matter best left to the discretion of Agency officials, with the objective being to offer the full amount of just compensation due at the time the offer is presented to the owner.

Section 25.102(i) Administrative settlement.

Four commenters supported the idea of a management level decision to settle a case at a higher amount, if circumstances warrant, rather than go to court. One opposed it on the basis that this was a judicial function.

The Department believes that this provision will serve to avoid litigation and relieve congestion in the courts.

Judicial resolution of a value question is time-consuming and expensive for both the property owner and the Agency. It should be reserved for matters of substance and importance, such as when the dollar differences are substantial or an important principle or precedent is involved in order to minimize litigation costs and limit court caseloads. Provided that it is reasonable, prudent, and in the public interest in a given situation, the Department advocates nonjudicial settlements.

The Department intends that such decisions be made at the Agency management level. Appraisers and review appraisers must not be pressured to adjust their value estimates for the purpose of justifying a settlement.

Several commenters recommended that the requirement for a written justification for the settlement should apply only where Federal funds participate in acquisition costs.

The Department has adopted this recommendation. There are situations where the Uniform Act and this regulation apply because there is Federal participation in some phase of project costs, even though there is no participation in the cost of acquiring the real property for the project. In such situations, a property owner is entitled to a full offer, summary statement, etc., as specified in the Uniform Act. The written justification for an administrative settlement provides a basis for Federal participation in the costs over and above the Agency's original offer. Thus, such an explanation need not be a Federal requirement if a Federal agency is not sharing in additional costs.

However, the Department observes that any public agency should be in a position to justify the expenditure of its funds.

There was also a concern expressed over how detailed the written justification should be. The Department intends that an Agency explain why it is reasonable, prudent, and in the public interest to settle a case at a certain figure over its offer of just compensation rather than go to court. The length of the explanation will depend on the complexity of the issues. A short paragraph may well suffice in a simple situation. In a manner of speaking, this is very similar to the apprisal process. The brief list of items which should be considered in arriving at a decision to settle or not is not all-inclusive.

Section 25.102(j) Payment before taking possession.

Two commenters noted that the language used appeared to preclude a voluntary agreement between the Agency and the landowner for possession by the Agency prior to payment (often called a right-of-entry).

The Department agrees that there are exceptional circumstances where it may be desirable for an Agency to obtain immediate possession of property. Section 301(4) of the Uniform Act makes it clear that payment is to be made to an owner, or made available by deposit with the court, before an Agency takes possession "to the greatest extent practicable" (from the opening sentence of § 301). Thus, there is recognition given to the exceptional case.

The Department has incorporated a provision for use of the right-of-entry process in exceptional circumstances such as for an emergency project. However, unless applicable law provides otherwise, this is at the option of the property owner under this regulation.

One commenter stated that paragraph (j)(2) of this section was inappropriately written, and should simply say that the Agency is to deposit its estimate of just compensation with the court. The concern was that the proposed language would encourage project delays and court backlogs.

The Department does not agree. The intent here is for the Agency to pay the agreed purchase price, or if agreement cannot be reached and a condemnation suit must be initiated, to deposit an amount not less than the Agency's approved appraisal (which sets the floor for the Agency's offer to the property owner) or such other amount as a court has established as a condition for the Agency to obtain possession. This language is very close to that in section 301(4) of the Uniform Act, and should not cause project delays.

Section 25.102(k) Uneconomic remnant.

The comment was made that the definition is arbitrary in that the determination of whether a remainder is uneconomic or not should be a part of the appraisal problem rather than a decision being made by the "Agency."

The Department does not agree with this objection. The intention here is that the Agency, rather than the property owner, have the responsibility to make the final decision on whether a particular remainder is or is not an uneconomic remnant. Since the appraisal process is an Agency activity, an Agency may handle the matter in its appraisals if it prefers.

One commenter stated that, while they agreed with the definition of uneconomic remnant, it would be desirable to make it clear that the test of "little or no utility or value" applies to the highest and best use of the property, and not just to the present use.

The Department believes incorporation of this concept would further complicate an already sufficiently complicated definition. Further, the Department has a greater concern for those owners who must sell an uneconomic remnant to a third party in order to break even, or who must undertake a totally new business in order to take advantage of a changed highest and best use. Both situations described present a significant financial risk to the owner. The Department intends that the Agency offer to assume that risk through an offer to purchase the remainder as an uneconomic remnant.

Section 25.102(m) Fair rental.

There were several objections to this paragraph on the basis that it required two rental value determinations to be made, one based on short-term occupancy, and the other on market rent, which would create additional and unnecessary work.

The Department has revised this paragraph in response to comments received. The thrust of section 301(6) of the Uniform Act is that the rental rate charged a former owner or tenant shall reflect the fact that the Agency can terminate occupancy on short notice. It is fair market rent given those circumstances—thus short-term and market rent would be the same.

Section 25.103 Criteria for appraisals.

One comenter stated that the appraisal standards in this section should provide that the direct benefits to real property from a utility construction project should be offset against the just compensation for the real property acquired, and that such benefits should be established on a simplified basis.

Treatment of project benefits in determining just compensation is controlled by applicable law, either Federal or State. In the case of a direct Federal acquisition, Federal rules of valuation and just compensation apply. In the case of a federally-assisted State project, State law controls. The Uniform Act did not change that. It only provides that the full amount of such just compensation shall be offered the owner.

The level or amount of documentation required for such project benefits is dependent on the complexity of the appraisal problem.

One commenter recommended that existing Agency appraisal criteria which meet the requirements established in

this section should be accepted as fulfilling the requirements. The Department agrees.

Section 25.103(a) Definition of appraisal.

Several commenters recomended incorporation of the concepts of impartial preparation and a defined value. The Department has made these changes.

A question was also raised on whether the independent preparation requirement was intended to affect the use of staff appraisers. The Department does not intend to limit the use of staff personnel in any way.

Section 25.103(b) Standards of appraisal.

Several commenters stated that the wording used implied two different standards of quality—one standard for complex situations, and a lower standard for simple appraisal problems. These commenters believe there should be only one high quality standard, with different requirements for documentation and reporting detail depending upon complexity.

The Department agrees that the language used could be interpreted in this manner and has revised it to clarify the policy.

It was the Department's intention to establish a single, basic quality standard, with different levels of documentation under that standard depending upon the complexity of the appraisal problem. As a part of that process, the Department has established specific requirements for the appraisal of complex acquisitions. The Agency is responsible for setting its own appraisal requirements for noncomplex acquisitions which must be consistent with established and commonly accepted appraisal practice. There were several comments in support of this approach.

A statement was made that it is not clear who is to develop the "Agency" appraisal standards.

"Agency" is defined as the Federal or State agency which acquires the real property (see § 25.2(a)), so generally the acquiring agency would develop its own appraisal requirements. However, other statutory authority may have an impact in this area. For example, under Title 23, United States Code, the State highway agency is responsible for all Federal-aid highway projects, even though they may be carried out at the city or county level. In this case, the State highway agency is the authority responsible for establishing appraisal requirements for Federal-aid highway projects.

Several commenters recommended that the reference to the Uniform Appraisal Standards for Federal Land Acquisition should be deleted.

The Department did not adopt this recommendation. This reference is essential for direct Federal acquisitions because it provides a standard for uniformity in appraisal practice among the Federal agencies which acquire real property directly. With respect to federally-assisted projects, it is applicable to the extent appropriate in the judgment of the Agency.

A comment was received that various items should be added to the listing of required contents of an appraisal. Examples given were legal descriptions, a definition of highest and best use, and a civil rights certification.

The Department believes it has covered the essential core requirements. An Agency may add to these requirements at its discretion.

Section 25.103(b)(2). It was suggested that this paragraph be revised to provide for "at least" a 5-year sales history. The Department has made this suggested change.

Section 25.103(b)(3). There were a significant number of comments expressing concern or opposition to the proposal that the appraisal may be limited to the market approach when there is sufficient market sales data.

The Department has revised this provision. It now places somewhat greater emphasis on inclusion of other approaches to value through reference to "all relevant and reliable approaches to value consistent with commonly accepted professional appraisal practice and the specific appraisal problem." However, the Department believes that in a large number of cases, the market sales approach is sufficient by itself. Utilization of the other approaches adds little if any support to an Agency's offer of just compensation, but may significantly affect the cost of obtaining the appraisal. In order to accommodate this possibility in appropriate circumstances, we have provided that the Agency, at its discretion, may limit the appraisal assignment to the market approach where this approach will reliably support the fair market value, and thus the offer of just compensation.

Section 25.103(b)(4). There were four comments suggesting ways to improve the wording of this paragraph. Three of the four were mainly editorial in nature in that no basic change in approach was recommended. The fourth recommended inclusion of an extensive list of specific items to be covered regarding comparable sales data.

The Department has revised this paragraph along the editorial lines suggested. We did not adopt the suggestion to require inclusion of the 19 specific items of information on the basis that too often many of them would be of marginal significance. Our intent is that comparable sales analysis cover relevant physical, legal, and economic factors, and indicate the parties to the transaction, the party who verified the price and terms of sale, and relevant financing considerations.

Section 25.103(b)(5). Several commenters stated that the requirement for a breakdown between land and improvement values should be deleted. It is the source of many negotiation problems, but is not essential to either the owner or the Agency. The Department has accepted this recommendation.

Section 25.103(c) Influence of projects on just compensation.

It was recommended that "public improvement" should be substituted for "project" in order to conform to the language of the Uniform Act, and to avoid further confusion concerning valuation increases and decreases, since one public improvement may be broken down into several separate projects.

The Department has used the term "project" throughout this regulation. Even though "public improvement" is used in Section 301(3) of the Uniform Act, in the interest of consistency, "project" is used here also and means a public improvement.

The Department agrees with the point being made. For purposes of estimating project related increases and decreases in value, in general, an undertaking which is planned, designed, and intended to operate as a unit should be considered as a project, even though it may be implemented or constructed in segments.

There were objections to use of the phrase "to the extent permitted by applicable law." One commenter suggested it be deleted, and another preferred reference to State law.

The Department has retained the phrase. This provision applies to direct Federal and to federally-assisted State projects. Therefore, reference to State law only is not appropriate. It was not deleted because State law is given precedence by virtue of Section 305 of the Uniform Act.

Section 25.103(d) Owner retention of improvements.

It was stated that this paragraph is difficult to interpret and should be reworded. The Department agrees and has revised it in order to more clearly state the intent.

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Section 25.103(e) Qualifications of appraisers.

One commenter recommended that the criteria for minimum qualifications should be more specific to be effective. For example, successful completion of appraisal courses should be stipulated for education requirements.

The Department believes it would be more effective to establish the basic policy that appraiser qualifications be consistent with the difficulty of the appraisal assignment, and leave it to the Agency to establish specific criteria. An Agency will be more knowledgeable of its needs and the general number and quality of the appraisers which are available.

Section 25.103(f) Conflict of interest.

One major Federal Department stated that while it agreed with the objective of prohibiting an appraiser from also acting as the negotiator on the same parcel, it has many low value acquisitions which have been efficiently negotiated by the appraiser who is already familiar with the property and the landowner. Adding a separate negotiator makes the process more difficult and expensive, with no significant additional protection.

It is the Department's objective to minimize the possibility of mismanagement and fraud. Separating appraisals from negotiations serves that end. However, the Department recognizes that this imposes a cost which may not be warranted in all situations, particularly if this risk is adequately dealt with through other means.

In order to respond to what the Department believes to be a valid comment, and at the same time minimize the risks involved, we have revised this paragraph to permit the same person to both appraise and negotiate for a parcel, provided the value is $2,500 or less, and Agency management decides that this is an acceptable method of operation for its program or projects. We also point out that all appraisals must be reviewed under the provisions of § 25.104.

It was also stated that where there are no Federal funds involved in the acquisition (but these regulations apply because of Federal funding in other phases of project costs), an Agency should have the flexibility to utilize the single appraiser/negotiator concept without restriction from these regulations.

While there may be no direct Federal financial involvement in such situations, there is an obligation under the Uniform Act to promote public confidence in those acquisitions of real property which are subject to this regulation. As a consequence, the Department has chosen to adopt one single standard in this area rather than differentiate based on funding.

Section 25.104 Review of appraisals.

One commenter objected to the provision which requires the review of all appraisals on the basis that only those in excess of $2,000 should have to be reviewed in order to reduce costs.

The Department has not adopted that recommendation. The purpose of the appraisal review process is to assure a quality appraisal product so that an offer can be made for the full amount of just compensation. This is a most important function which serves as a check on the appraiser, encourages consistency between offers and, in general, provides Agency management with assurance concerning the soundness of its operations. The benefits significantly outweigh the costs.

One commenter recommended that § 25.104(b) be deleted or revised on the grounds that the reviewer should not become the appraiser. The Department did not adopt this recommendation. We believe it is not advisable in this regulation to place a review appraiser in a position where he or she must either accept in total of otherwise reject an appraisal report in recommending or approving the amount to be offered the owner.

Further, it is not our intent that the reviewer be required to develop a complete new appraisal where circumstances do not dictate. Section 25.103 sets certain standards for various items or components of an appraisal. Where a reviewer finds that an appraiser has a basically sound but imperfect report, and efforts to obtain correction have been unsuccessful, the wisest course of action may well be for the reviewer to make the necessary adjustments rather than obtain a new appraisal or accept a marginal one.

Precisely how such matters are to be handled is something for each Agency to decide. An Agency may give the review appraiser broad authority, or restrict that authority.

One commenter recommended that this regulation should require another review where the first reviewer has arrived at his own independent value estimate (i.e., different than the appraisal).

The Department believes this is an internal Agency management decision. In some cases, a second review is advisable. In others, it may be a needless exercise.

One commenter recommended deletion of § 25.104(c). The Department does not agree. Among other things, this paragraph requires a written explanation of the basis for the reviewer's recommendation or decision. The Department believes the emphasis should be on analysis and explanation, not just a signature. The analysis should be appropriate to the situation. In some cases, a substantial effort would be required. In other cases, only a signature may be appropriate.

Section 25.105(a) Acquisition of improvements.

One commenter stated that he objected if this language was intended to require the acquisition of buildings, structures, or improvements not located on the land being acquired.

The Department does not intend this interpretation. The "adversely affected" reference concerns those situations where a partial interest, such as an easement, is being acquired and a building is located within the easement area. The effect of the easement on the building must be considered.

Section 25.105(c) Appraisal and establishment of just compensation for tenant-owned improvements.

Several commenters stated that value-in-place must be considered if a tenant-owner is to get fair and equitable treatment. The Department considers value-in-place to be a form of contributory value.

Under section 302 of the Uniform Act, a tenant-owner is entitled to the greater of either contributory value or value for removal. Both start from a market value premise—what would someone reasonably pay for the item. One approach assumes removal from the property, and the other approach assumes it will stay in place. The owner is entitled to the higher of the two. The Department believes this is fully consistent with the basic market value/just compensation concept.

Section 25.105(d) Special conditions.

One commenter said the burden seem unfairly skewed toward the tenant since no payment can be made unless the landowner disclaims any interest in the improvements in question. The standard could be whether the owner contests the tenant's interest, rather than a disclaimer.

Section 302(b)(2) of the Uniform Act is quite specific on this point. Further, unless there is agreement between the parties as to the ownership interests of each party, neither party is in a position to independently transfer full title to the Agency, and the Agency must deal with the matter accordingly.

Section 25.106 Expenses incidental to transfer of title to the agency.

One commenter objected to the last paragraph which states that whenever feasible, the Agency shall pay incidental costs directly, rather than reimbursing the owner as is specified in section 303 of the Uniform Act.

The Department believes that the objective of section 303 is to assure that the Agency, as the purchaser of the property, pay these necessary title transfer costs, rather than imposing the burden on the seller (which might be the case where only private parties are involved in a transaction). If it is feasible for the Agency to pay these costs directly, the Department believes the Agency should do so. Otherwise, the owner has to make payment and then submit a claim to the Agency.

One commenter stated that when acquiring property his Agency makes surveys and obtains legal description and evidence of title. Reimbursing an owner for these expenses is simply a duplication of effort and expense.

The Department does not agree with or intend this interpretation. For an expense to be eligible under § 25.106, it must be both necessary and reasonable. If the Agency has already made the required survey of the property to be acquired, and obtained evidence of title and a legal description, it is not "necessary" for a property owner to do so. The type of expense covered by section 303 of the Uniform Act is that which a property owner has no choice but to incur, as in a mortgage prepayment penalty.

One commenter stated that the expenses reimbursed under § 25.106(c) should specifically exclude penalties and interest imposed by the taxing authority.

The Department agrees with the point, but no change in the regulations is necessary. If a property owner had incurred penalty or interest charges because of late payment or underpayment of taxes due, such additional charges are not a necessary and reasonable expense which must be reimbursed by the Agency.

Section 25.108 Donations.

Four commenters stated this section might be more clearly worded since it appears the intent is to permit an owner to donate real property without an appraisal, after having been notified of the right to one.

The Department agrees, and has added a new sentence to this section. The Department intends that the Agency make an appraisal, and offer the full amount of just compensation due, unless the owner releases the Agency from these obligations. The owner may also require the Agency to make an appraisal before making a decision on whether to donate part or all of the property involved.

The Department emphasizes that the Agency acquiring the property always has the obligation to make an appraisal, offer just compensation, and make payment available before taking possession. Anything less than this is at the owner's option.

Subpart C—General Relocation Requirements

Section 25.202 Project development.

A number of commenters suggested deleting the section entirely. The Department, recognizing that displacing agencies, following sound management principles, have demonstrated competence in implementing the Uniform Act, agrees and has deleted this requirement.

The Department believes that early problem identification and resolution are desirable to avoid delays in project advancement, unnecessary litigation and other management difficulties. Therefore, the Department encourages displacing agencies to continue to take appropriate actions to avoid these problems.

Section 25.203 Relocation information and written notices.

Sixteen commenters suggested that proposed § 25.203, Notification of relocation eligibility, and proposed § 25.206, Ninety-day notice, be combined since both are concerned with notices. The two sections have been combined in § 25.203, Relocation information and written notices, and rewritten for clarification. This new section contains all significant relocation notices.

Nine commenters objected to eligibility notification being required too early in the process. This concern was acknowledged and § 25.203(a) was modified to provide for a general information notice informing the person that he or she *may* be displaced by a project.

Five commenters indicated that requiring one comparable replacement dwelling to be available prior to issuing a ninety-day notice would cause difficulties and would not improve relocation assistance. The requirement has been modified so that the notice may be issued ninety days prior to displacement or earlier, but displacement may not be required earlier than ninety days after comparable replacement housing has been made available.

Eight commenters stated that the acquiring agency should be able to determine the kind and timing for the delivery of eligibility notices. This, however, would not accomplish the uniformity which is a goal of the regulation. By combining the two sections and revising the material, the subject of notices has been clarified and simplified to the point where problems for acquiring agencies will be minimal, if not eliminated.

Section 25.204 Availability of comparable replacement dwellings prior to displacement.

(a) *General.* Four commenters indicated that the requirement is either too restrictive or that more flexibility in selecting comparables is desirable. The requirement that at least one comparable replacement dwelling be made available is considered a minimum requirement and complies with section 205(c)(3) of the Uniform Act. The revised definition of a comparable replacement dwelling found in Subpart A, section 25.2(c) should give the aquiring agencies much more flexibility in locating comparables.

Two agencies objected to the requirement that at least one comparable replacement dwelling be made available and one agency objected to the requirement that three or more comparables be made available "where possible." The provision for one comparable is considered a minimum requirement. Since the requirement for three comparables is prefaced by "Where possible", it should not be interpreted as mandatory. A comment was also received that at least two comparable replacement dwellings should be provided in order to give the displacee a choice. The Department agrees that it is very desirable to provide a displacee with a list of two or more available comparables, but there may be times when an agency may be able to locate only one. A minimum of two is judged to be too restrictive. For that reason, the minimum requirement was not changed.

One commenter expressed concern that the omission of a distinction between initial and subsequent occupants in this section, as well as in the definition of "displaced person," would require that comparable replacement housing be provided for both classes of occupants. The commenter recommended that this regulation should provide that a subsequent occupant could be offered less than comparable housing. The

Department concluded that there is not adequate support for such a distinction; the Uniform Act provides specific benefits for any person who meets the eligibility requirements for each specific benefit.

Two commenters objected to the use of the wording "made available" since the Agency cannot *"make available"* any replacement dwelling. Their recommendation was to change this wording to "informed" of the availability. While the comments are technically correct, the present language has long been used in various sections of the regulation without problems. Accordingly, the Department believes the proposed revision is not warranted. There was also an objection to the requirement for providing comparable replacement dwellings prior to displacement because there will be many cases where the displacee has already obtained replacement housing, such as owner retention or new construction. No change was considered necessary because in such cases replacement housing is considered to have been made available. In addition, having current information on replacement housing available is a requirement of the law.

Section 25.205 Relocation assistance advisory services.

Section 25.205(b)(2)(i). Five commenters objected to informing persons to be displaced of the specific comparable replacement dwelling used in determining the replacement housing payment. However, the reason for requiring this is to ensure that the person to be displaced is fully aware of how the payment has been determined.

Section 25.205(b)(2)(iii). Sixteen commenters objected to the provision requiring reasonable opportunities for minorities to relocate in areas which do not have minority concentrations. These commenters felt that such opportunities are provided for in other sections of the regulation. While this is true, the requirement in this section is still considered appropriate. The objective is to emphasize that relocation assistance advisory services include advising minorities that they may relocate to other areas and providing the assistance (but not additional payments) that will help them to do so if they desire. The first part of the first sentence of § 25.205(b)(2)(iii) has been deleted to improve readability.

Section 25.205(b)(2)(iv). Eight commenters objected to being required to offer transportation to certain displaced persons to enable them to inspect referred housing. The intent is to ensure that all displaced persons have the opportunity to make inspections. While many will not ask for assistance of this kind even when they need it, all should enjoy the same opportunity.

Section 25.205(b)(3). Two commenters stated that this section should indicate that businesses will be limited to those payments available to business and commercial enterprises specified in Subpart D of the regulations. Since this section only pertains to services, not monetary payments, no need was seen to include the suggested addition.

Former Section 25.206 Ninety-day notice.

Proposed § 25.206 was combined with § 25.203. (See comments on § 25.203.)

Section 25.206 (former Section 25.207 Eviction for cause.

Fifteen commenters recommended that lawful occupany be required until the date of actual displacement in order to retain eligibility for relocation assistance. This change was not made since eligibility is established on the basis of facts existing on the date of the initiation of negotiations. Once the Agency determines that a person has satisfied the eligibility requirements of the Uniform Act, there is no basis for changing that determination, assuming all remaining conditions for eligibility are met. The example relating to non-payment of rent has been deleted from this section to avoid confusion and is dealt with in §25.207(f).

Pursuant to one commenter's recommendation, the language "is permissible only as a last resort" has been deleted to avoid possible confusion with Subpart G of the regulation.

Section 25.207 (former Section 25.208) General requirements—claims for relocation payments.

(a) *Documentation.* Four commenters recommended that the last sentence be changed from "whatever assistance is necessary" to "reasonable assistance necessary" in order to provide some flexibility. This change was made.

(d) *Time for filing.* Five commenters recommended that the time limit for filing a claim be shortened from 18 months to a lesser period. In order to maintain uniformity among the various agencies, the maximum time limit for filing a claim was kept at 18 months. This limit has been used by all agencies since the inception of the Uniform Act, and the Department considers it consistent with the intent of the Uniform Act. However, the following changes in wording were made to improve accuracy and clarity: "after the move is completed" now reads "after the date of displacement or the date of final payment under these regulations, whichever is later." A waiver "for good cause" was also added at the end.

(e) *Multiple occupants of one displacement dwelling.* A wording change was recommended by one agency in the last sentence regarding the use of "tenancies". This word was eliminated and the entire sentence was revised to eliminate other problem words and to clarify the meaning.

(f) *Deductions from relocation payments.* (Formerly *Direct payment of claim*) Some commenters expressed difficulty in collecting rent owed to the State agency by a displacee and suggested that any relocation payment owed to the displacee be subject to a deduction to cover the rent owed the State agency. Provision is made to permit a State agency to deduct such sums from the relocation payment. If the acquisition is a direct action by a Federal agency, a deduction for rent owed the Federal government must be made. In either case, no deduction is permitted if to do so would prevent relocation into comparable replacment housing.

(g) *Notice of denial of claim.* One comment was received recommending that the last sentence be revised to eliminate any reference to the appeal process. No change was made in this regard because the applicant is entitled under the Uniform Act to have determinations reviewed and must, of necessity, be advised of the procedures involved.

Another commenter suggested changing the word "appealing" to "reviewing". Although this might be technically more accurate, no change was made because the term "appeal" is used throughout § 25.10 of the regulation and is commonly used among the agencies in referring to the review process.

Section 25.208 (formerly § 25.209) Relocation payments not considered as income.

One commenter questioned the tax liability status of non-Federal relocation payments. We assume that the commenter was referring to relocation payments provided on a non-Federal project but that it is beyond the scope of this regulation. The section simply restates the wording of the Uniform Act on this point.

Subpart D—Payment for Moving and Related Expenses

Section 25.301(a) Payment for actual reasonable moving and related expenses—residential moves.

It was suggested that the rule should provide specific criteria which could be used to decide whether to allow moving costs beyond the proposed 50-mile limit. The Department believes that the agencies carrying out displacement are the best judges of when such additional costs are reasonable and necessary and does not wish to limit their ability to manage their programs flexibly. Therefore, the selection of criteria is left to the displacing agencies.

Another commenter suggested that the rule should allow the payment of residential moving costs without additional documentation as long as the payment was limited to the amount of the lowest acceptable bid or estimate. The language in the rule is broad enough to encompass the commenter's interpretation and so no change to the proposed rule is required.

Section 25.301(d). A number of commenters indicated that this provision was unclear because of its prohibitions against storage of personal property in excess of 12 months or on property owned by the displaced person and qualified by the word "generally." The word "generally" in the proposed rule reflected the Department's desire to provide flexibility to displacing agencies. In order to make its intentions clear, the Department has deleted the word "generally" in both places it appears and has added as an ineligible expense, at § 25.305(k), the storage of personal property on real property owned or leased by the displaced person.

Section 25.302(a) Fixed payment for moving expenses—residential moves.

A number of commenters recommended that the schedule used for determining the moving expense allowance be a State-approved schedule rather than one adopted by the Federal funding agency. The Department seriously considered this alternative, but determined that its administration, especially the dissemination of revised schedules to non-highway agencies, would be extremely difficult and complicated. Therefore, the Department has decided to retain the current method for revising and approving these schedules. The word "Agency" in the proposed rule has been changed to the "Federal Highway Administration" to reflect this approach.

Section 25.303(a)(3) Payment for actual reasonable moving and related expenses—nonresidential moves.

This paragraph has been revised for better readability and to make clear that modifications to the personal property is what is intended and not modification to real property.

Section 25.303(a)(4). This parallels the change in § 25.301(d) for residential moves and is made for the purpose of internal consistency.

Section 25.303(a)(10)(11). The words "the reasonable costs incurred in attempting to sell the item plus" have been deleted from lines 4 and 5 of this paragraph. This was done to avoid the implication that a payment for the actual direct loss of tangible personal property could exceed the limitation imposed by the statute (moving expense). Instead, the reasonable cost incurred in attempting to sell an item which is not to be relocated has been identified as a separate eligible moving expense item in paragraph (11) of this subsection. The previous subsection (11) which deals with the purchase of substitute personal property has been renumbered as (12) of this subsection to accommodate this change. The renumbering is for clarification purposes only and is not intended to affect eligibility for these moving expenses. This applies also to new subsections (13) and (14).

Section 25.303(d) Transfer of ownership.

A number of commenters objected to the requirement that a displaced person must transfer to the Agency ownership of personal property not sold or traded in. Their view was that such transfer should not be a prerequisite for eligibility for a moving expense payment. The Department agreed and has changed the paragraph accordingly. The requirement is now optional with the displacing agency.

Section 25.304(a)(1) Fixed payment for moving expenses—nonresidential moves.

A number of commenters strongly recommended that "substantial loss of existing patronage" be documented by the use of the loss of net earnings rather than loss of "clientele." The Department does not wish to eliminate the clientele method of supporting this test, but does agree that net earnings can be a second method. Section 25.304(a)(1) now includes both clientele and net earnings. Two methods or a combination of both methods should make it easier for the displacing Agencies to document a substantial loss, or to demonstrate otherwise if the Agency believes that the business will not suffer a substantial loss of existing patronage.

Several comments were received objecting to the last sentence of (a)(1) beginning "A business is assumed to meet this test * * *" The Department believes that a business move under a Federal or federally-assisted program almost always results in the disruption of business activity and a consequent loss of patronage. In those cases in which this is not so, the Department believes the burden of proof should be on the displacing agency. Therefore, no change has been made in this standard.

It also was recommended that a clear definition of "contributes materially" be included in the regulations. This term is used in § 25.304(a)(3) to describe those businesses that are eligible for this payment. This has been a problem for many agencies, and the Department has decided to adopt this suggestion. A definition of "contributes materially" has been added to the Definitions § 25.2(d).

Section 25.305 Ineligible moving and related expenses.

A number of commenters recommended that "physical changes" to real property at the replacement site should be eligible moving costs under this rule, either in general or in specific situations such as when required by code or ordinance. The Department understands the basis for these recommendations, but they have not been adopted.

First, the experience of Federal agencies who have provided payments for such physical changes is that the cost is prohibitive. Second, the Act treats business moves differently from residential moves. For residential displacees, the Act provides a specific requirement of comparability in a replacement unit and specific payments designed to assure that comparability is attained. The Act provides neither these requirements nor these payments for businesses.

For both of the foregoing reasons, the Department has decided that a prohibition against including physical changes as eligible moving expenses should be included in the rule.

Subpart E —Replacement Housing Payments

Section 25.401 Replacement housing payments for 180-day home owners.

(a) *Eligibility.* Six commenters suggested including a provision, similar to that in § 25.402(a), allowing the Agency to extend for good cause the one

year period within which a person must purchase and occupy a replacement dwelling. This limitation is statutory. (See § 25.403(c) regarding what constitutes the purchase of a dwelling.)

Four commenters stated felt that there should be a requirement that the property be acquired before a displaced person would be eligible to receive payments. The Department does not agree, because such a provision could create an unfair hardship on the displacee.

One commenter felt that the date a displaced person is required to move should be considered as one of the dates which starts the one year period to purchase and occupy a replacement dwelling. However, the Uniform Act clearly specifies the dates to be used.

One commenter was concerned because constructive occupancy was not covered in the regulations. Section 25.403(d) provides the latitude necessary to handle situations where constructive occupancy determinations are required.

One commenter wanted to include the requirement that a displaced person had to mortgage a replacement dwelling before being eligible for a replacement housing payment. It is not felt that this is a necessary requirement.

One commenter wanted to know when the one-year period begins in those instances where a commissioner's award is deposited and later a court award is deposited. The Uniform Act specifies in section 203(a)(2) that the one-year period begins upon "final payment of all costs of the acquired dwelling, or on the date on which he moves from the acquired dwelling, whichever is the later date". The court award in the case of an appeal from a commissioner's award would be the final payment.

One commenter recognized that there was no requirement for a written notification of the replacement housing payment or rental assistance payment. It was urged that this is necessary to assist homeowners and tenants to seek replacement dwellings with knowledge of the amounts due them. The Department agrees that this is necessary to assure that displaced persons are aware of the amounts to which they are entitled and has revised the regulation by the revision of § 25.205(b)(2)(i).

(b) *Amount of total payment.* Two commenters suggested that "comparable" be placed before "replacement dwelling" throughout this paragraph. This is not considered necessary as this is general information and refers to succeeding paragraphs for computation instructions. The word "comparable" is in the other paragraphs.

(c) *Rental assistance payment for 180-day owner who rents.* In response to comments received regarding § 25.402(a) and § 25.403(g) and to correct an omission in the proposed regulation, a new section (c) has been added which provides the 180-day owner an option to receive a rental assistance payment. Proposed paragraphs (c), (d), and (e) become (d), (e), and (f).

(d) *Price differential.* One commenter suggested that the before value of the entire acquisition be used when the determination of replacement housing payment is made. For determining a replacement housing payment a residence must be compared with a residence. In the case of a multi-use property, this necessitates a residential carve-out, as provided in § 25.401(d)(3). Another commenter questioned whether past payments of disaster insurance were to be considered in the sale price of the displacement dwelling under § 25.401(d)(4). Only those insurance proceeds related to the disaster causing a loss of the displacement dwelling are to be included.

Ten commenters pointed out that the retention value of the displacement dwelling had been omitted as a cost in determining a replacement housing payment when the displacee retained the displacement dwelling. The omission has been corrected in § 25.401(d)(4)(i).

One commenter asked if the cost of the replacement site in § 25.401(d)(4)(iii) included the cost of landscaping items. It is intended that normal residential site preparation items be included in the cost of the replacement site. This is included in the definition of "comparable replacement dwelling" at § 25.2(c)(4).

In order to clarify what is meant by retention value of the displacement dwelling, attention is invited to § 25.103(d) and § 25.2(n), which relate to this subject.

(e) *Increased mortgage interest cost.* Six commenters addressed the methods used to calculate increased interest costs; three wanted to use the "buy down" method now permitted by some Agencies only in last resort housing situations, while three others wanted to use only one standardized method in all situations. The Uniform Act sets out how this payment will be computed in other than Last Resort Housing situations. This prevents the use of the "buy down" in the typical situation. The increased interest rates for home purchasing in the last few years were causing many replacement housing payment calculations to exceed the $15,000 limit thus creating last resort housing situations. In order to avoid unnecessarily large payments and still relocate displaced persons into a "make whole" situation, the "buy down" method of calculating the increased interest payment was instituted. While the Department supports the use of the "buy down" method in more than the last resort housing situation, additional legislation would be required to allow use of the method in other than last resort housing situations.

One commenter wanted to specify that the payment would be based on a "similar mortgage." This is not necessary since in § 25.401(e), paragraphs (2), (3), and (6), the payment is limited by the existing mortgage.

Another commenter wanted to use rates other than those paid on savings deposits by commercial banks as noted in paragraph (5). This requirement is taken from the Uniform Act section 203(a)(1)(B).

(f) *Incidental expenses.* Five commenters suggested that only those incidental expenses normally paid by the buyer be reimbursed when a displaced person incurs such expenses. This is the intent, and clarifying language has been added.

Section 25.402 Replacement housing payment for 90-day occupants.

(a) *Eligibility.* Two commenters suggested adding that the occupied property had to be acquired before the determination of "displaced person's" eligibility to receive payments was complete. This is covered by § 25.2(f)(1)(i) which defines "displaced person."

One commenter wanted to begin the one-year period to purchase and occupy replacement housing at the initiation of negotiations. Section 203(a)(2) of the Uniform Act specifies when the one-year period will begin for owners and, to be consistent, a similar time period should be used for tenants. Also, in some cases a period longer than 1-year elapses before acquisition takes place.

One commenter did not want to have to recalculate a replacement housing entitlement when a displaced person relocates to alternative housing within the one-year period. A displaced person is allowed to relocate within the one-year period. If after the initial relocation such person wishes to relocate to another form of occupancy, e.g., from tenant to owner or vice versa, he is still eligible for recalculation of a relocation payment. If such recalculated payment is greater than that received in conjunction with the initial move, the displaced person may claim the difference between the amount already received as the first payment and the recalculated payment. (See § 25.403(f).)

Another commenter wanted to include the date the person was required to move as a beginning date of the one-year occupancy period. This is not provided for in the Uniform Act and would conflict with provisions of the Act at § 203(a)(2) that establish the 1-year occupancy period for 180-day owners.

One commenter wanted to eliminate the provision to extend the 1-year period for good cause. This provision has been eliminated because § 25.403(d) gives the Agency this latitude.

(b) *Rental assistance payment.* Of 22 commenters, 18 opposed the inclusion of utilities in the computation of the payment (§ 25.402(b)(1)) and 19 opposed the 30 percent provision in the Base Monthly Housing Cost (§ 25.402(b)(2)). The majority of the commenters felt this paragraph goes well beyond the purpose and intent of the law. They expressed the opinion that the Uniform Act was never intended to be used as an income or utility subsidy program. Several stated that this requirement imposes another administrative burden on them and increases red tape. One commented that if it were required to compute payments under this formula, a person who chose, for any number of reasons, to pay a disproportionate amount of his or her income for housing, he or she would receive an unnecessary windfall.

In view of the substantive comments on these issues, the Department agreed to adopt the "make whole" approach for computation of the rental assistance payment and to delete the percentage of income test. However, the Department is unable to fully accommodate the wishes of those commenters opposed to inclusion of utilities in the rental assistance payment computation. Therefore, recognizing that increased utility charges at a replacement dwelling often are a real and substantial cost of a move, § 25.402(b) has been modified to permit exclusion of utilities in the payment computation only under limited conditions. The Department believes that this approach is both reasonable and equitable.

Two commenters pointed out the need for being able to make periodic rather than lump sum payments. Paragraph (b)(3) as written provides this flexibility.

Another commenter thought that the rental assistance payment should be discounted to present worth if paid in a lump sum. The Uniform Act does not provide for such a procedure.

(c) *Downpayment assistance payment.* Two commenters pointed out that there was no provision that the displacee match any amount over $2,000 which is provided as a downpayment under section 204(2) of the Uniform Act. This has been added to paragraph (c)(1).

Six commenters felt that paragraph (c)(2) indicated that a displaced person would receive a downpayment based upon what he or she was required to pay regardless of what the Agency determined was necessary. This is not the case. The first sentence indicates that the downpayment will be that amount which is typically required for conventional financing to a qualified buyer. This is usually a percentage amount. The second sentence only indicates that in the case where a displaced person pays more than is typical, the Agency will limit the downpayment amount to what the agency determines is necessary.

Section 25.403 Additional rules governing replacement housing payments.

One commenter suggested adding a rule describing the procedure used to carve out a dwelling located on a tract larger than normal for residential purposes. Section 25.401(d)(3) was revised to include this situation.

An additional rule was suggested which would state that the acquiring agency was not required to provide a different occupancy status for displaced persons, e.g., ownership for a tenant or tenancy for an owner. While it is not a requirement to do so, displacing agencies are encouraged to accommodate a displaced person's desire to change occupancy status by calculating a replacement housing payment based on the displaced person's request and by assisting the displaced person in finding a replacement dwelling for the desired type of occupancy.

Another commenter requested a policy regarding payment for improvements required by law when a business is required to relocate. This comment should have been addressed to § 25.303(a) and not this section. However, these costs are not reimbursable as they are a cost of doing business and are required by various Federal, State and local laws.

One commenter wanted a rule allowing the use of public housing as comparable dwellings. The Department believes that it is reasonable to use public housing as comparable housing only if the displacee is in public housing. Otherwise, the Agency should use comparable housing that is available on the private market.

One commenter wanted a rule requiring claims for payments to be filed within 3 months of displacement. Relocatees have 1-year from the date of displacement to purchase and occupy replacement housing and, in accordance with § 25.207(d), 18 months after displacement to file a claim for payment. In the extreme case, this allows only 6 months after purchasing replacement housing for the filing of a claim. In most cases, claims will be filed shortly after relocation but for those cases where circumstances result in delayed filing it is felt that the 18-month period will prevent the denial of benefits due to relocatees.

(a) *Determining the cost of comparable replacement housing.* Two commenters objected to being required to offer the comparable used to calculate the replacement housing payment to the displaced person. Similar comments were received regarding § 25.206 (now § 25.203) which resulted in a revision to that section. The requirement in § 25.403(a) has been eliminated to conform to the change made in § 25.203.

Nine commenters disagreed with being required to adjust asking prices of comparable replacement dwellings to reflect probable selling prices. Paragraph (a)(1) does not require adjustment unless the Agency considers an adjustment appropriate. The purpose of this paragraph is to provide flexibility where considered necessary.

Two commenters suggested that dwellings which are obviously underpriced should not be considered when computing payments. Although underpriced dwellings may be available on occasion, their comparability may be questionable and they may not be reflective of current market value. Agencies may ignore these dwellings for the same reasons they ignore overpriced dwellings.

Two commenters were dissatisfied with the proposed method for computing a replacement housing payment when the comparable dwelling lacks a major exterior attribute of the displacement dwelling site. While there may be other methods, it is believed that the method described in paragraph (a)(2) is equitable and sufficient. The Department believes a uniform approach to this type of situation is more desirable than providing alternatives.

Two other commenters felt that paragraph (a)(2) could be used to account for differences between the displacement and replacement dwellings. This is not the case. This has been clarified by the addition of "exterior" between "major" and "attribute" in the first sentence. This paragraph relates only to the site attributes.

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Another commenter wished to change "value" in paragraph (a)(2) to "contributory value." In different parts of the country, the term "contributory value" may be interpreted narrowly and, thus, penalize the displaced person. The term "value" will allow the displacing agency the flexibility to apply a value to the major exterior attribute which is customary to the area and provides the maximum allowable benefit to the displaced person.

Comments were received which indicated a need to address a problem created by the partial acquisition of a residential property where the dwelling is acquired but the owner is left with the remainder of a residential lot having considerable value, while at the same time, the displacing agency pays for replacing the entire property at the replacement site. The Department agrees that the substantial windfalls may result from this practice and has added language to § 25.403(a)(2) to permit adjustment in the method of computing the replacement housing payment in such cases to correct obvious overpayments.

Three commenters were concerned that paragraph (a)(3) is excessively restrictive and contrary to law. The Department intends that comparable dwellings be as similar or alike as possible. This comparison includes the type of neighborhood. This paragraph is deliberately restrictive to prevent the selection of comparables in neighborhoods where housing costs are less than the displacement neighborhood. Such a practice would be detrimental to the displaced person. The word "similar" has been added after "nearby" to restrict the choice of comparables to neighborhoods which are not less desirable than the displacement neighborhood. If the displacement neighborhood suffers from adverse conditions, comparables from more desirable neighborhoods should be selected. Displaced persons are not restricted in the choice of areas in which to relocate. Displaced persons should be encouraged and assisted in relocating to areas of their choice which they can afford.

The following changes have been made in the order of paragraphs in this section as they appeared in the NPRM:

Paragraph (c) of this section has been moved to § 25.2(e). Paragraphs (d), (e), (f), (g), and (h) have been relettered (c), (d), (e), (f) and (g).

(d) *Purchase of replacement dwelling.* One commenter indicated that paragraph (d) does not contain the requirement to occupy replacement housing. This requirement is covered in § 25.401(a) and § 25.402(a).

(e) *Delay in occupancy after purchase of replacement dwelling.* One commenter felt that the Agency, and not the displaced person, should determine whether the displaced person was prevented from occupying the replacement dwelling within the required time limit. The wording of paragraph (e) has been revised to accomplish this.

(f) *Presidentially declared disaster.* One commenter suggested that the relaxation of occupancy requirements in order to establish eligibility for payments should not be restricted to only Presidentially declared disasters. The Department has determined that section 411 of the Disaster Relief Act of 1974 does not limit application of this concept to only Presidentially declared disasters. Section 201 of the Uniform act provides that displaced persons be afforded fair and equitable treatment. Not all disasters will necessarily be declared by the President, even though similar conditions may exist. The paragraph has been revised to allow the head of the Federal funding Agency to determine when a disaster has occurred, in the absence of such determination by the President. This paragraph has been retitled, *"Payment eligibility in special circumstances".*

(g) *Conversion of payment.* One commenter asked if 90-day occupants should be included in paragraph (g) and another commenter thought the paragraph would be better located in § 25.401. The paragraph has been rewritten to provide for conversion of payment for all displaced persons. A new paragraph (c) has been added to § 25.401 specifically providing eligibility for 180-day owners to receive a rent supplement payment.

(h) *Payment after death.* One commenter suggested that paragraph (h)(1) be clarified as to what a deceased person's actual occupancy was. The Department intended that the amount paid be attributable to the deceased person's period of actual occupancy. Therefore, this paragraph has been revised for clarity.

Another commenter wanted to recover payments from a deceased displaced person's estate. The monetary benefits received by a displaced person are his or hers upon meeting certain requirements. If the displaced person obligated the money prior to his or her death, in connection with the replacement dwelling, the requirements have been met and the Agency has the obligation to pay the estate just as it has the obligation to pay any eligible displaced person.

Subpart F—Mobile Homes

Section 25.502 Moving and related expenses—mobile homes.

(a) *General.* One commenter expressed the need for procedures concerning (a) the displacee who must dispose of a mobile home which is not acquired and cannot be moved, and (b) payments for new skirting when the existing skirting cannot be moved. No action is taken on these concerns because § 25.7 concerning waivers provides the necessary flexibility for equitable resolution of exceptional problems.

Pursuant to a comment received on § 25.203(a), a new § 25.502(a)(3) was added to make it clear that reasonable costs for repairs or modifications to render a mobile home suitable for movement to a replacement site are reimbursable as moving costs.

(b) *Mobile home park entrance fee.* In response to the concerns expressed by several Agencies regarding windfall payments of mobile home park entrance fees, the language of this paragraph has been revised to allow reimbursement for such expenses only when necessary to effect relocation.

A suggestion for extending eligibility for entrance fees to conventional homeowners was not acted upon because the existing benefits for displaced residents of conventional homes are considered sufficient and because this Subpart covers only the subject of mobile homes. A recommendation to include entrance fees in replacement housing payments was not adopted because it does not represent a cost of acquiring replacement housing. Entrance fees are generally charged for the privilege of moving a mobile home into a park.

The problems of reimbursement for "appearance standards" noted by one agency is adequately covered under § 25.502(a)(3).

Section 25.503(c) Replacement housing payment for 180-day mobile homeowner-occupants.

To contain costs, several Agencies recommended reimbursement to mobile home owners who move non-decent, safe, and sanitary or otherwise deficient mobile homes on the basis of the reasonable cost of moving the structure and curing the deficiencies. This subject is addressed in our comments regarding new § 25.505(b)(3).

A suggestion to allow averaging of trade-in and salvage value was not adopted because the question of the value of the non-acquired mobile home

is appealable if the applicant is dissatisfied.

The language has been clarified to better indicate the eligibility of both owners and tenants of mobile homes and the conditions under which a replacement housing payment may be made even though the structure is not acquired.

Section 25.504 Replacement housing payments for 90-day mobile home occupants.

The words "tenant or owner" were inserted after "displaced" in response to a request that the language clearly indicate the eligibility for tenants as well as owners of mobile homes.

Section 25.505 Additional rules governing relocation payments to mobile home occupants.

Section 25.505(b) has been divided into paragraphs (1) and (2) to clarify its meaning. Pursuant to several comments on § 25.503(c), a new paragraph (3) has been added to allow reimbursement of costs to cure existing deficiencies in displaced mobile homes which are not acquired by including them in the calculation of the cost of a comparable replacement dwelling.

The proposed paragraph (d) has been dropped because of objections to the requirements for pads on mobile home sites. Paragraph (b)(1) now includes consideration of the site in the overall determination of comparability of the replacement mobile home.

Although several comments recommended clarification of § 25.505(f) (now (e)), no change is made regarding the displacement attributable to partial acquisition of mobile home parks. Paragraph (e) is considered to be a workable rule which clearly indicates that the determinations are to be made by the Agency.

Subpart G—Last Resort Housing

Section 25.601(a) Basic determination to provide last resort housing.

Several commenters raised the question of coverage for "subsequent" occupants who move onto properties to be acquired after the initiation of negotiations but before acquisition is completed. This stemmed from the absence of occupancy requirements for the last resort housing eligibility in the regulation. No action was taken by the Department on this issue because the language of section 206(a) of the Uniform Act does not specify any occupancy requirements for eligibility for last resort housing.

A comment recommending the substitution of "adequate" for "comparable" with reference to replacement housing is not acceptable under the law. Section 206(a) of the Uniform Act states that the lack of availability of *comparable* housing triggers last resort measures and that *comparable* housing must be provided.

One agency suggested that guidelines for implementation be included in the regulation. No action was taken by the Department on the suggestion because additional requirements would tend to limit the flexibility contemplated in the rule. A number of Agencies expressed support for the elimination of the burdensome requirements in existing regulations of some Federal agencies.

Section 25.601(b) Basic rights of persons to be displaced.

In response to several comments, the redundant reference to the eligibility of the 180-day owner to purchase a replacement dwelling has been eliminated. This guarantee of the displaced homeowner's right to purchase a replacement dwelling is stated elsewhere in the regulation and is implied here. Hence it need not be restated.

Section 25.602 Methods of providing replacement housing.

Several favorable comments regarding the simplification of requirements were received.

One commenter objected to the use of the term "reasonable cost" on the basis that the use of cost effective means of providing replacement housing is implied throughout the regulation. The term "reasonable cost" is retained to underline the fact that while innovative means to provide housing are allowed, they should be used in a cost effective manner.

Section 25.602(c). Two commenters objected to the inclusion of mortgage financing by the agency as an allowable method of providing last resort housing. The option is retained because section 206(a) of the Uniform Act authorizes "such action as is necessary or appropriate to provide such housing * * *".

Section 25.602(d). One commenter raised the question of how this paragraph would be applied to a specific situation. The Department has taken the position that it is impractical to address every individual situation in the regulation. We anticipate that specific examples will be addressed in technical advisories to be issued by each Federal agency.

Regulatory Evaluation

The Department has determined that this document does not constitute a major rule under the criteria of Executive Order 12291 or a significant rule under the Department's Regulatory Policies and Procedures. (44 FR 11034; February 26, 1979). The economic impact of this final rule has been found to be so minimal that a full regulatory evaluation is unnecessary. It merely simplifies and clarifies present Department of Transportation regulations that implement the Uniform Act, and will eventually, when adopted by other agencies operating under the Uniform Act, reduce administrative costs and burdens, to a degree, on State and local governmental agencies that must comply with the Uniform Act on Federally-assisted projects.

Under the criteria of the Regulatory Flexibility Act, the Agency certifies that this action will not have a significant economic impact on a substantial number of small entities. There is no significant effect on the relocation benefits provided to businesses, as the provisions of the Uniform Act which require those benefits have not been changed, and the economic impact on State and local agencies that are subject to the Uniform Act is not expected to be significant. The primary impact on such agencies would be the eventual elimination of current administrative burdens caused by differing or conflicting Federal regulations that implement the Uniform Act. As Federal agencies eliminate separate regulations implementing the Uniform Act and adopt a single government-wide regulation, such burdens will be reduced.

Paperwork Reduction Act Requirements

This rule contains information collection requirements. Those requirements are contained in §§ 25.9(a), 25.9(c), 25.202, 25.206, and 25.303(b)(2). These items have been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). OMB has approved them for use through December 31, 1988. The OMB approval number is *2105–0508.* The Department will apply to OMB for approval of continued use of these reports at the appropriate time.

List of Subjects in 49 CFR Part 25

Transportation, Relocation assistance and real property acquisition, Reporting and recordkeeping requirements.

Issued at Washington, D.C. on February 28, 1985.

Elizabeth H. Dole,

Secretary of Transportation.

For the reasons set forth in the preamble, the Department of Transportation hereby revises Part 25 of Title 49, Code of Federal Regulations to read as follows:

PART 25—UNIFORM RELOCATION AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS

Subpart A—General

Sec.
25.1 Purpose.
25.2 Definitions.
25.3 No duplication of payments.
25.4 Assurances, monitoring and corrective action.
25.5 Manner of notices.
25.6 Administration of jointly-funded projects.
25.7 Federal agency waiver of regulations.
25.8 Compliance with other laws and regulations.
25.9 Recordkeeping and reports.
25.10 Appeals.

Subpart B—Real Property Acquisition

25.101 Applicability of acquisition requirements.
25.102 Basic acquisition policies.
25.103 Criteria for appraisals.
25.104 Review of appraisals.
25.105 Acquisition of tenant-owned improvements.
25.106 Expenses incidental to transfer of title to the agency.
25.107 Certain litigation expenses.
25.108 Donations.

Subpart C—General Relocation Requirements

25.201 Purpose.
25.202 Applicability.
25.203 Relocation information and written notices.
25.204 Availability of comparable replacement dwelling prior to displacement.
25. 205 Relocation assistance advisory services.
25.206 Eviction for cause.
25.207 General requirements—claims for relocation payments.
25.208 Relocation payments not considered as income.

Subpart D—Payments for Moving and Related Expenses

25.301 Payments for actual reasonable moving and related expenses—residential moves.
25.302 Fixed payment for moving expenses—residential moves.
25.303 Payment for actual reasonable moving and related expenses—nonresidential moves.
25.304 Fixed payment for moving expenses—nonresidential moves.
25.305 Ineligible moving and related expenses.

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Appendix A—Section-by-Section Analysis
Appendix B—Statistical Report Form

Authority: Sec. 213, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91-646, 84 Stat. 1894 (42 U.S.C. 4601).

Subpart A—General

§ 25.1 Purpose.

The purpose of these regulations is to promulgate rules to implement the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.), in accordance with the following objectives:

(a) To ensure that owners of real property to be acquired for Federal and federally-assisted projects are treated fairly and consistently, to encourage and expedite acquisition by agreements with such owners, to minimize litigation and relieve congestion in the courts, and to promote public confidence in Federal and federally-assisted land acquisition programs; and

(b) To ensure that persons displaced as a result of Federal or federally-assisted projects are treated fairly, consistently, and equitably so that such persons will not suffer disproportionate injuries as a result of projects designed for the benefit of the public as a whole.

§ 25.2 Definitions.

(a) *Agency.* The term "agency" means the Federal agency, State or State agency which acquires the real property or displaces a person (see § 25.2(f)).

(b) *Business.* The term "business" means any lawful activity, except a farm operation, that is conducted:

(1) Primarily for the purchase, sale, lease, and/or rental of personal and/or real property, and/or for the manufacture, processing, and/or marketing of products, commodities, and/or any other personal property; or

(2) Primarily for the sale of services to the public; or

(3) Solely for the purpose of § 25.303 of these regulations, conducted primarily for outdoor advertising display purposes, when the display(s) must be moved as a result of the project; or

(4) By a nonprofit organization that has established its nonprofit status under applicable Federal or State law.

(c) *Comparable replacement dwelling.* The term comparable replacement dwelling means a dwelling which is:

(1) Decent, safe, and sanitary as described in § 25.2(e).

(2) Functionally similar to the displacement dwelling with particular attention to the number of rooms and living space.

(3) In an area that is not subject to unreasonable adverse environmental conditions, is not generally less desirable than the location of the displaced person's dwelling with respect to public utilities and commercial and public facilities, and is reasonably accessible to the person's place of employment.

(4) On a site that is typical in size for residential development with normal site improvements, including customary landscaping. The site need not include special improvements such as outbuildings, swimming pools, and greenhouses. (See also § 25.403(a)(2)).

(5) Currently available to the displaced person.

(6) Within the financial means of the displaced person.

(i) A replacement dwelling purchased by a homeowner in occupancy for at least 180 days prior to initiation of negotiations (180-day homeowner) is considered to be within the homeowner's financial means if the homeowner is paid the full price differential as described at § 25.401(d), all increased mortgage interest cost as described at § 25.401(e), and all incidental expenses as described at § 25.401(f).

(ii) A replacement dwelling rented by a displaced person is considered to be within his or her financial means if the monthly rent at the replacement dwelling does not exceed the monthly rent at the displacement dwelling, after taking into account any rental assistance which the person receives under these regulations. If the cost of any utility services is included in either rent, an appropriate adjustment must be made to ensure that like circumstances are compared. For a person who paid little or no rent before displacement, the market rent of the displacement dwelling shall be used when computing costs.

(d) *Contributes materially.* The term "contributes materially" means that during the 2 taxable years prior to the taxable year in which displacement occurs, or during such other period as the Agency determines to be more equitable, a business or farm operation:

(1) Had average annual gross receipts of at least $2,000; or

(2) Had average annual net earnings of at least $1,000; or

(3) Contributed at least 33⅓ percent of the owner's or operator's average annual gross income from all sources.

(4) If the applicant of the above criteria creates an inequity or hardship in any given case, the acquiring agency may approve the use of other criteria as determined appropriate.

(e) *Decent, safe, and sanitary dwelling.* The term "decent, safe, and sanitary dwelling" means a dwelling which meets applicable housing and occupancy codes. However, if any of the following standards are not met by an applicable code, such following standards shall apply, unless waived for good cause by the Federal agency funding the project. The dwelling shall:

(1) Be structurally sound, weathertight, and in good repair.

(2) Contain a safe electrical wiring system adequate for lighting and other electrical devices.

(3) Contain a heating system capable of sustaining a healthful temperature (of approximately 70 degrees) for a displaced person, except in those areas where local climatic conditions do not require such a system.

(4) Be adequate in size with respect to the number of rooms and area of living space needed to accommodate the displaced person. There shall be a separate, well-lighted and ventilated bathroom that provides privacy to the user and contains a sink, bathtub or shower stall, and a toilet, all in good working order and properly connected to appropriate sources of water and to a sewage drainage system. In the case of a housekeeping dwelling, there shall be a kitchen area that contains a fully usable sink, properly connected to potable hot and cold water and to a sewage drainage system, and adequate space and utility service connections for a stove and refrigerator.

(5) Contains unobstructed egress to safe, open space at ground level. If the replacement dwelling unit is on the second story or above, with access directly from or through a common corridor, the common corridor must have at least two means of egress.

(6) For a handicapped displacee, be free of any barriers which would preclude reasonable ingress, egress, or use of the dwelling by a displaced person who is handicapped.

(f) *Displaced person.*—(1) *General.* The term "displaced person" means any person (defined at § 25.2(m)) who moves from the real property or moves his or her personal property from the real property:

(i) As a direct result of the Agency's acquisition of such real property in whole or in part for a project. This includes any person who moved from the real property as a result of the inititation of negotiations as described at § 25.2(k). In the case of a partial acquisition, the Agency shall determine whether the person is displaced as a direct result of the partial acquisition; or

(ii) As a result of a written order from the acquiring Agency to vacate such real property for the project; or

(iii) As a result of the Agency's acquisition of, or written order to vacate, other real property for a project on which the person conducts a business, farm operation, or is a nonprofit organization. Eligibility as a displaced person under this subparagraph applies only for purposes of obtaining relocation assistance advisory services under § 25.205 and moving expenses under § 25.303.

(2) *Persons not displaced.* The following is a nonexclusive listing of persons who do not qualify as a displaced person under these regulations.

(i) A person who moves before the initiation of negotiations; or

(ii) A person who initially enters into occupancy of the property after the date of its acquisition for the project; or

(iii) A person who is not required to relocate permanently as a direct result of a project. Such determination shall be made by the Agency in accordance with any guidelines established by the Federal agency funding the project; or

(iv) A person who, after receiving a notice of relocation eligibility (described at § 25.203), is notified in writing that he or she will not be displaced for a project. Such notice shall not be issued unless the person has not moved and the Agency agrees to reimburse the person for any expenses incurred to satisfy any binding contractual relocation obligations entered into after the effective date of the notice of relocation eligibility; or

(v) An owner-occupant who voluntarily sells his or her property (as described at § 25.101(a) in Appendix A) after being informed in writing that if a mutually satisfactory agreement of sale cannot be reached, the Agency will not aquire the property. In such cases, however, any resulting displacement of a tenant is subject to these regulations; or

(vi) A person who retains the right of use and occupancy of the real property for life following its acquisition by the Agency; or

(vii) A person who retains the right of use and occupancy of the real property for a fixed term after its acquisition by the Department of Interior under Pub. L. 93–477 or Pub. L. 93–303; or

(viii) A person who is required only to temporarily vacate the premises in order to permit fumigation or other code enforcement work which does not exceed five calendar days.

(g) *Dwelling.* The term "dwelling" means the place of permanent or customary and usual residence of a person, according to local custom or law, including a single family house; a single family unit in a two-family, multi-family, or multi-purpose property; a unit of a condominium or cooperative housing project; a non-housekeeping unit; a mobile home; or any other residential unit.

(h) *Farm operation.* The term "farm operation" means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

(i) *Federal agency.* The term "Federal agency" means any Department, Agency, or instrumentality in the Executive Branch of the Government, any wholly owned Government corporation, and the architect of the Capitol, the Federal Reserve Banks and branches thereof.

(j) *Federal financial assistance.* The term "Federal financial assistance" means any Federal grant, loan, or contribution, except a Federal guarantee or insurance.

(k) *Initiation of negotiations.* The term "initiation of negotiations" means the delivery of the initial written offer by the Agency to the owner or the owner's representative to purchase real property for a project for the amount determined to be just compensation, unless applicable Federal program regulations specify a different action to serve this purpose. In the case of a permanent relocation to protect the public health and welfare, the "initiation of negotiations" means the formal announcement of such relocation or the Federal or federally-coordinated health advisory where the Federal Government later decides to conduct a permanent relocation, provided that such person

owns the property on the date the permanent relocation is announced. However, in any case where a person moves after the Agency issues a notice of its intent to acquire the real property, but before delivery of the initial written purchase offer, the "initiation of negotiations" means the date the person moves from the property. (See also § 25.505(c)).

(l) *Owner of displacement dwelling.* A displaced person is considered to have met the requirement to own a displacement dwelling if the person holds any of the following interests in real property acquired for a project:

(1) Fee title, a life estate, a 99-year lease, or a lease, including any options for extension, with at least 50 years to run from the date of acquisition; or

(2) An interest in a cooperative housing project which includes the right to occupy a dwelling; or

(3) A contract to purchase any of the interests or estates described in subparagraphs (1) or (2) of this paragraph, or

(4) Any other interest, including a partial interest, which in the judgment of the Agency warrants consideration as ownership.

(m) *Person.* The term "person" means any individual, family, partnership, corporation, or association.

(n) *Salvage value.* The term "salvage value" means the probable sale price of an item, if offered for sale on the condition that it will be removed from the property at the buyer's expense, allowing a reasonable period of time to find a person buying with knowledge of the uses and purposes for which it is adaptable and capable of being used, including separate use of serviceable components and scrap when there is no reasonable prospect of sale expect on that basis.

(o) *State.* The term "State" means any of the several States of the United States, the District of Columbia; the Commonwealth of Puerto Rico, any territory or possession of the United States, the Trust Territories of the Pacific Islands, or a political subdivision of any of these jurisdictions.

(p) *State agency.* The term "State agency" means any Department, Agency or instrumentality of a State or of a political subdivision of a State, or two or more States, or of two or more political subdivisions of a State or States.

(q) *Tenant.* The term "tenant" means a person who has the temporary use and occupancy of real property owned by another.

(r) *Uniform Act.* The term "Uniform Act" means the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (84 Stat. 1894; 42 U.S.C. 4601 et seq.; Pub. L. 91-646), and amendments thereto.

§ 25.3 No duplication of payments.

No person shall receive any payment under these regulations that would have substantially the same purpose and effect as compensation which the person receives under the State law of eminent domain and which is part of the cost of a project.

§ 25.4 Assurances, monitoring and corrective action.

(a) *General.* Before a Federal Agency may approve any grant to, or contract or agreement with, a State agency under which Federal financial assistance will be made available for a project which results in real property acquisition or displacement that is subject to the Uniform Act, the State agency must provide appropriate assurances that it will comply with the Uniform Act and these regulations. If, in the judgment of the Federal agency, Uniform Act compliance will be served, a State agency may provide these assurances at one time to cover all subsequent federally assisted programs or projects. The Federal agency will monitor compliance with these regulations, and the State agency shall take whatever corrective action is necessary to comply with the Uniform Act and these regulations. The Federal agency may also apply sanctions in accordance with applicable program regulations.

(b) *Prevention of fraud, waste, and mismanagement.* The Agency shall take appropriate measures to carry out these regulations in a manner that minimizes fraud, waste, and mismanagement.

§ 25.5 Manner of notices.

Each notice which the Agency is required to provide to a property owner or occupant under these regulations, except the notice described at § 25.102(b), shall be personally served or sent by certified or registered first-class mail, return receipt requested, and documented in Agency files. Each notice shall be written in plain, understandable language. Persons who are unable to read and understand the notice must be provided with appropriate translation and counseling. Each notice shall indicate the name and telephone number of a person who may be contacted for answers to questions or other needed help.

§ 25.6 Administration of jointly funded projects.

Whenever two or more Federal agencies provide financial assistance to an agency or agencies to carry out functionally or geographically related activities which will result in the acquisition of property or the displacement of a person, the Federal agencies may by agreement designate one such agency as the cognizant Federal agency. At a minimum, the agreement shall set forth the federally assisted activities which are subject to its terms and cite any policies and procedures, in addition to these regulations, that are applicable to the activities under the agreement. Under the agreement, the cognizant Federal agency shall assure that the project is in compliance with the provisions of the Uniform Act and these regulations. All federally assisted activities under the agreement shall be deemed a project for the purposes of these regulations.

§ 25.7 Federal agency waiver of regulations.

The Federal agency funding the project may waive any provision in this part that is not required by law when it determines that the waiver does not reduce any assistance or protection available to an owner or displaced person under this part. Any request for a waiver shall be justified on a case-by-case basis.

§ 25.8 Compliance with other laws and regulations.

The implementation of these regulations shall be in compliance with the following, including any implementing regulations:

(a) Section I of the Civil Rights Act of 1866 (42 U.S.C. 1982 et seq.).

(b) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.).

(c) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.), as amended.

(d) The National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(e) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 790 et seq.).

(f) Executive Order 12250—Leadership and Coordination of Non-Discrimination Laws.

(g) Executive Order 11063 as amended by Executive Order 12259—Equal Opportunity and Housing.

(h) Executive Order 11246—Equal Employment Opportunity.

(i) Executive Order 11625—Minority Business Enterprise.

(j) The Flood Disaster Protection Act of 1973 (Pub. L. 93-234).

(k) Executive Order 11988, Floodplain Management.

(l) The Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.).

§ 25.9 Recordkeeping and reports.

(a) *Records.* The Agency shall maintain adequate records of its acquisition and displacement activities

in sufficient detail to demonstrate compliance with these regulations. These records shall be retained for at least 3 years after each owner of a property and each person displaced from a property receives the final payment to which he or she is entitled under these regulations.

(b) *Confidentiality of records.* Records maintained by an Agency in accordance with these regulations are confidential regarding their use as public information, unless applicable law provides otherwise.

(c) *Reports.* The Agency shall submit a report of its real property acquisition and displacement activities under these regulations if required by the Federal Agency funding the project. A report will not be required more frequently than every 3 years, or as the Uniform Act provides, unless the Federal funding Agency shows good cause.

(Approved by the Office of Management and Budget under Control No. 2105–0508)

§ 25.10 Appeals.

(a) *General.* The Agency shall provide an opportunity for the prompt review of appeals in accordance with the requirements of applicable law and these regulations.

(b) *Actions which may be appealed.* A person may file a written appeal with the Agency in any case in which the person believes that the Agency has failed to properly determine the person's eligibility for, or the amount of, a payment required under § 25.106 or § 25.107, or a relocation payment required under these regulations. The Agency shall consider a written appeal regardless of form.

(c) *Time limit for initiating appeal.* The Agency may set a reasonable time limit for a person to file an appeal. The time limit shall not be less than 60 days after the person receives written notification of the Agency's determination on the person's claim.

(d) *Right to representation.* A person has a right to be represented by legal counsel or other representative in connection with his or her appeal, but solely at the person's own expense.

(e) *Review of files by person making appeal.* The Agency shall permit a person to inspect and copy all materials pertinent to his or her appeal, except materials which are classified as confidential by the Agency. The Agency may, however, impose reasonable conditions on the person's right to inspect, consistent with applicable laws.

(f) *Scope of review of appeal.* In deciding an appeal, the Agency shall consider all pertinent justification and other material submitted by the person, and all other available information that is needed to ensure a fair and full review of the appeal.

(g) *Determination and notification after appeal.* Promptly after receipt of all information submitted by a person in support of an appeal, the Agency shall make a written determination on the appeal, including an explanation of the basis on which the decision was made, and furnish the person a copy. If the full relief requested is not granted, the Agency shall advise the person of his or her right to seek judicial review.

(h) *Agency official to review appeal.* The Agency official conducting the review of the appeal shall be either the head of the Agency or his or her authorized designee. However, the official shall not have been directly involved in the action appealed.

Subpart B—Real Property Acquisition

§ 25.101 Applicability of acquisition requirements.

(a) *General.* The requirements of this Subpart apply to any agency acquisition of real property for a Federal or federally assisted project, except for voluntary transactions. (See Appendix A.)

(b) *Less-than-full-fee interest in real property.* The requirements of this Subpart apply to the acquisition of a life estate, or a life use, to acquisition by leasing where the lease term, including option(s) for extension, is 50 years or more, and to the acquisition of permanent easements.

(c) *Federally-assisted projects.* For federally assisted projects the provisions of §§ 25.102, 25.103, 25.104, and 25.105 are applicable to the extent practicable under State law. (See § 25.4(a).)

§ 25.102 Basic acquisition policies.

(a) *Expeditious acquisition.* The Agency shall make every reasonable effort to acquire the real property expeditiously by negotiation.

(b) *Notice to owner.* As soon as feasible, the owner shall be notified of the Agency's interest in acquiring the real property and the basic protections provided to the owner by law and these regulations. (See also information and notice requirements at § 25.203.)

(c) *Appraisal and invitation to owner.* Before the initiation of negotiations, the real property shall be appraised and the owner or the owner's designated representative shall be given an opportunity to accompany the appraiser during the appraiser's inspection of the property.

(d) *Establishment and offer of just compensation.* Before the initiation of negotiations, the Agency shall establish an amount which it believes is just compensation for the real property. The amount shall not be less than the approved appraisal of the fair market value, including damages or benefits to the remaining property. (See also § 25.104.) Promptly thereafter the Agency shall make a written offer to the owner to acquire the property for the full amount believed to be just compensation.

(e) *Summary statement.* Along with the initial written purchase offer, the owner shall be given a written statement of the basis for the offer of just compensation, which shall include:

(1) A statement of the amount offered as just compensation. (In the case of a partial acquisition, the compensation for the real property to be acquired and the compensation for damages, if any, to the remaining real property shall be separately stated.)

(2) A description and location identification of the real property and the interest in the real property to be acquired.

(3) An identification of the buildings, structures, and other improvements (including removable building equipment and trade fixtures) which are considered to be part of the real property for which the offer of just compensation is made. (Where appropriate, the statement shall identify any separately held ownership interest in the property, e.g., a tenant-owned improvement, and indicate that such interest is not covered by the offer.)

(f) *Basic negotiation procedures.* The Agency shall make reasonable efforts to contact the owner or the owner's representative and (1) discuss its offer to purchase the property including the basis for the offer of just compensation, and (2) explain its acquisition policies and procedures, including its payment of incidental expenses in accordance with § 25.106. The owner shall be given reasonable opportunity to consider the offer and present material which the owner believes is relevant to determining the value of the property and to suggest modification in the proposed terms and conditions of the purchase. The Agency shall consider the owner's presentation.

(g) *Updating offer of just compensation.* If the information presented by the owner, or a material change in the character or condition of the property, indicates the need for new appraisal information, or if a significant delay has occurred since the time of the appraisal(s) of the property, the Agency shall have the appraisal(s) updated or obtain a new appraisal(s). If the latest appraisal information indicates that a

change in the purchase offer is warranted, the Agency shall promptly reestablish just compensation and offer the amount to the owner in writing.

(h) *Coercive action.* The Agency shall not advance the time of condemnation, or defer negotiations or condemnation or the deposit of funds with the court, or take any other coercive action in order to induce an agreement on the price to be paid for the property.

(i) *Administrative settlement.* The purchase price for the property may exceed the amount offered as just compensation when reasonable efforts to negotiate on that amount have failed and an authorized agency official approves such administrative settlement as being reasonable, prudent, and in the public interest. When Federal funds pay for or participate in acquisition costs, a written justification shall be prepared which indicates that available information (e.g., appraisals, recent court awards, estimated trial costs, and valuation problems) supports such a settlement.

(j) *Payment before taking possession.* Before requiring the owner to surrender possession of the real property, the Agency shall (1) pay the agreed purchase price to the owner, or (2) in the case of a condemnation, deposit with the court for the benefit of the owner, an amount not less than the Agency's approved appraisal of the fair market value of such property, or the amount of the award of compensation in the condemnation proceeding for the property. In exceptional circumstances, with the prior approval of the owner, the Agency may obtain a right-of-entry before making payment available to an owner.

(k) *Uneconomic remnant.* If the acquisition of only a portion of a property would leave the owner with an uneconomic remnant, the Agency shall offer to acquire the uneconomic remnant along with the portion of the property needed for the project. An uneconomic remnant is a remaining part of the property in which the owner is left with an interest that the Agency determines has little or no utility or value to the owner.

(l) *Inverse condemnation.* If the Agency intends to acquire any interest in real property by exercise of the power of eminent domain, it shall institute formal condemnation proceedings and not intentionally make it necessary for the owner to institute legal proceedings to prove the fact of the taking of the real property.

(m) *Fair rental.* If the Agency permits a former owner or tenant to occupy the real property for a short term or a period subject to termination on short notice, the rent shall not exceed the fair market rent for short term occupancy.

§ 25.103 Criteria for appraisals.

(a) *Definition of appraisal.* An appraisal is a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.

(b) *Standards of appraisal.* The format and level of documentation for an appraisal are dependent on the complexity of the appraisal problem. The Agency shall develop minimum standards for appraisals consistent with established and commonly accepted appraisal practice for those acquisitions which, by virtue of their low value or simplicity, do not require the in-depth analysis and presentation necessary in a detailed appraisal. A detailed appraisal shall be prepared for all other acquisitions. A detailed appraisal shall reflect nationally recognized appraisal standards, including, to the extent appropriate, the Uniform Appraisal Standards for Federal Land Acquisition. An appraisal must contain sufficient documentation, including valuation data and the appraiser's analysis of that data, to support his or her opinion of value. At a minimum, the appraisal shall contain the following items:

(1) The purpose and/or the function of the appraisal, a definition of the estate being appraised, and a statement of the assumptions and limiting conditions affecting the appraisal.

(2) An adequate description of the physical characteristics of the property being appraised (and, in the case of a partial acquisition, an adequate description of the remaining property), a statement of the known and observed encumbrances, if any, title information, location, zoning, present use, an analysis of highest and best use, and at least a 5-year sales history of the property.

(3) All relevant and reliable approaches to value consistent with commonly accepted professional appraisal practices. When sufficient market sales data are available to reliably support the fair market value given the specific appraisal problem encountered, the Agency, at its discretion, may require only the market approach. If more than one approach is utilized, there shall be an analysis and reconciliation of value that is sufficient to support the appraiser's opinion(s) of value.

(4) A description of comparable sales, including a description of all relevant physical, legal, and economic factors such as parties to the transaction, source and method of financing, and verification by a party involved in the transaction.

(5) A statement of the value of the real property to be acquired and, for a partial acquisition, a statement of damages and benefits, if any, to the remaining real property.

(6) The effective date of valuation, date of appraisal, signature, and certification of the appraiser.

(c) *Influence of the project on just compensation.* To the extent permitted by applicable law, the appraiser shall disregard any decrease or increase prior to the date of valuation, in the fair market value of the real property, caused by the project for which the property is to be acquired, or by the likelihood that the property would be acquired for the project, other than that due to physical deterioration within the reasonable control of the owner.

(d) *Owner retention of improvements.* If the owner of a real property improvement is permitted to retain it for removal from the project site, just compensation for the interest in the real property to be acquired shall be not less than the difference between the amount determined to be just compensation for the owner's entire interest and the salvage value of the retained improvement.

(e) *Qualifications of appraisers.* The Agency shall establish criteria for determining the minimum qualifications of appraisers. Appraiser qualifications shall be consistent with the level of difficulty of the appraisal assignment. The Agency shall review the experience, education, training, and other qualifications of appraisers, including review appraisers, and utilize only those determined to be qualified.

(f) *Conflict of interest.* No appraiser or review appraiser shall have any interest, direct or indirect, in the real property being appraised for the Agency that would in any way conflict with the preparation or review of the appraisal. Compensation for making an appraisal shall not be based on the amount of the valuation. No appraiser shall act as a negotiator for real property which that person has appraised, except that the Agency may permit the same person to both appraise and negotiate an acquisition where the value of the acquisition is $2,500 or less.

§ 25.104 Review of appraisals.

The Agency shall have an appraisal review process and, at a minimum:

(a) A qualified reviewing appraiser shall examine all appraisals to assure

that they meet Agency appraisal requirements and shall, prior to acceptance, seek correction or revision of those which do not.

(b) If the reviewing appraiser is unable to approve or recommend approval of an appraisal as adequate support for compensation, the reviewing appraiser may develop appraisal documentation in accordance with § 25.103 to support an approved or recommended value if it is determined that it is not practical to obtain additional appraisals.

(c) The review appraiser's certification and the recommended or approved value of the property shall be set forth in a signed written statement which identifies the appraisal reports reviewed and explains the basis for such recommendation. Any damages or benefits to any remaining property shall also be identified in the statement.

§ 25.105 Acquisition of tenant-owned improvements.

(a) *Acquisition of improvements.* When acquiring any interest in real property, the Agency shall offer to acquire at least an equal interest in all buildings, structures, or other improvements located upon the real property to be acquired, which it requires to be removed or which it determines will be adversely affected by the use to which such real property will be put. This shall include any improvement of a tenant-owner who has the right or obligation to remove the improvement at the expiration of the lease term.

(b) *Improvements considered to be real property.* Any building, structure, or other improvement, which would be considered to be real property if owned by the owner of the real property on which it is located, shall be considered to be real property for purposes of this Subpart.

(c) *Appraisal and establishment of just compensation for tenant-owned improvements.* Just compensation for a tenant-owned improvement is the amount which the improvement contributes to the fair market value of the whole property or its salvage value, whichever is greater. (Salvage value is defined at § 25.2(n).)

(d) *Special conditions.* No payment shall be made to a tenant-owner for any real property improvement unless:

(1) The tenant-owner, in consideration for the payment, assigns, transfers, and releases to the Agency all of the tenant-owner's right, title, and interest in the improvement; and

(2) The owner of the real property on which the improvement is located disclaims all interest in the improvement; and

(3) The payment does not result in the duplication of any compensation otherwise authorized by law.

(e) *Alternate payment.* Nothing in this Subpart shall be construed to deprive the tenant-owner of any rights to reject payment under this Subpart and to obtain payment for such property interests in accordance with other applicable law.

§ 25.106 Expenses incidental to transfer of title to the Agency.

The owner shall be reimbursed for all reasonable expenses the owner necessarily incurred for:

(a) Recording fees, transfer taxes, documentary stamps, evidence of title, boundary surveys, legal descriptions of the real property, and similar expenses incidental to conveying the real property to the Agency. However, the Agency is not required to pay costs solely required to perfect the owner's title to the real property; and

(b) Penalty costs and other charges for prepayment of any preexisting recorded mortgage entered into in good faith encumbering the real property; and

(c) The pro rata portion of any prepaid real property taxes which are allocable to the period after the Agency obtains title to the property or effective possession of it, whichever is earlier. Whenever feasible, the Agency shall pay these costs directly and avoid the need for an owner to pay any such costs and then seek reimbursement from the Agency.

§ 25.107 Certain litigation expenses.

The owner of the real property shall be reimbursed for any reasonable expenses, including reasonable attorney, appraisal, and engineering fees, which the owner actually incurred because of a condemnation proceeding, if:

(a) The final judgment of the court is that the Agency cannot acquire the real property by condemnation; or

(b) The condemnation proceeding is abandoned by the Agency other than under an agreed-upon settlement; or

(c) The court having jurisdiction renders a judgment in favor of the owner in an inverse condemnation proceeding or the Agency effects a settlement of such proceedings.

§ 25.108 Donations

Nothing in these regulations shall prevent a person, after being informed of the right to receive just compensation, from making a gift or donation of real property or any part thereof, or any interest therein, or of any compensation paid therefor, to the Agency. The Agency is responsible for assuring that an appraisal of the real property affected is obtained unless the owner thereof releases the Agency from such obligation.

Subpart C—General Relocation Requirements

§ 25.201 Purpose.

This Subpart prescribes general requirements governing the provision of relocation payments and other relocation assistance under the regulations in this Subpart.

§ 25.202 Applicability.

These requirements apply to the relocation of any displaced person as defined at § 25.2(f).

(Approved by the Office of Management and Budget under Control No. 2105–0508)

§ 25.203 Relocation information and written notices.

(a) *General information notice.* As soon as feasible, a person scheduled to be displaced should be notified about the possibility of his or her displacement. He or she should also be furnished with a general written description of the Agency's relocation program which does at least the following:

(1) Informs the person that he or she may be displaced for the project and generally describes the relocation payment(s) for which the person may be eligible, the basic conditions of eligibility, and the procedures for obtaining the payment(s).

(2) Indicates that any person displaced will be given reasonable relocation advisory services including housing referrals, help in filing payment claim(s), and other necessary assistance to help the person successfully relocate.

(3) Informs any person to be displaced from a dwelling that he or she cannot be required to move permanently unless at least one comparable replacement dwelling has been made available to the displaced person. No person will be required to move without at least 90 days' advance written notice. (See paragraph (c) of this section.)

(4) Describes the person's right to appeal the Agency's determination as to eligibility for, or the amount of, any relocation payment for which the person is eligible.

(b) *Notice of relocation eligibility.* Eligibility for relocation assistance shall begin on the date of initiation of negotiations for the occupied property. When this occurs, the Agency shall promptly notify all occupants in writing

of their eligibility for applicable relocation benefits.

(c) *Ninety-day notice.*—(1) *General.* No lawful occupant shall be required to move unless he or she has received at least 90 days' advance written notice of the earliest date by which he or she may be required to move.

(2) *Timing of notice.* The displacing agency may issue the notice 90 days before it expects the person to be displaced or earlier.

(3) *Content of notice.* The 90-day notice may include a specific date as the earliest date by which the occupant may be required to move, or it may include a statement that the occupant will receive a further notice indicating, at least 30 days in advance, the specific date by which he or she must move. In any case, the notice must state clearly that the occupant will not have to move earlier than 90 days after either the date of the notice or the date comparable replacement housing was made available, whichever is later. (See § 25.204(a).)

(4) *Urgent need.* In unusual circumstances, an occupant may be required to vacate the property on less than 90 days' advance written notice if the Agency determines that a 90-day notice is impracticable, such as when the person's continued occupancy of the property would constitute a substantial danger to the person's health or safety. A copy of the Agency's determination shall be included in the applicable case file.

§ 25.204 Availability of comparable replacement dwelling prior to displacement.

(a) *General.* No person to be displaced shall be required to move permanently from his or her dwelling unless at least one comparable replacement dwelling (defined at § 25.2(c)) has been made available to the person. Where possible, three or more comparable replacement dwellings shall be made available. A comparable replacement dwelling will be considered to have been made available to a person, if:

(1) The person is informed of its location; and

(2) The person has sufficient time to negotiate and enter into a purchase agreement or lease for the property (not less than 90 days); and

(3) The person is assured of receiving the relocation assistance and acquisition compensation, subject to reasonable safeguards, to which the person is entitled in sufficient time to complete the purchase or lease of the property.

(b) *Circumstances permitting waiver.* The Federal agency funding the project may grant a waiver of the policy in paragraph (a) of this section in any case where it is demonstrated that a person must move because of:

(1) A major disaster as defined in section 102(c) of the Disaster Relief Act of 1974 (42 U.S.C. 5121); or

(2) A presidentially declared national emergency; or

(3) Another emergency which requires immediate vacation of the real property, such as when continued occupancy of the displacement dwelling constitutes a substantial danger to the health or safety of the occupants or the public.

(c) *Basic conditions of emergency move.* Whenever a person is required to relocate for a temporary period because of an emergency as described in paragraph (b) of this section, the Agency shall:

(1) Take whatever steps are necessary to assure that the affected person is temporarily relocated to a decent, safe, and sanitary dwelling;

(2) Pay actual reasonable out-of-pocket moving expenses and any reasonable increases in monthly housing costs incurred in connection with the temporary relocation;

(3) Make available to the displaced person as soon as feasible, at least one comparable replacement dwelling. (For purposes of filing a claim and meeting the eligibility requirements for a relocation payment, the date of displacement is the date the person moves from the temporarily occupied dwelling.)

§ 25.205 Relocation assistance advisory services.

(a) *General.* The Agency shall carry out a relocation assistance advisory program which satisfies the requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.), and Executive Order 11063 (27 FR 11527), and offers the services described in paragraph (b) of this section. If the Agency determines that a person occupying property adjacent to the real property acquired for the project is caused substantial economic injury because of such acquisition, it may offer the services to such person.

(b) *Services to be provided.* The advisory program shall include such measures, facilities, and services as may be necessary or appropriate in order to:

(1) Personally interview each person to be displaced, determine the person's relocation needs and preferences, and explain the relocation payments and other assistance for which the person may be eligible, the related eligibility requirements, and the procedures for obtaining such assistance.

(2) Provide current and continuing information on the availability, purchase prices, and rental costs of comparable replacement dwellings, and explain that the person cannot be required to move unless at least one comparable replacement dwelling is made available as set forth in § 25.204(a).

(i) The Agency shall inform the displaced person in writing of the specific comparable replacement dwelling and the price or rent used as the basis for establishing the upper limit of the replacement housing payment (see § 25.403(a)) and the basis for the determination in order that the displaced person is made aware of the amount of the replacement housing payment to which he or she may be entitled.

(ii) Where feasible, housing shall be inspected prior to being made available to assure that it meets applicable standards. (See § 25.2(c) and (e).) If such an inspection is not made, the person to be displaced shall be notified that a replacement housing payment may not be made unless the replacement dwelling is subsequently inspected and determined to be decent, safe, and sanitary.

(iii) Whenever possible, minority persons shall be given reasonable opportunities to relocate to decent, safe, and sanitary replacement dwellings, not located in an area of minority concentration, that are within their financial means. This policy, however, does not require an Agency to provide a person a larger payment than is necessary to enable a person to relocate to a comparable replacement dwelling.

(iv) All displaced persons, especially the elderly and handicapped, shall be offered transportation to inspect housing to which they are referred.

(3) Provide current and continuing information on the availability, purchase prices, and rental costs of comparable and suitable commercial and farm properties and locations. Assist any person displaced from a business or farm operation to obtain and become established in a suitable replacement location.

(4) Minimize hardships to persons in adjusting to relocation by providing counseling, advice as to other sources of assistance that may be available, and such other help as may be appropriate.

(5) Supply persons to be displaced with appropriate information concerning Federal and State housing programs, disaster loan and other programs administered by the Small Business Administration, and other Federal and

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State programs offering assistance to persons to be displaced.

(c) *Coordination of relocation activities.* Relocation activities shall be coordinated with project work and other displacement causing activities to ensure that, to the extent feasible, persons displaced receive consistent treatment, and the duplication of functions is minimized.

§ 25.206 Eviction for cause.

Eviction for cause must conform to applicable State and local law. Any person who has lawfully occupied the real property, but who is later evicted for cause on or after the date of the initiation of negotiations, retains the right to the relocation payments and other assistance set forth in these regulations. However, the date the person moves establishes the date of the person's displacement.

(Approved by the Office of Management and Budget under Control No. 2105–0508)

§ 25.207 General requirements—claims for relocation payments.

(a) *Documentation.* Any claim for a relocation payment shall be supported by such documentation as may be reasonably required to support expenses incurred, such as, bills, certified prices, appraisals, or other evidence of such expenses. A displaced person must be provided reasonable assistance necessary to complete and file any required claim for payment.

(b) *Expeditious payments.* The Agency shall review claims in an expeditious manner. The claimant shall be promptly notified as to any additional documentation that is required to support the claim. Payment for a claim shall be made as soon as feasible following receipt of sufficient documentation to support the claim.

(c) *Advance payments.* If a person demonstrates the need for an advance relocation payment in order to avoid or reduce a hardship, the Agency shall issue the payment, subject to such safeguards as are appropriate to ensure that the objective of the payment is accomplished.

(d) *Time for filing.* All claims for a relocation payment shall be filed with the Agency within 18 months after the date of displacement or the date of final payment for the displacement dwelling under these regulations, whichever is later. This time period shall be waived by the Agency for good cause.

(e) *Multiple occupants of one displacement dwelling.* If two or more occupants of the displacement dwelling move to separate replacement dwellings, each occupant is entitled to a reasonable prorated share, as determined by the Agency, of any relocation payments that would have been made if the occupants moved together to a comparable replacement dwelling. However, if the Agency determines that two or more occupants maintained separate households within the same dwelling, such occupants have separate entitlements to relocation payments.

(f) *Deductions from relocation payments.* An agency may deduct the amount of any advance relocation payment from the relocation payment(s) to which a displaced person is otherwise entitled. Similarly, when acquiring real property a Federal Agency shall, and a State Agency may, deduct from relocation payments any rent that the displaced person owes to such acquiring agency; provided that no deduction shall be made if it would prevent the displaced person from obtaining comparable replacement housing as required by § 25.204 of these regulations. The Agency shall not withhold any part of a relocation payment to a displaced person to satisfy an obligation to any other creditor.

(g) *Notice of denial of claim.* If the Agency disapproves all or part of a payment claimed or refuses to consider the claim on its merits because of untimely filing or other grounds, it shall promptly notify the claimant in writing of its determination, the basis for its determination, and the procedures for appealing that determination.

§ 25.208 Relocation payments not considered as income.

No relocation payment received by a displaced person under these regulations shall be considered as income for the purpose of the Internal Revenue Code of 1954, or for the purpose of determining the eligibility or the extent of eligibility of any person for assistance under the Social Security or any other Federal law.

Subart D—Payment for Moving and Related Expenses

§ 25.301 Payment for actual reasonable moving and related expenses—residential moves.

Any displaced owner-occupant or tenant of a dwelling who qualifies as a displaced person (defined at § 25.2(f)) is entitled to reimbursement of his or her actual moving and related expenses as the Agency determines to be reasonable and necessary, including expenses for:

(a) Transportation of the displaced person and personal property. Transportation costs for a distance beyond 50 miles are not eligible, unless the Agency determines that relocation beyond 50 miles is justified.

(b) Packing, crating, unpacking, and uncrating of the personal property.

(c) Disconnecting, dismantling, removing, reassembling, and reinstalling relocated household applicances, and other personal property.

(d) Storage of the personal property not to exceed 12 months, unless the agency determines that a longer period is necessary.

(e) Insurance for the replacement value of the property in connection with the move and necessary storage.

(f) The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her agent, or employee) where insurance covering such loss, theft, or damage is not reasonably available.

(g) Other moving related expenses that are not listed as ineligible under § 25.305, as the Agency determines to be reasonable and necessary.

§ 25.302 Fixed payment for moving expenses—residential moves.

Any person displaced from a dwelling, or a seasonal residence, is entitled to receive a fixed payment in lieu of a payment for actual moving and related expenses covered under §25.301, that consists of:

(a) A moving expense allowance not to exceed $300 which shall be determined in accordance with the applicable moving allowance schedules approved by the Federal Highway Administration; and

(b) A dislocation allowance of $200.

§ 25.303 Payment for actual reasonable moving and related expenses—nonresidential moves.

(a) *Eligible costs.* Any business or farm operation which qualifies as a displaced person (defined at § 25.2(f)) is entitled to payment for such actual moving and related expenses as the Agency determines to be reasonable and necessary, including expenses for:

(1) Transportation of personal property. Transportation costs for a distance beyond 50 miles are not eligible, unless the Agency determines that relocation beyond 50 miles is justified.

(2) Packing, crating, unpacking, and uncrating of the personal property.

(3) Disconnecting, dismantling, removing, reassembling, and reinstalling relocated machinery, equipment, and other personal property, and substitute personal property described at § 25.303(a)(11). This includes connection to utilities available nearby. It also includes modifications to the personal property necessary to adapt it to the

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replacement structure, the replacement site, or the utilities at the replacement site, and modifications necessary to adapt the utilities at the replacement site to the personal property. (Expenses for providing utilities from the right-of-way to the building or improvement are excluded.)

(4) Storage of the personal property not to exceed 12 months, unless the agency determines that a longer period is necessary.

(5) Insurnce for the replacement value of the personal property in connection with the move and necessary storage.

(6) Any license, permit, or certification required of the displaced person at the replacement location. However, the payment may be based on the remaining useful life of the existing license, permit, or certification.

(7) The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her agent, or employee) where insurance covering such loss, theft, or damage is not reasonably available.

(8) Professional services necessary for (i) planning the move of the personal property, (ii) moving the personal property, and (iii) installing the relocated personal property at the replacement location.

(9) Relettering signs and replacing stationary on hand at the time of displacement that is made obsolete as a result of the move.

(10) Actual direct loss of tangible personal property incurred as a result of moving or discontinuing the business or farm operation. The payment shall consist of the lesser of:

(i) The fair market value of the item for continued use at the displacement site, less the proceeds from its sale. (To be eligible for payment, the claimant must make a good faith effort to sell the personal property, unless the Agency determines that such effort is not necessary. When payment for property loss is claimed for goods held for sale, the fair market value shall be based on the cost of the goods to the business, not the potential selling price.); or

(ii) The estimated cost of moving the item, but with no allowance for storage. (If the business or farm operation is discontinued, the estimated cost shall be based on a moving distance of 50 miles.)

(11) The reasonable cost incurred in attempting to sell an item that is not to be relocated.

(12) Purchase of substitute personal property. If an item of personal property which is used as part of a business or farm operation is not moved but is promptly replaced with a substitute item that performs a comparable function at the replacement site, the displaced person is entitled to payment of the lesser of:

(i) The cost of the substitute item, including installation costs at the replacement site, minus any proceeds from the sale or trade-in of the replaced item; or

(ii) The estimated cost of moving and reinstalling the replaced item, based on the lowest acceptable bid or estimate obtained by the Agency for eligible moving and related expenses, but with no allowance for storage.

(13) Searching for a replacement location. A displaced business or farm operation is entitled to reimbursement for actual expenses, not to exceed $1,000, as the Agency determines to be reasonable, which are incurred in searching for a replacement location including:

(i) Transportation.

(ii) Meals and lodging away from home.

(iii) Time spent searching, based on reasonable salary or earnings.

(iv) Fees paid to a real estate agent or broker to locate a replacement site, exclusive of any fees or commissions related to the purchase of such site.

(14) Other moving related expenses that are not listed as ineligible under § 25.305, as the Agency determines to be reasonable and necessary.

(b) *Notification and inspection.* The following requirements apply to payments under this section:

(1) The Agency shall inform the displaced person, in writing, of the requirements of paragraphs (b) (2) and (3) of this section as soon as possible after the initiation of negotiations. This information may be included in the relocation information provided to the displaced person as set forth in § 25.203.

(2) The displaced person must provide the Agency reasonable advance notice of the approximate date of the start of the move or disposition of the personal property and a list of the items to be moved. However, the Agency may waive this notice requirement after documenting its file accordingly.

(3) The displaced person must permit the Agency to make reasonable and timely inspections of the personal property at both the displacement and replacement sites and to monitor the move.

(c) *Self-moves.* If the displaced person elects to take full responsibility for all or a part of the move of the business, farm operation, or nonprofit organization, the Agency may approve a payment for the person's moving expenses in an amount not to exceed the lowest acceptable bid or estimate obtained by the Agency, or prepared by a qualified staff person, without submission of any additional documentation of moving expenses actually incurred in the move.

(d) *Transfer of ownership.* Upon request and in accordance with applicable law, the claimant shall transfer to the Agency ownership of any personal property that has not been moved, sold, or traded in.

(e) *Advertising signs.* The amount of a payment for direct loss of an advertising sign(s) which is personal property shall be the lesser of:

(1) The depreciated reproduction cost of the sign(s) as determined by the Agency, less the proceeds from its sale; or

(2) The estimated cost of moving the sign(s), but with no allowance for storage.

(Approved by the Office of Management and Budget under Control No. 2105-0508)

§ 25.304 Fixed payment for moving expenses—Nonresidential moves.

(a) *Business.* Any displaced business (other than an outdoor advertising display business described at § 25.2(b)(3) or a nonprofit organization described at § 25.304(d)) is eligible for a fixed payment, in lieu of a payment for actual moving and related expenses, in an amount equal to its average annual net earnings as computed in accordance with paragraph (e) of this section, but not less than $2,500 nor more than $10,000, if the Agency determines that:

(1) The business cannot be relocated without a substantial loss of its existing patronage (clientele or net earnings). A business is assumed to meet this test unless the Agency demonstrates that it will not suffer a substantial loss of its existing patronage; and

(2) The business is not part of a commercial enterprise having another establishment, which is not being acquired by the Agency, and which is under the same ownership and engaged in the same or similar business activities. (For purposes of this rule a remaining business facility that did not contribute materially to the income of the displaced person during the 2 taxable years prior to displacement shall not be considered "another establishment."); and

(3) The business contributed materially to the income of the displaced person during the 2 taxable years prior to displacement (see § 25.2(d)). However, the Agency may waive this test for good cause.

(b) *Determining the number of businesses.* In determining whether two or more displaced legal entities constitute a single business which is entitled to only one fixed payment, all

pertinent factors shall be considered, including the extent to which:

(1) The same premises and equipment are shared;

(2) Substantially identical or interrelated business functions are carried out and business and financial affairs are commingled;

(3) The entities are held out to the public, and to those customarily dealing with them, as one business;

(4) The same person, or closely related persons own, control, or manage the affairs of the entities.

(c) *Farm operation.* Any displaced farm operation, defined at § 25.2(h), may choose a fixed payment in lieu of a payment for actual moving and related expenses in an amount equal to its average annual net earnings as computed in accordance with paragraph (e) of this section, but not less than $2,500 nor more than $10,000. In the case of a partial acquisition of land which was a farm operation before the acquisition, the fixed payment shall be made only if the Agency determines that:

(1) The acquisition of part of the land caused the operator to be displaced from the farm operation on the remaining land; or

(2) The partial acquisition caused a substantial change in the nature of the farm acquisition.

(d) *Nonprofit organizations.* Any displaced nonprofit organization may choose a fixed payment in lieu of a payment for actual moving and related expenses in an amount of $2,500, if the Agency determines that it:

(1) Cannot be relocated without a substantial loss of existing patronage (membership or clientele). A nonprofit organization is assumed to meet this test, unless the Agency demonstrates otherwise; and

(2) Is not part of an enterprise having at least one other establishment engaged in the same or similar activity which is not being acquired by the Agency.

(e) *Average annual net earnings of a business or farm operation.* The average annual net earnings of a business or farm operation are one-half of its net earnings before Federal, State, and local income taxes during the 2 taxable years immediately prior to the taxable year in which it was displaced. If the business or farm was not in operation for the full 2 taxable years prior to displacement, net earnings shall be based on the actual period of operation at the displacement site during the 2 taxable years prior to displacement, projected to an annual rate. Average annual net earnings may be based upon a different period of time when the Agency determines it to be more equitable. Net earnings include any compensation obtained from the business or farm operation by its owner, the owner's spouse, and dependents. The displaced person shall furnish the agency proof of net earnings through income tax returns, certified financial statements, or other reasonable evidence which the Agency determines is satisfactory.

§ 25.305 Ineligible moving and related expenses.

A displaced person is not entitled to payment for:

(a) The cost of moving any structure or other real property improvement in which the displaced person reserved ownership. (However, this rule does not preclude the computation under § 25.401(d)(4)(iii).); or

(b) Interest on a loan to cover moving expenses; or

(c) Loss of goodwill; or

(d) Loss of profits; or

(e) Loss of trained employees; or

(f) Any additional operating expenses of a business, farm, or nonprofit organization incurred because of operating in a new location; or

(g) Personal injury; or

(h) Any legal fee or other cost for preparing a claim for a relocation payment or for representing the claimant before the Agency; or

(i) Expenses for searching for a replacement dwelling; or

(j) Physical changes to the real property at the replacement location of a business, farm, or nonprofit organization, except as provided in § 25.303(a)(3); or

(k) Costs for storage of personal property on real property owned or leased by the displaced person.

Subpart E—Replacement Housing Payments

§ 25.401 Replacement housing payments for 180-day homeowner-occupants.

(a) *Eligibility.* A displaced person is eligible for the replacement housing payment for a 180-day homeowner-occupant if the person:

(1) Has actually owned and occupied the displacement dwelling for not less than 180 days immediately prior to the initiation of negotiations; and

(2) Purchases and occupies a decent, safe, and sanitary replacement dwelling within 1 year after the later of:

(i) The date the person receives final payment for the displacement dwelling or, in the case of condemnation, the date the required amount is deposited in the court, or

(ii) The date the person moves from the displacement dwelling.

(b) *Amount of total payment.* The total replacement housing payment for an eligible 180-day homeowner-occupant is an amount, not to exceed $15,000, which is the combined sum of:

(1) The amount by which the cost of a replacement dwelling exceeds the acquisition cost of the displacement dwelling, as determined in accordance with paragraph (d) of this section; and

(2) The amount necessary to compensate the displaced person for any increased interest costs and other debt service costs to be incurred in connection with the mortgage(s) on the replacement dwelling, as determined in accordance with paragraph (e) of this section; and

(3) The amount of the reasonable expenses that are incidental to the purchase of the replacement dwelling, as determined in accordance with paragrah (f) of this section.

(c) *Rental assistance payment for 180-day owner who rents.* (1) A 180-day owner eligible for a replacement housing payment under § 25.401(a) who elects to rent a replacement dwelling is eligible for a payment not to exceed $4,000.

(2) The payment shall be computed and disbursed in accordance with § 25.402(b).

(d) *Price differential.*—(1) *Determination of price differential.* The price differential to be paid under paragraph (b)(1) of this section is the amount which must be added to the acquisition cost of the displacement dwelling to provide a total amount equal to the lesser of:

(i) The reasonable cost of a comparable replacement dwelling as determined in accordance with § 25.403(a); or

(ii) The purchase price of the decent, safe, and sanitary replacement dwelling actually purchased and occupied by the displaced person.

(2) *Mixed-use and multifamily properties acquired.* If the displacement dwelling was part of a property that contained another dwelling unit and/or space used for non-residential purposes, and/or is located on a lot larger than typical for residential purposes, only that portion of the acquisition payment which is actually attributable to the displacement dwelling shall be considered its acquisition cost when computing the price differential.

(3) *Insurance proceeds.* To the extent necessary to avoid duplicate compensation, the amount of any insurance proceeds received by a person in connection with a loss to the displacement dwelling due to a catastrophic occurence (e.g. fire, flood, etc.,) shall be included in the acquisition cost of the displacement dwelling when

computing the price differential. (Also see § 25.3).

(4) *Owner retention of displacement dwelling.* If the owner retains ownership of his or her dwelling, moves it from the displacement site, and reoccupies it on a replacement site (see also § 25.103(d) regarding owner retention of improvements), the purchase price of the replacement dwelling shall be considered to be the sum of:

(i) The moving expenses and the cost of restoration to a condition comparable to that prior to the move, including the retention value of the retained dwelling; and

(ii) The costs incurred to make the unit a decent, safe, and sanitary replacement dwelling (defined at § 25.2(e)); and

(iii) The cost of the replacement site, unless the claimant did not own the displacement site and there is a reasonable opportunity for the claimant to rent a suitable replacement site. For purposes of replacement housing computation, the "acquisition cost" of the displacement dwelling will be the total amount determined to be just compensation for the real property. The retention cost of the dwelling will not be deducted from the acquisition cost before the replacement housing computation.

(e) *Increased mortgage interest costs.* The amount to be paid under § 25.401(b)(2) is the sum of the present value of any increase in interest costs resulting because the interest rate on the mortgage financing on the replacement dwelling exceeds that on the displacement dwelling plus other debt service costs, all computed on the basis of the following rules:

(1) The payment shall only be based on bona fide mortgages that were a valid lien on the displacement dwelling for at least 180 days prior to the initiation of negotiations. All such mortgages on the displacement dwelling shall be used to compute the payment.

(2) The payment shall be based on the unpaid mortgage balance on the displacement dwelling or the new mortgage amount, whichever is less.

(3) The payment shall be based on the remaining term of the mortgage on the displacement dwelling or the actual term of the new mortgage, whichever is shorter.

(4) The interest charge on the new mortgage shall not exceed the prevailing interest rate currently charged by mortgage lending institutions in the area in which the replacement dwelling is located.

(5) The present value of the increased cost shall be computed at the prevailing interest rate paid on savings deposits by commercial banks in the area in which the replacement dwelling is located.

(6) Purchaser's points and origination fees, but not seller's points, shall be paid to the extent (i) they are not paid as incidental expenses, (ii) they do not exceed rates normal to similar real estate transactions in the area, and (iii) the Agency determines them to be necessary. The computation of such points and fees shall be based on the unpaid mortgage balance on the displacement dwelling or the new mortgage amount, whichever is less.

(f) *Incidental expenses.* The incidental expenses to be paid under paragraph (b)(3) of this section or § 25.402(c)(1) are those reasonable costs actually incurred by the displaced person incident to the purchase of a replacement dwelling, and customarily paid by the buyer including:

(1) Legal, closing, and related costs, including those for title search and insurance, preparing conveyance instruments, notary fees, preparing surveys and plats, and recording fees.

(2) Lender, FHA, or VA appraisal fees.

(3) FHA or VA application fee.

(4) Certification of structural soundness when required by the lender.

(5) Credit report.

(6) Owner's and mortgagee's evidence or assurance of title.

(7) Escrow agent's fee.

(8) State revenue or documentary stamps, sales or transfer taxes (not to exceed the costs for a comparable replacement dwelling).

(9) Such other costs as the Agency determines to be incidental to the purchase.*

§ 25.402 Replacement housing payment for 90-day occupants.

(a) *Eligibility.* A tenant or owner-occupant displaced from a dwelling is entitled to a payment not to exceed $4,000 for rental assistance, as computed in accordance with paragraph (b) of this section, or downpayment assistance, as computed in accordance with paragraph (c) of this section, if such displaced person:

(1) Has actually and lawfully occupied the displacement dwelling for at least 90 days immediately prior to the initiation of negotiations; and

(2) Has rented, or purchased, and occupied a decent, safe, and sanitary replacement dwelling within 1 year after:

(i) In the case of a tenant, the date he or she moves from the displacement dwelling, or

(ii) In the case of an owner-occupant, the later of:

(A) The date he or she receives final payment for the displacement dwelling, or in the case of condemnation, the date the required amount is deposited in the court; or

(B) The date he or she moves from the displacement dwelling.

(b) *Rental assistance payment.*—(1) *Amount of payment.* An eligible displaced person who rents a replacement dwelling is entitled to a payment up to, but not to exceed $4,000 for rental assistance. Such payment shall be 48 times the amount obtained by subtracting the average monthly cost for rent of the displacement dwelling for a reasonable period prior to displacement, as determined by the Agency (for an owner-occupant or tenant who pays little or no rent, the average cost for rent shall be the fair market rent), from the lesser of:

(i) The monthly rent for a comparable replacement dwelling; or

(ii) The monthly rent for the decent, safe, and sanitary replacement dwelling actually occupied by the displaced person.

(2) *Utility services.* If utilities are included in the monthly rent of the displacement dwelling, the monthly rent of the comparable replacement dwelling should include utilities; but if it does not, an appropriate amount shall be added. If utilities are not included in the monthly rent of the displacement dwelling, but are included in the monthly rent of the comparable replacement dwelling, an appropriate amount shall be added to the monthly rent of the displacement dwelling in making the calculations. If utilities are not included in the monthly rent of the displacement dwelling or the monthly rent of the comparable replacement dwelling, then the Agency may compute a rental assistance payment without including utilities.

(3) *Manner of disbursement.* The payment under this section shall be disbursed in a lump sum amount, unless the Agency determines on a case-by-case basis, for good cause, that the payment should be made in installments.

(c) *Downpayment assistance payment.*—(1) *Amount of payment.* An eligible displaced person who purchases a replacement dwelling is entitled to a payment for downpayment assistance up to, but not to exceed, $4,000. Such payment shall be the full amount of the first $2,000 of the required downpayment and incidental expenses (see § 25.401(f)) plus one-half of any amount required over $2,000, provided that the displaced person matches equally any amount in excess of $2,000. However, the total payment by the Agency shall not exceed $4,000. A displaced person eligible to receive a replacement housing payment for a 180-day homeowner occupant

under § 25.401 is not eligible for this payment.

(2) *Required downpayment.* For purposes of this section, the term "required downpayment" means the downpayment ordinarily required to obtain conventional loan financing for the decent, safe, and sanitary dwelling actually purchased and occupied. However, if the downpayment actually required of a displaced person for the purchase of the replacement dwelling exceeds the amount ordinarily required, the amount of the "required downpayment" shall be the amount which the Agency determines is necessary for the downpayment.

(3) *Application of payment.* The full amount of the replacement housing payment for downpayment assistance must be applied to the purchase price of the replacement dwelling and related incidental expenses.

§ 25.403 Additional rules governing replacement housing payments.

(a) *Determining cost of comparable replacement dwelling.* The upper limit of a replacement housing payment shall be based on the cost of a representative comparable replacement dwelling (defined at § 25.2(c)).

(1) If available, at least three representative comparable replacement dwellings shall be examined and the payment computed on the basis of the dwelling most nearly representative of, and equal to, or better than, the displacement dwelling. An adjustment shall be made to the asking price of any dwelling, if such an adjustment is considered justified by the Agency (e.g., local market conditions). An obviously overpriced dwelling may be ignored.

(2) If the site of the comparable replacement dwelling lacks a major exterior attribute of the displacement dwelling site (e.g., the site is significantly smaller or does not contain a swimming pool), the value of such attribute shall be subtracted from the acquisition cost of the displacement dwelling for purposes of computing the payment. If a buildable residential lot or an uneconomic remnant remains after a partial taking and the owner of the remaining property refuses to sell the remainder to the displacing agency, the fair market value of the remainder may be added to the acquisition cost of the displacement dwelling for purposes of computing the payment.

(3) To the extent feasible, comparable replacement dwellings shall be selected from the neighborhood in which the displacement dwelling was located or, if that is not possible, in nearby or similar neighborhoods where housing costs are generally the same or higher.

(b) *Inspection of replacement dwelling.* Before making a replacement housing payment or releasing a payment from escrow, the Agency or its designated representative shall inspect the replacement dwelling and determine whether it is a decent, safe, and sanitary dwelling as defined at § 25.2(e).

(c) *Purchase of replacement dwelling.* A displaced person is considered to have met the requirement to purchase a replacement dwelling, if the person:

(1) Purchases a dwelling; or

(2) Purchases and rehabilitates a substandard dwelling; or

(3) Relocates a dwelling which he or she owns or purchases; or

(4) Constructs a dwelling on a site he or she owns or purchases; or

(5) Contracts for the purchase or construction of a dwelling on a site provided by a builder or on a site the person owns or purchases.

(d) *Delay in occupancy after purchase of replacement dwelling.* If the displaced person initially occupies the replacement dwelling after the date by which occupancy is required, but the delay beyond such date is caused by reasons beyond the person's control, as determined by the Agency, the occupancy requirement shall be considered to be satisfied.

(e) *Payment eligibility in special circumstances.* No person shall be denied eligibility for a replacement housing payment solely because he or she is unable to meet the occupancy requirements set forth in the regulations in this Part due to a disaster, an emergency, or an imminent threat to the public health or welfare, as determined by the President or the Federal agency funding the project.

(f) *Conversion of payment.* A displaced person who initially rents a replacement dwelling and receives a rental assistance payment under § 25.402(b) is eligible to receive a payment under § 25.401 or § 25.402(c) if he or she meets the eligibility criteria for such payments, including purchase and occupancy within the prescribed 1-year period. Any portion of the rental assistance payment that has been disbursed shall be deducted from the payment computed under § 25.401 or § 25.402(c).

(g) *Payment after death.* A replacement housing payment is personal to the displaced person and upon his or her death the undisbursed portion of any such payment shall not be paid to the heirs or assigns, except that:

(1) The amount attributable to the displaced person's period of actual occupancy of the replacement housing shall be paid.

(2) The full payment shall be disbursed in any case in which a member of a displaced family dies and the other family member(s) continue to occupy the replacement dwelling selected in accordance with these regulations.

(3) Any portion of a replacement housing payment necessary to satisfy the legal obligation of an estate in connection with the selection of a replacement dwelling by or on behalf of a deceased person shall be disbursed to the estate.

Subpart F—Mobile Homes

§ 25.501 Applicability.

This Subpart describes the requirements governing the provision of relocation payments for a person displaced from a mobile home or mobile homesite who meets the basic eligibility requirements of these regulations. Except as modified by this Subpart, such a displaced person is entitled to a moving expense payment in accordance with Subpart D and a replacement housing payment in accordance with Subpart E to the same extent and subject to the same requirements as persons displaced from conventional dwellings.

§ 25.502 Moving and related expenses—Mobile homes.

(a) *General.* A tenant or owner-occupant displaced from a mobile home or mobile homesite is entitled to a payment for the cost of moving his or her personal property on an actual cost basis in accordance with § 25.301 or, as an alternative, on the basis of a fixed payment under § 25.302 as described in the applicable Agency schedule.

(1) If a displaced mobile homeowner files a claim for actual moving expenses for moving the mobile home to a replacement site, the reasonable cost of disassembling, moving, and reassembling any attached appurtenances (such as porches, decks, skirting, and awnings) which were not acquired, anchoring of the unit, and utility "hook-up" charges are reimbursable.

(2) If the mobile home is not acquired but the owner obtains a replacement housing payment under one of the circumstances described at § 25.503(c), the owner is not eligible for payment of moving expenses under Subpart D for moving the mobile home.

(3) If a mobile home requires repairs or modifications to enable it to be moved to a replacement site, and the Agency determines that it is practical to do so, payment shall be limited to the

reasonable costs of moving the mobile home and making such repairs or modifications.

(b) *Mobile home park entrance fee.* Nonreturnable entrance fees are reimbursable as part of actual cost moving expenses unless the Agency determines that comparable mobile home parks are available which do not require entrance fees.

§ 25.503 Replacement housing payment for 180-day mobile home owner-occupants.

A displaced owner-occupant of a mobile home is entitled to a replacement housing payment not to exceed $15,000 under § 25.401 if:

(a) The person both owned the displacement mobile home and occupied it on the displacement site for at least 180 days immediately prior to the initiation of negotiations;

(b) The person meets the other basic eligibility requirements at § 25.401(a); and

(c) The Agency acquires the mobile home as real property, or the mobile home is not acquired by the Agency but the owner is displaced because the Agency determines that the mobile home:

(1) Is not decent, safe, and sanitary; or

(2) Cannot be moved without substantial damage or unreasonable cost; or

(3) Cannot be moved because there is no available comparable replacement site; or

(4) Cannot be moved because it does not meet mobile home park entrance requirements.

(When the mobile home is not actually acquired, the acquisition cost of the displacement dwelling used for the purpose of computing the price differential amount, described at § 25.401(d), shall include the salvage value or trade-in value of the mobile home, whichever is higher.)

§ 25.504 Replacement housing payments for 90-day mobile home occupants.

A displaced tenant or owner-occupant of a mobile home is eligible for a replacement housing payment, not to exceed $4,000, under § 25.402 if:

(a) The person actually occupied the displacement mobile home on the displacement site for at least 90 days immediately prior to the initiation of negotiations;

(b) The person meets the other basic eligibility requirements at § 25.402(a); and

(c) The Agency acquired the mobile home as real property, or the mobile home is not acquired by the Agency but the owner or tenant is displaced from the mobile home because of one of the circumstances described at § 25.503(c).

§ 25.505 Additional rules governing relocation payments to mobile home occupants.

(a) *Persons with both an ownership and tenant interest.* A displaced mobile home occupant may have owned the displacement mobile home and rented the site or may have rented the displacement mobile home and owned the site. Also a person may elect to purchase a replacement mobile home and rent a replacement site, or rent a replacement mobile home and purchase a replacement site. In such cases, the total replacement housing payment shall consist of a payment for a dwelling and a payment for a site, each computed under the applicable section in Subpart E. However, the total replacement housing payment to a person shall not exceed the maximum payment (either $15,000 or $4,000) permitted under the section that governs the computation of the dwelling.

(b) *Cost of comparable replacement dwelling.* (1) When computing the amount of a replacement housing payment for a person displaced from a mobile home, the cost of a comparable replacement dwelling is the reasonable cost of a comparable replacement mobile home, including the site. This applies whether the displaced person's actual replacement dwelling is another mobile home or a conventional home.

(2) If a comparable replacement mobile home is not available, the replacement housing payment shall be computed on the basis of the reasonable cost of a comparable conventional dwelling.

(3) If a mobile home requires repairs or modifications to permit its relocation to another site and the Agency determines that it would be practical to move the mobile home and make the repairs or modifications, the cost of a comparable dwelling is the value of the occupants' mobile home plus the cost to make the repairs or modifications.

(c) *Initiation of negotiations.* If a mobile home is not actually acquired, but the occupant is considered displaced under these regulations, the "initiation of negotiations" shall be the date of the initiation of negotiations to acquire the land, or, if the land is not acquired, the date the occupant is notified in writing that he or she is a displaced person for the purposes of these regulations.

(d) *Person moves mobile home.* If the owner is reimbursed for the cost of moving the mobile home under these regulations, he or she is not eligible to receive a replacement housing payment to assist in purchasing or renting a replacement mobile home. The person may, however, be eligible for assistance in purchasing or renting a replacement site.

(e) *Partial acquisition of mobile home park.* The acquisition of a portion of a mobile home park property may leave a remaining part of the property that is not adequate to continue the operation of the park. If the Agency determines that a mobile home occupant located in the remaining part of the property is required to move, such an occupant shall be considered displaced by the project and entitled to the relocation payments and other assistance in these regulations.

Subpart G—Last Resort Housing

§ 25.601 Applicability.

(a) *Basic determination to provide last resort housing.* A person cannot be required to move from his or her dwelling unless at least one comparable replacement dwelling is made available to the person. When a replacement housing payment under Subpart E is not sufficient to provide such housing, additional measures may be needed. An Agency is authorized to take additional measures when it determines that there is a reasonable likelihood that the project will not be able to proceed to completion in a timely manner because no comparable replacement dwelling will be available on a timely basis to a person to be displaced. The Agency's obligation to ensure that a comparable replacement dwelling is available shall be met when such a dwelling, or assistance necessary to provide such a dwelling, is offered under the provisions of this Subpart.

(b) *Basic rights of persons to be displaced.* The provisions of this Subpart do not deprive any displaced person of any rights the person may have under the Uniform Act of any implementing regulations. The Agency shall not require any displaced person, without the person's written consent, to accept a dwelling provided by the Agency under the procedures in this Subpart in lieu of any acquisition payment or any relocation payment for which the person may otherwise be eligible.

§ 25.602 Methods of providing replacement housing.

Agencies shall have broad latitude in implementing this Subpart, but implementation shall be on a reasonable cost basis. The methods of providing last resort housing include, but are not limited to:

(a) Rehabilitation of and/or additions to an existing replacement dwelling.

(b) The construction of a new replacement dwelling.

(c) The provision of a direct loan, which requires regular amortization or deferred repayment. The loan may be unsecured or secured by the real property. The loan may bear interest or be interest free.

(d) A replacement housing payment in excess of the limits set forth in § 25.401 or § 25.402. (A rental assistance subsidy under this Subpart may be provided in installments).

(e) The relocation and, if necessary, rehabilitation of a replacement dwelling.

(f) The purchase of land and/or a replacement dwelling by the displacing agency and subsequent sale or lease to, or exchange with, a displaced person.

(g) The removal of barriers to the handicapped.

Appendix A—Section-by-Section Analysis

This section-by-section analysis describes the provisions of the final rule. This material is normally published in the preamble to the final rule. However, the Department believes that it may be useful to displacing agencies and the public to publish this information in an appendix to the final regulation. As a result, this information will be available to users of the Code of Federal Regulations as well as to persons who have access to the **Federal Register** print of the regulation.

Subpart A—General

Section 25.9(c)(2) Functionally similar.

Section 25.2(c)(2) defines comparable replacement housing. One element of this definition requires that comparable replacement housing be functionally similar to the displacement dwelling, with particular attention to the number of rooms and living space. This means that while the replacement dwelling must perform the same functions as the displacement dwelling, it need not be identical. For example, if a displacement dwelling contains a garage which is used as a laundry room, a replacement dwelling with sufficient space (such as a basement) to perform the same function meets the comparability requirement , if otherwise acceptable. Similarly, a replacement dwelling need not duplicate specialized furnishings such as custom kitchen cabinets in order to be comparable.

Moreover, when evaluating comparability an Agency must pay particular attention to the number of rooms and the amount of living space provided by the displacement and replacement dwellings since these are major factors in determining whether the displaced family or individual will be able to maintain the same lifestyle as before displacement.

Section 25.9(c) Reports.

This regulation allows Federal agencies to require the submission of a report on activities under the Uniform Act no more frequently than once very three years. The report, if required, will cover activities during the Federal fiscal year immediately prior to the submission date. In order to minimize the administrative burden on agencies implementing this rule, a basic report form (see Attachment, Appendix B) has been developed which, with only minor modifications, will be used in all Federal and federally-assisted programs or projects.

Subpart B—Real Property Acquisition

Section 25.101(a) General.

The Department intends that the provisions of this Subpart will apply to real property acquisition for the following types of Federal or federally assisted programs or projects:

(1) Those carried out under the threat of eminent domain, including amicable agreements under the threat of such power.

(2) Where there is an intended, planned, or designated project area, and all or substantially all of the property within that area is eventually intended to be acquired. Such acquisitions are subject to the requirements of this Subpart whether or not the acquiring agency has or intends to use the power of eminent domain.

Provided it does not conflict with the foregoing, an Agency may determine that the requirements of this Subpart do not apply to an acquisition if all of the following conditions are present:

(1) No specific site or property needs to be acquired, although the Agency may limit its search for alternative sites to a general geographic area.

(2) The property to be acquired must not be a part of an intended, planned, or designated project area where all or substantially all of the property within the area is eventually to be acquired.

(3) The Agency will not acquire the property in the event negotiations fail to result in an amicable agreement, and the owner is so informed. Acquisitions meeting the foregoing criteria are classified as voluntary transactions. The essence of a voluntary transaction is the condition surrounding the transaction, not the type of transaction itself. A voluntary transaction may involve a donation, an exchange, or a market sale, if the transaction is without compulsion on the part of the acquiring agency.

In those situations where an Agency wishes to purchase more than one site within a geographic area on a "voluntary transaction" basis, the Department intends that all owners be treated similarly with respect to eligibility for benefits under the Uniform Act and these regulations.

Section 25.101(b) Less-than-full-fee interest in real property.

The intent of this provision is to provide a clear benchmark beyond which the requirements of the regulation clearly apply to leases. However, the Department also intends to allow displacing agencies the flexibility to apply the regulation to those leasehold acquisitions which are marginally short of 50 years but in their judgment should be covered.

Section 25.101(c) Federally-assisted projects.

A State agency's assurances under section 305 of the Uniform Act (see § 25.4(a)) must contain specific reference to the State law which the Agency believes provides an exception to the provisions of sections 301 and 302 of the Act.

Section 25.102(d) Establishment of offer of just compensation.

The initial offer to the property owner may not be less than the amount of the Agency's approved appraisal, but may exceed that amount if the Agency determines that a greater amount reflects just compensation for the property.

Section 25.102(f) Basic negotiation procedures.

The Department intends that an offer to an owner be adequately presented, and that the owner be properly informed. The Department encourages a personal, face-to-face contact, but this section is not intended to require such contact in all cases.

Section 25.102(g) Updating offer of just compensation.

The objective of this section is to assure that the full amount of just compensation due is offered to a property owner at the time the offer is presented to the owner. Appraisals should be updated as warranted so this objective will be achieved.

Section 25.102(i) Administrative settlement.

This section is intended to provide guidance on settlement of a case as an

alternative to judicial resolution of a difference of opinion on the value of a property so as to avoid unnecessary litigation and congestion in the courts. The Department intends that all relevant facts and circumstances be considered by an Agency official delegated this authority. The Department cautions that appraisers or reviewing appraisers should not be pressured to adjust their estimate of value for the purpose of justifying such settlements. Such action would invalidate the appraisal process.

Section 25.102(j) Payment before taking possession.

The right-of-entry process is intended to be used in the exceptional case, such as for emergency projects, where there is no time to make an appraisal and an offer, and the property owner is agreeable to the process.

Section 25.103(b) Standards of appraisal.

In paragraph (b)(3) of this section, the Department intends that all relevant and reliable approaches to value be utilized. However, where an Agency determines that the market approach will be adequate by itself because of the type of property being appraised and the availability of sales data, it may limit the appraisal assignment to the market approach.

Section 25.103(c) Influence of the project on just compensation.

As used in this section, the term "project" is intended to mean an undertaking which is planned, designed, and intended to operate as a unit.

Because of the public knowledge of the proposal, property values may be affected. A property owner should not be penalized because of a decrease in value caused by the proposed project and should not reap a windfall at public expense because of increased value created by the proposed project.

Section 25.103(f) Conflict of interest.

The overall Department objective is to minimize, within reason, the risk of fraud and mismanagement and to promote public confidence in Federal and federally-assisted land acquisition practices. In recognition that the costs may outweigh the benefits in some circumstances, the Department has provided that the same person may both appraise and negotiate an acquisition, provided its value is $2,500 or less. The Department also points out that *all* appraisals shall be reviewed in accordance with § 25.104. This includes appraisals made for the type of acquisition discussed here.

Section 25.104 Review of appraisals.

This section recognizes that agencies differ in the authority delegated to the review appraiser. In some cases the reviewer establishes the amount of the offer to the owner and in other cases the reviewer makes a recommendation which is acted on at a higher level. It is also within Agency discretion to decide whether a second review is needed if the first review appraiser establishes a value different from that in the appraisal report or reports on a property.

With respect to the requirement for a signed, written report by the review appraiser in § 25.104(c), the Department has emphasized explanation and analysis. The Department intends that such analysis be appropriate to the situation. In some cases, a substantial effort is required. At the opposite end of the scale, only a signature may suffice.

Section 25.106 Expenses incidental to transfer of title to the agency.

The Department intends that for a property owner to be entitled to reimbursement for incidental title transfer expenses, the expense must be one that the owner must incur; i.e., it is not optional with the owner and/or duplicative of Agency action to obtain surveys, a legal description, etc. Further, the amount itself must be reasonable given the nature of the expense and other relevant circumstances.

Section 25.108 Donations.

This section is intended to make the point that the agency must obtain an appraisal and offer the full amount of just compensation due unless the owner releases the Agency from these obligations.

Subpart C—General Relocation Requirements

Section 25.204 Availability of comparable replacement dwelling prior to displacement.

The requirement that at least one comparable replacement dwelling be made available is considered a minimum requirement and complies with section 205(c)(3) of the Uniform Act. The revised definition of a comparable replacement dwelling found in Subpart A, § 25.2(c), is intended to give the acquiring agencies flexibility in locating comparables.

Section 25.205(b)(2)(iii). The objective of this provision is to emphasize that, whenever possible, Relocation Assistance Advisory Services includes assisting minorities to relocate to decent, safe, and sanitary dwellings that are not located in an area of minority concentration.

Section 25.205(b)(2)(iv). The intent of this provision is to ensure that all displaced persons have the opportunity to make inspections. While many will not ask for assistance of this kind, all should enjoy the same opportunity.

Section 25.206 Eviction for cause.

Eligibility for assistance is established on the basis of facts existing as of the date of the initiation of negotiations. Once the Agency has determined that a person has satisfied the eligibility requirements of the Uniform Act, there is no basis for changing that determination, assuming all remaining conditions for eligibility are met.

Subpart D—Payments for Moving and Related Expenses

Section 25.301 Payment for actual reasonable moving and related expenses—residential moves.

The language of § 25.207(a) provides the necessary flexibility to allow an Agency, if it so desires, to adopt a procedure to permit payment of residential moving cost without additional documentation as long as the payment was limited to the amount of the lowest acceptable bid or estimate.

Section 25.305 Ineligible moving and related expenses.

The experience of Federal agencies who have allowed physical changes is that the cost is prohibitive. In addition, the Uniform Act treats business moves differently from residential moves. For residential displacements, the Uniform Act provides a specific requirement of comparability in a replacement unit and specific payments designed to assure that comparability is attained. The Act provides neither the requirement nor the payment for business. The Department has decided that the prohibition on physical changes should remain in the rule, except as provided in § 25.303(a)(3).

Subpart F—Mobile Homes

Section 25.502(a)(3) Moving and related expenses—mobile homes.

This paragraph is desinged to make it clear that reasonable costs for repairs or modifications to render a mobile home suitable for movement to a replacement site are reimbursable as moving costs.

Section 25.502(b) Mobile home park entrance fee.

This paragraph is intended to show that reimbursement for mobile home park entrance fees is allowable only when necessary to effect relocation.

Section 25.503(c) Replacement housing payment for 180-day mobile home owner-occupants.

The language is intended to indicate the eligibility of both owners and tenants of mobile homes and the conditions under which a replacement housing payment may be made even though the structure is not acquired.

Section 25.504 Replacement housing payments for 90-day mobile home occupants.

The language clearly indicates that tenants, as well as owners, of mobile homes may be eligible to receive this payment.

Section 25.505 Additional rules governing relocation payments to mobile home occupants.

Paragraph (b)(1) includes consideration of the site in the overall determination of comparability of the replacement mobile home.

Paragraph (b)(3) allows reimbursement of costs to cure existing deficiencies in displaced mobile homes which are not acquired by including them in the calculation of the cost of a comparable replacement dwelling.

Paragraph (e) clearly indicates that determinations regarding displacement attributable to partial acquisition of mobile home parks are to be made by the Agency.

Subpart G—Last Resort Housing

Section 25.601(a) Basic determination to provide last resort housing.

No guidelines for implementation are included in the regulation because additional requirements would tend to limit the flexibility considered necessary for equitable application of this subsection.

Section 25.601(b) Basic rights of persons to be displaced.

A displaced homeowner's right to purchase a replacement dwelling is stated elsewhere in the regulation and is intended to apply here also.

The use of cost effective means of providing replacement housing is implied throughout the regulation. The term "reasonable cost" is used here to underline the fact that while innovative means to provide housing are allowed, they should be used in a cost-effective manner.

Section 26.602(c). The mortgage financing option is mentioned because it is permitted under section 215 of the Uniform Act and because section 206(a) of the Act authorizes "such action as is necessary or appropriate to provide such housing * * *"

Appendix B—Statistical Report Form

The statistical report form required under § 25.9(c) will be published at a later date. The instructions for use and completion of the form are set forth below.

General

1. *Report coverage.* A report is required to be submitted by all agencies carrying out relocation and/or real property acquisition activities under a Federal or a federally assisted project or program subject to the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91–646 (herein called the "Uniform Act").

2. *Report period.* Activities shall be reported on a Federal Fiscal Year basis i.e., October 1—September 30 for the year in which the report is required under paragraph 25.9.

3. *Where and when to submit report.* Submit an original and two copies of this report to (*Name and Address of Federal Agency*) as soon as possible after September 30, but *NOT LATER THAN NOVEMBER 15* of the year in which the report is due.

4. *How to report relocation claims.* A relocation claim shall be reported once the full amount of the claim is approved. If a claim is to be paid in installments or any other type of partial payment is made, only the full amount of the approved claim shall be reported.

5. *How to report dollar amounts.* Round off all money entries in Parts B and C to the nearest dollar.

6. *Statutory references.* Data elements on the report relating to the costs of relocation payments and advisory assistance are identified to indicate the Section of the Uniform Act that authorizes the cost. The references are in parentheses in Part B on the applicable line.

Part A—Persons Displaced

Report in Part A the number of persons ("households," "businesses and nonprofit organizations," and "farms") who were permanently displaced during the report period by project or program activities and moved to their replacement dwelling or location. This includes businesses, nonprofit organizations and farms which, upon displacement, discontinued operations. The category "households" includes all families and individuals. A family shall be reported as "one" household, *not* by the number of people in the family unit. Persons shall be reported according to their status as "owners" or "tenants" of the property from which displaced.

Part B—Relocation Payments and Expenses

Report in Part B the total number of claims, total dollar amounts approved for relocation payments, and total expenses incurred in providing relocation advisory assistance and services during the report period.

Columns (a) and (b). Report in Column (a) the number of claims approved during the report period. Report in Column (b) the total amount represented by the claims reported in Column (a).

Line 10b, Column (b). Report in Column (b) the amount of increased mortgage interest costs that was included in the total amount approved for Replacement Housing Payments for Homeowners on Line 10a, Column (b). Leave Line 10b, Column (a) blank.

Line 13. Report in Column (a) the number of households displaced by project or program activities which were provided assistance in accordance with section 206(a) of the Uniform Act. Report in Column (b) the total financial assistance under section 206(a) allocable to the households reported in Column (a). (If a household received financial assistance under section 203 or section 204 of this regulation as well as under section 206(a) of the Uniform Act, report the household as a claim in Column (a), but in Column (b) report only the amount of financial assistance allocable to section 206(a). For example, if a tenant-household receives a payment of $5,000 to rent a replacement dwelling, the sum of $4,000 shall be included on Line 11, Column (b), and $1,000 shall be included on Line 13, Column (b).)

Line 14. Report on Line 14 all administrative costs incurred during the report period in connection with providing relocation advisory assistance and services under section 205 of the Uniform Act.

Part C—Real Property Acquisition Subject to Uniform Act

Line 16, Columns (a) and (b). Report in Column (a) all parcels acquired during the report period where title or possession was vested in the acquiring agency during the reporting period. (Include parcels acquired without Federal financial assistance, if there was or will be Federal financial assistance in other phases of the project or program.) Report in Column (b) the total of the amounts paid, deposited in court, or otherwise made available to a property owner pursuant to applicable law in order to vest title or possession in the acquiring agency.

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Line 17. Report on Line 17 the number of parcels reported on Line 16 that were acquired by condemnation where price disagreement was involved. Leave Line 17, Column (b), blank.

Part D—Relocation Grievances Filed During Report Period

Line 18. Report on Line 18 the total number of formal relocation grievances filed during the report period by persons displaced that pertain to a payment or to the adequacy of replacement housing in accordance with the applicable Federal agency government-wide regulations governing appeal procedures.

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 25

[OST Docket No. 79a; Notice 85-4]

Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act); Acquisition for Federal and Federally-Assisted Programs

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Supplemental Notice of Proposed Rulemaking.

SUMMARY: The Department of Transportation today is publishing in the **Federal Register** a final rule establishing revised policies and procedures for carrying out the Uniform Act. After the notice of proposed rulemaking for this final rule was published, the question arose of whether the rule should fully protect against the duplication of payments. This supplemental notice of proposed rulemaking requests comment on whether an alternative proposal having this purpose should replace the duplication of payments provision of the final rule.

DATE: Comments should be received in the Department by May 6, 1985.

ADDRESS: Comments should be addressed to Docket Clerk, Docket 79a, Department of Transportation, Room 4107, 400 7th Street, SW., Washington, D.C. 20590. Comments will be available at this address for public inspection from 9:00 a.m. to 5:30 p.m. Monday through Friday. Commenters wishing acknowledgement of their comments should enclose a stamped, self-addressed postcard with their comment. The Docket clerk will time and date stamp the card and return it to the commenter.

FOR FURTHER INFORMATION CONTACT: Wayne Kennedy, Director, Office of Right of Way, Federal Highway Administration (202-426-0342); Reid Alsop, Office of Chief Counsel, Federal Highway Administration (202-426-0800); or Joseph Canny, Director, Office of Transportation Regulations, Office of the Secretary (202-426-4220). Office hours, Monday through Friday, are 7:45 a.m. through 4:15 p.m. (FHWA) and 9:00 a.m. through 5:30 p.m. (OST).

SUPPLEMENTARY INFORMATION: Elsewhere in today's **Federal Register**, the Department of Transportation (DOT) has published a final rule revising its poilicies and procedures implementing the Uniform Act. This final rule, developed and in cooperation with an Interagency Working Group and the Office of Management and Budget (OMB), is intended to be a model for rules to be issued by other agencies with responsibilities under the Uniform Act. In the future, these other agencies will publish proposed rules based on the DOT final rule.

Section 25.3 of the final rule, which concerns duplication of payments, provides as follows:

> No person shall receive any payment under these regulations that would have substantially the same purpose and effect as the compensation which the displaced persón receives under the state law of eminent domain and which is part of the cost of a project.

This provision closely follows the language of 42 U.S.C. 4631(b), the "no duplication of payment" section of the present Uniform Act, and present FHWA rules and practice. Under this provision, the displaced person's compensation under the Uniform Act and these rules would be reduced by the amount of any payment the individual receives under state eminent domain law that is determined to have the same purpose and effect as the payment under the Uniform Act.

It is possible, however, that payments under laws other than state eminent domain law could also duplicate payments under the Uniform Act. After the notice of proposed rulemaking for today's final rule was published, the question of whether the regulation should attempt to deal with other sources of duplicate payments arose. Therefore, this supplemental notice of proposed rulemaking requests public comment on an alternative proposal that would expand the anti-duplication effect of this section to encompass some of those situations.

Since it is possible that payments other than under state eminent domain law could also duplicate payments under the Uniform Act, we are proposing an alternative. The alternative proposal set forth in this NPRM would expand the anti-duplication effect of this section to encompass some of those situations. Under the alternative proposal, if a displaced person receives a payment under any Federal, state or local law that is determined to have the same purpose and effect as the Uniform Act payment to which the person was entitled, the Uniform Act payment would be reduced by the amount of the other payment.

This approach is consistent with the intent of proposed revisions to the Uniform Act considered in Congress last year. A compromise to the House (HR 5504) and Senate (S. 531) bills took this approach. However, this legislation was not ultimately enacted. We seek comment on whether this proposal would be inconsistent with the existing language of the Act (43 U.S.C. 4631(b)).

The alternative proposal would also encompass other Federal payments, in order to ensure that Federal funds are not expended in a duplicative and wasteful manner. For example, it is possible, in some circumstances, that all or part of Federal housing assistance payment from Department of Housing and Urban Development programs, the Department of Health and Human Services low-income energy block grant program, or Flood Insurance payments administered by the Federal Emergency Management Agency could have the same purpose and effect as Uniform Act payments.

The purpose of this proposal is to ensure that the Uniform Act program is administered in as fiscally responsible a way as possible. If an individual receives a payment under another Federal, state or local legal authority that has the same purpose and effect as a Uniform Act payment, the result is not only a windfall for that individual but also a drain, (unnecessary to the accomplishment of the Act's objectives), on Federal, state and local funds supporting the Uniform Act program. This is as true if the duplicative payment is made under a Federal law or another state or local law as it is if the payment were under state eminent domain law.

We believe that there are a number of considerations related to the alternative proposal. First, a change in this aspect of the regulation could require recipients of Federal financial assistance to have to make procedural changes in their administration of the Uniform Act. This adjustment could be timeconsuming and burdensome.

Second, because the administrative procedures needed to keep track of potentially duplicative payments from a variety of sources could prove burdensome, for the agencies themselves as well as for displaced persons, we intend this alternative proposal to apply only to payments known to be duplicative prior to the disbursement or the Uniform Act payment. Otherwise, problems could arise with respect to subsequent reduction of welfare payments or housing subsidies, a certain level of which was used to calculate the offset from the payment under the Uniform Act.

Third, we seek comment on how the Federal administration of this part of the program might best be structured. If each agency were to make

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determinations on "same purpose and effect" issues, there cold be a serious problem of inconsistent determinations among the Federal agencies. If so, what sort of coordination mechanism (e.g., a "lead agency" approach, an interagency committee) would best address the problem?

Finally, we are interested in the experience of grantees and other interested parties concerning the prevalence of duplicative payments, the difficulty of obtaining information about such payments, and the costs versus the savings realized by eliminating the duplication.

Regulatory Process Matters

This rule is not a major rule for purposes of Executive Order 12291 or a significant rule under the Department's Regulatory Policies and Procedures. The only economic effect that the proposed regulation would have is to prevent certain duplicate payments which may now be possible. This effect would be beneficial to the Federal government, and would not significantly harm beneficiaries since it would simply act to prevent windfalls. For these reasons, under the criteria of the Regulatory Flexibility Act, the Department certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 49 CFR Part 25

Transportation, Relocation assistance and real property acquisition, Reporting and recordkeeping requirements.

Issued this 28th day of February, 1985, at Washington, DC.

Elizabeth Hanford Dole,

Secretary of Transportation.

PART 25—[AMENDED]

For the reasons set forth in the preamble, the Department of Transportation proposes to revise § 25.3 of Title 49, Code of Federal Regulations, to read as follows:

§ 25.3 No duplication of payments.

No person shall receive any payment under these regulations if that person receives a payment under Federal, state or local law which is determined to have the same purpose and effect as such payment under these regulations.

Authority: Sec. 211(b), Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91–646, 84 Stat. 1894 (42 U.S.C. 4631(b)).

[FR Doc. 85–5310 Filed 3–1–85; 12:32 pm]

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The President

Proclamation 5306 of March 4, 1985

National Consumers Week, 1985

By the President of the United States of America

A Proclamation

America's economy has been revitalized by the highest level of consumer confidence in nearly twenty years. Our free enterprise system and the high productivity of American workers have made such economic growth possible, providing the American consumer with an unprecedented choice of goods and services.

As the range of consumer choice increases, competition compels our businesses to provide even greater value for consumer dollars. Increasingly, business leaders respond to consumer expectations by improving the quality, safety, and effectiveness of their products. Competition also generates reliable servicing.

This year's slogan for National Consumers Week, "Consumers Should Know," highlights the right of consumers to information about the products offered them. Knowledgeable, selective consumers make their dollars count. In that way, families not only enjoy better products but are able to put more money aside for future needs. Those savings translate into business investments, and that means growth for our Nation's economy.

Buyers and sellers alike should recognize the basic rights of consumers: the right to choice among products and services; the right to information enabling them to make sound purchases; the right to healthful and safe products; the right to be heard when products do not meet standards. Government at all levels will continue its responsible stewardship of consumer safety as well as its vigorous prosecution of illegal and deceptive practices. But in the final analysis it is the knowledgeable consumer and the responsible business person whose decisions will determine the success or failure of products and services in the competitive marketplace.

In celebration of National Consumers Week, I encourage schools, community organizations, labor unions, businesses, the media, and consumers themselves to help further public awareness of consumer issues and services. I urge American consumers to take advantage of this opportunity to seek and use the wealth of information available to all.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week beginning April 21, 1985, as National Consumers Week.

IN WITNESS WHEREOF, I have hereunto set my hand this fourth day of March, in the year of our Lord nineteen hundred and eighty-five, and of the Independence of the United States of America the two hundred and ninth.

Ronald Reagan

[FR Doc. 85-5551
Filed 3-5-85; 11:10 am]
Billing code 3195-01-M

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Presidential Documents

Executive Order 12506 of March 4, 1985

Nuclear Cooperation with EURATOM

By the authority vested in me as President by the Constitution and statutes of the United States of America, including Section 126a(2) of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2155(a)(2)), and having determined that, upon the expiration of the period specified in the first proviso to Section 126a(2) of such Act and extended by Executive Orders No. 12193, 12295, 12351, 12409 and 12463, failure to continue peaceful nuclear cooperation with the European Atomic Energy Community would be seriously prejudicial to the achievement of the United States non-proliferation objectives and would otherwise jeopardize the common defense and security of the United States, and having notified the Congress of this determination, I hereby extend the duration of that period to March 10, 1986.

Ronald Reagan

THE WHITE HOUSE,
March 4, 1985.

[FR Doc. 85-5552
Filed 3-5-85; 11:11 am]
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Rules and Regulations

Federal Register
Vol. 50, No. 44
Wednesday, March 6, 1985

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL LABOR RELATIONS AUTHORITY, GENERAL COUNSEL OF THE FEDERAL LABOR RELATIONS AUTHORITY, AND FEDERAL SERVICE IMPASSES PANEL

5 CFR Ch. XIV

Regional Office; Address Change

AGENCY: Federal Labor Relations Authority (including the General Counsel of the Federal Labor Relations Authority) and Federal Service Impasses Panel.

ACTION: Amendment of rules and regulations.

SUMMARY: This document amends Appendix A, paragraph (d)(6) (45 FR 3522) of the rules and regulations of the Federal Labor Relations Authority (Authority), General Counsel of the Federal Labor Relations Authority (General Counsel), and Federal Service Impasses Panel (Panel), published at 5 CFR Part 2400 *et seq.* (1984), to establish a new location and mailing address for the Authority's Dallas Regional Office. The Dallas Regional Office telephone numbers have not been changed.

EFFECTIVE DATE: March 16, 1985.

FOR FURTHER INFORMATION CONTACT: Nancy Anderson Speight, Deputy to the Assistant General Counsel, (202) 382–0811.

SUPPLEMENTARY INFORMATION: Effective January 28, 1980, the Authority, General Counsel and Panel published at 45 FR 3482, January 17, 1980, final rules and regulations to govern the processing of cases by the Authority, General Counsel and Panel under Chapter 71 of Title 5 of the United States Code (5 CFR Part 2400 *et seq.* (1984)). These rules and regulations are required by Title VII of the Civil Service Reform Act of 1978 and are set forth in 5 CFR Part 2400 *et seq.* (1984). Appendix A, Paragraph (d) of the foregoing rules and regulations sets forth office addresses and telephone numbers of the Regional Directors of the Authority. This amendment sets forth the new location and mailing address of the Dallas Regional Office of the Authority. The Dallas Regional Office telephone numbers have not been changed. Accordingly, in Appendix A to Chapter XIV, paragraph (d)(6) of the Authority, General Counsel, and Panel rules and regulations (5 CFR Part 2400 *et seq.* (1984)) is revised to read as follows:

Appendix A to 5 CFR Ch. XIV—Current Addresses and Geographic Jurisdictions

* * * * *

(d) The Office addresses of Regional Directors of the Authority are as follows:

* * * * *

(6) *Dallas Regional Office*—Federal Office Building, 525 Griffin Street, Suite 926, Dallas, Texas 75202, Telephone: FTS—729–4996, Commercial—(214) 767–4996.

* * * * *

(5 U.S.C. 7134)

Dated: March 1, 1985.

John C. Miller,

General Counsel, Federal Labor Relations Authority.

[FR Doc. 85–5342 Filed 3–5–85; 8:45 am]

BILLING CODE 6727-01-M

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 293 and 294

Personnel Records; Availability of Official Information; Employment (General); Classification Under the General Schedule; Prevailing Rate Systems; Grade and Pay Retention; and Investigations

Correction

In FR Doc. 85–1740, beginning on page 3307 in the issue of Thursday, January 24, 1985, make the following corrections:

PART 293—[CORRECTED]

1. On page 3309, second column, in the last line of the **Authority** citation for 5 CFR Part 293, "2 CFR" should have read "3 CFR".

§ 293.307 [Corrected]

2. On page 3309, in the third column, the fifth line of § 293.307(a) should have read:

"for additional 60 days (90 days where".

PART 294—[CORRECTED]

§ 294.106 [Corrected]

3. On page 3311, third column, in the ninth line of § 294.106(d), the word "physical" should have read "physician".

§ 294.108 [Corrected]

4. On page 3312, second column, eighth line of § 294.108(e) should have read: "has his or her principal place of business,".

BILLING CODE 1505-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 10, 12, 13, 14, 20, 25, 58, 201, 207, 211, 225, 291, 310, 312, 320, 330, 361, 429, 430, and 431

Update of Organizational References

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations to update organizational references resulting from a reorganization within the agency.

EFFECTIVE DATE: March 6, 1985.

FOR FURTHER INFORMATION CONTACT: Richard L. Arkin, or Robert D. Bradley, Center for Drugs and Biologics (HFN–364), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6490.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 22, 1982 (47 FR 36913), the merger of the Bureau of Drugs and the Bureau of Biologics into the National Center for Drugs and Biologics was announced. In the **Federal Register** of March 19, 1984 (49 FR 10168), the title was changed to the Center for Drugs and Biologics. In addition, the March 19 document abolished three existing line offices and establishes five new line offices within the Center for Drugs and Biologics to combine similar drugs and biologics functions.

To implement these changes, FDA is amending its regulations by updating them to conform to terms now used in the agency's organizational structure. In addition, FDA is revising 21 CFR 310.503 by changing the name of the Atomic

Energy Commission to the Commission's new title, i.e., the Nuclear Regulatory Commission.

Because these amendments related to internal agency management and personnel and because the amendments are not substantive, the rule is exempt from the notice and comment and delayed effective date requirements of section 553(b) and (d)(3) of the Administrative Procedure Act (5 U.S.C. 553(b) and (d)(3)).

This rule has no economic impact. Therefore, in accordance with section 605(b) of the Regulatory Flexibility Act, FDA certifies that the rule will not have a significant impact on a substantial number of small entities. The rule is related to agency organization, management, and personnel and therefore is exempt from Executive Order 12991.

List of Subjects

21 CFR Part 10

Administrative practice and procedure.

21 CFR Part 12

Administrative practice and procedure.

21 CFR Part 13

Administrative practice and procedure.

21 CFR Part 14

Administrative practice and procedure, Advisory committees, Color additives, Drugs, Radiation protection.

21 CFR Part 20

Freedom of information.

21 CFR Part 25

Environmental impact statements.

21 CFR Part 58

Laboratories.

21 CFR Part 201

Drugs, Labeling.

21 CFR Part 207

Drug listing, Drug registration, Reporting requirements.

21 CFR Part 211

Drugs, Manufacturing, labeling, Laboratories, Packaging and containers, Warehouses.

21 CFR Part 225

Animal drugs, Animal feeds, Labeling, Packaging and containers.

21 CFR Part 291

Health professions, Methadone, Recordkeeping and reporting requirements.

21 CFR Part 310

Administrative practice and procedure, Drugs, Medical devices, Recordkeeping and reporting requirements.

21 CFR Part 312

Drugs, Medical research.

21 CFR Part 320

Drugs.

21 CFR Part 330

Over-the-counter drugs.

21 CFR Part 361

Medical research, Prescription drugs, Radiation protection.

21 CFR Part 429

Administrative practice and procedure, Drugs, Insulin, Labeling, Packaging and containers.

21 CFR Part 430

Administrative practice and procedure, Antibiotics.

21 CFR Part 431

Administrative practice and procedure, Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 701(a), 52 Stat. 1055 (21 U.S.C. 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Chapter I of Title 21 of the Code of Federal Regulations is amended as follows:

PART 10—ADMINISTRATIVE PRACTICES AND PROCEDURES

§§ 10.3, 10.55, 10.75 and 10.100 [Amended]

1. Part 10 is amended by changing "bureau" to "center" and "bureaus" to "centers" wherever they appear in § 10.3 *Definitions* in paragraph (d); § 10.55 *Separation of functions; ex parte communications* in paragraph (b)(2)(i), (ii), and (iii); § 10.75 *Internal agency review of decisions* in the introductory text of paragraph (c) and in paragraph (c)(1) and (2); and § 10.100 *Public calendars* in paragraphs (a)(2)(iii) and (b)(3)(vii) and (4)(iii).

PART 12—FORMAL EVIDENTIARY PUBLIC HEARING

§ 12.50 [Amended]

2. Part 12 is amended in § 12.50 *Advice on public participation in hearings* in paragraphs (d) and (e) by changing "bureau" to "center" and "bureaus" to "centers" wherever they appear.

PART 13—PUBLIC HEARING BEFORE A PUBLIC BOARD OF INQUIRY

§§ 13.10 and 13.25 [Amended]

3. Part 13 is amended by changing "bureau" to "center" wherever it appears in § 13.10 *Members of a Board* in paragraphs (b), (c), and (d) and in § 13.25 *Disclosure of data and information by the participants* in the introductory text of paragraph (a) and in paragraph (a)(3).

PART 14—PUBLIC HEARING BEFORE A PUBLIC ADVISORY COMMITTEE

4. Part 14 is amended in § 14.100 by removing and reserving paragraph (c) and by revising paragraph (b), to read as follows:

§ 14.100 List of standing advisory committees.

. . . . .

(b) *Center for Drugs and Biologics*—(1) *Allergenic Products Advisory Committee.* (i) Date established: July 9, 1984.

(ii) Function: Reviews and evaluates available data on the safety and effectiveness of allergenic biological products intended for use in the diagnosis, prevention, or treatment of human diseases.

(2) *Anesthetic and Life Support Drugs Advisory Committee.* (i) Date established: May 1, 1978.

(ii) Function: Reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in the field of anethesiology and surgery.

(3) *Anti-Infective Drugs Advisory Committee.* (i) Date established: October 7, 1980.

(ii) Function: Reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in infectious diseases.

(4) *Arthritis Advisory Committee.* (i) Date established: April 5, 1974.

(ii) Function: Reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in arthritic conditions.

(5) *Blood Products Advisory Committee.* (i) Date established: May 13 1980.

(ii) Function: Reviews and evaluates available data on the safety and effectiveness, and appropriate use of blood products intended for use in the diagnosis, prevention, or treatment of human diseases.

(6) *Cardiovascular and Renal Drugs Advisory Committee.* (i) Date established: August 27, 1970.

(ii) Function: Reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in cardiovascular and renal disorders.

(7) *Dermatologic Drugs Advisory Committee.* (i) Date established: October 7, 1980.

(ii) Function: Reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in the treatment of dermatologic diseases.

(8) *Drug Abuse Advisory Committee.* (i) Date established: May 31, 1978.

(ii) Function: Advises on the scientific and medical evaluation of information gathered by the Department of Health and Human Services and the Department of Justice on the safety, efficacy, and abuse potential of drugs and recommends actions to be taken on the marketing, investigation, and control of such drugs.

(9) *Endocrinologic and Metabolic Drugs Advisory Committee.* (i) Date established: August 27, 1970.

(ii) Function: Reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in endocrine and metabolic disorders.

(10) *Fertility and Maternal Health Drugs Advisory Committee.* (i) Date established: March 23, 1978.

(ii) Function: Reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in the practice of obstetrics and gynecology.

(11) *Gastrointestinal Drugs Advisory Committee.* (i) Date established: March 3, 1978.

(ii) Function: Reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in gastrointestinal diseases.

(12) *Oncologic Drugs Advisory Committee.* (i) Date established: September 21, 1978.

(ii) Function: Reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in treatment of cancer.

(13) [Reserved]

(14) *Peripheral and Central Nervous System Drugs Advisory Committee.* (i) Date established: June 4, 1974.

(ii) Function: Reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in neurological disease.

(15) *Psychopharmacologic Drugs Advisory Committee.* (i) Date established: June 4, 1974.

(ii) Function: Reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in the practice of psychiatry and related fields.

(16) *Pulmonary-Allergy Drugs Advisory Committee.* (i) Date established: February 17, 1972.

(ii) Function: Reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in the treatment of pulmonary disease and diseases with allergic and/or immunologic mechanisms.

(17) *Radiopharmaceutical Drugs Advisory Committee.* (i) Date established: August 30, 1967.

(ii) Function: Reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in the practice of nuclear medicine.

(18) *Vaccines and Related Biological Products Advisory Committee.* (i) Date established: December 31, 1979.

(ii) Function: Reviews and evaluates available data on the safety and effectiveness of vaccines intended for use in the diagnosis, prevention, or treatment of human diseases.

(c) [Reserved]

* * * * *

PART 20—PUBLIC INFORMATION

5. Part 20 is amended:

§ 20.44 [Amended]

a. In § 20.44 *Presubmission review of request for confidentiality of voluntarily submitted data or information* in paragraph (a) by changing "Bureau" to "Center".

§ 20.106 [Amended]

b. In § 20.106 *Studies and reports prepared by or with funds provided by the Food and Drug Administration* in paragraph (a)(7) by changing "bureaus" to "centers".

PART 25—ENVIRONMENTAL IMPACT CONSIDERATIONS

§ 25.5 [Amended]

6. Part 25 is amended in § 25.5 *Responsible agency officials* in paragraph (a)(2) by changing "bureau" to "center" wherever it appears.

PART 58—GOOD LABORATORY PRACTICE FOR NONCLINICAL LABORATORY STUDIES

§ 58.217 [Amended]

7. Part 58 is amended in § 58.217 *Suspension or termination of a testing facility by a sponsor* by changing "Bureau" to "Center" wherever it appears.

PART 201—LABELING

§ 201.59 [Amended]

8. Part 201 is amended in § 201.59 *Effective date of §§ 201.56, 201.57, 201.100(d)(3), and 201.100(e)* in the table in paragraph (a)(3) by changing "HFB–720" to "HFN–825", "HFD–110" to "HFN–110", "HFD–120" to HFN–120", "HFD–130" to "HFN–810", "HFD–140" to "HFN–815", "HFD–150" to "HFN–150" "HFD–160" to "HFN–160", and "HFD–30" to "HFN–810".

PART 207—REGISTRATION OF PRODUCERS OF DRUGS AND LISTING OF DRUGS IN COMMERCIAL DISTRIBUTION

9. Part 207 is amended:

a. In § 207.7 by removing and reserving paragraph (b), by changing "Bureau of Medical Devices" to "Center for Devices and Radiological Health" in paragraphs (c) and (d), by changing "Bureau of Drugs" to "Drug Listing Branch (HFN–315), Center for Drugs and Biologics" in paragraph (d), and by revising paragraph (a), to read as follows:

§ 207.7 Establishment registration and product listing for human blood and blood products and for medical devices.

(a) Owners and operators of human blood and blood product establishments shall register and list their products with the Drug Listing Branch, Office of Compliance (HFN–315), Center for Drugs and Biologics, on Form FDA–2830 (Blood Establishment Registration and Product Listing), in accordance with Part 607. Such owners and operators who also manufacture or process other drug products at the same establishment shall, in addition, register and list all such other drug products with the Drug Listing Branch in accordance with this part.

(b) [Reserved]

* * * * *

§ 207.22 [Amended]

b. In § 207.22 *How and where to register and list drugs* in paragraph (a) by changing "Bureau of Drugs, Drug Listing Branch (HFD–315)" to "Drug Listing Branch (HFN–315), Center for

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Drugs and Biologics" and in paragraph (b) by changing "Bureau of Drugs, Drug Listing Branch" to "Drug Listing Branch (HFN–315), Center for Drugs and Biologics".

§ 207.37 [Amended]

c. In § 207.37 *Inspection of registrations and drug listings* in paragraph (a) by changing "Bureau of Drugs' Registration Section" to "Drug Listing Branch, Center for Drugs and Biologics," and in paragraphs (a) and (b) by changing "Bureau of Drugs, Registration Section (HFD–315)" to "Drug Listing Branch (HFN–315), Center for Drugs and Biologics".

PART 211—CURRENT GOOD MANUFACTURING PRACTICE FOR FINISHED PHARMACEUTICALS

§ 211.176 [Amended]

10. Part 211 is amended in § 211.176 *Penicillin contamination* by changing "Bureau of Drugs (HFD–430)" to "Division of Drug Biology (HFN–170), Center for Drugs and Biologics".

PART 225—CURRENT GOOD MANUFACTURING PRACTICE FOR MEDICATED FEEDS

§ 225.115 [Amended]

11. Part 225 is amended in § 225.115 *Complaint files* in paragraph (b)(2) by changing "Bureau of" to "Center for".

PART 291—DRUGS USED FOR TREATMENT OF NARCOTIC ADDICTS

§ 291.505 [Amended]

12. Part 291 is amended in § 291.505 *Conditions for use of methadone; appropriate methods of professional practice for medical treatment of the narcotic addiction of various classes of narcotic addicts with methadone under section 4 of the Comprehensive Drug Abuse Prevention and Control Act of 1970* in paragraph (h)(1), (2), (3), and (5) by changing "Bureau of Drugs" to "Center for Drugs and Biologics" wherever they appear and in paragraph (k) by changing "Division of Methadone Monitoring (HFD–340)" to "Division of Scientific Investigations (HFN–340)" wherever they appear.

PART 310—NEW DRUGS

13. Part 310 is amended.

§ 310.6 [Amended]

a. In § 310.6 *Applicability of "new drug" or safety or effectiveness findings in drug efficacy study implementation notices and notices of opportunity for hearing to identical, related, and similar drug products* in paragraph (e) by changing "Bureau of Drugs, Office of Compliance, HFD–300" to "Center for Drugs and Biologics, Office of Compliance, HFN–300".

§ 310.500 [Amended]

b. In § 310.500 *Digoxin products for oral use; conditions for marketing* in paragraph (d) by changing "Bureau of Drugs (HFD–220)" to "Center for Drugs and Biologics (HFN–220)", in paragraph (f) by changing "Bureau of Drugs, Office of Scientific Evaluation, Generic Drug Staff (HFD–107)" to "Center for Drugs and Biologics, Division of Generic Drugs (HFN–230)", and in paragraph (h)(3)(iv) by changing "Bureau of Drugs, Office of Scientific Evaluation (HFD–100)" to "Center for Drugs and Biologics, Office of Drug Research and Review (HFN–100)".

§ 310.501 [Amended]

c. In § 310.501 *Preparations for contraception; labeling directed to the patient* in paragraph (b)(5) by changing "Bureau of Drugs, Division of Metabolic and Endocrine Drug Products (HFD–130)" to "Center for Drugs and Biologics, Division of Metabolism and Endocrine Drug Products (HFN–810)"

§ 310.503 [Amended]

d. In § 310.503 *Requirements regarding certain radioactive drugs* in paragraphs (a), (b), and (c) by changing "Atomic Energy Commission" to "Nuclear Regulatory Commission"

§ 310.509 [Amended]

e. In § 310.509 *Parenteral drug products in plastic containers* in paragraph (e) by changing "(HFD–160), Bureau of Drugs" to "(HFN–160), Center for Drugs and Biologics".

PART 312—NEW DRUGS FOR INVESTIGATIONAL USE

§ 312.1 [Amended]

14. Part 312 is amended in § 312.1 *Conditions for exemption of new drugs for investigational use* in paragraphs (c)(1), (d)(13), and (g) by changing "Bureau of Drugs" to "Office of Drug Research and Review" wherever it appears; in paragraph (g) by changing "Director, Bureau of Biologics" and "Bureau of Biologics" to "Office of Biologics Research and Review"; in paragraph (j) by changing "Bureau of Drugs and the Bureau of Biologics" to "Office of Drug Research and Review and the Office of Biologics Research and Review"; in paragraph (j)(1) by changing "Bureau of Drugs" to "Center for Drugs and Biologics"; and in paragraph (j)(2) and (3) by changing "Director, Bureau of Biologics" to "Office of Biologics Research and Review, Center for Drugs and Biologics".

PART 320—BIOAVAILABILITY AND BIOEQUIVALENCE REQUIREMENTS

§ 320.30 [Amended]

15. Part 320 is amended in § 320.30 *Inquiries regarding bioavailability requirements and review of protocols by the Food and Drug Administration* in paragraph (c) by changing "Bureau of Drugs" to "Center for Drugs and Biologics" and by changing "(HFD–520)" to "(HFN–220)".

PART 330—OVER-THE-COUNTER (OTC) HUMAN DRUGS WHICH ARE GENERALLY RECOGNIZED AS SAFE AND EFFECTIVE AND NOT MISBRANDED

16. Part 330 is amended:

§ 330.1 [Amended]

a. In § 330.1 *General conditions for general recognition as safe, effective, and not misbranded* in paragraph (a) by changing "Parts 210, 211, 225, 226 and 229" to "Parts 210 and 211."

§ 330.13 [Amended]

b. In § 330.13 *Conditions for marketing ingredients recommended for over-the-counter (OTC) use-under the OTC drug review* in paragraphs (c)(2)(i) and (d)(2)(i) by changing "Bureau of Drugs" to "Center for Drugs and Biologics".

PART 361—PRESCRIPTION DRUGS FOR HUMAN USE GENERALLY RECOGNIZED AS SAFE AND EFFECTIVE AND NOT MISBRANDED: DRUGS USED IN RESEARCH

§ 361.1 [Amended]

17. Part 361 is amended in § 361.1 *Radioactive drugs for certain research uses* in paragraph (c)(1) by changing "Bureau of Drugs" to "Center for Drugs and Biologics"; in paragraph (c)(3) by changing "Bureau of Drugs, HFD–150" to "Center for Drugs and Biologics, HFN–150"; in paragraph (c)(4) by changing "Bureau of Drugs" to "Center for Drugs and Biologics" wherever it appears and by changing "HFD–150" to "HFN–150"; and in paragraph (d)(8) by changing "Bureau of Drugs, HFD–150" to "Center for Drugs and Biologics, HFN–150".

PART 429—DRUGS COMPOSED WHOLLY OR PARTLY OF INSULIN

§ 429.40 [Amended]

18. Part 429 is amended in § 429.40 *Requests for certification; samples; storage; approvals preliminary to certification* in paragraph (a) by changing "(HFD–410)" to "(HFN–170)".

PART 431—CERTIFICATION OF ANTIBIOTIC DRUGS

19. Part 431 is amended:

§ 431.1 [Amended]

a. In § 431.1 *Requests for certification, check tests and assays, and working standards; information and samples required* in paragraph (a) by changing "National Center for Antibiotic Analysis (HFD-430)" to "Division of Drug Biology (HFN-170)".

§ 431.50 [Amended]

b. In § 431.50 *Forms for certification or exemption of antibiotic drugs* by changing "Certification Services Branch (HFD-332)" to "Product Surveillance Branch (HFN-333)".

Effective date. This regulation is effective March 6, 1985.

(Sec. 701(a), 52 Stat. 1055 (21 U.S.C 371(a)))

Dated: February 26, 1985.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-5329 Filed 3-5-85; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 184

[Docket No. 82G-0207]

Direct Food Substances Affirmed as Generally Recognized as Safe; Low Erucic Acid Rapeseed Oil

Correction

In FR Doc. 85-2000 beginning on page 3745 in the issue of Monday, January 28, 1985, make the following corrections:

1. On page 3747, first column, paragraph designated as (1), line thirteen, "without" should appear between "weight" and "adverse".

2. On page 3751, first column, third line from the bottom, "d-HBDH" should read" α-HBDH".

BILLING CODE 1505-01-M

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21 CFR Part 184

[Docket No. 82N-0269]

Wheat Gluten, Corn Gluten, and Zein; Affirmation of GRAS Status

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is affirming that wheat gluten, corn gluten, and zein are generally recognized as safe (GRAS) as direct human food ingredients. The safety of these ingredients has been evaluated under the comprehensive safety review conducted by the agency.

EFFECTIVE DATE: April 5, 1985.

FOR FURTHER INFORMATION CONTACT: Kenneth J. Falci, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-426-9463.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 12, 1983 (48 FR 31887), FDA published a proposal to affirm that wheat gluten, corn gluten, and zein are GRAS for use as direct human food ingredients. FDA published this proposal in accordance with its announced review of the safety of GRAS and prior-sanctioned food ingredients.

In accordance with § 170.35 (21 CFR 170.35), copies of the scientific literature review on wheat gluten, corn gluten, and zein and the report of the Select Committee on GRAS Substances (the Select Committee) on wheat gluten, corn gluten, and zein were made available for public review in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. Copies of these documents are also available for public purchase from the National Technical Information Service, as announced in the proposal.

In addition to proposing to affirm the GRAS status of wheat gluten, corn gluten, and zein, FDA gave public notice that it was unaware of any prior-sanctioned food uses for these ingredients other than the proposed conditions of use. Persons asserting additional or extended uses in accordance with approvals granted by the U.S. Department of Agriculture or FDA before September 6, 1958, were given notice to submit proof of those sanctions, so that the safety of any prior-sanctioned uses could be determined. That notice was also an opportunity to have prior-sanctioned uses of these ingredients recognized by issuance of an appropriate regulation under Part 181—Prior-Sanctioned Food Ingredients (21 CFR Part 181) or affirmed as GRAS under Part 184 or 186 (21 CFR Part 184 or 186), as appropriate.

FDA also gave notice that failure to submit proof of an applicable prior sanction in response to the proposal would constitute a waiver of the right to assert that sanction at any future time.

No reports of prior-sanctioned uses for wheat gluten, corn gluten, and zein were submitted in response to the proposal. Therefore, in accordance with the proposal, any right to assert a prior sanction for the use of these ingredients under conditions different from those set forth in this final rule has been waived.

FDA received four comments in response to the proposal. The comments and the agency's response to them are as follows:

1. One comment, from a person suffering from celiac disease, stated that labeling foods as "gluten free" would be a helpful label for packaged food products.

FDA discussed in its proposal (48 FR 31888) that persons with celiac disease are unable to ingest gluten from wheat and from some other sources without intestinal upset. However, FDA also noted that these same individuals are able to consume without ill-effects gluten derived from corn, rice, potato, and other foods. Because glutens do not always initiate intestinal upset in persons with celiac disease, the agency finds that labeling packaged foods as "gluten free" would not be as desirable as actually identifying on the food label the source of the gluten that is used in the food. Under 21 CFR 101.4(a), wheat gluten and other gluten sources must be identified by name when they are used in food. FDA believes, therefore, that the labeling already required is adequate to alert the public and protect gluten-sensitive individuals.

2. One comment stated that corn gluten is being investigated for use as a nutrient supplement in food and requested that the ingredient be listed for this technical effect in the final rule. The comment also requested that a cross-reference indicating that zein is produced from corn gluten be added to the proposed regulation for corn gluten.

The agency notes that wheat gluten is used as a nutrient supplement in food. Because corn gluten has a nutrient profile similar to that of wheat gluten, the agency believes that it is reasonable to conclude that corn gluten may also be used for this technical effect. Additionally, FDA concludes that adequate data exist in the Select Committee's report for it to find that the use of corn gluten as a nutrient supplement in food is safe and for it to affirm that corn gluten is GRAS for this use. Therefore, the agency is including the use of corn gluten as a nutrient supplement in § 184.1321(c)(1) (21 CFR 184.1321(c)(1)).

The agency does not agree that the corn gluten regulation should state that it is used to produce zein. The regulation for zein already states that it is made from corn gluten. Inclusion of this statement in the zein regulation is consistent with FDA's practice of describing how and from what sources regulated ingredients are obtained. The agency does not consider it necessary, however, to include a list of the products that may be manufactured from an ingredient in the regulation for that

ingredient. Therefore, the agency is not including the requested cross-reference in the regulation for corn gluten.

3. One comment stated that corn gluten is produced as a byproduct in the manufacture of corn syrups from dry milled corn. The comment stated that corn gluten is produced during the in-situ conversion of the starch in whole or various fractions of dry milled corn to corn syrups.

The agency agrees that this method has been used to prepare corn gluten and has incorporated it into § 184.1321(a).

4. One comment stated that four additional technical effects for wheat gluten should be added to the regulation for that ingredient. These additional technical effects are formulation aid, processing aid, stabilizer and thickener, and surface-finishing agent. The comment contained a substantial amount of information demonstrating that wheat gluten is currently being used for each of these technical effects.

The agency has reviewed the use information submitted in the comment and has determined that wheat gluten is currently used for the additional technical effects reported in this comment. Additionally, the agency concludes that adequate safety data exist in the Select Committee's report to assure that these uses are safe, and that they may be affirmed as GRAS. Therefore, the agency is incorporating these additional technical effects in this final rule.

The agency is also making two minor editorial changes in the regulation for corn gluten to correct errors in the spelling of "glutelin" and "gluten".

In the proposal, FDA stated that it would work with the Committee on Food Chemicals Codex of the National Academy of Sciences to develop acceptable specifications for corn gluten, wheat gluten, and zein used as direct food ingredients and would incorporate those specifications into the regulations when they were developed. To date, however, work on the specifications is still incomplete. Until the specifications are developed, these ingredients for direct food uses must comply with the descriptions in the respective regulations and be of food-grade purity (21 CFR 182.1(b)(3) and 170.30(h)(1)).

The agency had previously determined under 21 CFR 25.24(d)(6) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. FDA has not received any new information or comments that would alter its previous determination.

In accordance with the Regulatory Flexibility Act, the agency previously considered the potential effects that this rule would have on small entities, including small businesses. In accordance with section 605(b) of the Regulatory Flexibility Act, the agency has determined that no significant impact on a substantial number of small entities would derive from this action. FDA has not received any new information or comments that would alter its previous determination.

In accordance with Executive Order 12291, FDA has previously analyzed the potential economic effects of this final rule. As announced in the proposal, the agency has determined that the rule is not a major rule as determined by the Order. The agency has not received any new information or comments that would alter its previous determination.

The agency's findings of no major economic impact and no significant impact on a substantial number of small entities, and the evidence supporting these findings, are contained in threshold assessments which may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

List of Subjects in 21 CFR Part 184

Direct food ingredients, Food ingredients, Generally recognized as safe (GRAS) food ingredients.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348, 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Food Safety and Applied Nutrition (21 CFR 5.61; see 49 FR 48183; December 11, 1984), Part 184 is amended as follows:

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

1. By adding new § 184.1321, to read as follows:

§ 184.1321 Corn gluten.

(a) Corn gluten (CAS Reg. No. 66071-96-3), also known as corn gluten meal, is the principal protein component of corn endosperm. It consists mainly of zein and glutelin. Corn gluten is a byproduct of the wet milling of corn for starch. The gluten fraction is washed to remove residual water soluble proteins. Corn gluten is also produced as a byproduct during the conversion of the starch in whole or various fractions of dry milled corn to corn syrups.

(b) FDA is developing food-grade specifications for corn gluten in cooperation with the National Academy of Sciences. In the interim, the ingredient must be of a purity suitable for its intended use.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe (GRAS) as a direct human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as a nutrient supplement as defined in § 170.3(o)(20) of this chapter and a texturizer as defined in § 170.3(o)(32) of this chapter.

(2) The ingredient is used in food at levels not to exceed current good manufacturing practice.

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

2. By adding new § 184.1322, to read as follows:

§ 184.1322 Wheat gluten.

(a) Wheat gluten (CAS Reg. No. 8002-80-0) is the principal protein component of wheat and consists mainly of gliadin and glutenin. Wheat gluten is obtained by hydrating wheat flour and mechanically working the sticky mass to separate the wheat gluten from the starch and other flour components. Vital gluten is dried gluten that has retained its elastic properties.

(b) FDA is developing food-grade specifications for wheat gluten in cooperation with the National Academy of Sciences. In the interim, the ingredient must be of a purity suitable for its intended use.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe (GRAS) as a direct human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as a dough strengthener as defined in § 170.3(o)(6) of this chapter; a formulation aid as defined in § 170.3(o)(14) of this chapter; a nutrient supplement as defined in § 170.3(o)(20) of this chapter; a processing aid as defined in § 170.3(o)(24) of this chapter; a stabilizer and thickener as defined in

§ 170.3(o)(28) of this chapter; a surface-finishing agent as defined in § 170.3(o)(30) of this chapter; and a texturizing agent as defined in § 170.3(o)(32) of this chapter.

(2) The ingredient is used in food at levels not to exceed current good manufacturing practice.

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

3. By adding new § 184.1984, to read as follows:

§ 184.1984 Zein.

(a) Zein (CAS Reg. No. 9010-66-6) is one of the components of corn gluten. It is produced commercially by extraction from corn gluten with alkaline aqueous isopropyl alcohol containing sodium hydroxide. The extract is then cooled, which causes the zein to precipitate.

(b) FDA is developing food-grade specifications for zein in cooperation with the National Academy of Sciences. In the interim, the igredient must be of a purity suitable for its intended use.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe (GRAS) as a direct human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as a surface-finishing agent as defined in § 170.3(o)(30) of this chapter.

(2) The ingredient is used in food at levels not to exceed current good manufacturing practice.

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

Effective date. This regulation is effective April 5, 1985.

(Secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348, 371(a)))

Dated: February 15, 1985.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85-5424 Filed 3-5-85; 8:45 am]

BILLING CODE 4160-01-M

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Part 561

Animal Drugs, Feeds, and Related Products; Tolerances for Pesticides in Feeds Administered by the Environmental Protection Agency; 3,6-Bis(2-Chlorophenyl)-1,2,4,5-Tetrazine

[FAP 3H5312/R743; FRL-2790-7]

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule extends an established feed additive regulation to permit residues of the acaricide 3,6-Bis(2-chlorophenyl)-1,2,4,5-tetrazine in or on apple pomace. This extension of the regulation will permit the continued testing and gathering of additional data on the pesticide and marketing of apple pomace in connection with an experimental use program. The extension was requested by the Nor-Am Chemical Co.

EFFECTIVE DATE: Effective on March 16, 1985..

ADDRESS: Written objections, identified by the document control number [FAP 3H5412/R743), may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, D.C. 20460..

FOR FURTHER INFORMATION CONTACT: Jay Ellenberger, Product Manager (PM) 12, Registration Division (TS-767C), Environmental Protection Agency, Rm 202, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-2386).

SUPPLEMENTARY INFORMATION: EPA issued a final rule, published in the **Federal Register** of September 12, 1984 (49 FR 35767), which established a regulation to permit residues of the acaricide 3,6-Bis(2-chlorophenyl)-1,2,4,5-tetrazine in or on apple pomace in accordance with an experimental use program to expire March 15, 1985.

At the request of the Nor-Am Chemical Co., Wilmington, DE 19803, the regulation is extended to expire March 16, 1986, to permit the continued testing and gathering of additional data on the pesticide and marketing of apple pomace in connection with an experimental use program.

The data and other relevant material submitted in support of the regulation have been evaluated and discussed in the final rule document of September 12, 1984.

The pesticide is considered useful for the purpose for which the regulation is sought. It is concluded that the pesticide may be safely used in the prescribed manner when such use is in accordance with the label and labeling registered pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, (86 Stat. 973, 89 Stat. 751, U.S.C. 135(a) *et seq*) and is established as set forth below.

The Office of Management and Budget has exempted this rule from the requirements of section 3 Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new food or feed additive levels, or conditions for safe use of additives, or raising such food or feed additive levels do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24945).

List of Subjects in 21 CFR Part 561

Feed additives, Pesticides and pests.

(Sec. 409(c)(1), 72 Stat. 1786 (21 U.S.C. 346(c)(1)))

Dated: February 25, 1985.

Steven Schatzow,

Director, Office of Pesticide Programs.

PART 561—[AMENDED]

Therefore, 21 CFR 561.92 is revised to read as follows:

§ 561.92 3,6-Bis(2-chlorophenyl)-1,2,4,5-tetrazine.

A tolerance of 20.0 parts per million is established for residues of the acaricide 3,6-Bis(2-chlorophenyl)-1,2,4,5-tetrazine in apple pomace resulting from application of the acaricide to apples. Such residues may be present therein only as a result of the application of the acaricide in accordance with the provisions of the experimental use permit number 45639-EUP-14 that expires March 15, 1986.

[FR Doc. 85-5349 Filed 3-5-85; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 600, 606, 610, 620, 630, 640, and 660

[Docket No. 80N-0053]

Changes in Proper Names of Certain Biological Products

Correction

In FR Doc. 85-2001 beginning on page 4128 in the issue of Tuesday, January 29, 1985, make the following corrections:

1. On page 4128, in the second column, in the table under paragraph "2", in the fourth line, under the column "Name proposed by FDA", "Cyroprecipitated" should read "Cryoprecipitated".

2. On page 4130, in the third column, in paragraph "23", in the first line, "§ 640" should read "§ 640.4".

3. On page 4131, in the third column, in paragraph "30", in the seventh line, "Anti-Rh_o.' " " should read "Anti-Rh_o.' " ".

4. On page 4132, in Table I, under the column "Current codified name", in the twenty-first line, "Rh_o 1(D)" should read "Rh_o (D)".

§ 600.15 [Corrected]

5. On page 4133, in the second column, in § 600.15(a), in the table, in the column "Temperature", in the ninth line, ".° to 10°C." should read "1° to 10°C.".

§ 610.53 [Corrected]

6. On page 4134, in the table in § 610.53(c), in column A, the entry reading "Iodinated (^{125}I)" should read "Iodinated (^{125}I) products"; also in the same column, the entry reading "Antihuman globulin liquid" should read "Anti-Human globulin liquid".

7. On page 4135, in the table in § 610.53(c), in column A, in the twenty-third line, "desoxyridonuclease" should read "desoxyribonuclease"; in paragraph "1" under "Hepatitis B surface antigen", "Unlyophilied" should read "Unlyophilized"; in paragraph "8" under "Immunoglobulins", "globuline" should read "globulin"; in paragraph "10", "Vari-cella-zoster" should read "Varicella-zoster".

8. On page 4136, in the table in § 610.53(c), in column D, in the thirteenth line from the bottom, "24 hours" should read "(b) 24 hours",

§ 640.25 [Corrected]

9. On page 4139, in the second column, the line reading "**§ 604.25 [Amended]**" should read "**§ 640.25 [Amended]**".

§ 660.25 [Corrected]

10. On page 4140, in the third column, in § 660.25(a)(5)(iii), in the third line "Anti-Mg" should read "Anti-M^g".

BILLING CODE 1505-01-M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 721

Standards of Conduct; Revision

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: These regulations prescribe the standards of conduct required of military and civilian naval personnel. The regulations are being revised to refine policy regarding ethics and standards of conduct, to incorporate statutory changes, and to consolidate procedures regarding financial disclosure. These regulations govern all naval personnel.

EFFECTIVE DATE: October 24, 1984.

FOR FURTHER INFORMATION CONTACT: Commander G. Sid Smith (Office of the Judge Advocate General), (202) 325-9752 or Mr. James T. Tate, Jr. (Office of General Counsel), (202) 692-7186.

SUPPLEMENTARY INFORMATION: Pursuant to the authority conferred under 5 U.S.C. 301, 10 U.S.C. 133 and 5031, the Secretary of the Navy revises 32 CFR Part 721. This revision reflects the changes made to the underlying Secretary of the Navy instruction, SECNAVINST 5370.2 (series), which delineates the Navy's Standards of Conduct. These Standards of Conduct were reorganized and expanded to increase their value as a normative guide for personnel and to ensure their validity as a legal basis for disciplinary action in appropriate cases. The responsibilities of individuals for observing the Standards of Conduct, and the responsibilities of commands for enforcing the standards, are further delineated. Also, provisions concerning the filing, review, and disposition of Confidential Statements of Affiliations and Financial interests (DD Form 1555) are expanded.

Numerous substantive modifications and additions have been made in order to reflect current interpretation and practice, eliminate ambiguity and integrate material on fraud, waste and abuse. To reflect a broader scope, the phrase "government ethics" has been included in the title of this instruction. The terms "standards of conduct counselor" have been replaced with the terms "ethics official" and "ethics counselor," in accordance with the Ethics in Government Act of 1978.

This revision, was adopted on October 24, 1984. To the limited extent that this revision could be deemed to originate any requirements within the Department of the Navy, it has been determined that such requirements relate entirely to internal naval management and personnel practices that can be administered more effectively without public participation in the rule-making process. It has therefore been determined that invitation of public comment on this revision would be impracticable and unnecessary and is therefore not required under the provisions of Parts 296 and 701 of 32 CFR.

List of Subjects in 32 CFR Part 721

Conflict of interests, Government employees, Military personnel.

Accordingly, 32 CFR Part 721 is revised to read as follows:

Sec.

721.1 Purpose.
721.2 [Reserved]
721.3 Scope and effect.
721.4 Definitions.
721.5 General policies governing the conduct of naval personnel.
721.6 Standards of Conduct governing naval personnel.
721.7 Related statutes and directives.
721.8 Responsibilities for action.
721.9 Personal financial disclosure.
721.10 Post employment restrictions.
721.11 Administrative enforcement of 18 U.S.C. 207.
721.12 Reporting of post-retirement employment.
721.13 Delegation of authority.
721.14 Reports and forms.
721.15 Digest of laws.
721.16 Submission and processing of reports of financial circumstances (SF-278 and DD Form 1555).
721.17 Procedures for administrative enforcement of post employment restrictions of 18 U.S.C. 207.
721.18 Bedrock standards of conduct for Department of the Navy personnel.

Authority: 5 U.S.C. 301; 10 U.S.C. 133 and 5031; E.O. No. 11222, May 8, 1965; 5 CFR Part 735; 32 CFR Part 40.

§ 721.1 Purpose.

Part 721 implements and supplements Pub. L. 95-521, as amended by Pub. L. 96-19 and Pub. L. 96-28; Part 40 of this title; E.O. 11222, 3 CFR, 1964-1965 Comp., p. 301; and 5 CFR Parts 734, 735, 737, and 738, by prescribing required standards of ethical conduct governing all personnel in the Department of the Navy, to place responsibility and accountability for ensuring compliance upon commanding officers and supervisors, to publish financial disclosure reporting requirements and procedures applicable to certain naval personnel, to set forth conflict of interest statutes applicable to certain categories of both former and current naval personnel, and to promulgate bedrock

standards of conduct as a concise statement of expected ethical behavior.

§ 721.2 [Reserved]

§ 721.3 Scope and effect.

(a) *Applicability.* The provisions of this Part apply to all naval personnel as defined in § 721.4(a). The provisions of § 721.6(k)(2) apply to all retired military naval personnel and members of Reserve components not on active duty. The provisions of § 721.7(a), § 721.10, and § 721.11 apply to certain former naval personnel. The provisions of § 721.12 apply to all retired Regular officers.

(b) *Violations.* The bracketed portions of § 721.6 are regulatory general orders, apply to all naval personnel individually, and need no further implementation. A violation of these provisions is punishable in accordance with the Uniform Code of Military Justice for military personnel and is the basis for appropriate disciplinary procedures with respect to civilian employees. Noncompliance with other provisions of the instruction is expected to be corrected by timely administrative action.

§ 721.4 Definitions.

(a) *Naval personnel.* All Department of the Navy civilian officers and employees, active-duty officer and enlisted personnel (both Regular and Reserve), special Government employees, and personnel of nonappropriated fund instrumentalities.

(b) *Department of Defense (DOD) components.* The Office of the Secretary of Defense, the Military Departments, the Organization of the Joint Chiefs of Staff, the joint, unified, and specified commands, the Defense agencies, and nonappropriated fund instrumentalities.

(c) *Special Government employee.* A person who is retained, designated, appointed or employed to perform, with or without compensation, not to exceed 130 days during any period of 365 consecutive days, temporary duties on either a full-time or intermittent basis. The term also includes a Reserve officer while on active duty solely for training for any length of time, one who is serving on active duty involuntarily for any length of time, and one who is serving voluntarily on extended active duty for 130 days or less. It does not include enlisted personnel.

(d) *Gratuity.* Any gift, favor, entertainment, hospitality, transportation, loan, any other tangible item, and any intangible benefit (for example, discounts, passes, and promotional vendor training) given or extended to or on behalf of naval personnel or their spouses, minor children or members of their households for which fair market value is not paid by the recipient or the U.S. Government.

(e) *Appropriate supervisor.* That superior within the chain of authority who is acquainted with the duties of the naval personnel concerned and can best determine the existence and effect of any conflict of interest of such personnel. Ordinarily, this will be the immediate superior of the person concerned. Each commanding officer and head of activity should ensure that all personnel are aware of the identity of their appropriate supervisor.

§ 721.5 General policies governing the conduct of naval personnel.

(a) *Proper conduct of official activities.* (1) Naval personnel shall become familiar with the scope of authority for and the limitations concerning the activities for which they have responsibilities.

(2) The attention of naval personnel is directed to the statutory prohibitions that apply to the conduct of naval personnel. See § 721.15.

(3) Naval personnel shall not make or recommend any expenditure of funds or take or recommend any action known or believed to be in violation of United State laws, Executive Orders, applicable directives, instructions, or regulations.

(4) In cases of doubt of the propriety of a proposed action or decision in terms of regulations or law, naval personnel shall consult legal counsel or, if appropriate, the Designated Agency Ethics Official, a deputy ethics official or ethics counselor (hereafter collectively referred to as "ethics officials"; see paragraphs (a), (b), (g), and (h) of § 721.8) to ensure the proper and lawful conduct of naval programs and activities.

(b) *Conduct prejudicial to the Government.* Naval personnel shall avoid any action whether or not specifically prohibited by this instruction that might result in or reasonably be expected to create the appearance of:

(1) Using public office for private gain,

(2) Giving preferential treatment to any person or entity,

(3) Impeding Government efficiency or economy,

(4) Losing complete independence or impartiality,

(5) Making a Government decision outside official channels, or

(6) Adversely affecting the confidence of the public in the integrity of the Government.

(c) *Standards of personal judgment.* All naval personnel will adhere strictly to the standards of conduct and related requirements prescribed. In some instances, standards are imposed that require the exercise of personal judgment. Naval personnel must consider each such instance carefully and be prepared to account for the manner in which their judgment is exercised. This is particularly true in situations that involve acceptance of hospitality or favors from persons or entities who do or seek to do business with the Department of Defense.

(d) *Dealings with business and industry representatives.* Persons who represent the Government in business dealings with representatives of industry have positions of trust and grave responsibility that require them to observe the highest ethical standards. Practices that may be accepted in the private business world are not necessarily acceptable for naval personnel. Naval personnel will not allow themselves to be placed in a position in which a conflict of interest might arise or might justifiably be suspected. Such a conflict of interest may arise or appear to arise by reason of the acceptance of gratuities or by any other action that could influence or reasonably be interpreted as influencing the strict impartiality that must prevail in all business relationships involving the Government. Strict impartiality is often particularly difficult to maintain when business relationships are allowed to become overly personal. Naval personnel should at all times ensure that persons doing business or attempting to do business with the Department of the Navy or who represent such entities are not permitted to ingratiate themselves to the extent that naval personnel hesitate to deny requests for special treatment made by such persons or otherwise to follow the rule of strict impartiality when dealing with such persons in their official capacities. Acceptance of gratuities (no matter how innocently tendered or received) from those who have or seek business dealings with the Department of the Navy may be a source of embarrassment to the Department and to the naval personnel involved, may affect the objective judgment of the recipient, and may impair public confidence in the integrity of business relations between the Department and industry. It is emphasized that prohibited conflicts and apparent conflicts of interest can sometimes arise even from relationships and transactions that the personnel concerned perceive as inconsequential. When in doubt, naval personnel will refrain from accepting gratuities, attending functions, or accepting other invitations of a hospitable nature.

(e) *Preferential treatment.* Special treatment must not be accorded to particular individuals or firms unless equivalent treatment is also accorded to other justifiably entitled individuals or firms.

(f) *Acquiring conflicting financial interests.* Notwithstanding that they may be required to submit reports of their personal financial circumstances, naval personnel must at all times avoid acquiring or retaining financial interests that would disqualify them from performing their assigned duties or responsibilities. Some of the more likely situations in which conflicts of interest might arise are where naval personnel have Government duties or responsibilities related to business entities:

(1) With which they, their spouses, minor children, or household members are associated as employees, officers, owners, directors, members, trustees, partners, advisers, or consultants;

(2) With which they, their spouses, minor children, or household members are negotiating or have arrangements for prospective employment; or

(3) In which they, their spouses, minor children, or household members have interests through ownership of stock, stock options, bonds, or other securities or other financial arrangements, such as trusts, or through participation in certain types of pension or retirement plans.

(g) *Membership in associations.* Naval personnel who are members or officers of nongovernmental associations or organizations must avoid activities on behalf of the association or organization that are incompatible with their official Government positions. Under certain circumstances, holding a position of trust or responsibility in a private association or organization or undertaking activities on its behalf could conflict with one's official duties. For example, a commanding officer may not hold a position of trust or responsibility in an insurance company or an employee welfare or benefit organization that sells insurance to its members since the official duties of a commanding office require the exercise of control over the solicitation of insurance within the command. Secretary of the Navy Instruction (SECNAVINST) 5760.4 (series) sets forth Department of the Navy policy regarding participation by naval activities and naval personnel in the activities of private associations.

(h) *Equal opportunity.* Naval personnel shall scrupulously adhere to the DOD program of equal opportunity regardless of race, color, religion, sex, age, handicapping condition, or national origin in accordance with equal opportunity directives. See, for example, SECNAVINST 5350.6 (series) and SECNAVINST 5350.10 (series).

(i) *Reporting suspected violations.* Naval personnel who have information that causes them to believe that other DOD personnel have violated a statute or standard of conduct imposed by this instruction should bring the matter to the attention of the appropriate command authority.

(j) *Resolving violations.* Commanding officers or heads of activities shall promptly resolve standards of conduct violations by one or more measures such as divestiture of conflicting interests, disqualification for particular assignments, changes in assigned duties, termination, or disciplinary or other appropriate action as provided by statute or administrative procedures.

(k) *Display of the Code of Ethics for Government Service.* Pub. L. 96-303 requires the display of the *Code of Ethics for Government Service* poster in appropriate areas of federally owned or leased office space. Department of the Navy activities shall display the poster at all installations, facilities, and offices. It may also be displayed in lobbies, conference rooms, reception areas, auditoriums, cafeterias, and other high-traffic areas. To obtain copies, submit requisitions in FEDSTRIP format to the appropriate GSA regional office, requesting national stock number (NSW) 7690-01-099-8167.

§ 721.6 Standards of conduct governing naval personnel.

(a) *Affiliations and financial interests.* [Naval personnel shall not engage in any personal, business, or professional activity or receive or retain any direct or indirect financial interest that places them in a position of conflict between their private interests and the public interests of the United States related to the duties or responsibilities of their official positions. For the purpose of this prohibition, the private interests of a spouse, minor child, or household member are treated as private interests of naval personnel.]

(1) Unless otherwise expressly authorized by action taken under 18 U.S.C. 208(b), all naval personnel who have or acquire an affiliation or a financial interest that creates a conflict or appearance of a conflict with their official duties shall report the possibly disqualifying interest to their appropriate supervisor who shall resolve the matter in accordance with this instruction. If it is determined that the individual should be disqualified from participation in any official activities that are related to the conflicting interest, a formal memorandum of disqualification must be sent to the concerned individual and to any affected immediate subordinate. If the individual cannot adequately perform his or her official duties after such disqualification, he or she must divest himself or herself of such interest or be removed from that position.

(2) Naval personnel need not be disqualified under this section, however, for having one or more of the financial interests or affiliations set forth below. Such holdings are exempted from the provisions of this instruction otherwise pertaining to disqualification, but not disclosure of, such interests and from the provisions and penalties of 18 U.S.C. 208(a) as being too remote or inconsequential to affect the integrity of the services of naval personnel:

(i) Shares of a widely held and diversified mutual, money market, trust, or similar fund offered for sale by a financial institution or by a regulated investment company;

(ii) Deposits in and loans made by banks or other financial institutions, provided they are at customary and generally available terms and conditions;

(iii) Domestic bonds other than corporate bonds, i.e., federal, state, municipal, or local government bonds, regardless of the value of such interest; and

(iv) Interests resulting from holding a position of trust or responsibility in a private, nonprofit association or other organization that fosters and promotes the general interests of the naval service and depends, in part, upon the voluntary efforts of naval personnel acting in their private capacities for leadership. Provided they disclose their relationship with the organization when doing so, naval personnel so serving may, in their official capacities, render advice and make recommendations within the chain of command with respect to particular matters affecting the organization if the final decision is made by higher authority.

(3) Notwithstanding paragraph (a)(2) of this section, the commanding officer or head of the activity to which an individual is assigned who holds an interest described in paragraph (a)(2)(c) or (a)(2)(d) of this section may, in his or her discretion, require such individual to refrain from taking any official action affecting the interests of an entity in which the individual holds such an interest, if determined to be in the best interest of the Government. In this regard, see § 721.5 (b) and (g), and § 721.6(j) for ethics considerations other than 18 U.S.C. 208.

(b) *Using inside information.* [Naval personnel shall not use, directly or indirectly, inside information to further a private gain for themselves or others if that information is not generally available to the public and was obtained by reason of their DOD positions.]

(c) *Using naval position.* [Naval personnel are prohibited from using their official positions to improperly induce, coerce, or in any other manner improperly influence any person to provide any benefit, financial or otherwise, to themselves or others.]

(d) *Dealing with present and former military and civilian personnel.* [Naval personnel shall not knowingly deal on behalf of the Government with present or former Government personnel, military or civilian, whose participation in the transaction would be in violation of a statute, regulation, or policy set forth in this instruction, § 721.15 or 5 CFR Part 737.]

(e) *Commercial solicitations by naval personnel.* To eliminate the appearance of coercion, intimidation, or pressure from rank, grade, or position, [all naval personnel, are prohibited from making commercial solicitations or sales to DOD personnel who are junior in pay grade, or position, at any time or place] (see also SECNAVINST 1740.2 (series)). Commercial sales, whether or not solicited, are prohibited between officer and enlisted military personnel except as specified in paragraph (e)(2) of this section (see U.S. Navy Regulations, 1973, Article 1131):

(1) This prohibition includes, but is not limited to, the solicitation and sale of insurance, stocks, mutual funds, real estate, and other commodities or goods.

(2) This prohibition is not applicable to the one-time sale, lease, or sublease by an individual of his or her own personal property or privately owned or leased dwelling, or to the off-duty employment of naval personnel as employees in retail stores or other situations not involving solicited sales.

(3) With regard to solicitation by and of civilian personnel, the limitation applies only to solicitation of personnel under the supervision, at any level, of the solicitor.

(f) *Assignment of Reserve personnel for training.* Naval personnel who are responsible for assigning reservists for training shall not assign them to duties in which they will obtain information that could be used by them or their private sector employers to gain unfair advantage over civilian competitors.

(g) *Gratuities.* (1) [Except as provided in paragraph (g)(2) of this section, naval personnel and their spouses, minor children, and members of their households shall not solicit, accept, or agree to accept any gratuity for themselves, members of their families, or others, either directly or indirectly from or on behalf of a defense contractor or other entity that:]

(i) [Is engaged in or seeks business or financial relations of any sort with any DOD component;]

(ii) [Conducts operations or activities that are either regulated by a DOD component or significantly affected by DOD decisions; or]

(iii) [Has interests that may be substantially affected by the performance or nonperformance of the official duties of DOD personnel.] A foreign government or any agency thereof shall also constitute a defense contractor under this section where it is engaged in selling to the Department of Defense.

(2) This general prohibition does not apply to the following:

(i) The continued participation in employee welfare or benefit plans of a former employer when permitted by law and approved by the appropriate ethics official;

(ii) The acceptance of unsolicited advertising or promotional items of nominal intrinsic value such as disposable pens or pencils, note pads, or calendars;

(iii) Unsolicited trophies, entertainment, prizes, or awards given for public service or achievement, or in games or contests that are clearly open to the public or that are officially approved for participation by naval personnel;

(iv) Things available to the public (such as university scholarships covered by DOD Directive 1322.6 and free exhibitions by DOD contractors at public trade fairs);

(v) Discounts or concessions extended and realistically available to all naval personnel within a given metropolitan or regional geographic area;

(vi) Participation by naval personnel in civic and community activities when the involvement of DOD contractors is remote from the business purposes of any contractor who is sponsoring, supporting, or participating in the activity (for example, participation in a little league or Combined Federal Campaign luncheon that is subsidized by a DOD contractor);

(vii) Social activities engaged in by officers in command and other naval officials or their representatives with local civic leaders as part of community relations programs of the Department of the Navy in accordance with SECNAVINST 5720.44 (series);

(viii) The participation of naval personnel in widely attended gatherings of mutual interest to Government and industry, sponsored or hosted by institutions of higher learning, industrial, technical, or professional associations (not by individual contractors), provided that, in the case of the associations, their programs have been approved in accordance with DOD Instruction 5410.20. This exception permits acceptance of a luncheon, dinner, or refreshments which are part of the gathering, but does not extend to the acceptance of transportation or overnight accommodations unless authorized under the terms of paragraphs (g)(2) or (h) of this section;

(ix) Situations in which participation by naval personnel at public ceremonial activities of mutual interest to industry or local communities and the Department of the Navy, such as ship launchings, serves the interests of the Government, and acceptance of the invitation is approved by the commanding officer or head of the activity to which the invitee is attached. This exception permits attendance at appropriate functions incident to the activity, and mementos of nominal intrinsic value;

(x) Contractor-provided transportation, meals, or overnight accommodations in connection with official business when arrangements for Government or commercial transportation, meals, or accommodations are clearly impracticable and the individual reports the circumstances in writing to his or her appropriate supervisor in advance of acceptance or as soon after as possible;

(xi) Attendance at promotional vendor training sessions (such as tuition-free training or refresher courses, seminars, and the like) offered by contractors to facilitate understanding or utilization of their products. Such attendance may be authorized when it is determined to be in the Government's interest by the appropriate supervisor of the individual concerned. Transportation, accommodations, and meals in connection with such training may be accepted only in accordance with paragraph (g)(2)(x) of this section;

(xii) Attendance of naval personnel at gatherings, including social events such as receptions, that are hosted by foreign governments or international organizations, provided that the acceptance of the invitation is approved by the commanding officer or head of the activity to which the invitee is attached or, when there is doubt as to the propriety of acceptance, by higher authority (see SECNAVINST 1650. (series) for further information

pertaining to gifts from foreign governments);

(xiii) Customary exchanges of gratuities between naval personnel and their friends and relatives or the friends and relatives of their spouses, minor children, or members of their household where the circumstances make it clear that it is that relationship rather than the business of the persons concerned that is the motivating factor for the gratuity and where it is clear that the gratuity is not paid for by any entity described in paragraph (g)(1) of this section;

(xiv) Reimbursement in cash or in kind for travel, lodging, or subsistence expenses not extravagant or excessive in nature in connection with seeking other employment. In such cases the individual shall first notify his or her appropriate supervisor in writing and shall disqualify himself or herself from participating on behalf of the Government in any particular matter affecting the interests of the prospective employer. The disqualification may be rescinded only if the individual concerned notifies his or her appropriate supervisor in writing that he or she is no longer seeking or actively considering employment with that prospective employer; and

(xv) Situations in which, in the sound judgment of the individual concerned or his or her appropriate supervisor, the Government's interest will be served by naval personnel participating in activities otherwise prohibited. In any such case a written report of the circumstances shall be made by the individual concerned or his or her appropriate supervisor in advance of acceptance, or, when an advance report is not possible, within 48 hours after acceptance to the appropriate supervisor, if the appropriate supervisor is not otherwise aware of the acceptance, and to the cognizant eithics counselor, as defined in § 721.8(h).

(3) Naval personnel who receive gratuities, or have gratuities received for them in circumstances not in conformance with the standards of this section shall promptly report the circumstances to the appropriate supervisor for a determination as to proper disposition. The appropriate supervisor shall consult with the cognizant eithics counselor, as defined in §721.8(h).

(4) Procedures with respect to NROTC staff members are set forth in DOD Directive 1215.8.

(h) *Receipts in connection with official travel.* (1) The acceptance of transportation, accommodations, meals, or other services furnished in kind in connection with official travel from sources other than those indicated in paragraph (g)(1) of this section may be authorized by the commanding officer or head of activity to which an individual is assigned if determined to be in the overall interest of the Government when the individual concerned is to be a speaker, panelist, project officer, or other bona fide participant in the event attended and if the entity sponsoring the event customarily provides such services to participants. The acceptance of services of this nature may also be authorized under the foregoing conditions in connection with official travel to participate in events such as symposia, seminars, and the like sponsored by institutions of higher learning, or industrial, technical, or professional associations that are engaged in activities directly or indirectly funded by the Department of Defense, and that are, therefore, entities falling within the scope of paragraph (g)(1) of this section when such activities and the official duties of the naval personnel invited to participate in the event are unrelated.

(2) [Except as indicated in paragraph (h)(1) of this section, naval personnel may not accept personal reimbursement from any source for expenses incident to official travel unless authorized by their commanding officer or head of their activity consistent with guidance provided by the appropriate eithics official] (pursuant to 5 U.S.C. 4111 or other authority). Rather, reimbursement must be made to the Government by check payable to the "Treasurer of the United States". Personnel will be reimbursed by the Government in accordance with regulations relating to reimbursement for official travel.

(3) When transportation, accommodations, meals, or services in kind are furnished to naval personnel by non-Government sources consistent with paragraph (h) of this section, appropriate deductions shall be reported and made in the travel, per diem, or other allowances payable by the Government.

(4) In no case shall naval personnel accept reimbursement either in kind or in cash that is extravagant or excessive in nature.

(i) *Speaking, lecturing, writing, and appearances.* (1) Naval personnel are encouraged to engage in teaching, lecturing, and writing. [Naval personnel (including all Navy and Marine Corps members of both the ready and stand-by reserve), however, shall not, either with or without compensation, engage in activities that are dependent upon information obtained as a result of their Government employment except when the information has been published or is generally available to the public, or it will be made generally available and the official authorized to release such information gives written authorization for the use of nonpublic information on the basis that its use is in the public interest.]

(2) Unless there is a definite executive branch, Department of Defense, or Department of the Navy position on a matter addressed in the appearance or writing and the individual has been authorized by appropriate superior authorities to present that position officially, he or she shall expressly present his or her views on that matter as his or her own and not as those of the Department of the Navy or Department of Defense.

(3) [Naval personnel may not accept a payment or fee for any appearance or writing unless undertaken as a private citizen and not in an official capacity.] See also paragraph (j) of this section relating to outside employment generally.

(4) Naval personnel may not accept an honorarium exceeding $2,000 (excluding actual travel and subsistence expenses for the individual concerned, and for his or her spouse, or an aide, and fees or commissions paid to agents) for any appearance, lecture, speech, or article, unless disbursed to charitable organizations in accordance with procedures of 2 U.S.C. 441i(b). An honorarium is a gratuitous payment which is not intended as compensation for services.

(5) Civilian presidential appointees assigned to the Department of the Navy whose appointments must be made by and with the advice and consent of the Senate shall not receive compensation (excluding travel and subsistence expenses not otherwise prohibited by this instruction) or anything of monetary value for any consultation, lecture, discussion, writing, or appearance the subject matter of which is devoted substantially to naval responsibilities, programs, or operations or that draws substantially from official material that has not become part of the body of public information. Such personnel are also prohibited in any calendar year from having outside earned income exceeding 15 percent of the rate of pay fixed by law as compensation for their services to the Government or as stipulated and agreed to with the Senate Committee on Armed Services as a condition to the confirmation of their appointment by the Senate, whichever is less. See 5 U.S.C. app. 210.

(j) *Outside employment of naval personnel.* (1) [Naval personnel shall not engage in outside employment or

any other outside activity with or without compensation that:]

(i) [Interferes with or is not compatible with the performance of their Government duties;]

(ii) [May reasonably be expected to bring discredit upon the Government or the Department of the Navy; or]

(iii) [Is otherwise inconsistent with the requirements of this instruction] including the requirement to avoid actions and situations which reasonably can be expected to create the appearance of a conflict of interest.

(2) Enlisted naval personnel on active duty may not be ordered or authorized to leave their post to engage in a civilian pursuit, business, or professional activity if it interferes with the customary or regular employment of local civilians in their art, trade, or profession. See 10 U.S.C. 974.

(3) Active duty Regular officers of the Navy and Marine Corps, including those on terminal leave, shall not be employed by any person or entity furnishing naval supplies or war materials to the United States. If such an officer is so employed, he or she is not entitled to payment from the United States for the duration of that employment, pursuant to 37 U.S.C. 801(a).

(4) Off-duty employment of military personnel by an entity involved in a strike is permissible if the person was on the payroll of the entity prior to the commencement of the strike and if the employment is otherwise in conformance with the provisions of this instruction. After a strike begins and while it continues, no military personnel may accept employment by that involved entity at the strike location.

(k) *Use of civilian and military titles or positions in connection with commercial enterprises.*

(1) [All naval personnel are prohibited from using their grade, rank, title, or position in connection with any commercial enterprise or in endorsing any commercial product.] See also Article 1403, U.S. Navy Uniform Regulations. This does not preclude author identification for materials published in accordance with DOD procedures. A commercial enterprise is any entity that engages in activities that produce income as defined in the Internal Revenue Code of 1954, section 61, and that has not been exempted from paying income taxes pursuant to the Internal Revenue Code of 1954, section 501(a).

(2) All retired military personnel and all members of Reserve components not on active duty are permitted to use their military titles in connection with commercial enterprises, provided that they indicate their inactive Reserve or retired status. If, however, such use of military titles in any way casts discredit upon the Department of the Navy or the Department of Defense or gives the appearance of sponsorship, sanction, endorsement, or approval by the Department of the Navy or the Department of Defense, it is prohibited. In addition, commanders of overseas installations may further restrict the use of titles in overseas areas including use by retired military personnel and members of Reserve components not on active duty.

(l) *Use of Government facilities, property, and manpower.* [Naval personnel shall not directly or indirectly use, take, dispose of, or allow the use, taking, or disposing of Government manpower, property or facilities of any kind, including property leased to the Government, for other than official government business or purpose.] Naval personnel have a positive duty to protect and conserve Government property. Waste or abuse of any Government asset will not be tolerated. See SECNAVINST 5430.92. These provisions do not preclude the use of Government facilities for approved activities in furtherance of naval community relations, provided they do not interfere with military missions or Government business. See SECNAVINST 5720.44 (series) for community relations guidance.

(m) *Prohibition of contributions or presents to superiors.* [Naval personnel shall not solicit contributions from other DOD personnel for a gift to a superior, make a donation or a gift to a superior, or accept a gift from other DOD personnel subordinate to themselves.] This prohibition does not include voluntary gifts or contributions of nominal value on special occasions such as marriage, illness, transfer, promotion, or retirement, provided any gifts acquired with such contributions shall not be extravagant or excessive in nature.

(n) *Gambling, betting, and lotteries.* [While on Government owned, leased, or controlled property, or otherwise while on duty for the Government, naval personnel shall not participate in any gambling activity including a lottery or pool, a game of chance for money or property, or the sale or purchase of a number slip or ticket.] The only exceptions are for activities that have been specifically approved by the Secretary of the Navy.

(o) *Indebtedness.* Naval personnel shall pay their just financial obligations in a timely manner, particularly those imposed by law (such as Federal, state, and local taxes), so that their indebtedness does not adversely affect the Government as their employer. The Department of the Navy is not required to determine the validity or amount of disputed debts.

§ 721.7 Related statutes and directives.

Attention is directed to the following related matters governed by other directives:

(a) *Reports of defense related employment.* Certain categories of present naval personnel formerly employed by defense contractors and certain categories of former or retired naval personnel presently employed by defense contractors are required by statute to report their employment, governmental or private. SECNAVINST 5314.5 (series) implements the statutory requirements, provides a form for making the required report (DD Form 1787), and assigns responsibility to commanding officers or heads of activities for ensuring compliance with the filing requirement by affected civilian employees. Failure to file such reports when required may subject individuals to criminal penalties.

(b) *Political activities.* Chapter 733 of the Federal Personnel Manual, article 6210240 of the Naval Military Personnel Manual, and paragraph 1742.3 of the Marine Corps Manual discuss restrictions on political activities of naval personnel. Related statutes are discussed in § 721.15.

(c) *General responsibilities of naval personnel.* Chapter 11 of U.S. Navy Regulations, 1973, prescribes general regulations governing the rights and responsibilities of naval personnel. If any provisions of this instruction is found to conflict with a provision of Navy Regulations, the provision of Navy Regulations shall be controlling.

§ 721.8 Responsibilities for action.

(a) *The General Counsel of the Navy.* The General Counsel of the Navy is assigned overall responsibility for the ethics and standards of conduct program of the Department of the Navy and is appointed as Designated Agency Ethics Official for the Department of the Navy, the duties of which are prescribed in 5 CFR 738.203. Unless a function is specifically reserved or otherwise assigned here, the General Counsel shall act as the designee of the Secretary and for these purposes is empowered to redelegate all such duties to the extent permitted by 5 CFR 738.204.

(b) *Principal Deputy General Counsel of the Navy.* The Principal Deputy General Counsel of the Navy is appointed as the Alternate Designated Agency Ethics Official for the Department of the Navy and shall

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assume the responsibilities of the Designated Agency Ethics Official in the absence of the General Counsel of the Navy. In the absence of both the General Counsel of the Navy and the Principal Deputy General Counsel of the Navy, the Acting General Counsel of the Navy shall assume the responsibilities of the Designated Agency Ethics Official.

(c) *Navy Department officials.* The Chief of Naval Operations and the Commandant of the Marine Corps shall ensure that all naval personnel receive an oral briefing on this instruction upon initial appointment, employment or enlistment. This briefing shall be given at a depth and with an emphasis consistent with the nature of the duties to which such personnel are presently assigned and may be assigned in the foreseeable future. All personnel shall attest in writing to their attendance at the required briefing.

(d) *Commanding officers and heads of activities.* Each individual has a basic responsibility for complying with the requirements of this instruction, but commanding officers and naval personnel exercising command or similar authority have as a leadership/management matter the primary responsibility for ensuring compliance, and they will be held accountable. All commanding officers or heads of commands, bureau, offices, or activities are specifically responsible for the following:

(1) The continuing dissemination of the applicable information in this instruction to all naval personnel within their organizations at least annually in a manner that will ensure familiarity and compliance with the pertinent provisions of this instruction. (This is a continuing requirement and is in addition to the initial briefing required by paragraph (c) of this section);

(2) Providing a copy of this instruction to all naval personnel within their organizations upon request and periodically publishing § 721.18, which is a concise summary of the standards;

(3) The establishment and continuing execution of the requirements, procedures and controls prescribed in § 721.16 to ensure that all naval personnel within their organizations who are required to file reports of their financial circumstances do file them in a timely manner, and that the specified reviews are promptly and carefully made;

(4) Making determinations pursuant to this instruction and 18 U.S.C. 208(b) with respect to disqualification of personnel within their organizations from performing duties in which they have conflicts or apparent conflicts of interest;

(5) Ensuring that Reservists detailed to perform active duty for training in their organizations are assigned duties that will minimize the possibility of obtaining information that could be used by them or their employers to gain an unfair advantage over civilian competitors; and

(6) Receiving and taking prompt and appropriate action on reports concerning violations of this instruction including § 721.15 or related statutes, by personnel within their organizations.

(7) Ensuring that prospective retirees are briefed concerning post-employment requirements and restrictions, as discussed in § 721.12, § 721.15, 5 CFR Part 737, and NAVSO P–1778.

(e) *Inspector General.* The Naval Inspector General and the Inspector General of the Marine Corps shall ensure that periodic administrative inspections of organizations under their cognizance routinely include inquiry into the effectiveness of the organization's compliance with the provisions of this instruction.

(f) *Auditor General.* The Auditor General of the Navy shall ensure that the Naval Audit Service audit program routinely includes inquiry into the effectiveness of the organization's compliance with the provisions of this instruction.

(g) *Deputy ethics officials.* The Judge Advocate General, the Director, Judge Advocate Division (Headquarters Marine Corps), and the Assistant General Counsel of the Navy (Ethics) are appointed as deputy ethics officials and are delegated authority to act for the General Counsel. They shall be responsible for all ethics and standards of conduct functions within their respective areas of jurisdiction including, but not limited to, advice and proper review of all ethics and standards of conduct problems and for finally reviewing, acting upon, and maintaining the Department's file of Financial Disclosure Reports (SF–278's), except that the General Counsel shall perform all standards of conduct functions pertaining to civilian presidential appointees assigned to the Department of the Navy.

(h) *Ethics counselors.* Ethics counselors have been delegated authority for initially reviewing Financial Disclosure Reports (SF–278) and for finally reviewing Statements of Affiliations and Financial Interests (DD Form 1555) submitted by other naval personnel within their organization, activity, or geographical area. In addition, they shall be responsible for providing advice and assistance on matters relating to ethics, standards of conduct, and conflicts of interest under this instruction. Specific appointments of ethics counselors are contained in § 721.16. Other ethics counselors may be appointed by the General Counsel, the Judge Advocate General, the Director, Judge Advocate Division (Headquarters Marine Corps), or the Assistant General Counsel (Ethics).

(i) *Additional duties of senior officials.* The Commandant of the Marine Corps and the Chief of Naval Material, as appropriate, are responsible for bringing the contents of this instruction to the attention of the principal officers of each contractor doing significant business with the Department of the Navy. Chiefs and heads of commands, bureaus, and offices, commanding officers, and other senior officials shall periodically utilize the opportunity afforded by conferences with representatives of industry to direct attention to the regulations and policies set forth in this instruction.

§ 721.9 Personal financial disclosure.

The Department of the Navy maintains two separate and distinct financial disclosure reporting systems utilizing either DD Form 1555 or Standard Form 278. § 721.16 contains the detailed procedures and standards for the submission, review and custody of reports by affected naval personnel of their financial circumstances under both systems. Individuals required to file the SF–278 are not required to file DD Form 1555.

§ 721.10 Post employment restrictions.

Statutory and regulatory restrictions upon the activities of former or retired naval personnel are discussed in § 721.15 of this part and 5 CFR 737.

§ 727.11 Administrative enforcement of 18 U.S.C. 207.

A provision of the Ethics in Government Act of 1978, as amended (18 U.S.C. 207(j)), requires that each agency establish administrative procedures for the enforcement of the post employment restrictions imposed by 18 U.S.C. 207 (a)–(c). The procedures established for the Department of the Navy are contained in § 721.17. They provide that any former officer of employee, after opportunity to be heard, who is found to have violated any such restriction may be barred from engaging in business with the Department of the Navy for a period of up to five years. The implementing Office of Personnel Management Regulations are contained in 5 CFR Part 737.

§ 721.12 Reporting of post-retirement employment.

(a) Each retired Regular officer of the Navy and Marine Corps shall keep the Department of the Navy advised of his or her postretirement employment activities. All retired Regular officers whose names have been on the retired list for three years or less shall file a statement of employment [DD FORM 1357]. All retired Regular officers whose names have been on the retired list for over three years are encouraged to use DD Form 1357 to report their postretirement employment activities. In any event, officers whose names have been on the retired list for more than three years shall, at a minimum, keep the Department of the Navy advised as to whether they are employed by any agency, instrumentality, or department of the United States, and, if so, the position title and employing agency. Each Regular officer retiring hereafter shall file this statement within 30 days after retirement. Whenever the information reported changes, each such officer shall make an appropriate report within 30 days of that change. The Comptroller of the Navy (for Regular Navy officers) and the Commandant of the Marine Corps (for Regular Marine Corps officers) shall advise each officer required to file of the continuing need to report postretirement employment activities as set forth above.

(b) To determine compliance with 37 U.S.C. 801(b) and 5 U.S.C. 5532, reports of postretirement employment shall be submitted:

(1) In the case of a retired Regular Navy officer, to the Commanding Officer, Navy Finance Center (Retired Pay Division), Cleveland, OH 44199; or

(2) In the case of a retired Regular Marine Corps officer, to the Commanding Officer, Marine Corps Finance Center, Kansas City, MO 64197.

(c) If an apparent violation of law or regulation is noted upon review of a report of postretirement employment, a copy of the report shall be transmitted to the Commander, Navy Accounting and Finance Center, or Commandant of the Marine Corps (Code FD), for appropriate action.

(d) The Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate, shall provide each Regular officer retiring hereafter, as part of the retirement check-out procedures, with clear instructions concerning the requirement under this instruction to report postretirement employment. These instructions should be combined, where applicable, with the instructions prescribed in SECNAVINST 5314.5A concerning the possible additional requirement to file reports of DOD and defense-related employment (DD Form 1787).

§ 721.13 Delegation of authority.

The General Counsel of the Navy is authorized to modify or supplement § 721.15, § 721.16, and § 721.17 of this instruction in a manner consistent with the policies set forth herein.

§ 721.14 Reports and forms.

(a) Symbol DD–SECNAV 5370–1 has been assigned to the Statement of Affiliations and Financial Interests Report submitted on form DD 1555. Symbol SECNAV 5370–2 has been assigned to the Financial Disclosure Report submitted on form SF 278.

(b) Forms are available as indicated: (1) DD 1357, Statement of Employment (Regular Retired Officers), from Commanding Officer, Navy Finance Center, Cleveland, Ohio 44199; (2) DD 1555, Confidential Statement of Affiliations and Financial Interests (DOD Personnel), stock number 0102–LF–001–550, from Ethics Counselor or through normal channels in accordance with NAVSUP P–2002; (3) DD 1787, Report of Report of DOD and Defense Related Employment, stock number 0102LF–025–5090, from Ethics Counselor or through normal supply channels in accordance with NAVSUP F–2002; (4) OPM 1401, Request to Inspect or Review copies of SF 278, Financial Disclosure Report, from Ethics Counselor; (5) SF 278, Executive Personnel Financial Disclosure Report, stock number 7540–01–070–8444, from Ethics Counselor or Local GSA Stores.

§ 721.15 Digest of Laws

(a) *Conflict of interest laws applicable to present officers and employees.*—(1) *18 U.S.C. 203.* This statute prohibits a Government employee from soliciting or receiving compensation for a representation by himself or another before any federal agency while he is a Government employee.

(2) *18 U.S.C. 205.* (i) This statute prohibits Government personnel from acting as agent or attorney for anyone else before a department, agency, or court in connection with any particular matter in which the United States is a party or has a direct and substantial interest.

(ii) The following exemptions are allowed:

(A) 18 U.S.C. 205 does not prevent Government personnel from giving testimony under oath or making statements required to be made under penalty of perjury or contempt or from representing another person, without compensation, in a disciplinary, loyalty, or other personnel matter.

(B) 18 U.S.C. 205 also authorizes a limited waiver of its restrictions and those of 18 U.S.C. 203 for the benefit of an officer or employee, including a special Government employee, who represents his or her own parents, spouse, or child, or a person or estate he or she served as a fiduciary. The waiver is available only if approved by the official making appointments to the position. In no event does the waiver extend to representation of any such person in matters in which the employee has participated personally and substantially or that, even in the absence of such participation, are the subject of his or her official responsibility.

(C) Finally, 18 U.S.C. 205 gives the head of a department or agency the authority to allow a special Government employee to represent his or her regular employer or other outside organization in the performance of work under a Government grant or contract if the department or agency head certifies and publishes in the **Federal Register** that the national interest requires such representation.

(3) *18 U.S.C. 208.* (i) Subsection (a) of 18 U.S.C. 208 requires executive branch personnel to refrain from participating in an official capacity in any particular matter in which they, their spouses, minor children, or partners have financial interests. It also prohibits such participation in particular matters in which businesses or nonprofit organizations with which such personnel are connected or are seeking employment have financial interests. A "particular matter" may be less concrete than an actual contract, but is something more specific than rule making or abstract scientific principles. The test is whether the individual might reasonably anticipate that his or her Government action, or the decision in which he or she participates or with respect to which he or she advises, will have a direct and predictable effect upon such financial interests.

(ii) Subsection (b) of 18 U.S.C. 208 permits agencies to grant an ad hoc exemption from subsection (a) of the statute if the outside financial interest is deemed not substantial enough to affect the integrity of Government services. Categories of financial interests may also be made nondisqualifying by a general regulation published in the **Federal Register.**

(4) *18 U.S.C 209.* Subsection (a) of 18 U.S.C. 209 prevents executive branch personnel from receiving, and anyone from paying them, any salary or

supplementation of salary from a private source as compensation for their Government service. Subsection (b) of the statute permits participation in a bona fide pension plan or other employee welfare or benefit plan maintained by a former employer. Subsection (c) of this statute exempts special Government employees and anyone serving the Government without compensation. Subsection (d) of the statute exempts contributions, awards, or other expenses under the Government Employees Training Act (5 U.S.C. 4101–18).

(5) *37 U.S.C. 801(a).* A Regular Navy or Regular Marine Corps officer on active duty (including terminal leave) may not be employed by anyone furnishing naval supplies or war materials to the United States. If such an officer is so employed he or she is not entitled to any payment from the United States during that employment.

(b) *Conflict of interest laws applicable to former Government officers and employees.*—(1) *18 U.S.C. 203.* This statute makes it a criminal offense for a former Government employee to share in any fees rendered as compensation for representation before any Government agency in relation to a particular matter in which the United States is a party or has a direct and substantial interest, regardless of whether it was before the agency of which the individual is a former employee during the period of his or her Government service. It covers compensation received only in connection with actual or constructive appearances before an agency. This section does not apply to former Government employees who receive a fixed salary, as opposed to a share of profits, as compensation for their services. It is of concern primarily to professional employees who leave Government service to join an existing partnership.

(2) *18 U.S.C. 207(a) and (b)(i), applicable to all former Government officers and employees.* (i) Subsection (a) of 18 U.S.C. 207 permanently bars a former officer or employee from acting as agent or attorney for anyone other than the United States in connection with any particular matter involving a specific party or parties in which the United States is interested and in which the individual participated personnally and substantially in his or her governmental capacity. Subsection (a) similarly bars written or oral communications to the Government or its employees with regard to such matters. The legislative history of this provision makes it clear that it does not preclude post employment activities that may be characterized as rendering aid or assistance but not as acting in a representational capacity. Thus, it does not prohibit a former officer or employee from doing in-house work for an organization under a Government contract or grant that he or she negotiated on behalf of the Government, so long as the former officer or employee does not represent the organization in any dealings, formal or informal, with the Government or its employees relating to that contract or grant. In addition, the phrase "involving a specific party or parties" is interpreted as limiting the particular matters in which the former Government employee may not participate to those specific proceedings, generally adversarial in nature, that affect the legal rights of the parties involved. A former Government officer or employee, therefore, would not be barred by subsection (a) from acting as agent or attorney in connection with a particular matter governed by general rules or policies that he or she had a role in establishing, so long as the particular matter itself was not one in which he or she had participated as a Government officer or employee.

(ii) Subsection (b)(i) of 18 U.S.C. 207, as revised by the Ethics in Government Act, imposes a two-year ban against representational activities identical to those covered by subsection (a) of the statute as to all particular matters that were actually pending under the former officer's or employee's official responsibility during his or her last year of Government service, but in which the employee was not personally and substantially involved.

(iii) Past participation in, or official responsibility for, general rule making, the formulation of general policy or standards, or other similar matters does not preclude representational activities. Similarly, in the scientific field, past participation in discussions of scientific or engineering concepts, the feasibility of scientific or technical accomplishments, or proposed Government programs in their early stages, prior to the formulation of a contract or a contract proposal where specific parties become involved in a matter, does not disqualify former Government personnel from representation with respect to a contract entered into at a later time even though the same general scientific matters may be involved in such a contract.

(iv) *Exemptions under 18 U.S.C. 207* Former officers or employees may be exempted from the restrictions of Section 207 if the Secretary, in consultation with the Director, Office of Government Ethics, executes a certification published in the **Federal Register** finding that (A) the former officer or employee possesses outstanding qualifications in a scientific, technological, or other technical discipline, (B) the former officer or employee would be acting with respect to a particular matter requiring such qualifications, and (C) to do so would serve the national interest.

(v) *Implementing regulations.* The complete text of the Office of Personnel Management Regulations implementing 18 U.S.C. 207 (as revised by the Ethics in Government Act) are contained in 5 CFR Part 737. These regulations apply to the extent specified therein to all former Government employees who left Government service after June 30, 1979.

(3) *18 U.S.C 207(b)(ii) and (c), applicable to former "senior" Government officers and employees.* (i) "Senior employees" are Federal officers or employees who are (A) in positions at Levels I through V of the Executive Schedule, (B) active duty commissioned officers assigned to pay grade O–9 or above, and (C) other flag and general officers and members of the Senior Executive Service in "senior" positions designated by the Director, Office of Government Ethics. For a position to have been so designated, it must have been determined that it involves "significant decision-making or supervisory responsibility." Further, the position must be in the Senior Executive Service or have a basic rate of pay at least equal to GS–17, step 1, or be at military pay grades O–7 or O–8.

(ii) Subsection (b)(ii) of this statute bars former senior employees, for a period of two years after terminating their employment, from assisting in the representation of another person by "personal presence" at an "appearance" before the United States in connection with any particular matter in which the former senior employee could not act as the person's actual representative because of his or her personal and substantial participation in the matter while in Government service. This provision is designed to prevent a former senior employee from appearing to lend personal influence in the resolution of a matter in which he or she was previously personally and substantially involved, simply by being there. A violation of this subsection might occur when the topic of conversation during an appearance shifts from one in which the former senior employee *was not* personally and substantially involved to one in which he or she *was* so involved and when such a shift was likely. The subsection

does not, however, bar assisting in the preparation for negotiations, hearings, and similar transactions, so long as such assistance occurs in a context not involving the personal presence of the former senior employee at an appearance before the Government.

(iii) Subsection (c) of this statute precludes a former senior Government employee, for a period of one year after terminating his or her employment, from representing anyone vis-a-vis his former agency (the Department of the Navy) or its officers or employees, whether by formal or informal appearance, or by written or oral communications intended to influence the former employing agency. This restriction pertains to all particular matters regardless of prior involvement, and without regard to whether or not a specific party is involved, if the matter is one that is pending before the agency, or if it is one in which the agency has a direct and substantial interest.

(iv) Subsection (c) further precludes attempts to influence rule making or policy formulation, since the matters covered need not involve specific parties, and also includes self-representation. It is limited to contacts with the employing agency, however; the former senior employee may appear before, or attempt to influence any other part of Government if not otherwise precluded by subsections (a), (b)(i) or (b)(ii). There are, furthermore, a number of exceptions to the restriction such as (A) purely social or informational communications, (B) transmission of filings that do not require governmental action, (C) personal matters, (D) self-representation in connection with a judicial or administrative proceeding to which the former senior employee is an involuntary party, (E) expressions of personal views where the former employee has no direct or distinctive indirect pecuniary interest, (F) responses to requests to the former employee for information by the former agency, and (G) participation as the principal researcher or investigator under Government grants.

(v) In addition to the foregoing exceptions, regarding (A) former senior employees who become elected officials of state or local governments, or (B) former senior employees whose subsequent principal occupation or employment is with a state or local government, with an institution of higher education, or with a hospital or medical research organization, the restriction contained in subsection (c) of this statute does not apply to appearances, communications, or other representation on behalf of such government, institution, hospital, or organization.

(c) *Summary of laws particularly applicable to retired Regular officers.*

(1) Prohibited activities. (i) *Claims.* A retired Regular officer of the Armed Forces may not, within two years of retirement, act as agent or attorney for prosecuting any claim against the Government, or assist in the prosecution of such a claim or receive any gratuity or any share of or interest in such a claim in consideration for having assisted in the prosecution of such a claim if such a claim involves the military department in whose service he or she holds a retired status. Nor may a Regular retired officer at any time act as an agent or attorney for prosecuting any claim against the Government, or assist in prosecution of such claim, or receive any gratuity, or any share of or interest in such claim in consideration for having assisted in the prosecution of such claim, if the claim involves any subject matter with which he or she was directly connected while on active duty (see 18 U.S.C. 283).

(ii) *Selling.* (A) A retired Regular officer is prohibited, at all times, from representing any person in the sale of anything to the Government through the military department in whose service he or she holds a retired status (see 18 U.S.C. 281).

(B) Payment may not be made from any appropriation to an officer on a retired list of the Regular Army, the Regular Navy, the Regular Air Force, the Regular Marine Corps, the Regular Coast Guard, the National Oceanic and Atmospheric Administration, or the Public Health Service, for a period of three years after his or her name is placed on that list, if that officer is engaged for himself, herself, or others in selling, or contracting or negotiating to sell, supplies or war materials to an agency of the Department of Defense, the Coast Guard, the National Oceanic and Atmospheric Administration, or the Public Health Service [see 37 U.S.C. 801(b)].

(C) For the purposes of 37 U.S.C. 801(b), "selling" means:

(*1*) Signing a bid, proposal, or contract;

(*2*) Negotiating a contract;

(*3*) Contacting an officer or employee of any of the foregoing departments or agencies for the purpose of:

(*a*) Obtaining or negotiating contracts,

(*b*) Negotiating or discussing changes in specifications, price, cost allowances, or other terms of a contract, or

(*c*) Settling disputes concerning performance of a contract: or

(*4*) Any other liaison activity with a view toward the ultimate consummation of a sale, although the actual contract therefor is subsequently negotiated by another person.

(iii) Neither these statutes nor this instruction preclude a retired Regular officer from accepting employment with private industry solely because his or her employer is a contractor with the Government.

(d) *Other laws applicable to present or former DOD personnel.* (1) There are legal prohibitions concerning the following activities which may subject present and former DOD personnel to criminal or other penalties:

(i) Aiding, abetting, counseling, commanding, inducing, or procuring another to commit a crime under any criminal statute (see 18 U.S.C. 201).

(ii) Concealing or failing to report to proper authorities the commission of a felony under any criminal statute if such personnel knew of the actual commission of the crime (see 18 U.S.C. 4).

(iii) Conspiring with one or more persons to commit a crime under any criminal statute or to defraud the United States, if any party to the conspiracy does any act to effect the object of the conspiracy (see 18 U.S.C. 371).

(iv) Lobbying with appropriated funds (see 18 U.S.C. 1913).

(v) Disloyalty and striking (see 5 U.S.C. 7311, 18 U.S.C. 1918).

(vi) Disclosure of classified information (see 18 U.S.C. 798, 50 U.S.C. 783); and disclosure of confidential information (see 18 U.S.C. 1905).

(vii) Habitual use of intoxicants to excess (see 5 U.S.C. 7352).

(viii) Misuse of a Government vehicle (see 31 U.S.C. 1349).

(ix) Misuse of the franking privilege (see 18 U.S.C. 1719).

(x) Deceit in an examination or personnel action in connection with Government employment (see 18 U.S.C. 1917).

(xi) Committing fraud or making false statements in a Government matter (see 18 U.S.C. 1001).

(xii) Mutilating or destroying a public record (see 18 U.S.C. 2071).

(xiii) Counterfeiting and forging transportation requests (see 18 U.S.C. 508).

(xiv) Embezzlement of Government money or property (see 18 U.S.C. 641); failing to account for public money (see 18 U.S.C. 643); and embezzlement of the money or property of another person in the possession of an employee by reason of his or her Government employment (see U.S.C. 654).

(xv) Unauthorized use of documents relating to claims from or by the Government (see 18 U.S.C. 285).

(xvi) Certain political activities (see 5 U.S.C. 7321–27 and 18 U.S.C. 602, 603, 606, and 607). These statutes apply to civilian employees; regulations govern military personnel.

(xvii) Any person who is required to register under the Foreign Agents Registration Act of 1938 (see 18 U.S.C. 219) may not serve the Government as an officer or employee. The section does not apply to (A) Reservists who are not on active duty or who are on active duty for training, or (B) a special Government employee in any case in which the department head certifies to the Attorney General that his or her employment by the United States Government is in the national interest.

(xviii) Soliciting contributions for gifts or giving gifts to superiors, or accepting gifts from subordinates (see 5 U.S.C. 7351).

(xix) Acceptance of excessive honoraria [see 2 U.S.C. 441 (i)]

(xx) Acceptance, without statutory authority, of any office or title, of any kind whatever, from any king, prince, or foreign state by any person holding any office of profit or trust of the Federal Government, including all retired military personnel. (U.S. Const. Art. I, section 8).

(xxi) Civilian presidential appointees occupying full-time positions, appointment to which are required to be made by the President, by and with the advice and consent of the Senate, may not have in any calendar year outside earned income attributable to such calendar year that is in excess of 15 percent of their Government salary (see 5 U.S.C. app. 210).

(xxii) Commission of prohibited personnel practices (see 5 U.S.C. 2302).

(xxiii) Acceptance of gifts and decorations (awards) from foreign governments or agents and representatives thereof (5 U.S.C. 7342).

§ 721.16 Submission and processing of reports of financial circumstances (SF–278 and DD Form 1555).

(a) *Purpose.* This section implements the requirement and contains the procedures and standards for the submission, review and custody of Financial Disclosure Reports (SF–278) and Confidential Statements of Affiliations and Financial Interests (DD Form 1555) within the Department of the Navy and identifies those who must file such reports.

(b) *Standards for review of reports of financial circumstances (SF–278 and DD Form 1555).* Each reviewing official shall review each report or statement submitted to determine that:

(1) All items are completed. For SF–278's, see Title II of the Ethics in Government Act of 1978, 5 U.S.C. app. 201 et seq., and the Office of Personnel Management regulations promulgated thereunder, 5 CFR Part 734.

(2) No interest or position is disclosed that violates or appears to violate:

(i) Any applicable provision of law contained in § 721.15; and

(ii) The provisions of this instruction.

(3) A reviewing official shall not sign and date a statement of financial circumstances until the foregoing determination has been made.

(c) *Deputy ethics officials.* Incumbents of the following positions have been appointed deputy ethics officials and have been delegated authority by the General Counsel of the Navy to act for the General Counsel in finally reviewing, acting upon, and maintaining the Department's file of Financial Disclosure Reports (SF–278) and is resolving issues referred to them by commanding officers, other heads of activities or ethics counselors with regard to Confidential Statements of Affiliations and Financial Interests (DD Form 1555): The Judge Advocate General, with respect to Navy officers; The Director, Judge Advocate Division (Headquarters Marine Corps), with respect to Marine Corps officers; and The Assistant General Counsel (Ethics), with respect to civilian employees other than presidential appointees. In exercising this authority they shall comply with applicable statutes, regulations published by the Office of Personnel Management, and additional guidance issued by the Office of Governemnt Ethics or the General Counsel.

(d) *Ethics counselors.* Incumbents of the following positions have been designated ethics counselors and have been delegated authority to initially review Financial Disclosure Reports (SF–278) and to finally review Statements of Affiliations and Financial Interests (DD Form 1555) submitted by other naval personnel within their organization, activity, or geographical area: Counsel for the Comptroller of the Navy; Counsel for the Systems and Facilities Engineering Commands; Counsel for the Military Sealift Command; Counsel for the Office of Naval Research; Counsel for the Naval Data Automation Command; Counsel in charge of Office of the General Counsel field and branch offices; Counsel for the Commandant of the Marine Corps; Deputy Judge Advocate General and Assistant Judge Advocates General; Deputy Assistant Judge Advocate General (Civil Affairs); Special Counsel to the Chief of Naval Operations (OP–OOJ); Assistant for Legal and Legislative Matters, Office of the Chief of Naval Operations (OP–09BL); Special Assistant for Law, Office of the Naval Inspector General (OP–008F); Legal Advisor to the Deputy Chief of Naval Operations (Plans, Policy and Operations) (OP–616B); Special Assistant for Medico-Legal Affairs to the Director of Naval Medicine/Surgeon General; Special Assistant for Legal Support to the Commander, Naval Medical Command; Legal Counsel, Naval Military Personnel Command; Staff and force judge advocates on the staffs of all commands having general courtmartial convening authority; Commanding officers of Naval Legal Service Offices; and Other ethics counselors who may hereafter be so designated by the General Counsel, the Assistant General Counsel (Ethics), the Judge Advocate General, or the Director, Judge Advocate Division (Headquarters Marine Corps).

(e) *Naval executive personnel.* The term "naval executive personnel" includes those naval personnel whose rank or position places them in one of the following categories:

(1) Civilian presidential appointees;

(2) Regular Navy and Marine Corps officers who have been appointed (with dates of rank) to grade O–7 or above;

(3) Reserve Navy and Marine Corps officers, serving on voluntary extended active duty in excess of 130 days, who have been appointed (with dates of rank) to grade 0–7 or above;

(4) Reserve officers, serving as special Government employees, i.e., on active duty for training, in excess of 60 days in any calendar year and whose basic rate of pay is equal to or exceeds the uncapped rate of basic pay fixed for GS–16, step 1;

(5) Members of the Senior Executive Service;

(6) Other civilian employees, including special Government employees, whose positions are classified at GS–16 or above of the General Schedule prescribed by 5 U.S.C. 5332 (which excludes career civilian employees whose positions are classified at or below GS/GM–15) or whose rate of basic rate of pay is fixed other than under the General Schedule at a rate equal to or greater than the uncapped rate of basic pay fixed for GS–16;

(7) Civilian employees who are not members of the Senior Executive Service but who are detailed to a Senior Executive Service position for more than 60 days in any calendar year; and

(8) Employees in the excepted service in positions which are of a confidential or policy-making character unless they have been excluded by the Director, Office of Government Ethics. See Chapter 213 of the Federal Personnel Manual and 5 CFR 734.203.

(f) *Nomination reports (SF–278).* Within five days of transmittal by the President to the Senator of a nomination of an individual to a civilian position, appointment to which requires the advice and consent of the Senate, the individual so nominated shall submit an SF–278 directly to the General Counsel of the Navy. The report shall contain the information prescribed in the "Instructions" attached to the SF–278. These reports shall be certified personally by the General Counsel as Designated Agency Ethics Official, or in his or her absence by the Alternate Designated Agency Ethics Official, and thereupon processed as prescribed in 5 CFR 734.604(c) Nomination reports are not required of military officers nominated for promotion to 0–7 or 0–8 level flag or general officer grades.

(g) *Special reviewing requirement in the case of 0–9 and 0–10 level flag and general officer nominees.* As part of the process for approving nominees for appointment to 0–9 and 0–10 level flag or general officer positions, the Secretary of the Navy must ensure that the nominee has a current SF–278 on file and that the form has been reviewed in relation to the position for which he or she is being considered. Further, the Secretary of the Navy is required to cause a review of all relevant systems of records maintained by the Department of the Navy, including investigative files, to determine if there is any evidence that the nominee has violated the standards of conduct. Each such nomination forwarded to the Secretary of Defense must be accompanied by a certification of the Secretary of the Navy that the required review has been conducted and that the review has or has not disclosed a violation of the standards of conduct.

(h) *New entrant reports (SF–278).* Within 30 days of first assuming a naval-executive-personnel rank or position, a reporting individual shall submit an SF–278 in the same manner prescribed in paragraph (i)(2) of this section. The report shall contain that information prescribed for new entrant reports in the "Instructions" attached to the SF–278. No such report is necessary if the reporting individual has left another position requiring the submission of an SF–278 within 30 days prior to assumption of the new position, or has submitted an SF–278 as a nominee for the new position within 30 days of assuming it. As special Government employees, Reserve officers (as defined in paragraph (e)(4) of this section) commencing active duty for training are initially exempt from this reporting requirement. If, however, such an officer performs active duty for training in excess of 60 days in a calendar year, whether or not in a pay status, a report shall be filed within 15 days after serving the sixty-first day. New entrant reports shall be reviewed and forwarded by the appropriate supervisor and ethics counselor in the same manner as annual reports (see paragraph (i) of this section).

(i) *Annual Financial Disclosure Report (SF–278).*

(1) *Execution and signature.* At any time after 1 January, but not later than 1 May, naval executive personnel who served as such for more than 60 days during the preceding calendar year shall submit an annual Financial Disclosure Report. These reports are to be completed in accordance with the "Instructions for Completing SF–278" attached thereto. Even though no changes have occurred since the last filing of an SF–278, a complete report is required for each calendar year. Military officers newly promoted to the grade of O–7 and having dates of rank after 1 November of the preceding calendar year need not file an annual report. Their attention, however, is directed to paragraph (h) of this section.

(2) *Submission.* (i) SF–278's shall be submitted as follows:

(A) Civilian presidential appointees, to the General Counsel of the Navy;

(B) Other naval executive personnel assigned to positions within the Department of the Navy, to their appropriate supervisor for review and forwarding;

(C) Navy and Marine Corps officers serving in the various Defense agencies (e.g., DNA, DCA, DMA, DLA, DIA), or in the Central Intelligence Agency, to the Designated Agency Ethics Officials of those agencies;

(D) Navy and Marine Corps officers serving in the Office of the Secretary of Defense, the Organization of the Joint Chiefs of Staff, National Security Council, National Aeronautics and Space Administration, or in other assignments outside of the Department of the Navy not specifically mentioned in this paragraph, via their appropriate supervisor, to the Director for Personnel and Security, Washington Headquarters Services (OSD); and

(E) Navy and Marine Corps officers serving in joint, unified or specified commands, through their superiors for processing in accordance with procedures adopted by the unified, specified, or joint commander.

(ii) Naval executive personnel who are double or triple "hatted" shall meet the filing requirements of each position independently of the other.

(3) *Initial action by appropriate supervisor.* When a report is submitted, the appropriate supervisor shall attach to the report an unclassified copy of the official position description and thereupon forward both documents to the cognizant ethics counselor.

(4) *Ethics counselor.* —(i) *Review.* The ethics counselor shall review the report in accordance with the standards set forth in paragraph B. Ethics counselors need not audit reports to ascertain whether the facts reported therein are accurate. They may be taken at face value unless there is an apparent omission or ambiguity, or the ethics counselor has independent knowledge of matters at variance with the report.

(ii) *Disposition by ethics counselor.* (A) If the ethics counselor concludes that no actual or apparent violation of law or regulation is disclosed, he or she shall enter the following endorsement in the "Comments" section of page 1 of the report: "The information contained in this report discloses no conflict of interest under applicable laws and regulations." The ethics counselor shall thereupon date and sign the report with full name, command or activity, and the title "Ethics Counselor," and forward it to the cognizant deputy ethics official.

(B) If the ethics counselor concludes that no violation is disclosed but that the reporting individual has a direct or indirect financial interest or affiliation which, given other circumstances or different duties and responsibilities within the Department, might give rise to a conflict of interest, he or she shall issue a memorandum of caution to the reporting individual. One copy of the memorandum of caution shall be delivered to the appropriate supervisor and a second copy attached to the SF–278. Thereafter, the ethics counselor shall endorse and forward the report in the manner provided in paragraph (i)(4)(ii)(A) of this section.

(C) If the ethics counselor concludes that the information contained in the report discloses an actual or apparent violation of applicable law or regulation, he or she shall so state by making an appropriate endorsement on page 1 of the report and return the report to the appropriate supervisor.

(5) *Appropriate supervisor review.* If an ethics counselor returns to an appropriate supervisor an SF–278 containing an endorsement indicating an

actual or apparent conflict of interest, the appropriate supervisor shall review the report in accordance with the standards set forth in paragraph (b) of this section.

(i) If the appropriate supervisor concludes that no actual or apparent conflict of interest is disclosed, he or she shall endorse, date, sign, and return the report to the ethics counselor. If the ethics counselor agrees with the conclusion of the appropriate supervisor, he or she shall forward the report to the cognizant deputy ethics official, noting concurrence. Otherwise, the matter shall be referred to higher authority within the command or activity for resolution, and the report, noting that resolution is pending, shall be forwarded to the cognizant deputy ethics official.

(ii) If the appropriate supervisor concludes that an actual or apparent conflict is disclosed, he or she shall issue a memorandum of disqualification to the reporting individual. One copy of the memorandum shall be delivered to the ethics counselor and a second copy attached to the SF–278. The appropriate supervisor shall endorse and forward the report to the cognizant deputy ethics official noting the disqualification in the endorsement.

(6) *Time limits for review and disposition.* Action by the ethics counselor and, if required, the appropriate supervisor, must be completed and the report forwarded to the cognizant deputy ethics official within 15 days of submission but not later than 15 May. If necessary to provide sufficient time to accomplish the required review, commanding officers and heads of activities may require subordinate naval executive personnel to submit their SF–278's prior to 1 May. When a filing extension has been granted in accordance with the procedures of paragraph (k) of this section and a report is received after 1 May, review shall be completed and the report forwarded no later than 15 days after the report is received by the appropriate supervisor

(j) *Termination reports (SF–278).* Within thirty days after termination of employment from a naval-executive-personnel position, a reporting individual shall submit an SF–278 in the same manner prescribed in paragraph (i)(2) of this section. Termination reports shall contain information covering the preceding calendar year, if an annual report was not filed for that year, and that portion of the present calendar year up to the date of termination of employment. A termination report is not required of an individual who, within 30 days of such termination, assumes another position requiring the submission of an SF–278. Termination reports shall be reviewed and forwarded by the appropriate supervisor and ethics counselor in the same manner as annual reports.

(k) *Extension of filing deadlines (SF–278).* (1) The General Counsel, in the case of civilian presidential appointees, and the cognizant deputy ethics official in other cases (the cognizant Designated Agency Ethics Official in the case of those flag officers serving in entities identified in paragraphs (i)(2) (i)(3) and (5) of this section, may grant, for good cause, a filing extension of up to 45 days. All requests for extensions shall be submitted in writing to the cognizant official. A copy shall be provided concurrently to the appropriate supervisor and cognizant ethics counselor. The request shall contain a clear statement of the reasons for the request and shall be submitted well in advance of the original filing deadline. The Director, Office of Government Ethics may grant a further extension of up to 45 days. Requests necessitating such a further extension of time shall be forwarded by the cognizant official, with his or her comments attached thereto, to the Director, Office of Government Ethics.

(2) Reporting individuals who anticipate termination of their employment on or before 1 September of any given calendar year may request an extension from the cognizant official of up to 90 days in order to file one consolidated annual and termination report. Combined annual and termination reports must be filed within 30 days after termination of employment but not later than 30 July. No further report is required unless a reportable event occurs between the dates of filing and termination of employment.

(l) *Special instructions (SF–278).* (1) The Under Secretary of the Navy, the Chief of Naval Operations, and the Commandant of the Marine Corps shall ensure that by 10 January of each year, the directors of civilian personnel offices provide to commanding officers and heads of activities served by their offices a list of the names and addresses of civilian naval executive personnel assigned to their respective organizations who are required to file an annual Financial Disclosure Report (SF–278) pursuant to paragraph (i) of this section. They shall similarly ensure that the directors of civilian personnel offices provide to commanding officers and heads of activities served by their offices the names and addresses of civilian naval executive personnel assigned to their respective organizations who are required to file new entrant or termination Financial Disclosure Reports pursuant to paragraphs (h) and (j) of this section. This information shall be provided immediately upon the appointment of such personnel to a naval-executive-personnel position or upon receipt of an SF–52 requesting approval of the reitrement, resignation, or removal of an individual from such a position. Copies of these lists shall also be provided concurrently to the Assistant General Counsel (Ethics).

(2) Commanding officers or heads of activities shall provide timely, written notification and an SF–278, individually, to all civilian naval executive personnel under their cognizance whenever such personnel are required to file a new entrant, annual, or termination Financial Disclosure Report and shall ensure that all such reports are timely filed. They shall further provide to the Assistant General Counsel (Ethics) for appropriate action the names and addresses of all civilian naval executive personnel who continue to fail to submit any such report for more than thirty days after the required date of filing. See paragraph (m) of this section.

(3) The Judge Advocate General or the Director, Judge Advocate Division (Headquarters Marine Corps), as appropriate, shall provide timely, written notification and an SF–278, individually, to all flag and general officers whenever they are required to submit a new entrant, annual, or termination Financial Disclosure Report.

(4) The Under Secretary of the Navy, the Chief of Naval Operations, and the Commandant of the Marine Corps shall ensure that agreements with other DOD components and Government agencies involving detailing of Department of the Navy executive personnel contain a requirement that the other DOD component or Government agency shall forward to the cognizant Navy deputy ethics official a copy of the detailed individual's finally reviewed Financial Disclosure Reports, including a statement as to the resolution of any conflict or apparent conflict of interests indicated.

(m) Penalty for failure to file SF–278. In addition to sanctions otherwise provided by law or regulation, the Ethics in Government Act of 1978 provides for a fine of up to $5,000 for anyone who knowingly falsifies or willfully fails to file an SF–278.

(n) *Availability of SF–278.* Supplies of SF–276 are available from ethics counselors and GSA Supply Distribution Facilities under Stock Number 7540–01–070–8444.

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(o) *Confidential Statements of Affiliations and Financial Interests (DD Form 1555).*—(1) *Personnel required to file.* The following naval personnel, except those required to file SF–278, are required to submit initial and annual Confidential Statements of Affiliations and Financial Interests (DD Form 1555):

(i) Regular Navy and Marine Corps officers frocked to 0–7, and Reserve Navy and Marine Corps officers frocked to 0–7 serving on voluntary extended active duty in excess of 130 days;

(ii) Commanding officers or heads of, and executive officers or deputy heads of:

(A) Navy shore installations with 500 or more military and civilian personnel (including foreign national and indirect-hire personnel regularly attached but excluding personnel attached for duty under instruction); and

(B) All Marine Corps bases and air stations;

(iii) Civilian personnel classified at GS–13 or above, or whose positions are classified at a comparable rate of pay under other authority, and military personnel in grades 0–5 and 0–6, when it is determined by the commanding officer or head of the activity that the responsibilities of such personnel require the exercise of judgment in making a Government decision or in taking Government action in regard to activities in which the final decision or action may have a significant economic impact on the interests of any non-federal entity. Included, among others, are persons who, as part of their basic duties, sign, negotiate, recommend, or approve contracts, or other procurement actions and those who, as part of their basic duties, are engaged in auditing activities, including supervising others who are engaged in auditing activities or participating in the development of policies and procedures for performing audits;

(iv) Other civilian and military personnel of lesser rank or grade, if their commanding officer or head of activity determines that their responsibilities are comparable to those set forth in subparagraph (o)(1)(iii) of this section;

(v) Special Government employees, except those in the following categories (who may, in any case, be required to submit statements when specifically requested to do so by their appropriate supervisor):

(A) Special Government employees, other than members of advisory committees, who are not a "consultant" or "expert" as those terms are defined in Chapter 304 of the *Federal Personnel Manual;*

(B) Physicians, dentists, and allied medical specialists engaged only in providing service to patients;

(C) Veterinarians providing only veterinary services;

(D) Lecturers participating only in educational activities;

(E) Chaplains performing only religious services;

(F) Individuals in the motion picture and television fields who are utilized only as in DOD productions;

(G) Members of selection panels for NROTC candidates;

(H) Reserve officers on active duty solely for training.

(2) *Time of submission.*—(i) *Initial statement.* Affected naval personnel shall submit a DD Form 1555 to their appropriate supervisor within 30 days of assuming duties requiring the submission of such statements. The information shall be current as of the filing date. Upon transfer or reassignment from one position to another for which the filing of a statement is required, individuals shall submit a current statement to the appropriate supervisor of their new position.

(ii) *Annual statements.* Affected naval personnel shall submit a DD Form 1555 to their appropriate supervisor by 31 October of each year, with information current as of 30 September of that year. Even though no changes have occurred since the last filing, a complete statement is required.

(iii) *Extension of filing deadline.* When required by reason of duty assignment, infirmity, or other good cause, an appropriate supervisor, with the concurrence of the cognizant ethics counselor, may grant an extension of the filing deadline, not to exceed 45 days. Any annual statement filed after 31 October shall include an appropriate notation as to whether any extension of the filing deadline has been granted.

(p) *Review and disposition of DD Form 1555.*—(1) *Review.* Upon receipt of a Confidential Statement of Affiliations and Financial Interests, the appropriate supervisor shall review the statement in accordance with the standards set forth in paragraph (b) of this section, record his or her evaluation in the appropriate block on the form, and forward it to the cognizant ethics counselor for further review. If the ethics counselor agrees with the supervisor's evaluation, he or she shall note concurrence on the statement and return it to the appropriate supervisor for disposition in accordance with paragraph (p)(2) below. If the ethics counselor disagrees with the supervisor's evaluation, he or she shall forward a recommendation for appropriate resolution to the reporting individual's commanding officer or head of activity for implementation. If the commanding officer or head of activity disagrees with the recommendation of the ethics counselor and resolution of the matter is not achieved, the commanding officer or head of activity shall append his or her comments and recommendations to the record and forward the matter to the cognizant deputy ethics official who shall render a final decision. Local review and resolution of conflicts or apparent conflicts of interest disclosed in annual statements shall be accomplished by 30 November of each year and within 30 days after filing in cases where an extension has been granted and in the case of initial reports.

(2) *Disposition.* Confidential Statements of Affiliations and Financial Interests and a complete record of all action taken thereon shall be retained for a period of six years in a central location within the command or activity to which the reporting individual was assigned at the time of filing, after which time they may be destroyed.

(q) *Review of positions and notification to file (DD Form 1555).* Commanding officers and heads of activities shall ensure that position descriptions of individuals described in paragraphs (o)(1)(iii) and (o)(1)(iv) of this section contain a statement that the incumbent must file a Confidential Statement of Affiliations and Financial Interests. All new or revised position descriptions shall be reviewed to determine those requiring such statements. Any individual may request review of a decision requiring submission of a statement by him or her through established personnel of the Department. Additionally, commanding officers and heads of activities shall notify in writing naval personnel required to file Confidential Statements by 30 September of each year, and shall furnish a DD Form 1555 to them. Lists shall be maintained to ensure that all statements have been completed and returned by 31 October, or as otherwise specified when extensions have been granted.

(r) *Availability of DD Form 1555.* Supplies of DD Form 1555 are available from the Commanding Officer, Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, Pennsylvania 19120, under Stock Number 0102–LF–001–5550.

(s) *Privacy Act considerations.* Financial Disclosure Reports (SF–278) and Confidential Statements of Affiliations and Financial Interests (DD Form 1555) contain sensitive personal information. Completed SF–278's are

releasable to Govenment officers and employees and to the public, but only upon submission of a completed Request to Inspect or Receive Copies of SF-278, Financial Disclosure Report (OPM Form 1401) to the deputy ethics official having custody of the report. Naval personnel officially responsible within the chain of command for reviewing or approving a given individual's SF-278 need not submit such requests. Otherwise, care shall be exercised to ensure that completed SF-278's and DD Forms 1555 are seen only by personnel on a need-to-know basis in connection with their official duties. Adequate safeguards shall be utilized to prevent inadvertent or unauthorized disclosure of the completed forms and statements during review, transmittal, and storage. In addition, SECNAVINST 5211.5C prescribes other general restrictions and requirements applicable to the collection, use, and dissemination of these records, and contains Rules of Conduct under the Privacy Act which are applicable to all naval personnel.

(t) *Effect of disclosure.* The reporting of information or the filing of any report or statement of financial circumstances shall not be deemed to authorize the receipt of income, gifts, honoraria or reimbursements, the holding of assets, liabilities, or positions, or involvement in transactions otherwise prohibited by law, Executive Order, or regulation.

§ 721.17 Procedures for administrative enforcement of post employment restrictions of 18 U.S.C. 207.

(a) *Basic procedures.* The administrative enforcement of restrictions on post employment activities imposed by 18 U.S.C. 207 will be accomplished in accordance with 5 CFR 737.27 and these procedures.

(b) *Delegation of authority.* Authority to administer proceedings under these provisions is delegated to the General Counsel of the Navy with power to redelegate.

(c) *Initiation of administrative disciplinary hearing.* (1) On receipt of information regarding a possible violation of 18 U.S.C. 207, and after determining that such information is not frivolous, the General Counsel expeditiously shall provide such information, along with any comments, to the Director, Office of Government Ethics, and to the Criminal Division, Department of Justice, and shall coordinate any investigation or possible administrative disciplinary action with the Department of Justice. If that Department advises that it does not intend to institute criminal proceedings, such coordination shall no longer be required.

(2) Upon receipt of advice from the Department of Justice that it does not intend to institute criminal proceedings, in circumstances where it has been determined, after appropriate review, that there is reasonable cause to believe that a former Department of the Navy officer or employee (hereafter referred to as a "former employee") has violated 18 U.S.C. 207 (a), (b), or (c) or implementing regulations, the General Counsel will refer the case to the head of the activity where the alleged violation occurred. The activity head may initiate an administrative disciplinary proceeding by providing the former employee with notice of the alleged violation. The privacy of former employees shall be protected as to allegations made prior to a determination of sufficient cause to initiate an administrative disciplinary proceeding.

(d) *Content of notice.* (1) Notice must include:

(i) A statement of allegations, and the basis thereof, sufficiently detailed to enable the former officer or employee to prepare a defense;

(ii) Notification of the right to a hearing;

(iii) The procedure for requesting a hearing;

(iv) A statement to the effect that if the former employee fails to request such a hearing, the Department of the Navy may, nevertheless, take disciplinary action if the former employee is determined to have violated 18 U.S.C. 207.

(2) A copy of these Procedures for Administrative Enforcement shall be provided with this notice.

(3) *Request for a hearing.* (1) Any former employee who is notified of an alleged violation of 18 U.S.C. 207 pursuant to paragraph (c)(2) of this section may, within 20 days from the date of such notice, request a hearing by writing to the activity head who issued the notice.

(2) If the former employee fails to request a hearing in accordance with paragraph (c)(1) of this section, the activity head will notify the General Counsel who may, nevertheless, render a final administrative decision in the matter and, if appropriate, impose the sanctions specified in paragraph (k) of this section.

(f) *Hearing examiner.* (1) The presiding official shall be an individual to whom the General Counsel has delegated authority to make an initial decision (hereafter referred to as a "hearing examiner").

(2) A hearing examiner shall be an attorney with not less than five years experience in the practice of law subsequent to admission to the bar.

(3) A hearing examiner shall be impartial. An individual who has participated in any manner in the decision to initiate proceedings may not serve as a hearing examiner in those proceedings.

(g) *Time, date, and place of hearing.* (1) The hearing shall be held at a reasonable time, date, and place.

(2) The date of the hearing shall be established with due regard to the former employee's need for adequate time to prepare a defense properly and the need to resolve expeditiously allegations that may be damaging to his or her reputation.

(h) *Hearing Rights.* This subject of the hearing shall have, at a minimum, the following rights:

(1) To represent himself or herself, or to be represented by counsel;

(2) To introduce and examine witnesses, and to submit physical evidence;

(3) To confront and cross-examine witnesses;

(4) To stipulate as to facts not in issue;

(5) To present oral argument; and

(6) To receive a transcript or recording of the proceedings.

(i) *Burden of proof.* The Department of the Navy has the burden of proof. A violation is established only by a preponderance of the evidence.

(j) *Decision.* (1) Upon conclusion of the hearing, the hearing examiner shall make a determination exclusively upon matters of record in the proceeding, which determination shall be in the form of a written decision. This decision [hereafter referred to as the "initial decision"] shall include all findings of fact and conclusions of law relevant to the matters at issue, including possibly mitigating circumstances. In cases where a violation is found to have occurred, the initial decision shall also include a recommendation as to what measures would constitute appropriate action. The initial decision shall be transmitted to the General Counsel, via the activity head, and a copy shall be mailed or otherwise furnished to the affected former employee.

(2) Within 20 days following receipt of a copy of the initial decision, the former employee may file an appeal with the General Counsel. An appeal shall be in writing, and shall set forth all errors of fact, or law, or both, together with the reasons therefor, alleged to exist in the initial decision.

(3) Upon review of the initial decision, and any appeal timely filed, the General Counsel shall issue a written decision which shall be based solely upon the

record of the proceedings, or those portions thereof cited by the parties to limit the issues. If the General Counsel modifies or reverses the initial decision, findings of fact or conclusions of law that differ from those of the hearing examiner shall be specified. The decision of the General Counsel shall be deemed a final administrative determination.

(k) *Administrative sanctions.* The General Counsel may take appropriate disciplinary action in the case of any former employee found in violation of 18 U.S.C. 207 (a)–(c) or implementing regulations by:

(1) Prohibiting the former employee from making, on behalf of any other person, except the United States, any formal or informal appearance before, or, with the intent to influence, any oral or written communication to, the Department of the Navy, its officers or employees, on any matter of business, for a period not to exceed five years. This may be enforced by directing present officers and employees of the Department to refuse to participate in any such appearance, or to accept any such communication; and

(2) Taking other appropriate disciplinary action.

(l) *Judicial review.* Any person found in violation, as described, may seek judicial review of the final administrative determination.

§ 721.18 Bedrock standards of conduct for Department of the Navy Personnel.

(a) To maintain public confidence in the integrity of the Department of the Navy which is essential to the performance of its mission, all naval personnel shall comply with the standards of conduct listed in this section.

(b) Avoid any action, whether or not specifically prohibited, which might result in or reasonably be expected to create the appearance of:

(1) Using public office for private gain,

(2) Giving preferential treatment to any person or entity,

(3) Impeding Government efficiency or economy,

(4) Losing complete independence or impartiality,

(5) Making a Government decision outside official channels, or

(6) Adversely affecting the confidence of the public in the integrity of the Government.

(c) Do not engage in any activity or acquire or retain any financial interest which results in a conflict between your private interest and the public interest of the United States related to your duties.

(d) Do not engage in any activity that might result in or reasonably be expected to create the appearance of a conflict of interest.

(e) Do not accept gratuities from defense contractors.

(f) Do not use your official position to influence any person to provide any private benefit.

(g) Do not use inside information to further a private gain.

(h) Do not use your rank, title, or position for commercial purposes.

(i) Avoid outside employment or activity that is incompatible with your duties or may bring discredit to the Navy.

(j) Never take or use Government property or services for other than officially approved purposes.

(k) Do not give gifts to your superiors or accept them from your subordinates. (Consult § 721.6 for situations considered to fall outside this rule.)

(l) Conduct no official business with persons whose participation in the transaction would be in violation of law.

(m) Seek ways to promote efficiency and economy in Government operation and public confidence in its integrity.

Dated: February 14, 1985.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve; Federal Register Liaison Officer.

[FR Doc. 85–4881 Filed 3–5–85; 8:45 am]

BILLING CODE 3810-AE-M

POSTAL SERVICE

39 CFR Part 601

Procurement of Property and Services; Amendments to Postal Contracting Manual

AGENCY: Postal Service.

ACTION: Amendments to Postal Contracting Manual.

SUMMARY: The Postal Service announces that it is amending the Postal Contracting Manual to increase the rates for procurement of international mail transportation by water to reflect current marine operating costs.

EFFECTIVE DATE: February 15, 1985.

FOR FURTHER INFORMATION CONTACT: Eugene A. Keller, (202) 245–4818.

SUPPLEMENTARY INFORMATION: The Postal Contracting Manual, which is incorporated by reference in the Code of Federal Regulations (see 39 CFR 601.100), has been amended by the issue of PCM Circular 85–1, dated February 15, 1985.

In accordance with 39 CFR 601.105, notice of these changes is hereby published in the **Federal Register** and the text of the changes is filed with the Director, Office of the Federal Register. Subscribers to the basic manual will receive these amendments from the Postal Service. (For other availability of the Postal Contracting Manual, see 39 CFR 601.104.)

List of Subjects in 39 CFR Part 601

Government procurement, Postal Service, Incorporation by reference.

Explanation of Changes

Section 19–504 is revised to increase the rates for procurement of international mail transportation by water to reflect current marine operating costs. This revision supersedes the rates in PCM Circular 83–4, May 5, 1983, and in Section 19–504 of forthcoming Transmittal Letter 35.

(5 U.S.C. 552(a); 39 U.S.C. 401, 404, 410, 411)

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

[FR Doc. 85–5358 Filed 3–5–85; 8:45 am]

BILLING CODE 7710-12-M

39 CFR Part 601

Procurement of Property and Services; Cumulation of PCM Circulars into Postal Contracting Manual

AGENCY: Postal Service.

ACTION: Cumulation of PCM Circulars 82–1 through 84–3 into Postal Contracting Manual.

SUMMARY: Several years ago the Postal Service began a new and more expeditious method of amending the Postal Contracting Manual (PCM) by issuing PCM Circulars. Periodically all circulars previously issued are cumulated in a Transmittal Letter, noticed in the **Federal Register**, and transmitted to subscribers by GPO in the usual way. This document gives notice of the cumulation in Transmittal Letter 35 of PCM Circulars 82–1 through 84–3.

EFFECTIVE DATE: Transmittal Letter 35—August 15, 1984; Substantive changes to the PCM-date of each PCM Circular.

FOR FURTHER INFORMATION CONTACT: Eugene A. Keller, (202) 245–4818.

SUPPLEMENTARY INFORMATION: For the above reasons, the Postal Contracting Manual, which has been incorporated by reference in the Code of Federal Regulations (see 39 CFR 601.100), has been amended by the issuance of Transmittal Letter 35, dated August 15, 1984.

List of Subjects in 39 CFR Part 601

Government procurement, Postal Service.

PART 601—[AMENDED]

Accordingly, title 39 CFR Part 601 is amended by adding the following to § 601.105:

§ 601.105 Amendments to the Postal Contracting Manual.

Transmittal letter	Dated	Federal Register publication
35	Aug. 15, 1984	50 FR

(5 U.S.C. 552(a), 39 U.S.C. 401, 404, 410, 411, 2008)

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

[FR Doc. 85-5359 Filed 3-5-85; 8:45 am]

BILLING CODE 7710-12-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[CC Docket No. 81-893; File No. ENF 83-18; FCC 85-35]

Implementation of Detariffing of Customer Premises Equipment and Enhanced Services (Second Computer Inquiry); and American Telephone and Telegraph Co., Request for Approval To Supplement Capitalization of AT&T Information Systems in Connection With Transfers of Embedded Customer Premises Equipment

AGENCY: Federal Communications Commission.

ACTION: Memorandum opinion and order on reconsideration (MO&O).

SUMMARY: The MO&O reviews petitions for reconsideration of the Commission decision which established rules and requirements regarding the detariffing of customer premises equipment owned by AT&T. In the first report and order in CC Docket 81-893, released December 15, 1983, the Commission permitted AT&T to transfer to AT&T Information Systems (AT&T-IS) virtually all embedded CPE which AT&T received from the Bell Operating Companies (BOCs) as a result of the divestiture proceeding. Petitioners requested review of some of the conditions and requirements of that transfer. After review, the Commission affirmed its earlier decision with only minor changes in: (1) The procedure to ensure that customer service is not terminated due to failure to pay AT&T-IS's customer premises equipment charge; and (2) in the calculation of reimbursement expenses for refurbishment of equipment to be paid by AT&T-IS to the BOCs.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Geoffrey Jarvis, Rose Crellin, John Cimko (202) 632-9342.

SUPPLEMENTARY INFORMATION:

Memorandum Opinion and Order on Reconsideration

In the matter of procedures for implementing the detariffing of customer premises equipment and enhanced services (second computer inquiry) CC Docket No. 81-893; American Telephone and Telegraph Company, request for approval to supplement the capitalization of AT&T information systems in connection with the transfers of embedded customer premises equipment File No. ENF 83-18.

Adopted: January 18, 1985.
Released: January 29, 1985.

By the Commission.

I. Introduction

1. We have before us petitions for reconsideration of our decision [1] establishing rules and requirements regarding the detariffing of embedded customer premises equipment [2] (CPE) owned by American Telephone and Telegraph Company (AT&T). In the Order, we permitted AT&T to transfer to AT&T Information Systems (AT&T-IS) virtually all embedded CPE [3] which AT&T received from the Bell Operating Companies (BOCs) as a result of the divestiture proceeding. [4] The transfer was made subject to a number of conditions and requirements we established as a means of balancing the interests of ratepayers, investors, the telecommunications industry, and the public generally. [5] We have concluded, based upon our extensive review of these petitions and of oppositions, comments, replies, and other filings made in this proceeding, [6] that neither the basic principles nor the broad outline of the detariffing plan established in the *Order* is in need of any revision. We have found no reason to depart from our conclusion that the procedures and requirements established in the *Order* are the best means of implementing the objectives of *Second Computer Inquiry* [7] with regard to embedded CPE owned by AT&T.

A. Background

2. Our efforts in this proceeding to establish a program for the detariffing of embedded equipment owned by AT&T are part of our continuing implementation of deregulatory principles articulated in *Second Computer Inquiry*. In that proceeding, we made the finding that tariff regulation of CPE was no longer warranted because such regulation tended to thwart the competitive provision of CPE. *Final Decision*, 77 FCC 2d at 388. Our analysis of the CPE marketplace led us to conclude that there no longer was any justification for tariff regulation of carrier-provided CPE. *Id.* at 441; *see Reconsideration Order*, 84 FCC 2d at 65; *Further Reconsideration Order*, 88 FCC 2d at 513. [8] Our

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[1] CC Docket No. 81-893 & File No. ENF 83-18, Report and Order, 95 FCC 2d 1276 (1983) (hereinafter *Order*)

[2] For a definition of CPE which is subject to this proceeding, see *Order*, 95 FCC 2d at 1278 n.2. For a definition of embedded CPE, for purposes of this proceeding, see *id.* at 1279 n.5.

[3] The *Order* did not apply to embedded CPE used in mobile telephone service. The detariffing of this equipment has been ordered by the Commission in a separate Order. *See* CC Docket No. 81-893, Second Report and Order, FCC 84-209, 49 FR 27754 (released June 29, 1984). The *Order* also did not apply to specialized CPE designed for use by disabled persons. *See Order*, 95 FCC2d at 1329-30.

[4] See the Modified Final Judgment (MFJ) of the United States District Court for the District of Columbia (District Court) in *United States* v. *American Tel. & Tel. Co.*, 552 F.Supp. 131 (D.D.C. 1982, *aff'd sub nom. Maryland* v. *United States*, 460 S.CT. 1001 (1983) (hereinafter *United States* v. *AT&T*).

[5] See Part I.B, *infra*, for a summary of the provisions of the *Order*.

[6] A list of parties filing pleadings in this proceeding, together with a list of the acronyms and abbreviations used to refer to these parties in this Order, is attached as an Appendix to this Order. A summary of those pleadings has been placed in the docket of this proceeding.

[7] *Amendment of § 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry)*, 77 FCC 2d 384 (*Final Decision*), *reconsideration*, 84 FCC 2d 50 (1980) (*Reconsideration Order*), *further reconsideration*, 88 FCC 2d 512 (1981) (*Further Reconsideration Order*), *aff'd sub nom. Computer & Communications Industry Ass'n* v. *FCC*, 693 F.2d 198 (D.C.Cir 1982), *cert. denied sub nom. Louisiana Pub. Serv. Comm'n* v. *FCC*, *103 S.Ct 2109* (1983) (hereinafter *Second Computer Inquiry*).

[8] We have emphasized in this proceeding that the fostering of competition in the telephone equipment marketplace is an important Commission objective. *See* CC Docket No. 81-893, Notice of Proposed Rulemaking, 94 FCC 2d 76, 89 & n.23 (1983) (hereinafter *Notice*). Nearly 10 years ago we noted that: "[Our] decisions have permitted the terminal equipment market to evolve naturally into a multiple supplier market where competitors utilize state of the art technology and features to capture a portion of the market. In this environment there is no incentive for competitors to build and market terminal devices which are overpriced or so overbuilt that they are not affordable." FCC, *Report by the Federal Communications Commission on Domestic Telecommunications Policies*, Attachment B, at 67 (Sept. 27, 1976). It also is instructive to note that the District Court in the divestiture proceeding has recognized that the development of a competitive marketplace has directly benefitted CPE customers. The Court has indicated that "should [AT&T] * * * raise its rates, or fail to

Continued

assessment of the impact of competition upon the telephone equipment marketplace, however, did not prevent us from recognizing that special treatment would be necessary for embedded CPE in order to avoid significant dislocations which could result from immediate detariffing. *See Reconsideration Order*, 84 FCC 2d at 66. We arrived at the view that a phased approach to detariffing over a transition period was the surest means of continuing "progress towards a more competitive equipment environment * * *." *Id.* at 67.[9] These decisions and policies set the stage for our addressing directly, in the *Order*, the problems and issues surrounding the detariffing of AT&T embedded equipment.[10]

B. Summary of Order

3. After an extensive review of pleadings filed by more than fifty parties in this proceeding, we adopted the *Order* on November 23, 1983. The *Order* specified that a sale plan for embedded CPE, coupled with the transfer of the unsold portion of the embedded base to unregulated service, would serve as the foundation of the detariffing plan established in the *Order*, and also provided that net book value of AT&T's embedded base would be used as a surrogate for economic value for establishing sale prices during the transition period and for valuing the CPE transferred to AT&T–IS. We required that AT&T must disaggregate the embedded base on the basis of single-line and multi-line equipment for valuation and purchase price purposes. We also concluded that the detariffing plan established in the *Order* was fully consistent with the equitable principles established in *Democratic Central Committee*,[11] noting that the plan represented a workable means for detariffing embedded equipment under the unprecedented circumstances presented by the Bell System divestiture. We indicated that we would accept the AT&T plan for the detariffing of residence and business single-line CPE [12] and that we would permit all equipment in the multi-line base to be detariffed and transferred to AT&T–IS at divestiture. The *Order* specified, however, that the two-year transition period for product lines in the multi-line embedded base would be triggered only upon the offering for sale by AT&T–IS of the product line involved (if this sale offer did not occur at the time of divestiture.)

4. The *Order* provided that the national lease rates established by AT&T for embedded multi-line CPE would not apply until the product line involved was initially offered for sale by AT&T–IS, and the *Order* established a ceiling for lease rates which AT&T–IS could set for embedded multi-line CPE of a type which was not also leased as new equipment by AT&T–IS. The BOCs were permitted to provide billing and other support services to AT&T–IS on a compensatory basis, and AT&T–IS was permitted to obtain access to CPE customer-specific information. Access to non-CPE service information was restricted, and AT&T–IS was required to inform customers that they had the opportunity to obtain from AT&T–IS information regarding their leased embedded CPE. The *Order* required AT&T–IS to provide one year's notice before phasing out maintenance and support of particular product lines during the transition period, and to make available technical specifications and rights necessary for the support of phased-out products.

5. We required deferred tax reserves and unamortized investment tax credits associated with the Bell System embedded base to be transferred to AT&T–IS, and we concluded that intrasystem wiring owned by AT&T would not be detariffed and would not be transferred from the BOCs to AT&T–IS. The *Order* provided that CPE station handling costs in account 232, "Inside wiring," would not be added to net book value upon the removal of the CPE from regulated service, and the *Order* approved AT&T's proposed treatment of debt in its embedded CPE capitalization plan for AT&T–IS. We also required AT&T–IS to reimburse the BOCs for 50 percent of CPE refurbishment costs incurred by the BOCs during 1983, and we required AT&T–IS to provide reimbursement to the BOCs for 50 percent of the original cost of expensed assets acquired in 1983 and for 50 percent of the unallocated balance of 1983 exempt materials expenses

C. Issues Before the Commission

6. Petitions for reconsideration of the *Order* and other pleadings have been filed by numerous parties.[13] A few petitioners challenge the sufficiency of the sale and transfer plan established in the *Order*. One party, for example, objects to the use of net book value as a valuation standard for AT&T's embedded base, and argues that the aggregated valuation approach taken by the *Order* is deficient. Other petitioners suggest that the detariffing plan fails to meet the requirements set forth in *Democratic Central Committee*. Most commenters, however, accept the general detariffing framework established by the *Order*, choosing instead to focus their comments on discrete aspects of the detariffing plan.

7. A few petitioners argue that residential customers should not be required to pay charges for on-premises repair visits for hard-wired telephones, and another party contends that AT&T–IS has disseminated inaccurate pricing information regarding embedded Design-Line telephones. It also is argued that the Commission should determine that the two-year transition period for multi-line CPE was not triggered on January 1, 1984, because AT&T–IS failed to provide in-place customers with sufficient sale price information at that time. Other petitioners argue that the Commission should require AT&T–IS to release publicly its sale price information on a product line basis, and that the monthly sales reports filed by AT&T–IS with the Commission under the terms of the *Order* also should be released to the public.

8. With regard to long-term contracts for the leasing of embedded multi-line CPE, several petitioners argue that AT&T–IS should be prohibited from imposing penalties under the terms of these contracts if customers choose to terminate the contracts before the expiration date. Other commenters

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render quality service, its customers could easily take their business to one of its * * * equipment competitors." *United States* v. *Western Elec. Co.*, No. 82–0192, slip op. at 63 (D.D.C. July 26, 1984) (footnote omitted). We also have made the finding that the growth of competitive market forces in the equipment industry has made continued price regulation of CPE impractical. *Notice*, 94 FCC 2d at 113.

[9] We also concluded that a phased approach which provided for the detariffing of embedded CPE over a transition period would afford needed time for the development of solutions to jurisdictional separations problems associated with the provision of CPE. *Further Reconsideration Order*, 88 FCC 2d at 518–19. These separations problems have been resolved. *See Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board*, CC Docket No. 80–286, Decision and Order, 89 FCC 2d 1, *modified*, 90 FCC 2d 52 (1982), *appeal docketed sub nom. MCI Telecom. Corp.* v. *FCC*, No. 82–1237 (D.C. Cir. Mar. 4, 1982).

[10] For a further discussion of the background leading up to our adoption of the *Order*, see *Order*, 95 FCC 2d at 1283–91.

[11] *Democratic Cent. Comm.* v. *Washington Metro. Area Transit Comm'n*, 485 F.2d 786 (D.C.Cir. 1973), *Cert. denied sub nom. D.C. Transit Sys.* v. *Democratic Cent. Comm.*, 415 U.S. 935 (1974) (hereinafter, together with companion cases, referred to as *Democratic Central Committee*). For a description of the companion cases, see *Order*, 95 FCC 2d at 1312 n.48.

[12] For a description of the types of equipment encompassed by the terms "residence CPE" and "business single-line CPE," see *Order*, 95 FCC 2d at 1319 n.59.

[13] See para. 1 n.6, *supra*, & Appendix.

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contend that the Commission should take some action to prevent AT&T–IS from imposing these penalties in a discriminatory manner. Several petitioners suggest that the Commission should require that customer proprietary information relating to embedded CPE transferred to AT&T–IS should be disclosed to the public, and that the Commission should establish additional restrictions upon access to this information by AT&T–IS marketing personnel. Several petitioners request the Commission to reverse its decision to prohibit local telephone service terminations for failure to make payments to AT&T–IS for embedded CPE bills, to require that partial payments must first be applied to local service bills, and to require that customers must be notified that service will not be terminated for failure to pay CPE bills.

9. It is suggested by some petitioners that the Commission should strengthen the provisions of the *Order* which prohibit AT&T–IS from banning the use of independently-supplied equipment in conjunction with CPE leased from AT&T–IS. A few commenters argue that the Commission should reverse its treatment of deferred tax reserves and unamortized investment tax credits, and a few other petitioners also suggest that the Commission should reconsider its decision regarding intrasystem wiring in order to require that the wiring be detariffed and transferred from the BOCs to AT&T–IS. Another commenter contends that the Commission should, at a minimum, clarify the current responsibilities of the BOCs regarding maintenance and augmentation of embedded intrasystem wiring. It also is suggested that the Commission should reverse its decision in the *Order* and require the transfer of CPE station handling costs to AT&T–IS. There also is a request that the Commission modify the requirement of the *Order* that AT&T–IS share with the BOCs refurbishment costs and exempt materials expenses incurred in 1983.

II. General Rules Governing AT&T Embedded Base

A. *Adequacy of Detariffing Plan*

1. Comments

10. Rolm argues that the *Order* creates an anticompetitive situation because the sale program established by the *Order* leaves AT&T–IS with too much pricing flexibility and gives AT&T–IS the opportunity to overprice embedded CPE in less competitive markets in order to cross-subsidize equipment in more competitive markets. Rolm Petition at 11–12 & n.10. NATA contends that the sale program approved by the Commission is defective because the Commission, in its effort to balance the interests of ratepayers and investors under the guidelines of *Democratic Central Committee*, "ignored the interests of CPE competitors * * *." NATA Comments at 13–14.

2. Discussion

11. We conclude that none of the contentions raised by Rolm and NATA has merit. We stressed in the *Order* that "we must carefully gauge the effects on the continued strength of competition which may be caused by the removal from regulated service of AT&T [CPE] assets * * *"[14] and numerous provisions contained in the *Order* amply demonstrate that we have been successful in ensuring that competition in the CPE marketplace will not be adversely affected by the detariffing of AT&T's embedded base. First, the *Order* provides that the two-year transition period for multi-line equipment will not begin until AT&T–IS actually offers for sale the product line involved. This requirement eliminates the opportunity for AT&T–IS to manipulate the timing of sales and the level of lease rates in a manner which reduces customer choice and pressures customers into purchasing AT&T–IS's embedded CPE (at the point AT&T–IS decides to offer the equipment for sale) in order to avoid inflated lease rates. Second, AT&T–IS is required to offer all equipment comprising the embedded CPE base for sale to in-place customers. *See, e.g., Order*, 95 FCC 2d at 1300. AT&T initially proposed, with respect to embedded multi-line CPE, that no opportunity for purchase would be provided until *after* a price predictability period ended, and that this purchase opportunity would apply only to CPE also sold as new equipment by AT&T–IS. *See id.* at 1285. We rejected this approach, requiring instead that AT&T–IS must offer *all* embedded CPE for sale. Not only does the *Order* extend protection to in-place customers by giving them the option to purchase their equipment, but it also fosters competition through this requirement by creating the potential for a secondary market in used equipment.

12. Third, the *Order* establishes restrictions regarding the manner in which AT&T–IS may establish lease rates for both residential and business CPE during the transition. *See, e.g., id.* at 1286 n.15, 1324–25, 1341–46. These restrictions[15] preserve and enhance competition in the CPE marketplace by stabilizing lease rates applicable to in-place customers during the transition, thus giving them an opportunity to assess a range of options with respect to their equipment needs. Part of this assessment, of course, will include weighing the value of products and services offered by competing vendors. Fourth, we have required that AT&T–IS must give at least one year's notice before phasing out any embedded multi-line product and that, "[n]o later than the date of the announcement of product phase-out, AT&T should make available all technical information and rights necessary for the support of the phased-out products." *Id.* at 1358. These requirements will produce pro-competitive results because they will stimulate a secondary market in spare parts for embedded CPE and they also will enhance the opportunity of in-place customers to assess their equipment needs and turn to competing vendors if they conclude that such a decision will best serve their needs.

13. With regard to Rolm's assertion that the *Order* extends excessive pricing flexibility to AT&T–IS,[16] we made clear in the *Order*[17] that the valuation and pricing flexibility we were extending to AT&T–IS was consistent with the principles of *Democratic Central Committee* and was a necessary means of equitably accommodating the interests of AT&T's investors. Rolm has not advanced any credible evidence or arguments that this flexibility is "excessive" and, on that basis, we find no reason for modifying the provisions of the *Order*.

B. *Valuation of Embedded CPE Assets*

1. Comments

14. Rolm argues that adjusted net book value should not be used as the valuation standard particularly in light of the fact that the Commission has not sought to establish any relationship between the net book value and the economic value of the embedded CPE base. Rolm Petition at 15, 20–21. Rolm also contends that the Commission should require AT&T–IS to make a good faith effort to apply the net book value standard on a product line basis, as a means of ensuring fair treatment of in-place customers and mitigating the

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[14] *Order*, 95 FCC 2d at 1302.

[15] The *Order* established specific lease rate limits for residential CPE. With regard to business CPE, the *Order* imposed a ceiling on national lease rates which could be established by AT&T–IS and provided that these national lease rates would be phased in through three lease rate adjustments occurring eight months apart during the transition period. *See* CC Docket No. 81–893, Second Report and Order, FCC 84–269, 49 FR 27754 (released June 29, 1984) at paras. 19–25.

[16] *See* para. 10, *supra*.

[17] *Order*, 95 FCC 2d at 1319.

problems caused by the Commission's failure to ascertain the economic value of the embedded base *Id.* at 14 & n.10.

2. Discussion

15. We can find no reason for abandoning the net book valuation standard established in the *Order*. Rolm fails to mount a persuasive challenge to our conclusion that our use of net book value as a surrogate for economic value is well within our regulatory discretion under the terms of *Democratic Central Committee*. As we indicated in our *Order*, any attempt to appraise the embedded base as it existed prior to its transfer to AT&T at the time of divestiture would be fraught with difficulties, and there can be little assurance that any such appraisal would produce reliable results.[18] Further, Rolm presents no compelling arguments that AT&T–IS should be required to apply the net book value standard on a product line basis. Such an approach was specifically rejected in the *Order* because we concluded that pricing flexibility with regard to the embedded base would help ensure "that stockholders have an opportunity to obtain capital recovery * * *." *Order*, 95 FCC 2d at 1312. We also noted that more extensive disaggregation was not necessary because AT&T's agreement to offer the entire multi-line base for sale greatly reduced AT&T's ability to use manipulative pricing practices to gain a competitive advantage. *Id.* at 1311. We must stress that the pricing flexibility extended to AT&T–IS in the *Order* is part of an overall structure we designed to comply with *Democratic Central Committee* and to serve the public interest. Any alteration of the disaggregation provisions in the manner contemplated by Rolm could endanger the soundness of this overall detariffing structure.

C. Democratic Central Committee

1. Comment

16. California asserts that the Commission has failed to meet the standard established in *Democratic Central Committee* because we did not conduct an adequate factual examination or cost study to determine whether there was any appreciation in the value of the embedded base. California Petition at 2. California asserts that the Commission in effect delegated to AT&T–IS the Commission's authority to establish a sale program for embedded equipment because the Commission failed to conduct cost studies or otherwise establish a basis for the sale program. *Id.* at 5–6. Rolm contends that we have not met the *Democratic Central Committee* requirements because, under our approach, any gains in the value of assets transferred to AT&T–IS are potentially captured by in-place customers but not by the general body of ratepayers. Rolm Petition at 16–17. Rolm also argues that our failure to determine the economic value of the transferred equipment amounts to non-compliance with the *Democratic Central Committee* requirements. *Id.* at 18.

2. Discussion

17. None of these arguments has any merit. California's suggestion that cost studies were necessary to fix any appreciation in the value of the embedded base misperceives the mechanism we established in the *Order*. Our purpose was to prevent any gains from flowing to AT&T's investors, in the event that there were any such gains. *See, e.g. Order*, 95 FCC 2d at 1311–12, 1319. California and Rolm are erroneous in their assertions that this mechanism falls short of the *Democratic Central Committee* requirements. By requiring that sale prices established by AT&T–IS for single-line and multi-line equipment cannot exceed that net book value of this equipment in the aggregate, [19] we have ensured that, if there are any gains in the value of these assets upon their removal from regulated service, ratepayers have a sufficient opportunity to capture these gains. The operation of this mechanism is not dependent upon any actual determination of the economic value of the embedded base [20] and, in our view, fully comports with the *Democratic Central Committee* requirements.

18. With regard to California's assertion that we have somehow "delegated" to AT&T-IS authority for establishing and operating the sale program, such an argument files in the face of the express provisions of the *Order*. Regarding single-line CPE, specific sale prices are established. *Id.* at 1286 n.15. Regarding multi-line equipment, we have protected the interests of ratepayers and in-place customers by requiring that sale prices cannot exceed net book value. *See id.* at 1311–12. We have concluded that our balancing of ratepayer and investor interests fully meets the *Democratic Central Committee* test. Further, we agree with AT&T–IS's assertion that we are under no lobligation to conduct adjudicatory proceedings to ascertain appropriate sale prices, and that any attempt to conduct such proceedings prior to the divestiture of the Bell System would have held little prospect of success. *See* AT&T–IS Opposition at 4. Rolm, in claiming that our failure to devise a mechanism under which any gains would flow to the general body of ratepayers (as opposed to in-place customers having an opportunity to purchase their CPE) violates the *Democratic Central Committee* requirements, misapprehends the reach of those requirements. In the context of the extraordinary asset transfer with which we were confronted, we reached the conclusion that *Democratic Central Committee* requires no more than that the interests of ratepayers and investors be balanced in a manner which furthers the public interest. *See Orders*, 95 FCC 2d at 1315–19. Nothing in Rolm's petition convinces us that we have failed to meet this test.

III. Residence and Business Single-Line CPE

A. Design-Line Telephones

1. Comments

19. One residential customer, Paul J. Sinderbrand, has indicated that he was given price quotations for the electronic components of his Touch-Tone Design-Line telephone by AT&T–IS representatives which were considerably higher than the national sale prices subsequently announced by AT&T–IS. *See, e.g.*, Sinderbrand Petition, Affidavit at 2–3; Letter from Paul J. Sinderbrand to Secretary, FCC (Apr. 20, 1984) at 1–2. AT&T–IS contends that it never established sale prices at the level which Mr. Sinderbrand claims was quoted to him by AT&T–IS representatives. AT&T–IS Comments on Reply Filed by Paul J. Sinderbrand at 1–2. Mr. Sinderbrand further argues that, since the competitive marketplace is not at work with regard to Design-Line telephones, [21] the Commission should act to establish a ceiling on sale prices for these telephones. Sinderbrand Petition at 5. He also contends that, if such a cap is established, customers purchasing Design-Line telephones since

[18] *See id.* at 1306–07 & n.43 for a further discussion of the problems associated with any attempt to appraise the Bell System's embedded CPE base.

[19] *See id.* at 1339.

[20] The *Order* makes clear that intractable practical problems would have confronted any effort to determine the economic value of the enbedded base. *see id.* at 1307–08.

[21] Mr. Sinderbrand argues that telephone equipment retailers do not sell, as separate items, electronic telephone components which can be used with Design-Line telephone housings already purchased by BOC customers. Because of this, Design-Line users must either lease or purchase the electronic components from AT&T–IS. *See* Sinderbrand Petition at 6–7.

January 1, 1984, at prices above the cap should be entitled to receive refunds. *Id.* at 9.

20. AT&T–IS indicates that national sale prices have been established for Design-Line CPE. These prices are $15.95 for rotary components and $25.95 for Touch-Tone components. AT&T–IS Opposition at 6 n.**. AT&T–IS also states that these national purchase prices were first established in October 1983 and were forwarded to field representatives for implementation on January 27, 1984. AT&T–IS Comments on Reply Filed by Paul J. Sinderbrand at 2–3. In the period immediately following divestiture, state-tariffed sale prices for Design-Line components remained in effect until the changeover to AT&T–IS's national prices. Letter from Terry L. Trantina to Acting Chief, Enforcement Division, Common Carrier Bureau (Feb. 1, 1984) at 3.

2. Discussion

21. The national sale prices established by AT&T–IS for Design-Line electronic components appear to us to be reasonable on their face. The reporting requirements we have established will enable us to determine whether these prices, together with all other single-line CPE sale prices, comply with our requirement that sale prices may not exceed net book value. *See Order*, 95 FCC 2d at 1321–22. Further, we conclude that it is neither necessary nor prudent to attempt to resolve the factual dispute between Mr. Sinderbrand and AT&T–IS in the context of this reconsideration proceeding. We do note that if Mr. Sinderbrand or any other Design-Line customers paid a purchase price after January 1 in excess of the national sale price established by AT&T–IS (or the applicable state tariff sale price), then these customers should be entitled to a refund of the difference The normal complaint processes of the Commission are available to any customers who are entitled to a refund but fail to obtain it from AT&T–IS.[22]

B. Charges for Residential Repair Visits

1. Comments

22. Both New York and Virginia contend that residential customers should not be required to pay repair charges to AT&T–IS for the on-premises repair of hard-wired telephones.[23] New York Petition at 1; Virginia Petition at 7; *see* Letter from Counsel for New York Dept. of Pub. Serv. to Secretary, FCC (Jan. 26, 1984) at 2. Virginia argues that the flat charges established by AT&T–IS are too high, and New York suggests that this Commission should place a cap on these charges. Virginia Petition at 5–6; New York Petition at 2. New York further suggests that AT&T–IS should be required to provide free repair service to elderly and handicapped customers. Letter from Counsel for New York Dept. of Pub. Serv. to Secretary, FCC (Jan. 26, 1984) at 2. NATA contends that, in cases in which AT&T–IS personnel make on-premises repairs of hard-wired telephones, they should install modules so that the telephones can be more easily removed if future repairs are necessary. NATA Opposition at 17.

23. AT&T–IS argues that it has taken sufficient steps to meet concerns regarding charges for home repair visits. For customers with modular telephones, AT&T–IS has established a flat charge of $25 for on-premises repair visits. For customers with hard-wired telephones which are capable of being modularized by the customer, the flat repair charge is $15. If the equipment is not capable of being modularized by the customer, AT&T–IS does not charge for home repair visits. AT&T–IS also provides free modularization kits, and free pick-up and delivery service for residential customers. AT&T–IS Opposition at 14–16. AT&T–IS also points out that "most * * * leased single-line equipment may be brought into Phone Center Stores and exchanged for identical new or refurbished equipment at no charge." *Id.* at 15. AT&T–IS notes that, during 1983, between 75 and 80 percent of repairs to residential telephone equipment were made without on-premises visits. *Id.* at 15 n.*.

2. Discussion

24. After reviewing the plan proposed by AT&T–IS for the repair of residential CPE during the transition period, we took note of an approved AT&T–IS's proposal to charge for on-premises repair visits. Order, 95 FCC 2d at 1324–25. We now conclude that the flat charges established by for such repair visits, taken in the context of the overall repair program established AT&T–IS. are reasonable and do not require any adjustment. We see no reason to deter AT&T–IS from continuing the efforts originally begun by the BOCs to make more efficient the manner in which repairs of residential CPE are carried out. By providing free repair service at central locations, and through free pick-up and delivery services, AT&T–IS has acted in a prudent fashion to cut transaction costs associated with its repair services. At the same time, we cannot agree with claims that these procedures are unduly burdensome to residential customers. This is particularly true in light of the fact that AT&T–IS has established a flat charge (rather than hourly rates which could lead to substantial repair costs for some customers, depending upon the nature of the required repair work), and the fact that AT&T–IS provides free on-premises repairs in the case of hard-wired sets which are not capable of being modularized by the customers. To require AT&T–IS to do more would run the risk of escalating transaction costs to the detriment of all AT&T–IS customers. Further, it is important to keep in mind that the high level of competition in the residence CPE marketplace[24] gives consumers the option to deal with other vendors if they conclude that AT&T–IS's repair policies are not sufficient to meet their needs and cost considerations.

IV. Multi-Line CPE

A. Duration of Sale and Lease Transition Periods

1. Comments

25. ICA argues that we should conclude that the transition period for multi-line CPE did not begin on January 1, 1984, because AT&T–IS failed to take sufficient steps by such date to make its embedded: multi-line equipment available for purchase by in-place customers.[25] Letter from Counsel for ICA

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[22] One other residential customer, James J. Butler argues that telephone customers receiving secretarial telephone service (primarily in apartment buildings) should be given an opportunity to purchase their telephones as part of the AT&T–IS sale program. Butler Petition at 1. We indicated in the Order that the AT&T–IS sale program covered all significant classes of embedded CPE. *Order*, 95 FCC 2d at 1338, citing AT&T Response to Bureau Letter (filed Oct. 7, 1983) at 4. AT&T–IS has indicated that Mr. Butler has been informed that he may purchase his in-place equipment. AT&T–IS Opposition at 6 n.**

[23] "Hard-wired" telephones are connected to the transmission line through the physical, separate interconnection of (usually four wires are involved) inside an on-premises junction box. Modular telephones eliminate the need for this separate interconnection of wires by using plug in devices

[24] In 1982, 5.7 million telephones were sold to retailers, with factory sales of $400 million. In 1984, it is estimated that 31.1 million units will be sold, with factory sales reaching $1.24 billion. Wall St. J., Aug. 2, 1984, at 10

[25] ICA also has argued that AT&T–IS is incorrect in its assertion that multi-line CPE lease rates may be adjusted at 6-month, rather than 8-month, intervals during the transition period. *See, e.g.*, ICA Jan. 13 Letter at 4–5. This issue has been resolved by the Commission in separate actions in this docket. See CC Docket No. 81–893, Second Report and Order, FCC 84–289, 49 FR 27754 (released June 29, 1984), *reconsideration petition pending*. Public Notice No. 1476, 49 FR 34957 (released Aug. 24, 1984) at paras. 19–25; CC Docket No. 81–893, Order, FCC 84–304, 49 FR 30710 (released June 29, 1984).

to Chief, Common Carrier Bureau (Jan. 13, 1984) (hereinafter ICA Jan. 13 Letter) at 4; *see also* Letter from Counsel for ICA to Secretary, FCC (Jul. 9, 1984) at 3.[26] ICA contends that a letter from AT&T–IS to its multi-line customers informing them of their opportunity to purchase their in-place equipment should not constitute a sufficient sale offer for purposes of triggering the transition period because this notice failed to list price quotes or detail the terms and conditions of sale. ICA Jan. 13 Letter at 4.

26. ICA maintains that AT&T–IS's failure to supply firm price quotes has persisted well after the transfer of embedded CPE to AT&T–IS after divestiture. Letter from Counsel for ICA to Secretary, FCC (Feb. 17, 1984) (hereinafter ICA Feb. 17 Letter) at 2–3. ICA argues that AT&T–IS should be required to supply price quotes to customers not later than two weeks after an initial request from the customer. *Id.* at 3. ICA further contends that, "for *all* CPE product lines, ATTIS should be held to its representation * * * that it will credit against the purchase price any lease charges paid between the time a quote is requested and the time it is actually provided." *Id.* at 3 (emphasis in original). ICA also maintains that AT&T–IS has adopted a practice under which customers reviewing price quotes from AT&T–IS must make purchase decisions within 30 days, and that such a policy places undue burdens upon in-place users. *See* Letter from Counsel for ICA to Secretary, FCC (Apr. 27, 1984) at 4.

27. In responding to these assertions, AT&T–IS has maintained that it began mailings to its 4.5 million multi-line CPE customers on December 20, 1983, notifying them that their embedded CPE was available for purchase,[27] and that this notice was all that was required under the *Order* to trigger the transition period as of January 1, 1984. Letter from Terry L. Trantina to Secretary, FCC (Mar. 1, 1984) at 2. AT&T–IS contends that the *Order* did not require AT&T–IS to mail firm price quotes to *every* multi-line customer in order to trigger the transition period, and that any such requirement would have been administratively infeasible and prohibitively expensive. *Id.* at 2–3.

2. Discussion

28. There is no basis for concluding that the transition period for all multi-line CPE did not begin on January 1. The *Order* explicitly states that "the transition period for multi-line CPE should commence for a particular category of multi-line CPE at the time ATTIS notifies the customer of equipment." *Order*, 95 FCC 2d at 1334 (footnote omitted). In our view, AT&T–IS has initiated its sale program in a manner which is consistent with the *Order*, thus triggering the transition period as of the date of divestiture. ICA would have us now impose more stringent requirements upon AT&T–IS, based upon the alleged manner in which AT&T–IS has conducted its sale program since multi-line CPE was transferred to AT&T–IS. We can find no reason for doing so.

29. There are two principal reasons for our conclusion. First, we considered ICA's proposal in our *Order*, 95 FCC 2d at 1334 n.85, and decided upon a different approach. Changing our decision in the *Order* to require now that the transition period will not be construed to begin for a particular product line until AT&T–IS has provided specific price quotes to all users of the product line, would be unduly burdensome and expensive. ICA has failed to demonstrate that there are public interest benefits outweighing that burden and expense. Further, if particular customers have no interest in purchasing their in-place CPE, it is not reasonable to require AT&T–IS to supply these customers with unsolicited price quotes in order to trigger the transition period for the product line involved. Placing such a requirement upon AT&T–IS necessarily would result in severe upward pressures on transaction costs associated with the multi-line CPE sales program.[28] These transaction costs, which would be generated in large measure by multi-line customers who have no intention of purchasing their in-place equipment, would be borne by those customers who actually make purchases. Confronting prospective buyers with sale prices reflecting these inflated transaction costs also could seriously dampen sales, thus undermining our efforts to provide AT&T investors with a reasonable opportunity to recover their investment in the detariffed embedded base. *See id.* at 1319.

30. Second, we conclude that AT&T–IS has made reasonable efforts to provide multi-line customers with requested pricing information. These efforts began in November 1983 with the initiation of a customer information program for business CPE customers. Under this program, basic information[29] regarding the CPE sale program was distributed to business customers in December 1983. In addition, certain business customers received additional information regarding the sale program through bill inserts. *See* Letter from Terry L. Trantina to Secretary, FCC (Jan. 31, 1984) at 5. AT&T–IS also advised the Commission of its intention to make a second direct mailing to its 4.5 million business customers in late January. *Id.* at 6. This mailing contained information regarding the termination of lease service in order to obtain CPE from other vendors, described AT&T–IS's warranties and policies relating to special assembly equipment, and "advise[d] customers that they may obtain specific information concerning their equipment so they may evaluate their equipment needs and alternatives." *Id.*

31. AT&T–IS also prepared customer contact kits, for distribution to 30,000 large customers, which provided details regarding the multi-line CPE sale program. AT&T–IS advised the Commission of its intention to distribute similar kits to 3.5 million small and medium size customers. *Id.* at 7. Newspaper and magazine advertisements were purchased by AT&T–IS as a means of further informing its business customers that they could purchase their CPE as of January 1.

32. In April 1984, the Common Carrier Bureau requested AT&T–IS to supply specific information regarding AT&T–

[26] We have received a number of letters and other comments in addition to the petitions, oppositions, and reply comments filed regarding the *Order*. *See, e.g.*, para. 46 n.62, *infra*. In light of the serious issues raised in these filings, and the fact that in most instances interested parties have taken the opportunity to file opposing comments with regard to these letters and other comments, we are accepting these letters and other comments as further comments in this reconsideration proceeding. We note, however, that this proliferation of filings outside the normal reconsideration pleading cycle has contributed to prolonging the process of arriving at the decisions contained in this Order; it is our intention in the furture to treat less favorably such efforts by parties to burden us with filings in disregard of the pleading schedules established in our Rules.

[27] AT&T–IS earlier had notified the Common Carrier Bureau of its intention to "make *all* in-place embedded customer premises equipment available for purchase at the time of divestiture." Letter from D.J. Culkin to Chief, Common Carrier Bureau (Dec. 16, 1983) at 1 (emphasis added).

[28] We noted in the *Order* our interest in ensuring that AT&T–IS established reasonable transaction costs for embedded equipment sales. *Order*, 95 FCC 2d at 1340.

[29] This information included (1) a letter from the Chairman of AT&T–IS; (2) a notice regarding lease terms applicable to embedded multi-line CPE; (3) a question and answer booklet; and (4) stickers to be affixed to equipment with the 800 number for the AT&T–IS business sales and service center. Also included was a statement that all embedded business CPE would be available for purchase as of January 1. *See* Letter from Terry L. Trantina to Secretary, FCC (Jan. 31, 1984) at 4 & Attachment C.

IS's policies and procedures for supplying price quotes to its business customers. *See* Letter from Chief, Common Carrier Bureau, to Terry L. Trantina (Apr. 26, 1984). In response to this letter, AT&T–IS provided a detailed account of mechanisms it had established to facilitate the development of price quotes. *See* Letter from Terry L. Trantina to Secretary, FCC (May 15, 1984) (hereinafter Trantina May 15 Letter).[30] AT&T–IS outlined the steps taken to provide price quotes,[31] and drew attention to some of the problems encountered in the effort to expedite the preparation of this information. For example, a necessary step in the preparation of price quotes is the assembly of copies of the customer's detailed CPE records. *Id.*, Attachment A, at 1. In areas in which shared billing with the BOCs is still in effect, these records must be assembled by using copies of BOC customer service records (CSRs). This procedure leads to two difficulties. First, since the CSRs usually also contain transmission service data which must not be disclosed to AT&T–IS marketing personnel,[32] this information must be manually blocked out. *Id.*, Attachment A, at 2. This process often is time-consuming because of the amount of equipment involved.[33] Second, the BOC records do not identify CPE items using descriptive names, but rather identify each piece of equipment by reference to a BOC Uniform Service Order Code (USOC). AT&T–IS does not use these USOCs for equipment-identification purposes, and thus must translate these codes into its own formats.[34] This process adds further time to the price quote preparation procedures.

33. AT&T–IS also described in detail two automated systems, the Price Quote System (PQS) and the Portable Data Entry (PDE) system, developed to decrease the amount of time necessary to prepare price quotes. *See id.*, Attachment A, at 6–9. PQS, an on-line software program used for the development of price quotes for all intermediate size and large customers, automatically generates a variety of customer-specific information, including a "[s]ummary display, by equipment location, of total or partial system sale in-place price, maintenance contract costs, price predictability lease rates and current or projected monthly discounts." *Id.*, Attachment A, at 7. AT&T–IS maintains that use of PQS has dramatically cut price quote preparation time.[35] The PDE system, which is used to mechanize the process of summarizing USOC data in the case of large accounts, also has reduced price quote request processing time.[36]

34. Use of these automated processing techniques has enabled AT&T–IS to reduce the overall response times for providing price quotes. In the case of small customers, which comprise over 91 percent of AT&T–IS's embedded multi-line CPE customer base,[37] the typical response time is two to three business days. For intermediate customers, the typical response time ranges from four days to six weeks. Once AT&T–IS marketing personnel obtain screened CPE records for intermediate customers, "it typically takes two to five business days to process a price quote manually and approximately half that time to process a quote using PQS." *Id.*, Attachment A, at 18. For large customers, the preparation time ranges from one to several months, depending on the size and complexity of the customer system involved.[38]

35. It is evident from the information supplied by AT&T–IS in its May 15, 1984, filing that there are substantial obstacles impeding the rapid preparation of price quotes, and that AT&T–IS has made significant and effective efforts in overcoming these obstacles. As we have indicated, to require AT&T–IS to go through this price quote generation exercise for each and every customer using a particular product line as a prerequisite for beginning the transition period for that product line, would run the risk of greatly extending the length of the transition period as well as imposing substantial and unnecessary costs. In view of the fact that the great bulk of AT&T–IS's multi-line customers receives price quotes within two to three business days following the request, we see no reason to modify the *Order* to impose the additional burdens upon AT&T–IS which are being proposed by ICA. Although we have noted that "a primary objective of the transition period is assisting customer decision-making in a detariffed environment",[39] we conclude that the *Order* sufficiently protects this decision-making process, making unnecessary the additional requirements suggested by ICA. We have made clear, for example, that price predictability extends to December 31, 1985,[40] with lease rate adjustments occurring at sufficiently wide intervals.[41] to protect in-place users against severe lease rate increases.

In addition, we have: (1) Placed a cap on lease rates during the transition;[42] (2) established an overall ceiling on sale prices for multi-line CPE;[43] (3) imposed maintenance requirements for this equipment;[44] and (4) required AT&T–IS to comply with equipment interconnection requirements.[45] The approach taken in the *Order* regarding the triggering of the transition period was fashioned in the context of this overall set of transitional requirements

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[30] This account addressed an AT&T–IS embedded base customer profile which included 4.1 million small multi-line customers (10 stations or less, one location), 300,000 intermediate size multi-line customers (11 to 80 stations, one or more locations), and 100,000 large multi-line customers (80 stations and above, one or more locations). Trantina May 15 Letter, Attachment A, at 1 n.2 & 18.

[31] *See id.*, Attachment A, at 1–5.

[32] *See Order*, 95 FCC 2d at 1349–52.

[33] "On large accounts, a CSR printout for a single location may run several hundred to a thousand pages in length, with 50 lines per page." Trantina May 15 Letter, Attachment A, at 2.

[34] AT&T–IS in order to facilitate the establishment of national prices for embedded multi-line CPE, standardized CPE designations by instituting Embedded Base Price Element (EBPE) codes. *Id.*, Attachment A, at 3 nn. 7–8.

[35] "By way of example, in the case of one intermediate size customer quote, four hours of personnel time were performed in approximately 20 minutes using PQS." *Id.*, Attachment A, at 4.

[36] "By way of example, in the case of a large customer, an estimated 530 hours of personnel time for summarizing CPE records were performed in approximately 210 hours using PDEs." *Id.*, Attachment A, at 8.

[37] *See* para. 32 n.30, *supra*.

[38] ICA has criticized the price quote mechanisms established by AT&T–IS because "only 10 percent of embedded CPE users have received sales quotes thus far * * *" and "90 percent of users who do not have sales quotes have lost close to five months of the prescribed two-year transition period (assuming it began on January 1, 1984, as ATTIS claims) without having had any opportunity to evaluate the possible purchase of their embedded CPE." Letter from Counsel for ICA to Secretary, FCC (May 30, 1984) at 2. ICA apparently is referring to the Trantina May 15 Letter, in which it is indicated that "to date, AT&T–IS has provided quotations to over 10% (40,000) of its intermediate and large multi-line embedded CPE customers." Trantina May 15 Letter at 1. The 10 percent figure cited by ICA, however, is a percentage of *all* of AT&T–IS's intermediate and large multi-line CPE customers, not just those requesting price quotes. AT&T–IS has indicated that it has been processing 14,000 small business price quotes per month and that, as of March 31, 1984, it had received 18,000 price quote requests from intermediate and large customers and had processed 32,000 price quotes. The number of processed quotes exceeded the number of requests because AT&T–IS account executives may initiate price quote preparation without specific requests from customers, and because a separate quotation is processed for each location of a multi-location customer. *Id.* at 19 & nn.15–16.

[39] *Order*, 95 FCC 2d at 1336.

[40] *Id.* at 1342–43 & n.98; CC Docket No. 81–893, Second Report and Order, FCC 84–269, 49 FR 27754 (released June 29, 1984) at paras. 22–25.

[41] We have provided that lease rate adjustments during the transition period may be made by AT&T-IS on July 1, 1984, July 1, 1985, and January 1, 1986. CC Docket No. 81–893, Order, FCC 84–304, 49 FR 30710 (released June 29, 1984) at para. 11.).

[42] *Order*, 95 FCC 2d at 1344.

[43] *See id.* at 1339.

[44] *Id.* at 1356–59.

[45] *Id.* at 1358–59.

established in the *Order*. This matrix of requirements was constructed to balance the need to protect user interests with our overall goal of removing embedded CPE from regulation all allowing AT&T–IS to compete in the CPE marketplace free from unwarranted regulatory restrictions. In view of the extensive efforts made by AT&T–IS to establish and operate an efficient system for responding to price quote requests, we must conclude that nothing in the pleadings prompts us to undo the balance achieved in the *Order* for the purpose of subjecting AT&T–IS to additional regulatory burdens.[46]

36. Two additional points raised by ICA need to be addressed. First, ICA argues that AT&T–IS should be required to permit all its embedded multi-line CPE customers to receive a credit against the purchase price for all lease charges paid from the time a price quote is requested until the time the quote is provided. *See* para. 26, *supra*. We do not consider such a requirement to be warranted. AT&T–IS has indicated that such a credit for lease payments will apply in the case of customers who lease special assembly equipment and who made purchase inquiries in early January 1984.[47] With regard to all other multi-line customers, "AT&T–IS reduces the in-place sale price for all embedded equipment items one percent per month, up to a maximum of 15 percent during the price predictability period." Trantina May 15 Letter, Attachment A, at 4. AT&T–IS also offers other purchase discounts on a uniform basis to its multi-line customers, including "discounts based on the type of equipment purchased, the quantity purchased, [and] the total amount of the sale * * *." *Id.*, Attachment A, at 12.

37. We made it clear in the *Order* that, in order to comply with *Democratic Central Committee*, our detariffing plan must ensure "that stockholders have an opportunity to obtain capital recovery * * *." *Order*, 95 FCC 2d at 1312. We also noted that it would be in AT&T–IS's interest to establish sale prices which promote purchases by in-place customers in order to achieve capital recovery. *Id.* In our view the discount of one percent per month and other purchase discounts established by AT&T–IS reflect a prudent attempt by AT&T–IS to stimulate sales while also maximizing capital recovery. For us to require AT&T–IS to do more, as suggested by ICA, would constitute an unwarranted intrusion upon AT&T–IS's exercise of its business judgment and would risk undermining those elements of our detariffing plan which forward the goals of *Democratic Central Committee* by facilitating capital recovery.

38. Second, ICA argues that AT&T–IS guarantees its price quotes to embedded multi-line customers for only 30 days and that this is unduly burdensome on customers. *See* para. 26, *supra*. In explaining its price quotation policies, AT&T–IS has indicated that:

> Each firm price quotation is valid for 30 days. While customers can purchase their in-place equipment anytime thereafter, a new price quotation must be developed after 30 days to reflect the additional one percent per month discount, any embedded CPE sale-in-place price changes, and changes in the quantity of equipment to be purchased.

Trantina May 15 Letter, Attachment A, at 4. We conclude that this price quotation policy established by AT&T–IS is reasonable and that there is no need for us to impose any adjustments. Customers are not disadvantaged by the 30-day period because their failure to purchase by the end of that time does not foreclose their opportunity to purchase at a later time during the price predictability period. Since AT&T–IS has noted valid reasons for the need to recalculate price quotes, we can find no reason to impose any additional restrictions or requirements.

B. Public Release of AT&T–IS Sale Prices

1. Comments.

39. Both Rolm and NATA argue that AT&T–IS should be required to make publicly available all sale prices for its embedded multi-line CPE on a product line basis. They also contend that AT&T–IS's monthly sale reports to the Commission should be made public. *See* NATA Opposition at 16; Rolm Petition at 11; Rolm Reply Comments at 9–10; *See also* ICA Opposition at 8. Rolm argues that, without the disclosure of these prices, AT&T–IS is capable of setting sale prices in the manner which cross-subsidizes competitive product lines, and competitors must be permitted to monitor AT&T–IS's pricing policies and marketing conduct in order to prevent any such cross-subsidization. Rolm Petition at 11–13; *see* NATA Reply Comments at 8; Rolm Reply Comments at 7. ICA suggests that AT&T–IS at a minimum should be required to release "benchmark" sale prices for certain product lines to give some guidance to in-place customers. ICA Opposition at 8; *see* NATA Reply Comments at 7; Rolm Reply Comments at 9. AT&T–IS argues that general public release of this sale price information is not warranted because it is entitled to confidential treatment and particular customers may obtain price information from AT&T–IS upon request. *See* AT&T–IS Opposition at 6, 7 & n.*; AT&T–IS Reply Comments at 10.

2. Discussion

40. We find no merit in the claims that AT&T–IS should be required to disclose publicly its prices for embedded multi-line CPE. We have already determined in a separate proceeding[48] that AT&T–IS's pricing information qualifies for confidential treatment under §§ 0.457 and 0.459 of the Commission's Rules, 47 CFR 0.457, 0.459, and that the public interest does not otherwise require disclosure of this information.[49] Further, we rejected in the *Order* the assertion of various commenters[50] that the detariffing plan we ultimately established would run the risk of enabling AT&T–IS to engage in price manipulation in an anticompetitive manner. We stressed in the *Order*, in rejecting extensive disaggregation of AT&T–IS's sale prices and valuation amounts, that "the most effective means to guard against the possibility of anticompetitive conduct by ATTIS is to prevent any abrupt transition to a totally deregulated CPE environment." *Order*, 95 FCC 2d at 1311. We remain confident that the scope of requirements we have put in place during the transition[51] is sufficient to protect the interests of in-place customers, and we conclude that we are under no obligation to seek to enhance the standing of AT&T–IS's competitors in the CPE marketplace by giving them access to confidential pricing information. Further, since AT&T–IS indicates that in-place customers are being given pricing information upon request,[52] this availability of pricing information sufficiently protects the interests of these customers.[53]

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[46] To the extent that a particular multiline customer has requested a price quote and not received the type of response that AT&T–IS has assured us it is providing to all customers, our complaint procedures remain available. In virtually every case, however, we anticipate that customers will be able to resolve problems with AT&T–IS directly.

[47] Letter from Terry L. Trantina to Secretary, FCC (Jan. 31, 1984) at 6.

[48] *North Am. Tel. Ass'n*, FOIA Control No. 83–156, Memorandum Opinion and Order, FCC 84–343 (released July 20, 1984).

[49] *See id.* at paras. 8–12.

[50] *See Order*, 95 FCC 2d at 1310 & n.46.

[51] *See* para. 35, *supra*.

[52] See paras. 30–34, *supra*, for a review of the steps AT&T–IS has taken to supply price quotations to customers upon request.

[53] NATA has argued that AT&T–IS should disclose the methods it has used to calculate transaction costs with regard to its sale prices.

Continued

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C. Calculation of Lease Rates

1. Comments

41. ICA suggests that AT&T–IS may not be following the requirements of the *Order* regarding the manner in which it is calculating lease rates for multi-line CPE during the transition period. ICA argues that AT&T–IS may be applying the Commission's 70 percent lease rate ceiling [54] to each subcomponent of a given CPE system, rather than to the system as whole, and that such an approach would lead to a lease rate for the system in excess of the 70 percent cap.[55] Letter from Counsel for ICA to Secretary, FCC (Apr. 27, 1984) at 6. AT&T–IS explains that, in calculating lease rates for embedded multi-line CPE, it identified the highest state tariff on an individual Embedded Price Element Code (EPEC) basis.[56] Trantina May 15 Letter, Attachment A, at 15. AT&T–IS claims that it would not have been possible to take any other calculation approach, primarily because the BOC's tariffed CPE rates were based on USOCs and were not stated in aggregated terms based on the various USOCs making up a particular CPE system. *Id.*

2. Discussion

42. In establishing the 70 percent ceiling, we did not contemplate imposing upon AT&T–IS a method of lease rate calculation other than the one AT&T–IS had intended to use in connection with its proposal regarding lease rates. AT&T–IS had proposed that the *highest* state tariff rate should be the ceiling for national lease rates. *See Order*, 95 FCC 2d at 1341–42 & n.97. Our main purpose in reducing the ceiling to 70 percent of the highest state tariff rate was to prevent increases "so large as to threaten rate shock in any area." *Id.* at 1344. It was not our purpose to confront AT&T–IS with the virtually impossible task of comparing the tariff structures in all the states for each of the hundreds of thousands [57] of CPE system configurations in order to derive some hybrid "highest state traiff" for each configuration. There is too much variation in state tariff structures and in CPE configurations to make such an approach feasible. In order to devise an efficient and expeditious [58] method of calculating lease rates, it was necessary for AT&T–IS to seek out a "building block" which would provide a common link among the otherwise divergent tariff structures. The EPECs were the only tool available for this purpose. We cannot fault AT&T–IS for taking the only practical route available for establishing a lease rate calculation methodology.

D. CPE Contract Termination Penalties

1. Comments

43. Several different approaches to this issue are suggested in the comments. First, a number of commenters argue that the Commission should prohibit AT&T–IS from invoking early termination contract provisions to impose termination charges if customers who originally entered into a long-term contract [59] with a BOC (for CPE now owned by AT&T–IS) seek to terminate the contract before its scheduled termination date. *See* Rolm Reply Comments at 8; Tandy Opposition at 6; TCA Opposition at 4; *see also* IDCMA Petition at 4. Second, it is contended that the Commission should determine that, if the contracts were legally assignable from the BOCs to AT&T–IS and continue to be enforceable, then AT&T–IS does not have any discretion to waive the early termination penalties in certain circumstances and instead must apply these penalty provisions uniformly in all circumstances. That is, AT&T–IS should not be permitted to waive the early termination penalty *only* if the customer agrees to buy the embedded equipment, or new equipment, from AT&T–IS. Rolm Petition at 15 n.11; *see* ICA Opposition at 11; NATA Reply Comments at 10–11; IDCMA Comments of July 26, 1984, at 4–6. Third, it is argued that the long-term contracts should not be viewed as assignable and enforceable against the in-place customers (or, at least, the Commission should concede that it does not have authority to decide this issue), but that the contracts should be treated as enforceable against AT&T–IS because AT&T–IS in this proceeding has pledged to the Commission that it will abide by the contracts. NATA Reply Comments at 10–13. Under this approach, customers could terminate before the expiration dates in the contracts without facing any penalty. Fourth, it is suggested that the Commission should monitor AT&T–IS's activities and take appropriate action in instances in which complaints regarding AT&T–IS's practices are brought before the Commission. ICA Opposition at 11.

44. In arguing that none of these approaches is warranted or necessary, AT&T–IS maintains that the Commission has approved those aspects of the AT&T–IS plan relating to these fixed-term contracts. AT&T–IS Opposition at 11. AT&T–IS further contends that these contracts have been assigned to AT&T–IS from the BOCs by operation of law, and that we should reaffirm our intent that the terms of these contracts must be honored by all parties. AT&T–IS Reply Comments at 9; AT&T–IS Opposition at 12–13. AT&T–IS maintains that barring imposition of the early termination penalties would relieve customers of an obligation under the contracts while still giving them the benefits of their bargains. AT&T–IS Opposition at 11. In addition, AT&T–IS asserts that the BOC lease rates set by tariff regarding these contracts took into account the imposition of penalties for early termination, and that the resulting lower tariff rates would have been considered unlawfully discriminatory (*vis-a-vis* non-contract customers) were it not for the early termination penalty requirements of the contracts. *Id.* at 12 & n." ".

45. AT&T–IS argues that imposition of the early termination charge is necessary "because when a customer terminates service prior to the expiration of the term of the agreement, [AT&T–IS] will not achieve the investment and expense recovery contemplated and upon which the lower

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NATA Opposition at 16. We required AT&T–IS to supply us with information regarding the derivation of its transaction costs. *Order*, 95 FCC 2d at 1340. In compliance with this requirement AT&T–IS has disclosed and explained the methodology it has established for deriving transaction costs. *See* Letter from B.H. Walling, Jr., to Secretary, FCC (Apr. 16, 1984).

[54] We required that: "ATTIS may establish during the transition period for any product of multi-line equipment which is not also leased as new equipment by ATTIS [lease rates which] shall not exceed the higher of (1) an amount equal to 70 percent of the highest state tariff in effect for the category of equipment involved on March 29, 1983, and (2) the statistical median of all state tariffs in effect on that date for that category of equipment." *Order*, Appendix B, 95 FCC 2d at 1417.

[55] For an illustration of ICA's assertion that such component-specific lease rates would lead to overall lease rates for a CPE system in excess of the Commission's ceiling, see Letter from Counsel for ICA to Secretary, FCC (May 30, 1984), Table A.

[56] An EPEC is a code used by AT&T–IS to designate embedded CPE items. Trantina May 15 Letter, Attachment A, at 3. AT&T–IS found it necessary to convert USOCs to EPECs for purposes of establishing national sale and lease prices because USOCs "used by each BOC vary significantly among BOCs and by jurisdiction." *Id.*, Attachment A, at 3 n.8.

[57] Trantina May 15 Letter, Attachment A, at 15.

[58] It was AT&T–IS's goal to have the national lease rates in place at the time of divestiture. *See id.* AT&T–IS was not able to implement national lease rates until March 1, 1984. See Letter from Terry L. Trantina to Secretary, FCC (Jan. 31, 1984) at 4–5.

[59] AT&T–IS has explained that: "[F]ixed-term agreements [were made] for periods ranging from 12 to 144 months. Selection of a fixed-term agreement assured customers of a lower monthly rate than that available to month-to-month customers and that the company would not increase that rate during the contract term selected. In return, AT&T was assured of a know revenue stream to offset its investment and the expenses associated with the CPE without the risk of premature retirement or additional expense." Letter from Terry L. Trantina to Chief, Common Carrier Bureau (June 19, 1984) at 2.

[lease rates] were predicated." Letter from Terry L. Trantina to Chief, Common Carrier Bureau (June 19, 1984) at 2. AT&T–IS further contends that its current practices regarding the application of penalties for early contract termination [60] should not be overturned by the Commission because they are "normal competitive marketing practices"[61] which are "consistent with the marketing and pricing practices of other vendors who lease equipment."[62]

2. Discussion

46. The comments regarding two-tier contracts and early termination penalties have indicated several potential problems in the termination charge area. These problems include: AT&T–IS's ability to recover investments in equipment in the absence of termination charges; the impact of AT&T–IS's actions on competition in the CPE marketplace; and the effect of AT&T–IS's actions on its customers' capacity to make informed telecommunications decisions. The comments have also presented varied approaches for the resolution of these problems which range from maintaining the status quo to eliminating the charges entirely. The difficulty in resolving these issues has been further complicated by the relatively late submission of significant comments on the issue.[63]

47. Consequently, we have decided that the issues presented by AT&T–IS's termination charge practices should not be addressed in this Order. The desirability of an immediate resolution of many of the other issues raised in this proceeding, and the importance of the concerns raised by the termination charge issue, mandates this conclusion. Our conclusion is also prompted by the fact that the uniqueness of the questions raised by this issue and the number of comments filed and inquires made well after completion of the normal reconsideration pleading cycle make it necessary to take additional time to engage in further analysis before arriving at a decision. We will, therefore, address the full range of termination charge questions noted in the comments in a subsequent Order in this docket.

48. As a final matter, AT&T–IS has asserted that the Commission has sanctioned AT&T–IS's view that the CPE lease contracts have been assigned to AT&T–IS by operation of law. For example, in responding to a letter from the Chief, Common Carrier Bureau,[64] regarding early termination penalties, AT&T–IS contends that "[i]mplicit in your questions concerning AT&T–IS's termination charge policies and practices is Commission recognition of the continuing validity of the fixed-term agreement * * *." *Id.* at 1. In reaching such a conclusion, AT&T–IS is engaging in a strained interpretation of the Bureau Chief's letter and of our actions in this docket. We have had two objectives in this docket regarding the issue of early termination penalties—to determine the policies AT&T–IS intended to follow regarding imposition of these penalties if we permitted the transfer of the embedded base to AT&T–IS,[65] and to ascertain the nature of the actual practices followed by AT&T–IS regarding application of these penalties in the wake of divestiture.[66] Nothing in the *Order* addressed the issue of the assignability of the BOCs' long-term contracts, nor have we taken any other action in the docket which could be construed as a judgment that these contracts have been assigned to AT&T–IS "by operation of law."

V. Support of Embedded CPE During Transition Period

A. Customer Proprietary Information

1. Comments

49. Rolm argues that all customer proprietary information relating to the embedded CPE base should be disclosed to the public. Rolm Petition at 4; *see* Tandy Opposition at 8–9. Rolm contends that such disclosure would be consistent with Commission rules governing the provision of enhanced services customer proprietary information by carriers to their separate subsidiaries,[67] that the Commission has failed to take into account the fact that competition is severely threatened by the Commission's failure to require the disclosure of this information,[68] and that customer privacy could be adequately protected by permitting customers to bar the disclosure of this information to any CPE vendor, including AT&T–IS.[69]

50. AT&T–IS maintains that Rolm is incorrect in asserting that the procedures approved by the Commission in the *Order* are not consistent with the Commission's rules, and that, even if these rules were applicable, they would relate only to non-CPE service information and not to CPE-specific information. AT&T–IS Opposition at 9 & n.*. ICA objects to the approach suggested by Rolm because any automatic release of customer proprietary information would confront customers with the prospect of repeated and burdensome inquiries and blandishments from CPE vendors. ICA Opposition at 7. The BOCs maintain that the Commission has already specifically rejected the disclosure requirements recommended by Rolm, and that the BOCs are transferring CPE-specific information to AT&T–IS in a manner fully consistent with the requirements established by the District Court in *United States* v. *AT&T*. BOC Opposition at 7–8; BOC Reply Comments at 2–3.

2. Discussion

51. We can find no reason to alter the treatment of customer proprietary information which we established in the *Order*. In adopting the *Order*, we

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[60] AT&T–IS's current practices may be summarized as follows: (1) If a customer seeks to terminate a lease contract before its expiration date in order to purchase or otherwise obtain CPE from another vendor, then AT&T–IS imposes a termination penalty.

(2) If a customer seeks to purchase its in-place CPE from AT&T–IS, then no termination charge applies.

(3) If a customer seeks to upgrade its existing system, lease new CPE, or purchase new CPE from AT&T–IS, then the termination charge is not waived. The customer may, however, be eligible for a credit to reduce the amount of the termination liability. *See id.* at 3.

[61] *Id.* at 4.

[62] *Id.* at 3.

[63] Since August 31, 1984, the Commission has received comments for three parties solely on the termination charge issue. Supplemental Comments of North American Telecommunications Association, filed Aug. 30, 1984; Comments of Rolm Corporation, filed Sept. 19, 1984; Reply of AT&T—Information Systems, filed Sept. 21, 1984; Response of North American Telecommunications Association to Reply of AT&T—Information Systems, filed Oct. 26, 1984. The Common Carrier Bureau has also received between 60 and 70 informal inquiries regarding this issue.

[64] Letter from Chief, Common Carrier Bureau, to Terry L. Trantina (May 24, 1984).

[65] In September 1983 the Common Carrier Bureau requested AT&T to indicate "what corporate policy * * * ATTIS [would] apply concerning customer obligations under [long-term leases]" and whether "ATTIS [would] seek to enforce existing termination charges * * *." Letter from Chief, Common Carrier Bureau, to William A. Davis II (Sept. 16, 1983), Attachment, at 4. AT&T–IS responded that "[t]ermination charges, applicable to early termination of service agreements (*i.e.*, Tier A and Variable Term, non-month-to-month) will * * * be applied." Letter from William A. Davis II to Secretary, FCC (Oct. 7, 1983) at 22.

[66] In May 1984 the Common Carrier Bureau request information from AT&T–IS "in order that we may have a better understanding of the facts concerning your termination charge policies for purposes of the Commission's addressing and resolving this issue in the reconsideration proceeding." Letter from Chief, Common Carrier Bureau, to Terry L. Trantina (May 24, 1984) at 1–2.

[67] Section 64.702(d)(3) of the Commission's Rules, 47 CFR 64.702(d)(3), provides that carriers "[m]ay not provide to any * * * separate [subsidiary] any customer proprietary information unless such information is available to any member of the public on the same terms and conditions * * *."

[68] Rolm Petition at 5–6; *see* Rolm Reply Comments at 2–3.

[69] Rolm Petition at 8; *see* NATA Opposition at 9 n.8; Tandy Opposition at 9 n.4; NATA Reply Comments at 5; Rolm Reply Comments at 3–4.

considered and rejected the argument that CPE-related proprietary information [70] should be made publicly available, and nothing convinces us now that this decision should be modified. First, we reject the view that the mechanisms we established in the *Order* fail to take adequate account of competitive considerations. We reached the conclusion in the *Order* that the most serious potential threat to competition was created by the possibility that AT&T–IS could gain access to the BOCs' non-CPE service information [71] as well as CPE-related information. *See Order*, 95 FCC 2d at 1349. Access to such service information could give AT&T–IS an unfair competitive advantage over other CPE vendors because the information could be used to identify potential customer needs and to develop marketing strategies. We further concluded in the *Order* that the safeguards established by AT&T–IS to isolate non-CPE service information from AT&T–IS marketing personnel, if properly implemented, would be sufficient to ameliorate any potential risk that AT&T–IS would engage in anti-competitive conduct. *See id.* at 1351–52.[72] We find no reason to alter this view.

52. Second, we cannot agree with Rolm's assertion that the mechanisms we established in the *Order* regarding CPE-related information are not consistent with our rules. This CPE-related information is an essential attribute of the embedded base. To require public disclosure of this information would substantially discount the value of the embedded base transferred to AT&T–IS because such availability of the information to AT&T–IS's competitors would erode AT&T–IS's opportunity to compete in the CPE marketplace on an equal footing with these other vendors. *See id.* at 1350. Our desire to nurture competition in this market does not extend so far that we would be willing to award to AT&T–IS's competitors the windfall of free access to CPE-related information. Nor do we believe that any such windfall is necessary to protect competition in the CPE marketplace. We have concluded that competition is better served by recognizing that AT&T–IS is entitled to access to this information, as an integral part of the embedded base, without being required to make the information public. This information, which is inextricably bound up with the CPE assets being transferred to AT&T–IS, is not the type of proprietary information which is subject to § 64.702(d)(3) of the Commission's Rules, 47 CFR 64.702(d)(3).

53. It also is important to note that the *Order* established mechanisms regarding CPE-related information which will promote competition, while also protecting the interests of users. Under the *Order*, each embedded CPE user has the authority "to decide whether and to whom information specific to that customer's service and equipment should be disseminated." *Id.* at 1352. This requirement promotes competition by establishing a mechanism under which customers can give CPE-related information to other vendors, thus enabling these vendors to develop price quotes based on detailed information regarding the customers' current CPE systems. The mechanism also protects the privacy of embedded CPE customers by giving them control over dissemination of this information. No commenter has presented any persuasive evidence or argument that this mechanism—and the overall approach we have taken regarding CPE proprietary information—will not foster competition, protect the value of the embedded CPE base transferred to AT&T–IS, and provide in-place customers with a sufficient degree of confidentiality.

B. Termination of Service for Nonpayment of CPE Bills

1. Comments

54. AT&T–IS argues that the Commission's requirements [73] regarding the prohibition of local telephone service terminations for failure to pay embedded CPE bills, the application of partial payments first to local service bills, and the notification of customers that service will not be terminated for such nonpayment, should be relaxed because the BOCs' Customer Records Information System (CRIS) billing systems would have to be substantially altered to comply with these requirements and any such alteration could not be carried out in any timely fashion without inordinate expense. AT&T–IS Emergency Petition at 7–8.[74] Other commenters agree that it is not practical to require the BOCs to alter their CRIS systems to achieve compliance with these requirements. ICA Comments at 2; BOC Petition at 5–6. AT&T–IS also contends that the requirements established by the *Order* are not necessary because the billing system developed by the BOCs and AT&T–IS is in full compliance with requirements established by the District Court in *United States* v. *AT&T*. AT&T–IS Emergency Petition at 8–9. Further, AT&T–IS maintains that embedded CPE customers already are adequately protected because the BOCs do not terminate local service in any case in which a CPE bill has been contested by a customer. *Id.* at 9–10; *see* AT&T–IS Reply Comments at 4.

55. AT&T–IS suggests that the shared billing arrangements developed by the BOCs and AT&T–IS are beneficial to embedded CPE customers because the arrangements minimize costs, which otherwise would be passed on to these customers. AT&T–IS Emergency Petition at 8–9. AT&T–IS Argues that modifications of the CRIS system should not be required because these modifications may not serve any useful purpose after the BOCs cease providing shared billing to AT&T–IS. *Id.* at 10–11; *see* BOC Petition at 6; BOC Opposition at 5–6. ICA suggests that current billing and service termination procedures should be explained to embedded CPE customers through a written notice. ICA Comments at 2–3; *see* ICA Opposition at 10; Letter from Counsel for ICA to Secretary, FCC (Apr. 27, 1984) at 8–9.[75] The BOCs, however, object to such a notice requirement because joint billing is a transitory arrangement which does not warrant such costly notice requirements and because, under current BOC practices, customers are notified directly before local service is actually terminated. BOC Opposition at 5–7; *see* AT&T–IS Reply Comments at 4. The BOCs also point out that any Commission requirements which necessitate alteration of the CRIS systems would force the BOCs and AT&T–IS to renegotiate their shared billing contracts—an exercise which would be costly and time-consuming. BOC Petition at 7. Both AT&T–IS and the BOCs assert that the BOCs' current collection practices are recognized to be

[70] CPE-related information includes general customer information and CPE-specific information. General customer information includes customer name, billing address, billed telephone number, business or residence, and class of service. CPE-specific information includes equipment types, quantities, and locations. *Order*, 95 FCC 2d at 1349–50.

[71] Non-CPE service information includes information relating to access lines, toll usage, and directory advertising. *Id.* at 1349.

[72] We are satisfied that AT&T–IS has taken adequate measures to ensure that non-CPE service information is not made available to, or otherwise obtained by, AT&T–IS marketing personnel. For a detailed description of these measures, see Trantina May 15 Letter, Attachment A, at 10–11.

[73] *See Order*, 95 FCC 2d at 1354–55.

[74] See para. 56 n.75, *infra*, for a discussion of AT&T–IS's emergency petition.

[75] ICA generally favors the relief sought by AT&T–IS, arguing that the shared billing arrangements approved by the District Court in *United States* v. *AT&T–IS* are sufficient. ICA Opposition at 9–10.

fair and flexible, and that customers are given ample opportunity to make payment arrangements with regard to delinquent accounts before any service termination is actually carried out. AT&T–IS Reply Comments at 4; BOC Reply Comments at 5.

56. IDCMA asserts that the billing requirements established by the Commission in the *Order* should be maintained, and that the imposition of local service cut-offs should not depend upon whether the customer involved has disputed his telephone bill. IDCMA Petition at 7–8. NATA supports IDCMA's position, arguing that there is no need to reconfigure the CRIS system in order to achieve compliance with the *Order*. NATA argues that it would be sufficient for embedded CPE customers to be notified that the BOCs do not have any authority to terminate local telephone service if a customer fails to pay embedded CPE bills. NATA Opposition at 3, 5. Both NATA and Tandy argue that a manual review of customers' bills would be a sufficient mechanism to prevent service terminations for nonpayment of CPE bills. *Id.* at 6; *see* Tandy Opposition at 5. NATA and Tandy also assert that any relaxation of the requirements established in the *Order* would give AT&T–IS an unfair competitive advantage because the BOCs have a decided advantage in collecting unpaid bills as a result of their ability to terminate local service. NATA Opposition at 6; Tandy Opposition at 5.[76]

2. Discussion

57. We indicated in the *Order* that our objective in barring the BOCs from terminating local service for failure to pay CPE charges was to limit "any competitive advantage that may follow from the BOCs' provision of billing and related support services to ATTIS." *Order*, 95 FCC 2d at 1355. Our concerns regarding this possible competitive advantage lead us to hold to our view that the BOCs should not be authorized to terminate or suspend local telephone service for failure to pay AT&T–IS CPE charges. We also have concluded, however, that the practical problems and considerations raised by AT&T–IS make it advisable for us to adopt certain refinements and adjustments in the requirements we established in the *Order*. Specifically, those requirements are revised as follows:

(1) The BOCs shall not terminate or suspend local service in any case in which the customer has disputed a CPE charge or has failed to pay a CPE charge.

(2) A BOC employee shall manually review a customer's bill records before submitting any order for the termination or suspension of the customer's service. This manual review shall be for the purpose of confirming that the customer has failed to make payments or has made only partial payments, and for determining whether the failure to make payments is related to a CPE billing dispute.

(3) If the manual review indicates that the customer has made partial payments, the reviewing BOC employee shall determine whether sufficient payments have been made by the customer to defray outstanding transmission service bills. If sufficient payments have been made, the BOC employee shall not submit any order for local service termination or suspension.

(4) A BOC representative also shall contact a customer directly by telephone before authorizing any termination or suspension of local service. This contact may be made only if the customer is delinquent in paying transmission service bills, and shall be for the purpose of attempting to establish a mutunally acceptable payment schedule with the customer. The customer must be advised that he must pay the balance owed for transmission service in order to avoid termination or suspension of service. The customer also must be advised that local service will not be terminated or suspended for failure to pay AT&T–IS CPE bills.

(5) Neither the BOCs nor AT&T–IS will be required to notify all in-place CPE customers that the BOCs are not authorized to terminate or suspend local service for failure to pay CPE charges. Sufficient notice in specific cases will be provided through the manual review process we are requiring.

(6) The BOCs will not be required to make any alterations in the computer software comprising their CRIS billing systems. The automated billing methods and procedures currently in effect may continue to be operated by the BOCs without modification for purposes of the shared billing services provided to AT&T–IS.

These requirements, it should be noted, will apply only in cases in which the customer involved is leasing embedded equipment from AT&T–IS.

58. We have concluded that, with these clarifications and refinements, the requirements established in the *Order* are sufficient to prevent AT&T–IS from gaining an unfair competitive advantage over other vendors while also avoiding the imposition of burdensome costs on the BOCs or AT&T–IS. Further, the requirements we are establishing are similar to billing review procedures already being followed by many of the BOCs. *See, e.g.*, BOC Reply Comments at 5. From the perspective of the BOCs' customers who also continue to lease embedded CPE from AT&T–IS, the fact that our requirements bar any service cut-off for failure to pay CPE bills ensures that these customers' dealings with a third party vendor (*i.e.*, AT&T–IS) will not affect the provision of transmission service to them by the BOCs. Although we recognize that operation of the automated "treatment" mechanisms of CRIS [77] creates the potential for confusion among some customers, we have concluded that this potential is offset by our requiring manual review of a customer's bills and direct contact from a BOC representative before any termination or suspension of service may be carried out. Further, as we will discuss, modification of the CRIS billing mechanisms does not appear to be a practical alternative in the context of

[76] The BOCs also seek a waiver of the requirements of paragraphs 131 and 132 of the *Order* on behalf of 17 telephone companies. *See* BOC Petition at 7–8 & Attachment A. Mountain States Telephone and Telegraph Company also has filed a petition for waiver of these provisions of the *Order*. On December 28, 1983, AT&T–IS submitted an Emergency Petition seeking reconsideration of the Commission's joint billing requirements and also seeking temporary authority for AT&T–IS and the divested BOCs to implement shared billing without effectuating measures to comply with the billing requirements established in the *Order*. *See* AT&T–IS Emergency Petition at 2. On December 29, 1983, the Common Carrier Bureau granted a temporary partial stay of the billing requirements, pending further action by the Commission. CC Docket No. 83–893, Order Granting Temporary Partial Stay Pending Reconsideration, Mimeo No. 34183 (released Dec. 29, 1983).

[77] "Treatment" refers to methods employed by the BOCs to collect overdue bills. AT&T has explained that: "CRIS * * * provides for mechanized treatment (notices to the customer and/or business office) of overdue accounts. Residence, business and final accounts (residence or business) are separately categorized. Whether a particular customer is subject to credit treatment depends upon a combination of that customer's payment history, the amount due and the category in which the customer falls. A reminder notification is mechanically generated to the customer and/or business office when payment has not been received by a specific number of days after the due date."

AT&T Plan of Reorganization filed in *United States* v. *AT&T* (Dec. 16, 1982) at 96. AT&T has also indicated that: "Treatment notices will continue [after divestiture] to be generated by the BOC CRIS system based on the total amount due. The BOC account inquiry center will conduct normal collection activities on all overdue accounts unless or until a customer indicates that the failure to pay is due to a dispute over AT&T equipment charges. If this occurs, the BOC will credit the customer's account for the amount of AT&T equipment charges in dispute and refer the charges to AT&T for collection or adjustment. AT&T will compensate the BOC for these services." *Id.* at 104.

the shared billing services provided to AT&T–IS by the BOCs.[78]

59. From the perspective of vendors competing with AT&T–IS, we have concluded that our decision to bar service cut-offs for failure to pay CPE bills is an adequate means of protecting the competitive position of these vendors, and that further requirements, such as reconfiguration of CRIS, are not necessary. In our view, the result of these safeguards is that AT&T–IS is not afforded any special advantage as a result of joint billing carried out by the BOCs. The ultimate threat for non-payment of CPE bills—the cut-off of local service—has been removed, and we have taken steps to ensure that this fact is brought to the attention of the customer. Thus, the BOCs are not authorized to take action which would place AT&T–IS in a better position than its competitors to collect unpaid bills.

60. From the perspective of the BOCs and AT&T–IS, we agree with the contention that the imposition of further requirements is unnecessary and may be burdensome. We have arrived at this conclusion for a number of reasons. First, because of the design of CRIS [79] any revision of the system would be a difficult undertaking. AT&T–IS has indicated that any such modification "would require significant program and design changes * * *" and would require up to 12 months to complete.[80] Second, the modifications would be costly. The BOCs have estimated that these reconfiguration costs could easily exceed $100 million.[81] Third, the shared billing provided to AT&T–IS by the BOCs is temporary, and thus does not warrant the imposition of further billing reconfiguration requirements. The *Order* requires shared billing to terminate no later than June 30, 1985. *Order*, 95 FCC 2d at 1348. Further, AT&T–IS is currently phasing in its assumption of billing functions for embedded CPE and, after September 1, 1984, only seven BOCs are scheduled to be providing billing for AT&T–IS. BOC Reply Comments at 4.[82] This phasing out of joint billing makes unnecessary any reconfiguration of CRIS.

61. We conclude this discussion by noting that we imposed similar billing requirements upon the BOCs in a separate proceeding.[83] In that proceeding, we required that partial payments be applied first to transmission service charges, that local service could not be cut off for failure to pay CPE charges, and that BOC representatives must contact customers before terminating service in order to determine whether amounts owed relate to transmission charges or to charges imposed by a BOC separate subsidiary for CPE. *BOC Separation Order*, 95 FCC 2d at 1141–42. On reconsideration, we required the BOCs to develop procedures to satisfy our policy against termination of local service for failure to pay a BOC affiliate's CPE charges. *BOC Separation Reconsideration Order* at paras. 48–49.

62. Although the billing mechanisms applicable initially to the BOCs are more stringent than those we adopt here,[84] there are distinctions between the BOCs' billing for their affiliates and the BOCs' billing for AT&T–IS which support our view that the more stringent requirements need not be applied in the latter case. First, the joint billing provided to AT&T–IS must end not later than June 30, 1985, but the BOCs may provide joint billing to their affiliates through 1987. *See BOC Separation Order*, 95 FCC 2d at 1141. The shorter period of joint billing justifies less stringent requirements. Second, the BOCs are likely to have greater incentive to use their billing collection mechanisms to benefit their own affiliates than they would to benefit AT&T–IS, which in many instances is in competition with these affiliates. Third, since the BOCs' affiliates are just beginning to enter the CPE market as retailers of new equipment, the number of monthly billings involved is far less than the number of billings provided for AT&T–IS.[85] The large number of AT&T–IS billings makes CRIS reconfiguration more complicated than the billing mechanism changes necessary with regard to billings for the BOC affiliates.

C. Interconnection of Independently-Supplied CPE

1. Comments

63. IDCMA argues that AT&T–IS should be prohibited from establishing or enforcing any policy or rule under which AT&T–IS customers are barred from using or interconnecting any independently-supplied CPE as a condition of the continued leasing of AT&T–IS's equipment. IDCMA maintains that the *Order* should be clarified to ensure that this prohibition applies regardless of whether the independently-supplied CPE is registered under Part 68 of the Commission's Rules, 47 CFR 68.1 *et seq.* IDCMA Petition at 5; *see* ICA Opposition at 11; NATA Opposition at 6; Tandy Opposition at 6–7; TCA Opposition at 4. AT&T–IS contends that IDCMA's assertions are ill-conceived because AT&T–IS does not follow any "no-mix" policy regarding independently-supplied CPE, because AT&T–IS permits interconnection of such CPE so long as it meets "reasonable, minimal standards" and does not adversely affect compliance with Part 68 by the CPE supplied by AT&T–IS, and because AT&T–IS's policy is consistent with the approach adopted by the Commission regarding equipment interconnection. AT&T–IS Opposition at 13; *see* AT&T–IS Reply Comments at 8; Letter from Terry L. Trantina to Legal Assistant to the Chief, Common Carrier Bureau (May 11, 1984) (hereinafter Trantina May 11 Letter) at 2.[86]

2. Discussion

64. The *Order* barred AT&T–IS from preventing equipment-to-equipment interconnection between its embedded CPE and components or adjunct devices made by other manufacturers and registered under Part 68. The *Order* also required AT&T–IS to "work

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[78] See para. 61, *infra*. It also is reasonable to conclude that BOC customers are further protected by the fact that the BOCs may have little financial incentive to cut off transmission service for failure to pay AT&T–IS CPE bills, because this failure to pay CPE bills does not necessarily mean that the customer is not a good credit risk. *Cf.* Woletz, *Money Rolling Out*, Forbes, Sept. 10, 1984, at 142.

[79] AT&T–IS has indicated that: "The design of the BOC billing systems does not permit association of amounts paid by customers with specific charges comprising the total balance due. Payments can be applied only against the total balance due. When partial payments are tendered, the BOCs will therefore be unable to determine what portion of the payment is due to each entity whose charges are included in the total balance due." AT&T–IS Emergency Petition at 4 (quoting AT&T Plan of Reorganization filed in *United States* v. *AT&T* (Dec. 16, 1982) at 108); *see* BOC Petition at 4–5; AT&T–IS Reply Comments at 2.

[80] AT&T Emergency Petition, Attachment A (Affidavit of D.L. Oertle) at 4.

[81] BOC Petition at 5.

[82] As of December 1984, AT&T–IS had assumed embedded CPE billing functions in 24 states. In January 1985 AT&T–IS was scheduled to begin its own billing for more than 3 million customers in New York. New York Times, Dec. 4, 1984, at D1.

[83] *Policy and Rules Concerning the Furnishing of Customer Premises Equipment, Enhanced Services and Cellular Communications Services by the Bell Operating Companies*, CC Docket No. 83–115, Report and Order, 95 FCC 2d 1117 (1983) (*BOC Separation Order*), *reconsideration*, FCC 84–252, 49 FR 26056 (released June 1, 1984) (*BOC Separation Reconsideration Order*).

[84] *See* Letter from Chief, Common Carrier Bureau, to J.R. Teel, BellSouth Services (June 29, 1984). Our discussion of the BellSouth proposal here should not be construed as the rendering of any determination of whether the proposal is in compliance with the *BOC Separation Order*. We shall make that determination in a separate action.

[85] The CRIS systems include embedded CPE records for approximately 60 million customers. AT&T–IS Emergency Petition, Attachment A (Affidavit of D. L. Oertle) at 3.

[86] The Secretary of the Commission has been requested to include a copy of this letter in the official record of this docket.

cooperatively with such manufacturers to facilitate this interconnection." *Order*, 95 FCC 2d at 1359. The concerns expressed by IDCMA raise two separate issues. First, whether the "reasonable, minimal standards" applied by AT&T–IS in deciding whether to permit equipment-to-equipment interconnections are consistent with commission policies and do not constitute an unauthorized ban on such interconnections. Second, whether the scope of our policy as described in the *Order* should be expanded to include equipment-to-equipment interconnections not currently governed by Part 68.

65. As to the first issue, we note that the "reasonable, minimal standards" referenced by AT&T–IS may be summarized as follows:

(1) The equipment-to-equipment interconnection must conform to Part 68 and to applicable municipal regulations.

(2) Appropriate interfaces for interconnections, which may be provided by AT&T–IS or by the customer, must permit reasonable trouble isolation.

(3) Customers may not modify or rearrange AT&T–IS CPE to carry out hard-wire connections.

(4) Costs incurred by AT&T–IS to provide and remove arrangements to interconnect customer CPE will be recovered from the customer.

(5) Customers will be informed that they are responsible for ensuring that the AT&T–IS host CPE and the add-on CPE continue to comply with applicable regulations.

(6) The interconnection must be otherwise acceptable to AT&T–IS for the specific proposed connection.

(7) The interconnection must not require distribution or use of specifications which are proprietary in nature.

See Trantina May 11 Letter at 3 & Attachment (Letter from W. E. Russell to M. D. Woody (Apr. 13, 1984)) at 2. There is nothing on the face of these standards which conflicts with the policy of the *Order* that AT&T–IS should not prevent equipment interconnections with its embedded CPE.[87] Of course, the Commission would be concerned in any situation in which it is alleged that AT&T–IS is abusing these standards in order to restrict interconnections as a means of gaining a competitive advantage over other vendors.[88] If any such case arises, sufficient mechanisms already are in place to enable us to effect a remedy.

66. As to the second issue, we do not agree with IDCMA that the *Order* is unduly limiting. Our intent in the *Order* was to make clear that we would not countenance any deviation by AT&T–IS from our *existing* policies regarding equipment-to-equipment interconnections. Any suggestion that these policies should be expanded to encompass CPE not required to be registered under Part 68 would take us far afield from the issues we address in this proceeding. Hence, we reject IDCMA's suggested approach.

VI. Other Issues

A. Refurbishment Costs and Exempt Materials Expense

1. Comments

67. In the *Order* we required AT&T to reimburse each of the BOCs for 50 percent of the amount of refurbishing expenses incurred in 1983 by the respective BOCs. We also required AT&T–IS to reimburse the BOCs for 50 percent of the unallocated balance of 1983 exempt materials expenses except that AT&T was granted permission to subtract amounts previously allocated to AT&T–IS from 1983 exempt materials expenses.

68. AT&T–IS requests the Commission to reconsider its requirement that AT&T must reimburse ratepayers for 50 percent of refurbishment expenses incurred by the BOCs in 1983 in connection with embedded CPE inventory transferred to AT&T–IS. AT&T–IS disagrees with the Commission's conclusion that refurbishment increases the net book value of CPE transferred to arguing that the net book value of this CPE already has been adjusted to reflect a longer useful life resulting from refurbishment. Thus, AT&T–IS contends, the net book value paid by AT&T–IS at transfer was higher than would have been the case if refurbishment had not been taken into account.

69. AT&T–IS points out that this higher net book value is assumed regardless of whether the CPE is in place or in unrefurbished inventory, or whether the refurbishment expense was actually incurred before or after the CPE is transferred to AT&T–IS. AT&T–IS also notes that about 40 percent of embedded CPE inventory transferred to AT&T–IS was unrefurbished, and that the additional cost to AT&T–IS of refurbishing this CPE would be at least $83.6 million.

70. AT&T–IS contends that the assumptions made by the Commission in deriving the amount of reimbursement to the BOCs are not supported by the facts. First, AT&T–IS notes that the Commission assumed that all BOC refurbishing expenses in 1983 are attributable to inventory CPE, but notes that 87 percent of single-line CPE and 77 percent of multi-line CPE refurbished in 1983 were returned to service and are subject to AT&T–IS's sale plan. Second, AT&T–IS notes that the Commission assumed that all BOC embedded CPE inventories were transferred to AT&T–IS, but points out that at least 15.5 percent of embedded CPE was retained by the BOCs (for use primarily as official service equipment). Thus, AT&T–IS argues that at least this percentage of refurbishment expense is not attributable to CPE transferred to AT&T–IS. Third, AT&T–IS notes that the Commission assumed that all embedded CPE inventory was transferred to AT&T–IS in refurbished condition, but points out that this is true for only 60 percent of the transferred inventory. AT&T–IS is responsible for refurbishing the remaining 40 percent. AT&T–IS estimates that only $128.3 million of the $787.6 million 1983 BOC refurbishment expenses incurred through November 30, 1983, is actually attributable to embedded CPE inventory transferred to AT&T–IS, under the Commission's "increased value" rationale. AT&T–IS contends that reimbursement of even this amount would constitute double ratepayer recovery for the effects of refurbishment.

71. AT&T–IS contends that it should not be required to reimburse ratepayers for BOC "exempt materials" expense, as required by the Commission, because such expenses were incurred only in connection with the installation and maintenance of inside and drop wire, and not the installation and maintenance of CPE. Since inside and drop wire remains the property of the BOCs, AT&T–IS argues that any expense attributed to that wire, including exempt materials expense, is the responsibility of the BOCs.

72. AT&T–IS notes that the Commission may have intended to refer to "other expensed materials" (*e.g.*, small CPE repair parts such as bulbs, buttons, and cords) used in the repair

[87] We note that add-on CPE may require Part 68 registration prior to connection with AT&T–IS embedded CPE, depending upon the level of network protection offered by the embedded CPE. We further note that the Commission is currently considering deregulating the means of connecting equipment to equipment. *See Revisions to Part 68 of the Commission's Rules*, CC Docket No. 84–885, Notice of Proposed Rulemaking, FCC 84–424, 49 FR 39349 (released Sept. 26, 1984).

[88] *See, e.g.*, Letter from Legal Assistant to the Chief, Common Carrier Bureau, to T. A. Rossano, AT&T (Apr. 13, 1984).

and maintenance of embedded CPE. AT&T–IS maintains that, if this was the Commission's intent, AT&T–IS should not be required to reimburse any of the 1983 BOC expense associated with these materials because all of these materials were either used by the BOCs during 1983 or will have been used by AT&T–IS during the first few weeks of 1984 to repair in-place CPE available for purchase. Thus, it suggests that ratepayers can capture the value of such expense through purchase.

73. On the other hand, the BOCs argue that the Commission should reject AT&T–IS's suggestion that the *Order* be modified regarding refurbishment costs and exempt materials expenses, contending that modification would be inconsistent with the Commission's policy of protecting the BOC ratepayers. The BOCs maintain that, to the extent AT&T–IS collects lease rates for refurbished inventory and in-place embedded CPE, AT&T–IS will receive gains for which it has not compensated the BOCs. The BOCs note that, even though revenues associated with the lease or sale of refurbished inventory CPE will be received by AT&T–IS and cannot be captured by ratepayers through the sales program, the BOCs do not object to the Commission's adjusting the reimbursement to take into account CPE inventory transferred in unrepaired condition. Regarding exempt materials, the BOCs note that AT&T–IS has argued that reimbursement should not be required because the exempt materials relate to assets retained by the BOCs, and argue that it is likely that the Commission intended to refer only to the inventory of materials and supplies used for refurbishing CPE inventory which was transferred at the time the CPE inventory was itself transferred. The BOCs argue that they should be reimbursed for (1) 50 percent of refurbishment costs on embedded in-place CPE transferred to AT&T–IS; (2) 100 percent of such costs for inventory CPE actually refurbished before transfer; and (3) the value of inventory materials and supplies normally used to refurbish CPE transferred to AT&T–IS.

2. Discussion

74. AT&T–IS has persuaded us to revise our approach. In developing instructions in the *Order*, we were faced with the difficulty of quantifying the reimbursement amount. We noted that the BOCs might well be able to identify the CPE being transferred to AT&T–IS and not subject to the sales program, and that we could require the BOCs to bill AT&T–IS for such expenses. However, in order to minimize the administrative burden on both the BOCs and AT&T–IS, we assumed that all CPE inventory was refurbished during 1983 and that all 1983 refurbishment expenses were related to the CPE being transferred to AT&T–IS. Thus, we required the reimbursement of 50 percent of the refurbishment costs. We also assumed that all CPE was transferred in refurbished condition. AT&T–IS, however, has shown through its comments that our assumptions do not accurately reflect the relevant circumstances surrounding refurbishment costs and exempt materials. For one thing, AT&T–IS notes that the larger portions of both single-line and multi-line CPE refurbished in 1983 were returned to service subject to AT&T–IS's sales plan. This fact contradicts our assumption that all BOC refurbishing expenses in 1983 are attributable to inventory CPE. AT&T–IS also notes that at least a portion of embedded CPE was retained by the BOCs. This contradicts our assumption that all BOC embedded CPE inventories were transferred to AT&T–IS. And AT&T–IS further points out that only 60 percent of the transferred CPE inventory was in refurbished condition. This fact, again, contradicts our assumption that all embedded CPE inventory was transferred in refurbished condition.

75. Based on the facts that AT&T–IS presents, we agree that refurbishing expenses, in this instance, are properly attributable to inventory CPE. Further, a portion (15.5 percent) of embedded CPE was retained by the BOCs and not transferred at all. These facts substantially affect our instruction in the *Order*. Further, these facts, when taken in conjunction with the cost information provided by AT&T–IS, provide a basis upon which a more accurate measure of reimbursement can be determined.

76. Regarding exempt materials, we first must clarify the intended definition and the underlying assumptions from the *Order*. It was our intent to refer only to the inventory of materials and supplies used for refurbishing CPE inventory which was transferred at the time the CPE inventory was itself transferred. Further, we assumed "the value of these expensed assets endures beyond the moment the associated expenditure is incurred." *Order*, 95 FCC 2d at 1383. Other assumptions related to this issue were that the precise duration of the expensed assets' value is no greater than one year (*i.e.*, its value is consumed within a year after the moment it is expensed) and expensed assets were acquired at a constant rate throughout 1983. Accordingly, we required AT&T–IS to reimburse the BOCs for 50 percent of the expenses associated with exempt materials. There is, however, a clear distinction both between exempt materials and CPE inventory, and between the accounting for each. AT&T–IS has not given adequate justification to warrant reconsideration of AT&T–IS's reimbursement to the BOCs in this area. While AT&T–IS's comments provide a more quantifiable basis to determine how the BOCs should be reimbursed for CPE inventory, they have not demonstrated that ratepayers can capture the value of exempt materials expense through purchase. Accordingly, we agree with the BOCs that there should be a 50–50 sharing of expenses for exempt materials. As already discussed, exempt materials are assumed to have a life of one year or less and are purchased and consumed at relatively constant rates throughout the year. Further, the accountng effort necessary to identify specifically and reconstruct actual balances as of December 31, 1983, if possible, would be most difficult. The benefits to be derived from such reconstructed data appear to be negligible and certainly do not justify the effort involved, given the relatively low value of these assets.

77. In conclusion, therefore, we require AT&T–IS to reimburse the regulated BOC entities as follows. First, the exempt materials expense (expensed assets) associated with the CPE being transferred should be separated from the total refurbishment expense associated with that same CPE. Then, based on the premises stated in the *Order*, we require AT&T–IS to reimburse the regulated entities for 50 percent of the exempt materials expense not previously allocated to AT&T–IS. *See id.* Next we deal with refurbishment expense net of exempt materials expense. This net refurbishment expense should be divided by the total number of refurbished units to arrive at an average refurbishment cost per unit. With this computed average, we require AT&T–IS to reimburse the regulated BOC entities for the refurbishment expense associated with the actual number of refurbished CPE inventory units transferred (computed by multiplying the average cost per unit times the number of units transferred).

B. Tax Issues

1. Comments

78. California and NATA argue that the Commission should reverse its decision to reduce the net book value of the assets transferred to AT&T–IS by the amount of the deferred tax reserve and unamortized investment tax credit

(ITC) accounts associated with those assets.[89] California maintains that the Commission has failed to reach an equitable result and has ignored the implied, if not express, intent of Congress that ratepayers should continue to share in these tax benefits, even after the associated assets have been removed from regulation. NATA basically supports California's arguments.

79. AT&T–IS argues that the Commission's treatment of those tax-related accounts is required by the Internal Revenue Code and points out that the Internal Revenue Service, in ruling upon a request for a revenue ruling filed by AT&T,[90] has reached conclusions identical to the Commission's position on these tax issues on every point.

2. Discussion

80. Our decision in the *Order* was that deferred tax reserves and unamortized investment tax credits associated with embedded CPE should be transferred from the BOCs to AT&T–IS together with the CPE. *See id.* at 1359–60. We based this conclusion on the applicable provisions of the Internal Revenue Code (the "Code"), associated Treasury regulations, generally accepted accounting principles, and our own rules. As specified in these various provisions, under the "normalization" approach to accounting for the benefits of accelerated depreciation and ITCs, there is a continuing relationship between the assets that give rise to those benefits and the resulting deferred tax reserve and unamortized ITC accounts, which would be severed if those accounts did not move with the underlying assets. Furthermore, we concluded that both the express terms of the Code and their legislative history evidence a clear congressional intent that ratepayers should share in these tax benefits so long, but only so long, as the assets remain in regulated service and their costs are being borne by ratepayers through depreciation charges.

81. California now argues that tax reserves should be viewed as funds collected from ratepayers to be held until tax payments become due and that they are essentially customer contributions to capital. Thus, California concludes that the benefits of normalization should extend beyond the date of transferring the CPE because, argues California, AT&T still owns these assets, which have merely been tranferred to unregulated service.

82. Regarding investment tax credits, California argues that the *Order* subverts the statutory scheme and allows AT&T–IS to reap the full benefits of the unamortized ITCs. California suggests that the Commission should adopt some mechanism to permit the unamortized ITCs to be flowed through to ratepayers after the associated CPE has been transferred.

83. California's arguments are not new. The same lines of reasoning were considered in the initial responses to the *Notice*. Arguments found to be inadequate in the initial response period do not constitute sufficient reason to reconsider.[91]

84. Finally, subsequent to the release of our *Order*, the Department of the Treasury, Internal Revenue Service, issued its response to a revenue ruling request filed by AT&T. The IRS stated:

> The deferred tax reserve attributable to the transferred assets must be removed from each transferor's books of account and no part of such deferred tax reserve may be used to reduce the transferor's rate base or service (or treated as no-cost capital) * * *. The balance of the unamortized investment tax credits (after adjustment for recapture, if any) with respect to the transferred property should be removed from the transferor's books to reflect the assignment of the property and no portion of such unamortized investment tax credit may be used to reduce the transferor's cost of service or rate base under section 46(f)(2).[92]

Thus, our decision on this issue is fully consistent with IRS's decision.

C. Intrasystem Wiring

1. Comments

85. In the *Order*, we questioned whether embedded intrasystem wiring should be removed from regulated service in connection with the removal from regulated service of associated CPE. We concluded that intrasystem wiring currently owned by AT&T or the Independent telephone companies should not be detariffed and removed from regulated service for two reasons. First, the transfer could have an adverse effect upon competition. And second, it was more equitable to require that unamortized labor costs, which form the predominant portion of embedded intrasystem wiring investment, be recovered under regulation. *See Order*, 95 FCC 2d at 1370–73.

86. The parties make two general arguments regarding our decision dealing with embedded intrasystem wiring. First, it is contended that we should reverse our decision and now require that intrasystem wiring owned by the BOCs prior to divestiture must be detariffed and transferred to AT&T–IS. California Petition at 7; FEA Petition at 2. California maintains that such a transfer would not harm competition and would prevent AT&T–IS from deriving a windfall which it otherwise would receive if it were not required to assume responsibility for unrecovered investment in the embedded wiring. California Petition at 9. AT&T–IS opposes California's detariffing request, arguing that California is merely raising arguments already rejected by the Commission and by the District Court in the divestiture proceeding. AT&T–IS Opposition at 19; *see* Bell Atlantic Opposition at 4–5. AT&T–IS objects to the notion that it would receive any windfall as a result of our decision to require the BOCs to retain the embedded wire under tariff, arguing that "[n]o such windfall profits will accrue because all embedded CPE rates were disaggregated by the time of divestiture, and the lease rates do not include recovery of the intrasystem wire investment of the BOCs." AT&T–IS Opposition at 20 n.**. Our decision also is supported by a number of other parties. *See* ICA Opposition at 4; IDCMA Opposition at 5–6; NATA Opposition at 10–11.

87. The second argument made by a number of parties is that the Commission should impose requirements upon the BOCs regarding their maintenance of the embedded intrasystem wiring because the BOCs are failing to provide adequate maintenance or to respond to users' reconfiguration requests. FEA Petition at 3–5. It also is suggested that we should require the BOCs to provide access to the wire on a non-discriminatory basis as a means of curing any maintenance problems. ICA Opposition at 5–6; *see* NATA Opposition at 12. Several parties object to these suggestions, asserting

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[89] California Petition at 17–20; NATA Reply at 13–18.

[90] IRS Letter Ruling to AT&T, Dec. 29, 1983

[91] As it did in its comments, California simply asserts that its positions are consistent with congressional intent and public policy without anchoring its arguments to any substantive analysis of the applicable provisions of the Code or their legislative history. The Code supports our decision in the *Order*. NATA further argues that the Commission should not have looked to the tax law as a basis for deciding the tax-related issues involved in the transfer of the embedded CPE. NATA reply at 16–17. (It is not clear what source of law NATA would have us turn to in resolving these issues.) NATA is apparently concerned that an analysis of tax law is beyond the competence of this Commission. However, Congress has placed in the Code provisions governing the regulatory accounting treatment of accelerated depreciation and ITCs taken by public utilities. By virtue of this fact, every regulatory commission that has utilities within its jurisdiction that take accelerated depreciation and ITCs must interpret and apply those provisions of the Code.

[92] IRS Letter Ruling to AT&T, Dec. 29, 1983, at 4–5.

that the BOCs are fulfilling their maintenance obligations pursuant to state tariffs. *See* Bell Atlantic Opposition at 3–4; Mountain States Opposition at 4–5.

2. Discussion

88. As to the first argument raised in the comments, we refuse to make any modification of our treatment of embedded inside wiring in the *Order* because nothing in the comments persuades us that any adjustment is necessary. No new arguments are presented in the reconsideration petitions, and the contentions which are reiterated in these petitions do not cause us to waiver from our conclusion that the embedded wiring should not be transferred to AT&T–IS.

89. As to the commenters' second argument, we do not choose to address in this *Order* the merits of the assertions made in the petitions because we have concluded that these assertions raise issues which are beyond the scope of this proceeding. We will, in a separate proceeding, address requests that we issue a declaratory ruling clarifying the rights of users regarding embedded intrasystem wiring. *See* Public Notice, Common Carrier Bureau Seeks Comments on Petition for Declaratory Ruling Clarifying the Rights of Users with Respect to Access to Complex Embedded Intrasystem Wiring (released Aug. 29, 1984).

VII. Ordering Clauses

90. Accordingly, it is hereby ordered, That the petitions for reconsideration or, in the alternative, for waiver, filed by AT&T Information Systems, James J. Butler, the People of the State of California and the Public Utilities Commission of the State of California, the Federal Executive Agencies, the Independent Data Communications Manufacturers Association, Inc., the Mountain States Telephone and Telegraph Company, the State of New York Department of Public Service, the Operating Telephone Companies, Rolm Corporation, Paul J. Sinderbrand, and the Virginia State Corporation Commission, ARE DENIED except as provided herein.

91. It is further ordered, That the petition to waive page limitations filed by North American Telecommunications Association is granted.

92. It is further ordered, That the late-filed comments in opposition filed by the People of the State of California and the Public Utilities Commission of the State of California, and by the Public Service Commission of Wisconsin, are accepted.

93. It is further ordered, That the motion to strike filed by the American Telephone and Telegraph Company and AT&T-Information Systems regarding late-filed further comments filed by the People of the the State of California and the Public Utilities Commission of the State of California, is granted. [93]

94. It is further ordered, That the comments on the reply by Paul J. Sinderbrand filed by AT&T-Information Systems, and the letter filed by Paul J. Sinderbrand in response to these comments, are accepted.

95. It is further ordered, That the emergency petition filed on December 28, 1983, by AT&T-Information Systems seeking reconsideration of the joint billing requirements established in the *Order* is dismissed as moot.

96. And, it is further ordered, That the Secretary shall cause a copy of this Order to be published in the **Federal Register.**

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

William J. Tricarico,

Secretary

Appendix A

I. Parties Filing Petitions for Reconsideration or Petitions for Waiver

AT&T Information Systems (AT&T–IS)
James J. Butler
People of the State of California and the Public Utilities Commission of the State of California (California)
Federal Executive Agencies (FEA)
Independent Data Communications Manufacturers Association, Inc. (IDCMA)
International Communications Association (ICA)
Mountain States Telephone and Telegraph Company
State of New York Department of Public Service (New York)
Operating Telephone Companies (BOCs)
Rolm Corporation (Rolm)
Paul J. Sinderbrand
Virginia State Corporation Commission (Virginia)

II. Parties Filing Oppositions

American Telephone and Telegraph Company (AT&T)
AT&T–IS (jointly with AT&T)
Bell Atlantic Companies (Bell Atlantic)

[93] The California pleading, which was styled "Petition for Reconsideration Further Comments" was received by the Commission on February 23, 1984. The supplementary filing was submitted "in support" of California's intial petition for reconsideration, which was received on January 27, 1984. California Further Comments at 1. The supplementary filing was not accompanied by any separate pleading seeking acceptance of the late filing.

The Communications Act of 1934 specifically provides that petitions for reconsideration of Commission actions must be filed not later than 30 days after the date of public notice of the action. Section 405 of the Communications Act of 1934, 47 U.S.C. 405. Our rules, as a means of enforcing this statutory filing requirement, provide that "[n]o supplement to a petition for reconsideration filed after expiration of the 30 day period will be considered, except upon leave granted pursuant to a separate pleading stating the grounds for acceptance of the supplement." Section 1.429(d) of the Commission's Rules, 47 CFR 1.429(d). In this case, the deadline for filing reconsideration petitions regarding the *Order* was January 27, 1984.

In applying these provisions of the statute and our rules, we have decided to grant AT&T motion to strike California's supplementary filing for the following reasons. First, unlike other filing deadlines which we establish pursuant to our own Orders, we are here confronted with a statutory mandate that reconsideration petitions must be filed within a specified period. Our responsibility to enforce this statutory requirement makes it necessary for us to apply stringent scrutiny to any attempts to circumvent the filing deadline through supplementary filings. *See Gardner* v. *FCC*, 530 F.2d 1086 (D.C. Cir. 1976); *American Telephone & Telegraph Co.*, File No. ENF–83–7, Order, Mimeo No. 1603 (released Jan. 4, 1984); *Louisiana & Mississippi Broadcast Stations Renewals*, 50 FCC 2d 1020 (1975). Second, the California supplementary filing was received a full 27 days after the applicable filing deadline. (It will be noted that the lateness of California's filing was nearly as long as the original 30-day period available under the statute for filing reconsideration petitions.) Under these circumstances California bore an especially heavy burden to demonstrate grounds for accepting the pleading.

Third, California has made no attempt to meet this burden. No separate motion stating grounds for acceptance was submitted. In the absence of any attempt by California to comply with the provisions of § 1.429(d) of our Rules, we are not inclined to invent on our own initiative any grounds for the acceptance of the supplement. Fourth, since California's filing came so far outside the normal cycle for reconsideration petitions, oppositions, and replies, if we were to accept the late filing we would impinge upon the interests of other parties who did not have an adequate opportunity to reply.

California
IDCMA
ICA
Mountain States Telephone and Telegraph Company, Northwestern Bell Telephone Company, and Pacific Northwest Bell Telephone Company (filing jointly)
North American Telecommunications Association (NATA)
BOCs
Tandy Corporation (Tandy)
Tele-Communications Association (TCA)
Public Service Commission of Wisconsin (Wisconsin)

III. Parties Filing Reply Comments

AT&T–IS
FEA
IDCMA
NATA
BOCs
Rolm
Paul J. Sinderbrand

[FR Doc. 85–5326 Filed 3–5–85; 8:45 am]
BILLING CODE 6712–01–M

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47 CFR Part 64

[CC Docket No. 85–26; FCC 85–56]

Policy and Rules Concerning the Furnishing of Customer Premises Equipment and Enhanced Services by American Telephone and Telegraph Company, and Related Waiver Requests

AGENCY: Federal Communications Commission.

ACTION: Waiver of rule.

SUMMARY: This document cross references a document published in the Proposed Rule section in this issue. In that document, AT&T is granted a conditional waiver of Part 64 of the Commission's rules to allow its subsidiary to engage in joint use of software subject to approval of an accounting and network information and disclosure plan. AT&T was also permitted to realign personnel services in its Technologies Sector. Such activities should lower AT&T's cost while causing minimal harm to competition. Another waiver request, relating to AT&T's provision of CPE to the federal government, is denied because the need for it was unsupported.

EFFECTIVE DATE: The effective date of the conditional waiver is March 6, 1985.

ADDRESSES: All documents filed in this proceeding may be inspected and copied in the Commission's Public Reference Room, Room 239, 1919 M Street, N.W., Washington, D.C. 20554, between 8:00 a.m. and 5:30 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: Kurt DeSoto (202) 632–7553.

List of Subjects in 47 CFR Part 64

Communications common carriers, Communications equipment, Telephone, Separate Corporation.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85–5312 Filed 3–5–85; 8:45 am]
BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 84–710; RM–4753]

Assignment of TV Broadcast Station in Destin, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns UHF Television Channel 64 to Destin, Florida, as that community's first television assignment in response to a petition filed by Multi-Systems, Inc.

EFFECTIVE DATE: April 8, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.606(b), table of assignments, TV Broadcast Stations (Destin, Florida), MM Docket No. 84–710, RM–4753.

Adopted: February 15, 1985.
Released: February 28, 1985.

By the Chief, Policy and Rules Division.

1. Before the Commission for consideration is the *Notice of Proposed Rule Making*, 49 FR 30545, published July 31, 1984, which proposed the assignment of UHF television Channel 64 to Destin, Florida, as that community's first television assignment. The *Notice* was adopted in response to a petition filed by Multi-Systems of Destin, Inc. ("petitioner"). Petitioner has filed supporting comments reaffirming its intention to apply for the channel, if assigned. No other comments or oppositions to the proposal were received.

2. Destin (population 3,672)[1], in Okaloosa County (population 109,920) is located on the Gulf Coast approximately halfway between Pensacola and Panama City, Florida. Petitioner states that Destin is a growing community with both a permanent and year-round tourist population deserving of its first local television service.

3. We believe that petitioner has adequately demonstrated the need for a first commercial television assignment at Destin and that the public interest would be served by assigning UHF television Channel 64 to that community. The channel can be assigned in compliance with the minimum distance separation requirements of § 73.610 of the Commission Rules.

PART 73—[AMENDED]

§ 73.606 [Amended]

4. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934 as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective April 8, 1985, the Television Table of Assignments, § 73.606(b) of the Rules, is amended, with respect to the following community:

City	Channel No
Destin, Florida	64+

5. It is further ordered, That this proceeding is terminated.

6. For further information contact, D. David Weston, Mass Media Bureau (202) 634–6530.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85–5311 Filed 3–5–85; 8:45 am]
BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 84–375; RM–4589]

Assignment of TV Broadcast Stations in Perry, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

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[1] Population figures were extracted from the 1980 U.S. Census.

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SUMMARY: Action taken herein assigns UHF Television Channel 58 to Perry, Georgia, as its first TV assignment, in response to a petition filed by Lowell Register.

EFFECTIVE DATE: April 8, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations (Perry, Georgia), MM Docket No. 84–375, RM–4589.

Adopted: February 15, 1985.
Released: February 28, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it the *Notice of Proposed Rule Making*, 49 FR 18143, published April 27, 1984, proposing the assignment of UHF Television Channel 58 to Perry, Georgia, as that community's first television service. The *Notice* was adopted in response to a petition filed by Lowell Register ("petitioner"). Supporting comments were late filed by the petitioner reaffirming his intention to file for the channel, if assigned.[1] No comments in opposition to the proposal were received.

2. We believe that channel 58 should be assigned to Perry in order to provide a first television service to that community. The channel can be assigned in compliance with the minimum distance separation requirements of § 73.610 of the Commission's Rules.

PART 73—[AMENDED]

§ 73.606 [Amended]

3. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective April 8, 1985, the Television Table of Assignments, § 73.606(b) of the Rules, is amended, with respect to the following community:

City	Channel
Perry, Georgia	58+

4. It is further ordered, That this proceeding is terminated.

5. For further information contact Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85–5324 Filed 3–5–85; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 82–276; RM–4060]

Assignment of TV Broadcast Stations, Billings, Miles City and Lewistown, MT and Lander, WY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein switches the noncommercial educational reservation from Channel 6 to Channel 10 at Miles City, Montana, and reassigns Channel 6 to Billings, Montana, as that community's fifth commercial allocation. The assignment was made at the request of Comanche Enterprises.

EFFECTIVE DATE: April 4, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.606(b) table of assignments, television broadcast stations (Billings, Miles City, and Lewistown, Montana and Lander, Wyoming), BC Docket No. 82–276, RM–4060.

Adopted: February 15, 1985.
Released: February 26, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the *Second Further Notice of Proposed Rule Making and Order to Show Cause*, 49 FR 4527, published February 7, 1984, proposing alternative assignment plans looking toward the allocation of VHF Channels 5 or 6 to Billings, Montana. Comments were filed by Comanche Enterprises ("petitioner") and the Chrysostom Corporation ("Chrysostom"). Reply comments were filed by the petitioner, Arapahoe Silent Majority, Inc. ("Arapahoe"), and jointly by KOUS–TV, Inc. and Three C's Broadcasting Company ("KOUS" and "3 C's").

2. This proceeding was initiated by the *Notice of Proposed Rule Making*, published May 16, 1982, 47 FR 22985, which proposed the reassignment of Channel 6 from Miles City, Montana, where it is reserved for noncommercial educational use, to Billings, Montana, as a commercial channel. The *Notice* also proposed to switch the educational reservation to Channel 10 at Miles City. In response to the *Notice*, 3 C's notified the Commission that it had tendered an application for use of Channel 10 as a full service television facility at Miles City. As argued by 3 C's, should the Commission reassign Channel 6 as a commercial facility to Billings and grant its application for use of Channel 10 at Miles City, the Commission would be deleting a noncommercial educational channel, without replacement, in contravention of Commission policy.

3. The Commission then issued a *Further Notice of Proposed Rule Making* 48 FR 14681, published April 5, 1983, noting that Channel 13, assigned to Lewistown, Montana, had not been activated as a full-service station since its assignment in 1952, and was therefore available for reassignment to Billings. Therefore, we proposed in the alternative that Channel 13 be reassigned, without replacement, from Lewistown to Billings or that Channel 6 be reassigned from Miles City to Billings, with the reservation of Channel 10 at Miles City as previously proposed. In response to the *Further Notice*, the Commission was informed by Arapahoe that it had tendered an application for use of Channel 13 at Lewistown and based on Commission precedent argued against the removal of a channel from a community, without replacement, where an interest in its use had been expressed. In light of the proposed activation of Channel 13 at Lewistown, the Commission then issued the *Second Further Notice of Proposed Rule Making and Order to Show Cause* ("*Second Further Notice*"), *supra*, seeking comments on the alternative assignment of Channel 5 to Billings with a concomitant change in offset for Channel 5 at Lander, Wyoming, as well as the original Channel 6 reassignment from Miles City to Billings. It was also noted that the use of Channel 5 at Billings would require a site restriction of 10.7 miles southeast to avoid short-

[1] We have accepted these comments for consideration herein for the purpose of allowing the petitioner to reaffirm his intention to apply for the channel.

spacing to Channel 5, Great Falls, Montana.

4. The petitioner filed comments in response to the *Second Further Notice* supporting the original proposal which would reassign Channel 6 to Billings as a commercial channel with the reservation of Channel 10 at Miles City for noncommercial educational use. It based this support on the fact that (1) if the Commission approved a pending assignment of license application of Station KYUS–TV, Miles City, to KOUS, then 3 C's, as part of that application, has agreed to a dismissal of its application for Channel 10 at Miles City, thereby removing the impediment to switching the educational reservation from Channel 6 to Channel 10, and (2), the use of Channel 6 at Billings does not require a site restriction or modification of the Lander, Wyoming, Channel 5 license to specify operation on a different offset.

5. The Chrysostom Corporation, in its comments, indicates that it is willing to change offset provided it receives reasonable reimbursement for the costs involved in such a change, should Channel 5 be assigned to Billings. The assignment of Channel 5 is supported by Arapahoe as it will enable Commission grant of the application for use of Channel 13 at Lewistown, Montana.

6. In reply comments, KOUS and 3 C's have informed the Commission that the assignment application of KOUS has been granted and the application of 3 C's for Channel 10 at Miles City has been dismissed. Accordingly, we find that adoption of the original proposal, that of the dereservation and reassignment of Channel 6 from Miles City to Billings, with the reservation for noncommercial educational use of Channel 10 at Miles City, to be in the public interest. The application of 3 C's for use of Channel 10 at Miles City has been dismissed and the channel has not been applied for by any other party. Channel 6 at Billings can be assigned without the imposition of a site restriction and no existing licensee needs to modify its operation. Further, this action will enable Billings to receive an additional commercial television service while retaining an educational assignment for use at Miles City. Canadian concurrence in the channel assignment has been received.

PART 73—[AMENDED]

§ 73.606 [Amended]

7. In view of the above and pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective April 4, 1985, the Television Table of Assignments, § 73.606(b) of the Commission's Rules, is amended with respect to the communities listed below, to read as follows:

City	Channel No.
Billings, Montana	2, 6, 8, *11, 14, 20+
Miles City, Montana	3–, *10

8. It is further ordered, That this proceeding is terminated.

9. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85–5323 Filed 3–5–85; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 84–168]

Authorization of the Offering of Data Transmission Services on the Vertical Blanking Interval of Television Stations; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; Correction.

SUMMARY: This document corrects an error made in the Report and Order in this proceeding concerning the Vertical Blanking Interval of Television Stations. The error specifically appears in § 73.646(d). The Report and Order was published in the **Federal Register** on February 1, 1985, 50 FR 4658.

FOR FURTHER INFORMATION CONTACT: Alan Stillwell, (202) 632–6302.

Erratum

In the matter of amendment of Parts 2, 73, and 76 of the Commission's Rules to authorize the offering of data transmission services on the vertical blanking interval of television stations; MM Docket No. 84–168.

Released: February 19, 1985.

PART 73—[CORRECTED]

§ 73.646 [Corrected]

1. On January 24, 1985, the Commission released a *Report and Order* in the above captioned matter, 50 FR 4658. In this document, there is an error in the text of the new rules on page one of Appendix B. The error is in the second sentence of paragraph (d) page 4664, under "§ 73.646 Telecommunications Service on the Vertical Blanking Interval." The released text reads ". . . . with the right to reject any material that it deems is appropriate or undesirable." The correct text is ". . . . with the right to reject any material that it deems inappropriate or undesirable."

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85–5319 Filed 3–5–85; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 74

[MM Docket No. 84–280]

Frequency Assignment Procedures In the Broadcast Remote Pickup Service to Facilitate More Efficient Use of the Available Spectrum

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This *Order* establishes the effective date for two previously adopted rule changes affecting the Broadcast Remote Pickup Service.

This action is taken by the Commission in its efforts to relax restrictive regulations and policies.

The Rule changes are intended to provide broadcasters more flexibility in the way they use the Broadcast Remote Pickup frequencies.

EFFECTIVE DATE: February 13, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Hank VanDeursen, Mass Media Bureau, (202) 632–9660.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 74

Communications equipment.

Order

In the matter of amendment of frequency assignment procedures in the Broadcast Remote Pickup Service to facilitate more efficient use of the available spectrum MM Docket No. 84–280.

Adopted: February 13, 1985.
Released: February 15, 1985.

By the Chief, Mass Media Bureau.

1. The Commission adopted a *Report and Order* pertaining to the Broadcast Remote Pickup Service on October 26,

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1984 [1] with the effective date to be specified in a future *Order* when appropriate computer programs are available for implementing the rules. Some of the rule changes are not dependent upon those computer programs, and can therefore become effective immediately. These include the elimination of the "guard receiver" requirement for repeaters and the elimination of the "program only" usage restriction on the present R and S group channels.

Actions

2. Accordingly, it is ordered, pursuant to § 0.5(c) of the Commission's Statement of Delegations of Authority, that Part 74 of the Commission's Rules and Regulations is amended as set forth in the attached Appendix A, effective upon adoption.

3. Further information on this proceeding may be obtained by contacting Hank VanDeursen, Mass Media Bureau, (202) 632–9660.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

James C. McKinney,

Chief, Mass Media Bureau.

Appendix A

PART 74—[AMENDED]

Part 74 of the Federal Communications Commission's Rules and Regulations is amended as follows:

§ 74.402 [Amended]

1. Section 74.402 is amended by removing and reserving footnote 7 to paragraph (a).

2. Section 74.436 is amended by removing paragraphs (a) (1), (2), and (3) in their entirety, revising the introductory paragraph, and revising paragraph (a) to read as follows:

§ 74.436 Special requirements for automatic relay stations.

An automatic relay station shall, in addition to the relay transmitter, include a control unit and one or more relay receivers.

(a) The licensee shall institute appropriate operating procedures to prevent interference to other stations operating on the automatic relay output channel.

* * * * *

[FR Doc. 85–5314 Filed 3–5–85; 8:45 am]

BILLING CODE 6712–01–M

[1] MM Docket No. 84–280, 49 FR 45155 (November 15, 1984).

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1; Amdt. 1–202]

Organization and Delegation of Powers and Duties; Commercial Space Launch Act

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: This amendment delegates to the Director of the Office of Commercial Space Transportation the authority vested in the Secretary by the Commercial Space Launch Act.

EFFECTIVE DATE: The effective date of this amendment is October 30, 1984.

FOR FURTHER INFORMATION CONTACT: Robert I. Ross, Office of the General Counsel, Department of Transportation, Washington, DC (202) 472–5580.

SUPPLEMENTARY INFORMATION: Since this amendment relates to Departmental management, procedures, and practice, notice and comment on it are unnecessary and it may be made effective in fewer than thirty days after publication in the **Federal Register**.

Executive Order 12465 of February 24, 1984, "Commercial Expendable Launch Vehicles" (49 FR 7211; February 28, 1984) assigns to DOT responsibility for being the lead agency within the Federal Government for encouraging and facilitating commercial expendable launch vehicle (ELV) activities by the United States private sector. The Order assigns to the Secretary of Transportation numerous responsibilities and authorities in this regard. To carry out these functions, the Secretary established within the Office of the Secretary an Office of Commercial Space Transportation, headed, by a Director reporting directly to the Secretary.

To support the efforts of the ELV industry and DOT, the Congress recently passed the Commercial Space Launch Act, Pub. L. 98–575, which the President signed on October 30, 1984. That act establishes a formal regulatory, licensing, and enforcement scheme at DOT for ELVs, the places from which they are launched, and the payloads that they carry. All authority vested in the Secretary in that act is being delegated to the Director.

When a formal hearing is held, the Director will generally use the Office of Hearings (consisting of Administrative Law Judges and established by DOT because of the need for formal hearings in carrying out some functions transferred from the Civil Aeronautics Board under the Airline Deregulation Act of 1978), and the staff in the Office of Aviation Enforcement and Proceedings in the Office of the General Counsel will serve as agency counsel.

List of Subjects in 49 CFR Part 1

Authority delegations (government agencies), Organization and functions (government agencies).

PART 1—[AMENDED]

In consideration of the foregoing, Part 1 of Title 49, Code of Federal Regulations, is amended as follows:

1. In § 1.45, paragraph (b) is revised to read as follows:

§ 1.45 Delegations to all Administrators.

* * * * *

(b) Except as otherwise specifically provided, each official to whom authority is granted by §§ 1.45 through 1.53, 1.66, and 1.68 may redelegate and authorize successive redelegations of that authority within the organization under that official's jurisdiction.

2. Section 1.68 is revised to read as follows:

§ 1.68 Delegations to Director of Commercial Space Transportation.

The Director of Commercial Space Transportation is delegated authority to—

(a) Carry out the functions assigned to the Secretary by Executive Order 12465 (February 24, 1984) relating to commercial expendable launch vehicle activities.

(b) Carry out the functions vested in the Secretary by the Commercial Space Launch Act (Pub. L. 98–575; October 30, 1984).

Authority: 49 U.S.C. 322.

Issued in Washington, DC, on February 28, 1985.

Elizabeth H. Dole,

Secretary of Transportation.

[FR Doc. 85–5413 Filed 3–5–85; 8:45 am]

BILLING CODE 4910–62–M

Proposed Rules

Federal Register
Vol. 50, No. 44
Wednesday, March 6, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

Raisins Produced From Grapes Grown in California; Proposed Suspension of Certain Provisions for Zante Currant Raisins

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This notice of proposed rulemaking invites comments on suspending a sentence in § 989.67(j) of the marketing order for raisins produced from grapes grown in California. That sentence deals with the pricing of reserve raisins offered to handlers for free use. Suspension of that sentence would apply only to 1984 crop reserve Zante Currants so that the value of handlers' free tonnage inventory of those raisins can be adjusted downward closer to current world price levels, thereby aiding in the marketing of those supplies. The proposal was recommended by the Raisin Administrative Committee, which works with USDA in administering that marketing order.

DATE: Comments must be received by April 5, 1985.

ADDRESSES: Send two copies of comments to the Office of the Docket Clerk, Room 2069, South Building, Fruit and Vegetable Division, AMS, U.S. Department of Agriculture, Washington, D.C. 20250, where they will be available for public inspection during regular business hours.

FOR FURTHER INFORMATION CONTACT: Frank M. Grasberger, Acting Chief, Specialty Crops Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250 (202) 447–5053.

SUPPLEMENTARY INFORMATION: This proposal has been reviewed under USDA guidelines implementing Executive Order 12291 and Secretary's Memorandum No. 1512–1 and has been classified a "non-major" rule under criteria contained therein.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will have an impact on a substantial number of small entities. The net proceeds to equity holders resulting from the sale of reserve Zante Currant raisins under the Raisin Administrative Committee's proposal will be reduced to a point well below the cost of producing raisins. To the extent that such entities are equity holders in the reserve pool, this impact will be proportional to the size of their equities therein. However, it is recognized that the effects of this action on individual entities will vary depending on their financial conditions, but the impact is not expected to be significant. In the long-term, the benefits of becoming more competitive under current marketing conditions should outweigh any adverse short-term impact and result in benefits to both small and large entities. The domestic inventory adjustment to be accomplished through this action will permit an overall price reduction for Zante Currant raisins, enabling the industry to compete more effectively with lower-priced, foreign-produced Zante Currants, and to more aggressively market raisins generally so as to maintain and expand existing domestic markets and develop new markets. With respect to small businesses that are not raisin producers or handlers, the impact of this action is difficult to quantify but is not expected to be significant. To the extent there is an effect on such individuals, it is likely to be positive as a result of increased marketing of raisins at reduced prices.

This proposal would suspend for Zante Currant raisins, through July 31, 1985, the penultimate sentence in § 989.67(j) of the marketing agreement and Order No. 989, both as amended (7 CFR Part 989), regulating the handling of raisins produced from grapes grown in California. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). That sentence provides that: "However, such raisins shall not be sold at a price below that which the Committee concludes reflects the average price received by producers for free tonnage of the same varietal type purchased by handlers during the current crop year up to the time of any offer for sale of reserve tonnage by the Committee, to which shall be added the costs to the equity holders incurred by the committee on account of receiving, inspecting, storing, fumigating, insuring, and holding of said raisins, and including costs of taxes and interests: *Provided*, That where the outlook for the next crop year or other factors have caused a downward trend in the prices received by producers for free tonnage raisins or in the prices received by handlers for free tonnage packed raisins, reserve tonnage may be sold to handlers at the currently prevailing or the approximate computed field price for free tonnage raisins, as determined by the Committee."

On June 27, 1984, the Department issued a document suspending the penultimate sentence of § 989.67(j) through July 31, 1986, to help reduce the value of handlers' 1983 crop free tonnage inventory of all raisin varietal types having reserve pools to permit more aggressive marketing and product movement and to help the industry become price competitive with foreign-produced raisins. That suspension was published in the **Federal Register** on June 29, 1984 (49 FR 26708).

Subsequent to that action, a group of raisin producers filed suit in the Federal district court for the Eastern District of California (Raisin Producers for Fair Marketing, et al. vs John R. Block, et al.), to enjoin the implementation of that suspension and necessary price adjustments. On July 31, 1984, Judge Price denied the request for injunction relief insofar as it applied to 1983 crop reserve raisins but issued an order enjoining the suspension for the 1984 and subsequent crop year reserves until the Secretary had complied with the applicable provisions of the Agricultural Marketing Agreement Act of 1937, the Administrative Procedure Act, the Regulatory Flexibility Act, or until further order of the district court. The decision of the court prevented the industry from making price adjustments in the value of 1983 crop Zante Currant free tonnage inventory because no reserve was established for that varietal type during the 1983 crop year and because the suspension of the penultimate sentence of § 989.67(j) was blocked with respect to 1984 and later crop year reserves.

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A reserve is in effect for 1984 crop Zante Currant raisins and is available to offset the price of the higher valued 1983 crop inventory carried into the 1984 season (held in inventory on July 31, 1984) by the California raisin industry. That inventory totalling 2,551 natural condition tons was valued (producers price) at $1,150 per ton while the 1984 producer price for the free tonnage portion of the 1984 crop is just over half that amount at $625 per ton. The proposal would allow the RAC to sell to handlers one ton of 1984 crop reserve Zante Current raisins at $100 per ton for each ton of 1983 crop Zante Currant raisins, valued at $1,150, effectively revaluing those raisins at $625, and making them competitive with free tonnage from the 1984 crop.

Deliveries of current crop Zante Currant raisins to date this season are in excess of 2,800 tons. The carryin from the 1983 crop coupled with the 1984 production represent more than a two-year supply of Zante Currant raisins. Free tonnage shipments last year of Zante Currant raisins totalled about 2,262 packed tons and the most recent three-year average shipments was 2,311 tons.

In the absence of this proposal, open price contracting between producers and packers on 1984 crop Zante Currant deliveries was a possibility because of the excess supplies and the inflated value of the 1983 crop inventory. After the Committee's recommendation, packers did not use open price contracting but agreed instead to the aforementioned $625 per ton price, and have been conducting their marketing operations on the premise that the value of the 1983 crop Zante Currant raisins carried into the 1984 season would be averaged down to the 1984 negotiated free tonnage price.

In recommending this proposal, the Committee recognized that producers would be selling reserve Zante Currant raisins at a price well below production costs. However, the devaluation of the inventory would bring the prices of Zante Currant raisins in line with current marketing conditions, and parallel the price adjustments already made on other California raisins using 1983 crop reserves.

List of Subjects in 7 CFR Part 989

Marketing agreements and orders, Grapes, Raisins, California.

PART 989—[AMENDED]

Therefore, the proposal is as follows:

§ 989.67 [Amended]

The next to the last sentence in § 989.67(j) is hereby suspended for Zante Currant raisins through July 31, 1985.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: February 28, 1985.

Karen K. Darling,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 85–5399 Filed 3–5–85; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Parts 1007, 1011, 1046, 1093, 1097, 1098, 1102 and 1108

Milk in the Georgia and Certain Other Marketing Areas; Proposed Suspension of Certain Provisions of the Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rules.

7 CFR Part and Marketing Area

1007—Georgia
1011—Tennessee Valley
1046—Louisville-Lexington-Evansville
1093—Alabama-West Florida
1097—Memphis, Tennessee
1098—Nashville, Tennessee
1102—Forth Smith, Arkansas
1108—Central Arkansas

SUMMARY: This notice invites written comments on a proposal to suspend the seasonal base-excess plans for paying producers under the above listed orders. The suspension was requested by Southern Milk Sales, a cooperative association that represents producers who are located in areas covered by these marketing orders. The cooperative contends that a suspension of the base-excess plans during the period of March through August 1985 is necessary since a substantial portion of the cooperative's member milk was shipped to other deficit southeastern markets that do not provide for base-excess payment plans. As a result of supplying these markets, producer members of the cooperative have not established bases that reflect their entire production and thus they will have their returns reduced during the base-paying months. The cooperative contends that a reduction of returns, in the absence of a suspension action, will jeopardize the maintenance of an adequate supply of milk during the coming months for these and other southeastern markets.

DATE: Comments are due not later than March 13, 1985.

ADDRESS: Comments (two copies) should be sent to: Dairy Division, AMS, Room 2968, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250 (202) 447–2089.

SUPPLEMENTARY INFORMATION: William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on dairy farmers and would not affect milk handlers.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), the suspension of the following provisions of the orders regulating the handling of milk in the aforesaid marketing areas is being considered for the months of March through August 1985.

A. In Part 1007

1. In § 1007.61(a), the words "of September through January".
2. In § 1007.61(a)(5), the words "for the months of September through January".
3. Section 1007.61(b).
4. In § 1007.73(a)(2), the words "or base milk and excess milk".
5. In § 1007.75(a), the words "and the uniform price for base milk".

B. In Part 1011

1. In § 1011.61(a), the words "of July through February".
2. In § 1011.61(a)(5), the words "for the months of July through February".
3. Section 1011.61(b).
4. In § 1011.73(a)(2), the words "or base milk and excess milk".
5. Section 1011.73(d)(3).
6. In § 1011.75(a), the words "and the uniform price for base milk".

C. In Part 1046

1. In § 1046.61(a), the words "of July through February".
2. In § 1046.61(a)(5), the words "for the months of July through February".
3. Section 1046.61(b).
4. In § 1046.73(b), the words "or base milk and excess milk".
5. Section 1046.73(d)(3).
6. Section 1046.73(e)(3).
7. In § 1046.75, the words "and the uniform price" and "base".

D. In Part 1093

1. In § 1093.61(a), the words "of August through February"

2. In § 1093.61(a)(5), the words "for the months of August through February".

3. Section 1093.61(b).

4. In § 1093.73(a)(1), the words "or if the producer had no established base upon which to receive payments during the base paying months of March through July".

5. In § 1093.73(a)(2), the words "or base milk and excess milk".

6. Section "1093.73(e)(3).

7. In § 1093.75(a), the words "and the uniform price for base milk".

E. In Part 1097

1. In § 1097.61(a), the words "for each of the months of August through February".

2. In § 1097.61(a)(5), the words "of August through February,".

3. Section 1097.61(b).

F. In Part 1098

1. In § 1098.61(a), the words "for each of the months of August through February".

2. In § 1098.61(a)(5), the words "in the months of August through February".

3. Section 1098.61(b).

4. In § 1098.71(a), the words "except that for milk received in March, April, May, June, and July from a producer for whom no daily average base can be computed pursuant to § 1098.92, the applicable rate for making payment pursuant to this paragraph shall be the Class III price for the preceding month".

5. In § 1098.73(a), the words "except that for milk received in March, April, May, June, and July from a producer for whom no daily average base can be computed pursuant to § 1098.92, the applicable rate for making payment pursuant to this paragraph shall be the Class III price for the preceding month".

6. In § 1098.73(b), the words "and such payments to be for base and excess milk at not less than the uniform prices for base and excess milk, respectively, computed pursuant to § 1098.61(b) for the months for which such uniform prices for base and excess milk are computed".

7. In § 1098.73(d)(2), the words "including for the months in which base and excess prices apply, the pounds of base and excess milk".

8. In § 1098.73(e)(2), the words "including for the months in which base and excess prices apply, the pounds of base and excess milk".

9. In § 1098.75(a), the words "and the uniform price for base milk".

G. In Part 1102

1. In § 1102.61(a), the words "for each of the months of August through February".

2. In § 1102.61(a)(4), the words "of August through February,".

3. Section 1102.61(b).

H. In Part 1108

1. In § 1108.61(a), the words, "for each of the months of August through February".

2. In § 1108.61(a)(6), the words "of August through February,".

3. Section 1108.61(b).

4. In § 1108.73(a)(2), the words "or base milk and excess milk".

5. Section 1108.73(c)(2)(ii).

6. In § 1108.75(a), the words "and uniform price for base milk".

All persons who want to send written data, views, or arguments about the proposed suspension should send two copies of them to the Diary Division, AMS, Room 2968, South Building, U.S. Department of Agriculture, Washington, D.C. 20250, not later than 7 days from the date of publication of this notice in the **Federal Register.** The period for filing comments is limited because a longer period would not provide the time needed to complete the required procedures and include March 1985 in the suspension period.

The comments that are received will be made available for public inspection in the Diary Division during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed suspension would make inoperative the seasonal base-excess plans under eight orders during the base paying spring and summer months in 1985. The suspension was requested by Southern Milk Sales, a cooperative association that represents producers who are located in the areas covered by the marketing orders.

Under base-excess plans a base for each producer is computed on the basis of deliveries during the fall and winter months. During the following spring and summer months, producers receive a uniform price for base milk for production that does not exceed the established daily average base. Milk in excess of base production commands a lower "excess" price. The plans are intended to encourage a seasonal leveling of production.

The base-excess plans of these orders were recently amended so that if a producer delivered milk to more than one of these eight markets during the fall and winter months, the deliveries to all of the eight markets could be used to compute the producer's base for the purpose of payments during the spring and summer months. However, Southern Milk Sales contends that substantial quantities of the milk of its producer members was shipped to other deficit southeastern markets that do not have base-excess plans. As a result of supplying these markets, producer members of the cooperative have not established bases that reflect their entire production and thus their returns during the spring and summer will be reduced because an abnormally large proportion of their marketing would be paid for at the lower "excess" price. The cooperative contends that a reduction of returns will jeopardize the maintenance of an adequate supply of milk during the coming months for these and other southeastern markets. Thus, the cooperative concludes that the base-excess plans of the eight orders should be suspended during March through August 1985.

List of Subjects in 7 CFR Parts 1007, 1011, 1046, 1093, 1097, 1098, 1102 and 1108

Milk marketing orders, Milk, Dairy products.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Signed at Washington, D.C. on: February 28, 1985.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 85–5339 Filed 3–5–85; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 84–AWA–13]

Proposed Alteration of VOR Federal Airways

Correction

In FR Doc. 85–3732 beginning on page 6193 in the issue of Thursday, February 14, 1985, make the following correction on page 6194:

PART 71—[CORRECTED]

§ 71.123 [Corrected]

V–13 [Corrected]

In the third column, in V–13, in the fourth line, "003° T" should read read "033° T".

BILLING CODE 1505–01–M

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14 CFR Part 71

[Airspace Docket No. 84-AWA-14]

Proposed Alteration of VOR Federal Airways

Correction

In FR Doc. 85-3723 beginning on page 6195 in the issue of Thursday, February 14, 1985, make the following corrections:

PART 71—[CORRECTED]

§ 71.123 [Corrected]

V-105 [Corrected]

1. On page 6196, in the third column, in V-105, in the sixth line, "Vagas" should read "Vegas".

V-163 [Corrected]

2. In the same column, in V-163, in the eighth line, "Armdore" should read "Ardmore".

BILLING CODE 1505-01-M

14 CFR Part 71

[Airspace Docket No. 84-AWA-34]

Proposed Alteration of VOR Federal Airways

Correction

In FR Doc. 85-3731 beginning on page 6192 in the issue of Thursday, February 14, 1985, make the following corrections:

PART 71—[CORRECTED]

§ 71.123 [Corrected]

V-571 [Corrected]

1. On page 6193, in the middle column, in V-571, in the second line, "Leon" should read "Leona".

V-198 [Corrected]

2. On the same page, in the third column, in V-198, in the eleventh line, "226° " should read "266° ".

BILLING CODE 1505-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 341

[Docket No. 76N-052H]

Cold Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use; Tentative Final Monograph for OTC Antihistamine Drug Products; Correction

AGENCY: Food and Drug Administration.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: The Food and Drug Administration (FDA) is deleting the reference to doxylamine succinate inadvertently included in certain parts of the preamble of a notice of proposed rulemaking, which was published in the **Federal Register** of January 15, 1985 (50 FR 2200). The agency clearly indicated earlier in the preamble that all discussion of the safety and effectiveness of doxylamine succinate was removed from the tentative final monograph pending a complete review and evaluation of the new data and information concerning the relationship between doxylamine succinate and birth defects.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drugs and Biologics (HFN-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4960.

SUPPLEMENTARY INFORMATION: In FR Doc. 85-680 appearing at page 2200 in the **Federal Register** of Tuesday, January 15, 1985, the following correction are made:

1. On page 2204, third column, the last two sentences of the second paragraph are corrected to read: "The agency, therefore, is proposing in this tentative final monograph that diphenhydramine hydrochloride at an adult dosage of 25 to 50 mg be Category I as an OTC antihistamine drug product. (See comment 8 below.)"

2. On page 2209, third column, and on page 2210, first column, item (6)(iii) is corrected to read: *"For products containing diphenhydramine hydrochloride identified in § 341.12(e).* 'May cause marked drowsiness.' "

Dated: February 27, 1985.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-5328 Filed 3-5-85; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 357

[Docket No. 81N-0050]

Poison Treatment Drug Products for Over-the-Counter Human Use; Tentative Final Monograph

Correction

In FR Doc. 85-682 beginning on page 2244 in the issue of Tuesday, January 15, 1985, make the following corrections:

1. On page 2248, in the second column, in the ninth line, "permot" should read "permit".

2. On page 2249, in the second column, in paragraph 17., in the third line, "prvious" should read "previous".

BILLING CODE 1505-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 1800

[Docket No. R-85-1221; FR-2051]

Solar Energy and Energy Conservation Bank

AGENCY: Solar Energy and Energy Conservation Bank, HUD.

ACTION: Proposed rule.

SUMMARY: Section 104(d)(2) of the Housing and Community Development Technical Amendments Act of 1984 amended section 520(b)(5) of the Solar Energy and Energy Conservation Bank Act to require revision of the current regulation of the Solar Energy and Energy Conservation Bank. The revised regulations must establish explicit criteria, and their relative weights, for allocation of financial assistance and must provide that all amounts available for financial assistance shall be allocated at the same time. The Bank is proposing to change 24 CFR 1800.95 to conform to this statutory requirement and to make other necessary revisions to 24 CFR Part 1800.

DATE: Comment due date: April 5, 1985.

ADDRESS: Interested parties are invited to submit comments regarding this rule to the Office of General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410. Comments should refer to the docket number and date of publication of the rule. A copy of each comment submitted will be available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Francis, Manager, Solar Energy and Energy Conservation Bank, Room 7110, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410. Telephone: 202-755-7166. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Background

The current 24 CFR 1800.95 was adopted in response to the old section 520(b)(5) of the Solar Energy and Energy Conservation Bank Act, which had been added by section 463(e)(2) of the Housing and Urban-Rural Recovery Act

of 1983. (The background and reasoning for the current provision is explained in detail at 49 FR 9875–9876, March 16, 1984.) Under that section the Bank was required to include in its rule "criteria" for allocation of financial assistance. In response, the Bank established two sets of criteria. One set (which applied to the allocation of at least half of the available funds in each Fiscal Year) consisted of objective characteristics of a State (*e.g.*, number of households at various income levels, average household energy consumption) which were weighted through a formula to determine the percentage of funds allocated for each State. The remaining available funds (designated a "reserve fund") were to be allocated among States later in the year considering the following criteria as applied to the State and its approved program: Program scope, population characteristics, funds drawdown history, whether Bank funds are leveraged with any funds derived from sources not involving some form of Federal subsidy, and history of compliance with applicable rule provisions. The relative weight for these criteria, while not stated in the Bank regulations, was announced to State participants in the Bank program prior to allocation of funds. (Funds allocated to State participants under each set of criteria were to be later allocated within a State in accordance with the approved State program.)

The new legislation requires two basic changes to the current 24 CFR 1800.95. The relative weights among all of the allocation criteria must be stated in the regulation, whereas currently there is no fixed relationship in the regulation between the weights given to the two sets of criteria and no weights are stated in the regulation for the "reserve fund" criteria. Also, a single allocation round applying all of the criteria is required each year instead of the distinct "formula" and "reserve fund" allocation rounds which occur at separate times of the year under the current regulation.

Proposed § 1800.95

The proposed § 1800.95(a) preserves much of the current § 1800.95 (a) and (c) while making the changes required by legislation and certain other improvements. The score for each State is the product of two basic factors. The criteria for Factor "A" are the same as the criteria stated for the "formula" allocation in § 1800.95(a) of the current rule and used to calculate the tentative allocations announced on March 16, 1984 (49 FR 9962) except that the criterion in the current § 1800.95(a)(2) is excluded and the remaining criteria are multiplied rather than added together. The highest value given to a State under this factor would be set equal to 100 with other values proportionately less.

Factor "B" is comprised of four criteria which (except for one change) were aspects of the "funds drawdown history" item of the current § 1800.95(c)(2); these and other criteria were used in calculating the "reserve fund" allocation announced by HUD press release on September 26, 1984. These criteria were explained to all participating States before the allocations were calculated but they have not previously been published in the **Federal Register.**

The first criterion measures the extent of a State's energy savings per Bank subsidy dollar expended, the second criterion measures total dollar investment in subsidized measures in a State per Bank subsidy dollar expended, the third criterion measures the proportion of funds awarded to a State which are actually expended and the fourth criterion measures a State's use of subsidy dollars in relation to the subsidy dollars used by all States. The third criterion uses "expended" funds rather than "committed" funds as under the "reserve fund" allocation since the program is no longer at the start-up phase in which committed but not expended funds represented a significant amount of total committed funds (36 percent as of August 31, 1984).

For each of the four criteria the highest State value will be set equal to 5 with other values proportionately less. The Factor "B" elements are normalized to be in the range of 0–5 which represents a performance multiplier value, meaning a State could receive a funding allocation of up to 5 times the amount it would receive with no program activity. Increasing the range of the multiplier, *e.g.*, 0–10, increases the amount of funds distributed to participants with superior performance while decreasing the amount to low performers. The Bank feels the 0–5 range will provide adequate incentive for good performance without distorting award results with relatively small differences in performance as would happen with a high multiplier range. Weights given to the four criteria will be 0.1, 0.1, 0.5 and 0.3, respectively.

As was done with the 1984 "reserve fund" allocation, a State's allocation may be reduced if the State program uses Bank funds to subsidize measures which benefit from another Federal subsidy as well. This reduction is a minimum 5 percent of Factor "B" and potentially 50 percent in case of a complete overlap of subsidies. The subsidy levels permitted in the Bank rule themselves provide sufficient Federal subsidy for efficient measures. The Bank views the potential for substantial downward adjustment of a State's funds as a flexible and effective way of discouraging Federal oversubsidization and leveraging more State and local government and private funds into the energy area. Congress previously barred the Bank from prohibiting the combination of Bank funds with tax-exempt financing; the Bank now proposes to also drop provisions barring the combination of Bank funds with certain specified Federal assistance programs, as discussed below, and to rely instead exclusively on the funds allocation criteria to achieve these objectives. The Bank does not consider Petroleum Violation Escrow funds or proceeds of Federally-guaranteed or insured loans to be a Federal subsidy.

Certain of the criteria used for the "reserve fund" allocation under the current § 1800.95(c)(2) are not continued in the proposed § 1800.95. The "program scope" criterion as applied by the Bank resulted in extra funds being allocated to the States with operating programs for several building categories and for both solar and conservation. The proposed rule drops "program scope" and does not use funds allocation as a means of encouraging broad-based State programs. "History of compliance with applicable rule provisions" (another criterion for the "reserve fund") was implemented in a very limited way (failures to submit required reports) since compliance reviews had been conducted for only a small number of participants and the first audits were not yet due under § 1800.125. The Bank now proposes to allocate funds on the expectation of rule compliance and to use its powers to recapture funds or suspend drawdowns to address noncompliance problems. Failure to submit timely reports will have the effect of reducing an allocation, however, since a State will receive no score for the factors which depend on current information available only through the reports. "Population characteristics" was also a distinct criterion for the "reserve fund" allocation; this is no longer needed since the old "formula" and "reserve" allocations are in effect combined under the proposed rule and Factor "A" is based on population characteristics.

A revision to § 1800.95(b) also is proposed. That paragraph concerns the manner of legally obligating funds to States which elect to receive their tentative allocations. The proposed revision clarifies that the Bank is not

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required to obligate any new funds if a violation of program requirements has been brought to a State's notice and remains unresolved. The notice of violation gives the Bank the right to recapture already-obligated funds and it may be pointless to obligate new funds in that case.

Other Changes

Other proposed changes to Part 1800 are described below.

1. *Section 1800.3 Definitions.* The proposed rule would reinsert the definition for "one-to four-family residential building" which was inadvertently dropped when Part 1800 was published as a final rule and add to the definition a previously-announced Bank policy that at least half of a building's floor area must be for residential use. Another new definition would be "solar pool heating system" which is a system to heat swimming pool water in a non-profit commercial building for therapeutic purposes.

The proposed rule modifies certain other definitions. Deletion of "domestic" before "hot water" in the definition of "active solar energy system" is proposed in connection with new eligibility for swimming pools. The proposed revision to the "annual income" definition would reference the new 24 CFR Part 813 which contains the rule for calculating income for purposes of HUD's Section 8 housing assistance payment programs, but differs from Part 813 in not imputing income to any "net family assets" which are not actually income-producing. The Bank program permits assistance for nonrental buildings, unlike Section 8, and thus Bank applicants may have substantial nonincome-producing assets in the form of equity in their residences, which would not be counted. This approach is consistent with income calculation guidelines which the Bank has distributed to all State participants.

Proposed additions to the "commercial building" definition will clarify what is an ineligible building "used for the general conduct of government". The definition is not an exclusive list of such buildings. The Bank does not regard publicly-owned libraries, neighborhood centers, recreational facilities, or hospitals as buildings for "general conduct of government".

The revised definition of "commercial building" would also specifically exclude buildings used for religious purposes to reflect Constitutional restrictions on use of Federal financial assistance. While the religious nature of an applicant may also preclude Bank assistance without regard to the use of the building, the Bank has not attempted to incorporate that Constitutional restriction into the text of the rule because of the extreme difficulty in reducing the restriction to a simple rule. States and/or financial institutions should rely on relevant judicial opinions when evaluating the eligibility of an applicant for subsidy under the Bank program; they may consult the Bank in doubtful cases.

The proposed revision to the "cost-effective" definition is intended to clarify that an applicant who is not *required* to submit an energy audit or energy design analysis may nevertheless choose to obtain an audit or analysis and use it to demonstrate cost-effectiveness. The revised definition would also provide that an audit or analysis can demonstrate cost-effectiveness only on the basis of either simple payback or life-cycle cost analysis (both of which are explained). This precludes use of hybrid methods which use some factors excluded from simple payback, such as fuel cost escalation, but do not include all of the factors relevant to a comprehensive life-cycle cost analysis.

"Energy audit" is redefined in the proposed rule to eliminate the prior special provisions for multifamily, commercial and agricultural buildings which appear unnecessary and which did not clearly require information on costs and savings for appropriate energy conservation measures or solar energy systems. In the proposed definition, a State could determine which measures or systems were "inappropriate" for costs and savings information. For example, a State whose approved program is limited to one kind of measure could accept audits with costs and savings information only for that measure.

The proposed revision to the "financial institution" definition would update a reference to regulations of the Neighborhood Reinvestment Corporation. The proposed revision to the definition of "improvement costs" would delete the final three sentences of the definition, which would be restated in new §§ 1800.33(c), 1800.97(a)(7) and 1800.67(a)(4). "Median area income" would be redefined in the proposed rule to emphasize the need to consider applicant family size when determining applicant income in terms of percentage of median area income.

As proposed, the "multifamily residential building" definition would add a statement that at least half of a building's floor area must be for residential use. The proposed revision to the definition of "State" would drop reference to selection by the Bank since the term is sometimes used to refer both to participating and nonparticipating (*i.e.*, unselected) States, and adds a reference to the Indian Assistance Coordinator which is treated as a State for most purposes.

Section 1800.3 also defines the term "RCS" which is the Residential Conservation Service program of the Department of Energy. While no revision is proposed at this time, the Bank is aware of consideration by both the Senate and House of Representatives during 1984 of amendments to Title II of the National Energy Conservation and Policy Act (42 U.S.C. 8211 *et seq.*) which authorizes the RCS, as well as amendments or repeal of Title VII of the same Act which authorizes the Commercial and Apartment Conservation Service (CACS) program No legislative changes were made in 1984. Reconsideration in 1985 is likely and the Bank may be required to make revisions in its final rule (*e.g.*, in the provisions concerning energy audits as well as § 1800.77) if legislation amending Title II and/or Title VII has been enacted before the final rule is published.

2. *Section 1800.13 Forms of assistance.* The Bank has interpreted the current rule as prohibiting both interest and principal reduction for a single loan. The Bank has learned that combination of both subsidy types may be desired in certain cases and proposes to permit it at the discretion of the financial institution. The combined subsidies would be subject to the maximum levels stated in § 1800.67. The Bank continues to oppose combination of grants with loan subsidies and proposes to prohibit this more explicitly.

3. *Section 1800.15 Reduction of principal.* The Bank proposes a complete revision to respond negatively to questions which have arisen: Whether the entire loan amount must be disbursed before the subsidy payment is available from the Bank and whether an initial loan repayment schedule based on the unsubsidized loan is required.

3. *Section 1800.17 Prepayment of interest.* Changes are proposed which would explain how to combine prepayment of interest with principal reduction pursuant to the proposed change to § 1800.13.

5. *Section 1800.29 Debarment.* The proposed rule would update a reference to the debarment regulation of the General Services Administration.

6. *Section 1800.33 Installation certificate.* The proposed rule revises § 1800.33 to permit a financial institution representative, rather than a grant recipient, to certify as to use of Bank

funds for eligible purposes when a grant payment is not actually made to the grant recipient but instead is paid to a contractor or supplier or paid to reimburse a party which has advanced funds. While section 514(b)(8) of the Act literally requires the grant recipient to make the certification, the grant recipient cannot make a knowledgeable certification when he or she is not actually involved in the handling of funds. Since the Conference Report for the Act evidences a clear Congressional preference for payment of grant funds to persons other than the grant recipient, we believe the proposed rule fully carries out the Congressional intent that a reliable certification as to use of grant funds be available to the Bank in all cases. In actual practice, the Bank has accepted evidence other than installation certificates for those grant recipients who do not handle grant funds.

7. *Section 1800.43 Eligible recipients (solar).* Minor changes are proposed which are needed to apply income limitations after December 31, 1985, as required by statute. The Bank also proposes to remove paragraph (d) which bars Bank assistance for solar energy systems which are to be assisted under certain other Federal programs, in lieu of the more comprehensive approach of the allocation criteria discussed above. The current list of programs in paragraph (d) originated in mid-1980 and is outdated. Keeping the list up to date would be a continual problem if paragraph (d) were retained.

8. *Section 1800.45 Eligible solar energy systems.* The Bank proposes to modify this section to permit funding of heating for therapeutic swimming pools in non-profit commercial buildings. A proposed new paragraph explains eligibility in cases of mixed use buildings. Previous Bank guidance in this area preceded the eligibility of some commercial buildings and is outdated.

9. *Section 1800.47 Levels of assistance (solar).* The proposed change would add an appropriate maximum assistance level for eligible solar pool heating systems and add material moved from the definition of "improvement cost" in § 1800.3.

10. *Section 1800.55 Standards.* The Bank has relied on HUD's Minimum Property Standards (MPS) for building insulation as its minimum standards for newly constructed or substantially rehabilitated one- to four-family residential buildings with solar energy systems. HUD recently amended 24 CFR 200.929(b)(2) to adopt a new 1984 edition to the MPS for Multifamily Housing, 4910.1, 49 FR 18690–18699. This edition revises the building insulation provisions and it is the Bank's intention that § 1800.55 refer to the current edition of the handbook, whether the 1984 edition or a subsequent one. HUD has also proposed amendments of 24 CFR 200.929(b)(1) which currently references the MPS for One and Two Family Dwellings, 4900.1, 49 FR 39854–39865. The proposed amendment would delete reference to that handbook, which would no longer be used, and the building insulation requirements currently in the handbook would be replaced by a new 24 CFR 200.920d(e). Since this MPS change is only a proposed rule the Bank is not now formally proposing replacement language for § 1800.55. However, this is notice of the Bank's current intention to reflect in § 1800.55 of its final rule any final MPS changes which have been made by that time.

The Bank does not expect the HUD Secretary to consult with all of the officials and agencies named for consultation in section 515(a)(3) of the Solar Energy and Energy Conservation Bank Act before the Bank revises § 1800.55. The House Conference Report for the Act states:

> The Conferees intend that with respect to the establishment of requirements for cost-effective energy conservation standards pursuant to [the Act], the HUD Minimum Property Standards (and any amendments to the minimum property standards dealing with energy conservation and solar energy requirements which are in effect as of the date of the loan application) are appropriate cost-effective standard[s] to be used by the Bank.

While additional language in the Conference Report and the Act could be read as requiring even MPS changes to be adopted by the HUD Secretary for use by the Bank only after consultation with all of the named officials and agencies, the Bank has concluded that such consultation is needed only if standards other than the MPS are used. The statutory authority and requirements for the MPS are contained in other legislation and it is unlikely that Congress chose the Bank legislation to impose additional procedural requirements for revision of the MPS by the HUD Secretary.

11. *Section 1800.63 Eligible recipients (conservation).* Some reorganization and revision is proposed, largely to correct the failure of the current rule to completely recognize the elimination of earlier income limitations for most owners. As with § 1800.43, the paragraph listing programs which cannot be combined with Bank funds is proposed to be removed.

12. *Section 1800.65 Eligible energy conservation measures.* The proposed rule would correct a reference to the definitions section. A proposed new paragraph would explain eligibility in cases of mixed use buildings.

The Bank has also considered revisions to three other provisions. Currently § 1800.65(a)(9) allows financial assistance for heat pumps in one- to four-family residential buildings only if the heat pumps replace existing pumps or replace a combination of electrical resistance heating and air conditioning. This restriction, which is explained in the preamble to the current rule, 49 FR 9872, is related to ensuring that the replacement heat pump is cost-effective regardless of the future relationship between rates for different kinds of fuels. Similar concerns are addressed in the restrictions on assistance for heat pump water heaters in § 1800.65(a)(10). While the Bank is proposing to continue the current provisions without revision, it seeks public comment on whether revision would be appropriate before making a final decision. Similarly, the Bank is seeking public comment on its proposed decision not to revise § 1800.65(b)(9) to allow financial assistance for cogeneration systems in multifamily residential buildings. As far as the Bank is aware, existing studies do not demonstrate the feasibility of cogeneration systems in multifamily residential buildings rather than commercial/agricultural buildings. The Bank would consider adding multifamily residential buildings to § 1800.65(b)(9) if convincing evidence is received which demonstrates such feasibility.

13. *Section 1800.67 Levels of assistance.* Material would be moved from the definition of "improvement cost" in § 1800.3.

14. *Section 1800.77 Contractors and suppliers.* The proposed rule would insert the word "for" which was inadvertently omitted when Part 1800 was published as a final rule.

15. *Section 1800.93 Program participants.* The proposed revision of this section would make minor changes which clarify that all States with effective cooperative agreements on the date of an allocation round are treated the same; there is no special status for the original 1983 State participants. A reference to the reserve fund under § 1800.95 would be deleted. The discussion of the Indian Assistance Coordinator (IAC) would be revised to recognize that an initial IAC has been designated and to clarify that application of future IAC allocations of funds will be at the discretion of the Bank.

16. *Section 1800.97 Recapture of funds.* Since § 1800.97 no longer concerns reallocation of funds, the words "and reallocation" are proposed to be dropped from the section heading.

17. *Section 1800.98 Reallocation of funds.* This new section is proposed because the current reallocation provision is in the "reserve fund" sections and will be deleted. As a general rule any funds which are available for reallocation will be allocated under the proposed § 1800.95(a) the following year. A special allocation is possible for funds which would expire before the next regular allocation.

18. *Section 1800.99 Authorized expenditures.* The proposed rule would revise paragraph (d) to permit use of OMB Circular A–122, "Cost Principles for Non-profit Organizations", as applicable. For example, the Indian Assistance Coordinator, local participants or State agents could be non-profit organizations.

19. *Section 1800.103 State discretion.* An additional sentence to § 1800.103 is proposed to recognize current practice under which States (or their agents or designated local participants) perform many administrative tasks for financial institutions to "streamline" procedures. These tasks may include determination of eligibility for an applicant, building and/or proposed improvement, calculation of subsidy amount, and receipt of required certifications. Many States have determined that it is more cost-efficient for their personnel to undertake such tasks rather than the personnel of a financial institution which may make only a few subsidized loans or grants and lack familiarity with program requirements. As long as a financial institution actually makes the subsidized loan or grant, the Bank has been willing to permit such arrangements and considers them compatible with statutory and regulatory requirements. A different approach could greatly restrict the willingness of financial institutions to participate, particularly with respect to grants.

20. *Section 1800.107 Reporting and recordkeeping requirements.* The need to report use of other Federal subsidies in a State program would be highlighted.

21. *Section 1800.109 Manner of payment.* In connection with the revision of § 1800.15, the Bank proposes to permit a State to draw funds on the basis of *bona fide* loan commitments. The current rule restricts draws to loan closings or completed grant projects. The proposed change will eliminate any need for a financial institution to advance its own funds in the amount of the Bank subsidy while waiting for subsidy funds to be drawn and disbursed by a State. Under the proposal the financial institutions' funds will be needed only for the unsubsidized portion of the loan commitment.

22. *Section 1800.120 Conflict of interest.* A new provision is proposed to prevent any financial institution and any person involved in the assistance process from benefiting from the assistance, with exceptions for publicly-owned buildings and a person's principal residence.

23. *Section 1800.127 Prohibition against tax credits.* The proposed revision would correct several incorrect references to the Secretary of the Treasury and conform the reference to the residential energy tax credit to the section renumbering of the Internal Revenue Code made by section 471 of the Deficit Reduction Act of 1984. It also eliminates a certification requirement for an applicant for asisstance for a building outside the 50 States and the District of Columbia. The residential energy tax credit is limited to dwelling units in the 50 States and District of Columbia and the certification would serve no purpose elsewhere. The business energy credit may be available in certain cases for buildings located outside such areas (if the owner is located in such areas), but the Bank will not require the territories participating in the Bank program to establish a certification requirement for that narrow class. In practice the Bank has not required certifications from these applicants.

The certification in this section requires an applicant to certify that certain tax credits will not be claimed "except as permitted by regulations or other legal interpretations of the Internal Revenue Service." The Bank has requested a clarifying interpretation from the IRS and any such interpretation may require changes to this section which would be reflected in a final rule.

24. *Section 1800.137 Other Federal requirements.* Proposed changes would recognize the Bank's Memorandum of Agreement with the Advisory Council on Historic Preservation, the new HUD rental rehabilitation and housing development grant programs and the possibility of HUD regulations to implement Executive Orders 11988 (wetlands) and 11990 (floodplains). The revised rule would no longer restrict improvements to existing buildings in wetlands which are not also floodplains. The Bank is also reviewing the legality of relying in part on States for compliance with those Executive Orders and the final rule may reflect its conclusions.

With respect to OMB Circular A–102, it should be noted that OMB, in cooperation with all of the grantmaking agencies, including HUD, is reviewing the circular for possible revision and restructuring. Five agency-chaired teams have been organized for a logical review of the circular according to the grants process (and two special issue areas). The teams are addressing pre-award, post-award, after-the-grant, property and procurement, and entitlements (public assistance) programs. The result of the Government-wide effort will be a uniform set of grant terms and conditions which agencies will adopt verbatim in "common" regulations, and an accompanying set of OMB government-wide guidance instructing Federal agencies on significant grant management practices such as cash management and closeout. Such regulations and guidance will also be relevant for the Bank cooperative agreements.

The interagency teams developing the common regulations anticipate publishing final rules in mid-1985. Consequently, when the agencies adopt common regulations in place of Circular A–102, some changes to § 1800.137 will probably be necessary. One possibility will be to adopt the general HUD regulations on Circular A–102 as regulations of the Bank, through amendment of § 1800.135(b) or by action of the Bank President under § 1800.136(c), and to amend § 1800.137(g) to include only those requirements unique to the financial assistance program of the Bank.

25. *Appendices II and III.* Additional material proposed for Appendices II and III would explain calculation of combined interest and principal loan subsidies pursuant to the proposed changes to §§ 1800.13 and 1800.17.

Comment Period

HUD normally provides sixty days for public comment on proposed rules. In this instance, the public comment period has been reduced to thirty days. This abbreviated comment period will make it possible for HUD to take into account the views expressed in response to this rule, while publishing a final rule early enough in Fiscal Year 1985 to enable all available 1985 funds to be: (1) Allocated to current and potential new State participants in a single 1985 allocation round as required by the new legislative amendment, and (2) both allocated and obligated after receipt of State semi-annual reports for the period ending June 30, 1985 (which must conform to any revised reporting requirements) but prior to the end of Fiscal Year 1985 in

order to comply with the approved OMB apportionmnet of the 1985 funds.

Regulatory Flexibility Act

Pursuant to 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The Bank finds that there are no anticompetitive discriminatory aspects of the proposed rule with regard to small entities nor are there any unusual procedures that would need to be complied with by small entities.

Environmental Impacts

A Finding of No Significant Impact with respect to the environment has been made in accordance with Part 50 of this title which implements section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact for this final rule is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Room 10278, 451 Seventh Street, SW, Washington, D.C. 20410.

OMB Control Number

The reporting provisions of this proposed rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, (Pub. L. 96–111) and have been assigned OMB control number 2504–0001. This control number has an expiration date of January 31, 1988.

Regulatory Impact Analysis

The proposed rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. Analysis of the proposed rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs for prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Semiannual Agenda of Regulations

This rule was not listed in the Department's Semiannual Agenda of Regulations published on October 22, 1984 (49 FR 41684) under Executive Order 12291 and the Regulatory Flexibility Act.

Catalog Of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program number is 14.550.

List of Subjects In 24 CFR Part 1800

Grant program, Energy conservation, Loan program, Solar energy, Reporting and recordkeeping requirements.

Accordingly, 24 CFR Chapter XI is proposed to be amended by revising Part 1800 as follows:

PART 1800—FINANCIAL ASSISTANCE PROGRAM OF THE SOLAR ENERGY AND ENERGY CONSERVATION BANK

1. The citation of authority for Part 1800 would be revised to read as follows:

Authority: Solar Energy and Energy Conservation Bank Act (12 U.S.C. 3602–3619).

2. Section 1800.3 would be amended by adding definitions for "one- to four-family residential building" and "solar pool heating system" in alphabetical order and by revising the definitions of "active solar energy system", "annual income", "commercial building", "cost-effective", "Energy audit", paragraph (g) of "financial institution", paragraph (d) of "improvement cost", "Median area income", "Multifamily residential building", and "State", to read as follows:

§ 1800.3 Definitions.

* * * * *

"Active solar energy system" means equipment which is designed to absorb solar energy and provide auxiliary water heating and/or space heating by use of mechanically forced thermal energy transfer devices such as fans or pumps.

* * * * *

"Annual income" means the total annual income of a family from all sources for the 12-month period following the date of determination of income, computed in accordance with Part 813 of this title which prescribes the method of computation for the section 8 housing assistance payment programs of HUD, except that for purposes of this part only actual income from "Net Family Assets" rather than imputed income shall be included.

* * * * *

"Commercial building" means any building other than a one- to four-family residential or multifamily residential building which is used primarily to carry on a business (including any nonprofit business) and is not used primarily for the manufacture or production of raw material, products, or agricultural commodities. A building is used primarily to carry on a business if at least 50 percent of its floor space is devoted to the business. A building owned by a public body may be a commercial building unless it is a building used for general conduct of government such as a public school, city hall, county administrative building, State capital or office building or other facility in which the legislative, judicial or other general administrative affairs of government are conducted. Building used for religious purposes are not commercial buildings.

* * * * *

"Cost-effective" means, generally, that the solar energy system or energy conservation measure is expected to result in a dollar savings over the life of such system or measure that exceeds its costs over its useful life, as determined by an energy audit or energy design analysis without consideration of the financial assistance of the Bank. Such determination shall be made either on the basis of simple payback or life-cycle cost analysis. "Simple payback" means the determination of the time in years for recovery of the cost of an energy system based on estimated annual energy savings in dollars at current energy prices. The cost of a measure or system is divided by the annual savings to yield the simple payback period. "Life-cycle cost analysis" means an evaluation of investment alternatives to an energy conservation measure or a solar energy system which considers all costs and economic benefit parameters over the useful life of the measure or system as the common time element for the evaluation. All present value costs are aggregated and compared to the present value of all benefits and a measure or system is deemed to be cost-effective when the benefits exceed the costs. As a minimum, the evaluation shall compare the costs and benefits of a measure or system to a non-energy improvement investment alternative. The general methodology to be followed in the evaluation shall be as defined by a State and approved by the Bank. A solar energy system or energy conservation measure will also be considered cost-effective, in the case of applicants for financial assistance who are excepted from the requirement to submit an energy audit or energy design analysis stated in § 1800.35 of this part, if such system or measure is a "program measure" for the area under the regulations governing the RCS program (10 CFR Part 456) or (in States for which there is no listing of "program measures" in the RCS regulations) if

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such system or measure is listed in §§ 1800.45(a), 1800.65(a), or 1800.65(b) of this part.

* * * * *

"Energy audit" means:

(a) An energy audit of a building or dwelling unit performed for purposes of Title II or Title VII of the National Energy Conservation Policy Act, 42 U.S.C. 8211 *et seq.* and 8281 *et seq.*, respectively, or

(b) An on-site inspection of the building or dwelling unit using procedures approved by a State or Federal government entity (or performed by an energy auditor who is determined to be qualified by a State or local government entity) which includes a determination of and provides information on:

(1) The type, quantity, and rate of energy consumption of such building or dwelling unit;

(2) Energy conserving maintenance and operating procedures which can be employed to significantly reduce the energy consumption of such building or dwelling unit; and

(3) The cost of purchasing and installing appropriate energy conservation measures, a solar energy system, or both (excluding measures or systems considered inappropriate for this purpose by a State), and the savings in energy costs which are likely to result from the installation of such measures or system.

* * * * *

"Financial institution" means:

* * * * *

(g) Any Neighborhood Housing Services corporation which is administering a local program as described in § 4100.1 of this title and which meets all requirements of the Neighbrohood Reinvestment Corporation.

* * * * *

"Improvement cost" means:

* * * * *

(d) The actual cost to the recipient of the labor involved in the installation by a contractor.

* * * * *

"Median area income" means the median annual income for an area as determined by HUD for the section 8 housing assistance payment programs of HUD which adjust median area income for family size and region. When the annual income of an applicant must be determined in terms of percentage of median area income, the median area income for the appropriate family size must be used.

* * * * *

"Multifamily residential building" means any building which has 50 percent or more of its floor space used for residential purposes, contains five or more dwelling units and has at least one system for heating or cooling or both.

* * * * *

"One- to four-family residential building" means any builing which has 50 percent or more of its floor space used for residential purposes, contains at least one and not more than four dwelling units and has at least one system for heating or cooling or both.

* * * * *

"Solar pool heating system" means an active or passive solar energy system for heating water in a swimming pool which is part of a commercial building and which is used at least in part for therapeutic or similar non-recreational purposes.

* * * * *

"State" means any State (which includes the District of Columbia, Puerto Rico, Guam, the Northern Mariana Islands, the Virgin Islands, American Samoa and the Trust Territory of the Pacific Islands). As described in § 1800.93(d)(2) of this part, an Indian Assistance Coordinator designated by the Bank shall also be treated as a State for most purposes.

3. In § 1800.13, paragraphs (b)(1) and (b)(3) would be revised to read as follows:

§ 1800.13 Types of assistance.

* * * * *

(b) *Forms of financial assistance for loans.* (1) Except as specified in paragraph (b)(2) of this section, financial assistance used in connection with loans may be in the form of a reduction in principal, prepayment of interest, or a combination of reduction in principal and prepayment of interest, at the discretion of the financial institution.

* * * * *

(3) Financial assistance in the form of grants shall not be combined with assistance in the form of a loan subsidy.

4. Section § 1800.15 would be revised to read as follows:

§ 1800.15 Reduction of principal.

When financial assistance is in the form of reduction of principal, a financial institution must have made a *bona fide* loan commitment in the full unreduced principal amount to an eligible recipient for use for eligible purposes under this part. Prior to receiving payment from a State a financial institution may choose to disburse loan proceeds only in an amount equal to the difference between the loan commitment and the subsidy amount as long as an amount equal to the rest of the loan commitment is disbursed to the recipient whenever the financial institution receives payment from the State. The loan repayment schedule may be set based on the principal amount which will remain owing after reduction of principal by the financial institution to avoid recalculation of the repayment schedule. The loan must have an interest rate not exceeding the rate comparable to unassisted loans.

5. Section 1800.17 paragraphs (a), (b) (3) and (4) would be revised to read as follows:

§ 1800.17 Prepayment of interest.

(a) *Form.* Prepayment of interest on a loan shall take the form of reduction of the interest rate which would otherwise have been charged. The available subsidy may be used entirely toward prepayment of interest or a portion of it may be used as a reduction of principal with the balance if the subsidy used toward prepayment of interest. Where the two forms of loan subsidy are applied to a single loan, the reduction of principal shall be applied first following § 1800.15 of this part and the prepayment of interest portion shall be calculated following paragraph (b) of this section using the reduced principal amount of the loan.

* * * * *

(b) * * *

(3) Appendix II to this part explains the calculation procedure for assistance in the form of prepayment of interest or combined reduction of principal and prepayment of interest. Appendix III to this part presents examples of calculations for assistance in the form of prepayment of interest or combined reduction of principal and prepayment of interest. States may adopt alternative procedures provided the subsidy amount determined from any alternative procedure does not exceed the subsidy determined by Appendix II.

(4) In the case of a loan for which only a portion qualifies for financial assistance, *e.g.*, a home improvement loan of $2,000 which includes $1,000 for eligible conservation measures, the subsidy may be applied to the entire loan when calculated in accordance with procedures contained in Appendix II.

6. In § 1800.29, paragraph (a)(1) would be revised to read as follows:

§ 1800.29 Debarred contractors, suppliers and financial institutions.

(a) * * *

(1) The Consolidated List of debarred, suspended and ineligible contractors prepared by the General Services Administration pursuant to 48 CFR Chapter 1, Subchapter B, Supbart 9.4;

* * * * *

7. Section § 1800.33 would be revised to read as follows:

§ 1800.33 Installation certificate.

(a) *Requirement for receiving Bank funds.* No financial institution may request any Bank funds in connection with a particular applicant's solar energy system or energy conservation measure unless:

(1) The financial institution has received an installation certificate from the applicant, or

(2) The applicant has agreed to provide an installation certificate to the financial institution immediately upon competition of installation of such solar energy system or energy conservation measure (not applicable to grants), or

(3) A representative of the financial institution has executed an installation certificate (applicable only when a grant will not be paid directly to the recipient).

(b) *Content of certificate.* (1) An installation certificate from an applicant must include the following:

(i) The applicant's signature, and

(ii) A statement that the grant or loan proceeds will be used immediately toward payment for eligible purposes under this part, or toward reimbursement for payments for eligible purposes under this part.

(2) An installation certificate from a financial institution representative must include the following:

(i) The signature of the representative, and

(ii) A statement that the grant will not be paid directly to the recipient but will be used immediately by the financial institution toward payment toward eligible purposes under this part, or toward reimbusement for payment for eligible purposes under this part.

(3) In all cases except solar space heating or cooling systems, installation certificates must also include:

(i) The improvement cost, or

(ii) A statement that the improvement cost equals or exceeds the cost estimate (which shall be stated) which was used to determine the amount of financial assistance, or

(iii) A statement that the improvement cost equals or exceeds the loan amount (which shall be stated) used to determine the amount of financial assistance.

(c) *Reasonable costs.* Costs in excess of reasonable costs are not eligible for financial assistance and must be disregarded in an installation certificate.

8. Section 1800.43 would be amended by removing current paragraph (d), redesignating current paragraphs (e), (f) and (g) as paragraphs (d) (e), and (f), respectively, and revising paragraphs (c) and (f) to read as follows:

§ 1800.43 Eligible recipients.

* * * * *

(c) *Joint applications.* A joint owner of a dwelling unit or of a building may apply for assistance individually, simultaneously with other joint owners in a single application, or simultaneously with other joint owners by a separate application. If simultaneous separate applications are made by two or more joint owners with respect to the same building or dwelling unit, such applicants collectively may not receive assistance exceeding the maximum level of assistance established for such building or dwelling unit under § 1800.47 of this part. Spouses are not considered joint owners. Each applicant in a joint application must be eligible under this section. The average annual income of joint applicants shall be used to determine compliance with paragraph (f) of this section after December 31, 1985.

* * * * *

(f) Financial assistance may not be provided in connection with a loan made to an owner of an existing one- to four-family residential building after December 31, 1985 if such owner is not an individual or is an individual whose family has an annual income in excess of 250 percent of the median area income.

9. Section 1800.45 would be amended by revising paragraph (a) and adding new paragraphs (c) and (d), to read as follows:

§ 1800.45 Eligible solar energy systems.

(a) *Eligible systems.* The following are eligible solar energy systems, subject to paragraphs (b), (c) and (d) of this section:

(1) Passive solar energy systems, and

(2) Active solar energy systems.

* * * * *

(c) *Water heating.* The only eligible solar energy systems for water heating are solar domestic hot water systems and solar pool heating systems.

(d) *Mixed use buildings.* In a building in which floor space is used for both residential and other purposes, no special rules apply if the building is a commercial or agricultural building or is a one- to four-family or multifamily residential building in which at least 80 percent of the floor space is used for residential purposes. Otherwise, solar energy systems are eligible if they benefit the residential portion of the building or if the applicant is a non-profit owner and the non-residential portion of the building is used for purposes which, if extended throughout the building, would qualify the building as a commercial or agricultural building.

10. Section 1800.47 would be amended by redesignating current paragraphs (a)(3), (a)(4) and (a)(5) as paragraphs (a)(4), (a)(5) and (a)(6), respectively, and by adding new paragraphs (a)(3) and (a)(7) to read as follows:

§ 1800.47 Levels of assistance.

(a) * * *

(3) The maximum amount of assistance for solar pool heating systems shall be $12,500 or 40 percent of the improvement costs, whichever is less, for commercial buildings.

* * * * *

(7) If more than one person is responsible for the cost of a solar energy system, then the amount of financial assistance for a person shall be based on the person's share of the total improvement cost.

* * * * *

11. Section 1800.63 would be amended by revising paragraphs (c)(3) and (f), adding paragraph (c)(4), removing current paragraph (i), and redesignating current paragraphs (j) and (k) as paragraphs (i) and (j), respectively, to read as follows:

§ 1800.63 Eligible recipients.

* * * * *

(c) * * *

(3) Except as provided in paragraphs (c)(1) and (c)(2) of this section, an owner of a building shall not be subject to any income requirement.

(4) An owner which is not an individual shall be treated as having a family with an annual income in excess of 150 percent of the median area income.

* * * * *

(f) *Joint applications.* (1) A joint owner of a dwelling unit or of a building may apply for assistance individually, simultaneously with other joint owners in a single application, or simultaneously with joint owners simultaneously by separate application. A tenant jointly renting a dwelling unit or a building with other tenants may apply for assistance individually, simultaneously with other tenants in a joint application, or simultaneously with other tenants by separate application.

(2) Spouses are not considered joint owners or tenants.

(3) If simultaneous separate applications are made by two or more joint owners or by two or more joint tenants with respect to the same building or dwelling unit, such applicants collectively may not receive assistance which would exceed the maximum amount of assistance for which the applicant with the lowest annual income would be eligible if such applicant applied individually and did not share costs with anyone else.

(4) Each applicant in a joint application must be eligible under this section. If a joint application is made, the average annual income of all joint applicants shall be used for purposes of § 1800.67(a) of this part. When different family sizes are involved, the average size rounded up to the nearest whole number should be used. The average annual income of joint applicants when one or more is not an individual shall be considered in excess of 150% of median area income.

* * * * *

12. Section 1800.65 would be amended by revising paragraph (b)(13) and adding a new paragraph (d) to read as follows:

§ 1800.65 Eligible energy conservation measures.

* * * * *

(b) * * *

(13) Energy audits (as included in the definition of "improvement cost" in § 1800.3 of this part).

* * * * *

(d) *Mixed use buildings.* In a building in which floor space is used for both residential and other purposes, no special rules apply if the building is a commercial or agricultural building or is a one- to four-family or multifamily residential building in which at least 80 percent of the floor space is used for residential purposes. Otherwise, energy conservation measures are eligible if they benefit the residential portion of the building or if the applicant is a non-profit owner or tenant and the non-residential portion of the building is used for purposes which, if extended throughout the building, would qualify the building as a commercial or agricultural building.

13. Section 1800.67 would be amended by adding a new paragraph (a)(4) to read as follows:

§ 1800.67 Levels of assistance.

(a) * * *

(4) If more than one person is responsible for the cost of a solar energy system, then the amount of financial assistance for a person shall be based on the person's share of the total improvement cost.

* * * * *

14. Section 1800.77 would be revised to read as follows:

§ 1800.77 Contractors and suppliers.

All contractors and suppliers who install or supply energy conservation measures for which assistance is provided in the form of a grant must appear on a list of approved contractors and suppliers which meets the requirements of section 213(a) of the National Energy Conservation Policy Act, 42 U.S.C. 8214. This requirement shall not apply in areas of a State which are not served by a public utility described in section 211(a) of the National Energy Conservation Policy Act, 42 U.S.C. 8212, or areas where such list has not been made public by a public utility under section 215(a)(3) of the National Energy Conservation Policy Act, 42 U.S.C. 8216, or by the Secretary of Energy.

§ 1800.93 [Amended]

15. In § 1800.93, paragraphs (a), (b) and (d)(2) would be revised, to read as follows:

(a) *Current State participants.* Any State with a current cooperative agreement (one which is legally effective on the date of any tentative allocations under § 1800.95 of this part) may elect to receive any additional funds allocated under § 1800.95 of this part on the basis of programs approved in its cooperative agreement. To receive any new allocation of funds, a State must complete and return to the Bank a Bank-prepared cooperative agreement amendment obligating such additional funds to the State within a 30-day period from the time such amendment is provided by the Bank.

(b) *States without cooperative agreements.* A State without a current cooperative agreement with the Bank may become a new participant in the Bank program for any allocation of funds under § 1800.95 of this part by submitting a written program proposal which is accepted by the Bank. The Bank publishes, from time to time in the **Federal Register**, a Notice of Funding Availability which should be referred to for guidance as to the contents of the program proposal.

* * * * *

(d) * * *

(2) An IAC was initially designated on the basis of a written program proposal and statement of qualifications submitted to the Bank in response to a competitive solicitation announced in the **Federal Register**. Whenever an IAC designation expires, the IAC may be redesignated without competitive solicitation or a new competitive solicitation may be announced in the **Federal Register**. Tentative allocations of funds for an IAC shall be determined in the same manner as for States under § 1800.95(a) of this part except that Factor "A" shall be determined by the Indian population of the United States divided by United States household size and then multiplied by energy consumption per United States household. Values shall be given to Factor "B" on the basis on a particular IAC's program performance only if the resulting tentative allocation is expected to be obligated to the same IAC without an intervening competitive solicitation. At the discretion of the Bank, such allocation may be obligated to the then-designated IAC by amendment of its cooperative agreement, obligated by a cooperative agreement with a new IAC designated after competitive solicitation, or reallocated pursuant to § 1800.98 of this part. Except for designation and allocation of funds, the IAC shall be treated as a State for purposes of this part.

* * * * *

16. Section 1800.95 would be revised to read as follows:

§ 1800.95 Allocation of funds.

(a) *Tentative Allocation.* (1) Each Fiscal Year in which funds are available to the Bank for obligation, a tentative allocation shall be made to each State with a cooperative agreement and all other States which have submitted acceptable program proposals pursuant to § 1800.93 of this part. The tentative allocation shall be made during February or August at the Bank's option, but not both, depending on availability of funds and the need for additional funds by States to sustain program activities.

(2) The amount of funds allocated to each State is based on a score which is the product of two factors, provided that the tentative allocation of funds for each new State participant shall be not less than $120,000 and for each current State participant shall be not less than $20,000. The score for each State is divided by the sum of the scores of all States and the resulting ratio is multiplied by the available funds to provide a tentative allocation.

(i) Factor "A" is determined by the product of:

(A) The sum of 50 percent of the number of households in the State with income at 80 percent or less of the median household income for the State, 30 percent of the number of households with income greater than 80 percent of

the median up to 150% of the median and 20 percent of the number of households with incomes greater than 150% of the median, normalized so that the largest value is equal to 100 with all other ratios proportionately less with a weight of 0.5; and

(B) The average amount of energy consumed per household for the State, normalized so that the largest resultant value is equal to 100 with a weight of 0.5.

(ii) Factor "B" is equal to one for a new participant pursuant to § 1800.93(b) and otherwise is determined by the sum of one plus:

(A) The annual Btu savings for subsidized energy conservation measures and solar energy systems per dollar of Bank subsidy expended normalized so that the highest value equals 5 with a weight of 0.1;

(B) The calculation of the total dollar investment made in subsidized measures and systems per dollar of Bank subsidy expended normalized so that the highest value equals 5 with a weight of 0.1;

(C) The calculation of the ratio of dollars of Bank subsidy expended to the total funds obligated to a State by the cooperative agreement normalized so that the highest value equals 5 with a weight of 0.5; and

(D) The calculation of the ratio of dollars of Bank subsidy expended to the total funds expended by all program participants normalized so that the highest value equals 5 with a weight of 0.3.

(iii) "Investment" as used in paragraph (a)(2)(ii)(B) of this section means the improvement cost for a measure or system when used as the basis for calculation a subsidy; otherwise it means the estimated system cost in the case of solar space heating or cooling systems.

(iv) The value for Factor "B" shall be reduced if Bank subsidies and other Federal subsidies are provided for the purchase and installation of the same energy conservation measures or solar energy systems, with a minimum reduction of 5 percent and reductions at the rate of 5 percent for each 10 percent of total dollars of Bank subsidy which are expended for measures or systems which also are subsidized by other Federal subsidies to a maximum reduction of 50 percent.

(v) Factor "B" shall represent cumulative performance based on the entire period of State participation in the Bank program or the preceding 24 months, whichever period is less. The information needed to calculate the value for Factor "B" shall be taken from the State semi-annual reports due pursuant to § 1800.017 of this part. If any such report has not been received by the Bank from a State, no value will be given for paragraphs (a)(2)(ii) (A) and (B) of this section; in such case paragraphs (a)(2)(ii) (C) and (D) of this section shall be based on information available to the Bank through its fund transfer system with a 50 percent reduction applied to paragraph (a)(2)(ii)(C) of this section for any State not reporting.

(b) *Obligation.* The Bank shall inform each State of its tentative allocation. Unless a State elects not to receive its tentative allocation the full amount of the State's tentative allocation shall be obligated to a State by the cooperative agreement or an amendment to it, provided that if the Bank has a State notice of intent to recapture funds under § 1800.97(b) of this part the Bank shall have no duty to obligate any additional funds to the State unless the violation is resolved to the satisfaction of the bank.

17. The heading of § 1800.97 would be revised to read as follows:

§ 1800.97 Recapture of funds.

18. A new § 1800.98 would be added to read as follows:

§ 1800.98 Reallocation of funds.

Any funds which become available for reallocation after fentative allocation and while they remain legally available for obligation shall be included in the next tentative allocation. A special reallocation may be made for any such funds which would cease to be legally available for obligation prior to the next anticipated tentative allocation and any special reallocation shall be in a manner determined by the Bank to be appropriate considering the amounts involved and timing. Funds available for reallocation include funds tentatively allocated under § 1800.95 of this part to a State that does not elect to receive such funds or for an IAC when the Bank determines not to obligate such funds and funds recaptured under § 1800.97 of this part.

19. Section 1800.99 would be revised to read as follows:

§ 1800.99 Authorized expenditures.

* * * * *

(d) *Principles for determining allowable expenses.* Administrative and promotional expenses must be allowable under the principles and standards established in OMB Circular No. A–87, "Cost Principles for State and Local Governments", or A–122, "Cost Principles for Non-profit Organizations", as applicable.

20. Section 1800.103 would be revised to read as follows:

§ 1800.103 Selection of financial institutions.

A State will select the financial institutions which will provide financial assistance within the State. A State may serve as a financial institution itself as long as it qualifies under the definition set forth in § 1800.3 of this part. A State not serving as a financial institution itself may nevertheless perform any functions prescribed for a financial institution by this part or a cooperative agreement to the extent agreed by the financial institution, except for the actual making of a grant or subsidized loan.

21. Section 1800.107 would be amended by revising paragraph (a)(7) to read as follows:

§ 1800.107 Reporting and Recordkeeping Requirements.

(a) * * *

(7) The cost-effectiveness of the program in terms of the percent of Bank funds expended in connection with some other form of Federal subsidy, administrative costs, promotional costs, leveraging of funds, energy savings in terms of dollars per barrel of oil equivalent and other measures as may be appropriate; and

* * * * *

22. Section 1800.109 would be revised to read as follows:

§ 1800.109 Manner of payment.

Payments to States will be made by electronic funds transfer whenever possible, letter or credit, or other means, pursuant to the cooperative agreements and in compliance with the Intergovernmental Cooperation Act (42 U.S.C. 4201 *et seq.*) and Treasury Circular No. 1075 (31 CFR Part 205). States may receive payments for administrative and promotional expenses only after they have been incurred. States may receive other payments only in amounts necessary to pay financial institutions for financial assistance in connection either with energy conservation measures or solar energy systems which have been purchased, or with loans which have been closed or for which a *bona fide* loan commitment has been made if energy conservation measures or solar energy systems will be installed within 60 days of loan closing. States shall utilize appropriate procedures to minimize the time elapsing between the transfer of funds by the Treasury to the State and the disbursement of funds by the State.

23. A new § 1800.120 would be added to read as follows:

§ 1800.120 Conflict of interest.

No financial institution and no person who is an employee, agent, consultant, officer, or elected or appointed official of a State, local participant, financial institution, or public or private entity acting as agent of any of the foregoing, and who is in a position to participate in a decisionmaking process or gain inside information with respect to expenditures for administrative or promotional expenses or assistance for eligible activities under this part, may obtain a personal or financial interest in or benefit from such expenditures or assistance, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure. This paragraph does not restrict financial assistance to a publicly-owned building or to a person with respect to a single dwelling unit which is the person's principal residence.

24. Section 1800.127 would be revised to read as follows:

§ 1800.127 Prohibition against tax credits and financial assistance for same expenditure.

(a) *Information provided to the Secretary of the Treasury.* As required by section 506(f) of the Act, the Bank shall provide to the Secretary of the Treasury such information as the Secretary of the Treasury determines is necessary to insure that no person is allowed for the same expenditure both financial assistance under the Act and a credit against Federal income taxes under 26 U.S.C. 38 (investment credit) or 26 U.S.C. 23 (residential energy credit). Except as otherwise directed by the Secretary of the Treasury, the Bank intends to discharge this responsibility as well as the information return requirements of 26 U.S.C. 6050D by requiring either a State or financial institutions within a State to submit Internal Revenue Service Form 6497 ("Information Return of Nontaxable Energy Grants or Subsidized Energy Financing") or any replacement form duly approved by the Office of Management and Budget to the appropriate office of the Internal Revenue Service.

(b) *Information required from applicant.* As a condition of financial assistance, an applicant shall be required to provide to the financial institution:

(1) All information which the Secretary of the Treasury determines is necessary under paragraph (a) of this section and which is possessed by the recipient, including the applicant's Social Security number or taxpayer identification number and other information required for Internal Revenue Service Form 6497 or any replacement form duly approved by the Office of Management and Budget, and

(2) A certification that the applicant will not claim a Federal tax credit under 26 U.S.C. 38 or 23 for amounts expended for the assisted energy conservation measures or assisted solar energy system up to the amount used as the basis for determining the financial assistance, except as permitted by regulations or other legal interpretations of the Internal Revenue Service. No certification shall be required from an applicant for financial assistance for a building in Puerto Rico, Guam, the Northern Mariana Islands, the Virgin Islands, American Samoa or the Trust Territory of the Pacific Islands.

(Approved by the Office of Management and Budget under OMB control number, 2504–0001)

25. Section 1800.137 would be amended by revising paragraphs (c) and (d) to read as follows:

§ 1800.137 Other Federal requirements.

* * * * *

(c) *Historic preservation.* No financial assistance shall be provided in connection with any energy conservation measure or solar energy system with respect to any district, site, building, structure or object included in or eligible for inclusion in the National Register maintained by the Secretary of the Interior under 16 U.S.C. 470a as determined by the State or a financial institution, unless (1) such financial assistance is provided in compliance with the Bank's initial Memorandum of Agreement with the Advisory Council on Historic Preservation, or any subsequent such Memorandum of Agreement, or (2) such financial assistance is in connection with an assistance program of a Federal agency other than the Bank for which the other Federal agency or a recipient of assistance under Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 *et seq.*) or section 17 of the United States Housing Act of 1937 (42 U.S.C. 1437o) has complied with the procedures of the Advisory Council on Historic Preservation set forth in 36 CFR Part 800 or (in the case of Urban Development Action Grants) 36 CFR Part 801.

(d) *Special flood hazard areas and wetlands.* In order to carry out the Federal policies stated in Executive Orders 11988 ("Floodplain Management") and 11990 ("Protection of Wetlands"), no financial assistance shall be provided in connection with a newly constructed building located at wetlands in connection with any building located in or an area that has been identified by the Federal Emergency Management Agency as having special flood hazards, unless such financial assistance is in connection with an assistance program of a Federal agency other than the Bank for which the Federal agency or a recipient of assistance under Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 *et seq.*) or section 17 of the United States Housing Act of 1937 (42 U.S.C. 1437o)) has complied with the procedures set forth in Executive Order 11988 or 11990. The preceding sentence shall not restrict the providing of financial assistance in compliance with any HUD regulations implementing Executive Orders 11988 and 11990 if such regulations have been adopted by the Bank pursuant to § 1800.135(c) of this part.

26. Appendix II would be amended by adding a new section IV after the end of current section III to read as follows:

Appendix II—Procedure for Calculating Subsidy and Reduced Interest Rate on Prepayment of Interest Loan Assistance

* * * * *

IV. Combined Reduction of Principal and Prepayment of Interest.

Category 5 loan.

1. Determine subsidy amount available as per §§ 1800.47 and 1800.67 as applicable.

2. Determine amount of subsidy to be used for reduction of principal. This would normally be estimated based on the amount of interest bringdown desired as for a Category 1 loan.

3. Subtract the portion of the subsidy to be used as a reduction of principal from the loan amount to obtain the amount to obtain the amount to be repaid.

4. Using the amount to be repaid and the portion of the available subsidy to be used toward prepayment of interest, calculate the loan repayment terms and subsidy amount as per steps C.1 through C.5 for a Category 2 loan.

5. The amount of Bank assistance to be provided is the sum of the subsidy amounts determined by steps 2 and 4 above. An iterative process may be needed to maiximize use of an available subsidy if desired.

Appendix III—[Amended]

27. Appendix III would be amended by adding a new Example 5 after the end of current Example 4 and before the Note to Appendix III to read as follows:

Example 5, Category 5

It is desired to offer reduced interest rate loans at a level competitive with rates of return available to individuals to discourage early repayment of loans but yet make the total amount of assistance attractive to individuals to encourage installation of energy conserving measures. Accordingly, a situation as per Example 1 is desired with a $500 reduction in principal in addition to the 10% reduced interest rate loan.

1. Using Category 5 procedures, a $500 reduction in principal is applied to the loan making the amount to be repaid $1,500.

2. The difference in finance charges from 15% to 10% for $1,500 is $229.05 (641.25 – $412.20).

3. The discounted rate growth factor is 1.3489 as per example 1.

4. The amount of prepayment of interest subsidy required to reduce the interest rate to 10% is $169.80 ($229.05 divided by 1.3489).

5. The total amount of assistance to be provided is then $699.80 ($500 + $169.80). Since this is within the allowable subsidy of $700, the $669.80 is the subsidy amount.

EXAMPLE 5. SUMMARY

	Conventional	Bank subsidized
Principal	$2,000	$1,500.
Interest rate	15 pct	10 pct.
Term	5 years	5 years.
Monthly payment	$47 60	$31.87.
Total payments	$2,856	$1,912.20.

Authority: Solar Energy and Energy Conservation Bank Act (12 U.S.C. 3602–3619).

Date February 26, 1985.

Richard H. Francis,

Manager, Solar Energy and Energy Conservation Bank.

[FR Doc. 85–5300 Filed 3–5–85; 8:45 am]

BILLING CODE 4210–32–M

POSTAL SERVICE

39 CFR Part 111

Applicable Rates for "Plus" Issues of Second-Class Periodicals

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This proposal is intended to clarify postal regulations related to second-class mail, particularly as they concern so-called "Plus" issues or editions. The proposed regulations constitute a clarifying interpretation of Schedule 200 of the Domestic Mail Classification Schedule (DMCS) which is consistent with past interpretations of that schedule; no change in substance is proposed.

DATES: Comments must be received on or before April 5, 1985.

ADDRESS: Written comments should be directed to Robert Lowry, Law Department, U.S. Postal Service Headquarters, 475 L'Enfant Plaza West, SW., Washington, D.C. 20260–1142. Copies of all written comments will be available for inspection and photocopying between 9:00 a.m. and 4:00 p.m., Monday through Friday, in the Law Department, Room 5103, Comsat Building North, 955 L'Enfant Plaza West SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Robert Lowry, (202) 245–3891.

SUPPLEMENTARY INFORMATION: The mail classification schedule established by the Governors of the Postal Service pursuant to 39 U.S.C. 3621 and set forth in the DMCS seeks to preserve the essential nature of second-class mail as it was first established by Congress. It was Congress' intent that second-class be the class of mail set aside for mail matter devoted primarily to the dissemination of information. In recognition of the public benefit that resulted from such dissemination, certain rate advantages were enacted for second-class mail. *See* former 39 U.S.C. 4358. Congress also established third-class mail as the class of mail in which advertising matter was intended to travel through the postal system.

In order to preserve the nature of second-class mail, the DMCS identifies second-class mail as mail which is "originated and published for the purpose of disseminating information of a public character, or devoted to literature, the sciences, art, or some special industry." DMCS 200.0104. The DMCS preserves the dichotomy between second- and third-class mail by providing that "[p]ublications designed primarily for advertising purposes, free circulation, or circulation at nominal rates . . . do not qualify for second-class privileges." DMCS 200.012. *See* former 39 U.S.C. 4354(c).

Recent events have resulted in blurring the distinctions first enacted by Congress and preserved in the DMCS between the two classes of mail. Some second-class periodicals have begun distributing so-called "Plus" issues as part of a total market coverage program. These "Plus" issues are distributed to readers on the same day as that on which a regular issue of the periodical appears, contain a great preponderance of advertising matter, and are mailed to a different set of readers from those who hold subscriptions and who receive the regular issues of the periodical on a daily basis. Such "Plus" issues are inconsistent with the essential nature of second-class mail as a vehicle for information and not for advertising.

The Postal Service is proposing two revisions of the Domestic Mail Manual (DMM) as clarifying interpretations of existing provisions of the DMCS. If they are adopted, the first revision would amend DMM 422.23, which sets forth advertising restrictions on general second-class publications. A new 422.232 would be added stating that any issue which consists of more than 75 percent advertising or is distributed primarily to nonsubscribers, and which is also delivered by the Postal Service on the same day as another issue of the publication appears, may not be mailed at second-class rates. Current 422.232 would be renumbered 422.233.

The second revision would amend DMM 425.1 to state that, for purposes of eligibility for second-class rates, a periodical shall be considered to have only one regular issue on any given day. Additional issues delivered by the Postal Service on the same day as a regular issue appears, except for special issues designed for the purpose of communicating additional news and information received too late for insertion in the regular issue and not intended for advertising purposes, would be charged third- or fourth-class rates. The day on which an issue is designed to be delivered would be determined by the date on the issue. The determination as to which of multiple issues of the same publication designed to be delivered by the Postal Service on the same day is the regular issue would be made by local postmasters.

Although exempt from the requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites comments on the following proposed revisions of the Domestic Mail Manual, incorporated by reference in the Code of Federal Regulations. *See* 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Incorporation by reference, Postal Service.

PART 111—[AMENDED]

1. In 422, revise 422.232 to read as follows:

PART 422—TYPES OF AUTHORIZATIONS

* * * * *

422.2 General Publications.

* * * * *

.23 Advertising Restrictions

* * * * *

.232 Issues Not an Integral Part of the Periodical and Designed for Advertising Purposes

An issue of a general publication which contains more than 75 percent

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advertising or is distributed primarily to nonsubscribers, and which is also delivered by the Postal Service on the same day as another issue of the same publication appears, may not be mailed at second-class rates.

2. Renumber current 422.232 as 422.233.

3. In 425, revise 425.1 to read as follows:

PART 425—WHAT MAY BE MAILED AT THE SECOND-CLASS RATES

425.1 Complete Copies of Regular Issues.

Complete copies of the regular issues of a second-class publication may be mailed at the applicable second-class rates in 410. For purposes of eligibility for second-class rates, a periodical shall be considered to have only one regular issue on any single day. Copies which are not complete because pages or portions of pages are missing and issues designed to be delivered by the Postal Service on the same day as a regular issue appears, except as set forth in 425.2a and 425.2c, will be charged with postage at the applicable third-or fourth-class rates.

An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published if the proposal is adopted.

(39 U.S.C. 401, 3621, 3623)

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

[FR Doc. 85-5357 Filed 3-5-85; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL-2790-6]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Proposed rulemaking.

SUMMARY: On March 28, 1983, the State of Ohio, Environmental Protection Agency, submitted amendments to Ohio Administrative Code, Chapter 3745-21, to USEPA as proposed revisions to the State Implementation Plan (SIP) for ozone. Ohio Administrative Code Chapter 3745-21 consists of emission limitations and control requirements for sources of volatile organic compounds (VOC). The amendments to Chapter 3745-21 involve certain compliance deadlines, source specific exemptions from otherwise applicable emission limitations, and alternative test procedures.

Based on a review of the State's submittal, USEPA is proposing approval and disapproval of specific portions of the Ohio submittal as a revision to the Ohio SIP. The intent of this notice is to discuss the results of USEPA's review of the State's amendments to the VOC control portion of its SIP and to solicit public comments on the revisions and USEPA's proposed action.

DATE: Comments on this revision and on the proposed USEPA action must be received by April 5, 1985.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review.

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604

Ohio Environmental Protection Agency, Office of Air Pollution Control, 361 East Broad Street, Columbus, Ohio 43216

Comments on this proposed rule should be addressed to: (Please submit an original and five copies if possible.) Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Debra Marcantonio, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886-6088.

SUPPLEMENTARY INFORMATION: On March 28, 1983, the State of Ohio Environmental Protection Agency (OEPA) submitted amendments to Ohio Administrative Code (OAC) Chapter 3745-21 and supporting data to USEPA as a proposed revision to the ozone portion of its SIP. OEPA adopted these rules in final form in two separate actions on June 21, 1982, and January 24, 1983. OAC Chapter 3745-21, entitled "Carbon Monoxide, Photochemically Reactive Materials, Hydrocarbons, and Related Material Standards", consists of Ohio's VOC reasonably available control technology (RACT I and II) regulations. The regulations are embodied in the OAC as follows: Definitions, rule 3745-21-01; Attainment dates and compliance time schedules, Rule 3745-21-04; Control of emissions of organic compounds from stationary sources, Rule 3745-21-09; and Compliance test methods and procedures, Rule 3745-21-10. USEPA initially approved these regulations as part of Ohio's SIP for ozone in separate rulemaking actions on October 31, 1980, and June 29, 1982 (45 FR 72122 and 47 FR 28097).

For the reader's convenience, the following discussion presents a summary of the changes to the existing rules. Where appropriate, the discussion presents the results of USEPA's analysis and USEPA's conclusion as to whether or not the change is approvable. USEPA's complete analysis is contained in a document entitled Technical Support Document for Ohio RACT I and II Rule Revisions, dated July 18, 1983. This document is available for review at the Region V office listed above. The reader is referred to this document and the State submittal of March 28, 1983, which includes the adopted version of Rules 3742-21-01, -04, -09, -10, and supporting documentation, for further details.

1. Definitions, Rule 3745-21-01

In today's rulemaking action, USEPA is proposing to approve, as SIP revisions, all new terms and definitions which Ohio has added and revised pertaining to the source categories of paper and vinyl coating and to the use of cutback and emulsified asphalts in road construction and maintenance. The following portions of Rule 3745-21-01 have been revised.

a. Section (D) (16), (36), and (50)

The definition of paper coating has been revised to include coatings applied by an extrusion coater and a definition of an extrusion coater has been added. The definition of vinyl coating has been revised to include application of coating by means of a knife or roll coater.

b. Section (F)(1-8)

Ohio has clarified the existing definitions and added new terms related to amendments to Rule 3745-21-09(N) on the use of asphalts in road construction and maintenance.

c. Sections (E)(8) and (J)(5)

Typographical errors in Sections (E)(8) and (J)(5) have been corrected.

2. Attainment Dates and Compliance Time Schedules, Rule 3745-21-04

a. Sections (C)(2) and (C)(35) Extended Compliance Schedule

USEPA is taking no action on the compliance date extension contained in Rule 3745-21-04 Sections (C)(2) and (C)(35) granted by Ohio to the Honda of America Manufacturing, Inc. auto assembly plant in Marysville. The extension was granted under Ohio's new source review program and any further federal action here is unnecessary.

USEPA is proposing to approve the State's revisions to the compliance time schedules contained in Rule 3745–21–04 for the following sources.

b. Section (C)(3) Can Coating Lines

Section (C)(3) has been revised to include an alternative compliance schedule for can coating lines subject to applicable control requirements. The alternative schedule may extend to December 31, 1985, if the owner or operator of the line demonstrates the necessity of the compliance date extension to the satisfaction of the Director of OEPA by supplying the documentation required in subparts (i) through (iv).

USEPA requests copies of any extension granted by Ohio EPA. It is not required, however, that Ohio EPA submit such an extension to USEPA as a SIP revision unless the extension will interfere with Reasonable Further Progress (RFP) or maintenance of the standard. In those instances where the Director has discretion under this rule or any similar rule contained in OAC Chapter 3745–21 and the extension will interfere with RFP or maintenance of the standard, USEPA requires Ohio to submit a SIP revision request which includes an updated RFP demonstration along with a modeling attainment demonstration and data base consistent with that required for extension areas.

c. Section (C)(15) Cutback and Emulsified Asphalts

A compliance date of April 15, 1982, has been added to Rule 3745–21–04 OAC on the use of emulsified asphalt in road construction and maintenance.

d. Section (C)(29) Gasoline Tank Trucks

Ohio has revised the compliance date by which gasoline tank trucks are required to comply with leak testing, record-keeping and reporting requirements. This revision requires compliance by March 31, 1983.

e. Section (C)(33) External Floating Roof Tanks

The compliance time schedules for awarding contracts and initiating and completing construction to retrofit tanks to comply with the SIP, have been revised to March 1, October 1, and November 1, 1982, respectively. The deadlines for submitting a control plan to OEPA and for final compliance with Rule 3745–21–09(Z) are unchanged.

3. Control of Emissions of Organic Compounds From Stationary Sources, Rule 3745–21–09

In general, USEPA finds this rule to be acceptable and proposes to approve the following amendments. A discussion of USEPA's specific comments and exceptions to the proposed approval action are contained in part 3.b of this notice.

a. Proposed Approval

Sections:

(B) Emission limitations

.(C)(1) and (3) Surface coating of automobiles and light duty trucks

.(I)(1) and (2) Surface coating of metal furniture

.(K)(1) and (3) and (K)(4)(a), (b) and (c) Surface coating of large appliances

.(N) (1), (2), and (3)(b) and (c) Use of cutback and emulsified asphalts. Note: USEPA is not proposing to approve (N)(3)(a) and (e).

.(O)(2) Solvent metal cleaning

.(P)(1), (4), and (5) Bulk gasoline plants

.(Q)(3) Bulk gasoline terminals

.(R)(3) Gasoline dispensing facilities

.(U)(1) and the exemptions contained in (2)(h) Surface coating miscellaneous metal parts and products

.(X)(1)(a)(i), (b)(i), and the exemption contained in (2)(d) Rubber tire manufacturing.

.(Z)(1)(b) through (h), (2), and (3) Storage of petroleum liquids in external floating roof tanks. Note: USEPA is not proposing to approve (Z)(1)(a).

.(AA)(1) and (2)(b) and (c) Dry cleaning facility. Note: USEPA is not proposing to approve (AA)(2)(a).

b. Comments and Proposed Disapproval

.Section (A) Applicability

USEPA Comment: The applicability of this section was revised to include new as well as existing sources of VOC. USEPA is taking no action on this section as it applies to new sources of VOC. New Sources are regulated by Ohio's new source review program and by USEPA's Prevention of Significant Deterioration (PSD) program and may require more stringent emission limitations than those contained in this rule.

.Section (K)(4) Surface Coating of Large Appliances

USEPA Comment: Section (4) exempts 3 Whirlpool Corporation plants from the control requirements contained in paragraph (K)(1). The plants are located in Sandusky, Hancock, and Marion Counties. Marion, Sandusky, and Hancock were designated attainment areas on June 12, 1984 (49 FR 24124).

Because USEPA is proposing to approve the exemption from RACT for the Whirlpool Corporation sources located in Sandusky, Hancock, and Marion Counties, the State no longer has an accomodative ozone SIP for these counties. As a result, the waiver from the requirement of one year preconstruction ozone monitoring as required by the Prevention of Significant Deterioration regulations is terminated for the counties in which the sources are located.

Thus, in today's rulemaking action, USEPA is proposing to approve the State's exemption contained in (K)(4)(a) (b), and (c) for the Whirlpool Corporation plants located in Marion, Sandusky, and Hancock Counties.

.Section (N)(3)(a) and (e) Use of Cutback and Emulsified Asphalts

USEPA is proposing to disapprove 2 amendments to the requirements of Section (N) on the use of cutback and emulsified asphalt in road construction and maintenance. The first amendment extends the exemption period in the existing rule for use of cutback asphalts by 2 months to September 15 through May 15 of each year, due to problems encountered in using emulsified asphalt during colder weather. USEPA acknowledges that emulsified asphalt does not set up properly at temperatures below 50°F. However, OEPA has not provided documentation that USEPA requested in a letter to OEPA dated November 17, 1982, on the temperature ranges in the additional 2 months that the state permits the use of cutback asphalts.

The second amendment exempts a maximum daily use of 1000 gallons of cutback or emulsified asphalt when applied by hand for patching or sealing cracks. OEPA states that this exemption is necessary due to a lack of personnel trained to use low-volume emulsified asphalt for road patching. USEPA's review of this rule shows that the basis on which the 1000 gallons exemption is determined is not stated, i.e. per person, crew, district, or County. Further, a lack of training is not sufficient reason for an exemption.

.Section (R)(4) Gasoline Dispensing Facilities

USEPA Comment: USEPA previously conditionally approved this rule on October 31, 1980 (45 FR 72122–72143). On June 1, 1984 (49 FR 22814), USEPA proposed to remove the conditions on USEPA's approval of this rule for most of Ohio (except for Akron, Cincinnati and Cleveland demonstration areas).

.Section (U)(2)(f)

OEPA has amended the exemption for this rule by adding (f)(i) and (ii) which applies to new sources. Since USEPA is taking no action on Section (a) as it applies to new sources of VOC, USEPA

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is also taking no action on these exemptions.

.Section (U)(2)(i) Surface of Miscellaneous Metal Parts and Products

USEPA Comment: USEPA is taking no action on the exemption contained in Section (U)(2)(i) granted by Ohio for the Honda of America Manufacturing, Inc. motorcycle assembly plant in Marysville. The exemption was granted under Ohio's new source review program and any further federal action here is unnecessary.

.Section (V) Gasoline Tank Trucks

OEPA has amended the emission control requirements of Section (V) to include reference to the State's standard leak testing procedure, Method G [Rule 3745-21-10(G)] and a new alternative leak testing procedure, Method H [Rule 3745-21-10(H)]. USEPA is proposing to disapprove Method H. Thus, USEPA is proposing to disapprove this Section and Rules 3745-21-10(G) and (H) as adopted by the State on January 24, 1983. A discussion of Method H and USEPA's rationale for disapproving Rules 3745-21-09(V), -10G, and -10(H) as an alternative leak testing procedure is set forth in Part 4.b of this notice. The effect of a finalized disapproval of these rules is that all owners and operators of such trucks will be subject to the control requirements in Rule 3745-21-09(V) of the existing SIP and for leak tests using only the standard procedure in Rule 3745-21-10(G) as adopted by the State on March 27, 1981, and approved by USEPA as a SIP revision on June 29, 1982 (47 FR 28097).

.Section (X)(2)(d) Rubber Tire Manufacturing Facility

USEPA Comment: OEPA has added Section (2)(d) which contains an exemption for the Cooper Tire and Rubber Company facility located in Findlay, Ohio which is located in Hancock County. As stated previously, Hancock County was redesignated to attainment on June 12, 1984 (49 FR 24124).

Because USEPA is proposing to approve the exemption from RACT for the Cooper Tire and Rubber Company located in Hancock Counties, the State no longer has an accomodative ozone SIP for this county. As a result, the waiver from the requirement of one year of preconstruction ozone monitoring as required by the Prevention of Significant Deterioration regulations is terminated for Hancock County.

.Section (Z)(1)(a) Storage of Petroleum in External Floating Roof Tanks

This rule, as approved by USEPA for floating roof storage tanks (47 FR 28097, June 29, 1982), required the use of secondary seals for all tanks storing petroleum liquids. Ohio has amended this Section to require only one seal, either a liquid mounted primary seal, a mechanical shoe primary seal, or the equivalent, on an external floating roof tank if the petroleum liquid being stored is crude oil.

OEPA justified this amendment with data showing that the cost-effectiveness of retrofitting secondary seals on storage tanks with these types of primary seals is substantially more expensive per ton of VOC controlled than retrofitting secondary seals on other tank types or on tanks storing more volatile organic liquids. EPA agrees that cost-effectiveness may be considered in modifications to RACT. However, Ohio has not demontrated that this relaxation would not interfere with the timely attainment and maintenance of the the NAAQS for ozone. Without such a demonstration, EPA cannot approve the amendment. Therefore, EPA is proposing to disapprove this amendment. EPA will reconsider this amendment if the state submits the necessary demonstration.

c. Other Action

.Section (AA)(2)(c) Dry Cleaning Facility

This rule as approved by USEPA for perchloroethylene dry cleaning operations (47 FR 28097; June 29, 1982) exempted only those operations which were coin-operated or due to insufficient steam or space, could not install a control device. OEPA has added Section (2)(c) which exempts any facility in which less than 60,000 pounds of fabrics are cleaned per year.

On October 24, 1983 (48 FR 49097), USEPA proposed to add perchloroethylene to the list of organic compounds which have negligible photochemical reactivity and thus should be exempt from regulation under the SIP. Therefore, USEPA is proposing to take no action on Ohio's amendment regarding perchloroethylene. However, if after USEPA issues its final policy on perchloroethylene, USEPA determines further action is required on Ohio's amendment, USEPA will take action either approving or disapproving this rule revision.

.Section (D)(3) Alternative Daily Emission Limitation for Can Coating

USEPA Comment: USEPA approved OAC Rule 3745-21-09(D)(3); an alternative daily emission limitation for can coating facility on June 29, 1982 (47 FR 28097). However, during USEPA's review of the State's revision to the ozone SIP, USEPA identified the following deficiencies within this rule.

This rule presents equations for determining an alternative daily emission limitation. USEPA finds that the equations are incorrect in that the volume (Vi) of each coating delivered to the coating applicator is the same for the allowable daily emission limitation (Ad) and the actual daily emissions (Ed). Vi will be different because the coatings can only be compared on the basis of solids applied to the can being coated.

Unless Ohio corrects this provision before USEPA publishes a final rule on these revisions, USEPA will take the following steps.

(1) USEPA will issue a notice of SIP deficiency and will call for a SIP revision under Section 110(a)(2)(H).

(2) In the same notice, USEPA will set up a deadline for correcting this rule.

(3) USEPA may propose construction and funding restrictions under section 173(4) and 176(b).

(4) USEPA may defer final action on these restrictions if the State commits to submitting an approvable SIP revision during the specified time period.

(5) If USEPA approves the plan, it will withdraw the proposed funding restrictions. However, USEPA will impose the restrictions if it disapproves the plan.

USEPA is using today's notice as an opportunity to identify this deficiency in the Ohio ozone SIP and give Ohio the opportunity to respond to this deficiency during the public comment period.

4. Compliance Test Methods and Procedures, Rule 3745-21-10

OEPA has amended this Rule to include a number of minor revisions, corrections or classifications; a rule reorganization; and, an alternative method for determining the leak tightness of gasoline tank trucks. USEPA is proposing to approve all changes made to Rule 3745-21-10 (B) through (F) and (I) through (K). USEPA is proposing to disapprove Sections (G) and (H). The following sections of Rule 3745-21-10 have been significantly revised.

a. Proposed Approval

Sections .(A)(3) and (4) General Provisions

.(B)(3), (4), and (5) Methods for determining VOC content of surface coating and inks

.(E)(4) and (7) Method for determining VOC emissions from bulk gasoline terminals

.(K) Method for detecting leaks of gasoline vapors

b. Proposed Disapproval

.Section (G) Standard method for the determination of the leak tightness of gasoline tank trucks. (Method G). As noted in part 3.b. of this notice, USEPA is proposing to disapprove amended Section (G) consistent with USEPA's action on Rule 3745–21–09(V), which USEPA finds to be unapprovable. USEPA believes that the existing approved SIP currently contains the control requirements and leak test procedures consistent with Agency guidance and other States in the Nation that have tank certification regulations. The effect of a final disapproval of this rule is that all owners and operators of gasoline tank trucks would be subject to Rules 3745–21–09(V) and -10(G) as adopted by the State in March 1981, and approved by USEPA as a SIP revision on June 29, 1982 (47 FR 28097).

.Section (H) Alternate Method for Determining Leak Tightness of Gasoline Tank Trucks (Method H)

In today's rulemaking action, USEPA is proposing to disapprove the State's alternative test, Method H, contained in amended Rule 3745–21–10(H) because this method involves a pressure test of only the vapor recovery lines and associated equipment. To summarize the rule, gasoline tank trucks which were manufactured prior to 1/1/75, must be pressurized to 15 inches of water and may not sustain a pressure decrease greater than 3.0 inches of water over 3 consecutive minutes. Gasoline tank trucks which were manufactured on or after 1/1/75, must be pressurized to 18 inches of water and may not sustain a pressure decrease greater than 3.0 inches of water over 3 consecutive minutes. The pressure test does not involve pressurization of any compartment of the gasoline tank truck. In addition to the pressure test, the following items are to be inspected and repaired or replaced if found to be defective.

(1) Dome cover lids (gaskets, latch tension and pressure/vacuum vents),

(2) Fusible plugs,

(3) Vapor vent hoods and sealing bands,

(4) Vapor return hoses and any associated fittings and adaptors, and

(5) Any pressure and vacuum relief vents on the vapor recovery lines.

Also, the pressure/vacuum vents in the dome assembly covers must comply with certain minimum specifications.

This method is not consistent with USEPA's control technique guidance and regulations of 19 other States that have tank truck certification regulations. In addition, OEPA has presented no acceptable evidence demonstrating why this rule constitutes RACT.

5. Summary of USEPA's Proposed Action

USEPA is proposing to approve all of the June 21, 1982, and January 24, 1983, amendments to chapter 3745–21–01, –04, –09, and –10 as submitted by the Director of OEPA to USEPA on March 28, 1983, with the following exceptions:

a. USEPA is proposing to disapprove new exemptions for the use of cutback asphalt [Rule 3745–21–09(N)(3)(a)+(e)], for external floating roof (crude oil) storage tanks from the secondary seal requirement [Rule 3745–21–09(Z)(1)(a)], USEPA is also proposing to disapprove Method G+H as an alternative leak testing procedure for gasoline tank trucks.

b. USEPA is taking no action on the applicability of Rule 3745–21–09 to new sources of VOC, the gasoline throughput exemption level for gasoline dispensing facilities, and the compliance date extension for Honda of America Manufacturing, Inc. auto and motorcycle assembly plant in Marysville.

c. USEPA is identifying deficiencies in the existing Rule 3745–21–09(D)(3) which contains an Alternative Daily Emission Limitation for Can Coating facilities.

d. USEPA is taking no action on OAC Rule 3745–21–09(AA)(2)(a) which exempts any dry cleaning facility in which less than 60,000 pounds of fabrics are cleaned per year.

e. USEPA is taking no action on OAC Rule 3745–21–09(U)(2)(f)(i) and (ii) which apply to new sources (surface coating lines).

All interested persons are invited to submit written comments on the proposed revisions to the Ohio SIP and on USEPA's proposed action. Written comments received by the date specified above will be considered in USEPA's final rulemaking on the regulations discussed herein.

No matter what rules the State now enforces, the existing federally approved SIP regulations for any source will apply, and be fully enforceable, until the source complies with the new regulations which USEPA approves as a result of its final rulemaking on the Chapter 3745–21 revisions. Further, the appropriate existing SIP regulations will continue in force if USEPA finalizes its proposed action disapproving certain new regulations.

Under Executive Order 12291, today's action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review. Any comments from OMB to USEPA, and any USEPA response, are available for public inspection at the USEPA Region V office listed above. 023

Pursuant to the provisions of 5 U.S.C. section 605(b), the Administrator has certified on January 27, 1981 (46 FR 8709), that this rule, if finalized, will not have a significant economic impact on a substantial number of small entities.

This rule proposes approval and disapproval of State actions. For approval and/or disapproval, it imposes no new requirements beyond those which the State has already imposed. For disapprovals, the sources will remain subject to the existing applicable provisions of the Ohio SIP.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone.

The notice of proposed rulemaking is issued under the authority of sections 110, 172 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7410, 7502, and 7601(a)).

Dated: December 5, 1984.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 85–5348 Filed 3–5–85; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 60

[AD–FRL–2790–3]

Review of Standards of Performance for New Stationary Sources; Ammonium Sulfate Manufacture

AGENCY: Environmental Protection Agency (EPA).

ACTION: Review of standards.

SUMMARY: The EPA proposes to leave unchanged the regulations established in 1980 for the control of ammonium sulfate emissions from new, modified, or reconstructed ammonium sulfate plants. EPA is required to review standards of performance for new, modified, reconstructed sources every 4 years by the Clean Air Act. A review of the existing new source performance standards (NSPS) for ammonium sulfate manufacture (40 CFR Part 60, Subpart PP) has been completed to determine if changes are needed. The review indicates that no revision to the standard is necessary.

DATE: Comments must be received on or before May 6, 1985.

ADDRESS: Send comments (in duplicate if possible) to: Central Docket Section (LE–131), Attention: Docket Number A–

84–47, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

Review Document. The review document summarizing information gathered during the review may be obtained from the EPA Library (MD–35), Research Triangle Park, North Carolina 27711, telephone number (919) 541–2777. Please refer to "Review of New Source Performance Standards for Ammonium Sulfate Manfacture," EPA–450/3–85–004, February 1985.

Docket. Docket No. A–84–47, containing supporting information gathered during the review is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section, West Tower Lobby, Gallery 1, Waterside Mall, 401 M Street SW., Washington, D.C., 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. James Crowder, Industrial Studies Branch, Emission Standards and Engineering Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5601.

SUPPLEMENTARY INFORMATION:

Background

Ammonium sulfate (AS) is produced primarily for use as an agricultural fertilizer. Ammonium sulfate manufacture was selected for NSPS development in 1978 on the basis of the potential for AS dryers to emit significant quantities of particulate matter into the atmosphere. A particulate emission standard was proposed in February 1980 for new ammonium sulfate plants, and the standard was promulgated on November 12, 1980. The promulgated standard was expressed on a mass basis, and limited particulate matter from AS dryers to 0.15 kg per Mg of AS produced (0.30 1b/ton). An opacity standard of 15 percent was also promulgated.

The standards apply to AS dryers that manufacture AS as a caprolactam by-product, as a coke oven by-product, or by synthetic manufacture (direct combination of ammonia and sufuric acid). Over 95 percent of all AS is produced by one of these processes. The dryer is the only significant source of particulate emissions in the process, and is the only emission source covered by the NSPS. Requirements were included in the promulgated standards for continuous monitoring of pressure drops across particulate control equipment by the owner or operator, and for continuous monitoring of AS feed streams to the crystallizer/reactor unless a facility uses weigh scales to measure feed rates. Records of these operating parameters are required to be maintained by the owner/operator for 2 years from the date that the measurements are recorded.

Section 111(b)(1)(B) of the Clean Air Act requires the Administrator of EPA to review and, if necessary, to revise established standards of performance for new stationary sources at least every 4 years. This notice reports the findings of the first 4-year review of the NSPS for AS manufacture. Information was gathered through contacts with Regional Offices of the EPA, State agencies, AS facilities of the types that would be affected by the NSPS, and fertilizer trade organizations. The findings and recommendations of the review are presented in the following paragraphs.

Findings

Affected Facilities and Projected New Facilities

No new, modified, or reconstructed AS producing facilties have come under the NSPS since it promulgation in 1980. There have been several plant closing in the synthetic AS and coke oven by-product AS Segments of the industry. Most plants are currently operating at less than capacity due to a decreasing demand for AS fertilizer. There is no anticipated new construction of AS plants or expansion of existing AS plants in the next 4 years.

Emission Control Technology

Wet scrubbers are currently used at all operating AS plants to control particulate emissions. Particulates that are collected by wet scrubbing are recycled back into process streams, recrystallized, and sold as product. This practice eliminates waste streams and disposal costs, and increases production efficiencies. There are various types of wet scrubber systems in operation at existing facilities, including venturi scrubbers, centrifugal scrubbers, packed tower scrubbers, and spray chambers. One synthetic AS plant has previously used a baghouse to control particulates from an AS dryer, but this plant has been shut down since promulgation of the NSPS. No newly demonstrated technologies that control emissions more effectively than those currently in use were identified in the review.

Achievability

Although there have been no new, modified, or reconstructed dryers in the AS industry since proposal of the NSPS, emissions have been tested at several facilities; and testing results were obtained by EPA. One caprolactam by-product AS plant controls a combined stream from one fluidized bed dryer and one rotary dryer with centrifugal scrubbers. Emissions from the scrubber tested at this plant were reported at 0.04 kg of particulates per Mg of AS production. Another caprolactam by-product producer provided results from emission testing of four rotary dryers at the plant, with controlled emissions ranging from 0.021 kg/Mg to 0.090 kg/Mg of AS produced. All four of these dryers are controlled by centrifugal scrubbers.

Although not subject to the NSPS several operating facilities have achieved the NSPS limit of 0.15 kg/Mg. Because emissions are typically recycled back to process streams, there is an incentive for AS producers to meet the NSPS for production as well as environmental reasons. Credits for recycling captured particulates substantially offset operating costs of control equipment, and in some cases generate net savings in annualized costs.

Cost Effectiveness of the NSPS

A review of control costs for venturi scrubbers was performed to update the capital and annualized costs incurred in achieving the NSPS and to determine the cost effectiveness of the existing standard. A medium energy venturi scrubber with a pressure drop of 12 inches W.G. and 99.9 percent collection efficiency was selected for the study. Representative production rates, dryer exhaust rates, and uncontrolled emission rates were estimated for each of the three types of AS producing plants covered by the NSPS. Credits for captured particulates which are recycled to process streams were calculated based on the current market prices for AS, and a cost effectiveness was determined for ech segment of the industry. The cost effectiveness varied from a savings of $36/Mg of particulates captured in the caprolactam by-product plant, to a cost of $655/Mg of particulates removed in the coke oven by-product plant. The synthetic plant demonstrated a savings of $21/Mg of particulates removed. The overall cost (rather than a cost savings) at the coke oven by-product plant is attributed to lower design gas and product flow rates through the dryer. This results in a lower uncontrolled emission rate and less particulates available for capture and recycle. All money values in this study are in March 1984 dollars.

Monitoring, Recordkeeping, and Reporting

The NSPS includes requirements for continuous monitoring of pressure drops

across particulate control equipment to ensure proper operation and maintenance of the system. In addition, continuous monitoring of feed streams to the AS reaction is required by the NSPS. Owners and operators are required to maintain these records for 2 years after measurements are made. Because no facilities have come under the NSPS, this requirement has created no burden on AS producers to date. No changes in the existing monitoring, recordkeeping, and reporting requirements are being proposed.

List of Subjects in 40 CFR Part 60

Air pollution control, Ammonium sulfate plants.

Dated: February 26, 1985.

Charles L. Elkins,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 85-5261 Filed 3-5-85; 8:45 am]

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40 CFR Part 60

[AD-FRL-2790-2]

Standards of Performance for New Stationary Sources Monitoring Requirements; Appendix B, Alternative Procedures to Performance Specification 2 for SO_2 and NO_x Continuous Emission Monitoring Systems

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and notice of public hearing.

SUMMARY: The purpose of this proposed rule is to add an alternative procedure to Performance Specification 2 for determining the relative accuracy (RA) of a continuous emission monitoring system (CEMS). The alternative, a calibration audit using cylinder gases or calibration cells, would apply only to a CEMS used at a source whose pollutant emission rate is less than 50 percent of the applicable standard. The proposed amendments define the criteria for the RA test waiver, the calibration audit procedure, the acceptance criteria, and the criteria that would lead to recision of the waiver in amendments to §60.13(c) and Appendix B, Performance Specification 2 (PS 2) of 40 CFR Part 60. The intended effect is to add flexibility to the requirements of the PS 2 and to lower the expense of CEMS certification without affecting the quality of CEMS data relative to the emission limits.

A public hearing, if requested, will be held to provide interested persons an opportunity for oral presentation of data, views, or arguments concerning the proposed rule.

DATES: *Comments.* Comments must be received on or before May 20, 1985.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by March 27, 1985, a public hearing will be held on April 22, 1985 beginning at 10:00 a.m. Persons interested in attending the hearing should call Ms. Shelby Journigan at (919) 541-5578 to verify that a hearing will occur.

Request to Speak at Hearing. Persons wishing to present oral testimony must contact EPA by March 27, 1985.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate if possible) to: Central Docket Section (LE-131), Attention Docket Number A-84-46, U.S. Environmental Protection Agency, 401 M Street SW, Washington, D.C. 20460.

Public Hearing. If anyone contacts EPA requesting a public hearing, it will be held at EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should notify Ms. Shelby Journigan, Standards Development Branch (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5578.

Docket. Docket No. A-84-46, containing materials relevant to this rulemaking, is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section, West Tower Lobby, Galley 1, Waterside Mall, 401 M Street SW, Washington, D.C. 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Peter R. Westlin, Emission Measurement Branch, Emission Standards and Engineering Division (MD-19), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-2237.

SUPPLEMENTARY INFORMATION: The EPA promulgated a revised PS 2 on May 25, 1983 (48 FR 23608), that included provisions for less strict RA requirements for CEMS's that measure low emission levels. The Agency has reviewed requests for a waiver of RA testing with reference methods in cases of very low emission levels and substituting a calibration audit procedure. The intent is to ease the burden of CEMS certification in cases where the emissions are low in relation to the emission limit, and absolute accuracy of the CEMS is not a critical consideration.

The Agency believes that a calibration audit, in lieu of a reference method RA test in cases of low emission levels, may be appropriate. The use of cylinder gases or gas cells is a much less expensive means of checking CEMS performance than a RA test. Fewer people, less equipment, fewer field and laboratory analyses, and a shorter amount of time are needed for the alternative procedures.

A primary concern of the Agency would be the need for certified CEMS data if the emission levels increase and approach the level of the emission standard. For this reason, criteria for determining whether a source is eligible for a waiver of RA testing and for conditions that would result in rescinding the waiver are included. Rescinding the waiver includes the requirement that the source owner or operator conduct a CEMS RA test within 30 days of the recision.

There are a number of issues for which the Administrator requests comments. The calibration audit defined in the proposal specifies a two-point audit of both the pollutant and diluent monitors, if applicable. Instrument checks performed in addition to the calibration audit are included in the proposed revisions. These instrument checks provide assurance that the CEMS is operating as designed. Included are generally described procedures for checking light source operation, data acquisition, response system operation, timing mechanisms, and mechanical operations. The opinion of the Agency is that cylinder gases or gas cells introduced to the measurement path of CEMS's can provide an indication of CEMS performance under restricted conditions. Comments are invited on the calibration audit approach, on the number of audit points, on audit gas cell certification procedures, and on other means of assessing CEMS performance.

The proposed amendments include a provision to rescind the waiver and to conduct a RA test should the emissions approach the level of the applicable standard. The trigger level for rescinding the waiver is 70 percent of the applicable emission limit for seven consecutive averaging periods. Comments are invited on the appropriateness of this provision and on whether other criteria should be used.

Miscellaneous

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a regulatory impact

analysis. This regulation is not major because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices; and there will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB and any written EPA responses are available in the docket.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that the attached rule will not have a significant economic impact on small entities because this is not a new requirement but an alternative procedure.

This proposed rulemaking is issued under the authority of sections 111, 114, and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7411, 7414, and 7601(a)).

List of Subjects in 40 CFR Part 60

Air pollution control, Aluminum, Ammonium sulfate plants, Asphalt, Cement industry, Coal copper, Electric power plants, Glass and glass products, Grains, Intergovernmental relations, Iron, Lead, Metals, Metallic Minerals, Motor vehicles, Nitric acid plants, Paper and paper products industry, Petroleum, Phosphate, Sewage disposal, Steel sulfuric acid plants, Waste treatment and disposal, Zinc, Tires, Incorporation by reference, Can surface coating, Sulfuric acid plants, Industrial organic chemicals, Organic solvent cleaners, Fossil fuel-fired steam generators, Fiberglass insulation, Synthetic fibers.

Dated: February 7, 1985.

John C. Topping, Jr.,

Acting Assistant Administrator for Air and Radiation.

PART 60—[AMENDED]

It is proposed to amend 40 CFR Part 60, § 60.13(c) and Appendix B, Performance Specification 2 as follows:

1. Paragraph (c)(2) of § 60.13 is amended by adding paragraphs (iii) and (iv) and redesignating current paragraph (iii) as paragraph (v) as follows:

§ 60.13 Monitoring requirements.

* * * * *

(c) * * *

(2) * * *

(iii) An alternative to the reference method tests for determining relative accuracy is available for sources with emission rates demonstrated to be less than 50 percent of the applicable standard. A source owner or operator may petition the Administrator to waive the relative accuracy test in Section 7 of Performance Specification 2 and substitute the procedures in Section 10 if the results of a performance test conducted according to the requirements in § 60.8 of this subpart or other tests performed following the criteria in § 60.8 demonstrate that the emission rate of the pollutant of interest in the units of the applicable standard is less than 50 percent of the applicable standard. For sources subject to standards expressed as control efficiency levels, a source owner or operator may petition the Administrator to waive the relative accuracy test and substitute the procedures in Section 10 of Performance Specification 2 if the control device exhaust emission rate is less than 50 percent of the level needed to meet the control efficiency requirement.

(iv) The waiver of a CEMS relative accuracy test will be rescinded at such time following successful completion of the calibration audit that the continuous monitoring data indicate the source emissions approaching the level of the applicable standard. The criterion for rescinding the waiver is the collection of CEMS data showing that emissions have exceeded 70 percent of the applicable standard for seven, consecutive, averaging periods as specified by the applicable regulation(s). For sources subject to standards expressed as control efficiency levels, the criterion for rescinding the waiver is the collection of CEMS data showing that exhaust emissions have exceeded 70 percent of the level needed to meet the control efficiency requirement for seven, consecutive, averaging periods as specified by the applicable regulation(s). If this criterion is exceeded, the owner or operator must notify the Administrator and conduct a relative accuracy test as specified in Section 7 of Performance Specification 2 within 30 days of such occurrence.

* * * * * *

Appendix B—Amended

2. A new Section 10 is added to Performance Specification 2 of Appendix B and current Section 10 is redesignated as Section 11, as follows:

* * * * * *

Performance Specification 2. Specifications and Test Procedures for SO_2 and NO_x Continuous Emission Monitoring Systems in Stationary Sources

* * * * * *

10. Alternative Procedures.

10.1 Alternative to Relative Accuracy Procedure in Section 7. Section 60.13(c)(2)(iii) contains criteria for which the reference method relative accuracy may be waived and the following procedure substituted.

10.1.1 Conduct a complete instrument check following the manufacturer's written instructions. The checks should include operation of the light source, signal receiver, timing mechanism functions, data acquisition and data reduction functions, data recorders, mechanically operated functions (mirror movements, zero pipe operation, calibration gas valve operations, etc.), sample filters, sample line heaters, moisture traps, and other related functions of the CEMS, as applicable.

10.1.2 Challenge each monitor (both pollutant and diluent, if applicable) with audit gases of known concentrations or audit gas cells that produce known responses at two audit points within the following ranges:

Audit point	Audit range		
	Pollutant monitor	Diluent monitor for—	
		CO_2	O_2
1	20–30 percent of monitor calibration full scale.	5–8 percent by volume.	4–6 percent by volume.
2	50–60 percent of monitor calibration full scale.	10–14 percent by volume.	8–12 percent by volume.

Use a separate audit cylinder gas or gas cell for audit points 1 and 2. Do not dilute gas from a cylinder when challenging the monitor.

Operate each monitor in its normal sampling mode as nearly as possible. When using cylinder gases, pass the audit gas through all filters, scrubbers, conditioners, and other monitor components used during normal sampling and as much of the sampling probe as practical. The CEMS components used in the normal sampling mode should not be bypassed during the calibration audit when using gas cells. These include light sources, lenses, detectors, and reference cells. The monitor should be challenged at each audit point for a sufficient period of time to assure adsorption-desorption of the CEMS surfaces has stabilized.

Use audit cylinder gases that have been certified by comparision to National Bureau of Standards (NBS) gaseous standard reference material (SRM) or NBS/EPA-approved gas manufacturer's certified reference material (CRM) (See Citation 11.2) following EPA traceability protocol Number 1 (See Citation 11.3). As an alternative to protocol Number 1 audit gases, CRM may be used directly as audit gases. A list of gas manufacturers that have prepared approved CRM's is available from EPA at the address shown in Citation 11.2. Procedures for preparation of CRM are described in Citation 11.2.

Use audit gas cells certified by the manufacturer to produce a known response in the instrument. The cell certification procedure should include determination of instrument response produced by the gas cell in direct comparison with measurement of gases of known concentration. This can be accomplished using SRM or CRM gases in a laboratory source simulator or through

extended tests using reference methods at the CEMS location in the exhaust stack. These procedures are discussed in Citation 11.4. The audit cell certification procedure is subject to approval of the Administrator.

10.1.3 The differences between the known concentrations of the audit gases and the concentrations indicated by the monitor are used to assess the accuracy of the CEMS.

The calculations and limits of acceptable relative accuracy (RA) are as follows:

(a) For pollutant CEMS:

$$RA = \left[\frac{d}{AC} \times 100\right] < 15 \text{ percent}$$

Where:

d = Difference between response and the known concentration/response.

AC = The known concentration/response of the audit gas or cell.

(d) For diluent CEMS:

RA = [d] < 0.7 percent O_2 or CO_2, as applicable.

Note.—Waiver of the relative accuracy test in favor of the calibration audit does not preclude the requirements to complete the calibration draft (CD) tests nor any other requirements specified in the applicable regulation(s) for reporting CEMS data and performing CEMS draft checks or audits.

3. Section 9 is revised to read as follows:

* * * * *

9. *Reporting.*

At a minimum (check with the appropriate regional office, or State, or local agency for additional requirements, if any) summarize in tabular form the results of the CD tests and the relative accuracy tests or calibration audit as appropriate. Include all data sheets, calculations, charts (records of CEMS responses), and cylinder gas concentration certifications (if applicable), necessary to substantiate that the performance of the CEMS met the performance specifications.

3. Section 10 is redesignated Section 11, Citation 10.1 is redesignated 1, and is revised by adding 2, 3, and 4 to read as follows:

11. *Bibliography.*

1. * * *

2. "A Procedure for Establishing Traceability of Gas Mixtures to Certain National Bureau of Standards Standard Reference Materials." Joint publication by NBS and EPA. EPA–600/7–81–010. Available from U.S. Environmental Protection Agency. Quality Assurance Division (MD–77), Research Triangle Park, North Carolina 27711.

3. "Traceability Protocol for Establishing True Concentrations of Gases Used for Calibration and Audits of Continuous Source Emission Monitors. (Protocol Number 1)." June 1978. Protocol Number 1 is included in the *Quality Assurance Handbook for Air Pollution Measurement Systems. Volume III. Stationary Source Specific Methods.* EPA–600/4–77–027b. August 1977. Volume III is available from the U.S. EPA, Office of Research and Development Publications, 26 West St. Clair Street, Cincinnati, Ohio 45268.

4. "Gaseous Continuous Emission Monitoring Systems—Performance Specification Guidelines for SO_2, NO_x, CO_2, O_2, and TRS." EPA–450/3–82–026. Available from U.S. Environmental Protection Agency, Emission Standards and Engineering Division (MD–19), Research Triangle Park, North Carolina 27711.

[FR Doc. 85–5351 Filed 3–5–85; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2, 15, 22, 25, and 90

[Gen. Docket No. 84–1231; RM–4812, Doc. 84–1233; RM–4829, Doc. 84–1234; RM–4247]

Cellular Communications Systems, Frequencies Allocations, and the Use of Radio Frequencies; Extension of Comment and Reply Comment

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment and reply comment period and denial of consolidation motions.

SUMMARY: This Order extends the time period in which to file comments and reply comments in response to the Notice of Proposed Rulemaking in General Docket Nos. 84–1231 (1/28/85; 50 FR 3809) and 84–1233 (1/11/85; 50 FR 1582) concerning cellular communications systems, frequency allocations, and the use of radio frequencies. Also, the Order denies motions to consolidate Docket Nos. 84–1231, 84–1233, and 84–1234. This action is taken to establish a uniform comment and reply comment date in all three dockets, while at the same time maintaining flexibility to deal with each proceeding individually.

DATES: Comments may now be filed on or before March 29, 1985. Reply comments may now be filed on or before April 29, 1985.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rodney Small, Spectrum Management Division, Office of Science and Technology, Federal Communications Commission, Washington, DC 20554 (202) 653–8169.

Order Extending Time for Comments and Denying Consolidation of Proceedings

In the matter of amendment of Parts 2 and 22 of the Commission's Rules Relative To Cellular Communications Systems; General Docket No. 84–1231, RM– 4812; amendment of Parts 2, 15, and 90 of the Commission's Rules and Regulations To Allocate Frequencies in the 896–902 MHz and 935–941 MHz Bands for Private Land Mobile Use; General Docket No. 84–1233; Rm–4829; Amendment of Parts 2, 22, and 25 of the Commission's Rules to Allocate Spectrum for, and to Establish Other Rules and Policies Pertaining to the Use of Radio Frequencies in a Land Mobile Satellite Service for the Provision of Various Common Carrier Services; General Docket No. 84–1234, RM–4247.

Adopted: February 22, 1985.

Released: February 26, 1985.

By the Private Radio Bureau and Office of Science and Technology.

1. The Commission has before it several motions to extend time for comments and/or consolidate the above captioned rulemaking proceedings, as well as one motion opposing consolidation of the proceedings.

2. Currently, comments to the Notices of Proposed Rulemaking in the three dockets are due March 13, 1985 (84–1231); February 28, 1985 (84–1233); and March 29, 1985 (84–1234) respectively. All of the motions to extend time for comments propose a uniform comment date in all three proceedings, with the proposed date ranging from March 29, 1985 to April 30, 1985. The motions to consolidate proposed to go a step further. As stated by the Associated Public-Safety Communications Officers (APCO), "The three Notices of Proposed Rulemaking released by the Commission involve the allocation of frequencies and related issues that are inextricably interwined and, therefore, should not be addressed in a piece-meal manner by the Commission or interested parties in the public comment period. Without consolidation, APCO is concerned that the Commission will not be in the best position to address in a comprehensive manner the spectrum needs and public uses of the services involved in these proceedings, specifically the public safety services." (APCO Motion To Consolidate, p. 2).

3. We believe that the dockets are interrelated and that there is merit in establishing a uniform comment date. At

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the same time, however, we believe that consolidating the dockets would diminish our flexibility in dealing with each item and the issue associated solely with any particular one. Ultimately, the proposals and the issues involved will be resolved based upon the established record from each proceeding. To the extend some issues are common and interrelated, the Commission will give due consideration. Commenters can address these interrelationships in their pleadings to be filed concurrently.

4. Concerning the uniform comment date to be established, we believe that the March 29, 1985 date set forth in Docket 84–1234 affords ample time for parties to comment in all three proceedings. This date is sixty days after the release of the Notice in Docket 84-1234, and seventy-two days after the release of the Notice in Docket 84-1231, and eighty-five days after the release of Notice in Docket 84–1233. Also, we believe that the reply comment date of April 29, 1985 established in Docket 84–1234 is appropriate for the other two dockets.

5. Therefore, it is ordered, that the *Motions for Extension of Time* are granted to the extent discussed above. Interested parties may file comments to any or all of the Notices of Proposed Rulemaking in General Dockets 84–1231, 84–1233, and 84–1234 on or before March 29, 1985 and may file reply comments on or before April 29, 1985. It is further ordered that the *Motions for Consolidation* are denied.

6. This action is taken pursuant to authority found in sections 4(i), 302, and 303 of the Communications Act of 1934 as amended, 47 U.S.C. 154(i) 302, and 303, and pursuant to §§ 0.31, 0.131, 0.241, 0.331, and 0.332 of the Commission's Rules.

(Secs. 4, 303, 48 Stat., as amended, 1068, 1082, 47 U.S.C. 154, 303)

Federal Communications Commission.

Michael T. N. Fitch,

Deputy Chief, Private Radio Bureau.

Robert S. Powers,

Chief Scientist

[FR Doc. 85–5317 Filed 3–5–85; 8:45 am]

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47 CFR Parts 2, 73, and 90

[Gen. Docket No. 84-902; RM-3975]

Allocation of Additional Channels in the Band 470–512 MHz for Public Safety Services; Order Extending Time for Reply Comment

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of reply comment period.

SUMMARY: This Order extends the time period in which to file reply comments in response to the Notice of Proposed Rulemaking in General Docket No. 84–902 (November 21, 1984; 49 FR 45875) to allocate additional channels in the band 470–512 MHz for public safety services.

EFFECTIVE DATE: Reply comments may now be filed on or before March 5, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Don Precure, Spectrum Management Division, Office of Science and Technology, Federal Communications Commission, Washington, D.C. 20554, (202) 653–81710.

Order Extending Time for Comments

In the matter of amendment of Parts 2, 73, and 90 of the Commission's Rules and Regulations to allocate additional channels in the band 470–512 MHz for public safety services; General Docket No. 84–902, RM–3975.

Released: February 25, 1985.

By the Office of Science and Technology.

1. On October 11, 1984, the Commission released a Notice of Proposed Rulemaking in the above captioned proceeding. Comments to the Notice have been filed, and reply comments are currently due February 26, 1985.

2. On February 15, 1985, the Los Angeles County Sheriff's Department filed a *Motion for Extension of Time* for filing reply comments in the proceeding until March 5, 1985. In support of the Motion, the Sheriff states that the February 26 date provides insufficient time to analyze and respond to technical comments filed with respect to the Jones Report, a study commissioned by the Department to determine the potential interference impact of public safety utilization of UHF television spectrum upon the reception of station KSCI, San Bernardino, California, and filed with the Commission on January 11, 1985.

3. We believe the Department's request has merit. Accordingly, pursuant to sections 4(i), 302 and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 302, and 303, and pursuant to § 0.241(d) of the Commission's Rules, it is ordered That the *Motion for Extension of Time* filed by the Los Angeles County Sheriff's Department is granted. Interested parties may file reply comments to the Notice of Proposed Rule Making on or before March 5, 1985.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Robert S. Powers,

Chief Scientist.

[FR Doc. 85–5316 Filed 3–5–85; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 64

[CC Docket No. 85–26; FCC 85–56]

Policy and Rules Concerning the Furnishing of Customer Premises Equipment and Enhanced Services by American Telephone and Telegraph Company, and Related Waiver Requests

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed amendment to rules.

SUMMARY: The Commission is proposing to relieve American Telephone and Telegraph Co. (AT&T) of the requirement that AT&T may offer customer premises equipment (CPE) only through a subsidiary separate from its regulated communications operations contained 47 CFR 64.702 of its Rules. The Notice also poses questions to enable the Commission to determine any safeguards which may still be necessary. AT&T would still be prohibited from offering enhanced services jointly with regulated communications offerings, subject to an appraisal of that prohibition in a subsequent proceeding. The proposed relief is based upon the tentative conclusion that, following its divestiture of local exchange operations, AT&T's ability to engage in anticompetitive practices has declined markedly, while structural separation hinders AT&T from competing effectively in the provision of CPE, to the detriment of the public. AT&T is also granted a conditional waiver of Part 64 of the Commission's rules to allow its subsidiary to engage in joint use of software subject to approval of an accounting and network information and disclosure plan. AT&T was also permitted to realign personnel services in its Technologies Sector. Such activities should lower AT&T's costs while causing minimal harm to competition. Another waiver request, relating to AT&T's provision of CPE to the federal government, is denied because the need for it was unsupported.

DATES: Comments due: 45 days after the release of this notice and replies by 30 days after AT&T files its responses.

ADDRESSES: All documents filed in this proceeding may be inspected and copied in the Commission's Public Reference Room, Room 239, 1919 M Street, NW., Washington, D.C. 20554, between 8:00 a.m. and 5:30 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: Greg Vogt, (202) 632–4887.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 64

Communications common carriers, Communications equipment, Telephone, Separate corporation.

Memorandum Opinion and Order and Notice of Proposed Rulemaking

In the Matter of Furnishing of Customer Premises Equipment and Enhanced Services by American Telephone & Telegraph Company; CC Docket 85–26; American Telephone & Telegraph Company, Petition for Relief from Structural Separation Requirements; ENF 84–17; American Telephone & Telegraph Company, Petition for Temporary Waiver of the Computer II Rules Concerning the Provision of Customer Premises Equipment to the Federal Government; ENF 84–43; American Telephone & Telegraph Company, Request to Permit AT&T Technologies, Inc. to provide personnel-related services to AT&T Information Systems, Inc.; ENF 84–50.

Adopted: January 31, 1985.

Released: February 22, 1985.

By the Commission.

I. Introduction

1. The American Telephone & Telegraph Company (AT&T) has filed petition seeking relief from structural separation requirements imposed upon it in the *Second Computer Inquiry* (*Computer II*) [1] regarding its provision of customer premises equipment (CPE) and enhanced services. AT&T's petition [2] and other pleadings cite fundamental changes in its operations and in the telecommunications industry in general since the *Computer II* rules were adopted. We hereby give notice that we are proposing to relieve AT&T from structural separation requirements for the provision of CPE. We invite comments on this proposal, as well as on any other issue which arises as a result of actions described in this order or in relevant pleadings filed by AT&T. We are deferring until a later proceeding the issue of whether AT&T's provision of enhanced services should continue to be subject to structural separation.

A. Summary

2. In *Computer II* the Commission permitted AT&T to engage in the provision of CPE and enhanced services only through a separate subsidiary. That subsidiary was required to operate independently from the remainder of the corporation and to comply with specific structural, financial, and accounting requirements and information flow restrictions. The Commission adopted these requirements to lessen the likelihood that AT&T's provision of CPE and enhanced services would result in harm to competition in those markets or cause ratepayers to fund CPE and enhanced services operations.

3. AT&T has undergone fundamental changes in its corporate structure as a result of the Modified Final Judgment (MFJ) [3] and market changes in the telecommunications industry. As described herein, we seek to ensure that our regulations impose the minimum restrictions necessary to achieve the Commission's goals. Specifically, we propose to remove the structural separation conditions from AT&T's provision of CPE. We are not, however, at this juncture, addressing the possible removal of structural separation for AT&T's offering of enhanced services, for we wish to address enhanced services issues in a separate proceeding. Regardless of our proposal to remove structural separation conditions from AT&T's provision of CPE, we remain concerned that permitting AT&T to engage in the unseparated provision of CPE might hinder the ability of nonaffiliated providers of CPE to obtain timely information regarding changes to the manner in which CPE is connected or operates with the network. We also remain concerned that the total amounts of funds which AT&T infuses into CPE and other unregulated operations not adversely affect ratepayers. We therefore seek suggestions from interested parties as to means less restrictive than structural separation to address these and other potential drawbacks of relieving AT&T from structural separation requirements for its provision of CPE.

4. In addition, in this order we grant AT&T a waiver of Section 64.702(c)(4) of our Rules to permit its unregulated affiliates to engage in the unrestricted use of proprietary software on a fully cost compensatory basis, and grant AT&T's request of August 28, 1984, to permit AT&T Technologies to provide personnel and recruiting services to its separated affiliate, AT&T Information Systems, Inc. (ATTIS).[4] We deny AT&T's request for a temporary waiver of the *Computer II* rules to permit ATTIS to provide computer support to AT&T Technologies for the provision of CPE to the federal government.[5]

B. Background

5. In the *Second Computer Inquiry* the Commission established certain policies regarding the provision of enhanced services and CPE by all common carriers. These policies include promoting cost-based pricing for regulated offerings, protecting ratepayers from adverse consequences of carrier provision of competitive CPE and enhanced services offerings, and promoting an environment in which all vendors of CPE and enhanced services may compete without unfair advantage. We remain committed to these policies. In this proceeding we address the issue of whether they can in some instances be promoted by means other than the structural separation imposed in *Computer II*.

6. The *Computer II* structural separation requirements were adopted with several objectives. They are intended to control AT&T's ability to cross-subsidize competitive offerings with revenues derived from monopoly communications services, while insulating ratepayers from liabilities incurred by AT&T's unregulated ventures. They are also designed to ensure that competing providers of unregulated products and services receive equal interconnection of their offerings to the basic services network, and to ensure that the basic transmission network remain a clear channel over which all services, whether basic or enhanced, could flow unimpeded.[6] The *Computer II* rules

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[1] Amendment of § 64.702 of the Commission's Rules and Regulations (Computer II), 77 FCC 2d 384 (Final Decision), *reconsideration*, 84 FCC 2d 50 (1981), *further reconsideration*, 88 FCC 2d 512 (1980), *aff'd sub nom. Computer and Communications Industry Ass'n* v. *FCC*, 693 F.2d 198 (D.C. Cir. 1982), *cert. denied*, 103 S. Ct. 2109 (1983), *second further reconsideration*, FCC 84–190 (released May 4, 1984).

[2] AT&T Petition for Relief from Structural Separation Requirements, filed April 30, 1984, File No. ENF 84–17.

[3] *United States* v. *AT&T*, 552 F. Supp. 131 (D.D.C. 1982), *aff'd sub nom. Maryland* v. *United States*, 103 S. Ct. 1240 (1983).

[4] Letter from D.J. Culkin to Chief, Common Carrier Bureau, received August 28, 1984, File No. ENF 84–50.

[5] Petition of American Telephone and Telegraph Company for Temporary Waiver of § 64.702 of the Commission's Rules With Respect to the Provision of CPE to the Federal Government, filed July 17, 1984, File No. ENF 84–43.

[6] The *Computer II* rules define enhanced services as "services, offered over common carrier facilities used in interstate communications, which employ computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information; provide the subscriber additional, different or restructured information; or involve subscriber interaction with stored information." 47 CFR 64.702(a). Basic services are those in which a carrier offers a pure transmission capacity between two or more points

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prohibit AT&T and its *Computer II* subsidiary, whose initial and modified capitalization is subject to Commission approval, from, among other things, jointly marketing, installing and maintaining, and billing for products and services, and places conditions on their exchange of network-related and customer proprietary information. AT&T is prohibited from developing software-based products exclusively for the separate subsidiary but may develop "generic" software for sale to third parties on the same terms and conditions as are offered to the subsidiary. The subsidiary must compensate affiliates for research and development performed on its behalf. Like all other carriers which engage in the provision of enhanced services, AT&T's subsidiary must remain separate books of account for its unregulated activities and may obtain basic services from an affiliated carrier only at tariffed rates. The Commission has permitted affiliates to provide ATTIS with certain types of administrative services as specified in Commission decisions.

7. At the time these requirements were adopted, the Bell System was a vertically integrated company with assets estimated at $150 billion, and annual revenues that exceeded $69 billion in 1983. Prior to divestiture, AT&T provided exchange communications services through 22 wholly-owned and two partially-owned operating companies which operated more than 80% of the intrastate network, as well as interexchange services and CPE, which was generally provided as part of a bundled tariffed offering. At the time the *Computer II* decisions were adopted we found competition in the provision of CPE to be at a formative stage. AT&T also owned research, development and manufacturing facilities covering both network and customer premises equipment, the funds for which were largely derived from sales to affiliates which provided monopoly regulated services.

8. Since the *Computer II* decisions, however, fundamental changes in the structure of AT&T and the telecommunications industry in general have occurred. The most significant of these has been the divestiture of the Bell Operating Companies (BOCs) from AT&T pursuant to the MFJ. As a consequence of divestiture, AT&T is no longer engaged in the provision of local exchange telephone service. The MFJ permits AT&T, however, to enter almost any other line of business it chooses.[7] The BOCs, on the other hand, while barred from the provision of interexchange services and from manufacturing operations by the MFJ, have been permitted to provide CPE.[8] All of the BOCs have enterd the CPE market in competition with AT&T.

9. In addition, *Computer II* required the phased detariffing and unbundling of CPE from the offering of basic transmission services. Most of the embedded base of CPE owned by the BOCs prior to the divestiture has been transferred to ATTIS. The Commission has approved an additional capitalization of more than $6.5 billion to support ATTIS' provision of this equipment, subject to AT&T's compliance with a price predictability plan and the offering of sale or lease options to customers with embedded equipment.[9] Finally, the Commission recently authorized ATTIS to resell basic domestic services of any carrier including an affiliate, so long as such services are acquired at nondiscriminatory tariffed rates and are accounted for separately.[10]

10. Furthermore, there are strong indications that competition in the CPE market has grown significantly and will continue to grow. In the *Final Decision* in the *Second Computer Inquiry* we characterized competition in the provision of CPE as "infant yet promising."[11] It is currently estimated that there are approximately 3,000 suppliers of business CPE in the domestic market.[12] In 1983 independent manufacturers shipped more than 75% of PBXs and more than 70% of key telephone instruments.[13] The non-carrier share of installed key telephone instruments reached 19.2% in 1983 and is expected to reach almost 30% by 1988, and the non-carrier share of the market for installed PBXs reached 39% in 1983 and is projected at more than 43% by 1988.[14]

II. AT&T Petition for Relief From Structural Separation Requirements and Responses

11. On April 30, 1984, AT&T filed a petition requesting relief from the Computer II structural separation requirements. On June 4, 1984, the Commission issued a public notice requesting further information from AT&T on which to evaluate AT&T's petition, and setting a schedule for AT&T's response and pleadings by interested parties. An appendix to this Notice lists the more than 30 parites which filed comments and the more than 25 which responded to AT&T's supplemental information and filed reply comments.[15] Such parties include common carriers, providers of CPE and enhanced services, consumers of both regulated and competitive offerings, and agencies of the federal government. In addition, the Commission has received numerous informal comments supporting AT&T's petition.

12. AT&T asserts that it no longer exhibits the four characteristics enumerated in the order on *Reconsideration* of *Computer II* which make structural separation warranted for a comon carrier which engages in the provision of enhanced services and CPE.[16] AT&T argues that because of the

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"over a communications path that is virtually transparent in terms of its interaction with customer supplied information." *Final Decision*, 77 FCC 2d at 419–20.

[7] The MFJ bars AT&T from providing electronic publishing services through its own facilities for seven years from the date of divestiture. 552 F. Supp. at 225.

[8] We have required the BOCs to provide CPE and enhanced services through structural separation requirements similar, but not identical, to those imposed upon AT&T. *BOC Separation Order*, 95 FCC 2d 1117 (1984), *reconsideration*, 49 FR 26056 (June 26, 1984), *aff'd sub nom. Illinois Bell Tel. Co. v. FCC*, 740 F.2d 465 (7th Cir., 1984), petition for rehearing pending. The extent to which the BOCs may engage in the provision of enhanced services may be limited by the MFJ's restriction on their provision of "information services," which may encompass part or all of the enhanced services defined by the Commission. See *BOC Separation Order*, 95 FCC 2d at 1122, n.10.). In addition, unlike AT&T, the commission has permitted BOC regulated operations to provide billing for their subsidiaries, install and maintain residential and single-line telephones, and engage in dial-tone referral of prospective CPE customers. The BOC's subsidiaries have been permitted to file plans to act as agents for the sale of affiliates' regulated services. *BOC Sales Agency Order*, FCC 84–290 (released July 11, 1984), *recon. pending*.

[9] *Embedded CPE Detariffing Order*, 95 FCC 2d 1276 (1983), *recon. pending*.

[10] *ATTIS Resale Decision*, CC Docket 83–1375, 49 FR 28,835 (July 17, 1984), *recon. pending*, petition for stay denied, FCC 84–142 (released September 24, 1984).

[11] 77 FCC 2d at 467

[12] NATA 1985 Telecommunications Source Book at 86

[13] *Id.* at 70, 77.

[14] *Id.* at 65.

[15] A summary of AT&T's Petition for Relief and the pleadings filed in response to the public notice are available for public inspection at the Commission's offices.

[16] These include (1) the ability to engage in anticompetitive activity through control over "bottleneck" facilities i.e., local exchange and toll transmission facilities, on a broad national geographic basis; (2) the ability to engage in cross-subsidization to the detriment of the communications ratepayer; (3) vertical integration of the carrier and affiliated entities, with special emphasis upon research and development and manufacturing capabilities that are supported by communications derived revenues; and (4) the possession of sufficient resources to engage in competitive ventures through a separate subsidiary *Reconsideration*, 84 FCC 2d at 72. The Commission has indicated that these characteristics are only

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divestiture of local exchange facilities, the growth of competition in the provision of interexchange services, the change in AT&T Technologies (the successor to Western Electric) from a supplier of equipment to captive operating companies to a competitor in actively competitive markets, and the penetration by other companies into the markets for both network equipment and CPE, it is no longer able, nor does it have the incentive, to engage in the anticompetitive activities which the *Computer II* requirements are meant to control. AT&T asserts that it cannot discriminate in the interconnection of competitor's offerings to its basic services network because the BOCs rather than AT&T devise the specifications for connecting CPE to the network and control the actual interconnection in most cases. Moreover, asserts AT&T, to discriminate would drive potential customers to the growing number of competing providers of basic services. AT&T represents that the decline in its share of the interexchange market and failure to meet its allowable rate return compel it to avoid loading costs of competitive ventures into revenue requirements. It further represents that it has lost a significant pool of captive revenues which might have been usable to cross-subsidize competitive ventures because Technologies estimates that only 13% of its sales are to AT&T Communications (ATTCOM), its common carrier affiliate, and that only 4% of Technologies' total sales are of products sold exclusively to ATTCOM.

13. In addition, argues AT&T, the *Computer II* structural separation requirements impose costs which far outweigh any limited benefits which they may still provide. Restrictions on the joint marketing of enhanced services, CPE and basic services assertedly prevent AT&T from providing the complete systems solutions which consumers want and need. The restrictions on providing enhanced services through network facilities stifle the development of new technologies which would improve the basic services network, contrary to the objectives of *Computer II*. Requirements that Technologies and Bell Laboratories, AT&T's manufacturing and research and development arms, deal with ATTIS on an arms length basis, purportedly lead to inefficiencies in developing and marketing competitive offerings, and require duplication of work force and expenses. In its reply comments, AT&T estimated duplicative expenses at more than $1 billion annually. Finally, AT&T argues that the inefficiencies impose on it by *Computer II* contribute to its difficulties in responding to foreign penetration and the deficits in the balance of trade in telecommunications equipment.

III. Comments

14. AT&T's position is supported fully by some end users, telecommunications unions, and by the Department of Defense. The BOCs generally agree with AT&T that structural separation is unwarranted following divestiture, but contend that they should be treated the same as AT&T, i.e., AT&T should be exempted from structural separation only if the BOCs are concurrently relieved. Most BOCs believe that if AT&T is relieved unilaterally, it will be able to dominate the CPE market, contrary to the Commission's goals of promoting competition in the offering of CPE.[17] The National Telecommunications and Information Administration (NTIA) supported AT&T's request to be relieved of structural separation in the provision of CPE, but urged caution in removing structural safeguards for the provision of enhanced services until the Commission has determined in a separate ongoing proceeding[18] whether AT&T continue to possess market power in the provision of interexchange services which would enable it to act anticompetitively in the provision of enhanced services. In addition, NTIA cautioned that the Commission should be careful to ensure that relieving AT&T of structural separation for some or all offerings not impede the flow of network information to providers of competitive products and services. Other parties, while generally urging that the Commission retain structural separation requirements, suggested that the Commission might relieve AT&T of individual conditions that may be outmoded and impose undue inefficiency, for example the rule prohibiting AT&T from marketing software-based products exclusively through its subsidiary.[19]

15. Parties opposing relief argue first that the relief requested by AT&T is premature.[20] These parties note that only recently did AT&T divest the BOCs, receive the embedded base from the BOCs, and obtain authorization for ATTIS to resell basic services. In addition, the effects of the MFJ's requirement that all interexchange carriers receive equal access to local exchange facilities, and of the Commission's subscriber line charges, have not reached a measurable stage. Even if AT&T's market share and putative market power in the interexchange market have declined to the levels alleged by AT&T, which is disputed, these parties assert that such reductions may be attributable to temporary dislocations caused by the above events. In any event, several opponents assert that the Commission should not act upon AT&T's petition in this proceeding until it has determined in the *Long-Run Regulation* proceeding whether AT&T still possesses market power in interexchange services that would enable it to act anticompetitively in other lines of business.

16. In addition, opponents contend AT&T still possesses not only market power but also the functional, if not literal, equivalent of bottleneck facilities which would enable it to act anticompetitively. These parties contend that AT&T dominates the provision of private line, WATS and 800 services in high-volume intercity markets, which are the key types of services to which CPE and enhanced services must be interconnected in order to compete effectively. Furthermore, AT&T purportedly can dictate the standards for products and services which must interoperate if not directly interconnect with its facilities. With regard to the provision of CPE, it is alleged that AT&T's ownership of the installed base provides it with undue leverage in promoting its own new CPE. It is also argued that despite its divestiture of the BOCs' bottleneck facilities and loss of a captive purchaser for its products, AT&T

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guidelines in an overall analysis of the costs and benefits of requiring structural separation for any particular carrier, and that a carrier may be subject to structural separation even if it does not exhibit these characteristics to the same degree as did pre-divestiture AT&T. For example, in the *BOC Separation Order*, the BOCs were held to be subject to structural separation even though they exhibit control over bottleneck facilities on a regional rather than national basis. 95 FCC 2d at 1137.

[17] This notice does not deal with the issue of whether structural separation requirements remain warranted for the BOCs. Different issues are implicated concerning the BOCs. We remain committed to consider structural separation of BOC competitive offerings after two years have elapsed from the date the BOCs were required to fully implement separate structure. *BOC Separation Order*, 95 FCC 2d at 1140.

[18] Long-Run Regulation of AT&T's Basic Domestic Interstate Services, Notice of Inquiry, CC Docket No. 83-1147 (released October 27, 1983) (*Long-Run Regulation*).

[19] IBM, Comments at 11-12; US West BOCs, Comments at 10-12; Telecommunications International Union, Reply Comments at 5; Digital Equipment Corp., Reply Comments at 6-7.

[20] On January 18, 1985, ADAPSO filed a motion to accept supplemental comments on AT&T's Petition. AT&T opposed the motion. In light of our decision herein, *see* paragraph 30(3), *infra*, we see no need to accept ADAPSO's pleading and therefore deny its motion. ADAPSO is free to file its comments in response to this Notice.

possesses ample revenues from regulated offerings with which to cross-subsidize unregulated offerings, and that unseparated provision of regulated and unregulated offerings would produce large-scale common costs which could be shifted to the regulated side. With regard to the putative costs engendered because of structural separation, opponents contend that AT&T could even within the constraints imposed by *Computer II* reorganize its own operations to more effectively coordinate product and service development and marketing. They also contend that the *ATTIS Resale Decision* gave AT&T ample ability to provide its customers with systems solutions, a contention which AT&T disputes. Finally, opponents disagree with AT&T's contention that any possible cross-subsidization would be adequately detected by monitoring the accounting separation of regulated and unregulated operations.

IV. Discussion

A. Costs and Benefits of Continued Structural Separation of AT&T's Provision of CPE

17. The structural separation conditions we have imposed on AT&T and other carriers engaging in the provision of competitive offerings were never intended to be static or permanent. A fundamental precept beginning with the *Final Decision* in the *Second Computer Inquiry* has been that the need for structural separation for any particular carrier would depend on the circumstances peculiar to that carrier, and that the balance of costs and benefits of structural separation for a carrier will necessarily change with changes in that carrier's circumstances and in industry circumstances.[21] Relief from structural separation may be warranted for a particular carrier even though the benefits of structural separation have not dissipated totally. Thus, relief may be warranted if the benefits have so diminished that the costs of separation are more onerous than the benefits to ratepayers and competition which might ensue from maintaining structural safeguards. As discussed in the following paragraphs, we tentatively conclude that the costs of continuing to require structural separation for AT&T's provision of CPE outweighs the benefits.

18. It is indisputable that there have been fundamental changes in the circumstances of both AT&T and the telecommunications industry since we imposed structural separation on AT&T. AT&T is no longer the dominant provider of local exchange telephone service. Its assets and revenues, while still large, are substantially less than the total enjoyed by the predivestiture Bell System at the time the Commission required AT&T to provide enhanced services and CPE through structural separation. AT&T's share of new CPE installations has markedly declined due to intense competition in the CPE marketplace despite its continued possession of much of the installed base of CPE. For example, estimates by AT&T and by NATA indicate that AT&T's share of sales of new PBX's for 1982 and 1983 declined to the range of 23–32%.[22] The BOC's, having reentered the market for CPE, are a potentially potent source of competition. In addition, the BOC's are actively purchasing both network and terminal equipment from sources other than their former manufacturing affiliate, AT&T Technologies (formerly named Western Electric). AT&T Technologies, as noted above, as a consequence of divestiture, has been required to seek new customers in addition to affiliated companies and thus may be subject to marketplace checks on its pricing. On the other hand, we agree with the contentions of some commenters that AT&T's control of the installed base of CPE which the BOC's transferred to ATTIS at divestiture may give AT&T leverage in promoting its new CPE to installed base customers. We doubt, however, that the presence or absence of structural separation will affect the degree of any such leverage. In addition, we have the authority to enforce the Clayton Act should AT&T or other carriers engage in arrangements which contravene the antitrust laws.[23]

19. In light of these significant changes, we doubt contentions proffered by some parties that the balance of costs and benefits of structural separation for AT&T remains the same as when structural separation was first imposed. The first important benefit to consider is the role of structural separation in deterring anticompetitive practices such as discriminatory interconnection of CPE. AT&T, lacking local exchange bottleneck facilities, has far less ability to discriminate against competitors' CPE offerings through the installation and maintenance process. Moreover, while AT&T continues to play an important role in determining the characteristics of products that will interoperate with its network, AT&T is only one of a multiplicity of suppliers of such products which would be placed on the end of a transmission line. The participation of the BOCs in the provision of CPE places a check on the likelihood that AT&T could design a transmission system to preclude use of all but its own products and services without detection or marketplace retribution. This would prove to be superior to any competitive check which existed when the *Computer II* rules were adopted. Nor is it likely that AT&T can anticompetitively leverage consumers to unquestioningly accept its products as an adjunct to its services when it does not control the local loop and consumers have access to a multiplicity of alternative product and service combinations.

20. Some parties argue that AT&T already possesses all the flexibility it needs because ATTIS can resell basic services and can act as an ordering agent for its customers to obtain ATTCOM tariffed communications services. AT&T denies that resale or the ability to act as an ordering agent solves all its problems. Furthermore, some parties argue that the *Computer II* rules provide AT&T with sufficient flexibility to reorganize its manufacturing, development and marketing operations to solve its problems, for example, by transferring development personnel to ATTIS. AT&T denies that it could solve all of its *Computer II*-related problems through reorganization. For instance, ATTCOM would still be unable to provide incidental CPE even after a reorganization within the Technologies Sector. Parties should address what impact resale and ordering agency or AT&T's ability to reorganize consistent with the *Computer II* rules have on our tentative conclusion reached here to relieve AT&T from structural separation for its provision of CPE.

21. It is also likely that AT&T's ability and incentive to manipulate costs to maximize its profits in competitive ventures to the detriment of regulated services or to price predatorily in competitive ventures has declined significantly. The predivestiture AT&T had a significant pool of funds derived from monopoly ratepayers with which to attempt such activities. In addition to possessing revenues derived from monopoly exchange services, AT&T sold most of its products to captive affiliates,

[21] *BOC Reconsideration Order*, 49 FR at 26058, citing *Final Decision*, 77 FCC 2d at 389, 463

[22] AT&T Petition at 62; North American Telecommunications Association 1985 Telecommunications Source Book, Satistical Review at 77; *See* ATTIS Resale Decision at n.27 (AT&T's share of CPE market is decreasing; ATTIS is expected to lack market power in CPE provision when the price predictability program for installed base terminates).

[23] 15 U.S.C. 21. We do not now have to decide whether AT&T has market power in interexchange services in order to conclude that the costs of structural separation for AT&T's provision of CPE now outweigh the benefits

without the usual market checks on its prices. This gave AT&T substantial opportunity to shift costs to the ratepayer and recover them in rate proceedings while enabling AT&T to lower its CPE prices below cost-justified levels. In addition, unregulated affiliates such as Bell Laboratories and Western Electric could shift some of the costs of research, development, installation and maintenance and other activities benefitting competitive ventures to its products sold to regulated companies without effective marketplace scrutiny.

22. Structural separation, while not a foolproof deterrent to such activity, increases the detectability of such practices. There are substantial doubts whether such a remedy, however, is necessary at this juncture. AT&T is faced with growing competition in its regulated and unregulated ventures. Moreover, as noted, AT&T represents that most of its equipment sales are now to third parties, and therefore most of its sales of these products appear to be subject to marketplace checks. In light of these changes, AT&T's ability to engage in cost-shifting or predatory pricing should logically have diminished substantially, and its ability to succeed in such practices without marketplace retribution is questionable.

23. On the other hand, the costs of maintaining structural separation for AT&T may outweigh the limited benefits that remain since the risks structural separation was designed to control appear to have diminished. Structural separation imposes several costs on the public. It requires AT&T to maintain duplicative work forces and facilities, the cost of which AT&T has estimated as more than $1 billion annually.[24] It prevents the public from dealing with a single vendor for both network service and CPE needs, as numerous informal commenters have noted. Finally, it may make AT&T a less effective competitor in the CPE market, to the detriment of competition and the public interest. We are taking two steps to relieve possibly onerous costs short of immediately removing structural separation. We herein waive the prohibition against AT&T developing software-based products exclusively for marketing through ATTIS,[25] and grant AT&T's request for increased sharing of administrative services between AT&T Technologies and ATTIS. These actions, however, will not by themselves alleviate all of the problems of which AT&T complains.

24. We agree with opponents of AT&T's Petition for Relief that the *Computer II* rules do not preclude AT&T from reorganizing in a manner that will reduce some of these inefficiencies, as demonstrated by AT&T's reorganization in early 1984 along lines-of-business under the regulated Communications sector and the unregulated Technologies sector, and by its recently announced plans to shift certain lines of business, including manufacturing facilities and other resources, into ATTIS.[26] However, there appear to remain significant costs of duplication and barriers to efficient development even after these modifications. Morever, these actions illustrate some of the burdens which structural separtion imposes on the Commission as well as AT&T's, *i.e.*, due to the *Computer II* rules, AT&T must keep the Commission informed of internal restructuring which is essentially a matter of corporate judgment. This process can prove costly and disruptive to AT&T and requires the expenditure of limited Commission resources.

B. Proposed Relief and Questions Raised by Proposal

25. For the reasons stated above, we propose to remove some of the structural separation requirements which we have imposed on AT&T. We propose to permit AT&T to provide CPE on an untariffed basis without the need for structural separation from basic services. We would amend the *Computer II* rules to provide a blanket exemption for AT&T's participation in the provision of CPE. Under this proposal ATTCOM, AT&T Technologies, or other unseparated entities would be permitted to provide CPE to end users, market CPE jointly with basic services, and otherwise organize their offerings of CPE without regard to the *Computer II* structural separation requirements. Those requirements would remain in force, however, for the provision of enhanced services. ATTIS, as AT&T's enhanced service provider, would be the only entity within AT&T that would be permitted to provide enhanced services or to resell basic services on a nondominant basis. If ATTIS chose to continue to provide CPE, separately or in conjunction with enhanced services, it would be required to do so under the existing structural rules, either manufacturing the equipment itself or acquiring it on an arms' length basis from AT&T Technologies or other suppliers. Parties of course retain the opportunity to demonstrate that no relief is necessary, and are free to suggest lesser degrees of relief, for example, authorizing only a limited degree of joint marketing between AT&T's unregulated and regulated ventures. AT&T is hereby directed to describe the impact the relief we are proposing herein would have on its provision of CPE and other competitive offerings. AT&T should indicate whether, it would continue to provide competitive offerings both through ATTCOM and through an integrated Technologies sector. Parties are requested to comment on the desirability of such an approach and its consistency with remaining structural separation requirements if we remove structural separation requirements for CPE but not enhanced services. We intend to take action consistent with out proposal or any other actions which may prove warranted.

26. We request comment on this proposal from interested parties. We also request comment on alternatives that commenters believe would provide similar protection for ratepayers and CPE purchasers but might prove more efficient or more desirable in some other respect. We welcome alternatives proposals.

27. The BOCs are required to utilize Centralized Operations Groups (COGs) to ensure that all orders and installations of basis services to be connected to competing CPE vendors' products are handled in a non-discriminatory sequence.[27] Comment is solicited concerning whether AT&T should be required to establish and report to the Commission concerning similar procedures to ensure that enabling it to provide CPE and basic services on an unseparated basis does not unfairly prejudice competitors. Furthermore, parties, should address the means by which the Commission could enforce this mechanism absent

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[24] It should be noted that AT&T enumerated the costs of duplication it asserts are caused by Computer II for the first time in its reply comments. Parties have not had the opportunity to comment on that information. Parties are requested to comment on this subject as well as on the effect of AT&T's announcement, made after the close of the pleading cycle in ENF 84-17, that it intends to move certain factories and lines-of-business from AT&T Technologies to ATTIS. In its comments, AT&T should describe this reorganization and identify what part of the $1 billion savings would be achieved through the reorganization. In addition, AT&T should quantify in its proposal savings achievable by our decision herein to waive restrictions on software development and to permit sharing of personnel services by Technologies and ATTIS.

[25] 47 CFR 64.702(c)(4).

[26] AT&T Press Release dated September 27, 1984.

[27] *NATA Petition for Emergency Relief*, FCC 84-132 (released April 11, 1984). Although the installation of AT&T services may actually be provided by the BOCs, AT&T would still process orders for those services.

structural separation of AT&T's CPE operations.

28. As we stated previously, we are deferring until a later proceeding the issue of whether AT&T's provision of enhanced services should continue to be subject to structural separation. Under the current proposal, ATTIS is the only entity within AT&T which is permitted to provide enhanced services and resell basis services as a nondominant carrier. It can purchase CPE for retail sale from any vendor including Technologies. ATTIS would still be required, however, to comply with all structural separation conditions even if it does provide CPE in conjunction with enhanced or resold, basic services. ATTCOM, AT&T Technologies or other unseparated entities, would be permitted to provide CPE but the instant proposal would not extend to unseparated entities the authority to resell basic services on a nondominant basis or provide enhanced services.

29. As clarified in the *Disclosure Order*,[28] § 64.702(d)(2) of our rules requires that when a carrier subject to structural separation communicates to its subsidiary, or to its research and development or manufacturing affiliates concerning a matter for the benefit of the subsidiary, network design or technical specificatgions, or information concerning changes to the network which could affect the interconnection or interoperation of competitive offerings with the network, that information must be publicly released concurrently with the intracorporate disclosure.[29] Pursuant to the *Reconsideration* of *Computer II*, and Part 68 of our Rules, all carriers must disclose such information within a reasonable time. However, the disclosure rules may be more restrictive to carriers subject to structural separation because we have required them to disclose information when it moves within the corporation, which may occur well before changes are actually made. Thus, as AT&T argues, its internal development of products may be hampered because it must disclose information at a far earlier stage in the development process than competitors. We seek comment on means by which we can preserve the fair disclosure of network-related information by AT&T without unduly hampering its development of CPE. Commenters should also address whether it is feasible to apply different rules for the disclosure of information to enhanced services operations than to CPE operations if one remains structurally separated and the other is not. The same concerns also apply to our rule requiring that the carrier not provide customer proprietary information to its subsidiary unless such information is available to other members of the public on equal terms and conditions.[30]

30. In addition to other issues raised by this Notice, AT&T should respond to the following questions. We expect AT&T to provide information sufficient to permit parties to give complete responses.

(1) Should AT&T be required to implement COG-like procedures to ensure that customers of competing providers of CPE do not receive unfair treatment in the interconnection of their CPE to the network?

(2) By what means short of structural separation can the Commission prevent AT&T's unseparated provision of CPE and basic services from leading to abuse of the intracorporate exchange of information concerning interoperability of competitive offerings with the network?

(3) AT&T should separately identify the costs it expects to save because of its planned reorganization to move certain lines of business from AT&T Technologies to ATTIS.

(4) Even if AT&T did have control over bottleneck facilities, such as interLATA toll facilities, would the existence of such control alter our tentative conclusion to relieve AT&T of structural separation for CPE?

(5) Describe the accounting systems and techniques AT&T would use to identify and allocate costs between regulated and unregulated businesses if structural separation requirements were eliminated.

(6) How should the ability of ATTIS to provide resold, basic services or to act as an ordering agent to obtain ATTCOM tariffed communications for its customers or AT&T's ability to reorganize itself consistent with the *Computer II* rules affect our tentative conclusion to relieve AT&T of structural separation for CPE?

(7) What impact, if any, will our tentative decision to relieve AT&T from structural separation for CPE have on AT&T compliance with our network information disclosure rule?

(8) To what extent is AT&T able to continue to set *de facto* interconnection standards for some CPE despite the fact that a local exchange carrier's facilities stand in between the customer and AT&T? *See* IDCMA Comments at 19–20 (July 18, 1984).

C. Actions Regarding Specific Computer II Restrictions

1. Waiver To Permit AT&T Technologies To Develop Proprietary Software for ATTIS

31. Among the specific burdens which AT&T asserts that *Computer II* places upon it is the inability to market products containing software exclusively developed for customers of AT&T through an exclusive marketing arm.[31] As AT&T notes, AT&T-Technologies is permitted to sell CPE directly only to a limited range of end users. The "software rule" requires ATTIS to develop its own software or contract with non-affiliated vendors for the development of software other than that sold "off the shelf" to all interested purchasers on the same terms and conditions. Technologies and ATTIS must deal with each other at arms' length, i.e., software based products developed by Technologies for sale to end users must be available for resale by any CPE vendor. ATTIS must pay fully compensatory prices for research and development efforts performed on its behalf by affiliated entities.[32] AT&T contends that, taken together, these requirements impair its ability to compete for several reasons. First, AT&T cannot use ATTIS as an exclusive channel for software-based products. Second, AT&T must prematurely decide whether a software-based product must be developed within Technologies or within ATTIS, leading to possible inefficiencies or duplication of effort if the decision proves wrong. Third, Technologies is denied the benefits of innovation and cost savings which could occur if it could jointly develop software for its own and ATTIS' offerings. Despite our finding in the *Second Computer Inquiry* that there are diseconomies of scale in software development and applications,[33] AT&T contends that, since the software rule was adopted, great changes have occurred in the field, including the large scale reuse of software modules in both network equipment and CPE. AT&T asserts that the software rule largely negates its ability to utilize the economies produced by such reuse. AT&T also contends that one of the bases for the software rule, the risk that AT&T could misallocate the costs of developing software incurred between

[28] Computer and Business Equipment Manufacturers Association, 93 FCC 2d 1228 (1983).
[29] *Id.* at 1248.
[30] 47 CFR 64.702(d)(3)
[31] AT&T Petition at 34–42.
[32] 47 CFR 64.702(c)(4).
[33] *Final Decision*, 77 FCC 2d at 479.

regulated and unregulated affiliates, has greatly decreased with divestiture.

32. Commenters were divided on the question of the continued justification for the software rule. Certain commenters believe that the rule is unjustified and that permitting joint development and marketing of software-based products within the Technologies sector would allow AT&T to efficiently utilize its resources and benefit consumers,[34] that the Commission can achieve its essential goal of avoiding shifting costs of software development to ATTCOM's revenue requirements as long as the network information disclosure rule is enforced,[35] and that continued application of the software rule retards network development.[36] Other parties support retention of the software rule as a safeguard against the possibility of cross-subsidization and improper disclosure of network design specifications to ATTIS.[37] ADAPSO contends that if joint development of software does indeed produce economies, ATTIS, with a capitalization of more than $10 billion, is of sufficient size to derive such economies through the independent development of software for CPE.[38]

33. We have determined that the costs of retaining the software rule outweigh the benefits of retention, which could be achieved through less onerous means. The inability to reuse software and to market exclusive products through ATTIS requires duplication and hampers AT&T's ability to design competitive CPE, in which its sales have already noticeably declined. On the other hand, we have already discussed in this Notice our tentative belief that the threat of cross-subsidization by AT&T has diminished. The rules against unfair disclosure of network-related information to ATTIS are applicable to situations in which software development is undertaken on behalf of ATTIS by affiliates. For these reasons, we conditionally grant a waiver of § 64.702(c)(4) of the rules to permit AT&T Technologies to contract with ATTIS for the development and sale of exclusively developed software and products containing such software. This waiver is conditioned on AT&T's filing, within thirty days from the release of this Notice, a plan describing steps it will take to ensure that it complies with the network information disclosure rule as defined in the *Disclosure Order*, 93 FCC 2d 1226 (1983), and describing the accounting mechanisms AT&T will employ to ensure that all direct and indirect costs involved in software development are not attributed to ratepayers and that ATTIS fully compensates affiliates for such costs. We hereby delegate to the Chief, Common Carrier Bureau, authority to approve or modify this plan. This waiver does not take effect until approval is granted.

2. AT&T's Request for Temporary Waiver To Facilitate a Single Point of Contact With All Departments of the Federal Government

34. On July 17, 1984, AT&T filed a petition for waiver of the *Computer II* structural separation requirements to permit AT&T Technologies to sell CPE to all entities within the federal government on the account of ATTIS until computer records regarding CPE formerly owned by the BOCs can be incorporated into Technologies' billing system.[39] The Department of Defense filed comments supporting AT&T's request and numerous agencies of the federal government have filed informal comments in support of AT&T. Several parties oppose the relief sought by AT&T.[40] AT&T proposes to consolidate its dealings with all federal government agencies and departments into a Federal Systems Organization within Technologies and therefore requests only a limited waiver through the end of 1985 to allow ATTIS to provide computer support to Technologies. AT&T asserts that paragraph 92 of the *Further Reconsideration* of *Computer II*[41] made clear that Technologies can sell CPE to the government as an end user. Various commenters oppose the request, disputing that *Computer II* unequivocally recognized Technologies' right to sell CPE to the federal government directly.[42] Therefore, opponents argue, AT&T should be made to request a broader waiver. Opponents also assert that permitting AT&T to establish the Federal Systems Organization in the manner described would be more costly than beneficial because reintegrating regulated and competitive offerings for such a large customer poses risks of substantial cross-subsidization and anticompetitive effects. Moreover, it is argued that the authorization of ATTIS to provide resold, basic services in conjunction with CPE and enhanced services should allow ATTIS to be the single point of contact to meet the government's needs. AT&T argues that the question of its ability to resell basic services to the government through ATTIS is a substitute for the waiver it seeks is irrelevant.

35. We are not convinced that it is necessary at this time to grant a waiver to AT&T regarding its provision of CPE to the federal government. We have recently granted AT&T a waiver to provide CPE on an unseparated basis for 21 national security and emergency preparedness systems.[43] AT&T needs no further waiver to utilize ATTIS's billing system for the 21 national security and emergency preparedness systems. We see no reason to readdress that decision by expanding its provisions on a government-wide basis before finally resolving the issues raised in this Notice. In any event if we grant the relief we are considering herein to remove structural separation for AT&T's provision of CPE, AT&T's petition will be moot.

3. AT&T's Request To Permit AT&T Technologies To Provide Administrative Services to ATTIS

36. By letter dated August 28, 1984, to the Chief of the Common Carrier Bureau, AT&T requests permission for AT&T Technologies, Inc., to provide ATTIS six administrative services which have not previously been authorized by the Commission. These are (1) administering Equal Employment Opportunity (EEO)

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[34] API Central Committee, Comments at 7–8; Digital Equipment, Comments at 6–7; Telecommunications International Union at 5.

[35] IBM, Comments at 11–12.

[36] US West BOCs, Comments at 10–12.

[37] GTE, Comments at 18–22; ICA, Comments at 20–21; IDCMA, Comments at 38–40; NATA, Comments at 19–25; USTEL, Reply Comments at 5–6.

[38] ADAPSO, Reply Comments at 44–48; NATA, Reply Comments at 5–6.

[39] File No. ENF 84–43. The requested waiver would extend to a broader range of governmental communications systems than the waiver we recently granted to meet the National Security and Emergency Preparedness communications needs of certain emergency and defense-related agencies. *Procedures for Implementing the Detariffing of CPE and Enhanced Services*, FCC 84–652 (released January 4, 1985).

[40] Parties filing pleadings opposing AT&T's petition included American Satellite Co., Association of Long Distance Telephone Companies, the Bell Atlantic Companies, the BellSouth Companies, GTE Service Corp., MCI, the US West Companies, NYNEX Service Corp., Pacific Telesis, Rolm Corp., Southwestern Bell Telephone Co., and United Telecommunications, Inc.

[41] 88 FCC 2d at 544–45.

[42] We agree with the opponents that AT&T's interpretation of paragraph 92 of the Further Reconsideration is overly broad. Paragraph 92 only permitted Technologies (then Western Electric) to engage in its "traditional manner of conducting business." Further Reconsideration, 88 FCC 2d at 544. At that time Western Electric marketed CPE directly only to the Department of Defense and only in minor instances to other agencies. The BOCs provided CPE to the vast majority of federal agencies just like any other large customer. Therefore, AT&T's argument about the meaning of paragraph 92 is rejected.

[43] *Procedures for Implementing the Detariffing of CPE and Enhanced Services*, FCC 84–652 (released January 4, 1985).

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and Affirmative Action policies and practices, and handling EEO charges and investigations; (2) administering programs to identify high potential management employees; (3) administering management job evaluation and salary classification practices, and providing suggested salaries for newly hired employees; (4) administering a benefits and relocation plan; (5) administering a data base covering personnel matters, benefits and payroll information; and (6) recruiting, interviewing, and referring to ATTIS candidates for management and non-management positions. Both ADAPSO and IDCMA filed comments opposing this request. AT&T has responded to these comments.

37. In our *General Departments Order*,[44] we approved AT&T's plan for the General Departments to provide various categories of services to the separate subsidiary, including personnel recruitment and management services. We denied, however, permission for other affiliates to provide such services absent a showing that a compelling need outweighed the potential increase in cross-subsidy between regulated and unregulated operations, the entanglement between affiliates which could undermine the efficacy of structural separation in the minds of employees, and the increased monitoring complexity exemplified by the 24 or more additional accounting systems which the Commission would be required to review. Subsequent to divestiture, AT&T has replaced the General Departments with a smaller corporate headquarters organization and has established within AT&T Technologies a consolidated personnel and labor relations organization replacing the personnel organizations within each company now in the Technologies sector. This arrangement was described in a report on post-divestiture sharing of administrative services submitted by AT&T on March 16, 1984. The range of administrative services provided to ATTIS as described in this report is subject to continuing review by the staff.

38. AT&T asserts in its request that the proposed sharing would reduce costs of providing personnel services and lead to efficiencies within its organization without passing on costs to ratepayers. AT&T represents that the sharing would permit the elimination of at least 155 positions, saving an estimated $8 million annually. It would permit Technologies to promote uniform personnel practices, promoting employee career development, and facilitating accurate matching of employees with career paths. AT&T asserts that this sharing would be wholly internal to its Technologies sector, and that there is no danger of confusing employees concerning *Computer II* requirements or of passing on costs to ratepayers. In addition, AT&T contends that even if this request is granted, the Commission's burden of monitoring accounting for shared services is smaller than prior to divestiture because it will not have to scrutinize 22 BOC systems for accounting for this sharing.

39. ADAPSO and IDCMA oppose the requested sharing on several grounds. First, they contend that it would weaken structural safeguards by blurring lines between companies. ADAPSO focuses on joint visits to college campuses on behalf of ATTIS and other Technologies companies, which it contends will inspire new recruits to believe that Technologies and ATTIS are one company. IDCMA contends that ATTIS' independence would be weakened should Technologies personnel evaluate and recommend candidates for employment by ATTIS. Both commenters also contend that the requested sharing would intermingle ATTIS and Technologies employees, leading to increases in prohibited information flows and cross-subsidization between regulated and unregulated sectors accomplished through Technologies' dealings with Communications. Both commenters further contend that the proposal would needlessly increase the complexity of the Commission's monitoring efforts by extending them into new activities, with IDCMA noting that the divestiture of the BOCs was already taken into account in our denial of reconsideration of the *Shared Services Order*.[45] Finally, ADAPSO contends that since AT&T could consolidate ATTIS and Technologies consistent with the *Computer II* rules, the asserted inefficiencies are caused by AT&T's own organizational choices rather than the *Computer II* rules and therefore the requested relief is unjustified.

40. AT&T responds that concerns about weakening *Computer II* safeguards are unjustified and that granting its request would not materially increase the Commission's monitoring burden. It contends that Technologies will merely advise ATTIS, leaving ATTIS responsibility for hiring, firing, supervising and evaluating candidates and employees based upon standards developed by a centralized organization. Moreover, asserts AT&T, existing procedures and disciplinary actions are available to curtail illicit information flows within the corporation. Finally, granting the proposal would add little detail to the monthly reports concerning the costs of shared services which the Commission already receives, and AT&T would account for the increased shared services consistently with the accounting systems which the Commission has already approved as properly allocating costs to ATTIS.

41. We have decided to grant AT&T's request pending our review of the total range of shared administrative services listed in its March 1984 report. Our approval is based upon AT&T's representations of cost savings and efficiencies which appear to outweigh any alleged damage to our structural separation requirements or the risk of impermissible cost-shifting or impermissible information flow between regulated operations and ATTIS. The services to be performed are not operational in nature and therefore the likelihood that approval will permit ATTIS to somehow obtain network related information or shift costs to regulated operations is limited. Moreover, as described earlier in this Notice, our concerns about AT&T engaging in significant cross-subsidization of unregulated activities have diminished, and as AT&T asserts, its proposal appears only to add incrementally to our review of its accounting system which we generally approved in our January 16, 1984 order.[46] Finally, AT&T has existing mechanisms to deal with information flow between regulated and unregulated operations which are subject to Commission monitoring. Nevertheless, we are still concerned with monitoring any situation which has the potential to promote prohibited information flow. We expect AT&T to ensure that new employees are made aware of the structural separation conditions and that any final decision regarding hiring, firing and evaluation of employees will continue to rest with ATTIS and not with Technologies. We need not address what the interviewers tell job applicants.

V. Regulatory Flexibility Act Certification

42. Pursuant to section 605(b) of the Regulatory Flexibility Act, we hereby

[44] 90 FCC 2d 184 (1982)

[45] *Shared Services Order*, 92 FCC 2d 876 (1982), *recon.*, FCC 83-355 at paras. 22-23 (released July 29, 1983)

[46] *AT&T Report on Services to be Shared Between Fully Separated Subsidiary and Affiliated Companies and Associated Costing Methodology*, FCC 83-601 (released January 10, 1984).

certify that this proceeding does not address a "proposed or final rule" that will "have a significant economic impact on a substantial number of small entities." The pertinent definition of "small entity" is "small business" which has the same meaning as "small business concern" under Section 3 of the Small Business Act. The section defines a small business concern as "one which is independently owned and operated and which is not dominant in its field of operation." 15 U.S.C. 632. AT&T by its own estimates serves the majority of users of interexchange telecommunications services and the rules which the Commission is addressing herein were established for the very reasons that AT&T has been the dominant entity in its field of operation. Therefore, AT&T cannot be considered a "small entity" within the meaning of Section 605(b) of the Regulatory Flexibility Act.

43. In addition, no rules that may arise out of this proceeding will impose any regulatory requirements on, require any action by, or cause any direct impact on any entity other than AT&T. Therefore, because the rules that are the concern of this proceeding are being considered only for application to a large entity, AT&T, is no danger of violating the purpose of the Regulatory Flexibility Act of assuring that "laws and regulations designed for application to large scale entities [are not] applied uniformly to small business." 5 U.S.C. 601. To the extent that this proceeding is designed to determine whether AT&T's operations may no longer be of a scale requiring structural separation, it is consistent with the Regulatory Flexibility Act's purpose of "fit[ting] regulatory and informal requirements to the scale of the business . . . subject to regulation." *Id.*

VI. Ex Parte Contact Requirements

44. For purposes of this non-restricted notice and comment rulemaking proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a Notice of Proposed Rulemaking until the time a Public Notice is issued stating a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of a matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments or pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission staff that addresses the merits of the proceeding. Any person who submits an oral *ex parte* presentation addressing matters not fully convered in any previously filed written comments for the proceeding must prepare a written summary of the presentation. One the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, and a copy must be provided to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the procceding to which it relates. See generally § 1.1231 of the Commission's Rules, 47 CFR 1.1231.

45. In view of the extensive record already compiled, which is incorporated herein, pursuant to applicable procedures set forth in § 1.415 of the Commission's rules, comments should be filed within 45 days after the release of this Notice. Interested parties may file comments within 30 days after AT&T files its response.[47] All relevant and timely comments and reply comments will be considered by the Commission before further action in this proceeding. The Commission may also consider any other relevant information brought to its attention.

46. In reaching its decision, the Commission may take into consideration information or a written summary indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order. In accordance with § 1.419 of the Commission's Rules, an original and 5 copies of all comments, replies, or other documents filed in this proceeding shall be furnished to the Commission. Participants filing the required copies who also desire that each Commissioner receive a personal copy of the comments may file an additional 5 copies. Members of the general public who wish to express their interest by participating informally in this proceeding may do so by submitting one copy of their comments, without regard to form, provided that Common Carrier Docket No. is specified in the heading. Pleadings will be available for public inspection during regular business hours in the Commission's Public Reference Room, Room 239, 1919 M Street, N.W. in Washington, D.C.

[47] We have stated our expectation that AT&T will provide information sufficient to permit informed comment on all issues in the reply comments. If AT&T's initial comments prove inadequate to permit parties to comment on its proposals, we are prepared to entertain requests for a period of 15 days in which parties may submit additional replies to AT&T's reply comments.

VII. Ordering Clauses

47. Accordingly, It is ordered, That pursuant to the provisions of sections 4(i), 4(j), 201, 202, 203, 204, 205, 214, 220, 221, and 404 of the Communications Act of 1934, as amended, section 553 of the Administrative Procedure Act, 5 U.S.C. 553, and § 1.411 *et. seq.*, there is hereby instituted a notice of proposed rulemaking concerning the matters described herein including those raised by the Petition for Relief from Structural Separation Requirements filed April 30, 1984, by the American Telephone and Telegraph Company. Members of the public are notified that any policies that may be established in this proceeding may be embodied in the Rules and Regulations of the Commission.

48. It is further ordered, That the request of the American Telephone and Telegraph Company, filed August 28, 1984, for AT&T Technologies, Inc., to provide personnel services to AT&T Information Systems, Inc., is granted.

49. It is further ordered, That the petition of the American Telephone and Telegraph Company, filed July 17, 1984, for a temporary waiver of Section 64.702 of the Commission's rules regarding the provision of customer premises equipment by AT&T Technologies, Inc. to the federal government, is denied.

50. It is further ordered, That Section 64.702(d)(4) of the Commission's Rules is conditionally waived as described herein, and provided American Telephone and Telegraph Company files information in conjunction with this waiver as described herein and subject to approval by the Chief, Common Carrier Bureau, pursuant to delegated authority.

51. It is further ordered, That the Secretary shall cause this Memorandum Opinion and Order and Notice of Proposed Rulemaking to be published in the **Federal Register.**

52. It is further ordered, That the Secretary shall send a copy of this Memorandum Opinion and Order and Notice of Proposed Rulemaking to the Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et. seq.*) (1980).

(Secs. 4, 303, 48 stat., as amended 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.
William J. Tricarico,
Secretary.
[FR Doc. 85-5313 Filed 3-5-85; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 73

[BC Docket No. 80-157; RM-3363]

TV Broadcast Station in Santa Barbara, CA; Order Extending Time for Filing Comments and Reply Comments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment/reply comment period.

SUMMARY: This action extends the time for filing comments in this proceeding for a 60 day period in order to review additional data released to the public regarding propagation characteristics in southern California.

DATES: Comments must be filed on or before April 15, 1985, and reply comments must be filed on or before April 30, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Arthur Scrutchins, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

Order Extending Time for Comments and Reply Comments

In the matter of amendment of § 73.606(b), table of assignments, TV broadcast stations (Santa Barbara, California); BC Docket No. 80-157, RM-3363.

Adopted: February 15, 1985.
Released: February 22, 1985.

By the Chief, Mass Media Bureau.

1. The Commission has before it the *Notice of Proposed Rule Making*, 45 FR 28770, published April 30, 1980, proposing the assignment of VHF Channel *10 to Santa Barbara, California, with a reservation for non-commercial educational use, in response to a petition filed by KCPB, Inc. ("KCPB"). McGraw-Hill Broadcasting Company, Inc. ("McGraw-Hill"), licensee of Station KGTV-TV (Channel 10) San Diego, California, filed an opposition. A.D. Ring & Associates, Gordon Schlesinger, Ph.D., Blair Broadcasting, Inc. and Key Television also filed comments.

2. McGraw-Hill based its opposition on the claim of harmful interference along the southern California coast to the service of Station KGTV-TV. In support of its arguments, McGraw-Hill made an extensive technical showing. Subsequently, the Commission's Office of Science and Technology (OST) conducted a long term VHF/UHF measurement program of anomalous propagation conditions along the southern California coast.

3. By *Order*, released January 7, 1985, the Commission reopened the instant proceeding for a 45 day comment and reply period to give interested parties an opportunity to review the data compiled by OST.

4. After a further review of the propagation studies compiled to OST we have identified additional data that would be relevant to an analysis of this matter. We believe that due to the quantity and complexity of the technical data, it would be in the public interest to extend the comment period an additional 60 days.

5. Accordingly, it is ordered, That the time for filing comments and reply comments in BC Docket No. 80-157 (RM-3363) is extended to and including April 15, 1985 and April 30, 1985, respectively.

(Secs 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.
James C. McKinney,
Chief, Mass Media Bureau.
[FR Doc. 85-5315 Filed 3-5-85; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 85-54; RM-4862]

Assignment of TV Broadcast Station in Duncan, OK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes to assign UHF Television Channel 40 to Duncan, Oklahoma, in response to a petition filed by #52 Broadcasting Group, Inc. The proposal could provide a first UHF television service to that community.

DATES: Comments must be filed on or before April 22, 1985, and reply comments on or before May 7, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting

Notice of Proposed Rule Making

In the matter amendment of § 73.606(b) table of assignments, television broadcast stations (Ducan, Oklahoma) MM Docket No. 85-54, RM-4862.

Adopted February 15, 1985.
Released: February 28k 1985.

By the Chief, Policy and Rules Divison.

1. A petition for rule making has been filed by #52 Broadcasting Group, Inc., ("Petitioner") requesting the assignment of UHF Channel 40 to Ducan, Oklahoma, as its first television assignment. The petitioner has filed information in support of the proposal and indicated an interest in applying for the channel, if assigned.

2. Duncan (population 22,517)[1], seat of Stephens County (population 43,419) is located in south central Oklahoma, approximately 120 kilometers (75 miles) southwest of Oklahoma City.

3. We believe petitioner's proposal warrants consideration. Channel 40 can be assigned to Duncan in conformity with the minimum distance separation requirements of § 73.610 of the Commission's Rules and could provide the first local television service to this community. In view of the above, comments are invited on the proposal to amend the Television Table of Assignments, § 73.606(b) of the Rules, with regard to the following community:

City	Channel No.	
	Present	Proposed
Duncan, OK		40 +

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

5. Interested parties may file comments on or before April 22, 1985, and reply comments on or before May 7, 1985, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner's counsel as follows: Julia L. Frey, Finley, Kumble, Wagner, Heine, Underberg, Manley & Casey, 1120 Connecticut Avenue, NW., Washington, D.C. 20036.

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules. See, *Certification that Sections 603 and*

[1] Population figures are from the 1980 U.S. Census.

604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau (202) 634–6530. However, members of the public should note that from time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

(Secs. 4, 303 48 Stat., as amended, 1066, 1082 47 U.S.C 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in section 4(i), 5(c)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 85–5325 Filed 3–5–85; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 85–55; RM–4861]

Assignment of TV Broadcast Station in Bradenton, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes to assign UHF Television Channel 66 to Bradenton, Florida, in response to a petition filed by Elektra Broadcasting Company. The proposal could provide a first UHF commercial television service to that community.

DATE: Comments must be filed on or before April 22, 1985, and reply comments on or before May 7, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Notice of Proposed Rule Making

In the matter of amendment of § 73.606(b), table of assignments, television broadcast stations (Bradenton, Florida); MM Docket No. 85–55, RM–4861.

Adopted: February 15, 1985.
Released: February 28, 1985.

By the Chief, Policy and Rules Division.

1. A petition for rule making has been filed by Elektra Broadcasting Company ("petitioner"), proposing to amend the Television Table of Assignments, § 73.606(b) of the Rules, by deleting the noncommercial educational reservation of Channel *19 in Bradenton, Florida, making it available for commercial use and substituting Channel *66 in lieu thereof. The proposal could provide for a first commercial television assignment in Bradenton. The petitioner filed information in support of the proposal and indicated an interest in applying for the channel, if assigned.

2. Bradenton (population 30,170) [1], seat of Manatee County (population 63,188), is located on the west coast of Florida, approximately 40 kilometers (25 miles) south of St. Petersburg, Florida.

3. Petitioner submitted an engineering report in support of its request, showing that Channel 66 could be assigned in conformance with § 73.610 of the Rules. However, it did not supply any information attempting to justify its

[1] Population figures are from the 1980 U.S. Census.

request for dereservation of Channel *19. Since the Commission generally retains the reservation of noncommercial educational channels, particularly where another channel is available which can be assigned, we propose to assign Channel 66 as a first commercial television assignment at Bradenton, and retain Channel *19 as a reserved channel.

4. Comments are invited on the proposal to amend the television table of assignments, § 73.606(b) of the Commission's Rules, with regard to the following community:

City	Channel No.	
	Present	Proposed
Bradenton, FL	*19	*19, 66

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

6. Interested parties may file comments on or before April 22, 1985, and reply comments on or before May 7, 1985, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petititoners, or their counsel as follows: Thomas W. Fletcher, Cole, Raywid & Braverman, 1919 Pennsylvania Avenue, NW., Washington, D.C. 20006, (counsel for petitioner).

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules. See, *Certification that section 603 and 604 of the Regulatory Flexibility Act Do Not Apply To Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission Rules*, 46 FR 11549, published February 9, 1981.

8. For further information concerning this proceeding contact Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(c)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's rules, it is proposed to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in § 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petititoner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 85–4934 Filed 3–5–85; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 85–46; RM–4891]

Assignment of TV Broadcast Stations, in Tuscumbia and Selma, AL; and Fayetteville, TN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes the substitution of UHF television Channel 52 for Channel 47 at Tuscumbia, Alabama, in response to a joint petition filed by Kadd Communications Corporation, permittee of Station WGEI (TV), Tuscumbia, and American Valley Broadcasting Company, licensee of Station WAFF (TV), Huntsville, Alabama, and modification of WGEI–TV's permit to reflect the change. Additionally, the proposal requires the substitution of

Channel *29 for vacant Channel *52 at Fayetteville, Tennessee. ACB Inc., permittee of Station WOTC (TV), Channel 29 in Selma, Alabama, is required to change its carrier offset to accommodiate the Fayetteville proposal.

DATES: Comments must be filed on or before April 22, 1985, and reply comments on or before May 7, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner or Stanley Schmulewitz, Mass Media Bureau, (202) 635–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Notice of Proposed Rule Making and Order to Show Cause

In the matter of amendment of § 73.606(b), Table of Assignments, TV Broadcast Stations. (Tuscumbia and Selma, Alabama; and Fayetteville, Tennessee). MM Docket No. 85–46, RM–4891.

Adopted: February 15, 1985.
Released: February 28, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration a joint petition for rule making filed by Kadd Communications Corporation ("Kadd"), permittee of UHF television Station WGEI (Channel 47), Tuscumbia, Alabama, and American Valley Broadcasting Company ("AVBC"), licensee of Station WAFF (TV) (Channel 48), Huntsville, Alabama, seeking the substitution of UHF television Channel 52 for Channel 47 at Tuscumbia, and modification of the WGEI (TV) construction permit to specify operation on the new channel.

2. Petitioners' request is premised on their desire to eliminate mutual adjacent channel interference problems. Although the separation between WGEI (TV) and WAFF (TV) is approximately 68 miles, whereas 55 miles is required, petitioners claim that if Station WGEI (TV) commences operation on Channel 47, considerable interference to mutual service areas of the Huntsville-Decatur and the Tuscumbia-Florence-Sheffield markets would result. Therefore, Station WGEI (TV) seeks to change its operation from Channel 47 to Channel 52, to enable it to better serve its market area, without receiving or creating interference to Station WAFF (TV).

3. Petitioners claim that the presence of Station WAFF (TV) on adjacent Channel 48 would effectively prevent Station WGEI (TV) from serving its market area beyond its Grade B contour, including service to Decatur (population 42,002) and the Huntsville-Florence market east thereof, which it has served for many years.

4. Conversely, Station WGEI(TV), operating with minimal facilities, would cause significant interference to the existing off-the-air viewing of Station WAFF(TV) in the western portion of its ADI, including the areas of Florence (population 37,029) and Colbert County (population 54,519). Petitioners claim this situation would increase if WGEI(TV) were to improve its facilities, [1] to the extent it would virtually eliminate WAFF's off-the-air service to the countries of Colbert, Franklin (population 28,350), and Lauderdale (population 80,546), containing over 61,000 television households. Moreover, should WAFF)TV) increase its facilities in an attempt to regain its western market, petitioners claim it would result in even greater adjacent channel interference to Station WGEI(TV).

5. Thus, in order for Station WGEI(TV) to provide adequate service to its market area, while retaining the existing off-the-air service of Station WAFF(TV) within its market, petitioners request the substitution of Channel 52 for Channel 47 at Tuscumbia, and the concurent modification of the WGEI(TV) construction permit to reflect the change. Channel 52 can be assigned at the present transmitter site specified in WGEI–TV's construction permit.

6. In order to accomplish the proposed channel substitution at Tuscumbia, Channel *29 must be substituted for Channel *52 (vacant and unapplied for) at Fayetteville, Tennessee, with a site restriction 6.1 miles south of the community to avoid short spacing to Station WKSO(TV) (Channel *29), Somerset, Kentucky. Additionally, ACB, Inc., permittee of Station WOTC(TV) (Channel 29), Selma, Alabama, will be required to change its offset from "minus" to "zero" to accommodate the Fayetteville proposal. As required by Commission policy, both petitioners herein will be required to reimburse ACB, Inc. for its reasonable and prudent costs associated with the change in frequency offset of Station WOTC(TV), and should indicate a willingness to do so in their comments. Therefore, to enable the Commission to make a final determination herein, we are issuing an *Order to Show Cause* to ACB, Inc. to determine its willingness to modify its facilities to reflects a "zero" offset.

7. In view of the above, comments are invited on the proposals to amend the TV Table of Assignments, §73.606(b) of the Commission's Rules, with regard to the following communities.

Channel No.	City	
	Present	Proposed
Selma, AL	8, 29–	8, 29
Tuscumbia, AL	47–	52+
Fayetteville, TN	*52–	*29–

8. It is ordered, that, pursuant to section 316(a) of the Communications Act of 1934, as amended, ACB, Inc. Shall Show Cause why its permit should not be modified to specify operation on Channel 29, with a zero offset, at Selma, Alabama, as proposed herein, in lieu of its present operation on that channel with a minus offset.

9. Pursuant to §1.87 of the Commission's Rules, ACB may, not later than, April 22, 1985, request that a hearing be held on the proposed modifications. If the right to request a hearing is waived, it may not later than April 22, 1985, file a written statement showing with particularity why its license or application should not be modified as proposed in the *Order to Show Cause*. In that case, the Commission may call on ACB to furnish additional information, designate the matter for hearing, or issue, without further proceedings, an *Order* modifying the license or application as provided in the *Order to Show Cause*. If the right to request a hearing is waived and no written statement is filed by the date referred to above, ACB will be deemed to have consented to the modification as proposed in the *Order to Show Cause* and a final *Order* will be issued by the Commission, if the above-mentioned channel modification is ultimately found to be in the public interest.

10. It is further ordered, that the Secretary shall send a copy of this *Notice of Proposed Rule Making and Order to Show Cause* by Certified Mail, Return Receipt Requested, to the following: ACB, Inc., 1004 Crystal Court; Lexington, KY 40515.

11. Interested parties may file comments on or before April 22, 1985, and reply comments on or before May 7, 1985. Additionally, a copy of such comments should be served on the petitioners, as follows:

Howard Weiss, Esq., Mullin, Rhyne, Emmons & Topel, P.C., 1000 Connecticut Ave., NW.—Suite 500, Washington, D.C. 20036 (Counsel for Kadd Communications Corporation), and

Robert A Beizer, Esq. and Craig J. Blakeley, Esq., Schnader, Harrison, Segal & Lewis, 1111—19th Street, NW., Suite 1000, Washington, D.C.

[1] WGEI(TV) proposes operation with an ERP of 98 kW and antenna height of 513 ft. AAT (BPCT830728KG).

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20036. (Counsel for American Valley Broadcasting Company).

12. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Assignments, §73.606(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

13. For further information concerning this proceeding, contact Nancy V. Joyner, or Stanley Schmulewitz, Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time a *Notice of Proposed Rule Making* is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment to which the reply is directed constitutes an *ex parte* presentation and shall not be considered in the proceeding.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(c)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the TV Table of Assignments, §73.606(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in replay comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 85–5322, Filed 3–5–85; 8:45 am]
BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 85–52; RM–4847, RM–4851]

Assignment of TV Broadcast Stations in Jackson, WY, Billings, MT, and Provo, UT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes to assign VHF TV Channels 2 and 11 to Jackson, Wyoming, at the request of Metro Telecasting and Terrell Communications, respectively. In order to provide the first and second local television channels at Jackson, the offsets on Channel 2 at Billings, Montana, must be changed from "zero" to "minus" and on channel *11 at Provo, Utah, from "plus" to "minus."

DATES: Comments must be filed on or before April 22, 1985, and reply comments on or before May 7, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Notice of Proposed Rule Making and Orders to Show Cause

In the matter of amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations, (Jackson, Wyoming, Billings, Montana, and Provo, Utah) MM Docket No. 85–52, RM–4847, RM–4851.

Adopted: February 15, 1985.
Released: February 28, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration two petitions for rule making seeking the assignment of a VHF TV channel to Jackson, Wyoming. Metro Telecasting ("Metro") seeks the allocation of Channel 2 and Terrell Communications ("Terrell") requests the allocation of Channel 11. Both Metro and Terrell have stated their intention to apply for their respective channels, if assigned.

2. Jackson (population 4,511),[1] the seat of Teton County (population 9,355), is

[1] Population figures are taken from the 1980 U.S. Census.

located in western Wyoming, approximately 320 kilometers (200 miles) northeast of Salt Lake City, Utah. The assignment of Channels 2 and 11 could provide Jackson with its first and second local television services.

3. Both channels can be assigned in compliance with the Commission's minimum distance separation and other technical requirements if the offset on Channel 2 at Billings, Montana, occupied by Station KTVQ is changed from "zero" to "minus" and the offset on Channel *11 at Provo, Utah, occupied by Station KBYU–TV, is changed from "plus" to "minus." The eventual permittee for Channel 2 will be required to reimburse the licensee of Station KTVQ and the eventual permittee for Channel 11 will be required to reimburse the licensee of Station KBYU–TV for the reasonable expenses incurred by each as a result of their change in offsets. Metro and Terrell should indicate their willingness to reimburse.

4. Since Billings, Montana, is located within 320 kilometers (200 miles) of the U.S.-Canadian border, Canadian concurrence is required for the change there.

5. In view of the foregoing and the fact that the proposed assignments could provide Jackson with its first and second local television services, the Commission believes it appropriate to propose amending the Television Table of Assignments, § 73.606(b) of the Commission's Rules, as concerns the communities listed below, to read as follows:

City	Channel No.	
	Present	Proposed
Billings, MT	2, 6, 8, *11, 14, and 20+.	2–, 6, 8, *11, 14, and 20+.
Provo, UT	*11+ and 16	*11– and 16.
Jackson, WY		2 and 11+.

6. Accordingly, it is ordered, that pursuant to § 316(a) of the Communications Act of 1934, as amended, KTVQ, Inc. ("KTVQ"), licensee of Station KTVQ, Billings, Montana, and Brigham Young University ("BYU"), licensee of Station KBYU–TV, Provo, Utah, shall show cause why their licenses should not be modified to specify operation on Channels 2– and *11–, respectively, as proposed herein instead of their present Channels 2 and *11+.

7. Pursuant to § 1.87 of the Commission's Rules, KTVQ and BYU may, not later than April 22, 1985, request that a hearing be held on their proposed modification. If the right to request a hearing is waived, KTVQ and BYU may, not later than April 22, 1985, file a written statement showing with particularity why its license should not be modified as proposed in the *Order to Show Cause*. In this case, the Commission may call upon KTVQ and BYU to furnish additional information, designate the matter for hearing, or issue, without further proceedings, an *Order* modifying the individual licenses, as provided in the *Order to Show Cause*. If the right to request a hearing is waived and no written statement is filed by the date referred to above, KTVQ and BYU will be deemed to have consented to the modifications as proposed herein and a final *Order* will be issued by the Commission if the above-mentioned channel modifications are ultimately found to be in the public interest.

8. It is further ordered, that the Secretary SHALL SEND a copy of this *Notice of Proposed Rule Making and Orders to Show Cause* by Certified Mail, Return Receipt Requested, to KTVQ, Inc., 3203 Third Avenue North, Billings, Montana 59101, and Brigham Young University, C–302 HFAC, Provo, Utah 84602.

9. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements, are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

10. Interested parties may file comments on or before April 22, 1985, and reply comments on or before May 7, 1985, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

June Gray, President, Metro Telecasting, P.O. Box 811, Stockbridge, Georgia 30281 (Petitioner for Channel 2)

Gary D. Terrell, Terrell Communications, 2420 Belair, Magnolia, Arkansas 71753 (Petitioner for Channel 11)

11. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

12. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634:6530. However, members of the public should note that from the time a *Notice of Proposed Rule Making* is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

(Secs. 4, 303, 48 stat., as amended 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(c)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered

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if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection by Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 85-5321 Filed 3-5-85; 8:45 am]
BILLING CODE 6712-01-M

47 CFR PART 76

[MM Docket No. 84-1297; FCC 84-607]

Form and Procedure for Ownership Reporting by Cable Television Systems

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes deletion or substantial simplification of the cable television system ownership reporting requirements (Schedules 3 and 4 of FCC Form 325) and amendment of § 76.403 of the Commission's Rules (47 CFR 76.403), as needed, to reflect such deletion of simplification. The Commission has tentatively determined that existing reporting requirements are burdensome and that the costs they involve are no longer justified in view of the now less than critical need for the information they obtain.

DATES: Comments must be filed on or before April 5, 1985. Reply comments must be filed on or before April 22, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Thomas S. Walsh, Mass Media Bureau, Federal Communications Commission, Washington, D.C. 20554, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 76

Cable television.

Notice of Proposed Rule Making

In the matter of amendment of part 76, subpart L, § 76.403 of the Commission's rules and regulations with respect to the form and procedure for ownership reporting by cable television systems, MM Docket No. 84-1297; FCC 84-607.

Adopted: December 4, 1984.
Released: February 11, 1985.
By the Commission.

1. The Commission, on its own motion, here proposes to amend its rules governing the reporting of ownership information by cable television systems. Specifically, we propose to alter § 76.403 of the Commission's Rules relating to the filing of Schedules 3 and 4 of FCC Form 325 to either eliminate entirely the reporting obligation or to substantially simplify it.

Background

2. The Commission first imposed formal ownership information reporting requirements on cable television systems in 1966.[1] While no form was then adopted, cable system operators were required to file information annually for each of their systems regarding: (a) The names, addresses, and business interests of all officers, directors, and persons having substantial legal or beneficial ownership interests in each system; (b) the number of subscribers to each system; (c) the television stations carried on each system; and, (d) the extent of any existing or proposed program origination by each system. The Commission determined that the information obtained through this reporting process would assist congressional consideration of the Commission's legislative proposals in the cable area and also would assist the Commission in the development of cable regulation.

3. Shortly after the announcement of the above reporting requirements, the Commission determined that the use of a form setting forth specific questions would facilitate submission of the desired information.[2] The original FCC Form 325 was used once, in 1966. Subsequently, Form 325 was revised and divided into three sections: general information, cable services, and ownership information.[3] The Commission collected ownership information on this version of the form through 1973.

4. Although annual reporting requirements for cable television systems remained, data collection was suspended in 1974 while the Commission reviewed its data collection methods. This review ultimately produced a plan to create a cable television computer data base and to alter the format of the annual report form to make it compatible with the new data base. Appropriate changes to Form 325 were made in 1976, including division of the form into two categories.[4] The first, Schedules 1 and 2, solicited information concerning the cable system community unit and local service. The second category, Schedules 3 and 4, requested data concerning operator ownership and control.[5] Rather than establishing a fixed annual filing date, separate schedules were mailed to each cable operator, who was required to complete and return the form within 60 days of the mailing. To expedite the process and reduce the burden on the operators, information stored in the Commission's computer data base was preprinted on the form. Operators were required to correct the information already on file with the Commission rather than to submit the same data year after year. Ownership data were collected on this revised form in 1976, but no such information was collected in 1977 or thereafter due to administrative resource problems in connection with the computerizaton of the data.

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[1] *Second Report and Order* in Docket Nos. 14895, 15233, and 15971, 2 FCC 2d 725, 765 (1966)

[2] *See Order* in Docket No. 15791, 3 FCC 2d 403 (1966).

[3] *Third Report and Order* in Docket No. 18397, 32 FCC 2d 13 (1971).

[4] *Order*, 61 FCC 2d 1014 (1976).

[5] Copies of the current Schedules 3 and 4 of Form 325 are attached hereto as Appendix "A".

5. As designed, the existing ownership data collection system requires each cable operator to prepare one Schedule 3 for his business, one for each business entity which owns 25 percent or more of his business (parent), and one for each entity which owns 25 percent or more of the parent and the parent's patent, until all parents or all 25 percent shareholders are revealed. The same disclosure procedure is applicable to subsidiary interests as well. The number of Schedule 3 forms filed depends on the complexity of the operator's ownership structure. In addition, for each Schedule 3 filed, the operator must also submit data concerning each proprietor, partner, director, major officer, and 3 percent or more shareholder of the entity.[6] Finally, for each principal listed in Schedule 3, a separate Schedule 4 must be prepared. Schedule 4 solicits information regarding family relationships existing between persons listed in Schedule 3, whether stock is held in trust for a beneficial owner, and whether persons disclosed on Schedule 3 have any other telecommunications or newspaper interests. This detailed information was intended to support two basic Commission functions: Monitoring compliance with the cable television system ownership rules,[7] and formulating generalizations concerning ownership patterns in the cable industry in aid of our policy and rule making activities. In connection with the latter activity, it should be noted that substantial parts of our ownership rules have recently been codified, thereby eliminating the need for Commission policy determinations in these areas.[8]

[6] This information includes name, address, identification code, percentage interest, citizenship status, criminal status, and position within the entity (officer, director, etc.). If the business entity filing Schedule 3 is a corporation, information must also be provided regarding the number of shares of common and preferred stock authorized, issued and outstanding, treasury and unissued.

[7] Section 76.501 of the Commission's Rules prohibits common ownership of colocated cable systems and television broadcast stations as well as ownership of any cable system by a national television network. Section 63.54 of the rules also prohibits, with some exceptions, a telephone company from owning a cable system situated within the company's local service area.

[8] Cable Communications Policy Act of 1984, Pub. L. 98-549, 98 Stat. (1984). Section 613(a) of the statute prohibits common ownership of a television broadcast station and a cable system where the Grade B contour of the TV station covers any portion of the community served by the cable system. Section 613(b) prohibits, with certain specified exceptions, common ownership of a telephone company and a cable television system where the cable system provides service to subscribers within the service area of the telephone company.

Discussion

6. In reviewing our experience with the present and past reporting system, we have preliminarily concluded that the costs which the current system imposes are disproportionate to the benefits which it produces and that, accordingly, elimination or substantial simplification of the existing filing mechanism may be warranted. Our conclusion in this regard is motivated by several considerations. First, while the information available through Schedules 3 and 4 is useful in the context of our policy-analysis and rule making function, we have not found it to be indispensible. Since ownership data has not been collected through Form 325 since 1976, we have had to rely upon other sources of information.[9] We do not believe that such reliance has had an adverse effect on our ability to evaluate ownership-related issues in the cable television industry. Moreover, in the event we perceive a significant information gap that is detrimentally affecting our deliberations, we have the option of specifically requesting the data necessary to close that gap.

7. Second, we are no longer convinced that an ownership reporting system of general applicability is required to monitor compliance with cable television rules. This approach is both burdensome to the Commission and runs counter to our belief that the onus of understanding and complying with rules should rest with the system operator in the first instance.[10] In this connection, it is important to note that our suggestion here affects only our involvement in monitoring compliance with the rules and does not bespeak a diminished concern for adherence to them. We retain our enforcement procedures, including monetary forfeiture, and fully intend to utilize them to guarantee compliance in appropriate cases. Furthermore, our proposal in no way precludes the solicitation of ownership information in a specific case or range of cases should developments indicate that is necessary to ensure compliance with the rules. We are simply suggesting that the routine, industry-wide collection of highly detailed ownership data does not now appear essential to our enforcement function.[11]

8. Finally, the burdens imposed by the existing reporting system are substantial. The report is very detailed and quite complex, often requiring considerable effort on the part of the system operator to complete. Indeed, these characteristics prompted us to exempt small system operators from the obligation to file Schedules 3 and 4 of Form 325 at all.[12] The intricate nature of the report not only results in significant costs for the operator but also increases the likelihood of inaccurate, incomplete, delinquent and duplicative filings. Additionally, the burdens placed on the Commission staff are appreciable. The volume and complexity of the filings make it difficult for the staff to monitor, verify or correct, and analyze the data.

9. In view of what we now regard as the questionable need for the data collected, we believe the costs which the ownership reporting system would impose are no longer justifiable. Accordingly, we invite comment on our proposal to eliminate or modify our present ownership reporting system by abandoning or substantially simplifying Schedules 3 and 4 of FCC Form 325 and appropriately amending § 76.403 of our Rules.[13] We specifically request that commenting parties address the question of whether a formal, comprehensive ownership reporting system is still necessary as an aid in establishing Commission policies and in monitoring compliance with cable cross-ownership rules. Insofar as commenting parties suggest a modification or alternative to the present reporting system, we request that they explicitly detail the nature of the alternative

[9] Ownership information is collected, for example, by such sources as *Broadcasting* and *Television Factbook*.

[10] *See Report and Order* in CT Docket No. 78-206, 69 FCC 2d 697 (1978), where the Commission abandoned the prior review and approval approach of the certification mechanism in favor of a simple registration process emphasizing operator responsibility for conformance to the rules.

[11] Certain aspects of the Commission's cable ownership rules are currently under review. *See, e.g., Notice of Proposed Rule Making* in CT Docket No. 82-434, 91 FCC 2d 76 (1982), where the Commission proposed deletion of the existing prohibition on ownership of cable systems by national television networks. To the extent that this proceeding might result in relaxation or elimination of current ownership restrictions, the compliance monitoring justification for the present ownership reporting system would be further eroded. We have also declined to adopt additional ownership-related rules in the cable television area. *See Report and Order* in Docket No. 18891, 91 FCC 2d 46 (1982) [multiple ownership limitations for cable rejected]. *See also* para. 5 and n.6 *supra*.

[12] 42 FR 19329, 19341 (April 13, 1977).

[13] FCC Form 327, Application for Cable Television Relay Service (CARS) Station Authorization, also includes an ownership and control section (Schedule B). While we are not prepared at this time to thoroughly examine the reporting requirements in CARS, particularly in the context of license renewals and transfers, we note that several questions in Schedule B are cross-referenced to Form 325. In light of our proposals herein, we also invite comment on necessary changes to Schedule B.

system and the relevant costs and benefits of the proposed system.[14] Also, parties are invited to comment on the significance to the present proceeding of the enactment of the Cable Communications Policy Act of 1984.

10. Authority for the proposed rule making instituted herein is contained in sections 4 (i) and (j), 303(r), and 403 of the Communications Act of 1934, as amended.

11. Pursuant to procedures set out in § 1.415 of the Commission's Rules, interested parties may file comments on or before March 20, 1985, and reply comments on or before April 4, 1985. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a statement of the nature and scope of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the report and order.

12. In accordance with the provisions of § 1.419 of the Rules, formal participants shall file an original and 5 copies of their comments and other materials. Participants wishing each Commissioner to have a personal copy of the comments should file an original and 11 copies. Members of the general public who wish to express their interest by participating informally may do so by submitting one (1) copy. All timely comments will be considered, regardless of the number of copies submitted. In any event, all comments must contain reference to the appropriate docket number (MM Docket No. 84–1297). All documents will be available for public inspection during regular business hours in the Commission's Public Reference Room, 1919 "M" Street NW., Washington D.C. 20554. For general information on how to file comments, please contact the FCC Consumer Assistance and Small Business Division at (202) 632–7000.

13. For purposes of this nonrestrictive notice and comment rule making proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rule making until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments and formal oral arguments) addressing the merits of a pending proceeding and containing matter not fully covered in any previously filed written comments for the proceeding. Any person who submits a written *ex parte* presentation must submit a copy of that presentation to the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation must prepare a written summary of it; on the day of oral presentation, this written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. *See generally*, 1.1231 of the Commission's Rules.

14. As required by section 603 of the Regulatory Flexibility Act, the Commission has prepared an initial regulatory flexibility analysis ("IRFA") of the expected impact on small entities of the proposals advanced herein. The IRFA is set forth in Appendix "B". Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the *Notice*, but they must have a separate and distinct heading designating them as responses to the regulatory flexibility analysis. The Secretary shall cause a copy of the *Notice*, including the initial regulatory flexibility analysis, to be sent to the Chief Counsel for Advocacy of the Small business Administration, as required by section 603(a) of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 50 U.S.C. 601 *et seq.*, (1981)).

For further information regarding this proceeding, contact Thomas S. Walsh, Mass Media Bureau, (202) 632–7792.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commissions.

William J. Tricarico,

Secretary.

Note.—Copies of current Schedules 3 and 4 of Form 325 are included for purposes of comment as Appendix A. The forms are not published in the Code of Federal Regulations.

BILLING CODE 6712-01-M

[14] To the extent that retention of a simplified reporting system might primarily be founded on a concern for broadcast/cable cross-ownership issues, suitable modification of broadcast station reporting forms might permit collection of the necessary data and still allow elimination of Schedules 3 and 4 of Form 325.

Appendix A

FCC FORM 325
DECEMBER 1976

ANNUAL REPORT OF CABLE TELEVISION SYSTEMS

SCHEDULE 3

NOTE: DO NOT USE THIS FORM TO FILE INFORMATION PREVIOUSLY FILED

SCHEDULE 3. OWNERSHIP STRUCTURE. (File one Schedule 3 for each business entity in the cable operator business structure subject to limitations as indicated.)

1 LEGAL NAME OF ENTITY (IF PERSON, LIST LAST NAME FIRST)

USE TO CONTINUE BLOCK 1 IF NEEDED

2 E.I. NO (OR SOC. SEC. NO.)

IN ITEMS 3-7, indicate the following information for the business entity stated in Block 1

3 ENTER CODE TO INDICATE TYPE OF ENTITY: 1-Individual Person; 2-Partnership; 3-Corporation; 4-Association; 5-Government entity. ▶

4 List below the E.I. No. of any business entity which owns 25% or more of it.

5 List below the E.I. No. of any business entity of which it owns 25% or more of the stock.

6 If a corporation, indicate stock information below.

	Enter Code	If Voting Enter X	NO. AUTHORIZED	NO. ISSUED AND OUTSTANDING	NO. TREASURY	NO. UNISSUED
CLASS CODE: 1-Com. 2-Pref. 3-Other						

7 List each person (if individually owned); partners(if Partnership); officers and directors stockholders - owning 3% or more of the voting stock (if corporation).

LEGAL NAME OF PERSON (LAST NAME FIRST) OR CORPORATION

CONTINUE NAME HERE IF NEEDED — Soc.Sec.No. (E.I. No. if Corp)

CITY OF RESIDENCE (HEADQUARTERS IF CORPORATION) — ST — % INT — If Felon Enter X → — If Alien Enter X → — If Corp., enter: 1-Pres., 2-VP, 3-Sec. 4-Trs., 5-Dir., 6-other

LEGAL NAME OF PERSON (LAST NAME FIRST) OR CORPORATION

CONTINUE NAME HERE IF NEEDED — Soc.Sec.No (E.I. No. if Corp)

CITY OF RESIDENCE (HEADQUARTERS IF CORPORATION) — ST — % INT — If Felon Enter X → — If Alien Enter X → — If Corp., enter. 1-Pres., 2-VP, 3-Sec. 4-Trs., 5-Dir., 6-other

Continue on back as needed.

NOTE: File a separate Schedule 4 for each person or business entity listed in Block 7.

8

7. LEGAL NAME OF PERSON (LAST NAME FIRST) OR CORPORATION

CONTINUE NAME HERE IF NEEDED | Soc.Sec.No.(E.I.No.if Corp.)

CITY OF RESIDENCE (Headquarters if Corporation) | ST. | % INT | If Felon Enter X → | If Alien Enter X → | IF CORP. ENTER: 1-Pres, 2-VP, 3-Sec, 4-Trs, 5-Dir, 6-Other

LEGAL NAME OF PERSON (LAST NAME FIRST) OR CORPORATION

CONTINUE NAME HERE IF NEEDED | Soc.Sec.No.(E.I.No.if Corp.)

CITY OF RESIDENCE (Headquarters if Corporation) | ST | % INT | If Felon Enter X → | If Alien Enter X → | IF CORP. ENTER: 1-Pres, 2-VP, 3-Sec, 4-Trs, 5-Dir, 6-Other

LEGAL NAME OF PERSON (LAST NAME FIRST) OR CORPORATION

CONTINUE NAME HERE IF NEEDED | Soc.Sec.No.(E.I.No.if Corp.)

CITY OF RESIDENCE (Headquarters if Corporation) | ST. | % INT | If Felon Enter X → | If Alien Enter X → | IF CORP. ENTER: 1-Pres, 2-VP, 3-Sec, 4-Trs, 5-Dir, 6-Other

LEGAL NAME OF PERSON (LAST NAME FIRST) OR CORPORATION

CONTINUE NAME HERE IF NEEDED | Soc.Sec.No.(E.I.No.if Corp.)

CITY OF RESIDENCE (Headquarters if Corporation) | ST. | % INT | If Felon Enter X → | If Alien Enter X → | IF CORP. ENTER 1-Pres, 2-VP, 3-Sec, 4-Trs, 5-Dir, 6-Other

LEGAL NAME OF PERSON (LAST NAME FIRST) OR CORPORATION

CONTINUE NAME HERE IF NEEDED | Soc.Sec.No.(E.I.No.if Corp.)

CITY OF RESIDENCE (Headquarters if Corporation) | ST. | % INT | If Felon Enter X → | If Alien Enter X → | IF CORP. ENTER 1-Pres, 2-VP, 3-Sec, 4-Trs, 5-Dir, 6-Other

LEGAL NAME OF PERSON (LAST NAME FIRST) OR CORPORATION

CONTINUE NAME HERE IF NEEDED | Soc.Sec.No.(E.I.No.if Corp.)

CITY OF RESIDENCE (Headquarters if Corporation) | ST. | % INT | If Felon Enter X → | If Alien Enter X → | IF CORP. ENTER 1-Pres, 2-VP, 3-Sec, 4-Trs, 5-Dir, 6-Other

LEGAL NAME OF PERSON (LAST NAME FIRST) OR CORPORATION

CONTINUE NAME HERE IF NEEDED | Soc.Sec.No.(E.I.No.if Corp.)

CITY OF RESIDENCE (Headquarters if Corporation) | ST. | % INT | If Felon Enter X → | If Alien Enter X → | IF CORP. ENTER 1-Pres, 2-VP, 3-Sec, 4-Trs, 5-Dir, 6-Other

Specify below the person who has completed Schedule 3.

SIGNATURE	TITLE
PRINTED NAME OF PERSON SIGNING	DATE SIGNED

NOTE: File a separate Schedule 4 for each person or business entity listed in Block 7.

FCC FORM 325
DECEMBER 1976

ANNUAL REPORT OF CABLE TELEVISION SYSTEMS

SCHEDULE 4 9

NOTE: DO NOT USE THIS FORM TO FILE INFORMATION PREVIOUSLY FILED

SCHEDULE 4 - CONTROLLING PERSONS *(File one Schedule 4 for each person or business listed in Schedule 3, Block 7)*

1 NAME OF PERSON (LAST NAME FIRST) OR BUSINESS ENTITY

CONTINUE NAME IF NEEDED

2 Soc Sec No.(E.I.No.if business)

Indicate the following information regarding the above person or business entity, as applicable.

3 If a close family relationship exists between this person and another person listed in Schedule 3, Block 7 for the same business entity, describe the relationship below:

(Enter code and Soc. Sec. No)
This person is the
1 - Parent/Child
2 - Spouse
3 - Brother/Sister
of the person identified
by the Soc. Sec. No.

Enter Code	SOC. SEC. NO.	Enter Code	SOC. SEC. NO.

4 If this person's voting stock in a corporation listed in Schedule 3, Block 1 is held for a beneficial owner, indicate below:

LEGAL NAME OF CORPORATION

CONTINUE NAME OF CORPORATION IF NEEDED | 1 | E.I. NO.

NAME OF BENEFICIAL OWNER

CONTINUE NAME OF OWNER IF NEEDED | SOC SEC NO.

CITY OF RESIDENCE | ST | IF FELON ENTER X ▶ | IF ALIEN ENTER X ▶

LEGAL NAME OF CORPORATION

CONT. NAME OF CORPORATION IF NEEDED | E.I. NO.

NAME OF BENEFICIAL OWNER

CONT. NAME OF BENEFICIAL OWNER IF NEEDED | SOC. SEC. NO.

CITY OF RESIDENCE | ST | IF FELON ENTER X ▶ | IF ALIEN ENTER X ▶

5 If this person or business entity has other telecommunications or newspaper interests as defined in the instructions, provide the following information for each interest.
(Nature of interest Code: 1-Officer, 2-Director, 3-Partner, 4-Stockholder, 5-Individual Owner.
Type of BUSINESS Code: 1-Broadcasting, 2-Cable TV Systems, 3- Cable TV Equipment, 4-Common Carrier, 5-Newspaper)

LEGAL NAME OF BUSINESS ENTITY REPRESENTING COMMUNICATIONS OR NEWSPAPER INTERESTS

CONTINUE NAME IF NEEDED | E.I. NO.

CITY OF BUSINESS HEADQUARTERS (if newspaper, city served) | ST | NATURE OF INTEREST: ENTER CODE | % Vot. Int. | If Fiduciary Interest Enter X ▶ | TYPE: Enter Code ▶

▶ CONTINUE ON BACK AS NEEDED:

10

5 LEGAL NAME OF BUSINESS ENTITY REPRESENTING COMMUNICATIONS OR NEWSPAPER INTERESTS

CONTINUE NAME IF NEEDED | E I NO.

CITY OF BUSINESS HQRS. (IF NEWSPAPER, CITY SERVED) | ST. | NATURE OF INTEREST: ENTER CODE | %Vot. Int. | If Fiduciary Interest Enter X → | TYPE: Enter Code →

LEGAL NAME OF BUSINESS ENTITY REPRESENTING COMMUNICATIONS OR NEWSPAPER INTERESTS

CONTINUE NAME IF NEEDED | E I NO.

CITY OF BUSINESS HQRS. (IF NEWSPAPER, CITY SERVED) | ST. | NATURE OF INTEREST ENTER CODE | %Vot. Int. | If Fiduciary Interest Enter X → | TYPE: Enter Code →

LEGAL NAME OF BUSINESS ENTITY REPRESENTING COMMUNICATIONS OR NEWSPAPER INTERESTS

CONTINUE NAME IF NEEDED | E I NO.

CITY OF BUSINESS HQRS. (IF NEWSPAPER, CITY SERVED) | ST | NATURE OF INTEREST ENTER CODE | %Vot Int. | If Fiduciary Interest Enter X → | TYPE: Enter Code →

LEGAL NAME OF BUSINESS ENTITY REPRESENTING COMMUNICATIONS OR NEWSPAPER INTERESTS

CONTINUE NAME IF NEEDED | E I NO

CITY OF BUSINESS HQRS. (IF NEWSPAPER, CITY SERVED) | ST | NATURE OF INTEREST ENTER CODE | %Vot Int. | If Fiduciary Interest Enter X → | TYPE Enter Code →

LEGAL NAME OF BUSINESS ENTITY REPRESENTING COMMUNICATIONS OR NEWSPAPER INTERESTS

CONTINUE NAME IF NEEDED | E I NO

CITY OF BUSINESS HQRS. (IF NEWSPAPER, CITY SERVED) | ST | NATURE OF INTEREST ENTER CODE | %Vot Int. | If Fiduciary Interest Enter X → | TYPE: Enter Code →

LEGAL NAME OF BUSINESS ENTITY REPRESENTING COMMUNICATIONS OR NEWSPAPER INTERESTS

CONTINUE NAME IF NEEDED | E I NO

CITY OF BUSINESS HQRS. (IF NEWSPAPER, CITY SERVED) | ST | NATURE OF INTEREST ENTER CODE | %Vot Int. | If Fiduciary Interest Enter X → | TYPE: Enter Code →

LEGAL NAME OF BUSINESS ENTITY REPRESENTING COMMUNICATIONS OR NEWSPAPER INTERESTS

CONTINUE NAME IF NEEDED | E I NO

CITY OF BUSINESS HQRS. (IF NEWSPAPER, CITY SERVED) | ST | NATURE OF INTEREST ENTER CODE | %Vot Int. | If Fiduciary Interest Enter X → | TYPE: Enter Code →

SPECIFY BELOW THE PERSON WHO HAS COMPLETED SCHEDULE 4.

SIGNATURE	TITLE
PRINTED NAME OF PERSON SIGNING	DATE SIGNED

BILLING CODE 6712-01-C

Appendix B

Initial Regulatory Flexibility Act

I. *Reason for Action.* The proposed action will eliminate or substantially simplify the ownership reporting requirements now applicable to cable television systems and amend § 76.403 of the Rules accordingly. Such action would minimize the costs to cable operators resulting from an ownership reporting system that the Commission now believes to be unduly burdensome and possibly unnecessary.

II. *Objectives.* The proposed action will reduce the filing burdens of cable system operators. The objective is to eliminate comprehensive and mandatory filing requirements for ownership data no longer essential to the Commission's rule making or enforcement functions.

III. *Legal Basis.* The action taken by this *Notice* is authorized by sections 4 (i) and (j), 303 and 403 of the Communications Act of 1934, as amended.

IV. *Description, Potential Impact and Number of Small Entities Affected.* The proposed action will eliminate or significantly reduce the burdens of filing ownership information currently required for all cable system operators. Smaller entities will be positively affected because the burdens associated with supplying the Commission with ownership and control information will be substantially reduced.

V. *Recording, Record Keeping and other Compliance Requirements.* Elimination or simplification of Schedules 3 and 4 of FCC Form 325 will substantially reduce the filing and record keeping requirements of cable system operators. The Commission's record keeping burdens will also be reduced.

VI. *Federal Rules which Overlap, Duplicate, or Conflict with this Rule.* None.

VII. *Any Significant Alternative Minimizing Impact on Small Entities and Consistent with Stated Objectives.* None.

[FR Doc. 85–4224 Filed 3–5–85; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposal To Determine Coryphantha Robbinsorum (Cochise Pincushion Cactus) To Be a Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service proposes to determine a plant, *Coryphantha robbinsorum* (Earle) A.D. Zimmerman (Cochise pincushion cactus), to be a threatened species. Populations of this plant are known to occur in Cochise County, Arizona, on State and private lands. There is one population in adjacent Sonora, Mexico. The U.S. populations are threatened with habitat destruction from grazing, exploration and possible drilling for oil, and over-collection. The proposal, if made final, will implement the protection provided by the Endangered Species Act of 1973, as amended, for *Coryphantha robbinsorum.* Critical habitat is not being proposed at this time. The Service seeks data and comments from interested parties on this proposal.

DATE: Comments from all interested parties must be received by May 6, 1985. Public hearing requests must be received by April 22, 1985.

ADDRESS: Comments and materials concerning this proposal should be sent to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Comments and materials received will be available for public inspection during normal business hours, by appointment, at the Service's Regional Office of Endangered Species, 500 Gold Avenue, SW., Room 4000, Albuquerque, New Mexico.

FOR FURTHER INFORMATION CONTACT: Peggy Olwell, Endangered Species, Albuquerque, New Mexico (see ADDRESSES above) (505/766–3972; FTS 474–3972).

SUPPLEMENTARY INFORMATION:

Background

Coryphantha robbinsorum was first collected by James, Jimmy, and John Robbins in 1976. The species was described by W.H. Earle in 1976 as *Cochiseia robbinsorum.* Hunt (1978 placed the taxon in *Escobaria.* A.D. Zimmerman made the combination *Coryphantha robbinsorum* in 1978.

Coryphantha robbinsorum is a small, unbranched cactus. The tubercles are tightly packed in 8 and 13 spirals in mature plants (5 and 8 spirals in smaller plants). The areoles are circular to broadly oval and filled with copious white hairs. A deep furrow runs on the upper surface of the tubercle. The radial spines number 11 to 17. Juvenile plants have 10 equal-length spines which are densely pubescent. Central spines are usually lacking. The bell-shaped flowers are pale yellow-green with a slight bronze cast. Anthers are yellow; the stigma lobes and style are green. Fruits are orange-red when ripe, but quickly turn dull red; seeds are black. Flowering occurs in March and April; fruit ripens in July and August (Zimmerman, 1978).

Coryphantha robbinsorum is historically known to occur in the Semidesert Grassland Community in Cochise County, Arizona. There is also a population in adjacent Sonora, Mexico. The population in Cochise County, Arizona if found on several isolated hills averaging about one hectar (2.47 acres), each. Within an area of 4 to 6 square miles (2.5 to 3.7 square kilometers), there are roughly 40 hectares (88.8 acres) occupied by the plants. All of the known population in Arizona is on a privately owned ranch and Arizona State lands. Plants are locally common over about half the range, and scattered to rare over the remainder. The population in Mexico was verified in late 1984.

Coryphantha robbinsorum occurs in the Semidesert Grassland at an elevation of 1280 meters (4,198 feet), on limestone hills. Dominant associated species are sandpaper bush (*Mortonia scabrella*), ocotillo (*Fouquieria splendens*), desert spoon (*Dasylirion wheeleri*), snakeweed (*Gutierrezia microcephala*), Palmer agave (*Agave palmeri*), amole (*Agave schottii*), and prickly pear (*Opuntia phaeacantha*).

The first Federal action involving this species began when *Coryphantha robbinsorum* was included as a category 2 species in a list of plants under review for threatened and endangered classification in the December 15, 1980, **Federal Register** (45 FR 82480). Category 2 includes taxa for which the Service has insufficient biological data to support a proposed rule. A status report was completed in 1982, and

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Coryphantha robbinsorum was included as a category 1 species in the supplement to the 1980 notice which was published in the November 28, 1983, **Federal Register** (48 FR 53648). Category 1 includes taxa for which the Service presently has sufficient biological information to support listing as endangered or threatened.

The Endangered Species Act Amendments of 1982 required that all petitions pending as of October 13, 1982, be treated as having been newly submitted on that date. The species covered by the December 15, 1980, notice of review are considered to be under petition, and the deadline for making a finding on those species, including *Coryphantha robbinsorum*, was October 13, 1983. On October 13, 1983, and again on October 13, 1984, the petition finding was made that listing *Coryphantha robbinsorum* was warranted but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act. Such a finding requires a recycling of the petition, pursuant to section 4(b)(3)(C)(i) of the Act. Therefore, a new finding must be made on or before October 13, 1985; this proposed rule constitutes the finding that the petitioned action is warranted and proposes to implement the action in accordance with section 4(b)(3)(B)(ii) of the Act.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (to be codified at 50 CFR Part 424; see 49 FR 38900, October 1, 1984) set forth procedures for adding species to the Federal list. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to *Coryphantha robbinsorum* (Earle) A.D. Zimmerman (Cochise pincushion cactus) are as follows:

A. *Present or threatened destruction, modification, or curtailment of its habitat or range.* Threats to the survival of *Coryphantha robbinsorum* include habitat destruction due to livestock grazing leading to trail formation, soil disturbance, and erosion channels and direct destruction of plants by trampling. One population studied by Phillips and Brian (1982) was immediately adjacent to a livestock water source; livestock trails leading to the tank and service roads were evident in topographically less rugged parts of the habitat. All of the known range in Arizona is on an active cattle ranch, including private land and State land leased for grazing. While overgrazing is not a serious problem, and the owners of the ranch are conservation-oriented and sympathetic to preservation of the cactus (Zimmerman, 1984), a change in grazing practices or ranch ownership could lead to rapid deterioration of present conditions.

A source of potentially serious concern is exploration for oil in the area. At least one deep well was drilled around 1976, and the access road passed through a *Coryphantha robbinsorum* population. Although no oil was found, additional exploration continues. The present ranch owners do not own the mineral rights to the area (Zimmerman, 1984).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Its recent recognition, small size and handsome appearance make *Coryphantha robbinsorum* a very desirable cactus for private collectors and the commercial trade. Brack (1984) noted its vulnerability to any stress, and stated that human collecting is the main threat to the species. He further stated that confidentiality of the location is the key factor in its protection. Zimmerman (1984) noted that more than half the total population is on less than 4 percent of the total habitat, some 40 hectares (88.8 acres). Because individuals of this species are so concentrated, they are potentially very vulnerable to commercial cactus exploitation. Density of plants on the remaining 96 percent of the habitat is very low. Theoretically, collectors could reduce the plants to 5 to 10 percent of their present numbers if the proper habitat were thoroughly searched. Finding the last plants, those not in the usual habitats and very sparsely distributed, would be nearly impossible. However, once reduced to widely scattered individuals in marginal habitat, the species might be unable to recover and might be vulnerable to extinction from natural events.

C. *Disease or predation.* No evidence of damage or death of plants from insects, pathogens, rodents, or other animals has been noted. Cattle do not intentionally graze plants, but inadvertent trampling and habitat damage by range cattle may be a serious threat, as described in "A," above (Phillips and Brian, 1982).

D. *The inadequacy of existing regulatory mechanisms.* The Arizona Native Plant Law (A.R.S. Chap. 7, Art. 1, Sec. 3–901 C.I.) includes all members of the cactus family on its list of protected plants. These may be collected only with a State permit and permission of the landowner. *Coryphantha robbinsorum* is not included in the more restrictive prohibited list, which allows collection only for scientific or educational purposes under permit (Sec. 3–901 B). The Native Plant Law provides no protection against habitat loss or incidential taking or destruction, the major risks to this species.

E. *Other natural or manmade factors affecting its continued existence.* *Coryphanta robbinsorum* has a much lower reproductive potential than most other cacti (Zimmerman, 1984), with an estimated average production of 3 fruits, with 20 seeds each, pr year per plant (Brack, 1984). According to Zimmerman (1984), absence of these cacti from nearly half the isolated patches of apparently suitable habitat may be the result of natural local extinctions. A delicate balance between local extinction and recolonization in small "islands" of suitable habitat may be a natural feature of the biology of the species. If such a balance exists, any reserve intended to provide for the survival of this species would have to encompass several adjacent patches of suitable habitat, in order to allow for local extinctions and re-colonization.

Range fires and competition with dense grasses could become threats should grazing be eliminated entirely (Zimmerman, 1984).

The low total estimated population and restriction to a specific habitat type within a very restricted geographic range intensify the effects of any adverse impacts to the species or its habitat (phillips and Brian, 1982).

The Service has carefully assessed the best scientific information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Coryphanta robbinsorum* as threatened. Threatened status seems appropriate because the population, while extremely limited in distribution and facing serious potential threats, has a sufficient number of plants to maintain self if not heavily impacted by collecting. The threats are mitigated by the remote, unpublicized location and the concern of the present landowners for preserving the cactus. The reasons for not designating critical habitat are discussed below.

Critical Habitat

Section 4(a)(3) of the Endangered Species Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for *Coryphantha robbinsorum* because it restricted distribution, accessibility, and attractiveness to cactus collectors make

it vulnerable to threats from collection. The cactus may be sought as a curiosity by collectors of rare cacti if critical habitat maps are published in the **Federal Register**. Publication of such maps would call attention to this species, make specimens easy to locate, and make it more vulnerable to taking. Therefore, it would not be prudent to determine critical habitat for *Coryphantha robbinsorum* at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States, and requires that recovery actions be carried out all listed species. Such actions are initiated by the Service following listing. The protection required by Federal agencies and taking prohibitions are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species. This protection would now accrue to *Coryphantha robbinsorum*. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of *Coryphantha robbinsorum*. If a Federal action may affect a listed species, the responsible Federal agency must enter into formal consultation with the Service. There would be no known impacts to Federal projects by the listing of *Coryphantha robbinsorum*, which occurs on private and State lands.

The Act and its implementing regulations found at 50 CFR 17.71 and 17.72 set forth a series of general trade prohibitions and exceptions that apply to all threatened plant species. With respect to *Coryphantha robbinsorum*, the trade prohibitions of section 9(a)(2) of the Act, as implemented by 50 CFR 17.71, would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened species under certain circumstances. It is anticipated that few permits would ever be sought or issued since the species is not common in cultivation or in the wild.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to possession of endangered plant species from areas under Federal jurisdiction. Section 4(d) provides for the extension of such protection to threatened plant species through regulations. This protection will apply to *Coryphantha robbinsorum* once revised regulations are promulgated. Permits for exceptions to this prohibition are available through section 10(a) and 4(d) of the Act, until revised regulations are promulgated to incorporate the 1982 amendments. Proposed regulations implementing this prohibition were published on July 8, 1983 (48 FR 31417), and it is anticipated that these will be made final following public comment. *Coryphantha robbinsorum* occurs on Arizona State and private lands. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–1903).

Coryphantha robbinsorum is listed on Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), which requires a permit from the country of origin for export. International movement of this species is minimal. If the species is listed under the Act, the Service will review it to determine whether it should be listed on Appendix I of CITES.

Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of any endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of these proposed rules are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Coryphantha robbinsorum;*

(2) The location of any additional populations of *Coryphantha robbinsorum* and the reasons why any habitat of this species should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject area and their possible impacts on *Coryphantha robbinsorum.*

Final promulgation of the regulation on *Coryphantha robbinsorum* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Request must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Regional Director (see ADDRESSES section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Literature Cited

Brack, S. 1984. Correspondence to Office of Endangered Species, Region 2, regarding *Coryphantha robbinsorum*, 19 Jan. 1984.

Earle, W.H. 1976. *Cochiseia* Earle, genus novum. Saguaroland Bulletin 30:65–66.

Hunt, D.R. 1978. Amplification of the genus *Escobaria*. Cactus & Succulent Journal of Great Britain 40:13.

Lopresti, Vincent. 1984. *Coryphamtha robbinsorum* en Mexico. Cact. Suc. Mex. XXIX:81–83.

Phillips, B.G., and N.J. Brian. 1982. Status report on *Coryphantha robbinsorum*. U.S. Fish and Wildlife Service, Office of Endangered Species, Albuquerque, N.M.

Zimmerman, A.D. 1978. The relationships of *Cochiseia robbinsorum* Earle. Cactus & Succulent Journal (U.S.) 50:293–297.

Zimmerman, A.D. 1984. Correspondence to Office of Endangered Species, Region 2, regarding *Coryphantha robbinsorum*, 27 Feb. 1984.

Authors

The primary author of this proposed rule is Peggy Olwell, Office of Endangered Species, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103 (505/766–3974; FTS 474–3972). The preliminary listing package was provided by Drs. Arthur Phillips, III, and Barbara G. Phillips, Museum of Northern Arizona, Flagstaff, Arizona. The editor is LaVerne Smith, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–1975; FTS 235–1975). Status information was provided by Dr. Barbara G. Phillips and Ms. Nancy Brian, Museum of Northern Arizona, Route 4, Box 720, Flagstaff, Arizona 86001 (602/774–5211).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 reads as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order, under the family Cactaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species						
Scientific name	Common name	Historic range	Status	When listed	Critical habitat	Special rules
*	*	*	*	*	*	*
Cactaceae—Cactus Family:						
Coryphantha robbinsorum	Cochise pincushion cactus	U.S.A. (AZ) Mexico (Sonora)	T		NA	NA
*	*	*	*	*	*	*

Dated: February 8, 1985.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85–5383 Filed 3–5–85; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for *Santalum freycinetianum* Gaud. var. *lanaiense* Rock (Lanai sandalwood or 'iliahi)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine *Santalum freycinetianum* var. *lanaiense* (lanai sandalwood or 'iliahi) to be an endangered species, under the authority contained in the Endangered Species Act of 1973, as amended. This plant is known only from two areas, one at Kanepu'u, island of Lanai, and the other comprising the submit ridge system of the island of Lanai, County of Maui, Hawaii. The 39 known individuals of this variety are vulnerable to any substantial habitat alteration and face the threats of grazing and browsing by federal game animals, rat predation on fruits, and the potential threats of taking and fire at the sites they occupy. A determination that *Santalum freycinetianum* var. *lanaiense* is an endangered species would implement the protection provided by the Endangered Species Act of 1973, as amended. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by May 6, 1985. Public hearing requests must be received by April 22, 1985.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Regional Director, U.S. Fish and Wildlife Service, 500 N.E. Multnomah Street, Portland, Oregon 97232. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Wayne S. White, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, 500 N.E. Multnomah Street, Portland, Oregon 97232 (503/231–6131 or FTS 429–6131).

SUPPLEMENTARY INFORMATION:

Background

Santalum freycinetianum var. *lanaiense* is a small gnarled tree with leaves that vary from nearly round to twice as long as broad, and are dark green on the upper surface. The tree bears small clusters of bright red flowers. J.F. Rock discovered the sandalwood on the island of Lanai in 1910 and formally described it in 1913. Historically, it has been collected and/or reported from several widely spaced localities on the island. Sandalwood trade prior to this plant's discovery by the scientific community could have already reduced the number of trees by an unknown amount. Thirty-nine individuals of the variety are now known and are widely spaced over its range. These can be divided into two populations, one near Kanepu'u and the other near the summit of the island. Both populations occur on private lands owned by Castle and Cook, Inc.

The species is found in a range of habitats from dry lowland forests on well drained barren soils to mesic forests on shallow soils at higher elevations. The habitat has been severely degraded by grazing and browsing by livestock and exotic game animals. Much of the native vegetation has been removed, increasing wind erosion of the fragile soils. Rat predation on developing fruit has all but eliminated reproduction (Carr, 1981).

Section 12 of the Endangered Species Act of 1973 directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823–27924) of its acceptance of this report as a petition within the context of section 4(c)(2) of the Act (petition acceptance is now governed by section 4(b)(3) of the Act, as amended), and of its intention to review the status of the plant taxa named within. On June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523–24572) to determine approximately 1,700 vascular

plant taxa to be endangered species. This list was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication. *Santalum freycinetianum* var. *lanaiense* was included in the July 1, 1975, notice and the June 16, 1976, proposal. General comments on the 1976 proposal were summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909–17916).

The Endangered Species Act Amendments of 1978 required that all proposals over two years old be withdrawn. A 1-year grace period was given to those proposals already more than 2 years old. Subsequently, on December 10, 1979, the Service published a notice of the withdrawal of the portion of the June 16, 1976, proposal that had not been made final, along with other proposals that had expired (44 FR 70796–70797); this withdrawal included *Santalum freycinetianum* var. *lanaiense*. *Santalum freycinetianum* var. *lanaiense* was included in the December 15, 1980 (45 FR 82480–82569) notice of review of plant taxa as a candidate for listing. On February 15, 1983, the Service published a notice (48 FR 6752) of its prior petition finding that sufficient information exists to indicate that listing of this taxon may be warranted in accordance with section 4(b)(3)(A) of the Act. On October 13, 1983, and again on October 13, 1984, the petition finding was made that listing this taxon was warranted, but precluded by other pending listing actions in accordance with section 4(b)(3)(B)(iii) of the Act; notification of the 1983 finding appeared in the **Federal Register** of January 20, 1984 (49 FR 2485). Such a finding requires recycling of the petition pursuant to section 4(b)(3)(C)(i) of the Act. Therefore, a new finding must be made; consequently the Service finds that the petitioned action is warranted and hereby publishes a proposed rule for its implementation in accordance with section 4(b)(3)(B)(ii) of the Act.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (to be codified at 50 CFR Part 424; see 49 FR 38900, October 1, 1984) set forth the procedures for adding species to the Federal lists. A species may be determined to an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Santalum freycinetianum* Gaud. var. *lanaiense* Rock (Lanai sandalwood) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Only 39 individuals are presently known to be extant (Peter Connally, State Conservation Officer, Lanai City, pers. comm.). The recent decline in numbers of the species is largely due to loss of habitat. Natural vegetation has been eliminated over vast areas of Lanai and native dryland forests have been severely degraded (Spence and Montgomery, 1976). Agricultural development has removed large tracts of native vegetation, first for pasture and later for pineapple production. Cattle, sheep and axis deer, which had been introduced into this area, have removed and trampled vegetation, contributing to severe erosion of soils.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Extensive re;moval of Hawaiian sandalwoods for trade occurred from 1790 to 1820. The wood is valued for its fragrance and beauty and was used in making incense and in decorative woodworking. Although the species is no longer common enough for profitable commercial use, it may be threatened by individuals seeking the wood.

C. *Disease or predation.* The Lana'i sandalwood is grazed by introduced animals, including axis deer maintained for hunting, as demonstrated by the high browse line on the few remaining trees. Fruit predation by rats has resulted in virtual lack of reproduction in this taxon.

D. *The inadequacy of existing regulatory mechanisms.* No regulatory mechanisms exist at the present time to protect this taxon. Federal listing would automatically invoke listing under Hawaii State law, which prohibits taking and encourages conservation by State government agencies.

E. *Other natural or manmade factors affecting its continued existence.* Only one sapling has recently been observed, indicating that reproduction of *Santalum freycinetianum* var. *lanaiense* is almost non-existent. Several factors may contribute including reduction of the breeding population and rodent damage to fruit. The low numbers of individuals remaining has greatly reduced the gene pool for the species and may threaten its adaptive potential.

The Service has carefully assessed the best scientific information available, regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Santalum freycinetianum* var. *lanaiense* as endangered. The species is proposed for endangered status due to the imminent threat of extinction. This choice reflects the strong likelihood that without the institution of appropriate conservation measures, the species will become extinct. The conditions leading to a proposal without critical habitat designation are discussed in the "Critical Habitat" section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. As discussed under Factor "B" in the "Summary of Factors Affecting the Species" sandalwood is used for incense and decorative wood products and in the past this taxon was extensively harvested. Taking is an activity difficult to enforce against and not regulated by the Endangered Species Act with respect to plants, except for a prohibition against removal and reduction to possession of endangered plants from lands under Federal jurisdiction. Publication of critical habitat descriptions would make this species more vulnerable to collection. Therefore, it would not be prudent to determine critical habitat for *Santalum freycinetianum* var. *lanaiense* at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requriements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requries Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its

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critical habitat, if any is being proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, and are now under revision (see proposal at 48 FR 29990; June 29, 1984). Section 7(a)(4) requires Federal agencies to informally confer with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund or carry out are not likely to jeopardize the continue existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service. *Santalum freycinetianum* var. *lanaiense* is found on private land. No Federal action currently exists or is anticipated with regard to this species.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63, set forth a series of general trade prohibitions and exceptions that apply to all endangered plant species. With respect to *Santalum freycinetianum* var. *lanaiense*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61 would apply. These prohibitions, in part, would make it illegal for any persons subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. No trade in this species has been known since 1820. It is anticipated that few trade points involving *Santalum freycinetianum* var. *lanaiense* would be requested.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to possession of endangered plant species from areas under Federal jurisdiction. The prohibition would apply to *Santalum freycinetianum* var. *lanaiense* if it should be found on Federal land or if any of the land it is now found on should pass into Federal jurisdiction. Permits for exceptions to this prohibition are available through section 10(a) of the Act, until revised regulations are promulgated to incorporate the 1982 Amendments. Proposed regulations implementing this new prohibition were published on July 8, 1983 (48 FR 31417), and it is anticipated that these will be made final following public comment. As all known plants occur on private lands, it is anticipated that few, if any, taking permits will be requested for *Santalum freycinetianum* var. *lanaiense*. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–1903).

Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant date concerning any threat (or lack thereof) to *Santalum freycinetianum* var. *lanaiense*;

(2) The location of any additional populations of *Santalum freycinetianum* var. *lanaiense* and the reason why any habitat of this taxon should or should not be designated as critical habitat;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject area and their possible impacts on *Santalum freycinetianum* var. *lanaiense*.

Final promulgation of the regulation on *Santalum freycinetianum* var. *lanaiense* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Special Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Regional Director, U.S. Fish and Wildlife Service, 500 NE. Multnomah Street, Portland, Oregon 97232.

National Enviromental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Literature Cited

Carr, G.D. 1981. Status Report on *Santalum freycinetianum* var. *lanaiense*. Research Coporation of the University of Hawaii, under contract 14–16–001–79096 to the U.S. Fish and Wildlife Service.

Spence, G.E., and S. Montgomery. 1976. Ecology of the dryland forest at Kanepu'u, Island of Lana'i. *Hawaiian Botanical Society Newsletter* 15:62–80.

Author

The primary author of this proposed rule is Carol A. Wilson, U.S. Fish and Wildlife Service, 500 NE. Multnomah Street, Portland, Oregon 97232 (503/231–6131 or FTS 429–6131).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 reads as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under the family Santalaceae, to the List of Endangered and Threatened Plants:

§17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
• • • •		•	•			•
SANTALACEAE—Sandalwood family						
Santalum freycinetianum var. *lanaiense*.	Lanai sandalwood (Lanai 'iliahi).	U.S.A. (HI).....	E		NA	NA
• • • •		•	•			•

Dated: February 14, 1985.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85–5374 Filed 3–5–85; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Rule To List the Fragrant Prickly-Apply as an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service proposes to determine the fragrant prickly-apple (*Cereus eriophorus* var. *fragrans* (Small) L. Benson) to be an endangered species under provisions of the Endangered Species Act of 1973, as amended. Critical habitat is not being proposed. This cactus occurs only within a limited area of St. Lucie County, Florida, where it is subject to threats from habitat destruction and the potential for collecting for horticultural purposes. The proposal seeks to provide protection to this plant; public comments, as well as additional biological information concerning its status and threats, are hereby solicited.

DATES: Comments from all interested parties must be received by May 6, 1985. Public hearing requests must be received by April 22, 1985.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, 2747 Art Museum Drive, Jacksonville, Florida 32207. Comments and materials received will be available for public inspection during normal business hours, by appointment, at the address above.

FOR FURTHER INFORMATION CONTACT: Dr. Michael Bentzien (904/791–2580; FTS 8/946–2580); see ADDRESSES section above.

SUPPLEMENTARY INFORMATION:

Background

Cereus eriophorus var. *fragrans* (fragrant prickly-apple) is a columnar species of the cactus family, Cactaceae, which is not only known from St. Lucie County, Florida (Austin, 1984). It has cane-like stems which measure 1–5 m. long, and sprawl over surrounding vegetation as they become larger. The cylindrical succulent stems have numerous spines and measure 2.5–5 cm. in diameter. The nocturnal flowers are scented, white or pink in color and measure 7.5–10 cm. in diameter.

The orange-red fruits measure 5–6 cm. long. This cactus is endemic to the east coast of Florida and occurs in coastal hammock vegetation types. These native vegetation types have largely disappeared from coastal Florida due to increasing urbanization which has taken place in recent years.

The fragrant prickly-apple was collected first by John K. Small in 1917 on sand dunes south of Ft. Pierce, Florida, and described as *Harrisia fragrans*. Subsequently, the cactus has been reported from a number of additional localities along the Florida east coast, but as Austin (1984) points out, this is the result of confusion in the botanical literature between *C. eriophorus* var. *fragrans* and *C. gracilis*. Benson (1982) in his recently published *The Cacti of the U.S. and Canada* describes the distribution of *Cereus eriophorus* var. *fragrans* as the Florida Atlantic coast and two sites in Monroe County, Florida. Florida botanists have recently searched the two Monroe County sites but no *Cereus eriophorus* was located and it is speculated that earlier accounts of *Cereus eriophorus* at these sites may have been due to misidentification of *Cereus gracilis*. Based on recent field work by Florida botanists the only population known to exist today is the St. Lucie county population. *Cereus eriophorus* var. *fragrans* is only positively known historically from two populations, the St. Lucie locality and a since extirpated population near Malabar.

Section 12 of the Endangered Species Act of 1973 directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the report of the Smithsonian Institution as a petition within the context of section 4(c)(2) of the Act (petition acceptance is now governed by section 4(b)(3) of the Act), and of its intention thereby to review the status of the plant taxa named within. On June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant taxa to be endangered species pursuant to section 4 of the Act. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication. *Cereus eriophorus* var. *fragrans* was included in the Smithsonian's report, the 1975 notice of review, and the 1976 proposal. General comments on the 1976 proposal were summarized in an April 26, 1978, **Federal Register** publication which also determined 13 plant species to be endangered or threatened species (43 FR 17909).

The Endangered Species Act Amendments of 1978 required that all proposals over two years old be withdrawn. A one year grace period was given to proposals already over two years old. On December 10, 1979, the Service published a notice withdrawing the June 16, 1976 proposal along with four other proposals which had expired.

The July 1, 1975, notice of review was replaced on December 15, 1980, by the Service's publication in the **Federal Register** (45 FR 82479) of a new notice of review for plants which included *Cereus eriophorus* var. *fragrans*. No comments on this taxon have been received in response to the 1980 plant notice. On February 15, 1983, the Service published a notice in the **Federal Register** (48 FR 6752) of its prior petition finding that sufficient information existed to show that the listing of this taxon may be warranted, in accord with section 4(b)(3)(A) of the Act as amended in 1982.

On October 13, 1983, the petition finding was made that listing *Cereus eriophorus* var. *fragrans* was warranted but precluded by other listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act; notification of the finding was published in the January 20, 1984, **Federal Register** (49 FR 2485). Such a

finding requires recycling of the petition, pursuant to section 4(b)(3)(C)(i) of the Act. Therefore, a new finding must be made; we find that the petitioned action is warranted and hereby publish the proposed rule to implement the action in accord with section 4(b)(3)(B)(ii) of the Act.

In August 1984, personnel from the Service's Vero Beach Office conducted a survey of the only presently known sites for this species. The field notes of Dr. Daniel Austin of Florida Atlantic University were used to compare the distribution as of 1980 with the present distribution (also see Austin *et al.*, 1980). Plants were observed at two of the three sites reported by Austin; an additional locality was also discovered. All three localities were within approximately 300 meters and thus probably constitute one biological population. Only 14 plants were located.

The area where the three groups of cactus were found is a high sandy ridge approximately 12 acres in area. All plants are on private land, although in proximity to lands owned by the Florida Department of Natural Resources. There are no roads into the area and thus access is somewhat limited; however there is evidence that off-road vehicles (ORVs) use the area.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisons of the Act (codified at 50 CFR Part 424; revised at 49 FR 38900, October 1, 1984) set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or a threatened species due to one or more of the five factors described in that Section. These factors and their application to *Cereus eriophorus* var. *fragrans* (Small) L. Benson, fragrant prickly-apple, are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range. Cereus eriophorus* var. *fragrans* is known from only 14 plants in an extremely limited amount of habitat in east-central Florida. While access to the area is somewhat restricted, the Services' August 1984 survey showed tracks from off-road vehicles within 50 feet of the cactus at one locality. An additional locality was only 12 feet from a recently graded railroad right-of-way, and thus could easily be affected by routine maintenance. The cactus is known to have been extirpated from its other known poulation near Malabar, and one of Austin's localities from 1980 at the Port St. Lucie population could not be located in 1984. Because of the low number of plants and their clumped distribution at the Port St. Lucie population, this cactus is thus very susceptible to inadvertent destruction or modification of its habitat.

B. *Overutilization for commercial recreational, scientific, or educational purposes.* This species is not known to be in commerical trade. However, many species of cacti are commerically exploited, and it is likely that, because of rarity and the attractive nature of this species, it could be subject to collection if the exact location of the remaining plants became known. Near one of the three localities of the Port St. Lucie population, there is an area that has been extensively dug up by shovel. While there is no proof, it is at least a possibility that some individual plants could have been removed.

C. *Disease and predation.* Not known to be a problem with this species.

D. *The inadequacy of existing regulatory mechanisms. Cereus eriophorus* var. *fragrans* is offered protection under Florida Law, Chapter 65–426, section 865–06, which includes prohibitions concerning taking, transport, and the sale of plants listed under this law. *Cereus eriophorus* var. *fragrans* is included as threatened under the general category, Cacti. However, there is no habitat protection under Florida statutes, such as that provided under section 7 of the Act.

All native cacti are on Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora. This Convention regulates export of this plant, but does not regulate interstate trade in the cactus, or habitat destruction. No other Federal protective laws currently apply to this species. The Endangered Species Act would offer additional protection for the taxon.

E. *Other natural or manmade factors affecting its continued existence.* Restriction to specialized habitats and small geographically limited ranges tend to intensify any adverse effects upon the populations or the habitats of any rare plant. This is certainly true for *Cereus eriophorus* var. fragrans and is intensified by the loss of habitat which has already taken place.

The small remaining population of this cactus is also threatened by natural factors in the form of powerful storms. Small (1917) describes the destruction and damage of similar species due to windthrow after a hurricane passed over the Keys. The growth habit of *Cereus* makes it particularly vulnerable to this natural phenomenon. As more of the natural vegetation of coastal Florida is destroyed, the buffering against storms by nearby vegetation will decrease and the vulnerability of the remaining cacti will increase.

The careful assessment of the best scientific and commercial information available, as well as the best assessment of the past, present, and future threats faced by this taxon, were considered in determining the preferred action of this rule. Based on this evaluation, the preferred action is to list *Cereus eriophorus* var. *fragrans* as an endangered species. With only 14 individuals known, endangered status, seems an accurate assessment of the taxon's condition. Critical habitat is currently not prudent to propose for this species because doing so would increase risk to it, as detailed above under factor B. The attractive nature of this cactus coupled with rarity and very limited regulations against take make the species vulnerable to collecting, especially if maps were published in the **Federal Register** pinpointing exact locations.

Critical Habitat

The Endangered Species Act in section 4(a)(3), as amended, requires that to the maximum extent prudent and determinable, the secretary must designate any habitat of a species that is considered to be critical habitat at the time the species is determined to be endangered or threatened. The designation of critical habitat is not considered to be prudent when such designation would not be of net benefit to the species involved (50 CFR 424.12). In the present case, the Service finds that designation of critical habitat is not prudent because no benefit to the taxon can be identified that would outweigh the potential threat of collection, which might be exacerbated by the required publication of a detailed critical habitat map.

The Service knows the land ownership of all areas where this species is found. Landowners will be contacted so that the Service may develop appropriate conservation measures to ensure the survival of this species.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and can result in conservation actions by Federal, State, and private agencies,

groups, and individuals. The Endangered Species Act provides the possibility for land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required by Federal agencies and applicable prohibitions are discussed in part below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat. Provisions for interagency cooperation implementing this section are codified at 50 CFR Part 402, and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(4) requires Federal agencies to informally confer with the Service on any of their actions that are likely to jeopardize the continued existence of a proposed species. When a species is listed, section 7(a)(2) requires Federal agencies to ensure that actions they authorize, fund or carry out are not likely to jeopardize the continued existence of the species or adversely modify its critical habitat. If an action may affect such a species, the Federal agency must enter into a formal consultation with the Service.

At present, all plants of the Port St. Lucie population of the fragrant prickly-apple are known only from private lands, and no Federal agencies are known to have involvement. If Federal activities are identified in the future that may affect *Cereus eriophorus* var. *fragrans*, consultation could be initiated as appropriate.

The Act, and its implementing regulations published in the June 24, 1977, **Federal Register** (42 FR 32373), set forth a series of general trade prohibitions and exceptions which apply to all endangered plant species. The regulations pertaining to endangered plants are found at §§ 17.61, 17.62, and 17.63 of 50 CFR and are summarized below. With respect to *Cereus eriophorus* var. *fragrans* all prohibitions of section 9(a)(2) of the Act, as implemented by § 17.61, would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Certain exceptions could apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. No such trade in *Cereus eriophorus* var. *fragrans* is known. It is not anticipated that many trade permits whould ever be issued since this plant is very rare in the wild.

Section 9 (a)(2)(B) of the Act, as amended in 1982, states that it is unlawful to remove and reduce to possession endangered plant species from areas under Federal jurisdiction. This prohibition would apply to this cactus. Permits for exceptions to this prohibition for scientific purposes or to enhance the propagation or survival of the species are available through section 10(a) of the Act, until revised regulations are promulgated to incorporate the 1982 Amendments. Proposed regulations implementing this prohibition were published on July 6, 1983 (48 FR 31417), and these will be finalized following public comment. *Cereus eriophorus* var. *fragrans* does not occur on Federal lands; it is anticipated that few collecting permits for the fragrant prickly-apple will ever be requested.

In March 1973, all members of the family Cactaceae were included in Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The effect of this listing is that an export permit is required before international shipment may occur. Such shipment is strictly regulated by CITES member nations to prevent it from being detrimental to the survival of the species. If plants are certified as artificially propagated, international shipment requires export documents under CITES, and commercial shipments may be allowed.

Requests for copies of the regulations on plants, and inquiries regarding them, may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–1903).

Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, private interests, or any appropriate party concerning any aspect of these proposed rules are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Cereus eriophorus* var. *fragrans*;

(2) The location of any additional populations and the reasons why any habitat of this taxon should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range and distribution of this taxon; and

(4) Current or planned activities in the subject area and their possible impacts on the cactus.

Final promulgation of the regulations on *Cereus eriophorus* var. *fragrans* will take into consideration any comments and additional information received by the Service and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Regional Director, U.S. Fish and Wildlife Service, Richard B. Russell Federal Building, 75 Spring Street SW., Atlanta, Georgia 30303.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Literature Cited

Austin, D. F. 1984. Resume of the Florida taxa of *Cereus* (Cactaceae). Florida Scientist 47(1):68–72.

Austin, D. F., C. E. Nauman, and B. E. Tatje. 1980. Endangered and threatened plant species survey in southern Florida and the National Key Deer and Great White Heron National Wildlife Refuges, Monroe County, Florida. Final report on contract 14–16–004–78–105 to U.S. Fish and Wildlife Service

Benson, L. 1982. The Cacti of the U.S. and Canada. Stanford University Press, Stanford, California

Small, J. K. 1917. The tree cactus of the Florida Keys. J. N.Y. Bot. Garden 18:199–203.

Author

The primary author of this proposed rule is Dr. C. Kenneth Dodd, Jr., Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–1975; FTS 8–235–1975).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife. Fish. Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 reads as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751, Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*)

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order, under the Family Cactaceae to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
CACTACEAE-Cactus family						
*	*	*	*	*	*	*
Cereus eriophorus var. *fragrans*	Fragrant prickly-apple	U.S.A. (FL)	E		NA	NA
*	*	*	*	*	*	*

Dated: February 13, 1985.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85–5384 Filed 3–5–85; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Argyroxiphium sandwicense var. sandwicense ('ahinahina or Mauna Kea silversword)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine *Argyroxiphium sandwicense* var. *sandwicense* ('ahinahina or Mauna Kea silversword) to be an endangered species, under the authority contained in the Endangered Species Act of 1973, as amended. This plant is known only from one small population of 35 plants located on the east slope of Mauna Kea on the island of Hawaii, State of Hawaii. The lone population of this species is vulnerable to any substantial habitat alteration and faces the present threat of elimination through grazing and trampling by feral animals and the potential threat of damage by insect larvae. A determination that *Argyroxiphium sandwicense* var. *sandwicense* is an endangered species would implement the protection provided by the Endangered Species Act of 1973, as amended. The Service seeks data and comments from the public on this proposal and is requesting further information on the species' status.

DATES: Comments from all interested parties must be received by May 6, 1985. Public hearing requests must be received by April 22, 1985.

ADDRESSES: Comments and materials concerning this proposal should be sent to Regional Director, U.S. Fish and Wildlife Service, 500 NE. Multnomah Street, Portland, Oregon 97232. Comments and materials received will be available for public inspection, by appointment, during normal business hours, at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne White, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, 500 NE. Multnomah Street, Portland, Oregon 97232 (503/231–6131 or FTS 429–6131).

SUPPLEMENTARY INFORMATION:

Background

This taxon was first collected in 1825 by James Macrae and was described in 1836 by De Candolle. When Macrae visited Mauna Kea, several populations of this silversword were extant on the upper slopes of the volcano and the species presumably numbered thousands of individuals. The only known collections of Mauna Kea silversword after 1916 are from the Wailuku River population. In 1916, the taxon was abundant at this site. However, today only about 35 individuals remain.

There has been some disagreement concerning the proper taxonomic disposition of this taxon. *Argyroxiphium sandwicense* has sometimes been interpreted broadly to include plants of both the islands of Maui and Hawaii, without any recognition of infraspecific taxa. Alternatively, the Maui plants have been segregated at the specific level as *A. macrocephalum*. Recent research supports the acceptance of an inclusive concept of the species, with one variety (var. *sandwicense*) confined to the island of Hawaii and one (var. *macrocephalum*) native to Maui. Both taxa are known as 'ahinahina in Hawaiian.

The Hawaii taxon historically occupied the alpine slopes of the Mauna Kea volcanic dome, mostly above the tree line and including barren alpine desert areas above other vegetation. The only known extant population is found in the upper limits of *Sophora* woodland and the alpine scrub above the tree line along the Wailuku River drainage. The Wailuku River population is found on State lands in the Mauna Kea Forest Reserve and on Hawaiian Home Lands.

There are also historic reports of silverswords from Hualalai and Mauna Loa on the island of Hawaii. The plants on Hualalai may have been *A. sandwicense* var. *sandwicense*. No specimens are known from this population, which is no longer believed to be extant. It may have represented an undescribed and now-extinct taxon. Reports from Mauna Loa are believed to have been based on the related *A. kauense*, which is endemic to Mauna Loa.

Argyroxiphium sandwicense var. *sandwicense* produces a globe-shaped basal rosette of dagger-shaped leaves up to 1 foot long and usually less than ½ inch wide, the leaves are cloaked with silvery hairs. These rosetts grow for 5 to 15 years, reaching diameters of 2 feet or more before producing a rather narrow flowering stalk has numerous branches, each bearing a flowering head about 1 inch in diameter with pinkish ray flowers. After flowering, plants with a single rosette die. Individual rosettes of multiple-rosette plants also die after flowering.

On June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant taxa to be endangered species. General comments on the 1976 proposal were summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909).

Argyroxiphium macrocephalum was included in the June 16, 1976, proposal. It is apparent that this was mistaken, and that the intent was to indicate *A. sandwicense* in an inclusive sense.

comprising both the Maui and Hawaii taxa.

The Endangered Species Act Amendments of 1978 required that all proposals over two years old be withdrawn. A 1-year grace period was given to those proposals already more that 2 years old. Subsequently, on December 10, 1979, the Service published a notice of the withdrawal of the portion of the June 16, 1976, proposal that had not been made final, along with other proposals that had expired (44 FR 70796); this notice of withdrawal included *Argyroxiphium macrocephalum*.

Argyroxiphium sandwicense was included in the December 15, 1980 (45 FR 82479), updated review notice as a candidate species. *Argyroxiphium macrocephalum* was included in that notice as a tax on no longer under review because it was not considered to be a separate entity.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (to be codified at 50 CFR Part 424; see 49 FR 38900, October 1, 1984) set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Argyroxiphium sandwicense* DC. var. *sandwicense* ('ahinahina or Mauna Kea silversword) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The species historically was abundant on Mauna Kea from the 8,500 foot level to the 12,000 foot level. The activity of feral animals (goats, cattle, sheep, pigs, and horses) that were first introduced just before the 19th century has eliminated the silversword from the fragile upper zones of its former range and has reduced the species throughout the range to one known population of about 35 individuals. Feral animal populations have vastly altered and degraded the vegetation of Mauna Kea in general (Warner 1960). Direct results of animal activity have been mechanical damage of aerial and subterranean plant parts, consumption of plant material and dispersal of exotic plant species. Secondary effects include wind and water erosion of the thin soil mantle after it has been stripped of stabililzing vegetation.

A portion of the only known extant population has been fenced by the State of Hawaii; however, the exclosure has not been effective against them more recently introduced mouflon sheep, which are currently threatening the species' survival by grazing and browsing activities.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* In the past, unnecessarily large quantities of fruit have been removed from the extant population for propagation. The species is of ornamental interest and is threatened by collection for horticultural purposes. Entire flowering stalks have often been removed by individuals hoping to propagate this attractive species from seed. Propagation of silverswords is not easy as few flowers produce viable seed and seed germination is low (Kobayashi 1974).

C. *Disease or predation* The closely related Haleakala silversword is damaged by the predacious larvae of insects such as *Rhynchephestia rhabdotis* and *Tephritis cratericola*, which were found to have damaged a mean of 60 percent of the seeds produced. An insect thought to be the latter or a similar insect has been observed on the Mauna Kea silversword (Carr 1982). Plants are severely grazed by introduced herbivores even within the exclosure area.

D. *The inadequacy of existing regulatory mechanisms.* No regulatory mechanisms exist at the present time. Federal listing would automatically invoke listing under Hawaiian State law, which prohibits taking and encourages conservation by State government agencies.

E. *Other natural or manmade factors affecting its continued existence.* The extremely small size of the only known remaining population of the species threatens its reproductive capacity and has resulted in a reduced gene pool that may threaten its adaptive capacity. The species grows as a rosette for between 5 and 15 years before flowering. This low reproductive potential has been severely affected by reduction of the population size. Very few individuals produce a fruit crop in any one year. For 2 or more years no plants may bloom and some years 4 or 5 plants may bloom.

Concurrent with population decline in insect-pollinated species such as the silversword is often a loss of co-evolved pollinator species. The drastic alteration of the upper forest zone on Mauna Kea in general (Warner 1960) may have resulted in a parallel reduction of potential pollinators.

The Service has carefully assessed the best scientific information available regarding the past, present, and future threats faced by the species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Argyroxiphium sandwicense* var. *sandwicense* as endangered. This designation reflects the strong likelihood that, without the institution of appropriate conservation measures, the species is likely to become extinct throughout its range. A discussion of why critical habitat is not proposed to be designated is included in the "Critical Habitat" section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. As discussed under Factor B in the "Summary of Factors Affecting the Species," *Argyroxiphium sandwicense* var. *sandwicense* is threatened by taking, an activity difficult to control and not regulated by the Endangered Species Act with respect to plants, except for a prohibition against removal and reduction to possession of endangered plants from areas under Federal jurisdiction.

The species is known only from lands owned by the State of Hawaii and from Hawaiian Home Lands. The State is aware of the existence of the species and has taken preliminary steps for protection. Upon Federal listing the silversword would be placed upon the Hawaii State list, which prohibits taking and encourages conservation by State governmental agencies. Management for the survival and recovery of the species can be coordinated between the U.S. Fish and Wildlife Service and the State of Hawaii. No additional benefit would accrue to *Argyroxiphium sandwicense* var. *sandwicense* through critical habitat designation, and publication of critical habitat descriptions could make this species even more vulnerable.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State,

and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States, and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section (7)(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Currently, no activities to be authorized, funded, or carried out by Federal agencies are known to exist that would affect *Argyroxiphium sandwicense* var. *sandwicense*.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plant species. With respect to *Argyroxiphium sandwicense* var. *sandwicense*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for safe this species in interstate or foreign commerce. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. No trade in this species is known. It is anticipated that few trade permits involving this species would be requested.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to possession of endangered plant species from areas under Federal jurisdiction. The new prohibition would apply to *Argyroximphium sandwicense* var. *sandwicense* if it were found to occur on land under Federal jurisdiction. Permits for exceptions to this prohibition are available through section 10(a) of the Act, until revised regulations are promulgated to incorporate the 1982 Amendments. Proposed regulations implementing this new prohibition were published on July 8, 1983 (48 FR 31417), and it is anticipated that these will be made final following public comment. The only known extant propulation occurs on State of Hawaii lands. It is anticipated that few if any taking permits will be requested for the species. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–1903 or FTS 235–1903).

Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry or any other interested party concerning any aspect of these proposed rules are hereby solicited. Comments particularly are sought concerning the following:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Argyroxiphium sandwicense var. Sandwicense;*

(2) The location of any additional populations of this taxon;

(3) Additional information concerning the range and distribution of this species or indicating any area that should or should not be designated as critical habitat; and

(4) Current or planned acitives in the subject area and their possible impacts on this taxon.

Final promulgation of the regulation on *Argyroxiphium sandwicense* var. *sandwicense* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Regional Director, U.S. Fish and Wildlife Service, 500 NE. Multnomah Street, Portland, Oregon 97232.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Literature Cited

Carr, G. D. 1982. Status report on *Argyroxiphium sandwicense* var. *sandwicense*. Research Corporation of the University of Hawaii, under contract 14–16–001–79096 to the U.S. Fish and Wildlife Service. 41 pp.

Kobayashi, H. K. 1974. Preliminary investigations on insects affecting the reproductive stage of the silversword (*Argyroxiphium sandwicense* DC.) Compositae, Haleakala Crater, Maui, Hawaii. Proc. Haw. Ent. Soc. 21:397–402.

Warner, R. E. 1960. A forest dies on Mauna Kea. Pacific Discovery 13:6–14.

Author

The primary author of this proposed rule is Carol A. Wilson, U.S. Fish and Wildlife Service, 500 NE. Multnomah Street, Portland, Oregon 97232 (503/231–6131 or FTS 429–6131).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants, (agriculture).

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 reads as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order, under Asteraceae, to the List of Endangered and Threatened Plants.

§ 17.12 **Endangered and threatend plants.** (h) * * *

* * * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Asteraceae—aster family:						
* *	* *	*	*	*	*	*
Argyroxiphium sandwicense var. *sandwicense*.	'ahinahina (Mauna Kea silversword).	U.S.A. (HI)	E		NA	NA
* *	* *	*	*	*	*	*

Dated: February 21, 1985.

Susan E. Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85-5373 Filed 3-5-85; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposal To Determine Hymenoxys Texana To Be an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The service proposes to determine a plant, *Hymenoxys texana*, to be an endangered species. This plant occurs on both public and private land is Harris County, Texas. The three known populations are currently being threatened by housing and road development of the area. There is no current management plan for *Hymenoxys texana*, nor is there State or Federal protection. A final determination of *Hymenoxys texana* to be an endangered species will implement the protection provided by the Endangered Species Act of 1973, as amended. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by May 6, 1985. Public hearing requests must be received by April 22, 1985.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Comments and materials received will be available for public inspection during normal business hours, by appointment, at the Service's Regional Office of Endangered Species, 421 Gold Avenue, SW., Room 407, Albuquerque, New Mexico.

FOR FURTHER INFORMATION CONTACT: Peggy Olwell, Botanist, Endangered Species Staff, Albuquerque, New Mexico (see **ADDRESSES** above) (505-766-3972 or FTS 474-3972).

SUPPLEMENTARY INFORMATION:

Background

Hymenoxys texana was collected by F.W. Thurow in 1889 and 1890 in the vicinity of Hockley, Texas. Coulter and Rose (1891) described this new species as *Actinella texana*. Greene (1898) transferred this species to the genus *Picradenia*. Cockerell (1904) later transferred this species to the genus *Hymenoxys*. An additional specimen was also collected by Palmer around 1879–1880 from southwest Texas, between the Nueces and Frio Rivers on the Old San Antonio Road. However, recent field research has been unsuccessful in relocating this population (Mahler pers. comm. 1984). Three current populations of *Hymenoxys texana* have been located near Houston in Harris County, Texas (Mahler 1982). Two of the existing populations are located on private property in proximity to a current housing development area. However, one small population is located on public land adjacent to a county road right-of-way (Harris County, Department of Right-of-way pers. comm., 1984).

Hymenoxys texana is a member of the aster family. It is a small single stemmed or branching annual reaching up to 10 centimeters (cm) (3.9 inches) tall. The basal leaves are 4 to 5 millimeters (mm) (.16–.20 inches) broad with entire to toothed margins. Upper stem leaves become linear with entire margins. The flower heads are 4 to 6 mm (.16–.23 inch) tall, yellowish, with phyllaries partially indurate and keeled, in two series which are united basally. Flowering usually occurs in late March to early April. The three known populations of *Hymenoxys texana* occur in the northern part of the Gulf Coastal Prairie. They are found in poorly-drained swales or depressions in open grasslands with few other plants. The surrounding prairie vegetation is composed of plants measuring about 10 cm (3.9 inches) tall, with none being over 15 cm (5.9 inches) tall. These largely barren areas are sparsely vegetated with scattered individuals of an umbellifer (*Limnosciadium pumilum*) and a blue-green algae (*Nostoc* sp.) on the soil. The population biology and ecology of *Hymenoxys texana* are relatively unknown.

Section 12 of the Endangered Species Act of 1973 directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on December 15, 1974. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the report as a petition within the context of section 4(c)(2) of the Act, now incorporated in section 4(b)(3)(A), and of its intention thereby to review the status of the plant taxa named therein. On June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant taxa to be endangered species pursuant to section 4 of the Act. *Hymenoxys texana* was included in the 1974 Smithsonian report, the notice of July 1, 1975, and the proposal of June 16, 1976.

The Endangered Species Act Amendments of 1978 required that all proposals over 2 years old be withdrawn, although a 1-year grace period was given to proposals already over 2 years old. In the December 10, 1979, **Federal Register** (44 FR 70796), the Service published a notice of the withdrawal of the June 16, 1976, proposal, along with four other proposals that had expired. A revised notice for plants was published in the December 15, 1980, **Federal Register** (45 FR 82480) and included *Hymenoxys texana* as a category 1 species. Category 1 comprises taxa for which the Service has substantial information on biological vulnerability and threats to support the appropriateness of proposing to list the taxa as endangered or threatened species.

The Endangered Species Act Amendments of 1982 required that all petitions pending as of October 13, 1982, be treated as having been newly submitted on that date. The species listed in the December 15, 1980, notice of review were considered to be petitioned, and the deadline for a finding on those species, including *Hymenoxys texana*, was October 13, 1983. On October 13, 1983, and again on October 13, 1984, the petition finding was made that listing *Hymenoxys texana* was warranted but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act. Notice of the 1983 finding was published on January 20, 1984 (49 FR 2485). Such a finding

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requires a recycling of the petition, pursuant to section 4(b)(3)(C)(i) of the Act. Therefore, a new finding must be made; this proposed rule constitutes the finding that the petitioned action is warranted, and proposes to implement the action, in accordance with section 4(b)(3)(B)(ii) of the Act.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (to be codified at 50 CFR Part 424; see 49 FR 38900. October 1, 1984) set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Hymenoxys texana* (Coulter and Rose) Cockerell are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The main threat to *Hymenoxys texana* is habitat destruction. The three known populations occupy a total area of approximately 490 square meters (1600 square feet) and occupy in proximity to either a housing development or a road. They are especially vulnerable to accidential disturbance. A portion of one population has already been destroyed by the enlarging and paving of a county road. It is the policy of Harris County to update, maintain, and improve the county roads as needed (Harris County Services, pers. comm., 1984). Therefore, without proper protection planning, this small population is subject to possible elimination if any repairs, maintenance, or updating takes place in the near future. If current housing construction increases, as anticipated, along with road improvements, the few remaining populations could be severely damaged, or even destroyed.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Commercial trade in this plant is not known to exist, but potential exists for uncontrolled collecting and vandalism. The populations on private land would not be protected from taking by the Endangered Species Act, and all three populations are easily accessible.

C. *Disease or predation.* There is no known threat to this plant from disease or predation.

D. *The inadequacy of existing regulatory mechanisms.* Currently, *Hymenoxys texana* is not protected by either Federal or State laws or regulations.

E. *Other natural or manmade factors affecting its continued existence.* The limited distribution of approximately 490 square meters (1600 square feet) in Harris County and small number of known populations (3) make the existence of this species particularly precarious. It is especially precarious when future housing and road development, which could result in a significant loss in the numbers of individuals, are considered. Because of the low numbers of plants, there is a small gene pool, resulting in a possibly reduced ability of the species to tolerate stress.

The Service has carefully assessed the best scientific & commercial information available regarding the past, present, and future threats faced by this species in determining to proposed this rule. Based on this evaluation, the preferred action is to list *Hymenoxys texana* as endangered without critical habitat. Endangered status seems appropriate because portions of one population have been destroyed by the enlarging and paving of a county road, while the other two populations remain imminently threatened by a nearby housing development. The reasons for not designating critical habitat are discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time.

The Act does not protect endangered plants from taking or vandalism on lands that are not under Federal jurisdiction. The habitat of *Hymenoxys texana* is located along a highway and is easily accessible. Listing of a species, with attendant publicity, highlights its rarity and attractiveness to collectors. Determining critical habitat for this species would make it more vulnerable to taking by collectors and to vandalism. Therefore, it would not be prudent to determine critical habitat for *Hymenoxys texana* at this time. The location of populations of this plant could be brought to the attention of Harris County and other involved parties through regular communication channels. No net benefit would accrue from designating critical habitat for this species.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of its critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species, the responsible Federal agency must enter into formal consultation with the Service. However, *Hymenoxys texana* is not known to occur on Federal lands, and no Federal involvement with this species is currently known or expected.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plant species. With respect to *Hymenoxys texana*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell

or offer for sale this species in interstate or foreign commerce. Certain exceptions can apply to agents of the Service and state conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued since the species is not common in cultivation or in the wild.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to possession of endangered plant species from areas under Federal jurisdiction. The new prohibition would apply to *Hymenoxys texana*. Permits for exceptions to this prohibition are available through section 10(a) of the Act, until revised regulations are promulgated to incorporate the 1982 Amendments. Proposed regulations implementing this prohibition were published on July 8, 1983 (48 FR 31417), and it is anticipated that these will be made final following public comment. *Hymenoxys texana* occurs on private land and, at present, no populations are known to exist on Federal land. It is expected that few collecting permits for the species would ever be requested. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–1903 or FTS 235–1903).

Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commerical trade, or other relevant data concerning any threat (or lack thereof) to *Hymenoxys texana*;

(2) The location of any additional populations of *Hymenoxys texana* and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject area and their possible impacts on *Hymenoxys texana*.

Final promulgation of the regulation on *Hymenoxys texana* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Regional Director (see ADDRESSES section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Literature Cited

Cockerell, T.D.A. 1904. The North American species of *Hymenoxys*. Bulletin of Torrey Botanical Club 31(9):461–509.

Coulter, J.M., and J.N. Rose. 1891. *Actinella (Hymenoxys) texana*, n. sp. Botanical Gazette 16:27–28.

Greene, E.L. 1898. Studies in the Compositae VII. Pittonia 3:264–298.

Mahler, W.F. 1982. Status report on *Hymenoxys texana*. U.S. Fish and Wildlife Service, Albuquerque, New Mexico. 10 pp.

Author

The primary author of this proposed rule is Peggy Olwell, Endangered Species Staff, U.S. Fish and Wildlife Service, Department of the Interior, P.O. Box 1306, Albuquerque, New Mexico 87103 (505/766–3972 or FTS 474–3972). The preliminary listing package was provided by Catherine Coats, Herbarium, Southern Methodist University, Dallas, Texas 75275. The editor is LaVerne Smith, Office of Endangered Species, Washington, D.C. 20240 (703/235–1975 or FTS 235–1975). Status information was provided by Dr. W.F. Mahler, Herbarium, Southern Methodist University, Dallas, Texas 75275 (214/692–2257).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 reads as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*)

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under the family Asteraceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Asteraceae—Aster family						
*	*	*	*	*	*	*
Hymenoxys texana	No common name	U.S.A. (TX)	E		NA	NA
*	*	*	*	*	*	*

Dated: February 8, 1985.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85–5382 Filed 3–5–85; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 50, No. 44
Wednesday, March 6, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Programmatic Memorandum of Agreement Regarding the Management of Historic Properties That Will Be Affected by the U.S. Army Corps of Engineers Red River Waterway Projects

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice.

SUMMARY: The Advisory Council on Historic Preservation proposes to execute a Programmatic Memorandum of Agreement pursuant to § 800.8 of the Council's regulations, "Protection of Historic and Cultural Properties" (36 CFR Part 800), with the U.S. Army, Corps of Engineers, Vicksburg District and the State Historic Preservation Officers of Arkansas and Louisiana providing for the treatment, protection and management of historic properties that will be affected by the Corps of Engineers Red River Waterway, Mississippi River to Shreveport, Red River Emergency Bank Protection, and Red River Levees and Bank Stabilization Below Denison Dam projects. The proposed Programmatic Memorandum of Agreement will establish mechanisms by which historic and cultural properties will be identified, evaluated, treated or protected in order to meet the requirements of section 106 of the National Historic Preservation Act (16 U.S.C. 470f).

Comments Due: April 5, 1985.

FOR FURTHER INFORMATION CONTACT: Executive Director, Advisory Council on Historic Preservation, Western Division of Project Review, 730 Simms Street, Room 450, Golden, Colorado 80401, telephone (303) 236–2682.

Dated: February 28, 1985.

Robert R. Garvey, Jr.,

Executive Director.

[FR Doc. 85–5347 Filed 3–5–85; 8:45 am]

BILLING CODE 4310–10–M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Forms Under Review by Office of Management and Budget

March 1, 1985.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Office, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC. 20250, (202) 447–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC. 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

• Agricultural Marketing Service
Limes Grown in Florida under Marketing Order No. 911
Every four years
Farms; Businesses or other for-profit; Small businesses or organizations; 648 responses; 313 hours; not applicable under 3504(h)
William J. Doyle (202) 447–5975

• Foreign Agricultural Service
Certificate of Quota Eligibility
On occasion
Businesses or other for-profit; 600 responses; 100 hours; not applicable under 3504(h)
Carol Brick-Turin (202) 447–6939

Revision

• Agricultural Marketing Service
Marketing Order 991—Hops of Domestic Production
Annually
Farms; Businesses or other for-profit; 3,006 responses; 220 hours; not applicable under 3504(h)
Robert R. Boersma (202) 477–2256

• Economic Research Service
Cost of producing sugarcane and processing sugarcane and sugarbeets
On occasion
Farms; Small businesses or organizations; 187 responses; 187 hours; not applicable under 3504(h)
Ken Baum (202) 447–4190.

Reinstatement

• Agricultural Stabilization and Conservation Service
Payer's Request for Identification Numbers
CCC–343
On occasion
Individuals or households; 3,000 responses; 1,500 hours; not applicable under 3504(h)
Karl V. Choice (202) 447–4541.

• Forest Service
Timber Sale Bid Forms
FS 2400–14 and FS 2400–42a
On occasion
Business or other for-profit; Small businesses or organizations; 30,000 responses; 5,000 hours; not applicable under 3504(h)
Lloyd Olson (202) 475–3758.

Larry K. Roberson,

Acting Departmental Clearance Officer.

[FR Doc. 85–5398 Filed 3–5–85; 8:45 am]

BILLING CODE 3410–01–M

Food and Nutrition Service

Level of Donated-Food Assistance or Cash in Lieu Thereof for Nutrition Programs for the Elderly; Fiscal Year 1985

Correction

In FR Doc. 85–4272 beginning on page 7203 in the issue of Thursday, February 21, 1985, make the following corrections:

1. On page 7203, third column, second complete paragraph, last line, "to" should read "of".

2. On page 7204, first column, first paragraph, twelfth line, "a" should read "at".

BILLING CODE 1505–01–M

DEPARTMENT OF COMMERCE

Office of the Secretary

Privacy Act of 1974

AGENCY: Office of the Secretary, Commerce.

ACTION: Revision of systems of records to provide for disclosures to debt collection agencies.

SUMMARY: This notice identifies the Department of Commerce systems of records subject to the Privacy Act which will be used in accordance with the Debt Collection Act of 1982 (Pub. L. 97–365) to provide information to private collection contractors retained to collect delinquent Government debts. The information will be furnished based on the revised routine uses for nine systems of records which contain financial data. The systems of records involved are: DEPT–1, DEPT–2, DEPT–9, DEPT–12, DEPT–13, DEPT–16, DEPT–17, DEPT–18, and NTIS–1.

Except for the addition of the provision for disclosures to debt collection agencies, all other changes being published are editorial in nature, and reflect organizational changes and other minor administrative revisions which have occurred since the publication of the notices in the **Federal Register** on December 31, 1981 (46 FR 63498). The nine revised systems notices are published in their entirety below.

EFFECTIVE DATE: The proposed new routine uses will become effective, without further notice, 30 days from the date of this publication, unless comments dictate otherwise.

ADDRESS: Written comments on the poposed new routine use may be sent or delivered to: Information Management Division, Attention: Mrs. Geraldine LeBoo, Office of Information Resources Management, Department of Commerce, Room 6622, Herbert C. Hoover Building, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Mrs. Geraldine LeBoo, Information Management Division, (202)–377–4217.

Dated: February 28, 1985.

Marilyn S. McLennan

Chief, Information Management Division, Office of Information Resources Management.

COMMERCE/DEPT–1

SYSTEM NAME:

Attendance, Leave, and Payroll Records of Employees and Certain Other Persons—COMMERCE/DEPT–1.

SYSTEM LOCATION:

For Employees of Departmental Offices, BEA Census, EDA, ITA, PTO, MBDA, NOAA, NTIA, NTIS, USTTA: Management Service Center, U.S. Department of Commerce, Caller Service No. 6025, Germantown, Maryland 20874.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Commerce Department employees and certain other persons as categorized by organizational component above.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, date of birth, social security number and employee number, service computation date, grade, step, and salary; organization (code), retirement or FICA data as applicable; Federal, State, and local tax deductions, as appropriate; IRS tax lien data; savings bond and charity deductions; regular and optional Government life insurance deduction(s), health insurance deduction and plan of code; cash award data; jury duty data; military leave data; pay differentials; union dues deductions; allotments, by type and amount; financial institution code and employee account number, type of account; leave status and leave data of all types (including annual, compensatory, jury duty, maternity, military, retirement disability, sick, transferred, absence without leave, and without pay); time and attendance records, including number of regular, overtime, holiday, Sunday, and other hours worked; pay period number and ending date of living allowances; mailing address, co-owner and/or beneficiary of bonds, marital status and number of dependents; and "Notification of Personnel Action". The individual records listed herein are included only as pertinent or applicable to the individual employee.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 5 U.S.C., Title 31 U.S.C. 66a, 492, Title 44 U.S.C. 3101, 3309.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Transmittal of data to U.S. Treasury and employee-designated financial institutions to effect issuance of paycheck to employees and distribution of pay according to employee directions for savings bonds, allotments, alimony, child support, and other authorized purposes.

Reporting: Tax withholding to Internal Revenue Service and appropriate State and local taxing authorities; FICA deductions to the Social Security Administration; dues deductions to labor unions; withholdings for health and life insurance to the insurance carriers and the U.S. Office of Personnel Management; charity contribution deductions to agents of charitable institutions; annual W–2 statements to taxing authorities and the individuals; wage, employment, and separation information to state unemployment compensation agencies, to the U.S. Department of Labor to determine eligibility for unemployment compensation, and to housing authorities for low-cost housing applications; and NOAA Corps data to U.S. Office of Personnel Management for preparation of statistical materials. Disclosure of information from this system of records may also be made to commercial contractors (debt collection agencies) for the purpose of collection delinquent debts as authorized by the Debt Collection Act (31 U.S.C. 3718). Also, see routine use paragraph 1–5 and 8–13 of Prefatory Statement.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a (b)(12): Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f), and the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Both manual and machine-readable.

RETRIEVABILITY:

By name and/or employee or social security number.

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SAFEGUARDS:

Physical, technical and administrative security is maintained, with all storage equipment and/or rooms locked when not in use. Admittance, when open, is restricted to authorized personnel only. All payroll personnel and computer operators and programmers are instructed and cautioned on the confidentiality of the records.

RETENTION AND DISPOSAL:

Retained on site until after GAO audit, then disposed of, or transferred either to Federal Records Storage Centers in accordance with the fiscal records program approval by GAO, as appropriate, or general Record Schedules of GSA.

SYSTEM MANAGER(S) AND ADDRESS:

Management Service Center, U.S. Department of Commerce, Caller Service No. 6025, Germantown, Maryland 20874.

NOTIFICATION PROCEDURES:

For BEA records, information may be obtained from: Chief, Mangement and Organization Branch, BEA, Tower Building, 1401 K Street, NW., Washington, D.C. 20230; For Census records, information may be obtained from: Associate Director for Management Services, Bureau of the Census, Federal Building 3, Washington, D.C. 20233;

For EDA records, information may be obtained from: Director, Office of Public Affairs, EDA, U.S. Department of Commerce, Washington, D.C. 20230;

For ITA record, information may be obtained from: Director, Office of Management and Systems, ITA, U.S. Department of Commerce, Washington, D.C. 20230;

For MBDA records, information may be obtained from: Privacy Officer, Office of Chief Counsel, MBDA, U.S. Department of Commrece, Washington, D.C. 20230;

For NBS and NTIS records, information may be obtained from: Deputy Director for Information Systems, Room A1105, Administration, Building, National Bureau of Standards, Gaithersburg, Maryland 20899;

For NOAA records, information may be obtained from: Director, Administrative and Technical Services, National Oceanic and Atmospheric Administration, Room 4213 Herbert C. Hoover Building, 14th and Constitution Avenue, NW., Washington, D.C. 20230;

For NTIA records, information may be obtained from: Privacy Officer, NTIA, U.S. Department of Commerce, Washington, D.C. 20230;

For PTO records, information may be obtained from: Assistant Commissioner for Administration, U.S. Patent and Trademark Office, Washington, D.C. 20231;

For USTTA records, information may be obtained from: Director, Office of Administration, USTTA, U.S. Department of Commerce, Washington, D.C. 20230;

For all other records, information may be obtained from: Chief, Information Management Divsion, Office of Information Resources Management, U.S. Department of Commerce, Washington, D.C. 20230.

Requester should provide name, social security number, and time or organizational unit of employment pursuant to the inquiry provisions of the Department's Rules which appear in 15 CFR Part 4b.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to: Same address of the desired location as stated in the Notification section above.

CONTESTING RECORD PROCEDURES:

The Department's rules for access, for contesting contents, and appealing initial determinations by the individual concerned appear in 15 CFR Part 4b. Use above address for desired location.

RECORD SOURCE CATEGORIES:

Subject individuals, those authorized by the individual to furnish information, supervisors, timekeepers, official personnel records, and IRS.

COMMERCE/DEPT-2

SYSTEM NAME:

Accounts Receivable—COMMERCE/DEPT–2.

SYSTEM LOCATION:

a. For Departmental offices, BEA ITA, USTTA, MBDA, Office of Financial Operations and Travel Management, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

b. For NBS and NTIA: National Bureau of Standards, Office of the Comptroller, Administration Building, Gaithersburg, Maryland 20899.

c. For NOAA: Office of Budget and Finance, National Oceanic and Atmospheric Administration, Room 6811 Herbert C. Hoover Building, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

d. For PTO: Office of Finance, U.S. Patent and Trademark Office, 2021 Jefferson Davis Highway, Arlington, Virginia 22202.

e. For CENSUS: Finance Division, Bureau of the Census Federal Building 3, Washington, D.C. 20233.

f. For NTIS: Accounting Division, National Technical Information Service, Springfield, Virginia 22161.

g. For EDA: Accounting Division, Economic Development Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Debtors owing money to organizational components identified in a. through g. including employees, former employees, business firms, general public, and institutions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name and address; amount owed, and service, overpayment or other accounting therefor, invoice number, if any.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 5701–09; 31 U.S.C. 951–953, 4 CFR 102.4, FPMR 101–7; Treasury Fiscal Requirements Manual.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Billing debtors, reporting delinquent debts to credit bureaus, reporting to Office of Personnel Management for liquidating debts from retirement and other benefits. Disclosure of information from this system of records may also be made to commercial contractors (debt collection agencies) for the purpose of collecting delinquent debts as authorized by the Debt Collection Act (31 U.S.C. 3718). Also , see routine uses 1–5 and 8–13 of the Prefatory Statement.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f); and the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Both manual and machine-readable records.

RETRIEVABILITY:

By name, and invoice number as appropriate.

SAFEGUARDS:

Physical security, handling by authorized personnel only.

RETENTION AND DISPOSAL:

Retained until payment is received and account is audited, then disposed of in accordance with Records Control Schedule.

SYSTEM MANAGER(S) AND ADDRESS:

For records at location a.: Director, Office of Financial Operations and Travel Management, U.S. Department of Commerce, Washington, D.C. 20230.

For records at location b.: Comptroller, Office of the Comptroller, National Bureau of Standards, Administration Building, Gaithersburg, Maryland 20899.

For records at location c.: Director, Office of Budget and Finance, NOAA, Room 6811, Herbert C. Building, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

For records at location d.: Director, Office of Finance, U.S. Patent and Trademark Office, Washington, D.C. 20231.

For records at location e.: Associate Director for Administration, Bureau of the Census, Federal Building 3, Washington, D.C. 20233.

For records at location f.: Chief, Accounting Division, National Technical Information Service, Springfield, Virginia 22161.

For records at location g.: Chief, Accounting Division, Economic Development Administration, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, D.C. 20230.

NOTIFICATION PROCEDURE:

For ITA records at location a., information may be obtained from Director, Office of Management and Systems, ITA, U.S. Department of Commerce, Washington, D.C. 20230;

For USTTA records at location a., information may be obtained from Director, Office of Administration, USTTA, U.S. Department of Commerce, Washington, D.C. 20230; and

For all records at location a., information may be obtained from: Chief, Information Management Division, Office of Information Resources Management, U.S. Department of Commerce, Washington, D.C. 20230;

For NBS records at location b., information may be obtained from: Deputy Director of Administration, Room A1105, Administration Building, National Bureau of Standards, Gaithersburg, Maryland 20899.

For NTIA records at location b, information may be obtained from: Privacy Officer, NTIA, U.S. Department of Commerce, Washington, D.C. 20230;

For records at location c., information may be obtained from: Director, Administrative and Technical Services, National Oceanic and Atmospheric Administration, Room 4213 Herbert C. Hoover Building, 14th and Constitution Avenue, NW., Washington, D.C. 20230;

For records at location d., information may be obtained from: Assistant Commissioner for Administration, U.S. Patent and Trademark Office, Washington, D.C. 20231; and

For records at location e., information may be obtained from: Associate Director for Administration, Bureau of the Census, Federal Building 3, Washington, D.C. 20233.

For records at location f., information may be obtained from: Associate Director for Financial and Administrative Management, National Technical Information Service, Springfield, Virginia 22161.

For records at location g., information may be obtained from: Director, Office of Public Affairs, EDA, U.S. Department of Commerce, Washington, D.C. 20230.

Requester should provide name and address, and invoice number as appropriate, pursuant to the inquiry provisions of the Department's Rules which appear in 15 CFR Part 4b.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to: Same address as stated in the Notification section above.

CONTESTING RECORD PROCEDURES:

The Department's rules for access, for contesting contents, and appealing initial determinations by the individual concerned appear in 15 CFR Part 4b. Use above address.

RECORD SOURCE CATEGORIES:

Subject individual, those authorized by the individual to furnish information, contracting officer as appropriate, accounting records.

COMMERCE/DEPT-9

SYSTEM NAME:

Travel Records (Domestic and Foreign) of Employees and Certain Other Persons—COMMERCE/DEPT-9.

SYSTEM LOCATION:

a. For employees of Departmental Offices, BEA, Census (for travel paid on or after July 1, 1982), EDA, ITA, MBDA, NBS, NOAA (except employees of NOAA regional offices listed in c. below), NTIA, NTIS, PTO, USTTA, members of DOC Advisory Committees and private citizens invited to visit the Department: Management Service Center, U.S. Department of Commerce, Caller Service No. 6025, Germantown, Maryland 20874.

b. For employees of CENSUS (for travel paid prior to July 1, 1982); Finance Division, Bureau of the Census, Federal Building 3, Washington, D.C. 20233 and the following Regional Offices for intermittent CENSUS employees: 1365 Peachtree Streeet, NE., Atlanta, Georgia 30309; 441 Stuart Street, Boston, Massachusetts 02116; 230 South Tryon Street, Charlotte, North Carolina 28202; 55 East Jackson Boulevard, Chicago, Illinois 60604; 1100 Commerce Street, Dallas, Texas 75242; 7655 W. Mississippi Avenue (P.O. Box 26750), Denver, Colorado 80226; 231 W. Lafayette, Detroit, Michigan 48226; One Gateway Center, 4th and State Streets, Kansas City, Kansas 66101; 11777 San Vicente Boulevard, Los Angeles, California 90049; 26 Federal Plaza, New York City, New York 10278; 600 Arch Street, Philadelphia, Pennsylvania 19106; and 1700 Westlake Avenue, Seattle, Washington 98109.

For employees of NOAA regional offices: DOC/NOAA/EASC, RAS/EC5, 235 Monticello Avenue, Norfolk, Virginia 23510; DOC/NOAA/MASC, RAS/MC7 Room 5524, 325 Broadway, Boulder, Colorado 80303; DOC/NOAA/WASC, RAS/WC5, Operations Building, 7600 Sand Point Way, NE., Seattle, Washington 98115; and DOC/NOAA/CASC, RAS/CC5, Federal Building, Room 1758, 601 E. 12th Street, Kansas City, Missouri 64106.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees, Advisory Committee Members, and official guests of the Department.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, social security number, destination, itinerary, mode and purpose of travel; dates; expenses including amounts advanced (if any), amounts claimed, and amounts reimbursed; travel orders, travel vouchers, receipts, and passport record card.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Budget and Accounting Act of 1921; Accounting and Auditing Act of 1950; and Federal Claim Collection Act of 1966.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Transmittal to U.S. Treasury for payment, to State Department for passports. Disclosure of information from this system of records may also be made to commercial contractors (debt collection agencies) for the purpose of collecting delinquent debts as authorized by the Debt Collection Act (31 U.S.C. 3718). Also, see paragraphs 1–5 and 9–13 of the Prefatory Statement.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made from this system to "consumer reporting agencies" as defined in their Fair Credit Reporting Act (15 U.S.C. 1681a(f)), and the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual and machine-readable.

RETRIEVABILITY:

Filed by name, social security number, or travel order number.

SAFEGUARDS:

Records are located in lockable metal file cabinets or in secured rooms or secured premises with access limited to those whose official duties require access.

RETENTION AND DISPOSAL:

Retained according to GSA Federal Travel Regulations, and then disposed of according to unit's Records Control Schedule.

SYSTEM MANAGERS(S) AND ADDRESS: For records at location a., Director, Management Service Center, U.S. Department of Commerce, Caller Service No. 6025, Germantown, Maryland 20874.

For records at location b., Associate Director for Administration, Bureau of the Census, Federal Building 3, Washington, D.C. 20233 and the Director of the particular Regional Office listed above.

NOTIFICATION PROCEDURE:

For BEA records at location a., information may be obtained from: Chief, Management and Organization Branch, BEA Tower Building, 1401 K Street, NW., Washington, D.C. 20230;

For Census records at location a. and b., information may be obtained from: Associate Director for Administration, Bureau of the Census, Federal Building 3, Washington, D.C. 20233;

For EDA records at location a., information may be obtained from: Director, Office of Public Affairs, EDA, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C. 20230;

For ITA records at location a., information may be obtained from: Director, Office of Management and Systems, ITA, U.S. Department of Commerce, Washington, D.C. 20230;

For MBDA records at location a., information may be obtained from: Privacy Officer, Office of Chief Counsel, MBDA, U.S. Department of Commerce, Washington, D.C. 20230;

For NBS records at location a., information may be obtained from: Deputy Director of Administration, Room A1105, Administration Building, National Bureau of Standards, Washington, D.C. 20234.

For NOAA records at locations a. and c., information may be obtained from: Director, Administrative and Technical Services, National Oceanic and Atmospheric Administration, Room 4213, Herbert C. Hoover Building, 14th and Constitution Avenue, NW., Washington, D.C. 20230;

For NTIA records at location a., information may be obtained from: Privacy Officer NTIA, U.S. Department of Commerce, Washington, D.C. 20504.

For PTO records at location a., information may be obtained from: Assistant Commissioner for Administration, U.S. Patent and Trademark Office, Washington, D.C. 20231.

For USTTA records at location a., information may be obtained from: Director, Office of Administration, USTTA, U.S. Department of Commerce, Washington, D.C. 20230; and

For all other records at location a., information may be obtained from: Chief, Information Management Division, Office of Information Resources Management, U.S. Department of Commerce, Washington, D.C. 20230.

Requester should provide name, travel order number, if known, and date of travel, in accordance with the inquiry provisions of the Department's rules which appear in 15 CFR Part 4b.

RECORD ACCESS PROCEDURES:

Requests should be address to: Same address as stated in the Notification section above.

CONTESTING RECORD PROCEDURES:

The Department's rules for access, for contesting contents, and appealing initial determinations by the individual concerned appear in 15 CFR Part 4b. Use above address.

RECORD SOURCE CATEGORIES:

Subject individual, those authorized by the individual to furnish information, supervisors, and finance (or accounting) office standard references.

COMMERCE/DEPT-12

SYSTEM NAME:

Investigative and Inspection Records—COMMERCE/DEPT-12.

SYSTEM LOCATION:

Office of Inspector General, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

a. Current and former employees of the Department of Commerce and such other persons whose association with the Department relates to the alleged violations of the Department's rules of conduct, the Civil Service merit system, or any other criminal or civil misconduct, which affects the integrity or facilities of the Department of Commerce. The names of individuals and the files in their names may be: (1) Received by referral; or (2) initiated at the discretion of the Inspector General in the conduct of assigned duties.

b. Individuals who are: Witnesses; complainants; confidential or nonconfidential informants; suspects; defendants, parties who have been identified by the Office of the Inspector General or by other agencies, constituent units of the Department of Commerce and members of the general public in connection with the authorized functions of the Inspector General.

c. Current and former Commerce officials who are the subject of investigations initiated and conducted by the Office of the Inspector General.

CATEGORIES OF RECORDS IN THE SYSTEM:

Letters, memoranda, and other documents citing complaints of alleged criminal or administrative misconduct. Investigative files which include: Reports of investigations to resolve allegations of misconduct or violations of law with related exhibits, statements, affidavits or records obtained during investigations; prior criminal or noncriminal records of individuals as they relate to the investigations; reports of actions taken by management personnel regarding misconduct; and reports from or to other law enforcement bodies.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Inspector General Act of 1978 (Pub. L. 95–462); Executive Orders 12065 and 10450; 44 U.S.C. 3101; 28 U.S.C. 535; 18 U.S.C. including Sections 201, 202, 205, 207, 208, 209, 210, 211, 219, 285, 287, 508, 595, 600, 602, 603, 604, 607, 608, 641, 643, 653, 654, 798, 1001, 1719, 1905, 1913, 1917, 1918, 2071, 2073; 5 U.S.C. including Sections 301, 2302, 7311, 7324, 7352; 15 U.S.C. 1512; 31 U.S.C. 638(a)(c).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Routine use for law enforcement purposes will include disclosure to the appropriate agency, whether Federal, State, local, foreign, or international, charged with the responsibility for investigating or prosecuting a violation of any law, rule, regulation or order. Routine use for law enforcement purposes will also include disclosure to individuals or to agencies, whether Federal, State, local, foreign or international, when necessary to further the ends of an investigation. Disclosure of information from this system of records may also be made to commercial contractors (debt collection agencies) for the purpose of collecting delinquent debts as authorized by the Debt Collection Act (31 U.S.C. 3718). See routine use paragraphs 1–5 and 8–13 in Prefatory Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders; and automated storage media.

RETRIEVABILITY:

Indices are alphabetical, cross referenced to file number.

SAFEGUARDS:

Locked cabinets in secured rooms or in guarded building, and used only by authorized screened personnel.

RETENTION AND DISPOSAL:

When cases are closed records are disposed of in accordance with the unit's Records Control Schedule.

SYSTEM MANAGER(S) AND ADDRESS:

Counsel to the Inspector General, Office of Inspector General, U.S. Department of Commerce, Washington, D.C. 20230.

NOTIFICATION PROCEDURE:

Information may be obtained from: Counsel to the Inspector General, Office of the Inspector General, U.S. Department of Commerce, Washington, D.C. 20230. Requester should provide name and association with the Department, if any, pursuant to the inquiry provisions of the Department's rules which appear in 15 CFR Part 4b.

RECORD ACCESS PROCEDURE:

Requests from individuals should be addressed to: Same address as stated in the Notification selection above.

CONTESTING RECORD PROCEDURES:

The Department's rules for access, for contesting contents, and appealing initial determinations by the individual concerned appear in 15 CFR Part 4b. Use above address.

RECORD SOURCE CATEGORIES:

Subject individuals: Office of Personnel Management, FBI and other Federal, State, local, foreign and international agencies; individuals and organizations that have pertinent knowledge about the subject; and those authorized by the individual to furnish information.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Under 5 U.S.C. 552a(j)(2), the head of any agency may exempt any system of records within the agency from certain provisions of the Privacy Act of 1974, if the agency or component that maintains the system performs as its principal function any activities pertaining to the enforcement of criminal laws. The Inspector General Act of 1978, Pub. L. 95–462, mandates the Inspector General to recommend policies for, and to conduct, supervise and coordinate activities in the Department and between the Department and other Federal, State and local government agencies with respect to all matters relating to the prevention and detection of fraud in programs and operations administered or financed by the Department, and to the identification and prosecution of participants in such fraud. Under the Act, whenever the Inspector General has reasonable grounds to believe there has been a violation of Federal criminal law, the Inspector General must report the matter expeditiously to the Attorney General. In addition to these principal functions pertaining to the enforcement of criminal laws, the Inspector General may receive and investigate complaints on information from various sources concerning the possible existence of activities constituting violations of law, rules or regulations, or mismanagement, gross waste of funds, abuses of authority or substantial and specific danger to the public health and safety. The provisions of the Privacy Act of 1974 from which exemptions are claimed under 5 U.S.C. 552a(j)(2) are as follows: 5 U.S.C. 552a(c) (3) and (4); 5 U.S.C. 552a(d); 5 U.S.C. 552a(e) (1), (2) and (3); 5 U.S.C. 552a(e)(4) (G), (H), and (I); 5 U.S.C. 552a(e) (5) and (8); 5 U.S.C. 552a(f); 5 U.S.C. 552a(g).

To the extent that the exemption under 5 U.S.C. 552a(j)(2) is held to be invalid, then the exemptions under 5 U.S.C. 552a (k)(1), (k)(2), and (k)(5) are claimed for all material which meets the criteria of these three subsections.

Provisions of the Privacy Act of 1974 from which exemptions are claimed under 5 U.S.C. 552a (k)(1), (k)(2) and (k)(5) are as follows: 5 U.S.C. 552a(c)(3); 5 U.S.C. 552a(d); 5 U.S.C. 552a(e)(1); 5 U.S.C. 552a(e)(4) (G), (H), and (I); 5 U.S.C. 552a(f).

Reasons for exemptions: In general, the exemption of this information and material is necessary in order to accomplish the law enforcement function of the Office of Inspector General, to prevent disclosure of classified information as required by Executive Order 12065, to prevent subjects of investigations from frustrating the investigatory process, to prevent the disclosure of investigative techniques, to fulfill commitments made to protect the confidentiality of sources, to maintain access to sources of information, and to avoid endangering these sources and law enforcement personnel. Detailed reasons follow: Reasons for exemptions under 5 U.S.C. 552a (j)(2) and (k)(2):

(1) 5 U.S.C. 552a(C)(3) requires that upon request, an agency must give an individual named in a record an accounting which reflects the disclosure of the record to other persons or agencies. This accounting must state the date, nature and purpose of each disclosure of the record and the name and address of the recipient. The application of this provision would alert subjects of an investigation to the existence of the investigation and that such persons are subjects of that investigation. Since release of such information to subjects of an investigation would provide the subjects with significant information concerning the nature of the investigation, it could result in the alerting or destruction of documentary evidence, improper influencing of witnesses, and other activities that could impede or compromise the investigation.

(2) 5 U.S.C. 552a (c)(4), (d), (e)(4) (G) and (H), (f) and (g) relate to an individual's right to be notified of the existence of records pertaining to such individual; requirements for identifying an individual who requests access to records; the agency procedures relating

to access to records and the contest of information contained in such records; and the civil remedies available to the individual in the event of adverse determinations by an agency concerning access to or amendment of information contained in records systems. This system is exempt from the foregoing provisions for the following reasons: To notify an individual at the individual's request of the existence of records in an investigative file pertaining to such individual, or to grant access to an investigative file could interfere with investigative and enforcement proceedings, deprive co-defendants of a right to a fair trial or other impartial adjudication, constitute an unwarranted invasion of personal privacy of others, disclose the identity or confidential sources, reveal confidential information supplied by these sources and disclose investigative techniques and procedures.

(3) 5 U.S.C. 552a(e)(4)(I) requires the publication of the categories of sources of records in each system of records. The application of this provision could disclose investigative techniques and procedures and cause sources to refrain from giving such information because of fear or reprisal, or fear of breach of promises of anonymity and confidentiality. This would compromise the ability to conduct investigations, and to identify, detect, and apprehend violators.

(4) 5 U.S.C. 552a(e)(I) requires each agency to maintain in its records only such information about an individual that is relevant and necessary to accomplish a purpose of the agency required by statute or Executive Order. An exemption from the foregoing is needed:

a. Because it is not possible to detect relevance or necessity of specific information in the early stages of a criminal or other investigation.

b. Relevance and necessity are questions of judgment and timing. What appears relevant and necessary when collected may ultimately be determined to be unnecessary. It is only after the information is evaluated that the relevance and necessity of such information can be established.

c. In any investigation the Inspector General may obtain information concerning the violations of laws other than those within the scope of his jurisdiction. In the interest of effective law enforcement, the Inspector General should retain this information as it may aid in establishing patterns of criminal activity, and provide leads for those law enforcement agencies charged with enforcing other segments of criminal or civil law.

d. In interviewing persons, or obtaining other forms of evidence during an investigation, information may be supplied to the investigator which related to matters incidental to the main purpose of the investigation but which may relate to matters under the investigative jurisdiction of another agency. Such information cannot readily be segregated.

(5) 5 U.S.C. 552(e)(2) requires an agency to collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privilege under Federal programs, The application of the provision would impair investigations of illegal acts, violations of the rules of conduct, merit system and any other misconduct of the following reasons:

a. In certain instances the subject of an investigation cannot be required to supply information to investigators. In those instances, information relating to a subject's illegal acts, violations of rules of conduct, or any other misconduct, etc., must be obtained from other sources.

b. Most information colected about an individual under investigation is obtained from third parties such as witnesses and informers. It is not feasible to rely upon the subject of the investigation as a source for information regarding his activities.

c. The subject of an investigation will be alerted to the existence of an investigation if any attempt is made to obtain information from subject. This could afford the individual the opportunity to conceal any criminal activities to avoid apprehension.

d. In any investigation, it is necessary to obtain evidence from a variety of sources other than the subject of the investigation in order to verify the evidence necessary for successful litigation.

(6) 5 U.S.C. 552(a)(e)(3) requires that an agency must inform the subject of an investigation who is asked to supply information of:

a. The authority under which the information is sought and whether disclosure of the information is mandatory or voluntary,

b. The purposes for which the information is intended to be used,

c. The routine uses which may be made of the information, and

d. The effects on the subject, if any, of not providing the requested information. The reasons for exempting this system of records from the foregoing provision are as follows:

(i) The disclosure to the subject of the investigation as stated in (b) above would provide the subject with substantial information relating to the nature of the investigation and could impede or compromise the investigation.

(ii) If the subject were informed of the information required by this provision, it could seriously interfere with undercover activities requiring disclosure of undercover agents' identity and impairing their safety, as well as imparing the successful conclusion of the investigation.

(iii) Individuals may be contracted during preliminary information-gathering in investigations before any individual is identified as the subject of an investigation. Informing the individual of the matters required by this provision would hinder or adversely affect any present or subsequent investigations.

(7) 5 U.S.C. 552a(e)(5) requires that records be maintained with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in making any determination about an individual. Since the law defines "maintain" to include the collection of information complying with this provision would prevent the collection of any data not shown to be accurate, relevant, timely, and complete at the moment of its collection. In gathering information during the course of an investigation it is not possible to determine this prior to collection of the information. Facts are first gathered and then placed into a logical order which objectively proves or disproves criminal behavior on the part of the suspect. Material which may seem unrelated, irrelevant, incomplete, untimely, etc., may take on added meaning as an investigation progresses. The restrictions in this provision could interfere with the preparation of a complete investigative report.

(8) 5 U.S.C. 552a(e)(8) requires an agency to make reasonable efforts to serve notice on an individual when any record of such individual is made available to any persons; under compulsory legal process when such process becomes a matter of public record. The notice requirements of this provision could prematurely reveal an ongoing criminal investigation to the subject of the investigation.

Reasons for exemptions under 5 U.S.C. 552a(k)(1):

(1) 5 U.S.C. 552a(c)(3) requires that an agency make accountings of disclosures of records available to individuals named in the record at their request. These accountings must state the date, nature and purpose of each disclosure of the record and the name and address of

the recipient. The application of this provision would alert subjects of an investigation to the existence of the investigation, and that such persons are subjects of that investigation, information which if known might cause damage to national security.

(2) 5 U.S.C. 552a (d), (e)(4) (G) and (H), and (f) relate to an individual's right to be notified of the existence of records pertaining to such individual; requirements for identifying an individual who requests access to records; and the agency procedures relating to access to records, and the contest of information contained in such records. This system is exempt from the foregoing provisions for the following reasons: To notify an individual at the individual's request of the existence of records in an investigative file pertaining to such individual or to grant access to an investigative file could interfere with investigations undertaken in connection with national security; or could disclose the identity of sources kept secret to protect national security or reveal confidential information supplied by these sources.

(3) 5 U.S.C. 552a(3)(4)(I) requires the publication of the categories of sources of records in each system of records. The application of this provision could disclose the identity of sources kept secret to protect national security.

(4) 5 U.S.C. 552a(e)(1) requires each agency to maintain in its records only such information about an individual that is relevant and necessary to accomplish a purpose of the agency required by statute or Executive Order. An exemption from the foregoing is needed :

a. Because it is not possible to detect relevance or necessity of specific information in the early stages of an investigation involving national security matters.

b. Relevance and necessity are questions of judgment and timing. What appears relevant and necessary when collected may ultimately be determined to be unnecessary. It is only after the information is evaluated that the relevance and necessity of such information can be established.

c. In any investigation the Inspector General may obtain information concerning the violators of laws other than those within the scope of his jurisdiction. In the interests of effective law enforcement, the Inspector General should retain this information as it may aid in establishing patterns of criminal activity, and provide leads for those law enforcement agencies charged with enforcing other segments of criminal or civil law.

d. In interviewing persons, or obtaining forms of evidence during an investigation, information may be supplied to the investigator which relate to matters incidental to the main purpose of the investigation but which may relate to matters under the investigative jurisdiction of another agency. Such information cannot readily be segregated.

Reasons for exemptions under 5 U.S.C. 552a(k)(5):

(1) 5 U.S.C. 552a (c)(3) requires that an agency make accountings of disclosures of records available to individuals named in the records at their request. These accountings must stated the date, nature and purpose of each disclosure of the record and the name and address of the recipient. The application of this provision would alert subjects of an investigation to the existence of the investigation and that such persons are subjects of that investigation. Since release of such information to subjects of an investigation would provide the subject with significant information concerning the nature of the investigation, it could result in the altering or destruction of documentary evidence, improper influencing of witnesses, and other activities that could impede or compromise the investigation.

(2) 5 U.S.C. 552a(d), (e)(4)(G) and (H), and (f) relate to an individual's right to be notified of the existence of records pertaining to such individual; requirements for identifying an individual who requests access to records; and the agency procedures relating to access to records and the contest of information contained in such records. This system is exempt from the foregoing provisions for the following reasons: To notify an individual at the individual's request of the existence of records in an investigative file pertaining to such individual or to grant access to an investigative file could interfere with investigative and enforcement proceedings; co-defendants of a right to a fair trial; constitute an unwarranted invasion of personal privacy of others; disclose the identity of confidential sources and reveal confidential information supplied by these sources; and disclose investigative techniques and procedures.

(3) 5 U.D.C. 552a(e)(4)(I) requires the publication of the categories of sources of records in each system of records. The application of this provision could disclose investigative techniques and procedures and cause sources to refrain from giving such information because of fear of reprisal, or fear of breach of promises of anonymity and confidentiality. This would compromise the ability to conduct investigations, and to make fair and objective decisions on qustions of suitability for Federal employment and related issues.

(4) 5 U.D.C. 552a(e)(1) requires each agency to maintain in its records only such information about an individual that is relevant and necessary to accomplish a purpose of the agency required by statute or Executive Order. An exemption from the foregoing is needed:

a. Because it is not possible to detect relevance or necessity of specific information in the early stages of an investigation.

b. Relevance and necessity are questions of judgment and timing. What appears relevant and necessary when collected may ultimately be determined to be unnecessary. It is only after that information is evaluated that the relevance and necessity of such information can be established.

c. In any investigation the Inspector General may obtain information concerning the violations of laws other than those within the scope of his jurisdiction. In the interest of effective law enforcement, the Inspector General should retain this information as it may aid in establishing patterns of criminal activity, and provide leads for those law enforcement agencies charged with enforcing other segments of criminal or civil law.

d. In interviewing persons, or obtaining other forms of evidence during an investigation, information may be supplied to the investigator which relate to matters incidental to the main purpose of the investigation but which may relate to matters under investigative jurisdiction of another agency. Such information cannot readily be segregated.

COMMERCE/DEPT-13

SYSTEM NAME:

Investigative and Security Records—COMMERCE/DEPT-13.

SYSTEM LOCATION:

Departmental Office of Security, OS, Herbert C. Hoover Building, Washington, D.C. 20230.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Nominees, members, and former members of public advisory committees, trade missions and export councils; employees, former employees, and prospective employees; research associates; and guest workers. Employees of contractors used, or which may be used, by the Department on national security classified projects.

Principal officers of some contractors used, or which may be used by the Department, principal officers and some employees of organizations, firms, or institutions which were recipients or beneficiaries, or prospective recipients or beneficiaries, of grants, loans, or loan guarantee programs of the Department prior to May 9, 1980.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name; address; date and place of birth; Social Security Number; citizenship; physical characteristics; employment and military service history; credit references and credit records; education; medical history; arrest records; Federal employee relatives; dates and purpose of visits to foreign countries; passport numbers; names of spouses, relatives, references, and personal associates; activities; and security; and suitability materials. This system does not include records of EEO investigations. Such records are covered in a government-wide system noticed by the Office of Personnel Management and now the responsibility of the Equal Employment Opportunity Commission. For assistance contact the Privacy Officer for the Office of the Secretary.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Orders 10450, 11478, 12065, 5 U.S.C. 301 and 7531–332; 15 U.S.C. 1501 et. seq.; 28 U.S.C. 533–535; 44 U.S.C. 3101; and Equal Employment Act of 1972.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information concerning nominees, members and former members of public advisory committees may be disclosed: (a) To OMB in connection with its committee management responsibilities; (b) to other Federal agencies which have joint responsibility for advisory committees or which receive or utilize advice of the committees; and (c) to a Federal, state or local agency, private organization or individual as necessary to obtain information in connection with a decision concerning appointment or reappointment of an individual to committee membership.

Information concerning (1) nominees, members, and former members of trade missions and export councils; (2) current employees, former employees, and prospective employees; (3) research associates; (4) guest workers; (5) employees of contractors used, or which may be used, by the Department on national security classified projects; (6) principal officers of some contractors used, or which may be used, by the Department; and (7) principal officers and some employees of organizations, firms or institutions which are recipients or beneficiaries or prospective recipients or beneficiaries of grants, loans, guarantee or other assistance programs of the Department;—may be disclosed to a private organization or individual as necessary to obtain information in connection with a decision concerning the assignment, hiring or retention of an individual, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit. Disclosure of information from this system of records may also be made to commercial contractors (debt collection agencies) for the purpose of collecting delinquent debts as authorized by the Debt Collection Act (31 U.S.C. 3718). See routine use paragraphs in Prefatory Statement.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)), and the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Filed alphabetically by name.

SAFEGUARDS:

Locked cabinets in secure rooms in guarded buildings, and used only by authorized screened personnel.

RETENTION AND DISPOSAL:

When cases are closed, records are disposed of in accordance with the unit's Records Control Schedule.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Security, OS, Herbert C. Hoover Building, Washington, D.C. 20230.

NOTIFICATION PROCEDURE:

Information may be obtained from: Chief, Information Management Division, Office of Information Resources Management, U.S. Department of Commerce, Washington, D.C. 20230. Requester should provide name and association with the Department, pursuant to the inquiry provisions of the Department's rules which appear in 15 CFR Part 4b.

RECORD ACCESS PROCEDURE:

Requests from individuals should be addressed to: Same address as stated in the Notification section above.

CONTESTING RECORD PROCEDURES:

The Department's rules for access, for contesting contents, and appealing initial determinations by the individual concerned appear in 15 CFR Part 4b. Use above address.

RECORD SOURCE CATEGORIES:

Subject individuals; OPM, FBI and other Federal, state and local agencies; individuals and organizations that have pertinent knowledge about the subject; and, those authorized by the individual to furnish information.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a (k)(1), (k)(2) and (k)(5), all information and material in the record which meets the criteria of these subsections are exempted from the notice, access, and contest requirements under 5 U.S.C. 522a (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f) of the agency regulations because of the necessity to exempt this information and material in order to accomplish the law enforcement function of the agency, to prevent disclosure of classified information as required by Executive Order 12065, to assure the protection of the President, to prevent subjects of investigation from frustrating the investigatory process, to prevent the disclosure of investigative techniques, to fulfill commitments made to protect the confidentiality of information, and to avoid endangering these sources and law enforcement personnel.

COMMERCE/DEPT-16

SYSTEM NAME:

Property Accountability Files—COMMERCE/DEPT—16

SYSTEM LOCATION:

a. For all libraries of the Department. For listing, see Directory of Libraries in the United States Department of Commerce, Department of Commerce, Washington, D.C.; or American Library Directory, biennial, R.R. Bowker Company, New York City.

b. For employees of Census: Administrative Services Division, Bureau of the Census, Federal Building 4, Washington, D.C. 20233, and the following Census Regional Offices: 1365 Peachtree Street, NE., Atlanta, Georgia 30309; 441 Stuart Street, Boston, Massachusetts 02116; 230 South Tryon Street, Charlotte, North Carolina 28202; 55 East Jackson Boulevard, Chicago,

Illinois 60604; 1100 Commerce Street, Dallas, Texas 75242; 7655 W. Mississippi Avenue (P.O. Box 26750), Denver, Colorado 80226; 231 W. Lafayette, Detroit, Michigan 48226; One Gateway Center, 4th and State Streets, Kansas City, Kansas 66101; 11777 San Vicente Boulevard, Los Angeles, California 90049; 26 Federal Plaza, New York City, New York 10278; 600 Arch Street, Philadelphia, Pennsylvania 19106; and 1700 Westlake Avenue, Seattle, Washington 98109.

c. For employees of NBS: Security Office, National Bureau of Standards, Administration Building, Gaithersburg, Maryland 20899. Instrument Shops Division, Shops Building, NBS, Gaithersburg, Maryland 20890; and Security Office, Radio Building, NBS, Boulder, Colorado 80302.

d. For employees of PTO: Users Service Section, Scientific Library, U.S. Patent and Trademark Office, Washington, D.C. 20231.

e. For NTIA: Office of Administration, National Telecommunications and Information Administration, U.S. Department of Commerce, Washington, D.C. 20230.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees, general public, institutions, and anyone who charges out or signs for books or other materials.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name; telephone number, title of book; identification of property or equipment; home and business address; employee I.D. number, position, job title; grade; organization; explanations for items not accounted for, correspondence; clearance; and key number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 44 U.S.C. 3101; 40 U.S.C. 481–92; 15 U.S.C. 1518.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of information from this system of records may also be made to commercial contractors (debt collection agencies) for the purpose of collecting delinquent debts as authorized by the Debt Collection Act (31 U.S.C. 3718). See routine use paragraphs 1–5 and 9–13 of Prefatory Statement.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(1)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)93)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper copy in file folders and trays and machine-readable media.

RETRIEVABILITY:

Filed alphabetically by name.

SAFEGUARDS:

Records are located in lockable metal file cabinets, or lockable desks, or in metal file cabinets in secured rooms or secured premises with access limited to those whose official duties require access.

RETENTION AND DISPOSAL:

Retained until property is accounted for, then disposed of in accordance with unit's Records Control Schedule.

SYSTEM MANAGER(S) AND ADDRESS:

For records at location a.: the head of the respective library.

For records at location b.: Associate Director for Management Services, Bureau of the Census, Federal Building 3, Washington, D.C. 20233, and the Director of the particular Regional Office listed above.

For records at location c.: Security Officer, National Bureau of Standards, Administration Building, Gaithersburg, Maryland 20899.

For records at location d.: Program Manager, Scientific Library, U.S. Patent and Trademark Office, Washington, D.C 20231.

For records at location e.: Director of Administration, National Telecommunications and Information Administration, U.S. Department of Commerce, Washington, D.C. 20230.

NOTIFICATION PROCEDURE:

For records at location a.: Address communication to the library's parent organization (e.g., National Bureau of Standards), Attention: Privacy Officer, or use the Privacy Officer's official position title and address as listed in Apppendix B to the Department's rules which appear in 15 CFR Part 4b.

For records at location b.: Information may be obtained from: Associate Director for Administration, Bureau of the Census, Federal Building 3, Washington, D.C. 20233.

For records at location c.: Information may be obtained from: Deputy Director of Administration, Room A1105, Administration Building, National Bureau of Standards, Washington, D.C. 20234.

For records at location d.: Information may be obtained from: Assistant Commissioner for Administration, U.S. Patent and Trademark Office, U.S. Department of Commerce, Washington, D.C. 20231.

For records at location e.: Information may be obtained from: Privacy Officer, National Telecommunications and Information Administration, U.S. Department of Commerce, Washington, D.C. 20230.

Requester should provide name and address pursuant to the inquiry provisions of the Department's rules which appear in 15 CFR Part 4b.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to: same address as stated in the Notification section above.

CONTESTING RECORD PROCEDURES:

The Department's rules for access, for contesting contents, and appealing initial determinations by the individual concerned appear in 15 CFR Part 4b. Use above address.

RECORD SOURCE CATEGORIES:

Subject individual, those authorized by the individual to furnish information, book cards, and supply person providing the equipment.

COMMERCE/DEPT-17

SYSTEM NAME:

Records of Cash Receipts—COMMERCE/DEPT-17.

SYSTEM LOCATION:

a. For Departmental offices, BEA, ITA, MBDA, USTTA, Office of Financial Operations and Travel Management, OS, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

b. For NTIS: Accounting Division, National Technical Information Service, Springfield, Virginia 22161.

c. For PTO: Office of Finance, U.S. Patent and Trademark Office, 2021 Jefferson Davis Highway, Arlington, Virginia 22202.

d. For Census: Finance Division, Bureau of the Census, Federal Building 3, Washington, D.C. 20233.

e. For NTIA: Office of Administration, National Telecommunications and Information Administrative, U.S. Department of Commerce, Washington, D.C. 20230.

f. For EDA: Accounting Division, Economic Development Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

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CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals paying for goods or services, reimbursing overpayments, or otherwise delivering cash to the Department.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, the goods or service purchased, amount, date, check number, division or office, bank deposit, treasury deposit number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 66(a).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND THE PURPOSES OF SUCH USES:

Disclosure of information from this system of records may also be made to commercial contractors (debt collection agencies) for the purpose of collecting delinquent debts as authorized by the Debt Collection Act (31 U.S.C. 3718). See routine use paragraphs 1–5 and 9–13 of the Prefatory Statement.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)), and the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual and machine-readable.

RETRIEVABILITY:

Name and/or account or case number.

SAFEGUARDS:

Records are located in lockable metal file cabinets or in secured rooms or secured premises with access limited to those whose official duties require access.

RETENTION AND DISPOSAL:

Permanently maintained.

SYSTEM MANAGER(S) AND ADDRESSES:

For records at location a.: Director, Office of Financial Operations and Travel Management, U.S. Department of Commerce, Washington, D.C. 20230.

For records at location b.: Chief, Accounting Division, National Technical Information Service, Springfield, Virginia 22161.

For records at location c.: Director, Office of Finance, U.S. Patent and Trademark Office, Washington, D.C. 20231.

For records at location d.: Associate Director for Management Services, Bureau of the Census, Federal Building 3, Washington, D.C. 20233.

For records at location e.: Director of Administration, National Telecommunications and Information Administration, U.S. Department of Commerce, Washington, D.C. 20230.

For records at location f.: Chief, Accounting Division, Economic Development Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

NOTIFICATION PROCEDURE:

For BEA records at location a., information may be obtained from: Chief, Management and Organization Branch, BEA, Tower Building, 1401 K Street, NW., Washington, D.C. 20230;

For ITA records at location a., information may be obtained from: Director, Office of Management and Systems, ITA, U.S. Department of Commerce, Washington, D.C. 20230;

For MBDA records at location a., information may be obtained from: Privacy Officer, Office of Chief Counsel MBDA, U.S. Department of Commerce, Washington, D.C. 20230;

For USTTA records at location a., information may be obtained from: Director, Office of Administration, USTTA, U.S. Department of Commerce, Washington, D.C. 20230; and

For all other records at location a., information may be obtained from: Chief, Information Management Division, Office of Information Resources Management, U.S. Department of Commerce, Washington, D.C. 20230;

For records at location b., information may be obtained from: Associate Director for Financial and Administrative Management, National Technical Information Service, Springfield, Virginia 22161.

For records at location c., information may be obtained from: Assistant Commissioner for Administration, U.S. Patent and Trademark Office, Washington, D.C. 20231;

For records at location d., information may be obtained from: Associate Director for Management Services, Bureau of the Census, Federal Building 3, Washington, D.C. 20233;

For records at location e., information may be obtained from: Privacy Officer, National Telecommunications and Information Administration, U.S. Department of Commerce, Washington, D.C. 20230;

For records at location f., information may be obtained from: Director, Office of Public Affairs, EDA, U.S. Department of Commerce, Washington, D.C. 20230;

Requester should provide name, address, date of receipt, an check number or case number pursuant to the inquiry provisions of the Department's rules which appear in 15 CFR Part 4b.

RECORD ACCESS PROCEDURE:

Requests from individuals should be addressed to: same address as stated in the Notification section above.

CONTESTING RECORD PROCEDURE:

The Department's rules for access, for contesting contents, and appealing initial determinations by the individual concerned appear in 15 CFR part 4b. USE above address.

RECORD SOURCE CATEGORIES:

Subject individual and those authorized by the individual to furnish information.

COMMERCE/DEPT-18

SYSTEM NAME:

Employees Personnel Files Not Covered By Notices of Other Agencies-COMMERCE/DEPT-18.

SYSTEM LOCATION:

a. For all Departmental employees: Departmental Office of Personnel, Room 5001, U.S. Department of Commerce, Washingotn, D.C. 20230 (for automated records and for selected records relating to Senior Executive Service and Departmental Honor Awards).

b. For employees of Departmental Offices, NTIA, NTIS, MBDA, and USTTA: Departmental Office of Personnel Operations, Room 5008, U.S. Department of Commerce, Washington, D.C. 20230.

c. For employees of CENSUS: Office of Personnel, Bureau of the Census, Federal Building 3, Room 3260, Washington, DC 20233;

d. For employees of ITA; Office of Personnel, International Trade Administration, Room 3512, U.S. Department of Commerce, Washington, DC 20230;

e. For employees of NBS: Office of Personnel, National Bureau of Standards, Administration Building Room A123, Gaithersburg, Maryland 20899;

f. For employees of NOAA: Office of Personnel, National Oceanic and Atmospheric Administration, Rockville, Maryland 20852, and the following Administrative Support Centers:

DOC/NOAA/EASC, RAS/EC5, 235 Monticello Avenue, Norfolk, Virginia 23510; DOC/NOAA/MASC, RAS/MC7, Room 5534; 325 Broadway, Boulder,

Colorado, 80303; DOC/NOAA/WASC, RAS/WC5, Operations Building, 7600 Sand Point Way, N.E., Seattle, Washington 98115; and

DOC/NOAA/CASC, RAS/CC5, Federal Building, Room 1758, 601 E. 12th Street Kansas City, Missouri 64106.

g. For employees of PTO, Office of Personnel, U.S. Pantent and Trademark Office, U.S. Department of Commerce, Room 9C06, Crystal Plaza 2, Arlington, Virginia 22202;

h. For employees of EDA, Personnel Management Division, Economic Development Administration, Room 7089 U.S. Department of Commerce, Washington, D.C. 20230; and

i. For any Department employee: The immediate office of an imployee's supervisor(s), for records which have been disclosed to someone else.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees

CATEGORIES OF RECORDS IN THE SYSTESM:

All personnel records in the Department which are subject to the Privacy act but are not covered in the notices of systems of records published by other agencies with influence upon personnel mangement in the Department such as the Office of Personnel Mangement, Merit System Protection Board, Equal Employment Opportunity Commission, Department of State or Department of Labor. The records of this system may include, but are not limited to Employee Development; Incentive Awards; Employee Relations; Grievance Records; Medical; Work-related Injury or Illness Claims; Grievance Records; Medical; Career Management Program Ship Personnel; Employee Overseas Assignment; Minority Group Statistics Program, Work Performance and Appraisal Records; including supervisory records which have been disclosed; Re-employment and Priority Placement Program; Executive Assignments and Merit Pay Actions; Merit Assignment Programs;. Retirements; Within-Grade Denials (Reconsideration File); and Automated Employee Information System.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 44 U.S.C. 3101; 5 U.S.C. 4101 et seq., 5 U.SC. 1302, 3302, E.O. 10577, 3 CFR 1954–1958 Comp. p. 218, E.O. 12107, 3 CFR 1978 Comp. p264; and Federal Personnel Manual and related directives of the agencies citied above.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

a. Information concerning current or former employees may be disclosed to a private organization or individual as necessary to obtain information in connection with a decision concerning the assignment, hiring, or retention of an individual, the issuance of a security clearance, the letting of a contract or the issuance of a license, grant or other benefit.

b. To disclose information to any source from which additional information is requested in the course of processing a grievance to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and identify the type of information requested.

c. To disclose information to officials of the Office of Personnel Management, Merit Systems Protection Board, including the Office of the Special Counsel, the Federal Labor Relations Authority and its General Counsel, or the Equal Employment Opportunity Commission, the Department of State, or the Department of Labor when requested in performance of their authorized duties.

d. To disclose, in reponse to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

e. To provide information to officials or labor organizations reorganized under the Civil Service Reform Act when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting work conditions.

f. To disclose information to commercial contractors (debt collection agencies) for the purpose of collecting delinquent debts as authorized by the Debt Collection Act (31 U.S.C. 3718).

g. See routine uses paragraphs in the Prefatory Statement.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f), and the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual and machine-readable.

RETRIEVABILITY:

Filed by name and/or social security number.

SAFEGUARDS:

Records are located in lockable metal file cabinets or in secured rooms or secured premises with access limited to those whose official duties require access.

RETENTION AND DISPOSAL:

Retained according to Unit's Records Control Schedule.

SYSTEM MANAGER(S) AND ADDRESS:

For records at location a: Director, Office of Personnel, Room 5001, U.S. Department of Commerce, Washington, D.C. 20230;

For records at location b: Director, Office of Personnel Operations, Room 5008, U.S. Department of Commerce, Washington, D.C. 20230;

For records at location c: Chief of Personnel, Bureau of the Census, Federal Building 3, Room 3260, Washington, D.C. 20233;

For records at location d: Director, Office of Personnel, International Trade Administration, U.S. Department of Commerce, Room 3512, Washington, D.C. 20230;

For records at location e: Chief, Personnel Division, National Bureau of Standards, Administration Building, Room A123, Gaithersburg, Maryland 20899;

For records at location f: Chief, Personnel Division, WSC5, National Oceanic and Atmospheric Administration, NBOC2, Rockville, Maryland 20852, and the Director of the particular Administrative Support Center listed above;

For records at location g: Personnel Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, Room 9C06, Crystal Plaza 2, Arlington, Virginia 22202;

For records at location h: Personnel Management Division, Economic Development Administration, Room 7089, Washington, D.C. 20230; and

For records at location i: Employee's supervisor(s).

NOTIFICATION PROCEDURE:

For BEA records at locations a. and b., information may be obtained from: Chief, Management and Organization Branch, BEA, Tower Building, 1401 K Street, NW., Washington, D.C. 20230;

For NTIA records at locations a. and b., information may be obtained from: Privacy Officer, NTIA, U.S. Department of Commerce, Washington, D.C. 20504;

For NTIS records at locations a. and b., information may be obtained from: Privacy Officer, NTIA, U.S. Department of Commerce, Washington, D.C. 20230;

For MBDA records at locations a. and b. information may be obtained from: Privacy Officer, Office of Chief Counsel, MBDA, U.S. Department of Commerce, Washington, D.C. 20230;

For USTTA records at locations a. and b., information may be obtained from: Director, Office of Administration, USTTA, U.S. Department of Commerce, Washington, D.C. 20230;

For all other records at locations a. and b., information may be obtained from Chief, Information Management Division, Office of Information Resources Management, U.S. Department of Commerce, Washington, D.C. 20230;

For records at location c., information may be obtained from Associate Director for Management Services, Bureau of the Census, Federal Building 3, Washington, D.C. 20233;

For records at location d., information may be obtained from: Privacy Act Officer, Office of Management and Systems, International Trade Administration, Room 4001B, U.S. Department of Commerce, Washington, D.C. 20230.

For records at location e., information may be obtained from: Deputy Director of Administration, Room A1105, Administration Building, National Bureau of Standards, Gaithersburg, Maryland 20899.

For records at location f., information may be obtained from: Director, Administrative and Technical Services, National Oceanic and Atmospheric Administration, Room 4213, Herbert C. Hoover Building, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

For records at location g., information may be obtained from: Assistant Commissioner for Administration, U.S. Patent and Trademark Office, Washington, D.C. 20231.

For records at location h., information may be obtained from: Personnel Management Division, Economic Development Administration, Room 7089, U.S. Department of Commerce, Washington, D.C. 20230; and

For records at location i., information may be obtained from: Privacy Officer for employee's unit.

Requester should provide name, social security number, and time or organization unit of employment pursuant to the inquiry provisions of the Department's rules which appear in 15 CFR Part 4b.

RECORD ACCESS PROCEDURE:

Request from individuals should be addressed to: Same address as stated in the Notification section above.

CONTESTING RECORD PROCEDURES:

The Department's rules for access, for contesting contents, and appealing initial determinations by the individual concerned appear in 15 CFR Part 4b. Use above address.

RECORD SOURCE CATEGORIES:

Subject individual and those authorized by the individual to furnish information; others involved in references of the individual; physicians; enployee's supervisor; for grievance records information is also provided by the testimony of witnesses, by agency officials, and from related correspondence from organizations or persons.

COMMERCE/NTIS-1

SYSTEM NAME:

Individuals interested in NTIS Publications, Shipped Order Addresses, Customer Account Records, and Subscriber Files—COMMERCE/NTIS-1.

SYSTEM LOCATION:

Automated Data Processing Division and Document Distribution and Reproduction Division, Office of Computer and Communications Service and Document Services Division, NTIS, 5285 Port Royal Road, Springfield, Virginia 22161.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals who order and/or purchase products and services from NTIS and all individuals who have requested (that they be placed on the NTIS promotional mailing list) NTIS promotional literature.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name; address; nine-digit taxpayer identification number; items ordered; items sent; amount of purchases, date order received; date order mailed; NTIS deposit account or customer code number; total charge to date; whether account collectible or not; categories of publications ordered by each purchaser; when subscription expired; amount of deposit.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

15 U.S.C. 1151–57; 41 U.S.C. 104, 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records maintained in the system are disclosed to NTIS sales agents; and to individuals, organizations, Federal agencies, and State and local governments contributing publications to NTIS for their market research and sales accounting purposes, through the mechanism of providing them the names and addresses of individuals (and others) who have purchased their publications. "Disclosure of information from this system of records may also be made to commercial contractors (debt collection agencies) for the purpose of collecting delinquent debts as authorized by the Debt Collection Act (31 U.S.C. 3718)." Also see general routine uses (#1 through 6, #8 through 10, and #12 of Prefatory Statement notice in the **Federal Register** on October 2, 1975 (40 FR 45635), and amended on November 7, 1975 (40 FR 52074) and August 17, 1976 (41 FR 34805), #4, #5, #9 and #13 of Prefatory Statement.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12):

Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)), and the Federal Claims Collection Act of 1968 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, film files, magnetic tape and disc files.

RETRIEVABILITY:

Filed by individual identifier such as deposit account number of credit card account number.

SAFEGUARDS:

Records are located in lockable metal file cabinets or in metal tape vaults in secured rooms or premises with access limited to those whose official duties require access. The data can also be obtained at in-house computer terminals used by those whose official NTIS duties require access.

RETENTION AND DISPOSAL:

Records are updated regularly and maintained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, (Automated Data Processing Division) Office of Computer and

Communications Services, NTIS, (5285 Port Royal Road), Springfield, Virginia 22161.

NOTIFICATION PROCEDURE:

Information may be obtained from: Director, Office of Administrative Management, NTIS (Sills Building), Springfield, Virginia 22161. Requester should provide name and address in accordance with the inquiry provisions of the Department's rules which appear in 15 CFR Part 4b.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to: Same address as stated in the Notification section above.

CONTESTING RECORD PROCEDURES:

The Department rules for access, for contesting contents and appealing initial determinations by the individual concerned appear in 15 CFR Part 4b. Use above address.

RECORD SOURCE CATEGORIES:

Subject individuals and NTIS transaction files.

[FR Doc. 85-5340 Filed 3-5-85; 8:45 am]

BILLING CODE 3510-BR-M

International Trade Administration

Short Supply Determinations on Steel Pipe and Tube; Request for Comments

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short supply determination under Article 8 of the U.S.—EEC Pipe and Tube Arrangement with respect to:

(a) Carbon hollow drill steel in round sections with outside diameters ranging from 1¼ inch to 1½ inch and interior diameters of 1 1/32 inch to ½ inch, used in the manufacture of blast furnace tapping rods.

(b) Carbon hollow deformed bars with bar body diameters of 15/16 inch to 2 inches, diameters including the deformed pattern of 1 1/16 inch to 2 3/16 inch, and interior diameters and ¼ inch to ½ inch, used as anchor bolts to reinforce or attach materials to layered rock formations.

(c) Alloyed or carbon hollow mining drill steel of either a hexagon or round shape: The hexagon hollows measuring from ⅞ inch to 1 ⅞ inch across flats with interior diameters of ¼ inch to ¾ inch, the round hollows measuring 1¼ inch to 2 1/32 inches in outside diameter and 1 1/32 inch to 9/16 in inside diameter, used to manufacture mining drill rods.

EFFECTIVE DATE: Comments must be submitted no later than March 18, 1985.

ADDRESS: Send all comments to Joseph A. Spetrini, Director, Agreements Compliance Division, Import Administration, U.S. Department of Commerce, 14th and Constitution Ave., NW., Washington, D.C. 20230, Room 3099.

FOR FURTHER INFORMATION CONTACT: Nicholas C. Tolerico, Agreements Compliance Division, Import Administration, U.S. Department of Commerce, 14th and Constitution Ave., Washington, D.C. 20230, Room 3087B, (202) 377-4036.

SUPPLEMENTARY INFORMATION: On January 10, 1985, the United States (U.S.) and European Economic Community (EEC) concluded a clarification of the Pipe and Tube Arrangement agreed to on October 21, 1983. The January 10 clarification provides in Article 8 that ". . . the U.S. shall accept exports of pipes and tubes in addition to those permitted under sections 1 and 2 where a shortage of supply is identified, i.e., where the U.S. industry is unable to meet demand in the United States for a particular product." Under the terms of Article 8 the Department ". . . shall make a decision under this section on the basis of objective evidence from all relevant sources."

We have received a request for acceptance under short supply provisions for the following products:

(a) Carbon hollow drill steel in round sections with outside diameters ranging from 1¼ inch to 1½ inch and interior diameters of 1 1/32 inch to ½ inch, used in the manufacture of blast furnace tapping rods.

(b) Carbon hollow deformed bars with bar body diameters of 15/16 inch to 2 inches, diameters including the deformed pattern of 1 1/16 inch to 2 3/16 inch, and interior diameters of ¼ inch to ½ inch, used as anchor bolts to reinforce or attach materials to layered rock formations.

(c) Alloyed or carbon hollow mining drill steel of either a hexagon or round shape: the hexagon hollows measuring from ⅞ inch to 1⅞ inch across flats with interior diameters of ¼ inch to ¾ inch, the round hollows measuring 1¼ inch to 2 1/32 inches in outside diameter and 1 1/32 inch to 9/16 inch in inside diameter, used to manufacture mining drill rods.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than March 18, 1985. Comments should focus on the economic factors involved in granting or denying these requests.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly so label the business proprietary portion of their submission and also submit with it a submission without proprietary information which can be placed in the public file. The public file will be maintained in the Central Records Unit, Import Administration, U.S. Department of Commerce, Room B-099 at the above address.

February 28, 1985.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-5356 Filed 3-5-85; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Request for Nominations to the National Advisory Committee on Oceans and Atmosphere

AGENCY: National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice requesting nominations to the National Advisory Committee on Oceans and Atmosphere.

SUMMARY: The Department of Commerce seeks recommendations for nominations that will be submitted to the President for six members of the National Advisory Committee on Oceans and Atmosphere. The appointees will take office on July 1, 1985. Members should have knowledge in the following areas of direct concern to the Committee: (1) One or more of the disciplines and fields included in marine science and technology, marine industry, marine-related state or local governmental functions, coastal zone management or other fields directly appropriate for consideration of matters of ocean policy; or (2) one or more of the disciplines and fields included in atmospheric science, atmospheric-related state and local governmental functions, or other fields directly appropriate for consideration of matters of atmospheric policy.

EFFECTIVE DATE: Recommendations will be accepted until April 1, 1985.

ADDRESS: Recommendations will be accepted until April 1, 1985.

ADDRESS: Recommendations or nominations should be submitted to James W. Winchester, Associate Administrator, NOAA, Room 5126,

Herbert C. Hoover Department of Commerce Building, Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Ellen Campbell, Office of the Associate Administrator, NOAA, telephone (202) 377–5938.

SUPPLEMENTARY INFORMATION: The National Oceanic and Atmospheric Administration of the Department of Commerce is seeking recommendations for nominees for six vacancies on the National Advisory Committee on Oceans and Atmosphere (NACOA). NACOA was created by Pub. L. 95–63:

(1) To undertake a continuing review, on a selective basis, of national ocean policy, coastal zone management and the status of the marine and atmospheric science and service programs of the United States;

(2) To advise the secretary of Commerce with respect to the carrying out of programs administered by the National Oceanic and atmospheric Administration.

NACOA is composed of 18 members appointed by the President, who serve staggered three-year terms. The act specifies that members of NACOA shall be appointed from among individuals who are eminently qualified by way of knowledge and expertise in the areas of direct concern to the Committee.

Members of NACOA are expected to attend approximately 9 annual meetings of the Advisory Committee in Washington, D.C., or other locations around the country and to devote substantial time and interest to participation in subcommittees and the development of written documents that can serve as the basis for NACOA actions to fulfill its statutory functions. Members serve as paid consultants and are reimbursed for their travel expenses.

Any interested person may suggest him or her self or other individuals for membership. A complete resume of the individual should be included, along with a statement that the person nominated is aware of the nomination, has the time and interest to serve on the Committee, and appears to have no conflict of interest that would preclude a Committee membership. Letters in support of the nomination may also be submitted.

Dated: March 1, 1985.

James W. Winchester,

Associate Administrator, National Oceanic and Atmospheric Administration.

[FR Doc. 85–5416 Filed 3–5–85; 8:45 am]

BILLING CODE 3510-08-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Increasing the Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Sri Lanka

Feruary 28, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on February 28, 1985. For further information contact Diana Solkoff, International Trade Specialist (202) 377–4212.

Background

A CITA directive dated May 10, 1984 (See 49 FR 20751) established restraint limits for specified categories of cotton, wool and man-made fiber textile products, including women's girls' and infants' trousers in Category 348 and men's and boys' other coats in Category 634, produced or manufactured in Sri Lanka and exported during the twelve-month period which began on June 1, 1984. In the CITA directive published below the limits for Categories 348 and 634 are being increased to 275,501 dozen (Category 348) and 110,944 dozen (Category 634) to account for carryover, carryforward, carryforward used, and swing, variously applied, under the terms of the Bilateral Cotton and Man-Made Fiber Textile Agreement of May 10, 1983 between the Governments of the United States and Sri Lanka. To the extent used, the carryforward applied to Category 348 will be deducted from the applicable category limit during the agreement year which begins on June 1, 1985.

A description of textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1985).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

February 28, 1985.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,

Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of May 10, 1984 from the Chairman of the Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in Sri Lanka.

Effective on February 28, 1985, you are directed to increase the restraint limits established for the following categories in the directive of May 10, 1984 to the limits indicated, according to the terms of the Bilateral Cotton, Wool and Man-made Fiber Textile Agreement of May 10, 1983 between the Governments of the United States and Sri Lanka.[1]

Category	Amended Twelve-Month Limit [2] (dozen)
348	275,501
634	110,944

[2] The limits have not been adjusted to account for any imports exported after May 31, 1984.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85–5336 Filed 3–5–85; 8:45 am]

BILLING CODE 3510-DR-M

COPYRIGHT ROYALTY TRIBUNAL

[Docket Nos. CRT 80–4, 81–1, 82–1, 83–1]

Further Amendment to Order Granting Further Partial Distributions 1979, 1980, 1981 and 1982 Cable Royalty Distribution

FOR FURTHER INFORMATION CONTACT: Marianne Mele Hall, Chairman, Copyright Royalty Tribunal, 1111 20th Street, NW., Room 450, Washington, D.C. 20036 (202) 653–5175.

By order dated February 4, 1985, the Copyright Royalty Tribunal ("Tribunal") directed the further partial distribution of 1979, 1980, 1981 and 1982 royalty fees pursuant to section 111(d)(5)(C) of the

[1] The agreement provides, in part, that (1) within the aggregate and group limits, specific limits may be exceeded by designated percentages, provided an equal amount in equivalent square yards is deducted from another specific limit; (2) specific limits may be increased by carryover and carryforward up to 11 percent of the applicable category limit; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

Copyright Act of 1976, 17 U.S.C. 111(d)(5)(C). *See* 50 FR 5290 (February 7, 1985), *as supplemented* 50 FR 6027 (February 13, 1985). Subsequent to the issuance of this order, the Tribunal received a pleading joined in by all of the Copyright Owner representatives who had participated in the 1979–82 proceedings. The Copyright Owners requested that the Tribunal make a larger distribution than that proposed in the February 4, 1985 Order. Their request was based upon the following principles to which all the parties had agreed solely for purposes of securing a larger partial distribution of 1979–82 royalties at this time:

1. A further partial distribution of 1979–82 royalties should take place on March 7, 1985.

2. Past distributions plus the March 7, 1985 distribution should result in all parties having received the same percentage of their proportionate shares of the 1979–82 funds, as those shares have been determined in the Tribunal's most recent allocation decisions.

3. This percentage should be applied against the "Adjusted Total Fund" as set forth in the Tribunal's notice published at 50 FR 6030 (February 13, 1985) ("February 13 Notice"). The Tribunal calculated that "Adjusted Total Fund" by (a) totalling the amounts previously distributed to all parties and the amounts remaining in the fund on February 7, 1985; and then (b) subtracting from this total the amounts reflecting the "additional" interest which the Tribunal considers to be due the Devotionals.

4. The amount of the Devotionals' "additional" interest is that which is identified in the Tribunal's February 13 Notice. This interest is also to be distributed to the Devotionals on March 7, 1985.

5. The percentages to be applied against the "adjusted total funds" are 96 percent for 1979; 86 percent for 1980; 96 percent for 1981; and 96 percent for 1982.

5. Attached to this order are tables, prepared by the Copyright Owners, which reflect the above agreed-upon principles. The figures in the final column of each table represent the amount of their proposed further partial distribution.

The Copyright Owners and the Tribunal believe that the amounts which would remain in the 1979–82 funds after the proposed partial distributions are adequate to accommodate any possible adjustments that might be occasioned by pending judicial review of the Tribunal's prior allocation decisions. If no such adjustments must be made after these decisions are no longer subject to appeal, the royalties remaining after the March 7, 1985 distribution would be distributed to the parties in their proportionate shares, as those shares have been determined in the Tribunal's most recent final allocation orders. (*See* Column 1 of each of the attached tables.)

The Tribunal has consistently encouraged voluntary agreements among the parties and has supported the earliest possible distribution of the maximum amount of royalties not subject to controversy. Both of these principles are, of course, embodied in that portion of the Copyright Act of 1976 governing the cable royalty distribution proceedings. *See* 17 U.S.C. 111(d)(5). Accordingly, the Tribunal has determined to order a further partial distribution of 1979, 1980, 1981, and 1982 royalties consistent with the Copyright Owners' joint proposal.

The Tribunal hereby rescinds its February 4, 1985 partial distribution order and directs the distribution to each party of the amounts set forth in the final column of each of the attached tables. This distribution will take place on March 7, 1985. As reflected in the attached tables, Multimedia already has received some 140 percent of its share of the 1982 fund. The Tribunal, therefore, further directs Multimedia to reimburse the 1982 fund including interest for the difference between the amount of the 1982 royalties which it has already received and the amount to which it is entitled under the 96 percent distribution ordered above. Such reimbursement is to be made no later March 7, 1985.

Dated: March 4, 1985.

Marianne Mele Hall,

Chairman.

	Percent allocation	50 pct distribution, 5/82—7/2/82	35.5 pct distribution, 11/83 and 3/84—1/12/84	Total received to 2/6/85	96 pct of adjusted fund in real dollars	Distribution needed to attain 96 pct pro rata (in real dollars)
Total fund		$21,380,030	$23,290,015			$23,668,381
1979 PHASE I						
Program syndicators (see below):						
Joint sports and NCAA	15.00	$1,600,950	$136,945		$3,408,247	$385,571
(JS 5.5 pct-3/15/84			1,284,781	$3,022,676		
PBS	5.25	560,332	496,310	1,056,642	1,192,886	136,244
NAB (Phase I and II)	5.06	540,054	555,234	1,095,288	1,149,715	54,427
Music	4.25	453,603	401,753	855,356	965,670	110,314
Canadian	.75	80,048	83,844	163,892	170,412	6,520
NPR	.25	26,682	29,113	55,795	56,804	1,009
Devotionals	.35				79,526	[1] 79,526
1979 PHASE II						
Program syndicators (70 pct):						
MPAA	67.41	7,232,406	6,408,248	13,640,654	15,316,662	1,676,008
Multimedia	1.12	119,538	104,339	223,877	254,482	30,605
SIN	.49	52,297	45,648	97,945	111,336	13,391
Mutual of Omaha	.07	7,471	6,521	13,992	15,905	1,913
Total	100,000	10,673,381	9,552,736	20,226,117	22,721,645	2,495,528

[1] Devotionals also to receive "additional interest" in the amount of $1,361. *See* 50 FR 6030 (Feb. 13, 1985).

NOTE.—All dollar amounts have been rounded to the nearest whole dollar.

	Percent allocation	50 pct, 5/80—5/6/83	30 pct, 8/80—8/11/83	Total to 2/6/85	86 pct of adjusted fund in real dollars	Distribution needed to attain 86 pct pro rata (in real dollars)
Total fund		[1] $26,450,000	$26,825,913			$27,725,061
1980 Phase I						
Program syndicators:						
Joint sports	14.9473	$1,983,750	$1,207,166	$3,190,916	$3,563,967	$373,051
PBS	5.2316	694,312	422,508	1,116,820	1,247,399	130,579
NAB (Phase I and II)	5.0422	669,185	407,217	1,076,402	1,202,240	125,838

	Percent allocation	50 pct, 5/80—5/6/83	30 pct, 8/80—8/11/83	Total to 2/6/85	86 pct of adjusted fund in real dollars	Distribution needed to attain 86 pct pro rata (in real dollars)
Music	4.2351	562,062	342,030	904,092	1,009,798	105,706
Canadian	.7474	99,187	60,358	159,545	178,207	18,662
NPR	.2500	33,062	20,119	53,181	59,609	6,428
Devotionals	.3500	.....	.....	.....	83,453	[1] 83,453
1980 Phase II						
Program syndicators: (89.75%)						
MPAA	67.5920	8,970,517	5,458,805	14,429,322	16,116,334	1,687,012
Multimedia	(1.1161	148,120	90,135	238,255	266,117	27,862
SIN	(.4883	64,802	39,434	104,236	116,428	12,192
Total	(100.0000)	13,224,997	8,047,772	21,272,769	23,843,552	2,570,783

[1] Approximate.
[2] Devotionals also to receive "additional interest" in the amount of $8,450. *See* 50 Fed. Reg. 6030 (Feb. 13, 1985)
NOTE.—All dollar amounts have been rounded to the nearest whole dollar

	Percent allocation	85 pct distribution, 8/83	5 pct distribution, 11/83	6.5 pct distribution, 4/84	Total received to 2/6/85	96 pct of adjusted fund in real dollars	Distribution needed to attain 96 pct pro rata (in real dollars)
Total fund	.....	$32,280,745	$33,851,575	$34,627,943	.....	.....	$35,281,529
1981 PHASE I (Settled as per 1979 and 1980 Remand)							
Settling Parties:							
Program syndicators:							
Joint sports	14.9473	$4,115,795	$253,887	$337,613	$4,707,295	$5,062,690	$355,395
PBS	5.2316	1,440,528	88,850	118,171	1,647,559	1,771,957	124,398
NAB (Phase I & II)	5.0422	1,388,395	85,644	113,891	1,587,930	1,707,807	119,877
Music	4.2351	1,166,141	71,935	95,668	1,333,742	1,434,440	100,698
Canadian	.7474	205,790	12,694	16,898	235,382	253,146	17,764
NPR	.2500	68,596	4,231	5,626	78,453	84,676	6,223
Devotionals	.3500	.....	.....	.....	.....	118,546	[1] 118,546
1981 PHASE II							
Program Syndicators (89.75%):							
MPAA	67.5920	18,611,625	1,148,076	1,526,696	21,286,397	22,893,590	1,607,193
Multimedia	1.1161	307,313	18,957	25,209	351,479	378,026	26,547
SIN	.4883	134,449	8,294	11,046	153,789	165,389	11,600
Total	.....	27,438,632	1,692,578	2,250,816	31,382,026	33,870,267	2,486,241

[1] Devotionals also to receive "additional interest" in the amount of $24,464. *See* 50 Fed. Reg. 6030 (Feb. 13, 1985).
NOTE.—All dollar amounts have been rounded to the nearest whole dollar

	Percent allocation	90 pct distribution, 12/1/83	96 pct of adjusted fund in real dollars	Distribution needed to attain 96 pct pro rata (in real dollars)
Total fund	.....	42,160,356	.....	43,765,854
1982 PHASE I (Settled as per 1979 land 1980 Remand with adjustment for pro rata distribution of Devotionals share.)				
Settling Parties:				
Program syndicators (see below):				
Joint Sports	14.8486	$5,891,648	$6,237,833	$546,185
PBS	5.1974	1,992,077	2,183,699	191,622
NAB	5.0093	1,919,983	2,104,669	184,686
Music	4.2074	1,612,634	1,767,749	155,115
Canadian	.7425	284,582	311,963	27,381
NPR	.2500	94,861	105,038	10,177
Devotionals	1.0000	.....	420,152	[1] 420,152
1982 PHASE II				
Program syndicators (86.2982):				
MPAA	67.5657	25,737,632	28,387,884	2,650,252
Multimedia	.6930	424,976	291,166	[2] (133,810)
SIN	.4681	185,927	205,076	19,149
Total	100.0000	37,944,320	42,015,229	4,070,909
Settling sports parties (14.8486)				

[1] Devotionals also to receive "additional interest" in the amount of $55,916. *See* 50 Fed. Reg. 6030 (Feb. 13, 1985).
[2] Overpayment.
Note.—All dollar amounts have been rounded to the nearest whole dollar

[FR Doc. 85-5337 Filed 3-5-85; 8:45 am]
BILLING CODE 1410-08-M

DEPARTMENT OF DEFENSE

Defense Systems Management College Board of Visitors; Meeting

AGENCY: Department of Defense.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a meeting of the Defense Systems Management College Board of Visitors

Meeting. The agenda will include a review of accomplishments related to the system acquisition education, system acquisition research, and information collection and dissemination missions. It will also include a review of the DSMC plans, resources and operations. The meeting is open to the public; however, because of limitations on the space available, allocation of seating will be made on a first-come, first-serve basis. Notice of this meeting is required under Presidential Executive Order 11671, June 7, 1972.

DATE: March 28, 1985, 7:30 a.m. to 2:30 p.m.

ADDRESS: Defense Systems Management College, Building 202, Fort Belvoir, Virginia 22060–5426.

FOR FURTHER INFORMATION CONTACT: Ms. Radean Kerns, Bldg 202, Fort Belvoir, Virginia, telephone (703) 664–6480. Persons desiring to attend should contact Ms. Kerns.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

March 1, 1955.

[FR Doc. 85–5338 Filed 3–5–85; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

February 20, 1985.

The USAF Scientific Advisory Board will meet in general session at Brooks AFB, San Antonio, Texas, on April 17, 1985 from 8:30 a.m. to 5:00 p.m. and on April 18, 1985 from 8:30 a.m. to 2:00 p.m.

The purpose of the meeting will be to present classified briefings on Protection of Man in a Hostile Environment and Advances in Biotechnology for Air Force Applications and the Man-machine Interface to the full Board membership and special guests. The meeting will be closed to the public in accordance with section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof.

For further information contact the Scientific Advisory Board Secretariat at (202) 697–4811.

Norita C. Koritko,

Air Force Federal Register Liaison Officer.

[FR Doc. 85–5415 Filed 3–5–85; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF ENERGY

Procurement and Assistance Management Directorate; Restriction of Eligibility for Grant Award

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice of restriction of eligibility for grant award.

SUMMARY: DOE announces that, pursuant to 10 CFR 600.7(a), it intends to award on a restricted eligibility basis a continuation grant to the National Academy of Sciences in Support of the Board on Ocean Science and Policy. The DOE support under this grant will be $30,000 over a 12 month period.

Procurement Request No.: 01–85ER60319.000

Project Scope—The National Academy of Sciences, through the Board on Ocean Sciences and Policy of the Commission on Physical Sciences, Mathematics and Resources, is to address and report on major ocean sciences and policy issues of interest to DOE and other Federal Departments, Agencies, and Offices. The results of the 1985 program will be reported and made available to sponsoring entities, interested parties, and to the public. Eligibility for this continuation award is restricted to the National Academy of Sciences, chartered by Congress to conduct scientific research for the Government, to permit continuance of efforts initiated several years ago.

FOR FURTHER INFORMATION CONTACT: James P. Beiriger, MA–452.1, U.S. Department of Energy, Office of Procurement Operations, 1000 Independence Avenue, SW., Washington, D.C. 20585, Telephone (202) 252–1024.

Issued in Washington, D.C., on *February 27, 1985.*

Ben Goldman,

Director, Contract Operations, Division "A", Office of Procurement Operations.

[FR Doc. 85–5353 Filed 3–5–85; 8:45 am]

BILLING CODE 6450-01-M

Office of Assistant Secretary for International Affairs and Energy Emergencies

International Atomic Energy Agreement; Japan; Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation Between the Government of The United States of America and the Government of Japan Concerning Civil Uses of Atomic Energy, an amended.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval of the following sale: Contract Number S–JA–356, to the Research Reactor Institute, Kyoto University, Japan, 7 grams of uranium-233, 10 plates containing a total of 20 milligrams of uranium-233, on titanium, 100 milligrams of uranium-234, one gram of uranium-235, and 5 plates containing a total of 10 milligrams of plutonium-239 on titanium. These materials are to be used for the study of neutron cross sections and fission mass yields.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: February 28, 1985.

Richard H. Williamson,

Acting Deputy Assistant Secretary for International Affairs.

[FR Doc. 85–5344 Filed 3–5–85; 8:45 am]

BILLING CODE 6450-01-M

International Atomic Energy Agreements; International Atomic Energy Agency; Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation Between the Government of the United States of America and the International Atomic Energy Agency (IAEA) Concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval of the following sale: Contract Number S–IA–126, to the Instituto Nacional de Investigaciones Nucleares, Mexico, 2 grams of uranium enriched to 93.28% in U–235, and 2 grams of uranium enriched to 97.66% in U–235, for use as standard reference material.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department.

Dated: February 28, 1985.

Richard H. Williamson,

Acting Deputy Assistant Secretary for International Affairs.

[FR Doc. 85-5345 Filed 3-5-85; 8:45 am]

BILLING CODE 6450-01-M

Bonneville Power Administration

Initial Offer of Long-Term Power Contracts; Notice of Intent To Prepare an Environmental Impact Statement

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement (EIS) on Long-Term Power Contracts and Request for Recomendations.

SUMMARY: BPA hereby gives notice of its intent to prepare and consider an EIS on its long-term power contracts offered under section 5(g) of the Pacific Northwest Electric Power Planning and Conservation Act (Pacific Northwest Power Act), 16 U.S.C. 839–839h (1982).

BPA was required by the Pacific Northwest Power Act to offer new long-term power contracts to its customers. This was done in August 1981. BPA prepared an Environmental Report to accompany the initial offer of contracts but did not prepare an EIS. BPA has been ordered by the United States Court of Appeals for the Ninth Circuit to prepare an EIS at this time. *Forelaws on board v. Johnson*, 743 F.2d 677, 21 ERC 1850, No. 82-7319 (9th Cir. Sept. 25, 1984), petition for rehearing denied January 21, 1985.

The EIS will analyze major policy choices made for the initial contracts, particularly for terms affecting energy conservation, renewable resources, and the protection of fish and wildlife. Alternatives to contract terms adopted by BPA that were proposed in the initial negotiations and that were analyzed in the Environmental Report will be considered. Additional alternative contract terms may be developed in the scoping process. The EIS will provide information on the environmental consequences of contract terms as they now exist and of alternative contract terms as they are developed in the scoping process.

BPA encourages and will consider written recommendations on appropriate alternatives to the present contrct terms. Send recommendations to the address below by April 5, 1985. Public scoping meetings will be held later this spring. **Federal Register** notice will be made at least 15 days in advance for the time and place of scoping meetings.

Responsible Official: Mr. Roy B. Fox, Environmental Coordinator for the Office of Power and Resources Management, is the official responsible for the develpment of the EIS on long-term power contracts.

ADDRESS: Written recommendations and comments should be submitted to Mr. Fox at P.O. Box 12999, Portland, Oregon 97212.

FOR FURTHER INFORMATION: Questions regarding the EIS should be directed to Mr. Fox at 502-230-4238 in Portland, or Ms. Lynn Baker, Public Involvement Office, 503-230-3478 in Portland. Toll-free lines: Oregon callers outside of Portland may use 800-452-8429; callers in California, Idaho, Montana, Nevada, Utah, Washington, and Wyoming may use 800-547-6048

Issued in Portland, Oregon, on February 21, 1985.

Robert E. Ratcliffe,

Acting Administrator.

[FR Doc. 85-5346 Filed 3-5-85; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER85-293-000, et al.]

American Electric Power Service, Corp. et al; Electric Rate and Corporate Regulation Filings

February 22, 1985.

Take notice that the following filings have been made with the Commission:

1. American Electric Power Service Corporation

[Docket No. ER85-293-000]

February 22, 1985.

Take notice that on February 11, 1985, American Electric Power Service Corporation (AEP) tendered for filing on behalf of its affiliate Indiana & Michigan Electric Company (I&ME), which is an AEP affiliated operating subsidiary, Modification No. 20 dated January 30, 1985 to the Interconnection Agreement dated November 27, 1961 between Illinois Power Company (Illinois) and I&ME. The Commission has previously designated the 1961 Agreement as I&ME's Rate Schedule FERC No. 23 and Illinois' Rate Schedule FERC No. 9.

Sections 1 and 2 of Modification No. 20 provides for an increase in the transmission demand rate for Short Term Power when I&ME is the supplying party to $0.46 per kilowatt per week and to $0.092 per kilowatt per day. Section 4 increases the Limited Term Power transmission demand rate, when I&ME is the supplying party, to $2.00 per kilowatt per month. Sections 3 and 5 revise the generation demand compensation sections of the Short Term Power and Limited Term Power Service Schedules to provide rates. The proposal rates included in this Modification No. 20 for Short Term and Limited Term Power are similar to the rates for Transmission Service presently filed and accepted for filing by the Commission.

AEP requests an effective date of April 15, 1985, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing were served upon Illinois Power Company, Public Service Commission of Indiana, and Michigan Public Service Commission.

Comment date: March 13, 1985, in accordance with Standard Paragraph E at the end of this notice.

2. Florida Power & Light Company

[Docket No. ER85-291-000]

February 22, 1985.

Take notice that on February 8, 1985, Florida Power & Light Company (FPL) tendered for filing the following documents:

Amendment Number One to Agreement to Provide Specified Transmission Service Between Florida Power & Light Company and the City of Starke, Florida (Rate Schedule FERC No. 79)

Amendment Number Two to Agreement to Provide Specified Transmission Service Between Florida Power & Light Company and the City of Starke, Florida.

Amendment Number Three to Agreement to Provide Specified Transmission Service Between Florida Power & Light Company and the City of Starke, Florida.

FPL states that under Amendment Number One, Amendment Two, and Amendment Number Three, FPL will transmit power and energy for City of Starke as is required in the implementation of its interchange agreements with: (1) Jacksonville Electric Authority; (2) with the City of St. Cloud and the City of Kissimmee; and (3) with the Sebring Utilities Commission, respectively.

FPL requests waiver of the Commission's regulations be granted and that the proposed amendments be made effective immediately.

FPL states that copies of the filing were served on the Superintendent of

Power Resources, City of Starke, Florida.

Comment date: March 13, 1985, in accordance with Standard Paragraph E at the end of this notice.

3. Portland General Electric Company

[Docket No. ER85–295–000]

February 22, 1985.

Take notice that on February 11, 1985, Portland General Electric Company (PGE) tendered for filing a Summary of Sales made under the Company's first revised Electric Service Tariff, Volume No. 1, during December of 1984, along with a cost justification for the rates charged.

Copies of this filing were served upon parties having service agreements with PGE, parties to the Intercompany Pool Agreement (revised), intervenors in Docket No. ER77–131 and the Oregon Public Utility Commissioner.

Comment date: March 13, 1985, in accordance with Standard Paragraph E at the end of this notice.

4. Iowa Public Service Company

[Docket No. ER85–294–000]

February 22, 1985.

Take notice that on February 11, 1985, Iowa Public Service Company (IPS) tendered for filing two executed Transmission Service Agreements both dated January 8, 1985, whereby IPS will provide transmission service for Corn Belt Power Cooperative of Neal Station Generating Unit No. 4 capacity and associated energy effective January 1, 1985 and November 1, 1983, respectively.

IPS requests an effective date as noted above and therefore requests a waiver of the Commission's notice requirements.

Comment date: March 13, 1985, in accordance with Standard Paragraph E at the end of this notice.

5. Pennsylvania Power & Light Company.

[Docket No. ER85–299–000]

February 22, 1985.

Take notice that on February 13, 1985, Pennsylvania Power & Light Company (PP&L) tendered for filing as an initial rate schedule an executed Power Supply Agreement dated March 16, 1983 between PP&L and the Borough of Lansdale, Pa. (Lansdale). Under the proposed rate schedule, PP&L will provide full requirements service to Lansdale. PP&L's rates and charges for service to Lansdale will be the same as those charged by PP&L for service to its present Group 1—Transmission customers receiving service at 66 kv or higher.

PP&L requests an effective date of June 1, 1985, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing has been served upon Lansdale and the Pennsylvania Public Utility Commission.

Comment date: March 13, 1985, in accordance with Standard Paragraph E at the end of this notice.

6. Black Hills Power and Light Company

[Docket No. ER85–296–000]

February 22, 1985.

Take notice that on February 11, 1985, Black Hills Power and Light Company (Black Hills) tendered for filing an agreement between Black Hills and the City of Gilette, Wyoming which provides for the sale of seasonal non-firm energy.

Black Hills requests an effective date of February 1, 1985, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing were supplied to the City of Gilette, Wyoming, and the regulatory commissions of the states of Wyoming and South Dakota.

Comment date: March 13, 1985, in accordance with Standard Paragraph E at the end of this notice.

7. Central Hudson Gas & Electric Corporation

[Docket No. ER85–297–000]

February 22, 1985.

Take notice that on February 11, 1985, Central Hudson Gas & Electric Corporation (Central Hudson) tendered for filing as a supplement to its Rate Schedule FERC No. 22 a letter of agreement and notification dated January 28, 1985 between Central Hudson and New York State Electric and Gas Corporation. Central Hudson states that this letter provides for a decrease in the monthly facilities charge from $7,121.23 to $5,981.25 in accordance with Article IV.1 of its Rate Schedule FERC No. 22, a decrease in the monthly Transmission Charge from $6,090.89 to $5,860.55 in accordance with Articles V and VI of its Rate Schedule FERC No. 22 and an increase in the annual Operation and Maintenance Charge from $2,994.84 to $3,237.42 in accordance with Article IV.2 of its Rate Schedule FERC No. 22.

Central Hudson requests an effective date of January 1, 1985, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing by Central Hudson were served upon New York State Electric and Gas Corporation.

Comment date: March 13, 1985, in accordance with Standard Paragraph E at the end of this notice.

8. Northern States Power Company

[Docket No. ER85–290–000]

February 22, 1985.

Take notice that on February 8, 1985, Northern States Power (Minnesota), tendered for filing three related contracts entitled 345 KV Joint Transmission Network (JTN) Agreement between Cooperative Power Association and Northern States Power Company (NSP) and United Power Association (JTN Agreement) dated October 9, 1984; Facilities Agreement for Initial Equalization of the Joint Transmission Network between Cooperative Power Association and NSP and United Power Association (Facilities Agreement) dated October 9, 1984; and Purchase Agreement, dated October 9, 1984.

The JTN Agreement essentially provides for the establishment of a joint transmission network and the ongoing rights and responsibilities of NSP, UPA and CPA in that network. The Facilities Agreement defines the property to be transferred and constructed by each party to the joint transmission network to reach initial parity of investment in the network. The Purchase Agreement provides the transfer of certain transmission properties to NSP by UPA and CPA. The purpose of these related contracts is to establish a joint transmission network among NSP, Cooperative Power Association and United Power Association.

NSP requests an effective date of April 15, 1985, and therefore requests waiver of the Commission's notice requirements.

Comment date: March 13, 1985, in accordance with Standard Paragraph E at the end of this notice.

9. Florida Power & Light Company

[Docket No. ER85–292–000]

February 22, 1985.

Take notice that on February 8, 1985, Florida Power & Light Company (FPL) tendered for filing a document entitled Amendment Number Four to Agreement to Provide Specified Transmission Service Between FPL and the Sebring Utilities Commission (Sebring) (Rate Schedule FERC No. 64).

FPL states that under Amendment Number Four, FPL will transmit power and energy for Sebring Utilities Commission as is required in the implementation of its interchange agreement with City of Starke, Florida (Starke).

FPL requests that waiver of the Commission's Regulations be granted and that the proposed Amendment be made effective immediately.

FPL states that copies of the filing were served on Sebring Utilities Commission.

Comment date: March 13, 1985, in accordance with Standard Paragraph E at the end of this notice.

10. Idaho Power Company

[Docket No. ER85-298-000]

February 22, 1985.

Take notice that on February 12, 1985, Idaho Power Company (Idaho) tendered for filing in compliance with the Federal Energy Regulatory Commission's Order of October 7, 1978, a summary of sales made under the Company's 1st Revised FERC Electric Tariff, Volume No. 1 (Supersedes Original Volume No. 1) during December, 1984, along with cost justification for the rate charged. This filing includes the following supplements:

Utah Power & Light Company	Supplement 38
Sierra Pacific Power Company	Supplement 34
Portland General Electric Company	Supplement 31
Southern California Edison Company	Supplement 25
San Diego Gas & Electric Company	Supplement 20
Washington Water Power Company	Supplement 26
Los Angeles Water & Power Company	Supplement 21
City of Glendale	Supplement 20
Puget Sound Power & Light Company	Supplement 12
Pacific Gas & Electric Company	Supplement 6

Idaho requests an effective date of December 1, 1984, and therefore requests waiver of the Commission's notice requirements.

Comment date: March 13, 1985, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-5332 Filed 3-5-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF85-227-000, et al.]

Bethlehem Steel Corp., et al., Bethlehem Facility; Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications

Comment date: Thirty days from the publication in the **Federal Reister**, in accordance with Standard Paragraph E at the end of this notice.

Take notice that the following filings have been made with the Commission:

1. Bethlehem Steel Corporation, Bethlehem Facility

[Docket No. QF85-227-000]

February 20, 1985.

On January 31, 1985, Bethlehem Steel Corporation, 8th and Eaton Avenues, Bethlehem, Pennsylvania, 18056, submitted for filing an application for certification of a facility as a qualifying facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility is located at Bethlehem's ssteel operation facilities in Bethlehem, Pennsylvania, and is a topping-cycle cogeneration unit. The facility will supply steam and electricity to Bethlehem's steel plant. The cogeneration facility includes a topping cycle steam turbine generator and a condensing steam turbine generator. The facility's primary energy source is waste by-products consisting of coke oven gas and blast furnance gas. The power production capacity is 30 MW. No electric utility, electric utility holding company or any combination thereof has any ownership interest in the facility.

2. AES Placerita, Inc.

[Docket No. QR85-179-000]

February 21, 1985.

On January 7, 1985, AES Placerita, Inc., (Applicant) of 1925 N. Lynn Street, Suite 1200, Arlington, Virginia 22209 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submttal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the TOSCO Enhanced Oil Recovery Corporation's Placerita oil field in Newhall, California. The facility will consist of two gas-turbine generators exhausting to a heat recovery steam generator. The steam will be used to drive a steam-turbine generator and for injection into oil wells to enhance oil recovery. The primary energy source will be natural gas. The electric power production capacity will be 102 MW. Construction is scheduled to begin in July 1986 and operation is expected to commence about mid-1987.

3. Syngas Systems, Inc.

[Docket No. QF85-220-000]

February 22, 1985.

On February 1, 1985, Syngas Systems, Inc. (Applicant) of Three 555 Timmons Lane, Suite 8000, Houston, Texas 77027, submitted for filiing an application for certification of a facility as a qualifying facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility is located at 4601 Indiana Street, Building 13, Golden, Colorado 80403. Sixteen tons per day (dry basis) of whole tree wood chips are gasified in an air blown, downdraft gasifier to produce a low Btu fuel gas which is cooled and cleaned of tar and particulates and used as fuel for a turbosupercharged internal combustion engine specially configured for the low Btu gas. The engine drives a 480 volt, 3 phase, 60 Hz synchronous machine to produce a net output of 750 kW. The facility will be interconnected with the Public Service Company of Colorado system.

4. Medical Cogen

[Docket No. QF85-211-000]

February 22, 1985.

On January 28, 1985, Medical Cogen (Applicant) of Merritt Peralta Medical Center, Hawthorne and Webster Streets, Oakland, California 94623 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed topping-cycle cogeneration facility will be located at the Merritt Peralta Medical Center, Hawthorne and Webster Streets, Oakland, California. The cogeneration facility will consist of two 1430 kW engine generators and associated heat recovery equipment. Heat will be recovered from the engine exhausts to produce 120 psig steam, and 15 psig steam will be produced from the cooling jackets around the engines. The steam generated will be fed into the existing hospital distribution systems. A new 120 psig line and a condensate return line will be run to Peralta. In addition, new low-pressure absorption-type chillers will be installed at each hospital to fully utilize the steam produced.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-5333 Filed 3-5-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL85-22-000]

Aquenergy Systems, Inc., Complainant, v. Saluda River Electric Cooperative, Inc. and Blue Ridge Electric Cooperative, Inc., Respondents; Complaint

March 1, 1985.

Take notice that on February 21, 1985, Aquenergy Systems, Inc. (Aquenergy) submitted for filing a complaint pursuant to Rule 206 of the Commission's Rules of Practice and Procedure 18 CFR 385.206, against Saluda River Electric Cooperative, Inc. (Saluda River) and Blue Ridge Electric Cooperative, Inc. (Blue Ridge).

Aquenergy requests that the Commission issue an order requiring Saluda River and Blue Ridge to provide the appropriate and relevant data and information from which their avoided costs can be determined.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 29, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-5379 Filed 3-5-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 7522-001]

Cairo/Wickliffee Associates; Surrender of Preliminary Permit

March 4, 1985.

Take notice that Cairo/Wickliffee Associates, Permittee for the proposed Cairo/Wickliffee Hydro Project No. 7522, has requested that its preliminary permit be terminated. The permit was issued on February 3, 1984, and would have expired January 31, 1986. The project would have been located on the Ohio River near Cairo, Ballard County, Kentucky. The Permittee cites that the proposed project is not economically feasible as the basis for the surrender request.

The Permittee filed the request on February 1, 1985, and the preliminary permit for Project No. 7522 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-5378, Filed 3-5-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP85-20-000]

Colorado Interstate Gas Co. v. MIGC, Inc.; Complaint

February 28, 1985.

On February 19, 1985, Colorado Interstate Gas Company (CIG) filed a complaint pursuant to 18 CFR 271.1105(d)(3) and Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206 (1984), requesting that the Production-Related Costs Board order refunds of production-related costs charged to CIG by MIGC, Inc. (MIGC) contrary to 18 CFR 271.1104 (1984).

CIG states that it buys natural gas from MIGC that MIGC purchases from its affiliate, MGPC, Inc. (MGPC). CIG contends that MIGC knowingly and willfully violated 18 CFR 271.1104(e) regarding the retroactive collection of production-related charges for the period July 25, 1980 to June 1, 1982 when MIGC executed a contract amendment with MGPC. CIG also contends that MIGC incorrectly paid substantially inflated retroactive charges based on the wellhead Btu content of the gas rather than the lower Btu content of the residue gas at the tailgate of MGPC's plants where the sale of the gas to MIGC occurs. Finally, CIG contends that the overall rate at which CIG was billed for production-related cost charges from March 7, 1983 significantly and inexplicably rose beginning in May, 1984, despite no major changes in MGPC's system. CIG states that it cannot quantify the amounts paid for the prospective charges.

CIG requests either (1) a complete disallowance and refund with interest of all production-related costs billed by MIGC for the period July 25, 1980 to December 31, 1984, or (2) a disallowance and refunds with interest for the retroactive period July 25, 1980 to June 1, 1982 and a recalculation of all charges for the period June 1, 1982 to December 31, 1984.

Under Rules 206(b) and 213(a), 18 CFR 385.206(b) and 385.213(a) (1984), MIGC must file an answer to CIG's complaint with the Commission unless otherwise ordered by the Commission. Under Rule 213(e), any person failing to answer a complaint may be considered in default, and all relevant facts stated in such complaint may be deemed admitted. MIGC shall file its answer with the Commission on or before March 13, 1985.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 13, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-5375 Filed 3-5-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA85-13-000]

Crystal Oil Co.; Petition for Adjustment

March 1, 1985.

On December 31, 1984, Crystal Oil Company filed with the Federal Energy Regulatory Commission a petition for an adjustment under section 502(c) of the Natural Gas Policy Act of 1978 (NGPA) and Rules 1101 through 1104 of the Commission's rules.[1]

Commission Order Nos. 399 [2] and 399-A [3] implement the decision of the United States Court of Appeals for the District of Columbia Circuit in *Interstate Natural Gas Association of America* v. *FERC*,[4] and require Crystal, as a first-seller of natural gas, to make refunds to its gas purchasers resulting from the court-ordered adjustment in the method used to measure the energy content of natural gas.

Crystal asserts that the Btu refund billings received from two of its gas purchasers, Arkansas Louisiana Gas Company (Arkla) and United Gas Pipe Line Company (United), should be offset by monies (including the interest thereon) allegedly owed to Crystal by these purchasers. Additionally, Crystal asserts that its refund obligations should be further reduced by the amount of Btu refunds which allegedly were improperly billed Crystal by Arkla and United. Accordingly, Crystal requests an adjustment from the Btu refund requirements of Commission Order Nos. 399 and 399-A so that Crystal may reduce its refund obligations by monies allegedly due and owing to Crystal by Arkla and United and by amounts erroneously billed Crystal by these two purchasers.

Subpart K of Part 385 of the Commission's Rules sets out the procedures that apply to this adjustment proceeding. Any person who wishes to participate in this proceeding shall file a petition to intervene in accordance with Subpart K. All such petitions must be filed within 15 days after this notice is published in the **Federal Register**.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-5380 Filed 3-5-85; 8:45 am]

BILLING CODE 6717-01-M

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[1] 15 U.S.C. 3301, 3412(c) and 18 CFR 385.1101 through 385.1104 (1984), respectively.

[2] Order No. 399, *Refunds Resulting From Btu Measurement Adjustments*, III FERC Statutes and Regulations ¶ 30,597 (1984).

[3] Order No. 399-A, *Refunds Resulting From Btu Measurement Adjustments*, III FERC Statutes and Regulations ¶ 30,812 (1984).

[4] 716 F.2d 1 (1983), *cert. den.* 104 S. Ct. 1616 (1984).

[Project No. 8454-001]

Fountain City Associates; Surrender of Preliminary Permit

March 4, 1985.

Take notice that Fountain City Associates, Permittee for the Mississippi Lock and Dam No. 5A, has requested that the preliminary permit be terminated. The preliminary permit for Project No. 8454 was issued on January 31, 1985, and would have expired on December 31, 1987. The project would have been located on the Mississippi River in Winona County, Minnesota, and Buffalo County, Wisconsin.

The Permittee filed its request on February 1, 1985, and the preliminary permit for Project No. 8454 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-5376 Filed 3-5-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-315-000]

Iowa-Illinois Gas and Electric Co.; Filing

March 1, 1985.

The filing Company submits the following:

Take notice that Iowa-Illinois Gas and Electric Company (Iowa) on February 21, 1985, tendered for filing a proposed change in its Rate Schedule WES-M (applicable only to the cities of Buffalo, Callender and Farnhamville, Iowa), FPC Wholesale Electric Tariff, Original Volume No. 1, Second Revised Sheet No. 7, proposed to be effective May 1, 1985, corrects a previous reference error. The change reflected in 4th Revised Sheet No. 8 and 3rd Revised Sheet No. 9, also proposed to be effective May 1, 1985, would increase revenues from jurisdictional sales and service by $54,899 based on the 12-month period ending December 31, 1983.

Iowa states that the reason for the proposed increased revenues is because its operating income has declined to a level which provides an inadequate return.

Copies of the filing were served upon the cities of Buffalo, Callender and Farnhamville, Iowa, and the Iowa State Commerce Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 14, 1985. Protests will be considered by the Commission, in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-5381 Filed 3-5-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 7488-001]

Spottsville Associates; Surrender of Preliminary Permit

March 4, 1985.

Take notice that Spottsville Associates, Permittee for the proposed Spottsville Hydro Project No. 7488, has requested that its preliminary permit be terminated. The permit was issued on January 25, 1984, would have expired December 31, 1985. The project would have been located on the Green River near Spottsville, Henderson County, Kentucky. The Permittee cites that the proposed project is not economically feasible as the basis for the surrender request.

The Permittee filed the request on February 1, 1985, and the preliminary permit for Project No. 7488 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-5377 Filed 3-5-85; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[PP 4G2987/T479, FRL-2786-6]

FMC Corp.; Establishment of Temporary Tolerance

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: EPA has established a temporary tolerance for residues of the herbicide, command 2-(2-chlorophenyl)methyl-4,4-dimethyl-3-isoxazolidinone in or on the raw agricultural commodity soybeans. This temporary tolerance was requested by FMC Corporation.

DATE: This temporary tolerance expires March 1, 1986.

FOR FURTHER INFORMATION CONTACT:

By mail: Robert Taylor, Product Manager (PM) 25, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 245 CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1800).

SUPPLEMENTARY INFORMATION: FMC Corporation, Agricultural Chemical Group, 2000 Market St., Philadelphia, PA 19103, has requested in pesticide petition PP 4G2987 the establishment of a temporary tolerance for residues of the herbicide, command 2-(2-chlorophenyl)methyl-4,4-dimethyl-3-isoxazolidinone derived from its application in or on the raw agricultural commodity soybeans at 0.05 part per million (ppm).

This temporary tolerance will permit the marketing of the above raw agricultural commodity when treated in accordance with the provisions of experimental use permit 279-EUP-93, which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 95-396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that establishment of the temporary tolerance will protect the public health. Therefore, the temporary tolerance has been established on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. FMC Corp. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This tolerance expires March 1, 1986. Residues not in excess of this amount remaining in or on the raw agricultural commodity after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerance. This tolerance may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 610-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(j), 68 Stat. 516 (21 U.S.C. 346a(j)))

Dated: February 20, 1985.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 85-4999 Filed 3-5-85; 8:45 am]

BILLING CODE 6560-50-M

[PP4G3073/T477; FRL-2785-Y]

Micro Gene Systems, Inc., Establishment of Exemptions From Requirements of Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established exemptions from the requirement of tolerances for residues of the biological insecticide codling moth granulosis virus in or on the raw agricultureal commodities white corn and sweet corn.

DATE: These temporary exemptions from the requirement of tolerances expire June 18, 1985.

FOR FURTHER INFORMATION CONTACT:

By mail: Timothy Gardner, Product Manager (PM) 17, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., Sw., Washington, D.C. 20460.

Office location and telephone number: Rm. 207, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-2609).

SUPPLEMENTARY INFORMATION: Micro Gene Systems, Inc., 210 Frontage Rd., West Haven, CT 06516, has requested in pesticide petition PP 4G3073 the establishment of exemptions from the requirement of tolerances for residues of the biological insecticide codling moth granulosis virus in or on the raw agricultural commodities white corn and sweet corn.

These temporary exemptions from the requirement of tolerances will permit the marketing of the above raw agricultural commodities when treated in accordance with the provisions of the experimental use permit 51456-EUP-1 which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (Pub. L. 95-396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that the exemptions from the requirement of tolerances will protect the public health. Therefore, the temporary exemptions from the requirements of tolerances have been established on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredients to be used must not exceed the quantity authorized by the experimental use permit.

2. Micro Gene Systems, Inc., must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These temporary exemptions from the requirements of tolerances expire June 18, 1985. Residues remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary exemptions from the requirements of tolerances. These temporary exemptions from the requirement of tolerances may

be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirement of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 610-612), the Administrator has determined that the regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(j), 68 Stat. 516 (21 U.S.C. 346a(j)))

Dated: February 20, 1985.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 85-5001 Filed 3-5-85; 8:45 am]

BILLING CODE 6560-50-M

[PP 1G2431/T478; FRL-2786-5]

Extension of Temporary Tolerance; Rohm and Haas Co.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has extended temporary tolerances for residues of the chemical hybridizing agent potassium and its related metabolite in or on the raw agricutural commodity wheat.

DATE: This temporary tolerance expires March 1, 1986.

FOR FURTHER INFORMATION CONTACT:

By mail: Robert Taylor, Product Manager (PM) 25, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 245, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1800).

SUPPLEMENTARY INFORMATION: EPA issued a notice that was published in the **Federal Register** of October 6, 1982 (47 FR 44154), announcing the extension of a temporary tolerance for residues of the chemical hybridizing agent potassium 1-(p-chlorophenyl)-1,4-dihydro-6-methyl-4-oxo-pyridazine-3-carboxylate and its related metabolite in or on the raw agricultural commodity wheat (second generation, grown out of the hybrid seed and untreated male parent) at 1.0 part per million (ppm). This tolerance was issued in response to pesticide petition PP 1G2431, submitted by Rohm and Haas Co., Independence Mall West, Philadelphia, PA 19105.

This temporary tolerance has been extended to permit the continued marketing of the raw agricultural commodity named above when treated in accordance with the provisions of experimental use permit 707-EUP-95, which is being extended under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 95-396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that the extension of this temporary tolerance will protect the public health. Therefore, the temporary tolerance has been extended on the condition that the presticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. Rohm and Haas Co. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This tolerance expires March 1, 1986. Residues not in excess of this amount remaining in or on the raw agricultural commodity after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accorance with, the provisions of the experimental use permit and temporary tolerance. This tolerance may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981, (46 FR 24950).

(Sec. 408(j), 68 Stat. 516 (21 U.S.C. 346a(j)))

Dated: February 20, 1985.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 85-5000 Filed 3-5-85; 8:45 am]

BILLING CODE 6560-50-M

[PF-404; FRL-2786-3]

Pesticide Tolerance Petitions; Rhone-Poulenc Inc. and Mobay Chemical Corp.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received pesticide petitions relating to the establishment of tolerances for certain pesticide chemicals in or on certain raw agricultural commodities.

ADDRESS: By mail, submit comments identified by the document control number [PF-404] and the petition number, attention Product Manager (PM) named in each petition, at the following addresses:

Information Services Section (TS-757C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, bring comments to: Information Services Section (TS-757C), Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed in response to this notice will be available for public inspection in the Information Services Section office at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (TS-767C), Attn: (Product Manager (PM) named in

each petition), Environmental Protection Agency, Office of Pesticide Programs, 401 M St., SW., Washington, D.C. 20460.

In person: Contact the PM named in each petition at the following office location/telephone number:

Product manager	Office location and telephone No.	Address
PM-12, Jay Ellenberger.	Rm. 202, CM#2 (703-557-2386).	EPA, 1921 Jefferson Davis Hwy, Arlington, VA 22202.
PM-21, Henry Jacoby.	Rm. 227, CM#2 (703-557-1900).	Do.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions (PP) relating to the establishment of tolerances for certain pesticide chemicals in or on certain agricultural commodities.

Initial Filings

1. *PP 5E3214.* Rhone-Poulenc Inc., P.O. Box 125, Black Horse Lane, Monmouth Junction, NJ 08852. Proposes amending 40 CFR 180.399 by establishing tolerances for the combined residues of the fungicide iprodione [3-(3,5-dichlorophenyl)-*N*-(methyl-ethyl)-2,4-dioxo-1-imidazolidinecarboximide], its isomer [3-(1-methylethyl)-*N*-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidine-carboximide], and its metabolite [3-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboximide] in or on the agricultural commodities blueberries, boysenberries, currants, and rasberries at 15 parts per million (ppm). The proposed analytical method for determining residues is gas chromatography with a Ni63 electron-capture detector. (PM-21)

2. *PP 5E3187.* Mobay Chemical Corp., P.O. Box 4913, Hawthorn Road, Kansas City, MO 64120. Proposes amending 40 CFR Part 180 by establishing tolerances for the residues of the insecticide (*Z*)-alpha-[[(diethoxyphosphinothioyl]oxy]imino] benzeneacetonitrile and its cholinesterase-inhibiting metabolites in or on the agricultural commodity corn, sweet (kernels plus cops with husk removed at 0.05 ppm.

The proposed analytical method for determining residues is gas chromatography with phosphor thermionic or flame-photometer detector. (PM-12)

(Sec. 408(d)(2) 68 Stat. 512 (21 U.S.C. 346a(d)(2)))

Dated: February 20, 1985.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 85-4992 Filed 3-5-85; 8:45 am]

BILLING CODE 6560-50-M

[OPP-180658; FRL 2789-6]

Montana Department of Agriculture; Application for Emergency Exemption to Use Sodium Monofluoroacetate; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a request for an emergency exemption from the Montana Department of Agriculture (hereafter referred to as the "Applicant") to use the active ingredient sodium monofluoroacetate (Compound 1080) to control Columbian ground squirrels (*Spermophilus columbianus*) on 17,789 acres of cropland and 15,858 acres of improved pastureland in 16 counties of Montana. EPA is soliciting comment before making the decision whether or not to grant the exemption.

DATE: Comments must be received on or before March 21, 1985.

ADDRESS: Three copies of written comments, bearing the identifying notation "OPP-180658," should be submitted by mail to:

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, bring comments to: Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential business Information (CBI)." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for inspection in Rm. 236 at the address given above from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Jim Tompkins, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW, Washington, D.C. 20460.

Office location and telephone number: Rm. 716B, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1192).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any provision of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue a specific exemption to permit the use of sodium monofluoroacetate (CAS Reg. 62-74-8) grain bait to control Columbian ground squirrels in 16 counties (Beaverhead, Broadwater, Deer Lodge, Flathead, Granite, Jefferson, Lake, Lewis & Clark, Lincoln, Madison, Mineral, Missoula, Powell, Ravalli, Sanders, and Silver Bow) in Montana. Information in accordance with 40 CFR Part 166 was submitted as part of this request. Compound 1080 was previously used in Montana for control of ground squirrels under specific exemptions during 1979, 1981, 1982, 1983, and 1984.

The Applicant claims that because Columbian ground squirrels like to eat grains, grasses, and cultivated legumes they cause substantial damage to Western Montana's staple crops, principally small grains and hay. Damage studies show that moderate to high numbers of squirrels can remove about one-fourth of a small grain crop and damage 15 percent and 8 percent of first and second cuttings of alfalfa, and that additional damage is caused by mounds of earth and rock next to rodent burrows. The Applicant estimates that potential damages could amount to $389,620 in cropland and to $211,926 in pastureland, a total of approximately $601,543 in damages. Baiting costs at $2.33 per acre will result in a cost benefit amounting to approximately $514,591 from use of this pesticide. A damage study conducted in 1979 indicated that the specific exemption prevented a total of $1,417,000 in damages by the pest. A 1981 damage study showed an average of $13.51 herbage loss per acre to the Columbian ground squirrels.

Five pesticides are currently registered for controlling Columbian ground squirrels: Strychnine, zinc phosphide on grain baits, diphacinone in bait stations, and two burrow fumigants—gas cartridges and aluminum phosphide. The Applicant indicates that control with strychnine and zinc phosphides is usually 70 percent or less, and that many farmers feel using strychnine is a waste of time and money because of poor control. Burrow fumigants are effective in the spring when soil moisture is high enough to prevent gas leakage. However, the

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cost and time required to use gas cartridges on dense squirrel populations is prohibitive.

The Applicant proposes to use technical grade sodium monofluoroacetate with hulled, rolled oats as the carrier. Up to 13,459 pounds of 0.05 percent grin bait (requiring 120 ounces of technical grade sodium monofluoroacetate, 90 percent pure) will be used. The bait compound is to be scattered at a rate of 0.16 ounce of bait along each active burrow entrance using a calibrated dipper. Any land treated with bait shall not be grazed for a period of 14 days, with the exception of cattle which may be grazed after a period of 7 days. Application would be under the supervision of a licensed pesticide applicator or pest control consultant. Each applicator would be trained in:

1. The biology and ecology of the Columbian ground squirrel.
2. The safe handling of the toxic bait.
3. Proper placement of the bait.
4. Consideration of environmental conditions before baiting is begun.
5. Necessary recordkeeping.
6. Other competency standards.

Treatments would be made particularly during the breeding season and early gestation period in the spring and after the young have emerged and begun to forage independently, limited by the time period of from March 1, 1985, through August 31, 1985.

A notice of Rebuttable Presumption Against Registration and continued registration (RPAR) with respect to rodenticide products containing Compound 1080 was published in the **Federal Register** on December 1, 1976 (41 FR 52792). RPAR criteria determined to have been met or exceeded for Compound 1080 were:

(1) Acute toxicity to mammals and birds,

(2) Significant reduction in populations of nontarget organisms and fatalities to members of endangered species, and

(3) Lack of emergency treatment.

The Agency published Position Document No. 3/3 on November 4, 1983 (48 FR 50935), which outlined the Agency's findings and recommendations concerning the use of Compound 1080. Position Document No. 4, which will present the Agency's final determination with respect to use of Compound 1080, is expected in the near future.

This notice does not constitute a decision by EPA on the application itself. Use of the chemical sodium monofluoracetate, better known as "1080," has been determined to be of national interest and therefore, the Agency has decided that public notice and opportunity for public comment pursuant to 40 CFR 166.10 is called for as a part of the informal adjudication for specific exemptions. Accordingly, interested persons may submit written views on this subject to the Program Management and Support Division at the address above. The comments must be received on or before March 21, 1985, and should bear the identifying notation "OPP 180658." All written comments filed pursuant to this notice will be available for public inspection in Rm. 236, Crystal Mall No. 2 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by Montana.

Dated: February 25, 1985.

Douglas D. Campt,

Director, Registration Division.

[FR Doc. 85-5139 Filed 3-5-85; 8:45 am]

BILLING CODE 6560-50-M

[OPP-50630; RL-2788-6]

Issuance of Experimental Use Permits; American Hoechst Corp., et al.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

FOR FURTHER INFORMATION CONTACT: By mail; the product manager cited in each experimental use permit at the address below:

Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person or by telephone: Contact the product manager at the following address at the office location or telephone number cited in each experimental use permit: 1921 Jefferson Davis Highway, Arlington, VA.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits:

8340-EUP-9. Extension. American Hoechst Corporation, Route 202-206 North, Someville, NJ 08876. This experimental use permit allows the use of 191.1 pounds of the herbicide ethyl 2-[4-[(6-chloro-2-benzoxazolyl)oxy]phenoxy propanoate on turfgrass to evaluate the control of various weeds. A total of 510 acres are involved; the program is authorized in the States of Connecticut, Delaware, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Michigan, Minnesota, Missouri, Nebraska, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Virginia, and Wisconsin. The experimental use permit is effective from May 1, 1985 to May 1, 1986. (Richard Mountfort, PM 23, Rm. 253, CM#2, (703-557-1830))

52300-EUP-1. State of California, Health and Welfare Agency, Vector Biology and Control Branch, 744 P St., Sacramento, CA 95814. This experimental use permit allows the use of $2-10^{11}$ spores of the fungus Oospores of *Lagenidium giganteum* on rice fields to evaluate the control of mosquito larvae. A total of 20 acres are involved; the program is authorized only in the State of California. The experimental use permit is effective from January 14, 1985 to January 14, 1986. This permit is issued with the limitation that all crops will be destroyed or used for research purposes only. (Timothy Gardner, PM 17, Rm. 207, CM#2, (703-557-2690))

45639-EUP-4. Renewal. Nor-AM Chemical Company, P.O. Box 7495, 3509 Silverside Road, Wilmington, DE 19803. This experimental use permit allows the use of 78 pounds of the insecticide amitraz on approximately 8,800 cattle to evaluate the control of ticks. The program is authorized only in the States of California, Missouri, New Mexico, Oklahoma, and Texas and the Territory of Puerto Rico. The experimental use permit was previously effective from March 17, 1982 to March 17, 1983. The permit is now effective from October 17, 1984 to April 25, 1985. A temporary tolerance for residues of the active ingredient in or on the fat, meat, and meat by-products of cattle has been established. (Jay Ellenberger, PM 12, Rm. 202, CM#2, (703-557-2386))

707-EUP-106. Issuance. Rohm and Haas Company, Independence Mall West, Philadelphia, PA 19105. This experimental use permit allows the use of 50 pounds of the herbicide oxyfluorfen on rice to evaluate the control of various weeds. A total of 100 acres are involved; the program is authorized only in the States of Arkansas, California, Louisiana, Mississippi, and Texas. The experimental use permit is effective from January 14, 1985 to January 31,

1986. This permit is issued with the limitation that all crops are destroyed or used for research purposes only. (Richard Mountfort, PM 23, Rm. 253, CM#2, (703–557–1830))

Persons wishing to review these experimental use permits are referred to the designated product managers. Inquiries concerning these permits should be directed to the persons cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

(Sec. 5, Pub. L. 95–369; 92 Stat. 828 (7 U.S.C. 136c))

Dated: February 20, 1985.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 85–5133 Filed 3–5–85; 8:45 am]

BILLING CODE 6560–50–M

[OPP–42056A; FRL–2788–7]

Commonwealth of the Northern Mariana Islands; Approval of State Plan for Certification of Commercial and Private Applicators of Restricted Use Pesticides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA grants final approval of the Commonwealth of Northern Mariana Islands State Plan for the Certification of Commercial and Private Applicators of Restricted Use Pesticides (CNMI Plan).

EFFECTIVE DATE: March 6, 1985.

FOR FURTHER INFORMATION CONTACT: Kathryn Papalia, Region IX, Environmental Protection Agency, 215 Fremont St., San Francisco, CA 94195, (415–974–8119).

SUPPLEMENTARY INFORMATION: Section 4(a)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (7 U.S.C. 136b), and the implementing regulations of 40 CFR Part 171 require each State wishing to certify applicators to submit a plan to EPA for approval. Any State certification program shall be maintained according to the State Plan approved by EPA.

A notice of Intent to Approve CNMI State Plan by EPA was published in the **Federal Register** of November 7, 1984 (49 FR 44552). No comments were received on the Notice of Intent to Approve and EPA finds that all criteria for an approvable State plan have been met.

EPA is following the Congressional intent of FIFRA that States shall certify applicators of restricted use pesticides and hereby grants final approval to the CNMI Plan.

Dated: February 11, 1985.

John Wise,

Acting Regional Administrator, Region IX.

[FR Doc. 85–5132 Filed 3–5–85; 8:45 am]

BILLING CODE 6560–50–M

[OPP–42058A; FRL–2788–4]

Territory of American Samoa; Contingent Approval of State Plan for Certification of Pesticide Applicators of Restricted Use Pesticides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA grants contingent approval of the Territory of American Samoa State Plan for the Certification of Commercial and Private Applicators of Restricted Use Pesticides (American Samoa State Plan).

EFFECTIVE DATE: March 6, 1985.

ADDRESS: Copies of the plan are available for review at the following location:

1. Library, Region IX, Environmental Protection Agency, San Francisco, CA 91405.
2. Environmental Quality Commission, Office of the Governor, American Samoa Government, Pago Pago, American Samoa 96799.

FOR FURTHER INFORMATION CONTACT: Kathryn Papalia, Region IX, Environmental Protection Agency, 215 Fremont St., San Francisco, CA 91405, (415–974–8119).

SUPPLEMENTARY INFORMATION: A notice of intent to grant contingent approval of the American Samoa State Plan by EPA and solicitation of comment was published in the **Federal Register** of November 7, 1984 (49 FR 44552). No comments were received.

EPA is following the Congressional intent of FIFRA that States shall certify applicators of restricted used pesticides and hereby grants contingent approval of the American Samoa State Plan.

Upon promulgation by American Samoa of the required regulations for implementation of its State Plan, EPA will issue a notice of final approval of the American Samoa State Plan.

Dated: February 11, 1985.

Judith E. Ayres,

Regional Administrator, Region IX.

[FR Doc. 85–5135 Filed 3–5–85; 8:45 am]

BILLING CODE 6560–50–M

[OPP–42057A; FRL–2788–5]

Trust Territory of the Pacific Islands; Approval of State Plan for Certification of Commercial and Private Applicators of Restricted Use Pesticides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA grants final approval of the Trust Territory of the Pacific Islands State Plan for the Certification of Commercial and Private Applicators of Restricted Use Pesticides (Trust Territory Plan).

EFFECTIVE DATE: March 6, 1985.

FOR FURTHER INFORMATION CONTACT: Kathryn Papalia, Region IX, Environmental Protection Agency, 215 Fremont St., San Francisco, CA 94105, (415–974–8119).

SUPPLEMENTARY INFORMATION: Section 4(a)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (7 U.S.C. 136b), and the implementing regulations of 40 CFR Part 171 require each State wishing to certify applicators to submit a plan to EPA for approval. Any State certification program shall be maintained according to the State Plan approved by EPA.

A Notice of Intent to Approve the Trust Territory State Plan by EPA was published in the **Federal Register** of November 7, 1984 (49 FR 44553). No comments were received on the Notice of Intent to Approve and EPA finds that all criteria for an approvable State plan have been met.

EPA is following the Congressional intent of FIFRA that States shall certify applicators of restricted use pesticides and hereby grants final approval to the Trust Territory State Plan.

Dated: February 8, 1985.

Judith E. Ayres,

Regional Administrator, Region IX.

[FR Doc. 85–5134 Filed 3–5–85; 8:45 am]

BILLING CODE 6560–50–M

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[OW-3-FRL-2790-8]

Groundwater System of a Limestone Aquifer of the Piedmont Region in Seven Valleys, York County, PA; Sole Source Aquifer Designation; Final Determination

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Administrator of the U.S. Environmental Protection Agency has determined that the groundwater system of the Conestoga Limestone formation of the Piedmont region which underlies part of York County, Pennsylvania, in the vicinity of the Borough of Seven Valleys (denominated "Seven Valleys" aquifer), is the sole or principal source of drinking water for that part of York County and that such aquifer, if contaminated, would create a significant hazard to public health. This determination is in response to a petition submitted by Opposing Unnecessary Chemical Hazards, Inc. (O.U.C.H.) requesting that the Administrator of EPA make a determination under section 1424(e) of the Safe Drinking Water Act, Pub. L. 93-523, as amended, that the Conestoga Limestone aquifer underlying the Borough of Seven Valleys and a portion of North Codorus Township is a sole or principal source of drinking water for the area. As a result of this action, Federal financially assisted projects in the designated area will be subject to EPA review pursuant to section 1424(e) to ensure that these projects are designed and constructed so that they do not create a significant hazard to public health.

EFFECTIVE DATE: This determination shall be promulgated for purposes of judicial review at 1:00 p.m. eastern standard time on March 14, 1985. This determination shall become effective on April 15, 1985.

ADDRESS: The date on which these findings are based are available to the public and may be inspected during normal business hours at the U.S. Environmental Protection Agency, Region III, Water Supply Branch, Curtis Building, 6th and Walnut Streets, Philadelphia, Pennsylvania 19106.

FOR FURTHER INFORMATION CONTACT: S. Stephen Platt, Water Supply Branch, Environmental Protection Agency, Region III at the above address or at (215) 597-9017 or FTS-597-9017.

SUPPLEMENTARY INFORMATION: Notice is hereby given that pursuant to section 1424(e) of the Safe Drinking Water Act (Pub. L. 93-523) the Administrator of the Environmental Protection Agency has determined that the Conestoga Limestone Aquifer is the sole or principal source of drinking water for the Borough of Seven Valleys and a portion of North Codorus Township in York County, Pennsylvania. The aquifer supplies drinking water to the public water systems and individual (single family) wells. Pursuant to section 1424(e), Federally financially assisted projects, constructed on the Conestoga Limestone aquifer or within its streamflow source zone, will be subjected to EPA review.

Background Information

The Safe Drinking Water Act (Pub. L. 93-523) was enacted on December 16, 1974. Section 1424(e) of the Act states:

"If the Administrator determines, on his own initiative or upon petition, that an area has an aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health, he shall publish notice of that determination in the **Federal Register**. After the publication of such notice, no commitment for Federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health, but a commitment for Federal financial assistance may, if authorized under another provision of the law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer."

On September 24, 1981, Opposing Unnecessary Chemical Hazards, (O.U.C.H.), Inc., of Seven Valleys, Pennsylvania, petitioned the Administrator of EPA, pursuant to section 1424(e) of the Safe Drinking Water Act, to designate a small portion of the Conestoga Limestone formation in York County, Pennsylvania denominated "Seven Valleys" as the sole or principal source of drinking water for such area which, if contaminated would create significant hazard to public health. A notice of receipt of this petition, together with a request for comments, was published in the **Federal Register** on February 2, 1982 (47 FR 4737).

One comment was received as a result of the public notice. The comment forwarded the opinion that the intent of the petition was to obstruct development of a proposed chemical landfill and that the landfill would have no impact on the water quality of the Seven Valleys Aquifer. A Sole Source designation requires that the section 1424(e) review process be applied only to projects which receive Federal financial assistance. No evidence has been presented to indicate that this landfill would receive Federal funding and, consequently, be subjected to section 1424(e) review. The proposal to operate a chemical waste landfill also has no influence on the Agency's determination to designate the area.

Upon review of the petition, EPA has determined that the streamflow source zones of the designated area are portions of the drainage basins of the East Branch of West Branch Codorus Creek and South Branch Codorus Creek. Therefore, upon designation, protection will be extended to these drainage basins.

Description of the Designated Portion of the Conestoga Limestone Formation and its Stream Flow Source Zones.

The Conestoga formation consists of limestone that is argillaceous in places and interbedded with thin partings of graphite shale. The area over which Federally financially assisted projects will be reviewed includes both the designated portion of the Conestoga formation and its streamflow source zone. The designated area consists of the following: The area directly overlying the Conestoga Limestone formation in the vicinity of Sinsheim, Jefferson, and Seven Valleys and the streamflow source zones of that portion of the Conestoga Limestone Formation. The stream flow source zones include the drainage basins of the East Branch of West Branch Codorus Creek, from its headwaters to its confluence with West Branch Codorus Creek, and the South Branch Codorus Creek from its headwaters to the town of Glatfelters and including the drainage basins of Fishel Creek, Buffalo Valley Creek, Brush Valley Creek, Krebs Valley Creek, Glen Rock Valley Creek, Trout Run, and Cherry Run.

Information Utilized in the Determination

The surface area of the aquifer is about 4 square miles and the area of the stream flow source zone is approximately 75 square miles. An enlarged map of the area and all the information utilized in this determination, which includes the petition, written comments, and various technical publications, are available to the public and may be inspected during normal business hours at the office of the Environmental Protection Agency, Region III, Sixth and Walnut Streets, Philadelphia, Pennsylvania.

Basis for Determination

On the basis of the information which is available to this Agency, the Administrator has made the following

findings, which are the basis for the determination noted above:

1. The portion of the "Seven Valleys" aquifer underlying the designated area is the principal drinking water source for this area. Seven Valleys Public Water Supply derives 25,000 gallons per day (gpd) from the aquifer to serve about 700 people. No treatment is currently provided to this supply. The remaining residents in the designated area, approximately 1,000 people, have private wells which supply, collectively, about 35,000 gpd. It is difficult to obtain accurate water-use figures for the area, especially for ground water use. This is because the aquifer boundaries do not coincide with any statistical-unit boundaries and domestic wells are seldom equipped with water meters. A standard estimate of 35 gallons/person/day was used for the private supplies. This 60,000 gpd is approximately 95 percent of the drinking water supplied by ground water.

2. There is no existing alternative drinking water source which provides 50 percent or more of the drinking water to the designated area. This is because this area is rural in nature and the nearest existing alternative supply is at a distance.

3. The designated portion of the "Seven Valleys" aquifer is susceptible to contamination through the recharge or streamflow source zone from abandoned wells, septic tanks, leaking fuel tanks, and leaching from open dumps and improperly operated landfills. Isolated incidents of nitrate contamination and contamination of private wells in the streamflow source zone by an abandoned landfill have been documented. Since the ground water contamination can be difficult or impossible to reverse, and because this aquifer system is heavily relied upon for drinking water purposes by the general population, contamination of the aquifer would pose a significant hazard to public health.

4. Water enters the "Seven Valleys" aquifer through level precipitation and the streamflow source zone. Ground water levels are controlled by precipitation patterns. The water table follows the surface topography of the area. Ground water flow is a major component of streamflow in the area.

Project Review

When the EPA Administrator publishes this determination for a sole or principal drinking water source, the consequence is that no commitment for Federal financial assistance may be made if the Administrator finds that the Federally-assisted project may contaminate the aquifer through a recharge zone so as to create a significant hazard to public health * * *. Safe Drinking Water Act 1424(e), 42 U.S.C. 300h–3(e). In many cases, these Federally-assisted projects may also be analyzed in an "Environmental Impact Statement" ("EIS") under the National Environmental Policy Act ("NEPA"), 42 U.S.C. 4332(2)(C). All EIS's, as well as any other proposed Federal actions affecting an EPA program or responsibility, are required by Federal law (under the so-called "NEPA/309" process)[1] to be reviewed and commented upon by the EPA Administrator.

Therefore to streamline EPA's review of the possible environmental impacts on designated aquifers, when an action is analyzed in an EIS, the two reviews will be consolidated, and both authorities will be cited. The EPA review (under the Safe Drinking Water Act) of Federally-assisted projects potentially affecting sole or principal source aquifers, will be included in the EPA review (under the "NEPA/309" process) of any EIS accompanying the same Federally-assisted project. The letter transmitting EPA's comments on the final EIS to the lead agency will be the vehicle for informing the lead agency of EPA's actions under 1424(e).

Economic and Regulatory Impact

Pursuant to the provisions of the Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), I hereby certify that the attached rule will not have a significant impact on a substantial number of small entities. For purposes of this certification the term "small entity" shall have the same meaning given in section 601 of the RFA. This action is only applicable to the area covered by the petition submitted by O.U.C.H. The only effected entities will be those area-based businesses, organizations or governmental jurisdictions that submit applications for Federal financial assistance to a Federl agency. While the number of small entities which submit such applications cannot be anticipated, EPA has stated that it "will not be concerned with reviewing, on an individual basis, small isolated commitments of financial assistance" (42 FR 31621, September 29, 1977). Thus the number of projects reviewed in this area should be very small; protection of the aquifer will normally require review of larger, potentially contaminating or overpumping projects such as housing projects, highways or sewage treatment plants which would not ordinarily be small entities under the FRA (42 FR 51621, 51622).

For those small entities which are subject to review, the impact of today's action will not be significant. As noted in the **Federal Register** preamble cited above, most projects subject to this review will be preceded by a ground-water impact assessment under other Federal laws, such as the National Environmental Policy Act (NEPA). Integration of those related review procedures with Sole Source Aquifer review will allow EPA and other Federal agencies to avoid delay or duplication of effort in approving a grant of assistance, thus minimizing any adverse effect on those small entities which are affected. Finally, today's action does not prevent grants of Federal financial assistance which may be available to any affected small entity in order to pay for the redesign of the project to assure protection of the aquifer.

Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because it will not have an annual effect of $100 million or more on the economy, nor will it cause any major increases in costs or proces, or have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States' enterprises to compete in domestic or export markets. Today's action only affects Seven Valleys and the surrounding area. It provides an additional review of ground-water protection measures, including any instituted by local authorities, for only those projects which request Federal financial assistance in this area.

Dated: February 28, 1985.

Lee M. Thomas,

Administrator.

[FR Doc. 85–5350 Filed 3–5–85; 8:45 am]

BILLING CODE 6560-50-M

[1] 42 U.S.C. 7609 requires EPA to conduct this review. The "309" in a "NEPA/309" derives from the original source of this general requirement: Section 309 of the Clean Air Act.

FEDERAL COMMUNICATIONS COMMISSION

Sanibel Broadcasting Co., et al.; Erratum

In the matter of Applications of:	
Sanibel Broadcasting Co., Sanibel, FL.	MM Docket No. 85–13, File No. BPH–830204AH.
Hillebrand Broadcasting, Inc., Sanibel, FL.	File No. BPH–830217AI.

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Buenos Aires Radio, Sanibel, FL.	File No. BPH-830531AK.
Gumbo Limbo Broadcasting, Inc., Sanibel, FL.	File No. BPH-830610AC.
Pearlyn Ionie Miller et al, d.b.a. Sanibel Radio, Ltd., Sanibel, FL.	File No. BPH-830622AF.
Island Broadcasting, Inc., Sanibel, FL.	File No. BPH-830713AA.
Martin R. Schneider & Martin P. Schneider d.b.a. Sanibel Captiva FM Associates, Sanibel, FL.	File No. BPH-830714AL.
Punta Ybel Communications, Sanibel, FL.	File No. BPH-830714AM.
Sanibel Communications Co., Sanibel, FL.	File No. BPH-830714AN.
Riviera Communications-Sanibel, Inc., Sanibel, FL.	File No. BPH-830714AO.
High Tech Industries, Inc., Sanibel, FL.	File No. BPH-830714AP.
Sophia G. Dirks d.b.a. Island Sounds, Sanibel, FL.	File No. BPH-830714AQ.
Harte-Hanks Radio, Inc. (WRBQ), Tampa, FL.	File No. BPH-830714AT.

For Construction Permit for a New FM Station; Erratum.

Released: February 13, 1985.

The Hearing Designation Order in the above entitled proceeding adopted January 16, 1985, is corrected to show the release date as February 12, 1985.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85-5318 Filed 3-5-85; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; American President Lines, Ltd.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10352. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-010689-002.

Title: Transpacific Westbound Rate Agreement.

Parties:

American President Lines, Ltd.
Barber Blue Sea
The East Asiatic Company
Evergreen Marine Corp. (Taiwan), Ltd.
Hanjin Container Lines, Ltd.
Hapag-Lloyd Trans-Pacific Service
Japan Line, Ltd.
Kawasaki Kisen Kaisha, Ltd.
Korea Marine Transport Co., Ltd.
Lykes Brothers Steamship Co., Inc.
A.P. Moller—Maersk Line
Mitsui O.S.K. Lines, Ltd.
Neptune Orient Lines, Ltd.
NYK Line
Sea-Land Service, Inc.
Showa Line, Ltd.
United States Lines, Inc.
Yamashita-Shinnihon Steamship Co., Ltd.
Orient Overseas Container Line, Inc.
Zim Israel Navigation Co., Ltd.

Synopsis: The proposed amendment would modify the agreement to specifically list Macau as a port of destination.

By Order of the Federal Maritime Commission.

Dated: March 1, 1985.

Bruce A. Dombrowski,

Assistant Secretary.

[FR Doc. 85-5389 Filed 3-5-85; 8:45 am]

BILLING CODE 6730-01-M

Agreements Filed; Puget Sound Tug and Barge Co.

The Federal Maritime Commission hereby gives notice that the following agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and may request a copy of each agreement and the suporting statement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 20 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in § 522.7 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No. 117-010726.

Title: Western Alaska Space Charter Agreement.

Parties: Puget Sound Tug & Barge Company, Foss Alaska Line, Inc.

Synopsis: The proposed agreement would establish a chartering arrangement between the parties in the trade between Seattle, Washington and ports in Western Alaska. The agreement would remain in effect until the completion of the last voyage of the 1985 season.

Filing Party: William H. Fort, Esquire, Kominers, Fort, Schlefer & Boyer, 1401 New York Avenue, NW., Washington, D.C. 20005.

Agreement No. 121-010729.

Title: Seattle Terminal Agreement.

Parties: Port of Seattle (Port), Puget Sound Tug and Barge Co. (PSTBC).

Synopsis: Agreement No. 121.010729 provides for a twenty year lease between the parties commencing on June 1, 1985 running through May 31, 2005. The premises will be located at Pier No. 2 at the Port of Seattle. The lease provides PSTBC with space for chassis and container staging area in connection with their rail-barge activity at the premises. The cargo handled is solely of a interstate domestic nature moving between Seattle and Alaska.

Filing Party: Beryl J. Barker, Senior Property Manager, Port of Seattle, Post Office Box 1209, Seattle, Washington 98111.

By Order of the Federal Maritime Commission.

Dated: March 1, 1985.

Bruce A. Dombrowski,

Assistant Secretary.

[FR Doc. 85-5390 Filed 3-5-85; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 85-3]

Matson Navigation Company, Inc. Proposed Overall Rate Increase of 2.5 Percent Between United States Pacific Coast Ports and Hawaii Ports; Availability of Finding of No Significant Impact

March 1, 1985.

Upon completion of an environmental assessment, the Federal Maritime Commission Office of Energy and Environmental Impact has determined that the Commission's investigation in Docket No. 85-3 will not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, and that preparation of an environmental impact statement is not required.

Docket No. 85-3 is an investigation of Matson Navigation Company, Inc.'s proposed overall 2.5 percent rate increase between United States Pacific Coast ports and Hawaiian ports.

This Finding of No Significant Impact (FONSI) will become final within 10 days of publication of this notice in the **Federal Register** unless a petition for review is filed pursuant to 46 CFR 504.6(b).

The FONSI and related environmental assessment are available for inspection on request from the Office of the Secretary, Room 11101, Federal Maritime Commission, Washington, D.C. 20573, telephone (202) 523-5725.

Bruce A. Dombrowski,

Assistant Secretary.

[FR Doc. 85-5391 Filed 3-5-85; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Manufacturers Hanover Corp., et al.; Applications To Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 27, 1985.

A. Federal Reserve Bank of New York (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Manufacturers Hanover Corporation*, New York, New York; to engage *de novo* in sale as agent or broker of credit related involuntary unemployment insurance directly related to extensions of credit made or acquired by its subsidiaries.

B. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Standard Chartered Bank plc.*, London, England; *Standard Chartered Overseas Holdings, Limited*, London, England; and *Union Bancorp*, Los Angeles, California; to engage *de novo* through its subsidiary, Stanchart Real Estate Investment Advisors, Inc., San Francisco, California, in the activities of acting as investment or financial advisor pursuant to § 225.25(b)(4) of Regulation Y.

Board of Governors of the Federal Reserve System, February 28, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-5335 Filed 3-5-85; 8:45 am]

BILLING CODE 6210-01-M

Pioneer American Holding Company Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 29, 1985.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Pioneer American Holding Company Corp.*, Carbondale Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank, Carbondale, Pennsylvania.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *First National Corporation*, Orangeburg, South Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank, Orangeburg, South Carolina.

c. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Minooka Bancorp, Inc.*, Minoka, Illinois; to become a bank holding company by acquiring 83.98 percent of the voting shares of Tri-County Bank of Minooka, Minooka, Illinois.

2. *Westbanco, Inc.*, Westville, Illinois; to acquire 59.09 percent of the voting

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shares of of Minooka Bancorp, Minooka, Illinois thereby indirectly acquiring Tri-County Bank of Minooka, Minooka, Illinois.

D. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Quinlan Bancshares, Inc.*, Quinlan, Texas; to become a bank holding by acquiring 100 percent of the voting shares of Quinlan State Bank, Quinlan, Texas.

Board of Governors of the Federal Reserve System, February 28, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-5334 Filed 3-5-85; 8:45 am]

BILLING CODE 6210-01-M

Federal Open Market Committee; Domestic Policy Directive of December 17-18, 1984

In accordance with § 217.5 of its rules regarding availability of information, there is set forth below the Committee's Policy Directive issued at its meeting held on December 17-18, 1984.[1]

The following domestic policy directive was issued to the Federal Reserve Bank of New York:

The information reviewed at this meeting indicates a mixed pattern of developments but on balance suggests that economic activity is continuing to expand in the current quarter at a rate approximating the considerably reduced pace recorded in the third quarter. Nonfarm payroll employment rose substantially further outside of manufacturing in November, and the civilian unemployment rate fell from 7.4 to 7.2 percent. After two months of decline industrial production increased somewhat in November, largely reflecting a rebound in auto production from strike-reduced levels. Retail sales registered a large gain in November after changing little in October. Information on outlays suggests substantially slower expansion in business fixed investment, following exceptionally rapid growth earlier. Since the beginning of the year, broad measures of prices generally have continued to rise at rates close to, or somewnat above, those recorded in 1983, and the index of average hourly earnings has risen somewhat more slowly.

Growth of the monetary aggregates strengthened markedly in November. The November expansion in M1 offset the decline in October, and this aggregate has grown little on balance since early summer; from the fourth quarter of 1983 through November, M1 grew at a rate in the lower half of the Committee's range for 1984. Growth in the broader aggregates was especially rapid in November, bringing M2 to the midpoint of its longer-run range and M3 a bit further above the upper limit of its range. Expansion in total domestic nonfinancial debt is continuing above the Committee's monitoring range for the year, reflecting very large government borrowing and strong private credit growth. Interest rates have fallen further since the November meeting of the Committee, with the largest declines concentrated in short-term markets. On November 21, the Federal Reserve approved a reduction in the discount rate from 9 to 8½ percent.

Since early November the foreign exchange value of the dollar against a trade-weighted average of major foreign currencies has appreciated substantially, reversing most of the previous decline from its mid-October peak. The merchandise trade deficit in October was significantly reduced from the rate in the third quarter, mainly reflecting a sharp decline in non-oil imports.

The Federal Open Market Committee seeks to foster monetary and financial conditions that will help to reduce inflation further, promote growth in output on a sustainable basis, and contribute to an improved pattern of international transactions. In furtherance of these objectives the Committee agreed at the July meeting to reaffirm the ranges for monetary growth that it had established in January: 4 to 8 percent for M1 and 6 to 9 percent for both M2 and M3 for the period from the fourth quarter of 1983 to the fourth quarter of 1984. The associated range for total domestic nonfinancial debt was also reaffirmed at 8 to 11 percent for the year 1984. It was anticipated that M3 and nonfinancial debt might increase at rates somewhat above the upper limits of their 1984 ranges, given developments in the first half of the year, but the Committee felt that higher target ranges would provide inappropriate benchmarks for evaluating longer-term trends in M3 and credit growth. For 1985 the Committee agreed to tentative ranges of monetary growth, measured from the fourth quarter of 1984 to the fourth quarter of 1985, of 4 to 7 percent for M1, 6 to 8½ percent for M2, and 6 to 9 percent for M3. The associated range for nonfinancial debt was set at 8 to 11 percent.

The Committee understood that policy implementation would require continuing appraisal of the relationships not only among the various measures of money and credit but also between those aggregates and nominal GNP, including evaluations of conditions in domestic credit and foreign exchange markets.

In the implementation of policy in the short run, the Committee seeks to reduce pressures on reserve positions consistent with growth of M1, M2, and M3 at annual rates of around 7, 8, and 9 percent, respectively, during the period from November to March. Somewhat more rapid growth of M1 would be acceptable in light of the currently estimated shortfall in growth for the fourth quarter relative to the Committee's expectations at the beginning of the period, particularly in the context of sluggish growth in economic activity and continued strength of the dollar in exchange markets. Greater restraint on reserve positions might be acceptable in the event of substantially more rapid monetary growth and indications of significant strengthening of economic activity and inflationary pressures. The Chairman may call for Committee consultation if it appears to the Manager for Domestic Operations that pursuit of the monetary objectives and related reserve paths during the period before the next meeting is likely to be associated with a federal funds rate persistently outside a range of 6 to 10 percent.

By order of the Federal Open Market Committee, February 27, 1985.

Stephen H. Axilrod,

Secretary.

[FR Doc. 85-5395 Filed 3-5-85; 8:45 am]

BILLING CODE 6210-01-M

Federal Open Market Committee; Authorizations for Domestic Open Market Operations

In accordance with the Committee's rules regarding availability of information, notice is given that on December 17-18, 1984, paragraph 1(a) of the Committee's authorization for domestic open operations was amended to raise from $4 billion to $6 billion the limit on changes between Committee meetings in System Account holdings of U.S. government and federal agency securities, effective immediately, for the period ending with the close of business on February 13, 1985.

[1] The Record of Policy actions of the Committee for the meeting of December 17-18, 1984, is filed as part of the original document. Copies are available upon request to The Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

Note.—For paragraph 1(a) of the authorization, see 36 FR 22697, November 27, 1971.

By order of the Federal Open Market Committee, February 27, 1985.

Stephen H. Axilrod,

Secretary.

[FR Doc. 85–5396 Filed 3–5–85; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 81N–0314]

Sulfiting Agents; Reexamination of Gras Status; Availability of Final Report

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the final report of the ad hoc Review Panel on the Reexamination of the GRAS Status of Sulfiting Agents (the ad hoc Review Panel) is publicly available. The ad hoc Review Panel was formed by the Federation of American Societies for Experimental Biology (FASEB), Life Sciences Research Office.

DATE: The final report was delivered to FDA on January 31, 1985, and was publicly available February 1, 1985.

ADDRESSES: Requests for a copy of the final report should be sent to FASEB Special Publications, FASEB, 9650 Rockville Pike, Bethesda, MD 20814, along with $12 to cover the cost. A limited number of copies are available. In the near future the report will be available from the National Technical Information Service, 5275 Port Royal Rd., Springfield, VA 22161. Copies are on display at the Life Sciences Research Office, FASEB (address above) and at the Dockets Management Branch, Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Sue Ann Anderson, Life Sciences Research Office, Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, MD 20814, 301–530–7030.

SUPPLEMENTARY INFORMATION: In 1976, the Select Committee on GRAS Substances (the Select Committee), which was formed by FASEB, evaluated the GRAS status of the sulfiting agents in a report (PB–265–508), which is available from the National Technical Information Service. Based in part on that report, in 1982 FDA proposed to affirm that the use of sulfiting agents in food is generally recognized as safe (GRAS) (47 FR 29956; July 9, 1982). However, a large quantity of data and information on sulfiting agents in food and reports of health effects possibly associated with the consumption of sulfiting agents have become available since the Select Committee completed its review.

In the **Federal Register** of July 9, 1984 (49 FR 27994), FDA announced that it intended to reexamine the GRAS status of sulfiting agents. FDA also announced that the ad hoc Review Panel, which had been formed by the Life Sciences Research Office under a contract with FDA, was about to begin a reexamination of all relevant scientific data that bear on the human effects of food uses of these ingredients. In the **Federal Register**, of October 25, 1984 (49 FR 42984), FDA announced the availability of the tentative report of the ad hoc Review Panel and requested comments on the report at an open meeting on November 29, 1984.

In its final report, the ad hoc Review Panel presents its evaluation of the safety of the use of the sulfiting agents (potassium metabisulfite, sodium bisulfite, sodium metabisulfite, potassium bisulfite, sodium sulfite, and sulfur dioxide).

Dated: February 27, 1985.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 85–5327 Filed 3–5–85; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 76N–0231, NADA Nos. 12–738 and 65–059]

Norwich-Eaton Pharmaceuticals; Furaltadone; Withdrawal of Approval of Certain NADA's

Correction

In FR Doc. 85–3448, appearing on page 5816 in the issue of Tuesday, February 12, 1985, the first line of the second column should have read, "Stat. 345–347 (21 U.S.C. 360b(e)) and".

BILLING CODE 1505–01–M

HEALTH AND HUMAN SERVICES DEPARTMENT

Health Care Financing Administration

Statement of Organization, Functions, and Delegations of Authority

Part F. of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA) (**Federal Register**, Vol. 46, No. 223, pp. 56911–56934, dated Thursday, November 19, 1981; **Federal Register**, Vol. 48, No. 3, pp. 512–518, dated Wednesday, January 5, 1983; **Federal Register**, Vol. 49, No. 124, p. 26150, dated Tuesday, June 26, 1984; and **Federal Register**, Vol. 49, No. 164, pp. 33342–33343 dated Wednesday, August 22, 1984) is amended to reflect the Secretary's approval of changes to the organizational structure of HCFA. A brief summary of the changes follows:

- The Office of Direct Reimbursement (ODR) has been abolished. The functional statement for ODR is deleted, and the functional statement of the Office of the Associate Administrator for Management and Support Services is amended to reflect the abolishment of ODR.
- The organizational title of the Office of Financial and Actuarial Analysis is changed to the Office of the Actuary to provide a more descriptive title.

The Specific Changes to Part F. are Detailed Below

- Section FH.10. The Office of the Associate Administrator for Management and Support Services (FH) (Organization) is amended as follows:

1. Change reference "B.," the organizational title of the Office of Financial and Actuarial Analysis, to the Office of the Actuary (FHG). The administrative code will remain the same.

2. Delete reference "E.," The Office of Direct Reimbrusement.

- Section HF.20. is amended to delete references to functions formerly assigned to the Office of Direct Reimbursement. The new functional statement for the Associate Administrator for Management and Support Services reads as follows:

Section FH.20. Office of the Associate Administrator for Management and Support Services (FH) (Functions)

The Associate Administrator for Management and Support Services is responsible for the direction and implementation of HCFA policies, rules, and procedures in the areas of financial, personnel, and contracts management, project grant administration, management evaluation and analysis, and administrative services; the nationwide operation of a centralized Automated Data Processing (ADP) and telecommunications facility; establishing and maintaining computerized records supporting HCFA programs; administering an actuarial program which includes the analysis of health

care financing issues; developing and coordinating information and statistical plans and policies; maintaining a statistical data system which will provide program accountability data to the Administrator, HCFA, the Congress and the public; and equal employment opportunity and civil rights programs.

• Section FH.20.B. is amended to change the organizational title of the Office of Financial and Actuarial Analysis to the Office of the Actuary. The new Section FH.20.B. title reads as follows:

B. Office of the Actuary (FHG)

• Section FH.20.E. The Office of Direct Reimbursement is deleted in its entirety, including FH.20.E.a., Technical Support Staff; FH.20.E.b., Division of Provider Reimbursement; FH.20.E.c., Division of Claims Processing; and FH.20.E.d., Division of Health Services Studies.

Dated: February 25, 1985.

Margaret M. Heckler,

Secretary, Health and Human Services Department.

[FR Doc. 85-5341 Filed 3-5-85; 8:45 am]

BILLING CODE 4120-03-M

National Institutes of Health

National Heart, Lung, and Blood Institute; Meeting of Board of Scientific Counselors

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Heart, Lung, and Blood Institute Board of Scientific Counselors, June 27 and 28, 1985. National Institutes of Health, 9000 Rockville Pike, Building 10, Room 7N214, Bethesda, Maryland 20205. This meeting will be open to the public from 9:30 a.m. to 4:00 p.m. June 27 and from (9:30 a.m. to 12 noon on June 28 for discussion of the general trends in research relating to cardiovascular, pulmonary and certain hematologic diseases. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public from 12 noon to adjournment June 28 for the review, discussion, and evaluation of individual programs and projects conducted by the National Institutes of Health, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Terry Bellicha, Chief, Public Inquiry Reports Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20205, phone (301) 496-4236, will provide a summary of the meeting and a roster of the Board members. Substantive program information may be obtained from Dr. Jack Orloff, Director, Division of Intramural Research, NHLBI, NIH, Building 10, Room 7N214, phone (301) 496-2116.

Dated: February 19, 1985.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 85-5330 Filed 3-5-85; 8:45 am]

BILLING CODE 4140-01-M

Health Resources and Services Administration

Statement of Organization, Functions and Delegations of Authority; Public Health Service

Notice is hereby given that the Offices of Engineering Services which were established in Public Health Service regional offices II, VI, and X effective September 1, 1984 (49 FR 35251-54, September 6, 1984) will become operational on March 17, 1985.

Dated: February 26, 1985.

Robert Graham, MD.,

Administrator, Health Resources and Services Administration.

[FR Doc. 85-5331 Filed 3-5-85; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[516 DM 6, Appendix 10]

National Environmental Policy Act; Proposed Implementing Procedures

AGENCY: Department of the Interior.

ACTION: Notice of proposed instructions for the Minerals Management Service.

SUMMARY: This notice announces a proposed appendix to the Department's National Environmental Policy Act (NEPA) procedures for the Minerals Management Service (MMS). The proposed appendix consolidates instructions for those functions transferred from the Geological Survey (GS) and the Bureau of Land Management (BLM) to the MMS upon its establishment. The Department's procedures were published in the **Federal Register** on April 23, 1980 (45 CFR 27541) and revised on May 21, 1984 (49 FR 21437). Appendix 2 for the GS was published on January 23, 1981 (46 FR 7485) as was the original Appendix 5 for the BLM (46 FR 7492).

DATE: Comments due by April 1, 1985.

ADDRESS: Comments to Joseph W. Gorrell, Deputy Assistant Secretary—Policy, Budget and Administration, Department of the Interior, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Mr. Bruce Blanchard, Director of Environmental Project Review, Office of the Secretary, Department of the Interior, Washington, DC 20240; telephone (202) 343-3891, FTS 343-3891. For MMS, contact Ms. Mary Ann Turner, Environmental Operations Branch, (703) 860-6461, FTS 860-6461.

SUPPLEMENTARY INFORMATION: This proposed appendix to the Departmental Manual (516 DM 6, Appendix 10) provides specific NEPA compliance instructions to the Minerals Management Service. In particular, it provides information about MMS organizational responsibilities for NEPA compliance, advice to applicants, actions normally requiring the preparation of an environmental impact statement, and categorical exclusions from the NEPA process. The proposal consolidates in one appendix the MMS NEPA responsibilities transferred to it from the GS and the BLM.

The appendix must be taken in conjunction with the Departmental procedures (516 DM 1-6) and the Council on Environmental Quality's regulations implementing the procedural provisions of NEPA (40 CFR 1500-1508). In addition, the MMS is preparing a handbook of technical guidance on how to apply these procedures to its programs.

Comments on the proposed appendix which are received by April 1st will be carefully considered in preparing the final appendix. Comments received after that date will also be considered to the extent practicable.

OUTLINE

Chapter 6 (516 DM 6) Managing the NEPA Process

Appendix 10–Minerals Management Service

10.1 NEPA Responsibility

10.2 Guidance for Applicants

10.3 Major Actions Normally Requiring an EIS

10.4 Categorical Exclusions.

Date February 25, 1985.
Bruce Blanchard, Director,
Environmental Project Review.

Department of the Interior, Departmental Manual, Minerals Management Service

[516 DM 6; App. 10]

10.1 National Environmental Policy Act (NEPA) Responsibility

A. The Director/Deputy Director are responsible for NEPA compliance for Minerals Managment Service (MMS) activities.

B. The Associate Director for Offshore Minerals Management is responsible for ensuring NEPA compliance for all offshore MMS activities.

C. The Chief, Offshore Environmental Assessment Division (OEAD), is responsible for NEPA-related policy and guidance for MMS activities, including monitoring MMS activities to ensure NEPA compliance, assuring the quality control of MMS environmental documents, and managing the review of non-MMS environmental documents. The office is the focal point for all NEPA matters and information about MMS environmental documents or the NEPA process can be obtained by contacting it or the appropriate Region.

D. The Regional Directors are responsible to the Associate Director for Offshore Minerals Management for overall direction and integration of the NEPA process into their activities and for NEPA compliance in their Regions.

10.2 Guidance to Applicants

A. *General.* (1) Applicants should make initial contact with the Regional Director of the office where the affected action is located.

(2) Potential applicants may secure from Regional Directors a list or program regulations or other directives/guidance providing advice or requirements for submission of environmental information. The purpose of making these regulations known to potential applicants in advance is to assist them in presenting a detailed, adequate, and accurate description of the proposal and alternatives when they file their application and to minimize the need to request additional information. This is a minimum list, and additional requirements may be identified after detailed review of the formal submission and during scoping.

B. *Regulations.* The following partial list identifies MMS Outer Continental Shelf (OCS) regulations and other guidance which may apply to a particular application.

(1) Grants of pipeline rights-of-way and related facilities on the OCS (30 CFR Part 256, Subpart N).

(2) Exploration, development and production activities, Environmental Report (30 CFR Part 250, § 250.34–3).

(3) Aiir quality (30 CFR Part 250, § 250.57).

(4) Geological and geophysical explorations of the OCS (30 CFR Part 251, § 251.6–2(b)).

(5) OCS Pipelines Rights-of-Way, A Procedures Handbook.

(6) Guidelines for Preparing OCS Environmental Reports.

10.3 Major Actions Normally Requiring an EIS

A. The following proposals will normally require the preparation of an EIS:

(1) Approval of a 5-year offshore oil and gas leasing program.

(2) Approval of offshore lease sales.

(3) Approval of an offshore oil and gas development and production plan in any area or region of the offshore, other than the central or western Gulf of Mexico, when the plan is declared to be a major Federal action in accordance with section 25(e)(1) of the OCS Lands Act Amendments of 1978.

B. If, for any of these actions, it is proposed not to prepare an EIS, an environmental assessment will be prepared and handled in accordance with § 1501.4(e)(2).

10.4 Categorical Exclusions

In addition to the actions listed in the Departmental categorical exclusions outlined in Appendix 1 of 516 DM 2, many of which the MMS also performs, the following MMS actions are designated categorical exclusions unless the action qualifies as an exception under Appendix 2 of 516 DM 2:

A. *General.* (1) Inventory, data, and information collection, including the conduct of environmental monitoring and non-destructive research programs.

(2) Actions for which MMS has concurrence or co-approval with another Bureau if the action is a categorical exclusion for that Bureau.

B. *Internal Program Initiatives.* (1) All resource evaluation activities including surveying, mapping, and geophysical surveying which do not use solid or liquid explosives.

(2) Collection of geologic data and samples including geologic, paleontologic, mineralogic, geochemical, and geophysical investigations which does not involve drilling beyond 50 feet of consolidated rock or beyond 300 feet of unconsolidated rock, including contracts therefor.

(3) Acquisition of existing geological or geophysical data from otherwise private exploration ventures.

(4) Well logging, digital modeling, inventory of existing wells, and installation of recording devices in wells.

(5) Establishment and installation of any research/monitoring devices.

(6) Test of exploration drilling and downhole testing included in a project previously subject to the NEPA process.

(7) Insignificant revisions to the approved 5-year leasing program.

(8) Prelease planning steps such as the Call for Information and Area Identification.

C. *Permit and Regulatory Functions.* (1) Issuance and modification of regulations, Orders, Standards, Notices to Lessees and Operators, Guidelines, and field rules for which the impacts are limited to administrative, economic, or technological effects and the environmental impacts are minimal.

(2) Approval of production measurement methods, facilities, and procedures.

(3) Approval of off-lease storage in existing facilities.

(4) Approval of unitization agreements, pooling, or communitization agreements.

(5) Approval of commingling of production.

(6) Approval of suspensions of operations and suspensions of production.

(7) Approval of lease consolidation applications, lease assignments or transfers, operating rights, operating agreements, lease extensions, lease relinquishments, and bond terminations.

(8) Administrative decisions and actions and recordkeeping such as:

(a) Approval of applications for pricing determinations under the Natural Gas Policy Act.

(b) Approval of underground gas storage agreements from a presently or formerly productive reservoir.

(c) Issuance of paying well determinations and participating area approvals.

(d) Issuance of drainage determinations.

(9) Aproval of offshore geological and geophysical mineral exploration activities, except when the proposed activity includes the drilling of deep stratigraphic test holes or uses solid or liquid explosives.

(10) Approval of an offshore lease or unit exploration, development/production plan or a Development Operation Coordination Document in the central or western Gulf of Mexico (30 CFR 250.2) which does not require an

an environmental report from an operator pursuant to Item 3 of NTL 80–6.

(11) Approval of minor revisions of or minor variances from activities described in an approved offshore exploration or development/production plan including pipeline applications.

(12) Approval of an Application for Permit to Drill (APD) an offshore oil and gas exploration or development well, when said well and appropriate mitigation measures are described in an approved exploration plan, development plan, production plan, or Development Operations Coordination Document.

(13) Preliminary activities conducted on a lease prior to approval of an exploration or development/production plan or a Development Operations Coordination Plan. These are activities such as geological, geophysical, and other surveys necessary to develop a comprehensive exploration plan, development/production plan, or Development Operations Coordination Plan.

(14) Approval of Sundry Notices and Reports on Wells.

(15) Rights-of-way, easements, temporary use permits, and any revisions thereto that do not result in a new pipeline corridor to shore.

D. *Royalty Functions.* All functions of the Associate Director for Royalty Management including, but not limited to, such activities as: approval of royalty payment procedures, including royalty oil contracts; and determinations concerning royalty quantities and values, such as audits, royalty reductions, collection procedures, reporting procedures, and any actions taken with regard to royalty collections (including similar actions relating to net profit and windfall profit taxes).

[FR Doc. 85–5385, Filed 3–5–85; 8:45 am]

BILLING CODE 4310–MR–M

Bureau of Land Management

[5–00250–GP5–113]

Filing of Plats of Survey; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands have been officially filed in the Oregon State Office, Portland, Oregon on the dated hereinafter stated:

Willamette Meridian

Oregon

T. 30 S., R. 10 W.,
T. 30 S., R. 11 W.

Accepted January 18, 1985, and officially filed February 7, 1985.
T. 30 S., R. 13 W.,
T. 31 S., R. 13 W.

Accepted January 12, 1985, and officially filed February 7, 1985.
T. 16 S., R. 16 E.,
T. 16 S., R. 17 E.

Accepted January 25, 1985, and officially filed February 7, 1985.
T. 23 S., R. 6 W.,
T. 8 S., R. 1 E.

Accepted February 8, 1985, and officially filed February 11, 1985.
T. 28 S., R. 7 W.,
T. 40 S., R. 6 E.,
T. 12 S., R. 41 E.

Accepted February 15, 1985, and officially filed February 19, 1985.

The above-listed plats represent dependent and corrective resurveys, subdivisions, remonumentations, and a supplemental plat.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 825 NE Multnomah Street, P.O. Box 2965, Portland, Oregon 97208.

Dated: February 22, 1985.

Champ C. Vaughan, Jr.,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 85–5365, Filed 3–5–85; 8:45 am]

BILLING CODE 4310–33–M

[AA–6680–B]

Alaska Native Claims Selection Paug-Vik Incorporated; Ltd.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a modified decision to issue conveyance under the provisions of section 12 of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1611, will be issued to Paug-Vik Incorporated, Limited for approximately 250 acres. The lands involved are in the vicinity of Naknek.

Seward Meridian, Alaska (Partially Surveyed)

T. 17 S., R. 45 W.
Sec. 15 and 22.

A notice of the modified decision will be published once a week for four (4) consecutive weeks, in the Anchorage Times. Copies of the modified decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513, ((907) 271–5960).

Except as modified by this decision, the decision of August 5, 1983, stands as written. Pursuant to the provisions of Pub. L. 96–487, the Bureau of Land Management makes the final administrative determination concerning navigability of water bodies. This modified decision concerns only navigability, therefore, no appeals to this modified decision will be accepted.

Barbara A. Lange,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 85–5363 Filed 3–5–85; 8:45 am]

BILLING CODE 4310–JA–M

Fish and Wildlife Service

Endangered Species; Receipt of Application for Permit; Philip B. Larsen, et al.

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT–690367

Applicant: Philip B. Larsen, Elk Ridge Aviaries, Redway, CA.

The applicant requests a permit to import 5 male and 5 female captive-born golden parakeets (*Aratinga guarouba*) from Carterton Breeding Aviaries, Carterton, England, for enhancement of propagation.

PRT–690359

Applicant: New York Zoological Society, Bronz, NY.

The applicant requests a permit to import one male and one female captive bred Japanese cranes (*Grus japonensis*) from the East Berlin Zoo, Democratic Republic of Germany, for enhancement of propagation.

PRT–690284

Applicant: Betty C. Tanner, Duarte, CA.

The applicant requests a permit to import a pair of captive-born golden parakeets (*Aratinga guarouba*) from Carterton Breeding Aviaries, Oxford, England, for enhancement of propagation.

PRT–690379

Applicant: Jimmie C. Rosenbruch, St. George, UT.

The applicant requests a permit to import the sport-hunted trophy of a bontebok (*Damaliscus d. dorcas*) culled from the captive herd of Skietkuil Ranch, Hutchinson, South Africa, for the purpose of enhancement of survival of the herd.

PRT–690422

Applicant: Robert D. Irvine, Salt Lake City, UT.

The applicant requests a permit to import the sport-hunted trophy of a bontebok (*Damaliscus d. dorcas*) culled

from the captive herd of Skietkuil Ranch, Hutchinson, South Africa, for the purpose of enhancement of survival of the herd.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 611, 1000 North Glebe Road, Arlington, Virginia 22201, or by writing to the Director, U.S. Fish and Wildlife Service of the above address.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: February 27, 1985.

Larry LaRochelle,

Acting Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 85-5362 Filed 3-5-85; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Exxon Co. USA

AGENCY: Minerals Management Service, Department of the Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document.

SUMMARY: This Notice announces that Exxon Company, U.S.A., Unit Operator of the Grand Isle Block 16 Field Federal Unit Agreement No. 14-08-0001-2932, submitted on February 15, 1985, a proposed Development Operations Coordination Document describing the activities it proposes to conduct on the Grand Isle Block 16 Field Federal unit.

The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the plan and that it is available for public review at the offices of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 N. Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Records Management Section, Room 143, open weekdays 9:00 a.m. to 3:30 p.m., 3301 N. Causeway Blvd., Metairie, Louisiana 70002, phone (504) 838-0519.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in the proposed development operations coordination document available to affected States, executives of affected local governments, and other interested parties became effective on December 13, 1979 (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: February 25, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-5368 Filed 3-5-85; 8:45 am]

BILLING CODE 4310-MR-M

Bureau of Reclamation

Revised Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The revised proposal for the collection of information listed below has been submitted to the OMB (Office of Management and Budget) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). The material originally submitted to OMB on October 23, 1984, has been revised as a result of public comments received. Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau offices listed below. Written comments and suggestions on the requirement should be sent directly to the Office of Management and Budget Interior Department Desk Officer, Washington, D.C. 20503.

Title: Acreage Limitation, 43 CFR Part 426

Abstract: Respondents to this information collection include landholders who own or lease irrigation land, as defined in 43 CFR Part 426, and water user districts, which must summarize the information received from the landholders. Landholders are required to submit relevant information concerning their irrigation landholdings in order to establish their compliance with Reclamation law, and to determine the appropriate water rate for each landholding.

Bureau Forms No.: 7-1781A, 7-1781B, 7-2180, 7-2181, 7-2182, 7-2183, 7-2184, 7-2185, 7-2187, 7-2188, 7-2189, 7-2190, 7-2191, 7-2193, 7-2194, 7-2197, and 7-2198.

Frequency: Annually, or when landholding change occurs.

Description of Respondents: Irrigation landholders, as defined in 43 CFR Part 426, and water user districts.

Annual Responses: 4,283
Annual Burden Hours: 13,213

Bureau Offices

Commissioner, Bureau of Reclamation, Department of the Interior, 18th and C Street, NW., Washington, DC 20240
Regional Director, Pacific Northwest Region, Bureau of Reclamation, 550 West Fort Street, PO Box 043, Boise, ID 83724, (208) 334-1160
Regional Director, Mid-Pacific Region, Bureau of Reclamation, Federal Office Building, 2800 Cottage Way, Sacramento, CA 95825, (916) 484-4270
Regional Director, Lower Colorado Region, Bureau of Reclamation, Nevada Highway and Park Street, PO Box 427, Boulder City, NV 89005, (702) 293-7651
Regional Director, Upper Colorado Region, Bureau of Reclamation, 125 South State Street, PO Box 11568, Salt Lake City, UT 84147, (801) 524-4419
Regional Director, Southwest Region, Bureau of Reclamation, 714 South Tyler, Suite 201, Amarillo, TX 79101, (806) 378-5430
Regional Director, Upper Missouri Region, Bureau of Reclamation, 316 North 26th Street, PO Box 2553, Billings, MT 59103, (406) 657-6833
Regional Director, Lower Missouri Region, Bureau of Reclamation, Building 20, Denver Federal Center, PO Box 25247, Denver, CO 80225, (303) 236-0595.

Dated: February 27, 1985.

Robert A. Olson,

Acting Commissioner.

[FR Doc. 85-5436 Filed 3-5-85; 8:45 am]

BILLING CODE 4310-09-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-201 (Final)]

Egg Filler Flats From Canada; Rescheduled Hearing

AGENCY: International Trade Commission.

ACTION: Rescheduling of the hearing to be held in connection with the subject investigation.

SUMMARY: The Commission hereby announces the rescheduling of the hearing to be held in connection with the subject investigation from 10:00 a.m. on April 19, 1985 to 10:00 a.m. on June 13, 1985.

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For further information concerning the conduct of the investigation, hearing procedures, and rules of general application, consult the Commission's rule of practice and procedure, Part 207, Subparts A and C (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201, as amended by 49 FR 32569, August 15, 1984).

EFFECTIVE DATE: February 28, 1985.

FOR FURTHER INFORMATION CONTACT: Larry Reavis (202–523–0296), Office of Investigations, U.S. International Trade Commission, 701 E Street NW, Washington, DC 20436.

SUPPLEMENTARY INFORMATION:

Background

On January 16, 1985 the Commission instituted the subject investigation and scheduled a hearing to be held in connection therewith for April 19, 1985 (50 FR 3215 February 21, 1985). Subsequently, the Department of Commerce extended the date for its final determination in the investigation from March 26, 1985 to May 31, 1985. The Commission, therefore, is revising its schedule in the investigation to conform with Commerce's new schedule. As provided in section 735(b)(2)(B) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)(2)(B)), the Commission must make its final determination in antidumping investigations within 45 days of Commerce's final determination, or in this case by July 15, 1985.

Staff report

A public version of the prehearing staff report in this investigation will be placed in the public record on May 28, 1985, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 10:00 a.m. on June 13, 1985 at the U.S. International Trade Commission Building, 701 E Street NW, Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on May 28, 1985. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 10:00 a.m. on May 31, 1985 in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is June 7, 1985.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials musta be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2), as amended by 49 FR 32569, August 15, 1984)).

Written submissions

All legal arguments economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on June 21, 1985. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before June 21, 1985.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8, as amended by 49 FR 32569, August 15, 1984). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6, as amended by 49 FR 32569, August 15, 1984).

Authority

This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

Issued: February 28, 1985.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–5388 Filed 3–5–85; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 701–TA–239 and 731–TA–248 (Preliminary)]

Certain Ethyl Alcohol From Brazil

AGENCY: International Trade Commission.

ACTION: Institution of preliminary countervailing duty and antidumping investigations and scheduling of a conference to be held in connection with the investigations.

SUMMARY: The Commission hereby gives notice of the institution of preliminary countervailing duty investigation No. 701–TA–239 (Preliminary) under section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Brazil of certain ethyl alcohol, for nonbeverage purposes, provided for in item 427.88 of the Tariff Schedules of the United States, which are alleged to be subsidized by the Government of Brazil. As provided in section 703(a), the Commission must complete preliminary countervailing duty investigations in 45 days, or in this case by April 11, 1985.

The Commission also gives notice of the institution of preliminary antidumping investigation No. 731–TA–248 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Brazil of certain ethyl alcohol, for nonbeverage purposes, provided for in item 427.88 of the Tariff Schedules of the United States, which are alleged to be sold in the United States at elss than fair value. As provided in section 733(a), the Commission must complete preliminary antidumping duty investigations in 45 days, or in this case by April 11, 1985.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's rules of practice and procedure, Part 207, Subparts A and B

(19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201, as amended by 49 FR 32569, August 15, 1984).

EFFECTIVE DATE: February 25, 1985.

FOR FURTHER INFORMATION CONTACT: Tedford Briggs (202–523–4612), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436.

SUPPLEMENTARY INFORMATION:

Background. These investigations are being instituted in response to petitions filed on February 25, 1985, by counsel on behalf of the Ad Hoc Committee of Domestic Fuel Ethanol Producers.

Participation in the investigations. Persons wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the Federal Register. Any entry of appearance filed after this date will be referred to the Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list. Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with § 201.16(c) of the rules (19 CFR 201.16(c), as amended by 49 FR 32569, August 15, 1984), each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Conference. The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on March 19, 1985, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Parties wishing to participate in the conference should contact Tedford Briggs (202–523–4612) not later than March 15, 1985, to arrange for their appearance. Parties in support of the imposition of antidumping and/or countervailing duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written submissions. Any person may submit to the Commission on or before March 21, 1985, a written statement of information pertinent to the subject of the investigations, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8, as amended by 49 FR 32569, August 15, 1984). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6, as amended by 49 FR 32569, August 15, 1984).

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

Issued: March 1, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–5388 Filed 3–5–85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-196 (Final)]

Certain Red Raspberries From Canada; Rescheduled Hearing

AGENCY: International Trade Commission.

ACTION: Rescheduling of the hearing to be held in connection with the subject investigation.

SUMMARY: The Commission hereby announces the rescheduling of the hearing to be held in connection with the subject investigation from 10:00 a.m. on April 25, 1985, to 10:00 a.m. on May 14, 1985.

For further information concerning the conduct of the investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and C (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201, as amended by 49 FR 32569, August 15, 1984).

EFFECTIVE DATE: February 11, 1985.

FOR FURTHER INFORMATION CONTACT: Stephen A. Vastagh (202–523–0283), Office of Investigations, U.S. International Trade Commission, 701 E Street, NW., Washington, DC 20436.

SUPPLEMENTARY INFORMATION:

Background. On December 18, 1984, the Commission instituted the subject investigation and scheduled a hearing to be held in connection therewith for April 25, 1985 (50 FR 1136, January 9, 1985). Subsequently, the Department of Commerce extended the date for its final determination in the investigation to May 2, 1985. The Commission, therefore, is revising its schedule in the investigation to conform with Commerce's new schedule. As provided in section 735(b)(2)(B) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)(2)(B)), the Commission must make its final determination in antidumping investigations within 45 days of Commerce's final determination, or in this case by June 17, 1985.

Staff report. A public version of the prehearing staff report in this investigation will be placed in the public record on April 26, 1985, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing. The Commission will hold a hearing in connection with this investigation beginning at 10:00 a.m. on May 14, 1985, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on May 1, 1985. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on May 6, 1985, in Room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is May 8, 1985.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2),

as amended by 49 FR 32569, August 15, 1984)).

Written submissions. All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24), and must be submitted not later than the close of business on May 21, 1985. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before May 21, 1985.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8, as amended by 49 FR 32569, August 15, 1984). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must by submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6, as amended by 49 FR 32569, August 15, 1984).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

Issued: February 26, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-5405 Filed 3-5-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-244 (Preliminary)]

Natural Bristle Paint Brushes From the People's Republic of China

AGENCY: International Trade Commission.

ACTION: Institution of preliminary antidumping investigation and scheduling of a conference to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731-TA-244 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the People's Republic of China of natural bristle paint brushes, with or without handles, provided for in item 750.65 of the Tariff Schedules of the United States, which are alleged to be sold in the United States at less than fair value. As provided in section 733(a), the Commission must complete preliminary antidumping investigations in 45 days, or in this case by April 5, 1985.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's rules of practice and procedure, Part 207, Subparts A and B (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201, as amended by 49 FR 32569, August 15, 1984).

EFFECTIVE DATE: February 19, 1985.

FOR FURTHER INFORMATION CONTACT: Lawrence Rausch (202-523-0286), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436.

SUPPLEMENTARY INFORMATION:

Background. This investigation is being instituted in response to a petition filed on February 19, 1985, by the United States Paint Brush Manufacturers and Suppliers Ad Hoc Import Action Coalition, Washington, DC.

Participation in the investigation. Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list. Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with § 201.16(c) of the rules (19 CFR 201.16(c), as amended by 49 FR 32569, August 15, 1984), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Conference. The Director of Operations of the Commission has scheduled a conference in connection with this investigation for 9:30 a.m. on March 15, 1985, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Parties wishing to participate in the conference should contact Lawrence Rausch (202-523-0286), not later than March 13, 1985, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written submissions. Any person may submit to the Commission on or before March 19, 1985, a written statement of information pertinent to the subject of the investigation, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8, as amended by 49 FR 32569, August 15, 1984). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6, as amended by 49 FR 32569, August 15, 1984).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

Issued: February 25, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-5401 Filed 3-5-85; 8:45 am]

BILLING CODE 7020-02-M

Termination of Countervailing Duty Investigation Concerning Chain of Iron or Steel From Japan

AGENCY: International Trade Commission.

ACTION: Termination of countervailing duty investigation under section 104(b)(1) of the Trade Agreements Act of 1979, with regard to chain of iron or steel from Japan.

EFFECTIVE DATE: February 25, 1985.

FOR FURTHER INFORMATION CONTACT: Ms. Vera Libeau, Office of Investigations, telephone number (202) 523-0368.

SUPPLEMENTARY INFORMATION: The Trade Agreements Act of 1979, section 104(b)(1), requires the Commission in the case of a countervailing duty order issued under section 303 of the Tariff Act of 1930, upon the request of a government or group of exporters of merchandise covered by the order, to conduct an investigation to determine whether an industry in the United States would be materially injured, or threatened with material injury, or whether the establishment of such an industry would be materially retarded, if the order were to be revoked. On November 15, 1982, the Commission received a request from the Government of Japan for the review of the outstanding countervailing duty order on chain of iron or steel from Japan. Notice of the countervailing duty order was published on August 24, 1978, in the **Federal Register** (43 FR 37685).

On December 3, 1984, the Commission was notified by letter that the National Association of Chain Manufacturers, the original petitioner for the countervailing duty order, wished to withdraw its request for the imposition of countervailing duties under the above referenced countervailing duty order.

While there is no provision in the Trade Agreements Act of 1979, or in its legislative history, permitting termination of a transition case investigation, termination of a properly instituted countervailing duty investigation is permitted under section 704(a) of the Tariff Act of 1930. That section directs the Commission to solicit public comment prior to termination and approve such termination only if it is in the public interest. Termination authority is explicit in cases based on newly filed countervailing duty petitions; it is implied with respect to existing countervailing duty orders.

On December 27, 1984, (49 FR 50316) the Commission published a notice in the **Federal Register** requesting public comment by January 28, 1985, on the proposed termination of the Commission investigation on chain of iron or steel from Japan. No adverse comments were received in response to the Commission's notice.

The Commission is therefore terminating its investigation on chain of iron or steel from Japan (T.D. 78-295). The termination of this investigation has the same effect as a determination that an industry in the United States would not be materially injured, or threatened with material injury, nor would the establishment of such an industry be materially retarded, if the countervailing duty order were to be revoked.

In addition to publishing this **Federal Register** notice, the Commission is serving a copy of this notice on all persons who have written the agency in connection with this investigation and is also notifying the Department of Commerce of its action in this case.

By order of the Commission.

Issued: March 1, 1985.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-5387 Filed 3-5-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-190 (Final)]

Stainless Steel Wire Cloth From Japan

AGENCY: International Trade Commission.

ACTION: Rescheduling of the hearing to be held in connection with the subject investigation.

SUMMARY: The Commission hereby announces the rescheduling of the hearing to be held in connection with the subject investigation from 10:00 a.m. on March 19, 1985, to 10:00 a.m. on March 26, 1985.

For further information concerning the conduct of the investigation, hearing procedures, and rules of general application, consult the Commission's rules of practice and procedure, Part 207, Subparts A and C (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: February 21, 1985.

FOR FURTHER INFORMATION CONTACT: Tedford Briggs (202)-523-4612), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436.

SUPPLEMENTARY INFORMATION:

Background. On January 3, 1985, the Commission instituted the subject investigation and scheduled a hearing to be held in connection therewith for March 19, 1985 (50 FR 3422). On February 14, 1985, the Commission received a request from the petitioner, supported by the respondents, to reschedule the public hearing from March 19, 1985, to March 26, 1985. The Commission, therefore, is revising its schedule in the investigation to assist the parties to the investigation. Unless the investigation is extended by the Department of Commerce, Commerce will make its final less than fair value determination on or before March 12, 1985, and the Commission will make its final injury determination by May 2, 1985, as provided in sections 735(a) and 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(a) and 1673d(b)).

Staff report. A public version of the prehearing staff report in this investigation will be placed in the public record on March 4, 1985, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing. The Commission will hold a hearing in connection with this investigation beginning at 10:00 a.m. on March 26, 1985, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on March 12, 1985. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on March 18, 1985, in Room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is March 20, 1985.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2), as amended by 49 FR 32569, August 15, 1984)).

Written submissions. All legal arguments, economic analyses, and factual materials relevant to the public

hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on March 29, 1985. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before March 29, 1985.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6, as amended by 49 FR 32569, Aug. 15, 1984).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

Issued: February 22, 1985.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-5407 Filed 3-5-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-243 (Preliminary)]

Certain Expansion Tanks From the Netherlands

AGENCY: International Trade Commission.

ACTION: Institution of a preliminary antidumping investigation and scheduling of a conference to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731-TA-243 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the Netherlands of pre-pressurized, diaphragm-type expansion tanks for use in closed water systems, which are alleged to be sold in the United States at less than fair value. As provided in section 733(a), the Commission must complete preliminary antidumping investigations in 45 days, or in this case by April 1, 1985.

For further information concerning the conduct of this investigatioin and rules of general application, consult the Commission's rules of practice and procedure, Part 207, Subparts A and B (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201, as amended by 49 FR 32569, August 15, 1984).

EFFECTIVE DATE: February 14, 1985.

FOR FURTHER INFORMATION CONTACT: George Deyman (202-523-0481), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436.

SUPPLEMENTARY INFORMATION:

Background. This investigation is being instituted in response to a petition filed on February 14, 1985, by Amtrol, Inc., West Warwick, RI.

Participation in the investigation. Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list. Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with § 201.16(c) of the rules (19 CFR 201.16(c), as amended by 49 FR 32569, August 15, 1984), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Conference. The Director of Operations of the Commission has scheduled a conference in connection with this investigation for 9:30 a.m. on March 8, 1985, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Parties wishing to participate in the conference should contact George Deyman (202-523-0481) not later than March 5, 1985, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written submissions. Any person may submit to the Commission on or before March 12, 1985, a written statement of information pertinent to the subject of the investigation, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8, as amended by 49 FR 32469, August 15, 1984). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submission must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6, as amended by 49 FR 32569, August 15, 1984).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

By order of the Commission.

Issued: February 25, 1985.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-5403 Filed 3-5-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-238 (Preliminary)]

12-Volt Motorcycle Batteries From Taiwan

Determination

On the basis of the record [1] developed in the subject investigation the Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673(a)), that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports from Taiwan of 12-volt motorcycle batteries, provided for in item 683.05 of the Tariff Schedules of the United States, which are alleged to be sold in the United States at less than fair value (LTFV).

Background

On January 11, 1985, a petition was filed with the Commission and the Department of Commerce by General Battery Corp., Reading, PA, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of 12-volt motorcycle batteries from Taiwan. Accordingly, effective January 11, 1985, the Commission instituted preliminary antidumping investigation No. 731-TA-238 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of January 23, 1985 (50 FR 3038). The conference was held in Washington, DC, on February 1, 1985, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its report on this investigation to the Secretary of Commerce on February 25, 1985. A public version of the Commission's report, 12-volt Motorcycle Batteries from Taiwan (investigation No. 731-TA-238 (Preliminary), USITC Publication 1654, February 1985), contains the views of the Commission and information developed during the investigation.

By order of the Commission.

[1] The record is defined in § 207.21(i) of the Commission's Rules of Practice and Procedure (19 CFR. 207.2(i)).

Issued: February 26, 1985

Kenneth R. Mason,

Secretary.

[FR Doc. 85-5402 Filed 3-5-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-192]

Certain Spring Balance Arm Lamp Heads; Initial Determination Terminating Respondents on the Basis of Settlement Agreement

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presenting officer in the above-captioned investigation termination the following respondents on the basis of a settlement agreement: BC Imports Inc.; Prestigeline, Inc.; Fleco Industries, Inc.; Lite-Tron, Light World, Inc., & Light Frantastic of Texas; Sansui Industries Co.; Sansui Industries Co., Ltd.; J.K. Gill; Associated Graphics, Inc.; City Electric, Inc.; Pay 'n Pak Stores, Inc.; Advanced Tool Technology, Inc.; Lightways, Inc.; Lightning Bug, Ltd., Inc, and Lighting Resource, and J&D International.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on February 22, 1985.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

Written Comments: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street, NW., Washington, D.C. 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202-523-0176.

By order of the Commission.

Issued: February 22, 1985.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-5406 Filed 3-5-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-174]

Certain Woodworking Machines; Decision Not To Review Initial Determination Granting Motion To Terminate One Respondent; Issuance of Consent Order

AGENCY: International Trade Commission.

ACTION: Nonreview of initial determination (ID) granting motion for termination of one respondent; issuance of consent order.

SUMMARY: The Commission has determined not to review the ID of a Commission administrative law judge granting a motion for termination of the investigation as to one respondent and the entry of a consent order. By virtue of the Commission's decision not to conduct a review, the ID has become the Commission's determination. (See 19 CFR 210.53(h), as amended at 49 FR 46123 (November 23, 1984)). The consent order requested by the parties has been issued.

FOR FURTHER INFORMATION CONTACT: P. N. Smithey, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0350.

SUPPLEMENTARY INFORMATION:

Background. Investigation No. 337-TA-174 is being conducted to determine whether there is a violation of section 337 of the Tariff Act of 1930 (19 USC 1337) in the importation or sale of certain woodworking machines, by reason of unfair acts and practices by numerous Taiwanese and U.S. companies. (See 48 FR 55786 (December 15, 1983); 49 FR 23464 (June 6, 1984).) The complainant is Delta International Machinery Corp. (See 49 FR 23463 (June 6, 1984).)

On December 14, 1984, complainant Delta and respondent Rexon Industrial Corp. filed a joint motion requesting termination of the investigation as to Rexon and the entry of a consent order based on Rexon's settlement agreements with Delta (Motion No. 174–69). The Commission investigative attorney filed a response supporting the motion.

On January 18, 1985, the presiding administrative law judge issued an ID granting the motion. Copies of the ID were served on other Federal agencies. Comments from the public were solicited, but none were received. (See 50 FR 4286 (January 30, 1985).)

The parties did not file petitions for review, and the Commission determined that a review of the ID on the Commission's own motion was not warranted. (See 19 CFR 210.55, as amended at 49 FR 46123 (November 23, 1984).) The ID thus became the Commission's determination. (See 19 CFR 210.53(h), as amended at 49 FR 46123 (November 23, 1984).)

Termination of the investigation as respondent Rexon furthers the public interest by conserving the resources of the Commission and the parties.

Public inspection. The ID, the consent order, the settlement agreement, and all other nonconfidential documents on the record of the investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, Docket Section, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0471.

By order of the Commission.

Issued: February 25, 1985.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–5397 Filed 3–5–85; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–174]

Certain Woodworking Machines; Commission Partial Review and Reversal of Initial Determination Terminating the Investigation as to Thirteen Respondents on the Basis of Consent Orders

AGENCY: International Trade Commission.

ACTION: Partial review and reversal of the initial determination (ID) of a Commission administrative law judge (ALJ).

SUMMARY: The Commission conducted a self-initiated review of an ID granting thirteen motions to terminate the above-captioned investigation with respect to certain respondents on the basis of a consent order. The ID was reversed with respect to one motion. The ID was not reviewed with respect to the remaining motions. The unreviewed portion of the ID thus became the Commission's determination. (See 19 C.F.R. 210.53(h), as amended in 49 Fr 46123 November 23, 1985).

FOR FURTHER INFORMATION CONTACT: P.N. Smithey, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–0350.

SUPPLEMENTARY INFORMATION:

Background. Investigation No. 337–TA–174 is being conducted to determine whether there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation or sale of certain woodworking machines, by reason of unfair acts and practices by numerous Taiwanese and U.S. companies. (See 48 FR 55786 (December 15, 1983); 49 FR 23464 (June 6, 1984).) The complainant is Delta International machinery Corp. (See 49 FR 23463 (June 6, 1984).)

On December 3, 1984, complainant Delta and the following respondents filed joint motions for termination of the investigation as to those respondents and the entry of consent orders based on their settlement agreements with Delta: Nu-Way Machinery Corp., Tien Chien Enterprises Co., Ltd., Equipment Importers, Inc., Yung Li Hsing Electric Works Co., Ltd., Chiu Ting Machinery Co., Ltd., Upsix Industrial Co., Ltd., Grizzly Imports, Inc., Shih Hsin Machinery Industrial Co., Ltd., Dankey International Incorp., Kuang Yung Machinery Co., Ltd., Astro-Pneumatic Tool Co., Shen Kung Machinery Industrial Co., Ltd., and Taiwan Sheng Tsai Industrial Co., Ltd. The Commission investigative attorney filed a response supporting the motions.

On January 11, 1985, the presiding administrative law judge issued an ID granting the motions (Order No. 51). Copies of the ID was served on other Federal agencies. Although comments from the public were solicited (50 FR 3039, January 23, 1985), none were received.

Although the parties did not petition for review of the ID, the Commission conducted a partial review on the Commission's own motion. (See 19 C.F.R. 210.55, as amended at 49 FR 46123 November 23, 1984).) The Commission reversed the ID with respect to the motion filed by Delta and respondent Equipment Importers (Motion No. 174–54), because the parties had not filed a copy of the proposed consent order, as required by 19 CFR 212.20(b). The Commission determined not to review the ALJ's findings with respect to the motions filed by Delta and the remaining respondents—i.e., Nu-Way, Tien Chien, Yung Li Hsing, Chiu Ting, Upsix, Grizzly, Shih Hsin, Dankey, Kuang Yung, Astro-Pneumatic, Shen Kung, and Taiwan Sheng Tsai (Motions Nos. 174–51, 53, 55, 57–60, and 62–66). By virtue of the Commission's decision not to review the ID as to the aforesaid motions, the unreviewed portion of the ID became the Commission's determination. (See 19 CFR 210.53(h), as amended in 49 FR 46123 November 23, 1985).

Termination of the investigation as to respondents Nu-Way, Tien Chien, Yung Li Hsing, Chiu Ting, Upsix, Grizzly, Shih Hsin, Dankey, Kuang Yung, Astro, Shen Kung, and Taiwan Sheng Tsai furthers the public interest by conserving the resources of the Commission and the parties.

Public inspection. Copies of the ID, the Commission's Action and Order, and all other nonconfidential documents on the record of the investigation are available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, Docket Section, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0471.

By order of the Commission.

Issued: February 25, 1985.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–5404 Filed 3–5–85; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–55 (Sub-127X)]

Railroad Abandonments, Seaboard System Railroad, Inc.; Abandonment Exemption in Lake County, IN

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of prior approval under 49 U.S.C. 10903 *et seq.*, the abandonment by Seaboard System Railroad, Inc., of 5.069.5 feet of track in Lake County, IN, subject to standard labor protection.

DATES: This exemption is effective on April 5, 1985. Petitions for reconsideration must be filed by March 26, 1985. Petitions for stay must be filed by March 18, 1985.

ADDRESSES: Send pleadings referring to Docket No. AB–55 (Sub-No. 127X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
(2) Petitioner's representatives: Charles M. Rosenberger, 500 Water Street, Jacksonville, FL 32202.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to T. S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

Decided: February 25, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley, and Strenio. Commissioner Lamboley commented with a separate expression. Chairman Taylor would have required Seaboard to notify the two affected shippers.

James H. Bayne,

Secretary

[FR Doc. 85–5343 Filed 3–5–85; 8:45 am]

BILLING CODE 7035–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Media Arts Advisory Panel; Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Media Arts Advisory Panel (Film/Video Production Section) to the National Council on the Arts will be held on March 18–20, 1985 from 9:00 am–5:30 pm in the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sections will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

February 22, 1985.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 85–5366 Filed 3–5–85; 8:45 am]

BILLING CODE 7537–01–M

Visual Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Visual Arts Advisory Panel (Art in Public Places Section) to the National Council on the Arts will be held on March 18–20, 1985 from 9:00 am–6:00 pm in Room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

February 22, 1985.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 85–5367 Filed 3–5–85; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Alan T. Waterman Award Committee; Meeting

Correction

FR Doc. 85–5169 was published in the Sunshine Act Meetings section on page 8436 in the issue of Friday, March 1, 1985. It should have appeared in the regular Notices section of the issue.

BILLING CODE 1505–02–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–413 OL, 50–414 OL]

Duke Power Co., et al; Oral Argument

In the matter of Duke Power Company, et al. (Catawba Nuclear Station, Units 1 and 2).

Notice is hereby given that, in accordance with the Appeal Board's order of February 26, 1985, oral argument on the appeals of Palmetto Alliance and Carolina Environmental Study Group from the Licensing Board's three partial initial decisions (LBP–84–24, 19 NRC 1418 (1984); LBP–84–37, 20 NRC 933 (1984); and LBP–84–52, 20 NRC 1484 (1984)), will be held at *10:00 a.m. on Wednesday, April 3, 1985, in the NRC Public Hearing Room, Fifth Floor, East-West Towers Building, 4350 East-West Highway, Bethesda, Maryland.*

Dated: February 28, 1985.

For the Appeal Board.

C. Jean Shoemaker,

Secretary to the Appeal Board.

[FR Doc. 85–5410 Filed 3–5–85; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–289 OLA]

Metropolitan Edison Co.; Rescheduling Oral Argument

In the matter of Metropolitan Edison Company, (Three Mile Island Nuclear Station, Unit No. 1), (Steam Generator Repair).

Notice is hereby given that, in accordance with the Appeal Board's order of February 28, 1985, oral argument previously calendared for March 27, 1985 has been rescheduled for *2:00 p.m., Wednesday, April 3, 1985, in the NRC Public Hearing Room, Fifth Floor, East-West Towers Building, 4350 East-West Highway, Bethesda, Maryland.*

Dated: February 28, 1985.

For the Appeal Board.

C. Jean Shoemaker,

Secretary to the Appeal Board.

[FR Doc. 85–5409 Filed 3–5–85; 8:45 am]

BILLING CODE 7590–01–M

Three Mile Island Unit 2 Cleanup; Progress Information

AGENCY: Nuclear Regulatory Commission.

ACTION: Information notice.

SUMMARY: The Commission is issuing this Information Notice to provide its views on the status of both the cleanup

of Three Mile Island, Unit 2 (TMI–2), and the funding situation for that cleanup. As explained below, although the cleanup has not proceeded as expeditiously as the Commission would have hoped, the Commission finds that at this time General Public Utilities Nuclear ("GPUNC" or "licensee") is making reasonable progress in accomplishing cleanup objectives, and there appears to be reasonable assurance that there will be adequate funding for the cleanup for the next several years.

FOR FURTHER INFORMATION CONTACT: Dr. Bernard J. Snyder, Director, Three Mile Island Program Office, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–7761.

SUPPLEMENTARY INFORMATION: The accident at TMI–2 on March 28, 1979 resulted in substantial damage to the reactor core and to certain reactor systems and components, and the facility was contaminated with a large amount of radioactive material. Although the facility is presently in a safe shutdown condition, the core is in a condition and configuration for which it was not designed. Hence it is important that the cleanup proceed as promptly as safety considerations will permit, and to this end the Commission has been closely monitoring the licensee's progress and future plans.

In August 1980 the licensee informed the Commission that removal of the reactor vessel head, the first significant step in reactor defueling, would be accomplished by June 1982, containment building decontamination would be completed by December 1983, and reactor fuel removal finished by April 1984. In July 1981 the licensee revised its schedule and estimated that the reactor fuel would be removed by February 1985, and containment building decontamination would be completed by August 1986, with less significant cleanup activities continuing past that date. The licensee's December 1982 schedule estimated reactor head removal by June 1986, and completion of containment building decontamination by March 1988. The licensee's latest estimate, dated July 2, 1984, provided the staff with a revised that provides for a schedule target date for the completion of reactor fuel removal from the primary system by June of 1987.

This most recent schedule depends, in part, on adequate funding. The funding for the cleanup as proposed by Pennsylvania Governor Richard Thornburgh—the Thornburgh Plan—provides that funding will come from the utility industry, ratepayers, and the Federal and State governments. While funding by the taxpayers and Federal and State governments has been in place for several years, until recently no significant funds have been forthcoming from the industry.

The Commission was becoming increasingly concerned with both the pace of the cleanup and the possibility that funding shortfalls might even further slow down that effort. The Commission expressed its concerns regarding the cleanup in a May 30, 1984 meeting with the independent Advisory Panel for the Decontamination of TMI–2. At that meeting, the Commission stated that it would explore options the agency has for expediting the cleanup, including issuing an order directing the licensee to complete the cleanup by a set date.

Accordingly, in June 1984, the Commission directed the NRC staff to explore means to expedite the cleanup effort. This endeavor included consideration of alternative methods to accomplish the cleanup as well as actions that would compel the licensee to complete specific cleanup milestones by specified dates.

Several significant events occurred while this effort was underway. The Edison Electric Institute (EEI) renewed efforts to secure industry contributions. In a letter dated September 5, 1984, EEI informed the Commission that, beginning in 1985 for a period of six years, an EEI program will contribute $25 million annually to the cleanup of TMI–2 for a total of $150 million. These funds would be provided by EEI member companies on a volunteer basis, and, to the extent necessary, Pennsylvania and New Jersey electric utilities have agreed to provide research and development grants each year in an amount to maintain an annual funding level of $25 million per year for this program.

On December 28, 1984, GPUNC received a check from EEI for $10.9 million which represents partial payment on the $25 million 1985 commitment. The NRC staff was informed that three additional 1985 quarterly payments, each of $4.7 million, will be made to GPUNC on April 1, July 1, and October 1, 1985. These three payments are in the form of supplement research and development grants from six Pennsylvania and New Jersey utilities. The industry's share of the cleanup funds appears as reasonably assured as the other sources of funding. Also at the end of December the State of New Jersey provided a check for $3.7 million representing the State's appropriations for the cleanup for 1984 and 1985. GPUNC expects that the State of New Jersey will appropriate an additional $1.8 million per year for four more years after 1985.

In late 1983 the upper GPUNC management structure responsible for the cleanup began and a new management structure responsible for the cleanup was assembled. Concurrently, progress in the cleanup began to improve, and in February 1984 the polar crane test was successfully conducted. Five months later a significant milestone in the progress of the cleanup was reached when the reactor pressure vessel head was removed. Recently, in December 1984, the reactor vessel plenum was jacked up 7½ inches allaying fears that it may be stuck and require cutting to remove. Removal of the plenum, scheduled in May 1985, represents the last major hurdle prior to fuel removal operations. The licensee's management has informed the Commission that they are committed to accelerate the pace of the cleanup with the goal of conforming to the December 1982 schedule by the end of 1986.

The Commission finds that in view of these events it is not necessary at this time to consider alternative methods to expedite the cleanup or to seek more assurances of funding. Although the Commission has been disappointed by the earlier pace of the cleanup, the Commission believes that the licensee is now making reasonable progress toward accomplishing cleanup objectives, and that the funding situation is as assured as reasonably possible.

Commissioner Asselstine would have issued an enforceable order setting out a schedule for completion of TMI–2 cleanup which could only be modified for good cause.

Although the Commission has decided to take no action at this time, the Commission will continue to monitor closely both the licensee's progress in completing the cleanup and the funding situation. Should conditions change in a manner that could significantly impact the pace of the cleanup, the Commission will promptly reconsider the necessity of taking whatever action is deemed appropriate to ensure adequate protection of the public health and safety.

Dated at Washington, DC this 1st day of March, 1985.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 85–5411 Filed 3–5–85; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Policy Letter 77-2; Section 502(c) of Pub. L. 95-89, August 4, 1977; Rescission

AGENCY: Office of Federal Procurement Policy, OMB.

ACTION: Rescission of OFPP Policy Letter 77-2.

SUMMARY: OFPP Policy Letter has, by its own terms, become inoperative and is, therefore, rescinded.

FOR FURTHER INFORMATION CONTACT: Owen Birnbaum, Deputy Associate Administrator for Policy Development, (202) 395-3254.

SUPPLEMENTARY INFORMATION: OFPP Policy Letter 77-2, September 30, 1977, implemented section 502(c) of Pub. L. 95-89, August 4, 1977, which amended section 15(c) of the Small Business Act to provide that:

(c) During fiscal year 1978, public and private organizations and individuals eligible for assistance under section 7(h) of this Act shall be eligible to participate in such contracts or any part thereof in an aggregate amount to exceed $100,000,000; Provided, however, That the Administration, not later than March 1, 1979, shall prepare and transmit to the Select Committee on Small Business of the Senate and the Committee on Small Business of the House of Representatives, a report on the impact of contracts awarded to such organizations and individuals on small business.

Section 15(c) was subsequently amended to extend such eligibility to participate in small business set-asides through FY 83. Congress did not, however, extend the eligibility beyond FY 83.

Accordingly, Policy Letter 77-2 is by its own terms, inoperative. Therefore, the Policy Letter should be, and hereby is, rescinded.

This notice has the concurrence of the Director of the Office of Management and Budget.

Dated: February 8, 1985.

William E. Mathis,

Acting Administrator.

[FR Doc. 85-5369 Filed 3-5-85; 8:45 am]

BILLING CODE 3110-01-M

SMALL BUSINESS ADMINISTRATION

[Application No. 09/09-5359]

Orlando Capital Corp.; Application for License To Operate as a Small Business Investment Company

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to § 107.102 of Revision 6 of the Rules and Regulations (13 CFR 107.102 (1984)) by Orlando Capital Corporation, 977 North Broadway, Third Floor, Los Angeles, California 90012 for a license to operate as a small business investment company (SBIC) under the Small Business Investment Act of 1958 (the Act), as amended (15 US.C. *et. seq.*)

The proposed officers, directors and shareholders are:

Name and address	Title or relationship	Percentage of ownership
Enock Ho, 1621 Orlando Road, Pasadena, CA 91106.	President/CEO/Director	100
Patsy Ho, 1621 Orlando Road, Pasadena, CA 91106.	Secretary/Treasurer/Director.	0
Raymond Leung, 1190 B. Walnut Grove, Rosemead, CA 91770.	Vice President/Director	0

The Applicant will begin operations with a capitalization of $1,000,000 and will be a source of equity capital and long term loan funds for qualified small business concerns.

The Applicant will conduct its operations in the State of California.

As a small business investment company under section 301(d) of the Act, the Applicant has been organized and chartered solely for the purpose of performing the functions and conducting the activities contemplated under the Act and will provide assistance solely to small concerns which will contribute to a well balanced national economy by facilitating ownership is such concerns by persons whose participating in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the applicant include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management, including profitability and financial soundness in accordance with the Act and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, D.C. 20416.

A copy of the Notice will be published in a newspaper of general circulation in Los Angeles, California.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: February 25, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85-5360 Filed 3-5-85; 8:45 am]

BILLING CODE 8025-01-M

[License No. 06/06-0285]

Future Money Corp.; License Surrender

Notice is hereby given that Future Money Corporation, Two Energy Square, Dallas, Texas 75206, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended, (the Act). Future Money Corporation was licensed by the Small Business Administration on November 28, 1984.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender was accepted on February 14, 1985, and accordingly, all rights, privileges and franchises derived therefrom have been terminated.

Dated: February 20, 1985.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85-5361 Filed 3-5-85; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Order 85-Z-64; Docket 42907]

Proposed Revocation of Air Carrier Certificates

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause, Order 85-2-64 Docket 47907.

SUMMARY: The Department of Transportation is proposing to revoke the air carrier certificates of Aircore Aviation, Inc., and Astro-Wing Airlines, Inc., for noncompliance with the insurance, reporting and continuing fitness requirements for certificated air carriers.

DATES: All interested persons having objections to the Department issuing an order making final the tentative fundings, shall file their objections with

the Department and serve them upon the carrier or carriers involved, no later than March 27, 1985.

ADDRESSES: Objections should be filed in Docket 42907, and sent to the Documentary Services Division, Department of Transportation, 400 7th Street, SW., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Patricia T. Szrom, Chief, Special Authorities Division, Office of Aviation Operations, Department of Transportation, 400 7th Street, SW., Washington, D.C. 20590 (202) 755–3812.

Dated: February 28, 1985.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 85–5412 Filed 3–5–85; 8:45 am]

BILLING CODE 4910-62-M

Federal Railroad Administration

[FRA General Docket No. H–83–2]

Petitions for Waiver of Compliance; Norfolk Southern Corp., et al.

The Federal Railroad Administration's Freight Car Safety Standards (49 CFR Part 215) prohibit a railroad from keeping a freight car in service if it has a defective wheel. Since a wheel that has been thermally abused presents a significant risk of sudden failure and consequent derailment, § 215.103(h) defines such wheels as defective.

FRA recently initiated a rulemaking proceeding to improve the clarity of this provision. In response to the notice of proposed rulemaking issued on June 22, 1984, one commenter suggested that FRA's regulatory approach to thermally abused wheels was intrinsically flawed because it relies on a scientifically unjustified detection methodology. This commenter, the Association of American Railroads (AAR), suggested that FRA consider initiating a test program to obtain date about the thermal abuse of freight car wheels. The test program contemplated by the AAR would involve a waiver of compliance with FRA's regulation to permit one type of freight car wheel, generally described as a "curved plate," "S plate," or "low stress" wheel, to remain in service until that wheel displays clear evidence of thermal abuse such as thermal cracking. The service record of these wheels would then be compared to that of wheels removed from service under FRA's rule so as to validate or invalidate the current industry detection approach, which is premised on visual observation of discoloration criteria.

Four railroads, Norfolk Southern Corporation (NS), Consolidated Rail Corporation (Conrail), Union Pacific (UP), and Atchison, Topeka and Santa Fe (ATSF), have now filed specific proposals with FRA concerning a suggested test program. The NS and Conrail proposals were described by FRA in a notice that appeared in the March 1, 1985 issue of the **Federal Register** (50 FR 8432). In the subsequently filed UP and ATSF proposals, FRA has been offered additional equipment to be used in any test progam that FRA deems appropriate. ATSF volunteered the use of a fleet of approximately 16,000 hopper cars and notes that these cars are in dedicated service. These cars travel approximately 15,000 miles annually with nearly 80 percent of that mileage occurring on ATSF trackage. The commodities normally hauled in these cars include grain, cement, wood chips, aggregate and coal. In addition, UP has offered the use of a fleet of approximately 21,000 freight cars that includes box, gondola, flat and hopper cars. None of these cars are used to haul commodities that are classified as hazardous materials and they accumulate most of their mileage while operating on UP's own lines.

FRA invites interested parties to participate in this proceeding by submitting written comments, data or views on the appropriateness of initiating any test program concerning this topic; the nature and scope of the test program being requested by NS, Conrail, ATSF and UP, if a test program is deemed appropriate; and the safeguards or conditions needed to assure the safety of operations during any recommended test program. Interested parties also may desire to attend the public hearing scheduled for March 12, 1985. This hearing was announced in the **Federal Register** on December 17, 1984 (49 FR 48952) in connection with FRA's pending proposal to clarify its existing regulatory provision on this issue. FRA anticipates that persons testifying at this hearing will address the topic of initiating the type of test program sought by ATSF, UP, NS, and Conrail as a means of validating or invalidating FRA's regulatory provision. This hearing is scheduled to begin at 1:00 pm on March 12, 1985, in Room 8334 of the Nassif Building located at 400 Seventh Street SW., Washington, D.C.

All communications concerning this proceeding should identify the appropriate docket number (FRA General Docket No. H–83–2) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street SW., Washington, D.C. 20590. Communications received before April 15, 1985 will be considered by FRA before taking any further action. Comments received after that date will be considered as far as practicable. All written communications concerning this proceeding are available for examination during regular business hours (9 a.m.–5 p.m.) in Room 8201 of the Nassif Building at the above address.

Issued in Washington, D.C. on March 1, 1985.

Joseph W. Walsh,

Associate Administrator for Safety

[FR Doc. 85–5364 Filed 3–5–85; 8:45 am]

BILLING CODE 4910-06-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 44
Wednesday, March 6, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Monday, March 11, 1985, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Applications for Federal deposit insurance:

South Coast Thrift and Loan Association, an operating noninsured industrial bank located at 1421 West MacArthur Boulevard, Santa Ana, California.

Parker Industrial Bank, an operating noninsured industrial bank located at 6524 E. Parker Road, Parker, Colorado.

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 46,187–L (Amended)
Banco Creditory Ahorro Ponceno, Ponce, Puerto Rico
Case No. 46,188–NR
Penn Square Bank, National Association, Oklahoma City, Oklahoma

Memorandum regarding the Liquidation Asset Management Information System Project.

Memorandum and resolution re: Final amendments to Parts 332 and 337 of the Corporation's rules and regulation, entitled "Powers Inconsistent With Purposes of Federal Deposit Insurance Law," and "Unsafe or Unsound Banking Practices," respectively, which permit insured State nonmember banks to offer check guaranty services to retail banking deposit customers and to sponsor such customers in credit card agreements with other banks.

Reports of committees and officers:

Minutes of actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications, requests, or actions involving administrative enforcement proceedings approved by the Director or an Associate Director of the Division of Bank Supervision and the various Regional Directors pursuant to autority delegated by the Board of Directors.

Discussion Agenda:

Memorandum and resolution re: Proposed amendments to Part 338 of the Corporation's rules and regualtions, entitled "Fair Housing," which would provide that insured State nonmember banks having assets of $50 million or less and having received fewer than 25 home loan applications in the prior calendar year would no longer be required to collect and record in a log-sheet certain data concerning home loan applications, with the Corporation's baord of Directors retaining the right to required such recordkeeping by a bank if it has reason to believe the bank may be engaged in discriminatory home loan practices (including illegal prescreening).

Memorandum and resolution re: Final amendment to Part 333 of the Corporation's rule and regualtions, entitled "Extension of Corporate Powers," which would permit insured nonmember banks to offer and administer, with certain limitations, self-directed Individual Retirement and Keogh Plan accounts.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550-17th Street, NW., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389–4425.

Dated: March 4, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85–5501 Filed 3–4–85; 3:47 pm]

BILLING CODE 6714-01-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Monday, March 11, 1985, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enfrocement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liqudating agent of those assets:

Case No. 46,177 (Amended)
Costa Mesa Subregional Office, Costa Mesa, California

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

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Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552 (c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550–17th Street, NW., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation at (202) 389–4425.

Dated: March 4, 1985.
Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.
[FR Doc. 85–5502 Filed 3–4–85; 3:47 pm]
BILLING CODE 6714–01–M

3

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of March 4, 11, 18, and 25, 1985.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, D.C.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of March 4

Wednesday, March 6

9:30 a.m.
Discussion of Pending Investigations (Closed—Ex. 5 & 7)
10:30 a.m.
Discussion/Possible Vote on Full Power Operating License for Waterford-3 (Public Meeting) (*postponed* from February 26)
2:00 p.m.
Briefing on EEO Program (Public Meeting)

Thursday, March 7

2:00 p.m.
Meeting with Advisory Panel on TMI-2 Cleanup (Public Meeting)
3:00 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of March 11—Tentative

Tuesday, March 12

2:00 p.m.
Briefing by Staff on Use of Check Pilot Approach for Reactor Operator Requalification (Public Meeting)

Thursday, March 14

10:00 a.m.
Briefing on Further Actions on Source Term (Public Meeting)
2:00 p.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6) (Tentative)
3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of March 18—Tentative

Wednesday, March 20

2:00 p.m.
Briefing by NUMARC on Status of NUMARC Initiatives (Public Meeting)

Thursday, March 21

10:00 a.m.
Discussion of Proposed Revisions to Part 35 (Public Meeting)
2:00 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of March 25—Tentative

Tuesday, March 26

2:00 p.m.
Discussion of Motion to Disqualify in TMI-1 Restart Case (Closed—Ex. 10)

Thursday, March 28

2:00 p.m.
Affirmation Meeting (Public Meeting) (if needed)

ADDITIONAL INFORMATION: "Status Report and Discussion of Options on Shoreham" title changed to "Discussion of Options Concerning Shoreham Formal Adjudication," meeting held on February 25.

Discussion of Pending Investigations and Possible Enforcement Action (Closed—Ex. 5, 7 & 10) was held February 28.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (202) 634–1498.

CONTACT PERSON FOR MORE INFORMATION: Julia Corrado (202) 634–1410.

Andrew L. Bates,
Office of the Secretary.
[FR Doc. 85–5408 Filed 3–1–85; 5:01 pm]
BILLING CODE 7590–01–M

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PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL (NORTHWEST POWER PLANNING COUNCIL)

ACTION: Notice of meeting to be held pursuant to the Government in the Sunshine Act (5 U.S.C. 552b).

STATUS: Open.

TIME AND DATE: March 13–14, 1985, 9:00 a.m.

PLACE: Council Offices, 850 SW. Broadway, Suite 1100, Portland, Oregon.

MATTERS TO BE CONSIDERED:

March 13, 1985

• Public Comment on Washington Public Power Supply System Nuclear Plants Nos. 1 and 3 Issue Paper.
• Council Decision on Washington Public Power Supply System Nuclear Plants Nos. 1 and 3 Cost Assumptions.
• Staff Presentation on Re-Evaluation of the Model Conservation Standards Issue Paper.
• Staff Presentation on Cost and Availability of Resources Issue Paper.
• Staff Presentation and Public Comment on Analysis of Conservation Availability and Cost (Conservation Supply Function Issue Paper).

March 14, 1985

• Staff Presentation on Analysis of Forecast Loads Staff Report.
• Public Comment on Preliminary Load Forecast.
• Staff Presentation on Proposed Council Intertie Access Policy Issue Paper.
• Staff Presentation on Critical Water Planning Issue Paper.
• Staff Presentation on Combustion Turbine Cost-Effective Issue Paper.
• Public Comment on Status Report on Hood River, End Use Load and Conservation Assessment Project (ELCAP), and Elmhurst Conservation Demonstration Project.
• Status Report on 1985 Fish Passage Plan.
• Council Business.

Public comment will follow each item.

FOR FURTHER INFORMATION CONTACT: Ms. Bess Wong (503) 222–5161.

Edward Sheets,
Executive Director.
[FR Doc. 85–5420 Filed 3–4–85; 10:09 am]
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Federal Register

Wednesday
March 6, 1985

Part II

Department of the Treasury

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 19, 20, 21, 22, 170, 200, 211, 213, 250, 251, and 252

Distribution and Use of Denatured Alcohol and Rum, and Tax-Free Alcohol; Final Rule

VOL 50 ISS 44 MR 6 1985 UMI

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 19, 20, 21, 22, 170, 200, 211, 213, 250, 251 and 252

[T.D. ATF-199; Re: Notice No. 389]

Distribution and Use of Denatured Alcohol and Rum, and Tax-Free Alcohol

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This final rule amends and recodifies regulations relating to distribution and use of denatured alcohol and rum, and tax-free alcohol. This final rule also liberalizes qualification, bonding, operational, recordkeeping and reporting requirements for users and dealers of denatured alcohol and rum, and users of tax-free alcohol.

EFFECTIVE DATE: This final rule is effective on June 4, 1985. New permits will be issued to current permittees and the new procedures for withdrawal of specially denatured spirits or tax-free alcohol will apply to these new permits. Until the new permits are issued, current withdrawal permits remain valid.

FOR FURTHER INFORMATION CONTACT: John A. Linthicum, FAA, Wine and Beer Branch, 202-566-7626.

SUPPLEMENTARY INFORMATION:

Background

This final rule revises and recodifies regulations in 27 CFR Parts 211 and 213 relating to the acquisition, disposition and use of denatured and tax-free spirits. Denatured spirits are used in the manufacture of many industrial products, while tax-free spirits are normally limited to medical and scientific use. Both denatured and tax-free spirits are acquired free of the excise tax imposed on alcohol intended for beverage use. Persons wishing to deal in or use specially denatured alcohol or rum, and use tax-free alcohol are required by law to apply for and receive a permit. Under previous regulations, users were also required to apply for and obtain a withdrawal permit which set forth the maximum amount of spirits authorized to be on-hand, in transit or unaccounted for at any one time. This authorized amount was based on the estimated quantity of spirits required for one month. In most cases a user could withdraw, during a given month, up to twice the amount authorized by the withdrawal permit. However, the total quantity withdrawn in any one year could not exceed a quantity equal to 12 times the amount authorized by the withdrawal permit.

Users and dealers were required to file a bond, except States, any political subdivision thereof, the District of Columbia, the United States or any of its governmental agencies, and small users withdrawing 120 gallons or less of denatured spirits annually, or 240 proof gallons or less of tax-free spirits annually. The penal sum of the bond was based on the tax on all spirits on-hand, in transit or unaccounted for at one time.

In addition to the limitations on withdrawals and limitations of the amount on-hand, users of specially denatured spirits were required to submit a formula and a label for each article made. A person who purchased an article in bulk for bottling, labeling, reprocessing, resale, or simply to use, was required to obtain written authorization on Form 2622. Users and dealers were required to submit annual reports of transactions in specially denatured spirits or tax-free alcohol.

In general, users of tax-free alcohol or specially denatured spirits have not historically posed a serious jeopardy to the revenue. Therefore, ATF believes that liberalization of the regulatory requirements imposed on these individuals is justified, to the extent that the revenue and the public safety are not jeopardized.

Published Documents

On October 23, 1981, ATF published a notice of proposed rulemaking, Notice No. 389, in the **Federal Register** (46 FR 51929). This notice proposed to recodify 27 CFR Parts 211 and 213 into 27 CFR Parts 20 and 22, respectively. In addition, the notice proposed numerous liberalizing changes relating to qualification, bonding, operational, and recordkeeping/reporting requirements affecting users of specially denatured spirits and tax-free alcohol. In response to this notice, ATF received 17 comments.

On May 25, 1982, ATF published a final rule, T.D. ATF-103, in the **Federal Register** (47 FR 22522) eliminating the annual expiration of withdrawal permits issued to users. That final rule, based on Notice No. 389, eliminated an annual requalification requirement for more than 6,200 user permittees.

On June 21, 1982, ATF issued Industry Circular 82-7 which reported the issuance of ATF Rul. 82-5, A.T.F.Q.B. 1982-2, 44, allowing distilled spirits plant proprietors, dealers of specially denatured spirits, and others to apply for variances to use commercial records in lieu of Government forms covering the transfer of nontaxpaid commodities to qualified recipients. After this ATF Ruling was issued, several suppliers of specially denatured spirits or tax-free alcohol applied for and received permission to discontinue using Form 1473 covering shipments to user permittees.

This final rule implements all of the remaining changes proposed in Notice No. 389.

Revisions Affecting Both Specially Denatured Spirits and Tax-Free Alcohol

Withdrawal Procedures and Allowances

The new regulations on withdrawal of specially denatured spirits and tax-free alcohol provide greater cost benefits to users than any other provision of this final rule. ATF is eliminating the limitation on the quantity authorized to be on-hand, in transit, or accounted for at any one time. ATF is also eliminating the requirement that only a specified quantity is authorized to be withdrawn in one calendar month. These requirements are replaced with an annual withdrawal allowance, enabling users to purchase up to a one-year supply at one time. This will result in user savings in shipping charges, punitive charges for small orders imposed by some suppliers, and volume purchase discounts. These cost savings will be a benefit to small businesses and small government agencies, enabling them to purchase specially denatured spirits or tax-free alcohol at the same unit cost as large businesses and government agencies. An intangible benefit to the general economy is reduced energy consumption since several thousand users will be able to reduce shipments from as many as 12 annually to as few as one. Although these regulations will result in larger quantities in transit and on-hand, ATF believes that any increased jeopardy to the revenue is outweighed by the overall beneficial impact on the economy.

The new regulations eliminate the annual withdrawal permit. A user or dealer will show its eligibility to receive specially denatured spirits or tax-free alcohol by providing a copy of the user's/dealer's permit to each prospective supplier. This procedure eliminates the operational burden of obtaining the withdrawal permit from the current supplier and forwarding it to another supplier in order to change suppliers. Also, since the old withdrawal permit forms had shipments recorded on them, the new procedure protects the privacy of the user's

purchasing history from access by other suppliers.

Qualification

Limited Industrial Use Permits are eliminated because all of the benefits of the Limited Industrial Use Permit system are extended to all users, large and small, as discussed above.

The amount of information requested on qualifying documents is now considered to be the minimum possible amount which is necessary to identify the applicant and to determine that the applicant's intended use of specifically denatured spirits or tax-free alcohol is permitted by law. Storage facilities and other equipment are no longer described on the application except for stills and related equipment used in recovery operations. Thus, a change in storage facilities no longer requires notification or approval by ATF.

The underlying statute, 26 U.S.C. 5271, specifically requires that officers directors, principal stockholders, partners, and sole proprietors meet certain personal and professional criteria in order to hold an industrial alcohol permit. ATF conducts background investigations, including criminal records checks of these individuals. The previous regulations, and ATF policies, waived these investigations for many individuals except for those persons who were directly involved in permit operations or who held a 10% proprietary interest in the permittee entity. These policies are carried into the new regulations more clearly, so that applicants will find it easier to identify which individuals or which titles of offices need to be listed on the application. This will reduce the amount of information submitted to the Government.

Bonding

Notice No. 389 proposed to change the method for computing the penal sum of the surety bond filed by users and dealers. The previous method to determine the penal sum was to multiply the maximum quantity authorized to be on-hand, in transit, and unaccounted for at any one time by its tax value. Since there no longer is a limitation on the quantity authorized to be on-hand, in transit, and unaccounted for at any one time, the new method to determine the penal sum is based on annual withdrawals. The tiered scales of penal sums proposed in Notice No. 389 are adopted unchanged, giving an advantage to users which are small entities. The percentage of users of specially denatured spirits who are exempted from filing a surety bond increases from 43%, under previous regulations, to 75%, under the new regulations. The percentage of users of tax-free alcohol who are exempt from filing a surety bond increases from 36%, under previous regulations, to 75%, under the new regulations.

The changes revising amounts and methods of computing penal sums of bonds, would not relieve a permittee of tax liability, as established by law, if any specially denatured spirits or tax-free alcohol is misused.

ATF received one comment criticizing the liberalized bonding requirements from the Surety Association of America. The Surety Association believes that increasing the lower limit for unbonded permittees from 120 gallons to 5,000 gallons "seems a bit too high." The comment also states, "The proposed rules may have overlooked the important role underwriters have played in producing the favorable history of these bonds by protecting the excise taxes due to the government. Eliminating bonds could unleash unfavorable results upon the losses incurred by the government in the future if underwriters do not have an opportunity to exert their control and selectivity." However, as stated in Notice No. 389, the lower limit of 5,000 gallons per annum is based on the bonding threshold established by law for small Fuel Alcohol Plants. Under the Crude Oil Windfall Profits Tax Act of 1980, Pub. L. 96–223, a small Fuel Alcohol Plant may produce up to 10,000 proof gallons per annum of potable alcohol for fuel use without a surety bond. ATF believes that an equivalent amount (*i.e.* 5,000 gallons at 200° proof) of nonpotable specially denatured spirits does not pose a greater jeopardy to the revenue. Therefore, an annual limit of 5,000 gallons of specially denatured spirits is established as the lower threshold requiring a surety bond.

Form 1473 (5110.16)

Notice No. 389 proposed to eliminate the requirement for distilled spirits plant (DSP) proprietors and bonded dealers of specially denatured spirits to prepare, and users to complete, ATF Form 1473 (5110.16), Shipment and Receipt of Specially Denatured, Tax-Free, or Recovered Spirits. Under previous regulations, each shipment of denatured spirits, recovered spirits, or tax-free alcohol was accompanied by an ATF Form 1473 (5110.16). In addition, DSP's and bonded dealers normally prepare and forward a commercial invoice or shipping memo which duplicates most of the information on ATF Form 1473 (5110.16). ATF regional offices receive and maintain a copy of each ATF Form 1473 (5110.16). A random check of the ATF file copies has not uncovered any major problem. Therefore, the Government derives very little practical utility from requiring users to submit this form to ATF.

In lieu of preparing ATF Form 1473 (5110.16), DSP's and bonded dealers will use commercial invoices or other shipping/receipt records. These commercial records routinely contain sufficient information for ATF personnel to identify and trace the quantity and kind of spirits removed, received, reconsigned or returned. Preparation of ATF Form 1473 is replaced with a requirement to prepare a "Record of Shipment," a commercial record showing the kind of information routinely used on invoices or shipping records. The requirement to submit a record of shipment to ATF is removed.

Destruction and Reconsignment/Return of Shipments

The previous requirement to obtain written approval in order to destroy specially denatured spirits has been replaced with a requirement to prepare a record of the destruction. The previous requirement to obtain written approval in order to destroy tax-free alcohol has been replaced with a requirement to file a written notice of intent to destroy.

The previous requirements relating to returning or reconsigning shipments are substantially liberalized. Written approval is no longer required for either of these activities. In addition, a user of specially denatured spirits may now ship to another user. However, the regional director (compliance) may require a user to obtain a dealer's permit if shipments to other users are excessive. A user of tax-free alcohol may ship to another user, but only in case of an emergency. In these cases, the user must file a written notice of intent describing the emergency. However, these shipments must be made without remuneration, since the law does not permit dealing in tax-free alcohol.

Annual Reports

Users of tax-free alcohol and dealers in specially denatured spirits will no longer be required to submit annual reports. Each user of specially denatured spirits will continue to be required to submit a reduced annual report containing data used by ATF to identify the types of products made with specially denatured spirits (previously, ATF Form 1482, Part III). This information is necessary for protection of the revenue and public safety. It identifies which permittees are making the articles that are most likely to be

diverted to illegal use, *i.e.* the articles which are most easily recovered and the articles which are most likely to be identified as containing beverage alcohol. However, the remaining data previously submitted in the annual report of users of specially denatured spirits has been eliminated (previously, ATF Form 1482, Parts I and II).

The balanced accountings of specially denatured spirits or tax-free alcohol prepared and submitted annually by users and dealers will no longer be submitted to ATF: ATF Form 1451, for users of tax-free alcohol, ATF Form 1482, Parts I and II, for users of specially denatured spirits, and ATF Form 1478, for dealers of specially denatured spirits. The requirement to perform and record an annual balanced accounting is retained. However, this requirement is considered to be a usual and customary business record.

Use of Alcohol by United States

Agencies of the United States Government may obtain specially denatured spirits or tax-free alcohol for nonbeverage purposes using withdrawal procedures similar to those discussed previously for other permittees. The application forms and permit forms have been merged for specially denatured spirits and tax-free alcohol. Thus, a Federal agency may file one application for both specially denatured spirits and tax-free alcohol, and ATF will issue one permit authorizing withdrawal and use of both kinds of spirits. The requirement for a permit for beverage use of spirits by a Federal agency has been eliminated, since a permit is not specifically mandated by law.

Revisions Affecting Only Specially Denatured Spirits

Samples of Specially Denatured Spirits for Applicants and Prospective Applicants

There is a continuing need for a system to allow applicants and prospective applicants to obtain samples of specially denatured spirits for development of articles in order to determine if an Industrial Use Permit is desired. The underlying statute, 26 U.S.C. 5271, requires an application and a permit to receive and use specially denatured spirits. Under the previous regulations, a sample permit system using ATF Form 1512, provided applicants and prospective applicants with an opportunity to obtain samples of specially denatured spirits. However, the previous regulations permitted samples of 1 quart to be obtained without a permit, based on a longstanding policy that dispensing 1 quart to a nonpermittee does not circumvent the permit system required by law. ATF now believes that this amount can be increased to 5 gallons with no increased jeopardy to the revenue. However, suppliers will not be allowed to dispense more than 5 gallons per annum to nonpermittees. In addition, the regional director (compliance) may waive the requirement for a permit if a prospective applicant can demonstrate that more than 5 gallons is necessary to determine if a permit is desired.

Withdrawal of Specially Denatured Spirits

In addition to the liberalized withdrawal procedures previously discussed, the new regulations do not control which specific formulas of specially denatured spirits may be withdrawn. Under previous regulations, withdrawal permits specified which formulas of specially denatured spirits could be withdrawn. A user who wanted to develop a new article requiring a formula of specially denatured spirits which was not authorized by the withdrawal permit, was required to obtain an amended withdrawal permit authorizing withdrawal of the new formula of specially denatured spirits. Under the new regulations, a user permittee may withdraw any formula of specially denatured spirits. Thus, development of a new article does not require an amended permit.

ATF Form 1467 (5110.15)

Notice No. 389 proposed to eliminate the requirement for bonded dealers to prepare ATF Form 1467 (5110.15), Details of Packages Filled With Denatured Spirits. Implementing regulations for the Distilled Spirits Tax Revision Act of 1979 (27 CFR Part 19) eliminated the need for DSP proprietors to prepare this form by authorizing the use of commercial records. Therefore, the requirement to prepare ATF Form 1467 is removed as proposed. Commercial records of packages filled are usual and customary business records.

Formulas for Articles

General. Notice No. 389 proposed to modernize regulations governing formula approval for articles made with specially denatured spirits. Previous regulations required formula approval for each article made with specially denatured spirits. This requirement dates from the Prohibition era and was oriented toward the prevention of illicit diversion of denatured spirits to beverage use.

In regulating the use of specially denatured spirits in recent years, experience has failed to indicate any significant effort to divert spirits to avoid tax payment. Therefore, the legal obligation to protect the revenue has shifted toward protecting the public safety. Protecting public safety, with respect to articles made with denatured spirits, includes prohibiting from the marketplace any article which could be mistaken for a product intended for internal human use or beverage use.

Some types of articles are more likely to be suitable for conversion to beverage use. These articles include perfume, cologne, aftershave lotion, other body type lotions, mouthwash, some types of hair tonic, and similar articles. Most of these articles will continue to require formula approval by ATF.

Most other articles are less likely to be identified as containing alcohol suitable for conversion to beverage use. These articles include ink, shampoo, and some types of soaps, detergents and cleaning solvents. Many of these articles can now be made without filing a formula for approval by ATF.

General-use formulas. Since the underlying statute, 26 U.S.C. 5273, requires that articles be made in accordance with an approved formula, ATF is establishing, in the Code of Federal Regulations, a series of general-use formulas which would include broad categories of articles. An article made in accordance with an approved general-use formula would be exempt from the requirement to file a formula for approval with ATF. Articles containing the ingredients prescribed in approved general-use formulas contain sufficient denaturing materials to be fully denatured beyond easy recovery of beverage alcohol.

This final rule establishes general-use formulas for proprietary solvents, special industrial solvents, reagent alcohol and rubbing alcohol, based on previous regulations. Based on an analysis of currently approved formulas, general-use formulas are also established for inks, tobacco flavors, articles with low alcohol content and toilet preparations containing 10% essential oils. The Director will authorize new general-use formulas by approving them as alternate methods. Approval of new general-use formulas may also be made through ATF Rulings published in the ATF Bulletin.

Notice No. 389 requested comments proposing general-use formulas and ATF received one such comment from National Distillers and Chemical Company. Their proposed general-use formula reads, "For every 100 parts of SDA Formula 3–A there shall be added *no* less than 3 parts of one or any

combination of (1) methyl isobutyl ketone, (2) methyl *n*-butyl ketone, (3) nitropropane (mixed isomers), (4) ethyl acetate, (5) isopropyl alcohol, (6) methyl alcohol, (7) rubber hyrdrocarbon solvent (gasoline), (8) *n*-propanol, (9) ethylene glycol monoethyl ether, or (10) toluene." ATF believes that some of these proposed ingredients are not suitable in a general-use formula because they do not have sufficient denaturing properties at the level of 3 parts per 100. However, many of these possible combinations fit within the general-use formulas prescribed in the new regulations.

Other changes relating to formulas. A new regulation has been added which describes when a change of process or ingredients does not require submission of a revised formula.

New regulations have been added enumerating longstanding formula approval policies, some of which were previously issued as Revenue Rulings, Revenue Procedures, or ATF Rulings.

Samples of articles submitted with a formula for approval have been eliminated, except when requested by the Director. However, samples of essential oils used in perfumes and similar products made with S.D.A. Formula No. 39–C are still required to be submitted to ensure that they possess sufficient denaturing properties. This requirement also applies to any other ingredient which is not adequately described in the formula. This provision allows manufacturers to protect proprietary secrets by using generic terms in formulas (*e.g.* "essential oil") while still providing for adequate protection of the revenue.

Formulas, statements of process, and other proprietary information submitted for examination are considered to be trade secrets. This kind of information is protected from public disclosure under the Freedom of Information Act, Pub. L. 93–502, 88 Stat. 1563, 5 U.S.C. 552(b)(4). ATF will continue to employ the same safeguards which have been successful, for many years, in protecting this information from public disclosure.

Labels for Articles

ATF's main emphasis for requiring label approval for articles was to ensure that the labels did not imply that the article was suitable for internal human use or beverage use. It is unlawful to manufacture, sell, or offer for sale any article containing denatured spirits which is intended for internal human use or beverage use (26 U.S.C. 5273). A criminal penalty of $10,000 and/or 5 years imprisonment is imposed on the distribution of articles made with denatured spirits for internal human use or beverage use (26 U.S.C. 5607). ATF's review of labels for articles has disclosed so few labels in noncompliance that retaining the requirement is no longer deemed necessary. ATF further believes that manufacturers are concerned about product integrity and that they would not make an overt attempt to imply that an article was suitable for internal human use or beverage use.

Therefore, the new regulations eliminate the requirement that manufacturers of articles file and obtain label approval from ATF. However, standards for minimum labeling information are retained. Manufacturers may voluntarily submit labels to ATF for a determination that the label complies with the requirements of the law.

Rebottlers and Reprocessors

The previous regulations required reprocessors and rebottlers of articles to obtain written permission from ATF in order to receive bulk shipments of articles, to file formulas for reprocessing, to file labels for approval, and to maintain records available for ATF inspection.

Reprocessors and rebottlers receive articles which have already been produced in accordance with approved formulas by user permittees. Therefore, except where it is determined that an article poses jeopardy to the revenue or a threat to public safety, ATF is eliminating the requirements described above for all reprocessors and rebottlers of articles. Reprocessors and rebottlers may voluntarily submit article labels to ATF for a determination that the label complies with the requirements of the law.

This revision eliminates a large paperwork burden on both industry and the Government. ATF Form 2622 (5150.26), Application to Procure, Reprocess, Bottle, Repackage, or Resell Products Containing Specially Denatured Alcohol, is eliminated. However, a letter application reporting the same information may still be required if ATF has reason to believe that an article being reprocessed or rebottled poses jeopardy to the revenue or a threat to public safety.

Miscellaneous Amendments

This final rule makes conforming changes in regulation references to 27 CFR Part 212 which was recodified as Part 21, Formulas for Denatured Alcohol and Rum, in T.D. ATF–133, published in the **Federal Register** on June 2, 1983 (48 FR 24672). In addition, Part 21 is amended to allow for the use of S.D.A. Formula 3–A in the manufacture of Proprietary Solvents, and to change the names of two product codes which are affected by the establishment of general-use formulas.

Conforming changes in Parts 19 and 251 eliminate the requirement for preparation and submission of ATF Form 1473 (5110.16) and provide for the use of commercial documents in lieu of the form. Conforming changes in Part 200 reflect the elimination of the withdrawal permit as an enumerated category of permit. Conforming changes in Part 250 retain equal tax treatment for industrial spirits, denatured spirits, and products made with denatured spirits entering the United States from Puerto Rico or the Virgin Islands. Conforming changes throughout the chapter reflect the new part numbers for the recodified regulations.

A new regulation has been added in Part 252 to allow exporters of liquors to apply for and use alternate methods and procedures. This regulation is patterned after similar provisions throughout the chapter. An exporter may now be granted a variance from a requirement of Part 252 if the exporter's alternative method or procedure provides equal protection of the revenue and does not pose a burden to the Government in administering Part 252. The notice and public procedure requirements of 5 U.S.C. 553(b) are deemed unnecessary in this case because the new regulation is a rule of procedure which gives exporters the same privilege of obtaining a regulation variance which applies to all other persons regulated by ATF.

Certain Revenue Rulings, ATF Rulings, and Revenue Procedures are made obsolete by this final rule because they relate to subjects which are no longer regulated, or because they have been incorporated in the new regulations. These are listed after the Derivation and Distribution Tables, below.

Numerous minor editorial, clarifying, and implementing changes are contained in the recodified Parts 20 and 22.

Effect on Public-Use Forms

The following forms have been made obsolete by the new regulations:

ATF Form 133 (5150.29)—Manufacturing Record of Products Containing Specially Denatured Alcohol

ATF Form 1450 (1550.13)—Application and Withdrawal Permit to Procure Spirits Free of Tax

ATF Form 1451 (5150.28)—Report of Tax-Free Alcohol User

ATF Form 1467 (5110.15)—Details of Packages Filled with Denatured Spirits

ATF Form 1473 (5110.16)—Shipment and Receipt-Specially Denatured, Tax-Free or Recovered Spirits
ATF Form 1477 (5150.15)—Application and Withdrawal Permit of Bonded Dealer to Procure Specially Denatured Spirits
ATF Form 1478 (5150.10)—Bonded Dealer's Report of Specially Denatured Alcohol or Rum
ATF Form 1485 (5150.12)—Application and Withdrawal Permits of User to Procure Specially Denatured Spirits
ATF Form 1512 (5150.14)—Application and Permit to Procure Samples of Specially Denatured Spirits
ATF Form 2622 (5150.26)—Application to Procure, Reprocess, Bottle, Repackage, or Resell Products Containing Specially Denatured Alcohol
ATF Form 4326 (5150.21)—Application for Limited Industrial Use and Withdrawal Permit
ATF Form 4327 (5150.11)—Limited Withdrawal Permit to Procure Specially Denatured Spirits or Tax-Free Alcohol
ATF Form 5150.34—Redenaturation of Recovered Denatured Spirits

The following forms have been consolidated, revised, and renumbered by the new regulations:

ATF Form 1474 (5150.30)—Application for Permit to Deal in Specially Denatured Spirits, ATF Form 1479 (5150.23)—Application for Permit to Use Specially Denatured Spirits, and ATF Form 2600 (5150.22)—Application for Permit to Use Alcohol Free of Tax, are consolidated as ATF Form 5150.22—Application for Industrial Alcohol User Permit.

ATF Form 1447 (5150.9)—Permit to Use Alcohol Free of Tax, ATF Form 1476 (5150.16)—Permit to Deal in Specially Denatured Alcohol or Rum, and ATF Form 1481 (5150.17)—Permit to Use Specially Denatured Alcohol or Rum, are consolidated as ATF Form 1550.9—Industrial Alcohol User Permit.

ATF Form 1448 (5150.25)—Tax-Free Alcohol User's Bond, ATF Form 1475 (5150.24)—Bond of Dealer in Specially Denatured Alcohol and/or Rum, and ATF Form 1480 (5150.20)—Bond of User of Specially Denatured Alcohol or Rum, are consolidated as ATF Form 5150.25—Industrial Alcohol Bond.

ATF Form 1444 (5150.33)—Tax-Free Spirits for Use of the United States, and ATF Form 1486—Specially Denatured Spirits for Use of the United States, are consolidated as ATF Form 5150.33—Alcohol for Use of the United States.

ATF Form 1479-A (5150.19)—Formula for Article Made with Specially Denatured Alcohol or Rum, has been renumbered as ATF Form 5150.19.

As previously discussed, ATF Form 1482 (5150.18)—User's Report of Denatured Alcohol or Rum, has been revised by eliminating Parts I and II, and making the entire report consist only of the previous Part III. This form is renumbered as ATF Form 5150.18.

Executive Order 12291

It has been determined that this final rule is not a "major rule" within the meaning of Executive Order 12291 of February 17, 1981, because it will not have an annual effect on the economy of $100 million or more, it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this final rule because it will not have a significant economic impact on a substantial number of small entities. This final rule will not impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. This final rule is not expected to have significant secondary or incidental effects on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this final rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The collections of information contained in this final rule have been reviewed and approved by the Office of Management and Budget (OMB). In response to Notice No. 389, ATF received 17 comments, 12 of which discussed paperwork burdens. In accordance with 5 CFR Part 1320, the following is a discussion of those comments.

GATX Terminals Corporation's offices in Carteret, NJ, and San Pedro, CA, Block Drug Company, Inc., Procter & Gamble Co., and National Distillers and Chemical Corporation were in favor of the proposed elimination of withdrawal permits.

Baltimore County General Hospital and Block Drug Company, Inc., were in favor of the proposed elimination of annual reports.

Good Samaritan Medical Center, Milwaukee, WI, was in favor of reduced filing of Power of Attorney forms.

GATX Terminals Corporation's office in San Pedro, CA, Block Drug Company, Inc., Procter & Gamble Co., and National Distillers and Chemical Corporation were in favor of the proposed elimination of Form 1473.

Publicker Industries, Inc., was in favor of the proposed elimination of the requirement to obtain written approval for returning shipments to a supplier.

Procter & Gamble Co., and National Distillers and Chemical Corporation were in favor of the proposed elimination of mandatory label approval, and the proposed establishment of general-use formulas as a means of reducing the number of formulas which must be filed for approval.

Shell Chemical Company was in favor of reduced filing of Form 1512, and the elimination of the requirement to obtain written approval for a chemical distributor to repackage special industrial solvents.

In addition to the comments by National Distillers and Chemical Corporation discussed above, they were also in favor of the proposed elimination of limited-use permits, the proposed elimination of requirements relating to rebottlers and reprocessors of articles, and the proposed elimination of Form 1467.

The following organizations were generally in favor of the proposed reductions in paperwork, without commenting on specific paperwork burdens: American Pharmaceutical Association, Monsanto Plastics & Resins Co., and American Society of Hospital Pharmacists.

All of the suggested improvements related to recordkeeping and/or reporting contained in public comments are implemented in this final rule. Moreover, this final rule fulfills the purpose of the Paperwork Reduction Act because it does not impose a single new recordkeeping or reporting requirement, it eliminates many of the previous requirements, and it streamlines nearly all of the remaining requirements to fit within usual and customary business records maintained by regulated industry members.

Drafting Information

The principal author of this document is John A. Linthicum, FAA, Wine and Beer Branch, Bureau of Alcohol,

Tobacco and Firearms.

DERIVATION TABLE FOR PART 20

The requirements of—	Are derived from—
Subpart A	
§ 20.1	§ 211.1.
§ 20.2	§ 211.2.
§ 20.3	§ 211.3
Subpart B	
§ 20.11	§ 211.11
Subpart C	
§ 20.21	§ 211.21.
§ 20.22	§ 211.22.
§ 20.23	§ 211.23.
§ 20.24	§ 211.24.
§ 20.25	§ 211.25.
§ 20.26	§ 211.26.
§ 20.27	§ 211.27.
§ 20.28	§ 211.28.
§ 20.31	§ 211.31.
§ 20.33	§ 211.33.
§ 20.36	§ 211.34.
§ 20.37	§ 211.35.
Subpart D	
§ 20.41	§§ 211.41, 211.42.
§ 20.42	§§ 211.43, 211.52.
§ 20.43	§ 211.44.
§ 20.44	§ 211.48.
§ 20.45	§ 211.53.
§ 20.48	§ 211.45.
§ 20.49	§ 211.46.
§ 20.50	§ 211.49.
§ 20.51	§ 211.50.
§ 20.52	§ 211.51.
§ 20.53	§ 211.54.
§ 20.54	New.
§ 20.55	§ 211.47.
§ 20.56	§ 211.55.
§ 20.57	§ 211.56.
§ 20.58	§ 211.60.
§ 20.59	§ 211.63.
§ 20.60	§ 211.57.
§ 20.61	§ 211.58.
§ 20.62	§ 211.59.
§ 20.63	§ 211.62.
§ 20.64	New.
§ 20.66	§ 211.64.
§ 20.68	§ 211.65.
Subpart E	
§ 20.71	§§ 211.71, 211.72.
§ 20.72	New.
§ 20.73	§ 211.73.
§ 20.74	§ 211.73a.
§ 20.75	§ 211.73b.
§ 20.76	§ 211.74.
§ 20.77	§ 211.75.
§ 20.78	§ 211.76.
§ 20.79	§ 211.77.
§ 20.80	§ 211.78.
§ 20.81	§ 211.79.
§ 20.82	§ 211.80
Subpart F	
§ 20.91	§ 211.101.
§ 20.92	§ 211.107.
§ 20.93	New.
§ 20.94	§ 211.105.
§ 20.95	Rev. Rul. 71-410.
§ 20.100	§ 211.108.
§ 20.101	New.
§ 20.102	§ 211.192.
§ 20.103	§ 211.192.
§ 20.104	ATF Rul. 75-14.
§ 20.111	New.
§ 20.112	§§ 211.180, 211.181, 211.182.
§ 20.113	§ 211.170.
§ 20.114	New.
§ 20.115	Do.
§ 20.116	Do.

DERIVATION TABLE FOR PART 20—Continued

The requirements of—	Are derived from—
§ 20.117	§ 211.199.
§ 20.118	§ 211.187.
§ 20.119	New
Subpart G	
§ 20.131	New.
§ 20.132	§§ 211.30, 211.198.
§ 20.133	§§ 211.104, 211.193, 211.194, 211.266.
§ 20.134	§§ 211.195, 211.186–211.188.
§ 20.135	§ 211.196.
§ 20.136	§ 211.33a.
§ 20.137	New.
Subpart H	
§ 20.141	§ 211.111.
§ 20.142	§ 211.112.
§ 20.143	§ 211.115.
§ 20.144	§ 211.116.
§ 20.145	§ 211.117.
§ 20.146	§ 211.118.
§ 20.147	§ 211.121.
§ 20.148	§ 211.122.
§ 20.149	§ 211.125.
Subpart I	
§ 20.161	§§ 211.136, 211.166.
§ 20.162	§§ 211.138, 211.167.
§ 20.163	§§ 211.139, 211.168.
§ 20.164	§ 211.91.
§ 20.165	§§ 211.92, 211.93.
§ 20.166	§ 211.94.
§ 20.167	§ 211.95.
§ 20.170	§ 211.243.
§ 20.171	§ 211.148.
§ 20.172	§§ 211.149, 211.202.
§ 20.175	§ 211.137.
§ 20.176	§ 211.140.
§ 20.177	§ 211.141.
§ 20.178	§ 211.142.
§ 20.179	§ 211.143.
§ 20.180	§ 211.145.
§ 20.181	§ 211.146.
§ 20.182	§ 211.147.
§ 20.189	§ 211.169.
§ 20.190	§ 211.169.
§ 20.191	§§ 211.193, 211.194.
§ 20.192	§ 211.265.
Subpart J	
§ 20.201	§ 211.241.
§ 20.202	§ 211.242.
§ 20.203	§ 211.243.
§ 20.204	§ 211.245.
§ 20.205	§ 211.244.
Subpart K	
§ 20.211	§ 211.211.
§ 20.212	§ 211.212.
§ 20.213	§ 211.213.
§ 20.214	§ 211.217.
§ 20.215	§ 211.219.
§ 20 216	§ 211.218.
Subpart L	
§ 20.221	§ 211.251.
§ 20.222	§ 211.251.
Subpart M	
§ 20.231	§§ 211.252, 211.255.
§ 20.232	§§ 211.253, 211.255.
§ 20.233	§ 211.256.
§ 20.234	§§ 211.254, 211.257.

DERIVATION TABLE FOR PART 20—Continued

The requirements of—	Are derived from—
§ 20.235	§ 211.255.
Subpart N	
§ 20.241	§ 211.232.
§ 20.242	§ 211.231.
§ 20.243	§ 211.233.
§ 20.244	§ 211.235.
§ 20.245	§ 211.236.
§ 20.246	§ 211.237.
Subpart O	
§ 20.251	§ 211.281.
§ 20.252	§§ 211.282, 211.283.
§ 20.253	§ 211.284.
Subpart P	
§ 20.261	§ 211.261.
§ 20.262	§ 211.264.
§ 20.263	§ 211.265.
§ 20.264	§ 211.265.
§ 20.265	§ 211.267.
§ 20.266	§ 211.272.
§ 20.267	§ 211.273.
§ 20.268	§ 211.274.

DISTRIBUTION TABLE FOR PART 211

The requirements of—	Are now found in—
Subpart A	
§ 211.1	§ 20.1.
§ 211.2	§ 20.2.
§ 211.3	§ 20.3.
Subpart B	
§ 211.11	§ 20.11.
Subpart C	
§ 211.21	§ 20.21.
§ 211.22	§ 20.22.
§ 211.23	§ 20.23.
§ 211.24	§ 20.24.
§ 211.25	§ 20.25.
§ 211.26	§ 20.26.
§ 211.27	§ 20.27.
§ 211.28	§ 20.28.
§ 211.29	Obsolete.
§ 211.30	§ 20.132.
§ 211.31	§ 20.31.
§ 211.33	§ 20.33.
§ 211.33a	§ 20.136.
§ 211.34	§ 20.36.
§ 211.35	§ 20.37.
Subpart D	
§ 211.41	§ 20.41.
§ 211.42	§ 20.41.
§ 211.42a	Obsolete.
§ 211.43	§ 20.42.
§ 211.43a	Obsolete.
§ 211.44	§ 20.43.
§ 211.45	§ 20.48.
§ 211.46	§ 20.49.
§ 211.47	§ 20.55.
§ 211.48	§ 20.44.
§ 211.49	§ 20.50.
§ 211.50	§ 20.51.
§ 211.51	§ 20.52.
§ 211.52	§ 20.42(a)(9).
§ 211.53	§ 20.45.
§ 211.54	§ 20.53.
§ 211.55	§ 20.56.
§ 211.56	§ 20.57.
§ 211.57	§ 20.60.
§ 211.58	§ 20.61.
§ 211.59	§ 20.62.
§ 211.60	§ 20.58.
§ 211.61	§ 20.57.
§ 211.62	§ 20.63.
§ 211.63	§ 20.59.
§ 211.64	§ 20.66.
§ 211.65	§ 20.68.

DISTRIBUTION TABLE FOR PART 211—Continued

The requirements of—	Are now found in—
Subpart E	
§ 211.71	§ 20.71.
§ 211.72	§ 20.71
§ 211.73	§ 20.73.
§ 211.73a	§ 20.74.
§ 211.73b	§ 20.75
§ 211.74	§ 20.76.
§ 211.75	§ 20.77
§ 211.76	§ 20.78.
§ 211.77	§ 20.79.
§ 211.78	§ 20.80
§ 211.79	§ 20.81
§ 211.80	§ 20.82
Subpart F	
§ 211.91	§ 20.164
§ 211.92	§ 20.165
§ 211.93	§ 20.165
§ 211.94	§ 20.166.
§ 211.95	§ 20.167
§ 211.96	Obsolete
Subpart G	
§ 211.101	§ 20.91
§ 211.102	Obsolete
§ 211.103	Do
§ 211.104	§ 20.133
§ 211.105	§ 20.94
Subpart H	
§ 211.106	Obsolete
§ 211.107	§ 20.92
§ 211.108	§ 20.100
§ 211.111	§ 20.141
§ 211.112	§ 20.142
§ 211.113	Obsolete
§ 211.114	Do
§ 211.115	§ 20.143
§ 211.116	§ 20.144
§ 211.117	§ 20.145.
§ 211.118	§ 20.146.
§ 211.119	Obsolete
§ 211.120	Do
§ 211.121	§ 20.147
§ 211.122	§ 20.148
§ 211.123	Obsolete.
§ 211.124	Do.
§ 211.125	§ 20.149
Subpart I	
§ 211.131	Obsolete.
§ 211.132	Do
§ 211.134	Do
§ 211.135	Do.
§ 211.136	§ 20.161
§ 211.137	§ 20.175.
§ 211.138	§ 20.162
§ 211.139	§ 20.163
§ 211.140	§ 20.176
§ 211.141	§ 20.177
§ 211.142	§ 20.178
§ 211.143	§ 20.179.
§ 211.144	Obsolete
§ 211.145	§ 20.180
§ 211.146	§ 20.181
§ 211.147	§ 20.182
§ 211.148	§ 20.171.
§ 211.149	§ 20.172
Subpart J	
§ 211.161	Obsolete
§ 211.162	Do.
§ 211.163a	Do
§ 211.164	Do.
§ 211.165	Do
§ 211.166	§ 20.161
§ 211.167	§ 20.162
§ 211.168	§ 20.163
§ 211.169	§ 20.189
§ 211.170	§ 20.113.
§ 211.171	Obsolete.
§ 211.172	Do
§ 211.173	Do.
§ 211.174	Do.
§ 211.175	Do.
§ 211.176	Do.

DISTRIBUTION TABLE FOR PART 211—Continued

The requirements of—	Are now found in—
§ 211.177	Do
§ 211.178	Do
§ 211.179	Do
§ 211.180	§ 20.112
§ 211.181	§ 20.112
§ 211.182	§ 20.112.
§ 211.183	Obsolete
§ 211.183a	Do.
§ 211.184	Do
§ 211.185	Do
§ 211.185a	Do.
§ 211.185b	Do
§ 211.186	§ 20.134
§ 211.187	§§ 20.116, 20.134
§ 211.188	§ 20.134
§ 211.190	Obsolete
§ 211.190a	Do
§ 211.190b	Do
§ 211.190c	Do
§ 211.190d	Do
§ 211.190e	Do
§ 211.191	Do
§ 211.192	§§ 20.102, 20.103
§ 211.193	§§ 20.133, 20.191
§ 211.194	§§ 20.133, 20.191
§ 211.195	§ 20.134
§ 211.196	§ 20.135
§ 211.197	Obsolete
§ 211.198	§ 20.132
§ 211.199	§ 20.117
§ 211.200	Obsolete
§ 211.201	§ 20.133
§ 211.202	§ 20.172
Subpart K	
§ 211.211	§ 20.211
§ 211.212	§ 20.212
§ 211.213	§ 20.213
§ 211.214	Obsolete
§ 211.215	Redundant.
§ 211.217	§ 20.214
§ 211.218	§ 20.216
§ 211.219	§ 20.215
Subpart L	
§ 211.231	§ 20.242
§ 211.232	§ 20.241
§ 211.233	§ 20.243
§ 211.234	Obsolete
§ 211.235	§ 20.244
§ 211.236	§ 20.245
§ 211.237	§ 20.246
Subpart M	
§ 211.241	§ 20.201
§ 211.242	§ 20.202
§ 211.243	§§ 20.170, 20.203.
§ 211.244	§ 20.205.
§ 211.245	§ 20.204
Subpart N	
§ 211.251	§§ 20.221, 20.222
§ 211.252	§ 20.231
§ 211.253	§ 20.232
§ 211.254	§ 20.234
§ 211.255	§§ 20.231, 20.232, 20.235
§ 211.256	§ 20.233
§ 211.257	§ 20.234
§ 211.258	Obsolete
Subpart O	
§ 211.261	§ 20.261
§ 211.262	Obsolete
§ 211.263	Do
§ 211.264	§ 20.262
§ 211.265	§§ 20.192, 20.263
§ 211.266	Obsolete
§ 211.267	§ 20.265

DISTRIBUTION TABLE FOR PART 211—Continued

The requirements of—	Are now found in—
§ 211.268	Obsolete.
§ 211.269	Do.
§ 211.270	Do.
§ 211.271	§ 20.264
§ 211.272	§ 20.266.
§ 211.273	§ 20.267
§ 211.274	§ 20.268
§ 211.275	Obsolete
Subpart P	
§ 211.281	§ 20.251.
§ 211.282	§ 20.252
§ 211.283	§ 20.252
§ 211.284	§ 20.253.
§ 211.285	Obsolete

DERIVATION TABLE FOR PART 22

The Requirements of—	Are derived from—
Subpart A	
§ 22.1	§ 213.1.
§ 22.2	§ 213.2
§ 22.3	§ 213.3
Subpart B	
§ 22.11	§ 213.11
Subpart C	
§ 22.21	§ 213.21
§ 22.22	§ 213.22.
§ 22.23	§ 213.23.
§ 22.24	§ 213.24.
§ 22.25	§ 213.25.
§ 22.26	§ 213.26.
§ 22.27	§ 213.27.
§ 22.31	§ 213.28.
§ 22.33	§ 213.30.
§ 22.35	§ 213.31.
§ 22.36	§ 213.32
Subpart D	
§ 22.41	§ 213.41.
§ 22.42	§§ 213.42, 213.51.
§ 22.43	§ 213.43.
§ 22.44	§ 213.47.
§ 22.45	§ 213.52.
§ 22.46	§ 213.44
§ 22.49	§ 213.45.
§ 22.50	§ 213.48.
§ 22.51	§ 213.49.
§ 22.52	§ 213.50.
§ 22.53	§ 213.53.
§ 22.54	§ 213.114.
§ 22.55	§ 213.46.
§ 22.57	§ 213.54.
§ 22.58	§§ 213.55, 213.58.
§ 22.59	§ 213.56.
§ 22.60	§ 213.57
§ 22.61	§ 213.59.
§ 22.62	§ 213.60
§ 22.63	§ 213.61
§ 22.64	§ 213.63
§ 22.66	§ 213.62
§ 22.68	§ 213.64
Subpart E	
§ 22.71	§ 213.71
§ 22.72	New
§ 22.73	§ 213.72
§ 22.74	§ 213.72a
§ 22.75	§ 213.72b
§ 22.76	§ 213.73.
§ 22.77	§ 213.74.
§ 22.78	§ 213.75.
§ 22.79	§ 213.76.
§ 22.80	§ 213.77
§ 22.81	§ 213.78
§ 22.82	§ 213.79.

DERIVATION TABLE FOR PART 22—Continued

The Requirements of—	Are derived from—
Subpart F	
§ 22.91	§ 213.91.
§ 22.92	§§ 213.92, 213.93.
§ 22.93	§§ 213.94, 213.95
Subpart G	
§ 22.101	§ 213.101.
§ 22.102	§ 213.108.
§ 22.103	§ 213.102.
§ 22.104	§ 213.103.
§ 22.105	§ 213.104.
§ 22.106	§ 213.105.
§ 22.107	§ 213.106.
§ 22.108	§ 213.107.
Subpart H	
§ 22.111	§ 213.114.
§ 22.112	§ 213.115.
§ 22.113	§ 213.116.
§ 22.114	§ 213.117.
Subpart I	
§ 22.121	§ 213.151.
§ 22.122	§ 213.152.
§ 22.123	§ 213.153.
§ 22.124	§ 213.155.
§ 22.125	§ 213.154.
Subpart J	
§ 22.131	§ 213.131.
§ 22.132	§ 213.132.
§ 22.133	§ 213.133.
§ 22.134	§ 213.134.
Subpart K	
§ 22.141	New.
§ 22.142	§ 213.161.
Subpart L	
§ 22.151	§ 213.162.
§ 22.152	§ 213.163.
§ 22.153	§ 213.166.
§ 22.154	§ 213.164.
§ 22.155	New.
Subpart M	
§ 22.161	§ 213.171.
§ 22.162	§ 213.172.
§ 22.163	§ 213.174.
§ 22.164	§ 213.175.
§ 22.165	§ 213.176.
Subpart N	
§ 22.171	§ 213.141.
§ 22.172	§ 213.142.
§ 22.173	§ 213.143.
§ 22.174	§ 213.144.
§ 22.175	§ 213.145.
§ 22.176	§ 213.146.

DISTRIBUTION TABLE FOR PART 213

The Requirements of—	Are now found in—
Subpart A	
§ 213.1	§ 22.1.
§ 213.2	§ 22.2.
§ 213.3	§ 22.3.
Subpart B	
§ 213.11	§ 22.11.
Subpart C	
§ 213.21	§ 22.21.
§ 213.22	§ 22.22.
§ 213.23	§ 22.23.
§ 213.24	§ 22.24.
§ 213.25	§ 22.25.
§ 213.26	§ 22.26.
§ 213.27	§ 22.27.
§ 213.28	§ 22.31.
§ 213.30	§ 22.33.
§ 213.31	§ 22.35.
§ 213.32	§ 22.36.
Subpart D	
§ 213.41	§ 22.41.
§ 213.41a	Obsolete.
§ 213.42	§ 22.42.
§ 213.42a	Obsolete.
§ 213.43	§ 22.43.
§ 213.43a	Obsolete.
§ 213.44	§ 22.48.
§ 213.45	§ 22.49.
§ 213.46	§ 22.55.
§ 213.47	§ 22.44.
§ 213.48	§ 22.50.
§ 213.49	§ 22.51.
§ 213.50	§ 22.52.
§ 213.51	§ 22.42(a)(9).
§ 213.52	§ 22.45.
§ 213.53	§ 22.53.
§ 213.54	§ 22.57.
§ 213.55	§ 22.58.
§ 213.56	§ 22.59.
§ 213.57	§ 22.60.
§ 213.58	§ 22.58(c).
§ 213.59	§ 22.61.
§ 213.60	§ 22.62.
§ 213.61	§ 22.63.
§ 213.62	§ 22.66.
§ 213.63	§§ 22.64, 22.68.
Subpart E	
§ 213.71	§ 22.71.
§ 213.72	§ 22.73.
§ 213.72a	§ 22.74.
§ 213.72b	§ 22.75.
§ 213.73	§ 22.76.
§ 213.74	§ 22.77.
§ 213.75	§ 22.78.
§ 213.76	§ 22.79.
§ 213.77	§ 22.80.
§ 213.78	§ 22.81.
§ 213.79	§ 22.82.
Subpart F	
§ 213.91	§ 22.91.
§ 213.92	§ 22.92(a).
§ 213.93	§ 22.92(b).
§ 213.94	§ 22.93(b)(1).
§ 213.95	§ 22.93(b)(2).
Subpart G	
§ 213.101	§ 22.101.
§ 213.102	§ 22.103.
§ 213.103	§ 22.104.
§ 213.104	§ 22.105.
§ 213.105	§ 22.106.
§ 213.106	§ 22.107.
§ 213.107	§ 22.108.
§ 213.108	§ 22.102.
§ 213.109	Obsolete.
§ 213.110	Do.
§ 213.111a	Do.
§ 213.112	Do.
§ 213.113	Do.
§ 213.114	§§ 22.54, 22.111.
§ 213.115	§ 22.112.
§ 213.116	§ 22.113.
§ 213.117	§ 22.114.
§ 213.118	Redundant.
Subpart H	
§ 213.131	§ 22.131.
§ 213.132	§ 22.132.
§ 213.133	§ 22.133.
§ 213.134	§ 22.134.
Subpart I	
§ 213.141	§ 22.171.
§ 213.142	§ 22.172.
§ 213.143	§ 22.173.
§ 213.144	§ 22.174.
§ 213.145	§ 22.175.
§ 213.146	§ 22.176.
Subpart J	
§ 213.151	§ 22.121.
§ 213.152	§ 22.122.
§ 213.153	§ 22.123.
§ 213.154	§ 22.125.
§ 213.155	§ 22.124.
Subpart K	
§ 213.161	§ 22.142.
§ 213.162	§ 22.151.
§ 213.163	§ 22.152.
§ 213.164	§ 22.154(a).
§ 213.165	§ 22.139.
§ 213.166	§ 22.153.
§ 213.167	§ 22.154(b).
Subpart L	
§ 213.171	§ 22.161.
§ 213.172	§ 22.162.
§ 213.173	Obsolete.
§ 213.174	§ 22.163.
§ 213.175	§ 22.164.
§ 213.176	§ 22.165.

Obsolete Rulings and Procedures

The following Revenue Rulings and ATF Rulings are obsolete because they have been incorporated in the new regulations:

Rev. Rul. 57–429, 1957–2, C.B. 962
Rev. Rul. 58–22, 1958–1 C.B. 597
Rev. Rul. 64–298, 1964–2 C.B. 564
Rev. Rul. 64–317, 1964–2 C.B. 317
Rev. Rul. 71–410, 1971–2 C.B. 454
ATF Rul. 74–14, 1974 ATF C.B. 38
ATF Rul. 75–3, 1975 ATF C.B. 48
ATF Rul. 75–14, 1975 ATF C.B. 47
ATF Rul. 79–5, A.T.F.Q.B. 1979–1, 24
ATF Rul. 79–19, A.T.F.Q.B. 1979–4, 9
ATF Rul. 80–1, A.T.F.Q.B. 1980–1, 17

The following Revenue Rulings, Revenue Procedures, and ATF Rulings are obsolete because they relate to subjects which are no longer regulated:

Rev. Rul. 54–160, 1954–1 C.B. 320
Rev. Rul. 57–86, 1957–1 C.B. 606
Rev. Rul. 58–31, 1958–1 C.B. 595
Rev. Proc. 60–21, 1960–2 C.B. 991
Rev. Rul. 60–343, 1960–2 C.B. 611
Rev. Proc. 61–4, 1961–1 C.B. 890
Rev. Rul. 61–50, 1961–1 C.B. 811
Rev. Rul. 61–132, 1961–2 C.B. 276
Rev. Rul. 61–154, C.B. 1961–2 277
Rev. Rul. 62–36, 1962–1 C.B. 352
Rev. Rul. 65–160, 1965–1 C.B. 587
Rev. Rul. 65–306, 1965–2 C.B. 508
Rev. Rul. 66–228 1966–2 C.B. 536
Rev. Proc. 68–43, 1968–1 C.B. 146
Rev. Rul. 70–646, 1970–2 C.B. 319
Rev. Rul. 72–56, 1972–1 C.B. 420
ATF. Rul. 77–9, 1977 ATF C.B. 176
ATF. Rul. 77–22, 1977 ATF C.B. 173.

List of Subjects in 27 CFR Parts 19, 20, 21, 22, 170, 200, 211, 213, 250, 251 and 252

Administrative practice and procedure, Advertising, Alcohol, Authority delegations, Chemicals claims, Cosmetics, Labeling, Packaging containers, Reporting and recordkeeping requirements, Surety bonds, Transportation.

Authority and Issuance

This regulation is issued under the authority contained in 26 U.S.C. 7805 (68A Stat. 917).

Accordingly, Title 27, CFR, is amended as follows:

PART 19—DISTILLED SPIRITS PLANTS

Section A. Part 19 is amended as follows:

Paragraph 1. The Table of Sections for Part 19 is amended by revising the heading of § 19.779 as follows:

Sec

* * * * *

19.779 Record of shipment of spirits and specially denatured spirits withdrawn free of tax.

* * * * *

Par. 2. Section 19.3 is revised to read as follows:

§ 19.3 Related regulations.

Regulations relating to this part are listed below:

27 CFR Part 1—Basic Permit Requirements Under the Federal Alcohol Administration Act.
27 CFR Part 2—Nonindustrial Use of Distilled Spirits and Wine.
27 CFR Part 3—Bulk Sales and Bottling of Distilled Spirits.
27 CFR Part 4—Wine Labeling and Advertising.
27 CFR Part 5—Labeling and Advertising Distilled Spirits.
27 CFR Part 20—Distribution and Use of Denatured Alcohol and Rum.
27 CFR Part 21—Formulas for Denatured Alcohol and Rum.
27 CFR Part 22—Distribution and Use of Tax-Free Alcohol.
27 CFR Part 30—Gauging Manual.
27 CFR Part 170—Miscellaneous Regulations Relating to Liquor.
27 CFR Part 194—Liquor Dealers.
27 CFR Part 196—Stills.
27 CFR Part 197—Drawback on Distilled Spirits Used in Manfacturing Nonbeverage Products.
27 CFR Part 200—Rules of Practice in Permit Proceedings.
27 CFR Part 231—Taxpaid Wine Bottling Houses.
27 CFR Part 240—Wine.
27 CFR Part 250—Liquors and Articles from Puerto Rico and the Virgin Islands.
27 CFR Part 251—Importation of Distilled Spirits, Wine, and Beer.
27 CFR Part 252—Exportation of Liquors.
31 CFR Part 225—Acceptance of Bonds, Notes, or Other Obligations Issued or Guaranteed by the United States as Security in Lieu of Surety or Sureties on Penal Bonds.

§ 19.11 [Amended]

Par. 3. The definitions of *Article*, *Recovered article*, and *Spirits residue* in § 19.11 are amended by replacing "Part 211" with "Part 20".

§ 19.69 [Amended]

Par. 4. The first sentence of § 19.69 is amended by replacing "Part 211" with "Part 20".

§ 19.186 [Amended]

Par. 5. Paragraph (a) of § 19.186 is amended by replacing the words "Forms 5110.38 and 1479–A" with the word "formulas".

Par. 6. Paragraph (b) of § 19.187 is amended to read as follows:

§ 19.187 Adoption of formulas.

* * * * *

(b) *Form 5150.19.* The adoption by a successor of approved Forms 5150.19 (or previously approved Forms 1479–A) shall be in accordance with § 20.63 of this chapter.

* * * * *

Par. 7. Paragraph (a) of § 19.460 is revised to conform to the new formula for SDA Formula No. 1. As revised, § 19.460(a) reads as follows:

§ 19.460 Conversion of denatured alcohol formulas.

(a) *Conversion of Formula No. 1.* Any specially denatured alcohol, except Formulas No. 3–A and No. 30, may be converted into specially denatured alcohol, Formula No. 1, by the addition of methyl alcohol and either denatonium benzoate, N.F. (BITREX), methyl isobutyl ketone, mixed isomers of nitropropane, or methyl *n*-butyl ketone in accordance with the formulation prescribed in § 21.32 of this chapter. For specially denatured alcohol Formulas No. 3–A and No. 30, the methyl alcohol content shall be reduced to the level prescribed for specially denatured alcohol Formula No. 1 by the addition of ethyl alcohol before adding one of the other ingredients prescribed in § 21.32 of this chapter.

* * * * *

§ 19.471 [Amended]

Par. 8. Section 19.471 is amended by replacing "Part 211" with "Part 20".

Par. 9. Paragraphs (a), (b), and (d)(1) of § 19.536 are amended to read as follows:

§ 19.536 Authorized withdrawals free of tax.

* * * * *

(a) On receipt of a signed photocopy of a permit, issued under Part 22 of this chapter, to procure spirits for nonbeverage purposes and not for resale or use in the manufacture of any product for sale, as provided in 26 U.S.C. 5214(a)(3);

(b) On receipt of a signed photocopy of a permit, issued under Part 22 of this chapter, to procure spirits by and for the use of the United States or any governmental agency, any State, any political division of a State, or the District of Columbia, for nonbeverage purposes as provided in 26 U.S.C. 5214(a)(2);

* * * * *

(d) * * *

(1) On receipt of a signed photocopy of a permit to procure specially denatured spirits, issued under Part 20 of this chapter.

* * * * *

Par. 10. Section 19.537 is revised by deleting the requirement to prepare Form 1473, and providing for the use of commercial documents. As revised, § 19.537 reads as follows:

§ 19.537 Withdrawal of spirits free of tax.

Spirits withdrawn free of tax under § 19.536 (a), (b), or (c) shall be withdrawn in approved containers and shipped to the consignee designated in the permit. Unless the spirits are in cases or are to be withdrawn on the production or filling gauge, the proprietor shall gauge each container. If the spirits are in packages which are to be gauged, the proprietor shall prepare a package gauge record according to § 19.769, and attach it to the record of shipment. For each shipment the proprietor shall prepare a record of shipment (shipping invoice, bill of lading, or another document intended for the same purpose) and forward the original to the consignee, in accordance with § 19.779. Bulk conveyances used to transport spirits withdrawn free of tax under this section shall be secured in accordance with § 19.96.

(Approved by the Office of Management and Budget under control number 1512–0334)

(Sec. 201, Pub. L. 85–859, 72 Stat. 1362, as amended (26 U.S.C. 5214))

Par. 11. Section 19.538 is revised to read as follows:

§ 19.538 Withdrawal of spirits by the United States.

(a) *Nonbeverage use.* (1) Government agencies of the United States, intending to procure specially denatured spirits or

spirits free of tax for nonbeverage purposes, shall make application for and receive a permit, Form 5150.33, from the Director. Permits may be issued to Government agencies of the United States for:

(i) Withdrawal and use of specially denatured spirits, in accordance with Part 20 of this chapter;

(ii) Withdrawal and use of alcohol free of tax for nonbeverage purposes, in accordance with Part 22 of this chapter; or

(iii) Importation and use of alcohol free of tax for nonbeverage purposes, in accordance with Part 251 of this chapter.

(2) All permits previously issued to Government agencies of the United States for use of spirits or specially denatured spirits on Form 1444 shall remain valid and will be regulated by the same provisions of this chapter as it refers to permits on Form 5150.33.

(3) A Government agency shall forward a signed copy of its permit, Form 5150.33, for retention by the proprietor of the distilled spirits plant for the initial purchase. Subsequent orders with the same vendor shall refer to the permit number.

(4) In the case of a Government agency holding a single permit for use of other sub-agencies, the signed copy of the permit shall contain an attachment listing all other locations authorized to procure spirits under that permit.

(5) For each shipment under this section, the proprietor shall prepare a record of shipment and forward the original to the consignee agency, in accordance with § 19.779.

(b) *Beverage use.* (1) Distilled spirits may be withdrawn free of tax, under 26 U.S.C. 7510, for use for beverage purposes by Government agencies of the United States on receipt of a proper Government purchase order signed by the head of the agency, or an authorized delegate.

(2) For each withdrawal under paragraph (b)(1) of this section, each case removed shall be plainly marked "For Use of the United States" in addition to the marks required by Subpart R of this part.

(3) For each withdrawal under paragraph (b)(1) of this section, the proprietor shall prepare a record containing the information required by § 19.761 for a record of tax determination. The proprietor shall mark this record "Free of Tax For Use of the United States."

(Act of August 16, 1954, Ch. 736, 68A Stat. 900 (26 U.S.C. 7510); sec. 201, Pub. L. 85–859, 72 Stat. 1370, as amended, 1375, as amended (26 U.S.C. 5271, 5313))

Par. 12. Section 19.539 is amended by revising the first sentence to eliminate the requirement of obtaining approval of the regional director (compliance) for shipment. As amended, § 19.539 reads as follows:

§ 19.539 Disposition of excess spirits.

Upon discontinuance of use of spirits or specially denatured spirits withdrawn free of tax under § 19.538, a Government agency may dispose of excess spirits (a) to another Government agency (the receiving agency is required to have a permit under Part 20 or 22 if the spirits were withdrawn for nonbeverage purposes), (b) by returning the spirits to the proprietor of a distilled spirits plant, or (c) in any manner authorized by the Director. In no case may such spirits be disposed of to the general public, or otherwise than as provided in this section.

(Act of August 16, 1954, Ch. 736, 68A Stat. 900 (26 U.S.C. 7510); Sec. 201, Pub. L. 85–859, 72 Stat. 1370, as amended, 1375, as amended (26 U.S.C. 5271, 5313))

Par. 13. Section 19.540 is revised to provide for the use of commercial records of disposition in lieu of preparing Form 1473, increasing the authorized size of a sample from one quart to five gallons, eliminating Form 1512, and other conforming and editorial changes. As revised, § 19.540 reads as follows:

§ 19.540 Removal of denatured spirits and articles.

(a) *Specially denatured spirits.* Specially denatured spirits withdrawn free of tax under § 19.536(d) shall be shipped in approval containers to the consignee designated on the permit. If such spirits are for export or for transfer to a foregin-trade zone, they shall be withdrawn under the applicable provisions of Part 252 of this chapter. If such spirits are for shipment to a qualified user, dealer, or an applicant or prospective applicant under paragraph (c)(2)(ii) of this section, the proprietor shall prepare a record of shipment in accordance with § 19.779. Bulk conveyances used to transport specially denatured spirits shall be secured in accordance with the provisions of § 19.96.

(b) *Completely denatured alcohol.* No permit, application, or notice is required for removal of completely, denatured alcohol from bonded premises.

(c) *Samples of denatured spirits.* (1) The proprietor may take samples of denatured spirits free of tax which may be necessary for the conduct of business.

(2) The proprietor may furnish samples of specially denatured spirits:

(i) To dealers in, and users of, specially denatured spirits in advance of sales; or

(ii) To applicants or prospective applicants for permits to use specially denatured spirits, for experimental purposes or for use in preparing samples of a finished product for submission on request by the Director.

(A) Proprietors shall maintain records to ensure that samples of specially denatured spirits dispensed to nonpermittees do not exceed five gallons per calendar year. Records of samples of less than five gallons shall be maintained as provided in § 19.766.

(B) Samples in excess of five gallons may be furnished to nonpermittees only after the consignee provides the proprietor with a letterhead application approved by the regional director (compliance) under § 20.252 of this chapter. The proprietor shall retain the approved letterhead application on file as a part of the record of transaction.

(C) For each shipment of a sample in excess of five gallons under paragraph (c)(2)(ii)(B) of this section, the proprietor shall prepare a record of shipment and forward the original to the consignee, in accordance with § 19.779.

(3) Each sample of specially denatured spirits withdrawn under the provisions of paragraph (c)(2) of this section shall have a label affixed showing the following information:

(i) The word "Sample", and the words "Specially Denatured Alcohol", or "Specially Denatured Rum", whichever is applicable;

(ii) The name, address, and plant number of the proprietor; and

(iii) The formula number.

(d) *Articles.* Removal of articles from bonded premises shall be in accordance with the provisions of Part 20 of this chapter.

(Approved by the Office of Management and Budget under control number 1512–0337)

(Sec. 201, Pub. L. 85–859, 72 Stat. 1362, as amended, 1370, as amended (26 U.S.C. 5214, 5271))

Par. 14. Section 19.541 is revised to incorporate conforming changes to read as follows:

§ 19.541 Reconsignment.

(a) *Reconsignment.* When, prior to or on arrival at the consignee's premises, spirits or specially denatured spirits withdrawn free of tax under § 19.536 are not accepted by the consignee or by a carrier, the spirits may be reconsigned (1) to the consignor, (2) to another proprietor for return to the bonded premises under the provisions of § 19.685, or (3) to another permittee

holding a valid permit issued under Part 20 or 22 of this chapter, as applicable.

(b) *Consent of surety.* In case of reconsignment to bonded premises, the provisions of § 19.685, relating to consent of surety in respect to return of spirits or specially denatured spirits withdrawn free of tax, are applicable.

(c) *Records of reconsignment.* In the case of reconsignment, the consignor shall cancel the initial record of shipment and prepare a new record of shipment, if shipment is to another permittee or proprietor. The new record of shipment shall be marked "Reconsignment." File copies of the canceled and the new record of shipment will be annotated to cross reference each other.

(Records relating to tax-free alcohol approved by the Office of Management and Budget under control number 1512-0334; records relating to specially denatured spirits approved by the Office of Management and Budget under control number 1512-0337)

(Sec. 201, Pub. L. 85-859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

§§ 19.581, 19.583 and 19.592 [Amended]

Par. 15. Sections 19.581, 19.583, and 19.592 are amended by replacing "Part 211" with "Part 20", wherever it appears.

Par. 16. The first sentence of § 19.604 is revised to conform the caution label requirement with the revised requirement of Part 20. As revised, § 19.604 reads as follows:

§ 19.604 Caution label.

Each container of completely denatured alcohol containing five gallons or less, sold or offered for sale, shall be labeled to show, in plain, legible letters, the words "Completely Denatured Alcohol" and the following statement "Caution—contains poisonous ingredients." * * *

Par. 17. Paragraph (d) of § 19.606 is amended to read as follows:

§ 19.606 Marks on bulk conveyances.

* * * * *

(d) Bulk conveyances used to transport articles or wine shall conform to the requirements of Part 20 or 240 of this chapter, as applicable.

* * * * *

§§ 19.683 and 19.684 [Amended]

Par. 18. Sections 19.683 and 19.684 are amended by replacing "Part 211" with "Part 20", wherever it appears.

§ 19.685 [Amended]

Par. 19. (a) Paragraph (a) of § 19.685 is amended by replacing "Part 211 or 213" with "Part 20 or 22", by replacing "Part 213" with "Part 22", and by replacing "Part 211, 213, or 252" with "Part 20, 22, or 252". (b) The first sentence of paragraph (c) of § 19.685 is removed since it refers to Form 1473 which has been eliminated.

Par. 20. Section 19.779 is revised by changing the section heading and incorporating the use of commercial documents in lieu of Form 1473. As revised § 19.779 reads as follows:

§ 19.779. Record of shipment of spirits and specially denatured spirits withdrawn free of tax.

(a) *General.* The proprietor shall prepare a record of shipment, and forward the original to the consignee and file a copy, when:

(1) Samples of specially denatured spirits in excess of five gallons are withdrawn in accordance with § 19.540(c)(2);

(2) Spirits are withdrawn free of tax in accordance with § 19.536(a)—(c); and

(3) Specially denatured spirits are withdrawn free of tax in accordance with §§ 19.536(d) and 19.540.

(b) *Form of record.* (1) The record of shipment prescribed in this section may consist of a proprietor's commercial invoice, bill of lading, or another document infended for the same purpose. Any commercial document used as a record of shipment shall:

(i) Be preprinted with the name and address of the proprietor,

(ii) Be sequentially numbered, and

(iii) Be consistently used for the intended purpose.

(2) In addition to any other information on the document, the record of shipment shall contain, as applicable, the following information:

(i) Date of shipment;

(ii) Name, address, and permit number of consignee;

(iii) Kind of spirits;

(iv) Proof of spirits;

(v) Formula number(s), for specially denatured spirits;

(vi) Number and size of containers;

(vii) Package identification numbers or serial numbers of containers; and

(viii) Total wine gallons (specially denatured spirits) or total proof gallons (tax-free alcohol).

(Records relating to tax-free alcohol approved by the Office of Management and Budget under control number 1512-0334; records relating to specially denatured spirits approved by the Office of Management and Budget under control number 1512-0337)

(Sec. 807, Pub. L. 96-39, 93 Stat. 284 (26 U.S.C. 5207))

PART 211—[REVISED AND REDESIGNATED PART 20]

Section B. Part 211 is revised and redesignated as Part 20 as follows:

1. The regulations in this part supersede 27 CFR Part 211 in its entirety.

2. These regulations do not affect any act done or any liability or right accruing, or accrued, or any suit or proceeding had or commenced before the effective date of these regulations.

3. The regulations in this part are effective on June 4, 1985.

PART 20—DISTRIBUTION AND USE OF DENATURED ALCOHOL AND RUM

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Authority: August 16, 1954, Chapter 736, 68A Stat. 917, as amended (26 U.S.C. 7805); Sec. 201, Pub. L. 85–859, 72 Stat. 1370–1373, as amended (26 U.S.C. 5271–5275), unless otherwise noted.

Subpart A—Scope

§ 20.1 General.

The regulations in this part relate to denatured distilled spirits and cover the procurement, use, disposition, and recovery of denatured alcohol, specially denatured rum, and articles containing denatured spirits.

§ 20.2 Territorial extent.

This part applies to the several States of the United States, the District of Columbia and to denatured spirits and articles coming into the United States from Puerto Rico or the Virgin Islands.

§ 20.3 Related regulations.

Regulations related to this part are listed below:

16 CFR Chapter I—Federal Trade Commission.
16 CFR Chapter II—Consumer Product Safety Commission.
21 CFR Chapter I—Food and Drug Administration, Department of Health and Human Services.
27 CFR Part 19—Distilled Spirits Plants.

27 CFR Part 21—Formulas for Denatured Alcohol and Rum.
27 CFR Part 196—Stills.
27 CFR Part 200—Rules of Practice in Permit Proceedings.
27 CFR Part 250—Liquors and Articles from Puerto Rico and the Virgin Islands.
27 CFR Part 251—Importation of Distilled Spirits, Wines and Beer.
31 CFR Part 225—Acceptance of Bonds, Notes, or Other Obligations Issued or Guaranteed by the United States as Security in Lieu of Surety or Sureties on Penal Bonds.

Subpart B—Definitions

§ 20.11 Meaning of terms.

When used in this part and in forms prescribed under this part, the following terms have the meanings given in this section. Words in the plural form include the singular, and vice versa, and words importing the masculine gender include the feminine. The terms "includes" and "including" do not exclude things not enumerated which are in the same general class.

Alcohol. Those spirits known as ethyl alcohol, ethanol, or spirits of wine, from whatever source or by whatever process produced; the term does not include such spirits as whisky, brandy, rum, gin, or vodka.

Area supervisor. The supervisory officer of the Bureau of Alcohol, Tobacco and Firearms area office.

Article. Any substance or preparation in the manufacture of which denatured spirits are used, including the product obtained by further manufacture or by combination with other materials, if the article subjected to further manufacture or combination contained denatured spirits.

ATF Officer. An officer or employee of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any function relating to the administration or enforcement of this part.

Bulk conveyance. Any tank car, tank truck, tank ship, or tank barge, or a compartment of any such conveyance, or any other container approved by the Director for the conveyance of comparable quantities of denatured spirits or articles.

CFR. The Code of Federal Regulations.

Completely denatured alcohol. Those spirits known as alcohol, as defined in this section, denatured under the completely denatured alcohol formulas prescribed in Subpart C of Part 21 of this chapter.

Dealer. A person who holds a permit to deal in specially denatured alcohol or specially denatured rum for resale to persons authorized to purchase or receive specially denatured alcohol or specially denatured rum in accordance with this part.

Denaturant. Any one of the materials authorized under Part 21 of this chapter for addition to spirits in the production of denatured spirits.

Denatured spirits. Alcohol or rum to which denaturants have been added as provided in Part 21 of this chapter.

Denaturer. The proprietor of a distilled spirits plant who denatures alcohol or rum under Part 19 of this chapter.

Director. The Director, Bureau of Alcohol, Tobacco and Firearms, the Department of the Treasury, Washington, DC 20226.

Distributor. Any person who sells completely denatured alcohol, other than a proprietor of a distilled spirits plant who sells such alcohol at the plant premises, and any person who sells articles containing completely or specially denatured alcohol or specially denatured rum, other than the manufacturer, except where otherwise specifically restricted in this part.

Executed under penalties of perjury. Signed with the prescribed declaration under the penalties of perjury as provided on or with respect to the claim, form, or other document or, where no form of declaration is prescribed, with the declaration—

> I declare under the penalties of perjury that this ———— (insert type of document, such as statement, report, certificate, application, claim, or other document), including the documents submitted in support thereof, has been examined by me and, to the best of my knowledge and belief, is true, correct, and complete.

Fiduciary. A guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity for any person.

Gallon. The liquid measure equivalent to the volume of 231 cubic inches.

Liter or litre. A metric unit of capacity equal to 1,000 cubic centimeters of alcohol, and equivalent to 33.814 fluid ounces. A liter is divided into 1,000 milliliters. The symbol for milliliter or milliliters is "ml".

Manufacturer or user. A person who holds a permit to use specially denatured alcohol or specially denatured rum to recover completely or specially denatured alcohol, specially denatured rum, or articles.

Permit. The document issued under 26 U.S.C. 5271(a), authorizing a person to withdraw and deal in or use specially denatured alcohol or specially denatured rum or to recover denatured alcohol, specially denatured rum, or articles under specified conditions.

Permittee. Any person holding a permit, Form 5150.9, issued under this part to withdraw and deal in or use (including recover) denatured spirits.

Person. An individual, trust, estate, partnership, association, company, or corporation.

Proof. The ethyl alcohol content of a liquid at 60° Fahrenheit, stated as twice the percent of ethyl alcohol by volume.

Proof gallon. A gallon at 60° Fahrenheit which contains 50 percent by volume of ethyl alcohol having a specific gravity of 0.7939 at 60° Fahrenheit referred to water at 60° Fahrenheit as unity, or the alcoholic equivalent thereof.

Proprietary solvents. Solvents which are manufactured with specially denatured alcohol under the proprietary solvent general-use formula in this part.

Recover. To salvage, after use, specially denatured spirits, completely denatured alcohol without all of its original denaturants, or any article containing denatured spirits, if (1) the original article was made with specially denatured spirits and the salvaged article does not contain all of the original ingredients of the article, or (2) the original article was made with completely denatured alcohol and the salvaged article does not contain all of the completely denatured alcohol.

Recovered article. An article containing specially denatured spirits salvaged without all of its original ingredients, or an article containing completely denatured alcohol salvaged without all of the original denaturants of the completely denatured alcohol.

Recovered denatured alcohol. Denatured alcohol (except completely denatured alcohol containing all of its original denaturants) which has been recovered.

Recovered denatured rum. Denatured rum which has been recovered.

Region. A Bureau of Alcohol, Tobacco and Firearms Region.

Regional director (compliance). The principal ATF regional official responsible for administering regulations in this part.

Restoration. Restoring to the original state (except that the restored material may or may not contain denaturants to the same extent as the original material) of recovered denatured alcohol, recovered specially denatured rum, or recovered articles containing denatured alcohol or specially denatured rum. Restoration includes bringing the alcohol content of the recovered product to 190° of proof or more or to not less than the original proof if less than 190°.

Restoration also includes the removal of foreign materials by any suitable means.

Rum. Any spirits produced from sugar cane products and distilled at less than 190° proof in such manner that the spirits possess the taste, aroma, and characteristics generally attributed to rum.

Secretary. The Secretary of the Treasury or his delegate.

Special industrial solvents. Solvents which are manufactured with specially denatured alcohol under special industrial solvent general-use formula in this part.

Specially denatured alcohol or S.D.A. Those spirits known as alcohol, as defined in this section, denatured under the specially denatured alcohol formulas prescribed in Part 21 of this chapter.

Specially denatured rum or S.D.R. Those spirits known as rum, as defined in this section, denatured under the specially denatured rum formula prescribed in Part 21 of this chapter.

Specially denatured spirits. Specially denatured alcohol or specially denatured rum.

Spirits or distilled spirits. Alcohol or rum as defined in this part.

Tank truck. A tank-equipped semi-trailer, trailer, or truck, conforming to the requirements of this part.

This chapter. Chapter I, Title 27, Code of Federal Regulations.

U.S.C. The United States Code.

Subpart C—Administrative Provisions

Authorities

§ 20.21 Forms prescribed.

(a) The Director is authorized to prescribe all forms required by this part, including bonds, applications, notices, claims, reports, and records. All of the information called for in each form shall be furnished as indicated by the headings on the form and the instructions on or pertaining to the form. In addition, information called for in each form shall be furnished as required by this part.

(b) ATF Publication 1322.1, Public Use Forms, is a numerical listing of forms issued by the Bureau of Alcohol, Tobacco and Firearms. This publication is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC. 20402.

(c) Requests for forms should be mailed to the ATF Distribution Center, 3800 South Four Mile Run Drive, Arlington, Virginia 22206.

§ 20.22 Alternate methods or procedures; and emergency variations from requirements.

(a) *Alternate methods or procedures.*—(1) *Application.* A permittee, after receiving approval from the Director, may use an alternate method or procedure (including alternate construction or equipment) in lieu of a method or procedure prescribed by this part. A permittee wishing to use an alternate method or procedure may apply to the regional director (compliance). The permittee shall describe the proposed alternate method or procedure and shall set forth the reasons for its use.

(2) *Approval by Director.* The Director may approve the use of an alternate method or procedure if:

(i) The applicant shows good cause for its use;

(ii) It is consistent with the purpose and effect of the procedure prescribed by this part, and provides equal security to the revenue;

(iii) It is not contrary to law; and

(iv) It will not cause an increase in cost to the Government and will not hinder the effective administration of this part.

(3) *Exceptions.* The Director will not authorize an alternate method or procedure relating to the giving of a bond.

(4) *Conditions of approval.* A permittee may not employ an alternate method or procedure until the Director has approved its use. The permittee shall, during the terms of the authorization of an alternate method or procedure, comply with terms of the approved application.

(b) *Emergency variations from requirements.*—(1) *Application.* When an emergency exists, a permittee may apply to the regional director (compliance) for a variation from the requirements of this part relating to construction, equipment, and methods of operation. The permittee shall describe the proposed variation and set forth the reasons for using it.

(2) *Approval by regional director (compliance).* The regional director (compliance) may approve an emergency variation from requirements if:

(i) An emergency exists;

(ii) The variation from the requirements is necessary;

(iii) It will afford the same security and protection to the revenue as intended by the specific regulations;

(iv) It will not hinder the effective administration of this part; and

(v) It is not contrary to law.

(3) *Conditions of approval.* A permittee may not employ an emergency variation from the requirements until the regional director (compliance) has approved its use. Approval of variations from requirements are conditioned upon compliance with the conditions and limitations set forth in the approval.

(4) *Automatic termination of approval.* If the permittee fails to comply in good faith with the procedures, conditions or limitations set forth in the approval, authority for the variation from requirements is automatically terminated and the permittee is required to comply with prescribed requirements of regulations from which those variations were authorized.

(c) *Withdrawal of approval.* The Director may withdraw approval for an alternate method or procedure, or the regional director (compliance) may withdraw approval for an emergency variation from requirements, approved under paragraph (a) or (b) of this section, if the Director or the regional director (compliance) finds that the revenue is jeopardized or the effective administration of this part is hindered by the approval.

(Approved by the Office of Management and Budget under control number 1512–0336)

(Act of August 16, 1954, Ch. 736, 68A Stat. 917 (26 U.S.C. 7805); Sec. 201, Pub. L. 85–859, 72 Stat. 1395, as amended (26 U.S.C. 5552))

§ 20.23 Approval of formulas and statements of process.

The Director is authorized to approve all formulas for articles and statements of process relating to recovery operations or other activities required to be submitted on Form 5150.19.

§ 20.24 Allowance of claims.

The regional director (compliance) is authorized to allow claims for losses of specially denatured alcohol or specially denatured rum.

§ 20.25 Permits.

The Director shall issue permits covering the use of specially denatured alcohol by the United States or a Governmental agency as provided in § 20.222. The regional director (compliance) shall issue the industrial alcohol user permit, Form 5150.9, required under this part.

§ 20.26 Bonds and consents of surety.

The regional director (compliance) is authorized to approve all bonds and consents of surety required by this part.

§ 20.27 Right of entry and examination.

An ATF officer may enter, during business hours or at any time operations are being conducted, any premises on which operations governed by this part are conducted to inspect the records and reports required by this part to be kept on those premises. An ATF officer may also inspect and take samples of distilled spirits, denatured alcohol,

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specially denatured rum or articles (including any substance for use in the manufacture of denatured alcohol, specially denatured rum or articles) to which those records or reports relate.

§ 20.28 Detention of containers.

(a) *Summary detention.* An ATF officer may detain any container containing, or supposed to contain, spirits (including denatured spirits and articles), when the ATF officer believes those spirits, denatured spirits, or articles were produced, withdrawn, sold, transported, or used in violation of law or this part. The ATF officer shall hold the container at a safe place until it is determined if the detained property is liable by law to forfeiture.

(b) *Limitations.* Summary detention may not exceed 72 hours without process of law or intervention of the regional director (compliance). The person possessing the container immediately before its detention may prepare a waiver of the 72 hours limitation to have the container kept on his or her premises during detention.

(Sec. 201, Pub. L. 85–859, Stat. 1375, as amended (26 U.S.C. 5311))

Liability For Tax

§ 20.31 Applicable laws and regulations; persons liable for tax.

(a) All laws and regulations regarding alcohol or rum that is not denatured, including those requiring payment of the distilled spirits tax, apply to completely denatured alcohol, specially denatured alcohol, specially denatured rum, or articles produced, withdrawn, sold, transported, or used in violation of laws or regulations pertaining to those substances.

(b) Any person who produces, withdraws, sells, transports, or uses completely denatured alcohol, specially denatured alcohol, specially denatured rum, or articles in violation of laws or regulations shall be required to pay the distilled spirits tax on those substances.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1314, as amended (26 U.S.C. 5001))

Marks and Brands

§ 20.33 Time of destruction of marks and brands.

(a) Any person who empties a package containing denatured alcohol, specially denatured rum, or articles made from denatured alcohol or specially denatured rum shall immediately destroy or obliterate the marks, brands, and labels required by this chapter to be placed on packages containing those materials.

(b) A person may not destroy or obliterate the marks, brands or labels until the package or drum has been emptied.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5206))

Document Requirements

§ 20.36 Execution under penalties of perjury.

(a) When any form or document prescribed by this part is required to be executed under penalties of perjury, the dealer or user or other authorized person shall:

(1) Insert the declaration "I declare under the penalties of perjury that I have examined this ———— (insert the type of document such as claim, application, statement, report, certificate), including all supporting documents, and to the best of my knowledge and belief, it is true, correct, and complete"; and

(2) Sign the document.

(b) When the required document already bears a perjury declaration, the dealer or user or other authorized person shall sign the document.

(Act of August 16, 1954, 68A Stat. 745 (26 U.S.C. 6055))

§ 20.37 Filing of qualifying documents.

All documents returned to a permittee or other person as evidence of compliance with requirements of this part, or as authorization, shall except as otherwise provided, be kept readily available for inspection by an ATF officer during business hours.

Subpart D—Qualification of Dealers and Users

Application For Permit, Form 5150.22

§ 20.41 Application for industrial alcohol user permit.

(a) *Dealers.* A person who desires to withdraw and deal in specially denatured spirits shall, before commencing business, file an application on Form 5150.22 for, and obtain a permit, Form 5150.9.

(b) *Users.* A person who desires to withdraw and use or recover specially denatured spirits shall, before commencing business, file an application of Form 5150.22 for, and obtain a permit, Form 5150.9. The provisions of this paragraph also apply to persons desiring to recover denatured spirits from articles.

(c) *Filing.* All applications and necessary supporting documents, as required by this subpart, shall be filed with the regional director (compliance). All data, written statements, certifications, affidavits, and other documents submitted in support of the application are considered a part of the application.

(1) Applications filed as provided in this section, shall be accompanied by evidence establishing the authority of the officer or other person to execute the application.

(2) A State, political subdivision thereof, or the District of Columbia, may specify in the application that it desires a single permit authorizing the withdrawal and use of specially denatured spirits in a number of institutions under it control. In this instance, the application, Form 5150.22, or an attachment, shall clearly show the method of distributing and accounting for the specially denatured spirits to be withdrawn.

(d) *Exceptions.* (1) The proprietor of a distilled spirits plant qualified under Part 19 of this chapter, who sells specially denatured spirits stored at the plant premises is not required to qualify as a dealer under this part.

(2) A permittee who was previously qualified on the effective date of this regulation shall not be required to requalify under this part.

§ 20.42 Data for application, Form 5150.22.

(a) Unless waived under § 20.43, each application on Form 5150.22 shall include as applicable, the following information:

(1) Serial number and purpose for which filed.

(2) Name and principal business address.

(3) Based on the bona fide requirements of the applicant, the estimated quantity of all formulations of specially denatured spirits, in gallons, which will be procured during a 12-month period.

(4) Location, or locations where specially denatured spirits will be sold or used if different from the business address.

(5) Statement that specially denatured spirits will be stored in accordance with the requirements of this part.

(6) For user applications, statement as to the intended use (*e.g.* cosmetics, external medicines, solvents, fuels, mouthwashes, laboratory uses, inks, etc.) to be made of the specially denatured spirits, and whether recovery, restoration, and redenaturation processes will be used.

(7) Statement as to the type of business organization and of the persons interested in the business, supported by the items of information listed in § 20.45.

(8) Listing of the principal equipment to be used in recovery processes, including processing tanks, storage tanks, and equipment for recovery.

restoration, and redenaturation of denatured spirits (including the serial number, kind, capacity, names and addresses of manufacturer and owner of distilling apparatus along with intended use).

(9) List of trade names under which the applicant will conduct operations, and the offices where these names are registered.

(10) Listing of the titles of offices, the incumbents of which are responsible for the specially denatured spirits activities of the business and are authorized by the articles of incorporation, the bylaws, or the board of directors to act and sign on behalf of the applicant.

(11) Other information and statements as the regional director (compliance) may require to establish that the applicant is entitled to the permit. In the case of a corporation or other legal entity, the regional director (compliance) may require information which establishes that the officers, directors and principal stockholders whose names are required to be furnished under § 20.45 (a)(2) and (c) have not violated or conspired to violate any law of the United States relating to intoxicating liquor or have been convicted of any offense under Title 26, U.S.C., punishable as a felony or of any conspiracy to commit such offense.

(b) If any of the information required by paragraphs (a)(4) through (a)(10) and any information which may be required under paragraph (a)(11) of this section is on file with any regional director (compliance), the applicant may incorporate this information by reference by stating that the information is made a part of the application.

§ 20.43 Exceptions to application requirements.

(a) The regional director (compliance) may waive detailed application and supporting data requirements, other than the requirements of paragraphs (a)(1) through (a)(6) and (a)(9) of § 20.42, and paragraph (a)(8) of that section as it relates to recovery, restoration and redistillation, in the case of—

(1) All applications, Form 5150.22, filed by States or political subdivisions thereof or the District of Columbia, and

(2) Applications, Form 5150.22, filed by applicants whose annual withdrawal and sale or use of specially denatured spirits does not exceed 5,000 gallons.

(b) The waiver, provided for in this section will terminate when the permittee, other than a State or a political subdivision thereof, or the District of Columbia, files an application to amend its permit, Form 5150.9, to increase the annual withdrawal and sale or use of specially denatured spirits to an amount in excess of 5,000 gallons. In this case, the permittee shall also furnish information required by § 20.56(a)(2).

§ 20.44 Disapproval of application.

The regional director (compliance) may, in accordance with Part 200 of this chapter, disapprove an application for a permit to withdraw and deal or use denatured spirits, if on examination of the application (or inquiry), the regional director (compliance) has reason to believe that:

(a) The applicant is not authorized by law and regulations to withdraw and deal in or use specially denatured spirits;

(b) The applicant (including, in the case of a corporation, any officer, director, or principal stockholder, or, in the case of a partnership, a partner) is, by reason of their business experience, financial standing, or trade connections, not likely to maintain operations in compliance with 26 U.S.C. Chapter 51, or regulations issued under this part;

(c) The applicant has failed to disclose any material information required, or has made any false statement as to any material fact, in connection with the application; or

(d) The premises at which the applicant proposes to conduct the business are not adequate to protect the revenue.

§ 20.45 Organizational documents.

The supporting information required by § 20.42(a)(7) includes, as applicable:

(a) *Corporate documents.* (1) Certified true copy of the certificate of incorporation, or certified true copy of certificate authorizing the corporation to operate in the State where the premises are located (if other than that in which incorporated);

(2) Certified list of names and addresses of officers and directors, along with a statement designating which corporate offices, if applicable, are directly responsible for the specially denatured spirits portion of the business; and

(3) Statement showing the number of shares of each class of stock or other evidence of ownership, authorized and outstanding, the par value, and the voting rights of the respective owners or holders.

(b) *Articles of partnership.* True copy of the articles of partnership or association, if any, or certificate of partnership or association where required to be filed by any State, county, or municipality.

(c) *Statement of interest.* (1) Names and addresses of persons owning 10% or more of each of the classes of stock in the corporation, or legal entity, and the nature and amount of the stockholding or other interest of each, whether such interest appears in the name of the interested party or in the name of another for him or her. If a corporation is wholly owned or controlled by another corporation, persons owning 10% or more of each of the classes of stock of the parent corporation are considered to be the persons interested in the business of the subsidiary, and the names and addresses of such persons shall be submitted to the regional director (compliance) if specifically requested.

(2) In the case of an individual owner or partnership, name and address of every person interested in the business, whether such interest appears in the name of the interested party or in the name of another for the interested person.

Industrial Alcohol User Permit, ATF F 5150.9

§ 20.48 Conditions of permits.

(a) Permits to withdraw and deal in or use specially denatured spirits will designate the acts which are permitted, and include any limitations imposed on the performance of these acts. All of the provisions of this part relating to the use, recovery, restoration or redistillation of denatured spirits or articles are considered to be included in the provisions and conditions of the permit, the same as if set out in the permit.

(b) An applicant need not have formulas and statements of processes, approved by the Director, prior to the issuance of a permit by the regional director (compliance).

(c) A permittee shall not use specially denatured spirits in the manufacture or production of any article unless the Director has approved the formula on Form 5150.19 or the article is covered by an approved general-use formula.

§ 20.49 Duration of permits.

Permits to withdraw and deal in or use specially denatured spirits are continuing unless automatically terminated by the terms thereof, suspended or revoked as provided in § 20.51, or voluntarily surrendered. The provisions of § 20.57 are considered part of the terms and conditions of all permits.

§ 20.50 Correction of permits.

If an error or a permit is discovered, the permittee shall immediately return the permit to the regional director (compliance) for correction.

§ 20.51 Suspension or revocation of permits.

The regional director (compliance) may institute proceedings under Part 200 of this chapter to suspend or revoke a permit whenever the regional director (compliance) has reason to believe that the permittee:

(a) Has not in good faith complied with the provisions of 26 U.S.C. Chapter 51, or regulations issued under that chapter;

(b) Has violated the conditions of that permit;

(c) Has made any false statements as to any material fact in the application for the permit;

(d) Has failed to disclose any material information required to be furnished;

(e) Has violated or conspired to violate any law of the United States relating to intoxicating liquor or has been convicted of an offense under Title 26, U.S.C., punishable as a felony or of any conspiracy to commit such offense;

(f) Is, by reason of its operations, no longer warranted in procuring and dealing in or using specially denatured spirits authorized by the permit; or

(g) Has not engaged in any of the operations authorized by the permit for a period of more than 2 years.

§ 20.52 Rules of practice in permit proceedings.

The regulations of Part 200 of this chapter apply to the procedure and practice in connection with the disapproval of any application for a permit and in connection with suspension or revocation of a permit.

§ 20.53 Powers of attorney.

An applicant or permittee shall execute and file with the regional director (compliance) a Form 1534, in accordance with the instructions on the form, for each person authorized to sign or to act on behalf of the applicant or permittee. Form 1534 is not required for a person whose authority is furnished in accordance with § 20.42(a)(10).

§ 20.54 Photocopying of permits.

A permittee may make photocopies of its permit exclusively for the purpose of furnishing proof of authorization to withdraw specially denatured spirits from a distilled spirits plant and other persons authorized under this part to deal in specially denatured spirits.

§ 20.55 Posting of permits.

Permits issued under this part shall be kept posted and available for inspection on the permit premises.

Changes After Original Qualification

§ 20.56 Changes affecting applications and permits.

(a) *General.*—(1) *Changes affecting application.* When there is a change relating to any of the information contained in, or considered a part of the application on Form 5150.22 for a permit, the permittee shall, within 30 days (except as otherwise provided in this subpart) file a written notice with the regional director (compliance) to amend the application. However, a change in the information required by § 20.42(a)(6) caused by approval of a new formula or statement of process shall not require filing a new application unless the approval is the permittee's first statement of process covering recovery operations.

(2) *Changes affecting waivers.* When any waiver under § 20.43 is terminated by a change to the application, the permittee shall include the current information as to the item previously waived with the written notice required in paragraph (a)(1) of this section.

(3) *Changes affecting permit.* When the terms of a permit are affected by a change, the written notice required by paragraph (a)(1) of this section (except as otherwise provided in this subpart) will serve as an application to amend the permit.

(4) *Form of notice.* A written notice to amend an application on Form 5150.22 shall—

(i) Identify the permittee;

(ii) Contain the permit identification number;

(iii) Explain the nature of the change and contain any required supporting documents;

(iv) Identify the serial number of the applicable application, Form 5150.22; and

(v) Be consecutively numbered and signed by the permittee or any person authorized to sign on behalf of the permittee.

(b) *Amended application.* The regional director (compliance) may require a permittee to file an amended application on Form 5150.22 when the number of changes to the previous application are determined to be excessive, or when a permittee has not timely filed the written notice prescribed in paragraph (a)(1) of this section. If items on the amended application remain unchanged, they will be marked "No change since Form 5150.22, Serial No. ————."

(c) *Changes in officers, directors and stockholders*—(1) *Officers.* In the case of a change in the officers listed under the provisions of § 20.45(a)(2), the notice required by paragraph (a)(1) of this section shall only apply (unless otherwise required, in writing, by the regional director (compliance)) to those offices, the incumbents of which are responsible for the operations covered by this part.

(2) *Directors.* In the case of a change in the directors listed under the provisions of § 20.45(a)(2), the notice required by paragraph (a)(1) of this section shall reflect the changes.

(3) *Stockholders.* In lieu of reporting all changes, within 30 days, to the list of stockholders furnished under the provisions of § 20.45(c)(1), a permittee may, upon filing written notice to the regional director (compliance) and establishing a reporting date, file an annual notice of changes. The notice of changes in stockholders does not apply if the sale or transfer of capital stock results in a change in ownership or control which is required to be reported under § 20.57.

(Approved by the Office of Management and Budget under control number 1512-0336)

§ 20.57 Automatic termination of permits.

(a) *Permit not transferable.* (a) Permits issued under this part are not transferable. In the event of the lease, sale, or other transfer of such a permit, or of the operations authorized by the permit, the permit shall, except as provided for in this section, automatically terminate.

(b) *Corporations.* (1) If actual or legal control of any corporation holding a permit issued under this part changes, directly or indirectly, whether by reason of a change in stock ownership or control (in the permittee corporation or any other corporation), by operation of law, or in any other manner, the permittee shall, within 10 days of the change, give written notice to the regional director, (compliance). Within 30 days of the change, the successor shall file an application for a new permit, Form 5150.22 with supporting documents. If an application for a new permit is not filed on Form 5150.22 within 30 days of the change, the outstanding permit will automatically terminate.

(2) If an application for a new permit is filed on Form 5150.22 within the 30-day period prescribed in paragraph (b)(1) of this section, the outstanding permit may remain in effect until final action is taken on the application. When final action is taken, the outstanding permit will automatically terminate and shall be forwarded to the regional director (compliance). The successor corporation may adopt the formulas and statements of process of the predecessor.

(c) *Proprietorships.* In the event of a change in proprietorship of a business of a permittee (as for instance, by reasons of incorporation, the withdrawal or taking in of additional partners, or succession by any person who is not a fiduciary), the successor shall file written notice and make application on Form 5150.22 for a new permit, under the same conditions provided for in paragraph (b) of this section. The successor may adopt the formulas and statements of process of the predecessor.

(Approved by the Office of Management and Budget under control number 1512–0336)

§ 20.58 Adoption of documents by a fiduciary.

If the business covered by a permit issued under this part, is to be operated by a fiduciary, the fiduciary may, in lieu of qualifying as a new proprietor, file a written notice, and any necessary supporting documents, to amend the predecessor's permit. The fiduciary shall furnish a consent of surety on Form 1533, extending the terms of the predecessor's bond, if any, and may adopt the formulas and statements of process of the predecessor. The effective date of the qualifying documents filed by a fiduciary shall coincide with the effective date of the court order or the date specified therein for the fiduciary to assume control. If the fiduciary was not appointed by the court, the date the fiduciary assumed control shall coincide with the effective date of the filing of the qualifying documents.

§ 20.59 Continuing partnerships.

(a) *General.* If, under the laws of a particular State, a partnership is not teminated on death or insolvency of a partner, but continues until final settlement of the partnership affairs is completed, and the surviving partner has the exclusive right to the control and possession of the partnership assets for the purpose of liquidation and settlement, the surviving partner may continue to withdraw and use specially denatured spirits under the prior qualifications of the partnership.

(b) *Bonds.* If a bond was required under the previous partnership, the surviving partner shall furnish a consent of surety, in which the surety and surviving partner agree to remain liable.

(c) *Requalification.* If a surviving partner acquires the business on completion of the settlement of the partnership, that partner shall qualify as a new proprietor, from the date of acquisition, under the same conditions and limitations prescribed in § 20.56.

(d) *More than one partner.* The rule set forth in this section also applies if there is more than one surviving partner.

§ 20.60 Change in name of permittee.

(a) *Permit.* When the only change is a change in the individual, firm, or corporation name, a permittee may not conduct operations under the new name until a written notice, accompanied by necessary supporting documents, to amend the application and permit has been filed and an amended permit issued by the regional director (compliance).

(b) *Bond.* If required to file a bond, the permittee shall furnish a consent of surety on Form 1533 or a new bond to cover the change in name.

(Approved by the Office of Management and Budget under control number 1512–0336)

§ 20.61 Change in trade name.

If there is to be a change in, or addition of, a trade name, the permittee may not conduct operations under the new trade name until a written notice has been filed and an amended permit has been issued by the regional director (compliance). A new bond or consent of surety is not required for changes in trade names.

(Approved by the Office of Management and Budget under control number 1512–0336)

§ 20.62 Change in location.

(a) *Permit.* When there is to be a change in location within the same region, a permittee may not conduct operations at the new location until a written notice, accompanied by necessary supporting information to amend the application and permit has been filed and an amended permit issued by the regional director (compliance).

(b) *Bond.* If required to file a bond, the permittee shall furnish a consent of surety on Form 1533 or a new bond to cover the new location.

(Approved by the Office of Management and Budget under control number 1512–0336)

§ 20.63 Adoption of formulas and statements of process.

(a) The adoption by a successor (corporation, proprietorship or fiduciary) of a predecessor's formulas and statements of process, as provided in § 20.57 (b) and (c), and § 20.58, will be in the form of a certificate to be made a part of the written notice or the application for a new permit submitted to the regional director (compliance).

(b) The certificate will contain, as applicable, (1) a list of all approved formulas or statements of process in which specially denatured spirits are used or recovered, (2) the formulas of specially denatured spirits used, (3) the ATF laboratory number of the sample (if any), (4) the date of approval of Form 1479–A or serial number of Form 5150.19, and (5) the applicable code number for the article or process. In addition, the certificate will contain the name of the successor followed by the phrase "Formula of ———— (Name of predecessor) is hereby adopted."

(Approved by the Office of Management and Budget under control number 1512–0336)

§ 20.64 Return of permits.

Following the issuance of a new or amended permit, the permittee shall (a) obtain and destory all photocopies of the previous permit from its suppliers, and (b) return the original of the previous permit to the regional director (compliance).

Registry of Stills

§ 20.66 General.

Part 196 of this chapter applies to stills located on the premises of a permittee. The listing of a still on Form 5150.22 and the issuance of a permit constitute registration of that still in lieu of filing Form 26.

Permanent Discontinuance of Business

§ 20.68 Notice of permanent discontinuance.

(a) *Notice.* When a permittee permanently discontinues business, a written notice shall be filed with the regional director (compliance) to cover the discontinuance. The notice will be accompanied by the permit, and contain—

(a) A request to cancel the permit,

(2) A statement of the disposition made of all specially denatured spirits, as required in § 20.234, and

(3) The date of discontinuance.

(b) *Bonds.* The bond of a permittee may not be canceled until all specially denatured spirits have been properly disposed of as required by this part.

(c) *Final Reports.* The written notice required by this paragraph will also be accompanied by a report on Form 5150.18 covering the discontinuance and marked "Final Report."

(Approved by the Office of Management and Budget under control number 1512–0336)

Subpart E—Bonds and Consents of Surety

§ 20.71 Bond.

(a) Except as provided in paragraph (d) of this section, each permittee who intends to withdraw more than 5000 gallons of specially denatured spirits per annum shall file a bond, Form 5150.25.

before issuance of the permit. The penal sum of the bond shall be as follows:

Maximum annual withdrawals	Bond penal sum
0 to 5,000 gallons	No bond required.
Over 5,000 but not over 500,000 gallons	$2,000 plus $1,000 for each 5,000 gallons of withdrawals over 10,000 gallons.
Over 500,000 gallons	$100,000

(b) The following method may be used to compute your penal sum:

(1) If the total of your estimated annual withdrawals is divisible by 5,000, divide it by 5. The result is your penal sum in dollars.

(2) If the total of your estimated annual withdrawals is not divisible by 5,000, increase it to the next highest number which is divisible by 5,000 and divide that number by 5. The result is your penal sum in dollars.

(c) The following are some examples:

If your annual withdrawals are	Your penal sum is
25,000 gallons	$5,000
84,500 gallons	17,000
335,000 gallons	67,000

(d) Any bond previously approved on Form 1475 or 1480 which fulfills the penal sum requirements of paragraph (b) of this section shall remain valid and will be regulated by the same provisions of this subpart as it refers to bonds on ATF F 5150.20.

§ 20.72 Evaluation of bond penal sum.

(a) *Permittee's evaluation.* Each permittee shall, for the period from July 1 through the following June 30, make an annual evaluation of the permittee's previous and future needs for specially denatured spirits. Based on the results of this evaluation:

(1) The permittee shall file a new bond in increased penal sum, if the existing bond no longer meets the penal sum requirements of § 20.71, or

(2) The permittee may file a new bond in decreased penal sum, if the existing bond exceeds the penal sum requirements of § 20.71.

(b) *Authority of regional director (compliance).* The regional director (compliance) may, at any time, require a permittee to file a new bond in a larger penal sum, or require a satisfactory explanation why a new bond should not be filed.

§ 20.73 Corporate surety.

(a) Surety bonds required by this part may be given only with corporate sureties holding certificates of authority from, and subject to the limitations prescribed by, the Secretary in the current revision of Treasury Department Circular No. 570.

(b) Treasury Department Circular No. 570 is published in the **Federal Register** annually as of the first workday in July. As they occur, interim revisions of the circular are published in the **Federal Register**. Copies may be obtained from the Audit Staff, Bureau of Government Financial Operations, Department of the Treasury, Washington, DC 20226.

§ 20.74 Filing of powers of attorney.

Each bond, and each consent to changes in the terms of a bond, must be accompanied by a power of attorney authorizing the agent or officer who executed the bond or consent to act on behalf of the surety. The regional director (compliance) who is authorized to approve the bond may require additional evidence of the authority of the agent or officer to execute the bond or consent.

§ 20.75 Execution of powers of attorney.

The power of attorney shall be prepared on a form provided by the surety company and executed under the corporate seal of the company. If the power of attorney submitted is not a manually signed original, it shall be accompanied by certification of its validity.

§ 20.76 Deposit of securities instead of corporate surety.

Instead of corporate surety, the principal may pledge and deposit as surety for the bond, securities which are transferable and which are guaranteed as to both interest and principal by the United States, under the provisions of 31 CFR Part 225.

§ 20.77 Consents of surety.

Consents of surety to changes in the terms of bonds shall be executed on Form 1533 by the principal and by the surety with the same formality and proof of authority as is required for the execution of bonds.

§ 20.78 Strengthening bonds.

(a) When the penal sum of any bond becomes insufficient, the principal shall either give a strengthening bond with the same surety to attain a sufficient penal sum, or give a new bond to cover the entire liability. A strengthening bond will not be approved if it bears any notation which is intended or which may be considered:

(1) To be a release of any former bond, or

(2) As limiting the amount of any bond to less than its full penal sum.

(b) Strengthening bonds shall show the date of execution and the effective date, and shall be marked "Strengthening Bond."

§ 20.79 Superseding bonds.

Superseding bonds are required when insolvency or removal of any surety occurs. Superseding bonds may also be required at the discretion of the regional director (compliance) when any other contingency affects the validity or impairs the sufficiency of the bond. If the principal intends to continue the transactions to which the bond relates after the surety, under § 20.80, has applied for relief of liability under the bond, the principal shall file a valid superseding bond to be effective on or before the date specified in the surety's application for relief of liability. Superseding bonds shall show the date of execution and the effective date, and shall be marked "Superseding Bond." If the principal does not file a superseding bond when required, the principal may not conduct any operation under the permit.

§ 20.80 Notice by surety of termination of bond.

A surety on any bond required by this part may at any time, in writing, notify the principal and regional director (compliance) with whom the bond is filed, that the surety desires (after a specified date) to be relieved of liability under the bond. The specified date may not be less than 90 days after the date the notice is received by the regional director (compliance). The surety shall also file with the regional director (compliance) an acknowledgment or other proof of service of the notice of termination on the principal.

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§ 20.81 Termination of rights and liability under a bond.

(a) If the notice of termination given by the surety is not withdrawn, in writing, the rights of the principal as supported by the bond terminate on the date named in the notice. The surety is relieved from liability under a bond as to any operations which are wholly subsequent to:

(1) The date named in a notice of termination (§ 20.80); or

(2) The effective date of a superseding bond (§ 20.79); or

(3) The date of approval of the discontinuance of operations by the principal.

(b) If the principal fails to file a valid superseding bond before the date on which the surety desires to be relieved from liability under the bond, the surety, notwithstanding the release from

liability as specified in paragraph (a)(1) of this section, shall remain liable under the bond for all specially denatured spirits or articles on hand or in transit to the principal on that date until the spirits or articles have been lawfully disposed of or a new bond has been filed by the principal.

§ 20.82 Release of pledged securities.

Securities of the United States, pledged and deposited as provided in § 20.76, will be released only under the provisions of 31 CFR Part 225. When the regional director (compliance) is satisfied that they may be released, the regional director (compliance) shall fix the date or dates on which a part or all of the securities may be released. At any time before the release of the securities, the regional director (compliance) may extend the date of release for any additional length of time considered necessary

Subpart F—Formulas and Statements of Process

§ 20.91 Formula.

(a) Each article made with specially denatured spirits shall be made in accordance with (1) an approved formula, Form 5150.19, or (2) an approved general-use formula prescribed in this subpart, approved by the Director as an alternate method, or published as an ATF Ruling in the ATF Bulletin. The manufacturer shall file Form 5150.19, along with the sample(s) required by § 20.92, and obtain an approved formula before manufacturing the article.

(b) An article made in accordance with a formula on Form 1479–A approved under previous regulations in Part 211 of this chapter will be considered to comply with the requirements of this subpart.

(c) Any person who has approved formulas or statements of process, Form 1479–A or Form 5150.19, which have been discontinued or have become obsolete, may submit these formulas or statements of process to the Director for cancellation.

§ 20.92 Samples.

(a) For each formula submitted in accordance with § 20.91 covering a toilet preparation made with S.D.A. Formula No. 39–C and containing an essential oil, the manufacturer shall submit a 0.5-ounce sample of the essential oil used in the article. The Director may also require the manufacturer to submit a sample of any ingredient which is not adequately described in the formula.

(b) For each formula submitted in accordance with § 20.91, the Director may require the manufacturer to submit a 4-ounce sample of the finished article.

(c) The regional director (compliance) or the Director may, at any time, require submission of samples of (1) any ingredient used in the manufacture of an article, or (2) any article.

§ 20.93 Changes to formulas.

(a) *General.* Except as provided in paragraph (b) of this section, any change of ingredients or quantities of ingredients listed in an appoved formula shall constitute a different article for which a different approved formula is required by § 20.91.

(b) *Exceptions.* A different approved formula is not required for the following—

(1) A change from an ingredient identified in the formula by a brand name to the same quantity of a chemically identical ingredient acquired under a different brand name, or

(2) A change of an ingredient which is a coloring material.

§ 20.94 Statement of process.

(a) Manufacturers shall submit a statement of process on Form 5150.19, in accordance with paragraph (b) of this section, covering the following activities:

(1) If specially denatured spirits are used for laboratory or mechanical purposes, other than use of S.D.A. Formula No. 3–A, 3–C, or 30 for laboratory or mechanical purposes not in the development of a product;

(2) If specially denatured spirits are used in a manufacturing process in which none of the specially denatured spirits remains in the finished product;

(3) If specially denatured spirits, completely denatured alcohol, or articles are used in a manufacturing process and are to be recovered; or

(4) If recovered denatured spirits are to be redenatured.

(b) The manufacturer shall submit a separate Form 5150.19 for each activity described in paragraph (a) of this section describing the process completely.

(1) If specially denatured spirits are used for laboratory or mechanical purposes, other than use of S.D.A. Formula No. 3–A, 3–C, or 30 for laboratory or mechanical purposes not in the development of a product, the Form 5150.19 shall identify the formula number of specially denatured spirits, a description of the laboratory or mechanical use, and the approximate annual quantity to be used.

(2) If the Form 5150.19 is submitted covering activities described in paragraphs (a)(2), (a)(3), or (a)(4) of this section, the Form 5150.19 shall also contain the following information:

(i) Flow diagrams shall be submitted with the Form 5150.19 clearly depicting the equipment in its relative operating sequence, with essential connecting pipelines and valves. All major equipment shall be identified as to its use. The direction of flow through the pipelines shall be indicated in the flow diagram. The flow diagram, shall be accompanied by a written description of the flow of materials through the system.

(ii) The statement of process shall describe the chemical composition of the recovered spirits. The statement of process shall be accompanied by a statement of the intended use of the recovered spirits.

§ 20.95 Developmental samples of articles.

(a) A user may use limited quantities of specially denatured spirits in the manufacture of samples of articles for submission on request by the Director in accordance with § 20.92.

(b) A user may prepare developmental samples of articles, of limited sizes and quantities, for one-time shipment to prospective customers. The user shall maintain records showing—

(1) The types of product samples prepared,

(2) The size and number of samples sent, on a one-time basis, to each prospective customer, and

(3) The names and addresses of the prospective customers.

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Approval Policies

§ 20.100 General.

(a) In addiiton to the limitations in this part, and if necessary to protect the revenue or public safety, the Director, when approving Form 5150.19 may:

(1) Specify on the Form 5150.19 the size of containers in which any article may be sold;

(2) Specify the maximum quantity that may be sold to any person at one time; or

(3) Restrict the sale of an article to a specific class of vendee and for a specific use.

(b) Approval by the Director of formulas, samples, or statements of process means only that they meet the standards of the Bureau of Alcohol, Tobacco and Firearms. The approval does not require the regional director (compliance) to issue a permi' under Subpart D of this part to withdraw and use specially denatured spirits in those formulas, articles, or statements of process.

§ 20.101 Drafting formulas.

(a) In preparing Form 5150.19, the manufacturer shall, for each ingredient containing ethyl alcohol, identify—

(1) The percent alcohol by volume of the ingredient, if known, and

(2) The supplier's name and serial number or approval date of the supplier's approved formula covering the manufacture of the ingredient.

(b) In preparing Form 5150.19, manufacturers may—

(1) Identify ingredients by generic names rather than brand names, and

(2) Identify quantities of ingredients used in ranges rather than in finite quantities.

(c) If ranges of ingredients are used, as authorized by paragraph (b)(2) of this section—

(1) The lower range shall not be zero for any ingredient, and

(2) The range for usage of specially denatured spirits shall not exceed ± 5%.

§ 20.102 Bay rum, alcoholado, or alcoholado-type toilet waters.

All bay rum, alcoholado, or alcoholado-type toilet waters made with specially denatured alcohol shall contain:

(a) 1.10 grains of benzyldiethyl (2:6-xylylcarbamoyl methyl) ammonium benzoate (Bitrex (THS–839)) in each gallon of finished product in addition to any of this material used as a denaturant in the specially denatured alcohol, or

(b) 32 grains of tartar emetic in each gallon of finished product, or

(c) 0.5 avoirdupois ounce of sucrose octaacetate in each gallon of finished product.

§ 20.103 Articles made with S.D.A. Formula No. 39–C.

Each article made with S.D.A. Formula No. 39–C shall contain in each gallon of finished product not less than 2 fluid ounces of perfume material (essential oils, isolates, aromatic chemicals, etc.) satisfactory to the Director.

§ 20.104 Residual alcohol in spirit vinegar.

Commercial strength (40 grain) vinegar made from specially denatured alcohol may contain trace amounts of residual alcohol, not to exceed 0.5 percent of alcohol by volume, in the finished product.

General-Use Formulas

§ 20.111 General.

(a) An approved formula on Form 5150.19 is not required for an article made in accordance with any approved general-use formula prescribed by §§ 20.112–20.119, approved by the Director as an alternate method, or published as an ATF Ruling in the ATF Bulletin.

(b) Any interested party may petition ATF for approval of a new general-use formula by submitting a letter describing the proposed general-use formula to the Director.

(Approved by the Office of Management and Budget under control number 1512–0336)

§ 20.112 Special industrial solvents general-use formula.

(a) A special industrial solvent is any article made with any other ingredients combined with the ingredients in the minimum ratios prescribed in this section. A special industrial solvent shall be made with S.D.A. Formula No. 1, 3A, or 3C containing, for every 100 parts (by volume) of alcohol:

(1) No less than 1 part (by volume) of one or any combination of the following: methyl isobutyl ketone, methyl *n*-butyl ketone, nitropropane (mixed isomers), or ethylene glycol monoethyl ether, and

(2) No less than 5 parts (by volume) of one or any combination of the following: ethyl acetate (equivalent to 85% ester content, as defined in § 21.106 of this chapter), isopropyl alcohol, or methyl alcohol.

(b) Special industrial solvents are intended for use as ingredients or solvents in manufacturing processes and shall not be distributed through retail channels for sale as consumer commodities for personal or household use. When a special industrial solvent is used in the manufacture of an article for sale, sufficient ingredients shall be added to definitely change the composition and character of the special industrial solvent. A special industrial solvent shall not be reprocessed into another solvent intended for sale if the other solvent would contain more than 50% alcohol by volume.

(c) If this article contains more than 4% by weight of methyl alcohol, the label shall have a skull and crossed bones symbol and the following words: "danger," "poison," "vapor harmful," "May be fatal or cause blindness if swallowed," and "Cannot be made nonpoisonous."

§ 20.113 Proprietary solvents general-use formula.

(a) A proprietary solvent is any article made with any other ingredients combined with the ingredients in the minimum ratios prescribed in this section. A proprietary solvent shall be made with S.D.A. Formula No. 1 or 3–A containing, for every 100 parts (by volume) of alcohol:

(1) No less than 1 part (by volume) of one or any combination of the following: gasoline, unleaded gasoline, heptane, or rubber hydrocarbon solvent, and

(2) No less than 3 parts (by volume) of one or any combination of the following: ethyl acetate (equivalent to 85% ester content, as defined in § 21.106 of this chapter), methyl isobutyl ketone, methyl *n*-butyl ketone, *tert*-butyl alcohol, *sec*-butyl alcohol, nitropropane (mixed isomers), ethylene glycol monoethyl ether, or toluene.

(b) If this article contains more than 4% by weight of methyl alcohol, the label shall have a skull and crossed bones symbol and the following words: "danger," "poison," "vapor harmful," "May be fatal or cause blindness if swallowed," and "Cannot be made nonpoisonous."

§ 20.114 Tobacco flavor general-use formula.

Tobacco flavor general-use formula is any finished article made with S.D.A. Formula No. 4 or S.D.R. Formula No. 4 which—

(a) Contains sufficient flavors,

(b) May contain other ingredients, and

(c) Is packaged, labeled, and sold or used as a tobacco flavor only.

§ 20.115 Ink general-use formula.

Ink general-use formula is any finished article made with S.D.A. Formula No. 1, 3–A, 3–C, 13–A, 23–A, 30, 32, or 33 which—

(a) Contains sufficient pigments, dyes, or dyestuffs,

(b) May contain other ingredients, and

(c) Is packaged, labeled and sold or used as an ink.

§ 20.116 Low alcohol general-use formula.

Low alcohol general-use formula is a finished article containing not more than 5% alcohol by volume.

§ 20.117 Reagent alcohol general-use formula.

(a) Reagent alcohol is an article (1) made in accordance with paragraph (b) of this section, (2) packaged and labeled in accordance with paragraph (c) of this section, and (3) distributed in accordance with paragraph (d) of this section.

(b) Reagent alcohol shall be made with 95 parts (by volume) of S.D.A. Formula No. 3–A, and 5 part (by volume) of isopropyl alcohol. Water may be added at the time of manufacture. Reagent alcohol shall not contain any ingredient other than those named in this paragraph.

(c)(1) Except as provided in paragraph (d) of this section, reagent alcohol shall be packaged by the manufacturer in containers not exceeding four liters. Each container shall have affixed to it a

label with the following words, as conspicuously as any other words on the labels: "Reagent Alcohol, Specially Denatured Alcohol Formula 3–A–95 parts by vol., and Isopropyl Alcohol—5 parts by vol."

(2) Because this article contains more than 4% by weight of methyl alcohol, the label shall have a skull and crossbones symbol and the following words: "danger," "poison," "vapor harmful," "May be fatal or cause blindness if swallowed," and "Cannot be made nonpoisonous

(3) If water is added at the time of manufacture, the label shall reflect the composition of the diluted product. If the addition of water reduces the methyl alcohol concentration to less than 4% by weight, the requirements of paragraph (c)(2) of this section shall not apply.

(4) A back label shall be attached showing the word "ANTIDOTE", followed by suitable directions for an antidote.

(d)(1) Reagent alcohol may be distributed in containers not exceeding 4 liters exclusively to laboratories or persons who require reagent alcohol for scientific use.

(2) Reagent alcohol may be distributed in bulk containers to proprietors of bona fide laboratory supply houses for packaging and resale, and to any other person who was qualified to receive bulk shipments of reagent alcohol on the effective date of this part. Reagent alcohol may also be distributed in bulk containers to any person who has received approval of a letterhead application containing the following:

(i) The applicant's name, address, and permit number, if any;

(ii) A description of the security measures which will be taken to segregate reagent alcohol from denatured spirits or other alcohol which may be on the same premises;

(iii) A statement that labels required by paragraph (c) of this section will be affixed to containers of reagent alcohol filled by the applicant;

(iv) A statement that the applicant will allow ATF Officers to inspect the applicant's premises; and

(v) A statement that the applicant will comply with the requirements of § 20.133 which may be conditions of approval by the regional director (compliance).

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§ 20.118 Rubbing alcohol general-use formula.

(a) Rubbing alcohol is an article made with S.D.A. Formula No. 23–H (1) containing 70% ethyl alcohol by volume (2) made in accordance with one of the two formulas prescribed in paragraph (b) of this section, and (3) labeled in accordance with § 20.134(e) of this part.

(b) Either of the following two formulas is approved for manufacturing rubbing alcohol:

Formula A

S.D.A. formula no. 23–H	103.3 fl. oz.
Sucrose octa-acetate	0.5 av.oz.
Water	q.s. 1 gallon.[12]

(If desired, odorous, medicinal and/or colorative ingredients may be added.)

Formula B

S.D.A. formula no. 23–H	103.3 fl. oz.
Benzyldiethyl (2: 6-xylylcarbamoyl methyl) ammonium benzoate (Bitrex (THS–839)).	0.88 grains.
Water	q.s. 1 gallon.

(If desired, odorous, medicinal and/or colorative ingredients may be added.)

§ 20.119 Toilet preparations containing 10% essential oils general-use formula.

This general-use formula shall consist of an article containing 10% essential oils by volume made with a formula of S.D.A. authorized for that article on the following list:

Article	Product code No.	Formula authorized
Bath preparations	142	1, 3–A, 3–B, 3–C, 23–A, 30, 36, 38–B, 39–B, 39–C, 40, 40–A, 40–B, 40–C.
Colognes	122	38–B, 39, 39–A, 39–B, 39–C, 40, 40–A, 40–B, 40–C.
Deodorants (body)	114	23–A, 38–B, 39–B, 39–C, 40, 40–A, 40–B, 40–C.
Hair and scalp preparations	111	3–B, 23–A, 23–F, 23–H, 37, 38–B, 39, 39–A, 39–B, 39–C, 39–D, 40, 40–A, 40–B, 40–C.
Lotions and creams (body, face, and hand).	113	23–A, 23–H, 31–A, 37, 38–B, 39, 39–B, 39–C, 40, 40–A, 40–B, 40–C.
Perfume materials (processing)	121	38–B, 39, 39–B, 39–C, 40, 40–A, 40–B, 40–C.
Perfumes and perfume tinctures	121	38–B, 39, 39–B, 39–C, 40, 40–A, 40–B, 40–C.
Shampoos	141	1, 3–A, 3–B, 3–C, 23–A, 27–B, 31–A, 36, 38–B, 39–A, 39–B, 40, 40–A, 40–B, 40–C.
Soaps, toilet	142	1, 3–A, 3–C, 23–A, 30, 36, 38–B, 39–B, 39–C, 40, 40–A, 40–B, 40–C.
Toilet waters	122	38–B, 39, 39–A, 39–B, 39–C, 40, 40–A, 40–B, 40–C.

Subpart G—Requirements Relating to Articles

§ 20.131 Scope of subpart.

This subpart prescribes requirements relating to articles which may affect persons who are not required to obtain a permit under this part. These requirements, described in general terms § 20.132, are imposed by law. Criminal penalties imposed for violating these requirements are described in § 20.137. In this subpart, the term "article" means any substance or preparation in the manufacture of which denatured spirits are used, including the product obtained by further manufacture or by combination with other materials, if the article subjected to further manufacture or combination contained denatured spirits.

§ 20.132 General requirements.

(a) *Internal medicinal preparations and flavoring extracts*—(1) *Manufacture.* No person shall use denatured spirits in the manufacture of medicinal preparations or flavoring extracts for internal human use where any of the spirits remain in the finished product.

(2) *Sale.* No person shall sell or offer for sale for internal human use any medicinal preparations or flavoring extracts manufactured from denatured distilled spirits where any of the spirits remain in the finished product.

(3) *Labeling and advertising.* Labeling and advertising of articles shall not imply that the article is intended for or suitable for internal human use.

(b) *Beverage use.* No person shall sell or offer for sale any article containing denatured spirits for beverage purposes. Labeling and advertising of articles shall not imply that the article is intended for or suitable for use as a beverage.

(c) *Trafficking in articles.* The regional director (compliance) may impose the requirements of § 20.133 on any person who reprocesses, rebottles, or repackages articles, deals in articles, or receives articles in containers exceeding one gallon.

§ 20.133 Registration of persons trafficking in articles.

(a) Upon written notice from the regional director (compliance), any person who reprocesses, rebottles, or

repackages articles, deals in articles, or receives articles in containers exceeding one gallon may be required to submit any of the following:

(1) Nature of activities to be conducted;

(2) Name and address of supplier;

(3) Size and type of containers in which articles will be received and, if applicable, rebottled or repackaged;

(4) Maximum quantity of each article to be obtained during any calendar month;

(5) Description of the reprocessing operation;

(6) Samples of the reprocessed article;

(7) Labels and advertising materials; and,

(8) Names and addresses of recipients of articles and quantities received;

(b) The regional director (compliance) shall prohibit any of the activities described in paragraph (a) of this section if the activities pose a jeopardy to the revenue, or a burden in administering this part.

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§ 20.134 Labeling.

(a) *General.* Except as provided in paragraph (b) or (c) of this section, each article shall, before removal from the manufacturer's premises, have a label affixed to its immediate container identifying (1) the name, trade name or brand name of the article, and (2) the name and address (city and State) of the manufacturer or distributor of the article.

(b) *Articles for external human use.* Except as provided in paragraph (c) of this section, an article intended for external human use shall, before removal from the manufacturer's premises, have a label affixed to its immediate container identifying the name, trade name or brand name of the article. If the volume of the article in the container exceeds 8-fluid ounces, the label shall also show the information required by paragraph (b) (1) or (2) of this section.

(1) If the article was packaged or bottled by the person who manufactured it, the label shall identify—

(i) The manufacturer's name and the address (city and State) of the actual place or places where article was manufactured, or

(ii) The name and principal office address (city and State) of the manufacturer, and the permit number or numbers of the place or places of manufacture, or

(iii) The manufacturer's permit number and the name and address (city and State), of the person for whom the article was packaged and bottled.

(2) If the article was packaged or bottled by a person other than the manufacturer of the article, the label shall identify—

(i) The name and address (city and State) of the person by whom or for whom the article was packaged or bottled, and

(ii) The permit number of the manufacturer or distributor.

(3) If a permit number is required to be shown on the label, it may be shown utilizing a State code number, in accordance with § 20.135.

(c) *Shipment of unlabeled articles.* A manufacturer may, subject to the approval of the regional director (compliance) and compliance with § 20.133, remove an unlabeled article from the manufacturer's premises, if the outer containers of the article are labeled with the name, trade name or brand name of the article and the names and addresses (city and State) of the manufacturer and the consignee.

(d) *Use of the words "denatured alcohol."* If the words "denatured alcohol" appear on the label of an article, the label shall also have a name, trade name or brand name which appears as conspicuously as the words "denatured alcohol."

(e) *Use of the words "rubbing alcohol."* If the words "rubbing alcohol" appear on the label of an article, (1) the article shall be made in accordance with § 20.118 of this part, and (2) the label (i) shall have the words "rubbing alcohol" in letters of the same color and size, (ii) shall identify the name and address (city and State) of the manufacturer or bottler, (iii) shall state the alcohol content as 70% by volume with no reference to the proof strength, and (iv) shall have the warning "For external use only. If taken internally, will cause serious gastric disturbances." An alcohol rub made from any other material, such as isopropyl alcohol, shall not be labeled "Rubbing Alcohol" unless the label informs the consumer that the preparation was not made with specially denatured alcohol.

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§ 20.135 State code numbers.

In showing the permit number on labels as provided in § 20.134(b)(2)(ii), the permittee who distributes the article may substitute the appropriate number shown below for the State abbreviation For example, permit number SDA-CONN-1234 may be shown on the labels as SDA-07-1234. The code numbers for the respective State are as follows:

01—Alabama	03—Arizona
02—Alaska	04—Arkansas
05—California	29—Nevada
06—Colorado	30—New Hampshire
07—Connecticut	31—New Jersey
08—Delaware	32—New Mexico
09—D.C.	33—New York
10—Florida	34—North Carolina
11—Georgia	35—North Dakota
12—Hawaii	36—Ohio
13—Idaho	37—Oklahoma
14—Illinois	38—Oregon
15—Indiana	39—Pennsylvania
16—Iowa	40—Rhode Island
17—Kansas	41—South Carolina
18—Kentucky	42—South Dakota
19—Louisiana	43—Tennessee
20—Maine	44—Texas
21—Maryland	45—Utah
22—Massachusetts	46—Vermont
23—Michigan	47—Virginia
24—Minnesota	48—Washington
25—Mississippi	49—West Virginia
26—Missouri	51—Wisconsin
27—Montana	51—Wyoming
28—Nebraska	

§ 20.136 Labeling regulations of other agencies.

(a) *General.* Other Federal agencies have promulgated regulations which may affect labeling of articles, as described in this section.

(b) *Consumer Product Safety Commission.* The Consumer Product Safety Commission has promulgated regulations to administer the Federal Hazardous Substances Act. The regulations in 16 CFR Chapter II require warning labels for products containing certain specified substances. For example, S.D.A. Formula Nos. 3-A and 30 require warning labels because they contain methyl alcohol, a hazardous substance at levels of 4% or more by weight. Manufacturers, reprocessors, rebottlers, and repackagers who convey articles containing strong chemicals should refer to 16 CFR Chapter II for warning label requirements.

(c) *Federal Trade Commission.* The Federal Trade Commission (F.T.C.) has promulgated regulations to administer the Fair Packaging and Labeling Act. The regulations in 16 CFR Chapter I affect packaging and labeling of "consumer commodities." The term "consumer commodities" generally means products intended for retail sale to an individual for personal or household use. The F.T.C. regulations do not apply to drugs, medical devices, or cosmetics for which the Food and Drug Administration enforces the Fair Packaging and Labeling Act (see paragraph (d) of this section). Manufacturers, reprocessors, rebottlers, and repackagers who convey articles which are "consumer commodities" should refer to 16 CFR Chapter I for packaging and lebeling requirements.

(d) *Food and Drug Administration, Department of Health and Human Services.* The Food and Drug Administration has promulgated

regualtions in 21 CFR Chapter I to administer the Fair Packaging and Labeling Act (as it applies to drugs, medical devices, or cosmetics) and the Federal Food, Drug and Cosmetic Act. Manufacturers, reprocessors, rebottlers, and repackagers who convey articles which are drugs, medical devices, or cosmetics should refer to 21 CFR Chapter I for packaging and labeling requirements.

§ 20.137 Penalties.

Violation of the requirements prescribed in § 20.132 is punishable by a fine of not more than $10,000 and/or imprisonment for not more than 5 years for each offense. In addition, persons who manufacture (including reprocess), sell, or transport articles in violation of this part are liable for payment of a tax on the articles at the rate imposed by law on distilled spirits.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1314, as amended, 1402 (26 U.S.C. 5001, 5607))

Subpart H—Sale and Use of Completely Denatured Alcohol

§ 201.41 General.

(a) Each formula of completely denatured alcohol may be sold and used for any purpose, subject to the limitations in the formula prescribed in Part 21 of this chapter. For example, C.D.A. Formula No. 18 or 19 may be used:

(1) In the manufacture of definite chemical substances where the alcohol is changed into some other chemical substance and does not appear in the finished product;

(2) In the arts and industries, including but not limited to the manufacture of cleaning fluids, detergents, proprietary antifreeze solutions, thinners, lacquers, and brake fluids; and

(3) For fuel, light, and power.

(b) Completely denatured alcohol may not be used in the manufacture of preparations or products for internal human use or consumption where any of the alcohol or the denaturants used in that alcohol remain in the finished product.

(c) Persons distributing and using (but not recovering for reuse) completely denatured alcohol are not required to obtain a permit or file a bond under this part.

(d) Any person recovering completely denatured alcohol for reuse shall obtain a permit under Subpart D of this part if the recovered alcohol does not contain all of the original denaturants of the completely denatured alcohol.

(e) Containers of products manufactured with completely denatured alcohol (such as proprietary antifreeze solutions, solvents, thinners, and lacquers) may not be branded as completely denatured alcohol. These products may not be advertised, shipped, sold, or offered for sale as completely denatured alcohol.

§ 20.142 Records of bulk conveyances.

If completely denatured alcohol is to be shipped in a bulk conveyance, the shipment shall be accompanied by a record which identifies each car, truck, or compartment, the name and location (city or town and State) of both the consignor and consignee, the quantity in gallons, and the formula number of the completely denatured alcohol.

(Approved by the Office of Management and Budget under control number 1512-0337)

§ 20.143 Receipt.

Unless completely denatured alcohol received in bulk conveyances or by pipeline is to be used immediately, it shall be deposited in storage tanks, stored in the tank cars or tank trucks in which received, or drawn into packages which shall be marked or labeled as required by this subpart.

§ 20.144 Packages of completely denatured alcohol.

Packages containing more than 5 gallons of completely denatured alcohol shall be of metal or other equally suitable material approved by the Director. The openings of these packages shall be sealed with appropriate seals furnished by the person filling the packages.

§ 20.145 Encased containers.

Completely denatured alcohol may be packaged by distributors in unlabeled containers which are completely encased in wood, fiberboard, or similar material so that the surface (including the opening) of the actual container is not exposed. When completely denatured spirits are packaged in unlabeled containers, the distributor shall apply the required marks or label to an exposed surface of the case. The case shall be so constructed that the portion containing the marks will be securely attached to the encased container until all of the contents have been removed. A statement reading "Do Not Remove Inner Container Until Emptied," or words of similar meaning, shall be placed on the portion of the case bearing the marks.

§ 20.146 Labels on bulk containers.

(a) Completely denatured alcohol in bulk containers with a capacity exceeding 1 gallon shall be labeled on the head or side of the container or on the side of the casing, with the following:

(1) The name and address of the person filling the containers;

(2) The contents in gallons:

(3) The words "Completely Denatured Alcohol"; and

(4) The formula number.

(b) Packages of 5 gallons or less shall bear labels required by § 20.147, in lieu of the labels required by this section.

(c) The letters and figures used for marking packages shall be large enough to be easily read and, when printed, labeled, or stenciled, shall be in permanent ink and shall contrast distinctly with the background to which applied.

(d) Packages may also be marked with the brand name and a statement to the type of merchandise contained in the package if these markings do not obscure or detract from the required markings. The person filling the packages shall maintain the record required by § 20.261.

§ 20.147 Labels on consumer-size containers.

(a) Each consumer-size container with a capacity of 5 gallons or less of completely denatured alcohol sold or offered for sale by a distributor shall bear a label showing, in plain, legible letters, the following:

(1) The words "Completely Denatured Alcohol";

(2) The statement "Caution—contains poisonous ingredients"; and

(3) The name and address of the distributor filling the packages, unless shown elsewhere on the package.

(b) No other information (except that required by State or Federal law) may be shown on the label without the Director's approval. The word "pure", qualifying denatured alcohol may not appear on the label or the container.

(c) The requirements of paragraphs (a) and (b) of this section apply to any person who sells completely denatured alcohol at wholesale or retail.

§ 20.148 Manufacture of articles with completely denatured alcohol.

Articles may be made with completely denatured alcohol for sale under brand names. If ingredients are added in sufficient quantities to materially change the composition and character of the completely denatured alcohol, the article is not classified as completely denatured alcohol and may not be marked, branded, or sold as completely denatured alcohol.

§ 20.149 Records.

Records of transactions in completely denatured alcohol and articles made with completely denatured alcohol shall be maintained as prescribed in § 20.261.

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Subpart I—Operations by Dealers and Users of Specially Denatured Spirits

Obtaining Specially Denatured Spirits

§ 20.161 Withdrawals under permit.

(a) *General.* The permit, Form 5150.9, issued under Subpart D of this part, authorizes a person to withdraw specially denatured spirits from the bonded premises of a distilled spirits plant or a dealer.

(b) *Photocopying of permit, Form 5150.9.* (1) As provided in § 20.54, a permittee may make photocopies of its permit, or amended permit, for the exclusive purpose of furnishing proof of authorization to withdraw specially denatured spirits.

(2) A permittee need only furnish the photocopy of its permit, or amended permit, to a distilled spirits plant or dealer for the "initial order" from that distilled spirits plant or dealer.

(3) When a permittee makes photocopies of its permit, Form 5150.9, each copy must be signed, dated, and contain the word "COPY" across the face.

(4) A permittee is responsible for obtaining and, as applicable, destroying all photocopies of its permit from distilled spirits plants and dealers when: (i) An amended or corrected permit is issued which supersedes the copy on file, (ii) the permit is canceled by reason of requalification as a new permittee, (iii) the permit is revoked or suspended, or (iv) upon permanent discontinuance of dealing in or using specially denatured spirits.

(c) *Withdrawals.* (1) When a permittee places an initial order for specially denatured spirits the permittee will forward a signed copy of its permit, for retention by the distilled spirits plant or dealer, along with the purchase request.

(2) When the permittee places a subsequent order for specially denatured spirits, the purchase request, in addition to any other information, will contain the permit identification number and date of issue along with a statement that the permittee possesses a valid permit to withdraw specially denatured spirits, a copy of which is on file with the supplier.

(3) Shipments will not be made by a proprietor of a distilled spirits plant or dealer until it is in possession of a signed copy of a valid permit, Form 5150.9, unless the regional director (compliance) authorizes the shipment.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1370, as amended, 1395, as amended (26 U.S.C. 5271, 5555))

§ 20.162 Regulation of withdrawals.

(a) Each permittee shall regulate its withdrawals of specially denatured spirits to ensure that (1) the quantity on hand and unaccounted for does not exceed the capacity of the storage facilities, and (2) the cumulative quantity withdrawn or received in any calendar year does not exceed the quantity authorzied by the permit, Form 5150.9. Recovered alcohol will be taken into account in determining the total quantity of alcohol on hand.

(b) For the purpose of this section, specially denatured spirits and recovered alcohol will be considered as unaccounted for if lost under circumstances where a claim for allowance is required by this part and the claim has not been allowed, or if used or disposed of in any manner not provided for in this part.

§ 20.163 Receipt and storage of specially denatured spirits.

(a) *Receipt of bulk conveyances or by pipeline.* A permittee who receives specially denatured spirits in bulk conveyances or by pipeline shall: (1) Deposit the specially denatured spirits into storage tanks as provided by § 20.165; (2) draw the specially denatured spirits into packages marked and labeled as required by paragraph (b) of this section; (3) store the specially denatured spirits in the tank truck or tank car in which received if the conveyance is effectively immobilized within an enclosure secured to prevent unauthorized access; or (4) use the specially denatured spirits immediately in accordance with an approved formula or statement of process.

(b) *Marks on portable containers.* (1) A user who receives specially denatured spirits in bulk conveyances or by pipeline and who transfers the spirits to drums shall plainly label them to show (i) the words "Specially Denatured Alcohol" or "Specially Denatured Rum", and (ii) the formaula number.

(2) A dealer who fills packages of specially denatured spirits shall label them in accordance with § 20.178.

(c) *Receipt of portable containers.* A permittee who receives specially denatured spirits in portable containers such as drums or barrels shall transfer the specially denatured spirits to storage tanks or deposit the specially denatured spirits in a storeroom as provided in § 20.165, or use the spirits in accordance with an approved formula or statement of process. A user may not transfer the spirits to other portable containers for storage except in the following circumstances:

(1) Contents of damaged packages may be transferred to new packages to prevent loss or waste; or

(2) Contents of portable containers may be transferred to "safety" containers to comply with city or State fire code regulations, or on filing notice with the regional director (compliance) to comply with the safety practices of the user. The user shall label the new containers with the information marked on the original containers and shall also identify the new containers as "repackaged."

(d) *Record of receipt.* Records of receipt will consist of the consignor's invoice of bill or lading which identifies the quantities, formula number(s), and serial numbers of containers of specially denatured spirits, and which has been annotated by the consignee with the date of receipt of the shipment.

(e) *Losses.* On receipt of specially denatured spirits, the user shall determine and account for any losses in transit in accordance with Subpart J of this part.

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Premises and Equipment

§ 20.164 Premises.

(a) A permittee shall have premises suitable for the business being conducted and adequate for protecting the revenue.

(b) Storage facilities shall be provided on the premises for specially denatured spirits received or recovered. Except as provided in paragraph (c) of this section, storage facilities shall consist of storerooms, compartments, or stationary storage tanks (not necessarily in a room or building).

(c) A permittee receiving and storing specially denatured spirits in tank cars or tank trucks, as provided in § 20.163, need not provide stationary storage tanks.

(d) If specially denatured spirits are received at or removed from a permittee's premises in bulk conveyances, suitable facilities for those operations shall be provided.

(e) The regional director (compliance) may require the storage facilities or distilling equipment to be secured with Government locks or seals, or both.

§ 20.165 Storage facilities.

(a) Storerooms shall be constructed and secured to prevent unauthorized access and the entrance doors shall be equipped for locking.

(b) Each stationary tank used for the storage of specially denatured spirits shall be equipped for locking to control

access to the denatured spirits. An accurate means of measuring its contents shall be provided for each tank.

(c) Storerooms and storage tanks shall be kept locked when unattended. A storage cabinet or locker kept inside a room which is locked when unattended is considered to be adequately secured.

§ 20.166 Stills and other equipment.

If recovered denatured spirits or articles are to be restored on the permittee's premises, all equipment to be used in the restoration process shall be located on the permit premises. Distilling apparatus or other equipment, including pipelines, for restoration or for recovery, shall be constructed and secured in such a manner as to prevent unauthorized access to the denatured spirits and so arranged as to be readily inspected by ATF officers.

§ 20.167 Recovered and restored denatured spirits tanks.

Suitable storage tanks shall be provided for recovered and restored denatured spirits. Each storage tank for recovered and restored denatured spirits shall be—

(a) Durably marked to show its capacity and use,

(b) Equipped for locking to control access to the contents, and

(c) Provided with an accurate means of measuring its contents.

Inventory and Records

§ 20.170 Physical inventory.

Once in each calendar year and when requested by an ATF officer, each permittee shall perform and record a physical inventory of each formula of new and recovered specially denatured spirits.

(Approved by the Office of Management and Budget under control number 1512–0337)

§ 20.171 Record of shipment.

(a) *Dealer.* When a dealer transfers new or recovered specially denatured spirits to a distilled spirits plant or permittee in the normal course of business or in accordance with § 20.216 or § 20.231 of this part, the dealer shall prepare a record of shipment in accordance with paragraph (c) of this section. Dealers shall consistently use the same record series for the record of shipment. A dealer's record of shipment shall show a serial number or other unique number.

(b) *User.* When a user transfers new or recovered specially denatured spirits to a distilled spirits plant or permittee in accordance with § 20.216, 20.231, or 20.235 of this part, the user shall prepare a record of shipment in accordance with paragraph (c) of this section.

(c) *Record.* The record of shipment shall consist of an invoice, bill of lading or similar document which shows the following information:

(1) Date of shipment;

(2) Consignor's name and address;

(3) Consignee's name, address, and permit number or distilled spirits plant registry number;

(4) For each formula of specially denatured spirits—

(i) The formula number,

(ii) The number and sizes of containers, and

(iii) The total quantity; and,

(5) If the specially denatured spirits are recovered, the word "recovered" shall appear on the record.

(Approved by the Office of Management and Budget under control number 1512–0337)

§ 20.172 Records.

In addition to the records required by this subpart, permittees shall maintain records required in Subpart P of this part.

(Approved by the Office of Management and Budget under control number 1512–0337)

Operations by Dealers

§ 20.175 Shipment for account of another dealer.

(a) A dealer may order specially denatured spirits shipped directly from a denaturer or another dealer to a customer (dealer or user).

(b) The dealer who ordered the shipment of specially denatured spirits shall forward a copy of his or her permit, Form 5150.9, and the consignee's permit, Form 5150.9, to the person actually shipping the specially denatured spirits.

(c) The bond of the dealer who ordered the shipment shall be liable for the tax while the specially denatured spirits are in transit and the bond of the person actually shipping the specially denatured spirits shall not be liable.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1370, as amended (26 U.S.C. 5271))

§ 20.176 Packaging by a dealer.

A dealer may package specially denatured spirits in containers of any size necessary for the conduct of business. After filling packages, the dealer shall accurately determine the contents of each package. After filling drums, the dealer shall seal all the drum openings with the dealer's own seals. Packages of specially denatured spirits shall be marked or labeled in accordance with § 20.178.

§ 20.177 Encased containers.

(a) A dealer may package specially denatured spirits in unlabeled containers which are completely encased in wood, fiberboard, or similar material. The total surface (including the opening) of the actual container of the spirits must be enclosed.

(b) When specially denatured spirits are packaged in unlabeled containers, the bonded dealer shall apply the required marks to an exposed surface of the case. The case shall be constructed so that the portion bearing the marks will remain securely attached to the encased container until all the spirits have been removed. A statement reading "Do not remove inner container until emptied," or of similar meaning, shall be placed on the portion of the case bearing the marks.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended (26 U.S.C. 5206))

§ 20.178 Marks and brands on containers of specially denatured spirits.

(a) *Required marks.* Each dealer who fills packages of specially denatured spirits shall mark or label each package with the following imformation:

(1) Quantity, in gallons, or in liters and gallons;

(2) Package identification number or serial number (see § 20.179);

(3) Name and permit number of the dealer;

(4) The words "Specially Denatured Alcohol" or "Specially Denatured Rum," or an appropriate abbreviation;

(5) Formula number;

(6) Proof, if the spirits were denatured at other than 190° proof;

(7) Denaturants used, if alcohol was denatured under an approved formula authorizing a choice of denaturants; and

(8) Quantity of denaturants used, if the approved formula authorizes a choice of quantities of denaturants.

(b) *Location of marks.* The dealer shall place the required marks on the head of the package or on the side of the case.

(c) *Other marks.* Other marks authorized by this paragraph may not interfere with or detract from the marks required by this subpart. The dealer may place marks other than the required marks on the Government head or Government side of the package if the other marks—

(1) Are authorized by the Director, or

(2) Consist of a brand name, or consist of caution notices, or consist of other material required by Federal or State law or regulations.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended (26 U.S.C. 5206))

§ 20.179 Package identification number or serial number.

(a) *Requirement.* A dealer who fills packages with specially denatured spirits shall mark each package with a package identification number, in accordance with paragraph (b) of this section, or a serial number, in accordance with paragraph (c) of this section.

(b) *Package identification number.* A package identification number shall apply to all of the packages filled at the same time on which all of the marks required by § 20.178 (a)(1) and (a)(3) through (a)(8) are identical. All of the packages in one lot shall be the same type, have the same rated capacity, and be uniformly filled with the same quantity. A package identification number shall be derived from the date on which the package is filled, and shall consist of the following elements, in the order shown—

(1) The last two digits of the calendar year;

(2) An alphabetical designation from "A" through "L," representing January through December, in that order;

(3) The digits corresponding to the day of the month; and

(4) A letter suffix when more than one identical lot is filled into packages during the same day. For successive lots after the first lot, a letter suffix shall be added in alphabetical order, with "A" representing the second lot of the day, "B" representing the third lot of the day, etc. (*e.g.* the first three lots filled into packages on November 19, 1983, would be identified as "83K19," "83K19A," and "83K19B").

(c) *Serial number.* A consecutive serial number shall be marked on each package, beginning with the number "1" and continuing in regular sequence. The dealer shall use a separate but similar number series for packages containing specially denatured rum. When any numbering series reaches "1,000,000", the dealer may recommence the series by providing an alphabetical prefix or suffix for each number in the new series.

(d) *Continuation of numbering series.* If a change in proprietorship, name, or trade name occurs, the numbering system in use at the time of the change may be continued. If serial numbers are used at the time of a change, the numbering series in use at the time of the change may be continued.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1360, as amended (26 U.S.C. 5206))

§ 20.180 Record of packages filled.

(a) *Requirement to keep record.* A dealer shall keep a record when filling packages with specially denatured spirits. The dealer shall keep a separate record of packages for each formula of specially denatured alcohol and specially denatured rum.

(b) *Information to be shown.* The dealer shall show the following information on the record of packages filled—

(1) Date packages filled;

(2) Package identification number and number of packages in each identical lot filled, or the serial numbers;

(3) Kinds of packages;

(4) Wine gallons or liters;

(5) Kind of specially denatured spirits and formula number; and

(6) Proof, if the spirits were denatured at other than 190° proof.

(c) *Filing.* The dealer shall retain the record at the premises and shall file it according to the serial numbers or package identification numbers of the packages.

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§ 20.181 Limitations on shipments.

(a) *Shipments made under permit.* A dealer may ship specially denatured spirits to users and other dealers under the consignee's permit, Form 5150.9. The dealer may not ship specially denatured spirits before receiving the consignee's permit, Form 5150.9, unless the shipment has been authorized by the regional director (compliance).

(b) *Shipments of samples.* A dealer may ship samples of specially denatured spirits to the persons authorized to receive them, and in the quantities permitted by Subpart O of this part.

§ 20.182 Bulk shipments.

(a) *Use.* Dealers may ship specially denatured spirits in bulk conveyances. The dealer shall seal the bulk conveyances at the time of filling with railroad or other appropriate serially numbered seals dissimilar in marking from cap seals used by the Bureau of Alcohol, Tobacco and Firearms. Specially denatured alcohol or specially denatured rum from only one consignor may be placed in any one compartment of a bulk conveyance. Not less than the entire contents of any one compartment may be delivered to any one consignee at any one premises.

(b) *Construction of bulk conveyances.* Bulk conveyances shall be constructed to conform to the following requirements:

(1) All openings (including valves) shall be constructed so that they may be sealed to prevent unauthorized access to the contents of the conveyance. Outlets, valves or other openings to or from tank cars may be constructed in such a manner that they may be closed and securely fastened on the inside.

(2) If the conveyance has two or more compartments, the outlets of each shall be so equipped that delivery of any compartment will not afford access to the contents of any other compartment.

(3) Each compartment shall be arranged so that it can be completely drained.

(4) Each tank car or tank truck shall be permanently and legibly marked with its number, capacity in gallons or liters, and the name or symbol of its owner. If the tank car or truck consists of two or more compartments, each compartment shall be identified and the capacity of each shall be marked thereon.

(5) Permanent facilities must be provided on tank trucks to permit ready examination of manholes or other openings.

(6) Calibrated charts, prepared or certified by recognized authorities or engineers, showing the capacity of each compartment in gallons or liters for each inch of depth, must accompany each tank truck, tank ship, or tank barge.

Operations by Users

§ 20.189 Use of specially denatured spirits.

(a) Specially denatured spirits shall not be used for any purpose not authorized in this section.

(b) Specially denatured spirits shall be used (1) in the manufacture of articles in accordance with the formula requirements of Subpart F of this part, (2) for other purposes in accordance with approved statements of process (§ 20.94), or (3) in the case of S.D.A. Formula No. 3–A, 3–C, or 30, for mechanical or laboratory purposes not involving the development of a product.

(c) Each formula of specially denatured spirits may be used only for the purposes authorized under Part 21 of this chapter.

(d) By the use of essential oils and chemicals used in the manufacture of each liquid article, the user shall ensure that the finished article cannot be reclaimed or diverted to beverage use or internal human use.

(e) Each finished article shall conform to the sample, if any, and formula for that article approved by the Director.

§ 20.190 Diversion of articles for internal human use or beverage use.

A regional director (compliance) who has reason to believe that the spirits in any article are being reclaimed or diverted to beverage or internal human use may direct the permittee to modify an approved formula to prevent the reclamation or diversion. The regional director (compliance) may require the permittee to discontinue the use of the

formula until it has been modified and again approved.

§ 20.191 Bulk articles.

Users who convey articles in containers exceeding one gallon may provide the recipient with a photocopy of Subpart G of this part to ensure compliance with requirements relating to articles. Copies of Subpart G are printed as ATF Publication 5150.5 and are available from the ATF Distribution Center, 3800 South Four Mile Run Drive, Arlington, Virginia 22206.

§ 20.192 Manufacturing record.

For each manufacturing process in which specially denatured spirits are used, the user shall record:

(a) Quantity and formula number of new or recovered specially denatured spirits used;

(b) Names and quantities of ingredients used; and

(c) Name, trade name or brand name and alcoholic content of each article or intermediate product manufactured, as applicable

(Approved by the Office of Management and Budget under control number 1512–0337)

Subpart J—Losses

§ 20.201 Liability and responsibility of carrier.

(a) A person or carrier transporting specially denatured spirits to a consignee or returning it to the consignor is responsible for the safe delivery and is accountable for any specially denatured spirits not delivered.

(b) A person or carrier transporting specially denatured spirits in violation of any law or regulation pertaining thereto, is subject to all provisions of law relating to alcohol and the payment of tax thereon, and shall be required to pay the tax.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1314, as amended (26 U.S.C. 5001))

§ 20.202 Losses in transit.

(a) *Reporting losses.* Upon discovering any loss of specially denatured spirits while in transit, the carrier shall immediately inform the consignee, in writing, of the facts and circumstances relating to the loss. In the case of theft, the carrier shall also immediately notify the consignee's regional director (compliance) of the facts and circumstances relating to the loss.

(b) *Recording losses.* At the time the shipment or report of loss is received, the consignee shall determine the quantity of specially denatured spirits lost. The consignee shall note the quantity lost on the receiving document and attach all relevant information to the record of receipt, prescribed in § 20.163. For the purpose of maintaining the records prescribed in Subpart P of this part, receipts of specially denatured spirits will only include the quantity actually received.

(c) *Claims.* A claim for allowances of losses of specially denatured spirits will, as prescribed in § 20.205, be filed:

(1) If the quantity lost in transit exceeds one percent of the total quantity shipped and is more than 10 gallons, the consignee shall file a claim for allowance of the entire quantity lost; or

(2) If the loss was due to theft or other unlawful removal, the consignee shall file a claim for allowance of the entire quantity lost, regardless of the quantity or percentage involved.

(Reporting approved by the Office of Management and Budget under control number 1512–0336; recordkeeping approved by the Office of Management and Budget under control number 1512–0337)

§ 20.203 Losses on premises.

(a) *Recording of losses.* A permittee shall determine and record, in the records prescribed by Subpart P of this part, the quantity of specially denatured spirits or recovered alcohol lost on premises:

(1) When an inventory is taken,

(2) At the time a container is emptied, or

(3) Immediately upon the discovery of any loss due to casualty, theft or other unusual causes.

(b) *Claims.* A claim for allowance of specially denatured spirits will be filed as prescribed in § 20.205, in the following circumstances:

(1) If the quantity lost during the annual accounting period (§ 20.263(c)) exceeds one percent of the quantity to be accounted for during that period, and is more than 50 gallons; or,

(2) If the loss was due to theft or unlawful use or removal, the permittee shall file a claim for allowance of losses regardless of the quantity involved.

(Approved by the Office of Management and Budget under control number 1512–0337)

§ 20.204 Incomplete shipments.

(a) Subject to the provisions of this part (and Part 19 of this chapter for shipments made by a distilled spirits plant), when containers of specially denatured spirits have sustained losses in transit other than by theft, and the shipment will not be delivered to the consignee, the carrier may return the shipment to the shipper.

(b) When specially denatured spirits are returned to the shipper in accordance with this section, the carrier shall inform the shipper, in writing, of the facts and circumstances relating to the loss. In the case of theft, the carrier shall also immediately notify the shipper's regional director (compliance) of the facts and circumstances relating to the loss.

(c) Subject to the limitations for loss prescribed in § 20.202, the dealer or proprietor shall file a claim for allowance of the entire quantity lost, in the same manner provided in that section. The claim shall include the applicable data required by § 20.205.

§ 20.205 Claims.

Claims for allowance of losses of specially denatured spirits or recovered alcohol will be filed, on Form 2635 (5620.8), with the regional director (compliance) within 30 days from the date the loss is ascertained, and will contain the following information:

(a) Name, address, and permit number of claimant;

(b) Identification and location of the container(s) from which the specially denatured spirits or recovered alcohol was lost, and the quantity lost from each container;

(c) Total quantity of specially denatured spirits or recovered alcohol covered by the claim and the aggregate quantity involved;

(d) Date of loss or discovery, the cause or nature of loss, and all relevant facts, including facts establishing whether the loss occurred as a result of negligence, connivance, collusion, or fraud on the part of any person, employee or agent participating in or responsible for the loss;

(e) Name of carrier where a loss in transit is involved. The carrier's statement regarding the loss, prescribed by § 20.202 or § 20.204, will accompany the claim; and,

(f) Any additional evidence which the regional director (compliance) may require to be submitted in support of the claim.

Subpart K—Recovery of Denatured Alcohol, Specially Denatured Rum, or Articles

§ 20.211 General.

(a) Upon filing the appropriate qualifying documents under the applicable provisions of Subparts D and F of this part and receiving approval, a manufacturer using denatured alcohol, specially denatured rum, or articles in an approved process may recover the denatured alcohol, specially denatured rum, or articles. However, a person who recovers (1) completely denatured alcohol with all its original ingredients, (2) an article made with specially

denatured spirits with all its original ingredients (or practically so, to the extent that the presence of the original denaturants and other ingredients in the recovered article make it as nonpotable as the original article), or (3) an article made with completely denatured alcohol with all the denaturants of the completely denatured alcohol, shall not be required to obtain a permit under this part.

(b) For a determination as to whether obtaining a permit under this part is necessary, each person who intends to conduct the recovery operations outlined in paragraph (a) of this section shall forward Form 5150.19 with a sample of the recovered article, to the Director, in accordance with Subpart F of this part.

(c) Restoration and redenaturation may be done by a permittee or by the proprietor of a distilled spirits plant.

§ 20.212 Deposit in receiving tanks.

All recovered denatured alcohol, specially denatured rum, or articles shall be accumulated (after recovery or restoration is completed) in a receiving tank equipped for locking. If the recovered product is to be shipped under § 20.214, it may be accumulated in appropriately marked packages. All denatured alcohol or specially denatured rum recovered shall be measured and a record of the measurement shall be made before being redenatured or reused. Recovered denatured alcohol or specially denatured rum and new denatured alcohol or specially denatured rum shall be kept in separate storage containers properly marked for identification.

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§ 20.213 Reuse of recovered spirits.

(a) If the denatured alcohol or specially denatured rum is recovered in its original denatured state, or practically so, or contains substantial quantities of the original denaturants and other ingredients which make it unfit for beverage or other internal human medicinal use, it may be reused in any approved process without further redenaturation. In these cases, the regional director (compliance) will require samples of the recovered product to be taken from time to time to determine if the product requires redenaturation.

(b) If the denatured alcohol or specially denatured rum is not recovered in its original denatured state, or practically so, it shall be redenatured at the premises of the manufacturer or a denaturer before being used. The regional director (compliance) may require supervision of the redenaturation of the recovered spirits by an ATF officer.

§ 20.214 Shipment for restoration or redenaturation.

Recovered denatured alcohol, recovered specially denatured rum, or recovered articles requiring restoration or redenaturation (or both, unless the restoration or redenaturation is to be done on the manufacturer's premises) shall be shipped to a distilled spirits plant or to a permittee. Packages shall be numbered with a package identification number or serial number in accordance with § 20.179 (b) or (c). Packages shall be labeled with the name, address, and permit number of the manufacturer, the quantity (in gallons) of spirits contained in the package, and the applicable words "Recovered denatured alcohol formula No. ____" or "Recovered specially denatured rum formula No. ____." If the restoration or redenaturation is performed by a user or dealer permittee (not a distilled spirits plant), the permittee shall return the same materials to the same manufacturer and shall not intermingle them with materials received from other sources.

§ 20.215 Shipment of articles and spirits residues for redistillation.

(a) The proprietor of a distilled spirits plant authorized to produce distilled spirits may receive for redistillation (1) articles manufactured under this part which contain denatured spirits, and (2) spirits residues of manufacturing processes related to the manufacture of these articles.

(b) Any person shipping these articles or spirits residues to a distilled spirits plant for redistillation shall—

(1) Identify each package or articles or spirits residues as to contents, and

(2) Mark and serially number each package as provided in § 20.214.

§ 20.216 Record of shipment.

A consignor shipping recovered denatured alcohol, recovered specifically denatured rum, or recovered articles to a distilled spirits plant or a permittee shall prepare and forward a record of shipment to the consignee, in accordance with § 20.171.

(Approved by the Office of Management and Budget under control number 1512–0337)

Subpart L—Destruction

§ 20.221 General.

A permittee may terminate liability for payment of tax, prescribed by law, when specifically denatured spirits or recovered alcohol are destroyed in accordance with this subpart.

§ 20.222 Destruction.

(a) A permittee who destroys specifically denatured spirits or recovered alcohol shall prepare a record which identifies—

(1) The reason for destruction,

(2) The date, time, location and manner of destruction,

(3) The quantity involved and, if applicable, identification of containers, and

(4) The name of the individual who accomplished or supervised the destruction.

(b) This record of destruction shall be maintained with the records required by Subpart P of this part.

(Approved by the Office of Management and Budget under control number 1512–0337)

Subpart M—Return, Reconsignment and Disposition of Specifically Denatured Spirits

§ 20.231 Return.

A permittee may, following the receipt of specifically denatured spirits and for any legitimate reason, return the specifically denatured spirits to any distilled spirits plant or dealer if the consignee consents to the shipment. The consignor shall prepare a record of shipment in accordance with § 20.171.

(Approved by the Office of Management and Budget under control number 1512–0337)

§ 20.232 Reconsignment in transit.

(a) *Reconsignment.* Specifically denatured spirits may be reconsigned to another permittee or returned to the consignor if, prior to or on arrival at the premises of the consignee, the alcohol is determined to be unsuitable for the intended purpose, was shipped in error, or, for any bona fide reason, is not accepted by the consignee or carrier.

(b) *Bond coverage.* In the case of reconsignment, the bond, if required, of the permittee to whom the specifically denatured spirits were reconsigned will cover the specifically denatured spirits while in transit. In the case of the return of a shipment, the bond, if required, of the consignor will cover the specifically denatured spirits while in transit.

(c) *Records of reconsignment.* In the case of reconsignment, the consignor shall cancel the initial record of shipment and prepare a new record of shipment, if the shipment is to another permittee. The new record of shipment will be annotated "Reconsignment."

(Approved by the Office of Management and Budget under control number 1512–0337)

§ 20.233 Disposition after revocation of permit.

When any permit issued on Form 5150.9 is revoked, all specifically denatured spirits in transit and all specifically denatured spirits on the former permit premises, may be lawfully possessed by the former permittee for the exclusive purpose of disposing of the specially denatured spirits, for a period of 60 days following the date of revocation. Any specifically denatured spirits or recovered alcohol not disposed of within the specific 60-day period, is subject to seizure and forfeiture.

§ 20.234 Disposition on permanent discontinuance of use.

(a) *Specially denatured spirits.* Specially denatured spirits on hand at the time of discontinuance of use, may be disposed of by (1) returning the specially denatured spirits to a distilled spirits plant or dealer, as provided in § 20.231, (2) destruction, as provided in § 20.222, or (3) shipped to another user, as provided in § 20.235.

(b) *Recovered denatured alcohol, recovered specially denatured rum, or recovered articles.* Upon permanent discontinuance of use, a permittee may dispose of recovered denatured alcohol, recovered specially denatured rum, or recovered articles by (1) shipment to a distilled spirits plant, as provided in § 20.215 for articles and spirits residues, (2) destruction, as provided in § 20.222, or (3) upon the filing of an application with the regional director (compliance), any other approved method.

(Approved by the Office of Management and Budget under control number 1512–0336)

§ 20.235 Disposition to another user.

(a) A user may dispose of specially denatured spirits to another permittee or Government agency.

(b) The user shall prepare a record of shipment in accordance with § 20.171. The user's copy of the record of shipment shall include an explanation of the reason for the disposition.

(c) The regional director (compliance) may require a user to apply for and obtain a dealer's permit, if shipments under this section are excessive.

(Approved by the Office of Management and Budget under control number 1512–0337)

Subpart N—Use of Specially Denatured Spirits by the United States or Government Agency

§ 20.241 General.

The United States or any of its Government agencies may withdraw specially denatured spirits from a distilled spirits plant or dealer under this part, as authorized by 26 U.S.C. 5214(a)(2) and 5271. Before any specially denatured spirits may be withdrawn, a permit to procure the spirits shall be obtained from the Director. A bond is not required for any Government agency of the United States to procure specially denatured spirits.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1362, as amended (26 U.S.C. 5214))

§ 20.242 Application and permit, Form 5150.33.

(a) All permits previously issued to the United States or any of its Government agencies on Form 1444 shall remain valid and will be regulated by the same provisions of this subpart as it refers to permits on Form 5150.33.

(b) A Government agency shall apply for a permit to obtain specially denatured spirits on Form 5150.33, to the Director. Upon approval, Form 5150.33 will be returned to the Government agency, and will serve as authority to procure specially denatured spirits.

(c) A Government agency may specify on its application for a permit to procure specially denatured spirits, Form 5150.33, that it desires a single permit authorizing all sub-agencies under its control to procure specially denatured spirits; or each Government location (agency, department, bureau, etc.) desiring to procure specially denatured spirits may individually submit an application for a permit on Form 5150.33.

(d) An application for a permit shall be signed by the head of the agency or sub-agency or the incumbent of an office which is authorized by the head of the agency or sub-agency, to sign. Evidence of authorization to sign for the head of the agency or sub-agency shall be furnished with the application.

(e) Specially denatured spirits obtained by Government agencies may not be used for non-Government purposes.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1370, as amended (26 U.S.C. 5271))

§ 20.243 Procurement of specially denatured spirits.

Government agencies shall retain the original permit, Form 5150.33, on file. When placing an initial order with a vendor, the agency shall forward a photocopy of its permit with the purchase order for specially denatured spirits. In the case of an agency holding a single permit for use of other sub-agencies, the photocopy of the permit will contain an attachment listing all other locations authorized to procure specially denatured spirits. Any subsequent purchases from the same vendor need only contain the permit number on the purchase order.

§ 20.244 Receipt of shipment.

On receipt of a shipment of specially denatured spirits, a representative of the Government agency shall inspect the shipment for any loss or deficiency. In the case of loss or deficiency, the agency shall annotate the receiving document and forward a copy to the regional director (compliance) of the region from which the shipment was consigned.

§ 20.245 Discontinuance of use.

When a Government agency, holding a permit issued under this subpart, no longer intends to procure and use specially denatured spirits, the permit shall be returned to the Director for cancellation. All photocopies of the permit furnished to vendors shall be returned to the agency for destruction.

§ 20.246 Disposition of specially denatured spirits on discontinuance of use.

At the time of discontinuance of use of specially denatured spirits, a Government agency may dispose of any excess specially denatured spirits (a) to another Government agency holding a permit, (b) by returning the specially denatured spirits to a vendor, or (c) in any manner authorized by the Director. Specially denatured spirits may not be disposed of to the general public.

Subpart O—Samples of Specially Denatured Spirits

§ 20.251 General.

(a) Applicants and prospective applicants for permits to use specially denatured spirits may obtain samples of specially denatured spirits for experimental purposes or for preparing samples of finished articles for submission on request by the Director. Samples of specially denatured spirits may only be obtained from distilled spirits plants or dealers.

(b) Samples not larger than five gallons per calendar year may be obtained without a permit. Dealers shall maintain records to ensure that samples of specially denatured spirits dispensed to nonpermittees do not exceed five gallons per calendar year.

(c) Samples larger than five gallons per calendar year may be obtained without a permit as described in § 20.252.

(d) Samples of specially denatured spirits shall not be used to manufacture articles for commercial sale.

(Approved by the Office of Management and Budget under control number 1512–0337)

§ 20.252 Samples larger than five gallons.

(a) *General.* The regional director (compliance) may waive the requirement to obtain a permit under

Subpart D of this part if a nonpermittee can demonstrate that more than five gallons is necessary to determine if an Industrial Use Permit is desired.

(b) *Application.* A nonpermittee who wishes to obtain more than five galllons of specially denatured spirits to determine if an Industrial Use Permit is desired, shall file a letterhead application with the regional director (compliance) of the region in which the nonpermittee's premises are located. The letter shall describe why the requested quantity is necessary.

(c) *Approval.* If the letterhead application is approved, the nonpermittee shall submit it to the proprietor of a distilled spirits plant or a dealer with the order for the sample of specially denatured spirits.

(Approved by the Office of Management and Budget under control number 1512–0336)

§ 20.253 Labels for samples.

When a sample of specially denatured spirits is withdrawn from a dealer's premises, that dealer shall attach a label to the sample which shows the following information:

(a) The word "Sample";

(b) The dealer's name, address, and permit number;

(c) The words "Specially Denatured Alcohol" or "Specially Denatured Rum";

(d) The quantity; and

(e) The formula number.

Subpart P—Records and Reports

§ 20.261 Records of completely denatured alcohol.

When requested by the regional director (compliance), any person who receives, packages, stores, disposes of, or uses completely denatured alcohol shall keep records of all transactions in completely denatured alcohol which will enable ATF officers to verify and trace receipt, packaging, storage, usage, and disposal of the spirits, and to determine whether there has been compliance with law and regulations. However, on sales in quantities of less than 5 gallons, only the total quantity disposed of daily need be recorded.

(Approved by the Office of Management and Budget under control number 1512–0337)

§ 20.262 Dealer's records of specially denatured spirits.

(a) Each dealer shall maintain separate records of each formula of new specially denatured spirits—

(1) received, as required by § 20.163,

(2) packaged, as required by § 20.180,

(3) destroyed, as required by § 20.222,

(4) lost, as required by §§ 20.202–20.204, and

(5) transferred to another permittee or a distilled spirits plant, as required by §§ 20.171, 20.216, and 20.231.

(b) Each dealer shall maintain separate records of each formula of recovered specially denatured spirits for each of the transactions listed in paragraphs (a)(1) through (a)(5) of this section.

(c) Once in each calendar year, and when requested by an ATF officer, each dealer shall perform and record a balanced accounting of each formula of new and recovered specially denatured spirits using the records required by § 20.170 and this section.

(d) When requested, the dealer shall submit the accounting required by paragraph (c) of this section to the regional director (compliance).

(Approved by the Office of Management and Budget under control number 1512–0337)

§ 20.263 User's records of specially denatured spirits.

(a) Each user shall maintain separate records of each formula of new specially denatured spirits—

(1) Received, as required by §20.163,

(2) Recovered, as required by § 20.212,

(3) Used, as required by § 20.192,

(4) Destroyed, as required by § 20.222,

(5) Lost, as required by §§ 20.202–20.203, and

(6) Transferred to another permittee or a distilled spirits plant, as required by §§ 20.216, 20.231, and 20.235.

(b) Each user shall maintain separate records of each formula of recovered specially denatured spirits for each of the transactions listed in paragraphs (a)(1) through (a)(6) of this section.

(c) Once in each calendar year, and when requested by an ATF officer, each user shall perform and record a balanced accounting of each formula of new and recovered specially denatured spirits using the records required by § 20.170 and this section.

(d) When requested, the user shall submit the accounting required by paragraph (c) of this section to the regional director (compliance).

(Approved by the Office of Management and Budget under control number 1512–0337)

§ 20.264 User's records and report of products and processes.

(a) *Records.* (1) Each user shall maintain separate accountings of—

(i) The number of gallons of each formula of new specially denatured spirits used for each product or process, recorded by the code number prescribed by § 21.141 of this chapter.

(ii) The number of gallons of each formula of recovered specially denatured spirits used for each product or process, recorded by the code number prescribed by § 21.141 of this chapter.

(2) Each user who recovers specially denatured spirits shall maintain separate accountings of the number of gallons of each formula of specially denatured spirits recovered from each product or process, recorded by the code number prescribed by § 21.141 of this chapter.

(3) Product or process code numbers are shown on approved formula and statement of process forms. For an article made in accordance with a general-use formula, the user will refer to § 21.141 of this chapter and record the applicable product or process code number.

(b) *Report.* Each user shall submit an annual report, Form 5150.18, for the period from July 1 through June 30, summarized from the records required by this section. The report shall be filed no later than July 15 following the end of the accounting period.

(Approved by the Office of Management and Budget under control number 1512–0337)

§ 20.265 Retention of invoices.

(a) Any person required to keep records under this part shall retain copies of invoices which will enable ATF officers to readily obtain the details regarding:

(1) Purchases of all essential oils, chemicals, and other materials used in manufacturing articles, including the name and address of the vendor, and the quantity;

(2) Purchases of articles containing specially denatured spirits for reprocessing, or purchases of those articles for bottling, repackaging, and/or resale, including the name and address of the vendor and the quantity; and

(3) Dispositions of all articles manufactured or received, including in each case the name and address of the person to whom sold or otherwise disposed of.

(b) The regional director (compliance) may, on application filed by the permittee, waive the requirements for retaining invoices if the quantity sold to any person during a calendar month does not exceed 25 gallons, and if a waiver will not hinder the effective administration of this part and will not pose a jeopardy to the revenue.

(Approved by the Office of Management and Budget under control number 1512–0336)

§ 20.266 Time for making entries in records.

Any person who conducts an operation which is required to be recorded under this part, shall enter that operation in the records on the same

day on which the operation occurred. However, the daily posting of records may be deferred to conform to the permittee's normal accounting cycle if (a) supporting or supplemental records are prepared at the time of the operation, and these supporting or supplemental records are to be used to post the daily record, and (b) the deferral of posting does not pose a jeopardy to the revenue.

§ 20.267 Filing and retaining records.

Any person who is required to maintain records of operations under this part shall file and retain records and copies of reports in the following manner:

(a) Keep on file for a period of not less than 3 years after the date of the report covering the operation, in such a way as to allow inspection by ATF officers, all those records of operations, all supporting or supplemental records, and copies of all reports submitted to the regional director (compliance). However, the regional director (compliance) may require that the records and copies of reports be kept for an additional period, not to exceed 3 years.

(b) File all records and copies of reports at the premises where the operations are conducted.

(c) Make the files of records and copies of reports available to ATF officers during regular business hours for examination.

§ 20.268 Photographic copies of records.

(a) *General.* Permittees may record, copy, or reproduce required records. Any process may be used which accurately reproduces the original record, and which forms a durable medium for reproducing and preserving the original record.

(b) *Copies of records treated as original records.* Whenever records are reproduced under this section, the reproduced records will be preserved in conveniently accessible files, and provisions will be made for examining, viewing, and using the reproduced records the same as if they were the original record, and they will be treated and considered for all purposes as though they were the original record. All provisions of law and regulations applicable to the original are applicable to the reproduced record. As used in this section, "original record" means the record required by this part to be maintained or preserved by the permittee, even though it may be an executed duplicate or other copy of the document.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1395, as amended (26 U.S.C. 5555))

PART 21—FORMULAS FOR DENATURED ALCOHOL AND RUM

Section C. Part 21 is amended as follows:

§ 21.4 [Amended]

Paragraph 1. Section 21.4 is amended by replacing "Part 211" with "Part 20".

Par. 2. Section 21.11 is amended to revise the definition of *Manufacturer or user* to read as follows:

§ 21.11 Meaning of terms.

* * * * *

Manufacturer or user. A person who holds a permit, issued under Part 20 of this chapter, to withdraw and use specially denatured alcohol or specially denatured rum, or to recover completely or specially denatured alcohol, or specially denatured rum, or articles manufactured with denatured spirits, or a distilled spirits plant proprietor qualified under Part 19 of this chapter as a processor.

* * * * *

§ 21.31 [Amended]

Par. 3. The second sentence of paragraph (c) of § 21.31 is amended by replacing "Part 211" with "Part 20".

Par. 4. Paragraph (b) of § 21.32 is amended to change the name of product code 041 to read "041. Proprietary solvents" (deleting the words "(standard formulations)") and to change the name of product code 043 to read "043. Solvents, special (restricted sale)" (deleting the word "industrial").

§ 21.32 Formula No. 1.

* * * * *

(b) * * *

* * * * *

041. Proprietary solvents.

* * * * *

043. Solvents, special (restricted sale)

* * * * *

Par. 5. Paragraph (b) of § 21.35 is amended to add a listing for "041. Proprietary solvents" as an authorized use for Formula No. 3–A and to change the name of product code 043 to read "043. Solvents, special (restricted sale)" (deleting the word "industrial").

§ 21.35 Formula No. 3–A.

* * * * *

(b) * * *

* * * * *

041. Proprietary solvents.

043. Solvents, special (restricted sale)

* * * * *

Par. 6. Section 21.37 is amended to change the name of product code 043 to read "043. Solvents, special (restricted sale)" (deleting the word "industrial") and to revise paragraph (c) on conditions governing the use of Formula No. 3–C.

§ 21.37 Formula No. 3–C.

* * * * *

(b) * * *

* * * * *

043. Solvents, special (restricted sale)

* * * * *

(c) *Conditions governing use.* This formula shall not be used in manufacturing Reagent alcohol general-use formula under § 20.117 of this chapter.

Par. 7. In § 21.141, the table entitled "USES OF SPECIALLY DENATURED ALCOHOL" is amended to change the names of the entries for "Proprietary solvents" (deleting the words "(standard formulations)") and "Solvents, special (restricted sale)" (deleting the word "industrial").

§ 21.141 List of products and processes using specially denatured alcohol and rum, and formulas authorized therefor.

* * * * *

Uses of Specially Denatured Alcohol

Product or process	Code No.	Formulas authorized
* * *	*	*
Proprietary solvents	041	1, 3–A
* * *	*	*
Solvents, special (restricted sale)	043	1, 3–A, 3–C

* * * * *

PART 213—[REVISED AND REDESIGNATED AS PART 22]

Section D. Part 213 is revised and redesignated as Part 22 as follows:

1. The regulations in this part supersede 27 CFR Part 213 in its entirety.

2. These regulations do not affect any act done or any liability or right accruing, or accrued, or any suit or proceeding had or commenced before the effective date of these regulations.

3. The regulations in this part are effective on June 4, 1985.

PART 22—DISTRIBUTION AND USE OF TAX-FREE ALCOHOL

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Authority: August 16, 1954, Chapter 736, 68A Stat. 917, as amended (26 U.S.C. 7805); Sec. 201, Pub. L. 85–859, 72 Stat. 1370–1373, as amended (26 U.S.C. 5271–5275), unless otherwise noted.

Subpart A—Scope

§ 22.1 General.

The regulations in this part relate to tax-free alcohol and cover the procurement, storage, use, and recovery of tax-free alcohol.

§ 22.2 Territorial extent.

This part applies to the several States of the United States and the District of Columbia.

§ 22.3 Related regulations.

Regulations related to this part are listed below:

27 CFR Part 19—Distilled Spirits Plants.
27 CFR Part 30—Gauging Manual.
27 CFR Part 196—Stills.
27 CFR Part 200—Rules of Practice in Permit Proceedings.
27 CFR Part 250—Liquors and Articles from Puerto Rico and the Virgin Islands.
27 CFR Part 251—Importation of Distilled Spirits, Wines and Beer.
31 CFR Part 225—Acceptance of Bonds, Notes, or Other Obligations Issued or Guaranteed by the United States as Security in Lieu of Surety or Sureties on Penal Bonds.

Subpart B—Definitions

§ 22.11 Meaning of terms.

When used in this part and in forms prescribed under this part, the following terms have the meanings given in this section. Words in the plural form include the singular, and vice versa, and words importing the masculine gender include the feminine. The terms "includes" and "including" do not exclude things not enumerated which are in the same general class.

Alcohol. Spirits having a proof of 190° or more when withdrawn from bond, including all subsequent dilutions and mixtures thereof, from whatever source or by whatever process produced.

Area supervisor. The supervisory officer of the Bureau of Alcohol, Tobacco and Firearms area office.

ATF officer. An officer or employee of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any function relating to the administration or enforcement of this part.

CFR. The Code of Federal Regulations.

Clinic. When used in this part the term includes veterinary clinics.

Delegate. Any officer, employee, or agency of the Department of the Treasury authorized by the Secretary of the Treasury directly, or indirectly by one of more redelegations of authority, to perform the function mentioned or described in the context.

Director. The Director, Bureau of Alcohol, Tobacco and Firearms, the Department of the Treasury, Washington, DC.

Executed under penalties of perjury. Signed with the prescribed declaration under the penalties of perjury as provided on or with respect to the claim, form, or other document or, where no form of declaration is prescribed, with the declaration "I declare under the penalties of perjury that this _____ (insert type of document, such as statement, report, certificate, application, claim, or other document), including the documents submitted in support thereof, has been examined by me and, to the best of my knowledge and belief, is true, correct, and complete."

Fiduciary. A guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity for any person.

Gallon or wine gallon. The liquid measure equivalent to the volume of 231 cubic inches.

Hospital. When used in this part the term includes veterinary hospitals.

Initial order. The first order of tax-free alcohol placed by a permittee or Governmental agency with a distilled spirits plant or vendor, and, the first order placed following the issuance of an amended or corrected permit.

Liter or litre. A metric unit of capacity equal to 1,000 cubic centimeters of alcohol, and equivalent to 33.814 fluid ounces. A liter is divided into 1,000 milliliters (ml). The symbol for milliliter or milliliters is "ml".

Permit. The document issued under 26 U.S.C. 5271(a), authorizing a person to withdraw tax-free alcohol from the premises of a distilled spirits plant and use such alcohol under specified conditions.

Permittee. Any person holding a permit, on Form 5150.9, issued under this part to withdraw and use tax-free alcohol.

Person. An individual, trust, estate, partnership, association, company, or corporation.

Proof. The ethyl alcohol content of a liquid at 60° Fahrenheit, stated as twice the percent of ethyl alcohol by volume.

Proof gallon. A gallon at 60° Fahrenheit which contains 50 percent of volume of ethyl alcohol having a specific gravity of 0.7939 at 60° Fahrenheit referred to water at 60° Fahrenheit as unity, or the alcoholic equivalent thereof.

Region. A Bureau of Alcohol, Tobacco and Firearms Region.

Regional director (compliance). The principal ATF regional official responsible for administering regulations in this part.

Restoration. Restoring to the original state of recovered tax-free alcohol, including redistillation of the recovered alcohol to 190° or more of proof and the removal of foreign materials by redistillation, filtration, or other suitable means.

Secretary. The Secretary of the Treasury or his delegate.

Spirits or distilled spirits. The substance known as ethyl alcohol, ethanol, or spirits of wine, having a proof of 190° or more when withdrawn from bond, including all subsequent dilutions and mixtures thereof, from whatever source or by whatever process produced.

This chapter. Title 27, Code of Federal Regulations, Chapter I (27 CFR Chapter I).

U.S.C. The United States Code.

Subpart C—Administrative Provisions

Authorities

§ 22.21 Forms prescribed.

(a) The Director is authorized to prescribe all forms required by this part, including bonds, applications, notices, claims, reports, and records. All of the information called for in each form shall be furnished as indicated by the headings on the form and the instructions on or pertaining to the form. In addition, information called for in each form shall be furnished as required by this part.

(b) ATF Publication 1322.1, Public Use Forms, is a numerical listing of forms issued by the Bureau of Alcohol, Tobacco and Firearms. This publication is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

(c) Requests for forms should be mailed to the ATF Distribution Center, 3800 South Four Mile Run Drive, Arlington, Virginia 22206.

§ 22.22 Alternate methods or procedures; and emergency variations from requirements.

(a) *Alternate methods or procedures.*—(1) *Application.* A permittee, after receiving approval from the Director, may use an alternate method or procedure (including alternate construction or equipment) in lieu of a method or procedure prescribed by this part. A permittee wishing to use an alternate method or procedure may apply to the regional director (compliance). The permittee shall describe the proposed alternate method or procedure and shall set forth the reasons for its use.

(2) *Approval by Director.* The Director may approve the use of an alternate method or procedure if:

(i) The applicant shows good cause for its use;

(ii) It is consistent with the purpose and effect of the procedure prescribed by this part, and provides equal security to the revenue;

(iii) It is not contrary to law; and

(iv) It will not cause an increase in cost to the Government and will not hinder the effective administration of this part.

(3) *Exceptions.* The Director will not authorize an alternate method or procedure relating to the giving of a bond.

(4) *Conditions of approval.* A permittee may not employ an alternate method or procedure until the Director has approved its use. The permittee shall, during the terms of the authorization of an alternate method or procedure, comply with the terms of the approved application.

(b) *Emergency variations from requirements*—(1) *Application.* When an emergency exists, a permittee may apply to the regional director (compliance) for a variation from the requirements of this part relating to construction, equipment, and methods of operation. The permittee shall describe the proposed variation and set forth the reasons for using it.

(2) *Approval by regional director (compliance).* The regional director (compliance) may approve an emergency variation from requirements if:

(i) An emergency exists;

(ii) The variation from the requirements is necessary;

(iii) It will afford the same security and protection to the revenue as intended by the specific regulations;

(iv) It will not hinder the effective administration of this part; and

(v) It is not contrary to law.

(3) *Conditions of approval.* A permittee may not employ an emergency variation from the requirements until the regional director (compliance) has approved its use. Approval of variations from requirements are conditioned upon compliance with the conditions and limitations set forth in the approval.

(4) *Automatic termination of approval.* If the permittee fails to comply in good faith with the procedures, conditions or limitations set forth in the approval, authority for the variation from requirements is automatically terminated and the permittee is required to comply with prescribed requirements of regulations from which those variations were authorized.

(c) *Withdrawal of approval.* The Director may withdraw approval for an alternate method or procedure, or the regional director (compliance) may withdraw approval for an emergency variation from requirements, approved under paragraph (a) or (b) of this section, if the Director or the regional director (compliance) finds that the revenue is jeopardized or the effective administration of this part is hindered by the approval.

(Approved by the Office of Management and Budget under control number 1512–0335)

(Act of August 16, 1954, Chapter 736, 68A Stat. 917 (26 U.S.C. 7805); (Sec. 201, Pub. L. 85–859, 72 Stat. 1395, as amended (26 U.S.C. 5552))

§ 22.23 Allowance of claims.

The regional director (compliance) is authorized to allow claims for losses of tax-free alcohol.

§ 22.24 Permits.

(a) The Director shall issue permits on Form 5150.33 covering the withdrawal of tax-free alcohol by the United States or a Governmental agency as provided in § 22.172.

(b) The regional director (compliance) shall issue the permit to withdraw and use tax-free alcohol, Form 5150.9 required under this part.

§ 22.25 Bonds and consents of surety.

The regional director (compliance) is authorized to approve all bonds and consents of surety required by this part.

§ 22.26 Right of entry and examination.

An ATF officer may enter, during business hours or at any time operations are being conducted, any premises on which operations governed by this part are conducted to inspect the records required by this part to be kept on those premises. An ATF officer may also inspect and take samples of tax-free alcohol to which those records relate.

§ 22.27 Detention of containers.

(a) *Summary detention.* An ATF officer may detain any container containing, or supposed to contain, alcohol when the ATF officer believes the alcohol was withdrawn, sold, transported, or used in violation of law of this part. The ATF officer shall hold the container at a safe place until it is determined if the detained property is liable by law to forfeiture.

(b) *Limitations.* Summary detention may not exceed 72 hours without process of law or intervention of the regional director (compliance). The person possessing the container immediately before its detention may prepare a waiver of the 72 hours limitation to have the container kept on its premises during detention.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1375, as amended (26 U.S.C. 5311))

Liability for Tax

§ 22.31 Persons liable for tax.

All tax-free alcohol removed, sold, transported, or used in violation of law or regulations in this part, is subject to all provisions of law relating to taxable alcohol, including the requirement for payment of tax on the alcohol. The person removing, selling, transporting, or using tax-free alcohol in violation of law or regulations pertaining to tax-free alcohol shall be required to pay the distilled spirits tax on the alcohol.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1314, as amended (26 U.S.C. 5001))

Destruction of Marks and Brands

§ 22.33 Time of destruction of marks and brands.

(a) Any person who empties a package containing tax-free alcohol shall immediately destroy or obliterate the marks, brand, and labels required by this chapter to be placed on packages of tax-free alcohol.

(b) A person may not destroy or obliterate the marks, brands or labels until the package or drum has been emptied.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5206))

Document Requirements

§ 22.35 Execution under penalties of perjury.

(a) When any form or document prescribed by this part is required to be executed under penalties of perjury, the permittee or other authorized person shall:

(1) Insert the declaration "I declare under the penalties of perjury that I have examined this _____ (insert the type of document such as claim, application, statement, report, certificate), including all supporting documents, and to the best of my knowledge and belief, it is true, correct, and complete"; and

(2) Sign the document.

(b) When the required document already bears a perjury declaration, the permittee or other authorized person shall sign the document.

(Act of August 16, 1954, 68A Stat. 745 (26 U.S.C. 6056))

§ 22.36 Filing of qualifying documents.

All documents returned to a permittee or other person as evidence of compliance with requirements of this part, or as authorization, shall except as otherwise provided, be kept readily available for inspection by an ATF officer during business hours.

Subpart D—Qualification

Application for Permit, Form 5150.22

§ 22.41 Application for industrial alcohol user permit.

(a) *Users.* Each person desiring to withdraw and use tax-free alcohol shall, before commencing business, file an application on Form 5150.22 for, and obtain a permit, Form 5150.9, except permittees who were previously qualified to withdraw and use tax-free alcohol on the effective date of this regulation.

(b) *Filing.* All applications and necessary supporting documents, as required by this subpart, shall be filed with the regional director (compliance). All data, written statements, affidavits, and other documents submitted in support of the application are considered a part of the application.

(1) Applications filed as provided in this section, shall be accompanied by evidence establishing the authority of the officer or other person to execute the application.

(2) A State, political subdivision thereof, or the District of Columbia, may specify in the application that it desires a single permit authorizing the withdrawal and use of tax-free alcohol in a number of institutions under its control. In this instance, the application, Form 5150.22, or an attachment, shall clearly show the method of distributing and accounting for the tax-free alcohol to be withdrawn.

§ 22.42 Data for application, Form 5150.22.

(a) Unless waived under § 22.43, each application on Form 5150.22 shall include as applicable, the following information:

(1) Serial number and purpose for which filed.

(2) Name and principal business address.

(3) Based on the bona fide requirements of the applicant, the estimated quantity of tax-free alcohol in proof gallons, which will be procured during a 12-month period (one calendar year).

(4) Location, or locations where tax-free alcohol is to be used, if different from the business address.

(5) Statement showing the specific manner in which, or purposes for which, tax-free alcohol will be withdrawn and used.

(6) Statement that tax-free alcohol will be stored in accordance with the requirements of this part.

(7) Statement as to the type of business organization and of the persons interested in the business, supported by the items of information listed in § 22.45.

(8) Listing of the principal equipment for the recovery and restoration of alcohol (including the serial number, kind, capacity, name and address of manufacturer, and name and address of owner if different from applicant).

(9) List of any trade name(s) under which the applicant will conduct operations, and the offices where these names are registered.

(10) Listing of the titles of offices, the incumbents of which are responsible for the tax-free alcohol activities of the business and are authorized by the articles of incorporation, the bylaws, or the board of directors to act and sign on behalf of the applicant.

(11) Other information and statements as the regional director (compliance) may require to establish that the applicant is entitled to the permit. In the case of a corporation or other legal entity the regional director (compliance) may require information which establishes that the officers, directors and principal stockholders whose names are required to be furnished under § 22.45 (a)(2) and (c) have not violated or conspired to violate any law of the United States relating to intoxicating liquor or have been convicted of any offense under Title 26, U.S.C., punishable as a felony or of any conspiracy to commit such offense.

(b) If any of the information required by paragraphs (a)(4) through (a)(10) of this section is on file with any regional director (compliance), the applicant may incorporate this information by reference by stating that the information is made a part of the application.

§ 22.43 Exceptions to application requirements.

(a) The regional director (compliance) may waive detailed application and supporting data requirements, other than the requirements of paragraphs (a)(1) through (a)(6) of § 22.42, and of paragraph (a)(8) of that section as it relates to recovery, in the case of—

(1) All applications, Form 5150.22 filed by States or political subdivisions thereof or the District of Columbia, and

(2) Applications, Form 5150.22, filed by applicants, if their annual withdrawal and usage of tax-free alcohol does not exceed 1,500 proof gallons.

(b) The waiver provided for in this section will terminate when the permittee, other than States or political subdivisions thereof or the District of Columbia, files an application to amend their permit, Form 5150.9, to increase the annual withdrawal and usage of tax-free alcohol in excess of 1,500 proof gallons. In this case the permittee will furnish information in respect to the previously waived items, as provided in § 22.57(a)(2).

§ 22.44 Disapproval of application.

The regional director (compliance) may, in accordance with Part 200 of this chapter, disapprove an application for a permit to withdraw and use tax-free alcohol, if on examination of the application (or inquiry), the regional director (compliance) has reason to believe that:

(a) The applicant is not authorized by law and regulations to withdraw and use alcohol free of tax;

(b) The applicant (including, in the case of a corporation, any officer, director, or principal stockholder, and, in the case of a partnership, a partner) is, by reason of their business experience, financial standing, or trade connections, not likely to maintain operations in compliance with 26 U.S.C. Chapter 51, or regulations issued under this part;

(c) The applicant has failed to disclose any material information required, or has made any false statement as to any material fact, in connection with their application; or

(d) The premises at which the applicant proposes to conduct the business are not adequate to protect the revenue.

§ 22.45 Organizational documents.

The supporting information required by § 22.42(a)(7) includes, as applicable:

(a) *Corporate documents.* (1) Certified true copy of the certificate of incorporation, or certified true copy of certificate authorizing the corporation to operate in the State where the premises are located (if other than that in which incorporated).

(2) Certified list of names and addresses of officers and directors, along with a statement designating which corporate officers, if applicable, are directly responsible for the tax-free alcohol activities of the business.

(3) Statement showing the number of shares of each class of stock or other evidence of ownership, authorized and outstanding, the par value thereof, and the voting rights of the respective owners or holders.

(b) *Articles of partnership.* True copy of the articles of partnership or association, if any, or certificate of partnership or association where required to be filed by any State, county, or municipality.

(c) *Statement of interest.* (1) Names and addresses of persons owning 10% or more of each of the classes of stock in the corporation, or legal entity, and the nature and amount of the stockholding or other interest of each, whether such interest appears in the name of the interested party or in the name of another for him or her. If a corporation is wholly owned or controlled by another corporation, persons owning 10% or more of each of the classes of stock of the parent corporation are considered to be the persons interested in the business of the subsidiary, and the names and addresses of such persons shall be submitted to the regional director (compliance) if specifically requested.

(2) In the case of an individual owner or partnership, name and address of every person interested in the business, whether such interest appears in the name of the interested party or in the name of another for the interested person.

Industrial Alcohol User Permit, ATF F 5150.9

§ 22.48 Conditions of permits.

Permits to withdraw and use tax-free alcohol will designate the acts which are permitted, and include any limitations imposed on the performance of these acts. All of the provisions of this part relating to the use or recovery of tax-free alcohol are considered to be included in the provisions and conditions of the permit, the same as if set out in the permit.

§ 22.49 Duration of permits.

Permits to withdraw and use tax-free alcohol are continuing unless automatically terminated by the terms thereof, suspended or revoked as provided in § 22.51, or voluntarily surrendered. The provisions of § 22.58 are considered part of the terms and conditions of all permits.

§ 22.50 Correction of permits.

If an error on a permit is discovered, the permittee shall immediately return the permit to the regional director (compliance) for correction.

§ 22.51 Suspension or revocation of permits.

The regional director (compliance) may institute proceedings under Part 200 of this chapter to suspend or revoke a permit whenever there is reason to believe that the permittee—

(a) Has not in good faith complied with the provisions of 26 U.S.C. Chapter 51, or regulations issued under that chapter;

(b) Has violated the conditions of that permit;

(c) Has made any false statements as to any material fact in the application for the permit;

(d) Has failed to disclose any material information required to be furnished;

(e) Has violated or conspired to violate any law of the United States relating to intoxicating liquor or has been convicted of an offense under Title 26, U.S.C., punishable as a felony or of any conspiracy to commit such offense;

(f) Is, by reason of its operations, no longer warranted in procuring and using tax-free alcohol authorized by the permit; or

(g) Has not engaged in any of the operations authorized by the permit for a period exceeding two years.

§ 22.52 Rules of practice in permit proceedings.

The regulations of Part 200 of this chapter apply to the procedure and practice in connection with the disapproval of any application for a permit and in connection with suspension or revocation of a permit.

§ 22.53 Powers of attorney.

An applicant or permittee shall execute and file with the regional director (compliance) a Form 1534, in accordance with the instructions on the form, for each person authorized to sign or to act in its behalf. Form 1534 is not required for persons whose authority is furnished in accordance with § 22.42(a)(10).

§ 22.54 Photocopying of permits.

A permittee may make photocopies of its permit exclusively for the purpose of furnishing proof of authorization to withdraw tax-free alcohol from a distilled spirits plant.

§ 22.55 Posting of permits.

Permits issued under this part will be kept posted and available for inspection on the permit premises.

Changes After Original Qualification

§ 22.57 Changes affecting applications and permits.

(a) *General.*—(1) *Changes affecting application.* When there is a change relating to any of the information contained in, or considered a part of the application on Form 5150.22 for a permit, the permittee shall, within 30 days (except as otherwise provided in this subpart) file a written notice with the regional director (compliance) to amend the application.

(2) *Changes affecting waivers.* When any waiver under § 22.43 is terminated by a change to the application, the permittee shall include the current information as to the item previously waived with the written notice required in paragraph (a)(1) of this section.

(3) *Changes affecting permit.* When the terms of a permit are affected by a change, the written notice required by paragraph (a)(1) of this section (except as otherwise provided in this subpart) will serve as an application to amend the permit.

(4) *Form of notice.* All written notices to amend an application on Form 5150.22 with—

(i) Identify the permittee;

(ii) Contain the permit identification number;

(iii) Explain the nature of the change and contain any required supporting documents;

(iv) Identify the serial number of the applicable application, Form 5150.22; and

(v) Be consecutively numbered and signed by the permittee or any person authorized to sign on behalf of the permittee.

(b) *Amended application.* The regional director (compliance) may require a permittee to file an amended application on Form 5150.22 when the number of changes to the previous application are determined to be excessive, or when a permittee has not timely filed the written notice prescribed in paragraph (a)(1) of this section. If items on the amended application remain unchanged, they will be marked "No change since Form 5150.22, Serial No. _____."

(c) *Changes in officers, directors and stockholders*—(1) *Officers.* In the case of a change in the officers listed under the provisions of § 22.45(a)(2), the notice required by paragraph (a)(1) of this section shall only apply (unless otherwise required, in writing, by the regional director (compliance)) to those offices, the incumbents of which are responsible for the operations covered by the permit.

(2) *Directors.* In the case of a change in the directors listed under the provisions of § 22.45(a)(2), the notice required by paragraph (a)(1) of this section shall reflect the changes.

(3) *Stockholders.* In lieu of reporting all changes, within 30 days, to the list of stockholders furnished under the provisions of § 22.45(c)(1), a permittee may, upon filing written notice to the regional director (compliance) and establishing a reporting date, file an annual notice of changes. The notice of changes in stockholders does not apply if the sale or transfer of capital stock results in a change in ownership or control which is required to be reported under § 22.58.

(Approved by the Office of Management and Budget under control number 1512–0335)

§ 22.58 Automatic termination of permits.

(a) *Permit not transferable.* Permits issued under this part are not transferable. In the event of the lease, sale, or other transfer of such a permit, or of the operations authorized by the permit, the permit shall, except as provided for in this section, automatically terminate.

(b) *Corporations.* (1) If actual or legal control of any corporation holding a permit issued under this part changes, directly or indirectly, whether by reason of a change in stock ownership or control (in the permittee corporation or any other corporation), by operation of law, or in any other manner, the permittee shall within 10 days of the change, give written notice to the regional director (compliance). The written notice shall be accompanied by (or within 30 days of the change) an application and supporting documents on Form 5150.22 for a new permit. If an application on Form 5150.22 for a new permit is not filed within 30 days of the change, the outstanding permit will automatically terminate.

(2) If an application on Form 5150.22 for a new permit is filed within the 30-day period prescribed in paragraph (b)(1) of this section, the outstanding permit will remain in effect until final action is taken on the application. When final action is taken, the outstanding permit will automatically terminate and the permittee shall forward it to the regional director (compliance) for cancellation.

(c) *Proprietorships.* In the event of a change in proprietorship of a business of a permittee (as for instance, by reason of incorporation, the withdrawal or taking in of additional partners, or succession by any person who is not a fiduciary), the successor shall file written notice and make application on Form 5150.22 for a new permit under the same conditions provided for in paragraph (b) of this section.

(Approved by the Office of Management and Budget under control number 1512–0335)

§ 22.59 Adoption of documents by a fiduciary.

If the business covered by a permit issued under this part, is to be operated by a fiduciary, the fiduciary may, in lieu of qualifying as a new proprietor, file a written notice, and any necessary supporting documents, to amend the predecessor's permit. The fiduciary shall furnish a consent of surety on Form 1533, extending the terms of the predecessor's bond, if any. The effective date of the qualifying documents filed by a fiduciary shall coincide with the effective date of the court order or the

date specified therein for the fiduciary to assume control. If the fiduciary was not appointed by the court, the date the fiduciary assumed control shall coincide with the effective date of the filing of the qualifying documents.

§ 22.60 Continuing partnerships.

(a) *Continuing partnerships.* If, under the laws of a particular State, a partnership is not terminated on death or insolvency of a partner, but continues until final settlement of the partnership affairs is completed, and the surviving partner has the exclusive right to the control and possession of the partnership assets for the purpose of liquidation and settlement, the surviving partner may continue to withdraw and use tax-free alcohol under the prior qualifications of the partnership.

(b) *Bonds.* If a bond was required under the previous partnership, the surviving partner shall furnish a consent of surety, in which the surety and surviving partner agree to remain liable.

(c) *Requalification.* If a surviving partner acquires the business on completion of the settlement of the partnership, that partner shall qualify as a new proprietor, from the date of acquisition, under the same conditions and limitations prescribed in § 22.58(b).

(d) *More than one partner.* The rule set forth in this section also applies if there is more than one surviving partner.

§ 22.61 Change in name of permittee.

(a) *Permit.* When the only change is a change in the individual, firm, or corporation name, a permittee may not conduct operations under the new name until a written notice, accompanied by necessary supporting documents, to amend the application and permit has been filed and an amended permit has been issued by the regional director (compliance).

(b) *Bond.* If required to file a bond, the permittee shall furnish a consent of surety on Form 1533 or a new bond to cover the change in name.

(Approved by the Office of Management and Budget under control number 1512–0335)

§ 22.62 Change in trade name.

Where there is to be a change in, or addition of, a trade name, the permittee may not conduct operations under the new trade name until a written notice has been filed and an amended permit has been issued by the regional director (compliance). A new bond or consent of surety is not required for changes in trade names.

(Approved by the Office of Management and Budget under control number 1512–0335)

§ 22.63 Change in location.

(a) *Permit.* When there is to be a change in location within the same region, a permittee may not conduct operations at the new location until a written notice, accompanied by necessary supporting information, to amend the application and permit has been filed and an amended permit has been issued by the regional director (compliance).

(b) *Bond.* If required to file a bond, the permittee shall furnish a consent of surety on Form 1533 or a new bond to cover the new location.

(Approved by the Office of Management and Budget under control number 1512–0335)

§ 22.64 Return of permits.

Following the termination, surrender or revocation of a permit, or the issuance of a new or amended permit, caused by a change, the permittee shall (a) obtain and destroy all photocopies of the previous permit from its suppliers, and (b) return the original of the permit or obsolete permit to the regional director (compliance) for cancellation.

Registry of Stills

§ 22.66 Registry of stills.

Part 196 of this chapter applies to stills located on the premises of a permittee. The listing of a still on Form 5150.22 and the issuance of a permit constitute registration of that still in lieu of filing Form 26.

Permanent Discontinuance of Use of Tax-Free Alcohol

§ 22.68 Notice of permanent discontinuance.

(a) *Notice.* A permittee who permanently discontinues the use of tax-free alcohol shall file a written notice with the regional director (compliance) to cover the discontinuance. The notice will be accompanied by the permit, and contain—

(1) A request to cancel the permit,

(2) A statement of the disposition made, as provided in § 22.154, of all tax-free and recovered alcohol, and

(3) The date of discontinuance.

(b) *Bonds.* The bond of a permittee may not be canceled until all tax-free and recovered alcohol has been properly disposed of in accordance with the provisions of this part.

(Approved by the Office of Management and Budget under control number 1512–0335)

Subpart E—Bonds and Consents of Surety

§ 22.71 Bond.

(a) Any bond previously approved, under this chapter, on Form 1448 (5150.25) which fulfills the penal sum requirements of paragraph (b) of this section shall remain valid and will be regulated by the same provisions of this subpart as it refers to bonds on Form 5150.25.

(b) Each person who intends to withdraw more than 1,500 proof gallons of tax-free alcohol per annum shall file a bond, Form 5150.25, before issuance of the permit. The penal sum of the bond will be as follows:

Maximum annual withdrawals	Bond penal sum
0 to 1,500 proof gallons	No bond required.
Over 1,500 but not over 3,000 proof gallons.	$2,000 plus $100 for each additional 100 proof gallons up to a maximum of $3,000 (2,500 proof gallons).
Over 3,000 but not over 6,000 proof gallons.	$3,000 plus $200 for each additional 100 proof gallons up to a maximum of $7,500 (5,250 proof gallons).
Over 6,000 proof gallons	$7,500 plus $250 for each additional 100 proof gallons up to a maximum penal sum of $15,000 (9,000 proof gallons).

(c) The following are some examples:

If your annual withdrawals are	Your penal sum is
1,250 proof gallons	No bond required.
2,800 proof gallons	$3,000 ($2,000 plus $1,000 ($100 × 10 units), last 300 proof gallons does not require additional bond coverage).
8,250 proof gallons	$13,000 ($7,500 plus $5,500 ($250 × 22 units), the remaining 50 proof gallons does not increase the bond since it is not an "additional" 100 proof gallon unit).

§ 22.72 Evaluation of bond penal sum.

(a) *Permittee's evaluation.* Each permittee shall, for the period from January 1 through the following December 31, make an annual evaluation of its previous and future needs for tax-free alcohol. Based on the results of this evaluation:

(1) The permittee shall file a new bond in increased penal sum, if the existing bond no longer meets the penal sum requirements of § 22.71, or

(2) The permittee may file a new bond in decreased penal sum, if the existing bond exceeds the penal sum requirements of § 22.71.

(b) *Authority of regional director (compliance).* The regional director (compliance) may, at any time, require a permittee to file a new bond in a larger penal sum, or require a satisfactory explanation why a new bond should not be filed.

§ 22.73 Corporate surety.

(a) Surety bonds required by this part may be given only with corporate sureties holding certificates of authority

from, and subject to the limitations prescribed by, the Secretary in the current revision of Treasury Department Circular No. 570.

(b) Treasury Department Circular No. 570 is published in the **Federal Register** annually as of the first workday in July. As they occur, interim revisions of the circular are published in the **Federal Register**. Copies may be obtained from the Audit Staff, Bureau of Government Financial Operations, Department of the Treasury, Washington, DC 20226.

(Chapter 390, Pub. L. 80–280, 61 Stat. 648 (6 U.S.C. 6, 7))

§ 22.74 Filing of powers of attorney.

Each bond, and each consent to changes in the terms of a bond, shall be accompanied by a power of attorney authorizing the agent or officer who executed the bond or consent to act on behalf of the surety. The regional director (compliance) may require additional evidence of the authority of the agent or officer to execute the bond or consent.

(Chapter 390, Pub. L. 80–280, 61 Stat. 648 (6 U.S.C. 6, 7))

§ 22.75 Execution of powers of attorney.

The power of attorney shall be prepared on a form provided by the surety company and executed under the corporate seal of the company. If the power of attorney submitted is not a manually signed original, it shall be accompanied by certification of its validity.

(Chapter 390, Pub. L. 80–280, 61 Stat. 648 (6 U.S.C. 6, 7))

§ 22.76 Deposit of securities instead of corporate surety.

Instead of corporate surety, the principal may pledge and deposit as surety for the bond, securities which are transferable and which are guaranteed as to both interest and principal by the United States, under the provisions of 31 CFR Part 225.

(Chapter 390, Pub. L. 80–280, 61 Stat. 648 (6 U.S.C. 6, 7))

§ 22.77 Consents of surety.

Consents of surety to changes in the terms of bonds shall be executed on Form 1533 by the principal and by the surety with the same formality and proof of authority as is required for the execution of bonds.

§ 22.78 Strengthening bonds.

(a) When the penal sum of any bond becomes insufficient based on projected annual withdrawals, the principal shall either give a strengthening bond with the same surety to attain a sufficient penal sum, or give a new bond to cover the entire liability. A strengthening bond will not be approved if it bears any notation which is intended or which may be considered—

(1) To be a release of any former bond, or

(2) As limiting the amount of any bond to less than its full sum.

(b) Strengthening bonds will show the date of execution and the effective date, and will be marked "Strengthening Bond."

§ 22.79 Superseding bonds.

Superseding bonds are required when insolvency or removal of any surety occurs. Superseding bonds may also be required at the discretion of the regional director (compliance) when any other contingency affects the validity or impairs the sufficiency of the bond. If the principal intends to continue the transactions to which the bond relates after the surety, under § 22.80, has applied for relief of liability under the bond, the principal shall file a valid superseding bond to be effective on or before the date specified in the surety's application for relief of liability. Superseding bonds will show the date of execution and the effective date, and will be marked "Superseding Bond." If the principal does not file a superseding bond when required, the principal may not conduct any operation under the permit.

§ 22.80 Notice by surety of termination of bond.

A surety on any bond required by this part may at any time, in writing, notify the principal and regional director (compliance) with whom the bond is filed, that the surety desires (after a specified date) to be relieved of liability under the bond. The specified date may not be less than 90 days after the date the notice is received by the regional director (compliance). The surety shall also file with the regional director (compliance) an acknowledgment or other proof of service of the notice of termination on the principal.

(Approved by the Office of Management and Budget under control number 1512–0335)

§ 22.81 Termination of rights and liability under a bond.

(a) If the notice of termination given by the surety is not withdrawn in writing, the rights of the principal as supported by the bond terminate on the date named in the notice. The surety is relieved from liability under a bond as to any operations which are wholly subsequent to—

(1) The date named in a notice of termination (§ 22.80); or

(2) The effective date of a superseding bond (§ 22.79); or

(3) The date of approval of the discontinuance of operations by the principal.

(b) If the principal fails to file a valid superseding bond before the date on which the surety desires to be relieved from liability under the bond, the surety, notwithstanding the release from liability as specified in paragraph (a)(1) of this section, shall remain liable under the bond for all tax-free alcohol and recovered alcohol on hand or in transit to the principal on that date until the spirits have been lawfully disposed of or a new bond has been filed by the principal.

§ 22.82 Release of pledged securities.

Securities of the United States, pledged and deposited as provided in § 22.76, will be released only under the provisions of 31 CFR Part 225. When the regional director (compliance) is satisfied that they may be released, the regional director (compliance) shall fix the date or dates on which a part or all of the securities may be released. At any time before the release of the securities, the regional director (compliance) may extend the date of release for any additional length of time considered necessary.

(Chapter 390, Pub. L. 80–280, 61 Stat. 648 (6 U.S.C. 6, 7))

Subpart F—Premises and Equipment

§ 22.91 Premises.

All persons qualified to withdraw and use tax-free alcohol shall have premises suitable for the business being conducted and adequate for the protection of the revenue. Storage facilities shall be provided on the premises for tax-free alcohol received or recovered. The storage facilities may consist of a combination of storerooms, compartments, or stationary storage tanks.

§ 22.92 Storage facilities.

(a) Storerooms or compartments shall be so constructed and secured as to prevent unauthorized access and will be equipped for locking. These storage facilities shall be of sufficient capacity to hold the maximum quantity of tax-free alcohol which will be on hand at one time.

(b) Each stationary storage tank used to hold tax-free alcohol shall be equipped for locking in such a manner as to control access to the spirits. All stationary storage tanks shall be equipped with an accurate means of measuring the spirits.

(c) Storerooms and storage tanks shall be kept locked when unattended. A storage cabinet or locker kept inside a room which is locked when unattended is considered to be adequately secured.

§ 22.93 Equipment for recovery and restoration of tax-free alcohol.

(a) *Location.* All equipment used to recover and restore tax-free alcohol for reuse shall be located on the permit premises.

(b) *Construction.* (1) Distilling apparatus, pipelines and other equipment used for recovery and restoration of tax-free alchohol shall be constructed and secured in such a manner as to prevent unauthorized access and so arranged as to be readily inspected.

(2) Storage tanks shall be provided for the collection of recovered tax-free alcohol. Each storage tank shall—

(i) Be durably marked as to use and capacity;

(ii) Be equipped with, or for, an accurate means of measuring the spirits: and

(iii) Be equipped for locking to control unauthorized access to the spirits.

Supart G—Use of Tax-Free Alcohol

§ 22.101 Authorized uses.

Alcohol may be withdrawn free of tax from the bonded premises of a distilled spirits plant for the use of any State or political subdivision of a State, or the District of Columbia, for nonbeverage purposes. Alcohol may also be withdrawn by persons eligible to use tax-free alcohol, for nonbeverage purposes and not for resale or use in the manufacture of any product for sale. Tax-free alcohol shall be withdrawn and used only as provided by law and this part, as follows:

(a) For the use of any educational organization described in 26 U.S.C. 170(b)(1)(A) which is exempt from income tax under 26 U.S.C. 501(a), or for the use of any scientific university or college of learning;

(b) For any laboratory for use exclusively in scientific research;

(c) For use at any hospital, blood bank, or sanitarium (including use in making any analysis or test at a hospital, blood bank, or sanitarium), or at any pathological laboratory exclusively engage in making analyses, or test, for hospitals or sanitariums; or

(d) For the use of any clinic operated for charity and not for profit (including use in the compounding of bona fide medicines for treatment of patients outside of the clinic).

(Sec. 201, Pub. L. 85–859, 72 Stat. 1362, as amended, (26 U.S.C. 5214))

§ 22.102 Prohibited uses.

(a) *Usage.* Under no circumstances may tax-free alcohol withdrawn under this part be used for beverage purposes, food products, or in any preparation used in preparing beverage or food products.

(b) *Selling.* Persons qualified under this part are prohibited from selling tax-free alcohol, using tax-free alcohol in the manufacture of any product for sale, or selling any products resulting from the use of tax-free alcohol. A separate charge may be made by a hospital, sanitarium or clinic for medicines compounded with tax-free alcohol and dispensed to patients for use on the premises, as provided in §§ 22.105 and 22.106. Hospitals may not furnish tax-free alcohol for use of physicians in their private practice.

(c) *Removal from premises.* Persons qualified under this part may not remove tax-free alcohol or products resulting from the use of tax-free alcohol from the permit premises unless specifically authorized by the terms of their permit, or permission is obtained from the regional director (compliance), except that:

(1) Products made through the use of tax-free alcohol which contain no alcohol may be removed to other premises for the sole purpose of further research; or

(2) Under the provisions of §§ 22.105 and 22.106, clinics operated for charity and not for profit may compound bona fide medicines with tax-free alcohol, and dispense the medicine from the premises for use by its patients outside of the clinic, if the furnishing of the medicine is not conditioned upon payment.

(d) *Liability for tax.* Permittees who use tax-free alcohol in any manner prohibited by this section become liable for the tax on the alcohol. Any permittee who sells tax-free alcohol also becomes liable for special (occupational) tax as a liquor dealer.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1314, as amended, 1343, as amended, 1362, as amended (26 U.S.C. 5001, 5121, 5214))

§ 22.103 States and the District of Columbia.

Except as otherwise provided in this section, tax-free alcohol withdrawn by a State or political subdivision of a State, or the District of Columbia shall be used solely for mechanical and scientific purposes, and except on approval of the regional director (compliance), the use of tax-free alcohol or the use of any resulting product will be confined to the premises under the control of the State or political subdivision of a State, or the District of Columbia. Tax-free alcohol withdrawn for use in hospitals, clinics, and other establishments specified in §§ 22.104 through 22.108, operated by a State, political subdivision of a State, or the District of Columbia, shall be used in the manner prescribed for those establishments.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1362, as amended (26 U.S.C. 5214))

§ 22.104 Educational organizations, colleges of learning, and scientific universities.

(a) *Educational organizations.* Educational organizations authorized to withdraw and use tax-free alcohol under § 22.101 are those organizations which normally maintain a regular faculty and curriculum and which normally have a regularly enrolled body of students in attendance at the place where their educational activities are regularly carried on and which are exempt from Federal income tax under 26 U.S.C. 501(a).

(b) *Colleges of learning.* Colleges of learning, for the purposes of this subpart, have a recognized curriculum and confer degrees after specified periods of attendance at classes or research work.

(c) *Scientific universities.* Scientific universities include any university incorporated or organized under any Federal or State law which provides training in the sciences.

(d) *Uses.* Tax-free alcohol withdrawn by educational organizations, scientific universities, and colleges of learning shall be used only for scientific, medicinal, and mechanical purposes. Use of tax-free alcohol and resulting products are limited by the provisions of § 22.102.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1362, as amended (26 U.S.C. 5214))

§ 22.105 Hospitals, blood banks, and sanitariums.

(a) Tax-free alcohol withdrawn for use by hospitals, blood banks, and sanitariums shall be used exclusively for medicinal, mechanical (analysis or test) and scientific purposes and in the treatment of patients. The use of tax-free alcohol and of products resulting from the use of tax-free alcohol shall be confined to the permit premises, except as provided in this section and § 22.102. Medicines compounded with tax-free alcohol on the premises of a hospital or sanitarium, for use of patients on the premises, may not be sold, but a separate charge may be made for the medicine.

(b) A hospital, operating a clinic on premises, may withdraw tax-free alcohol for use in the clinic, if the clinic

is operated for charity and not for profit. Medicines compounded with tax-free alcohol may be dispensed to patients at a clinic for use outside of the clinic, if the furnishing of the medicine is not conditioned upon payment.

(c) A hospital or sanitarium, operating a pathological or other laboratory on premises, may withdraw tax-free alcohol for authorized use in the laboratory.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1362, as amended (26 U.S.C. 5214))

§ 22.106 Clinics.

Tax-free alcohol withdrawn by clinics operated for charity and not for profit shall be used only for medicinal, scientific, and mechanical purposes and in the treatment of patients. Medicine compounded with tax-free alcohol may be dispensed to patients for use off the premises, if the furnishing of the medicine is not conditioned upon payment. A separate charge may be made for medicine coumpounded on the clinic premises with tax-free alcohol for use of patients on the premises. Except as provided in this section and in § 22.102, the use of tax-free alcohol shall be confined strictly to the premises of the clinic.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1362, as amended (26 U.S.C. 5214))

§ 22.107 Pathological laboratories.

(a) Pathological laboratories, not operated by a hospital or sanitarium, may withdraw and use tax-free alcohol if exclusively engaged in making analyses or tests for hospitals or sanitariums. If a pathological laboratory does not exclusively conduct analyses or tests for hospitals or sanitariums, it does not qualify for the permit issued under this part.

(b) A pathological laboratory which uses tax-free alcohol for any other purpose, except as provided in this section, shall become liable for the tax on the alcohol.

(c) Except as provided in § 22.102, the use of tax-free alcohol and of products resulting from the use of tax-free alcohol shall be confined strictly to the permit premises.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1314, as amended, 1362, as amended (26 U.S.C. 5001, 5214))

§ 22.108 Other laboratories.

Laboratories, other than pathological laboratories specified in § 22.107, may withdraw and use tax-free alcohol exclusively in scientific research. The use of tax-free alcohol or of products resulting from the use of tax-free alcohol shall be confined strictly to the laboratory premises, except as provided in § 22.102.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1362, as amended (26 U.S.C. 5214))

Subpart H—Withdrawal and Receipt of Tax-Free Alcohol

§ 22.111 Withdrawals under permit.

(a) *General.* The permit, Form 5150.9, issued under Subpart D of this part, authorizes a person to withdraw tax-free alcohol from the bonded premises of a distilled spirits plant or, under the provisions of 26 U.S.C. 5688(a)(2)(B), receive alcohol from the General Services Administration.

(b) *Photocopying of permit, Form 5150.9.* (1) As provided in § 22.54, a permittee may make photocopies of its permit, or amended permit, for the exclusive purpose of furnishing proof of authorization to withdraw tax-free alcohol.

(2) A permittee need only furnish the photocopy of its permit, or amended permit, to a distilled spirits plant for the "initial order" from that distilled spirits plant.

(3) When a permittee makes photocopies of its permit, Form 5150.9, each copy shall be signed, dated, and contain the word "COPY" across the face.

(4) A permittee is responsible for obtaining and, as applicable, destroying all photocopies of its permit from distilled spirits plants when (i) an amended or corrected permit is issued which supersedes the copy on file, (ii) the permit is canceled by reason of requalification as a new permittee, (iii) the permit is revoked or suspended, or (iv) upon permanent discontinuance of use of tax-free alcohol.

(c) *Withdrawals under permit.* (1) When a permittee places an initial order for tax-free alcohol it shall forward a signed copy of the permit, for retention by the distilled spirits plant, along with the purchase request.

(2) When the permittee places a subsequent order for tax-free alcohol, the purchase request, in addition to any other information, shall contain the permit identification number and date of issue along with a statement that the permittee possesses a valid permit to withdraw tax-free alcohol, a copy of which is on file.

(3) Shipments shall not be made by a proprietor of a distilled spirits plant until it is in possession of a signed copy of a valid permit, Form 5150.9.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1395, as amended (26 U.S.C. 5555))

§ 22.112 Regulation of withdrawals.

(a) Each permittee shall regulate its withdrawals of tax-free alcohol to ensure that (1) the quantity on hand and unaccounted for does not exceed the capacity of the storage facilities, and (2) the cumulative quantity withdrawn or received in any calendar year does not exceed the quantity authorized by the permit, Form 5150.9. Recovered alcohol and alcohol received from the General Services Administration shall be taken into account in determining the total quantity of alcohol on hand.

(b) For the purpose of this section, tax-free alcohol and recovered alcohol shall be considered as unaccounted for if lost under circumstances where a claim for allowance is required by this part and the claim has not been allowed, or if used or disposed of in any manner not provided for in this part.

§ 22.113 Receipt of tax-free alcohol.

(a) When tax-free alcohol is received, it shall be placed in the storage facilities prescribed by § 22.91 and kept there under lock until withdrawn for use. Unless required by city or State fire code regulations or authorized by the regional director (compliance) or the terms of the permit, the permittee may not remove tax-free alcohol from the original packages or containers in which received until the alcohol is withdrawn for use. If the tax-free alcohol is transferred to "safety" containers in accordance with fire code regulations, the containers to which they are transferred shall be appropriately marked to identify the package from which transferred, the quantity transferred, the date of transfer, and the name and address of the vendor.

(b) When tax-free alcohol is received, the permittee shall ascertain and account for any losses in transit in accordance with Subpart I of this part. The permittee shall note any loss or deficiency in the shipment on the record of receipt.

(c) Records of receipt shall consist of the consignors invoice or bill. Records of receipt may be filed in accordance with the permittee's own filing system as long as it does not cause inconvenience to ATF officers desiring to examine the records. The filing system shall systematically and accurately account for the receipt of all tax-free alcohol.

§ 22.114 Alcohol received from the General Services Administration.

Any nonprofit charitable institution holding a permit on Form 5150.9, and receiving alcohol from the General Services Administration under the provisions of 26 U.S.C. 5688(a)(2)(B),

shall include any quantity of alcohol received in computing the quantity of tax-free alcohol that may be procured under its permit during the calendar year. The alcohol, on receipt, shall be placed in the storage facilities prescribed in § 22.91 and kept there under lock until withdrawn for use.

Subpart I—Losses

§ 22.121 Liability and responsibility of carriers.

(a) A person or carrier transporting tax-free alcohol to a consignee or returning the alcohol to the consignor is responsible for the safe delivery and is accountable for any tax-free alcohol not delivered.

(b) A person or carrier transporting tax-free alcohol in violation of any law or regulation pertaining thereto, is subject to all provisions of law relating to alcohol subject to and the payment of tax thereon, and shall be required to pay the tax.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1314, as amended (26 U.S.C 5001))

§ 22.122 Losses in transit.

(a) *Reporting losses.* Upon discovering any loss of tax-free alcohol while in transit, the carrier shall immediately inform the consignee, in writing, of the facts and circumstances relating to the loss. In the case of theft, the carrier shall also immediately notify the consignee's regional director (compliance) of the facts and circumstances relating to the loss.

(b) *Recording losses.* At the time the shipment or report of loss is received, the consignee shall determine the quantity of tax-free alcohol lost. The consignee shall note the quantity lost on the receiving document and attach all relevant information to the record of receipt, prescribed in § 22.113. For the purpose of maintaining the records prescribed in Subpart M of this part, receipts of tax-free alcohol shall only include the quantity actually received.

(c) *Claims.* A claim for allowances of losses of tax-free alcohol shall, as prescribed in § 22.125, be filed:

(1) If the quantity lost in transit exceeds 1 percent of the total quantity shipped and is more than 5 proof gallons, the consignee shall file a claim for allowance of the entire quantity lost; or

(2) If the loss was due to theft or other unlawful removal, the consignee shall file a claim for allowances of the entire quantity lost, regardless of the quantity or percentage involved.

(Reporting approved by the Office of Management and Budget under control number 1512–0335; recordkeeping approved by the Office of Management and Budget under control number 1512–0334)

§ 22.123 Losses on premises.

(a) *Recording of losses.* A permittee shall determine and record, in the records prescribed by Subpart M of this part, the quantity of tax-free or recovered alcohol lost on premises—

(1) At the end of each semi-annual period when the inventory required by § 22.162 is taken, or

(2) Immediately upon the discovery of any loss due to casualty, theft or other unusual causes.

(b) *Claims.* A claim for allowances of losses of tax-free alcohol shall be filed as prescribed in § 22.125, in the following circumstances—

(1) if the quantity lost during any semi-annual inventory period exceeds 1 percent of the quantity to be accounted for during that period, and is more than 10 proof gallons, or

(2) if the loss was due to theft or unlawful use or removal, the permittee shall file a claim for allowances of losses regardless of the quantity involved.

(Approved by the Office of Management and Budget under control number 1512–0334)

§ 22.124 Incomplete shipments.

(a) Subject to the provisions of this part and Part 19 of this chapter, when containers of tax-free alcohol have sustained losses in transit other than by theft, and the shipment will not be delivered to the consignee, the carrier may return the shipment to the distilled spirits plant.

(b) When tax-free alcohol is returned to the distilled spirits plant, in accordance with this section, the carrier shall inform the proprietor, in writing, of the facts and circumstances relating to the loss. In the case of theft, the carrier shall also immediately notify the shipper's regional director (compliance) of the facts and circumstances relating to the loss.

(c) Subject to the limitations for loss prescribed in § 22.122, the proprietor of the distilled spirits plant shall file a claim for allowance of the entire quantity lost, in the same manner provided in that section. The claim shall include the applicable date required by § 22.125.

§ 22.125 Claims.

(a) Claims for allowances of losses of tax-free or recovered alcohol shall be filed, on Form 2635 (5620.8), with the regional director (compliance) within 30 days from the date the loss is ascertained, and shall contain the following information:

(1) Name, address, and permit number of claimant;

(2) Identification and location of the container(s) from which the tax-free or recovered alcohol was lost, and the quantity lost from each container;

(3) Total quantity of tax-free or recovered alcohol covered by the claim and the aggregate quantity involved;

(4) Date of loss or discovery, the cause or nature of loss, and all relevant facts, including facts establishing whether the loss occurred as a result of negligence, connivance, collusion, or fraud on the part of any person, employee or agent participating in or responsible for the loss; and

(5) Name of carrier where a loss in transit is involved.

(b) The carriers statement regarding a loss in transit, prescribed by § 22.122 or 22.124, shall accompany the claim.

(c) The regional director (compliance) may require additional evidence to be submitted in support of the claim.

Subpart J—Recovery of Tax-Free Alcohol

§ 22.131 General.

Any person or permittee conducting recovery operations of tax-free alcohol shall be qualified by the terms of their permit to do so, under the provision of Subpart D of this part. Restoration of recovered tax-free alcohol may only be accomplished on the permit premises or by the proprietor of a distilled spirits plant.

§ 22.132 Deposit in storage tanks.

(a) Recovered alcohol shall be accumulated and kept in separate storage tanks conforming to § 22.93. Recovered alcohol shall be measured before being redistilled or reused.

(b) Recovered alcohol may be removed from storage tanks for packaging and shipment to a distilled spirits plant for redistillation.

§ 22.133 Shipment for redistillation.

(a) Unless a permittee intends to redistill recovered alcohol to its original state, the recovered alcohol shall be shipped in containers to a distilled spirits plant for restoration.

(b) Containers shall be labeled with—

(1) The name, address, and permit number of permittee,

(2) The quantity of recovered alcohol in gallons,

(3) The words "Recovered tax-free alcohol", and

(4) A package identification number or serial number in accordance with paragraph (c)(1) or (c)(2) of this section.

(c)(1) A package identification number shall apply to all of the packages filled

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at the same time. All of the packages in one lot shall be the same type, have the same rated capacity, and be uniformly filled with the same quantity. A package identification number shall be derived from the date on which the package is filled, and shall consist of the following elements, in the order shown—

(i) The last two digits of the calendar year;

(ii) An alphabetical designation from "A" through "L", representing January through December, in that order;

(iii) The digits corresponding to the day of the month; and

(iv) A letter suffix when more than one identical lot is filled into packages during the same day. For successive lots after the first lot, a letter suffix shall be added in alphabetical order, with "A" representing the second lot of the day, "B" representing the third lot of the day, etc. (*e.g.* the first three lots filled into packages on November 19, 1983, would be identified as "83K19," "83K19A," and "83K19B."

(2) A consecutive serial number shall be marked on each package, beginning with the number "1" and continuing in regular sequence. When any numbering series reaches "1,000,000," the user may recommence the series by providing an alphabetical prefix or suffix for each number in the new series.

§ 22.134 Records of shipment.

A consignor shipping recovered alcohol or tax-free alcohol to a distilled spirits plant shall prepare and forward a record of shipment to the consignee. The record of shipment may consist of a shipping invoice, bill, or bill of lading, or another document intended for the same purpose. The record of shipment shall accurately identify and account for the tax-free or recovered alcohol being shipped. A permittee shall file one copy of the record of shipment with the records required by § 22.161.

(Approved by the Office of Management and Budget under control number 1512–0334)

Subpart K—Destruction

§ 22.141 General.

A permittee may terminate liability for payment of tax, prescribed by law, when tax-free or recovered alcohol is destroyed in accordance with this subpart.

§ 22.142 Destruction.

(a) A permittee may destroy tax-free or recovered alcohol upon (1) the filing of a notice of intention to destroy with the area supervisor at least 7 days prior to the proposed date of destruction, or (2) furnishing the notice to an ATF officer at the premises who may supervise the destruction or transmit the notice to the area supervisor.

(b) The notice of intention to destroy shall contain—

(1) The reason for destruction,

(2) The date, time, location and manner of destruction, and

(3) The quantity involved and, if applicable, the package identification numbers of containers.

(c) If, by the date and time specified in the notice, an ATF officer has not supervised the destruction, or the area supervisor has not advised the permittee to the contrary, the spirits may be destroyed in the manner stated in the notice.

(d) Following the destruction, if unsupervised by an ATF officer, the permittee shall annotate a copy of the notice with the name of the individual who accomplished or supervised the destruction. This notice shall serve as a record of destruction and shall be maintained with the records required by § 22.161.

(Approved by the Office of Management and Budget under control number 1512–0335)

Subpart L—Return, Reconsignment and Disposition of Tax-Free or Recovered Alcohol

§ 22.151 Return.

A permittee may, following the receipt of tax-free alcohol and for any legitimate reason, return the spirits to any distilled spirits plant if the consignee consents to the shipment. The consignor shall prepare a record of shipment in the same manner prescribed in § 22.134 for shipment of recovered alcohol.

(Approved by the Office of Management and Budget under control number 1512–0334)

§ 22.152 Reconsignment in transit.

(a) *Reconsignment.* Tax-free alcohol may be reconsigned to another permittee or returned to the consignor if, prior to, or on arrival at the premises of the consignee, the alcohol is determined to be unsuitable for the intended purpose, was shipped in error, or, for any bona fide reason, is not accepted by the consignee or carrier.

(b) *Bond coverage.* In the case of reconsignment, the bond, if required, of the permittee to whom the tax-free alcohol was reconsigned or the bond of the consignor, if for return, shall cover the spirits while in transit.

(c) *Records of reconsignment.* In the case of reconsignment, the consignor shall cancel the initial record of shipment and prepare a new record of shipment, if the shipment is to another permittee. The new record of shipment shall be annotated "Reconsignment."

(Approved by the Office of Management and Budget under control number 1512–0334)

§ 22.153 Disposition after revocation of permit.

When any permit issued on Form 5150.9 is revoked, all tax-free alcohol in transit and all alcohol on the former permit premises, may be lawfully possessed by the former permittee for the exclusive purpose of disposing of the alcohol, for a period of 60 days following the date of revocation. Any tax-free or recovered alcohol not disposed of within the specified 60-day period, is subject to seizure and forfeiture.

§ 22.154 Disposition on permanent discontinuance of use.

(a) *Tax-free alcohol.* Tax-free alcohol on hand at the time of discontinuance of use, may be disposed of by (1) returning the spirits to a distilled spirits plant, as provided in § 22.151, (2) destruction, as provided in § 22.142, or (3) shipping to another permittee, in accordance with § 22.155.

(b) *Recovered tax-free alcohol.* Upon permanent discontinuance of use, a permittee may dispose of recovered tax-free alcohol by (1) shipment to a distilled spirits plant, as provided in § 22.133, (2) destruction, as provided in § 22.142, or (3) upon the filing of an application with the regional director (compliance), any other approved method.

(Approved by the Office of Management and Budget under control number 1512–0335)

§ 22.155 Emergency disposition to another permittee.

(a) In the case of an emergency, a permittee may, upon the filing of a notice with the area supervisor, dispose of tax-free alcohol to another permittee, when the quantity involved does not exceed 10 proof gallons. In the case of a medical emergency or disaster, the area supervisor is authorized to verbally approve, with the required notice to follow, disposals of tax-free alcohol to another permittee or Government agency in excess of 10 proof gallons. The tax-free alcohol disposed of shall be in original unopened containers. The consignor shall prepare a record of shipment in the same manner prescribed in § 22.134.

(b) The notice required by this section shall (1) explain the nature of the emergency, (2) identify the consignee by name, address and permit number, and (3) list the quantity of alcohol and package identification number of the container(s) involved.

(c) The consignor permittee may not receive remuneration for tax-free alcohol given to another permittee in

case of an emergency, as authorized by this section.

(Notice approved by the Office of Management and Budget under control number 1512–0335; recordkeeping approved by the Office of Management and Budget under control number 1512–0334)

Subpart M—Records of Transactions

§ 22.161 Records.

(a) *General.* All persons qualified under this part shall keep accurate records of all receipts, shipments, usage, destructions and claims pertaining to the withdrawal and use of tax-free alcohol. These records shall be in sufficient detail to enable the permittee to reconcile any losses or gains for the semi-annual inventory, and to enable ATF officers to verify all transactions and to ascertain whether there has been compliance with law and regulations. All records required by this section shall identify tax-free alcohol by proof, date of transaction, and quantity involved, and shall include alcohol received from the General Services Administration and the recovery of alcohol and its disposition. Records shall be kept current at all times.

(b) *Records of receipt and shipment.* Records of receipt and shipment shall consist of the consignor's or consignee's (as the case may be) invoice, bill or bill of lading, or another document used for the intended purpose. Records of receipt shall record only the quantity of tax-free alcohol actually received. Losses in transit shall not be considered as received, but may be the subject of a claim for allowances of losses, as prescribed in Subpart I of this part.

(c) *Records of usage.* For the purpose of this subpart, tax-free or recovered alcohol shall be considered as "used" when permanently removed from a permittee's supply storeroom, compartment, or tank for any authorized use. Records of usage shall identify the tax-free alcohol by quantity, proof, and purpose of removal (office, department or location to which dispensed). This record shall list separately, the usage of tax-free alcohol from recovered alcohol or alcohol received from the General Services Administration.

(d) *Records of destruction.* Records of destruction shall consist of a copy of the notice of intention to destroy, prescribed in § 22.141, signed by an ATF officer or employee witnessing the destruction.

(e) *Claims.* Claims for allowance of losses of tax-free alcohol, required to be filed under Subpart I of this part, shall consist of Forms 2635 (5620.8) and supporting data.

(Approved by the Office of Management and Budget under control number 1512–0334)

§ 22.162 Inventories.

Each permittee shall take a physical inventory of the tax-free and recovered alcohol in its possession semi-annually for the periods ending June 30 and December 31 of each year; or other inventory periods which are approximately 6 months apart, upon filing written notice with the regional director (compliance) establishing other inventory periods. These inventories may be recorded separately or as an entry in the record of usage with any necessary adjustments (losses or gains). If an inventory results in a loss in excess of the quantities prescribed by Subpart I of this part, the permittee shall file a claim for allowance of loss.

(Notice approved by the Office of Management and Budget under control number 1512–0335; recordkeeping approved by the Office of Management and Budget under control number 1512–0334)

§ 22.163 Time for making entries.

Any person who conducts an operation which is required to be recorded under this part, shall enter that operation in the records on the same day the operation occurred. However, the daily posting of records may be deferred to conform to the permittee's normal accounting cycle if (a) supporting or supplemental records are prepared at the time of the operation, and these supporting or supplemental records are to be used to post the daily record, and (b) the deferral of posting does not pose a jeopardy to the revenue.

§ 22.164 Filing and retention of records.

Each person required to maintain records of operations and transactions under this part shall:

(a) Keep on file all records and copies of claims for a period of not less than 3 years following the date of transaction or, at the discretion of the regional director (compliance), an additional 3-year period; and

(b) Maintain all records at the permit premises, except that the records may be kept at a central location by a State or political subdivision of a State, or the District of Columbia which distributes tax-free alcohol to multiple dependent agencies, institutions, or departments.

§ 22.165 Photographic copies of records.

(a) *General.* Permittees may record, copy, or reproduce required records. Any process may be used which accurately reproduces the original record, and which forms a durable medium for reproducing and preserving the original record.

(b) *Copies of records treated as original records.* Whenever records are reproduced under this section, the reproduced records shall be preserved in conveniently accessible files, and provisions shall be made for examining, viewing, and using the reproduced records the same as if they were the original record, and they shall be treated and considered for all purposes as though they were the original record. All provisions of law and regulations applicable to the original are applicable to the reproduced record. As used in this section, "original record" means the record required by this part to be maintained or preserved by the permittee, even though it may be an executed duplicate or other copy of the document.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1395, as amended (26 U.S.C. 5555))

Subpart N—Use of Tax-Free Spirits by the United States or Government Agency

§ 22.171 General.

(a) The United States or any of its Government agencies may withdraw tax-free spirits for nonbeverage purposes from a distilled spirits plant under this part, as authorized by 26 U.S.C. 5214(a)(2). Before any tax-free spirits may be withdrawn, a permit to procure the spirits shall be obtained from the Director. A bond is not required for any Government agency of the United States to procure tax-free spirits.

(b) The provisions of Subpart M of 27 CFR Part 251 cover the withdrawal of imported spirits, free of tax, for use of the United States or any of its Government agencies.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1362, as amended) (26 U.S.C. 5214))

§ 22.172 Application and Permit, Form 5150.33.

(a) All permits previously issued to the United States or any of its Government agencies on Form 1444 shall remain valid and shall be regulated by the same provisions of this subpart as it refers to permits on Forms 5150.33.

(b) A Government agency shall apply for a permit to obtain tax-free spirits on Form 5150.33, to the Director. Upon approval, Form 5150.33 will be returned to the Government agency, and shall serve as authority to procure spirits free of tax.

(c) A Government agency may specify on its application for a permit to procure tax-free spirits, Form 5150.33, that it desires a single permit authorization all sub-agencies under its control to procure tax-free spirits; or each Government location (agency, department, bureau, and etc.) desiring to procure tax-free

spirits for nonbeverage purposes may individually submit an application for a permit on Form 5150.33.

(d) An application for a permit shall be signed by the head of the agency or sub-agency, or the incumbent of an office which is authorized by the head of the agency or sub-agency, to sign. Evidence of authorization to sign for the head of the agency or sub-agency shall be furnished with the application.

(e) Tax-free spirits obtained by Government agencies may not be used for non-Government purposes.

§ 22.173 Procurement of tax-free spirits.

Each Government agency shall retain the original of its permit, Form 5150.33, on file. When placing an initial order with a vendor, the agency shall forward a photocopy of its permit with the purchase order for tax-free spirits. In the case of an agency holding a single permit for use of other sub-agencies, the photocopy of the permit shall contain an attachment listing all other locations authorized to procure tax-free spirits. Any subsequent purchases from the same vendor need only contain the permit number on the purchase order.

§ 22.174 Receipt of shipment.

On receipt of a shipment of tax-free spirits, a representative of the Government agency shall inspect the shipment for any loss or deficiency. In the case of loss or deficiency, the agency shall annotate the receiving document and forward a copy to the regional director (compliance) of the region from which the shipment was consigned.

§ 22.175 Discontinuance of use.

When a Government agency, holding a permit issued under this subpart, no longer intends to procure and use tax-free spirits, the permit shall be returned to the Director for cancellation. All photocopies of the permit furnished to vendors shall be returned to the agency for destruction.

§ 22.176 Disposition of excess spirits.

At the time of discontinuance of use of tax-free spirits, a Government agency may dispose of any excess tax-free spirits (a) by transferring the spirits to another Government agency holding a permit, (b) by returning the spirits to a vendor, or (c) in any manner authorized by the Director. Tax-free spirits may not be disposed of to the general public.

PART 170—MISCELLANEOUS REGULATIONS RELATING TO LIQUOR

Section E. Part 170 is amended as follows:

§ 170.23 [Amended]

The definition of *Denatured spirits* in § 170.23 is amended by replacing "Part 212" with "Part 21".

PART 200—RULES OF PRACTICE IN PERMIT PROCEEDINGS

Section F. Part 200 is amended to remove references to withdrawal permits, including references to expiration or renewal of withdrawal permits, and to eliminate the distinction between initial applications and renewal applications as follows:

Paragraph 1. The table of sections for Part 200 is amended to reflect amended headings of §§ 200.48, 200.49a, 200.62, 200.67, 200.78, 200.79, 200.80, 200.81, 200.107, and 200.108, and to reflect the removal of §§ 200.50, 200.63, and 200.68.

Sec.

* * * * *

200.48 Operating permits and industrial use permits.
200.49 * * *
200.49a Applications for operating permits and industrial use permits.
200.49b * * *

Subpart F * * *

* * * * *

200.62 Application.

Answers

200.64 * * *

* * * * *

200.67 Applications.
200.69 * * *

* * * * *

200.78 Applications.
200.79 Suspension, revocation, or annulment.

Burden of Proof

200.80 Applications.
200.81 Suspension, revocation, or annulment.

* * * * *

200.107 Application.
200.108 Suspension, revocation, or annulment proceedings.

* * * * *

Par. 2. The definitions of *Application, Citation, Initial decision, Permit,* and *Respondent* in § 200.5 are amended to read as follows:

§ 200.5 Meaning of terms.

* * * * *

Application. Any application for a permit under the Federal Alcohol Administration Act or the Internal Revenue Code (26 U.S.C.) for operations not covered by an existing permit.

* * * * *

Citation. Includes any notice contemplating the disapproval of an application or any order to show cause why a permit should not be suspended, revoked or annulled.

* * * * *

Initial decision. The decision (order) of the regional director (compliance) in any proceeding on an application for a permit, and the decision of the administrative law judge in any proceeding on the suspension, revocation, or annulment of a permit.

* * * * *

Permit—(a) *Alcohol fuel permit.* The document issued under 26 U.S.C. 5181, authorizing the person named therein to engage in the business described therein.

(b) *Basic permit.* The document authorizing the person named therein to engage in a designated business or activity under the Federal Alcohol Administration Act.

(c) *Industrial use permit.* The document issued under 26 U.S.C. 5271(a), authorizing the person named therein to withdraw and use distilled spirits free of tax in accordance with Part 22 of this chapter, or withdraw and deal in or use specially denatured spirits in accordance with Part 20 of this chapter, as described therein.

(d) *Operating permit.* The document issued under 26 U.S.C. 5171, authorizing the person named therein to engage in the business described therein.

(e) *Tobacco permit.* The document issued under 26 U.S.C. 5713(a), authorizing the person named therein to engage in the business described therein.

* * * * *

Respondent. Any person holding a permit against which an order has been issued to show cause why such permit should not be suspended, revoked or annulled.

* * * * *

§ 200.35 [Amended]

Par. 3. Section 200.35 is amended by deleting "or application for renewal disapproved," and "or applicant for renewal," from the first sentence and by deleting "or disapproval of the renewal application," from the last sentence.

§ 200.36 [Amended]

Par. 4. Section 200.36 is amended by deleting "or his application for renewal disapproved," from the first sentence.

§ 200.37 [Amended]

Par. 5. Section 200.37 is amended by deleting "or his application for renewal thereof be disapproved," from the first sentence.

§ 200.38 [Amended]

Par. 6. Section 200.38 is amended by deleting "or disapproval of renewal application," from the first sentence.

Par. 7. The introductory text of § 200.48 is revised to delete references to withdrawal permits. As revised, the introductory text of § 200.48 reads as follows:

§ 200.48 Operating permits and industrial use permits.

Whenever the regional director (compliance) has reason to believe that any person who has an operating permit or an industrial use permit:

* * * * *

Par. 8. The introductory text of § 200.49a is revised to delete references to withdrawal permits and renewal applications. As revised, the introductory text of § 200.49a reads as follows:

§ 200.49a Applications for operating permits and industrial use permits.

If, on examination of an application for an operating permit or an industrial use permit, the regional director (compliance) has reason to believe:

* * * * *

§ 200.50 [Removed]

Par. 9. Section 200.50 is removed because it relates to expiration of withdrawal permits.

§ 200.55 [Amended]

Par. 10. Section 200.55 is amended by replacing "an initial or renewal permit" with "a permit".

§ 200.56 [Amended]

Par. 11. Paragraph (b) of § 200.56 is amended by deleting ", whether initial or renewal".

§ 200.59 [Amended]

Par. 12. Section 200.59 is amended by replacing "an initial or renewal permit" with "a permit".

§ 200.62 [Amended]

Par. 13. The heading of § 200.62 is amended by replacing "Initial application" with "Application", and the first sentence of § 200.62 is amended by deleting "initial".

§ 200.63 [Removed]

Par. 14. Section 200.63 is removed because it relates to renewal applications.

§ 200.67 [Amended]

Par. 15. The heading of § 200.67 is amended by replacing "Initial applications" with "Applications", and the first sentence of § 200.67 is amended by deleting "initial".

§ 200.68 [Removed]

Par. 16. Section 200.68 is removed because it relates to renewal applications.

§ 200.70 [Amended]

Par. 17. Section 200.70 is amended by replacing "an initial or renewal permit" with "a permit" in the second sentence.

§ 200.78 [Amended]

Par. 18. The heading of § 200.78 is amended by replacing "Initial applications" with "Applications". The first and third sentences of § 200.78 are amended by replacing "initial applications" with "applications".

Par. 19. Section 200.79 is revised to remove reference to renewal permits. As revised, § 200.79 reads as follows:

§ 200.79 Suspension, revocation, or annulment.

The administrative law judge who presides at the hearing in proceedings for the suspension, revocation, or annulment of a permit shall make the initial decision.

§ 200.80 [Amended]

Par. 20. The heading of § 200.80 is amended by replacing "Initial applications" with "Applications", and the first sentence of § 200.80 is amended by deleting "initial".

Par. 21. Section 200.81 is revised to remove reference to renewal applications. As revised, § 200.81 reads as follows:

§ 200.81 Suspension, revocation, or annulment.

In hearings on the suspension, revocation, or annulment of a permit, the burden of proof is on the Government.

Par. 22. Paragraph (h) of § 200.97 is revised to eliminate the distinction between initial and renewal applications. As revised, paragraph (h) of § 200.97 reads as follows:

§ 200.97 Powers.

* * * * *

(h) Render recommended decisions in proceedings on applications for permits, and in suspension, revocation, or annulment proceedings against permits;

* * * * *

§ 200.106 [Amended]

Par. 23. Paragraph (a) of § 200.106 is amended by replacing "initial application" with "an application". Paragraph (b) of § 200.106 is amended by deleting "proceedings on renewal applications and".

§ 200.107 [Amended]

Par. 24. The heading of § 200.107 is amended by replacing "Initial applications" with "Application", and the fourth sentence of § 200.107 is amended by deleting "initial".

Par. 25. The first clause of 200.108 is revised to remove references to renewal applications. As amended, the first clause of § 200.108 reads as follows:

§ 200.108 Suspension, revocation, or annulment proceedings.

Upon receipt of the complete certified record of the hearing the regional director (compliance) shall enter an order suspending, revoking, or annulling the permit (Form 1430–B) or dismissing the proceedings in accordance with the administrative law judge's findings and decision, * * *

§ 200.109 [Amended]

Par. 26. Section 200.109 is amended by deleting "or disapproving a renewal application" from the first sentence.

§ 200.115 [Amended]

Par. 27. Section 200.115 is amended by deleting "disapproving a renewal application and" and "initial" from the second sentence.

§ 200.116 [Amended]

Par. 28. Section 200.116 is amended by deleting "initial" from the second sentence.

§ 200.117 [Amended]

Par. 29. Section 200.117 is amended by replacing "annulment, or renewal application" with "or annulment" in the first sentence, and by deleting the last sentence.

PART 250—LIQUORS AND ARTICLES FROM PUERTO RICO AND THE VIRGIN ISLANDS

Section G. Part 250 is amended as follows:

Paragraph 1. The table of sections for Part 250 is amended to reflect the removal of §§ 250.36a, 250.36b, and 250.201b, and to reflect the revision of Subparts Ia and O.

Sec.

* * * * *

250.36 * * *
250.36c * * *

* * * * *

Subpart Ia—Shipment of Denatured Spirits and Products Made With Denatured Spirits to the United States From Puerto Rico

250.191 Notice of shipment.
250.192 Samples and analysis.
250.193 Notification of tax liability.
250.194 Detention of articles.

Subpart Ib * * *
* * * * *
250.201a * * *
250.201c * * *
* * * * *

Subpart O—Tax-Free Shipments to the United States From the Virgin Islands

250.291 General.

Shipment of Industrial Spirits and Specially Denatured Spirits

250.292 Copy of consignee's permit under Part 20 or 22.
250.293 Marks on containers.
250.294 Record of shipment.

Shipment of Completely Denatured Alcohol and Products Made with Denatured Spirits

250.295 Marks on containers.
250.296 Record of shipment.

Arrival in the United States

250.297 General.
* * * * *

Par. 2. The authority citation for Part 250 is revised to read as follows:

Authority: August 16, 1954, Ch. 736, 68A Stat. 906–907, as amended, 917, as amended (26 U.S.C. 7651–7652, 7805); Sec. 201, Pub. L. 85–859, 72 Stat. 1375, as amended (26 U.S.C. 5314), unless otherwise noted.

Par. 3. Section 250.36 is revised to provide for bringing industrial spirits, denatured spirits, and products made with denatured spirits into the United States from Puerto Rico with equal tax treatment for similar products made in the United States. As revised, § 250.36 reads as follows:

§ 250.36 Products exempt from tax.

(a) *General.* Industrial spirits, denatured spirits, and products made with denatured spirits in Puerto Rico may be brought into the United States without incurring tax liability imposed by 26 U.S.C. 5001 or 7652.

(b) *Industrial spirits.* A distiller of industrial spirits who registers and files a bond as a distilled spirits plant in accordance with Part 19 of this chapter may ship industrial spirits to a tax-free alcohol user in the United States who holds a permit under Part 22 of this chapter. These shipments shall be made in accordance with the requirements of Parts 19 and 22 of this chapter.

(c) *Denatured spirits.* A distiller who registers and files a bond as a distilled spirits plant in accordance with Part 19 of this chapter and who denatures spirits in accordance with Parts 19 and 21 of this chapter may ship (1) completely denatured alcohol to anyone in the United States, and/or (2) specially denatured spirits to a dealer or user of specially denatured spirits in the United States or Puerto Rico who holds a permit under Part 20 of this chapter. These shipments shall be made in accordance with the requirements of Parts 19 and 20 of this chapter, and Subpart Ia of this part.

(d) *Products made with denatured spirits.* (1) A person in Puerto Rico who manufactures products with completely denatured alcohol in accordance with the requirements of Part 20 of this chapter may ship those products to the United States in accordance with the requirements of Part 20 of this chapter, and Subpart Ia of this part.

(2) A person in Puerto Rico who manufacturers products with specially denatured spirits may ship those products to the United States if that person (i) obtains a permit to use specially denatured spirits under Part 20 of this chapter, and (ii) complies with the requirements of Part 20 of this chapter and Subpart Ia of this part relating to the manufacture and shipment of those products.

§ 250.36a and 250.36b [Removed]

Par. 4. Sections 250.36a and 250.36b are removed because they are made obsolete by the above revision of § 250.36.

Par. 5. Paragraphs (b) and (c) of § 250.51 are revised to reflect new regulations in Part 20 and the new form number of a Government form. As revised, § 250.51 (b) and (c) read as follows:

§ 250.51 Formulas for articles and products manufactured with denatured spirits.

* * * * *

(b) *Formulas for products manufactured with denatured spirits.* Products manufactured with denatured spirits shall be manufactured in accordance with the formula requirements of Part 20 of this chapter for similar products made in the United States.

(1) Products may be made with completely denatured alcohol for sale under brand names under Part 20 of this chapter without obtaining an approved formula. If ingredients are added in sufficient quantities to materially change the composition and character of the completely denatured alcohol, the product is not classified as completely denatured alcohol and may not be marked, branded, or sold as completely denatured alcohol.

(2) Products made with specially denatured spirits shall be made in accordance with (i) a general-use formula approved as provided in Part 20 of this chapter, or (ii) an approved formula on Form 5150.19, or previously approved on ATF Form 1479–A or 27–B Supplemental.

(c) *Form 5150.19.* Formulas required by this section shall be submitted on Form 5150.19 in accordance with § 250.54.

Par. 6. Subpart Ia is revised to provide for equal tax treatment by eliminating procedural requirements which exceed the requirements of Parts 19, 20, and 21 relating to manufacture and shipment of denatured spirits and products made with denatured spirits. However, oversight by the chemist of the Secretary of the Treasury of Puerto Rico is retained so that the Treasury of Puerto Rico can ensure that products shipped tax-exempt are qualified for tax-exempt status. As revised, Subpart Ia reads as follows:

Subpart Ia—Shipment of Denatured Spirits and Products Made With Denatured Spirits to the United States From Puerto Rico

Sec.
250.191 Notice of shipment.
250.192 Samples and analysis.
250.193 Notification of Tax liability.
250.194 Detention of articles.

Subpart Ia—Shipment of Denatured Spirits and Products Made With Denatured Spirits to the United States From Puerto Rico

§ 250.191 Notice of shipment.

At least 5 business days before shipment, each proprietor of a distilled spirits plant in Puerto Rico who intends to ship denatured spirits to the United States in containers larger than 5 gallons, and each permittee in Puerto Rico who intends to ship products made with denatured spirits to the United States in containers larger than 5 gallons shall notify the chemist of the Treasury of Puerto Rico of the intent to ship.

(Approved by the Office of Management and Budget under control number 1512–0336)

§ 250.192 Samples and analysis.

The chemist of the Treasury of Puerto Rico may take samples of the product to be shipped in order to determine that it is eligible for tax-free status.

§ 250.193 Notification of tax liability.

(a) If the chemist of the Treasury of Puerto Rico finds that denatured spirits or products made with denatured spirits are not eligible for tax-free shipment, before the shipment is made, the chemist will immediately notify the shipper that the article is subject to tax, payable in accordance with §§ 250.107 through 250.110.

(b) If the chemist of the Treasury of Puerto Rico finds that denatured spirits or products made with denatured spirits are not eligible for fax-free shipment, after the shipment is made, the chemist

will immediately notify the shipper that the tax shall be paid immediately in accordance with § 250.113. The chemist will also notify the regional director (compliance) of the consignee's region.

§ 250.194 Detention of articles.

(a) Upon receiving a notification in accordance with § 250.193(b), the regional director (compliance) will detain the article in accordance with Part 20 of this chapter or seize the article in accordance with Part 72 of this chapter.

(b) After the shipper furnishes proof that the tax was paid in accordance with § 250.113, the regional director (compliance) will release the article to the consignee.

Par. 7. Section 250.201 is revised to provide for bringing industrial spirits, denatured spirits, and products made with denature spirits into the United States from the Virgin Islands with equal tax treatment for similar products made in the United States. As revised, § 250.201 reads as follows:

§ 250.201 Products exempt from tax.

(a) *General.* Industrial spirits, denatured spirits, and products made with denatured spirits in the Virgin Islands may be brought into the United States without incurring tax liability imposed by 26 U.S.C. 5001 or 7652.

(b) *Industrial spirits.* A distiller of industrial spirits who qualifies under regulations issued by the Governor of the Virgin Islands may ship industrial spirits to a tax-free alcohol user in the United States who holds a permit under Part 22 of this chapter. Shipments shall be made in accordance with the requirements of Subpart O of this part.

(c) *Denatured spirits.* A distiller who qualifies under the regulations issued by the Governor of the Virgin Islands and who denatures spirits in accordance with Part 21 of this chapter may ship (1) completely denatured alcohol to anyone in the United States, and/or (2) specially denatured spirits to a dealer or user of specially denatured spirits in the United States or Puerto Rico who holds a permit under Part 20 of this chapter. Shipments shall be made in accordance with the requirements of Subpart O of this part.

(d) *Products made with denatured spirits.* A person in the Virgin Islands who manufactures products with completely denatured alcohol or specially denatured spirits in accordance with the requirements of Part 20 of this chapter and regulations issued by the Governor of the Virgin Islands may ship those products to the United States in accordance with the requirements of Subpart O of this part.

§ 250.201b [Removed]

Par. 8. Section 250.201b is removed because it is made obsolete by the above revision of § 250.201.

Par. 9. Paragraphs (b) and (c) of 250.221 are revised to reflect new regulations in Part 20 and the new form number of a Government form. As revised, § 250.221 (b) and (c) read as follows:

§ 250.221 Formulas for articles and products manufactured with denatured spirits.

* * * * *

(b) *Formulas for products manufactured with denatured spirits.* Products manufactured with denatured spirits shall be manufactured in accordance with the formula requirements of Part 20 of this chapter for similar products made in the United States.

(1) Products may be made with completely denatured alcohol for sale under brand names under Part 20 of this chapter without obtaining an approved formula. If ingredients are added in sufficient quantities to materially change the composition and character of the completely denatured alcohol, the product is not classified as completely denatured alcohol and may not be marked, branded, or sold as completely denatured alcohol.

(2) Products made with specially denatured spirits shall be made in accordance with (i) a general-use formula approved as provided in Part 20 of this chapter, or (ii) an approved formula on Form 5150.19, or previously approved on ATF Form 1479–A or 27–B Supplemental.

(c) *Form 5150.19.* Formulas required by this section shall be submitted on Form 5150.19 in accordance with § 250.224.

Par. 10. Subpart O is revised to provide equal tax treatment by adding procedural requirements prescribed in Parts 19, 20, 21 and 22 relating to manufacture and shipment of industrial spirits, denatured spirits and products made with denatured spirits in the United States, and by eliminating procedural requirements which exceed the requirements for those products made in the United States. As revised. Subpart O reads as follows:

Subpart O—Tax-Free Shipments to the United States From the Virgin Islands

Sec.

250.291 General.

Shipment of Industrial Spirits and Specifially Denatured Spirits

250.292 Copy of consignee's permit under Part 20 or 22.
250.293 Marks on containers.
250.294 Record of shipment.

Shipment of Completely Denatured Alcohol and Products Made With Denatured Spirits

250.295 Marks on containers.
250.296 Record of shipment.

Arrival in the United States

250.297 General.

Subpart O—Tax-Free Shipments to the United States From the Virgin Islands

§ 250.291 General.

(a) Industrial spirits may be shipped into the United States to the holder of a permit under Part 22 of this chapter, in accordance with § 250.292 through 250.294 and regulations issued by the Governor of the Virgin Islands.

(b)(1) Specially denatured spirits may be shipped into the United States to the holder of a permit under Part 20 of this chapter, in accordance with §§ 250.292 through 250.294 and regulations issued by the Governor of the Virgin Islands.

(2) Completely denatured alcohol may be shipped to anyone in the United States in accordance with §§ 250.295 through 250.296 and regulations issued by the Governor of the Virgin Islands.

(3) Denatured spirits shall be denatured in accordance with Part 21 of this chapter and regulations issued by the Governor of the Virgin Islands.

(c) Products made with denatured spirits may be shipped to anyone in the United States in accordance with §§ 250.295 through 250.296 and regulations issued by the Governor of the Virgin Islands. These products are also subject to the requirements of § 250.221 of this part.

Shipment of Industrial Spirits and Specially Denatured Spirits

§ 22.292 Copy of consignee's permit under Part 20 or 22.

The consignor or consignee shall file a copy of the consignee's permit issued under Part 20 of this chapter (for shipments of specially denatured spirits) or Part 22 of this chapter (for shipments of industrial spirits) with the district director of customs of the port of entry. The copy of the permit shall be adequate evidence that the consignee is authorized to enter industrial spirits or specially denatured spirits free of tax.

§ 250.293 Marks on containers.

(a) *Industrial spirits.* The shipper shall mark or label each immediate container of industrial spirits with the following information:

(1) The name or trade name of the distiller or shipper;

(2) The words "Virgin Islands Industrial Spirits";

(3) A package identification number as required by Subpart R of Part 19 of this chapter;

(4) The date filled;

(5) Proof; and

(6) Quantity in proof gallons.

(b) *Specially denatured spirits.* The shipper shall mark or label each immediate container of specially denatured spirits with the following information:

(1) Quantity, in gallons, or in liters and gallons;

(2) A serial number or package identification number;

(3) Name and address of shipper;

(4) The words "Virgin Islands Specially Denatured Alcohol" or "Virgin Islands Specially Denatured Rum," as appropriate;

(5) Formula number prescribed by Part 21 of this chapter;

(6) Proof, if the spirits were denatured at other than 190 proof;

(7) Denaturants used, if spirits were denatured under an approved formula authorizing a choice of denaturants; and

(8) Quantity of denaturant used, if the approved formula authorizes a choice of quantities of denaturants.

§ 250.294 Record of shipment.

(a) Each shipment of industrial spirits or specially denatured spirits from the Virgin Islands to the United States shall be accompanied by a record of shipment. The record of shipment shall consist of an invoice, bill of lading or similar document which shows the following information:

(1) Consignor's name and address;

(2) Consignee's name, address, and permit number;

(3) For each formula of specially denatured spirits—

(i) The formula number prescribed by Part 21 of this chapter,

(ii) The serial numbers or package identification numbers of containers, and

(iii) The total quantity in wine gallons;

(4) For industrial spirits—

(i) The package identification numbers of containers, and

(ii) The total quantity in proof gallons.

(b) The record of shipment shall be made available to custom officers inspecting the shipment.

(Records relating to industrial spirits approved by the Office of Management and Budget under control number 1512–0334; records relating to specially denatured spirits approved by the Office of Management and Budget under control number 1512–0337)

Shipment of Completely Denatured Alcohol and Products Made With Denatured Spirits

§ 250.295 Marks on containers.

(a) *Completely denatured alcohol.* (1) For each immediate container of completely denatured alcohol with a capacity exceeding 1 gallon, the shipper shall mark or label on the head or side of the package or on the side of the casing, the following:

(i) The name and address of the person filling the container;

(ii) The contents in gallons;

(iii) The words "Virgin Islands Completely Denatured Alcohol"; and

(iv) The formula number prescribed by Part 21 of this chapter.

(2) In addition, if the container has a capacity of 5 gallons or less, the words "Completely Denatured Alcohol" shall be in red letters on white background, and the label shall also have the words "Caution—contains poisonous ingredients" in red letters on white background.

(b) *Products made with denatured spirits.* The shipper shall mark or label each immediate container of a product made with denatured spirits with the name, trade name or brand name of the product and the name and address of the shipper.

§ 250.296 Record of shipment.

(a) Each shipment of completely denatured alcohol or products made with denatured spirits shall be accompanied by a record of shipment. The record of shipment shall consist of an invoice, bill of lading or similar document which shows the following information:

(1) Consignor's name and address;

(2) Consignee's name and address;

(3) Capacity and number of containers;

(4) Total quantity shipped; and

(5)(i) For completely denatured alcohol, the words "Virgin Islands Completely Denatured Alcohol" and the formula number prescribed by Part 21 of this chapter, or

(ii) For products made with denatured spirits, the name, trade name or brand name of the product.

(b) The record of shipment shall be made available to customs officers inspecting the shipment.

(Approved by the Office of Management and Budget under control number 1512–0337)

Arrival in the United States

§ 250.297 General.

The district director of customs shall inspect each shipment of industrial spirits, specially denatured spirits, completely denatured alcohol, and products made with denatured spirits coming into the United States from the Virgin Islands. If the shipment complies with the requirements of this part, the products may be released free of tax.

PART 251—IMPORTATION OF DISTILLED SPIRITS, WINES AND BEER

Section H. Part 251 is amended as follows:

Paragraph 1. The table of sections for Part 251 is amended to reflect the revision of Subpart M.

Sec.

* * * * *

Subpart M—Withdrawal of Imported Distilled Spirits From Customs Custody Free of Tax For Use of the United States

251.181 General.
251.182 Application and Permit, Form 5150.33.
251.183 Use of permit, Form 5150.33.
251.184 Entry documents.
251.185 Customs release.

Subpart N * * *

* * * * *

Par. 2. Subpart M of Part 251 is revised to read as follows:

Subpart M—Withdrawal of Imported Distilled Spirits From Customs Custody Free of Tax For Use of the United States

§ 251.181 General.

(a) The United States or any of its Government agencies may, upon filing proper customs entry, withdraw imported distilled spirits free of tax from customs custody, as authorized by 26 U.S.C. 5313 and under the provisions of this subpart. Before any distilled spirits may be withdrawn, a permit to procure the spirits shall be obtained from the Director. A bond is not required for any Government agency to procure and withdraw spirits free of tax under this subpart.

(b) The provisions of Subpart N of Part 22 of this chapter cover the withdrawal of domestically produced tax-free spirits for use of the United States or any of its Government agencies.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1372, as amended, 1375, as amended (26 U.S.C. 5273, 5313))

§ 251.182 Application and Permit, Form 5150.33.

(a) *General.* All permits previously issued to the United States or any of its Government agencies on Form 1444 shall remain valid and will be regulated by the same provisions of this subpart as it refers to permits on Form 5150.33.

(b) *Application.* (1) A Government agency of the United States shall apply to the Director for a permit to procure and withdraw spirits free of tax on Form 5150.33. Upon approval by the Director, Form 5150.33 will be returned to the agency.

(2) If a Government agency intends to withdraw spirits free of tax under this part and Part 22 of this chapter, Form 5150.33 may be annotated to cover both types of withdrawals.

(3) A separate permit is not required for each port of entry. The application, Form 5150.33, may be completed to indicate the applicable ports of entry in which spirits will be withdrawn from customs custody.

(4) A Government agency may specify on its application that it desires a single permit authorizing all sub-agencies under its control to procure and withdraw spirits free of tax under this subpart and Subpart N of Part 22 of this chapter; or, each Government location may individually file an application for a permit, Form 5150.33.

(5) Each application for a permit shall be signed by the head of the agency or sub-agency, or the incumbent of an office which is authorized by the head of the agency or sub-agency, to sign. Evidence of authorization to sign on behalf of the head of an agency or sub-agency shall be furnished with the application.

(c) *Use of spirits.* Spirits withdrawn under this subpart may not be used for non-Government purposes.

(d) *Cancellation of permit.* All permits on Form 5150.33 and previous editions on Form 1444 shall remain in force until surrendered or canceled. Upon surrender or cancellation, the Government agency shall obtain and destroy all photocopies of the permit furnished to district directors of customs, and forward the original to the Director for cancellation.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1375, as amended (26 U.S.C. 5313))

§ 251.183 Use of permit, Form 5150.33.

Each Government agency shall retain the original of its permit, Form 5150.33, on file. When filing an initial customs entry to withdraw spirits free of tax from a port of entry, the agency shall furnish a photocopy of its permit to the district director of customs for retention. In the case of an agency holding a single permit for use of its sub-agencies, an attachment to the permit shall list all locations authorized to withdraw spirits free of tax from customs custody. Any subsequent requests for customs entry from the same port shall refer to the permit number.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1375, as amended (26 U.S.C. 5313))

§ 251.184 Entry documents.

Entry documents for importation of tax-free spirits under this subpart shall record the serial numbers or other identifying numbers of the containers and the total quantity in proof gallons of the spirits to be entered.

§ 251.185 Customs release.

(a) Upon receipt of appropriate customs entry and a photocopy of a permit, Form 5150.33 or previous editions on Form 1444 (5150.33), the district director of customs shall, following an inspection of the shipment, release spirits free of tax to the Government agency named on the permit, or an attachment thereto.

(b) Customs officers shall not release spirits for shipment until the shipment has been inspected for losses in transit. If it appears that a container or containers have sustained losses in transit, the customs officers shall gauge the damaged container and prepare a package gauge record for the entire shipment, according to § 251.139. A copy of the package gauge record will be retained for the customs files and the original forwarded to the consignee agency.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1375, as amended (26 U.S.C. 5313))

PART 252—EXPORTATION OF LIQUORS

Section I. Part 252 is amended as follows:

Paragraph 1. The table of sections for Part 252, Subpart C, is amended to reflect the addition of § 252.20.

Sec.

* * * * *

Subpart C—Miscellaneous Provisions

252.20 Alternate methods or procedures; and emergency variations from requirements.

* * * * *

Par. 2. Section 252.3 is revised by removing "27 CFR Part 211—Distribution and Use of Denatured Alcohol and Rum" because it is not related to Part 252. As revised, § 252.3 reads as follows:

§ 252.3 Related regulations.

Regulations related to this part are listed below:

19 CFR Chapter I—Customs Regulations.
27 CFR Part 1—Basic Permit Requirements Under the Federal Alcohol Administration Act.
27 CFR Part 4—Wine Labeling and Advertising.
27 CFR Part 19—Distilled Spirits Plants.
27 CFR Part 21—Formulas for Denatured Alcohol and Rum.
27 CFR Part 30—Gauging Manual.
27 CFR Part 194—Liquor Dealers.
27 CFR Part 231—Taxpaid Wine Bottling Houses.
27 CFR Part 240—Wine.
27 CFR Part 245—Beer.
31 CFR Part 225—Acceptance of Bonds, Notes, or Other Obligations Issued or Guaranteed by the United States as Security in Lieu of Surety or Sureties on Penal Bonds.

§ 252.11 [Amended]

Par. 3. The definition of *Specially denatured spirits* in § 252.11 is amended by replacing "Part 212" with "Part 21".

Par. 4. Subpart C is amended by adding § 252.20 immediately preceding the undesignated center head "Withdrawal or Lading for Use on Certa in Vessels and Aircrafts." As added, § 252.20 reads as follows:

Subpart C—Miscellaneous Provisions

§ 252.20 Alternate methods or procedures; and emergency variations from requirements.

(a) *Alternate methods or procedures.*—(1) *Application.* An exporter, after receiving approval from the Director, may use an alternate method or procedure (including alternate construction or equipment) in lieu of a method or procedure prescribed by this part. An exporter wishing to use an alternate method or procedure may apply to the regional director (compliance). The exporter shall describe the proposed alternate method or procedure and shall set forth the reasons for its use.

(2) *Approval by Director.* The Director may approve the use of an alternate method or procedure if:

(i) The applicant shows good cause for its use;

(ii) It is consistent with the purpose and effect of the procedure prescribed by this part, and provides equal security to the revenue;

(iii) It is not contrary to law; and

(iv) It will not cause an increase in cost to the Government and will not hinder the effective administration of this part.

(3) *Exceptions.* The Director will not authorize an alternate method or procedure relating to the giving of a bond or the payment of tax.

(4) *Conditions of approval.* An exporter may not employ an alternate method or procedure until the Director has approved its use. The exporter shall, during the terms of the authorization of an alternate method or procedure, comply with the terms of the approved application.

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(b) *Emergency variations from requirements.*—(1) *Application.* When an emergency exists, an exporter may apply to the regional director (compliance) for a variation from the requirements of this part relating to construction, equipment, and methods of operation. The exporter shall describe the proposed variation and set forth the reasons for using it.

(2) *Approval by regional director (compliance).* The regional director (compliance) may approve an emergency variation from requirements if:

(i) An emergency exists;

(ii) The variation from the requirements is necessary;

(iii) It will afford the same security and protection to the revenue as intended by the specific regulations;

(iv) It will not hinder the effective administration of this part; and

(v) It is not contrary to law.

(3) *Conditions of approval.* An exporter may not employ an emergency variation from the requirements until the regional director (compliance) has approved its use. Approval of variations from requirements are conditioned upon compliance with the conditions and limitations set forth in the approval.

(4) *Automatic termination of approval.* If the exporter fails to comply in good faith with the procedures, conditions or limitations set forth in the approval, authority for the variation from requirements is automatically terminated and the exporter is required to comply with prescribed requirements of regulations from which those variations were authorized.

(c) *Withdrawal of approval.* The Director may withdraw approval for an alternate method or procedure, or the regional director (compliance) may withdraw approval for an emergency variation from requirements, approved under paragraph (a) or (b) of this section, if the Director or the regional director (compliance) finds the revenue is jeopardized or the effective administration of this part is hindered by the approval.

(Act of August 16, 1954, Ch. 736, 68A Stat. 917 (26 U.S.C. 7805); Sec. 201, Pub. L. 85–859, 72 Stat. 1395, as amended (26 U.S.C. 5552))

Signed,

Stephen E. Higgins,

Director.

Approved,

November 26, 1984.

John M. Walker, Jr.,

Assistant Secretary (Enforcement and Operations).

[FR Doc. 85–5136 Filed 3–5–85; 8:45 am]

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federal register

Wednesday
March 6, 1985

Part III

Environmental Protection Agency

40 CFR Part 86

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Nonconformance Penalties for Heavy-Duty Engines and Heavy-Duty Vehicles, Including Light-Duty Trucks; Proposed Rulemaking

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[FRL-2760-4]

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Nonconformance Penalties for Heavy-Duty Engines and Heavy-Duty Vehicles, Including Light-Duty Trucks

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The EPA is proposing the generic aspects of a nonconformance penalty (NCP) rule. The NCP would allow a manufacturer of heavy-duty engines (HDEs) or heavy-duty vehicles (HDVs) whose engines or vehicles fail to conform with certain applicable emission standards, but which do not exceed a designated upper limit, to be issued a certificate of conformity upon payment of a monetary penalty. An "upper limit" is an emission level, established by regulation and appropriate to a specific pollutant, above which an HDE or HDV could not be issued a certificate.

This rule proposes the criteria for the availability of NCPs, the method of establishing upper limits, a testing program called Production Compliance Auditing (PCA), a penalty formula to determine the dollar amount of the NCP and other general aspects of an NCP rule. Specific upper limits and penalty rates to be used in the proposed penalty formula will be proposed in a separate rulemaking following completion of the generic NCP rulemaking.

This proposal is the result of an experimental rulemaking process called Regulatory Negotiation, the concept of which is to allow the parties interested in or affected by the outcome of the proposed rule an opportunity to participate in its development through face-to-face negotiations. This proposal is based upon the consensus that was reached during the Regulatory Negotiation process. This is EPA's first proposal under this new regulatory process.

Regulations affected by this rulemaking are condified in Subparts A, K and L of 40 CFR Part 86.

DATES: *Public Hearing:* EPA will hold a public hearing on this Notice on March 25, 1985 beginning at 9:00 a.m., provided that it is requested. Any person desiring to request the hearing must notify the Agency by March 18, 1985. If the hearing is not requested, it will be cancelled by a separate notice in the **Federal Register**. To request the hearing or to verify whether it is being held or not, contact the EPA contact listed below. Any person desiring to participate in the hearing should, to the extent possible, notify the EPA contact listed below of his or her intention, along with an outline of the points to be discussed and the time needed to discuss these points prior to the hearing. Pursuant to section 307 of the Clean Air Act, the record of the hearing, if held, will be kept open for 30 days following its conclusion to provide an opportunity for submission of rebuttal and other information.

Public Comments: All comments should be received on or before April 5, 1985 or within 30 days following the conclusion of the public hearing, if held, whichever is later. If the hearing is not requested, it will be cancelled by a separate notice in the **Federal Register** and all comments should be received on or before April 5, 1985.

ADDRESSES: The hearing will take place in the conference room at the EPA Motor Vehicle Emissions Laboratory, 2565 Plymouth Road, Ann Arbor, MI, 48105.

Send written comments to: Public Docket EN-85-02, Central Docket Section [A-130], Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460. If possible, a copy of the written comments should be submitted to the EPA contact listed below.

Public Docket: Copies of materials relevant to this rulemaking proceeding are contained in Public Docket EN-85-02 at the Central Docket Section of the U.S. Environmental Protection Agency, West Tower Lobby/Gallery 1, 401 M Street, SW., Washington, D.C., 20460, and are available for review between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT:

Mr. Robert Montgomery or Mr. Claude Magnuson, Manufacturers Operations Division (En-340F), Environmental Protection Agency, 401 M Street SW., Washington, D.C., 20460, Telephone: (202) 382-2500 or (202) 382-2547.

SUPPLEMENTARY INFORMATION

A. Statutory Authority

Section 206(g) of the Clean Air Act requires EPA to issue certificates of conformity to any class or category of heavy-duty vehicles or engines which exceeds a section 202(a) emissions standard, but does not exceed an upper limit associated with that standard, if the manufacturer pays a nonconformance penalty (NCP) established by rulemaking. In placing section 206(g) in the Clean Air Act amendments of 1977, Congress intended NCPs as a response to perceived problems with technology-forcing heavy-duty emissions standards.[1] Following *International Harvester* v. *Ruckelshaus*, 478 F.2d 615 (D.C. Cir. 1973), Congress realized the dilemma that technology-forcing standards were likely to cause. If strict standards were maintained, then some manufacturers (technological laggards) might be unable to comply initially and would be forced out of the marketplace. NCPs were intended to remedy this potential problem; the laggards would have a temporary alternative to permit them to sell their engines or vehicles through payment of a penalty, yet leaders would not suffer an economic disadvantage compared to nonconforming manufacturers, because the NCP would be based on the amount of money the laggard and his customer saved from the nonconforming engine or vehicle.

Under section 206b(g)(1), NCPs may be offered for heavy-duty vehicles (HDVs) and heavy-duty engines (HDEs), which are engines to be installed in heavy-duty vehicles. HDVs are defined by section 202(b)(3)(C) as vehicles in excess of 6000 pounds gross vehicle weight (GVW). They include the part of the light-duty truck (LDT) class between 6001 and 8500 pounds GVW—the heavy light-duty trucks. The penalty may vary by pollutant and by class or category of vehicle or engine.

Section 206(g)(3) requires NCPs to be designed so as to:

- Increase with the degree of emission nonconformity;
- Increase periodically to provide incentive for nonconforming manufacturers to achieve the emission standards;
- Remove any competitive disadvantage to conforming manufacturers.

Section 206(g) authorizes EPA to require testing of production vehicles or engines in order to determine the emission level on which the penalty is based. This emission level, the "compliance level," becomes the benchmark for warranty and recall liability; the manufacturer who elects the NCP may be responsible for warranty or recall liability if its vehicle or engine exceeds the compliance level in-use. It would not have in-use warranty or recall liability for emissions

[1] The existence of NCPs, however, will not change the criteria under which the standards have been and will be set under section 202.

levels above the standard but below the compliance level.

However, when the emission level of a vehicle or engine exceeds the upper limit of nonconformity, the vehicle or engine would not qualify for an NCP under section 206(g) and no certificate of conformity could be issued to the manufacturer.

B. Previous EPA Rulemakings Regarding Heavy-Duty Engine and Light-Duty Truck NCPs

NCPs were previously proposed by EPA in two separate rulemakings. An NCP system was originally proposed in the Gaseous Emission Regulations for 1983 and Later Model Year Heavy-Duty Engines Notice of Proposed Rulemaking (44 FR 9464, February 13, 1979). A generic NCP formula was proposed, based on the marginal cost of bringing a "typical" HDE into compliance when its emissions are in the allowable range of nonconformity (not in excess of the upper limit). Also proposed was a system of Production Compliance Auditing (PCA) to measure the compliance levels of vehicles and engines which may qualify for NCPs. The notice stated that the proposed hydrocarbon (HC) and carbon monoxide (CO) emission standards for HDEs could probably be achieved by all manufacturers, so that upper limits would be set equal to the proposed standards, and NCPs would not be offered for those standards. A similar NCP/PCA system was outlined in the Gaseous Emission Regulations for 1983 and Later Model Year Light-Duty Trucks NPRM (44 FR 40784, July 12, 1979), but again, specific NCPs were not proposed.

The final rules for the HC and CO standards for both HDEs and LDTs stated that NCPs would be offered as part of a separate rulemaking to provide for isolated instances where compliance was not achieved. However, in April, 1981, the Administration announced a number of regulatory relief initiatives aimed at reducing the impact of government regulations on the automotive industry. One element of this program included the proposed revision of HC and CO emission standards so that catalysts would not be required for heavy-duty gasoline engines. Thus, NCPs were not offered for the final standards, as revised in 1983 (48 FR 1413, 1424, January 12, 1983), since the Agency believed manufacturers could generally comply with the revised standards. However, NCPs may be necessary for some future emissions standards, such as the oxides of nitrogen (NO_x) and particulate standards which have been proposed for 1987 (49 FR 40258, October 15, 1984), or for previously promulgated standards if future standards for other pollutants makes compliance with existing standards more difficult.

C. Generic Rule

This notice of proposed rulemaking (NPRM) is the beginning of the generic phase (Phase I) of the current NCP rulemaking. During this generic phase, EPA will publish regulations concerning when NCPs will be made available for emissions standards, how upper limits will be chosen, the general formula for calculating the penalties, and procedures for testing the degree of emissions nonconformity. During the second phase of the NCP rulemaking (Phase II), EPA will apply the Phase I concepts to determine particular emissions standards for which NCPs will be available, specific upper limits, and numerical values for the variables in the penalty rate formula for particular subclasses of engines.

The U.S. District Court for the District of Columbia in *Natural Resources Defense Council* v. *Ruckelshaus*, No. 84–758 (D.D.C. Sept. 14, 1984), ordered EPA to publish the proposed rule for Phase I by March 15, 1985, and the final regulations by August 31, 1985, the same date by which the Agency must publish the NPRM for Phase II of the rulemaking proceeding. EPA must publish the final rule for Phase II by December 31, 1985.

D. Regulatory Negotiation

This proposal is a result of an experimental rulemaking process called Regulatory Negotiation, which allows the parties interested in or affected by the outcome of the proposed rule an opportunity to participate in the rule's development through face-to-face negotiations. This proposal is based upon the consensus that was reached during the Regulatory Negotiation process. This is EPA's first proposal under this new regulatory process.

The negotiations were conducted under a Federal Advisory Committee charter. The first meeting of the Committee was on June 14, 1984 and the final meeting was on October 12, 1984. Committee meetings were open to the public and were noticed in the **Federal Register.**

Participants in the negotiations included heavy-duty vehicle and engine manufacturers, representatives of state air pollution control programs, an environmental organization, industry trade associations, an emission control equipment manufacturer association and the Environmental Protection Agency. (Following this preamble is a list of organizations that participated.)

E. Availability Criteria

NCPs need not necessarily be made available every time EPA promulgates or revises an emissions standard for HDVs or HDEs. This generic rule proposes three conditions that must be met before NCPs become available: An emission standard must become more difficult to meet; EPA must find that substantial work is necessary to meet the standard; and EPA must determine that there is likely to be a technological laggard.

Congress intended that EPA limit the availability of NCPs to situations where technological laggards are likely to develop In section 202(a)(3)(A) of the 1977 amendments to the Clean Air Act, Congress required that substantial reductions be made from uncontrolled emissions levels of HC, CO, and NO_x, because it was concerned that heavy-duty emission standards had been too lenient. Congress did allow EPA to revise these statutory standards under certain circumstances, so long as they were set on the basis of the emissions control capability of the technological leaders. One purpose of section 206(g) was to avoid, at least temporarily, the problem of technological laggards being driven out of the market because of their inability to meet technology-forcing emissions standards. Thus, the existence of NCPs presupposes the existence of a potential laggard.

This interpretation is consistent with both the language of the statute and its legislative history. Section 206(g)(1) says that NCPs shall be available "in the case of any . . . heavy duty vehicles or engines to which a standard promulgated under section 202(a) applies. "Availability of NCPs is limited by section 206(g)(2), however, to situations where the vehicle or engine's emissions do not exceed "the percentage determined . . . to be practicable," i.e., an upper limit. Congress expected that most laggards would meet the upper limit, according to the 1977 House Report discussing section 206(g). H.R. Rep. No. 95–294, 95th Cong. 1st Sess. 275 (1977). The Senate concurred in the House Report's explanation of NCPs. Conference Report, H.R. Rep. No. 95–564, 95 Cong., 1st Sess. 163 (1977). It follows that the upper limit should be set at a level achievable by most laggards. Conversely, if laggards are not anticipated, then an upper limit may be set equal to the standard and NCPs need not be offered. Therefore, NCPs should be available only when there is a likelihood that a new or revised standard might cause a technological laggard to exist.

The three conditions that must be met before EPA will make an NCP available are consistent with Congress' intention. The first condition is that an emissions standard becomes more difficult to meet. This condition creates the possibility for a technological laggard to exist. There may be some cases where a standard will become more difficult to meet even though it has not changed, because another standard has become more stringent. For instance, under certain circumstances, compliance with a more stringent NO_x standard might adversely affect the capability of a diesel engine to meet an existing HC standard. Therefore, the subclass subject to the HC standard might be eligible for an NCP.

The second condition is that substantial work be required in order to comply. Substantial work may be defined as the application of technology not previously used in that engine class or subclass or the significant modification of existing technology or design parameters needed to bring the vehicle or engine into compliance. When manufacturers must perform substantial work, it is possible that at least one will be unsuccessful and will become a laggard.

Third, EPA must find that there is likely to be a technological laggard. Even when a standard becomes more stringent (or there is an adverse effect on a previously attainable standard), and even when manufacturers must perform substantial work, all manufacturers may still be able to meet the more stringent standard. For instance, compliance with a standard may involve merely the transference of technology from a similar application. Thus, EPA must make a determination whether the circumstances will likely give rise to a laggard.

In Phase II, EPA will determine those emissions standards and those subclasses of HDEs and HDVs for which NCPs should be available. EPA will make these decisions for the two light-duty truck subclasses, heavy light-duty gas trucks (6,001–8,500 pounds gross vehicle weight) and heavy light-duty diesel trucks (6,100–8,500 GVW); the two heavy-duty gas engine subclasses, light heavy-duty gas engines (8,501–14,000 GVW) and heavy heavy-duty gas engines (over 14,000 GVW); and the three heavy-duty diesel engine subclasses, light heavy-duty diesel engines (e.g. pickups, delivery, and recreational vehicles), medium heavy-duty diesel engines (e.g. short haul intra-city vehicles); and heavy heavy-duty diesel engines (e.g. long haul inter-city vehicles). [The diesel HDE subclasses are more fully defined at 40 CFR 86.085–2.] EPA may further divide these classifications. This specification of eligible subclasses, which is adapted from the NCP negotiated consensus document, lists only engine subclasses above 8,500 GVW. Although evaporative emissions standards apply only to vehicle, not engine, subclasses, *see* 40 CFR 86.085–10(b), the Agency intends to offer evaporative NCPs for vehicles in excess of 8,500 GVW, and believes that that would be consistent with the consensus document. EPA requests interested parties to comment on this issue. EPA is considering whether to make NCPs available for those vehicles which certify as HDVs on the basis of vehicle frontal area and which have a gross vehicle weight rating of 6,000 pounds or less, or those engines which are classified as HDEs because they are expected to be used for motive power in such an HDV. Under EPA's regulations (40 CFR 86.082–2), vehicles can qualify as HDVs if they have a vehicle frontal area in excess of 45 square feet, but to the extent that such vehicles do not exceed a gross vehicle weight rating of 6,000 pounds, they would not seem to qualify as HDVs under the Act (section 202(b)(3)(C)), and thus may not be eligible for NCPs. EPA requests comments on this issue.

Once EPA makes NCPs available for any subclass or other group, they may be used by any manufacturer for its vehicles or engines in that category, with the exception of vehicles or engines imported under 40 CFR Part 85, Subpart P. When a manufacturer decides to pay an NCP, no judgments will be made about whether the manufacturer is motivated by economic rather than technological reasons. The penalty formula, as discussed below, has been designed to remove the economic advantage for nonconformance and, by doing so, obviates the need for making difficult determinations of subjective intent.

If NCPs are appropriate, they will generally be made available concurrent with a promulgation or revision of emission standards. However, when this is not feasible or appropriate, the NCPs will be published subsequent to the promulgation of the standards.

F. Upper Limits

An upper limit is an emission level, established by regulation, appropriate to a specific HDE or HDV pollutant above which an HDE or HDV configuration cannot be certified or introduced into commerce. This provision prevents the introduction into commerce of grossly polluting engines or vehicles. Section 206(g)(2) of the Clean Air Act refers to the upper limit as a percentage above the emission standard, set by regulation, that corresponds to an emission level EPA determines to be "practicable."

EPA intends to set each upper limit at an emission level that should be achievable by all manufacturers, including technological laggards. When an emission standard is changed and becomes more stringent than the prior emission standard, EPA proposes that the upper limit for the new emission standard be the prior emission standard. EPA requests comments on whether the upper limit should always be the prior emission standard. For example, when an NCP is made available for a previously attainable emission standard that has become more difficult to meet because another emission standard has become more stringent, should the upper limit for the previously attainable emission standard be the prior emission standard for that pollutant, as proposed, or should the upper limit be more stringent than the prior emission standard? Also, the averaging concepts proposed in 49 FR 40258, October 15, 1984, for HDEs were not considered when the NCP Regulatory Negotiation Committee addressed the selection of upper limits. Due to the potential linkage between the proposed averaging program (which also has an upper bound on allowable emission levels), if promulgated, and the NCP upper limit selection, would the prior emission standard always be appropriate for the NCP upper limit? For example, if an emission standard is reduced by a very small amount, should the emission standard prior to the reduction become the upper limit (allowing for only a small range on non-conformity), as proposed, or should the upper limit be less stringent?

When an emission standard is promulgated for a pollutant that had no prior emission standard, the upper limit will be determined by EPA during the specific NCP rulemaking.

G. Implementation Scheme

1. Production Compliance Auditing

Before a manufacturer could pay an NCP for the introduction into commerce of nonconforming engines or vehicles, it would have to perform a Production Compliance Audit (PCA) to determine the emission levels that are being emitted by those production engines or vehicles. A manufacturer could elect to conduct a PCA following the failure of engines or vehicles to conform with emission requirements during certification testing or Selective Enforcement Audit (SEA) testing or

following a production running change, provided that certain conditions, discussed below, are met. NCPs are not available to a manufacturer in lieu of recalling engines or vehicles due to in-use failures.

Compliance levels are established in a PCA for the pollutants for which the NCPs have been elected. The compliance level is somewhat analogous to the Acceptable Quality Level in EPA's existing production line SEA testing program (40 CFR Part 86, Subpart K). The compliance level represents an emission level at which 40 percent of the HDEs or HDVs have emission levels greater than that value; that is, the compliance level marks the 60th percentile of the emissions distribution of these HDEs or HDVs.[2]

As discussed previously, the PCA compliance level would be used to determine the size of an NCP penalty and, if the vehicles are introduced into commerce and the penalty is paid, the compliance level would become the level at which the manufacturer may incur warranty and recall liability for engines and vehicles which are subsequently found to exceed that level during their useful lives.[3] The compliance level would be rounded to the same number of significant figures contained in the applicable standard in accordance with ASTM E29–67.

The PCA would also be used to determine whether the emission levels for the pollutants for which the PCA was initiated are in excess of the associated upper limit. If a compliance level is determined to be in excess of the upper limit for the applicable emission standard, NCPs would not be available.

EPA is proposing three different sampling plans that would establish the compliance level(s) during PCA testing: the primary sampling plan and two optional reduced sampling plans.

The primary sampling plan would be a non-parametric test (i.e., not dependent on emission distribution) which would require the testing of at least 24 engines or vehicles. The emission test results from the PCA would be ranked in order from the lowest to the highest values and the test result of the sequence number determined from Table 1 of Appendix XII would become the compliance level. This test result corresponds to the 60th percentile point. This is a variation of the testing plan EPA proposed in 44 FR 9490, February 13, 1979, and 44 FR 40826, July 12, 1979.

EPA is also proposing two optional sampling plans: The fixed reduced sampling plan and the sequential reduced sampling plan. These reduced sampling plans, which would require fewer tests, are being proposed to accommodate small volume manufacturers or manufacturers with high testing costs, although any manufacturer could use either of these optional sampling plans. Each reduced sampling plan would be a parametric test (i.e., assuming a normal emission distribution) with a sample size of less than 24 engines or vehicles. In both cases, the compliance level would be equal to the value of $X+Ks$, where X is the mean of a sample of emission test results, s is the sample standard deviation, and K is a factor that provides for the additional protection against underestimation required by EPA for a test sample size less than 24. The value of K would depend upon the sample size and would decrease, approaching a constant, as the sample size increases. Due to the smaller test sample and the assumption of a normal emission distribution, the reduced sampling plans would likely result in a higher compliance level than the primary sampling plan. Thus, the reduced sampling plans would give the manufacturer the option of a reduced testing burden at the expense of a penalty per engine that is likely to be higher than that determined using the primary sampling plan.

A manufacturer that elects to use the fixed reduced sampling plan would have the option to choose a sample size between 3 and 23 engines or vehicles. However, that specific sample size would have to be selected prior to the start of testing. For values of K that correspond to a specific sample size using this sampling plan, see Table 2 of Appendix XII of the proposed regulations.

A manufacturer the elects to use the sequential reduced sampling plan would have the option to choose a sample size between 4 and 20 engines or vehicles, provided that the sample size is a multiple of 4 (i.e., 4, 8, 12, 16 or 20). After the manufacturer tests the engines or vehicles of the selected sample size and determines the compliance level, it would have the option to continue testing, in multiples of 4 engines or vehicles up to the maximum sample size of 20, to revise the initially determined compliance level. For values of K that correspond to the five possible sample sizes using this sampling plan, see Table 3 of Appendix XII of the proposed regulations.

A manufacturer would have the option to choose either of the three sampling plans. Once PCA testing begins, however, the manufacturer would not be able to change sampling plans under this proposal. EPA requests comments on whether a manufacturer should be allowed the option of changing to the primary (non-parametric) sampling plan during the course of testing under either optional (parametric) sampling plan.

Following selection of the sampling plan, and of the specific sample size if a reduced sampling plan is elected, an appropriate sample of engines or vehicles would then be drawn at random from the production line and tested. The sample could be all drawn at one time, in groups, or as needed for testing provided that the testing requirements, as specified in these regulations, are satisfied.

A support document entitled "An Analytical Development of Sampling Plans for Production Compliance Auditing of Heavy-Duty Engines and Heavy-Duty Vehicles" is available in the Public Docket for this rulemaking. Section H provides an example of how a compliance level would be determined during a PCA for each of the above sampling plans.

2. Certification Failure

If an HDE of HDV manufacturer's certification test results exceed the emission standard for a particular pollutant, but do not exceed the upper limit associated with the pollutant, the manufacturer would have the following alternatives: remedy the nonconformity and seek certification, elect to pay an NCP, or not certify. If the manufacturer's certification test results are in excess of the upper limit, of course, no certificate would be offered and no NCP would be made available.

If the manufacturer elected to pay an NCP and otherwise complied with the certification requirements, a qualified certificate would be offered to enable the manufacturer to introduce engines or vehicles into commerce while the manufacturer is expenditiously conducting PCA testing of those engines or vehicles. The qualified certificate would require payment of the NCP based on the result of PCA testing. It would also require an agreement by the

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[2] Of course any individual HDEs or HDVs whose emissions during the PCA testing exceeds the ultimate compliance level (the 60th percentile) would not be covered by a certificate and could not be sold until they are brought into conformity with the compliance level.

[3] In essence, the compliance level contained in the certificate under which such in-use engines or vehicles were sold is equivalent to an emission standard for those engines or vehicles that will remain in effect during their entire useful lives and be applicable for warranty and recall purposes, even though (as discussed below) another compliance level may be set subsequently for engines or vehicles of the same family which are still in production.

holder of the certificate to recall all engines or vehicles that have been introduced into commerce under that certificate, without invoking the requirements of section 207(c) of the Clean Air Act, if the compliance level established during the PCA exceeds the upper limit. Failure of the manufacturer to implement the required recall or to pay the NCP in a timely manner (as discussed below), assuming the compliance level is below the upper limit, would result in voiding of the certificate for those specific engines or vehicles subject to nonpayment or to the recall.

The engine or vehicle configuration tested in the PCA would be the one which was unable to conform with the emission standard during certification testing. The PCA would be promptly initiated following the start of assembly line production of those engines or vehicles. Failure of a manufacturer to initiate the PCA as soon as practical could result in a suspension of the qualified certificate of conformity.

If, as a result of the PCA, the compliance level is determined to be at or below the standard, the NCP conditions contained in any qualified certificate would be inapplicable and no NCP would be paid.

3. SEA Failure

A manufacturer whose HDEs or HDVs fail an SEA with respect to a pollutant standard for which an upper limit has been provided, but do not fail with respect to that upper limit, would have the following alternatives: Remedy the nonconformity, elect to pay an NCP commensurate with the degree of the failure, or cease the introduction into commerce of the applicable engines or vehicles. EPA requests comments on whether a manufacturer that elects to pay an NCP should be required to continue SEA testing after a fail decision is reached with respect to the standard, if necessary, until enough data is available to determine whether a fail decision is made with respect to the upper limit. A manufacturer could also be issued an SEA Test order for a configuration for which an NCP has previously been assessed. If the SEA should result in a fail decision with respect to the compliance level but not the associated upper limit, the manufacturer would be required to initiate a PCA to establish a new compliance level and NCP in order for the configuration to continue to be introduced into commerce. If the SEA resulted in a pass decision with respect to the emission standards, the manufacturer then could elect to perform a PCA to attempt to reduce or eliminate the penalty being paid. If the SEA results in a fail decision with respect to the upper limit for that pollutant, no NCP would be available and the certificate for that configuration would be suspended not earlier than ten days from the date of the SEA failure, in accordance with 40 CFR 86.1012–84 of the SEA regulations.

A manufacturer that elects to pay an NCP would be required to submit a written report to the Administrator within five days after completion of the SEA indicating the following: the reason for the nonconformance with pollutant standards(s) or applicable compliance level(s) and the date the manufacturer intends to begin the PCA testing. Failure to submit the report in the specified time period could result in the forfeiture of the NCP option. In accordance with the SEA regulations, this could result in the suspension of the certificate not earlier than ten days after the completion of the SEA. The NCP Regulatory Negotiation consensus document indicates that EPA would offer a qualified certificate of conformity for engines or vehicles which have failed an SEA with respect to an applicable emission standard or compliance level but not to the upper limit. This would enable the manufacturer to introduce those engines or vehicles into commerce while it is expeditiously conducting a PCA to establish a compliance level. Since EPA would not suspend the certificate of conformity following such an SEA failure, a qualified certificate would not be necessary; however, the manufacturer would still be subject to the same conditions as contained in a qualified certificate.

The configuration tested in the PCA would be the same configuration specified on the SEA test order. Failure to begin the PCA testing promptly after the manufacturer elects to pay an NCP could result in suspension of the certificate for the failed configuration. EPA could grant additional time to initiate the PCA if the production line that produces the NCP configuration were not operating.

EPA proposes that all the SEA test results for the failed pollutants be used as part of the PCA test sample. If a manufacturer elects the primary PCA sampling plan and there are 24 or more SEA test results, then no additional tests would be required to establish a compliance level during the PCA. A manufacturer that elects a reduced PCA sampling plan could not choose a sample size smaller than the number of engines or vehicles tested during the SEA, as all of the SEA test results would be used to establish the compliance level.

EPA proposes that a manufacturer could not pay an NCP for an individual nonconforming HDE or HDV discovered during SEA or PCA testing in lieu of bringing that engine or vehicle into conformance with the emission standard or compliance level, if applicable. The certificate or conformity for an individual HDE or HDV whose final SEA or PCA test results, when adjusted by the emissions deterioration factor, exceed the specified emission standard, or compliance level ultimately established for that configuration, would be suspended from the time that SEA or PCA testing is completed. Such a vehicle or engine would have to be brought into conformity with the emission standard, or applicable compliance level, before it could be distributed into commerce.

4. Production Running Change

EPA proposes that a manufacturer of HDEs or HDVs that elects to implement a running change on the assembly line, which it expects will cause emission levels to exceed a standard for which an NCP is available (but not the upper limit), be required to conduct a PCA. Before implementing the running change, the manufacturer would have to submit a written report to EPA indicating the reason for the running change, the testing data and the date the manufacturer intends to begin the PCA testing.

EPA would offer the manufacturer a qualified certificate to enable it to introduce engines or vehicles into commerce while the manufacturer is expeditiously conducting PCA testing of those engines or vehicles. The conditions in the certificate would be the same as those discussed earlier in the case of a certification failure. If the compliance level determined during the PCA is below the applicable standard, and NCP would not be established, or an existing NCP would be terminated, and all qualifications would be removed from the certificate.

5. Assessment and Payment of Penalty

In the case of a certification failure, the NCP would be assessed against all HDEs or HDVs of the failed engine configuration(s) that are introduced into commerce since the beginning of the model year. After an SEA failure, the NCP would be assessed against all those HDEs or HDVs of the nonconforming configuration introduced into commerce beginning 10 days after the completion of the SEA. This date was selected to coincide with the date in the SEA regulations for which a certificate of

conformity may be suspended after failure to pass the SEA. Engines or vehicles already introduced into commerce at that time would not be, by virtue of the SEA failure, subject to either a suspension or revocation of its certificate or payment of NCPs. Of course, for those engines or vehicles, the manufacturer would still be subject to recall and warranty liability with respect to the emission standard. Following a production running change that results in emission levels above the emission standard, or compliance level if applicable, the NCP would be assessed against all HDEs or HDVs of the new configuration introduced into commerce after the approved change is implemented.

Once an NCP is applied, it would continue to be assessed against each engine or vehicle produced for the rest of the model year unless the configuration or engine family is brought into conformance with applicable emission standards due to a production running change. If the NCP configuration is carried over during certification to a future model year, the amount of the penalty would increase according to the annual adjustment factor (see Section I).

The proposed regulations provide a payment schedule for the penalty, once assessed, based on calendar quarters. A manufacturer could request the establishment of a payment schedule based on other three-month periods or shorter intervals if approved by the Administrator. Failure to pay the penalty within the time limits established could result in a voiding of the certificate of conformity for those engines or vehicles for which the assessed penalty has not been paid.

The payee would be the United States Treasury and the payment would be sent to EPA's Manufacturers Operations Division along with a report from the manufacturer. The manufacturer's report and payment for all engines or vehicles produced during a calendar quarter would be due to EPA within 30 days after that calender quarter ends. The manufacturer's report would contain corporate identification, NCP engine or vehicle identification, certificate identification (number and date), NCP engine or vehicle quantities, and NCP payment calculations. The report would have to also contain an endorsement by a company representative acknowledging the penalties associated with violations of the requirements of the Clean Air Act and the regulations thereunder.

6. Request for Public Hearing

A manufacturer could request a public hearing to challenge the NCP which the Agency has determined applies to its vehicles or engines. The only issues which could be determined at a hearing include whether the compliance level was determined in accordance with § 86.1112–87(a) of the proposed regulations or whether the penalty was properly calculated in accordance with § 86.1113–87(a) of the proposed regulations. The manufacturer must file its request for a public hearing within 15 days of receiving notice of its penalty amount, unless otherwise specified by the Administrator. Even if a manufacturer reequests a hearing, it would still be obligated to pay the penalty within the established time limits. EPA requests comments on whether it should create an escrow fund to hold challenged penalty payments pending the outcome of the public hearing.

The manufacturer could not, however, challenge the initial determination of nonconformity under these hearing procedures. If it believes the results of the failed certification test or Selective Enforcement Audit are incorrect, the manufacturer must challenge these results under Subpart A or Subpart K, as appropriate. Nor may the manufacturer raise issues with regard to the penalty formula itself or the factors or variables associated with the formula, since these must be raised within the review period permitted by section 307 of the Clean Air Act after publication of the rule in which they are promulgated.

The hearing would be a full adjudicatory hearing, conducted by a presiding officer, with discovery and examination of witnesses. Upon completion of the hearing, the manufacturer could appeal the decision of the presiding officer to the Administrator, or the Administrator could review the decision on his own motion. After the Administrator issued his decision, the manufacturer could seek reconsideration based only on new questions raised by the final order, unless otherwise specified by the Administrator.

7. EPA Information

EPA will make available in years that NCPs are used by manufacturers the following information for subclasses of engines of vehicles for which NCPs have been used: a. Estimated total emissions of the engines or vehicles as produced.

b. Estimated total emissions of the engines or vehicles assuming that all met the standards.

c. Estimated total emissions of the engines or vehicles assuming the old standard had been met.

d. Total funds collected from NCPs. EPA may separate the above information by state.

8. Other Implementation Aspects

Several provisions contained in the proposed Subpart L regulations are being proposed to make the NCP regulations consistent with the SEA regulations (Subparts G and K) for production line testing. These provisions would be essentially identical and would include:

Testing by the Administrator (§ 86.1107–87)
Maintenance of records (§ 86.1108–87)
Entry and access (§ 86.1109–87)
Sample selection (§ 86.1110–87)
Test procedures for PCA testing (§ 86.1111–87)

In addition, EPA is proposing minor technical amendments to Subpart A (§ 86.085–22(e) and § 86.087–30(e)) to reference the proposed Subpart L regulations. EPA is also proposing minor technical amendments to Subpart K to allow SEAs to be conducted for engines or vehicles that have SEA liability with respect to a compliance level, as opposed to an emission standard, determined pursuant to the proposed Subpart L.

H. Compliance Level Determination Examples

Following is an example of how a compliance level would be determined during a PCA for each of the three PCA sampling plans for nonconforming HDEs. The same procedures would apply to HDVs. The emission standard for the pollutant in these examples is 10.0 grams/BHP-hr and the upper limit is 20.0 grams/BHP-hr. All deteriorated test results have been rounded to whole numbers for simplicity in these examples only.

Example 1

A manufacturer that elects to conduct a PCA using the primary PCA sampling plan would test 24 engines in accordance with the proposed regulations. The deteriorated test results for the pollutant for which the PCA was initiated in this example, in the order in which all tests were conducted, are as follows:

Engine No.	Deteriorated test result (grams/BHP-hr)
1	9
2	12
3	15
4	11
5	10
6	13
7	11
8	9
9	12

Engine No.	Deteriorated test result (grams/BHP-hr)
10	10
11	11
12	13
13	14
14	12
15	11
16	12
17	7
18	16
19	8
20	13
21	15
22	10
23	14
24	13

The test results would be ranked in order from the lowest to the highest value, as follows:

Rank	Engine No.	Deteriorated test result (grams/BHP-hr)
1st	17	7
2nd	19	8
3rd	1	9
4th	8	9
5th	5	10
6th	10	10
7th	22	10
8th	4	11
9th	7	11
10th	11	11
11th	15	11
12th	2	12
13th	9	12
14th	14	12
15th	16	12
16th	6	13
17th	12	13
18th	20	13
19th	24	13
20th	13	14
21th	23	14
22th	3	15
23th	21	15
24th	18	16

From Table 1 of Appendix XII of the proposed regulations, for this test sample size, the compliance level would be the fifteenth ranked test result, which corresponds to the 60th percentile point. In this example, the compliance level would be 12 grams/BHP-hr. This level would become the new "standard" for this pollutant for the applicable configuration or engine family for SEA, recall and warranty purposes. For example, engine numbers 3, 6, 12, 13, 18, 20, 21, 23 and 24 which had emissions of greater than 12 grams/BHP-hr would have to be remedied to conform with the compliance level before they could be introduced into commerce. Other engines with emissions greater than 10 grams/BHP-hr and less than 12 grams/BHP-hr would not need to be remedied as long as the NCP is paid.

Example 2

A manufacturer that elects to conduct a PCA using the fixed reduced sampling plan would select a sample size between 3 and 23 engines. For this example, a manufacturer selects a sample size of 5 engines. The deteriorated test results of the 5 engines for the pollutant for which the PCA was initiated, tested in accordance with the proposed regulations, are as follows:

Engine No.	Deteriorated test result (grams/BHP-hr)
1	10
2	9
3	12
4	11
5	13

The compliance level would be equal to the value of:

$X + Ks$

where:

X = the mean of the above data = 11 grams/BHP-hr

K = the value from Table 2 of Appendix XII of the proposed regulations for a sample size of 5 = 0.895

s = the standard deviation of above data = 1.581 grams/BHP-hr

Using the above values for $\bar{X}$, K and s, the compliance level would equal (11 grams/BHP-hr + (0.895)(1.581 grams/BHP-hr)) 12.4 grams/BHP-hr. The compliance level would be rounded to the same number of significant figures contained in the applicable standard in accordance with ASTM E29–67. Engine number 5 would have to be remedied to conform with the compliance level of 12.4 grams/BHP-hr before it could be introduced into commerce. Engine numbers 3 and 4 would not need to be remedied as long as the NCP is paid.

Example 3

A manufacturer that elects to conduct a PCA using the sequential reduced sampling plan would select a sample size of 4, 8, 12, 16 or 20 engines. For this example, a manufacturer initially selects a sample size of 4 engines. The deteriorated test results of the 4 engines for the pollutant for which the PCA was initiated, tested in accordance with the proposed regulations, are as follows:

Engine No	Deteriorated test result (grams/BHP-hr)
1	11
2	13
3	10
4	12

The compliance level would be equal to the value of:

$\bar{X} + Ks$

where:

$\bar{X}$ = the mean of the above data = 11.5 grams/BHP-hr

K = the value from Table 3 of Appendix XII of the proposed regulations for a sample size of 4 = 1.671

s = the standard deviation of above data = 1.291 grams/BHP-hr

Using the above values for $\bar{X}$, K and s, the initial compliance level would equal (11.5 grams/BHP-hr + (1.671)(1.291 grams/BHP-hr)) 13.7 grams/BHP-hr.

Under this PCA sampling plan, the manufacturer would have the option to continue testing engines and establish a new compliance level using the initial test data combined with the additional test results. A manufacturer that elects to continue testing would increase the test sample size to 8, 12, 16 or 20 engines. For this example, a manufacturer selects a sample size of 8 engines and tests 4 additional engines in accordance with the proposed regulations. The deteriorated tests results, combined with the initial test results, are as follows:

Engine No.	Deteriorated test result (grams/BHP-hr)
1	11
2	13
3	10
4	12
5	12
6	14
7	13
8	11

The new compliance level would be equal to the value of:

$\bar{X} + Ks$

where:

$\bar{X}$ = the mean of the above data = 12 grams/BHP-hr

K = the value from Table 3 of Appendix XII of the proposed regulations for a sample size of 8 = 0.912

s = the standard deviation of above data = 1.309 grams/BHP-hr

Using the above values for $\bar{X}$, K and s, the new compliance level would equal (12 grams/BHP-hr + (0.912)(1.309 grams/BHP-hr)) 13.2 grams/BHP-hr. This new compliance level would replace the initially determined compliance level. Engine number 6 would have to be remedied to conform with the compliance level of 13.2 grams/BHP-hr before it could be introduced into commerce. Engine numbers 1, 2, 4, 5, 7 and 8 would not need to be remedied as long as the NCP is paid.

These three PCA examples assume that the PCA does not follow an SEA failure and, no test results are carried forwarded to the PCA. In the case of an SEA failure, the results in the SEA would become part of the PCA test sample.

I. NCP Penalty Formula

As discussed above, the Clean Air Act sets three requirements for determining the amount of NCPs. First, the NCP is to remove any competitive disadvantage to manufacturers whose engines or

vehicles conform to the relevant standard. Second, the penalty must take into account the extent to which actual emissions exceed a standard. Third, the NCP must be increased periodically to create incentives for conformance with the standards.

When EPA determines that NCPs will be available for a standard and specifies the HDE or HDV subclasses for which the NCP will be provided, EPA will also develop a formula for calculating the NCP for nonconforming engines or vehicles. As proposed, the basic form of the NCP formula would be the same for each HDE or HDV subclass and each pollutant, although the values of parameters in the formula may vary by engine and vehicle subclass and pollutant. EPA requests comments on the basic form of the proposed NCP formula and the proposed values and definitions of the parameters used in the formula.

The NCP formula would incorporate the following elements: (1) The compliance level determined in PCA testing, (2) penalty rates, expressed in dollars per unit of emissions, and (3) annual adjustment factors. Basing the penalty on the compliance level would insure that the NCP takes into account the extent to which actual emissions exceed the applicable standard. The penalty rate, because it is based on projected compliance costs, would remove the competitive advantage of not conforming by eliminating the cost savings associated with nonconformance. Annual adjustment factors would be used to increase the NCP from year to year to provide additional incentives for conformance and keep the penalty in current year dollars.

When a manufacturer elects to pay an NCP, the first step in determining the amount of the NCP would be to calculate the "initial penalty." The initial penalty is the penalty amount that would be paid if the nonconformity occurred in the first year that the penalty was available for a particular standard. To arrive at the penalty for the current year, the initial penalty would be multiplied by the annual adjustment factors for each year since the first year the penalty was available. When payment of an NCP is elected in the first year in which the NCP is available, no annual adjustment factor would be used in calculating the penalty amount for that year.

Penalty Rates

EPA initially considered three alternate general approaches to setting penalty rates. Using a "differential cost" approach, the penalty would be determined separately for each nonconforming engine or vehicle configuration. The penalty rate would be calculated from the difference between the estimated total cost of the engine or vehicle if it conformed with the standard and the estimated total cost of the engine or vehicle at the compliance level established in PCA testing. The underlying philosophy behind this approach is that the penalty should make a potential purchaser indifferent, in economic terms, to two alternatives: (1) Purchasing the nonconforming engine or vehicle with its price increased to reflect estimated compliance costs and (2) purchasing the same engine or vehicle if it has been produced in conformance with the applicable standard. In this way, the competitive advantage of nonconformity could be eliminated. As with the other approaches, a penalty based on differential cost would increase with the degree of nonconformance, since the total incremental cost of bringing a vehicle or enging into compliance generally increases as the compliance level increases above the standard.

The differential cost approach has two major disadvantages. The first is that the cost of compliance would be estimated individually for each nonconforming configuration based on the compliance level. This estimation process would require substantial resources. The second disadvantage is that the amount of the NCP would probably not be known by the manufacturer prior to the beginning of the model year, making product planning decisions more difficult.

The other approaches considered by EPA involve using a single penalty formula for all nonconforming configurations within a given category of HDEs or HDVs. For each standard, EPA would define one or more categories of HDEs or HDVs for which the NCP would be available. These categories may comprise HDE or HDV subclasses, groups of subclasses, or subdivisions of subclasses.

EPA considered using a "marginal cost" approach, in which the penalty rate for each engine and vehicle category and pollutant combination would be the slope of the steepest segment of an estimated emission control cost curve for the category. The cost curve would depict the relationship between emission control cost and emission levels ranging from the upper limit down to the new standard for each pollutant. Its slope, the marginal cost, would be expressed in terms of cost per unit of emission reduction. If the marginal cost increased continuously as the emission level fell (as might be assumed in a simplified analysis), the steepest slope (greatest marginal cost) would be the slope of the curve at the new standard. However, since the relationship between emission control costs and emission rates (i.e., the marginal cost) may be discontinuous and "lumpy," the greatest marginal cost may instead occur elsewhere. For example, it may be associated with the addition of a significant emission control hardware item such as a catalyst or particulate trap.

Under a marginal cost approach, the penalty rate could either be derived from a cost curve developed for a typical engine or vehicle within the engine or vehicle subclass or it could be based on an engine or vehicle having greater than average marginal cost. An advantage of the marginal cost penalty is that it provides economic incentives for manufacturers to increase emission control to the point where their marginal cost is as great as the penalty. A disadvantage of the marginal cost approach is that it would result in very high penalties for technological laggards whose emission levels were far above the new standard.

Finally, EPA considered using an "average cost" approach, where the penalty rate for each engine and vehicle category and pollutant combination would be based on an estimate for the category of the expected total incremental compliance cost per engine or vehicle for reducing emission levels from the upper limit to the new standard. The estimate used would be near the upper end of the range of the estimates of the cost of compliance among manufacturers. That total cost of compliance would then be divided by the emission reduction required to meet the new standard, resulting in a penalty rate equal to the average cost per unit of emissions reduction. The average cost approach results in more moderate penalties for vehicles or engines that remain close to the old standard than the marginal approach. However, this approach may not provide adequate economic incentives to conform with a standard for manufacturers having the technological capability to conform since a manufacturer's marginal cost near the standard may be significantly greater than an average cost penalty rate.

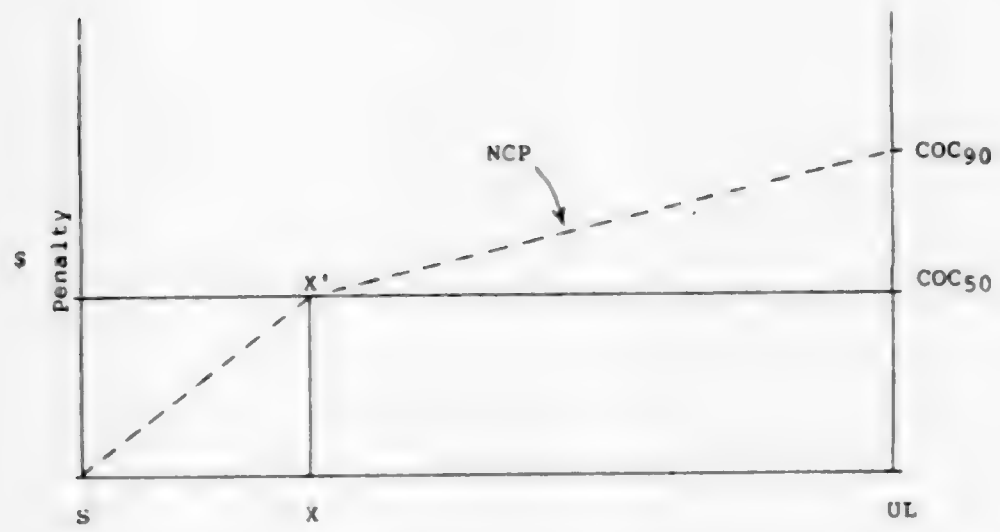
The proposed penalty formula combines the marginal and average cost approaches. The initial penalty can be represented graphically by two linear segments as shown by the dashed lines in Figure 1. This proposed form was chosen in order to satisfy two criteria simultaneously: (1) That the penalty rate

near the new standard be steep enough to discourage voluntary noncompliance by manufacturers who are technologically able to conform, and (2) that the initial penalty faced by a technological laggard whose compliance level is significantly above the standard would not be substantially higher than the estimated total incremental cost of compliance with the new standard. Thus, for compliance levels that exceed but remain near the new emission standard, the penalty would be based on an estimate of the 90th percentile marginal cost of compliance within the HDE or HDV category. EPA will first estimate the average marginal cost of compliance with the new standard for the category. EPA will then estimate the 90th percentile marginal cost by multiplying the average marginal cost by a factor, F. The value of F will be in the range of 1.1 to 1.3 and will be selected by EPA based on the best available cost data. The 90th percentile is used in an effort to ensure that few manufacturers will use NCPs out of purely economic considerations.

As the compliance level increases above the standard (S in figure 1), the penalty would increase at a constant rate up to the emission level (X) at which the penalty would equal the estimated average total incremental cost of compliance (COC_{50}) for the category. The initial penalty would then increase linearly at a lesser constant rate from that point (X') to an amount at the upper limit (UL) equal to EPA's estimate of the 90th percentile total incremental cost of compliance (COC_{90}).

Figure 1

Penalty vs. Compliance Level



In evaluating the total and marginal costs of compliance with a particular standard under this approach, EPA would need to assess both manufacturers' and users' cost impacts. Manufacturers' costs include the incremental production costs involved in bringing an engine or vehicle into conformance with a standard and the additional warranty costs of keeping it there. The nonconforming manufacturer is avoiding these costs. EPA requests comments on what should be included in manufacturer's incremental production costs.

Users' costs may include the present value of any fuel economy penalty, requirements for unleaded fuel, and changes in maintenance costs associated with operating a conforming engine or vehicle over its lifetime. To the extent that these cost impacts are known by potential buyers, a purchaser should be willing to pay more for an engine or vehicle with lower total user costs. Therefore, in order to remove a manufacturer's economic incentive for nonconformance and to prevent manufacturers of conforming engines or vehicles from being placed at a competitive disadvantage, the NCP must also reflect the user cost increase.

The data base used by EPA to establish the average cost of compliance and the penalty rate factors in a specific NCP rulemaking would be the cost data used by EPA in setting the emission standard. However, when the rulemaking to establish a specific NCP occurs after the rulemaking to establish the standard, EPA could augment the data base used to establish the standard by including the best cost and emission performance data available to EPA during the specific NCP rulemaking.

Annual Adjustments

Annual adjustment factors would be used to increase the amount of the nonconformance penalty from year to year, beginning with the second year that the NCP is available for a particular standard. The penalty per engine or vehicle in year n would be equal to the "inital penalty" multiplied by the cumulative product of the annual adjustment factors for years two through

n. The annual adjustment factor would take into account inflation, the number of years the NCP has been available for the particular standard, and the fraction of subclass production for which NCPs have been assessed. The formula for the annual adjustment factor for year i (i>2) would be as follows:

$$AAF_i = 1 + I_{i-1} + A_i \left[\frac{1}{1-(frac_{i-1})} \right] i$$

$A_i = 0.10$ for $i = 2$
$A_i = 0.08$ for $i > 3$

In the formula, I_{i-1} is the rate of increase in an appropriate index of inflation during year i–1. EPA requests comment on which inflation index would be appropriate. The increase is expressed as a decimal percentage (e.g., ten percent would be expressed as 0.10). The inflation rate would be included in the formula to insure that each year's penalty reflects estimated increases in compliance costs as a result of inflation during the period when the NCP has been available.

The variable A_i is the usage adjustment factor, which affects the impact of the prior year's NCP usage on the size of the annual adjustment factor. The variable "$frac_{i-1}$ in the formula is the fraction of NCP usage for the previous year. It would be calculated separately for each category of engines or vehicles and is the ratio of (1) the total number of HDEs or HDVs for which an NCP will be paid in year i–1 to (2) the total number of HDEs or HDVs that will be introduced into commerce in year i–1. If $frac_{i-1}$ is greater than 0.50, $frac_{i-1}$ would be set equal to 0.50 in calculating AAF_i.

The formula for AAF_i is structured so that the penalty increases as $frac_{i-1}$ increases and, for any given value of $frac_{i-1}$, the increase in the penalty would be greater in later years than in the initial years of availability. This structure was chosen in order to provide adequate incentives for eventual compliance. If the initial penalty were so low that many engines or vehicles were produced under the NCP, a relatively high value of $frac_{i-1}$ would protect the environment by increasing the penalty substantially in the next year and creating greater incentives for conformance. If, on the other hand, NCP usage is low, the HDE or HDV category is protected by a much smaller annual increase in the penalty.

The NCP usage fraction for calculating the next year's penalty would include actual NCP usage through March 31 of the current model year and EPA's estimate of additional usage for the remainder of the current model year. Each previous year's usage fraction would be corrected to reflect actual year-end usage of NCP's and this corrected AAF would be used in establishing the NCP for future years. The correction of the previous year's annual adjustment factor would not affect the previous year's penalty. Thus, when the running product of the annual adjustment factor is calculated to determine an NCP for year n, AAF_n would be based on the projected value of $frac_{n-1}$ and all other AAF_i (for $i < n$) would be calculated using the final corrected values of $frac_{i-1}$.

NCP Formula

The complete proposed NCP formula incorporates both the initial penalty and the annual adjustment factors. It is given below along with definitions for the variables. As discussed in the penalty rate section above, the initial penalty will be described by two linear segments (Figure 1). A separate formula is used for each segment. As described for Case 1 and Case 2 below, the formula used depends on the value of the compliance level, CL, determined in PCA testing. Figure 2 illustrates the relationship between an initial penalty, NCP_1, and a subsequent year's penalty, NCP_n.

Case (1): If the compliance level (CL) is greater than S and less than or equal to X (e.g., point CL_1 in figure 2), then:

$$NCP_n = (PR_1)\ (CL - S)\ \frac{\prod_{i=1}^{n} AAF_i}{}$$

where:
$PR_1 = (F)(MC_{so})$

Case (2): If the compliance level is greater than X and less than or equal to the upper limit (e.g., point CL_2 in figure 2), then:

$$NCP_n = (COC_{so} + (PR_2)\ (CL - X))\ \frac{\prod_{i=1}^{n} AAF_i}{}$$

where:

$$PR_2 = \frac{COC_{so} - COC_{so}}{UL - X}$$

In Case (1) or Case (2), AAF_i would have the following values:
If $frac_{i-1} = 0$, then $AAF_i = 1 + I_{i-1}$
If $frac_{i-1} > 0$, then:

$$AAF_i = 1 + I_{i-1} + A_i \left[\frac{1}{1 - frac_{i-1}} \right] i$$

If $frac_{i-1} > 0.50$, then $frac_{i-1}$ would be set equal to 0.50.
In the first year, $AAF_1 = 1$

$$X = \left[\frac{COC_{so}}{(F)(MC_{so})} \right] + S$$

The terms in the above formulas have the following meanings and values:

NCP_n = NCP for year n for each engine or vehicle
CL = Compliance level for year n for applicable engines or vehicles
S = Emission Standard
UL = Upper Limit
X = Compliance level above the standard at which NCP_1 equals COC_{so}
PR_1 = Penalty Rate for $CL < X$
PR_2 = Penalty rate for $X < CL < UL$
$\prod_{i+1}^{n} AAF_i$ = Running Product, i.e., $(AAF_1)x(AAF_2)x..x(AAF_n)$
i = Index representing a year
n = Index representing the number of model years for which the NCP has been

available for an engine or vehicle subclass, i.e., n=1 for the first year that the NCP is available; . . . n=n for the nth year that the NCP is available

COC_{50} = Estimate of the average total incremental cost to comply with the standard relative to complying with the upper limit[4]

COC_{90} = Estimate of the 90th percentile total incremental cost to comply with the standard relative to complying with the upper limit

MC_{50} = Estimate of the average marginal cost of compliance (dollars per emission unit) with the standard[4]

F = Factor used to estimate the 90th percentile marginal cost based on the average marginal cost (the minimum value of F is 1.1, the maximum value of F is 1.3) [4]

AAF_i = Annual adjustment factor in year i

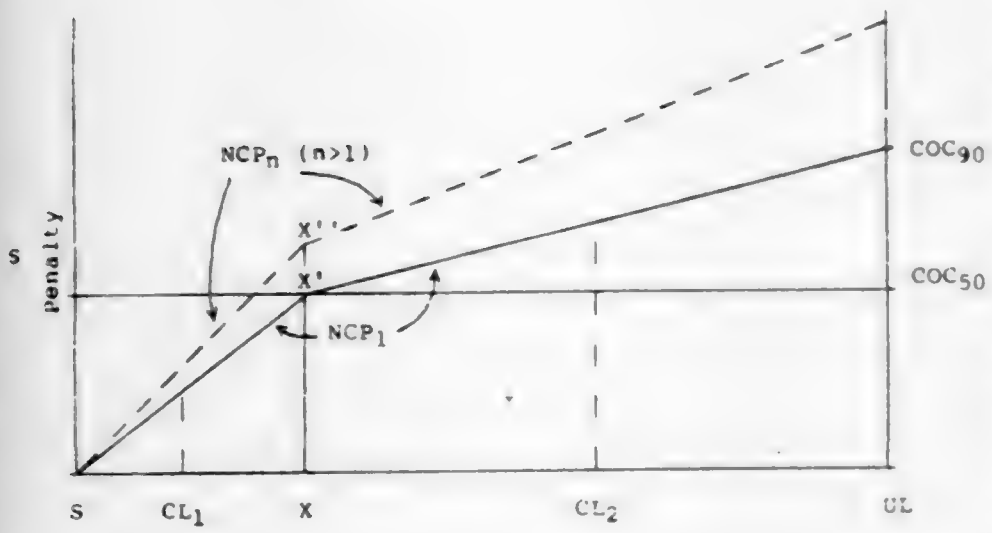
$frac_{i-1}$ = Fraction of engines or vehicles of a subclass using NCPs in previous year (i−1)

A_i = Usage adjustment factor in year i: A_i=0.10 for i=2; $A_{i=0.05\ (i=3)}$

I_i = Percentage increase in inflation index in year i

Figure 2

Penalty vs. Compliance Level



J. Administrative Designation

Under the criteria provided in Executive Order 12291, the Administrator has determined that this proposed regulation is "non-major" and therefore not subject to the requirement of a Regulatory Impact Analysis. This determination is based on the following:

(1) The proposed NCP program will not result in an annual adverse effect on the economy of $100 million or more. The NCP merely provides an economically reasonable option that may be utilized when a manufacturer is unable to comply with a standard. This concept is more fully discussed in the ECONOMIC IMPACT section.

(2) The NCP program will not result in adverse cost or price impacts (above those that would otherwise occur from compliance with the emission standards themselves).

(3) The NCP program provides manufacturers relief from the inability to market nonconforming HDEs or HDVs. Presently, a manufacturer experiencing difficulty in certifying or producing HDEs or HDVs in conformance with emission standards, has only two alternatives: Fix the nonconforming configuration or prevent its introduction into commerce. In some cases, a fix may not be readily available, and a manufacturer may have to prevent its introduction into commerce. NCPs provide relief from these disruptions. Therefore, NCPs will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

As required by Executive Order 12291, this Notice of Proposed Rulemaking has been reviewed by the Office of Management and Budget (OMB) for compliance with regulatory development criteria and for general content. Any OMB comments and EPA's response to those comments are available for inspection in the public docket for this rulemaking.

K. Economic Impact

Because of the optional nature of the use of NCPs, manufacturers have flexibility and will likely choose whether or not to use NCPs based on their capability to comply with emission standards. If no HDE or HDV manufacturer elects to use NCPs, these manufacturers or the users of their products will not incur any additional costs related to NCPs.

The existence of an NCP program may provide some direct cost savings to HDE or HDV manufacturers that lack the technological capability to conform with emission standards immediately. In the absence of NCPs, a manufacturer which has difficulty certifying HDEs or HDVs in conformance with emission standards or which fails an SEA has only two alternatives: fix the nonconforming engines or vehicles, perhaps at prohibitive cost, or prevent their introduction into commerce. The availability of NCPs provides manufacturers with a third alternative with some potential cost savings: continue production and introduce into commerce a unit that exceeds the standard until an emission conformance technique is developed.

Therefore, NCPs represent a regulatory mechanism that allows affected manufacturers increased flexibility. A decision to use NCPs may be the manufacturer's only course of action that would allow it to continue to introduce HDEs or HDVs into commerce. Hence, NCPs may be considered to have no adverse economic impact.

L. Environmental Impact

Because the use of NCPs is an option elected by affected manufacturers, EPA

[4] The definitions of COC_{50}, MC_{50} and F in the NCP Regulatory Negotiation consensus document refer to 50th percentile costs, as opposed to average costs. However, EPA believes that average costs were intended to be referenced. EPA requests comments on this matter.

cannot be sure to what extent NCPs will be used.

If no manufacturer elects to use NCPs, all HDEs and HDVs produced will need to be in conformance with the regulatory requirements. In this situation, the environmental benefits estimated during the rulemakings establishing the emission regulations will not be affected.

If some HDE and/or HDV manufacturers do elect to participate in the NCP program, some HDEs and/or HDVs will be introduced into commerce that will be emitting pollutants above applicable standards (as Congress contemplated when it mandated that EPA provide NCPs). The magnitude of this reduced environmental benefit is proportional to the number of HDEs and HDVs subject to NCPs and their degree of nonconformance. (Of course, the upper limits exclude gross emitters from being introduced into commerce.) EPA estimates that an NCP will not be used for more than ten percent of the HDE's and HDV's for which NCPs are provided in the first year that they are avaliable and that they will be used by less than one percent in the third year. The long term environmental impact from NCP usage is expected to be relatively very small, if any, due to the relatively high penalty rates and the annual adjustment factor that rapidly increases those penalty rates when NCP usage is significant. Of course, any reduction in environmental benefit refers not to an increase in emissions from current levels, but from levels that would otherwise occur from reduced emission standards without NCPs.

Because emission impacts are anticipated to be very small if any, compared to the total emissions of HDEs and HDVs which in fact comply with emission standards, and because the extent of NCP usage in any specific model year cannot be accurately predicted at this time, no specific air quality impact analysis will be made regarding this proposal.

M. Compliance with Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et. seq.*, EPA is required to determine whether this regulation will have a significant economic impact on a substantial number of small business entities. None of the affected entities could be classified as a small business. Moreover, as already discussed, the NCP program can be expected to have salutary effects on manufacturers. Thus, this rule will not have a significant adverse economic impact on a substantial number of small entities.

N. Information Collection Requirements

The proposed rule (Phase I) requires that manufacturers perform certain recordkeeping and submit certain reports to EPA, however, this requirement will not become effective until the Phase II NCP rulemaking. The Paperwork Reduction Act provides that reporting and recordkeeping requirements be approved by OMB before they can be imposed on the public. The information collection requirements in this proposed rule will be submitted to OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, during the proposal for the Phase II NCP rulemaking, at which time EPA will better be able to predict the extent of NCP usage.

List of Subjects in 40 CFR, Part 86

Administrative practice and procedure, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: February 22, 1985.

Lee M. Thomas,

Administrator.

The following is a list of organizations that participated in the Regulatory Negotiation process:

American Trucking Association
Auto Importers of America
California Air Resources Board
Caterpillar Tractor Company
Chrysler Corporation
Colorado Department of Health
Cummins Engine Company
Deutz Corporation
Engine Manufacturers Association
Ford Motor Company
General Motors Corporation
International Harvester Company
Isuzu Motor America
Iveco Trucks of North America
Mack Truck Corporation
Manufacturers Emission Control Association
Mercedes-Benz Truck Company
Motor Vehicle Manufacturers Association
Natural Resources Defense Council
Onan Corporation
State and Territorial Air Pollution Program Administrators
U.S. Environmental Protection Agency
Volvo Truck Company

PART 86—[AMENDED]

For the reasons set forth in this preamble, Part 86, Subparts A, K and L, Chapter I of Title 40, Code of Federal Regulations is proposed to be amended as follows:

1. Paragraph (e)(3)(ii)(A) of § 86.085–22 of Subpart A is proposed to be revised to read as follows:

§ 86.085–22 Approval of application for certification; tst fleet selections; determinations of parameters subject to adjustment for certification, Selective Enforcement Audit, and Production Compliance Audit, adequacy of limits, and physically adjustable ranges.

* * * * *

(e) * * *

(3) * * *

(ii)(A) In the case of a parameter determined to be adequately inaccessible or sealed, the Administrator shall include within the physically adjustable range applicable to testing under Subpart G, K or L (Selective Enforcement Audit and Production Compliance Audit) only the actual setting to which the parameter is adjusted during production.

* * * * *

2. Paragraph (e) (1)(iii)–(vii), (e)(5), (e)(6)(i), and (e)(7) of § 86.087–30 of Subpart A is proposed to be revised to read as follows:

§ 86.087–30 Certification.

* * * * *

(e) For light-duty trucks, heavy-duty engines, and heavy-duty vehicles (1)

* * *

(i) * * *

(ii) * * *

(iii) The manufacturer submits false or incomplete information in any report or information provided pursuant to the requirements of § 86.1009 or § 86.1112–87; or

(iv) The manufacturer renders inaccurate any test data submitted pursuant to § 86.1009 or § 86.1112–87; or

(v) Any EPA Enforcement Officer is denied the opportunity to conduct activities related to entry and access as authorized in § 86.1006 or § 86.1109–87 and in a warrant or court order presented to the manufacturer or the party in charge of the facility in question; or

(vi) EPA Enforcement Officers are unable to conduct activities related to entry and access as authorized in § 86.1006 or § 86.1109–87 because a manufacturer has located a facility in a foreign jurisdiction where local law prohibits those activities; or

(vii) The manufacturer refuses to or in fact does not comply with the requirements of §§ 86.1004(a), 86.1005, 86.1007, 86.1008, 86.1010, 86.1011, 86.1013, 86.1107(a), 86.1108–87, 86.1110–87, 86.1111–87, 86.1112–87, or § 86.1113–87.

* * * * *

(5) In any case in which certification of a light-duty truck, heavy-duty engine, or heavy-duty vehicles is proposed to be suspended under paragraph (e)(1)(v) of this section and in which the

Administrator has presented to the manufacturer involved reasonable evidence that a violation of § 86.1006 or § 86.1109–87 in fact occurred, if the manufacturer wishes to contend that, although the violation occurred, the vehicle or engine configuration or engine family in question was not involved in the violation to a degree that would warrant suspenion of certification under paragraph (e)(1)(v) of this section, he shall have the burden of establishing that contention to the satisfaction of the Administrator.

(6) * * *

(i) Be made only after the manufacturer concerned has been offered an opportunity for a hearing conducted in accordance with § 86.1014 or § 86.1115–87, and

* * * * * *

(7) Any voiding of a certificate of conformity under paragraph (e)(4) of this section shall be made only after the manufacturer concerned has been offered an opportunity for a hearing conducted in accordance with § 86.1014 or § 86.1115–87.

3. § 86.1002–84 of Subpart K is proposed to be amended by adding the following definition:

§ 86.1002–84 Definitions.

* * * * * *

"Compliance level" means an emission level determined during a Production Compliance Audit pursuant to Subpart L of this part.

4. Paragraph (b)(2) of §86.1008–84 is proposed to be revised to read as follows:

§ 86.1008–84 Test procedures.

* * * * * *

(b)(1) * * *

(2) For 1984 and later model years the Administrator may adjust or cause to be adjusted any engine parameter which the Administrator has determined to be subject to adjustment for certification, Selective Enforcement Audit, and Production Compliance Audit testing in accordance with § 86.084–22(e)(1), to any setting within the physically adjustable range of that parameter, as determined by the Administrator in accordance with § 86.084–22(e)(3)(ii), prior to the performance of any tests. However, if the idle speed parameter is one which the Administrator has determined to be subject to adjustment, the Administrator shall not adjust it to any setting which causes a lower engine idle speed then would have been possible within the physically adjustable range of the idle speed parameter if the manufacturer had accumulated 125 hours of service on the engine or 4,000 miles on the vehicle under paragraph (c) of this section, all other parameters being identically adjusted for the purpose of the comparison. The manufacturer may be requested to supply information to establish such an alternative minimum idle speed. The Administrator, in making or specifying these adjustments, may consider the effect of the deviation from the manufacturer's recommended setting on emissions performance characteristics as well as the likelihood that similar settings will occur on in-use heavy-duty engines or light-duty trucks. In determining likelihood, the Administrator may consider factors such as, but not limited to, the effect of the adjustment on engine or vehicle performance characteristics and surveillance information from similar in-use engines or vehicles.

* * * * * *

5. Paragraph (d)(2) of § 86.1009–84 is proposed to be revised to read as follows:

§ 86.1009–84 Calculation and reporting of test results.

* * * * * *

(d) * * *

(2) The applicable standards or compliance levels against which the engines or vehicles were tested;

* * * * * *

6. Paragraphs (b) and (c) of § 86.1010–84 are proposed to be revised to read as follows:

§ 86.1010–84 Compliance with acceptable quality level and passing and failing criteria for Selective Enforcement Audits.

* * * * * *

(b) A failed engine or vehicle is one whose final deteriorated test results pursuant to paragraph 86.1009–84(c), for one or more of the applicable exhaust pollutants, exceed the applicable emission standard or compliance level.

(c) The manufacturer shall test heavy-duty engines or light-duty trucks comprising the test sample until a pass decision is reached for all pullutants, or a fail decision is reached for one pollutant. A pass decision is reached when the cumulative number of failed engines or vehicles, as defined in paragraph (b) of this section, for each pollutant is less than or equal to the pass decision number appropriate to the cumulative number of engines or vehicles tested. A fail decision is reached when the cumulative number of failed engines or vehicles for one or more pollutants is greater than or equal to the fail decision number appropriate to the cumulative number of engines or vehicles tested. The pass and fail decision numbers associated with the cumulative number of engines or vehicles tested are determined by using the tables in Appendix X of this part appropriate to the projected sales as made by the heavy-duty engine manufacturer in its Application for Certification or as made by the light-duty truck manufacturer in its report submitted under paragraph (a)(2) of § 600.207–80 of the Automobile Fuel Economy Regulations. In the tables in Appendix X to this part, sampling plan "stage" refers to the cumulative number of engines or vehicles tested. Once a pass or fail decision has been made for a particular pollutant, the number of engines or vehicles whose final deteriorated test results exceed the emission standard or compliance level, if applicable, for that pollutant shall not be considered any further for the purposes of the audit.

* * * * * *

7. Paragraphs (i)(l)(ii), (j)(2), (k)(2), and (m) of § 86.1012–84 are proposed to be revised to read as follows:

§ 86.1012–84 Suspension and revocation of certificates of conformity.

* * * * * *

(i) * * *

(l) * * *

(ii) Demonstrate that the engine or vehicle conforms to applicable standards or compliance levels by retesting the engine or vehicle in accordance with these regulations; and

(2) * * *

(j) * * *

(2) Demonstrate that the engine or vehicle configuration for which the certificate of conformity has been suspended does in fact comply with these regulations by testing engines or vehicles selected from normal production runs of that engine or vehicle configuration, at the plant(s) or associated storage facilities specified by the Administrator, in accordance with the conditions specified in the initial test order. Except, that if the manufacturer elects to continue testing individual engines or vehicles after suspension of a certificate, the certificate is reinstated for any engine or vehicle actually determined to be in conformance with the applicable standards or compliance levels through testing in accordance with the applicable test procedures, provided that the Administrator has not revoked the certificate pursuant to paragraph (h) of this section.

(k) * * *

(l) * * *

(2) After implementing the change or changes intended to remedy the nonconformity, the manufacturer shall demonstrate that the modified engine or

vehicle configuration does in fact conform with these regulations by testing engines or vehicles selected from normal production runs of that modified engine or vehicle configuration in accordance with the conditions specified in the initial test order. This testing will be considered by the Administrator to satisfy the testing requirements of § 86.078–32 or § 86.079–33 if the Administrator has so notified the manufacturer. If the subsequent audit results in passing of the audit at the level of the standards or compliance levels, if applicable, the Administrator shall reissue or amend the certificate, as the case may be, to include that configuration, provided that the manufacturer has satisfied the testing requirements of paragraph (k)(l) of this section. If the subsequent audit is failed, a revocation remains in effect. Any design change approvals under this subpart are limited to the configuration affected by the test order.

* * * * *

(m) After the Administrator suspends or revokes a certificate of conformity pursuant to this section or notifies a manufacturer of his intent to suspend, revoke or void a certificate of conformity under paragraph § 86.087–30(e), and prior to the commencement of a hearing under § 86.1014–84, if the manufacturer demonstrates to the Administrator's satisfaction that the decision to suspend, revoke or void the certificate was based on erroneous information, the Administrator shall reinstate the certificate.

* * * * *

8. Paragraphs (a) and (d)(2) of § 86.1014–84 are proposed to be revised to read as follows:

§ 86.1014–84 Hearings on suspension, revocation and voiding of certificate of conformity.

(a) *Applicability.* The procedures prescribed by this section apply whenever a manufacturer requests a hearing pursuant to § 86.087–30(e)(6)(i), § 86.087–30(e)(7), or § 86.1012–84(1).

* * * * *

(d) *Summary decision.* (1) * * *

(2) In the case of a hearing requested under § 86.087–30(e)(6)(i), to challenge a proposed suspension of a certificate of conformity for the reasons specified in § 86.087–30(e)(1)(i) or (e)(1)(ii), when it clearly appears from the data and other information contained in the request for the hearing that there is no genuine and substantial question of fact with respect to the issue of whether the refusal to comply with the provisions of a test order or any other requirement of § 86.1003–84 was caused by conditions and circumstances outside the control of the manufacturer, the Administrator shall enter an order denying the request for a hearing and suspending the certificate of conformity.

* * * * *

9. The table of contents of Subpart L is proposed to be added as follows:

Subpart L—Nonconformance Penalties for Gasoline-Fueled and Diesel Heavy-Duty Engines and Heavy-Duty Vehicles

Sec.

86.1101–87 Applicability.
86.1102–87 Definitions.
86.1103–87 Criteria for availability of nonconformance penalties.
86.1104–87 Determination of upper limits.
86.1105–87 [Reserved]
86.1106–87 Production compliance auditing.
86.1107–87 Testing by the Administrator.
86.1108–87 Maintenance of records.
86.1109–87 Entry and access.
86.1110–87 Sample selection.
86.1111–87 Test procedures for PCA testing.
86.1112–87 Determining the compliance level and reporting of test results.
86.1113–87 Calculation and payment of penalty.
86.1114–87 Suspension and voiding of certificates of conformity.
86.1115–87 Hearing procedures for nonconformance determinations and penalties.

10. Subpart L is proposed to be added to read as follows:

Subpart L—Nonconformance Penalties for Gasoline-Fueled and Diesel Heavy-Duty Engines and Heavy-Duty Vehicles

§ 86.1101–87 Applicability.

The provisions of this subpart are applicable for 1987 and later model year gasoline-fueled and diesel heavy-duty engines and heavy-duty vehicles. These vehicles include light-duty trucks rated in excess of 6,000 pounds gross vehicle weight.

§ 86.1102–87 Definitions.

(a) The definitions in this section apply to this subpart.

(b) As used in this subpart, all terms not defined herein have the meaning given them in the Act.

(1) "Configuration" means a subdivision, if any, of a heavy-duty engine family for which a separate projected sales figure is listed in the manufacturer's Application for Certification and which can be described on the basis of emission control system, governed speed, injector size, engine calibration, or other parameters which may be designated by the Administrator, or a subclassification of light-duty truck engine family emission control system combination on the basis of engine code, inertia weight class, transmission type and gear ratios, rear axle ratio, or other parameters which may be designated by the Administrator.

(2) "Test Sample" means a group of heavy-duty engines or heavy-duty vehicles of the same configuration which have been selected to receive emission testing.

(3) "Upper limit" means the emission level for a specific pollutant beyond which a certificate of conformity may not be issued or may be suspended or revoked.subpart. A compliance level can only be determined for a pollutant for which an upper limit has been established in this subpart.

(5) "Subclass" means a classification of heavy-duty engines or heavy-duty vehicles based on such factors as gross vehicle weight rating, fuel usage, vehicle usage, engine horsepower or additional criteria that the Administrator shall apply. Subclasses include, but are not limited to:

light-duty gasoline trucks (6,001–8,500 lb. GVW)
light-duty diesel trucks (6,001–8,500 lb. GVW)
light heavy-duty gasoline engines (8,501–14,000 lb. GVW)
heavy heavy-duty gasoline engines (14,001 lb. and above GVW)
light heavy-duty diesel engines (see § 86.085–2(a)(1))
medium heavy-duty diesel engines (see § 86.085–2(a)(2))
heavy heavy-duty diesel engines (see § 86.085–2(a)(3))

(6) "NCP" means a nonconformance penalty as described in section 206(g) of the Clean Air Act.

(7) "PCA" means a Production Compliance Audit as described in § 86.1106–87 of this subpart.

§ 86.1103–87 Criteria for availability of nonconformance penalties.

(a) EPA shall establish for each subclass of heavy-duty engines and heavy-duty vehicles (other than motorcycles), an NCP for a motor vehicle pollutant, when any new or revised emission standard is more stringent than the previous standard for the pollutant, or when an existing standard for that pollutant becomes more difficult to achieve because of a new or revised standard, provided that EPA finds:

(1) That for such subclass of engines or vehicles, substantial work will be required to meet the standard for which the NCP is offered, and

(2) That there is likely to be a technological laggard.

(b) Substantial work, as used in paragraph (a)(1) of this section, means the application of technology not

previously used in an engine or vehicle class or subclass, or the significant modification of existing technology or design parameters, needed to bring the vehicle or engine into compliance with either the more stringent new or revised standard or an existing standard which becomes more difficult to achieve because of a new or revised standard.

§ 86.1104–87 Determination of upper limits.

(a) The upper limit applicable to a pollutant standard for a subclass of heavy-duty engines or heavy-duty vehicles for which an NCP is established in accordance with § 86.1103–87, shall be the previous pollutant standard for that subclass.

(b) If no previous standard existed for the pollutant under paragraph (a) of this section, the upper limit will be developed by EPA during rulemaking.

§ 86.1105–87 [Reserved]

§ 86.1106–87 Production compliance auditing.

For a model year in which upper limits for heavy-duty engine or heavy-duty vehicle emission standards for one or more exhaust pollutants are specified in § 86.1105–87, a manufacturer may elect to conduct a Production Compliance Audit (PCA) for each engine or vehicle configuration satisfying the following conditions:

(a) Certification test results, pursuant to § 86.082–23, exceed the emission standard for a particular pollutant but do not exceed the upper limit established for that pollutant. In that event, the manufacturer will be offered a qualified certificate of conformity allowing for the introduction into commerce of the specified engine family, *provided that*:

(1) The manufacturer must agree to conduct a PCA of those engines or vehicles;

(2) PCA testing must be conducted on the same configuration tested in certification;

(3) The selection of engines or vehicles for PCA testing must be initiated no later than five (5) days after the start of assembly-line production of the specified engine or vehicle configuration, unless that period is extended by the Administration;

(4) The manufacturer must agree:

(i) To pay the NCP amount calculated as a result of PCA testing on each engine or vehicle, unless the manufacturer successfully challenges the Administrator's determination of the compliance level or penalty calculation or both under § 86.1115–87(c);

(ii) To recall any engines or vehicles introduced into commerce, without invoking the procedural requirements of section 207(c) of the Clean Air Act, if the compliance level for the engine or vehicle configuration of paragraph (a)(2) of this section exceeds the upper limit as determined by the PCA; and

(iii) To any other terms and conditions that the Administrator may require; and

(5) If the compliance level determined in the PCA is below the emission standard, no NCP will be offered, and all appropriate qualifications will be removed from the qualified certificate of conformity.

(b) An engine or vehicle configuration fails a Selective Enforcement Audit (SEA) under Subpart K of 40 CFR Part 86 with respect to the standard for a particular pollutant but does not fail with respect to the upper limit established for that pollutant, and no NCP has been previously assessed for that configuration, *provided that*:

(1) The manufacturer must submit a written report to the Administrator within five (5) days after failure to pass the audit containing the following:

(i) A statement which describes the reason for the failure;

(ii) A statement that the manufacturer does not intend, at that time, to make any engine and/or emission control system design changes that may remedy the nonconformity; and

(iii) A request from the manufacturer to conduct the PCA, including the date the testing will begin;

(2) Failure to submit the report within five (5) days after the SEA failure will result in the forfeiture of the NCP option, unless a satisfactory justification for the delay is provided to the Administrator;

(3) The selection of any required engines or vehicles for PCA testing must be initiated no later than ten (10) days after the SEA failures unless extended by the Administrator; otherwise, the manufacturer may forfeit the option to elect an NCP;

(4) PCA testing must be conducted on the same configuration that failed the SEA;

(5) Test results from the SEA, together with any additional test results required during the PCA, will be used in establishing a compliance level for the configuration pursuant to § 86.1112–87(a); and

(6) The manufacturer, upon approval by the Administrator to conduct a PCA on a failed SEA engine or vehicle configuration, must agree:

(i) To pay the NCP amount calculated as a result of PCA testing on each engine or vehicle introduced into commerce after the tenth day of the SEA failure, unless the manufacturer successfully challenges the Administrator's determination of compliance level or penalty calculation or both under §86.1115–87(c);

(ii) To recall any engines or vehicles introduced into commerce after the tenth day of the SEA failure, without invoking the procedural requirements of section 207(c) of the Clean Air Act, if the compliance level of the engine or vehicle exceeds the upper limit as determined by the PCA; and

(iii) To any other terms and conditions that the Administrator may require.

(c) An engine or vehicle configuration, for which an NCP has been previously assessed for a particular pollutant, either passes an SEA with respect to the particular pollutant standard, fails an SEA with respect to the particular pollutant standard but not the previous compliance level, or fails an SEA with respect to the previous compliance level but not the associated upper limit, *provided that:*

(1) The manufacturer must submit a written statement to the Administrator within five (5) days of the conclusion of the SEA requesting a PCA, including the date the PCA testing will begin; otherwise, the manufacturer forfeits the option to establish a new compliance level;

(2) The selection of any required engines or vehicles for PCA testing must be initiated no later than ten (10) days after the conclusion of the SEA unless the period is extended by the Administrator; otherwise, the manufacturer forfeits the option to establish a new compliance level;

(3) PCA testing must be conducted on the same configuration tested during the SEA, and all conditions in the SEA test order must apply to the PCA;

(4) Test results for the SEA, together with any additional test results required during the PCA, will be used in establishing a new compliance level for the configuration pursuant to § 86.1112–87(a);

(5) The manufacturer must agree:

(i) To pay the NCP amount calculated as a result of PCA testing on each engine or vehicle introduced into commerce after the tenth day of the conclusion of the SEA, unless the manufacturer successfully challenges the Administrator's determination of compliance level or penalty calculation or both under §86.1115–87(c);

(ii) To recall any engines or vehicles introduced into commerce after the tenth day of the conclusion of the SEA, without invoking the procedural requirements of section 207(c) of the Clean Air Act, if the engine or vehicle configuration exceeds the upper limit as determined by the PCA; and

(iii) To any other terms and conditions that the Administrator may require; and

(6) A previously assessed NCP will be terminated and no NCP will be established as a result of the PCA if the compliance level is determined to be below the applicable emission standards.

(d) The implementation of a production running change that causes the emission level for a particular pollutant to be either above the emission standard but below the associated upper limit for a engine or vehicle configuration configuration for which an NCP has not been previously assessed, or above the emission standard but below the associated upper limit for a engine or vehicle configuration for which an NCP has been previously assessed, regardless of the previous compliance level. In that event, the manufacturer will be offered a qualified certificate of conformity allowing for the introduction into commerce of the engine or vehicle configuration resulting from the running change, *provided that*:

(1) The manufacturer must submit a written report to the Administrator outlining the reason for the running change and the date the manufacturer will begin PCA testing;

(2) The manufacturer must agree:

(i) To pay the NCP amount calculated as a result of PCA testing on each engine or vehicle, unless the manufacturer successfully challenges the Administrator's determination of compliance level or penalty calculation or both under § 86.1115–87(c);

(ii) To recall any engines or vehicles introduced into commerce, without invoking the procedural requirements of section 207(c) of the Clean Air Act, if the engine or vehicle configuration exceeds the upper limit as determined by the PCA; and

(iii) To any other terms and conditions that the Administrator may require;

(3) The selection of engines or vehicles for PCA testing must be initiated no later than five (5) days after the start of assembly-line production of the engine or vehicle configuration resulting from the running change unless that period is extended by the Administrator; and

(4) If the compliance level is determined to be below the applicable emission standard, a previously assessed NCP will be terminated, an NCP will not be established as a result of the PCA testing, and all qualifications will be removed from the qualified certificate of conformity.

(e) The following requirements are applicable to each PCA under this subpart.

(1) The manufacturer shall make the following documents available to EPA Enforcement Officers upon request;

(i) A properly filed and current application for certification, following the format prescribed by the EPA for the appropriate model year; and

(ii) A copy of the shop manual and dealer service bulletins for the configurations being tested.

(2) Only one mechanic at a time per engine or vehicle shall make authorized checks, adjustments, or repairs, unless a particular check, adjustment, or repair requires a second mechanic as indicated in the shop manual or dealer service bulletins.

(3) A mechanic shall not perform any check, adjustment, or repair without an Enforcement Officer present unless otherwise authorized.

(4) The manufacturer shall utilize only those tools and test equipment utilized by its dealers or those dealers using its engines when performing authorized checks, adjustments, or repairs.

§ 86.1107–87 Testing by the administrator.

(a) The Administrator may require that engines or vehicles of a specified configuration be selected in a manner consistent with the requirements of § 86.1110–87 and submitted to him at such place as he may designate for the purpose of conducting emission tests in accordance with § 86.1111–87 to determine whether engines or vehicles manufactured by the manufacturer conform with the regulations of this subpart.

(b) (1) Whenever the Administrator conducts a test on a test engine or vehicle or the Administrator and manufacturer each conduct a test on the same test engine or vehicle, the results of the Administrator's test will comprise the official data for that engine or vehicle.

(2) Whenever the manufacturer conducts all tests on a test engine or vehicle, the manufacturer's test data will be accepted as the official data, provided that if the Administrator makes a determination based on testing under paragraph (a) of this section that there is a substantial lack of agreement between the manufacturer's test results and the Administrator's test results, no manufacturer's test data from the manufacturer's test facility will be accepted for purposes of this subpart.

(c) If the Administrator determines that testing conducted under paragraph (a) of this section demonstrates a lack of agreement under paragraph (b)(2) of this section, the Administrator shall:

(1) Notify the manufacturer in writing of his determination that the test facility is inappropriate for conducting the tests required by this subpart and the reasons therefore; and

(2) Reinstate any manufacturer's data upon a showing by the manufacturer that the data acquired under paragraph (a) of this section was erroneous and the manufacturer's data was correct.

(d) The manufacturer may request in writing that the Administrator reconsider his determination in paragraph (b)(2) of this section based on data or information which indicates that changes have been made to the test facility and that these changes have resolved the reasons for disqualification.

§ 86.1108–87 Maintenance of records.

(a) The manufacturer of any new gasoline-fueled or diesel heavy-duty engine or heavy-duty vehicle subject to any of the provisions of this subpart shall establish, maintain, and retain the following adequately organized and indexed records:

(1) *General records.* A description of all equipment used to test engines or vehicles in accordance with § 86.1111–87, pursuant to PCA testing under this subpart, specifically;

(i) If testing heavy-duty gasoline engines, the equipment requirements specified in §§ 86.1306–84 and 86.1506–84 of this part.

(ii) If testing heavy-duty diesel engines, the equipment requirements specified in §§ 86.1306–84, 86.1506–84, 86.879–6, 86.879–8 and 86.879–9 of this part;

(iii) If testing light-duty gasoline-fueled trucks, the equipment requirements specified in §§ 86.106 (excluding all references to particulate emission testing) and 86.1506–84 of this part; and

(iv) If testing light-duty diesel trucks, the equipment requirements specified in § 86.106 (excluding all references to evaporative emission testing) of this part.

(2) *Individual records.* These records pertain to each Production Compliance Audit conducted pursuant to this subpart.

(i) The date, time, and location of each test;

(ii) The number of hours of service accumulated on the engine or the number of miles on the vehicle when the test began and ended;

(iii) The names of all personnel, including supervisory personnel, involved in the conduct of the Production Compliance Audit;

(iv) A record and description of any repair performed, giving the date and time of the repair, the reason for it, the person authorizing it, and the names of

all personnel involved in the supervision and performance of the repair.

(v) The date when the engine or vehicle was shipped from the assembly plant or associated storage facility and when it was received at the testing facility;

(vi) A complete record of all emission tests performed pursuant to this subpart (except tests performed by EPA directly), including all individual worksheets and/or other documentation relating to each test, or exact copies thereof, specifically—

(A) If testing heavy-duty gasoline engines, the record requirements specified in §§ 86.1342–84 and 86.1542–84 of this part;

(B) If testing heavy-duty diesel engines, the record requirements specified in §§ 86.1342–84, 86.1542–84, and 86.879–10; (§ 86.337–79 for Subpart D testing only).

(C) If testing light-duty gasoline fueled trucks, the record requirements specified in §§ 86.142 (excluding all references to diesel vehicles) and 86.1542–84; and

(D) If the testing light-duty diesel trucks, the record requirements specified in § 86.142; and

(vii) A brief description of any significant Production Compliance Audit events commencing with the test engine or vehicle selection process, but not described by any paragraph under paragraph (a)(2) of this section, including such extraordinary events as engine damage during shipment or vehicle accident.

(3) The manufacturer shall record the test equipment description, pursuant to paragraph (a)(1) of this section, for each test cell that was used to perform emission testing under this subpart.

(b) The manufacturer shall retain all records required to be maintained under this subpart for a period of six (6) years after completion of all testing. Records may be retained as hard copy or reduced to microfilm, punch cards, etc., depending upon the manufacturer's record retention procedure, provided that in every case all the information contained in the hard copy is retained.

§ 86.1109-87 Entry and access.

(a) To allow the Administrator to determine whether a manufacturer is complying with the provisions of this subpart, EPA Enforcement Officers are authorized to enter any of the following (during operating hours and upon presentation of credentials):

(1) Any facility where any engine or vehicle to be introduced into commerce or any emission-related component is manufactured, assembled, or stored;

(2) Any facility where any tests conducted pursuant to a PCA request or any procedures or activities connected with these tests are or were performed;

(3) Any facility where any engine or vehicle which is being tested, was tested, or will be tested is present; and

(4) Any facility where any record or other document relating to any of the above is located.

(b) Upon admission to any facility referred to in paragraph (a) of this section, EPA Enforcement Officers are authorized to perform the following inspection-related activities;

(1) To inspect and monitor any aspects of engine or vehicle manufacture, assembly, storage, testing and other procedures, and the facilities in which these procedures are conducted;

(2) To inspect and monitor any aspect of engine or vehicle procedures or activities, including, but not limited to, monitoring engine or vehicle selection, preparation, service or mileage accumulation, preconditioning, repairs, emission test cycles, and maintenance; and to verify calibration of test equipment;

(3) To inspect and make copies of any records or documents related to the assembly, storage, selection and testing of an engine or vehicle; and

(4) To inspect and photograph any part or aspect of any engine or vehicle and any component used in the assembly thereof that is reasonably related to the purpose of the entry.

(c) EPA Enforcement Officers are authorized to obtain reasonable assistance without cost from those in charge of a facility to help them perform any function listed in this subpart and are authorized to request the manufacturer conducting the PCA to make arrangements with those in charge of a facility operated for its benefit to furnish reasonable assistance without cost to EPA, whether or not the manufacturer controls the facility.

(d) EPA Enforcement Officers are authorized to seek a warrant or court order authorizing the EPA Enforcement Officers to conduct activities related to entry and access as authorized in this section, as appropriate, to execute the functions specified in this section. EPA Enforcement Officers may proceed ex parte to obtain a warrant whether or not the Enforcement Officers first attempted to seek permission of the manufacturer conducting the PCA or the party in charge of the facilities in question to conduct activities related to entry and access as authorized in this section.

(e) A manufacturer that conducts a PCA shall permit EPA Enforcement Officers who present a warrant or court order as described in paragraph (d) of this section to conduct activities related to entry and access as authorized in this section and as described in the warrant or court order. The manufacturer shall cause those in charge of its facility or a facility operated for its benefit to permit EPA Enforcement Officers to conduct activities related to entry and access as authorized in this section pursuant to a warrant or court order whether or not the manufacturer controls the facility. In the absence of such a warrant or court order, EPA Enforcement Officers may conduct activities related to entry and access as authorized in this section only upon the consent of the manufacturer or the party in charge of the facilities in question.

(f) It is not a violation of this part or the Clean Air Act for any person to refuse to permit EPA Enforcement Officers to conduct activities related to entry and access as authorized in this section without a warrant or court order.

(g) A manufacturer is responsible for locating its foreign testing and manufacturing facilities in jurisdictions in which local foreign law does not prohibit EPA Enforcement Officers from conducting the entry and access activities specified in this section. EPA will not attempt to make any inspections which it has been informed that local foreign law prohibits.

(h) For purposes of this section, the following definitions are applicable:

(1) "Presentation of Credentials" means display of the document designating a person as an EPA Enforcement Officer.

(2) Where engine or vehicle storage areas of facilities are concerned, "operating hours" means all times during which personnel other than custodial personnel are at work in the vicinity of the area or facility and have access to it.

(3) Where facilities or areas other than those covered by paragraph (h)(2) of this section are concerned, "operating hours" means all times during which an assembly line is in operation, engine or vehicle assembly is taking place, testing, repair, service accumulation, preparation or compilation of records is taking place, or any other procedure or activity related to engine or vehicle manufacture, assembly or testing is being carried out in a facility.

(4) "Reasonable assistance" includes, but is not limited to, clerical, copying, interpreting and translating services, and making personnel of the facility being inspected available during their working hours on an EPA Enforcement Officer's request to inform the EPA Enforcement Officer of how the facility operates and to answer his or her questions. Any employee whom an EPA

Enforcement Officer requests the manufacturer to cause to appear for questioning will be entitled to be accompanied, represented and advised by counsel.

§ 86.1110–87 Sample selection.

(a) Engines or vehicles comprising a test sample which are required to be tested pursuant to a PCA in accordance with this subpart will be selected at the location and in the manner specified by EPA. If a manufacturer determines that the test engines or vehicles cannot be selected in the manner specified by EPA, an alternative selection procedure may be employed, provided that the manufacturer requests approval of the alternative procedure in advance of the start of test sample selection and that the Administrator approves the procedure.

(b) The manufacturer shall have assembled the test engines or vehicles of the configuration selected for testing using its normal mass production processes for engines or vehicles to be distributed into commerce. In the case of heavy-duty engines, if the test engines are selected at a location where they do not have their operational and emission control systems installed, EPA will specify the manner and location for selection of components to complete assembly of the engines. The manufacturer shall assemble these components onto the test engines using normal assembly and quality control procedures as documented by the manufacturer.

(c) No quality control, testing, or assembly procedures will be used on the completed test engine or vehicle or any portion thereof, including parts and subassemblies, that will not be used during the production and assembly of all other engines or vehicles of that configuration.

(d) The EPA Enforcement Officers may specify that they, rather than the manufacturer, will select the test engines or vehicles.

(e) The order in which test engines or vehicles are selected determines the order in which test results are to be used in applying the PCA testing plan in accordance with § 86.1112–87.

(f) The manufacturer shall keep on hand all engines or vehicles comprising the test sample until such time as a compliance level is determined in accordance with § 86.1112–87 (a) except that the manufacturer may ship any tested engine or vehicle which has not failed in accordance with § 86.1112–87 (f)(1). However, once the manufacturer ships any test engine or vehicle, it relinquishes the prerogative to conduct retests as provided in § 86.1111–87(i).

§ 86.1111–87 Test procedures for PCA testing.

(a) (1) For heavy-duty engines, the prescribed test procedure for PCA testing is the Federal Test Procedure as described in Subparts M, N, I, and P of this part.

(2) For light-duty trucks, the prescribed test procedure for PCA testing is the Federal Test Procedure as described in Subparts B and P of this part.

(3) When testing light-duty trucks, the following exceptions to the test procedures in Subpart B are applicable:

(i) The manufacturer may use gasoline test fuel meeting the specifications of paragraph (a) of § 86.113 for mileage accumulation. Otherwise, the manufacturer may use fuels other than those specified in this section only with advance approval of the Administrator.

(ii) The manufacturer may measure the temperature of the test fuel at other than the approximate midvolume of the fuel tank, as specified in paragraph (a) of § 86.131, and may drain the test fuel from other than the lowest point of the fuel tank, as specified in paragraph (b) of § 86.131, with the advance approval of the Administrator.

(iii) The manufacturer may perform additional preconditioning on PCA test vehicles other than the preconditioning specified in § 86.132 only if the additional preconditioning had been performed on certification test vehicles of the same configuration.

(iv) The manufacturer shall perform the heat build procedure 11 to 34 hours following vehicle preconditioning rather than according to the time period specified in paragraph (a) of § 86.133.

(v) The manufacturer may substitute slave tires for the drive wheel tires on the vehicle as specified in paragraph (e) of § 86.135, provided that the slave tires are the same size as the drive wheel tires.

(vi) The cold start exhaust emission test described in § 86.137 shall follow the heat build procedure described in § 86.133 by not more than one hour.

(vii) In performing exhaust sample analysis under § 86.140:

(A) When testing diesel vehicles, the manufacturer shall allow a minimum of 20 minutes warm-up for the HC analyzer, and a minimum of 2 hours warm-up for the CO, CO_2 and NO_x analyzers. [Power is normally left on infrared and chemiluminescent analyzers. When not in use, the chopper motors of the infrared analyzers are turned off and the phototube high voltage supply to the chemiluminescent analyzers is placed in the standby position.]

(B) The manufacturer shall exercise care to prevent moisture from condensing in the sample collection bags.

(viii) The manufacturer need not comply with § 86.142, since the records required therein are provided under other provisions of this subpart.

(ix) In addition to the requirements of Subpart B of this part, the manufacturer shall prepare gasoline-fueled vehicles as follows prior to exhaust emission testing:

(A) The manufacturer shall inspect the fuel system to insure the absence of any leaks of liquid or vapor to the atmosphere by applying a pressure of 14.5±0.5 inches of water to the fuel system, allowing the pressure to stabilize, and isolating the fuel system from the pressure source. Following isolation of the fuel system, pressure must not drop more than 2.0 inches of water in 5 minutes. If required, the manufacturer shall perform corrective action in accordance with paragraph (d) of this section.

(B) When performing this pressure check, the manufacturer shall exercise care to neither purge nor load the evaporative emission control system.

(C) The manufacturer shall not modify the test vehicle's evaporative emission control system by component addition, deletion, or substitution, except to comply with paragraph (a)(4)(ii) of this section if approved in advance by the Administrator.

(b) (1) The manufacturer shall not adjust, repair, prepare, or modify the engines or vehicles selected for testing and shall not perform any emission tests on engines or vehicles selected for testing pursuant to a PCA request unless the adjustment, repair, preparation, modification, or tests are documented in the manufacturer's engine or vehicle assembly and inspection procedures and are actually performed on all engines or vehicles produced or unless these adjustments or tests ar required or permitted under this subpart or are approved in advance by the Administrator.

(2) For 1984 and later model years the Administrator may adjust or cause to be adjusted any engine parameter which the Administrator has determined to be subject to adjustment for certification, Selective Enforcement Audit and Production Compliance Audit testing in accordance with § 86.084–22(e)(1), to any setting within the physically adjustable range of that parameter, as determined by the Administrator in accordance with § 86.084–22(e)(3)(ii), prior to the performance of any tests. However, if the idle speed parameter is

one which the Administrator has determined to be subject to adjustment, the Administrator shall not adjust it to any setting which causes a lower engine idle speed than would have been possible within the physically adjustable range of the idle speed parameter if the manufacturer had accumulated 125 hours of service on the engine or 4,000 miles on the vehicle under paragraph (c) of this section, all other parameters being identically adjusted for the purpose of the comparison. The manufacturer may be requested to supply information to establish such an alternative minimum idle speed. The Administrator, in making or specifying these adjustments, may consider the effect of the deviation from the manufacturer's recommended setting on emissions performance characteristics as well as the likelihood that similar settings will occur on in-use heavy-duty engines or light-duty trucks. In determining likelihood, the Administrator may consider factors such as, but not limited to, the effect of the adjustment on engine or vehicle performance characteristics and surveillance information from similar in-use engines or vehicles.

(c) Prior to performing emission testing on a PCA test engine, the manufacturer may accumulate on each engine a number of hours of service equal to the greater of 125 hours or the number of hours the manufacturer accumulated during certification on the emission-data engine corresponding to the configuration tested during PCA. Prior to performing emission testing on a PCA test vehicle, the manufacturer may accumulate a number of miles equal to the greater of 4,000 miles or the number of miles the manufacturer accumulated during certification on the emission-data vehicle corresponding to the configuration tested during PCA. Service or mileage accumulation may be performed in any manner the manufacturer desires.

(d) No maintenance shall be performed on test engines or vehicles after selection for testing nor will any test engine or vehicle substitution or replacement be allowed, unless requested of and approved by the Administrator in advance of the performance of any maintenance or engine or vehicle substitution.

(e) The manufacturer shall expeditiously ship test engines or vehicles from the point of selection to the test facility or other location to meet any other requirements of this subpart. If the test facility is not located at or in close proximity to the point of selection, the manufacturer shall assure that test engines or vehicles arrive at the test facility within 24 hours of selection, except that the Administrator may approve more time based upon a request by the manufacturer accompanied by a satisfactory justification.

(f) If an engine or vehicle cannot complete the service or mileage accumulation or emission tests because of engine or vehicle malfunction, the manufacturer may request that the Administrator authorize the repair of the engine or vehicle. If the engine or vehicle cannot be repaired expeditiously, EPA may delete it from the test sequence.

(g) (1) Heavy-duty engine manufacturers with projected sales bound for the United States market for that year of 30,000 or greater, as made in their respective Applications for Certification, shall complete emission testing at their testing facility on a minimum of two engines per 24-hour period, including voided tests.

(2) Heavy-duty engine manufacturers with projected sales bound for the United States market for that year of less than 30,000, as made in their respective Applications for Certification, shall complete emission testing at one engine per 24-hour period, including voided tests.

(3) Light-duty truck manufacturers shall complete emission testing on a minimum of four vehicles per 24-hour period, including voided tests.

(4) The Administrator may approve a longer period of time for conducting emission tests based upon a request by a manufacturer accompanied by a satisfactory justification.

(h) The manufacturer shall perform test engine or vehicle selection, shipping, preparation, service or mileage accumulation, and testing in such a manner as to insure that the audit is performed in an expeditious manner.

(i) The manufacturer may retest any engines or vehicles tested during a Production Compliance Audit once a compliance level has been established in accordance with § 86.1112–87 based on the first test on each engine or vehicle. The Administrator may approve retesting at other times based upon a request by the manufacturer accompanied by a satisfactory justification. The manufacturer may test each engine or vehicle a total of three times. The manufacturer shall test each engine or vehicle the same number of times. The manufacturer may accumulate additional service or mileage before conducting a retest, subject to the provisions of paragraph (c) of this section.

§ 86.1112–87 Determining the compliance level and reporting of test results

(a) A manufacturer that has elected to conduct a PCA in accordance with § 86.1106–87 may establish the compliance level for a pollutant for any engine or vehicle configuration by using the primary PCA sampling plan or either of two optional reduced PCA sampling plans (the fixed reduced sampling plan or the sequential reduced sampling plan) described below.

(1) A manufacturer that elects to conduct a PCA for a pollutant using the primary PCA sampling plan shall:

(i) Conduct emission tests on 24 engines or vehicles in accordance with § 86.1111–87 for the pollutants for which the PCA was initiated. If the PCA follows an SEA failure, the number of additional tests conducted shall be the difference between 24 and the number of engines or vehicles tested in the SEA. If 24 or more engines or vehicles were tested in the SEA, no additional tests shall be conducted; and

(ii) Rank the final deteriorated test results, as defined by paragraph (e) of this section, obtained for that pollutant in order from the lowest to the highest value. If the PCA follows an SEA failure, all SEA test results for the pollutant shall be included in this ranking.

(iii) The compliance levels for that pollutant is the final deteriorated test result in the sequence determined from Table 1 of Appendix XII of these regulations.

(2) A manufacturer that elects to conduct a PCA for a pollutant using the fixed reduced PCA sampling plan shall:

(i) Select a sample size between 3 and 23 engines or vehicles. If the PCA follows an SEA failure, the sample size selected cannot be less than the number of engines or vehicles tested during the SEA; and

(ii) Conduct emission tests on the selected sample in accordance with § 86.1111–87 for the pollutants for which the PCA was initiated.

(iii) The compliance level for the pollutant is the result of the following equation, using the test results obtained in (a)(2)(ii) and all SEA test results for that pollutant if the PCA follows an SEA failure:

$$CL = \bar{X} + Ks$$

where:

CL = The compliance level.

$\bar{X}$ = The mean of the final deteriorated test results, as defined by paragraph (e) of this section.

K = A value that depends on the size of the test sample. See Table 2 of Appendix XII of this part for the value of K that corresponds to the size of the test sample.

s = The sample standard deviation.

The compliance level is rounded to the same number of significant figures contained in the applicable standard in accordance with ASTM E29–67.

(3) A manufacturer that elects to conduct a PCA for a pollutant using the sequential reduced PCA sampling plan shall perform the following:

(i) Select a sample size of 4, 8, 12, 16 or 20 engines or vehicles. If the PCA follows an SEA failure, the sample size selected cannot be less than the number of engines or vehicles tested during the SEA.

(ii) Conduct emission tests on the selected sample in accordance with § 86.1111–87 for the pollutants for which the PCA was initiated.

(iii) The compliance level for the pollutant is the result of the following equation, using the test results obtained in paragraph (a)(3)(ii) of this section and all SEA test results for that pollutant if the PCA follows an SEA failure:

$$CL = \bar{X} + Ks$$

where:

CL = The compliance level.

$\bar{X}$ = The mean of the final deteriorated test results, as defined by paragraph (e) of this section.

K = A value that depends on the size of the test sample. See Table 3 of Appendix XII of this part for the value of K that corresponds to the size of the test sample.

s = The sample standard deviation.

The compliance level is rounded to the same number of significant figures contained in the applicable standard in accordance with ASTM E29–67.

(iv) After calculating a compliance level in accordance with paragraph (a)(3)(iii) of this section, a manufacturer may elect to increase the sample size by 4 engines or vehicles, or a multiple thereof, up to the maximum, including SEA engines or vehicles if any, of 20. Upon that election, the manufacturer shall add the additional engines or vehicles to the sample and perform paragraphs (a)(3)(ii) and (a)(3)(iii) of this section. This election may be repeated if appropriate. A compliance level determined under this election shall replace a previously determined compliance level.

(b) A fail decision is reached with respect to the upper limit when the compliance level determined in paragraph (a) of this section exceeds the applicable upper limit.

(c) Initial test results are calculated following the Federal Test Procedure specified in § 86.1111–87(a).

(d) Final test results are calculated by summing the initial test results derived in paragraph (c) of this section for each test engine or vehicle, dividing by the number of tests conducted on the engine or vehicle, and rounding in accordance with ASTM E29–67 to the same number of decimal places contained in the applicable standard expressed to one additional significant figure.

(e) *Final deteriorated test results.* (1) The final deteriorated test results for each heavy-duty engine or light duty truck tested according to Subparts B, I, N, or P of this part are calculated by applying the final test results by the appropriate deterioration factor, derived from the certification process for the engine family control system combination and model year for the selected configuration to which the test engine or vehicle belongs. If the deterioration factor computed during the certification process is multiplicative and it is less than one, that deterioration factor will be one. If the deterioration factor computed during the certification process is additive and it is less than zero, that deterioration factor will be zero.

(2) The final deteriorated test results are rounded to the same number of significant figures contained in the applicable standard in accordance with ASTM E29–67.

(f) A failed engine or vehicle is one whose final deteriorated test results, for one or more of the applicable exhaust pollutants, exceed:

(1) The applicable emission standard, or

(2) The compliance level established in paragraph (b) of this section.

(g) Within five working days after completion of PCA testing of all engines or vehicles, the manufacturer shall submit to the Administrator a report which includes the following information:

(1) The location and description of the manufacturer's emission test facilities which were utilized to conduct testing reported pursuant to this section;

(2) The applicable standards against which the engines or vehicles were tested;

(3) Deterioration factors for the engine family to which the selected configuration belongs;

(4) A description of the engine or vehicle and any emission-related component selection method used;

(5) For each test conducted,

(i) Test engine or vehicle description, including;

(A) Configuration and engine family identification,

(B) Year, make and build date,

(C) Engine or vehicle identification number, and

(D) Number of hours of service accumulated on engine or number of miles on vehicle prior to testing;

(ii) Location where service or mileage accumulation was conducted and description of accumulation procedure and schedule;

(iii) Test number, date, initial test results before and after rounding, final test results and final deteriorated test results for all emission tests, whether valid or invalid, and the reason for invalidation, if applicable;

(iv) A complete description of any modification, repair, preparation, maintenance, and/or testing which was performed on the test engine or vehicle and has not been reported pursuant to any other paragraph of this subpart and will not be performed on all other production engines or vehicles; and

(v) Any other information the Administrator may request relevant to the determination as to whether the new heavy-duty engines or heavy-duty vehicles being manufactured by the manufacturer do in fact conform with the regulations of this subpart; and

(6) The following statement and endorsement: This report is submitted pursuant to section 206 of the Clean Air Act. This Production Compliance Audit was conducted in complete conformance with all applicable regulations under 40 CFR Part 86 *et seq.* All data and information reported herein is, to the best of

_____

(Company Name)

knowledge, true and accurate. I am aware of the penalties associated with violations of the Clean Air Act and the regulations thereunder.

_____

(Authorized Company Representative)

§ 86.1113–87 Calculation and payment of penalty.

(a) The NCP for each engine or vehicle for which a compliance level has been determined under § 86.1112–87 is calculated according to the formula in paragraph (a) (1) or (2) of this section depending on the value of the compliance level. Each formula contains an annual adjustment factor (AAF_i) which is defined in paragraph (a)(3) of this section. Other terms in the formulas are defined in paragraph (a)(4) of this section.

(1) If the compliance level (CL) is greater than the standard and less than or equal to X (e.g., point CL_1 in figure 1), then:

$$NCP_n = (PR_1)(CL - S)\left(\prod_{i=1}^{n} AAF_i\right)$$

where:
$PR_1 = (F)(MC_{90})$

(2) If the compliance level is greater than X and less than or equal to the upper limit (e.g., point CL_2 in figure 1), then:

$$NCP_n = (COC_{90} + (PR_2)(CL - X))\left(\prod_{i=1}^{n} AAF_i\right)$$

where:

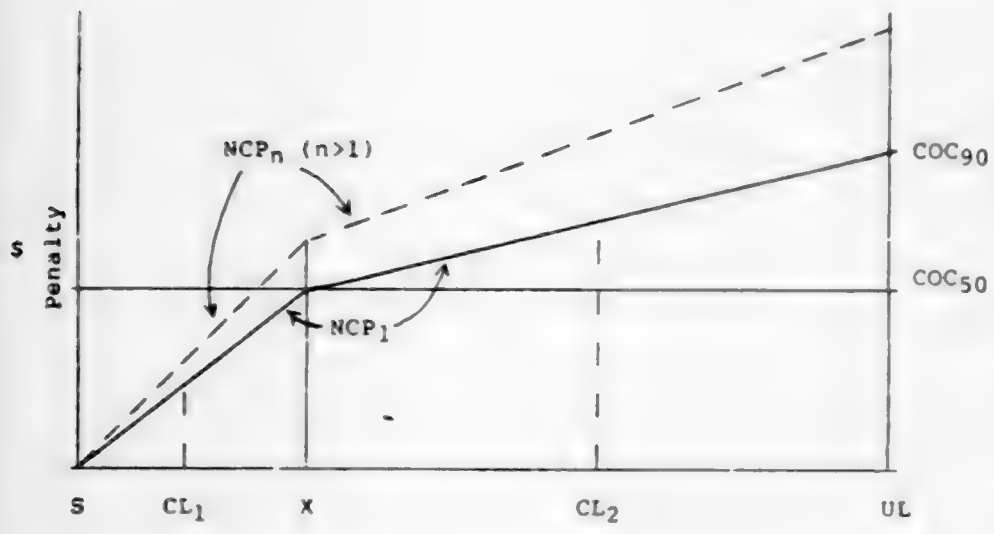
$$PR_2 = \frac{COC_{90} - COC_{50}}{UL - X}$$

(3) AAF_i has the following values:
(i) If $frac_{i-1} = 0$, then $AAF_i = 1 + I_{i-1}$
(ii) If $frac_{i-1} > 0$, then:

$$AAF_i = 1 + I_{i-1} + A_i\left[\frac{1}{1 - frac_{i-1}}\right]$$

Figure 1

Penalty vs. Compliance Level



If $frac_{i-1} > 0.50$, then $frac_{i-1}$ will be set equal to 0.50.

(iii) $AAF_i = 1$

(iv) In calculating the NCP for year n, the value of $frac_{i-1}$ for i—n will include actual NCP usage through March 31 of model year n—1 and EPA's estimate of additional usage for the remainder of model year n—1. The value of $frac_{i-1}$ will be corrected to reflect actual year end usage of NCPs and a corrected AAF_i will be used to establish NCPs in future years. The correction of the previous year's AAF will not affect the previous year's penalty.

(4) The terms in the above formulas have the following meanings and values which may be determined separately for each subclass and pollutant for which an NCP is offered:

NCP_n = NCP for year n for each applicable engine or vehicle
CL = Compliance level for year n for applicable engines or vehicles
S = Emission standard
UL = Upper limit
X = Compliance level above the standard at which NCP_1 equals COC_{90}

$$X = \left[\frac{COC_{90}}{(F)(MC_{90})}\right] + S$$

PR_1 = Penalty rate when CL<X
PR_2 = Penalty rate when X<CL<UL
$\prod_{i=1}^{n} AAF_i$ = Running product, i.e., $(AAF_1)x(AAF_2)x...x(AAF_n)$
i = An index representing a year
n = Index representing the number of model years for which the NCP has been available for an engine or vehicle subclass, i.e., n=1 for the first year that the NCP is available; . . . n=n for the nth year that the NCP is available
COC_{90} = Estimate of the average total incremental cost to comply with the standard relative to complying with the upper limit
COC_{50} = Estimate of the 90th percentile total incremental cost to comply with the standard relative to complying with the upper limit
MC_{90} = Estimate of the average marginal cost of compliance (dollars per emission unit) with the standard
F = Factor used to estimate the 90th percentile marginal cost based on the average marginal cost (the minimum value of F is 1.1, the maximum value of F is 1.3)
AAF_i = Annual adjustment factor for year i
$frac_{i-1}$ = Fraction of engines or vehicles of a subclass using NCPs in previous year (year i-1)
A_i = Usage adjustment factor in year i: $A_i = 0.10$ for i=2; $A_i = 0.08$ for i>2
I_i = Percentage increase in inflation index in year i

(5) The values of COC_{90}, COC_{50}, MC_{90} and F will be determined for each applicable subclass by EPA based on the cost data used by EPA in setting the applicable emission standard. However, where the rulemaking to establish a specific NCP occurs after the rulemaking to establish the standard, EPA may augment the data base used to establish the standard by including the best cost and emission performance data available to EPA during the specific NCP rulemaking.

(6) Any NCP calculated under paragraph (a) of this section will be

rounded to the nearest dollar in accordance with ASTM E29–67.

(b) The NCP determined in paragraph (a) of this section is assessed against all those engines or vehicles of the nonconforming configuration or engine family produced at all assembly plants and distributed into commerce—

(1) Since the beginning of the model year in the case of a certification failure described by § 86.1106–87(a).

(2) Beginning ten days after an SEA failure described by § 86.1106–87 (b) or (c).

(3) Following implementation of a production running change described by § 86.1106–87(d).

(c) The NCP will continue to be assessed during the model year, until such time, if any, that the configuration or engine family is brought into conformance with applicable emission standards.

(d) A manufacturer may carry over an NCP from a model year to the next model year. There is no limit to the number of years that carryover can continue. The amount of the penalty will increase each year according to paragraph (a) of this section.

(e) The Administrator shall notify the manufacturer in writing of the nonconformance penalty established under paragraph (a) of this section after the completion of the PCA under § 86.1112–87.

(f) At any time subsequent to notification of the nonconformance penalty established under paragraph (a) of this section, but not later than fifteeen (15) days or such other period as may be allowed by the Administrator after such notification, a manufacturer may request a hearing under § 86.1115–87 as to whether the compliance level was determined in accordance with the procedures in § 86.1112–87(a) or whether the penalty was calculated in accordance with the procedures in § 86.1113–87(a).

(g) (1) The nonconformance penalty or penalties assessed under this subpart must be paid within 30 days of the end of each calendar quarter (March 31, June 30, September 30 and December 31), or according to such other payment schedule as the Administrator may approve pursuant to a manufacturer's request, for all nonconforming engines or vehicles produced by a manufacturer in accordance with paragraph (b) of this section and distributed into commerce for that quarter. Payment must be made to the United States Treasury and delivered to: Director, Manufacturers Operations Division (En–340F), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

(2) The manufacturer shall provide the Administrator with the following information along with payment under paragraph (g)(1) of this section:

(i) Corporate identification, identification and quantity of engines or vehicles subject to the NCP, certificate identification (number and date), and NCP payment calculations.

(ii) The following statement and endorsement:

This information is submitted pursuant to section 206 of the Clean Air Act. All information reported herein is, to the best of

(Company name)

knowledge, true and accurate. I am aware of the penalties associated with violations of the Clean Air Act and the regulations thereunder.

(Authorized Company Representative)

(3) The Administrator may verify the production figures or other documentation submitted under paragraph (g)(2) of this section.

§ 86.1114–87 Suspension and voiding of certificates of conformity.

(a) The certificate of conformity is suspended with respect to any engine or vehicle failing pursuant to paragraph (f) of § 86.1112–87 effective from the time that a fail decision is made for that engine or vehicle.

(b) Once a certificate has been suspended for a failed engine or vehicle as provided for in paragraph (a) of this section, the manufacturer shall take the following actions:

(1) Before the certificate is reinstated for that failed engine or vehicle,

(i) Remedy the nonconformity, and

(ii) Demonstrate that the engine or vehicle conforms to the applicable standards or compliance levels by retesting the engine or vehicle in accordance with these regulations; and

(2) Submit a written report to the Administrator within five working days after successful completion of testing on the failed engine or vehicle, which contains a description of the remedy and test results for each engine or vehicle in addition to other information that may be required by this regulation.

(c) The Administrator may suspend the certificate of conformity if the manufacturer, after electing to conduct a PCA, fails to adhere to the requirements stated in § 86.1106–87 (b)(3), (b)(6)(iii), (c)(2), (c)(5)(iii), or if the compliance level as determined in § 86.1112–87(a) is in excess of the upper limit.

(d) The Administrator may suspend the qualified certificate of conformity issued under the conditions specified in § 86.1106–87 if the manufacturer fails to adhere to the requirements stated in § 86.1106–87 (a)(3), (a)(4)(iii), (d)(2)(iii), (d)(3), or if the compliance level as determined in § 86.1112–87(a) is in excess of the upper limit.

(e) The Administrator may void the certificate of conformity if the compliance level as determined in § 86.1112–87(a) is in excess of the upper limit and the manufacturer fails to recall any engines or vehicles introduced into commerce pursuant to § 86.1106–87 (a)(4)(ii), (b)(6)(ii), (c)(5)(ii) or (d)(2)(ii).

(f) The Administrator may void the certificate of conformity for those engines or vehicles for which the manufacturer fails to meet the requirements of § 86.1106–87 (a)(4)(i), (b)(6)(i), (c)(5)(i), or (d)(2)(i).

(g) The Administrator shall notify the manufacturer in writing of any suspension or voiding of a certificate of conformity in whole or in part, except as provided for in paragraph (a) of this section.

(h) A certificate of conformity suspended or voided under paragraphs (c), (d), (e), or (f) of this section may be reinstated after a written request by the manufacturer and under such terms and conditions as the Administrator may require and after the manufacturer demonstrates compliance with applicable requirements.

(i) After the Administrator suspends or voids a certificate of conformity pursuant to this section or notifies a manufacturer of his intent to suspend or void a certificate of conformity under § 86.087–30(e), and prior to the commencement of a hearing under § 86.1115–87, if the manufacturer demonstrates to the Administrator's satisfaction that the decision to suspend or void the certificate was based on erroneous information, the Administrator shall reinstate the certificate.

§ 86.1115–87 Hearing procedures for nonconformance determinations and penalties.

(a) *Applicability.* The procedures prescribed by this section shall apply whenever a manufacturer requests a hearing pursuant to § 86.087–30(e)(6)(i), § 86.087–30(e)(7), or § 86.1113–87(f).

(b) *Definitions.* The following definitions shall be applicable to this section:

(1) "Hearing Clerk" shall mean the Hearing Clerk of the Environmental Protection Agency.

(2) "Manufacturer" means a manufacturer contesting a compliance level or penalty determination sent to the manufacturer.

(3) "Party" means the Agency and the manufacturer.

(4) "Presiding Officer" shall mean an Administrative Law Judge appointed pursuant to 5 U.S.C. 3105 (see also 5 CFR Part 930 as amended).

(5) "Judicial Officer" shall mean an officer or employee of the Agency appointed as a Judicial Officer by the Administrator pursuant to this section who shall meet the qualifications and perform functions as follows:

(i) Officer—there may be designated for purposes of this section one or more Judicial Officers. As work requires, there may be a Judicial Officer designated to act for the purposes of a particular case.

(ii) Qualifications—A Judicial Officer may be a permanent or temporary employee of the Agency who performs other duties for the Agency. Such Judicial Officer shall not be employed by the Office of Air and Radiation or have any connection with the preparation or presentation of evidence for a hearing held pursuant to this subpart.

(iii) Functions—the Administrator may consult with a Judicial Officer or delegate all or part of his authority to act in a given case under this section to a Judicial Officer, *provided*, That this delegation shall not preclude the Judicial Officer from referring any motion or case to the Administrator when the Judicial Officer determines such referral to be appropriate.

(c) *Request for public hearing.* (1) If the manufacturer disagrees with the Administrator's determination of compliance level or penalty calculation or both, he may request a public hearing as described in this section. Requests for such a hearing shall not be filed later than 15 days after receipt of the Administrator's notification of NCP unless otherwise specified by the Administrator. The manufacturer shall simultaneously serve two copies of this request upon the Director of the Manufacturers Operations Division and file two copies with the Hearing Clerk. Failure of the manufacturer to request a hearing within the time provided constitutes a waiver of the right to a hearing. Subsequent to the Expiration of the period for requesting a hearing as of right, the Administrator may, in his discretion and for good cause shown, grant the manufacturer a hearing to contest the compliance level or penalty calculation.

(2) The request for a public hearing shall contain:

(i) A statement as to which vehicle or engine subclasses or configurations are to be the subject of the hearing;

(ii) A concise statement of the issues to be raised by the manufacturer at the hearing for each vehicle or engine subclass or configuration for which the manufacturer has requested the hearing, and shall be restricted to the following issues:

(A) The compliance level was not determined in accordance with the procedures in § 86.1112–87(a); or

(B) The penalty was not calculated in accordance with the procedures in § 86.1113–87(a).

(iii) A statement specifying reasons why the manufacturer believes it will prevail on the merits on each of the issues so raised; and

(iv) A summary of the evidence which supports the manufacturer's position on each of the issues so raised.

(3) A copy of all requests for public hearings shall be kept on file in the Office of the Hearing Clerk and shall be made available to the public during Agency business hours.

(d) *Summary decision.* (1) In the case of a hearing requested under § 86.1113–87(f) when it clearly appears from the data and other information contained in the request for a hearing that there is no genuine and substantial question of fact with respect to the issues specified in § 86.1115–87(c)(2)(ii), the Administrator will enter an order denying the request for a hearing, and reaffirming the original compliance level determination or penalty calculation.

(2) In the case of a hearing requested under § 86.087–30(e)(6)(i), to challenge a proposed suspension or voiding of a certificate of conformity for the reasons specified in § 86.087–30 (e)(1)(i) or (e)(1)(ii), when it clearly appears from the data and other information contained in the request for a hearing that there is no genuine and substantial question of fact with respect to the issue of whether the refusal to comply with the provisions of a Production Compliance Audit was caused by conditions and circumstances outside the control of the manufacturer, the Administrator shall enter an order denying the request for a hearing and suspending or voiding the certificate of conformity.

(3) Any order issued under paragraph (d) (1) or (2) of this section shall have the force and effect of a final decision of the Administrator, as issued pursuant to paragraph (v)(4) of this section.

(4) If the Administrator determine that a genuine and substantial question of fact does exist with respect to any of the issues referred to in paragraphs (d) (1) and (2) of this section, he shall grant the request for a hearing and publish a notice of public hearing in accordance with paragraph (h) of this section.

(e) *Filing and service.* (1) An original and two copies of all documents or papers required or permitted to be filed pursuant to this section shall be filed with the Hearing Clerk. Filing shall be deemed timely if mailed, as determined by the postmark to the Hearing Clerk within the time allowed by this section. If filing is to be accomplished by mailing, the documents shall be sent to the address set forth in the notice of public hearing as described in paragraph (h) of this section.

(2) To the maximum extent possible, testimony shall be presented in written form. Copies of written testimony shall be served upon all parties as soon as practicable prior to the start of the hearing. A certificate of service shall be provided on or accompany each document or paper filed with the Hearing Clerk. Documents to be served upon the Director of the Manufacturers Operations Division shall be sent by registered mail to: Director, Manufacturers Operations Division, U.S. Environmental Protection Agency (EN–340F), 401 M Street, SW., Washington, D.C. 20460. Service by registered mail is complete upon mailing.

(f) *Time.* (1) In computing any period of time prescribed or allowed by this section, except as otherwise provided, the day of the act or event from which the designated period of time begins to run shall not be included. Saturdays, Sundays, and Federal legal holidays shall be included in computing any such period allowed for the filing of any document or paper, except that when such a period expires on a Saturday, Sunday, or Federal legal holiday, such period shall be extended to include the next following business day.

(2) A prescribed period of time within which a party is required or permitted to do an act shall be computed from the time of service, except that when service is accomplished by mail, three days shall be added to the prescribed period.

(g)(1) *Consolidation.* The Administrator or the Presiding Officer in his discretion may consolidate two or more proceedings to be held under this section for the purpose of resolving one or more issues whenever it appears that such consolidation will expedite or simplify consideration of such issues. Consolidation shall not affect the right of any party to raise issues that could have been raised if consolidation had not occurred.

(2) If a vehicle or engine is determined to be in nonconformity during certification testing under Subpart A of this part, then the manufacturer may wait to challenge the determination until after production compliance auditing

and calculation of his penalty and may consolidate challenges to the determination of nonconformity and the compliance level determination or the penalty calculation, without losing any rights he would otherwise have had.

(3) If a vehicle or engine is determined to be in nonconformity during selective enforcement auditing under Subpart K of this part, then the manufacturer must wait to challenge the determination until after the compliance level determination and the penalty calculation, and must consolidate challenges to the determination of nonconformity and the compliance level determination or the calculation of the penalty.

(h) *Notice of public hearings.* (1) Notice of public hearing under this section shall be given by publication in the **Federal Register** and by such other means as the Administrator finds appropriate to provide notice to the public. To the extent possible, hearings under this section shall be scheduled to commence within 14 days of receipt of the application in paragraph (c) of this section.

(i) *Amicus curiae.* Persons not parties to the proceeding wishing to file briefs may do so by leave of the Presiding Officer granted on motion. A motion for leave shall identify the interest of the applicant and shall state the reasons why the proposed amicus brief is desirable.

(j) *Presiding Officer.* The Presiding Officer shall have the duty to conduct a fair and impartial hearing in accordance with 5 U.S.C. sections 554, 556 and 557 and to take all necessary action to avoid delay in the disposition of the proceedings and to maintain order. He shall have all power consistent with Agency rules and with the Administrative Procedure Act necessary to this end, including the following:

(1) To administer oaths and affirmations;

(2) To rule upon offers of proof and exclude irrelevant or repetitious material;

(3) To regulate the course of the hearings and the conduct of the parties and their counsel therein;

(4) To hold conferences for simplification of the issues or any other proper purpose;

(5) To consider and rule upon all procedural and other motions appropriate in such proceedings;

(6) To require the submission of direct testimony in written form with or without affidavit whenever, in the opinion of the Presiding Officer, oral testimony is not necessary for full and true disclosure of the facts;

(7) To enforce agreements and orders requiring access as authorized by law;

(8) To require the filing of briefs on any matter on which he is required to rule;

(9) To require any party or any witness, during the course of the hearing, to state his position on any issue;

(10) To take or cause depositions to be taken whenever the ends of justice would be served thereby;

(11) To make decisions or recommend decisions to resolve the disputed issues on the record of the hearing;

(12) To issue, upon good cause shown, protective orders as described in paragraph (n) of this section.

(k) *Conferences.* (1) At the discretion of the Presiding Officer, conferences may be held prior to or during any hearing. The Presiding Officer shall direct the Hearing Clerk to notify all parties of the time and location of any such conference. At the discretion of the Presiding Officer, persons other than parties may attend. At a conference the Presiding Officer may:

(i) Obtain stipulations and admissions, receive requests and order depositions to be taken, identify disputed issues of fact and law, and require or allow the submission of written testimony from any witness or party;

(ii) Set a hearing schedule for as many of the following as are deemed necessary by the Presiding Officer;

(A) Oral and written statements;

(B) Submission of written direct testimony as required or authorized by the Presiding Officer;

(C) Oral direct and cross-examination of a witness where necessary as prescribed in paragraph (p) of this section; and

(D) Oral argument, if appropriate.

(iii) Identify matters of which official notice may be taken;

(iv) Consider limitation of the number of expert and other witnesses;

(v) Consider the procedure to be followed at the hearing; and

(vi) Consider any other matter that may expedite the hearing or aid in the disposition of the issue.

(2) The results of any conference including all stipulations shall, if not transcribed, be summarized in writing by the Presiding Officer and made part of the record.

(l) *Primary discovery (exchange of witness lists and documents).* (1) At a prehearing conference or within some reasonable time set by the Presiding Officer prior to the hearing, each party shall make available to the other parties the names of the expert and other witnesses the party expects to call, together with a brief summary of their expected testimony and list of all documents and exhibits which the party expects to introduce into evidence. Thereafter, witnesses, documents, or exhibits may be added and summaries of expected testimony amended upon motion by a party.

(2) The Presiding Officer, may upon motion by a party or other person, and for good cause shown, by order (i) restrict or defer disclosure by a party of the name of a witness or a narrative summary of the expected testimony of a witness, and (ii) prescribe other appropriate measures to protect a witness. Any party affected by any such action shall have an adequate opportunity, once he learns the name of a witness and obtains the narrative summary of his expected testimony, to prepare for the presentation of this case.

(m) *Other discovery.* (1) Except as provided by paragraph (m)(1) of this section, further discovery under this paragraph shall be permitted only upon determination by the Presiding Officer:

(i) That such discovery will not in any way unreasonably delay the proceeding;

(ii) That the information to be obtained is not obtainable voluntarily; and

(iii) That such information has significant probative value. The Presiding Officer shall be guided by the procedures set forth in the Federal Rules of Civil Procedure, where practicable, and the precedents thereunder, except that no discovery shall be undertaken except upon order of the Presiding Officer or upon agreement of the parties.

(2) The Presiding Office shall order depositions upon oral questions only upon a showing of good cause and upon a finding that:

(i) The information sought cannot be obtained by alternative methods; or

(ii) There is a substantial reason to believe that relevant and probative evidence may otherwise not be preserved for presentation by a witness at the hearing.

(3) Any party to the proceeding desiring an order of discovery shall make a motion or motions therefor. Such a motion shall set forth:

(i) The circumstances warranting the taking of the discovery;

(ii) The nature of the information expected to be discovered; and

(iii) The proposed time and place where it will be taken. If the Presiding Officer determines the motion should be granted, he shall issue an order for the taking of such discovery together with the conditions and terms thereof.

(4) Failure to comply with an order issued pursant to this paragraph may lead to the inference that the information to be discovered would be

adverse to the person or party from whom the information was sought.

(n) *Protective orders, in camera proceedings.* (1) Upon motion by a party or by the person from whom discovery is sought, and upon a showing by the movant that the disclosure of the information to be discovered, or a particular part thereof, (other than emission data) would result in methods or processes entitled to protection as trade secrets of the person being divulged, the Presiding Officer may enter a protective order with respect to such material. Any protective order shall contain such terms governing the treatment of the information as may be appropriate under the circumstances to prevent disclosure outside the hearing, *provided,* That the order shall state that the material shall be filed separately from other evidence and exhibits in the hearing. Disclosure shall be limited to parties to the hearing, their counsel and relevant technical consultants, and authorized representatives of the United States concerned with carrying out the Act. Except in the case of the Government, disclosure may be limited to counsel for parties who shall not disclose such information to the parties themselves. Except in the case of the Government, disclosure to a party or his counsel shall be conditioned on execution of a sworn statement that no disclosure of the information will be made to persons not entitled to receive it under the terms of the protective order. (No such provision is necessary where Government employees are concerned because disclosure by them is subject to the terms of 18 U.S.C. 1905.)

(2)(i) A party or person seeking a protective order may be permitted to make all or part of the required showing in camera. A record shall be made of such in camera proceedings. If the Presiding Officer enters a protective order following a showing in camera, the record of such showing shall be sealed and preserved and made available to the Agency or court in the event of appeal.

(ii) Attendance at any in camera proceeding may be limited to the Presiding Officer, representatives of the Agency, and the person or party seeking the protective order.

(3) Any party, subject to the terms and conditions of any protective order issued pursuant to paragraph (n)(1) of this section, that desires to make use of any in camera documents or testimony in the presentation of his case shall apply to the Presiding Officer by motion for permission to do so, and shall state the justification for the motion. The Presiding Officer, in granting any such motion, shall enter an order protecting the rights of the affected persons and parties as far as is practicable, and preventing unnecessary disclosure of such information and testimony concerning such information.

(4) In the submittal of proposed findings, briefs, or other papers, counsel for all parties shall make a good faith attempt to refrain from disclosing the specific details of in camera documents and testimony. This shall not preclude references in such proposed findings, briefs, or other papers to such documents or testimony. This shall not preclude references in such proposed findings, briefs, or other papers marked "confidential," which shall become part of the in camera record.

(o) *Motions.* (1) All motions, except those made orally during the course of the hearing, shall be in writing and shall state with particularity the grounds therefore, shall set forth the relief or order sought, and shall be filed with the Hearing Clerk and served upon all parties.

(2) Within such time as may be fixed by the Administrator, the judicial officer, or the Presiding Officer, as appropriate, any party may serve and file an answer to the motion. The movant shall, if requested by the Administrator, the judicial officer, or the Presiding Officer, as appropriate, serve and file reply papers, within the time set by the request.

(3) The Presiding Officer shall rule upon all motions filed or made prior to the filing of his decision or accelerated decision, as appropriate. The Administrator or the judicial officer, as appropriate, shall rule upon all motions filed prior to the appointment of a Presiding Officer and all motions filed after the filing of the decision of the Presiding Officer or accelerated decision. Oral argument of motions will be permitted only if the Presiding Officer, the Administrator or the judicial officer, as appropriate, deems it necessary.

(p) *Evidence.* (1) The official transcripts and exhibits, together with all papers and requests filed in the proceeding, shall constitute the record. Immaterial or irrelevant parts of an admissible document shall be segregated and excluded so far as practicable. Documents or parts thereof subject to a protective order under paragraph (n) of this section shall be segregated. Evidence may be received at the hearing even though inadmissible under the rules of evidence applicable to judicial proceedings. The weight to be given evidence shall be determined by its reliability and protective value.

(2) The Presiding Officer shall allow the parties to examine and cross-examine a witness to the extent that such examination and cross-examination is necessary for a full and true disclosure of the facts.

(3) Rulings of the Presiding Officer on the admissibility of evidence, the propriety of examination and cross-examination and other procedural matters shall appear in the record.

(4) Parties shall automatically be presumed to have taken exception to an adverse ruling.

(q) *Record.* (1) Hearings shall be stenographically reported and transcribed and the original transcripts shall be part of the record. Copies of the records shall be filed with the Hearing Clerk and made available during Agency business hours for public inspection. Any person who wants a copy of the record of the hearing or any part thereof, except as provided in paragraph (n) of this section, shall be entitled to the same upon payment of the cost thereof.

(2) The official transcripts and exhibits, together with all papers and requests filed in the proceeding, shall constitute the record.

(r) *Proposed findings, conclusions.* (1) Within 4 days of the close of the reception of evidence, or within such longer time as may be fixed by the Presiding Officer, any party may submit for the consideration of the Presiding Officer proposed findings of fact, conclusions of law, and a proposed order, together with reasons therefore and briefs in support thereof. Such proposals shall be in writing, shall be served upon all parties, and shall contain adequate references to the record and authorities relied upon.

(2) The record shall show the Presiding Officer's ruling on the proposed findings and conclusions except when his order disposing of the proceeding otherwise informs the parties of the action taken by him.

(s) *Decisions of the Presiding Officer.* (1) Unless extended by the Administrator, the Presiding Officer shall issue and file with the Hearing Clerk his decision within 14 days after the period for filing proposed findings has expired; as provided for in paragraph (r) of this section.

(2) The Presiding Officer's decision shall become the decision of the Administrator (i) 10 days after issuance thereof, if no notice of intention to appeal as described in paragraph (t) of this section is filed, unless in the interim the Administrator shall have taken action to review or stay the effective date of the decision; or (ii) 5 days after expiration of the period allowed by paragraph (t)(1) of this section for

perfection of an appeal, if a notice of intention to appeal is filed but the appeal is not perfected, unless within that 5-day period the Administrator shall have taken action to review or stay the effective date of the decision;

(3) the Presiding Officer's decision shall include a statement of findings and conclusions, as well as the reasons or basis therefore, upon all the material issues of fact or law presented on the record and an appropriate rule or order. Such decision shall be supported by substantial evidence and based upon a consideration of the whole record.

(4) At any time prior to the issuance of his decision, the Presiding Officer may reopen the proceeding for the reception of further evidence. Except for the correction of clerical errors, the jurisdiction of the Presiding Officer is terminated upon the issuance of his decision.

(t) *Appeal from the decision of the Presiding Officer.* (1) Any party to a proceeding may appeal the Presiding Officer's decision to the Administrator, *provided,* That within 10 days after issuance of the Presiding Officer's decision such party files a notice of intention to appeal and no appeal brief within 20 days of such decision.

(2) When an appeal is taken from the decision of the Presiding Officer, any party may file a brief with respect to such appeal. The brief shall be filed within the same time limits as the appellant's brief.

(3) Any brief filed pursuant to this paragraph shall contain in the order indicated, the following:

(i) A subject index of the matter in the brief, with page references, and a table of cases (alphabetically arranged), textbooks, statutes, and other material cited, with page references thereto;

(ii) A specification of the issues intended to be appealed;

(iii) The argument, presenting clearly the points of fact and law relied upon in support of the position taken on each issue, with specific page references to the record and legal or other material relied upon; and

(iv) A proposed order for the Administrator's consideration if different from the order contained in the Presiding Officer's decision.

(4) No brief in excess of 15 pages shall be filed without leave of the Administrator.

(5) Oral argument will be allowed only in the discretion of the Administrator.

(u) *Review of the Presiding Officer's decision in absence of appeal.* (1) If, after the expiration of the period for taking an appeal as provided for by paragraph (t) of this section, no notice of intention to appeal the decision of the Presiding Officer has been filed, or if filed, not perfected, the Hearing Clerk shall so notify the Administrator.

(2) The Administrator, upon receipt of notice from the Hearing Clerk that no notice of intention to appeal has been filed, or if filed, not perfected pursuant to paragraph (t) of this section, may, on his own motion, within 14 days after notice from the Hearing Clerk, review the decision of the Presiding Officer. Notice of the intention of the Administrator to review the decision of the Presiding Officer shall be given to all parties and shall set forth the scope of such review and the issues which shall be considered and shall make provision for filing of briefs.

(v) *Decision of appeal or review.* (1) Upon appeal from or review of the Presiding Officer's decision, the Administrator shall consider such parts of the record as are cited or as may be necessary to resolve the issues presented and in addition shall, to the extent necessary or desirable, exercise all the powers which he could have exercised if he had presided at the hearing.

(2) In rendering his decision, the Administrator shall adopt, modify or set aside the findings, conclusions, and order contained in the decision of the Presiding Officer and shall set forth in his decision a statement of the reasons or bases for this action.

(3) In those cases where the Administrator believes that he should have further information or additional views of the parties as to the form and content of the rule or order to be issued, the Administrator, in his discretion, may withhold final action pending the receipt of such additional information or views, or may remand the case to the Presiding Officer.

(4) Any decision rendered under this paragraph which completes disposition of a case shall be a final decision of the Administrator.

(w) *Reconsideration.* Any party may file with the Administrator a petition for reconsideration of such decision, setting forth the relief desired and the grounds in support thereof. This petition must be filed within 20 days of the issuance of the Administrator's decision, and must be confined to new questions raised by the decision or final order and which the petitioner had no opportunity to argue before the Presiding Officer or the Administrator, unless otherwise specified by the Administrator. Subsequent to the expiration of the period for petitioning for reconsideration, the Administrator may, in his discretion and for good cause shown, grant the manufacturer a hearing to contest the compliance level or the penalty calculation, even though such issues may have been raised in the previous proceeding. Any party desiring to oppose such a petition, shall file an answer thereto within 10 days after the filing of the petition. The filing of a petition for reconsideration shall not operate to stay the effective date of the decision or order or to toll the running of any statuory time period affecting such decision or order unless specifically so ordered by the Administrator.

(x) *Accelerated decision, dismissal.* (1) The Presiding Officer, upon motion of any party or sua sponte, may at any time render an accelerated decision in favor of the Agency or the manufacturer as to all or any part of the proceeding, without further hearing or upon such limited additional evidence such as affidavits as he may require, or dismiss any party with prejudice, for any of the following reasons:

(i) Failure to state a claim upon which relief can be granted, or direct or collateral estoppel;

(ii) The lack of any genuine issue of material fact, causing a party to be entitled to judgment as a matter of law; or

(iii) Such other and further reasons as are just, including specifically, failure to obey a precedural order of the Presiding Officer.

(2) If under this paragraph an accelerated decision is issued as to all the issues and claims joined in the proceeding, the decision shall be treated for the purposes of these procedures as the decision of the Presiding Officer, as provided in paragraph (s) of this section.

(3) If under this paragraph, judgment is rendered on less than all issues or claims in the proceeding, the Presiding Officer shall determine what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. He shall thereupon issue an order specifying the facts which appear without substantial controversy, and the issues and claims upon which the hearing will proceed.

(y) *Conclusion of hearing.* (1) If, after the expiration of the period for taking an appeal as provided by paragraph (t) of this section, no appeal has been taken from the Presiding Officer's decision, and after the expiration of the period for review by the Administrator on his own motion as provided for by paragraph (u) of this section, the Administrator does not move to review such decision, the hearing will be deemed to have ended at the expiration of all periods allowed for such appeal and review.

(2) If an appeal of the Presiding Officer's decision is taken pursuant to paragraph (t) of this section, or if, in the absence of such appeal the Administrator moves to review the decision of the Presiding Officer pursuant to paragraph (u) of this section, the hearing will be deemed to have ended upon issuance of a final decision by the Administrator.

(z) *Judicial review.* (1) The Administrator hereby designates the General Counsel, Environmental Protection Agency as the officer upon whom copies of any petition for judicial review shall be served. Such officer shall be responsible for filing in the court the record on which the order of the Administrator is based.

11. The table of contents of Part 86 is proposed to be amended by adding the following appendix:

PART 86—CONTROL OF AIR POLLUTION FROM NEW MOTOR VEHICLES AND NEW MOTOR VEHICLE ENGINES: CERTIFICATION AND TEST PROCEDURES

* * * * *

Appendix XII—Tables for Production Compliance Auditing of Heavy-Duty Engines and Heavy-Duty Vehicles

12. Part 86 is proposed to be amended by adding Appendix XII as follows:

Appendix XII—Tables for Production Compliance Auditing of Heavy-Duty Engines and Heavy-Duty Vehicles

TABLE 1.—COMPLIANCE LEVEL DETERMINATION USING THE PRIMARY PCA SAMPLING PLAN

PCA test sample size (including the number of SEA tests if applicable)	Compliance level is the test result of the sequence number (the lowest test result is sequence number 1)
24	15
25	15
26	16
27	17
28	17
29	18
30	18
31	19
32	20
33	20
34	21
35	21
36	22
37	23
38	23
39	24
40	24
41	25
42	26
43	26
44	27
45	27
46	28
47	29
48	29
49	30
50	30
51	31
52	32
53	32
54	33
55	33
56	34
57	35
58	35
59	36
60	36

TABLE 2—VALUES OF K FOR THE REDUCED FIXED PCA SAMPLING PLAN

Sample size	Value of K
3	1.602
4	1.114
5	0.895
6	0.764
7	0.674
8	0.608
9	0.555
10	0.513
11	0.478
12	0.448
13	0.422
14	0.399
15	0.379
16	0.360
17	0.343
18	0.328
19	0.314
20	0.301
21	0.289
22	0.277
23	0.266

TABLE 3.—VALUES OF K FOR THE REDUCED SEQUENTIAL PCA SAMPLING PLAN

Sample size	Value of K
4	1.671
8	0.912
12	0.672
16	0.540
20	0.451

(42 U.S.C. 7525)

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Part IV

Department of Commerce

National Oceanic and Atmospheric Administration

Listing Endangered and Threatened Species and Designating Critical Habitat; Action on Petition to List the North Pacific Fur Seal; Notice of Determination

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 50219-5019]

Listing Endangered and Threatened Species and Designating Critical Habitat; Action on Petition to List the North Pacific Fur Seal

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of determination.

SUMMARY: On January 5, 1984, the Humane Society of the United States petitioned NMFS to add the North Pacific fur seal (*Callorhinus ursinus*) to the U.S. List of Endangered and Threatened Wildlife (50 CFR Part 17). The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), determined that the petition presented substantial scientific information indicating that the proposed listing may be warranted. A status review was conducted to determine if the petitioned action is warranted. Based upon that review, current population estimates, and the implementation of various Federal and international measures to conserve the species, the NMFS has determined that a proposal to list the North Pacific fur seal as a threatened species is not warranted at this time.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia Carter, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, Washington, D.C. 20235 (202/634-7471).

SUPPLEMENTARY INFORMATION:

Background

On January 5, 1984, the Assistant Administrator received a petition from the Humane Society of the United States, *et al.*, to list the North Pacific fur seal as a threatened species. The petitioners cited the following criteria, provided in section (4)(a)(1) of the Endangered Species Act of 1973 (ESA), as amended, as justification for the petitioned action: reduced and declining population due to overutilization of the species as a result of the commercial harvest of sub-adult male fur seals; other man-made factors, i.e. entanglement of fur seals in discarded netting and other floating debris; inadequacy of existing regulatory mechanisms; or a combination of these factors. The petition received extensive review by marine mammal biologists, wildlife managers and other personnel having knowledge and expertise concerning *C. ursinus*. Based on these reviews, the Assistant Administrator determined that the petition presented substantial evidence indicating that the petitioned listing of the North Pacific fur seal as a threatened species may be warranted. Pursuant to section 4 of the Act and regulation implementing section 4 (50 CFR 424.14(b)(3)) a status review must be conducted if a petition is determined to present substantial evidence in support of a proposed listing. To ensure a comprehensive review, a notice was published in the **Federal Register** on April 11, 1984 (49 FR 14416-14417), soliciting comments and information pertinent to this issue by June 11, 1984. The comment period was extended until August 17, 1984, in response to requests for extensions from several interested parties (49 FR 27808, July 6, 1984). After a thorough analysis of all information available, including information and comments received in response to the aforementioned notice, the NMFS has determined that a proposed rule to list *C. ursinus* as a threatened species is not warranted at this time.

Summary of Status Review

A detailed review of the population status of *C. ursinus* was undertaken by the NMFS in response to the subject petition. That review is provided as an appendix to this notice. A summary of the determinations made in the status review is presented below.

The total population of northern fur seals in the Pacific Ocean, as estimated for 1983, was between 1.19 and 1.23 million individuals. In the late 1970's the population size was estimated at 1.77 million animals. The decline follows trends observed in recent years on Robben Island in the Western Pacific, and especially on the Pribilof Islands.

The North Pacific fur seal population of the Pribilof Islands has been declining at a rate of about 6.5 per cent annually since 1978. Various factors potentially contributing to the decline have been examined.

The likely principal factor behind the decline is increased mortality at sea based on an increased estimate for mortality of young males. Various factors that could contribute to increased mortality have been examined. These include increased levels of toxic substances, lack of food, predation, changes in the physical environment, diseases, and entanglement in debris. Food resources appear not to be a cause since increased growth, body size and pup survival are inconsistent with such an hypothesis. Appraisals of the fishery resources also indicate that there should be sufficient food available. However, none of the other factors can be conclusively ruled out.

The hypothesis that entanglement is a major cause of mortality at sea is consistent with and supported by several sets of data. These data show significant correlations between observed entanglement rates and several changes within the population. If entanglement is a major cause of mortality, the population is likely to experience a continuing decline, since net debris, similar to other debris, may remain at sea for many years. Additional research will be conducted to address this hypothesis.

Listing Procedures

Section 4(a) of the ESA provides that the Secretary of the Interior or Commerce, depending on the species involved, shall by regulation, determine if any species is endangered or threatened for any of the following factors: (1) Present or threatened destruction, modification or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; or (5) other natural or manmade factors affecting its continued existence.

Section 4(b) of the ESA requires that determinations concerning decisions on listings be made solely on the best scientific and commercial data available after conducting a review of the status of the species and taking into account any efforts being made by any State, foreign nations or subdivisions thereof, to protect the species under consideration. The NMFS considered these factors in determining whether to list *C. ursinus* as a threatened species. These factors and their relation to *C. ursinus* are discussed below.

1. *The Present or Threatened Destruction, Modification or Curtailment of Its Habitat or Range*

There is little evidence that modification or destruction of the North Pacific fur seal habitat has contributed significantly to the decline of the species, although actions that occur or have been proposed within the species range have the potential to adversely affect portions of its habitat. The Pribilof Islands have been suggested as possible development sites for offshores oil and gas operations in the Bering Sea. In addition, oil and gas development activities are increasing in central and southern California waters. As a result, there is a potential for fur seals to contact spilled oil. If encountered, spilled oil could affect individual fur

seals in their pelagic habitat or on haulout areas including those at San Miguel Island or the Pribilof Islands. As fur seals rely on their thick pelage for insulation from the cold marine environment, contact with oil either at sea or on a haulout area could adversely affect individual fur seals. However, the probability of an oil spill occurring in these areas is extremely low and such events do not represent a typical component of their habitat.

Questions have been raised concerning potential reduction of the carrying capacity of the North Pacific fur seal habitat as a factor contributing to the population decline. At the present time there is no evidence of such a reduction. Food resources probably are the principal determinant of the carrying capacity for large mammals. Reviews of commercial fisheries and estimates of the biomass of fishes taken in commercial fisheries do not indicate a decrease in food supply for fur seals. Fur seals are pelagic feeders and apparently are highly opportunistic, feeding on a wide variety of prey, some of which are targeted by commercial fisheries operating in the eastern Bering Sea. In the Bering Sea, the major prey items of the North Pacific fur seal are schooling fish and squid. Of their primary food sources, only pollock and herring are target species for fisheries.

It is possible that the food available to fur seals has increased through the influence of commercial fisheries. Pollock found in fur seal stomach samples generally were small, ranging in length from 10 to 35 cm, the majority being sub-commercial size and averaging about 19 to 21 cm. As reviewed by Swartzman and Harr (1983), fishing mortality on large, cannibalistic adult walleye pollock (*Theragra chalcogramma*) may have resulted in a greater availability of smaller pollock more commonly taken by North Pacific fur seals. Existing data fail to support the hypothesis that other environmental factors, such as changes in salinity or temperature within the fur seal's ecosystem, have contributed to the population decline; although there is a possibility that undetected detrimental changes have occurred or are occurring.

2. *Overutilization for Commercial, Recreational, Scientific, or Educational Purposes*

The Interim Convention on Conservation of North Pacific Fur Seals (Convention) provides for limited land harvests of subadult male seals on islands in the western North Pacific Ocean (Robben and Commander Islands) and on Alaska's Pribilof Islands. The total commercial harvest for this species is about 30,000 males per year, or 2.5% of the total species population of approximately 1.2 million. The North Pacific Fur Seal Commission's (NPFSC) regulation of the harvest, in terms of season, sex and length limits, ensures that only those seals not needed as replacements for the breeding stocks are taken. A sufficient number of young males are thought to escape the harvest to return to breed in later years. Because the fur seal is polygynous, many more females are needed for reproduction than males.

Since 1978 the number of fur seal pups born on the Pribilof Islands has been declining at an annual rate of about 6.5%; however, the decline is not thought to be related to the male harvest. The reasons for this conclusion are: (1) the North Pacific fur seal population experienced a major increase in size while a harvest was being conducted between the early 1900's and the 1950's; and (2) the rate of decline in the fur seal population on St. George Island, where the commercial harvest was terminated more than 10 years ago, is similar to that found on St. Paul Island, the site of the current commercial harvest.

Recent work by scientists in the Soviet Union, however, suggests the need for caution regarding the effects of the harvest. Although the details of their work are not yet available, Soviet scientists claim to have evidence that reproductive rates can be determined by the degree of comparability in the age structure of the male and female segments of the population and by the sex ratio. Their work indicates that departures from a sex ratio of 20 adult females to each breeding adult male may result in declining trends, especially when the age structure of the two sexes differ. On some Soviet islands, there may not be an adequate number of breeding age males to inseminate young females at the end of the regular breeding season each year.

There is some evidence to suggest that the problems identified by the Soviet scientists could be involved in the decline on the Pribilofs. This evidence concerns possible increased utilization rates, i.e., an increase in the portion of available animals taken in the harvest each year. Although harvested males are not yet of breeding age, an increase in utilization rates will result in reduced recruitment to the breeding aged population of males and, therefore, a reduced ratio of males to females of breeding age in this population.

With the possible exception of such an indirect effect of the male harvest, the limited data available are not consistent with reduced reproduction rates as a possible contributing factor in the Pribilof decline. Indeed, any effects of the harvest now would be inconsistent with historical increasing trends in the population while being harvested, and are inconsistent with the decline in the unharvested population on St. George Island.

Further evaluation is needed to determine the effects, if any, of the harvest on the decline in fur seal numbers. However, it is the consensus of those scientists participating each year in the Standing Scientific Committee of the NPFSC that the harvest probably is not contributing to the present decline. In addition, some researchers believe that termination of the harvest and the resultant increase in subadult males, might increase the mortality rates of fur seal pups on land.

3. *Disease or Predation*

Predation, diseases and exposure to toxic substances may be contributing to higher rates of mortality among fur seals; however, very little direct information is available on this subject. There is no evidence of increased predatory activity by killer whales (*Orcinus orca*) or Stellar sea lions (*Eumatopius jubatus*), the natural predators of the North Pacific fur seal. The effects of a documented increase in the incidence of Leptospirosis during the mid 1970's has not been fully evaluated although it has not been implicated as a significant contributor to the current decline. Likewise, there is no evidence that other diseases known to occur in North Pacific fur seals, such as hookworm and San Miguel sea lion virus have increased. Based on current information on the physiology and population dynamics of the North Pacific fur seal, the population is not behaving as though it were being affected by diseases. Diseases typically cause a rather precipitous decline in populations followed by a relatively slow regeneration. This has not happened in the Pribilof Islands population. Additional research is needed before a more definitive determination may be made regarding the effects of disease and predation on the North Pacific fur seal population.

4. *Inadequacy of Existing Regulatory Mechanisms*

The NMFS is responsible for management of North Pacific fur seals under the Fur Seal Act of 1966, as amended. The Act implements the Interim Convention on Conservation of North Pacific Fur Seals of 1957, a treaty with Canada, Japan, and the Soviet Union. This treaty and earlier

agreements dating back to 1912, established an international conservation and management regime for this migratory species. Under the provisions of the Convention, fur seals cannot be taken for purposes other than research, native subsistence or the commercial harvest. In all cases, the number of fur seals taken is closely controlled by the Convention.

A significant element of the treaty is a prohibition on pelagic sealing (the taking of seals at sea), a practice which nearly exterminated the herd in the early 1900's. During their spring migration, pregnant females take a direct route from the west coast to the Pribilofs, placing this portion of the population at the greatest risk from any possible resumption of pelagic sealing. Since all North Pacific fur seals spend some portion of their lives in waters outside the jurisdiction of the United States, treaty prohibitions on pelagic sealing are essential to the protection of the fur seal breeding stock. Although a resumption of commercial pelagic sealing on a scale similar to that at the beginning of this century is considered unlikely, the taking of fur seals by commercial fleets in the North Pacific Ocean for "predator control" purposes can be expected to increase without the protection provided by this treaty. The treaty also limits the land harvest of fur seals to levels consistent with wildlife management principles. The Standing Scientific Committee of the NPFSC annually reviews the results of cooperative research programs on this species and is responsible for recommending harvest methods and length of the harvest season as well as the number, size and sex of the seals to be taken. This ensures that only those seals not needed as replacements for the breeding stock are taken and that the harvest is conducted in the most humane manner possible.

The Interim Convention was to expire in October 1984; however, an agreement was reached among the Party Governments on a Protocol that extends the treaty until October 1988. The new Protocol will be forwarded to the U.S. Senate for ratification early this year. A statement attached to the Protocol addresses the concerns of all Parties regarding the recent decline in the fur seal population and other issues directly related to fur seal conservation and utilization. The statement underscores the party governments' determination to resolve the current problems facing the North Pacific fur seal by: (1) Addressing the need for additional research concerning current aspects of fur seal conservation including the problem of entanglement; (2) committing to take appropriate measures, in conformity with their national laws and the provisions of the Convention on the Prevention of Marine Pollution by Dumping Wastes and Other Matter of 1972, to prohibit the disposal of synthetic materials at sea in Convention areas; (3) establishing a mechanism for dealing with unforeseen circumstance, as noted by the countries of fur seal origin, in considering measures to be taken to enhance conservation and management of fur seal populations; and (4) providing for review of the operation of the Convention within two years to determine what further agreements would be appropriate in order to achieve the objectives of the Convention.

In addition to actions being undertaken through the NPFSC, the NMFS recently co-sponsored the Workshop on Fate and Impact of Marine Debris, a major international symposium on the entanglement problem. Based on the recommendations of these experts, and the results of current research, the NMFS will be taking additional measures designed to reduce mortality of fur seals associated with entanglement.

5. *Other Natural and Man-Made Factors Affecting Its Continued Existence*

The cause of the currently reduced and declining status of the North Pacific fur seal populations has not yet been conclusively determined; however, the results of recent analyses presented in the status review indicate that the decline may be attributed to an increase in accidental at-sea mortality. There is reason to believe that pelagic entanglement in lost or discarded netting, fishing gear or other floating debris may be a significant mortality factor. Preliminary estimates based on limited data suggest that the mortality rate associated with entanglement may be in excess of 5–10 per cent per year for younger age classes.

The magnitude of the entanglement problem has been difficult to determine since the number of fur seals observed in debris may represent only a small proportion of the actual number affected. It is believed that a number of entangled animals are not observed because they die before returning to the islands. At the Workshop on Fate and Impact of Marine Debris, held on November 27–29, 1984, it was noted that entanglement mainly involves animals younger than three years of age. In addition, these animals appear to be attracted to floating nets and other debris. Further research is needed to determine more conclusively the impact of entanglement related mortality on the fur seal population.

Discussion

Listing decision

An endangered species is any species that is in danger of extinction throughout all or a significant portion of its range; a threatened species is any species that is likely to become an endangered species within the foreseeable future. The ESA requires that a determination to list a species as endangered or threatened be made solely on the basis of the best available scientific and commercial information concerning that species, relative to the five factors reviewed above.

The NMFS recognizes that the petition addresses a serious problem affecting the well-being of the North Pacific fur seal population. However, based on existing data, we do not believe that the population is likely to become endangered within the forseeable future. Therefore, we have determined that listing the fur seal as threatened under the ESA is not warranted at this time. We base this decision on the following:

(1) Although the Pribilof fur seal population is declining at a rate of about 6.5 per cent annually, the herd is not at or near a critical population level at which it would be in danger of extinction. The total species population numbers approximately 1.2 million animals, which is at least three times greater than the estimated population in the early 1900's at the time the initial fur seal treaty was signed.

(2) The current decline is not a result of harvest, research or other management measures in the Convention. Under the Fur Seal Act Amendments of 1983, the Federal government continues its responsibility of oversight and management of the fur seal harvest and for stringent fur seal management, as required by the Convention.

((3) It is the consensus of the Standing Scientific Committee of the Convention, and other fur seal biologists, that the harvest of fur seals probably is not a factor contributing to the decline in the fur seal population.

((4) Since the cause of the current decline has not yet been conclusively determined, the underlying need is to intensify efforts to identify causal factors. The NMFS and Marine Mammal Commission are working with the scientific and environmental communities and the Parties to the Convention toward resolving this decline by redefining research goals; recommending stronger enforcement

policies regarding marine pollution and the discard of fishing gear, and by developing an action plan to further address the entanglement issue.

((5) Continuation of the current management regime in accordance with the provisions of the Convention provides the North Pacific fur seal with the greatest protection available since the species also occurs in waters outside the jurisdiction of the U.S. and could not otherwise be protected from pelagic taking by those not subject to U.S. jurisdiction.

Dated: February 25, 1985.

William G. Gordon,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

Status Review—Northern Fur Seal (Callorhinus Ursinus) of the Pribilof Islands, Alaska

Introduction

Fur seals of the Eastern Pacific have been the subject of a long history of research and management. Research conducted prior to the mid-1960's is reviewed by Scheffer, Fiscus, and Todd (1984). Research and management since the 1960's are documented in Roppel (1984). Additional information is also found in Roppel and Davey (1965).

Most data and analyses which have been used for the evaluation of the northern fur seal population are contained in one of three series of reports. The first series is the annual report of U.S. scientific research, published in various formats since the late 1940's. It is presently produced in a Technical Memorandum series by the National Marine Fisheries Service. The second series is the North Pacific Fur Seal Commission's intermittent report on fur seal investigations. These reports summarize the research of Canada, the United States, the Soviet Union and Japan as a basis for decisions made by scientists, managers, and commissioners of all four nations. The third series of reports is the proceedings of the annual meetings of the North Pacific Fur Seal Commission. These contain the reports of the Standing Scientific Committee (including any workshops) and the meetings of the Commissioners, and are published by the Commission. The proceedings also list background papers which contain more detailed research results. These documents are submitted each year by the scientists participating in the Standing Scientific Committee of the Commission. Many of these documents will be referred to in the following discussion of the biology, distribution, and trends of the North Pacific fur seal population, with special reference to that of the Pribilof Islands.

Biological Background

The general biology of northern fur seals is described in U.S. Dept. of Comm. (1977), Fiscus (1978), and Lander (1979a). The northern fur seal belongs to the family Otariidae. At birth, females average 63 cm in length and weigh about 4.5 kg. Newborn males average 66 cm in length and 5.4 kg in weight. Adult females reach an average length of 1.42 m and weigh 43.50 kg while males reach an average length of 2.13 m and weigh 180–272 kg.

Northern fur seals are found only in the northern Pacific Ocean and Bering Sea. Their general distribution and the islands on which they congregate are shown in Fig. 1. In the eastern Pacific, the majority of the fur seal population breeds on the Pribilof Islands, located in the eastern Bering Sea. A smaller population is found on San Miguel Island in southern California and a very small colony was recently discovered on Bogoslof Island (about 54°N lat., 168°W long.) in the eastern Aleutian Islands. Further information concerning the general distribution of northern fur seals may be found in Kajimura (1984a), Fiscus (1978) and the draft environmental impact statement produced for consideration of the Interim Convention on the Conservation of North Pacific Fur Seals (October 1983).

Fur seals begin to return to the breeding islands from their pelagic winter foraging in the spring of each year. Adult males arrive first and establish territories on the breeding rookeries. On the Pribilof Islands they arrive in descending order by age, beginning in early May. The youngest males may not return to the breeding areas until mid-August or later. Some yearlings arrive as late as September or October, however most appear to remain at sea. The older pregnant females arrive beginning about mid-June; the peak of pupping occurs in early July.

Pups leave the islands in early November simultaneous with the departure to sea of the older animals. The early winter migration of seals takes them through the eastern Aleutian Islands into the north Pacific Ocean where they migrate to the western coasts of British Columbia, Washington, Oregon, and California. Older males appear to remain in the northern part of their range, while young males and females of all ages spend the winter feeding in the southern part. The northward migration begins in March. This migration brings the animals back to the breeding colonies on the Pribilof Islands where the cycle is repeated. Fur seals which breed on San Miguel Island, complete the reproductive cycle somewhat earlier and appear in coastal waters of California, Oregon and Washington during the non-breeding season.

Adult females usually give birth to their pups within the first 24 hours of arriving at their breeding rookery (fairly consistently the rookery of their birth). Within 5 to 6 days the onset of estrus occurs. Insemination by territorial males ensues, resulting in the fertilization of an egg; implantation in the uterus is delayed until about November. Following the birth of the pup, the female nurses for 4 to 6 days. At this point she departs on her first feeding excursion. Each feeding bout normally lasts about 4 or 5 days. The female's return to land initiates the second nursing phase of the feeding/nursing cycle. These cycles are repeated throughout the summer with the at-sea portion becoming slightly longer over time.

Females generally begin giving birth to pups about their 5th or 6th year of life but are capable of producing a pup at age 4. Peak reproductive activity occurs between the 7th and 14th years of life. The pregancy rate of adult females is between 60% and 80% depending on age. Males reach peak reproductive performance about the age of 9 or 10 and suffer greater mortality rates than do females throughout their lives. The life table thought to characterize northern fur seals is shown in Table 1 (compare the harvested populations on St. Paul with the unharvested population on St. George).

Fur seals from the Pribilof Islands feed in the vicinity of those islands during the breeding season and throughout their range during winter. Generally northern fur seals feed on fish and cephalopods of 20 to 30 cm in length. They are opportunistic feeders, and the composition of the diet appears to depend very heavily on the composition of the suitably sized forage species available (Kajimura, 1984a). The principal prey species are listed in Table 2.

Information concerning stock size, abundance and trends will be presented below. General accounts are published in the workshop report from the Standing Scientific Committee meeting in Moscow in 1984, in Lander (1979a), and Scheffer et al. (1984).

Distribution of Major Stocks

The number of northern fur seals in the major stocks are shown in Table 3. About 72% of the current estimated population are found on the Pribilof

Islands. About 17% occur on the Commander Islands with about 6% on Robben Island and the remainder from the Kurile Islands, San Miguel Island, and Bogoslof Island. The San Miguel Island population is still a small portion of the overall population but has been observed to be growing until the last two years. The reversal of this trend on San Miguel may have been a result of the 1982–83 El Nino event; the 1983 pup production for this stock was about 60% of that of the previous year.

The distribution of the various stocks of fur seals at sea is not well understood. It appears that the Pribilof Islands population is found predominantly in the eastern North Pacific along with those from San Miguel Island and Bogoslof Island. The remaining stocks appear to be found predominantly in the western Pacific. Intermixture among these stocks has been shown to occur, as based on tag recovery programs conducted by Soviet and U.S. scientists (North Pacific Fur Seal Commission, 1975). The rates of intermixture are generally low; ordinarily less than 5% of any particular stock move out of their typical feeding areas. Most of these involve young males that probably return to their original breeding colonies and feeding areas as adults.

During its migration to the south in the fall and early winter, the Pribilof Islands population passes through the eastern Aleutian Islands and stays relatively close to the edge of the continental shelf enroute to the waters off the coasts of Washington, Oregon, and California. In their northward migration, the females and young males follow a more direct course across the north Pacific Ocean from waters off the coasts of Oregon, Washington, and British Columbia directly to waters in the vicinity of Kodiak Island and the eastern Aleutian chain (Fiscus, 1978; Bigg 1982). Thus, at some point in their lives virtually every fur seal passes outside the 200-mile limit of the combined territorial waters of Canada and the U.S. In view of the Canadian territorial waters between Alaska and Washington, most seals pass outside of the territorial waters of the U.S. on numerous occasions.

Population Trends

The total population of northern fur seals in the Pacific Ocean, as estimated for 1983, was between 1.19 and 1.23 million individuals.[1] This is to be compared to the estimated 1.77 million animals of the late 1979's (Lander, 1979a). The decline follows trends observed in recent years, both on Robben Island in the western Pacific but especially on the Pribilof Islands.[2] Since approximately 72% of the total fur seal population breed on the Pribilof Islands, the decline there tends to overshadow the changes on other islands.

In the past, trends in northern fur seal populations have been associated with the harvesting of females (on land, at sea, or both). Currently there is no harvest of females. The first decline documented for seals at the Pribilof Islands was observed in the late 1700's when both sexes were harvested. Following an increase in which females were protected, a second decline, again caused by the harvest of both sexes, occurred in the late 1800's. During the early 1900's another increase was observed (Figs. 2, 3) during which only males were harvested. A third decline was caused by the land-based harvest of females between 1956 and 1968 (Figs. 2, 3). (See Scheffer et al., 1984, for a more complete historical account of population trends prior to 1950.)

The most useful index of population size is the number of pups born. Roughly, pups comprise about 20% to 30% of the total population depending on the age structure as determined by reproductive rates, and mortality (both natural and harvest-caused).[3] The pup population, as it reflects total population, is shown for the Pribilof Islands in Fig. 2. For St. Paul, which comprises the bulk of the Pribilof population, the numbers of pups born first increased from about 67,000 in 1912 to about 162,000 in 1924. Records do not exist for 1925 to 1939, but in 1940 there were an estimated 469,000 pups born on St. Paul. The level remained high until the mid-to-late 1950's. Thereafter, pup numbers declined from about 450,000 in the mid-1950's to about 170,000 in the early 1980's. On Robben Island in the western Pacific a decline occurred between the mid-1960's and the present during which time pup numbers dropped from about 50,000 to slightly over 20,000.

The reduction in fur seals on the Pribilof Islands since 1950 is the result of at least two phases of decline separated by a period of possible increase. The first decline, as mentioned above, occurred in the period between the mid-1950's and the late 1960's when a female harvest was permitted. A decline of about the magnitude shown for this period in Fig. 2 would be expected as a result of the effects of the female harvest. This is shown by models which duplicate the dynamics of the numbers of pups born (Eberhardt, 1981; York and Hartley, 1981; Trites, 1984). The decline for this period is seen as a true reduction in the population, therefore, rather than as a result of changes in estimation procedures or reliability of the procedures for estimating pup numbers. It is also directly attributable to the female harvest. The decline which resulted from this harvest can also be seen in the reduction of the numbers of adult males counted on the rookeries after accounting for the 7–10 yr. time lag required for maturation (Fig. 3). A commensurate decline in the harvest of subadult males was also observed over this period (Fig. 4).

Between the late 1960's and mid-1970's the number of pups born appears to have increased slightly. Increases in the numbers of adult males, as dependent on recruitment from pups born during this period, are also observed (Fig. 3). Any increase in population, however, occurred at rates substantially less than those observed for the growing population of the early 1900's. The increases in productivity that managers had expected following cessation of the female harvest did not occur.

The second declining phase in the fur seal population on the Pribilof Islands since 1950 started with a decrease in pup numbers in the mid- to late 1970's and continues to the present (1984). This phase, as distinguished from earlier declines, is not associated with a female harvest. As is seen in Fig. 3 this trend is reflected not only in the numbers of pups born but also, after a lag, in the numbers of adult males counted, in this case, for both islands. The current rate of decline is estimated to be about 6.5% per year as based on the numbers of pups born since 1978.[4] However, parallel declines in the numbers of males harvested during this time have not been observed. This may be due, in part, to the lag time from birth to when animals enter the harvestable age categories. It is also possible that a larger fraction of the available animals were being taken in recent harvests. Such a change was noted for 2-yr old animals by York

[1] Report of the North Pacific Fur Seal Commission. Workshop on population trends of northern fur seals: Causes and methodology. March 25–30, 1984. Moscow, U.S.S.R.

[2] Report of the North Pacific Fur Seal Commission. Workshop on population trends of northern fur seals: Causes and methodology. March 25–30, 1984. Moscow, U.S.S.R.

[3] The algorithm for estimating total population size is explained in the workshop report of the Proceedings of the 27th Annual Meeting of the North Pacific Fur Seal Commission, March 25–30, 1984. Moscow, U.S.S.R.

[4] Page 35. Workshop report on Population Trends of Northern Fur Seals. Proceedings, of the 27th meeting of the North Pacific Fur Seal Commission. Moscow, USSR. April 1984.

(1983b) through the estimation of utilization rates.

Factor of Potential Importance in the Current Decline

Reproductive Rates. There appears to have been no change in reproductive rates that would account for the current decline in the number of pups born. Goebel and Gentry (1984) found no evidence of any declining trend in reproductive rate of females as estimated by longitudinal records (records of individuals observed over time) of the suckling activity of females observed on St. George Island. These data also show no significant differences from the pregnancy rates observed among older females determined from pelagic sampling from the 1950's through the 1970's. A decrease in reproductive rates over this time would be inconsistent with the observed rates of increase in body weight for this species (Fowler, 1984a), since larger healthier animals tend to show greater reproductive success.

York (1983a) observed that seals born before 1955 shows a declining age of first reproduction. Another declining trend was observed for seals born between 1956 and 1966. This second decline followed a major discontinuity between the 1955 and 1956 year classes in which a major increase was observed. The discontinuity may have been a side effect of the female harvest.

Although existing data do not support reduced reproductive rates as a cause of the decline in the numbers of pups, their limited quantity and the inferential nature of the interpretation of some of the data emphasize the need for further study.

Mortality at Sea. Mortality of seals for the first 20–22 months at sea has been estimated (according to Lander, 1975) since 1950 (Fig. 5). In the 1950's at a time when the population was high these mortality rates varied between 54% and 82% with a mean of 66%. Between 1960 and 1970 mortality varied between 53% and 66% with a mean of 63% at a time when the population was declining. At the lower population levels observed for 1966–1969, the mean estimated mortality rate was 59%. Since 1970, however, estimated mortality rates have increased,[5] returning to levels comparable to some of the higher rates observed in the 1950's and statistically significantly higher than the mean of estimates from 1970 and earlier. Current rates are nearly 70%.

The extent of increased mortality of juvenile males in recent years is emphasized in work by Fowler (1982b) showing a correlation between estimated survival at sea and survival of pups on land for data collected between 1950 and 1965 (for St. Paul Island). Estimated survival for this period differs very little from the values expected from the correlation as shown in Fig. 6. Since 1965, however, the estimated survival differs markedly from that expected from the correlation, indicating a different survival pattern before and after 1965. Where survival of pups on land has continued to increase, survival at sea has declined. In all cases, the estimated survival at sea for year classes of recent years (since 1965) is below that which had been expected from the correlation and current levels of survival on land. Since 1972 this difference has been 15–20%.

The net survival of male seals from birth to age 2 involves both on-land and at sea survival. In view of the opposite trends the net effect could remain unchanged. This is not the case, however, given the fact that the mortality rate at sea is higher than that experienced on land and, therefore, dominates the total mortality. This is verified by population models which incorporate both survival rates and duplicate the dynamics of observed trends (Eberhardt 1981), Trites 1984).

It is possible to evaluate the survival of two- to five-year-old male fur seals through an examination of the age structure of the commercial harvest. An index of survival can be obtained by relating the numbers of animals of one cohort (animals born in the same year) to the number of animals found in the same cohort taken the previous year. Calculating such an index for all cohorts and normalizing so as to produce comparable values results in the index of survival shown in Fig. 7. There was an increasing trend in survival during the period over which the population declined in response to the female harvest (1956–1968). Since 1970, however, the survival of animals between the ages of 2 and 5 has declined again, returning to levels observed in the 1960's.

A similar increase in the mortality of females is suggested by data presented by Goebel and Gentry (1984). Estimates of mortality using their method are higher than estimates from Lander (1981) as based on a different technique.

In view of the results of the analyses summarized above, the most apparent reason for the decline in northern fur seals then, is a recent unexpected decline in the survival between the time animals leave land and return for reproduction. This conclusion is supported by the North Pacific Fur Seal Commission and its standing Scientific Committee.[6]

Possible causes of mortality at sea—Entanglement. An important cause of the unexpected increase in at-sea mortality may be entanglement in fishing debris and plastic packing bands.[6] This problem has been observed in northern fur seals since the mid 1960's, the same period when the mortality rate at sea began to depart from expected values. Although only about 0.4% of male seals taken in the harvest carry such debris, such entanglement involves only animals in pieces of trawl net fragments and plastic packing bands small enough to be able to swim back to the islands. Analyses of the size composition of such debris (Fowler, 1982b, 1984c) indicate that the smaller pieces of debris are only a small part of debris to which fur seals are exposed. Most debris on the beaches is much larger as are the few pieces observed at sea. Since fur seals probably encounter larger pieces for debris more often than smaller pieces of debris at sea, and since more than one animal can become entangled in larger debris, the actual entanglement in debris is probably higher than indicated by the entanglement rate observed in the harvest.

It is possible to show that high rates of entanglement caused mortality are feasible (Fowler, 1984b). Rates in excess of 5%–10% per year are indicated by the very limited data which can be used to produce preliminary estimates (Fowler, 1982a, b, 1984b). Simulation models indicate that these levels of mortality are sufficiently high to account for the observed decline in both the numbers of pups as well as the total population (Swartzman, 1984). In view of the limited nature of the data, and analyses, however, the estimated mortality rates provided by these approaches cannot, by themselves, be used to show that entanglement is causing the decline. It should be stressed that further refinement of direct estimates of such mortality are needed.

Other analyses provide further evidence of a problem, however. Recent work (Fowler, 1984d) involving entanglement of northern fur seals shows that there is a correlation between the rate of decrease of pup numbers and the observed entanglement

[5] Page 44, Proceedings of the 26th Annual Meeting of the North Pacific Fur Seal Commission, Washington, D.C., April 11–14, 1983.

[6] Page 28, North Pacific Fur Seal Commission, Report of the Standing Scientific Committee, Proceedings of the 25th Annual Meeting, April 13–16, 1982, Ottawa, Canada.

rate among harvested males (after accounting for appropriate time lags for maturation, Fig. 8). We can use this correlation to estimate the theoretical rate of population change if there were no mortality caused by entanglement. Assuming a linear relationship between the observed entanglement rate and the rate of population change, at an entanglement rate of zero, the pup population on the Pribilof Islands would be increasing by about 5% per year. (Compare this to the 7.4% increase observed during the arly 1900's and the present decrease of 6.5% per year.) The rates of change observed in bulls counted are also correlated with entanglement rates after accounting for the lag time necessary to achieve reproductive male maturity. Furthermore, the unexpected decline in survival shown in Fig. 6, which is suspected of causing the herd's decline, is correlated with entanglement rates observed in the male harvest (Fowler, 1984d). Thus, from at least a statistical assessment of the data, the current decline in fur seal abundance can be largely accounted for through correlations with the rate of entanglement.

At a recent workshop on the fate and impact of marine debris it was noted that entanglement does not involve random contact between fur seals and debris. As demonstrated by video recordings provided by Japanese scientists, fur seals appear to be attracted to such debris and purposefully insert their heads in the debris to result in their becoming entangled. Other information on the density of debris sighted at sea along with a preliminary analysis of encounter rates necessary to cause mortality consistent with the decline were also presented. In the 21 sightings of trawl gear reported through the combined efforts of U.S. and Japanese scientists there were 7 entangled seals. This is over three times more frequent than would be expected since only about 9% of the trawl gear on beaches is of the mesh size found on entangled seals taken in the harvest. It was also pointed out at this workshop that the problem appears to be restricted to young animals (younger than 3 years). Differences in the age structure of unentangled animals in the harvest as compared to that of entangled animals showed a significant difference for those between two and three years of age implicating entanglement as a problem for younger animals. The mortality increase seen for young animals (Fig. 5) is also consistent with this observation.

The factors discussed above can be summarized as follows:

1. Entanglement and the population decline coincide in time after accounting for lag effects.
2. Estimated mortality at sea (first two years) is correlated with observed entanglement rates.
3. The decline can be accounted for in models which apply the entanglement correlated mortality to females.
4. Changes in estimated pup numbers are correlated with observed entanglement rates with appropriate lags.
5. Changes in "harem bull" counts are correlated with observed entanglement rates, again, with appropriate lags.
6. Crude estimates of entanglement caused mortality based on the composition of net debris (on seals and on beaches) coincide with rates consistent with the decline.
7. Entanglement rates observed at sea are consistent with (possibly in excess of) rates as estimated on the basis of analyses of net debris and as consistent with the decline.

These factors tend to contribute to a coherent picture as follows. After cessation of the female harvest in the late 1960's, the pup population failed to increase as expected, during an increase in observed entanglement rates of subadult males. After what appears to be a slight increase from the late 1960's to mid-1970's, the pup population began a continuous decline. This trend coincides with observed increases in at-sea mortality rates for juvenile males, which are correlated with observed entanglement rates. The rates of change of both bull counts and estimated pup numbers are correlated with observed entanglement rates and can be simulated using estimated mortality rates. As pointed out at the recent workshop observed entanglement and overall (foreign plus domestic) fishing effort has not changed a great deal since 1970 in the vicinity of Alaska.

The various factors considered above indicate that entanglement is probably the major contribution to the decline, acting very much like the female harvests which were involved as causes of the three previous historically documented declines. It is unlikely that so many factors consistent with the hypothesis that entanglement is causing the decline would be observed if such were not the case. However, they do not constitute final proof that such is the case. Sufficient doubt surrounds the assumptions involved in estimating entanglement-caused mortality to promote caution and emphasize the need for further research. The same holds for the correlations in that actual causes and effects have not been studied in detail.

Change in Environmental Carrying Capacity. During the 1940's and early 1950's, the northern fur seal population was relatively stable (as indicated by available estimates of the numbers of pups born, Fig. 2), and this population level is therefore considered a measure of its carrying capacity (the average number of seals that would occur in the natural environment). Studies of density dependent factors in the biology of fur seals (Fowler, 1982a, 1984 b, d) show characteristics similar to those exhibited in the 1920's, when the population was last at its present level. Since these factors depend on the population's size in relation to the ability of the environment to sustain it, researchers have concluded that the population is probably as far below the carrying capacity now as it was in the 1920's.

Changes in the amount of food available have been suggested as a factor in the decline of the Pribilof fur seal herd. This would, however, constitute a change in carrying capacity; if food resources were limited, one would expect reduced mean body sizes and reduced growth rates (the extensive literature on this topic is reviewed by Heasley, 1977). Such is not the case. As reviewed in Fowler (1984a), the average body size of both males and females have increased, a response which is more consistent with an increased than a decreased level of food availability. Body lengths of several age classes of both sexes and tooth size (an indicator of body size) show similar responses (Fowler, 1981, 1984c).

Catastrophic changes in food availability result in changes in the length of the feeding cycle of fur seals at sea. Such may have been the case on San Miguel Island, California, during the unusually stormy El Nino of 1983 when feeding cycles increased in length by about 2 days during a time when food was thought to be in limited supply (NMFS unpubl. data). No significant differences have been observed in the length of these cycles on the Pribilof Islands in comparing current cycles with those of the 1960's (Gentry and Holt, in press).

Reviews of commercial fisheries and estimates of the biomass of fishes taken in commercial fisheries do not indicate a decrease in food supply for fur seals. The fur seal population on San Miguel Island in California has been increasing in an area where part of the Pribilof population spends its winter, indicating that food supplies in the winter habitat are sufficiently high to promote growth.

Current groundfish biomass estimates for the northern part of the range of fur seals are either equivalent to, or in some cases slightly above, levels observed before the commercial fisheries rose to current levels (Kajimura, 1984b). In the case of one abundant species, it is possible that the food available to fur seals has increased through the influence of commercial fisheries. As reviewed by Swartzman and Harr (1983), fishing mortality on the large cannibalistic adult walleye pollock *(Theragra chalcogramma)* may have resulted in a greater availability of smaller pollock more commonly taken by northern fur seals. Further information concerning the general availability of commercially important fishes is found in Kajimura (1984 a, b) where it is also shown that fur seals feed opportunistically. For this reason, they would be expected to adjust readily to changing composition of food resources created by commercial fishing. It would seem unlikely, therefore, that changes in the availability of food have contributed to the fur seal population decline.

Although food resources are probably the principle determinant of the carrying capacity for large mammals, as mediated through density dependent changes (Fowler et al., 1980), other factors are also important. These include factors such as diseases, parasites, and predation (considered below). Other factors include the abiotic environment. Any changes in temperature or salinity, for example, which are correlated with the population decline could serve as potential contributors to the decline. The Standing Scientific Committee of the North Pacific Fur Seal Commission examined such possibilities and noted an observed decline in the temperature of surface waters in the eastern Pacific Ocean. This decline (about .75 °C) from 1945 to 1970 occurred during a time when the population was declining as a result of the female harvest. Since the mid-1970's the temperature of both the eastern North Pacific and Bering Sea have returned to levels observed in the 1940's and 1950's (Niebauer, 1983: Chelton, 1984; and Xiong and Royer, 1984) when the population was at a high and relatively stable level. Likewise, salinity has not been correlated with the current decline; no trends have been observed in recent years (Royer, 1983; Xiong and Royer, 1984).

The results of the work presented above lend themselves to a rejection of the hypothesis that changes have occurred in the resources and measured abiotic components of the fur seal's ecosystem which would be detrimental to the population. As an integrator of what is happening in their ecosystem, fur seals show characteristics (e.g., increased body size, increased pup survival, etc.) that indicate the ecosystem can support a fur seal population as high as that observed in the 1940's and 1950's. However, such evidence does not rule out the possibility that undetected detrimental changes have or are occurring. This is perhaps demonstrated by changes which have been documented for other components of the ecosystem, such as the dramatic decline in king crab in the eastern Bering Sea from 1980 to 1984. More research is needed to be definitive.

Predation. Predation by species such as Steller sea lions *(Eumatopius jubatus)* and killer whales *(Orcinus orca)* may also be contributing to higher mortality rates among fur seals. However, very little direct information has been produced along these lines. There are no data on whether the abundance of killer whales has increased. Northern sea lions in the southeastern Bering Sea are thought to be experiencing a decline in population (Braham, et al., 1980), perhaps in parallel with that of the northern fur seal. There is no evidence of increased predatory activity in the form of injured animals. Further study will be required to be definitive in regard to any effects of predation.

Diseases and Toxic Substances. Diseases may also be viewed as potential contributors to increased mortality. There was an increase in the incidence of Leptospirosis during the mid 1970's. The incidence of mortality due to this disease, however, remains to be evaluated. Other diseases such as hookworm and San Miguel sea lion virus (which is known to occur in the Pribilof populations of northern fur seals) may also be implicated if there were eividence to indicate that the levels of these diseases had increased. Currently no such evidence has been produced. Hookworm does not seem to be implicated, as it affects animals on land, while the problem seems to occur at sea. Diseases usually cause precipitous declines in populations followed by grandual increases, a pattern very different from that observed for northern fur seals on the Pribilofs. More research involving the effects and incidence of diseases is needed to be conclusive, but, at this time, there appears to be no basis for identifying diseases as a principal cause of the decline.

Toxic substances in the form of heavy metals or organic pesticides might contribute to increased motality. A number of recent studies have evaluated these possibilities. So far, all of the results indicate that, for the most part, existing levels of contaminants in fur seal tissues occur at low or safe levels. Further evaluation is necessary, however, since the majority of these samples come from harvested males, although similar levels are found in the small sample of females.

Commercial Harvest. The harvest of subadult males is often suspected as contributing to the population decline. However, since the population underwent a major increase while a harvest was being conducted between the early 1900's and the 1950's, it is difficult to attribute the population decline to effects of the harvest. This is especially true when there has been no commercial harvest on St. George Island since 1973, but the population there is declining at about the same rate as the population on St. Paul Island where the fur seal harvest occurs.

Recent work by scientists of the Soviet Union, however, raises the need to be cautious in this regard. Although the details of their work are not yet available, Soviet scientists claim to have evidence that reproductive rates can be determined both by the degree to which there is comparability in the age structure of both the male and female segments of the population and by the sex ratio. Their work indicates that departures from a sex ratio of 20 adult females to each breeding adult male may result in declining trends, especially if the age structures of the two sexes differ by very much. It is possible that copulation involving the insemination of young females may require the presence of an adequate number of the younger breeding aged males at the end of the regular breeding season each year. (The males which are being harvested are not yet of breeding age.)

Some evidence exists suggesting that problems of the type Soviet scientists claim to have identified may be involved in the decline on the Pribilofs. It involves evidence of increased utilization rates (portion of available animals taken in the harvest) and, therefore, reduced ratio of males to females of breeding age due to reduced recruitment to the breeding aged population of males. As noted earlier, York (1983b) found evidence of this among 2-year-old animals. Further evidence is shown in Figure 7 in which a decline in survival for 2- to 5-year-old males is indicated since 1970. Although it may be associated with entanglement (in time) there is no clear correlation between this survival index and

observed entanglement rates. One possible contributor to the observed reduced survival as measured by this index is an increasd utilization rate. As mentioned earlier this would also explain the lack of decline in the harvest since the mid-1970's (Fig. 4). Declining pup numbers for this period, along with increased mortality and relatively consistent harvest levels imply an increased utilization rate.

The ratio of adult females to adult breeding males is currently at over 35:1 as indicated by the ratio of pups to harem bulls on St. Paul Island. Ratios in excess of this value are indicated for nearly all years since 1900 with the exception of 1916–1919 and 1959–1969 (years of the female harvest).

Further evaluation will be required in order to determine the effects of the harvest and its role, if any, on currently observed declines. It is the consensus of the scientists participating each year in the Standing Scientific Committee of the North Pacific Fur Seal Commission that the harvest probably is not contributing to the decline and that no adjustments in harvest levels are required. This view is shared by other scientists (e.g. Swartzman, 1984).

Current Levels in Relationship to MSY and OSP

Estimates indicate that the northern fur seal population is currently below 50% of its carrying capacity based on current population levels compared to those of the 1940's and early 1950's (Anon., 1983, Fig. 2). Pup mortality on land (Fig. 9), growth rates for various age and sex categories, and the amount of variance in mortality on land and at sea are all presently characteristic of a population reduced substantially below its carrying capacity. These are all density dependent factors insofar as they have been observed to be correlated with population size. However, the estimated mortality at sea of juvenile males (as opposed to its variance) has not been observed to be correlated with population size, and assuming this mortality affects females as well, this may well be an important factor in the population decline. Such mortality, as reviewed in Fowler (1982b), would be much like a harvest of both sexes imposed to bring about a decline in abundance to elicit the density dependent responses observed.

Based on empirical information for fur seals (Smith, 1973) and interspecific comparisons (Fowler, 1984e), the population at which maximum productivity would occur is about 60% of the carrying capacity. Furthermore, the maximum production of harvestable males requires a considerably higher population level than that which produces maximum net productivity, since in this species only a few males breed with many females and only males are harvested. This level of sustainable productivity is thought to be at or above 90% of the levels sustainable by the exosystem as based on interspecific comparisons reviewed in Fowler (1981). Since the current population is below 50% of the levels observed in the 1940's and early 1950's (Anon., 1983), the population is considered to be below levels which can maintain either maximum net productivity [7] or maximum sustainable producivity of sub-adult males.[8]

Summary

The North Pacific fur seal population of the Pribilof Islands is declining at the rate of about 6.5% per year and the current total population level is equivalent to that of the early 1920's at which time the population was increasing. Various factors potentially contributing to the decline have been examined. These factors fall into three major categories depending on whether they contribute to reduced reproductive rates, increased mortality rates or emigration. The latter is unlikely on the basis of low rates of exchange between populations and the balance of changes in worldwide population. With the possible exception of an indirect effect of the male harvest, the limited data available are not consistent with reduced reproductive rates. Even in this case, however, any effects of the harvest now would be inconsistent with historical increasing trends in the population while being harvested, and are inconsistent with the decline in the unharvested population on St. George Island. Instead, reproductive rates would be expected and have increased in parallel with other changes in the population (e.g., increased body size and pup survival).

The likely principal factor behind the decline is an increase in mortality at sea as based on increases observed for estimated mortality amoung young males. Various factors which could potentially contribute to increased mortality have been examined. These includee increased levels of toxic substances, lack of food, predation, changes in the physical environment, diseases, and entanglement in debris. Food resources appear not to be a cause since increased growth, body size and pup survival are inconsistent with such a hypothesis. Appraisals of the fishery resources also indicate that there should be sufficient food available. With the exception of entanglement, none of the other factors can be conclusively ruled out, mostly because of lack of information. However, the meager data available for fur seals and comparisons with other species do not indicate the existence of such problems.

The hypothesis of entanglement as a major cause of at sea mortality is consistent with and supported by several sets of data. These data show significant correlations between observed entanglement rates and several changes within the population, for example, declines in pup production and adult rates, along with the mortality rate among young males. If entanglement is a major cause of mortality, the population is likely to experience a continuing decline since net debris as with other debris will likely remain at sea for many years.

[7] Page 47, Proceedings of the 26th Annual Meeting of the North Pacific Fur Seal Commission. Washington, D.C., April 11–14, 1983.

[8] Page 6, Proceedings of the 27th Annual Meeting of the North Pacific Fur Seal Commission. Moscow, U.S.S.R., April 11, 1983.

References

Anonymous. 1983. Status of northern fur seals on the Pribilof Islands. Background paper submitted to the 26th annual meeting of the Standing Scientific Committee of the North Pacific Fur Seal Commission, Wash. D.C., April 1983.

Briggs, L. and C.W. Fowler. 1984. Tables and figures of the basic population data for northern fur seals of the Pribilof Islands. Background paper submitted to the 27th meeting of the Standing Scientific Committee of the North Pacific Fur Seal Commission, Moscow, U.S.S.R., April 1984.

Bigg, M.A. 1982. Migration of northern fur seals in the eastern North Pacific and eastern Bering Sea: an analysis using effort and population composition data. Background paper submitted to the 25th annual meeting of the Standing Scientific Committee of the North Pacific Fur Seal Commission, Ottawa, Canada, April 1982.

Braham, H.W., R.D. Everitt, and D.J. Rugh. 1980. Northern sea lion population decline in the eastern Aleutian Islands. J. Wildl. Manage. 44:25–33.

Chelton, D.B. 1984. Commentary: Short-term climatic variability in the Northeast Pacific Ocean. pp. 87–99 *In:* Pearcy, W.G. (editor) The influence of ocean conditions on the production of salmonids in the North Pacific: A workshop. Oregon State Univ., Sea Grant, Corvallis, Oregon.

Eberhardt, L.L. 1981. Population dynamics of the Pribilof fur seals. *In:* Fowler, C.W. and T.D. Smith (eds) Dynamics of Large Mammal Populations. pp. 197–220. John Wiley and Sons, New York.

Fiscus, D.H. 1978. Northern Fur Seals. *In:* D. Haley (editor) Marine Mammals of Eastern North Pacific and Arctic Waters, p. 152–159. Pac. Search Press, Seattle, Wash.

Fowler, C.W. 1981. Comparative population dynamics in large mammal populations. *In:*

Fowler, C.W. and T.D. Smith (editors) Dynamics of Large Mammal Populations, pp. 437–456. John Wiley and Sons, New York.

Fowler, C.W. 1982a. Interactions of northern fur seals and commercial fisheries. Trans. 47th N. Am. Wildl. Nat. Res. Conf.: 278–292.

Fowler, C.W. 1982b. Entanglement as an explanation for the decline in northern fur seals on the Pribilof Islands. Background paper submitted to the 25th annual meeting of the Standing Scientific Committee of the North Pacific Fur Seal Commission, Ottawa, Ontario, Canada, 1982.

Fowler, C.W. 1984a. Density dependent body size in northern fur seals (*Callorhinus ursinus*). Background paper submitted to the 27th meeting of the Standing Scientific Committee of the North Pacific Fur Seal Commission, Moscow, U.S.S.R., April, 1984.

Fowler, C.W. 1984b. Entanglement in fishing debris as a contributing factor in the decline of northern fur seals on the Pribilof Islands. Background paper submitted to the 27th meeting of the Standing Scientific Committee of the North Pacific Fur Seal Commission, Moscow U.S.S.R., April 1984.

Fowler, C.W. 1984c. Density dependence in northern fur seals (*Callorhinus ursinus*). Unpubl. manuscr. National Marine Mammal Laboratory, Northeast and Alaska Fisheries Center, National Marine Fisheries Service, NOAA, 7600 Sand Point Way N.E., Seattle, WA. 98115. (Presented at the International Conference on Fur Seals, Cambridge, England, April 1984).

Fowler, C.W. 1984d. An evaluation of the rule of entanglement in the population dynamics of northern fur seals on the Pribilof Islands. Unpubl. manuscr. National Marine Mammal Laboratory, Northwest and Alaska Fisheries Center, National Marine Fisheries Service, NOAA, 7600 Sand Point Way NE., Seattle, WA 98115.

Fowler, C.W. 1984e. Density Dependence in Cetacean Populations. *In:* W.F. Perrin, R.L. Brownell, D.P. DeMaster (eds.), Reproduction in Whales, Dolphins and Porpoises, Special Issue 6, Report of Int. Whal. Commn., Proceedings of Symposium on Cetacean Reproduction, Nov., 1981., Int. Whal. Commn., Cambridge, U.K.

Fowler, C.W., W.T. Bunderson, R.J. Ryel, and B.B. Steele. 1980. A preliminary review of density dependent reproduction and survival in large mammals. pp. 50–173 *In:* Fowler, C.W., W.T. Bunderson, M.B. Cherry, R.J. Ryel and B.B. Steele. Comparative population dynamics of large mammals: A search for management criteria. Report to the Marine Mammal Commission, NTIS PB80–178627, NTIS, Springfield, Virginia.

Gentry, R.L. and J.R. Holt, (In press). Attendance behavior of northern fur seals. *In:* Gentry, R.L. and G.L. Kooyman (eds.), Fur Seals: maternal Strategieis on Land and at Sea. Princeton Univ. Press, Princeton, N.J.

Goebel, M.E. and R.L. Gentry. 1984. The use of longitudinal records of tagged females to estimate fur seal survival and pregnancy rates. Background paper submitted to the 27th meeting of the Standing Scientific Committee of the North Pacific Fur Seal Commission, Moscow, U.S.S.R., April 1984.

Heasley, J.E. 1977. Energy allocation in small mammals and its influence on their population dynamics: A laboratory and simulation study. Ph.D. dissertation. Dept. of Wildl. Science, Utah State University, Logan, Utah.

Kajimura, H. 1984a. Opportunistic feeding of the northern fur seal, *Callorhinus ursinus*, in the Eastern North Pacific Ocean and Eastern Bering Sea. U.S. Dept. Commer. NOAA Tech Rept. NMFS SSRF–779, 49 p.

Kajimura, H. 1984b. A review of fishery resources and commercial catches of fish important to northern fur seals. Background paper submitted to the 27th meeting of the Standing Scientific Committee of the North Pacific Fur Seal Commission, Moscow, U.S.S.R., April 1984.

Lander, R.H. 1975. Method of determining natural mortality in northern fur seal (*Callorhinus ursinus*) from known pups and kill by age and sex. J. Fish. Res. Board Can. 32(12):2447–2452.

Lander, R.H. 1979a. Alaskan or Northern Fur Seal. *In:* Mammals in the sea. Volume 2: pinniped species summaries and report on sirenians, p. 19–23. Food Agric. Organ. UN, Rome, Advis. Comm. Mar. Resour. Res., FAO Fish. Ser. 5, Vol. 2.

Lander, R.H. 1979b. Role of land and ocean mortality in yields of Alaska fur seals. U.S. Dept. Commer., Natl. Ocean. Atmos. Admin., Natl. Mar. Fish. Serv., Fish. Bull. 77:311–314.

Lander, R.H. 1980. Summary of northern fur seal data and collection procedures. Volume 1: land data of the U.S. and Soviet Union (excluding tag and recovery records). U.S. Dept. Comm., NOAA Tech. Memo. NMFS F/NWC–3, 315 p.

Lander, R.H. 1981. A life table and biomass estimate for Alaskan fur seals. Fish. Res. 1:55:70.

Niebauer, H.J. 1983. Multiyear ice variability in the Eastern Bering Sea: An update. J. Geophys. Res. 88:2733–2742.

North Pacific Fur Seal Commission. 1975. Report on Investigations From 1967 through 1972. Washington, D.C.

Roppel, A.Y. 1984. Management of northern fur seals on the Pribilof Islands, Alaska, 1786–1901. U.S. Dept. Commer., NOAA Tech. Rep. NMFS 4., 26 p.

Roppel, A.Y. and S.P. Davey. 1965. Evolution of fur seal management on the Pribilof Islands. J. Wildl. Manage. 29:448–463.

Royer, T.C. 1983. Interannual variability in the abiotic environment of the Bering Sea and the Gulf of Alaska. pp. 134–138 *In:* W.S. Wooster (editor). From Year to Year. Washington Sea Grant. University of Washington, Seattle, Washington.

Scheffer, V.B., C.H. Fiscus, and E.J. Todd. 1984. History of Scientific Study and Management of the Alaskan Fur Seal, *Callorhinus ursinus*, 1786–1964, U.S. Dept. Commer, NOAA Tech. Rep. NMFS SSRF–780, 70 p.

Smith, T.D. 1973. Variable population matrices: theory and application to the evaluation of harvesting strategy. Ph.D. Thesis, Univ. of Wash., Seattle. 158 pp.

Swartzman, G.L. 1984. Factors bearing on the present status and future of the eastern Bering Sea fur seal population with special emphasis on the effect of terminating the subadult male harvest on St. Paul Island. U.S. Mar. Mammal Comm., Washington, D.C. (Available from U.S. Dep. Commer., Natl. Tech. Inf. Serv., Springfield, Va., as #PBBY–172329).

Swartzman, G.L. and R.T. Harr. 1983. Interactions between fur seal populations and fisheries in the Bering Sea. U.S. Natl. Mar. Fish. Serv. Fish. Bull. 81:1:121–132.

Trites, A.W. 1984. Stock assessment and modelling of the North Pacific fur seal population. Background paper submitted to the 27th meeting of the Standing Scientific Committee of the North Pacific Fur Seal Commission, Moscow, U.S.S.R. March 28-April 6, 1984.

U.S. Dept. of Comm. 1977. The Story of the Pribilof Fur Seals. U.S. Gov. Print. Off., Washington. D.C. 13 p.

Xiong, Q. and T.C. Royer. 1984. Coastal Temperature and Salinity in the Northern Gulf of Alaska, 1970–1983. J. Geophys. Res. 89: 8061–8068.

York, A.E. 1983a. Average age at first reproduction of the northern fur seal (*Callorhinus ursinus*). Can. J. Fish. Aquat. Sci. 40:121–127.

York, A.E. 1983b. Forecast of the 1983 harvest. Background paper submitted to the 26th annual meeting of the Standing Scientific Committee of the North Pacific Fur Seal Commission, Washington, D.C., April 1983.

York, A.E. and J.R. Hartley. 1981. Pup production following harvest of female northern fur seals. Can. J. Fish. Aquat. Sci. 38:84–90.

TABLE 1—SUMMARY OF AGE SPECIFIC AND CUMULATIVE SURVIVAL RATES FOR ALASKAN FUR SEALS. (FROM LANDER, 1981)

Age	Males				Females	
	St. Paul Island		St. George Island and Sea Lion Rock			
	By age	From age 0	By age	From age 0	By age	From age 0
0		1.000		1.000		1.000
1	0.500	0.500	0.400	0.400	0.500	0.500
2	0.760	0.380	0.750	0.300	0.800	0.400
3	0.778	0.296	0.800	0.240	0.840	0.336
4	0.478	0.141	0.800	0.192	0.920	0.309
5	0.342	0.048	0.750	0.144	0.940	0.290
6	0.682	0.033	0.700	0.101	0.940	0.273
7	0.800	0.026	0.850	0.086	0.945	0.258
8	0.800	0.021	0.800	0.040	0.950	0.245
9	0.800	0.017	0.550	0.022	0.950	0.233
10	0.760	0.013	0.500	0.011	0.938	0.219
11	0.730	0.009	0.450	0.005	0.924	0.202
12	0.700	0.006	0.400	0.002	0.906	0.183
13	0.650	0.004	0.320	0.001	0.884	0.162
14	0.590	0.002	0.220	<0.001	0.858	0.139
15	0.540	0.001	0.100		0.826	0.122
16	0.430	<0.001	0.010		0.789	0.096
17			<0.010		0.743	0.071
18					0.692	0.044
19					0.630	0.031
20					0.564	0.017
21					0.490	0.008
22					0.411	0.003
23					0.330	0.001
24+					<0.330	<0.001

Table 2.—Principal Forage Species Utilized by Fur Seals in the Eastern North Pacific Ocean and the Eastern Bering Sea, 1958–74, by Area. (From Kajimura, 1984a)

Forage species	Location						
	California	Oregon	Washington	British Columbia	Gulf of Alaska	Western Alaska	Bering Sea
Fish:							
Clupea harengus pallasi	X			X	X	X	X
Engraulis mordax	X	X	X				
Oncorhynchus spp			X	X	X	X	
Malotus villosus			X		X	X	X
Thaleichthys pacificus			X	X			
Cololabis saira	X	X		X			
Gadidae							X
Gadus macrocephalus				X			
Merluccius productus	X	X	X	X			
Theragra chalcogramma				X	X	X	X
Trachurus symmetricus	X						
Sebastes spp	X	X	X	X	X		
Anoplopoma fimbria	X		X	X		X	
Pleurogrammus monopterygius					X	X	X
Ammodytes hexapterus					X	X	X
Cephalopods:							
Loligo opalescens	X	X		X			
Onychoteuthis sp	X	X	X				
Onychoteuthis borealijaponicus					X		
Gonatus sp					X		
Berryteuthis magister					X	X	X
Gonatopsis borealis							X
Unidentified squid					X		

Table 3.—Estimated Size of the Various Stocks of Northern Fur Seals for 1979 and 1984.[1]

Stock (by breeding island)	Estimated stock size late 1970's	Estimated stock size 1984
Pribilof Islands	1,300,000	871,000
Commander Islands	265,000	210,000
Robben Island	165,000	75,000
Kurile Islands	33,000	47,000
San Miguel Island	2,000	4,000
Total	1,765,000	1,207,000

[1] Report of the North Pacific Fur Seal Commission, Workshop on population trends of northern fur seals: Causes and methodology, March 25–30, 1984, Moscow, U.S.S.R.

Figure 1. The general ocean distribution and breeding islands of the northern fur seal (from Kajimura, 1984a).

Figure 2. Estimated numbers of pups born on St. Paul and St. George Islands, Alaska, 1912 to the present (1984. From Lander, 1980; Briggs and Fowler, 1984.)

Figure 3. Counts of territorial males with females (harem males) and idle males for the fur seal populations of both St. Paul and St. George Islands in Alaska from 1911 to the present (1984). (From Lander, 1980 and Briggs and Fowler, 1984).

Figure 4. Harvest of subadult male fur seals from St. Paul Island, Alaska, 1954–83 (revised and updated from Lander, 1980).

Figure 5. Mortality as estimated for males after leaving land but prior to age 2 as based on Lander's (1975) technique (updated from Fowler, 1982a).

Figure 6. The differences between observed (i.e. Lander's 1979b estimates) and expected survival for males between leaving land and 2 years of age as based on a correlation between on-land survival and survival at sea between 1950 and 1965 (updated from Fowler, 1982b).

Figure 7. A survival index calculated as the normalized ratios between animals of one age in the harvest and those at the next younger, ages 3 to 5 weighted by numbers taken in the harvest for the year at the end of which the survival would be expressed..

Figure 8. The correlation between the rate of change in pup numbers (smoothed by a running mean of 3 from the data shown in Fig. 2) and entanglement rate observed in the harvest 6 years earlier (to account for the maturation time of females). (From Fowler, 1984d).

Figure 9. Pup mortality on land for St. Paul Island 1950–1983 (updated from Fowler, 1982a).

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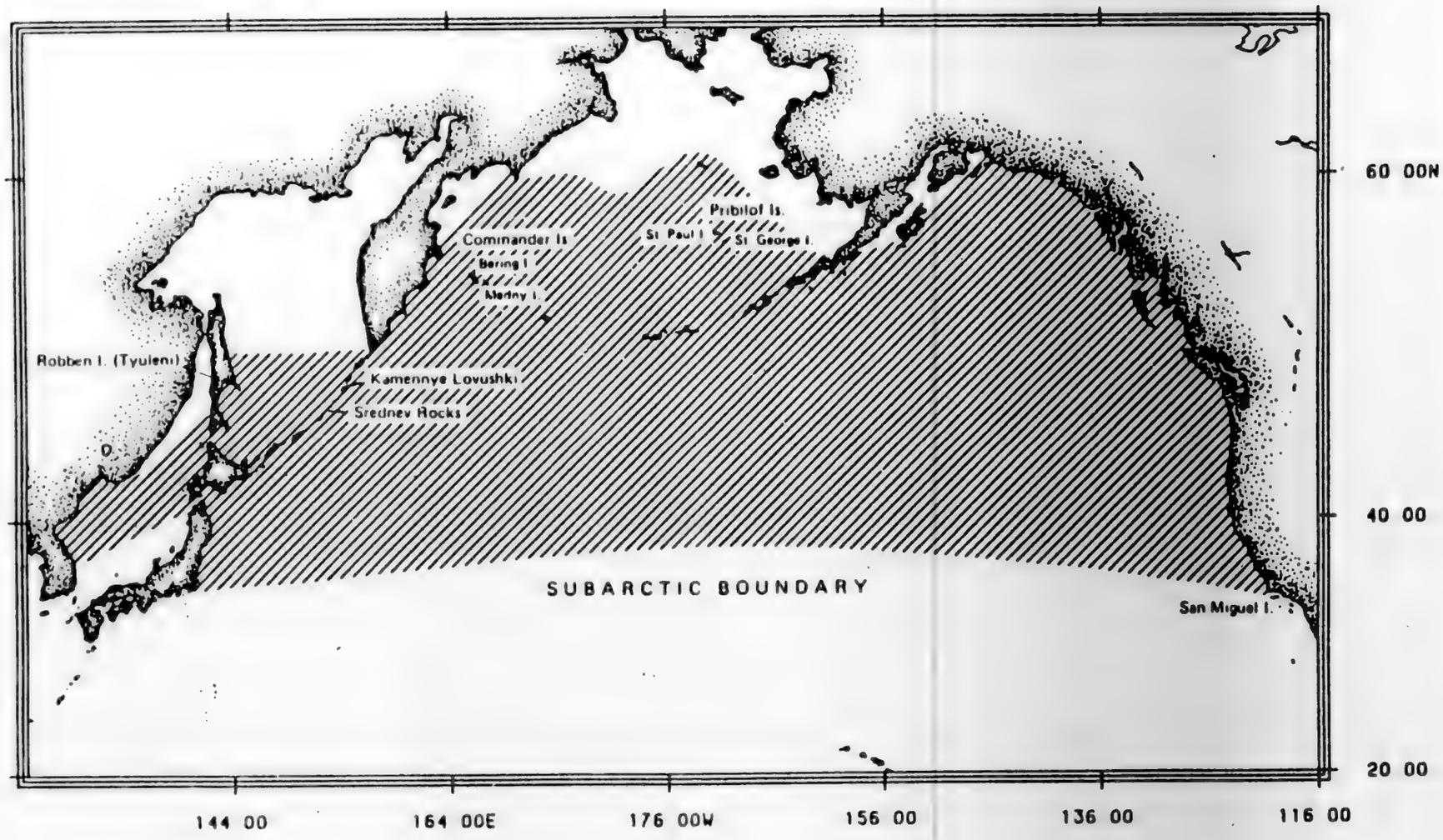


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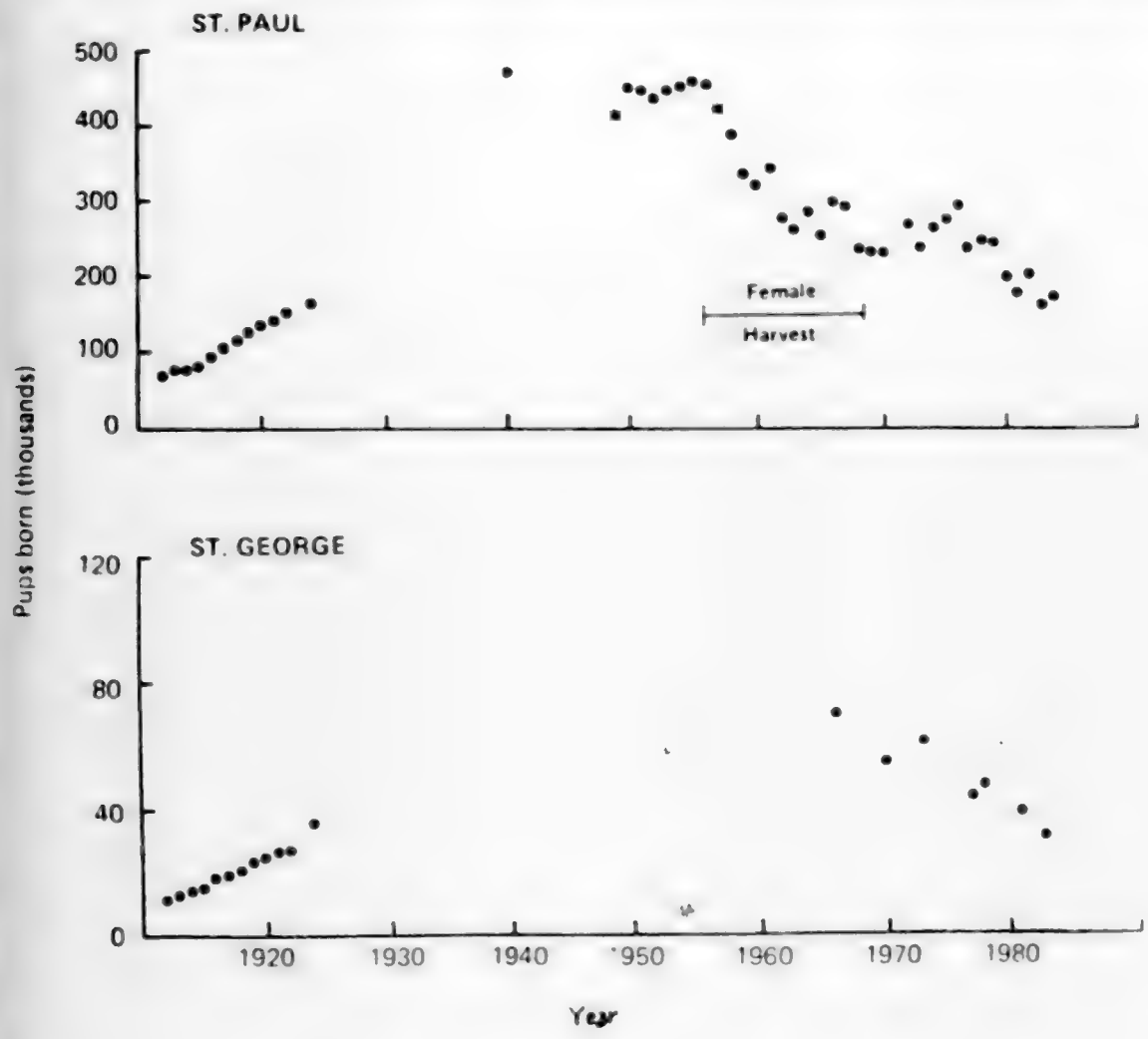


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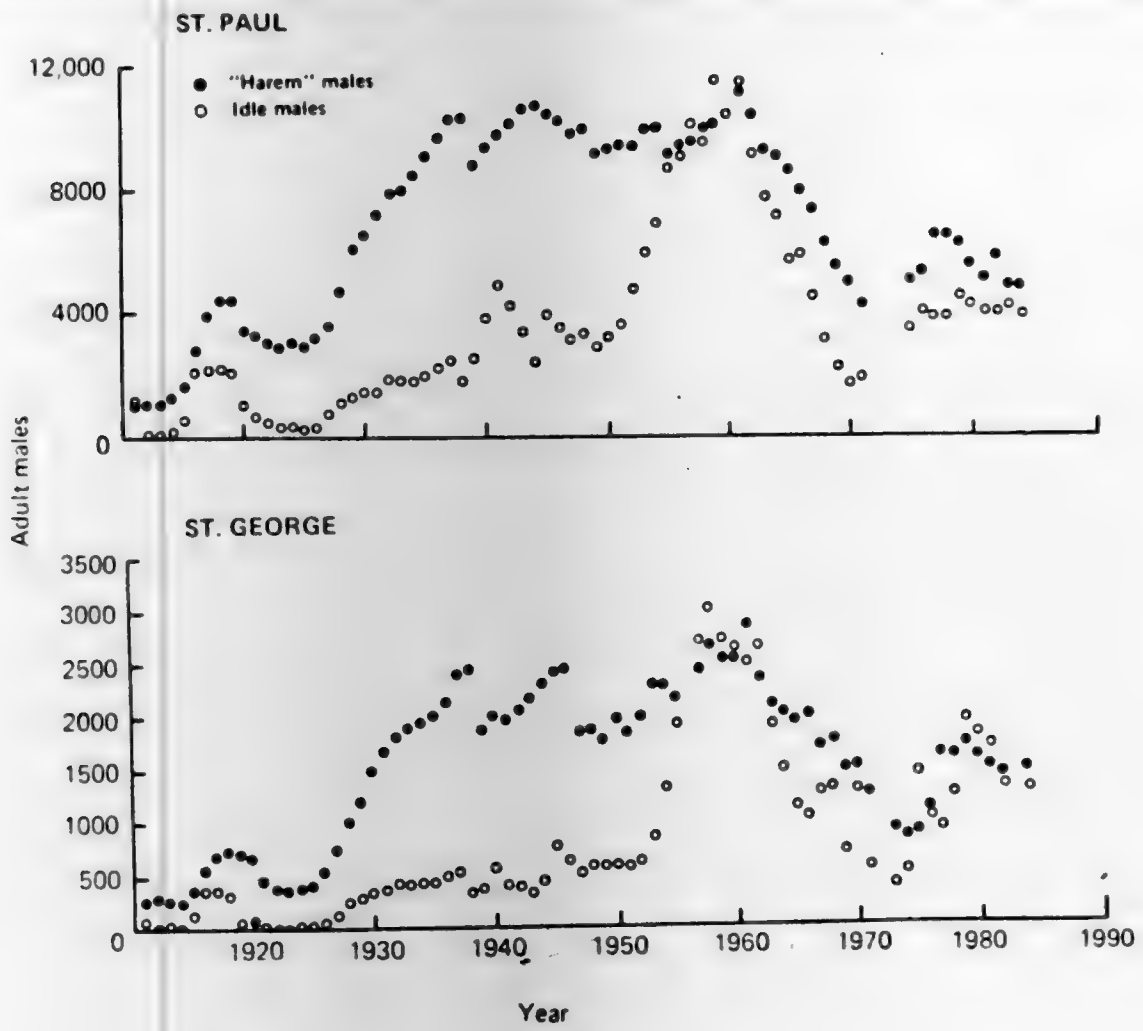


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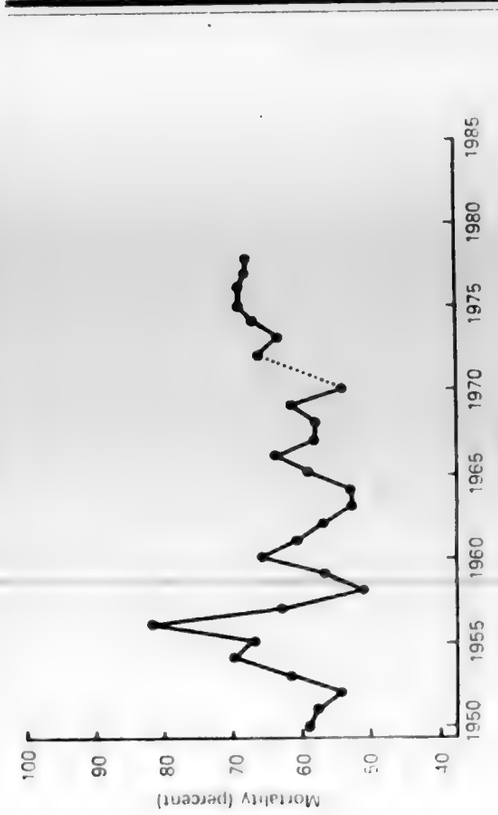


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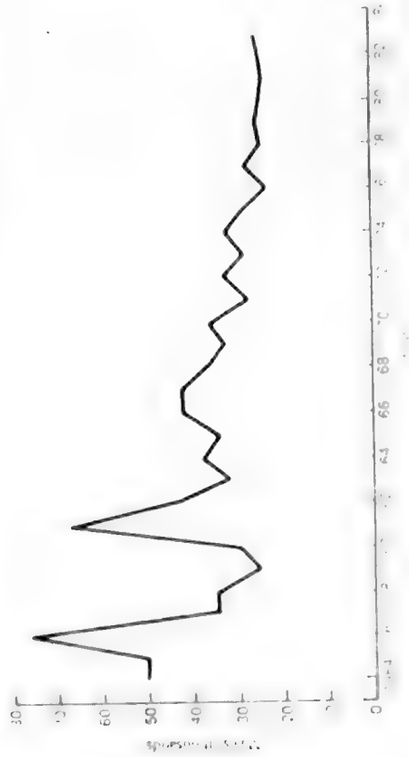


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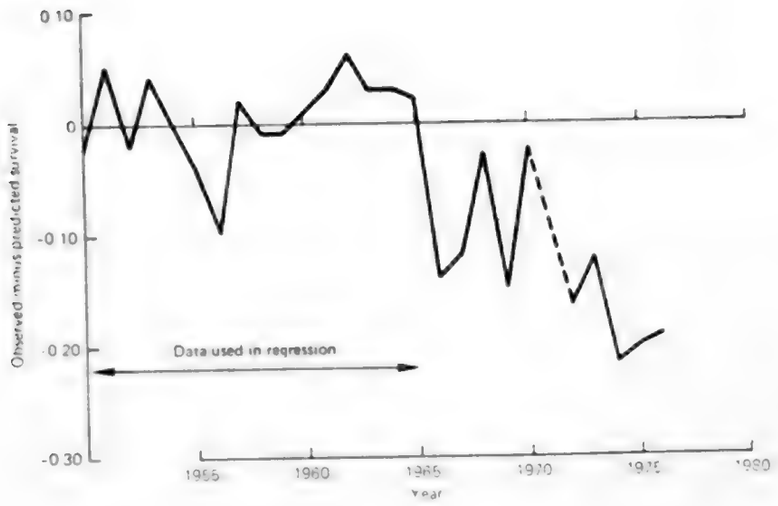


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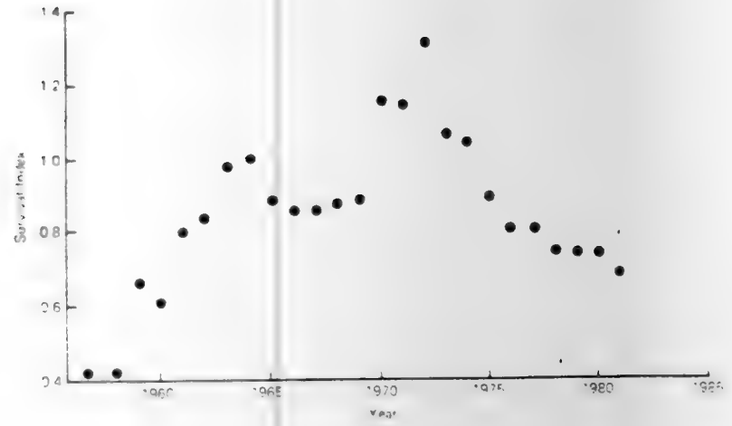


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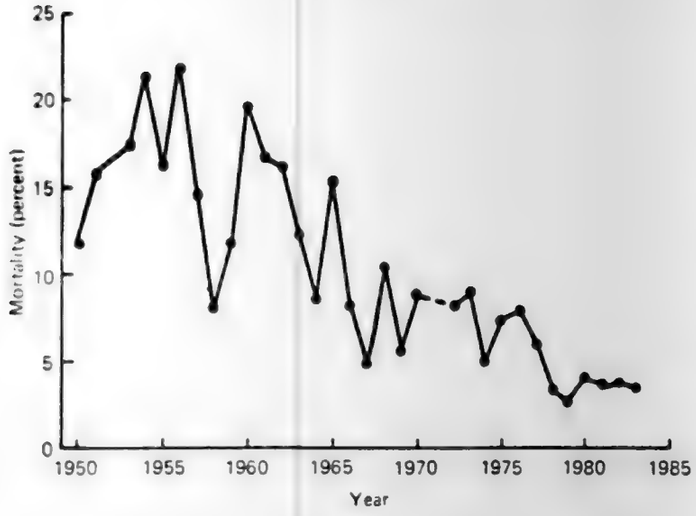


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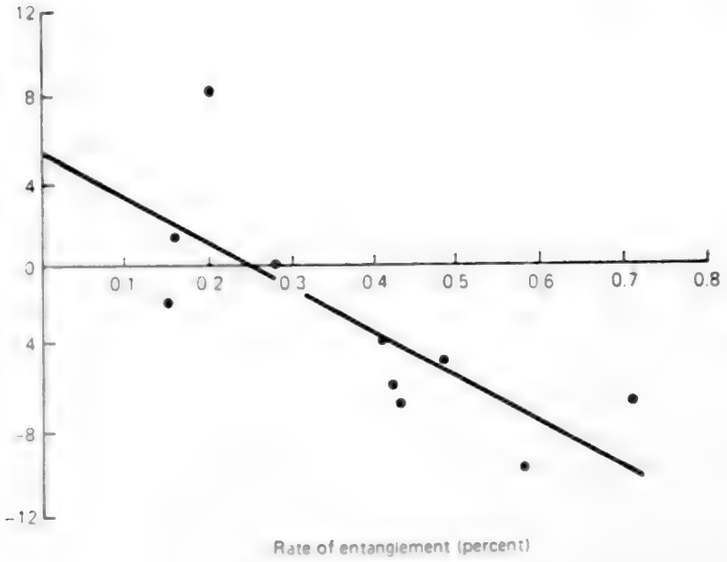


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federal register

Wednesday
March 6, 1985

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Parts 71, 91, 103, and 105
Establishment of Airport Radar Service Areas; Final Rules

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 84-AWA-31]

Establishment of Airport Radar Service Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action designates an Airport Radar Service Area (ARSA) at Austin, TX, Columbus, OH, and Baltimore, MD, concurrently with a separate rulemaking action establishing operating rules for flight in such areas. In taking these actions, the FAA is adopting several National Airspace Review (NAR) Terminal Task Group 1–2.2 recommendations. This action supersedes the Special Federal Aviation Regulation (SFAR) which established a temporary ARSA at Austin, TX, and Columbus, OH.

EFFECTIVE DATE: 0901 GMT, March 14, 1985.

FOR FURTHER INFORMATION CONTACT: William C. Davis, Airspace and Air Traffic Rules Branch (ATO–230), Airspace—Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426–8783.

SUPPLEMENTARY INFORMATION:

History

On April 22, 1982, the National Airspace Review (NAR) plan was published in the **Federal Register** (47 FR 17448). The plan encompasses a review of airspace use and the procedural aspects of the air traffic control (ATC) system. The FAA published NAR Recommendation 1–2.2.1, "Replace Terminal Radar Service Areas (TRSA) with Model B Airspace and Service (Airport Radar Service Areas)," in Notice 83–9 (July 28, 1983; 48 FR 34286) proposing the establishment of ARSA's at Columbus, OH, and Austin, TX. These locations were designated ARSA's by SFAR No. 45 (October 28, 1983; 48 FR 50038) in order to provide an operational confirmation of the ARSA concept for potential application on a national basis. The original expiration dates of SFAR 45 of December 22, 1984, for Columbus and January 19, 1985, for Austin were extended to June 20, 1985 unless the rule is rescinded or superseded before that date (49 FR 47176; November 30, 1984).

On November 30, 1984, the FAA proposed amendments to Parts 71, 91, 103 and 105 to establish the general definition and operating rules for an ARSA (49 FR 47184). On the same date, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to designate an ARSA for the Robert Mueller Municipal Airport, Austin, TX; the Port Columbus International Airport, Columbus, OH; and the Baltimore/Washington International Airport, Baltimore, MD (49 FR 47178). The rules for designating an ARSA and for governing flight operations within an ARSA are also being adopted by separate rulemaking action published on this date. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Additionally, the FAA, on December 12, 1984, held an informal airspace meeting concerning the Baltimore ARSA at Baltimore. Similar meetings were not held for the ARSA's at Austin and Columbus because the FAA believed them unnecessary in that the ARSA's established at those locations under SFAR 45–1 were the subject of an extended comment period and several user meetings in their respective areas. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.501 of Part 71 of the Federal Aviation Regulations will be published in Handbook 7400.6 dated January 2, 1985.

Discussion of Comments

FAA received ten comments in response to the NPRM published on November 30, 1984, although some comments submitted in related Docket No. 23708 also contain information which relates to the specific airspace designations at Austin, Columbus and Baltimore. Fifteen comments were received earlier on Docket No. 23708 following the issuance of the SFAR which established temporary ARSA's at Austin and Columbus. Most of the earlier comments related to the ARSA program in general, although one commenter specifically supported establishment of an ARSA at Austin. Those persons who have an interest in the ARSA program generally or in the establishment of an ARSA at a specific location are encouraged to review the comments submitted in both dockets.

Two of the comments received in this docket requested a longer notice period for public comment and postponement of the informal airspace meeting held at Baltimore/Washington International Airport (BWI) on December 12, 1984. The airspace proposals for Austin and Columbus, and the proposed rules for flight in ARSA have been the subject of an operational confirmation for more than a year. The comment period associated with the operational confirmation extended over a period of six months. While the ARSA at BWI was not the subject of an operational confirmation or prior comment, FAA took additional measures to solicit comments on the BWI ARSA within the comment period. Approximately 170 announcements were mailed to individuals, fixed-base operators, and organizations in the Baltimore area. The announcement contained a notice of the informal airspace meeting on December 12. For the above reasons the FAA believes the period for notice and comment was sufficient to permit full public comment on the proposed rule.

To the extent the comments received in this docket contained remarks pertinent to ARSA rules or airspace generally, those comments were addressed in the final rule issued in Docket No. 23708. Comments relating specifically to the ARSA airspace designations at Austin, Columbus or Baltimore are discussed below.

Establishment of an ARSA at each of the three proposed locations was supported by the Air Line Pilots Association (ALPA), the Regional Airline Association (RAA), the Air Transport Association (ATA), and the Aircraft Owners and Pilots Association (AOPA), and was found acceptable by the Experimental Aircraft Association (EAA).

The establishment of an ARSA at BWI Airport was supported by one individual commenter and opposed by another commenter. The objecting commenter observed that he experiences difficulty in contacting approach control in the BWI area at the present time, due to congestion on the radio frequency, and that he expects this problem to become worse if participation is mandatory. The commenter also stated his opinion that the ARSA services would place an additional unnecessary and unwanted burden on air traffic controllers. FAA considers both comments to address issues of resources rather than the benefits or disadvantages of the ARSA concept. TRSA services are already provided for BWI Airport, and it has been the experience of the BWI tower facility that participation of pilots in the TRAS services exceeds 95% of those aircraft operating to or from the primary airport. Mandatory participation under an ARSA, therefore, is not expected to increase controller workload significantly. The operational confirmation conducted over the last year at Austin and Columbus supports

this conclusion. FAA's ATC experience has been that frequency congestion does occur at peak periods at most major airports. When such congestion occurs, resource adjustments are made on site. Such adjustments include resectoring and assigning selected personnel to the situation.

AOPA, in addition to comments directed at all proposed ARSA's, specifically requested that the proposed BWI ARSA be modified to have a uniform 1,700 foot MSL floor in the five to ten-mile ring, rather than the segmented floors of 1,300 and 1,700 feet MSL as proposed. FAA appreciates that the change requested by AOPA would simplify the representation of the ARSA on aeronautical charts and make it slightly easier for pilots to understand the airspace involved. However, in consideration of the instrument approach and departure paths for BWI, FAA believes that in this case the advantages of mandatory participation in the additional airspace outweigh the possible convenience of a uniform dimension. Accordingly, the final rule retains the segmented floor as proposed.

Two comments were received opposing the implementation of a permanent ARSA at Columbus, OH. Both commenters represented corporate flight departments which operate out of the Columbus Airport, and both commented on the basis of experience with the operational confirmation. Both commenters complained of unnecessary delays as a result of participating in the ARSA procedures, either from excessive or unnecessary spacing in VFR conditions or from excessive vectoring. FAA recognizes that mandatory participation in ARSA will result in some degree of delay, during peak traffic periods, for aircraft that otherwise would proceed VFR and would not contact ATC. However, FAA believes that the safety benefits of mandatory participation outweigh the potential delays for some VFR operations. Also, the specific delays described by the commenters may be due to procedures which could be modified without altering the basic ARSA concept. In locations where ARSA's have been adopted, ATC will continue to consider user suggestions for any improvements in local ATC procedures consistent with the ARSA rules.

No comments specifically addressing the Austin, TX, ARSA were received.

Several comments which contained suggestions relating to nonregulatory matters, such as ATC procedures and the charting of ARSA's will be considered by FAA in the implementation of each ARSA but will not be discussed in this document.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations designates ARSA's at Baltimore/Washington International Airport (BWI), Baltimore, MD; Robert Mueller Municipal Airport, Austin, TX; and the Port Columbus International Airport, Columbus, OH. These airspace designations represent the initial implementation of the NAR recommendations which are designed to promote standardization and simplification of terminal airspace designations while enhancing safety by the mandatory two-way radio communications requirements within the ARSA airspace. The designations of ARSA's at Austin, TX, and Columbus, OH, supersede SFAR No. 45–1 effective 0901 GMT, March 14, 1985.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore is not a "major rule" under Executive Order 12291 and is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Also, for the reason stated under the heading "Regulatory Flexibility Act Determination," I certify that this rule will not have a significant economic impact on a substantial number of small entities. The anticipated impact may be found in a copy of the draft regulatory evaluation contained in the public docket. A copy of that evaluation may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

Economic Impact

A final regulatory evaluation for this rule has been placed in the docket. Because the rule, as it relates to the airports at Austin, TX, and Columbus, OH, makes the ARSA's permanent at these sites and the regulatory evaluations for these sites remain valid, this economic impact statement concerns only BWI.

The potential cost elements as a result of implementing the ARSA at BWI may be summarized as follows:

1. Additional costs for circumnavigating or flying over the ARSA.
2. The need for some operators to purchase avionics.
3. Delay costs as a result of operating within an ARSA rather than a TRSA.
4. Costs relating to preparation of charts, notifying the public and educating pilots.
5. Controller staffing costs.

The FAA has estimated that perhaps as many as 20 aircraft per day will choose to avoid the ARSA. This can be done by flying at 4,000 feet or higher above ground level and is estimated to cost about $7,000 per year.

There are 2 nontowered airports within 10 miles of BWI; however, neither are located in the surface area of the ARSA. Aircraft based at these airports will be able to land and takeoff without having to communicate with ATC; therefore, these users will not have to have communication avionics.

An analysis of the Columbus and Austin ARSA's indicated no delay because of ARSA implementation and the same is expected for BWI. Charts, education and training are expected to have an associated one-time cost of $21,000. There will be no need for additional controllers at BWI but there will be a one-time training cost of $20,000. The estimated annual cost including annualization of one-time costs is estimated to be $14,000 per year.

The primary benefit of an ARSA at BWI will be a reduction in the midair collision risk. This benefit is derived from the reduction in nonparticipating aircraft operating close to the primary airport and its associated approach and departure courses. At Columbus it was estimated that there is a 75 percent reduction in midair collision risk or a reduction of one midair collision every 105 years. Because the activity levels are similar at BWI and Columbus the FAA expects that benefits at BWI will be similar to those at Columbus. The FAA estimates that the averge midair collision between general aviation aircraft costs society $1,644,000 in 1983 dollars. Therefore, annual benefits are estimated to be $16,000 per year. Since the costs are estimated to be $14,000 per year the benefits exceed the costs.

The FAA conducted a survey of pilots, air traffic controllers and FAA supervisors who were users and operators of the ARSA at Columbus and Austin. The pilots, controllers and supervisors indicated strong approval of the two ARSA's. This strong approval rating does not lend itself to the calculation of its benefits, but, nevertheless, is highly significant and should be recognized as an index of value to the aviation community.

There were no public comments relating to the "Economic Impact" section in the NPRM.

Trade Impact Analysis

The rule only affects airspace within the United States. This action will not eliminate existing or create additional barriers to the sale of foreign aviation

products or services in the U.S. and will not impact sales of U.S. aviation products or service in foreign countries.

This rule is published less than 30 days prior to its effective date of March 14, 1985. March 14 is the next publication for en route low altitude navigation charts published by the National Ocean Survey. Pilots rely on these charts for flight information, and FAA considers it a matter of flight safety that the implementation date for each ARSA coincide with the publication date of the air navigation chart depicting that ARSA. If these ARSA's are not established on March 14, the next subsequent chart publication date—and the next date on which the three ARSA's could become effective—is in September, 1985. FAA considers the establishment of the ARSA at BWI Airport to be of immediate importance and cannot accept a six-month delay in implementation of this ARSA. Furthermore, controller training, revised coordination procedures among adjacent ATC facilities, and equipment display modifications have been undertaken at all these locations in preparation for the March 14, 1985, effective date. A six-month delay in implementation would have a disruptive effect on the ATC facilities involved. For these reasons, and in consideration that the need for users to adjust to the rule is minimized by the fact that ARSA or TRSA procedures now apply at each location, the FAA finds that good cause exists for making the rule effective less than 30 days after publication.

Regulatory Flexibility Act Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to insure that small entities are not disproportionately affected by government regulations. The RFA requires agencies to review rules which may have "a significant economic impact on a substantial number of small entities."

The FAA criteria for a significant impact is $3,420/year in 1983 dollars and a substantial number must be at least 11 operators and at least one third of the small entities subject to the rule. The economic impact to all the users is estimated to be $14,000/year. Clearly, this rule does not have "a significant economic impact on a substantial number of small entities." There were no public comments relating to the Regulatory Flexibility Act Determination or the Trade Impact Analysis as published in the NPRM.

List of Subjects in 14 CFR Part 71

Airport Radar Service Areas, Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, § 71.501 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

Robert Mueller Municipal Airport, Austin, TX [New]

That airspace extending upward from the surface to and including 4,600 feet MSL within a 5-nautical-mile radius of the Robert Mueller Municipal Airport and that airspace extending upward from 2,000 feet MSL to 4,600 feet MSL within a 10-nautical-mile radius of Robert Mueller Municipal Airport from the 027° bearing from the airport clockwise to the 207° bearing from the airport and that airspace extending upward from 2,300 feet MSL to 4,600 feet MSL within a 10-nautical-mile radius of the airport from the 207° bearing from the airport clockwise to the 027° bearing of the airport.

Port Columbus International Airport, Columbus, OH [New]

That airspace extending upward from the surface to and including 4,800 feet MSL within a 5-nautical-mile radius of the Port Columbus International Airport and that airspace extending upward from 2,500 feet MSL to 4,800 feet MSL within a 10-nautical-mile radius of the Port Columbus International Airport from the 008° bearing from the airport clockwise to the 127° bearing from the airport and that airspace extending upward from 2,200 feet MSL to 4,800 feet MSL within a 10-nautical-mile radius of the airport from the 127° bearing from the airport clockwise to the 008° bearing from the airport.

Baltimore/Washington International Airport, Baltimore, MD [New]

That airspace extending upward from the surface to and including 4,200 feet MSL within a 5-nautical-mile radius of the Baltimore-Washington International Airport (lat. 39°10'30" N., long. 76°40'10" W.) and that airspace extending upward from 1,300 feet MSL to 4,200 feet MSL within a 10-nautical-mile radius of the Baltimore-Washington International Airport from the 012° bearing from the airport clockwise to the 192° bearing from the airport and that airspace extending upward from 1,700 feet MSL to 4,200 feet MSL within a 10-nautical-mile radius of the airport from the 192° bearing from the airport clockwise to the 012° bearing from the airport, excluding the airspace within and beneath the Washington, D.C., Terminal Control Area.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983)); and 14 CFR 11.69)

Issued in Washington, D.C., on January 23, 1985.

John W. Baier,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 85-5392 Filed 3-1-85; 5:03 pm]

BILLING CODE 4910-13-M

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14 CFR Parts 71, 91, 103, 105

[Docket No. 23708; Amendment Nos. 71-10, 91-187, 103-2, 105-8]

Airport Radar Service Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action adopts certain National Airspace Review (NAR) recommendations concerning air traffic rules governing flight operations within airspace designated as "airport radar service area (ARSA)." Specifically, this action defines "airport radar service area" and establishes air traffic rules for operation within such an area. The initial airport radar service areas are established under separate rulemaking actions in Airspace Docket No. 84-AWA-31 for the Robert Mueller Municipal Airport, Austin, TX; the Port Columbus International Airport, Columbus, OH; and the Baltimore/Washington International Airport, Baltimore, MD. Future notices will propose airport radar service areas for other locations.

EFFECTIVE DATE: March 14, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. William C. Davis, Airspace—Rules and Aeronautical Information Division, ATO-200, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591, telephone (202) 426-8783.

SUPPLEMENTARY INFORMATION:

Background

On April 22, 1982, the NAR plan was published in the **Federal Register** (47 FR 17448). The plan encompasses a review of airspace use and the procedural aspects of the air traffic control (ATC) system. The three main objectives of the NAR are:

(1) To develop and incorporate into the air traffic system a more efficient relationship between traffic flows, airspace allocation, and system capacity. This will involve the use of improved air traffic flow management to maximize system capacity and improve airspace management.

(2) To review and eliminate, wherever possible, governmental restraints to system efficiency levied by Federal

Aviation Regulations (FAR) and FAA directive—reducing complexity and simplifying the ATC system.

(3) To revalidate ATC services within the National Airspace System with respect to state-of-the-art and future technological improvements. This will entail a complete review of separation criteria, terminal control area/terminal radar service area (TCA/TRSA) requirements, instrument flight rules/visual flight rules (IFR/VFR) services to the pilot, etc.

Organization participating in the NAR task group are:

Federal Aviation Administration
Department of Defense
Air Transport Association
National Business Aircraft Association
Regional Airline Association
Aircraft Owners and Pilots Association
Experimental Aircraft Association
Helicopter Association International
Air Line Pilots Association

NAR Recommendations Pertaining to the Proposal

The comprehensive plan contains an administrative structure and detailed task assignments which resulted in recommendations to the FAA, including the NAR Task Group 1–2.2 recommendations set forth below.

NAR 1–2.2.1 Replace TRSA's With Airport Radar Service Areas (ARSA's

"The Task Group recommends that the current Terminal Radar Service Area (TRSA) program—Airspace and Services—be discontinued. The Task Group further recommends that the concept identified herein as [airport radar service area (ARSA)] be implemented as replacement for the TRSA. program in accordance with the recommendations to follows."

(The task group recommendations referred to the ARSA concept as "Model B Airspace." References to "Model B Airspace" have been replaced with the term "ARSA" for consistency with the terminology used in the FAA rule.)

NAR 1–1.2.2 ARSA Size and Operating Requirements

"The Task Group recommends that the physical dimensions of [an ARSA shall be a 10 NM radius capped at 4,000 feet height above airport (HAA) from the primary airport. This airspace shall extend down to 1200 feet above the surface except that an inner core with a 5 nautical mile radius shall extend down to the surface. Except for aircraft departing from satellite airports/heliports within [an ARSA], all aircraft shall establish two-way radio communications with ATC prior to entering [an ARSA]. Aircraft departing satellite airports/heliports within the surface area of [an ARSA] shall establish two-way radio communications with ATC as soon as possible. Pilots must comply with approved FAA traffic patterns when departing these airports.

NAR 1–2.2.3 Outer Area Limits and Operating Requirements

"The Task Group recommends that the outer limit of [the area outside of the ARSA in which ARSA services are provided by an ARSA facility] be the same dimensions as the radar/radio coverage within each approach control's delegated airspace. While strongly encouraged, two-way radio communications is *not* a VFR requirement in [this airspace] and aircraft are not restricted from entering/transmitting this airspace."

NAR 1–2.2.4 ATC Services

"Services provided within [an ARSA] shall be as follows: Sequencing of arriving aircraft; IFR be provided standard IFR separation; IFR to VFR be provided traffic advisories and conflict resolution so that targets do not merge at the same altitude; and VFR to VFR be provided traffic advisories. Furthermore, aircraft operating outside [an ARSA but within the approach control's area of jurisdiction] will receive [ARSA] services upon establishing two-way radio communications and radar contact."

[NAR 1–2.2.5 Not applicable to this proposal]

NAR 1–2.2.6 Airspace Designation Criteria

"The Task Group recommends that, excluding TCA locations, all airports with an operational airport traffic control tower and currently contained within a TRSA serviced by Level III, IV, or V radar approach control facility shall have [an ARSA] designated; unless a study indicates that such designation is inappropriate for a particular location. Any other location serviced by a radar approach control facility may be considered as a candidate location for [an ARSA] on the basis of a thorough staff study considering, but *not limited to,* the following:

1. Traffic mix, flow, density, and volume.
2. Airport configuration, geographical features and adjacent airspace/facilities.
3. Collision risk assessment.
4. ATC capabilities to provide [ARSA] services to the users at maximum benefit and minimum cost.

All proposed [ARSA] actions shall be subject to regional and headquarters approval. Military operated facilities will process requests through appropriate military and FAA channels. Any [ARSA] location which fails to meet the establishing criteria for its respective location for more than 12 consecutive months, shall be subject to a regulatory review to terminate the [ARSA] designation."

NAR 1–2.2.7 Charting

"The Task Group recommends for further consideration by Task Group 1–6 that all [ARSA's] be charted, and that either a visual or narrative method of identifying the [area in which ARSA services are provided by an ARSA facility] be undertaken."

NAR 1–1.2.8 Education

"The Task Group recommends the aviation community be made aware of [the ARSA program] by educational programs to support ATC operational and procedural information, phraseology, practices, and the desirability of voluntary participation. Specifically, it is recommended:

1. All FAA pilot exams and appropriate textbooks must contain a significant amount of questions and information concerning radar operation in terminal areas. Specifically, operations and procedures be included in written and practical tests for pilot certification, ratings, and reviews.

2. Specific questions and answers must be required on all flight reviews and other appropriate occasions (air carrier initial and recurrent proficiency training, pilot proficiency exams, biennial flight review, etc.) to assure that users in every aviation community have shown a current understanding of radar terminal areas and their use of these areas.

3.The FAA develop and fund a traveling air traffic team to speak to pilot groups on operations within the National Airspace System; i.e., [ARSA]. Emphasis should be given to flight instructor contact.

4. An advisory circular dealing with [the ARSA program] be published to include well presented, up-to-date information on operations in terminal airspace and that this advisory circular be given the widest possible dissemination to aviation users and organizations.

5. The Airman's Information Manual (AIM) be distributed free of charge to all fixed-base operators (FBO's) at all public use airports.

6. FAA Public Affairs Office develop and promote through the general news media, aviation awareness of FAA

services and publications available to the pilot and general public.

7. Facts about terminal airspace in some form of questionnaire be developed and distributed by the FAA to appropriate agencies (licensed pilots, fixed-base operators, business organizations, etc.). This questionnaire could be a public relations effort, advisory circular, or included in the Airman's information Manual.

8. FAA continues to make available to interested pilot groups training or other audio-visual aids that deal with terminal radar operations."

A copy of the task group's report is in the public docket.

The ARSA Confirmation

In Notice 83–9 [July 28, 1983; 48 FR 34286], the FAA stated that it believed in the merits of the task group's recommendations, and set forth aspects of those recommendations which could be confirmed under a proposed Special Federal Aviation Regulation (SFAR) to Austin, TX, and Columbus, OH. After reviewing the proposal in the light of the comments received, the FAA issued SFAR No. 45 [October 28, 1983; 48 FR 50038] to accomplish the confirmation.

The FAA contracted with Engineering and Economic Research, Inc. (EER) to analyze user operational experience with the ARSA's at Columbus and Austin. A copy of the EER analysis is in the docket. The FAA, itself, conducted random informal evaluations of ATC procedures which were also being confirmed. Informal discussion between FAA management and air traffic controllers at Columbus and Austin concerning ARSA operations and air traffic procedures were conducted routinely. These activities revealed that a significantly majority of users approve of the ARSA concept in the NAR recommendations. The FAA also conducted a detailed analysis of comparative radar data gathered before and during the confirmation at Columbus, a copy of which is in the docket, and found that the ARSA produced a significant reduction in collision risk.

The FAA concluded that the confirmaion at Columbus and Austin indicated probable benefits of the ARSA program for users at other locations. The confirmation also revealed an ARSA to be a practical replacement for a TRSA from an ATC procedural standpoint. On November 30, 1984, the FAA published Notice No. 84–22 which proposed air traffic rules governing flight operations within designated ARSA's (49 FR 47184).

Analysis of Comments

The FAA received 17 comments on the Notice of Proposed Rulemaking (NPRM) published November 30, 1984, in Docket No. 23708, in addition to 15 comments received earlier in the same docket in response to SFAR 45, which included a request for comments. Also, several comments received in the related Airspace Docket No. 84–AWA–31 contained remarks pertinent to Docket No. 23708, and were considered in the development of this rule. Those persons who have an interest in either proposal are encouraged to review the comments submitted in both dockets.

Several commenters were critical of the comment period on the NPRM provided by the FAA, and requested an extension of the comment period. The FAA believes the period for notice and comment was sufficient to permit full public comment on the proposed rule. The flight rules adopted in this amendment have been the subject of extensive discussion and review by the aviation public as a result of the NAR process, by which the rulers were recommended. Moreover, the designation of any particular site for establishment of an ARAS will be the subject of additional rulemaking, with the opportunity for additional public comment.

The comments received on the SFAR between December 1983 and August 1984 were generally critical of the ARSA concept, although not on the basis of actual experience with the Austin, TX, or Columbus, OH, ARSA's. Common comments were that the standardized ARSA airspace will not serve the intended purpose in areas of mountainous terrrain, will discourage or preclude certain activities such as soaring near ARSA airports, and will inhibit free access to satellite airports within an ARSA. The FAA does not believe that any of the above criticisms constitutes an insurmountable problem with establishment of the ARSA program, or presents sufficient reasons to depart from the general policy of establishing ARSA's in a standardized configuration. However, the actual configuration of any particular ARSA will take into consideration any unusual terrain features. Also, there are means to accommodate the presence of satellite airports and, where consistent with ATC safety and efficiency, VFR activities such as soaring. These measures are discussed in more detailed below in connection with comments received in response to the most recent NPRM.

Comments received from organizations which participated in NAR Task Group 1–2.2 were generally supportive of the proposed ARSA rules. These groups included the Aircraft Owners and Pilots Association (AOPA), the Air Transport Associaltion (ATA), the Experimental Aircraft Association (EAA), the National Business Aircraft Association (NBAA), the Regional Airline Association (RAA), and the Air Line Pilots Association (ALPA). In each case the above groups offered additional comments or requests which, together with other comments received, are discussed below by subject.

Establishment Criteria

Several commenters addressed the need for specific criteria for establishment (and disestablishment) of ARSA airspace at individual sites, rather than considering each existing TRSA as an automatic candidate for an ARSA. Recommended criteria included aircraft operations and passenger enplanements, proximity of other airspace complexes and other airports, and geography. AOPA also suggested that in addition to TRSA's, those TCA's which currently do not meet the standards for establishment of a new TCA also be considered as candidates for replacement by an ARSA. One commenter also requested that any specific criteria developed by FAA for establishment of an ARSA first be proposed in an NPRM and published in the **Federal Register** for comment.

FAA consideration of most TRSA sites as candidates for ARSA's is adopted in response to NAR Recommendation 1–2.2.1. Initially, only those TRSA locations which are served by a Level III, IV, or V terminal radar facility will be considered for establishment. In each case, an ARSA would be established only after issuance of an NPRM and the opportunity for public comment on the merits of an ARSA at the proposed location. The impact on the proposed ARSA of local geography, adjacent airspace configurations, and nearby airports would receive full consideration by FAA only in determining appropriate adjustments to the configuration of the ARSA, but also in detemining whether it would be appropriate to establish an ARSA.

FAA is currently in the process of developing specific quantitative criteria, such as traffic and passenger enplanements, for example, for proposing the establishment of ARSA's for locations that are not TRSA's or that are not served by a Level III, IV, or V approach control facility. FAA will issue the criteria before proposing such additional ARSA locations. FAA does

not intend to develop the criteria through the formal rulemaking process, but will take into consideration all comments relating to establishment criteria received in this docket.

FAA has not proposed to consider any existing TCA's for potential replacement by ARSA's and does not adopt such a policy at this time.

Potential Impacts

Comments critical of the proposal generally involved concerns about increased delays, the exclusion of certain user groups, and potential safety impacts. Several commenters were concerned that establishment of an ARSA would increase traffic delays in that area as a result of unnecessary separation standards, extensive vectoring, and the difficulty in contacting ATC due to frequency congestion. Because participation in existing TRSA's is high, and separation standards in an ARSA are less than those in a TRSA (radar separation standards in an ARSA are less than the 1.5 mile lateral standard for participating aircraft in a TRSA). FAA does not believe that the implementation of mandatory separation in ARSA's will result in any significant traffic delays. For the same reasons, the FAA does not anticipate extensive or circuitous vectoring of aircraft in an ARSA. The NAR proposal was intended to minimize the vectoring or rerouting of VFR aircraft in affected terminal airspace, and this should be accomplished by the procedures implemented by FAA. Moreover, the only requirement to enter an ARSA is two-way radio communications with ATC. In the absence of subsequent ATC instructions, the pilot may proceed via his/her planned route. Finally, FAA does not believe that radio frequency congestion will result in delays or exclusion from an ARSA. When congestion is experienced, resource adjustments will be considered to resolve the problem.

A few commenters on the NPRM expressed concern that an ARSA would have the effect of excluding some VFR pilots, primarily recreational aircraft and sailplanes. The ARSA requirement for two-way radio communications does effectively preclude aircraft not having this basic communications capability from entering an ARSA, without special ATC authorization. FAA believes, however, in consideration of the safety benefits of the communications requirement, that the effects of the rule are limited and are fully justified. Moreover, as discussed below in connection with ARSA configuration, special procedures will be considered on a site-specific basis to permit access to nontower airports underlying an ARSA, without entering ARSA airspace. It may also be possible, at affected sites, to accommodate soaring and other recreational VFR flight activities in an ARSA through agreement with the controlling ATC facility. In the rulemaking which will precede the establishment of each individual ARSA, FAA will consider comments and suggestions on means for the safe and efficient accommodation of aviation activities which might otherwise be precluded by the proposed ARSA.

While none of the commenters on the NPRM claimed that an ARSA would reduce safety rather than enhance it, several safety-related issues were raised in comments on the NPRM and on the previous SFAR. One commenter suggested that controller workload would be substantially increased by the implementation of an ARSA. The FAA is confident that an increase in traffic will only result from the handling of aircraft not presently participating in the TRSA program and that any such increase would not cause a substantial increase in an individual controller's workload because of the present high level of participation in the TRSA program. However, if an ATC facility does experience a substantial increase in traffic handled, the FAA will take the necessary measures to ensure that adequate facilities and personnel are available to handle the increase.

Another comment was that the establishment of an ARSA, with its operating requirements, would lead many VFR pilots to avoid the ARSA, resulting in compression of traffic in adjacent areas. FAA does not believe that a significant number of pilots will choose to avoid ARSA airspace, given the minimum burden involved of contacting ATC. Also, the airspace taken by an ARSA is not extensive either laterally or vertically, and in most locations there is no reason to conclude that traffic circumventing the ARSA would be compressed into a confined area. A final safety-related comment received was the concern that provision of radar separation in an ARSA would generate a false sense of security in VFR pilots, and would undermine the duty to see-and-avoid other aircraft. See-and-avoid responsibility is not relieved or diminished in an ARSA, and FAA intends to make this responsibility clear in informational announcements and materials dealing with the ARSA program. However, FAA believes that any possible misperception of some pilots as to their see-and-avoid responsibilities in an ARSA environment is an issue of pilot education, and does not support the nonadoption of the ARSA concept itself.

ARSA Configuration and Dimensions

Many of the commenters suggested changes to the ARSA dimensions as proposed, while others urged that no consideration be given to expansion of the proposed dimensions. Commenters generally supported the FAA policy of standardizing the dimensions of ARSA's, and NBAA in particular expressed concern at FAA's announced intention to consider "customization" of areas in certain circumstances. FAA has adopted the dimensions as proposed, and, in the absence of special circumstances, individual ARSA's will be proposed in the standard configuration. However, the existence of other airports or controlled airspace adjacent to the primary airport may present a situation in which the standard configuration is not feasible.

AOPA and EAA both requested that access to satellite airports within a proposed ARSA be protected. AOPA specifically requested that the traffic pattern of a satellite airport be excluded from the ARSA and depicted as a cutout from the ARSA on aeronautical charts. AOPA argued that traffic to and from satellite airports should not be required to participate in the ARSA, and that exclusion of the satellite airport traffic pattern from the ARSA is the only way to avoid pilot confusion. EAA suggested that access to satellite airports within the 5-mile core of an ARSA, without participation in the ARSA, could be allowed by retaining the provisions of FAR 91.85(b). Section 91.85(b) permits operation to and from the satellite airports in an airport traffic area. FAA believes that establishment of an ARSA will not necessarily have an adverse effect on access to satellite airports within the ARSA, and that where there is a potential for such effect, it can be resolved. Satellite airports with control towers, whether in the 5-mile core or the 10-mile shelf area, will require no adjustment of the ARSA configuration. Local procedures established between the satellite tower and the ARSA controlling facility will ensure that pilots remain in contact with the appropriate facility, and that access to the airport through ARSA airspace is not impeded. For nontower airports located under the 5- to 10-mile shelf, no reconfiguration of the standard ARSA is required because aircraft may approach and depart the airport below 1200 feet above ground level (AGL), and thereby remain clear of ARSA airspace. Nontower airports within the 5-mile core area present a

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more complex problem. It may be most practical to provide access to the airport by letter of agreement or other special arrangement with the ARSA controlling facility. However, in situations where safety, traffic flow, or pilot understanding would be enhanced, the FAA will consider permitting unrestricted access to the airport below 1200 feet AGL. In such situations, cutouts would be depicted on the representation of the ARSA's on aeronautical charts.

AOPA renewed its request, first made in the NAR task group, that the upper limit of the ARSA airspace be set at 3000 feet above airport elevation rather than 4000 feet as proposed. This issue was considered by the NAR task group, and has been reconsidered by FAA in light of the operational experience at Austin and Columbus. Based on the majority recommendation of NAR Task Group 1–2.2, the comments of other users, and the experience with the Austin, TX, and Columbus, OH, ARSA's, FAA has retained the 4000 foot cap. FAA considers it desirable to have mandatory participation up to 4000 feet above airport elevation for the type of airports that will be eligible for the ARSA airspace designation, and we do not believe it necessary or beneficial to make the cap compatible with the upper limit of the airport traffic area, as AOPA suggests.

AOPA requests that the lower limit of the ARSA shelf be set at 1200 feet above the highest terrain in the 10-mile radius, and that the floor not be segmented to follow variations in terrain. FAA agrees that any segmenting of the floor in the 5- to 10-mile area should be kept to a minimum, but we believe that some segmenting will be appropriate in certain terrain situations. Each proposal to incorporate a segmented base altitude will be subject to further comment in the airspace rulemaking for that location.

Representatives of the Soaring Society of America and several individual sailplane pilots requested that in areas where soaring is now conducted within the proposed ARSA, either the ARSA be modified or special procedures be developed to permit the sailplane operations to continue without complying with ARSA communication requirements. FAA does not believe that a national policy of modifying the standard ARSA configuration or procedures is warranted, given the relatively small number of locations at which soaring would be conducted within an ARSA. However, at some proposed ARSA locations it may well be the case that there is substantial sailplane activity conducted in the local area, and that those sailplane operations could be adversely affected by the establishment of an ARSA. In those cases, FAA is willing to consider special procedures to accommodate the soaring, including arrangement with the local ARSA controlling facility to operate without radio equipment at certain times and in certain prearranged areas, if control and separation of other aircraft is not adversely impacted. Procedures for any particular location would be developed during the proposal and comment process, and would be specific to that location.

Finally, several commenters addressed the nonregulatory 20-mile limit of the area in which ARSA services are provided by ATC, but in which user participation is not required. NBAA found the 20-mile perimeter acceptable, but suggested that the areas of two adjacent ARSA's be connected. This suggestion will be considered in the airspace rulemaking at appropriate locations. ALPA objected to the 20-mile limitation and requested that radar service be provided to the limits of the controlling facility's radar coverage, as implemented during the operational confirmation. For the reasons discussed in the NPRM, FAA continues to believe that the 20-mile perimeter provides a high level of service to participating aircraft consistent with the resources of the local ATC facility, and, because of its uniformity, minimizes pilots' confusion about the services available.

Required Equipment

ATA requested that altitude-encoding transponders be required in addition to two-way radios for operation in an ARSA. FAA does not believe that transponders are required to effect the purposes of the TRSA program, and does not intend to propose a requirement for transponders in ARSA airspace.

EAA and the Soaring Society of America both expressed concern that the use of 25 kilohertz (kHz) frequency spacing, made possible by 720-channel radios, would constitute a hardship for operators of small recreational aircraft having older 360-channel radio equipment. Because the rule requires two-way radio communications capability for operation in an ARSA, the use of the 25kHz spacing in ATC ARSA frequencies would effectively force these operators to upgrade their communications equipment. There is now a serious shortage of radio frequencies spaced at 100kHz intervals. The requirement for 720-channel radio capability for system users will likely increase independent of the ARSA airspace decision. At most of the locations for which ARSA's will be proposed, there is already a considerable demand for 720 channel radio capability, and FAA believes that the majority of aircraft using these airports already have this equipment. However, the extent that operators may need to install or upgrade aircraft radios at some potential ARSA sites will be assessed in the regulatory evaluation of a separate rulemaking proposing the designation of ARSA's at specific locations (see discussion in Economic Impact below).

Other Comments

A number of other comments were made concerning matters of operations under an ARSA, such as ATC procedures and the representation of ARSA's on aeronautical charts, which do not affect the substance or justification of the rule itself. FAA will take these comments into consideration in implementing designated ARSA's, but will not address them here.

Adoption of NAR Recommendations

The FAA's action with respect to each of the aforementioned NAR recommendations is set forth below.

NAR 1–2.2.1 Replace TRSA's With ARSA's

While the adoption of this recommendation would indicate that the FAA is adopting all aspects of the other NAR recommendations addressed herein, the FAA has only adopted the aspect dealing with the discontinuance of TRSA's. The remaining aspects of this recommendation are treated individually. In that regard, all current TRSA locations will remain as such until they are cancelled or converted to ARSA's. Additionally, ATC procedures dealing with TRSA's will remain in place and aeronautical charts will continue to depict each TRSA until it is cancelled or converted.

NAR 1–2.2.2 ARSA Size and Operating Requirements

The physical dimensions of the ARSA and the operating requirements recommended by the task group are adopted except that the floors of the airspace between 5 and 10 miles may be segmented and will be expressed in altitudes above mean sea level instead of AGL because of variations in terrain elevations. This deviation is in the spirit of the task group's recommendations and every effort will be made to ensure that the ARSA airspace between 5 and 10 miles of each ARSA is not segmented except as necessary.

Additionally, some customizing of ARSA's may be required due to proximity of satellite airports and other regulatory airspace designations. However, customizing will be held to the absolute mininum required and the FAA foresees no situation that would necessitate extension of the ARSA airspace beyond 10 nautical miles.

NAR 1–2.2.3 Outer Area Limits and Operating Requirements

While the limit that was operationally confirmed at Austin, TX, and Columbus, OH, coincided with the extent of the approach control facility's delegated airspace, the FAA may not always have the resources or capability to provide the ARSA service to those limits. Further, the FAA believes flexibility must be retained in establishing limits because of considerations which include: Proximity to TCA's; clustering of ARSA's; terrain; unusually high level of activity not related to the ARSA airport operation, and radio/radar coverage. Accordingly, the limits of the airspace outside each ARSA within which ARSA services are provided with be depicted narratively on sectional charts in a manner similar to the method used for the confirmation. The procedures for establishing the limits will be implemented under the FAA directive system; therefore, user organizations will have another opportunity to provide comments regarding this subject.

NAR 1–2.2.4 ATC Services

The ATC services that the task group recommended the FAA provide within the ARSA will be provided as recommended, and will be implemented under the FAA directives system. The services provided by ATC through mandatory participation in the ARSA will be available to pilots on a voluntary participation basis in other specified areas within the approach control's area of jurisdiction. These services will be in addition to the services and separation currently applied to aircraft operating under IFR. Specifically, ATC will: (1) Resolve potential conflictions between aircraft operating under IFR and aircraft operating under VFR by ensuring that 500 feet vertical separation exists between those aircraft or by ensuring that those aircraft's radar targets do not touch; and (2) provide traffic advisory service and arrival sequencing to aircraft.

Where there is a satellite airport with an operating control tower within the ARSA, the airport traffic area of the satellite airport will overlap the ARSA airspace. The requirements of the adopted rules apply in such airspace. Pilots approaching a satellite airport with an operating control tower will be provided ARSA services until they are in two-way communication with the tower. Pilots approaching a satellite airport without an operating control tower will receive ARSA services until they are instructed to change to the appropriate airport frequency; however, general traffic information concerning observed radar targets will be provided by ATC in such cases. Pilots departing a satellite airport will receive ARSA services upon establishing two-way radio communications with the ARSA facility.

The provision of ARSA services at any location is dependent upon operation of the local ATC facility. Hours of facility nonoperation, when ARSA requirements and services would not apply, may be specified in airspace rules for individual sites or by Notices to Airmen.

NAR 1–2.2.6 Airspace Designation Criteria

This recommendation is adopted. The following is a list of TRSA locations that are candidates for conversion to ARSA's. In some cases under this recommendation, more than one ARSA would be created from a single TRSA; for example, there are three airports within the Ontario, CA, TRSA—Ontario International, March Air Force Base (AFB), and Norton AFB airports—that would be candidates for individual ARSA's. However each specific ARSA airport will be addressed separately in an NPRM.

ARSA Candidate Locations:
Anchorage, AK; Mobile, AL; Little Rock, AR; Burbank, CA; Orlando, FL; Tampa, FL; Macon, GA; Cedar Rapids, IA; Ontario, CA; San Diego, CA; Windsor Locks, CT; Jacksonville, FL; Tallahassee, FL; Columbus, GA; Kahului, HI; Boise, ID; Peoria, IL; Evansville, IN; South Bend, IN; Lexington, KY; Lafayette, LA; Baltimore, MD; Grand Rapids, MI; Saginaw, MI; Billings, MT; Greensboro, NC; Omaha, NE; Reno, NV; Islip, NY; Syracuse, NY; Columbus, OH; Youngstown, OH; Portland, OR; Harrisburg, PA; Champaign, IL; Rockford, IL; Fort Wayne, IN; Wichita, KS; Louisville, KY; Lake Charles, LA; Portland, ME; Kalamazoo, MI; Gulfport, MS; Charlotte, NC; Raleigh, NC; Atlantic City, NJ; Albany, NY; Rochester, NY; White Plains, NY; Dayton, OH; Oklahoma City, OK; Allentown, PA; Toledo, OH; Charleston, SC; Bristol, TN; Memphis, TN; Austin, TX; El Paso, TX; San Antonio, TX; Norfolk, VA; Quonset Pt., RI; Greer, SC; Knoxville, TN; Amarillo, TX; Corpus Christi, TX; Midland, TX; Chantilly, VA; Roanoke, VA; Tacoma, WA; Milwaukee, WI; Birmingham, AL; Montgomery, AL; Phoenix, AZ; Monterey, CA; Palm Springs, CA; Santa Ana, CA; Daytona Beach, FL; Cincinnati, KY; Baton Rouge, LA; Shreveport, LA; Flint, MI; Lansing, MI; Jackson, MS; Fayetteville, NC; Lincoln, NE; Albuquerque, NM; Burlington, VT; Green Bay, WI; Charleston, WV; Huntsville, AL; Abilene, TX; Tucson, AZ; Oakland, CA; Sacramento, CA; Colorado Springs, CO; Ft. Lauderdale, FL; Pensacola, FL; W. Palm Beach, FL; Savannah, GA; Des Moines, IA; Moline, IL; Springfield, IL; Indianapolis, IN; Tulsa, OK; Erie, PA; San Juan, PR; Columbia, SC; Chattanooga, TN; Nashville, TN; Beaumont, TX; Lubbock, TX; Salt Lake City, UT; Buffalo, NY; Rome, NY; Akron Canton, OH; Richmond, VA; Spokane, WA; Madison, WI.

NAR 1–2.2.7 Charting

This recommendation is adopted. Each ARSA will be depicted on aeronautical charts in a manner similar to the way Austin, TX, and Columbus, OH, locations are depicted.

NAR 1–2.2.8 Education

This recommendation is adopted to the extent set forth in Notice 84–22.

The Amendment

After consideration of the comments received, the FAA is adopting, with the exception of two editorial changes, the amendments to Parts 71, 91, 103, and 105 as they were proposed in Notice 84–22. The definition of an ARSA in new § 71.14 has been revised for consistency with the definitions of other types of controlled airspace in Part 71. The revision has no effect on the operating rules for an ARSA or the extent of airspace involved. A second editorial revision was made to new § 91.88. The phrase "or heliport" was deleted from the proposed section as unnecessary, because the term "airport" as defined in FAR Part 1, Section 1.1, includes heliports.

These amendments establish a new type of airspace assignment and prescribe operating rules for aircraft, ultralight vehicles, and parachute jump operations in that airspace.

Specifically, aircraft arriving at any airport in an ARSA, and overflying aircraft, prior to entering the ARSA must: (1) Establish two-way radio communications with the ATC facility having jusidiction over the area; and, (2) while in the ARSA, maintain two-way radio communications with that ATC facility. For aircraft departing from the primary airport within the ARSA, two-

way radio communications must be maintained with the ATC facility having jurisdiction over the area. For aircraft departing a statellite airport or heliport within the ARSA, as soon as practicable after takeoff, two-way radio communications must be established and thereafter maintained, while operating within the ARSA, with the ATC facility having jurisdiction over the area.

All aircraft operating within an ARSA are required to comply with all ATC clearances and instructions and any FAA arrivial or departure traffic patttern for the airport of intended operation. However, the proposed rule permits ATC to authorize appropriate deviations to any of the operating requirements of the proposed rules when safety considerations justify the deviation or more efficient utilization of the airspace can be attained. Ultralight vehicle operations and parachute jumps in an ARSA may only be conducted under the terms of an ATC authorization.

Economic Impact

This action defines an ARSA and establishes air traffic rules for operation within the ARSA. Specific designations of individual ARSA's will be proposed in separate NPRM's. This amendment has no economic consequences. Rather, it is the airspace proposals which would implement this rule at specific sites that would have the economic impact, if any, at those sites. The FAA will provide a Regulatory Evaluation (an analysis of the economic impact), a Trade Impact Analysis (an analysis of the impact of the rule on foreign trade), and a Regulatory Flexibility Determination (whether a proposal has a significant economic impact on a substantial number of small entities) when an ARSA is proposed at specific sites.

Accordingly, the FAA has determined that: (1) The amendment does not involve a major rule under Executive Order 12291; (2) the amendment is not significant nor does it require a full Regulatory Evaluation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) it is certified that under the criteria of the Regulatory Flexibility Act that the amendment will not have a significant economic impact on a substantial number of small entities. In addition, this amendment, if adopted, would have little or no impact on trade opportunities for U.S. firms doing business overseas, or for foreign firms doing business in the U.S.

This rule is published less than 30 days prior to its effective date of March 14. By separate rulemaking published this date, FAA has established ARSA's at Austin, TX; Columbus, OH; and Baltimore, MD, to take effect on March 14. March 14 is the next publication for enroute low altitude navigation charts published by the National Ocean Survey. Pilots rely on these charts for flight information, and FAA considers it a matter of flight safety that the implementation date for each ARSA coincide with the publication date of the air navigation chart depicting the ARSA. The permanent Austin and Columbus ARSA's and the Baltimore ARSA cannot be established unless this rule, which promulgates the definition and operating rules for ARSA's is in effect. If these ARSA's are not established on March 14, the next subsequent chart publication date, and the next date on which the three ARSA's could become effective, is in September. FAA considers the establishment of the ARSA at Baltimore Airport to be of immediate importance and cannot accept a 6-month delay in implementation of this ARSA. Furthermore, controller training, revised coordination procedures among adjacent ATC facilities, and equipment display modifications have been undertaken at all these locations in preparation for the March 14 effective date. A 6-month delay in implementation would have a disruptive effect on the ATC facilities involved. For these reasons, and in consideration of the fact that the final rule is substantially identical to the proposal, the FAA finds that good cause exists for making the rule effective less than 30 days after publication.

List of Subjects

14 CFR Part 71

Airspace, Navigation (air).

14 CFR Part 91

Air traffic control, Airport, Aviation safety, Flight rules, Terminal control areas.

14 CFR Part 103

Aircraft, Aviation safety, Recreation and recreation areas, Ultralight vehicles.

14 CFR Part 105

Aircraft, Aviation safety, Recreation and recreation areas, Parachute jumps.

The Rule

For the reasons set out in the preamble, Chapter I of Title 14 of the Code of Federal Regulations is amended as set forth below.

PART 71—[AMENDED]

1. In Part 71, by adding new § 71.1(e), new § 71.14, and new Subpart L, § 71.501, to read as follows:

§ 71.1 Applicability.

* * * * *

(e) The airspace assignments described in Subpart L of this part are designated as airport radar service areas.

§ 71.14 Airport Radar Service Areas.

The airport radar service areas listed in Subpart L of this part consist of controlled airspace extending upward from the surface or higher to specified altitudes, within which all aircraft are subject to operating rules and equipment requirements specified in Part 91 of this chapter. Each location listed includes at least one primary airport around which the airport radar service area is located.

Subpart L—Airport Radar Service Areas

§ 71.501 Designation.

The airspace descriptions listed below are designated as airport radar service areas. The primary airport for each airport radar service area is also designated. Except as otherwise specified, all mileages are nautical miles and all altitudes are above mean sea level.

PART 91—[AMENDED]

2. In Part 91, by revising § 91.1(b)(1) and adding new § 91.88 to read as follows:

§ 91.1 Applicability.

* * * * *

(b) * * *

(1) When over the high seas, comply with Annex 2 (Rules of the Air) to the Convention on International Civil Aviation and with §§ 91.70(c), 91.88, and 91.90 of Subpart B;

* * * * *

§ 91.88 Airport Radar Service Areas.

(a) *General.* For the purposes of this section, the primary airport is the airport designated in Part 71, Subpart L, for which the airport radar service area is designated. A satellite airport is any other airport within the airport radar service area.

(b) *Deviations.* An operator may deviate from any provision of this section under the provisions of an ATC authorization issued by the ATC facility having jurisdiction of the airport radar service area. ATC may authorize a deviation on a continuing basis or for an individual flight, as appropriate.

(c) *Arrivals and Overflights.* No person may operate an aircraft in an airport radar service area unless two-way radio communication is established with ATC prior to entering that area and is thereafter maintained with ATC while within that area.

(d) *Departures:* No person may operate an aircraft within an airport radar service area unless two-way radio communication is maintained with ATC while within that area, except that for aircraft departing a satellite airport, two-way radio communication is established as soon as practicable and thereafter maintained with ATC while within that area.

(e) *Traffic Patterns.* No person may take off or land an aircraft at a satellite airport within an airport radar service area except in compliance with FAA arrival and departure traffic patterns.

PART 103—[AMENDED]

3. In Part 103, by revising § 103.17 to read as follows:

§ 103.17 Operations in Certain Airspace.

No person may operate an ultralight vehicle within an airport traffic area, control zone, airport radar service area, terminal control area, or positive control area unless that person has prior authorization from the air traffic control facility having jurisdiction over that airspace.

PART 105—[AMENDED]

4. In Part 105, by adding new § 105.20 to read as follows:

§ 105.20 Jumps in or into Airport Radar Service Areas.

(a) No person may make a parachute jump and no pilot in command may allow a parachute jump to be made from that aircraft in or into an airport radar service area without, or in violation of, the terms of an ATC authorization issued under this section.

(b) Each request for an authorization under this section must be submitted to the control tower at the airport for which the airport radar service area is designated.

(Secs. 307 and 313(a), Federal Aviation Act of 1958, as amended (49 U.S.C. 1348, 1354(a)); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); 14 CFR 11.45; and 14 CFR 11.65)

Issued in Washington, D.C., on February 27, 1985.

Richard H. Jones,

Deputy Administrator.

[FR Doc. 85-5393 Filed 3-1-85; 5:03 pm]

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Vol. 50, No. 45
Thursday, March 7, 1985

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 84-362]

Citrus Canker—Extraordinary Emergency Provisions

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: This document amends "Subpart—Citrus Canker" by adding extraordinary emergency provisions relating to activities in Florida because of an outbreak of citrus canker, including provisions concerning the payment of compensation for plants ordered destroyed because of citrus canker. This action is necessary in order to help obtain cooperation from affected persons in the citrus canker eradication effort in Florida.

DATES: Effective date of this amendment is March 1, 1985. Written comments concerning this interim rule must be received on or before May 6, 1985.

ADDRESSES: Written comments should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, 6505 Belcrest Road, Room 728 Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: B. Glen Lee, Emergency Programs Coordinator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 611 Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-6365.

SUPPLEMENTARY INFORMATION:

Emergency Action

Harvey L. Ford, Deputy Administrator of the Animal and Plant Health Inspection Service for Plant Protection and Quarantine, has determined that an emergency situation exists which warrants publication without prior opportunity for a public comment period on this interim rule. Immediate action is warranted in order to help obtain cooperation from affected persons in the citrus canker eradication effort in Florida.

Further, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that prior notice and other public procedure with respect to this interim rule are impracticable and contrary to the public interest, and good cause is found for making this interim rule effective upon signature. Comments will be solicited for 60 days after publication of this document, and a final document discussing comments received and any amendments required will be published in the **Federal Register** as soon as possible.

Background

Citrus canker, a disease caused by the bacterial pathogen, *Xanthomonas campestris pv. citri* (Hasse) Dawson, is a devastating disease which is known to affect plants and plant parts (including fruit) of citrus and citrus relatives (Family Rutaceae). Strains of the pathogen causing citrus canker can result in defoliation and other serious damage to the leaves and twigs of infested plants. Infected fruit becomes unmarketable and often drops from a tree prematurely. Citrus canker is a very aggressive disease which can rapidly infect plants and plant parts, and can lead to extensive economic losses throughout entire citrus growing areas. The establishment of citrus canker in the United States would present a severe threat to citrus producing and packing industries in the United States and pose a burden to interstate and international commerce.

Because of the finding of citrus canker in Florida, regulations captioned "Subpart-Citrus Canker" (contained in 7 CFR 301.75 *et seq.* and referred to below as the regulations) were established (See 49 FR 36623–36626, 43448–43449) to regulate the interstate movement from anywhere in Florida of certain articles designated as regulated articles.

On October 17, 1984, the Secretary of Agriculture declared an extraordinary emergency in Florida because of the existence of citrus canker (See 49 FR 41268). This document amends the regulations by adding new §§ 301.75–9 through 301.75–12 relating to the extraordinary emergency. These provisions reflect that an extraordinary emergency exists because of outbreaks of citrus canker in Florida. In addition, provisions are added concerning inspection, seizures, quarantines, and other actions specifically authorized under 7 U.S.C. 150dd and 150ff. Further, provisions are added concerning the payment of compensation for plants ordered destroyed in Florida because of citrus canker.

New § 301.75–12 describes the procedures to be followed in order to file a claim for compensation for destroyed plants. New § 301.75–11 sets forth the amounts of compensation to be paid by the United States Department of Agriculture (USDA) for destroyed plants. In this connection, § 301.75–11 states that:

Compensation by the United States Department of Agriculture shall be paid for plants destroyed in Florida because of citrus canker on or after October 17, 1984, pursuant to an order issued by an inspector. Compensation shall be based on inspectors' inventories of destroyed plants. Compensation shall be as follows:

Class of plant	Compensation to be paid by USDA[1]
Field Grown Nursery Plants	
Seedling	$0.0135
Liner	0.1385
Budded tree	0.8450
Greenhouse Grown Nursery Plants	
Seedling	0.0315
Liner	0.2660
Budded tree	0.9825
Container Plants	
One (1) gallon	1.315
Two (2) gallons	1.710
Three (3) or more gallons	2.100
Grove Plants	
Reset or new planting	3.740

[1] The amounts of compensation to be paid by USDA for plants represent fifty percent (50%) of the replacement values of the plants as determined by the Deputy Administrator. The replacement values for plants were determined based on information provided by the Citrus Canker Indemnity Work Group (a group composed of representatives of USDA-ERS, USDA-APHIS, the University of Florida, and the Florida Department of Agriculture and Consumer Services) and representatives from the citrus industry.

The amounts of compensation to be paid by USDA for plants destroyed because of citrus canker represent fifty percent (50%) of the replacement values of the plants as determined by the Deputy Administrator. The replacement values of the plants are based on the average cost of purchasing, planting, and maintaining the plants.

The determination that compensation by USDA would equal fifty percent of the replacement value of plants destroyed reflects a policy decision by the Secretary of Agriculture that this would allow for the best use of the available Federal funds in the citrus canker eradication effort in Florida, and that the remainder of the economic losses incurred as a result of the destruction of plants because of citrus canker should be absorbed by the State of Florida or the citrus industry, or both.

Also, § 301.75–1 is amended by adding definitions of the terms "container plant," "grove," and "nursery."

As noted above, § 301.75–11 does not provide for compensation by USDA for plants destroyed prior to October 17, 1984. USDA does not have authority to pay compensation for plants destroyed prior to the issuance of the Declaration of Extraordinary Emergency.

Executive Order and Regulatory Flexibility Act

The emergency nature of this action makes it impracticable for the Agency to follow the procedures of Executive Order 12291 with respect to this interim rule. Immediate action is warranted in order to help obtain cooperation from affected persons in the citrus canker eradication effort in Florida.

This emergency situation also makes compliance with section 603 and timely compliance with section 604 of the Regulatory Flexibility Act impracticable. Since this action may have a significant economic impact on a substantial number of small entities, the final Regulatory Impact Analysis, if required, will address the issues required in sections 603 and 604.

Paperwork Reduction Act

In accordance with section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), the information collection provisions that are included in "Subpart-Citrus Canker" (7 CFR 301.75 *et seq.*) have been approved by the Office of Management and Budget (OMB) and have been assigned OMB Control Number 0579–0083.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Citrus canker, Plant disease, Plant pests, Plants (agriculture), Quarantine, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

Under the circumstances described above, "Subpart-Citrus Canker" (contained in 7 CFR 301.75 *et seq.*) is amended as follows:

1. The authority citation for "Subpart-Citrus Canker" is revised to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 161, and 162; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 301.75–1 the following terms are added to the list of definitions in alphabetical order:

§ 301.75–1 Definitions.

* * * * *

Container plant. Any plant in a container propagated for replanting or ornamental purposes.

* * * * *

Grove. Any permanent stand of plants maintained for the purpose of producing fruit.

* * * * *

Nursery. Any premises at which plants are grown or maintained for the purpose of propagating or replanting, or for ornamental purposes, but not including any grove on such premises.

* * * * *

§ 301.75–6 [Amended]

3. Footnote 2 in § 301.75–6 is redesignated as footnote 1.

4. New §§ 301.75–9, 301.75–10, 301.75–11, and 301.75–12 are added to read as follows:

§ 301.75–9 Determination of extraordinary emergency.

An extraordinary emergency was declared on October 17, 1984, because of an outbreak of citrus canker in Florida (49 FR 41268). The regulations in §§ 301.75–10 through 301.75–12 of this subpart establish provisions relating to the extraordinary emergency.

§ 301.75–10 Inspection, seizure, quarantine and other actions.

Any employee of the United States Department of Agriculture designated by the Deputy Administrator and identified by an official identification card, shall have authority to inspect, seize, quarantine and take other actions authorized under 7 U.S.C. 150dd and 150ff, including entering with a warrant any premises in Florida to make necessary inspections and seizures. Any such employee shall be allowed to collect samples of plants or plant products found on such premises. Any such employee may enter upon any premises without a warrant if the person in possession of the premises voluntarily consents to such employee's entry.

§ 301.75–11 Compensation for destroyed plants.

Compensation by the United States Department of Agriculture shall be paid for plants destroyed in Florida because of citrus canker on or after October 17, 1984, pursuant to an order issued by an inspector. Compensation shall be based on inspector's inventories of destroyed plants. Compensation shall be as follows:

Class of plant	Compensation to be paid by USDA[1]
Field Grown Nursery Plants	
Seedling	$0.0135
Liner	0.1385
Budded tree	0.8450
Greenhouse Grown Nursery Plants	
Seedling	0.0315
Liner	0.2680
Budded tree	0.9825
Container Plants	
One (1) gallon	1.315
Two (2) gallons	1.710
Three (3) or more gallons	2.100
Grove Plants	
Reset or new planting	3.740

[1] The amounts of compensation to be paid by USDA for plants represent fifty percent (50%) of the replacement values of the plants as determined by the Deputy Administrator. The replacement values for plants were determined based on information provided by the Citrus Canker Indemnity Work Group (a group composed of representatives of USDA-ERS, USDA-APHIS the University of Florida, and the Florida Department of Agriculture and Consumer Services) and representatives from the citrus industry.

§ 301.75–12 Claim for Compensation.

A claim for compensation to be paid by the United States Department of Agriculture for economic losses resulting from the destruction of plants must be presented to an inspector before compensation will be made. The claim must be made on PPQ Form 751. The claimant must state whether the items for which compensation is requested are, or are not, subject to a mortgage, lien, or other security or beneficial interest held by any person other than the claimant. If the claimant is the owner and states that there is no mortgage, lien, or other such interest on the items, payment will be made to the owner. If the claimant states that there is a mortgage, lien, or other such interest, PPQ Form 751 shall be signed by the claimant and by each person holding a mortgage, lien, or other such interest on the items, consenting to the payment of any compensation allowed to the person specified thereon, and payment will be made to such person.

Done at Washington, D.C., this 1st day of March, 1985.

W. Helms,

Acting Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 85-5220 Filed 3-6-85; 8:45 am]

BILLING CODE 3410-34-M

Federal Crop Insurance Corporation

7 CFR Part 448

[Doc. No. 1865S]

Extra Long Staple (Pima) Cotton Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby issues a new Part 448 in Chapter IV of Title 7 of the Code of Federal Regulations, effective for the 1985 and succeeding crop years, for the purpose of prescribing procedures for insuring extra long staple (Pima) cotton in certain counties where such cotton is produced. The intended effect of this rule is to issue regulations for such purpose to be known as 7 CFR Part 448—Extra Long Staple (Pima) Cotton Crop Insurance Regulations under the authority contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: April 8, 1985.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is April 1, 1989.

Merritt W. Sprague, Manager, FCIC, has determined that this action (1) is not a major rule as defined by Executive Order No. 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) will not increase the Federal paperwork burden for individuals, small businesses, and other persons.

The title and number of the Federal Assistance Program to which this rule applies are: Title—Crop Insurance; Number 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

On March 28, 1984, the Board of Directors of FCIC approved Docket No. CI-ELS-85-2, authorizing FCIC to offer a program of crop insurance on extra long staple (Pima) cotton in counties where such cotton is ordinarily produced, effective for the 1985 and succeeding crop years. On Tuesday, August 14, 1984, FCIC published a notice of proposed rulemaking in the **Federal Register** at 49 FR 32363, issuing a new Part 448 in Chapter IV of Title 7 of the Code of Federal Regulations (7 CFR Part 448), prescribing procedures for insuring extra long staple (Pima) cotton in certain counties where such cotton is produced. The public was given 60 days in which to submit written comments, data, and opinions on the proposed rule, but none were received. On Friday, December 14, 1984, FCIC published a supplemental notice of proposed policy rulemaking and extension of comment period in the **Federal Register** at 49 FR 48738, providing an additional 30 days for public comment on further proposed changes in 7 CFR Part 448 for: (1) Prescribing procedures for insuring extra long staple (ELS) cotton on an actual production history (APH) basis; (2) defining the insured's responsibility for reporting production records necessary for determining the insurance guarantee; (3) removing the Premium Adjustment Table; (4) adding a definition of mature ELS cotton; and (5) deleting Appendix A. No comments were received in response to the supplemental notice of proposed policy rulemaking.

Therefore, the supplemental notice of proposed policy rulemaking and extension of comment period, containing the original proposed rule issuing 7 CFR Part 448, as amended by the supplemental notice, is hereby adopted as final.

List of Subjects in 7 CFR Part 448

Crop insurance, Extra long staple (Pima) cotton.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby issues a new Part 448 in Chapter IV of Title 7 of the Code of Federal Regulations to be known as 7 CFR Part 448—Extra Long Staple (Pima) Cotton Crop Insurance Regulations, effective for the 1985 and succeeding crop years. Part 448 is added to read as follow:

PART 448—EXTRA LONG STAPLE (PIMA) COTTON CROP INSURANCE REGULATIONS

Subpart—Regulations for the 1985 and Succeeding Crop Years

Sec.

448.1 Availability of extra long staple (pima) cotton crop insurance.
448.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.
448.3 OMB control numbers.
448.4 Creditors.
448.5 Good faith reliance on misrepresentation.
448.6 The contract.
448.7 The application and policy.

Authority: Secs. 506, 516, Pub. L. 75-430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

Subpart—Regulations for the 1985 and Succeeding Crop Years

§ 448.1 Availability of extra long staple (pima) cotton crop insurance.

Insurance shall be offered under the provisions of this subpart on extra long staple (pima) cotton in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

§ 448.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for extra long staple (pima) cotton which will be included in the actuarial table on file in applicable service offices for the county and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant will elect a coverage level and price at which indemnities will be computed from among those levels and prices contained in the actuarial table for the crop year.

§ 448.3 OMB control numbers.

The information collection requirements contained in these regulations (7 CFR Part 448) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Nos. 0563–0003 and 0563–0007.

§ 448.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

§ 448.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the extra long staple (pima) cotton insurance contract, whenever: (a) An insured under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation: (1) Is indebted to the Corporation for additional premiums; or (2) has suffered a loss to a crop which is not insured or for which the insured is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured believed to be insured, or believed the terms of the insurance contract to have been complied with or waived; and (b) the Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000 finds that: (1) An agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice; (2) said insured relied thereon in good faith; and (3) to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured shall be granted relief the same as if otherwise entitled thereto. Requests for relief under this section must be submitted to the Corporation in writing.

§ 448.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the extra long staple (pima) cotton crop as provided in the policy. The contract shall consist of the application, the policy, and the county actuarial table. Any changes made in the contract shall not affect its continuity from year to year. The forms referred to in the contract are available at the applicable service offices.

§ 448.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation may be made by any person to cover such person's share in the extra long staple (pima) cotton crop as landlord, owner-operator, or tenant. The application shall be submitted to the Corporation at the service office on or before the applicable closing date on file in the service office.

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk is excessive, and also, for the same reason, may reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the closing date for submitting applications in any county, by placing the extended date on file in the applicable service offices and publishing a notice in the **Federal Register** upon the Manager's determination that no adverse selectivity will result during the period of such extension. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1985 and succeeding crop years, a contract in the form provided for in this subpart will come into effect as a continuation of an extra long staple (pima) cotton contract issued under such prior regulations, without the filing of a new application.

(d) The application for the 1985 and succeeding crop years is found at Subpart D of Part 400—General Administrative Regulations (7 CFR 400.37, 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Extra Long Staple Cotton Insurance Policy for the 1985 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Extra Long Staple Cotton Crop Insurance Policy

(This is a continous contract. Refer to Section 15.)

AGREEMENT TO INSURE: We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, "you" and "your" refer to the insured shown on the accepted Application and "we," "us" and "our" refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of loss.

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;
(2) Fire;
(3) Insects;
(4) Plant disease;
(5) Wildlife;
(6) Earthquake;
(7) Volcanic eruption; or
(8) Failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9e(8).

b. We will not insure against any loss of production due to:

(1) The neglect, mismanagement, or wrongdoing of you, any member of your household, your tenants or employees;

(2) The failure to follow recognized good cotton farming practices;

(3) The impoundment of water by any governmental, public or private dam or reservoir project; or

(4) Any cause not specified in section 1a as an insured loss.

2. Crop, acreage, and share insured.

a. The crop insured will be Extra Long Staple ("ELS") cotton and American Upland lint ("AUP") cotton if the acreage was originally planted to ELS cotton, which is grown on insured acreage and for which a guarantee and premium rate are provided by the actuarial table.

b. The acreage insured for each crop year will be cotton planted on insurable acreage as designated by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we elect. The acreage insured of skip-row cotton will be the acreage occupied by the rows of cotton after eliminating the skipped-row portions, unless other acreage determinations are provided by the actuarial table.

c. The insured share will be your share as landlord, owner-operator, or tenant in the insured ELS cotton at the time of planting.

d. We do not insure any acreage:

(1) Which is non-irrigated and from which a hay crop was harvested or on which a small grain crop reached the heading stage in the same calendar year;

(2) Planted in excess of the limitations established by any program administered by the United States Department of Agriculture;

(3) Which is new ground acreage;

(4) Where the farming practices carried out are not in accordance with the farming practices for which the premium rates have been established;

(5) Which is irrigated and an irrigated practice is not provided for by the actuarial table, unless you elect to insure the acreage as nonirrigated by reporting it as insurable under section 3;

(6) Which is destroyed, it is practical to replant to ELS cotton, and such acreage is not replanted;

(7) Which you have elected to exclude (the exclusion must be by unit, in writing on our form and made before the closing date for submitting applications as established by the actuarial table, except that, if a unit is acquired after the closing date, an exclusion may be filed up to 15 days after the acquisition but not later than the acreage reporting date); or

(8) Planted to a type or variety of cotton not established as adapted to the area or excluded by the actuarial table.

e. If insurance is provided for an irrigated practice:

(1) You must report as irrigated only the acreage for which you have adequate facilities and water to carry out a good cotton irrigation practice at the time of planting; and

(2) Any loss of production caused by failure to carry out a good cotton irrigation practice, except failure of the water supply from an unavoidable cause occurring after the beginning of planting, will be considered as due to an uninsured cause. The failure or breakdown of irrigation equipment or facilities will not be considered as a failure of the water supply from an unavoidable cause.

f. Acreage which is planted for the development or production of hybrid seed or for experimental purposes is not insured unless we agree, in writing, to insure such acreage.

g. We may limit the insured acreage to any acreage limitation established under any Act of Congress, if we advise you of the limit prior to planting.

3. Report of acreage, share, and practice.

You must report on our form:

a. All the acreage of cotton in the county in which you have a share;

b. The practice; and

c. Your share at the time of planting.

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any ELS cotton planted in the county. This report must be submitted annually on or before the reporting date established by the actuarial table. All indemnities may be determined on the basis of information you submit on this report. If you do not submit this report by the reporting date, we may elect to determine, by unit, the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Production guarantees, coverage levels, and prices for computing indemnities.

a. The production guarantees, coverage levels, and prices for computing indemnities will be contained in the actuarial table.

b. The production guarantees in the actuarial table are the second stage guarantees. The first stage guarantee is 60 percent of the second stage guarantee. The stages are:

(1) First Stage—From planting until 60 days after the final planting date for ELS cotton or until the shedding of the first blooms, whichever occurs first. We may limit the liability to the first stage if the cotton was damaged during this period to the extent that farmers generally would not further care for the cotton; or

(2) Second Stage—All insured cotton after the first stage.

c. Coverage level 2 will apply if you have not elected a coverage level.

d. You may change the coverage level and price election before the closing date for submitting applications for the crop year as established by the actuarial table.

5. Annual premium.

a. The annual premium is earned and payable at the time of planting. the amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting.

b. Interest will accure at the rate of one and one-half percent (1½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

6. Deductions for debt.

Any unpaid amount due us may be deducted from any indemnity payable to you or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies.

7. Insurance period.

Insurance attaches when the ELS cotton is planted and ends at the earliest of:

a. Total destruction of the cotton;

b. Removal of the cotton from the field;

c. Final adjustment of a loss; or

d. January 31 after planting:

8. Notice of damage or loss.

a. In case of damage or probable loss:

(1) You must give us written notice if:

(a) during the period before harvest, the cotton on any unit is damaged and you decide not to further care for or harvest any part of it;

(b) You want our consent to put the acreage to another use; or

(c) After consent to put acreage to another use is given, additional damage occurs.

Insured acreage may not be put to another use until we have appraised the cotton and given written consent. We will not consent to another use until it is too late to replant. You must notify us when such acreage is put to another use.

(2) You must give us notice if you are going to replant any acreage originally planted to ELS cotton to AUP cotton.

(3) You must give us notice at least 15 days before the beginning of harvest if you anticipate a loss on any unit.

(4) If probable loss is later determined, immediate notice must be given. A representative sample of unharvested cotton (at least 10 feet wide and the entire length of the field) must remain unharvested for a period of 15 days from the date of the notice, unless we give you written consent to harvest the sample.

(5) In addition to the notices required by this section, if you are going to claim an indemnity on any unit, we must be given notice not later than 30 days after the earliest of:

(a) Total destruction of the cotton on the unit;

(b) Harvest of the unit; or

(c) The calendar date for the end of the insurance period.

b. You must obtain written consent from us before you destroy any of the cotton which is not to be harvested.

c. We may reject any claim for indemnity if any of the requirements of this section or section 9 are not complied with.

9. Claim for indemnity.

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the cotton on the unit;

(2) Harvest of the unit; or

(3) The calendar date for the end of the insurance period.

b. We will not pay any indemnity unless you:

(1) Establish the total production of cotton on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting thereform the total production of cotton to be counted (see section 9e);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this product by your share.

d. If the information reported by you under section of the policy:

(1) In the 1985 crop year results in a lower premium than the actual premium determined to be due, the indemnity will be reduced proportionately.

(2) In the 1986 and succeeding crop years results in a lower premium than the actual premium determined to be due, the production guarantee on the unit will be computed on the information reported and not on the actual information determined. All production from insurable acreage whether or not reported as insurable will count against the production guarantee.

e. The total production to be counted for a unit will include all harvested and appraised production.

(1) Any mature ELS cotton production which is or can be harvested will be reduced when, due solely to insured causes, the quality of the ELS cotton produced is such that the price quotation for ELS cotton of like grade, staple length and micronaire reading (price A), is less than 75 percent of price B.

Price B will be the market price quotation at the same market for ELS cotton of the grade, staple length and micronaire reading designated in our actuarial table for this purpose. The price quotations for prices A and B, will be the market price quotations on the earlier of the day the loss is adjusted or the day the damaged ELS cotton was sold. In the absence of a price quotation on such date, the price quotation for the nearest prior date for which an ELS cotton price quotation was

listed for prices A and B will be used. The pounds of production to be counted will be determined by multiplying the number of pounds of production (harvested and unharvested) by price A and dividing the result by 75 percent of price B.

(2) Any AUP cotton harvested from acreage originally planted to ELS cotton will be reduced by the factor obtained by dividing the price of the AUP cotton by the price of ELS cotton of the grade, staple length and micronaire reading shown in our actuarial table. The prices will be determined on the earlier of the date the loss is adjusted or the date the AUP cotton was sold.

(3) Appraised production to be counted will include:

(a) Unharvested production on harvested acreage;

(b) Not less than the applicable guarantee for any acreage which is abandoned or put to another use without our written consent or damaged solely by an uninsured cause;

(c) Potential production lost due to failure to follow recognized good farming practices and, to the extent not covered by (b) above, lost due to uninsured causes;

(d) Second stage production on unharvested acreage which is destroyed, abandoned, or put to another use pursuant to our written consent; and

(e) First stage production on unharvested acreage which is destroyed, abandoned, or put to another use pursuant to our written consent, to the extent that it is not covered by (b) or (c) above and to the extent that it does not exceed the difference between the first and second stage guarantee.

(d) The total appraisal for uninsured causes.

(4) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage is:

(a) Not put to another use before harvest of cotton becomes general in the county;

(b) Harvested; or

(c) Further damaged by an insured cause before the acreage is put to another use.

(5) Any appraisal of the AUP cotton on acreage originally planted to ELS cotton will be reduced by the factor determined in Section 9e(2) above. If prices are not yet available, the previous year's season average prices will be used.

(6) The cotton stalks must not be destroyed on any acreage for which an indemnity is claimed, until we given consent. An appraisal of not less than the second stage guarantee may be made on acreage where the stalks have been destroyed without our consent.

(7) The amount of production of any unharvested cotton may be determined on the basis of field appraisals conducted after the end of the insurance period.

(8) When you have elected to exclude hail and fire as insured causes of loss and the cotton is damaged by hail or fire, appraisals will be made in accordance with Form FCI–78, "Request to Exclude Hail and Fire".

(9) The commingled production of units will be allocated to such units in proportion to our liability on the harvested acreage of each unit.

f. You must not abandon any acreage to us.

g. You may not sue us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial is received by you.

h. We have a policy for paying your indemnity within 30 days of our approval of your claim, or entry of a final judgment against us. We will, in no instance, be liable for the payment of damages, attorney's fee, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim. We will, however, pay simple interest computed on the net indemnity ultimately found to be due by us or by a final judgment from and including the 61st day after the date you sign, date and submit to us the properly completed claim for indemnity form, if the reason for our failure to timely pay is not due to your failure to provide information or other material necessary for the computation or payment of the indemnity. The interest rate will be that established by the Secretary of the Treasury under Section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611), and published in the **Federal Register** semi-annually on or about January 1 and July 1. The interest rate to be paid on any indemnity will vary with the rate announced by the Secretary of the Treasury.

i. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the cotton is planted for any crop year, any indemnity will be paid to the person(s) we determine to be beneficially entitled thereto.

j. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of:

(1) The amount of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) The amount by which the loss from fire exceeds the indemnity paid or payable under such other insurance. For the purposes of this section, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment or fraud.

We may void the contract on all crops insured without affecting you liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract. Such voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of right to indemnity on insured share.

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

12. Assignment of indemnity.

You may assign to another party your right to an indemnity for the crop year, only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. Subrogation. (Recovery of loss from a third party.)

Because you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve any such rights. If we pay you for your loss, then your right of recovery will at our option belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

14. Records and access to farm.

You must keep, for two years after the time of loss, records of the harvesting, storage, shipment, sale or other disposition of all cotton produced on each unit, including separate records showing the same information for production from any uninsured acreage. Any person designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of contract: Cancellation and termination.

a. This contract will be in effect for the crop year specified on the application and may not be canceled by you for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c. This contract will be canceled if you do not furnish to us, on or before the cancellation date; satisfactory records of the previous year's production. If you show, prior to the cancellation date, to our satisfaction, that records are unavailable due to conditions beyond your control, such as fire, flood or other natural disaster, the Field Actuarial Office may assign a yield for that year. The assigned yield will not exceed the ten-year average yield computed from records for the 10 years immediately preceding the current crop year.

d. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due:

(1) If deducted from an indemnity wil be the date you sign the claim; or

(2) If deducted from payment under another program administered by United States Department of Agriculture will be the date both such other payment and set off are approved.

e. The cancellation and termination date is March 31.

f. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. Death of partner in a partnership will dissolve the partnership unless the

partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

g. The contract will terminate if no premium is earned for five consecutive years.

16. Contract changes.

We may change any of the terms and provisions of the contract from year to year. If your price election at which indemnites are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by November 30 preceding the cancellation date. Acceptance of any changes will be conclusively presumed in the absence of any notice from you to cancel the contract.

17. Meaning of terms.

For the purposes of cotton crops insurance:

a. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnites, practices, insurable and uninsurable acreage, and related information regarding cotton insurance in the county.

b. "ASCS" means the Agricultural Stabilization and Conservation Service of the United States Department of Agriculture.

c. "Cotton" means Extra Long Staple Cotton and acreage replanted to American Upland Cotton if the acreage was originally planted to Extra Long Staple Cotton.

d. "County" means the county shown on the application and:

(1) Any additional land located in a local producing area bordering on the county, as shown by the actuarial table; and

(2) Any land identified by an ASCS farm serial number for the county but physically located in another county.

e. "Crop year" means the period within which the cotton is normally grown and will be designated by the calendar year in which the cotton is normally harvested.

f. "ELS cotton" means Extra Long Staple Cotton (also called Pima Cotton or American-Egyptian Cotton).

g. "Harvest" means the removal of the seed cotton from the the open cotton boll or the severance of the open cotton boll from the stalk by either manual or mechanical means.

h. "Insurable acreage" means the land classified as insurable by us and shown as such by the actuarial table.

i. "Insured" means the person who submitted the application accepted by us.

j. "Mature ELS cotton" means ELS cotton which can be harvested either manually or mechanically and includes both unharvested and harvested cotton.

k. "New ground acreage" means any acreage which has not been planted to a crop in any one of the previous three crop years, except that acreage in tame hay or rotation pasture during the previous crop year will not be considered new ground acreage.

l. "Person" means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

m. "Replanted" means performing the cultural practices necessary to replant acreage to AUP cotton originally planted to ELS cotton.

n. "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

o. "Skip-row" means planting patterns consisting of alternating rows of cotton and fallow rows (or rows of another crop) as defined by ASCS.

p. "Tenant" means a person who rents land from another person for a share of the cotton or a share of the proceeds therefrom.

q. "Unit" means all insurable acreage of cotton in the county in which you have an insured share on the date of planting for the crop year and which is identified by a single ASCS farm serial number at the time insurance first attaches under this policy for the crop year. Units will be determined when the acreage is reported. We may reject or modify any ASCS reconstitution for the purpose of unit definition if the reconstitution was in whole or part to defeat the purpose of the Federal Crop Insurance Program or to gain disproportionate advantage under this policy. Errors in reporting units may be corrected by us when adjusting a loss.

r. "Yield" means the actual yield reported by you to ASCS or the yield established by ASCS or us.

18. Descriptive headings.

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

19. Determinations.

All determinations required by the policy will be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those determinations in accordance with Appeal Regulations.

20. Notices.

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

Done in Washington, D.C., on January 15, 1985.

Dated: February 28, 1985.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Approved by:

Michael A. Bronson,

Acting Manager.

[FR Doc. 85-5438 Filed 3-6-85; 8:45 am]

BILLING CODE 3410-08-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 239

[Release Nos. 33-6465A; 34-19695A; File No. S7-961]

Technical Amendments to Rules, Forms, and Schedules; Correction

AGENCY: Securities and Exchange Commission.

ACTION: Final rules; correction.

SUMMARY: This document corrects a final rule which was published May 3, 1983 (48 FR 19873) relating to technical amendments to various rules, forms, and schedules. The correction concerns a section heading which was incorrectly cited.

FOR FURTHER INFORMATION CONTACT: Leslie Murphy, Esq., Division of Corporation Finance, Securities and Exchange Commission, Washington, D.C. 20549, (202) 272-2589.

SUPPLEMENTARY INFORMATION: The amendatory language for number 16 and the section heading thereunder appearing on page 19876 at FR Doc. 83-11804 in the issue of May 3, 1983 should have read § 239.16b.

John Wheeler,

Secretary.

February 28, 1985.

[FR Doc. 85-5431 Filed 3-6-85; 8:45 am]

BILLING CODE 5010-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 436

[Docket No. 84N-0149]

Tests and Methods of Assay of Antibiotic and Antibiotic-Containing Drugs; High-Pressure Liquid Chromatographic Assays for Dactinomycin and Plicamycin; Correction

AGENCY: Food and Drug Administration.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting the amendatory language of a final rule that amended the antibiotic drug regulations (50 FR 5748; February 12, 1985). An amendment in that final rule stated that the "last" sentence in 21 CFR 436.341(e)(1) was being revised. It should have stated that the "fourth"

sentence was being revised. This document corrects that error.

EFFECTIVE DATE: March 7, 1985.

FOR FURTHER INFORMATION CONTACT: Agnes B. Black, Regulations Editorial Staff (HFC–222), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2994.

SUPPLEMENTARY INFORMATION: In FR Doc. 85–3334 appearing at page 5748 in the **Federal Register** of Tuesday, February 12, 1985, on page 5749 in the first column, amendment No. 2 is corrected to read "2. In § 436.341 by revising the fourth sentence in paragraph (e)(1) to read as follows:"

Dated: February 28, 1985.

Daniel L. Michels,

Director, Office of Compliance, Center for Drugs and Biologics.

[FR Doc. 85–5423 Filed 3–6–85; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. R–85–1229; FR–2097]

24 CFR Parts 1, 17, 35, 42, 50, 51, 108, 200, 201, 390, 600, 880, 882, 883, 885, 886, 888, 905, 1710, 2700, 3280, and 3500

Miscellaneous Nomenclature Changes to the Department's Regulations

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This document makes nomenclature changes throughout Title 24 of the Code of Federal Regulations to reflect the new use of the term "manufactured homes" instead of "mobile homes" and the term "Health and Human Services" instead of "Health, Education and Welfare." These changes conform HUD terminology to current practice required by recent legislation.

EFFECTIVE DATE: April 17, 1985.

FOR FURTHER INFORMATION CONTACT: Joan J. Campion, Department of Housing and Urban Development, Room 10278, 451 Seventh Street, S.W., Washington, D.C. 20410, (202) 755–7084. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: This final rule makes changes to HUD's regulations required by section 308 of the Housing and Community Development Act of 1980, Pub. L. 96–399 (October 8, 1980) and by section 201 of the Housing and Community Development Technical Amendments Act of 1984, Pub. L. 98–479 (October 17, 1984). The amendments changed references in the Acts and changed, respectively, the term of mobile home from "mobile home" to "manufactured home" and changed any reference to Health, Education and Welfare (HEW) from "Health, Education and Welfare (HEW)" to "Health and Human Services (HHS)."

Tables following the Preamble to this rule show in list format the nomenclature changes being made by this rule to the various sections to Title 24 of the Department's regulations.

The Department has determined that this document need not be published as a proposed rule, as generally required by the Administrative Procedure Act (APA), since this rule making merely conforms HUD regulations to reflect legislative changes in terminology. As a rule relating to agency practice, it is exempt from the proposed rule making requirements of the APA (see section 553(b)(A)).

A Finding of No Significant Impact with respect to the environment required by the National Environmental Policy Act (42 U.S.C. 4321–4347) is unnecessary, since this nomenclature change is categorically excluded under HUD regulations at 24 CFR 50.20(k).

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued on February 17, 1981. Analysis of this rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in cost or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

As required by section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities because it merely makes nomenclature changes to the Department's regulations.

This rule was not listed in the Department's Semiannual Agenda of Regulations published on October 22, 1984 (49 FR 41684).

List of Subjects in 24 CFR Parts 1, 17, 35, 42, 50, 51, 108, 200, 201, 390, 600, 880, 882, 883, 885, 886, 888, 905, 1710, 2700, 3280, and 3500

Housing, Manufactured homes.

Accordingly, the Department hereby amends Title 24 CFR as follows:

1. In the list below, for each entry indicated in the left column, remove the reference indicated in the middle column from wherever it appears in the section and add the reference indicated in the right column:

Section	Remove	Add
17.43(c)(3)	mobile homes	manufactured homes
17.43(c)(3)	mobile home	manufactured home
42.51	mobile home	manufactured home
42.501	mobile homes	manufactured homes
42.503	mobile home	manufactured home
42.505	mobile home	manufactured home
42.507	mobile home	manufactured home
50.17	manufactured and mobile home	manufactured homes
51.101	mobile home	manufactured home
108.1	mobile home	manufactured home
200.31, section heading	mobile homes	manufactured homes
200.31	mobile homes	manufactured homes
200.85	Mobile Homes	Manufactured Homes
200.615	mobile home	manufactured home
Part heading to 24 CFR Part 201	Mobile Home	Manufactured Home
Subpart B heading of 24 CFR Part 201	Mobile Home	Manufactured Home
201.505	mobile homes	manufactured homes
201.510, section heading	mobile homes	manufactured homes
201.510	mobile home	manufactured home
201.515, section heading	mobile home	manufactured home
201.515	mobile home	manufactured home
201.520	mobile home	manufactured home
201.525, section heading	Mobile home	Manufactured home
201.525	mobile home	manufactured home
201.526	mobile home	manufactured home
201.530	manufactured (mobile) home	manufactured home
201.530	mobile home	manufactured home
201.531	mobile home	manufactured home
201.535	mobile home	manufactured home
201.545	mobile home	manufactured home
201.550	mobile home	manufactured home
201.585	mobile home	manufactured home
201.575	mobile home	manufactured home
201.595	mobile home	manufactured home
Subpart D heading of 24 CFR Part 201	Mobile home	Manufactured home
201.600	mobile home	manufactured home
201.605	mobile home	manufactured home
201.665	mobile home	manufactured home
201.680	mobile home	manufactured home

Section	Remove	Add
201.680	mobile homes	manufactured homes
201.1500	mobile home	manufactured home
201.1501	mobile home	manufactured home
201.1502	mobile home	manufactured home
201.1503	mobile home	manufactured home
201.1504	manufactured (mobile) home.	manufactured home
201.1505, section heading.	mobile home	manufactured home
201.1505	mobile home	manufactured home
201.1506	mobile home	manufactured home
201.1507	mobile home	manufactured home
201.1510	mobile home	manufactured home
201.1511	mobile home	manufactured home
201.1512, section heading.	Mobile home	Manufactured home
201.1512	mobile home	manufactured home
Undesignated center heading following § 201.1514.	MOBILE HOME	MANUFACTURED HOME
201.1515	mobile home	manufactured home
201.1515	mobile home owner	manufactured homeowner
201.1515	mobile homeowner	manufactured homeowner
201.1516	mobile home	manufactured home
201.1525	mobile home	manufactured home
201.1526	mobile home	manufactured home
Subpart F heading of 24 CFR Part 201	Mobile Homes	Manufactured Homes
201.1700	mobile homes	manufactured homes
201.1701	mobile home	manufactured home
201.1702	mobile home	manufactured home
201.1704	mobile home	manufactured home
390.3	mobile home	manufactured home
390.5	mobile homes	manufactured homes
880.207	Mobile Home	Manufactured Home
882.102	Mobile Home	Manufactured Home
882.109(o)	Mobile Home	Manufactured Home
882.401(d)	Mobile Home	Manufactured Home
Subpart F heading of 24 CFR Part 882.	Mobile Home	Manufactured Home
882.601	Mobile Home	Manufactured Home
882.602	Mobile Home	Manufactured Home
882.603, section heading.	mobile home	manufactured home
882.603	Mobile Home	Manufactured Home
882.604	Mobile Home	Manufactured Home
882.605	Mobile Home	Manufactured Home
882.606	Mobile Home	Manufactured Home
883.310	Mobile Home	Manufactured Home
886.302(c)	mobile homes	manufactured home
886.307(i)	mobile home	manufactured home
888.101	mobile homes	manufactured homes
888.103, Title to Schedule D.	Mobile home	Manufactured home
1710.10	Mobile Homes	Manufactured Homes
1710.11, section heading.	Mobile home	Manufactured home
1710.11	mobile home	manufactured home
2700.5(n)	mobile home	manufactured home
3280.105	Mobile homes	Manufactured homes
3500.5	mobile home	manufactured home

2. In the list below, for each entry indicated in the left column, remove the reference indicated in the middle column from wherever it appears in the section and add the reference indicated in the right column:

Section	Remove	Add
1.5(e)	Health, Education and Welfare.	Health and Human Services
35.10	Health, Education and Welfare.	Health and Human Services
Part 35, Appendix I.	Health, Education and Welfare.	Health and Human Services
Part 35, Appendix II.	Health, Education and Welfare.	Health and Human Services
600.410(f)(4)	HEW	HHS
885.5	Health, Education and Welfare.	Health and Human Services
905.102	Health Education and Welfare.	Health and Human Services

Authority: Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: February 26, 1985.

Samuel R. Pierce, Jr.,

Secretary.

[FR Doc. 85-5522 Filed 3-6-85; 8:45 am]

BILLING CODE 4210-32-M

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Part 960

[Docket No. R-85-1144; FR-1882]

Definition of Income, Income Limits, Rent and Reexamination of Family Income for the Public and Indian Housing Programs

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule that appeared in the **Federal Register** on Monday, May 21, 1984 (49 FR 21475), which implemented a new definition of income, established income limits for admission, set rental payment levels, and provided for reexamination of income for certain housing assistance programs. Previous correction documents were published on June 29, 1984, July 16, 1984 and September 25, 1984. This action is necessary to conform the language of the provisions of 24 CFR 960.204 and 960.205 that address range of income, and to remove language included erroneously in § 960.204 which might preclude otherwise appropriate means of implementing the requirements of § 960.205(c).

FOR FURTHER INFORMATION CONTACT: Edward Whipple, Chief, Rental and Occupancy Branch, Office of Public and Indian Housing, Room 4206, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410, telephone (202) 426-0744. (This is not a toll-free telephone number.)

Accordingly, the Department is correcting FR Document 84-17350, published on May 21, 1984 (49 FR 21475) as follows:

§ 960.204 [Corrected]

1. In item 20, § 960.204 on top of page 21492, column one, lines 8 through 12 are corrected to read as follows:

of incomes of lower income families in the PHA's area of operation, as defined in State law.

* * * * *

2. In item 21, § 960.205, on page 21492, column one, the word "reasonable", the first time it appears, is corrected to read "reasonably"; the phrase "basic objective," is corrected to read "basic objective of attaining,"; the phrase "of housing tenant" is corrected to read "a tenant body in each project composed of"; and the word "representative" is corrected to read "generally representative".

Dated: March 4, 1985.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 85-5521 Filed 3-6-85; 8:45 am]

BILLING CODE 4210-33-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 7993]

FSC General Rules, Requirements, Definitions, and Special Rules

Correction

In FR Doc. 84-32298 beginning on page 48283 in the issue of Wednesday, December 12, 1984, make the following correction: On page 48290, in the third

column, in § 1.927(f)—1T(a), Q—2, in the second line, "1984" should read "1985".

BILLING CODE 1505-01-M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 80-2B]

Compulsory License for Cable Systems

AGENCY: Copyright Office, Library of Congress.

ACTION: Final regulations.

SUMMARY: The Copyright Office of the Library of Congress is issuing final regulations amending portions of 37 CFR 201.11 and 201.17. These regulations implement portions of section 111 of the Copyright Act of 1976, title 17 of the United States Code. That section prescribes conditions under which cable systems may obtain a compulsory license to retransmit copyrighted works, including the filing of Notices of Identity and Signal Carriage Complement and Statements of Account, and the submission of statutory royalty fees.

The purpose of these regulations is to modify on a final basis the filing requirements and royalty fee calculations necessitated by changes in the rules and regulations of the Federal Communications Commission effective June 25, 1981. Interim rules published May 20, 1982 at 47 FR 21786 are hereby made final without modification.

EFFECTIVE DATE: March 7, 1985.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, U.S. Copyright Office, Library of Congress, Washington, D.C. 20559 (202) 287–8380.

SUPPLEMENTARY INFORMATION: Section 111(c) of the Copyright Act of 1976 (Act of October 19, 1976, 90 Stat. 2541) establishes a compulsory licensing system under which cable systems may make secondary transmissions of copyrighted works. The compulsory license is subject to various conditions, including the requirement that cable operators file certain documents with the Copyright Office. These documents include the recordation of Notices of Identity and Signal Carriage Complement and Notices of Change of Identity or Signal Carriage Complement under section 111(d)(1), and deposit of Statements of Account and statutory royalty fees under section 111(d)(2).

Regulations of the Copyright Office implement the filing requirement specified in section 111. The first regulations were published in the **Federal Register** on January 5, 1978 (43 FR 958) and established new §§ 201.11 and 201.17 governing the form, content, and filing of the Notices, Statements of Account, and statutory royalty fees. On June 27, 1978, the Copyright Office announced in the **Federal Register** (43 FR 27827) the adoption of Statement of Account forms and published amendments to its regulations (37 CFR 201.17) to reflect changes necessitated by the new forms. Futher experience with these regulations led the Copyright Office to published in the **Federal Register** on July 3, 1980 (45 FR 45270) certain clarifying and technical amendments to its regulations (37 CFR 201.17) governing the form, content, and filing of Statements of Account.

The regulatory actions of both the Federal Communications Commission (FCC) and the Copyright Royalty Tribunal (CRT) frequently require review of the cable regulations of the Copyright Office. On September 11, 1980, the FCC published in the **Federal Register** (45 FR 60186) its decision to remove cable televison distant signal limitations and syndicated program exclusivity rules from the FCC regulations. The Court of Appeals for the Second Circuit upheld the authority of the FCC to repeal these rules in *Malrite* v. *FCC*, 652 F.2d 1140 (2d Cir. 1981), *cert. den.* 454 U.S. 1143 (1982).

In view of these developments, the Copyright Office decided to review the cable television regulations and Statement of Account forms. On June 10, 1981, the Copyright Office published in the **Federal Register** (46 FR 30649) a Notice of Public Hearing to be held on July 28, 1981, in order to elicit comments, views, and information regarding these matters.

During the public hearing the Copyright Office received testimony and written submissions from two cable television operators and representatives of the Motion Picture Association of America (MPAA), the National Cable Televison Association (NCTA), and professional sports. The Copyright Office also received nine written comments from other interested parties in response to the Notice of Public Hearing.

On the basis of the statutory language of section 111 and the information received in the public hearing, the Copyright Office issued on May 20, 1982, an interim regulation (47 FR 21786) to reflect the impact on the copyright law of the changes in the FCC's regulatory scheme. The Copyright Office regulations were made effective immediately because the Commission's actions had an immediate impact on the responsibilities of cable systems under the copyright law's cable compulsory license. The Copyright Office solicited public comments on the changes which were proposed.

The Copyright Office received comments from the National Cable Television Association (NCTA), a law firm representing cable operators, the Motion Picture Association of America (MPAA), and the Professional Sports Leagues. After considering the underlying basis of the interim regulations and the arguments raised by the parties submitting comments, the Copyright Office has decided to adopt as final the interim regulations without modification. A discussion of the regulations and major substantive comments appears below.

1. Summary of the 1980 FCC Deregulation

The cable television copyright compulsory license mechanism is premised on a bifurcation of responsibilities under communications and copyright law. Under this mechanism, the FCC controls signal distribution by cable systems as part of a national allocation policy and protects some exclusive rights as part of this policy. At the same time, the copyright law prescribes the degree and nature of cable operators' liability for the use of copyrighted programming that the FCC rules permit them to retransmit. When a general revision of the copyright law was enacted on October 19, 1976, the FCC had several rules and regulations which limited cable carriage of distant television signals in general and syndicated, sports, and network programming in particular. Those FCC rules and regulations pertinent to this rulemaking are:

(1) Distant signal limitations in general: 47 CFR 76.57(b)–(d); 76.59(b)–(d); 76.61(b)–(e); and 76.63 [referring to 76.61];

(2) Permissible additional carriage of distant specialty programming on a part-time basis: 47 CFR 76.57(d); 76.59(d)(1); 76.61(e)(1); and 76.63 [referring to 76.61(e)(1)];

(3) Permissible additional carriage of distant signals on a part-time late-night basis: 47 CFR 76.57(c); 76.59(d)(3); 76.61(e)(3); and 76.63 [referring to 76.61(e)(3)];

(4) Permissive deletion and substitution of a program carried on a distant signal that "is primarily of local interest to the distant community (e.g. a local news or public affairs program)": 47 CFR 76.61(b)(2); and 76.63 [referring to 76.61(b)(2)];

(5) Required deletion and substitution of syndicated programming pursuant to the syndicated program exclusivity rules [47 CFR 76.151–161]: 47 CFR 76.61(b)(2); and 76.63 [referring to 76.61(b)(2)]; and

(6) Required deletion and substitution of sports programming pursuant to the sports exclusivity rule: 47 CFR 76.67.

All but the last of the abovementioned rules and regulations have been deleted as part of the Commission's 1980 deregulation decision.

2. The Interim Regulation

Paragraph (f) of section 111 of the Copyright Act sets forth the definition of "distant signal equivalent" (DSE), which has been incorporated by reference in § 201.17(f)(3) of the Copyright Office regulations. The DSE is the value assigned to the secondary transmission of any nonnetwork television programming carried by a cable system, in whole or in part, beyond the local service area of the primary transmitter of such programming. Cable systems that complete Statement of Account form CS/SA–3 compute their statutory royalty payment on the basis of their total number of DSE's.

Ordinarily, the DSE value of a distant independent station is one and the DSE value of either a distant network station or a distant noncommercial educational station is one-quarter. The DSE definition, however, permits certain modifications in the DSE value of a particular station to reflect limited carriage in accordance with FCC rules and regulations listed in items (2) through (6) as noted above. It is the specified modifications in items (2) through (5) that the interim regulation addressed.

a. Calculation of Distant Signal Equivalent

Before the FCC deregulation became effective June 25, 1981, the Copyright Act provided that the ordinary DSE value of a distant television station could be reduced in accordance with certain specified formulae in four situations. Stated generally, these were: (1) Part-time carriage of distant specialty programming; (2) part-time carriage of distant signals on a late-night basis; (3) part-time carriage of distant signals because of lack of activated channel capacity to retransmit on a full-time basis all signals which the cable system is authorized to carry; and (4) carriage of live nonnetwork programming substituted for a program deleted at the option of the cable system.

The DSE definition in section 111(f) further specified two situations where no DSE value shall be assigned for additional carriage of distant programming. These situations are: (1) Carriage of distant programming substituted for a program which is required to be deleted under FCC rules and regulations; and (2) carriage of nonlive nonnetwork programming substituted for a program deleted at the option of the cable system.

As a result of the FCC deregulation, the continued availability of the exceptions and limitations authorizing departures from the ordinary calculation of the DSE was called into question by the language of the Copyright Act which, in certain cases, referenced FCC rules in effect on a certain date. The public hearing held in July 1981 dealt extensively with the effect of FCC deregulation. The interim regulation announced on May 20, 1982, identified a number of areas where the FCC deregulation affected the calculation of the DSE. Those areas and the substantive comments submitted to the Copyright Office concerning the interim regulation are as follows:

(1) *Permissive substitution based on FCC rules in effect on October 19, 1976.* As noted earlier, the DSE definition permits the prorating of the DSE value for carriage of live nonnetwork programming substituted at the option of the cable system. The DSE definition further provides that if the substituted program is a nonlive program, no additional DSE value shall be assigned for such carriage. The DSE definition specifies that both cases of permissive substitute carriage are governed by "the rules, regulations, or authorizations of the Federal Communications Commission in effect on the date of enactment of this Act" [October 19, 1976]. The only FCC rules in effect on that date concerning such carriage pertained to the substitution of a program primarily of local interest to the distant community. Despite the deletion of this rule by the FCC, it remains effective for purposes of the Copyright Act and calculation of the DSE under the compulsory license. In order to clarify this matter, a new definition (8) was added to § 201.17(b) identifying the local content substitution rule as "rules and regulations of the FCC in effect on October 19, 1976."

(2) *New occasions for substitution based on 1980 FCC deregulation.* In explaining the interim regulation published on May 20, 1982, (47 FR 21786), the Copyright Office took the position that substitution of distant signals newly authorized by the FCC deregulation must be calculated at the full DSE value of the signal carried. This interpretation was based, in part, on the Report of the Judiciary Committee of the House of Representatives [H.R. Rep. No. 94–1476, 94th Cong., 2d Sess. 100 (1976)] stating:

> [W]here the FCC rules on the date of enactment of this legislation permit a cable system, at its discretion, to make such deletions or substitutions or to carry additional programs not transmitted by primary transmitters within whose local service area the cable system is located [and] . . . the substituted or additional program is a "live" program (e.g., a sports event), then an additional value is assigned to the carriage of the distant signal computed as a fraction of one distant signal equivalent. . . . *The discretionary exception is limited to those FCC rules in effect on the date of enactment of this legislation. If subsequent FCC rule amendments or individual authorizations enlarge the discretionary ability of cable systems to delete and substitute programs, such deletions and substitutions would be counted at the full value assigned for the particular type of station provided above.* [Emphasis added.]

In the comments submitted by NCTA this interpretation was disputed. Under the proposed construction of the NCTA, the DSE would be calculated on a pro-rated basis to reflect actual carriage of particular signals. This argument was made in an earlier Copyright Office rulemaking proceeding [45 FR 45270; July 3, 1980] and was rejected. For the reasons explained in detail in that proceeding, the Copyright Office continues to adhere to the view that:

> . . . Congress clearly did not intend to establish an open-ended policy of permitting the reduction of DSE values to correspond to actual signal carriage. [45 FR 45271]

The representatives of professional sports also submitted comments urging that the instructions in the Statement of Account forms be clarified in order to ensure that newly authorized substitutions were calculated at full DSE value. Since the time of the announcement of the interim regulations, the Copyright Office has revised the Statement of Account forms in order to implement the October 20, 1982, cable rate adjustment by the Copyright Royalty Tirbunal. [49 FR 26722]. We believe the concerns of professional sports have been addressed in this latest revision of the Statement of Account Forms.

(3) *Part-time carriage.* Unlike the case of permissive substitutions, the DSE definition dealing with part-time carriage pursuant to the late-night and specialty programming rules of the FCC is not tied to those rules in effect on the date of enactment of the 1976 Copyright Act. Since the FCC eliminated its rules on permissible additional carriage of late-night and specialty programming in its 1980 deregulation, the interim regulation eliminated these bases as a

justification for proration after June 30, 1981.

Comments submitted by NCTA dispute this interpretation. NCTA argues that the elimination of specific regulations governing part-time and specialty programming does not withdraw authorization to carry such programming. Instead, when the FCC eliminated its restrictions on signal importations, the specific rule authorizing part-time carriage of late-night and specialty programming became superfluous.

The Copyright Office has concluded that the interpretation contained in the interim regulation is correct under the statutory language of section 111(f). The provision authorizing proration "in the case of a station carried pursuant to the late-night or specialty programming rules of the Federal Communications Commission" was intended as a limited exception to the rule requiring full DSE valuation. At the time the Copyright Act was enacted, cable systems were operating in a highly restricted environment and it would appear that the exceptions to the full valuation rule were intended to give cable systems a measure of flexibility in a few, specific cases. When the FCC deregulated in 1980, these restrictions were largely eliminated, and the FCC "rules" governing late-night and specialty programming ceased to exist. As a result of the demise of these specific rules, the mechanism for triggering the applicability of the provision authorizing proration in the case of late-night and specialty programming was eliminated. In such circumstances, the general principle of full DSE valuation established in section 111(f) logically applies.

(4) *Required deletions.* Prior to the FCC's deregulation, cable systems were required generally to delete certain distant syndicated and sports programming and were permitted to substitute additional programming in its place. As discussed earlier, no DSE value is assigned for programming substituted in place of the deleted programming. As part of its 1980 deregulation, the Commission eliminated its syndicated program exclusivity rules, but the sport programming rule remains in effect.

Since this portion of the DSE definition in section 111(f) does not refer to FCC rules and regulations in effect on October 19, 1976, the interim regulation took the position that cable systems could no longer avail themselves of the syndicated program exclusivity rules as a basis for substitution without calculation of a DSE for such carriage. Accordingly, the Copyright Office added a new definition (9) to 201.17(b), stating that:

> For purposes of this section, the "rules and regulations of the FCC" which require a cable system to omit the retransmission of a particular program and substitute another in its place, refers to 47 CFR 76.67.

This provision makes clear that required deletions, which result in the nonassignment of a DSE value for programming substituted in place of deleted programming, may not only be made pursuant to the FCC's sports exclusivity rule continues to remain in force.

3. Retroactive Application of the Interim Regulation

When the Copyright Office announced the interim regulation on May 20, 1982, it stated its intention to apply the changes retroactively to the first accounting period following the effective date of the FCC deregulation. Since the deregulation of the FCC became effective June 25, 1981, the first accounting period affected was the July 1, 1981—December 31, 1981 accounting period. Because the filing date for that period had ended, the Copyright Office stated its intention to issue a supplemental form to determine whether or not an additional royalty should be submitted.

Instead of issuing the supplemental form, the Copyright Office individually contacted the cable systems which might have been effected by the FCC deregulation. Some of these cable systems did file amended accounting forms as a result of the Copyright Office inquiry.

The representatives of the cable industry criticized the retroactive application of the interim regulation. A law firm representing cable systems argued that retroactive application violated section 553 of the Administrative Procedure Act. NCTA claimed that retroactive application imposed an unreasonable hardship on cable systems.

Section 553 of the Administrative Procedure Act establishes "interpretative rules" as an exception to the standard "notice and comment" requirements. The Copyright Office believes the interim regulation clearly qualifies as an "interpretative rule" since it was based on a construction of section 111(f). The regulation itself imposes no burden or conduct on the public other than that required by the express language of the Copyright Act.

Moreover, the Copyright Office believes the criticism by the NCTA is misplaced since on June 10, 1981, the Copyright Office published in the **Federal Register** (46 FR 30649) a notice of public hearing designating one of the topics for consideration as: "What changes, if any, should be made to the Statement of Account forms and regulations with respect to part-time and substitute carriage as a result of the FCC elimination of its distant signal limitations and syndicated program exclusivity rules?" As a result, cable systems were informed of the possibility that FCC deregulation would have concomitant effect in interpreting the Copyright Act, even before the July 1, 1981—December 31, 1981 accounting period. In addition, after the interim regulation was announced on May 20, 1982, the Copyright Office individually contacted the relatively few cable systems which might have been affected.

4. Applicability of the Regulatory Flexibility Act

A law firm representing cable systems argued that the Copyright Office failed to comply with the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The Copyright Office takes the position this Act does not apply to the Copyright Office. The Copyright Office is a department of the Library of Congress and is part of the legislative branch. Neither the Library of Congress nor the Copyright Office is an "agency" within the meaning of the Administrative Procedure Act of June 11, 1946, as amended (title 5, Chapter 5 of the U.S. Code, Subchapter II and Chapter 7). The Regulatory Flexibility Act consequently does not apply to the Copyright Office since that Act affects only those entities of the Federal Government that are agencies as defined in the Administrative Procedure Act.[1] In addition, the Act does not apply since the interim regulation and this final regulation are interpretive.

Alternatively, if it is later determined by a court of competent jurisdiction that the Copyright Office is an "agency" subject to the Regulatory Flexibility Act and that this regulation is not interpretive, the Register of Copyrights has determined that this regulation will have no significant impact on small businesses because the modified DSE

[1] The Copyright Office was not subject to the Administrative Procedure Act before 1978, and it is now subject to it only in areas specified by section 701(d) of the Copyright Act (i.e. "all actions taken by the Register of Copyrights under this title [17]," except with respect to the making of copies of copyright deposits). (17 U.S.C. 706(b)). The Copyright Act does not make the Office an "agency" as defined in the Administrative Procedure Act. For example, personnel actions taken by the Office are not subject to APA–FOIA requirements.

calculation will only be made by large cable systems filing a Statement of Account form CS/SA–3.

List of Subjects in 37 CFR Part 201

Cable television, Copyright.

Final Regulations

In consideration of the foregoing, the amendments to Part 201 of 37 CFR Chapter II issued on an interim basis on May 20, 1982 (47 FR 21786), are hereby confirmed, and the amendments to the regulations are issued on a final basis, effective upon the publication of this document in the **Federal Register**.

(17 U.S.C. 111;702)

Dated: February 26, 1985.

Donald C. Curran,

Acting Register of Copyrights.

Approved:

Daniel J. Boorstin,

The Librarian of Congress.

[FR Doc. 85–5467 Filed 3–6–85; 8:45 am]

BILLING CODE 1410–03–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[OW–FRL–2791–3]

Ocean Dumping; Final Designation of Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today designates an ocean disposal site located in the San Pedro Basin near Long Beach, California, for the disposal of drilling muds and cuttings. This action is necessary to provide a suitable ocean dumping site for the current and future disposal of these materials resulting from oil drilling activities in Long Beach Harbor. This site designation does not authorize any actual dumping of drilling muds and cuttings. Authorization to ocean dump drilling muds and cuttings at the site is granted only by permit and other administrative proceedings conducted by the EPA.

DATE: This designation shall become effective April 8, 1985.

ADDRESSES: The record supporting this action may be examined at the following locations:

EPA Public Information Reference Unit (PIRU), Room 2904 (rear), 401 M Street, SW., Washington, D.C.

EPA Region IX, 215 Fremont Street, San Francisco, California

FOR FURTHER INFORMATION CONTACT: Mr. Frank G. Csulak, 202–755–9231.

SUPPLEMENTARY INFORMATION: Section 102(c) of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 et seq. (the "Act"), gives the Administrator of EPA the authority to designate sites where ocean dumping may be permitted. On September 19, 1980, the Administrator delegated the authority to designate ocean dumping sites to the Assistant Administrator for Water and Waste Management, now the Assistant Administrator for Water. This final site designation is being made pursuant to that authority.

The EPA Ocean Dumping Regulations (40 CFR Chapter I, Subchapter H, § 228.4) state that ocean dumping sites will be designated by promulgation is this Part 228.

The permitting process for ocean dumping requires two separate actions by EPA: (1) The selection and designation of a site at which these materials may be ocean dumped; and (2) the issuance of a permit for the disposal of specific types and amounts of material for a specific period of time. Ocean dumping may not commence until both of these actions are taken.

In the permit issuance procedure, the permitting authority, EPA Region IX in this case, considers the need for the proposed dumping and the environmental acceptability of the specific material for ocean disposal in accordance with the requirements of 40 CFR Part 227. After review of the permit application, EPA Region IX will issue a public notice announcing a tentative determination on permit issuance and invite public comment. Final action by Region IX will be taken after consideration of all comments which are received on the public notice.

In the site selection and designation process, the generic nature of the waste (e.g., sewage sludge, dredged material, fish cannery wastes) is considered, and site is selected which would minimize the impacts of the particular type of waste proposed for disposal. Site selection is in accordance with 40 CFR 228.5 and 228.6 which set forth five general criteria and eleven specific factors to be considered in selecting an appropriate site.

The action taken today is solely the final designation of a site appropriate for the disposal of drilling muds and cuttings found acceptable for ocean disposal in accordance with the requirements of 40 CFR Part 227 of the EPA Ocean Dumping Regulations. The purpose of this notice is to notify the public of the final designation, as an EPA approved ocean dumping site, of a site in the San Pedro Basin for the disposal of drilling muds and cuttings for a period of three years. This action does not authorize use of the site; use of the site may be authorized only by permit. The public has an opportunity to comment on and challenge the issuance of any permit during the process, as provided by 40 CFR Part 221.

A final Environmental Impact Statement (EIS) has been prepared on the site designation. The EIS describes the proposed disposal operation, discusses the alternatives to ocean disposal, and describes the anticipated environmental impacts associated with the proposed disposal. This document is available for public inspection at the addresses given above, and is summarized in the following paragraphs.

THUMS Long Beach Company, 840 Van Camp Street, Long Beach, California 90801, has applied for a special permit to transport and dump material into ocean waters pursuant to the Act. THUMS proposes to dump drilling muds and cuttings from drilling activities at four islands in Long Beach Harbor. Since no designated ocean dumping site is available for the disposal of these materials, a new ocean disposal site must be designated if the permit is to be granted.

Nature of Proposed Waste to be Disposed

A. All of the drilling muds and cuttings proposed for ocean dumping will originate from wells drilled within Long Beach Harbor

(1) Drill cuttings are composed of naturally occurring sediments. The results of grain size analysis demonstrated that the cuttings are composed primarily (58%) of sand particles (2.0–0.06 mm diameter) removed from the rock formation by the drilling activity. The cuttings also contain significant silt (0.06–.004 mm diameter) and clay (.004–.001 mm diameter) fractions, comprising respectively 11% and 29% of the cuttings. The silt and clay fractions of the cuttings are essentially residual drilling muds which are retained by the cuttings during the process of removing the larger drill cutting particles from the recirculating mud system (THUMS, 1982, page 6).

2. Drilling muds are a mixture of materials used to facilitate the drilling process through various rock formations. There are two types of drilling muds proposed for ocean dumping. The first is termed "spud mud" which is used in drilling the initial shallow section of the well, i.e., from the surface to 900 feet or 1500 feet. It is primarily composed of bentonite, lignite and freshwater which

are all naturally occurring substances. The second is "water based mud" and is actually a continuation of the spud mud. Usually these muds contain additives for fluid loss and viscosity control, lubricity, increase in weight requirements and, if required, for controlling cement contamination. The additives generally contain non-toxic (non-toxic amounts of biologically available material after initial dilution) materials and are used in varying amounts depending on the well depth and problems encountered while drilling. These materials are used in drilling the well to total depth and during preliminary completion phases. Small amounts of soybean oil (approximately 1.5%) are used to provide lubricity to minimize friction against the drill shaft at bending points where the direction of drilling is changed (THUMS, 1982, pages 7–30).

B. Limitations

(1) All waste materials to be dumped at this proposed ocean disposal site must meet EPA's ocean dumping regulations and criteria. No disposal of material of different composition will be permitted unless EPA determines that such disposal would not constitute a significant threat to the marine environment.

(2) Maximum quantities of drilling muds and cuttings to be disposed and rate of discharge are to be determined by the permitting authority, EPA Region IX, according to specific characteristics of the muds and cuttings to be disposed, method of transportation to be used, and frequency of disposal. Site management is now delegated to the permitting authority, EPA Region IX, for the evaluation of baseline and trend assessment data to determine capacity of the site for disposal, and maximum frequency, rate and volume of disposal according to specific characteristics of muds and cuttings prior to redesignation.

Evaluation of Site Selection Criteria

Five general criteria are used in the selection and approval for continuing use of ocean disposal sites. Sites are selected so as to minimize interference with other marine activities, to keep any temporary perturbations from the dumping from causing impacts outside the disposal site, and to permit effective monitoring to detect any adverse impacts at an early stage. Where feasible, locations off the Continental Shelf are chosen. If at any time disposal operations at a site cause unacceptable adverse impacts, further use of the site will be restricted or terminated. These general criteria are given in § 228.5 of the EPA Ocean Dumping Regulations, and § 228.6 lists eleven specific factors used in evaluating a disposal site.

EPA established these eleven factors to identify the key elements in the environmental assessment of the site for disposal. These factors are used to make critical comparisons between the alternative sites and are the basis for final site selection. The characteristics of the disposal site for drilling muds and cuttings are summarized below in terms of the five general criteria and are covered in more detail in the subsequent discussion of the eleven specific factors.

The disposal site's location has been chosen to minimize the interference of disposal activities with other activities in the marine environment. While there is potential for increased oil and gas exploitation in the area, no serious conflict with such activities is expected. Coordination with future lesses should effectively avoid potential conflicts. Effects upon the biological communities of the San Pedro Basin are expected to be negligible. There are no major commercial navigational problems since the nearest traffic separation lane for south bound ships will be 1½ nmi north of the proposed dumpsite (§ 228.5(a)). The location of the proposed disposal site has been established as clearly beyond potential influence to any of the above sensitive areas. The muds will be rapidly dispersed northwesterly at increasing depths within the undercurrent and cuttings will fall to the bottom in a region of extremely low biological productivity (§ 228.5(b)) (THUMS, 1982, page 82).

The disposal site has been limited in size in order to localize, for identification and control any immediate adverse impacts and to facilitate the implementation of an effective monitoring and surveillance program to prevent adverse long-range impacts (§ 228.5(d)). Utilization of the significantly greater nearshore depths located along the Pacific Coast, and specifically, the San Pedro Basin, provide for minimization of environmental impacts through adequate dilution during descent of the disposed wastes. The edge of the Continental Shelf from Long Beach, California, is about 150 miles offshore. EPA believes that such a time-consuming distance would make ocean dumping of the drilling wastes impracticable and would provide no appreciable environmental benefit (§ 227.5(e)). Specific criteria (§ 228.6) considered for site selection are discussed below.

Specific Criteria for Site Selection

1. Geographical position, depth of water, bottom topography, and distance from coast

The proposed dumpsite is within a 1.5 nmi radius of 33°34'30" N latitude and 118°27'30" W longitude near the center of the San Pedro Basin. The point is 16 nmi from the Long Beach opening in the federal breakwater; 11 nmi from Point Vincente and 11 nmi from Long Point on Santa Catalina Island. Water depth at the proposed disposal site is approximately 485 fathoms (2910 ft.).

The San Pedro Basin is the shallowest of about a dozen depressions along the southern California coast. It lies between the mainland of southern California and Santa Catalina Island, and it continues northwestward through a narrow channel with the Santa Monica Basin. It is bounded by a submarine valley, the Redondo Canyon, to the north, by the City of South Laguna Beach to the south. Its geographic boundaries extend from 33°16' to 33°50' N latitude, and 117°46' to 118°36' W longitude. Depths range from 400 to 495 fathoms (2400 to 2970 feet), with the deepest measured about halfway between Isthmus, Catalina Island, and Point Vincente on the mainland. The oceanward basins, beyond San Pedro Basin, gradually attain far greater depths, to more than 1,000 fathoms (6000 feet).

Offshore southern California is cut by numerous faults, many of which have been identified as active. Several active faults, fault traces, have been identified near the proposed dump site area and the San Pedro Basin in general. Slump and slide areas have also been identified for the San Pedro Basin.

2. Location to breeding, spawning, nursery, feeding or passage areas of living resources in adult or juvenile phases

Benthic Biology

The macrofauna of subtidal benthic communities in general within the Southern California Bight are influenced by a variety of factors including bathymetry, substrate type, oceanic and localized currents, biogeographic location, and oxygen concentrations (THUMS, 1982, page 61). The nearshore deep sea basins located between the mainland and first line of islands and ridges are quite broad and relatively shallow 490 fathoms (2940 feet) as a consequence of rapid sedimentation. Offshore basins are deeper with less plains, have greater slope habitat, and are relatively more highly oxygenated

than nearshore basins. The San Pedro Basin benthic macrofauna community is randomly distributed and numerically dominated by minor phyletic groups (THUMS, 1982, page 62). Similar to other nearshore habitats, San Pedro Basin supports few species and low population densities. The benthic fauna are typically deposit feeders, since the basin acts as a food trap. In comparison to other basins, San Pedro Basin exhibits the lowest standing crop and lower species richness and diversity than Santa Cruz and San Nicholas basins. This habitat is a result of extremely low oxygen levels. The oxygen levels generally correspond to the sill depth at 273 to 382 fathoms (1640 to 2296 feet) the oceanic minimum layer and little decomposition of organic material before reaching the basin floors (THUMS, 1982, page 62).

The greatest occurrence of animals is along a rim bordering Santa Catalina Island and off of Point Fermin. Siliceous sponge/ampharetid polychaete associations dominate the community makeup and occur in high density at the base of submarine mountains on either side of the sills and along the walls of the canyon. The dominant benthic invertebrates of the San Pedro Basin are polychaete worms and mollusks.

Foraminifera fauna of the inshore basin (including San Pedro Basin) are characterized by assemblages present in water depths below the basin sill where oxygen levels are normally less than 0.3 mg/l (THUMS, 1982, page 64). The principal species of this assemblage are *Bolivina argentea, Suggrunda eckisi, Buliminella tenuata, Cassidulinoides cornuta,* and *Loxostomum pseudobeyrichi.* The dominant form in the San Pedro Basin is *Buliminella tenuata.*

WATER COLUMN BIOLOGY

Plankton

The distribution, abundance, and type of planktonic organisms in the coastal waters between the mainland and Catalina are directly influenced by both mixing and transport by currents, i.e., the southerly flowing California Current and the counter-current in the Southern California Bight, and upwelling. The waters of the Continental California Shelf are highly productive due to upwelling and diffusion mixing of nutrients from colder deep waters to shallower surface waters.

Phytoplankton. Approximately 280 species of phytoplankton from California waters have been identified: 160 diatoms; 112 dinoflagellate, and 6 silicoflagellate species. Sixty species have been reported in Santa Monica Bay (THUMS, 1982, page 67). The distribution of the species and their abundances are controlled by several factors including amount of light, currents, intensity of grazing, temperature, and upwelling events. Phytoplankton variability is evident on a seasonal basis as well as over long-term periods in which it has been related to oceanographic and meteorological events.

Zooplankton. Zooplankton are instrumental in the transfer of energy from the phytoplankton to the higher trophic levels including fishes, birds, and marine mammals. In the California Current system, at least 546 invertebrate and 2,000 vertebrate species of fish larvae are estimated to occur, representing 23 major taxa among 9 animal phyla (THUMS, 1982, page 68). The zooplankton include both temporary meroplanktonic and permanent (holoplanktonic) forms which range in depth distribution from the surface to at least 3,280 fathoms (19,680 feet). Siphonophores dominate the fauna of the bottom of San Pedro Basin, feeding on bathypelagic animals living above the surface of the anoxic sediments.

Factors influencing zooplankton density and distribution within the study area include advection currents and the winds that cause currents, long-term meteorological and oceanographic changes, and nutrient/temperature relationships.

Several endemic species occur within the California Current system. Most species, however, vary geographically, seasonally, and yearly due primarily to changes in current patterns. These include the chaetognath *Sagitta bierri,* the copepod *Eucalanus bungi californicus,* the hyperiid amphipod *Hyperietta stebbingi,* and the squid *Abcaliopsis jelis* (THUMS, 1982, pages 68–70).

Nearshore waters have been found to support higher populations of benthic invertebrates and fishes than offshore waters, including the larval stages of the Dungeness crabs *Cancer magister,* pink shrimp *Pandalus jordanni, Crangon* shrimp, and several species of bottom-dwelling flatefishes (THUMS, 1982, page 71).

Depth Distribution of Zooplankton. Patterns of vertical distribution of zooplankton relate to such variables as light, phytoplankton density, food, and life history patterns. Individual species show differing depth maxima. Most species within the waters of the Continental Slope are neritic forms, with occasional oceanic and migratory abyssal forms (THUMS, 1982, page 71).

Fish Eggs and Larvae

The distribution of fish larvae is highly dependent upon the spawning areas of the parents and the hydrographic conditions prevailing in the area. Because most of the coastal waters are transported in either a northern or southern direction, larvae spawned in coastal areas tend to be retained there (THUMS, 1982, page 72). The distribution and abundance of fish larvae and eggs vary by season over the Southern California Bight depending on the species. For some species, for example the northern anchovy and the several species of rockfish, larvae occur throughout the Bight area during most of the year (THUMS, 1982, page 72).

Fishes

The southern California fish fauna consists of at least 485 species and an unknown number of deep sea fishes (THUMS, 1982, pages 72–74). The factors which govern the types and distribution of the fishes are largely those which govern the zooplankton and phytoplankton.

The San Pedro Basin fish fauna consists of vertically distributed fish communities including forms common to mainland and island shelf areas, mesopelagic deep sea or midwater forms, and bathypelagic demersal fishes. Various transient and resident species occur within the Basin.

Epipelagic forms are generally migratory through the area between various parts of the Pacific Ocean or at least through the Bight. Common species in southern California waters include Pacific bonito (*Sardo chiliensis*), yellowtail (*Seriola dorsalis*), jack mackerel (*Trachurus symmetricus*), northern anchovy (*Engraulis mordex*), Pacific mackerel (*Scomber japonicus*), Pacific barracuda (*Sphyraena argenta*), and Pacific sardine (*Sardinops sagax*).

Although Pt. Conception is recognized as a faunal boundary, many of the nearshore fishes, especially bottom fishes, are found throughout the coast as far north as British Columbia. Many of the deep water species are essentially cool water temperature fishes with centers of distribution lying to the north of the Southern California Bight. Therefore, a distinct southern California fauna does not occur below the thermocline or in the deeper waters of the coastal shelf.

Principal sportfish species taken within the general dumpsite region include rockfish (*Sebastes sp.*), kelpbass (*Paralabrax clathratus*), and Pacific mackerel. Sport fishing catch data demonstrate that the proposed ocean

disposal site is not an area of significant sportfishing activity, although the coastlines adjacent the San Pedro Basin and the Catalina Channel to the south do provide important sport fisheries. Commercially important species taken from the general dumpsite area include northern anchovy, jack mackerel, Pacific bonito (*Sarda chiliensis*), and squid.

Marine Mammals

Within the Southern California Bight, 32 species of marine mammals have been recorded. The Bight is the richest of all temperate water areas in terms of abundances and types.

The most common of these are the California grey whale (*Eschrictius robustus*), common dolphin (*Delphinus dephis*), pilot whale (*Globicephala macrorhyncha*), Pacific white-sided dolphin (*Lagenorhynchus obliquidens*), Pacific bottle-nosed dolphin (*Tursiops gilli*), California sea lion (*Zalophus californianus*), and harbor seal (*Phoca vitulina*). In addition to these species, 10 others are considered uncommon (or rare) in the region; these are the Minke whale (*Balaenoptera acutorostrata*), Sei whale (*Balaenoptera boreolis*), blue whale (*Balaenoptera musculus*), humpback whale (*Megaptera novaeangliae*), killer whale (*Orcinus orca*), sperm whale (*Physeter macrocephalus*), northern fur seal (*Calorhinus ursinur*), Stellar sea lion (*Eumentopias jubatus*), the northern elephant seal (*Mirounga angustirostris*), and the very rare California sea otter (*Enhydra lutris nereis*).

Five cetaceans which occur in California waters (California grey whale, blue whale, Sei whale, humpback whale, and sperm whale) are designated as endangered species by the federal government. The Guadelupe fur seal (*Arctocephalus townsendii*) is designated rare by the State of California. All marine mammals, however, are afforded complete protection under the Marine Mammals Protection Act of 1972.

In addition to the endangered whales, six other listed species under National Marine Fisheries Service jurisdiction occur in the project area. These are the fin whale (*Balaenoptera physalus*), the right whale (*Eubalaena glacialis*), the green sea turtle (*Chelonia mydas*), the leatherback sea turtle (*Dermochelys coriacea*), the olive ridley sea turtle (*Lepidochelys olivacea*), and the loggerhead sea turtle (*Caretta caretta*). As with the five species of whales, these six species are broadly distributed, seasonal migrants that are not dependent on the habitat that will be affected by the project. Therefore, the designation of the San Pedro Basin disposal site is not likely to affect any of the listed species.

3. Location in relation to beaches and other amenity areas

Coastal beaches are 21 nmi north and east of the dumpsite. Palos Verdes Peninsula with its rocky shoreline is over 11 nmi north and Santa Catalina Island's closest rocky shoreline is 7.5 nmi south of the dumpsite. Since subsurface currents at the proposed disposal site move northwest, it is not anticipated that disposal activities will impact these nearby shorelines.

4. Type and quantities of waste proposed to be disposed of and proposed methods of release, including methods of packing the waste, if any

The proposed action is to dispose drilling muds and cuttings that will meet EPA criteria and applicable local requirements. The types of waste materials to be disposed consists of the following constituents:

a. *Cuttings:* Natural sediments consisting of sand and rock fragments.

b. *Spud mud:* Spud mud is predominantly used in the shallow section of the well, i.e., from the surface to 900 feet. It is primarily composed of bentonite, lignite, freshwater and non-toxic additives (THUMS, 1982, pages 7–21).

c. *Water-based mud:* Continuation of spud mud at greater depths (i.e., over 1,000 ft.).

The oil drilling program in Long Beach is expected to peak in some five to seven years and then taper off. The site is being designated for only three years, the maximum time for which a permit may be issued. This will permit a re-evaluation of the site designation after some use but before the period of peak drilling. Maximum quantities of drilling muds and cuttings to be disposed and rate of discharge will be established by the permitting authority, EPA Region IX, according to specific characteristics of the muds and cuttings to be disposed, method of transportation to be used, and frequency of disposal.

5. Feasibility of surveillance and monitoring

The proposed dumpsite is readily accessible for surveillance and monitoring. It will be required that monthly and quarterly monitoring of physical, chemical, and biological water quality parameters be carried out by the permittee(s) to evaluate the impact to the marine environment from disposal operations. Specific requirements regarding the monitoring program will be addressed through the permitting process.

6. Dispersal, horizontal transport, and vertical mixing characteristics of the area including prevailing current direction, if any

The water in the Southern California Bight Region is a mixture of relatively low temperature-low salinity water transported south in the California Current with higher temperature-higher salinity water brought north in the California Undercurrent. The California Current water dominates in the upper few hundred meters of the ocean seaward (west) of the borderland. The California Undercurrent is predominantly below 500 m (1640 feet). The 200 to 500 m (656 to 1640 feet) depth range is a zone of mixed water (THUMS, 1982, page 50).

The water entering the California Current system comes from four great water masses. The offshore waters of the northern part of the California Current are derived from the Subarctic water mass. As the Current moves southward, it mixes with waters from the Central water mass which enters from the northwest and west. Equatorial water enters the system as a subsurface current from the south, inshore of the California Current. The fourth major water source is from upwelling of mid-depth waters all along the coast. Inshore of the California Current, gyres or eddy circulations are often noted.

Currents in the nearshore region are influenced by the alignment of the coast, the width of the continental shelf, oceanic currents, general topography, and bathymetry. Local currents are highly dependent upon the predominant forcing mechanism driving the currents. The primary mechanism driving the currents in the nearshore region are the winds, tides, oceanic currents, density structure, waves, and river discharge especially during periods of runoffs. At any one location, one or more of the driving forces and resulting currents are, in general, extremely dependent upon time and location. Tidal currents will predominate in constricted areas such as at entrances to bays and inlets. Tidal currents are important because they are always present, acting on a diurnal or semidiurnal time scale. The influence of the oceanic current on the nearshore currents is variable throughout the year.

Basin-to-basin differences indicate that the bottom waters of most basins move in a general northwesterly direction, opposite of the surface current. Coldest waters occupy each basin from its bottom to near its sill depth. Current measurements show that the flow at the bottom of San Pedro Basin is normally very weak, less than

0.05 cm/sec, but strong surges can occur (THUMS, 1982, page 50).

These water masses directly influence the physical and chemical makeup of the surface and bottom waters and sediments of the San Pedro Basin as well as the biotic components of the area.

This situation indicates that materials dumped at the site will not be carried toward the coast but either will be dispersed in an area parallel to the shore or will sink to the bottom of the basin. The presence of two currents moving in opposite directions in the area indicates mixing and dispersion are likely to be rapid.

7. Existence and effects of current and previous discharges and dumping in the area (including cumulative effects)

The Southern California Bight receives pollution from both discrete and diffuse sources. Discrete sources include municipal wastewater discharge and surface runoff. Diffuse discharges include ocean dumping, runoff and atmospheric addition, vessel waste, and advective transport.

The last THUMS dumping operation at the site took place in January 1969. Since that time there have been no permitted dumping operations in the site or adjacent to it. At the outset of historic dumping operations, the California Department of Fish and Game had a command patrol boat on-scene with other government and THUMS observers aboard to visually monitor the dumping operations. Within minutes after the first static dump, the observers on both crafts could not visually locate the dumpsite except for a marker buoy indicating the spot of discharge. Nothing of a residual nature was observed in the aerial photographs.

From 1966 to January of 1969, THUMS disposed of drilling muds and cuttings in the San Pedro Basin with the suport of the U.S. Bureau of Commercial Fisheries, U.S. Geological Survey, U.S. Bureau of Land Management, California Department of Fish and Game, California Regional Water Quality Control Board, California State Lands Commission, and the California State Attorney General's office. The U.S. Army Corps of Engineers sent a letter on March 4, 1966, to THUMS which the Corps, considered as evidence of approval for the disposal operation.

The disposal was pumped from a specially built motorless barge that carried between 5,000 and 6,000 barrels depending on the weight of the fluid being hauled. The material was discharged while the barge was static in the water and the material was pumped through a 10 inch hose that extended 20 feet below the ocean surface. During these discharge operations, no effluent plume was observable from either aircraft or surface craft. The fine particulates apparently continued a rapid descent. During the three years of discharging, no complaint was received from any of the governmental monitoring agencies. (THUMS, 1982, page 87).

There is an LA–2 dredged material ocean disposal site located at center coordinates 33°37'06" N latitude, and 118°17'24" W longitude, which is approximately ten nautical miles towards the northeast from the proposed drilling muds and cuttings site. The LA–2 dredged material disposal site is an existing interim site, designated by EPA in 1977. The site receives dredged material originating principally from the Ports of Los Angeles and Long Beach.

When dumped, most dredged material forms clods and descends through the water column and quickly reaches the bottom, with little horizontal deflection due to currents. Dredged material disposed of at the LA–2 site, therefore, is expected to be retained within the boundaries of the disposal site. It is anticipated that the drilling muds at the proposed site will be rapidly dispersed northwesterly in the undercurrent at increasing depths while the cuttings will fall to the bottom of the basin.

Site surveys have previously been conducted at both sites and additional trend assessment monitoring will provide EPA with field data to assess any potential for cumulative impacts.

8. Interference with shipping, fishing, recreation, mineral extraction, desalination, fish and shellfish culture, areas of special scientific importance, and other legitimate uses of the ocean

The dumpsite is 1.5 nmi south of the nearest shipping lane. There are no mineral extraction or desalination activities proposed for the site. There is no fish or shellfish culturing in the area. There are no special scientific or other uses of the ocean with which dumping will interfere. Fishing, both commercial and sport, as well as small craft piloting will be slightly disrupted while the tankship is on station.

It is possible that the general area of the disposal site may be opened up for oil and gas exploration and production at some time in the future. However, no specific plans have been announced at this time, so it is not possible to analyze the potential for conflicts between these uses and the use of the site for ocean disposal activities.

Should this area be opened to oil and gas exploration and should it be proposed to locate a drilling rig in the vicinity of the dumpsite, it would then be necessary to analyze the potential for cumulative impacts as a result of discharges of drilling muds and cuttings from such drilling rigs in association with the discharges occurring at this site. Such analyses would be made in the process of issuing NPDES permits for discharges from drilling rigs, and, if necessary, the permit and/or dumpsite could be restricted or site relocated.

9. The existing water quality and ecology of the site as determined by available data or trend assessment or baseline surveys

The characteristics of the marine environment in the San Pedro Basin where the proposed site is located has been discussed previously in detail. The Basin is of general open ocean physical, chemical, and biological characteristics with fauna typical of the Pacific marine environment off the southern coast of California.

Water column levels of trace metals in the California Current is as low as that in the open ocean. Because of its large volume, the total amount of trace metals transported by the Current is very large in comparison with all other sources (THUMS, 1982, page 57). The California Mussel Watch Program has monitored water quality along the mainland coast and also stations on the offshore islands. These studies have indicated trace metals in tissues as well as the water and sediments (higher near urban areas than areas farther away from population centers). Accordingly, the higher levels of trace metals are associated heavily with the municipal dischargers found in the Southern California Bight (THUMS, 1982, page 56).

Suspended particulate trace metal concentrations for inner basin, outer basin, and outer banks indicate that the concentration of surface water column particulates do not contrast markedly, although lead was higher by a factor of 2 or 3 in particulates at the outer (offshore) basins relative to the inner (nearshore) basin (THUMS, 1982, page 57). Bottom water samples of the outer banks exhibited a substantial increase of lead, zinc, cadmium, and possibly copper, compared to the inner and outer basins. Elements including Cd, Cu, Pb, V and Zn exhibited higher levels (although of the same magnitude) in the inner basin sediments than in the outer basin (THUMS, 1982 page 59).

HYDROCARBONS

Hydrocarbons encountered in the marine environment may originate from not only human activities (e.g., offshore drilling and production operations, oil

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tanker operations, coastal refineries, atmospheric transport of combustion products, coastal municipal and nonrefinery industrial wastes, and urban and river runoff), but also natural sources (e.g., biological production by organisms as well as submarine oil seeps). Distinction of environmental hydrocarbons among these various sources has only recently been attempted.

SYNTHETIC CHLORINATED HYDROCARBONS

The major source of chlorinated hydrocarbons in the area of the dumpsite is primarily for municipal wastewater dischargers; however, ocean dumping, surface runoff, and aerial fallout all contribute to the total chlorinated hydrocarbon levels in the Bight. Southern California Bight levels of dissolved, chlorinated hydrocarbons range from 0.03 ppb to 20 ppb (THUMS, 1982, page 60).

10. Potentiality for the development or recruitment of nuisance species in the disposal site.

The development or recruitment of nuisance species in the disposal site or adjacent areas is not expected to occur.

11. Existence at or in close proximity to the site of any significant natural or cultural features of historical importance

No historically important natural or cultural features exist at or in close proximity to the proposed dumpsite.

Impact Assessment

The impacts on recreational, economic, esthetic, and biological resources of such disposal are summarized below.

(1) No detrimental impacts on the area's recreational uses are expected. Recreational values within the area include boating and fishing. Inshore waters and shorelines are well out of the intial dilution zone and will not be impacted.

(2) It is anticipated that the drilling muds and cuttings disposal activity will not adversely impact the recreational and commerical value of living marine resources, such as sport and commercial fisheries.

(3) No long-term effects on the proposed water quality of the dumpsite are expected. However, short-term turbidity increases are expected within the initial dilution zone. The esthetic values of the area, therefore, will be minimally impacted.

The disposal material does not contain pathogenic organisms, biologically available toxic materials, or other material which might significantly impact either fisheries, shell fisheries, or public health directly or indirectly through food chain interaction.

Ocean disposal of drilling muds and cuttings have several advantages over transporting them from offshore drill sites to land disposal sites. The advantages are:

a. Decreased truck traffic from docksite and disposal site.

b. Decrease in energy use associated with trucking to land dump sites.

c. Decrease of potential for nearshore air and water pollution associated with barge transport of trucks to shore facilities.

d. Decrease of potential for air and noise pollution due to offloading operations and trucking.

e. Unnecessary use of the presently limited Class II–1 disposal site within the Region.

f. Decreased marine traffic within Long Beach Outer Harbor with a decrease in probability of accident in transit to and from shore facilities.

g. Decrease in probability of accidents on California highways.

(4) Effects on water column and benthic organisms.

Phytoplankton. Initial discharge of the drilling muds will increase turbidity in the initial dilution zone. Thus, a small decrease in primary productivity could be expected. However, the rapid descent of the drilling muds to a depth of 60 m and subsequent diluted dispersion in the California Undercurrent at the lower edge of the euphotic zone substantially diminishes the chances of any significant reduction in primary productivity (THUMS, 1982, page 92).

Zooplankton. Temporary loss of zooplankton biomass may occur within the initial dilution zone related to the physical effects of particulates interrupting respiratory and feeding metabolism. Further transport of the drilling muds to increasing depths at minimal concentrations minimizes any further adverse impacts occurring within the zooplankton community.

Fishes. No adverse impacts on the pelagic, littoral, mesopelagic, or bathypelagic fish fauna are expected to occur. These fishes will respond to the increase of particulate concentrations by moving out of the immediate area of discharge, which will eliminate the potential for interruption of any metabolic processes (THUMS, 1982, page 93).

Benthos. The San Pedro Basin benthic environment will be impacted by the settling of the cuttings particles and the larger drilling mud particulate fractions. Approximately 1/3 of the disposed material will be added to the sediments of the basin between 0.3 to 7.5 km northwest of the dumpsite (THUMS, 1982, page 93).

The addition of the cuttings will likely cause a shift in the grain size distribution toward larger particle sizes, primarily evident nearest the point of impact and decreasing in impact with increasing distance northwest.

Biologically, the shift in grain size characteristics may alter benthic community structure and/or smother sessile benthic organisms unable to migrate up through the deposited material. Biological loss is expected to be minimal and localized since basin productivity is low and the community exhibits low density, diversity, and random spatial dispersion.

The non-availability of chemical constituents of the drilling muds and cuttings to animals precludes any adverse toxicity impacts. Primary impacts would relate to a change of the physical environment which in turn may alter the biotic components in the area.

Endangered Species

According to the National Marine Fisheries Service and the U.S. Fish and Wildlife Service, no adverse short-term or long-term impacts on any federally endangered or rare species are expected from the discharge of drilling muds and cuttings in the San Pedro Basin.

Conclusion

EPA has reviewed the information submitted by the applicant in regard to the characteristics of the site and believes it adequately addresses the environmental features of the site and supports the conclusion that the site is acceptable for the ocean disposal of drilling muds and cuttings. Therefore, EPA designates this site for a period of three years from the effective date of site designation.

EPA regulations provide for ambient site monitoring programs as deemed necessary by the Regional Administrator and for evaluation of disposal site impacts based on the results of such programs. See 40 CFR 228.3 and 228.9—228.10. The regulations further provide for modifications in site use or designation based on the results of impact or on changed circumstances concerning use of the site. See 40 CFR 288.11. Management authority of this site will be delegated to the Regional Administrator of EPA Region IX. Any permittee using the site will be required to conduct an appropriate monitoring program and report the results to EPA.

The proposal to designate this site was published in the **Federal Register**

(48 FR 55000, December 8, 1983), and the public comment period closed on January 23, 1983. Eleven sets of comments were received on the proposed site designation and draft EIS. Comments received on the draft EIS have been addressed in the final EIS. The California Coastal Commission has stated that a consistency certification with the California Coastal Zone Management Plan is required for this site designation, and has provided such certification. This document is available for public inspection at the addresses given above.

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. EPA has determined that this action will not have a significant impact on small entities since the site designation will only have the effect of providing a disposal site for drilling mud and cuttings resulting from oil drilling operations within Long Beach Harbor.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action will not result in an annual effect on the economy of $100 million or more or cause any of the other effects which would result in its being classified by the Executive Order as a "major" rule. Consequently, this final rule does not necessitate preparation of a Regulatory Impact Analysis.

This final rule does not contain any information collection requirements subject to Office of Management and Budget Review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

List of Subjects in 40 CFR Part 228

Water pollution control.

Authority: 33 U.S.C. 1412 and 1418.

Dated: February 1, 1985.

Henry L. Longest II,

Acting Assistant Administrator for Water.

PART 228—[AMENDED]

In consideration of the foregoing, Subchapter H of Chapter I of Title 40 is amended by adding to § 228.12(b) an ocean dumping site for Region IX as follows:

§ 228.12 Delegation of management authority for ocean dumping sites.

* * * * *

(b) * * *

(21) Drilling muds and cuttings site—Region IX.

Center point location: 33°34'30" N latitude, 118°27'30" W longitude.

Size: A circle with a diameter of 3.0 nautical miles.

Depth: Approximately 485 fathoms (2910 feet).

Primary Use: Drilling muds and cuttings.

Period of Use: 3 years from effective date of site designation.

Volumes: To be determined by EPA Regional Administrator, Region IX.

Restriction: Disposal shall be limited to water-based drilling muds and cuttings which meet the requirements of the Ocean Dumping Evaluation Criteria of 40 CFR Part 227. Permittee(s) must implement monitoring program acceptable to EPA Regional Administrator responsible for management of the site.

[FR Doc. 85-5448 Filed 3-6-85; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6588

[C-4436]

Colorado; Withdrawal of National Forest Land for Protection of Recreation and Resource Values

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 820.34 acres of land within the Pike National Forest from mining for a period of 50 years to protect fragile and irreplaceable resource values. The land has been and will remain open to surface entry appropriate to national forest land and to mineral leasing.

EFFECTIVE DATE: March 7, 1985.

FOR FURTHER INFORMATION CONTACT: Richard D. Tate, BLM Colorado State Office, 2020 Arapaho Street, Denver, Colorado 80205, 303-844-2592.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described national forest land which is under the jurisdiction of the Secretary of Agriculture, is hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. Ch. 2) to protect irreplaceable resource values:

Pike National Forest

Sixth Principal Meridian

T. 12 S., R. 68 W.,

Sec. 29, lots 1, 2, 3, 4, 7, 8, 9, and 10;
Sec. 30, SE¼NE¼, and E½SE¼;
Sec. 31, NE¼NE¼;
Sec. 32, lots 2, 3, 4, 5, 7, 8, and 9.

T. 13 S., R. 68 W.,

Sec. 5, lots 1 and 2, and SE¼NW¼.

The area described aggregates 820.34 acres of land in El Paso and Teller Counties.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the national forest land under lease, license, or permit, or governing the disposal of its mineral or vegetative resources other than under the mining laws.

3. The withdrawal shall remain in effect for a period of 50 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

Dated: February 21, 1985.

Robert N. Broadbent,

Assistant Secretary of the Interior.

[FR Doc. 85-5474 Filed 3-6-85; 8:45 am]

BILLING CODE 4310-84-M

Fish and Wildlife Service

50 CFR Part 91

Migratory Bird Hunting and Conservation Stamp ("Duck Stamp") Contest

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Amendment of rules.

SUMMARY: The Service amends the regulations governing the conduct of the annual Migratory Bird Hunting and Conservation Stamp ("Duck Stamp") Contest to improve administration of the contest. The amendments will improve the viewing and handling of entries, increase the entry fee, and reduce the number of debts for returned checks. The changes will allow the Service to handle the large number of entries more efficiently, and provide additional funding to cover operating costs associated with the contest. The dates and location of this year's contest are also announced.

DATES: 1. These amendments are effective upon publication.

2. This year's contest will be held on November 5 and 6, 1985, beginning at 9 a.m. each day.

3. Persons wishing to enter this year's contest may submit entries anytime

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after July 1 but all must be postmarked no later than midnight October 1.

ADDRESSES: 1. Requests for the contest regulations, list of eligible species, and Reproduction Rights Agreement should be addressed to: Migratory Bird Hunting and Conservation Stamp Contest, U.S. Fish and Wildlife Service, Room 1025–A Interior, Department of the Interior, Washington, D.C. 20240.

2. The contest will be conducted in the following location: Department of the Interior, Auditorium (C Street Entrance), 18th & C Streets, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Mr. Glenn Smart, (202–653–2220) or Mr. Peter Anastasi (202–343–5508), Room 1025–A Interior, Office of Pubic Use Management U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240.

SUPPLEMENTARY INFORMATION:

1. Section 91.11 is amended to require contestants to request copies of the current year's contest regulations, list of eligible species and Reproduction Rights Agreement. Beginning this year, the Service will provide contestants with a complete list of species eligible as the dominant feature of the design (see § 91.14 changes below). This section is amended to ensure that contestants receive the current list of eligible species and Reproduction Rights Agreement to avoid any misunderstandings or erroneous interpretations of the rules of the contest.

2. Section 91.12 is amended to increase from $25.00 to $35.00 the non-refundable fee that must accompany each entry that is submitted. This increase is required to defray the increased costs associated with processing and judging the large number of entries submitted. This section also is amended to specify that remittances should be in the form of a cashier's check or money order. This change will help to reduce costs associated with personal checks that are returned for insufficient funds.

3. Section 91.13 is amended to specify that entries may not exceed one-half inch in total thickness. This change will ensure that the hundreds of entries can be handled more efficiently and will fit in the display cases. Each year the Service receives several entries with elaborate mounts that are difficult to handle efficiently and safely. This amendment will not affect the actual artwork or its ability to compete with other entries.

4. Section 91.14 is amended to advise contestants that a list of species eligible for portrayal as the dominant feature of the design will be provided to ensure that entries are not submitted erroneously due to interpretation. Each year, the Service receives several entries that must be disqualified due to ineligible species selection. The list will contain both the common and scientific names of each species and is intended to assist contestants in submitting an eligible entry. This amendment affects the Service's procedure for mailing application packages to potential contestants.

The amendments to 50 CFR Part 91 contained in this notice are either minor and clarifying amendments or amendments to the Service's organization and management procedures applicable to the Duck Stamp contest. The notice and comment provisions of 5 U.S.C. 553(b) are impracticable and unnecessary for such clarifying and administrative changes. For similar reasons, these changes are not "rules" within the meaning of Executive Order 12291. Nor are the entrants in the Duck Stamp Contest "small entities" within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* Analyses of these amendments to 50 CFR Part 91 are thus not required under either E.O. 12291 or the Regulatory Flexibility Act. In addition, the amendments do not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

The primary authors of this document are James E. Pinkerton and Peter A. Anastasi, U.S. Fish and Wildlife Service.

List of Subjects in 50 CFR Part 91

Wildlife.

PART 91—[AMENDED]

Accordingly, 50 CFR Part 91 is amended as follows:

1. The authority for Part 91 reads as follows:

Authority: 5 U.S.C. 301, 31 U.S.C. 9701.

2. Section 91.11 paragraph (b) is amended by revising the first sentence to read as follows:

§ 91.11 Contest deadlines.

* * * * *

(b) All persons intending to submit an entry to the contest must request copies of the current year's contest regulations list of eligible species and Reproduction Rights Agreement by writing to "Migratory Bird Hunting and Conservation Stamp Contest." Room 1025–A Interior, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240. * * *

3. Section 91.12 is amended by replacing the amount "$25.00" with the amount "$35.00," and revising the last sentence to read as follows:

§ 91.12 Contestant eligibility.

* * * * *

Remittance should be by cashier's check or money order and made payable to the U.S. Fish and Wildlife Service.

4. Section 91.13 is amended by revising the fourth sentence to read as follows:

§ 91.13 Technical requirements for design and submission of entry.

* * * * *

Each entry must be matted (over or under) with an eight inch by ten inch mat (color optional), not exceeding one-half inch in total thickness and protected by an easy to remove covering of acetate or cellophane.

* * * * *

5. Section 91.14 is amended by inserting the following sentence after the first sentence:

§ 91.14 Restrictions on subject matter of entry.

* * * A list of eligible species will be provided to contestants as specified in § 91.11 of this Part.* * *

Dated: February 25, 1985.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85–5417 Filed 3–6–85; 8:45 am]

BILLING CODE 4310–55–M

Proposed Rules

Federal Register
Vol. 50, No. 45
Thursday, March 7, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 230

[Release No. 33-6568; File No. S7-9-85]

Facilitation of Multinational Securities Offerings

AGENCY: Securities and Exchange Commission.

ACTION: Request for public comment.

SUMMARY: National boundaries which have in the past circumscribed securities trading are rapidly losing their significance as a global marketplace develops. To provide a context for public comment on internationalization, the Commission is publishing two conceptual approaches which would facilitate multinational offerings: The reciprocal approach and the common prospectus approach. In addition, the Commission is requesting commentators to comment on a series of specific questions dealing with these approaches and with the Commission's role in facilitating multinational offerings.

DATE: Comment must be received on or before July 15, 1985.

ADDRESS: Comment letters should refer to File No. S7-9-85 and be submitted in triplicate to John Wheeler, Secretary, Securities and Exchange Commission, Washington, D.C. 20549. The Commission will make all comments available for public inspection and copying in its Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Carl T. Bodolus (202) 272-3246 or Martin L. Meyrowitz (202) 272-3250, Office of International Corporate Finance, Division of Corporation Finance, Securities and Exchange Commission, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: In light of the increasing internationalization of securities markets, the Securities and Exchange Commission today announced that it is soliciting public comment on methods ot harmonize disclosure and distribution practices for multinational offerings by non-governmental issuers. To provide a framework for public comment, the Commission is publishing two conceptual approaches which would facilitate such offerings in the United States, the United Kingdom and Canada.[1] The United Kingdom and Canada were chosen for consideration because issuers from these countries use the United States' capital markets frequently and their disclosure requirements are more similar to the United States' requirements than those of other countries.

The two methods for facilitating multinational offerings being considered are: (1) An agreement by the three countries that a prospectus accepted in an issuer's domicile which meets certain standards would be accepted for offerings in each of the participating countries (reciprocal approach); and (2) the development of a common prospectus which would be simultaneously filed with each of the country's respective securities administrators (common prospectus approach). Although the Commission already has made significant accommodations in its disclosure requirements to facilitate foreign offerings in the United States, it believes that the proposed conceptual approaches may lead to increased harmonization. As a first step in this process, the Commission is requesting public comment to determine whether these approaches, or others which may be suggested by commentators, are feasible, practical and consistent with investor protection.[2]

I. Background

In recent years, the Commission has recognized that the lines of demarcation between domestic and international capital markets are becoming more difficult to ascertain. Traditional notions of a world made up of separate and distinct domestic capital markets are being replaced by a global market for corporate securities. Among the factors which some believe may contribute to the internationalization of the world capital markets include: The abandonment of U.S. investment controls; the advent of floating exchange rates; relaxation of foreign exchange controls; efforts by corporations and investors to diversify funding and investment sources; the recent repeal of the withholding tax on interest paid to foreign holders of United States bonds; interest rate differentials; the relatively long period of peace and prosperity for the developed countries; and new technology in the areas of transportation and communications. One example of this trend is the increasing number of companies whose securities are traded on domestic and foreign exchanges. A recent article identified approximately 236 issuers as having an active international trading market in their equity securities.[3] According to this article, a company with an active international trading market must have daily active trading outside its home market. Of the 236 issuers identified, 84 are U.S., 49 are Japanese, 17 are German, 16 Australian, 13 British, 12 Canadian, 10 Swedish, 7 South African, 5 Swiss, 2 Italian, 2 Belgian, 2 New Zealanders and 4 from Hong Kong. France, Denmark, Norway, Singapore and Malaysia each had one issuer identified by the article as having an internationally traded security

The most rapid internationalization has occurred in the debt market. Recently, widely followed issuers have been able to switch between domestic markets, foreign markets, and the Euromarket, depending on where they can offer their debt securities on the most favorable terms. United States corporations are probably the most mobile, moving in and out of their domestic markets with considerable ease. In 1983, domestic United States corporate debt issues amounted to $52.4 billion, compared with $44 billion in 1982.[4] In the first six months of 1984

[1] The commission recognizes that the two conceptual approaches may not be adequate or appropriate where the issuer is a regulated investment company. Accordingly, offerings by investment companies are not encompassed in the two conceptual approaches.

[2] The Commission also intends to consider issuing within the next month a concept release soliciting public comment on other aspects of the internationalization of the securities markets. Possible issues include 24 hour trading, consolidated market information systems, broker-dealer regulation and international regulatory cooperation.

[3] *See* Yassukovich, "The Rise of International Equity," *Euromoney*, May 1984 at 63.

[4] *See* "The One World Capital Market," *Euromoney*, October 1984 at 106.

domestic debt volume amounted to $26.7 billion. [6] Over the same period, the volume of Eurobonds isssued by United States corporations amounted to $13.3 billion in 1982, declining to $6.2 billion in 1983 due to the increase in domestic issues. [8] In the first half of 1984, United States corporations issued $6.8 billion in Eurobonds. [7]

Total issues in the Eurobond market have about doubled in recent year from $26.5 billion in 1981 to $45 billion in 1983. [9] Underwritten foreign debt and equity offerings in the United States have averaged over $5 billion per year since 1975. [9] In the first half of 1984, $3.2 billion in foreign offerings were underwritten in the United States markets. [10] Transactions in the secondary markets by foreign investors in United States stocks have increased from $17.2 billion in 1970 to over $134 billion in 1983. [11] Similarly, transactions in foreign stocks traded in the United States increased from $2.03 billion in 1970 to approximately $30 billion in 1983. [12] Many of these stocks are in the form of American Depositary Receipts ("ADRs") registered with the Commission. [13]

In addition to foreign offerings in the United States, there have been several recent multinational offerings. [14] In 1983, two Canadian companies, Alcan Aluminum and Bell Canada Enterprises, each offered equity issues simultaneously in the United States, Canada and Japan. In 1984, British Telecommunications made an initial public offering of over 3 billion ordinary (common) shares with an equivalent U.S. dollar offering price of 4.5 billion dollars in the United Kingdom, Japan, Canada and the United States. Thus, an international capital market, both in primary offerings and secondary trading, is developing at a rapid pace.

II. Present Procedure

In its attempt to address changes in the capital markets, the Commission adopted Form 20–F [15] in 1979 which sets forth the disclosure requirements for foreign private issues ("foreign issuers") filing periodic reports under the Securities Exchange Act of 1934 (the "Exchange Act"). [16] When this form was adopted, certain accommodations were made to foreign issuers in an attempt to harmonize the disclosure requirements in the United States with the requirements most commonly found in foreign countries. In 1982, an integrated disclosure system for foreign issuers making public offerings similar to the system available to domestic issuers making public offerings was adopted. [17]

In response to accelerating trends towards an international capital market for primary securities offerings, the Commission has determined that public comments is needed to formulate methods to further accommodate miltinational offerings and to harmonize the prospectus disclosure standards and securities distribution system of the three countries.

III. Comparison of Distribution and Disclosure Systems

As a first step in its examination of multinational offerings, the Commission's staff compared the distribution systems and the statutory and regulatory disclosure requirements of the United Kingdom and certain provinces of Canada with the distribution system and disclosure requirements of the United States applicable to domestic issuers and to foreign issuers offering securities in the United States by registering on Form F–1. [18]

For purposes of the survey, the staff concentrated on three areas: (1) Comparative differences resulting from each country's method of underwriting securities in public offerings and in the manner in which disclosure regulation is implemented; (2) disclosure requirements concerning the nature and character of the issuer, its business and its management; and (3) disclosure requirements pertaining to the financial statements to be included in the prospectus. In addition to comparing the distribution systems and disclosure requirements of the three countries, the staff compared each country's liability provisions, including antifraud statutes relating to omissions, and false or misleading statements made in prospectuses.

Some of the conclusions which may be drawn from the staff's comparative survey are summarized below. The summary is not exhaustive and illustrates only selected material differences.

A. Underwriting Methods and Disclosure Regulation

All three countries have their own system for underwriting publicly offered securities. Canada and the United States have very similar underwriting methods. Neither the United Kingdom nor Canada, generally, provide for "shelf registrations." [19] On the other hand, the methods of underwriting used in the United Kingdom are substantially different from those used in the United States and Canada.

The United Kingdom uses two principal methods of offering securities—the offer by subscription and the offer by tender. In the former, the offering price is set and solicitations from the public are sought on the day the offering is publicly announced by printing the entire prospectus and subscription forms in nationally circulated newspapers and furnishing copies to brokers and the public generally—the "impact day." After a short subscription period, [20] the applications are sorted, allotments are made and the amounts to be taken by the brokers and the public are announced—the "allotment day." [21] In the offer by tender, the same prospectus publication procedures apply except that on impact day a minimum tender price is announced and tenders at or above the minimum tender price are solicited. Shares for which applications are accepted will all be sold at the same price—the "striking prices."

In the United Kingdom, preliminary prospectuses are not generally used and the contents of the prospectus are not generally available to the public until after its publication in nationally circulated newspapers and statistical services. Unlike the United States and Canada where offers, but not sales, can be made in the "waiting" period, [22] offers

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[6] *Id.*

[8] *Id.*

[7] *Id.*

[8] *See* Curtin, "Now It's Grown Up, It's Fierce," *Euromoney*, June 1984 at 64.

[9] *See* Directory of Corporate Financing 1983–1984 (Dealers Digest Inc.); Corporate Financing Directory 1981–1982 (Investment Dealers Digest); Directory of Corporate Financing 1970–1980 Decade (Dealers Digest Inc.).

[10] *Id.*

[11] *See Fact Book* 1971–1983, (New York Stock Exchange Inc.).

[12] *Id.*

[13] *See*, Form F–6, 17 CFR 239.36.

[14] *See generally* Donnelly, "The Perils of Multimarket Offerings," *Institutional Investor*, October 1984 at 71, for a discussion of some of the problems involving multinational offerings.

[15] Release No. 34–16371 (November 29, 1979) [44 FR 70132] (adopting Form 20–F).

[16] 15 U.S.C. 78a *et seq.* References to "foreign issuers" in this release shall refer only to foreign private issuers unless stated otherwise.

[17] Release No. 33–6437 (adopting Forms F–1, F–2, and F–3) [47 FR 54764] (December 6, 1982).

[18] Copies of the Staff's comparative disclosure survey are available in the public file, S7–9–85.

[19] *See* 17 CFR 230.415.

[20] Typically, three to fourteen days.

[21] In the United Kingdom, the method in which the issuer issues securities in an underwritten public offering is known as an allotment. Typically, the securities are allotted to the participating issuing houses which then renounce their own allotments in favor of the subscriber. This system was apparently developed to minimze certain transfer taxes.

[22] The "waiting" period refers to the time period between the filing of a registration statement pursuant to section 5 of the Securities Act of 1933, 15 U.S.C. 77e, and its effectiveness pursuant to section 8(a) of that act, 15 U.S.C. 77h.

in the United Kingdom are not made prior to the date the prospectus is published.

In addition to differences in methods of underwriting securities, the review process in the United Kingdom is substantially different than in the United States and Canada and is primarily accomplished by the London Stock Exchange, rather than independent governmental agencies.

B. Disclosure of the Nature and Character of the Issuer, Its Business and Its Management

Substantial differences exist among the three countries surveyed with respect to required disclosure relating to the nature and character of the issuer, its business and its management. These differences may derive in part from the varying degree to which each country's statutory provisions and applicable case law aid the issuer in determining what information is required to be disclosed. For example, all three countries require disclosure of the nature of the issuer's business. In the United States, Regulation S–K provides specific guidelines as to what should be disclosed.[23] In the United Kingdom and Canada, however, only a general instruction is given (*e.g.*, describe the issuer's business) without providing further guidance as to the specific facts which may be material to an understanding of the issuer's business (*e.g.*, backlog of customer orders or sources and availability of raw materials). Other notable differences among the jurisdictions surveyed include, but are not limited to: Variations in the requirements for Management's Discussion and Analysis of Financial Condition and Results of Operations;[24] disclosure of industry segment data; and disclosure of management's business experience, remuneration, and its beneficial ownership of securities of the issuer.

C. Financial Statements

The basic differences in financial information required by each jurisdiction are due primarily to the differences in each jurisdiction's generally accepted accounting principles ("GAAP"). Some of the principal accounting differences among the three countries involved the accounting treatment of research and development costs; industry segment and geographic financial information; foreign currency translations; and interest costs associated with long-term construction and inventories. Material differences also exist in the accounting practices for different industries such as banking and mineral resources companies.

The requirements to reconcile financial statement of issuers incorporated in other jurisdictions which employ different accounting standards also vary among the jurisdictions surveyed. The United States and Canada require a discussion to be included which explains the differences between the significant accounting principles applied and gives a quantitative assessment of the effect of these differences. The United Kingdom does not require reconciliation to United Kingdom GAAP, provided that financial statements are presented in accordance with International Accounting Standards Committee ("IASC") requirements. Both United States and Canadian GAAP meet IASC standards.

D. Liability Provisions

The three countries surveyed have liability provisions concerning the sale of securities. Comparatively, the United States has the most comprehensive system. Under section 11 of the Securities Act[25] and the liability provisions in Quebec and Ontario, issuers are absolutely liable for false or misleading statements contained in prospectuses. Persons other than the issuer may rely on a due diligence defense. In British Columbia, the issuer bears no absolute liabilty. The U.K.'s liability provisions are similar, except that issuers, as well as others, may rely on a defense of reasonable belief. This defense does not *per se*, require a reasonable investigation of the facts supporting such statements. All three countries have antifraud protections and each provides for recission or damages.

A substantial number of civil lawsuits based on securities violations are brought in the United States, and the courts have broadly construed the antifraud provisions in favor of investors. In contrast, very few civil lawsuits are filed in Canada or in the United Kingdom. This may be partly due to the lack of class actions in certain provinces of Canada and the United Kingdom.

Even if the Commission takes steps to facilitate multinational offerings, the broad application of the United States' liability provisions and the frequency of securities litigation may have a deterrent effect on foreign issuers seeking access to the capital markets in the United States.

IV. The Reciprocal and Common Prospectus Approaches

To provide a framework for discussion, the Commission is publishing two conceptual approaches which would encourage multinational securities offerings: The reciprocal approach and the common prospectus approach.

A. Reciprocal Approach

The first conceptual approach would require the agreement by each of the three countries to adopt a reciprocal system providing that an offering document used by the issuer in its own country would be accepted for offerings in each of the other countries, assuming certain minimum standards are met. For example, the Commission could promulgate the necessary rules to permit a foreign issuer to file a registration statement with the Commission pursuant to the Securities Act consisting of a facing page, a copy of the offering documents used in its own country and a signature page. By doing so, of course, a foreign issuer would be subject to the same liability provisions of the United States' securities laws which apply to domestic issuers, including the absolute liability imposed upon issuers by section 11 of the Securities Act for false or misleading statements contained in the prospectus.

B. Common Prospectus Approach

The second possible conceptual approach would be for all three countries to agree on disclosure standards for an offering document that could be used in two or more of the three countries. Like the reciprocal approach, the Commission could adopt the necessary rules to allow the common prospectus to be used in registration statements filed with the Commission pursuant to the Securities Act. Also like the reciprocal approach, the same liability provisions of the federal securities laws would apply to foreign issuers as apply to domestic issuers.

C. Advantages and Disadvantages to Both Approaches

An advantage to the reciprocal approach appears to be that it is simpler to implement than the common prospectus approach. While the common prospectus approach would require an agreement between the participating countries on disclosure standards, the reciprocal approach would basically accept the offering document of each of the participating countries. On the other

[23] 17 CFR Part 229. Regulation S–K sets forth the requirements applicable to the content of the non-financial statement portions of forms filed under the Securities Act of 1933 (the "Securities Act") (15 U.S.C. 77a *et seq.*) and the Exchange Act.

[24] 17 CFR 229.301.

[25] 15 U.S.C. 77k.

hand, adoption of the reciprocal approach could eliminate any incentive to harmonize the disclosure standards of the participating countries.

Another advantage of the reciprocal approach is that it would be less costly and less time consuming to registrants because only the issuer's domicile would be reviewing the offering for compliance with the applicable disclosure standards.

There are, however, certain disadvantages to the reciprocal approach. For example, it is possible that the reciprocal approach would provide investors less information than the common prospectus approach if the disclosure standards for the common prospectus were more extensive than those of an issuer's domicile.

The principal advantage in adopting the common prospectus approach appears to be that all participating countries would have the same standards of disclosure. This harmonization of disclosure standards would likely result in prospectuses in all the countries being more standardized that if the reciprocal approach were adopted. Uniformity would permit greater ease of comparability of information between companies from different countries. Consequently, uniform financial and corporate information may act as the first step in developing an international data base for use in secondary trading.

The major disadvantage to adopting the common prospectus approach over the reciprocal approach appears to be the difficulties associated with reaching agreement with the participating countries on disclosure standards. Multiplicity of review may also result in complications to the issuer and a problem in coordinating the review process between the countries. These disadvantages would more than likely result in greater costs to issuers then the reciprocal approach.

Certain disadvantages exist equally for both approaches. For example, the effects on the secondary trading markets of allowing foreign prospectuses or a common prospectus to be used in primary distributions in the United States is uncertain. Also, the effect of inconsistent state blue sky regulations may circumvent the advantages of both approaches.[26]

[26] Each of the 50 states have securities statutes (Blue Sky laws) which are of two major types: (1) "Full disclosure" statutes; and (2) "fair, just and equitable" statutes. Before a foreign or domestic issuer can sell securities in a state, it must be registered (qualified) with the state or exempt from such registration (qualification). The 34 states having "fair, just and equitable" statutes regulate the offer and sale of securities based upon the merit of the investment and the quality of the issuer. In contrast, the 16 states with "full disclosure" statutes may allow any securities to be offered and sold by an issuer so long as adequate disclosure including any concomitant risks is made to investors.

V. Request for Public Comment; Specific Inquiries

In addition to soliciting public comment on the two conceptual approaches discussed in this release, the Commission is requesting specific comment on any other possible approaches which facilitate multinational offerings and are consistent with the protection of investors. The Commission is also interested in ways to harmonize the different distribution systems of the three countries. In addition, the Commission is asking commentators to address the following specific questions:

1. What should be the role of the Securities and Exchange Commission in encouraging multinational offerings?
2. How is the current foreign integration system working to accommodate the increasing internationalization of the capital markets?
3. Will simultaneous offerings in several jurisdictions replace an offering by an issuer from one country in another as the most common method of international distributions?
4. Between the reciprocal approach and the common prospectus approach, which is the better and why?
5. With respect to the reciprocal approach, should there be minimum standards, and if so, what should they be?
6. If either the reciprocal approach or common prospectus approach were implemented, would it tend to increase or decrease the number of foreign offerings in the United States or financings abroad by U.S. corporations?
7. What would the cost savings to issuers be if either approach were adopted, including the specific amounts as well as the areas in which cost savings might be realized?
8. Would issuers in one country benefit more than issuers in any other country if either the reciprocal approach or common prospectus approach were adopted?
9. What effect, if any, would adopting either approach have on the disclosure standards for United States issuers offering securities only in the United States?
10. What effect would the adoption of either approach have on the registration, periodic reporting, proxy, tender offer and other requirements under the Securities Exchange Act of 1934, and what steps should the Commission take to accommodate disclosure requirements for secondary trading subsequent to the public offering by the foreign issuer?
11. Should the availability of the new procedure for multinational offerings be limited to only certain issuers or certain types of offerings?
12. Will either the reciprocal approach or common prospectus approach accommodate the differences in distribution methods between the United Kingdom's system and those of the United States and Canada? If not, what further modifications to the two approaches must be made to make one or both approaches feasible?
13. Is the reciprocal approach appropriate for issuers who are permitted to incorporate by reference other documents and reports which are readily available in the issuer's country but more difficult to obtain in the other two countries?
14. Should the Commission's system for electronic filing, processing and dissemination of documents (EDGAR) accept filings made from foreign sources of transmission and assure overseas access to the system?
15. What, if any, additional disclosures should be required of foreign issuers under either approach of the fact that they are foreign issuers and of any differences in their disclosures from those of U.S. companies? For example, should there be a legend to the effect that, "The offering is by a foreign issuer and that, while the issuer has met the disclosure requirements of its own country, the potential investor should be aware that these requirements are essentially different from, and therefore not comparable to, those of the U.S."
16. Is it in the interest of the U.S. to facilitate access to the U.S. market to issuers who may ultimately invoke the protection of foreign secrecy or blocking laws to frustrate Commission investigations or Commission or private civil actions?
17. Would it be necessary or appropriate for the Commission to request British and Canadian authorities to legislate exceptions to their country's blocking legislation which would apply to issuers within their jurisdiction who register securities for sale in the U.S.?

List of Subjects in 17 CFR Part 230

Reporting and recordkeeping requirements, Securities.

By the Commission.

John Wheeler,

Secretary.

February 28, 1985.

[FR Doc. 85-5430 Filed 3-6-85; 8:45 am]

BILLING CODE 8010-01-M

DELAWARE RIVER BASIN COMMISSION

18 CFR Part 410

Proposed Amendment to Comprehensive Plan and Water Code of the Delaware River Basin; Change in Location of Hearing

AGENCY: Delaware River Basin Commission.

ACTION: Proposed Rule and Public Hearing; Correction.

SUMMARY: Notice was given in 50 FR, 7350, February 22, 1985 that the

Delaware River Basin Commission would hold a public hearing to receive comments on a proposed amendment to the Commission's Comprehensive Plan and *Water Code of the Delaware River Basin* in relation to well registration.

The location of the hearing ~~was~~ to have been the Goddard Conference Room of the Commission's offices at 25 State Police Drive, West Trenton, New Jersey. The location *has been changed to* the Pennsylvania West Room of the Philadelphia Centre Hotel, 1725 Kennedy Boulevard, Philadelphia, Pennsylvania. Written comments should be submitted to Susan M. Weisman, Delaware River Basin Commission, P.O. Box 7360, West Trenton, New Jersey 08628.

DATES: The public hearing is scheduled for Wednesday, March 27, 1985 beginning at 1:30 p.m. The comment closing date will be announced at the hearing.

FOR FURTHER INFORMATION CONTACT: Susan M. Weisman, Commission Secretary, Delaware River Basin Commission, Telephone (609) 883-9500.

Susan M. Weisman,

Secretary.

March 1, 1985.

[FR Doc. 85-5469 Filed 3-6-85; 8:45 am]

BILLING CODE 6360-01-M

RAILROAD RETIREMENT BOARD

20 CFR Part 200

Debt Collection

AGENCY: Railroad Retirement Board.

ACTION: Proposed rule.

SUMMARY: The Railroad Retirement Board (Board) hereby proposes to amend its regulations to provide for waiver of interest, penalties, and collection costs, as authorized by the Debt Collection Act of 1982, in connection with the collection of certain debts arising from erroneous benefit payments under the several Acts administered by the Board. The Debt Collection Act of 1982 requires the Board to charge interest on claims for money owed the Board, to assess penalties on delinquent debts, and to assess charges to cover the costs of processing claims for delinquent debts. The Act permits, and in certain cases requires, an agency to waive the collection of interest, penalties and charges. This proposed new section contains the circumstances under which the Board may waive the collection of interest, penalties and charges which arise from benefit or annuity overpayments made under any of the Acts the Board administers.

DATE: Comments must be received on or before May 6, 1985.

ADDRESS: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Steven A. Bartholow, Deputy General Counsel, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751-4935 (FTS 387-4935).

SUPPLEMENTARY INFORMATION: Section 11 of the Debt Collection Act of 1982 (Pub. L. 97-365) amended section 3(e) of the Federal Claims Collection Act of 1966 to provide that the head of an agency shall charge interest on claims owed the agency, assess penalties on delinquent debts, and assess charges to cover the costs of processing delinquent claims. Section 11 imposes a mandatory requirement that interest, penalties, and charges be assessed except as specifically provided in that section. Paragraphs (3) and (6) of the amended section 3(e) provide, respectively, for waiver of interest and penalties under agency regulations adopted in accordance with standards established by the Attorney General and Comptroller General and or a thirty-day grace period within which payment may be made and no interest charged.

The proposed § 200.6 would implement the exception contained in the amended section 3(e)(6) of the Federal Claims Collection Act by establishing criteria for waiver in conformity with the standards adopted by the Attorney General and Comptroller General and published as a final rule in the **Federal Register** on March 9, 1984. The proposed new section provides that interest must be waived if the underlying debt is paid within 30 days after notice of the debt or, where waiver of recovery of the overpayment is available, within 30 days after the expiration of the period within which the debtor may request waiver of recovery of the erroneous payment if no request is made or within 30 days after a decision denying waiver of recovery if such was requested. The proposed new section also provides for discretionary waiver of interest, penalties, and administrative costs when it is determined that assessing such charges would be against equity and good conscience or not in the best interests of the United States.

The Board has determined that this is not a major rule under Executive Order 12291. Therefore, no regulatory analysis is required.

List of Subjects in 20 CFR Part 200

Claims, Employee benefits plans, Railroad employees, Railroad retirement, Railroad unemployment insurance, Debt collection.

PART 200—[AMENDED]

Title 20 CFR Chapter II is amended as follows:

1. The table of contents for Title 20, Chapter II, Subchapter A, Part 200 is amended by adding at the end thereof the following: "200.6 Waiver of interest, penalties, and collection costs with respect to collection of certain debts."

2. A new § 200.6 is added to Subchapter A and reads as follows:

§ 200.6 Waiver of interest, penalties, and collection costs with respect to collection of certain debts.

(a) *Purpose.* The Debt Collection Act of 1982 requires the Board to charge interest on claims for money owed the Board, to assess penalties on delinquent debts, and to assess charges to cover the costs of processing claims for delinquent debts. The Act permits, and in certain cases requires, an agency to waive the collection of interest, penalties and charges under circumstances which comply with standards enunciated jointly by the Comptroller General and the Attorney General. Those standards are contained in 4 CFR 102.13. This section contains the circumstances under which the Board may waive the collection of interest, penalties and charges which arise from benefit or annuity overpayments made under any of the Acts the Board administers.

(b)(1) The Board shall waive the collection of interest under the following circumstances:

(i) When the debt is paid within thirty days after the date on which notice of the debt was mailed or personally delivered to the debtor;

(ii) When in any case where a decision with respect to waiver of recovery of the overpayment must be made,

(A) The debt is paid within thirty days after the end of the period within which the debtor may request waiver of recovery if no request is received within the prescribed time period; or

(B) The debt is paid within thirty days after the date on which notice was mailed to the debtor that his or her request for waiver or recovery has been wholly or partially denied if the debtor requested waiver of recovery within the prescribed time limit; however,

regardless of when the debt is paid, no interest may be charged for any period prior to the end of the period within which the debtor may request waiver of recovery or, if such request is made, for any period prior to the date on which notice was mailed to the debtor that his or her request for recovery has been wholly or partially denied;

(iii) When, in the situations described in paragraphs (b)(1)(i) and (b)(1)(ii) of this section, the debt is paid within any extension of the thirty-day period granted by the Board;

(iv) With respect to any portion of the debt which is paid within the time limits described in paragraphs (b)(1)(i), (b)(1)(ii), or (b)(1)(iii) of this section; or

(v) In regard to any debt the recovery of which is waived.

(2) The Board may waive the collection of interest, penalties and administrative costs in whole or in part in the following circumstances:

(i) When collecting interest, penalty and administrative costs is against equity and good conscience; or

(ii) Where collecting interest, penalty and administrative costs is not in the best interests of the United States.

(c)(1) In making determinations as to when the collection of interest, penalty and administrative costs is against equity and good conscience the Board will consider evidence on the following factors:

(i) The fault of the overpaid individual in causing the underlying overpayment; and

(ii) Whether the overpaid individual in reliance on the incorrect payment relinquished a valuable right or changed his or her position for the worse.

(2) In rendering a determination as to when the collection of interest, penalties and charges is "not in the interest of the United States" the Board will consider the following factors:

(i) Whether the collection of interest, penalties and charges would result in the debt never being repaid; and

(ii) Whether the collection of interest, penalties and charges would cause undue hardship.

(31 U.S.C. 3717)

Dated: March 1, 1985.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 85-5434 Filed 3-6-85; 8:45 am]

BILLING CODE 7905-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 904

Public Comment and Opportunity for Public Hearing on a Modification to the Arkansas Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing procedures for the public comment period and for requesting a public hearing on the substantive adequacy of a program amendment submitted by the state of Arkansas as a modification to the Arkansas Permanent Regulatory Program (hereinafter referred to as the Arkansas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment would establish a program for the training, examination and certification of blasters. The amendment would also amend performance standards for the use of explosives.

This notice sets forth the times and locations that the Arkansas program and proposed amendment are available for public inspection, the comment period during which interested persons may submit written comments on the proposed program elements, and the procedures that will be followed regarding the public hearing.

DATES: Comments not received on or before 4:00 p.m., April 8, 1985 will not necessarily be considered.

If requested, a public hearing on the proposed modifications will be held on March 19, 1985, beginning at 10:00 a.m. at the location shown below under "**ADDRESSES.**"

ADDRESSES: Written comments should be mailed or hand delivered to: Mr. Robert Markey, Tulsa Field Office, Office of Surface Mining, 333 West 4th Street, Room 3432, Tulsa, Oklahoma 74103.

If requested, a public hearing will be held at the following location: U.S. Post Office and Courthouse, South 6th and Rogers Avenue, Room 115A, Fort Smith, Arkansas.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Markey, Tulsa Field Office, Office of Surface Mining, 333 West 4th Street, Room 3432, Tulsa, Oklahoma 74103, Telephone: (918) 745-7927.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Availability of Copies

Copies of the Arkansas program, the proposed modifications to the program, a listing of any scheduled public meeting and all written comments received in response to this notice will be available for review at the OSM offices and the office of the State regulatory authority listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays. Each requestor may receive free of charge, one single copy of the proposed amendment by contacting the Tulsa Field Office listed below:

Tulsa Field Office, Office of Surface Mining, 333 West 4th Street, Room 3432, Tulsa, Oklahoma 74103

Office of Surface Mining, Reclamation and Enforcement, 1100 "L" Street, NW., Washington, D.C. 20240

Department of Pollution Control and Ecology, 8001 National Drive, P.O. Box 9583, Little Rock, Arkansas 72209.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after March 14, 1985 or at locations other than Little Rock Arkansas will not necessarily be considered and included in the Administrative Record for this final rulemaking.

Public Hearing

Persons wishing to comment at a public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by the close of business March 14, 1985. If no one requests to comment at a public hearing, the hearing will not be held. If only one person requests a public hearing a public meeting may be held instead and the results of the public meeting included in the Administrative Record.

II. Background on the Arkansas State Program

On December 17, 1984, Arkansas submitted to OSM pursuant to 30 CFR 732.17, an amendment to the Arkansas regulatory program which would establish a blaster training and certification program and would amend performance standards for the use of explosives.

Concerning the proposed blasters certification program, on March 4, 1983, OSM issued final rules effective April 14, 1983, establishing the Federal standards for the training and certification of blasters at 30 CFR

Chapter M (48 FR 9486). Section 850.12 of these regulations stipulates that the regulatory authority in each State with an approved program under SMCRA shall develop and adopt a program to examine and certify all persons who are directly responsible for the use of explosives in a surface coal mining operation within 12 months after approval of a State program or within 12 months after publication date of OSM's rules at 30 CFR Part 850, whichever, is later.

In the amendment, Arkansas is proposing changes at 816.61–S and 816.61–U regarding the use of explosives and Part 850 regarding establishing the requirements and procedures for blaster training, examination, and certification program.

Therefore, OSM is seeking comment on the State proposed amendment to establish a program for the training, examination and certification of blasters, and to amend performance standards for the use of explosives.

If the Director determines that the proposal modifications are in accordance with SMCRA and no less effective than the Federal regulations, the amendment will become part of the Arkansas permanent regulatory program.

III. Additional Determinations

1. Compliance with the National Evironmental Policy Act:

The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act:

On August 28, 1982, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs.

Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

3. Paperwork Reduction Act:

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 904

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

Dated: March 1, 1985.

John D. Ward,

Director, Office of Surface Mining.

[FR Doc. 85–5493 Filed 3–6–85; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 943

Texas Permanent Regulatory Program; Reopening and Extension of Public Comment Period

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Reopening and extension of public comment period.

SUMMARY: On August 31, 1984, the State of Texas submitted to OSM a proposed amendment consisting of modifications to the Texas regulations concerning effluent limitations and prime farmland (PEL).

OSM published a ntoice in the **Federal Register** on September 25, 1984, announcing receipt of the amendment and inviting public comment on its adequacy (49 FR 37641). The public comment period ended on October 25, 1984. During its review of Texas' proposed provisions, OSM identified several concerns relating to the proposed provisions. OSM notified Texas of its concerns, and in a letter dated February 8, 1985, Texas responded by submitting additional explanation and information on, and revisions to the proposed amendment.

Accordingly, OSM is reopening and extending the comment period for 15 days on Texas' prepared amendment and explanatory information. This action is being taken to provide the public an opportunity to reconsider the adquancy of the proposed amendment in light of the additional information.

DATE: Written comments relating to Texas' proposed modification of its program not received on or before 4:00 p.m. on March 22, 1985, will not necessarily be considered in the Director's decision to approve or disapprove the proposed program modifications.

ADDRESSES: Written comments should be mailed or hand-delivered to: Mr. Robert L. Markey, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, Room 3432, 333 West 4th Street, Tulsa, Oklahoma 74103. Telephone: (918) 581–7927.

Copies of the Texas program, the proposed amendment, and all written comments received in response to this notice will be available for review at the OSM offices and the Office of the State Regulatory Authority listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m. excluding holidays. Each requestor may receive, free of charge, one single copy of the proposed amendment from OSM's Tulsa Field Office listed below.

Office of Surface Mining Reclamation and Enforcement, Room 5124, 1100 "L" Street, NW Washington, D.C. 20240.

Office of Surface Mining Reclamation and Enforcement, Room 3432, 333 West 4th Street, Tulsa, Oklahoma 74103.

Surface Mining Reclamation Division, Railroad Commission of Texas, Capitol Station, P.O. Drawer 12967, Austin, Texas 78711.

FOR FURTHER INFORMATION CONTACT: Mr. Robert L. Markey, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 333 West 4th Street, Room 3432, Tulsa, Oklahoma 74103. Telephone: (918) 581–7927.

SUPPLEMENTARY INFORMATION: Information regarding the general background on the Texas State Program, including the Secretary's Findings, the disposition of comments and a detailed explanation of the conditions of approval of the Texas program can be found in the February 27, 1980, **Federal Register** (45 FR 12998).

On August 31, 1984, the Director, Surface Mining and Reclamation Division of the Railroad Commission of Texas (RCT), submitted to OSM pursuant to 30 CFR 732.17, a proposed State program amendment for approval. OSM announced receipt of the amendment and initiated a public comment period on September 25, 1984 (49 FR 37641). The public comment period ended on October 25, 1984. A public hearing scheduled for October 24, 1984, was not held because no one expressed a desire to present testimony.

During its review of Texas' proposed amendment, OSM identified the following concerns:

1. Texas' proposed rules 051.07.04.138(b) and .184(b) would eliminate the definition of "frequently flooded" ("during the growing season,

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more often than once in two years, and the flooding has reduced crop yields") which corresponds to the U.S. Soil Conservation Service (SCS) criteria in 7 CFR 657.5(a)(2)(iv) and (vi). Since 30 CFR 701.5 defines prime farmland as those lands defined in 7 CFR Part 657, deviation from these criteria requires concurrence of the SCS State Conservationist (see 7 CFR 657.4(a)(2)). OSM asked Texas to clarify that the RCT's interpretation of the State prime farmland criteria for negative determination purposes will conform with the SCS criteria at 7 CFR 657.5(a)(2).

2. The proposed rules 051.07.04.138(d) and .184(d) do not require the soil survey performed pursuant to the PFL reconnaissance inspection to be of the detail used by the SCS for operational Conservation planning, as in 30 CFR 785.17(b)(3).

3. In proposed 051.07.04.201(b)(1), Texas should specify where the SCS National Soils Handbook is available for review.

4. Texas' proposed rule 051.07.04.201(b)(1)(B) vests authority for approval of alternative representative soil profiles with the Railroad Commission of Texas. The Federal rule at 30 CFR 785.17(c)(1)(ii) permits only the SCS State Conservationist to make such a decision.

5. OSM questioned inclusion of 051.07.04201(c)(1) and .624(a) which apply only to the SCS and which Texas cannot enforce.

6. Due to the decision by Judge Flannery in *In re: Permanent Surface Mining Regulation Litigation II* (Civil Action No. 79–1144, U.S.D.C. D.C, October 1, 1984), the prime farmland exemption for long-term use of certain surface facilities proposed at 051.07.04.620(a)(1) cannot be approved for facilities associated with surface mines.

7. Proposed Texas rule 051.07.04.620(a)(2) cannot be approved because Judge Flannery held that the PFL exemption for permanent water impoundment violates section 510(d)(1) of the Surface Mining Control and Reclamation Act of 1977.

8. OSM requested a letter clarifying that where 30 CFR Part 434 is more stringent than Texas proposed effluent limitation, the Federal Environmental Protection Agency (EPA) standards (30 CFR Part 434) will take precedence.

9. OSM requested clarification that any discharges authorized under proposed Texas rules 051.07.04.340(d)(3) and .510(c)(3) must still comply with applicable State and Federal effluent limitations.

10. Proposed Texas rule 051.07.04.008 uses, but does not define the term "support facilities".

11. OSM requested clarification of proposed paragraph 051.07.04.340(a)(8).

12. OSM identified some typographical errors and errors of omission.

OSM notified Texas of these concerns in a letter dated January 10, 1985, and Texas responded in a letter dated February 8, 1985, by submitting additional information and explanation on and revisions to its proposed amendment.

The full text of the proposed program amendment and the additional material are available for review at the locations listed above under "**ADDRESSES**". Accordingly, is now seeking public comments on the adequacy of the State's submissions. The public comment period is hereby extended to March 22, 1985. All comments should be submitted to the location shown above under "**ADDRESSES**" in order to be considered by the Director in his decision on the program amendment.

List of Subjects in 30 CFR Part 943

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

Dated: March 1, 1985.

Carl C. Close,

Acting Assistant Director, Program Operations and Inspection.

[FR Doc. 85–5492 Filed 3–6–85; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD7–85–03]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, FL

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the Florida Department of Transportation the Coast Guard is considering temporarily revising the seasonal regulations governing the Sunrise Boulevard bridge, Broward County, Florida to make them applicable year-round through November 14, 1986. This proposal is being made because all vehicular traffic will be using the 2-lane westbound bridge while the eastbound bridge is being replaced. This action should facilitate vehicular traffic and yet provide for the reasonable needs of navigation.

DATE: Comments must be received on or before April 22, 1985.

ADDRESSES: Comments should be mailed to Commander (oan), Seventh Coast Guard District, 51 S.W. 1st Avenue, Miami, Florida 33130. The comments and other materials referenced in this notice will be available for inspection and copying at 51 SW. 1st Avenue, Room 816, Miami, Florida. Normal office hours are from 7:30 a.m. to 4:00 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Mrs. Zonia Reyes, Bridge Administration Specialist, telephone (305) 350–4103.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Seventh Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments recieved.

Drafting Information

The drafters of this notice are Mrs. Zonia Reyes, project officer, and Lieutenant Commander Ken Gray, project attorney.

Discussion of Proposed Regulations

The existing regulations require the Sunrise Boulevard bridge to open on signal except that from November 15 through May 15 annually the bridge need open 7:15 a.m. and 6:15 p.m. only on the quarter and three-quarter hour. The proposed regulation would simply extend this restriction on bridge openings year-round through November 14, 1986. Limiting and spacing bridge openings will facilitate the movement of vehicular traffic detoured to the westbound bridge during replacement of the eastbound bridge. The existing westbound bridge, a 2-lane bridge, will be restriped for east and westbound vehicular traffic, one lane in each direction. Weekday vehicular traffic averages 1938 vehicles per hour from 7

a.m. to 6 p.m. with a peak of 2259 vehicles between 2 p.m. and 3 p.m. Weekend vehicular traffic averages 1927 vehicles per hour with a peak of 2367 vehicles during the same time frames. The 2-lane westbound bridge has a capacity of 2000 vehicles per hour. With the westbound bridge being at capacity with two-way traffic, unregulated drawbridge openings would create severe vehicular traffic congestion.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of the proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the proposed regulation is temporary and will exempt tugs with tows. Since the economic impact is expected to be minimal the Coast Guard certifies that, if adopted, it will not have a significant impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, by revising § 117.261(t) to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

§ 117.261 Atlantic Intracoastal Waterway from St. Marys River to Miami.

* * * * *

(t) The draw of the Sunrise Boulevard (SR838) bridge, mile 1062.6 at Fort Lauderdale, shall open on signal; except that, from November 15 through May 15 and year-round through November 14, 1986 from 7:15 a.m. to 6:15 p.m., the draw need be opened only on the quarter and three-quarter hour. Public vessels of the United States, tugs with tows, and vessels in distress shall be passed at any time.

* * * * *

(33 U.S.C. 499; 49 CFR 1.46(c)(5); 33 CFR 1.05-1(g)(3))

Dated: February 22, 1985.

R.P. Cueroni,

Rear Admiral, U.S. Coast Guard, Commander, seventh Coast Guard District.

[FR Doc. 85-5506 Filed 3-6-85; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 117

[CCGD13 85-02]

Drawbridge Operation Regulations; Columbia River, Automated Railroad Bridge Between Celilo, OR, and Wishram, WA

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the Burlington Northern Railroad Company, the Coast Guard is considering a change to the regulations governing the Burlington Northern railroad drawbridge across the Columbia River, mile 201.2 between Celilo, Oregon, and Wishram, Washington, to accommodate automated operation of the drawspan. This proposal is being made because the Burlington Northern Railroad Company can realize substantial savings in operating costs through its implementation. This action should relieve the bridge owner of the burden of having a person constantly available to open or close the draw and should still provide for the reasonable needs of navigation.

DATE: Comments must be received on or before April 22, 1985.

ADDRESS: Comments should be mailed to Commander (oan), Thirteenth Coast Guard District, 915 Second Avenue, Seattle, Washington 98174. The Comments and other materials referenced in this notice will be available for inspection and copying at 915 Second Avenue, Room 3564. Normal office hours are between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: John E. Mikesell, Chief, Bridge Section, Aids to Navigation Branch, (Telephone: (206) 442-5864).

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Thirteenth Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in the light of comments received.

Drafting Information

The drafters of this notice are: John E. Mikesell, project officer, and Lieutenant Commander Judith M. Hammond, project attorney.

Discussion of the Proposed Regulations

The Burlington Northern Railroad Company has asked the Coast Guard to approve changes in the drawbridge operation regulations for the railroad bridge across the Columbia River, mile 201.2 between Celilo, Oregon, and Wishram, Washington, to allow for automated operation of the drawspan. Existing regulations require the bridge to open on signal for the passage of vessels. The railroad wants to operate this bridge using automatic controls, rather than by manual operation. To do this requires Coast guard approval, because the automated bridge would involve special signal lights and would not provide for the usual sound signals.

Under the proposed change, the bridge would be unattended and normally maintained in the open to navigation position. The drawspan would be lowered only when a train actually needed to cross the bridge, or for maintenance. Waterway users would be able to call the railroad by telephone or radiotelephone to find out if any trains were in the area and, if so, approximately when the bridge would be lowered. the railroad also would be able to pass along information about maintenance activities affecting operation of the bridge. Special warning lights would be provided to warn waterway users that the bridge was about to be lowered. These lights would be especially important to those vessels without radios. A display panel would be attached to the center of the movable span on both the upstream and downstream side. It would display a green light when the drawspan was open, a red light when the drawspan was less than fully open, and a large yellow flashing arrow pointing downward whenever the drawspan was to be lowered. The green light would change to red and the yellow arrow would flash for 8 minutes before the span actually began to descend. It would continue to flash as the span was lowered. With the span fully lowered, the yellow arrow would stop flashing. After the train had passed, the drawspan would be raised. The red light would change to green as soon as the bridge was fully open.

This proposal would enable Burlington Northern to automate its operation of the drawspan. This would result in savings in operating costs to

the bridge owner and would not unreasonably affect navigation on the waterway.

Other than the Burlington Northern Railway Company and navigation interests, there are no known businesses, including small entities, that would be affected by the proposed change. There are only minimal economic impacts on navigation or other interests. Therefore, an economic evaluation has not been prepared for this action. Burlington Northern would benefit because it would be relieved of the burden of providing a salaried full-time operator for bridge openings and closures.

Economic Assessment and Certification

These proposed regulations have been reviewed under the provisions of Executive Order 12291 and have been determined not to be a major rule. In addition, these proposed regulations are considered to be nonsignificant in accordance with guidelines set out in the Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5 of 5–22–80). As explained above, an economic evaluation has not been conducted since its impact is expected to be minimal. In accordance with § 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b), it is certified that these rules, if promulgated, would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

PART 117—DRAWBRIDGE OPERATION REGULATIONS

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, by adding § 117.869(c) to read as follows:

§ 117.869 Columbia River.

* * * * *

(c) The draw of the Burlington Northern railroad bridge across the Columbia River, mile 201.2, between Celilo, Oregon, and Wishram, Washington, is automated and is normally maintained in the fully open to navigation position.

(1) *Lights.* All lights required for automated operation shall be visable for a distance of at least 2 miles and shall be displayed at all times, day and night.

(i) When the draw is fully open, a steady green light shall be displayed at the center of the drawspan on both upstream and downstream sides.

(ii) When the draw is not fully open, a steady red light shall be displayed at the center of the drawspan on both upstream and downstream sides.

(iii) When the draw is about to close, flashing yellow lights in the form of a down-pointing arrow shall be displayed at the center of the drawspan on both upstream and downstream sides.

(2) *Operation.* When a train approaches the bridge, the yellow lights shall start flashing. After an eight-minute delay, the green lights shall change to red, the drawspan shall lower and lock, and the yellow lights shall be extinguished. Red lights shall continue to be displayed until the train has crossed and the drawspan is again in the fully open position. At that time, the red lights shall change to green.

(3) Vessels equipped with radiotelephones may contact Burlington Northern to obtain information on the status of the bridge. Bridge status information also may be obtained by calling the commercial telephone number posted at the drawspan of the bridge.

(33 U.S.C. 499; 49 CFR 1.46(c)(5); 33 CFR 1.05–1(g)(3)).

Dated: February 22, 1985.

R.R. Garrett,

Acting Captain, U.S. Coast Guard Commander, 13th Coast Guard District.

[FR Doc. 85–5504 Filed 3–6–85; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Parts 140, 141, 142, 143, 144, 145, and 146

[CGD 84–098]

Revision of the Regulations on Outer Continental Shelf Activities

AGENCY: Coast Guard, DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This notice solicits the public's comments and suggestions concerning a revision of the Coast Guard regulations on Outer Continental Shelf (OCS) Activities. A revision is needed to address new developments in the offshore industry, new legislation and interagency agreements, and numberous recommendations that have been received as a result of investigations of casualties on the OCS. This revision would align the regulations with appl.icable interagency agreements, fully implement legislation, and address problems identified by casualty investigations and public input.

DATE: Comments must be received on or before June 5, 1985.

ADDRESSES: Comments should be mailed to Commandant (G–CMC/21) (CGD 84–098), U.S. Coast Guard, 2100 Second St. SW, Washington, D.C. 20593. Comments will be available for inspection or copying from 8:00 AM to 4:00 PM, Monday through Friday, except holidays, at the Office of the Marine Safety Council (G–CMC/21), Room 2110, at the address above. The telephone number is 202–426–1477.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Alan J. Cross, Office of Merchant Marine Safety, 202–426–2307.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this preliminary rulemaking proceedings by submitting written comments, data, or arguments. Each comment should include the name and address of the person submitting the comment, reference the docket number (CGD 84–098), and include sufficient detail to indicate the basis on which each comment is made.

All comments received will be considered before further rulemaking action is taken. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The principal persons involved in drafting this proposal are Lieutenant Commander Alan J. Cross, Office of Merchant Marine Safety, and Mr. Stephen H. Barber, Project Counsel, Office of the Chief Counsel.

Discussion

This project is the second major phase of an ongoing effort by the Coast Guard to implement the provisions of the Outer Continental Shelf Lands Act Amendments of 1978 (Pub. L. 95–372; "the 1978 Act") and to update 33 CFR Chapter I, Subchapter N, on Outer Continental Shelf (OCS) activities. The first phase of rulemaking (47 FR 9366; March 4, 1982) implemented the mandatory provisions of the 1978 Act, such as domestic manning, and reorganized Subchapter N to provide a framework for the inclusion of more specific regulations to be developed in the future. Since 1978, the Coast Guard has initiated a number of smaller OCS rulemaking projects, including "Unregulated Hazardous Working Conditions" (CGD 79–073), "Workplace Safety and Health Requirements for Facilities on the OCS" (CGD 79–077), "Revision of Material Standards for Fixed Facilities on the OCS" (CGD 83–

035), and "Offshore Cranes" (CGD 79–059). The first of these projects has been closed and combined with the second. The third (CGD 83–035) has been closed and combined with the present rulemaking. The workplace safety (CGD 79–077) and the offshore cranes (CGD 79–059) projects will continue separately.

This project, the second major phase of rulemaking, addresses the broad subjects of OCS vessels, fixed facility inspection, workplace safety, fire protection, evacuation standards, lifesaving appliances, personnel training, and casualty data collection. Each subject is discussed below.

Vessels Used for OCS Activities

The OCS Lands Act Amendments of 1978 direct the Coast Guard to issue regulations which require that any vessel used for activities pursuant to the Act complies with "such minimum standards of design, construction, alteration, and repair" as the Coast Guard establishes. With regard to vessels, the Coast Guard has concentrated most of its regulatory efforts to date on Mobile Offshore Drilling Units (MODUs), offshore supply vessels, and crew boats. With the expansion of activities on the OCS, many specialized vessels have been developed for such jobs as well servicing, diving support, towing, construction, painting, sand blasting, and standby. Under this rulemaking project, the Coast Guard will conduct a comprehensive study of the operations and safety records of these vessels to determine whether there is a need for further regulation. This study will focus on defining vessel types and determining what regulations, if any, should be applied, what means would be available for ensuring compliance, and to what extent foreign flag vessels should be regulated.

In addition, the Coast Guard is considering amending its Subchapter N regulations on U.S. uninspected MODUs and on foreign MODUs because these regulations are often confusing and out of date. New types of units are being developed for service in the Arctic and for the exploration and exploitation of hard mineral resources. The safety needs of these units must be assessed.

Specific comments are requested regarding appropriate standards that should be applied to the various types of vessels used for OCS activities.

Fixed Facility Inspection

The Outer Continental Shelf Lands Act Amendments of 1978 state that the Coast Guard shall promulgate regulations to provide for—

(1) scheduled onsite inspection, at least once a year, of each facility on the Outer Continental Shelf which is subject to any environmental or safety regulation promulgated pursuant to this Act, which inspection shall include all safety equipment designed to prevent or ameliorate blowouts, fires, spillages, or other major accidents; and

(2) periodic onsite inspection without advance notice to the operator of such facility to assure compliance with such environmental or safety regulations" (43 U.S.C. 1348 (c)).

The act does not require the Coast Guard to perform these inspections itself but only to "provide for" them by means of regulation. Due to the magnitude of the task of conducting both annual and periodic inspections of all fixed facilities on the OCS, the Coast Guard is considering requiring that annual inspections of fixed facilities be conducted by the facility owner's personnel or by a third party employed by the owner. Under this program, the owner would certify to the Coast Guard that the inspection was performed, that all discrepancies were corrected, and that the facility was in compliance with the regulations. The efforts of Coast Guard inspectors could then be focused on periodic unannounced inspections of the fixed facilities, particularly on those which are manned or which have a poor safety record. These periodic inspections by the Coast Guard could, in turn, provide a means for monitoring the application and effectiveness of the "self-certification" program.

Comments regarding the implementation of a "self-certification" program are solicited, particularly with regard to who should be permitted to conduct the annual inspection, qualifications or minimum experience level of the person performing the inspection, when should the inspection be performed, what specific items the inspection should cover, and necessary Coast Guard oversight.

Workplace Safety and Health

A major concern of the Coast Guard is in the area of workplace safety and health on the OCS. The current regulations found in 33 CFR Part 142 basically implement certain provisions of the 1978 Act relating to the leaseholders responsibilities and reports of unsafe working conditions. The Coast Guard published a notice of proposed rulemaking (49 FR 1083; January 9, 1984) under a separate docket number (CGD 79–077) concerning specific requirements for personal protective equipment, guarding of openings, lock-out and tag-out procedures, and general housekeeping. At this time, CGD 79–077 will continue as a separate project, as the comment period for that project has already closed. The present project (CGD 84–098) will cover workplace safety and health matters other than those addressed in CGD 79–077, such as the need for first aid equipment or hospital spaces on OCS facilities.

Comments are requested regarding the adequacy of existing and proposed workplace safety and health requirements for all units used for OCS activities.

Fire Protection

An area that may require significant modification is that of fire protection standards for fixed facilities. The current regulations in 33 CFR Part 145 are essentially unchanged from the original regulations published in 1956.

Review of Coast Guard and Minerals Management Service (MMS) accident and casualty data reveal that fires remain a major safety hazard on offshore facilities. From 1970 to 1979, there were 270 fires and explosions involving units located on the Gulf of Mexico Outer Continental Shelf; 261 of these were associated with fixed platforms and 231 occurred during production operations where natural gas was being processed from flowing wells. From 1980 to 1983, MMS records show 20 explosions and 164 fires occurring on the U.S. Outer Continental Shelf. The current Coast Guard regulations for offshore platforms require only hand-portable or semi-portable fire extinguishers. These fire extinguishers are limited to use on small fires and are not meant to extinguish large oil or gas fires or to protect the facility and personnel from the extreme heat generated by fires. Many of today's large platforms house production facilities capable of handling thousands of barrels of oil and millions of cubic feet of gas daily, making the hazard similar to that encountered on a tank vessel. However, the Coast Guard standards for OCS facilities are far below the standards applied to tank vessels. There are no provisions for structural fire protection to allow escape or to protect living areas, no required control measures, and no required personnel protection equipment.

Comments are requested regarding the adequacy of current Coast Guard regulations relative to fire detection, fire fighting, and structural fire protection on fixed facilities.

Evacuation and Lifesaving

The current regulations for evacuation in 33 CFR Part 143 and for lifesaving appliances in 33 CFR Part 144 are essentially unchanged from the original regulations published in 1956.

Significant advances in technology have made possible the movement of operations farther from shore and into more hostile environments. Facilities have grown more sophisticated. As a result, the regulations lag far behind today's best available and safest technologies, a criteria to be considered under the 1978 Act (43 U.S.C. 1347(b)).

Safe evacuation is a major area of concern. From 1976 to 1983, there were thirty-one blowouts (losses of well control) in which platforms had to be evacuated. The present regulations require only two primary means of escape from a manned platform, either by ladder or stairway. Many companies have responded to the obvious need for additional means of escape on their own initiatives.

Similarly with lifesaving appliances, the existing regulations require only life preservers and life floats (33 CFR 144.01–1 and 144.01–20). Life floats, for example, are intended for use as temporary means of flotation, not as a means of protection from burning oil or heavy seas. Abandonment technology now includes devices such as enclosed lifeboats, survival capsules and free fall lifeboats. Many companies have already installed these or other.

In many instances, standby vessels anchored close to the platforms have been used to augment the evacuation and lifesaving equipment on board the unit. The Coast Guard's Marine Board of Investigation's report on the loss of the MODU OCEAN RANGER and National Transportation Safety Board's reports on the losses of the MODUs OCEAN RANGER and JAVA SEA recommend that the Coast Guard require standby vessels for all MODUs drilling on the OCS. On October 4, 1984, the House Subcommittee on the Panama Canal and the Outer Continental Shelf held a hearing on a proposed bill which would require the Coast Guard to issue regulations requiring standby vessels. Therefore, the Coast Guard is studying the relationship between standby vessels and the facility's primary lifesaving equipment to determine whether, and to what degree, standby vessels would enhance safety on the OCS.

The Coast Guard is interested in receiving comments regarding lifesaving equipment requirements for fixed facilities and on the use of standby vessels in an overall evacuation plan for both MODUs and fixed platforms.

In particular these comments should address such issues as:

a. Under what conditions should a standby vessel be mandatory?

b. How close should a standby vessel be to a platform or MODU in order to render effective assistance in an emergency?

c. What design criteria should a standby vessel meet?

d. What special equipment should be aboard a standby vessel to enable it to effectively handle emergencies?

e. How should a standby vessel be named?

f. What special training should be required of a standby vessel's crew?

Training

Personnel training is particularly critical on the OCS because of the operational and environmental dangers inherent in offshore work. A number of recent casualties caused by misuse of emergency equipment and improperly executed evacuations strongly suggest the need to improve evacuation and survival training. Safety equipment itself is becoming so sophisticated that training is required for its proper use and maintenance. Some degree of entry level safety training is necessary for personnel new to offshore operations. Training in the use of fire fighting equipment and in the handling of medical emergencies are growing areas of concern. Recognizing these needs, many companies have developed and applied various levels of training. The Coast Guard is interested in your comments in this area, particularly with regard to training needs in the areas of survivability, fire fighting, workplace safety, and medical emergencies.

Casualty Data

The Coast Guard has in place a system for collecting data on deaths and injuries occurring on the OCS. Under the Coast Guard system, owners, operators, and persons in charge of OCS facilities must report injuries causing incapacitation for more than 72 hours and all deaths. The problem with this system is that it does not provide information on the size of the worker population, or injuries causing less than 72 hours incapacitation, or on the total time lost for each injury. Without such information, the Coast Guard has difficulty in assessing the relative degree of hazard imposed by a particular operation and the need to control the operation by regulation. Accordingly, the Coast Guard is considering requiring the leaseholder to make an annual report to the Coast Guard giving the total number of man-hours worked on each location.

In addition, the Coast Guard is also considering requiring that injuries on platforms be reported on Form CG–2692, *Report of Marine Accident, Injury or Death.* While injuries on platforms are presently required to be reported, Form CG–2692 is not required to be used, thus making computerization of this data difficult. These reports are required only for injuries which result in incapacitation for 72 hours or more. However, the Occupational Safety and Health Administration (OSHA) now requires industries to post at the workplace a log of work related fatalities, illnesses, and injuries requiring medical treatment other than first aid. There are two items on this log that would benefit the Coast Guard if the employer were required to submit them to the Coast Guard, as well as post them at the workplace. They are the number of cases involving a worktime loss of 24 hours or more and the number of days lost for each case. The Coast Guard could require that this information be submitted to the Coast Guard without imposing an additional information gathering burden on the employer.

Comments are requested regarding the least burdensome way for population data to be compiled and reported to the Coast Guard and on difficulties which may be encountered in compiling information for an injury and illness log.

This advance notice is issued under the Coast Guard's policy for early public participation in rulemaking proceedings. Your comments on the subjects discussed above, or on any other sections of the Outer Continental Shelf Activities regulations not covered by the Notice of Proposed Rulemaking on Workplace Safety (CGD 79–077), are solicited.

Dated: March 4, 1985.

Clyde T. Lusk, Jr.,

Rear Admiral, U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

[FR Doc. 85–5503 Filed 3–6–85; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATION COMMISSION

47 CFR Part 2

[Gen. Docket No. 84–1234; RM–4247]

Allocating Spectrum for, and Establish in Other Rules and Polices Pertaining to, the Use of Radio Frequencies in a Land Mobile Satellite Service for the Provision of Various Common Carrier Service, Correction

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects the Reply Comment Period for the proposed

Rule in this proceeding regarding the use of Radio Frequencies in a Land Mobile Statellite Service, published on February 28, 1985, 50 FR 8149.

DATE: Reply Comments are due by April 29, 1985.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Jacqueline Spindler, (202) 632–4047.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85–5450 Filed 3–6–85; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR PART 90

[PR Docket No. 85–6; RM–4834]

Application Processing Procedures for the 800 MHz Private Land Mobile Band

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; Extension of Comment period.

SUMMARY: The Commission has adopted an *Order* which extends the comment period in Docket 85–6, concerning application processing procedures for the 800 MHz Private Land Mobile Band. This action is taken in response to a request by International Business Machines Corp. (IBM).

DATES: Comments are now due by February 26, 1985.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Nia Chirigos Cresham, Private Radio Bureau, Land Mobile and Microwave Division, Rules Branch (202) 634–2443.

SUPPLEMENTARY INFORMATION: The Proposed Rule in this proceeding was published on January 22, 1985 (50 FR 2837).

Order

In the Matter of Amendment of Part 90 Subpart M of the Commission's Rules Governing the Application Processing Procedures for the 800 MHz Private Land Mobile Band PR Docket No. 85–6, RM–4834).

Adoped: February 22, 1985.
Released: February 28, 1985.

By the Acting Chief, Private Radio Bureau.

1. International Business Machines Corp. (IBM) has requested an extension of time for the filing of comments and reply comments in the above-captioned proceeding. The *Notice of Proposed Rule Making* in this proceeding was adopted January 7, 1985 and released January 15, 1985, 50 FR 2837 (January 22, 1985). Comments are due by February 22, 1985 and reply comments by March 11, 1985.

2. IBM has requested additional time to comment because it expects to point out relationships between this proceding and two other current Commission proceedings. One is a *Notice of Proposed Rule Making* in Docket No. 84–1231, released January 16, 1985 and the other is a *Notice of Proposed Rule Making* in Docket No. 84–1233, released January 3, 1985.

3. The Commission has considered the reasons given in support of the requested extension of time and does not find adequate justification to grant the extension based on the information provided by IBM. IBM has not demonstrated a sufficient relationship between this proceeding and the other two proceedings to warrant a thirty day extension of time. We will, however, allow an additional two days for filing comments in this proceeding and extend the comment deadline to February 26, 1985. We are not extending the time period for filing reply comments. Upon adoption of this *Order,* counsel for IBM was notified by telephone of this action.

4. Accordingly, it is ordered, pursuant to the authority set forth in § 0.331 of the Commission's Rules and Regulations, that the relief requested is granted to the extent discussed herein, and denied in all other respects. Interested parties will have until February 26, 1985 to file comments.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Michael T.N. Fitch,

Acting Chief, Private Radio Bureau.

[FR Doc. 85–5451 Filed 3–6–85; 8:45 am]

BILLING CODE 6712–01–M

GENERAL SERVICES ADMINISTRATION

48 CFR Ch. 5

[GSAR Notice No. 5–82f]

Acquisition of Leasehold Interests in Real Property

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice invites written comments on a proposed change to the General Services Administration Regulation (GSAR) implementing the Competition in Contracting Act of 1984 (CICA) (Pub. L. 98–369) with respect to the acquisition of leasehold interests in real property. Miscellaneous changes unrelated to CICA are also proposed in Part 552, Solicitation Provisions and Contract Clauses; Part 553, Forms, and Part 570, Acquisition of Leasehold Interest in Real Property. The intended effect is to implement CICA and to improve the regulation system for the benefit of contracting activities.

DATES: Comments are due in writing not later than April 8, 1985.

ADDRESS: Requests for a copy of the proposal and comments should be addressed to Ms. Carol A. Farrell, Office of GSA Acquisition Policy and Regulations, 18th and F Sts., NW., Room 4027, Washington, D.C. 20405.

FOR FURTHER INFORMATION CONTACT: Ida M. Ustad, Office of GSA Acquisition Policy and Regulations on (202) 523–4754.

SUPPLEMENTARY INFORMATION: The proposed rule is not a "major rule" as defined by Executive Order 12291. Therefore, no regulatory impact analysis has been prepared. The General Services Administration (GSA) certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. et. seq.). Therefore, no regulatory flexibility analysis has been prepared. The rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et. seq.

List of Subjects in CFR Parts 552, 553 and 570

Government procurement.

Dated: February 6, 1985.

Richard H. Hopf, III,

Director, Office of GSA Acquisition, Policy and Regulations.

[FR Doc. 85–5460 Filed 3–6–85; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 215

[FRA Docket No. RSFC–6, Notice 9]

Railroad Freight Car Standards

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Announcement of change in hearing schedule.

SUMMARY: FRA announces that the public hearing scheduled for March 12,

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1985 in Washington, DC, regarding thermal abuse of freight car wheels, will not commence until 1:00 p.m. and may be extended for an additional day (through March 13, 1985) if necessary.

DATES: The public hearing previously announced as beginning at 10:00 a.m. on Tuesday, March 12, 1985, will be convened at 1:00 p.m. on that date and, if necessary to assure adequate time for the presentation of information or views, may be reconvened at 10:00 a.m. on Wednesday, March 13, 1985.

ADDRESS: The public hearing will be held in Room 8334 of the Nassif Building located at 400 Seventh Street SW., Washington DC.

FOR FURTHER INFORMATION CONTACT: Philip Olekszyk, Office of Safety, Federal Railroad Administration, Washington, DC 20590, telephone (202) 426–0897.

SUPPLEMENTARY INFORMATION: On December 17, 1984 FRA published in the **Federal Register** (49 FR 48952) an announcement that it was scheduling additional dates for public hearings regarding its proposal to amend FRA's regulatory provision defining freight car wheels as defective because of thermal abuse. The hearing scheduled for March 12, 1985 was set to convene at 10:00 a.m. and was focused on the concern raised by a commenter that FRA's current regulatory approach to thermally abused freight car wheels is intrinsically flawed because it continues to rely on a scientifically unjustified detection methodology.

Due to unforeseen scheduling conflicts, FRA has decided to delay the start of this hearing until 1:00 p.m. on March 12, 1985. Since this delay in the convening of the hearing may necessitate the need to extend the hearing until the following day so as to permit all interested parties to fully explain their views, FRA is tentatively scheduling an additional day for the conduct of thus hearing. If appropriate, FRA will reconvene the hearing on Wednesday, March 13, 1985 at 10:00 a.m. in the same location to permit all parties a full opportunity to express their views on the issues.

To assist FRA in conducting this hearing, any individual or organization desiring to present testimony is requested to notify FRA prior to the hearing and to provide FRA with the name and title of the person expected to testify as well as an estimate of the amount of time required for the presentation.

Issued in Washington, DC, on March 4, 1985.

John M. Mason,

Chief Counsel.

[FR Doc. 85–5518 Filed 3–6–85; 8:45 am]

BILLING CODE 4910–06–M

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 85–02, Notice 01]

Federal Motor Vehicle Safety Standards; Brake Hoses, Motor Vehicle Brake Fluids

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposed several amendments to Federal Motor Vehicle Safety Standard (FMVSS), No. 116, *Motor Vehicle Brake Fluids*, and FMVSS No. 106, *Brake Hoses*, to revise the referee materials and test procedures referenced in portions of those standards. At present, FMVSS No. 116 and FMVSS No. 106 reference the referee material (RM) identified as RM–1 fluid by the Society of Automotive Engineers (SAE). However, RM–1 fluid is now commerically unavailable, and is less representative of brake fluids used in vehicles on the road today. The SAE in its January 1980 revision of Standard J1703, "Motor Vehicle Brake Fluid," substituted a new referee material, RM–66–03, in place of RM–1 for use in the compatibility test. This notice proposes to adopt and extend this revision by referencing RM–66–03 for use in the compatibility test of Standard No. 106, and the compatibility and fluid chemical stability tests of Standard No. 116. This notice also proposes to reference a new referee material, TEGME, in the humidification procedures of Standard No. 116, and also to adjust the water content level and test temperature referenced in the test procedures. Additionally, this notice proposes to amend the number of sets of stroking test materials in the stroking test procedures of Standard No. 116. The proposed amendment to the stroking test will reduce the quantities of the stroking test materials, and thus related compliance costs, without an effect on safety.

DATE: Comments must be submitted by May 6, 1985. Due to the commercial unavailability of RM–1 fluid, it is proposed that the final rule be effective upon publication in the **Federal Register**. However, because the agency is concerned that manufacturers who may have a supply of RM–1 fluid on hand and are currently using it to test their products would be unable to determine the date of publication of the final rule, it is proposed that use of RM–1 fluid may continue for 180 days after publication of the final rule in the **Federal Register**.

ADDRESS: Comments should refer to the docket and notice numbers and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590 (Docket hours are 8:00 a.m. to 4:00 p.m., Monday through Friday.)

FOR FURTHER INFORMATION CONTACT: Mr. Vernon Bloom, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590, (202–426–2153).

SUPPLEMENTARY INFORMATION: Federal Motor Vehicle Safety Standard (FMVSS) No. 116, *Motor Vehicle Brake Fluids*, and FMVSS No. 106, *Brake Hoses*, specify performance requirements for brake fluids and motor vehicle brake hoses. Included in the performance requirements for Standard No. 106 is a brake fluid compatibility test, and included in Standard No. 116 are compatibility and humidification tests. The procedures for the compatibility and humidification tests currently reference the referee materials brake fluid specified by the Society of Automotive Engineers (SAE) in J1703b. In turn, J1703b references a referee material (RM) identified as RM–1.

Brake fluid compatibility is considered an important factor in establishing brake hose life and strength characteristics. The compatibility test of Standard No. 106 measures hydraulic brake hose compatibility with brake fluid. The brake hose that is being tested is filled with the SAE Compatibility Fluid for a required number of hours at specified temperatures, and is then subjected to constriction and burst strength tests. Currently RM–1 fluid is referenced in the test procedures for the standard's brake fluid compatibility test.

Under the compatibility requirements of FMVSS No. 116, the compatibility of a brake fluid with a RM fluid (representative of fluids used in motor vehicles) is determined. The SAE Compatibility Fluid that is used in these tests as a referee material should be representative of the fluids found in a braking system in service. The tests measure the compatibility of fluids of different chemical bases by checking

whether there are undesirable chemical interactions resulting from the mixture of fluids. Section 6.10 determines the compatibility of a brake fluid with other brake fluids. This section currently references RM–1 fluid as the referee material used in the test procedure.

The humidification tests of FMVSS No. 116 measure the amount of water absorbed by a brake fluid as compared to a reference fluid. Presently this reference fluid is RM–1 fluid. The presence of water in a brake system degrades braking performance and safety by lowering the boiling point of brake fluid, increasing the possibility of vapor lock and the corroding of system components, and the depositing of sediment in wheel cylinders that could cause a system malfunction. The test procedures of S6.2 determine the water content and wet equilibrium reflux boiling point (ERBP) of a brake fluid. Standard No. 116 establishes minimum wet ERBP's for different grades of brake fluid. In the test procedure a sample of brake fluid is humidified under controlled conditions. SAE RM–1 fluid is currently used to establish the "endpoint" for humidification, i.e., a sample of the RM fluid is humidified simultaneously with the sample of the test fluid. When the water content of the current SAE RM–1 fluid is measured to be 3.50±0.05 percent by weight, the test fluid sample is removed from the humidification apparatus. After humidification, the water content and ERBP of the sample are determined.

Section 7.2 also refers to RM–1 fluid as a reference for measuring the water content of brake fluids.

RM–1 and RM–66–03 Fluids

The J1703b SAE Standard currently referenced in Standard No. 116 still references the RM–1 fluid. NHTSA has tentatively concluded that the inclusion of RM–1 fluid in the test procedures of Standards 116 and 106 is no longer desirable for several reasons. First, manufacture of the fluid has ceased. In January 1980, SAE revised Standard J1730 to replace the RM–1 fluid with the new RM–66–03 campatibility fluid. The updated reference to RM–66–03 fluid by the SAE is a result of the termination of the manufacturing of the RM–1 fluid. Manufacturers are unwilling to produce more RM–1 fluid because several of the ingredients contained in the RM–1 fluid are not available to the manufacturers because they are no longer used in today's fluids, or have become prohibitively costly to obtain.

Another reason the inclusion of RM–1 fluid in Standards Nos. 116 and 106 is undesirable is because RM–1 fluid contains toxic materials which require elaborate protective procedures and special handling and manufacturing processes.

The reference to RM–1 fluid in Standards Nos. 116 and 106 is also undesirable because the fluid is not representative of fluids in service today. The purposes of the compatibility test would be better served by a referee material more representative of today's fluids.

Since the RM–1 fluid referenced in the test procedures of FMVSS Nos. 116 and 106 is no longer readily available, NHTSA has tentatively decided to amend these standards to substitute new referee materials used in the test procedures for the compatibility and humidification tests. RM–66–03 fluid would be referenced in Standard No. 106's compatibility requirement and test procedures (S5.3.9 and S6.7), and in Standard No. 116's compatibility (6.10), fluid chemical stability (6.5), and water content (7.2) tests.

The RM–66–03 fluid was specified by the SAE in J1703, January 1980, as a blend of four proprietary polyglycol brake fluids of fixed composition, in equal parts by volume. The four fluids selected comprise three factory-fill and one after market fluid as follows: DOW HD50–4, DOW 455, Delco Supreme II, and Olin HDS–79.

The RM–66–03 fluid is available from the SAE in the blend and formulation developed by the SAE for J1703. The individual manufacturers of the four proprietary fluids have indicated to the SAE Brake Fluids Subcommittee and Reference Materials Subcommittee that the proprietary formulation may be changed in the commercial market, but the formulations developed for the RM–66–03 fluid would be guaranteed to be available for a minimum five-year period. This five-year period commenced in May 1983.

No adverse impact on safety is anticipated from the use of the RM–66–03 fluid in the test procedures of Standards Nos. 116 and 106. On the contrary, since the RM–1 compatibility fluid referenced in Standards Nos. 106 and 116 is not commercially available, ascertaining whether hoses and fluids comply with certain requirements related to compatibility and boiling points is difficult. Amending the standards to allow the use of RM–66–03 fluid in place of RM–1 provides a readily available compatibility fluid for the compliance tests which is more representative of fluids used in today's vehicles.

TEGME Brake Fluid Grade

In humidification test procedures under Standard No. 116, the referee material fluid is used as a reference to determine when to terminate the humidification procedure. Currently RM–1 fluid is used as this referee material. The agency is proposing to amend Standard No. 116 to reference a new referee fluid, triethylene glycol monomethyl ether (TEGME), brake fluid grade, as the referee material used in the humidification test procedures of the standard. The new referee material (TEGME) would be referenced in Standard No. 116's test of a brake fluid's wet equilibrium reflux boiling point (S6.2).

TEGME has been referenced by the SAE in J1703 Jan80, as the referee material used in the humidification test procedure. The TEGME fluid is capable of absorbing a measurable amount of water in a given time. The SAE has determined that use of the TEGME fluid would reduce costs and produce accurate, repeatable results in the humidification test. Nominally the TEGME fluid will increase from its starting point of 0.5% water by weight to 3.70% by weight in 16 to 18 hours, when the control test temperature is maintained at 50 °C.

The agency has tentatively concluded that amending S6.2 to reference the TEGME fluid (instead of RM–1 fluid), adjust the final water content of the referee material fluid to 3.70% water (instead of the current requirement of 3.5%), change the test temperature to 50 °C. (from 23 °C.), and add a cooling period for the sealed jar sample would establish a less costly and more convenient testing procedure. These changes (use of TEGME fluid, change in water pickup endpoint and test temperature, and the cool-down to room temperature) are part of the overall changes adopted from SAE J1703 procedures. A change to the final water content of the referee material specified in S6.2.5 to 3.70% water is proposed in this notice as this nominally is the point where 3% water pickup would occur in current polyglycol-type fluids being humidified. This would give approximately the same amount of water pickup that would occur in a polyglycol fluid when the RM–1 referee material reached 3.5% water content.

Changing the temperature from 23 °C to 50 °C will allow manufacturers to complete the required testing in a more convenient time interval. The RM–1 fluid, humidified as 23 °C, took 8 to 10 hours to reach its 3.5% water content. This time interval made it necessary for some testing laboratories to run overtime shifts in order to complete the humidification procedure. When TEGME is used as the referee material

for this test, the samples of brake fluid and referee material would be humidified at 50 °C for 16 to 18 hours. The completion of the test would thus fall within the following day shift time period, and laboratories would not need to use personnel on an overtime basis.

The cool-down period is an added step also made for the convenience of test laboratories. The samples of brake fluid are taken from the humidification apparatus and allowed to cool for 60 to 90 minutes. This interval allows the brake fluid specimens to cool to room temperature and gives the lab technician a brief period to set up the test apparatus that measures the water content of the test fluid specimens. Neither the change in test temperature nor the addition of the cool-down period affect the stringency of the test.

The humidification procedure requires that the sealed jars be capped promptly. This is to ensure that the specimens of brake fluid do not absorb additional ambient moisture after being removed from the desiccator.

The agency believes that the use of the TEGME fluid in compliance testing would conserve the more expensive supply of RM–66–03 brake fluid material. NHTSA has also tentatively concluded that these changes to sections 6.2 would not have an adverse effect on safety, because these changes should have no effect on the outcome of the humidification test.

Stroking Test

The stroking test in Standard No. 116 checks the lubricity effect of a brake fluid on rubber components. This notice proposes to amend the requirements for stroking test materials referenced in S5.1.13 and S6.13 by reducing the number of materials required to be tested. Currently the procedures of the stroking test in S6.13 require four sets of testing materials comprising wheel cylinders, drums, shoe assemblies, et cetera. The SAE has determined in its revision of J1703, January 1980, that three sets of test materials are sufficient to analyze the adequacy of results. The agency has tentatively agreed with this conclusion, and has tentatively determined that the reduced number of test materials would lessen the costs related to compliance testing without an adverse impact on safety. This notice proposes to amend the requirements of S5.1.13 and S6.13 so that three sets are tested in place of the current four sets. S5.1.13 also currently requires brake fluid to be tested with ten new brake cups in the above test system according to the procedures of S6.13. This notice proposes that eight cups be tested, and accordingly reduces the number of cups which are checked for unsatisfactory operating condition.

Typographical Errors

The agency is also proposing to correct several typographical errors in S5.1.9(a), S5.1.9(b) and S5.1.12 of Standard No. 116. These sections inadvertently referred to sections which are not found in the standard.

Effective Date

It is proposed that the final rule be effective upon publication in the **Federal Register**. There is good cause for this expedited effective date since the referee material identified as RM–1 used in the testing procedures of Standards Nos. 116 and 106 is commercially unavailable. Use of the RM–66–03 fluid will facilitate compliance testing by utilizing a referee material that is currently available and more representative of fluids in service. However, because the agency is concerned that manufacturers who have a supply of RM–1 fluid on hand may be using it to test their products and would be unable to determine the date of publication of the final rule, it is proposed that use of RM–1 fluid may continue for 180 days after publication of the final rule in the **Federal Register**.

Environmental Effects

NHTSA has analyzed this proposal for the purposes of the National Environmental Policy Act, and has concluded that it will not have a significant effect on the quality of the human environment.

Economic Effects

NHTSA has considered the impacts of this proposal in relation to the Regulatory Flexibility Act. I certify that this proposal would not have a significant economic impact on a substantial number of small entities, and no initial regulatory flexibility analysis has been prepared. Manufacturers of brake hoses and referee materials referenced in Standards Nos. 116 and 106 are generally not small businesses within the meaning of the Regulatory Flexibility Act. However, even if such manufacturers were considered small businesses within the Regulatory Flexibility Act, the potential costs of this rulemaking are minimal and are outweighed by the potential benefits.

The benefits of referencing RM–66–03 fluid in Standards Nos. 116 and 106 are substantial. RM–66–03 fluid is readily available whereas RM–1 is not. RM–66–03 fluid is also more representative of fluids in service today. The agency knows of no problems resulting from tests conducted with RM–66–03 fluid.

Some cost savings would be realized with the recommended changes. The utilization of RM–66–03 fluid would reduce the costs of fluids used in compliance testing without sacrificing adequate test results. For example, when last available the cost of RM–1 fluid was approximately $27.00 per quart. The cost of RM–66–03 fluid is approximately $8.00 per quart.

Cost savings would be realized by the use of the TEGME fluid in the humidification tests of Standard No. 116. The TEGME fluid costs approximately $3.30 per quart.

The change in the stroking test procedures would also result in some cost savings. The costs related to the quantities of materials tested would be reduced about 25 percent.

Any changes to Standard Nos. 106 and 116 referencing the TEGME fluid and reducing the number of test materials used in the stroking test would not significantly affect manufacturers of brake hoses and referee materials. These manufacturers may benefit from some cost savings resulting from the changes to the standards, but would not otherwise be significantly affected by this proposal.

NHTSA has concluded that this proposal does not qualify as a "major rule" within the meaning of Executive Order 12291, and that this amendment is not "significant" within the meaning of the Department of Transportation's regulatory procedures. Preparation of a regulatory impact analysis is not necessary for this rulemaking. The agency has determined further that the effects of this rulemaking are minor and that a full regulatory evaluation is not warranted. The proposal would reference referee materials in Standards Nos. 116 and 106 which are readily available to manufacturers of brake fluids and brake hose.

Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted. All comments must be limited not to exceed 15 pages in length (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15 page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential information, should be submitted to the Chief Counsel, NHTSA, at the street address

given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation (49 CFR Part 512).

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after the closing date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after the date, and comment received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. NHTSA will continue to file relevant material as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with their comments, a self addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

PART 571—FEDERAL MOTOR VEHICLES SAFETY STANDARDS

§ 571.106 [Amended]

In consideration of the foregoing, it is proposed that 49 CFR 571.106, *Brake Hoses*, be amended as follows:

1. Standard 5.3.9 would be revised to read as follows:

S.5.3.9 *Brake fluid compatibility, constriction, and burst strength.* Except for brake hose assemblies designed for use with mineral or petroleum-based brake fluids, a hydraulic brake hose assembly shall meet the constriction requirement of S5.3.1 after having been subjected to a temperature of 200 °F. for 70 hours while filled with SAE RM–66–03 Compatibility Fluid, as described in Appendix A of SAE Standard J1703 Jan 80, "Motor Vehicle Brake Fluid," January 1980, (S6.7) It shall then withstand water pressure of 4,000 psi for 2 minutes and thereafter shall not rupture at less than 5,000 psi (S6.2).

2. Standard 6.7.1(a) would be revised to read as follows:

S6.7.1 *Preparation.*

(a) Attach a hose assembly below a 1-pint reservoir filled with 100 ml. of SAE RM–66–03 compatibility fluid as shown in Figure 2.

§ 571.116 [Amended]

In consideration of the foregoing, it is proposed that 49 CFR 571.116, *Motor Vehicle Brake Fluids*, be amended as follows:

1. Standard 5.1.9(a) introductory text would be revised to read as follows:

S5.1.9 *Water Tolerance*

(a) *At low temperature.* When brake fluid is tested according to S6.9.3(a)—

* * * * *

2. Standard 5.1.9(b) would be revised to read as follows: S5.1.9

* * * * *

(b) *At 60 °C. (140 °F.).* When brake fluid is tested according to S6.9.3(b)—

* * * * *

3. Standard 5.1.12 introductory text would be revised to read as follows:

S5.1.12 *Effects on cups.* When brake cups are subjected to brake fluid in accordance with S6.12—

* * * * *

4. Standard 5.1.13(c) would be revised to read as follows:

(c) The average decrease in hardness of seven of the eight cups tested (six wheel cylinder and one master cylinder primary) shall not exceed 15 IRHD. Not more than one of the seven cups shall have a decrease in hardness greater than 17 IRHD;

5. Standard 5.1.13(d) would be revised to read as follows:

(d) None of the eight cups shall be in an unsatisfactory operating condition as evidenced by stickiness, scuffing, blisters, cracking, chipping, or other change in shape from its orignial appearance;

6. Standard 5.1.13(e) would be revised to read as follows:

(e) None of the eight cups shall show an increase in base diameter greater than 0.90 mm. (0.035 inch);

7. Standard 5.1.13(f) would be revised to read as follows:

(f) The average lip diameter set of the eight cups shall not be greater than 65 percent;

8. Standard 6.2.1 would be revised to read as follows:

S6.2.1 *Summary of the procedure.* A 100-ml. sample of the brake fluid is humidified under controlled conditions; 100 ml. of SAE triethylene glycol monomethyl ether referee material (TEGME) as described in Appendix E of SAE Standard J1703 Jan80, "Motor Vehicle Brake Fluid," January 1980, is used to establish the end point for humidification. After humidification the water content and ERBP of the brake fluid are determined.

9. Standard 6.2.3(c) would be revised to read as follows:

(c) SAE TEGME referee material.

10. Standard 6.2.4 would be revised to read as follows:

S6.2.4 *Preparation of apparatus.* Lubricate the ground-glass joint of the desiccator. Load each desiccator with 450±25 grams of the ammonium sulfate and add 125±10 ml. of distilled water. The surface of the salt slurry shall lie with 45±7 mm. of the top surface of the desiccator plate. Place the desiccators in an area with temperature controlled at 50±1 °C. (122±1.8 °F.) throughout the humidification procedure. Load the desiccators with the slurry and allow to condition with the covers on and stoppers in place at least 12 hours before use. Use a fresh charge of salt slurry for each test.

11. Standard 6.2.5 would be revised to read as follows:

S6.2.5 *Procedure.* Pour 100±1 ml. of the brake fluid into a corrosion test jar. Promptly place the jar into a desiccator. Prepare a duplicate test sample, and two duplicate specimens of the SAE TEGME referee material fluid. Adjust water content of the SAE TEGME fluid to 0.50±0.05 percent by weight at the start of the test in accordance with S7.2 At intervals remove the rubber stopper in the top of each desiccator containing SAE TEGME fluid. Using a long needled hypodermic syringe, take a sample of not more than 2 ml. from each jar and determine its water content. Remove no more than 10 ml. of fluid from each SAE TEGME sample during the humidification procedure. When the water content of the SAE fluid reaches 3.70±0.05 percent by weight (average of the duplicates), remove the two test fluid specimens from their desiccators and promptly cap each jar tightly. Allow the sealed jars to cool for 60–90 minutes at 23±5 °C. (73.4±9 °F.). Measure the water contents of the test fluid specimens in accordance with S7.2 and determine their ERBP's in accordance with S6.1 through S6.1.5. If the two ERBP's agree within 4 °C. (8 °F.), average them to determine the wet ERBP; otherwise repeat and average the four individual ERBP's as the wet ERBP of the brake fluid.

12. Standard 6.5.4.1 would be revised to read as follows:

S6.5.4.1 *Materials.* SAE RM–66–03 Compatibility Fluid, as described in Appendix A of SAE Standard J1703 Jan80, "Motor Vehicle Brake Fluid," January 1980.

13. Standard 6.5.4.2(a) would be revised to read as follows:

S6.5.4.2 *Procedure.*

(a) Mix 30±1 ml. of the brake fluid with 30±1 ml. of SAE RM–66–03 Compatibility Fluid in a boiling point flask (S6.1.2(a)). Determine the initial ERBP of the mixture by applying heat to the flask so that the fluid is fluxing in 10±2 minutes at a rate in excess of 1 drop per second, but not more than 5 drops per second. Note the maximum fluid temperature observed during the first minute after the fluid begins refluxing at a rate in excess of 1 drop per second. Over the next 15±1 minutes, adjust and maintain the reflux rate at 1 to 2 drops per second. Maintain this rate for an additional 2 minutes, recording the average value of four temperature readings taken at 30-second intervals as the final ERBP.

14. Standard 6.10.1 would be revised to read as follows:

S6.10.1 *Summary of the procedure.* Brake fluid is mixed with an equal volume of SAE RM–66–03 Compatibility Fluid, then tested in the same way as for water tolerance (S6.9.3) except that the bubble flow time is not measured. This test is an indication of the compatibility of the test fluid with other motor vehicle brake fluids at both high and low temperature.

15. Standard 6.10.2(e) would be revised to read as follows:

(e) *SAE RM–66–03 Compatibility Fluid.* As described in Appendix A of SAE Standard J1703 Jan80, "Motor Vehicle Brake Fluid," January 1980.

16. Standard 6.10.3(a) would be revised to read as follows:

(a) *At low temperature.* Mix 50±0.5 ml. of brake fluid with 50±0.5 ml. of SAE RM–66–03 Compatibility Fluid. Pour this mixture into a centrifuge tube and stopper with a clean dry cork. Place tube in the cold chamber maintained at minus 40°±2 °C. (minus 40°±3.6 °F.). After 24±2 hours, remove tube, quickly wipe with a clean lint-free cloth saturated with ethanol (isopropanol when testing DOT 5 fluids) or acetone. Examine the test specimen for evidence of sludging, sedimentation, or crystallization. DOT 3 and DOT 4 test fluids shall also be examined for stratification.

17. Standard 6.13.1 would be revised to read as follows:

S6.13.1 *Summary of the procedure.* Brake fluid is stroked under controlled conditions at an elevated temperature in a simulated motor vehilce hydraulic braking system consisting of three slave wheel cylinders and an actuating master cylinder connected by steel tubing. Referee standard parts are used. All parts are carefully cleaned, examined, and certain measurements made immediately prior to assembly for test. During the test, temperature, rate of pressure rise, maximum pressure and rate of stroking are specified and controlled. The system is examined periodically during stroking to assure that excessive leakage of fluid is not occurring. Afterwards, the system is torn down. Metal parts and SBR cups are examined and remeasured. The brake fluid and any resultant sludge and debris are collected, examined, and tested.

18. Standard 6.13.2(a) would be revised to read as follows:

(a) *Brake assemblies.* With the drum and shoe apparatus: three drum and shoe assembly units (SAE RM–29a) consisting of three forward brake shoes and three reverse brake shoes with linings and three front wheel brake drum assemblies with assembly component parts. With stroking fixture type apparatus: three fixture units including appropriate adapter mounting plates to hold brake wheel cylinder assemblies.

19. Standard 6.13.2(c) would be revised to read as follows:

(c) *Heated air bath cabinet.* An insulated cabinet or oven having sufficient capacity to house the three mounted brake assemblies or stroking fixture assemblies, master cylinder, and necessary connections. A thermostatically controlled heating system is required to maintain a temperature of 70°±5 °C. (158°±9 °F.) or 120°±5 °C. (248°±9 °F.). Heaters shall be shielded to prevent direct radiation to wheel or master cylinder.

20. Standard 6.13.2(f) would be revised to read as follows:

(f) *Wheel cylinder (WC) assemblies (SAE RM–14a).* Three unused cast iron housing straight bore hydraulic brake WC assemblies having diameters of approximately 28 mm. (1⅛ inch) for each test. Pistons shall be made from unanodized SAE AA2024 aluminum alloy.

21. Standard 6.13.3(a) would be revised to read as follows:

(a) *Standard SBR brake cups.* Six standard SAE SBR wheel cylinder test cups, one primary MC test cup, and one secondary MC test cup, all as described in S7.6, for each test.

22. Standard 6.13.6(b) would be revised to read as follows:

(b) Calculate the average decrease in hardness of the seven cups tested, as well as the individual value (see S5.1.13(c)).

23. Standard 6.13.6(c) would be revised to read as follows:

(c) Calculate the increases in base diameters of the eight cups (see S5.1.13(e)).

24. The first sentence of Standard 6.13.6(d) would be revised to read as follows:

(d) Calculate the lip diameter interference set for each of the eight cups by the following formula and average the eight values (see S5.2.13(f)).

* * * * *

25. Standard 7.2 would be revised to read as follows:

S7.2 *Water content of motor vehicle brake fluids.* Use analytical methods based on ASTM D1123–59, "Standard Method of Test for Water in Concentrated Engine Antifreezes by the Iodine Reagent Method," for determining the water content of brake fluids, or other methods of analysis yielding comparable results. To be acceptable for use, such other method must measure the weight of water added to samples of the SAE RM–66–03 and TEGME Compatibility Fluids within ±15 percent of the water added for additions up to 0.8 percent by weight, and within ±5 percent of the water added for additions greater than 0.8 percent by weight. The SAE RM–66–03 Compatibility Fluid used to prepare the samples must have an original ERBP of not less than 205 °C. (401 °F.) when tested in accordance with S6.1. The SAE TEGME fluid used to prepare the samples must have an original ERBP of not less than 240 °C. (464 °F.) when tested in accordance with S6.1.

(Secs. 103, 119, Pub. L. 89–563, 80 Stat. 718 (15 U.S.C. 1392, 1407); delegations of authority at 49 CFR 1.50 and 501.8)

Issued: February 28, 1985.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 85–5452 Filed 3–6–85; 8:45 am]

BILLING CODE 4910–59–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1171

[Ex Parte No. 55 (Sub.–62)]

Applications for Certificates of Registration for Certain Foreign Carriers

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rules.

SUMMARY: Sections 225 and 226 of the Motor Carrier Safety Act of 1984, Pub. L. No. 98–554, 98 Stat. 2882, 2847–52 (Act), respectively, extend the moratorium on

the Commission's certification of foreign motor carrriers, and require certain foreign motor cariers and foreign motor private carriers to hold a new certificate of registration during the period the moratorium is in effect to perform specified transportation services that until now have been outside the Commission's jurisdiction and exempt from regulation. To obtain this certificate, a carrier must demonstrate that it is fit, willing, and able to provide the involved service, and that it has paid, or will timely pay, applicable Federal motor vehicle taxes. This rulemaking proceeding (1) discusses the new statutory provisions, and (2) proposes rules for applying for the new certificate of registration.

DATE: Comments are due on April 8, 1985.

ADDRESS: An original and 15 copies, if possible, should be sent to:

Ex Parte No. 55 (Sub-No. 62), Room 2203, Office of the Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT:

Joseph B. O'Malley, (202) 275–7928;
or
Howell I. Sporn, (202) 275–7691.

SUPPLEMENTARY INFORMATION:

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, D.C., 20423, or call 289–4357 (D.C. Metropolitan area) or toll free (800) 424–5403.

Energy and Environmental Considerations

This action will not have an adverse effect on either the quality of the human environment or conservation of energy resources.

Regulatory Flexibility Analysis

The Commission certifies that these rules will not have a significant economic impact on a substantial number of small entities. The proposed application rules will provide an expedited procedure for foreign motor carriers and foreign motor private carriers to obtain certificates of registration mandated under the Motor Carrier Safety Act of 1984.

List of Subjects in 49 CFR Part 1171

Administrative practice and procedure, Motor carriers, Insurance.

(49 U.S.C. § 10922 and 10530, and 5 U.S.C. 553)

Decided: February 28, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley, and Strenio. Commissioner Andre concurred.

James H. Bayne,
Secretary.

Title 49, Code of Federal Regulations, is proposed to be amended by adding a new Part 1171 to read as follows:

PART 1171—RULES GOVERNING APPLICATIONS FOR CERTIFICATES OF REGISTRATION BY FOREIGN MOTOR CARRIERS AND FOREIGN MOTOR PRIVATE CARRIERS UNDER 49 U.S.C. 10530

Sec.

1171.1 Controlling legislation.
1171.2 Definitions.
1171.3 Procedure used generally.
1171.4 Information on Form OP-___
1171.5 Where to send the application.
1171.6 Commission review of the application.
1171.7 Appeals.

Authority: 49 U.S.C. 10922 and 10530, 5 U.S.C. 553.

§ 1171.1 Controlling legislation.

(a) These rules govern applications filed under 49 U.S.C. 10530 (section 226 of the Motor Carrier Safety Act of 1984). Under 49 U.S.C. 10530, certain foreign motor carriers and motor private carriers must hold a certificate of registration to provide certain interstate transportation services otherwise outside the jurisdiction of the Commission. A foreign motor carrier may not provide interstate transportation of exempt items unless the Commission has issued the carrier a certificate of registration. A foreign motor private carrier may not provide interstate transportation of property (including exempt items) without such a certificate. The service allowable under a certificate of registration is described in 49 U.S.C. 10922(l)(2)(B).

(b) These rules apply only to carriers of a contiguous foreign country with respect to which a moratorium is in effect under 49 U.S.C. 10922(l)(1).

§ 1171.2 Definitions.

(a) *The Act.* The Motor Carrier Safety Act of 1984.

(b) *Registrable year.* The first registrable year is the 6-month period beginning July 1, 1985, and ending December 31, 1985. Subsequent registrable years shall coincide with the calendar year.

(c) *Foreign motor carrier.* A motor carrier of property, (1) which does not hold a certificate or permit issued under 49 U.S.C. 10922 or 10923, and (2) which (i) is domiciled in any contiguous foreign country, or (ii) is owned or controlled by persons of any contiguous foreign country, and is not domiciled in the United States.

(d) *Foreign motor private carrier.* A motor private carrier, (1) which is domiciled in any contiguous foreign country, or (2) which is owned or controlled by persons of any contiguous foreign country, and is not domiciled in the United States.

(e) *Exempt items.* Commodities described in detail at or transported under 49 U.S.C. 10526(a) (4), (5), (6), (11), (12), (13), and (15).

(f) *Interstate transportation.* Transportation described at 49 U.S.C. 10521, and transportation in the United States otherwise exempt from the Commission's jurisdiction under 49 U.S.C. 10526(b)(1).

(g) *Fit, willing, and able.* Safety fitness and proof of minimum financial responsibility as defined in 49 U.S.C. 1053(e).

(h) *Motor vehicle taxes.* Taxes imposed under 26 U.S.C. 4481.

(i) *Most recent taxable period.* Same as defined in 26 U.S.C. 4482(c).

§ 1171.3 Procedures used generally.

(a) All applicants must file a completed Form OP-_____. All required information must be submitted in English on the Form OP-_____. The application will be decided based on the submitted Form OP-_____ and any attachments. Notice of the authority sought will not be published in either the **Federal Register** or the *ICC Register*. Protests or comments will not be allowed (except for intervention by the Department of Transportation). There will be no oral hearings.

(b) Applications must be filed for each registrable year. Under the Act, the carriers covered must have a copy of a valid certificate of registration in any vehicle providing transportation within the scope of the Act. 49 U.S.C. 10530(g). Applications for a particular registrable year may be filed at any time.

(c) The Form OP-_____ may be obtained at Commission regional and field offices, or by calling the Office of the Secretary at 202–275–7833.

(d) Applicants must concurrently serve a copy of their completed applications on the United States Department of Transportation, Federal Highway Administration, Bureau of Motor Carrier Safety. The Department of Transportation may intervene in any proceeding on the issue of safety fitness by filing an appropriate pleading detailing its reasons for opposing a grant of authority. The pleading must be filed within 30 days of receiving a copy of the application. Applicant may respond to

any such pleading within 20 days of its filing.

§ 1171.4 Information on Form OP-_____.

(a) Applicants must furnish all information required on Form OP-_____ by completing all spaces on the form and providing any necessary attachments. Failure to do so will result in rejection of the application.

(b) Notarization of the application is not required; however, applicants are subject to applicable Federal penalties for filing false information.

§ 1171.5 Where to send the application.

(a) The original and one copy shall be sent to the Office of the Secretary, Interstate Commerce Commission, Washington, D.C. 20423, with the $150 application fee. Make checks payable to the Interstate Commerce Commission.

(b) One copy shall be sent to the regional office or offices of the Interstate Commerce Commission for the territory for which applicant seeks authority.

(c) One copy shall be sent to the Department of Transportation, Federal Highway Administration, Bureau of Motor Carrier Safety, Washington, D.C. 20590.

§ 1171.6 Commission review of the application.

(a) Commission staff will review the application for correctness, completeness, and adequacy of the evidence.

(1) minor errors will be corrected without notification to the applicant.

(2) Materially incomplete applications will be rejected.

(b) Except in those proceedings in which the Department of Transportation intervenes under 49 CFR 1171.3(d), applications will be determined solely on the basis of the application. An employee review board will decide whether the authority sought falls under the statute, and whether and to what extent the evidence warrants a grant of authority.

(1) If the authority sought does not require a certificate of registration, or if the evidence does not warrant a grant of the authority sought, the employee review board will deny the application in whole or in part. In the case of a full or partial denial of an application, the Commission will inform the applicant by letter setting forth the reasons for the denial.

(2) If the employee board grants all or part of the application, the Commission will issue a certificate of registration authorizing specified operations for the registrable year for which the authority is sought provided that applicant has demonstrated compliance with (i) 49 CFR Part 1044 (designation of process agent), and (ii) either 49 CFR Part 1043 (insurance), or State insurance requirements, as applicable under the Act. If applicant has not complied with these requirements, the Commission will issue a notice stating that a certificate of registration will be issued upon such compliance. No certificate of registration shall be issued prior to compliance.

(c) If the Department of Transportation intervenes under 49 CFR 1171.3(d), the proceeding will be assigned to an appropriate division of the Commission for decision. If the division grants all or part of the application, it will issue a certificate in accordance with the procedure described immediately above in 49 CFR 1171.6(b)(2).

§ 1171.7 Appeals.

A decision disposing of an application subject to these rules is a final action of the Commission. Review of such an action on appeal is governed by the Commission's appeal regulations at 49 CFR 1115.2.

[FR Doc. 85-5570 Filed 3-6-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Extension of Comment Period on Proposed Threatened Status and Critical Habitat for the Inyo Brown Towhee (Pipilo Fuscus Eremophilus)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Extension of comment period.

SUMMARY: The U.S. Fish and Wildlife Service gives notice that the comment period on the proposed determination of threatened status and critical habitat for the Inyo brown towhee (*Pipilo fuscus eremophilus*) is extended. The original proposed rule action was not advertised in newspapers of local circulation. The comment period was reopened until March 11, 1985 (50 FR 5647) due to a request from an interested party. This additional extension will provide for all advertisements to be made and any interested parties ample time to comment.

DATES: The reopened comment period on the proposal is extended (50 FR 5647). The comment period, which closes on March 11, 1985, now closes April 11, 1985.

ADDRESSES: Written comments and materials should be sent to the Regional Director, U.S. Fish and Wildlife Service, Lloyd 500 Building, 500 N.E. Multnomah Street, Suite 1692, Portland, Oregon 97232. Comments and materials received will be available for public inspection during normal business hours, by appointment, at the Regional Endangered Species Division at the above Regional Office address.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne S. White, Chief, Division of Endangered Species, at the address above or 503/231-6131 (FTS 429-6131).

Author

The primary author of this notice is Ms. Carolyn A. Bohan, U.S. Fish and Wildlife Service, Lloyd 500 Building, 500 N.E. Multnomah Street, Suite 1692, Portland, Oregon 97232 (503/231-6131 or FTS 429-6131).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: February 1, 1985.

William S. Shake,

Acting Regional Director.

[FR Doc. 85-5490 Filed 3-6-85; 8:45 am]

BILLING CODE 4310-55-M

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50 CFR Part 26

Public Entry and Use, Ruby Lake National Wildlife Refuge NV

AGENCY: Fish and Wildlife Serice, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes to withdraw regulations published on June 12, 1984, that govern boating on Ruby Lake National Wildlife Refuge (NWR). In their place, regulations are proposed that would permit powerboats on the South Sump of Ruby Lake from August 1 through December 31 only.

DATE: Comments must be received on or before April 8, 1985.

ADDRESS: Comments may be addressed to the Associate Director—Wildlife Resources, U.S. Fish and Wildlife Service, 18th and C Streets, NW, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: James F. Gillett, Division of Refuge Management, U.S. Fish and Wildlife Service, 18th and C Streets, NW, Washington, D.C. 20240 (telephone: 202-343-4311).

SUPPLEMENTARY INFORMATION: On June 12, 1984, at 49 FR 24139, the Service

issued a final rulemaking to regulate the use of boats on the South Sump of Ruby Lake NWR, Nevada. The regulations provided that motorless boats and boats with electric motors could be used from June 15 through December 31 annually. The regulations further permitted the use of powerboats (having motors of 10 horsepower or less) on the South Sump from July 15 through December 31 in 1984, 1986, and 1988, and from August 1 through December 31 in 1985 and 1987. This alternating annual schedule was developed to accommodate a Service research program to evaluate the effects of powerboating on canvasback and redhead duck broods.

On July 16, 1984, a notice was published at 49 FR 28773 announcing the emergency closure of the South Sump to powerboating from July 15, 1984, through July 31, 1984. This action was taken because extremely high water had caused a high rate of nest failure and subsequent late renesting among canvasback and redhead ducks using the refuge, thereby making nests vulnerable to disturbance.

On July 5, 1984, the Defenders of Wildlife, *et al.*, filed suit (Civil Action No. 84–2035) in U.S. District Court, Washington, D.C., against the Secretary of the Interior, *et al.*, to contest the July 15 opening dates for powerboating as set forth in the June 12 rulemaking. On January 3, 1985, the District Court dismissed the lawsuit pursuant to a stipulated settlement by the parties providing for the Service to withdraw the June 12, 1984, final rule pertaining to regulations for powerboats and replace it with a rule that would permit powerboats on the South Sump of Ruby Lake only from August 1 through December 31 annually. This proposed rule is in response to the terms of the stipulated settlement agreement.

Conformance With Statutory and Regulatory Authorities

The National Wildlife Refuge System Administration Act of 1966 (NWRSAA), as amended (16 U.S.C. 668dd), authorizes the Secretary of the Interior to permit public access, use and recreation on refuges whenever he determines that such uses are compatible with the major purposes for which such areas were established. The Service has determined that permitting the use of motorized boats from August 1 through December 31 annually will not have a biological impact on waterfowl nesting and is compatible with the major purposes for which the Ruby Lake NWR was established.

The provisions of the NWRSAA relating to rereation are administered in accordance with the Refuge Recreation Act of 1962 (16 U.S.C. 460k), which authorizes the Secretary to permit recreational uses on refuges if they are appropriate incidental or secondary uses. In conformance with that Act, the Service has determined that motorized recreational boating governed by the proposed regulations permits a secondary use of Ruby Lake NWR that is not inconsistent with the primary objectives for which it was established. Further, the proposed recreational use will not interfere with the primary purposes for which the Ruby Lake NWR was established. The above determinations are based in large part on the Service's empirical data derived from its experience under the identical regulations in effect from 1978 to the present. In addition, funds are available within the annual refuge budget for the administration of the recreational activities that will be permitted by these regulations.

Economic Effect

Executive Order 12291 of February 19, 1981, requires the preparation of regulatory impact analyses for major rules. A major rule is one likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, government agencies or geographic regions, or significant adverse effects on the ability of United States-based enterprises to compete with foreign-based enterprises. The Regulatory Flexibity Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations or government jurisdictions.

The proposed rulemaking is a minor adjustment to existing regulations for one refuge; therefore, this action will not have an adverse impact on the overall economy or a particular region, industry or group of industries, or level of government. With respect to small entities, the proposed rulemaking will not significantly alter the existing recreational uses of the refuge, and small entities such as sporting goods stores, restaurants, motels and local governments will not be significantly affected by the rule.

Accordingly, the Department of the interior has determined that this proposed rule is not a "major rule" within the meaning of Executive Order 12291, and would not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Environmental Effects

The final environmental impact statement for the "Operation of the National Wildlife Refuge System" [FES 76–52] was filed with the Council on Environmental Quality on November 12, 1976; a notice of availability was published in 41 FR 51131. Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C), an environmental assessment (EA) was prepared in 1976 on the effects of boating on the mangement of Ruby Lake NWR. An EA and Finding of No Significant Impact were also prepared for the June 12, 1984, rulemaking.

These documents are available for public inspection and copying in Room 2343, Department of the Interior, 18th and C Streets, NW, Washington, DC 20240, or by mail, addressing the Associate Director—Wildlife Resources, U.S. Fish and Wildlife Service, at the address listed above.

Maps of the South Sump are available from the Refuge Manager, Ruby Lake NWR, Ruby Valley, Nevada 89833, and will be posted at refuge boat landings. Copies of the maps can also be obtained from the Regional Director, U.S. Fish and Wildlife Service, 500 Northeast Multnomah Street, Suite 1692, Portland, Oregon 97232.

The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, persons may submit written comments, suggestions, or objections regarding the proposed rule to the location identified in the Addresses section of this preamble. All relevant comments will be considered by the Department prior to issuance of the final rule.

Primary author of this proposed rule is Stephen J. Lewis, Division of Refuge Management, U.S. Fish and Wildlife Service, 18th and C St., NW, Washington, D.C. 20240.

List of Subjects in 50 CFR Part 26

National Wildlife Refuge System, Recreation, Wildlife refuges.

PART 26—[AMENDED]

Accordingly, it is hereby proposed to amend 50 CFR Part 26, as set forth below:

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1. The authority citation for Part 26 continues to read as follows:

Authority: Sec. 2, 22 Stat. 614, as amended (16 U.S.C. 685); Sec. 5, 43 Stat. 651 (16 U.S.C. 725); Sec. 5, 45 Stat. 449 (16 U.S.C. 690d); Sec. 10, Stat. 1244 (16 U.S.C. 715); Sec. 4, 48 Stat. 402, as amended (16 U.S.C. 664); Sec. 2, 48 Stat. 1270 (43 U.S.C. 315a); Sec. 4, 76 Stat. 654 (16 U.S.C. 460k); Sec. 4, 80 Stat. 927 (16 U.S.C. 668dd); (5 U.S.C. 301); (16 U.S.C. 685, 725, 690d), unless otherwise noted.

§ 26.34 [Amended]

2. The entry at § 26.34 for Ruby Lake National Wildlife Refuge, Nevada, is revised to read as follows:

Ruby Lake National Wildlife Refuge, Nevada

Beginning June 15 annually and continuing until December 31 annually, motorless boats and boats with electric motors are permitted only on that portion of the Ruby Lake National Wildlife Refuge known as the South Sump. Beginning August 1 annually and continuing until December 31 annually, boats propelled with a motor or combination of motors in aggregate not to exceed a 10 horsepower rating are permitted on the South Sump of the refuge. Boats may be launched only from landings approved and so designated by the Refuge Manager.

Dated: February 14, 1985.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85-5494 Filed 3-6-85; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 223

Implementation of Emergency Stumpage Rate Redeterminations for National Forest Timber Sales in Alaska

AGENCY: Forest Service, USDA.

ACTION: Proposed rule; extension of public comment period.

SUMMARY: On February 5, 1985, the Forest Service published a proposed rule to implement section 4 of the Federal Timber Contract Payment Modification Act (98 Stat. 2213; 16 U.S.C. 619), which provides for emergency stumpage rate redeterminations of certain National Forest System timber sales in Alaska (50 FR 4992). Comments on the proposed rule were to be received by March 7, 1985, in order to be considered. In response to requests, the Forest Service hereby extends the comment period to March 18, 1985.

DATE: Comments must be received by March 18, 1985.

ADDRESSES: Send written comments to R. Max Peterson, Chief (2400), Forest Service, USDA, P.O. Box 2417, Washington, D.C. 20013.

The public may inspect comments received on this proposed rule in the office of the Director, Timber Management Staff, Room 3207, South Building, 14th and Independence SW., Washington, D.C., between the hours of 8:30 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: David Spores, Timber Management Staff, (202) 447-4051.

Dated: March 5, 1985.

F. Dale Robertson,

Associate Chief.

[FR Doc. 85-5674 Filed 3-6-85; 11:58 am]

BILLING CODE 4310-05-M

Notices

Federal Register
Vol. 50, No. 45
Thursday, March 7, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Section 22 Import Fees; Adjustment of Import Fees on Sugar

AGENCY: Office of the Secretary.

ACTION: Notice.

SUMMARY: Headnote 4(c) of Part 3 of the Appendix to the Tariff Schedules of the United States (TSUS) requires the Secretary of Agriculture to increase by one cent the amount of the fees which shall be imposed on imports of raw and refined sugar (TSUS items 956.05, 956.15, and 957.15) under the authority of section 22 of the Agricultural Adjustment Act of 1933, as amended, whenever the average daily (domestic) spot price quotation for raw sugar for 10 consecutive market days within any calendar quarter is less than the market stabilization price by more than one cent. This notice announces such an adjustment.

EFFECTIVE DATE: 12:01 AM (local time at point of entry) effective March 5, 1985 (See **SUPPLEMENTARY INFORMATION**).

FOR FURTHER INFORMATION CONTACT: Robert G. Harper, Foreign Agricultural Service, Department of Agriculture, Washington, D.C. 20250, ((202) 382–9061).

SUPPLEMENTARY INFORMATION: By Presidential Proclamation No. 5164, dated March 19, 1984, headnote 4 of Part 3 of Appendix to the TSUS was amended to provide for quarterly adjusted fees on imports of raw and refined sugar (TSUS items 956.05, 956.15, and 957.15). Paragraph (c)(ii) of headnote 4 provides that the quarterly adjusted fee for item 956.15 shall be the amount by which the average of the adjusted daily spot (domestic) price quotations for raw sugar for the 20 consecutive market days immediately preceding the 20th day of the month preceding the calendar during which the fee shall be appliable (as reported by the New York Coffee, Sugar, and Cocoa Exchange) expressed in United States cents per pound, in bulk, is less than the market stabilization price. However, whenever the average of the daily spot (domestic) price quotations for 10 consecutive market days within any calendar quarter (1) exceeds the market stabilization price by more than one cent, the fee than in effect shall be decreased by one cent, or (2) is less than the market stabilization price by more than one cent, the fee than in effect shall be increased by one cent. Paragraph (c)(i) further provides that the quarterly adjusted fee for items 956.05 and 957.15 shall be the amount of the fee for item 956.15 plus one cent per pound.

The average of the daily spot (domestic) price quotations for raw sugar (item 956.15) for the 10 consecutive market day period February 13—February 27, inclusive, within the first calendar quarter of 1985, is 20.3890 cents per pound. This more than one cent below the market stabilization price of 21.57 cents. Accordingly, the fee of 1.2875 cents per pound for item 956.15 is required to be increased by one cent, resulting in a fee for item 956.15 of 2.2875 cents per pound and a fee for items 956.05 and 957.15 of 3.2875 cents per pound.

Headnote 4(c) requires the Secretary of Agriculture to determine and announce any adjustment in the fees made within a calendar quarter, certify such adjusted fees to the Commissioner of Customs, and file notice thereof wth the **Federal Register** within 3 market days of such determination. This notice, therefore, is being issued in order to comply with the requirements of headnote 4(c).

Effective Date

In accordance with headnote 4(c)(vii) of Part 3 of the Appendix to the Tariff Schedules of the United States, the adjustment in fees made herein shall not apply to the entry or withdrawal from warehouse for consumption of sugar exported (as defined in 19 CFR 152.1) on a through bill of lading to the United States from the country of origin before the effective date of the adjustment.

Notice

Notice is hereby given that, in accordance with the requirements of headnote 4(c) of Part 3 of the Appendix to the Tariff Schedules of the United States, it is determined that the fees for raw and refined sugar (TSUS items 956.05, 956.15, and 957.15) for the remainder of the first calendar quarter of 1985 shall be as follows:

Item	Fee
956.05	3.2875 cents per lb.
956.15	2.2875 cents per lb.
956.15	3.2875 cents per lb.

The amounts of such fees have been certified to the Commissioner of Customs in accordance with paragraph (c)(v) of headnote 4.

Signed at Washington, D.C., on March 4, 1985.

John R. Block,

Secretary of Agriculture.

[FR Doc. 85–5524 Filed 3–4–85; 5:05 pm]

BILLING CODE 3410-01-M

Forest Service

Mt. Baker-Snoqualmie and Wenatchee National Forests, Chelan, King, and Kittitas Counties, WA; Changes to the Alpine Lakes Wilderness

This Notice corrects information given in a **Federal Register** Notice published at 49 FR 21971, May 24, 1984. Errors were found in the above referenced Notice. The following is a resubmittal of this previously released information.

In accord with the provisions of section 3 (d) and (e) of the "Alpine Lakes Area Management Act of 1976, Pub. L. 94–357," notice is hereby given of the following additions to the Alpine Lakes Wilderness.

All metes and bounds descriptions between the below stated angle points are as described in the legal description of the Alpine Lakes Wilderness and Intended Wilderness boundaries on file in the office of the Chief, USDA Forest Service in Washington, D.C.

T.22N., R.14E., W.M.,

Sec. 4. That portion northwest of a line running between angle points 48–2 and 48–4;

Sec. 5. That portion northeast of a line running between angle points 48–6 and 52;

Sec. 6. That portion northeast of a line running between angle points 48–6 and 52;

T.22N., R.16E., W.M.

Sec. 1. That portion northeast of the wilderness boundary running between angle points 25 and 26.
T.22N., R17E., W.M.,
Sec. 6. That portion north of a line running between angle points 19–7 and 26.
T.23N., R.14E., W.M.,
Sec. 3. That portion southwest of the crest of Goat Mountnain Ridge;
Sec. 4. That portion west and south of a line running between angle points 48 and 48–1;
Secs. 5, 7, 8, 9, all;
Sec. 10. That portion west of the crest of Goat Moutain Ridge;
Sec. 15. That portion west of the crest of Goat Moutain Ridge;
Secs. 16 through 21, all;
Sec. 22. That portion west and north of the crest of Goat Mountain Ridge;
Sec. 27. That portion northwest of the crest of Goat Mountain Ridge;
Sec. 28. That portion west of the crest of Goat Mountain Ridge;
Secs. 29 through 32, all;
Sec. 33. That portion northwest of a line running between angle points 48–2 and 48–3.

The above described Waptus Parcel contains in all 12,729 acres, more or less.

T.23N., R.17E., W.M.,
Sec. 3. That portion west of a line running between angle points 16–4 and 16;
Secs. 4 and 5, all;
Sec. 21. That portion southwest of a line running between angle points 19 and 19–2;
Sec. 26. That portion south and west of a line running between angle points 19–1 and 19–4;
Sec. 27. That portion south of a line running between angle points 19–1 and 19–2;
Sec. 28. That portion southwest of a line running between angle points 19–1 and 19–2;
Secs. 29, 31, 32, 36, all;
Sec. 34. That portion northwest of a line running between angle points 19–4 and 19–5;
Sec. 35. That portion northwest of a line running between angle points 19–3 and 19–5.

The above described Ingalls Creek Parcel contains in all 5,089 acres, more or less.

T.24N., R.17E., W.M.,
Sec. 33. That portion southeast of a line running between angle points 16–1 and 16–2;
Sec. 34. That portion west of a line running between angle points 16–3 and 16–5.

The above described Snow Creek Parcel contains in all 1,939 acres, more or less.

T.24N., R.16E., W.M.,
Secs. 16 through 21, all;
Secs. 28 through 32, all;
Sec. 33, all except for Lot 1 (23.84 acres);
Sec. 34, W¾,E½SE¼.

The above described Eightmile Parcel contains in all 8,135 acres, more or less.

T.24N., R16E., W.M.,
Sec. 1. That portion northeast of the crest of Icicle Ridge.
T.24N., R.17E., W.M.,
Sec. 6. That portion northwest of the crest of Icicle Ridge.
T.25N., R.16E., W.M.,
Secs. 1 through 25, all;
Sec. 26. That portion north of the crest of Icicle Ridge;
Sec. 27. That portion north of the crest of Icicle Ridge;
Sec. 28. That portion northwest of a line running between angle points 3–31 and 3–32;
Secs. 29 and 30, all;
Sec. 31. That portion north of a line running between angle poiints 6 and 3–34;
Sec. 32. That portion northwest of a line running between angle points 6 and 3–33;
Sec. 36. That portion northeast of the crest of Icicle Ridge.
T.25N., R.17E., W.M.,
Sec. 6. That portion southwest of a line running between angle points 3–16 and 3–17;
Sec. 7, all;
Sec. 18. That portion northwest of a line running between angle points 3–18 and 3–19;
Sec. 19. That portion southwest of a line running between angle points 3–20 and 3–22;
Sec. 20. That portion south of a line running between angle points 3–21 and 3–22;
Sec. 29. W½;
Secs. 30, 31, all;
Sec. 32. W½.
T.26N., R.16E., W.M.,
Sec. 17 W½SW¼;
Secs. 18, 19, 20 all;
Sec. 27. That portion south of the crest of McQue Ridge;
Sec. 28. That portion south of the crest of McQue Ridge;
Secs. 29 through 34, 36, all.
T.26N., R.17E., W.M.,
Sec. 31. That portion southwest of a line running between angle points 3–16 and 3–17.

The above described Chiwaukum Parcel contains in all 32,533 acres, more or less.

T.26N., R.13E., W.M.,
Sec. 24. That portion south and east of a line running between angle points 204–4 and 202–6;
Sec. 25. All, except for that portion within the existing Alpine Lakes Wilderness Area;
Sec. 26. That portion east of a line running between angle points 202–1 and 202–4;
Sec. 35. That portion northeast of a line running between angle point 202–2 and the intersection of the wilderness boundary with the east section line;
Sec. 36. That portion north of the wilderness boundary running between angle points 202 and 203.
T.26N., R.14E., W.M.;
Sec. 26. That portion west of a line running between angle points 202–5 and 203;
Sec. 35. That portion west of the wilderness boundary running between angle points 202 and 203.

The above described Tunnel Creek Parcel contains in all 1,131 acres, more or less.

T.33N., R.14E., W.M.,
Sec. 29 through 32, all.

The above described lands total, in aggregate, 61,556 acres, more or less. The lands in the Waptus and Tunnel Creek Parcels effectively became part of the Alpine Lakes Wilderness and the National Forest System on March 25, 1983. The lands in the Ingalls Creek, Snow Creek, Eightmile, and Chiwaukum Parcels effectively became part of the Alpine Lakes Wilderness and the National Forests System on July 26, 1983.

Maps of the Apline Lakes Wilderness with the acreage additions are available from the Forest Supervisor, Mt. Baker-Snoqualmile National Forest, 1022 First Avenue, Seattle, Washington 98104.

For further information, contact David Odahl, Mt. Baker-Snoqualmie National Forest.

Dated: February 25, 1985.

John F. Butruille,

Acting Regional Forester.

[FR Doc. 85–5491 Filed 3–6–85; 8:45 am]

BILLING CODE 3410–11–M

Soil Conservation Service

Aronson Island Critical Area Treatment RC&D Measure, MI; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Aronson Island RC&D Measure, Delta County, Michigan.

FOR FURTHER INFORMATION CONTACT: Mr. Homer R. Hilner, State Conservationist, Soil Conservation Service, 1405 South Harrison Road, East Lansing, Michigan 48823, telephone 517–337–6702.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. A contact has been made with the State Historical Preservation Officer and concludes that it will have no effect on any cultural resources either eligible for or listed on the National Register of Historic Places. The State Archaeologist will be contacted if any land disturbance associated with this project and archaeological sites, features, or

materials are encountered during actual construction. As a result of these findings, Mr. Homer R. Hilner, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

This measure concerns a plan for the installation of measures for critical area treatment. The planned works of improvement include the following items: Adding topsoil, fill and planting adapted grasses, shrubs and trees, barrier posts, walkways and rustic fences. Total construction cost is estimated to be $81,000, with 65 percent ($39,650) RC&D funds and 35 percent ($21,350) local funds.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Homer R. Hilner. The FONSI has been sent to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address.

Implementation of the proposal will not be initiated until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.901, Watershed Protection and Flood Prevention Program. Office of Management and Budget Circular A–95 regarding state and local clearinghouse review of federal and federally assisted programs and projects is applicable)

Dated: February 19, 1985.

Homer R. Hilner,

State Conservationist.

[FR Doc. 85–5472 Filed 3–6–85; 8:45 am]

BILLING CODE 3410–16–M

Deerhead Riverfront Park Critical Area Treatment RC&D Measure, MI; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Deerhead Riverfront Park RC&D Measure, Berrien County, Michigan.

FOR FURTHER INFORMATION CONTACT: Mr. Homer R. Hilner, State Conservationist, Soil Conservation Service, 1405 South Harrison Road, East Lansing, Michigan 48823, telephone 517–337–6702.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. A contact has been made with the State Historical Preservation Officer and concludes that it will have no effect on any cultural resources either eligible for or listed on the National Register of Historic Places. The State Archaeologist will be contacted if any land disturbance associated with this project and archaeological sites, features, or materials are encountered during actual construction. As a result of these findings, Mr. Homer R. Hilner, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

This measure concerns a plan for the installation of measures for critical area treatment. The planned works of improvement include the following items: One erosion control structure, one diversion, recreation trail and walkway and critical area planting. Total construction cost is estimated to be $19,400, RC&D funds will pay $12,600 and local funds will pay $6,800.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Homer R. Hilner. The FONSI has been sent to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address.

Implementation of the proposal will not be initiated until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.901, Watershed Protection and Flood Prevention Program. Office of Management and Budget Circular A–95 regarding state and local clearinghouse review of federal and federally assisted programs and projects is applicable)

Dated: February 14, 1985.

Homer R. Hilner,

State Conservationist.

[FR Doc. 85–5473 Filed 3–6–85; 8:45 am]

BILLING CODE 3410–16–M

Lake Antoine—Pike Spawning March Public Water-Based Fish and Wildlife Development RC&D Measure, MI; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines, (40 CFR Part 1500); and the Soil Conservation Service Guidleines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Lake Antoine—Pike Spawing Marsh RC&D Measure, Dickinson County, Michigan.

FOR FURTHER INFORMATION CONTACT: Mr. Homer R. Hilner, state Conservationist, Soil Conservation Service, 1405 South Harrison Road, East Lansing, Michigan 48823, telephone 517–337–6702.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. A contact has been made with the State Historical Preservation Officer and concludes that it will have no effect on any cultural resources either eligible for or listed on the National Register of Historic Places. The State Archaeologist will be contacted if any land disturbance associated with this project and archaeological sites, features, or materials are encountered during actual construction. As a result of these findings, Mr. Homer R. Hilner, State Conservationist, has determiend that the preparation and review of an environmental impact statement are not needed for this project.

This measure concerns a plan for the installation of measures for public water-based fish and wildlife development. The planned works of improvment include the following items: An earthen water impounding dike, a concrete flow-through spillway and stilling apron, critical area planting, a road culvert and a road sign. Total construction cost is estimated to be

$53,000, of which RC&D funds will pay 50% ($26,500) and the local sponsors will pay 50% (26,500).

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Homer R. Hilner. The FONSI has been sent to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address.

Implementation of the proposal will not be initiated until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.901, Watershed Protection and Flood Prevention Program. Office of Management and Budget Circular A-95 regarding state and local clearinghouse review of federal and federally assisted programs and projects is applicable)

Dated: February 14, 1985.

Homer R. Hilner,

State Conservationist.

[FR Doc. 85-5471 Filed 3-6-85; 8:45 am]

BILLING CODE 3410-16-M

South Fork River Sub-Watershed, West Virginia and Virginia; Finding of No Significant Environmental Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Supplemental Sub-Watershed Work Plan No. 3, South Fork River Sub-Watershed, Hardy and Pendleton Counties, West Virginia and Highland County, Virginia.

FOR FURTHER INFORMATION CONTACT: Rollin N. Swank, State Conservationist, Soil Conservation Service, 75 High Street, Room 301, Morgantown, West Virgina, 26505, telephone: 304-291-4151.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Rollin N. Swank, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for flood control and watershed protection. The planned works of improvement include clearing and snagging along 3,300 feet of stream; installation of 2,850 feet of vegetated floodway; and accelerated technical assistance for land treatment. Mitigation measures include excavation to create 2.75 acres of wetland wildlife habitat; establishment of grass and shrubs attractive to wildlife; and seeding of all disturbed areas.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Rollin N. Swank.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistnce Program No. 10.901, Resource Conservation and Development Program. The State of West Virginia's process regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable

Rollin N. Swank,

State Conservationist.

February 26, 1985.

[FR Doc. 85-5482 Filed 3-6-85; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-122-402]

Certain Dried Heavy Salted Codfish From Canada; Postponement of Final Antidumping Determination

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that the Department of Commerce (the Department) has received a request from counsel for respondents in this investigation that the final determination be postponed, as provided for in section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)(2)(A); and, that we have determined to postpone our final determination, as to whether sales of certain dried heavy salted codfish from Canada are being made at less than fair value, until not later than May 14, 1985.

EFFECTIVE DATE: March 7, 1985.

FOR FURTHER INFORMATION CONTACT: Karen Sackett or Mary Jenkins, Office of Investigations, Import Administration, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone (202) 377-3798 or 377-1756.

SUPPLEMENTARY INFORMATION: On August 8, 1984, the Department of Commerce published a notice in the **Federal Register** (49 FR 32437) that it was initiating, under section 732(b) of the Act (19 U.S.C. 1673a(b)), an antidumping investigation to determine whether certain dried heavy codfish from Canada, is being, or is likely to be, sold at less than fair value. On January 29, 1985, we published a preliminary determination of sales at less than fair value with respect to this merchandise (50 FR 3946). The notice stated that if this investigation proceeded normally we would make our final determination by April 8, 1985.

On February 7, 1985, counsel for the six Canadian respondents requested that we extend the period for the final determination for 30 days, 105 days after the date of publication of the preliminary determination, in accordance with section 735(a)(2)(A) of the Act. Section 735(a)(2)(A) of the Act provides that the Department may postpone its final determination concerning sales at less than fair value until not later than 135 days after the date on which it published notice of its preliminary determination, if exporters who account for a significant proportion of exports of the merchandise request an extension after an affirmative preliminary determination.

Counsel for the six respondents is qualified to make such a request since it represents the majority of exporters of the merchandise under investigation. If an exporter properly requests an extension after an affirmative preliminary determination, the Department is required, absent compelling reasons to the contrary, to grant the request.

Accordingly, the Department will issue a final determination in this case not later than May 14, 1985. Because a hearing was not requested by any party to the proceeding, the hearing originally scheduled for February 28 has been cancelled.

This notice is published pursuant to section 735(d) of the Act.

Dated: February 28, 1985.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-5495 Filed 3-6-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-580-401]

Oil Country Tubular Goods From Korea; Postponement of Final Antidumping Duty Determination

AGENCY: International Trade Administration, Import Administration Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that the Department of Commerce (the Department) has received a request from the petitioners in this investigation to postpone the final determination, as provided for in section 735(a)(2)(B) of the Tariff Act of 1930, as amended (the Act)(19 U.S.C. 1673d(a)(2)(B). Based on this request, we are postponing our final determination as to whether sales of oil country tubular goods (OCTG) from Korea have occurred at less than fair value until not later than April 24, 1985.

EFFECTIVE DATE: March 7, 1985.

FOR FURTHER INFORMATION CONTACT: Paul Thran, Office of Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone (202) 377-3963.

SUPPLEMENTARY INFORMATION: On July 10, 1984, we announced the initiation of an antidumping duty investigation to determine whether OCTG from the Republic of Korea, are being, or are likely to be, sold in the United States at less than fair value (49 FR 28084). We issued our preliminary determination on January 9, 1985. That notice stated that we would issue a final determination by March 25, 1985.

On February 7, 1985, counsel for petitioners, Lone Star Steel Company, CF&I Steel Corporation, and LTV Steel Company, requested that the Department extend the period for the final determination for 30 days, in accordance with section 735(a)(2)(B) of the Act. If a petitioner requests an extension after a negative preliminary determination, the Department is required, absent compelling reasons to the contrary, to grant the request. Accordingly, we grant the request and postpone our final determination until not later than April 24, 1985.

This notice is published pursuant to section 735(d) of the Act.

The United States International Trade Commission is being advised of this postponement, in accordance with section 735(d) of the Act.

Scope of Investigation

The term "*oil country tubular goods*" covers hollow steel products of circular cross section intended for use in the drilling of oil or gas. It includes oil well casing, tubing and drill pipe of carbon or alloy steel, whether welded or seamless, manufactured to either American Petroleum Institute (API) or non-API (e.g., proprietary), specifications as currently provided for in the *Tariff Schedules of the United States Annotated* (TSUSA) items 610.3216, 610.3219, 610.3233, 610.3242, 610.3243, 610.3249, 610.3252, 610.3254, 610.3256, 610.3258, 610.3262, 610.3264, 610.3721, 610.3722, 610.3751, 610.3925, 610.3935, 610.4025, 610.4035, 610.4225, 610.4235, 610.4325, 610.4335, 610.4942, 610.4944, 610.4946, 610.4954, 610.4955, 610.4956, 610.4957, 610.4966, 610.4967, 610.4968, 610.4969, 610.4970, 610.5221, 610.5222, 610.5226, 610.5234, 610.5240, 610.5242, 610.5243, and 610.5244.

This investigation includes OCTG that are finished and unfinished.

In accordance with § 353.47 of our regulations (19 CFR 353.47), we will hold a public hearing to afford interested parties an opportunity to comment on our preliminary determination at 10:00 a.m. on April 1, 1985, at the U.S. Department of Commerce, room 1413, 14th Street and Constitution Avenue NW., Washington, D.C. 20230. Prehearing briefs, in at least 10 copies, must be submitted to the Deputy Assistant Secretary by March 25, 1985. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within 30 days of publication of this notice, at the above address in at least 10 copies.

Dated: February 28, 1985.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-5496 Filed 3-6-85; 8:45 am]

BILLING CODE 3510-DS-M

[C-469-054]

Ampicillin Trihydrate and Its Salts From Spain; Revocation of Countervailing Duty Order

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of revocation of countervailing duty order.

SUMMARY: As a result of a request by the Government of Spain, the International Trade Commission conducted an investigation and determined that revocation of the countervailing duty order on ampicillin trihydrate and its salts from Spain would not cause, or threaten to cause, material injury to an industry in the United States. The Department of Commerce consequently is revoking the countervailing duty order. All entries of this merchandise on or after June 21, 1982, shall be liquidated without regard to countervailing duties.

EFFECTIVE DATE: March 7, 1985.

FOR FURTHER INFORMATION CONTACT: Susan Silver or Alan Long, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone (202) 377-2786.

SUPPLEMENTARY INFORMATION: On March 22, 1979, the Treasury published in the **Federal Register** A countervailing duty order on ampicillin trihydrate and its salts ("ampicillin") from Spain (44 FR 17484).

On June 21, 1982, the International Trade Commission ("the ITC") notified the Department of Commerce ("the Department") that the Spanish government had requested an injury determination for this order under section 104(d) of the Trade Agreements Act of 1979 ("the TAA"). It was not necessary for the Department, upon notification from the ITC, to suspend liquidation of entries of the merchandise pursuant to that section of the TAA, since previous suspension remained in effect.

On November 30, 1984, the ITC notified the Department of its determination (49 FR 46392) that an industry in the United States would not be materially injured, or threatened with material injury, by reason of imports of Spanish ampicillin if the order were revoked. As a result, the Department is revoking the countervailing duty order concerning ampicillin from Spain with respect to all merchandise entered, or withdrawn from warehouse, for consumption on or after June 21, 1982, the date the Department received notification of the request for an injury determination.

The Department will instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after June 21, 1982, without regard to countervailing duties, and to refund any estimated countervailing duties collected with respect to these entries.

This revocation and notice are in accordance with section 104(b)(4)(B) of the TAA (19 U.S.C. 1671 note).

Dated: February 28, 1985.

Alan F. Holmer,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 85-5479 Filed 3-6-85; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

National Marine Fisheries Service; Receipt of Application for General Permit

Notice is hereby given that the following application has been received to take marine mammals incidental to the pursuit of commercial fishing operations within the U.S. Fishery Conservation Zone during 1985 as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) and the regulations thereunder.

Applicant: Embassy of the Union of Soviet Socialist Republics, Washington, D.C. 20011, has applied for a Category 1: Towed and Dragged Gear general permit to take up to 10 cetaceans and 5 harbor seals in the North Atlantic Ocean; 35 northern sea lions, 15 harbor seals and 15 cetaceans in the Bering Sea and 15 California sea lions, 30 harbor seals and 15 cetaceans in the waters off California, Washington and Oregon.

This application is available for review in the following office: Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.

Interested parties may submit written comments on this application within thirty (30) days of the date of this notice to the Assistant Administrator for Fisheries, National Marine Fisheries Service, Washington, D.C. 20235.

Dated March 1, 1985.

William G. Gordon,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 85-5526 Filed 3-6-85; 8:45 am]

BILLING CODE 3510-08-M

DEPARTMENT OF DEFENSE

Office of the Secretary

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: The DOD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 9:00 a.m., Tuesday, 2 April 1985.

ADDRESS: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, Crystal Park One, Suite 307, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: David Slater, AGED Secretariat, 201 Varick Street, New York, 10014.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary for Defense for Research and Engineering, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The AGED meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave Tubes, Displays and Lasers. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Pub. L. 92-463, as amended, (5 U.S.C. App. II section 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 85-5453 Filed 3-6-85; 8:45 am]

BILLING CODE 3810-01-M

DOD Advisory Group on Election Devices; Advisory Committee Meeting

SUMMARY: Working Group C (Mainly Opto Electronics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 9:00 a.m., Thursday, 28 March 1985.

ADDRESS: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, Crystal Park One, Suite 307, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: Gerald Weiss, AGED Secretariat, 201 Varick Street, New York, 10014.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Research and Engineering, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group C meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. This opto-electronic device area includes such programs as imaging devices, infrared detectors and lasers. The review will include classified program details throughout.

In accordance with section 10(d) of Pub. L. 92-463, as amended, (5 U.S.C. App. II section 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

Dated: March 4, 1985.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 85-5454 Filed 3-6-85; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

February 26, 1985.

The USAF Scientific Advisory Board's Ad Hoc Committee on High Power Microwave Systems will meet at Kirtland AFB, NM on April 3-4, 1985.

The purpose of the meeting will be to review contractor work on high power microwave source development and hold working sessions to frame and begin report writing. The meeting will convene from 8:30 a.m. to 5:00 p.m. on April 3 and 8:00 a.m. to 4:00 p.m. on April 4.

The meeting concerns matter listed in section 552b(c) of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof, and accordingly, will be close to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202-697-8845.

Norita C. Koritko,

Air Force Federal Register Liaison Officer.

[FR Doc. 85-5489 Filed 3-6-85; 8:45 am]

BILLING CODE 3910-01-M

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: Monday and Tuesday, 25 and 26 March 1985.

Times of Meeting: 0830–1700 hours, both days (Closed).

Place: Central Intelligence Agency, Langley, VA (25 March); National Security Agency, Fort Meade, MD (26 March); and at the Pentagon, Washington, DC (25 and 26 March, as needed).

Agenda: The Army Science Board Ad Hoc Subgroup on Chemical/Biological Warfare Intelligence will meet for classified briefings and discussions. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

Maria P. Winters,

Acting Administrative Officer, Army Science Board.

[FR Doc. 85–5455 Filed 3–6–85; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: Tuesday and Wednesday, 26 and 27 March 1985.

Times of Meeting: 0830–1700 hours, both days (Closed).

Place: U.S. Army Atmospheric Sciences Laboratory (ASL), White Sands Missile Range, New Mexico.

Agenda: The Army Science Board Ad Hoc Subgroup on U.S. Army Atmospheric Sciences Laborartory Effectiveness Review will meet for a classified overview of ASL to ensure its continued excellence by providing independent evaluation on problems and causes of deficiencies, if any. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

Maria P. Winters,

Acting Administrative Officer, Army Science Board.

[FR Doc. 85–5456 Filed 3–6–85; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: Tuesday–Thursday, 26–28 March 1985.

Times of Meeting: 0800–1630 hours, 26 and 27 March 1985 (Closed); 0800–1200 hours, 28 March 1985 (Closed).

Place: Fort Leavenworth, Kansas.

Agenda: The Army Science board Functional Subgroup on C³I (Command, Control, Communications and Intelligence) will meet for orientation briefings and discussions in this functional area from the developer's point of view, as well as the user's, who generates the need or requirement for a particular capability. Topics to be addressed include: (1) The Army Command and Control Master Plan (AC²MP); (2) development of subsystem architecture for maneuver control, air defense control, fire support control, Intelligence/Electronic Warfare (IEW) Control and Combat Service Support Control; (3) the potential uses for military applications of non-developmental (commercial, off-the-shelf) items; (4) C³I funding and priorities; (5) testing of new equipments and concepts. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

Maria P. Winters,

Acting Administrative Officer, Army Science Board.

[FR Doc. 85–5457 Filed 3–6–85; 8:45 am]

BILLING CODE 3710–08–M

Corps of Engineers; Department of the Army

Intent; the Albuquerque District, Corps of Engineers Intends to Prepare a Draft Environmental Impact Statement (DEIS) on a Proposal to Reduce Flood Damages in the Communities of Truth or Consequences and Williamsburg, NM

AGENCY: U.S. Army Corps of Engineers, Albuquerque District, DOD.

ACTION: Intent to prepare a draft environmental impact statement (DEIS).

SUMMARY:

1. *Alternatives Considered.* The objective of the current planning effort is to reduce property damage, disruption of community activities, and the potential for injury and loss of life caused by flooding from the Rio Grande and Cuchillo Negro Creek in the communities of Truth or Consequences and Williamsburg, New Mexico. Coincident objectives are the preservation and enhancement of biological, cultural, recreational, social, and aesthetic values. Alternative measures being evaluated consist of the authorized plan of levee construciton and channel improvement on Cuchillo Negro Creek and the Rio Grande at Truth or Consequences and Williamsburg; construction of flood control dams on Cuchillo Negro Creek above Truth or Consequences; flood plain management; and the no-action alternative. The formulation and evaluation of these alternatives comprise General Design Memorandum studies and will culminate in a recommendation that best satisfies the community's needs and desires.

2. *Public Involvement Process.* Coordination is being maintained with both public and private concerns having jurisdiction or an interest in land and resources in the vicinity of Truth or Consequences. This includes the City of Truth or Consequences; the Village of Cuchillo; Sierra County; the Jornada Resources, Conservation, and Development Council; the U.S. Soil Conservation Service; and the U.S. Bureau of Reclamation. Formal public involvement to date includes two public meetings held in Truth or Consequences, one in 1979 to announce the study's initiation and the other in May, 1983 to discuss progress of the study and preliminary findings. Coordination will be expanded and intensified as plans become increasingly refined. Federal, state, and local input in the development of the DEIS will be obtained by a combination of public and agency coordination, workshops, and, if necessary, public meetings. All interested parties will be invited to submit comments on the DEIS when it is circulated for field level review.

The planning effort is being coordinated with the U.S. Fish and Wildlife Service pursuant to the requirements of the Fish and Wildlife Coordination Act of 1972 (72 Stat. 563) (Pub. L. 85–624) and the Endangered Species Act of 1973, as amended (87 Stat. 884) (Pub. L. 93–205). Consultation

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with the Advisory council on Historic Preservation and the New Mexico State Historic Preservation Officer will be initiated pursuant to the National Historic Preservation Act of 1966 (80 Stat. 915) (Pub. L. 89–655), and the Preservation of Historic and Archeological Data (88 Stat. 174) (Pub. L. 93–291).

3. *Significant Issues to be Analyzed.* Significant issues to be analyzed in depth in the development of the DEIS include the effect the recommended plan and accompanying alternatives on flood plain development, human safety, social welfare, community activities, biological systems, cultural resources, and aesthetic qualities. Also, the development of mitigative measures will be undertaken if necessary.

4. *Public Review.* The presently estimated date that the draft General Design Memorandum will be completed and the DEIS circulated for public review is September 1985.

5. *Further Information.* Questions regarding the study and the DEIS may be directed to: Mr. Mark Sifuentes, USAED, Albuquerque, P.O. Box 1580, Albuquerque, New Mexico 87103, Phone: Comm (505) 766–3577; FTS 474–3577.

Dated: February 28, 1985

Edward D. Ostell,

Major, CE, Deputy District Engineer.

[FR Doc. 85–5468 Filed 3–6–85; 8:45 am]

BILLING CODE 3710-KK-M

Intent To Prepare a Draft Environmental Impact Statement (DEIS); Wolf Creek Hydropower Feasibility Study Concerning the Potential for Increasing the Hydroelectric Power Output From the Existing Wolf Creek Dam at Mile 460.9 on the Cumberland River, KY.

AGENCY: US Army corps of Engineers, Nashville District, DoD.

ACTION: Notice of intent to prepare a Draft Environmental Impact Statement (DEIS).

1. Proposed Action

SUMMARY:

Under the authority of a resolution of the Committee on Public Works, United States Senate, adopted October 2, 1972, as amended, the Nashville District has found that it is economically feasible to increase the hydropower output from Wolf Creek Dam from the current installed capacity of 270 megawatts from six 45-megawatt Francis Units. This would be accomplished by adding up to four additional Francis units to the existing six units. In addition, the existing six units may be uprated to about 70 megawatts each under an operations and maintenance authority. The total capacity resulting from the potential plant uprate and expansion could be as much as 630 megawatts.

2. Alternatives

Alternatives which have been identified for final consideration in the Feasibility Study are (1) "no action" (uprate in place with no futher Federal action), (2) the addition of 2 new 70-megawatt Francis Units, (3) the addition of 3 new 67-megawatt Francis Units, (4) the addition of 4 new 65-megawatt Francis Units. Alternatives which have been identified for final consideration in the Uprate Study are (1) "no action", (2) uprate existing units to 55 megawatts, (3) uprate existing units to 60 megawatts, (4) uprate existing units to 65 megawatts, (5) uprate existing units to 70 megawatts.

3. The Scoping Process

a. *Public Input.* A scoping letter was sent to concerned Federal and state agencies as well as private organizations in January 1984 under the authority of the parent study. Comments were received from the State of Kentucky Natural Resources and Environmental Protection Cabinet, Department for Natural Resources, Department of Fish and Wildlife, and the Kentucky Department of Parks. Comments were also received from the Tennessee Department of Health and the Environment, The Tennessee Department of Conservation, and the Tennessee Wildlife Resources Agency. Federal agencies commenting included the US Fish and Wildlife Service, and the Soil Conservation Service. A notice was also circulated announcing the District's intention to prepare a feasibility report for the Wolf Creek Hydropower study in June of 1984. A single comment was received from the Kentucky Natural Resources and Environmental Cabinet.

The public is invited to submit written comments within 20 days of this notice to aid in determining the issues to be covered in the DEIS. Additional Input from concerned Federal, State, and local agencies will be solicited by letter.

b. *Issues.* The following is a preliminary list of significant issues which have been identified for analysis in the DEIS:

1. Effects on water quality.
2. Effects on the Wolf Creek tailwater trout fishery.
3. Effects on streambank erosion.
4. Effects on domestic raw water withdrawals.
5. Effects on fish and wildlife.
6. Effects on recreation.
7. Effects on lands adjacent to the river.

c. *Other Environmental Review and Consultation.* Comments have also been solicited from the US Fish and Wildlife Service under the Fish and Wildlife Coordination Act. In addition, if it is determined that any endangered species might be affected, consultation under the Endangered Species Act may be initiated.

4. Scoping Meeting

Public information workshops are scheduled for March 25 and 26, 1985. The first workshop will be held at Lake Cumberland State Park Lodge at 7:00 pm CST on the 25th, The second workshop will be held at the Somerset Lodge in Somerset, Kentucky, at 7:00 pm e.s.t. on the 26th.

5. Estimated Completion

The estimated completion date for the DEIS is July 15, 1985.

Questions: The District point-of-contact for questions relating to the DEIS is: Planning Branch, ATTN: Mr. Jim Sharber, US Army Engineer District, Nashville, P.O. Box 1070, Nashville, TN 37202–1070.

Dated: February 26, 1985.

William F. Malone,

LTC, Corps of Engineers, Acting District Engineer.

[FR Doc. 85–5478 Filed 3–6–85; 8:45 am]

BILLING CODE 3710-GF-M

Proposed Flood Control Measures; Albuquerque District, Corps of Engineers Intends to Prepare a Draft Environmental Impact Statement for Proposed Flood Control Measures Along the Arkansas River in La Junta, CO.

AGENCY: U.S. Army, Corps of Engineers, Albuquerque District, DOD.

ACTION: Preparation of a Draft Environmental Impact Statement (DEIS).

SUMMARY: 1. *Proposed Action and Alternatives:* The authorized plan considered by the DEIS is construction of an approximately two-mile long excavated unlined channel flanked by earthen levees. There would be about three miles of levee along the north bank to protect North La Junta and La Junta Gardens and about four miles of levee

along the south bank to protect La Junta and agricultural land east and west of La Junta. These changes to the channel would increase the capacity of the Arkansas River through La Junta from the present non-damaging level of 10,200 cubic feet per second (CFS) to a non-damaging level of 170,000 cfs or about 500 year protection. In addition to the authorized plan, seven additional structural and several non-structural alternatives have been evaluated as means of providing as much flood protection as possible to the city of La Junta while maintaining economic feasibility. The authorized plan has been eliminated from further consideration because of economic infeasibility. Additionally, three of the other structural plans have been eliminated from study due to economic infeasibility. Structural alternatives still being considered include one of two north bank levee alignments to protect North La Junta and La Junta Gardens and a south bank levee to protect downtown La Junta and the railroad yards. The two north bank alignments differ in that one is set back from the river a considerable distance while the second is much closer to the existing river channel. These alignments are anticipated to provide protection from 50 to 100 year flood event on the Arkansas River but advanced planning studies will optimize the level of protection based on economic and other considerations. Advanced planning studies and the DEIS will concentrate on the remaining structural and non-structural alternatives.

2. *Public Involvement Process:* Public involvement has included one public hearing in December 1981 and numerous meetings with interested local government officials and individuals. These meetings have also served the purpose of scoping for the DEIS. Local interests have expressed concerns over decreasing channel capacity due to aggradation, proliferation of saltcedars, and preservation of valuable habitat and fish and wildlife resources. At this time, there are plans for an additional public hearing in May 1985 to inform the local government and individuals on the progress and outcome of Phase I studies. This meeting will also serve as part of the scoping process for the DEIS. Affected federal, state, and local agencies and other interested or affected private organizations or parties are invited to submit comments at either the public hearing or on the DEIS when it becomes available for public review as indicated below.

3. *Significant Issues to be Analyzed:* Significant issues to be considered in the DEIS include the impact of the proposed work on the Arkansas River floodplain through La Junta, effects of the proposed work on existing environmental values associated with the floodplain, effects on cultural and historical resources, a comparison of current and projected future conditions with and without the recommended project and the various alternatives, and the need for mitigation.

4. *Public Review:* The DEIS should be available for public review in September, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. William Tully, USAED; Albuquerque, Southern Colorado Project Office, P.O. Box 294, Pueblo, Colorado, 81002-0294, (303) 543-9459.

Edward D. Postell,

Deputy District Engineer, Albuquerque.

[FR Doc. 85-5441 Filed 3-6-85; 8:45 am]

BILLING CODE 3710-KK-M

Department of the Navy

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Naval Personnel Research and Development Center (NPRDC) Review Team of the Naval Research Advisory Committee (NRAC) Panel on Laboratory Oversight will meet on March 25, 1985, at the Naval Personnel Research and Development Center, Building 329, Point Loma, San Diego, California. The agenda will include technical briefings by the NPRDC departments which will assist the team in their efforts to make a thorough evaluation of the scientific, technical, and engineering health of the activity. The meeting will commence at 8:30 a.m. and terminate at 3:00 p.m. on March 25, 1985. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to examine the scientific, technical, and engineering health of NPRDC. The entire meeting will consist of classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander M. B. Kelley, U.S. Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217-5000, Telephone number (202) 696-4870.

Dated: March 4, 1985.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 85-5498 Filed 3-6-85; 8:45 am]

BILLING CODE 3810-AE-M

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Naval Civil Engineering Laboratory (NCEL) Review Team of the Naval Research Advisory Committee (NRAC) Panel on Laboratory Oversight will meet on March 26-27, 1985 at Headquarters, Naval Facilities Engineering Command, Hoffman Building #2, 200 Stovall Street, Alexandria, Virginia. The agenda will include technical briefings from the headquarters sponsors of NCEL which will assist the team in their effors to make a thorough evaluation of the scientific, technical, and engineering health of the activity. The first session of the meeting will commence at 8:30 a.m. and terminate at 4:45 p.m. on 26 March. The second and final session will commence at 8:30 a.m. and terminate at 5:00 p.m. on 27 March 1985. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to examine the scientific, technical and engineering health of NCEL. The entire meeting will consist of classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander M.B. Kelley, U.S. Navy, Office of Naval Research, (Code 100N), 800 North

Quincy Street, Arlington, VA 22217–5000, Telephone number (202) 6976–4870.

Dated: March 4, 1985.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 85–5500 Filed 3–6–85; 8:45 am]

BILLING CODE 3810-AE-M

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Naval Research Advisory Committee Panel on Mid-Depth Sea Floor Technology will meet on March 28, 1985, at the Office of Naval Research, 800 North Quincy Street, Arlington, Virginia. The agenda will include technical briefings on the strategic implications of exploring mid-depth ocean topography for naval operations. The meeting will commence at 9:30 a.m. and terminate at 4:00 p.m. on March 28, 1985. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to examine the strategic implications of exploring mid-depth ocean topography for naval operations, and the utility of currently demonstrated technology for utilizing sea floor topography. These matters constitute classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting.

The Secretary of the Navy, therefore, has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander M. B. Kelley, U.S. Navy, Office of Naval Research, (Code 100N), 800 North Quincy Street, Arlington, VA 22217, Telephone number (202) 696–4870.

Dated: March 4, 1985.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 85–5499 Filed 3–6–85; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

Follow Through Program

AGENCY: Department of Education.

ACTION: Application notice for Fiscal Year 1985 (school year 1985–86).

Applications are invited for continuation awards in the following categories under the Follow Through program:

(1) Grants for carrying out local Follow Through projects;

(2) Grants for demonstration (Sponsors); and

(3) Grants for expanded demonstration activity (Resource Centers).

Authority for these categories is contained in sections 661–669 of the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97–35, 95 Stat. 508–511.

(42 U.S.C. 9861–9868)

The purpose of these awards is to provide comprehensive services to low-income children in primary grades.

Closing date for transmittal of applications: To be assured of consideration for funding, an application for a continuation award should be mailed or hand-delivered to the U.S. Department of Education by April 15, 1985.

If an application for a continuation award is late, the Department of Education may lack sufficient time to review it with other continuation applications and may decline to accept it.

Applications delivered by mail: An application sent by mail must be addresed to the U.S. Department of Education, Application Control Center, Attention: 84.014A (for Follow Through local projects), 84.014B (for sponsor awards), or 84.014D (for expanded demonstration activity), Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping lable, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education. If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly porvide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or first class mail.

Applications delivered by hand: An application that is hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th & D Streets, S.W., Washington, D.C.

The Application Control Center will accept a hand-delivered application between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

Program information: In formulating applications for continuation of local project grants, applicants should give special attention to 34 CFR 215.15 of the Follow Through regulations, which explains the criteria used in awarding these grants. In formulating applications for continuation of sponsor awards, applicants should give special attention to 34 CFR 215.52 of the Follow Through regulations, which provides an explanation of the criteria used in awarding these grants. In the case of a sponsor application, the Secretary will award a grant only if a grant also is being made to at least one local project that implements the sponsor's approach. See 34 CFR 215.52. In formulating applications for continuation of expanded demonstraion activity awards (Resource Centers), applicants should give special attention to 34 CFR 215.15a of the Follow Through regulations, which provides an explanation of the procedures and criteria used in evaluating these applications.

Because the amount of funds available for Fiscal Year 1985 is not sufficient to support grantees at their Fiscal Year 1984 levels, the Secretary will be required to reduce substantially the budget for each project that successfully meets the requirements for a continuation award. Therefore, in their applications for continuation awards, applicants should demonstrate how they would reduce the budgets of their projects by approximately 32 percent, although the final amount of each budget will be negotiated on a case-by-case basis. Applicants for local project grants, for example, may accomplish this reduction by reducing the number of grades to be served with Follow Through funds. Instead of serving three or four grades, an applicant may decide to serve only second and third grades with Follow Through funds.

This approach is consistent with the gradual phasing of Follow Through activities into Chapter 2 of the Education Consolidation and Improvement Act of 1981. Other options may also be available, although each local project must still include the program components in 34 CFR 215.26, unless the Secretary, in particular cases, specifies otherwise. Applicants for sponsor projects and for resource center projects should likewise propose reduced budgets.

Available funds: Ten million dollars was appropriated for this program for Fiscal Year 1985. However, Fiscal Year 1984 funds for Follow Through were impounded by the U.S. District Court for the Northern District of Illinois in *United States v. Board of Education of the City of Chicago* (No. 80C–5124). As a result, because of the Department's concern about harm to Follow Through projects caused by this freeze, and consistent with language in the conference report accompanying the Department's Fiscal Year 1985 appropriation (*see* Conf. Rep. No. 1132, 98th Cong., 2d Sess. 26 (1984)), the Department used Fiscal Year 1985 funds to support 1984 Follow Through projects that did not receive their funds due to the court's freeze on Fiscal Year 1984 funds. If the Fiscal Year 1984 funds are released by the court, accounting adjustments will be made so that 1985 awards can be made using Fiscal Year 1985 funds. In the interim, applications are being invited to allow sufficient time for their evaluation and for completion of the grant process prior to the end of the school year should the funds become available.

Intergovernmental Review

On June 24, 1983, the Secretary published in the **Federal Register** final regulations (34 CFR Part 79, published at 48 FR 29158) implementing Executive Order 12372 entitled "Intergovernmental Review of Federal Programs." The regulations took effect September 30, 1983.

This program is subject to the requirements of the Executive Order and the regulations in 34 CFR Part 79. The objective of Executive Order 12372 is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

The Executive Order—

- Allows States, after consultation with local officials, to establish their own process for review and comment on proposed Federal financial assistance;
- Increases Federal responsiveness to State and local officials by requiring Federal agencies to accommodate State and local views or explain why not; and
- Revokes OMB Circular A–95.

Transactions with nongovernmental entities, including State postsecondary educational institutions and federally recognized Indian tribal governments, are not covered by Executive Order 12372. Also excluded from coverage are research, development, or demonstration projects that do not have a unique geographic focus and are not directly relevant to the governmental responsibilities of a State or local government within that geographic area.

The following is the current list of States that have established a process, designated a single point of contact, and have selected this program for review:

Alabama	Mississippi	South Carolina
Arizona	Missouri	South Dakota
Arkansas	Montana	Tennessee
California	Nebraska	Texas
Connecticut	Nevada	Utah
Delaware	New Hampshire	Vermont
Hawaii	New Jersey	Virginia
Illinois	New Mexico	Washington
Indiana	New York	West Virginia
Iowa	North Carolina	Wyoming
Kansas	North Dakota	Guam
Louisiana	Ohio	Trust Territory
Maine	Oklahoma	Northern
Maryland	Oregon	Mariana
Massachusetts	Pennsylvania	Islands
Michigan	Rhode Island	Virgin Islands

Immediately upon receipt of this notice, applicants that are governmental entities, including local educational agencies, must contact the appropriate State single point of contact to find out about and to comply with the State's process under the Executive Order. Applicants proposing to perform activities in more than one State should contact, immediately upon receipt of this notice, the single point of contact for each State and follow the procedures established in those States under the Executive Order. A list containing the single point of contact for each State is included in the application package for this program.

In States not listed above, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State process recommendation and other comments submitted by a State single point of contact and any comments from State, areawide, regional, and local entities must be mailed or hand delivered by May 15, 1985 to the following address:

The Secretary, U.S. Department of Education, Room 4181 (Attention: 84.014A, B, or D), 400 Maryland Avenue, S.W., Washington, D.C. 20202. (Proof of mailing will be determined on the same basis as for applications.)

Please note that the above address is not the same address as the one to which the applicant submits its completed application. *Do not send applications to the above address.*

Application forms: Application forms and program information packages will be mailed to eligible applicants.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program information is only intended to aid applicants in applying for assistance. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those imposed under the statute and regulations.

The Secretary strongly urges that applicants not submit information that is not requested.

(Approved by Office of Management and Budget under control number 1810–0003)

Applicable regulations: Regulations applicable to this program include the following:

(a) Regulations governing the Follow Through program in 34 CFR Part 215.

(b) Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 78, and 79.

Further information: For further information contact Mary Jean LeTendre, Director, Compensatory Education Programs, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3616, ROB–3), Washington, D.C. 20202. Telephone (202) 245–3081.

(42 U.S.C. 9861–9868)

(Catalog of Federal Domestic Assistance No. 84.014, Follow Through Program)

Dated: March 4, 1985.

William J. Bennett,

Secretary of Education.

[FR Doc. 85–5619 Filed 3–6–85; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP85–266–000, et al.]

Natural gas certificate filings; Columbia Gas Transmission Corp, et al.

Take notice that the following filings have been made with the Commission:

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1. Columbia Gas Transmission Corporation; Columbia Gulf Transmission Company

[Docket No. CP85–266–000]

February 28, 1985.

Take notice that on February 5, 1985, Columbia Gas Transmission Corporation, (Columbia Gas), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, and Columbia Gulf Transmission Company (Columbia Gulf), 3805 West Alabama Avenue, Houston, Texas 77027, or jointly referred to as Applicants, filed in Docket No. CP85–266–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Owens-Illinois, Inc. (Owens-Illinois), under the certificates issued in Docket Nos. CP83–73–000 (Columbia Gas) and CP83–496–000 (Columbia Gulf) pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicants indicate that Owens-Illinois has acquired natural gas from The Resource Group, Inc. (The Resource Group), pursuant to the terms of December 14, 1984, gas purchase agreement. It is further indicated that Owens-Illinois would use the gas at its Toano, Virginia, plant for glass melting furnaces and glass conditioning forehearths. In order for Owens-Illinois to receive its gas from The Resource Group, Columbia Gulf proposes to receive up to 1.5 billion Btu of natural gas from The Resource Group in the Valentine field, LaFourche Parish, Louisiana, and to redeliver the gas to Columbia Gas in Kentucky for further transportation. Columbia Gas would then transport the gas it receives from Columbia Gulf to an existing point of interconnection between Columbia Gas and Commonwealth Gas Pipeline Corporation (Commonwealth) in Greene County, Virginia, it is stated. Commonwealth would then transport the gas to Virginia Natural Gas, A Division of Virginia Electric and Power Company, the distributor serving Owens-Illinois, for subsequent delivery of gas to the plant, it is further stated.

For this transportation Columbia Gulf would charge Owens-Illinois one of the rates set forth in Rate Schedule T–2 of its FERC Gas Tariff, it is stated. The current rates for Rate Schedule T–2 are 23.92 cents per dt equivalent of gas and 1.89 percent retainage for transportation from offshore to Kentucky, 14.28 cents per dt equivalent and 1.5 percent retainage from lateral onshore to Kentucky, 12.76 cents per dt equivalent and 1.50 percent retainage from Rayne, Louisiana, to Kentucky and 6.38 cents per dt equivalent and 0.75 percent retainge from Corinth, Mississippi, to Kentucky, it is explained. For this transportation Columbia Gas would charge one of the rates set forth in Rate Schedule TS–1 of its FERC tariff, it is stated. The current rates for Rate Schedule TS–1 within Commonwealth's total daily entitlement are 21.16 cents per dt equivalent for gas received from Columbia Gulf at Leach, Kentucky, and 29.93 cents per dt equivalent for gas received at receipt points other than Leach, Kentucky, it is explained. The current rates for Rate Schedule TS–1 in excess of Commonwealth's total daily entitlement are 32.50 cents per dt equivalent for gas received from Columbia Gulf at Leach and 41.27 cents per dt equivalent for gas received at receipt points other than Leach, it is further explained. In addition, it is stated that Columbia Gas would retain 2.43 percent of the gas it receives for company-use and unaccounted-for gas, as reflected in its Rate Schedule TS–1, and that Columbia Gas would collect the General R and D Funding Unit of the Gas Research Institute for all quantities transported under this transprotation arrangement.

Applicants state that they would transport 1.5 billion Btu of gas on a peak day, 1,465 million Btu of gas on average day and 527,152 million Btu of gas on an annual basis through June 30, 1985.

Applicants also request flexibile authority to add or delete receipt/delivery points associated with sources of gas acquired by the Owens-Illinois. The flexible authority requested applies only to points related to sources of gas supply, not to delivery points in the market area. Applicants will file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

Comment date: April 15, 1985, in accordance with Standard Paragraph G at the end of this notice.

2. Natural Gas Pipeline Company of America

[Docket No. CP85–269–000]

February 28, 1985.

Take notice that on February 7, 1985, Natural Gas Pipeline Company of America (Applicant), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP85–269–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon two 1,000 horsepower compressor units and related facilities, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Applicant proposes to abandon two 1,000 horsepower compressor units and related facilities, one at its Quinduno field compressor station No. 149, located in Roberts County, Texas, and one at its booster station No. 60, located at the junction of its Camrick field main trunk gathering line, Beaver and Texas Counties, Oklahoma, and its main transmission pipeline in Beaver County, Oklahoma. Applicant asserts that deliverability from each field has declined to the point that such compressor units are surplus to Applicant's needs. Applicant states that upon issuance of the requested authorization, it would remove all salvable facilities at each location and retain them in stock for use at other locations. Applicant estimates the out of pocket costs of the abandonment of the compressors and related facilities to be $163,000 which cost would be met with funds on hand.

Comment date: March 20, 1985, in accordance with Standard Paragraph F at the end of this notice.

3. Northern Natural Gas Company Division of InterNorth, Inc.

[Docket No. CP68–75–012]

February 28, 1985.

Take notice that on February 5, 1985, Northern Natural Gas Company, Division of InterNorth Inc., (Petitioner), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP68–75–012, a petition to amend further the order issued May 20, 1968, in Docket No. CP68–75 pursuant to section 7 of the Natural Gas Act so as to authorize the establishment of two additional exchange points of natural gas, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that by order issued May 20, 1968, it was authorized, *inter alia*, to construct and operate certain measuring stations and to exchange with and transport natural gas for Phillips Petroleum Company (Phillips).

Petitioner seeks to add the following wells as additional points of delivery of exchange gas:

Name of well	Location
InterNorth Inc.—McGee 1120 No. 1	Lipscomb County, TX
TXO Production—Gibner-No. 1	Hansford County, TX

Phillips will install the necessary facilities to connect these wells.

Comment date: March 20, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

4. Southern Natural Gas Company

[Docket No. CP85-278-000]

February 28, 1985.

Take notice that on February 11, 1985, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202, filed in Docket No. CP85-278-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Southern to render a firm transportation service for Alabama Gas Corporation (Alagasco) and to construct and operate certain pipeline facilities to provide the transportation service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern proposes to transport, on a firm basis, for Alagasco a maximum quantity of 20,000 Mcf of natural gas per day for a primary term of 15 years and month to month thereafter. During the first and second years of the transportation agreement, dated October 1, 1984, Southern proposes to transport on an interruptible basis an addtional 10,000 Mcf of gas per day and 5,000 Mcf of gas per day, respectively.

Southern also proposes to construct and operate approximately 6.9 miles of 24-inch pipeline loop on its Second North Main Line in Tuscaloosa County, Alabama. Southern alleges these facilities are required to provide sufficient capacity to perform the proposed firm transporation service. Southern estimates the cost of construction would be $3,272,920, which cost Southern expects to finance initially by short-term financing and/or cash from current operations.

It is explained that Alagasco would purchase the gas to be transported for its system supply from Alabama Intrastate Supply (Alabama Intrastate) from reserves in Fayette and Lamar Counties, Alabama, and that Alabama Intrastate would deliver the gas to SNG Intrastate Pipeline Inc. for transportation and redelivery to Southern in Pickens and Tuscaloosa Counties, Alabama. Southern proposes to redeliver the gas to Alagasco at existing delivery points in the Birmingham area.

Southern propses to charge Alagasco a contract demand rate of $3.43 per Mcf and a commodity charge of 18.5 cents per Mcf up to a maximum of 20,000 Mcf of gas per day. Volumes of gas transported in excess of the contract demand would be charged a rate of 29.8 cents per Mcf, it is asserted.

Southern contends the proposed transportation and the construction and operation of the pipeline facilities are in the public interest since they would enable Alagasco to acquire an economical source of gas for its customers without having to duplicate existing facilities. Southern alleges that the proposed transportation service would not harm or impair service to Southern's other customers.

Comment date: March 20, 1985, in accordance with Standard Paragraph F at the end of this notice.

5. Columbia Gulf Transmission Company

[Docket No. CP85-275-000]

February 27, 1985.

Take notice that on February 8, 1985, Columbia Gulf Transmission Company (Columbia Gulf), 3805 West Alabama Avenue, Houston, Texas 77027, filed in Docket No. CP85-275-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Bethlehem Steel Corporation (Bethlehem) under the certificate issued in Docket No. CP83-496-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Columbia Gulf proposes to transport up to 11.0 billion Btu and 10.0 billion Btu equivalent of natural gas per day for Bethlehem's Steelton and Bethelehem plants, respectively, through June 30, 1985. Columbia Gulf states that the gas to be transported would be purchased from Gas Systems Network, Inc. (Gas Systems) and would be used as process gas and boiler fuel in Bethlehem's Steelton and Bethlehem, Pennsylvania, plants.

It is indicated that Bethlehem has made arrangements to purchase this gas from Gas Systems. Columbia Gulf states that it would receive the gas from United Gas Pipe Line Company and Tennessee Gas Pipeline Company, a Division of Tenneco Inc., in Louisiana for the account of Gas Systems and redeliver the gas to Columbia Gas Transmission Corporation (Columbia Transmission) for redelivery to UGI Corporation (UGI), the distribution company serving Bethlehem, near Steelton and Bethlehem, Pennsylvania. Columbia Transmission is also participating in this transportation arrangement and has obtained Commission authorization in Docket No. CP84-170-001 for Bethlehem's Steelton plant and Docket No. CP84-171-001 for Bethlehem's Bethlehem plant. Columbia Transmission is utilizing its flexible authority to add a receipt point from Columbia Gulf.

Columbia Gulf states that it would charge one of the rates in its Rate Schedule T-2 for its transportation service: Offshore to Kentucky—23.92 cents per dt equivalent of gas and retain 1.69 percent of the total quantity of gas delivered into its system for company-use and unaccounted-for gas; lateral onshore to Kentucky—14.28 cents per dt equivalent of gas and retain 1.50 percent; Rayne, Louisiana, to Kentucky—12.76 cents per dt equivalent of gas and retain 1.50 percent; and Corinth, Mississippi, to Kentucky—6.38 cents per dt equivalent of and retain 0.75 percent.

Comment date: April 15, 1985, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs:

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is

required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-5516 Filed 3-6-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP85-233-000, et al.]

Natural Gas Certificate Filings; National Fuel Gas Supply Corp., et al.

March 1, 1985.

Take notice that the following filings have been made with the Commission:

1. National Fuel Gas Supply Corporation

[Docket No. CP85-233-000

Take notice that on January 18, 1985, National Fuel Gas Supply Corporation (National Fuel), Ten Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP85-233-000 a request pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of McInnes Steel Company (McInnes Steel) under the certificate issued in Docket No. CP83-4-000 pursuant to Section 7 of the Natural Gas Act, all as more fully described in the request which is on file and open to public inspection.

It is stated that pursuant to the terms of a September 28, 1984, gas purchase agreement, McInnes Steel acquired volumes of gas from U.S. Energy Development Corporation (U.S. Energy) for use in space heating and as process gas at McInnes Steel's Erie, Pennsylvania, plant. In order for McInnes Steel to receive its gas, it is explained that McInnes Steel has entered into a transportation agreement with National Fuel. It is indicated that National Fuel would receive up to 1.5 billion Btu of natural gas per day from U.S. Energy at various points in Erie and Chautauqua Counties, Pennsylvania, Chautauqua County, New York, and redeliver the gas, less retainage, to National Fuel Gas Distribution Corporation for further transportation to McInnes Steel's plant. It is stated that National Fuel began transporting gas on behalf of McInnes Steel on November 1, 1984, pursuant to § 157.209 of the Commission's Regulations. National Fuel herein proposes to transport 1.5 billion Btu on an average day and 547.5 billion Btu of gas on an annual basis on behalf of McInnes Steel for three months and month to month thereafter. National Fuel states that it would charge 31.72 cents per Mcf for gas it transports hereunder; this rate is set forth in Rate Schedule T-2 of National Fuel's FERC Gas Tariff. In addition, National Fuel states it would retain a percentage of the total quantity of gas delivered into its system for company use and unaccounted-for gas. This percentage, as reflected in Rate Schedule T-2, is currently 2 percent.

National Fuel also requests flexible authority to add or delete receipt/delivery points associated with the sources of gas acquired by the end-user. The flexible authority requested applies only to points related to sources of gas supply, not to delivery points in the market area. National Fuel will file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

Comment date: April 15, 1985, in accordance with Standard Paragraph G at the end of this notice.

2. Trunkline Gas Company, and Panhandle Eastern Pipe Line Company

Docket No. CP84-577-003

Take notice that on February 5, 1985, Trunkline Gas Company (Trunkline) and Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77001, filed in an amendment in Docket No. CP84-577-003 a request pursuant to Section 7 of the Natural Gas Act and to § 157.205 of the Regulations under the Natural Gas Act for authorization to make an off-system sale of natural gas and to transport such gas. The request is pursuant to authorization received in the Commission's order issued October 29, 1984, in Docket No. CP84-577-000, authorizing a sales for take-or-pay relief program (STOPR), all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Trunkline proposes to make an off-system sale of gas to Olin Corporation (Olin) pursuant to a gas sales contract dated December 20, 1984, between Olin and Trunkline (contract). It is explained that the contract provides for Trunkline to deliver up to 3,500 Mcf of gas per day on an interruptible basis for use by Olin to process fuel to dry wet industrial phosphate chemicals at its Joliet, Illinois, facility. It is stated that the sales price which Olin would pay Trunkline is $3.1928 per dt equivalent of gas. The sales price consists of Trunkline's current average cost of gas, the GRI surcharge, Panhandle's third party transporter fee and an added margin pursuant to the authorization received in the STOPR order, it is indicated.

Panhandle proposes to transport the gas for Trunkline pursuant to a transportation agreement dated January 11, 1985, between Panhandle and Trunkline (agreement). It is stated that the agreement provides for Panhandle to accept up to 3,500 Mcf of gas per day on an interruptible basis from Trunkline at Tuscola, Douglas County, Illinois. Further, it is stated that Panhandle would then transport and redeliver such gas, less an 0.8% reduction for fuel, to Northern Illinois Gas Company (NIGAS) at an existing interconnection in Pike County, Illinois, or to an existing interconnection between Panhandle and Natural Gas Pipeline Company of America in Moultrie County, Illinois. It is explained that NIGAS would make ultimate delivery to Olin for its end use in Joliet, Illinois. It is indicated that Trunkline would pay Panhandle 3.90 cents per Mcf of gas for the transportation service which is reflected in the sales price above. NIGAS is an existing jurisdictional customer served by Panhandle and Olin is an existing end-use customer of NIGAS, it is stated.

Further, it is stated that Panhandle and NIGAS have sufficient capacity to provide such service without detriment or disadvantage to Panhandle's or NIGAS' customers. The term of the services under the authorization requested herein would be from the date of first delivery, with termination to coincide with the expiration under the STOPR program, it is stated.

Comment date: April 15, 1985, in accordance with Standard Paragraph G at the end of this notice.

3. Panhandle Eastern Pipe Line Company

[Docket No. CP85–272–000]

Take notice that on February 8, 1985, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP85–272–000 a request pursuant to § 157–205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Can-Am Industries, Inc. (Can-Am), under the certificate issued in Docket No. CP83–83–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Panhandle proposes to transport up to 1,500 Mcf of natural gas per day on an interruptible basis on behalf of Can-Am. Panhandle states it requests authorization from the date automatic authorization expires until the earlier of (1) 18 months from December 11, 1984, (2) termination of authorization as provided in Subpart F of Part 157 of the Commission's Regulations, or (3) termination of the transportation agreement by either of the parties.

Panhandle states that Can-Am has entered into a natural gas purchase agreement with Consolidated Fuel Supply, Inc. (Consolidated), providing for the purchase of up to 1.5 billion Btu of natural gas per day. Panhandle further states it would receive the natural gas at existing points of receipt on its system in Dewey, Beckham, Custer and Ellis Counties, Oklahoma, and would then transport and redeliver such natural gas, less a four percent reduction for fuel, to Central Illinois Public Service Company (CIPSCO) at an existing point of connection in Adams County, Illinois. It is explained that CIPSCO in turn would make ultimate delivery to Can-Am for its end use at its Quincy, Illinois, plant. Panhandle indicates that CIPSCO is an existing jurisdictional customer of Panhandle and Can-Am is an end-use customer of CIPSCO.

Panhandle proposes to charge Can-Am a transportation rate pursuant to its Rate Schedule OST, which rate is currently 42 cents, plus 1.24 cents GRI surcharge, for each million Btu redelivered at the point of redelivery. Panhandle states that the Rate Schedule OST excess service rate is currently 87 cents, plus 1.24 cents GRI surcharge, for each million Btu redelivered at the point of redelivery.

Panhandle indicates that the natural gas would be used at Can-Am's facility at Quincy, Illinois, primarily for boiler use. Panhandle also indicates that no intermediary participated in the transaction between Consolidated and Can-Am.

Panhandle also requests flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by the end-user. The flexible authority requested applies only to points related to sources of gas supply, not to delivery points in the market area. Panhandle will file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

Comment date: April 15, 1985, in accordance with Standard Paragraph G at the end of this notice.

Panhandle Eastern Pipe Line Company

[Docket No. CP85–273–000]

Take notice that on February 8, 1985, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP85–273–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas (18 CFR 157.205) for authorization to transport natural gas for General Motors Corporation (GM) under the certificate issued in Docket No. CP83–83–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Panhandle proposes to transport up to 17,500 Mcf of natural gas per day on an interruptible basis on behalf of GM. Panhandle states it requests authorization from the date automatic authorization expires until the earlier of (1) 18 months from December 19, 1984, (2) termination of authorization as provided in Subpart F of Part 157 of the Commission's Regulations, or (3) termination of the transportation agreement by either of the parties.

Panhandle states that GM has entered into a natural gas purchase agreement with State Gas Pipeline (State Gas) providing for the purchase of up to 20 billion Btu of natural gas per day. Panhandle further states it would receive the natural gas at existing points of receipt on its system in Major, Kingfisher and Woodward Counties Oklahoma. Panhandle proposes to transport and redeliver such natural gas, less a four percent reduction for fuel, to Michigan Gas Storage Company (Michigan Gas) at an existing point of connection in Oakland County, Michigan. It is explained that Michigan Gas would then transport and deliver the natural gas to Consumers Power Company (Consumers) which in turn would make ultimate delivery to GM for its end use at its Warren Kalamazoo, Saginaw and Bay City, Michigan, facilities. Panhandle indicates that Michigan Gas is an existing jurisdictional customer of Panhandle whereas Consumers is served by Michigan Gas and that GM is an existing end-use customer of Consumers.

Panhandle proposes to charge GM a transportation rate pursuant to its Rate Schedule OST, which rate is currently 42 cents, plus 1.24 cents GRI surcharge, for each milion Btu redelivered at the point of redelivery. Panhandle states that the Rate Schedule OST excess service rate is currently 87 cents, plus 1.24 cents GRI surcharge, for each million Btu redelivered at the point of redelivery.

Panhandle indicates that the natural gas would be used at GM's facilities for boiler and process fuel. Panhandle also indicates that no intermediary participated in the transaction between GM and State Gas.

Panhandle also request flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by the end-user. The flexible authority requested applies only to points related to sources of gas supply, not to delivery points in the market area. Panhandle will file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

Comment date: April 15, 1985, in accordance with Standard Paragraph G at the end of this notice.

[Docket No. CP85–274–000]

5. Michigan Gas Storage Company

Take notice that on February 8, 1985, Michigan Gas Storage Company (Michigan Gas), 212 West Michigan Avenue, Jackson, Michigan 20036, filed in Docket No. CP85–274–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for General Motors Corporation (GM) under the certificate issued in Docket No. CP84–451–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the commission and open to public inspection.

Michigan Gas states the GM has purchased a supply of natural gas from State Gas Pipeline. Michigan Gas further

states that Panhandle Eastern Pipe Line Company (Panhandle) would receive such natural gas at existing points of receipts on its system in Oklahoma. Panhandle would then transport and redeliver such natural gas to Michigan Gas in Michigan, it is explained.

Michigan Gas proposes to receive up to 17.5 billion Btu of natural gas per day for GM from Panhandle at various existing points of interconnection between Panhandle and Michigan Gas, provided that such points(s) of interconnection are downstream from the South Lyon measuring station of Michigan Gas in Oakland County, Michigan. Michigan Gas states that the natural gas would then be transported and redelivered on an interruptible basis to Consumers Power Company (Consumers) which in turn would make ultimate delivery to GM for its end-use at its Warren, Kalamazoo, Saginaw and Bay City, Michigan, facilities. Michigan Gas indicates that it is an existing jurisdictional customer of Panhandle whereas Consumers is served by Michigan Gas and that GM is an existing end-use customer of Consumers.

Michigan Gas states it request authorization from the date automatic authorization expires through termination as provided in Subpart F of 18 CFR Part 157 or the termination of the transportation agreement dated December 19, 1984, between GM and Michigan Gas. It is further stated that the term of the transportation agreement is for a period of two years beginning December 29, 1984, provided that either party may terminate on 30 days notice to the other party.

Michigan Gas would charge GM for the transportation service as provided in Michigan Gas, Rate Schedule T-3. Michigan Gas indicates that the natural gas would be used at GM's facilities for boiler and process fuel. Michigan Gas also indicates that no intermediary participated in the transaction between GM and State Gas Pipeline.

Michigan Gas also requests flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by the end-use. The flexible authority requested applies only to points related to sources of gas supply, not to delievery points in the market area. Michigan Gas will file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas woud only be obtained to constitute the transportation quantities here is and not to increase those quantities.

Comment date: April 15, 1985, in accordance with Standard Paragraph G at the end of this notice.

[Docket No. CP85-254-000]

8. Northern Natural Gas Company, Division of InterNorth, Inc.

Take notice that on January 28, 1985, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP85-254-000 a request pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natual gas on behalf of Robinson Brick Company (Robinson Brick) under the certificate issued in Docket No. CP82-401-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern proposes to transport 1800 Mcf of natural gas per day for Robinson Brick through June 30, 1985. It is stated that the gas would be received by Northern at (1) a point on Northern's system located in Haskell County, Kansas (Haskell County receipt point) and/or (2) a point on Northern's system located in Clark County, Kansas (Clark Country receipt point) and/or (3) a point on Northern's system located in Weld County, Colorado (Weld Country receipt point). It is further stated that commencing with said deliveries to the Haskell County receipt point and the Clark County receipt point, Northern would transport the gas to a point on Northern's system located in Gage County, Nebraska (Beatrice), and from Beatrice, Northern would transport, by displacement, thermally equivalent quantities to an interconnect between Northern and Western Gas Supply Company located in Weld County, Colorado (Weld County delievery point). It is further stated that for gas received at the Weld County receipt point, Northern would transport equivalent volumes to the Weld County delivery point. Northern states that the gas to be transported would be purchased by Robinson Brick from Northern Gas Marketing, Inc., and would be used as fuel to heat the brick kilns and as residual fuel to heat the plant.

It is stated that the following rates are proposed to be charged Robinson Brick for the transportation service:

(1) 16.3 cents per Mcf of gas transported from the Haskell County recipt point to Beatrice and/or 13.5 cents per Mcf of gas transported from the Clark County receipt point to Beatrice; and/or 1.21 cents per Mcf of gas tranported from the Weld County receipt point to the Weld County delivery point.

(2) 1.25 cents per Mcf for funding the Gas Research Institute.

It is also stated that Northern would also retain, for fuel and unaccounted-for gas, 5½ percent and 3½ percent of all volumes received at the Haskell County and Clark County receipt points, respectively.

Nothern also requests flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by Vulacan. The flexible authority requested applies only to points related to sources of gas supply, not to delivery points in the market area. Northern would file a report providing certain information, with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein not to increase those quantities.

Comment date: April 15, 1985, in accordance with Standard Paragraph G at the end of this notice.

[Docket No. CP85-271-000]

7. Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

Take notice that on February 8, 1985, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Applicant), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP85-271-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Courtaulds North America, Inc. (Courtaulds), under the blanket certificates issued in Docket No. CP82-413-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Applicant states that it entered into a gas transportation agreement (Agreement) with Courtaulds on January 8, 1985. Pursuant to the terms of the Agreement, Applicant proposes to transport up to 5,000 Mcf of gas per day which Courtaulds purchases from Mobil Oil Exploration and Producing Southeast Inc. (Mobil) in the Topeka Field, Lawrence County, Mississippi, and the Bovina Field, Warren County, Mississippi. Applicant states it would receive, on an interruptible basis, the gas purchsed by Courtaulds at the existing points of interconnection between Applicant and Mobil at Applicant's Meter No. 0-0557-1 in the Topeka Field and/or Applicant's Meter

No. 0–0516–1 in the Bovina Field. Applicant indicates that it would transport the gas to United Gas Pipe Line Company (United) at the existing points of interconnection between the facilities of Applicant and United at applicant's Meter No. 5–0108 in the Topeka Field and/or Applicant's Meter No. 5–0110–1, United-Bovina Check Meter, in Warren County, Mississippi. United would then transport equivalent volumes to Courtaulds' LeMoyne plant located near Salco, Mobile County, Alabama.

Applicant states that, pursuant to § 157.209(a)(2), the transportation service was commenced on January 9, 1985. Applicant requests authority to perform such service until June 30, 1985.

Pursuant to its Rate Schedule ITEU, Applicant proposes to charge Courtaulds 7.02 cents per Mcf of gas delivered during the month. In addition, Courtaulds would provide Applicant 1.2 percent of the daily volume for system fuel and uses and gas lost and unaccounted for, it is stated.

Applicant also requests flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by the end-user. The flexible authority requested applies only to points related to sources of gas supply, not to delivery points in the market area. Applicant will file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

Comment date: April 15, 1985, in accordance with Standard Paragraph G at the end of this notice.

8. Montana-Dakota Utilities Co.

[Docket No. CP85–259–000]

Take notice that on February 1, 1985, Montana-Dakota Utilities Co. (MDU), 400 North Fourth Street, Bismarck, North Dakota 58501, filed in Docket No. CP85–259–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for autorization to construct and operate sales taps and appurtenant facilities under the certificate issued in Docket No. CP83–1–000, as amended in Docket No. CP83–1–001, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

MDU proposes to construct and operate 14 retail sales taps and appurtenant facilities on its natural gas transmission system for the delivery of gas to certain new residential, commercial and industrial end-user customers, as further explained in the Appendix hereto. It is stated that the natural gas ultimately consumed by each customer would be served from MDU's general system supply. MDU further states that the deliveries would be made in accordance with the terms of *Amendment of Stipulation and Agreement in Settlement of Remaining Issues* approved by the Commission's order issued February 19, 1982, regarding MDU's curtailment plan in Docket No. RP76–91–000.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization purusant to Section 7 of the Natural Gas Act.

LIST OF SALES TAP CUSTOMERS

Name of customer	Location of tap	Peak day usage	Class of customer	Estimated cost
Cary Schuler	Sec. 4, T150N, R66W, Eddy County, ND	3	Residential	$1,000
Concrete Pre-Mix	Sec. 35, T161N, R60W, Cavalier County, ND	18	Commercial	1,000
Minot Air Force Base Hospital	Sec. 18, T157N, R82W, Ward County, ND	60	do	1,000
Arlin Kemmit	Sec. 25, T147N, R81W, McLean County, ND	6	Residential	700
Darrel Sanberg	Sec. 19, T157N, R94W, Mountrail County, ND	2	do	700
Williston Park Sub-division	Sec. 3, T154N, R101W, Williams County, ND	14	do	1,000
Texaco	Sec. 15, T150N, R99W, McKenzie County, ND	250	Industrial	2,500
Sun Exploration & Prod. Co. M.L. Lassey #1 Battery API 33–053.	Sec. 34, TN, R103W, McKenzie County, ND	18	do	1,000
Bill Johnson	Sec. 30, T140N, R104W, Golden Valley County, ND	2	Residential	700
Vern Moss	Sec. 31, T10N, R51E, Prairie County, ND	2	do	700
Rau School District	Sec. 16, T22N, R59E, Richland County, ND	5	Commercial	700
Norman Lundquist	Sec. 32, T6S, R23E, Carbon County, ND	2	Residential	700
Robert J. Springer	Sec. 2, T50N, R82W, Johnson County, ND	2	do	700
Joe Nichols	Sec. 35, T7N, R2E, Lawrence County, ND	2	do	700

Comment date: April 15, 1985, in accordance with standard Paragraph G at the end of this notice.

9. Transcontinental Gas Pipe Line Corporation

[Docket No. CP85–264.000]

Take notice that on February 4, 1985, Transocontinental Gas Pipe Line Corporation (Applicant), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP85–264–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission to abandon natural gas sales to Columbia Gas Transmission Corporation (Columbia) under three expired service agreements, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it presently provides natual gas service of 86,400 dt equivalent per day to Columbia under five service agreements at five delivery points and that three of these service agreements, with contract demands totaling 60,000 dt equivalent per day, have expired; and Applicant desires to abandon service under these agreements. These agreements, it is explained, include delivery of 15,000 dt equivalent per day at Rockville, Maryland; 20,000 dt equivalent per day at Downingtown, Pennsylvania; and 25,000 dt equivalent per day at Dranesville, Virginia. Applicant states that it owns the facilities at Downingtown and Dranesville, while Columbia owns the facilities at Rockville. Applicant states that the facilities would not be abandoned because they could be used for future

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transportation or exchange agreements or for emergency situations.

Applicant states that Columbia's 1984 annual load factor purchases were 12 percent at Dranesville, 13 percent at Downingtown, and 14 percent at Rockville. Applicant further states that it would use the pipeline capacity made available by the proposed abandonment to render additional firm service to certain of its customers and that such service would be the subject of another application to be subsequently filed by Applicant.

Comment date: March 21, 1985, in accordance with Standard Paragraph F at the end of this notice.

[Docket No. CP70-7-028]

10. Southern Natural Gas Company

Take notice that on January 25, 1985, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP70-7-028 a petition to amend the order issued October 29, 1969, in Docket No. CP70-7-000 pursuant to Section 7 of the Natural Gas Act so as to grant authorizations reflecting a merger and corporate reorganization of two of its customers and the associated assignment and transfer of one of the customers' service agreements and related contract demand and requirements to the other customer, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

It is stated that Southern is currently authorized to sell and deliver to Carolina Pipeline Company (Carolina Pipeline) a contract demand of 45,461 Mcf of natural gas per day and that Southern is also authorized to sell and deliver a contract demand of 165,439 Mcf of gas per day to South Carolina Electric & Gas Company (South Carolina). Southern states that Carolina has sold its gas transmission properties to Carolina Pipeline in a corporate reorganization and that as part of said corporate reorganization South Carolina assigned its service agreement with Southern to Carolina Pipeline. Southern therefore requests authorization to sell to Carolina Pipeline an additional contract demand volume of 165,439 Mcf per day and to abandon sales and deliveries to South Carolina.

It is indicated that upon receipt of the authorization requested, Southern would file revised tariff sheets to its Index of Requirements reflecting the new contract demand of Carolina Pipeline resulting from the assignment and transfer of South Carolina's service agreement to Carolina Pipeline and the transfer from South Carolina to Carolina Pipeline of the former's requirement in Southern's Index of Requirements.

Comment date: March 21, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

Standard Paragraphs:

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is requried, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-5517 Filed 3-16-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF85-233-000, et al.]

Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications; etc.; Northwest Power Co., et al.

Comment date: Thirty days from the publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

March 1, 1985.

Take notice that the following filings have been made with the Commission:

1. Northwest Power Company (Lower Haypress Creek)

[Docket No. QF85-233-000]

On February 7, 1985, Northwest Power Company, (Applicant), of Four Embarcadero Center, Suite 1980, San Francisco, California 94111, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The Lower Haypress Creek Hydroelectric Project (P. 6028) will be located on the Lower Haypress Creek, in Sierra and Nevada Counties, California. The project electric capacity and annual generation will respectively be 5,000 kW and 12,000 MWh approximately. A 23-mile, 60 kV transmission line will connect the project to Pacific Gas & Electric Company (PG&E) near Lake Spaulding, California. The applicant will own another 5,000 kW Lower Haypress Creek hydroelectric project (P. 6061) located within one mile of the proposed facility, hence the aggregate capacity of Haypress Creek and Lower Haypress Creek Projects will be approximately 10,000 kW. No electric utility or electric utility holding Company has any ownership interest in the facility.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR

Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

2. Northwest Power Company (Haypress Creek)

[Docket No. QF85-232-000]

On February 7, 1985, Northwest Power Company, (Applicant) of Four Embarcadero Center, Suite 1980, San Francisco, California 94111, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The Haypress Creek Hydroelectric Project (P. 6061) will be located on the Haypress Creek, in Sierra and Nevada Counties, California. The project electric capacity and annual generation will respectively be 5,000 kW and 12,000 MWh approximately. A 22-mile, 60 kV transmission line will connect the project to Pacific Gas & Electric Company (PG&E) near Lake Spaulding, California. The applicant will own another 5,000 kW Lower Haypress Creek hydroelectric project (P. 6028) located within one mile of the proposed facility, hence the aggregate capacity of Haypress Creek and Lower Haypress Creek Projects will be approximately 10,000 kW. No electric utility or electric utility holding Company has any ownership interest in the facility.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

3. Romic Chemical Corporation

[Docket No. QF85-240-000]

On February 11, 1985, Romic Chemical Corporation of 2081 Bay Road, East Palo Alto, California 94303 (Applicant) submitted for filing an application for certification of a facility as a qualifying congeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the Applicant's plant in East Palo Alto, California. The facility will consist of a combustion gas turbine exhausting to a heat recovery boiler. Steam produced in the boiler will be used for plant process steam loads, with excess steam being injected back into the turbine. The primary energy source for the facility will be natural gas. The electric power production capacity of the facility will be 6 megawatts. Construction of the facility is scheduled to begin in October 1985 and completed by April 1986.

4. Procter & Gamble Manufacturing Company

[Docket No. QF85-241-000]

On February 11, 1985, the Procter & Gamble Manufacturing Company, 1306 Highway 70 Bypass, Jackson, Tennessee 38301 (Applicant) submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the Applicant's plant, in Jackson, Tennessee. The facility will consist of two base-loaded diesel-generator sets exhausting into a heat recovery boiler for steam production. The boiler will contain duct burners for supplementary gas or diesel firing whenever required. The primary energy source for the facility will be natural gas. The electric power production capacity of the facility will be 5,000 kilowatts. Construction began in June 1984 and startup is scheduled for March 1985.

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-5519 Filed 3-6-85; 8:45 am]

BILLING CODE 6717-01-M

Western Area Power Administration

Proposed Pre-1989 Salt Lake City Area (SLCA) Integrated Projects Firm Power Offer

AGENCY: Western Area Power Administration, Energy.

ACTION: Proposed Pre-1989 SLCA Integrated Projects Firm Power Offer.

SUMMARY: As a direct result of the proposed integration of the Colorado River Storage Project (CRSP), Collbran, Rio Grande, and Provo River Projects, hereafter referred to as the SLCA Integrated Projects, as well as recent and projected Glen Canyon generator uprates, the Western Area Power Administration (Western) has determined that additional firm power and energy will be available in the Salt Lake City market area for the period from October 1, 1986, through September 30, 1989. In addition to project integration and generator uprates, selection of a new hydrological basis for determination of marketable resources and a lower reserve level have resulted in the identification of this additional firm power and energy not previously marketed under existing power marketing criteria. Available hydroelectric power will vary from about 80 to 110 MW (see table 1) as uprated units are entered into service, with energy at seasonal load factors of 18 percent to 63 percent. Western proposes to supplement this hydro resource with varying seasonal thermal purchases, if necessary, to provide 85 megawatts (MW) or firm power with associated energy at an approximate 50 percent seasonal load factor. Hydro resources in excess of these amounts which may be available in a few seasons will be marketed under other existing programs. Potential new customers who satisfy eligibility requirements and certain existing customers receiving a small percentage of power from Federal resources will be given priority, but other existing customers may also be eligible for an allocation of this additional SLCA Integrated Projects firm power for the proposed contract period. However, if the total applications for power from priority customers exceed 85 MW, a portion of the power allocated to existing customers may be made on a withdrawable basis, subject to the readiness of potential new customers to receive and distribute Federal power.

Proposed contract terms and conditions and many other elements of this offer are similar to those proposed in the September 4, 1984, Federal

Register publication of the Revised Proposed General Power Marketing Criteria for SLCA Integrated Project Resources (Post-1989 Plan, 49 FR 34900 (September 4, 1984)). Written comments on this proposed offer will be received by Western's Salt Lake City Area Office through March 20, 1985.

Since it is likely that many of the probable comments will have been presented in previously transcribed public forums, Western believes that a separate public information and/or comment forum will not be necessary. However, should sufficient written comment raise issues not previously addressed, Western will, at that time, decide whether a public forum is appropriate.

A final pre-1989 firm power offer will be prepared with a preliminary target publication date of August 1985. In this final notice, applications for power will be requested. Potential customers are expected to be formally notified of proposed allocations during October 1985.

ADDRESSES: On or before March 20, 1985, written comments on this proposed firm power offer may be sent to: Mr. Mark N. Silverman, Area Manager, Salt Lake City Area Office, Western Area Power Administration, P.O. Box 11606, Salt Lake City, UT 84147, Telephone: (801) 524-5494.

SUPPLEMENTARY INFORMATION: Contents of Supplementary Information Section:

A. Applicability.
B. Marketable Resources.
C. Market Area, Service Seasons, and Class of Service.
D. Eligibility.
E. Allocation Procedure.
F. Application Procedure.
G. General Contract Terms and Conditions.
H. Regulatory Procedure Requirements.

A. Applicability

This offer is based upon the provisions of the Act of April 11, 1956 (70 Stat. 105), referred to as the CRSP Act, and specifically section 7 which provides for the operation of CRSP: ". . . so as to produce the greatest practicable amount of power and energy that can be sold at firm power and energy rates."

The offer shall become final upon approval and promulgation by the Administrator of Western and shall apply to those additional SLCA Integrated Projects resources determined to be available for the period October 1, 1986, through September 30, 1989, and shall include varying seasonal amounts of complementary thermal power and energy purchases, as may be required in some seasons. Firm power and energy defined in this offer will be allocated and marketed in accordance with terms and conditions detailed in this notice. Terms and/or conditions of this offer may be subject to change upon reasonable notice by the Administrator.

B. Marketable Resources

Additional power available from SLCA Integrated Projects resources will be based on the maximum operating capacity of the powerplants of the Collbran, Rio Grande, and Provo River Projects along with the capacity from the CRSP powerplants based on 90 percent hydrological probability during the period from 1986 to 1989. Determination of the 90 percent level of available power is based upon the application of the computer simulation model of the Colorado River, known as Colorado River Simulation System (CRSS), using the 78 years of recorded historic flows. Estimated hydroelectric energy available for load is based on average hydrological conditions projected for the 15-year period ending September 1999. Power and energy has been reserved for certain Bureau of Reclamation (BuRec) priority uses. All resources will be marketed in accordance with applicable Federal laws and policies.

Based upon the most current schedule for generator unit uprates at Glen Canyon Powerplant provided by the BuRec, Western has estimated the additional marketable hydroelectric resources available from October 1, 1986, to September 30, 1989. Table 1 provides a summary of the estimated additional power and energy available from the SLCA Integrated Projects, as well as estimates of the varying amounts of purchased thermal power and/or energy which may be required. Thermal purchases will be made, as required, to provide a constant resource level of 85 MW of firm power with associated firm energy sufficient to provide an approximate seasonal load factor of 50 percent or 2190 kWh/kW.

In determination of additional marketable resources for this period, consideration was given to reservation of a portion of the total SLCA Integrated Projects resources for BuRec project uses, and an additional amount of firm power and energy to the BuRec for other priority uses that do not fall within the traditional definition of project use. The amounts reserved are shown in table 2.

As stated above, these additional SLCA Integrated Projects power resources were not anticipated or addressed in the February 6, 1984, CRSP General Power Marketing Criteria which are currently in effect, and therefore, are considered a separate marketable resource. Offering hydroelectric energy with this power could reduce the amounts of surplus energy offered to existing CRSP customers under the existing criteria. However, in just 1 year (FY 1984) when surplus energy was offered every month on a 100 percent load factor basis, over 1750 GWh of hydroelectric energy were produced in excess of all energy delivered to firm power customers—far in excess of what Western proposes to commit with these new power resources for the entire 3-year period.

C. Market Area, Service Seasons, and Class of Service

The primary market area for this resource shall be the SLCA market area which includes the States of New Mexico and Utah; western Colorado (west of the Continental Divide); the southwest area of Wyoming within the Colorado River Basin; White Pine County and portions of Elko and Eureka Counties in Nevada; and the portions of Arizona that lie in the drainage area of the Upper Colorado River Basin.

The service seasons shall be comprised of a 6-month summer season from the first day of the April billing period through the last day of the September billing period, and a 6-month winter season from the first day of the October billing period through the last day of the March billing period.

Class of service shall be firm power with associated energy and, in some seasons, will represent a varying combination of hydro and thermal resources. Based on the most recent historic hydrologic data base and the estimated Glen Canyon uprate schedule, it is anticipated that hydroelectric power included in this offer will approximately equal or exceed 85 MW for all seasons. Sufficient hydroelectric energy is estimated to be available in the winter seasons, but about 100 GWh of thermal energy will most likely be required in all summer seasons to provide 2190 KWh of firm energy per kW of firm power. This energy entitlement was selected to complement the anticipated seasonal load factor of post-1989 marketable resources.

All prospective customers should be aware that estimates for available hydro power and energy are based upon the assumption of 90 percent hydrologic probability for capacity (power) and mean energy availability. It is therefore possible but not probable, that in an extreme adverse water year, 100 percent thermal purchases may be required to

fulfill contractual commitments pursuant to this offer. The costs of such purchases and delivery would be borne solely by the customer.

D. Eligibility

To be eligible for an allocation of this available firm power and energy, an entity must be either a potential new preference customer or an existing preference customer under consideration for an allocation of SLCA Integrated Projects resources in the post-1989 contract period, and identified as such in the September 4, 1984, Revised General Power Marketing Criteria proposal. Therefore, each eligible entity must have submitted complete application profile data to the Salt Lake City Area Office prior to the December 31, 1983, submittal deadline and must satisfy all preference prerequisites and eligibility requirements proposed in the September 1984 proposal. In addition, potential new preference entities generally must have taken *significant and tangible steps* by January 1, 1984, to acquire the means to distribute power by September 30, 1988.

Consideration shall be given to all eligible applicants based on the following order of priority:

1. Existing preference entities in the SLCA market area who have no existing allocation of Federal power, have established utility responsibility, and are ready to accept delivery by October 1, 1986; or eligible new preference entities who have not yet established utility responsibility; or preference customers presently purchasing CRSP firm power in the SLCA market area who received less than 25 percent of their requirements from Federal resources, based on the average of 1980–82 load data;

2. Other preference customers presently purchasing CRSP firm power;

3. Nonpreference entities acting as agents for public entities without distribution systems; and

4. Nonpreference entities acting on their own behalf.

E. Allocation Procedure

Within the priority categories set out above, an allocation of available firm power and energy will be based on the amount requested by each qualified applicant, up to an amount equal to the 3-year average historic load from 1980–82, as reported in applicant profile data. In the event that the total amount requested by all applicants within any priority category exceeds resource estimates available to that priority group, proportional adjustments will be made to all requests, accordingly.

If requests from potential new customers and certain existing customers (priority category 1) are not sufficient to fully commit the offered resource from October 1986 through September 1989, allocations will be made to others who have submitted an application hereunder, based on subsequent priority categories. If requests from priority customers are sufficient to fully commit the offered resources, allocations to existing customers may still be made, but on a withdrawable basis, with the understanding that as potential new customers acquire the means to distribute power, the contract commitment to the existing customer will be withdrawn.

An adjusted maximum allocation (greater than the 3-year average 1980-82 load) may be established for those potential new customers who may have experienced a substantial increase in load during 1983 and 1984. (A "substantial increase" is considered to be equivalent to a load growth in excess of 10 percent per year.) For those requesting this consideration, load data for 1983 and 1984 will be required. The form of this data should be similar to those items of information pertaining to historic load as requested in the **Federal Register** notice of February 4, 1983 (48 FR 5303). Information submitted shall have the signature and title of an appropriate official who is able to attest to the validity of the additional data submitted and who is authorized to submit an application for power.

It is important to note that allocation of this power and energy to either potential new preference customers or existing CRSP preference customers will *not* affect the basis upon which post-1989 allocation amounts will be determined.

F. Application Procedure

Application from eligible utilities for available resources must be received by Western's Salt Lake City Area Office by the date specified in the final offer. All applications shall indicate the amount of firm power and energy requested for each summer and winter season. Power shall be expressed in kilowatts, and energy expressed in kilowatthours.

For potential new preference customers, the following additional information will be necessary to be considered eligible to participate in the allocation procedure:

1. Description of the current status of efforts to establish utility responsibility (i.e., efforts to acquire ability to receive and distribute power);

2. Projected schedule of remaining steps to be taken to establish responsibility;

3. Projected date when acceptance of electric service will be possible and when each customer will be ready to receive delivery from Western; and

4. Any information to update previously submitted applicant profile data relating to substantial changes in load magnitude, delivery points, or transmission system voltages.

G. General Contract Terms and Conditions

1. Effective Date and Contract Term

Contracts offered for the sale of this firm power with associated energy will become effective on the first day of the October 1986 billing period (or upon the first day of any subsequent season when a potential new preference customer has established utility responsibility). All contracts shall terminate on the last day of the September 1989 billing period.

2. Rates

The rate for the portion of the contractor's seasonal power and energy commitment represented by *hydro* generation will be billed at the rate in effect for CRSP firm power and energy until a SLCA Integrated Projects firm power and energy rate is established. If implemented, a new Integrated Projects rate schedule will replace the CRSP rate schedule upon its effective date.

The rate for the portion of the contractor's seasonal power and energy commitment represented by *thermal* purchases will be billed at the average purchase cost plus 15 percent of the average purchase cost to account for transmission losses and administrative expenses.

All potential customers will be provided an estimate of the anticipated proposed purchase costs for thermal resources prior to contract execution.

3. Withdrawable Power and Energy

If some power and energy is allocated on a withdrawable basis, the contract will provide that the contract commitment can be reduced or withdrawn upon 60 days notice prior to the beginning of any season. Tentative withdrawal dates will be established prior to contract execution.

4. Power Receipt and Distribution

Contractors must have the means to receive and distribute power no later than December 31, 1988, in order to avoid automatic forfeiture of their contract rights unless Western specifically agrees otherwise in writing.

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5. Allottee Purchasing Agents

Western may contract with a single purchasing agent for two or more allottees, but only under conditions that permit Western to retain all the benefits of load diversity as if separate contracts were executed with each allottee.

6. Load Diversity Adjustment

Contract provisions will permit Western to adjust contract rates of delivery downward on a proportional basis in the event load diversity does not cover transmission system losses.

7. Delivery Obligations

Monthly power and energy delivery obligations for each season will be set forth in each contractor's power sales contract. These amounts will approximate the estimated monthly pattern of the contractor's load requirements, unless Western agrees to deviate for resource related purposes, such as the contractor's maintenance schedules. Western will agree to requested deviations if the United States is not adversely affected.

8. Resale Provisions

All contractors will implement the terms of the Resale of Electric Energy Article upon contract execution, or upon receipt of Federal power. Failure to comply may result in loss of all or a part of the resources committed to the contractor.

The Resale of Electric Energy Article will contain, among other things, a requirement that the contractor demonstrate that:

(a) The benefits of federally-generated power are distributed to the contractor's customers at the lowest possible rates consistent with sound business principles, and

(b) Consumers can identify the costs of federally-generated power and non-federally-generated power such that the true costs of growth and the benefits of conservation and/or development of renewable resources are readily identifiable.

When the contractor consists of members or principals who are retail distributors of Federal power, these retail distributors wil be directly accountable to Western for complying with the above requirements. These requirements may be satisfied by the contractor and its members or principals by displaying, on a semiannual notice rendered to their customers, a breakdown of the amounts and costs of Federal power and non-Federal power and of the magnitude and type of other costs which constitute the composite costs charged to the customers.

9. Scheduling, Accounting, and Billing

Western and its contractors will establish mutually agreeable scheduling and accounting procedures, based upon standard utility industry practices, which will provide efficient, practicable utilization of power and energy.

All terms and conditions regarding scheduling, accounting, and billing shall be in accordance with provisions currently in effect for CRSP sales, with the following modifications:

(a) Billing, scheduling, and accounting procedures will be detailed in power sales contracts which will provide for separation of those portions of the marketed resource that are represented by available hydro generation and thermal purchases, and for differentiation among existing customers between existing contract commitments and entitlements under this offer;

(b) The SLCA Integrated Projects firm energy obligation will be approximately 2190 kWh of firm energy per kW of firm power in the summer and winter seasons, representing an equivalent seasonal load factor of approximately 50 percent, rather than the present CRSP energy entitlement of 2550 kWh/kW or an approximate 58 percent seasonal load factor.

10. Conservation and Renewable Energy Program

Contractors will implement the terms of the Conservation and Renewable Energy (C&RE) Article within 1 year of the date of contract execution. The development of a C&RE program is a responsibility of each Western firm power contractor and its member systems, if any, benefiting from the purchase of federally-generated firm power.

An "Announcement of Final Guidelines and Acceptance Criteria for Customer Conservation and Renewable Energy Program" was published in the **Federal Register** (46 FR 56140) on November 13, 1981. In order to achieve the purposes listed therein, Western will guide and assist its firm power contractors in their C&RE program development, as requested and to the extent possible. Failure to develop a C&RE program that meets the Western Acceptance Criteria may subject a contractor to the potential loss of 10 percent of its firm power allocation.

H. Regulatory Procedure Requirements

1. Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.), each agency, when required by 5 U.S.C. 553 to publish a proposed rule, is further required to prepare and make available for public comment an initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities. In this instance the marketing plan relates to electric services provided by Western. Under 5 U.S.C. 601(2), services are not considered "rules" within the meaning of the Act. Therefore, Western believes that no flexibility analysis is required.

2. Intent to Make Environmental Determination

In compliance with the National Environmental Policy Act of 1969 (NEPA) and the Department of Energy (DOE) regulations published in the **Federal Register** on February 23, 1982 (47 FR 7976), Western conducts environmental evaluations of certain rate and allocation actions. Under the DOE regulations, Western will make an environmental determination of the possible impacts of this proposed 1986–89 offer prior to its implementation.

3. Determination Under Executive Order 12291

The Department of Energy has determined that this is not a major rule because it does not meet the criteria of section 1(b) of Executive Order 12291, 46 FR 13193 (February 19, 1981). Western has an exemption from sections 3, 4, and 7 of Executive Order 12291.

Issued in Washington, D.C., February 21, 1985.

Ronald K. Greenhalgh,

Assistant Administrator for Washington Liaison.

TABLE 1.—OFFERED RESOURCES [1]

	1986–87 Winter	1987 Summer	1987–88 Winter	1988 Summer	1988–89 Winter	1989 Summer
Power (MW)						
Estimated available hydro power [2]	82.65	107.31	82.65	98.25	82.65	84.51
Estimated required thermal purchase	2.35	0	2.35	0	2.35	.49
Total marketable power offered	85.00	85.00	85.00	85.00	85.00	85.00
Energy (GWh):						
Estimated available hydro generation [3]	227.66	99.55	227.66	91.01	227.66	78.64
Estimated required thermal purchase	0	86.60	0	95.14	0	107.51
Total marketable energy offered	186.15	186.15	186.15	186.15	186.15	186.15

TABLE 1.—OFFERED RESOURCES [1]—Continued

	1986–87 Winter	1987 Summer	1987–88 Winter	1988 Summer	1988–89 Winter	1989 Summer
Seasonal energy factor = 2190 kWh/kW.						

[1] Based on October 22, 1984, estimated Glen Canyon Uprate Schedule, Bureau of Reclamation.
[2] Resources from SLCA Integrated Projects in excess of amount required to serve existing commitments, minus 114 MW for reserves, and amounts shown on table 2 for project use and other priority use requirements.
[3] Based on average generation in excess of amount required to serve existing load, minus losses, project use, and other priority use requirements.

TABLE 2.—RESERVATIONS FOR BUREAU OF RECLAMATION AND RELATED LOADS

	1986–87 Winter	1987 Summer	1987–88 Winter	1988 Summer	1988–89 Winter	1989 Summer
Power (MW):						
Project use	.50	23.05	.50	27.87	.50	38.31
Other priority use	2.04	13.54	2.04	17.79	2.04	21.09
Total	2.54	36.60	2.54	45.66	2.54	59.40

[FR Doc. 85–5428 Filed 3–6–85; 8:45 am]
BILLING CODE 6450–01–M

FEDERAL COMMUNICATIONS COMMISSION

Federal-State Joint Board; Notice of Meeting and Notice of Meeting Deferral

Correction

FR Docs. 85–5074 and 85–5320 were published in the Sunshine Act Meetings section on Friday, March 1, 1985, at page 8435 and on Tuesday, March 5, 1985, at page 8811, respectively. They should have appeared in the regular Notices section of those issues.

BILLING CODE 1505–02–M

FEDERAL HOME LOAN BANK BOARD

[No. 85–142]

FSLIC Insurance Premium

Dated: February 22, 1985.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The Federal Home Loan Bank Board, as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC" or "Corporation"), has adopted a resolution pursuant to which the Corporation ordered the assessment against each insured institution of an additional premium for FSLIC insurance in an amount equal to one-thirty-second of one percent of the total amount of the accounts of the insured members of each insured institution determined as of December 31, 1984.

EFFECTIVE DATE: February 22, 1985.

FOR FURTHER INFORMATION CONTACT: Mary A. Creedon, Director, Insurance Division, Office of the FSLIC (202) 377–6620; Judith K. Gunderson, Attorney, Office of General Counsel (202) 377–6442, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION:

Assessment of Additional Insurance Premium

Whereas, The Federal Home Loan Bank Board ("Bank Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("Corporation" or "FSLIC"), may authorize the Corporation, pursuant to section 404(c) of the National Housing Act, as amended ("NHA"), 12 U.S.C. 1727(c) (1982), to assess against each institution the accounts of which are insured by the Corporation pursuant to section 403 of the NHA, 12 U.S.C. 1726 (1982) ("insured institution") additional premiums for such insurance until the amount of such premiums equals the amount of all losses and expenses of the Corporation, *provided* that the total amount so assessed in any one year against any insured institution shall not exceed one-eighth of one per centum of the total amount of the accounts of the insured members of such institution; and

Whereas, The Bank Board has considered a memorandum dated February 22, 1985, from the Director, Office of the FSLIC, and attachments (a copy of which memorandum is in the Minute Exhibit file) describing the losses and expenses incurred by the Corporation and the impact of those losses and expenses on the Corporation's insurance reserves; and

Whereas, The Bank Board has previously solicited and received public comment upon the assessment of additional premiums to meet losses and expenses of the Corporation pursuant to an advance notice of proposed rulemaking dated November 4, 1984, and a notice of proposed rulemaking dated March 17, 1983, and has considered such comment:

Losses and Expenses of the Corporation

Now, therefore, it is resolved That the Bank Board, as operating head of the Corporation, finds that, for the purposes of section 404(c) of the NHA, the losses of the Corporation include losses incurred by the Corporation pursuant to its obligation under section 405(b) of the NHA, 12 U.S.C. 1728(b) (1982), in the event of the default of an insured institution, to make payment of each insured account in such insured institution which is surrendered and transferred to the Corporation, and losses incurred by the Corporation pursuant to its provision of assistance to insured institutions or acquirers thereof under section 406(f) of the NHA, 12 U.S.C. 1729(f) (1982); and

Resolved further, That the Bank Board, as operating head of the Corporation, finds that, for the purposes of section 404(c) of the NHA, the expenses of the Corporation include the operating expenses of the Corporation incurred in connection with the maintenance of the Corporation's insurance reserves and the performance by the Corporation of its duties under Title IV of the NHA, 12 U.S.C. 1724 *et seq.* (1982); and

Resolved further, That the Bank Board finds that the Corporation has incurred substantial losses during calendar years 1981 through 1984; and

Assessment

Resolved further, That the Bank Board finds and determines that:

1. Losses incurred by the Corporation require the assessment of an additional insurance premium pursuant to section 404(c) of the NHA in order to maintain the insurance reserves of the Corporation at a level adequate to meet in part the Corporation's losses and expenses and to protect the insured members of insured institutions;

2. It appears that the Corporation will incur further substantial losses and expenses in calendar year 1985;

3. It is appropriate, therefore, to provide for such assessment at this time, pursuant to section 404(a)(2) of the NHA, by order of the Corporation; and

4. Adequate opportunity for public comment upon the assessment of an additional premium equal to or less than the losses of the Corporation has been provided by the advance notice of proposed rulemaking issued by the Bank Board on November 4, 1982, and the notice of proposed rulemaking issued by the Bank Board on March 17, 1983; and

Resolved further, That the Corporation hereby orders the assessment against each insured institution of an additional premium for insurance in an amount equal to one-thirty second of one per centum of the total amount of the accounts of the insured members of each insured institution determined as of December 31, 1984; and

Resolved further, That the additional insurance premium assessed pursuant to this Resolution shall be paid by each insured institution on or about March 31, 1985; and

Resolved further, That the Director or Deputy Director for Operations and Administration, Office of the FSLIC ("Director"), shall determine the amount of the additional insurance premium due to be paid on March 31, 1985 by each insured institution and shall notify each insured institution of such amount at least twenty (20) days prior to the date such amount is due; and

Resolved further, That the Bank Board recognizes the existence of proposals to amend the NHA to provide for the making available to the Corporation deposits or other payments from insured institutions to increase substantially the insurance reserves of the Corporation and that the adoption by the Congress of any such proposal could ameliorate the need for the additional assessment provided for herein; and

Resolved further, That if such an amendment to the NHA is enacted into law prior to September 1, 1985, and the Bank Board determines that such amendment has the effect of ameliorating the need for such additional assessment, then the Director shall either refund to each institution that has paid the additional insurance premium the amount thereof or shall establish a credit equal to such premium payment against any deposit or other payment due to the Corporation pursuant to such amendment to the NHA; and

Resolved further, That the Director, on behalf of the Corporation, is hereby authorized to take all other actions necessary or appropriate to determine, collect, and, if appropriate, refund or credit the additional insurance premium authorized and ordered by this Resolution; and

Resolved further, That the Bank Board hereby expresses its intention to consider the assessment of further additional premiums in amounts equal to one thirty second of one per centum on a quarterly basis during 1985, not to exceed an aggregate of one eighth of one per centum of the total amount of the accounts of the insured members of each insured institution; and

Resolved further, That the Secretary shall forward this Resolution for publication in the **Federal Register**.

By the Federal Home Loan Bank Board.

Gregory B. Smith,

Acting Secretary.

[FR Doc. 85-5283 Filed 3-6-85; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL RESERVE SYSTEM

FNB Bankshares, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 29, 1985.

A. **Federal Reserve Bank of Boston** (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *FNB Bankshares*, Bar Harbor, Maine; to become a bank holding company by acquiring 1.00 percent of the voting shares of The First National Bank of Bar Harbor, Bar Harbor, Maine.

B. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *First Leigh Corporation*, Walnutport, Pennsylvania; to acquire 19.99 percent of the voting shares of Albion Bancorp, Inc., Pen Argyl, Pennsylvania.

C. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *BBA, Inc.*, Shepherdsville, Kentucky; to become a bank holding company by acquiring at least 80 percent of the voting shares of Bullitt County Bank, Shepherdsville, Kentucky.

Board of Govenors of the Federal Reserve System, March 1, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-5421 Filed 3-6-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

National Advisory Board on Technology and the Disabled; Establishment

Pursuant to Pub. L. 92-463, the Federal Advisory Committee Act, the Office of the Secretary, DHHS announces the establishment by the Secretary of the National Advisory Board on Technology and the Disabled.

The Board shall assist and advise the Secretary concerning but not to limited to:

1. The delineation of issues and constraints bearing on the transfer of new technologies to assist people with disabling conditions;

2. The identification of areas of needed research and investigation by public and private entities;

3. The expansion of public awareness of existing and potential systems and resource identification and dissemination in the area of technology and the disabled; and

4. The identification of models of technical assistance and application of science and technology to the needs of people with disabilities.

The Board shall terminate on February 26, 1987 unless the Secretary, DHHS, formally determines that continuance is in the public interest.

Margaret M. Heckler,

Secretary.

[FR Doc. 85-5458 Filed 3-6-85; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

[Docket No. 84C-0426]

Davis and Geck, American Cyanamid Co.; Filing of Color Additive Petition

Correction

In FR Doc. 85-3660 appearing on page 6252 in the issue of Thursday, February 14, 1985, make the following correction: In the second column, **SUPPLEMENTARY INFORMATION,** fourth line, "U.S.C. 476" should read "U.S.C. 376".

BILLING CODE 1501-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-85-1512]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.
ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ADDRESS: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: Robert Neal, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410, telephone (202) 755-6050. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the prosposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposals should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirements are described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: PHA Application Submitted for FY 1985—Certification Regarding Comparable Existing Housing.
Office: Public and Indian Housing.
Form Number: HUD-52470 and 52483A.
Frequency of Submission: On Occasion.
Affected Public: State or Local Governments and Non-Profit Institutions.
Estimated Burden Hours: 3,222.
Status: Revision.
Contact: Raymond Hamilton, HUD, (202) 426-0938, Robert Neal, OMB, (202) 395-7316.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: February 21, 1985.

Proposal: Good Faith Estimate of Settlement Costs.
Office: Housing.
Form Number: None.
Frequency of Submission: On Occasion.
Affected Public: Businesses or Other For-Profit and Small Businesses or Organizations.
Estimated Burden Hours: 867,500.
Status: Extension.
Contact: Brian J. Chappelle, HUD, (202) 755-6720, Robert Neal, OMB, (202) 395-7316.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: February 13, 1985.

Proposal: Housing Counseling Program and Recordkeeping Requirements (Non-funded).
Office: Housing.
Form Number: HUD-9900, 9902, 9903, 9909, and 9914.
Frequency of Submission: Semi-annually.
Affected Public: State or Local Governments and Non-Profit Institutions.
Estimated Burden Hours: 3,177.
Status: Extension.
Contact: Robert B. Warner, HUD, (202) 755-6664, Robert Neal, OMB, (202) 395-7316.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: February 26, 1985.

Proposal: Grants and Cooperative Agreement Requests for Application and General Reporting Requirements for Grants and Cooperative Agreement Recipients.
Office: Administration.
Form Number: HUD-274, SF-183, 270, and 1194.
Frequency of Submission: Quarterly, Annually, and On Occasion.
Affected Public: Individuals or Households, State or Local Governments, Businesses or Other For-Profit, Non-Profit Institutions, and Small Businesses or Organizations.
Estimated Burden Hours: 48,005.
Status: Reinstatement.
Contact: Gladys Gines, HUD, (202) 755-5294, Robert Neal, OMB, (202) 395-7316.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: February 26, 1985.

Proposal: Notice—Announcement of the HUD Multifamily Urban Homesteading Demonstration Program.
Office: Community Planning and Development.
Form Number: None.
Frequency of Submission: Quarterly.
Affected Public: State or Local Governments.
Estimated Burden Hours: 2,960.
Status: New.
Contact: Richard R. Burk, HUD, (202) 755-5324, Robert Neal, OMB, (202) 395-7316.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: February 11, 1985.

Dennis F. Geer,
Director, Office of Information Policies and Systems.

[FR Doc. 85-5527 Filed 3-6-85; 8:45 am]
BILLING CODE 4210-01-M

VOL 50 ISS 45 MR 7 1985 UMI

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[A 26302]

Arizona; Order Providing for Opening of Lands to Entry; Correction

March 1, 1985.

The following corrections are made in FR Doc. 85–2260 appearing on pages 3980–81 in the issue of January 29, 1985:

1. On page 3980, third column, the date of the document is corrected to read January 22, 1985.

2. On pages 3980–81, third column, second paragraph, second sentence is corrected to read:

All applications received prior to 9 a.m. March 5, 1985, will be considered as simultaneously filed as of 9 a.m. on March 5, 1985 and a drawing will be held in accordance with 43 CFR 1821.2–3, if necessary.

Don R. Mitchell,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 85–5418 Filed 3–6–85; 8:45 am]

BILLING CODE 4310–32–M

Battle Mountain District Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of Grazing Advisory Board Meeting.

SUMMARY: In accordance with Pub. L. 94–579, a meeting of the Battle Mountain District Grazing Advisory Board will be held.

DATE: April 9, 1985, begin at 9:00 a.m. in the Battle Mountain District Office conference room at North 2nd and Scott Streets, Battle Mountain, Nevada.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include:

1. Status of District's Range Improvement Program.
2. Status of Allotment Management Plan Development and Implementation.
3. Review of Final Report to Congress—Tonopah Experimental Stewardship Program.
4. A presentation on the management of riparian habitats.
5. Status of Cooperative Management Agreements and Grazing Fee Study, and
6. BLM policy concerning public water reserves.

The meeting is open to the public. Interested persons may make oral statements to the board between 4:00 and 4:30 p.m. on April 9, 1985 or file written statements for the Board's consideration. If you wish to make oral comments, please contact H. James Fox by April 2, 1985.

FOR FURTHER INFORMATION CONTACT: H. James Fox, District Manager, P.O. Box 1420, Battle Mountain, Nevada 89820, or phone (702) 635–5181.

Date signed: February 25, 1985.

Michael C. Mitchell,

Acting District Manager, Battle Mountain Nevada.

[FR doc. 85–5477 Filed 3–6–85; 8:45 am]

BILLING CODE 4310–HC–M

Coos Bay District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Meeting of Coos Bay District Advisory Council.

SUMMARY: Notice is hereby given in accordance with Pub. L. 94–579 and 43 CFR, Part 1780 that a meeting of the Coos Bay District Advisory Council will be held on Friday, April 5, 1985, beginning at 10:00 a.m. The meeting will be held in the conference room of the Coos Bay District Office, 333 South Fourth Street, Coos Bay, OR.

AGENDA: The agenda for the meeting will include:

1. A discussion of old business.
2. A discussion of the BLM/Forest Service interchange plan.
3. A discussion among the council members to develop recommendations to the State Director concerning some of the following: Statewide wilderness recommendations; dealing with protests and appeals; future recreational use of public lands; monitoring program.
6. Arrangements for the next meeting.

The meeting is open to the public and news media. Interested persons may make oral statements to the council from 1:00 p.m. to 1:30 p.m. on Friday, or file written statements for the council's consideration. Anyone wishing to make an oral statement must notify the District Manager by close of business on Friday, March 22, 1985 (Telephone 503–269–5880).

ADDRESS: Bureau of Land Management, Coos Bay District Office, 333 South Fourth Street, Coos Bay, OR 97420.

Summary minutes of the meeting will be maintained at the District Office and made available during regular business hours (7:45 a.m. to 4:30 p.m.) for public inspection or reproduction at the cost of duplication.

Dated: February 25, 1985.

Robert T. Dale,

District Manager.

[FR Doc. 85–5514 Filed 3–6–85; 8:45 am]

BILLING CODE 4310–33–M

[Serial No. I–11]

Idaho; Proposed Continuation of Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes that a 4.5 acre withdrawal for the Skookumchuck Recreation Site continue for an additional 20 years. The land will remain closed to surface entry and mining but have been and will remain open to mineral leasing.

DATE: Comments should be received by June 5, 1985.

ADDRESS: Comments should be sent to: Idaho State Director, Bureau of Land Management, 3380 Americana Terrace, Boise, ID 83706.

FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, Idaho State Office 208–334–1735.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management proposes that the existing land withdrawal made by Public Land Order No. 4086 of September 19, 1966, be continued for a period of 20 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714. The land described is as follows:

Boise Meridian, Idaho

T. 27 N., R. 1 E.,
Sec. 3, lot 10.

The area described contains 4.5 acres in Idaho County.

The purpose of the withdrawal is to protect the Skookumchuck Recreation Site. The withdrawal segregates the land from operation of the public land laws generally, including the mining laws, but not the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Idaho State Director of the Bureau of Land Management.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued and, if so,

for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Dated: February 26, 1985.

Louis B. Bellesi,

Deputy State Director for Operations.

[FR Doc. 85-5485 Filed 3-6-85; 8:45 am]

BILLING CODE 4310-GG-M

[Serial No. I-017335]

Idaho; Notice of Proposed Continuation of Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes that a 70 acre withdrawal for a Ponderosa Pine Seed Orchard continue for an additional 75 years. The lands will remain closed to surface entry and mining but have been and will remain open to mineral leasing.

DATE: Comments should be received by June 5, 1985.

ADDRESS: Comments should be sent to: Idaho State Director, Bureau of Land Management, 3380 Americana Terrace, Boise, ID 83706.

FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, Idaho State Office, 208-334-1735.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management proposes that the existing land withdrawal made by Public Land Order No. 4046 of June 30, 1966, be continued for a period of 75 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

Boise Meridian, Idaho

T. 6 N., R. 5 E.,
Sec. 27, N½NE¼SE¼, SW¼NE¼SE¼, NW¼SE¼.

The area described contains 70 acres in Boise County.

The purpose of the withdrawal is to protect the Ponderosa Pine Tree Seed Orchard. The withdrawal segregates the land from operation of the public land laws generally, including the mining laws, but not the mineral leasing laws. No change is proposed in the purpose or segragative effect of the withdrawal.

For a period 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Idaho State Director of the Bureau of Land Management.

The authorized officer of the Bureau of Land Management will undetake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued and, if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such determination is made.

Dated: February 26, 1985.

Louis B. Bellesi,

Deputy State Director for Operations.

[FR Doc. 85-5486 Filed 3-6-85; 8:45 am]

BILLING CODE 4310-GG-M

[Serial No. I-15514]

Idaho; Notice of Proposed Continuation of Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes that a 3,243.46 acre withdrawal for the domestic water supply of the community of St. Maries, Idaho continue for an additional 20 years. The lands will remain closed to surface entry and mining but have been and will remain open to mineral leasing.

DATE: Comments should be received by June 5, 1985.

ADDRESS: Comments should be sent to: Idaho State Director, Bureau of Land Management, 3380 Americana Terrace, Boise, ID 83706.

FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, Idaho State Office, 208-334-1735.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management proposes that the existing land withdrawal made by Executive Order 8397 of April 23, 1940, be continued for a period of 20 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

Boise Meridian, Idaho

T. 46 N., R. 1 W.,
Sec. 1, lot 2, SW¼NW¼;
Sec. 2, lots 1, 2, and 4, S½NE¼, SW¼NW¼, NW¼SE¼;
Sec. 3, lots 1 and 2, S½NE¼, N½SE¼;
Sec. 4, lot 2.
T. 47 N., R. 1 W.,
Sec. 22, SE¼SW¼, SW¼SE¼;
Sec. 23, N½SW¼, S½SE¼;
Sec. 24, SW¼SW¼;
Sec. 25, W½NW¼, W½E½NW¼, SW¼, W½SE¼, SE¼SE¼;
Sec. 26, E½NE¼, NE¼SE¼, S½SE¼;
Sec. 27, NW¼NE¼, W½, S½SE¼;
Sec. 33, lots 1 and 2, NE¼, N½SE¼;
Sec. 34, all;
Sec. 35, W½NE¼, NW¼, N½SW¼, NW¼SE¼.

The area described contains 3,243.46 acres in Benewah County.

The purpose of the withdrawal is to protect the domestic water supply for the community of St. Maries, Idaho. The withdrawal segregates the land from operation of the public land laws generally, including the mining laws, but not the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawal.

For a period 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Idaho State Director of the Bureau of Land Management.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued and, if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Dated: February 26, 1985.

Louis B. Bellesi,

Deputy State Director for Operations.

[FR Doc. 85-5487 Filed 3-6-85; 8:45 am]

BILLING CODE 4310-GG-M

Exchange of Public Lands in Tehama and San Diego Counties, CA; Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, Land Exchange, CA 10388A.

SUMMARY: The Bureau proposes to exchange isolated lands in Tehama and San Diego Counties for private lands fronting on Paynes Creek and adjacent to Public Lands in Tehama County.

The following described public lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Parcel	Township	Range	Meridian	Section	Subdivision	Acres
1	26 N.	1 W.	M.D.M.	26	SW¼ SW¼	40
2					N½ SE¼	80
3					SE¼ NE¼	40
Total Tehama County						160
4	13 S.	1 E.	S.B.M.	6	N½ SE¼	80
Total San Diego County						80
Total						240

In exchange for these lands, the Federal Government will acquire 90 acres more or less of non-Federal land in Tehama County from The Trust for Public Land described as follows:

Tehama County Assessor's Parcels #009-22-11-1, 90 acres: SW¼ SW¼ NE¼, S½ SE¼ NW¼, NE¼ SW¼, W½ NW¼ SE¼, Sec. 22, T. 28 N., R. 3 W., M.D.M.

The purpose of the exchange is to acquire the non-Federal lands for use in implementing the Sacramento River/ Paynes Creek/Table Mountain Composite. The exchange is consistent with the Bureau's planning for the lands involved and has been discussed with Tehama and San Diego counties with composite review by the State of California Resources Agency. The public interest will be well served by making the exchange.

The value of the lands to be exchanged is approximately equal, and the acreage will be adjusted or money will be used to equalize the values upon completion of the final appraisal of the lands.

The terms and conditions applicable to the exchange are:

Public Lands

Parcels—All.

Reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

Parcels—1, 2, 3.

1. Reservation to the United States for oil and gas. Parcels are presently covered by oil and gas lease CA 2061.

2. Riparian and Wetland Preservation in accordance with Executive Orders Number 11988 and 11990, the Patentee and successors shall undertake no construction activities within 100 feet of annual waterways which is not in compliance with county floodplain zoning criteria in effect at the time such construction is undertaken.

Offered Lands

1. An easement affecting the portion of said land and for the purposes stated herein, and incidental purposes.

In favor of: A. M. F. McCollough and Emma A. McCollough.

For: Reservation of the right to construct ditches or flumes for conveyance of water.

Recorded: December 5, 1900 in Book 30 page 183, Official Records.

Affects: Herein described property with other property.

2. An easement affecting the portion of said land and for the purposes stated herein, and incidental purposes.

In favor of: Lillian K. Richmond.

For: Ingress and egress and public utilities.

Recorded: September 11, 1968, in Book 526 page 630, Official Records.

Affects: A strip of land 60 feet in width following a described center line, over, upon and across a portion of the Northeast quarter of the Southwest quarter of Section 22, Township 28 North, Range 3 West, Mount Diablo Meridian.

3. Terms, covenants, and conditions of an Agreement for Right-of-Way by and between Ludington Patton, Jr., et ux and Crocker-Citizens National Bank, as Trustee, dated August 28, 1968, in Book 516, page 635, Official Records.

Affects: Herein described property with other property.

4. Any adverse claim based upon the assertion that:

(a) Said land or any part thereof is now or at any time has been below the highest high water mark of the Sacramento River and/or its tributaries, in the event the boundary of said river has been artificially raised and the decision entered in State of California vs. the Superior Court of Placer County, Respondent, Charles F. Fogerty, et al., Real Parties in Interest, 29 Cal. 3d 240 (March 20, 1981) applies, or is now or at any time has been below the ordinary high water mark, if said river and/or its tributaries is in its natural state.

(b) Some portion of said land has been created by artificial means or has accreted to such portion so created.

(c) Some portion of said land has been brought within the boundaries thereof by an avulsive movement of the Sacramento River and/or its tributaries, or has been formed by accretion to any such portion.

5. Such rights and easements for navigation and fishery which may exist over that portion of said land lying beneath the water of Paynes Creek.

6. An easement affecting the portion of said land and for the purposes stated herein, and incidental purposes.

In favor of: The United States of America.

For: Ingress and egress.

Recorded: October 30, 1984 in Book 1004, page 123, Official Records.

Affects: The Westerly and Southerly 36 feet of the Northeast quarter of the Southwest quarter of said Section 22.

The publication of this notice in the **Federal Register** will segregate the public lands described above to the extent that they will not be subject to appropriation under the public land laws, including the mining laws and any subsequently tendered application, allowance of which is discretionary, shall not be accepted, shall not be considered as filed and shall be returned to the applicant.

Detailed information concerning the exchange, including the environmental analysis and the record of public discussions, is available for review at the Redding Resource Area Office, 355 Hemsted Drive, Redding, California 96002.

ADDRESS: For a period of 45 days, interested parties may submit comments to: Redding Resource Area Office, Bureau of Land Management, 355 Hemsted Drive, Redding, California 96002.

Robert J. Bainbridge,

Redding Area Manager.

[FR Doc. 85-5439 Filed 3-6-85; 8:45 am]

BILLING CODE 4310-40-M

Recreation Management Restrictions; Camping Stay Limit; Caliente Resource Area, Bakersfield District, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Establishment of camping stay limit for campgrounds and undeveloped public lands in the Caliente Resource Area, Bakersfield District, California.

SUMMARY: Persons may camp within designated campgrounds or on undeveloped public lands not closed to camping within the Caliente Resource Area for a total period of not more than fourteen days during any 30-day period. The fourteen day limit may be reached either through a number of separate visits or through a period of continuous occupation of the public lands.

Camping or occupancy longer than fourteen days is not allowed, unless authorized by law. Under special circumstances and upon request, the authorized officer may give written permission for extension to the fourteen day limit. Camping is defined as living in tents, vehicles or shelters such as cabins, huts, shacks, or lean-tos.

Occupancy is defined as the taking or holding possession of a camp or residence on public land.

SUPPLEMENTARY INFORMATION: This camping and occupancy stay limit restriction order is established to allow orderly use and administration of public lands and to discourage unauthorized occupancy. Authority for this restriction order is contained in CFR Title 43, Chapter II, Part 8364, Subpart 8364.1. Any person who fails to comply with a restriction order may be subject to a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months. Penalties are contained in CFR Title 43, Chapter II, Part 8360, Subpart 8360.0–7.

Glenn A. Carpenter,

Caliente Resource Area Manager.

February 28, 1985.

[FR Doc. 85–5437 Filed 3–6–85; 8:45 am]

BILLING CODE 4310–40–M

[C–38516]

Realty Action; Noncompetitive Sale of Public Land in Routt County, CO

AGENCY: Bureau of Land Management, Colorado, Interior.

ACTION: Notice of Realty Action C–38516; Noncompetitive Sale of Public Land in Routt County, Colorado.

SUMMARY: The following-described lands have been examined and identified as suitable for disposal by sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750; 43 U.S.C. 1701, 1713) at the appraised fair market value.

Parcel	Serial No.	Legal description	Acres	Appraised value
302	C–38516	Sixth Principal Meridian, Township 1 South, Range 84 West, Section 34: S½NE¼NW¼.	20.00	$16,000

The land is being offered to Walter E. and Alice Castle, by direct sale at the appraised fair market value. No other bids or bidders will be considered.

The land has not been used for and is not required for any Federal purpose.

The parcel is difficult and uneconomic to manage as public land. Disposal would best serve the public interest. The disposal would be consistent with the Bureau's planning recommendations as approved in the *Glenwood Springs Resource Management Plan*, January 1984.

All minerals except oil and gas beneath the parcel will also be offered for conveyance. The mineral interests being offered have no known mineral value. A bid on the parcel will also constitute application for conveyance of those mineral interests offered under the authority of section 209(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1719(b)).

The patent issued as the result of the sale will be subject to all valid existing rights and reservations of record and will contain a reservation to the United States for a right-of-way for ditches and canals under the Act of August 30, 1890 (26 Stat. 391, 43 U.S.C. 945), for right-of-way C–26749 for a buried telephone cable, and for oil and gas under the Act of July 17, 1914.

The publication of this notice in the **Federal Register** will segregate the public lands described above to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. As provided by the regulations of 43 CFR 2711.1–2(d), any subsequently tendered application, allowance of which is discretionary, shall not be considered as filed and shall be returned to the applicant. This segregation will expire 270 days from the date of publication of this notice.

Sale Procedures

The designated bidders, Walter E. and Alice A. Castle, will be required to submit payment of at least 10 percent of the fair market value by cash, certified or cashier check, or money order to the BLM at 50629, Highway 6 and 24, Glenwood Springs, Colorado, on the sixth day of June, 1985. On this same date, the bidder will be required to deposit an additional $50.00 nonrefundable filing fee and application for the conveyance offered minerals pursuant to 43 CFR 1720.1–2(c).

The balance of the appraised fair market value will be due within 180 days, payable in the same form at the same location. Failure to submit the remainder of the payment within 180 days of receipt of the decision notice accepting the bid deposit will result in cancellation of the sale offering and forfeiture of the deposit.

Further Information and Public Comment

Additional information concerning this sale offering, including the planning documents and environmental assessment, is available for review in the Glenwood Springs Resource Area Office at 50629 Highway 6 and 24, P.O. Box 1009, Glenwood Springs, Colorado 81602. For a period of 45 days from the date of publication of this notice, interested parties may submit comments to the District Manager, Grand Junction District Office, Bureau of Land Management, 764 Horizon Drive, Grand Junction, Colorado 81506. Any adverse comments will be evaluated by the District Manager, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become the final determination of the Department of the Interior.

Dated: February 27, 1985.

Wright Sheldon,

District Manager, Grand Junction District Office.

[FR Doc. 85–5435 Filed 3–6–85; 8:45 am]

BILLING CODE 4310–JB–M

[U–47295]

Sale of Public Lands in Box Elder County, UT; Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action: Sale of Public Lands U–47295.

SUMMARY: The following described land has been examined and identified as suitable for disposal by sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713), at no less than the appraised fair market value shown:

Tract identifier	Legal description	Acreage	Appraised value
Parcel No. 1	T.11N., R.18W., SLM, sec. 20, W½ NE¼.	80	$8,000
Parcel No. 2	T.11N., R.18W., SLM, sec. 20, E½ E½.	160	16,000

The above described land will be sold in order to dispose of lands which because of location and other characteristics are difficult and uneconomical to manage. The sale is consistent with the Bureau's planning system and the public interest will be served by offering these lands for sale.

The lands described are hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action.

The above described land will be offered for sale on may 15, 1985 by sealed bid. All bids must be received by 10 a.m. on May 15, 1985 at the Bureau of Land Managemente (BLM) Salt Lake District Office at 2370 South 2300 West, Salt Lake City, Utah 84119. Bids will be opened and a high bidder declared at 11 a.m. on May 15, 1985. No bids will be accepted for less than the appraised fair market value shown above.

Bids may be made by a principal or duly qualified agent. Qualified bidders include: Citizens of the United States 18

years of age or over; a corporate subject to the laws of any state or of the United States; a state, state instrumentality or political subdivision authorized to hold property; and any entities capable of holding lands or interests therein under the laws of the state within which the lands to be conveyed are located. Entities include but are not limited to associations, partnerships, and other legal entities.

Each bid shall be accompanied by a certified check, postal money order, bank draft or cashier's check, made payable to the Department of the Interior, BLM for not less than one-third of the amount bid and shall be enclosed in a sealed envelope clearly marked "Bid for Public Land, the serial number and tract number as shown above." If two or more bids for the same amount are received, the apparent high bidder shall be determined by supplemental biddings pursuant to 43 CFR 2711.3–1(c).

The terms and conditions applicable to the sale are:

(1) The apparent high bidder shall submit the remainder of the full bid amount within 180 days from date of sale. Failure to submit the full bid price prior to, but not including the 180th day following the sale, shall result in the disqualification of the bidder and the deposit shall be forefeited.

(2) The authorized officer may reject the highest qualified bid and release the bidder from his obligation and withdraw the tract for sale, if he determines that consummation of the sale would be inconsistent with provisions of any existing law or collusive or other activities have hindered or restrained free and open bidding or consummation of the sale would encourage or promote speculation in public lands.

(3) The patent will contain a reservation for ditches and canals and be subject to all valid existing rights.

(4) All minerals will be reserved to the United States including the right of ingress or egress for mineral development.

(5) The United States does not, by the terms of this sale, guarantee to any party physical or legal access to the tract of land being sold. None of the tracts offered presently have legal access.

(6) In the event that any of the lands offered for sale are not sold on the date of the sale, they shall continue to be offered for sale at the appraised fair market value on the third Wednesday of each succeeding month after that date until sold or until further notice. Any person wishing to purchase any of these lands after the initial date of sale must present his/her bid at the BLM office shown above accompanied by a certified check, postal money order, bank draft or cashier's check for not less than one-third of the amount bid. All applicable terms and conditions as listed above will continue to apply regardless of when the land is actually sold.

For a period of 45 days from the date of this notice, interested parties may submit comments to the District Manager, BLM, 2370 South 2300 West, Salt Lake City, Utah 84119. Any adverse comments will be evaluated by the District Manager who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of Interior.

Dated: February 27, 1985.

Frank W. Snell,

Salt Lake District Manager.

[FR Doc. 85–5432 Filed 3–6–85; 8:45 am]

BILLING CODE 4310–DQ–M

Richfield District Advisory Council; Meeting and Tour

AGENCY: Bureau of Land Management, Interior.

ACTION: Richfield District Advisory Council Meeting and Tour.

SUMMARY: Notice is hereby given, in accordance with 43 CFR Part 1780, that a meeting of the Council will be held on Tuesday, April 2, 1985 at the Plaza Restaurant, 540 East Topaz, Delta, Utah at 9:00 a.m. with the following agenda:

1. Election of Officers.
2. WSA Interim Management Policy.
3. BLM/FS Interchange.
4. Annual Work Plan Review.
5. District Maintenance Policy.
6. Grazing Fee Study.
7. Grazing on Capitol Reef National Park—Jeffery Ranches.
8. Planning Status Update.
9. Piute Tribe Land Management Proposal.
10. Proposed Freemont River Dam Project.
11. Topaz Mountain—State Exchange and Mining Claims.
12. Tabernacle Hill—State Exchange and Mining Claims.
13. Schedule Next Meeting.

The tour will leave Delta, from the Pendray Plaza Motel, 527 East Topaz Boulevard at 7:30 a.m. Points of interest on the tour are Topaz Mountain and the Little Sahara Recreation Area. Those wishing to go on the tour will need to provide their own transportation and lunch.

The tour and meeting are open to the Public. Interested persons may make oral statements to the Council, regarding agenda matters, from 1:00 p.m. to 2:00 p.m. April 2, 1985, or file written statements for the Councils consideration. Anyone wishing to make an oral statement must notify Bert Hart, Public Affairs Officer at 801–896–8221 by March 28, 1985.

Minutes of the meeting will be available 30 days after the meeting at the Richfield District Office, Richfield, Utah.

Donald L. Pendleton,

District Manager.

February 27, 1985.

[FR Doc. 85–5440 Filed 3–6–85; 8:45 am]

BILLING CODE 4310–DQ–M

[C–28257]

Withdrawal of Lands; Proposed Modification of Bureau of Reclamation Missouri Basin Project, CO

February 27, 1985.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation proposes that the order which withdrew lands for the Missouri Basin Project be modified to expire in 25 years insofar as it affects 328.1 acres of public land in the State of Colorado. The lands will remain closed to surface entry and mining but have been and will continue to be open to mineral leasing.

DATE: Comments should be received on or before June 5, 1985.

ADDRESS: All comments should be addressed to State Director, Colorado State Office, 2020 Arapahoe Street, Denver, Colorado 80205.

FOR FURTHER INFORMATION CONTACT: Richard D. Tate, BLM Colorado State Office, 303–294–7626.

SUMMARY: The Bureau of Reclamation proposes that the existing land withdrawal made by Bureau Order of December 22, 1949, as amended, be modified to expire in 25 years insofar as it affects public lands in the State of Colorado, in accordance with section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714.

This order currently withdraws 328.1 acres of public land in Colorado. The land is located in T. 4 N., R. 59 W., Sixth Principal Meridian, Morgan County, Colorado.

The purpose of the withdrawal is to protect the Narrows Dam and Reservoir,

Missouri Basin Project, and segregate the land from surface entry and mining, but not from mineral leasing. No change is proposed in the purpose or segregative effect of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the State Director, Colorado State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued and, if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Robert D. Dinsmore,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 85-5433 Filed 3-6-85; 8:45 am]

BILLING CODE 4310-JB-M

[OR 38278 (WA)]

Realty Action; Exchange of Public and Private Lands in Okanogan and Kittitas Counties, WA

The following described lands have been determined to be suitable for disposal by exchange under the authority of section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

T. 36 N., R. 26 E., W.M.

Section 12, SE¼ NE¼

T. 37 N., R. 27 E., W.M.

Section 11, NW¼ SE¼

T. 38 N., R. 27 E., W.M.

Section 19, That portion of the SE¼ SE¼SW¼ Lying within the boundary of MS 1155B, SW¼ SE¼.

Section 30, That portion of the N½ NE¼ NE¼ NW¼ Lying within the boundary of MS 1155B, NW¼ NW¼ except the Lucky Knock and Frozen Mitt lode claims M.S. No. 1155A

comprising 131.89 acreas more of less of public land.

In exchange for all of part of these lands, the United States will acquire the following described lands from Elwin A. Magill and Ruth Helen Magill:

T. 23 N., R. 12 E., W.M.

Section 22, 26 and 27—Transit lode Mining Claim M.S. No. 1080, Giant Lode and Jack Lode Mining Claims M.S. No. 1079A

comprising 59.66 acres more or less of private lands.

The purpose of this exchange is to acquire the non-Federal lands which are within the Alpine Lakes Wilderness area and which the Secretary of Agriculture has been authorized and directed, by the Alpine Lakes Area Management Act of 1976, to acquire. The public interest will be served by completing the exchange.

Any or all of the above described lands may be exchanged provided the values are equal. In the event the values are not equal, either party may equalize the values by the payment of cash. The amount of cash payment may not exceed 25 percent of the value of the lands transferred out of Federal ownership.

Lands to be transferred from the United States will be subject to the reservation of a right-of-way thereon for ditches or canals constructed by the authority of the United States. Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945.

Publication of this notice segregates the public lands from the operation of all forms of appropriation under the public land laws, including the mining laws, for a period of 2 years from the date of first publication.

Further information concerning this exchange is available at the Mt. Baker-Snoqualmie National Forest office, 1022 First Avenue, Seattle, WA 98104. Phone number is (206) 442-1083.

For a period of 45 days from the date of first publication, interested parties may submit comments to the District Manager, Bureau of Land Management, U.S. Dept. of Interior, East 4217 Main Ave., Spokane, WA 99202.

Dated: February 27, 1985.

Joseph K. Buesing,

District Manager.

[FR Doc. 85-5476 Filed 3-6-85; 8:45 am]

BILLING CODE 4310-33-M

[I-21338]

Realty Action; Exchange of Public Lands in Cassia County, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, I-21338, Exchange of Public Lands in Cassia County, Idaho.

SUMMARY: The following described lands have been examined and identified as suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Legal Description and Acres

T. 13 S., R. 21 E., B.M.,
Sec. 4, E1/2SE¼—80

In exchange for these lands the Federal Government will acquire the following described lands from Michael Cranney:

Legal Description and Acres

T. 13 S., R. 20 & 21 E., B.M.—88.8

Beginning at the corner No. 1 from which the west quarter corner of Section 30 in Township 13 South, Range 21, EBM bears North 11' East 6.07 chains distant; thence North 28°43' East 48.13 chains to corner No. 2; thence South 75.7' East 16.9 chains to the corner No. 3; thence South 32°19' West 64.45 chains to corner No. 4; thence North 59°19' West 5.86 chains to corner No. 5; thence North 59°19' West 6.51 chains to corner No. 6; thence North 28°43' East 11.71 chains to corner No. 1, the place of beginning.

The lands are hereby segregated from appropriation under the public land laws, including the mining laws as provided by 43 CFR 2711.1-2(d). The segregative effect of the NORA shall terminate upon issuance of patent or other document of conveyance to such lands, upon publication in the **Federal Register** of a termination of the segregation, or 270 days from the date of publication, whichever occurs first.

The purpose of this axchange is to allow the United States Forest Service to acquire private lands owned by Mr. Cranney. These lands are valuable for wildlife habitat and recreation. Mr. Cranney, in turn, will be acquiring public lands administered by the Bureau of Land Management. The public interest will be well served by making the exchange which is consistent with local governmental planning and zoning regulations and with Federal programs and planning. The values of the lands to be exchanged are equal.

The lands will be subject to the following reservations when patented:

1. A reservation to the United States for rights-of-way for ditches and canals constructed under the Act of August 30, 1890 (43 U.S.C. 945).
2. All oil and gas rights (43 U.S.C. 1719).
3. All valid existing rights.

Detailed information concerning the exchange, including an environmental analysis and the record of public discussions is available for review at the Burley District Office, 200 S. Oakley Highway, Burley, Idaho 83318.

For a period of 45 days from the date of this notice, interested parties may submit comments to the District

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Manager regarding the proposed action. Any adverse comments will be evaluated by the District Manager who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become the final determination of the Department of the Interior.

Dated: January 14, 1985.

John S. Davis,

District Manager.

[FR Doc. 85-5513 Filed 3-6-85; 8:45 am]

BILLING CODE 4310-22-M

Bureau of Reclamation

[INT-FES 85-6]

Narrows Unit, Pick-Sloan Missouri Basin Program; Availability of Final Supplement to the Final Environmental Statement

Pursuant to section 101(2)(C) of the National Environmental Policy Act of 1969, as amended, the Department of the Interior has prepared a final supplement to the final environmental statement (INT-FES 76-25) on a potential water storage project that would provide supplemental irrigation water, flood control, recreation, fish and wildlife development and municipal and industrial water supplies on the South Platte River in northeastern Colorado. The final supplement was prepared to update the final environmental statement and analyze the minor modifications that have taken place in project design. Additionally, the final supplement discusses the five issues that in 1977 were deemed in need of further study: (1) Dam safety and reservoir seepage; (2) flood control; (3) recreational water quality; (4) impact on crane habitat in central Nebraska; and (5) ground-water recharge. This document incorporates the comments from the various Federal, State, and local and private entities to the supplement released in July 1988.

Copies are available for inspection at the following locations:

Director, Office of Environmental Affairs, Room 7624, Bureau of Reclamation, Washington, D.C. 20240, Telephone: (202) 343-4991

Office of Environmental Technical Services, Engineering and Research Center, D-150 Denver Federal Center, Denver, Colorado 80225, Telephone: (303) 236-9336

Regional Director, Bureau of Reclamation, Denver Federal Center, Building 20, P.O. Box 25247, Denver Colorado 80225, Telephone: (303) 236-0688

South Platte Projects Office, Bureau of Reclamation, 955 Wilson Avenue P.O. Box 449, Loveland, Colorado 80539, Telephone: (303) 667-4410.

Single copies of the supplement may be obtained on request to the Chief, Office of Environmental Technical Services, Bureau of Reclamation, or the Regional Director, at the above addresses. Copies also will be available for inspection at the following libraries in the project vicinity:

Weld County Public Library—Greeley, Colorado
Fort Morgan Public Library—Fort Morgan, Colorado
Brush Public Library—Brush, Colorado
Sterling Public Library—Sterling Colorado
Julesburg Public Library—Julesburg, Colorado
Greeley Public Library—Greeley, Colorado
Colorado State University Library—Fort Collins, Colorado
University of Colorado Library—Boulder, Colorado
University of Northern Colorado Library—Greeley, Colorado
University of Denver Library—Denver, Colorado
Morgan County Community College Library—Fort Morgan, Colorado
Northeastern Junior College Library—Sterling, Colorado

Dated: March 4, 1985.

Tom Loomis,

Acting Director, Environmental Project Review.

[FR Doc. 85-5479 Filed 3-6-85; 8:45 am]

BILLING CODE 4310-09-M

Minerals Management Service

Outer Continental Shelf Advisory Board; Policy Committee; Notice and Agenda for Meeting

This notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Pub. L. 92-463, 5 U.S.C. App. 1 and the Office of Management and Budget's Circular No. A-63, Revised.

The Policy Committee of the Outer Continental Shelf (OCS) Advisory Board will meet from 8:00 a.m. to 5:00 p.m., April 10 and 11, 1985, at the Bay View Plaza Holiday Inn, Santa Monica, California (213/399-9344).

The meeting will cover the following principle subjects:

April 10, Morning—California Perspective

8:00

- Air Quality/Resource Issues
- Local Government: Santa Barbara
- Panel: Permitting procedures for offshore development

Afternoon—Proposed 5-Year OCS Program

1:15

- Economic Analysis
- Marine Productivity/Environmental Sensitivity
- Fair Market Value

4:45

- Public Comment

April 11, Morning—Proposed 5-Year OCS Program

8:30

- Leasing Schedule
- Size, Timing and Location

Afternoon

1:30 Minerals Management Service Update

Advisory Board Role

The meeting is open to the public. Upon request, interested parties may make oral or written presentations to the committee. Such requests should be made no later than March 20, 1985, to the OCS Policy Committee, Minerals Management Service, Department of the Interior, 18th and C Streets, NW., Washington, D.C. 20240.

Request to make oral statements should be accompanied by a summary of the statement to be made. For more information, contact the Executive Secretary, Michele Tetley at 202/343-9314.

Minutes of the meeting will be available for public inspection and copying 8 weeks after the meeting at the Minerals Management Service, Department of the Interior, 18th and C Streets, NW., Washington, D.C. 20240.

Dated: March 1, 1985.

Bruce G. Weetman,

Acting Associate Director for Offshore Minerals Management.

[FR Doc. 85-5425 Filed 3-6-85; 8:45 am]

BILLING CODE 4310-MR-M

Outer Continental Shelf; Development Operations Coordination Document; ARCO Oil and Gas Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that ARCO Oil and Gas Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 3782, Block 174, Eugene Island Area, offshore Louisiana. Proposed plans for the above area

provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Amelia, Louisiana.

DATE: The subject DOCD was deemed submitted on February 27, 1985.

ADDRESS: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838–0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties become effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: February 27, 1985.

John L., Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85–5513 Filed 3–6–85; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

Availability of Finding of No Significant Impact for the Land Use Plan/Cultural Landscape Report/Environmental Assessment; Boxley Valley, Buffalo National River, AR

Pursuant to the National Environmental Policy Act of 1969, and Title 40 of the Code of Federal Regulations, the National Park Service has prepared a Finding of No Significant Impact for the Land Use Plan/Cultural Landscape Report/Environmental Assessment, Boxley Valley, Buffalo National River, Searcy, Newton, Baxter and Marion Counties, Arkansas.

Based on public review comments and on management decisions, the preferred Alternative B has been selected as the basis for the final plan. Alternative B best guides future management of lands within Boxley Valley. It is the conclusion of the National Park Service that the selected plan is not a major Federal action that will significantly affect the human environment. Therefore, an environmental impact statement will not be prepared. The National Park Service will proceed with development of a final Land Use Plan/Cultural Landscape Report.

Copies of the Finding of No Significant Impact for the Land Use Plan/Cultural Landscape Report/Environmental Assessment are available from Buffalo National River, Post Office Box 1173, Harrison, Arkansas 72601; and the Southwest Regional Office, National Park Service, Post Office Box 728, Santa Fe, New Mexico 87501, and will be sent upon request.

Dated: February 14, 1985.

Robert Kerr,

Regional Director, Southwest Region.

[FR Doc. 85–5419 Filed 3–6–85; 8:45 am]

BILLING CODE 4310–70–M

Natchez Trace Parkway; Insignia; Prescription

I hereby prescribe the Natchez Trace Parkway "POSTRIDER" symbol which is depicted below as the official Insignia of the Natchez Trace Parkway, a unit of the National Park System, United States Department of the Interior.

In making this prescription, I give notice that, under section 701 of Title 18 of the United States Code, whoever manufactures, sells, or possesses any badge, identification card, or other insignia of the design herein prescribed, or any colorable imitation thereof, or photographs, prints, or in any other manner makes or executes any engraving, photograph, print, or impression in the likeness of any such badge, identification card, or other insignia or any colorable imitation thereof, except as authorized under regulations made pursuant to law, shall be fined not more than $250 or imprisoned not more than six months, or both.

Notice is given that in order to prevent proliferation of the distinctive "POSTRIDER" Insignia and to assure against its use for purposes other than making the parkway route, marking interpretative exhibits and informational literature for parkway visitors and those purposes which, in the determination of the National Park Service, are consistent with the purpose for which the parkway was established, the National Park Service will proceed to secure trademark registration under section 1115 of Title 15 of the United States Code for the Natchez Trace Parkway "POSTRIDER" Insignia.

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NATCHEZ TRACE PARKWAY "POSTRIDER" SYMBOL, AS FOLLOWS:



Dated: March 1, 1985.

Russell E. Dickenson,

Director, National Park Service.

[FR Doc. 85-5465 Filed 3-6-85; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701-TA-236 (Preliminary and 731-TA-242 (Preliminary))

Tapered Tubular Steel Transmission Structures From the Republic of Korea

AGENCY: International Trade Commission.

ACTION: Notice of withdrawal of petitions in countervailing duty and antidumping investigations and cancellation of the conference.

SUMMARY: On March 1, 1985, counsel for the petitioners in the subject investigations, namely:

The Tapered Tubular Steel Transmission Structures Section of the National Electrical Manufacturers Association,

C.E. American Pole Structures,
ITT Meyer Industries,
Power Enterprises, Inc., and
Valmont Industries, Inc.,

filed letters with the U.S. Department of Commerce and the U.S. International Trade Commission withdrawing their petitions concerning imports of tapered tubular steel transmission structures from the Republic of Korea. Having received this letter, Commerce did not initiate an investigation as provided for in section 702(c) of the Tariff Act of 1930. Accordingly, the Commission hereby gives notice that the countervailing duty and antidumping investigations, involving imports from the Republic of Korea of tapered tubular steel structures or structural units used to support overhead electrical transmission and distribution lines, or for mounting substation equipment, provided for in items 652.94, 652.96, and 653.00 of the Tariff Schedules of the United States (investigations Nos. 701-TA-236 (Preliminary) and 731-TA-242 (Preliminary)), will not be continued further and the conference, scheduled for March 6, 1985, is therefore cancelled.

EFFECTIVE DATE: March 1, 1985.

FOR FURTHER INFORMATION CONTACT: Bonnie Noreen (202-523-1369), Office of Investigations, U.S. International Trade Commission, 701 E Street, NW., Washington, DC 20436.

This notice is published pursuant to § 207.40 of the Commission's rules of practice and procedure (19 CFR 207.40).

Issued: March 4, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-5523 Filed 3-6-85; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 84-30]

Clifton Orson Timanus, D.D.S., Humboldt, TN; Hearing

Notice is hereby given that on July 30, 1984, the Drug Enforcement Administration, Department of Justice, issued an Order To Show Cause as to why the Drug Enforcement Administration should not deny his application, executed on August 17, 1983, for registration as a practitioner under 21 U.S.C. 823(f).

Thirty days having elapsed since the said Order To Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held, commencing at 9:30 a.m. on Wednesday, March 20, 1985, in Room 226, U.S. Bankruptcy Court, Customs House, 701 Broadway, Nashville, Tennessee.

Dated: February 28, 1985.

Francis M. Mullen, Jr.,

Administrator, Drug Enforcement Administration.

[FR Doc. 85-5464 Filed 3-6-85; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 84-17]

James M. Sornsin, M.D., Detroit, MI, Cullman, AL; Hearing

Notice is hereby given that on July 30, 1984, the Drug Enforcement Administration, Department of Justice, issued to James M. Sornsin, M.D., an Order To Show Cause as to why the Drug Enforcement Administration should not revoke his DEA Certificates of Registration, AS9115658 and AS1971945, and deny any pending

applications for registration as a practitioner under 21 U.S.C. 823(f).

Thirty days having elapsed since the said Order To Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held, commencing at 9:30 a.m. on Thursday, March 21, 1985, in Room 226, U.S. Bankruptcy Court, Customs House, 701 Broadway, Nashville, Tennessee.

Dated: February 28, 1985.

Francis M. Mullen, Jr.,

Administrator, Drug Enforcement Administration.

[FR Doc. 85-5463 Filed 3-6-85; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 84-33]

Richard Hinson, d/b/a Palmer Drugs, Palmer, TN; Hearing

Notice is hereby given that on August 7, 1984, the Drug Enforcement Administration, Department of Justice, issued to Richard Hinson, d/b/a Palmer Drugs, an Order To Show Cause as to why the Drug Enforcement Administration should not revoke the DEA Certificate of Registration, AP2642761, and deny any pending applications for registration as a pharmacy under 21 U.S.C. 823(f).

Thirty days having elapsed since the said Order To Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held, commencing at 9:30 a.m., on Tuesday, March 19, 1985, in Room 226, U.S. Bankruptcy Court, Customs House, 701 Broadway, Nashville, Tennessee.

Dated: February 28, 1985.

Francis M. Mullen, Jr.,

Administrator, Drug Enforcement Administration.

[FR Doc. 85-5462 Filed 3-6-85; 8:45 am]

BILLING CODE 4410-09-M

NATIONAL FOUNDATION THE ARTS AND THE HUMANITIES

Ad Hoc Advisory Group on Arts Education; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that a meeting of the Ad Hoc Advisory Group on Arts Education to the National Council on the Arts will be held on March 27-28, 1985, from 9:00 a.m.-5:00 p.m. in room M-14 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506.

This meeting will be open to the public on a space available basis. The topic for discussion will be an assessment of needs in arts education and the development of proposals for appropriate Endowment response.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682-5433.

John H. Clark,

Director, Council and Panel Operations, National Endowment for the Arts.

February 27, 1985.

[FR Doc. 85-5480 Filed 3-6-85; 8:45 am]

BILLING CODE 7537-01-M

Music Advisory Panel (Composers Prescreening Section); Meeting

Pursuant to section 10 (a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Composers Prescreening Section) to the Naional Council on the Arts will be held on March 19-20, 1985 from 9:30 a.m.-9:00 p.m. in Room MO-7 of the Nancy Hanks Center, 1100 Pennsylvania Ave., N.W., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1865, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and (9) (b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

John H. Clark,

Director, Office of Council & Panel Operations, National Endowment for the Arts.

February 27, 1985.

[FR Doc. 85-5481 Filed 3-6-85; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a new guide planned for its Regulatory Guide Series together with a draft of the associated value/impact statement. This series has been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

The draft guide, temporarily identified by its task number, FC 405-4 (which should be mentioned in all correspondence concerning this draft guide), is entitled "Guide for the Preparation of Applications for Licenses for the Use of Sealed Sources in Gas Chromatography Devices and X-Ray Fluorescence Analyzers" and is intended for Division 10, "General." It is being developed to provide guidance in conformance with the new NRC Form 313 for preparing license applications for the use of byproduct material in gas chromatography devices and x-ray fluorescence analyzers.

This draft guide and the associated value/impact statement are being issued to involve the public in the early stages of the development of a regulatory position in this area. They have not received complete staff review and do not represent an official NRC staff position.

Public comments are being solicited on both drafts, the guide (including any implementation schedule) and the draft value/impact statement. Comments on the draft value/impact statement should be accompanied by supporting data. Comments on both drafts should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, by May 10, 1985.

Although a time limit is given for comments on these drafts, comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public

Document Room, 1717 H Street NW., Washington, D.C. Requests for single copies of draft guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Technical Information and Document Control. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Silver Spring, MD, this 28th day of February 1985.

For the Nuclear Regulatory Commission.

Dearwood F. Ross,

Deputy Director, Office of Nuclear Regulatory Research.

[FR Doc. 85-5510 Filed 3-6-85; 8:45 am]

BILLING CODE 7590-01-M

International Atomic Energy Agency Draft Safety Guide; Availability of Draft for Public Comment

The International Atomic Energy Agency (IAEA) is completing development of a number of internationally acceptable codes of practice and safety guides for nuclear power plants. These codes and guides are in the following five areas: Government Organization, Design, Siting, Operation, and Quality Assurance. All of the codes and most of the proposed safety guides have been completed. The purpose of these codes and guides is to provide guidance to countries beginning nuclear power programs.

The IAEA codes of practice and safety guides are developed in the following way: The IAEA receives and collates relevant existing information used by member countries in a specified safety area. Using this collation as a starting point, an IAEA working group of a few experts develops a preliminary draft of a code or safety guide which is then reviewed and modified by an IAEA Technical Review Committee corresponding to the specified area. The draft code of practice or safety guide is then sent to the IAEA Senior Advisory Group which reviews and modifies as necessary the drafts of all codes and guides prior to their being forwarded to the IAEA Secretariat and thence to the IAEA Member States for comments. Taking into account the comments received from the Member States, the Senior Advisory Group then modifies the draft as necessary to reach agreement before forwarding it to the IAEA Director General with a recommendation that it be accepted.

As part of this program, Safety Guide SG-D14, "Design for Reactor Core Safety in Nuclear Power Plants," has been developed. The working group, consisting of Mr. V.C. Orpen and Mr. A.C. Whittier from Canada; Mr. F.W. Aisch from the Federal Republic of Germany; Mr. A.F. Goode from the United Kingdom; Mr. S. Saito from Japan; and Mr. B.C. Slifer (Yankee Atomic) from the United States of America, developed the initial draft of this guide from an IAEA collation. This draft was subsequently modified by the IAEA Technical Review Committee for Design and the Senior Advisory Group, and we are now soliciting public comment on a modified draft (Rev. 5, dated July 2, 1984). Comments received by the Director, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, by April 1, 1985, will be particularly useful to the U.S. representatives to the Technical Review Committee and the Senior Advisory Group in developing their positions on its adequacy prior to their next IAEA meetings.

Single copies of this draft Safety Guide may be obtained by a written request to the Director, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

(5 U.S.C. 522(a))

Dated at Washington, D.C., this 1st day of March 1985.

For the Nuclear Regulatory Commission.

Robert B. Minogue,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 85-5511 Filed 3-6-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-275]

Pacific Gas and Electric Co.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendment to Facility Operating License No. DPR-76 issued to the Pacific Gas and Electric Company for the operation of the Diablo Canyon Nuclear Power Plant, Unit 1 located in San Luis Obispo, California.

In accordance with the licensee's application dated January 30, 1985, the proposed change would (i) revise Diablo Canyon, Unit 1 Technical Specifications, Table 6.2-1, "Minimum Shift Crew Composition," to provide for two unit operation with a common control room to comply with the staffing requirement of 10 CFR 50.54(m)(2) (l), and (ii) revise the Diablo Canyon, Unit 1 Technical Specification 4.8.1.1.2, "Electrical Power Systems, Surveillance Requirements" to add a footnote regarding the testing of Diesel Generator No. 3 which is common to both Units 1 and 2 to avoid unnecessary diesel generator testing and to be in conformance with the guidelines contained in NRC Generic Letter 84-15, "Proposed Staff Actions to Improve and Maintain Diesel Generator Reliability."

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facilities in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The NRC staff proposes to determine that the proposed changes do not involve significant hazards considerations. In this regard, the Commission has provided guidance concerning the application of standards for determining whether or not a signficant hazards consideration exists by providing certain examples (48 FR 14870) of amendments considered not likely to involve significant hazards considerations. Example (vi) relates to a change which either may result in some increase to the probability or consequences of a previously analyzed accident or may in some way reduce a margin of safety, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan: For example, a change resulting from the application of a small refinement of a previously used calculational model or design method. Example (i) relates to a purely administrative change to technical specifications: For example, a change to achieve consistency throughout the technical specifications, correction of an

error, or a change in nomenclature. Each of the proposed changes is similar to one of these examples. On this basis, it is proposed that these changes do not involve significant hazards considerations. The following is a description of each of the proposed changes and how each is similar to one of the examples of 48 FR 14870.

1. Proposed Change-Minimum Shift Crew Composition

The proposed change would revise the Diablo Canyon, Unit 1 Technical Specifications, Table 6.2–1, "Minimum Shift Crew Composition" to provide for two-unit operation with a common control room. The current Diablo Canyon, Unit 1 Technical Specifications specify the minimum number of operators of various levels (e.g., Shift Supervisor, Senior Operator License) to be present in the control room at all times during operating or shutdown modes. These minimums, which comply with the requirements of 10 CFR 50.54(m), are based on a single unit being operated from the control room. Upon issuance of an operating license for Diablo Canyon, Unit 2, the licensee has requested to revise the minimum shift crew composition requirements of Diablo Canyon, Unit 1 Technical Specifications to reflect operation of a two-unit facility with a common control room while continuing to comply with the staffing requirements of 10 CFR 50.54(m)(2)(1) and NUREG–0452, Revision 4, "Standard Technical Specifications for Westinghouse Pressured Water Reactors." The current Diablo Canyon, Unit 1 Technical Specifications require the following minimum shift crew composition while in operational modes 1, 2, 3, and 4: One Shift Supervisor (SS), one individual with a Senior Operating License (SOL), one individual with an Operating License (OL), one Auxiliary Operator (AO), and one Shift Technical Advisor (STA). For modes 5 and 6, the current Technical Specifications require the following minimum crew size: One Shift Supervisor (SS), one individual with an Operating License (OL), and one Auxiliary Operation (AO). Thus, a minimum crew size of seven is required for modes 1, 2, 3, and 4 and three for modes 5 and 6. The proposed change for two-unit operation requires the following mimimum crew size: One SS, one SOL, three OLs (at least one of these individuals must be assigned to the designated position for each unit and the third individual being a floater for either unit), and one STA. With both units in modes 5 or 6, the minimum crew size would be one SS, two OLs (one for each unit), and three AOs (one for each unit, with the third individual being a floater for either unit). With one unit in modes 1, 2, 3, or 4 and the other unit in modes 5 or 6, the following minimum crew size composition is required: One SS, one SOL, three OLs (one for each unit with the third individual being a floater between both units), three AOs (one for each unit with the third being a floater between both units), and one STA. Thus, when both units are in modes 1, 2, 3, or 4, the minimum crew size is nine individuals compared to seven individuals currently required for one-unit operation. With both units in modes 5 or 6, the minimum crew size would be six personnel compared to three for the current one-unit operation. It should be noted that the requirements of 10 CFR 50.54(m) do not require that for a two-unit plant the staffing be twice that of a one-unit plant since the change conforms to and satisfies the Commission's regulations and the Standard Review Plan by being consistent with the regulatory guidance provided in NUREG–0452, Revision 4, it is similar to example (vi) of 48 FR 14870. On this basis, the NRC proposes to determine that the change does not involve significant hazards consideration.

2. Proposed Change-Diesel Generator Testing

Diablo Canyon, Units 1 and 2 are provided with five emergency diesel generators. There are three diesel generators currently serving Diablo Canyon, Unit 1 and two which will serve Diablo Canyon, Unit 2. Diesel Generator No. 3 in Diablo Canyon, Unit 1 is designed to be connected in such a manner that it can serve either Diablo Canyon, Unit 1 or Unit 2. The current Diablo Canyon, Unit 1 Technical Specifications requires the same testing of Diesel Generator No. 3 as is required for Diesel Generators Nos. 1 & 2. Upon issuance, a Unit 2 license will require that Diesel Generator No. 3 be tested on a testing schedule consistent with Diablo Canyon, Unit 2. This double requirement will result in unnecesary and potentially harmful testing. To preclude unnecessary testing of Diesel Generator No. 3, a footnote will be added to Surveillance Requirement 4.8.1.1.2 recognizing that the Diesel Generator 3 is common to both units and need not be surveillance tested more frequently than required to satisfy the operability rquirement for the most limiting unit. The change is consistent with the guidance in the NRC Generic Letter 84–15, "Proposed Staff Actions to Improve and Maintain Diesel Generator Reliability" to reduce unnecessary diesel generator testing. This proposed change is similar to example (i) of 48 FR 14870 in that the proposed change is administrative in nature and maintains the existing substantive requirement for testing Diesel Generator No. 3. On this basis, the NRC proposes to determine that the change does not involve a significant hazards consideration.

The above proposed changes to the Technical Specifications are contingent upon issuance of an operating license for Unit 2.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention, Docketing and Service Branch.

By April 8, 1985, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceedings; and (3) the possible effect of any order which may be

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entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to G. Knighton: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** Notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, to Phillip A. Crane, Esq., Richard F. Locke, Esq., Pacific Gas & Electric Company, P.O. Box 7442, San Francisco, California 94120 and to Bruce Norton, Esq., Norton, Burke, Berry and French, P.O. Box 10569, Phoenix, Arizona 85064.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer of the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. The determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., and at the California Polytechnic State University Library, Documents and Maps Department, San Luis Obispo, California 93407.

Dated at Bethesda, Maryland, this 26 day February 1985.

For the Nuclear Regulatory Commission.

George W. Knighton,

Chief, Licensing Branch No. 3, Division of Licensing.

[FR Doc. 85–5525 Filed 3–6–85; 8:45 am]

BILLING CODE 7590-01-M

RAILROAD RETIREMENT BOARD

Actuarial Advisory Committee With Respect to the Railroad Retirement Accounts; Public Meeting

Notice is hereby given in accordance with Pub. L. 92–463 that the Actuarial Advisory Committee will hold a meeting on April 3, 1985, at the offices of the Chief Actuary and Director of Research of the U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, on the conduct of the 16th Actuarial Valuation of the Railroad Retirement Account. The agenda for this meeting will include a discussion of the results and presentation of the 16th Actuarial Valuation. The text and the tables which constitute the Valuation will have been prepared in draft form for review by the Committee. It is expected that this will be the last meeting of the Committee before publication of the Valuation.

The meeting will be open to the public. Persons wishing to submit written statements or make oral presentations should address their communications or notices to the RRB Actuarial Advisory Committee, c/o Chief Actuary and Director of Research, U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611.

Dated: February 27, 1985.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 85–5488 Filed 3–6–85; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–21799; SR–PSE–85–5]

Self-Regulatory Organizations; Proposed Rule Change by the Pacific Stock Exchange, Inc., Relating to the Procedure for Closing Rotations and the Bid-Ask Differential Rule

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 19, 1985, the Pacific Stock Exchange, Inc. ("PSE") filed with the Securities and Exchange Commission the proposed rule change as described herein. The Commission is

publishing this notice to solicit comments on the proposed rule change from interested persons.

The proposed rule change would amend PSE Rule VI, section 36(b) and 79, respectively, to provide a more detailed procedure for closing rotations, and to clarify the bid-ask differential rule. With respect to section 36(b), the proposed rule change would provide PSE with the ability to use trading rotations in additional, limited situations not permissible under PSE's current rules. In particular, the proposal would permit the use of a trading rotation when a delayed opening/reopening occurs after 12:30 p.m., and when a fast market is declared by two PSE Options Floor Officials, in accordance with guidelines established by PSE in Options Floor Procedure Advice G–9. The decision to employ a trading rotation after 12:30 p.m. would be publicly announced on the trading floor at least 10 minutes prior to the commencement of such rotation. Only one trading rotation may be commenced in any given options class after 1:10 p.m.

As a related matter, when a closing rotation is necessary the PSE Order Book Official would be required to use a single price closing procedure. In addition, the proposed rule change would provide that public customer orders receive the same priority as they do during opening rotations, (*i.e.*, priority over market-makers). The text of the proposed rule change is modeled after a similar rule of the Chicago Board Options Exchange, Inc. ("CBOE") (CBOE Rule 6.2, Commentary .02), and is attached as *Exhibit A*.

Currently, PSE Rule VI, Section 36(b) only authorizes the use of a closing rotation in two situations: if trading in the underlying security either opens or reopens after 12:45 p.m. In addition, the current rule does not specify whether a single price procedure should be used, rather than free trading in each series, or whether customer orders will receive the same priority they enjoy on opening rotations.

In its filing, PSE indicated that it is amending the trading rotation rule to provide for its expanded use, in part, as a result of PSE's recent experience with the existence of a fast market in the overlying options. In addition, PSE indicated that it decided to further amend the trading rotation rule to require the use of a single price procedure and to provide public customer order priority during the extraordinary trading rotations, as well, after it "weighed the interests involved." Finally, PSE indicates that new section 36(b) of Rule VI is consistent with the rules of CBOE and other options exchanges.

With respect to PSE Rule VI, section 79, the proposed rule change would clarify the bid-ask differentials by conforming the language in Commentary .02 to the language in paragraph (b)(1) of that rule. Paragraph (b)(1) of Section 79 used the current "bid" for an options series as the reference point for establishing the bid-ask differential, and defines the maximum bid-ask differential in terms of the bid price (*i.e.*, the difference shall be no more that ¼ of $1 between the bid and the offer for each option contract for which the bid is $.50 or less). For the most part, Commentary .02 of Section 79 repeats the bid-ask differential formula contained in paragraph (b)(1), except that it uses the "last sale" of the option as the reference point to establish the bid-ask differential, instead of the current "bid." To make the Commentary consistent with the Rule, the proposed rule change would delete the "last sale" language from Commentary .02, and leave the current "bid" as the sole reference point in determining the bid-ask differential for an option. The text of new Section 79 of PSE Rule VI is attached as *Exhibit B*.

In July 1984, PSE amended Section 79 to reduce the maximum bid-ask differentials in order to create tighter options markets. However, in its filing, PSE noted that "in a recent effort to circumvent the tighter markets, some market makers have seized upon the 'last sale' language contained in Commentary .02 to lay wider markets in options that trade irregularly." As a result, PSE stated that the Options Floor Trading Committee, on November 13, 1984, directed the PSE staff to clarify the bid-ask differential Rule and Commentary, as described above. PSE also stated that "the clear intent of section 79 is that the current 'bid,' as the best reflection of the existing market, should be the reference point for the bid-ask differential, not a last sale which may be hours or days old."

PSE believes the proposed rule change is consistent with the requirements of the Securities Exchange Act of 1934 ("Act") and the rules and regulations thereunder in that the new closing procedure will ensure customer priority when a rotation is used, and the amendment of section 79 will guarantee that the narrower bid-ask differentials can be enforced under all market conditions. Therefore, PSE stated that the proposed rule change is consistent with section 6(b)(5) of the Act, which provides in pertinent part, that the rules of the Exchange be designed to promote just and equitable principles of trade and to protect the investing public.

In order to assist the Commission in determining whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days after the date of publication in the **Federal Register**. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549. Reference should be made to File No. SR–PSE–85–5.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 5th Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the principal office of the PSE.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

March 1, 1985.

Exhibit A.—Text of the Proposed Rule Change

The Pacific Stock Exchange Incorporated ("PSE" or the "Exchange") proposes to amend Rule VI, sections 36(b) and 79 of the Rules of the Board of Governors to provide a more detailed procedure for closing rotations, and to clarify the bid-ask differential rule. (Brackets indicate language to be deleted; arrows indicate new language.)

Trading Rotations

Section 36. No change.

Commentary:

.01 No change.

(a) No change.

(b) Closing Rotations. (The closing rotation, when used, shall be commenced at the close of trading hours of the Exchange with all Order Book Officials proceeding concurrently in the following manner: Taking each class of

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option contracts in which he is acting in turn, each Order Book Official should close the one or more series of each class having the nearest expiration; having the most distant expiration, and so forth, until all series have been closed. Except as otherwise provided by the Options Floor Trading Committee, if both puts and calls covering the same underlying security are traded, the Order Book Offical shall determine the order of closing each series of such puts and calls in light of current market conditions, in the manner provided in paragraph (a) for opening rotations.

One trading rotation in any class of option contracts may be completed even though completion of the rotation will result in the effecting of transactions on the Exchange after 1:10 p.m. provided that trading in the underlying security opens or reopens after 12:45 p.m. and promptly thereafter and before 1:10 p.m. the Exchange commences an opening or reopening rotation in the corresponding options class.]

►*Transactions may be effected in a class of options after 1:10 p.m. (San Francisco time) if they occur during a trading rotation. Such a trading rotation may be employed in connection with the opening or reopening of trading in the underlying security after 12:30 p.m. (San Francisco time) or due to the declaration of a "fast market" pursuant to Options Floor Procedure Advice G–9. The decision to employ a trading rotation after 12:30 p.m. shall be publically announced on the trading floor prior to the commencement on the trading floor prior to the commencement of such rotation. No more than one trading rotation may be commenced after 1:10 p.m. If a trading rotation is in progress and Floor Officials determine that a final trading rotation is needed to assure a fair and orderly close, the rotation in progress shall be halted and a final rotation begun as promptly as possible after 1:10 p.m. Any trading rotation conducted after 1:10 p.m. may not begin until ten minutes after news of such rotation is disseminated.*

(1) When a closing rotation is necessary, the Order Book Official shall use a single price closing procedure. In a closing rotation, customer orders will receive the same priority as they do during opening rotations.

(2) Except as otherwise provided by the Options Floor Trading Committee, if both puts and calls covering the same underlying security are traded, the Order Book Official shall determine the order of closing each series of such puts and calls in light of current market conditions, in the manner provided in paragraph (a) for opening rotations.◄

Exhibit B—Obligations of Market Makers

Section 79.
(a) No change.
(b) No change.
(c) No change.
(d) No change.
Comentary:
.01 No change.
.02 [Pursuant to paragraph (b)(1) of this Section, the Options Floor Trading Committee has adoped the following bid-ask differential quidelines: Market Makers shall make bids and/or offers so as to create a differential between the highest bid and the lowest offer in each series of no more than:

¼ When the last sale of the option is $1 or less.

⅜ When the last sale of the option is greater than $1 but does not exceed $5.

½ When the last sale of the option is greater than $5 but does not exceed $10.

¾ When the last sale of the option is greater than $10 but does not exceed $20 exactly.

$1 When the last sale of the option is $20⅛ or more.]

The bid-ask differentials as stated [above] ►in paragraph (b)(1) of this Section◄ shall apply to all options series open for trading in each option class.

.03–.07 No change.

[FR Doc. 5428 Filed 3–6–85; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 21797; SR–NASD–84–31]

National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change

February 28, 1985.

The National Association of Securities Dealers, Inc. ("NASD"), 1735 K Street, N.W., Washington, D.C., 20006, submitted on December 11, 1984 a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder to modify Schedule D of the NASD By-Laws [1] by providing that an American Depository Receipt ("ADR") registered under section 12(g) of the Act may be included in the National Association of Securities Dealers Automated Quotations Systems ("NASDAQ") if at least 100,000 ADRs have been registered with the Commission.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 21685, January 24, 1985) and by publication in the **Federal Register** (50 FR 5024, February 5, 1985). Although certain ADRs have been eligible for quotation in the NASDAQ System for some time, the NASD states that it became necessary for the NASD to establish a public float requirement for ADRs when the Commission amended Rule 12g3–2 (17 CFR 240.12g3–2) under the Act.[2]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of section 15A and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

John Wheeler,
Secretary.

[FR Doc. 85–5429 Filed 3–6–85; 8:45 am]
BILLING CODE 8010-01-M

[1] Schedule D, NASD By-Laws, *NASD Manual* (CCH) ¶ 1653A.

[2] *See* Securities Exchange Act Release No. 20264 (October 6, 1983), 48 FR 46736 (October 14, 1983).

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Determination Regarding the Application of Certain International Agreements

This notice modifies the determination published in the **Federal Register** of January 4, 1980 (45 FR 1181), as amended by determinations published at 45 FR 18547, 45 FR 36569, 45 FR 63402, 45 FR 85239, 46 FR 24059, 46 FR 40624, 46 FR 46263, 46 FR 48391, 47 FR 16697, 49 FR 47467, and 50 FR 8428.

Under Section 1–103(b) of Executive Order 12188 of January 2, 1980, the functions of the President under section 2(b) of the Trade Agreements Act of 1979 (the Act) and section 701(b) of the Tariff Act of 1930 as amended, are delegated to the United States Trade Representative (the Trade Representative), who shall exercise such authority with the advice of the Trade Policy Committee.

Now, therefore, William E. Brock, United States Trade Representative, in conformance with the provisions of Section 2(b) of the Act, section 701(b) of the Tariff Act of 1930 as amended, and section 1–103(b) of Executive Order

12188, does hereby determine, effective on the date of signature of this Notice that:

With respect to the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreements on Tariffs and Trade (Subsidies Code), Indonesia has accepted the obligations of the Agreement with respect to the United States and should not otherwise be denied the benefits of the Agreement.

In accordance with section 702(b) of the Tariff Act of 1930, as amended (19 U.S.C. 1671(b)), as of March 4, 1985, Indonesia is a "country under the Agreement."

William E. Brock,

United States Trade Representative.

March 4, 1985.

[FR Doc. 85-5483 Filed 3-6-85; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 85-012]

Equipment, Construction, and Materials

AGENCY: Coast Guard, DOT.

ACTION: Approval Notice.

SUMMARY: This notice contains a listing of Coast Guard approvals issued between 1 February 1984 and 30 November 1984. These approvals are for safety equipment and materials required by regulation to be used on certain merchant vessels and recreational boats, and also in Outer Continental Shelf activities.

FOR FURTHER INFORMATION CONTACT: Ms. Valarie Williams, Office of Merchant Marine Safety (G-MVI-3/24), Room 1404, U.S. Coast Guard Headquarters, 2100 Second St., S.W., Washington, DC 20593, (202) 426-1444. Normal office hours are between 7 a.m. and 3:30 p.m., Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: Certain regulations in Titles 33 and 46 of the Code of Federal Regulations require that various items of lifesaving, firefighting and other safety equipment and materials used on board merchant vessels and recreational boats, and in Outer Continental Shelf activities be approved by the Commandant, U.S. Coast Guard. This document notifies interested persons that certain approvals have been issued or revised during the period from 1 February 1984 and 30 November 1984. These actions were taken under the procedures in 46 CFR 2.75-1 to 2.75-50.

The statutory authority governing carriage of this equipment is in sections 3306(a), 4102, and 4302(a)(2) of Title 46, U.S.C., section 1333 of Title 43, U.S.C., and section 198 of Title 50, U.S.C. The Secretary of Transportation has delegated authority to the Commandant, U.S. Coast Guard with respect to these approvals (49 CFR 1.46(b)).

Most of the items in this list meet specification regulations in 46 CFR Parts 160 to 164. The approvals listed in this document are generally issued for a period of 5 years from the date of issue, unless sooner withdrawn, suspended or terminated.

Life Preserver Kapok

Approval No. 160.002/78/0 Adult, standard Type I PFD, Model No. 3, manufactured by Paris Southern Corporation, P.O. Drawer 9038, Station A, Greenville, SC 29604 (Supersedes Approval 160.002/78/0 dated 25 October 1979 to show inspection laboratory).

Approval No. 160.002/79/0 Child, standard Type I PFD, Model No. 5, manufactured by Paris Southern Corporation, P.O. Drawer 9038, Station A, Greenville, SC 29604.

Approval No. 160.002/102/1, Adult, standard Type I PFD, Model 3, manufactured by Buddy Schoellkopf Products Inc., 4949 Joseph Hardin Dr., Dallas, TX 75236.

Approval No. 160.002/A102/1, Adult, standard Type I PFD, Model 3, manufactured by Red Head Brand Corporation, 4949 Joseph Hardin Dr., Dallas, TX 75236.

Approval No. 160.002/103/1, Child, standard Type I PFD, Model 5, manufactured by Buddy Schoellkopf Products Inc., 4949 Joseph Hardin Dr., Dallas, TX 75236.

Approval No. 160.002/A103/1, Child, standard Type I PFD, Model 5, manufactured by Red Head Brand Corporation, 4949 Joseph Hardin Dr., Dallas, TX 75236.

Approval No. 160.002/128/0, Adult, non-standard Type I PFD, Model No. 8810, manufactured by Kent Sporting Goods, State Route 60, New London, OH 44851.

Approval No. 160.002/129/0, Child, non-standard Type I PFD, Model No. 8800, manufactured by Kent Sporting Goods, State Route 60, New London, OH 44851.

Buoyant Apparatus

Approval No. 160.010/70/2, 48"x 48" x 9", 12-person capacity, box type, manufactured Cal-June, Inc., Jim-Buoy Marine Division, P.O. Box 9551, North Hollywood, CA 91609.

Approval No. 160.010/71/2, 62" x 48" x 9", 18-person capacity, box type, manufactured Cal-June, Inc., Jim-Buoy Marine Division, P.O. Box 9551, North Hollywood, CA 91609.

Approval No. 160.010/72/2, 84" x 48" x 9", 20-person capacity, box type, manufactured Cal-June, Inc., Jim-Buoy Marine Division, P.O. Box 9551, North Hollywood, CA 91609.

Approval No. 160.010/73/2, 51" x 37" x 9", 10-person capacity, rectangular type, manufactured Cal-June, Inc., Jim-Buoy Marine Division, P.O. Box 9551, North Hollywood, CA 91609.

Approval No. 160.010/74/2, 63" x 37" x 9", 12-person capacity, rectangular type, manufactured Cal-June, Inc., Jim-Buoy Marine Division, P.O. Box 9551, North Hollywood, CA 91609.

Approval No. 160.010/75/2, 64" x 48" x 12½", 18-person capacity, rectangular type, manufactured Cal-June, Inc., Jim-Buoy Marine Division, P.O. Box 9551, North Hollywood, CA 91609.

Approval No. 160.010/76/2, 100" x 48" x 12 ½", 22-person capacity, rectangular type, manufactured Cal-June, Inc., Jim-Buoy Marine Division, P.O. Box 9551, North Hollywood, CA 91609.

Approval No. 160.010/77/2, 51" x 37" x 9", 8-person capacity, rectangular type, manufactured Cal-June, Inc., Jim-Buoy Marine Division, P.O. Box 9551, North Hollywood, CA 91609.

Approval No. 160.010/78/2, 63" x 37" x 9, 10-person capacity, rectangular type, manufactured Cal-June, Inc., Jim-Buoy Marine Division, P.O. Box 9551, North Hollywood, CA 91609.

Approval No. 160.010/80/2, 100" x 48" x 12½", 22-person capacity, rectangular type, manufactured Cal-June, Inc., Jim-Buoy Marine Division, P.O. Box 9551, North Hollywood, CA 91609.

Approval No. 160.010/81/0, 45-person capacity inflatable buoyant apparatus, manufactured by Beaufort Air-Sea Equipment Canada, Ltd., 12351 Bridgeport Road, Richmond, B.C. V6V 1J4 Canada.

Approval No. 160.010/82/0, Model KRR-30 buoyant ring 30"OD x 16¾"ID x 8"thick, manufactured by Rescue Ring Inc., 227 N.E. Brumbaugh Ilwaco, WA 78624.

Approval No. 160.010/83/0, Model KRR-26 buoyant ring 26"OD x 8" ID x 8" thick, manufactured by Rescue Ring Inc., 227 N.E. Brumbaugh Ilwaco, WA 78624.

Approval No. 160.010/84/0, 45-person capacity, Viking Type 45 RDV, manufactured by Viking-A/S Nordisk, Gummibadsfabrik, P.O. Box 3060-6700 Esbjerg V, Denmark.

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Self-Contained Breathing Apparatus

Approval No. 160.011/60/0, Models 9849–20,-22, 9036–20,-22, -70, -72, 9838–20, -22, -70, -72, and 9848–20, -22, 30-minute, manufactured by U.S. Divers Co., 3323 West Warner Ave., Santa Ana, CA 92702.

Lifeboat Compass

Approval No. 160.014/8/0, Model 73172, Merkur-R compass consisting of Model 2631, manufactured by C. Plath, P.O.B. 60 20 60, Gertigstrasse 48, 2000 Hamburg 60, Federal Republic of Germany.

Lifeboat Winch

Approval No. 160.015/93/2, Type 35G-MKII lifeboat winch, manufactured by Marine Safety Equipment Corp., P.O. Box 465, Farmingdale, NJ 07727.

Approval No. 160.015/105/0, Type M–13 lifeboat winch, manufactured by Marine Safety Equipment Corp., P.O. Box 465, Farmingdale, NJ 07727.

Approval No. 160.015/126/0, Type USW/9.3 lifeboat winch, manufactured by Watercraft America, Inc., P.O. Box 1130, Edgewater, FL 32032.

Approval No. 160.015/143/0, Model CW–100M lifeboat winch, manufactured by Lake Shore, Inc., Iron Mountain, MI 49801.

Chain Ladder Equivalent

Approval No. 160.017/57/0, Comar Debarkation Ladder—synthetic construction with ¼ dacron jacketed orange safety core rope suspension members, manufactured by Coast Marine & Industrial Supply Co., 398 Jefferson St., San Francisco, CA 94133.

Approval No. 160.017/58/0, Applio Marine ladder—suspension members Poly Plus PD–10, manufactured by Applo Marine Specialties, 3914 Royal St., New Orleans, LA 70117.

Hand Held Red Flare Distress Signal

Approval No. 160.021/22/0, International hand held red flare distress signal, 500 candela, 2 minute burning time, manufactured by Kilgore Corporation, Bradford Rd., Toone, TN 38381–0099.

Floating Orange Smoke Distress Signal

Approval No. 160.022/8/2, Model K–5A floating orange smoke distress signal, manufactured by Kilgore Corporation, Toone, Tennessee 38381.

Emergency Drinking Water

Approval No. 160.026/57/0, 4 oz sterile water in heat sealed foiled envelope, manufactured by ACR Electronics Inc., 3901 N. 29th Ave., Hollywood, FL 33020.

Life Float

Approval No. 160.027/75/2, 50½" x 36½" x 8½" life float, 8-person capacity, manufactured by Cal-June, Inc., Jim-Buoy Marine Division, P.O. Box 9551, N. Hollywood, CA 91609.

Approval No. 160.027/76/2, 63" x 37" x 9" life float, 10-person capacity, manufactured by Cal-June, Inc., Jim-Buoy Marine Division, P.O. Box 9551, North Hollywood, CA 91609.

Approval No. 160.027/77/2, 64" x 48" x 12½" life float, 15-person capacity, manufactured by Cal-June, Inc., Jim-Buoy Marine Division, P.O. Box 9551, N. Hollywood, CA 91609.

Approval No. 160.027/78/2, 100" x 48" x 12½" life float, 22-person capacity, manufactured by Cal-June, Inc., Jim-Buoy Marine Division, P.O. Box 9551, N. Hollywood, CA 91609.

Approval No. 160.027/79/2, 50½" x 36½" x 8½" life float, 6-person capacity, manufactured by Cal-June, Inc., Jim-Buoy Marine Division, P.O. Box 9551, N.Hollywood, CA 91609.

Approval No. 160.027/80/2, 78" x 37" x 9" life float, 12-person capacity, manufactured by Cal-June, Inc., Jim-Buoy Marine Division, P.O. Box 9551, N. Hollywood, CA 91609.

Shoulder Gun Type Line-Throwing Appliance

Approval No. 160.031/7/3, "Safety Line" shoulder gun type line-throwing appliance, manufactured by Safety-Liner Corporation, 5889 Wood Side Drive, Watertown, NY 13601.

Lifeboat Davit

Approval No. 160.032/181/2, Mechanical davit, steel straight boom-sheath screw, Type 22–31, MK III, manufactured by Marine Safety Equipment Corp., Foot of Wyckoff Road, Farmingdale, NJ 07727.

Approval No. 160.032/202/1, Type 26–16 gravity davit, approved for a working load of 16,000 lbs. per set, manufactured by Marine Safety Equipment Corp., Foot of Wyckoff Road, Farmingdale, NJ 07727.

Approval No. 160.032/221/1, Type 24 WOD outrigger-gravity davit, approved working load of 15,880 lbs. per set, manufactured by Watercraft America, Inc., P.O. 1130, Edgewater, FL 32032.

Approval No. 160.032/224/1, Type 21 WOD outrigger-gravity davit, approved for a maximum working load of 11,200 lbs., manufactured by Watercraft America, Inc., P.O. 1130, Edgewater, FL 32032.

Approval No. 160.032/225/1, Type 28 WOD outrigger-gravity davit, approved for a maximum working load of 20,474 lbs., manufactured by Watercraft America, Inc., P.O. 1130, Edgewater, FL 32032.

Approval No. 160.032/227/1, Type 26 WOD outrigger-gravity davit, approved for a maximum working load of 15,866 lbs., manufactured by Watercraft America, Inc., P.O. 1130, Edgewater, FL 32032.

Approval No. 160.032/228/2, Type 28–21 gravity davit, approved for a maximum working load of 21,000 lbs. per set, manufactured by Marine Safety Equipment Corp., P.O. Box 465, Farmingdale, NJ 07727.

Approval No. 160.032/246/1, Type 28/WOD/OFF outrigger gravity davit, Approved for a working load of 20,800 lbs. per set, manufactured by Watercraft America, Inc., P.O. 1130, Edgewater, FL 32032.

Approval No. 160.032/254/0, Type G–195–S gravity davit, approved for a maximum working load of 40,000 lbs. per set, manufactured by Lake Shore Inc., Iron Mountain, Michigan 49801.

Approval No. 160.032/258/0, Type CG–226–2G gravity davit (trackway-type), approved for a maximum working load of 22,600 lbs. per set, manufactured by Lake Shore Inc., P.O. Box 809, 900 West Breitung Ave., Iron Mountain, MI 49801.

Mechanical Disengaging Apparatus (for Lifeboats)

Approval No. 160.033/26/3, Rottmer, size 297 releasing gear, manufactured by Lane Marine Technology Inc., 150 Sullivan Street, Brooklyn, NY 11231.

Approval No. 160.033/64/0, Rottmer type releasing gear, manufactured by Whittaker Corporation, Survival Systems Division, 5159 Baltimore Drive, La Mesa, CA 92041.

Lifeboat

Approval No. 160.035/91/4, 18.0" x 6.0' x 2.6' steel steel, oar-propelled lifeboat, 13-person capacity, manufatured by Lane Lifeboat Division of Lane Marine Technology, Inc., 150 Sullivan Street, Brooklyn, NY 11231.

Approval No. 160.035/100/2, 24.0' x 7.75' x 3.33' steel, oar-propelled lifeboat, 39-person capacity, manufactured by Lane Lifeboat Division of Lane Marine Technology, Inc., 150 Sullivan Street, Brooklyn, NY 11231.

Approval No. 160.035/103/4, 24.0' x 8.0' x 3.5' steel, oar-propelled lifeboat, 40-person capacity, manufactured by Lane Lifeboat Division of Lane Marine Technology, Inc., 150 Sullivan Street, Brooklyn, NY 11231.

Approval No. 160.035/174/3, 22.0' x 7.5' x 3.17' steel, motor-propelled lifeboat, 28-person capacity,

manufactured by Marine Safety Equipment Corp., Foot of Wyckoff Road, Farmingdale, NJ 07727.

Approval No. 160.035/285/3, 18.0' x 5.75' x 2.42' aluminum, oar-propelled lifeboat, 12-person capacity, manufactured by Marine Safety Equipment Corp., Foot of Wyckoff Road, Farmingdale, NJ 07727.

Approval No. 160.035/409/0, 26.0' x 9.0' x 3.83' aluminum, oar-propelled 53-person capacity, manufactured by Lane Marine Technology, Inc., Lane Lifeboat Division, 150 Sullivan Street, Brooklyn, NY 11231.

Approval No. 160.035/416/1, 30.0' x 10.0' x 4.33' FRP open lifeboat, hand propelled, 78 persons capacity, manufactured by Lane Marine Technology, Inc., 150 Sullivan Street, Brooklyn, NY 11231.

Approval No. 160.035/455/1, 26.0' x 9.0' x 3.8' aluminum motor-propelled, lifeboat 48 persons capacity, manufactured by Lane Marine Technology, Inc., 150 Sullivan Street, Brooklyn, NY 11231.

Approval No. 160.035/458/1, 24.0' x 7.75' x 3.33' steel, hand propelled, lifeboat, 39 persons capacity, manufactured by Lane Marine Technology, Inc., 150 Sullivan Street, Brooklyn, NY 11231.

Approval No. 160.035/474/6 Model 1401 survival capsule, 11.2' diameter x 3.35' depth 14 persons capacity, manufactured by Whittaker Corporation, Survival Systems Division, 5151 Baltimore Drive, La Mea, CA 92041.

Approval No. 160.035/475/1 ;26.25' x 8.85' x 3.6' fibrous glass reinforced plastic, manufactured by Watercraft America, Inc., P.O. Box 1130, Edgewater, FL 32032.

Approval No. 160.035/487/2, 23.87' x 8.75' x 3.25' fibrous glass reinforced plastic, manufactured by Watercraft America, Inc., P.O. Box 1130, Edgewater, FL 32032.

Approval No. 160.035/508/0, EL/16 totally enclosed lifeboat, 16.6 x 7.0'' x 9.6' fibrous glass reinforced plastic, manufactured by Watercraft America, Inc., P.O. Box 1130, Edgewater FL 32032.

Approval No. 160.035/509/1, Model CA 2100, 21 person capacity, manufactured by Whittaker Corporation Survival Systems Division, 5159 Baltimore Drive, La Mesa, CA 92041.

Approval No. 160.035/512/0, FRP open oar-propelled lifeboat, 42 person capacity, manufactured by Harding Safety Inc., P.O. Box 1445, Mobile, AL 36633.

Hand Held, Rocket Propelled, Parachute Red Flare Distress Signal

Approval No. 160.036/11/0, Model Proteus III hand held, rocket propelled red parachte flare, manufactured by Kilgore Corporation, Bradford Road, Toone, TN 38381–0099.

Hand Held Orange Smoke Distress Signal

Approval No. 160.037/20/0, Hand Held Orange Smoke Distress Signal, manufactured by Kilgore Corporation, Bradford Rd., Toone, TN 38381–0099.

Line Throwing Appliance Rocket Type

Approval No. 160.040/8/0, "Lifeline 750" manufactured by Kilgore Corporation, Bradford Rd., Toone, TN 38381–0099.

First Aid Kit

Approval No. 160.041/3/2, First Aid Kit, Model No. 01–16–05, manufactured by North Health Care, 1515 Elmwood Road, Rockford, IL 61101.

Approval No. 160.041/15/0, First Aid Kit, Model No. 01–16–07, plastic container, manufactured by North Health Care, 1515 Elmwood Road, Rockford, IL 61101.

Lifeboat Bilge Pump

Approval No. 160.044/16/0, Size No. 2 lifeboat bilge pump, Henderson P7/L MKV T/A model, manufactured by Watercraft America, Inc., P.O. Box 1130, Edgewater, FL 32032.

Approval No. 160.044/19/0, Size No. 3 lifeboat bilge pump, Henderson Mark V double chamber pump, manufactured by Watercraft America, Inc., P.O. Box 1130, Edgewater, FL 32032.

Approval No. 160.044/20/0, Size No. 2 lifeboat bilge pump, Henderson Mark V single chamber pump, manufactured by Watercraft America, Inc., P.O. Box 1130, Edgewater, FL 32032.

Emergency Provisions for Lifeboat & Liferaft

Approval No. 160.046/11/0, Hermetically sealed foil laminate package, package material meets MIL–B–131F Class II, manufactured by Rubber Fabricators Inc., P.O. Box 248, Apex, NC 27502.

Approval No. 160.046/12/0, Hermetically sealed foil laminate package, foil laminate meets MIL–B–131G, manufactured F & L Packing Corporation, 681 Main Street, Belleville, NJ 07109.

Unicellular Plastic Ring Life Buoys

Approval No. 160.050/48/2, 20 inch, type IV PFD, Model No. GW–20, manufactured by Cal-June Inc., P.O. Box 9551, North Hollywood, CA 91609.

Approval No. 160.050/50/2, 24 inch, type IV PFD, Model No. GW–24, manufactured by Cal-June Inc., P.O. Box 9551, North Hollywood, CA 91609.

Approval No. 160.050/60/2, 24 inch, type IV PFD, Model No. GWX–24 manufactured by Cal-June Inc., P.O. Box 9551, North Hollywood, CA 91609.

Approval No. 160.050/A60/2, 24 inch, type IV PFD, Model GX–24, marketted by Recreonics Corporation, 1635 Expo Lane, Indianapolis, IN 46224.

Approval No. 160.050/61/2, 20 inch type IV PFD, Model No. GWX–20, manufactured by Cal-June Incorporated, P.O. Box 9551, North Hollywood, CA 91609.

Approval No. 160.050/A61/2, 20 inch type IV PFD, Model No. GX–20 marketted by Recreonics Corporation, 1635 Expo Lane, Indianapolis, IN 46224.

Approval No. 160.050/84/0, 20-inch, type IV PFD, manufactured by Plasti-Kraft Corporation, Ozona Insustrial Park, Ozona, FL 33560.

Approval No. 160.005/85/0, 24-inch, type IV PFD, manufactured by Plasti-Kraft Corporation, Ozona Industrial Park, Ozona, FL 33560.

Approval No. 160.050/86/0, 30-inch, type IV PFD, manufactured by Plasti-Kraft Corporation, Ozona Industrial Park, Ozona, FL 33560.

Approval No. 160.050/102/1, 20-inch, type IV PFD, Model No. GOX–20, manufactured by Cal-June Incorporated, P.O. Box 9551, North Hollywood, CA 91609.

Approval No. 160.005/A102/1, 20-inch, type IV PFD, Model No. GX–20, marketted by Recreonics Corporation, 1635 Expo Lane, Indianapolis, IN 46224.

Approval No. 160.050/103/1, 24-inch, type IV PFD, Model No. GOX–24, manufactured by Cal-June Incorporated, P.O. Box 9551, North Hollywood, CA 91609.

Approval No. 160.050/A103/1, 24-inch, type IV PFD, Model No. GX–24, marketed by Recreonics Corporation, 1635 Expo Lane, Indianapolis, IN 46224.

Approval No. 160.050/104/1, 30-inch, type IV PFD, Model No. GX–30, manufactured by Cal-June Incorporated, P.O. Box 9551, North Hollywood, CA 91609.

Approval No. 160.050/A104/1, 30-inch, type IV PFD, Model No. GX–30, marketed by Recreonics Corporation, 1635 Expo Lane, Indianapolis, IN 46224.

Approval No. 160.050/105/1, 20-inch, type IV PFD, Model No. GO–20, manufactured by Cal-June Incorporation, P.O. Box 9551, North Hollywood, CA 91609.

Approval No. 160.050/106/1, 24-inch, type IV PFD, Model No. GO–24, manufactured by Cal-June Incorporated, P.O. Box 9551, North Hollywood, CA 91609.

Approval No. 160.050/107/1, 30-inch, type IV PFD, Model No. G–30,

manufactured by Cal-June Incorporated, P.O. Box 9551, North Hollywood, CA 91609.

Approval No. 160.050/110/0, 20 inches, Type IV PFD, Model A20, manufactured by Coated Marine Products, 10 Foam Forms Place, Waukegan, IL 60085.

Approval No. 160.050/111/0, 24 inches, Type IV PFD, Model A24, manufactured by Coated Marine Products, 10 Foam Forms Place, Waukegan, IL 60085.

Approval No. 160.050/112/0, 30 inches, Type IV PFD, Model A30, manufactured by Coated Marine Products, 10 Foam Forms Place, Waukegan, IL 60085.

Approval No. 160.050/116/1, 30-inch, Type IV PFD, Model No. R-30, manufactured by Cal-June Incorporated, P.O. Box 9551, North Hollywood, CA 91609.

Inflatable Liferaft

Approval No. 160.051/60/3, 20-person, davit-launched inflatable liferaft, Type 20MC MK3, manufactured by B.F. Goodrich Company, Star Route 1, P.O. Box 200, Fenwick, WV 26202.

Approval No. 160.051/71/2, 4-person inflatable liferaft (Circular-Type) with conventional water packets. Manufactured by Switlik Parachute Company, Inc., 1325 E. State Street, Trenton NJ 08607.

Approval No. 160.051/72/2, 4-person SOLAS inflatable liferaft; manufactured by Revere Survival Products, Inc., 605 West 29th Street, New York, New York 10001.

Approval No. 160.051/73/2, 6-person SOLAS inflatable liferaft; manufactured by Revere Survival Products, Inc., 605 West 29th Street, New York, New York 10001.

Approval No. 160.050/74/2, 8-person SOLAS inflatable liferaft; manufactured by Revere Survival Products, Inc., 605 West 29th Street, New York, New York 10001.

Approval No. 160.051/75/2, 10-person SOLAS inflatable liferaft; manufactured by Revere Survival Products, Inc., 605 West 29th Street, New York, New York 10001.

Approval No. 160.051/76/2, 12-person SOLAS inflatable liferaft; manufactured by Revere Survival Products, Inc., 605 West 29th Street, New York, New York 10001.

Approval No. 160.051/77/2, 15-person SOLAS inflatable liferaft; manufactured by Revere Survival Products, Inc., 605 West 29th Street, New York, New York 10001.

Approval No. 160.051/78/3, 20-person SOLAS inflatable liferaft; manufactured by Revere Survival Products, Inc., 605 West 29th Street, New York, New York 10001.

Approval No. 160.051/79/2, 25-person SOLAS inflatable liferaft; manufactured by Revere Survival Products, Inc., 605 West 29th Street, New York, New York 10001.

Approval No. 160.051/80/2, 25-person SOLAS inflatable liferaft (Ocean Service); manufactured by Revere Survival Products, Inc., 605 West 29th Street, New York, New York 10001.

Approval No. 160.051/83/3, 25-person davit-launched inflatable liferaft (Limited Service); manufactured by B.F. Goodrich Company, Star Route 1, P.O. Box 200, Fenwick, WV 26202.

Approval No. 160.051/103/0, 4-person inflatable liferaft (Circular-Type) with toroidal stabilizing device. Manufactured by switlik Parachute Company, Inc., 1325 E. State Street, Trenton NJ 08607.

Approval No. 160.051/109/0, 8-person inflatable liferaft with toroidal stabilizing device. Manufactured by Switlik Parachute Company, Inc., 1325 East State Street, Trenton NJ 08607.

Approval No. 160.051/113/1, 25-person, davit-launched inflatable liferaft, Type 25 MC MK 3A, manufactured by B.F. Goodrich Company, Star Route 1, P.O. Box 200, Fenwick, WV 26202.

Approval No. 160.051/129/0, 25-person davit-launched inflatable liferaft, Type 25 QM with ocean service equipment. Manufactured by Beaufort Air-Sea Equipment Canada, Ltd., 12351 Bridgeport Road, Richmond, B.C. V6V 1J4 Canada.

Work Vest Unicellular Plastic

Approval No. 160.053/37/0, Nonstandard Type V PFD, Model AF 600, manufactured by Paris Southern, P.O. Box 9038, Station A, Greenville, SC 29604.

Approval No. 160.053/43/0, Adult, Type V PFD, Model WV-1, manufactured by Wellington Industries, Inc., P.O. Box 244, Madison, GA 30650.

Approval No. 160.053/59/0, Nonstandard, Type V PFD, Model WV-3, manufactured by Taylortec Inc., 2400 South Range Rd., Hammond, LA 70401.

Approval No. 160.053/60/1, Adult Universal, Type V PFD, Model IWV-224, manufactured by Stearns Manufacturing Co., P.O. Box 1498, St. Cloud, MN 53601.

Approval No. 160.053/65/0, Nonstandard Model S9792, Type V PFD, manufactured by Wellington Puritan, Inc., Wellington Cordage Division, Monticello Highway, Madison, Georgia 30650.

Unicellular Plastic Foam Work Vest

Approval No. 160.055/126/0, Type Adult, Nonstandard Type I PFD, Model ILJ-100, manufactured by Stearns Manufacturing Co., P.O. Box 1498, St. Cloud, MN 56301.

Approval No. 160.055/131/0, Child, Nonstandard Type I PFD, Model ILJ-101, manufactured Stearns Manufacturing Co., P.O. Box 1498, St. Cloud, MN 56301.

Approval No. 160.055/144/0, Child, Type V PFD, Models 1062, 1063, 1064, 1065, manufactured by Wellington Leisure Products, Inc., 30 East Chambers, Forsyth, Georgia 31029.

Approval No. 160.055/145/0, Adult Type V PFD, Models 1062, 1063, 1064, 1065, manufactured by Wellington Leisure Products, Inc., 30 East Chambers, Forsyth, Georgia 31029.

Approval No. 160.0.55/147/0, Adult I PFD, Model No. ALP-1, manufactured by Buddy Schoellkopf Products, Inc., 4949 Joseph Hardin Drive, Dallas, TX 75236.

Approval No. 160.055/148/0, Child, Type I PFD, Model No. CLP-1, manufactured by Buddy Schoellkopf Products, Inc., 4949 Joseph Hardin Drive, Dallas, TX 75236.

Approval No. 160.055/149/0, Adult, Type I PFD, Model 8830, manufactured by Kent Sporting Goods, State Route 60, New London, OH 44851.

Approval No. 160.055/150/0, Child, Type I PFD, Model 8280, manufactured by Kent Sporting Goods, State Route 60, New London, OH 44851.

Buoyant Vests

Approval No. 160.060/34/0, Adult, Type II PFD, Model 4156, manufactured by Ero Industries, Inc., 189 West Madison Drive, Chicago, IL 60602.

Approval No. 160.060/35/0, Child Medium, Type II PFD, Model 4161, manufactured by Ero Industries, Inc., 189 West Madison Drive, Chicago, IL 60602.

Approval No. 160.060/36/0, Child Small, Type II PFD, Model 4166, manufactured by Eros Industies, Inc., 189 West Madison Drive, Chicago, IL 60602.

Approval No. 160.060/55/0, Child Small, Type II PFD, Model PPS, manufactured by Atlantic Pacific, P.O. Box 27, Staten Island, NY 10314.

Approval No. 160.060/56/0, Child Medium, Type II PFD, Model PPM, manufactured by Atlantic Pacific, P.O. Box 27, Staten Island, NY 10314.

Approval No. 160.060/57/0, Adult Universal, Type II PFD, Model PPA, manufactured by Atlantic Pacific, P.O. Box 27, Staten Island, NY 10314.

Approval No. 160.060/62/0, Infant-Child Small, Type II PFD, Model No. KS,

manufactured by Ero Industries Inc., 5940 W. Touhy Ave., Chicago, IL 60648.

Hydraulic Release

Approval No. 160.062/1/4, Raftgo Model C hydraulic and manual release for lifesaving equipment; manufactured by Raftgo Hendry Manufacturing Company, 12A Pamaron Way, Navato, CA 94947.

Approval No. 160.062/2/1, Model 404 hydraulic and manual release for lifesaving equipment; manufacured by Arrow Manufacturing, Inc. 12A Pamaron Way, Navato, CA 94947.

Launching Device

Approval No. 160.063/10/0, Model AIW 101 swivel-davit launching device with attached single-drum winch; manufactured by Alexander Industries, Inc., P.O. Box 51886, 1901 Julia Street, New Orleans, LA 70151.

Marine Buoyant Device

Approval No. 160.064/531/1, Adult Small, Type III PFD, Model Nos. SSV–4164, SSV–4165, SSV–4166, SSV–4160, ILV–460, or ILV–465, manufactured by Stearns Manufacturing Co., 30th and Division Streets, P.O. Box 1498, St. Cloud, MN 56301.

Approval No. 160.064/532/1, Adult Medium Type III PFD, Model Nos. SSV–4164, SSV–4165, SSV–4166, SSV–4160, ILV–460, or ILV–465, manufactured by Stearns manufacturing Co., 30th and Division Streets, P.O. Box 1498, St. Cloud, MN 56301.

Approval No. 160.064/533/1, Adult Large, Type III PFD, Model Nos. SSV–4164, SSV–4165, SSV–4166, SSV–4160, ILV–460, or ILV–465, manufactured by Stearns Manufacturing Co., 30th and Division Streets, P.O. Box 1498, St. Cloud, MN 56301.

Approval No. 160.064/534/1, Adult X-Large, Type III PFD, Model Nos. SSV–4164, SSV–4165, SSV–4166, SSV–4160, ILV–460, or ILV–465, manufactured by Stearns Manufacturing Co., 30th and Division Streets, P.O. Box 1498, St. Cloud, MN 56301.

Approval No. 160.064/730/0, Adult Medium, Type III PFD, Model Nos. 1010, 1015, 1016, manufactured by Wellington Leisure Products, Inc., 30 East Chambers, Forsyth, GA 31029.

Approval No. 160.064/731/0, Adult Large, Type III PFD, Model Nos. 1010, 1015, 1016, manufactured by Wellington Leisure Products, Inc., 30 East Chambers, Forsyth, GA 31029.

Approval No. 160.064/772/1, Adult Medium, Type III PFD, Model No. 2020, manufactured by Wellington Leisure Products, Inc., 30 East Chambers, Forsyth, GA 31029.

Approval No. 160.064/773/1, Adult Large, Type III PFD, Model No. 2020, manufactured by Wellington Leisure Products, Inc., 30 East Chambers, Forsyth, GA 31029.

Approval No. 160.064/774/1, Adult X-Large, Type III PFD, Model No. 2020, manufactured by Wellington Leisure Products, Inc., 30 East Chambers, Forsyth, GA 31029.

Approval No. 160.064/776/1, Adult XX-Large or Super, Type III PFD, Model Nos. SSV–4164, SSV–4165, SSV–4166, SSV–4160, ILV–460, or OLV–465, manufactured by Stearns Manufacturing Co., 30th and Division Streets, P.O. Box 1498, St. Cloud, MN 56301.

Approval No. 160.064/1347/0, Adult X-Small, Type III PFD, Model No. 101, manufactured by Ettinger Enterprises, Inc., 5310, Lance Drive, Knoxville, TN 37919.

Approval No. 160.064/1348/0, Adult Small, Type III PFD, Model No. 102, manufactured by Ettinger Enterprises, Inc., 5310, Lance Drive, Knoxville, TN 37919.

Approval No. 160.064/1349/0, Adult Medium, Type III PFD, Model No. 103, manufactured by Ettinger Enterprises, Inc., 5310, Lance Drive, Knoxville, TN 37919.

Approval No. 160.064/1350/0, Adult Large, Type III PFD, Model No. 104, manufactured by Ettinger Enterprises, Inc., 5310, Lance Drive, Knoxville, TN 37919.

Approval No. 160.064/1351/0, Adult X-Large, Type III PFD, Model No. 105, manufactured by Ettinger Enterprises, Inc., 5310, Lance Drive, Knoxville, TN 37919.

Approval No. 160.064/1352/0, Adult XX-Large, Type III PFD, Model No. 106, manufactured by Ettinger Enterprises, Inc., 5310, Lance Drive, Knoxville, TN 37919.

Approval No. 160.064/1394/0, Adult X-Large, Type III PFD, Model Nos. 1010, 1015, 1016, manufactured by Wellington Leisure Products, Inc., 30 East Chambers, Forsyth, GA 31029.

Approval No. 160.064/1460/0, Child, Type III PFD, Model Nos. ANXS or 802, manufactured by The Coleman Co., Inc., P.O. Box 1762, 250 N. St. Francis, Wichita, KS 67201.

Approval No. 160.064/1461/0, Youth Medium, Type III PFD, Model Nos. ANSS, 802, or SKY, manufactured by The Coleman Co., Inc., P.O. Box 1762, 250 N. St. Francis, Wichita, KS 67201.

Approval No. 160.064/1462/0, Adult X-Small, Type III PFD, Model Nos. ANMS or SKXS, manufactured by The Coleman Co., Inc., P.O. Box 1762, 250 N. St. Francis, Wichita, KS 67201.

Approval No. 160.064/1463/0, Adult Small, Type III PFD, Model Nos. ANS or SKS, manufactured by The Coleman Co., Inc., P.O. Box 1762, 250 N. St. Francis, Wichita, KS 67201.

Approval No. 160.064/1464/0, Adult Medium, Type III PFD, Model Nos. ANMS or SKM, manufactured by The Coleman Co., Inc., P.O. Box 1762, 250 N. St. Francis, Wichita, KS 67201.

Approval No. 160.064/1465/0, Adult Large, Type III PFD, Model Nos. ANL or SXL, manufactured by The Coleman Co., Inc., P.O. Box 1762, 250 N. St. Francis, Wichita, KS 67201.

Approval No. 160.064/1466/0, Adult X-Large, Type III PFD, Model Nos. ANXL or SKXL, manufactured by The Coleman Co., Inc., P.O. Box 1762, 250 N. St. Francis, Wichita, KS 67201.

Approval No. 160.064/1547/0, Adult, Type III PFD, Model No. 803, manufactured by Fabrionics, Inc., Rt. 130 South, Camargo, IL 61919.

Approval No. 160.064/1548/0, Adult, Type III PFD, Model No. 1001, manufactured by Fabrionics, Inc., Rt. 130 South, Camargo, IL 61919.

Approval No. 160.064/1563/0, Adult, Type III PFD, Model No. 7780, manufactured by Ero Industries, Inc., 5940 W. Touhy Street, Chicago, IL 60648.

Approval No. 160.064/1564/0, Adult, Type III PFD, Model No. 7790, manufactured by Ero Industries, Inc., 5940 W. Touhy Street, Chicago, IL 60648.

Approval No. 160.064/1565/0, Youth Medium, Type III PFD, Model 114, manufactured by Ettinger Enterprises, Inc., 5310 Lance Drive, Knoxville, TN 37919.

Approval No. 160.064/1566/0, Youth Large, Type III PFD, Model 115, manufactured by Ettinger Enterprises, Inc., 5310 Lance Drive, Knoxville, TN 37919.

Approval No. 160.064/1567/0, Tyke, Type III PFD, Model ED–20, manufactured by Omega Corporation, 266 Border St., East Boston, MA 02128.

Approval No. 160.064/1568/0, Youth, Type III PFB, Model ED–30, manufactured by Omega Corporation, 266 Border St., East Boston, MA 02128.

Approval No. 160.064/1569/0, Adult Small, Type III PFD, Model ED–40, manufactured by Omega Corporation, 266 Border St., East Boston, MA 02128.

Approval No. 160.064/1570/0, Adult Medium, Type III PFD, Model ED–50, manufactured by Omega Corporation, 266 Border St., East Boston, MA 02128.

Approval No. 160.064/1571/0, Adult Large, Type III PFD, Model ED–60, manufactured by Omega Corporation, 266 Border St., East Boston, MA 02128.

Approval No. 160.064/1572/0, Adult X-Large, Type III PFD, Model ED–70, manufactured by Omega Corporation, 266 Border St., East Boston, MA 02128.

Approval No. 160.064/1573/0, Adult XX-Large, Type III PFD, Model ED–80, manufactured by Omega Corporation, 286 Border St., East Boston, MA 02128.

Approval No. 160.064/1592/0, Adult Small, Type III PFD, Model 1010, 1015, 1016, Manufactured by Wellington Leisure Products, Inc., 30 East Chambers, Forsyth, GA 31029.

Approval No. 160.064/1610/0, Adult Small, Type III PFD, Model SSV–111 or SSV–169, manufactured by Stearns Manufacturing Co., P.O. Box 1498, St. Cloud, MN 56301.

Approval No. 160.064/1611/0, Adult Medium, Type III PFD, Model SSV–111 or SSV–169, manufactured by Stearns Manufacturing Co., P.O. Box 1498, St. Cloud, MN 56301.

Approval No. 160.064/1612/0, Adult Large, Type III PFD, Model SSV–111 or SSV–169, manufactured by Stearns Manufacturing Co., P.O. Box 1498, St. Cloud, MN 56301.

Approval No. 160.064/1613/0, Adult X-Large, Type III PFD, Model SSV–111 or SSV–169, manufactured by Stearns Manufacturing Co., P.O. Box 1498, St. Cloud, MN 56301.

Approval No. 160.064/1630/0, Adult Small, Type III PFD, Model SSV–161, manufactured by Stearns Manufacturing Co., P.O. Box 1498, St. Cloud, MN 56301.

Approval No. 160.064/1631/0, Adult Medium, Type III PFD, Model SSV–161, manufactured by Stearns Manufacturing Co., P.O. Box 1498, St. Cloud, MN 56301.

Approval No. 160.064/1632/0, Adult Large, Type III PFD, Model SSV–161, manufactured by Stearns Manufacturing Co., P.O. Box 1498, St. Cloud, MN 56301.

Approval No. 160.064/1633/0, Adult X-Large, Type III PFD, Model SSV–161, manufactured by Stearns Manufacturing Co., P.O. Box 1498, St. Cloud, MN 56301.

Approval No. 160.064/1634/0, Adult Small, Type III PFD, Models FJ45, FJ7045, IFJ–52, manufactured by Stearns Manufacturing Co., P.O. Box 1498, St. Cloud, MN 56301.

Approval No. 160.064/1635/0, Adult Medium, Type III PFD, Models FJ45, FJ7045, IFJ–52, manufactured by Stearns Manufacturing Co., P.O. Box 1498, St. Cloud, MN 56301.

Approval No. 160.064/1636/0, Adult Large, Type III PFD, Models FJ45, FJ7045, IFJ–52, manufactured by Stearns Manufacturing Co., P.O. Box 1498, St. Cloud, MN 56301.

Approval No. 160.064/1637/0, Adult X-Large, Type III PFD, Models FJ45, FJ7045, IFJ–52, manufactured by Stearns Manufacturing Co., P.O. Box 1498, St. Cloud, MN 56301.

Approval No. 160.064/1640/1, Adult Small, Type III PFD, Model SSV–5351, manufactured by Stearns Manufacturing Co., P.O. Box 1498, St. Cloud, MN 56301.

Approval No. 160.064/1641/1, Adult Medium, Type III PFD, Model SSV–5351, manufactured by Stearns Manufacturing Co., P.O. Box 1498, St. Cloud, MN 56301.

Approval No. 160.064/1642/1, Adult Large, Type III PFD, Model SSV–5351, manufactured by Stearns Manufacturing Co., P.O. Box 1498, St. Cloud, MN 56301.

Approval No. 160.064/1643/1, Adult X-Large, Type III PFD, Model SSV–5351, manufactured by Stearns Manufacturing Co., P.O. Box 1498, St. Cloud, MN 56301.

Approval No. 160.064/1645/0, Adult Small, Type III PFD, Model SSV–112, manufactured by Stearns Manufacturing Co., P.O. Box 1498, St. Cloud, MN 56301.

Approval No. 160.064/1696/0, Adult Small, Type III PFD, Model FV–7, FV–8, manufactured by Paris Southern Corp., P.O. Drawer 9038, Station "A", Greenville, SC 29604.

Approval No. 160.064/1697/0, Adult Medium, Type III PFD, Model FV–7, FV–8, manufactured by Paris Southern Corp., P.O. Drawer 9038, Station "A", Greenville, SC 29604.

Approval No. 160.064/1698/0, Adult Large, Type III PFD, Model FV–7, FV–8, manufactured by Paris Southern Corp., P.O. Drawer 9038, Station "A", Greenville, SC 29604.

Approval No. 160.064/1698/0, Adult Large, Type III PFD, Model FV–7, FV–8, manufactured by Paris Southern Corp., P.O. Drawer 9038, Station "A", Greenville, SC 29604.

Approval No. 160.064/1699/0, Adult X-Large, Type III PFD, Model FV–7, FV–8, manufactured by Paris Southern Corp., P.O. Drawer 9038, Station "A", Greenville, SC 29604.

Approval No. 160.064/1928/0, Adult, Type III PFD, Model Universal 300, manufactured by Ettinger Enterprises, Inc., 5310 Lance Drive, Knoxville, TN 37919.

Approval No. 160.064/1960/0, Child Small, Type III PFD, Model 701, manufactured by Casad Mfg. Co., 1015 Brandon Ave., Celina, OH 45822.

Approval No. 160.064/1961/0, Youth, Type III PFD, Model 702, manufactured by Casad Mfg. Co., 1015 Brandon Ave., Celina, OH 45822.

Approval No. 160.064/1962/0, X-Small, Type III PFD, Model 703, manufactured by Casad Mfg. Co., 1015 Brandon Ave., Celina, OH 45822.

Approval No. 160.064/1963/0, Small, Type III PFD, Model 704, manufactured by Casad Mfg. Co., 1015 Brandon Ave., Celina, OH 45822.

Approval No. 160.064/1964/0, Medium, Type III PFD, Model 705, manufactured by Casad Mfg. Co., 1015 Brandon Ave., Celina, OH 45822.

Approval No. 160.064/1965/0, Large, Type III PFD, Model 706, manufactured by Casad Mfg. Co., 1015 Brandon Ave., Celina, OH 45822.

Approval No. 160.064/1966/0, X-Large, Type III PFD, Model 707, manufactured by Casad Mfg. Co., 1015 Brandon Ave., Celina, OH 45822.

Approval No. 160.064/2072/0, X-Small, Type III PFD, Model 751, manufactured by Casad Mfg. Co., 1015 Brandon Ave., Celina, OH 45822.

Approval No. 160.064/2073/0, Small, Type III PFD, Model 752, manufactured by Casad Mfg. Co., 1015 Brandon Ave., Celina, OH 45822.

Approval No. 160.064/2074/0, Medium, Type III PFD, Model 753, manufactured by Casad Mfg. Co., 1015 Brandon Ave., Celina, OH 45822.

Approval No. 160.064/2075/0, Large, Type III PFD, Model 754, manufactured by Casad Mfg. Co., 1015 Brandon Ave., Celina, OH 45822.

Approval No. 160.064/2076/0, X-Large, Type III PFD, Model 755, manufactured by Casad Mfg. Co., 1015 Brandon Ave., Celina, OH 45822.

Approval No. 160.064/2135/0, Adult X-Small, Type III PFD, Model FV–7, FV–8, manufactured by Paris Southern Corp., P.O. Drawer 9038, Station "A", Greenville, SC 29604.

Approval No. 160.064/2136/0, Adult X-Small, Type III PFD, Model 944, manufactured by Continental Canvas Co., 10900 E. Fawcett Ave., S. El Monte, CA 91733.

Approval No. 160.064/2137/0, Adult Small, Type III PFD, Model 944, manufactured by Continental Canvas Co., 10900 E. Fawcett Ave., S. El Monte, CA 91733.

Approval No. 160.064/2138/0, Adult Medium, Type III PFD, Model 944, manufactured by Continental Canvas Co., 10900 E. Fawcett Ave., S. El Monte, CA 91733.

Approval No. 160.064/2139/0, Adult Large, Type III PFD, Model 944, manufactured by Continental Canvas Co., 10900 E. Fawcett Ave., S. El Monte, CA 91733.

Approval No. 160.064/2140/0, Adult X-Large, Type III PFD, Model 944, manufactured by Continental Canvas Co., 10900 E. Fawcett Ave., S. El Monte, CA 91733.

Approval No. 160.064/2141/0, Adult XX-Large, Type III PFD, Model 944, manufactured by Continental Canvas Co., 10900 E. Fawcett Ave., S. El Monte, CA 91733.

Approval No. 160.064/2149/0, Adult Small/Medium, Type III PFD, Model 902/903, manufactured by America's Cup, Inc., P.O. Box 2009, La Puenta, CA 91746–0009.

Approval No. 160.064/2150/0, Adult Large/X-Large, Type III PFD, Model 902/

903, manufactured by America's Cup, Inc., P.O. Box 2009, La Puenta, CA 91746–0009.

Approval No. 160.064/21676/0, Adult X-Small, Type III PFD, Model FV–16, manufactured by Paris Southern Corp., P.O. Drawer 9038, Station "A", Greenville, SC 29604.

Approval No. 160.064/2168/0, Adult Small, Type III PFD, Model FV–16, manufactured by Paris Southern Corp., P.O. Drawer 9038, Station "A", Greenville, SC 29604.

Approval No. 160.064/2169/0, Adult Medium, Type III PFD, Model FV–16, manufactured by Paris Southern Corp., P.O. Drawer 9038, Station "A", Greenville, SC 29604.

Approval No. 160.064/2170/0, Adult Large, Type III PFD, Model FV–16, manufactured by Paris Southern Corp., P.O. Drawer 9038, Station "A", Greenville, SC 29604.

Approval No. 160.064/2171/0, Adult X-Large, Type III PFD, Model FV–16, manufactured by Paris Southern Corp., P.O. Drawer 9038, Station "A", Greenville, SC 29604.

Approval No. 160.064/2235/0, Adult Small/Medium, Type III PFD, Models 1006, 1009, 1041, manufactured by Wellington Leisure Products, Inc., P.O. Box 46, 2600 Industrial St., Leesburg, FL 32784.

Approval No. 160.064/2236/0, Adult Large/X-Large, Type III PFD, Models 1006, 1009, 1041, manufactured by Wellington Leisure Products, Inc., P.O. Box 46, 2600 Industrial St., Leesburg, FL 32784.

Approval No. 160.064/2249/0, Adult Small, Type III PFD, Model BTM–100, manufactured by Southern Plastics Co., Inc., P.O. Box 218, Eufaula, AL 36027.

Approval No. 160.064/2250/0, Adult Medium, Type III PFD, Model BTM–100, manufactured by Southern Plastics Co., Inc., P.O. Box 218, Eufaula, AL 36027.

Approval No. 160.064/2251/0, Adult Large, Type III PFD, Model BTM–100, manufactured by Southern Plastics Co., Inc., P.O. Box 218, Eufaula, AL 36027.

Approval No. 160.064/2252/0, Adult X-Large, Type III PFD, Model BTM–100, manufactured by Southern Plastics Co., Inc., P.O. Box 218, Eufaula, AL 36027.

Approval No. 160.064/2253/0, Adult XX-Large, Type III PFD, Model BTM–100, manufactured by Southern Plastics Co., Inc., P.O. Box 218, Eufaula, AL 36027.

Approval No. 160.064/2254/0, Adult Universal, Type III PFD, Model BTM–100, manufactured by Southern Plastics Co., Inc., P.O. Box 218, Eufaula, AL 36027.

Red Aerial Pyrotechnic Flare

Approval No. 160.066/20/0, Brite Star 12 ga. Red Meteor Flare cartridge for 12 ga. signal pistol —6.7 second burn time. Manufactured by Pyrotechnic Industries Inc., 600 Center Ave., Grand Junction, CO 81501.

Approval No. 160.064/21/0, Brite Star Self Contained Red Meteor Flare —6.5 second burn time. Manufactured by Pyrotechnics Industries Inc., 600 Center Ave., Grand Junction, CO 81501.

Exposure Suit

Approval No. 160.071/2/2, Model 7–01–00, size Adult, universal. Manufactured by BayleySuit, Inc., 900 S. Fortuna Blvd., Fortuna, CA 95540.

Approval No. 160.071/3/2, Model 9450, Exposure Suit, Adult. Manufactured by Fitz-Wright Suits, Ltd., 17919 Roan Place, Surrey, British Columbia V3S 5K1 Canada.

Approval No. 160.071/4/0, Model NT2002, Exposure Suit, Adult. Manufactured by Harvey's Skin Diving Supply Inc., 2505 South 252nd St., Kent, WA 98031.

Approval No. 160.071/6/0, Model 7–01–07 (Sea King). Manufactured by BayleySuit, Inc., 900 S. Fortuna Blvd., Fortuna, CA 95540.

Approval No. 160.071/8/0, Model 7–01–04 (Sea Scout). Manufactured by BayleySuit, Inc., 900 S. Fortuna Blvd., Fortuna, CA 95540.

Approval No. 160.071/10/0, Model E38–001. Manufactured by Narwahl Marine, Ltd., 2 Bluewater Road, Bedford, Nova Scotia B4B 1G7, Canada.

Approval No. 160.071/11/1, Model 41439 "Sea Wolf". Manufactured by Sea Otter Thermal Wear Mfg., 327–5930 No. 6 Road, Richmond, B.C. V6V 1Z1, Canada.

Approval No. 160.071/12/0, Model ISS–590, used either with IFR–591 inflator ring or ISV–001 inflatable vest. Manufactured by Stearns Manufacturing Co., P.O. Box 1498, 30th and Division Sts., St. Cloud, MN 56302.

Approval No. 160.071/16/0, Model IS–2 Exposure Suit, Adult. Manufactured by Mustang Industries, Inc., 3810 Jacombs Rd., Richmond, B.C. V6V 1Y6 Canada.

Approval No. 160.071/18/0, Model ISS–592, used either with IFR–591 inflator ring or ISV–001 inflatable vest. Manufactured by Stearns Manufacturing Co., P.O. Box 1498, 30th and Division Sts., St. Cloud, MN 56302.

Approval No. 160.071/19/0, Model NT2002C, Exposure suit, child/small adult. Manufactured by Harvey's Skin Diving Supply Inc., 2505 South 252nd St., Kent, WA 98031.

Approval No. 160.071/20/0, Model NT2002J, Exposure suit, jumbo (king-size). Manufactured by Harvey's Skin Diving Supply Inc., 2505 South 252nd St., Kent, WA 98031.

Approval No. 160.071/21/0, Model 9700, adult, with removable gloves and boot style legs.

Approval No. 160.071/22/0, Model IS–2, Jumbo (adult oversize). Manufactured by Mustang Industries, Inc., 3810 Jacombs Rd., Richmond, B.C. V6V 1Y6 Canada.

Sound Powered Telephone Systems

Approval No. 161.005/36/3, Type 702019–075, Manufactured by Dynalec Corporation, 87 West Main St., P.O. Box 188, Sodus, NY 14551–0188.

Approval No. 161.005/58/1, 2 circuit, manual reset. Manufactured by Hose-McCann Telephone Co., Inc., 9 Smith Street, Englewood, NJ 07631.

Approval No. 161.005/59/1, 3 circuit, manual reset. Manufactured by Hose-McCann Telephone Co., Inc., 9 Smith Street, Englewood, NJ 07631.

Approval No. 161.005/61/1, single circuit, manual reset. Manufactured by Hose-McCann Telephone Co., Inc., 9 Smith Street, Englewood, NJ 07631.

Approval No. 161.005/95/0, Dwg. No. 901493, sheet 1–3, dated 27 February 1984. Manufactured by Sound Powered Telephone Mfg. Corp., 6270 Dean Parkway, P.O. Box 495, Ontario, New York 14519.

Approval No. 161.005/96/0, Dwg. No. 901414, sheet 1–4, dated 27 February 1984. Manufactured by Sound Powered Telephone Mfg. Corp., 6270 Dean Parkway, P.O. Box 495, Ontario, New York, 14519.

Approval No. 161.005/97/0, Dwg. No. 901410, sheet 1–3, dated 27 February 1984. Manufactured by Sound Powered Telephone Mfg. Corp., 6270 Dean Parkway, P.O. Box 495, Ontario, New York 14519.

Approval No. 161.005/98/0, Model I, 2, 4, 12, 19, and 24 station. Manufactured by Hose-McCann Telephone Co., Inc., 9 Smith Street, Englewood, NJ 07631.

Approval No. 161.005/99/0, Model O, 2 to 24 station. Manufactured by Hose-McCann Telephone Co., Inc., 9 Smith Street, Englewood, NJ 07631.

Approval No. 161.005/100/0, Model F, 2, 8, 19, and 24 station. Manufactured by Hose-McCann Telephone Co., Inc., 9 Smith Street, Englewood, NJ 07631.

Approval No. 161.005/101/0, Headset 4C 100, Headset Jackboxes HJ2 and HJ3. Manufactured by Sound Powered Telephone Mfg. Corp., 6270 Dean Parkway, P.O. Box 495, Ontario, New York 14519.

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Electric Hand Flashlight

Approval No. 161.008/21/0, Model No. 95 Electric Hand Flashlight for Merchant Vessels. Manufactured by Fulton Industries Inc., 135 East Linfoot Street, Post Office Box 377, Wauseon, Ohio 43567.

Floating Electric Water Light

Approval No. 161.010/4/2, Model No. 328, Xenon flashtube floating electric water light. Manufactured by The Guest Corporation, 17 Culbro Drive, West Hartford, Conn. 06110.

Approval No. 161.010/14/0, Model SM–2(M), Xenon flashtube magnetic reed switch. Manufactured by ACR Electronics, Inc., 3901 North 29th Ave., Hollywood, FL 33022.

Approval No. 161.010/15/2, Model No. 328, Xenon flashtube floating electric water light with magnetic reed switch. Manufactured by The Guest Corporation, 17 Culbro Drive, West Hartford, Conn. 06110.

Approval No. 161.010/16/0, ACR/L–15(A) floating electric water light. Manufactured by ACR Electronics, Inc., 3901 North 29th Ave., P.O. Box 2148, Hollywood, FL 33022.

Approval No. 161.010/17/0, Model No. SN4 Floating Electric Waterlight. Manufactured by Tek-Lite Inc., P.O. Box 548, 201 Thomas Street, Union Bridge, MD 21791.

Class A EPIRB

Approval No. 161.011/6/0, Model DB–2051. Manufactured by A/S Jotron Elektronikk, 7600 Levanger, Norway.

Approval No. 161.011/10/0, Model ACR/RLB–15. Manufactured by ACR Electronics, Inc., 3901 North 29th Ave., Hollywood, FL 33020.

Personal Flotation Device Light

Approval No. 161.012/1/0, Model ACR/4F Firefly Rescue Lite. Manufactured by ACR Electronics, Inc., 3901 North 29th Ave., Hollywood, FL 33020.

Approval No. 161.012/2/0, Cyanamid Lightstick Personnel Marker Light. Manufactured by American Cyanamid Company, Organic Chemicals Division, Berdan Avenue, Wayne, NJ 07470.

Approval No. 161.012/3/0, ACR/L8–2 Rescue Light. Manufactured by ACR Electronics, Inc., 3901 North 29th Ave., Hollywood, FL 33020.

Approval No. 161.012/10/0, G.T. Price Model D–31 Life Saver Flashlight. Manufactured by ACR Electronics, Inc., 3901 North 29th Ave., Hollywood, FL 33020.

Safety valve (Power Boilers)

Approval No. 162.001/229/0, Style HC–MS–35 carbon steel body pop safety valve. Manufactured by Crosby Valve Division, Geosource Inc., 43 Kendrick Street, Wrentham, MA 02093.

Approval No. 162.001/230/0, Style HC–MS–36 carbon steel body pop safety valve. Manufactured by Crosby Valve Division, Geosource Inc., 43 Kendrick Street, Wrentham, MA 02093.

Approval No. 162.001/235/0, Style HCA–MS–37 alloy steel body pop safety valve. Manufactured by Crosby Valve Division, Geosource Inc., 43 Kendrick Street, Wrentham, MA 02093.

Approval No. 162.001/236/0, Style HCA–MS–38 alloy steel body pop safety valve. Manufactured by Crosby Valve Division, Geosource Inc., 43 Kendrick Street, Wrentham, MA 02093.

Approval No. 162.001/248/0, Style HS–MS–15 carbon steel body pop safety valve. Manufactured by Crosby Valve Division, Geosource Inc., 43 Kendrick Street, Wrentham, MA 02093.

Approval No. 162.001/249/0, Style HS–MS–16 carbon steel body pop safety valve. Manufactured by Crosby Valve Division, Geosource Inc., 43 Kendrick Street, Wrentham, MA 02093.

Approval 162.001/250/0, Style HSA–MS–17 alloy steel (A217) body pop safety valve, Manufactured by Crosby Valve Division, Geosource Inc., 43 Kendrick Street, Wrentham, MA 02093.

Approval 162.001/251/0, Style HS–MS–45 carbon steel body pop safety valve, Manufactured by Crosby Valve Division, Geosource Inc., 43 Kendrick Street, Wrentham, MA 02093.

Approval 162.001/252/0, Style HS–MS–46 carbon steel body pop safety valve, Manufactured by Crosby Valve Division, Geosource Inc., 43 Kendrick Street, Wrentham, MA 02093.

Approval 162.001/253/0, Style HSA–MS–47 alloy steel (A–217) body pop safety valve, Manufactured by Crosby Valve Division, Geosource Inc., 43 Kendrick Street, Wrentham, MA 02093.

Approval 162.001/254/0, Style HSA–MS–48 alloy steel (A–217) body pop safety valve, Manufactured by Crosby Valve Division, Geosource Inc., 43 Kendrick Street, Wrentham, MA 02093.

Approval 162.001/256/0, Style HCB–MS–58 drum pilot actuated safety valve, Manufactured by Crosby Valve Division, Geosource Inc., 43 Kendrick Street, Wrentham, MA 02093.

Approval 162.001/261/1, Types 1541–MF and 1543–MF Safety Valves, Manufactured by Dresser Industries, Industrial Valve and Insturment Division, P.O. Box 1430, Alexandria, LA 71301.

Approval 162.001/283/0, Style HNP–MS–75 ASTM A–216 GR-WCB carbon steel body drum safety valve, Manufactured by Crosby Valve Division, Geosource Inc., 43 Kendrick Street, Wrentham, MA 02093.

Approval No. 162.001/292/0, Style HCP–55–MS carbon steel body pop safety valve, Manufactured by Crosby Valve and Gage Co., 43 Kendrick Street, Wrentham, MA 02093.

Approval No. 162.001/293/0, Style HSB–48–MS carbon steel body pop safety valve, Manufactured by Crosby Valve and Gage Co., 43 Kendrick Street, Wrentham, MA 02093

Safety Valve (Auxiliary Boilers)

Approval No. 162.002/87/0, Types 1541–XMY and 1543–XMY Safety Valves, Manufactured by Dresser Industries, Industrial Valve and Instrument Division, P.O. Box 1430, Alexandria, LA 71301.

Safety Valve (Steam Service Not in Excess of 30 PSIG)

Approval No. 162.012/22/1, Types 1541 and 1543 Safety Valves, Manufactured by Dresser Industries, Industrial Valve and Instrument Division, P.O. Box 1430, Alexandria, LA 71301.

Approval No. 162.012/28/0, Types 1811–A, consolidated carbon steel body pop safety valve, Manufactured by Dresser Industries, Industrial Valve and Instrument Division, P.O. Box 1430, Alexandria, LA 71301.

Pressure Vacuum Relief and Spill Valve

Approval No. 162.017/64/4, Figure No. 100 pressure-vacuum relief valve, Manufactured by Hayward Industrial Products, Inc., 900 Fairmount Avenue, Elizabeth, NJ 07207.

Approval No. 162.017/68/1, Figure No. 240 pressure-vacuum relief valve, Manufactured by Hayward Industrial Products, Inc., 900 Fairmount Avenue, Elizabeth, NJ 07207.

Approval No. 162.017/69/2, Figure No. 250 pressure only or vacuum only relief valve, Manufactured by Hayward Industrial Products, Inc., 900 Fairmount Avenue, Elizabeth, NJ 07207.

Approval No. 162.017/70/1, Style Figure No. 260 pressure only relief valve, Manufactured by Hayward Industrial Products, Inc., 900 Fairmount Avenue, Elizabeth, NJ 07207.

Approval No. 162.017/77/1, Figure No. 140 pressure-vacuum relief valve, Manufactured by Hayward Industrial Products, Inc., 900 Fairmount Avenue, Elizabeth, NJ 07207.

Approval No. 162.017/81/0, Figure No. 160 pressure-vacuum relief valve, Manufactured by Hayward Industrial Products, Inc., 900 Fairmount Avenue, Elizabeth, NJ 07207.

Liquefied Compressed Gas Safety Relief Valve

Approval 162.018/36/1, Type 1905, safety relief valve for liquefied compressed gas service (non-corrosive), full nozzle type. Manufactured by Dresser Industrial Valve & Instrument Division, P.O. Box 1430, Alexandria, LA 71301.

Approval 162.018/37/1, Type 1906, safety relief valve for liquefied compressed gas service (non-corrosive), full nozzle type. Manufactured by Dresser Industrial Valve & Instrument Division, P.O. Box 1430, Alexandria, LA 71301.

Approval 162.018/38/1, Type 1910, safety relief valve for liquefied compressed gas service (non-corrosive), full nozzle type. Manufactured by Dresser Industrial Valve & Instrument Division, P.O. Box 1430, Alexandria, LA 71301.

Approval 162.018/39/1, Type 1912, safety relief valve for liquefied compressed gas service (non-corrosive), full nozzle type. Manufactured by Dresser Industrial Valve & Instrument Division, P.O. Box 1430, Alexandria, LA 71301.

Approval 162.018/42/1, Type 1905–30, safety relief valve for liquefied compressed gas service (non-corrosive), full nozzle type. Manufactured by Dresser Industrial Valve & Instrument Division, P.O. Box 1430, Alexandria, LA 71301.

Approval 162.018/43/1, Type 1906–30, safety relief valve for liquefied compressed gas service (non-corrosive), full nozzle type. Manufactured by Dresser Industrial Valve & Instrument Division, P.O. Box 1430, Alexandria, LA 71301.

Approval 162.018/44/1, Type 1910–30, safety relief valve for liquefied compressed gas service (non-corrosive), full nozzle type. Manufactured by Dresser Industrial Valve & Instrument Division, P.O. Box 1430, Alexandria, LA 71301.

Approval 162.018/45/1, Type 1912–30, safety relief valve for liquefied compressed gas service (non-corrosive), full nozzle type. Manufactured by Dresser Industrial Valve & Instrument Division, P.O. Box 1430, Alexandria, LA 71301.

Approval 162.018/48/1, Type 1905 (Special), safety relief valve for liquefied compressed gas service (non-corrosive), full nozzle type. Manufactured by Dresser Industrial Valve & Instrument Division, P.O. Box 1430, Alexandria, LA 71301.

Approval 162.018/49/1, Type 1906 (Special), safety relief valve for liquefied compressed gas service (non-corrosive), full nozzle type. Manufactured by Dresser Industrial Valve & Instrument Division, P.O. Box 1430, Alexandria, LA 71301.

Approval 162.018/50/1, Type 1910 (Special), safety relief valve for liquefied compressed gas service (non-corrosive), full nozzle type. Manufactured by Dresser Industrial Valve & Instrument Division, P.O. Box 1430, Alexandria, LA 71301.

Approval 162.018/51/1, Type 1912 (Special), safety relief valve for liquefied compressed gas service (non-corrosive), full nozzle type. Manufactured by Dresser Industrial Valve & Instrument Division, P.O. Box 1430, Alexandria, LA 71301.

Approval 162.018/52/1, Type 1905–30 (Special), safety relief valve for liquefied compressed gas service (non-corrosive), full nozzle type. Manufactured by Dresser Industrial Valve & Instrument Division, P.O. Box 1430, Alexandria, LA 71301.

Approval 162.018/53/1, Type 1906–30 (Special), safety relief valve for liquefied compressed gas service (non-corrosive), full nozzle type. Manufactured by Dresser Industrial Valve & Instrument Division, P.O. Box 1430, Alexandria, LA 71301.

Approval 162.018/54/1, Type 1910–30 (Special), safety relief valve for liquefied compressed gas service (non-corrosive), full nozzle type. Manufactured by Dresser Industrial Valve & Instrument Division, P.O. Box 1430, Alexandria, LA 71301.

Approval 162.018/55/1, Type 1912–30 (Special), safety relief valve for liquefied compressed gas service (non-corrosive), full nozzle type. Manufactured by Dresser Industrial Valve & Instrument Division, P.O. Box 1430, Alexandria, LA 71301.

Approval No. 162.018/69/0, Type 1005 safety relief valve for liquefied compressed gas service. Manufactured by Midland Manufacturing Corp., 7733 Gross Point Road, P.O. Box 226, Skokie, IL 60076.

Approval No. 162.018/82/0, Series 1900–S Safety Relief Valves, Manufactured by Midland Manufacturing Corp., 7733 Gross Point Road, P.O. Box 226, Skokie, IL 60076.

Approval No. 162.018/83/0, Lonergan DO–20 Series Model DO–20L/S4. Manufactured by J.E. Lonergan Company, 10050 Sandmeyer Lane, Philadelphia, PA 19116.

Approval No. 162.018/84/0, Lonergan DO–30 Series Model DO–30P/4. Manufactured by J.E. Lonergan Company, 10050 Sandmeyer Lane, Philadelphia, PA 19116.

Fixed Fire Extinguishing Systems

Approval No. 162.029/32/0, Model "15 MA" 1.5 lb. Halon 1301 pre-engineering type fire extinguishing systems. Convenience Marine Products, 100 Commerce Avenue, S.W., Grand Rapids, MI 49503.

Approval No. 162.029/33/0, Model "35 MA" 4 lb. Halon 1301 pre-engineered type fire extinguishing systems. Convenience Marine Products, 100 Commerce Avenue, S.W., Grand Rapids, MI 49503.

Approval No. 162.029/34/0, Model "70 MA" 7 lb. Halon 1301 pre-engineered type fire extinguishing systems. Convenience Marine Products, 100 Commerce Avenue, S.W., Grand Rapids, MI 49503.

Approval No. 162.029/35/0, Model "100 MA" 10 lb. Halon 1301 pre-engineered type fire extinguishing systems. Convenience Marine Products, 100 Commerce Avenue, S.W., Grand Rapids, MI 49503.

Approval No. 162.029/36/0, Model "150 MA" 15 lb. Halon 1301 pre-engineered type fire extinguishing systems. Convenience Marine Products, 100 Commerce Avenue, S.W., Grand Rapids, MI 49503.

Approval No. 162.029/37/0, Model "200 MA" 20 lb. Halon 1301 pre-engineered type fire extinguishing systems. Convenience Marine Products, 100 Commerce Avenue, S.W., Grand Rapids, MI 49503.

Approval No. 162.029/38/0, Model "258 MA" 25.8 lb. Halon 1301 pre-engineered type fire extinguishing systems. Convenience Marine Products, 100 Commerce Avenue, S.W., Grand Rapids, MI 49503.

Backfire Flame Arrester for Gasoline Engines

Approval No. 162.041/45/3, Bendix Model No. B175–23. Manufactured by Facet Enterprises, Inc., Woods Energy, 8150 N. 116th E. Avenue, Owasso, OK 74055.

Approval No. 162.041/46/3, Bendix Model No. B175–24. Manufactured by Facet Enterprises, Inc., Woods Energy, 8150 N. 116th E. Avenue, Owasso, OK 74055.

Approval No. 162.041/47/3, Bendix Model No. B175–25. Manufactured by Facet Enterprises, Inc., Woods Energy, 8150 N. 116th E. Avenue, Owasso, OK 74055.

Approval No. 162.041/48/3, Bendix Model No. B175–29. Manufactured by Facet Enterprises, Inc., Woods Energy, 8150 N. 116th E. Avenue, Owasso, OK 74055.

Approval No. 162.041/49/3, Bendix Model No. B175–30. Manufactured by Facet Enterprises, Inc., Woods Energy, 8150 N. 116th E. Avenue, Owasso, OK 74055.

Approval No. 162.041/50/3, Bendix Model No. B175–31. Manufactured by Facet Enterprises, Inc., Woods Energy, 8150 N. 116th E. Avenue, Owasso, OK 74055.

Approval No. 162.041/51/3, Bendix Model No. B175–32. Manufactured by Facet Enterprises, Inc., Woods Energy, 8150 N. 116th E. Avenue, Owasso, OK 74055.

Approval No. 162.041/52/3, Bendix Model No. B175–22A. Manufactured by Facet Enterprises, Inc., Woods Energy, 8150 N. 116th E. Avenue, Owasso, OK 74055.

Approval No. 162.041/53/3, Bendix Model No. B175–23A. Manufactured by Facet Enterprises, Inc., Woods Energy, 8150 N. 116th E. Avenue, Owasso, OK 74055.

Approval No. 162.041/54/3, Bendix Model No. B175–24A. Manufactured by Facet Enterprises, Inc., Woods Energy, 8150 N. 116th E. Avenue, Owasso, OK 74055.

Approval No. 162.041/55/3, Bendix Model No. B175–25A. Manufactured by Facet Enterprises, Inc., Woods Energy, 8150 N. 116th E. Avenue, Owasso, OK 74055.

Approval No. 162.041/56/3, Bendix Model No. B175–26A. Manufactured by Facet Enterprises, Inc., Woods Energy, 8150 N. 116th E. Avenue, Owasso, OK 74055.

Approval No. 162.041/57/3, Bendix Model No. B175–27A. Manufactured by Facet Enterprises, Inc., Woods Energy, 8150 N. 116th E. Avenue, Owasso, OK 74055.

Approval No. 162.041/59/3, Bendix Model No. B175–29A. Manufactured by Facet Enterprises, Inc., Woods Energy, 8150 N. 116th E. Avenue, Owasso, OK 74055.

Approval No. 162.041/60/3, Bendix Model No. B175–30A. Manufactured by Facet Enterprises, Inc., Woods Energy, 8150 N. 116th E. Avenue, Owasso, OK 74055.

Approval No. 162.041/61/3, Bendix Model No. B175–31A. Manufactured by Facet Enterprises, Inc., Woods Energy, 8150 N. 116th E. Avenue, Owasso, OK 74055.

Approval No. 162.041/62/3, Bendix Model No. B175–32A. Manufactured by Facet Enterprises, Inc., Woods Energy, 8150 N. 116th E. Avenue, Owasso, OK 74055.

Approval No. 162.041/63/3, Bendix Model No. B175–33A. Manufactured by Facet Enterprises, Inc., Woods Energy, 8150 N. 116th E. Avenue, Owasso, OK 74055.

Approval No. 162.041/71/3, Bendix Model No. B175–34. Manufactured by Facet Enterprises, Inc., Woods Energy, 8150 N. 116th E. Avenue, Owasso, OK 74055.

Approval No. 162.041/72/3, Bendix Model No. B175–37. Manufactured by Facet Enterprises, Inc., Woods Energy, 8150 N. 116th E. Avenue, Owasso, OK 74055.

Approval No. 162.041/73/3, Bendix Model No. B175–34A. Manufactured by Facet Enterprises, Inc., Woods Energy, 8150 N. 116th E. Avenue, Owasso, OK 74055.

Approval No. 162.041/74/3, Bendix Model No. B175–36A. Manufactured by Facet Enterprises, Inc., Woods Energy, 8150 N. 116th E. Avenue, Owasso, OK 74055.

Approval No. 162.041/75/3, Bendix Model No. B175–37A. Manufactured by Facet Enterprises, Inc., Woods Energy, 8150 N. 116th E. Avenue, Owasso, OK 74055.

Approval No. 162.041/94/2, Bendix Model No. B175–39. Manufactured by Facet Enterprises, Inc., Woods Energy, 8150 N. 116th E. Avenue, Owasso, OK 74055.

Approval No. 162.041/95/2, Bendix Model No. B175–40. Manufactured by Facet Enterprises, Inc., Woods Energy, 8150 N. 116th E. Avenue, Owasso, OK 74055.

Approval No. 162.041/98/2, Bendix Model No. B175–42. Manufactured by Facet Enterprises, Inc., Woods Energy, 8150 N. 116th E. Avenue, Owasso, OK 74055.

Approval No. 162.041/106/2, Bendix Model No. B175–44. Manufactured by Facet Enterprises, Inc., Woods Energy, 8150 N. 116th E. Avenue, Owasso, OK 74055.

Approval No. 162.041/168/0, Model 980032 backfire flame arrester. Manufactured by Outboard Marine Corporation, 3145 Central Avenue, Waukegan, IL 60085.

Approval No. 162.041/190/9, Barbron all brass and all aluminum flame arresters. Which consist of 85 models. Manufactured by Barbron Corporation, 14580 Lesure Avenue, Detroit, MI 48227.

Approval No. 162.041/195/2, Facet Type A175–64, A175–68, A175–70, A175–71, backfire flame arrester Manufactured by Facet Enterprises, Inc., Fuel Devices Division, 696 Hart Avenue, Detroit, MI 48214.

Approval No. 162.041/196/1, Facet Type A175–63 backfire flame arrester. Manufactured by Facet Enterprises, Inc., Fuel Devices Division, 696 Hart Avenue, Detroit, MI 48214.

Approval No. 162.041/197/1, Facet Type A175–65, and A175–67 backfire flame arrester. Manufactured by Facet Enterprises, Inc., Fuel Devices Division, 696 Hart Avenue, Detroit, MI 48214.

Approval No. 162.041/198/0, Barbron all brass flame arrester, which consist of 11 models. Manufactured by Barbron Corporation, 14580 Lesure Avenue, Detroit, MI 48227.

Approval No. 162.041/203/0, Barbron Models 912025, 13226895. Manufactured by Barbron Corporation, 14580 Lesure Avenue, Detroit, MI 48227.

Backfire Flame Control, Gasoline Engines; Air and Fuel Induction System

Approval No. 162.042/7/0, Suzuki DT50 powdered for in board application. Manufactured by Sea Crest Inc., 119 N.E. 1st Street, Little Falls, MN 56345.

Oily Water Separators

Approval No. 162.050/1006/0, Sarex Model 5 GPM/OWS 1.14m³/hr. Manufactured by Separation and Recovery Systems, 16901 Armstrong Ave., Irvine, CA 92714.

Approval No. 162.050/1037/1, Model type HSN–0.25 F consisting of a 1st stage parallel plate separator. Manufactured by Heishin Pump Works Co., LTD, 572 Furuta, Hauma-Cho, Kako-Gun Hyogo-Pref, 673–01, Japan.

Approval No. 162.050/1038/1, Model type HSN–0.5 F consisting of a 1st stage parallel plate separator. Manufactured by Heishin Pump Works Co., LTD, 572 Furuta, Hauma-Cho, Kako-Gun Hyogo-Pref, 673–01, Japan.

Approval No. 162.050/1039/1, Model type HSN–1.0 D consisting of a 1st stage parallel plate separator. Manufactured by Heishin Pump Works Co., LTD, 572 Furuta, Hauma-Cho, Kako-Gun Hyogo-Pref, 673–01, Japan.

Approval No. 162.050/1040/1, Model type HSN–2.0 D consisting of a 1st stage parallel plate separator. Manufactured by Heishin Pump Works Co., LTD, 572 Furuta, Hauma-Cho, Kako-Gun Hyogo-Pref, 673–01, Japan.

Approval No. 162.050/1041/1, Model type HSN–3.0 D consisting of a 1st stage parallel plate separator. Manufactured by Heishin Pump Works Co., LTD, 572 Furuta, Hauma-Cho, Kako-Gun Hyogo-Pref, 673–01, Japan.

Approval No. 162.050/1042/1, Model type HSN–5.0 D consisting of a 1st stage parallel plate separator. Manufactured by Heishin Pump Works Co., LTD, 572 Furuta, Hauma-Cho, Kako-Gun Hyogo-Pref, 673–01, Japan.

Approval No. 162.050/1043/1, Model type HSN–10.0 D consisting of a 1st stage parallel plate separator. Manufactured by Heishin Pump Works

Co., LTD, 572 Furuta, Hauma-Cho, Kako-Gun Hyogo-Pref, 673–01, Japan.

Approval No. 162.050/1044/1, Model type HSN–0.25 D consisting of a 1st stage parallel plate separator. Manufactured by Heishin Pump Works Co., LTD, 572 Furuta, Hauma-Cho, Kako-Gun Hyogo-Pref, 673–01, Japan.

Approval No. 162.050/1045/1, Model type HSN–0.5 D consisting of a 1st stage parallel plate separator. Manufactured by Heishin Pump Works Co., LTD, 572 Furuta, Hauma-Cho, Kako-Gun Hyogo-Pref, 673–01, Japan.

Approval No. 162.050/1046/1, Model type HSN–1.0 F consisting of a 1st stage parallel plate separator. Manufactured by Heishin Pump Works Co., LTD, 572 Furuta, Hauma-Cho, Kako-Gun Hyogo-Pref, 673–01, Japan.

Approval No. 162.050/1047/1, Model type HSN–2.0 F consisting of a 1st stage parallel plate separator. Manufactured by Heishin Pump Works Co., LTD, 572 Furuta, Hauma-Cho, Kako-Gun Hyogo-Pref, 673–01, Japan.

Approval No. 162.050/1048/1, Model type HSN–3.0 F consisting of a 1st stage parallel plate separator. Manufactured by Heishin Pump Works Co., LTD, 572 Furuta, Hauma-Cho, Kako-Gun Hyogo-Pref, 673–01, Japan.

Approval No. 162.050/1049/1, Model type HSN–5.0 F consisting of a 1st stage parallel plate separator. Manufactured by Heishin Pump Works Co., LTD, 572 Furuta, Hauma-Cho, Kako-Gun Hyogo-Pref, 673–01, Japan.

Approval No. 162.050/1050/1, Model type HSN–10.0 F consisting of a 1st stage parallel plate separator. Manufactured by Heishin Pump Works Co., LTD, 572 Furuta, Hauma-Cho, Kako-Gun Hyogo-Pref, 673–01, Japan.

Approval No. 162.050/1092/1, Model S1–08 consisting of a single tank with several "zones". Manufactured by Sigma Treatment Systems, Merry Meadows, PD1, Box 70, Chester Springs, PA 19425.

Approval No. 162.050/1107/0, COMYN 1 ton per hour separator. Manufactured by Alexander Esplen & Co., LTD, 107 Duke House, Liverpool L1 4JR, ENGLAND.

Approval No. 162.050/1108/0, COMYN 2.5 ton per hour separator. Manufactured by Alexander Esplen & Co., LTD, 107 Duke House, Liverpool L1 4JR, ENGLAND.

Approval No. 162.050/1109/0, COMYN 5 ton per hour separator. Manufactured by Alexander Esplen & Co., LTD, 107 Duke House, Liverpool L1 4JR, ENGLAND.

Approval No. 162.050/1110/0, Pace™ S–1 Oil Water Separator with primary tank mounted on a steel skid. Manufactured by St. Louis Ship, 611 East Marceau, St. Louis, MO 63111.

Approval No. 162.050/1111/0, Pace™ S–2 Oil Water Separator with primary tank mounted on a steel skid. Manufactured by St. Louis Ship, 611 East Marceau, St. Louis, MO 63111.

Approval No. 162.050/1112/0, Pace™ S–3 Oil Water Separator with primary tank mounted on a steel skid. Manufactured by St. Louis Ship, 611 East Marceau, St. Louis, MO 63111.

Approval No. 162.050/1113/0, Pace™ S–4 Oil Water Separator with primary tank mounted on a steel skid. Manufactured by St. Louis Ship, 611 East Marceau, St. Louis, MO 63111.

Approval No. 162.050/1114/0, Pace™ S–5 Oil Water Separator with primary tank mounted on a steel skid. Manufactured by St. Louis Ship, 611 East Marceau, St. Louis, MO 63111.

Approval No. 162.050/1115/0, Facet Model 3–OWS–300. Manufactured by Facet Enterprises Inc., P.O. Box 50096, Tulsa, Oklahoma 74150.

Approval No. 162.050/1116/0, Facet Model 1–OWS–300. Manufactured by Facet Enterprises Inc., P.O. Box 50096, Tulsa, Oklahoma 74150.

Approval No. 162.050/1117/0, Hamworthy HS 1 T/H oil water separators. Manufactured by Hamworthy Engineering Ltd., Fleets Corner, Poole, Dorset BH 17 7LA, ENGLAND.

Approval No. 162.050/1118/0, Hamworthy HS 2.5 T/H oil water separators. Manufactured by Hamworthy Engineering Ltd., Fleets Corner, Poole, Dorset BH 17 7LA, ENGLAND.

Approval No. 162.050/1119/0, Hamworthy HS 5 T/H oil water separators. Manufactured by Hamworthy Engineering Ltd., Fleets Corner, Poole, Dorset BH 17 7LA, ENGLAND.

Approval No. 162.050/1120/0, Model MSS 1.5, 0.34 M^3/HR. Manufactured by Hyde Products, 810 Sharon Drive, Cleveland, OH 44145.

Approval No. 162.050/1121/0, Model MSS 2.2, 0.5 M^3/HR. Manufactured by Hyde Products, 810 Sharon Drive, Cleveland, OH 44145.

Approval No. 162.050/1122/0, Model MSS 3.0, 0.68 M^3/HR. Manufactured by Hyde Products, 810 Sharon Drive, Cleveland, OH 44145.

Approval No. 162.050/1123/0, Model MSS 4.4, 1.0 M^3/HR. Manufactured by Hyde Products, 810 Sharon Drive, Cleveland, OH 44145.

Approval No. 162.050/1124/0, Model MSS 5.0, 1.13 M^3/HR. Manufactured by Hyde Products, 810 Sharon Drive, Cleveland, OH 44145.

Approval No. 162.050/1125/0, Model MSS 8.8, 2.00 M^3/HR. Manufactured by Hyde Products, 810 Sharon Drive, Cleveland, OH 44145.

Approval No. 162.050/1126/0, Model MSS 10.0, 2.27 M^3/HR. Manufactured by Hyde Products, 810 Sharon Drive, Cleveland, OH 44145.

Approval No. 162.050/1127/0, Model MSS 176, 4.0 M^3/HR. Manufactured by Hyde Products, 810 Sharon Drive, Cleveland, OH 44145.

Approval No. 162.050/1128/0, Model MSS 200, 4.52 M^3/HR. Manufactured by Hyde Products, 810 Sharon Drive, Cleveland, OH 44145.

Approval No. 162.050/1129/0, Red Fox OWS–5. Manufactured by Red Fox Industries, Inc., P.O. Drawer 640, New Iberia, LA 70560.

Approval No. 162.050/1130/0, Facet Model 5–OWS–25. Manufactured by Facet Enterprises Inc., P.O. Box 50096, Tulsa, Oklahoma 74150.

Approval No. 162.050/1131/0, Facet Model OWS–27.5/121. Manufactured by Facet Enterprises Inc., P.O. Box 50096, Tulsa, Oklahoma 74150.

Approval No. 162.050/1132/0, Facet Model OWS–30/132. Manufactured by Facet Enterprises Inc., P.O. Box 50096, Tulsa, Oklahoma 74150.

Approval No. 162.050/1133/0, Nelson Industries 2 stage 2.5 GPM. Manufactured by Nelson Industries, Inc., P.O. Box 428, Stoughton, WI 53589.

Approval No. 162.050/1138/0, Heli-Sep Model 500 2.2GPM. Manufactured by World Water Systems, Inc., 340 E. First Street, P.O. Box 3427, Tustin, CA 92681.

Approval No. 162.050/1139/0, Heli-Sep Model 1000 4.4GPM. Manufactured by World Water Systems, Inc., 340 E. First Street, P.O. Box 3427, Tustin, CA 92681.

Approval No. 162.050/1140/0, Heli-Sep Model 2000 8.8GPM. Manufactured by World Water Systems, Inc., 340 E. First Street, P.O. Box 3427, Tustin, CA 92681.

Approval No. 162.050/1141/0, Heli-Sep Model 2500 11.0GPM. Manufactured by World Water Systems, Inc., 340 E. First Street, P.O. Box 3427, Tustin, CA 92681.

Approval No. 162.050/1142/0, Heli-Sep Model 5000 22.0GPM. Manufactured by World Water Systems, Inc., 340 E. First Street, P.O. Box 3427, Tustin, CA 92681.

Approval No. 162.050/3010/0, Fellow Kogyo Co. LTD bilge alarm model focas 1500A consisting of a sensing unit. Manufactured by Fellow Kogyo Co., LTD, 2–6, 5-Chome, Arakawa, Aradawa-Ku, Tokyo, 16 Japan.

Approval No. 162.050/3013/0, Oil Sentry Bilge Alarm, Model BA–200. Manufactured by Biospherics, Inc., 4928 Wyaconda Rd., Rockville, MD 20852.

Approval No. 162.050/3015/0, Shaban Manufacturing, Inc., Type BA–100 bilge alarm. Manufactured by World Water

Systems, Inc., 340 E. First Street, P.O. Box 3427, Tustin, CA 92681.

Approval No. 162.050/5002/0, Salwico Oil Pollution Monitor. Manufactured by Salen & Wicander Akriebalag, P.O. Box 1122, S–171 22 Solna SWEDEN.

Approval No. 162.050/5010/0, Model ODME–S.663 Cargo Monitor. Manufactured by SERES, RUE ALBERT EINSTEIN, Z.I. d'Aix-les Miles, les Miles CEDEX 13763 FRANCE.

Approval No. 162.050/8014/0, Model BWAM S.646 Bilge Alarm. Manufactured by SERES, RUE ALBERT EINSTEIN, Z.I. d'Aix-les Miles, les Miles CEDEX 13763 FRANCE.

Approval No. 162.050/9006/0, Aqualert, Bilge Monitor. Manufactured by Bull & Roberts, 785 Central Ave., Murray Hill, NJ 07974.

Approval No. 162.050/9007/0, Model ODME–S.663 bilge monitor. Manufactured by SERES, RUE ALBERT EINSTEIN, Z.I. d'Aix-les Miles, les Miles CEDEX 13763 FRANCE.

Oil Water Interface Detector

Approval No. 162.055/8002/0, Model UTI–82, manufactured by Tank Systems A.S., President Haibitz Gate 22, (OSLO2-Norway.

Pilot Hoist

Approval No. 163.002/2/0, Electrically powered pilot hoist models PHL–EE–T and PHL–EE–S. Manufactured by Chuo Kogyo Ltd., No. 80 Yaraicho Shinjuku-Ku, Tokyo, Japan

Pilot Ladder

Approval No. 163.003/13/0, Pilot ladder, wooden steps, bottom four steps molded polyurethane plastic, dacron-polyester polypropylene end rope suspension members. Manufactured by Sidewinder International Ltd., P.O. Drawer 5007, Wilmington, NC 28403.

Approval No. 163.003/12/0, Adonic II Pilot ladder, manufactured by Apollo Marine Specialties, Inc., 3914 Royal St., New Orleans, LA 70117.

Approval No. 164.006/60/0, "Hubbelite" magnesite deck covering. Manufactured by Allegheny Installations, Inc., William Flynn Highway, Route 8, P.O. Box 29, Allison Park, PA 15101.

Approval No. 164.006/61/0, "Insulite I" oxychlorite cement deck covering. E.H. O'Neill Company, Inc., 5515 Belair Road, Baltimore, Md. 21206.

Structural Insulation

Approval No. 164.007/56/0, "FBX CG Felt" mineral wool batt. Manufactured by Fibrex Inc., P.O. Box 1148, Aurora, IL 60507.

Approval No. 164.007/59/0, "Fiberfrax Durablanket" ceramic fiber type. Manufactured by Carborundum Company, Insulation Division, P.O. Box 808, Niagara Falls, NY 14302.

Approval No. 164.007/60/0, "Kaowool Blanket" ceramic fiber type. Manufactured by Babcock & Wilcox, Insulating Product Division, P.O. Box 923, 2102 Old Savannah Road, Augusta, GA 30906.

Approval No. 164.007/61/0, "Sponge with Foil" foil-faced ceramic insulation. Manufactured by Babcock & Wilcox, Insulating Products Division, P.O. Box 923, 2102 Old Savannah Road, Augusta, GA 30906.

Approval No. 164.007/62/0, "Cafcote 280" mineral fiber spray type. Manufactured by United States Mineral Products Co., Stanhope, NJ 07874.

Approval No. 164.007/63/0, "Cafcote 800" mineral fiber spray type. Manufactured by United States Mineral Products Co., Stanhope, NJ 07874.

Bulkhead Panels

Approval No. 164.008/94/1, "Marinite M" asbestos free calcium silicate composite type panel. Manufactured by Johns-Manville Sales Corp., Ken-Caryl Ranch, Denver, CO 80217.

Approval No. 164.008/113/0, "Thermolite 650 SA" bulkhead panels. Manufactured by Asberit, S.A., P.O. Box 716, Rio De Janeiro, Brazil.

Approval No. 164.008/114/0, "Thermax SN" bulkhead panels. Manufactured by Isovolta A.G., Wiener Neudorf, Austria.

Approval No. 164.008/115/0, "Unimet B–1" steel-faced gypsum bulkhead panels. Manufactured by Jamestown Metal Marine Sales, Inc., Corporate Plaza, Suite 400, 4710 Northwest Avenue, Boca Raton, FL 33431.

Approval No. 164.008/116/0, "Unimet B–1" steel-faced gypsum bulkhead panals. Manufactured by Jamestown Metal Marine Sales, Inc., Corporate Plaza, Suite 400, 4710 Northwest Avenue, Boca Raton, FL 33431.

Approval No. 164.008/119/0, "Navalite N" bulkhead panels. Manufactured by Dansk Etermit-Fabrik A/S, Sohngaardsholmsvey 2, P.O. Box 763, DK–9100 Aslborg, DENMARK.

Noncombustible Material

Approval No. 164.009/78/0, "Foster Insulfas Adhesive 81-15", composition type of noncombustible material. Manufactured by H.B. Fuller Company, P.O. Box 625, Springhouse, PA 19477.

Approval No. 164.009/120/1, "Fiberglas Hull Board N3A", fibrous glass insulation board type material. Manufactured by Owens-Corning Fiberglas Corp., 900 17th Street, N.W., Washington, DC 20006.

Approval No. 164.009/163/0, "Thermo-12" pipe and block insulation Manufactured by Johns-Manville Sales Corporation, Denver Co 80217.

Approval No. 164.009/165/2, "Flexible Hull Insulation", fibrous glass type noncombustible material. Manufactured by Owens-Corning Fiberglas Corp., 900 17th Street N.W., Washington, DC 20006.

Approval No. 164.009/166/0, J.M. N.B.R. 375 Cement, noncombustible material. Manufactured by Johns-Manville Sales Corp., 1600 Wilson Blvd., Suite 705, Arlington, VA 22209.

Approval No. 164.009/167/0, J.M. N.B.R. 460 Cement, noncombustible material. Manufactured by Johns-Manville Sales Corp., 1600 Wilson Blvd., Suite 705, Arlington, VA 22209.

Approval No. 164.009/205/0, No. 703 aluminum foil faced fiberglass insulation type noncombustible material. Manufactured by Hopeman Brother, Inc., P.O. Box 820, Waynesboro, VA 22980.

Approval No. 164.009/206/0, No. 707 aluminum foil faced fiberglass insulation type noncombustible material. Manufactured by Hopeman Brother, Inc., P.O. Box 820, Waynesboro, VA 22980.

Approval No. 164.009/207/0, No. 708 aluminum foil faced fiberglass insulation type noncombustible material. Manufactured by Hopeman Brother, Inc., P.O. Box 820, Waynesboro, VA 22980.

Approval No. 164.009/210/0, "Ecomax 335", mineral wool type noncombustible material. Manufactured by Rockwool Ab, Fack 615, S–541 01 Skovde, Sweden.

Approval No. 164.009/212/0, Conwed Type C61, ceramic panels. Manufactured by Conwed corporation, 332 Minnesota Street, P.O. Box 43237, St. Paul, MN 55164.

Approval No. 164.009/2013/0, "Type 850 Snap-on", fiberglass pipe insulation. Manufactured by Certain-Teed Products Corp., Old Route 202, Eagle School Rd., Valley Forge, PA 19481.

Approval No. 164.009/214/0, "Elevated Temperature Service Board", fiberglass hullboard. Manufactured by Knauf Fiberglass Gmbh, 240 Elizabeth Street, Selbyville, IN 46176.

Approval No. 164.009/215/0, "Ceramaguard" ceramic ceiling tile. Manufactured by Armstrong World Industries, Inc., 2500 Columbia Avenue, Lancaster, PA 17604.

Approval No. 164.009/216/0, ASK Rock Fine Board—N, No. 80 rockwool insulation board. Manufactured by Asahi Asbestos Co., Ltd., 10–6, 7-Chome, Ginza, Chuo-Ku, Tokyo 104 Japan.

Approval No. 164.009/265/0, "Utility blanket, NO. 24", fiberglass Blankets.

Manufactured by CertainTeed Corporation, P.O. Box 1100, 1400 Union Meeting Blvd., Blue Bell, PA 19422.

Approval No. 164.009/266/0, "High Temperature Blanket, Type II", fiberglass blankets. Manufactured by CertainTeed Corporation, P.O. Box 1100, 1400 Union Meeting Blvd., Blue Bell, PA 19422.

Approval No. 164.009/268/0, Rockwool Marine Pipe Sections 115 and 150, mineral wool pipe covering. Manufactured by Rockwool A/S, DK–2640 Hedehusen, DENMARK.

Approval No. 164.009/269/0, Rockwool Marine Lamella Mat 32/Alu, mineral wool pipe covering. Manufactured by Rockwool A/S, DK–2640 Hedehusen, DENMARK.

Approval No. 164.009/270/0, "Hi-Wool" Types 40 and 50 mineral wool. Manufactured by Keumkang Limited, 485–1, Sinsa-Dong, Kangnam-Ku, Seoul, Korea.

Interior finish

Approval No. 164.012/37/0, Type FR Bk 50 FORMICA laminate. Manufactured by Formica Corporation, 120 E. 4th Street, Cincinnati, OH 45202.

Approval No. 164.012/38/0, "Stkle 332/9466" glass cloth. Manufactured by Owens-Corning Fiberglas Corp., 900 17th Street NW., Washington, DC 20006.

Approval No. 164.012/39/0, Style X–547 and X–630 fabrics. Manufactured by W.S. Libbey Company, #1 Mill Street, Lewiston, Maine 04240.

Approval No. 164.012/40/0, "Melanitto NVA" and "NP" decorative melamine laminates. Manufactured by Nitto Boseki, Co,. Ltd., 8–1, Yaesu 2 Chome, Tokyo, Japan.

Approval No. 164.012/75/0, Type "United Duct Sealer" coating. Manufactured by United Mc Gill Corp., United Steet Metal Div., 2000 East Broadway, Westerville, OH 43081.

Approval No. 164.012/76/0, Style 3732–1261 fiberglass cloth facing. Manufactured by International Multi Services, 162 Hazeltine Ave., Jamestown, NY 14701.

Approval No. 164.012/77/0, Types "Lightweight", "Lightweight T", "Mediumweight", and "Mediumweight T" vinyl wall coverings. Manufactured by General Tire & Rubber Company, P.O. Box 191, Columbus, MS 39701.

Approval No. 164.012/78/0, Type 606 plastic laminate. Manufactured by Ralph Wilson Plastic Co., 600 General Bruce Drive, Temple, Tx 76501–5199.

Approval No No. 164.012/79/0, "590 Lo-Perm" general purpose coating. Manufactured by Marathon Industries, Inc., Delaware Ave and Sylon Blvd., Hainesport, NJ 08036.

Clyude T. Lusk, Jr.,

Rear Adminal, U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

March 4, 1985.

[FR Doc. 85–5505 Filed 3–6–85; 8:45 a.m.]

BILLING CODE 4910–14–M

Federal Highway Administration

Enrironmental Impact Statement; Cocke County, TN

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed project in Cocke County, Tennessee.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas J. Ptak, Division Administrator, Federal Highway Administration, Federal Building, U.S. Courthouse, 801 Broadway, Suite A–926, Nashville, Tennessee 37203, telephone (615) 251–5394.

SUPPLEMENTAL INFORMATION: The FHWA in cooperation with the Tennessee Department of Transportation will prepare an environmental impact statement (EIS) on a proposal to construct a section of State Route 35 in Cocke County, Tennessee. The proposed imporovement would involve the construction of a two-lane facility on new location generally parelling the existing location from Good Hope Road to the Greene County Line. The proposed improvement would have a length of approximately 9 miles. Improvements to the corridor are considered necessary to provide for the existing and projected traffic demands.

Options under consideration include (1) taking no action; (2) postponement; (3) reduced facility design; and (4) constructing a two-lane roadway on new locaton. New alternatives to either side of the existing facility are under consideration.

Letters describing the proposed action and soliciting comments were sent to appropriate Federal, State and local agencies in 1984. A public hearing will be held at a future date. Public notice will be given of the time and place of this hearing. The draft EIS will be available for public and agency review and comment. These activities are providing input regarding the scope of the EIS.

To insure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and suggestions concerning the proposed action and the EIS should be directed to the FHWA at the address provided above.

Issued on: February 27, 1985.

Thomas J. Ptak,

Division Administrator, Nashville, Tennessee.

[FR Doc. 85–5470 Filed 3–6–85; 8:45 am]

BILLING CODE 4910–22–M

Federal Railroad Administration

Petitions for Exemption or Waiver of Compliance; Port Authorities of New York and New Jersey, et al.

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received requests for an exemption from or waiver of compliance with certain requirements of its safety standards. The individual petitions are described below, including the party seeking relief, the regulatory provisions involved, and the nature of the relief being requested.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number RST–84–21) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590. Communications received before April 22, 1985 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590.

The individual petitions seeking an exemption or waiver of compliance are as follows:

The Port Authority of New York and New Jersey

(Waiver Petition Docket Number LI–84–6)

The Port Authority of New York and New Jersey (PATH) seeks a waiver of compliance with certain provisions 49 CFR Part 229, Locomotive Safety Standards, for 289 Multiple Operated Electric locomotives.

PATH operates trains in four passenger services between four major terminals and nine intermediate stations in New York and New Jersey 24 hours a day. There are no grade crossings and one-half of the operations is in tunnels below ground level. PATH seeks a permanent waiver of compliance with § 229.115(c). Section 229.115(c) requires "Effective January 1, 1981, all new locomotives capable of being used in road service shall be equipped with a device that detects wheel slip/slide for each powered axle when it is under power. The device shall produce an audible or visual alarm in the cab." PATH does not believe this rule should be applied to its equipment because there is no accident data to support a contention that the rule should apply to MU type locomotives. In addition, there is no extra capacity in the automatic coupler circuits to accommodate a wheel slip/slide train line wire.

PATH also seeks a permanent waiver of compliance with § 229.125(a). Section 229.125(a) requires "Each lead locomotive used in road service shall have a headlight that produces at least 200,000 candela." The maximum attainable speed for PATH cars is approximately 57 mph, with less than 55 mph set for the majority. The cars are light in weight and the stopping distance at 55 mph is approximately 825 feet. Comparable equipment used on other transit operations has headlights with candela ratings of 56,000 to 100,000. PATH has two 100,000 candela headlights and two of 33,000 candela or a total of 266,000 candela. If one 100,000 candela light is inoperative, they want to be able to operate until such time as the headlight could be replaced.

New York Cross Harbor Railroad
(Waiver Petition Docket Number LI–84–7)

The New York Cross Harbor Railroad (NYCH) seeks a waiver of compliance with certain provisions 49 CFR Part 229, Locomotive Safety Standards, for one locomotive.

NYCH operates a locomotive in a confined area within defined terminal yards, some completely fenced. NYCH interchanges freight with Conrail, mainly via carfloat operation. The float bridges rise and fall with the tide, which tears off the end plates while switching between carfloat bridge and land.

Section 229.123 requires "Each lead locomotive shall be equipped with an end plate that extends across both rails, a pilot, or a snowplow. The minimum clearance above the rail of the pilot, snowplow or end plate shall be 3 inches, and the maximum clearance 6 inches."

NYCH seeks a permanent waiver from this provision.

Missouri Pacific Railroad Company
(Waiver Petition Docket Number LI–84–9)

The Missouri Pacific Railroad Company (MP) seeks a waiver of compliance on behalf of Union Carbide Corporation, with certain provisions of 49 CFR 229.23 of the Locomotive Safety Standards for two locomotives.

Union Carbide leases these locomotives from Relco Locomotive, Inc., and has not had any problem performing inspections without a pit. Union Carbide believes the cost to construct a pit is too expensive.

Union Carbide operates over 18.5 miles of track within their facility located in North Seadrift, Texas, and over a connecting segment of MP trackage. There are no communities, cities, towns or villages through which these locomotives operate. Union Carbide primarily performs its own intra-plant switching but does interchange cars with the MP at specified locations. When operating beyond the confines of the plant, these locomotives cross a State highway twice a day.

E. I. Du Pont De Nemours and Company
(Waiver Petition Docket Number SA–84–16)

E. I. Du Pont De Nemours and Company (DuPont) seeks a waiver of compliance with certain provisions of the safety appliance standards 49 CFR Part 231, section 8(b) for 25 aluminum tank cars haviang full length underframes. Section 231.8(b) specifies that cars of this type must have continuous running boards along both sides and ends of the car or two running boards full length, one on each side. The petitioner seeks authority to equip these 25 tank cars with a safety appliance arrangement as set forth in 49 CFR 231.21. Section 231.21 was formulated specifically for tank cars without underframes and does not require running boards. The petitioner states that running boards would serve no useful purpose on these tank cars since train crews no longer use running boards to traverse the train and these walkways are not used by loading or unloading personnel. The petitioner also states that running boards increase construction and maintenance costs and that side safety railings as required in 49 CFR 231.21(e) would provide better safety for personnel at ground level particularly for persons walking near the wheel area.

Issued in Washington, D.C. on March 1, 1985.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 85–5459 Filed 3–6–85; 8:45 am]

BILLING CODE 4910–06–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: March 1, 1985.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB (listed by submitting bureau(s)), for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of these submissions may be obtained by calling the Treasury Bureau Clearance Officer listed under each bureau. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of each bureau's listing and to the Treasury Department Clearance Officer, Room 7221, 1201 Constitution Avenue, NW., Washington, D.C. 20220.

Internal Revenue Service

OMB No.: 1545–0032
Form No.: IRS Forms 941NMI and 941aNMI
Type of Review: Revision
Title: Employer's Quarterly Return, Consolidation Sheet for Schedule A of Form 941NMI, Report of Wages Taxable Under the NMISSRS
Clearance Officer: Garrick Shear (202) 568–6150, Room 5571, 1111 Constitution Avenue, NW., Washington, D.C. 20224
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

Office of the Secretary

OMB No.: 1505–0017
Form No.: BC/BC(SA)
Type of Review: Extension
Title: Reporting Bank's Own Claims, and Selected Claims of Broker or Dealer, to "Foreigners," Payable in Dollars
Clearance Officer: Ira Schoen (202) 535–6020, Office of the Secretary, Room 7221, ICC Building, 1201 Constitution Avenue, NW., Washington, D.C. 20220

OMB Reviewer: Judy McIntosh (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

Joseph F. Maty,

Departmental Reports, Management Office.

[FR Doc. 85–5427 Filed 3–6–85; 8:45 am]

BILLING CODE 4810-25-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

ACTION: Modification of Notice.

SUMMARY: The United States Information Agency is modifying a notice found at 50 FR 6423 (February 15, 1985) regarding immunity from judicial seizure for the objects in the exhibit "The Sculpture of India" by expanding the list to include six additional works of art.

EFFECTIVE DATE: The modification is effective on the date of publication in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: John Lindbury, Office of the General Counsel, United States Information Agency, 301–4th Street, S.W., Washington, D.C. 20547.

SUPPLEMENTARY INFORMATION: Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation of Authority from the Director, USIA (47 FR 57600, December 27, 1982), I hereby determine that the additional objects in the exhibit "The Sculpture of India" (included in the list[1] filed as a part of this determination) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to a loan agreement between the National Gallery of Art and foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the National Gallery of Art, beginning on or about Mary 3, 1985, to on or about September 2, 1985, and at the Art Institute of Chicago, Chicago, Illinois, beginning on or about October 19, 1985, to on or about January 5, 1986, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

Dated: March 4, 1985.

Thomas E. Harvey,

General Counsel and Congressional Liaison.

[FR Doc. 85–5530 Filed 3–6–85; 8:45 am]

BILLING CODE 8230-01-M

[1] An itemized list of objects included in the exhibit is filed as part of the original document.

VETERANS ADMINISTRATION

Information Collections Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

SUMMARY: The Veterans Administration has submitted to OMB for review the following information collections under the provisions of the Paperwork Reduction Act (44 U.S.C. ch. 35). These information collections are contained in a final regulation regarding loan guaranty, amending the VA's condominium regulations (38 CFR 36.4356, 36.4357, 36.4358, 36.4359, 36.4360 and 36.4360a), published in the **Federal Register** on February 13, 1985 at 50 FR 5975 to 5982.

ADDRESSES: Copies of the information collections and supporting documents may be obtained from Nancy McCoy, Paperwork Management and Regulations Service (731), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 389–2308. Comments and questions about the information collections should be directed to the VA's OMB Desk Officer, Dick Eisinger, Office of Management and Budget, 726 Jackson Place, NW, Washington, DC 20503, (202) 395–7316.

DATES: Comments on the information collections should be directed to the OMB Desk Officer within 50 days of this notice.

Dated: March 1, 1985.

By direction of the Administrator.

Dominick Onorato,

Associate Deputy Administrator for Information Resources Management.

Information Collections Contained in Final Regulations

1. Requesting department: Department of Veterans Benefit, VA.

2. Subject: Information collected from developers of condominium projects to aid VA in determining legality of project under State laws and to determine reasonable value of individual units within the project.

3. Agency form number: Information not collected on form.

4. How often the information will be collected: On occasion.

5. Who will be required or asked to report: Individuals or households, and businesses or other for profit entities.

6. Estimate of the total number of responses: 2,600.

7. Estimate of the total number of hours needed to reply: 2,600.

These information collection requirements are under OMB review pursuant to section 3504(h), Pub. L. 96–511.

[FR Doc. 85–5507 Filed 3–6–85; 8:45 am]

BILLING CODE 8320-01-M

VOL 50 ISS 45 MR 7 1985 UMI

Sunshine Act Meetings

Federal Register
Vol. 50, No. 45
Thursday, March 7, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, March 12, 1985 10:00 a.m.

PLACE: 1325 K Street NW., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance. Litigation. Audits. Personnel.

DATE AND TIME: Thursday, March 14, 1985, 10:00 a.m.

PLACE: 1325 K Street, NW., Washington, D.C. (Fifth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of dates of future meetings
Correction and approval of minutes
Eligibility for Candidates to receive Presidential primary matching funds
Draft Advisory Opinion # 1985-7—Robert O. Tiernan and David E. Osterhout, on behalf of Anheuser-Busch Companies, Inc.
Draft Advisory Opinion # 1985-9—James H. Quillan, Member of Congress
Routine administrative matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, 202-523-4065.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 85-5587 Filed 3-5-85; 2:20 pm]

BILLING CODE 6715-01-M

2

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of March 11, 1985.

A closed meeting will be held on Tuesday, March 12, 1985, at 2:30 p.m. An open meeting will be held on Thursday, March 14, 1985, at 4:00 p.m., in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meeting may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10).

Commissioner Marinaccio, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, March 12, 1985, at 2:30 p.m., will be:

Formal orders of investigation.
Institution of administrative proceedings of an enforcement nature.
Institution of injunctive actions.
Litigation matter.

The subject matter of the open meeting scheduled for Thursday, March 14, 1984, at 4:00 p.m., will be:

1. Consideration of whether to propose for public comment amendments to rule 6e-2 under the Investment Company Act of 1940. The amendments would conform certain parts of Rule 6e-2, the exemptive rule for insurance company separate accounts issuing scheduled premium variable life insurance, to Rule 6e-3(T), the exemptive rule for separate accounts issuing flexible premium variable life insurance. For further information, please contact Robert E. Plaza at (202) 272-2822.

2. Consideration of whether to propose for public comment (i) new Form N-14 for the registration of securities issued by registered management investment companies and business development companies in business combination transactions and (ii) certain related rules for the filing and processing of the proposed form. For further information, please contact Mary S. Podesta at (202) 272-2107.

3. Consideration of whether to propose for public comment Rule 205-3 under Investment Advisers Act of 1940 which would permit registered investment advisers to charge their clients performance fees under certain conditions. For further information, please contact Forrest R. Foss at (202) 272-7318.

4. Consideration of an application filed by Alleghany Corporation ("Applicant"), requesting an order pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act") temporarily exempting Applicant until June 30, 1985, from most of the provisions of the Act. The Applicant has also requested that, pending final action on its application, the Commission issue an interim temporary order granting the same exemptive relief pending a final determination on the application by the Commission. For further information, please contact Curtis Hilliard at (202) 272-2799.

5. Consideration of whether to declare the Americus Trust for Exxon Shares effective. On June 7, 1984, the Commission published for public comment a release soliciting written comments on issues raised by the Americus Trust. These offerings relate to units of a unit investment trust series whose portfolios would consist of common stock of major industrial issuers, and two separable components of such units. In addition, the Commission will consider whether to approve a proposed rule change of the American Stock Exchange establishing listing standards for Americus Trust type securities. For further information, please contact Joseph V. Del Raso at (202) 272-7317.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any matters have been added, deleted or postponed, please contact: Alan Dye at (202) 272-2014.

John Wheeler,

Secretary.

[FR Doc. 85-5565 Filed 3-5-85; 12:21 pm]

BILLING CODE 8010-01-M

3

SECURITIES AND EXCHANGE COMMISSION

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: (50 FR 7264 2/21/85.)

STATUS: Closed/open meeting.

PLACE: 450 Fifth Street, NW., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Wednesday, February 19, 1985.

CHANGE IN THE MEETING: Additional items/deletion.

A closed meeting scheduled for Tuesday, February 27, 1985, at 10:00 a.m. was changed to 3:30 p.m. and the following additional items were considered.

Regulatory matter regarding financial institution.
Personnel matter.

The following open item was not considered at an open meeting scheduled for Thursday, February 28, 1985, at 2:30 p.m.

Consideration of the General Counsel report on the Commission's Bankruptcy Program.

In December 1983 the Commission considered and adopted a report on the Commission's bankruptcy program prepared by Commissioner Longstreth in which he recommended changes to the Commission's approach to its statutory responsibilities under the Bankruptcy Code to participate in reorganization cases on behalf of public investors. At that time, the Commission directed the General Counsel to prepare a report with recommendations after one year's experience in administering the changed program. The General Counsel's report requests the Commission to adopt a series of guidelines to direct the staff in the exercise of the Commission's statutory responsibilities under the Bankruptcy Code as special advisor to the courts in reorganization cases and its responsibilities under the federal securities laws to enforce those laws against debtors undergoing reorganization. For further information, please contact Michael A. Berman at (202) 272–2498.

Chairman Shad and Commissioners Cox, Marinaccio and Peters determined that Commission business required the above changes and that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Bruce Kohn at, (202) 272–3195.

John Wheeler,

Secretary.

March 1, 1985.

[FR Doc. 85–5573 Filed 3–5–85; 12:26 pm]

BILLING CODE 8010–01–M

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federal register

Thursday
March 7, 1985

Part II

Environmental Protection Agency

40 CFR Part 122

National Pollutant Discharge Elimination System Permit Regulations; Modification of Application Deadline and Testing Requirements for Storm Water Point Sources; Proposed Rules

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 122

[OW-FRL-2779-6]

National Pollutant Discharge Elimination System Permit Regulations; Modification of Application Deadline and Testing Requirements for Storm Water Point Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: On September 26, 1984, the Environmental Protection Agency published final regulations (49 FR 37998) that addressed several issues concerning the National Pollutant Discharge Elimination System (NPDES) program administered under the Clean Water Act. One aspect of those amended rules concerned the regulation of point sources of storm water runoff. The final rule defined the scope of NPDES permit program coverage of storm water discharges and adopted a two-tiered application process for storm water point sources.

The final storm water regulations generated considerable post-promulgation comment. The major concerns raised were the difficulty of complying with the April 26, 1985 deadline for application submittals due to winter weather conditions and the size of the task of identifying, sampling and testing storm water point sources.

Today's proposed rule, in response to these concerns, leaves the substantive coverage of the September 26 regulation intact, but proposes two changes in the application process. First, the deadline for submission of application Form 1 for all storm water point sources is proposed to be extended to December 31, 1985. Second, EPA proposes to eliminate the general requirement for Group I dischargers to submit Form 2C (sampling data), with one exception. That exception is storm water discharges covered by effluent limitations guidelines. In lieu of Form 2C, the narrative required under the existing regulations to be submitted with Form 1 by Group II dischargers will also be required of Group I dischargers. In addition, such dischargers will be required to identify those pollutants that they believe will be present in their discharge. New quantitative testing for these pollutants will not be required. Although the mandatory requirement to submit Form 2C will be deleted, EPA may require submission of storm water sampling data at a later date, following analysis of the submissions required by today's proposal and other data available to the Agency. Finally, the reference to "urbanized areas" has been updated to reflect current Bureau of Census criteria.

These provisions concerning storm water discharges are part of the NPDES regulations which are currently the subject of ongoing litigation in the U.S. Circuit Court of Appeals for the District of Columbia, *NRDC* v. *EPA*, No. 80-1607 and consolidated cases. EPA has requested from the Court a partial remand of the record to eliminate any doubt as to the authority of the Agency to proceed with final rulemaking respecting a rule subject to the Court's jurisdiction. Unless the Court denies this request the Agency will proceed with final rulemaking following completion of the public comment period.

DATES: Comments must be received on or before April 8, 1985.

ADDRESS: Interested persons may submit written comments to: Martha Kirkpatrick, Permits Division (EN-336), Office of Water Enforcement and Permits, U.S. Environmental Protection Agency, Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Martha Kirkpatrick, Telephone: (202) 426-7010.

SUPPLEMENTARY INFORMATION:

I. Background

EPA has been wrestling with the problem of storm water regulation since 1973. In that year, the Agency published regulations exempting uncontaminated storm water runoff discharges from NPDES permit requirements. Although under the regulations these discharges fell within the definition of a point source, the Agency maintained that it would be more effective and administratively workable to deal with storm water runoff through nonpoint source controls

Shortly thereafter, the Natural Resources Defense Council (NRDC) brought suit in federal District Court challenging EPA's authority under the Clean Water Act to exempt categories authority under the Clean Water Act to exempt categories of point sources from permit requirements. *NRDC* v. *Train*, 396 F. Supp. 1393 (D.D.C. 1975; Aff'd, 568 F.2d. 1369, D.C.Cir. 1977). While recognizing the Agency's substantial discretion to define what constitutes a point source, the Court held that EPA did not have the authority under the Clean Water Act to exempt point source discharges from the NPDES program.

In response to this decision, on March 18, 1976, EPA published final storm water regulations requiring permit applications and NPDES permits for storm water point sources. Minor changes to these rules were made and reflected in the separate storm sewer regulations published on June 7, 1979 at 44 FR 32854 (40 CFR 122.79), republished on May 19, 1980 at 45 FR 33290 (40 CFR 122.57).

The 1980 storm water rules classified three types of storm water discharges as point sources: (1) Separate storm sewers in urbanized areas, (2) conveyances of contaminated storm water runoff from industrial or commercial facilities, and (3) those designated by the Director.

These regulations were challenged in court by a number of industry groups who asserted that most storm water discharges posed no significant environmental danger and thus should not be considered point sources. These groups also challenged the use of the term "contaminated" in the 1980 rules as vague and ambiguous.

After protracted negotiations with industry litigants, EPA agreed to propose a modification to the storm water provisions. The proposal was published on November 18, 1982 at 47 FR 52073, and defined storm water discharges as conveyances of storm water contaminated by process wastes, raw materials, toxics, hazardous pollutants or oil and grease. Thus the scope of coverage was significantly narrowed from the 1980 rule. The proposal also reduced application requirements by establishing two groups of storm water dischargers, and eliminating all testing and identification of pollutants for sources that were less likely to pose significant pollution problems.

The storm water proposal generated considerable comment from industry, trade associations and environmental groups. Industry and trade groups asserted that the proposal did not go far enough in limiting coverage, and continued to maintain that the permit program was an inappropriate means of dealing with storm water runoff. States and environmental groups took the position that the Clean Water Act requires permits for storm water discharges regardless of the level of pollutants. They contended that the proposal went too far in narrowing the scope of coverage in that no data existed to support the elimination of discharges from permit requirements. EPA considered these public comments and published final storm water regulations on September 26, 1984 (49 FR 37998).

II. September 26 Final Rule

The final rule recognized that there are two fundamental NPDES issues regarding storm water: (1) Which storm water discharges are point sources and therefore within the NPDES program, and (2) what is the best way to regulate these sources.

With regard to the first issue, EPA was persuaded by comments on the proposal that there were insufficient data to support a narrowing of coverage for storm water under the NPDES program. The Agency therefore promulgated final regulations that essentially retained the broad scope of the 1976 and 1980 rules. The final rule comported with the legal requirements set by the Clean Water Act and *NRDC* v. *Train*, which mandate the regulation and permitting of point sources that discharge pollutants into waters of the United States. The September 26 rule identified as a point source any storm water discharge that is located in an urbanized area, or discharges from industrial or commercial lands or facilities, or is designated by the Director. Because of concerns that the term "contaminated" as used in the 1980 rules was ambiguous and difficult to apply, the term was deleted. The new regulations rely instead on geographic criteria but result in approximately the same broad coverage.

In the preamble to the September 26 rule, EPA stated that insufficient data were available to justify the proposed exclusions of storm water discharges from coverage as point sources and that available data, especially on urban runoff, supported broad coverage of storm water discharges. Throughout the rulemaking process, no one submitted any data to substantiate claims that there are categories of storm water dischargers that have *de minimis* impacts on the environment and should be excluded from permit requirements. EPA concluded that it may not exclude storm water discharges without some basis; indeed, data available to EPA, such as the Nationwide Urban Runoff Program (NURP) study, indicated existing and potential water quality problems from storm water discharges.

To address the second issue, the regulatory approach, EPA retained in the final rule the two-tiered classification and application requirements set forth in the November 18, 1982 proposal. As provided in the Settlement Agreement with industry challengers, the final regulations set a deadline of six months from their effective date for submission of storm water permit applications. (Due to a technical error, the rule as published stated that March 26, 1985 was the deadline. However, the preamble refers to six months from the effective date of the rule, April 26, 1985, and this is the correct deadline for submission of applications under the existing regulations.) A technical correction to the regulations recognizing the April 26, 1985 deadline was published in the **Federal Register** on February 19, 1985.

The final rule set out two categories of storm water point sources with different application requirements for each. Group I storm water discharges are those subject to effluent limitations guidelines, located in an industrial plant or plant associated area, or designated by the Director. All other storm water point sources are classified as Group II. Group I dischargers were required to complete the full NPDES application: Form 1 plus Form 2C, which requires sampling and testing data. Form 2C data was requested of Group I dischargers so that data on the quality of these discharges could be analyzed and appropriate permitting strategies and requirements developed.

The application requirements were significantly reduced for Group II dischargers. They were required to submit only Form 1 plus a narrative description of the drainage area, the receiving water, and any treatment applied to the discharge. This lessened the burden on the dischargers that EPA believed were less likely to cause significant environmental problems.

Although considerable relief has been provided to Group II storm water point sources by this reduction in application requirements, EPA specifically requests comments on whether it would also be appropriate to postpone the application deadline for Group II storm water point sources until sometime in 1986. Such a postponement, to either June 30, 1986, or December 31, 1986, would allow EPA and the NPDES States to focus their efforts on the Group I point sources, which are more likely to be environmentally significant. Such a postponement clearly would not preclude issuance of a permit in the interim to a Group II point source or group of point sources, where a problem with that discharge or group of discharges is identified.

Because EPA lacked sufficient data on the nature and constituents of these highly diverse point sources, further data collection was considered essential to the development of an effective program of storm water management. The September 26 final rule reflected EPA's decision to gather such data through individual permit applications. Several commenters suggested that storm water runoff be regulated through general permits, and EPA agreed that this may be the best general approach, although individual permits for some dischargers may be necessary in some cases. However, the reason why general permit coverage does not usually require submission of a full Form 1 and Form 2C is because the general permit approach is available only where the Agency already has adequate information on the nature and impacts of the discharges. EPA clearly lacks sufficient information on storm water discharges at this time: therefore, and Agency retained full application requirements for these sources.

III. Reaction to the Final Rule

The final storm water regulations produced considerable post-promulgation comment on both of the central issues in the rulemaking: the scope of coverage and the Agency's strategy for regulating these sources.

With regard to the scope of coverage, some affected dischargers complained that the storm water permit requirements would subject thousands of point sources to the NPDES program for the first time. In fact, as the September 26 final rule indicated, the coverage of storm water point sources under the NPDES program was essentially unchanged by this rulemaking. The new rules simply deleted the term "contaminated" and relied instead on geographic criteria. Since the 1976 rule, pursuant to the *NRDC* v. *Train* decision, these dischargers have been required to obtain permits.

Various litigants, industries and trade associations also claimed that the April 26 deadline would be impossible for many dischargers to meet. One reason given was that many discharges were located in areas where testing during the winter months would not be feasible. It was also argued that the intermittent and unpredictable nature of storm water discharges would result in difficult and time-consuming data gathering because laboratories doing the sampling would have to be on stand-by waiting for a representative rainfall event to test the discharge. Dischargers also claimed that there would be insufficient laboratory facilities to do the required analysis within so short a time period. Finally, some commenters asserted that six months was an insufficient amount of time to locate, identify, sample and test thousands of storm water point sources. They also argued that the magnitude of the task for permit authorities meant that the data would be stale by the time permits were to be issued.

Another complaint about EPA's selected strategy was that it required extensive and costly testing and analysis where the Agency had indicated that EPA and the States would not have the resources needed to act on storm water applications in a timely manner.

The final rule also generated comment from environmental groups, who maintain that the Agency's decisions reflected in the September 26 notice are support by the record and should not be changed without strong justification supported by hard data. They expressed reservations that any change or delay would exacerbate EPA's failure to regulate this important source of pollutants.

IV. EPA Action

EPA's goal is an effectve, manageable and environmentally sound program for regulating storm water discharges. Today's proposed rule would make no changes in the substantive coverage of the September 26 final regulations. As explained earlier and in the September 26 rulemaking, there is currently insufficient information to justify any exclusion of storm water discharges from the point source definition other than those already recognized by the existing rule. Although the discharges from the point sources definition other than Agency has received complaints concerning this aspect of the regulation, there continues to be no basis to justify a change to those regulations. Thus, the issue of scope of coverage is not affected by today's proposal. EPA feels that the scope of its final rule is well-supported and mandated by the Clean Water Act and *NRDC* v. *Train*.

However, while the scope of the program will not change, today's rule proposes to change how storm water discharge permitting will be handled administratively. The final storm water rules established a six-month application deadline both because that was the time frame provided in the NPDES Settlement Agreement and because it is the current amount of time given for renewal applications for existing NPDES dischargers. However, EPA recognizes that many of the practical problems with meeting the deadline raised since promulgation are legitimate.

As recognized in the previous rulemaking, the primary problem EPA has faced in its attempt to implement a workable storm water program has been the lack of adequate data to determine the nature and constituents of these diverse point sources and the appropriate means of regulating them. Thus, further data collection is essential to the development of an effective program of storm water management. Notwithstanding this, EPA believes that the magnitude of post-promulgation comments received indicates that the timing and method of data collection must be revised. The difficulties with data collection and analysis make the six-month deadline difficult and perhaps impossible for some dischargers.

Rather than rely on Form 2C data from all Group I dischargers, the Agency first will assess the Form 1 information from all dischargers, then gather data selectively, as necessary, thus reducing both the drain on limited EPA and State resources and the cost to applicants. Based on its review of the more selective data, the Agency will develop specific permitting strategies, using general permits where appropriate, and individual permits where this cannot be done or is not otherwise appropriate.

To reflect this overall strategy, the first proposed change is to extend the deadline for submissions of storm water applications from April 26, 1985 to December 31, 1985. This extension will give dischargers sufficient time to identify their storm water point sources and prepare applications. It will also allow EPA and States greater opportunity to assimilate the submissions in an orderly fashion. It should also lower the cost for both permitting authorities applicants by spreading the requirements over a longer period of time, and reduce the likelihood of laboratory shortages. Finally, it will eliminate the potential problem of stale data; permitting authorities would be better able to consider more current information when it is time for permits to be issued.

EPA further proposes in today's rulemaking to suspend the present requirement that Group I dischargers submit Form 2C. Instead, Group I dischargers would be required to submit, by the December deadline, the same information as Group II (i.e., Form 1 plus a narrative discription of the drainage area, the receiving waters, and any treatment applied to the discharge). In lieu of Form 2C. data and sampling, today's proposal would require applicants to indicate whether their discharges fall within the Group I or Group II category.

Additionally, for Group I storm water point sources, the Agency is proposing to augment the narrative submission requirement in two ways. First, the Agency is proposing to require that Group I storm water point sources submit any available existing quantitative data on their Group I discharges for the pollutants specified in proposed 40 CFR 122.21(f)(9)(ii). The Agency is proposing that applicants submit available data; it is not proposing that applicants perform new sampling and analysis to satisfy the requirements in proposed § 122.21(f)(9)(ii) and (iii).

Second, the Agency is proposing to require that Group I storm water point sources identify, for each discharge, any pollutants on the list in proposed § 122.21(f)(9)(iii) that the applicant knows or has reason to believe are present in its storm water discharge. An applicant would base its identification of pollutants on factors such as its knowledge of the presence of raw material stockpiles in the drainage area, and the potential for pollution of storm water by manufacturing or other plant operations.

In general, a plant at which raw materials are stockpiled in the drainage area would reasonably expect that its discharge would be polluted by that raw material or its constituents. A manufacturer of a fertilizer, such as ammonium nitrate, could reasonably expect ammonia to be present in its discharge as a result of tank car washings, for example. A lead smelter could reasonably expect its discharge to be contaminated with lead as a result of air emissions or contamination of roadways and storage areas by trucks or other material handling equipment (MHE).

The Agency specifically requests comments on this aspect of today's proposal. In particular, comments should be directed to whether pollutants listed in proposed § 122.21(f)(9)(iii) are appropriate for generally assessing storm water discharge quality and to whether other pollutants should be added to the list.

Although the approach set forth here is different from the strategy set forth in the September 26 final rule, the strategy proposed today is also intended to assure reasonably expeditious NPDES permitting for storm water point sources. However, today's proposal reflects a more realistic time frame for action by EPA and the States given other permitting priorities.

In deciding to rely on more selective data than envisioned in the September 26 rule, the Agency is relying in part on commitments from industries and trade associations that they will submit representative quantitiative sampling and analysis data during 1985. A number of industry groups have assured EPA that they will submit such data, and permit applicants are encouraged to voluntarily submit any effluent data they have as early as possible. EPA will be meeting with the representatives of

these and other groups during the comment period on the proposal to work out the specific details of these commitments in writing. This will expedite the Agency's data gathering process and assist the Agency in determining what additional data will be needed, thus minimizing the possibility of a need for broad data submittal requirements in the future.

In the event that the Agency decides to retain the existing requirement that Group I dischargers submit Form 2C or a similar requirement for submission of quantitative data, waiver of such a data submission for categories of Group I dischargers may be considered. The Agency is requesting comments on whether the storm water regulations should include discretionary authority for the Director of the Office of Water Enforcement and Permits to waive the quantitative data submission requirement for a class or category of Group I storm water point sources. Such a provision would require submission of representative quantitative data that accurately characterizes the storm water discharges of that class or category.

This proposed storm water management program anticipates that applications will be prepared and submitted by storm water dischargers during 1985. During this period, EPA will circulate storm water guidance, disigned primarily to assist applicants with such questions a whether their discharges are point sources, whether they fall within the Group I or Group II category, and whether the facility is industrial or commercial.

During 1985 and 1986, EPA will be developing a detailed strategy for implementation of its storm water program. After developing a draft of the strategy, EPA will seek comment from States, municipalities, industry representatives, environmental groups, and other interested parties on this strategy.

As part of its program EPA will engage in some additional data collection before developing general permits. One possibilty is that the Agency will request the submission of sampling data through the use of selective Section 308 letters (Section 308 of the Clean Water Act describes a mechanism whereby the Director may request additional data concerning outfalls). It is likely that data will be requested of selected representative individual dischargers by industry category or other grouping. Precise identification of industry categories that are likely to be addressed first is not possible at this time. This decision will be the result of the analysis of Form 1's and other data received. However, certain categories appear likely to receive data submittal requests relatively early. For example, city-owned separate storm sewers have already been identified as containing significant levels of harmful pollutants. Thus, it is likely that major cities will be among the first to be asked to submit sampling data on their separate storm sewer outfalls. Other likely candidates for early requests for sampling data are those industries subject to an effluent limitations guideline for process wastewater (e.g., chemical and petroleum industries). Permit authorities may require early submittal of sampling data from sources that are already covered by an existing NPDES permit that would have to be modified to cover their storm water outfalls or for those storm water discharges that have been identified as a problem.

During the development of its strategy, EPA will review the Form 1's and any other information that is submitted. Based on this information, the resulting strategy is expected to recommend the use of both general and individual permits, as may be appropriate for specific categories of dischargers.

Priorities for permit issuance will be set according to the relative environmental impact among and within the various categories of storm water discharges and relative to other Agency activities. General permits will begin to be issued after the strategy is announced at the end of 1986.

EPA Regional Offices and States with approved NPDES programs will be assisting in gathering and will be asked to take part in the review of Form 1 information and the collected sampling data. As noted above, the States and Regions are expected to continue calling in storm water permit applications and issuing individual and general permits where problems are identified while the national storm water program is being more fully developed and implemented.

It is also proposed that the definition of "urbanized area" found in the storm water regulations be amended to reflect the most current criteria established by the Bureau of Census, rather than the 1970 designation.

V. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is major and therefore subject to the requirement of a Regulatory Impact Analysis. These proposed revisions generally make the regulations more flexible and less burdensome for affected permittees. These regulations do not satisfy any of the criteria specified in section 1(b) of the Executive Order and, as such, do not constitute major rulemakings. This regulation was submitted to OMB for review.

VI. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* An Information Collection Request document has been prepared by EPA and a copy may be obtained from: Nanette Liepman, Information Management Branch, EPA 401 M Street, SW. (PM-223), Washington, D.C. 20460 or by calling 202/382-2742. Submit comments on these requirements to EPA and: Richard Otis, Office of Information and Regulatory Affairs, OMB, 726 Jackson Place, NW., Washington, D.C. 20503. The final rule will respond to any OMB or public comments on the information collection requirements.

VII. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA is required to prepare a Regulatory Flexibility Analysis to assess the impact of rules on small entities. EPA has determined that this regulation will not have a significant economic impact on a substantial number of small entities. Today's proposed amendments to the regulations generally would make the regulations more flexible and less burdensome for permittees. Accordingly, I hereby certify, pursuant to 5 U.S.C. 605(b), that these proposed amendments will not have significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 122

Administrative practice and procedure, Reporting and recordkeeping requirements, Water pollution control.

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: March 3, 1985.

Lee M. Thomas,

Administrator.

For the reasons set out in the preamble, Part 122 of Chapter I of Title 40 of the Code of Federal Regulations is proposed to be amended as follows:

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PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

Subpart B—Permit Application and Special NPDES Program Requirements

1. Section 122.21 is amended by revising paragraphs (c)(2), (f)(7), (f)(9), (g)(10)(i), and (g)(10)(iii) to read as follows:

§ 122.21 Application for a permit (applicable to State NPDES programs, see § 123.25).

* * * * *

(c) * * *

(2) Any existing storm water point source under § 122.26 that does not have an effective permit shall submit an application by December 31, 1985. Any discharger designated under § 122.26(c) shall submit an application within 6 months of notification of its designation.

* * * * *

(f) * * *

(7) A topographic map (or other map if a topographic map is unavailable) extending one mile beyond the property boundaries of the source, depicting the facility and each of its intake and discharge structures; each of its hazardous waste treatment, storage, or disposal facilities; each well where fluids from the facility are injected underground; and those wells, springs, other surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant in the map area. Storm water point sources, as defined in § 122.26(b)(1), are exempt from the requirements of paragraph (f)(7) of this section.

* * * * *

(9) For storm water point sources (as defined in § 122.26(b)(1)):

(i) An identification of whether the discharges are Group I or Group II storm water point sources as defined in §§ 122.26(b)(2) and 122.26(b)(3), and a brief narrative description of the drainage area, including an estimate of the size and nature of the area; the receiving water; any treatment applied to the discharge; and

(ii) For Group I storm water point sources (as defined in 122.26(b)(2)), any available quantitative data on the following pollutants for each storm water discharge:

(A) Oil and grease;

(B) Total organic carbon;

(C) Chemical oxygen demand; and

(D) Any pollutant listed in Appendix D of 40 CFR Part 122; and

(iii) For Group I storm water point sources (as defined in § 122.26(b)(2)), a list for each discharge of any of the following pollutants that the applicant knows or has reason to believe are present in the storm water discharge:

(A) Oil and grease;

(B) Total organic carbon;

(C) Chemical oxygen demand; and

(D) Any pollutant listed in Appendix D of 40 CFR Part 122.

(g) * * *

* * * * *

(10)(i) Storm water point sources (as defined in § 122.26(b)(1)) are exempt from the requirements of paragraphs (f)(7) and (g) of this section, unless the Director requests such information. This paragraph does not apply to storm water dischargers that are within an industry category covered by a guideline which specifically addresses storm water discharges.

* * * * *

(iii) The Director may require additional information under paragraph (g)(13) of this section, and may request any storm water discharger to comply with paragraph (g) of this section.

* * * * *

2. Section 122.26 is amended by revising paragraphs (b)(1)(i) and (b)(3) to read as follows:

§ 122.26 Storm water dischargers (applicable to State NPDES programs, see § 123.25).

* * * * *

(b) * * *

(1) * * *

(i) Is located in an urbanized area as designated by the most current Bureau of Census criteria;

* * * * *

(3) "Group II storm water discharge" means any "storm water point source" not included in paragraph (b)(2) of this section.

* * * * *

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March 7, 1985

Part III

Department of Commerce

Patent and Trademark Office

37 CFR Part 1

Miscellaneous Patent Provisions; Final Rules

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DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No. 41269-5018]

Final Rules for Miscellaneous Patent Provisions

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of final rulemaking.

SUMMARY: The Patent and Trademark Office is amending the rules of practice in patent cases, Part I of Title 37, Code of Federal Regulations, to provide rules and procedures for the miscellaneous patent provisions enacted into law by Pub. L. 98-620 and 98-622, on November 8, 1984, in which statutory invention registrations, changes in appeals to the courts, prior art and joint inventor provisions and PCT international application filing and processing procedures were established or amended. The rulemaking provides specific rules and procedures for the new and amended provisions.

EFFECTIVE DATE: May 8, 1985.

FOR FURTHER INFORMATION CONTACT: R. Franklin Burnett by telephone at (703) 557-3054 or by mail marked to his attention and addressed to the Commissioner of Patents and Trademarks, Washington, D.C. 20231.

SUPPLEMENTARY INFORMATION: This rule change is designed primarily to establish a set of rules and procedures for the various requirements of Pub. L. 98-620 and 98-622 concerning appeals to the courts, statutory invention registrations, rejections based on prior art and double patenting, and filing of international applications under the Patent Cooperation Treaty. The proposed rules were published on January 25, 1985 in Volume 50 of the **Federal Register**, pages 3712 through 3725. A public hearing was held on the proposed rule changes on February 8, 1985.

Background Information

Most of the rule changes contained herein are necessary as a result of Pub. L. 98-620 or 98-622, both of which were signed by President Reagan on November 8, 1984. The following is a summary of the purposes of the various statutory amendments.

Amended 35 U.S.C. 103—Unpublished Knowledge of Prior Art

Pub. L. 98-622 changes a complex body of case law which discourages communication among members of research teams working in corporations, universities or other organizations. It amended 35 U.S.C. 103 by adding a new sentence which provides that subject matter developed by another which qualifies as "prior art" only under subsections 102 (f) or (g) of 35 U.S.C. is not to be considered when determining whether an invention sought to be patented is obvious under 35 U.S.C. 103, provided the subject matter and the claimed invention were commonly owned at the time the invention was made.

"Prior art" is the existing body of technical information against which the patentability of an invention is judged. Publicly known information is always considered in determining whether an invention would have been obvious. However, under *In re Bass*, 474 F.2d 1276, 177 USPQ 178 (CCPA 1973), and *In re Clemens*, 622 F.2d 1029, 206 USPQ 289 (CCPA 1980), an earlier invention which is not public could have been treated under 35 U.S.C. 102(g), and possibly under 102(f), as prior art with respect to a later invention made by another employee of the same organization.

New technology often is developed by using background scientific or technical information known within an organization but unknown to the public. Pub. L. 98-622, by disqualifying such background information from prior art, encourages communication among members of research teams, and leads to more public dissemination through patents of the results of team research.

The subject matter that is disqualified as prior art under 35 U.S.C. 103 is strictly limited to subject matter that qualifies as prior art only under 35 U.S.C. 102(f) or 102(g). If the subject matter qualifies as prior art under any other subsection—e.g., subsection 102(a), 102(b) or 102(e)—it will not be disqualified as prior art under the amendment to section 103.

The contents of a patent of the same or different ownership as an application, continues to be available as prior art against the application under section 103 by virtue of section 102(e) as of the application filing date of the patent. If subject matter becomes potential prior art under section 102(e) because a patent application is filed on such subject matter before a commonly owned claimed invention is made the subject matter of a later application the two applications may be combined (under amended sections 116 and 120) into a single application and such subject matter (with the abandonment of the two applications) would no longer constitute potential prior art under section 102(e) or under section 103 since it would not be "described in a patent granted on an application for patent by another."

It is important to recognize that the amendment to the law applies only to consideration of prior art for purposes of section 103. It does not apply to or affect subject matter which qualifies as prior art under section 102. A patent applicant urging that subject matter is disqualified has the burden of establishing that it was commonly owned at the time the claimed invention was made.

Pub. L. 98-622 was not intended to permit anyone other than the inventors to be named in a patent application or patent. Also, the amendment was not intended to enable appropriation of the invention of another.

The Patent and Trademark Office has withdrawn the Commissioner's Notice of January 9, 1967, "Double Patenting", 834 O.G. 1615 (Jan. 31, 1967), to the extent that it does not authorize a double patenting rejection where different inventive entities are present. See the Commissioner's Notice of December 11, 1984, "Initial Guidelines Implementing Changes in 35 U.S.C. 103, 116, and 120", 1050 O.G. 316 (January 8, 1985). The Office is reinstituting, in appropriate circumstances, the practice of rejecting claims in commonly owned applications of different inventive entities on the ground of double patenting. See 130 Cong. Rec. H 10527, column 3 (daily ed. Oct. 1, 1984) (statement of Rep. Kastenmeier); *In re Rogers*, 394 F.2d 566, 567 n. 4, 157 USPQ 569, 570 n. 4 (CCPA 1964). This is in accordance with existing case law and prevents an organization from obtaining two or more patents with different expiration dates covering nearly identical subject matter. See *In re Zickendraht*, 319 F.2d 225, 138 USPQ 22 (CCPA 1963) ("The doctrine is well established that claims in different applications need be more than merely different in form or content; and that *patentable distinction* must exist to entitle applicants to a second patent") and *In re Christensen*, 330 F.2d 652, 141 USPQ 295 (CCPA 1964) ("* * * the correct procedure for double patenting cases is to analyze the claims to determine the inventions defined therein, and then decide whether such inventions, as claimed are *patentably distinct* and therefore qualified to be claimed in separate patents"). In accordance with established patent law doctrines, double patenting rejections can be overcome in certain circumstances by disclaiming, pursuant to the existing provisions of 37 CFR 1.321, the terminal portion of the term of the later patent and including in the disclaimer a provision that the patent shall be enforceable only for and during the period the patent is commonly

owned with the application or patent which formed the basis for the rejection, thereby eliminating the problem of extending patent life.

Information learned from or transmitted to persons outside the organization is not disqualified as prior art.

The term "subject matter" will be construed broadly, in the same manner the term is construed in the remainder of section 103. The term "another" as used in section 103 means any inventive entity other than the inventor and would include the inventor and any other persons. The term "developed" is to be read broadly and is not limited by the manner in which the development occurred. The term "commonly owned" means wholly owned by the same person, persons, or organization at the time the invention was made.

Amended 35 U.S.C. 116—Joint Inventor Filing

35 U.S.C. 116 as amended by Pub. L. 98–622 recognizes the realities of modern team research. A research project may include many inventions. Some inventions may have contributions made by individuals who are not involved in other, related inventions.

Amended 35 U.S.C. 116 allows inventors to apply for a patent jointly even though (i) they did not physically work together or at the same time, (ii) each did not make the same type or amount of contribution, or (iii) each did not make a contribution to the subject matter of every claim of the patent. Items (i) and (ii) adopt the rationale stated in decisions such as *Monsanto* v. *Kamp*, 269 F. Supp. 818, 154 USPQ 259 (D.D.C. 1967). Item (iii) adopts the rationale of cases such as *SAB Industrie AB* v. *Bendix Corp.*, 199 USPQ 95 (E.D. Va. 1978).

Like other patent applications, jointly-filed applications are subject to the requirements of 35 U.S.C. 121 that an application be directed to only a single invention. If more than one invention is included in the application, the Patent and Trademark Office may require the application to be restricted to one of the inventions.

In such a case, a "divisional" application complying with 35 U.S.C. 120 would be entitled to the benefit of the earlier filing date of the original application.

It is possible that different claims of an application or patent may have different dates of invention even though the patent covers only one independent and distinct invention within the meaning of 35 U.S.C. 121. When necessary, the Patent and Trademark Office or a court may inquire of the patent applicant or owner concerning the inventors and the invention dates for the subject matter of the various claims.

Amended 35 U.S.C. 120—Benefit of Prior U.S. Application

35 U.S.C. 120 was amended by Pub. L. 98–622 to provide that an application can obtain the benefit of the filing date of an earlier application when not all inventors named in the joint application are the same as those named in the earlier application. This amendment permits greater latitude in filing "divisional" applications. For example, if the previously filed application named inventors A and B as the inventors, a later application by either A or B could be filed during the pendency of the previously filed application and claim benefit of the previously filed application. In order for a claim to be entitled to the benefit of an earlier pending application, the subject matter of the claim of the later application would have to be disclosed in the earlier application.

Similarly, if inventor A filed an application on an invention and during the pendency of that application made an improvement on the subject matter of the application as a joint inventor with inventor B, the joint application filed on behalf of inventors A and B could claim the benefit of A's previously filed sole application to the extent that the later filed joint application contained claims directed solely to A's subject matter which was disclosed in the earlier filed pending application in the manner provided by the first paragraph of section 112 of title 35, U.S.C.

Likewise, an application filed by inventors A and C could claim the benefit of an earlier filed pending application of inventors A and B, to the extent that the requirements of section 120 could be met.

Like other patent applications, jointly-filed applications will continue to be subject to the requirement of 35 U.S.C. 121 that an application be directed to only a single invention. If more than one invention is included in the application, the Patent and Trademark Office may require the application to be restricted to one of the inventions. In such a case, a "divisional" application would be entitled to the benefit of the earlier filing date of the original application.

New 35 U.S.C. 157—Statutory Invention Registration (SIR)

This section which is effective on May 8, 1985, establishes an optional procedure by which an inventor may secure protection which is strictly defensive in nature.

Under current law, there is no simple, practical method by which an inventor can protect his or her ability to exploit the invention without obtaining a patent. The new procedure confers on an inventor the same defensive rights that a patent provides to prevent others from patenting the invention. However, it does not permit the holder to exclude others from making, using or selling the invention.

Due to the fact that a SIR does not grant an exclusive right to an inventor, it is not necessary to subject a SIR to the lengthy examination process required for the granting of a patent. Such an examination is necessary if the SIR is subject to an interference proceeding to determine priority of invention. In all other instances, the Patent and Trademark Office will only review the application for adherence to formal printing and fee payment requirements and to ensure that the requirements of 35 U.S.C. 112 are satisfied.

An applicant desiring to have a SIR published will be required to file a regular complete application for a patent and to execute a request including a waiver of enforcement of patent rights. This waiver of the claimed invention will be effective at the time of publication. The original application can be abandoned in favor of a continuing application for a patent, claiming the filing date of the earlier filed application, by filing an express abandonment of the original application and a timely request or petition to withdraw the request for a SIR prior to publication of the SIR, thereby providing the applicant with flexibility during the pendency period of the application. Until the SIR is published the application remains an application for a patent. However, the holder of a SIR will not be able to file a reissue application to recapture the rights to exclusive use that were waived by the initial publication of the SIR.

The waiver of the right to receive a patent, required of all applicants electing to receive a SIR, applies to those remedies provided for the enforcement of a patent under section 183 and sections 271 through 289 of title 35, U.S.C. The waiver also applies to remedies under other titles of the U.S.C. including sections 1337 and 1337a of title 19, section 2356 of title 22, and section 1498 of title 28. This waiver of enforcement applies only to the claimed subject matter of the SIR and not to any foreign patent arising from an application which might have served as the basis of a priority claim under the Paris Convention for the Protection of Industrial Property. Likewise, the waiver

does not prevent the holder of a SIR from asserting any defenses provided in sections 271 through 289 of title 35, U.S.C. with respect to a charge of infringement of any other patent.

The Commissioner of Patents and Trademarks can refuse to accept the waiver in certain cases. For example, the waiver could not be accepted if the waiver is not a waiver of all the previously mentioned rights. The Commissioner also has discretion, which has not been exercised at this time, to set time limits on the waiver. This would allow the Commissioner to limit the ability of an inventor to keep inventions secret through a series of continuing patent applications followed by a conversion to a SIR.

The waiver of patent rights in the SIR to the subject matter claimed therein may affect the patentability of a claim in other related applications, particularly divisional applications, since the waiver of patent rights would be effective for all inventions claimed in the SIR and would be effective as a waiver of the right of the inventor to obtain a patent on the invention claimed in the same application or any other application, but not in any patent issued before the date the SIR is published. Where an application containing generic claims is published as a SIR, the waiver in that application applies to any other related applications, including divisions, continuations, and continuations-in-part, to the extent that the same invention claimed in the SIR is also claimed in the other related application.

The Patent and Trademark Office will apply standards similar to those which it applies in making determinations of "same invention" double patenting for purposes of determining whether or not a wavier by an inventor to claims in a SIR precludes patenting by the same inventor to subject matter in any other related application.

Therefore, the waiver would preclude patenting of an invention claimed by an inventor in a related application which is the same as the invention claimed by the same inventor in the SIR. When making this determination it is the claimed subject matter of the SIR which is compared to the claimed subject matter of the related application. Where the subject matter claimed in the related application is the same as the subject matter waived in the SIR, i.e., the "same invention" in the double patenting sense, the claims of the related application will be rejected as being precluded by the waiver in the SIR and cannot be overcome by a terminal disclaimer. The limitation of the scope of the waiver to the claimed invention would not affect the application of existing § 1.658(c) should the SIR become involved in an interference. If a divisional application is filed and published as a SIR claiming only a method, publication thereof will not normally effect a waiver on an application for a patent claiming only an apparatus. The waiver in a SIR would not affect any rights in a patent which issued prior to the date of publication of the SIR, but would preclude an already issued patent from being broadened by reissue if the rights to the subject matter to which broadened claims relate have been waived by publication of the SIR. The waiver applies to any rights of the same inventor in any application pending when the SIR is published even if the inventor is a joint applicant in the pending application and was a sole applicant in the application published as a SIR. The waiver would not affect the rights of any other inventor even though those rights are commonly owned by the same person.

The holder of a SIR containing the required waiver will be left without the offensive rights associated with a patent. In other respects a SIR will be the same as a patent, including the application which is published as a SIR serving as the basis for a priority claim in a foreign application under the Paris Convention. A SIR will be treated the same as a U.S. patent for all defensive purposes. The application, and the SIR published therefrom, could become involved in an interference; the SIR would be a "constructive reduction to practice" under 35 U.S.C. 102(g); it will be "prior art" under all applicable sections of 35 U.S.C. 102 including section 102(e); and it will be classified, cross-referenced and placed in the search files, disseminated to foreign patent offices, stored in the Patent and Trademark Office computer tapes, made available in commercial data bases, and announced in the *Official Gazette* of the Patent and Trademark Office. A published SIR is intended to be a fully viable publication for defensive purposes, usable as a reference as of its filing date in the same manner as a patent. A SIR will also serve as a basis to initiate or participate in an interference or priority proceeding under 35 U.S.C. 291 in a manner similar to a patent and can be used as a reference in defense of an infringement suit.

A SIR is based on a regularly filed application for a patent. Therefore, the filing date of the application will be a sufficient basis for a priority claim in a foreign application. Article 4, section A(3) of the Paris Convention states:

> By a regular national filing is meant any filing that is adequate to establish the date on which the application was filed in the country concerned, whatever may be the subsequent fate of the application.

After a SIR is published, markings such as "patent pending" are improper under section 292 of title 35 of the U.S.C.

The SIR will serve as a replacement for the current "defensive publication program" which was established by regulation under 37 CFR 1.139. Although publication under the "defensive publication program" was intended to provide rights similar to those of the SIR, publication under that program has been held not to be available as evidence of prior knowledge as of its filing date under section 102(a) of title 35, U.S.C. (*Ex parte Osmond*, 191 USPQ 334 (P.T.O. Bd. App. 1976).) The use of a "defensive publication" as a reference to prevent a patent from issuing on a subsequent application is therefore limited. A SIR, on the other hand, will have a clear statutory basis in title 35, U.S.C. The SIR will be "prior art" and a "constructive reduction to practice" under section 102(a) and section 102(g), respectively, as of the filing date of the application on which it is based.

A SIR will not be subject to reexamination under sections 302 to 307 of title 35, U.S.C.

The Commissioner is authorized to issue SIRs for defensive purposes, but is not required to do so. The Commissioner has discretion in determining whether or not a SIR should be issued on a particular application. In circumstances where the subject matter is obviously not an invention, is too informal to print, and so forth, the Commissioner has the right to refuse to publish the SIR.

SIRs will be published sooner than patents because no substantive examination will normally be required for SIRs. To the extent that examination is required, it will be conducted in the same manner as in any other patent application. Maintenance fees will not be charged for SIRs.

Since the fees set by the Commissioner for the new SIR procedure under section 157 of title 35, U.S.C. are not established under section 41 (a) or (b) of that title, they are not subject to reduction if the applicant has small entity status.

If the fee for requesting publication is not paid at the time of filing of the waiver of the right to receive a patent, the Commissioner may set a period within which the fee must be paid to prevent abandonment of the application. Such a period would be subject to petitions and fees for extensions of time. If abandonment should occur, the application may be revived.

In the final analysis, the SIR procedures set forth in the law should give inventors defensive protection more cheaply than they could get by obtaining a patent. The procedure will allow the government and the private sector to make inventions public knowledge. Last, the SIR would be particularly useful to those with limited resources such as universities and small businesses, who have a new, less expensive alternative to the traditional patenting of inventions.

Amended 35 U.S.C. 361, 366, 371, 372, and 376—Miscellaneous Provisions Relating to the Applications Under the Patent Cooperation Treaty

Section 361(d) of title 35, U.S.C., was amended effective May 8, 1985, to provide a one-month grace period from the date of filing an international application for payment of the basic international fee and the transmittal and search fees.

Section 366 of title 35, U.S.C., was amended, effective May 8, 1985, to clarify the effect of withdrawal of an international application on claims for the benefit of its filing date. The withdrawal of an international application designating the United States will not deprive an applicant of the right to claim the benefit of the filing date of such an international application in a later filed application, provided the claim for benefit is made before that international application is withdrawn. Stated otherwise, this clarifies that withdrawing the designation of the United States in an international application is comparable to abandoning a national application as far as a claim for an earlier filing date is concerned.

National Stage

As a general proposition, the amendments made to 35 U.S.C. 371 set forth a legislative scheme, effective May 8, 1985, to provide greater flexibility in the Patent and Trademark Office for the handling of international applications. In addition, by relaxing the requirements which international applicants must satisfy by the commencement of the national stage, the amendments give international applicants benefits similar to those given national applications by section 111, 35 U.S.C. as amended by Pub. L. 97–247 with respect to the time for filing the national fee and oath or declaration.

Section 372(b) of title 35, U.S.C., is amended, effective May 8, 1985, to authorize the Commissioner to require a verification of the translation of an international application or any other document pertaining thereto if the application or other document was filed in a language other than English. An authorization for the Commissioner to require verification in appropriate cases is necessary since subsection (c)(2) of section 371 was amended to remove the requirement that the translation be verified in all cases.

Section 372(c) of title 35, U.S.C., was deleted thereby discontinuing the requirement for payment of a special fee to maintain claims in an international application which were not searched by an international searching authority. This deletion was made to place international applications processed in the national stage on the same footing as purely national applications.

Section 376(a) of title 35, U.S.C., was also amended by Pub. L. 98–622 to delete mention of the special fee in order to conform with the amendment of section 372(c).

Discussion of Specific Rules

Section 1.11 is amended as proposed to add a reference to published statutory invention registrations in paragraph (a) to indicate that they are available to the public. The portion of present § 1.11(a) which deals with interferences is transferred to a new paragraph (e) and rewritten.

The amendment to paragraph (b) deletes reference to § 1.139, which is being deleted in favor of the SIR, and inserts language which covers opening to the public defensive publications published under § 1.139 as well as other applications laid open to the public such as the previously published abstracts and abbreviatures.

Section 1.11 is amended as proposed to delete the word "general" before public as unnecessary.

New paragraph (e) of § 1.11 is added to cover the availability to the public of all interferences, including those which involved a statutory invention registration. This paragraph applies to interferences declared under the new rules which became effective on February 11, 1985, 49 FR 48416 (Dec. 12, 1984), as well as the rules formerly in effect. The term "award of priority" is intended to refer to those decisions of the Board of Patent Interferences, or Board of Patent Appeals and Interferences, awarding priority in interferences conducted under the former rules. The term "judgment" refers to judgments entered by the Board of Patent Appeals and Interferences in interferences conducted under the new rules. The language of the proposed rule has been slightly modified for clarity in the final rule.

Section 1.14 is amended as proposed to delete reference to § 1.139 since that section is being removed.

Section 1.17 paragraph (h) is amended as proposed to include the petition fee required by new § 1.295.

Section 1.17 is amended to add new paragraphs (n) and (o) to establish fees for requesting publication of statutory invention registrations. Paragraph (n) establishes a $400.00 fee for requesting publication of a statutory invention registration where no first examiner's action pursuant to § 1.104 has been issued in the application. The amount paid for basic filing fees under § 1.16 (a), (f) or (g) will be credited against this amount. For example, if a $300.00 filing fee was paid, only $100.00 additional would be required for requesting publication of a statutory invention registration.

The addition of paragraph (o) to § 1.17 is similar to the addition of paragraph (n) but establishes a fee for requesting publication of applications, which have received any examiner's action pursuant to § 1.104, as a statutory invention registration. The higher fee of $800.00 set in paragraph (o) is necessary in view of the expenditure of additional Office resources in examining the application prior to the filing of the request for a statutory invention registration.

Section 1.19 is amended as proposed to provide in paragraph (a)(1) a reference to the cost of a printed copy of a statutory invention registration and in paragraph (e) to provide reference to statutory invention registrations listed by subclass.

Section 1.20 is amended as proposed to delete the requirement to pay maintenance fees in all plant patents in view of the amendment in Pub. L. 98–622. Paragraph 1.20(m) is amended as proposed to provide that non-timely payment of maintenance fees may be accepted in patents based on applications filed prior to August 27, 1982, in accordance with Pub. L. 98–622.

Pub. L. 98–622 provides that no maintenance fees are charged for plant patents, regardless of when filed. Without this provision that no maintenance fees be charged for plant patents, plant patent owners whose applications were filed between the dates of enactment of Pub. L. 96–517 and Pub. L. 97–247 (December 12, 1980 to August 27, 1982) would be subject to payment of maintenance fees, while plant patent owners whose applications were filed outside those dates would not be subject to such fees. Pub. L. 98–622 eliminates that inconsistency.

Section 1.45 is amended as proposed to reflect the change made by Pub. L. 98–

622 in 35 U.S.C. 116. The previously existing paragraph is designated as paragraph (a). New paragraph (b) incorporates the wording added to 35 U.S.C. 116 by Pub. L. 98–622. New paragraph (c) indicates that each named inventor listed in an application must have made a contribution, individually or jointly, to the subject matter of at least one claim of the application and that the application will be considered to be a joint application under 35 U.S.C. 116.

Section 1.48 is amended to add new paragraphs (b) and (c). New paragraph (b) provides for deleting the names of persons originally properly included as inventors, but whose invention is no longer being claimed in the application. Such a situation would arise where claims have been amended or deleted because they are unpatentable or as a result of a requirement for restriction of the application to one invention, or for other reasons. Pub. L. 98–622 and § 1.48(b) change the result reached in *Ex parte Lyon*, 146 USPQ 222, 1965 Dec. Comm'r Pat. 362 (Bd. App. 1964). The final rule has fewer requirements than the proposed rule for correction of inventorship in this situation. The proposed rule would have required, in addition to the requirements of the final rule, an oath or declaration by each actual inventor or inventors as required by § 1.63 and the written consent of any assignee. The final rule requires only a petition and fee with the petition including a statement identifying each named inventor who is being deleted and acknowledging that the inventor's invention is no longer being claimed in the application. The amendment would have to be diligently made under paragraph (b).

The final rule adds a paragraph (c) in response to a comment to provide for the situation where an application discloses unclaimed subject matter by an inventor or inventors not named in the application as filed. In such a situation, the application may be amended pursuant to paragraph (a) of § 1.48 to add claims to the subject matter and also to name the correct inventors for the application. The claims would be added by an amendment and, in addition, an amendment pursuant to paragraph (a) of § 1.48 would be required to correct the inventors named in the application. Any claims added to the application must be supported by the disclosure as filed and cannot add new matter.

Section 1.60 is amended to include wording which would permit an application to be filed under this section only if it named as inventors the same or less than all the inventors who were named and signed the oath or declaration in the prior application. This addition is necessary in view of the new provisions of 35 U.S.C. 120, as amended by Pub. L. 98–622, which permit continuing applications to be filed by different inventors. Under § 1.60 additional inventors are not permitted to be named since the oath or declaration from the prior application is relied upon.

Section 1.61 is amended as proposed to incorporate the ability to file the translation, oath or declaration, and national fee after the 20 month deadline set forth in PCT Article 22(1) for entering the national phase in the United States Patent and Trademark Office.

Public Law 98–622 amended 35 U.S.C. 371(a) to provide greater flexibility for the PTO handling international applications. Also, 35 U.S.C. 371(a), by relaxing the requirements which international applicants must satisfy by the commencement of the national stage, gives international applicants benefits similar to those given national applicants under 35 U.S.C. 111 by Pub. L. 97–247 with respect to the time for filing the national fee and oath or declaration.

Paragraph (b) of § 1.61 is amended to delete the 2 month time period to conform with the decision concerning PCT Article 22(2) adopted by the Assembly of the International Patent Cooperation Union (PCT Union) on February 3, 1984. The amendment to the Article took effect on January 1, 1985.

PCT Article 22(2) as amended, reads as follows:

> Where the International Searching Authority makes a declaration, under Article 17(2)(a), that no international search report will be established, the time limit for performing the acts referred to in paragraph (1) of this Article shall be the same as that provided in paragraph (1).

The additional wording to paragraph (b) of § 1.61 sets forth the ability to comply with the requirements for entering the national phase before the Patent and Trademark Office as a Designated Office within 22 months of the priority date. If the national fee or oath or declaration is submitted later than 20 months after the priority date, a surcharge as set in §1.445(a)(5) is required to be paid. If a required English translation of the international application is filed later than 20 months after the priority date, a processing fee as set in §1.445(a)(6) is required to be paid.

New paragraph (c) of § 1.61 provides that any amendments under PCT Article 19 which are not received along with any necessary English translation by the end of 20 months from the priority date will be considered as cancelled. This change is required in view of amended § 371(d) of 35 U.S.C.

Paragraph (d) is added as proposed to § 1.61 in view of § 372(b) of title 35, United States Code, as amended by Pub. L. 98–622, which authorizes the Commissioner to require a verification of the translation of an international application or any other document pertaining thereto if the application or other document was filed in a language other than English. An authorization for the Commissioner to require verification in appropriate cases was necessary since subsection (c)(2) of 35 U.S.C. 371 was amended to remove the requirement that the translation be verified in all cases.

Section 1.62 is amended by revising paragraphs (a), (c), and (h) to include wording which would permit a continuing application to be filed under this section by the same or less than all the same inventors who filed and signed the oath or declaration in the prior application. This addition is necessary in view of the new provisions of 35 U.S.C. 120, as amended by Pub. L. 98–622, which permit continuing applications to be filed by different inventors. Under § 1.62, additional inventors may be added only in applications in which a new oath or declaration is required because additional subject matter is being claimed. Paragraph (h) has been amended to also request applicants to furnish the title of the invention and the names of the applicants in the continuing application to permit the Office to enter this information in its records in the Application Branch.

Section 1.78 is amended to provide in paragraph (a) that the inventorship in the continuing application may be different from the inventorship in the prior copending application and that the prior application must disclose the invention claimed in at least one claim of the later filed application in the manner provided by the first paragraph of 35 U.S.C. 112. The requirement that at least one claim be fully supported in the prior application to be entitled to priority benefit is not new, but is included to serve as a reminder that information such as foreign patenting, publication, or public use or sale in the United States which occurred more than one year prior to the filing date of the later application is available as prior art where the claims of the continuation-in-part application are not fully supported by the disclosure of the parent application so as to be entitled to an earlier effective filing date under 35 U.S.C. 120. See *In re Ruscetta*, 255 F.2d

687, 118 USPQ 101 (CCPA 1958); *In re van Langenhoven*, 458 F.2d 132, 173 USPQ 426 (CCPA 1972), and *Chromalloy American Corp.* v. *Alloy Surfaces Co., Inc.*, 339 F. Supp. 859, 173 USPQ 295 (D. Del. 1972).

Paragraph (c) as amended provides for the reply to an examiner's inquiry as to first inventor of conflicting claims in commonly owned applications or an application and a patent to be either (1) a statement that the inventions were both commonly owned at the time the later invention was made or (2) an indication of the first inventor. Paragraph (c) has been changed from that proposed in response to comments to clarify that common ownership or an obligation of assignment to the same person has to exist at the time the later invention was made. New paragraph (d) provides for making a double patenting rejection where an application claims an invention which is not patentably distinct from an invention claimed in a commonly-owned patent with the same or different inventive entities. An obviousness-type double patenting rejection could be overcome by the assignee by submitting a terminal disclaimer complying with § 1.321(b).

Section 1.101 is amended as proposed to delete reference to applications filed under § 1.139 since this section is being removed.

Section 1.103 is amended as proposed to refer paragraph (d) to a request "for a defensive publication" rather than a request "filed under § 1.139" since § 1.139 is being removed. Paragraph (d) is amended as proposed to also refer to "patent interference proceedings under Subpart E" rather than to "proceedings under § 1.201(b)" since § 1.201(b) has been removed.

Section 1.104 is amended as proposed to add a new paragraph (e) to specify the nature of the showing necessary before the examiner would consider co-pending applications to be owned by, or subject to an obligation of assignment to, the same person for purposes of 35 U.S.C. 102(f)/103, 102(g)/103, and paragraph (d) of § 1.106. The rule permits the necessary showing to be made in different alternative ways. The necessary showing will be considered by the examiner to be present if the application files refer to assignments which are recorded in the Patent and Trademark Office in accordance with § 1.331 as long as the assignments conveyed the entire rights in the applications to the same person or organization. A second alternative which can be used, if assignments have not been recorded, permits the examiner to consider copies of unrecorded assignments filed in each of the applications by the applicants as long as the unrecorded assignments convey the entire rights in the applications to the same person or organization. A third alternative permits an affidavit or declaration to be filed by the common owner stating that there is common ownership and stating facts which explain why the affiant or declarant believes there is common ownership. Under this alternative, sufficient facts will have to be presented in order to enable the examiner to conclude that a prima facie case of common ownership exists. The fourth alternative permits other evidence to be used which would establish common ownership of the applications, e.g., a court decision determining the owner. The terms "person" and "organization" in the rule would include circumstances where the ownership resided in more than one person and/or organization as long as the applications are owned jointly by the same owners. Paragraph (e) also provides that where the common owner is a corporation or other organization an affidavit or declaration averring common ownership may be signed by an official of the corporation or organization who is empowered to act on behalf of the corporation or organization. A mere power of attorney to prosecute a patent application will not make an individual an official of the corporation or organization or empower the individual to act on behalf of the corporation or organization.

The wording of § 1.106(d) amends the rule to reflect the change in 35 U.S.C. 103 and refers to the "entire" rights to the subject matter and the claimed invention to make it clear that the term "commonly owned" means wholly owned by the same person, persons, or organization.

If the person, persons, or organization owned less than 100 percent of the subject matter which would otherwise be prior art to the claimed invention, or less than 100 percent of the claimed invention, then common ownership would not exist. Common ownership requires that the person, persons, or organization own 100 percent of the subject matter and 100 percent of the claimed invention. As long as principal ownership rights to either the subject matter or the claimed invention reside in different persons or organizations common ownership does not exist. A license of the claimed invention to another by the owner where basic ownership rights are retained would not defeat ownership. The requirement for common ownership at the time the claimed invention was made is intended to preclude obtaining ownership of subject matter after the claimed invention was made in order to disqualify that subject matter as prior art against the claimed invention. The question of whether common ownership exists at the time the claimed invention was made is to be determined on the basis of the evidence presented and the facts of the particular case in question. Actual ownership of the subject matter and the claimed invention by the same individual or organization or a legal obligation to assign both the subject matter and the claimed invention to the same individual or organization must be in existence at the time the claimed invention was made in order for the subject matter to be disqualified as prior art. A moral or unenforceable obligation would not evidence common ownership.

The burden of establishing that subject matter is disqualified as prior art under the section is intended to be placed and reside upon the person or persons urging that the subject matter is disqualified. For example, the examiner would normally make what appears to be a proper 35 U.S.C. 102(f)/103 or 102(g)/103 rejection and the burden would be on the patent applicant to establish that subject matter is disqualified as prior art because it was commonly owned at the time the claimed invention was made. To place the burden upon the patent examiner would not be appropriate since evidence as to common ownership at the time the claimed invention was made might not be available to the patent examiner, but such evidence, if it exists, should be readily available to the patent applicant or the patentee.

The invention is made for purposes of the amendment to section 103 when the conception is complete as defined in *Mergenthaler* v. *Scudder*, 11 App. D.C. 264, 1897 C.D. 724 (C.A.D.C. 1897), and *In re Tansel*, 117 USPQ 188 (CCPA 1958).

> The conception of the invention consists in the complete performance of the mental part of the inventive act. All that remains to be accomplished in order to perfect the act or instrument belongs to the department of construction, not invention. It is, therefore, the formation in the mind of the inventor of a definite and permanent idea of the complete and operative invention as it is thereafter to be applied in practice that constitutes an available conception within the meaning of the patent law.
>
> *Mergenthaler* v. *Scudder*, supra, at page 731.

Paragraph (e) of § 1.106 has been added in response to a comment that the rulemaking should leave no doubt as to the standard to be applied in determining the effect of a statutory invention registration waiver in one application on a related application. Paragraph (e) of § 1.106 provides that

the claims in any original application naming an inventor will be rejected as being precluded by a waiver in a published statutory invention registration naming that inventor if the same subject matter is claimed in the application and the statutory invention registration. Paragraph (e) of § 1.106 also provides that the claims in any reissue application naming an inventor will be rejected as being precluded by a waiver in a published statutory invention registration naming that inventor if the reissue application seeks to claim subject matter which was not covered by claims issued in the patent prior to the date of publication of the statutory invention registration and which was the same subject matter waived in the statutory invention registration.

Section 1.108 is amended as proposed to delete the reference to filing a request under § 1.139, which is being removed, and insert in its place a reference to a defensive publication.

A new § 1.110 is added as proposed to allow the examiner or other Office official to make inquiry as to the invention date, inventors and ownership at the time the invention was made when necessary for purposes of an Office proceeding.

Section 1.131 is amended to require that affidavits to overcome a rejection of a claim on a cited patent or publication be by the inventor or inventors of the subject matter of that claim. Section 1.131 has also been amended in response to a comment to permit the person qualified under §§ 1.42, 1.43, or 1.47 to make the required oath or declaration in appropriate circumstances.

Section 1.139 is being removed in view of the new statutory invention registration. The proposed rules made clear the intent to remove this section which established the defensive publication program although the section per se was not published as being removed. The defensive publication program is being replaced by the ability to obtain a statutory invention registration.

Section 1.193 is amended as proposed to change from twenty days to one month the time for filing a reply brief in response to an examiner's answer which raises new points of argument. This amendment is intended to simplify the docketing of this time period and make it consistent with the time period fixed for requesting an oral hearing in § 1.194(b).

Section 1.293 is added to provide who may file a request for a statutory invention registration (SIR) and the requirements of such a request in accordance with 35 U.S.C. 157 added by Pub. L. 98–622. Paragraph (a) of § 1.293 indicates that a request for publication of a statutory invention registration in a complete pending patent application for an original patent may be filed and be signed by the applicant, and any assignee of record, or the attorney or agent of record in the application. Paragraph (b) sets forth the requirements for a request for a statutory invention registration. Such a request must include:

(1) A waiver of the applicant's right to receive a patent. This waiver will become effective upon the date of publication. Therefore, it will be possible to petition to withdraw a request for publication of a statutory invention registration until such time that publication can not be terminated;

(2) Payment of the fee for requesting publication of a statutory invention registration as set forth in § 1.17 (n) or (o). The fee is set at two levels to reflect the amount of resources used by the Patent and Trademark Office;

(3) A statement that the application meets the disclosure requirements of 35 U.S.C. 112. This provision is considered desirable in order to prevent publication of defective and insufficient disclosures; and

(4) A statement that the application complies with the formal requirements of the rules of practice relating to printing. This provision is required in order to provide the printer with drawings and specifications which are suitable for printing in substantially the same format as a patent.

A suggested format for use in filing a request for a statutory invention registration is as follows.

Request for Statutory Invention Registration

Application Serial No. or [ ] Attached hereto
Filed:
Titled:
Applicants:

A. In the above identified patent application, I hereby—

1. request and authorize the Commissioner of Patents and Trademarks to publish the above identified regularly filed patent application as a Statutory Invention Registration. (35 U.S.C. 157)

2. waive the right to receive a United States patent on the same invention claimed in the above identified patent application. These rights, which are waived, include those specified in 35 U.S.C. 183 and 271 through 289 as well as all attributes specified for patents in any other provision of law other than title 35 United States Code. The waiver includes, but is not limited to, the remedies under 19 U.S.C. 1337 and 1337a, 22 U.S.C. 2356 and 28 U.S.C. 1498. (35 U.S.C. 157(c))

3. understand that the above waiver will be effective pursuant to 37 CFR 1.293 upon publication of the Statutory Invention Registration to waive the inventor's right to receive a United States patent on the invention claimed in the Statutory Invention Registration. (37 CFR 1.293(b)(1))

4. state that, in my opinion, the disclosure and claims of the above identified patent application meet the requirements of 35 U.S.C. 112. (37 CFR 1.293(b)(3))

5. state that, in my opinion, the above identified application complies with the requirements for printing as set forth in the Rules of Practice for Patent Cases, 37 CFR Part 1. (37 CFR 1.293(b)(4))

6. enclose the fee set forth in 37 CFR 1.17 (n) or (o) for requesting publication of a Statutory Invention Registration.

[ ] A first examiner's action *has not* been mailed in the above application, 37 CFR 1.17(n)—$400.00 or

[ ] A first examiner's action *has* been mailed in the above application, 37 CFR 1.17(o)—$800.00 $____

	Minus basic filing fee, if previously paid	
	Small entity	Large entity
Basic filing fee for utility patent		
Application set forth in 37 CFR 1.16(a)	[ ] $150.00	[ ] $300.00
Basic filing fee for design patent		
Application set forth in 37 CFR 1.16(f)	[ ] $62.50	[ ] $125.00
Basic filing fee for plant patent:		
Application set forth in 37 CFR 1.16(g)	[ ] $100.00	[ ] $200.00

Minus: $____
Amount Due $____

[ ] Amount enclosed by check or money order _____.

[ ] Please charge Deposit Account No. _____ in the amount of _____.

[ ] If payment of any additional fee is required for publication of the Statutory Invention Registration, charge such payment to Deposit Account No. _____.

B. For printing on the Statutory Invention Registration from page list below the name(s) of not more than 3 registered patent attorneys or agents OR alternatively, the name of the firm having as a member a registered patent attorney or agent. If no name is listed below, no name will be printed.

C. Name of assignee, if any, for printing on the Statutory Invention Registration

Address (City and State or Country)

State of incorporation, if assignee is a corporation

(signature(s) (37 CFR 1.293(a))
[ ] applicant(s) and any assignee
[ ] attorney or agent of record

Paragraph (c) of § 1.293 is added to define the effects of a waiver filed with

a request for a statutory invention registration. The waiver is effective, upon publication of the SIR, to waive the inventor's right to receive a patent on the invention claimed in the SIR in any application for an original patent which is pending on, or filed after, the date of publication of the SIR. The waiver will affect pending or later applications the inventor filed as a joint inventor with others, but will not affect an application of another person, even if the application and the SIR were commonly owned. The waiver will affect a reissue application of an earlier patent of the inventor only to the extent that the reissue application seeks to enlarge the scope of the claims. Paragraph (c) of § 1.293 has been modified from the proposal by inclusion of a reference to § 1.106(e).

Section 1.294 is added as proposed to provide in paragraph (a) for a review of the request for publication of a statutory invention registration and the patent application to which it is directed. The request will be examined to determine if the requirements of § 1.293 have been met. The application to which the request is directed will be examined to determine (1) if the subject matter of the application is appropriate for publication, (2) if the requirements for publication are met, and (3) if the requirements of 35 U.S.C. 112 and § 1.293 are met. Under 35 U.S.C. 157, the Commissioner is authorized to publish a statutory invention registration, but is not required to do so. Thus, the Commissioner has discretion in determining whether or not a statutory invention registration should be issued on a particular patent. In circumstances where the subject matter was obviously not a patentable invention, was too informal to print, and so forth, the request to publish the statutory invention registration will be refused.

Paragraph (b) of § 1.294 provides for notifying applicant of the results of the examination of the request for publication of the statutory invention registration. Paragraph (c) of § 1.294 provides for the issuances of a notice of the intent to publish a statutory invention registration once the request has been examined and approved.

Section 1.295 is added to provide for the review of a final refusal to publish a statutory invention registration. The review would be by petition to the Commissioner for matters other than those arising from a rejection pursuant to 35 U.S.C. 112 and by appeal for a rejection pursuant to 35 U.S.C. 112. The language of the final rule is slightly different from that proposed to emphasize that the Board either affirms or reverses decisions rather than rejections. Paragraph (a) also differs from the proposal by including, in response to a comment, a provision for requesting return of the petition fee if the necessity for the petition resulted from an error by the Patent and Trademark Office.

Section 1.296 has been modified from the proposal to provide a specific period during which a request for a statutory invention registration may be withdrawn. Under § 1.296, as modified, a request for a statutory invention registration may be withdrawn, at applicant's option, prior to the date of the notice of intent to publish a statutory invention registration issued pursuant to § 1.294(c) by filing a request to withdraw the request for publication of a statutory invention registration. An applicant filing such a request to withdraw may also, under § 1.296, request a refund of any amount paid in excess of the application filing fee and a handling fee of $100.00 which will be retained by the Office. Any request to withdraw the request for publication of a statutory invention registration filed on or after the date of the notice of intent to publish pursuant to § 1.294(c) must be in the form of a petition pursuant to § 1.183 accompanied by the fee set forth in § 1.17(h).

Section 1.297 is added to provide for the publication of the statutory invention registration and of the notice of its publication in the *Official Gazette*. In response to a comment, § 1.297 has been modified so that the statement on the statutory invention registration will specifically state that the statutory invention registration is not a patent.

Sections 1.301, 1.302 and 1.304 are amended as proposed to delete the requirement to give reasons for appeal when filing an appeal to the Court of Appeals for the Federal Circuit in accordance with § 414(a) of Pub. L. 98–620 which amended 35 U.S.C. 142, 143 and 144.

Section 1.378 is amended as proposed to delete from paragraph (a) the limitation that only applications filed on or after August 27, 1982 may have the maintenance fee accepted after expiration of the patent. This change follows the change made by section 404(b) of Pub. L. 98–622.

Section 1.431 is amended as proposed to provide for the later payment directly to the Receiving Office of the basic fee portion of the international fee and the transmittal and search fees within one month of the filing of an international application. The rule follows section 361(d) of title 35, U.S.C. as amended by Pub. L. 98–622, to provide a one-month grace period from the date of filing of an international application for the payment of the basic international fee and the transmittal and search fees.

It should be noted that the designation fees continue to be required by 12 months after the priority date and that no subsequent grace period is provided in the Receiving Office for designation fees.

New paragraphs 1.431 (d) and (e) incorporate into the regulations the provisions of PCT Rule 16 bis. Under these provisions the Receiving Office will charge any unpaid or insufficient fees to a deposit account maintained by the International Bureau. The applicant will then be notified by the International Bureau and be given one month to reimburse the amount charged plus a surcharge of 50%. The surcharge would not be less than 248 Swiss francs or more than 624 Swiss francs under the current fee schedule.

Section 1.445 is amended as proposed to clarify paragraph (a)(4) to clearly indicate that the national fee is credited by an amount of $250 only one time where a $500 search fee has been paid to the Patent and Trademark Office to act as an international searching authority. This is consistent with current practice. The special fee provisions in paragraph (a)(5) are being deleted in view of section 402(g) of Pub. L. 98–622 which deleted the fee in 35 U.S.C. 376(a)(5). The wording of § 1.445(a)(5) sets forth the surcharge required for filing of a national fee or oath or declaration later than 20 months from the priority date. Paragraph (a)(6) of § 1.445 is added to require a fee of $20.00 for filing an English translation of an international application later than 20 months after the priority date. This makes the practice in international applications consistent with that in national applications where a fee of $20.00 is charged under § 1.17(k) for processing an application filed with a specification in a non-English language.

Section 1.446 is amended as proposed to clarify the refund of a portion of the $500 search fee toward payment of the national fee.

Section 1.451 is amended as proposed to correct a rule citation in paragraph (b) and to amend paragraph (c) to provide for supplying a copy of the priority document to the Receiving Office in conformance with revised PCT Rule 17.1.

Section 1.461 is amended as proposed to delete provisions which relate to the applicant transmitting the record copy to the International Bureau. Provisions for such alternative transmittal were deleted from PCT Rule 22, effective

January 1, 1985. Accordingly, since the PCT rules no longer provide for such transmittal, the provisions therefor in the U.S. rules are also being deleted.

Response To Comments on the Rules

Specific comments were received on a number of the proposed rule changes. Six letters submitting written comments were received. Oral testimony was presented by four persons at the public hearing conducted on February 8, 1985 and the oral testimony of two of these persons (representing the American Intellectual Property Law Association and Intellectual Property Owners, Inc.) was supplemented by written statements. All of the written and oral comments were considered in adopting the changes set forth herein. Comments suggesting modifications to the proposed rules appear below with responses thereto.

Comment. One comment suggested that 37 CFR 1.11 be amended to create a waiver of secrecy of an application as of the date of filing of a notice of appeal to the Court of Appeals for the Federal Circuit. The comment suggests that secrecy could be maintained upon request by the appellant in such a situation.

Reply. The change was not published in the proposed rulemaking and is considered to be too substantial a change to be adopted without publication as a proposal to allow public comment. Further, if the suggestion were adopted appellants might simply include a request for secrecy with every notice of appeal.

Comment. One comment suggested that the $120.00 petition fee under § 1.17(h) for review of a refusal to publish a statutory invention registration under § 1.295 be returned to the petitioner if the refusal to publish is found to have occurred only through an administrative error of the PTO.

Reply. This suggestion has been adopted by an additional sentence being added to § 1.295(a).

Comment. Three comments suggested that the proposed fees for a statutory invention registration were too high. One comment suggested the elimination of the fee proposed in § 1.17(o).

Reply. Although lower fees would certainly be preferred by the public, the Office must recover its costs of processing and publishing statutory invention registrations. The two levels of fees permit an applicant whose application has not had a first Office action mailed to pay a minimum amount while those filing a request for a statutory invention registration later would share the average additional costs. The amounts proposed are the current estimates of expected costs and cannot be reduced. This will become apparent when it is realized that about $250.00 of the $400.00 fee which has been established for requesting publication of a statutory invention registration prior to the mailing of the first examiner's action pursuant to §1.104 is the cost of printing the statutory invention registration and does not include in-house publication staff costs. The remainder of the fee is used to cover the administrative processing costs and the limited examination which is required to be given pursuant to 35 U.S.C. 157. The higher fee of $800.00 which has been established is necessary to cover the additional costs to the Office when an applicant requests publication of a statutory invention registration after the Office has begun examination of the application on which the applicant is requesting publication of a statutory invention registration. Since the rules permit the request to be filed at any time during the examination process substantial additional examination costs, including possibly appeal costs, may have been incurred in a particular application prior to the date on which the request for publication is made. Accordingly, the additional $400.00 is required to cover the extra costs to the Office where the applicant belatedly requests publication of a statutory invention registration. Applicants can avoid the higher costs to themselves and the Office by requesting publication of the statutory invention registration in a timely fashion prior to the mailing of the first examiner's action pursuant to § 1.104. The possibility of reducing fees below costs to the Office does not exist since the legislative history of 35 U.S.C. 157 does not reflect any intent that other Office fees or appropriations be used to defer the costs of statutory invention registrations. Further, most of the comments received urged that the fees be set as low as possible, but not below the level necessary to recover costs.

Comment. One comment suggested that the Patent and Trademark Office should investigate less expensive procedures for printing statutory invention registrations to reduce the costs and thereby lower the fees.

Reply. If the registrations are not printed by a system using computer tape, the subject matter of the registrations would not be easily searchable in paper form and would not be fully available for searching under the planned automated "paperless" system. Further, the "section-by-section" analysis submitted for the Record by Representative Kastenmeier during discussion of H.R. 6286 on the floor of the House stated that the statutory invention registration "would be classified and cross-referenced, disseminated to foreign patent offices, stored in the Patent and Trademark Office computer tapes, made available in commercial data bases, and announced in the *Official Gazette* of the PTO." (130 Cong. Rec. H 10526 (1984), column 3). These uses of the statutory invention registrations preclude use of any informal method of printing which would be different from the method used for the printing of patents.

Comment. A number of comments were received concerning § 1.48(b). The comments related to (1) the propriety of the fee required, (2) the incorporation of paragraph (b) into current § 1.48, (3) the inclusion in the rules of a fixed and definite time period to correct inventorship, (4) the inclusion in the rules of a provision to add inventors claiming previously disclosed but unclaimed subject matter, and (5) a suggestion that the change in inventorship be simplified and possibly effected by a statement by applicant's attorney.

Reply. Each comment will be treated separately in order. (1) The fee of $120.00 to accompany a petition for correction of inventorship is considered appropriate since the consideration of such a petition and correction of Office records takes additional resources. Such a fee should also act as a discouragement to grouping marginal inventions and loosely related inventions into the same application. (2) Whether paragraph (b) is made part of § 1.48 or established as a separate rule does not appear to be a substantive matter. Paragraph (b) is being made part of § 1.48 to place all rules relating to correction of inventorship in applications in a single rule. (3) No specific time period for correction of inventorship was indicated in the proposed rules. The rule requires that the correction must be made diligently. Since the examiner will not normally be aware of when inventorship correction is required, the responsibility of making such a correction diligently must rest with the applicant. The time of the correction will vary from case to case. (4) The addition of claims to previously disclosed but unclaimed subject matter of additional inventors is considered to be an error in the application and is therefore corrected under § 1.48(a). A new paragraph (c) has been added to § 1.48 to make this clear. Such a correction must always include a new oath or declaration. (5) The correction of inventorship has been simplified from that proposed. Final § 1.48(b) does not require a new oath or declaration of

each actual inventor or written consent of any assignee as originally proposed. The final rule requires a petition including a statement identifying each named inventor who is being deleted and acknowledging that the inventor's invention is no longer being claimed in the application, and the fee set forth in § 1.17(h). The petition could be signed by applicant's attorney who would then take full responsibility for ensuring that the inventor is not being improperly deleted from the application.

Comment. One comment suggested that proposed § 1.60 and 1.62 should be modified to permit the filing of such continuing applications with different inventive entities from the prior application.

Reply. The procedures under §§ 1.60 and 1.62 were developed to allow continuing applications to be filed without the necessity of again obtaining an inventor's signature to a declaration. The proposed rule wording has been modified in the final rule to permit inventors to be deleted in the continuing application. The addition of inventors is now permitted where a new oath or declaration would be required because of claims in the continuing application being drawn to additional subject matter.

Comment. One comment suggested that §§ 1.77 and 1.78 be modified to change the placement in a patent application of the information regarding cross-reference to related applications. It was suggested to require this information to be placed immediately after the Abstract, following the claims, so that the cross-reference information could be easily removed when filing the application outside the United States.

Reply. These changes were not included in the proposed rulemaking and therefore the public has not had an opportunity to comment on the suggestion. Accordingly, the suggestion has not been adopted.

Comment. One comment suggested that proposed § 1.78(c) be modified to permit a statement that the claimed inventions were subject to an obligation of assignment to the same person at the time the inventions were made.

Reply. The suggestion has been adopted.

Comment. One comment suggested that the application of double patenting rejections to applications of different inventive entities which are commonly owned as set out in proposed § 1.78(d) not be made until the effective date of this rulemaking.

Reply. The Commissioner's Notice of December 11, 1984, "Initial Guidelines Implementing Changes in 35 U.S.C. 103, 116, and 120", 1050 O.G. 316 (January 8, 1985), changed the practice in accordance with the intention of Congress in enacting Public Law 98–622. See 130 Cong. Rec. H 10527, column 3 (daily ed. Oct. 1, 1984) (statement of Rep. Kastenmeier) wherein the following statement appears:

> The Committee expects that the Patent and Trademark Office will reinstitute in appropriate circumstances the practice of rejecting claims in commonly owned applications of different inventive entities on the ground of double patenting. This will be necessary in order to prevent an organization from obtaining two or more patents with different expiration dates covering nearly identical subject matter. In accordance with established patent law doctrines, double patenting rejections can be overcome in certain circumstances by disclaiming the terminal portion of the term of the later patent, thereby eliminating the problem of extending patent life.

Since the provisions of Pub. L. 98–622 became effective on November 8, 1984, it was not appropriate to delay the change in practice.

Comment. One comment suggested that the policy of rejecting commonly-owned applications of different inventive entities on the grounds of double patenting, as set forth in proposed § 1.78(d), was unnecessary in view of 35 U.S.C. 102(e).

Reply. The provisions of 35 U.S.C. 102(e) will not be effective to preclude double patenting in situations where the applicants of the later filed application can use the provisions of 37 CFR 1.131 to antedate the filing date of the earlier filed application or patent. Accordingly, the application of the prohibitions against double patenting is necessary in order to prevent an organization from obtaining two or more patents with different expiration dates covering nearly identical subject matter. See 130 Cong. Rec. H 10527, supra.

Comment. One comment suggested that proposed § 1.78(c) was broader than required by statute and capable of being construed to conflict with proposed § 1.106(d) by referring to common ownership at "the time the inventions were made" rather than at the time the later invention was made.

Reply. The wording of § 1.78(c) has been revised from the proposal to clarify the problem spoken to in the comment.

Comment. One comment suggested that the proposed amendment to § 1.131 not be made so that the "applicant" can make affidavits or declarations to overcome rejections. The comment suggested that the proposed rule provides no remedy in situations where the inventor is dead, insane, legally incapacitated, cannot be reached or refuses to join in the application.

Reply. The final rule has been changed in response to the comment to permit the person qualified under §§ 1.42, 1.43, or 1.47 to make the required oath or declaration in appropriate circumstances.

Comment. Two comments suggested that the scope of the waiver in a statutory invention registration be limited to the subject matter of the claims of the statutory invention registration and not to any obvious modifications thereof. Another comment suggested that the statutory invention registration applicant should be able to waive the right to a patent on all of the subject matter disclosed in the application if he wishes to do so. One comment suggested that the rulemaking should leave no doubt as to the standard to be applied in determining the effect of a statutory invention registration waiver in one application on a related application.

Reply. A new paragraph (e) has been added to § 1.106 to clarify the standard to be applied in determining the effect of a statutory invention registration waiver. The suggestion that the scope of the waiver be limited to the subject matter of the claims of the statutory invention registration and not to any obvious modifications thereof has been adopted.

Comments. Three comments suggested that since a statutory invention registration is prior art as of its effective filing date, the time permitted between the effective filing date and the publication of the statutory invention registration should be limited. Several different approaches were suggested. One comment suggested that there was no problem in this regard. Another comment suggested that the organization is studying the question and will have recommendations in several months.

Reply. The statute makes it clear that the Commissioner is not required to publish a statutory invention registration in response to a request therefor. The case-by-case consideration of requests for publication of a statutory invention registration should safeguard the public without unduly placing limits on patent applicants. The Office will await further recommendations on this question and will observe actual experience prior to placing any time limitations on the use of statutory invention registrations.

Comment. Two comments suggested that § 1.293 be modified to eliminate the requirement for a statement in the request for publication of a statutory invention registration that the application meets the requirements of 35

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U.S.C. 112. One of these comments also suggested the elimination of the statement that the application meets formal requirements for printing. One comment suggested that if there is a requirement for a statement in the request for publication of a statutory invention registration that the application meets the requirements of 35 U.S.C. 112, there will not be a great necessity for the Office to spend a lot of time examining the application, although there has to be some examination.

Reply. The reason for the statements in § 1.293 regarding compliance with 35 U.S.C. 112 and the formal requirements for printing as a patent was to reduce the cost of statutory invention registrations to the applicants and to the Office. The level of fees which have been established assumes that applicants will include the statements required by § 1.293 in their requests and that the statements will accurately reflect the condition of the applications to which the requests are directed.

Comment. One comment suggested that the rules should include a fixed and definite time period in which an authorized party can withdraw a statutory invention registration after its approval and before its publication.

Reply. The suggestion has been adopted. Section 1.296 has been modified to permit a request to withdraw the request for publication of a statutory invention registration to be filed at any time prior to the date of the notice of intent to publish the statutory invention registration. After the date of the notice of intent to publish the statutory invention registration, any request to withdraw the request for publication of the statutory invention registration must be in the form of a petition pursuant to § 1.183 accompanied by the fee set forth in § 1.117(h).

Comment. One comment suggested that the statement to be printed on statutory invention registrations as set out in proposed § 1.297(b) be modified to be easily understood by lay people.

Reply. The statement has been modified to specifically state that the statutory invention registration is not a patent.

Environmental, Energy, and Other Considerations

The final rule change will not have a significant impact on the quality of the human environment or conservation of energy resources.

The rule change is in conformity with the requirements of the Regulatory Flexibility Act (Pub. L. 96–354), Executive Order 12291, and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

The General Counsel of the Department of Commerce certified to the Small Business Administration that the rule change will not have a significant adverse economic impact on a substantial number of small entities (Regulatory Flexibility Act, Pub. L. 96–354). In fact, the rule change will benefit small entities since the statutory invention registration procedures will provide a new, less expensive alternative to the traditional patenting of inventions in appropriate circumstances. Further, the ability to join multiple inventors in a single application in appropriate circumstances will be of particular benefit to small entities. Other changes, such as the elimination of the reasons for appeal, will also be beneficial to all inventors. See a "section-by-section" analysis submitted for the Record by Representative Kastenmeier during discussion of H.R. 6286 on the floor of the House in which the following statement appears (130 Cong. Rec. H 1057 (1984), column 1):

> Last, the SIR would be particularly useful to those with limited resources such as universities and small businesses, who have a new less expensive alternative to the traditional patenting of inventions.

These rules, therefore, will have no significant adverse economic impact on small entities.

The Patent and Tademark Office has determined that this rule change is not a major rule under Executive Order 12291. The annual effect on the economy will be less than $100 million. There will be no major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The information collection requirements contained in these rules were submitted to the Office of Management and Budget (OMB) at the time of the proposed rulemaking for review under Section 3504(h) of the Paperwork Reduction Act. OMB has approved the information collection requirements and has assigned OMB control number 0651–0018 thereto.

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Authority delegations (government agencies), Conflict of interests, Courts, Inventions and patents, Lawyers.

PART 1—[AMENDED]

Notice is hereby given that pursuant to the authority granted to the Commissioner of Patents and Trademarks by 35 U.S.C. 6, Pub. L. 98–620 and 98–622, the Patent and Trademark Office is amending Title 37 of the Code of Federal Regulations as set forth below.

1. Section 1.11 is amended by revising paragraphs (a) and (b) and adding new paragraph (e) to read as follows:

§ 1.11 Files open to the public.

(a) After a patent has been issued or a statutory invention registration has been published, the specification, drawings and all papers relating to the case in the file of the patent or statutory invention registration are open to inspection by the public, and copies may be obtained upon paying the fee therefor. See § 2.27 for trademark files.

(b) All reissue applications, all applications in which the Office has accepted a request to open the complete application to inspection by the public, and related papers in the application file, are open to inspection by the public, and copies may be furnished upon paying the fee therefor. The filing of reissue applications will be announced in the *Official Gazette*. The announcement shall include at least the filing date, reissue application and original patent numbers, title, class and subclass, name of the inventor, name of the owner of record, name of the attorney or agent of record, and examining group to which the reissue application is assigned.

* * * * *

(e) The file of any interference involving a patent, a statutory invention registration, or an application on which a patent has been issued or which has been published as a statutory invention registration, is open to inspection by the public, and copies may be obtained upon paying the fee therefor, if: (1) the interference has terminated, or (2) an award of priority or judgment has been entered as to all parties and all counts.

2. Section 1.14 is amended by revising paragraph (b) to read as follows:

§ 1.14 Patent applications preserved in secrecy.

* * * * *

(b) Except as provided in § 1.11(b) abandoned applications are likewise not open to public inspection, except that if an application referred to in a U.S. patent, or in an application in which the

applicants has filed an authorization to open the complete application to the public, is abandoned and is available, it may be inspected or copies obtained by any person on written request, without notice to the applicant.

* * * * *

3. Section 1.17 is amended by revising paragraph (h) and by adding new paragraphs (n) and (o) to read as follows:

§ 1.17 Patent application processing fees.

* * * * *

(h) For filing a petition to the Commissioner under a section of this part listed below which refers to this paragraph—$120.00.

Section 1.47—for filing by other than all the inventors or a person not the inventor.

Section 1.48—for correction of inventorship.

Section 1.182—for decision on questions not specifically provided for.

Section 1.183—to suspend the rules.

Section 1.295—for review of refusal to publish a statutory invention registration.

Section 1.377—for review of decision refusing to accept and record payment of a maintenance fee filed prior to expiration of patent.

Section 1.378(e)—for reconsideration of decision on petition refusing to accept delayed payment of maintenance fee in expired patent.

Section 1.644(e)—for petition in an interference.

Section 1.644(f)—for request for reconsideration of a decision on petition in an interference.

Section 1.666(c)—for late filing of interference settlement agreement.

Sections 5.12, 5.13, and 5.14—for expedited handling of foreign filing license.

Section 5.15—for changing the scope of a license.

Section 5.25—for retroactive license.

* * * * *

(n) For requesting publication of a statutory invention registration prior to the mailing of the first examiner's action pursuant to § 1.104—$400.00 reduced by the amount of the application basic filing fee paid.

(o) For requesting publication of a statutory invention registration after the mailing of the first examiner's action pursuant to § 1.104—$800.00 reduced by the amount of the application basic filing fee paid.

4. Section 1.19 is amended by revising paragraphs (a) and (e) to read as follows:

§ 1.19 Document supply fees.

The Patent and Trademark Office will supply copies of the following documents upon payment of the fees indicated:

(a) Uncertified copies of Office documents:

(1) Printed copy of a patent, including a design patent, statutory invention registration, or defensive publication document, except color plant patent—$1.00.

* * * * *

(e) List of patents in subclass:

(1) For list of all United States patents and statutory invention registrations in a subclass, per 100 numbers or fraction thereof—$2.00.

(2) For list of United States patents and statutory invention registrations in a subclass limited by date or number, per 50 numbers or fraction thereof—$2.00

5. Section 1.20 is amended by revising paragraphs (e), (f), (g) and (m) to read as follows:

§ 1.20 Post-issuance fees.

* * * * *

(e) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980 and before August 27, 1982, in force beyond 4 years; the fee is due by three years and six months after the original grant—$200.00.

(f) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980 and before August 27, 1982, in force beyond 8 years; the fee is due by seven years and six months after the original grant—400.00.

(g) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980 and before August 27, 1982, in force beyond 12 years; the fee is due by eleven years and six months after the original grant—600.00.

* * * * *

(m) Surcharge for accepting a maintenance fee after expiration of a patent for non-timely payment of a maintenance fee where the delay in payment is shown to the satisfaction of the Commissioner to have been unavoidable—500.00.

6. Section 1.45 is revised by labeling the existing paragraph as (a) and by adding new paragraphs (b) and (c) to read as follows:

§ 1.45 Joint inventors.

* * * * *

(b) Inventors may apply for a patent jointly even though

(1) They did not physically work together or at the same time,

(2) Each inventor did not make the same type or amount of contribution, or

(3) Each inventor did not make a contribution to the subject matter of every claim of the application.

(c) If multiple inventors are named in an application, each named inventor must have made a contribution, individually or jointly, to the subject matter of at least one claim of the application and the application will be considered to be a joint application under 35 U.S.C. 116.

7. Section 1.48 is amended by labeling the current paragraph as paragraph (a) and by adding new paragraphs (b) and (c) to read as follows:

§ 1.48 Correction of inventorship.

* * * * *

(b) If the correct inventors are named in the application when filed and the prosecution of the application results in the amendment or cancellation of claims so that less than all of the originally named inventors are the actual inventors of the invention being claimed in the application, an amendment shall be filed deleting the names of the person or persons who are not inventors of the invention being claimed. The amendment must be diligently made and shall be accompanied by:

(1) A petition including a statement indentifying each named inventor who is being deleted and acknowledging that the inventor's invention is no longer being claimed in the application, and

(2) The fee set forth in § 1.17(h).

(c) If an application discloses unclaimed subject matter by an inventor or inventors not named in the application, the application may be amended pursuant to paragraph (a) of this section to add claims to the subject matter and name the correct inventors for the application.

(OMB Control No. 0651–0018)

8. Section 1.60 is revised to read as follows:

§ 1.60 Continuation or divisional application for invention disclosed in a prior application.

(a) A continuation or divisional application (filed under the conditions specified in 35 U.S.C. 120 or 121 and § 1.78(a)), naming as inventors the same or less than all the inventors named in a prior application and which discloses and claims only subject matter disclosed in the prior application may be filed as a separate application before the patenting or abandonment of or

termination of proceedings on the prior application.

(b) An applicant may omit signing of the oath or declaration in a continuation or divisional application if (1) the prior application was a complete application as set forth in §1.51(a), (2) applicant files a true copy of the prior complete application as filed including the specification (including claims), drawings, oath or declaration showing the signature or an indication it was signed, and any amendments referred to in the oath or declaration filed to complete the prior application, and (3) the inventors named in the continuation or divisional application are the same or less than all the inventors named in the prior application. The copy of the prior application must be accompanied by a statement that the application papers filed are a true copy of the prior application and that no amendments referred to in the oath or declaration filed to complete the prior application introduced new matter therein. Such statement must be by the applicant or applicant's attorney or agent and must be a verified statement if made by a person not registered to practice before the Patent and Trademark Office. Only amendments reducing the number of claims or adding a reference to the prior application (§ 1.78(a)) will be entered before calculating the filing fee and granting the filing date. If the continuation or divisional application is filed by less than all the inventors named in the prior application a statement must accompany the application when filed requesting deletion of the names of the person or persons who are not inventors of the invention being claimed in the continuation or divisional application.

9. Section 1.61 is amended by revising the section heading and paragraphs (a) and (b) and adding paragraphs (c) and (d) to read as follows:

§ 1.61 Filing of applications in the United States of America as a Designated Office.

(a) To maintain the benefit of the international filing date and obtain an examination as to the patentability of the invention in the United States, the applicant shall furnish to the U.S. Patent and Trademark Office not later than the expiration of 20 months from the priority date: (1) A copy of the international application with any amendments under PCT Article 19, unless it has been previously communicated by the International Bureau or unless it was originally filed in the U.S. Patent and Trademark Office; (2) a translation of the international application and a translation of any amendments under PCT Article 19 into the English language, if originally filed in another language; (3) the national fee (see § 1.445(a)(4)); and (4) an oath or declaration of the inventor (see § 1.70).

(b) If the translation of the international application, oath or declaration, and national fee have not been submitted by the applicant within twenty (20) months from the priority date, such requirements may be met within twenty-two (22) months from the priority date. The payment of the surcharge set forth in § 1.445(a)(5) is required as a condition for accepting the national fee or the oath or declaration later than 20 months after the priority date. The payment of the processing fee set forth in § 1.445(a)(6) is required for acceptance of an English translation later than 20 months after the priority date. Failure to comply with these requirements will result in abandonment of the application. The provisions of § 1.136 do not apply to the 22 month period of this section.

(c) If a copy of the amendments under PCT Article 19 is not communicated by the International Bureau or a copy thereof and any necessary English translation thereof is not received by the end of 20 months from the priority date, such failure will be regarded as cancellation of the amendments under PCT Article 19 in the international application.

(d) Verification of the translation of the international application or any other document pertaining to an international application may be required where it is considered necessary, if the international application or other document was filed in a language other than English.

10. Section 1.62 is amended by revising paragraphs (a), (c) and (h) to read as follows:

§ 1.62 File wrapper continuing procedure.

(a) A continuation, continuation-in-part, or divisional application, which uses the specification, drawings and oath or declaration from a prior complete application (§ 1.51(a)) which is to be abandoned, may be filed before the payment of the issue fee, abandonment of, or termination of proceedings on the prior application. The filing date of an application filed under this section is the date on which a request is filed for an application under this section including identification of the Serial Number, filing date, and applicant's name of the prior complete application. If the continuation, continuation-in-part, or divisional application is filed by less than all the inventors named in the prior application a statement must accompany the application when filed requesting deletion of the names of the person or persons who are not inventors of the invention being claimed in the continuation, continuation-in-part, or divisional application.

* * * * *

(c) In the case of a continuation-in-part application which adds and claims additional disclosure by amendment, an oath or declaration as required by § 1.63 must also be filed. In those situations where a new oath or declaration is required due to additional subject matter being claimed, additional inventors may be named in the continuing application. In a continuation or divisional application which discloses and claims only subject matter disclosed in a prior application, no additional oath or declaration is required and the application must name as inventors the same or less than all the inventors named in the prior application.

* * * * *

(h) The applicant is urged to furnish the following information relating to the prior and continuing applications to the best of his or her ability:

* * * * *

(5) The title of the invention and names of the applicants to be named in the continuing application.

* * * * *

11. Section 1.78 is amended by revising paragraphs (a) and (c) and by adding a new paragraph (d) to read as follows:

§ 1.78 Claiming benefit of earlier filing date and cross references to other applications.

(a) An application may claim an invention disclosed in a prior filed copending national application or international application designating the United States of America. In order for an application to claim the benefit of a prior filed copending national application, the prior application must name as an inventor at least one inventor named in the later filed application and disclose the named inventor's invention claimed in at least one claim of the later filed application in the manner provided by the first paragraph of 35 U.S.C. 112. In addition, the prior application must be (1) complete as set forth in § 1.51, or (2) entitled to a filing date as set forth in § 1.53(b) and include the basic filing fee set forth in § 1.16; or (3) intitled to a filing data as set forth in § 1.53(b) and have paid therein the processing and retention fee set forth in § 1.21(1) within the time period set forth in § 1.53(d).

Any application claiming the benefit of a prior filed copending national or international application must contain or be amended to contain in the first sentence of the specification following the title a reference to such prior application, identifying it by serial number and filing date or international application number and international filing date and indicating the relationship of the applications. Cross-references to other related applications may be made when appropriate. (See § 1.14(b)).

* * * * *

(c) Where two or more applications, or an application and a patent naming different inventors and owned by the same party contain conflicting claims, and there is no statement of record indicating that the claimed inventions were commonly owned or subject to an obligation of assignment to the same person at the time the later invention was made, the assignee may be called upon to state whether the claimed inventions were commonly owned or subject to an obligation of assignment to the same person at the time the later invention was made, and if not, indicate which named inventor is the prior inventor. In addition to making said statement, the assignee may also explain why an interference should or should not be declared.

(d) Where an application claims an invention which is not patentably distinct from an invention claimed in a commonly owned patent with the same or a different inventive entity, a double patenting rejection will be made in the application. An obviousness-type double patenting rejection may be obviated by filing a terminal disclaimer in accordance with § 1.321(b).

12. Section 1.101 is amended by revising paragraph (a) to read as follows:

§ 1.101 Order of examination.

(a) Applications filed in the Patent and Trademark Office and accepted as complete applications are assigned for examination to the respective examining groups having the classes of inventions to which the applications relate. Applications shall be taken up for examination by the examiner to whom they have been assigned in the order in which they have filed except for those applications in which examination has been advanced pursuant to § 1.102. International applications which have complied with the requirements of 35 U.S.C. 371(c) will be taken up for action based on the date on which such requirements were met. However, unless a request has been filed under 35 U.S.C. 371(f), no action may be taken prior to 21 months from the priority date.

* * * * *

13. Section 1.103 is amended by revising paragraph (d) to read as follows:

§ 1.103 Suspension of action.

* * * * *

(d) Action on applications in which the Office has accepted a request to publish a defensive publication will be suspended for the entire pendency of these applications except for purposes relating to patent interference proceedings under Subpart E.

14. Section 1.104 is amended by adding a new paragraph (e) immediately following the Note to paragraph (d) to read as follows:

§ 1.104 Nature of examination; examiner's action.

* * * * *

(e) Co-pending applications will be considered by the examiner to be owned by, or subject to an obligation of assignment to, the same person if (1) the application files refer to assignments recorded in the Patent and Trademark Office in accordance with § 1.331 which convey the entire rights in the applications to the same person or organization; or (2) copies of unrecorded assignments which convey the entire rights in the applications to the same person or organization are filed in each of the applications; or (3) an affidavit or declaration by the common owner is filed which states that there is common ownership and states facts which explain why the affiant or declarant believes there is common ownership; or (4) other evidence is submitted which establishes common ownership of the applications. In circumstances where the common owner is a corporation or other organization an affidavit or declaration may be signed by an official of the corporation or organization empowered to act on behalf of the corporation or organization.

15. Section 1.106 is amended by adding new paragraphs (d) and (e) to read as follows:

§ 1.106 Rejection of claims.

* * * * *

(d) Subject matter which is developed by another person which qualifies as prior art only under 35 U.S.C. 102(f) or (g) may be used as prior art under 35 U.S.C. 103 against a claimed invention unless the entire rights to the subject matter and the claimed invention were commonly owned by the same person or organization or subject to an obligation of assignment to the same person or organization at the time the claimed invention was made.

(e) The claims in any original application naming an inventor will be rejected as being precluded by a waiver in a published statutory invention registration naming that inventor if the same subject matter is claimed in the application and the statutory invention registration. The claims in any reissue application naming an inventor will be rejected as being precluded by a waiver in a published statutory invention registration naming that inventor if the reissue application seeks to claim subject matter (1) which was not covered by claims issued in the patent prior to the date of publication of the statutory invention registration and (2) which was the same subject matter waived in the statutory invention registration.

16. Section 1.108 is revised to read as follows:

§ 1.108 Abandoned applications not cited.

Abandoned applications as such will not be cited as references except those which have been opened to inspection by the public following a defensive publication.

17. Section 1.110 is added to read as follows:

§ 1.110 Inventorship and date of invention of the subject matter of individual claims.

When more than one inventor is named in an application or patent, the Patent and Trademark Office, when necessary for purposes of an Office proceeding, may require an applicant, patentee, or owner to identify the inventive entity of the subject matter of each claim in the application or patent. Where appropriate, the invention dates of the subject matter of each claim and the ownership of the subject matter on the date of invention may be required of the applicant, patentee or owner. See also §§ 1.78(c) and (d).

[OMB Control No. 0651-0018]

18. Section 1.131 is amended by revising paragraph (a) to read as follows:

§ 1.131 Affidavit or declaration of prior invention to overcome cited patent or publication.

(a) When any claim of an application or a patent under reexamination is rejected on reference to a domestic patent which substantially shows or describes by does not claim the rejected invention, or on reference to a foreign patent or to a printed publication, and the inventor of the subject matter of the rejected claim, the owner of the patent

under reexamination, or the person qualified under §§ 1.42, 1.43 or 1.47, shall make oath or declaration as to facts showing a completion of the invention in this country before the filing date of the application on which the domestic patent issued, or before the date of the foreign patent, or before the date of the printed publication, then the patent or publication cited shall not bar the grant of a patent to the inventor or the confirmation of the patentability of the claims of the patent, unless the date of such patent or printed publication is more than one year prior to the date on which the inventor's or patent owner's application was filed in this country.

* * * * *

§ 1.139 [Removed]

19. Section 1.139 is removed.

20. Section 1.193 is amended by revising paragraph (b) to read as follows:

§ 1.193 Examiner's answer.

* * * * *

(b) The appellant may file a reply brief directed only to such new points of argument as may be raised in the examiner's answer, within one month from the date of such answer. However, if the examiner's answer states a new ground of rejection appellant may file a reply thereto within two months from the date of such answer; such reply may include any amendment or material appropriate to the new ground.

* * * * *

21. A new § 1.293 is added to read as follows:

§ 1.293 Statutory invention registration.

(a) An applicant for an original patent may request, at any time during the pendency of applicant's pending complete application, that the specification and drawings be published as a statutory invention registration. Any such request must be signed by (1) the applicant and any assignee of record or (2) an attorney or agent of record in the application.

(b) Any request for publication of a statutory invention registration must include the following parts:

(1) A waiver of the applicant's right to receive a patent on the invention claimed effective upon the date of publication of the statutory invention registration;

(2) The required fee for filing a request for publication of a statutory invention registration as provided for in § 1.17 (n) or (o);

(3) A statement that, in the opinion of the requester, the application to which the request is directed meets the requirements of 35 U.S.C. 112; and

(4) A statement that, in the opinion of the requester, the application to which the request is directed complies with the formal requirements of this part for printing as a patent.

(c) A waiver filed with a request for a statutory invention registration will be effective, upon publication of the statutory invention registration, to waive the inventor's right to receive a patent on the invention claimed in the statutory invention registration, in any application for an original patent which is pending on, or filed after, the date of publication of the statutory invention registration. A waiver filed with a request for a statutory invention registration will not affect the rights of any other inventor even if the subject matter of the statutory invention registration and an application of another inventor are commonly owned. A waiver filed with a request for a statutory invention registration will not affect any rights in a patent to the inventor which issued prior to the date of publication of the statutory invention registration unless a reissue application is filed seeking to enlarge the scope of the claims of the patent. See also § 1.106(e).

(OMB Control No. 0651–0018.)

22. A new § 1.294 is added to read as follows:

§ 1.294 Examination of request for publication of a statutory invention registration and patent application to which the request is directed.

(a) Any request for a statutory invention registration will be examined to determine if the requirements of § 1.293 have been met. The application to which the request is directed will be examined to determine (1) if the subject matter of the application is appropriate for publication, (2) if the requirements for publication are met, and (3) if the requirements of 35 U.S.C. 112 and § 1.293 of this part are met.

(b) Applicant will be notified of the results of the examination set forth in paragraph (a) of this section. If the requirements of § 1.293 and this section are not met by the request filed, the notification to applicant will set a period of time within which to comply with the requirements in order to avoid abandonment of the application. If the application does not meet the requirements of 35 U.S.C. 112, the notification to applicant will include a rejection under the appropriate provisions of 35 U.S.C 112. The periods for response established pursuant to this section are subject to the extension of time provisions of § 1.136. After response by the applicant, the application will again be considered for publication of a statutory invention registration. If the requirements of § 1.293 and this section are not timely met, the refusal to publish will be made final. If the requirements of 35 U.S.C. 112 are not met, the rejection pursuant to 35 U.S.C. 112 will be made final.

(c) If the examination pursuant to this section results in approval of the request for a statutory invention registration the applicant will be notified of the intent to publish a statutory invention registration.

23. A new § 1.295 is added to read as follows:

§ 1.295 Review of decision finally refusing to publish a statutory invention registration.

(a) Any requester who is dissatisfied with the final refusal to publish a statutory invention registration for reasons other than compliance with 35 U.S.C. 112 may obtain review of the refusal to publish the statutory invention registration by filing a petition to the Commissioner accompanied by the fee set forth in § 1.17(h) within one month or such other time as is set in the decision refusing publication. Any such petition should comply with the requirements of § 1.181(b). The petition may include a request that the petition fee be refunded if the final refusal to publish a statutory invention registration for reasons other than compliance with 35 U.S.C. 112 is determined to result from an error by the Patent and Trademark Office.

(b) Any requester who is dissatisfied with a decision finally rejecting claims pursuant to 35 U.S.C. 112 may obtain review of the decision by filing an appeal to the Board of Patent Appeals and Interferences pursuant to § 1.191. If the decision rejecting claims pursuant to 35 U.S.C. 112 is reversed, the request for a statutory invention registration will be approved and the registration published if all of the other provisions of § 1.293 and this section are met.

(OMB Control No. 0651–0018.)

24. A new § 1.296 is added to read as follows:

§ 1.296 Withdrawal of request for publication of statutory invention registration.

A request for a statutory invention registration, which has been filed, may be withdrawn prior to the date of the notice of the intent to publish a statutory invention registration issued pursuant to § 1.294(c) by filing a request to withdraw the request for publication of a statutory

invention registration. The request to withdraw may also include a request for a refund of any amount paid in excess of the application filing fee and a handling fee of $100 which will be retained. Any request to withdraw the request for publication of a statutory invention registration filed on or after the date of the notice of intent to publish issued pursuant to § 1.294(c) must be in the form of a petition pursuant to § 1.183 accompanied by the fee set forth in § 1.17(h).

(OMB Control No. 0651–0018.)

25. A new § 1.297 is added to read as follows:

§ 1.297 Publication of statutory invention registration.

(a) If the request for a statutory invention registration is approved the statutory invention registration will be published. The statutory invention registration will be mailed to the requester at the correspondence address as provided for in § 1.33(a). A notice of the publication of each statutory invention registration will be published in the *Official Gazette*.

(b) Each statutory invention registration published will include a statement relating to the attributes of a statutory invention registration. The statement will read as follows:

A statutory invention registration published pursuant to 35 U.S.C. 157 is not a patent but it has all of the attributes specified for patents in title 35, United States Code, except those specified in 35 U.S.C. 183 and sections 271 through 289. A statutory invention registration does not have any of the attributes specified for patents in any other provision of law other than title 35, United States Code. The invention with respect to which a statutory invention registration is published is not a patented invention for purposes of the marking provisions of 35 U.S.C. 292.

26. Section 1.301 is revised to read as follows:

§ 1.301 Appeal to U.S. Court of Appeals for the Federal Circuit.

Any applicant or any owner of a patent involved in a reexamination proceeding dissatisfied with the decision of the Board of Patent Appeals and Interferences, and any party to an interference dissatisfied with the decision of the Board of Patent Appeals and Interferences, may appeal to the U.S. Court of Appeals for the Federal Circuit. The appellant must take the following steps in such an appeal: (a) In the Patent and Trademark Office file a written notice of appeal directed to the Commissioner (see §§ 1.302 and 1.304); and (b) in the Court, file a copy of the notice of appeal and pay the fee for appeal, as provided by the rules of the Court. The certified list of documents and any original or certified copies of such documents required by the Court will be transmitted to the Court by the Patent and Trademark Office.

27. Section 1.302 is revised to read as follows:

§ 1.302 Notice of appeal.

(a) When an appeal is taken to the U.S. Court of Appeals for the Federal Circuit, the appellant shall give notice thereof to the Commissioner within the time specified in § 1.304.

(b) In interferences, the notice must be served as provided in § 1.646.

28. Section 1.304 is amended by revising paragraph (a) to read as follows:

§ 1.304 Time for appeal or civil action.

(a) The time for filing the notice of appeal to the U.S. Court of Appeals for the Federal Circuit (§ 1.302) or for commencing a civil action (§ 1.303) is sixty days from the date of the decision of the Board of Patent Appeals and Interferences. If a request for reconsideration or modification of the decision is filed within the time provided under § 1.197(b) or § 1.658(b), the time for filing an appeal or commencing a civil action shall expire at the end of the sixty-day period or thirty days after action on the request, whichever is later. Except for an appeal from or commencing a civil action after a decision of the Board of Patent Appeals and Interferences in a reexamination proceeding or an interference proceeding, the time periods set forth herein are subject to the provisions of § 1.136. See § 1.550(c) for extensions of time to appeal or commence a civil action in a reexamination proceeding. See § 1.645(a) for extensions of time to appeal or commence a civil action in an interference. An examiner-in-chief, upon a showing of excusable neglect, may extend the time for seeking judicial review of a decision of the Board of Patent Appeals and Interferences in an interference case when a request is untimely filed after expiration of the time prescribed by this section.

* * * * *

29. Section 1.378 is amended by revising the section heading and paragraph (a) to read as follows:

§ 1.378 Acceptance of delayed payment of maintenance fee in expired patent to reinstate patent.

(a) The Commissioner may accept the payment of any maintenance fee due on a patent after expiration of the patent if, upon petition, the delay in payment of the maintenance fee is shown to the satisfaction of the Commissioner to have been unavoidable and if the surcharge required by § 1.20(m) is paid as a condition of accepting payment of the maintenance fee. If the Commissioner accepts payment of the maintenance fee upon petition, the patent shall be considered as not having expired, but will be subject to the conditions set forth in 35 U.S.C. 41(c)(2).

* * * * *

30. Section 1.431 is amended by revising paragraphs (b)(3)(iii) and (c) and by adding new paragraphs (d) and (e) to read as follows:

§ 1.431 International application requirements.

* * * * *

(b) * * *

(3) * * *

(iii) The name of the applicant, as prescribed (note §§ 1.421–1.424);

(c) Payment of the basic portion of the international fee (PCT Rule 15.2) and the transmittal and search fees (§ 1.445) may be made in full at the time the international application papers required by paragraph (b) of this section are deposited or within one month thereafter. Failure to make full payment within one month of the deposit of the international application papers required by paragraph (b) of this section will result in the fees being charged to the International Bureau under the provisions of paragraph (d) of this section and PCT Rule 16 bis.

(d) The United States Receiving Office will charge to the International Bureau in accordance with PCT Rule 16 bis and will consider as having been timely paid:

(1) The transmittal fee, the basic fee portion of the international fee, or the search fee where these fees have not been fully paid by the applicant within one month of the date of deposit of the international application, and

(2) The designation fee, or the amount necessary to cover all the designations made in the request which have not been paid by the applicant within one year from the priority date.

(e) The International Bureau will notify applicant of any amount charged under paragraph (d) of this section and invite the applicant to pay directly to the International Bureau within one month from the date of the notification, the amount charged, augmented by a surcharge of 50%, provided the surcharge will not be less, and will not be more, than the amounts indicated in the Schedule of Fees appended to the PCT Rules. If the payment needed to

cover the transmittal fees, the basic fee, the search fee, one designation fee and the surcharge is not timely made to the International Bureau, the International Bureau will notify the Receiving Office which will declare the international application withdrawn under PCT Article 14(3)(a). If the applicant makes timely payment of the fees referred to in the previous sentence, but the amount paid is not sufficient to cover all the designation fees, the Receiving Office will declare any designation not paid withdrawn under PCT Article 14(3)(b) in accordance with PCT Rule 16 bis. 2(c).

31. Section 1.445 is amended by revising paragraphs (a)(4) and (5) and adding paragraph (a)(6) to read as follows:

§ 1.445 International application filing and processing fees.

(a) * * *

(4) The national fee, that is, the amount set forth as the filing fee under § 1.16 (a) through (d) credited one time only by an amount of $250 where an international search fee of $500.00 has been paid on the corresponding international application to the United States Patent and Trademark Office as an International Searching Authority. Where the amount of the credit is in excess of that required for the national fee, a request for a refund of the excess under § 1.446(b) may be filed at the time of paying the national fee. Only one such credit is permitted based on a single $500.00 international search fee.

(5) Surcharge for filing the national fee or oath or declaration later than 20 months from the priority date—$100.00.

(6) For filing an English translation of an international application later than 20 months after the priority date (§ 1.61(b))—$20.00.

* * * * *

32. Section 1.446 is amended by revising the section heading and paragraph (b) to read as follows:

§ 1.446 Refund of international application filing and processing fees.

* * * * *

(b) Refund of a portion of the search fee toward payment of the national fee may be made one time to the extent set forth in § 1.445(a)(4) if requested at the time of paying the national fee provided that a $500 search fee has been paid.

* * * * *

33. Section 1.451 is amended by revising paragraphs (b) and (c) to read as follows:

§ 1.451 The priority claim and priority document in an international application.

* * * * *

(b) Whenever the priority of an earlier United States national application is claimed in an international application, the applicant may request in a letter of transmittal accompanying the international application upon filing with the United States Receiving Office or in a separate letter filed in the Receiving Office not later than 16 months after the priority date, that the Patent and Trademark Office prepare a certified copy of the national application for transmittal to the International Bureau (PCT Article 8 and PCT Rule 17). The fee for preparing a certified copy is stated in § 1.19 (a)(3) and (b)(1).

(c) If a certified copy of the priority document is not submitted together with the international application on filing, or, if the priority application was filed in the United States and a request and appropriate payment for preparation of such a certified copy do not accompany the international application on filing or are not filed within 16 months of the priority date, the certified copy of the priority document must be furnished by the applicant to the International Bureau of the United States Receiving Office within the time limit specified in PCT Rule 17.1(a).

34. Section 1.461 is amended by deleting paragraph (b) and by revising paragraph (a) to read as follows:

§ 1.461 Procedures for transmittal of record copy to the International Bureau.

(a) Transmittal of the record copy of the international application to the International Bureau shall be made by the United States Receiving Office.

(b) [Reserved]

* * * * *

Dated: February 14, 1985.

Donald J. Quigg,

Acting Commissioner of Patents and Trademarks.

[FR Doc. 85-5466 Filed 3-6-85; 8:45 am]

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Part IV

Environmental Protection Agency

40 CFR Part 80

Regulation of Fuels and Fuel Additives; Gasoline Lead Content; Final Rule and Supplemental Notice of Proposed Rulemaking

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL-2775-3(b)]

Regulation of Fuels and Fuel Additives; Gasoline Lead Content

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action on a portion of the revisions to the gasoline lead content regulations proposed on August 2, 1984 (49 FR 31032). The Agency is promulgating a low-lead standard of 0.10 gram of lead per gallon of leaded gasoline (gplg) effective on January 1, 1986, and an interim standard of 0.50 gplg effective on July 1, 1985. These standards will significantly reduce the adverse health effects that result from the use of lead in gasoline, and will reduce the misuse of leaded gasoline in vehicles designed for unleaded gasoline.

The Agency is not taking final action on the portion of the proposed notice concerning a total ban on the use of lead in gasoline. New information has become available relevant to this subject, and elsewhere in this issue of the **Federal Register** is a notice describing such information and reopening the comment period on this subject.

The Agency is also promulgating other proposed revisions to the gasoline lead content regulations. These revisions include elimination of the inter-refinery averaging provisions effective January 1, 1986, a change to the definition of "unleaded gasoline," and deletion of outdated special small refinery provisions.

DATE: The final actions taken in this notice are effective April 8, 1985.

ADDRESS: Comments and other information relevant to this rulemaking (Docket No. EN–84–05) may be viewed at the Central Docket Section (LE–131), Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460. The docket is located in the West Tower Lobby of EPA, 401 M Street, SW., Washington, D.C., and may be inspected between 8:00 a.m. and 4:00 p.m. on weekdays. As provided in 40 CFR Part 2, a reasonable fee may be charged for photocopying.

FOR FURTHER INFORMATION CONTACT: Richard G. Kozlowski, Director, Field Operations and Support Division (EN–397F), EPA, 401 M Street, SW., Washington, D.C. 20460. Telephone (202) 382–2633.

SUPPLEMENTARY INFORMATION:

I. August 2, 1984, Proposal

On August 2, 1984 (49 FR 31032), EPA proposed several revisions to the gasoline lead content regulations set forth at 40 CFR Part 80. The revisions were proposed under the Agency's authority to regulate fuels and fuel additives under section 211(c) (1) and (2) of the Clean Air Act to protect the public health and welfare and to safeguard the performance of emission control devices in general use. The notice of proposed rulemaking (NPRM) contains a detailed description of the basis and statutory authority for the proposal, the proposed regulatory actions, the expected impacts of the proposed actions (lead usage, health, economic, energy, and use of other fuel additives), and alternative actions considered by the Agency.

The Agency's proposed rulemaking actions were based on three major concerns about the use of lead in gasoline. The first concern related to the use of leaded gasoline in vehicles designed and certified by EPA to use only unleaded gasoline, termed "fuel switching" or "misfueling." This practice is of great concern to the Agency both because it results in greater use of lead in gasoline than previously estimated, and because leaded gasoline poisons catalytic converters and thereby causes very large increases in tailpipe emissions of several pollutants: Hydrocarbons (HC), carbon monoxide (CO), and nitrogen oxides (NO_x). The 1982 EPA motor vehicle emissions tampering survey (the most recent available at the time the NPRM was drafted) estimated a national fuel switching rate of 13.5% of unleaded designed vehicles. The subsequently-released 1983 tampering survey estimates a national fuel switching rate of 16% of such vehicles, indicating a continuing problem. Although the Agency is taking other measures to combat this practice, these did not appear to be adequate to correct this problem.

The Agency's second concern (related to the first) was that lead usage under the current 1.10 gplg standard has been significantly higher than that anticipated at the time that standard was promulgated in 1982. Total lead usage in 1983 was more than 10% higher than that predicted by EPA a year earlier.

The Agency's third concern was the direct impact of the use of lead in gasoline on human health, particularly that of pre-school children. The NPRM contains an extensive review of available information on this subject, including new studies that had become available since the Agency's 1982 rulemaking on gasoline lead. Based on this review, the Agency tentatively concluded that a national health problem still exists with regard to environmental lead, that gasoline lead is a major contributor to lead exposure, that lead emissions should be controlled to the extent possible, and that all reasonable efforts should be taken to reduce lead exposure to the population as rapidly as possible. In addition, the Agency tentatively concluded that there is no health-based reason to continue the use of lead in gasoline, as this is the most readily controlled and most ubiquitous source of lead emissions into the environment. A prudent health objective was therefore considered to be the rapid reduction and eventual end to the use of lead in gasoline.

As a result of these concerns, the NPRM contained two major proposals:

(1) The Agency proposed a lead content standard of 0.10 gplg, effective January 1, 1986. This proposed standard was intended to reduce lead usage as much as possible while providing the minimum amount of lead needed to prevent valve-seat recession in older automobiles, certain trucks, and other vehicles. Since the minimum amount of lead needed to prevent valve-seat recession had not been precisely determined, EPA proposed a standard of 0.10 gplg based primarily on three studies from the late 1960's and early 1970's which found such a lead level adequate to protect against this problem.

The Agency proposed a January 1, 1986, effective date for the 0.10 gplg standard because its analysis using the Department of Energy linear programming model suggested that date is feasible for the industry as a whole and because such a date maximizes the net benefits of the standard, compared to other effective dates for such a standard. The notice stated, however, that if comments led EPA to believe that 1986 is not a feasible date, the Agency would consider alternative compliance schedules for a phased-in approach, such as 0.50 gplg on July 1, 1985, 0.30 gplg on January 1, 1986, 0.20 gplg on January 1, 1987, and 0.10 gplg on January 1, 1988.

The Agency specifically requested comments on the adequacy of the 0.10 gplg standard to protect vehicle engines and on the feasibility of the effective date for the refining industry.

EPA stated that the 0.10 gplg standard was intended to eliminate or drastically reduce fuel switching, since such a standard should result in the production cost of leaded gasoline becoming higher

than that of unleaded gasoline (assuming current octane levels are maintained). If retail prices were to reflect this cost differential, a major incentive for fuel switching (i.e., the lower price of leaded gasoline) would be eliminated. Because such a "price flip" is not certain, the Agency requested comments on various marketing restrictions that could be adopted in conjunction with a low-lead standard in order to eliminate or reduce misfueling.

(2) EPA stated that its overall objective is to end the use of lead as a gasoline additive to prevent unacceptable health effects and misfueling, while at the same time protecting engines designed strictly for the use of leaded fuel. The Agency proposed two alternatives relating to long term gasoline usage: (a) No further regulatory action, based on reliance on likely market trends to eliminate the need for lead; and (b) a ban on the use of lead in gasoline by about 1995, which would assure that such use stops by a specific date. Because of uncertainties concerning this subject, comments were requested on a wide range of related issues.

In addition to these major proposals, the Agency also proposed to:

(3) Prohibit use of the inter-refinery averaging provisions currently in the regulations after January 1, 1986, in order to assure that engines that need lead would receive an adequate amount (for the same purpose, comments were also requested on whether the current quarterly averaging period should be shortened and/or whether a minimum per gallon lead standard should be established);

(4) Amend the definition of "unleaded gasoline" to make clear that it may not include any amount of intentionally-added lead and to lower the allowable contamination level from 0.05 gram per unleaded gallon (gpug) to 0.01 gpug;

(5) Eliminate the small refinery provisions and other obsolete portions of the regulations; and

(6) Make minor changes to the right of entry/inspection, importer, and inter-refinery averaging provisions (effective until January 1, 1986).

The NPRM presented detailed estimates of the impacts of the proposed actions. Total lead usage in gasoline during 1986–94 was predicted to be reduced by 91–94% under a 0.10 gplg standard effective in January 1986, depending on the impact of that standard on fuel switching.

The primary impact of the proposal would be to reduce human exposure to environmental lead, in particular to reduce such exposure of the group most at risk, pre-school children. Over the period 1986 to 1992, the proposed 0.10 gplg standard was estimated to result in an aggregate 280,000 fewer incidences of children exceeding a blood lead level of 30 μg/dl (the current level of undue exposure to lead established by the Centers for Disease Control) and 9.6 million fewer incidences exceedng a level of 15 μg/dl. Emissions of the leaded gasoline additive ethylene dibromide (EDB), a potential human carcinogen, would also be reduced as a result of this proposal. Ambient lead levels in areas not significantly affected by stationary sources could be reduced by as much as 91%, and emissions of HC, CO, and NO_x would be reduced significantly, depending on the extent that misfueling is controlled.

The Agency also attempted to quantify the economic impact of a 0.10 gplg standard effective in 1986 and a no-lead standard effective in 1995. Based on the Department of Energy linear programming model, the cost of the low-lead standard to the refining industry for the period 1986–92 was estimated at $3.4 billion. For this same period, benefits of $10.7 billion were predicted (such benefits relate to reduced vehicle maintenance costs, increased fuel efficiency, reduced misfueling rates, medical cost savings, and improved school performance). The costs and benefits of a lead ban in 1995 were also predicted.

The impact of a low-lead or no-lead standard on the use of other fuel additives was also analyzed in the NPRM. Additives that might replace lead as an octane booster and/or valve lubricant include phosphorus, sodium, MMT, and alcohols. Based on then-available information, the Agency tentatively concluded that a prohibition on the use of lead in gasoline would not cause the use of another fuel or fuel additive that will produce emissions that will endanger the public health or welfare to the same or greater degree than the use of lead.

Finally, the NPRM discussed alternative regulatory or legislative actions that could be taken (including a Federal ban on individual fuel switching and incentives for state/local anti-misfueling programs), and concluded that such actions would be infeasible and/or ineffective compared to the actions proposed.

On August 30 and 31, 1984, the Agency held a public hearing in Arlington, Virginia, to receive oral testimony on the notice of proposed rulemaking. Sixty witnesses (representing large refineries, small refineries, blenders, the lead industry, gasoline marketers, the medical community, environmental groups, owners of older vehicles, motorcyclists, fleet operators, boatowners, and farmer cooperatives) presented testimony at the hearing. In addition, more than 1500 written comments were submitted to the Agency by the close of the comment period on October 1, 1984. All such testimony and written comments have been considered in the development of today's final rulemaking action. A summary of all such testimony and comments has been prepared and placed in the rulemaking docket.

Because of the very large number of comments on the NPRM, this final notice generally discusses in detail only those comments and testimony that resulted in changes from the proposal. EPA's responses to other significant comments appear in a separate document entitled "Responses to Comments on the August 2, 1984, Proposal to Amend the Gasoline Lead Content Regulations" ("Responses to Comments"). This separate document has been included in Docket Number EN–84–05, and is incorporated by reference in this notice. This supplemental document may be reviewed at the EPA Central Docket Section (see the **"ADDRESS"** section above), or a copy may be obtained by writing to Richard Kozlowski at the address listed in the **"FOR FURTHER INFORMATION"** section above.

[On January 4, 1985, the Agency issued a notice of proposed rulemaking that proposed to allow the banking of lead usage rights in conjunction with more stringent gasoline lead content standards. 50 FR 718. The proposal would allow refiners who use less lead in 1985 than allowed under the applicable standards to use additional lead in certain future calendar quarters (i.e., the second quarter of 1985 through the fourth quarter of 1987) in an amount equal to the lead previously not used. The reason for this proposal was the Agency's belief that the banking mechanism would provide an efficient method of reducing total lead levels while allowing the industry greater flexibility in meeting more stringent standards. A public hearing was held on January 15, 1985, concerning this proposal, at which 11 witnesses testified. Written comments on the proposal are due by February 19, 1985. The Agency expects to take final action on this proposal by March 31, 1985.]

II. Today's Actions

A. Low-Lead Standards

EPA is today promulgating a low-lead standard of 0.10 gplg, effective January 1, 1986, and an interim standard of 0.50 gplg, effective July 1, 1985. In EPA's

judgment, these standards will result in significantly greater public health benefits than the Agency's proposal, are feasible for the industry as a whole, and will provide adequate protection for engines that may need a valve lubricant.

1. 0.10 gplg Standard

As noted in Part I of this notice, the Agency proposed the 0.10 gplg standard to be effective on January 1, 1986, based on its tentative conclusions that such an amount of lead would be adequate to protect engines at risk from the problem of valve-seat recession and that such an effective date would be feasible for the refining industry as a whole. A large number of public comments were submitted on these issues. A significant number of commenters cited various reasons in support of the proposed 1986 effective date for the 0.10 gplg standard, including a number of refiners, environmental and health groups, and state and local governments. Others urged that a 0.10 gplg standard be imposed even sooner than 1986. On the other hand, a number of other commenters (including most of the refiners that submitted comments) opposed a 0.10 gplg standard in 1986. Many refiners argued that they could not meet such a deadline. Others (including the lead industry, antique car owners, boaters, motorcyclists, truck fleet operators, farm groups and some vehicle engine manufacturers) argued that a 0.10 gplg standard would not provide enough engine valve protection.

Comments were also received on the Agency's analysis of the health and economic impacts of a 0.10 gplg standard. Such comments argued that EPA's estimates of such impacts were too high, too low, or correct.

Based on a review of these comments, EPA continues to believe that the rationales for the benefits of this standard and the feasibility of its proposed effective date, as set forth at length in the NPRM and related regulatory documents, are correct. In particular, the Agency believes that a January 1, 1986, effective date will not have an unduly adverse impact on a substantial portion of the refining industry, and thus that a later effective date for the 0.10 gplg standard (such as the 1988 date discussed in the NPRM) is not necessary or appropriate in light of the benefits that will be achieved by a 1986 effective date.

The Agency has not been persuaded by comments opposing a 0.10 gplg standard in 1986 that such an effective date is infeasible or unduly costly, or that such an amount of lead is inadequate to protect engine valves. For example, a large number of refiners argued that there will be insufficient capacity to produce adequate supplies of gasoline and still meet a 0.10 gplg standard in 1986. In response to these comments, EPA has performed exhaustive analyses (described in the final regulatory impact analysis (RIA) and other submissions to the docket) that indicate that this standard is feasible in this timeframe. The refining industry is currently operating at only 75 percent of crude capacity and 50 percent of reformer capacity. The Agency believes that use of up to 90 percent of this capacity would be feasible for the industry, but the Agency analysis shows that less than 70 percent of reformer capacity would be needed to meet a 0.10 gplg standard in 1986 with new fluid catalytic cracking (FCC) units (and less than 80 percent without such units). In its analysis, EPA made various pessimistic assumptions that tended to produce conservative capacity estimates. As discussed in detail in the final RIA, only when a number of pessimistic conditions were assumed to occur at the same time did the analysis show that it would be infeasible for the industry to meet the promulgated standard, and then only for the summer months. Since the likelihood of these conditions all occurring at the same time is extremely remote, the Agency believes this standard is feasible for the industry as a whole to meet.

As noted above, another major group of comments was that a 0.10 gplg standard would be inadequate to protect engine valves. After reviewing these comments, the Agency remains convinced that the risk of valve damage at a 0.10 gplg standard are minimal and do not justify a less stringent standard. Because of the factors in addition to gasoline lead levels that are related to valve damage, automobiles and light-duty trucks (LDT's) that operate under relatively mild operating conditions must be analyzed separately from heavy-duty trucks (HDT's) and other engines that may be operated under more severe conditions (i.e., high engine speed and load). For cars and LDT's, the Doelling study and other studies provide a reasonable basis for concluding that there is little risk of valve damage at 0.10 gplg. Also, based on the available data (discussed in detail in the final RIA and the Responses to Comments), EPA has concluded that 0.10 gplg should provide an adequate amount of lead for valve protection for HDT's and other engines (including marine and farm equipment engines). This is particularly true in light of the fact that fuel additive packages would apparently be available to serve as a supplement or substitute to lead as a valve lubricant. Moreover, although there is not enough information to rule out completely the possibility that there will be some unquantifiable risk of some damage to certain engines, there are no specific data clearly demonstrating that more than 0.10 gplg is necessary for valve protection, and the potential risk of valve damage appears to be very small. In any event, that potential risk, even if it were verifiable, would not change EPA's conclusion that 0.10 gplg is the most appropriate standard for achieving the paramount public health goals in this rule—especially in light of the clear and substantial public health risks that would be created by a more lenient standard than 0.10 gplg. Of course, EPA will continue to study the issue of valve lubrication in the context of the supplemental notice of proposed rulemaking published today, and will work closely with users of particular vehicles and engine types designed for leaded gasoline to minimize further the potential risk, if any, of valve damage.

The Agency's detailed responses to all comments on the 0.10 gplg standard (including comments discussed above) are contained in the separate "Responses to Comments" document.

As noted in Part I of this notice, on January 4, 1985, EPA proposed to allow refiners to "bank" lead usage rights in 1985 for use in certain future calendar quarters. Although the Agency believes that the 0.10 gplg standard promulgated today can be met by the industry as a whole under any reasonably foreseeable circumstances, EPA also expects that the banking provisions, if promulgated, would alleviate or eliminate any problems that individual refiners might have in meeting this standard. Moreover, the Agency has modelled the effects of a banking mechanism and believes that such a mechanism would alleviate any feasibility problems for the industry as a whole in even the most extreme cases.

2. 0.50 gplg Standard

As noted in Part I of this notice, the NPRM requested comments on a phased-in 0.10 gplg standard, including a phase-in schedule which began with a 0.50 gplg standard effective on July 1, 1985, and ended with a 0.10 gplg standard effective on January 1, 1988. 49 FR 31040. Several commenters (e.g., U.S. Small Business Administration, the National Cooperative Refiners Association) supported this example phase-in schedule. On the other hand, certain refiners and blenders opposed this schedule, arguing that it would create many of the same disruptions in the industry as they claimed would

occur under a 0.10 gplg standard effective in January 1986. One commenter (Canal Refining) noted that only 12 of 35 refiners surveyed could meet the example alternative schedule. Others (Union Oil and Kern Oil) argued that such a schedule would not help refiners who currently lack sufficient octane capacity, which would be improved only upon the completion of new facilities. Certain refiners and blenders (e.g., Canal, Phillips Petroleum) stated specifically that they would have trouble meeting a 0.50 gplg interim standard in July 1985.

However, a number of commenters recommended that an intermediate 0.50 gplg standard be promulgated effective in 1985, along with a rapidly effective 0.10 gplg standard. Both Ashland Oil and Crown Central Petroleum stated that the refining industry could meet a 0.50 gplg standard effective on January 1, 1985, along with a 0.10 gplg standard beginning on January 1, 1986. Saber Energy urged EPA to adopt a 0.50 gplg standard in early 1985 along with a 0.10 standard on January 1, 1986. Hawaiian Independent Refinery stated that the Agency should seriously consider a 0.50 gplg standard effective as soon as administratively possible, but no later than July 1, 1985, along with a 0.10 gplg standard in 1986. Two environmental groups, the Natural Resources Defense Council (NRDC) and the Environmental Defense Fund (EDF), supported standards of 0.50 gplg on July 1, 1985, and 0.10 gplg on January 1, 1986. The Center for Science in the Public Interest (CSPI) indicated its support for any plan that phases in compliance with a 0.10 gplg standard efective in 1986.[1]

Commenters who supported an interim 0.50 gplg standard effective in 1985 listed various reasons for their support, arguing that: (1) Such a standard would result in benefits for children, the environment, and future generations; (2) it would provide additional net benefits ranging between $174 and $626 million, compared to a 0.10 gplg standard effective in 1986 with no interim standard; (3) such a standard is feasible; (4) there is sufficient underutilized octane capacity in the gasoline refinery and fuel ethanol distillery industries to meet such a standard; and (5) in the absence of such an interim standard, refiners would otherwise wait until the last minute to comply with a 0.10 gplg standard.

After a review of these comments and other information in the record and after an extensive evaluation of the industry's capacity to meet this standard, the Agency is convinced that an interim standard of 0.50 gplg should be made effective on July 1, 1985. The Agency believes that such a standard is clearly feasible for the refining industry as a whole without the need for construction of additional refining equipment. Adequate capacity exists in the industry at present to meet this standard, and individual facilities with insufficient octane capabilities should be able to meet the standard through use of the inter-refinery averaging mechanism and/or trading of high-octane blending components. EPA's analysis indicates that the industry needs little or no lead time to meet a 0.50 gplg standard, that reformer utilization will not be increased significantly (from about 50 percent of capacity currently to about 59 percent), and that even the most pessimistic assumptions about industry capacity do not change these conclusions. The Agency also believes that a 0.50 gplg standard would provide far more lead than is needed to protect engines from valve damage. In addition, although EPA believes that the industry as a whole can meet a 0.50 gplg standard in July 1985, the proposed lead rights banking mechanism would, if promulgated, substantially reduce or eliminate any problem that individual refiners might have in meeting that standard.

Moreover, a 0.50 gplg interim standard would result in significant health benefits (in addition to those resulting from the 0.10 gplg standard) by reducing the number of incidences of children whose blood lead levels exceed various levels. For example, a 0.50 gplg standard effective in mid-1985 would result in 20,000 fewer incidences of children exceeding a blood lead level of 30 μg/dl in that year, and in 64,000 fewer incidences of exceedances of a 25 μg/dl blood lead level, compared to a 1.10 gplg standard. In monetary terms, the benefits of reducing the number of exceedances of the 25 μg/dl blood lead level alone are estimated to be $223 million in 1985.

The Agency's detailed responses to comments opposing an interim 1985 standard are contained in the separate "Responses to Comments" document.

B. No-Lead Standard

As noted in Part I of this notice, the Agency proposed two alternatives relating to long-term gasoline lead usage: (1) No further regulatory action; and (2) a ban on the use of lead in gasoline by about 1995. A large number of public comments were submitted on this portion of the NPRM, including comments on the need for a no-lead standard, the effective date of such a standard, whether alternatives exist to replace lead as a valve lubricant, and the number of vehicles that would require lead for this purpose in both the short and long term.

The Agency is not taking final action on a no-lead standard today. Instead, in a supplemental notice published elsewhere in today's **Federal Register**, EPA is reopening the comment period on the issue of a total ban on the use of lead in gasoline. As explained in detail in that notice, the comment period is being reopened to take comments on new information that has come to the attention of the Agency since publication of the NPRM.

One example is a paper concerning the relationship between blood lead and blood pressure in adults, which is summarized in a September 7, 1984, memorandum to the rulemaking docket (Document No. IV-A-14). This paper concludes that the blood lead level is a statistically significant predictor of blood pressure in adult males, based on an analysis of data from the Second National Health and Nutrition Evaluation Survey (NHANES II). This paper also examines the public health implications of such a relationship using several correlations between blood pressure and the risk of heart attack, stroke, and death based upon long-term cardiovascular epidemiological studies. If this relationship exists, significant numbers of heart attacks, strokes and deaths could be prevented by a no-lead standard.

Another example of recently-developed information relates to the amount of lead needed to prevent valve damage in engines. Subsequent to publication of the NPRM, an EPA contractor discovered the results of experiments by both the U.S. Army and the U.S. Postal Service to convert vehicles (both light-duty and heavy-duty) from the use of leaded to unleaded gasoline. The contractor's report (see Document No. IV-A-12 in the rulemaking docket) indicates that the Army found no significant problems in using all unleaded gasoline at six posts during 1972-5. EPA has learned that, based on these results, since 1976 all of the armed services have been using solely unleaded gasoline wherever available without any special vehicle maintenance or other problems. Similarly, the Postal Service was found

[1] In addition, the January 4, 1985, NPRM concerning the banking mechanism indicated that the Agency was considering a 0.50 gplg interim standard on July 1, 1985, in conjunction with a 0.10 gplg standard on January 1, 1986. 50 FR 718. Most of those who testified at the January 15, 1985, hearing on this proposal presented comments on the feasibility of this schedule.

to have experienced no significant mechanical or operating problems as the result of using unleaded gasoline in its large fleet of 1975 model year heavy-duty trucks that were originally designed to run on leaded gasoline.

All comments on the August 2, 1984, NPRM related to a no-lead standard will be addressed in any final rulemaking on such a standard.

C. Marketing Restrictions

As noted in Part I, the NPRM requested comments on various marketing restrictions that could be adopted in conjunction with a 0.10 gplg standard in order to eliminate or reduce misfueling. The following regulatory actions were identified as being under consideration by the Agency for potential adoption for this purpose:

(1) Focus enforcement efforts against retailers who sell leaded gasoline at a lower price than unleaded gasoline;

(2) Restrict the sale of leaded gasoline to full-serve pumps only;

(3) Require that leaded gasoline be sold at a higher price than unleaded gasoline;

(4) Restrict the sale of leaded gasoline to full-serve pumps unless such gasoline is sold at a higher price than unleaded gasoline; and

(5) Require that leaded gasoline be produced at a specified octane level.

In order to determine the need for such controls, the NPRM also asked for comments on how leaded gasoline produced under a 0.10 gplg standard would be marketed, particularly how it would be priced vis-a-vis unleaded gasoline and what its octane level would be.

A large number of comments were received on this portion of the NPRM, particularly from refiners and petroleum marketing groups. The vast majority of commenters agreed that the production cost of leaded gasoline under a 0.10 gplg standard would be higher than that of unleaded gasoline, at current octane levels. In regard to retail pricing, some refiners stated that such a "cost flip" would result in a "price flip" under which regular leaded gasoline would be priced higher than regular unleaded gasoline. However, the majority of commenters predicted that leaded gasoline might still be sold at a lower retail price than unleaded, or stated that the uncertainties of the marketplace precluded a clear answer on this subject. Commenters from the petroleum industry (refiners and marketers) were generally opposed to the imposition of marketing controls, citing various reasons for such opposition (e.g., cost, impracticality, unfairness). A few refiners and others indicated support for specific regulatory options, particularly price controls and/or a tax to eliminate the current price differential between leaded and unleaded gasoline.

The Agency is taking no action on this portion of the NPRM. Marketing restrictions will continue to be considered in conjunction with the extended comment period on a total ban on the use of lead in gasoline.

D. Inter-Refinery Averaging

The NPRM proposed to prohibit the use of the inter-refinery averaging mechanism after January 1, 1986, in order to assure that engines that may need lead would receive an adequate amount under a 0.10 gplg standard. For the same purpose, comments were also requested on whether the current quarterly averaging period should be shortened and/or whether a "per gallon" minimum lead content standard should be established.

Most refiners and other commenters supported or did not oppose the ending of inter-refinery averaging upon implementation of a 0.10 gplg standard. A few refiners opposed such a restriction, while one environmental group called for its immediate end. All refiners who addressed the issue stated that EPA should not shorten the quarterly averaging period, arguing that this would reduce needed flexibility and increase reporting burdens. Reaction to a "per gallon" minimum standard was mixed, with various such standards proposed by some refiners while others opposed it as unnecessary.

The Agency is eliminating the inter-refinery averaging mechanism as of January 1, 1986, as proposed. Although newly-developed information indicates that lead may not be required to prevent valve-seat recession (see Part II.B of this notice, above), the Agency is seeking additional public comments on this information, whose conclusions may not be applicable to all engines under all operating modes. At this time, therefore, EPA believes it prudent to take this regulatory action in order to assure that engines originally designed to run on leaded gasoline receive approximately 0.10 gram of lead in each gallon, an amount other studies have indicated may be needed for this purpose. The inter-refinery averaging provision would potentially allow the marketing of leaded gasoline containing only trace amounts of lead, and therefore, would not provide such assurance. While refinery flexibility will be reduced to some exent by this action, this is outweighed by the need to prevent potential engine damage. It should be noted that the proposed lead rights banking mechanism, if promulgated, would potentially provide even greater flexibility to refiners than inter-refinery averaging by allowing lead rights generated in one quarter to be used in certain future quarters.

The Agency believes that elimination of the inter-refinery averaging provision will remove the major incentive to produce leaded gasoline with lead levels substantially below 0.10 gplg, and therefore is neither shortening the current quarterly averaging period nor imposing a "per gallon" minimum lead content standard.

E. Other Proposals

The NPRM proposed to amend the definition of "unleaded gasoline" in two ways: (1) To make clear that such gasoline may not include any amount of intentionally-added lead; and (2) to lower the allowable contamination level of such gasoline from 0.05 gram per unleaded gallon (gpug) to 0.01 gpug. Elimination of the small refinery provisions and other obsolete portions of the regulations was also proposed. Finally, the NPRM proposed to make minor changes to the right of entry/inspection, importer, and inter-refinery averaging provisions (while the latter remain in effect).

No comments were received in opposition to the proposal to clarify that "unleaded gasoline" may not include any amount of lead that has been intentionally added during its production, and this proposal is being adopted as proposed. As the result of public comments, however, the Agency is not adopting the other proposed change to the "unleaded gasoline" definition. Commenters have raised valid questions about the availability of an accurate field testing method to detect lead at the 0.01 gpug level. Commenters also noted that EPA's own analysis of unleaded gasoline samples under the current 1.10 gplg standard indicated that 98% of the samples that meet the current 0.05 gpug contamination standard also would meet a 0.01 gpug standard, and that with less allowable lead in leaded gasoline there is likely to be even less unintentional contamination of unleaded gasoline. These comments about the feasibility and necessity of a 0.01 gpug contamination standard have persuaded the Agency not to revise the current standard.

The Agency is adopting the other regulatory changes as proposed, for the reasons outlined in the NPRM. There was no opposition to any of these changes.

III. Impacts of Final Actions

A. Lead Usage

As part of its evaluation of the comments received on the proposed rules, the Agency has reevaluated its estimates of the total amount of lead used in gasoline in the period 1985–94. Projections are made for both the current lead phasedown standard (1.10 gplg) and the regulations promulgated in this notice. A detailed discussion of these projections is contained in the final RIA.

These estimates are provided in the form of a range. Table 1 shows the estimated amount of lead usage based on two assumptions. The highest total lead usage under the regulations promulgated today would occur if the 0.10 gplg and 0.50 gplg standards will have no impact on demand for leaded gasoline, but will simply reduce the amount of lead in each gallon of leaded gasoline. The reduction in gasoline lead for this case during the period 1985–94 would be 82.4 percent, compared to the amount of lead predicted to be used during this period under the current 1.10 gplg standard.

However, the 0.10 gplg standard is also intended to deter or prevent fuel switching. Assuming that this goal is fully achieved, lead usage in gasoline would be reduced over the period 1985 through 1994 by 87.2 percent, compared to the current standard. Table 1 shows the drop in both leaded gasoline demand and lead usage that would occur if fuel switching stopped. If fuel switching were only partly eliminated, the lead usage reduction would be somewhere between 82.4 percent and 87.2 percent. The Agency's best estimate is that the 0.10 gplg standard will reduce fuel switching by about 80 percent.

For the initial period in which only the 0.10 gplg standard will be in effect (1986–94), lead usage in gasoline will be reduced between 90.9 percent and 94.3 percent, compared to a 1.10 gplg standard.

It is possible that under the 0.10 gplg standard the owners of vehicles that currently legally use leaded gasoline, but do not require lead to prevent valve-seat recession problems, will choose to fuel them with unleaded gasoline. Such a scenario is possible because it is expected that the 0.10 gplg standard will increase the production cost of leaded gasoline relative to that of unleaded regular gasoline. If this were to be reflected in retail prices, additional reductions in lead usage would result.

Under the banking regulations proposed by the Agency on January 4, 1985, lead usage during the 1985–7 period would likely be spread out more evenly than the projections in Table 1, although total lead usage for the period would not be expected to change.

TABLE 1.—PROBABLE LEAD USAGE UNDER CURRENT AND PROMULGATED REGULATIONS

Calendar year	Total gasoline (billion gals.)	Leaded demand (billion gallons)		Lead usage expected (billion grams)		
		Current projection [1]	No fuel switching [2]	Existing regs. (1.10 gplg)	Current demand (0.10 gplg) [3]	No fuel switching (0.10 gplg) [3]
1985	100.6	40.2	32.2	44.3	32.2	25.6
1986	100.3	37.5	28.6	41.3	3.8	2.9
1987	100.0	34.9	25.6	38.4	3.5	2.6
1988	99.6	32.4	22.4	35.6	3.2	2.2
1989	99.3	29.8	19.2	32.8	3.0	1.9
1990	99.0	27.6	16.4	30.4	2.8	1.6
1991	99.0	25.3	14.9	27.8	2.5	1.5
1992	99.0	24.7	13.4	27.2	2.5	1.3
1993	99.0	24.0	12.4	26.4	2.4	1.2
1994	99.0	23.3	11.5	25.7	2.3	1.1
Total	894.8	299.7	196.8	329.9	56.2	42.1

[1] Leaded gasoline demand for this case is based on current projections and assumed to be the same under either the existing or proposed regulations.
[2] This case removes the effect of fuel switching from otherwise projected leaded gasoline demand.
[3] 0.50 gplg, July 1–December 31, 1985.

B. Health Impacts

The August 2, 1984 NPRM and accompanying preliminary regulatory impact analysis (RIA) contained detailed discussions of the medical and scientific information available to the Agency concerning the health effects of lead in gasoline. 49 FR 31035–8. A large number of public comments was received concerning this portion of the notice, and EPA's detailed responses to these comments are contained in Part VII of the "Responses to Comments" document. Except as noted in that document and in the final RIA, the Agency reaffirms its findings and conclusions on the health effects of lead in gasoline as set forth in the NPRM.

The NPRM also discussed the health impacts of the regulatory actions proposed in that notice, and contained estimates of the number of children whose blood lead would be reduced from above to below certain blood lead levels. 49 FR 31045–6. Of particular concern in that notice were blood lead levels above 30 micrograms per deciliter (μg/dl) because at that time this was the level established by the Centers for Disease Control (CDC) as indicating an elevated blood lead level. Blood lead levels above 25 μg/dl are now of particular concern because CDC recently redefined "elevated blood lead level" to include this amount of blood lead.

EPA has quantified the health impacts of this final rulemaking in terms of the number of incidences of children whose blood lead levels will be reduced below various blood lead levels as the result of the 0.50 and 0.10 gplg standards promulgated today. EPA's analytical methodology is fully discused in Chapters III and IV of the final RIA that has been prepared in conjunction with this notice.

A 0.50 gplg standard effective on July 1, 1985 (without banking of lead usage rights) would result in 20,000 fewer incidences of children exceeding a blood lead level of 30 μg/dl and 64,000 fewer incidences exceeding a 25 μg/dl level in 1985 (assuming this standard does not reduce misfueling). In 1986, a 0.10 gplg standard without banking (assuming misfueling is reduced by 80 percent) would result in 52,000 fewer incidences of children exceeding a 30 μg/dl blood lead level and 171,000 fewer incidences exceeding a 25 μg/dl level. (If the proposed banking mechanism were promulgated, benefits would likely increase in 1985 when national lead usage would likely be lower than the 1.10 and 0.50 gplg standards, with commensurate decreases in 1986 and 1987 benefits when such lead usage would likely be higher than 0.10 gplg.) The impact on other blood lead levels has also been estimated. For example, a 0.10 gplg standard would result in 1.7 million fewer incidences of children exceeding a blood lead level of 15 μg/dl in 1986, and 1.1 million fewer incidences in 1992. Over the period 1985 to 1992, the 0.10 gplg standard is estimated to result in 300,000 fewer incidences of blood lead exceeding a level of 30 μg/dl, 988,000 fewer incidences of blood lead greater than 25 μg/dl, and 10.2 million fewer incidences of blood lead greater than 15 μg/dl. Table 2 summarizes these impacts, which are very similar to the estimates in the NPRM (except for the 1985 numbers, which were not included

in the earlier notice, but were contained in the preliminary RIA that accompanied it). One reason for the changes in the estimates is that only an 80 percent reduction in misfueling is now assumed to result from the 0.10 gplg standard, while a 100 percent reduction was assumed in the NPRM.

Because the NHANES–II survey from which these estimates were derived only covered children 6 months or older, the values in Table 2 underestimate the health impacts of today's rulemaking by excluding effects on infants and fetuses. In a memorandum in the rulemaking docket (Document No. IV–A–15) and in the final RIA, EPA has calculated for the years 1985 to 1992 the estimated decrease in the number of children exposed in utero to certain blood lead levels. This calculation uses the NHANES–II analysis to determine adult blood lead levels, general population statistics to determine the number of women of childbearing age and the number of annual live births.

In addition to the beneficial health impacts from reducing lead emissions, excess emissions of hydrocarbons (HC), carbon monoxide (CO), and nitrogen oxides (NO_x) that result from misfueling will be reduced to the extent that misfueling is reduced as a result of this action. Part III.C of this notice contains estimates of the reductions in these pollutants expected to result from today's rulemaking, and the final RIA contains a detailed discussion of the health impacts that may be achieved through such a reduction in emissions of these pollutants.

As discussed in the NPRM, emissions of ethylene dibromide (EDB) will also be reduced as a result of this action. Based upon emission factors derived by Sigsby et al. (1982), national motor vehicle tailpipe emissions of EDB in 1986 under the 0.10 gplg standard will be reduced by as much as 94 percent, or 143 metric tons (assuming all misfueling is eliminated). In addition, EPA has calculated that in 1986 motor vehicle evaporative emissions of EDB will be reduced by 34 metric tons and that EDB emissions from the distribution of leaded gasoline will decrease by 8 metric tons, not counting tank leakage and spillage. These calculations are explained in the final RIA.

TABLE 2.—NUMBER OF INCIDENCES OF CHILDREN WHOSE BLOOD LEAD GOES FROM ABOVE TO BELOW THE INDICATED BLOOD LEAD LEVEL

[Thousands of incidences]

Blood lead level	Year							
	1985 [1]	1986 [2]	1987	1988	1989	1990	1991	1992
30 µg/dl	20	52	47	43	39	36	32	31
25 µg/dl	64	171	156	143	129	118	105	102
20 µg/dl	205	561	516	474	432	398	355	346
15 µg/dl	612	1,720	1,593	1,469	1,347	1,244	1,118	1,090

[1] Assumes no impact of 0.50 gplg standard on misfueling.
[2] Assumes 0.10 gplg standard will reduce misfueling by 80 percent in 1986 and subsequent years.

C. Air Quality Impacts

This rulemaking will result in reduced emissions of several motor vehicle pollutants. The reductions in lead usage have been discussed in Part III.A of this notice. As discussed in the NPRM, analysis of ambient lead levels in the past has indicated a close relationship between gasoline lead use reductions and ambient air lead concentrations in areas where lead air quality is not dominated by stationary sources. 49 FR 31046. As a result of today's actions, it is anticipated that there will be a significant improvement in ambient lead air quality, particularly in the areas not dominated by stationary sources of lead. The percentage reduction in ambient lead concentrations could be as high as the percentage reduction in lead use in such areas. Thus, as the result of the 0.10 gplg standard effective in 1986, ambient lead air quality could improve by as much as 90.9 to 94.3 percent starting in that year.

As discussed in the NPRM, misfueling causes significantly increased emissions of HC, CO and NO_x. To the extent that the final rulemaking reduces or prevents misfueling, there will be a reduction in the amount of these excess emissions. A vehicle misfueled to the extent of permanent damage to the catalyst will emit excess emissions throughout its life, and a program which prevented this vehicle from ever misfueling would eliminate the excess future emissions that would otherwise occur. The magnitude of these avoided emissions for the period 1986–92 has been calculated, assuming that 80 percent of the misfueling that would otherwise occur is discontinued under the standard of 0.10 gplg due to the production cost of leaded gasoline exceeding that of unleaded gasoline. In 1985, the standard of 0.50 gplg is assumed to not affect misfueling. Table 3 lists the reductions in excess emissions as the result of the 0.10 gplg standard. These estimates are slightly higher than those listed in the NPRM for two reasons. First, more recent data show higher misfueling rates than those used in the NPRM calculations. Second, EPA has modified the fleet model to reflect newer data indicating that the average lifetimes of vehicles are increasing. These changes are discussed at greater length in the final RIA.

TABLE 3.—REDUCTIONS IN EXCESS EMISSIONS

[Thousands of short tons]

Pollutant	1986	1987	1988	1989	1990	1991	1992
CO	1,692	1,691	1,690	1,705	1,739	1,804	1,866
HC	244	242	242	242	246	256	265
NO_x	75	86	95	104	111	116	120

D. Economic Impact

EPA has estimated both the economic costs and benefits of the final rule. These estimates update the estimates presented at the time the rule was proposed, based on additional data receiving during the comment period. The methods used to make the estimates are discussed in detail in the final RIA, which has been placed in the rulemaking docket. This section provides only a brief summary of the results.

1. Refinery Costs [3]

Reducing the lead content of gasoline will increase the cost of manufacturing gasoline because lead is a relatively inexpensive method of raising octane. As discussed in the NPRM, EPA has used the Department of Energy (DOE) linear programming model of the refining industry to estimate the costs of complying with the rule. That model represents the refining industry in terms of individual processing units, and can find the least-cost method for meeting specified product demands under different lead limits.

Several commenters on the August proposal criticized EPA's use of the DOE model, arguing that it understates costs or overstates the ability of the industry to comply with a 0.10 gplg standard without constructing new equipment. The most common criticism has been that the model over-optimizes, primarily because it fails to incorporate various real-world constraints that limit the ability of refineries to operate at peak

[3] EPA has not quantified the amount of valve damage likely to occur in certain engines under the 0.10 gplg standard. The Agency believes that the risk of such damage is small, as will be the costs of any such damage.

efficiency. Some commenters were particularly critical that the DOE model covers the industry as a whole, and does not model individual refineries separately. (Similar arguments were raised by certain small refiners that challenged EPA's use of this model in the 1982 rulemaking. Use of the model was, however, upheld by the U.S. Court of Appeals. *Small Refiner Lead Phase-Down Task Force* v. *EPA*, 705 F.2d 506, 534–6 (D.C. Cir. 1983)).

EPA does not believe that the use of a national model unrealistically portrays the industry or underestimates costs. Furthermore, it would be infeasible to model individual refineries separately. The refining industry is highly competitive, with most markets in the country tightly interconnected by pipelines and water transportation. These links and the competitive nature of the industry help to ensure that gasoline is manufactured by the lowest-cost producers; the optimization that takes place in the linear programming model imitates these market forces that direct production to the most efficient equipment. EPA also notes that refineries and gasoline marketers frequently engage in trading of blending stocks or final products in an effort to minimize costs.

EPA has considered the comments carefully and has concluded that the use of a model such as the DOE model is the most accurate, practicable method available to estimate costs. As noted in the NPRM, in order to compensate for potential real-world problems the Agency has placed many constraints on the model that limit its ability to use the most efficiency equipment to make gasoline. In response to comments, EPA has added additional constraints and has made more pessimistic input assumptions. EPA also has adjusted the prices of crude oil and other petroleum products in the model to reflect decreases in these prices over the past year. These changes have increased EPA's cost estimates on net by about 6 percent. In addition, the Agency has conducted exhaustive sensitivity analyses with the model, varying many parameter values to test the robustness of the results. The results of these analyses are reported in the final RIA and in submissions to the docket. In brief, they show that a 0.10 gplg standard is feasible in 1986 and a 0.50 gplg standard is feasible in July 1985 for the industry as a whole without new capital equipment, even if (as noted in Part II.A.1 of this notice) several unexpected adverse conditions occur simultaneously.

Table 4 presents EPA's estimates of the year-by-year refining costs of complying with the final rule. These estimates assume that misfueling will continue at its current level through 1985, and then fall to 20 percent of that level starting in 1986 when the 0.10 gplg standard takes effect. The impacts of alternative assumptions about misfueling are examined in the final RIA; they have little impact on estimated costs.

EPA also has examined the impact of the final rule on several categories of small refineries. The results of that analysis are contained in the final regulatory flexibility analysis (RFA), which has also been placed in the docket. They show that per unit costs of complying with the rule will be somewhat higher for smaller refineries, particularly those with less modern equipment.

2. Benefits

EPA has made a careful effort to estimate in monetary terms the benefits of the final rule. These estimates, however, are not complete; they omit certain benefit categories because sufficient data were not available to quantify or monetize some relationships.

Benefits were estimated in three categories: (1) Children's health benefits associated with reduced lead exposure; (2) benefits from reduced emissions of hydrocarbons, nitrogen oxides, and carbon monoxide from misfueled vehicles; and (3) maintenance and fuel economy savings. These three categories of benefits were estimated at the time of proposal. In addition, the final RIA (for informational purposes) contains estimates of the benefits potentially associated with reduced blood pressure that may result from reductions in lead exposure. Because the Agency is not relying on these potential benefits in promulgating this rule, these estimates are not discussed in this notice.

a. *Children's Health Benefits.* EPA has estimated the reductions that the rule will achieve in the numbers of incidences of children whose blood lead levels exceed various blood lead levels. EPA's estimates of those numbers have changed only slightly from those contained in the NPRM, as discussed in Part III.B of this notice. The Agency has significantly revised its estimates of the monetary benefits associated with those reductions, however, based on new information received during the comment period.

The most important change since the proposal is that the CDC has revised downward the blood lead level used to define elevated blood lead level. CDC has also revised downward the erythrocyte protoporphyrin (EP) level used, in conjunction with elevated blood lead level, to define lead toxicity. Formerly, the elevated blood lead level was 30 μg/dl or higher; the new level is 25 μg/dl or higher. The EP level has been reduced from 50 μg/dl to 35 μg/dl. (See the February 8, 1985, issue of CDC's *Morbidity and Mortality Weekly Report.*) The new CDC criteria roughly triple the number of children defined as having lead toxicity. New recommended testing and treatment guidelines also have been published in the *Journal of Pediatrics* (Piomelli et al., "Management of Childhood Lead Poisoning," Vol. 105, No. 4, October 1984). A preprint of this article was placed in the docket prior to the public hearing on the NPRM. Based on the new CDC levels and the new recommended follow-up procedures for children found to have blood lead levels in excess of 25 μg/dl, EPA now estimates a benefit of $900 in reduced medical costs for each child whose blood lead level is brought below 25 μg/dl.

EPA also estimated benefits based on reducing the number of children experiencing difficulty in school due to elevated blood lead levels. Several studies have found adverse cognitive effects in children with elevated blood lead levels. (See August 2, 1984 NPRM (49 FR 31045)). A reanalysis of one of the studies that found effects at relatively low blood lead levels, which was suggested by an EPA expert review panel as part of the Agency's review of the lead ambient standard, has not been completed, and confirms the original finding of cognitive effects. This reanalysis is discussed in the final RIA.

Based on this reduced performance and the new CDC definition of lead toxicity, EPA has assessed benefits based on the assumption that 20 percent of the children with blood lead levels above 25 μg/dl would merit three years of part-time compensatory education. (In the preliminary RIA, EPA assumed that one-third of the children over 30 μg/dl would need such compensatory assistance.) Based on estimates of the cost of such education from the Department of Education, this results in an average benefit of $2600 for each child whose blood lead level is brought below 25 μg/dl. A full description of the Agency's analysis (including the assumptions used) is contained in the final RIA.

b. *Benefits from Reduced Emissions of Conventional Pollutants.* As discussed in Parts III.B and III.C of this notice, catalyst-equipped vehicles that are misfueled generate excess emissions of three pollutants: HC, NO_x, and CO. EPA

believes that the final rule will have a significant impact on these emissions for two reasons. First, it will be more expensive to manufacture regular leaded gasoline (89 octane) under a 0.10 gplg standard than regular unleaded gasoline (87 octane). This change in relative costs should narrow, if not reverse, the retail price differential between leaded and unleaded regular grades of gasoline, and thus reduce the incentive to misfuel. Second, even for those vehicles that continue to be misfueled, it will take substantially longer to destroy the effectiveness of catalysts using 0.10 gplg leaded gasoline than it does with 1.10 gplg leaded gasoline.

EPA has estimated the benefits of reducing emissions of HC, NO_x, and CO from misfueled vehicles using two methods. The first simply values these reductions based on the cost of mobile source emission controls destroyed by misfueling and the quantity of pollutants that are emitted due to such destruction. The second method attempts to measure benefits on the basis of health and welfare effects, e.g., the effects of ozone (formed by HC and NO_x) on agricultural crop losses and on days lost from work due to respiratory symptoms. The final estimate was based on an average of these two methods. It is lower than the estimates made in the NPRM because of changes in the second type of estimates, which are described in the final RIA.

c. *Maintenance and Fuel Economy Benefits.* Lead and its scavengers form corrosive salts in engines and exhaust systems that increase maintenance expenses. Reducing lead in gasoline should reduce these maintenance expenses. Based on several fleet studies that compared maintenance requirements for vehicles using leaded gasoline to those using unleaded gasoline, EPA has made monetary estimates of maintenance benefits for three categories: exhaust system replacements, spark plug replacements, and oil changes.

Several commenters argued that EPA's estimates of maintenance savings in the NPRM were too high because many consumers would not alter their behavior as the lead level of gasoline was reduced. This argument clearly does not apply to the estimate for exhaust systems, because they are replaced when they fail. With respect to spark plug and oil changes, EPA acknowledged in the NPRM that habitual maintenance patterns may not change, but noted that if vehicle owners did not alter spark plug and oil change intervals, they still would reap benefits in the form of better fuel economy (with reduced spark plug fouling) and less engine wear (due to longer maintenance of oil quality with reduced lead). Thus, the maintenance benefit estimates for spark plugs and oil changes should be viewed in part as proxies for these other benefits.

Reducing lead in gasoline also should increase fuel economy, for three reasons: (1) Lead fouls spark plugs; (2) the refining processes used to boost octane with lower lead produce a denser gasoline (i.e., one with a higher energy content per gallon); and (3) in newer cars, lead fouls oxygen sensors and causes excessively rich combustion mixtures that hurt fuel economy. EPA did not estimate any fuel economy benefits in the first category, to avoid possible double counting with the maintenance benefits for spark plugs. It estimated the benefits in the second category based on predicted changes in fuel density from the DOE model and on a Society of Automotive Engineers (SAE) formula relating density to mileage. It estimated the benefits in the third category based on a study that measured excess hydrocarbon emissions (a measure of wasted fuel due to a too-rich air-fuel mixture) in misfueled vehicles equipped with oxygen sensors.

Several commenters criticized EPA for counting fuel economy benefits associated with oxygen sensors because that effect is due to misfueling, not the legitimate use of leaded gasoline. To the extent that the tighter standard reduces misfueling, however, it will yield that benefit. EPA's analysis assumed that a 0.50 gplg standard would not reduce misfueling, but that a 0.10 gplg standard would reduce it by 80 percent. Other commenters criticized EPA for the fuel density estimates, noting that the rule may lead to increased use of alcohols, which have a lower energy content per gallon. EPA's cost estimates, however, account for that fact; in those runs in which the model increased alcohol use, EPA added an appropriate penalty factor to make up for the lower energy content of alcohol.

d. *Summary of Benefit Estimates.* Table 4 presents the year-by-year estimates for the three different benefit categories. As with the estimated costs, these estimates assume that the rule will have no impact on misfueling in 1985, but will reduce it by 80 percent starting in 1986, when the 0.10 gplg standard will apply. The final RIA contains estimates for a broader range of possible assumptions about the impact of the rule on misfueling. They show that the estimated benefits of the rule substantially exceed the costs, whatever the predicted impact of misfueling.

TABLE 4.—ESTIMATED COSTS AND BENEFITS OF FINAL RULE COMPARED TO 1.10 GPLG STANDARD

[Millions of 1983 dollars]

Category	1985	1986	1987	1988	1989	1990	1991	1992
Cost	96	608	558	532	504	471	444	441
Benefits								
Children's health	223	600	547	502	453	414	382	358
Conventional pollutants	0	222	222	224	226	230	239	248
Maintenance and fuel economy	137	1,101	1,029	931	922	906	926	913
Net benefits[1]	264	1,316	1,241	1,125	1,096	1,079	1,090	1,079

[1] Columns may not add due to rounding.

E. Energy Impacts

Reducing lead in gasoline will require some increase in the operation of downstream refining equipment to manufacture octane formerly produced by lead additives. This will require the use of additional energy to produce the same amount of gasoline at current octane levels. EPA has quantified this increased energy use in refineries, as well as the net change in petroleum imports due to changes in product volumes at the lower lead levels. Some of this additional refinery energy use will be oil, any additional amounts of which would have to be imported, and some may be natural gas, which is generally domestically produced. In making these estimates, EPA has converted both of these types of energy use increases to crude oil-barrel equivalents.

The actual changes in energy use depend on what refiners do to their crude oil purchases. For example, if they increase purchases of crude oils with high gasoline yields, such as Nigerian crude, there might be no net change in energy use because that crude requires less processing than the average type of crude oil. (This crude is more expensive than the average, however, and that would increase the cost of gasoline processing.) Alternatively, refiners could use heavier crude, which requires more than average processing. That would reduce crude costs (per barrel) but would increase the amount of energy

consumed in processing. Either route leads to the higher costs of this final rule estimated elsewhere, but with considerable variation in energy use.

Based on a review of public comments and EPA's analysis of the economic cost of the regulations promulgated today (which makes no allowance for gasoline imports and assumes no switching to better crude oil), the increased energy use will be 56,000 barrels per day (bpd) crude oil equivalent in 1986, decreasing to 49,000 bpd in 1988 and continuing to decrease in later years. This represents about one third of one percent of U.S. oil demand and one fifth of one percent of U.S. oil and natural gas demand in 1984.

F. Alternative Additives

As stated in the August 2, 1984 NPRM, the Agency has considered the possibility that a low-lead standard such as the 0.10 gplg standard promulgated today might (in the absence of further regulatory action) cause the use of other additives as lubricating agents for valves and/or as octane enhancers. 49 FR 31046–7. The Agency believes that under the 0.10 gplg standard, refiners would likely consider other additives for use primarily as an octane enhancer because this standard generally provides an adequate amount of lead for valve lubrication. Included in those additives that might be considered by refiners for this purpose are MMT and alcohols.

The manganese additive MMT may not be added to unleaded gasoline unless a waiver has been granted under section 211(f)(4) of the Act. Although presently there are no restrictions on the use of MMT in leaded gasoline and some is so used, there is no information available at this time to suggest that its use will increase significantly.

Alcohols, particularly ethanol and methanol, are known octane enhancers. The Agency expects that the use of alcohols in gasoline will increase to some extent as the result of a 0.10 gplg standard. The August 2, 1984, NPRM discusses fully the Agency's authority under the Act to control the use of alcohols in unleaded gasoline. See 49 FR 31047. Like MMT, the use of alcohols in unleaded gasoline is allowed only if a waiver has been obtained by the manufacturer under section 211(f)(4) of the Act. As to the use of alcohols in leaded gasoline, any such use would also require registration of the new fuel or fuel additive under section 211(b) of the Act and 40 CFR Part 79. Further, the Agency has broad authority under section 211(c) of the Act to control the use of any such product if, in its judgment, it would cause or contribute to air pollution which may reasonably be anticipated to endanger the public health or welfare. The Agency does not expect the increased use of alcohol in gasoline to be of a magnitude that would compel EPA to use this authority, however.

As noted in Part II.A.1. of this notice, the Agency believes that any risk of engine valve damage will be minimized by the availability of fuel additive packages containing substances that could serve as supplemental valve protectants. Studies have indicated that several such additives may be available. Godfrey and Courtney (1971) have suggested a number of additives that might be usable, including boron oxides, bismuth oxides, ceramic bonded CaF_2, and iron phospahate. Sorem (1971) has suggested a tricresylphosphate additive. Kent and Finnegan (1971), Felt and Kerley (1971), and Giles and Updike (1971) have all indicated that a phosphorus additive will provide lubricating properties. Fuchs (1971) reported that three different additives were as effective as lead in controlling valve-seat recession. The Agency does not expect the use of any of these additives to be of a magnitude comparable to that of lead under a 1.10 gplg standard, nor their emission products to pose a comparable danger to the public health or welfare. If used by gasoline refiners, these additives would be subject to the same controls under section 211 of the Act as alcohols.

The Agency will continue to work with manufacturers and consumers to minimize any risk of valve-seat recession. Besides the work mentioned above, another possibility is simply the sale of small quantities of leaded gasoline as an aftermarket additive. Leaded gasoline sold as a consumer additive would not require a prior waiver from EPA, unlike fuels or additives sold at the pump. Such additives could be used by consumers to provide engine valve lubrication.

It is the Agency's conclusion that the final rule promulgated today will not cause the use of another fuel additive that will produce emissions that will endanger the public health or welfare to the same or greater degree than the use of lead. Should the use of any other alternative additive pose such a danger to the public health, however, this Agency will use its authority under section 211(c) or 211(f) of the Act to prohibit or control its use, as outlined above.

IV. Alternatives Considered

The NPRM discussed two regulatory/legislative actions that have been or could be taken in lieu of the proposed changes to the gasoline lead content standards. These two actions, and the reasons listed in the NPRM for rejecting them, are summarized below.

(1) Incentives for state or local anti-fuel switching programs. The Agency has already issued a document which provides CO and HC emission reduction credits for various types of anti-fuel switching programs that can be included in state implementation plans (SIP's). In addition, the Agency could also require implementation of a national anti-misfueling inspection program.

The NPRM stated that the Agency does not believe either of these approaches would be an effective substitute for stricter lead standards, for several reasons. First, the provision of SIP credits is only likely to encourage anti-misfueling program in certain areas (i.e., those unable to demonstrate attainment of ozone and/or CO standards by 1987), and therefore this policy will not be enough by itself to solve the nationwide fuel switching problem. Second, any anti-misfueling program of the types discussed in the SIP credit document that would be aimed at the nationwide fuel switching problem would likely be expensive and burdensome, since it would necessitate programs to inspect all vehicles in the U.S. and to assure that misfueled vehicles are repaired. Nor would such programs do anything to solve the lead-related health problems caused by the legal use of leaded gasoline. Therefore, the NPRM stated that the Agency does not consider the SIP credit policy to be an adequate substitute for the regulatory program proposed in the NPRM, nor does it consider the requirement of a national anti-misfueling inspection program to be a feasible alternative.

(2) Federal Ban on Fuel Switching by Individuals. Another alternative discussed in the NPRM by the Agency was a Federal ban on fuel switching by individual vehicle owners and operators. Under current regulations only retailers and wholesale purchaser-consumers (and their employees and agents) are liable for the introduction of leaded gasoline into a vehicle designed for unleaded gasoline. Such persons are also liable for causing or allowing the introduction of leaded gasoline into such vehicles, but others (e.g., individual vehicle operators) are not themselves liable for such misfueling.

The NPRM stated that the Agency believes that a direct prohibition on individual fuel switching, coupled with a vigorous enforcement effort, would be effective in reducing the amount of fuel switching. However, the Clean Air Act presently does not clearly authorize such a prohibition, and the Agency

recently asked Congress to amend the Act to specifically prohibit fuel switching by individuals. It is not clear whether such an amendment will be enacted. Even if such authority were clearly available, however, it is unlikely to eliminate this practice entirely, because fuel switching by retailers and others currently liable under the existing regulations occurs today at a significant rate and because enforcement of regulations affecting millions of gasoline refuelings would be difficult. Furthermore, such a ban would not affect the legal use of leaded gasoline or the adverse health impacts caused by lead emissions from such use. Therefore, the NPRM stated that this alternative would not achieve all of the purposes of the proposed rule.

The Agency received a large number of public comments on these and other alternatives to the proposed regulatory actions. Numerous commenters supported the imposition of penalties on individual motorists for fuel switching. In addition, a number of commenters urged expansion of state inspection/maintenance (I/M) programs to detect misfueling as well as tampering with emission control equipment, although others agreed with EPA's analysis that such programs would not be as effective as EPA's proposal.

For the reasons outlined in the NPRM, EPA continues to believe that these two alternatives are not adequate substitutes for the changes made today to the gasoline lead content regulations and those discussed elsewhere in today's **Federal Register**. Public comments supporting these alternatives failed to persuade EPA that it was erroneous in its analysis in the NPRM about the comparative effectiveness of these measures vis-a-vis more stringent gasoline lead standards. Because of the benefits they will produce prior to a complete phaseout of lead in gasoline, the Agency will continue to provide SIP credits for effective state/local anti-misfueling programs and to seek adoption of Clean Air Act amendments that would penalize individual fuel switchers. Responses to comments advocating adoption of these measures as a substitute for changes to the gasoline lead content regulations are contained in the "Responses to Comments" document.

A large number of comments supporting other alternatives to the proposed actions were also received. These alternatives include:

(1) Restrict the sale of devices made to circumvent vehicle fuel filler inlet restrictors (e.g., "emergency" fill hose adaptors);

(2) Conduct a public education campaign to discourage misfueling by vehicle owners and operators;

(3) Require that vehicle fill-pipes be modified so as to make the fuel filler inlet restrictor tamper-proof;

(4) Require on-board canister controls on new vehicles;

(5) Promulgate regional, rather than national, controls on gasoline lead;

(6) Restrict the sale of leaded gasoline (e.g., limit sales to certain locations or certain amounts);

(7) Require lead collection devices on vehicles; and

(8) Make lead available as a separate additive.

While the Agency believes that some of these alternatives (particularly the first two) would have benefits as short-term measures, it does not believe any would be as effective as the regulatory actions taken and discussed today in eliminating the adverse health effects from misfueling and the other adverse health effects of gasoline lead. Responses to comments advocating these and other alternatives are contained in the "Responses to Comments" document.

V. Additional Information

A. Executive Order 12291

Executive Order (E.O.) 12291 requires the preparation of a regulatory impact analysis (RIA) for major rules, defined by the Order as those likely to result in:

(1) An annual adverse effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete in domestic or export markets.

EPA determined that the proposed regulations met the definition of a major rule under E.O. 12291, and prepared a preliminary RIA. That document was placed in the rulemaking docket for public comment at the time of issuance of the NPRM. Comments on the preliminary RIA have been reviewed by the Agency and responses to such comments have been included in the "Responses to Comments" document. Such comments have also been taken into consideration in the preparation of a final RIA, which is also required by E.O. 12291 for major rules. The final RIA, along with this notice of final rulemaking, has been submitted to the Office of Management and Budget (OMB) for review under E.O. 12291. Any comments from OMB and any EPA responses to such comments are available for public inspection at the Central Docket Section, U.S. Environmental Protection Agency, West Tower Lobby, 401 M Street, S.W., Washington, D.C. 20460 (Docket No. EN-84-05). A copy of the final RIA has also been placed in the rulemaking docket.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601-612, requires that Federal agencies examine the impacts of their regulations on small entities. Under 5 U.S.C. 604(a), whenever an agency is required to publish a general notice of proposed rulemaking, it must prepare and make available for public comment an initial regulatory flexibility analysis (RFA). Such an analysis is not required if the head of an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, pursuant to 5 U.S.C. 605(b). EPA prepared an initial RFA for the proposed regulations, and this initial RFA was placed in the rulemaking docket at that time.

Under 5 U.S.C. 604(a), whenever an agency promulgates a final rule after being required to publish a general notice of proposed rulemaking, it is required to prepare a final RFA, which must include: (1) A statement of the need for the final rule and its objectives; (2) a summary of the issues raised in public comments on the initial RFA, a summary of the agency's assessment of such issues, and a statement of any changes made to the proposed rule as a result of such comments; and (3) a description of each of the significant alternatives to the rule considered by the agency and the reasons for rejection of such alternatives. EPA has prepared a final RFA for this rule, which has been placed in the rulemaking docket.

C. National Academy of Sciences Recommendations

Section 307(d)(3) of the Clean Air Act, 42 U.S.C. 7607(d)(3), requires that rulemaking proceedings under section 211 of the Act, 42 U.S.C. 7545, take into account any pertinent findings, comments, and recommendations by the National Academy of Sciences. Pertinent findings by the National Academy of Sciences are contained in the 1980 report, "Lead in the Human Environment," prepared by the Committee on Lead in the Human Environment of the National Academy of Sciences. The major recommendations in this report pertinent to regulatory controls are the following:

(1) "Efforts to control exposure to lead should proceed, with full acknowledgement of the necessary imprecision of estimates of the costs, risks, and benefits."

(2) "Control strategies should be based on coordinated, integrated measures to reduce exposures from all significant sources."

(3) "Improved institutional mechanisms should be developed to permit a more systematic, consistent approach to the management of lead hazards."

(4) "Expanded and more concerted efforts should be made to identify children at risk and remove sources of lead from their environments. A serious effort should also be made to reduce the 'background' level of exposure of the general population to lead. The most important elements in control strategies include population screening, lead paint removal, reduction of lead emissions from gasoline combustion, and reduction of lead levels in foods."

The Agency has taken these recommendations into account in the development of this regulatory action, which it believes is fully consistent with them. Most significantly, the gasoline lead content standard of 0.10 gplg will reduce by at least 91 percent the lead emissions from gasoline consumption, which adversely affect children and other "at risk" groups in the population.

D. Paperwork Reduction Act

The information collection requirements contained in the rule which this notice amends have been cleared previously by OMB under control number 2000–0041. See 48 FR 13430 (March 31, 1983). The changes to the information requirements made in this notice were submitted to OMB for review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., and were cleared by OMB under control number 2060–0066 on October 18, 1984. The major change in information collection requirements that will result from the regulatory revisions involves the inter-refinery averaging provisions. Since this notice eliminates these provisions starting on January 1, 1986, the amount of time now needed to comply with related reporting requirements will be eliminated. EPA estimates that this change will result in an approximately one-third reduction in the total reporting burden associated with the gasoline lead content regulations.

E. Judicial Review

The final actions described in this notice are made under the authority of sections 211 and 301 of the Clean Air Act and are nationally applicable. Under section 307(b)(1) of the Clean Air Act, judicial review may be sought only in the United States Court of Appeals for the District of Columbia Circuit. Petitions for judicial review must be filed on or before May 6, 1985. Judicial review may not be obtained in subsequent enforcement proceedings.

Lists of Subjects in 40 CFR Part 80

Fuel additives, Gasoline, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

(Secs. 211 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7545 and 7601(a)))

Dated: March 3, 1985.

Lee M. Thomas,

Administrator.

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

For the reasons set out in the preamble, Part 80 of Title 40 of the Code of Federal Regulations is amended as follows:

1. Section 80.2 is amended by revising paragraph (g) and by rescinding, removing and reserving paragraphs (p) and (q), to read as follows:

§ 80.2 Definitions.

* * * * *

(g) "Unleaded gasoline" means gasoline which is produced without the use of any lead additive and which contains not more than 0.05 gram of lead per gallon and not more than 0.005 gram of phosphorus per gallon.

* * * * *

(p)–(q) [Reserved]

* * * * *

2. Section 80.4 is revised to read as follows:

§ 80.4 Right of entry; tests and inspections.

The Administrator or his authorized representative, upon presentation of appropriate credentials, shall have a right to enter upon or through any refinery, retail outlet, wholesale purchaser-consumer facility, the premises or property of any distributor or importer, or any place where gasoline is stored, and shall have the right to make inspections, take samples and conduct tests to determine compliance with the requirements of this part.

3. Section 80.20 is revised to read as follows:

§ 80.20 Controls applicable to gasoline refiners and importers.

(a) *Refiners.* (1) In the production of gasoline at a refinery, a refiner shall not:

(i) Produce leaded gasoline whose average lead content during any calendar quarter ending prior to July 1, 1985, exceeds 1.10 grams of lead per gallon of leaded gasoline.

(ii) Produce leaded gasoline whose average lead content during any calendar quarter beginning on or after July 1, 1985, and ending prior to January 1, 1986, exceeds 0.50 gram of lead per gallon of leaded gasoline.

(iii) Produce leaded gasoline whose average lead content during any calendar quarter beginning on or after January 1, 1986, exceeds 0.10 gram of lead per gallon of leaded gasoline.

(2) Except as provided in paragraph (d)(1) of this section, compliance with the requirements of paragraph (a)(1) (i), (ii) and (iii) of this section shall be determined by dividing the total grams of lead used in the production of leaded gasoline (including the lead in gasoline blending stocks and components used in such production) at a refinery during a calendar quarter by the total gallons of leaded gasoline produced at the refinery in the same calendar quarter.

(3) For each calendar quarter, each refiner shall submit to the Administrator a report which contains the following information for each refinery:

(i) The total grams of lead in the refinery's inventory (including its lead additive inventory and its inventory of gasoline blending stocks and components) on the first day of the calendar quarter;

(ii) The total grams of lead (including lead additives and lead in gasoline blending stocks and components) received by the refinery during the calendar quarter;

(iii) The total grams of lead additives shipped from the refinery during the calendar quarter;

(iv) The total grams of lead in the refinery's inventory (including its lead additive inventory and its inventory of gasoline blending stocks and components) on the last day of the calendar quarter;

(v) The total gallons of leaded gasoline produced by the refinery during the calendar quarter;

(vi) The total gallons of unleaded gasoline produced by the refinery during the calendar quarter;

(vii) The total grams of lead used in the production of leaded gasoline (including lead additives and the lead in gasoline blending stocks and components used in such production) by the refinery during the calendar quarter;

(viii) The average lead content of each gallon of leaded gasoline produced by the refinery during the calendar quarter;

(ix) The total grams of lead used in the production of products other than gasoline by the refinery during the calendar quarter, by type of product;

(x) The total gallons of products other than gasoline in which lead was used that were produced by the refinery during the calendar quarter, by type of product; and

(xi) If any of the products listed in paragraph (a)(3)(x) were sold or otherwise transferred to another refinery during the calendar quarter, the total gallons of each product so transferred, the total grams of lead in each product so transferred, the name and address of the refinery to which the transfer was made, and the date of such transfer.

Reports shall be submitted within 15 days after the close of the calendar quarter on forms prescribed by the Administrator.

(b) [Reserved]

(c) *Importers.* (1)(i) No importer shall sell or offer for sale leaded gasoline which has been imported into the United States and whose average lead content during any calendar quarter ending prior to July 1, 1985, exceeds 1.10 grams of lead per gallon of such gasoline.

(ii) No importer shall sell or offer for sale leaded gasoline which has been imported into the United States and whose average lead content during any calendar quarter beginning on or after July 1, 1985, and ending prior to January 1, 1986, exceeds 0.50 gram of lead per gallon of such gasoline.

(iii) No importer shall sell or offer for sale leaded gasoline whose average lead content during any calendar quarter beginning on or after January 1, 1986, exceeds 0.10 grams of lead per gallon of such gasoline.

(2) Except as provided in paragraph (d)(1) of this section, compliance with the requirements of paragraphs (c)(1) (i), (ii), and (iii) shall be determined by calculating:

(i) The lead content of each shipment of imported leaded gasoline sold by the importer during a calendar quarter, determined by the performance by the importer of the test for lead in gasoline set forth in Appendix B of this part upon a representative sample of gasoline in the shipment;

(ii) The total gallons of leaded gasoline in each such shipment;

(iii) The total grams of lead in each such shipment, determined by multiplying the lead content of the shipment by the total gallons of leaded gasoline in the shipment;

(iv) The total grams of lead in all such shipments sold during the calendar quarter;

(v) The total gallons of leaded gasoline in all such shipments sold during the calendar quarter;

(vi) The average lead content of all imported leaded gasoline sold during the calendar quarter, determined by dividing the total in paragraph (c)(2)(iv) by the total in paragraph (c)(2)(v).

(3) For each calendar quarter, each importer who sells imported leaded gasoline or imported gasoline blending stocks or components shall submit to the Administrator a report which contains the following information:

(i) The information described in paragraphs (c)(2) (i) through (vi) of this section;

(ii) The lead content of each shipment of imported gasoline blending stocks or components sold by the importer during the calendar quarter, determined by performance by the importer of the test for lead in gasoline set forth in Appendix B of this Part upon a representative sample of gasoline blending stocks or components in the shipment;

(iii) The total gallons of gasoline blending stocks or components in each such shipment;

(iv) The total grams of lead in each such shipment, determined by multiplying the lead content of the shipment by the total gallons of gasoline blending stocks or components in the shipment;

(v) For each shipment of imported leaded gasoline or imported gasoline blending stocks or components sold during the calendar quarter: name and address of importer; date and place of entry; and vessel or carrier number (where applicable); and

(vi) For each shipment of imported leaded gasoline blending stocks or components sold during the calendar quarter: the name and address of the refinery or the other person to which the sale was made; the total gallons of product sold; the total grams of lead in the product sold; and the date of such sale.

Reports shall be submitted within 15 calendar days after the close of the calendar quarter on forms prescribed by the Administrator.

(4) Any importer who adds lead to gasoline or gasoline blending stocks or components during a calendar quarter shall also submit a report pursuant to paragraph (a)(3) of this section.

(d) *Inter-refinery averaging.* (1) As an alternative means of demonstrating compliance with the requirements of paragraph (a)(1)(i), (i)(1)(ii), (c)(1)(i), or (c)(1)(ii) of this section, one or more refiners may demonstrate such compliance by constructively allocating lead usage between or among two or more refineries in any manner agreed upon by the refiner(s), so long as:

(i) The average constructive lead content of leaded gasoline produced in a calendar quarter by each refinery does not exceed the lead content standard applicable to such calendar quarter (as prescribed in paragraph (a)(1)(i), (a)(1)(ii), (c)(1)(i), or (c)(1)(ii) of this section);

(ii) The total amount of lead usage in a calendar quarter by all such refineries, as constructively allocated and reported, is equal to the total amount of lead actually used in the calendar quarter by all such refineries;

(iii) The actual or constructive lead content of gasoline produced by each refinery does not exceed any applicable state statutory or regulatory standards; and

(iv) The constructive allocation agreement is made no later than the final day of the calendar quarter in which the lead allocated is actually used.

(2) Any refiner who demonstrates compliance with the requirements of this section pursuant to paragraph (d)(1) of this section shall submit to the Administrator, as an additional part of the report required by paragraph (a)(3) or paragraph (c)(3) of this section, the following information:

(i) The total grams of lead actually used by the reporting refinery during the calendar quarter and constructively allocated to another refinery, and the name and address of such other refinery (for each such constructive allocation);

(ii) The total grams of lead actually used by another refinery during the calendar quarter and constructively allocated to the reporting refinery, and the name and address of such other refinery (for each such constructive allocation);

(iii) The total grams of lead constructively used in the production of leaded gasoline by the reporting refinery during the calendar quarter, as determined by performing the following calculations upon the total grams of lead actually used by the reporting refinery during the calendar quarter: (A) Subtracting the total grams of lead indicated in paragraph (d)(2)(i) of this section, and (B) Adding the total grams of lead indicated in paragraph (d)(2)(ii) of this section; and

(iv) The constructive average lead content of leaded gasoline produced by the reporting refinery during the calendar quarter, as determined by dividing the total grams of lead indicated in paragraph (d)(2)(iii) of this section by the total gallons of leaded

gasoline produced by the reporting refinery during the calendar quarter; and

(v) When compliance is demonstrated pursuant to paragraph (d)(1) by more than one refiner, each such report shall also include supporting documentation adequate to show the agreement of all such refiners to the constructive allocation of lead usage stated in the report.

(3) For purposes of paragraphs (d)(1) and (d)(2) of this section, the total amount of imported leaded gasoline sold during a calendar quarter by each importer shall be treated as the output of a single refinery, and each importer shall be treated as a refiner.

(4) The provisions of paragraphs (d)(1), (d)(2), and (d)(3) of this section shall not be applicable during any calendar quarter beginning on or after January 1, 1986.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL-2775-3(a)]

Regulation of Fuels and Fuel Additives; Gasoline Lead Content

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: On August 2, 1984, EPA requested comments on alternative approaches to the long-term use of lead in gasoline. 49 FR 31032. In that action EPA discussed the possibility of regulatory action banning the use of leaded gasoline if significant usage of leaded gasoline would otherwise continue. The Agency is today requesting public comments on additional information relevant to the issue of a total ban on the use of lead in gasoline. Based upon this additional information and comments received on the August 2 notice, the Agency is now considering a range of alternatives on this issue, ranging from no regulatory action to a ban in 1995 to a ban effective as early as January 1, 1988.

The additional information on which comments are requested includes a study that indicates a relationship exists between blood lead and blood pressure for adult males. Because this and previous studies have indicated a relationship between high blood pressure and the incidence of heart attacks, strokes, and deaths, a ban on lead in gasoline could result in a significant decrease in the number of incidences of these serious illnesses and in the number of deaths, as well as other types of benefits. It would also eliminate the practice of misfueling. Other information recently received by EPA, which indicates that engines designed to run on leaded gasoline may not need lead to prevent engine valve damage, also would support an early ban on the use of lead in gasoline.

Elsewhere in this issue of the **Federal Register**, EPA is taking final action on other proposed revisions to the gasoline lead content regulations.

DATES: A public hearing will be held in order to provide an opportunity for oral presentations of data, views, or arguments concerning the optional revisions to the gasoline lead content regulations discussed in this notice. The date(s) for this hearing will be announced in a later issue of the **Federal Register**.

The date by which written comments on this notice must be received at the location listed below will also be announced in a later issue of the **Federal Register**. This date will be at least 30 days after the date of the public hearing.

ADDRESSES: The location of the public hearing will also be announced in a later issue of the **Federal Register**. Written comments should be sent to Docket No. EN–84–05, Central Docket Section (LE–131), Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460. The docket is located in the West Tower Lobby of EPA at the above street address, and may be inspected between 8:00 a.m. and 4:00 p.m. on weekdays. As provided in 40 CFR Part 2, a reasonable fee may be charged for photocopying. This is the same docket as that of the August 2, 1984, notice of proposed rulemaking (NPRM) on revisions to the gasoline lead content regulations. Resubmittal of previously-submitted comments on a total ban on the use of lead in gasoline is not necessary, as all such comments on that portion of the August 2, 1984, NPRM will be considered in development of a final rule. Commenters are therefore encouraged to submit comments only on the new aspects of a total ban discussed in this notice.

FOR FURTHER INFORMATION CONTACT: Richard G. Kozlowski, Director, Field Operations and Support Division (EN–397F), EPA, 401 M Street, SW., Washington, D.C. 20460. Telephone (202) 382–2633.

SUPPLEMENTARY INFORMATION:

I. Background

On August 2, 1984 (49 FR 31032), EPA proposed several revisions to the gasoline lead content regulations set forth at 40 CFR Part 80. This notice of proposed rulemaking (NPRM) contained two major proposals. First, the Agency proposed a short-term lead content standard of 0.10 gram of lead per gallon of leaded gasoline (gplg), effective January 1, 1986 (this notice also stated that EPA was considering alternative phasedown schedules, including one beginning with a 0.50 gplg standard in July 1985). Second, the Agency proposed two approaches related to the goal of long-term elimination of lead use in gasoline: (1) No further regulatory action, based on reliance of likely market trends to eliminate the need for such a use of lead; and (2) a ban on the use of lead in gasoline by about 1955, which would assure that such use stops by a specific date. Other, minor regulatory revisions were also proposed.

Elsewhere in today's **Federal Register**, EPA is taking final action on short-term gasoline lead content standards and on the proposed minor regulatory revisions. That notice of final rulemaking (NFRM) contains a detailed summary of the August 2, 1984, NPRM, and the public comments received in response to those portions of the NPRM. This notice requests additional comments on long-term gasoline lead use.

II. Statutory Authority

Section 211(c)(1) of the Clean Air Act, 42 U.S.C. 7545(c)(1), confers broad authority on the Administrator to "control or prohibit the manufacture . . . or sale" of any fuel or fuel additive whose emission products cause, or contribute to, "air pollution which may be reasonably anticipated to endanger the public health or welfare" or which "will impair to a significant degree the performance of any emission control device or system . . . in general use . . ."

EPA's authority to control usage of lead as an additive in gasoline under section 211(c)(1)(A) to protect public health is well-established, and prior regulations significantly curtailing lead additive usage have been upheld in court. *Ethyl Corp.* v. *EPA*, 541 F.2d 1 (D.C. Cir.) (en banc), cert. denied, 426 U.S. 941 (1976); *Small Refiner Lead Phase-Down Task Force* ("*SRTF*") v. *EPA*, 705 F.2d 506 (D.C. Cir. 1983). On issues related to the health effects of gasoline lead, the Court in the latter case concluded:

> In summary, the demonstrated connection between gasoline lead and blood lead, the demonstrated health effects from levels of 30 μg/dl or above, and the significant risk of adverse health effects from blood lead levels as low as 10–15 μg/dl would justify EPA in banning lead from gasoline entirely.
> 705 F.2d at 531.

In deciding whether to restrict fuel additives such as lead under section 211(c)(1)(A), the Administrator is required by section 211(c)(2)(A) to "consider" all relevant scientific and medical evidence available to him. The Agency has considered all such information in preparing this supplemental notice, as described in Part III of this notice.

Similarly, before restricting an additive under section 211(c)(1)(B)—to prevent damage to emission control systems—the Administrator is required by section 211(c)(2)(B) to consider available scientific and economic data, including a cost-benefit analysis comparing emission control devices that are (or will be) in general use that require such protection to those that do not. The Agency has considered these data in a supplement to the preliminary

regulatory impact analysis (RIA) that has been placed in the rulemaking docket (see Part VI.A of this notice). Since EPA has determined that there are not (and will not be in the foreseeable future) any emission control devices in general use for gasoline-powered vehicles that do not require protection from lead contamination, the cost-benefit analysis called for in section 211(c)(2)(B) cannot be performed.

In addition, if requested by a manufacturer of motor vehicles, engines, fuels or fuel additives, the Administrator must hold a public hearing on the regulations proposed under section 211(c)(1)(B), and publish his findings with respect to the issues he is required to consider under this provision at the time of promulgation of final regulations. As indicated above, EPA will hold a public hearing on the proposed regulations, and findings on the required issues will be made at the time of final rulemaking.

Finally, before prohibiting use of any fuel additive altogether, the Administrator is required by section 211(c)(2)(C) to find that such a prohibition will not result in the use of other fuel additives that will endger the public health or welfare to the same or greater degree than the additive being prohibited. EPA has evaluated this issue in Part V.E. of this notice.

Comments by interested parties on the findings that must be made and on the information that must be considered under these provisions are requested.

III. Information on Possible Ban of Lead in Gasoline

A. Information Discussed in 8/2/84 NPRM

The August 2, 1984, NPRM contains a detailed description of the information on which the regulatory actions proposed in that notice were based. 49 FR 31034–8. This information was of three general types: (1) Information from EPA's 1982 motor vehicle tampering survey indicating that the practice of using leaded gasoline in vehicles designed to use only unleaded gasoline ("misfueling" or "fuel switching") is a widespread and persistent problem nationwide; (2) information from reports submitted to EPA by refiners and importers indicating that gasoline lead usage is higher than was predicted by the Agency at the time of its 1982 promulgation of revised gasoline lead regulations; (3) information from a variety of sources concerning the adverse health effects of lead in general and gasoline lead in particular.

In addition, there are three types of information developed or brought to the attention of the Agency since the publication of the NPRM that merit additional review and comment, and these are described below.

B. Newly Developed Information

1. *Blood Lead/Blood Pressure Relationship.* Staff members from the Centers for Disease Control (CDC), EPA, and the University of Michigan recently completed a paper concerning the relationship between blood lead and blood pressure for adults, based on an analysis of data obtained in the Second National Health and Nutrition Evaluation Survey (NHANES II). This paper (Pirkle et al. 1985) has been published in the February 1985 issue of the *American Journal of Epidemiology*, which was issued on January 16, 1985. A summary of its conclusions was placed in the rulemaking docket on September 7, 1984 (Document No. IV–A–14).

The authors found that blood lead levels were a statistically significant predictor of blood pressure in adult males. This relationship held not only when blood lead was evaluated in a regression with all known factors previously established as correlated with blood pressure, but also when tested against 89 additional variables representing linear and non-linear functions of every dietary and serologic variable on the NHANES II survey.[1] Family history of hypertension, recreational exercise, work-related exercise, blood pressure medication, and recent weight loss were also considered, but did not affect the size or strength of the relationship. Included in the analysis were variables that, while not significant at the 5% level of significance (p-value), were significant at the 15% level, and every possible combination of such variables was considered. All such combinations (255) were added to the variables that were statistically significant and a regression was performed on each one. The range of variation of the coefficient of the log of blood lead varied by only ±10% from the value obtained when only significant variables were included, and the highest p-value for lead was still less than .01. Age and age-squared were also forced into the regressions, although in the age group analyzed (40-59 year-old men) blood pressure is independent of age. Since blood lead levels correlated with age, this approach reduced both the coefficient and significance level of lead. Although these parameters were reduced, they were still highly significant at $p<.008$ and $p<.003$ for diastolic and systolic blood pressure, respectively. Following are two tables showing the regression coefficients obtained in this analysis. (Chapter V of the final regulatory impact analysis (RIA) that accompanies the notice of final rulemaking (NFRM) on lead phasedown published today contains regression tables with additional variables.)

TABLE 1.—REGRESSION OF DIASTOLIC BLOOD PRESSURE IN 40- TO 59-YEAR-OLD WHITE MALES

Variables	Coefficient	T-Statistic	Probability
Age	0.2768	0.17	0.8636
Age^2	−0.0014	0.10	0.9321
Body Mass Index	1.131	8.55	0.0001
Log (blood lead)	3.954	2.85	0.0080
Dietary Potassium	−0.0018	4.92	0.0001
Hemoglobin	1.548	3.90	0.0005
Albumin	3.587	2.50	0.0179
Log (dietary vitamin C)	1.838	4.65	0.0001

TABLE 2.—REGRESSION OF SYSTOLIC BLOOD PRESSURE IN 40- TO 59-YEAR OLD WHITE MALES

Variables	Coefficient	T-statistic	Probability
Age	1.311	0.57	0.5720
Age^2	−0.0068	0.30	0.7706
Body Mass Index	1.736	9.42	0.0001
Log (blood lead)	8.436	3.24	0.0028
Albumin	7.068	2.50	0.0178
Log (dietary vitamin C)	2.411	3.84	0.0005
Log (dietary riboflavin)	−5.509	3.07	0.004
Log (dietary oleicacid)	3.992	2.49	0.0183
Log (serum vitamin C)	−3.472	2.47	0.0184

The paper by Pirkle et al. (1985) cites several other studies that have suggested a relationship between blood pressure and blood lead levels in humans (Beevers et al. 1976; Kromhout and Couland 1984; Batuman et al. 1983). In addition, experiments on rats are cited that confirm that moderate doses of lead can increase blood pressure and that the effect is restricted to males (Victery et al. 1982; Perry et al. 1979). The rat experiments also suggest a pathway: lead interfering with nerve signals to the muscles around the arteries that control blood pressure (Webb et al. 1981).[2]

[1] Another recently published study (Harlan et al. 1985) analyzed NHANES II data and found blood lead related to blood pressure for males aged 12–74 (both white and black), after controlling for age, age-squared, body mass index, race, alcohol consumption, socio-economic factors, and all nutritional variables suspected of being involved in blood pressure.

[2] In addition to the studies cited in the paper, other published studies examining whether there exists a significant relationship between blood lead and blood pressure include: Morgan 1976; Richet et al. 1966; Dingwell-Fordyce and Lane 1963; Moreau et al. 1982; Ramirez-Cervantes et al. 1978; Fouts and Page 1942; and Pocock et al. 1984. Other animal studies include: Perry and Kerlanger 1979; and Kopp 1980.

The paper by Pirkle et al. (1985) further states that the above data suggest that the relationship between blood lead and blood pressure is causal. Moreover, specific analysis by the authors to determine whether there is a lower threshold below which lead has no effect on blood pressure showed that the data was best fit with a blood lead threshold of zero.

The paper also examines the public health implications of this relationship using several established correlations between blood pressure and the risk of heart attacks, strokes, and deaths, based upon long-term cardiovascular epidemiological studies. The principal study used by the authors, which was important in establishing cholesterol as a major factor in the risk of heart disease, was the Framingham Study, specifically Section 28 (McGee 1973), 30 (Shurtleff 1974), and 31 (McGee and Gordon 1976). Extensive analyses of data have indicated the probabilities of such coronary events as a function of several variables, including blood pressure. In the 1970's, the National Institutes of Health funded the Pooling Project, which combined the Framingham data with data from five other long-term studies to improve the accuracy of the risk coefficients. The Pooling Project analyzed the occurrence of serious heart attacks (myocardial infarctions) in white men who entered the study at ages 40–59 and who were followed for at least 10 years. The stroke regressions in the Pirkle et al. paper, also based on a 10-year follow-up, were taken from the Framingham study, as were the estimates of deaths. In order to predict health outcomes, the paper also restricted its blood pressure regressions to data on white men aged 40–59.

The regression of the relationship between blood lead and blood pressure was used by one of the authors of the Pirkle et al. (1985) paper to predict changes in blood pressure that would occur as the result of the regulations proposed by EPA on August 2, 1984, to lower the gasoline lead content standard to 0.10 gplg. The Framingham and Pooling Project coefficients of the risks of heart attacks, strokes, and deaths as a function of blood pressure were used by the author to predict the health outcomes. The September 7, 1984, memorandum referred to above contains estimates of such health outcomes, specifically the reductions in the number of heart attacks (myocardial infarctions), strokes, and deaths of white males aged 40–59 predicted to result from promulgation of a 0.10 gplg standard. The memorandum also estimates the reductions in the number of cases of hypertension (high blood pressure) in all makes aged 40–59 predicted to result from promulgation of such a standard. In addition, the memorandum presents estimates of the monetized benefits of avoiding these heart attacks, strokes, deaths, and cases of hypertension.

EPA has completed a preliminary review of the blood lead/blood pressure paper described above through the convening of both EPA and non-EPA experts in biostatistics, epidemiology, and cardiovascular disease to critique statistical and other aspects of the health effects analyses contained in the paper. Reviewers received a detailed briefing by the authors concerning their analyses and examined the manuscript submitted for publication. Written comments were submitted by each of the reviewers, and copies of these comments have been placed in the rulemaking document. In general, the reviewers viewed the reported analyses and findings favorably. Some indicated that independent study results from other investigations currently in preparation for publication also find significant associations between blood lead levels and increased blood pressure.

2. *1983 Tampering Survey.* In August 1984 (after the NPRM was issued), EPA published the results of its 1983 tampering survey. (These results have been placed in the rulemaking docket—see Document No. IV–A–26.) As part of the survey, vehicles were inspected for three indicators of fuel switching: (1) The removal of the vehicle's filler inlet restrictor; (2) the presence of leaded gasoline in the tank; and (3) the detection of lead deposits on the tailpipe by a lead sensitive "Plumbtesmo" test paper. EPA considers a vehicle to be misfueled if any of these indicators is observed.

The survey was conducted in six urban areas, two of which had vehicle emission inspection/maintenance (I/M) programs (Denver, Colorado and Phoenix, Arizona) at the time of the survey, and three of which did not (Houston, Texas; Cook County (Chicago), Illinois; and Sedgwick County (Wichita), Kansas). The sixth area (Los Angeles, California) did not begin a full I/M program until March 1984, but had a change-of-ownership I/M program for several years. Because of this history and the unique California motor vehicle emission control program, Los Angeles was not considered as either an I/M or non-I/M area, but data from this area were included in the calculation of overall fuel switching and tampering rates. The fuel switching rates found by the 1983 survey were 12% in the non-I/M areas, 17% in the I/M areas, 5% in Los Angeles, and 14% (on a non-weighted basis) for all areas (all percentages were rounded to the nearest whole number). Adjusting the fuel switching rates to account for the relative percentages of vehicles in I/M and non-I/M areas results in an estimated national fuel switching rate of 16% of unleaded-designed vehicles.

The 1983 tampering survey indicates that fuel switching continues to be widespread and persistent, despite Agency efforts to combat this problem through vigorous enforcement of current regulations, the allowance of state implementation plan credits for state/local anti-misfueling programs, and a widespread multi-media public information compaign. In fact, the 1983 survey indicates a higher misfueling rate than the 13.5% rate found in the 1982 survey. The misfueling rate in the two I/M areas surveyed in 1983 was about double that found in the five I/M areas surveyed in 1982 (12% v. 6.2.%), and the gap between the I/M and non-I/M rates was significantly less in 1983 than in 1982 (5% v. 8.9%). Although only two I/M areas were surveyed in 1983, this data tends to indicate that I/M programs are not a full solution to the misfueling problem.

3. *Experience of In-Use Engines with Unleaded Gasoline.* The August 2, 1984, NPRM analyzes information available to the Agency at that time on the amount of lead needed to protect certain engines from valve-seat recession. 49 FR 31039. Relying primarily on three laboratory studies conducted between 1969 and 1971, EPA proposed a 0.10 gplg standard on the basis that such a standard would provide the minimum amount of lead needed to protect against this problem.

Subsequently, several large-scale sources of data on the comparative effects of leaded and unleaded gasoline have been brought to the attention of the Agency. While most of the data previously reviewed by the Agency were limited to light-duty passenger cars, one study conducted by the U.S. Army included a wide variety of light-duty and heavy-duty vehicles and other equipment. In addition, recent data on valve and valve-seat repair records for heavy-duty trucks using unleaded gasoline were provided by the U.S. Postal Service. Each of these studies is discussed below. Taken together, these data indicate that valve-seat recession in actual service may not be as much of a problem as the results of certain laboratory studies would indicate. The Army and Post Office information was mentioned during the hearing held on

the NPRM on August 30 and 31, 1984, and was submitted to the docket prior to the close of the comment period on the NPRM.

In the middle and late 1960's, Ethyl Corporation carried out an extensive five-year study of leaded versus unleaded gasoline use (Wintringham et al. 1972). This study included 64 matched pairs of vehicles owned and driven by Ethyl Corporation employees. One vehicle in each pair used leaded gasoline, the other used unleaded exclusively. The cars averaged more than 15,000 miles per year (an average of 78,749 miles per car during the five years for the unleaded group). At that time, speed limits on the interstate highway system were 65 or 70 miles per hour. Despite these factors, only four unleaded vehicles (six percent) required cylinder-head replacements due to valve-seat recession (one vehicle required two replacements). One vehicle in the leaded group also required a new cylinder head during the same period. On the other hand, the absence of lead showed a beneficial effect in reducing the amount of valve-related maintenance—only six vehicles in the unleaded group required valve jobs, compared with sixteen vehicles using leaded gasoline.

Three other studies on automobiles carried out at about the same time gave similar results. Gray and Azhari (1972) reported the results of a small fleet test and a panel survey, neither of which indicated any particular problems with valve-seat recession. Overall, engine repair costs for the unleaded group were lower than for the leaded group, exactly the opposite of what would have been expected if valve-seat recession were widespread. However, no details of repair records were provided, so the data must be interpreted cautiously. Crouse and others (1971) provided data on four cars used in a comparison of leaded and unleaded gasoline effects on lubricants. The cars were operated on a more or less normal schedule, involving home-to-work driving on weekdays and turnpike driving on weekends. Three cars completed 50.000 miles successfully on this schedule; the fourth suffered from valve-seat recession and had to be dropped from the test after 34,000 miles. All of these cars operated exclusively on unleaded gasoline. The researchers found that preconditioning on leaded gasoline at least doubled the mileage obtained in another test fleet (operated in very severe patrol service) before valve recession became a problem. Schwochert (1969) operated an experimental catalyst-equipped car for 50,000 miles on unleaded gasoline in the EMA mileage accumulation cycle. Valve-seat recession in this cycle did not exceed 0.02 inches, which is not significant. Subsequent operation in a very high-speed cycle (70 to 90 MPH) destroyed the valve seats in less than 12,000 miles.

All of the tests discussed above dealt with light-duty vehicles. There is reason to suspect that heavy-duty vehicles, since they often have lower power-to-weight ratios and higher RPM at highway speeds, might suffer more severely from valve-seat recession with unleaded gasoline. These concerns are also applicable to a wide range of farm, construction, and industrial equipment, much of which operates at higher average power ratings and RPM than heavy-duty vehicles. It is very relevant, therefore, that the largest and most wide-ranging fleet test available included a number of such vehicles. This was conducted by the U.S. Army, involved some 7,600 vehicles, and lasted for three years. It is documented in a series of reports by the Army Fuels and Lubricants Research Laboratory (Moffit 1972; Russel and Tosh 1973; Tosh et al. 1975; Tosh 1976). A copy of the final report on this testing program (Tosh 1976) was placed in the rulemaking docket on September 17, 1984.

The Army tests involved the conversion of vehicles at six posts entirely to unleaded gasoline. Four of the posts were in the study for three years; two more were added for the final years. A total of 2,800 light and heavy-duty commercial (i.e., civilian-type) vehicles were involved, along with 4073 tactical vehicles (jeeps and off-road trucks) and 682 combat vehicles (armored personnel carriers and tank retrievers). In addtion, numerous items of motorized equipment such as generators, pumps, road-graders, tractors, cranes, rollers, and compressors were included. The heavy-duty civilian vehicles included at least 244 heavy trucks and truck-tractors, some of which dated from the 1940's, and 75 buses. Given the age and the broad assortment of vehicles involved, it seems likely that many of these vehicles did not have hardened valve seats (one of the methods used to reduce valve-seat recession). This was certainly true of the light-duty cars and trucks included in the test, as well as for the jeeps. However, the armored personnel carriers were equipped with hard valve-seat inserts, as (presumably) were many of the tactical trucks and the later-model heavy-duty commercial vehicles. Based on the year-by-year reports of the individual Army bases, the average mileage accumulation for civilian vehicles was over 10,000 miles per year per vehicle and was up to 18,000 miles per year for one base for one year.

The results of this test found no untoward maintenance problems that could be attributed to the use of unleaded gasoline. Overall, an engine failure rate of 0.5 percent was experienced. This rate was stated as being comparable to the Army's experience with leaded gasoline. Only three cases of valve-seat recession were reported, all in light-duty vehicles.

The conclusions of the Army study were as follows:

> From the evaluation results, it can be concluded that commercial, tactical and combat vehicles, and all other equipment used in this program can operate satisfactorily during their normal day-to-day activities without any fuel economy penalties and with no apparent increase in vehicle maintenance or operating costs *so long as unleaded gasoline meeting VV–G–00169A Federal specification is used.*

(Tosh 1976, at p. 34 (emphasis in original)). The Federal specification cited is essentially that for present-day commercial unleaded gasoline.

Subsequent to this test, all the armed services converted completely to unleaded gasoline wherever it was available. No special vehicle maintenence or other problems were experienced during this conversion, according to a recent communication with Army personnel.

Data provided by the U.S. Postal Service indicate very similar results for trucks in medium-heavy duty service (this is the typical service classification for gasoline heavy-duty trucks). The Postal Service has operated some 1,562 1975-model year Ford heavy-duty trucks on unleaded gasoline since 1980. These trucks were originally purchased in 1975, and travel approximately 50,000 miles per year on average. By 1980, most of them were on their second or third engine rebuild or replacement, so that there were a wide variety of engine Mileages—from zero to about 100,000 miles—represented in the fleet. So far as is known, all of the new and rebuilt engines in the fleet used hard valve inserts.

In the approximately 3½ years since switching to unleaded gasoline, the Postal Service has recorded 69 instances of valve problems (a valve failure rate of 4.4 percent) and 18 cases of valve seat problems (a failure rate of 1.2 percent), while operating these trucks for an average mileage of approximately 175,000 miles each on unleaded gasoline (this would normally include at least one full engine rebuild). By comparison, Ford has indicated that its warranty

data for the same types of engines—presumably run primarily on leaded gasoline—showed comparable valve and cylinder-head failure rates. No separate date distinguishing valve seat failures from other cylinder-head problems were available. It appears from these data, however, that the valve and cylinder/head (including valve-seat) failure rates with unleaded gasoline are not significantly different from those with leaded gasoline. The Postal Service has reportedly experienced no significant mechanical or operating problems as a result of using unleaded gasoline in its fleet.

IV. Request for Additional Comments

The Agency is today requesting comments on the additional information about health effects, misfueling, and the need for lead in engines, as discussed in Part III of this notice. The information suggests that: (1) The adverse health consequences of gasoline lead usage may be significantly greater than previously believed; (2) misfueling continues to be a serious problem nationwide; and (3) the need for lead as an engine valve lubricant may not be as great as previously believed. Therefore, EPA is considering a range of options on the long-term use of lead in gasoline, including those discussed in the August 2, 1984, NPRM, as well as a total ban on such a use of lead, perhaps as early as January 1, 1988.

A summary of public comments on the August 2, 1984, NPRM has been placed in the rulemaking docket. Responses to comments on issues related to today's final rulemaking are contained in another document in the docket, "Responses to Comments on the August 2, 1984, Proposal to Amend the Gasoline Lead Content Regulations" ("Responses to Comments"). In addition, EPA is requesting comments on the following aspects of the major issues discussed above, raised by commenters on the NPRM.

A. Health Effects

At the time of the August 2, 1984, NPRM, health information available to the Agency related primarily to the adverse effects of gasoline lead on young children. Based on that data, EPA stated.

> [I]t is the opinion of the Agency that there is no health-based reason to continue the use of lead in gasoline, as this is the most readily controlled and most ubiquitous source of lead emissions into the environment. A prudent health objective is the rapid reduction and eventual end to the use of lead in gasoline.

49 FR 31038. The Agency also stated that its overall goal is to end the use of lead as a gasoline additive in order to prevent such adverse health effects and to eliminate the misfueling problem, and requested public comments on the need for this goal. 49 FR 31041.

EPA received a number of comments on the August 2, 1984 NPRM generally supporting its analysis of the health effects of gasoline lead and its goal of eventually eliminating the use of lead in gasoline. Commenters in support of this goal included medical experts, environmental and health groups, state and local government agencies, refiners, and others. Such commenters supported various time frames for eliminating lead from gasoline, ranging from immediately to the 1995 date set forth in the NPRM. Some of these commenters also pointed out additional adverse effects of gasoline lead, including those related to unborn children and adults of childbearing years. Some other commenters (e.g., Ethyl and Dupont Corps.) did dispute the Agency's health effects analysis, suggesting that there was no demonstrated correlation between lead in gasoline and adverse health effects. (For details, see chapters II and VII for the summary of public comments.) The Agency specifically requests comments on these health issues as they relate to a total ban on leaded gasoline and the timing of such a ban.

B. Misfueling

Another type of information developed since the August 2, 1984, NPRM is information indicating that misfueling continues to be a serious problem nationwide, as discussed in Part III. B.2 of this notice. Several commenters on the NPRM, including at least two state agencies, stated that EPA's estimates of misfueling may be too low. In addition, as discussed in Part II.C of today's notice of final rulemaking (published elsewhere in this issue of the **Federal Register**), The Agency is disturbed by the number of comments on the August 2, 1984, NPRM that predicted that leaded gasoline produced under a 0.10 gplg standard might still be sold at a lower retail price than unleaded gasoline, or which stated that the uncertainties of the market place prevent accurate predictions on this subject. Since the relatively low price of leaded gasoline is a major incentive for misfueling, absent a ban on the use of lead in gasoline or an equally effective solution, the practice of misfueling might well continue at significant rates. Misfueling, as well as proper use of leaded gasoline, contributes to levels of lead usage which have caused the Agency to consider a total ban on leaded gasoline. The Agency solicits additional comments on the misfueling problem and/or other solutions to this problem, including the types of marketing restrictions discussed in the August 2, 1984, NPRM. 49 FR 31040–1.

C. Engine Protection

1. *Lead As A Valve-Seat Protectant.* The August 2, 1984, NPRM stated that EPA's goal of ending the use of lead in gasoline should be accomplished while protecting engines designed strictly for the use of leaded gasoline. That NPRM solicited comments on a broad range of issues related to a ban, including the amount of lead needed as a valve lubricant and the availability of alternative additives for this purpose. 49 FR 31041–2. Several commenters argued that the proposed short-term 0.10 gplg standard would provide more valve protection than is probably needed. Some commenters suggested that the real world experience of leaded-designed vehicles running on unleaded gasoline suggests that a minimum amount of lead is not needed in gasoline. One commenter also pointed out that Amoco has sold unleaded gasoline for years with no apparent adverse impact on vehicles using that fuel. The same commenter noted that while the amount of damage caused by the lack of lead is unsubstantiated, the damage that lead causes to such engine components as valves and pistons is known. Another commenter pointed to laboratory studies which show that load and speed, not gasoline composition, cause premature valve damage.

One commenter also cited the Army and Postal Service studies described in Part III.C.3 of this notice as examples of in-use experiences that did not support the theory that widespread valve damage would result from the use of no-lead or low-lead gasoline. These studies are the most extensive in-use experiments known to EPA that involve the use of unleaded gasoline in vehicles designed for leaded fuel. These two studies are also of particular relevance because they included heavy-duty vehicles, the engines of which are generally considered to be more susceptible to valve damage because of the way in which they are often operated (high speed and heavy load). Along with certain in-use experiments with light-duty vehicles that are also described in Part III.C.3, these studies indicate that valve damage in actual use may not be as much of a problem as previously believed.

On the other hand, the elimination of lead from gasoline would likely result in engine benefits. Use of unleaded gasoline could reduce valve problems due to deposit buildup and overheating,

would all but eliminate engine rusting, and would greatly decrease corrosive wear. This would extend engine life and reduce repair costs. Reduced oil thickening as the result of the use of unleaded gasoline, combined with the reduced corrosion and wear, would allow a significant extension of oil drain periods. Unleaded gasoline would extend significantly the service lives of spark plugs and exhaust systems, and would nearly eliminate exhaust system corrosion in warm climates. The economic value of these and other benefits of a ban is discussed in Part V.D.2 of this notice.

2. *Other Additives/Engine Changes.* Even if lead is not needed in gasoline to protect most engines, valve-seat recession might still be a problem with some groups of engines that are used under severe operating conditions (high-power, high-RPM). For these engines, there are several possible approaches to eliminating this problem, including the use of other fuel and lubricating oil additives. Such fuel additives include phosphorus, manganese (both presently regulated in unleaded gasoline), and three unidentified compounds tested by Lubrizol Corporation in the early 1970's. Oil additives that could have a significant effect on valve-seat recession include sulfate ash, zinc, sodium, and magnesium. These alternative fuel and oil additives are discussed in Part V.E of this notice. There are also engine modifications that could be made to alleviate valve problems, including pinning valves to prevent rotation, substitution of lower-force valve springs, and changing the valve-seat angle. See Kent and Finnigan (1971), Giles and Updike (1971), and Fuchs (1971). Some problems also could be addressed by the use of a special grade of off-highway gasoline or by supplying the needed additives (including lead) in oil or in fuel supplements.

The Agency will continue to work with manufacturers and consumers to minimize any risk of valve-seat recession. Besides the work mentioned above, another possibility is simply the sale of small quantities of leaded gasoline as an aftermarket additive. Leaded gasoline sold as a consumer additive would not require a prior waiver from EPA, unlike fuels or additives sold at the pump. Such additives could be used by consumers to provide engine valve lubrication.

The Agency specifically seeks information and comments on the feasibility of other additives and engine changes that would protect valves.

D. Refinery Capacity

The Agency has done extensive analysis on refinery capacity (see the supplement to the preliminary RIA that accompanies this notice) and believes that a ban effective as early as 1988 would allow refiners adequate time to prepare for the production of unleaded gasoline only. Refiners would have almost three years from the date of this notice to plan and construct isomerization units and any other petroleum processing equipment needed to produce unleaded gasoline, and to obtain any environmental permits needed to construct and/or operate this equipment. A number of commenters on the August 2, 1984, NPRM, including several refiners and petroleum marketers, supported, or stated that they did not oppose, a ban on lead in gasoline at an earlier date than the 1995 date discussed in that NPRM. Among the several commenters whose comments supported an effective date of 1988 or earlier was at least one refiner which stated that presently available refinery capacity is sufficient to produce adequate amounts of unleaded gasoline and that a total ban on the production of leaded gasoline could be implemented by the industry within 90 days of a final rule.

The Agency requests comments on the relevant information discussed in this notice and in the August 2, 1984, NPRM, as well as on the regulatory implications of such information. Comments on the feasibility of a total ban on the use of lead in gasoline as early as January 1, 1988,[3] are specifically requested. Comments are requested on how much prior notice the refining industry would need before a ban would become effective. Comments are also requested on the availability by that date of alternative additives or of alternative methods of making lead additives avialable, or on other solutions such as engine modifications, should it appear that some engines will need a valve lubricant.

V. Impacts of Total Ban on Lead in Gasoline

A. Health Impacts

The primary health impact of a total ban on gasoline lead would be to reduce human exposure to environmental lead, in particular the exposure of the group most at risk, pre-school and unborn children. In the notice of final rulemaking published elsewhere today, EPA quantified the health benefits of going from a 1.10 gplg standard to a 0.10 gplg standard in 1986. A total ban would result in additional health benefits as the result of going from a 0.10 gplg standard to a no lead standard.

EPA has quantified the health impacts of a ban in terms of the net change in the number of incidences of children exceeding various blood lead levels as the result of going from a 0.10 gplg standard to a ban. EPA's analytical methodology is fully discussed in chapters II and IV of the final RIA that accompanies today's final rulemaking. Blood lead levels above 30 micrograms per deciliter (μg/dl) have been of particular concern because this was the elevated blood lead level established by the Centers for Disease Control (CDC) in 1978. CDC recently announced that it is redefining "elevated blood lead level" to include levels of 25 μg/dl and higher (see February 8, 1985, issue of CDC's *Morbidity and Mortality Weekly Report).* Therefore, EPA has also examined the impacts of a ban on reductions in blood lead from above to below 25 μg/dl.

A no-lead standard effective on January 1, 1988 would, relative to a 0.10 gplg standard in 1988, result in 2000 fewer incidences of children exceeding a blood lead level of 30 μg/dl and 7000 fewer incidences exceeding a 25 μg/dl level in 1988. The impact on other blood lead levels has also been estimated. These impacts are presented in Table 3.

TABLE 3.—NUMBER OF INCIDENCES OF CHILDREN WHOSE BLOOD LEAD GOES FROM ABOVE TO BELOW THE INDICATED BLOOD LEAD LEVEL [1]

Blood lead level	Year				
	1988	1989	1990	1991	1992
30 μg/dl	2,000	2,000	1,000	1,000	1,000
25 μg/dl	7,000	7,000	6,000	6,000	5,000
20 μg/dl	26,000	22,000	19,000	18,000	16,000
15 μg/dl	83,000	72,000	65,000	58,000	54,000

[1] This table assumes that under a 0.10 gplg standard there will be an 80% reduction in the mistueling rate. This reduction is based on the assumption that no reductions in mistueling are achieved under a 0.50 gplg standard, but that mistueling declines linearly from that level to a no-lead level. For a further discussion, see chapter VIII of the final RIA that accompanies today's final rulemaking.

Based on the analysis of the relationship between blood lead and blood pressure discussed in Part III.B.1 of this notice, EPA has estimated the reduction in case of hypertension and other cardiovascular diseases expected to occur as the result of a total ban on lead in gasoline. In preparing these estimates, EPA first estimated the distribution of blood lead levels at various gasoline lead levels. Next, using the regression coefficients from the

[3] If such a ban were promulgated, the applicable date in the following proposed regulatory provisions set forth in the August 2, 1984, NPRM would be changed from "January 1, 1995" to "January 1, 1988": 40 CFR 80.20(a)(1)(ii), (a)(1)(iii), (a)(3), (c)(1)(ii), (c)(1)(iii), and (c)(3).

model relating blood pressure to blood lead levels, the number of cases of hypertension (i.e., diastolic blood pressure of 90 millimeters mecury or higher) were calculated at various gasoline lead levels. Using the risk coefficients from the Framingham and Pooling Project studies, the number of myocardial infarctions (heart attacks), strokes, and deaths were calculated. A full discussion of this analysis is found in chapter V of the final RIA prepared for today's final rulemaking action. Table 4 lists the reductions in the number of cases of each health effect estimated to occur as the result of going from a 0.10 gplg standard to a total ban, assuming such a ban is effective in 1988. Note that estimates are for white males aged 40–59, only. This group is slightly more than half of all males above 40.

In addition to the beneficial health impacts from reducing lead emissions, excess emissions of HC, CO, and NO_x that result from misfueling would be reduced to the extent that misfueling is reduced as a result of this action (see Part V.B.3 of this notice). The final RIA accompanying today's final rule contains a detailed discussion of the adverse health impacts estimated to be averted through such a reduction in the emissions of these pollutants.

TABLE 4.—REDUCTIONS IN NUMBER OF ADVERSE ADULT HEALTH EFFECTS [1]

Health effect	Year				
	1988	1989	1990	1991	1992
Hypertension	123,427	110,411	98,906	91,403	86,081
Myocardial infarctions	402	360	322	298	281
Strokes	84	75	67	62	58
Deaths	387	346	310	286	270

[1] This table assumes that under a 0.10 gplg standard there will be an 80% reduction in the misfueling rate.

B. Other Environmental Impacts

In the notice of final rulemaking published elsewhere in this issue of the **Federal Register**, EPA quantified the environmental benefits of going from a 1.10 gplg standard to a 0.10 gplg standard reductions in emissions of several motor vehicle pollutants: lead, ethylene dibromide, hydrocarbons, carbon monoxide, and nitrogen oxides.

1. *Lead.* A total ban would obviously reduce motor vehicle lead emissions to zero. As discussed in the August 2, 1984, NPRM, analysis of ambient lead levels in the past has indicated a close relationship between reductions in ambient air lead concentrations and gasoline lead use reductions in areas where lead air quality is impacted primarily by mobile sources. 49 FR 31046. The no-lead standard would also eliminate any residual misfueling. This would provide additional positive environmental impact. The net reduction in lead in the environment from changing the 0.10 gplg standard to a zero lead standard would be 2240 tons in 1988 if there is no misfueling at a 0.10 gplg standard, and 2440 tons in 1988 if 20% misfueling occurred at the 0.10 gplg level.

2. *Ethylene Dibromide.* Emissions of ethylene dibromide (EDB), a potential human carcinogen, would also be reduced as a result of a total ban on lead gasoline. EDB is used as a lead scavenger in leaded gasoline to prevent a build-up of lead deposits in engines and exhaust systems. Based upon emission factors derived by Sigsby et al. (1982), 1988 national motor vehicle tailpipe emissions of EDB under a lead ban, relative to a 0.10 gplg standard in 1988, would be reduced by 10.6 metric tons (assuming misfueling is reduced by 80% under a 0.10 gplg standard). In addition, EPA has calculated that motor vehicle evaporative emissions of EDB would be reduced by 2.5 metric tons and that EDB emissions from the distribution of leaded gasoline would decrease by 0.5 metric tons. Total emissions of EDB would decrease by 13.6 metric tons (not counting tank leakage and spillage). These calculations are explained in the final RIA for the final rulemaking.

3. *Other Pollutants.* Reductions in emissions of hydrocarbons (HC), nitrogen oxides (NO_x, and carbon monoxide (CO) that result from the ban would be primarily due to reductions in misfueling. Misfueling alters the efficiency of the catalytic converter, and can result in total deactivation of this pollution control equipment. A total ban would eliminate all misfueling, and thereby eliminate excess emissions that would otherwise occur from misfueling under a 0.10 gplg standard. The final RIA that accompanies today's final rulemaking discusses EPA's methodology for calculating such avoided emissions. In making estimates concerning the impact of a total ban, the Agency has assumed that the 0.10 gplg standard promulgated today will reduce misfueling by 80% (compared to a 1.10 gplg standard), and that a total lead ban will eliminate the remaining misfueling. Table 5 estimates the net emission reductions that would be achieved in going from a 0.10 gplg standard to a no-lead standard.

TABLE 5.—REDUCTIONS IN EXCESS EMISSIONS

(Thousands of tons)

Pollutant	1988	1989	1990	1991	1992
CO	424	426	435	451	467
HC	61	61	62	64	66
NO_x	24	26	28	29	30

C. Economic Impact

The Agency is considering a broad range of alternatives for the elimination of lead from gasoline (including no action at all), and has considered the economic impact of these options. EPA has estimated the costs and benefits of banning all lead in gasoline starting in 1988. These estimates are based on the same methods used to analyze the economic impacts of the short-term low lead standards being promulgated today elsewhere in this issue of the **Federal Register**. The results are summarized below, and further details may be found in the supplement to the preliminary RIA that accompanies this notice.

1. *Refinery Costs of a Ban.* The primary cost of banning lead in gasoline would be the extra refining costs needed to replace the octane provided by 0.10 gplg of lead in leaded gasoline. EPA has estimated these costs using the Department of Energy's linear programming model of the refining industry. As described in the August 2, 1984, NPRM (49 FR 31043) and in the final RIA that accompanies today's final rulemaking, this model has been used by EPA and by DOE to estimate the costs of various regulations affecting refineries. The model finds the mix of refinery inputs and processing that minimizes the cost of meeting product demands. EPA also has imposed various constraints on the model to ensure that it does not achieve unrealistically high degrees of optimization.

The annual costs of a ban depend in part on how much misfueling is eliminated by the 0.10 gplg standard that will apply starting on January 1, 1988. Table 6 presents cost estimates for a ban assuming that the 0.10 gplg standard will eliminate 80 percent of the misfueling that would occur under a 1.10 gplg standard (and that a ban would eliminate the remaining misfueling). The supplement to the preliminary RIA contains cost estimates based on alternative assumptions about misfueling. These estimates cover only the incremental costs of the ban relative to the 0.10 gplg rule that would otherwise apply in those years.

In reaching a final decision on whether to promulgate a ban, EPA also will consider the cost of potential damage to engines that may need lead to prevent valve-seat recession. As discussed elswhere in this notice, EPA is soliciting comments on the likelihood of such damage under normal operating conditions and on alternative ways of dealing with any problem areas.

2. *Benefits of a Ban.* EPA also has estimated the value of the benefits that

would result from banning lead in gasoline in 1988. These benefits fall into four categories: (1) Children's health and cognitive effects associated with exposure to lead; (2) health and welfare effects associated with excess emissions from vehicles misfueled with leaded gasoline; (3) fuel economy and vehicle maintenance benefits; and (4) blood-pressure-related health effects associated with lead. In calculating the first three types of benefits, the same methods have been used as were used to estimate the impact of the final rule establishing a gasoline lead content standard of 0.10 gplg. For a summary of these methods, see the notice of final rulemaking published elsewhere in this issue of the **Federal Register**. Additional details are provided in the final RIA prepared in conjunction with that notice.

The estimates of blood-pressure-related health benefits are based on the analysis of the relationship between blood lead and blood pressure discussed in Part III.B.1 of this notice, which showed a significant relationship between blood lead and blood pressure in adult males. This analysis has been used to predict the effect of a ban on the number of cases of hypertension among men aged 40 to 59 and the number of myocardial infarctions, strokes, and deaths among white males in that age range. (The analysis was restricted to white males in that age range because the most reliable estimates of the impact of blood pressure on cardiovascular risk are based on large epidemiological studies that included few nonwhites.)

EPA's estimates of the monetary benefits associated with reduced blood pressure are comprised of several components. Based on estimates of the cost of medical treatment and lost wages, a benefit of $220 was used per case of hypertension avoided. For myocradial infarctions and strokes, benefits were based on lost wages (excluding fatal heart attacks and strokes) and medical expenses; they totaled $60,000 per myocardial infarction and $44,000 per stroke.

Placing a monetary value on the reductions in mortality risks (i.e., deaths from myocardial infarctions, strokes, and other causes related to blood pressure) predicted to result from a ban is an inherently difficult and imprecise task. Most benefit-cost analysts agree that the appropriate measure to use is the willingness to pay of individuals to reduce risks to themselves and their families, but there is little agreement as to the correct empirical measure. Many studies have examined this issue, based on the implicit values revealed by individuals in accepting tradeoffs between job risks and wages, or in other choices involving dollars and risk. A recent survey of the literature for EPA found that the estimates from such studies ranged from $400,000 to $7 million per statistical life saved. In preparing EPA's benefit estimates, a value from the lower end of that range, $1 million, was used. Additional details on the calculation of blood-pressure-related health benefits are contained in the final RIA.

EPA's estimates of benefits depend on how much misfueling is eliminated under a 0.10 gplg standard. The estimates presented in Table 6 are based on the assumption that the 0.10 gplg standard will eliminate 80 percent of misfueling. Estimates based on other assumptions are presented in the supplement to the preliminary RIA.

These monetized estimates of benefits are incomplete. Several omissions deserve particular notice: (1) The blood-pressure-related estimates cover only males aged 40–59 and, for myocardial infarctions, strokes, and deaths, only whites; (2) the estimated benefits for both children and adults do not ascribe any monetary value to reduced pain and suffering associated with disease; (3) no monetized benefits have been ascribed to reductions in blood levels of children who remain above the expected CDC toxicity level of 25 ug/dl; and (4) the direct benefit estimates for conventional pollutants from misfueled vehicles do not include any benefits for reductions in emissions of nitrogen oxides and carbon monoxide. Because of these limitations, and others, it is likely that the benefits of a ban have been understated substantially.

TABLE 6.—COSTS AND BENEFITS OF 1988 BAN

[Millions of 1983 dollars]

Category	Year				
	1988	1989	1990	1991	1992
Cost	149	131	114	99	88
Benefits:					
Children's health	23	23	20	20	17
Conventional pollutants	56	56	58	60	62
Maintenance and fuel economy	115	98	89	65	67
Blood-pressure-related	442	395	354	327	309
Net benefits [1]	486	442	407	373	366

[1] Columns may not add due to rounding.

D. Energy Impact

Because many of the alternatives to lead for boosting octane require additional processing of gasoline components, a total ban on lead in gasoline would result in increased use of energy. This reflects the fact that energy is expended in the course of operating this processing equipment. Compared to energy use under a 0.10 gplg standard, a ban on the use of lead in gasoline would increase national energy use by the equivalent of approximately 9000 barrels per day of crude oil in 1988, less than 0.1% of current crude oil usage in the United States. The cost of the use of this energy is included in EPA's cost estimates and, compared to the benefits that would result from such a ban, this increase is not considered significant.

E. Impact of Use of Alternative Additives

To prohibit the use of fuel additive under section 211(c) of the Act, section 211(c)(2)(C) requires the Administrator to find that such a prohibition will not cause the use of another fuel or fuel additive that will produce emissions that will endanger the public health or welfare to the same or greater degree than the fuel additive to be banned. Accordingly, the Agency has considered the possibility that a total ban on the use of lead in gasoline as early as 1988 might (in the absence of further regulatory action) cause the use of other additives as lubricating agents for valves and/or as octane enhancers.

Under a total ban on the use of lead in gasoline, refiners might consider use of other additives to serve as an engine valve lubricant and/or to increase the octane of gasoline. Refiners might consider the use of substances such as phosphorus, sodium or MMT for the purpose of lubrication. To increase the octane of gasoline, refiners might consider the increased use of MMT and/or alcohols. The Agency believes that some or all of these substances might be considered for use by refiners, but at this time cannot accurately predict which substances might be so considered, or in what quantities. The Agency specifically requests comments on these issues, and will make a finding under section 211(c)(2)(C) after considering these comments if a ban is promulgated.

However, the Agency has broad authority under section 211 of the Act to limit the use of additives in gasoline. Generally, a waiver must be obtained under section 211(f)(4) of the Act for the use of any fuel additive in unleaded gasoline unless it is "substantially similar" to an additive used in the certification of 1975 or later model year vehicles under section 206 of the Act, 42 U.S.C. 7525. EPA's revised interpretation

of "substantially similar" was published in the **Federal Register** on July 28, 1981, at 46 FR 38582.

Since under a total ban all gasoline will be unleaded, no new additive can be developed and used before first going through the section 211(f) waiver process unless it is substantially similar to a previously-approved fuel. Those fuel or fuel additives for which waivers have already been granted may be restricted, however, since any attempt to increase the concentration of any such fuel or fuel additive generally would be prohibited without a new waiver application to the Agency.

In addition, the Agency has authority under section 211(c) of the Act to control or prohibit the use of fuels or fuel additives, as discussed in Part II of this notice, if those fuels or additives pose risks to the public health or to emission control devices. Therefore, the Agency does not expect that a ban on lead in gasoline would cause the use of other fuels or fuel additives whose emissions would endanger the public health or welfare to the same or greater degree than lead.

VI. Additional Information

A. Executive Order 12291

Executive Order (E.O.) 12291 requires the preparation of a regulatory impact analysis for major rules, defined by the Order as those likely to result in:

(1) An annual adverse effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

EPA has determined that a ban would meet the definition of a major rule under E.O. 12291, and has prepared a supplement to the preliminary regulatory impact analysis (RIA) prepared in conjunction with the August 2, 1984, NPRM. The supplement includes information on a ban effective January 1, 1988. That document, along with this supplemental notice, has been submitted to the Office of Management and Budget (OMB) for review under E.O. 12291. Any comments from OMB and any EPA responses to such comments are available for public inspection at the Central Docket Section, U.S. Environmental Protection Agency, West Tower Lobby, 401 M Street, SW., Washington, D.C. 20460 (Docket No. EN-84-05). A copy of the supplement to the preliminary RIA has also been placed in the rulemaking docket.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601-612, requires that Federal agencies examine the impacts of their regulations on small entities. Under 5 U.S.C. 604(a), whenever an agency is required to publish a general notice of proposed rulemaking, it must prepare and make available for public comment an initial regulatory flexibility analysis (RFA). Such an analysis is not required if the head of an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, pursuant to 5 U.S.C. 605(b). EPA has prepared a supplement to the initial RFA prepared in conjunction with the August 2, 1984, NPRM. The supplement includes information relevant to the regulatory options described in this notice, and a copy of the supplement has been placed in the rulemaking docket.

C. National Academy of Sciences Recommendations

Section 307(d)(3) of the Clean Air Act, 42 U.S.C. 7607(d)(3), requires that rulemaking proceedings under section 211 of the Act, 42 U.S.C. 7545, take into account any pertinent findings, comments, and recommendations by the National Academy of Sciences. Pertinent findings by the National Academy of Sciences are contained in the 1980 report, "Lead in the Human Environment," prepared by the Committee on Lead in the Human Environment of the National Academy of Sciences. The major recommendations in this report pertinent to regulatory controls are the following:

(1) "Efforts to control exposure to lead should proceed, with full acknowledgment of the necessary imprecision of estimates of the costs, risks, and benefits."

(2) "Control strategies should be based on coordinated, integrated measures to reduce exposures from all significant sources."

(3) "Improved institutional mechanisms should be developed to permit a more systematic, consistent approach to the management of lead hazards."

(4) "Expanded and more concerted efforts should be made to identify children at risk and remove sources of lead from their environments. A serious effort should also be made to reduce the 'background' level of exposure of the general population to lead. The most important elements in control strategies include population screening, lead paint removal, reduction of lead emissions from gasoline combustion, and reduction of lead levels in foods."

The Agency has taken these recommendations into account in the development of this supplemental notice and believes this notice is fully consistent with them.

D. Paperwork Reduction Act

The information collection requirements that would result from a ban such as that discussed in this notice would be less than those cleared previously by OMB under control number 2000-0041. See 48 FR 13430 (March 31, 1983). Any such changes to the information collection requirements that would result from a ban will be submitted to OMB for review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. The impact of a total ban on lead in gasoline effective on January 1, 1988, would be the elimination of most, if not all, reporting requirements after January 15, 1988.

List of Subjects in 40 CFR Part 80

Fuel additives, Gasoline, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

(Secs. 211 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7545 and 7601(a))

Dated: March 3, 1985.

Lee M. Thomas,

Administrator.

[FR Doc. 85-5442 Filed 3-6-85; 8:45 am]

BILLING CODE 6560-50-M

federal register

Thursday
March 7, 1985

Part V

Office of Management and Budget

Budget Deferrals; Notice

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OFFICE OF MANAGEMENT AND BUDGET

Budget Deferrals

To the Congress of the United States:

In accordance with the Impoundment Control Act of 1974, I herewith report six new deferrals of budget authority for 1985 totaling $58,900,000 and four revised deferrals now totaling $110,566,481. The deferrals affect the Departments of Agriculture, Health and Human Services, Justice, and Labor.

The details of these deferrals are contained in the attached report.

Ronald Reagan.

The White House.
March 1, 1985.

BILLING CODE 3110-01-M

CONTENTS OF SPECIAL MESSAGE
(in thousands of dollars)

DEFERRAL #	ITEM	BUDGET AUTHORITY
	Department of Agriculture	
	Soil Conservation Service	
D85-59	Watershed and flood prevention operations...	8,365
	Forest Service	
D85-4A	Timber salvage sales.....	13,175
D85-5A	Expenses, brush disposal.....	77,913
	Department of Health and Human Services	
	Social Security Administration	
D85-9A	Limitation on administrative expenses (construction).....	15,712
	Department of Justice	
	Office of Justice Programs	
D85-60	Justice assistance.....	13,026
	Department of Labor	
	Employment and Training Administration	
D85-61	Program administration.....	162
	State unemployment insurance and	
D85-34A	employment service operations.....	3,767
D85-62		37,000
D85-63	Unemployment trust fund.....	119
	Pension Benefit Guaranty Corporation	
D85-64	Pension benefit guaranty fund.....	228
	Total, deferrals.....	169,466

SUMMARY OF SPECIAL MESSAGES
FOR FY 1985
(in thousands of dollars)

	RESCISSIONS	DEFERRALS
Seventh special message:		
New items.....	---	58,900
Revisions to previous special messages.....	---	25,758
Effects of seventh special message.....	---	84,658
Amounts from previous special messages that are changed by this message (changes noted above).....	---	84,809
Subtotal, rescissions and deferrals.....	---	169,466
Amounts from previous special messages that are not changed by this message.....	1,805,913	14,553,149
Total amount proposed to date in all special messages.....	1,805,913	14,722,615

Deferral No: D85-59

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:
Department of Agriculture
Bureau:
Soil Conservation Service
Appropriation title and symbol:
Watershed and Flood Prevention Operations 1/
12X1072
OMB Identification code:
12-1072-0-1-301
Grant program: [X] Yes [ ] No
Type of account or fund:
[ ] Annual
[ ] Multiple-year _____ (expiration date)
[X] No-Year

New budget authority..... $ 182,300,000
(P.L. 98-473)
Other budgetary resources 50,946,859
Total budgetary resources 233,246,859
Amount to be deferred:
Part of year $ 8,365,000
Entire year _____
Legal authority (in addition to sec. 1013):
[ ] Antideficiency Act
[ ] Other _____
Type of budget authority:
[X] Appropriation
[ ] Contract authority
[ ] Other _____

Justification: This program provides for cooperation between the Federal Government and States and their political subdivisions in installing works of improvement to reduce damage from floodwater, sediment, and erosion; for the conservation, development, utilization, and disposal of water; and for the conservation and proper utilization of land. The deferred funds were provided for technical and financial assistance to sponsors of projects authorized under P. L. 566 in carrying out works of improvement to protect, develop and utilize the land and water resources in small watersheds (under 250,000 acres). These amounts are deferred until Congress has completed action on a proposal to transfer them to the Conservation operations account of the Soil Conservation Service to be used to meet increased pay costs.

Estimated Program Effect: This action will reduce funds available for technical and financial assistance to projects already under construction in 1985.

Outlay Effect (in thousands of dollars):

1985 Outlay Estimate		Outlay Savings					
Without Deferral	With Deferral	1985	1986	1987	1988	1989	1990
280,310	277,810	2,500	3,800	2,065	---	---	---

1/ This account was the subject of a deferral in 1984 (D84-49). It is also the subject of a rescission proposal (R85-34).

D85-4A

Supplementary Report

Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D85-4 transmitted to Congress on October 1, 1984.

This increases by $3,470,917 the previous deferral of $9,703,710 in the Department of Agriculture's Forest Service Timber salvage sales account, resulting in a total deferral of $13,174,627. The additional funds can be deferred because more unobligated funds were available at the end of 1984 than previously anticipated.

Deferral No: *D85-4A

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:
Department of Agriculture
Bureau:
Forest Service
Appropriation title and symbol:
Timber salvage sales 1/
12X5204
OMB identification code:
12-9922-0-2-302
Grant program: |__| Yes |X| No
Type of account or fund:
|__| Annual
|__| Multiple-year _____ (expiration date)
|X| No-Year

New budget authority..... $ 16,055,000
(P.L. 94-588; 16 U.S.C. 472a(h))
Other budgetary resources * 21,946,627
Total budgetary resources * 38,001,627
Amount to be deferred:
Part of year $_____
Entire year * 13,174,627
Legal authority (in addition to sec. 1013):
|X| Antideficiency Act
|__| Other_____
Type of budget authority:
|X| Appropriation
|__| Contract authority
|__| Other_____

Justification: *The Timber salvage sales fund was established under the provisions of the National Forest Management Act of 1976 so that immediate action can take place to harvest dead and dying trees when required by market conditions or catastrophes (such as the Mount St. Helens volcanic eruption). Fees are paid by purchasers of dead, damaged, insect-infested or down timber to finance subsequent timber salvage sales. Contingency reserves are established under the provisions of the Antideficiency Act (31 U.S.C. 1512) because of the time lag between the deposit of receipts in one year and the expenditure of funds for sales operations in subsequent years.

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in 1984 (D84-2).

* Revised from previous report.

D85-5A

Supplementary Report

Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D85-5 transmitted to Congress on October 1, 1984.

This increases by $22,062,759 the previous deferral of $55,850,019 in the Department of Agriculture's Forest Service Expenses, brush disposal account, resulting in a total deferral of $77,912,778. The additional funds can be deferred because more unobligated funds were available at the end of 1984 than previously anticipated.

Deferral No: *D85-5A

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:
Department of Agriculture
Bureau:
Forest Service
Appropriation title and symbol:
Expenses, brush disposal 1/
12X5206
OMB identification code:
12-9922-0-2-302
Grant program:
|___| Yes |X| No
Type of account or fund:
|___| Annual
|___| Multiple-year _____ (expiration date)
|X| No-Year

New budget authority..... $ 41,822,000
(P.L. 16 U.S.C. 490)
Other budgetary resources * 77,927,778
Total budgetary resources *119,749,778
Amount to be deferred:
Part of year $_____
Entire year * 77,912,778
Legal authority (in addition to sec. 1013):
|X| Antideficiency Act
|___| Other_____
Type of budget authority:
|X| Appropriation
|___| Contract authority
|___| Other_____

Justification: *Fees are paid by purchasers of National Forest timber reflecting the estimated expenses of the Forest Service for disposing of brush and other debris resulting from timber cutting operations. Much of the brush disposal work for which fees are collected cannot be done in the same year because harvesting is not completed or due to seasonal weather conditions. In addition, extra fire protection by the Forest Service may be required for three to five years after the timber harvest. The Forest Service plans for a stable year-to-year program which will require $41.8 million in 1985. A contingency reserve has been established for future expenses under the provisions of the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in 1984 (D84-3).

* Revised from previous report.

D85-9A

Supplementary Report

Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D85-9 transmitted to Congress on October 1, 1984.

This increases by $224,195 the previous deferral of $15,487,881 in the Department of Health and Human Services' Social Security Administration Limitation on administrative expenses (construction) account, resulting in a total deferral of $15,712,076. The additional resources can be deferred as a result of updated Social Security Administration and General Services Administration projections of 1985 obligations for headquarters and field construction projects and because more unobligated funds were available at the end of 1984 than previously anticipated.

Deferral No: *D85-9A

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:
Department of Health and Human Svcs
Bureau:
Social Security Administration
Appropriation title and symbol:
Limitation on Administrative Expenses (Construction)
75X8704
OMB identification code:
75-8007-0-7-571
Grant program: |__| Yes |X| No
Type of account or fund:
|__| Annual
|__| Multiple-year (expiration date)
|X| No-Year

New budget authority..... $
(P.L.)
Other budgetary resources *41,450,381
Total budgetary resources *41,450,381
Amount to be deferred:
Part of year $
Entire year *15,712,076
Legal authority (in addition to sec. 1013):
|X| Antideficiency Act
|__| Other
Type of budget authority:
|X| Appropriation
|__| Contract authority
|__| Other

Justification: *This account provides funding for construction and renovation of the Social Security Administration's (SSA) headquarters and field office buildings. This deferral represents the amounts provided in past years which SSA will not need in 1985 to carry out its current plans in this account. The deferred amount is a result of changes to prior year construction plans, revised SSA and General Services Administration obligation projections, and the difference between estimated and actual 1984 carryover resources. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in 1984 (D84-10A). A separate limitation in this same account is also the subject of a deferral (D85-44).

* Revised from previous report.

Deferral No: D85-60

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:
Department of Justice
Bureau:
Office of Justice Programs
Appropriation title and symbol:
Justice Assistance
15X0401

OMB Identification code:
15-0401-0-1-754
Grant program: |X| Yes |__| No

Type of account or fund:
|__| Annual
|__| Multiple-year _____ (expiration date)
|X| No-Year

New budget authority..... $ 145,551,000
(P.L. 98-411)
Other budgetary resources 103,657,827
Total budgetary resources 249,208,827

Amount to be deferred:
Part of year $ 13,026,000
Entire year _____

Legal authority (in addition to sec. 1013):
|__| Antideficiency Act
|__| Other _____

Type of budget authority:
|X| Appropriation
|__| Contract authority
|__| Other _____

Justification: The Justice Assistance appropriation provides for activities authorized by the Juvenile Justice and Delinquency Prevention Act, Missing Children's Assistance Act, and Justice Assistance Act. Unobligated balances from Juvenile justice activities are deferred pending Congressional action on two proposed supplementals: one transferring $12,226,000 to United States Attorneys and Marshals Salaries and expenses account to support costs associated with the establishment of 85 new judgeships, and a second of $800,000 to provide initial funding for Emergency Federal Law Enforcement Assistance.

Estimated Program Effect: None

Outlay Effect (in thousands of dollars):

1985 Outlay Estimate		Outlay Savings					
Without Deferral	With Deferral	1985	1986	1987	1988	1989	1990
208,151	202,854	5,297	6,210	719	---	---	---

Deferral No: D85-61

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:
Department of Labor
Bureau:
Employment and Training Admin.
Appropriation title and symbol:
Program administration 1/
1650172

OMB Identification code:
16-0172-0-1-504
Grant program: |__| Yes |X| No

Type of account or fund:
|X| Annual
|__| Multiple-year _____ (expiration date)
|__| No-Year

New budget authority..... $ 67,625,000
(P.L. 98-619)
Other budgetary resources 45,294,000
Total budgetary resources 112,919,000

Amount to be deferred:
Part of year $ 162,000
Entire year _____

Legal authority (in addition to sec. 1013):
|X| Antideficiency Act
|__| Other _____

Type of budget authority:
|X| Appropriation
|__| Contract authority
|__| Other _____

Justification: This account funds the expenses of administering the programs of the Employment and Training Administration. In addition to general funds, the 1985 appropriation authorizes the expenditure of $45,200,000 from the Employment Security Administration account of the Unemployment Trust Fund for Federal administrative expenses of running the program. A supplemental has been proposed to reduce this limitation by $162,000 to effect savings in congressionally specified management categories pursuant to section 2901 of the Deficit Reduction Act of 1984. These funds are deferred pending Congressional action on that proposal and pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect (in thousands of dollars):

1985 Outlay Estimate Without Deferral	1985 Outlay Estimate With Deferral	Outlay Savings 1985	1986	1987	1988	1989	1990
45,200 2/	45,038 2/	162 2/	---	---	---	---	---

1/ This account is also the subject of a rescission proposal (R85-163A).

2/ Trust Fund portion only.

Supplementary Report

Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D85-34 transmitted to Congress on November 29, 1984.

The amount withheld in the previous deferral of $3,767,000 is not affected by this revised deferral. The justification has been updated to reflect the transmittal to Congress of a proposal to delete the deferred funds.

Deferral No: *D85-34A

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:
U.S. Department of Labor
Bureau:
Employment and Training Admin.
Appropriation title and symbol:
State Unemployment Insurance and Employment Service Operations
1650179
OMB Identification code:
16-0179-0-1-999
Grant program: |X| Yes |__| No
Type of account or fund:
|X| Annual
|__| Multiple-year (expiration date)
|__| No-Year

New budget authority..... $ *1,300,000
(P.L. 98-619)
Other budgetary resources *1,635,867,000
Total budgetary resources 1,637,167,000
Amount to be deferred:
Part of year $ 3,767,000
Entire year
Legal authority (in addition to sec. 1013):
|__| Antideficiency Act
|__| Other
Type of budget authority:
|X| Appropriation
|__| Contract authority
|__| Other

Justification: *The State Unemployment Insurance and Employment Service Operations appropriation provides for State grants for payment of salaries and expenses of State Unemployment Insurance and Employment Services staff and for related operations. The deferred amount was provided by the Congress to be available for amortization payments to five States which had independent retirement plans in their State Employment Service agencies prior to 1980. The financing of basic Employment Service grants and management flexibility provided to States under Section 6 of the Wagner-Peyser Act as amended result in sufficient amounts to meet all retirement plan needs in the five States without the additional $3.767 million. Therefore, the amount is deferred pending Congressional action on the Administration proposal to delete the earmarked additional financing.

Estimated Program Effect: None

Outlay Effect* (in thousands of dollars):

1985 Outlay Estimate Without Deferral	1985 Outlay Estimate With Deferral	Outlay Savings 1985	1986	1987	1988	1989	1990
1/	1/	3,767	---	---	---	---	---

* Revised from a previous report.

1/ Outlays are included within the totals for the Unemployment trust fund.

Deferral No: D85-62

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:
U.S. Department of Labor
Bureau:
Employment and Training Admin.
Appropriation title and symbol:
State Unemployment Insurance and Employment Service Operations
165/60179
OMB Identification code:
16-0179-0-1-999
Grant program: |X| Yes |__| No
Type of account or fund:
|__| Annual
|X| Multiple-year June 30, 1986 (expiration date)
|__| No-Year

New budget authority..... $ 22,200,000 (P.L. 98-619)
Other budgetary resources 755,198,000
Total budgetary resources 777,398,000
Amount to be deferred:
Part of year $ ____
Entire year 37,000,000
Legal authority (in addition to sec. 1013):
|__| Antideficiency Act
|__| Other ____
Type of budget authority:
|X| Appropriation
|__| Contract authority
|__| Other ____

Justification: The State Unemployment Insurance and Employment Service Operations appropriation provides for State grants for payment of salaries and expenses of State Unemployment Insurance and Employment Services staff and for related operations. The amount deferred was provided for the Employment Service for the 1985 program year beginning July 1, 1985, but is not necessary to maintain the operations of the Employment Service. The remaining amount, the same as provided for the 1984 program year, already represents an increase of more than 14% over comparable 1983 State Employment Service grants. This increase, equivalent to 7% per year, compares to inflation rates of less than 4% over each of the last two years. The Wagner-Peyser Act, as amended, gives States great flexibility in the use of these grants to provide employment services, particularly in comparison to the relative inflexibility that characterized the grants prior to 1985. The management and program flexibility now afforded the States in the use of the formula grants should offset any inflation needs the States may experience. Therefore the amount is deferred pending Congressional action on the Administration proposal to delete this unnecessary funding.

Estimated Program Effect: None

Outlay Effect (in thousands of dollars):

1985 Outlay Estimate		Outlay Savings					
Without Deferral	With Deferral	1985	1986	1987	1988	1989	1990
1/	1/	9,250	27,750	---	---	---	---

1/ Outlays are included within the totals for the Unemployment trust fund.

Deferral No: D85-63

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:
U.S. Department of Labor
Bureau:
Employment and Training Admin.
Appropriation title and symbol:
Unemployment Trust Fund
(Veterans employment and training)
1658042
OMB Identification code:
20-8042-0-7-999
Grant program: [X] Yes [ ] No
Type of account or fund:
[X] Annual
[ ] Multiple-year _____ (expiration date)
[ ] No-Year

New budget authority..... $ 122,172,000
(P.L. 98-619)
Other budgetary resources _____
Total budgetary resources 122,172,000
Amount to be deferred:
Part of year $ 119,000
Entire year _____
Legal authority (in addition to sec. 1013):
[X] Antideficiency Act
[ ] Other _____
Type of budget authority:
[X] Appropriation
[ ] Contract authority
[ ] Other _____

Justification: The Assistant Secretary for Veterans Employment and Training appropriation provides resources for grants to state agencies for the payment of salaries and expenses necessary for the administration of the Disabled Veterans Outreach Program and the Local Veterans Employment Representative program. Additionally, funds are appropriated for Federal salaries and expenses for staff assigned to implement the goals of the Assistant Secretary. A supplemental has been proposed to reduce these resources by $119,000 to effect savings in congressionally specified management categories pursuant to section 2901 of the Deficit Reduction Act of 1984. Funds are deferred pending congressional action on that proposal pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect (in thousands of dollars):

1985 Outlay Estimate Without Deferral	1985 Outlay Estimate With Deferral	Outlay Savings 1985	1986	1987	1988	1989	1990
122,172	122,053	119	---	---	---	---	---

Deferral No: D85-64

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:
U.S. Department of Labor
Bureau:
Pension Benefit Guaranty Corporation
Appropriation title and symbol:
Pension Benefit Guaranty Corporation
16X4204
OMB Identification code:
16-4204-0-3-601
Grant program: [ ] Yes [X] No
Type of account or fund:
[ ] Annual
[ ] Multiple-year _____ (expiration date)
[X] No-Year

New budget authority..... $ _____
(P.L. _____)
Other budgetary resources 592,078,000
Total budgetary resources 592,078,000
Amount to be deferred:
Part of year $ _____
Entire year 228,000
Legal authority (in addition to sec. 1013):
[X] Antideficiency Act
[ ] Other _____
Type of budget authority:
[ ] Appropriation
[ ] Contract authority
[X] Other Public Enterprise Fund

Justification: The Pension Benefit Guaranty Corporation is a self-financing, wholly owned Government corporation which provides pension insurance for single and multi-employer plans. The Department of Labor Appropriation Act of 1985 provides for a limitation on administrative expenses of $33,057,000. A supplemental has been proposed to reduce the limitation by $228,000 to effect savings in congressionally specified management categories pursuant to section 2901 of the Deficit Reduction Act of 1984. Funds are deferred pending congressional action on that proposal pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect (in thousands of dollars):

1985 Outlay Estimate Without Deferral	1985 Outlay Estimate With Deferral	Outlay Savings 1985	1986	1987	1988	1989	1990
-12,136	-12,364	228	---	---	---	---	---

[FR Doc. 85-5484 Filed 3-6-85 8:45 am]
BILLING CODE 3110-01-C

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL ELECTION COMMISSION

11 CFR Parts 9007 and 9038

[Notice 1985–1]

Repayments by Publicly Financed Presidential Candidates

AGENCY: Federal Election Commission.

ACTION: Final rule; Second Transmittal to Congress.

SUMMARY: The Commission announces the resubmission to Congress of revised regulations governing certain repayments by publicly financed Presidential candidates. 11 CFR Parts 9007 and 9038. These regulations were first transmitted to Congress on August 17, 1984. *See* 49 FR 33225 (August 22, 1984). However, thirty legislative days had not expired when Congress adjourned on October 12, 1984. The Commission is retransmitting these regulations prior to final promulgation. Further information is provided in the supplementary information that follows.

EFFECTIVE DATES: Further action, including the announcement of an effective date, will be taken by the Commission after these regulations have been before the Congress 30 legislative days.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel (202) 523–4143 or Toll Free (800) 424–9530.

SUPPLEMENTARY INFORMATION: On August 17, 1984, the Commission transmitted to Congress revised rules governing the formula used to determine repayments by Presidential candidates receiving public financing under Title 26. *See* 49 FR 33225 (August 22, 1984). These regulations had not been before Congress for 30 legislative days prior to its adjournment on October 12, 1984. Accordingly, the Commission resubmitted these rules and their explanation and justification to Congress on March 5, 1985.

Explanation and Justification

On May 15, 1984, the U.S. Court of Appeals for the D.C. Circuit held that repayments by publicly-financed Presidential primary candidates for non-qualified campaign expenses should be "limited to the amount of federal funds that the Commission reasonably determined were spent" by the candidates for such purposes. *Kennedy for President Committee et al.* v. *Federal Election Commission,* 734 F.2d 1558 (D.C. Cir. 1984); *Reagan for President Committee* v. *Federal Election Commission,* 734 F.2d 1569, 1570 (D.C. Cir. 1984). In accordance with the court's order, the Commission has revised its regulations, which currently require repayment of the total amount spent on non-qualified campaign expenses. *See,* 11 CFR 9007.2(b)(2) and 9038.2(b)(2) (1983). The revised regulations implement a pro-rata formula based on the proportion of federal funds to total funds received by the candidate. The amount of any repayment sought would then be a similar proportion of the total amount spent on non-qualified campaign expenses. In the case of Presidential primary candidates, the proportion of federal funds certified will be determined as of the candidate's date of ineligibility. In the general election, a pro-rata formula will only be used for major party candidates who had received private contributions to make up a deficiency in the Fund and for minor or new party candidates receiving partial Federal funding. The use of such formulas is consistent with the court's opinion, which does not require a mathematically precise determination of the amount of the Federal funds spent improperly but only a reasonable determination of the amount of Federal matching funds so used. *Kennedy supra* at 1562. Moreover, the revisions are limited to repayment determinations under 26 U.S.C. 9007(b)(4) and 9038(b)(2), as those were the only types of repayment determinations addressed in the *Kennedy* and *Reagan* decisions.

To demonstrate how these formulas will operate, the Commission has prepared two examples of hypothetical repayment determinations under 26 U.S.C. 9038(b)(2). Although the examples deal with repayments by Presidential primary candidates, they may be analogized to repayments by general election candidates as the issues presented in both cases are similar. The examples cover hypothetical repayments by candidates in a surplus and in a deficit position.

Illustration No. 1: Surplus Candidate

Assumptions

Date of ineligibility (DOI): 7/19/84
Surplus on DOI: $1,000,000
Matching funds received through DOI: $8,000,000 (net)
Total deposits through DOI: $20,000,000
Non-qualified campaign expenses incurred pre-DOI: $100,000 (in excess of New Hampshire limit)
Non-qualified campaign expenses incurred post-DOI: $25,000 (purchase of 1984 Corvette)

1. Calculate 26 U.S.C. 9038(b)(3) ratio and determine amount of 26 U.S.C. 9038(b)(3) surplus repayment.

The Audit staff verified the Candidate's NOCO statement (as of 7/19/84) and reached agreement with the Treasurer as to the amount of the surplus at DOI (i.e., $1,000,000). The Audit staff then calculated the 26 U.S.C. 9038(b)(3) ratio using figures developed by reviewing reports and records of the Committee. The ratio calculated was (40%)

$$\frac{\$8,000,000}{\$20,000,000}$$

Applying this ratio (40%) to the verified surplus ($1,000,000),[1] the 26 U.S.C. 9038(b)(3) repayment amount becomes $400,000. Since some estimates (for winding down costs) were used to calculate the surplus, adjustments to the amount repayable may be appropriate as a result of audit fieldwork updates.

2. Calculate 26 U.S.C. 9038(b)(2) ratio and determine amount of 26 U.S.C. 9038(b)(2) repayment for non-qualified campaign expenses.

In order to determine the repayment for $100,000 in expenditures in excess of the New Hampshire state limit, several calculations and adjustments were

[1] The Treasurer included $25,000 in accounts payable for expenses chargeable in the New Hampshire limit and arrived at a calculated surplus of $975,000. The Audit staff excluded the $25,000 in accounts payable for non-qualified campaign expenses, thus making the surplus $1,000,000.

performed by the Audit staff. First, the ratio had to be calculated. In this case, the Treasurer had workpapers supporting his calculation of the 26 U.S.C. 9038(b)(2) ratio and the Audit staff verified his figures. The Treasurer's ratio was 38.7755%

$$\frac{\$7,600,000}{\$19,600,000}$$

The Treasurer reasoned that since $400,000 was to be repaid via the 26 U.S.C. 9038(b)(3) repayment, actual matching funds certified (NET) was equal to matching funds certified through DOI ($8,000,000) less the $400,000 to be repaid. A similar adjustment was made to the denominator. The Audit staff explained that for purposes of calculating the 26 U.S.C. 9038(b)(2) ratio, repayments pursuant to 26 U.S.C. 9038(b)(1) and (b)(3) did not come into consideration.[2] The 26 U.S.C. 9038(B)(2) ratio was calculated to be 40%

$$\frac{\$8,000,000}{\$20,000,000}$$

Since the $100,000 ($75,000 paid and $25,000 yet to be paid) were the only non-qualified expenses incurred prior to date of ineligibility, the Audit staff simply multiplied 40% times $100,000 to arrive at the amount ($40,000) repayable pursuant to 26 U.S.C. 9038(b)(2).

With respect to the review of post-DOI disbursements, the Audit staff noted a $25,000 payment for purchase of an automobile made on 8/2/84. It was also noted that the Treasurer had properly: (1) Not included this amount for purposes of inclusion in the NOCO statement and (2) considered this expense to have been defrayed with excess campaign funds pursuant to 2 U.S.C. 439a. (The Committee's calculated residual funds after all repayments and qualified expenses were satisfied, amounted to approximately $560,000).

In summary, the total repayment requested would have been as follows:

26 U.S.C. 9038(b)(3):

$$\frac{\$8,000,000}{\$20,000,000} \times \$1,000,000 = \$400,000$$

26 U.S.C. 9038(b)(2):

$$\frac{\$8,000,000}{\$20,000,000} \times \$100,000 = \$40,000$$

Total Repayment—$440,000

Illustration No. 2: Deficit Candidate

Assumptions

Date of ineligibility (DOI): 3/20/84

Amount of Last Matching Fund Payment: $1,750 on 2/5/85

Matching Funds Certified Through DOI: $3,000,000[3]

Total Contributions Deposited Through DOI: $6,000,000

Amount of Non-Qualified Expenses incurred Pre-DOI:

Undocumented	$50,000
Excess Iowa	25,000
Total 26 U.S.C. 9038(b)(2) incurred Pre-DOI	75,000

Amount of Non-Qualified Expenses incurred Post-DOI:

Non-qualified type	Date incurred	Date paid	Amount paid
Non-campaign related (Convention expenses)	June 1, 1984	July 1, 1984	$20,000
Transfer to National Party	May 4, 1985	May 4, 1985	5,000
Total Post-DOI Non-Qualified			25,000

1. Calculate 26 U.S.C. 9038(b)(2) ratio and resultant repayment amount.

During initial fieldwork, the Audit staff reviewed workpapers prepared by the Treasurer concerning the Committee's NOCO position and 26 U.S.C. 9038(b)(2) repayment situation. The Audit staff verified the Committee's NOCO position (entitlement). Several differences were noted between the Committee Treasurer's calculations and those performed by the Audit staff.

The Treasurer did not include the $300,000 matching payment received on 3/23/84 in computing the 26 U.S.C. 9038(b)(2) ratio. This appeared to be an oversight on the Treasurer's part. The Audit staff pointed out that the 26 U.S.C. 9038(b)(2) ratio (both numerator and denominator) is to include the amount of matching funds *certified* through the date of ineligibility, whether or not received by that date. Hence, the correct ratio for 26 U.S.C. 9038(b)(2) repayment purposes was

$$\frac{\$3,000,000}{\$3,000,000 + \$6,000,000}$$

or 33.3333%;

not the 31.0345% or

$$\frac{\$2,700,000}{\$2,700,000 + \$6,000,000}$$

as originally calculated by the Treasurer. Applying the 33.3333% ratio to the amount of non-qualified campaign expenses incurred prior to the date of ineligibility ($75,000), the repayment amount was $25,000.

The Audit staff verified the figures contained on the Treasurer's NOCO workpapers. It was noted that the Treasurer has included $25,000 in non-qualified expenses as a payable on her NOCO statement. This amount represented expenses for materials and services used in February 1984 which had not been paid and are included in the pre-ineligibility non-qualified expenses included above. The Audit staff explained that, if permitted, inclusion of the $25,000 in non-qualified campaign expenses could result in an additional $25,000 in matching fund entitlement.

During the audit fieldwork update, the Audit staff reviewed expenses incurred after the date of ineligibility, the updated NOCO statements sumbitted, and the liquidation of matching fund payments received after the date of ineligibility. It was noted that the Treasurer included on her NOCO statement, $20,000 in expenses relating to the candidate's and his staff's travel, food and lodging costs at the nominating convention. The Audit staff pointed out two problems with the Treasurer's approach.

First, the $20,000 in convention-related expenses were not valid winding down costs and, therefore, could not be defrayed with matching funds. The

[2] There is no adjustment for repayments under 26 U.S.C. 9038(b)(1) or (b)(3) because the repayment formula for 9038(b)(2) is based on the amount of funds certified to the candidate and therefore available to defray non-qualified campaign expenses. This is so even if the Commission may later determine that the candidate was not entitled to a portion of the funds or that the candidate had a surplus.

[3] Actual matching funds received through DOI totaled $2,700,000; however, a certification for $300,000 was approved on 3/18/84, with the resulting payment not received until 3/23/84.

Audit staff informed the Treasurer that the $20,000 payment was a non-qualified campaign expense subject to repayment pursuant to 26 U.S.C. 9038(b)(2). The Treasurer agreed.

Second, for the same reasons that the $25,000 in pre-DOI non-qualified campaign expenses could not be included on the NOCO statement, the $20,000 in post-DOI non-qualified campaign expenses also could not be included.

Thus, the entitlement as calculated by the Treasurer was reduced by $20,000[4] and the 26 U.S.C. 9038(b)(2) ratio was applied to the $20,000 which resulted in a repayment amount of $6,666.67 for convention expenses. It should be noted that the $5,000 transfer (dated 5/4/85) was made after all matching funds received had been disposed of and thus, this transfer was considered to have been made using non-federal monies.

The total 26 U.S.C. 9038(b)(2) repayment is $31,666.67, comprised of the following:

Pre-DOI non-qualified campaign expenses ($75,000 × 33.3333%)	$25,000.00
Post-DOI non-qualified expenses ($20,000 × 33.3333%)	6,666.67
Total 26 U.S.C. 9038(b)(2) Repayment	31,666.67

At the close of follow-up fieldwork, the Treasurer inquired concerning the possible impact of settling a $500,000 debt for $50,000 in the near future. The Audit staff advised her of the Commission's debt settlement procedures and informed the Treasurer that all NOCO statements filed carried this debt at $500,000. Should the debt be settled for less, it was the Commission's policy to recalculate entitlement based on the $50,000 settlement amount, and seek a 26 U.S.C. 9038(b)(1) repayment, if appropriate.

Statutory Authority

(26 U.S.C. 9007, 9038)

List of Subjects 11 CFR Parts 9007 and 9038

Campaign funds, Administrative practice and procedure, Political candidates.

PART 9007—[AMENDED]

11. CFR Part 9007 is amended by revising §§ 9007.2(b)(2)(i) introductory text, and (b)(2)(ii)(B), (C) and (D); and adding (b)(2)(iii) as follows:

[4] To the extent the candidate's entitlement was inflated by this amount, a repayment determination would also be made under 26 U.S.C. 9038(b)(1).

§ 9007.2 Repayments.

* * * * *

(b) * * *

(2) * * *

(i) If the Commission determines that any amount of any payment to an eligible candidate from the Fund was used for purposes other than those described in paragraphs (A) through (C) below, it will notify the candidate of the amount so used, and such candidate shall pay to the United States Treasury an amount equal to such amount.

* * * * *

(ii) * * *

(B) Determinations that amounts spent by a candidate, a candidate's authorized committee(s), or agent(s) from the Fund were not documented in accordance with 11 CFR 9003.5;

(C) Determinations that any portion of the payments made to a candidate from the Fund was expended in violation of State or Federal law; and

(D) Determinations that any portion of the payments made to a candidate from the Fund was used to defray expenses resulting from a violation of State or Federal Law, such as the payment of fines or penalties.

(iii) In the case of a candidate who has received contributions pursuant to 11 CFR 9003.3 (b) or (c), the amount of any repayment sought under this section shall bear the same ratio to the total amount determined to have been used for non-qualified campaign expenses as the amount of payments certified to the candidate from the Fund bears to the total amount of deposits of contributions and federal funds, as of December 31, of the Presidential election year.

* * * * *

PART 9038—[AMENDED]

11 CFR Part 9038 is amended by revising § 9038.2(b)(2)(i) introductory text, adding (b)(2)(iii) and revising (b)(3) as follows:

§ 9038.2 Repayments.

* * * * *

(b) * * *

(2) * * *

(i) The Commission may determine that amounts of any payments made to a candidate from the matching payment account were used for purposes other than those set forth in (A)–(C) below:

* * * * *

(iii) The amount of any repayment sought under this section shall bear the same ratio to the total amount determined to have been used for non-qualified campaign expenses as the amount of matching funds certified to the candidate bears to the total amount of deposits of contributions and matching funds, as of the candidate's date of ineligibility.

(3) *Failure to Provide Adequate Documentation.* The Commission may determine that amount(s) spent by the candidate, the candidate's authorized committee(s), or agents were not documented in accordance with 11 CFR 9033.11. The amount of any repayment sought under this section shall be determined by using the formula set forth in 11 CFR 9038.2(b)(2)(iii).

* * * * *

Dated: March 5, 1985.

John Warren McGarry,

Chairman.

[FR Doc. 85–5591 Filed 3–7–85; 8:45 am]

BILLING CODE 6715–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization; Director, Center for Devices and Radiological Health

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations for delegations of authority on medical devices and electronic products to add new delegations to the Director and Deputy Director, Center for Devices and Radiological Health (CDRH).

EFFECTIVE DATE: March 8, 1985.

FOR FURTHER INFORMATION CONTACT: Robert L. Miller, Office of Management and Operations (HFA–340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4976.

SUPPLEMENTARY INFORMATION: FDA is amending the delegations of authority to redelegate the authority to CDRH officials to issue notices relating to the approval, denial of approval, or withdrawal of approval of premarket approval applications (PMA's) or supplemental PMA's and to issue notices of the availability of approved variances, and amendments or extensions thereof, for electronic products. This document amends § 5.53 *Approval, disapproval, or withdrawal of approval of product development protocols and applications for premarket approval for medical devices* (21 CFR 5.53) and § 5.86 *Variances from performance standards for electronic products* (21 CFR 5.86) to delegate

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authority to the Director and Deputy Director, CDRH, to issue such notices.

All notices pertaining to highly visible, controversial, or sensitive matters, or, which involve granting or denial of a hearing, will be reviewed and issued by the Office of the Commissioner.

All documents will continue to be reviewed and cleared by the Office of General Counsel.

Further redelegation of the authority delegated is not authorized. Authority delegated to a position by title may be exercised by a person officially designated to serve in such position in an acting capacity or on a temporary basis.

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 701(a), 52 Stat. 1055 (21 U.S.C. 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 5 is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. By adding new § 5.53(c), to read as follows:

§ 5.53 Approval, disapproval, or withdrawal of approval of product development protocols and applications for premarket approval for medical devices.

* * * * *

(c) The Director and Deputy Director, CDRH, for medical devices assigned to their organization, are authorized to issue notices to announce the approval, disapproval, or withdrawal of approval of a device, and to make publicly available a detailed summary of the information on which the decision was based, under sections 515 (d), (e), and (g) and 520(h)(1) of the act.

2. By revising § 5.86, to read as follows:

§ 5.86 Variances from performance standards for electronic products.

The Director and Deputy Director, Center for Devices and Radiological Health, are authorized to grant and withdraw variances, and issue notices of availability of any approved variance or any amendment or extension thereof, from the provisions of performance standards for electronic products established in Subchapter J of this chapter.

Effective date. This regulation shall become effective March 8, 1985.

(Sec. 701(a), 52 Stat. 1055 (21 U.S.C. 371(a)))

Dated: March 4, 1985.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-5534 Filed 3-7-85; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 5

Delegations of Authority and Organization; Associate Commissioner for Health Affairs

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations for delegations of authority by adding a new delegation to the Associate Commissioner for Health Affairs from the Commissioner of Food and Drugs. The authority being added is under section 156 of Title 35 of the United States Code (35 U.S.C. 156) and pertains to patent term restoration.

EFFECTIVE DATE: March 8, 1985.

FOR FURTHER INFORMATION CONTACT: Robert L. Miller, Office of Management and Operations (HFA-340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4976.

SUPPLEMENTARY INFORMATION: FDA is amending the regulations under Part 5 to delegate to the Associate Commissioner for Health Affairs the authorities to perform the functions that have been delegated to the Commissioner under 35 U.S.C. 156, except for the holding of informal hearings pursuant to 35 U.S.C. 156(d)(2)(B)(ii).

Further redelegation of the authority delegated is not authorized. Authority delegated to a position by title may be exercised by a person officially designated to serve in such position in an acting capacity or on a temporary basis.

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies); Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 701(a), 52 Stat. 1055 (21 U.S.C. 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 5 is amended by adding new § 5.27, to read as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

§ 5.27 Patent term extensions for human drug products, medical devices, and food and color additives.

The Associate Commissioner for Health Affairs is authorized to perform the functions delegated to the Commissioner under section 156 of Title 35 of the United States Code (35 U.S.C. 156), except for the holding of informal hearings pursuant to 35 U.S.C. 156(d)(2)(B)(ii).

Effective date. March 8, 1985.

(Sec. 701(a), 52 Stat. 1055 (21 U.S.C. 371(a)))

Dated: March 4, 1985.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-5541 Filed 3-7-85; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 73

[Docket No. 84C-0135]

Poly (Hydroxyethyl Methacrylate)-Dye Copolymers; Listing of Color Additive for Coloring Contact Lenses

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the color additive regulations to provide for the safe use of coloring contact lenses of the colored polymeric reaction product formed by chemically bonding Reactive Blue No. 19 to poly(hydroxyethyl methacrylate) to produce tinted contact lenses. This action responds to a petition filed by Ciba Vision Care.

DATES: Effective April 9, 1985; objectives by April 8, 1985.

ADDRESS: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Tom C. Brown, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION:

Background

In a notice published in the **Federal Register** of June 6, 1984 (49 FR 23455), FDA announced that a color additive petition (CAP 4C0183) had been filed by Ciba Vision Care, P.O. Box 105069, Atlanta, GA 30348, proposing that Part 73 (21 CFR Part 73) be amended to provide for the safe use of Reactive Blue

No. 19 [2-anthracenesulfonic acid, 1-amino-9,10-dihydro-9,10-dioxo-4-[(3-[(2-(sulfooxy)ethyl)sulfonyl)phenyl)amino)-, disodium salt] (CAS Reg. No. 2580–78–1) chemically bonded to the lens polymer to produce permanently tinted contact lenses. The petition was filed under section 706 of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 376).

The colored polymeric reaction product that is the subject of this petition is formed when the dye is bonded with poly(hydroxyethyl methacrylate) on the front surface of a contact lense to form a thin layer of colored polymeric material on that surface. This polymeric material colors the contact lens.

Under the Medical Device Amendments of 1976 (Pub. L. 94–295), a color additive for use in a medical device is subject to the listing requirements when the color additive comes in direct contact with the body for a significant period of time (section 706(a) of the act). As explained in the **Federal Register** of January 4, 1984 (49 FR 372), the polymeric reaction products of bonding reactive dye like Reactive Blue No. 19 to poly(hydroxyethyl methacrylate) are called "poly(hydroxyethylmethacrylate)-dye copolymers" in § 73.3121 (21 CFR 73.3121). These reaction products are color additives within the meaning of section 201(t) of the act (21 U.S.C. 321(t)) because they are substances made by a process of synthesis or similar artifice, and because they are capable of imparting color to food, drugs, cosmetics, or the human body if added or applied thereto. For the color additive considered here, Reactive Blue No. 19 is merely a starting material. In the reaction process that occurs in bonding the reactive dye to the poly(hydroxyethyl methacrylate), the reactive dye ceases to exist as a separate entity.

The use of the poly(hydroxyethyl methacrylate)-dye copolymers as color additives in contact lenses is subject to regulation under section 706(a) of the act. The lenses that have this colored polymeric material on their front surfaces are intended to be placed on the eye for several hours a day, each day, for 1 year or more. These color additives accordingly will come in direct contact with the body for a significant period of time. Consequently, the use of the color additive presented in the petition now before the agnecy is subject to the statutory listing requirement.

Safety Evaluation

The petitioner submitted various toxicity data to establish that the color additive created by bonding Reactive Blue No. 19 to poly(hydroxyethyl methacrylate) is safe for use in contact lenses. In a primary ocular irritation study with extracts of lens material containing the color additive, and in a 21-day ocular irritation study with contact lenses tinted with the color additive, both of which were done in rabbits, neither the lenses containing the color additive nor the extracts of the colored lens material caused ocular irritation.

The agency has also reviewed data regarding the toxicity of potential impurities, such as unbound reactive dye, remaining in the lens. Because the reactive dye has a lower molecular weight than the polymeric color additive, it would be more readily absorbed into the body than the color additive and would thus be expected to show a greater toxic effect. FDA has concluded that, as a worst case, any material migrating from the color additive in the lens would pose a safety concern no greater than if the reactive dye was placed in the lens unbound, and all migrated into the eye over a 1-year period. The agency concludes, based upon the information submitted in the petition, that a maximum of 34.5 micrograms of reactive dye would be present in each lens. Therefore, the estimated worst cause exposure from two lenses would be 180 nanograms per day for both eyes.

The petitioner conducted cytotoxicity studies in which serial dilutions of the reactive dye were applied directly to L–929 mouse fibroblast cells. No toxic effect was seen at a concentration 4,600 times the concentration that would be in the eyes if 180 nanograms migrated into the eyes per day.

Conclusion

Based on the data in the petition and other relevant material, FDA concludes that there is a reasonable certainty that no harm will result from the proposed use of the reaction product formed by bonding Reactive Blue No. 19 to poly(hydroxyethyl methacrylate) for coloring contact lenses, and that this color additive is suitable for its intended use. The agency, therefore, is amending § 73.3121 by adding Reactive Blue No. 19 to the list of reactive dyes in paragraph (a).

In addition, based on the relevant data, FDA concludes that the safety margin for use of this color additive is large enough to rule out any need for imposing a limitation on the amount of the additive that may be present on the lens, beyond the limitation that only that amount necessary to accomplish the intended technical effect may be used. Finally, on the basis of factors listed in § 71.20(b) (21 CFR 71.20(b)), the agency concludes that certification of the color additive is not necessary for the protection of the public health.

In accordance with § 71.15 (21 CFR 71.15), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in § 71.15, the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

Environmental Impact

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement therefore will not be prepared. The agency's finding of no significant impact may be seen in the Dockets Management Branch (address above), between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 73

Color additives, Cosmetics, Drugs, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 701(e), 706, 70 Stat. 919 as amended, 74 Stat. 399–407 as amended (21 U.S.C. 371(e), 376)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 73 is amended in § 73.3121 by removing the word "and" before, and the period at the end of, paragraph (a)(4) and by adding new paragraph (a)(5) to read as follows:

PART 73—LISTING OF COLOR ADDITIVES EXEMPT FROM CERTIFICATION

§ 73.3121 Poly(hydroxyethyl methacrylate)-dye copolymers

(a) * * *; and (5) Reactive Blue No. 19 [2-anthracene-sulfonic acid, 1-amino-9,10-dihydro-9,10-dioxo-4-((3-((2-(sulfooxy)ethyl)sulfonyl)phenyl)amino)-, disodium salt] (CAS Reg. No. 2580–78–1).

* * * * *

Any person who will be adversely affected by the foregoing regulation may, at any time on or before April 8,

1985, file with the Dockets Management Branch (address above) written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date: April 9, 1985.

(Secs. 701(e), 706, 70 Stat. 919 as amended, 74 Stat. 399–407 as amended (21 U.S.C. 371, 376))

Dated: March 4, 1985.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 85–5549 Filed 3–5–85; 11:54 am]

BILLING CODE 4160–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 126 and 160

[CGD 84–039]

Radioactive Materials

Correction

In FR Doc. 85–5176 beginning on page 8612 in the issue of Monday, March 4, 1985, make the following corrections: On page 8614, in the first column, in paragraph 4, in the first line, "§ 126.203" should read "§ 160.203"; also, the heading "**§ 126.203 Definitions.**" below paragraph 4, should read "**§ 160.203 Definitions.**"

BILLING CODE 1505–01–M

33 CFR Part 165

[COTP LA/LB–85–03]

Safety Zone, Santa Cruz Island

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This regulation establishes a safety zone in the vicinity of Santa Cruz Island. Tests of submerged and semi-submerged vessels will be conducted during a four month period. There will also be placement of fixed underwater sound systems making transit, anchoring or fishing hazardous. Limiting access to this area will serve to protect vessels and sensitive underwater gear.

DATES: This regulation becomes effective on February 28, 1985 and expires on June 1, 1985.

ADDRESS: Commanding Officer, U.S. Coast Guard Marine Safety Office, Los Angeles/Long Beach, 165 N. Pico Avenue, Long Beach, CA 90802. The comments will be available for inspection and copying at the Port Operations Department, U.S. Coast Guard Marine Safety Office Los Angeles/Long Beach. Normal Office hours are between 8:00 a.m. and 4:00 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant John A. Turner, U.S. Coast Guard, U.S. Coast Guard Marine Safety Office, Los Angeles/Long Beach (213–590–2215).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was not published for this regulation and it is being made effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been contrary to the public interest. A safety zone already in effect completely excludes all vessels from the regulated area. This rule amends that zone to allow limited access on an individual basis resulting in more vessels being allowed to use the area when operations do not require exclusion. Although this regulation is published as a final rule without prior notice, an opportunity for public comment is nevertheless desirable to ensure that the regulation is both reasonable and workable. Accordingly, persons wishing to comment may do so by submitting written comments to the office listed under "**ADDRESS**" in this preamble. Commenters should include their names and addresses, identify the docket number for the regulation, and give reasons for their comments. Receipt of comments will be acknowledged if a stamped, self-addressed postcard or envelope is enclosed. Based upon comments received, the regulations may be changed.

Drafting Information

The drafters of this regulation are Lieutenant John A. Turner, U.S. Coast Guard, Port Operations Department, U.S. Coast Guard Marine Safety Office, Los Angeles/Long Beach, project officer; Lieutenant Joseph R. McFaul, Eleventh Coast Guard District Legal Office

Discussion of Regulation

At intermittent times during the months of February, March, April and May, tests of submerged and semi-submerged vessels will take place in the waters off Santa Cruz Island. There will be suspended hydrophone arrays in the water column and test vessels may not be visible making transit of the area hazardous especially at night. Tests will be conducted as meteorological and oceanographic conditions permit. The area will be patrolled as needed by Coast Guard cutters and vessels approaching the safety zone should follow the directions of the Coast Guard cutter. In addition vessels may seek advance clearance from the Coast Guard Marine Safety Office to enter this area. The Marine Safety Office will issue clearances to vessels. The owner can call the Coast Guard, using the clearance, at least twenty-four hours in advance of the anticipated need to enter the safety zone. The Coast Guard will inform the vessel's owner if permission to enter the safety zone can be granted.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Final Regulation:

PART 165—[AMENDED]

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations, is amended by removing § 165.T11–02 and adding § 165.T–11–71 to read as follows:

§ 165.T–11–71 Santa Cruz Island.

(a) A safety zone is established to include all waters enclosed within lines drawn from the following points: beginning from a point on land located approximately at Latitude 33–57.9 N., Longitude 119–42.6 W., then due south to a point on the territorial sea located approximately at Latitude 33–54.9 N., Longitude 119–42.6 W., then following the limit of the territorial sea in an easterly direction to a point approximately located at Latitude 33–56.2 N., Longitude 119–35.5 W., then due

north to a point on land located approximately at Latitude 33–59.2 N., Longitude 119.35.5 W., then returning along the shore to the beginning point.

(b) No person may swim, skin dive or scuba dive in the waters within the safety zone without prior permission of the Captain of the Port.

(c) No vessel may navigate, transit, fish, anchor or drift in the waters within the safety zone without prior permission of the Captain of the Port.

(d) Any vessel within the zone shall follow the directions of the patrolling Coast Guard cutter. If instructed to leave, the vessel will do so immediately.

(e) Vessels may obtain a numbered clearance from the Marine Safety Office to enter the zone at times when operations permit. Any vessel may request, at least 24 hours in advance, permission to enter the area using the clearance. The Captain of the Port will grant permission, as operations permit, on a daily basis. Any person interested in obtaining permits should contact on of the following Coast Guard units for details:

(1) Port Operations Department, Coast Guard Marine Safety Office Los Angeles/Long Beach, Phone: (213) 590–2315

(2) Coast Guard Station Channel Island, Harbor Oxnard, California, Phone: (805) 985–9822

(3) Coast Guard Marine Safety Detachment, Santa Barbara, California, Phone: (805) 962–7430

(f) This regulation is effective on 25 February 1985 and remains continuously in force until 1 June 1985.

(33 U.S.C. 1225, 1231, 49 CFR 1.46; and 33 CFR 165.3)

Dated: February 25, 1985.

L.E. Beaudin,

Captain, U.S. Coast Guard, Captain of the Port, U.S. Coast Guard.

[FR Doc. 85–5614 Filed 3–7–85; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[SW–3–FRL–2793–1]

District of Columbia; Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of Final Determination on the District of Columbia's Application for Final Authorization.

SUMMARY: The District of Columbia has applied for Final Authorization under the authority of the Resource Conservation and Recovery Act (RCRA). EPA has reviewed the District's application and has reached a final determination that the District's hazardous waste program satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA is granting final authorization to the District to operate its program, subject to the limitations on its authority imposed by the Hazardous and Solid Waste Amendments of 1984.

EFFECTIVE DATE: Final authorization for the District of Columbia shall be effective at 1:00 pm on March 22, 1985.

FOR FURTHER INFORMATION CONTACT: Wayne Naylor, Program Manager, State Programs Section (3HW31), U.S. EPA Region III, 6th and Walnut Streets, Philadelphia, Pennsylvania 19106, (215) 597–3884.

SUPPLEMENTARY INFORMATION: .

Background

Section 3006 of the Resource Conservation and Recovery Act (RCRA) allows EPA to authorize State hazardous waste programs to operate in lieu of the Federal hazardous waste program. To qualify for Final Authorization, a State's program must (1) be "equivalent" to the Federal program, (2) be consistent with the Federal and other State programs, and (3) provide for adequate enforcement (section 3006(b) of 42 U.S.C. 6926(c)).

On August 6, 1984, the District of Columbia submitted a complete application to obtain Final Authorization to administer the RCRA program. On November 26, 1984, EPA published a tentative decision announcing that the District's hazardous waste program would satisfy all of the requirements necessary for Final Authorization. Further background information appeared in EPA's tentative determination notice (Vol. 49, No. 288 FR 46443, November 26, 1984). Along with the tentative determination, EPA announced the availability of the District's application for public comment and a hearing was scheduled. The public hearing was not held as scheduled on December 27, 1984 since neither EPA nor the District received significant interest in holding the hearing. Therefore, EPA has determined that the District's hazardous waste program satisfies all necessary requirements for Final Authorization.

Decision

I conclude that the District's application for Final Authorization meets all of the statutory and regulatory requirements established by RCRA. Accordingly, the District of Columbia is granted Final Authorization to operate its hazardous waste programs subject to the limitations on its authority imposed by the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98–616, November 8, 1984) (HSWA). The District now has the responsibility for permitting treatment, storage and disposal facilities within its borders and for carrying out other aspects of the RCRA program, subject to the HSWA. The District also has the primary enforcement responsibility, although EPA maintains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under section 3008, 3013 and 7003 of RCRA.

Prior to the HSWA ameding RCRA, a State with final authorization administered its hazardous waste program entirely in lieu of the EPA. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted the State was obligated to enact equivalent authority within specified timeframes. New Federal requirements did not take effect in the authorized State until the State adopted the requirements as State law.

Any District requirement that is more stringent than an HSWA provision remains in effect; thus, the universe of the more stringent provisions in the HSWA and the approved State program define the applicable requirements in the District. (The District is not being authorized for any requirement implementing the HSWA.)

EPA will be publishing a **Federal Register** notice that explains in detail the HSWA and its effect on authorized States. That notice should be referred to for further information.

EPA Region III and the District are currently reviewing the Memorandum of Agreement (MOA) to revise it to address the requirements of the HSWA. The current MOA contains some language that does not reflect the provisions of the HSWA and will be revised to reflect EPA's and the District's respective responsibilities under the new Federal/State regulatory scheme.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of the District's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the District. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Hazardous materials, Indian lands, Reporting and record keeping requirements, Waste treatment and disposal, Intergovernmental relations, Penalties, Confidential business information.

Authority

This notice is issued under the authority of Sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C 6912(a), 6926, and 6974(b).

Dated: February 14, 1985.

Stanley L. Laskowski,

Acting Regional Administrator.

[FR Doc. 85-5581 Filed 3-7-85; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6589

[NM 42705, NM 42706, NM 42707]

NM; Public Land Order 6459; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This document will correct an error in the land description in Public Land Order 6459 of August 16, 1983

EFFECTIVE DATE: March 8, 1985.

FOR FURTHER INFORMATION CONTACT: Pauline Brown, Bureau of Land Management, New Mexico State Office, P.O. Box 1449, Santa Fe, New Mexico 87501, 505-988-6635.

SUPPLEMENTARY INFORMATION: By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

The land description in Public Land Order 6459 of August 16, 1983, in FR Doc. 83-24687 published at page 40725 in the issue of September 9, 1983, is corrected as follows: "On page 40725, second column, the last line of the land description reading "T. 30 S., R. 21 W." should read "T. 30S., R. 22W."

Robert N. Broadbent,

Assistant Secretary of the Interior

February 28, 1985.

[FR Doc. 85-5475 Filed 3-7-85; 8:45 am]

BILLING CODE 4310-84-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 50, 52, 53, 54, 58, 63 and 162

[CGD 81-079]

Marine Engineering Regulations for Merchant Vessels; Acceptance of ASME S, E, A and H Symbol Stamps for Power and Heating Boilers

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: These regulations replace the current Coast Guard requirements for plan approved and shop inspection of boilers with requirements that boilers be inspected and stamped in accordance with the American Society of Mechanical Engineers' Boiler and Pressure Vessel Code. These regulations bring Coast Guard requirements for boilers in line with current industry practice and take maximum advantage of an industry safety standard which is recognized throughout the world and an inspection system already in existence. Several boiler and pressure vessel manufacturers have requested a changeover to ASME inspection and stamping because of frequent delays involved in having plan approval and shop inspections performed by the Coast Guard. ASME inspectors are more readily available to perform shop inspections in a timely manner, and the use of registered professional engineers to certify plans will minimize the time needed for Coast Guard pre-installation inspections.

EFFECTIVE DATE: These rules become effective May 7, 1985.

ADDRESSES: A copy of the final evaluation may be obtained from Commandant (G-CMC/44), (CGD 81-079), U.S. Coast Guard, Washington, D.C. 20593.

FOR FURTHER INFORMATION CONTACT: Mr. Howard L. Hime, Office of Merchant Marine Safety, (202) 426-2160.

SUPPLEMENTARY INFORMATION: On August 18, 1983 the Coast Guard published a proposal in the **Federal Register** (48 FR 37441) concerning these regulations. Interested persons were given an opportunity to submit written comments and 12 comments were received. Two of the comments have been adopted and the regulations have been changed to reflect these comments. These changes to the regulations are discussed under the Specific Comments section below.

Drafting Information

The principal persons involved in drafting this document are Mr. Howard Hime, Project Manager, Office of Merchant Marine Safety, and Lieutenant Commander William B. Short, Project Attorney, Office of Chief Counsel.

Discussion of Comments

General

1. One commenter objected to the proposed regulations citing the lack of requirements for an independent review of the design and that the entire design, construction, and inspection would be under the control of persons not required to have any marine experience. Since 1968, Coast Guard regulations have incorporated the design, construction, and inspection requirements of the ASME Code, modifying the requirements where necessary to account for the marine environment. These regulations extend the adoption of the ASME Code to include certification of boiler plans by a registered professional engineer, inspection by an ASME authorized inspector, and stamping by an ASME accredited manufacturer. Independent review is retained by the requirement for the plans to be certified by a registered professional engineer and submitted to the Coast Guard for review. During the review, those aspects of the boiler design which are peculiar to the marine environment will be analyzed to assure compliance with the regulations. Further, the marine inspector at the shipyard will inspect the boiler to assure compliance with the regulations. The commenter further stated that there is no provision in the proposed rule change for the Coast Guard to receive a copy of the Manufacturer's Data Report Forms. Sections 52.01-145 and 53.10-15 require these forms to be made available to the marine inspector for review.

2. One commenter suggested that certification by The American Bureau of Shipping (ABS) be included as an alternative to ASME inspection and stamping of boilers. This suggestion was not adopted since ABS is permitted to

inspect boilers and pressure vessels under the ASME Code through it wholly owned subsidiary, The ABS Boiler Marine Insurance Company.

3. One commenter suggested that boilers be registered with the National Board of Boiler and Pressure Vessel Inspectors and the Manufacturer's Data Report Forms be filed with them to provide a permanent location for future retrieval. This suggestion was not adopted. Manufacturer's Data Report Forms are required to be made available to the marine inspector for review at time of boiler installation. This provides sufficient information to determine compliance with the regulations. Further, the American Bureau of Shipping and other classification societies maintain extensive files on vessels they class. This information can be retrieved if required for future alterations or repairs to the boilers.

4. One comment was received from another government agency which expressed concern that the use of the term "marine platform" in paragraph 1 of the preamble in the Notice of Proposed Rulemaking (NPRM) was too vague and could be interpreted to apply to marine structures outside the Coast Guard's jurisdiction. As stated in paragraph 1 and 4 of the NPRM, these regulations apply only to vessels certificated by the Coast Guard. Taken in the context of the paragraph, the term "marine platform" was used as a generic phrase to indicate that additional forces act on boilers mounted on floating supports rather than stationary foundations. There was no intent to imply that the regulations applied to items outside the Coast Guard's jurisdiction.

5. One commenter suggested that the regulations be extended to require safety valve repairs by a facility that is certified by and holds the "VR" stamp from the National Board of Boiler and Pressure Vessel Inspectors. This suggestion was not adopted. § 59.01–5 requires safety valve repairs to be approved by the Officer in Charge, Marine Inspection (OCMI). Accordingly, repairs made by facilities holding the "VR" stamp may be permitted as well as other facilities which can demonstrate to the satisfaction of the OCMI that they are capable of repairing safety valves.

6. One commenter questioned the savings for the manufacturers claimed in the Draft Evaluation. The commenter stated that, since design review and shop inspection would still be performed, the cost to the manufacturer should be the same regardless of who performs these functions. As stated in the Draft Evaluation, much of the cost incurred by the manufacturer for Coast Guard plan approval and shop inspection is a result of the additional time required for the Coast Guard to perform these functions. Due to limited resources, Coast Guard plan approval takes from four to six weeks. Further, several submittals may be required before all necessary information is obtained and the boiler plans are accepted. Also, the manufacturer's shop may be located a hundred or more miles from the nearest marine inspector resulting in costly delays during fabrication. These costs are greatly reduced by the use of registered professional engineers who may be in the employ of the manufacturer and ASME authorized inspectors who make routine visits to the manufacturer's shops. Since many marine boilers are presently stamped with the appropriate ASME symbol, no additional inspection costs are incurred for these boilers as a result of these regulations.

Specific Comments

Nine comments received related to specific sections of the proposed rules. These comments are discussed below. The specific sections of the regulations to which the comments apply are identified and discussed in ascending order.

1. *Section 50.20–1*—One commenter noted that the proposed revision to § 50.20–1 eliminated the requirement for boiler plans to be approved while § 63.05–5(a) requires plans for boiler automatic control systems to be submitted for approval in accordance with § 50.20–1. This confusion has been eliminated. Section 50.20–1 is revised to retain the requirement that plans for boiler automatic controls be submitted for approval.

2. *Section 50.20–1(b)*—One commenter questioned the need to have boiler plans submitted for review. The plans are required to be submitted because they contain vital information necessary to assure that steam piping and other equipment are adequately designed for the boiler steam generating capacity and safety valve capacity. The plans will be reviewed to assure compliance with the regulations with particular emphasis on those details which are peculiar to the marine environment.

3. *Section 52.01–5(a)*—One commenter questioned the merits of requiring the boiler plans to be certified by a registered professional engineer who will normally be in the employ of the manufacturer. The commenter further stated that this requirement may put small manufacturers, who may not have ready access to a professional engineer, at a disadvantage. The requirement to have the plans certified by a registered professional engineer would assure that the boiler design has been reviewed by a competent engineer who is skilled in the art of boiler design. A registered professional engineer is an engineer who is licensed by one of the 50 states of the United States or the District of Columbia. While the specific licensing requirements may vary among the different states, the requirements are similar and generally follow the guidelines of the National Society of Professional Engineers. A registered professional engineer must meet certain minimum combinations of education and experience and pass a rigorous exam. Further, a professional engineer must adhere to a strict code of ethics which does not permit the engineer to certify designs outside the engineer's area of knowledge. Also, since the professional engineer certifies the boiler plans as an individual, this provides an independent review of the design. There are over 400,000 registered professional engineers, many who work for consulting firms who contract out their services. With this large number of professional engineers it should not be difficult for a manufacturer to retain the service of one skilled in the art of boiler design. Another commenter stated that this requirement would cause problems because registration requirements vary in the different states and suggested that boiler plans be certified by the manufacturer instead. We do not concur with this suggestion based on the above comments.

4. *Section 52.01–50(a) and Subpart 162.014.* In the NRPM, proposed § 50.01–50(a) would require fusible plugs to be installed only on boilers fired with solid fuel not in suspension or not equipped for unattended waterbed operation. The requirement that fusible plugs be from acceptable heats manufactured in accordance with Subpart 162.014 of Subchapter Q was retained. We have reconsidered this requirement due to recent difficulties experienced by several operations in obtaining fusible plugs meeting Subpart 162.014. Several manufacturers of approved fusible plugs have deleted them from their product list and other manufacturers are unwilling to maintain an inventory of approved fusible plugs for relatively few users. To alleviate these problems and assure an adequate supply of fusible plugs, § 52.01–50(a) is revised to require fusible plugs to comply with the fabrication and marking requirements of the ASME Code. Subpart 162.014 is removed.

5. *Section 52.01–100(b)(3)*—One commenter suggested that the size and pressure limitations for threaded

connections in § 52.01–100(b)(3) be increased. The commenter stated that the present limitations are impractical. The suggestion has not been adopted. These size and pressure limitations for threaded connections have been in our rules for over 25 years. During this time we have never received any indication that these rules have caused the marine industry any problems nor have we received any complaints on the size and pressure limitations for threaded connections in the past.

6. *Sections 52.01–135 and 53.10–3*—Two commenters suggested that additional requirements for experience, examination, and oversight be placed on the ASME Authorized Inspectors to ensure a minimum level of competency. One commenter recommended that the Authorized Inspectors be required to hold a valid commission issued by the National Board of Boiler and Pressure Vessel Inspectors. This suggestion has been adopted. The National Board administers a licensing program for boiler and pressure vessel inspectors. Commissioned inspectors must have a minimum combination of education and experience and pass a rigorous twelve hour exam. In addition, supervisors of commissioned inspectors must meet additional experience and examination requirements. If a National Board Inspector fails to carry out his duties, he and his supervisor are subject to disciplinary action as determined by a hearing committee. The action of the hearing committee can vary from the dismissal of the charges to permanent (life time) revocation of the inspector's National Board Commission. Accordingly, §§ 52.01–135(b), 52.01–145(a), 53.10–3(a), and 53.10–15 have been revised to require ASME Authorized Inspectors to hold a valid National Board Commission and to include their commission number on the Manufacturer's Data Report Forms. The cost to comply with this requirement is minimal. The majority (over 98%) of ASME Authorized Inspectors hold a valid National Board Commission. Currently there are over 3600 National Board Commissioned inspectors located throughout the world.

7. *Sections 52.01–135 and 53.10–3*—One commenter raised a concern that the requirement for shop inspections be carried out by an "Authorized Inspector" as defined in the ASME Code is exclusionary since not everybody can meet the qualification requirements. The ASME Code is an industry standard which is recognized throughout the world and is adopted into many of the boiler laws of the United States and Canada. ASME qualification requirements for inspectors ensure that inspections are performed by competent individuals who are well versed in the design and construction of boilers. These requirements are not unreasonable restraints to protect the lives of persons on board certificated vessels, property, and the marine environment. Further, alternative inspection procedures could be authorized by an Officer in Charge, Marine Inspection (OCMI) under other regulations in Title 46, CFR that allow equivalencies. The Title 46 regulations that allow equivalencies include §§30.15–1, 70.15–1, 90–15–1, 108.105, 175.15–1, and 188.15–1.

8. *Section 52.05–5*—One commenter suggested that weld procedures and welder performance qualifications approved by ABS be included as an alternative to qualifying weld procedures and welders to the ASME Code. This suggestion was not adopted. In order to stamp a boiler with the appropriate ASME Code symbol, welders and weld procedures must be qualified in accordance with the ASME Code. This is a basic requirement of the ASME Code and cannot be waived. Existing Coast Guard and ABS welding requirements parallel those of the ASME Code. Accordingly, most of the weld procedures and welders qualified to USCG and ABS requirements already meet qualification requirements of the ASME Code.

Economic Evaluation and Record Keeping

These regulations have been reviewed under Executive Order 12291 and the Department of Transportation's Order 2100.5 "Policies and Procedures for Simplification, Analysis and Review of Regulations" dated May 22, 1980, and have been determined to be neither major nor significant. A final evaluation has been prepared and placed in the public docket. As stated in the final evaluation, these rules would result in an estimated annual savings of 3848 staff hours and $126,690.00 for manufacturers plus 3976 staff hours and $99,400.00 for the Coast Guard. These savings result from the reduced amount of paperwork required to be submitted, the substantial amount of time saved by manufacturers in obtaining required inspections of boilers, and the time saved by the Coast Guard in performing inspections.

These regulations have been evaluated in accordance with the Regulatory Flexibility Act (94 Stat. 1164). It is certified that these regulations will not have a significant economic impact on a substantial number of small entities. For the purposes of this rule making, "small entities" consist of small boiler manufacturers. As explained in the final evaluation, most manufacturers, both large and small, already hold the ASME stamp. The cost to obtain this stamp ($5,000 for small manufacturers, up to approximately $20,000 for large manufacturers) is marginal compared to overall business costs. Also, some small manufacturers who, unlike large concerns, do not have a registered professional engineer (PE) in their organization will incur some increased costs to hire a registered PE to review and certify design drawings in accordance with these regulations. However, the total time and dollar costs for manufacturers, both large and small, resulting from these regulations is expected to be less than the time and money involved to obtain Coast Guard plan approval and shop inspection under the old requirements.

Paperwork Reduction Act

An analysis of the recordkeeping requirements in these regulations was conducted under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). The analysis shows that 475 documents were required to be submitted annually to the Coast Guard under the old requirements. These reporting and recordkeeping requirements have been approved by the Office of Management and Budget and issued OMB control number 2115–0142. The requirements as revised in this rulemaking will reduce the annual reporting burden from 475 documents down to 400 documents.

List of Subjects 46 CFR Part 50, 52, 53, 54, 63, and 162

Vessels, Marine safety.

In consideration of the foregoing, the Marine Engineering Regulations in Subchapter F of Title 46, Code of Federal Regulations, are amended as follows:

1. The authority citation for Parts 50, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, and 64 in Subchapter F of Title 46, is revised to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 CFR 1.46(b)

PART 50–GENERAL PROVISIONS

2. In § 50.05–5 a new paragraph (d) is added to read as follows:

§ 50.05–5 Existing boilers, pressure vessels or piping systems.

. . . . .

(d) For the purpose of this section, existing equipment includes only items which have previously met all Coast Guard requirements for installation

aboard a vessel certificated by the Coast Guard, including requirements for design, fabrication, testing, and inspection at the time the equipment was new.

3. In § 50.15–5 paragraph (c) is revised to read as follows:

§ 50.15–5 ASME Boiler and Pressure Vessel Code.

. . . . .

(c) Except as required in § 52.01–1(a), § 52.01–120(a)(2), § 53.01–1, and § 54.01–5 of this chapter, manufacturers constructing boilers, pressure vessels, and safety valves for installation on vessels subject to the regulations in this subchapter need not hold the applicable ASME Code symbol stamps.

. . . . .

4. § 50.20–1(b) is revised to read as follows:

§ 50.20–1 General.

. . . . .

(b) Manufacturers of pressure vessels and other components, which require specific fabrication inspection in accordance with the requirements of this subchapter, shall submit and obtain approval of the applicable construction plans prior to the commencement of such fabrication. Manufacturers of automatically controlled boilers shall submit and obtain approval of the applicable control system plans prior to installation of the boiler. Manufacturers of boilers which must meet the requirements of Part 52 of this subchapter shall submit the applicable construction plans for review prior to installation.

5. § 50.30–1(a) is revised to read as follows:

§50.30–1 Scope.

(a) The manufacturer shall notify the Officer in Charge, Marine Inspection, of the intended fabrication of pressure vessels that will require Coast Guard inspection.

. . . . .

§ 50 .30–5 [Removed]

6. § 50.30–5 is removed.

PART 52—POWER BOILERS

7. The table of contents is revised to read as follows:

Subpart 52.01—General Requirements

Sec.

52.01–1 Adoption of section I of the ASME Code.
52.01–3 Definitions of terms used in this part.
52.01–5 Plans.
52.01–10 Automatic controls.
52.01–35 Auxiliary, donkey, fired thermal fluid heater, and heating boilers.
52.01–40 Materials and workmanship.
52.01–50 Fusible plugs (modifies A–19 through A–21).
52.01–50 Increase in maximum allowable working pressure.
52.01–90 Materials (modifies PG–5 through PG–13).
52,01–95 Design (modifies PG–16 through PG–31 and PG–100).
52.01–100 Openings and compensation (modifies PG–32 through PG–39, PG–42 through PG–55).
52.01–105 Piping, valves and fittings (modifies PG–58 and PG–59).
52.01–110 Water level indicators, water columns, gage glass connections, gage cocks, and pressure gages (modifies PG–60).
52.01–115 Feedwater supply (modifies PG–61).
52.01–120 Safety valves and safety relief valves (modifies PG–67 through PG–73).
52.01–130 Installation.
52.01–135 Inspection and tests (modifies PG–90 through PG–100).
52.01–140 Certification by stamping (modifies PG–104 through PG–113).
52.01–145 Manufacturers' data report forms (modifies PG–112 and PG–113).

Subpart 52.05—Requirements for Boilers Fabricated by Welding

52.05–1 General (modifies PW–1 through PW–54).
52.05–15 Heat treatment (modifies PW–10).
52.05–20 Radiographic and ultrasonic examination (modifies PW–11 and PW–41.1).
52.05–30 Minimum requirements for attachment welds (modifies PW–16).
52.05–45 Circumferential joints in pipes, tubes and headers (modifies PW–41).

Subpart 52.15—Requirements for Watertube Boilers

52.15–1 General (modifies PWT–1 through PWT–15).
52.15–5 Tube connections (modifies PWT–9 and PWT–11).

Subpart 52.20—Requirements for Firetube Boilers

52.20–1 General (modifies PFT–1 through PFT–49).
52.20–17 Opening between boiler and safety valve (modifies PFT–44).
52.20–25 Setting (modifies PFT–46).

Subpart 52.25—Other Boiler Types

52.25–1 General
52.25–3 Feedwater heaters (modifies PFH–1).
52.25–5 Miniature boiler (modifies PMB–1 through PMB–21).
52.25–7 Electric boilers (modifies PEB–1 through PEB–19).
52.25–10 Organic fluid vaporizer generators (modifies PVG–1 through PVG–12).
52.25–15 Fired thermal fluid heaters.
52.25–20 Exhaust gas boilers.

8. In § 52.01–1 paragraph (a) introductory text, and Table 52–01–1(a) are revised to read as follows:

§ 52.01–1 Adoption of section I of the ASME Code.

(a) Main power boilers and auxiliary boilers shall be designed, constructed, inspected, tested, and stamped in accordance with section I of the ASME (American Society of Mechanical Engineers) Code, as limited, modified, or replaced by specific requirements in this part. The provisions in the appendix to section I of the ASME Code are adopted and shall be followed when the requirements in section I make them mandatory. For general information Table 52.01–1(a) lists the various paragraphs in section I of the ASME Code which are limited, modified, or replaced by regulations in this part.

TABLE 52.01–1(a)—LIMITATIONS AND MODIFICATIONS IN THE ADOPTION OF SECTION I OF THE ASME CODE

Paragraphs in section I, ASME Code[1] and disposition	Unit of this part
PG–1 replaced by	54.01–5(a)
PG–5 through PG–13 modified by	52.01–90
PG–16 through PG–31 modified by	52.01–95
PG–32 through PG–39 modified by	52.01–100
PG–42 through PG–55 modified by	52.01–100
PG–58 and PG–59 modified by	52.01–105
PG–60 modified by	52.01–110
PG–61 modified by	52.01–115 (56.50–30)
PG–67 through PG–73 modified by	52.01–120
PG–90 through PG–100 modified by	52.01–135 (52.01–95)
PG–91 modified by	52.01–135(b)
PG–99 modified by	52.01–135(c)
PG–100 modified by	52.01–95(e)
PG–104 through PG–113 modified by	52.01–140(a)
PG–112 and PG–113 modified by	52.01–145
PW–1 through PW–54 modified by	52.05–1
PW–10 modified by	52.05–15
PW–11.1 modified by	52.05–20
PW–16 modified by	52.05–30
PW–41 modified by	52.05–20, 52.05–45
PWT–1 through PWT–15 modified by	52.15–1
PWT–9 modified by	52.15–5
PWT–9.2 replaced by	52.15–5(b)
PWT–11 modified by	52.15–5
PWT–11.3 replaced by	52.15–5(b)
PFT–1 through PFT–49 modified by	52.20–1
PFT–44 modified by	52.20–17
PFT–46 modified by	52.20–25
PFH–1 modified by	52.25–3
PMB–1 through PMB–21 modified by	52.25–5
PEB–1 through PEB–19 modified by	52.25–7
PVG–1 through PVG–12 modified by	52.25–10
A–19 through A–21 modified by	52.01–50

[1] The references to specific provisions in the ASME Code are coded. The first letter "P" refers to section I, while the letter "A" refers to the appendix to section I. The letter or letters following "P" refer to a specific subsection of section I. The number following the letter or letters refers to the paragraph so numbered in the text.

. . . . .

9. In § 52.01–3 paragraph (b)(9) is revised to read as follows:

§ 52.01–3 Definitions of terms used in this part.

. . . . . .

(b)(9) *Furnace.* A furnace is a firebox or a large flue in which the fuel is burned.

(i) *Corrugated furnace.* A corrugated furnace is a cylindrical shell wherein corrugations are formed

circumferentially for additional strength and to provide for expansion.

(ii) *Plain furnace.* A plain furnace is a cylindrical shell usually made in sections joined by means of riveting or welding.

* * * * *

10. § 52.01–5 is revised to read as follows:

§ 52.01–5 Plans.

(a) Manufacturers intending to fabricate boilers to be installed on vessels shall submit detailed plans as required by Subpart 50.20 of this subchapter. The plans, including design calculations, must be certified by a registered professional engineer as meeting the design requirements in this part and in section I of the ASME Code.

(b) The following information must be included:

(1) Calculations for all pressure containment components including the maximum allowable working pressure and temperature, the hydrostatic or pneumatic test pressure, the maximum steam generating capacity and the intended safety valve settings.

(2) Joint design and methods of attachment of all pressure containment components.

(3) A bill of material meeting the requirements of section I of the ASME Code, as modified by this subpart.

(4) A diagrammatic arrangement drawing of the assembled unit indicating the location of internal and external components including any interconnecting piping.

(Reporting and recordkeeping requirements approved by the Office of Management and Budget under Control No. 2115–0142)

11. In § 52.01–35 paragraph (b) is revised to read as follows:

§ 52.01–35 Auxiliary, donkey, fired thermal fluid heater, and heating boilers.

* * * * *

(b) Fired vessels in which steam is generated at pressures exceeding 103 kPa gage (15 psig) shall meet the requirements of this part.

12. Section 52.01–50 is amended by revising paragraphs (a) and (g), by removing and reserving paragraph (j), and by removing paragraph (l) as follows:

§ 52.01–50 Fusible plugs (replaces A–19 through A–21).

(a) All boilers, except watertube boilers, with a maximum allowable working pressure in excess of 206 kPa gage (30 psig), if fired with solid fuel not in suspension, or if not equipped for unattended waterbed operation, must be fitted with fusible plugs. Fusible plugs must comply with only the requirements of A19 and A20 of the ASME Code and be stamped on the casing with the name of the manufacturer, and on the water end of the fusible metal "ASME Std.". Fusible plugs are not permitted where the maximum steam temperature to which they are exposed exceeds 218 °C (425 °F).

* * * * *

(g) Boilers of types not provided for in this section shall be fitted with at least one fusible plug of such dimensions and located in a part of the boiler as will best meet the purposes for which it is intended.

* * * * *

(j) [Reserved]

* * * * *

(l) [Removed]

§ 52.01–90 [Amended]

13. § 52.01–90 is amended as follows:

a. Paragraphs (c), (e), (g) and (i) are removed.

b. Paragraphs (d), (f), and (h) are redesignated as paragraphs (c), (d), and (e) respectively.

14. § 52.01–95 is amended as follows:

a. Paragraphs (b)(1) and (2) are revised.

b. Paragraph (e) is removed.

c. Paragraphs (f) and (g) are redesignated as paragraphs (e) and (f) respectively.

As revised the text of paragraphs (b)(1) and (b)(2) read as follows:

§ 52.01–95 Design (modifies PG–16 through PG–31 and PG–100).

* * * * *

(b) *Superheater.* (1) The design pressure of a superheater integral with the boiler shall not be less than the lowest setting of the drum safety valve.

(2) Controls shall be provided to insure that the maximum temperature at the superheater outlets does not exceed the allowable temperature limit of the material used in the superheater outlet, in the steam piping, and in the associated machinery under all operating conditions including boiler overload. Controls need not be provided if the operating superheater characteristic is demonstrated to be such that the temperature limits of the material will not be exceeded. Visible and audible alarms indicating excessive superheat shall be provided in any installation in which the superheater outlet temperature exceeds 454 °C (850 °F). The setting of the excessive superheat alarms must not exceed the maximum allowable temperature of the superheater outlet, which may be limited by the boiler design, the main steam piping design, or the temperature limits of other equipment subjected to the temperature of the steam.

* * * * *

15. § 52.01–100 is revised to read as follows:

§ 52.01–100 Openings and compensation (modifies PG–32 through PG–39, PG–42 through PG–55).

(a) The rules for openings and compensation shall be as indicated in PG–32 through PG–55 of the ASME Code except as noted otherwise in this section.

(b) (Modifies PG–39.) Pipe and nozzle necks shall be attached to vessel walls as indicated in PG–39 except that threaded connections shall not be used under any of the following conditions:

(1) Pressures greater than 4137 kPa (600 psig);

(2) Nominal diameters greater than 51mm (2 in.); or

(3) Nominal diameters greater than 19mm (0.75 in.) and pressures above 1034 kPa (150 psig).

(c) *(Modifies PG–42).* Butt welding flanges and fittings must be used when full radiography is required by § 56.95–10.

16. § 52.01–105 is revised to read as follows.

§ 52.01–105 Piping, valves and fittings (modifies PG–58 and PG–59).

(a) Boiler external piping within the jurisdiction of the ASME Code must be as indicated in PG–58 and PG–59 of the ASME Code except as noted otherwise in this section. Piping outside the jurisdiction of the ASME Code must meet the appropriate requirements of Part 56 of this subchapter.

(b) In addition to the requirements in PG–58 and PG–59 of the ASME Code, boiler external piping must:

(1) meet the design conditions and criteria in § 56.07–10 of this subchapter, except § 56.07–10(b);

(2) be included in the pipe stress calculations required by § 56.31–1 of this subchapter;

(3) meet the nondestructive examination requirements in § 56.95–10 of this subchapter;

(4) have butt welding flanges and fittings when full radiography is required; and

(5) meet the requirements for threaded joints in § 56.30–20 of this subchapter.

(c) Steam stop valves, in sizes exceeding 152mm (6 inch) NPS, must be fitted with bypasses for heating the line and equalizing the pressure before the valve is opened.

(d) *Feed connections.* (1) Feed water shall not be discharged into a boiler

against surfaces exposed to hot gases or radiant heat of the fire.

(2) Feed water nozzles of boilers designed for pressures of 2758 kPa (400 psi), or over, shall be fitted with sleeves or other suitable means employed to reduce the effects of metal temperature differentials.

(e) *Blowoff connections.* (1) Firetube and drum type boilers shall be fitted with a surface and a bottom blowoff valve or cock attached directly to the boiler or to a short distance piece. The surface blowoff valve shall be located within the permissible range of the water level, or fitted with a scum pan or pipe at this level. The bottom blowoff valve shall be attached to the lowest part of the boiler or fitted with an internal pipe leading to the lowest point inside the boiler. Watertube boilers designed for pressures of 2413 kPa (350 psig) or over are not required to be fitted with a surface blowoff valve. Boilers equipped with a continuous blowdown valve on the steam drum are not required to be fitted with an additional surface blowoff connection.

(2) Where blowoff pipes are exposed to radiant heat of the fire, they must be protected by fire brick or other suitable heat-resisting material.

(f) *Dry pipes.* Internal dry pipes may be fitted to the steam drum outlet provided the dry pipes have a diameter equal to the steam drum outlet and a wall thickness at least equal to standard commercial pipe of the same diameter. Openings in dry pipes must be as near as practicable to the drum outlet and must be slotted or drilled. The width of the slots must not be less than 6mm (0.25 in.). The diameter of the holes must not be less than 10mm (0.375 in.). Where dry pipes are used, they must be provided with drains at each end to prevent an accumulation of water.

17. In § 52.01–110 paragraph (b)(1) is revised to read as follows:

§ 52.01–100 Water level indicators, water columns, gage glass connections, gage cocks, and pressure gages (modifies PG–60).

* * * * *

(b) *Water level indicators (modifies PG–60.1).* (1) Each boiler, except those of the forced circulation type with no fixed water line and steam line, shall have two independent means of indicating the water level in the boiler connected directly to the head or shell. One shall be a gage lighted by the emergency electrical system (See Subpart 112.15 of Subchapter J (Electrical Engineering) of this chapter) which will insure illumination of the gages under all normal and emergency conditions. The secondary indicator may consist of a gage glass, or other acceptable device. Where the allowance pressure exceeds 1724 kPa (250 psi), the gage glasses shall be of the flat type instead of the common tubular type.

* * * * *

§ 52.01–110 [Amended]

18. In § 52.01–110 paragraph (h) is removed.

19. Section 52.01–115 is revised to read as follows:

§ 52.01–115 Feedwater supply (modifies PG–61).

Boiler feedwater supply must meet the requirements of PG–61 of the ASME Code and § 56.50–30 of this subchapter.

20. In § 52.01–120, the heading, paragraphs (a) (1), (2), (6), and (7) are revised, paragraph (a)(10) is added, paragraphs (b)(3) and (d)(2) are revised to read as follows:

§ 52.01–120 Safety valves and safety relief valves (modifies PG–67 through PG–73).

(a)(1) Boiler safety valves and safety relief valves must be as indicated in PG–67 through PG–73 of the ASME Code except as noted otherwise in this section.

(2) A safety valve must:

(i) Be stamped in accordance with PG–110 of the ASME Code;

(ii) Have its capacity certified by the National Board of Boiler and Pressure Vessel Inspectors;

(iii) Have a drain opening tapped for not less than 6mm (¼ in.) NPS; and

(iv) Not have threaded inlets for valves larger than 51mm (2 in.) NPS.

* * * * *

(6) (Modifies PG–67). Drum safety valves shall be set to relieve at a pressure not in excess of that allowed by the Certificate of Inspection. Where for any reason this is lower than the pressure for which the boiler was orginially designed and the revised safety valve capacity cannot be recomputed and certified by the valve manufacturer, one of the tests described in PG–70(3) of the ASME Code shall be conducted in the presence of the Inspector to insure that the relieving capacity is sufficient at the lower pressure.

(7) On new installations the safety valve nominal size for propulsion boilers and superheaters must not be less than 38mm (1½ in.) nor more than 102mm (4 in.). Safety valves 38mm (1½ in.) to 114mm (4½ in.) may be used for replacements on existing boilers. The safety valve size for auxiliary boilers must be between 19mm (¾ in.) and 102mm (4 in.) NPS. The nominal size of a safety valve is the nominal diameter (as defined in 56.07–5(b)) of the inlet opening.

* * * * *

(10) *(Modifies PG–73.2).* Cast iron may be used only for caps and lifting bars. When used for these parts, the elongation must be at least 5 percent in 51mm (2 inch) gage length. Nonmetallic material may be used only for gaskets and packing.

(b) * * *

(3) Drum pilot actuated superheater safety valves are permitted provided the setting of the pilot valve and superheater safety valve is such that the superheater safety valve will open before the drum safety valve.

* * * * *

(d) * * *

(2) (Modifies PG–73). The lifting device required by PG–73.1.3. of the ASME Code shall be fitted with suitable relieving gear so arranged that the controls may be operated from the fireroom or engineroom floor.

§ 52.01–125 [Removed]

21. Section 52.01–125 is removed.

22. In § 52.01–135 paragraphs (b) and (c) are revised to read as follows:

§ 52.01–135 Inspection and tests (modifies PG–90 through PG–100).

* * * * *

(b) The inspections required by PG–90 through PG–100 of the ASME Code shall be performed by the "Authorized Inspector" as defined in PG–91 of the ASME Code. The Authorized Inspector shall hold a valid commission issued by the National Board of Boiler and Pressure Vessel Inspectors. After installation, boilers will be inspected for compliance with this Part by the "Marine Inspector" as defined in § 50.10–15 of this subchapter.

(c) *Hydrostatic test (modifies PG–99).* Each new boiler shall be hydrostatically tested after installation to 1½ times the maximum allowable working pressure as indicated in PG–99 of the ASME Code. Before the boilers are insulated, accessible parts of the boiler shall be emptied, opened up and all interior surfaces shall be examined by the marine inspector to ascertain that no defects have occurred due to the hydrostatic test.

* * * * *

23. Section 52.01–140 is revised to read as follows:

§ 52.01–140 Certification by stamping (modifies PG–104 through PG–113).

(a) All boilers built in accordance with this part must be stamped with the appropriate ASME Code symbol as

required by PG–104 through PG–113 of the ASME Code.

(b)(1) Upon satisfactory completion of the tests and Coast Guard inspections, boilers must be stamped with the following:

(i) Manufacturer's name and serial number;

(ii) ASME Code Symbol;

(iii) Coast Guard symbol, which is affixed only by marine inspector (see § 50.10–15 of this subchapter);

(iv) Maximum allowable working pressure ——— at ——— °C (°F); and

(v) Boiler rated steaming capacity in kilograms (pounds) per hour (rated joules (B.T.U.) per hour output for high temperature water boilers).

(2) The information required in paragraph (b)(1) of this section must be located on:

(i) The front head or shell near the normal waterline and within 610 mm (24 inches) of the front of firetube boilers; and

(ii) The drum head of water tube boilers.

(3) Those heating boilers which are built to section I of the ASME Code, as permitted by §53.01–10(e) of this subchapter, do not require Coast Guard stamping and must receive full ASME stamping including the appropriate code symbol.

(c) The data shall be legibly stamped and shall not be obliterated during the life of the boiler. In the event that the portion of the boiler upon which the data is stamped is to be insulated or otherwise covered, a metal nameplate as described in PG–106.6 of the ASME Code shall be furnished and mounted. The nameplate is to be maintained in a legible condition so that the data may be easily read.

(d) Safety valves shall be stamped as indicated in PG–110 of the ASME Code.

24. §52.01–145 is revised to read as follows:

§ 52.01–145 Manufacturers' data report forms (modifies PG–112 and PG–113).

The manufacturers' data report forms required by PG–112 and PG–113 of the ASME Code must be made available to the marine inspector for review. The Authorized Inspector's National Board commission number must be included on the manufacturers's data report forms.

§§ 52.05–5, 52.05–5, 52.05–10, 52.05–35, 52.05–40, 52.05–50, 52.05–55 [Removed]

25. In Subpart 52.05–5, §§ 52.05–5, 52.05–10, 52.05–35, 52.05–40, 52.05–50 and 52.05–55 are removed and §§ 52.05–20 and 52.05–45 (b) and (c) are revised to read as follows:

§ 52.05–20 Radiographic and ultrasonic examination (modifies PW–11 and PW–41.1).

Radiographic and ultrasonic examination of welded joints shall be as described in PW–11 of the ASME Code except that parts of boilers fabricated of pipe material, such as drums, shells, downcomers, risers, cross pipes, headers and tubes containing only circumferentially welded butt joints, shall be nondestructively examined as required by § 56.95–10 of this subchapter even though they may be exempted by the size limitations specified in PW–11.1.2 and PW–41.1 of the ASME Code.

§ 52.05–45 Circumferential joints in pipes, tubes and headers (modifies PW–41).

* * * * *

(b) (Modifies PW–41.1) Circumferential welded joints in pipes, tubes, and headers of pipe material must be nondestructively examined as required by § 56.95–10 of this subchapter and PW–41 of the ASME Code.

(c) (Modifies PW–41.5) Butt welded connections shall be provided whenever radiography is required by § 56.95–10 of this subchapter for the piping system in which the connection is to be made. When radiography is not required, welded socket or sleeve type joints meeting the requirements of PW–41.5 of the ASME Code may be provided.

§§ 52.10–1—52.10–15 Subpart 52.10 [Removed]

26. Subpart 52.10 is removed.

27. § 52.15–1 is revised to read as follows:

§ 52.15–1 General (modifies PWT–1 through PWT–15).

Watertube boilers and parts thereof shall be as indicated in PWT–1 through PWT–15 of the ASME Code except as noted otherwise in this subpart.

28. Section 52.15–5 is amended by removing paragraphs (c) and (e), and by revising and redesignating paragraphs (d) and (f) as paragraphs (c) and (d), respectively to read as follows:

§ 52.15–5 Tube connections (modifies PWT–9 and PWT–11).

* * * * *

(c) In welded wall construction employing stub and welded wall panels which are field welded, approximately 10 percent of the field welds shall be checked using any acceptable nondestructive test method.

(d) Nondestructive testing of the butt welded joints shall meet the requirements of § 56.95–10 of this subchapter.

* * * * *

29. Figure 52.15–5 is removed.

§§ 52.20–5, 52.20–10, 52.20–15, 52.20–20 [Removed]

30. In subpart 52.20, §§ 52.20–5, 52.20–10, 52.20–15, and 52.20–20 are removed.

§ 52.20–10 [Amended]

31. Figure 52.20–10 is removed.

32. § 52.20–17 is revised to read as follows:

§ 52.20–17 Opening between boiler and safety valve (modifies PFT–44).

When a discharge pipe is used, it must be installed in accordance with the requirements of § 52.01–105.

33. Subpart 52.25 is revised to read as follows:

Subpart 52.25—Other Boiler Types

Sec.

52.25–1 General.
52.25–3 Feedwater heaters (modifies PFH–1).
52.25–5 Miniature boilers (modifies PMB–1 through PMB–21).
52.25–7 Electric Boiler (modifies PEB–1 through PEB–19).
52.25–10 Organic fluid vaporizer generators (modifies PVG–1 through PVG–12).
52.25–15 Fired thermal fluid heaters.
52.25–20 Exhaust gas boilers.

Subpart 52.25—Other Boiler Types

§ 52.25–1 General.

Requirements for fired boilers of various sizes and uses are referenced in Table 54.01–5(a) of this subchapter.

§ 52.25–3 Feedwater heaters (modifies PFH–1).

In addition to the requirements in PFH–1 of the ASME Code, feedwater heaters must meet the requirements in this Part or the requirements in Part 54.

§ 52.25–5 Miniature boilers (modifies PMB–1 through PMB–21).

Miniature boilers must meet the applicable provisions in this Part for the boiler type involved and the mandatory requirements in PMB–1 through PMB–21 of the ASME Code.

§ 52.25–7 Electric Boiler (modifies PEB–1 through PEB–19).

Electric boilers required to comply with this part must meet the applicable provisions in this Part and the mandatory requirements in PEB–1 through PEB–19 except PEB–3 of the ASME Code.

§ 52.25–10 Organic fluid vaporizer generators (modifies PVG–1 through PVG–12).

(a) Organic fluid vaporizer generators and parts thereof shall meet the requirements of PVG–1 through PVG–12 of the ASME Code except as noted otherwise in this section.

(b) The application and end use of organic fluid vaporizer generators shall be approved by the Commandant.

§ 52.25-15 Fired thermal fluid heaters.

(a) Fired thermal fluid heaters shall be designed, constructed, inspected, tested, and stamped in accordance with the applicable provisions in this Part.

(b) Each fired thermal fluid heater must be fitted with a control which prevents the heat transfer fluid from being heated above its flash point.

(c) The heat transfer fluid must be chemically compatible with any cargo carried in the cargo tanks serviced by the heat transfer system.

§ 52.25-20 Exhaust gas boilers.

Exhaust gas type boilers with a maximum allowable working pressure greater than 103 kPa gage (15 psig) or an operating temperature greater than 454°C (850°F) shall be designed, constructed, inspected, tested, and stamped in accordance with the applicable provisions in this Part. The design temperature of parts exposed to the exhaust gas must be the maximum temperature that could normally be produced by the source of the exhaust gas. This temperature shall be verified by testing or by the manufacturer of the engine or other equipment producing the exhaust.

PART 53—HEATING BOILERS

34. The Table of Contents is revised to read as follows:

Subpart 53.01—General Requirements

Sec.
53.01-1 Adoption of section IV of the ASME Code.
53.01-5 Scope (modifies HG-100).
53.01-10 Service restrictions and exceptions (replaces HG-101).

Subpart 53.05—Pressure Relieving Devices (Article 4)

53.05-1 Safety valve requirements for steam boilers (modifies HG-400 and HG-401).
53.05-2 Relief valve requirements for hot water boilers (modifies HG-400.2).
53.05-5 Discharge capacities and valve markings.

Subpart 53.10—Tests, Inspections, Stamping, and Reporting (Article 5)

53.10-1 General.
53.10-3 Tests and shop inspections (modifies HG-500 through HG-540).
53.10-10 Certification by stamping (modifies HG-530).
53.10-15 Manufacturers' data report forms (modifies HG-520).

Subpart 53.12—Instruments, Fittings, and Controls

53.12-1 General (modifies HG-600 through HG-640).

§ 53.01-1 [Amended]

35. § 53.01-1(a) introductory tests and Table 53.01-1(a) are revised to read as follows:

(a) Heating boilers shall be designed, constructed, inspected, tested, and stamped in accordance with section IV of the ASME (American Society of Mechanical Engineers) Code as limited, modified, or replaced by specific requirements in this part. The provisions in the appendices to section IV of the ASME Code are adopted and shall be followed when the requirements in section IV make them mandatory. For general information Table 53.01-1(a) lists the various paragraphs in section IV of the ASME Code which are limited, modified, or replaced by regulations in this part.

TABLE 53.01-1(A).—LIMITATIONS AND MODIFICATIONS IN THE ADOPTION OF SECTION IV OF THE ASME CODE

Paragraphs in section IV, ASME Code[1] and disposition	Unit of this part
HG-100 modified by	53.01-5(b)
HG-101 replaced by	53.01-10
HG-400 modified by	53.05-1
HG-400.2 modified by	53.05-2
HG-401 modified by	53.05-1
HG-401.2 modified by	53.05-3
HG-500 through HG-540 modified by	53.10-3
HG-600 through HG-640 modified by	53.12-1

[1]The references to specific provisions in the ASME Code are coded. The first letter "H" refers to section IV. The letter following "H" refers to a part or subpart in section IV. The number following the letters refers to the paragraph so numbered in the text of the part or subpart in section IV.

§ 53.01-5 [Amended]

36. In § 53.01-5 paragraph (a) is revised by adding a period after the word "Code".

37. § 53.01-5 is amended by removing paragraph (c).

38. Section 53.01-10 is amended by revising paragraphs (b), (c) and (d), and by adding paragraphs (e) and (f) to read as follows:

§ 53.01-10 Service restrictions and exceptions (replaces HG-101).

* * * * *

(b) *Service restrictions.* (1) Boilers of wrought materials shall be restricted to a maximum of 103 kPa gage (15 psig) for steam and a maximum of 689 kPa (100 psig) or 121°C (250°F) for hot water. If operating conditions exceed these limits, design and fabrications shall be in accordance with Part 52 of this subchapter.

(2) Boilers of cast iron materials shall be restricted to a maximum of 103 kPa gage (15 psig) for steam and to a maximum of 206 kPa gage (30 psig) or 121°C (250°F) for hot water.

(c) *Hot water supply boilers.* (1) Electrically fired hot water supply boilers which have a capacity not greater than 454 liters (120 gallons), a heat input not greater than 58.6 kilowatts (200,000 B.t.u. per hour), and are listed as approved under Underwriters' Laboratories Standard 174 or 1453 are exempted from the requirements of this part provided they are protected by a pressure relief device. This relief device need not comply with § 53.05-2.

(2) Oil fired hot water supply boilers shall not be exempted from the requirements of this part on the basis of size or heat input.

(d) Exhaust gas type boilers shall be restricted to a working pressure equal to or less than 103 kPa gage (15 psig) and an operating temperature equal to or less than 454°C (850°F). The design temperature of parts exposed to the exhaust gas must be the maximum temperature that could normally be produced by the source of exhaust gas. This temperature shall be verified by testing or by the manufacturer of the engine or other equipment producing the exhaust.

(e) Heating boilers whose operating conditions are within the service restrictions of § 53.01-10(b)(1) may be constructed in accordance with section I of the ASME Code. In addition, these heating boilers must:

(1) be stamped with the appropriate ASME Code symbol in accordance with PG-104 through PG-113 of the ASME Code;

(2) meet the service restrictions of § 53.01-10(b)(2) if made of cast iron;

(3) have safety valves which meet the requirements of § 52.01-120 of this subchapter;

(4) if a hot water supply boiler, have a temperature relief valve or a pressure-temperature relief valve in accordance with § 53.05-2(c);

(5) if automatically controlled, meet the applicable requirements in Part 63 of this subchapter; and

(6) meet the inspection and test requirements of § 53.10-3.

(f) *Controls and miscellaneous accessories.* Refer to Part 63 of this subchapter for the requirements governing controls and miscellaneous accessories.

39. Subpart 53.05 is revised to read as follows:

Subpart 53.05—Pressure Relieving Devices (Article 4)

Sec.
53.05-1 Safety valve requirements for steam boilers (modifies HG-400 and HG-401).
53.05-2 Relief valve requirements for hot water boilers (modifies HG-400.2).
53.05-3 Materials (modifies JG-401.2).
53.05-5 Discharge capacities and valve markings.

Subpart 53.05—Pressure Relieving Devices (Article 4)

§ 53.05–1 Safety valve requirements for steam boilers (modifies HG–400 and HG–401).

(a) The pressure relief valve requirements and the safety valve requirements for steam boilers must be as indicated in HG–400 and HG–401 except as noted otherwise in this section.

(b) Each steam boiler must have at least one safety valve.

§ 53.05–2 Relief valve requirements for hot water boilers (modifies HG–400.2).

(a) The relief valve requirements for hot water boilers must be as indicated in article 4 of section IV of the ASME Code except as noted otherwise in this section.

(b) *Hot water heating boilers.* Each hot water heating boiler must have at least one safety relief valve.

(c) *Hot water supply boilers.* Each hot water supply boiler must have at least one safety relief valve and a temperature relief valve or a pressure-temperature relief valve. The valve temperature setting must not be more than 99°C (210°F).

§ 53.05–3 Materials (modifies HG–401.2).

(a) Materials for valves must be in accordance with HG–401.2 of the ASME Code except nonmetallic materials may be used only for gaskets and packing.

§ 53.05–5 Discharge capacities and valve markings.

(a) The discharge capacities and valve markings must be as indicated in HG–402 of the ASME Code. The discharge capacities must be certified by the National Board of Boiler and Pressure Vessel Inspectors.

40. Section 53.10–3 is revised to read as follows:

§ 53.10–3 Inspection and tests (modifies HG–500 through HG–540).

(a) The inspections required by HG–500 through HG–540 must be performed by the "Authorized Inspector" as defined in HG–575 of the ASME Code. The Authorized Inspector shall hold a valid commission issued by the National Board of Boiler and Pressure Vessel Inspectors. After jnstallation, heating boilers must be inspected for compliance with this Part by a marine inspector.

(b) Automatically controlled boilers must be subjected to the operating tests prescribed in Part 63 of this subchapter.

(c) All heating boilers must have the operation of their pressure relieving devices checked after the final installation.

§ 53.10–5 [Removed]

41. Section 53.10–5 is removed.

42. Section 53.10–10 is revised to read as follows:

§ 53.10–10 Certification by stamping

Stamping of heating boilers shall be as indicated in HG–530 of the ASME Code.

43. Section 53.10–15 is revised to read as follows:

§ 53.10–15 Manufacturers' data report forms.

The manufacturers' data report forms required by HG–520 of the ASME Code must be made available to the marine inspector for review. The Authorized Inspector's National Board commission number must be included on the manufacturers' data report forms.

§ 53.13–1 Subpart 93.13 [Removed]

44. Subpart 53.13 is removed.

§ 53.15–1—53.15.5 Subpart 53.15 [Removed]

45. Subpart 53.15 is removed.

PART 54—PRESSURE VESSELS

§ 54.01–5 [Amended]

46. In § 54.01–5, Table 54.01–5(a) is revised to read as follows:

TABLE 54.01-5(A)—REGULATION REFERENCE FOR BOILERS, PRESSURE VESSELS, AND THERMAL UNITS

Service and pressure temperature boundaries	Part of subchapter regulating mechanical design	Part of subchapter regulating automatic control
Main (power) boiler: All	52	
Pressure vessel: All	54	NA
Fired auxiliary boiler [1] (combustion products or electricity)		
(a) Steam:		
More than 103 kPa (15 psig)	52	63
Equal to or less than 103 kPa (15 psig)	53	63
(b) Hot water heating:		
More than 689 kPa (100 psig) or 121°C (250°F)	52	63
Equal to or less than 689 kPa (100 psig) and 121°C (250°F)	53	63
(c) Hot water supply:		
More than 689 kPa (100 psig) or 121°C (250°F)	52	63
Equal to or less than 689 kPa (100 psig) and 121°C (250°F)	53	63
Other:		
(a) Fired thermal fluid heaters: All	52	63
(b) Unfired steam boiler:		
More than 206 kPa (30 psig) or 454°C (850°F) [2]	52	NA
Equal to or less than 206 kPa (30 psig) and 454°C (850°F) [2]	54	NA
(c) Evaporators and heat exchangers: More than 103 kPa (15 psig) [3]	54	NA
(d) Unfired hot water supply or heating boiler: More than 103 kPa (15 psig) [3]	54	NA

[1] Including exhaust gas types.
[2] Temperature of working fluid.
[3] Relief device is required even if designed for less than 103 kPa (15 psig).

47. In § 54.01–10 paragraph (a) is revised to read as follows:

§ 54.01–10 Steam generating pressure vessels (modifies U–1(e)).

(a) Pressure vessels in which steam is generated, such as steam generators in the secondary system of a nuclear plant, are classed as "Unfired Steam Boilers" except as required otherwise by paragraph (b) of this section. Unfired steam boilers must be fitted with an efficient water level indicator, a pressure gage, a blowdown valve, and an approved safety valve as required by § 54.15–15. Unfired steam boilers must be constructed in accordance with this part other than when the pressures are more than 206 kPa (30 psig) or the temperatures of the working fluid are more than 454 °C (850 °F) when such boilers must be constructed in accordance with Part 52 of this subchapter.

* * * * *

48. In § 54.15–10 paragraph (a) is revised to read as follows:

§ 54.15–10 Safety and relief valves (modifies UG–126).

(a) All safety and relief valves for use on pressure vessels or piping systems shall be designed to meet the protection and service requirements for which they are intended and shall be set to relieve at a pressure which does not exceed the "maximum allowable working pressure" of the pressure vessel or piping system. Relief valves are not required to have huddling chambers for other than steam service. In addition, safety valves used on vessels in which steam is generated shall meet § 52.01–120 of this subchapter except § 52.01–120(a)(9). For steam service below 206 kPa (30 psig), bodies of safety valves may be made of cast iron. Safety relief valves used in liquefied compressed gas service shall meet Subpart 162.017 or 162.018 in Subchapter Q (Specifications) of this chapter as appropriate.

* * * * *

PART 58—MAIN AND AUXILIARY MACHINERY AND RELATED SYSTEMS

49. Section 58.01–15 is revised to read as follows:

§ 58.01–15 Fuel oil for boilers.

Oil to be used as fuel to be burned under boilers on vessels subject to inspection by the Coast Guard shall have a flashpoint of not less than 60°C (140°F), (Pensky-Martens Closed Cup Method, ASTM–D93). Fuels having a lower flashpoint will be considered in those cases where the complete fuel system has been approved by the Commandant. Piping for fuel oil transfer or service systems conveying oil that does not need to be heated for service must not have fuel oil heaters installed and must not be interconnected in such a manner that the oil can be heated in other fuel oil systems.

PART 63—CONTROL SYSTEMS FOR AUTOMATIC AUXILIARY HEATING EQUIPMENT

50. In § 63.05–90 paragraph (a) is revised to read as follows:

§ 63.05–90 Inspection and tests.

(a) Each heating unit shall be carefully examined by a marine inspector to determine compliance with the regulations and approved drawings.

* * * * *

51. In § 63.15–5 paragraph (a) is revised to read as follows:

§ 63.15–5 Plan approval.

(a) Except for electric water supply boilers listed by Underwriters Laboratories as meeting UL 174 or UL 1453, plans shall be submitted for approval prior to the assembly or manufacture of the equipment. (Refer to Subpart 50.20 of this subchapter for procedures to follow in submitting plans.) Sufficient information shall be submitted to enable determination of compliance with the regulations of this and other parts of this chapter.

* * * * *

52. In § 63.15–30 is revised to read as follows:

§ 63.15–30 Temperature-pressure relief devices.

Electric hot water supply boilers must have at least one safety relief valve and a temperature relief valve or a pressure-temperature relief valve. These pressure and temperature relief valves must meet Subpart 53.05 of this chapter. Electric hot water supply boilers listed by Underwriters Laboratories as meeting UL 174 may have temperature-pressure relief valves meeting the requirements of ANSI Standard Z 21.22 in lieu of Subpart 53.05 of this chapter.

53. Section 63.15–35 is revised to read as follows:

§ 63.15–35 Unspecified details.

Unspecified details such as electric supply connections, wiring terminals, and wiring shall be in accordance with Underwriters' Laboratories, Inc. UL–174—Electric Storage Tank Water Heaters or UL–1453—Electric Booster and Commercial Storage Tank Water Heaters as applicable.

54. In § 63.15–40 paragraph (b) is revised to read as follows:

§ 63.15–40 Operating test.

* * * * *

(b) For heaters not listed by Underwriters' Laboratories, Inc., all operating, limit, and safety devices and controls shall be tested by the marine inspector. Such tests shall be conducted aboard the vessel after installation. The pressure relief valve shall be tested as required by Part 52 or Part 53 of this subchapter as applicable.

* * * * *

PART 162—ENGINEERING EQUIPMENT

55. The authority citation for Part 162 reads as follows:

Authority: 46 U.S.C. 3306, 3703; 49 CFR 1.46(b).

56. Subpart 162.001 is removed.
57. Subpart 162.002 is removed.
58. Subpart 162.012 is removed.
59. Subpart 162.013 is removed.
60. Subpart 162.014 is removed.

Clyde T. Lusk, Jr.,

Rear Admiral, U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

February 27, 1985.

[FR Doc. 85–5178 Filed 3–7–85; 8:45 am]

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Maritime Administration

46 CFR Part 298

Obligation Guarantees

AGENCY: Maritime Administration, DOT.

ACTION: Final rule.

SUMMARY: The regulation, 46 CFR Part 298, implements provisions of Title XI of the Merchant Marine Act, 1936, as amended (Act) (46 U.S.C. 1271–1279), prescribing conditions, terms and procedures for applying for and administering Federal ship financing assistance in the form of "obligation guarantees." [An "obligation guarantee" is a pledge of the full faith and credit of the United States to the payment of the unpaid principal and interest on the guarantee of a note, bond, debenture, or other evidence of indebtedness as defined in section 1101(c) of the Act (46 U.S.C. 1271(c)).] The amendments adopted in this final rulemaking will: (1) Streamline procedures for processing applications for assistance under Title XI of the Act and make those procedures more efficient and responsive; (2) clarify the criteria that the Maritime Administration (MARAD) will apply in evaluating Title XI applications; (3) provide more detailed financial requirements; and (4) establish specific criteria and procedures for reviewing and evaluating requests by Title XI obligors for advances for debt service, insurance payments and other vessel-related expenses. The amendments in this final rulemaking also make certain technical changes to the existing regulation. A notice of proposed rulemaking is also being issued on this date to solicit comments on the calculation method for an internal rate of return (IRR) requirement that is included in the final rule.

EFFECTIVE DATE: April 8, 1985.

FOR FURTHER INFORMATION CONTACT: James L. Westcott, Director, Office of Ship Financing, Maritime Administration, 400 Seventh Street, SW., Washington, D.C. 20590, telephone number (202) 382–0389.

SUPPLEMENTARY INFORMATION:

Background

Title XI of the Act authorizes the Maritime Administrator, based upon delegation of authority by the Secretary of Transportation (Secretary), upon application by a United States citizen, to enter into a commitment to guarantee, and to guarantee the payment of the interest and the unpaid balance of principal on any obligation that is eligible to be guaranteed. The Act limits obligation guarantees to 87.5 percent of the actual cost of certain vessels, constructed, reconstructed or reconditioned without construction-differential subsidy (CDS), or 75 percent of the actual cost of a vessel built with the aid of CDS. [A "vessel" includes a cargo or passenger vessel, tanker, tug, towboat, barge or special purpose vessel, as defined in section 1101(b) of the Act (46 U.S.C. 1271(b)). The "actual cost" of a vessel is the aggregate of all amounts paid by or for the account of the obligor and all amounts which the obligor is obligated to pay for the construction, reconstruction, or reconditioning of the vessel, inclusive of designing, inspecting, outfitting or

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equipping, as defined in sections 1101 (f) and (h) of the Act (46 U.S.C. 1271 (d), (f) and (h)).] Presently, MARAD is issuing obligation guarantees in an amount not to exceed 75 percent of the actual cost of a vessel constructed, reconstructed or reconditioned entirely in U.S. shipyards, with or without CDS, and from U.S. materials and components, where practicable. Each guaranteed obligation contains the statement that "the full faith and credit of the United States" is pledged to the payment of the unpaid principal and interest on the obligation.

The regulation implementing this authority is published at 46 CFR Part 298, and was substantially revised in 1978 to implement earlier amendments to the Act. The existing regulation contains an application procedure, eligibility requirements for the applicant and the project, a description of the types of financing contemplated, a provision for discretionary advances for principal payments on the obligations, a description of required documentation, a procedure for defaults and remedies therefor, and reporting requirements.

Basis for Final Rulemaking

This final rule, which amends the existing regulation, is being adopted after consideration of: (1) MARAD's program administration experience; (2) recommendations by the Department of Transportation Title XI Task Force; (3) recommendations by the President's Private Sector Survey on Cost Control; and (4) the comments received in response to the Notice of Proposed Rulemaking (NPRM) (48 FR 37453; August 18, 1983).

The NPRM invited comments for 60 days ending October 17, 1983. The comment period was extended by one month, to November 17, 1983, at the request of interested parties. Comments were received from 33 sources including affected shipowners, ship operators, trade and industry associations, investment firms and law firms for themselves or as representatives of members of the industry.

Request for Public Hearing

During the comment period, a request for public hearing on the proposed rulemaking was made stating that the industry should have the opportunity to express its views on this important proposal. On October 12, 1983, MARAD advised the requester that it believed that a public hearing did not appear necessary at the current time, since the public was being given the opportunity to submit written comments, and these comments were expected to provide an adequate expression of the various views on this proposal.

Review of these comments confirms that there is a need to revise the existing regulation, 46 CFR Part 298, in order to streamline and clarify procedures for processing applications for obligation guarantees and advances; to establish decision criteria, particularly for the applicant's financial requirements and the project's economic soundness; to assure uniformity of evaluation of these applications; to increase the investigation and annual guarantee fees; and to make certain technical changes to the existing regulation.

Section-by-Section Analysis of Comments on the Proposed Rulemaking

Section 298.3 Applications.

The time period for application review. Several commenters argued that MARAD should be flexible as to the time period in which applications will be processed. Others argued that MARAD should be able to process these applications within 120 days, rather than six months, as proposed. There was some commenter support for including express authority for MARAD to expedite processing.

MARAD believes that application processing can be accomplished more effectively and expeditiously if specific time requirements are adopted and deadlines are imposed for submission of additional information by applicants. The final regulation establishes the time period for processing applications that MARAD's experience in administering the Title XI program has proven necessary. It also provides the Secretary with discretion to extend or expedite processing time when appropriate. MARAD does not believe that express authority is needed in the final rule for the Secretary to expedite processing.

Formal documentation of extenuating circumstances. Some commenters suggested that requiring an applicant to submit formal documentation of "extenuating circumstances" in order to receive expedited review by the Secretary is unnecessary.

As stated above, MARAD believes that six months is necessary to perform an in-depth review of the material submitted by the applicant. However, to allow flexibility in the processing time, the regulation provides that the Secretary may consider applications submitted less than six months prior to the anticipated date by which the applicant requires a letter commitment, upon written documentation of extenuating circumstances. MARAD believes that submission of written documentation of extenuating circumstances is necessary to ensure adequate, equitable and consistent consideration of all requests for expedited processing.

Termination of the processing of an application. Several commenters argued that the termination of an application after one year should only occur if the lack of approval is due to a failure by the applicant to timely respond to the Secretary's requests for data. Others argued that MARAD should notify the applicant of the reason for its failure to approve the application.

As stated in the NPRM, MARAD believes that one year is usually sufficient to process an application (including the submission of additional information and the correction of application deficiencies) and notify applicants of a final decision. Moreover, the final regulation provides that the Secretary may extend the one year time period. In determining whether to extend the one year time period, the Secretary may consider factors other than the applicant's response to the Secretary's requests for data, such as the lack of adequate financial backing for the project and the length of time before the project may become active.

Unsuccessful applicants usually have been informally informed of MARAD's reason for not approving an application. Under the final rule, the Secretary will notify the applicant in writing of the reason for non-approval.

Time requirement for submission of documents. Commenters pointed out that the proposed regulation contains a typographical error in § 298.3(b)(2): "six months" should be "six weeks".

MARAD agrees that the time period specified in that section should be "six weeks," and has made that correction in the final rule.

Additional financial assurances. Several commenters urged that the regulation should more clearly outline the substance of the "additional assurances" that might be required from applicants. Other commenters believed that the proposed regulation, stating that "the Secretary *may* require additional assurances," should be changed to "the Secretary *shall* require additional assurances." Some commenters said that the final regulation should be clear that any additional assurances would be incorporated as conditions in the shipowner's letter commitment and would not be required prior to approval of the application.

As stated in the proposed regulation, additional assurances may include firm charter commitments, parent company guarantees, greater equity participation, private financing participation, security interests on other property and similar documents. MARAD believes that the

requirement for and the substance of such additional assurances should not be further mandated or restricted by regulation, but should remain within the discretion of the Secretary in order to allow for any type of "additional assurances" that the Secretary may legitimately need. For applications not involving financially strong, well established companies seeking to replace existing vessels in a vibrant market, additional assurances may well be required. MARAD believes that any additional assurances needed can be stated as a condition in the letter commitment or required during the processing of the application. Generally, it believes that it would be more efficient and effective to indicate the requirement for additional assurances prior to issuance of the letter commitment.

Priority in processing—General. Several commenters urged that a priority system is not necessary in view of the available statutory authority and current level of new commitments. Many commenters stated their concern that applicants who do not fall within one or more of the priority categories may be excluded from consideration. One commenter believed that an additional priority category for processing should be created that would favor an unsubsidized operator if two applications of equal merit are filed, one by a subsidized operator and another by an unsubsidized operator.

A priority system for processing applications in no manner excludes any application from consideration. It merely affects the order and time in which applications will be considered. Given the volume of applications and the limited resources available to process these applications, some priority system is necessary. There can be no serious question that the Secretary has discretion to establish a processing priority system pursuant to her authority (delegated to MARAD) to issue guarantees of ship financing obligations and regulations necessary or appropriate to carry out the Act (46 U.S.C. 1271 et seq.).

MARAD recognizes that there may be divergent factors to be considered when applications of equal merit are filed by a subsidized operator and an unsubsidized operator. Because of the impossibility in foreseeing every relevant factor that could be involved, MARAD believes that it is necessary to leave this evaluation to administrative discretion rather than establish a flat policy in this area.

Priority in processing—Capable of serving as naval auxiliaries. Some commenters suggested that the priority category for vessels capable of military auxiliary service should include shallow draft vessels which keep domestic commerce moving and the economy functioning. Other commenters asserted that priorities create a bias against certain inland vessels.

Some stated that MARAD should elaborate on how it determines military service capability.

MARAD believes that setting a priority for military service capability is justified since one of the bases for the Title XI program is the strengthening of the national defense and one of the purposes of the Act is to ensure that there are vessels capable of serving as naval and military auxiliaries in time of war or national emergency.

Those vessels "capable of serving as a naval and military auxiliary in time of war or national emergency" will vary as specific national defense requirements change from time to time. However, the Secretary needs flexibility in categorization in making any determination. The determination will be made on a case-by-case basis with advice from the Navy Department in the event that this categorization appears critical to processing or evaluating an application.

Traditionally, the determination of military usefulness has been restricted to oceangoing vessels. In the future, MARAD will consider, however, including all types of vessels, among them inland vessels, in this category. In any case, the final rule does not specifically exclude any vessel type from inclusion in a priority categorization. As stated before, an exclusion from the priority categories does not preclude a type of vessel from consideration for financial assistance, but rather, may affect the timing and the order of the processing of those applications.

Priority in processing—Mobilization base shipyards. Many commenters argued that giving priority to the shipyards within the established mobilization base is highly discriminatory. Others asserted that priorities create a bias against inland shipyards. Several commenters asked that objective guidelines be provided to determine what type of Great Lakes vessel or shipyard location might be designated as subject to national security jurisdiction. A number of commenters requested that clarification be given as to which shipyards are considered part of the defense mobilization base, which they believe should include inland yards.

MARAD agrees with those comments which suggested eliminating the consideration of certain shipyards as a factor in establishing application processing priorities. MARAD has concluded that the proposal would have been very difficult to administer and that the final rule will encourage processing of applications for construction of new, militarily useful vessels. The rule being adopted, therefore, does not give processing priority to vessels which are to be constructed in shipyards within the established mobilization base.

Priority in Processing—Purchase of present Title IX vessels. A number of commenters contended that application by financially strong companies for acquisition of vessels currently guaranteed under Title XI should not receive priority consideration, and that such debt should be defaulted, with no possibility for waivers of defaults. Other commenters argued that priority should be given to Title XI financing undertaken in "work-out" situations.

There is no basis to discriminate against applications to finance acquisitions of current Title XI vessels, as some commenters urge. If those applications meet statutory and regulatory requirements, it is MARAD's policy to consider them.

If the new applicant is proposing to service the full debt, and is more able than the present obligor to continue to meet that obligation, it is in the best interest of all concerned, including the Government and competitors, to encourage acquisition. MARAD will give priority consideration to those "work-out" proposals that include an acquisition. MARAD has decided to adopt the provision as proposed.

Section 298.11 Vessel requirement.

Buy American Requirements. A few commenters stated that MARAD should eliminate United States construction—"Buy American"—requirements under the Title XI program for all vessel machinery and components.

MARAD is considering this issue and may issue a separate notice of proposed rulemaking on the subject in the near future.

Actual Cost. One commenter suggested that MARAD require additional cost details from applicants regarding the "actual cost" of construction.

Presently, MARAD obtains and reviews detailed information regarding items comprising construction costs, including escalation provisions in construction contracts, to determine the actual cost of a vessel under its existing regulation. Specifically, § 298.11(b) of the existing regulation requires an applicant to submit additional technical cost data, and any other supporting cost

information necessary. Accordingly, MARAD has not modified the proposed provision.

Section 298.12 Applicant and operator's qualifications.

Citizenship. Some commenters urged that United States citizenship disclosure requirements be strengthened so that MARAD can monitor more closely any efforts by foreign entities to invest in or operate United States-flag vessels, or to enter the domestic market in apparent violation of the Jones Act.

The citizenship requirement for Title XI financed vessels is set forth in § 298.10 of the existing regulation and it requires the applicant to establish United States citizenship in the form and manner prescribed in 46 CFR Part 355. MARAD believes that the requirements of that section are sufficient. It requires disclosure of precise information used to determine citizenship eligibility.

Financial information required. Some commenters argued that information submitted should include credit rating reports and disclosures of liabilities which are typically made in auditor's reports and public or private placement documents.

Audited financial statements ("auditor's report") and placement documents, such as the offering memorandums of limited partnership, will be required by the final regulation in §§ 298.12(b) and 298.13. This information is also currently requested in Title XI applications. Current credit rating reports are normally not uniform in content and quality. MARAD believes, therefore, that an additional requirement to submit credit rating reports serves no useful purpose and is not necessary, since information submitted with the application and pursuant to this revised provision will provide more accurate and detailed data about an applicant's creditworthiness.

Typographical Errors. Commenters noted that the proposed regulation contains two typographical errors in section 298.12:

(1) Section 298.12(c)(2)—In the first sentence substitute the word "one" for "an."

(2) Section 298.12(f)—In the third sentence substitute the word "now" for "not."

MARAD agrees with the comments, and the final regulation reflects these corrections.

Section 298.13 Financial requirements.

Twenty-Five Percent Equity Requirement. One commenter believed that the 25 percent equity requirement unduly penalizes the owner/operator of United States-flag non-subsidized tonnage.

Other commenters stated that the circumstances for requiring a 25 percent equity requirement should be clarified. Another commenter said that requiring 25 percent equity funding will only continue the industry's decline. Some commenters stated that the Act permits the issuance of guarantees with respect to obligations amounting to 87½ percent of the actual cost of a vessel and a regulation should not be adopted which would permanently preclude 87½ percent financing in appropriate circumstances. Moreover, such circumstances should be set forth in the regulation. One commenter argued that it is contrary to legislative intent to permanently restrict guarantees to 75 percent of the actual cost. However, some commenters believed that the 25 percent equity requirement is appropriate.

MARAD disagrees with those comments indicating that 87½ percent financing should be permitted. The 25 percent equity requirement is necessary as a safeguard to strengthen new guarantees. A policy of issuing obligation guarantees not to exceed 75 percent has been pursued for almost three years to enhance the position of the Secretary as a secured guarantor. This policy applies equally to owners/operators of United States-flag tonnage, both subsidized and non-subsidized. The 75 percent guarantee level also reduces the cash flow required to service the Title XI debt and reduces the project breakeven revenue requirement for both subsidized and non-subsidized owners/operators. Further, there is no satutory prohibition against setting a financing limit below the statutory maximum of 87½ percent for a project.

Sources and Uses Statement. One commenter believed that requiring sources and uses statements in proposed § 298.13 duplicates § 298.14 requirements for a detailed description of the project's cash flow.

The cash flow statement shows the cash flow of a project under consideration for Title XI financing, while the sources and uses statement describes the overall operations of the applicant. There is no redundancy in the requirement, and the provision will be adopted as proposed.

More shipyard data. One commenter said that MARAD should require data pertaining to a shipyard's vessel construction experience, financial history, and background.

In §§ 298.11(c) and 298.32(a) of the existing regulation, there is adequate general authority for MARAD's consideration of such data.

In certain cases, MARAD has requested and obtained additional shipyard information. MARAD does not consider it necessary to include the suggested requirements since they would be applicable in unusual circumstances only, e.g., employment of a shipyard inexperienced in the construction of a particular type of vessel.

Special Financial Requirements. Two commenters urged that the change from alternative to special financial requirements at closing, in proposed § 298.13(e), unwisely reduces the Secretary's discretion, and effectively imposes a 33⅓ percent equity requirement on those excluded.

The alternative financial requirements—§ 298.13 in the existing regulation—could be used by any applicant. The proposed regulation restricts the use of the alternative (renamed "special") requirements to projects involving leverage lessors, parent companies or "hell or high water" charterers. MARAD disagrees that this change reduces the Secretary's discretion. This provision restricts the type of project eligible to use these special requirements. It has no effect on the Secretary's discretion.

MARAD has found that a 2:1 debt to equity ratio (33⅓ percent) for shipping companies is workable. The purpose of the proposed change is to promote consistency with other proposed provisions to the Title XI regulations (e.g. § 298.13). By restricting the type of project that could take advantage of these requirements, the likelihood increases that the projects approved will be successful. Therefore, no modification is being made to the provision as proposed.

Section 298.14 Economic soundness.

Economic evaluation. Several commenters argued that a five year economic projection rather than a long-term projection should be used.

Several commenters urged that MARAD's internal operating expense guidelines be updated.

Several commenters maintained that estimates should be based on credible data.

Several commenters urged that specific marketing strategy should be required.

The proposed rule, published in 1983, specified several "Basic Feasibility Factors" that would be considered in making economic soundness determinations. Pub. L. 98–595, enacted October 30, 1984, among other things, amends subsection (d)(1) of section 1104 of Title XI of the Act to provide that the

Secretary in determining whether the property or project associated with the guarantees applied for is economically sound, shall consider certain factors which are specifically set forth in the Pub. L. The "Basic Feasibility Factors" in the 1983 proposed rule are substantially indentical to the factors provided in this legislation. In order to conform the final rule fully to this legislation, the text of the legislation encompasing the economic soundness factors has been incorporated into the final rule. However, the legislation does add the requirement that the Secretary consider a factor for assessment of technical improvement, e.g., fuel efficiency and improved safety, in the determination of economic soundness for inland waterway vessel projects. MARAD has incorporated this factor in the final rule in the "Basic Feasibility" section of its Economic Soundness Requirements (§ 298.14(a)(1)(v)). Another factor—"Other relevant criteria"—contained in the legislation, has also been added (§ 298.14(a)(1)(vi)).

As noted above, several commenters urged that a five year economic projection rather than a long-term projection should be used in making economic soundness determinations. The amending legislation has now disposed of this issue by mandating consideration of the market potential for the employment of the vessel over the life of the guarantee. Therefore, in addition to analysis of the projected market during the early years of a project, MARAD will analyse market potential over the entire life of the proposed guarantee.

The final rule does not include operating expense guidelines because MARAD views this subject as a matter for internal interpretation and implementation based on current economic and industry conditions. Under any circumstances, no submission from a commenter proposed specific internal operating expense guidelines to be included in the regulation.

MARAD, based on its analytical experience with the data it uses believes such data is credible.

Section 298.14 would require submission of various types of marketing information, including applicant expectations for the market's future. We believe the information submitted will reflect marketing strategy. Marketing strategy information is also requested on Title XI applications.

Objective Criteria. Several commenters argued that the proposed objective criteria would not be sufficiently flexible since they do not take into account such subjective factors as marketing skills, operating efficiency and management experience. Many of the same commenters maintained that the requirement that long-term demand for a project must exceed supply is too restrictive or an oversimplification. They claimed that the short-term market may offer more credible evidence of economic soundness.

Many commenters criticized the requirement that internal rate of return (IRR) and the net present value of the projected cash flow be shown on the grounds that those: (1) Do not take into account overall operations; (2) do not reflect the credit of the applicant; and (3) are not sufficiently flexible. The commenters claimed that better economic soundness indicators exist than IRR and net present value of the projected cash flow including: (1) Current dollar projections for debt coverage; (2) analyses using a computation of the ratio of earnings to fixed charges; and (3) cash flow projections sufficient to cover operating costs and debt service.

A few commenters suggested that the projected return should be 15 percent on an "all-equity" basis.

MARAD disagrees that the provision for use of objective criteria will prevent flexibility in evaluating applications. The consideration of objective criteria does not preclude consideration of other less objective factors, such as particular characteristics possessed by an applicant, e.g., marketing skills, operating efficiency and substantial management experience. The objective criteria are merely minimum requirements that must be met by each applicant, regardless of whatever other qualifications the applicant may possess.

MARAD also disagrees that the requirement that the long-term demand exceed the vessel supply is too restrictive or oversimplified. MARAD believes that an evaluation of long-term demand/supply projections is essential. In most cases, the obligations to be guaranteed are long-term. That fact, alone, requires a long-term demand/supply determination. In addition, the short-term market will be considered in evaluating the overall prospects of the project. In those instances where the demand and supply are equal or almost equal in the short-term, some additional equity or other financial assurances would be required to support the project during this period.

Comments were specifically invited in the NPRM on the relative merits of the use of either an internal rate of return analysis or net present value cash flow analysis or both, in evaluating Title XI applications. All comments on the use of both discounted cash flow methods were negative. Commenters stated that other indicators (e.g., operating or marketing efficiency) were more appropriate and that the use of discounted cash flow information to determine creditworthiness was not relevant.

MARAD had decided not to adopt the proposed net present value cash flow analysis requirement. MARAD believes that use of the other economic soundness criteria will produce adequate cash flow information for a project.

The requirement for an internal rate of return analysis, as a part of the regulatory scheme, has just recently been studied as a possible requirement for evaluating economic soundness. MARAD has decided to adopt the internal rate of return requirement, as proposed, in the final rule although procedures for its calculation are in the related NPRM that will be published simultaneously. The NPRM requests comments on calculation procedures for a ten percent internal rate of return based on total project cost and if adopted, these procedures would be provided for in paragraph (b)(4) to implement (b)(3) of § 298.14, the rule. After MARAD reviews the comments received in response to the NPRM, MARAD will expeditiously make a decision on that rulemaking.

MARAD believes that a projected return of ten percent is an adequate standard of profitability and sees no reason to require a 15 percent return. An internal rate of return based on total project cost would be identical to that produced by a return based on all-equity. In both cases, the base for calculation is the total project investment outlay.

Purchase of existing equipment. Some commenters urged that the potential for purchasing existing equipment should not be one of the objective criteria for an economic soundness finding as: (1) The up-to-date technology, productivity and efficiency of new ships should be evaluated; (2) newer vessels may be needed for long-term requirements; (3) new construction should be encouraged; (4) other market factors are more important.

MARAD believes that companies requesting financing of new vessels under Title XI should consider the potential for purchasing existing vessels of a reasonable condition and age that may be available from existing Title XI obligors. If suitable vessels are available, then it is possible that the

market would be less likely to support the construction of new vessels.

The final rule states that the Secretary, in evaluating project applications, shall also consider whether an application provides for the acquisition of vessels, currently financed under Title XI, by the assumption of the total guaranteed obligation. The regulation does not *require* that existing vessels be used. However, since the availability of existing vessels is, among other things, an indication of the extent, if any, of oversupply of vessels, the regulation does require that the use of existing vessels be *considered* by the company and MARAD.

Unnecessary information and disclosure. A few commenters claimed that requiring identification of seamen's unions unnecessarily intrudes on private enterprise management. A few other commenters maintained that requiring fuel costs and identification of ports of purchase is unrealistic for the transportation trades. One commenter urged that MARAD disclose economic studies and assessments of existing equipment and define "sensitivity analysis."

Crew costs must be projected to enable application evaluation. Union agreements provide a firm indication of those costs. Fuel costs and purchase ports are essential cost data for calculating breakeven rates and evaluating the financial condition of the applicant. Therefore, the information required by the rule concerning seamen's unions is essential to determination of whether a project is economically sound and is not an unnecessary intrusion on private enterprise management. In the past, MARAD has requested inclusion of this information on the application form, in any case.

MARAD's assessments of existing equipment and economic and financial analyses all are based on confidential commercial information and staff views. Disclosure of such information would jeopardize the Government's continued access to confidential information, could harm applicants submitting such information competitively and could inhibit the free flow of staff advice to MARAD decision makers. For these reasons, MARAD will not modify its proposal to authorize disclosure.

A sensitivity analysis identifies the degree of fluctuation in the cash flow of the project resulting from changes in certain variables, e.g., applicant's historical market share, past market fluctuations, availability of long-term charters, and potential Government actions.

Notice of available equipment. Some commenters stated that MARAD should state in the regulation that there will be a public notice of available or potentially available equipment. These commenters believe that an applicant should be required, in demonstrating economic soundness, to give details of its potential for purchasing existing equipment of a reasonable age and condition from existing Title XI obligors.

MARAD, as a routine procedure, gives, and will give, notice of available equipment, i.e., vessels, through newspaper advertisements, mailings, and personal contacts with potential purchasers. A change in the provision, as proposed, is not considered necessary by MARAD, since the information will continue to be publicly available.

Section 298.15 Investigation fee.

Fee rate. A substantial number of responses opposed the proposed flat investigation fee of ½ of 1 percent of the guaranteed amount. These objections are summarized as follows:

The proposed increase is not justified and represents an unreasonable burden on applicants. This increase could weaken the strength of the Title XI loan portfolio by discouraging financially strong applicants who could arrange private financing at more advantageous terms.

The commenters also stated that the flat fee structure is unreasonable in that it increases the fee payable in direct proportion of the guarantee amount, when, in fact, the costs associated with application processing do not rise significantly as the guarantee amount increases. Under this proposal, applicants with large guarantees would subsidize applicants with smaller obligation amounts.

Other commenters believed that MARAD should either: (1) Fix a flat fee based on a historical cost analysis of the average cost of an investigation; or (2) establish a two-tiered fee structure with a higher percentage fee applicable up to certain guarantee amounts, and a lower percentage fee applicable to guarantee amounts in excess of this level.

Some commenters argued that legal precedent establishes that a Federal agency cannot impose user charges in excess of the reasonable costs incurred by that agency in performing the service (investigating the application) for which charges are made. Others argued that MARAD has not established that an increase of this magnitude is needed to cover costs incurred.

Several favorable comments also were received: MARAD is entitled to recover fully the costs of processing applications; the new fee structure may help discourage frivolous applications.

Although generally unfavorable, most comments seemed to accept the implicit assumption that investigation fees should fully cover the administrative costs incurred by MARAD to process applications. MARAD has found that the present fee rates have not been sufficient to cover these costs. Therefore, MARAD believes that an increase is reasonable and necessary. As several commenters pointed out, the costs incurred do not increase in direct proportion to the guarantee amount. The present breakpoint of $1,000 for the first $300,000 and ⅛ of one percent for all amounts in excess of $300,000 is, nevertheless, outdated since the ⅛ of one percent rate has not been sufficient to cover all costs. As a result, a new formula is needed that both covers costs and avoids undue penalty to companies applying for larger amounts.

The final rule retains the sliding scale structure, but the investigation fee is fixed at ½ percent of all guarantee amounts up to and including $10,000,000, and ⅛ of one percent of all guarantee amounts in excess of $10,000,000. This adjustment in the rates will help overcome both the underfunding and fairness issues. For fiscal 1983, $10 million was the midpoint in the range of obligation guarantee amounts (six were over $10 million, six were under $10 million).

For the past three fiscal years, the average annual investigation cost to MARAD has been $1.5 million. Based on the $600 million budgeted for new commitments in FY 1984, and assuming the historical distribution of large and small applications within this amount, the adjusted fee rate scale would yield $1.4 million in income, which substantially covers, but does not exceed, program costs, while the current fee rates would yield only $765,000.

Therefore, MARAD expects that the adoption of the adjusted fee scale will reasonably cover the cost of investigating applications, and that the additional cost would be marginal to the applicant when amortized over the term of the guarantees. Using the previously proposed flat fee, the amount charged to applicants would be approximately four times the amount now charged, and would result in receipts substantially in excess of program cost.

Section 298.17 Evaluation of applications.

Evaluation Priorities. Many commenters believed that a priority system is not necessary.

Several commenters opined that the Act does not permit designation of priority by vessel type. With respect to the evaluation of applications, they claimed that there should be no priority based on vessel type or shipyard. The same commenters claimed that the priorities proposed (vessels capable of being military auxiliaries and yards within the mobilization base) are highly discriminatory to inland vessels and shipyards.

A few commenters argued that the acquisition of an existing Title XI vessel should not be granted priority over new construction. One commenter noted that there may have been an inadvertent omission of a priority for guarantees shorter than the usual terms. Many commenters agreed that the regulation appropriately establishes priorities.

MARAD disagrees with the comments opposing evaluation priorities, except for those urging elimination of evaluation priorities for applications tied to ship construction in the defense mobilization base. For the reasons set forth in the explanation of section 298.3, MARAD accepts those comments and has decided not to include evaluation priority for applications for vessels constructed in the defense mobilization base in the final rule. MARAD agrees with the merits of the commenter's suggestion on priority for guarantees of shorter than usual terms. MARAD prefers loans of shorter maturity. A provision has been added that would give evaluation priority to such guarantees.

As stated before, MARAD has authority to set evaluation priorities, delegated as part of the Secretary's authority to guarantee ship financing obligations. The priority factors established in no manner contravene the provision in section 1103(f) of the Act that no vessel eligible for guarantees shall be denied eligibility because of its type. The system of evaluation priorities does not mean that applications that do not fall into one of the priority categories will be denied. If these applications meet the statutory and regulatory requirements, they may be approved, assuming that sufficient commitment authority remains. The priority system for evaluating applications does not preclude the evaluation of other applications, but only affects the chronological order of the evaluation. Finally, it should be noted that there is no ranking among the evaluation priorities. For instance, there is no policy that applications involving acquisitions of existing Title XI vessels are to be preferred over applications involving new constructions.

Section 298.20 Terms, redemption and interest rates.

Economic Lives. One commenter maintained that the Secretary should determine more realistic economic life assessments for certain vessels, such as supply vessels.

The Act provides that the Secretary determine economic soundness and determine the maturity for obligations, not to exceed 25 years from delivery. Under that authority, the Secretary establishes policies regarding the "economic life" of particular vessel types. Currently, crewboats and tug/supply vessels are permitted a maximum mortgage maturity of 15 and 20 years, respectively. A separate rulemaking would be required to address this issue. If MARAD decides to change those policies, an appropriate rulemaking will be instituted.

Denial of Certain Applications. Some commenters urged MARAD not to approve any application for a specific vessel class if MARAD owns vessels of that class from previous foreclosings. Commenters also suggested that MARAD approve only applications for operation of United States-flag vessels in the United States foreign and international trade.

Section 1103(f) of the Act requires that no vessel eligible for guarantees shall be denied eligibility because of its type. That effectively precludes the type of blanket exclusions from the Title XI program sought by these commenters. Further, the requirement in section 298.14 that the applicant consider the potential for purchasing existing equipment addresses the concern of the first comment.

Section 298.28 Advances.

Terms of the Advance: Interest rate. Several commenters urged that the interest rate on the advance should be the market rate.

With respect to the interest rate on the advance, the proposed regulation is identical to the existing regulation. Under the existing regulation, the interest rate for an advance is the higher of the interest rate on the underlying obligation or the rate charged the Federal Ship Financing Fund (Fund) on Treasury loans plus an amount equal to a Guarantee Fee of one percent. If this latter market interest rate were less than the interest rate on the guaranteed obligations and the interest rate for an advance were always set at the market rate, the rate would serve as an incentive to applicants to seek an advance rather than to secure commercial funding or defer principal payments (at the existing rate on the obligations). MARAD does not consider it desirable to encourage requests for advances and, thereby, is providing an incentive to companies to seek private financing.

Terms of the Advance: Guarantee fee. Several commenters urged that the guarantee fee on the outstanding Title XI obligations relating to the advance not be increased to a rate of one percent.

The proposed regulation provided that, as a further condition of the advance, the guarantee fee required to be paid by the obligor on the outstanding Title XI obligations relating to the advance would be at the rate of one percent. Presently, the guarantee fee for financially troubled companies requesting advances is, in all likelihood, already one percent because of the Secretary's increased risk. MARAD believes that, under the final rule, the guarantee fee rate should remain at one percent until an advance is repaid because of the increased risk associated with it.

Advances—General. One commenter stated that the regulation on advances is too detailed. One commenter urged that the regulation be more restrictive and comprehensive. One commenter said that a notice to MARAD of reasonable offers to buy the equipment should be required in the regulation. Some commenters suggested that the regulation should provide authority to MARAD to foreclose on the equipment so that it may be sold to new owners. One commenter suggested that a two year work-out period for advances is arbitrary.

One commenter urged that the cost savings to the government resulting from the termination of ODS payments should be considered in lieu of making advances. Another commenter stated that a specific provision should be provided in the regulation for advances whose sole purpose is to maintain existing Title XI obligations even if the obligor does not qualify for an advance. The commenter cited a past Title XI bankruptcy situation as an example.

Some commenters believed that advances have not accomplished the purpose intended. Another said that the agency should proceed to foreclosure if there is a default and set forth guidelines of when such action should be taken. Several commenters urged that MARAD apply the same financial and economic standards that a commercial bank would employ in deciding whether to provide loans to assist financially troubled shipowners through their difficulties. Certain commenters suggested in their comments that any

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financially troubled shipowner that may make a request to MARAD for an advance should explore the availability of commercial loan assistance.

Based on past experience, MARAD believes that advances are appropriate in certain circumstances and that the public should be advised of the circumstances under which advances would be made and the procedures for obtaining advances.

MARAD disagrees that the provisions on advances are too detailed. It believes specific criteria were needed for use in applying for and qualifying for advances. MARAD believes that this regulation is much more comprehensive than the existing rule, but disagrees that the advances provision should be more restrictive. The provisions reflect a firm policy approach while permitting flexibility.

Since MARAD has not yet paid the guarantee of Title XI obligations when an obligor applies for an advance, MARAD is not legally able to foreclose. However, the regulation does require the applicant to describe all the actions it has taken to alleviate the difficulties leading to the need for the advance. This information indicates any efforts the applicant has made to sell the equipment and what offers have been received.

The funds to pay operating-differential subsidies (ODS) are paid pursuant to contracts authorized by Title VI of the Act and come from appropriations made annually. This statutorily authorized funding and contract framework are specifically intended to promote and maintain U.S.-flag shipping services. On the other hand, funds to make advances come from the Fund established by Title XI of the Act and are composed of investigation and guarantee fees paid by Title XI recipients and interest and income generated by those fees. The purposes of the two programs are different and distinct.

While MARAD makes every effort to give appropriate consideration to all the factors present in a request for advances, MARAD des not believe that this regulation should require denial of Title XI advance requests if ODS payments could be terminated and vessels could be sold to effect a cost savings comparable to the amount of the advance requested. MARAD cannot use this regulation to affect or modify the contract between the ODS recipient and this agency.

MARAD disagrees that advances have not accomplished the purpose intended. Advances permit the applicants time to recover from short-term difficulties, preserve favorable interest rates and provide opportunity for possible sales to stronger companies. When MARAD does proceed to foreclosure after default, however, such action is subject to applicable bankruptcy law and litigation constraints. If favorable sales opportunities are offered to the obligor prior to foreclosure sale, they are investigated and considered by the obligor and MARAD. MARAD does not believe it is necessary to include a provision on foreclosure, in the final rule, since that is governed by other applicable Federal laws.

No formal rule governing advances in bankruptcy cases is possible because of the unique and complex problems associated with bankruptcies. Under bankruptcy law, the debtor is not in complete control of its own affairs, but is subject to the jurisdiction of the bankruptcy court. Moreover, the creditor is stayed from exercising its rights and remedies against the debtor or its collateral. Thus, MARAD needs maximum flexibility to protect its interests in bankruptcy situations. In other than bankruptcy situations, MARAD believes that the requirements being adopted should be met or in the absence of aid from another source, upon default, MARAD should recoup the amounts paid, to the extent possible, by proceeding to foreclose on the collateral.

MARAD decided against any regulatory provision for publishing notice of reasonable offers to buy Title XI guaranteed equipment. MARAD advertises for the sale of Title XI equipment in foreclosure proceedings, and does publish notice of availability of Title XI equipment obtained after foreclosure. Since time is often of the essence for bids received pursuant to published notices, further publication of offers to purchase is neither possible nor practicable. Moreover, there are situations where a requirement to publish might preclude a sale made clearly in the Government's interest and ultimately result in a transaction less favorable to it.

MARAD disagrees that a two year work-out period is arbitrary and continues to support it. That time period is considered sufficient to weather any temporary financial difficulty that a Title XI company may be facing.

Section 298.35 Reserve fund and financial agreement.

Covenants. One commenter suggested that to conform with changes on special financial requirements, MARAD should relax financial covenants, such as the the requirement to build up cash reserves, that are applicable to alternative financial requirements.

MARAD disagrees that financial covenants should be relaxed when special financial requirements apply. MARAD believes that these requirements should continue to be a part of the regulation in order to ensure that additonal financial safeguards are available to the Secretary. The Secretary continues to have the discretion not to apply such covenants when justified for particular situations (§ 298.35). For that reason, there will be no change in the provision as proposed.

Section 298.36 Annual guarantee fee.

Most commenters opposed a flat 1 percent guarantee fee. Some commenters favored the flat 1 percent rate.

The 1983 proposed rule provided for a fixed one-half of one percent as a guarantee fee rate prior to vessel delivery and a fixed one percent as a guarantee fee rate following vessel delivery.

Pub. L. 98–595, enacted October 30, 1984, provided for the use of a guarantee fee formula based on the range of creditworthiness among obligors and to be included in the regulations adopted by the Secretary for computing obligors' guarantee fees. The statutory language, as an amendment to section 1104(e) of Title XI of the act, is:

> Such regulations shall provide a formula for determining the creditworthiness of obligors under which the most creditworthy obligors pay a fee computed on the lowest allowable percentage and the least creditworthy obligors pay a fee which may be computed on the highest allowable percentage (the range of creditworthiness to be based on obligors which have actually issued guaranteed obligations).

The effect of the Congressional language in the foregoing amendment to section 1104(e) is to preclude the use of fixed guarantee fee percentages such as those proposed in the NPRM. The final rule, therefore, does not contain a provision adopting fixed fee rates. Because MARAD's present regulations (§ 298.36) provide for a guarantee fee to be based on assessments of creditworthiness, it will continue with that formula.

Section 298.38 Partnership agreements.

Limited Partnerships. One commenter believed that limited partners, as well as general partners, should share in the obligations and responsibilities of partnerships because limited partners benefit in various ways from the partnership form of business organization.

MARAD disagrees that limited partners should share in all partnership

obligations and responsibilities. The limited partnership is a legally-sanctioned and well-established form of business organization which allows investors, as limited partners, to risk their specific equity contribution and gain certain profit and tax benefits while avoiding the risk of assuming all partnership obligations and responsibilities. When applying for Title XI guarantees, such a partnership is subject to the same statutory and regulatory standards governing management, operating ability and experience, financial qualifications as other forms of business organizations participating in the program.

Partnership Requirements. One commenter believed that the proposed partnership requirements should be provided in the security agreement between the obligor shipowner and the Secretary, not in the partnership agreement itself. This commenter argued that enforcement of the requirements can be assured adequately by providing in the security agreement that a failure to comply with a partnership is a default under the security agreement to which the Secretary is a party. The commenter also argued that there are insufficient material differences between a corporation and a partnership to justify the incorporation of certain Title XI requirements in the partnership agreement.

MARAD disagrees with the comment that the partnership requirements should not be placed in the partnership agreement. The partnership agreement is a contract which governs the partnership, its basic organizational structure and the relations among all the partners, including the conditions of partner entry, withdrawal and removal. It is also the document setting forth the financial obligations of the various partners to the partnership. Since it is a contract, these conditions and terms may be changed only by mutual agreement and affect the basic nature and existence, and scope of the partnership. In the NPRM, MARAD proposed that, to ensure the continued existence of each partnership and its compliance with certain essential requirements and terms upon which the Title XI transaction is premised, all partners, as contracting parties to the partnership agreement, must incorporate these requirements in the partnership agreement itself.

MARAD cannot rely on the ability to call a default solely under the security agreement as the commenter has suggested. By placing certain Title XI requirements in the partnership agreement, MARAD restricts the powers of the partners to take certain actions (e.g. dissolution of the partnership participating in the project) that affect the Title XI obligation. If these partnership restrictions were placed only in the security agreement, MARAD would be compelled to call a default on the obligation when any requirement was breached. Such an action would result in a premature payment by MARAD of its guarantees and foreclosure by MARAD on the collateral with the resulting possibility of adverse financial consequences for the agency.

Section 298.39 Exemptions.

MARAD has decided to rename the waiver clause provision, which was included in the NPRM published in August 1983, the more specific appellation of "exemption clause."

The text of the provision has been modified to show that exemptions would only be granted to applicants in exceptional cases and after written findings of, among other things, a national emergency that makes an exemption necessary, or when the Government's liability will be substantially relieved. The renomination and modification are to ensure that exemptions are based on unique, individual requests pursuant to a documented demonstration of special circumstrances. MARAD believes that an agency's authority to exempt applicants from certain criteria in unique, limited or extraordinary circumstances derives from its well-founded authority to regulate. *U.S.* v. *Allegheny Ludlum Steel Corp.*, 92 S.Ct. 1941, 406 U.S. 742, 32 L.Ed. 2d 453 (1972); *George A. Rehman Co.* v. *U.S.*, 133 F.Supp. 668 (D.D.S.C. 1955).

Moreover, MARAD believes that this clause is consistent with the purpose for revising these regulations—the strengthening and tightening of the criteria for participation in the Title XI program.

Section 298.43 Applicability of regulations to pending matters.

A few commenters argued that neither pending applications nor pending letter commitments should be subject to the revised regulation.

To exclude pending (unapproved) applications from revised requirements would give those applications preference over those that may be filed after the effective date of this rule. The date of filing should not unfairly affect applicability of the regulation. On the other hand, existing guarantees and letter commitments are agreements to which the Government is a party and, therefore, they will not be affected by the revised regulation.

Regulatory Evaluation and Regulatory Flexibility Act Determination

This rule has been evaluated under Executive Order 12291, "Federal Regulation," dated February 17, 1981, and the Department of Transportation Order 2100.5, dated May 22, 1980. It is not considered to be a major rule because it would not: have an annual effect on the economy of $100 million or more; cause a major increase in costs or prices for consumers, individual industries, government agencies or regions or have a significant adverse effect on competition or any other aspects of the economy.

MARAD's economic evaluation of this final rule is summarized as follows: The revision to the regulations establishes additional information requirements and more stringent criteria for evaluation of Title XI applications. The time requirements in the rule will require a decision on each application within one year. Reduction of processing time will result in reduced interest and carrying costs to the applicant. It is estimated that, based upon the $800,000,000 budgeted for Title XI guarantees during a fiscal year, the reduction in processing time could save applicants approximately $2.25 million in interest charges per fiscal year.

The final rule is not expected, however, to have a significant cost effect on the maritime industry. Most of the additional information proposed is already requested by MARAD and most of the proposed analysis is already performed by MARAD and/or the applicant. There will be a slight incremental increase in cost to the Government and applicants attributable to revision of the application form and submission of the requested information. The Government will incur a one-time cost due to the need to revise the application form. This is estimated to be approximately $88. Based on an estimated cost to each of the 40 (based on an historical annual average) applicants of $725 to process a current application it is estimated that, in order to comply with revised requirements, it will cost each applicant an additional $80.60 ($3,225 annual total incremental cost).

The increase in fees will result in an increase in costs to the applicants. The investigation fee, for example, on a $10 million obligation, will be, approximately, an additional $36,000. The current fee, based on a $1,000 filing fee covering the first $300,000 of obligations and ⅛ of 1 percent on the remainder, is $13,125, whereas, under the revision, the investigation fee is ½ of

1 percent or $50,000. For the past three fiscal years, the average annual investigation expense to MARAD has amounted to $1.5 million. Investigation fees from applicants have amounted to only approximately $765,000. Using the budget figure of $600 million in total new commitments, and assuming the historical distribution of large and small applications within this amount, the new fee structure would yield $1.4 million in income, which would substantially cover program costs.

Although the final rule provides for priority in the processing and evaluating of applications in the program, the current, projected lack of demand for such vessels is expected to mitigate any possible cost impact.

Given the small incremental increase relative to the overall financing costs, it is not anticipated that these revisions will have more than a marginal impact on the maritime industry.

The rule is considered to be significant under DOT Order 2100.5 because it concerns a matter in which there is substantial public interest. Since the great majority of applicants for Title XI obligation guarantees have revenues far in excess of the existing Small Business Administration criteria for a small business under the classification of "transportation and warehousing" (13 CFR 121.3–3–10(f), the Maritime Administrator certifies that this rulemaking would not, under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.), exert a significant economic impact on a substantial number of small entities.

Pursuant to DOT Order 2100.5, a final Regulatory Evaluation has been prepared and will be made available for public review in the docket established for this rulemaking. The final Regulatory Evaluation concludes that these revisions to the existing regulation will not have a significant adverse impact upon the maritime industry; and that, by streamlining and clarifying Title XI procedures, the revisions will be an overall benefit to the maritime industry.

Paperwork Reduction Act

This rule does include expanded requirements for the collection of information within the scope of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) and those requirements have been approved by OMB (OMB Control No. 2133–0018).

These additional information collection requirements will result in an estimated increase in cost to the Federal government of $88.00. It is estimated that the increase in administrative cost for all applicants would be $3,225 annually in total.

List of Subjects in 46 CFR Part 298

Banks, banking, Loan programs—transportation, Maritime carriers, Mortgages, Mortgage insurance, Uniform system of accounts, Vessels.

PART 298—[AMENDED]

Accordingly, 46 CFR Part 298 is amended as follows:

1. Section 298.3 is amended by removing the final sentence of paragraph (a), revising paragraph (b) and adding a new paragraph (e) to read as follows:

§ 298.3 Application.

* * * * *

(b)(1) *Time requirements for application.* Each application shall be submitted to the Secretary at least six months prior to the anticipated date by which the applicant requires a Letter Commitment. The Secretary may consider applications with less notice prior to the anticipated date by which the applicant requires a Letter Commitment, upon written documentation that extenuating circumstances exist. During the first 30 day period after submission, the Secretary shall perform a preliminary review of the application for adequacy and completeness. If the application is found to be incomplete, or if additional data are required, the Secretary shall notify the applicant promptly in writing. The applicant shall meet requests for additional information in a timely manner. If at the end of nine months from the submission date, unless such time period is extended within the discretion of the Secretary, the applicant has not corrected the deficiencies, or made substantial progress toward correcting them, the Secretary shall notify the applicant in writing that the application will be dismissed without prejudice. If an application is not approved within one year from the submission date, unless such time period is extended by the Secretary, the Secretary shall notify the applicant in writing that processing of the application is terminated and that the applicant may reapply.

(2) *Time requirements for documentation.* An applicant to whom a Letter Commitment has been issued shall submit four sets of the documentation to the Secretary for review. The documentation shall be submitted to the Secretary for review at least six weeks prior to the anticipated closing to afford the Secretary time to complete an adequate review of the documentation. The applicant shall utilize the standard form of documentation which will be provided by the Secretary.

(3) *Processing applications.* In processing applications, the Secretary shall consider the different degrees of risk involved with different applications.

(4) *Additional assurances.* For those applications not involving well established firms with strong financial qualifications and strong market shares, seeking financing guarantees for replacement vessels in an established market, in which projected demand exceeds supply, the Secretary may require additional assurances prior to approval, such as firm charter commitments, parent company guarantees, greater equity participation, private financing participation, security interest on other property and similar arrangements.

* * * * *

(e) *Priority.* The Maritime Administration shall give priority for processing applications to vessels capable of serving as a naval and military auxiliary in time of war or national emergency, and requests for financing construction of equipment or vessels less than one year old as opposed to the financing of existing equipment or vessels that are one year old or older. Any applications involving the purchase of vessels currently financed under Title XI will also receive priority consideration for purposes of processing the assumption of the obligations as will applications from those willing to take guarantees for less than the normal term for that class of vessel.

2. Section 298.12 is amended by revising the title, designating the present paragraph as paragraph (a), and adding a subject heading thereto, and by adding new paragraphs (b), (c), (d), to read as follows:

§ 298.12 Applicant and operator's qualifications.

(a) *Operator's qualifications.* * * *

(b) *Identity and ownership of applicant.* In order to assess the likelihood that the project will be successful, the Secretary needs information about the applicant and the proposed project. To permit this assessment, each applicant shall provide the following information in its application for Title XI guarantees.

(1) *Incorporated companies.* If the applicant is an incorporated company, it shall submit the following identifying information:

(i) Exact name of applicant and tax identification number;

(ii) State in which incorporated and date of incorporation;

(iii) Address of principal executive offices and of important branch offices, if any;

(iv) The name, address, nationality and number and type of capital shares owned by each officer and director of the corporation.

(v) The name, address, nationality, and number of capital shares owned by each person not named in the paragraph (b)(1)(iv) answer, owning of record or beneficially 5 percent or more of any class of capital shares issued by the applicant;

(vi) A brief statement of the general effect of each voting agreement, voting trust or other arrangement whereby the voting rights with respect to any share of the applicant are owned, controlled or exercised, or whereby the control of the applicant is in any way held or exercised, by any person not the holder of legal title to such shares. (Give the name, address, nationality, and business of any such person, including the form of the organization.); and

(vii) A certified copy of the certificate of incorporation, charter and by-laws.

(2) *Partnerships, joint-ventures, associations, unincorporated companies.* If the applicant is a partnership, joint-venture, association, or unincorporated company, it shall submit the following identifying information:

(i) Name of partnership, association, or unincorporated company, and tax identification number;

(ii) Business address;

(iii) Date of organization;

(iv) Name of partners (general and special) of the partnership or trustee and holders of beneficial interest in the association or company;

(v) Equity interest or percentage of capital contribution of each partner, trustee, or beneficial owner;

(vi) If any partners are individuals, provide:

(A) Date of birth of each;

(B) Place of birth of each; and

(C) Nationality of each;

(vii) If a partner is a corporation, provide information requested in paragraph (b)(1) of this section.

(viii) Certified copy of Partnership or Joint Venture Agreement, as amended; and

(ix) Offering Memorandum of Limited Partnership.

(3) *Individual.* If the applicant is an individual, he(she) shall submit the following identifying information:

(i) Name;

(ii) Address;

(iii) Date of birth;

(iv) Place of birth;

(v) Nationality;

(vi) Principal place of business; and

(vii) Trade name under which business is conducted.

(c) *Applicants: business and affiliations.* The applicant shall include:

(1) A brief description of the principal business activities during the past 5 years of applicant and of any predecessor of the applicant. If any change in the principal business activities is presently contemplated (whether in connection with the work to be financed by the guarantees applied for, or otherwise), applicant shall give a brief statement of the nature and circumstances thereof;

(2) A list of all companies or persons (hereinafter referred to as related companies) that directly or indirectly, through one or more intermediaries, control, are controlled by, or are under common control with, the applicant. Also indicate the nature of the business transacted by each, the relationships between the companies named, and the nature and extent of the control. This information may be furnished in the form of a chart. Specify whether any related companies have previously applied for or received any Title XI assistance;

(3) A statement of whether or not during the past 5 years the applicant, or any predecessor or related company, has been in bankruptcy or in reorganization under the Federal Bankruptcy Act or in any other insolvency or reorganization proceedings, and whether or not any substantial property of the applicant or a predecessor or related company has been acquired in any such proceedings or has been subject to foreclosure or receivership during such period, and details of all such occurrences; and

(4) A statement of whether or not the applicant or any predecessor or related company is now, or during the past 5 years has been, in default under any agreement or undertaking with others or with the United States or guaranteed or insured by the United States.

(d) *Management of applicant.* The applicant shall include:

(1) A brief description of the principal business activities during the past 5 years of each director and each principal executive officer of the applicant; and

(2) The name and address of each organization engaged in business activities related to those carried on or to be carried on by the applicant with which any person named in answer to paragraph (d)(1) of this section has any present business connection, the name of each such person and, briefly, the nature of such connection.

(e) *Applicant's property and activity.* The applicant shall provide:

(1) A brief description of the general character and location of the prinicipal properties of the applicant employed in its business, other than vessels, describing encumbrances, if any;

(2) A statement with respect to each vessel owned by the applicant, or operated by it under charter, stating name, gross tonnage, net tonnage, deadweight tonnage, age, type, speed, registry, cargo capacity and number and type of cargo units (container, trailer, etc.); and

(3) A summary statement which addresses the services, routes, or line (including ports served) on which the applicant operates any of the vessels owned or chartered by it. Also, a schedule and tonnage of cargo carried by the applicant during the two preceeding years, the units carried (containers, barges, passengers, etc.) and the cargo capacity utilization factor experienced.

(f) *Operating ability.* The applicant shall submit a detailed statement showing its ability to successfully operate the vessel(s), including name, education, background of, and licenses held by all shore management personnel concerned with the physical operation of the ships owned by the applicant or proposed for construction. If not now an operator of vessel(s), the applicant shall indicate a proposed organizational structure of key operating personnel or the name of the proposed operating agent. If now the owner and/or operator of ships, the applicant shall furnish data as to union affiliations and existing contracts necessary to the management and operation of the vessel(s) covering such items as bunkers, repairs, stores and stevedoring, and names of companies (domestic and foreign) for which company acts as agent. If a company other than the applicant is designated to operate the vessel(s), then the above information shall be provided for that company, together with a copy of the proposed operating agreement(s).

3. Section 298.13 is amended by inserting the paragraph designation "(a)(3)," after the word "paragraphs" and before the paragraph designation "(d)" in paragraph (g), by revising paragraph (a) and the introductory text of paragraphs (e), (e)(1), and (e)(2) as follows:

§ 298.13 Financial requirements.

(a)(1) *In general.* To be eligible for guarantees, the applicant and/or the parent organization (when applicable), and any other participants in the project having a significant financial or

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contractual relationship with the applicant shall submit information, respectively, on their financial condition. This information shall be submitted at the time of the application and supplemented as subsequently required by the Secretary. In addition, the applicant shall submit information satisfactory to the Secretary that financial resources are available to support the project which is the subject of the Title XI application.

(2) *Cost of the project*—Applicant shall submit the following cost information with respect to the project:

(i) A detailed statement of the estimated actual cost of construction, reconstruction or reconditioning of the vessel(s) including those items which would normally be capitalized as vessel construction costs. Net interest during construction is the total estimated construction period interest on non-equity funds less estimated earnings from the escrow fund, if such fund is to be established prior to vessel(s) delivery. Each item of foreign equipment and services shall be excluded from Actual Cost unless a waiver is specifically granted for the item. If any of the costs have been incurred by written contracts such as the shipyard contract, management or operating agreement, signed copies should be forwarded with the application. The applicant may be required to have the contracting shipyard submit back-up cost details and technical data. This information shall be submitted in the format as prescribed by the Title XI application procedures.

(ii) A detailed statement showing the actual cost of any shore facilities, cargo containers, etc., required to be purchased in conjunction with the project.

(iii) A detailed statement showing any other costs associated with the project which were not included in paragraphs (a)(2) (i) and (ii) of this section, such as: legal and accounting fees, printing costs, guarantee fees, vessel insurance, underwriting fees, fee to affiliates, etc.

(iv) If the project involves refinancing, the exhibit entitled Request for Actual Cost Approval and Reimbursement, its summary sheet and supplemental schedules shall be submitted at the time of filing the application.

(3) *Financing.* The applicant shall describe, in detail, how the costs of the project (sums referred to in paragraph (a)(2) of this section) are to be funded and the timing of such funding. The applicant shall include any vessel trade-ins, related or third party financings, etc. The applicant shall also provide the proposed terms and conditions of all private funding, from both equity and debt sources and clearly identify all parties involved. If the applicant intends to utilize co-financing (involving a blend of Title XI and private financing for the 75% debt portion), the terms and conditions of such financing shall be subject to approval by the Secretary. The applicant shall demonstrate with financial statements that at least 25 percent of the construction costs of the vessel(s) will be in the form of equity and not additional debt. The applicant shall disclose all of the vessel(s) financing in the format as prescribed by the Title XI application procedures.

(4) *Financial Information.* The applicant shall submit the following additional financial statements with respect to both the proposed Title XI project and the overall operations of the applicant, footnoted to explain the basis used for arriving at the figures:

(i) The most recent financial statement of the applicant, its parent and other significant participants, as applicable (year end or intermediate), and the three most recent audited statements with details of all existing debt. If the applicant is a new entity or is to be funded from or guaranteed by external source(s), it shall provide the above mentioned statements for the funding source(s);

(ii) A pro forma balance sheet of the applicant as of the estimated date of execution of the guarantees reflecting the assumption of the Title XI obligations, including the current liability;

(iii) A schedule of amortization of all existing debt (Title XI or otherwise) of the applicant for the period in which the guarantees are to be outstanding; and

(iv) A sources and uses statement for the first full year of operations and the next four years, including a clear source of funding for the payment of all debt when due.

* * * * *

(e) *Special financial requirements at closing.* If the proposed project involves a leverage lessor, parent company or "hell or high water" charterer committed to financing the debt service for the term of the Guarantees and who meets the primary financial requirement at closing, then with respect to the applicant, the eligibility for Guarantees may be based upon satisfaction of special financial requirements, in which the financial covenants imposed and the requirements for maintenance of a Title XI Reserve Fund shall be as provided for in § 298.35(c) of this Part. Special financial requirements are as follows:

(1) *Owner as operator.* Where the owner is the Vessel operator, the special requirements at Closing are as follows:

* * * * *

(2) *Lessee or charterer as operator.* Where the lessee or charterer is the Vessel operator, the special financial requirements at Closing are as follows:

* * * * *

4. Section 298.14 is revised to read as follows:

§ 298.14 Economic soundness.

(a) *Economic Evaluation.* No Letter Commitment for guarantees shall be given by the Secretary without a finding that the proposed project, with respect to which the Vessel(s) is to be financed or refinanced under Title XI, will be economically sound.

(1) *Basic feasibility factors.* In making the economic soundness findings the Secretary shall consider all relevant factors, including, but not limited to:

(i) The need in the particular segment of the maritime industry for new or additional capacity, including any impact on existing equipment for which a guarantee under this title is in effect;

(ii) The market potential for the employment of the vessel over the life of the guarantee;

(iii) Projected revenues and expenses associated with employment of the vessel;

(iv) Any charters, contracts of affreightment, transportation agreements, or similar agreements or undertakings relevant to the employment of the vessel;

(v) For inland waterways, the need for technical improvements including but not limited to increased fuel efficiency, or improved safety; and

(vi) Other relevant criteria.

(2) *Project Feasibility.* The applicant shall state in detail the purpose for the obligations to be guaranteed and shall supplement the application by exhibits deemed to be necessary. The applicant shall submit the following information to demonstrate the economic feasibility of the project over the Guarantee period.

(i) *Relevant market.* A written narrative of the market (or potential market) for the project including full details on the following, as applicable:

(A) Nature and amount of cargo/passengers available for carriage and applicant's projected share (provide also the number of units; i.e., containers, trailers, etc.);

(B) Services or routes in which the Vessel(s) will be employed, including and itinerary of ports served, with the arrival and departure times, sea time, port time, hours working or idle in port, off hire days and reserve or contingency

time, proposed number of annual sailings and number of annual working days for the Vessel(s);

(C) Suitability of the Vessel(s) for their anticipated use;

(D) Significant factors influencing the applicant's expectations for the future market for the Vessel(s), for example, competition, government regulations, alternative uses, and charter rates: and

(E) Particulars of any charters, contracts of affreightment, transportation agreements, etc. The narrative should be supplemented by providing copies of any marketing studies and/or supporting information (for instance, existing or proposed charters, contracts of affreightment, transportation agreements, and letters of intent from prospective customers).

(F) The potential for purchasing existing equipment of a reasonable condition and age that may be available from existing Title XI Obligors, including information regarding—

(*1*) Market assessment concerning the availability and cost of existing equipment that may be an alternative to new construction;

(*2*) The cost of modification, reconditioning or reconstruction of existing equipment to make it suitable for intended use; and

(*3*) Descriptions of any bids or offers which the company had made to purchase existing equipment, especially Vessels which currently are financed with Title XI Obligations including date of offer, Vessels and amount of offer.

(ii) *Revenues.* A detailed statement of the revenues expected to be earned from the project based upon the information in paragraph (a)(2) of this section. The revenues shall be based on a realistic estimate of the Vessel(s) utilization rate at a breakeven rate for the project. A justification for the utilization rate shall be supplied and should indicate the number of days per year allowed for maintenance, drydocking, inspection, etc.

(iii) *Expenses.* A detailed statement of estimated daily vessel expense, including the following (where applicable):

(A) Wages, including staffing (submit itemized staffing schedule and wages, identifying the seamen's unions involved), and aggregated as to straight time, overtime and fringe benefits;

(B) Subsistence cost (indicate cost per person per day);

(C) Fuel cost (specify purchase ports), including estimated fuel consumption at design speed loaded and in port;

(D) Cost of stores, supplies and equipment, segregated as to Deck, Engine and Stewards Departments;

(E) Maintenance and repair cost at midlife of ship (specify in years) segregated as to voyage repairs, special surveys, drydocking and tailshaft removal, annual survey and structural renewals;

(F) Insurance costs, Hull and Machinery, Protection and Indemnity, War Risk and other (an insurance broker's estimate based upon current premium rates, if available, is considered preferable); and

(G) Other vessel expense (indicate items included).

(iv) *Estimated voyage expense:* These items shall include:

(A) Port expense segregated by port as to agency fees, wharfage and dockage and other port expenses;

(B) Cargo expense, segregated as to stevedoring and other cargo expense (show average cost per ton for loading and discharging for each port or geographic area);

(C) Brokerage expense, segregated as to freight and passenger; and

(D) Other voyage expense segregated as to canal tolls and other expense (indicate items included).

(v) *Owner's expenses annually.* These expenses shall be segregated as to:

(A) Interest and amortized principal on mortgage indebtedness;

(B) Estimated government Guarantee Fee; and

(C) Salaries and other administrative expenses (indicate basis of allocations).

(b) *Objective Criteria.* The Secretary shall make a finding of economic soundness with respect to each proposed project based on an assessment of the entire project. In order to be considered for approval, a project must meet the following criteria as determined by the Secretary:

(1) The projected long-term demand (equal to length of financing being requested) for the particular Vessel(s) to be financed must exceed the supply of similar vessels in the applicable markets, based on the Secretary's assessment of existing equipment, similar vessels under construction and the projected need for new equipment in that particular segment of the maritime industry. Such an assessment shall be determined by the Secretary's analysis of the following three elements:

(i) Conformity of the company's projections with supply and demand analyses prepared by the Maritime Administration;

(ii) Availability of charters, contracts of affreightment, transportation agreements or similar agreements or undertakings; and

(iii) The applicant's existing market share compared with the market share necessary to meet projected revenues.

(2) A projected cash flow and net income, supported by the findings of paragraph (b)(1) of this section, that is sufficient to meet the projected Title XI debt service requirements and any other debt obligations of the company; and

(3) The internal rate of return analysis shall provide a minimum return of 10 percent when computed, based on the total project cost, and in accordance with paragraph (b)(4) of this section.

(4) [Reserved]

(5) That all prior Title XI advances shall have been paid.

5. Section 298.15 is amended by removing paragraphs (c) and (d) and revising paragraph (b) to read as follows:

§ 298.15 Investigation fee.

* * * * *

(b) *Base Fee.* The investigation fee shall be one-half of one percent on obligations to be issued up to and including $10,000,000 and ⅛ of one percent on all obligations to be issued in excess of $10,000,000. The $1,000 filing fee previously paid upon filing the original application (described in § 298.3 of this part) shall be credited against the investigation fee.

6. A new § 298.17 is added to Subpart B to read as follows:

§ 298.17 Evaluation of applications.

In evaluating project applications, the Secretary shall also consider whether the application provides for:

(a) The capability of the Vessel(s) serving as a naval and military auxiliary in time of war or national emergency.

(b) The financing of the Vessel(s) within one year after delivery.

(c) The acquisition of Vessel(s) currently financed under Title XI by assumption of the total obligation(s).

(d) The Guarantees extend for less than the normal term for that class of vessel.

7. Section 298.23 is revised to read as follows:

§ 298.23 Refinancing.

The Secretary may approve guarantees with respect to Obligations to be secured by one or more Vessels and issued to refinance existing debt, whether or not covered by mortgage insurance or Guarantees, so long as the existing debt has been issued for one of the purposes set forth in Section 1104(a)(1) through (4) of the Act. Section 1104(a)(1) of the Act requires that, if the existing indebtedness was incurred more than one year after the delivery or redelivery of the related Vessel, the proceeds of such Obligations shall be

applied to the construction, reconstruction or reconditioning of other vessels or for facilities or equipment pertaining to marine operation (described in § 298.24 of this part). The Secretary may permit the refinancing of existing debt but only if any security lien on the Vessel(s) is discharged immediately prior to the placing of any Mortgage thereon by the Secretary. The applicant shall satisfy all the eligibility requirements set forth in Subpart B of this part.

8. Section 298.28 is revised to read as follows:

§ 298.28 Advances.

(a) *In general.* In accordance with the provisions of section 207 and Title XI of the Act, the Secretary shall have the discretion to make or commit to make an advance or payment of funds to, or on behalf of the owner, or operator or directly to any other person or entity for items, including, but not limited to, principal, interest, insurance and other vessel-related expenses or fees. Such advances or payments shall be made only to protect, preserve or improve the collateral held as security by the Secretary to secure Title XI debt. The applicant making the request for an advance shall demonstrate (with market and cash flow analyses and other projections) that its problems are of a short term duration (less than two years) and that with the help of an advance(s), the applicant would be assisted over its temporary difficulties. In making or committing to make an advance or payment of funds the Secretary shall evaluate the following:

(1) *Company finances.* The applicant shall clearly demonstrate that it has insufficient cash flow, working capital or other financial resources to make the payment and has made a good faith effort to arrange for a transaction acceptable to the Secretary to provide the necessary commercial funding for the payment. Further, the Secretary shall consider the following factors, among others:

(i) The existing financial condition of the Obligor, including the likelihood of liens being filed by creditors;

(ii) The reason for the financial difficulties of the Obligor and whether the problems are the result of economic conditions or actions of the Obligor or both;

(iii) The reasonableness of the financial projections for the Obligor and the expectation that the Obligor's operations will recover; and

(iv) The extent to which company management has taken action to alleviate the difficulties leading to the need for advances.

(2) *Collateral.* There shall be adequate security for the advance. In determining adequate security the Secretary shall evaluate, among other things:

(i) The existing and future market conditions for the Vessel(s) held as collateral after consideration of all potential liens and claims;

(ii) The benefit of preserving the existing Obligations on the collateral; and

(iii) Any other available collateral (i.e., mortgages on other vessel(s), special escrow funds, pledge of stock, charters, contracts, notes, letters of credit, accounts receivable assignments and guarantees).

(3) *Repayment.* The company must have the capacity to repay the advances in a timely manner as well as meeting the other financial obligations imposed as a condition of the advance. The terms of repayment of an advance shall be satisfactory to the Secretary. In determining the Obligor's ability to meet the foregoing the Secretary shall evaluate, among other things:

(i) The expectation of repayment of the advance;

(ii) The ability and willingness of the Obligor to repay the advance on a short-term basis; and

(iii) The Obligor's experience in repaying any prior advance.

(b) *Terms of advance.* The terms of an advance shall be satisfactory to the Secretary and shall include, but not necessarily be limited to:

(1) The interest rate shall be equal to the greater of—(i) the sum of the effective interest rate borne by the Obligations and a Guarantee Fee computed in accordance with § 298.36; or (ii) the sum of the interest rate the Treasury would charge the Federal Ship Financing Fund for a similar borrowing of like maturity and an amount equal to the Guarantee Fee provided in accordance with paragraph (b)(6) of this section.

(2) The advance may have a maturity date no later than that of the Obligation(s).

(3) Unless the Secretary otherwise requires, the advance shall have periodic payments of principal and interest, payable to the extent practicable, on the same dates as that of the Obligation(s) with the right of prepayment at any time without premium.

(4) As long as any advance is outstanding, no dividends can be paid without prior written consent of the Secretary provided, however, that if the Obligation(s) and advance(s) are assumed by a non-affiliated company which was approved by the Secretary, this dividend restriction shall not apply unless it is expressly required by the Secretary.

(5) The advance, both as to principal and the interest relating to the advance of principal, shall be secured by the mortgage and/or other such collateral as the Secretary shall deem appropriate.

(6) As a further condition of the advance, the guarantee fee required to be paid by the Obligor on the outstanding Title XI obligations relating to the advance shall be at the rate of one percent, until such advance is repaid.

(c) *Filing requirements.* Any company that desires to request an advance or other payment, or a commitment to make an advance or other payment from the Secretary for the purposes stated in § 298.28 of this part, shall apply for such assistance as far in advance as is reasonably possible. A request for an advance for principal and interest payments shall be received by the Secretary at least 30 days prior to the initial payment date. A request for an advance of insurance payments shall be received by the Secretary at least 30 days prior to a renewal or termination date. The Secretary may consider requests for assistance with less notice, upon written documentation of extenuating circumstances. Any requests for assistance must be accompanied by supporting data with respect to the need for the advance, that financing assistance has been sought from other sources, that the company is taking and has taken measures to alleviate its situation, financial projections, proposed term of the repayment, current and projected market conditions, information on other available collateral, liens and other creditor information, and any other information which may be requested by the Secretary.

9. Section 298.31 is amended by removing in the last sentence of paragraph (a) the number "21" and inserting the number "10" in its place and adding a new paragraph (c) to read as follows:

§ 298.31 Mortgage.

* * * * *

(c) *Adequacy of collateral.* Under normal circumstances, a First Preferred Mortgage on the Vessel(s) will be adequate security for the Guarantees. If, however, the Secretary determines that the Mortgage on the Vessel(s) in not sufficient to provide adequate security, the Secretary, as a condition to approving the Letter Commitment or processing the application may require

additional collateral, such as a mortgage(s) on other vessel(s) or on other assets, special escrow funds, pledges of stock, charters, contracts, notes, letters of credit, accounts receivable assignments, and guarantees.

§ 298.35 [Amended]

10. Section 298.35 is revised by removing the word "alternative" wherever it appears in the introductory text of paragraph (c) and paragraph (c)(2) and in lieu thereof inserting the word "special".

11. A new § 298.38 is added at the end of Subpart D to read as follows:

§ 298.38 Partnership agreements.

Partnership agreements shall be in form and substance satisfactory to the Secretary prior to any Guarantee closing, especially relating, but not limited to, four basis areas: (a) Duration of the partnership, (b) adequate partnership funding requirements and mechanisms, (c) dissolution of the partnership and the withdrawal of a general partner and (d) the termination, amendment, or other modification of the partnership agreement without the prior written consent of the Secretary.

12. A new § 298.39 is added to read as follows:

§ 298.39 Exemptions.

The Secretary may exempt an applicant from any requirement of this Part not required by law, in exceptional cases, on written findings that: (a) The case materially involves factors not considered in the promulgation of this Part; (b) (1) a national emergency makes it necessary to approve the exemption or (2) the financial liability of the United States will be substantially relieved; (c) the exemption will not substantially affect effective regulation of the Title XI program, consistent with the objectives of this part; and (d) exemption will not be unjustly discriminatory.

13. Section 298.41(d) is revised to read as follows:

§ 298.41 Remedies after default.

* * * * *

(d) *Security proceeds to Obligor.* The Obligor shall be entitled to the proceeds from the sale or other disposition of security, described in paragraph (c) of this section, if and to the extent that the proceeds realized are in excess of the amounts described in paragraphs (c) (1) through (6) of this section.

14. A new § 298.43 is added to Subpart E to read as follows:

§ 298.43 Applicability of the Regulations.

The regulations in this part shall be in effect as to all Letter Commitments, commitments to guarantee Obligations and Guarantees of Obligations made, issued or entered into after the effective date hereof pursuant to section 1104(a) of the Act, and all mortgages and loans covered thereby. These regulations supersede those issued under Part 298 of this title (43 FR 60912) as of the effective date hereof, but shall not affect any Letter Commitments, commitment for Guarantees, Guarantees or contracts of insurance in existence on the effective date of these regulations. The regulations in this part may be amended, but said amendments shall have no effect upon any existing Letter Commitments, guarantees, insurance contracts, commitments for Guarantees or Documentation.

(Secs. 204(b) and 1109, Merchant Marine Act, 1936, as amended (46 U.S.C. 1114(b), 1279(b)) Pub. L. 97-31, August 6, 1981; 49 CFR 1.66)

Dated: January 31, 1985.

Approved:

Murray A. Bloom,

Acting Secretary—Maritime Administration.

[FR Doc. 85-5509 Filed 3-7-85; 8:45 am]

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Proposed Rules

Federal Register
Vol. 50, No. 46
Friday, March 8, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 911

Limes Grown in Florida; Container Marking Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule specifies new lime size designations to be used in marking containers of seedless limes based on the number of seedless limes in a ten pound sample. This proposal is designed to prevent misrepresentation of the size of seedless limes in containers, facilitate sales of seedless limes between buyers and sellers, and promote orderly marketing of Florida seedless limes. This proposal also updates references to the United States Grade Standards for Florida Limes in the regulation.

DATES: Comments are due by March 25, 1985. The proposed effective date is April 1, 1985.

ADDRESS: Comments should be sent to: Docket Clerk, F&V, AMS, Room 2069–S, U.S. Department of Agriculture, Washington, D.C. 20250. Two copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone (202) 447–5975.

SUPPLEMENTARY INFORMATION: This action has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has determined that this action will not have a significant economic impact on a substantial number of small entities..

This proposed rule is issued under the marketing agreement, as amended, and Order No. 911, as amended (7 CFR Part 911), regulating the handling of lime grown in Florida. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

The proposed rule is based upon recommendations and information submitted by the Florida Lime Administrative Committee, established under the marketing agreement and order, and upon other information. Shipments of Florida limes are regulated by pack under § 911.311 Lime Pack Regulation 9 (7 CFR Part 911). The pack regulation, which is effective on a continuing basis, establishes pack and container marking requirements for fresh limes. This proposal was unanimously recommended by the Florida Lime Administrative Committee.

This proposal would require the marking of containers of seedless limes with one of seven specified lime size designations. These seven size designations are defined in terms of the number of limes in a ten pound sample. Handlers of limes use several different sizes and weights of containers in shipping limes. The committee reports that handlers currently designate lime sizes by count or number of fruit in the container. This has caused some buyer confusion since the number of limes will vary with the size of the container. In some instances, the number of limes in a container has been misrepresented to the buyer. The proposal is designed to alleviate this situation by standardizing lime sizes so that the same lime size designation will be shown regardless of the size and weight of the container in which the limes are packed. These size designations are currently used by many handlers on a voluntary basis. This proposal is necessary to facilitate sales between buyers and sellers of limes and promote orderly marketing of Florida seedless limes.

The proposed rule provides a 15-day comment period. A longer comment period would be contrary to the public interest and would serve no useful purpose.

List of Subjects in 7 CFR Part 911

Marketing agreements and orders, Limes, Florida.

PART 911—[AMENDED]

The proposed rule would amend paragraphs (a)(1) and (b) in section 911.311 by removing the reference to "7 CFR 2851.1000–2851.1016" and inserting in its place the reference to "7 CFR 51.1000–51.1016" and adds a new paragraph (a)(5) to § 911.311 to read as follows:

§ 911.311 Lime Pack Regulation 9.

(a) * * *

(5) No handler shall handle any container of seedless limes, grown in the production area, unless such container is marked on the top and two sides, using one inch high numbers, with one of the size designations shown in column 1 of the following table: *Provided*, That the number of seedless limes in a ten pound sample of a particular size designation, representative of the limes in the container, corresponds to the permissible size range in column 2 of such table for such size designation.

TABLE 1

Column 1 size designations	Column 2 size range
72	68 to 76
63	60 to 66
54	51 to 57
48	46 to 50
42	40 to 44
36	34 to 38
28	27 to 29

* * * * *

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: March 5, 1985.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division Agricultural Marketing Service.

[FR Doc. 85–5558 Filed 3–7–85; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 85–AGL–6]

Proposed Alteration of Transition Area; Litchfield, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the Litchfield, Illinois, transition area to provide airspace determined necessary to accommodate existing conditions.

The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument weather conditions from other aircraft operating under visual weather conditions in controlled airspace.

DATES: Comments must be received on or before April 10, 1985.

ADDRESS: Send comments on the proposal in triplicate to: Federal Aviation Administration, Regional Counsel, AGL-7, Attn: Rules Docket No. 85-AGL-6, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

An informal docket may also be examined during normal business hours at the Airspace, Procedures, and Automation Branch, Air Traffic Division, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Airspace, Procedures, and Automation Branch, Air Traffic Division, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

SUPPLEMENTARY INFORMATION: This action redescribes the Litchfield, Illinois, transition area to accommodate existing conditions. An NDB Runway 27 instrument approach procedure has been developed for Litchfield Municipal Airport, but the required designated airspace has not yet been depicted on appropriate charts. The additional airspace to be depicted will be the area contained within 3 miles each side of the 274° true bearing from the Litchfield, Illinois, NDB (LTD) extending from the 5-mile radius to 8 miles west of Litchfield Municipal Airport.

The development of the procedure requires that the FAA alter the designated airspace to insure that the procedure will be contained within controlled airspace. The minimum descent altitudes for this procedure may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts will reflect the defined areas which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 85-AGL-6." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 426-8058.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2, which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter an existing 700-foot controlled airspace transition area near Litchfield, Illinois.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 3, 1984.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Transition areas, Aviation safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

Litchfield, IL

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Litchfield, Illinois, Municipal Airport (latitude 39°09'50"N, longitude 89°40'36"W), and within 3 miles each side of the 079° bearing from the Litchfield NDB (LTD), extending from the 5-mile radius to 8 miles east of the Litchfield Airport, and within 3 miles each side of the 274° bearing from the Litchfield NDB (LTD), extending from the 5-mile radius to 8 miles west of the Litchfield Municipal Airport.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.65)

Issued in Des Plaines, Illinois, on February 15, 1985.

Paul K. Bohr,

Director, Great Lakes Region.

[FR Doc. 85-5529 Filed 3-7-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Parts 71 and 75

[Airspace Docket No. 84-AWA-35]

Proposed Alteration of Jet Route J-174 and Associated Control Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to extend Jet Route J–174 from Hampton, NY, to Snow Hill, MD, and establish a control area associated with the jet route. This action is an integral part of a major air traffic management program to alleviate air traffic congestion and compression conditions along the east coast of the United States, particularly between the New York and Southern Florida/Caribbean areas.

DATES: Comments must be received on or before April 8, 1985.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket [AGC–204], Airspace Docket No. 84–AWA–35, 800 Independence Avenue, SW., Washington, D.C. 20591.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Gene Falsetti, Airspace and Air Traffic Rules Branch (ATO–230), Airspace—Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposals. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposals. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 84–AWA–35." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426–8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering amendments to § 71.161 and § 75.100 of Part 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) to alter J–174 between Snow Hill, MD, and Hampton, NY, with an associated control area. The associated control area is centered on the centerline of the jet route. The FAA has developed a United States east coast traffic management plan to alleviate congestion and compression of air traffic, particularly along the heavily travelled coastal corridor between New York and the Southern Florida/Caribbean areas. The overall objectives of the east coast plan are to adjust inbound/outbound routings along the east coast and the New York Metroplex areas in order to provide the optimum use of airspace and reduce departure and arrival delays between Chicago, New York, Atlanta and Miami. At present, east coast traffic flows are saturated and compressed to the extent that they restrict the movement of traffic into and out of the New York Metroplex. This congestion causes delays to the degree that a substantial portion of all reported delays occur within the New York Metroplex (approximately 25 percent of the national total). The east coast plan is designed to make optimum use of limited airspace resources. One of the constraints to the free flow of traffic along the east coast is otherwise usable airspace designated as offshore warning areas. A warning area is a nonregulatory designation of airspace of defined dimensions over international waters that contains activity which may be hazardous to nonparticipating aircraft.

The FAA recognizes the existence and the need for offshore warning areas. The amended Federal Aviation Act of 1958 is clear in that both air commerce and the needs of national defense must be considered. In addition, Executive Order 10854 extended appliation of the FA Act outside of U.S. jurisdiction under appropriate international agreements and consistent with the requirements of national defense.

In consideration of both civilian air commerce and national defense needs, the FAA is proposing the alteration of Jet Route J–174 and an associated control area. This route is expected to absorb and distribute a substantial portion of inland high altitude air traffic movements while posing minimal impact on warning area airspace. At point of greatest penetration, the jet route and associated control area would extend approximately 15 miles into Warning Area 107A and 8 miles into Warning Area 108A. The FAA considers the availability of Jet Route J–174 as crucial to the success of overall east coast air traffic management. As proposed, the jet route should have minimal impact on Department of Defense activity while providing substantial benefit to all users. For example, for those portions of warning areas penetrated, altitudes would remain available for use by the using agency as follows:

1. Below Flight Level 240 and above Flight Level 410 within Warning Area 108A.

2. Below Flight Level 180 and above Flight Level 410 within Warning Area 107A.

The overall impact to Department of Defense activities is seen as minimal while the advantage to overall air transportation is great. Approximately 500 aircraft movements a day which now utilize inland routings may be expected to use the proposed offshore route. A proportionate share of those movements are expected to be departures from the New York airports, facilitating the flow of arrival traffic to those airports via inland routes. Sections 71.161 and 75.100 of Parts 71 and 75 of the Federal Aviation Regulations were published in Handbook 7400.6 dated January 3, 1984.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to

keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

ICAO Considerations

As part of these proposals relate to navigable airspace outside the United States, this notice is submitted in consonance with the International Civil Aviation Organization (ICAO) International Standards and Recommended Practices.

Applicability of International Standards and Recommended Practices by the Air Traffic Operations Service, FAA, in areas outside domestic airspace of the United States is governed by Article 12 of, and Annex 11 to, the Convention on International Civil Aviation, which pertains to the establishment of air navigation facilities and services necessary to promoting the safe, orderly, and expeditious flow of civil air traffic. Their purpose is to ensure that civil flying on international air routes is carried out under uniform conditions designed to improve the safety and efficiency of air operations.

The International Standards and Recommended Practices in Annex 11 apply in those parts of the airspace under the jurisdiction of a contracting state, derived from ICAO, wherein air traffic services are provided and also whenever a contracting state accepts the responsibility of providing air traffic services over high seas or in airspace of undetermined sovereignty. A contracting state accepting such responsibility may apply the International Standards and Recommended Practices in a manner consistent with that adopted for airspace under its domestic jurisdiction.

In accordance with Article 3 of the Convention on International Civil Aviation, Chicago, 1944, state aircraft are exempt from the provisions of Annex 11 and its Standards and Recommended Practices. As a contracting state, the United States agreed by Article 3(d) that its state aircraft will be operated in international airspace with due regard for the safety of civil aircraft.

Since these actions involve, in part, the designation of navigable airspace outside the United States, the Administrator is consulting with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

List of Subjects in 14 CFR Parts 71 and 75

Aviation safety; Jet routes and control areas.

The Proposed Amendments

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend §§ 71.161 and 75.100 of Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) as follows:

§ 71.161 [Amended]

J–174 [Revised]

From Snow Hill, MD, via Hampton, NY; Hyannis, MA, to HERIN INT. Airspace below FL 240 is excluded between Snow Hill and lat. 38°45'00" N., long. 74°44'00" W. Airspace above FL 410 is excluded between Snow Hill and Hampton.

§ 75.100 [Amended]

J–174 [Revised]

From Snow Hill, MD, via Hampton, NY; INT Hampton 069° T(082° M) and Hyannis, MA 237° T(252° M) radials; Hyannis; to the INT of Hyannis 080° T(095° M) and Nantucket, MA, 066° T(081° M) radials. Airspace below FL 240 is excluded between Snow Hill and lat. 38°45'00" N., long. 74°44'00" W. Airspace above FL 410 is excluded between Snow Hill and Hampton.

(Secs. 307(a), 313(a) and 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348(a), 1354(a), and 1510); Executive order 10854 (24 FR 9565); (49 U.S.C. 106(g) (Revised, Pub L. 97–449, January 12, 1983)); and 14 CFR 11.65)

Issued in Washington, D.C. on March 5, 1985.

John W. Baier,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 85–5720 Filed 3–7–85; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 101

Withdrawal of Proposed Customs Regulations Amendment Relating to the Customs Service Field Organization—Gramercy, LA

AGENCY: Customs Service, Treasury.

ACTION: Withdrawal of proposed rule.

SUMMARY: This document withdraws a proposal to extend the limits of the Customs port of entry of Gramercy, Louisiana. The proposal was included as a part of a larger revision of the Customs field organization which updated and consolidated the descriptions of all ports of entry in the New Orleans Customs district. Customs periodically amends its field organization to obtain more efficient use of its personnel, facilities, and resources, but after review of public comment and further analysis of this matter, it has been determined an expansion of the port limits at Gramercy would negatively impact shippers and increase Customs workload without creating any compensating benefits to the community at large.

DATE: Withdrawal effective March 8, 1985.

FOR FURTHER INFORMATION CONTACT: Richard Coleman, Office of Inspection and Control, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202–566–8157).

SUPPLEMENTARY INFORMATION:

Background

By **Federal Register** notice of October 5, 1983 (48 FR 45409), Customs published a proposed rule designed to update and consolidate the description of all ports in the New Orleans Customs district. The consolidation was a part of Customs nationwide effort to obtain more efficient use of personnel, facilities and resources and to provide better service to carriers, importers and the public. Public comment was invited until December 5, 1983.

Customs adopted the proposal as a final rule by publication of T.D. 84–126 in the **Federal Register** of May 31, 1984 (49 FR 22629). However, the final rule included a slight expansion of the geographical limits of the port of entry of Gramercy, Louisiana. The slight expansion had not been mentioned in the October 5, 1983, proposal.

It was brought to Customs attention that the expansion of the limits of the Gramercy port could have some unexpected adverse impact on several concerns in the Gramercy area. Accordingly, on July 2, 1984, Customs published two **Federal Register** notices relating to this matter. The first notice (49 FR 27142) delayed indefinitely the effective date of the Gramercy expansion. The second notice (49 FR 27172) formally proposed the expansion that had been included in the May 31, 1984, final rule and invited public comment on the matter. The comment period closed August 31, 1984, and Customs has now concluded its review and analysis of all comments received.

Discussion of Comments

There were 18 comments received concerning the expansion, 9 in favor, 9 opposed. Commenters included U.S. congressmen, members of Louisiana state and local government, and representatives of businesses and trade associations.

Some of the proponents of the Gramercy port expansion cited increased convenience of obtaining Customs service while opponents claimed the creation of a clearance obligation in an area now outside port limits would significantly but needlessly increase both Customs workload and shippers' costs. The main reason the expansion had been requested was to bring the Gramercy port limits into line with the state determined boundaries of the Southwest Louisiana Port Commission. A comment received from a Louisiana state senator urged Customs to withhold any action on Gramercy while the Louisiana Ports Study Commission completed its study of the Louisiana ports and their relationship to each other.

After review of all comments received and further analysis of the matter, Customs has determined that expansion of the Gramercy port limits is not necessary to maintain or expand the current service level at the port. The division among the commenters is more a political dispute among competing port commissions, that of New Orleans and South Louisiana. The concurrence of Customs and state determined port boundaries would affect state port workload statistics and the allocation of state grants. However, the expansion would negatively impact shippers and increase Customs workload without creating any compensating benefits to the community at large.

For the above stated reasons, the proposal to expand the geographical limits of the Customs port of entry of Gramercy, Louisiana, is withdrawn.

Drafting Information

The principal author of this document was John E. Doyle, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

William von Raab,

Commissioner of Customs.

Approved: February 21, 1985.

Edward T. Stevenson,

Acting Assistant Secretary of the Treasury.

[FR Doc. 85-5613 Filed 3-7-85; 8:45 am]

BILLING CODE 4820-02-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[AD-FRL-2792-3]

Stack Height Regulation; Comment Period Extension

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of comment period extension.

SUMMARY: This notice extends the supplemental public comment period for proposed revision to EPA's stack height regulation, now scheduled to close on February 25, 1985. The supplemental public comment period will end on March 11, 1985.

DATE: Interested parties may submit supplemental information until March 11, 1985.

FOR FURTHER INFORMATION CONTACT: Eric O. Ginsburg, Office of Air Quality Planning and Standards, Control Program Development Division (MD-15), EPA, Research Triangle Park, North Carolina 27711, (919) 541-5540.

ADDRESSES: Room 2409, EPA, 401 M Street, SW., Washington, D.C. 20460.

Background material for this action is located in Docket A-83-49, West Tower Lobby Gallery, EPA, 401 M Street, SW., Washington, D.C. 20460. The docket may be examined between 8:00 a.m. and 4:00 p.m. on weekdays. A reasonable fee may be charged for photocopying. All written comments should be submitted (in duplicate, if possible) to: Central Docket Section, Docket A-83-49, EPA, 401 M Street, SW., Washington, D.C. 20460.

SUPPLEMENTARY INFORMATION: On February 8, 1982 (47 FR 5864), EPA promulgated a regulation governing the extent to which tall stacks and other dispersion techniques may be considered in setting emission limitations for stationary sources. This regulation was challenged by the Sierra Club Legal Defense Fund, Inc., the Natural Resources Defense Council, Inc. (NRDC), and the Commonwealth of Pennsylvania (*Sierra Club* v. *EPA*, 719 F.2d 436) and, on October 11, 1983, the U.S. Court of Appeals for the D.C. Circuit issued a decision reversing two portions of the regulation, remanding certain other portions to EPA for reconsideration, and imposing a deadline of January 18, 1985, for the promulgation of revised rules. Revisions to the regulation, responding to the court decision, were proposed on November 9, 1984 at 49 FR 44878. That notice describes the court decision and the proposed revisions in greater detail.

Subsequent to the proposal, EPA received a request for a public hearing and several requests for extension of the 30-day public comment period. EPA granted these requests, and the Court of Appeals modified its schedule accordingly.

Since granting these last requests, EPA has received additional requests for further extension of the supplemental comment period beyond February 25. EPA and petitioners Sierra Club and NRDC are filing a joint motion requesting the court to extend the deadlines, including the close of the supplemental comment until March 11 and promulgation on June 13. If the court denies this request, EPA will modify the comment period as necessary to meet any court-mandated deadline.

Accordingly, supplemental comments may be submitted in writing no later than 4:00 p.m. on March 11, 1985 to: Central Docket Section, Docket No. A-83-49, EPA, 401 M Street, Washington, D.C. 20460.

List of Subjects in 40 CFR Part 51

Administrative practice and procedures, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Hydrocarbons, Carbon monoxide.

Dated: March 4, 1985.

Charles L. Elkins,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 85-5576 Filed 3-7-85; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 298

Obligation Guarantees

AGENCY: Maritime Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The notice of proposed rulemaking (NPRM) on obligation guarantees was published on August 18, 1983 (48 FR 37453-37464). Elsewhere in this issue, the Department of Transportation is publishing a final rule prescribing conditions, terms and procedures for applying for and administering Federal ship financing assistance in the form of obligation guarantees. [An "obligation guarantee"

is a pledge of the full faith and credit of the limited States to the payment of the unpaid principal and interest on the guarantee of a note, bond, debenture, or other evidence of indebtedness as defined in the Merchant Marine Act, 1936.] This notice asks for comments on the following issues: procedures for the calculation of the internal rate of return, used to assist in determining the economic soundness of a project proposed for an obligation guarantee; and the anticipated economic impact of the proposed requirement. This notice also requests comment on proposed changes to confidential information disclosure and insurance reporting requirements pertaining to obligation guarantee applications. It is anticipated that a final decisions on this rulemaking will be made expeditiously.

DATE: Comments on this notice must be received on or before April 8, 1985.

ADDRESS: One original and one copy of the comments should be sent to the Secretary, Maritime Administration, Room 7300, Department of Transportation, 400 Seventh St., SW., Washington, D.C. 20590. Any commentor who wishes an acknowledgment of receipt by MARAD should include a stamped, self-addressed post card or envelope. All comments will be made available for inspection during normal business hours in Room 7300, Department of Transportation, 400 Seventh St., SW., Washington, D.C. (Nassif Building).

FOR FURTHER INFORMATION CONTACT: James L. Westcott, Director, Office of Ship Financing, Maritime Administration, 400 Seventh St., SW., Washington, D.C. 20590, (202) 382–0389.

SUPPLEMENTARY INFORMATION:

Background

Section 298.14 of the existing rule on obligation guarantees provides that no letter of commitment for an obligation guarantee will be issued by MARAD without finding that the proposed project will be economically sound. It also provides that economic soundness be determined by considering factors including, among other things: the vessel's potential for employment in the market over the life of the guarantee, projected revenues and expenses of operation, the length of the guarantee period and any charters or transportation agreements. An NPRM was issued on obligation guarantees on August 18, 1983 (48 FR 37453). In § 298.14 of the NPRM, MARAD proposed that certain "objective criteria" be added to the existing rule for the determination of economic soundness by MARAD.

To demonstrate economic soundness, MARAD proposed in the NPRM that the applicant submit a cash flow analysis statement including, among other things, an internal rate of return (IRR) analysis. Each project would have to meet certain objective criteria to be considered economically sound: the projected long-term demand for the vessels to be financed must exceed the supply of vessels with similar capacity in applicable markets; the project's projected cash flow must be sufficient to meet the projected Title XI debt service requirements; the present value of the projected cash flow must be positive, using a ten percent discount rate; and the IRR analysis must provide a minimum real rate of return of ten percent.

MARAD included the proposed requirement that applicants provide an IRR of at least ten percent to aid it in evaluating the relative merits of competing applications, and promote uniformity in the procedures followed and the format used by applicants seeking financial assistance under the Title XI program. An IRR analysis shows the relative projected profitability of a proposed project, and whether the facilities or equipment to be acquired, rehabilitated, improved, constructed, developed, or established with the proceeds of the obligation will be economically and efficiently used.

Calculation of the IRR

Although comments were specifically invited on the merits of using an IRR analysis in evaluating Title XI applications, no specific comments were requested on procedures for calculation of the IRR. Moreover, the NPRM did not clearly indicate what procedures for IRR calculation were being proposed by MARAD nor the relative merits of any particular procedures.

MARAD believes applicants should have clear and precise procedures for complying with an IRR analysis requirement. It is convinced that specific, clear procedures would produce more accurate and complete information that will assist its selection of successful applicants.

In this NPRM, MARAD is proposing procedures for calculation that would be based on the total project cost. These procedures, involving calculation of the ten percent IRR based on the total project cost, follow procedures and application formats similar to those used by applicants for loan guarantees issued by the Federal Railroad Administration under Title V of the Railroad Revitalization and Regulatory Reform Act of 1976, as amended (49 U.S.C. 1651 *et seq.*) (Pub. L. 94–210).

When commenting on these procedures, commenters should also consider the following question: are there any other methods of calculating the ten percent IRR that would be preferable to the one discussed in this notice?

An IRR analysis requirement has been included in the final rule although the procedures for calculation are in this proposal. After reviewing the comments that are received on this NPRM, it is anticipated that a final decision on this rulemaking will be made quickly.

Amendments to Confidential Information Disclosure Provision

MARAD also proposes to revise paragraph (d)(2) and delete paragraph (d)(3) of § 298.3 which concern applicant claims of exemption from disclosure under the Freedom of Information Act (FOIA) (5 U.S.C. 552). The proposed revision to paragraph (d)(2) would change the requirement that MARAD make a determination on an applicant's claims of exemption at the time the application is filed. MARAD has found this requirement to be administratively burdensome and to impede expeditious processing of applications. Claims for exemption instead would be reviewed and a determination made at the time a specific request for information is made pursuant to the FOIA by a third party. The present requirement that the applicant assert a claim of exemption from the disclosure provisions of FOIA at the time of filing will not be affected by the proposed revision.

The proposed deletion of paragraph (d)(3) would eliminate the requirement that this information be returned if the applicant receives an unfavorable exemption determination and desires to have it returned. MARAD has found it to be administratively burdensome to collect and return voluminous materials by mail to applicants. It assumes that applicants will have retained copies of such important material.

Insurance Reporting Requirements

This proposed provision (§ 298.42) would require a Title XI obligor to furnish statements from its insurance underwriter(s) or broker(s) confirming that the company is current on its payment of premiums and indicating the effective term of the insurance. Under current practice, MARAD may never be notified that a Title XI obligor has allowed an insurance policy to lapse. This means that the collateral securing the loan guarantee could be accidentally destroyed and the Secretary could not recover on the loss.

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Regulatory Evaluation and Regulatory Flexibility Act Determination

The proposed rulemaking has been evaluated under Executive Order 12291, "Federal Regulation," dated February 17, 1981, and the Department of Transportation's Regulatory Policies and Procedures, dated February 26, 1979 (DOT Order 2100.5). The proposal is not considered to be a major rule because it would not have an annual effect on the economy of $100 million or more; cause a major increase in costs or prices for consumers, individual industries, government agencies or regions or have a significant adverse effect on competition or any other aspects of the economy. MARAD believes that since many applicants presently perform IRR analyses of prospective projects in order to make their investment decisions, they will incur only minor administrative cost in complying with any final regulation. MARAD estimates the total annual administrative cost of compliance with these computation requirements to be $1,491 per applicant, per project. MARAD estimates the total annual administrative cost of preparing and submitting the semiannual insurance confirmation to be $1,500 per applicant per project.

However, MARAD did not have accurate information relating to the essential variables that would be needed to determine the economic impact on a company of these requirements or to conduct a cost-benefit analysis. Such variables might include the accounting methods used, and how a company treats non-marine assets. MARAD is, therefore, specifically requesting comments from the public on the likely economic impact if this proposed rule is adopted. At this time, despite the fact that MARAD lacks the information needed to determine the economic impact of any rule on this subject MARAD believes a full regulatory evaluation is unnecessary.

The proposal is considered to be significant under DOT Order 2100.5 because it concerns a matter on which there is substantial public interest. Since the great majority of applicants for Title XI obligation guarantees have revenues far in excess of the existing Small Business Administration criteria for a small business under the classification of "transportation and warehousing" (13 CFR 121.3–3.10(f)), the Maritime Administrator certifies that this rulemaking would not, under the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) exert a significant economic impact on a substantial number of small entities.

The proposed rulemaking contains information collection requirements in the following sections: § 298.14 and § 298.42. They have been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act of 1980. (44 U.S.C. 3501 *et seq.*) Persons desiring to comment on these information collection requirements should submit their comments to: Office of Regulatory Policy, Office of Management and Budget, 726 Jackson Place, NW., Washington, D.C. 20503, ATTN: Desk Officer, Maritime Administration. Persons submitting comments to OMB are also requested to submit a copy of their comments to the Maritime Administration as indicated under "**ADDRESSES.**"

List of Subjects in 46 CFR Part 298

Banks, Banking, Loan programs, Transportation, Maritime carriers, Mortgages, Mortgage insurance, Uniform system of accounts, Vessels.

PART 298—[AMENDED]

For the reasons set out in the preamble, Part 298, Subparts A, B, and E Chapter II of Title 46, Code of Federal Regulations are proposed to be amended as follows.

Section 298.14 is amended by adding a paragraph (b)(4) to read as follows:

§ 298.14 Economic soundness.

* * * * *

(b) * * *

(4) The project shall have at least a ten percent (in real terms) internal rate of return using the following computation procedures:

(i) A detailed narrative description of the project. This description must present the following: The objectives of the project, e.g., what vessels will be constructed, reconstructed, or reconditioned, and how they will be used. It must also describe any other work to be done as part of the project, and any operating changes, including retirement of assets, which will accompany the investment. For these purposes, the project shall be deemed to include all expenditures (including those for which no Federal assistance is requested) necessary to carry out its objectives.

(ii) A detailed narrative description of the base case. The base case is the most favorable alternative action the applicant could take with little or no investment. The description must be comparable in scope to the description of the project. In some cases, the most favorable alternative action may be to do nothing, i.e., make no change in the current situation. In other cases, the applicant may take other alternative actions such as rerouting traffic, changing operating practices (perhaps with an increase in operating costs), or relying more heavily on vessels or equipment belonging to others. The applicant shall consider such alternative proposals as different ship designs, modification of existing vessels versus' new equipment, and analysis of leasing versus direct ownership. If the applicant has considered more than one alternative action (requiring little or no investment) to the project, the applicant must describe each of the actions considered and give the rationale for the selection of the base case from among those other actions.

(iii) A narrative discussion of key assumptions. All general assumptions and those relating only to a particular cash flow impact which substantially affect the IRR should be explained. Assumptions regarding traffic volumes deserve particular attention. The applicant must specify how much revenue is expected if the project or base case are undertaken, and where the difference, if any, between the project and base case is expected to come from. Other key assumptions may relate to actions by third parties, such as regulatory agencies. The applicant shall conduct a sensitivity analysis that takes into account the applicant's historical market share, past market fluctuations, availability of long-term charters, potential government actions, especially in areas of intended foreign operations.

(iv) A narrative discussion of each cash flow impact resulting from the project or base case. The applicant must identify all the cash receipts and disbursements resulting from the project but not the base case, and vice-versa. Cash flows which would be the same in either event should not be considered. For each cost and benefit used in the IRR computations, the applicant must explain why the particular cash flow will result from the project or base case, and how the size of the cash flow and the corresponding measure in physical units were estimated. In addition, the applicant must identify and discuss important costs and benefits which it has not been able to quantify. The applicant must note which of the benefit and cost items could be measured to confirm the predictions in the IRR computation, and must suggest how such measurements could be made. (Appendix A of this subpart lists the most common cash flow impacts of investment projects and base case alternatives, indicates the kinds of actions likely to involve a type of cash

flow, suggests how each might be measured (both in physical and monetary units), and discusses special problems associated with each. Appendix A is not exhaustive; other cash flow items should be included in the analysis as appropriate.)

(v) A discussion of the principal areas of uncertainty. This discussion must indicate why particular values might be different from those used in the computation, and the range into which each uncertain value could be expected to fall. It must also indicate the applicant's subjective level of confidence that the computed IRR is a reasonably close prediction of the project's and base case's financial performance. In some circumstances, the applicant must point out where the IRR fails to incorporate certain important features of the project or the base case, or both. The applicant may enhance its discussion by presenting examples of its own prior experiences with IRR, stating, perhaps, that an audit of past computations has shown marked deviations from actual results regardless of the detail of those computations.

(vi) For the project, (as it relates to its base case alternative), a thorough presentation of all the computations underlying the IRR using the Forms I–V of Appendix B to this subpart shall be prepared and provided. State and local tax impacts need not be included in the computations, unless the applicant has determined that their inclusion substantially affects the IRR. The computation of the IRR must follow the four steps described below. (This procedure cannot be used if the project consists of replacing an asset, usually equipment, which would otherwise remain in service (at high cost) for only a few more years. In that situation, the lifetime of the project (the new asset) is substantially longer than the lifetime of the base case (the old asset), so that it is not possible to get a differential cash flow in every year of the project's life. A possible approach for handling such cases is to determine the discount rate which gives the same average annual cost per unit of output for both the project and the base case.)

(A) *Step 1:* the applicant must determine, for each year of the project's expected useful life, up to a maximum of 25 years (unless the cash flow impacts of later years would substantially affect the IRR), both the project's and base case's before-tax cash flow impacts (receipts and disbursements). The cash flow estimates must be done in constant dollars. The effects of financing must also be excluded; that is the cash flows must be estimated as if the required cash were immediately available at no cost.

(*a*) The various cash flow impacts for this step 1 must be shown on Forms I through V of Appendix B as explained below. On Forms I through V, cash flow impacts occurring in the first year of the project and base case are assigned to and recorded in the time period year 1. Cash flows in subsequent years are all assigned to and recorded in the year in which they occur regardless of whether they occur at the beginning or end of the year. For purposes of assigning and recording cash flow impacts of the project and base case, it will be assumed that the project's starting date and, thus, the commencement of year 1 begins as of the first of the January following the year in which an application for financial assistance is filed.

(*b*) Capitalized investments which would occur as a part of the project but not in the base case must be entered in Column 1 of Form I. The capitalized investment includes capitalized engineering work, installation expenditures and other startup costs allowable in reporting to the IRS. The total investment for the project must be divided into portions which are homogeneous with respect to depreciation method (if depreciable), depreciation period (if depreciable), year in which the assets enter service, and whether the assets qualify for investment tax credit. (If applicant has a considerable tax credit carry forward, the tax credit must be shown only in the year or years it will result in a reduction of tax payments). A separate form should be completed for each such portion. Similarly, a set of Forms I must be completed for a capitalized investment which would be made as part of the base case but not the project.

(*c*) Sales of released assets (as useful assets or as scrap), which would occur as a part of the project or the base case, must be entered in Column 1 of Form II. As was the case for the capitalized investments, there must be a separate Form II for each portion of the assets sold, such that each portion is homogeneous with respect to tax treatment and year of sale. Form II must also be completed for retirements of assets, even though the sale price is zero, if the retirement will affect the applicant's income taxes and thereby the applicant's cash flow. The sale or retirement of an asset at the end of the project's life, if the cash flow impact is substantial enough to merit inclusion in the computation, must also appear on one or more Forms II. (If a project would continue an asset already owned in its prior use but the base case would put the asset to an alternative use, and if the cash flow from that alternative use is difficult to determine, the applicant may do the analysis as if the asset were to be sold in the base case at its fair market value when put to the alternative use. Similarly, if the base case would continue the asset in its present use but the project would result in the asset being employed in an alternative use, the anticipated cash flow of which would be difficult to determine, the asset in the project may be treated as a sale at fair market value in the IRR computations. In either event, the market value of the asset otherwise put to an alternative use would be entered in Column 1 of Form II and the asset in its current use (in either the project or base case, as the case may be) would be recorded, as to continuing depreciation and income tax credit, if any, on Form I and, as to expenses and contribution to profit, on Form III. However, whenever possible, the anticipated cash flow of the alternative use, whether in the project or base case, should be entered on Form III rather than treated as a theoretical sale at a fair market value).

(B) *Step 2:* the applicant must compute the annual cash flows after Federal income tax corresponding to each of the before-tax flows recorded on each Form I and Form II in the previous step. If the applicant expects to pay taxes in some years but not others, the applicant will undoubtedly carry forward (or back) the tax losses and credit from years in which no tax was paid, so as to take full advantage of them. In that case, the applicant must estimate when such tax benefits will actually be received, and include them in the cash flow stream at the appropriate time. The appropriate tax rate for such computations is the applicant's marginal tax rate. This is the rate which would apply to one additional dollar of income earned by the applicant. The average or effective tax rate (found by dividing firm's actual tax payments by its net income before taxes) is not appropriate for this purpose. If the computations assume the applicant will not pay taxes in certain years, then those assumptions must be explained in the discussion of key assumptions. The tax-related computations must be shown on the same forms as were used to record the pretax cash flows. Additional working papers should be submitted as necessary to clarify the computations. The computations to be done on the two forms are as follows:

(*a*) On each Form I, the applicant must indicate in Column 2 the depreciation schedule which it expects to use in

reporting to the IRS. In Column 3, the applicant must indicate how much its tax bill will be reduced as a result of the depreciation shown in Column 2. In Column 4, the applicant must indicate the tax reduction, if any, it expects from investment tax credit. (The effect of the tax credit must be computed using the flow-through method, in which investment credits are generally treated as reductions in income tax expense of the year in which the credits are actually realized, rather than being deferred and amortized over the productive life of the acquired property.) Column 5 is the net after-tax cash flow associated with the investment.

(*b*) On each Form II, the applicant must indicate in Column 2 the increase (or decrease) in its Federal income tax payments resulting from the difference between the sale price and the book value of assets to be sold by reason of the project or base case. If an asset is released without a sale or a corresponding writedown of book value, Form II is not used, but Form I is used to reflect continuing depreciation as before the release. In Column 3, the applicant must record any recapture of investment tax credit by the IRS. Finally, Column 4 records the net cash flow in or out.

(C) *Step 3:* The applicant must determine the project's aggregate after-tax cash flow using Form IV. This shall be done as follows:

(*a*) For each year, the corresponding after-tax cash flow (Column 5 on the various Forms I on which the "project" box was checked are summed, and the total entered into Column 1 of Form IV. Then the net after-tax cash flows on the base case Forms I are summed and entered into Column 2 of Form IV.

(*b*) Similarly, the project and base case Forms II (Column 4) are consolidated and entered into Columns 3 and 4, respectively, of Form IV.

(D) *Step 4:* The applicant shall enter the operating income for the project and the base in Form III for each year of the project's life and shall determine and enter the after-tax cash flow. If the applicant expects to pay no Federal income tax, columns three and four will be identical. If the applicant expects to pay taxes in some years but not other, the applicant must incorporate the effects of carrying losses forward (or back) into the estimated after-tax cash flow. The aggregate net cash flow for the project relative to the base case is then found and entered on Form IV.

(E) *Step 5:* The aggregate net cash flow for the project relative to the base case is then found and entered in Column 7 of Form IV. All estimates shall be in constant dollars.

(F) *Step 6:* The applicant must determine the discount rate for which the present value of the differential cash flow stream is zero. Computer programs for calculating the rate of return are widely available. If a program is utilized, copies of the printout showing input and output data, and a brief explanation of the program function must be included in the application. The applicant should furnish:

(*a*) Copies of all financial analyses which the applicant did on rejected alternatives to the project, including changes in scale or scope. The applicant need not do any such analyses beyond those already done, nor need the format, assumptions, or procedures used in those analyses be changed to conform to the requirements of these regulations, and

(*b*) A reconciliation between the cash flows used in the IRR computations and all forecasted data presented in the application, both before (for the base case) and after (for the project). This reconciliation must indicate what inflation factor or factors were used in developing the forecasted financial statements as compared to the constant dollar figures used in the IRR computations. The reconciliation must also show how each of the individual parts and subparts of the project relates to the applicant's forecasted financial statements.

In § 298.3, paragraph (d)(3) is removed and (d)(2) is revised to read as follows:

§ 298.3 Application.

* * * * *

(d) * * *

(2) The Secretary, Maritime Administration, shall make a determination as to any claim of exemption at the time a request is made for the information pursuant to the Freedom of Information Act. If the Secretary, Maritime Administration makes a determination unfavorable to the applicant as to any item of information in the application or amendment, the applicant will be advised that the Maritime Administration will not honor the request for confidentiality at the time of any request for production of information made pursuant to the Freedom of Information Act by third parties.

Section 298.42 is amended by adding paragraph (c) to read as follows:

§ 298.42 Reporting requirements—financial statements.

* * * * *

(c) The Company shall furnish, along with its semi-annual report, a letter of confirmation issued by its insurance underwriter(s) or broker(s) that the Company has paid premiums on insurance applicable to the preservation, protection and operation of the asset, which confirmation shall state the term for which the insurance is in force.

Appendices A and B are added to Subpart B of the 46 CFR Part 298 to read a follows:

Appendix A to Subpart B—Selected Cash Flow Impacts

Investments usually affect the investor's cash flow by changing some of the following things:

Use of assets.

Labor requirements.

Requirements for trailers, and containers.

Energy consumption.

Expenditures needed to meet legal requirements.

Salvage value.

While this list is not exhaustive it does identify the most common cash flow impacts.

Some of the items listed are almost always costs of projects or base cases, rather than benefits. Others, such as salvage items, however, may be either project or base case benefits or costs, depending on the particular situation.

Use of Assets

Characteristic Actions: Assets are often released for sale or alternative uses when they are replaced or made unnecessary by new assets.

Monetary Value: The value of an asset released by an action depends on what will be done with it. Depending on the particular circumstances, any of the following might be involved: Payment received from selling the asset; a multi-year stream of income produced by the asset in some use; tax paid on the sale of the asset; expenditure for dismantling and/or moving the asset; recapture by the IRS of investment tax credit taken when the asset was purchased.

In cases in which the assest is transferred to another use which provides income over several years, the effect of releasing the asset extends over several years, and must be expressed as a series of annual cash flows, rather than a lump sum.

Labor Requirements

Characteristic Actions: Labor requirements are often reduced by automation or facility consolidation.

Physical Units: Man-hours, number of employees.

Monetary Value: The value of labor depends on the particular situation. If the action results in a change in the number of employees or in overtime hours, the wages and fringe benefits associated with that change directly affect the cash flow.

Requirements for Trailers, and Containers

Characteristic Actions: Actions which change turnaround time.

Energy Consumption

Characteristic Actions: Actions changing efficiency.

Monetary Value: Found by multiplying the fuel by the current price per unit.

Salvage Value.

Characteristic Actions: Acquisition of new assets or disposal of existing assets.

Physical Units: List of the particular assets involved.

Monetary Value: The cash flow resulting from disposing of the assets or using them elsewhere.

When salvage values are small relative to other benefits and costs, and when they are heavily discounted (because they occur far in the future), their impact on the IRR is likely to be negligible. In such cases, the salvage value can be safely ignored.

Expenditures Needed to Meet Legal Requirements

Characteristic Actions: Actions permitting abandonment of old vessels or equipment may reduce the need for such expenditures. New vessels may make some such expenditures unnecessary.

Appendix B to Subpart B—Forms To Be Used in Computing IRR

Form 1—Analysis of Capitalized Investment (Constant Dollars)

Applicant _____
Project _____
Date _____
Sheet No. _____ of _____
Portion of investment covered by this sheet _____
Depreciation method used _____
Depreciation Period _____
This investment would occur in the ☐ Project ☐ Base case (check one)

Year	(1)—Amount capitalized	(2)—Depreciation	(3)—Tax reduction from depreciation	(4)—Tax reduction from investment tax credit	(5)—Net cash flow in (out)
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					
13					
14					
15					
Totals					

INSTRUCTIONS

Use separate forms for portions of the investment which would receive different tax treatment or which would enter service in different years.

Estimate amounts in cols. 1–4 as would be done in reporting to IRS.

Col. 5 equals col. 3 plus col. 4 minus col. 1.

Form II—Analysis of Sale or Retirement of Assets (Constant Dollars)

Applicant _____
Project _____
Date _____
Sheet No. _____ of _____
Assets covered by this sheet _____
Depreciation method used _____
Depreciation Period _____

Book value of assets at time of sale _____
This sale would occur in the ☐ Project ☐ Base case (check one)

Year	(1)—Sale price	(2—Tax on gain (for tax saving on loss) from disposal	(3)—Tax credit recapture	(4)—Net cash flow in (out)
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
Totals				

INSTRUCTIONS

Use a separate form for each portion of the assets which would receive different tax treatment or be disposed of at different times.

Estimate amounts in cols. 1–3 as would be done in reporting to IRS.

Col. 4 equals col. 1 minus col. 2 (plus col. 2 if a tax saving occurs) minus col. 3.

Form III—Analysis of Operating Income

Applicant _____
Project _____
Date _____
Sheet No. _____ of _____

Year	(1)—Operating revenues	(2)—Operating expenses	(3)—Pretax net operating income	(4)—After-tax operating income
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
Totals				

Form IV—Consolidation of Cash Flows (Constant Dollars)

Applicant _____
Project _____
Date _____
Sheet No. _____ of _____

Year	Form I—Totals		Form II—Totals		Form III—Totals		(7)—Net cash flow in (out)
	(1)—Project	(2)—Base case	(3)—Project	(4)—Base case	(5)—Project	(6)—Base case	
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							
11							
12							
13							
14							

Year	Form I—Totals		Form II—Totals		Form III—Totals		(7) –Net cash flow in (out)
	(1)—Project	(2)—Base case	(3)—Project	(4)—Base case	(5)—Project	(6)—Base case	
15							
Totals							

INSTRUCTIONS
Cols. 1 through 5 are found by summing the right most columns on the indicated forms.

Form V—Computation of IRR (Constant Dollars)

Project _____ Sheet No. _____ of _____

Date _____

Applicant _____

Year	(1)—Cash flow	Present value					
		Factor	(2)—Value at 10 pct	Factor	(3)—Value at 25 pct	Factor	(4)—Value at 40 pct
1		0.909		0.800		0.714	
2		.826		.640		.510	
3		.751		.512		.364	
4		.683		.410		.260	
5		.621		.328		.186	
6		.564		.262		.133	
7		.513		.210		.095	
8		.467		.168		.068	
9		.424		.134		.048	
10		.386		.107		.035	
11		.350		.086		.025	
12		.319		.069		.018	
13		.290		.055		.013	
14		.263		.044		.009	
15		.239		.035		.008	
Total							

PRESENT VALUE OF CASH FLOW STREAM

IRR = _____

INSTRUCTIONS
1. Col. 1 is brought from form IV col. 7
2. Cols. 2, 3, and 4 are found by multiplying col. 1 each time by the indicated factor.

(Sec. 204(b) and 1109, Merchant Marine Act, 1936, as amended (46 U.S.C. 1114(b), 1279(b)) Pub. L. 97-31, August 6, 1981, 49 CFR 1.66)

Dated: January 31, 1985.

Murray A. Bloom,

Acting Secretary—Maritime Administration.

[FR Doc. 85-5508 Filed 3-7-85; 8:45 am]

BILLING CODE 4910-81-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[CC Docket No. 83-1145, Phase I, FCC 85-59]

Investigation of Access and Divestiture Related Tariffs

AGENCY: Federal Communications Commission.

ACTION: Order requesting comments.

SUMMARY: This Order addresses the issues raised in the petitions for reconsideration of the *Investigation of Access and Divestiture Related Tariffs*, CC Docket No. 83-1145, Phase I, 49 FR 9174, Mar. 12, 1984; *Investigation of Access and Divestiture Related Tariffs*, CC Docket No. 83-1145, Phase I, 49 FR 13075, Apr. 2, 1984; *Investigation of Access and Divestiture Related Tariffs*, CC Docket No. 83-1145, Phase I, 49 FR 19821, May 10, 1984; *Investigation of Access and Divestiture Related Tariffs*, CC Docket No. 83-1145, Phase I, 49 FR 23924, June 8, 1984. In response to petitions that objected to the exchange carriers' proposals to route all undesignated interexchange traffic to the American Telephone and Telegraph Company, the Commission invites comments on whether it is reasonable to route all "default" traffic to one particular interexchange carrier. Commenters supporting this "default" traffic method are requested to come forward with justification for this practice and explain why alternative plans are unworkable or unreasonable. Those parties supporting alternative plans such as *pro rata* allocation should explain how such plans would work, and should address questions relating to the implementation of suggested alternative plans. They should show, for example, how undesignated traffic would be handled, and whether it would be necessary to use balloting procedures to obtain initial presubscription results.

DATES: Comments are due April 4, 1985, and Reply Comments on or before April 15, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Joanne M. Salvatore, Tariff Division, Common Carrier Bureau (202) 632-6917.

Memorandum Opinion and Order on Reconsideration

In the matter of Investigation of Access and Divestiture Related Tariffs; CC Docket No. 83-1145, Phase I.

Adopted: February 14, 1985.
Released: February 25, 1985.

By the Commission: Commissioner Patrick issuing a separate statement.

I. Introduction and Background

1. In October 1983 we received over 200,000 pages of tariffs and associated support material filed in response to the divestiture of the American Telephone and Telegraph Company (AT&T) and the implementation of our access charge decisions. This proceeding was instituted at that time to facilitate review of these tariffs. *Investigation of Access and Divestiture Related Tariffs*, CC Docket No. 83-1145, FCC 83-470

(released October 19, 1983). Four months later, after a thorough review of comments received from dozens of parties, we found the access service tariff filed by the National Exchange Carrier Association to be unlawful. *Investigation of Access and Divestiture Related Tariffs*, CC Docket No. 83–1145, Phase I, FCC 84–51 (released February 17, 1984) (*ECA Tariff Order*). Shortly thereafter, the Chief, Common Carrier Bureau, issued a similar order covering the initial access service tariffs of 74 other local exchange carriers. *Investigation of Access and Divestiture Related Tariffs*, CC Docket No. 83–1145, Phase I, Mimeo No. 2802 (released March 7, 1984) (*Non-ECA Tariff Order*). Both tariff orders contained lengthy appendices of approximately four hundred pages, each setting forth a section-by-section analysis of the tariffs, and providing carriers with detailed instructions for revising and refiling their access tariffs.

2. As directed by the *ECA Tariff Order* and *Non-ECA Tariff Order*, the exchange carriers refiled their access service tariffs in March 1984, with a scheduled effective date of April 3, 1984.[1] An initial examination of the refiled tariffs revealed that substantial questions of lawfulness remained unresolved. Accordingly, we deferred the effective date of the refiled tariffs from April 3 until June 13, 1984, and established an extended schedule for public comment on the tariffs. *Investigation of Access and Divestiture Related Tariffs*, CC Docket No. 83–1145, Phase I, FCC 84–106 (released March 15, 1984) (*Extension Order*). We found, moreover, that the the Special Access portions of the tariffs presented particularly difficult questions of reasonableness. Therefore, the *Extension Order* established a separate pleading cycle for Special Access related matters.[2]

3. Our investigation of the non-Special Access portions of the tariffs confirmed that, despite considerable improvement, the tariffs were still unlawful. Accordingly, a third tariff order was issued. *Investigation of Access and Divestiture Related Tariffs*, CC Docket No. 83–1145, Phase I, FCC 84–188 (released April 27, 1984) (*April 27th Order*). As in the earlier tariff orders, the *April 27th Order* set forth a section-by-section analysis of the regulations contained in the ECA and Non-ECA tariffs. We again included detailed instructions for refiling the tariffs, but did not address questions relating to rates. Instead, we resolved cost-related questions in yet another separate order. *Investigation of Access and Divestiture Related Tariffs*, CC Docket No. 83–1145, Phase I, FCC 84–201 (released May 15, 1984) (*Cost Order*). Finally, by revising their tariffs in substantial compliance with these orders, exchange carriers were able to begin offering all access services (other than Special Access) on May 25, 1984.

4. During the course of this investigation, we have received a number of petitions for reconsideration of various aspects of the *ECA Tariff Order*, the *Non-ECA Tariff Order*, the *April 27th Order* and the *Cost Order* ("tariff orders").[3] These petitions were filed by both exchange carriers and their access service customers (principally, interexchange carriers or "ICs"). The petitioners express overall satisfaction with our handling of the access tariffs during this long and complex proceeding. Nevertheless, the petitioners seek reconsideration of a number of particular decisions in those orders. For example, the exchange carriers submitting petitions for reconsideration (Bell Atlantic, CENTEL, Pacific Bell and Nevada Bell, and NYNEX) generally assert that we should reconsider portions of the tariff orders that found certain provisions unreasonable.[4] On the other hand, access customers such as Allnet, ALTEL, SBS, and USTEL assert that we did not go far enough in requiring deletion or modification of certain other tariff provisions.

II. Discussion of Issues

5. In the *ECA Tariff Order*, the *Non-ECA Tariff Order* and the *April 27th Order*, we adopted a "modular" format for review of the access service tariff filings. After a general overview of the tariffs and a brief textual discussion of certain issues, each tariff order analyzed particular access service provisions within individual "modules." These modules were grouped by tariff section (*e.g.*, general regulations, ordering provisions, switched access service) and set forth in appendices to the tariff orders. Essentially, this format allowed a section-by-section review of the tariffs that followed the structure of the tariffs themselves. Although the present order is concerned with petitions for reconsideration of the tariff orders, and not the tariffs themselves, we will again use a "modular" format to analyze issues raised by the petitioners. These modules are set forth in Appendix B.

6. In general, we have affirmed our earlier orders in this proceeding. The actual experience gained in the past months by carriers, customers and this Commission has shown that the access tariffs, as revised, are indeed a workable means of implementing our access charge rules. In some cases, however, we are persuaded that certain revisions may be made to the findings of the tariff orders. For example, one area that was of particular concern to us when we reviewed the October 1983 tariff filings related to the carriers' proposed access ordering procedures. In particular, we were concerned that the "Planned Facilities Order" (PFO) ordering mechanisms would have unduly shifted the burden of network planning to customers. Under the PFO provisions, customers ordering access facilities not in inventory would have been required to place orders from 24 to 36 months in advance, with 12 month service charge pre-payment and 24 month minimum service periods. There was no clear distinction, however, between facilities that would be in "available inventory" and those that would require special planned orders. We were concerned that small customers needing only a few circuits could potentially be required to order all facilities under the PFO process, while large customers who ordered hundreds of circuits, perhaps depleting "available inventory," would obtain the same types of facilities under normal ordering conditions. Moreover, the PFO provisions were one-sided. While customers using PFOs would be subject to substantial advance payment and minimum service periods, the provisions

[1] Pursuant to a waiver granted by the Chief, Common Carrier Bureau, the Matanuska, Orchard Farm, Walnut Hill, Citizens and Fidelity and Bourbeuse Telephone Companies, and Anchorage Telephone Utility filed revisions to their access service tariffs after the March 19, 1984 filing deadline established for non-NECA carriers. Those tariffs, as revised, were allowed to become effective on October 16, 1984. *Anchorage Telephone Utility*, CC Docket No. 83–1145, Phase I, Mimeo No. 0294 (released Oct. 18, 1984).

[2] The carriers' March 1984 Special Access filings were recently found to be unlawful. Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83–1145, Phase I and Phase II, Part I, FCC 84–524 (released Nov. 9, 1984) (*Special Access Order*).

[3] A list of parties filing petitions for reconsideration, along with various commenters and reply commenters, is attached as Appendix A.

[4] In some cases, exchange carriers sought interim relief from various aspects of the tariff orders by submitting petitions for waiver. The majority of these petitions were addressed in three waiver orders issued in this proceeding by the Chief, Common Carrier Bureau. *See* Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83–1145, Phase I, Mimeo No. 2964 (released Mar. 10, 1984) (*First Waiver Order*); Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83–1145, Phase I, Mimeo No. 4250 (released May 16, 1984) (*Second Waiver Order*); Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83–1145, Phase I, Mimeo No. 4246 (released May 16, 1984) (*Third Waiver Order*). Similar petitions for waiver that were not included in this scope of these waiver orders were resolved on an informal basis.

did not set any incentives for exchange carriers to actually meet the promised service dates. For these reasons we instructed carriers to delete provisions relating to Planned Facilities Orders.

7. As discussed below in Appendix B, we have determined that it may be possible for carriers to implement a planned facilities ordering mechanism in their access tariffs. It appears that both exchange carriers and access customers would benefit from a truly optional ordering mechanism for handling extraordinary service requests. Moreover, at least one access customer, MCI, expresses a willingness to commit to extraordinary minimum service periods and advance payment obligations in return for guaranteed delivery of facilities. We continue to be concerned that all access customers, including smaller interexchange carriers, should be able to obtain service under normal ordering conditions upon reasonable request. Nevertheless, we have reconsidered our decision in the *ECA Tariff Order* with respect to planned facilities orders, thus allowing carriers to propose reasonable, non-discriminatory PFO provisions in their March 1985 access service tariff filings.[5]

8. Exchange carriers also sought reconsideration of several decisions in the *ECA Tariff Order* and *April 27th Order* that dealt with the level and structure of various nonrecurring charges for access service. For example, in the absence of adequate cost support information, we limited carriers to a nonrecurring charge of five dollars for end users seeking to change their predesignated (presubscribed) interexchange carrier. *April 27th Order*, App. B at 13–5. We also required carriers to delete a proposed "Other Modification Charge" for access order modifications, *ECA Tariff Order*, App. D at 5–19, and we further required carriers to restructure nonrecurring charges relating to installation of Switched Access Service. *Id.* at paras. 51–59. As originally filed, the tariffs set forth a charge for access service installation that was based on the capacity of the access service ordered. The levels for the proposed charge varied enormously among exchange carriers' tariffs, and we found that there was little correlation between the carriers' cost support material and the levels of the proposed charges. Moreover, we found that, as a structural matter, the carriers had failed to justify their proposed system of capacity-based installation charges. For example, while some of the costs of installing access service could be expected to vary with capacity ordered, other costs would not vary on this basis. In the absence of sufficient cost justification to support the proposed rates and rate structure, we required access carriers to delete the capacity-based charging system and replace it with a flat charge set at a level that would be no higher than the average charge for installation found in the OCC Facility Tariffs, which had governed similar installations prior to implementation of the access tariffs.[6]

9. The exchange carriers addressing this issue in petitions for reconsideration argue that they should be allowed to refile capacity-based nonrecurring charges for installation and other service activities. According to Pacific Bell and Nevada Bell, the capacity-based structure was intended to act as an equitable means of assessing installation charges to access customers, since customers would be charged the same for added capacity regardless of their size. At the same time, these petitioners argue that we should reconsider our decision to limit the level of installation charges to those found in the OCC Facility Tariffs. This limitation, in their view, results in charges that are "grossly inadequate" to cover the costs of installing service.

10. As discussed below, we agree that nonrecurring charges for installation should recover the costs of performing the various activities associated with installation. For that reason, we will allow carriers to file fully supported, nondiscriminatory charges for installation. We find however, that the petitions fail to provide convincing evidence that the exchange carriers' original proposals for capacity-based charges should be reinstated. As we noted in the ECA Tariff Order, it is unlikely that all of the up-front administrative costs of beginning service are related in any direct way to the capacity ordered. *Id.* at para. 57. The petitions do not attempt to segregate these costs in any way, nor do they attempt to show why the original system could be considered more equitable that a flat charge. Accordingly, these petitions will be denied in this respect. To the extent that carriers can show that some of the costs associated with installation and other one-time service activities vary as a function of capacity, they may submit tariff revisions incorporating reasonable, fully supported capacity-based charges for those segregated costs in the context of their March 1985 access tariff filings or by other tariff revisions.[7]

11. Although we have attempted to address as many tariff-related issues raised by the petitions for reconsideration as possible, in a number of cases we have found it necessary to defer certain questions until later phases of this proceeding. For example, this order does not address claims raised with respect to the Special Access portions of the *ECA Tariff Order*. As noted above, issues related to Special Access were separated from other areas of investigation by the *Extension Order*. Since that time, participants in this proceeding were given extensive opportunity to submit additional comments, and as a result, the Special Access tariffs have been thoroughly revised, and it appears that the Special Access related concerns raised by these petitions have been adequately addressed.[8] To the extent that parties have raised questions or claims in their petitions for reconsideration of the Special Access portions of the *ECA Tariff Order* that remain unaddressed either in the *Special Access Order* or by revisions to the tariffs, we are not foreclosing resolution of these issues in the Special Access phase of this investigation.

12. In some cases, we have found that the petitions for reconsideration raise questions that cannot be fully addressed on the basis of the record gathered to date in CC Docket No. 83–1145. For example, the *ECA Tariff Order* found that the cost support material submitted with the October 1983 tariffs failed to justify the exchange carriers' proposed charges for interstate directory assistance. In the interest of achieving workable tariffs, we prescribed an interim one-year charge no higher than 25 cents for the directory assistance service call element. *ECA Tariff Order* at para. 84. A number of the petitions for reconsideration received from exchange carriers argue that this prescription fails

[5] Some exchange carriers (Illinois Bell Telephone Company, Ohio Bell Telephone Company, Michigan Bell Telephone Company and Wisconsin Bell Telephone Company) have recently filed revised PFO provisions for their access service tariffs. These tariff revisions became effective on February 8, 1985.

[6] *See, e.g.*, Cincinnati Bell Inc. Tariff F.C.C. No. 34 (Facilities for Other Common Carriers, *cancelled* Jan. 1, 1984).

[7] With respect to nonrecurring charges for presubscription changes, the Common Carrier Bureau recently instituted an investigation of revised presubscription charges filed by Central Telephone Company of Nevada. *See* Central Telephone Company of Nevada, Transmittal No. 9, Mimeo No. 1374 (released Dec. 13, 1984).

[8] For example, Western Union's petition for reconsideration of the *ECA Tariff Order* raises a number of issues that relate to our decision on Special Access rate structures. In the Special Access phase of this proceeding, however, we determined that many of Western Union's structural concerns were resolved. *Special Access Order* at para. 14.

to allow them to recover the costs of providing this service, and request that we allow higher charges to go into effect. The petitions fail to provide any additional cost support for higher directory assistance charges, and we are therefore unwilling to grant them. Recently, however, the Chief, Common Carrier Bureau, directed NECA and all Bell Operating Companies filing access service tariffs to supply updated cost support information on the costs of providing interstate directory assistance. Letter of December 12, 1984 from Chief, Common Carrier Bureau, to G.R. Evans, National Exchange Carrier Association. After review of the information filed in response to this letter, we expect to be in a better position to resolve the quesions raised by petitioners.[9]

13. Petitions for reconsideration of the *Cost Order* raise a closely related question. In that order, we indicated that we would allow AT&T to impose a 50 cent charge for interstate directory assistance calls. Based on the exchange carriers' initial proposals for directory assistance service charges (which averaged much higher than 25 cents), AT&T had originally proposed a charge of 75 cents for each interstate directory assistance call placed over its network, with one free call allowed to each subscriber per month provided the subscriber made at least one MTS call in that month. As a result of our prescription in the *ECA Tariff Order*, however, AT&T indicated that a 50 cent charge would cover its costs. We agreed that a charge no higher than 50 cents could be allowed to go into effect, provided that AT&T allowed two free calls per month to customers making at least two MTS or WATS calls. *Cost Order* at para. 92. The petitions for reconsideration of the *Cost Order* generally argue that AT&T's charge should be eliminated. Some parties quarrel with AT&T's administration of the charge, arguing that AT&T should be required to give two free calls per subscriber line, not account; that AT&T should also be required to "carry forward" unused complimentary calls from month to month; and that AT&T should be required to provide free interstate directory assistance calling from pay phones.

14. In our view, these petitions fail to present any new information or claims that would cause us to reconsider our decision to allow AT&T to impose directory assistance charges. Clearly, the use of AT&T facilities to access interstate directory assistance service involves some cost to AT&T. As we noted in the *Cost Order*, unbundling directory assistance charges from overall MTS rates should result in fairer recovery of those costs, and customers will thereby be given an appropriate price incentive to make efficient use of the service. We point out that the *Cost Order* did not prescribe the interstate directory assistance charge, but merely allowed AT&T's tariff establishing that charge to become effective. The charge remains subject to challenge in an appropriate complaint proceeding.

15. Nor do we believe that we should require changes in the way that AT&T administers the charge. For example, the Federal Executive Agencies (FEA) has argued that, because it obtains many thousand individual lines from local exchange carriers under one account name, it should be provided with at least two free calls per line, instead of only two free calls for all lines obtained under the same name. The number of local exchange service lines obtained by a given customer, however, is entirely irrelevant to the purpose of the free call allowance, which was to relieve individual residential customers and small businesses of undue hardship that in the transition to interstate directory assistance charges. As the *Cost Order* pointed out, large users such as credit bureaus and other businesses should be fairly assessed for their interstate directory assistance calling. A charge along the lines suggested by FEA might result in thousands of "free" directory assistance calls originated by large users, which, in turn, would likely require an increase in the overall rate for directory asssistance calls or in charges for MTS. Other proposals to extend the benefit of the complimentary call allowance also will therefore be denied. We emphasize once again that the interstate directory assistance charge, including the two free call feature, was not prescribed and remains subject to any appropriate complaint.

16. The *ECA Tariff Order* questioned the propriety of including Billing and Collection Service in the tariffs. Although our rules indeed require exchange carriers to include a billing and collection element in their tariffs if this service is provided to one interexchange carrier, our examination of the tariffs themselves revealed that many elements of billing and collection did not appear to be properly within the definition of "access service." *See ECA Tariff Order*, App. D at 8–2, *quoting* § 69.2(a) of the Commission's Rules, 47 CFR 69.2(a). Accordingly, we determined that a separate proceeding should be instituted to examine the question of whether billing and collection services could be detariffed. The petitions for reconsideration of the *April 27th Order* raise one important question related to billing and collection service: that is, whether it is reasonable to allow exchange carriers to deny local service to end users who fail to pay interexchange carrier service charges. As discussed in Appendix B of this order, we have determined that ultimate resolution of this question is best left to our separate proceeding on billing and collection. In the interim, carriers who have obtained waiver of the requirements of the *April 27th Order* in this regard may continue to deny end users local service where such denial is permitted by state regulatory authority.

17. Under current tariff arrangements, end users in areas converted to Feature Group D access may "presubscribe" to a particular interexchange carrier (IC). Presubscription allows end users to access the facilities of their designated IC without dialing the five-digit access code normally associated with the IC. In most cases, exchange carrier tariffs provide that end users with established service at the time that Feature Group D access is made available in a given area will be automatically presubscribed to AT&T.These end users then have six months in which to change their designated carrier without charge. End users who do not change this initial designation will continue to have their interexchange traffic routed to AT&T.

18. A number of parties in this proceeding objected to the exchange carriers' proposals to route all undesignated traffic to AT&T. The *ECA Tariff Order* recognized that AT&T's status as "default" carrier for undesignated traffic would work to AT&T's advantage, but denied petitions to reject the tariffs on this ground. At the time, it appeared that alternative solutions such as call blocking or *pro rata* distribution of undesignated traffic among competing ICs would involve undue inconvenience to end users. SBS and USTEL have petitioned for reconsideration of the *ECA Tariff Order* in this matter. These ICs assert that it is anticompetitive to allow AT&T to act as the "default" carrier for undesignated traffic, and that alternative schemes such as a *pro rata* allocation would, in fact, be workable.

19. In reply to these petitions, AT&T argues that the *ECA Tariff Order's* original disposition of this matter should

[9] The Common Carrier Bureau recently rejected a NECA request to increase its interstate directory assistance charge to 28 cents because NECA did not justify its claimed costs and did not address the substantive issues raised in the *ECA Tariff Order*. *See* National Exchange Carrier Association, Transmittal No. 23, Mimeo No. 1990 (released Jan. 17, 1985) at para. 8.

be reaffirmed. AT&T points out, for example, that the District Court reviewing the Modification of Final Judgment (MFJ) divestiture agreement resolved the issue of AT&T's default carrier status by determining that the BOCs would be permitted to route undesignated calls to AT&T to avoid confusion and inconvenience to the customer. In support of AT&T's comments, several BOCs argue that the proposed alternatives to the assignment of AT&T as default carrier are inconvenient, expensive and confusing to the public. The NYNEX companies assert that any advantage AT&T may enjoy as default carrier will be short-lived because new customers are required to presubscribe and BOCs must publicize the fact that current customer's may predesignate any IC.

20. Since the time that the *ECA Tariff Order* was issued, it has come to our attention that one exchange carrier, Northwestern Bell Telephone Company, has implemented a *pro rata* distribution plan for assigning ICs to customers who fail to designate a particular carrier. Under its *pro rata* allocation plan, Northwestern Bell apparently uses initial presubscription figures (obtained by ballot) to assign "default" subscribers among competing interexchange carriers on a proportional basis. For example, if 50 percent of the subscriber lines in a given equal access area are presubscribed to a particular IC, 50 percent of the undesignated subscriber lines will be assigned to that IC as well. Subscribers who are assigned in this fashion are then notified by Northwestern Bell of the selection, and are given an additional 30 days in which to select some other carrier. No charge applies to the subscriber for this second opportunity to presubscribe.

21. Certain limitations are placed upon ICs who wish to participate in the allocation process. For example, Northwestern Bell requires all ICs to have the capability of terminating an originating Feature Group D call to any point in the Continental United States. ICs must agree to accept all assigned customers and not to impose upon them any fixed monthly charges without their consent. Moreover, the service provided to assigned customers must be at least equal to that provided the IC's other presubscribed customers. Finally, the IC's rates may not exceed the highest rates specified in any IC's effective interstate and intrastate tariffs for MTS or MTS-type service. According to Northwestern Bell, this limitation is necessary to ensure that ICs not subject to tarriff regulation are not able to collect exorbitant rates from assigned customers.

22. Although we make no determination as to the reasonableness of the plan developed by Northwestern Bell, it appears to us that our original conclusions on this question bear reexamination. In our view, the practice of routing all "default" traffic to AT&T can only be justified by a strong showing of necessity. If, in fact, *pro rata* plans for distributing default traffic can be implemented without undue customer inconvenience, then the basis for the *ECA Tariff Order's* determination in this matter is seriously undermined. It may be the case that customers in equal access areas would only experience a minimal level of inconvenience under plans similar to Northwestern Bell's, and it may also be true that the benefits of an alternative system would more than compensate for this inconvenience. For example, under an alternate system, AT&T, like its competitors, would have an incentive to offer new and competitive services as a means of affirmatively attracting presubscriptions. Increased consumer awareness of the available range of choices, as well as presumably lower prices and new services, would be likely to follow. Under the current system, however, AT&T may be seen as having an incentive to persuade customers to take no action with respect to presubscription, since all such default traffic flows to AT&T. We believe that a system that encourages consumers to exercise their right to select from among competing long distance carriers is, in the long run, beneficial.

23. The present record is insufficient for us to make any final determination on this matter. We are seriously concerned, however, that it may be an unreasonable practice under section 201(b) or the Communications Act, 47 U.S.C. 201(b), and unreasonably discriminatory under Section 202(a) of the Act, 47 U.S.C. 202(a), for carriers to route all "default" traffic to one particular interexchange carrier. In order to make a final determination of this matter, we request that interested parties in this proceeding submit comments on the question of whether it is reasonable to route all undesignated traffic to one particular interexchange carrier. Those parties who assert that routing all default traffic to one IC is a reasonable alternative should come forward with justification for this practice. These parties should explain why other plans such as *pro rata* allocation are unworkable or otherwise unreasonable. Parties who believe that alternative plans would be more reasonable than the practice of automatically routing all default traffic to AT&T should explain how such plans could work, and should address questions relating to the implementation of suggested alternative plans, showing, for example, how undesignated traffic should be handled, whether it would be necessary to use balloting procedures to obtain initial presubscription results, etc. Commenters should explain carefully how proposed plans would affect end users, and should suggest ways in which unnecessary inconvenience to subscribers can be avoided. Comments are due April 14, 1985. Replies are due April 15, 1985.

24. Petitioners have raised a number of other issues that do not appear to be within the scope of this proceeding. CC Docket No. 83–1145 is an investigation of the lawfulness of the filed access tariffs and their compliance with our access charge rules. Proposals to change or reconsider those rules should be submitted in the *MTS and WATS Market Structure Inquiry*, CC Docket No. 78–72. We note, however, that in most cases the issues raised in these petitions have already been discussed and resolved there. For example, questions related to the treatment of WATS closed ends for purposes of assessing carrier common line and end user charges have been extensively discussed in CC Docket No. 78–72, Phase I. Similarly, we have not addressed questions related to whether separate premium charges should be devised for the line termination element of Switched Access charges for Feature Group A access (as opposed to Feature Groups B, C or D); notice periods for conversion to equal access; what constitutes "equal access;" or whether multiline business end user charges should only be assessed on businesses with more than six lines (as opposed to more than one line). These issues all appear to be within the scope of CC Docket No. 78–72. We have also not specifically addressed questions with respect to whether premium and non-premium charges in LATAs partially converted to equal access should be assessed on an end office by end office basis. Since the time that the *ECA Tariff Order* and *April 27th Order* were issued, exchange carriers have extensively revised their tariffs to incorporate a formula to apportion charges between premium and non-premium traffic. *See, e.g.*, National Exchange Carrier Association Transmittal Nos. 21 and 28, Mimeo No. 1244 (released December 7, 1984). While we made no findings here as to the reasonableness of those formulas, it

does appear that the original concerns of petitioners have been rendered moot.

25. In its petition for reconsideration of the *Cost Order*, Allnet challenges the basis for our prescription of Switched Access rates. Allnet's principal objection to the *Cost Order* appear to relate to our use of BOC-supplied 1982 post-divestiture views to develop the ultimate levels for the prescribed rates, even though we had found that the BOCs had not fully supported those views. *Cost Order* at para. 60. Allnet argues that our use of unsupported 1982 figures as baseline figures in our rate calculations necessarily means that the resulting prescribed rates are unsupported. In Allnet's view, the effective date of the access tariffs should have been suspended or deferred, and the Commission should have adopted "more reasonable rate levels based on the detailed cost analyses of the commenting parties" in CC Docket No. 83–1145. Allnet Petition for Reconsideration at 6–7.

26. We find Allnet's petition in this regard to be without merit. We specifically found in the *Cost Order* that the 1982 post-divestiture views supplied by the BOCs, though flawed, were the best available information reflecting actual figures. *Cost Order* at para. 60. While continued deferral of the access tariffs would arguably have allowed us to collect more information, it appeared that the unique circumstances surrounding divestiture would probably continue to make estimation of most divestiture costs inherently uncertain. In other words, requiring additional estimates would not necessarily have produced better estimates. Faced with this continued uncertainly and in view of the need to implement some form of reasonable access tariffs eventually, we found that the 1982 post-divestiture views, with considerable adjustment and recalculation, could be used as the basis for finding just and reasonable rates. As the exchange carriers gain actual experience in the post-divestiture environment, we expect that the underlying cost data submitted with future tariff filings will be considerably more accurate than the estimates used in developing the 1982 post-divestiture views.

27. Allnet also raises the issue of whether exchange carriers should be required to include time-of-day sensitive pricing in their access tariffs. Allnet specifically recommends that, as an interim approach, the Commission should prescribe a time-of-day sensitive discount schedule for Carrier Common Line and Switched Access Service charges identical to the discount schedule currently used by AT&T for interstate MTS. Although we favor reasonable time-of-day sensitive rates where practical, the question of whether time-of-day sensitive rate structures should be prescribed for exchange carrier access tariffs is properly within the scope of CC Docket No. 78–72. In fact, in the *Third Report and Order* in that proceeding, we specifically noted that implementation of such peak/off-peak pricing structures would require extensive further study. *MTS and WATS Market Structure*, 93 FCC 2d 241, 307 (1983). Therefore, we will not now prescribe any particular peak/off-peak pricing structure for use in access tariffs.

III. Ordering Clauses

28. Accordingly, it is ordered that the petitions for reconsideration filed in this proceeding by the parties listed in Appendix A are granted or deferred to the extent discussed herein and are in all other respects denied.

29. It is further ordered that interested parties shall submit comments on the question of whether it is reasonable to route all undesignated traffic originating from end offices converted to Feature Group D access to one interexchange carrier, or whether alternative systems would be more reasonable. Comments are due by April 14, 1985, and replies by April 15, 1985.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Note.—Appendix A, Petitioners and Parties, and Appendix B, Section-by-Section Review of Petitions for Reconsideration, will not be printed herein due to the ongoing effort to minimize publishing costs. However, copies of this document, including those appendices, may be obtained from the International Transcription Service, 1919 M St., NW., Washington, D.C. 20554 Tel. No.: (202) 296–7322. Also, a copy will be available for public inspection in the FCC Dockets Branch, Rm. 239, and the FCC Library, Rm. 639, both located at 1919 M St., NW., Washington, D.C.

Separate Statement of Commissioner Dennis R. Patrick

In re: Investigation of Access and Divestiture Related Tariffs, Phase I

I support the Commission's decision today to reexamine the practice followed by the majority of Bell Operating Companies (BOCs) of assigning to AT&T the traffic of all customers served by an end office converting to FG D who have not chosen to presubscribe to any interexchange carrier's service. Reports of unexpectedly high percentages of such "default traffic," [1] as well as the experience of Northwestern Bell with its approach of distributing default traffic on a *pro rata* basis, suggest we must give serious consideration to a method of assignment that would be more pro-competitive than the current method of assigning all default traffic to AT&T. I am concerned, however, that if we find it necessary to prescribe such alternative methods, we approve methods of handling default traffic that will maximize the likelihood of *customers'* exercising their presubscription rights and require minimal regulatory intrusion.

For this reason, I would hope that comments discussing alternatives to the currently prevalent method of assigning default traffic will not be restricted to analyzing the costs and benefits of a pro rata distribution approach. I shall be looking for discussions of the costs and benefits of other alternatives, *e.g.* blocking, that might involve less intrusive regulatory responses.

[FR Doc. 85–5515 Filed 3–7–85; 8:45 am]

BILLING CODE 6712–01–M

[1] See *Telecommunications Reports*, February 11, 1985, at 10.

Notices

Federal Register
Vol. 50, No. 46
Friday, March 8, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

Natural Resource Management Meeting; Temple, TX; Correction

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice of Meeting; correction.

SUMMARY: The Farmers Home Administration (FmHA) State Office located in Temple, Texas, inadvertently published in the **Federal Register** of February 7, 1985, (50 FR 5284) an incorrect date of a public information meeting to discuss its draft Natural Resource Management Guide. The corrected date of the meeting is March 26, 1985. The previous date was February 7, 1985. Comments must be received no later than April 25, 1985, rather than March 9, 1985.

Dated: March 5, 1985.

Gary Morgan,

Acting Director, Program Support Staff.

[FR Doc. 85-5635 Filed 3-7-85; 8:45 am]

BILLING CODE 3410-07-M

Federal Crop Insurance Corporation

[Doc. No. 1882S]

Claim for Indemnity; Interest Payments

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Notice of current interest rate.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) publishes, for the information of the general public, this notice of the current interest rate to be computed on indemnity payments not made within a specified time under the authority contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: This notice, and the interest rate cited herein, is effective beginning March 1, 1985, and ending on June 30, 1985.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This notice provides, for the information of all interested parties, the current interest rate to be applied by FCIC to late paid indemnities, and is applicable from March 1, 1985 until June 30, 1985.

Background

Although FCIC attempts to make all indemnity payments within 30 days of the filing of a proper claim, data processing backlog and the need for further investigation have on some occasions, delayed payment past the targeted date. FCIC believes, on those occassions where the delay is due to procedural requirements of FCIC and through no fault of the insured, that FCIC should pay interest on the net amount eventually found to be due the insured.

The interest payment, as outlined herein, will be effective for the first period of the 1985 crop year, beginning on March 1, 1985.

Pursuant to section 12 of the Contract Disputes Act the Secretary of the Treasury is responsible for computing and publishing the interest rate to be used in cases under that Act.

The interest rate established by the Secretary of the Treasury (as published in the **Federal Register** on December 27, 1984 at 49 FR 50357) for the six-month period beginning January 1, 1985 and ending June 30, 1985, and applicable by FCIC to late paid indemnities to policyholders during the period, beginning March 1, 1985 is 12⅛% (Twelve and one eighth) per centum per annum.

Done in Washington, D.C., on January 4, 1985.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Dated: March 1, 1985.

Approved by:

Merritt W. Sprague,

Manager.

[FR Doc. 85-5598 Filed 3-7-85; 8:45 am]

BILLING CODE 3410-08-M

[Docket No. NOM 85-1]

New Policy Directions; Meeting

Time and date: 2:00 p.m., Tuesday, March 12, 1985

Place: Airport Marriott Hotel, St. Louis, Missouri. (Room number will be posted).

Status: Open.

Matters to be considered: Discussion of proposed new policy directions involving the delivery of crop insurance programs.

Contact person for more information: Michael A. Forgash, (202) 447-3287.

Authority: 7 U.S.C. 1501, et seq.

Done in Washington, D.C. on March 6, 1985.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Dated: March 6, 1985.

Approved by:

Edward Hews,

Acting Manager.

[FR Doc. 85-5695 Filed 3-6-85; 1:47 pm]

BILLING CODE 3410-08-M

Forest Service

Land and Resource Management Plan; Sawtooth National Forest; Idaho and Utah; Revised Notice of Intent To Prepare an Environmental Impact Statement

This Notice revises a previously issued notice of intent published in the **Federal Register** dated August 26, 1983, 48 FR 38865.

This Notice is being issued to inform interested publics of a change in the scheduled date of publication of the Draft Environmental Impact Statement (DEIS) and proposed Land and Resource Management Plan for the Sawtooth National Forest. These documents were previously scheduled for filing with the Environmental Protection Agency in December of 1984. The Supervisor of the Sawtooth National Forest now plans to file the Draft Environmental Impact Statement with the Environmental Protection Agency in April of 1985.

The completion of the DEIS and proposed Plan was delayed because of unforeseen requirements in planning analysis needed to meet public concerns.

The Sawtooth National Forest's proposed Plan, now being evaluated within the Forest Service, was selected from a range of alternatives for managing the National Forest, disclosed in the DEIS, which included:

(1) A "no-action" alternative, which represents continuation of present level of activity and management plans.

(2) Alternatives which represent Forest goals and levels of activity needed to meet various RPA Program levels of production.

(3) Alternatives formulated to resolve identified major public issues and management concerns, including roadless areas.

(4) Alternatives that address the implications of lowering costs for managing the National Forest.

The DEIS and proposed Plan address management of the 2.1 million acres administered by the Supervisor of the Sawtooth National Forest. Included is the Sawtooth National Recreation Area (SNRA). As part of the public review of the Plan, there will be at least one formal public hearing to address the wilderness study areas in the SNRA.

J. S. Tixier, Regional Forester, Intermountain Region, USDA Forest Service, is the responsible official for the Forest's Land and Resource Management Plan and Environmental Impact Statement. Roland M. Stoleson, Sawtooth National Forest Supervisor, is responsible for preparation of these documents.

Requests for information should be sent to Robert L. Hendricks, Forest Planner, Sawtooth National Forest, 1525 Addison Avenue East, Twin Falls, Idaho 83301, telephone 208–737–3223.

Dated: February 25, 1985.

W.H. McCrum,

Acting Regional Forester.

[FR Doc. 85–5604 Filed 3–7–85; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

National Forest Land and Resource Management Planning and Public Land and Resources; Planning, Programming, and Budgeting

AGENCIES: Forest Service, USDA and Bureau of Land Management, Interior.

ACTION: Joint Notification of Land and Resource Management Planning Schedules

SUMMARY: Land and resource management plans of the Forest Service and the Bureau of Land Management frequently cover adjoining areas which share common resource issues and management concerns requiring continuous and close interagency coordination. Therefore, the USDA Forest Service and the USDI Bureau of Land Management have again elected to jointly announce land management planning schedules for lands which each agency administers. The purpose of publishing joint planning schedules is to provide agencies and the public with the opportunity to study the relationships between the agencies' current and projected planning activities.

The Forest Service and the Bureau of Land Management's planning systems are authorized and administered under different laws and regulations. Consequently, this notice is organized into two parts (Part A—Forest Service and Part B—Bureau of Land Management).

Comments on the schedules should be directed to the appropriate agency (see **ADDRESS,** Part A and Part B).

Part A—Forest Service

The National Forest Management Act of 1976 directed the Secretary of Agriculture to attempt to complete land and resource management plans for each "administrative unit" (e.g., National Forest) of the National Forest System by September 30, 1985. Regulations to guide this effort were initially developed in 1979, and revised in 1982 at the direction of the Presidential Task Force on Regulatory Relief (Vol. 47, No. 190 of the **Federal Register**, September 30, 1982). Additional revision to the rules was necessary to respond to a court decision that the 1979 Roadless Area Review and Evaluation (RARE II) environmental statement and associated procedures were inadequate under the National Environmental Policy Act (NEPA).

The NFMA regulations require integrated planning for all resources of the National Forest System—recreation, fish and wildlife, water, timber, range, and wilderness. The rules set forth a process for developing and revising the land and resource management plans as required by the Forest and Rangeland Renewable Resources Planning Act of 1974 (NFMA). These rules require development of Regional Guides and Forest Plans. Each plan will include all management planning for resource and be supported by an environmental impact statement.

The Wilderness re-evaluation required as a result of the 9th Circuit Court decision and the increased role of economic analysis in the decision process have had major impacts on the Forest Service planning program. However with few exceptions, all draft Forest plans will be completed prior to September 1985.

Draft and final Regional Guides and Forest Plans and associated environmental impact statements will be filed with the Environmental Protection Agency and made available to the public for comment.

A planning schedule is included below showing the fiscal year in which draft and final documents have been or will be filed. Also given are the addresses of the Forest Service's nine Regional Offices and National Forest headquarters in each Regional for which plans are to be prepared.

Readers interested in the progress and status of a particular Regional Guide or Forest Plan should contract the appropriate Regional Forester or Forest Supervisor.

DATE: Comments on the schedule will be accepted until April 8, 1985.

ADDRESS: Comments should be sent to: Chief, Forest Service, USDA, P.O. Box 2417, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Joyce P. Parker, Land Management Planning, P.O. Box 2417, Washington, DC 20013, (202) 447–6697.

NATIONAL FOREST SYSTEM FIELD OFFICES AND FISCAL YEAR FILING DATES OF REGIONAL GUIDES AND FOREST PLANS WITH ENVIRONMENTAL PROTECTION AGENCY

Headquarters location [1]	Fiscal year to be completed	
	DEIS	[2] FEIS
NORTHERN REGION, Federal Building, Missoula, MT 59807. Regional Guide	1981	[4] 1981
Idaho		
Clearwater, Orofino 83544	1985	1986
Idaho Panhandle, National Forests:[3] Coeur d'Alene, Kaniksu, St. Joe; Coeur d'Alene 83814	1985	1986
Nezperce, Grangeville 83530	1984 [4]	1986
Montana		
Beaverhead, Dillion 59725	1985	1985
Bitterroot, Hamilton 59840	[4] * 1985	1986
Custer, Billings 59103	1985	1986
Deerlodge, Butte 59701	1985	1986
Flathead, Kalispell 59901	[4] * 1984	1985
Gallatin, Bozeman 59715	1985	1986
Helena, Helena 59601	[4] * 1985	1986
Kootenai, Libby 59923	1985	1986
Lewis and Clark, Great Falls 59403	[4] * 1984	1985
Lolo, Missoula 59801	[4] * 1985	1986
ROCKY MOUNTAIN REGION, 11177 W. 8th Ave., Box 25127, Lakewood, CO 80225. Regional Guide	1981	[4] 1983
Colorado		
Arapaho—Roosevelt,[3] Ft. Collins 80521	1982	[4] 1984
Grand Mesa, Uncompahgre, and Gunnison,[3] Delta 81416	1983	[4] 1983
Pike and San Isabel,[3] Pueblo 81008	1982	[4] 1985
Rio Grande, Monte Vista 81144	1983	[4] 1985
Routt, Steamboat Springs 80477	1983	[4] 1984
San Juan, Durango 81301	1982	[4] 1983
White River, Glenwood Springs 81601	1983	[4] 1984
Nebraska		
Nebraska—Samuel R. McKelvie,[3] Chadron 69337	1982	[4] 1985
South Dakota		
Black Hills, Custer 57730	1982	[4] 1983
Wyoming		
Bighorn, Sheridan 82801	[4] 1984	1985
Medicine Bow, Laramie 82070	[4] 1984	1985
Shoshone, Cody 82414	1984	1985

NATIONAL FOREST SYSTEM FIELD OFFICES AND FISCAL YEAR FILING DATES OF REGIONAL GUIDES AND FOREST PLANS WITH ENVIRONMENTAL PROTECTION AGENCY—Continued

Headquarters location [1]	Fiscal year to be completed	
	DEIS	[2] FEIS
SOUTHWESTERN REGION, 517 Gold Ave., SW, Albuquerque, NM 87102 Regional Guide	1981	[4] 1983
Arizona		
Apache—Sitgreaves,[3] Springerville 85938	1985	1986
Coconino, Flagstaff 86001	1985	1986
Coronado, Tucson 85702	[4] [5]1985	1986
Kaibab, Williams 86046	1985	1986
Prescott, Prescott 86301	1985	1986
Tonto, Phoenix 85034	[4] [5]1985	1985
New Mexico		
Carson, Taos 87571	[4] 1985	1985
Cibola, Albuquerque 87112	[4] 1984	1985
Gila, Silver City 88061	[4] 1985	1986
Lincoln, Alamogordo 88310	1985	1986
Santa Fe, Santa Fe 87501	1985	1986
INTERMOUNTION REGION, 324 25th Street, Ogden, UT 84401 Regional Guide	1981	[4] 1984
Idaho		
Boise, Boise 83706	1985	1985
Caribou, Pocatello 83201	[4] 1985	1985
Challis, Challis 83226	1985	1985
Payette, McCall 83638	1985	1986
Salmon, Salmon 83467	1985	1985
Sawtooth, Twin Falls 83301	1985	1985
Targhee, St. Anthony 83445	[4] [5]1985	[4] 1985
Nevada		
Humboldt, Elko 89801	1985	1985
Toiyabe, Reno 89501	[4] 1985	1985
Utah		
Ashley, Vernal 84078	1985	1985
Dixie, Cedar City 84720	1985	1985
Fishlake, Richfield 84701	1985	1985
Manti—LaSal, Price 84501	1985	1985
Uinta, Provo 84601	[4] [5]1985	[4] 1985
Wasatch—Cache,[3] Salt Lake City 84138	1985	1985
Wyoming		
Bridger—Teton, [3] Jackson 83001	1985	1986
PACIFIC SOUTHWEST, 630 Sansome Street, San Francisco, CA 94111 Regional Guide	1981	[4] 1984
California		
Angeles, Pasadena 91101	1985	1986
Cleveland, San Diego 92188	1985	1986
Eldorado, Placerville 95667	1986	1987
Inyo, Bishop 93514	1986	1987
Klamath, Yreka 96097	[4] 1986	1987
Lassen, Susanville 96130	1986	1986
Los Padres, Goleta 93107	1986	1986
Mendocino, Willows 95988	1986	1987
Modoc, Alturas 96101	1986	1987
Plumas, Quincy 95971	1986	1986
San Bernardino, San Bernardino 92408	1986	1986
Sequoia, Porterville 93257	1986	1986
Shasta—Trinity,[3] Redding 96001	1986	1986
Sierra, Fresno 93721	[4] 1986	1987
Six Rivers, Eureka 95501	1986	1986
Stanislaus—Calaveras, Big Tree,[3] Sonora 95370	1986	1986
Tahoe, Nevada City 95959	1985	1986
Lake Tahoe Basin, Management Unit, South Lake Tahoe	1985	1986
PACIFIC NORTHWEST REGION, 319 SW Pine Street, P.O Box 3623, Portland, OR 97208 Regional Guide	1982	[4] 1984
Oregon		
Deschutes, Bend 97701	[4] 1985	1986
Fremont, Lakeview 97630	1985	1986
Malheur, John Day 97845	1985	1986
Mt. Hood, Portland 97233	1985	1986
Ochoco, Prineville 97754	1985	1986
Rogue River, Medford 97501	1985	1986
Siskiyou, Grants Pass 97526	1985	1986
Siuslaw, Corvallis 97330	1985	1986
Umatilla, Pendleton 97801	1985	1986

NATIONAL FOREST SYSTEM FIELD OFFICES AND FISCAL YEAR FILING DATES OF REGIONAL GUIDES AND FOREST PLANS WITH ENVIRONMENTAL PROTECTION AGENCY—Continued

Headquarters location [1]	Fiscal year to be completed	
	DEIS	[2] FEIS
Umpqua, Roseburg 97470	1985	1986
Wallowa—Whitman,[3] Baker 97814	1985	1986
Willamette, Eugene 97440	1985	1986
Winema, Klamath Falls 97601	1985	1986
Washington		
Colville, Colville 99114	1985	1986
Gifford Pinchot, Vancouver 98660	1985	1986
Mt. Baker—Snoqualmie,[3] Seattle 98101	1985	1986
Okanogan, Okanogan 98840	[4] 1985	1986
Olympic, Olympia 98501	1985	1986
Wenatchee, Wenatchee 98801	1985	1986
SOUTHERN REGION, 1720 Peachtree Road, NW., Atlanta, GA 30309, Regional Guide	1982	[4] 1985
Alabama		
National Forests in Alabama:[3] William B. Bankhead, Conecuh, Talladega, Tuskegee, Montgomery 36101	1985	1985
Arkansas		
Ouachita, Hot Springs 79101	[4] 1985	1985
Ozark—St. Francis,[3] Russellville 72801	[4] 1985	1985
Florida		
National Forests in Florida:[3] Apalachicola, Ocala, Osceola; Tallahassee 32301	1985	1985
George Chattahoochee—Oconee,[3] Gainesvill 30501	[4] 1984	1985
Kentucky		
Daniel Boone, Winchester 40391	[4] 1985	1985
Louisiana		
Kisatchie, Pineville 71360	[4] 1984	1985
Mississippi		
National Forests in Mississippi:[3] Bienville, Delta, DeSoto, Holly Springs, Homochitto, Tombigbee; Jackson 39205	[4] 1985	1985
North Carolina		
National Forests in North Carolina:[3] Asheville 28802:		
Nantahala and Pisgah	[4] 1985	1985
Uwharrie and Croatan	1985	1986
Puerto Rico		
Caribbean, Rio Piedras 00928	[4] 1985	1985
South Carolina		
Francis—Marion	[4] 1984	1985
Sumter,[3] Columbia 29202	[4] 1985	1985
Tennessee		
Cherokee, Cleveland 37311	[4] 1985	1985
Texas		
National Forests in Texas:[3] Angelina, Davy Crockett, Sabine, Sam Houston, Lufkin 75901	1985	1986
Virginia		
George Washington, Harrisonburg 22801	[4] 1984	1985
Jefferson, Roanoke 24011	[4] 1985	1985
EASTERN REGION, 633 West Wisconsin Ave., Milwaukee, WI 53203 Regional Guide	1982	[4] 1984
Illinois		
Shawnee, Harrisburg 62946	1985	1985
Indiana and Ohio		
Wayne-Hoosier,[3] Bedford 47421		
Wayne	1985	1986
Hoosier	[4] 1984	1985
Michigan		
Hiawatha, Escanaba 49829	1985	1986
Huron—Manistee,[3] Cadillac 49601	[4] 1985	1986
Ottawa, Ironwood49938	1985	1986
Minnesota		
Chippewa, Cass Lake 56633	[4] 1985	1985
Superior, Duluth 55801	[4] 1985	1985
Missouri		
Mark Twain, Rolla 65401	1985	1986
New Hampshire and Main		
White Mountain, Laconia 03246	[4] 1985	1985

NATIONAL FOREST SYSTEM FIELD OFFICES AND FISCAL YEAR FILING DATES OF REGIONAL GUIDES AND FOREST PLANS WITH ENVIRONMENTAL PROTECTION AGENCY—Continued

Headquarters location [1]	Fiscal year to be completed	
	DEIS	[2] FEIS
Pennsylvania		
Allegheny, Warren 16365	[4] 1985	1985
Vermont		
Green Mountain, Ruthland 05701	1985	1986
West Virginia		
Monongahela, Elkins 26241	[4] 1985	1985
Wisconsin		
Chequamegon, Park Falls 54552	1985	1986
Nicolet, Rhinelander 54501	[4] 1985	1985
ALASKA REGION, Federal Office Building P.O. Box 1628, Juneau, AL 99802. Regional Guide	1981	[4] 1984
Alaska		
Chugach, Anchorage 99502	1982	[4] 1984
Tongass—Chatham, Sitka 99835	[6] 1989	[6] 1989
Tongass—Ketchikan 99901	[6] 1989	[6] 1989
Tongass—Stikine, Petersburg 99833	[6] 1989	[6] 1989

[1] Mailing address for each National Forest.
[2] Two or more separately proclaimed National Forests.
[3] DEIS and FEIS mean Draft and Final Environmental Impact Statements.
[4] Filed with EPA.
[5] One EIS will be filed for the Tongass National Forest.
[6] An earlier published Draft EIS will be supplemented or revised.

R.M. Housley,
Deputy Chief.
February 27, 1985.

Part B—Bureau of Land Management

Regulations governing resource management planning for the Bureau of Land Management administered lands (43 CFR 1601 and 1610) were published in the **Federal Register** on May 5, 1983. They became effective on July 5, 1983. Those regulations [43 CFR 1610.2(b)] require that the Bureau publish a planning schedule for the current and three succeeding Fiscal Years. The schedule below fulfills that requirement.

The formal start of the planning process begins with the publication of a Notice of Intent to initiate a plan. The projected planning starts are shown on the schedule for Fiscal Years 1985 and 1986. Where an environmental assessment (EA) is indicated on the schedule, the EA will be made available to the public and will be revised to respond to public comments, as appropriate.

A key to the abbreviations used is provided after the schedule.

DATES: Comments on the schedule will be accepted until April 8, 1985.

ADDRESS: Comments should be sent to Director (202), Bureau of Land Management, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Ann Loose, (202) 653–9924.

Bureau Land Management Planning Schedule

District, State, and resource area	Plan name (major resource issues)	Fiscal year			
		1985	1986	1987	1988
Anchorage, AK:					
Peninsula	Bristol Bay Cooperative Management Plan (oil and gas, wildlife, fisheries, lands, minerals).	Final			
Peninsula	Southeast RMP (minerals, interagency cooperation, wildlife, lands, recreation, forestry).	Start		DEIS, FEIS	
Glennallen	South Central MFP–A (lands, ROW, wildlife)		EA		
Fairbanks, AK:					
Yukon	Steese RMP (wild river, caribou, oil and gas, minerals)	FEIS			
Yukon	White Mountain RMP (wild river, recreation, minerals, wildlife).	FEIS			
Yukon	Central Yukon RMP (oil and gas, settlement, subsistence, minerals, wildlife).	DEIS	FEIS		
Arizona Strip, AZ: Shivwits Vermillion.	Arizona Strip RMP (wildlife, recreation, minerals)	Start	DEIS	DEIS	
Phoenix, AZ:					
Lower Gila	Lower Gila South RMP (range, wilderness, minerals)	DEIS, FEIS			
Phoenix	Phoenix RMP (range, wilderness, minerals, lands)	Start	DEIS	FEIS	
Phoenix	Phoenix Wilderness EIS (wilderness)	PFEIS			
Safford, AZ: Safford/Phoenix	Eastern Arizona EIS (grazing)	DES	FEIS		
Yuma, AZ: Yuma, Havasu	Yuma RMP (recreation, lands, minerals, range)	FEIS			
Bakersfield, CA:					
Bishop	Bodie Coleville MFP–A (grazing, wildlife)		EA		
Bishop	Benton-Owens Valley MFP–A (grazing, wildlife)		EA		
Folsom	Sierra MFP–A (recreation, forestry, lands)			EA	
Susanville, CA: Eagle Lake/Surprise.	Eagle Lake/Cedarville Wilderness MFP–A (wilderness)	PFEIS			
Ukiah, CA: Arcata	King Range MFP (wilderness)	PFEIS			
California Desert, CA:					
El Centro, Barstow, Indio, Needles, Ridgecrest.	Desert 83–84 RMP–A (recreation, lands, grazing, wildlife).	EA			
Do	Desert 84–85 RMP–A (recreation, lands, grazing, wildlife).		EA		
Do	Desert 85–85 RMP–A (recreation, lands, grazing, wildlife).			EA	
San Diego	Metro Project Area MFP–A (wilderness)	PFEIS			
Grand Junction, CO:					
Grand Junction	Grand Junction RMP (wilderness, oil and gas, coal, recreation).	DEIS, FEIS			
Grand Junction	Whitewater MFP–A Jerry Creek (land exchange)	EA			
Grand Junction	Roan Creek MFP–A (ROW application, PSC conversion)	EA			
Craig, CO:					
White River	Raven Ridge ACEC MFP–A (rare plants)	EA			
White River	Special management MFP–A (rare plants, cultural resources, rarefish to be determined).		EA		
White River	Piceance Basin RMP (oil shale, wildlife, rare plants)	FEIS			
Little Snake	Little Snake RMP (range, coal, oil and gas, wilderness, wildlife).	DEIS	FEIS, PFEIS		
Montrose, CO:					
San Juan	San Juan/San Miguel RMP (coal, wilderness, range, cultural).	DEIS, PFEIS			
Uncompahgre	Uncompahgre RMP (coal, wilderness)		DEIS, FEIS		
Canon City, CO:					
Northeast	Northeast RMP (realty, oil and gas, coal)	FEIS			
Northeast	Kansas Planning Analysis (oil & gas, realty)	EA			
San Luis	San Luis Valley RMP (range, wildlife)				DEIS, FEIS.
Milwaukee, WI:					
Missouri	PA (ownership conflict, lack of geological data)	EA			
W. Virginia			EA		
Illinois		EA			
Indiana				EA	
Maryland	PA (lack of geological data)			EA	
New York					EA.
Pennsylvania					EA.
Wisconsin	PA (ownership conflict, lack of geological data)	EA			
Michigan	do	EA			
Ohio	do		EA		
Jackson, MS:					
Tennessee	PA (lack of geological data)	EA			
Kentucky	do	EA			
Louisiana	PA (ownership conflict, lack of geological data)		EA		
Florida	do			EA	
Georgia	PA (lack of geological data)		EA		
South Carolina	do				EA.
North Carolina	do				EA.
Boise, ID.					
Cascade	Cascade RMP (grazing, timber, land transfer, wildlife)		DEIS	FEIS	
Jarbidge	Jarbidge RMP (grazing, wilderness, wild horses, land transfer).	FEIS	PFEIS		
Burley ID: Snake River, Deep Creek.	Cassia RMP-A (land tenure)	EA			
Idaho Falls, ID: Medicine Lodge.	Medicine Lodge RMP (grazing wilderness, recreation, land tenure).	FEIS	PFEIS		
Salmon ID: Lemhi	Lemhi RMP (grazing, land tenure, minerals, wildlife, watershed).	DEIS	FEIS, PFEIS		
SHOSHONE, ID: Monument Bennett Hills.	Monument RMP (grazing, land tenure, wildlife, wilderness.	FEIS, PFEIS			
Coeur d' Alene: Emerald Empire, Cottonwood.	North Idaho MFP–A (roadless area)	EA			

BUREAU LAND MANAGEMENT PLANNING SCHEDULE—Continued

District, State, and resource area	Plan name (major resource issues)	Fiscal year			
		1985	1986	1987	1988
Miles City, MT: Powder River	Powder River (coal development, vegetation, wildlife, watershed, land pattern).	FEIS			
South Dakota	South Dakota RMP (non-energy realty, vegetation)	DEIS	FEIS		
Dickinson, ND: North Dakota	North Dakota RMP (coal, land)	Start		DEIS, FEIS	
Lewistown, MT:					
Havre Great Falls	West Hi-Line RMP (vegetation, land pattern, vehicle access, coal/oil and gas).			DEIS, FEIS	
Judith	Judith RMP (land pattern, access)		Start		DEIS, FEIS
Butte, MT:					
Garnet	Garnet RMP (forest management, vegetation, wilderness, land patern, oil and gas)	FEIS			
Dillon	Centennial MFP-A (wilderness)		PFEIS		
Elko, NV: Elko	Elko RMP (grazing, lands, wilderness)	DEIS	FEIS		
Carson City, NV					
Lahontan	Lahontan RMP (grazing, lands, wilderness)	FEIS			
Walker	Walker RMP (grazing, lands, wilderness)	FEIS			
Las Vegas, NV:					
Caliente	Caliente MFP-A (wilderness)	PFEIS			
Stateline—Esmarelda	Esmarelda RMP (grazing, lands, wilderness)	FEIS			
Battle Mountain, NV: Tonopah	Esmarelda RMP (grazing, lands, wilderness)	FEIS			
Albuquerque, NM:					
Rio Puerco	Rio Puerco RMP (grazing, land disposal, coal)	DEIS, FEIS			
Taos	Taos RMP (grazing, land disposal)		DEIS	FEIS	
Farmington	Farmington RMP (grazing, land disposal)			DEIS, FEIS	
Farmington	McKinney County Coal Exchange Proposal MFP-A (coal exchange)	EA			
Roswell, NM: Carlsbad	Carlsbad RMP (grazing, minerals, land tenure, access, special management areas).		DEIS, FEIS		
Las Cruces, NM:					
White Sands	White Sands RMP (grazing, land disposal, access, special areas)	DEIS, FEIS			
Socorro	Socorro RMP (grazing, land disposal, access)		Start		DEIS, FEIS
Las Cruces/Lordsburg	Navajo-Hopi exchange MFP-A (disposal)				
Do	NM-84-05# 345 KV Line MFP-A (corridor)	DEIS, FEIS			
Statewide (NMSO)	Statewide Wilderness Study (wilderness)	DEIS	FEIS		
Tulsa, OK:					
Oklahoma	S. Canadian/Central OK Land Use Analysis (land disposal.	EA			
Do	Cimarron River N. Oklahoma Land Use Analysis (land disposal)		EA		
Burns, OR: Three Rivers	John Day RMP (grazing, land tenure, timber, fisheries)	FEIS			
Prineville, OR: Central Oregon Deschutes.	Two Rivers RMP (grazing, land tenure, fisheries)	DEIS,FEIS			
Statewide High Desert, Warner Lakes, Three Rivers, Andrews, S. Malheur, N. Malheur, Baker, Central Oregon, Klamath, Myrtlewood.	Oregon Statewide Wilderness MFP-A (wilderness)	DEIS			PFEIS
Vale, OR: Baker	Baker RMP (grazing, land tenure, timber, fisheries)		DEIS, FEIS		
Spokane, WA: Border Basin	Spokane RMP (grazing, land tenure, timber, ACECs)	FEIS			
Emal, UT: Bookcliffs	Bookcliffs RMP (tar sand, grazing, oil shale, oil and gas)	FEIS			
Salt Lake, UT:					
Bear River	Box Elder RMP (grazing, land tenure)	DEIS, FEIS			
Pony Express	Utah County RMP (land tenure, ROW, oil and gas, recreation)				DEIS, FEIS
Cedar City, UT:					
Beaver River Kanab, Escalante.	Cedar, Beaver Garfield, Antimony RMP (livestock, grazing, coal, ROW land)	FEIS			
Dixie	Dixie RMP (land tenure, recreation)		Start		DEIS, FEIS
Escalante	Escalante RMP (coal, recreation)		Start		
Moab, UT:					
San Juan	San Juan RMP (livestock grazing, land tenure, recreation, oil and gas)		DEIS, FEIS		
San Rafael	San Rafael RMP (livestock grazing, oil and gas, recreation, tar sand)	Start		DEIS, FEIS	
Richfield, UT: Warm Springs House Range.	Warm Springs/House Range (livestock, grazing, land tenure, geothermal)		DEIS, FEIS		
Worland, WY: Washakie	Washakie RMP (range, wilderness)	DEIS	FEIS		
Rawlins, WY:					
Lander	Lander RMP (range, wilderness, oil and gas)	DEIS	FEIS		
Medicine Bow	Medicine Bow Coal Bypass MFP—A (coal)	EA			
Medicine Bow	Medicine Bow MFP-A (range, wilderness)		EA		
Rock Springs, WY:					
Kemmerer	Kemmerer RMP (range, oil and gas)	DEIS, FEIS			
Pinedale	Pinedale RMP (range, oil and gas, recreation)		DEIS, FEIS		
Big Sandy	Big Sandy MFP-A (realty)	EA			
Salt Wells	Salt Wells MFP-A (realty)	EA			
Casper, WY:					
Buffalo	Buffalo RMP (range, coal, wilderness)	FEIS			
Platte River	Platte River RMP (range, coal, wildlife, lands, minerals, forestry).	FEIS			

Key to Abbreviations

ACEC—Area of critical environmental concern.
DEIS—Draft environmental impact statement.
EA—Environmental assessment.
FEIS—Final environmental impact statement.
MFP—A—Management framework plan amendment.
PA—Planning analysis (only in Eastern States Office).
PD—Public domain.
PFEIS—Preliminary environmental impact statement (wilderness issues only)
RMP—Resource management plan.
ROW—Rights-of-way.

VOL 50 ISS 46 MR 8 1985 UMI

Date: February 28, 1985.
James M. Parker,
Acting Director.
[FR Doc. 85-5371 Filed 3-7-85; 8:45 am]
BILLING CODE 4310-84-M 5001-84-M

Rural Electrification Administration

Alabama Electric Cooperative, Inc.; Finding of No Significant Impact

AGENCY: Rural Electrification Administration, Department of Agriculture.

ACTION: Notice of finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the National Environmental Policy Act of 1969, the Council of Environmental Quality Guidelines (40 CFR Part 1500), and REA Environmental Policies and Procedures 7 CFR Part 1794, has made a Finding of No Significant Impact with respect to a project proposed by the Alabama Electric Cooperative, Inc., (AEC). The project consists of the development of a fly ash disposal landfill for AEC's Tombigbee Electric Generating Plant near Jackson in Washington County, Alabama.

FOR FURTHER INFORMATION CONTACT: REA's Finding of No Significant Impact and Environmental Assessment and AEC's Borrower's Environmental Report (BER) may be reviewed in the office of the Director, Southeast Area—Electric, Room 0270, South Agriculture Building, Rural Electrification Administration, Washington, D.C. 20250, telephone (202) 382-8434, or at the office of Alabama Electric Cooperative, Inc., Mr. Charles R. Lowman, P.O. Box 550, Andalusia, Alabama 36420, telephone (205) 222-2571, during regular business hours.

SUPPLEMENTARY INFORMATION: REA, in connection with a request to approve AEC's use of general funds, has reviewed the BER submitted by AEC and has determined that it represents an accurate assessment of the environmental impact of the proposed purchase of property and the development of a fly ash disposal landfill. General funds will also be used to purchase four 15-ton tandem dump trucks, one bulldozer, one water truck, one earth mover, one grader, and a ½-ton pickup truck. In addition, general funds will be used for construction of a 30 by 60 foot storage and maintenance building on the property site to be surrounded by a 50 by 150 foot fence that will include a parking area and a dry fly ash collection system to be constructed at the generation plant site. This system will be entirely within the boundary of the plant site.

Based upon AEC's BER, REA prepared an Environmental Assessment concerning the proposed landfill development and its impacts. REA concluded that the proposed approval of general funds use would not be a major Federal action significantly affecting the quality of the human environment. The BER and Environmental Assessment adequately consider potential impacts of the proposed landfill development on prime farmlands, wetlands, floodplains, cultural resources, federally listed threatened and endangered species or those proposed for listing or their critical habitat, air quality, water quality, and ambient noise levels. The no action alternative and various alternative proposals for fly ash disposal were considered. REA determined that the proposed fly ash disposal landfill is the preferred alternative because it best meets AEC's needs with a minimum of adverse impact to the environment.

REA has independently evaluated the proposed landfill and has concluded that approval of AEC's use of general funds for the project would not constitute a major Federal action significantly affecting the quality of the human environment.

This program is listed in the Catalog of Federal Domestic Assistance as 10.850—Rural Electrification Loans and Loan Guarantees.

Dated: March 1, 1985.
Harold V. Hunter,
Administrator.
[FR Doc. 85-5559 Filed 3-7-85; 8:45 am]
BILLING CODE 3410-15-M

DEPARTMENT OF COMMERCE

International Trade Administration

[Case No. 656]

Exclusitrade, Inc. et al; Order Amending Temporary Denial of Export Privileges

In the matter of: Josef Kubicek, individually and doing business as Exclusitrade, Inc. and J.O.K., Inc., William Carlton Dart, individually and doing business as Display Systems, Inc., and Perpetuum, Inc., Robert William Haire, Sr., individually and doing business as Display Systems, Inc. and Exclusitrade, Inc., Raymond Shields Spitz.

By a Temporary Denial Order (TDO) issued on November 6, 1984 (49 FR 45468, November 16, 1984), Respondents were denied all privileges of participating in any manner or capacity in the export of U.S.-origin commodities or technical data.

Respondent Josef Kubicek, individually and doing business as Exclusitrade, Inc. and J.O.K., Inc., moved on December 5, 1984 to modify the TDO so as to authorize certain exports to the Wuxi Project in the People's Republic of China. Respondents William Carlton Dart, individually and doing business as Display Systems, Inc. and Perpetuum, Inc., and Robert William Haire, Sr., individually and doing business as Display Systems, Inc. and Exclusitrade, Inc., filed a similar motion on December 19, 1984. The U.S. Department of Commerce filed its reply to both motions on January 14, 1985. Both motions were heard in a closed hearing on January 16, 1985.

By an Initial Decision issued January 18, 1985, Respondents' motions were granted (a) for those Wuxi Project exports for which the TDO revoked previously issued individual validated licenses and (b) for those Wuxi Project exports that could be sent G-DEST or GLR but for the TDO, provided that all such exports in (a) and (b) are made in compliance with safeguards acceptable to the Department. The Intitial Decision denied Respondents' motions with respect to those Wuxi Project exports for which applications for individual validated licenses were pending in the Department's Office of Export Administration when the TDO was issued.

On March 1, 1985, the Department and the Respondents reached an agreement (the Agreement) that set forth the safeguards required by the Initial Decision, and that added to those exports approved by the Initial Decision certain of the exports that it had denied. The Hearing Commissioner approves this addition. A copy of this Agreement has been submitted for the record.

Accordingly, it is ordered, the TDO is amended to permit the Respondents to

export, as an exception to the TDO's denial of all their export privileges, and subject to the condition that for each permitted export Respondents shall comply with the safeguards set forth in the Agreement, the following: (a) Certain equipment, related spare parts, and technical data authorized by individual validated licenses A777027, A569528, A594951, A618444, A618445, and A763274; and (b) certain equipment, related spare parts, and technical data that were described in Appendix A to Respondents' December 5 and 19, 1984 motions and that were described in Attachment 1 to the Agreement, and that could be sent G–DEST or GLR but for the TDO. This exception from the TDO for the exports in (a) and (b), subject to the condition regarding safeguards, shall also apply to Respondent Raymond Shields Spitz who, although a Respondent, was not a party to the motions.

This Amendment of the TDO is effective immediately.

Thomas W. Hoya,

Hearing Commissioner.

March 5, 1985, 10:50 am, EST.

[FR Doc. 85–5606 Filed 3–7–85; 8:45 am]

BILLING CODE 3510-DT-M

[C–565–001]

Canned Tuna Form the Philippines; Preliminary Results of Administrative Review of Countervailing Duty Order

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of Preliminary Results of Administrative Review of Countervailing Duty Order.

SUMMARY:

The Department of Commerce has conducted an administrative review of the countervailing duty order on canned tuna from the Philippines. The review covers the period August 1, 1983, through December 31, 1983, and 22 programs.

As a result of the review, the Department has preliminarily determined the total bounty or grant for the period to be 0.25 percent *ad valorem*. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: March 8, 1985.

FOR FURTHER INFORMATION CONTACT: Peggy Clarke or Richard Moreland, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On October 31, 1983, the Department of Commerce ("the Department") published in the **Federal Register** (48 FR 50134) a countervailing duty order on canned tuna from the Philippines and announced its intent to conduct an administrative review of the order. As required by section 751(a)(1) of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that administrative review.

Scope of Review

Imports coverd by the review are shipments of Philippine tuna packed and preserved in any manner, not in oil, in airtight containers. Such merchandise is currently classifiable under items 112.3020, 112.3040, and 112.3400 of the Tariff Schedules of the United State Annotated.

The review covers the period August 1, 1983, through December 31, 1983, and 22 programs: (1) An exemption from import taxes (Article 48 (f) of the Omnibus Investment Code); (2) an income tax deduction for labor and raw materials (Article 48(b) of the Code); (3) a tax credit for indirect taxes (Article 48(a) of the Code); (4) export packing credits; (5) an income tax deduction for overseas offices (Article 49(f)); (6) an income tax deduction for new brand names (Articles 48(e) and 49(g)); (7) an income tax deduction for export traders (Article 49(d)); (8) an income tax deduction for financial assistance (Article 49(e)); (9) government bank loans (Article 51); (10) private bank loans (Article 52); (11) equity investment by insurance companies (Article 52); (12) employee equity investment (Article 53); (13) a tax credit for net local content; (14) a tax credit for net local value; (15) preferential loan guarantees; (16) government equity investment; (17) foreign equity investment; (18) various financial services by the Export Credit Insurance and Guarantee Corporation; (19) various financial and marketing assistance by the Institute for Export Development; (20) an offsetting export tax; (21) preferential access to foreign exchange; and (22) World Bank import funding.

Analysis of Programs

(1) Exemption From Import Taxes (Article 48(f))

In 1982, the Philippine government combined most of its existing incentive programs into the Omnibus Investments Code ("the Code"). To be eligible for benefits under the Code, a firm must register with the Board of Investments ("the Board"), which administers the Code. Seven of the eight tuna companies reviewed are registered with the Board.

Article 48(f) of the Code allows only exporters to receive 100 percent exemptions from import taxes when importing capital equipment and spare parts for seven years following the firm's registration with the Board. Three of the firms took the exemptions during the review period.

All registered firms are also eligible for 50 percent exemptions of the same taxes under Article 45(d) of the Code. The Department determined during its investigation on this merchandise that Article 45 was generally available and therefore not a countervailable subsidy. To find the benefit under Article 48(f), we calculated the difference between exemptions received and exemptions that could be received under Article 45(d) and then divided by the firm's overall exports for 1983. We then weight-averaged the benefits by each firm's share to total exports to the U.S. and preliminarily find the benefit from this program to be 0.04 percent *ad valorem*.

(2) Income Tax Deduction for labor and Raw Materials (Article 48 (b))

Article 48(b) of the Code allows a Philippine-owned and registered exporter an income tax deduction for direct labor and local raw materials costs for five years following registration. One firm used this program during the review period. To calculate the benefit, we multiplied the amount of the deduction from taxable income by the corporate tax rate and divided the result by the firm's total exports for 1983. We then weight-averaged the benefit by the firm's share of total exports to the U.S., and preliminarily determine the benefit from this program to be 0.05 percent *and valorem*.

(3) Tax Credit for Indirect Taxes (Article 48(a))

Article 48(a) of the Code allows registered export producers to receive tax credits equal to the sales, specific taxes, and import taxes paid on the supplies, raw material and semi-manufactured products used in production.

The Tariff Act and the Commerce Regulations allow the rebate of only the following: (1) Indirect taxes borne by inputs that are physically incorporated in the exported product (see Annex 1.1 of part 355 of the Commerce Regulations) and (2) indirect taxes levied at the final stage (see Annex 1.2 of part 355 of the Commerce Regulations).

We found that two firms did use these tax credits during the review period. However, during verification, we found that their credits were based on the import duties paid on imported packing materials, *i.e.*, physically incorporated goods. We preliminarily determine that the tax credits used by the two firms meet the first criterion, and were equal to the import duties paid. Therefore they provide no countervailable benefit duirng the review period.

(4) Export Packing Credits

The Philippine Central Bank offers a rediscounting program through the commercial banks. Upon receipt of a letter of credit from a foreign purchaser, an exporter may negotiate an "export packing credit," a pre-export loan, with a commercial bank based on the letter of credit. The commercial bank may then rediscount the packing credit with the Central Bank. Until November 18, 1983, Central Bank Circular 784 set the maximum interest rate the banks could charge under the program to "non-traditional" exporters (canned tuna exporters are included in this category) at 12 percent. Under the same circular, the Central Bank charged the commercial banks 3 percent for the rediscounting. On November 18, 1983, Circular 981 changed the maximum rate of 12 percent to the 90-day Manila Reference Rate minus two points, and for the rediscounting to 7 percent. If the commercial banks do not rediscount the loans, they may charge a commercial rate of interest on the loans.

We based our calculations on the actual interest paid rather than the maximum rates. For our benchmark interest rate, we took the weighted average interest rates for secured loans of one year or less in duration as found in the annual report of the Central Bank. To find the benefit for each loan, we took the difference between the actual interest paid and the interest the firm would have paid using our benchmark interest rate. We totaled the difference for each firm's loans and divided by that firm's exports during the review period. We then weight-averaged the benefit by the firm's share of total exports to the U.S. and preliminarily find the total benefit under this program to be 0.16 percent *ad valorem*.

(5) Other Programs

We also examined the following programs and preliminarily find that exporters of canned tuna did not use them during the review period.

A. Income tax deduction for overseas offices (Article 49(f) of the Ominbus Investments Code);

B. Income tax deduction for new brands names (Articles 48(e) & 49 (g));

C. Income tax deduction for export traders (Article 49(d));

D. Income tax deduction for financial assistance (Article 49(e));

E. Government bank loans (Article 51);

F. Private Bank loans (Article 52);

G. Equity investment by insurance companies (Article 52);

H. Employee equity investment (Article 53);

I. Tax credits for net local content;

J. Tax credits for net local value;

K. Preferential loan guarantees;

L. Government equity investment;

M. Foreign equity investment;

N. Various financial services by the Export Credit Insurance and Guarantee Corp.;

O. Various financial and marketing assistance by the Institute for Export Development;

P. Offsetting export tax;

Q. Preferential access to foreign exchange; and

R. World Bank import funding

Preliminary Results of Review

As a result of our review, we preliminarily determine the total bounty or grant to be 0.25 percent *ad valorem* for the period of review. The Department considers any rate less than 0.50 percent *ad valorem* to be *de minimis*.

Section 707 of the Tariff Act provides that the difference between the deposit of estimated countervailing duties and the final calculation of the duty under a countervailing duty order shall be disregarded to the extent that the estimated duty is less than the final duty, and refunded to the extent that the estimated duty is higher than the final duty, for merchandise entered, or withdrawn from warehouse, for consumption before (for non-signatories) the date of the countervailing duty order. The Department therefore intends to instruct the Customs Service not to assess countervailing duties for shipments of the merchandise entered, or withdrawn from warehouse, for consumption on or after August 16, 1983, the date of the preliminary affirmative determination (48 FR 37051), and before October 31, 1983 (the date of the order), or entered, or withdrawn from warehouse, for consumption on or after October 31, 1983, and exported on or before December 31, 1983.

The Department intends to instruct the Customs Service to waive deposits of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, on all shipments of the merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. This deposit waiver shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and section 355.41 of the Commerce Regulations (19 CFR 355.41).

Dated: March 4, 1985.

Alan F. Holmer,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 85-5609 Filed 3-7-85; 8:45 am]

BILLING CODE 3510-DS-M

Applications for Duty-Free Entry of Scientific Instruments; Cornell University, et al.

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No. 84-095. Applicant: Cornell University, Ithaca, NY 14853. Instrument: Viscoelastometer, Model DDV-II-C. Manufacturer: Toyo Baldwin Co., Japan. Intended use: Studies of high modulus fibers and thin films of polymers. Experiments will consist of characterization of structural

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parameters—crystallinity, orientation, solvent content and relaxation temperature and of mechanical properties—stiffness, strength, loss tangent. The objectives of this research are to discover how to produce new stiff fibers and to study failure mechanisms in films and fibers. Application received by Commissioner of Customs: February 10, 1984.

Docket No. 84–278. Applicant: Cornell University, Materials Science Center, Room 625, Clark Hall, Ithaca, NY 14853. Instrument: Electron Microscope, Model JEM–4000 EX/TES with TTH 40 Holder. Manufacturer: JEOL, Japan. Intended use: The instrument is intended to be used for varied experiments in materials research. The experiments to be conducted will include but are not limited to the following:

(1) Structural and electrical characterization of silicon on sapphire.

(2) Studies of the mechanical properties of metallic glasses.

(3) Study of the influence of grain boundaries on the electrical transport properties of polycrystalline si films.

(4) Solar cell silicon studies.

(5) Microscopy studies of the structure and chemistry of melt phases in rocks.

(6) Study of structure of grain boundaries in Olivine.

(7) Microscopy studies of the structure of ceramic grain boundaries.

(8) Study of radiation-induced precipitation in tungsten (Rhenium) alloy.

Application received by Commissioner of Customs: August 6, 1984.

Docket No. 84–285. Applicant: The Pennsylvania State University, Department of Mineral Engineering, Geomechanics, 104 Mineral Sciences Building, University Park, PA 16802. Instrument: Underground Service Chart Recorder. Manufacturer: McPhar Mine Systems, Inc., Canada. Intended use: Studies of active coal mine roof and pillar strata with the objective of improving mine safety and increasing coal production. In addition, the article will be used in the course Mng 545—Field Instrumentation to acquaint students with geotechnical field instrumentation. Application received by Commissioner of Customs: August 27, 1984.

Docket No. 85–086. Applicant: University of Nevada, Reno, Department of Range, Wildlife & Forestry, 1000 Valley Road, Reno, NV 89512. Instrument: Hand Held Ratioing Radiometer System, Model HHRR with Accessories. Manufacturer: Barringer Research Limited, Canada. Intended use: Study of the spectra of various range plant species and the associated soil surface. Data will be collected from an aircraft and on the ground. The spectral data will be used to identify, measure, and explain patterns of succession for arid range plant communities; to associate the brightness levels of the spectra with specific scene components to describe and measure forage productivity, carrying capacity and range condition; and to develop mathematical models using spectral data and statistical data derived from the spectral data to identify and measure plant succession, forage productivity, carrying capacity and associated range condition. Application received by Commissioner of Customs: February 5, 1985.

Docket No. 85–090. Applicant: Massachusetts Institute of Technology, Room 1–343B, 77 Massachusetts Avenue, Cambridge, MA 02139. Instrument: Direct Simple Shear Apparatus, Model H–12. Manufacturer: Geonor AS, Norway. Intended use: The instrument will be used in the Soil Mechanics research program for studies of particulate media. Both natural and artificial materials are to be studied to quantify the components which control performance. The initial state of the material as well as load history will be varied to better formulate a model for general behavior. Other application areas include performance prediction of embankments and large gravity platforms. Considerable research effort will be devoted to device improvements and procedure modifications. The instrument will also be used for demonstration purposes in the course Geotechnical Measurements and Exploration. Application received by Commissioner of Customs: February 7, 1985.

Docket No. 85–098. Applicant: Department of Interior, U.S. Geological Survey, Branch of Geophysics, Box 25046, Mail Stop 964, Denver, CO 80225. Instrument: Time-Domain Electromagnetic Prospecting System, Model EM 37–3. Manufacturer: Geonics Limited, Canada. Intended use: The instrument is intended to be used to measure the electrical conductivity of the earth, particularly to determine the properties of geothermal systems, groundwater aquifers, and mineral deposits for research purposes. Application received by Commissioner of Customs: February 13, 1985.

Docket No. 85–100. Applicant: University of Illinois, Urbana-Champaign Campus, Purchasing Division, 223 Administration Building, Urbana, IL 61801. Instrument: Electron Microscope, Model JEM–4000EX with Accessories. Manufacturer: JEOL, Japan. Intended use: Studies of interactions between materials and gases at high magnifications. Problems of material degradation by the environment (hydrogen embrittlement, stress corrosion cracking, etc.) grain growth of ceramics, fracture of ceramics, polymer degradation and many others will be studied. Application received by Commissioner of Customs: February 13, 1985.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientifc Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 85–5607 Filed 3–7–85; 8:45 am]

BILLING CODE 3510–DS–M

[C–791–010]

Galvanized Steel Wire Strand From South Africa; Preliminary Results of Administrative Review of Suspension Agreement

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of Preliminary Results of Administrative Review of Suspension Agreement.

SUMMARY: The Department of Commerce has conducted an administrative review of the agreement suspending the countervailing duty investigation on galvanized steel wire strand from South Africa. The review covers the period October 1, 1983, through December 31, 1983.

As a result of the review, we preliminarily find that the signatory, Haggie Limited, the only known exporter of South African galvanized steel wire strand to the United States, has complied with the terms of the suspension agreement.

EFFECTIVE DATE: March 8, 1985.

FOR FURTHER INFORMATION CONTACT: Sylvia Chadwick or Philip Otterness, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On June 13, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 24426) the final results of its last administrative review of the agreement suspending the countervailing duty investigation on galvanized steel wire strand from South Africa (48 FR 19451, April 29, 1983) and announced its intent

to conduct the next administrative review. As required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that administrative review.

Scope of the Review

Imports covered by the review are shipments of South African galvanized steel wire strand. Such merchandise is currently classifiable under items 642.1142 and 642.1144 of the Tariff Schedules of the United States Annotated.

The review covers the period October 1, 1983, through December 31, 1983, and four programs: (1) Preferential rail rates; (2) Export Incentive Program; (3) the Iron/Steel Export Promotion Scheme; and (4) the General Levy and Import Subsidy Scheme. Haggie Limited, the signatory to the suspension agreement, is the only known exporter of South African galvanized steel wire strand to the United States.

Analysis of Programs

(1) Preferential Rail Rates

The South African Transport Services, a government-owned corporation, maintains a rate schedule that provides preferential rates for container shipments destined for export. Haggie ships all of its galvanized steel wire strand for export in containers. During the period of review, Haggie paid the domestic container rate for all shipments of galvanized steel wire strand, including shipments to the United States. This eliminated the differential in accordance with the terms of the suspension agreement.

(2) Export Incentive Program

Haggie is eligible for tax benefits under Categories B and D of this program but, as a part of the suspension agreement, agreed not to claim Category B and D benefits on exports of galvanized steel wire strand to the United States. Haggie has not yet filed its tax return for the period under review. In a subsequent review, after Haggie has filed its return, we will examine whether or not Haggie claimed Category B or D benefits for shipments made during the review period.

(3) Iron/Steel Export Promotion Scheme ("ISEPS")

The South African Rolled Steel Producers' Co-ordinating Council, a group of nine primary steel producers, introduced ISEPS in September 1972. The scheme pays to secondary steel exporters an amount equal to 19.5 percent of the f.o.b. invoice price on all exports of secondary steel products that contain rolled, drawn, or forged steel and that meet a 25 percent value-added criterion. The scheme is funded by a 4 rand per metric ton levy on all purchases of primary steel. The primary producers pay the levy to the fund, but the government allows an upward adjustment to the government-controlled price of primary steel to compensate for the amount of the levy, shifting the charge to the secondary producers.

In accordance with the terms of the suspension agreement, Haggie did not make any claims for ISEPS benefits on shipments of galvanized steel wire strand to the United States during the review period.

(4) The General Levy and Import Subsidy Scheme ("GLISS")

The South African Rolled Steel Producers' Co-ordinating Council created GLISS in the early 1970's.

The scheme's purpose was to stabilize the difference between the government-controlled price of domestic primary steel, which was in short supply, and higher-priced steel imported to meet South African demand. In order to repay money borrowed from the South African government to finance GLISS, the Council now imposes a levy paid by secondary producers on their purchases of primary steel. This levy is rebated to secondary producers on their export sales at a rate of 9.99 rand per metric ton.

Haggie did not receive any benefits from GLISS for shipments of galvanized steel wire strand to the United States during the review period.

We found no other benefits received by Haggie during the review period.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that Haggie Limited has complied with the terms of the suspension agreement for the period October 1, 1983, through December 31, 1983. The agreement can remain in force only so long as shipments covered by the agreement account for at least 85 percent of imports of galvanized steel wire strand to the United States. Our information indicates that Haggie Limited accounted for 100 percent of imports into the United States of South African galvanized steel wire strand during the review period.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such comments or at a hearing.

This administrative review and notice are in accordance with section 751 of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.41 of the Commerce Regulations (19 CFR 355.41).

Dated: February 27, 1985.

Alan F. Homer,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 85-5811 Filed 3-7-85; 8:45 am]

BILLING CODE 3510-DS-M

Prestressed Concrete Steel Wire Strand From South Africa; Preliminary Results of Administrative Review of Suspension Agreement

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of Preliminary Results of Administrative Review of Suspension Agreement.

SUMMARY: The Department of Commerce has conducted an administrative review of the agreement suspending the countervailing duty investigation on prestressed concrete steel wire strand from South Africa. The review covers the period January 1, 1983, through December 31, 1983.

As a result of the review, we preliminarily find that the signatory, Haggie Limited, the only known exporter of South African prestressed concrete steel wire strand to the United States, has complied with the terms of the suspension agreement.

EFFECTIVE DATE: March 8, 1985.

FOR FURTHER INFORMATION CONTACT: Sylvia Chadwick or Philip Otterness, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On April 23, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 17061) the final results of its last administrative review of the agreement suspending the countervailing duty investigation on prestressed concrete steel wire strand ("PC strand") from South Africa (47 FR 22137, May 21, 1982) and announced its intent to conduct the next administrative review. As required

by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that administrative review.

Scope of the Review

Imports covered by the review are shipments of South African prestressed concrete steel wire strand. Such merchandise is currently classifiable under item 642.1120 of the Tariff Schedules of the United States Annotated.

The review covers the period January 1, 1983, through December 31, 1983, and four programs: (1) Preferential rail rates; (2) Export Incentive Program; (3) the Iron/Steel Export Promotion Scheme; and (4) the General Levy and Import Subsidy Scheme. Haggie Limited, the signatory to the suspension agreement, is the only known exporter of South African PC strand to the United States.

Analysis of Programs

(1) Preferential Rail Rates

The South African Transport Services, a government-owned corporation, maintains a rate schedule that provides preferential rates for container shipments destined for export. Haggie ships all of its PC strand for export in containers. During the period of review, Haggie paid the domestic container rate for all shipments of PC strand, including shipments to the United States. This eliminated the differential in accordance with the terms of the suspension agreement.

(2) Export Incentive Program

Haggie is eligible for tax benefits under Categories B and D of this program but, as a part of the suspension agreement, agreed not to claim Category B and D benefits on exports of PC strand to the United States. We examined Haggie's 1982 tax return and confirmed that the company made no claims not in accordance with the terms of the suspension agreement.

(3) Iron/Steel Export Promotion Scheme ("ISEPS")

The South African Rolled Steel Producers' Co-ordinating Council, a group of nine primary steel producers, introduced ISEPS in September 1972. The scheme pays to secondary steel exporters an amount equal to 19.5 percent of the f.o.b. value on all exports of secondary steel products that contain rolled, drawn, or forged steel and that meet a 25 percent value-added criterion. The scheme is funded by a 4 rand per metric ton levy on all purchases of primary steel. The primary producers pay the levy to the fund, but the government allows a upward adjustment to the government-controlled price of primary steel to compensate for the amount of the levy, shifting the charge to the secondary producers.

In accordance with the terms of the suspension agreement, Haggie did not make any claims for ISEPS benefits on shipments of PC strand to the United States during the review period.

(4) The General Levy and Import Subsidy Scheme ("GLISS")

The South African Rolled Steel Producers' Co-ordinating Council created GLISS in the early 1970's The scheme's purpose was to stabilize the difference between the government-controlled price of domestic primary steel, which was in short supply, and higher-priced steel imported to meet South African demand. In order to repay money borrowed from the South African government to finance GLISS, the Council now imposes a levy paid by secondary producers on their purchases of primary steel. This levy is rebated to secondary producers on their export sales at a rate of 9.99 rand per metric ton.

Haggie did not receive any benefits form GLISS for shipments of PC strand to the United States during the review period.

We found no other benefits received by Haggie during the review period.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that Haggie Limited has complied with the terms of the suspension agreement for the period January 1, 1983, through December 31, 1983. The agreement can remain in force only so long as shipments covered by the agreement account for at least 85 percent of exports of such merchandise to the United States. Our information indicates that Haggie Limited accounted for 100 percent of imports into the United States of South African PC strand during the review period.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.41 of the Commerce Regulations (19 CFR 355.41).

Dated: February 27, 1985.

Alan F. Holmer,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 85-5610 Filed 3-7-85; 8:45 am]

BILLING CODE 3510-DS-M

Steel Wire Rope From South Africa; Preliminary Results of Administrative Review of Suspension Agreement

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of Preliminary Results of Administrative Review of Suspension Agreement.

SUMMARY: The Department of Commerce has conducted an administrative review of the agreement suspending the countervailing duty investigation on steel wire rope from South Africa. The review covers the period July 1, 1983, through December 31, 1983.

As a result of the review, we preliminarily find that the signatory, Haggie Limited, the only known exporter of South African steel wire rope to the United States, has complied with the terms of the suspension agreement.

EFFECTIVE DATE: March 8, 1985.

FOR FURTHER INFORMATION CONTACT: Sylvia Chadwick or Philip Otterness, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On April 13, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 14775) the final results of its last administrative review of the agreement suspending the countervailing duty investigation on steel wire rope from South Africa (47 FR 54130, December 1, 1982) and announced its intent to conduct the next administrative review. As required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that administrative review.

Scope of the Review

Imports covered by the review are shipments of South African steel wire rope. Such merchandise is currently

classifiable under items 642.1200, 642.1610, and 642.1650 of the Tariff Schedules of the United States Annotated.

The review covers the period July 1, 1983, through December 31, 1983, and four programs: (1) Preferential rail rates; (2) Export Incentive Program; (3) the Iron/Steel Export Promotion Scheme; and (4) the General Levy and Import Subsidy Scheme. Haggie Limited, the signatory to the suspension agreement, is the only known exporter of South African steel wire rope to the United States.

Analysis of Programs

(1) Preferential Rail Rates

The South African Transport Services, a government-owned corporation, maintains a rate schedule that provides preferential rates for container shipments destined for export. Haggie ships all of its wire rope for export in containers. During the period of review, Haggie paid the higher domestic container rate for all shipments of wire rope, including shipments to the United States. This eliminated the differential in accordance with the terms of the suspension agreement.

(2) Export Incentive Program

Haggie is eligible for tax benefits under Categories B and D of this program but, as part of the suspension agreement, agreed not to claim Category B and D benefits on exports of wire rope to the United States.

Haggie has not yet filed its tax return for the period under review. In a subsequent review, after Haggie has filed its return, we will examine whether or not Haggie claimed Category B or D benefits for shipments made during the review period.

(3) Iron/Steel Export Promotion Scheme ("ISEPS")

The South African Rolled Steel Producers' Co-ordinating Council, a group of nine primary steel producers, introduced ISEPS in September 1972. The scheme pays to secondary steel exporters an amount equal to 19.5 percent of the f.o.b. value on all exports of secondary steel products that contain rolled, drawn, or forged steel and that meet a 25 percent value-added criterion. The scheme is funded by a 4 rand per metric ton levy on all purchases of primary steel. The primary producers pay the levy to the fund, but the government allows an upward adjustment to the government-controlled price of primary steel to compensate for the amount of the levy, shifting the charge to the secondary producers.

In accordance with the terms of the suspension agreement, Haggie did not make any claims for ISEPS benefits on shipments of wire rope to the United States during the review period.

(4) The General Levy and Import Subsidy Scheme ("GLISS")

The South African Rolled Steel Producers' Co-ordinating Council created GLISS in the early 1970's. The scheme's purpose was to stabilize the difference between the government-controlled price of domestic primary steel, which was in short supply, and higher-priced steel imported to meet South African demand. In order to repay money borrowed from the South African government to finance GLISS, the Council now imposes a levy paid by secondary producers on their purchases of primary steel. This levy is rebated to secondary producers on their export sales at a rate of 9.99 rand per metric ton.

Haggie did not receive any benefits from GLISS for shipments of wire rope to the United States during the period of review.

We found no other benefits received by Haggie during the review period.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that Haggie Limited has complied with the terms of the suspension agreement for the period July 1, 1983, through December 31, 1983. The agreement can remain in force only so long as shipments covered by the agreement account for at least 85 percent of exports of such merchandise to the United States. Our information indicates that Haggie Limited accounted for 100 percent of imports into the United States of South African wire rope during the review period.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.41 of the Commerce Regulations (19 CFR 355.41).

Dated: February 27, 1985.

Alan F. Holmer,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 85-5608 Filed 3-7-85; 8:45 am]

BILLING CODE 3510-DS-M

Export Trade Certificate of Review; Application

AGENCY: International Trade Administraiton, Commerce.

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the certificate should be issued.

FOR FURTHER INFORMATION CONTACT: James V. Lacy, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (Pub. L. 97-290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A certificate of review protects its holder and the members identified in it from private treble damage actions and from civil and criminal liability under Federal and state antitrust laws for the export conduct specified in the certificate and carried out during its effective period in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination of whether a certificate should be issued. An original and five (5) copies should be submitted not later than March 28, 1985 to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington, D.C. 20230.

Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate

of Review, application number 85-00005."

Applicant: Comet Rice, Inc., P.O. Box 1681, Houston, TX 77001, Telephone: (713) 447-7423

Application #: 85-00005

Date Deemed Submitted: February 25, 1985

Member: Farmers' Rice Cooperative, Box 696, West Sacramento, CA 95691

Summary of the Application:

Export Trade

(a) Rice, including wild rice, and rice products (rough rice, parboiled rice, milled rice, undermilled or unpolished rice, brown rice, coated rice, enriched rice, rice bran, rice polish, head rice, second head rice, brewers' rice, and flavored rice).

(b) Services (consulting; international market research; advertising; marketing; insurance; product research and design, exclusively for export; legal assistance; transportation, including trade documentation and freight forwarding; communication and processing of foreign orders; warehousing; foreign exchange; financing; and taking title to goods) in connection with the export of rice and rice products.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

To engage in Export Trade in the Export Markets, Comet Rice seeks certification:

(1) On a transaction-by-transaction basis, to join with its member to bid for the sale of, and to sell, U.S. rice and rice products to the Export Markets.

(2) For each bid or sale, to negotiate and agree with its member on the terms of their participation in the bid or sale, including the amount of rice and rice products each will commit to the sale and the price to be bid, and, in order to negotiate those terms, exchange:

(a) Information (other than information about the costs, output, capacity, inventories, domestic prices, domestic sales, domestic orders, terms of domestic marketing or sale of United States business plans, strategies or methods of Comet Rice, Inc. or its member) that is already generally available to the trade or public,

(b) Information (such as selling strategies, prices, projected demand, and customary terms of sale) solely about the Export Markets, and

(c) Information on expenses specific to exporting to the Export Markets (such as ocean freight, inland freight to the terminal or port, terminal or port storage, wharfage and handling charges, insurance, agents' commissions, export sales documentation and service, and export sales financing).

(3) To negotiate with its member to provide or contract for the provision of the storage, shipping and delivery, and associated services needed for each sale.

(4) Individually or jointly with its member, with respect to each bid, to refuse to include in their bid any other company having rice and rice products for export.

(5) To purchase additional quantities of rice and rice products from other U.S. suppliers for resale in the Export Markets.

Dated: March 5, 1985.

Richard H. Shay,

Acting General Counsel.

[FR Doc. 85-5644 Filed 3-7-85; 8:45 am]

BILLING CODE 3510-DR-M

National Bureau of Standards

[Docket No. 50327-5027]

Indefinite Suspension of Federal Information Processing Standard 98, Message Format for Computer-Based Message Systems

AGENCY: National Bureau of Standards, Commerce.

ACTION: The purpose of this notice is to announce that the Secretary of Commerce has suspended indefinitely the implementation of Federal Information Processing Standard 98, Message Format for Computer-Based Message Systems.

SUMMARY: On March 1, 1983, notice was published in the **Federal Register** (48 FR 8526-8527) that the Secretary of Commerce had approved Federal Information Processing Standard 98, Message Format for Computer-Based Message Systems. Since the approval of this standard, it has been introduced into the voluntary standards process for consideration as an international consensus standard. As a result of action by the Consultative Committee for International Telephone and Telegraph (CCITT), the message format specifications detailed in FIPS 98 have been adopted for international use with modifications. Because it is in the best interest of the U.S. government to use standards that are compatible with those used by industry and approved by the international standards community, NBS intends to revise FIPS 98 to make it consistent with CCITT recommendation X.409.

Accordingly, the Secretary of Commerce has decided to suspend the implementation of FIPS 98 indefinitely, pending its revision.

FOR FURTHER INFORMATION CONTACT: Dr. John Heafner, Chief, Systems and Network Architecture Division, Institute for Computer Sciences and Technology, National Bureau of Standards, Gaithersburg, MD 20899, (301) 921-3537.

Dated: March 5, 1985.

Ernest Ambler,

Director.

[FR Doc. 85-5533 Filed 3-7-85; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

Coastal Zone Management Act; Section 306(i) Satisfactory Progress Findings for State Coastal Management Programs

AGENCY: National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management, Commerce.

ACTION: Notice of intent to issue findings.

SUMMARY: Notice is hereby given by the Office of Ocean and Coastal Resource Management (OCRM) of its intent to issue findings pursuant to Section 306(i) of the Coastal Zone Management Act of 1972, as amended (CZMA), 16 U.S.C. 1455(i), on the satisfactory progress of State coastal management programs in inventorying and designating areas that contain coastal resources of national significance. These findings will be based on a report prepared by OCRM which describes the activities coastal States have undertaken to inventory, designate and protect coastal resources of national significance such as wetlands, beaches, dunes, barrier islands, reefs, estuaries, and fish and wildlife habitats. The report also identifies the type of progress coastal States have made in achieving the objectives of Section 306(i) of the CZMA. The report indicates that the 28 coastal States with Federally approved programs 24 States have made fully satisfactory progress and 4 States have made partially satisfactory progress in carrying out the requirements of Section 306(i). Both findings make States eligible for Section 306A grants, but those States

found to be making only partially satisfactory progress must complete recommendations to correct the identified deficiencies within time schedules noted in the report in order to ensure future eligibility for Section 306A financial awards.

Interested persons are advised that they may submit comments on this report within 30 days from the date of this notice. The comments will be considered before the findings are issued.

Requests for the report, further information and all comments should be made to:

Ben Mieremet, Technical Assistance and Coastal Hazards Coordinator
or
Doris Grimm, Environmental Specialist, Office of Ocean and Coastal Resource Management, 3300 Whitehaven Street, NW., Washington, D.C. 20235, (202) 634–4124

(Federal Domestic Assistance Catalog 11.419, Coastal Zone Management Program Administration)

Dated: March 1, 1985.

Peter L. Tweedt,

Director, Office of Ocean and Coastal Resource Management.

[FR Doc. 85–5588 Filed 3–7–85; 8:45 am]

BILLING CODE 3510–08–M

Endangered Species; Receipt of Application for Permit; Cold Springs Harbor Fish Hatchery and Aquarium

Notice is hereby given that an Applicant has applied in due form for a Permit to take endangered species as authorized by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543), the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR Parts 217–222).

1. Applicant:

a. Name: Cold Springs Harbor Fish Hatchery & Aquarium, Norman Soule, Director.

b. Address: P.O. 535, Route 25A, Cold Spring Harbor, New York 11724.

2. Type of Permit: Scientific Research.

3. Names and Number of Animals: Shortnose Sturgeon (*Acipenser brevirostrum*), 74.

4. Type of Take: Capture, by gillnet, of ripe adults for propagation research.

5. Location of Activity: Hudson River, New York (river Miles 87–154).

6. Period of Activity: April 15–June 1, 1985.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.; and

Regional Director, National Marine Fisheries Service, Northeast Region, 14 Elm Street, Federal Building, Gloucester, MA 01930.

Dated: March 1, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85–5646 Filed 3–7–85; 8:45 am]

BILLING CODE 3510–22–M

Issuance of Permit for Marine Mammals; West Coast Whale Research Foundation

On January 7, 1985, notice was published in the **Federal Register** (50 FR 873) that an application had been filed with the National Marine Fisheries Service by the West Coast Whale Research Foundation for a Permit for the potential harassment of humpback whales (*Megaptera novaeangliae*) for the purpose of scientific research as described in the application.

Notice is hereby given that on February 28, 1985, and as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Endangered Species Act of 1973 (16 U.S.C. 1531–1543), the National Marine Fisheries Service issued a Scientific Research Permit for the above taking to the West Coast Whale Research Foundation, subject to certain conditions set forth therein.

This Permit is available for review by interested persons in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.; and

Regional Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Dated: February 28, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85–5647 Filed 3–7–85; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals; Issuance of Permit; Oregon State University

On February 17, 1984, Notice was published in the **Federal Register** (49 FR 6143) that an application had been filed with the National Marine Fisheries Service by Dr. Bruce R. Mate, Marine Science Center, Oregon State University, Newport, Oregon 97365 to take by harassment and satellite radio tagging up to 800 bowhead whales (*Balaena mysticetus*) over a four year period for scientific research.

Notice is hereby given that on March 1, 1985, and as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Endangered Species Act of 1973 (16 U.S.C.–1543), the National Marine Fisheries Service issued a Permit to Dr. Bruce R. Mate to take the endangered species requested subject to certain conditions set forth therein.

The Permit is available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW. Washington, D.C.; and

Regional Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way, NE., BIN C15700, Seattle, Washington 98115.

Regional Director, Alaska Region, National Marine Fisheries Service, P.O. Box 168, Juneau, Alaska 99802.

Dated: March 1, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85–5648 Filed 3–7–85; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals; Modification No. 1 to Permit No. 376; Marineland Amusements Corp.

Notice is hereby given that pursuant to the provisions of §§ 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216) Public Display Permit No. 376 issued to Marineland Amusements Corporation, 6610 Palos Verdes Drive

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South, Rancho Palos Verdes, California 90274, on April 23, 1982 (47 FR 17605), is modified to extend the period of authorized take two (2) years.

Accordingly, Section B-4 is deleted and replaced by: "4. This permit is valid with respect to the taking authorized herein until December 31, 1987."

This modification became effective February 26, 1985.

The Permit as modified and documentation pertaining to the modification are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.; and

Regional Director, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731.

Dated: February 26, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85-5650 Filed 3-7-85; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Receipt of Application for Permit; Dolphin Research Center

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant:

a. Name: Dolphin Research Center (P53B).

b. Address: P.O. Box 2875, Marathon Shores, Florida 33052.

2. Type of Permit: Public Display.

3. Name and Number of Animals: Atlantic bottlenose dolphins (*Tursiops truncatus*), 8.

4. Type of Take: Capture and maintain.

5. Location of Activity: Florida West Coast.

6. Period of Activity: 2 years.

The arrangements and facilities for transporting and maintaining the marine mammals requested in the above described application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate to provide for the well-being of the marine mammals involved.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.; and

Regional Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Dated: March 1, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85-5651 Filed 3-7-85; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Receipt of Application for Permit; Triple Five Corporation, Ltd.

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant:

a. Name: Triple Five Corporation Ltd. (P348A).

b. Address: Suite 900, Capital Place, 9707-110th Street, Edmonton, Alberta T5K2L9, Canada.

2. Type of Permit: Public Display.

3. Name and Number of Animals: Bottlenose dolphin (*Tursiops truncatus*), 4.

4. Type of Take: Capture for permanent maintenance.

5. Location of Activity: West Coast of Florida.

6. Period of Activity: Two (2) years.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.; and

Regional Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Dated: March 1, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85-5649 Filed 3-7-85; 8:45 am]

BILLING CODE 3510-22-M

North Pacific Fur Seals; Availability of an Issue Paper

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of availability of an Issue Paper on North Pacific Fur Seals.

SUMMARY: An issue paper has been prepared for use in the development of the United States' position at the Tokyo Meeting Concerning North Pacific Fur Seals, to be held April 12 to 19, 1985. The Tokyo Meeting will include Parties to the Interim Convention on Conservation of North Pacific Fur Seals. Topics of the meeting are scientific and conservation issues relating to North Pacific fur seals (*Callorhinus ursinus*).

DATE: Comments on the issue paper will be accepted through March 29, 1985. This issue paper was used for

discussion at a public meeting held on February 14, 1985, in Washington, D.C.

ADDRESS: To receive a copy of the issue paper please call Ted I. Lillestolen at (202) 634–7257 or write to the following office: Office of International Fisheries, F/M3, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Washington, D.C. 20235.

FOR FURTHER INFORMATION CONTACT: Ted I. Lillestolen, 202–634–7257.

Dated: March 5, 1985.

Henry R. Beasley,

Director, Office of International Fisheries, National Marine Fisheries Service.

[FR Doc. 85–5645 Filed 3–7–85; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comment on Bilateral Textile Consultations with the Government of India To Review Trade in Category 313 (Cotton Sheeting)

March 5, 1985.

On January 30, 1985 the Government of the United States requested consultations with the Government of India with respect to cotton sheeting in Category 313. This request was made on the basis of Paragraph 16 of the agreement between the Governments of the United States and India relating to trade in Cotton, Wool and Man-Made Fiber Textiles and Textile Products of December 21, 1982, which provides for consultations when the orderly development of trade between the two countries may be impeded by imports due to market disruption, or the threat thereof.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations between the two governments, CITA may establish a prorated specific limit of 10,602,245 square yards for the entry and withdrawal from warehouse for consumption of cotton textile products in Category 313, produced or manufactured in India and exported to the United States during the period which began on January 30, 1985 and extends through December 31, 1985.

The Government of the United States has decided, until such time as a mutually satisfactory solution is reached in consultations, to control imports in this category during the 90-day consultation period which began on January 30, 1985 extends through April 29, 1985 at a level of 3,359,218 square yards.

In the event the level established for Category 313 during the ninety-day period is exceeded, such excess amounts, if they are allowed to enter at the end of the restraint period, shall be charged to the prorated twelve-month level described below.

A summary market statement for this category follows this notice.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57534), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Anyone wishing to comment or provide data of information regarding the treatment of Category 313 under the Bilateral Cotton, Wool and Man-Made Fiber Agreement with the Government of India, or to comment on domestic production or availability of textile products included in this category, is invited to submit such comments or information in ten copies of Mr. Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C., and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

SUPPLEMENTARY INFORMATION: On December 27, 1984 a letter was published in the **Federal Register** (49 FR 50236) to the Commissioner of Customs from the Chairman of the Committee for the Implementation of Textile Agreements which established restraint limits for certain categories of cotton, wool and man-made fiber textiles and textile products, produced or manufactured in India and exported during the twelve-month period which began on January 1, 1985. In the letter published below, pursuant to the terms of the bilateral agreement, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs, pending agreement on a different solution, to prohibit entry for consumption or withdrawal from warehouse for consumption of cotton textile products in Category 313, exported during the indicated ninety-day period, in excess of the designated level of restraint.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

Category 313—Cotton Sheeting

India—Market Statement
January 1985.

U.S. imports of Category 313 from India totalled 10.5 million square yards for the year ending November 1984, a substantial increase over the 417,000 square yards imported a year earlier.

The domestic industry producing cotton sheeting fabric is adversely affected by imports. While the market expanded in early 1984 as the U.S. economy improved, the U.S. producer's share of the market for domestically produced and imported sheeting declined. Depite a strong first quarter showing, domestic production was relatively flat for January–September, reflecting the eight percent decline in second and third quarter production. This downturn coincided with a substantial loss of market share for domestic producers; from 51.3 percent in January–September 1983 to 42.0 percent in 1984. Production for 1984 is expected to be one percent below the level of 1983.

Total imports of cotton sheeting fabrics increased 38.1 percent, from 304.1 million square yards ending November 1983 to 420.0 million square yards year ending November 1984. This was the first time that imports of cotton sheeting surpassed the amount domestically produced.

The import to production ratio of Category 313 increased from 94.8 percent in January–September 1983 to 138.1 percent in January–September 1984.

March 5, 1985.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of December 21, 1984 from the Chairman of the Committee for the Implementation of Textile Agreements which directed you to prohibit entry of certain

cotton, wool and man-made fiber textiles and textile products, produced or manufactured in India and exported during 1985.

Effective on March 11, 1985, paragraph one of the directive of December 2, 1984 is hereby amended to include a limit of 3,359,218 square yards [1] for cotton textile products in Category 313, produced or manufactured in India and exported during the ninety-day period which began on January 30, 1985 and extends through April 29, 1985.

Textile products in Category 313 which have been exported to the United States before January 30, 1985 shall not be subject to this directive.

Textile products in Category 313 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1(A) prior to the effective date of this directive shall not be denied entry under this directive.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-5572 Filed 3-7-85; 8:45 am]

BILLING CODE 3510-DR-M

CONSUMER PRODUCT SAFETY COMMISSION

Chronic Hazard Advisory Panel on Di(2-Ethylhexyl)Phthalate; Meeting

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of public meeting.

SUMMARY: A Chronic Hazard Advisory Panel, established by the Commission to provide advice about the potential chronic hazards presented by Di(2-ethylhexyl)phthalate (DEHP) in consumer products, has scheduled a meeting to hear oral comments from the public on this subject. On the day following that meeting, the Panel will meet in open session to consider information which it has received to date.

DATES: The meeting to hear oral comments will begin at 9:00 am on April 3, 1985 and is expected to conclude by 5:00 pm. Requests to make presentations should be received by March 20, 1985. The Panel also will meet in open session on April 4, 1985; this meeting also will start at 9:00 am and is expected to conclude by 5:00 pm.

ADDRESS: The meeting will be at 5401 Westbard Avenue, Bethesda, Maryland, in room 456.

FOR FURTHER INFORMATION CONTACT: Requests to make presentations at the public meeting should be submitted to Colin B. Church, Directorate for Health Sciences, Consumer Product Safety Commission, Washington, D.C. 20207; (301) 492-6957.

SUPPLEMENTARY INFORMATION: The Chronic Hazard Advisory Panel on DEHP is a seven-member group which has been established to advise the Commission concerning the potential chronic hazard of cancer associated with the use of consumer products containing DEHP. The Panel, convened in January, 1985, is addressing the concern that the presence of DEHP as a plasticizer in children's products may result in a substantial exposure of children to a substance that is known to cause cancer in animals.

At its meeting on April 3, the Panel will hear public comments on matters related to its work. Those planning to make presentations on April 3 should submit their requests and typewritten copies or outlines of their presentations to Mr. Church by March 20, 1985. In order to accommodate all who wish to speak, presentations will be limited to 20 minutes or less. Written comments are also welcome, if received by Mr Church by April 1, 1985, for consideration by the Panel at its April 4 meeting.

On April 4, the Panel will meet in open session to consider oral and written public comments received as of that date.

Dated: March 5, 1985.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 85-5636 Filed 3-7-85; 8:45 am]

BILLING CODE 6355-01-M

COPYRIGHT ROYALTY TRIBUNAL

[Docket No. CRT 84-1 83CD]

1983 Cable Royalty Distribution Proceeding; Prehearing Conference

AGENCY: Copyright Royalty Tribunal.

ACTION: Notice of Prehearing Conference.

SUMMARY: The Copyright Royalty Tribunal will hold a prehearing conference to discuss scheduling and other procedural matters regarding the 1983 royalty distribution proceeding.

This prehearing conference is being held at the request of various copyright owners.

DATE: The prehearing conference will be held at 10:00 a.m., Tuesday, March 26, 1985.

ADDRESS: The prehearing conference will be held at 1111 20th Street, NW., Room 458, Washington, D.C. 20036.

FOR FURTHER INFORMATION CONTACT: Marianne Mele Hall, Chairman, Copyright Royalty Tribunal, 1111 20th Street, NW., Room 450, Washington, D.C. 20036, 202-653-5175.

SUPPLEMENTARY INFORMATION:

Order Concerning Prehearing Conference in 1983 Cable Royalty Distribution Proceeding

In its October 1, 1984 notice the Copyright Royalty Tribunal (Tribunal) requested comments on (1) whether a controversy existed with regard to the distribution of 1983 cable royalties; (2) scheduling the 1983 royalty distribution proceeding; and (3) the procedures to be followed in that proceeding. Comments were submitted by interested Copyright Owners on November 15, 1984. The Tribunal subsequently received from outside counsel, retained by the Tribunal, a report recommending the adoption of certain procedural suggestions for the conduct of the cable royalty distribution proceedings.

The Copyright Owners comments demonstrated that controversy does exist with regard to the 1983 fund. The comments also revealed areas of agreement and areas of disagreement respecting the scheduling of and other procedural matters concerning the 1983 case.

By letter dated March 1, 1985, the Copyright Owners jointly requested the Tribunal to hold an on-the-record prehearing conference for the purpose of considering issues raised by the November 15 comment. They further requested that the Tribunal, at the prehearing conference or as soon thereafter as possible, adopt a schedule for and set of procedures governing the 1983 proceeding.

The Tribunal believes that the prehearing conference requested by the Copyright Owners would assist in the efficient conduct of the 1983 royalty distribution proceeding. Accordingly, it will hold such a conference beginning at 10:00 a.m. on March 26, 1985. As soon thereafter as is possible, the Tribunal will (1) determine when it will declare a controversy over the 1983 fund within the meaning of Section 111(d)(5)(B) of the Copyright Act of 1976, 17 U.S.C. Section 111(d)(5)(B); (2) establish a schedule for the 1983 royalty distribution proceedings; and (3) adopt a set of procedures which will govern that proceeding. In order to narrow the issues that need to be resolved at the prehearing conference, the Copyright

[1] The level has not been adjusted to reflect any imports exported after January 29, 1985.

Owners are hereby directed to provide the Tribunal, no later than March 19, 1985 with a single joint memorandum identifying (1) each of the procedural proposals (including scheduling) which any party wishes the Tribunal to consider adopting; and (2) the positions of each of the parties with respect to each such proposal.

The Copyright Owners have further requested the Tribunal to release the report on procedures prepared by outside counsel. The Tribunal believes it would be useful for the parties to have access to the relevant portions of the report in formulating their positions and the joint memorandum described above. Accordingly, copies of those portions of the report which the Tribunal has decided to release are available at the Tribunal offices.

Dated: March 4, 1985.

Edward W. Ray,

Commissioner, Acting Chairman.

[FR Doc. 85-5528 Filed 3-7-85; 8:45 am]

BILLING CODE 1410-15-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

March 1, 1985.

The USAF Scientific Advisory Board Ad Hoc Committee on Advanced Air-Vehicle Surveillance and Warning Technologies will meet at Hanscom AFB, MA, on March 25–26, 1985 (9:00 a.m.–5:00 p.m.) to review surveillance technologies and system concepts for application to air-vehicle detection systems. This meeting will involve classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

Norita C. Koritko,

Air Force Federal Register Liaison Officer.

[FR Doc. 85-5605 Filed 3-7-85; 8:45 am]

BILLING CODE 3910-01-M

Department of the Army

U.S. Army Medical Research and Development Advisory Committee, Subcommittee on Trauma; Partially Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 USC Appendix, Sections 1–15), announcement is made of the following Subcommittee meeting:

Name of committee: United States Army Medical Research and Development Advisory Committee, Subcommittee on Trauma.

Date of meeting: April 18 and 19, 1985.

Time and place: 0830 hours, Room AS3102, Letterman Army Institute of Research, Presidio of San Francisco, CA.

Proposed agenda: This meeting will be open to the public from 0830 to 1045 hours on 18 April for the administrative review and discussion of the scientific research program of the Letterman Army Institute of Research. Attendance by the public at open sessions will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), U.S. Code, Title 5 and Sections 1–15 of Appendix, the meeting will be closed to the public from 1100–1700 hours on 18 April and from 0830–1700 on 19 April for the review, discussion and evaluation of individual programs and projects conducted by the US Army Medical Research and Development Command, including consideration of personnel qualifications and performance, the competence of individual investigators, medical files of individual research subjects, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. R. A. McHenry, Research Contract Management, Letterman Army Institute of Research, Presidio of San Francisco, CA 94129–6800 (415/561–4367) will furnish summary minutes, roster of Subcommittee members and substantive program information.

Philip Z. Sobocinski, Ph.D.,

Colonel, MSC, Deputy Commander for Science and Technology.

[FR Doc. 85-5629 Filed 3-7-85; 8:45 am]

BILLING CODE 3710-08-M

Change in Annotation on Section 10721 Rate Tender Format (Optional Form 280) of Items 15 and 17

AGENCY: Military Traffic Management Command, Army Department, Department of Defense.

ACTION: Notice of Rate Tender Annotation Application Revision.

SUMMARY: For those carriers doing business with the Department of Defense and the Military Traffic Management Command (MTMC), the use of SSS (Signature Security Service) in Item 15, PROTECTIVE SERVICES, on the Optional form 280 (Uniform Tender of Rates and/or charges for Transportation Services) will be eliminated.

Effective February 15, 1985, with the concurrence of the General Services Administration, annotation of Optional Form 280 and the tender preparation instructions will be revised. Tender format changes are:

(1) Eliminating the use of the "SSS" block, Item 15, under "PROTECTIVE SERVICES". In lieu of the use of this block;

(2) Under item 17, "ACCESSORIAL SERVICE" annotate a charge for a "Signature and Tally Record (STR)", or "Signature Service Record" in Item 17A "RATE or CHARGE": Enter the rate or charge and basis (cents per cwt; charge per shipment, etc. . . .) If an "STR" is to be furnished at no additional charge, enter "no charge" in Item 17A;

(3) Item 17B, DESCRIPTION OF SERVICE: Annotate: "STR".

Additional Information

Effective 31 July 1984, MTMC established the minimum transportation protective service for shipments of sensitive conventional arms, ammunition, and explosives, and CONFIDENTIAL classified material. Signature Security Service (SSS) was eliminated as the minimum transportation protective service, and the use of a Signature and Tally Record (STR), using a DD Form 1907, replaced SSS for use on those shipments not requiring a transportation protective service. For further information call Betty Yanowsky at (202) 756–1356.

John O. Roach II,

Army Liaison Officer with the Federal Register.

[FR Doc. 85-5630 Filed 3-7-85; 8:45 am]

BILLING CODE 3710-08-M

Corps of Engineers, Department of the Army

Chief of Engineers Environmental Advisory Board; Meeting

ACTION: Notice of Open Meeting.

SUMMARY: Under section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463) this notice sets forth the schedule and proposed agenda of the forthcoming meeting of the Chief of Engineers Environmental Advisory Board (EAB). The meeting is to be jointly chaired by Dr. Laurence R. Jahn, Chairman, EAB, and Lieutenant General E. R. Heiberg III, Chief of Engineers, U.S. Army. The meeting is open to the public.

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DATE: The meeting will be held from 8:00 a.m., Tuesday, April 2, 1985, to 11:00 a.m., Thursday, April 4, 1985.

PLACE: The meeting will be held at the Bay Harbor Inn (Main Conference Room), Tampa, Florida 33607.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel Ronald G. Kelsey, Assistant Director of Civil Works for Environmental Programs, or Captain Glen J. Lozier, Office of the Chief of Engineers, Washington, D.C. 20314–1000, (202) 272–0103.

SUPPLEMENTARY INFORMATION: The schedule and proposed agenda of the Environmental Advisory Board meeting is:

2 April—Tuesday—A.M. Session

8:00—Meeting convened—Opening remarks
9:00—Old business
10:45—Presentation—Director of Civil Works

P.M. Session

1:00—Ocean Disposal: The Scientific Approach to Site Selection and Management
- National Perspective
- London Dumping Convention & Ocean Disposal
- Tampa Harbor—Case History

2:15—Panel Discussion
- Tampa Harbor Case Study—Views on Scientific Approach to Dredged Material Management
- Dialogue with EAB

5:00—Meeting recessed

3 April—Wednesday—A.M. Session

8:00—Water/Wetlands Resources Activities in Florida
- The State of Florida's Water Resources Program and Objectives
- The Role of Jacksonville District in Addressing Florida's Water Resources Problem

9:00—Regulatory Activities
- Federal/State Partnership in Water Resources Regulation: National Perspective
- The Corps Regulatory Program in Florida
- The State Regulatory Program

10:00—Panel Discussion
- Perspectives on Regulatory Activities in Florida
- Dialogue with EAB

P.M. Session

1:30—Water Resources Development Activities: Florida Everglades Case Study
- Florida's "Save our Everglades Program"
- The National Park Service and the Everglades—Perspectives, Problems, and Programs
- The Corps and the Everglades

3:15—Panel Discussion
- Perspectives on Saving the Everglades Program
- Dialogue with EAB

5:00—Meeting recessed

4 April—Thursday—A.M. Session

8:00—EAB Report to the Chief of Engineers
10:00—Chief of Engineers Response
10:30—Public Comments
11:00—Meeting Adjourned.

John O. Roach II,
Army Liaison Officer with the Federal Register.

[FR Doc. 85–5628 Filed 3–7–85; 8:45 am]
BILLING CODE 3710–08–M

Department of the Navy

Privacy Act of 1974; Matching Program; Department of the Navy (U.S. Marine Corps) City of New York

AGENCY: Department of the Navy (U.S. Marine Corps), DOD.

ACTION: Notice of a proposed continuing computer matching program between the U.S. Marine Corps and the City of New York.

SUMMARY: The U.S. Marine Corps proposes to match by computer certain Marine Corps allotment records with records of recipients of food stamps and public assistance in the City of New York to detect any fraud and abuse by recipients determined not to meet the eligibility criteria. The matches will be made under a written agreement with the City of New York and the Marine Corps. This will be an ongoing matching program conducted at least semiannually. A projected completion date cannot be determined. A matching report is set forth below.

DATE: This action will be effective without further notice April 8, 1985, unless comments are received which would result in a contrary determination.

ADDRESS: Send any comments to the following address: Commandant of the Marine Corps (MPI–60), Headquarters, U.S. Marine Corps, Washington, D.C. 20380–0001, telephone: (202) 694–1452.

FOR FURTHER INFORMATION CONTACT: Mrs. B.L. Thompson, Privacy Act Coordinator, Headquarters, U.S. Marine Corps, Washington, D.C. 20380–0001, telephone: (202) 694–1452.

SUPPLEMENTARY INFORMATION: A copy of this notice has been provided to Congress (President of the Senate and Speaker of the House of Representatives) and to the Director of the Office of Management and Budget on March 1, 1985.

Set forth below is the information required by paragraph 5.f(1) of the Revised Supplemental Guidance for Conducting Matching Programs issued by the Office of Management and Budget (47 FR 21656; May 19, 1982).

Patricia H. Means,
OSD Federal Register Liaison Officer, Department of Defense.
March 5, 1985.

Report of a Matching Program, U.S. Marine Corps/City of New York, New York

a. *Authority:* Title 42, U.S. Code, Subchapter IV, "Grants to States for Aid and Services to Needy Families with Children and for Child Welfare Services" and Title 7, U.S. Code, Chapter 51, "Food Stamp Program"; 5 U.S.C. 552a, Privacy Act of 1974; Inspector General Act of 1978 (Pub. L. 95–452).

b. *Program Description:* Using computer tapes prepared by the City of New York, the U.S. Marine Corps, as the matching agency, will match the names on the tape against its computer data base of individuals receiving allotments authorized by Marine Corps members. These New York tapes will contain the names and addresses of current public assistance/food stamp recipients. These will be matched to the names, addresses, and dollar amounts of current Marine Corps allotments. "Hit" data will be supplied on a paper listing to New York City for visual review and screening. The Marine Corps will use a specially developed computer program to implement this match. After the initial match, this project will be an ongoing matching program conducted at least semiannually. A projected completion date for the entire project cannot be determined at this time. The City officials will visually review the "hit" data to ensure that the records pertain to the same individuals and make any follow-up determinations. In those situations where there is any question as to eligibility, the recipient will be personally contacted by the City of New York to resolve the issue of the individual's eligibility under public assistance/food stamp programs. No benefits will be discontinued solely on the basis of the "hit" data listings. Also, no Marine Corps bestowed rights, privileges, or benefits of individuals, Marine Corps allottors or recipient allottees, will be terminated based on a "hit" or on records provided by the City

of New York in connection with this program. This proposed program will be under written agreement between the City of New York and the U.S. Marine Corps.

c. *Records to be Matched:* Names and addresses of current public assistance/food stamp recipients from the New York City Department of Income Maintenance File. Names, addresses, and dollar amounts of current Marine Corps allottees from the Marine Corps system of records identified as MFD00004, entitled "Bond and Allotment (B&A) System" described in the **Federal Register** at 48 FR 25970, June 6, 1983, as amended (new routine use) at 49 FR 49163, December 18, 1984.

d. *Period of the Match:* The matching will begin as soon as possible after this public notice becomes effective as set forth under "**DATE**" in the preamble of this notice. Additional matches may be made upon request of the City of New York at intervals of not less than six months. A projected completion date of this continuing matching program cannot be determined at this time.

e. *Security:* Only U.S. Marine Corps personnel who will perform the actual matches shall have access to the Marine Corps file and the New York City computer tapes. Only the list of "hits" will be turned over to personnel from the City of New York. The New York City personnel will have access only to the details of the "hits" and not to other information or names in the Marine Corps files. The City intends to retain the listings provided for six months and storage will be in locked cabinets. Upon completion of the match, the computer tapes, provided by the City, will be returned to the City and no copies will be retained by the Marine Corps.

f. *Retention and Disposition of Records:* The Marine Corps will not retain or copy the computer tapes provided by the City. The computer tapes provided to the Marine Corps shall remain the property of the City of New York in the temporary custody of the Marine Corps. The computer tapes will be returned to the City along with the "hit" data. The City of New York will retain the listings received from the Marine Corps for only six months and will dispose of them by shredding or burning. The Marine Corps will not provide the "hit" data developed by this match to any other Federal, State or local agencies.

[FR Doc. 85-5553 Filed 3-7-85; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Deputy Under Secretary for Management invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before April 8, 1985.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place NW., Room 3208, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue SW., Room 4074, Switzer Building, Washington, D.C 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 426-7304.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Deputy Under Secretary for Management publishes this notice containing proposed information collection requests prior to the submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Agency form number (if any); (4) Frequency of the collection; (5) The affected public; (6) Reporting burden; and/or (7) Recordkeeping burden; and (8) Abstract.

OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: March 5, 1985.

Linda M. Combs,

Deputy Under Secretary for Management.

Office of Postsecondary Education

Type of Review Requested: Extension
Title: Institutional Payment Summary (IPS) & IPS Batch Report
Agency Form Number: ED 255-3b IPS, ED 225-3c IPS Batch Report
Frequency: Quarterly
Affected Public: Non-profit and for-profit institutions of higher education
Reporting Burden: Responses: 78,000; Burden Hours: 97,500
Recordkeeping Burden: Recordkeepers: 5,200; Burden Hours: 2,600.

Abstract: The Institutional Payment Summary (IPS) is used by institutions of higher education to report cumulative payment data for the students receiving Pell Grants at the institution. Adjustments to an institution's Pell Grant funding level will be made based on the information contained on this form and the Student Aid Reports (SARs) that accompany the IPS. The IPS Batch Report is a report from the Department to the institution that recaps the processing of the latest submission of payment documents with an IPS.

Type of Review Requested: Revision; Extension
Title: Request for Payment of 1985-86 Pell Grant Award, Notice of Termination/Leave of Absence, and ADS Student Report—Request for Additional Payment
Agency Form Number: ED 304, ED 304-1, ED 304-2
Frequency: On occasion; Semi-annually; Annually
Affected Public: Individuals or households; Non-profit and for-profit institutions of higher education
Reporting Burden: Responses: 122,700; Burden Hours: 97,755
Recordkeeping Burden: Recordkeepers: 900; Burden Hours: 135.

Abstract: The forms are used by the students and financial aid officers that participate in the Pell Grant Program under the Alternative Disbursement System to request payment of their Pell Grants, request all additional payments, and notify the Department when a student terminates his or her enrollment. These documents also request verification of previously submitted data which as used to calculate a student's payments.

Type of Review Requested: Extension
Title: Application to Participate in State Student Incentive Grant Program
Agency Form Number: ED 1288
Frequency: Annually

Affected Public: State or local governments
Reporting Burden: Responses: 57; Burden Hours: 171
Recordkeeping Burden: Recordkeepers: 57; Burden Hours: 57.

Abstract: The State Student Incentive Grant Program uses matching Federal/State funds to provide a nationwide system of grants to help qualified college students. This application form is used to obtain from State agencies information the Department needs to obligate program funds and for program management. Signed assurances document State qualifications and State commitment to administer the program in compliance with the statute.

Type of Review Requested: Existing
Title: Financial and Performance Reports under the Graduate and Professional Opportunity Fellowships Program.
Agency Form Number: ED 591A, ED 591B and ED 404A
Frequency: Annually
Affected Public: Non-profit institutions
Reporting Burden: Responses: 130; Burden Hours: 5,580
Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0.

Abstract: Report forms are utilized to obtain information from grant recipients to assure that Federal funds were expended within the provisions of all applicable laws and regulations and to assess the accomplishment of project goals and objectives.

Type of Review Requested: New
Title: Institutional Release of 1984–85 Unexpended Balances for the College Work-Study, Supplemental Educational Opportunity Grant and National Direct Student Loan Programs
Agency Form Number: E40–4P
Frequency: Annually
Affected Public: Non-profit and for-profit institutions of higher education
Reporting Burden: Responses: 2,300; Burden Hours: 1,150
Recordkeeping Burden: Recordkeepers: 2,300; Burden Hours: 115.

Abstract: This form will allow institutions to report anticipated 1984–85 unspent funds for the Campus-Based Programs, so these unspent funds can be redistributed as supplemental 1985–86 awards to institutions with unmet 1984–85 needs.

Office of Elementary and Secondary Education

Type of Review Requested: Reinstatement
Title: Financial Status Report and Instructions for Performance Status Report—State Educational Agency and Desegregation Assistance Center Programs
Agency Form Number: ED 296–1
Frequency: Annually
Affected Public: State or local governments; Non-profit institutions
Reporting Burden: Responses: 146; Burden Hours: 876
Recordkeeping Burden: Recordkeepers: 146; Burden Hours: 292.

Abstract: Grantees under Title IV of the Civil Rights Program are required to submit financial and performance status reports annually. The reports are used to monitor compliance with terms and conditions of grant awards. S.F. 296–1 Financial Status Report and the Title IV Civil Rights Act Instructions for Performance Status Reports are utilized by grantees to submit reports.

Type of Review Requested: Extension
Title: Financial Status and Grant Performance Report—Indian Education Programs
Agency Form Number: ED 354, 354–1
Frequency: Annually
Affected Public: State or local educational agencies; Tribal schools; Indian tribes; Indian organizations; Indian institutions; Federally supported elementary and secondary schools for Indian children; Institutions of higher education
Reporting Burden: Responses: 1,200; Burden Hours: 3,600
Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0.

Abstract: These forms are required from each grantee annually. The grantee reports the amount of funds spent, amount remaining, number of students participating in the project, and the extent to which the project achieved its objectives.

Office of Vocational and Adult Education

Type of Review Requested: Revision
Title: State-Administered Vocational Education Program Improvement Projects—Abstracts and Final Reports
Agency Form Number: ED 590
Frequency: On occasion
Affected Public: State or local governments
Reporting Burden: Responses: 684; Burden Hours: 513
Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0.

Abstract: This form will be used to collect data and an abstract about State-administered projects for research, personnel development and curriculum development in vocational education. The affected public will be the program improvement units of the State Boards of Vocational Education.

Type of Review Requested: Reinstatement
Title: The Carl D. Perkins Vocational Education Act of 1984 (P.L. 98–524)—State Plan
Agency Form Number: ED 576–3
Frequency: Annually; Triennially, then biennially
Affected Public: State or local governments
Reporting Burden: Responses: 53; Burden Hours: 5,300
Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0.

Abstract: Pub. L. 98–524 requires State Boards for Vocational Education to submit a three-year State plan (and a two-year State plan thereafter) with annual revisions as the Board deems necessary in order to receive Federal funds. Program staff review the plans to ensure that proposed actions comply with the various requirements of the statute.

[FR Doc. 85–5818 Filed 3–7–85; 8:45 am]
BILLING CODE 4000–1–M

Office of Special Education and Rehabilitative Services

Educational Media Research, Production, Distribution, and Training

AGENCY: Department of Education.

ACTION: Application Notice Establishing Closing Date for Transmittal of New Applications for a Fiscal Year 1985 Award.

Applications are invited for a new project under the Educational Media Research, Production, Distribution and Training program.

Authority for this program is contained in sections 651 and 652 of Part F of the Education of the Handicapped Act. (20 U.S.C. 1451, 1452)

Applications may be submitted by profit and non-profit public and private agencies, organizations, and institutions.

The Educational Media, Research Production, Distribution, and Training program is designed to promote the educational advancement of handicapped persons by providing assistance for: (a) Conducting research on the use of educational media and technology for handicapped persons; (b) producing and distributing educational media for the use of handicapped persons, their parents, their actual or potential employers, and other persons directly involved in work for the advancement of handicapped persons; and (c) training persons in the use of educational media for the instruction of handicapped persons.

Closing date for transmittal of applications: An application for a new

project must be mailed or hand delivered on or before April 15, 1985.

Applications delivered by mail: An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: CFDA Number 84.026, 400 Maryland Avenue SW., Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail.

Each late applicant will be notified that its application will not be considered.

Applications delivered by hand: An application that is hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets SW., Washington, D.C.

The Application Control Center will accept a hand-delivered application between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

An application for a new project that is hand delivered will not be accepted by the Application Control Center after 4:30 p.m. on the closing date.

Intergovernmental review: On June 24, 1983, the Secretary published in the **Federal Register** final regulations (34 CFR Part 79, published at 48 FR 29158 *et seq.*) implementing Executive Order 12372, entitled "Intergovernmental Review of Federal Programs." The regulations took effect September 30, 1983.

This program is subject to the requirements of the Executive Order and the regulations in 34 CFR Part 79. The objective of Executive Order 12372 is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local government coordination and review of Federal financial assistance.

The Executive Order—

- Allows States, after consultation with local officials, to establish their own process for review and comment on proposed Federal financial assistance;
- Increases Federal responsiveness to State and local officials by requiring Federal agencies to accommodate State and local views or explain why those views will not be accommodated; and
- Revokes OMB Circular A–95.

Transactions with nongovernmental entities, including State postsecondary educational institutions and federally recognized Indian tribal governments, are not covered by Executive Order 12372. Also excluded from coverage are research, development, or demonstration projects that do not have a unique geographic focus and are not directly relevant to the governmental responsibilities of a State or local government within that geographic area.

The following is a current list of States that have established a process, designated a single point of contact, and have selected this program for review:

Alabama	New Mexico
Arizona	New York
Arkansas	Northern Mariana Islands
California	North Dakota
Connecticut	Ohio
Delaware	Oklahoma
Florida	Oregon
Guam	Pennsylvania
Hawaii	Puerto Rico
Indiana	South Carolina
Iowa	South Dakota
Kansas	Tennessee
Kentucky	Texas
Louisiana	Trust Territory
Maine	Utah
Massachusetts	Vermont
Michigan	Virgin Islands
Missouri	Virginia
Montana	Washington
Nebraska	West Virginia
Nevada	Wyoming
New Hampshire	
New Jersey	

Immediately upon receipt of this notice, applicants which are governmental entities, including local educational agencies, must contact the appropriate State single point of contact to find out about, and to comply with, the State's process under the Executive Order. Applicants proposing to perform activities in more than one State should, immediately upon receipt of this notice, contact the single point of contact for each State and follow the procedures established in those States under the Executive Order. A list containing the single point of contact for each State is included in the application package for this program.

In States that have not established a process or chosen this program for review, State, areawide, regional and local entities may submit comments directly to the Department.

Because the comment period under the Order has been shortened for this grant competition, it is very important that applicants contact the State single point of contact and make arrangements to comply with the State's review requirements. State single points of contact have been alerted to this shortened time through a concurrent letter.

All comments from State single points of contact and all comments from State, areawide, regional, and local entities must be mailed or hand delivered by April 25, 1985, to the following address:

The Secretary, U.S. Department of Education, Room 4181 (84.026), 400 Maryland Avenue SW., Washington, D.C. 20202. (Proof of mailing will be determined on the same basis as applications.)

Please note that the above address is not the same address as the one to which the applicant submits its application. Do not send applications to the above address.

Available funds: It is estimated that approximately $1.5 million will be available for support of one project for the manufacture of Line 21 large-scale-integrated circuit chips during Fiscal Year 1985. This estimate of funding level does not bind the U.S. Department of Education to a specific number of grants or to the amount of any grant, unless that amount is otherwise specified by statute or regulations.

Priority for funding: The Secretary selects for funding the priority for a project to manufacture Line 21 large-scale-integrated circuit chips to ensure a continuing supply of Line 21 television decoders for the Nation's hearing impaired population. A notice of final funding priority is published in this issue of the **Federal Register.**

Application forms: Application forms and program information packages are expected to be available for mailing on March 13, 1985.

These materials may be obtained by writing to the Captioning and Adaptation Branch, Special Education Programs, Department of Education, 400 Maryland Avenue SW. (Switzer Building, Room 3511–M/S 2313), Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information packages. However, the program information is only intended to aid applicants in applying for assistance. Nothing in the program information

package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those imposed under the statute and regulations.

The Secretary strongly urges that the narrative portion of the application not exceed 20 pages in length. The Secretary further urges that applicants not submit information that is not requested. (Approved by the Office of Management and Budget under control number 1820–0028)

Applicable regulations: Regulations applicable to this program include the following:

(a) The regulations governing the Educational Media Research, Production, Distribution and Training program (34 CFR Part 332).

(b) The Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, 78, and 79).

FOR FURTHER INFORMATION CONTACT: Dr. Malcolm J. Norwood, Chief, Captioning and Adaptation Branch, Special Education Programs, Department of Education, 330 C Street, SW. (Switzer Building, Room 4088), Washington, D.C. 20202. Telephone: (202) 732–1172.

(Catalog of Federal Domestic Assistance No. 84.026, Handicapped Media Services and Captioned Films)

(20 U.S.C. 1451, 1452)

Dated: March 5, 1985.

William J. Bennett,

Secretary of Education.

[FR Doc. 85–5617 Filed 3–7–85; 8:45 am]

BILLING CODE 4000-01-M

Educational Media Research, Production, Distribution and Training

AGENCY: Department of Education.

ACTION: Final funding priority for fiscal year 1985.

SUMMARY: The Secretary issues a final funding priority for the Educational Media, Research, Production, Distribution and Training program. To ensure a continuing supply of Line 21 television decoders for the Nation's hearing impaired population, the Secretary establishes a single priority for Fiscal Year 1985 for a project to manufacture Line 21 integrated chips.

EFFECTIVE DATE: This priority will take effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. If you want to know the effective date of this final funding priority, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Dr. Malcolm J. Norwood, Division of Innovation and Development, Department of Education, 400 Maryland Avenue SW., Room 4088, Switzer Building, Washington, D.C. 20202. Telephone: (202) 732–1172.

SUPPLEMENTARY INFORMATION: The Educational Media, Research, Production, Distribution and Training program is designed to promote the educational advancement of handicapped persons by providing assistance for: (a) Conducting research on the use of educational media and technology for handicapped persons; (b) producing and distributing educational media for the use of handicapped persons, their parents, their actual or potential employers, and other persons directly involved in work for the advancement of handicapped persons; and (c) training persons in the use of educational media for the instruction of handicapped persons.

In 1972 the Federal Government, through the former Office of Education, initiated the development of the closed captioned Line 21 system to make television accessible to the Nation's hearing impaired population. Upon completion of the development of the system, the Department supported the creation of the National Captioning Institute to provide captioning services to the broadcasting industry and helped subsidize 100,000 large-scale-integrated circuit chips which made the manufacture of Line 21 decoders possible.

Closed captioning is a system that uses Line 21 of the broadcasting signal to transmit captions (subtitles) which may be made visible only on television sets that are equipped with decoders for the benefit of viewers with hearing impairments.

The system was implemented in March, 1980, and has resulted in cooperative efforts between the public and private sectors to provide closed captioned television to hearing impaired Americans. All major networks are making closed captioned programs available. Federal funding supports approximately 40% of current programming, the networks support approximately 30%, and corporate advertisers, foundations, and contributions account for the remaining 30%.

The original stock of Line 21 decoders will be depleted over the next few months. The supply of large-scale-integrated circuit chips needed to replenish the stock of decoders is nearly exhausted. Because of the highly specialized nature of the product and the very small market, subsidized production of the decoders is essential to ensure that hearing impaired people will continue to be able to have access to the television medium. Closed captioning provides the only acceptable system that makes this access possible. Open captioning which would appear on all television sets is disturbing to the general viewing audience and, therefore, is not an acceptable alternative to the broadcasting industry and private sector supporters of captioning services. The Congress, which has appropriated funds annually to fund closed captioning, recognized this dilemma and indicated in report language that $1.5 million should be spent to assist in the underwriting of the manufacture of large-scale-integrated circuit chips to be incorporated into Line 21 decoders to ensure a continuing supply. The Senate Report accompanying S. 2836 states that Congress: "Has included $1,500,000 to assist in underwriting the manufacture of new integrated circuit chips for incorporation into the new Line 21 decoder to be produced by mid-1985."

Waiver of Proposed Rulemaking

In accordance with section 431(b)(2)(a) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)) and the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Department of Education to publish priorities in proposed form and to offer interested parties the opportunity to comment on the proposed priorities. However, because of the Congressionally recognized need to begin production of Line 21 large-scale-integrated circuit chips no later than mid-1985, the Secretary has determined that publication of this document as a proposed priority for public comment is impracticable and contrary to public interest under 5 U.S.C. 553(b)(B).

This priority must become effective before the award of a grant for the production of Line 21 large-scale-integrated circuit chips can be made. That award must be made immediately if the Congressional deadline is to be met. The use of regular procedures for the proposed priority would involve a substantial delay in the effective date of this priority resulting from: (1) The period for public comments, (2) a further period for the review of any comments received and preparation, clearance, and publication of the priority in final form, and (3) the delayed effective date required by section 431(d) of the General Education Provisions Act, which precludes a rule from taking effect for 45 to 84 days, depending on Congressional adjournments.

The current supply of large-scale-integrated circuit chips will soon be depleted and no chips will be available for additional decoders unless production can commence over the next few months. The Secretary believes that if there are no chips available for additional decoders, private sector contributors and the networks who support this system will begin to withdraw their support. As stated above, the Congress indicated in report language that $1.5 million should be spent to subsidize the production of additional chips, and specified that production should be underway by mid-1985. However, these funds were not made available until November 8, 1984 (the date of enactment of the Department's Appropriation Act, Pub. L. 98–619). Under these circumstances there is not adequate time to solicit public comment on this priority. Even without taking public comment, the Secretary must solicit applications for a minimum of thirty days, evaluate those applications under the applicable regulations, and then make the award. After the award is made, the grantee must arrange for the production of Line 21 large-scale-integrated circuit chips. This will require the grantee to secure the services of a qualified electronics firm, which will then have to manufacture the Line 21 large-scale-integrated circuit chips. The grantee will then have to develop a plan for a fully assembled unit (i.e., large-scale-integrated circuit chip set, circuit board, and adapter unit). This unit will have to be assembled and then tested.

The grantee must also arrange for the manufacture of 50,000 assembled Line 21 decoders. Then, in order for the Line 21 decoders to be available to the hearing impaired population, the grantee will have to provide for their marketing and retailing.

This lengthy process requires an extremely tight schedule. The Secretary believes that invoking the exception to notice and public comment procedures under 5 U.S.C. 553 is essential.

Final Priority

The Secretary establishes a priority for applications for a project to manufacture Line 21 large-scale-integrated circuit chips to ensure a continuing supply of Line 21 television decoders for the Nation's hearing impaired population.

The selection of this final priority is based upon the Congressional appropriation report language indicating that $1.5 million should be spent under Pub. L. 98–619 to underwrite the production of a second generation of Line 21 decoders before the current supply is exhausted.

This final priority will support a single award to an organization which has the technical expertise and knowledge to assure that the hearing impaired population is better served by improving and miniaturizing the existing decoder integrated circuit design for the Line 21 closed captioning system.

The applicant shall submit a working plan for the subsequent production of Line 21 decoder modules as part of the application. The plan shall provide for a fully assembled unit (i.e., large-scale-integrated (LSI) circuit chip set, circuit board, and adapter unit) with evidence of commitment from one or more manufacturers and retailers to assure production and sale of the units to begin no later than September 15, 1985. The plan shall contain a timeline for testing and production and an estimated retail price for the assembled units to be marketed to hearing impaired consumers. The plan shall also provide assurances that no less than 50,000 Line 21 decoder modules will be produced for incorporation into the units for marketing to consumers at the estimated price.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79 (48 FR 29158; June 24, 1983). The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local governmental coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

(20 U.S.C. 1451, 1452)

Dated: March 5, 1985.

William J. Bennett,

Secretary of Education.

[FR Doc. 85-5616 Filed 3-7-85; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Idaho Operations Office; Solicitation of Cooperative Agreement Proposals; Cascades Thermal Gradient Drilling

AGENCY: Department of Energy.

ACTION: Solicitation for Cooperative Agreement Proposals (SCAP) No. DE-SCO7-85ID12580 on Exploration and Research to Define the Geothermal Resource Potential of the U.S. Cascades.

SUMMARY: The Department of Energy, Idaho Operations Office, desires to receive and consider for support proposals to enter into a Cooperative Agreement to perform the drilling of 3,000 feet or deeper thermal gradient holes and to collect data. DOE will cost share up to 50% of the cost of drilling the hole and associated data collection. DOE will require access to the hole for further data and experiments for a specified period of time after drilling. The primary objective of the program is to stimulate geothermal resource development of the Cascades region. Funding is estimated at $1,000,000 in fiscal year 1985, anticipating a cost-sharing of 1–8 Cooperative Agreements.

Minimum Requirements

To qualify for evaluation under the SCAP, the proposer must meet the following qualification criteria: The proposed site must be located within the Cascades volcanic region of the United States; the proposal must include a cost-share plan in which DOE's share shall not exceed 50 percent; the proposed hole must be a minimum of 3,000 feet deep; the proposer must agree to complete the hole and allow DOE access to the hole for data acquisition.

DATES: The SCAP will be issued during March, 1985. A preproposal conference will be held with the time and place to be determined. Proposals are due April 29, 1985.

Contacts

Potential proposers desiring to receive a copy of the SCAP should request it in writing within 15 calendar days from the date of this notice from: Department of Energy, Idaho Operations Office, 550 Second Street, Idaho Falls, ID 83401, ATTN: Elizabeth M. Hyster, Contracts Management Division.

Issued at Idaho Falls, Idaho, on February 15, 1985.

J.F. Marmo,

Director, Contracts Management Division.

February 15, 1985.

[FR Doc. 85-5615 Filed 3-7-85; 8:45 am]

BILLING CODE 6450-01-M

National Petroleum Council, Worldwide Refining Trends Task Group; Meeting

Notice is hereby given that the Worldwide Refining Trends Task Group will meet in March 1985. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and

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natural gas or the oil and natural gas industries. The Worldwide Refining Trends Task Group will address previous Council refining studies and evaluate future refinery operations and their impact on petroleum markets. Its analysis and findings will be based on information and data to be gathered by the various task groups.

The Worldwide Refining Trends Task Group will hold its fourth meeting on Wednesday, March 27, 1985, starting at 9:00 a.m., in the Lubbock Room of the Houston Airport Marriott Hotel, 18700 Kennedy Boulevard, Houston, Texas.

The tentative agenda for the Worldwide Refining Trends Task Group meeting follows:

1. Opening remarks by Chairman and Government Cochairman.
2. Discuss the individual study assignments of the Worldwide Refining Trends Task Group.
3. Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

The meeting is open to the public. The Chairman of the Worldwide Refining Trends Task Group is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Worldwide Refining Trends Task Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Ms. Carolyn Klym, Office of Oil, Gas, Shale and Coal Liquids, Fossil Energy, 301/353-2709, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E-190, DOE Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on February 28, 1985.

William A. Vaughan,

Assistant Secretary, Fossil Energy.

[FR Doc. 85-5584 Filed 3-7-85; 8:45 am]

BILLING CODE 6450-01-M

Office of the Secretary

International Energy Agency Report

AGENCY: Department of Energy.

ACTION: Request for comments.

SUMMARY: The International Energy Agency's Coal Industry Advisory Board recently completed a technical study on the effect of coal quality and ash characteristics on boiler operations. The report, which will be published in the next several months, is available in draft form. It states that the efficiency and economics of coal-fired boilers would be improved if boiler operators had access to better data on the combustion characteristics of different types of coal.

The Department of Energy would appreciate receiving comments on this report from coal companies, utilities, and any other interested parties.

DATE: Comments should be received on or before April 8, 1985.

ADDRESS: Copies of the draft report are available from the Office of the Assistant Secretary for Fossil Energy (FE-1), Department of Energy, Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Ms. Margie Biggerstaff, Office of the Assistant Secretary for Fossil Energy, Department of Energy, Washington, D.C. 20585, (202) 252-4700.

Issued in Washington, D.C., February 28, 1985.

William A. Vaughan,

Assistant Secretary Fossil Energy

[FR Doc. 85-5585 Filed 3-7-85; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

Proposed Remedial Orders to Shell Oil Co.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of issuance of proposed remedial orders to Shell Oil Co. and notice of opportunity for objection.

I. Introduction

Shell Oil Company ("Shell"), One Shell Plaza, Houston, Texas 77001, is a major refiner engaged in the production and the refining of crude oil and the marketing of petroleum products. Shell was therefore subject to the Manadatory Petroleum Price and Allocation Regulations ("Regulations") which were in effect from August 1973 through January 28, 1981.

During all or part of the period between September 1973 and January 1981 (the audit period), Shell operated refineries and marketed refined petroleum products throughout the United States. The Economic Regulatory Administration ("ERA") of the Department of Energy ("DOE") conducted an audit of Shell and determined that the firm violated the Regulations.

Pursuant to 10 CFR 205.192(c), ERA hereby gives notice that ERA issued five (5) Proposed Remedial Orders ("PROs") to Shell on February 15, 1985. ERA also gives notice of an opportunity for objection thereto. In accordance with 10 CFR 205.192(c), a copy of the PROs with confidential information deleted may be obtained from the DOE.

II. Issuance of Proposed Remedial Orders

1. Proposed Remedial Order for Case Nos. RSHB00304, RSHB00305, RSHB00201

This PRO alleges that Shell assigned improper and excessive May 15, 1973 prices to consumers, retailers, and resellers of gasoline and distillates, as well as to consumers and resellers of propane, thereby calculating excessive sales and maximum allowable prices during the period of price controls from August 1973 to January 1981.

As a remedy, ERA proposes three possible alternatives to a transaction by transaction maximum allowable price calculation for all purchasers of the covered products involved in this action. The first alternative, if adopted, would require the calculation of the difference between the correct and incorrect May 15, 1973 prices in all instances where Shell imposed an unlawfully high May 15, 1973 price. The difference would be ordered refunded. The second alternative, if adopted, would require the recalculation of the maximum allowable prices for sales only to customers whose purchase prices included an unlawfully high May 15, 1973 price. Also, recoveries in all sales of the covered product—both sales involving and sales not involving excessive May 15, 1973 prices—would be determined, and resultant overrecoveries would be calculated. Overcharges resulting from both of these calculations would then be ordered refunded. The third alternative, if adopted, would require, for the period prior to September 1974, the calculation described in the second alternative and for the period September 1974 forward the calculations described in the first alternative. In the opinion of the ERA, the proposed remedies are more properly focused on persons directly affected by Shell's violations and require less burdensome calculations for determining the refund amount than the transaction-by-transaction calculations that could otherwise be required.

2. Proposed Remedial Order No. RSHB00306

This PRO alleges that Shell failed to establish a lawful class of purchaser system for its sales of aviation jet fuel, and also failed to establish lawful May 15, 1973 prices for aviation jet fuel based on actual transactions.

The PRO offers two alternative remedies. The first would require Shell to calculate and to refund to its aviation jet fuel customers the difference between the correct and incorrect May 15, 1973 prices multiplied by the respective volumes of jet fuel sold. The second alternative would require Shell to determine, after establishing a correctly structured class of purchaser system and ultimately a correct maximum allowable price for each class of purchaser during each month of measurement, whether its actual sales prices exceeded those maximum allowable prices during the regulatory period. Overcharges would then be refunded.

3. Proposed Remedial Order No. RSHM00101

This PRO alleges that Shell incorrectly calculated and reported its increased costs of gasoline during the period October 1974 through December 1976 and therefore overstated its banked costs available for passthrough in sales of gasoline. The violation was a product of Shell's failure to deem recoveries at its refiner-operated retail outlets on the basis of the maximum amount Shell actually applied of the permissible three-cent per gallon additional increment allowed at such stations pursuant to the retail price equalization rule. 10 CFR 212.83(h)(2)(iv)(A).

As a remedy, the PRO proposes that Shell be ordered to recalculate its maximum allowable selling prices for the regulatory period. Specifically, in making such calculations, Shell would be required to assume that the highest portion of the maximum three-cent additional increment charged in any sale at any refiner-operated retail outlet was charged in all sales at all refiner-operated retail outlets. Shell would then be required to refile its RMCARs for the period October 1974 through January 1981, restating its recoveries and costs available for recovery in accordance with the regulations.

4. Proposed Remedial Order No. RSHM00401

This PRO alleges that Shell unlawfully revised and altered calculations of its unrecouped costs (banks) and maximum allowable prices by changing elections it had previously made with respect to the reallocation of costs from one product category to another. These improper retroactive reallocations occurred throughout the regulatory period.

As a remedy, the PRO directs Shell to employ the reallocations contained in its original filings in calculating the amounts of increased costs available for recovery in all product categories for all months from August 1973 through January 1981. Shell is liable for any overcharges brought about by the above recalculations, plus interest on those overcharges. The recalculated costs must be used in all future refilings of Shell's RMCARs and in the determination of the amount of Shell's refund liability in this or any other proceeding.

5. Proposed Remedial Order No. RSHL01401

This PRO alleges that Shell violated the non-product cost regulations during the period from February 1, 1975 through December 31, 1976 (the audit period) by incorrectly calculating non-product cost increases for its interest, refinery fuel, marketing, pollution control, and utility cost categories. Shell's improper calculations resulted in overstatements of increased non-product costs available for passthrough in the prices charged for covered petroleum products during the audit period. Consequently, Shell may have charged prices for covered petroleum products which exceeded maximum allowable prices.

As a remedy for this violation, the PRO proposes that Shell be ordered to recompute all reported non-product cost increases lawfully attributable to interest, refinery fuel, marketing, pollution control, and utility costs for all months included in the audit period. In the event that Shell's recalculated nonproduct costs result in overcharges, the amount of such overcharges, plus interest, shall be remitted to the DOE for appropriate disposition.

III. Notice of Objection

In accordance with 10 CFR 205.193, any aggrieved person may file a Notice of Objection to any or all of the proposed orders described in Section II above with DOE's Office of Hearings and Appeals. A person who fails to file a Notice of Objection shall be deemed to have admitted the findings of fact and conclusions of law stated in the proposed orders. If a Notice of Objection is not filed in accordance with § 205.193, the proposed order may be issued as a final Remedial Order by the Office of Hearings and Appeals.

The Notice must be filed, in duplicate, by 4:30 p.m. EST on or before the fifteenth day after publication of this Notice, or the first federal workday thereafter.

All Notices of Objection, Statements of Objections, Responses, Replies, Motions, and other documents required to be filed with the Office of Hearings and Appeals shall be sent to: Office of Hearings and Appeals, U.S. Department of Energy, Room 6F–055, 1000 Independence Avenue SW., Washington, D.C. 20585.

Copies of all Notices of Objection, Statements of Objections and all other documents filed by an aggrieved person or other participant shall be served on the same day as filed, on the following person in each of the identified PRO proceedings pursuant to 10 CFR 205.193(c): George Kielman, Assistant Chief Counsel for Administrative Litigation, Economic Regulatory Administration, United States Department of Energy, 1000 Independence Avenue SW., Room 3H–017, Washington, D.C. 20585.

No data or information which is confidential shall be included in any Notice of Objection.

Requests for copies of any of the proposed orders with confidential information deleted, should be identified by ERA Case Number and be directed to: Freedom of Information Reading Room, Forrestal Building, 1000 Independence Avenue SW., Room 1E–190, Washington, D.C. 20585.

Issued in Washington, D.C., this 1st day of March 1985.

Avrom Landesman,

Director, Enforcement Programs, Economic Regulatory Administration.

[FR Doc. 85–5652 Filed 3–7–85; 8:45 am]

BILLING CODE 6450–01–M

Proposed Consent Order; Gulf Oil Corporation

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of proposed consent order and opportunity for public comment.

SUMMARY: The Economic Regulatory Administration (ERA) announces a proposed Consent Order between the Department of Energy (DOE) and Gulf Oil Corporation ("Gulf"). The agreement proposes to resolve matters relating to Gulf's compliance with the federal petroleum price and allocation regulations for the period January 1, 1973 to January 28, 1981. ERA has assessed the effects of Gulf's alleged regulatory violations resolved by this proposed agreement, and has determined that the maximum amount

Gulf could have overcharged is approximately $135 million. This amount, plus an additional amount for interest, represents Gulf's maximum liability if the government ultimately were to prevail in litigating all of the issues resolved by this Consent Order. Gulf disputes ERA's allegations of regulatory violations and denies any overcharge liability.

ERA is proposing that Gulf's possible liability for overcharges and interest be settled for $142 million. The settlement reflects the negotiated compromises present in every settlement, including assessments of litigation risks in the settlement, including assessments of litigation risks in the significant areas of dispute between ERA and Gulf.

There is a strong probability that the government would not prevail in all of the twenty or more individual disputes with Gulf. The loss by the government of one or several issues would reduce Gulf's maximum possible overcharge liability substantially and disproportionately in comparison to the dollar amounts of issues which were lost. Thus, ERA has tentatively concluded that a compromise settlement for $142 million—an amount exceeding the maximum possible overcharges—is favorable to the government and in the public interest.

If the Consent Order is made final, Gulf would pay DOE $142 million, plus interest accrued from the date of execution. The entire amount of Gulf's payment would be submitted to the Office of Hearings and Appeals (OHA) for disbursement through the administrative claims process promulgated in 10 CFR Part 205, Subpart V. Under those procedures, any person who claims to have suffered injury from Gulf's alleged overcharges would have the opportunity to submit a refund claim to OHA.

Pursuant to 10 CFR 205.199J, ERA will receive written comments on the proposed Order for thirty (30) days following publication of this Notice and shoud be addressed to: Gulf Consent Order Comments, RG–13, Economic Regulatory Administration, 1000 Independence Avenue SW., Washington, D.C. 20585.

Following this comment period, on April 18, 1985, ERA will conduct a public hearing in the Department of Energy Auditorium, Room GE–086, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. at 10:00 a.m. to provide interested persons an additional opportunity to present comments, information and recommendations as to whether the settlement should be finalized by DOE. Requests to make presentations must be received in writing by 5:00 p.m. on the thirtieth day following publication of this Notice, and should be marked "Requests to Make Oral Comments" and forwarded to the same address indicated for written comments.

ERA will consider the comments, information and recommendations received from the public in finally evaluating the proposed settlement. This will result in one of the following courses of action: rejection of the settlement; acceptance of the settlement and issuance of a final Order; or renegotiation of the agreement and, if successful, issuance of the modified agreement as a final Order. DOE's final decision will be published in the **Federal Register**, along with an analysis of and response to the significant written and oral comments, as well as any other considerations that were relevant to the decision.

FOR FURTHER INFORMATION CONTACT:
Edward Levy, Assistant Special Counsel, Economic Regulatory Administration, Department of Energy, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252–8900.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Results of the Audit
A. Areas of Dispute
B. Determination of Maximum Overcharge Liability
III. Determination of Reasonable Settlement Amount
IV. Terms and Conditions of the Consent Order
V. Resolution of Litigation Matters

I. Introduction

Gulf is a major petroleum refiner subject to the audit jurisdiction of ERA to determine compliance with the federal petroleum price and allocation regulations. During the period covered by this proposed Order (January 1, 1973 until January 28, 1981), Gulf engaged in, among other things, the production, importation, refining, and sale of crude oil; the sale of residual fuel oil, motor gasoline, middle distillates, aviation fuel, propane and other refined petroleum products; and the extraction, fractionation and sale of natural gas liquids and natural gas liquid products.

ERA conducted an intensified audit of Gulf's compliance for the period September 1973 to the date when federal price and allocation controls were ended by the President (January 28, 1981, Executive Order 12287). During this audit, ERA identified areas in the pricing and sales of crude oil and refined pertroleum products in which it believes that Gulf had failed to comply with the requirements of the federal price and allocation regulations. A number of issues arose which involved Gulf's accounting procedures in which ERA disagreed with Gulf's accounting procedures in which ERA disagreed with Gulf's calculation of the amounts of increased costs which were incurred and eligible for recovery through product price increases. These apparent cost errors are not the same as, and do not necessarily translate into, overcharge liabilities.

The regulations governing the pricing of refined petroleum products were complex. The starting point for determining the maximum lawful sales price in any month for products covered by the regulations ("covered products") was the refiner's May 15, 1973 selling prices to its various classes of purchaser. A refiner was permitted to increase those prices only to the extent necessary to recover specified categories of cost increases incurred as compared to those costs incurred in the month of May, 1973. For example, refiners could recover increased costs of acquiring crude oil and refined products ("product costs"); and their labor, marketing, manufacturing and interest costs ("non-product costs").

If a refiner failed to fully recover the cost increases incurred in the preceding month, it could "bank" those unrecovered costs for recovery (subject to certain limitations) in succeeding months. The regulations required refiners to allocate those recoverable costs to product categories, and provided some discretion to refiners to reallocate those costs among product groups.

Having specified the amount of increased costs eligible for recovery, the extent to which unrecouped "banked" costs could be recovered, and the allocation of those increased costs to product categories, the regulations thereby enabled refiners to calculate the maximum amount of increased costs eligible for recovery in each month. Thus, a refiner calculated its maximum lawful sales price for each covered product to each class of purchaser, which was the sum of its May 15, 1973 price plus the increased costs available for recovery. A refiner could recover its increased costs by increasing its prices by any amount up to levels at which the full amount of recoverable increased costs would be recovered in the form of increased prices. A refiner infrequently charged the price it calculated to be its maximum lawful price. As a consequence, an error made in cost calculations for a particular month did not necessarily result in overcharges to purchasers.

Even if the government were to prevail in each of its enforcement proceedings, ERA determined that Gulf would have had total undisputed recoverable costs which were $946 million in excess of those recovered through product price increases in the 88 months of controls. However, ERA alleges that in some of those months Gulf's product pricing practices would have caused a direct refund obligation of $28 million, and that some $430 million in cost and recovery adjustments would cause another $11 million of overcharges for refined products.

Thus, in Gulf's case, ERA calculated that the alleged overcharges in sales of refined products total, at most, $39 million. In addition, ERA preliminarily determined that Gulf may be liable for a maximum of approximately $96 million in crude oil overcharges. Gulf's potential total liability for overcharges resolved by this proposed settlement, therefore, is believed by ERA to total $135 million. Gulf contends that the amount is largely based upon projections for which there is little or no support and that, in many instances, ERA has failed to reasonably apply the regulations given the factual circumstances and the regulatory ambiguities and inconsistencies; accordingly, Gulf would contend that $135 million is a substantial exaggeration of its maximum possible overcharge liability.

ERA has preliminarily agreed to this settlement amount after assessing the litigation risks associated with establishing the alleged overcharges, and considering the factual veracity and appropriate settlement compromises related to the many issues. The settlement calls for Gulf to pay $142 million plus interest from the date of execution, under the terms of the Consent Order, to discharge in full its obligations under the price and allocation regulations, subject to certain stated exclusions. Under the terms of the proposed agreement, the amount paid by Gulf would be submitted to OHA for disbursement through the administrative claims process promulgated pursuant to 10 CFR Part 205, Subpart V.

II. Results of the Audit

In the negotiation process which led to this proposed settlement, ERA analyzed the results of the audit, the nature of the alleged regulatory violations, and the "banks" of costs that Gulf was entitled to recover in previous months but did not. ERA also considered the extent to which these banks were available to offset the alleged cost and recovery violations and thus negate the possibility of overcharges on refined products. One issue on unequal passthrough of costs at various of Gulf-operated retail stations, as well as three issues concerning Gulf's May 15, 1973 prices, and the alleged crude oil overcharges were separately considered by ERA in its assessment of the total settlement value.

During the negotiations with Gulf, ERA examined all the alleged regulatory violations and the amount of costs it determined Gulf should be allowed in the calculation of the company's maximum lawful prices and total overcharge exposure. Gulf presented factual information relevant to its calculations of increased costs and selling prices. This enabled ERA to correct factual errors in its audit information, which accrued both to the detriment and benefit of Gulf. Additionally, ERA was able to supplement its audit data with other information on the company's business activities relevant to its pricing practices.

A. Areas of Dispute

The two major areas of dispute between ERA and Gulf concern alleged errors in calculating maximum lawful prices for crude oil produced by Gulf, and recovery issues related to alleged understatements of certain of Gulf's May 15, 1973 selling prices and to alleged unequal price increases effected by Gulf at some of its company-operated service stations. In addition, ERA has raised fifteen or more other issues related to Gulf's claimed costs of crude oil, purchased products, non-product expenses, and allocation of costs to covered products. Those cost issues, amounting to $430 million, would increase Gulf's maximum overcharge liability by only $11 million.

1. *Crude Oil Overcharge Disputes.* ERA has alleged that Gulf produced and sold crude oil from several of its properties at prices in excess of ceiling prices. After a review of information made available to ERA by Gulf in the negotiation process and consideration of recent developments in related cases, ERA believes that the aggregate amount of such violations is $96 million. In addition to specific clerical errors discovered by EPA, these alleged overcharges arose from the manner in which Gulf designated its properties for purposes of the crude oil price regulations, determined certain posted prices, and calculated the average daily production of the well on some of its producing properties for purposes of justifying exempt stripper well prices.

In arriving at the $96 million of maximum overcharge liability for these issues, ERA included estimated violations based on extrapolations to unaudited properties and/or unaudited time periods.

2. *Recovery Disputes.* ERA has contended that Gulf increased its prices for gasoline at its company-operated service stations in unequal increments, and that Gulf's reported cost recoveries for all company-operated stations should be deemed to have been at the highest level of increase for such stations, *or* that Gulf should refund the differences between the higher and lower increases. The first alternative would mean that Gulf would reflect some $80 million of additional cost recoveries in its filings over a six-year period; because of the high level of Gulf's unchallenged cost banks, ERA estimates that little, if any, overcharges would be added to the maximum $11 million that ERA calculated in connection with the $430 million in cost issues discussed above. The second alternative, that of measuring the refund amounts necessary to effect equal cost passthrough at all company-operated stations, would mean that Gulf could be liable for nearly $21 million of direct cash liability, excluding interest. In ERA's analysis of the overall settlement value, this issue was considered as a separate potential liability for Gulf.

ERA's audit also disclosed several issues which affected the May 15, 1973 selling prices utilized by Gulf to compute its maximum prices during the period of price controls. ERA has contested the classification of certain customers of Gulf's Product Supply Department, which in turn affected the assigned May 15, 1973 prices; Gulf's reclassification of its former GoCal dealers from "branded" to "unbranded" dealers, and Gulf's use of higher May 15, 1973 prices for those dealers after the GoCal brand was discontinued; and Gulf's removal of certain dealer discounts which ERA alleged were customary as of May 15, 1973. Although these issues would affect the theoretical maximum prices for those groups of customers but may not have resulted in overcharges, ERA considered, on a per gallon basis, the differences between the May 15, 1973 prices Gulf utilized and those alleged by ERA to have been in the nature of a cash refund. The total amount of those issues was just over $7 million excluding possible interest, which would be a suitable remedy for proven violations of that type.

B. Determination of Maximum Overcharge Liability

Utilizing only those costs that ERA determined were proper for Gulf, and considering the recoveries or refunds

which ERA believed should have been effected by Gulf, ERA calculated the approximate maximum amount of possible overcharges for which Gulf might be liable during each month of price controls in an effort to determine whether Gulf had overcharges. By comparing ERA's calculations of available costs with the amounts of costs Gulf actually recovered in the sales of its products, and the additional potential liability related to the recovery issues, the agency was able to determine Gulf's maximum liability for refined product overcharges. In addition, ERA considered the overcharged alleged and projected in connection with its crude oil pricing claims against Gulf.

Under the regulations, a refiner was allowed to "bank" any increased costs in a given month that it lawfully could have recovered in its product prices but did not. Costs could be "banked" and used (subject to certain limitations) in later months in pricing products. For the period of controls after late 1975, Gulf accumulated cost banks on an accelerated basis because the prices Gulf charged were generally not sufficient to recover all of its claimed costs. As calculated by ERA, Gulf's banks were sufficient to absorb all but $11 million of the $430 million in cost adjustments alleged by ERA. Thus, the $430 million in cost issues relate to a relatively minor amount of Gulf's maximum refund liability.

As discussed above, Gulf's potential cash liability for the recovery issues, unequal application, and May 15, 1973 prices was quantified by reference to the total amount of refunds which would remedy the allegedly unequal prices and erroneous May 15, 1973 prices. That refund amount was approximately $28 million.

For the crude oil pricing allegations, ERA determined Gulf's maximum liability by summing the amounts of the alleged violations arising out of the properties actually audited and the additional amounts projected for possible violations on unaudited properties and unaudited time periods. The total of alleged crude oil overcharges was $96 million, and the combination of alleged refunds related to crude oil and refined product sales amount to a maximum of $135 million.

III. Determination of Reasonable Settlement Amount

In determining a reasonable settlement amount, ERA reviewed its allegations of overcharges, which are comprised of three components: $96 million related to crude oil pricing, $28 million related to refined product recovery issues, and $11 million related to refined product cost issues. These amounts were based on audit samples, estimates, projections and extrapolations. These variables, and the complexity of auditing a company as large as Gulf, make the identification of precise numbers difficult.

ERA's assessment of the settlement value particularly focused on the crude oil pricing disputes which represent over 70 percent of Gulf's $135 million maximum overcharge liability, and secondarily, on the four issues involving cost recoveries on refined product sales which appear to involve another 20 percent of Gulf's maximum potential overchange liability. Unlike ERA's cases involving many other refiners, the numerous cost issues amounting to several hundred million dollars have little effect on Gulf's overcharge liability; even in ERA's most optimistic case, $430 million of cost adjustments (which do not include the $28 million of alleged refund liability related to the equal application and May 15, 1973 price issues) would only affect a Gulf's permissible product prices by a maximum of $11 million.

Also significant in ERA's consideration of this tentative settlement was Gulf's previous efforts directed at compensating for errors it may have made in its pricing of refined products. First, in response to concern brought to Gulf's attention during the course of ERA's audit, Gulf voluntarily implemented approximately $30 million of refunds and credits to its customers. Second, in 1979, Gulf agreed to pay $42.25 million in settlement on a $78 million crude cost issue. That sum is currently the subject of distribution proceedings initiated by OHA pursuant to 10 CFR Part 205, Subpart V, in OHA case number DFF–0001.

The $135 million represents the maximum recovery, absent interest, that ERA anticipates the government would obtain if *all* issues resolved by this settlement were adjudicated in its favor. The necessity for the government to prevail in litigation on all of the significant issues in order to achieve the maximum overcharge recovery from Gulf was a signficant consideration in ERA's preliminary determination that Gulf's agreement to pay $142 million is in the public interest. Furthermore, that analysis presupposes that the government will prevail in litigating all other disputes. It is also important to note that successful prosecution of the great majority of the enforcement issues would result only in reductions of Gulf's available cost banks in particular time periods. This, in turn, would require only bookkeeping adjustments in Gulf's records, particularly for those periods in which Gulf did not recover all of its costs. In arriving at an overall judgment, in addition to the analysis of litigation risks, ERA took into account such factors as the interest which could be added to possible adjudicated refund amounts, the number and complexity of the legal and factual issues, the time and expense required for the government to fully litigate every issue, as well as the necessity in a settlement for both sides to make reasonable compromises of their most optimistic assessments. Based on all of these considerations, ERA concludes that the resolution of these matters for $142 million—an amount exceeding Gulf's maximum overcharge liability—is an appropriate settlement.

IV. Terms and Conditions of the Consent Order

Pursuant to the terms of the proposed Consent Order, within thirty days of the effective date of the Consent Order Gulf will pay DOE $142 million, plus interest computed from the date the document was executed through the date of actual payment. If the settlement is not made final within 120 days of its execution date (January 30, 1985), Gulf may withdraw from the proposed agreement.

If the Consent Order is made final, Gulf's obligation to pay $142 million, plus interest, will be satisfied by the transfer of that amount to DOE within thirty days. DOE will deposit the entire amount in an interest-bearing escrow account maintained for DOE by the Department of Treasury. Promptly thereafter, ERA will petition OHA to implement a Special Refund Proceeding under the provisions of Subpart V of the regulations. In the proceeding, OHA will develop procedures for the receipt and evaluation of applications for refund in order to distribute the refund amount. To ensure that OHA has sufficient information to evaluate the claims, the proposed Consent Order requires that Gulf provide necessary information to OHA.

Unless specifically excluded, Gulf and DOE mutually release each other from claims and actions arising under the subject matter covered by the proposed Consent Order. The proposed Order does not affect the right of any other party to take action against Gulf, or of Gulf or the DOE to take action against any other party.

Several matters are excluded from the settlement. The proposed Order does not resolve:

(a) the issues or claims now pending or related to those in *Howard Stout and Gulf Oil Corp.* v. *Dept. of Energy, et al.*, No. 78–1513 (D. Kan.), consolidated in *In*

Re The Department of Energy Stripper Well Exemption Litigation, MDL No. 378 (D. Kan.) (The issues and claims excluded from the Consent Order also include those matters covered by the "Stipulation Staying Certain Portions of the Proposed Remedial Order," dated October 25, 1983, before OHA in Case No. DRO–0194.);

(b) the issues or claims pending or arising out of the matter now before the courts in *Exxon, et al.* v. *Dept. of Energy* (D. Del.) and before OHA in *In Re Three Forty One (341) Tract Unit of the Citronelle Field,* OHA Case No. BEN–0078, *et al.*, except that Gulf's liability, if any, will be limited to $6.7 million and implementation of any OHA Order will be consistent with DOE and court decisions related to the termination of the entitlements program;

(c) the issues or claims pending or arising out of the subject matter of the ERA's Notice of Final Decision, Notice of Public Proceeding and Public Hearing with respect to January 1981 and Entitlements Adjustments Notices (49 FR 27410 (July 3, 1984)) including without limitation the subject matter of ERA's request therein for additional comments;

(d) Gulf's rights or obligations concerning claims under 10 CFR Part 205, Subpart V;

(e) Gulf's rights, if any, under the Consent Order between DOE and Standard Oil Company (45 FR 26747 (April 21, 1980)) and Gulf's rights, if any, in *Diamond Shamrock Refining and Marketing Co.* v. *Standard Oil Co.*, No. CA–84–1432 (S.D Ohio);

(f) Gulf's obligation to respond to a subpoena issued at the request of DOE for documents of Cities Service Corporation in the possession of Gulf, which is now before the courts in *United States* v. *Gulf Oil Corp.*, No. CA H–84–553 (S.D. Tex.), appeal pending, Dkt. No. 5–108 (Temp. Emer. Ct. App.); and

(g) the remaining issues or claims pending or arising out of the subject matter now before the courts in *Stertz,* v. *Gulf Oil Corp.*, No. 78C1813 (E.D. N.Y.), and related appeals.

Finally, this agreement only resolves certain civil liabilities and makes no attempt to resolve any criminal liability that might be established by the government against Gulf.

V. Resolution of Litigation Matters

The proposed settlement resolves a number of enforcement matters that are being litigated by Gulf and DOE. This involves administrative and judicial litigation and includes the following cases:

Administrative Litigation

Office of Hearings and Appeals: BRO–0211, DRO–0194, HRO–0156, HRO–0157, HRO–0158, HRO–0159, HRO–0168, HRO–0171, HRO–0172, HRO–0173

Federal Energy Regulatory Commission: RO–84–6–000, RA–83–2–000

Judicial Litigation

United States v. *Gulf Oil Corp.*, No. 790027 (D.D.C.)

Gulf Oil Corp. v. *Dept. of Energy*, No. CA79–CV–11 (N.D. N.Y.)

Gulf Oil Corp. v. *Dept. of Energy*, No. H–82–3224 (S.D. Texas)

Submission of Written Comments

The proposed Consent Order cannot be made effective until the conclusion of the public review process, of which this Notice is a part.

Interested persons are invited to submit written comments concerning this proposed Consent Order to the address noted above, and to appear at a public hearing beginning at 10:00 a.m. on April 18, 1985. All comments received within 30 days of the publication of this Notice, and all statements made at the hearing, will be considered before determining whether to adopt the proposed Consent Order as a final Order. Any modification of the proposed Consent Order which significantly alters its terms or impact will be published for additional comment. If, after considering the comments it has received, and the comments at the hearing, the DOE determines to issue the proposed Consent Order as a final Order, the proposed Order will be made final and effective by publication of a Notice in the **Federal Register.**

Any information or data considered confidential by the person submitting it must be identified as such in accordance with the provisions of 10 CFR 205.9(f).

Issued in Washington, D.C., on March 1, 1985.

M.C. Lorenz,

Special Counsel, Economic Regulatory Administration.

Department of Energy, Office of Special Counsel

[Case No. RGFA00001]

Consent order with Gulf Oil Corporation.

I. Introduction

101. This Consent Order is entered into between Gulf Oil Corporation ("Gulf") and the United States Department of Energy ("DOE"). Except as specifically excluded herein, this Consent Order settles and finally resolves all civil and administrative claims and disputes, whether or not heretofore asserted, between DOE and Gulf, its subsidiaries and affiliates, relating to Gulf's compliance with the federal petroleum price and allocation regulations administered and enforced by DOE and its predecessor agencies during the period January 1, 1973, through January 27, 1981 (all the matters settled and resolved by this Consent Order are referred to hereafter as "the matters covered by this Consent Order").

II. Jurisdiction, Regulatory Authority and Definitions

201. This Consent Order is entered into by DOE pursuant to the authority conferred upon it by Sections 301 and 503 of the Department of Energy Organization Act ("DOE Act"), 42 U.S.C. 7151 and 7193; Executive Order No. 12009, 42 FR 46267 (1977); Executive Order No. 12038, 43 FR 4957 (1978); and 10 CFR 205.199J.

202. The Economic Regulatory Administration ("ERA") was created by Section 206 of the DOE Act, 42 U.S.C. § 7136. In Delegation No. 0204–4, the Secretary of Energy delegated responsibility for the administration of the federal petroleum price and allocation regulations to the Administrator of the ERA. In Delegation No. 0204–4A, the Administrator delegated to the Special Counsel authority to audit the compliance of certain refiners, including Gulf, with the federal petroleum price and allocation regulations and to take appropriate enforcement actions based upon such audits.

203. For purposes of this Consent Order, the phrase "federal petroleum price and allocation regulations" means all statutory requirements and administrative regulations regarding the pricing and allocation of crude oil, refined petroleum products, natural gas liquids, and natural gas liquid products, including the entitlements and mandatory oil imports programs, administered by DOE. The federal petroleum price and allocation regulations include (without limitation) the pricing, allocation, reporting, certification, and recordkeeping requirements imposed by or under the Economic Stablization Act of 1970, the Emergency Petroleum Allocation Act of 1973, the Federal Energy Administration Act of 1974, Presidential Proclamation 3279; all applicable DOE regulations codified in 6 CFR Parts 130 and 150 and 10 CFR Parts 205, 210, 211, 212 and 213, and rules, rulings, guidelines, interpretations, clarifications, manuals, decisions, orders, notices, forms, and

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subpoenas relating to the pricing and allocation of petroleum products. The provisions of 10 CFR 205.199J and the definitions under the federal petroleum price and allocation regulations shall apply to this Consent Order, except to the extent inconsistent herewith. Reference herein to "DOE" includes the Cost of Living Council, the Federal Energy Office, the Federal Energy Administration, the Department of Energy, the Office of Special Counsel (OSC), the Economic Regulatory Administration and all predecessor and successor agencies. References in this Consent Order to "Gulf" shall include (without limitation) the Gulf Oil Corporation, its parent Gulf Corporation, as well as its affiliates and subsidiaries; predecessors; its petroleum-related activities as refiner, producer, operator, reseller, retailer, natural gas processor, or otherwise, and except for Article IV, *infra*, directors, and employees of Gulf. Notwithstanding the foregoing, references in this Consent Order to "Gulf" shall exclude Chevron Corporation, and its subsidiaries (other than Gulf), and affiliates, other than with respect to their derivative liability, if any, for the acts of Gulf under the federal petroleum price and allocation regulations.

III. Facts

The stipulated facts upon which this Consent Order is based are as follows:

301. Gulf is a "refiner" and a "producer" of crude oil as those terms are defined in the federal petroleum price and allocation regulations, and is subject to the jurisdiction of the DOE. During the period covered by this Consent Order, Gulf engaged in, among other things, the production; importation, sale, and refining of crude oil; the sale of residual fuel oil, motor gasoline, middle distillates, aviation fuel, propane, and other refined petroleum products; and the extraction, fractionation, and sale of natural gas liquids ("NGLs") and natural gas liquid products ("NGLPs").

302. In 1973, the DOE began an audit to determine Gulf's compliance with the federal petroleum price and allocation regulations. In 1977, pursuant to the mandate of the Secretary of Energy, OSC continued the audit on an intensified basis. The audit encompassed review of Gulf's policies and procedures pertaining to, and Gulf's compliance with, specific federal petroleum price and allocation regulations.

303. As part of its audit, DOE examined Gulf's books and records relating to Gulf's compliance with the federal petroleum price and allocation regulations and the reporting requirements incidental to those regulations. In addition, at DOE's request, Gulf prepared and submitted to the auditors a substantial number of specific responses to audit inquires not necessarily limited to, or readily available from, individual books or records.

304. During the course of its audit, as well as the negotiations that led to this Consent Order, OSC raised certain issues with respect to Gulf's application of the federal petroleum price and allocation regulations. OSC has taken various administrative enforcement actions against Gulf, including the issuance of letters, Notices of Probable Violation, Notices of Proposed Disallowance, Proposed Remedial Orders, and a Proposed Order of Disallowance and filed a judicial enforcement action. Gulf maintains, however, that it has calculated its costs, determined its prices, sold its crude oil and petroleum products, and operated in all other respects in accordance with the federal petroleum price and allocation regulations. DOE and Gulf disagree in several respects concerning the proper application of the federal petroleum price and allocation regulations to Gulf's activities with respect to the matters covered by this Consent Order, and each believes that its respective legal and factual positions on the matters resolved by this Consent Order are meritorious. These positions were emphasized in the intensive review and exchange of information conducted during the negotiation process. However, in order to avoid the expense of protracted, complex litigation and disruption of its orderly business functions, Gulf has agreed to enter into this Consent Order. DOE believes this Consent Order constitutes a satisfactory resolution of the matters covered herein and is in the public interest.

305. Pursuant to a consent order (49 FR 24929 (June 18, 1984)), Gulf has already paid forty-two million two hundred forty thousand dollars ($42,240,000.00) which is now subject to distribution in accordance with Subpart V of 10 CFR Part 205.

306. In the matter now before the courts in *Howard Stout and Gulf Oil Corporation* v. *Department of Energy, et al.*, No. 78–1513 (D.Kan.), consolidated in *In Re The Department of Energy Stripper Well Exemption Litigation*, MDL No. 378 (D. Kan.) Gulf has already paid at least one hundred seventy-one million dollars ($171 million) into an interest-bearing escrow fund maintained under the authority of the court for ultimate distribution as directed by the court.

307. Pursuant to a prior consent order (45 F.R. 78755 (Nov. 26, 1980)) and negotiations with DOE concerning various matters arising under the federal petroleum price and allocation regulations, Gulf has already paid nearly thirty million dollars ($30 million) in refunds and credit memoranda to its customers.

TERMS AND CONDITIONS

IV. Remedial Provisions

401. In full and final settlement of all matters covered by this Consent Order and in lieu of all other remedies which might have been sought by DOE for such matters under 10 CFR 205.199I or otherwise, Gulf shall pay one hundred forty-two million dollars ($142,000,000.00), plus interest accruing at the rate specified in paragraph 404 between the date of execution of this Consent Order and the date of payment, pursuant to paragraph 402, to be disbursed as provided in paragraph 403.

402. Gulf agrees to pay one hundred forty-two million dollars ($142,000,000.00) plus interest accrued for the period described in paragraph 401, to DOE within thirty (30) days of the effective date of this Consent Order.

403. OSC and Gulf agree that OSC will petition DOE's Office of Hearings and Appeals (OHA) to implement special refund procedures pursuant to 10 CFR Part 205, Subpart V to distribute the amount specified in paragraph 402.

404. Interest shall be deemed to be earned from the date of execution by DOE of this Consent Order at an interest rate reflecting the average price bid at the most recent auction of 13-week U.S. Treasury Bills preceding said date of execution. Thereafter, the interest deemed to be earned shall be revised to reflect the average price bid at the auction of 13-week Treasury Bills next following the first day of each calendar quarter, beginning with the calendar quarter next following said date of execution. The revised interest rate will apply on the first day after the relevant auction, and will continue to apply until and including the day of the next relevant auction. Upon each quarterly revision of the interest rate or upon payment to DOE, the interest earned since the date of execution of this Consent Order by DOE in the case of the first such quarterly revision or in the case of payment to DOE before such first quarterly revision or since the immediately preceding quarterly in all other cases shall be computed at a rate equal to the annual coupon equivalent for the 13-week U.S. Treasury Bill auction average bid price at the auction

governing the interest rate for the computation period times a fraction the numerator of which shall be the number of calendar days in the computation period and the denominator of which shall be 365. Interest shall be deemed earned as of 2:00 P.M. Eastern Standard Time.

V. Issues Resolved

501. All pending and potential civil and administrative claims, whether or not known, demands, liabilities, causes of action or other proceedings by DOE against Gulf regarding Gulf's compliance with and obligations under the federal petroleum price and allocation regulations during the period covered by this Consent Order, whether or not heretofore raised by an issue letter, Notice of Probable Violation, Notice of Proposed Disallowance, Proposed Remedial Order, Proposed Order of Disallowance, Remedial Order, action in court or otherwise are resolved and extinguished as to Gulf by this Consent Order, except that this Consent Order does not cover or affect:

(a) the issues or claims now pending, and those related thereto, in *Howard Stout and Gulf Oil Corporation* v. *Department of Energy, et al.*, No. 78–1513 (D. Kan.), consolidated in *In Re The Department of Energy Stripper Well Exemption Litigation*, MDL No. 378 (D. Kan.) (The issues and claims excluded from the Consent Order by this paragraph also include those matters covered by the "Stipulation Staying Certain Portions of the Proposed Remedial Order," dated October 25, 1983, before OHA in Case No. DRO–0194.);

(b) the issues or claims pending or arising out of the matter now before the courts in *Exxon, et al.* v. *DOE and 341 Tract Unit of the Citronelle Field*, No. 61–25, *et al.* (D.Del.) and before OHA in *In Re Three Forth One (341) Tract Unit of the Citronelle Field*, OHA Case Nos. BEN–0078, *et al.*, except to the extent provided in paragraph 506;

(c) the issues or claims pending or arising out of the subject matter of the ERA's Notice of Final Decision, Notice of Public Proceeding and Public Hearing with respect to January 1981 and Entitlements Adjustments Notices (49 FR 27410 (July 3, 1984)), including without limitation the subject matter of ERA's request therein for additional comments;

(d) Gulf's rights in all regards concerning claims under 10 CFR Part 205, Subpart, V, or claims arising from violations or settlements of alleged violations of the federal petroleum price and allocation regulations;

(e) Gulf's rights, if any, under the consent order between DOE and Standard Oil Company (Indiana) (45 FR 26747 (April 21, 1980)) and related agreements between DOE and Standard Oil Company (Indiana) and Gulf's rights, if any, in *Diamond Shamrock Refining and Marketing Co.* v. *Standard Oil Company, et al.*, v. *U.S. Department of Energy, et al.*, No. C2–84–1432 (S.D. Ohio).

(f) Gulf's obligation to respond to a subpoena issued at the request of DOE for documents of Cities Service Corporation in the possession of Gulf, said issue being now before the courts in *United States of America* v. *Gulf Oil Corporation*, No. CA H–84–553 (S.D.Tex.), appeal pending, Dkt. No. 5–108 (TECA); and,

(g) the remaining issues or claims pending or arising out of the subject matter now before the courts in *Stertz, et al.* v. *Gulf Oil Corporation* v. *Department of Energy*, No. 78C1813 (E.D.N.Y.) and related appeals.

502. (a) Compliance by Gulf with this Consent Order shall be deemed by DOE to constitute full compliance for administrative and civil purposes with all federal petroleum price and allocation regulations for matters covered by this Consent Order. In consideration for performance as required under this Consent Order by Gulf, except as to those matters excluded by pargraph 501, DOE hereby releases Gulf completely and for all purposes from all administrative and civil judicial claims, liabilities or causes of action, specifically including claims for civil penalties, that DOE has asserted or may otherwise be able to assert against Gulf for alleged violations of the federal petroleum price and allocation regulations with respect to the matters covered by this Consent Order. DOE will not initiate or prosecute any such administrative or civil matter against Gulf or cause or refer any such matter to be initiated or prosecuted, nor will DOE or its successors directly or indirectly aid in the initiation of any such administrative or civil matter against Gulf or participate voluntarily in the prosecution of such actions. DOE will not assert voluntarily in any administrative or civil judicial proceeding that Gulf has violated the federal petroleum price and allocation regulations with respect to the matters covered by this Consent Order, or otherwise take action with respect to Gulf in derogation of this Consent Order.

(b) Nothing contained herein shall preclude DOE from defending the validity of the federal petroleum price and allocation regulations. DOE also reserves the right to initiate and prosecute enforcement actions against any party other than Gulf for noncompliance with the federal petroleum price and allocation regulations, including, for example, suits against operators for overcharges for crude oil when Gulf is a working or royalty interest owner in such crude oil production. However, if Gulf was the operator of a property that produced crude oil for all or part of the period covered by this Consent Order, DOE shall not initiate or prosecute any enforcement action against any party for noncompliance with the federal petroleum price and allocation regulations during such period relative to such property, except to the extent such party received its interest from such property in kind. Gulf and DOE agree that the amount paid to DOE pursuant to this agreement is not attributable to Gulf's activities as a working or royalty interest owner on properties on which it is not the operator. Furthermore, Gulf and DOE agree that the Consent Order and the payments hereunder do not resolve, reduce or release the liability of any other party for violations on properties at times during which Gulf is a working or royalty interest owner (and not the operator) or affect any rights or obligations between Gulf and such working or royalty interest owners. Except for the matters excluded by this paragraph and paragraph 501, DOE agrees that this Consent Order settles and finally resolves all aspects of Gulf's liability to DOE under the federal petroleum price and allocation regulations in its capacity as a producer, including but not limited to its capacity as an operator or working interest or royalty interest owner of a crude oil producing property.

(c) DOE expressly agrees that it will not seek or recommend any criminal fines or penalties based solely on the information and evidence presently in its possession for the matters covered by this Consent Order; provided that nothing in the Consent Order precludes DOE from exercising its obligations under law with regard to forwarding information of possible criminal violations of law to the appropriate authorities. Nothing contained herein may be construed as a bar, an estoppel, or a defense against any criminal action, or against any civil action brought by any purchaser of covered products from Gulf, or against any civil action brought by an agency of the United States other than by DOE under (i) Section 210 of the Economic Stabilization Act of (ii) any statute or regulation other than the

federal petroleum price and allocation regulations. Finally, this Consent Order does not affect or prejudice any private action brought by a third party against Gulf, or by Gulf against any third parties, including an action for contribution; nor may this Consent Order be used to establish, enlarge, or abridge the rights of third parties seeking contribution from Gulf, or the rights of Gulf to seek contribution from third parties.

(d) Gulf expressly agrees that in consideration for DOE's performance under the Consent Order, Gulf releases DOE completely and for all pruposes from all administrative and civil judicial claims, liabilities or causes of action that Gulf has asserted or may otherwise be able to assert against DOE under the federal petroleum price and allocation regulations, except for matters specifically excluded from this Consent Order.

503. Gulf and DOE agree to stipulate to the dismissal with prejudice of *Gulf Oil Corporation* v. *Department of Energy*, No. CA79–CV–11 (N.D.N.Y.). Within fifteen (15) days after the effective date of this Consent Order, Gulf will execute and deliver to DOE a stipulation in the form attached hereto as Attachment A.

504. Gulf and DOE agree to stipulate to the dismissal with prejudice of *United States of America* v. *Gulf Oil Corp.*, No. 79–0030 (D.D.C.). Within fifteen (15) days after the effective date of this Consent Order, DOE will execute and deliver to Gulf a stipulation in the form attached hereto as Attachment B.

505. Gulf agrees to file a motion to dismiss with prejudice as to DOE in *Gulf Oil Corporation* v. *U.S. Dept. of Energy, et al.*, No. H–82–3224 (S.D. Texas) within fifteen (15) days after the effective date of this Consent Order.

506. Gulf and DOE agree that any existing or future order requiring Gulf to refund or otherwise pay money or other consideration as a result of proceedings or decisions arising from the peititon for exception relief filed by the Three Forty One (341) Tract Unit of the Citronelle Field, including those cases and decisions referenced by the following citations (OHA Case No. BEN–0078, (7 DOE ¶ 81,140); DEE–7746, HED–0079, (10 DOE ¶ 81,027); and BEX–0180, (9 DOE ¶ 82,509) shall not exceed $6.7 million, plus interest, if any. Implementation of any OHA order respecting Gulf's obligations arising from these proceedings will be consistent with DOE and court decisions respecting the termination of the entitlements program (49 FR 27410, July 3, 1984, and (50 FR 1919, January 14, 1985).

507. Within thirty (30) days after the effective date of this Consent Order, DOE and Gulf will file or cause to be filed appropriate pleadings to dismiss with prejudice all proceedings against Gulf or commenced by Gulf covered by this Consent Order then pending before DOE's OHA or on appeal from OHA to the Federal Energy Regulatory Commission, except that in Case No. DRO–0194 the issues and claims excluded by paragraph 501(a), *supra*, will be dismissed without prejudice.

508. Execution of this Consent Order constitutes neither an admission by Gulf nor a finding by DOE of any violation by Gulf or any statute or regulation. DOE has determined that it is not appropriate to seek to impose civil penalties for the matters covered by this Consent Order, and DOE expressly agrees that it will not seek any such civil penalties. None of the payments or expenditures made by Gulf pursuant to this Consent Order are to be considered for any purpose as penalties, fines, or forfeitures or as settlement of any potential liability for penalties, fines, or forfeitures. Payments made by Gulf pursuant to this Consent Order are attributable only to the matters resolved by this Consent Order.

509. Nothwithstanding any other provision herein, with respect to the matters covered by this Consent Order, DOE reserves the right to initiate an enforcement proceeding or to seek approriate penalties for any newly discoverd regulatory violations committed by Gulf, if Gulf has knowingly concealed facts relating to such violations. DOE and Gulf also reserve the right to seek appropriate judicial remedies, other than full rescission of this Consent Order, for any misrepresentation of material fact during the course of the audit or during the course of the negotiations that preceded this Consent Order.

VI. Reporting, Recordkeeping Requirements and Confidentiality

601. Pursuant to 10 CFR 210.92(d) and 10 CFR 210.1, Gulf is relieved of its obligation to comply with the recordkeeping requirements of the federal petroleum price and allocation regulations relating to the matters resolved by this Consent Order. Gulf shall maintain such records as are necessary to demonstrate compliance with the terms of this Consent Order. Except for the matters excluded in paragraph 501, Gulf will not be subject hereafter to any report order, subpoenas, or other administrative discovery by DOE or a successor relating to Gulf's compliance with the federal petroleum price and allocation regulations for the period covered by this Consent Order; provided, however, that Gulf will not invoke this Consent Order as a defense to report orders, subpoenas and other administrative discovery it may receive regarding other firms subject to the federal petroleum price and allocation regulations. Gulf shall continue to be subject to DOE's information gathering and reporting authority.

602. DOE will treat the sensitive commercial and financial information of Gulf as confidential and proprietary and will not disclose such information unless required to do so by law including a request by a duly authorized committee or subcommittee of Congress. If a request or demand for release of any such information is made pursuant to law, DOE will claim any privilege or exemption reasonably available to it. DOE will provide Gulf with ten (10) days actual notice, if possible, of any pending disclosure of such information, unless prohibited or precluded from doing so by law or request of Congress. DOE will retain the audit information which it has acquired during its review of Gulf's compliance with the federal petroleum price and allocation regulations in accordance with the DOE's established records retention procedures. Notwithstanding the otherwise confidential treatment afforded such information by the terms of the Consent Order, DOE will make such information available to the Department of Justice ("DOJ") in response to a request pursuant to DOJ's statutory authority by a duly authorized representative of the DOJ. If requested by DOJ, DOE shall not disclose that such a request has been made. Nothing in this paragraph shall be deemed to waive or prejudice any right Gulf may have independent of this Consent Order regarding the disclosure of sensitive commercial and financial information.

VII. Contractual Undertaking

701. It is the understanding and express intention of Gulf and DOE that this Consent Order constitutes a legally enforceable contractual undertaking that is binding on the parties and their successors and assigns. Notwithstanding any other provision herein, Gulf (and its successors and assigns) and DOE each reserves the right to institute a civil action in an appropriate United States district court, if necessary, to secure enforcement of the terms of this Consent Order, and DOE also reserves the right to seek appropriate penalties and interest for any failure to comply with the terms of this Consent Order. Consistent with Departmental policy, DOE will

undertake the defense of the Consent Order as finalized, in response to any litigation challenging the Consent Order's validity in which DOE is named as a party. Gulf agrees to cooperate with DOE in the defense of any such challenge.

VIII. Final Order

801. Upon becoming effective, this Consent Order shall be a final order of DOE having the same force and effect as a remedial order issued pursuant to Section 503 of the DOE Act, 42 U.S.C. 7193, and 10 CFR 205.199B. Gulf hereby waives its right to administrative or judicial review of this Order.

IX. Effective Date

901. This Consent Order shall become effective as a final order of the DOE upon notice to that effect published in the **Federal Register**. Prior to that date, DOE will publish notice of the proposed Consent Order in the **Federal Register** and, in that notice, will provide not less than thirty (30) days for members of the public to submit comments to DOE and to appear at a hearing conducted by ERA. DOE will consider all written comments and the statements made at the hearing to determine whether to adopt the Consent Order as a final order, to withdraw agreement to the Consent Order or to attempt to renegotiate the terms of the Consent Order.

902. Until the effective date, DOE reserves the right to withdraw consent to the Consent Order by written notice to Gulf, in which event this Consent Order shall be null and void. If this Consent Order is not made effective on or before the one hundred twentieth (120th) day following execution by Gulf, Gulf reserves the right, at any time thereafter until the effective date, to withdraw its agreement to this Consent Order by written notice to DOE in which event this Consent Order shall be null and void.

I, the undersigned, a duly authorized representative of Gulf, hereby agree to and accept on behalf of Gulf the foregoing Consent Order.

Gulf Oil Corporation,

C.H. Bowman.

Dated: January 30, 1985.

I, the undersigned, a duly authorized representative of DOE, hereby agree to and accept on behalf of the DOE the foregoing Consent Order.

Milton C. Lorenz,

Special Counsel, Department of Energy.

Dated: January 30, 1985.

In the United States District Court for the Northern District of New York

[Civil Action No. CA79–CV–11]

Gulf Oil Corporation Plaintiff, *v. Department of Energy*, Defendant.

Stipulation of Dismissal

Plaintiff, Gulf Oil Corporation, and defendant, the Department of Energy ("DOE"), hereby stipulate as follows:

1. Gulf and DOE have entered into a Consent Order, a true copy of which is attached hereto as Exhibit A.

2. The Consent Order has now become final and effective pursuant to law.

3. Pursuant to the terms of the Consent Order and Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedure, Gulf and DOE hereby stipulate that the instant action be dismissed with prejudice, each party to bear its own costs.

Gulf Oil Corporation.

By: _____

Attorneys for Plaintiff

United States Department of Energy.

By: _____

Attorneys for Defendant.

This____ day of_____, 1984, the foregoing Stipulation is approved, and it is so ordered.

_____

United States District Judge.

Attachment B

In The United States District Court for the District of Columbia

[Civil Action No. 79–0030]

United States of America Plaintiff, v. *Gulf Oil Corporation*, Defendant.

Stipulation of Dismissal

Plaintiff, United States of America and the defendant, Gulf Oil Corporation, hereby stipulate as follows:

1. Gulf and the U.S. Department of Energy have entered into a Consent Order, a true copy of which is attached hereto as Exhibit A.

2. The Consent Order has now become final and effective pursuant to law.

3. Pursuant to the terms of the Consent Order and Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedure, Gulf and DOE hereby stipulate that the instant action be dismissed with prejudice, each party to bear its own costs.

United States of America.

By: _____

Attorneys for Plaintiff.

Gulf Oil Corporation.

By: _____

Attorneys for Defendant.

This ___ day of _____, 1984, the forefoing Stipulation is approved and It is so ordered.

_____

United States District Judge.

[FR Doc. 85–5586 Filed 3–7–85; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. RP82–75–004]

Arkansas Louisiana Gas Company, a Division of Arkla, Inc.; Compliance Filing

March 1, 1985.

Take notice that on February 19, 1985, Arkansas Louisiana Gas Company, a division of Arkla, Inc. (Arlka) tendered for filing revised tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1, Rate Schedule G–2 and Original Volume No. 3, Rate Schedule X–26 to comply with Article II of the Stipulation and Agreement accepted by the Commission on February 17, 1983 and Commission Opinion No. 160–A, issued April 6, 1983. Arkla states that these proposed revised tariff sheets are being filed only to be effective in accordance with their terms during the locked-in period from June 1, 1982 through January 31, 1985.

Arkla requests that it be permitted to withdraw its previous compliance filing of May 26, 1983, or alternatively, that the Commission reject that filing as not being in compliance with the Commission's order approving the Stipulation and Agreement, because those proposed tariff sheets were based on calculations that contained an error.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 11, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file

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with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-5533 Filed 3-7-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 7704-001]

Enumclaw/Washington Associates; Surrender of Preliminary Permit

March 5, 1985.

Take notice that Enumclaw/Washington Associates, Permittee for the Enumclaw/Washington Project No. 7704, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 7704 was issued on August 8, 1984, and would have expired on January 31, 1986. The project would have been located on the White River in King and Pierce Counties, Washington.

The Permittee filed the request on February 1, 1985, and the preliminary permit for Project No 7704 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-5536 Filed 3-7-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 1250]

City of Pasadena, California, Water and Power Department; Issuance of Annual License

March 5, 1985.

On May 29, 1984, the Water and Power Department of the City of Pasadena, California (City), Licensee for the Azusa Project No. 1250, filed an application for a new license pursuant to the Federal Power Act and Commission Regulations thereunder. Project No. 1250 is located on the San Gabriel River in Los Angeles County, California.

The license for Project No. 1250 was issued for a period ending May 30, 1984. In order to authorize the continued operation and maintenance of the project, pending Commission action on the Licensee's application, it is appropriate and in the public interest to issue an annual license to the City.

Take notice that an annual license was issued to the City of Pasadena, California for a period effective May 31, 1984, to May 30, 1985, or until federal takeover, or until the issuance of a new license for the project, whichever comes first, for the continued operation and maintenance of the Project No. 1250, subject to the terms and conditions of the original license.

Take further notice that if federal takeover or issuance of a new license does not take place on or before May 30, 1985, a new annual license will be issued each year thereafter, effective May 31 of each year, until such time as federal takeover takes place or a new license is issued, without further notice being given by the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-5537 Filed 3-7-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. 8007-001]

Franklin Associates; Surrender of Preliminary Permit

March 5, 1985.

Take notice that Franklin Associates, Permittee for the proposed Franklin Falls Project No. 8007, has requested that its preliminary permit be terminated. The preliminary permit was issued on August 3, 1984, and would have expired on July 31, 1986. The project would have been located on the Pemigewasset River in Merrimack and Belknap Counties, New Hampshire. The Permittee states that a preliminary study found that the project would not be economically feasible to develop at this time.

The Permittee filed the request on February 1, 1985, and the preliminary permit for Project No. 8007 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-5538 Filed 3-7-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 7629-001]

Independence Electric Corp.; Surrender of Preliminary Permit

March 5, 1985

Take notice that Independence Electric Corporation, Permittee for the proposed Beaver Creek Project No. 7629, requested by letter dated January 18, 1985, that its preliminary permit be terminated. The preliminary permit was issued on March 12, 1984 and would have expired on February 28, 1987. The project would have been located on the Holston River in Grainger and Jefferson Counties, Tennessee.

The Permittee filed the request on January 28, 1985, and the preliminary permit for Project No. 7629 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-5539 Filed 3-7-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RA82-9-000]

Little America Refining Co.; Permitting Supplemental Filing

March 1, 1985.

On March 7, 1984, the presiding officer issued a proposed order [1] affirming the Supplemental Decision and Order of the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) issued to Little America Refining Company (LARCO).[2] That order reflected a retrospective year-end review of exception relief previously granted on a conditional basis for LARCO's fiscal year ending June 30, 1978. The decision found that LARCO had received excessive relief and ordered LARCO to reimburse the entitlements program. Comments on the proposed order were filed by LARCO.

On June 28, 1984, DOE announced its final decision not to issue any further entitlements notices, and its tentative decision not to require firms which had received excessive entitlements exception relief to refund that relief.[3]

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[1] 26 FERC ¶ 62,209.

[2] 9 DOE ¶ 85,502 (1981).

[3] 49 FR 27,410 (July 3, 1984).

This proceeding was then stayed until DOE announced its final decision. On January 9, 1985, DOE announced its final decision not to enforce orders requiring firms to refund excessive relief.[4] DOE held that effectuation of such orders in today's unregulated petroleum market would be inconsistent with the purpose of these orders and of the Emergency Petroleum Allocation Act (EPAA).[5]

It appears that these actions by DOE may have rendered moot this proceeding. By March 11, 1985, any participant who believes that DOE's actions have not rendered moot this proceeding shall file a response explaining in detail its position. Failure to file a response will be deemed an admission that this proceeding is moot and should be dismissed.

Kenneth Plumb,

Secretary.

[FR Doc. 85-5540 Filed 3-7-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP84-88-001, et al.]

Transwestern Pipeline Co., et al., Filing of Pipeline Refund Reports and Refund Plans

March 4, 1985.

Take notice that the pipelines listed in the Appendix hereto have submitted to the Commission for filing proposed refund reports or refund plans. The date of filing, docket number, and type of filing are also shown on the Appendix.

Any person wishing to do so may submit comments in writing concerning the subject refund reports and plans. All such comments should be filed with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before March 13, 1985. Copies of the respective filings are on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

APPENDIX

Filing date	Company	Docket No.	Type filing*
Feb. 15, 1985	Transwestern Pipeline Co	RP84-88-001	
Do	Mountain Fuel Resources, Inc	RP85-73-000	
Feb. 14, 1985	West Lake Arthur Corp	RP85-74-000	
Feb. 15, 1985	Florida Gas Transmission Co	RP85-75-000	
Do	Lone Star Gas Co	RP85-76-000	
Do	Trunkline Gas Co	RP85-77-000	
Do	Transcontinental Gas Pipe Line Corp	RP85-78-000	
Do	Texas Gas Pipe Line Corp	RP85-79-000	
Feb. 19, 1985	Mississippi River Transmission Corp	RP85-80-000	
Feb. 15, 1985	Northwest Central Pipeline Corp	RP85-81-000	
Do	Mid Louisiana Gas Co	RP85-82-000	
Do	Northwest Pipeline Corp	RP85-83-000	
Do	Texas Gas Transmission Corp	RP85-84-000	
Do	Texas Eastern Transmission Corp	RP85-85-000	
Do	Valero Interstate Transmission Co	RP85-86-000	
Do	Consolidated Gas Transmission Corp	RP85-87-000	
Do	ANR Pipeline Co	RP85-88-000	
Do	Sea Robin Pipeline Co	RP85-89-000	
Do	United Gas Pipe Line Co	RP85-90-000	
Do	Columbia Gas Transmission Co	RP85-91-000	
Do	El Paso Natural Gas Co	RP85-92-000	
Do	National Fuel Gas Supply Corp	RP85-93-000	
Do	Tennessee Gas Pipe Line Co	RP85-94-000	
Do	Colorado Interstate Gas Co	RP85-95-000	
Do	Panhandle Eastern Pipe Line Co	RP85-96-000	
Feb. 19, 1985	Montana-Dakota Utilities Co	RP85-97-000	
Do	K N Energy, Inc	RP85-98-000	
Do	Natural Gas Pipe Line Co of America	RP85-99-000	
Do	Cimarron Transmission Co	RP85-100-000	
Feb. 15, 1985	Valley Gas Transmission, Inc	RP85-104-000	
Do	Arkansas Oklahoma Gas Corp	RP85-105-000	

* Refunds Resulting From Btu Measurement Adjustments.

Note.—Each Company will retain its basic Docket No. and will be assigned sub-docket numbers as appropriate.

[FR Doc. 85-5541 Filed 3-7-85; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-59706; FRL-2791-8]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984 (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. PMNs for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of four such PMNs and provides a summary of each.

DATES: Close of Review Period:

Y 85-24 and 85-25—March 14, 1985.

Y 85-26—March 18, 1985.

Y 85-27—March 20, 1985.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M St.,

[4] 50 FR 1919, 1922 (January 14, 1985).

[5] 15 U.S.C. 751 *et seq.* (1982).

SW., Washington, DC 20460 (202–382–3725).

SUPPLEMENTARY INFORMATION: A nonsubstantive change in the prefixes is being initiated for information published under sections 5(d)(2) and 5(h)(6) of TSCA. The notices will contain essentially the same information but the prefixes to the specific number assignment will appear in an abbreviated form. Prefixes under the modified format will use the letters "Y" (POLYMER EXEMPTION), "P" (PMN) and "T" (TMEA). The following notice contains information extracted from the non-confidential version of the submission by the manufacturer on the exemption received by EPA. The complete non-confidential document is available in the Public Reading Room E–107 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 85–24

Manufacturer. Confidential.
Chemical. (G) Polyester polyol.
Use/Production. (S) Industrial low shrink additive for unsaturated polyester sheet molding compounds. Prod. range: 56,000–141,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Y 85–25

Manufacturer. Confidential.
Chemical. (G) Polyester from poly(alkylene ether)glycol and methylene bis(isocyanatobenzene).
Use/Production. (G) Coating or film. Prod. range: Confidential.
Toxicity Data. No data on the PMN subtance submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

Y 85–26

Manufacturer. C. J. Osborn Chemicals, Inc.
Chemical. (G) Alkyd copolymer.
Use/Production. (S) Industrial and consumer clear and pigmented coatings. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: Dermal, a total of 4 workers, up to 1 hr/da, up to 4 da/yr.
Environmental Release/Disposal. No release.

Y 85–27

Manufacturer. Ionics, Incorporated.
Chemical. (G) A functional methacrylate polymer.
Use/Production. (S) Industrial and commercial permselective anion membrane used in electrodialysis apparatus in a contained manner for water demineralization.
Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

Dated: March 4, 1985.

Linda A. Travers,

Acting Director, Information Management Division.

[FR Doc. 85–5575 Filed 3–7–85; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–51561; FRL–27922]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of fifty-six PMNs and provides a summary of each.

DATES: Close of Review Period:

P 85–558, 85–559, 85–560, 85–561, 85–562, 85–563, 85–564, 85–565 and 85–566—May 22, 1985.

P 85–567—May 25, 1985.

P 85–568, 85–569, 85–570, 85–571, 85–572, 85–573, 85–574, 85–575, 85–576, 85–577, 85–578, 85–579, 85–580, 85–581, 85–582, and 85–583—May 26, 1985.

P 85–584, 85–585, 85–586, 85–587, 85–588, 85–589, 85–590, 85–591, 85–592, 85–593 and 85–594—May 27, 1985.

P 85–595, 85–596, 85–597, 85–598, 85–599, 85–600, 85–601, 85–602, 85–603, 85–604, 85–605, 85–606, 85–607, 85–608, 85–609, 86–610, 85–611, 85–612 and 85–620—May 28, 1985.

Written comments by:

P 85–558, 85–559, 85–560, 85–561, 85–562, 85–563, 85–564, 85–565 and 85–566—April 22, 1985.

P 85–567—April 25, 1985.

P 85–568, 85–569, 85–570, 85–571, 85–572, 85–573, 85–574, 85–575, 85–576, 85–577, 85–578, 85–579, 85–580, 85–581, 85–582 and 85–583—April 26, 1985.

P 85–584, 85–585, 85–586, 85–587, 85–588, 85–589, 85–590, 85–591, 85–592, 85–593 and 85–594—April 27, 1985.

P 85–595, 85–596, 85–597, 85–598, 85–599, 85–600, 85–601, 85–602, 85–603, 85–604, 85–605, 85–606, 85–607, 85–608, 85–609, 86–610, 85–611, 85–612 and 85–620—April 28, 1985.

ADDRESS: Written comments, identified by the document control number "[OPTS–51561]" and the specific PMN number should be sent to: Document Control Officer (TS–793), Chemical Information Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E–201, 401 M St., SW., Washington, DC 20460, (202–382–3532).

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M St., SW., Washington, DC 20460, (202–382–3725).

SUPPLEMENTARY INFORMATION: A nonsubstantive change in the prefixes is being initiated for information published under sections 5(d)(2) and 5(h)(6) of the Toxic Substances Control Act (TSCA). The notices will contain essentially the same information but the prefixes to the specific number assignmept will appear in an abbreviated form. Prefixes under the modified format will use the letters "P" (PMN), "T" (TMEA) and "Y" (Polymer Exemption). The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room E–107 at the above address.

P 85–558

Manufacturer. Confidential.
Chemical. (G) Waterborne urethane-acrylic polymer.
Use/Production. (S) Industrial and commercial general purpose coating and modifier for coating and inks. Prod. range: 50,000–300,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: Dermal, a total of 4 workers, up to 4 hrs/da, up to 10 da/yr.
Environmental Release/Disposal. No release to the environment.

P 85–559

Importer. Confidential.
Chemical. (G) Alkyl calixaryl acetate.
Use/Import. (G) A formulation component for open, non-dispersive use. Import range: 1,000–5,000 kg/yr.
Toxicity Data. No data submitted.

Exposure. Processing and use: Dermal, a total of 8 workers.
Environmental Release/Disposal. 0.01 to 2 kg/batch released to land. Disposal by landfill.

P 85–560

Manufacturer. Confidential.
Chemical. (G) Substituted olefinic ketone.
Use/Production. (G) Destructive end use. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential. Disposal by publicly owned treatment works (POTW).

P 85–561

Manufacturer. Confidential.
Chemical. (G) Substituted olefinic alcohol.
Use/Production. (G) Highly dispersive use. Prod. range: Confidential.
Toxicity Data. Acute oral: > 5 g/kg; Irritation: Eye-Non-irritant; Ames Test: Non-mutagenic; Maximization Test: Non-allergic: Phototoxicity test: Non-photoxic: Photoallergenicity test: Non-photosensitizer.
Exposure. Confidential.
Environmental Release/Disposal. Confidential. Disposal by POTW.

P 85–562

Manufacturer. Allied Corporation.
Chemical. (G) Alkanolalkane triacrylate octylamine adduct.
Use/Production. (S) Binder component for coated abrasive manufacturing. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 2 workers, up to 3 hrs/da.
Environmental Release/Disposal. No release.

P 85–563

Manufacturer. Reichhold Chemicals, Inc.
Chemical. (G) Polyester polymer composed of fumarated rosin, glycerine, diethylene glycol and a polyhydroxyl prepolymer.
Use/Production. (S) Printing ink vehicle. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: Dermal, a total of 4 workers, up to 3 hrs/da, up to 35 da/yr.
Environmental Release/Disposal. 40 kg/batch released to air. Disposal by incineration.

P 85–564

Manufacturer. Confidential.
Chemical. (S) Polymer of hydroxyethyl acrylate, 4,4'-diphenylmethyane diisocyanate and polymethlene polyphenyl isocyanate.
Use/Production. (S) Industrial laminating resin for FRP. Prod. range: 127,120–544,800 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: Dermal, a total of 4 workers, up to 5 hrs/da.
Environmental Release/Disposal. Less than 5 kg/batch released to land. Disposal by sawdust landfill.

P 85–565

Manufacturer. Confidential.
Chemical. (G) Organo sulfonic acid, zinc salt.
Use/Production. (G) A catalyst used in the polymerization of organic molecule. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: Dermal, a total of 1 worker, up to 1–2 hrs/da.
Environmental Release/Disposal. 25 kg/da released.

P 85–566

Manufacturer. Confidential.
Chemical. (G) Alcohol ether sulfate, amine salt.
Use/Production. (G) An additive used in the energy production industry. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: Dermal, a total of 1 worker, up to 1–2 hrs/da.
Environmental Release/Disposal. 25 kg/da released.

P 85–567

Manufacturer. Dow Corning Corporation.
Chemical. (G) Silyl ketene acetal.
Use/Production. (G) Polymerization initiator. Prod. range: Confidential.
Toxicity Data. Acute oral: 4,580 mg/kg; Acute dermal: 2,000 mg/kg; Irritation: Skin-Slight, Eye-Non-irritant; Ames Test: Negative.
Exposure. Manufacture: Dermal, a total of 1 worker, up to 2 hrs/da, up to 30 da/yr.
Environmental Release/Disposal. 560 kg released. Disposal by incineration.

P 85–568

Manufacturer. Confidential.
Chemical. (G) Difunctional ester.
Use/Production. (S) Site-limited resin intermediate. Prod. range: 50,000–222,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: dermal, a total of 41 workers, up to 8 hrs/da, up to 35 da/yr.
Environmental Release/Disposal. 11 to 95 kg/batch released to land. Disposal by incineration and landfill.

P 85–569

Manufacturer. Confidential.
Chemical. (G) Styrene/acrylate/methacrylate polymer.
Use/Production. (G) Industrial coating. Prod. range: 170,000–510,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: Dermal, a total of 35 workers, up to 8 hrs/da, up to 82 da/yr.
Environmental Release/Disposal. 15 to 95 kg/batch released to land. Disposal by incineration and landfill.

P 85–570

Importer. Confidential.
Chemical. (G) Ester of olefinic acid.
Use/Import. (G) Highly dispersive. Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential. Disposal by POTW.

P 85–571

Importer. Confidential.
Chemical. (G) Ester of olefinic acid.
Use/Import. (G) Highly dispersive. Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential. Disposal by POTW.

P 85–572

Manufacturer. Confidential.
Chemical. (G) Quaternary ammonium montmonillonite.
Use/Production. (S) Industrial thickener for oil-based coatings (paints). Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential. Disposal by onsite evaporation/settling pond. Fully contained.

P 85–573

Manufacturer. Confidential.
Chemical. (G) Quaternary ammonium hectorite.
Use/Production. (S) Industrial thickener for oil-based coatings (paints). Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential. Disposal by onsite evaporation/settling pond. Fully contained.

P 85–574

Manufacturer. Confidential.
Chemical. Substituted benzocyazolethylidine.
Use/Production. (G) Dye in coated article. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture and processing: Dermal, a total of 21 workers, up to 8 hrs/da, up to 5 da/yr.

Environmental Release/Disposal. Less than 0.008 kg/batch released to land. Less than 0.002 to less than 0.01 kg/batch incinerated.

P 85–575

Manufacturer. The Minnesota Mining and Manufacturing Company.

Chemical. (G) Substituted bisbenzophenone.

Use/Production. (G) Polymer stabilizer. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture and processing: Dermal, a total of 18 workers, up to 8 hrs/da, up to 8 da/yr, 14 persons/batch.

Environmental Release/Disposal. 2 to 145 kg/batch released with less than 0.5 kg/batch to land. Disposal by incineration and landfill.

P 85–576

Manufacturer. Confidential.

Chemical. (S) Polymer of phthalic anhydride 2,2,4-trimethyl-1,3-pentanediol 2,2'-oxybis(ethanol) fascat 4100.

Use/Production. (S) Site-limited and industrial polymer for general metal finishing. Prod. range: 400,000–600,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: Dermal, a total of 40 workers, up to 4 hrs/da, up to 36 da/yr.

Environmental Release/Disposal. .5 to 40 kg/da released to air and/or land. Disposal by incineration or sanitary landfill.

P 85–577

Manufacturer. Confidential.

Chemical. (S) Polymer of 1,3-benzenedicarboxylic acid, 1,4-benzenedicarboxylic acid, hexanediolic acid, 2,2'-oxybis(ethanol) 2,2-dimethyl-1,3-propanediol 2,2,4-trimethyl-1,3-pentanediol.

Use/Production. (S) Industrial polymer for coil coating enamel. Prod. range: 740,000–1,480,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: Dermal, a total of 13 workers, up to 2 hrs/da, up to 72 da/yr.

Environmental Release/Disposal. .5 to 40 kg released to air and/or land. Disposal by incineration or sanitary landfill.

P 85–578

Importer. American Hoechst Corporation.

Chemical. (G) Substituted stilbene.

Use/Import. (S) Polymerization initiator for printing plates. Import range: 10 kg/yr.

Toxicity Data. Acute oral (Male/female): > 5,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant; Ames Test: Non-mutagenic.

Exposure. Processing: A total of 2 workers, up to 0.25 hrs/da, up to 10 da/yr.

Environmental Release/Disposal. .5 kg incinerated.

P 85–579

Manufacturer. Allied Corporation.

Chemical. (G) Sulfonated styrene-containing polymer.

Use/Production. (G) Ion exchange. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Confidential.

Environmental Release/Disposal. Release to land. Disposal by secured landfill.

P 85–580

Manufacturer. Allied Corporation.

Chemical. (G) Sulfonated styrene-containing polymer.

Use/Production. (G) Ion exchange. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Confidential.

Environmental Release/Disposal. Release to land. Disposal by secured landfill.

P 85–581

Manufacturer. Allied Corporation.

Chemical. (G) Chlorine-containing styrene copolymer.

Use/Production. (G) Reactant in preparing ion exchangers. Prod. range: Confidential.

Toxicity Data. Acute oral: > 4.0 g/kg; Irritation: Skin—Negligible.

Exposure. Confidential.

Environmental Release/Disposal. Release to land. Disposal by secured landfill.

P 85–582

Manufacturer. Allied Corporation.

Chemical. (G) Styrene containing ion exchange material.

Use/Production. (G) Ion exchange. Prod. range: Confidential.

Toxicity Data. Acute oral: > 2.0 g/kg; Irritation: Skin—Negligible.

Exposure. Confidential.

Environmental Release/Disposal. Release to land. Disposal by secured landfill.

P 85–583

Manufacturer. Allied Corporation.

Chemical. (G) Chlorosulfonated polystyrene.

Use/Production. (S) Site-limited process intermediate. Prod. range: Confidential.

Toxicity Data. Acute oral: > 4 g/kg; Irritation: Skin—Mild.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 85–584

Manufacturer. Confidential.

Chemical. (G) Polymer of acrylate-acrylonitrile, salt.

Use/Production. (S) Industrial size for cellulosic fibers. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: Dermal, a total of 5 workers, up to 8 hrs/da, up to 50 da/yr.

Environmental Release/Disposal. Disposal by POTW.

P 85–585

Manufacturer. Confidential.

Chemical. (G) Alkyd resin.

Use/Production. (S) Site-limited resin intermediate. Prod. range: 925,000–1,113,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: Dermal, a total of 52 workers, up to 8 hrs/da, up to 148 da/yr.

Environmental Release/Disposal. 6 to 100 kg/batch released to land. Disposal by incineration and landfill.

P 85–586

Manufacturer. Confidential.

Chemical. (G) Functionally modified acrylic system.

Use/Production. (G) Industrial coating resin. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: Dermal, a total of 50 workers, up to 8 hrs/da, up to 200 da/yr.

Environmental Release/Disposal. 5 to 120 kg/batch released to land. Disposal by incineration and landfill.

P 85–587

Manufacturer. Confidential.

Chemical. (G) Reaction product of monosulfonated heterocyclic compound with cyclic amine.

Use/Production. (G) Open-non-dispersive use. Prod. range: Confidential.

Toxicity Data. Confidential.

Exposure. Confidential

Environmental Release/Disposal. Confidential. Disposal by POTW.

P 85–588

Manufacturer. Confidential.
Chemical. (G) Reaction product of monosulfonated heterocyclic compound with cyclic amine.
Use/Production. (G) Open-non-dispersive use. Prod. range: Confidential.
Toxicity Data. Confidential.
Exposure. Confidential.
Environmental Release/Disposal. Confidential. Disposal by POTW.

P 85–589

Manufacturer. Confidential.
Chemical. (G) Reaction product of monosulfonated heterocyclic compound with cyclic amine.
Use/Production. (G) Open-non-dispersive use. Prod. range: Confidential.
Toxicity Data. Confidential.
Exposure. Confidential.
Environmental Release/Disposal. Confidential. Disposal by POTW.

P 85–590

Manufacturer. Confidential.
Chemical. (G) Reaction product of monosulfonated heterocyclic compound with cyclic amine.
Use/Production. (G) Open-non-dispersive use. Prod. range: Confidential.
Toxicity Data. Confidential.
Exposure. Confidential.
Environmental Release/Disposal. Confidential. Disposal by POTW.

P 85–591

Manufacturer. Confidential.
Chemical. (G) Reaction product of monosulfonated heterocyclic compound with cyclic amine.
Use/Production. (G) Open-non-dispersive use. Prod. range: Confidential.
Toxicity Data. Confidential.
Exposure. Confidential.
Environmental Release/Disposal. Confidential. Disposal by POTW.

P 85–592

Manufacturer. Confidential.
Chemical. (G) Heterocyclic substituted butane.
Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.
Toxicity Data. Confidential.
Exposure. Confidential.
Environmental Release/Disposal. Confidential. Disposal by POTW.

P 85–593

Manufacturer. The Dow Chemical Company.
Chemical. (G) Polyamine ion exchange resin.
Use/Production. (S) Industrial water demineraliztion and metals extraction. Prod. range: Confidential.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Manufacture: Dermal.
Environmental Release/Disposal. Less than 1 kg/batch released to water/landfill with less than 1 kg/batch to air or landfill. Disposal by incineration and navigable waterway after treatment behind waterway.

P 85–594

Manufacturer. The Dow Chemical Company.
Chemical. (G) Polyamine ion exhange resin.
Use/Production. (S) Industrial water demineralization and metals extraction. Prod. range: Confidential.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Manufacture: Dermal.
Environmental Release/Disposal. Less than 1 kg/batch released to water/landfill with less than 1 kg/batch to air or landfill. Disposal by incineration and navigable waterway after treatment behind waterway.

P 85–595

Manufacturer. Confidential.
Chemical. (G) Emulsion tetrapolymer.
Use/Production. (G) Component of manufactured consumer article—contained use. Prod. range: 5,000–25,000 kg/yr.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Manufacture and processing: Dermal, a total of 10 workers, up to 4 hrs/da, up to 11 da/yr.
Environmental Release/Disposal. No release.

P 85–596

Manufacturer. Confidential.
Chemical. (G) 1-Substituted-3-alkylheteromonocyclic-4-hydroxybenzene.
Use/Production. (S) Industrial intermediate. Prod. range: 5,000–20,000 kg/yr.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Manufacture and processing: Dermal, a total of 3 workers, up to 1 hr/da, up to 80 da/yr.
Environmental Release/Disposal. 9.0 kg/batch released to water.

P 85–597

Manufacturer. Confidential.
Chemical. (G) 3-Alkylheteromonocyclic-4-hydroxy-1-substitutedbenzene.
Use/Production. (S) Industrial intermediate. Prod. range: 5,000–20,000 kg/yr.
Toxicity Data. Skin sensitization: Mild sensitizer.
Exposure. Manufacture and processing: Dermal, a total of 3 workers, up to 1 hr/da, up to 50 da/yr.
Environmental Release/Disposal. 1.0 kg/batch released to water. Disposal by POTW.

P 85–598

Manufacturer. Confidential.
Chemical. (G) Di(Trisubstitutedheteromonocyclic-(carbomonocyclicsubstituted)-heteropolycycle.
Use/Production. (G) Component of manufactured consumer article-contained use. Prod. range: 5,000–20,000 kg/yr.
Toxicity Data. Acute oral: > 5.0 g/kg: Irritation: Skin—Slight, Eye—Irritant but non-corrosive; Ames Test: Not mutagenic.
Exposure. Manufacture and processing: Dermal, a total of 27 workers, up to 4 hrs/da, up to 50 da/yr.
Environmental Release/Disposal. 5.2 kg/batch released to air with 2 to 4.5 kg/batch to water and less than .1% to 34 kg/batch to land. Disposal by POTW and incineration.

P 85–599

Manufacturer. Confidential.
Chemical. (G) Di(Trisubstitutedheteromonocyclic-(carbomonocyclicsubstituted)-heteropolycycle.
Use/Production. (G) Component of manufactured consumer article-contained use. Prod. range: 5,000–20,000 kg/yr.
Toxicity Data. Acute oral: > 50.0 g/kg; Irritation: Skin-Slight, Eye-Irritant but non-corrosive; Ames Test: Not mutagenic.
Exposure. Manufacture and processing: Dermal, a total of 27 workers, up to 4 hrs/da, up to 50 da/yr.
Environmental Release/Disposal. 5.2 kg/batch released to air with 2 to 4.5 kg/batch to water and less than .1% to 34 kg/batch to land. Disposal by POTW and incineration.

P 85–600

Manufacturer. Confidential.
Chemical. (G) Di(Trisubstitutedheteromonocyclic-(carbomonocyclicsubstituted)-heteropolycycle.
Use/Production. (G) Component of manufactured consumer article-contained use. Prod. range: 5,000–20,000 kg/yr.
Toxicity Data. Acute oral: > 50.0 g/kg; Irritation: Skin-Slight, Eye-Irritant but non-corrosive; Ames Test: Not mutagenic.

Exposure. Manufacture and processing: Dermal, a total of 27 workers, up to 4 hrs/da, up to 50 da/yr.

Environmental Release/Disposal. 5.2 kg/batch released to air with 2 to 4.5 kg/batch to water and less than .1% to 34 kg/batch to land. Disposal by POTW and incineration.

P 85-601

Manufacturer. Confidential.

Chemical. (G) Disubstituted phenol.

Use/Production. (S) Industrial intermediate. Prod. range: 5,000–10,000 kg/yr.

Toxicity Data. Acute oral: Males-5.2 g/kg, Females-3.5 g/kg, Combined-4.4 g/kg; Irritation: Skin-Irritant, Eye-Corrosive; Ames Test: Not mutagenic.

Exposure. Manufacture and processing: Dermal, a total of 4 workers, up to 1 hr/da, up to 80 da/yr.

Environmental Release/Disposal. 10 kg/batch released to air and water. Disposal by POTW and incineration.

P 85-602

Manufacturer. Confidential.

Chemical. (G) 2,4-Diheteromonocyclic phenol.

Use/Production. (G) Component of manufactured consumer article-contained use. Prod. range: 2,000–10,000 kg/yr.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture and processing: Dermal, a total of 12 workers, up to 1 hr/da, up to 70 da/yr.

Environmental Release/Disposal. Less than 0.3 to less than 1.0 kg/batch released to water. Disposal by POTW and incineration.

P 85-603

Manufacturer. Confidential.

Chemical. (G) (3-Alkylheteromonocyclic-4-hydroxyphenylsubstituted)3'-substituted-4'-hydroxyphenylsubstituted)alkyl.

Use/Production. (S) Industrial intermediate. Prod. range: 5,000–20,000 kg/yr.

Toxicity Data. No data submitted on the PMN substance.

Exposure. Manufacture and processing: Dermal, a total of 8 workers, up to 2 hrs/da, up to 50 da/yr.

Environmental Release/Disposal. 1 kg/batch released to air with trace (0.1 kg) to water and land. Disposal by POTW and incineration.

P 85-604

Manufacturer. Confidential.

Chemical. (G) Di(Trisubstitutedheteromonocyclic-(carbomonocyclicsubstituted)-heteropolycycle.

Use/Production. (S) Industrial intermediate. Prod. range: 5,000–20,000 kg/yr.

Toxicity Data. No data on the PMN substance submitted .

Exposure. Manufacture and processing: Dermal, a total of 4 workers, up to 1 hr/da, up to 50 da/yr.

Environmental Release/Disposal. 1.0 to 20 kg/batch released to land.

P 85-605

Manufacturer. Confidential.

Chemical. (G) Trisubstituted phenol.

Use/Production. (G) Component of manufactured consumer article-contained use. Prod. range: 1,000–5,000 kg/yr.

Toxicity Data. Skin sensitization: Extreme sensitizer.

Exposure. Manufacture and processing: Dermal, a total of 10 workers, up to 1 hr/da, up to 10 da/yr.

Environmental Release/Disposal. 4 kg/batch released to air, with less than 0.1 kg to 2.5 kg/batch to water and 5.0 kg/batch to land. Disposal by POTW and incineration.

P 85-606

Manufacturer. Confidential.

Chemical. (G) (3-Alkylheteromonocyclic-4-hydroxyphenyl-substituted) (3'-substituted-4'-hydroxyphenylsubstituted)alkyl.

Use/Production. (S) Industrial intermediate. Prod. range: 5,000–20,000 kg/yr.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture and processing: Dermal, a total of 3 workers, up to 1 hr/da, up to 80 da/yr.

Environmental Release/Disposal. .1% to 1 kg/batch released to air with .1% to .1 kg/batch to water and 0.2 to 1 kg/batch to land. Disposal by POTW and incineration.

P 85-607

Manufacturer. Confidential.

Chemical. (G) 2-Alkylheteromonocyclic-4-substitutedphenol.

Use/Production. (S) (Industrial intermediate. Prod. range: 5,000–20,000 kg/yr.

Toxicity Data. Skin sensitization: Moderate.

Exposure. Manufacture and processing: Dermal, a total of 2 workers, up to 1 hr/da, up to 80 da/yr.

Environmental Release/Disposal. A very small trace to 0.5 kg/batch released to air with 1.0 kg/batch to water and a very small trace to .05 Kg/batch to land. Disposal by POTW and incineration.

P 85-608

Manufacturer. Confidential.

Chemical. (S) Polymer of hydroxy ethyl acrylate, Desmodur W, Jeffamine D 230, Teracol 650 and Dianol.

Use/Production. (G) Closed system. Prod. range: 2,000–120,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: Dermal, a total of 6 workers, up to 2 hrs/da.

Environmental Release/Disposal. Minimal release to air. Disposal by landfill.

P 85-609

Manufacturer. Confidential.

Chemical. (G) Functionally modified methacrylate polymer.

Use/Production. (G) Resin to be used in industrial coating products. Prod. range: 212,000–248,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: Dermal, a total of 29 workers, up to 8 hrs/da, up to 58 da/yr.

Environmental Release/Disposal. 5 to 104 kg/batch released to land. Disposal by incineration and landfill.

P 85-610

Importer. Confidential.

Chemical. (G) Aryl-alkyl dithioether.

Use/Import (S) An industrial antireversion agent for natural and polyisoprene rubber. Import range: Confidential.

Toxicity Data. Acute oral (Male/female): > 2.86 g/kg; Irritation: Skin—Slight, Eye—Non-Irritant.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

P 85-611

Importer. Confidential.

Chemical. (G) Copper complex of substituted-disazonaphthalenetrisulfonic acid.

Use/Import. (S) Industrial colorant for textiles. Import range: Confidential.

Toxicity Data. Acute oral (Male/female): > 5.0 g/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant: IC_{50} 96 hr (Brachydanio rerio): > 100 mg/1.

Exposure. Import and use: Dermal and inhalation, 5 min/weighting, twice/shift.

Environmental Release/Disposal. No release anticipated. Disposal by POTW.

P 85-612

Manufacturer. Confidential.

Chemical. (G) Polymer of substituted aryl olefin.

Use/Production. (G) An additive in the formation of certain polymers. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 85-620

Manufacturer. Confidential.

Chemical. (G) Functionally substituted acrylic/methacrylic/styrene polymer.

Use/Production. (G) Polymer for an industrial used coating. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: A total of 40 workers, up to 8 hrs/da, up to 70 da/yr.

Environmental Release/Disposal. 4.0 to 105 kg/batch released to land. Disposal by landfill.

Dated: March 4, 1985.

Linda A. Travers,

Acting Director, Information Management Division.

[FR Doc. 85-5578 Filed 3-7-85; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59186; FRL-2792-1]

Stannous (Tin 2$^+$) Methane-Sulfonate; Test Marketing Exemption Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5 (a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt, are discussed in EPA's final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722.) This notice, issued under section 5(h)(6) of TSCA, announces receipt of one application for exemption, provides a summary, and request comments on the appropriateness of granting the exemption.

DATE: Written comments by March 25, 1985.

ADDRESS: Written comments, identified by the document control number "[OPTS-59186]" and the specific TME number should be sent to: Document Control Officer (TS-793), Chemical Information Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-4201, 401 M Street, SW, Washington, DC 20460, (202-382-3532).

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street, SW, Washington, DC 20460, (202-382-3725).

SUPPLEMENTARY INFORMATION: A nonsubstantive change in the prefixes is being initiated for information published under sections 5(d)(2) and 5(h)(6) of the Toxic Substances Control Act (TSCA). The notices will contain essentially the same information but the prefixes to the specific number assignment will appear in an abbreviated form. Prefixes under the modified format will use the letters "T" (TMEA), "P" (PMN) and "Y" (POLYMER EXEMPTION). The following notice contains information extracted from the non-confidential version of the submission provided by the manfacturer on the TME received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address.

T 85-28

Close of Review Period. April 12, 1985.

Manufacturer. CP Chemicals Inc.

Chemical. (S) Stannous (Tin 2$^+$) methane-sulfonate.

Use/Production. (S) Customer evaluation as an improvement on other tin salts in electroplating operations. Prod. range: 10,000 lbs/6-12 months.

Toxicity Data. No data submitted.

Exposure. Manufacture: Dermal and inhalation, a total of 25 workers, 40 hrs/wk for 1-4 wks each.

Environmental Release/Disposal. No data submitted.

Dated: March 4, 1985.

Linda A. Travers,

Acting Director, Information Management Division.

[FR Doc. 85-5574 Filed 3-7-85; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-2792-7]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared February 19, 1985 through February 22, 1985 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5075/76. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated October 19, 1984 (49 FR 41108).

Draft EISs

ERP No. DS-AFS-L61143-00, Rating EC2, Targhee Nat'l Forest Land Mgmt. Plan, ID and WY. SUMMARY: EPA found that many of the insufficiencies of the DEIS remained in the DSEIS. Specific information regarding existing and predicted water quality and air quality violations was requested. Clarification of apparent contradictions in the text was also requested.

ERP No. D-AFS-L61163-OR, Rating EC2, Willamette Pass Alpine Winter Sports Site, Expansion and Development, Master Plan, Deschutes and Willamette Nat'l Forests, OR. SUMMARY: EPA requested more in-depth analyses of predicted effects on air and water quality, fish and wildlife, and vegetation. Information about existing water quality was also requested.

ERP No. D-BLM-K65063-NV, Rating EC2, Esmeralda—Southern Nye Planning Area Resource Mgmt. Plan, NV. SUMMARY: EPA requested clarification of Wilderness Study Area criteria, further analysis of air and water quality issues, and discussion of the use of herbicides for range management.

ERP No. DS-FHW-B40029-VT, Rating EC2, Burlington Southern Connector Construction, I-189/Shelburne Road (US 7) to Battery and King Streets, VT. SUMMARY: EPA believes that the specific design effluent limitations of the onsite groundwater treatment system must be addressed to allow the assessment of impacts on drinking water supplies. EPA recommends that runoff during construction be collected for treatment at the onsite treatment facility, and that the highway drainage system include a permanent holding basin. Finally, EPA requests that additional information be provided in the FSEIS to allow the assessment of wetland impacts, and the evaluation of mitigation for unavoidable wetland losses.

ERP No. D-FHW-G40113-AR, Rating LO, Hot Springs East/West Arterial Construction, US 270 to US 270W, AR. Summary: EPA has not identified any significant environmental impacts requiring changes to the project.

ERP No. D-SCS-D36100-DE, Rating 3, Murderkill River Watershed Protection and Flood Prevention, DE. Summary: EPA stated that the DEIS inadequately

discussed potentially significant water quality and wetland impacts of the proposal. EPA also identified new alternatives not addressed in the EIS. EPA recommended that a supplement to this EIS or a revised DEIS be prepared to address these concerns.

Final EISs

ERP No. F-FHW-F40185-IN, US 12 Realignment and US 12 Bridge Replacement over Trail Creek, Michigan Blvd./US 12 and Pine Street to US 12, IN. Summary: EPA's review of the FEIS did not identify any significant environmental impacts requiring changes to the proposed project.

ERP No. F-NRC-B06004-CT, Millstone Nuclear Power Station, Unit 3, Operating License, Issuance, CT. Summary: EPA's concerns were satisfactorily resolved in the FEIS and the proposed operation of Unit 3 will not cause significant adverse impacts on the environment.

Dated: March 5, 1985.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 85-5640 Filed 3-7-85; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-2792-6]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

Availability of Environmental Impact Statements filed February 25, 1985 through March 1, 1985 Pursuant to 40 CFR 1506.9.

EIS No. 850079, Draft, HUD, PA, Philadelphia Convention Complex Development, CDBG, Center City, Philadelphia County, Due: April 22, 1985, contact: Avrum Kantor (215) 875-3506.

EIS No. 850080, Draft, IBR, SD, Lake Andes-Wagner Unit, Water Resource Project, Pick-Sloan Missouri Basin Program, Charles Mix County, Due: May 29, 1985, Contact: John Lawson (406) 657-6164.

EIS No. 850081, Final, EPA, CA, San Pedro Basin Ocean Dredged Material Disposal Site, Designation, Long Beach Harbor, Due: April 8, 1985, Contact: Frank Csulak (202) 755-9231.

EIS No. 850082, DSuppl, AFS, ID, Meadows Unit Land Use Plan, Payette National Forest, Due: April 22, 1985, Contact: Peter Smith (202) 447-3853.

EIS No. 850083, Draft, NOA, REG, Northeast Multi-Species Fishery Management Plan, Adoption, Approval and Implementation, Due: April 22, 1985, Contact: Douglas Marshall (617) 231-0422.

EIS No. 850084, Draft, BLM, CA, Amselco Colosseum Project, Reopening and Expansion, San Bernardino County, Due: April 22, 1985, Contact: Roger Britton (619) 326-3896.

EIS No. 850085, Draft, BIA, NM, Norton-Tesuque 115 kV Overhead Transmission Line and Substation, Right-of-Way Permit and Approval, Santa Fe County, Due: May 8, 1985, Contact: Bruce Blanchard (202) 343-3891.

Dated: March 5, 1985.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 85-5641 Filed 3-7-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

March 4, 1985.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511.

Copies of these submissions are available from Doris R. Peacock, (202) 632-7513. Persons wishing to comment on any information collection should contact David Reed, Office of Management and Budget, Room 3235 NEOB, Washington, D.C. 20503, (202) 395-7231.

OMB No. 3060-0003
Title: Application for Amateur Radio Station and/or Operator Permit
Form No. FCC 610
Action: Revision
Estimated Annual Burden: 118,751 Responses; 9,856 Hours.

OMB No. 3060-0035
Title: Application for Renewal of Auxiliary Broadcast License (Short Form)
Form No. FCC 313-R
Action: Extension
Estimated Annual Burden: The burden has been temporarily eliminated due to the fact that no filings are scheduled until FY 1988.

OMB No. 3060-0069
Title: Application for Commercial Radio Operator License
Form No. FCC 756
Action: Revision
Estimated Annual Burden: 40,000 Responses; 4,000 Hours.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85-5624 Filed 3-7-85; 8:45 am]

BILLING CODE 6712-01-M

Executive Resources and Performance Review Board; Appointment of Members

As required by the Civil Service Reform Act of 1978 (Pub. L. 95-454), Chairman Mark S. Fowler has appointed the following SES members to the Executive Resources and Performance Review Board:

Edward J. Minkel—Managing Director
Chairman
Robert S. Foosaner—Chief, Private Radio Bureau
Member
Albert Halprin—Chief, Common Carrier Bureau
Member
James C. McKinney—Chief, Mass Media Bureau
Member
Jack D. Smith—General Counsel
Member
Richard M. Smith—Chief, Field Operations Bureau
Member.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85-5625 Filed 3-7-85; 8:45 am]

BILLING CODE 6712-01-M

Shirley C. Bumpous and Caprice Ford; Hearing Designation Order

In re applications of:

Shirley C. Bumpous, Wasilla, Alaska: Req: 1360 kHz, 5 kW, U.	MM Docket No. 85-42, file No. BP-840104AD.
Caprice E. Ford, Wasilla, Alaska: Req: 1360 kHz, 5 kW, U.	File No. BP-840702AG.

For Construction Permit.

Adopted: February 15, 1985.
Released: March 1, 1985.

By the Chief, Mass Media Bureau:

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has under consideration the mutually exclusive applications of Shirley C. Bumpous and Caprice E. Ford.

2. *Caprice E. Ford.* While this applicant checked the "Individual" box in response to Question 1, Section II of FCC Form 301, the title in the signature

portion (Section VII) of the application indicates "General Partner-Owner." This discrepancy should be clarified by amendment.

3. Except as indicated by the issues specified below, both applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding.

4. Accordingly, it is ordered, That pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine which of the proposals would, on a comparative basis, better serve the public interest.

2. To determine, in light of the evidence adduced pursuant to the foregoing issue, which of the applications should be granted.

5. It is further ordered, That Caprice E. Ford shall submit the amendment specified in paragraph 2 above, to the presiding Administrative Law Judge within 30 days of the release of this Order.

6. It is further ordered, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M Street, NW., Washington, D.C. 20554.

7. It is further ordered, That to avail themselves of the opportunity to be heard and pursuant to § 1.221(c) of the Commission's Rules, the applicants shall, within 20 days of the mailing of this Order, in person or by attorney, file with the Commission, in triplicate, written appearances stating an intention to appear on the dates fixed for the hearing and to present evidence on the issues specified in this Order.

8. It is further ordered, That pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, the applicants shall give notice of the hearing as prescribed by the Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 85-5626 Filed 3-7-85; 8:45 am]

BILLING CODE 6712-01-M

790 Communications; Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city and state	File No.	MM Docket No.
A. 790 Communications—WTNY, a partnership; Watertown, NY.	BPH-830825AG	85-45
B. Thomas Gramuglia; Watertown, NY.	BPH-840217AK	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Air Hazard, B
2. Comparative, A, B
3. Ultimate, A, B

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street, N.W., Washington, D.C. 20554. Telephone (202) 632-6334.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 85-5627 Filed 3-7-85; 8:45 am]

BILLING CODE 6712-01-M

Salina Broadcasting Co. and Melinda W. Sittre; Construction Permit; Hearing Designation Order

In re applications of:

Salina Broadcasting Co., Salina, Utah; Req: 1490 kHz, 0.25 kW, 1 kW-LS, U.	MM Docket No. 85-44; file No. BP-840302AC.
Melinda W. Sittre, Salina, Utah; Req: 1490 kHz, 0.25 kW, 1 kW-LS, U.	File No. BP-840723AH.

For Construction Permit.

Adopted: February 15, 1985.

Released: March 5, 1985.

By the Chief, Mass Media Bureau.

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has under consideration the mutually exclusive applications of Salina Broadcasting Co., and Melinda W. Sittre.

2. *Salina Broadcasting Co.* While this applicant answered "No" to Question 10, section V-A of FCC Form 301, indicating non-compliance with § 73.24(g)[1] of the Commission's Rules, its technical showing cites the lack of a substantial residential population within the 1V/m contour as a basis for the selection of the proposed transmitter site. Population figures were not included in this showing. This discrepancy should be clarified by amendment. If, upon receipt of the amendment the non-compliance still exists, an issue should be specified by the Administrative Law Judge to determine whether waiver of the Rule is warranted.

3. *Melinda W. Sittre.* Ms. Sittre is presently associated with stations KSVC/KKWZ-FM, Richfield, Utah, as Vice President-Account Executive. The 1 mV/m contour of the present proposal is totally encompassed by the 1 mV/m contour of KSVC, in violation of § 73.3555(a)[2] (multiple ownership) of the Commission's Rules. Therefore, Ms. Sittre will be required to sever all connection with this station prior to program test authority should this application be granted. However, no statement of intent has been filed. An amendment will be required.

4. In addition, Ms. Sittre failed to submit photographs of the transmitter site as required by Question 8, section

[1] Section 73.24(g) provides that the population within the 1 V/m contour may not exceed 1.0 percent of the population within the 25 mV/m contour except where the number of persons within the 1 V/m contour is 300 or less.

[2] Section 73.3555(a) requires in pertinent part that no license will be granted to any party if such party directly or indirectly owns, operates or controls one or more AM broadcast stations and the grant of such license will result in any overlap of the predicted or measured 1 mV/m groundwave contours of the existing and proposed stations.

V–A of FCC Form 301. An amendment will be required.

5. Except as indicated by the issues specified below, both applicants are qualified to construct and operate as proposed.[3] However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding.

6. Accordingly, It Is Ordered, that pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine which of the proposals would, on a comparative basis, better serve the public interest,

2. To determine, in light of the evidence adduced pursuant to the foregoing issue, which of the applications should be granted.

7. It Is Further Ordered, that Salina Broadcasting Co. shall submit the amendment specified in paragraph 2 above, to the presiding Administrative Law Judge within 30 days of the release of this Order.

8. It Is Further Ordered, that Melinda W. Sittre shall submit the amendments specified in paragraphs 3 and 4 above, to the presiding Administrative Law Judge within 30 days of the release of this Order.

9. It Is Further Ordered, that the construction permit for Melinda W. Sittre, should it be granted, shall contain the following condition: Before program test authority (PTA) is granted, Melinda W. Sittre shall sever all connection with station KSVC, Richfield, Utah.

10. It Is Further Ordered, that in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M Street, NW., Washington, D.C. 20554.

11. It Is Further Ordered, that to avail themselves of the opportunity to be heard and pursuant to § 1.221(c) of the Commission's Rules, the applicant, shall, within 20 days of the mailing of this Order, in person or by attorney, file with the Commission, in triplicate, written appearances stating an intention to appear on the dates fixed for the hearing and to present evidence on the issues specified in this Order.

12. It Is Further Ordered, that pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, the applicants shall give notice of the hearing as prescribed by the Rule, and shall advise the Commission of the publications of such as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 85–5620 Filed 3–7–85; 8:45 am]

BILLING CODE 6712–01–M

[3] Operation with the facilities specified herein is subject to modification, suspension or termination without right to hearing, if found by the Commission to be necessary in order to conform to the final Acts of ITU Administrative Conference on Medium Frequency Broadcasting in Region 2, Rio de Janeiro, 1981, and to bilateral and other multilateral agreements between the United States and other countries.

Auto-Phone Co. and MCI Airsignal of CA, Inc.; Order Designating Applications for Hearing

In re Applications of:

James E. Walley, dba Auto-Phone Company	CC Docket No. 85–33, file No. 20389–CD–P–(A)–84.
For a construction permit to establish additional one-way facilities to operate on frequency 158.70 MHz for Station KDS498 in the Public Mobile Service at Yuba City, California.	
James E. Walley, dba Auto-Phone Company.	File No. 20829–CD–P–84.
For a construction permit to establish additional one-way facilities to operate on frequency 158.70 MHz for Station KDS498 in the Public Land Mobile Service at Oroville, California.	
MCI Airsignal of California, Inc.	File No. 21476–CD–P–84.

For a construction permit to establish additional one-way facilities to operate on frequency 158.70 MHz for Station KRM981 in the Public Land Mobile Service at Marysville, California.

Adopted February 6, 1985.
Released March 5, 1985.

By the Common Carrier Bureau:

1. On November 2, 1983, James E. Walley dba Auto-Phone Company (Auto-Phone) filed an application for a construction permit to establish an additional one-way facility to operate on frequency 158.70 MHz at Yuba City, California. The application was accepted for filing on Public Notice of November 23, 1983. On December 9, 1983, Auto-Phone filed an application to establish an additional facility to operate on frequency 158.70 MHz at Oroville, California. The application was accepted for filing by Public Notice of December 21, 1983. On January 16, 1984, MCI Airsignal of California (MCI) filed an application for an additional facility at Marysville, California to operate on frequency 158.70 MHz. This application was accepted for filing by Public Notice of February 15, 1984. The applications have not been protested.

2. After careful examination of the applications, we find the applicants to be legally, technically and otherwise qualified to construct and operate the proposed facilities. We further find that the proposals of Auto-Phone, and MCI to use the same frequency, 158.70 MHz, in the same geographical area are electrically mutually exclusive; [1] therefore, a comparative hearing [2] will be held to determine which applicant would best serve the public interest.

3. Accordingly, it is ordered that the applications of Auto-Phone, File No. 20389–CD–P–(A)–84 File No. 20829–CD–P–84, and MCI File No. 21476–CD–P–84 are designated for hearing in a consolidated proceeding pursuant to section 309(e) of the Communications Act of 1934, as amended, upon the following issues:

(a) To determine on a comparative basis, the nature and extent of service proposed by each applicant, including the rates, charges, maintenance, personnel, practices, classifications, regulations, and facilities pertaining thereto;

(b) To determine on a comparative basis, the areas and populations that each applicant will serve within the prospective interference-free area within the 43 dBu contours,[3] based upon the standards set forth in § 22.504(a) of the Commission's Rules,[4] and to

[1] It should be noted that since the same applicant, Auto-Phone, has applied for two locations, these applications are not mutually exclusive with each other and a grant of one would not preclude a grant of the other.

[2] Since Auto-Phone and MCI have applied for additional facilities, a comparative hearing rather than a lottery will be held, pursuant to § 22.33(b)(1), *as amended* effective January 17, 1985. *See*, Reconsideration of Second Report and Order, General Docket No. 81–768, FCC 84–596, released December 4, 1984; 49 FR 49, 466 (1980).

[3] For the purpose of this proceeding, the interference-free area is defined as the area within the 43 dBu contour as calculated from § 22.504, in which the ratio of desired-to-undesired signal is equal to or greater than R in FCC Report No. R–6404, equation 8.

[4] Section 22.504(a) of the Commission's Rules and Regulations describes a field strength contour of 43 decibels above one microvolt per meter as the limits of the reliable service area for base stations engaged in one-way communications service on frequencies in the 150 MHz band. Propogation data set forth in § 22.504(b) are the proper bases for establishing the location of service contours F(50,50) for the facilities involved in this proceeding. (The applicants should consult with the Bureau counsel with the goal of reaching joint technical exhibits).

determine and compare the relative demand for the proposed services in said areas; and

(c) To determine, in light of the evidence adduced pursuant to the foregoing issues, what disposition of the referenced applications would best serve the public interest, convenience, and necessity.

4. It Is Further Ordered, that the hearing shall be held at a time and place and before an Administrative Law Judge to be specified in a subsequent Order.

5. It Is Further Ordered, that the Chief, Common Carrier Bureau, is made a party to the proceeding.

6. It Is Further Ordered, That the applicants may file written notices of appearance under § 1.221 of the Commission's Rules within 20 days of the release date of this Order.

7. This order is issued under § 0.291 of the Commission's rules and is effective on its release date. Petitions for the reconsideration under § 1.106 or applications for review under § 1.115 of the rules may be filed within 30 days of the date of public notice of this Order. *See* § 1.4(b)(2).

8. The Secretary shall cause a copy of this Order to be published in the **Federal Register.**

Michael Deuel Sullivan,

Chief, Mobile Services Division, Common Carrier Bureau.

[FR Doc. 85-5621 Filed 3-7-85; 8:45 am]

BILLING CODE 6712-01-M

John H. Leland and Garcia Communications; Hearing Designation Order

In re applications of:

John H. Leland	MM Docket No. 85-29; File No. BPCT-840727KI.
Garcia Communications	File No. BPCT-840921LA.

For Construction Permit, Morehead, Kentucky.

Adopted: January 23, 1985.
Released: March 5, 1985.

By the Chief, Video Services Division.

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications of John H. Leland (Leland), and Garcia Communications (Garcia) for authority to construct a new commercial television station on Channel 67, Morehead, Kentucky.

2. The effective radiated visual power, antenna height above average terrain and other technical data submitted by each applicant indicate that there would be a significant difference in the size of the area and populations that each proposes to serve. Consequently, the areas and populations which would be within the predicted 64 dBu (Grade B) contour, together with the availability of other television service of Grade B or greater intensity, will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to either of the applicants.

3. No determination has been made that the tower height and location proposed by Garcia [1] would not constitute a hazard to air navigation. Accordingly, an appropriate issue will be specified.

4. Leland and Garcia each proposes to operate from a site located within 250 miles of the Canadian border with maximum visual effective radiated power of more than 1000 kilowatts. The proposals pose no interference threat to United States television stations; however, they contravene an agreement between the United States and Canada which limits the maximum visual ERP of United States Television stations located within 250 miles of Canada to 1000 kilowatts. *Agreement Effectuated by Exchange of Notes,* T.I.A.S. 2594 (1952). In the event of a grant of either application, the construction permit shall contain a condition precluding station operation with maximum visual ERP in excess of 1000 kilowatts, absent Candaian consent. *South Bend Tribune,* 8 R.R. 2d 416 (1966).

5. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since the applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant would serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

6. Accordingly, it is ordered, that pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether there is a reasonable possibility that the tower height and location proposed by Garcia Communications would constitute a hazard to air naviagation.

[1] The Commission is not in receipt of FAA's determination for the tower proposed by Garcia.

2. To determine which of the propsoals would, on a comparative basis, better serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

7. It is further ordered, that the Federal Aviation Administration is made a party respondent to this proceeding with respect to issue 1.

8. It is further ordered, that, in the event of a grant of either application, the construction permit shall contain the following condition:

Subject to the condition that operation with effective radiated visual power in excess of 1000 kW is subject to consent by Canada.

9. It is further ordered, that to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

10. It is further ordered, that the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 85-5622 Filed 3-7-85; 8:45 am]

BILLING CODE 6712-01-M

Owensboro Television and Powers Communications; Hearing Designation Order

In re applications of:

Johnnie B. Woodbery d.b.a. Owensboro Television.	MM Docket No. 85-48; File No. BPCT-840802KH.
Glen Powers d.b.a. Powers Communications.	File No. BPCT-840831KE.

For Construction Permit for New TV Station, Owensboro, Kentucky.

Adopted: February 21, 1985.
Released: March 5, 1985.

By the Chief, Video Services Division.

1. The Commission by the Chief, Video Services Division, acting pursuant

to delegated authority, has before it the above-captioned mutually exclusive applications of Johnnie B. Woodberry d.b.a. Owensboro Television and Glen Powers d.b.a. Powers Communications, for authority to construct a new commercial television station on Channel 61, Owensboro, Kentucky.

2. No determination has been made that the tower height and location proposed by Owensboro Television would not constitute a hazard to air navigation.[1]

3. The contour map submitted by Owensboro Television is unacceptable because:

(1) Either the scale of miles is wrong or the contours are drawn much smaller than its response to Item 15, Section V-C, FCC Form 301, indicates.

(2) Portions of the coverage area are blank.

(3) The coordinates in the application indicate a transmitter site about 13 miles west of Owensboro, but the countours are centered at Owensboro.

Owensboro Television will be required to submit an appropriate amendment to correct these errors, to the presiding Administrative Law Judge, within 20 days after this Order is released.

4. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since these applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant would serve the public interest, convenience, and necessity. Therefore, the application must be designated for hearing in a consolidated proceeding on the issues specified below.

5. Accordingly, it is ordered, that pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether there is a reasonable possibility that the tower height and location proposed by Owensboro Television would constitute a hazard to air navigation.

2. To determine which of the proposals would, on a comparative basis, better serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

6. It is further ordered, that the Federal Aviation Administration is made a party respondent to this proceeding with respect to Issue 1.

7. It is further ordered, that Owensboro Television shall submit a new contour map to correct the discrepancies noted in Paragraph 3, to the presiding Administrative Law Judge, with in 20 days after this Order is released.

8. It is further ordered, that to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

9. It is further ordered, that the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 85-5623 Filed 3-7-85; 8:45 am]

BILLING CODE 6712-01-M

[1] Owensboro Television proposes to mount its antenna on the tower of AM Station WSTO, Owensboro, Kentucky. The coordinates and height specified by Owensboro Television do not agree with those of Station WSTO. Owensboro must file FAA Form 7460-1 with the FAA.

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby give notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20572, within 15 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-008050-012.

Title: Sri Lanka/U.S.A. Conference Agreement.

Parties:

Hoegh Lines

The Scindia Steam Navigation Co, Ltd.

The Shipping Corporation of India Limited

Waterman Isthmian Line

Synopsis: The proposed amendment would modify the scope of the agreement to include service from Sri Lanka to U.S. Atlantic and Gulf ports, by direct call or transshipment including joint water-land transport via the West Coast of the United States. It would change the name of the conference from Ceylon/U.S.A. Conference to Sri Lanka/U.S.A. Conference. It would also restate the agreement to conform with the format requirements of the Commission's regulations and incorporate mandatory provisions required by the Shipping Act of 1984.

Dated: March 5, 1985.

By order of the Federal Maritime Commission.

Bruce A. Dombrowski,

Assistant Secretary.

[FR Doc. 85-5632 Filed 3-7-85; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 204-010066-006.

Title: U.S. Atlantic and Pacific—Colombia Equal Access Agreement.

Parties:

Flota Mercante Grancolombiana, S.A.

Coordinated Caribbean Transport, Inc.

Synopsis: The proposed amendment would delete Delta Steamship Lines, Inc. and add United States Lines, Inc. as parties to the agreement. The parties have requested a shortened review

period and a waiver of the format requirements of the Commission's regulations.

Agreement No.: 217–010731.

Title: Space Charter Agreement between Sea-Land Service, Inc. and United Arab Shipping Company (SAG).

Parties:

Sea-Land Service, Inc. (Sea-Land)

United Arab Shipping Company (SAG) ("UASC")

Synopsis: The proposed agreement would establish a space chartering arrangement between the parties in the trade between ports in the U.S. Atlantic and Gulf range and United States and Canadian points and ports and ports and points in Saudi Arabia, United Arab Emirates, Oman, Qatar, Kuwait, India, Pakistan, Bahrain, Bangladesh, Sri Lanka, Jordan and Iraq. It would guarantee Sea-Land the use of 3,350 TEU spaces per year on UASC's vessels and allow the use of 1,150 addditional TEU spaces per year if required.

Dated: March 5, 1985.

By Order of the Federal Maritime Commission.

Bruce A. Dombrowski,

Assistant Secretary.

[FR Doc. 85–5634 Filed 3–7–85; 8:45 am]

BILLING CODE 6730-01-M

Intent To Terminate Approval of Agreement

Agreement No.: 217–010652.

Title: Kawasaki Kisen Kaisha, Ltd., Mitsui O.S.K. Lines, Ltd., Slot Purchase Agreement.

Parties:

Kawasaki Kisen Kaisha, Ltd.

Mitsui O.S.K. Lines, Ltd.

Synopsis: The parties to the referenced agreement have provided notice of the termination of the agreement. The Commission hereby gives notice of its intent to terminate its previously granted approval of Agreement No. 217–010652 effective February 21, 1985, the date the parties' termination notice was received. The parties have requested a shortened review period.

Dated: March 5, 1985.

By Order of the Federal Maritime Commission.

Bruce A. Dombrowski,

Assistant Secretary.

[FR Doc. 85–5633 Filed 3–7–85; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

CB&T Bancshares, Inc., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than March 29, 1985.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *CB&T Bancshares, Inc.*, Columbus, Georgia; to acquire Calumet Financial Associates, Inc., Knoxville, Tennessee, thereby engaging in the provision of portfolio management and investment advisory services for fixed-income portfolios for which the Company is paid a fee on either a monthly or quarterly basis and the execution of securities transactions for fixed-income portfolios management advisory service clients, with securities being limited to obligations of the United States, obligation of the States and their political subdivisions and other obligations that state member banks may be authorized to underwrite and deal in.

2. *First Metropolitan Financial Corporation*, Baton Rouge, Louisiana; to engage through its subsidiary, First Metropolitan Mortgage Corporation, Baton Rouge, Louisiana, in making and servicing mortgage loans. These activities would be conducted in the southeastern and southwestern United States.

Board of Governors of the Federal Reserve System, March 4, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85–5561 Filed 3–7–85; 8:45 am]

BILLING CODE 6210-01-M

First Commerce Corp.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (49 FR 794) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources,

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decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 29, 1985.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *First Commerce Corporation*, New Orleans, Louisiana; to merge with First Lafayette Bancrop, Inc., Lafayette, Louisiana, thereby indirectly acquiring First National Bank of Lafayette, Lafayette, Louisiana, and MSDI Company, Lafayette, Louisiana, a non-banking subsidiary; and to merge with City National Bancshares, Inc., Baton Rouge, Louisiana, thereby indirectly acquiring City National Bank or Baton Rouge, Baton Rouge, Louisiana.

First Commerce Corporation has also applied to acquire MSDI Company, Lafayette, Louisiana, thereby engaging in data processing activities pursuant to § 225.25(b)(7). These activities would be conducted in Lafayette, Louisiana.

Board of Governors of the Federal Reserve System, March 4, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-5562 Filed 3-7-85; 8:45 am]

BILLING CODE 6210-01-M

FNB Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 29, 1985.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *FNB Corp.*, Asheboro, North Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of the First National Bank of Randolph County, Asheboro, North Carolina.

B. **Federal Reserve Bank of Atlanta**, (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *First Commerce Corporation*, New Orleans, Louisiana; to acquire 100 percent of the voting shares of The First National Bank of Lake Charles, Lake Charles, and Rapides Bank & Trust Company, Alexandria, Louisiana.

2. *U S Bancshares*, Morristown, Tennessee; to become a bank holding company by acquiring 80 percent of the voting shares of United Southern Bank of Morristown, Morristown, Tennessee.

C. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Mid-Missouri Bancshares, Inc.*, Nevada, Missouri; to become a bank holding company by acquiring 98.8 percent of the voting shares of Polk County Bank, Bolivar, Missouri.

D. **Federal Reserve Bank of Kansas City** (Thomas M. Hoening, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Buerge Bancshares of Girard, Inc.*, Girard, Kansas; to become a bank holding company by acquiring at least 80 percent of the voting shares of Mid American Bancshares, Inc., Girard, Kansas, thereby indirectly acquiring The First National Bank of Girard, Girard, Kansas.

2. *Wichita Bancshares, Inc.*, Wichita, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of Charter Bank, N.A., Wichita, Kansas. In this regard Fourth Financial Corporation, Wichita, Kansas, has applied to acquire 24.9 percent of the voting shares of Wichita Bancshares, Inc., Wichita, Kansas, the proposed parent of Charter Bank, N.A., Wichita, Kansas.

Board of Governors of the Federal Reserve System, March 4, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-5563 Filed 3-7-85; 8:45 am]

BILLING CODE 6210-01-M

Merchants Capital Corp.; Notice of Application to Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Govenors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of intrests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 28, 1985.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *Merchants Capital Corporation*, Vicksburg, Mississippi; to engage *de novo* through its subsidiary, Merchants

Data Services, Vicksburg, Mississippi, in conducting data processing activities as a service to banks and non-banks. Such activities will involve the collections, subscription, processing, and storage of banking, financial or related economic data for itself and others in the marketing by-products of data processing activity as well as making excess processing time available to other users. These activities would be conducted in the State of Mississippi.

Board of Governors of the Federal Reserve System, March 4, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-5564 Filed 3-7-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on March 1, 1985.

Public Health Service

National Institutes of Health

Subject: Cohort Study of Grain Millers—New.
Respondents: Businesses or other for-profit.
OMB Desk Officer: Fay S. Iudicello.

Food and Drug Administration

Subject: Premarket Notification Submission (510(k)) Extension—(0910-0120).
Respondents: Businesses or other for-profit.
Subject: Product License Application for the Manufacture of Source Plasma (Human) Product License Application for Therapeutic Exchange Plasma—Extension—(0910-0040).
Respondents: Businesses or other for-profit.
OMB Desk Officer: Bruce Artim.

Centers for Disease Control

Subject: NIOSH Information Dissemination Strategy—Extension (0920-0031).
Respondents: Individuals.
OMB Desk Officer: Fay S. Iudicello.

Health Care Financing Administration

Subject: Annual Report for Home and Community Based Services Waiver (HCFA-371)—Extension (0938-0272).
Respondents: State Medicaid Agencies.
Subject: Annual Expenditure Report for Home and Community Based Services Waiver (HCFA-372)—Extension (0938-0272).
Respondents: State Medicaid Agencies.
Subject: Integrated Quality Control Review Worksheet (HCFA-316)—Reinstatement (0938-0094).
Respondents: State Agencies.
Subject: Hospice Statements of Reimbursements HCFA 278,279,280—Revision (0938-0177).
Respondents: Hospices.
OMB Desk Officer: Fay S. Iudicello.

Social Security Administration

Subject: Winter 1984-1985 Private Sector Energy Assistance Survey—New.
Respondents: Utility companies.
Subject: Corrective Action Plan and Progress Report—Extension (0960-0279).
Respondents: States.
Subject: Annual Survey of Refugees-Revision-(0960-0308).
Respondents: Individuals or households.
OMB Desk Officer: Robert J. Fishman.

Copies of the above information collection clearance packages can be obtained by calling the HHS Report Clearance Officer on 202-245-6511.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, D.C. 20503. Attn: (name of OMB Desk Officer).

Dated: March 4, 1985.

Wallace O. Keene,

Acting Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 85-5554 Filed 3-7-85; 8:45 am]

BILLING CODE 4150-04-M

Annual Revision of the Poverty Income Guidelines

AGENCY: Department of Health and Human Services.

ACTION: Notice.

SUMMARY: This notice provides a revision of the Federal poverty income guidelines to account for increases in the Consumer Price Index.

DATE: Effective March 8, 1985.

ADDRESS: Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT: For information about the poverty guidelines in general, contact Joan Turek-Brezina or Michele Adler (telephone: (202) 245-6141).

Questions about applying these guidelines to a particular program should be referred to the Federal office which is responsible for that program.

For information about the Hill-Burton Uncompensated Services Program, contact the Office of the Director, Division of Facilities Compliance (telephone: (301) 443-6512).

SUPPLEMENTARY INFORMATION: This notice provides the 1985 revision of the poverty income guidelines required by sections 652 and 673(2) of the Omnibus Reconciliation Act of 1981. As required by the statute, this revision reflects changes in the Consumer Price Index; it was accomplished using the same methodology used in previous years.

These poverty income guidelines are used as an eligibility criterion by a number of Federal programs. In certain cases, as noted in the relevant authorizing legislation or program regulations, a program uses the poverty guidelines as only one of several eligibility criteria, or uses a modification of the guidelines (e.g., 130% or 185% of the guidelines). Some other programs, while not using the guidelines as a criterion of individual eligibility, use them for the purpose of targeting assistance or services. In some cases, these poverty income guidelines may not become effective until a regulation or notice specifically applying to the program in question has been issued.

The following definitions (derived for the most part from language used in U.S. Bureau of the Census, *Current Population Reports* Series P-60, No. 144 and earlier reports in the same series) are made available for use in connection with the poverty income guidelines. Programs may use somewhat different definitions. The poverty guidelines are applicable to both farm and nonfarm families.

(a) *Family.* A family is a group of two or more persons related by birth, marriage, or adoption who reside together; all such related persons are considered as members of one family. (If a household includes more than one family and/or more than one unrelated individual, the poverty guidelines are applied separately to each family and/or unrelated individual, and not to the household as a whole.)

(b) *Family unit of size one.* In conjunction with the Federal poverty income guidelines, a family unit of size one is an unrelated individual (as defined by the Census Bureau)—i.e., a person 15 years old or over (other than an inmate of an institution) who is not living with any relatives. An unrelated individual may be the sole occupant of a housing unit, or may be residing in a housing unit (or in group quarters such as a rooming house) in which one or more persons also reside who are not related to the individual in question by birth, marriage, or adoption. (Examples of unrelated individuals residing with others include a lodger, a foster child, a ward, or an employee.)

(c) *Income.* Refers to total annual cash receipts before taxes from all sources. (Income data for a part of a year may be annualized in order to determine eligibility—for instance, by multiplying by four the amount of income received during the most recent three months.) Income includes money wages and salaries before any deductions, but does not include food or rent in lieu of wages. Income also includes net receipts from nonfarm or farm self-employment (receipts from a person's own business or farm after deductions for business or farm expenses). Income includes regular payments from social security, railroad retirement, unemployment compensation, workers' compensation, strike benefits from union funds, veterans' benefits, public assistance (including Aid to Families with Dependent Children, Supplemental Security Income, and General Assistance money payments), training stipends, alimony, child support, and military family allotments or other regular support from an absent family member or someone not living in the household; private pensions, and regular insurance or annuity payments; and income from dividends, interest, rent, royalties, or periodic receipts from estates or trusts. For eligibility purposes, income does not include the following money receipts: capital gains; any assets drawn down as withdrawals from a bank, the sale of property, a house, or a car; tax refunds, gifts, lump-sum inheritances, one-time insurance payments, or compensation for injury. Also excluded are noncash benefits, such as the employer-paid or union-paid portion of health insurance or other employee fringe benefits, food or rent received in lieu of wages, the value of the food and fuel produced and consumed on farms, the imputed value of rent from owner-occupied nonfarm or farm housing, and such Federal programs as Medicaid, Food Stamps, or public housing.

1985 POVERTY INCOME GUIDELINES FOR ALL STATES (EXCEPT ALASKA AND HAWAII) AND THE DISTRICT OF COLUMBIA

Size of family unit	Poverty guideline
1	$5,250
2	7,050
3	8,850
4	10,650
5	12,450
6	14,250
7	16,050
8	17,850

For family units with more than 8 members, add $1,800 for each additional member.

POVERTY INCOME GUIDELINES FOR ALASKA

Size of family unit	Poverty guideline
1	$6,560
2	8,810
3	11,060
4	13,310
5	15,560
6	17,810
7	20,060
8	22,310

For family units with more than 8 members, add $2,250 for each additional member.

POVERTY INCOME GUIDELINES FOR HAWAII

Size of family unit	Poverty guideline
1	$6,040
2	8,110
3	10,180
4	12,250
5	14,320
6	16,390
7	18,460
8	20,530

For family units with more than 8 members, add $2,250 for each additional member.

Dated: March 6, 1985.

Margaret M. Heckler,

Secretary of Health and Human Services.

COMPUTATION FOR 1985 ANNUAL REVISION TO POVERTY INCOME GUIDELINES

[Families in all States (except Alaska and Hawaii) and the District of Columbia]

Size of family unit	Poverty thresholds in 1983 (weighted averages)[1]	Column multiplied by 1.0426 price inflator [2]	Difference between column 3 entries	Average difference in column 3 [3]	Feb 1985 guidelines
(1)	(2)	(3)	(4)	(5)	(6)
1	$5,061	$5,277			$5,250
2	6,483	6,759	$1,482	$1,800	7,050
3	7,938	8,276	1,517	1,800	8,850
4	10,178	10,612	2,336	1,800	[4] 10,650
5	12,049	12,562	1,950	1,800	12,450
6	13,630	14,211	1,649	1,800	14,250
7	15,500	16,160	1,949	1,800	16,050
8	17,170	17,901	1,741	1,800	17,850

[1] *Source:* Column 2 entries are from Table E-1 of U.S. Bureau of the Census, Technical Paper 52, *Estimates of Poverty Including the Value of Noncash Benefits: 1983*, U.S. Government Printing Office, Washington, D.C. August 1984.

[2] *Source:* U.S. Department of Labor, CPI Press Release, USDL 85-29, January 1985, Table 1-A. (The Consumer Price Index (CPI-U) for all items was 298.4 for calendar year 1983 and 311.1 for calendar year 1984, an increase of 4.26 percent.)

[3] The arithmetic average of Column 4 entries, rounded to the nearest multiple of $20.

[4] Obtained by multiplying the average poverty threshold for a family of 4 persons in 1983, as published in Table E-1-($10,178), by the inflation factor from calendar year 1983 to calendar year 1984 (1.0426) and rounding the result upward to the nearest whole multiple of $50. All other entries in Column 6 are obtained by successive addition or subtraction of the average difference ($1,800) to the size-4 1985 guideline entry ($10,650).

For Alaska and Hawaii, scaling factors of 1.25 and 1.15 are applied to the 1985 continental guidelines and the results rounded to multiples of $10. For family units with more than 8 members, add $1,800 for each person in the continental U.S., $2,250 for each person in Alaska and $2,070 for each person in Hawaii.

[FR Doc. 85-5714 Filed 3-7-85; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

[Docket No. 84P-0433]

Canned Pacific Salmon Deviating From Identity Standard; Temporary Permit for Market Testing; Correction

AGENCY: Food and Drug Administration.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting the document that announced that a temporary permit had been issued to Ralston Purina Co. to market test canned chunked-style, skinless, and boneless salmon packed in water. This document corrects the docket number.

FOR FURTHER INFORMATION CONTACT: Agnes B. Black, Regulations Editorial Staff (HFC-222), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2994.

SUPPLEMENTARY INFORMATION: In FR Doc. 85-1297 appearing on page 2619 in the issue of Thursday, January 17, 1985, the docket number is corrected to read as set out in the heading of this document.

Dated: March 1, 1985

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85-5548 Filed 3-7-85; 8:45 am]

BILLING CODE 4160-01-M

[FDA-225-85-8251]

Memorandum of Understanding With the National Institute on Drug Abuse

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has executed a memorandum of understanding with the National Institute on Drug Abuse

(NIDA). This agreement describes procedures for the cooperative and timely interaction between NIDA and FDA in expediting the responsibilities of the Public Health Service (PHS) for the domestic scheduling of drugs of abuse. Nothing in this agreement is intended to compromise FDA's authority to make and forward to the Assistant Secretary for Health (ASH) all drug scheduling recommendations.

DATE: This agreement became effective December 11, 1984.

FOR FURTHER INFORMATION CONTACT: Walter J. Justka, Intergovernmental and Industry Affairs Staff (HFC–50), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1583.

SUPPLEMENTARY INFORMATION: In accordance with § 20.108(c) (21 CFR 20.108(c)) which states that all agreements and memoranda of understanding between FDA and others shall be published in the **Federal Register**, the agency is publishing the following memorandum of understanding:

Memorandum of Understanding Between the National Institute on Drug Abuse and the Food and Drug Administration

I. Purpose

This agreement describes procedures for the cooperative and timely interaction between the National Institute on Drug Abuse (NIDA) and the Food and Drug Administration (FDA) in expediting the responsibilities of the Public Health Service (PHS) for the domestic scheduling of drugs of abuse. Nothing in this memorandum is intended to compromise FDA's authority to make and forward to the Assistant Secretary for Health (ASH) all drug scheduling recommendations.

II. Background

The Secretary of Health and Human Services (HHS) has delegated to the ASH the authority to make domestic drug scheduling recommendations. The Attorney General (through the Drug Enforcement Agency (DEA)) initiates on his motion, upon the request of the Secretary of HHS, or upon the petition of an interested person, proceedings for the scheduling, amendment, or repeal of a domestic scheduling classification. Scheduling proceedings are governed by the provisions of the Controlled Substances Act (CSA), 21 U.S.C. 801 et seq. Once the Attorney General initiates a scheduling proceeding, he must request from the Secretary of HHS a scientific and medical evaluation of the drug or substance at issue and a recommendation as to whether the drug or substance should be controlled domestically.

At the present time, HHS responds to drug scheduling requests from DEA in accordance with a procedure described in a 1970 memorandum by Merlin K. Duval, M.D., then ASH. Under that procedure, FDA has the responsibility for gathering appropriate data pertaining to the abuse potential of marketed drugs. FDA considers available data and positions from other relevant HHS agencies in preparing for the ASH the scientific and medical evaluations and recommendations. FDA then forwards the evaluations and recommendations to the ASH. The 1970 memorandum states that the director of the agency charged with drug abuse prevention should always be consulted by FDA and that his/her position on drug scheduling should be included in the evaluation and recommendations. FDA is the lead agency, however, the Drug Abuse Staff (DAS) of the Division of Neuropharmacological Drug Products (DNDP) in the Office of Drug Research and Review, which is part of FDA's Center for Drugs and Biologics (CDB) performs the initial scientific and medical evaluation upon which a scheduling recommendation is based. The review is often performed in conjunction with FDA's review of new drug applications (NDA).

Both NIDA and FDA believe that a new procedure to expedite the development of domestic drug scheduling recommendations is needed. The new procedure described herein reflects FDA's role as the lead PHS agency in the process which results in the forwarding of domestic drug scheduling recommendations to the ASH. It also recognizes FDA's commitment to collaborate fully with NIDA in the development of such recommendations because of NIDA's expertise in investigating and evaluating the potential for abuse associated with drug products.

By this memorandum, FDA is formally providing NIDA the opportunity to present its views on domestic drug scheduling to FDA at an appropriately early stage in the NDA process or in other circumstances in which issues pertaining to domestic drug scheduling may arise. While NIDA's opinions will not be binding on FDA, both agencies agree to make every effort to resolve differences of opinion, should they arise, as early as possible in the course of their interactions pertaining to domestic drug scheduling.

III. Substance of Agreement

The procedures to be used in the development of domestic drug scheduling recommendations will be as shown below:

A. *Initial Center for Drugs and Biologics Review.* 1. Drug products subject to an NDA.

a. Upon receipt of an NDA for a drug product that may, under provisions of the CSA, require a scheduling recommendation to be made by the ASH, the DNDP, through the DAS, will notify NIDA of the receipt of the NDA submission.

b. Notice of DNDP organizational meeting on the NDA.

(1) FDA, through the DNDP, will extend an invitation (stating the date, time, and location of the meeting) to NIDA to designate a representative to attend the introductory meeting of the NDA review team. A goal of this meeting is to determine if the drug under review should be evaluated for abuse potential.

(2) The NIDA representative shall inform the team if NIDA wishes to participate in evaluation of the drug's abuse potential.

(3) Any employee of NIDA who reviews, considers, or discusses any trade secret and confidential commercial information contained in an NDA in assessing the abuse potential of the product under consideration must first obtain any necessary FDA conflict-of-interest clearances. Clearances pertaining to confidential information are not necessary for NIDA employees who will review only information for which the NDA sponsor has waived proprietary claims (see b.(4) below). CDB will be responsible for initiating conflict-of-interest clearances through FDA's Policy Management Staff.

(4) In the case of drugs to be evaluated for abuse potential, FDA shall request the NDA sponsor to submit a separate drug abuse package containing relevant animal and human abuse-related data together with other information concerning the drug's potential for abuse and diversion. This request will include a request to the sponsor to waive confidentiality of the data provided so that the data can be given to NIDA for evaluation.

(5) At this meeting a determination will be made if NIDA is to receive a copy of the drug abuse data and information package to be requested from the NDA sponsor.

(6) NIDA will inform FDA if it plans to conduct an independent evaluation of the drug in question.

(7) NIDA will provide FDA by the date of the 90-day meeting (see c. below) any data it may have on the drug in question for use by the review team.

c. Notice of the DNDP 90-day NDA review team meeting.

(1) NIDA shall be provided with a written notification stating the date, time, and location of the proposed meeting. The NIDA representative shall be requested to participate in this meeting.

(2) If NIDA participates in this meeting, it indicates that NIDA has an ongoing interest in the drug under review. If NIDA elects not to participate in this meeting, then NIDA will not participate as a member of the DNDP 90-day review team for the substance under evaluation.

(3) If NIDA participates in the 90-day NDA review team meeting, FDA will provide the NIDA representative a copy of the drug abuse data and information obtained from the NDA sponsor. If no such data and information are available, FDA will provide the NIDA representative data extracted from the NDA submission which are related to a determination of the abuse potential of the drug under review, provided all employees of NIDA who will be reviewing, considering, or discussing the confidential data or information have obtained an FDA conflict-of-interest clearance, or authorization to provide these data to NISA has been obtained from the NDA sponsor. From these data, NIDA will determine if it should perform additional studies, or confirm the NDA sponsor's data, from information it has on studies already performed.

(4) NIDA will present data it has available on any studies of abuse potential either already carried out or planned for the drug under evaluation.

(5) At the 90-day meeting and any time thereafter, FDA and NIDA will exchange in a

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timely manner any new data concerning the abuse potential of the drug under evaluation that may become available. As discussed above, appropriate clearances must be secured before data may be shared with NIDA.

2. Drug products not subject to a pending NDA: When a domestic drug scheduling question arises other than in connection with FDA review of a pending NDA, FDA will inform NIDA of the scheduling issue and will invite NIDA to participate in the evaluation process.

3. In all situations covered by Part A of this agreement, FDA will make available to NIDA a copy of its proposed draft scheduling recommendation.

B. *Consideration of Draft Scheduling Recommendations by the FDA Drug Abuse Advisory Committee (DAAC.* 1. The Executive Secretary of DAAC will notify NIDA when a scheduling matter has been placed on a DAAC meeting agenda and will provide NIDA a copy of the agenda as soon as it is available.

2. Data provided to DAAC to assist in its deliberation on a drug scheduling matter will be made available to the NIDA representative at the same time they are made available to the DAAC members. The NIDA representative shall have secured any necessary FDA conflict-of-interest clearance in advance of receipt of these data or authorization to release the data will be secured from the NDA sponsor.

3. NIDA will provide DAS any comments or specific data it has regarding an agenda item as far in advance of the meeting as possible so that NIDA's comments and data can be sent to the DAAC members for review prior to the meeting.

4. NIDA may indicate its desire to make a formal presentation to DAAC on any drug scheduling item that is part of the scheduled agenda for a DAAC meeting. Such a presentation would normally consist of at least one of the following:

a. A response to a general question concerning drug scheduling. (DAS should have received a copy of the data NIDA will present—see B.3. above.)

b. Results of an independent evaluation conducted by NIDA. The presentation should emphasize NIDA's additional data or different points of view from those of FDA. Data should be provided in advance to DAS—see B.3. above.)

c. A statement that NIDA has determined to present no data.

C. *Review of Final Draft Scheduling Recommendations.* 1. After the DAAC meeting, a proposed final scheduling recommendation will be drafted by and circulated within CDB. A copy of the draft recommendation will promptly be provided to NIDA for comment.

2. If the CDB draft scheduling recommendation is substantially revised by FDA, a copy of the revised document will be transmitted to NIDA for further comment.

3. If NIDA does not concur in the final recommendation before it is submitted to the FDA Commissiner for signature, NIDA should specify its nonconcurrence to the FDA Commissioner in writing. The data upon which NIDA's position is based should be included in this document.

4. If disagreement between the agencies cannot be resolved, the NIDA dissent will be forwarded to the ASH concurrently with FDA's scheduling recommendations.

IV. Name and Address of Participating Parties

A. Food and Drug Administration, Public Health Service, Department of Health and Human Services, 5600 Fishers Lane, Rockville, MD 20857.

B. National Institute on Drug Abuse, Public Health Service, Department of Health and Human Services, 5600 Fishers Lane, Rockville, MD 20857.

V. Liaison Officers

A. For Food and Drug Administration: Associate Commissioner for Health Affairs (currently Stuart L. Nightingale, M.D., 301–443–6143.

B. For National Institute on Drug Abuse: Associate Director for Medical and International Affairs (currently James R. Cooper, M.D.), 301–443–4877.

VI. Period of Agreement

This agreement becomes effective upon acceptance by both parties. It may be modified by mutual consent or terminated by either party upon the giving of a 60-day written notice.

Approved and accepted for the Food and Drug Administration.

By: Mark Novitch,

Title: Deputy Commissioner.

Date: November 13, 1984.

Approved and accepted for the National Institute on Drug Abuse.

By: William Pollin,

Title: Director.

Date: December 11, 1984.

Effective date. This memorandum of understanding became effective December 11, 1984.

Dated: March 4, 1985.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 85–5550 Filed 3–7–85; 8:45 am]

BILLING CODE 4160-01-M

[FDA-225-85-0001]

Memorandum of Understanding With the University of Tennessee

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has executed a memorandum of understanding with the University of Tennessee. This agreement provides the mechanism for collaborative research and educational programs between the University of Tennessee through its Center for Health Sciences (UTCHS) and FDA's National Center for Toxicological Research (NCTR).

DATE: This agreement became effective December 17, 1984.

FOR FURTHER INFORMATION CONTACT: Walter J. Kustka, Intergovernmental and Industry Affairs Staff (HFC–50), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1583.

SUPPLEMENTARY INFORMATION: In accordance with § 20.108(c) (21 CFR 20.108(c)) which states that all agreements and memoranda of understanding between FDA and others shall be published in the **Federal Register**, the agency is publishing the following memorandum of understanding:

Memorandum of Understanding Between the University of Tennessee, Memphis, Tennessee and the Food and Drug Administration, National Center for Toxicological Research

I. Purpose

This agreement provides the mechanism for collaborative research and educational programs between the University of Tennessee through its Center for Health Sciences (UTCHS) and the Food and Drug Administration's National Center for Toxicological Research (NCTR).

II. Background

The University of Tennessee Center for the Health Sciences is a public institution within the University of Tennessee system which has an enrollment of some 42,500 students. UTCHS is composed of the Colleges of Community and Allied Health Professions, Denistry, Medicine, Nursing, and Pharmacy, as well as the Graduate School of Medical Sciences. There are approximately 2,000 students in these advance programs at UTCHS. One of the major objectives of the professional programs of the University is to produce graduates who are well prepared and highly motivated to pursue advanced work in the sciences.

The National Center for Toxicological Research is a Federal laboratory specializing in biomedical research. A part of NCTR's goal is to assist in training highly qualified toxicologists. The collaborative program with UTCHS provides an opportunity to accomplish this while furthering NCTR's research goals.

III. Substance of Agreement

Through this agreement, NCTR will provide facilities, equipment, materials, and limited supervision for outstanding science students who will serve as guest workers at the Center performing collaborative research with NCTR scientists. In addition, NCTR will provide guest worker positions or appointments to do collaborative research for qualified faculty members of UTCHS, if spaces are available during summers, periods of sabbatical leave, or other mutually agreeable periods.

NCTR and UTCHS will establish cooperative scientific activities, which may include joint guest lectures and seminar programs, for the benefit of all members of

both institutions to promote exchange of information on the latest developments at both institutions. To further accomplish this objective, members of the staffs of NCTR and UTCHS will be granted access to the library facilities of both institutions.

IV. Name and Address of Participating Parties

A. University of Tennessee Center for the Health Sciences, 800 Madison Ave., Memphis, TN 38163.
B. Food and Drug Administration, National Center for Toxicological Research, Jefferson, AR 72079.

V. Liaison Officers

A. For University of Tennessee Center for the Health Sciences: Professor, Department of Medicinal Chemistry, College of Pharmacy (currently Dr. W. H. Lawrence), 901–528–6927 or 901–528–6080.
B. For the National Center for Toxicological Research: Director, National Center for Toxicological Research, (currently Dr. Ronald W. Hart), 501–541–4517.

VI. Period of Agreement

This agreement becomes effective upon acceptance by both parties and will continue indefinitely. It may be modified by mutual consent or terminated by either party upon a 60-day advance written notice to the other.

Approved and accepted for the University of Tennessee.

By: James C. Hunt,

Title: Chancellor.

Date: November 23, 1984.

By: Emerson H. Fly,

Title: Vice President.

Date: December 17, 1984.

Approved and accepted for the Food and Drug Administration.

By: Joseph P. Hile,

Title: Associate Commissioner for Regulatory Affairs.

Date: October 5, 1984.

Effective date. This memorandum of understanding became effective December 17, 1984.

Dated: March 4, 1985.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 85–5532 Filed 3–7–85; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 85F–0060]

UBE Industries, Ltd.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Springborn Regulatory Services, Inc., on behalf of Ube Industries, Ltd., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of polyamides consisting of the homopolymer of Nylon 12 derived from *omega*-aminododecanoic acid as side seam cements that may contact food.

FOR FURTHER INFORMATION CONTACT: Thomas C. Brown, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 4B3796) has been filed by Springborn Regulatory Services, Inc., Enfield, CT 06082, on behalf of the Ube Industries, Ltd., Tokyo, Japan, proposing that the food additive regulations be amended to provide for the safe use of polyamides consisting of the homopolymer of Nylon 12 derived from *omega*-aminododecanoic acid as side seam cements that may contact food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c) (proposed December 11, 1979; 44 FR 71742).

Dated: March 1, 1985.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85–5547 Filed 3–7–85; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 85F–0082]

Economics Laboratory, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Economics Laboratory, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of decanoic acid, octanoic acid, a mixture of 1-octanesulfonic acid and 1-octanesulfonic-2-sulfinic acid, and the condensate of four moles of poly(oxyethylene)poly(oxypropylene) block copolymers with one mole of ethylenediamine as components of sanitizing solutions to be used on food-processing equipment and other food-contact articles.

FOR FURTHER INFORMATION CONTACT: Mary W. Lipien, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5740.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 5H3842) has been filed by Economics Laboratory, Inc., St. Paul, MN 55102, proposing that the food additive regulations be amended to provide for the safe use of decanoic acid, octanoic acid, a mixture of 1-octanesulfonic acid and 1-octanesulfonic-2-sulfinic acid, and the condensate of four moles of poly(oxyethylene)poly(oxypropylene) block copolymers with one mole of ethylenediamine as components of sanitizing solutions to be used on food-processing equipment and other food-contact articles

The potential evironmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c) (proposed December 11, 1979; 44 FR 71742).

Dated: March 1, 1985.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85–5546 Filed 3–7–85; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 85F–0023]

Drew Chemical Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Drew Chemical Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of sorbitan monooleate as a direct additive to clarify cane and beet sugar juice and liquor.

FOR FURTHER INFORMATION CONTACT: Vir Anand, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, D.C. 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 345(b)(5))), notice is given that a petition (FAP 5A3840) has been filed by Drew Chemical Corp., One Drew Chemical Plaza, Boonton, NJ 07005, proposing that the food additive regulations be amended to provide for the safe use of sorbitan monooleate as a direct additive to clarify cane and beet sugar juice and liquor.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c) (proposed December 11, 1979; 44 FR 71742).

Dated: March 1, 1985.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85-5545 Filed 3-7-85; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 85F-0057]

The Goodyear Tire & Rubber Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the Goodyear Tire & Rubber Co. has filed a petition proposing that the food additive regulations be amended to include dimethyl-5-sulfoisophthalic acid, and/or its sodium salt, in the list of acids for polyester resins (including alkyd type) intended for use as components of adhesives in food-packaging applications.

FOR FURTHER INFORMATION CONTACT: Mary W. Lipien, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration., 200 C St. SW., Washington, DC 20204, 202-472-5740.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (section 409(b)(5), 72 Stat 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 4B3825) has been filed by The Goodyear Tire & Rubber Co., 130 Johns Ave., Akron, OH 44316-0001, proposing that the food additive regulations be amended to include dimethyl-5-sulfoisophthalic acid, and/or its sodium salt, in the list of acids for polyester resins (including alkyd type) intended for use as components of adhesives in food-packaging applications.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 1, 1985.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85-5542 Filed 3-7-85; 8:45 am]

BILLING CODE 4160-01-M

Small Business Participation; Open Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a forthcoming small business exchange meeting to be chaired by George J. Gerstenberg, Director, Brooklyn District Office.

DATE: The meeting will be held at 1 p.m., Thursday, March 28, 1985.

ADDRESS: The meeting will be held at the Commack Public Library, 18 Hauppauge Rd., Commack, NY 11725.

FOR FURTHER INFORMATION CONTACT: George R. Walden, Small Business Representative, Food and Drug Administration, 20 Evergreen Place, East Orange, NJ 07018-2195, 201-645-6466.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between small business and FDA officials. The meeting will provide a forum for the owners and managers of small businesses to express their concerns about FDA, encourage discussion about the effects of regulation and regulatory alternatives, convey knowledge about the agency's operations and procedures, and increase participation by small business persons in FDA's decisionmaking process.

Dated: March 5, 1985.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-5543 Filed 3-7-85; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Application Announcement and Proposed Funding Preference for Grants for Geriatric Education Centers

The Bureau of Health Professions, Health Resources and Services Administration, announces the acceptance of applications for Fiscal Year 1985 Grants for Geriatric Education Centers under the authority of Section 788(b) of the Public Health Service Act, as amended by Pub. L. 97-35 and invites comments on the proposed funding preference as set forth below.

Grants will be awarded to support the development of additional areawide organizational arrangements called Geriatric Education Centers focused on strengthening and coordinating multidisciplinary training in geriatric health care involving several health professions. These centers are established to facilitate training of medical, dental, optometric, pharmacy, podiatric, nursing, and appropriate allied health and public health faculty, students, and practitioners in the diagnosis, treatment, and prevention of diseases and other health problems of the aged. To receive support, applicants must meet the requirements of 42 CFR Part 57, Subpart NN.

Functioning within a self-defined geographic area, which may be a metropolitan area, a State or portion thereof, or an area including all or part of two or more States, a Geriatric Education Center provides the health professions educational community within that area with comprehensive services such as:

1. Training which prepares faculty in the various health professions schools to carry out geriatric education programs;

2. Serving as a focal point for collection and dissemination of information on geriatric education programs and instructional materials;

3. Providing educational services, including consultation, in support of geriatric training of health professionals, to schools and programs, professional associations, and State, local, and voluntary agencies;

4. Assisting health professions schools in the selection, development, implementation, and evaluation of appropriate geriatric course materials and curriculum improvements; and

5. Assisting in the establishment of further organizational arrangements in other components of a health sciences center or among health professions educational programs to provide multidisciplinary resources for geriatric

leadership and coordination in the teaching program.

Any health profession, allied health profession, or nurse training institution, or any public or private nonprofit entity is eligible to apply for a grant. Applications are encouraged from health professions schools, and educational entities, or consortia of such institutions, that have as a purpose the objectives set forth in this announcement. All applicants must be located in the United States, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands.

Requests for application materials and questions regarding grants policy should be directed to: Grants Management Officer (D–31), Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 8C–22, Rockville, Maryland 20857, Telephone: (301) 443–6960.

Should additional programmatic information be required, please contact: Geriatric Program Representative, Bureau of Health Professions, Health Resources and Services Administration 5600 Fishers Lane, Room 8–101, Rockville, Maryland 20857, Telephone: (301) 443–6887.

Approximately $5.0 million is expected to be available in Fiscal Year 1985 for competing awards. Authorization for the current fiscal year is provided by the Department of Labor, Health and Human Services and Education and Related Agencies Appropriation Act, (Pub. L. 98–619), enacted on November 8, 1984.

The application deadline date is May 20, 1985. Applications shall be considered as meeting the deadline if they are either:

1. *Received* on or before the deadline date, or

2. *Postmarked* on or before the deadline and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

This program is listed at 13.969 in the *Catalog of Federal Domestic Assistance*. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs, or 42 CFR Part 100.

Proposed Funding Preference: In determining the order of funding of competing applications which have been recommended for approval, it is proposed to give a funding preference to applications which satisfactorily address all three of the program priorities listed below. All applications, however, will be reviewed and given consideration for funding.

(1) Projects which will train faculty or students from four health professions, one of which is allopathic or osteopathic medicine. The additional three or more professions proposed shall be designated from among the following:

a. Allied health professions which provide direct patient care services;

b. Dentistry;

c. Nursing;

d. Optometry;

e. Pharmacy;

f. Podiatry;

g. Appropriate public or community health specialties.

(2) Projects which currently have or plan to provide for a high degree of areawide collaboration as evidenced by:

a. Significant multidisciplinary health care educational activities;

b. Letters of agreement or assurance, among participating entities, such as professional schools, teaching facilities and other clinical sites, professional associations, and State and local health agencies; and

c. Organization or other arrangements for participation by the social and behavioral science disciplines.

(3) Projects which during the first year will initiate a training program for health professions schools and programs outside the applicant organization. This program must provide during the first year a minimum of at least 20 weeks of training among at least six faculty. The applicant must demonstrate the availability of resources to initiate such training.

Interested persons are invited to submit written comments regarding this funding preference to Director, Division of Associated and Dental Health Profession, Bureay of Health Professions at the address given below.

All comments received not later than April 8, 1985 will be considered before a final funding preference for Fiscal Year 1985 is established.

Normally, the comment period would be 60 days. However, due to the need to implement any changes in the funding preference for the Fiscal Year 1985 award cycle, this comment period has been reduced to 30 days. After the close of the comment period, the final funding preference will be published as a notice in the **Federal Register**.

Written comments should be addressed to: Director, Division of Associated and Dental Health Professions, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8–101, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–6853.

All comments received will be available for public inspection and copying at the above address weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

In determining projects to be funded from among applicants recommended for approval including those assigned a funding preference, the Secretary, after consultation with the National Advisory Council of Health Professions Education, may give consideration to the geographic location of the project in relation to other Geriatric Education Centers funded or to be funded by this grant program, and to regional and are wide needs.

Dated: March 2, 1985.

Robert Graham, M.D.,

Administrator, Assistant Surgeon General.

[FR Doc. 85–5531 Filed 3–7–85; 8:45 am]

BILLING CODE 4160–16–M

Office of Human Development Services

President's Committee on Mental Retardation; Meeting

Agency Holding the Meeting: President's Committee on Mental Retardation.

Time and Date: March 25, 1985, 7:00 p.m.–9:00 p.m.; March 26, 1985, 8:00 a.m.–8:00 p.m.; March 27, 1985, 9:00 a.m.–6:00 p.m.

Place: Salt Lake Sheraton Hotel, 255 Southwest Temple, Salt Lake City, Utah 84101.

Status: Meetings are open to the public. An interpreter for the deaf will be available upon advance request. All locations are barrier free.

Matters to be considered: Reports by the Steering Committe of the President's Committee on Mental Retardation (PCMR) will be given. The PCMR plans to discuss critical issues concerning prevention, family and community services, full citizenship, public awareness and other issues relevant to the PCMR's goals.

The PCMR, (1) Acts in an advisory capacity to the President and the Secretary of the Department of Health and Human Services on matters relating to programs and services for persons who are mentally retarded; and (2) is responsible for evaluating the adequacy of current practices in programs for the retarded, and reviewing legislative proposals that affect the mentally retarded.

Contact Person for More Information: Jim F Young, 330 Independence Avenue SW., Room 4016 North, Washington, D.C. 20201, (202) 245–7634.

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Dated: March 1, 1985.

Jim F. Young,

Acting Executive Director, PCMR.

[FR Doc. 85–5555 Filed 3–7 85; 8:45 am]

BILLING CODE 4130–01–M

Public Health Service

National Committee on Vital and Health Statistics (NCVHS), Subcommittee on Uniform Minimum Health Data Sets; Meeting

Pursuant to the Federal Advisory Act (Pub.L 92–463), notice is hereby given that the National Committee on Vital and Health Statistics (NCVHS), Subcommitte pursuant to 42 U.S.C. 242k, section 306(k)(2) of the Public Health Service Act, as amended, will convene on Thursday, March 28, 1985 from 11:00 a.m. to 4:30 p.m. in Room 800 of the Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, D.C. 20201.

The Subcommittee will hear testimony from national associations involved in the provision of long term care on their reactions to the proposed long term care minimum data set.

Further information regarding this meeting of the Subcommitte may be obtained by contacting Henry S. Mount, National Committee on Vital and Health Statistics, Room 2–28 Center Building, 3700 East-West Highway, Hyattsville, Maryland 20782, Telephone (301) 436–7122.

Dated: February 28, 1985.

Manning Feinleib,

Director, National Center for Health Statistics.

[FR Doc. 85–5557 Filed 3–7 85; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species; Receipt of Application for Permit; Dr. Raul A. Perez-Rivera et al.

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT 688249

Applicant: Dr. Raul A. Perez-Rivera, Universidad de Puerto Rico, Humacao, Puerto Rico 00661

The applicant requests an amendment to his permit (formerly PRT 2–8868) to include the capture and banding of the Puerto Rican plain pigeon (*Columba inornata wetmorei*) for enhancement of survival.

PRT 690784

Applicant: Horst W. Schmudde, Colts Neck, NJ

The applicant requests a permit to import 2 pairs of Hawaiian geese [*Nesochen* (=Branta) *sandvicensis*] from Berthold Wessjohann, Stapelfeld, West Germany for the purpose of enhancement of propagation.

PRT 690856

Applicant: Oklahoma City Zoo, Oklahoma City, OK

The applicant requests a permit to import one captive-bred male Malaya tapir (*Tapirus indicus*) from the Copenhagen Zoo, Denmark, for enhancement of propagation.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 611, 1000 North Glebe Road, Arlington, Virginia 22201, or by writing to the Director, U.S. Fish and Wildlife Service of the above address.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: March 4, 1985.

R.K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 85–5594 Filed 3–7–85; 8:45 am]

BILLING CODE 4310–55–M

Marine Mammals; Receipt of Application for Permit; Detroit Zoological Parks Department

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*, the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*) and the regulations governing marine mammals and endangered species (50 CFR Parts 17 and 18).

Applicant: Name: Detroit Zoological Parks Department. File No. PRT 690489. Address: Royal Oaks, MI.

Type of Permit: Scientific Research.

Name and Numer of Animals: Polar bears (*Ursus maritimus*); 7.

Summary of Activity to be Authorized: The applicant proposes to take (anesthetize, extract premolars, eartag and tattoo) for research on age determination and related studies.

Source of Marine Mammals for Research: Animals are currently in captivity at Detroit Zoo, except for one which is at Riverbanks Zoo, Columbia, SC.

Period of Activity: 2 years.

Concurrent with the publication of this notice in the **Federal Register** the Federal Wildlife Permit Office is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be submitted to the Director, U.S. Fish and Wildlife Service (FWPO), 1000 North Glebe Road, Room 611, Arlington, Virginia 22201, within 30 days of the publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such hearing is at the discretion of the Director.

Documents submitted in connection with the above application are available for review during normal business hours (7:45 am to 4:15 pm) in Room 601 N. Glebe Road, Arlington, Virginia.

Dated: March 4, 1985.

Larry LaRochelle,

Acting Chief, Branch of Permits; Federal Wildlife Permit Office.

[FR Doc. 85–5292 Filed 3–7–85; 8:45 am]

BILLING CODE 4310–55–M

Issuance of Permits for Marine Mammals; Mote Marine

On November 20, 1984, a notice was published in the **Federal Register** (49 FR 45813) that an application had been filed with the Fish and Wildlife Service by Mote Marine Lab (PRT 685009) for renewal of and an amendment to PRT 2–9757.

On January 22, 1985, a notice was published in the **Federal Register** (50 FR 2865) that an application had been filed with the Fish and Wildlife Service by Jane M. Packard (PRT 690699) for a permit to take (harass) two captive rehabilitated manatees (*Trichechus manatus*), for the purpose of scientific research.

Notice is hereby given that on February 13, 1985, as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Endangered Species Act of 1972 (16 U.S.C. 1539), the Fish and Wildlife Service renewed the original permit PRT 685009 (PRT 2–9757). The requested

amendments [additional takes of manatee (*Trichechus manatus*) and an expansion of the study area] were denied. On February 25, 1985, PRT 690699) was issued, subject to certain conditions set forth therein.

The permits are available for public inspection during normal business hours at the Fish and Wildlife Service's Office in Room 601, 1000 North Glebe Road, Arlington, Virginia 22201.

Dated: March 4, 1985.

R.K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 85-5593 Filed 3-7-85; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Land Management

Designation of an Area of Critical Environmental Concern; Bakersfield District, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Designation of public lands within the Red Hills Management Area as an Area of Critical Environmental Concern (ACEC) and Notice of Availability of Final Red Hills Management Plan and Environmental Accessment.

SUMMARY: Public review on the draft Management Plan and Environmental Assessment for 7100 acres of BLM-administered public lands in Tuolumne County, California ended 20 April 1984. The Bureau received 65 comment letters on this draft Management Plan. Many of these comments were incorporated into the final Management Plan.

The major components of the proposed action is to designate 2600 acres as in Intensive Use Zone and 4500 acres for restricted use and as an ACEC. The ACEC was identified to protect five sensitive plant species found in this area. Cumulative surface disturbance in the ACEC is limited to less than five percent and the area is closed to off-road vehicle activity.

The area designated as the Red Hills, ACEC are described as follows:

Mount Diablo Meridian

T. 1 S., R. 14 E.,
Sec. 12, S½;
Sec. 13, NW¼, N½NE¼, SE¼, NE¼SE¼.
T. 1 S., R. 14 E.,
Sec. 7, lot 4;
Sec. 16, N½NW¼, NE¼, SE¼, S½SE¼, SW¼SW¼, S½SE¼SW¼;
Sec. 18, lots 1, 2, N½ lot 3;
Sec. 19, N½SW¼NE¼, SW¼SW¼NE¼;
Sec. 20, S½SE¼, SE¼SE¼SW¼, SE¼NE¼SE¼SW¼, SE¼SW¼SE¼SW¼;
Sec. 21, S½S½, NW¼SW¼;
Sec. 22, S½NE¼, SE¼, S½SW¼;
Sec. 23, lots 4, 5, 8, 9, 10, 12, 13, 14, 15, 16;
Sec. 24, SW¼NW¼, SW¼NE¼, SW¼, W½NW¼SE¼;
Sec. 25, NW¼NW¼NW¼, NE¼NW¼NW¼, SW¼NW¼NW¼;
Sec. 26, lots 1-8, includes W½ lot 9, 10-15, includes W½ lot 16;
Sec. 27, N½NE¼, E½SE¼NE¼, SW¼NE¼, W½SE¼, W½;
Sec. 28, E½, NW¼;
Sec. 29, NE¼, E½NW¼;
Sec. 34, W½NE¼NE¼, NW¼NE¼, N½NW¼;
Sec. 35, lots 21, 25.

A limited number of copies of the final Red Hills Management Plan are available upon request at the Folsom Resource Area Office, 63 Natoma Street, Folsom, California, 95630, (916) 985-4474.

Dated: February 26, 1985.

D.K. Swickard,

Area Manager.

[FR Doc. 85-5602 Filed 3-7-85; 8:45 am]

BILLING CODE 4310-40-M

[OR-22197-J (WASH)]

Washington; Proposed Continuation of Withdrawal

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice.

SUMMARY: The U.S. Coast Guard proposes that 1.3 acres of a land withdrawal for the Kellett Bluff Light Station continue for an indefinite period. The land(s) would remain closed to surface entry and mining but has been and would remain open to mineral leasing.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, (Telephone 503-231-6905.

SUPPLEMENTARY INFORMATION: The U.S. Coast Guard proposes that 1.3 acres of the existing land withdrawal made by the Executive Order of July 15, 1875, be continued for an indefinite period pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714.

The land(s) involved is located at the south end of Henry Island in Section(s) 28, T. 36 N., R. 4w., W.M., San Juan County, Washington.

The purpose of the withdrawal is to protect the U.S. Coast Guard's Kellett Bluff Light Station. The withdrawal segregates the land(s) from operation of the public land laws generally, including the mining laws, but not the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal continuation may present their views in writing to the undersigned officer at the address specified above.

The authorized office of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Dated: March 1, 1985.

Harold A. Berends,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 85-5603 Filed 3-7-85; 8:45 am]

BILLING CODE 4310-33-M

Request for Public Comment on Fair Market Value and Maximum Economic Recovery; Emergency Coal Lease Application M 62073(ND); Comment Period Extension and Rescheduling of Hearing

AGENCY: Bureau of Land Management, Interior.

ACTION: Public comment period extended and public hearing date rescheduled.

SUMMARY: On January 31, 1985, the Bureau of Land Management published notice FR Doc. 85-2513, Vol. 50, page 4601, requesting public comments on fair market value and maximum economic recovery for Emergency Coal Lease Application M 62073(ND); and setting the date of March 4, 1985, for public hearing.

DATES: Notice is given that the period for receiving comments has been extended to March 29, 1985; and that the public hearing has been rescheduled and will be held on March 29, 1985, on the environmental assessment, the proposed Emergency Coal Lease Application M 62073(ND), the fair market value and maximum economic recovery on the proposed lease tract. The public hearing will be held at 1:00

p.m., at the Midwest Federal Savings Bank, (Community Room), 221 First Avenue West, Dickinson, North Dakota.

ADDRESS: For more complete data on this tract, please contact Jeanette Bejot (telephone 406–657–6875), Bureau of Land Management, Montana State Office, 222 North 32nd Street, P.O. Box 36800, Billings, Montana 59107. Copies of the environmental assessment are available at this address or at the BLM, Dickinson District Office, 204 Sims Street, P.O. Box 1229, Dickinson, North Dakota 58602.

Dated: February 27, 1985.

Marvin LeNoue,

Associate State Director, Montana State Office.

[FR Doc. 85–5599 Filed 3–7–85; 8:45 am]

BILLING CODE 4310-84-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–6 (Sub. 222)B]

Burlington Northern Railroad Co.; Abandonment in Umatilla County, or; Findings

The Commission has found that the public convenience and necessity permit Burlington Northern Railroad Company to abandon its 3.5 mile rail line near Smeltz, OR (milepost 0.00) and Duroc, OR (milepost 3.50) in Umatilla County, OR.

A certificate will be issued authorizing this abandonment unless within 15 days after this publication the Commission also finds that: (1) A financially responsible person has offered assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB–OFA." Any offer previously made must be remade within this 10 day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27(b).

James H. Bayne,

Secretary.

[FR Doc. 85–5590 Filed 3–7–85; 8:45 am]

BILLING CODE 7035-01

[Finance Docket No. 30522]

Burlington Shortline, Inc. and Keokuk Northern Real Estate Co., d/b/a Burlington Junction Railway; Exemption From 49 U.S.C. 10901, 11301, and 49 U.S.C. Subtitle IV

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10910(g), the Commission exempts Burlington Shortline, Inc. and Keokuk Northern Real Estate Company doing business as Keokuk Junction Railway from the provisions of the Interstate Commerce Act (except with respect to transportation under a joint rate).

DATES: This exemption is effective on March 8, 1985. Petitions to reopen must be filed by March 28, 1985.

ADDRESSES: Send pleadings referring to Finance Docket No. 30522 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioners' representative: John D. Heffner, Suite 1000, 1250 I Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289–4357 (DC metropolitan area) or toll free (800) 424–5403.

Decided: February 20, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley, and Strenio. Chairman Taylor dissented in part. He would have granted the sought exemption under 49 U.S.C. 10505.

James H. Bayne,

Secretary.

[FR Doc. 85–5589 Filed 3–7–85; 8:45 am]

BILLING CODE 7035-01-M

Intent To Engage In Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or to use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: Contico International, Inc., 1101 Warson Rd., St. Louis, MO 63132.

2. Wholly owned subsidiaries which will participate in the operations, and State(s) of Incorporation:

(a) Pol-Tex International, 13830 Hatcherville Rd., Mont Belvieu, TX 77580. Incorporated in the state of Texas.

1. Parent corporation and address of principal office: Marathon Petroleum Company, 539 South Main Street, Findlay, Ohio 45840.

2. Wholly-owned subsidiaries which will participate in the operations, and States of Incorporation:

(a) Emro Marketing Company, a Delaware corporation;

(b) Muesing, Inc., an Indiana corporation;

(c) Webster Service Stations, Inc., a Delaware corporation.

1. Parent corporation and address of principal office: Miller & Hartman, Inc., 180 Greenfield Road, Post Office Box 1748, Lancaster, Pennsylvania 17603–1748.

2. Wholly-owned subsidiary which will participate in the operations and states of incorporation: Miller & Hartman Transportation, Inc., 180 Greenfield Road, Post Office Box 1748, Lancaster, Pennsylvania 17603–1784, A Pennsylvania corporation.

1. Parent corporation and address of principal office: Roanoke Electric Steel Corporation, P.O. Box 13948, Roanoke, Virginia 24038–3948.

2. Wholly-owned subsidiaries which will participate in the operations, and state of incorporation:

(i) John W. Hancock, Jr., Inc.—Virginia.

(ii) Shredded Products Corporation—Virginia.

1. Parent corporation and address of principal office: G.S. Robins & Company, 126 Chouteau Avenue, St. Louis, Missouri 63102.

2. Wholly-owned subsidiaries which will participate in the operations, and states of incorporation:

(i) Robins Transportation Company, 126 Chouteau Avenue, St. Louis, Missouri 63102, Incorporated in Missouri.

(ii) Robins Solvents Company, 126 Chouteau Avenue, St. Louis, Missouri 63102, Incorporated in Missouri.

(iii) Ro Corp, Inc., 126 Chouteau Avenue, St. Louis, Missouri 63102, Incorporated in Missouri.

1. Parent corporation and address of principal Office: SSW Corporation, 902 North Rowe Street, Ludington, Michigan 49431.

2. Wholly owned subsidiaries which will participate in the operations, and States of incorporation:

Wire Transport Company, Michigan

Straits Steel and Wire, Company, Michigan
Great Lakes Plating Corporation, Michigan
D & H Manufacturers, Inc., Michigan
Greenville Wire Products Co., Michigan.

1. Parent corporation and address of principal office: Sealed Air Corporation, Park 80 Plaza East, Saddle Brook, New Jersey 07662.

2. Wholly-owned subsidiaries which will participate in the operations, and states or provinces of incorporation:

Cellu-Products Company, Delaware
Sealed Air of Canada Limited, Ontario
Sealed Air Trucking, Inc., Delaware
Static, Inc., Delaware

James H. Bayne,
Secretary.

[FR Doc. 85-5571 Filed 3-7-85; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Norac Co., Inc.; Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on October 22, 1984, Norac Company Inc., 405 S. Motor Avenue, Azusa, California 91702, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the Schedule I controlled substance Tetrahydrocannabinols.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, D.C. 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than April 8, 1985.

Dated: March 4, 1985.

Gene R. Haislip,
Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 85-5595 Filed 3-7-85; 8:45 am]
BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of the Secretary

Labor Advisory Committee for Trade Negotiations and Trade Policy; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463 as amended), notice is hereby given of a meeting of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

Date, time and place: April 3, 1985, 2:00 p.m., RM. N3437 A, B, C, D, Frances Perkins Department of Labor Building, 200 Constitution Avenue, NW., Washington, D.C. 20210.

Purpose: To discuss trade negotiations and trade policy of the United States.

This meeting will be closed under the authority of section 10(d) of the Federal Advisory Committee Act. The Committee will hear and discuss sensitive and confidential matters concerning U.S. trade negotiations and trade policy.

For further information, contact: Fernand Lavallee, Executive Secretary, Labor Advisory Committee, Phone: (202) 523-6565, March 1, 1985.

Signed at Washington, D.C. this 1st day of March 1985.

Robert W. Searby,
Deputy Under Secretary, International Affairs.

[FR Doc. 85-5637 Filed 3-7-85; 8:45 am]
BILLING CODE 4510-28-M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; A.B.C. Manufacturing Co., et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filled in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than March 18, 1985.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than March 18, 1985.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, D.C. 20213.

Signed at Washington, D.C. this 25th day of February 1985.

Marvin M. Fooks,
Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
A.B.C. Manufacturing Co. (ILGWU)	Manning SC	1/28/85	1/23/85	TA-W-15,753	Uniforms, work.
Anchor Hocking Corp Plant 1 and Plant 2 (Amer. Flint Glass Workers).	Lancaster, OH	2/8/85	2/5/85	TA-W-15,754	Tableware items.
Barbara Leslie, A Div. of Sherman Mfg Co. (ILGWU)	Florence, SC	1/30/85	1/23/85	TA-W-15,755	Dresses, pants, and suits, ladies.
Block Industries (workers)	Wilmington, NC	1/28/85	1/20/85	TA-W-15,756	Sportshirts and dressshirts, men.
Block Industries (workers)	New York, NY	1/28/85	1/20/85	TA-W-15,757	Do.
Cushman Industries, Inc. (UAW & Co.)	Hartford, CT	2/4/85	1/28/85	TA-W-15,758	Chucks, power, manual, speed, high.
Dresser Industries, Inc., Harbison-Walker Refractories Div. (USWA).	Mount Union, PA	1/30/85	1/28/85	TA-W-15,759	Brick, refractory.
Henry I. Siegel Co. (workers)	Tiptonville, TN	2/1/85	1/28/85	TA-W-15,760	Vests, jackets and some jeans, cotton & denim.
Hyster Company (ILTBU)	Danville, IL	2/11/85	2/7/85	TA-W-15,761	Trucks, lift, industrial.

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APPENDIX—Continued

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
ICL, Inc., Operations Div. (workers)	Utica, NY	2/7/85	1/31/85	TA-W-15,762	Computer terminals, video display units, printed circuit boards
LTV Steel Corp (USWA)	Warren, OH	1/30/85	1/28/85	TA-W-15,763	Flat rolled steel.
Pathfinder Mines Corp., Shirley Basin Mine (USWA)	Shirley Basin, WY	2/1/85	1/30/85	TA-W-15,764	Uranium (yellow cake)
Plastronics (workers)	Milwaukee, WI	2/4/85	1/28/85	TA-W-15,765	Plastic disposable hospital products
Samuels Shoe Co., Charleston "T" (workers)	Charleston, IL	2/1/85	1/24/85	TA-W-15,766	Shoes, dress, ladies.
Teledyne Columbia Steel Summeral (USWA)	Carnegie, PA	1/30/85	1/28/85	TA-W-15,767	Tube products, bar products flat bars.
United Shoe Machinery Corporation (UER & MWA)	Beverly, MA	2/7/85	2/1/85	TA-W-15,768	Castings machines.
Weyerhaeuser Company, Everett Wood Products Div. (IWA)	Everett, WA	2/4/85	1/25/85	TA-W-15,769	Lumber
Wilker Brothers Co., Inc. (company)	McKenzie, TN	1/24/85	1/18/85	TA-W-15,770	Pajamas
Wolverine World Wide, Factory C (UFCW)	Big Rapids, MI	2/7/85	1/22/85	TA-W-15,771	Shoes, puppie, hush, ladies

[FR Doc. 85-5638 Filed 3-7-85; 8:45 am]

BILLING CODE 4510-30-M

Occupational Safety and Health Administration

Utah State Standards; Notice of Approval

1. Background

Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary), (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State Plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On January 10, 1973, notice was published in the **Federal Register** (38 FR 1178) of the approval of the Utah Plan and of adoption of Subpart E to Part 1952 containing the decision. The Plan provides for the adoption of Federal Standards as State Standards by:

1. Advisory committee recommendation.
2. Publication in newspapers of general/major circulation with a 30-day waiting period for public comment and hearings.
3. Commission order adopting and designating an effective date.
4. Provision of certified copies of Rules and Regulations or Standards to the Office of the State Archivist.

OSHA regulations (29 CFR 1953.22 and 1953.23) require that States respond to the adoption of new or revised permanent Federal standards by State promulgation of comparable standards within six months of OSHA publication in the **Federal Register**, and within 30 days for emergency temporary standards. Although adopted State standards or revisions to standards must be submitted for OSHA review and approval under procedures set forth in Part 1953, they are enforceable by the State prior to Federal review and approval. By letter dated January 16, 1985, from Douglas J. McVey, Administrator, Utah Occupational Safety and Health Division, to Byron R. Chadwick, OSHA Regional Administrator, the State submitted rules and regulations in response to Federal OSHA's Occupational Exposure to Ethylene Oxide Provisions of General Industry Standards (29 CFR 1910.19 and 1910.1047 Occupational Exposure to Ethylene Oxide, 49 FR 25796, June 22, 1984.

The above adoptions of Federal standards have been incorporated in the State Plan, and are contained in the Utah Occupational Safety and Health Rules and Regulations for General Industry, as required by Utah Code annotated 1943, Title 63-46-1. In addition, the standards were published in newspapers of general/major circulation throughout the State. No public comments were received and no hearings were held.

State Standards for 29 CFR 1910.19 and 1910.1047 Occupational Exposure to Ethylene Oxide was adopted by the Industrial Commission of Utah, Archives File Number 7450, on October 18, 1984, (effective November 1, 1984) pursuant to Title 35-9-6, Utah Code annotated 1953. The State Standard on Occupational Exposure to Ethylene Oxide is identical to the Federal standard action, with the only exception being paragraph numbering.

2. Decision

The above State standard has been reviewed and compared with the relevant Federal standard and OSHA has determined that the State standard is identical to the Federal standard and accordingly should be approved.

3. Location of Supplement for Inspection and Copying

A copy of the standard supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Room 1554, Federal Office Building, 1961 Stout Street, Denver, Colorado 80294; Utah State Industrial Commission, UOSHA Offices at 160 East 300 South, Salt Lake City, Utah 84111; and the Office of State Programs, Room N-3476, 200 Constitution Avenue, NW., Washington, D.C. 20210.

4. Public Participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplements to the Utah State Plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reason:

The Standards were adopted in accordance with the procedural requirements of State law which permitted public comments, and further public participation would be repetitious.

This decision is effective January 31, 1985 (Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 6671)).

Signed in Denver, Colorado this 31st day of January, 1985.

Byron E. Chadwick,

Regional Administrator.

[FR Doc. 85-5639 Filed 3-7-85; 8:45 am]

BILLING CODE 4510-26-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-389]

Florida Power & Light Co., et al. (St. Lucie Plant, Unit No. 2); Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 9 to Facility Operating License No. NPF-16 issued to Florida Power & Light Company, the Orlando Utilities Commission of the City of Orlando, Florida, and the Florida Municipal Power Agency (the licensee), which revised the Technical Specifications for operation of the St. Lucie Plant, Unit No. 2 (the facility), located in St. Lucie County, Florida. The amendment was effective as of the date of its issuance.

The amendment revised the Technical Specifications to allow operation of St. Lucie 2 at a power level of 2700 MWt.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Prior Hearing in connection with this action was published in the **Federal Register** on December 26, 1984 (49 FR 50131). No request for a hearing or petition for leave to intervene was filed following this notice.

For further details with respect to this action see (1) the application for amendment dated November 21, 1984, (2) Amendment No. 9 to Facility Operating License No. NPF-16, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 1st day of March, 1985.

For the Nuclear Regulatory Commission.

James R. Miller,

Chief, Operating Reactors Branch No. 3, Division of Licensing.

[FR Doc. 85-5631 Filed 3-7-85; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-23618; 70-7080]

General Public Utilities Corp. et al.; Notice of Proposal of Issuance, Sale and Renewal of Promissory Notes of Subsidiaries; Issuance and Pledge of First Mortgage Bonds

March 1, 1985.

General Public Utilities Corp. ("GPU"), 100 Interpace Parkway, Parsippany, New Jersey 07054, a registered holding company, and its electric utility subsidiaries, Jersey Central Power & Light Company ("JCP&L"), Madison Avenue at Punchbowl Road, Morristown, New Jersey 07960, Metropolitan Edison Company ("Met-Ed"), 2800 Pottsville Pike, Muhlenburg Township, Berks County, Pennsylvania 19605, and Pennsylvania Electric Company ("Penelec"), 1001 Broad Street, Johnstown, Pennsylvania 15907, (collectively the "GPU Companies"), have filed a declaration subject to sections 6(a), and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rules 44 and 50(a)(2) thereunder.

The GPU Companies propose to issue, sell and renew to certain banks (the "Banks") from time to time through March 31, 1987, their respective promissory notes (the "New Notes") maturing not more than 180 days from the date of issue, pursuant to a new revolving credit agreement (the "New Credit Agreement"). Borrowings would be limited to an aggregate of $150 million, with individual sublimits of $10 million for the GPU and $50 million for Met-Ed. In the case of each of GPU Companies, the aggregate amount of New Notes issued and outstanding at any one time would not exceed such lesser amount, if any, as may be permitted by its respective charter.

The annual interest rate on each borrowing under the New Credit Agreement would be either (a) Citibank's Alternate Base Rate for GPU, JCP&L and Penelec, and ⅛ of 1% above Citibank's Alternate Base Rate for Met-Ed, (b) the domestic money market bid rate for certificates of deposit of various maturities ("DMM-Bid Rate" or "CD Rate"), plus 1⅝% for GPU, 1½% for JCP&L and Penelec, and 1¾% for Met-Ed. The maximum effective cost of borrowing for 1985 through 1987 as set forth in the declaration would be 14.925% for GPU, 14.8% for JCP&L and Penelec, and 15.05% for Met-Ed. In addition, the GPU Companies will pay the Banks an annual commitment fee of ½ of 1% of the unused commitment and an annual Agent's fee of $150,000.

Met-Ed proposes to pledge and grant to the Banks as collateral for its New Notes and other obligations under the New Credit Agreement, first priority security interest in Met-Ed's interest in (a) customer accounts receivable from the sale of electricity and (b) coal inventories. Moreover, Met-Ed proposes to issue and pledge to the Banks $40 million aggregate principal amount of First Mortgage Bonds ("Pledge Bonds") as further collateral. The Pledge Bonds will be issued pursuant to the Indenture, would mature on March 31, 1987, would carry an interest rate of 1% above the rate applicable to the New Notes, and would be payable only upon a default by Met-Ed under the New Credit Agreement.

The GPU Companies further propose from time to time through March 31, 1987, to issue or renew their respective unsecured promissory notes, maturing not more than nine months after issue, to various commercial banks pursuant to informal lines of credit. Each such unsecured promissory note will bear interest at a rate (after giving effect to any fees or compensating balance requirements) not exceeding 120% of the lending bank's prime rate for commercial borrowing (12.6% assuming a 10.5% prime rate), will be prepayable at any time without premium and will not be issued as part of a public offering. The total principal amount of such unsecured borrowings outstanding at any one time when added to such Company's total principal amount of New Notes then outstanding would not exceed the lesser of (a) $165 million for JCP&L, $110 million for Penelec, and (b) the amount of short-term indebtedness permitted by such Company's charter to be outstanding at any one time. For Met-Ed, the sum of the total amount of such unsecured borrowings plus the total principal amount of New Notes, outstanding at any one time, will not exceed the lesser of (i) $90 million, and (ii) the amount of unsecured short-term indebtedness permitted by its charter to be outstanding at any one time. The total principal amount of unsecured borrowings outstanding at any one time for GPU, plus its total principal amount of New Notes then outstanding, will not exceed $10 million.

The net proceeds of the New Notes and the unsecured promissory notes proposed to be issued and sold would be used by the GPU Companies to repay maturing bank borrowings and to provide temporary working capital.

The declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by March 25, 1985, to the Secretary, Securities and Exchange Commission, Washingon, D.C. 20549, and serve a copy on the declarants at the addresses specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the declaration, as filed or as it may be amended, may be authorized.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-5567, Filed 3-7-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-23619; 70-6895]

Middle South Energy, Inc.; Notice of Proposed Interest Rate Swap Authorization

March 1, 1985.

Middle South Energy, Inc. ("MSE"), 225 Baronne Street, New Orleans Louisiana, 70112, a subsidiary of Middle South Utilities, Inc., a registered holding company, has filed a post-effective amendment to its declaration with this Commission pursuant to sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rules 42(b)(2) and 50 thereunder.

By order dated November 15, 1983 (HCAR No. 23119), MSE was authorized to enter into one or more interest rate swap agreements ("Swap Agreements") at any time through December 31, 1984 in order to convert up to $378 million of its floating rate debit obligations to fixed rate obligations. As of December 31, 1984, MSE had entered into a Swap Agreement relating to $189 million of debt obligations. MSE is now proposing that the authorization of November 15, 1984 be extended to December 31, 1985.

The amended declaration and any further amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by March 25, 1985 to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the declarant at the address specified above. Proof of service by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date the amended declaration, as filed or as it may be amended, may be permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-5568 Filed 3-7-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21807; File Nos. SR-PSDTC-84-15; SR-PCC-84-13]

Self-Regulatory Organizations; Filing of Proposed Rule Changes of Pacific Clearing Corp. and Pacific Securities Depository Trust Co.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"). 15 U.S.C. 78s(b)(1), notice is hereby given that on December 14, 1984, the Pacific Clearing Corporation ("PCC") and Pacific Securities Depository Trust Company ("PSDTC") filed with the Securities and Exchange Commission the proposed rule changes described below. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

The proposed rule changes would amend PSDTC's and PCC's Rules[1] to enable PCC and PSDTC staff to admit applicants for membership on a temporary basis pending review by PCC's or PSDTC's board of Directors.[2] To the eligible for temporary membership, an applicant would be required to have excess net capital of at least $100,000 and make a participant's fund deposit of at least $50,000.[3] Temporary approval could be made by two senior officers[4] of PCC or PSDTC or one such senior officer plus and officer from the Internal Audit Department of the Pacific Stock Exchange Inc., PCC's and PSDTC's parent corporation. In addition, temporary membership status would be effective only until the applicant was reviewed by PCC's or PSDTC's board or directors. Under the proposals, that board review must occur within 60 days after the applicant's first use of PCC or PSDTC services. Finally, PCC and PSDTC state in their filings that trading activity of temporary members would be monitored daily.

PCC and PSDTC state in their filings that the proposals are consistent with section 17A(b)(3) (B) and (f) of the Act because they will facilitate the admission of qualified applicants for membership and promote the use of PCC's and PSDTC's facilities for the clearance and settlement of securities transactions and the safeguarding of securities and funds.

Copies of all documents relating to the proposal, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, may be inspected and copied at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. and at PCC's and PSDTC's principal offices.

To assist the Commission in determining whether to approve the proposal or to institute disapproval proceedings, please send six copies of your comments to the Secretary of the Commission. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549, by March 29, 1985. Please refer to File Nos. SR-PCC-84-13 or SR-PSDTC-84-15 in your comments.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

John Wheeler,

Secretary.

March 4, 1985.

[FR Doc. 85-5569 Filed 3-7-85; 8:45 am]

BILLING CODE 8010-01-M

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[1] *See* PSDTC Rule 2. Section 2(b); PCC Rule II, Section 2(b).

[2] PSDTC and PCC Rules currently require all applicants to be approved only by PSDTC's or PCC's board of directors.

[3] In conversations with Division of Market Regulation staff, PCC and PSDTC stated that candidates for temporary membership status would be required to meet all of PCC's and PSDTC's membership standards in addition to the proposed standards. *See.* PCC Rule 2, PSDTC Rule II, and PCC/PSDTC's Standards of Financial Responsibility and Operational Capability.

[4] PCC and PSDTC stated that "senior officers" under the proposals would be PCC's and PSDTC's President and Executive Vice President.

Self-Regulatory Organizations; Order Granting Application To Strike From Listing and Registration; Philadelphia Stock Exchange, Inc.

March 1, 1985.

The Philadelphia Stock Exchange, Inc. ("Exchange") has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2–2(c) promulgated thereunder, to strike the common stock ($.10 par value) of Integrated Resources, Inc. (File No. 1–7030) from listing and registration thereon.

The reason alleged for striking this security from listing and registration include the following:

Integrated Resources, Inc. ("Company") states that "the Common Stock was initially listed on the Exchange in conjunction with their $3.07 Cum. Pfd. Stock. In order to be eligible to list the Conv. Pfd. Stock, the Company had to list their Common Stock because of the Pfd. Stock being convertible into the Common Stock. The Pfd. Stock was redeemed in 1983 and since they no longer have a Conv. Pfd. listed on the Exchange, combined with low trading volume, the Company feels it's no longer in their best interest to continue the listing of the Common Stock."

The Commission, having considered the facts stated in the application and having due regard for the public interest and protection of investors, orders that said application be, and it hereby is, granted, effective at the opening of business on March 4, 1985.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85–5566 Filed 3–7–85; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket 42918; Order 85–3–4]

Intra-Alaska and Intra-Hawaii All-Cargo Authority in Domestic Section 401 Certificates; Order to Show Cause

Issued: March 4, 1985.

By orders 81–11–23 and 82–12–131 the Civil Aeronautics Board amended the basic form of section 401 domestic certificates to authorize the carriage of property and mail on passenger aircraft and all-cargo aircraft between *all* points in the United States, its territories and possessions. Previously, certificate holders could carry cargo only between specifically named points.

The 1981 amendment was subject to one qualification: All-cargo service within the states of Alaska and Hawaii would continue to be authorized only to named points. In a separate interpretive statement dated November 3, 1981, Docket 40208, the Board explained that this qualification stemmed from section 418(b)(3) of the Act, which prohibited the Board from granting unlimited authority for all- cargo air transportation in Alaska and Hawaii.

Section 418(b)(3) has now been repealed.[1] The Board in late 1984 acted to conform outstanding section 418 domestic all-cargo certificates to the new statutory regime.[2] We now propose to take the corresponding step with regard to domestic section 401 certificates.

We share the Board's assessment that the repeal of section 418(b)(3), along with the amendment to the statutory definition of "all-cargo air service" in section 101(11) of the Act, manifests a Congressional intent that Alaska and Hawaii should be extended the full benefits of deregulation with respect to all-cargo services. We thus tentatively find and conclude that it is consistent with the public convenience and necessity that all outstanding domestic section 401 certificates authorizing the holder "to engage in the interstate and overseas air transportation of property and mail between all points in the United States, its territories and possessions" but containing a condition prohibiting such air transportation between points wholly within the States of Alaska and Hawaii (unless specifically authorized), should be amended to remove the condition prohibiting all-cargo air transportation within Alaska or Hawaii, and further amended to remove, as no longer necessary, any specific authorization for points within Alaska or Hawaii.

Since we are proposing this action on our own initiative, we have decided to allow for a brief comment period. We shall provide interested persons within 14 days from the service date of this order to submit comments or objections. Answer will be due 10 days thereafter.

Accordingly,

1. We direct all interested persons to show cause why we should not make final our tentative findings and conclusions and implement the section 401 certificate amendments indicated above;

2. Properly supported objections may be filed within 14 days of the date of service of this order, i.e. by March 21, 1985; Answers may be filed 10 days thereafter, i.e. by April 1, 1985;

3. If no timely objections are filed, all further procedural steps will be deemed to have been waived, and we will issue an order making final our tentative findings and conclusions and amending the certificates in question;

4. This order shall be served on all certificated air carriers; and

5. This order shall be published in the **Federal Register.**

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 85–5600 Filed 3–7–85; 8:45 am]

BILLING CODE 4910–62–M

[1] Section 9(a) of the CAB Sunset Act of 1984. Pub. L. 98–433, 98 Stat. 1703, October 4, 1984.

[2] Orders 84–11–90 and 84–12–118.

[Order 85–3–9; Docket Nos. 42542, 42543]

Application of Pegasus Airlines, Inc., for Certificate Authority Under Subpart Q

AGENCY: Department of Transportation.

ACTION: Notice of order of show cause.

SUMMARY: The Department is directing all interested persons to show cause why it should not issue orders finding Pegasus fit and awarding it certificates of public convenience and necessity to engage in scheduled interstate/overseas and foreign air transportation; denying the applicant's motion to withhold certain information from public disclosure; and denying a request by Pegasus Air Transport Company that the application of Pegasus be denied or, alternatively, deferred pending a change of the applicant's name.

DATES: Persons wishing to file objections shall do so no later than March 21, 1985; answers to objections shall be filed no later than April 1, 1985.

ADDRESS: Objections and answers to objections should be filed in Dockets 42542 and 42543 and addressed to the Documentary Services Division, U.S. Department of Transportation, 400 Seventh Street, SW., Room 4107, Washington, D.C. 20590, and should be served upon the persons listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Steven B. Farbman, Aviation Enforcement and Proceedings, U.S. Department of Transportation, 400 Seventh Street, SW., Room 4116L, Washington, D.C. 20590, (202) 426–7631.

Dated: March 4, 1985.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 85-5601 Filed 3-7-85; 8:45 am]

BILLING CODE 4910-62-M

Maritime Administration

Essential Trade Routes; Intent To Redesignate

Under section 211(a) of the Merchant Marine Act, 1936, as amended, the Maritime Administrator is authorized and directed to investigate, determine, and keep current records of the ocean services, routes, and lines which are or may be determined by the Maritime Administrator to be essential for the promotion, development, expansion, and maintenance of the foreign commerce of the United States.

Determinations of essential U.S. foreign trade routes were made as early as 1930 to assist in administering the Merchant Marine Act of 1928 and to deal with problems in relation to ocean mail contracts. The essential trade routes became an important keystone of the Merchant Marine Act, 1936, by restricting the payments of subsidies to ships which are to be used in an essential service in the foreign commerce of the United States. There have been no substantial changes in essential trade route descriptions since enactment of the Merchant Marine Act, 1936, other than inclusion of the U.S. Great Lakes.

In recent years there have been major changes in shipping technology and U.S. trade patterns. The development of the line-haul/feeder and intermodal services has allowed companies to serve much broader trade areas than was possible in 1936. Thus, it is the intent of the Maritime Administrator to consolidate the present essential trade routes and essential trade areas into eight essential trade areas (described below), in order to reflect more realistically the current pattern of vessel operations.

It is proposed that upon consolidation of essential trade routes as contemplated herein, the Maritime Subsidy Board may proceed, upon the request of any subsidized operator, to amend such operator's ODSA so as to conform such Agreement to these essential trade areas by the provision for such service. In order to accomplish these modifications, it is expected that the Board will rely upon the authority provided for in the Agreements which permit amendment by mutual consent, as well as its authority in sections 606(3), 204 and 605(c) of the Act, as may be applicable. In any amendment to the ODS contract implementing the trade area concept, the Government will not agree to any increase in ODS subsidy over the most recent baseline, updated as necessary, as a result of those amendments.

Proposed Trade Areas[1]

Between the United States (the contiguous United States plus Alaksa and Hawaii) and:

(1) Europe and Mediterranean.
(2) Far East.
(3) East Coast of Central and South America (including Caribbean).
(4) West Coast of Central and South America.
(5) South and East Africa.
(6) West Coast of Africa.
(7) Australasia.
(8) Middle East and South Asia.

A detailed discussion of the factors which lead to the proposal to consolidate trade routes is contained in an Agency study "Reevaluation of U.S. Liner Trade Routes." This study is available upon request.

The Maritime Administration invites comments on the proposed trade route redesignation and background study. Interested persons are invited to submit comments on or before April 22, 1985. Written comments and requests for the study should be addressed to U.S. Department of Transportation, Maritime Administration, Director, Office of Trade Studies and Subsidy Contracts, Room 8117, 400 7th Street SW., Washington, D.C. 20590. For further information contact: Edmond J. Fitzgerald (202) 382-0374. Prior to any contract negotiation based on final determinations of new essential trade routes and essential trade areas, the Maritime Administrator will publish the final determination.

(Catalog of Federal Domestic Assistance Program No. 20.804) Operating-Differential Subsidies (ODS))

Date: March 5, 1985.

By Order of the Maritime Administrator.

Murray A. Bloom,

Acting Secretary.

[FR Doc. 85-5556 Filed 3-7-85; 8:45 am]

BILLING CODE 4910-81-M

Research and Special Programs Administration

Applications for Exemptions

AGENCY: Materials Transportation Bureau, DOT.

ACTION: List of Applicants for Exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Regulation of the Materials Transportation Bureau has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft.

DATE: Comment period closes April 10, 1985.

ADDRESS: *Comments to:* Dockets Branch, Office of Regulatory Planning and Analysis, Materials Transportation Bureau, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street, SW., Washington, DC.

NEW EXEMPTIONS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9369-N	Chilean Nitrate Sales Corporation, Norfolk, VA	49 CFR 172.301(a), Part 107, Appendix B	To authorize shipment of approximately 360,000 bags, containing sodium nitrate or nitrate, n.o.s., which are not marked with the proper shipping name and identification number (Modes 1, 2.)

[1] Countries included in the proposed trade areas are described in general in the Bureau of Census, U.S. Foreign Trade Statistics, Classification and Cross-Classifications, 1980, Section 15, Schedule R—Code Classification and Definitions of Foreign Trade Areas.

NEW EXEMPTIONS—Continued

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9391-N	Dowell Schlumberger, Inc., Tulsa, OK	49 CFR 172.101(6)(b), 175.30	To authorize shipment of hydrochloric acid, classed as a corrosive material in 3,100 gallon capacity DOT Specification 60 rubber lined portable tanks in the State of Alaska only. (Mode 4.)
9392-N	Steigerwalt Associates, Allentown, PA	49 CFR 173.301(b), 178.42	To manufacture, mark and sell non-DOT specification steel cylinders comparable to DOT Specification 3E, for shipment of carbon dioxide, nonflammable gas. (Modes 1, 2, 3.)
9393-N	Sexton Can Company, Inc., Everett, MA	49 CFR 173.304, 178.65	To manufacture, mark and sell non-DOT specification nonreusable steel containers, patterned after DOT Specification 2Q, for shipment of (mono) chlorofluoromethane (R-22) classed as nonflammable gas. (Mode 1.)
9395-N	Overland Tank & Trailer Mfg. Inc., Abilene, TX	49 CFR 173.119(a), (m), 173.245(a), 178.340-7, 178.342-5, 178.343-5.	To manufacture, mark and sell non-DOT specification cargo tanks similar to DOT Specification MC-307/312 except for bottom outlet valve variations, for shipment of various flammable or corrosive waste liquids or semi-solids. (Mode 1.)
9396-N	CIBA-GEIGY Corporation, Ardsley, NY	49 CFR 173.346	To authorize shipment of nitrochlorobenzene, ortho, classed as a poison B liquid in DOT Specification 57 steel portable tanks of 345 gallon capacity with the bottom outlet valve permanently plugged. (Mode 1.)
9397-N	Austin Powder Company, Cleveland, OH	49 CFR 173.77	To authorize shipment of pentaerythrite tetranitrate (PETN) wetted with not less than 25% water contained in either plastic or rubberized textile bags over packed in specially constructed fiber drums. (Mode 1.)
9398-N	Chemical Commodities, Inc., Olathe, KS	49 CFR 173.127	To authorize shipment of nitrocellulose wet with water contained in 250 pound capacity DOT Specification 21P fiber drum with a 4 mil polyliner to be loaded in a freight container. (Modes 1, 3.)
9399-N	HTL Industries, Inc., Duarte, CA	49 CFR 173.302(a), 175.3, 178.44	To manufacture, mark and sell non-DOT specification girth welded stainless steel pressure vessel patterned after a DOT Specification 3HT, for shipment of nitrogen classed as a nonflammable gas. (Modes 1, 2, 3.)
9400-N	Poly Processing Company, Inc., Monroe, LA; Poly Cal Plastics, Inc., French Camp, CA	49 CFR 173.266, 173.268, Part 173, Subpart D, Subpart F.	To manufacture, mark and sell non-DOT specification portable polyethylene sphere tanks mounted on and partially enclosed in a steel unit, for shipment of certain oxidizers and certain corrosive and flammable liquids authorized in DOT Specification 34 and 57 containers. (Modes 1, 2, 3.)
9401-N	Fauvet-Girel, St. Laurent-Blangy, France	49 CFR 173.315	To offer non-DOT specification portable tanks built to DOT Specification 51 except for ASME Code Certification, for shipment of various nonflammable compressed gases (refrigerants). (Modes 1, 2, 3.)
9402-N	Fauvet-Girel, St. Laurent-Balngy, France	49 CFR 173.315	To offer non-DOT specification portable tanks built to DOT Specification 51 except for ASME Code Certification, for shipment of various nonflammable and flammable compressed gases. (Modes 1, 2, 3.)
9403-N	Schulmberger Well Services, Houston, TX; Schlumberger Offshore Service, Houston, TX	49 CFR 173.110, 173.80	To authorize carnage of charged well casing jet perforating guns by specialized common motor carriers rather than by privately owned and operated motor vehicles. (Mode 1.)
9404-N	Luxfer USA Limited, Riverside, CA	49 CFR 173.302, 173,304, 178.46	To manufacture, mark and sell aluminum cylinders complying with DOT Specification 3AL except for a modified base shape, for shipment of those hazardous materials authorized in DOT Specification 3AL. (Modes 1, 2, 3, 4.)
9405-N	M&G Tankers Limited, West Midlands, England.	49 CFR 173.119	To manufacture, mark and sell non-DOT specification fiber reinforced plastic cargo tanks, mounted on a truck chassis, for transportation of gasoline, aviation fuel, and certain other flammable liquids. (Mode 1.)
9406-N	Imperial Plastics, Evansville, IN	49 CFR 173.217(a)	To manufacture, mark and sell non-DOT specification removable head polyethylene pails for shipment of certain oxidizers (solids). (Modes 1, 2, 3.)
9407-N	Eastman Kodak Company, Rochester, NY	49 CFR 173.204(d)	To authorize use of shipping papers bearing a preprinted shippers certificate. (Modes 1, 2, 3, 4, 5.)

This notice of receipt of applications for new exemptions is published in accordance with section 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on March 4, 1985.

J.R. Grothe,

Chief, Exemptions Branch, Office of Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc. 85-5597 Filed 3-7-85; 8:45 am]

BILLING CODE 4910-60-M

Applications for Renewal or Modification of Exemptions or Applications To Become a Party to an Exemption

AGENCY: Materials Transportation Bureau, DOT.

ACTION: List of applications for renewal or modification of exemptions or application to become a party to an exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Regulation of the Materials Transportation Bureau has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier Federal Register publications, they are not repeated here. Except as otherwise noted, renewal applications are for extension of the exemption terms only. Where changes are requested (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) they are described in footnotes to the application number. Application numbers with the suffix "X" denote renewal; application numbers with the suffix "P" denote party to. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comment period closes March 26, 1985.

ADDRESS: Dockets Branch, Office of Regulatory Planning and Analysis, Materials Transportation Bureau, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street, S.W., Washington, DC.

Application No.	Applicant	Renewal of exemption
1862-X	Greer Hydraulics, Inc., City of Commerce, CA.	1862

Application No.	Applicant	Renewal of exemption
4177-X	Hydrodyne Industries, Inc., Hauppauge, L.I., NY	4177
4262-X	Schlumberger Offshore Services, Houston, TX	4262
4262-X	Schlumberger Well Services, Houston, TX	4262
4884-X	Ashland Oil, Inc., Columbus, OH	4884
6151-X	Virginia Chemicals, Inc., Portsmouth, VA	6151
6184-X	Air Products and Chemicals, Inc., Allentown, PA	6184
6531-X	Tavco, Inc., Chatsworth, CA	6531
6557-X	General Fire Extinguisher Corporation, Northbrook, IL	6557
6759-X	Hercules, Incorporated, Wilmington, DE	6759
7227-X	Richmond Lox Equipment Company, Livermore, CA [1]	7227
7526-X	Schenng, AG, West Berlin, West Germany	7526
7719-X	Turner Company, Sycamore, IL [2]	7719
7879-X	Geerhart Industries, Inc., Fort Worth, TX	7879
8053-X	Eastman Kodak Co., Rochester, NY	8053
8086-X	Boeing Aerospace Co., Seattle, WA	8086
8129-X	Aqua-Tech, Inc., Port Washington, WI	8129
8129-X	Virginia Polytechnic Institute & State University Blacksburg, VA	8129
8129-X	Acurex Corp., Mountain View, CA	8129
8129-X	Ecolfo, Inc., Bladensburg, MD	8129
8129-X	University of California, Davis, Davis, CA	8129
8129-X	McKesson Corporation, Dublin, CA	8129
8129-X	Borg-Warner Chemicals, Inc., Parkersburg, WV	8129
8129-X	Loma Linda University, Loma Linda, CA	8129
8129-X	GSX Services, Inc., formerly Triangle Resources, Laurel, MD	8129
8129-X	McDonnell Douglas Corp., Saint Louis, MO	8129
8129-X	Findly Chemical Disposal, Inc., Riverside, CA	8129
8151-X	Ropak West, Inc., La Mirada, CA	8151
8152-X	Allied Corporation, Morristown, NJ	8152
8208-X	Jet Propulsion Laboratory, Pasadena, CA	8208
8451-X	Stresau Laboratory, Inc., Spooner, WI	8451
8511-X	Interox America, Houston, TX	8511
8565-X	Bergen Barrel and Drum Company, Kearny, NJ	8565
8679-X	MicroD International, Burnsville, MN	8679
8725-X	CNG Cylinder Corporation, Long Beach, CA [3]	8725
8859-X	AVM Corporation, Pittsburgh, PA	8859
8886-X	Nalco Chemical Company, Oak Brook, IL [4]	8886
8910-X	Canber Products Limited, Waterloo, Ontario, Canada	8910
8969-X	McDonnell Douglas Corp., Saint Louis, MO	8969
8998-X	Oil Air Industries, Inc., Brookshire, TX	8998
8999-X	Scott Aviation Div of Figgie International, Inc., Lancaster, NY	8999
9010-X	United Technologies Chemical Systems, San Jose, CA	9010
9011-X	Van Leer Containers, Inc., Chicago, IL	9011
9024-X	Sierni, Paris, France	9024
9024-X	Fauvet-Girel, St Laurent Blangy, France	9024
9036-X	The Manson Company, South Elgin, IL	9036
9180-X	M & G Tankers Limited, West Midlands, England [5]	9180
9222-X	Bryson Industrial Services Inc., Lexington, SC [6]	9222

[1] To authorize an additional portable tank of 1920 gallon capacity.
[2] To authorize cargo aircraft only as additional mode of transportation.
[3] To authorize certain flammable and nonflammable gases as additional commodities.
[4] To authorize additional cleaning or water treating compounds.
[5] To include gasoline blended with either methanol or ethanol as an additional commodity.
[6] To expand travel distance by changing points of origination and destination.

Application No.	Applicant	Parties to exemption
6610-P	Akzo Chemie America, Chicago, IL	6610
6762-P	Kem Manufacturing Corporation, Tucker, GA	6762
6762-P	Nutmeg Chemical Company, New Haven, CT	6762
6772-P	Thomas Gray & Associates, Inc., Orange, CA	6772
6806-P	Stone & Webster Engineering Corporation, Boston, MA	6806
7951-P	Beatrice Cheese, Inc., New Berlin, WI	7951
8009-P	MCF Services, Inc., Golden, CO	8009
8129-P	Washington State University, Pullman, WA	8129
8129-P	University of California, Riverside, Riverside, CA	8129
8445-P	Thomas Gray & Associates, Inc., Orange, CA	8445
8526-P	Johnson & Bloy Canada Inc., Prescott, Ontario	8526
8526-P	Birko Corporation, Westminster, CO	8526
8958-P	Track of the Wolf, Inc., Osseo, MN	8958
9110-P	QueNord Inc., Magog, Quebec, Canada	9110
9271-P	Burlington Northern Railroad, Ft Worth, TX	9271
9271-P	The Denver and Rio Grande Western Railroad Company, Salt Lake City, UT	9271

This notice of receipt of applications for renewal of exemptions and for party to an exemption is published in accordance with section 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, D.C., on March 4, 1985.

J. R. Grothe,

Exemptions Branch, Office of Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc. 85-5596 Filed 3-7-85; 8:45 am]

BILLING CODE 4910-60-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 46
Friday, March 8, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 9:30 a.m., Wednesday, March 13, 1985.

LOCATION: Third Floor Hearing Room, 1111 18th Street, NW., Washington, D.C.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:
Chlorocarbons: Status/Options.

The staff will brief the Commission on the status of the priority project Chlorocarbons and options concerning the consumer use survey.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301—492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207, 301—492–6800.

Sheldon D. Butts,
Deputy Secretary.
March 5, 1985.

[FR Doc. 85–5676 Filed 3–6–85; 1:58 pm]
BILLING CODE 6355–01–M

2

COUNCIL ON ENVIRONMENTAL QUALITY

TIME AND DATE: 10:00 a.m. Monday, March 18, 1985.

PLACE: Conference Room, first floor, 722 Jackson Place, NW., Washington, D.C.

MATTERS TO BE CONSIDERED:

1. On December 31, 1984, the Council on Environmental Quality published an Advance Notice of Proposed Rulemaking, (49 FR 50744), announcing that it was considering the need to amend the regulation entitled "Incomplete or unavailable information" (40 CFR 1502.22). That notice included a solicitation of written comments with respect to certain questions concerning the subject rule. The Council received many letters of comment in response to the notice and the Chairman and Members are each reviewing the comments. The purpose of the meeting is for the Council to discuss the contents of the responses received. Discussion will be limited to the Council and staff.

2. Other business.

A. Alan Hill,
Chairman.
March 5, 1985.

[FR Doc. 85–5643 Filed 3–5–85; 5:00 pm]
BILLING CODE 3125–01–M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Monday, March 4, 1985, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director C. T. Conover (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Application for assistance under section 13(i) of the Federal Deposit Insurance Act: Name and location of bank authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(4), (c)(6), (c)(8), and (c)(9) (A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii)).

Application of Pendleton Banking Company, Pendleton, Indiana, an insured State nonmember bank, for consent to purchase certain assets of and assume the liability to pay deposits made in the State Bank of Lapel, Lapel, Indiana, and to establish the two offices of The State Bank of Lapel as branches of Pendleton Banking Company.

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 46,167–L (Amended).
The First National Bank of Midland, Midland, Texas

The Board further determined, by the same majority vote, that no earlier notice of these changes in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

Dated: March 5, 1985.
Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.
[FR Doc. 85–5689 Filed 3–6–85; 8:45 am]
BILLING CODE 6714–01–M

4

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 2:00 p.m. on Monday, March 4, 1985, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director C.T. Conover (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of a memorandum regarding the augmenting of the Corporation's Washington, D.C., housing facilities.

By the same majority vote, the Board further determined that no earlier notice of this change in the subject matter of the meeting was practicable.

Dated: March 5, 1985.
Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.
[FR Doc. 85–5690 Filed 3–6–85; 12:30 pm]
BILLING CODE 6714–01–M

5

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 3:30 p.m. on Friday, March 1, 1985, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to (1) receive bids for the purchase

of certain assets of and the assumption of the liability to pay deposits made in Halifax National Bank of Port Orange, Port Orange, Florida, which was closed by the Senior Deputy Comptroller for Bank Supervision, Office of the Comptroller of the Currency, on Friday, March 1, 1985; (2) accept the bid for the transaction submitted by Barnett Bank of Volusia County, De Land, Florida, an insured State nonmember bank; (3) approve the application of Barnett Bank of Volusia County, De Land, Florida, for consent to purchase certain assets of and to assume the liability to pay deposits made in Halifax National Bank of Port Orange, Port Orange, Florida, and to establish the three offices of Halifax National Bank of Port Orange as branches of Barnett Bank of Volusia County; and (4) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to effect the purchase and assumption transaction.

In calling the meeting, the Board determined, on motion of Director Irvine H. Sprague (Appointive), seconded by Mr. H. Joe Selby, acting in the place and stead of Director C. T. Conover (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: March 5, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-5691 Filed 3-6-85 12:30 am]

BILLING CODE 6714-01-M

6

FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 11:00 a.m., Wednesday, March 13, 1985, following a recess at a conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: March 5, 1985.

James McAfee

Associate Secretary of the Board.

[FR Doc. 85-5664 Filed 3-7-85; 11:12 am]

BILLING CODE 6210-10-M

7

FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, March 13, 1985.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda: Because of its routine nature, no substantive discussion of the following item is anticipated. This matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Federal Reserve Board response to the Federal Trade Commission's rule on sale of used motor vehicles.

Discussion Agenda:

2. Publication for comment of a proposed amendment to Regulation G (Securities Credit by Persons Other Than Banks, Brokers, or Dealers) to permit G-lenders to extend credit to employee stock ownership trusts on a good-faith basis. (Docket No. R-0529)

3. Publication for comment of proposed amendments to Regulations G, T, and U (Securities Credit Transactions) which would exclude loans on face-amount certifcates from margin rules.

4. Any items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: March 5, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-5665 Filed 3-6-85; 11:12 am]

BILLING CODE 6210-01-M

federal register

Friday
March 8, 1985

Part II

Environmental Protection Agency

40 CFR Part 58

Ambient Air Quality Surveillance; Proposed Rule

VOL 50 ISS 46 MR 8 1985 UMI

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 58

[AD-FRL 2742-5]

Ambient Air Quality Surveillance

AGENCY: Environmental Protection Agency.

ACTION: Proposed revision.

SUMMARY: EPA proposes to amend provisions of Part 58 of Chapter 1 of Title 40 of the Code of Federal Regulations to take into account the suggestions offered by State and local air pollution control agencies through the Standing Air Monitoring Work Group (SAMWG) mechanism and the operating experience of State and local agencies, EPA Regional Offices and EPA Headquarters personnel over the last 5 years. Salient changes proposed include: provisions to use most current census population figures to estimate air monitoring network size, allowing 120 days instead of 90 days to submit National Air Monitoring Stations (NAMS) Quarterly data to the National Air Data Bank, to require reporting organizations to submit the results of each individual precision and accuracy test, and to modify network design and siting requirements.

DATE: Comments must be submitted on or before May 7, 1985.

ADDRESS: Submit comments (duplicate copies are preferred) to: Central Docket Section, U.S. Environmental Protection Agency, Attn: Docket No. A–84–28, 401 M Street, SW., Washington, D.C. 20460. Docket No. A–84–28 is located in the Central Docket Section of the Environmental Protection Agency, West Tower Lobby Gallery I, 401 M St., SW., Washington, D.C. The docket may be inspected between 8:00 a.m. and 4:00 p.m. on week days and a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Neil Berg or Stanley Sleva, Monitoring and Data Analysis Division (MD–14). Office of Air Quality Planning and Standards, Environmental Protection Agency, Research Triangle, Park, N.C. 27711, phone: 919–541–5651 or (FTS) 629–5651.

SUPPLEMENTARY INFORMATION:

Background

Section 110(a)(2)(C) of the Clean Air Act requires ambient air quality monitoring for purposes of the State Implementation Plans (SIP's) and for reporting air quality data to EPA. Criteria to be followed when measuring air quality and provisions for daily air pollution index reporting are required by Section 319 of the Act. To satisfy these requirements, on May 10, 1979 (44 FR 27558), EPA established 40 CFR Part 58 which provided detailed requirements for air quality monitoring, data reporting, and surveillance for all of the pollutants for which ambient air quality standards have been established (criteria pollutants) except lead. On September 3, 1981 (44 FR 27558), similar rules were promulgated for lead. On March 20, 1984, similar rules were proposed for PM_{10} and for TSP as a secondary standard.

The regulations in this notice deal with changes to the ambient air quality monitoring, data reporting, and surveillance requirements of 40 CFR 58 based on the experience of State and local agencies, EPA Regional Offices, and EPA Headquarters personnel during the past 5 years.

Proposed Revisions to Part 58—Ambient Air Quality Surveillance

Section 58.1 Definitions.

The revisions proposed today would change the definition of urban area population from the 1970 census to that of the most current decennial census figures. The most current decennial census figures are in the "1980 Census of Population" U.S. Department of Commerce, Bureau of the Census PC 80–1–A1, U.S. Government Printing Office, Washington, D.C., April 1982. There has been an increase of 91 in the number of urbanized areas greater than 50,000 since the 1970 census. The greatest increase (64 urban areas) occurred in the 50,000 to 100,000 population category. The 1970 census showed 275 urban areas and the 1980 census shows 366.

Section 58.35 NAMS data submittal.

The current monitoring regulations specify that all NAMS data be submitted in quarterly reports to the National Air Data Bank within 90 days of the end of each reporting period. This requirement would be changed to 120 days to allow States and Regional Offices more time to throroughly validate the data prior to submitting to the National Air Data Bank.

Analysis of the past three years indicate that 64% of the States report NAMS data within the 90 day period while 95% of the States report within the 120 days period.

Section 58.40 Index reporting.

The revisions proposed today would make the population of urban areas for purposes of Air Quality Index Reporting compatible with the definition of urban area population found in Section 58.1 Definitions. This would increase the number of urban areas required to report a PSI from 105 to 115.

Revisions to Appendix A

Appendix A prescribes minimum quality assurance and specific quality assessment requirements applicable to SLAMS air monitoring data submitted to EPA. Some changes are being proposed to these requirements, primarily in the requirements for reporting the assessment data to EPA. These changes should have a minor, if any, economic impact on monitoring agencies. A more significant change under consideration by EPA to increase the auditing frequency for automated analyzers and particulate matter samplers is not being proposed at this time because of concern about the substantial impact it would have on some agencies. Comments are solicited on any of these issues, which are discussed more fully below.

Air quality data collected from National Air Monitoring Stations (NAMS) and State and Local Air Monitor Stations (SLAMS) are used for a variety of purposes by a number of public agencies, including State and local air pollution control agencies, the Environmental Protection Agency (EPA), the Council of Environmental Quality (CEQ), other Federal agencies, and the Congress, as will as organizations in the private sector. State and local agencies use the data principally for determining compliance with air quality standards, developing State implementation plans, achieving and maintaining air quality, maintenance planning, and reviewing new sources. On the national level, these data are used for regulatory development, re-evaluating the national air quality standards, evaluating State implementation plans, studying air quality trends, estimating health risks, and developing health risk models.

Assessments of the quality of the NAMS and SLAMS data provide these data users with estimates of the accuracy (degree of bias) and precision (variability) of the monitoring data. Such information is essential to the application of the monitoring data to the various objectives. Subsequent to the original establishment of the assessment requirements in 1979, the uses of the data quality information have been re-evaluated, and the specific needs for such information have been refined. The changes in the data assessment requirements being proposed today are intended to improve and expand the usefulness and value of the data quality estimates associated with the NAMS and SLAMS monitoring data.

The most significant change proposed is a change in the reporting requirements for data quality assessments. Under the existing Appendix A requirements, data quality (precision and accuracy) measurements are combined and reported on an integrated "reporting organization" basis. These reporting organizations are State-level agencies or subordinate organizations within a State for which pooled precision and accuracy assessments serve to inform a data user of the overall data quality being achieved by the reporting organization as a whole. The present reporting system does not now provide available data quality indicators for specific individual monitors or monitoring sites.

It is proposed, instead, to require reporting organizations to submit to EPA the results from each individual precision and accuracy test. EPA would then calculate and report the same type of integrated precision and accuracy assessments representative of each reporting organization as are now calculated and reported by the States. More importantly, precision and accuracy information would then be available for each individual monitoring site.

Access to these individual precision and accuracy test results would allow EPA to analyze data quality at specific sites, in specific areas, for specific methods or analyzers, under specific conditions, etc. This additional information will greatly improve the description of the quality of specific blocks of monitoring data, an important benefit for the data user in many instances. For example, more detailed accuracy data directly associated with the pollutant measurements would be very useful in developing and issuing air quality criteria that are to reflect the latest scientific information concerning air pollutants and their effects on public health or welfare. Similarly, other data uses, such as trends anaysis, development of national policies, and research studies, would benefit significantly when site-specific accuracy and precision of the measurement data are known.

This change in reporting should have only a minor impact on monitoring agencies, which would no longer have to carry out the calculations of integrated precision and accuracy estimates for each reporting organization according to the procedures currently specified in Section 4 of Appendix A. The agencies would simply forward the individual results of the precision and accuracy tests directly to EPA. The calculation procedures would still be retained (in Section 5 of the proposed revised Appendix A) to indicate how EPA will calculate the integrated precision and accuracy estimates. Reporting organizations could also continue to calculate the integrated precision and accuracy estimates for use in their own quality assurance programs, even though these estimates would not be reported to EPA.

New forms and data formats are proposed for reporting the individual precision and accuracy test data to EPA. Figures A–1 and A–2 are generalized reporting forms, while Figures A–3 and A–4 are site and method specific reporting forms. Specific comments are solicited as to whether both types of forms are necessary, and if not, which type is preferable or what changes might be beneficial. The new reporting requirements are proposed as Section 4 in the revised Appendix A and include instructions for using the proposed reporting forms.

Another change concerns the procedure in Section 3 for auditing automated analyzers for NO_2. It is proposed to require that NO_2 audit gases for chemiluminescence-type NO_2 analyzers also contain $0.1 \pm .02$ ppm of NO. This requirement is intended to provide a more realistic test of the NO_2 analyzer under conditions that simulate a typical ambient air mix on NO and NO_2, and it is consistent with current NO_2 audit recommendations to be incorporated into Volume II of the Quality Assurance Handbook (Reference 3 of Appendix A).

Some minor changes are proposed in the number of collocated monitoring sites required for assessing the precision of manual monitoring methods. As proposed, the number of collocated sites required for each manual method used would depend on the number of sites in the network and would be 1, 2, or 3 sites for 1–5, 6–20, or over 20 network sites, respectively. It is further proposed that these collocated-sampler precision assessment requirements also apply to lead measurements, replacing the current requirement for analysis of duplicate filter strips for lead. Although many agencies may have to add one or two additional samplers (mostly for lead), the overall impact of these changes should be small because of the small number of collocated sites required for each monitoring network.

Another minor change is proposed in the computation of precision from collocated measurements (Section 5.3 of the revised Appendix A). The calculation of percent difference would be referenced to the average of the two collocated measurements (equation 10) rather than to the measurement from the primary sampler. The reason for this change is that even though only the primary sampler is used for routine measurements, the two collocated measurements are obtained with identical samplers under identical conditions. The average of the two measurements provides the best estimate of the true value. It is therefore statistically more correct to use the average of the two measurements rather than only one of them as the reference for determining the percent difference.

Some very minor changes are also proposed to the general quality assurance requirements in Sections 1 and 2. The language of Sections 1 and 2 would be revised slightly, and a few additional items (training, selection and control of calibration standards, and data quality assessment) are proposed to be added to the list of activities required for quality assurance plans in Section 2. These changes are to augment and clarify the provisions and descriptions of these sections. It is not intended that all quality assurance plans approved under the current language of Section 2 would have to be amended immediately to address the new items. Rather, plans that do not already include procedures for the new activities may be updated as part of the agency's normal, ongoing program to review and modify its quality assurance procedures or in conjunction with an annual EPA systems audit as identified in Section 2.4. A minor related change proposed in Section 3 would clarify that all definitions of reporting organizations must be approved by the appropriate EPA Regional Office.

Numerous other wording changes and revisions in the language have also been made throughout the proposed revised text of Appendix A to improve, clarify or update various provisions, and a new table (Table A–1) is added to summarize the minimum quality assessment requirements of Appendix A.

It should be noted that other changes or revisions to Appendix A (as well as Appendix B) were previously proposed on March 20, 1984 (49 FR 10442) to incorporate provisions applicable to methods for monitoring PM_{10}. Those amendments are still pending. In general, provisions proposed in March for PM_{10} methods are similar or identical to current provisions for TSP or other manual methods. The changes proposed to the current provisions are intended to apply also to PM_{10} methods when the PM_{10} amendments are promulgated. Where possible, the PM_{10} provisions are proposed to be consolidated with provisions for TSP and other similar methods, and applicability to PM_{10}

methods would be affected by use of generic terms such as "particulate matter method" or "particulate matter sampler," which are intended to apply to both TSP and PM_{10} methods. Specific references to PM_{10} are enclosed in brackets [ ] to indicate that the provision would be included only upon promulgation of the PM_{10} amendments package.

As noted in the first paragraph, EPA is considering a future requirement for the more frequent auditing of automated analyzers and particulate matter samplers. From evaluation of the applications and utility of the SLAMS data quality assessment information, EPA is very concerned that the currently required one-per-year audit of these analyzers and samplers is not sufficient to adequately characterize the true quality of the ambient data in all cases. EPA believes that auditing each of these devices every calendar quarter would provide more representative assessments of the data quality. Quarterly audits, together with the presently proposed change to report individual audit results, would make available more detailed and useful information concerning specific sites or specific blocks of ambient monitoring data. Also, quarterly audits would provide sufficient information to assess the precision of automated analyzers, thereby obviating the need for continued reporting of the results from the biweekly precision checks.

Many State and local pollution control agencies have submitted advance comments on this issue. These advance comments from affected agencies indicate sharply polar positions on this matter. Ten State or local agencies reported that they are already auditing all of their analyzers every quarter, and six additional agencies reported that implementation of a quarterly audit program would not be a problem. These agencies support a quarterly audit requirement—some very strongly, corroborating EPA's belief that quarterly audits are necessary to adequately assess data quality and indicating that such a requirement is overdue. Seven other agencies indicated general agreement with the need for more frequent audits but expressed concern about obtaining additional resources necessary to implement quarterly audits.

At the opposite pole, approximately 20 agencies opposed a quarterly audit requirement—some very strongly and profusely—indicating that a substantial amount of additional resources would be needed and suggesting that in the presence of an effective quality assurance program, more frequent auditing of analyzers was not necessary and may even be detrimental if it diverts resources from other quality assurance efforts.

In view of the considerable adverse impact that would be caused on some agencies and the current general unavailability of additional resources, EPA has decided not to propose an increase in the audit frequency at this time. But EPA seeks additional comments on this issue for further study, and proposal of a more frequent audit requirement will be reconsidered in the future. All comments previously received from State and local monitoring agencies will be retained and reconsidered together with the additional comments received in connection with this proposal. Therefore, those agencies need not resubmit the same comments. New comments, of course, are welcome.

Amendments to Appendix B

Appendix B prescribes minimum quality assurance and quality assessment requirements applicable to air monitoring data submitted to EPA in connection with the regulations for Prevention of Significant Deterioration (PSD). Sections 1 and 2 are proposed to be revised, corresponding to revisions to Sections 1 and 2 of Appendix A, to incorporate editorial changes to the language and additional items to be addressed in the required quality assurance plans. Because of the number of minor changes, the entire texts of Section 1 and Sections 2.1 and 2.2 are being reproposed. Also, minor corrections or wording changes are proposed to Section 2.3, and a new introductory paragraph is proposed to be added to Section 3.

A proposed change in Section 3.2 would require that NO_2 audit gases for auditing chemiluminescence-type NO_2 analyzers also contain approximately 0.1 ppm of NO. Another proposed change, in the Section 5 procedure for calculating precision from collocated measurements, provides that the percent difference would be referenced to the average of the two measurements rather than to the measurement from the primary sampler. A new equation (1a) is added for this purpose. Finally, the References section is revised to incorporate corrections and updated information, and a new table summarizing the minimum quality assessment requirements in Appendix B is proposed to be added. These changes are all similar to corresponding changes proposed for Appendix A and are based on the same rationale discussed in connection with Appendix A.

Revisions to Appendix C

Appendix C stipulates the types of monitoring methods that may be used in State air quality monitoring networks. Sections 2.4 and 2.5 are proposed to be revoked and reserved because these sections are obsolete and unnecessary. Also, Section 2.6.1 is proposed to be revoked and reserved because it has expired and is not longer pertinent. The title of Section 2.6 would be changed to reflect the revocation of Section 2.6.1. These changes would have no impact on monitoring agencies.

Revisions to Appendix D

The revisions to Appendix D proposed today would revise Section 2.5 to address the possible scavenging effect of trees on ozone at middle scale sites and to change the requirements for ozone monitoring to correspond with the ozone season as determined on a State by State basis and designated in the Storage and Retrieval of Aerometric Data (SAROAD) files.

In Section 3.2, dealing with SO_2 NAMS network design criteria, Table 3 is changed to make it compatible with the criteria proposed for PM_{10} and for the TSP secondary standard. The minimum urban area size requiring NAMS has been raised from 50,000 to 100,000, and a 4th population category of those urban areas greater than 1,000,000 has been added. Also, the range of required monitors has been broadened, especially in large areas of high concentration. This will better meet the national data needs of the Agency.

In Sections 3.3, and 3.5, dealing with design criteria for NAMS for CO, and NO_2 respectively, the criteria would be revised to allow a middle scale site for NAMS. This change would make the design criteria compatible with the existing criteria for Pb and the proposed criteria for PM_{10} and TSP. Also, this change would be consistent with using the objective of the monitoring to determine the location of the site rather than letting the required scale of representativeness dictate site location. This change should allow the site to be identified in terms of the most appropriate scale of representativeness. Middle scale sites would be allowed to fulfill category (a) requirements for TSP, PM_{10} Pb, SO_2, and NO_2. Middle scale sites would be allowed to fulfill category (b) requirements for CO. Table 5, Summary of Spatial Scales for SLAMS and NAMS would be revised to accommodate all of these revisions to the allowable scales.

Revisions to Appendix E

The revisions to Appendix E proposed today would add a specific section entitled "Spacing from Trees and Other Considerations" to each of the 7 criteria pollutant sections, including the section on PM_{10} which was proposed on March 20, 1984. Although the new sections deal with trees as reacting surfaces, adsorbing surfaces, obstructions to wind flow, and in some cases emitters of particulate matter (pollen), the only change proposed at this time is the addition of "from the dripline" to the statement "should be set back 20 meters from trees" and the requirement that the probe must be 10 meters from the dripline when trees act as an obstruction or produce pollen in significant quantities. EPA solicits input from State and local agencies and other organizations concerning their monitoring experiences with situations where trees may or may not unduly bias the air quality data. EPA welcomes pollutant specific information or monitoring data which could indicate whether or not trees are a cause for concern in selecting monitoring locations. Based on the comments and/or data received during the comment period, the final rules resulting from today's proposal may include additional or fewer restrictions concerning trees.

Revisions to Appendix G

The revisions to Appendix G proposed today would leave to the discretion of the reporting agency the requirement to measure and report the Pollutant Standard Index (PSI) in those cases where the PSI as calculated by the critical pollutant has not exceeded a value of 50 during the previous calendar year.

Impact on Small Entities

The Regulatory Flexibility Act requires that all federal agencies consider the impacts of final regulations on small entities, which are defined to be small businesses, small organizations, and small governmental jurisdictions (5 U.S.C. 601 et seq.). EPA's consideration pursuant to this Act indicates that no small entity group would be significantly affected in an adverse way by the proposal. Therefore, pursuant to 5 U.S.C. 605(b), the Administrator certifies that this regulation will not have a significant economic impact on a substantial number of small entities.

Other Reviews

Since this revision is classified as minor, no additional reviews are required.

The proposed revisions to Part 58 were submitted to the Office of Management and Budget (OMB) for review (under Executive Order 12291). This is not a "major" rule under E.O. 12291 because it does not meet any of the criteria defined in the Executive Order.

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* Submit comments on these requirements to the Office of Information and Regulatory Affairs; OMB; 726 Jackson Place, NW.; Washington, D.C. 20503 marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements.

List of Subjects in 40 CFR Part 58

Air Pollution Control, Intergovernmental relations, Reporting and recordkeeping requirements, Quality assurance requirements, Pollutant standard index, Ambient air quality monitoring network.

(Secs. 110, 301(a) and 319, Clean Air Act, 42 U.S.C. 7410, 7801(a), 7819)

Dated: February 20, 1985.

Lee M. Thomas,

Administrator.

PART 58—AMBIENT AIR QUALITY SURVEILLANCE

For the reasons set forth in the Preamble, Part 58 of Chapter I of Title 40 of the *Code of Federal Regulations* is proposed to be amended as follows:

1. Section 58.1 is amended by revising paragraph (s) to read as follows:

§ 58.1 Definitions.

* * * * *

(s) "Urban area population" means the population defined in the most recent decennial U.S. Census of Population Report.

2. Paragraph (c) of Section 58.35 is revised to read as follows:

§ 58.35 NAMS data submittal.

* * * * *

(c) * * *

(1) Be received by the National Air Data Bank, after being submitted by the States to the Regional Offices for review, within 120 days of the end of each reporting period, and

3. Section 58.40 is amended by revising paragraph (c) to read as follows:

§ 58.40 Index reporting.

* * * * *

(c) The population of urban areas for purposes of index reporting are the most recent U.S. census population figures as defined in § 58.1 paragraph (s).

4. Appendix A is revised to read as follows:

Appendix A—Quality Assurance Requirements for State and Local Air Monitoring Stations (SLAMS)

1. General Information

This Appendix specifies the minimum quality assurance requirements applicable to SLAMS air monitoring data submitted to EPA. States are encouraged to develop and maintain quality assurance programs more extensive than the minimum required.

Quality assurance of air monitoring systems includes two distinct and important interrelated functions. One function is the control of the measurement process through the implementation of policies, procedures, and corrective actions. The other function is the assessment of the quality of the monitoring data (the product of the measurement process). For a given monitoring system, the greater the effort and the effectiveness of the control, the better the resulting quality of the monitoring data will be. The results of data quality assessments indicate whether the control efforts need to be increased.

Documentation of the quality assessments of the monitoring data is important to data users, who can then consider the impact of the data quality in specific applications (see Reference 1). Accordingly, assessments of SLAMS data quality are required to be reported to EPA periodically. To provide national uniformity in this assessment and reporting of data quality for all SLAMS networks, specific assessment and reporting procedures are prescribed in detail in Sections 3, 4, and 5 of this Appendix.

In contrast, the control function encompasses a variety of policies, procedures, specification, standards, and corrective measures which affect the quality of the resulting data. The selection and extent of the quality control activities—as well as additional quality assessment activities—used by a monitoring agency depend on a number of local factors such as the field and laboratory conditions, the objectives of the monitoring, the level of the data quality needed, the expertise of assigned personnel, the cost of control procedures, pollutant concentration levels, etec. Therefore, the quality assurance requirements, in Section 2 of this Appendix, are specified in general terms to allow each State to develop a quality assurance system that is most efficient and effective for its own circumstances.

2. Quality Assurance Requirements

2.1 Each State must develop and implement a quality assurance program consisting of policies, procedures, specifications, standards and documentation necessary to:

(1) Provide data of adequate quality to meet monitoring objectives, and

(2) Minimize loss of air quality data due to malfunctions or out-of-control conditions.

This quality assurance program must be described in detail, suitably documented, and approved by the Regional Administrator, or his designee. The Quality Assurance Program will be reviewed during the annual system audit described in Section 2.4.

2.2 Primary guidance for developing the quality assurance program is contained in References 2 and 3, which also contain many suggested procedures, checks, and control specifications. Section 2.0.9 of Reference 3 describes specific guidance for the development of a Quality Assurance Program for SLAMS automated analyzers. Many specific quality control checks and specifications for manual methods are included in the respective reference methods described in Part 50 of this chapter or in the respective equivalent method descriptions available from EPA (see Reference 4). Similarly, quality control procedures related to specifically designated reference and equivalent analyzers are contained in the respective operation and instruction manuals associated with those analyzers. This guidance, and any other pertinent information from appropriate sources, should be used by the States in developing their quality assurance programs.

As a minimum, each quality assurance program must include operational procedures for each of the following activities:

(1) Selection of methods, analyzers, or samplers;

(2) Training;

(3) Installation of equipment;

(4) Selection and control of calibration standards;

(5) Calibration;

(6) Zero/span checks and adjustments of automated analyzers;

(7) Control checks and their frequency;

(8) Control limits for zero, span and other control checks, and respective corrective actions when such limits are surpassed;

(9) Calibration and zero/span checks for multiple range analyzers (see Section 2.6 of Appendix C of this part);

(10) Preventive and remedial maintenance;

(11) Quality control procedures for air pollution episode monitoring;

(12) Recording and validating data;

(13) Data quality assessment (precision and accuracy);

(14) Documentation of quality control information.

2.3 *Pollutant Concentration and Flow Rate Standards.*

2.3.1 Gaseous pollutant concentration standards (permeation devices or cylinders of compressed gas) use to obtain test concentrations for CO, SO_2, and NO_2 must be traceable to either a National Bureau of Standards (NBS) Standard Reference Material (SRM) or an NBS/EPA-approved commercially available Certified Reference Material (CRM). CRM's are described in Reference 5, and a list of CRM sources is available from the Quality Assurance Division (MD–77), Environmental Monitoring Systems Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711.

General guidance and recommended techniques for certifying gaseous working standards against an SRM or CRM are provided in Section 2.0.7 of Reference 3. Direct use of a CRM as a working standard is acceptable, but direct use of an NBS SRM as a working standard is discouraged because of the limited supply and expense of SRM's.

2.3.2 Test concentrations for ozone must be obtained in accordance with the UV photometric calibration procedure specified in Appendix D of Part 50 of this chapter, or by means of a certified ozone transfer standard. Consult References 6 and 7 for guidance on primary and transfer standards for ozone.

2.3.3. Flow rate measurements must be made by a flow measuring instrument that is traceable to an authoritative volume or other standard. Guidance for certifying some types of flowmeters is provided in Reference 2.

2.4 National Performance and System Audit Programs.

Agencies operating SLAMS network stations shall be subject to annual EPA systems audits of their ambient air monitoring program and are required to participate in EPA's National Performance Audit Program. These audits are described in Section 1.4.18 of Reference 2 and Section 2.0.11 of Reference 3. For instructions, agencies should contact either the appropriate EPA Regional Quality Assurance Coordinator or the Quality Assurance Division (MD–77), Environmental Monitoring Systems Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

3. Data Quality Assessment Requirements

All ambient monitoring methods or analyzers used in SLAMS shall be tested periodically, as described in this Section 3, to quantitatively assess the quality of the SLAMS data being routinely produced. Measurement accuracy and precision are estimated for both automated and manual methods. The individual results of these tests for each method or analyzer shall be reported to EPA as specified in Section 4. EPA will then calculate quarterly integrated estimates of precision and accuracy applicable to the SLAMS data as described in Section 5. Data assessment results should be reported to EPA only for methods and analyzers approved for use in SLAMS monitoring under Appendix C of this part.

The integrated data quality assessment estimates will be calculated on the basis of "reporting organizations." A reporting organization is defined as a State, subordinate organization within a State, or other organization that is responsible for a set of stations that monitor the same pollutant and for which precision or accuracy assessments can be pooled. States must define one or more reporting organizations for each pollutant such that each monitoring station in the State SLAMS network is included in one, and only one, reporting organization.

Each reporting organization shall be defined such that precision or accuracy among all stations in the organization can be expected to be reasonably homogeneous, as a result of common factors. Common factors that should be considered by States in defining reporting organizations include: (1) Operation by a common team of field operators, (2) common calibration facilities, and (3) support by a common laboratory or headquarters. Where there is uncertainty in defining the reporting organizations or in assigning specific sites to reporting organizations, States shall consult with the appropriate EPA Regional Office for guidance. All definitions of reporting organizations shall be subject to final approval by the appropriate EPA Regional Office.

Assessment results shall be reported on forms or in a format similar to Figures A–1 and A–2 (general forms) or Figures A–3 and A–4 (site- and method-specific forms). Concentration and flow standards must be as specified in Section 2.3 or 3.4. In addition, working standards and equipment used for accuracy audits must not be the same standards and equipment used for routine calibration. Concentration measurements reported from analyzers or analytical systems must be derived by means of the same calibration curve and data processing system used to obtain the routine air monitoring data. Table A–1 provides a summary of the minimum data quality assessment requirements, which are described in more detail in the following sections.

3.1 *Precision of Automated Methods.*

A one-point precision check must be carried out at least once every two weeks on each automated analyzer used to measure SO_2, NO_2, O_3 and CO. The precision check is made by challenging the analyzer with a precision check gas of known concentration between 0.08 and 0.10 ppm for SO_2, NO_2, and O_3 analyzers, and between 8 and 10 ppm for CO analyzers. To check the precision of SLAMS analyzers operating on ranges higher than 0 to 1.0 ppm for SO_2, NO_2, andO_3, or 0 to 100 ppm for CO, use precision check gases of appropriately higher concentration as approved by the Regional Administrator or his designee. However, the results of precision checks at concentration levels other than those shown above need not be reported to EPA. The standards from which precision check test concentrations are obtained must meet the specifications of section 2.3.

Except for certain CO analyzers described below, analyzers must operate in their normal sampling mode during the precision check, and the test atmosphere must pass through all filters, scrubbers, conditioners and other components used during normal ambient sampling and as much of the ambient air inlet system as is practicable. If permitted by the associated operation or instruction manual, a CO analyzer may be temporarily modified during the precision check to reduce vent or purge flows, or the test atmosphere may enter the analyzer at a point other than the normal sample inlet, *provided that* the analyzer's response is not likely to be altered by these deviations from the normal operational mode. If a precision check is made in conjunction with a zero or span adjustment, it must be made prior to such zero or span adjustments.

The differences between the actual concentration of the precision check gas and the concentration indicated by the analyzer is used to assess the precision of the monitoring data as described in section 5.1.

3.2 *Accuracy of Automated Methods.*

Each calendar quarter, audit at least 25 percent of the SLAMS analyzers that monitor for SO_2, NO_2, O_3, or CO such that each analyzer is audited at least once per year. If there are fewer than four analyzers for pollutant within a reporting organization, randomly reaudit one or more analyzers so that at least one analyzer for that pollutant is audited each calendar quarter. Where possible, EPA strongly encourages more frequent auditing, to an audit frequency of up to once per quarter for each SLAMS analyzer.

The audit is made by challenging the analyzer with at least one audit gas of known concentration from each of the following ranges which fall within the measurement range of the analyzer being audited:

Audit level	Concentration range, ppm		
	SO_2, O_3	NO_2	CO
1	0.03–0.08	0.03–0.08	3–8
2	0.15–0.20	0.15–0.20	15–20
3	0.35–0.45	0.35–0.45	35–45
4	0.80–0.90		80–90

NO_2 audit gas for chemiluminescence-type NO_2 analyzers must also contain 0.10∓.02 ppm NO to approximate a typical ambient mix of NO and NO_2.

To audit SLAMS analyzers operating on ranges higher then 0 to 1.0 ppm for SO_2, NO_2, and O_3 or 0 to 100 ppm for CO, use audit gases of appropriately higher concentration as approved by the Regional Administrator or his designee. The results of audits at concentration levels other than those shown in the above table need not be reported to EPA.

The standards from which audit gas test concentrations are obtained must meet the specifications of Section 2.3. Working or transfer standards and equipment used for auditing must not be the same as the standards and equipment used for calibration and spanning, but may be referenced to the same NBS SRM, CRM, or primary UV photometer. The auditor should not be the operator/analyst who conducts the routine monitoring, calibration, and analysis.

The audit shall be carried out by allowing the analyzer to analyze the audit test atmosphere in its normal sampling mode such that the test atmosphere passes through all filters, scrubbers, conditioners, and other sample inlet components used during normal ambient sampling and as much of the ambient air inlet system as is practicable. The exception given in section 3.1 for certain CO analyzers does not apply for audits.

Report both the test concentrations and the concentration measurements produced by the analyzer being tested. The differences between these concentrations are used to assess the accuracy of the monitoring data as described in Section 5.2.

3.3 *Precision of Manual Methods.*

For networks of manual methods, select one or more monitoring sites within the reporting organization for duplicate sampling as follows: for 1 to 5 sites, select 1 site; for 6 to 20 sites, select 2 sites; and for over 20 sites, select 3 sites. Where possible, additional collocated sampling is encouraged. Sites with the highest expected annual arithmetic mean concentration must be selected or, if such sites are impractical, alternate sites approved by the Regional Administrator may be selected. The two collocated samplers must be within 4 meters of each other, and high-volume particulate matter [or PM_{10}] samplers must be at least 2 meters apart to preclude airflow interference. Calibration, sampling and analysis must be the same for other collocated samplers and the same as for all other samplers in the network.

For each pair of collocated samplers, designate one sampler as the primary sampler whose samples will be used to report air quality for the site, and designate the other as the duplicate sampler. Each duplicate sampler must be operated concurrently with its associated routine sampler at least once per week. The operation schedule should be selected so that the sampling days are distributed evenly over the year and over the seven days of the week. Report the measurements from both samplers at each collocated sampling site, including measurements falling below the limits specified in 5.3(a). The differences in measured concentration ($\mu g/m^3$) between the two collocated samplers are used to calculate precision as described in Section 5.3.

3.4 *Accuracy of Manual Methods.*

The accuracy of manual sampling methods is assessed by auditing a portion of the measurement process. For particulate matter methods, the flow rate during sample collection is audited. For Pb methods, the flow rate and analytical measurement are audited. The flow rate audit should be scheduled so as to avoid interference with a scheduled sampling period. For SO_2 and NO_2 methods, the analytical measurement is audited.

(a) *Particulate matter methods.* Each calendar quarter, audit the flow rate of at least 25 percent of the samplers such that each sampler is audited at least once per year. If there are fewer than four high-volume samplers within a reporting organization, randomly reaudit one or more samplers so that one sampler is audited each calendar quarter. Audit each sampler at its normal operating flow rate, using a flow rate transfer standard as described in Section 2.3.3. The flow rate standard used for auditing must not be the same flow rate standard used to calibrate the sampler. However, both the calibration standard and the audit standard may be referenced to the same primary flow rate standard. The flow audit should be scheduled so as to avoid interference with a scheduled sampling period. The differences between the audit flow rate and the flow rate indicated by the sampler's normally used flow indicator are used to calculate accuracy as described in Section 5.4.

Great care must be used in auditing high-volume particulate matter samplers having flow regulators because the introduction of resistance plates in the audit flow standard device can cause abnormal flow patterns at the point of flow sensing. For this reason, the flow audit standard should be used with a normal filter in place and without resistance plates in auditing flow-regulated high-volume samplers, or other steps should be taken to assure that flow patterns are not perturbed at the point of flow sensing.

(b) *SO_2 Methods.* Prepare audit solutions from a working sulfite-TCM solution as described in section 10.2 of the SO_2 Reference Method (Appendix A of Part 50 of this chapter). These audit samples must be prepared independently from the standardized sulfite solutions used in the routine calibration procedure. Sulfite-TCM audit samples must be stored between 0 and 5 °C and expire 30 days after preparation.

Prepare audit samples in each of the concentration ranges of 0.2–0.3, 0.5–0.6, and 0.8–0.9 μg SO^2/ml. Analyze an audit sample in each of the three ranges at least once each day that samples are analyzed and at least twice per calendar quarter. The differences between the audit concentrations (in μg SO_2/ml) and the indicated concentrations (in μg SO_2/ml) are used to calculate accuracy as described in section 5.4.2.

(c) *NO_2 Methods.* Prepare audit solutions from a working sodium nitrite solution as described in the appropriate equivalent method (see reference 4). These audit samples must be prepared independently from the standardized nitrite solution used in the routine calibration procedure. Sodium nitrite audit samples expire 3 months after preparation. Prepare audit samples in each of the concentration ranges of 0.2–0.3, 0.5–0.6, and 0.8–0.9 μg NO_2/ml. Analyze an audit sample in each of the three ranges at least once each day that samples are analyzed and at least twice per calendar quarter. The differences between the audit concentrations (in μg NO_2/ml) and the indicated concentrations (in μg NO_2/ml) are used to calculate accuracy as described in section 5.4.2.

(d) *Pb Methods.* For the Pb reference method (Appendix G of Part 50 of this chapter), the flow rates of the high-volume Pb samplers shall be audited as part of the TSP network using the same procedures described in Section 3.4(a). For agencies operating both TSP and Pb networks, 25 percent of the total number of high-volume samplers are to be audited each quarter.

Each calendar quarter, audit the Pb reference method analyses using glass fiber filter strips containing a known quantity of Pb. These audit sample strips are prepared by depositing a lead solution on 1.9 cm by 20.3 cm (¾ inch by 8 inch) unexposed glass fiber filter strips and allowing them to dry thorougly. The audit samples must be prepared using batches of reagents different from those used to calibrate the lead analytical equipment being audited. Prepare audit samples in the following concentration ranges:

Range	Pb concentration, μg/strip	Equivalent ambient Pb concentration,[1] $\mu g/m^3$
1	100– 300	0.5–1.5
2	600–1000	3.0–5.0

[1] Equivalent ambient Pb concentration in $\mu g/m^3$ is based on sampling at 1.7 m^3/min for 24 hours on 20.3 cm × 25.4 cm (8 inch × 10 inch) glass fiber filter.

Audit samples must be extracted using the same extraction procedure used for exposed filters.

Analyze three audit samples in each of the two ranges each quarter samples are analyzed. The audit sample analyses shall be distributed as much as possible over the entire calendar quarter. The percent difference between the audit concentration (in μg Pb/strip) and the analyst's measured concentration (in μg Pb/strip) is used to calculate analysis accuracy as described in Section 5.4.2.

The accuracy of an equivalent method is assessed in the same manner as for the reference method. The flow auditing device and Pb analysis audit samples must be compatible with the specific requirements of the equivalent method.

4. Reporting Requirements

For each pollutant, prepare a list of all monitoring sites and their SAROAD site identification codes in each reporting organization and submit the list to the EPA Regional Office, with a copy to the Environmental Monitoring Systems Laboratory (MD-75), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711 (EMSL/RTP). Whenever there is a change in this list of monitoring sites in a reporting organization, report this change to the Regional Office and to EMSL/RTP.

4.1 *Quarterly Reports.*

Within 120 calendar days after the end of each quarter, each reporting organization shall report to EMSL/RTP through the appropriate EPA Regional Office the results of all valid precision and accuracy assessments it has carried out during the quarter. This information should be reported in a format similar to that of the forms illustrated in Figures A–1 and A–2 or A–3 and A–4, or in an alternate format (including machine-readable or electronic transfer formats) acceptable to the appropriate Regional Office. Instructions for using the forms are provided in Section 4.3 below. Do not report results from invalid tests, from tests carried out during a time period for which ambient data immediately prior or subsequent to the tests were invalidated for appropriate reasons, or from tests of methods or analyzers not approved for use in SLAMS monitoring networks under Appendix C of this Part.

Within 120 days after the data quality assessment information is submitted, EPA will calculate integrated precision and accuracy estimates for each reporting organization as specified in Section 5 and return reports of the respective estimates to each reporting organization.

4.2. *Annual Reports.*

When precision and accuracy estimates for a reporting organization have been calculated for all four quarters of the calendar year, EPA will calculate the average probability limits for precision and accuracy for the year and will associate them with the data submitted in the annual SLAMS report required by § 58.26.

Each reporting organization shall submit, along with its annual SLAMS report, a listing by pollutant of all monitoring sites in the reporting organization.

4.3 *Instructions for Data Assessment Reporting Forms.*

Optional forms for reporting data quality assessment information are provided in Figures A–1 through A–4. The forms in Figures A–3 and A–4 are site- and method-specific forms for reporting assessment data from individual analyzers or samplers, whereas the forms in Figures A–1 and A–2 are general forms for reporting data from several sites and methods on the same form. The instructions for both sets of forms are identical:

Common Information (all forms):

Block No	Description
1-2	State: The two digit SAROAD State code.
3-5	Reporting Organization: A unique 3-digit code assigned by each State to each of its respective reporting organizations.
6-7	Year: Last two digits of the calendar year corresponding to the quarter specified in block 8.
8	Quarter: Enter 1, 2, 3, or 4 to refer to the calendar quarter during which the data quality assessments were obtained.
9	Enter "1" for original assessment data, "2" to revise assessment data previously submitted, or "3" to delete previously submitted assessment data.

Also enter the name of the reporting organization and the date the form is submitted.

Accuracy data (Figs. A–1 and A–3):

Block No.	Description
10-18	Site: Enter the SAROAD site identification code (first 9 digits only)
21-23	Method Code: Enter the measurement method code from the back of the form. Also enter the pollutant symbol (e.g., SO_2, CO, TSP, [PM_{10}], etc.) on the blank to the left of block No. 21.
24	Precode with an "A"
25-28	Date: Enter month and day of audit.
29	T: Enter "1" if the audit standards were traced to NBS by the reporting organization; enter "2" if the standards were traced to NBS by some other organization.
30	S: Enter the code letter of the source of the local primary standard used, from the list on the form.
31-32	Unit code: Enter the unit code number from the unit code list on the form (use only the codes listed). Also write in the unit on the blank to the left of block 31.
33	Precoded with a "0" or a "1."
34-40	Level 1 Actual: Enter the actual concentration determined from the audit standard in appropriate blocks with respect to the precoded decimal point.
41-47	Level 1 Indicated: Enter the concentration indicated by the analyzer or sampler being audited in appropriate blocks with respect to the precoded decimal point.
48-61	Level 2: Enter the actual and indicated concentrations for audit level 2, if applicable.
34-61	Levels 3 and 4 (if applicable): On the second line, enter the actual and indicated concentrations for audit level 3 and, if used, audit level 4.

Precision data (Figs. A–2 and A–4):

Block No.	Description
10-18	Site: Enter the SAROAD site identification code (first 9 digits only).
21-23	Method Code: Enter the measurement method code from the back of the form. Also enter the pollutant symbol (e.g., NO_2, Pb, TSP, [PM_{10}], etc.) on the blank to the left of block No. 21.
24	Precoded with a "P."
25-28	Date: Enter month and day of test.
31-32	Unit Code: Enter the unit code number from the unit code list on the form (use only the codes listed). Also write in the unit on the blank to the left of block 31.
34-40	Actual or Primary: Enter the value of the known test concentration or the concentration measurement associated with the sampler designated as the primary sampler.
41-47	Indicated or Duplicate: Enter the value of the concentration measurement from the analyzer or the duplicate collocated sampler.

5. Calculations for Data Quality Assessment

Calculation of estimates of integrated precision and accuracy are carried out by EPA according to the following procedures. Reporting orgnizations should report the results of individual precisions and accuracy tests as specified in Sections 3 and 4 even though they may elect to carry out some or all of the calculations in this section on their own.

5.1 *Precision of Automated Methods.*

Estimates of the precision of automated methods are calculated from the results of biweekly precision checks as specified in Section 3.1. At the end of each calendar quarter, an integrated precision probability interval for all SLAMS analyzers in the reporting organization is calculated for each pollutant.

(a) *Single Analyzer Precision.* The percentage difference (d_i) for each precision check is calculated using equation 1, where Y_i is the concentration indicated by the analyzer for the i-th precision check and X_i is the known concentration for the i-th precision check.

$$d_i = \frac{Y_i - X_i}{X_i} \times 100 \qquad (1)$$

For each analyzer, the quarterly average (d_j) is calculated with equation 2, and the standard deviation (S_j) with equation 3, where n is the number of precision checks on the instrument made during the calendar quarter. For example, n should be 6 or 7 if precision checks are made bi-weekly during a quarter.

$$d_j = \frac{1}{n} \sum_{i=1}^{n} d_i \qquad (2)$$

$$S_j = \sqrt{\frac{1}{n-1}\left[\sum_{i=1}^{n} d_i^2 - \frac{1}{n}\left(\sum_{i=1}^{n} d_i\right)^2\right]} \qquad (3)$$

(b) *Precision for Reporting Organization.* For each pollutant, the average of averages (D) and the pooled standard deviation (S_a) are calculated for all analyzers monitoring the pollutant, using either equations 4 and 5 or 4a and 5a, where k is the number of analyzers within the reporting organization for a single pollutant.

$$D = \frac{1}{k} \sum_{j=1}^{k} d_j \qquad (4)$$

$$D = \frac{n_1 d_1 + n_2 d_2 + \ldots + n_j d_j + \ldots + n_k d_k}{n_1 + n_2 + \ldots + n_j + \ldots + n_k} \qquad (4a)$$

$$S_a = \sqrt{\frac{1}{k} \sum_{j=1}^{k} S_j^2} \qquad (5)$$

$$S_a = \sqrt{\frac{(n_1 - 1)S_1^2 + (n_2 - 1)S_2^2 + \ldots + (n_j - 1)S_j^2 + \ldots + (n_k - 1)S_k^2}{n_1 + n_2 + \ldots + n_j + \ldots + n_k - k}} \qquad (5a)$$

Equations 4 and 5 are used when the same number of precisions checks are made for each analyzer. Equations 4a and 5a are used to obtain a weighted average and a weighted standard deviation when different numbers of precision checks are made for the analyzers.

For each pollutant, the 95 Percent Probability Limits for the precision of a reporting organization are calculated using equations 6 and 7.

Upper 95 Percent Probability Limit = $D + 1.96 S_a$ (6)

Lower 95 Percent Probability Limit = $D - 1.96 S_a$ (7)

5.2 *Accuracy of Automated Methods.*

Estimates of the accuracy of automated methods are calculated from the results of independent audits as described in Section 3.2. At the end of each calendar quarter, an integrated accuracy probability interval for all SLAMS analyzers in the reporting organization is calculated for each pollutant. Separate probability limits are calculated for each audit concentration level listed in Section 3.2.

(a) *Single Analyzer Accuracy.* The percentage difference (d_i) for each audit concentration is calculated using equation 1, where Y_i is the analyzer's concentration measurement from the i-th audit check and X_i is the actual concentration of the audit gas used for the i-th audit check.

(b) *Accuracy for Reporting Organization.* For each audit concentration level, the average (D) of the individual percentage differences (d_i) for all n analyzers measuring a given pollutant audited during the quarter is calculated using equation 8.

$$D = \frac{1}{n} \sum_{i=1}^{n} d_i \qquad (8)$$

For each concentration level, the standard deviation (S_a) of all the individual percentage differences for all analyzers audited during the quarter is calculated, for each pollutant, using equation 9.

$$S_a = \sqrt{\frac{1}{n-1}\left[\sum_{i=1}^{n} d_i^2 - \frac{1}{n}\left(\sum_{i=1}^{n} d_i\right)^2\right]} \qquad (9)$$

For reporting organizations having four or fewer analyzers for a particular pollutant, only one audit is required each quarter and the average and standard deviation cannot be calculated. For such reporting organizations, the audit results of two consecutive quarters are required to calculate an average and a standard deviation, using equations 8 and 9. Therefore, the reporting of probability limits is on a semi-annual (instead of a quarterly) basis.

For each pollutant, the 95 Percent Probability Limits for the acuracy of a reporting organization are calculated at each audit concentration level using equations 6 and 7.

5.3 *Precision of Manual Methods.*

Estimates of precision of manual methods are calculated from the results obtained from collocated samplers as described in Section 3.3. At the end of each calendar quarter, an integrated precision probability interval for all collocated samplers operating in the reporting organization is calculated for each manual method network.

(a) *Single Sampler Precision.* At low concentrations, agreement between the measurements of collocated samplers, expressed as percent age differences, may be relatively poor. For this reason, collocated measurement pairs are selected for use in the precision calculations only when both measurements are above the following limits:

TSP: 20 $\mu g/m^3$,
SO_2: 45 $\mu g/m^3$,
NO_2: 30 $\mu g/m^3$,
Pb: 0.25 $\mu g/m^3$, and
[PM_{10}: 20 $\mu g/m^3$].

For each selected measurement pair, the percentage difference (d_i) is calculated, using equation 10.

$$d_i = \frac{Y_i - X_i}{(Y_i + X_i)/2} \times 100 \qquad (10)$$

Where Y_i is the pollutant concentration measurement obtained from the duplicate sampler and X_i is the concentration measurement obtained from the primary sampler designated for reporting air quality for the site. For each site, the quarterly average percentage difference (d_j) is calculated from equation 2 and the standard deviation (S_j) is calculated from equation 3, where n = the number of selected measurement pairs at the site.

(b) *Precision for Reporting Organization.* For each pollutant, the average percentage difference (D) and the pooled standard deviation (S_p) are calculated, using equations 4 and 5, or using equations 4a and 5a if different numbers of paired measurements are obtained at the collocated sites. For these calculations, the k of quations 4, 4a, 5 and 5a is the number of collocated sites.

The 95 Percent Probability Limits for the integrated precision for a reporting organization are calculated using equations 11 and 12.

$$\text{Upper 95 Percent Probability Limit} = D + 1.96 \frac{S_p}{\sqrt{2}} \quad (11)$$

$$\text{Lower 95 Percent Probability Limit} = D - 1.96 \frac{S_p}{\sqrt{2}} \quad (12)$$

5.4 *Accuracy for Manual Methods.*

Estimates of the accuracy of manual methods are calculated from the results of independent audits as described in Section 3.4. At the end of each calendar quarter, an integrated accuracy probability interval is calculated for each manual method network operated by the reporting organization.

5.4.1 *Particulate Matter Samplers (including reference method Pb samplers).*

(a) *Single Sampler Accuracy.* For the flow rate audit described in Section 3.4(a), the percentage difference (d_i) for each audit is calculated using equation 1, where X_i represents the known flow rate and Y_i represents the flow rate indicated by the sampler.

(b) *Accuracy for Reporting Organization.* For each type of particulate matter measured (i.e., TSP/Pb and [PM_{10}]), the average (D) of the individual percentage differences for all similar particulate matter samplers audited during the calendar quarter is calculated using equation 8. The standard deviation (S_p) of the percentage differences for all of the similar particulate matter samplers audited during the calendar quarter is calculated using equation 9. The 95 percent probability limits for the integrated accuracy for the reporting organization are calculated using equations 6 and 7. For reporting organizations having four or fewer particulate matter samplers, only one audit is required each quarter and the audit results of two consecutive quarters are required to calculate an average and a standard deviation. In that case, probability limits will be reported semi-annually rather than quarterly.

5.4.2 *Analytical Methods for SO_2, NO_2, and Pb.*

(a) *Single Analysis-Day Accuracy.* For each of the audits of the analytical methods for SO_2, NO_2, and Pb described in Section 3.4 (b), (c), and (d), the percentage difference (d_i) at each concentration level is calculated using equation 1, where X_i represents the known value of the audit sample and Y_i represents the value of SO_2, NO_2, and Pb indicated by the analytical method.

(b) *Accuracy for Reporting Organization.* For each analytical method, the average (D) of the individual percentage differences at each concentration level for all audits during the calendar quarter is calculated using equation 8. The standard deviation (S_p) of the percentage differences at each concentration level for all audits during the calendar quarter is calculated using equation 9. The 95 percent probability limits for the accuracy for the reporting organization are calculated using equations 6 and 7.

References

1. Rhodes, R.C. Guideline on the Meaning and Use of Precision and Accuracy Data Required by 40 CFR Part 58, Appendices A and B. EPA–600/4–83–023. U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, June, 1983.

2. "Quality Assurance Handbook for Air Pollution Measurement Systems, Volume 1—Principles." EPA–600/9–76–005. March 1976. Available from U.S. Environmental Protection Agency, Environmental Monitoring Systems Laboratory (MD–77), Research Triangle Park, NC 27711.

3. "Quality Assurance Handbook for Air Pollution Measurement Systems, Volume II—Ambient Air Specific Methods." EPA–600/4–77–027a. May 1977. Available from U.S. Environmental Protection Agency, Environmental Monitoring Systems Laboratory (MD–77), Research Triangle Park, NC 27711.

4. "List of Desingated Reference and Equivalent Methods." Available from U.S. Environmental Protection Agency, Department E (MD–77), Research Triangle Park, NC 27711.

5. Hughes, E.E. and J. Mandel. A Procedure for Establishing Traceability of Gas Mixtures to Certain National Bureau of Standards SRM's. EPA–600/7–81–010. U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, May, 1981. (Joint NBS/EPA Publication)

6. Paur, R.J. and F.F. McElroy. Technical Assistance Document for the Calibration of Ambient Ozone Monitors. EPA–600/4–79–057. U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, September, 1979.

7. McElroy, F.F. Transfer Standards for the Calibration of Ambient Air Monitoring Analyzers for Ozone. EPA–600/4–79–056. U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, September, 1979.

TABLE A–1.—MINIMUM DATA ASSESSMENT REQUIREMENTS

Method	Assessment method	Coverage	Frequency	Parameters reported
Precision				
Automated methods for SO_2, NO_2, O_3, and CO.	Response check at concentration between .08 and .10 ppm (8 & 10 ppm for CO)	Each analyzer	Once per 2 weeks	Actual concentration and measured concentration
Manual methods including lead	Collocated samplers	1 site for 1–5 sites, 2 sites for 6–20 sites, 3 sites for >20 sites (sites with highest conc.)	Once per week	Two concentration measurements
Accuracy				
Automated methods for SO_2, NO_2, O_3, CO.	Response check at .03–.08 ppm*, .15–.20 ppm*, .35–.45 ppm*, .80–.90 ppm* (if applicable).	1. Each analyzer	1. Once per year	Actual concentration and measured concentration for each level.
		2. 25% of analyzers (at least 1)	2. Each calendar quarter	
Manual methods for SO_2 and NO_2.	Check of analytical procedure with audit standard solutions.	Analytical system	Each day samples are analyzed, at least twice per quarter	Actual concentration and measured concentration for each audit solution
TSP, ([PM_{10}])	Check of sampler flow rate	1. Each sampler	1. Once per year	Actual flow rate and flow rate indicated by the sampler.
		2. 25% of samplers (at least 1)	2. Each calender quarter	
Lead	1. Check sample flow rate as for TSP	1. Each sampler	1. Include with TSP	1. Same as for TSP
	2. Check analytical system with Pb audit strips.	2. Analytical system	2. Each quarter	2. Actual concentration and measured concentration of audit samples (μg Pb/strip)

*Conc. times 100 for CO.

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Figure A-1

DATA QUALITY ASSESSMENT FORM

ACCURACY

STATE (1-2) | REPORTING ORGANIZATION (3-5) | YEAR (6-7) | QUARTER (8) | SEND COMPLETED FORM TO REGIONAL OFFICE

9 = 1=ORIGINAL, 2=REVISION, 3=DELETION

NAME OF REPORTING ORGANIZATION _____

DATE SUBMITTED _____ MO./DAY/YR

SAROAD SITE CODE (10-18)	POLLUTANT (21-23)	METHOD CODE (24)	DATE MON. DAY (25-28)	T[1] (29)	S[2] (30)	UNIT (31-32)	CODE (33)	ACTUAL (34-37)	INDICATED (38-40)	ACTUAL (41-44)	INDICATED (45-47)	ACTUAL (48-51)	INDICATED (52-54)	ACTUAL (55-58)	INDICATED (59-61)
		A					0	LEVEL 1		LEVEL 2					
							1	LEVEL 3		LEVEL 4					
		A					0	LEVEL 1		LEVEL 2					
							1	LEVEL 3		LEVEL 4					
		A					0	LEVEL 1		LEVEL 2					
							1	LEVEL 3		LEVEL 4					
		A					0	LEVEL 1		LEVEL 2					
							1	LEVEL 3		LEVEL 4					
		A					0	LEVEL 1		LEVEL 2					
							1	LEVEL 3		LEVEL 4					

[1] Traceability: Audit gasses were traced to NBS by
1 Reporting organization
2 Other than reporting organization

[2] Source of local primary standard
A NBS SRM
B EMSL reference gas
C Commercial CRM
D Photometer
E Other; specify _____

UNIT CODES

ppm	07
ug/m³	14
CFM	72
L/min	73
m³/min	83

DATA QUALITY ASSESSMENT FORM

PRECISION

STATE | REPORTING ORGANIZATION (1 2 3 4 5) | YEAR (6 7) | QUARTER (8) | SEND COMPLETED FORM TO REGIONAL OFFICE

(9) 1=ORIGINAL 2=REVISION 3=DELETION

NAME OF REPORTING ORGANIZATION ___ _____

DATE SUBMITTED _____ _____
MO./DAY/YR

SAROAD SITE CODE 10–18	POLLUTANT	METHOD CODE 21–23	24	DATE MON 25–26	DAY 27–28	UNIT	UNIT CODE 31–32	ACTUAL OR PRIMARY 34–37 . 38–40	INDICATED OR DUPLICATE 41–44 . 45–47
			P						
			P						
			P						
			P						

Figure A-2

UNIT CODES

ppm	07
ug/m^3	14
CFM	72
L/min	73
m^3/min	83

DATA QUALITY ASSESSMENT FORM

ACCURACY

STATE | REPORTING ORGANIZATION (1 2 3 4 5) | YEAR (6 7) | QUARTER (8) | SEND COMPLETED FORM TO REGIONAL OFFICE

NAME OF REPORTING ORGANIZATION _____

DATE SUBMITTED _____ MO./DAY/YR

(9) 1=ORIGINAL 2=REVISION 3=DELETION

SAROAD SITE CODE (10-18) | POLLUTANT (21-23) | METHOD CODE (24) = A

DATE MON. DAY (25-28)	T[1] (29)	S[2] (30)	UNIT (31-32)	UNIT CODE (33)	ACTUAL (34-37 . 38-40)	INDICATED (41-44 . 45-47)	ACTUAL (48-51 . 52-54)	INDICATED (56-58 . 59-61)
				0	LEVEL 1		LEVEL 2	
				1	LEVEL 3		LEVEL 4	
				0	LEVEL 1		LEVEL 2	
				1	LEVEL 3		LEVEL 4	
				0	LEVEL 1		LEVEL 2	
				1	LEVEL 3		LEVEL 4	
				0	LEVEL 1		LEVEL 2	
				1	LEVEL 3		LEVEL 4	
				0	LEVEL 1		LEVEL 2	
				1	LEVEL 3		LEVEL 4	

[1] Traceability: Audit gasses were traced to NBS by
1 Reporting organization
2 Other than reporting organization

[2] Source of local primary standard
A NBS SRM
B EMSL reference gas
C Commercial CRM
D Photometer
E Other; specify _____

UNIT CODES

ppm	07
ug/m^3	14
CFM	72
L/min	73
m^3/min	83

Figure A-3

DATA QUALITY ASSESSMENT FORM

PRECISION

STATE | REPORTING ORGANIZATION | YEAR | QUARTER | SEND COMPLETED FORM TO REGIONAL OFFICE

1 2 3 4 5 | 6 7 | 8

1=ORIGINAL
2=REVISION
3=DELETION
9

NAME OF REPORTING ORGANIZATION _____

DATE SUBMITTED _____
MO./DAY/YR

UNIT CODES	
ppm	07
ug/m^3	14
CFM	72
L/min	73
m^3/min	83

SAROAD SITE CODE 10–18 | POLLUTANT | METHOD CODE 21–23 | 24

P

DATE MON. 25–26	DAY 27–28	UNIT	UNIT CODE 31–32	ACTUAL OR PRIMARY 34–37	38–40	INDICATED OR DUPLICATE 41–44	45–47

Figure A-4

METHOD	DESIGNATION NUMBER	METHOD CODE
SO_2 Manual Methods		
Ref. method (pararosaniline)	—	801
Technicon I (pararosaniline)	EQS-0775-001	001
Technicon II (Pararosaniline)	EQS-0775-002	002
SO_2 Analyzers		
Asarco 500	EQSA-0877-024	024
Beckman 953	EQSA-0678-029	029
Bendix 8303	EQSA-1078-030	030
Lear Siegler AM2020	EQSA-1280-049	049
Lear Siegler SM1000	EQSA-1275-005	005
Meloy SA185-2A	EQSA-1275-006	006
Meloy SA285E	EQSA-1078-032	032
Meloy SA700	EQSA-0580-046	046
Monitor Labs 8450	EQSA-0876-013	013
Monitor Labs 8850	EQSA-0779-039	039
Philips PW9700	EQSA-0876-011	011
Philips PW9755	EQSA-0676-010	010
Thermo Electron 43	EQSA-0276-009	009
O_3 Analyzers		
Beckman 950A	RFOA-0577-020	020
Bendix 8002	RFOA-0176-007	007
CSI 2000	RFOA-0279-036	036
Dasibi 1003-AH,-PC,-RS	EQOA-0577-019	019
Dasibi 1008-AH	EQOA-0383-056	056
McMillan 1100-1	RFOA-1076-014	014
McMillan 1100-2	RFOA-1076-015	015
McMillan 1100-3	RFOA-1076-016	016
Meloy OA325-2R	RFOA-1075-003	003
Meloy OA350-2R	RFOA-1075-004	004
Monitor Labs 8410E	RFOA-1176-017	017
Monitor Labs 8810	EQOA-0881-053	053
PCI Ozone Corp. LC-12	EQOA-0382-055	055
Philips PW9771	EQOA-0777-023	023
Thermo Electron 49	EQOA-0880-047	047

METHOD	DESIGNATION NUMBER	METHOD CODE
NO_2 Manual Methods		
Sodium arsenite	EQN-1277-026	026
Sodium arsenite/Technicon II	EQN-1277-027	027
TGS-ANSA	EQN-1277-028	028
NO_2 Analyzers		
Beckman 952A	RFNA-0179-034	034
Bendix 8101-B	RFNA-0479-038	038
Bendix 8101-C	RFNA-0777-022	022
CSI 1600	RFNA-0977-025	025
Meloy NA530R	RFNA-1078-031	031
Monitor Labs 8440E	RFNA-0677-021	021
Monitor Labs 8840	RFNA-0280-042	042
Philips PW9762/02	RFNA-0879-040	040
Thermo Electron 14B/E	RFNA-0179-035	035
Thermo Electron 14D/E	RFNA-0279-037	037
TSP Manual Method		
Reference method (high-volume)	—	802
Pb Manual Methods		
Ref. method (hi-vol/AA spect.)	—	803
Hi-vol/AA spect. (alt. extr.)	EQL-0380-043	043
Hi-vol/Flameless AA (EMSL/EPA)	EQL-0380-044	044
Hi-vol/ICAP spect. (EMSL/EPA)	EQL-0380-045	045
Hi-vol/Wavelength disp. XRF	EQL-0581-052	052
Hi-vol/ICAP spect. (Montana)	EQL-0483-057	057
Hi-vol/Energy-disp. XRF	EQL-0783-058	058
CO Analyzers		
Beckman 866	RFCA-0876-012	012
Bendix 8501-5CA	RFCA-0276-008	008
Dasibi 3003	RFCA-0381-051	051
Horiba AQM-10, -11, -12	RFCA-1278-033	033
Horiba 300E/300SE	RFCA-1180-048	048
MASS - CO 1 (Massachusetts)	RFCA-1280-050	050
Monitor Labs 8310	RFCA-0979-041	041
MSA 202S	RFCA-0177-018	018
Thermo Electron 48	RFCA-0981-054	054

BILLING CODE 6560-50-C

[INFORMATION FOR BACK OF DATA FORMS]

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Appendix B—[Amended]

5. Appendix B is amended as follows:

a. Section 1 is revised to read as follows:

1. General Information

This Appendix specifies the minimum quality assurance requirements for the control and assessment of the quality of the PSD ambient air monitoring data submitted to EPA by an organization operating a network of PSD stations. Such organizations are encouraged to develop and maintain quality assurance programs more extensive than the required minimum.

Quality assurance of air monitoring systems includes two distinct and important interrelated functions. One function is the control of the measurement process through the implementation of policies, procedures, and corrective actions. The other function is the assessment of the quality of the monitoring data (the product of the measurement process). In general, the greater the effort and effectiveness of the control of a given monitoring system, the better will be the resulting quality of the monitoring data. The results of data quality assessments indicate whether the control efforts need to be increased.

Documentation of the quality assessments of the monitoring data is important to data users, who can then consider the impact of the data quality in specific applications (see Reference 1). Accordingly, assessments of PSD monitoring data quality are required to be made and reported periodically by the monitoring organization.

To provide national uniformity in the assessment and reporting of data quality among all PSD networks, specific assessment and reporting procedures are prescribed in detail in Sections 3, 4, 5, and 6 of this Appendix.

In contrast, the control function encompasses a variety of policies, procedures, specifications, standards, and corrective measures which affect the quality of the resulting data. The selection and extent of the quality control activities—as well as additional quality assessment activities—used by a monitoring organization depend on a number of local factors such as the field and laboratory conditions, the objectives of the monitoring, the level of the data quality needed, the expertise of assigned personnel, the cost of control procedures, pollutant concentration levels, etc. Therefore, the quality assurance requirements, in Section 2 of this Appendix, are specified in general terms to allow each organization to develop a quality control system that is most efficient and effective for its own circumstances.

For purposes of this Appendix, "organization" is defined as a source owner/operator, a government agency, or their contractor that operates an ambient air pollution monitoring network for PSD purposes.

b. Sections 2.1 and 2.2 are revised to read as follows:

2. Quality Assurance Requirements

2.1 Each organization must develop and implement a quality assurance program consisting of policies, procedures, specifications, standards and documentation necessary to:

(1) Provide data of adequate quality to meet monitoring objectives and quality assurance requirements of the permit-granting authority, and

(2) Minimize loss of air quality data due to malfunctions or out-of-control conditions.

This quality assurance program must be described in detail, suitably documented, and approved by the permit-granting authority. The Quality Assurance Program will be reviewed during the system audits described in Section 2.4.

2.2 Primary guidance for developing the Quality Assurance Program is contained in References 2 and 3, which also contain many suggested procedures, checks, and control specifications. Section 2.0.9 of Reference 3 describes specific guidance for the development of a Quality Assurance Program for automated analyzers. Many specific quality control checks and specifications for manual methods are included in the respective reference methods described in Part 50 of this chapter or in the respective equivalent method descriptions available from EPA (see Reference 4). Similarly, quality control procedures related to specifically designated reference and equivalent analyzers are contained in their respective operation and instruction manuals. This guidance, and any other pertinent information from appropriate sources, should be used by the organization in developing its quality assurance program.

As a minimum, each quality assurance program must include operational procedures for each of the following activities:

(1) Selection of methods, analyzers, or samplers;

(2) Training;

(3) Installation of equipment;

(4) Selection and control of calibration standards;

(5) Calibration;

(6) Zero/span checks and adjustments of automated analyzers;

(7) Control checks and their frequency;

(8) Control limits for zero, span and other control checks, and respective corrective actions when such limits are surpassed;

(9) Calibration and zero/span checks for multiple range analyzers (see Section 2.6 of Appendix C of this part);

(10) Preventive and remedial maintenance;

(11) Recording and validating data;

(12) Date quality assessment (precision and accuracy);

(13) Documentation of quality control information.

* * * * *

(c) In Section 2.3.1, the phrase "in Reference 7" is changed to "in Reference 5" (two places) and the phrase "References 2 and 3" is changed to "Section 2.0.7 of Reference 3." Also, the phrase "the address shown in Reference 7." is changed to "Quality Assurance Division (MD–77), Environmental Monitoring Systems Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711."

d. Sections 2.3.2 and 2.3.3 are revised to read as follows:

2.3.2 Test concentrations for ozone must be obtained in accordance with the UV photometric calibration procedure specified in Appendix D of Part 50 of this chapter, or by means of a certified ozone transfer standard. Consult References 6 and 7 for guidance on primary and transfer standards for ozone.

2.3.3 Flow measurement must be made by a flow measuring instrument that is traceable to an authoritative volume or other standard. Guidance for certifying various types of flowmeters is provided in Reference 3.

e. In Section 2.4, the phrase "Section 1.4.16 of reference 1 and reference 6" is changed to "Section 1.4.16 of reference 2 and Section 2.0.11 of reference 3."

f. In Section 3, an introductory paragraph is added to read as follows:

3. Data Quality Assessment Requirements

All ambient monitoring methods or analyzers used in PSD monitoring shall be tested periodically, as described in this Section 3, to quantitatively assess the quality of the data being routinely collected. The results of these tests shall be reported as specified in Section 6. Concentration standards used for the tests must be as specified in Section 2.3. Concentration measurements reported from analyzers or analytical systems must be derived by means of the same calibration curve and data processing system used to obtain the routine air monitoring data. Table B–1 provides a summary of the minimum data quality assessment requirements, which are described in more detail in the following section.

* * * * *

g. The first paragraph of Section 3.2 is revised to read as follows:

3.2 *Accuracy of Automated Methods.* Each sampling quarter audit each analyzer that monitors for SO_2, NO_2, O_3, or CO at least once. The audit is made by challenging the analyzer with at least one audit gas of known concentration from each of the following ranges which fall within the measurement range of the analyzer being audited:

Audit level	Concentration range, ppm		
	SO_2, O_3	NO_2	CO
1	0.03–0.08	0.03–0.08	3–8
2	0.15–0.20	0.15–0.20	15–20
3	0.35–0.45	0.35–0.45	35–45
4	0.80–0.90		80–90

NO_2 audit gas for chemiluminescence-type NO_2 analyzers must also contain 0.10±.02 ppm NO to approximate a typical ambient mix of NO and NO_2.

* * * * *

h. In the second paragraph of section 5.1, the phrase "equation 1" is changed to "equation 1a," and equation 1a is added to read as follows:

$$d_i = \frac{Y_i - X_i}{(Y_i + X_i)/2} \times 100 \qquad (1a)$$

i. The section entitled "References" is revised to read as follows:

References

1. Rhodes, R.C. Guideline on the Meaning and Use of Precision and Accuracy Data Required by 40 CFR Part 58, Appendices A and B. EPA–600/4–83–023. U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, June, 1983.

2. "Quality Assurance Handbook for Air Pollution Measurement Systems, Volume I—Principles." EPA–600/9–76–005. March 1976. Available from U.S. Environmental Protection Agency, Environmental Monitoring Systems Laboratory (MD–77), Research Triangle Park, NC 27711.

3. "Quality Assurance Handbook for Air Pollution Measurement Systems, Volume II—Ambient Air Specific Methods." EPA–600/4–77–027a. May 1979. Available from U.S. Environmental Protection Agency, Environmental Monitoring Systems Laboratory (MD–77), Research Triangle Park, NC 27711.

4. "List of Designated Reference and Equivalent Methods." Available from U.S. Environmental Protection Agency, Department E (MD–77), Research Triangle Park, NC 27711.

5. Hughes, E.E. and J. Mandel. A Procedure for Establishing Traceability of Gas Mixtures to Certain National Bureau of Standards SRM's. EPA–600/7–81–010. U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, May, 1981. (Joint NBS/EPA Publication)

6. Paur, R.J. and F.F. McElroy. Technical Assistance Document for the Calibration of Ambient Ozone Monitors. EPA–600/4–79–057. U.S. Environmental Protection Agency, Environmental Monitoring Systems Laboratory (MD–77), Research Triangle Park, NC 27711, September, 1979.

7. McElroy, F.F. Transfer Standards for the Calibration of Ambient Air Monitoring Analyzers for Ozone. EPA–600/4–79–056. U.S. Environmental Protection Agency, Environmental Monitoring Systems Laboratory (MD–77), Research Triangle Park, NC 27711, September, 1979.

j. Table B–1 is added to read as follows:

TABLE B–1.—MINIMUM PSD DATA ASSESSMENT REQUIREMENTS

Method	Assessment method	Coverage	Frequency	Parameters reported
		Precision		
Automated methods for SO_2, NO_2, O_3, CO.	Response check at concentrations between .08 and .10 ppm (8 and 10 ppm for CO).	Each analyzer	Once per 2 weeks	Actual concentration and measured concentration.
TSP, (PM_{10}), Lead	Collocated samplers	Highest concentration site in monitoring network.	Once per week or every 3rd day for continuous sampling.	Two concentration measurements.
		Accuracy		
Automated methods for SO_2, NO_2, O_3, CO.	Response check at .03–.08 ppm*, .15–.20 ppm*, .35–.45 ppm*, .80–.90 ppm* (if applicable).	Each analyzer	Once per sampling quarter	Actual concentration and measured concentration for each level.
TSP, (PM_{10})	Sampler flow check	Each sampler	Once per sampling quarter	Actual flow rate and flow rate indicated by the sampler.
Lead	1. Sample flow rate check 2. Check of analytical systems with Pb audit strips.	1. Each sampler 2. Analytical system	1. Once/quarter 2. Each quarter Pb sampler are analyzed.	1. Same as for TSP. 2. Actual concentration and measured concentration of audit samples (μg Pb/strip).

*Concentration shown times 100 for CO.

Appendix C—[Amended]

6. Appendix C is amended as follows:

a. Section 2.2 is revised to read as proposed in 49 FR 10445 in connection with proposed amendments for PM_{10} (49 FR 10435).

b. Sections 2.4 and 2.5 are removed and reserved.

c. In Section 2.6, subsection 2.6.1 is removed and reserved, and the heading of Section 2.6 is revised to read as follows:

2.6 *Use of methods with higher, nonconforming ranges in certain geographical areas.*

Appendix D—[Amended]

7. Appendix D is amended as follows:

a. In Section 2.5, the following sentence is inserted after the first sentence in the middle scale discussion which appears after the third paragraph. "Trees also may have a strong scavenging effect on O_3 and may tend to suppress O_3 concentrations in their immediate vicinity." The first sentence in the last paragraph of Section 2.5 is replaced by the following. "Since ozone levels decrease significantly in the colder parts of the year in many areas, ozone is required to be monitored only during the "ozone season" as designated in the SAROAD files on a State by State basis and described below:

OZONE MONITORING SEASON BY STATE

State	Begin month	End month
Alabama	March	November.
Alaska	April	October.
Arizona	January	December.
Arkansas	March	November.
California	January	December.
Colorado	March	September.
Connecticut	April	October.
Delaware	....do	Do.
District of Columbia	....do	Do.
Florida	January	December.
Georgia	March	November.
Hawaii	January	December.
Idaho	April	October.
Illinois	....do	Do.
Indiana	....do	Do.
Iowa	....do	Do.
Kansas	....do	Do.
Kentucky	....do	Do.
Louisiana	January	December.
Maine	April	October.
Maryland	....do	Do.
Massachusetts	....do	Do.
Michigan	....do	Do.
Minnesota	....do	Do.
Mississippi	March	November.
Missouri	April	October.
Montana	June	September.
Nebraska	April	October.

OZONE MONITORING SEASON BY STATE—Continued

State	Begin month	End month
Nevada	January	December.
New Hampshire	April	October.
New Jersey	....do	Do.
New Mexico	January	December.
New York	April	October.
North Carolina	....do	Do.
North Dakota	May	September.
Ohio	April	October.
Oklahoma	March	November.
Oregon	April	October.
Pennsylvania	....do	Do.
Puerto Rico	January	December.
Rhode Island	April	October.
South Carolina	....do	Do.
South Dakota	June	September.
Tennessee	April	October.
Texas	January	December.
Utah	May	September.
Vermont	April	October.
Virginia	....do	Do.
Washington	....do	Do.
West Virginia	....do	Do.
Wisconsin	....do	Do.
Wyoming	....do	Do.
American Samoa	January	December.
Guam	....do	Do.
Virgin Islands	....do	Do.

b. In Section 3.2, Table 3 is revised as follows:

TABLE 3.—SO_2 National Air Monitoring Station Criteria

[Approximate number of stations per area] [1]

Population category	High concentration [2]	Medium concentration [3]	Low concentration [4]
>1,000,000	5–10	4–8	2–4
500,000 to 1,000,000	4–8	2–4	1–2
250,000 to 500,000	3–4	1–2	0–1
100,000 to 250,000	1–2	0–1	0

[1] Selection of urban areas and actual number of stations per area will be jointly determined by EPA and the State agency.
[2] High concentration—exceeding level of the primary NAAQS.
[3] Medium concentration—exceeding 80 percent of the level of the primary or 100% of the secondary NAAQS.
[4] Low concentration—less than 80 percent of the level of the primary or 100% of the secondary NAAQS.

c. In Section 3.3, the parenthetical expression "(neighborhood scale)" at the end of the last sentence in the 2nd paragraph is amended to read "(middle scale, neighborhood scale)". In the first sentence of the 4th paragraph the first use of the word "neighborhood" is removed and replaced by "category (b)" and the parenthetical expression "(neighborhood scale)" is replaced by "(middle scale or neighborhood scale)." In the 3rd sentence of the 4th paragraph the term "under the influence" is replaced by "unduly influenced by".

d. In Section 3.5 the first parenthetical expression in the second paragraph "(category (a) neighborhood scale)" is amended to read "(category (a), middle scale or neighborhood scale)."

e. Table 5 in Section 3.7, as proposed on March 20, 1984 (49 FR 10447), is revised as follows:

Table 5.—Summary of Spatial Scales for SLAMS and NAMS

Spatial Scale	Scales applicable for SLAMS							Scales applicable for NAMS						
	TSP	SO_2	CO	O_3	NO_2	Pb	PM_{10}	TSP	SO_2	CO	O_3	NO_2	Pb	PM_{10}
Micro	✓		✓			✓	✓	✓		✓			✓	✓
Middle	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓
Neighborhood	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Urban	✓	✓		✓	✓	✓	✓				✓	✓		
Regional	✓	✓		✓	✓	✓	✓							

Appendix E—[Amended]

8. Appendix E is amended as follows:

a. In the table of contents, Section 2.4 is revised and Sections 3.3, 4.4, 5.4, 6.4, 7.4 and 8.4 are inserted in the appropriate places as follows:

* * * * *

2.4 Spacing from trees and other considerations.

* * * * *

3.3 Spacing from trees and other considerations.

* * * * *

4.4 Spacing from trees and other considerations.

* * * * *

5.4 Spacing from trees and other considerations.

* * * * *

6.4 Spacing from trees and other considerations.

* * * * *

7.4 Spacing from trees and other considerations.

* * * * *

8.4 Spacing from trees and other considerations.

* * * * *

b. In Section 2.2, the last two sentences in the second paragraph are removed.

c. In Section 2, a new Section 2.4 replaces the existing Section 2.4.

2. Total Suspended Particulates (TSP).

* * * * *

2.4 *Spacing from trees and other considerations.*

Trees can provide surfaces for particulate deposition or adsorption, act as a source of particulate in some cases (pollen), and obstruct normal wind flown pattern. To minimize the possible effects of trees on the measured TSP levels, the sampler should be placed at least 20 meters from the drip line of trees. However, in situations where trees could be classified as an obstruction, i.e., the distance between the trees and the sampler is less than twice the height that the tree protrudes above the sampler, the sampler must be placed at least 10 meters from the drip line of the obstructing tree(s).

In order to minimize the impact of wind blown dusts, stations should not be located on barren ground. Additional information on TSP probe siting may be found in reference 10.[*]

d. In Section 3.2 the words "should be placed more than 20 meters from trees and" are removed from the first sentence of the second paragraph.

e. In Section 3, a new Section 3.3 is added.

3. Sulfur Dioxide (SO_2).

* * * * *

3.3 *Spacing from trees and other considerations.*

Trees can provide surfaces for SO_2 adsorption and act as an obstruction to normal wind flow patterns. To minimize the possible effects of trees on the measured SO_2 levels, the sampler should be placed at least 20 meters from the drip line of trees. However, in situations where trees could be classified as an obstruction, i.e., the distance between the tree(s) and the sampler is less than twice the height that the tree(s) protrudes above the sampler, the sampler must be placed at least 10 meters from the drip line of the obstructing tree(s).

f. In Section 4.3, the next to last sentence in paragraph 3 is removed.

g. In Section 4, a new Section 4.4 is added.

4. Carbon Monoxide (CO)

* * * * *

4.4 *Spacing from trees and other considerations.*

Since CO is relatively non-reactive, the major factor concerning trees is as obstructions to normal wind flow patterns. For middle and neighborhood scale stations, trees should not be located between the major sources of CO, usually vehicles on a heavily traveled road, and the sampler. The sampler must be at least 10 meters from the drip line of a tree which is between the sampler and the road and extends at least 5 meters above the sampler. For microscale stations, no trees or shrubs should be located between the sampling inlet probe and the road.

h. In Section 5.2, the second and third sentences in the first paragraph are removed.

i. In Section 5.3, the 6th and 7th sentences in the first paragraph are removed.

j. In Section 5, a new section 5.4 is added.

5. Ozone (O_3)

* * * * *

5.4 *Spacing from trees and other considerations.*

Trees can provide surfaces for O_3 adsorption and/or reactions and obstruct normal wind flow patterns. To minimize the possible effect of trees on measured O_3 levels, the probe should be placed at least 20 meters from the drip line of trees. Since the scavenging effect of trees is greater for ozone than for the other criteria pollutants, strong consideration of this effect must be given in locating the O_3 inlet probe to avoid this problem. Therefore, the sampler must be at least 10 meters from the drip line of trees that are located between the urban city core area and the sampler along the predominant summer day-time wind direction.

k. In Section 6.2, the word "trees" is removed from the 1st sentence. The sixth sentence is also removed.

l. In Section 6.3, the next to last sentence is removed.

6. Nitrogen Dioxide (NO_2)

* * * * *

6.4 *Spacing from trees and other considerations.*

Trees can provide surfaces for NO_2 adsorption and/or reactions and obstruct

normal wind patterns. To minimize the possible scavenging effect of trees on the measured levels of NO_2 the probe should be placed at least 20 meters from the drip line. For trees that protrude above the height of the probe by 5 meters or more, the sampler must be at least 10 meters from the drip line of trees.

n. In Section 7.2, the first sentence is removed.

o. In Section 7, a new Section 7.4 is added.

7. Lead (Pb)

* * * * *

7.4 *Spacing from trees and other considerations.*

Trees can provide surfaces for deposition or adsorption of lead particles and obstruct normal wind flow patterns. For microscale and middle scale category (a) roadway sites there must not be any tree(s) between the source of the lead, i.e., the vehicles on the roadway, and the sampler. For neighborhood scale, category (b) sites, the sampler should be at least 20 meters from the drip line of trees. The sampler must, however, be placed at least 10 meters from the drip line of trees which could be classified as an obstruction, i.e., the distance between the tree(s) and the sampler is less than twice the height that the tree protrudes above the sampler.

p. In Section 8.2, as proposed on March 20, 1984 (49 FR 10448), the last sentence in the second paragraph is removed.

q. In Section 8, as proposed to be amended on March 20, 1984 (49 FR 10448), a new section 8.4 replaces the existing Section 8.4.

8. Particulate Matter (PM_{10})

* * * * *

8.4 *Spacing from trees and other considerations.*

Trees can provide surface for particulate deposition or adsorption, act as a source of particulate in some cases (pollen), and obstruct normal wind flow patterns. To minimize the possible effects of trees on the measured PM_{10} levels, the sampler should be placed at least 20 meters from the drip line of trees. The sampler must, however, be placed at least 10 meters from the drip line of trees which also could be classified as an obstruction, i.e., the distance between the trees and the sampler is less than twice the height that the tree protudes above the sampler.

Regarding other considerations, for those areas that are primarily influenced by stationary source emissions as opposed to roadway emissions, guidance in locating these areas may be found in the guideline document "Optimum Network Design and Site Exposure Criteria for Particulate Matter."[29]

Stations should not be located in an unpaved area unless there is vegetative ground cover year round, so that the impact of wind blown dusts will be kept to a minimum.

Appendix G—[Amended]

9. Apendix G is amended as follows:

a. In Section 8, the following is added to the end of the first paragraph "Also, in situations where the PSI value has not exceeded 50, as calculated by the critical pollutant, for the previous calendar year, the requirement to measure and report the PSI will be left up to the discretion of the reporting agency.

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Part III

Department of Labor

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions, Notice

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DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Orders 9–83, 48 FR 35736 (1983), and 6–84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations. Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Orders 6–84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Program Operations, Division of Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

Modifications to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

Colorado:	
CO83–5115	July 29, 1983.
CO84–5003	Feb. 24, 1984.
CO82–5127	Nov. 5, 1982.
District of Columbia: DC84–3009	Apr. 6, 1984.
Nevada: NV84–5014	June 8, 1984.
Oklahoma: OK84p4050	Sept. 7, 1984.
Wisconsin: WI84–5035	Oct. 19, 1984

Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the number of the decisions being superseded.

Illinois:	
IL83–2066 (IL85–5017)	Aug. 21, 1983.
IL83–2014 (IL85–5018)	Mar. 4, 1983.
Michigan: MI84–5043 (MI85–5019)	Dec. 28, 1984.
Pennsylvania: PA84–3041 (PA85–3012)	Nov. 9, 1984.
Virginia: VA85–3006 (VA85–3011)	Jan. 18, 1985.

Signed at Washington, D.C. this 1st day of March, 1985.

James L. Valin,

Assistant Administrator.

BILLING CODE 4510-27-M

DECISION NO. CO83-5115 - MOD #3
(48 FR 34598 - July 29, 1983)
Delta, Garfield, Gunnison, Mesa, Montrose, and Pitkin Counties, Colorado

	Basic Hourly Rates	Fringe Benefits
CHAGE:		
Carpenters	$10.38	$3.12
LABORERS:		
Group 1: Final clean-up laborers	5.20	.15
Group 2: General laborers	7.65	2.04
Group 3: Mechanical, Air, Gas and Electric Power Tool Operators; Burners on Demolition; Gunnite Nozzlemen; and Sand Blasters	7.90	2.04

DECISION NO. CO84-5003 - MOD. #2
(49-FR-7066 - February 24, 1984)
El Paso County, Colorado

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Carpenters	$10.38	$3.12
LABORERS:		
Group 1: Final clean-up laborers	5.20	.15
Group 2: General laborers	7.65	2.04
Group 3: Mechanical, Air, Gas and Electric Power Tool Operators; Burners on Demolition; Gunnite Nozzlemen; and Sand Blasters	7.90	2.04

DECISION NO. DC84-[illegible]
MOD. #[illegible]
(49 FR 13[illegible]-April 6, 1984)
DISTRICT OF COLUMBIA, MARYLAND-MONTGOMERY & PRINCE GEORGES COUNTIES, THE D.C. TRAINING SCHOOL, VIRGINIA-INDEPENDENT CITY OF ALEXANDRIA & ARLINGTON & FAIRFAX COUNTIES.

OMIT:
Footnote d

	Basic Hourly Rates	Fringe Benefits

DECISION NO. CO82-5127
MOD #9
(47 FR 50418 - November 5, 1982)
Las Animas, Otero and Pueblo Counties, Colorado

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Carpenters	$10.38	$3.12
LABORERS:		
Group 1: Final clean-up laborers	5.20	.15
Group 2: General laborers	7.65	2.04
Group 3: Mechanical, Air, Gas and Electric Power Tool Operators; Burners on Demolition; Gunnite Nozzlemen; and Sand Blasters	7.90	2.04

DECISION #NV84-5014 - MOD. #8
(49 FR 23988 - June 8, 1984)
Statewide (does not include the Nevada Test Site and Tonopah Test Range, and Highway construction in Douglas County), Nevada

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Carpenters:		
Area 2:		
Carpenters	$16.30	$5.47
Drywall Installer	16.55	5.47
Floor Layers; Patent Scaffold Erectors; Power Saw Operators; Shingler	16.45	5.47
Millwrights	16.90	5.47
Piledrivermen	16.55	5.47

DECISION NO. OK84-4050
MOD #7 (49 FR 35477 - September 7, 1984)

Alfalfa, Beckham, Blaine, Caddo, Canadian, Carter, Cleveland, Comanche, Cotton, Custer, Dewey, Ellis, Garfield, Garvin, Grady, Grant, Greer, Harmon, Harper, Jackson, Jefferson, Johnston, Kay, Kingfisher, Kiowa, Lincoln, Logan, Love, McClain, Major, Marshall, Murray, Noble, Oklahoma, Payne, Pontotoc, Roger Mills, Pottawatomie, Seminole, Stephens, Tillman, Washita, Woods and Woodward Counties, Oklahoma

	Basic Hourly Rates	Fringe Benefits
CHANGE		
Sheet Metal Workers	$16.15	$3.30

DECISION NO. WI84-5035 - MOD. #1
(49 FR 41146 - October 19, 1984)
Green Lake, Marquette, Waupaca, Waushara and Winnebago Counties, Wisconsin

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Ironworkers:		
Extreme East Part of County Including Lake Winnebago, Menasha and Neenah	$14.81	$5.55
Plumbers:		
Waupaca and Townships of Menasha and Neenah	16.04	3.35

Basic Hourly Rates	Fringe Benefits

SUPERSEDEAS DECISION

STATE: Illinois
DECISION NO. IL85-5017
Supersedes Decision No. IL83-2066, dated Aug. 21, 1983 in 48 FR 36780
DESCRIPTION OF WORK: Heavy & Highway Construction Projects

COUNTIES: *See Below
DATE: Date of Publication

*Bond, Calhoun, Clinton, Greene, Jersey, Macoupin, Madison, Monroe, Montgomery, St. Clair & Washington

	Basic Hourly Rates	Fringe Benefits
CARPENTERS & PILEDRIVERMEN:		
Area 1	$17.435	$2.90
Area 2	16.91	3.17
Area 3:		
Carpenters	15.405	3.01
Piledrivermen	15.905	3.01
Area 4:		
Carpenters	15.77	2.61
Piledrivermen	16.27	2.61
CEMENT MASONS:		
Area 1	17.405	2.77
Area 2	18.675	
ELECTRICIANS:		
Area 1	18.61	3.46
Area 2	19.20	2.83
Area 3	17.86	3.44
Area 4	17.32	2.29
Area 5	17.85	2.14
IRONWORKERS:		
Area 1	18.05	2.75
Area 2	16.53	2.48
LINE CONSTRUCTION:		
Area 1:		
Linemen & Digging Operator	18.28	1.00+ 13½%
Groundmen Equipment OP.:		
Class 1	15.59	1.00+ 13½%
Class 2	13.96	1.00+ 13½%
Groundman	11.60	1.00+ 13½%
Area 2:		
Linemen	21.27	11%
Groundman Equipment OP.	18.50	11%
Groundman Truck Drivers	15.10	11%
Groundman	13.82	11%
Area 3:		
Linemen	18.06	3.25+ 3½%
Groundman Truck Drivers	16.86	3.25+ 3½%
Groundman Truck Driver with Winch	17.16	3.25+ 3½%

	Basic Hourly Rates	Fringe Benefits
LINE CONSTRUCTION: (Cont'd)		
Area 4:		
Linemen	$18.10	1.00+8½%
Groundman Equipment OP.	16.89	1.00+8½%
Groundman Truck Driver with Winch	12.85	1.00+ 8½%
Groundman Truck Driver	12.10	1.00+8½%
Groundman	11.54	1.00+8½%
PAINTERS:		
Commercial Brush	15.69	1.86
Commercial Spray & Blast	16.69	1.86
Industrial Brush	16.65	1.86
Industrial Spray & Blast	17.65	1.86
Bridges - Brush	16.90	1.86
Bridges - Spray & Blast	17.90	
LABORERS (HEAVY CONSTRUCTION)		
Area 1:		
Group 1	16.85	.45
Group 2	17.10	.45
Group 3	17.35	.45
Group 4	18.45	.45
Area 2:		
Group 1	17.25	.05
Group 2	17.50	.05
Group 3	17.75	.05
Group 4	18.85	.05
Area 3:		
Group 1	15.70	1.60
Group 2	15.95	1.60
Group 3	16.20	1.60
Group 4	17.30	1.60
Area 4:		
Group 1	14.30	3.00
Group 2	14.55	3.00
Group 3	14.80	3.00
Grour 4	15.90	3.00
Area 5:		
Group 1	16.35	1.05
Group 2	16.60	1.05
Group 3	16.85	1.05
Group 4	17.95	1.05
Area 6:		
Group 1	16.95	.35
Group 2	17.20	.35
Group 3	17.45	.35
Group 4	18.55	.35

DECISION NO. IL85-5017

LABORERS (HEAVY CONSTRUCTION) (CONT'D)	Basic Hourly Rates	Fringe Benefits
Area 7:		
Group 1	17.05	.25
Group 2	14.30	.25
Group 3	17.55	.25
Group 4	18.65	.25
Area 8:		
Group 1	16.65	.65
Group 2	16.90	.65
Group 3	17.15	.65
Group 4	18.25	.65
Area 9:		
Group 1	16.25	1.05
Group 2	16.50	1.05
Group 3	16.75	1.05
Group 4	17.85	1.05
Area 10:		
Group 1	17.00	.30
Group 2	17.25	.30
Group 3	17.50	.30
Group 4	18.60	.30
Area 11:		
Group 1	16.25	1.05
Group 2	16.50	1.05
Group 3	16.75	1.05
Group 4	17.85	1.05
Area 12:		
Group 1	16.75	.55
Group 2	17.00	.55
Group 3	17.25	.55
Group 4	18.35	.55
Area 13:		
Group 1	16.45	.85
Group 2	16.70	.85
Group 3	16.95	.85
Group 4	18.05	.85
Area 14:		
Group 1	14.65	2.65
Group 2	14.90	2.65
Group 3	15.15	2.65
Group 4	16.25	2.65
Area 15:		
Group 1	16.80	.50
Group 2	17.05	.50
Group 3	17.30	.50
Group 4	18.40	.50
Area 16:		
Group 1	15.90	1.50
Group 2	16.00	1.50
Group 3	16.05	1.50
Group 4	16.15	1.50
Group 5	16.15	1.50
Group 6	16.35	1.50
Group 7	16.40	1.50
Group 8	16.90	1.50
Group 9	17.425	1.50

	Basic Hourly Rates	Fringe Benefits
Area 17:		
Group 1	$14.90	$2.50
Group 2	15.00	2.50
Group 3	15.05	2.50
Group 4	15.15	2.50
Group 5	15.25	2.50
Group 6	15.35	2.50
Group 7	15.40	2.50
Group 8	15.90	2.50
Group 9	16.425	2.50
Area 18:		
Group 1	15.25	2.15
Group 2	15.75	2.15
Group 3	15.775	2.15
Group 4	15.525	2.15
Group 5	16.775	2.15
Group 6	15.775	2.15
Area 19:		
Group 1	15.65	1.75
Group 2	16.15	1.75
Group 3	16.20	1.75
Group 4	16.95	1.75
Area 20:		
Group 1	16.35	1.05
Group 2	16.45	1.05
Group 3	16.60	1.05
Group 4	16.85	1.05
Group 5	17.875	1.05
Area 21:		
Group 1	15.40	1.95
Group 2	15.65	1.95
Group 3	15.70	1.95
Group 4	15.90	1.95
Area 22:		
Group 1	12.40	1.135
Group 2	12.90	1.135
Group 3	12.65	1.135
Group 4	14.00	1.135
Area 23:		
Group 1	14.25	1.90
Group 2	15.75	1.90
Group 3	14.50	1.90
Area 24:		
Group 1	14.70	1.45
Group 2	14.95	1.45
Group 3	15.55	1.45
Group 4	15.20	1.45
Area 25:		
Group 1	15.25	2.15
Group 2	15.50	2.15
Group 3	15.75	2.15
Group 4	16.775	2.15

DECISION NO. IL85-5017 (CONT'D)

	Basic Hourly Rates	Fringe Benefits
LABORERS (HEAVY CONSTRUCTION) (CONT'D)		
Area 26:		
Group 1	$15.70	$1.60
Group 2	15.95	1.60
Group 3	16.20	1.60
Group 4	17.30	1.60
Area 27:		
Group 1	15.95	1.45
Group 2	16.20	1.45
Group 3	16.80	1.45
Group 4	16.45	1.45
LABORERS (HIGHWAY CONSTRUCTION)		
Area 1:		
Group 1	16.95	.45
Group 2	17.05	.45
Group 3	17.20	.45
Group 4	17.45	.45
Group 5	18.475	.45
Area 2:		
Group	17.35	.05
Group 2	17.45	.05
Group 3	17.60	.05
Group 4	17.85	.05
Group 5	18.875	.05
Area 3, 24, 26, & 27:		
Group 1	15.80	1.45
Group 2	15.94	1.45
Group 3	16.05	1.45
Group 4	16.30	1.45
Group 5	17.325	1.45
Area 4:		
Group 1	14.40	3.00
Group 2	14.50	3.00
Group 3	14.65	3.00
Group 4	14.90	3.00
Group 5	15.925	3.00
Area 5, 9, and 11:		
Group 1	16.35	1.05
Group 2	16.45	1.05
Group 3	16.60	1.05
Group 4	16.85	1.05
Group 5	17.875	1.05
Area 6:		
Group 1	17.05	.35
Group 2	17.15	.35
Group 3	17.30	.35
Group 4	17.55	.35
Group 5	18.575	.35

	Basic Hourly Rates	Fringe Benefits
LABORERS (HIGHWAY CONSTRUCTION)		
Area 7:		
Group 1	$17.15	.25
Group 2	17.25	.25
Group 3	17.40	.25
Group 4	17.65	.25
Group 5	18.675	.25
Area 8:		
Group 1	16.75	.65
Group 2	16.85	.65
Group 3	17.00	.65
Group 4	17.25	.65
Group 5	18.275	.65
Area 10:		
Group 1	17.10	.30
Group 2	17.20	.30
Group 3	17.35	.30
Group 4	17.60	.30
Group 5	18.625	.30
Area 12:		
Group 1	16.85	.55
Group 2	16.95	.55
Group 3	17.10	.55
Group 4	17.35	.55
Group 5	18.375	.55
Area 13:		
Group 1	16.55	.85
Group 2	16.65	.85
Group 3	16.80	.85
Group 4	17.05	.85
Group 5	18.075	.85
Area 14:		
Group 1	14.75	2.65
Group 2	14.85	2.65
Group 3	15.00	2.65
Group 4	15.25	2.65
Group 5	16.275	2.65
Area 15:		
Group 1	16.90	.50
Group 2	17.00	.50
Group 3	17.15	.50
Group 4	17.40	.50
Group 5	18.435	.50
Area 16:		
Group 1	15.90	1.50
Group 2	16.00	1.50
Group 3	16.15	1.50
Group 4	16.40	1.50
Group 5	17.425	1.50

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	Basic Hourly Rates	Fringe Benefits
LABORERS (HIGHWAY CONSTRUCITON) (CONT'D)		
Area 17:		
Group 1	$14.90	$2.50
Group 2	15.00	2.50
Group 3	15.15	2.50
Group 4	15.40	2.50
Group 5	16.425	2.50
Area 18 and Area 25:		
Group 1	14.75	2.65
Group 2	14.85	2.65
Group 3	15.00	2.65
Group 4	15.25	2.65
Group 5	16.275	2.65
Area 19:		
Group 1	15.65	1.75
Group 2	15.75	1.75
Group 3	15.90	1.75
Group 4	16.15	1.75
Group 5	17.175	1.75
Area 20:		
Group 1	15.50	1.90
Group 2	15.60	1.90
Group 3	15.75	1.90
Group 4	16.00	1.90
Group 5	17.025	1.90
Area 21:		
Group 1	15.40	2.00
Group 2	15.50	2.00
Group 3	15.65	2.00
Group 4	15.90	2.00
Group 5	16.925	2.00
Area 22:		
Group 1	12.45	1.185
Group 2	12.55	1.185
Group 3	12.70	1.185
Group 4	12.95	1.185
Group 5	13.875	1.185
Area 23:		
Group 1	14.70	2.70
Group 2	14.80	2.70
Group 3	14.95	2.70
Group 4	15.20	2.70
Group 5	16.225	2.70

	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS:		
Master mechanic	$19.07	$2.73
Group 1	18.57	2.73
Group 2	15.14	2.73
Group 3	14.49	2.73
Group 4	14.39	2.73
Group 5	14.14	2.73
Group 6:		
a.	20.72	2.73
b.	21.02	2.73
c.	16.24	2.73
d.	16.74	2.73
TRUCK DRIVERS:		
Group 1	14.275	1.90+a
Group 2	14.675	1.90+a
Group 3	14.875	1.90+a
Group 4	15.125	1.90+a

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AREA DEFINITIONS

CARPENTERS & PILEDRIVERMEN

Area 1: Bond, Calhoun, Greene (S. of Apple Creek), Jersey, Macoupin (S 2/3), Madison, & Montgomery (S 2/3) Cos.
Area 2: Clinton, Monroe, St. Clair, & Washington Cos.
Area 3 Green (except S. of Apple Creek) Co.
Area 4: Macoupin (N 1/3), & Montgomery (N 1/3, inclu. Waggoner, Standard City, & North Thereof) Cos.

CEMENT MASONS

Area 1: Bond, Calhoun, Clinton (W. 1/2, East to but not incl. Carlyle), Greene, Jersey, Macoupin, Madison, Monroe, Montgomery, & St. Clair Cos.
Area 2: Clinton (E 1/2 inclu. Caryle), & Washington Cos.

ELECTRICIANS

Area 1: Bond (E 1/2), Clinton (Huey, Hoffmen & Vic), & Washington (except Venedy Tpw.) Cos.
Area 2: Bond (W 1/2), Clinton (Rem. of Co.), Macoupin (except Brighton, Athensville, Scottville, Girard & areas N. thereof), Madison (except Alton & Vic.), Monroe, Montgomery (except Portion E. of Butler Grove, Grisham, Hillsboro & Raymond Twp.), St. Clair, & Washington (Venedy Twp) Cos.
Area 3: Calhoun, Greene, Jersey, Macoupin (Brighton Twp.), & Madison (Alton & Vic.) Cos.
Area 4: Macoupin (Athensville, Scottville, Girard & area N. thereof), & Montgomery (NW part inclu. Bois D'Arc, Harvel & Pittman Twps.) Cos.
Area 5: Montgomery (E. of Butler Grove, Grishma, Hillsboro & Raymond Twps.) Cos.

IRONWORKERS

Area 1: Bond, Calhoun, Clinton, Greene (S 1/2), Jersey, Macoupin (Summerville & S. thereof), Madison, Monroe, Montgomery (Litchfield, Hillsboro, & S. thereof, St. Clair, & Washington Cos.
Area 2: Greene (N 1/2), Macoupin (N. of Summerville), & Montgomery (N. of Litchfield & Hillsboro) Cos.

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LINE CONSTRUCTION

Area 1: Bond (E 1/2) & Washington (Okawville & Vendy Twps.) Cos.
Area 2: Bond (W 1/2), Clinton, Macoupin (except N 1/3 & SW Corner), Madison (except E. Alton, Alton, Wood River & Hartford), Monroe, Montgomery (E. of Roundtree, Irving & E. Fork Twps), St. Clair, & Washington (Okawville & Venedy Twps.) Cos.
Area 3: Calhoun, Greene, Jersey, Macoupin (SW Corner), & Madison (E. Alton, Alton, Wood River & Hartford) Cos.
Area 4: Macoupin (N 1/3) & Montgomery (Rem. of Co.) Cos.

LABORERS

Area 1: Bond Co. (Pocahontas); Macoupin Co. (Gillespie); Washington Co. (Ashley)
Area 2: Macoupin Co. (Carlinville)
Area 3: Clinton Co. (Trenton)
Area 4: Montgomery Co. (Hillsboro)
Area 5: Madison Co. (Glen Carbon)
Area 6: Bond Co. (Greenville); Macoupin Co. (Mt. Oliver)
Area 7: Calhoun Co. (Hardin); Madison Co. (Marine)
Area 8: Madison Co. (St. Jacob & Highland); Washington Co. (Okawville)
Area 9: Macoupin (Stauton)
Area 10: Bond Co. (Sorento); Jersey Co. (Jerseyville)
Area 11: Madison Co. (Troy); Greene Co. (Roodhouse); Montgomery Co. (Litchfield)
Area 12: Madison Co. (Livingston)
Area 13: Washington Co. (Nashville)
Area 14: St. Clair Co. (New Athens)
Area 15: Macoupin Co. (Shipman)
Area 16: Madison (Alton)
Area 17: Madison Co. (Wood River)
Area 18: Madison Co. (Granite City & Vic.)
Area 19: Madison Co. (Collinsville)
Area 20: Madison Co. (Edwardsville)
Area 21: Monroe Co.
Area 22: St. Clair Co. (Freeburg)
Area 23: St. Clair Co. (Belleville)
Area 24: St. Clair Co. (Mascoutah)
Area 25: St. Clair Co. (E. St. Louis & Vic)
Area 26: Clinton Co. Clair Co. (Carlyle)
Area 27: St. Clair Co. (O' Fallon)

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LABORERS - HEAVY CONSTRUCTION

Areas 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15,&26
Group 1: General Laborers
Group 2: Botton of Sewer Trenches on final Grading, Laying or Caulking or Preformed sectional sanitary or storm sewer pipe; (including reinforced concrete tile, but not inclu. box culverts, tin whistles or multiplate culverts); Cutting & Burning w/Torch
Group 3: Brick, Plaster, Mason Tenders
Group 4: Dynamite Men

AREA 16 AND AREA 17

Group 1: Common Laborer
Group 2: Laying Sewer & All Sewer Work; Wrapping Pipe and Handling of Tar Pots: & Handling Creosote & Creosote Work on Railroad
Group 3: Open Well Work
Group 4: Well Digging; Machine & Nozzle Op. on Gunnite; Sandblasting; Rip Rapping Work; Cutting & Welding; High Work - 50 ft. to 100 ft.; Hard Rock Mining
Group 5: Sandblasting
Group 6: High Work over 100 ft.
Group 7: Hooker on Hard Rock Mining; Hod Carrier
Group 8: Reinforced Concrete Stack Work by Composite Crews, except footing or bases
Group 9: Handling & Blasting of Dynamite

AREA 18

Group 1: General Laborers
Group 2: Brick, Mason and Plaster Tenders
Group 3: Oxygen Lancing
Group 4: Cutting, Burning, & Welding
Group 5: Dynamiting & Power Man
Group 6: Tender w/Dynamiting & Powder Man

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LABORERS - HEAVY CONSTRUCTION (CONT'D)

AREA 19

Group 1: General Laborers
Group 2: Mason Tenders, Plaster Tender
Group 3: Dynamite Man Tender
Group 4: Dynamite Man

AREA 20

Group 1: General Laborers
Group 2: Men Working on Sewer Work from Building to Main Sewer; Water lines and Conduit Work; Main Sewer Top Men; Asphalt & Mastic Paving
Group 3: Men Working in Main Sewer Ditch; Men Handling Cutting Torch
Group 4: Mason & Plasterer Tenders
Group 5: Dynamite & Powder Men

AREA 21

Group 1: General Laborer
Group 2: Air Tools, Cutting Torch & Welding (not inclu. Jackhammer), Bottom of Sewer Trenches on the Final Grading, Laying or Caulking of Preformed Sectional Sewer Pipe, High Work 50 ft. or more, (only where free fall is 50' or more)
Group 3: Cooking of Mastic, Coal Tar Derivatives, or Handling of Creosoted Materials
Group 4: Dynamite & Blasting (4 hr. min.); Mason Tender & Plasters' Tender

AREA 22

Group 1: Common Laborer
Group 2: Brick, Plaster & Mason Tenders
Group 3: Workmen Cutting & Burning w/Torch; Men Working on Bottom of Sewer
Group 4: Dynamite Men

AREA 23

Group 1: Common Laborer
Group 2: Dynamite Men & Powder Men
Group 3: Burning & Cutting w/Torch; Raking or Luting Asphalt

AREA 24 AND AREA 27

Group 1: Common Laborer
Group 2: Men Working on Bottom doing Caulking, Laying or Final Grading for sectional sewer pipe
Group 3: Dynmaite Men
Group 4: Masons & Plasterers' Tenders

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LABORERS - HEAVY CONSTRUCTION (CONT'D)

AREA 25

Group 1: General Laborer; Diamond Point Drill Operator
Group 2: Septic Tanks, Cess Pools or Dry Wells, new or old; Sandblasting Work; Handling Creosoted Materials, Raking or Luting Asphalt; Burning & Cutting with Torch; Working Labor Forceman; Feeders, Mixers & Nozzle Men or Gunnite
Group 3: Hod Carriers
Group 4: Dynamite and Powder Men

LABORERS (HIGHWAY CONSTRUCTION)

ALL AREAS

Group 1: General Laborers
Group 2: Asphalt raker; & Applying, Cooking & Heating of all Mastic; Weighman on Asphalt Platform
Group 3: Men on bottom of Sewer Trenches on the Final Grading, Laying oir Caulking of performing Pipe (including reinforced concrete tile but not including box culverts), Tin Whistles, Multi-plate Culverts
Group 4: Brick Mason Tender
Group 5: Dynamite Men

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POWER EQUIPMENT OPERATORS

Group 1: Cranes, draglines, Shovels, Skimmer Scoops, Clamshells or Derrick Boats, Pile Drivers, Crane-Type Backhoes, Asphalt Plant Opers. Plant Opers., Ditching Machines or Backfillers (requiring oilers), Dredges, Asphalt Spreading Machines, Heavy Duty Mechanic, Ass't. Master Mechanic, All Locomotives, Cableways or Tower Machines, Hoists 2 drum or more (where oiler or fireman is required), Hoists-2 drum or more (where oiler or fireman is not required) Hydraulic Backhoes, Ditching Machines or Backfiller (not required oilers) Cherry Pickers, Overhead Cranes, Roller (Steam or Gas) Concrete Pavers, Excavators, Concrete Breakers, Concrete Pumps, Bulk Cement Plants, Cement Pumps, Derrick-Type Drills, Mixers (over 3 bags) and Boats Oprs. (25' & over), Motor Grades or Pushcats, Scoops or Tournapulls, Bulldozers, Endloaders or Fork-lifts, Power Blade or Elevating Graders, Winch Cats, Boom Tractors, and Pipe Wrapping or Painting Machines, Drills (other than derrick type) 1-drum-hoists, Mud Jacks, Mixers (2 or 3 bags), Conveyors (2), Air Compressors (2), Water Pumps regardless of size (2) and Light Plants (2), Mixers (under 2 bags), all Tractors regardless of size (2), Welding Machines (2) Siphons or Jets (2), Winch Heads or Apparatus (2) and Light Plants (2), Mixers (under 2 bags), all Tractors regardless of size (Straight Tractor only), Firemen on Stationary Boilers, Automatic Elevators, Form Grading Machines, Finishing Machines, Power-Sub-Grader or Ribbon Machine, Longitudinal Floats, Boat Oprs., (under 25 ft., conveyors (1), Distribution Oprs., On Trucks, Siphons or Jets (1) Winches Heads or Apparatuses (1), Light Plants (1) Mixers (under 2 bags)
Group 2: Air Commpressor (1), Water Pumps regardless of size (1) Welding machines (1)
Group 3: Firemen and Asphalt Spreader Oilersd
Group 4: Heavy Equipment Oilers (truck cranes, dredges, monigans, large cranes, etc.)
Group 5: Oilers
Group 6: a. Engineers Operating under air pressure
b. Engineers Operating in air over 10 lbs pressure
c. Oilers operating under air pressure
d. Oilers operating in air over 10 lbs pressure

TRUCK DRIVERS

Group 1: Drivers on 2 Axles hauling less than 9 tons; Air Compressor & Welding Machine incl. those pulled by separate units; Fork Lifts up to 6,000 lbs. cap.; Mechanic Tenders; Pick-ups when hauling materials, tools, or men to and from and on the job site; & Truck Driver Tenders

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TRUCK DRIVERS (CONT'D)

Group 2: 2 or 3 Axles hauling more than 9 tons, but hauling less thxles hauling 16 tons or more; Dispatcher; 5-Axles or more combination units; Mechanic & Working Foreman; & Water Pulls

Group 4: Drivers on Oiler Distrbutors & Drivers on Semi-Lowboys when moving equipment

FOTNOTES:
a. 55.00 Per Week

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: ILLINOIS

COUNTIES: BOONE, DEKALB, DUPAGE, KANE, KENDALL, LAKE, MCHENRY & WILL

DECISION NUMBER: IL85-5018

DATE: Date of Publication

Supersedes Decision Number IL83-2014 dated March 4, 1983, in 48 FR 9432

DESCRIPTION OF WORK: Heavy and Highway Projects

	Basic Hourly Rates	Fringe Benefits
CARPENTERS; PILEDRIVERMEN:		
Boone County	$14.87	5.10
DeKalb Co.	15.58	2.52
DuPage & Lake Co	16.75	3.78
Kane, Kendall & McHenry Cos	14.00	2.35
Will Co.	15.86	2.35
CEMENT MASONS:		
Boone Co.	15.42	3.95
DeKalb, Kane (S. part), and Kendall Cos.	16.80	3.81
DuPage Co.	16.45	4.48
Kane (North Part), McHenry	18.15	2.76
Lake Co.	16.50	4.40
Will Co.	17.31	4.05
ELECTRICIANS:		
Boone & DeKalb (Except Sandwich Twp)	18.20	2.25+3%
DeKalb (Sandwich Twp), Kane (Aurora, Sugar Grove, Big Rock, Kaneville, Blackberry, Batavia, Geneva Twps & City of St Charles) & Kendall Cos	18.50	20%
DuPage Co.	17.78	28%
Kane (Remainder) & McHenry Cos	16.35	3.58
Lake Co.	17.86	25%
Will Co.	18.50	2.60+ 3.6%
IRONWORKERS:		
Boone, DeKalb (Except S.E.), McHenry (N.W.) Cos	17.02	5.625
DeKalb (Remainder), DuPage (Except Argonne & Vic.), Kane, Kendall (N.), McHenry (S.E. part) Cos	20.17	3.085
DuPage (Argonne & vic.), Kendall (S. part) & Will Cos	16.49	3.97
Lake & McHenry (Hebron, Woodstock & East thereof) Cos	17.68	5.58
LINE CONSTRUCTION:		
Boone, DeKalb, DuPage, Kane, Kendall, Lake & McHenry Cos:		
Lineman; Digger Dp. & Crane 15 tons or over	17.40	.65+11%
Equip. Op. Semi-Truck Driver	14.78	.65+11%
Groundman Truck Driver	11.78	.65+11%
Groundman	11.39	.65+11%
LINE CONSTRUCTION (Cont'd):		
Will Co:		
Lineman, Equipment Operator	17.50	20.65%
Groundman	12.50	20.65%
PAINTERS:		
Boone Co:		
Brush; Roller	15.07	2.55
Open Structural Steel	16.22	2.55
Spray	16.47	2.55
Sandblasting	16.97	2.55
DeKalb, DuPage, Kane, Kendall & McHenry Cos:		
Brush, Spray, Sandblasting	14.45	2.72
Lake Co:		
Brush	14.50	1.87
Will Co:		
Brush	14.70	2.45
Bridges with:		
Butt Plates, Handrails	14.70	2.45
Superstructures	15.70	2.45
W/O Superstructures	15.20	2.45
TRUCK DRIVERS:		
Boone Co:		
2-3 Axles	14.87	4.00
4 Axles	15.02	4.00
5 Axles	15.22	4.00
6 Axles	15.42	4.00
Remaining Counties:		
2-3 Axles	15.70	b
4 Axles	15.85	b
5 Axles	16.06	b
6 Axles	16.25	b
LABORERS		
DeKalb Co:		
Group 1	13.39	3.515
Group 2	13.64	3.515
DuPage, Lake & Will Cos:		
Group 1	13.90	1.92
Group 2	13.975	1.92
Group 3	14.05	1.92
Group 4	14.175	1.92
Group 5	13.90	1.92
Group 6	14.025	1.92
Group 7	14.125	1.92
Group 8	14.25	1.92

	Basic Hourly Rates	Fringe Benefits
LABORERS (Cont'd):		
Boone, Kane, Kendall & McHenry:		
Group 1	$12.25	$1.92
Group 2	12.30	1.92
Group 3	12.35	1.92
Group 4	12.40	1.92
Group 5	12.50	1.92
Group 6	12.60	1.92
POWER EQUIPMENT OPERATORS:		
Group 1	18.05	5.25
Group 2	17.50	5.25
Group 3	16.35	5.25
Group 4	14.95	5.25
Group 5	13.75	5.25
LANDSCAPE WORK:		
DuPage, Kane, Lake, McHenry and Will Cos:		
Plantsman	8.18	c
Truck Driver (Tractor-Trailer, 3 or more Axles), and Equipment Operator	8.66	c
Truck Driver (Single axle)	6.24	c

CLASSIFICATION DESCRIPTIONS

LABORERS: DeKalb County:

GROUP 1: Common Laborer; Carpenter Tender; Tool Cribman; Fireman or Salamander Tender; Gravel Box Men, Dumpmen & Spotters; Form handlers; Material handlers; Fencing laborers; Cleaning lumber; Pit men; Landscaper; Unloading explosives; Laying of sod; Planting of trees; Removal of trees; Asphalt workers with machine & layers; Asphalt plant Laborers; Wrecking; Fireproofing; Driving of stakes, Stringlines for all machinery; Window cleaning

GROUP 2: Handling of materials harmful to skin or clothing; Track laborer; Cement handler; Chloride handler; Unloading & laborers with steel workers & re-bars; Concrete workers, wet; Tunnel tenders in free air; Batch dumper; Mason tender; Kettle & tar man; Tank cleaner; Plastic installer; Scaffold worker; Motorized buggies or motorized unit used for wet concrete or handling of building materials; Laborers with de-watering systems; Sewer workers plus depth; Vibrator operators; Cement silica, clay, fly ash, Lime & plasters, Handlers (bulk or bag); Cofferdam workers plus depth; Concrete paving, placing, cutting & tying of reinforcing; Deck hand, dradge hand and shore laborers; Bankmen on floating plant; Grade checker; Power tools; Front end man on chip spreader; Caisson worker plus depth; Gunnite nozzle man; leadman on sewer work; Welders, cutters, burners & torchmen; Chainsaw operator; Jackhammer & drill operator; Layout man and/or tile layer; Steel form setter; Air tamping hammerman; Signal man on crane; Concrete saw; Screenman on asphalt paver; Tending masons with hot material or where foreign materials are used; Mortar mixer operator; Multiple concrete duct - leadman; Luteman; Asphalt raker; Curb asphalt machine operator; Ready mix scaleman, permanent, portable or temporary plant; Laborers handling masterplate or similar materials; Laser beam operator; Concrete burning machine operator; Coring machine Operator; Plaster tender; Underpinning and shoring of buildings; Pump man; Manhole and catch basin; Dirt & stone tamper; Hose men on concrete pump.

LABORERS: Boone, McHenry, Kane, & Kendall Counties

Group 1: Common laborer, Asphalt laborer, Asphalt plant laborer, Stripping laborer, clipper type concrete saw, self-propelled saws, laser beam
Group 2: Air Tampers & vibrators
Group 3: Mortar & concrete mixers
Group 4: Stringline & form setter; Torchman (demolition), Sheeting & cribbing, Black top rakers & lutemen, Machine screwmen
Group 5: Chain saw man, Jackhammer man, Drillman, concrete breaders & air space, Dynamite handlers (helpers)
Group 6: Tunnel Laborers, Tile Layers & Bottom Men
Group 7: Caisson Diggers, Dynamiters

CLASSIFICATION DESCRIPTIONS

LABORERS: DuPage, Lake & Will Counties:

Group 1: Common Laborer; Tenders; Material expeditor (asphalt plant); Street paving, Grade separation, sidewalk, curb & gutter, stripers & all laborers not otherwise specified

Group 2: Asphalt tampers & smoothers; Cement gun

Group 3: Cement gun nozzle (laborers) gunnite

Group 4: Rakers & Lutemen; Machine-screwmen; Kettlemen; Mixermen; Drum-men; Jackhammermen (asphalt); Paintmen; Mitre box spreaders; Laborers on birch, overman & similar spreader equipment; Laborers on Apsco; Laborers on air compressors; Paving form setters; Jackhammermen (concrete); Power driven concrete saws; other power equip.

SEWER & TUNNEL WORK:

Group 5: Top Laborers; All laborers not otherwise specified

Group 6: Concrete & Steel setters

Group 7: Cement carriers; Cement Mixers; Concrete repairman; Mortar men; Scaffold men and second bottom men

Group 8: Air Trac Drill Operators; Bottom men; Bracers-Bracing; Bricklayer tenders; Catch basin diggers; Drainlayers; Dynamiters; Form men; Jackhammer men; Pipelayers; Rodders; Welders & Burners; Well point system men

POWER EQUIPMENT OPERATORS:

Group 1: Asphalt plant; Asphalt heater & planer combination; Asphalt spreader; Autograder; Belt loader; Caisson rigs; Car dumper; Central Redi-mix plant; Combination backhoe front end loader 1 yd & over; Concrete breaker truck mounted; Concrete conveyor; Concrete paver over 27E cu ft; Concrete placer; Concrete tube float; Cranes, all attachments; Cranes, Hammerhead, Linden, Peco & similar; Crater crane; Derricks; Derrick boats; Derricks, traveling; Dredges; Field mechanic-welder; Formless curb & gutter machine; Gradall & similar; Grader, elevating; Motor grader, motor patrol, auto patrol, form grader, pull grader, subgrader; Guard rail post driver truck mounted; Roto mill grinder; Slip form paver; Soil test drill rig truck mounted; Straddle Buggy; Hydraulic telescoping form (tunnel); Tractor drawn belt loader with or without attach. Pusher; Tractor with boom; Raised or blind hole (tunnel shaft) drill; Underground boring and/or mining machines under 5 ft; Wheel excavator; Widener (Apsco)

Group 2: Batch plants; Bituminous mixer; Babcats over 3/4 cu yds; Boiler & throttle valve; Bulldozers; Car loader trailing conveyors; Combination backhoe front end loader machine under 1 cu yd; Compressor & throttle valves; Concrete breaker or hydrohammer; Concrete grinding machine; Concrete mixer or paver 7S series to & inclu. 27 cu ft; Concrete spreader; Concrete curing machine; Burlap machine; Belting machine & sealing machine; Finishing machine, concrete; Greaser engineer; Highlift shovels or front-end loaders; Hoist - sewer dragging machine; Hydraulic boom trucks, all attachments; Locomotives, Dinky; Pumpcretes, squeeze cretes - screw type pumps, gypsum bulker & pump; Roller, asphalt; Rotary snow plows; Rototiller. Seaman, etc, self-propelled; Scoops, tractor drawn; Self-propelled compactor spreader - chip -stone, etc; Scraper - prime mover in tandem (add $1/hr each machine attached) Tank car heater; Tractors, push, pulling sheeps foot, disc, compactor, etc, Tug boats.

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CLASSIFICATION DESCRIPTIONS

POWER EQUIPMENT OPERATORS (Cont'd):

Group 3: Boilers; Brooms, all power propelled; Cement supply tender; Concrete mixer (2 bags & over); Conveyor, portable; Farm-type tractors used for mowing, seeding, etc; Firemen on boilers; Forklift trucks; Grouting machine; Hoists, automatic; Hoists, all elevators; Hoists, tugger single drum; Jeep diggers; Pipe jacking machine; Post hole digger; Power saw, concrete; Pug mills; Rollers, other than asphalt; Steam generators; Stone crushers; Stump machine; Winch trucks with "A" frame; Work boats, tamper-form-motor driven

Group 4: Air compressor; Asphalt spreader backend man; Combination - small equipment operator; Generators; Heaters, mechanical; Light plants (1 through 5); pumps over 3" (1 to 3 not to exceed a total of 300 ft); Pumps, well points; Tractaire; Welding machines (2 through 5); Winches, 4-small electric drill winches; Bobcats 3/4 cu yd and under

Group 5: Oilers

FOOTNOTES:

a. Paid Holidays: Memorial Day; Independence Day; Labor Day; Thanksgiving Day;

b. $116.00 per week

c. Paid Holidays: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day & Christmas Day. One year's service - one week paid vacation; two or more years of service - two weeks paid vacation

UNLISTED CLASSIFICATIONS NEEDED FOR WORK NOT INCLUDED WITHIN THE SCOPE OF THE CLASSIFICATIONS LISTED MAY BE ADDED AFTER AWARD ONLY AS PROVIDED IN THE LABOR STANDARDS CONTRACT CLAUSES (29 CFR, 5.5 (a)(1)(ii)

SUPERSEDEAS DECISION

STATE: Michigan COUNTY Kent
DECISION NUMBER: MI85-5019 DATE: Date of Publication
Supersedes Decision No. MI84-5043 dated December 28, 1984 in 49 FR 50557
DESCRIPTION OF WORK: Building Construction Projects (excluding single family homes and apartments up to and including 4 stories.)

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	$ 7.50	
BOILERMAKERS	11.07	$3.83
BRICKLAYERS & STONEMASONS	11.18	
CARPENTERS	7.72	
CEMENT MASONS	10.77	
ELECTRICIANS	13.00	1.23+ 9%[a]
ELEVATOR CONSTRUCTORS	9.90	.915+ 4%+a+b
IRONWORKERS:		
Structural & Ornamental	5.86	
Reinforcing	5.92	
LABORERS - Unskilled	7.01	
PAINTERS - Brush	12.00	1.07
PAINTERS - Tapers	12.25	1.07
PLASTERERS	10.00	
PLUMBERS & STEAMFITTERS	14.89	2.22
ROOFERS	8.32	
SHEET METAL WORKERS	13.75	4.23
Truck Drivers	8.12	
POWER EQUIPMENT OPERATORS:		
Backhoe Operator	9.13	
Bulldozer Operator	9.20	
Crane Operator	9.25	
Front End Loader	7.61	
WELDER: Receive rate prescribed for craft performing work to which welding is incidental.		

FOOTNOTES:
a. 6 Paid Holidays: New Year's Day, Memorial Day, Independence Day, Labor Day Thanksgiving Day, Christmas Day.
b. Employer contributes 4% of regular hourly rate to vacation pay credit for employee who has worked more than 5 years & 2% for employee who has worked less than 5 years.
c. $5.00 per month - Life Insurance

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: PENNSYLVANIA

COUNTIES: Bucks, Chester, Delaware, Montgomery & Philadelphia

DECISION NO. PA85-3012

DATE: Date of Publication

Supersedes Decision No.: PA84-3041 dated November 9, 1984, in 49 FR 44855

DESCRIPTION OF WORK: Building Construction, including single family homes and garden type apartments up to and including 4 stories (Chester County Building, Construction Only)

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS		
Zone 1	18.75	4.45
Zone 2	16.32	4.455
BOILERMAKER	18.88	2.865
BRICKLAYERS:		
New Residential: Under 4 stories	16.12	2.57
All other work:		
Zone 1	16.01	3.82
Zone 2	16.06	4.39
Zone 3	16.02	3.78
CARPENTERS:		
Residential Under 4 Bucks, Delaware & Montgomery Counties	13.68	4.21
Philadelpha County	15.72	5.71
All other work	15.82	5.61
CEMENT MASONS:		
Zone 1	14.00	6.54
Zone 2	14.60	2.75
Zone 3	10.79	1.65
FINAL CLEAN-UP CREW: When construction cleaning completed and general contractor and all construction sub-contractors are off the job:		
Janitorial Cleaner	4.68	.43+a+b
Window Cleaner	5.99	.43+a+b
DRYWALL FINISHERS	15.03	5.69
ELECTRICIANS		
Zone 1		
Commercial	18.67	28%
Residential up to and including 4 stories	17.50	27%
Zone 2		
Commercial	19.59	16.5%
Residential up to and including 3 stories	17.79	15.5%
Zone 3		
Commercial	18.82	22½%
Residential up to and including 3 stories	11.40	22½%
Zone 4		
Commercial	17.92	2.68+3½%
Zone 5		
Commercial	17.38	1.89+3%
Zone 6		
Commercial	16.70	1.57+10%
Zone 7		
Commercial	15.35	1.84+3%
Residential up to and including 4 stories	8.50	.84+3%
Zone 8		
Commercial	19.68	16 3/4%+1.00
Zone 9		
Commercial	14.15	.64+3%
ELEVATOR CONSTRUCTORS:		
Elevator Constructors	19.36	3.29+c+d
Elevator Constructors Helpers	70%JR	3.29+c+d
Elevator Constructors Helpers (Prob.)	50%JR	
GLAZIERS		
Zone 1	16.04	3.55
Zone 2	14.04	1.465
IRONWORKERS:		
Zone 1	16.20	8.00
Zone 2	16.70	5.75
Zone 3		
Structural&Ornamental	16.75	6.80
Reinforcing Steel Mesh Rehar work	17.27	6.30
Rigger, Machinery Moving	17.70	4.20
Zone 4		
Structural, Ornamental	17.40	4.25
Reinforcing Steel, Mesh Machinery & Rebar Work	16.53	4.25
All Pre-Eng. Bldg. one evevation of 25 ft. or less, Overhead Doors, Chainlink type fences	14.79	4.25
All other types fences	17.40	4.25

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	Basic Hourly Rates	Fringe Benefits
LABORERS:		
New Residential under 4 Stories	9.08	1.775
All other work		
Class I	13.05	3.85
Class II	13.15	3.85
Class III	12.90	3.85
Class IV	13.20	3.85
Class V	13.45	3.85
Class VI	12.49	3.85
LANDSCAPE LABORERS:		
Class I	8.30	1.80+e
Class II	8.80	1.80+e
LATHERS		
Zone 1	15.82	5.61
Zone 2	16.82	3.23
Zone 3	11.61	1.01
Zone 4	11.40	.57
LEAD BURNERS	10.75	.66+f
LINE CONSTRUCTION		
Zone 1		
Linemen	18.04	.80+6%
Groundmen	10.82	.80+6%
Winch truck operator	12.63	.80+6%
Zone 2		
Linemen, cable splicers, heavy equipment operator, truck driver	15.27	.80+10 3/4%
Groundman, winch op.	12.22	.80+10 3/4%
MARBLE SETTERS	14.20	3.50
MARBLE FINISHERS	11.62	3.85
MILLWRIGHTS	16.32	5.61
PAINTERS:		
Zone 1		
Brush	15.00	2.78
Spray, steel & swing	15.55	2.78
Roller	15.00	2.78
Zone 2		
Commercial, brush	15.38	3.40
Commercial, spray	15.88	3.40
Zone 3		
Brush	12.15	2.25
Steel and spray	13.20	2.25
Roller	12.15	2.25
Zone 4		
Brush	15.56	3.48
Steel	16.31	3.48
PILEDRIVERMEN	15.97	6.81+g
POINTERS, CAULKERS AND CLEANERS	15.30	4.20
PLASTERERS:		
Zone 1	18.24	1.53
Zone 2	10.81	1.66
Zone 3	15.37	.91
PLUMBERS:		
Zone 1	19.78	3.94
Zone 2	18.38	3.59
ROOFERS:		
Shingle, slate, and tile	13.92	2.25
Mechanic II (for shingle, slate, or tile work) - handles and transports all materials, tools & equipment; clean-up debris	6.25	2.25
All other work	19.57	2.93+h
Mechanic II (for all other work) - Handles and transports all materials, tools and equipment; clean-up debris	8.25	2.93+h
SHEET METAL WORKERS	18.72	4.95
SOFT FLOOR LAYERS	15.53	5.91
SPRINKLER FITTERS		
Zone 1	16.92	3.23
Zone 2	15.62	2.50
STEAMFITTERS		
Zone 1	19.56	4.16
Zone 2	18.16	3.81
STONEMASONS		
Zone 1	15.47	3.85
Zone 2	16.02	3.80
Zone 3	15.21	3.32
Zone 4	14.20	3.50
SOUND AND PUBLIC ADDRESS INSTALLATION TECHICIANS (Existing building only)	9.50	3%
TERRAZZO WORKERS	15.32	2.33
TERRAZZO FINISHERS	11.60	3.85
TILE SETTERS	13.35	4.80
TILE SETTERS FINISHERS	11.39	3.85
POWER EQUIPMENT OPERATORS		
Group 1	17.82	26.6%+j
Group 2	17.56	26.6%+j
Group 3	16.10	26.6%+j
Group 4	15.79	26.6%+j

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	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS (Continued)		
Group 5	14.02	26.6% +j
Group 6	13.51	26.6% +j
BUILDING CONSTRUCTION TRUCK DRIVERS		
Class I	12.05	2.8725 +k+1
Class II	12.15	2.8725 +k+1
Class III	12.35	2.8725 +k+1
TRUCK DRIVERS: HEAVY & HIGHWAY INCLUDING SITE PREPARATION, PAVING & UTILITIES ON BUILDING CONSTRUCTION		
Class 1	11.90	2.8725 +o+p
Class 2	12.00	2.8725 +o+p
Class 3	12.20	2.8725 +o+p

Paid Holidays (Where Applicable): A-New Year's Day; B-Memorial Day; C-Indenpence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTES:

a. Paid Holidays: New Year's Day; Lincoln's Birthday; Good Friday; Decoration Day; Independence Day; Labor Day; Thanksgiving Day; Christmas Day, plus vacation pay for employee who have been employed by the empolyer for one year may receive five paid holidays; two years ten paid holidays, five years twelve paid holidays; ten years fifteen paid holidays, eighteen years twenty paid holidays, twenty five years twenty five paid holidays.

b. Funeral Leave: Employee's shall be granted three consecutive calendar days in the case of a parent, spouse, child, brother, or sister of an employee, if the employee normal time off falls within the three day period, the employee will be reimbursed for that portion of time normally scheduled for work, should death occur during an employee's schedule vacation, there will be no funeral leave payment. Funeral leave under no circumstances results in a change in employee's basic weekly salary.

c. Employer contributes 8% of basic hourly rate for 5 years or more of service or 6% basic hourly rate for 6 months to 5 years of service as Vacation Pay Credit.

j. Holidays: a through f, plus the Friday after Thanksgiving Day.

k. Holidays: July 4th; Labor Day and Thanksgiving Day.

f. Holidays, A through F, Washington's Birthday, Good Friday and Christmas Eve, provided the employee has worked 45 days for the employer during the 120 days prior to the holiday, and is available for work the day preceding and following the holiday.

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FOOTNOTES CONTINUED

g. Holidays; A through F, Washington's Birthday, Good Friday and Christmas Eve providing the employee has worked 45 full days for the same employer during the 120 calendar days prior to the holiday & is available for work the day preceding & following the holiday.

h. Holiday: Election Day.

j. Paid Holidays: A through F, providing the employee works the day before and after the holiday.

k. Employer will earn one (1) vacation day every two (2) months up to a maximum of five (5) vacation days (40 hours pay) calendar year. During each two(2) consecutive months period, employee must have worked twenty-six (26) days in that two month period. After 130 workdays the employee will be entitled to all days of vacation, employees with five (5) years of more senority shall be eligible for two (2) weeks of vacation.

l. Paid Holidays: Memorial Day; Independence Day; Labor Day; Veterans Day and (5) personal holidays for employees who have worked a minimum of thirty days and are on the employer's senority list, provided he works the schedule work days before and after the said holidays.

o. Employee will earn one (1) vacation day every two (2) months up to a maximum of five (5) vacation days per calendar year. During each two (2) consecutive months period, employee must have worked twenty-six (26) days in that two month period. After 130 workdays the employee will be entitled to all days of vacation.

p. Paid Holidays: Memorial Day; Independence Day; Labor Day and Veterans Day and five (5) personal holidays provided such employee work the schedule work days before and after said holiday; and employee gives employer one (1) week's notice requesting a personal holiday. The eligibility for personal holidays will be as follows; Employee will earn one (1) personal holiday every two (2) months up to a maximum of five (5) personal holidays per calendar year. During each two (2) consecutive month period, employee must have worked twenty-six (26) days in that two month period. After 130 workdays the employee will be entitled to all personal holidays.

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WELDERS - rate prescrived for craft performing operation to which welding is incidental.

"Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award provided in the labor standards contract clauses (29 CFR, 5.5 (a) (1)(ii))."

AREA COVERED BY ASBESTOS WORKERS

ZONE 1 - Chester, Delaware, Montgomery, Philadelphia and Remainder of Bucks County

ZONE 2 - Bridgeton, Durhan, Lower Makefield, Middletown Falls, Morristown, New Hope, Newton, Noxkamixon, Plumstead Riegelsville, Solebury, Tullytown, Tinicum Upper Makefield and Yardley Townships in Bucks County

AREA COVERED BY BRICKLAYERS ZONES

ZONE 1 - Bucks, Chester, Philadelphia Counties, Radnor and Haverford Township in Delaware County, Lower Marion, Abington, Upper Moreland and Cheltenhan Townships in Montgomery County

ZONE 2 - Remainder of Delaware County

ZONE 3 - Remainder of Montgomery County

AREA COVERED BY CEMENT MASONS ZONES

ZONE 1 - Bucks, Delaware and Philadelphia Counties, Remainder of Chester County and Remainder of Montgomery County

ZONE 2 - Oxford, Kenneth Square, Avondale and Longwood Townships in Chester County

ZONE 3 - Pennsburg and Pottstown Townships in Montgomery County

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AREA COVERED BY ELECTRICIANS ZONES

ZONE 1

Bucks County - starting at the Delaware River and following the west limits of the Borough of Bristol, along the continuation of U.S. Highway 13 and under the Pennsylvania Railroad bridge to Route 09113, north 09113 to Route 152, north along Route 152 to the Humeville Road, east on Humeville Road to Route 333, north on Route 344 to the junction of Spurs 281 and 252, continue north on Spur 252 to Route 09028, west on 09028 to Route 152, north on 152 to TR 232, north on TR 532 to Tr 113, north on TR 113 to TR 232 at Anchor Inn, northeast on TR 232 and continue northeast along Route 659 to Route 09060, west on 09060 to Route 402, north on 402 to the Borough line at the southwest corner of the Borough of New Hope. The Borough of New Hope is excluded.

starting at the Delaware at the Delaware River and proceeding southwest along the Plumstead-Solebury and the Plumstead-Buckingham Township lines to Route 09064, northwest on 09064 to U.S. Highway 611 south on 611 to the spur of Route 270, northwest along the spur to Route 397, southwest on 397 to Route 350, southeast on 350 to Route 395, southwest on 395 to Route 09069, southeast on 09069 to Route 09041 southwest on 09041 to the Montgomery County line.

Delaware County - that portion east of a line following State Highway 320 from Montgomery County to Maple, then along the Springfield Road to Saxer Avenue, along Saxer Avenue to Powell Road, along Powell Road to State Highway 420 and continuing in a straight line to the Delaware River.

Montgomery County - that portion southeast of a line following Lower State Road from Bucks County southwest to the Bethlehem Pike (U.S. Highway 309), south on the Bethlehem Pike to the Penllyn Pike, southwest on the Penllyn and Blue Bell Pikes to the Wissahickon Creek, southeast on the Wissahickon Creek to the Butler Pike to North Lane near Conshohocken Borough, southwest on North Lane to Schuylkill River and continuing southeast in a line to the Spring Mill Road and southwest on the Spring Mill Road to Delaware County.

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AREA COVERED BY ELECTRICIANS ZONE CONT'D

Philadelphia County - in its entirety.

ZONE 2
Bucks County - Hilltown and New Britain Townships in their entirety; that portion of telford Borough northeast of County Line Road (Main Street) and bounded by West Rockhill and Hilltown Township; that portion of Dublin Borough west of State Highway 313, and that portion of Doylestown and Warrington Townships and Doylestown Borough northwest of a line following U.S. Highway 611 south from Route 09064 to the spur of Route 270, and proceeding northwest along the spur to Route 397, southwest on 397 to Route 350, Southeast on 350 to Route 395, southwest on 395 to Route 09069, southeast on 09069 to Route 09041, southwest on 09041 to the Montgomery County Line.

Chester County - East Coventry, East Vincent, West Vincent, East Pikeland, West Pikeland, Uwchlan, Upper Uwchlan, East Brandywine, Schuylkill and Charlestown Townships in their entirety, and that portion of Caln, East Caln, West Whiteland, East Whiteland, Tredyffrin, Willstown, Easttown Townships and the Borough of Downingtown north of U. S. Highway 30.

Delaware County - That portion of Radnor Township north of U.S. Highway 30 and west of State Highway 320.

Norristown, Montgomery County - That portion northwest of a line following Lower State Road from Bucks County southwest to the Bethlehem Pike (U.S. Highway 309), south on Bethlehem Pike to the Penllyn Pike, southwest onthe Penllyn and Blue Bell Pikes to the Wissahickon Creek to the Butler Pike, southwest Wissahickon Creek to the Butler Pike, southwest on the Butler Pike, to North Lane near Conshohocken Borough, southeast on North Lane to the Schuylkill River and continuing southeast in a line to the Spring Mill Road, southwest on the Spring Mill Road to Delaware County; but excluding Upper Hanover, Douglas, Upper Pottsgrove, West Pottsgrove Townships and also excluding that portion of the

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AREA COVERED BY ELECTRICIANS ZONE CONT'D

ZONE 2 CONT'D
Borough of Pottstown north and west of a line drawn northeast on Keim Street from the Schuylkill River to the Reading Railroad northwest on the railroad to Madison Street, to High Street, east on High Street to Green Street, north on Green Street and northeast on Mintzer Street to the Lower Pottsgrove Township Line, along this township line and the borough line northwest to Adams Street and the Beehive Road, northeast on the Beehive Road to the Township Line at Mervine Street in the State Of Pennsylvania.

ZONE 3
Chester County - That portion south of U.S. Highway 30 and north and west of U. S. Highway 1

Delaware County - That portion south of U.S. Highway 30 and north of that part of U.S. Highway 1 between U.S. Highway 202 and the Chester County Line, and east of that part of U.S. Highway 202 betwen U.S. Highway 1 and the Delaware Line, and west of a line extending from Montgomery County along State Route 320 to Maple, then along the Springfield Road to Saxer Avenue, along Saxer Avenue to Powell Road; along Powell Road to State Highway 420; along 420 and continuing in a straight line to the Delaware River in the State of Pennsylvania.

ZONE 4
Chester County - Oxford, Avondale and Kenneth Square Twps.

ZONE 5
Chester County - West Clan, West Brandywine, Honey Brook, Wallace, West Nantmeal, East Nantmeal, Warwich, South Coventy, Valley Twps. and Coatesville.

Montgomery County - West Pottsgrove, Upper Pottsgrove, Douglas Twps., Pottstown.

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AREA COVERED BY ELECTRICIANS ZONE CONT'D

ZONE 6
Bucks County - Plumstead, Bedminister, Tinicum, Nockomixon, Bridgeton and Durham Townships in their entireties, and that portion of Haycock and Springfield Townships east of a line following State Highway 412, from Northampton County south to Route 09071 to State Highway 212, along highway 212 to Route 09068, and along 09068 to State Highway 313. Also included is that portion of Bublin Borough east of State Highway 313.

ZONE 7
Bucks County - East Rock Hill, West Rock Hill, Milford and Richland Townships in their entirety and that portion of Haycock and Springfield Townships west of a line following State Highway 212 from Northampton County South to Route 09071 along 09071 to State Highway 212, along Highway 212 to Route 09068 and along 09068 to State Highway 313

Montgomery County - Upper Hanover in its entirety

ZONE 8
Bucks County - That portion east of a line starting at the Delaware River and following the west limits of the Borough of Bristol, along the continuation of U.S. Highway 13 and under the Pennsylvania Railroad Bridge to Route 09113, north along 09113 to Route 152, north along Route 152 to the Hulmevilla Rd., east on the Hulmeville to Route 344, north on Route 344 to the junction of Spurs 281 and 252 continue north on Spur 252 and Route 09028, west on 09028 to Route 152, north on 152 to TR 532, north on TR 532 to TR 113, north on TR 113 to TR 232 as Anchor Inn, northeast on TR 232 and continue northeast along Route 659 to Route 09060, West on 09060 to Route 402, north on 402 to the Borough Line at the southwest corner of the Borough of New Hope. The Boroughs of New Hope and Bristol are included.

ZONE 9
Chester County - That portion of Sadsbury and West Sadsbury Township north of U. S. Highway 30.

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AREA COVERED BY GLAZIERS ZONES

ZONE 1 - Delaware and Philadelphia Counties, Remainder of Bucks, Chester and Montgomery Counties

ZONE 2 - Milford, West Rockville, Rickland, E. Rockville, Haycock, Surham, Springfield, Richlandtown, Sqoherton, Nockamixon Townships in Bucks County, Warwick, S. Coventry, E. Coventry, N. Coventry, Spring City and Royersford Townships in Chester County, Pottstown, Lower Pottsgrove, Limrick, Lower Frederick, Upper Salford, Sounderton, Greeland, Upper Hanover, New Hanover, Douglas, Marlboro Twps. in Mongtomery County

AREA COVERED BY IRONWORKERS ZONES

Zone 1 - Bucks County

Zone 2 - Remainder of Chester County

Zone 3 - Delaware, Philadelphia Counties, Remainder of Montgomery County

Zone 4 - Townships in Chester County, Parkersburg, E. Sadsburg, W. Sadsburg, Pomeroy, Wagontown; W. Clan, Barren; Honeybrook: birdel; Rockville; Icedale; E. Brandywine; W. Brandywine; Cognog, Lyndel; Cupola: Wyebrook; Glen Moore; Marsh, Nantmeal; East Nantmeal; Nantmeal Village; West Vincent; Kimberton; Chester Spring; Pikeland; East Vincent; East Warwick; West Warwick; St. Peters; East Coventry; West Coventry; Cedarville; Pottstown and Flicks Lock: Pennburst; Spring City; Parker Ford;

Townships in Montgomery County; Palm; Hopenville; Hanover; Upper Hanover; New Hanover; E. Greenfield; Pennsubrg; Perkiomen; Niantio: Douglas; Congo; Sassamansville; New Perkionenville; Marlboro; Greenland; Tylerport; Ford; Greenland; Roytown; Englesville; Gilbertsville, Upper Woxall; Bergey; E. Salford; W. Salford; Anise: Obelish; Lower Pottsgrove; Upper Pottsgrove; Fagleysville; E. Zieglerville; W. Zieglerville; E. Limerick; W. Limerick; and Royerford

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LABORERS CLASSIFICATIONS DEFINITIONS REHABILITATION
AND ALL OTHER WORK OTHER THAN RESIDENTIAL

CLASS I - Striping & dismantling concrete form work, loading, carry 7 handling of all reinforced steel 7 steel mesh, handling lumber and other building materials, operating jackhammers, paving breakers 7 all other pheumatic tools, building scaffolds, raking shoveling 7 tamping of asphalt, spading & concrete pit work, grading, form pinning, shoring, demolition except burners, laying conduits and ducts, sheathing, lagging, laying non metallic pipe & caulking, all other types of Laborers

CLASS II - Mason tender, power buggies, burners on demolition

CLASS III - Wagon drill operator (single)

CLASS IV - Powdermen, wagon drill operator (multiple), circular caissons excavation: Caisson groundmen, Underpinning excavation: Laborers, working at depth of 8 feet or under

CLASS V - Caisson bottom man

CLASS VI - Yard Workers

LANDSCAPE LABORERS CLASSIFICATIONS DEFINITIONS

CLASS I - Landscape Laborers

CLASS II - Farm tractor driver, hydroseeder nozzle man and mulcher nozzle man

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AREA COVERED BY LATHERS ZONES

ZONE 1 - Delaware, Montgomery and Philadelphia Counties, Remainder of Bucks and Chester Counties

ZONE 2 - Coatesville & lower part of Chester County

ZONE 3 - Milford, Trumbersville, Richland, Quarkertown, Springfield, Durham, Riegelsville, Bridgetown, Noxkamixon, Tinicum, Plumstead, Dublin, Bedminister, Haycock, East Rockhill, Perkasie, Sellersville, West Rockhill Townships in Bucks County

ZONE 4 - Solebury, New Hope, Upper Makefield, Wrightstown, Newton, Yardley, Lower Makefield, Morrisville, Falls, Tullytown Townships in Bucks County

AREA COVERED BY LINE CONSTRUCTION

ZONE 1 - Remainder of Bucks County, Chester, Delaware, Montgomery, Philadelphia Counties

ZONE 2 - Buck county: That portion east of a line starting at the Delaware River and following the west limits of the Borough of Bristol, along the continuation of U.S. Highway 13 and under the Pennsylvania Railroad Bridge to Route 09113, north along 09113 to Route 152, north along Route 152 to the Hulmeville Rd., east on the Hulmeville to Route 344, north on Route 344 to the junction of Spurs 281 and 252, continue north on Spur 252 and Route 09028, west on 09028 to Route 152, north on 152 to Tr 532, north on Tr 532 to Tr 113, north on Tr 113 to Tr 232 at Anchor Inn, northeast on Tr 232 and continue northeast along Route 659 to Route 09060, west on 09060 to Route 402, north on 402 to the Borough Line at the southwest corner of the Borough of New Hope. The Borough of New Hope and Bristol are included.

AREA COVERED BY PAINTERS ZONES

ZONE 1 - Bucks & Philadelphia Counties: Haverford, Newton, Randnor, Maple, Springfield, Upper Darby, Barby, Ridley, Tinicum & Yeondon Townships in Delaware County, Cheltenahm, Abington, Uper and Lower Morland, Springfield Whitemarsh, Plymouth, Upper Dubling, Horsham, Whitpain, Upper and Lower Gwynodd, Lower Marion, Upper Southampton, Townships in Montgomery County

ZONE 2 - Chester County and Remainder of Delawre County

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ARE COVERED BY PAINTERS ZONES CONTINUED

ZONE 3 - Pottstown, Pottsgrove, New Hanover and Douglas Townships in Montgomery County

ZONE 4 - Remainder of Montgomery County

AREA COVERED BY PLASTERERS ZONES

ZONE 1 - Bucks, Delaware & Philadelphia Counties; remainder of Chester County, Remainder of Montgomery County

ZONE 2- Pennsburg Township in Montgomery County

ZONE 3 - Longwood, Kennett Square, Avondale and Oxford Townships in Chester County

AREA COVERED BY PLUMBERS ZONES

ZONE 1 - Delaware, Chester, Montgomery, Philadelphia Counties; remainder of Bucks County

ZONE 2 - Bridgton, Durnham, Haycock, Milford, Nockamixon, Richland, East Rockhill, West Rockhill and Springfield Townships in Bucks County

AREA COVERED BY SPRINKLER FITTERS ZONES

ZONE 1 - Bucks, Chester, Delaware & Montgomery Counties

ZONE 2 - Philadelphia County

AREA COVERED BY STEAMFITTERS ZONES

ZONE 1 - Chester, Delaware, Montgomery, Philadelphia Counties, Remainder of Bucks County

ZONE 2 - Bucks County; Townships of Bridgton, Durham, Haycock, Milford, Nockamixon, Richland, East Rockhill, West Rockhill and Springfield

AREA COVERED BY STONE MASONS ZONES

ZONE 1 - Delaware & Philadelphia Counties; Remainder of Bucks County

ZONE 2 - Montgomery County

ZONE 3 - Chester County

ZONE 4 - Bristol Township in Bucks County

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POWER EQUIPMENT OPERATIONS CLASSIFICATIONS

WAGE GROUP I - Handling steel and stone in connection with erection, cranes doing hook work, any machines handling machinery, cable spinning machine, helicopters, and machines similar to to the above.

WAGE GROUP II - All types of cranes, all types of backhoes, cableways, draglines, keystones, all types of shovels, derricks, trench shovels, trenching machines, pippin type backhoes, hoist with two towers, paver 21E and over, all types over-head cranes, building hoists - double drum (unless used as single drum), mucking machines in tunnel, gradalls, front-end loaders, boat captain, tandems scrapers, tower type crane operation, erecting, dismantling, jumping or jacking, drills self-contained (drillmaster type), fork lift (20 ft. and over), batch plant with mixer, scrapers & tournapulls, rollers (high grade finishing), mechanic-welder, spreaders, bulldozers and tractors, and machines similar to the above.

WAGE GROUP III - Conveyors (except building conveyors), building hoists (single drum), asphalt plant engineers, high or low pressure boilers, concrete pumps, well drillers, fork lift trucks of all types, ditch witch type trencher, motor patrol, concrete breaking machines, rollers, and machines similar to the above.

WAGE GROUP IV - Seaman pulverizing mixer, tireman on power equipment, farm tractors, fine grade machines, form line graders, road finishing machines, power broom (self-contained), seed spreader, grease truck, and machine similar to the above, maintenance engineer (power Boat)

WAGE GROUP V - Conveyors (building), welding machines, heaters, wellpoints, pumps, compressors, and machines similar to the above.

WAGE GROUP IV - Fireman, oilers and deck hands (personnel boats), grease truck helpers

TRUCK DRIVERS CLASSIFICATION DEFINITIONS (BUILDING CONSTRUCTION)

CLASS I - Warehouseman, checker, fork lift driver, stake body truck (single axle), 1½ ton and under vehicles

CLASS II - Truck driver over 1½ tons, dump trucks, tandem and batch trucks, semi-trailers, agitator mixer trucks, and dumpcrete type vehicles, asphalt distributors, farm tractor when used for transportation, stake body Truck (tandem)

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TRUCK DRIVERS CLASSIFICATIONS DEFINITIONS (CONTINUED)

CLASS III - Euclid type-off highway equipment - back or belly dump trucks and double - hitched equipment straddle (Ross) carrier, lowbed trailers

TRUCK DRIVERS, HEAVY & HIGHWAY INCLUDING SITE PREPARATION, PAVING & UTILITIES ON BUILDING CONSTRUCTION CLASSIFICATION DEFINITIONS

CLASS 1 - Helpers, Stake Body Truck (single axle, dumpster)

CLASS 2 - Dump trucks, tandem & batch trucks, semi-trailers, agitator mixer trucks, and dumpcrete type vehicles, asphalt distributors, farm tractor when used for transportation, stake body truck (tandem)

CLASS 3 - Euclid type, off-highway equipment or belly dump trucks and double hitched equipment, staddle (ross) carrier, low-bed trailers

SUPERSEDEAS DECISION

STATE: VIRGINIA COUNTIES: SEE BELOW*
DECISION NO. VA85-3011 DATE: DATE OF PUBLICATION
Supersedes Decision No. VA85-3006 dated January 18, 1985 in 50 FR 2765.
DESCRIPTION OF WORK: Highway Construction (does not include bridges over navigable waters; tunnels; rest areas which include building structures; railroad construction; and paving associated with building construction).

*The Independent Cities of Chesapeake, Hampton, Newport News, Norfolk, Portsmouth & Virginia Beach.

	Basic Hourly Rates	Fringe Benefits
ASPHALT RAKER	5.76	
CARPENTERS, STRUCTURE	8.25	
CARPENTER HELPER, STRUCTURE	5.67	
CONCRETE FINISHER	7.44	
CONCRETE FINISHER HELPER	5.45	
ELECTRICIAN	12.85	
FIREMAN	9.05	
FORM SETTER	7.04	
GUARDRAIL/FENCE ERECTOR	5.25	
SIGN ERECTOR	6.50	
IRONWORKER, REINF.	9.56	
IRONWORKER, REINF. HELPER	6.73	
IRONWORKER, STRUCTURAL	10.25	
LABORER, UNSKILLED	4.91	
LANDSCAPE WORKER	4.55	
MECHANIC	7.39	
MECHANIC HELPER	5.95	
PAINTER, BRIDGE	9.52	
PILEDRIVER LEADSMAN	9.63	
PIPELAYER	5.60	
ASPHALT DISTRIBUTOR OPER.	6.15	
ASPHALT PAVER OPERATOR	6.74	
BACKHOE OPERATOR	7.21	
BULLDOZER OPERATOR	6.77	
BULLDOZER OPERATOR (UTILITY	9.06	
CONCRETE FINISH MACHINE OP.	7.00	
CONCRETE PAVING MACHINE OP.	6.41	
CRANE, DERRICK, DRAGLINE OPERATOR (1 yd. & Under)	8.97	
CRANE, DERRICK, DRAGLINE OPERATOR (Over 1 yd.)	9.80	
DRILL OPERATOR	5.50	
LOADER OPERATOR (2 yds. & under)	6.58	
LOADER OPERATOR (Over 2 yds.)	6.97	
MOTOR GRADER OPERATOR (Fine Grade)	7.61	
MOTOR GRADER OPERATOR (Rough Grade)	6.95	
OILER GREASER	6.39	
LINE MARKER OPERATOR	6.50	
PILE DRIVER OPERATOR	8.93	
POWER TOOL OPERATOR	8.80	
ROLLER OPERATOR (Rough)	5.69	
ROLLER OPERATOR (Finish)	5.69	
SCRAPER PAN OPERATOR	5.75	
SLIP-FORM PAVER OPERATOR	6.42	
STABLIZER OPERATOR	5.88	
SUBGRADE MACHINE OPERATOR	6.53	
TRACTOR OPERATOR (Utility)	6.31	
TRUCK DRIVER, HEAVY DUTY (Over 7 c.y.)	5.67	
TRUCK DRIVER (Multi-Rear Axle)	5.05	
TRUCK DRIVER (Single Rear Axle)	5.05	

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

[FR Doc. 85-5414 Filed 3-7-85; 8:45 am]
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March 8, 1985

Part IV

Environmental Protection Agency

40 CFR Part 60

Standard of Performance for New Stationary Sources; Reference Methods; Total Reduced Sulfur; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-2741-7]

Standards of Performance for New Stationary Sources; Appendix A—Reference Methods; Total Reduced Sulfur

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Method 16A for the determination of total reduced sulfur (TRS) emissions from kraft pulp mills was proposed in the **Federal Register** on June 18, 1981 (46 FR 31904). This action promulgates "Method 16A, Determination of Total Reduced Sulfur Emissions from Stationary Sources," which is to be added to Appendix A of 40 CFR Part 60. The intended effect is to allow all sources in kraft pulp mills that are subject to standards of performance requiring the use of Method 16 to use this as an alternative method. Method 16A offers improvements over Method 16 in that the procedure is simpler and less expensive. Revisions to § 60.285 of Subpart BB to mention Method 16A and facilitate its use in calculating emission rates from smelt dissolving tanks are also being made.

EFFECTIVE DATE: March 8, 1985.

Under section 307(b)(1) of the Clean Air Act, judicial review of this new source performance standard is available *only* by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this rule. Under section 307(b)(2) of the Clean Air Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

ADDRESSES: *Summary of Comments and Responses.* This document for the promulgated test method may be obtained from the U.S. EPA Library (MD–35), Research Triangle Park, North Carolina 27711, telephone (919) 541–2777. Please refer to "Method 16A for the Determination of Total Reduced Sulfur Emissions (Proposed June 18, 1981, 46 FR 31904)—Summary of Comments and Responses, EPA 450/3–82–028." The document contains (1) a summary of all the public comments made on the proposed test method and the Administrator's response to the comments, and (2) a summary of the changes made to the test method since proposal.

Docket. A docket, number A–80–38, containing information considered by EPA in development of the promulgated test method, is available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section (LE–131), West Tower Lobby, Gallery 1, 401 M Street, S.W., Washington, D.C. 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Foston Curtis or Roger T. Shigehara, Emission Measurement Branch, Emission Standards and Engineering Division (MD–19), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–2237.

SUPPLEMENTARY INFORMATION: Method 16A has been proposed because it offers a procedure that is simpler and less expensive than Method 16. This method is to be used as an alternative method and would apply to all sources in kraft pulp mills that are subject to standards of performance specifying the use of Method 16 for the measurement of TRS. This rulemaking does not impose any additional emission measurement requirements on affected facilities. Rather, the rulemaking would simply add an alternative test method associated with emission measurement requirements that would apply irrespective of this rulemaking.

Public Participation

This test method was proposed and published in the **Federal Register** on June 18, 1981 (46 FR 31904). The opportunity to request a public hearing was presented to provide interested persons the opportunity for oral presentation of data, views, or arguments concerning the proposed test method, but no person desired to make an oral presentation. The public comment period was from June 18, 1981, to August 17, 1981. Ten comment letters were received concerning issues relative to the proposed test method. The comments have been carefully considered and, where determined to be appropriate by the Administrator, changes have been made in the proposed test method.

Significant Comments and Changes to the Proposed Test Method

Ten comment letters were received on the proposed test method. The major comments and responses are summarized in this preamble. Most of the comment letters contained multiple comments. The significant comments and subsequent method changes are listed here.

1. One commenter noted that the TRS mass emission rate needed to determine compliance for smelt dissolving tanks could not be calculated using Method 16A. The calculation requires the concentrations of the individual TRS compounds which are not available with Method 16A since all compounds are oxidized and collectively analyzed.

To allow the use of Method 16A, a change in § 60.285(d)(3) has been made to calculate the TRS concentration on an equivalent hydrogen sulfide (H_2S) basis.

2. Several commenters requested that more flexibility be allowed in the sample train calibration system. The use of dry gas meters to make volume determinations was opposed because significant error is introduced when making small measurements by taking the difference between two large gas measurements. It was suggested that certified permeation devices be allowed as an alternative source of standard gas since Method 16 uses permeation tubes. This case would eliminate the need to certify standard gases by Method 11.

The requirements of the proposed calibration system have been modified to allow the use of certified permeation devices. The dry gas meters have been replaced by calibrated rotameters which will simplify the measurement of gas flow and effectively eliminate the measurement error.

3. The sulfur dioxide (SO_2) scrubber was found to be deficient in two areas. The midget impingers are of insufficient volume to accommodate the high levels of condensed moisture present at some facilities, and the specified volume of scrubber solution could not completely remove high levels of SO_2 over extended periods of time.

The proposed scrubber system has been modified to consist of three large Teflon impingers connected in series. The first two impingers contain 100 ml of scrubber solution while the third impinger is initially dry. A requirement to adjust the pH of this solution has also been added.

4. For the analysis procedure, one commenter objected to titrating the entire sample since only one analysis could be performed per sample and a large titration volume would result. This procedure has been changed to reduce the titration volume and to allow duplicate analysis of each sample.

5. It was noted that calcium particulate was encountered while testing one facility and acts as an interference in the analysis. A heated Teflon filter and an upturned probe nozzle have been inserted into the sampling train to effectively remove this interference.

6. Commenters familiar with the operation of the proposed method suggest that 5 percent precision for the system performance check is too stringent. Precision within 10 percent and the option to run the check at the level of the applicable standard ±20 percent would seem more reasonable. The precision limit has been dropped and the option to run this check within 20 percent of the level of the applicable standard will be allowed.

Docket

The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to identify readily and locate documents so that they can intelligently and effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated test method and EPA responses to significant comments, the contents of the docket will serve as the record in case of judicial review (Section 307(d)(7)(A)).

Miscellaneous

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a regulatory impact analysis. This regulation is not major because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices; and there will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Pursuant to the provisons of 5 U.S.C. 605(b), I hereby certify that the attached rule will not have a significant economic impact on a substantial number of small entities because the rulemaking simply adds an alternative test method.

List of Subjects in 40 CFR Part 60

Air pollution control, Aluminum, Ammonium sulfate plants, Asphalt, Cement industry, Coal, Copper, Electric power plants, Glass and glass products, Grains, Intergovernmental relations, Iron, Lead, Metals, Metallic minerals, Motor vehicles, Nitric acid plants, Paper and paper products industry, Petroleum, Phosphate, Sewage disposal, Steel sulfuric acid plants, Waste treatment and disposal, Zinc, Tires, Incorporation by reference, Can surface coating, Sulfuric acid plants, Industrial organic chemicals, Organic solvent cleaners, Fossil fuel-fired steam generators, Fiberglas insulation, Synthetic fibers, Lime.

Date: February 12, 1985.

Lee M. Thomas,

Administrator.

PART 60—[AMENDED]

40 CFR Part 60 is amended as follows:

1. The authority citation for this amendment is as follows:

Authority: Secs. 111, 114, and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7411, 7414, and 7601(a)).

2. By revising paragraph (d)(1) of § 60.285 to read as follows:

§ 60.285 Test methods and procedures.

* * * * *

(d) * * *

(1) Method 16 or, at the discretion of the owner or operator, Method 16A for the concentration of TRS.

* * * * *

3. By revising paragraph (d)(3) of § 60.285 to read as follows:

§ 60.285 Test methods and procedures.

* * * * *

(d) * * *

(3) When determining compliance with § 60.283(a)(4), use the results of Method 2, Method 16 or 16A, and the black liquor solids feed rate in the following equation to determine the TRS emission rate on an equivalent hydrogen sulfide (H_2S) basis.

$E = (C_{TRS})(F)(Q_{sd})/BLS$

Where:

E = mass of TRS emitted per unit of black liquor solids (g/kg)(lb/ton).

C_{TRS} = average combined concentration of TRS as determined by Method 16 or 16A during the test period, ppm.

F = 0.001417 g H_2S/m^3 ppm for metric units.

□ = 0.08844 lb H_2S/ft^3 ppm for English units.

Q_{sd} = dry volumetric stack gas flow rate corrected to standard conditions, dscm/hr (dscf/hr).

BLS = black liquor solids feed rate, kg/hr (ton/hr).

* * * * *

3. By amending Appendix A by adding a new method as follows:

Appendix A—[Amended]

* * * * *

Method 16A.—Determination of Total Reduced Sulfur Emissions From Stationary Sources (Impinger Technique)

1. *Applicability, Principle, Interferences, Precision, and Bias.*

1.1 Applicability. This method is applicable to the determination of total reduced sulfur (TRS) emissions from recovery boilers, lime kilns, and smelt dissolving tanks at kraft pulp mills, and from other sources when specified in an applicable subpart of the regulations. The TRS compounds include hydrogen sulfide, methyl mercaptan, dimethyl sulfide, and dimethyl disulfide.

The flue gas must contain at least 1 percent oxygen for complete oxidation of all TRS to sulfur dioxide (SO_2). The lower detectable limit is 0.1 ppm SO_2 when sampling at 2 liters/min for 3 hours or 0.3 ppm when sampling at 2 liters/min for 1 hour. The upper concentration limit of the method exceeds TRS levels generally encountered at kraft pulp mills.

1.2 Principle. An intergrated gas sample is extracted from the stack. SO_2 is removed selectively from the sample using a citrate buffer solution. TRS compounds are then thermally oxidized to SO_2, collected in hydrogen peroxide as sulfate, and analyzed by the Method 6 barium-thorin titration procedure.

1.3 Interferences. TRS compounds other than those regulated by the emission standards, if present, may be measured by this method. Therefore, carbonyl sulfide, which is partially oxidized to SO_2 and may be present in a lime kiln exit stack, would be a positive interferent.

Particulate matter from the lime kiln stack gas (primarily calcium carbonate) can cause a negative bias if it is allowed to enter the citrate scrubber; the particulate matter will cause the pH to rise and H_2S to be absorbed prior to oxidation. Furthermore, if the calcium carbonate enters the hydrogen peroxide impingers, the calcium will precipitate sulfate ion. Proper use of the particulate filter described in Section 2.1.3 will eliminate this interference.

1.4 Precision and Bias. Relative standard deviations of 2.0 and 2.6 percent were obtained when sampling a recovery boiler for 1 and 3 hours, respectively.

In a separate study at a recovery boiler, Method 16A was found to be unbiased relative to Method 16. Comparison of Method 16A with Method 16 at a lime kiln indicated that there was no bias in Method 16A. However, instability of the source emissions adversely affected the comparison. The precision of Method 16A at the lime kiln was similar to that obtained at the recovery boiler.

Relative standard deviations of 2.7 and 7.7 percent have been obtained for system performance checks.

2. *Apparatus.*

2.1 Sampling. The sampling train is shown in Figure 16A–1 and component parts are discussed below. Modifications to this sampling train are acceptable provided the system performance check (Section 4.3) is met.

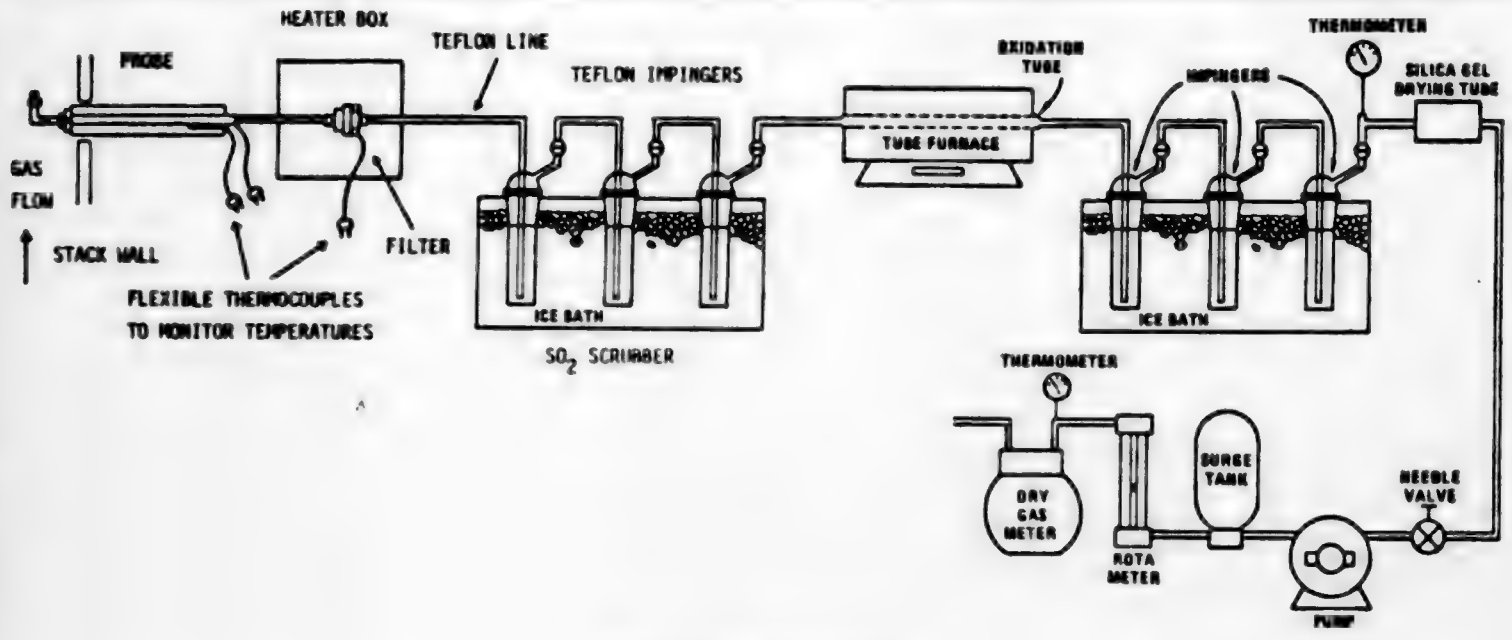


Figure 16A-1. Sampling Train

2.1.1. Probe. Teflon (mention of trade names or specific products does not constitute endorsement by the U.S. Environmental Protection Agency) tubing, 0.6-cm (¼-in.) diameter, sequentially wrapped with heat-resistant fiber strips, a rubberized heat tape (plug at one end), and heat-resistant adhesive tape. A flexible thermocouple or other suitable temperature measuring device should be placed between the Teflon tubing and the fiber strips so that the temperature can be monitored to prevent softening of the probe. The probe should be sheathed in stainless steel to provide in-stack rigidity. A series of bored-out stainless steel fittings placed at the front of the sheath will prevent moisture and particulate from entering between the probe and sheath. A 0.6-cm (¼-in.) Teflon elbow (bored out) should be attached to the inlet of the probe, and a 2.54-cm (1-in.) piece of Teflon tubing should be attached at the open end of the elbow to permit the opening of the probe to be turned away from the particulate stream; this will reduce the amount of particulate drawn into the sampling train. The sampling probe is depicted in Figure 16A–2.

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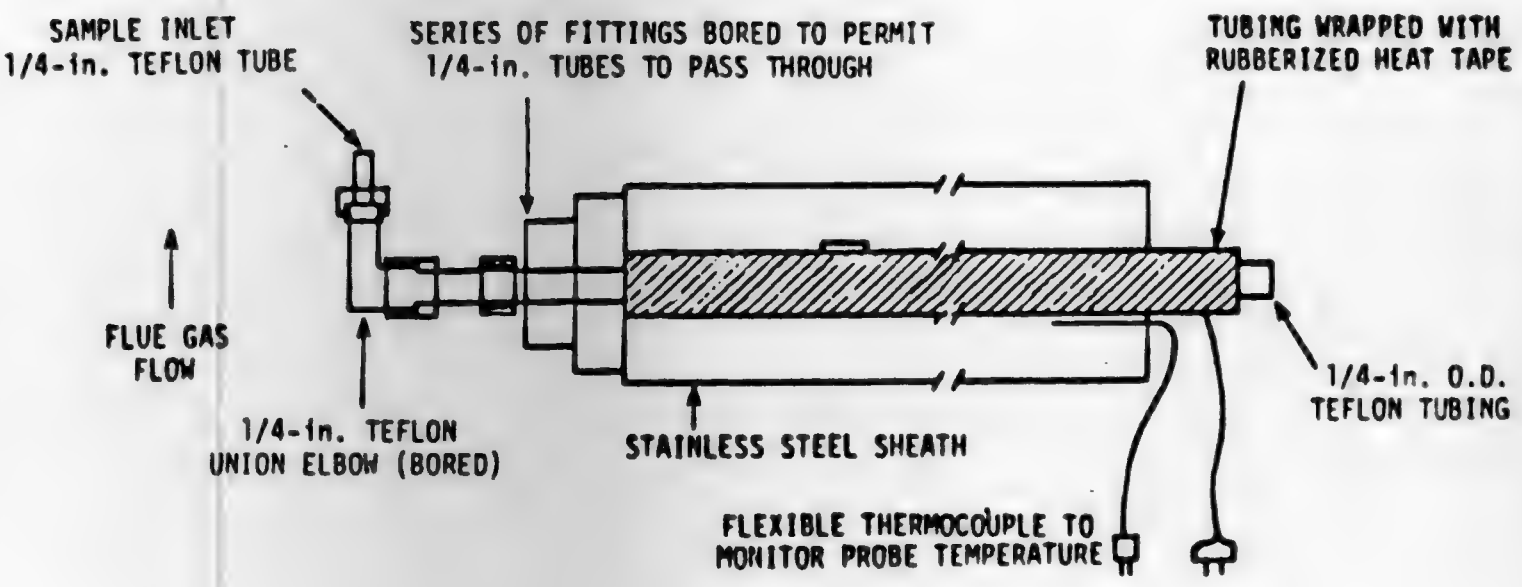


Figure 16A-2. Angled sampling probe

2.1.2 Probe Brush. Nylon bristle brush with handle inserted into a 3.2-mm (⅛-in.) Teflon tubing. The Teflon tubing should be long enough to pass the brush through the length of the probe.

2.1.3 Particulate Filter. 50-mm Teflon filter holder and a 1- to 2-μ porosity, Teflon filter (available through Savillex Corporation, 5325 Highway 101, Minnetonka, Minnesota 55343). The filter holder must be maintained in a hot box at a temperature sufficient to prevent moisture condensation. A temperature of 121 °C (250 °F) was found to be sufficient when testing a lime kiln under sub-freezing ambient conditions.

2.1.4 SO_2 Scrubber. Three 300-ml Teflon segmented impingers connected in series with flexible, thick-walled, Teflon tubing. (Impinger parts and tubing available through Savillex.) The first two impingers contain 100 ml of citrate buffer and the third impinger is initially dry. The tip of the tube inserted into the solution should be constricted to less than 3 mm (⅛ in.) ID and should be immersed to a depth of at least 5 cm (2 in.).

2.1.5 Combustion Tube. Quartz glass tubing with an expanded combustion chamber 2.54 cm (1 in.) in diameter and at least 30.5 cm (12 in.) long. The tube ends should have an outside diameter of 0.6 cm (¼ in.) and be at least 15.3 cm (6 in.) long. This length is necessary to maintain the quartz-glass connector at ambient temperature and thereby avoid leaks. Alternatively, the outlet may be constructed with a 90-degree glass elbow and socket that would fit directly onto the inlet of the first peroxide impinger.

2.1.6 Furnace. A furnace of sufficient size to enclose the combustion chamber of the combustion tube with a temperature regulator capable of maintaining the temperature at 800±100 °C. The furnace operating temperature should be checked with a thermocouple to ensure accuracy.

2.1.7 Peroxide Impingers, Stopcock Grease, Thermometer, Drying Tube, Valve, Pump, Barometer, and Vacuum Gauge. Same as in Method 6, Sections 2.1.2, 2.1.4, 2.1.6, 2.1.7, 2.1.8, 2.1.11, and 2.1.12, respectively.

2.1.8 Rate Meter. Rotameter, or equivalent, accurate to within 5 percent at the selected flow rate of 2 liters/min.

2.1.9 Volume Meter. Dry gas meter capable of measuring the sample volume under the sampling conditions of 2 liters/min with an accuracy of ±2 percent.

2.1.10 Polyethylene Bottles. 250-ml bottles for hydrogen peroxide solution recovery.

2.2 Sample Preparation and Analysis. Same as in Method 6, Section 2.3, except a 10-ml buret with 0.05-ml graduations is required and the spectrophotometer is not needed.

3. *Reagents.*

Unless otherwise indicated, all reagents must conform to the specifications established by the Committee on Analytical Reagents of the American Chemical Society. When such specifications are not available, the best available grade shall be used.

3.1 Sampling. The following reagents are needed:

3.1.1 Water. Same as in Method 6, Section 3.1.1.

3.1.2 Citrate Buffer. 300 g of potassium citrate (or 284 g of sodium citrate) and 41 g of anhydrous citric acid dissolved in 1 liter of water (200 ml is needed per test). Adjust the pH to between 5.4 and 5.6 with potassium citrate or citric acid, as required.

3.1.3 Hydrogen Peroxide, 3 percent. Same as in Method 6, Section 3.1.3 (40 ml is needed per sample).

3.1.4 Recovery Check Gas. Hydrogen sulfide (100 ppm or less) in nitrogen, stored in aluminum cylinders. Verify the concentration by Method 11 or by gas chromatography where the instrument is calibrated with an H_2S permeation tube as described below. For Method 11, the standard deviation should not

exceed 5 percent on at least three 20-minute runs.

Alternatively, hydrogen sulfide recovery gas generated from a permeation device gravimetrically calibrated and certified at some convenient operating temperature may be used. The permeation rate of the device must be such that at a dilution gas flow rate of 3 liters/min, an H_2S concentration in the range of the stack gas or within 20 percent of the standard can be generated.

3.1.5 Combustion Gas. Gas containing less than 50 ppb reduced sulfur compounds and less than 10 ppm total hydrocarbons. The gas may be generated from a clean-air system that purifies ambient air and consists of the following components: Diaphragm pump, silica gel drying tube, activated charcoal tube, and flow rate measuring device. Flow from a compressed air cylinder is also acceptable.

3.2 Sample Recovery and Analysis. Same as in Method 6, Sections 3.2.1 and 3.3.

4. *Procedure.*

4.1 Sampling. Before any source sampling is done, conduct two 30-minute system performance checks in the field as detailed in Section 4.3 to validate the sampling train components and procedure (optional).

4.1.1 Preparation of Collection Train. For the SO_2 scrubber, measure 100 ml of citrate buffer into the first and second impingers; leave the third impinger empty. Immerse the impingers in an ice bath, and locate them as close as possible to the filter heat box. The connecting tubing should be free of loops. Maintain the probe and filter temperatures sufficiently high to prevent moisture condensation, and monitor with a suitable temperature indicator.

For the Method 6 part of the train, measure 20 ml of 3 percent hyrdrogen peroxide into the first and second midget impingers. Leave the third midget impinger empty, and place silica gel in the fourth midget impinger. Alternatively, a silica gel drying tube may be used in place of the fourth impinger. Maintain the oxidation furnace at 800 ± 100 ° C. Place crushed ice and water around all impingers.

4.1.2 Citrate Scrubber Conditioning Procedure. Condition the citrate buffer scrubbing solution by pulling stack gas through the Teflon impingers and bypassing all other sampling train components. A purge rate of 2 liters/min for 10 minutes has been found to be sufficient to obtain equilibrium. After the citrate scrubber has been conditioned, assemble the sampling train, and conduct (optional) a leak-check as described in Method 6, Section 4.1.2.

4.1.3 Sample Collection. Same as in Method 6, Section 4.1.3, except the sampling rate is 2 liters/min (± 10 percent) for 1 or 3 hours. After the sample is collected, remove the probe from the stack, and conduct (mandatory) a post-test leak check as described in Method 6, Section 4.1.2. The 15-minute purge of the train following collection should not be performed. After each 3-hour test run (or after three 1-hour samples), conduct one system performance check (see Section 4.3) to determine the reduced sulfur recovery efficiency through the sampling train. After this system performance check and before the next test run, rinse and brush the probe with water, replace the filter, and change the citrate scrubber (recommended but optional).

In Method 16, a test run is composed of 16 individual analyses (injects) performed over a period of not less than 3 hours or more than 6 hours. For Method 16A to be consistent with Method 16, the following may be used to obtain a test run: (1) collect three 60-minute samples or (2) collect one 3-hour sample. (Three test runs constitute a test.)

4.2 Sample Recovery. Disconnect the impingers. Quantitatively transfer the contents of the midget impingers of the Method 6 part of the train into a leak-free polyethylene bottle for shipment. Rinse the three midget impingers and the connecting tubes with water and add the washings to the same storage container. Mark the fluid level. Seal and identify the sample container.

4.3 System Performance Check. A system performance check is done (1) to validate the sampling train components and procedure (prior to testing; optional) and (2) to validate a test run (after a run). Perform a check in the field prior to testing consisting of a least two samples (optional), and perform an additional check after each 3-hour run or after three 1-hour samples (mandatory).

The checks involve sampling a known concentration of H_2S and comparing the analyzed concentration with the known concentration. Mix the H_2S recovery gas (Section 3.1.4) and combustion gas in a dilution system such as is shown in Figure 16A–3. Adjust the flow rates to generate an H_2S concentration in the range of the stack gas or within 20 percent of the applicable standard and an oxygen concentration greater than 1 percent at a total flow rate of at least 2.5 liters/min. Use Equation 16A–3 to calculate the concentration of recovery gas generated. Calibrate the flow rate from both sources with a soap bubble flow tube so that the diluted concentration of H_2S can be accurately calculated. Collect 30-minute samples, and analyze in the normal manner (as discussed in Section 4.1.3). Collect the sample through the probe of the sampling train using a manifold or some other suitable device that will ensure extraction of a representative sample.

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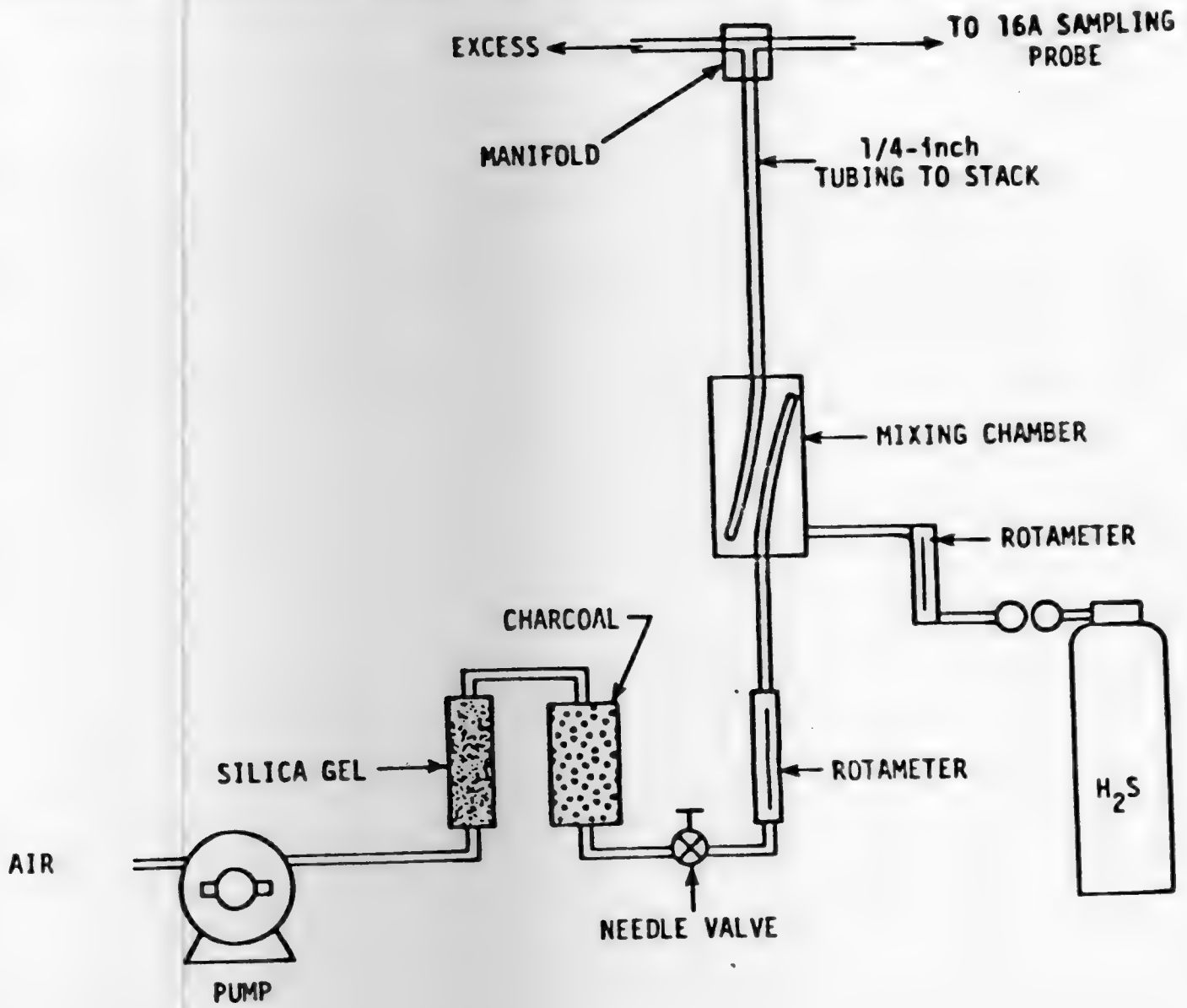


Figure 16A-3 Recovery gas dilution system

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The recovery check must be performed in the field prior to replacing the SO_3 scrubber and particulate filter and before the probe is cleaned. A sample recovery of 100 ± 20 percent must be obtained for the data to be valid and should be reported with the emission data, but should not be used to correct the data. However, if the performance check results do not affect the compliance or noncompliance status of the affected facility, the Administrator may decide to accept the results of the compliance test. Use Equation 16A–4 to calculate the recovery efficiency.

4.4 Sample Analysis. Same as in Method 6, Section 4.3, except for 1-hour sampling, take a 40-ml aliquot, add 160 ml of 100 percent isopropanol, and four drops of thorin. Analyze an EPA SO_3 field audit sample with each set of samples. Such audit samples are available from the Source Branch, Quality Assurance Division, Environmental Monitoring Systems Laboratory, U. S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

5. *Calibration.*

5.1 Metering System, Thermometers, Rotameters, Barometers, and Barium Perchlorate Solution. Calibration procedures are presented in Method 6, Sections 5.1 through 5.5.

6. *Calculations.*

In the calculations, at least one extra decimal figure should be retained beyond that of the acquired data. Figures should be rounded off after final calculations.

6.1 Nomenclature.

C_{TRS} = Concentration of TRS as SO_3, dry basis corrected to standard conditions, ppm.

C_{RG} = Concentration of recovery gas generated, ppm.

C_{RGA} = Verified concentration of H_2S recovery gas.

N = Normality of barium perchlorate titrant, milliequivalents/ml.

P_{bar} = Barometric pressure at exit orifice of the dry gas meter, mm Hg (in. Hg).

P_{std} = Standard absolute pressure, 760 mm Hg (29.92 in. Hg).

Q_{RGA} = Calibrated flow rate of H_2S recovery gas, liters/min.

Q_{CG} = Calibrated flow rate of combustion gas, liters/min.

R = Recovery efficiency for the system performance check, percent.

T_m = Average dry gas meter absolute temperature, °K (°R).

T_{std} = Standard absolute temperature, 293 °K, (528 °R).

V_a = Volume of sample aliquot titrated, ml.

V_m = Dry gas volume as measured by the dry gas meter, liters (dcf).

$V_{m(std)}$ = Dry gas volume measured by the dry gas meter, corrected to standard conditions, liters (dscf).

V_{soln} = Total volume of solution in which the sulfur dioxide sample is contained, 100 ml.

V_t = Volume of barium perchlorate titrant used for the sample, ml (average of replicate titrations).

V_{tb} = Volume of barium perchlorate titrant used for the blank, ml.

Y = Dry gas meter calibration factor.

32.03 = Equivalent weight of sulfur dioxide, mg/meq.

6.2 = Dry Sample Gas Volume, Corrected to Standard Conditions.

$$V_{m(std)} = V_m Y \frac{T_{std}}{T_m} \frac{P_{bar}}{P_{std}} = K_1 Y \frac{V_m P_{bar}}{T_m}$$

Eq.–16A–1

Where: $K_1 = 0.3858$ °K/mm Hg for metric units.

6.3 Concentration of TRS as ppm SO_3.

$$C_{TRS(ppm)} = K_3 \frac{(V_t - V_{tb}) N (V_{soln}/V_a)}{V_{m(std)}}$$

Eq.–16A–2

Where:

$$K_3 = 32.02 \frac{\text{mg}}{\text{meq}} \frac{24.05 \text{ liters}}{\text{mole}} \frac{1 \text{ mole}}{64.06\text{–}g} \frac{1\text{–g}}{1000 \text{ mg}} \frac{1000\text{–ml}}{\text{liter}} \frac{1000\text{–}\mu\text{l}}{1 \text{ ml}} = 12025 \frac{\mu\text{l}}{\text{meq}}$$

6.4 Concentration of Recovery Gas Generated in the System Performance Check.

$$C_{RG} = \frac{(QH_2S)(CH_2S)}{QH_2S + Q_{CG}}$$

Eq.–16A–3

6.5 Recovery Efficiency for the System Performance Check.

$$R = \frac{C_{TRS}}{C_{RG}} \times 100$$

Eq.–16A–4

7. *Bibliography.*

1. Curtis, F., and G.D. McAlister. Development and Evaluation of an Oxidation/Method 6 TRS Emission Sampling Procedure. Emission Measurement Branch, Emission Standards and Engineering Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711. February 1980.

2. Blosser, R.O., H.S. Oglesby, and A.K. Jain. A Study of Alternate SO_3 Scrubber Designs Used for TRS Monitoring. A Special Report by the National Council of the Paper Industry for Air and Stream Improvement, Inc., New York, New York. July 1977.

3. Gellman, I. A Laboratory and Field Study of Reduced Sulfur Sampling and Monitoring Systems. National Council of the Paper Industry for Air and Stream Improvement, Inc., New York, New York. Atmospheric Quality Improvement Technical Bulletin No. 81. October 1975.

4. American Society for Testing and Materials. Annual Book of ASTM Standards. Part 31: Water, Atmospheric Analysis. Philadelphia, Pennsylvania. 1974. pp. 40–42.

5. Blosser, R.O. A Study of TRS Measurement Methods. National Council of the Paper Industry for Air and Stream Improvement, Inc., New York, New York. Technical Bulletin No. 434. May 1984. 14 p.

6. Margeson, J.H., J.E. Knoll, and M.R. Midgett. A Manual Method for TRS Determination. Draft available from the authors. Source Branch, Quality Assurance Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

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federal register

Friday
March 8, 1985

Part V

Environmental Protection Agency

40 CFR Parts 305 and 306
Superfund; CERCLA Arbitration Procedures and Natural Resource Claims Procedures; Proposed Rules

VOL 50 ISS 46 MR 8 1985 UMI

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 305

[FRL 2766-5]

Superfund; CERCLA Arbitration Procedures

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: Section 112 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) outlines procedures for asserting a claim against the Hazardous Substance Response Trust Fund (the "Fund") established under CERCLA. A portion of these section 112 procedures concerns the arbitration of claims, the subject of this regulation. Claims are authorized by section 111 of CERCLA for two general purposes: To reimburse persons for the costs of responding to actual or threatened releases of hazardous substances, pollutants or contaminants (i.e., response claims); and to pay trustees for the costs of the assessment of damages to natural resources, and/or for the costs of restoration, rehabilitation, replacement or acquiring the equivalent of natural resources injured as a result of the release of a hazardous substance (i.e., natural resource claims). Section 112(b)(4) of CERCLA directs the President to establish a Board of Arbitrators (Board) to decide some factual disputes with regard to claims. The President has delegated this authority to the Environmental Protection Agency (EPA) under Executive Order 12316 EPA is today proposing regulations which establish and govern the procedures of the Board. The general procedures for filing natural resource and response claims will be issued separately under 40 CFR Parts 306 and 307, respectively.

DATES: Comments must be submitted on or before May 7, 1985.

ADDRESSES: Comments may be submitted in triplicate to William N. Hedeman, Jr., Director, Office of Emergency and Remedial Response (WH-548), Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

Docket: The public docket for claims procedures is located in Room S-325 at the Waterside Mall, 401 M Street, SW.; Washington, D.C. 20460, and is available for viewing from 9:00 a.m. to 4:30 p.m. Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: William O. Ross, Office of Emergency and Remedial Response (WH-548), Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, telephone (202) 382-4642.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 112 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9601 *et seq.* (CERCLA or the Act), requires EPA (by delegation from the President) to prescribe the forms and procedures for asserting a claim against the Fund. This proposed regulation concerns only one portion of the section 112 procedures: Those pertaining to the Board of Arbitrators. (Section 112 (b)(3), (b)(4)). EPA proposes elsewhere in today's **Federal Register** the forms and procedures for asserting a claim for injury to, destruction, or loss of a natural resource (proposed 40 CFR Part 306). The Agency expects to propose in 40 CFR Part 307 forms and procedures for the assertion of response claims shortly. The purpose of the Board is to decide factual disputes with regard to claims in one of two circumstances: When the Administrator declines to award a claim, or when a claimant is dissatisfied with the size of an award and petitions the Board.

This preamble explains: the statutory background for asserting claims against the Fund, the selection and dismissal of Board members, referral of claims to the Board, the procedures for filing pleadings, the procedures for the arbitral hearing itself, the process by which a Board member will make a decision, the procedures for expedited decisions by members of the Board, and the regulatory status of this regulation under Executive Order 12291, the Rgulatory Flexibility Act, and the Paperwork Reduction Act of 1980.

II. Background

A. Statutory Framework

CERCLA, enacted on December 11, 1980, establishes broad authority for responding to actual or threatened releases of hazardous substances, pollutants, or contaminants. CERCLA establishes the Hazardous Substance Response Trust Fund (the "Fund"), which may be used by the Government to respond to releases and to pay certain claims to other parties for responding to releases. CERCLA also imposes liability on classes of parties associated with sites and the disposal or treatment of hazardous substances and provides authority to undertake enforcement and abatement action against responsible parties.

Section 111(a) authorizes the use of the Fund for three general purposes: (1) Payment of governmental response costs incurred pursuant to section 104 of CERCLA, (2) payment of response claims, and (3) payment of natural resource claims. Only the latter two uses of the Fund are subject to arbitration under section 112.

Response claims, as authorized by section 111(a)(2) of CERCLA, reimburse persons other than the Federal government for the necessary costs of responding to an actual or threatened release of a hazardous substance, pollutant or contaminant. For a claimant's response costs to be reimbursed, those costs must be incurred as a result of carrying out the National Oil and Hazardous Substance Contingency Plan (NCP) (40 CFR Part 300, 47 FR 31180 *et seq.* July 16, 1982). The procedures for filing a response claim will be proposed in the near future.

Natural resource claims are authorized at section 111(a)(3) and (b) of CERCLA, and can be asserted only by trustees of the particular resource. Such trustees are defined in section 111(b) as Federal or State governmental agencies who have authority over the natural resource. Trustees can file claims for two general types of costs: (1) The costs of assessing damage to a natural resource as the result of a release of a hazardous substance, and (2) the reasonable costs for the restoration, rehabilitation, or acquiring the equivalent of an injured natural resource. The forms and procedures for filing a natural resource claim are proposed elsewhere in today's **Federal Register**.

As mentioned previously, this regulation is concerned with the portion of the procedures for asserting either a response or natural resource claim against the Fund; i.e., arbitration of factual disputes. Section 112 of CERCLA outlines the procedures for filing such a claim. In general, upon receipt of any claim, the Administrator of EPA (Administrator) must inform any known affected parties of the claim as soon as practicable; and then attempt to promote and arrange a settlement between the claimant and the potentially responsible parties (PRPs). If there are no known PRPs, the Administrator must attempt to arrange a settlement with the claimant. If a settlement can be agreed to, the Administrator is authorized to make an award from the Fund; and the parties

are deemed to have waived any further recourse.

If the Administrator cannot arrange a settlement within 45 days, he will then proceed to make a decision on whether to award or deny the claim. After the Administrator makes this decision, the claim may be forwarded to the Board or Arbitrators. A claim is generally submitted to the Board if the Administrator declines to make an award. If the claimant is dissatisfied with the amount of any award, he can decide to petition the Board for further redress.

The sections which follow describe the establishment of a Board of Arbitrators for claims under CERCLA, and the procedures which the Board, and any parties participating in arbitration, must follow.

B. Dispute Resolution for Claims by Federal Agencies

The dispute resolution process for Federal agencies which may have claims before the Fund will be the procedures outlined in Executive Order 12088. That is, the Executive Branch of the Federal Government, and not the Board of Arbitrators, will make decisions where: (1) The Administrator denies the claim as outlined in section 112(b) (3), or (2) a Federal claimant wishes to challenge the amount of an award.

III. Arbitration Rules

A. Establishment of an Arbitration Board

Section 112(b)(4) (A) of CERCLA authorizes the Administrator to establish an arbitration board to decide factual disputes in CERCLA claims. The Agency must select each Board member through utilization of the procedures of the American Arbitration Association (AAA); and no employee of either the President or a Federal agency which is delegated responsibility under CERCLA can serve as a member of the Board. Apart from these two requirements, the statute grants the Agency discretion in setting up a Board.

Membership to the Board will be determined by means of the following procedure. First, the Administrator will screen all applicants for membership. The AAA will then evaluate whether candidates selected by the Administrator meet the AAA's requirements for membership. The Administrator will then appoint Board members from the list found acceptable by the AAA.

Board members are appointed for three year terms, unless dismissed by the Administrator.

B. Submission and Consideration of Claims to Board

There are two ways in which a claim can be heard by a member of the Board. First, EPA will forward the claim to the general office of the AAA if the Administrator denies the claim. Second, if a claimant wishes to challenge the amount of an award, he can file such a challenge at the general office of the AAA.

An Arbitrator is limited to resolving factual disputes with regard to a claim. For example, an Arbitrator is not empowered to overturn an Agency decision not to preauthorize a claim under 40 CFR 300.25(d) and 306.22. Nor can an arbitrator review a decision by EPA to deny a claim based on competing priorities for the expenditure of Fund monies. (Most claims of low priority would be rejected by EPA at the preauthorization stage, but some claims, such as those for emergency restorations and natural resource damage assessment, can be filed without preauthorization.) Similarly, the Arbitrator is not empowered to decide legal issues which may arise in the course of resolving a claim. The Administrator shall, as provided by 40 CFR 305.30(b)(2), include a statement summarizing the applicable legal standards and any other legal issues pertinent to the claim. In reviewing claims, a member of the Board shall accord substantial deference to EPA decisions as reflected in the administrative record.

C. Appointment of Arbitrator for Particular Claim Dispute

Disputes will be heard by a single Arbitrator, unless the Administrator decides otherwise. The selection of that Arbitrator shall be pursuant to AAA procedures. The AAA shall first submit to EPA and each claimant an identical list of names from the standing Board. The parties will then cross off any names they object to, and indicate an order of preference for those remaining. From the returned lists, the AAA shall select an Arbitrator to resolve the particular claim dispute. If, for any reason, this process fails to select a single Arbitrator, the AAA shall have the power to appoint one from among the members of the standing Board.

An Arbitrator must be neutral and, upon selection for a particular case, shall disclose any circumstances likely to affect impartiality. Upon receipt of information from the Arbitrator or any other source concerning possible impartiality, the AAA shall communicate such information to the parties. The parties shall have seven calendar days upon receipt of such information to request disqualification of the Arbitrator; however, any determination of disqualification shall be within the sole discretion of the AAA.

Once the final selection of the Arbitrator is completed, all communications from the parties should be directed to the Arbitrator. Prior to selection of the Arbitrator, communications should be directed to the AAA.

D. Pleadings

If the arbitration is initiated due to EPA denial of a claim, the Administrator shall submit to the general offices of the AAA two copies of a written statement which includes: The reasons for the denial of the claim, any supporting documentation, and the identity of any PRPs, if known, and any written communications (or summary of oral communications) with PRPs. If the claimant initiates arbitration, he shall submit to the general office of the AAA two copies of a written statement which includes: an assertion of the matter and amount of money in dispute, the remedy sought, supporting documentation, and the identity of any PRPs, if known. In either situation, the initiating party is encouraged to request expedited process, if applicable.

The opposing party is given the opportunity to answer; however, if no answer is filed within seven calendar days of notice of pending arbitration, the claim shall be deemed to be denied.

EPA or the claimant has the opportunity to amend its claim or to file an answer before an Arbitrator is chosen. However, once a member of the Board has been appointed, no new or different claim may be submitted without the Arbitrator's consent.

E. Arbitral Hearing

Hearings before a member of the Board shall be informal, but shall also afford full and equal opportunity to all parties for the presentation of relevant material. All hearings shall be open. The claimant shall have the burden of proof; and the Arbitrator has the power to subpoena the attendance and testimony of witnesses as well as the production of books, records and other evidence pertinent to the issues presented for decision. Each party has the opportunity to be represented by counsel.

The Administrator shall determine the general location in which the arbitration is to be held, giving due consideration to requests by the claimant. It shall be the Arbitrator's responsibility to fix the time and the place of each hearing once the

general location is decided. The Arbitrator shall, no later than 14 calendar days before the date of the hearing, publish a notice of the hearing in the newspaper of largest circulation in the city where the hearing is to take place and in the city closest to the site of cleanup or the natural resource at issue.

There shall be a record made of each arbitration hearing. The preparation of this record is the responsibility of the Arbitrator.

The parties may, by written agreement, waive oral hearings. If this occurs, all parties shall be afforded the opportunity to examine documents filed with the Arbitrator. If there is an oral hearing, all evidence (unless by agreement of the parties) shall be given in the presence of the Arbitrator and other interested parties. This rule does not apply if a party is found in default or has waived the right to be present.

F. Arbitral Decision

The Arbitrator shall render a decision within 90 days of submission of the claim to him, unless the parties agree in writing to an extension or the Administrator extends the time limit pursuant to section 112(b)(4)(I) of CERCLA.

The decision of the Arbitrator shall be signed, and in writing. It shall contain a concise statement of the basis and rationale for the Arbitrator's determination.

G. Expedited Procedures

Unless the Administrator determines otherwise, the parties and the Arbitrator shall follow expedited procedures if the claim does not exceed $20,000. The parties can also agree to follow the expedited procedures for claims exceeding $20,000.

Under the expedited procedures, notice of the arbitration shall be by telephone and mail—as will be notice of the date, time, and place of the hearing. Notice of the hearing must be published by the Arbitrator, no later than five calendar days before the date of the hearing, in the newspaper of largest circulation in the city where the hearing is to take place and in the city closest to the site of cleanup or the natural resource at issue. In most cases, any oral hearing will be conducted in a single day. Within five days of any hearing, the Arbitrator shall render a decision, unless the parties agree otherwise. In any case, it shall never take longer than 90 days for a decision to be reached after an Arbitrator is selected.

H. Appeals Procedures

The award or decision by a member of the Board shall be binding and conclusive, and shall not be overturned except for arbitrary or capricious abuse of the member's discretion. No award or decision by the Arbitrator is admissable as evidence of any issue of fact or law in any proceeding brought by any other provision of CERCLA or under any other provision of law. Any prearbitral settlement reached pursuant to this regulation is admissable as evidence in any such proceeding. EPA does not consider the AAA or any Arbitrator in a proceeding under this regulation to be a necessary party in judicial proceedings relating to the arbitration. Nor do we believe that the AAA or any Arbitrator may be liable to any party for any act or omission in connection with any arbitration conducted under this regulation.

I. Ex parte Communication

EPA is considering the adopton of procedures similar to those described in 40 CFR 124.78 to govern *ex parte* communication during the arbitration process. EPA solicits comments on the advisibility and content of such procedures.

IV. Regulatory Statutes and Required Analyses

Proposed and final rules issued by Federal agencies are governed by several statutes and executive orders. These include Executive Order 12291, the Regulatory Flexibility Act, and the Paperwork Reduction Act.

A. Executive Order 12291

Rulemaking protocol under Executive Order 12291 requires that proposed regulations be classified as major or non-major for purposes of review by the Office of Management and Budget. According to E.O. 12291, major rules are regulations that are likely to result in:

(1) An annual effect on the economy of $100 million or more; or

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

EPA has determined that this regulation is a non-major rule under Executive Order 12291 because it is unlikely to result in any of the impacts identified above. Therefore, the Agency has not prepared a regulatory impact analysis for this regulation. This proposal meets all requirements in the Executive Order for non-major rules.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires that a Regulatory Flexibility Analysis be performed for all rules that are likely to have "significant impact on a substantial number of small entities." EPA certifies that this regulation will not have a significant impact on a substantial number of small entities, because all authorized costs and expenses attributable to the operation of the Board are payable from the Fund. Further, this regulation imposes no capital expenditures, nor any compliance requirement on any industrial sector.

C. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. Section 3501 *et. seq.*, the reporting or recordkeeping provisions that are included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under section 3504(h) of the Paperwork Reduction Act. Any final rule will include an explanation of how the reporting or recordkeeping provisions contained therein respond to any comments by OMB and the public.

List of Subjects in 40 CFR Part 305

Chemicals, Hazardous materials, Intergovernmental relations, Natural resources, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal.

Lee M. Thomas,

Administrator.

February 28, 1985.

Part 305, Title 40 of the Code of Federal Regulations is added as set forth below.

PART 305—COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA) ARBITRATION PROCEDURES

Subpart A—General

Sec

305.10 Purpose.

305.11 Scope and applicability.

305.12 Definitions.

Subpart B—Selection and Jurisdiction

305.20 Selection and dismissal of Board of Arbitrators.

305.21 Jurisdiction of Board of Arbitrators.

Subpart C—Referral of claims and arbitrator selection

305.30 Referral of claims.
305.31 Appointment of arbitrators.
305.32 Disclosure and challenge procedures.

Subpart D—Hearings Before the Board of Arbitrators

305.40 Filing of pleadings.
305.41 Pre-hearing conference.
305.42 Arbitral hearing.
305.43 Arbitral decision.

Subpart E—Expedited Procedures and Other Provisions

305.50 Expedited procedures.
305.51 Appeals procedures.
305.52 Miscellaneous provisions.

Authority: Secs. 111 and 112, Pub. L. 96-510, 94 Stat. 2767-2811 (42 U.S.C. 9601 et seq.) and E.O. 12316, secs. 7(a) and 7(e), 46 FR 42237 (August 20, 1981).

Subpart A—General

§ 305.10 Purpose.

This regulation establishes and governs procedures for the arbitration of disputes arising out of claims to the Hazardous Substance Response Trust Fund established under section 221 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601 *et seq.*

§ 305.11 Scope and applicability.

Claims for necessary response costs incurred by any person in carrying out the National Contingency Plan and for injury to, or destruction or loss of natural resources, including costs of damage assessment, as submitted by State trustees, may be decided through the procedures established by this regulation. These rules will govern the procedures for any arbitration of claims under section 112 of CERCLA.

§ 305.12 Definitions.

Terms not defined in this section have the meaning given by section 101 of CERCLA. All time deadlines in this part are specified in calendar days. *Except when otherwise specified:*

(a) "Board of Arbitrators," or "Board" means a panel of one or more persons selected in accordance with section 112(b)(4)(A) of CERCLA and governed by the provisions in 40 CFR Part 305.

(b) "CERCLA," means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601 *et seq.*

(c) "Claim," means a demand in writing for a sum certain.

(d) "Claimant," means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, United States Government, State, municipality, commission, political subdivision of a State, or any interstate body who presents a claim for compensation under section 112 of CERCLA.

(e) "Damage assessment claim," means a claim for assessment costs submitted to the Fund as described in section 111(c)(2) of CERCLA.

(f) "Fund", means the Hazardous Substance Response Trust Fund established under section 221 of CERCLA.

(g) "Hazardous substance", means (1) any substance designated pursuant to section 311(b)(2)(A) of the Federal Water Pollution Control Act, (2) any element, compound, mixture, solution, or substance designated pursuant to section 102 of this Act, (3) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Act of Congress), (4) any toxic pollutant listed under section 307(a) of the Federal Water Pollution Control Act, (5) any hazardous air pollutant listed under section 112 of the Clean Air Act, and (6) any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to section 7 of the Toxic Substances Control Act. The term does not include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under subparagraphs (1) through (6) of this paragraph, and the term does not include natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas).

(h) "National Contingency Plan," or "NCP," means the National Oil and Hazardous Substances Contingency Plan (47 FR 17832, revised March 19, 1980), developed under section 311(c) of the Clean Water Act and revised pursuant to section 105 of CERCLA (40 CFR Part 300, 47 FR 31180 *et seq.*, July 16, 1982).

(i) "Natural resources," means land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conservation zone established by the Fishery Conservation and Management Act of 1976), any State or local government, or any foreign government.

(j) "Party," means EPA or a claimant.

(k) "Preauthorization" means EPA's approval to submit a claim for reimbursement to the Fund.

(l) "Response action," means remove, removal, remedy, and remedial action.

(m) "Response claim" means a preauthorized demand in writing for a sum certain for response costs referred to in section 111(a)(2) of CERCLA.

(n) "Restoration" or "Restore", means the restoration, rehabilitation, replacement, or acquiring the equivalent of any natural resources injured, destroyed or lost as a result of a release of a hazardous substance.

(o) "Restoration claim" means a preauthorized or emergency claim for restoring, rehabilitating, replacing or acquiring the equivalent of any natural resources injured by the release of a hazardous substance.

(p) "Trustee" means any Federal natural resources management agency designated in subpart G of the NCP, and any State agency that may prosecute claims for damages under section 111(b) of CERCLA.

Subpart B—Selection and Jurisdiction

§ 305.20 Selection and dismissal of the Board of Arbitrators.

(a) Members of the Board of Arbitrators for CERCLA claims shall be appointed by the Administrator. The Arbitrator for a particular claims dispute shall be selected in accordance with § 305.31.

(b) The Administrator shall screen applicants for membership to the Board by evaluating such criteria as background in hazardous substances or administrative procedures. Those applicants selected by the Administrator will be forwarded to the American Arbitration Association (AAA) for that body to evaluate whether they meet the AAA's requirements for membership. If these requirements are met, the applicant's name will be returned to the Administrator for possible appointment to the Board.

(c)(1) Except as provided in paragraph (c)(2), members of the Board serve at the pleasure of the Administrator, who may dismiss any member for such reasons as the Administrator deems appropriate;

(2) A member may not be dismissed during the pendency of a claim before such member except for cause as provided in section 305.32.

(d) The Board shall consist of as many members as the Administrator may determine is necessary for the expeditious resolution of disputes.

(e) Appointment to the Board shall be for a three year term, unless a member

is dismissed pursuant to paragraph (c) of this section.

§ 305.21 Jurisdiction of Board of Arbitrators.

(a) In accordance with the procedures set forth in § 305.30, the Board of Arbitrators is empowered to adjudicate claims asserted against the Fund pursuant to section 111 of the Act when the Administrator has denied such claims under section 112(b)(3) of CERCLA or when the claimant has made a request for arbitration pursuant to § 305.30 of this Part.

(b) The Board of Arbitrators is authorized to award claims for the reimbursement of response costs only if such costs were:

(1) Necessary response costs incurred as result of carrying out the NCP; and

(2) reasonable and necessary to carry out the response as preauthorized by the Administrator pursuant to section 300.25 of this Part.

(c) Subject to subsection (d), the Board is authorized to award claims for:

(1) The reimbursement of costs for assessing injury to, destruction of, or loss of any natural resources resulting from a release of a hazardous substance; or

(2) Costs of Federal or State efforts in the restoration, rehabilitation, or replacement or acquiring the equivalent of any natural resources injured, destroyed, or lost as a result of a release of a hazardous substance.

(d) Costs may be reimbursed under subsection (c)(2) only if such costs are:

(1) Necessary and reasonable to implement a plan developed and adopted under section 111(i) of the Act; or

(2) The costs were incurred in response to a situation requiring emergency action to avoid irreversible loss of natural resources or to prevent or reduce any continuing danger to natural resources or similar need for emergency action.

(e) Except for claims for assessment of injury to natural resources, and except as provided in subsection (d)(2), the Board is not authorized to:

(1) Consider or award claims which have not been preauthorized by EPA in accordance with 40 CFR 300.25(d) and 306.25;

(2) Award a claim in excess of the amount preauthorized by EPA in accordance with 40 CFR 300.25(d) and 306.25.

(f) The Board is not authorized to review a decision by the Administrator to deny a claim based on competing priorities for the expenditure of Fund monies.

(g) The Board shall apply such legal standards as are contained in the summary of applicable legal standards and principles furnished by EPA under 40 CFR 305.30(b) or 305.40(a).

(h) In reviewing claims under this Part, the Board shall accord substantial deference to EPA decisions as reflected in the administrative record.

Subpart C—Referral of Claims and Arbitrator Selection

§ 305.30 Referral of claims.

(a) If the Administrator denies a claim under section 112 of CERCLA, he shall within five days submit the claim to the general office of the AAA. If a claimant decides to challenge an award made by the Administrator with regard to the claim, he may submit the claim to the general office of the AAA within 30 days of the date of the award.

(b) When arbitration is initiated due to EPA's denial of a claim, the Administrator shall submit to the general office of the AAA two copies of a written statement which includes:

(1) The notice of the denial of the claim, with a short explanation of the reasons for that denial;

(2) A statement of the legal standard applicable to the claim and any other applicable principles of law;

(3) Any supporting documentation which EPA deems necessary to explain the reason(s) for the denial of the claim;

(4) A request for the expedited procedures, if appropriate; and

(5) The identity of any potentially responsible parties, if known, and a copy of any written communications (or summary of oral communications) with such parties.

(c) When arbitration is initiated due to the challenge of an award by the claimant, the claimant shall submit to the general office of the AAA two copies of a written statement which includes:

(1) An assertion of the matter in dispute;

(2) The amount of money in dispute;

(3) The remedy sought;

(4) A copy of the Administrator's disposition of the claim;

(5) Any supporting documentation which the claimant deems necessary to support the claimant's position;

(6) A request for the expedited procedures, if appropriate; and

(7) The identity of any potentially responsible parties, if known.

(d) The AAA shall, within five days of receipt, give notice of the referred claims under this section to the other parties in the claims dispute. Notice is complete when a copy of the claim is placed in the mail by the AAA addressed to the last known address of a party, or its attorney, or delivered by personal service. For the purposes of service to EPA, notice will be addressed to the Administrator at 401 M Street, SW., Washington, D.C. 20460.

§ 305.31 Selection of arbitrator.

(a) After the filing of the submission asking for arbitration, the AAA shall submit simultaneously to EPA and each claimant an identical list of names of persons chosen from the Board. Each party to the dispute shall have seven days from the mailing date in which to cross off any names objected to, number the remaining names to indicate the order of preference, and return the list to the general office of the AAA. If a party does not return the list within the time specified, all persons named therein shall be deemed acceptable. From among the persons who have been approved on both lists, and in accordance with the designated order of mutual preference, the AAA shall invite the acceptance of an Arbitrator to serve. If the parties fail to agree upon any of the persons named, or if acceptable Arbitrators are unable to act, or if for any other reason the appointment cannot be made from the submitted lists, the AAA shall have the power to make the appointment from among other members of the Board without the submission of any additional lists. Once the AAA makes the appointment, it shall immediately notify the parties.

(b)(1) The dispute shall be heard and determined by one Arbitrator, unless the Administrator in his discretion decides that a greater number of Arbitrators should be approved based on the complexity of the issues.

(2) When a large number of claims arise from a single incident or set of incidents, a group of claims may be submitted to a single Arbitrator if the Administrator determines that it is in the best interests of the parties.

(c) The AAA shall give notice of the selection of the Arbitrator, together with a copy of these rules, to the parties. A signed acceptance of the case by the Arbitrator shall be filed at the general office of the AAA prior to the opening of the first hearing. Upon the final selection of the Arbitrator, all communications from the parties should be directed to the Arbitrator. (See § 305.52(b) for communications prior to Arbitrator selection.

(d) Unless the Administrator determines otherwise, the expedited procedures described in § 305.50 of these rules shall apply in any case where the total claim of any party does not exceed $20,000, exclusive of interest

costs, or the parties agree to the procedures for claims exceeding $20,000.

(e) If any Arbitrator should resign, die, withdraw, refuse, be disqualified or be unable to perform the duties of the office, the AAA may, on proof satisfactory to it, declare the office vacant. Vacancies shall be filled in accordance with the applicable provisions of this section and the matter shall be reheard unless the parties shall agree otherwise.

§ 305.32 Disclosure and challenge procedures.

(a) A person appointed as an Arbitrator under § 305.31 shall within five days of service disclose to the AAA any circumstances likely to affect impartiality, including any bias or any financial or personal interest in the result of the arbitration, or any past or present relationship with the parties or their counsel, or any past or present relationship with any potentially responsible party to which the claim may relate.

(b) Upon receipt of such information from such Arbitrator or other source, the AAA shall on the same day communicate such information to the parties and, if it deems it appropriate to do so, to the Arbitrator and others.

(c) The parties may request within seven days of service by the AAA that an Arbitrator be disqualified.

(d) The AAA shall make a determination on any request for disqualification of an Arbitrator within seven days. This determination shall be within the sole discretion of the AAA, and its decisions shall be final. Disqualification under this section is distinct from dismissal by the Administrator under § 305.20(c).

Subpart D—Hearings Before the Board of Arbitrators

§ 305.40 Filing of pleadings.

(a) EPA or the claimant may file an answering statement with the general office of the AAA no later than seven days after receipt of the notice provided under § 305.30(d). In the case of a matter referred to the Board by a claimant, EPA shall provide a statement of applicable legal standards and principles.

(b) If either party desires to make any new or different claim after the claim is submitted to arbitration, such claim shall be made in writing and filed with the general office of the AAA, and a copy thereof shall be mailed to the other party, who shall have a period of seven days from the date of such mailing within which to file an answer with the general office of the AAA. After the Arbitrator is appointed, however, no new or different claim may be submitted except with the Arbitrator's consent.

§ 305.41 Pre-hearing conference.

At the request of the parties or at the discretion of the Arbitrator, a pre-hearing conference with the Arbitrator and the parties or their counsel will be scheduled in appropriate cases to arrange for an exchange of information, including witness statements, exhibits and documents, and the stipulation of uncontested facts so as to expedite the arbitration proceedings.

§ 305.42 Arbitral hearing.

(a) The Administrator shall select the locale for the arbitral hearing, with due consideration to any requests by the claimants.

(b) The Arbitrator shall fix the time and place for each hearing, within the locale selected in accordance with paragraph (a). The hearing shall commence no later than 60 days after the selection of the Arbitrator. The Arbitrator shall mail to each party notice thereof at least 30 days in advance, unless the parties by mutual agreement waive such notice or modify the terms thereof. The Arbitrator shall publish, no later than 14 days before the date of the hearing, a notice of the hearing in the newspaper of largest circulation in the city where the hearing is to take place and in the city closest to the site of cleanup or the natural resource at issue.

(c) Any party may be represented by counsel. A party intended to be so represented shall notify the other party and the Arbitrator of the name and address of counsel at least three days prior to the date set for the hearing at which counsel is first to appear. When an arbitration is initiated by counsel, or where an attorney replies for the other party, such notice is deemed to have been given.

(d) The Arbitrator shall make the necessary arrangements for the taking of a true and accurate record for all arbitral hearings.

(e) The Arbitrator shall make the necessary arrangements for the services of an interpreter upon the request of one or more of the parties, and the requesting party(ies) shall assume the cost of such service.

(f) The Arbitrator may take adjournment upon the request of a party or upon the Arbitrator's own initiative and shall take such adjournment when all of the parties agree thereto.

(g) The Arbitrator shall take oaths of all witnesses before they testify at the arbitral hearing.

(h) (1) A hearing shall be opened by the recording of the place, time, and date of the hearing, the presence of the Arbitrator and parties, and counsel if any, and by the receipt by the Arbitrator of the statement of the claim and answer, if any. The Arbitrator may, at the beginning of the hearing, ask for statements clarifying the issues involved.

(2) The claimant shall then present its claim and proofs and its witnesses (if any), who shall submit to questions or other cross-examination. The Arbitrator has discretion to vary this procedure but shall afford full and equal opportunity to all parties for the presentation of any material or relevant proofs.

(3) Exhibits, when offered by either party, may be received in evidence by the Arbitrator. The names and addresses of all witnesses and exhibits in the order received shall be made a part of the record.

(i) The arbitration may proceed in the absence of any party which, after due notice, fails to be present or fails to obtain an adjournment. An award shall not be made solely on the default of a party. The Arbitrator shall require the party who is present to submit such evidence as the Arbitrator may require for the making of an award.

(j) *Evidence.* (1) The parties may offer such evidence as they desire (subject to such reasonable limitations as the Arbitrator deems appropriate) and shall produce such additional evidence as the Arbitrator may deem necessary to an understanding and determination of the dispute.

(2) All evidence shall be taken in the presence of the Arbitrator and of all the parties, except where any of the parties is absent in default or has waived the right to be present. In any arbitration proceeding, the claimant has the burden of proof.

(3)(i) Arbitrators may subpoena the attendence and testimony of witnesses and the production of books, records, and other evidence pertinent to the issues presented to him for decision.

(ii) Subpoenas issued under this section shall be issued and enforced in accordance with 5 U.S.C. 555(d).

(iii) If a person fails or refuses to obey a subpoena, the Arbitrator may request that the Administrator request that the Attorney General invoke the aid of the district court of the United States where the person is found, resides, or transacts business in requiring the attendance and testimony of the person and the production by him of books, papers, documents, or any tangible things.

(iv) The Administrator shall, within five days of a request under paragraph (j)(3)(iii), either:

(A) Request that the Attorney General invoke the aid of the district court as provided in paragraph (j)(3)(iii); or

(B) Advise the Arbitrator in writing that a request for invocation of judicial aid will not be made.

(k) The Arbitrator may receive and consider the evidence of witnesses by affidavit, interrogatory or deposition, but shall give it only such weight as the Arbitrator deems appropriate after consideration of any objections made to its admission.

(l) Whenever the Arbitrator deems an inspection or investigation to be necessary, the Arbitrator may request the EPA Administrator to undertake such activities pursuant to CERCLA section 104(b). The Administrator shall have sole discretion whether to grant the Arbitrator's request. In making such a determination, the Administrator shall consider the cost of the inspections or investigations, the time they will take, the reasonableness of the particular activity requested, competing demands on Agency resources, and the availability of the technical and financial capacity to conduct the requested studies, monitoring and investigations.

(m) After the presentation of all evidence, the Arbitrator shall specifically inquire of all parties whether they have any further proofs to offer or witnesses to be heard. Upon receiving negative replies, the Arbitrator shall declare the hearings closed and a minute thereof shall be recorded. If briefs are to be filed, the hearings shall be declared closed as of the final date set by the Arbitrator for the receipt of briefs. If documents are to be filed as provided for in paragraph (o) of this section and the date set for their receipt is later than that set for the receipt of briefs, the later date shall be the date of closing the hearings. The time limit within which the Arbitrator is required to make the award shall commence to run upon the referral of the claim to the Arbitrator.

(n) The parties may provide, by written agreement, for the waiver of oral hearings.

(o) All documents not filed with the Arbitrator at the hearing, but arranged for at the hearing or subsequently by agreement of the parties, shall be filed with the Arbitrator. All parties shall be afforded an opportunity to examine such documents.

§ 305.43 Arbitral decision.

(a) The Arbitrator shall render a decision within 90 days of submission of the claim to the member of the Board, except if:

(1) All parties agree in writing to an extension, or

(2) The Administrator extends the time limit pursuant to section 112(b)(4)(I) of CERCLA.

(b) The decision of the Arbitrator shall be signed and in writing. It shall contain a full statement of the basis and rationale for the Arbitrator's determination.

(c) If the parties settle their dispute during the course of the arbitration, the Arbitrator, upon their request, may set forth the terms of the agreed settlement in an award.

(d) Parties shall accept as legal delivery of the decision, the placing of a true copy of the decision in the mail by the Arbitrator, addressed to the parties' last known addresses or their attorneys, or by personal service.

(e) The Arbitrator shall, upon written request of a party, furnish to such party, certified facsimiles of any papers in the Arbitrator's possession that may be required in judicial proceedings relating to the arbitration.

Subpart E—Expedited Procedures and Other Provisions

§ 305.50 Expedited procedures.

(a) Unless the Administrator determines otherwise, the expedited procedures of these rules shall be applied in any case where the total claim of any party does not exceed $20,000, exclusive of interest costs. The parties may also agree to these expedited procedures for claims exceeding $20,000. The Administrator can make a determination not to use the expedited procedures either on his own initiative or upon petition by a party. The Administrator must notify the AAA of any decision not to use the expedited procedures. The AAA must notify all parties in writing within five days of the Administrator's decision.

(b)(1) The parties shall accept all notices from the AAA by telephone. Such notices by the AAA shall subsequently be confirmed in writing to the parties.

(2) Notwithstanding the failure to confirm in writing any notice or objection hereunder, the proceeding shall nonetheless be valid if notice of obligation has, in fact, been given by telephone.

(c) The AAA shall submit simultaneously to each party to the dispute an identical list of five members of the CERCLA Board of Arbitrators from which one Arbitrator shall be appointed. Each party shall have the right to strike two names from the list on a preemptory basis. The list is returnable to the general office of the AAA within 10 days from the date of mailing. If for any reasons the appointment cannot be made from the list, the AAA shall have the authority to make the appointment from among other members of the Board without the submission of additional lists. Such appointment shall be subject to disqualification for the reasons specified in § 305.32. The parties shall be given notice by telephone, within seven days of any objections to the Arbitrators appointed. Any objection by a party to such Arbitrator shall be confirmed in writing to the general office of the AAA with a copy to the other party(ies). Upon the final selection of the Arbitrator, all communications from the parties should be directed to the Arbitrator.

(d) The Administrator shall select the locale for the arbitral hearing.

(e) The Arbitrator shall fix the date, time and place of the hearing. The hearing shall commence no later than 60 days after the selection of the Arbitrator. The Arbitrator shall notify the parties by telephone seven days in advance of the hearing date. Formal notice of the hearing will be sent by the Arbitrator to the parties, unless the parties by mutual agreement waive such notice or modify the terms thereof.

(f) The Arbitrator shall publish, no later than five days before the date of the hearing, a notice of the hearing in the newspaper of largest circulation in the city where the hearing is to take place and in the city closest to the site of cleanup or the natural resource at issue.

(g) In most instances, the hearing shall be completed within one day. The Arbitrator, for good cause shown, may schedule an additional hearing to be held within five days.

(h) Unless otherwise agreed to by the parties, the decision shall be rendered not later than five business days from the date of the closing of the hearing. In no event shall the decision be rendered more than 90 days from the date of selection of the Arbitrator.

§ 305.51 Appeals procedures.

(a) The award or decision of a member of the Board shall be binding and conclusive, and shall not be overturned except for arbitrary or capricious abuse of the member's discretion.

(b) No award or decision shall be admissable as evidence of any issue of fact or law in any proceeding brought under any other provision of CERCLA or under any other provision of law. Nor shall any prearbitral settlement be admissable as evidence in any such proceeding.

§ 305.52 Miscellaneous provisions.

(a) Any party who proceeds with the arbitration after knowledge that any provision or requirement of these Rules has not been complied with and who fails to state objection thereto in writing, shall be deemed to have waived the right to object.

(b) Until the Arbitrator is selected, all oral or written communications from the parties for the Arbitrator's consideration shall be directed to the AAA for eventual transmittal to the Arbitrator.

(c) All papers connected with the arbitration shall be served on the opposing party either by personal service or United States mail, First Class.

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40 CFR Part 305

[SWH-FRL 1906-4]

Superfund; CERCLA Natural Resource Claims Procedures

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: Section 111 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) allows the submission of claims to the Hazardous Substance Response Trust Fund (the "Fund") established under CERCLA. Section 111 permits trustees to assert claims for the costs of restoring, rehabilitating, replacing or acquiring the equivalent of natural resources injured by releases of hazardous substances, including damage assessments. Claims may also be asserted for reimbursement of the costs of responding to actual or threatened releases of hazardous substances, pollutants, or contaminants. Section 112 of CERCLA directs the President to establish forms and procedures for the filing of claims against the Fund. The President has delegated this authority to the Environmental Protection Agency (EPA) under Executive Order 12316. EPA is today proposing regulations to establish the procedures for filing, evaluating, and resolving claims for injury to natural resources asserted against the Fund. The procedures contained herein apply only to natural resource claims against the Fund. The procedures governing the Board of Arbitrators, established under section 112(b)(4)(A) of CERCLA, are proposed elsewhere in today's **Federal Register** (proposed 40 CFR Part 305). The procedures for filing claims for necessary response costs incurred by third parties in carrying out the National Contingency Plan will be issued separately under 40 CFR Part 307.

DATES: Comments must be submitted on or before May 7, 1985. As the court in *New Jersey* v. *Ruckelshaus*, Civ. Action No. 84-1668 (D.N.J., Dec. 12, 1984), has ordered EPA to promulgate these regulations by November 30, 1985, the Agency will be unable to consider requests for an extension of the comment period.

ADDRESSES: Comments on the proposed regulation and forms may be submitted in triplicate to William N. Hedeman, Jr., Director, Office of Emergency and Remedial Response (WH-548), Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

Docket: The public docket for claims procedures is located in Room S-325 at the Waterside Mall, 401 M Street, SW., Washington, D.C. 20460, and is available for reviewing from 9:00 a.m. to 4:30 p.m. Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: William O. Ross, Office of Emergency and Remedial Response (WH-548), Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, telephone (202) 382-4642.

SUPPLEMENTARY INFORMATION:

I. Introduction

This proposed regulation would provide the forms and procedures authorized by section 112(b)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601 *et seq.*, (CERCLA or the Act), for filing claims allowed by section 111 of the Act for injury to, or destruction or loss of natural resources. This proposed regulation would apply only to claims for reimbursement from the Hazardous Substance Response Trust Fund established by section 221 of CERCLA (the Fund), and not to judicial actions under section 107 of CERCLA. The regulation would apply only to natural resource claims under section 111 (a)(3) and (b)—claims by trustees for injury to, or destruction or loss of (hereinafter, collectively referred to as "injury to") natural resources, including the cost for damage assessments. This regulation would not apply to claims against the Post Closure Liability Fund established under section 232 of CERCLA; procedures for such claims will be addressed at a later date.

This preamble explains: The background of CERCLA, the types of claims for natural resource injury authorized by CERCLA, the distinction between response actions and natural resource activities, the Agency's priorities for natural resource claims in relation to the limited resources available in the Superfund, the annual planning and budget process through which EPA will make trustees aware of Fund priorities for natural resource claims, the requirement that claims for injury to natural resources be preauthorized by EPA, the process by which EPA will review and evaluate claims, what trustees should do in emergency situations, the statutory time limits within which natural resource actions must be undertaken by trustees in order to avail themselves of the natural resource claims provisions of CERCLA, and the regulatory status of this regulation under Executive Order 12291, the Regulatory Flexibility Act, and the Paperwork Reduction Act of 1980.

II. Background

CERCLA provides several options for responding to releases of hazardous substances, pollutants, or contaminants. This section describes briefly the framework of the statute, as it applies to this regulation, and the types of claims compensable under CERCLA.

A. Statutory Framework

CERCLA, enacted on December 11, 1980, establishes broad authority for responding to actual or threatened releases of hazardous substances, pollutants, or contaminants. CERCLA establishes a Fund which may be used to respond to releases and to pay certain claims to other parties for responding to releases. CERCLA also imposes liability on those responsible for actual or threatened releases and provides authority to undertake abatement actions and to enforce against responsible parties.

CERCLA authorizes certain responses to releases or threats of releases of hazardous substances, pollutants or contaminants from vessels and facilities. "Hazardous substance" is defined by section 101(14) of CERCLA, and "pollutant or contaminant" is defined by section 104(a)(2) of CERCLA. The Government may take response actions whenever there is a release or a substantial threat of a release of a hazardous substance, or whenever there is a release or substantial threat of a release of pollutants or contaminants which may present an imminent and substantial danger to public health or welfare or the environment. (Hereinafter, unless otherwise indicated, the term "release" refers to actual or threatened releases of either hazardous

substances or pollutants or contaminants). These response authorities may be utilized unless the President (by delegation, EPA) determines that a response action will be done properly by a responsible party (section 104). Any response actions taken by the Government, pursuant to this authority, must not be inconsistent with the National Oil and Hazardous Substance Contingency Plan (NCP) (40 CFR Part 300, 47 FR 31180 *et seq.* July 16, 1982).

The first major response action authorized by section 104(a) of CERCLA is a removal. In a removal action EPA can respond to immediate and significant threats to public health or welfare or the environment posed by a release or threat of a release of hazardous substances, pollutants or contaminants into the environment. Removal actions generally are limited to not more than six months in duration and the expenditure of not more than $1 million. One hundred percent of the cost of these removal actions may be paid out of the Superfund.

The second major response action available under section 104(a) of CERCLA is a remedial action. Remedial actions are responses to prevent or mitigate the migration of hazardous substances, pollutants or contaminants from the site in order to protect health, welfare and the environment. Under the NCP, CERCLA funded remedial actions must be cost-effective and are restricted to sites that are on the National Priorities List (NPL). Remedial actions may take several years to plan, design, and implement. There is no statutory limitation on the amount of time or money that can be spent for a remedial action; however, EPA is required to balance the costs of the remedial action selected against other demands on the Fund in determining whether and how to proceed with the remedial action. States are required by statute to contribute ten percent of the cost of the remedial action selected (or at least fifty percent of all response costs at the site if that site is owned or operated by the State or political subdivision).

Section 104(b) authorizes studies, investigations, monitoring, surveys, testing, and other information gathering necessary to identify the existence, extent, source, and nature of an actual or threatened release, and the extent of danger to the public health or welfare or the environment. Under this broad authority, EPA may authorize Fund expenditures for studies and investigations of injury to natural resources, to the extent that such injury may pose a threat to public health, welfare, or the environment. For example, a contaminated wetland could be addressed through a section 104 response action.

Section 106 of CERCLA authorizes Federal enforcement actions, including administrative orders, to abate the effects of releases. Section 107 imposes broad liability for releases on current and former owners and operators of vessels or facilities, as well as on persons, such as generators and transporters of hazardous waste, who arranged for the disposal or treatment of hazardous substances. Section 107 also confers a right of action upon the United States and States as trustees to sue for injury to natural resources. Under the Act, the measure of such damages may not be limited by the sums which can be used to restore or replace such resources, and could under section 107 include, for example, loss of use and/or aesthetic value. Any sums recovered by trustees must be available for use to restore, rehabilitate, replace, or acquire the equivalent of such natural resources.

Section 111 of CERCLA authorizes the submission of claims from the Fund for injury to, or destruction or loss of, natural resources, including the cost of damage assessment, as a result of a release of a hazardous substance. The Federal Government or States, as trustees, may submit claims against the Fund for reasonable costs associated with assessing damage to natural resources and for restoring, rehabilitating, replacing or acquiring the equivalent of injured natural resources. (Hereinafter, unless otherwise indicated, the term "restoring" or "restoration" includes restoring, rehabilitating, replacing or acquiring the equivalent of.) Unlike a section 107 suit, the measure of damages recoverable from the Fund is limited to reimbursement of restoration costs and the costs of assessing damages to the resource. Section 111 also authorizes the payment of claims for response costs incurred by non-governmental entities in carrying out the NCP.

Section 112 of the Act sets forth procedures by which claims may be asserted against the Fund. That section also requires the President, and by Executive Order the Agency, to establish forms and procedures for both natural resource and response claims.

B. Natural Resource Claims Allowable Under CERCLA

1. *Definition of Trustee.* Natural resource claims may be asserted against the Fund only by the trustee for the natural resource. For the purpose of claims, CERCLA section 111(b) designates the President as trustees for resources over which the United States has sovereign rights and certain additional resources identified in section 111(b) (hereinafter referred to as "Federal resources"), and States as trustee for resources within their boundaries, belonging to, managed by, controlled by, or appertaining to the State. Subpart G of the NCP specifies which Federal agency(ies) shall serve as trustee(s) for the various Federal resources. It also describes the relationship between Federal and State trustees.

2. *Uses of the Fund for Natural Resources.* Section 111(b) provides that trustees may make natural resources claims for "* * * injury to, or destruction or loss of, natural resources, including the cost for damage assessment "* * * ." Section 111(c)(2) declares that Fund money may be used for "* * * " the costs of Federal or State efforts in the restoration, rehabilitation, or replacement or acquiring the equivalent of any natural resource injured, destroyed, or lost * * *." Accordingly, claims will be allowed only for the costs of restoration, rehabilitation, or replacement or acquiring the equivalent of an injured natural resource. (This proposed rule will use the term "restoration costs" to refer to all of these costs.) The Agency does not believe that the limited resources in the Fund should be used to provide monetary compensation for loss or injury to natural resources. By contrast, as noted above, section 107 does not limit sums which can be recovered against responsible parties to restoration costs (section 107(f)).

3. *Types of Natural Resource Claims* CERCLA permits trustees to obtain compensation through the claims process for two types of natural resource activities—damage assessment and restoration. Damage assessment is the process of determining the extent of injury to, destruction or loss of a natural resource. (Hereinafter, the term "injury" refers to injury to, destruction or loss.) This may include preliminary investigation of injury, and the use of appropriate techniques for determining the extent of injury. Trustees may also include in such claims the reasonable and necessary costs associated with developing cost projections and an appropriate restoration plan and with the obtaining of public comments.

The Act provides that restoration may involve restoring, rehabilitating, replacing or acquiring the equivalent of an injured resource. Examples of restoration activities include: Cleanup to make an injured area habitable once again to indigenous fish and wildlife,

contouring land to its original topography, and restocking and revegetating land. Other types of activities contemplated by CERCLA to mitigate losses to natural resources include replacement of the natural resource that has been injured, lost or destroyed with an equivalent resource, preferably in the same general geographical area as the lost resource. An example of this would be the restocking of an injured or destroyed fish population with new fishstocks.

CERCLA also authorizes acquiring the equivalent of an injured natural resource. An instance of this would be creating an equivalent wetland or rehabilitating a functionally-stressed wetland ecosystem, preferably in the same geographical area, for one injured by the release of a hazardous substance. It may also include development of a new habitat from another potentially equivalent wetland. The result of either approach would be to ensure that the overall sum of wetlands available for the purpose(s) for which they were used at the time of the release is maintained.

Section 111(i) bars the use of Fund monies for natural resource restoration, except in limited situations, until a plan for the use of such monies has been developed by the trustee and adopted by affected Federal agencies and States. The Agency interprets this section to require "preauthorization" or the prior approval of EPA before natural resource claims for restorations may be asserted against the Fund. "Preauthorization" is discussed further in section III of this preamble.

III. Use of the Fund for Natural Resource Claims

This section explains the priorities which the Agency will use to approve requests for natural resource expenditures from the Trust Fund. It also explains why the annual EPA budget process is necessary for evaluating requests for funding of damage assessments and restorations and why the Agency prefers to address injury to natural resources, when possible, through its response authorities. It then explains the preauthorization process for restorations.

A. Agency Priorities for Use of the Fund

There are many sites around the country where the release or threatened release of a hazardous substance poses a threat to public health. The Agency believes that response at those sites has a higher priority on the Fund's limited resources than does injury to natural resources.

Section 111(e)(2) of the Act, which allows the Agency to spend no more than 15 percent of the amount credited to the Fund each year on natural resource claims, makes it clear that such a priority is consistent with Congressional intent. Accordingly, at least while many sites that appear to pose human health risks remain unattended, the majority of resources available in the Superfund will be utilized to support response ("removal" and "remedial") actions. Because of this, it is unlikely that the Agency will allocate the maximum 15 percent of the amount credited to the Fund to natural resource claims in the next few years.

B. Coordination of Response and Natural Resource Action

In keeping with its emphasis on Fund-financed response actions, the Agency intends, where possible, to address injury to natural resources within the context of those actions. The reason for linking natural resource activities with response activities at a given site is simple. Many of the removal and remedial actions selected by EPA will directly or indirectly address losses to natural resources that have occurred at the site as a result of the release of hazardous substances into the environment. For example, the decontamination of ground water involves both actual or potential injury to public health (requiring a remedial action) and danger to a natural resource (requiring a restoration). In some cases, the removal or remedial action selected to protect the public health will essentially restore the area to its natural condition. For example, natural resources such as fish or wildlife that were unable to inhibit the area as a result of the releases of hazardous substances will be able to reinhabit the area once the threat is corrected or minimized. On the other hand, removal or remedial actions generally will exclude specifically directed restoration activities, such as the restocking of fish in surface streams or lakes.

A first step toward completing a remedial action under section 104 of CERCLA is the preparation of a remedial investigation/feasibility study ("RI/FS"). In preparing the RI/FS, the Agency will evaluate actual or potential injury to natural resources to the extent that such injury is associated with a threat to human health or welfare, or to the environment. Similarly, the response cleanup action may address injury to natural resources. EPA has linked the planning, budgeting and implementation of natural resource activities with the response program. Trustees of natural resources should therefore become actively involved in the review of response actions planned at sites where the release of a hazardous substance may have injured a natural resource. EPA will, to the extent practicable, notify affected trustees of suspected natural resource injury as provided by § 300.52(d) of the NCP. Involvement at an early stage will allow trustees to identify activities which are not contained in a proposed remedial or removal response action. Trustees may then request that the scope of planned response actions (including RI/FS) be expanded to address major natural resource concerns. If the Agency determines that the response action cannot be so expanded, trustees may follow the procedures necessary to assert a claim against the Fund.

The trustee is cautioned that his actions at the site should neither interfere with, nor disrupt, response actions planned or underway at the site, if known. In determining if an emergency restoration should be undertaken, the trustee should consult the National Response Center, the Regional Response Team, the on-scene coordinator, and other Federal, State or private parties at the site. Where the response can include efforts to address injury to a natural resource, trustees should propose such actions. The Agency will only reimburse for emergency actions which either could not have been addressed in the response action or were specifically considered but not included in the response action. Trustees may present claims for emergency actions to the Fund only after presentation of the claim for emergency action to the potentially responsible party.

The priorities that must be addressed by EPA in utilizing the Fund make it unlikely that many natural resource claims will be awarded in the near future. Accordingly, trustees are encourgaged to obtain relief regarding natural resources injured by suing responsible parties. The priorities which the Agency will accord to natural resource claims are discussed next.

C. Priorities for Natural Resource Claims

In evaluating natural resource claims, the Agency will give top priority to those sites where imminent and substantial endangerment to public health or the environment warrant an immediate removal or enforcement action. These sites may or may not be on the National Prioroties List (NPL). Conditions at many of these sites, in addition to posing serious actual or potential threats to public health, could also cause

significant injury to natural resources. Where the efforts to stabilize a situation can, with substantial benefit, be augmented by a specific natural resource assessment or restoration activity, the trustee may notify the Agency of its intent to file an assessment claim or request preauthorization of the restoration. EPA will consider requests solely for a restoration only if trustee can justify such actions without an assessment. Where the site is on the NPL, the Agency will take into consideration the likelihood of a remedial action (beyond the removal action) and its potential scope in making this decision. In some cases, a seemingly desirable restoration proposal may be deferred pending future site decisions on remedial actions. Where the site is not on the NPL, and has little likelihood of being included, the Agency will make its decisions based on the priority, costs and benefits of the specific restoration proposed.

The Agency will accord second highest priority for natural resource claims at sites where the Agency has instituted or intends to institute Fund-financed remedial or enforcement actions. To be eligible for a remedial action, a site must be on the NPL. 40 CFR Part 300 (Appendix B). As discussed above, the Agency, where possible, will attempt to develop these remedial actions in a manner that addresses the injury to natural resources. At sites on the NPL for which remedial action is planned or underway, but for which natural resources will not be *completely* addressed, trustees should first request that the remedial plan be expanded to address the natural resource injury. If such expansion is not possible, the trustee may proceed against the Fund. In the case of a restoration claim, the trustee must obtain preauthorization from the Agency. No preauthorization is required for a damage assessment claim. However, in either case, the trustee is advised to notify the Agency of his intent to file a claim. Preauthorization of restoration claims and decisions on assessment claims will be made in part on a priority basis; an annual planning process is essential to sound decision-making.

Recognizing that sufficient resources may not be available from the Fund to implement a restoration plan once developed, trustees are encouraged to pursue actions against responsible parties to obtain restoration of natural resources injured as a result of the release of a hazardous substance. The Agency is most likely to preauthorize a specific restoration action when prospects for recovery from a responsible party appear limited, and the Fund-financed remedial action does not address a substantial natural resource injury.

The third priority for natural resource claims will be given to injuries that are not at NPL sites but result from releases associated with NPL sites. Restorations that fall into this category may require an areawide cleanup and are likely to be greater than priority two restorations in terms of scope and cost.

Finally, the last priority relates to those sites that are not on the NPL and which do not pose an immediate and significant threat to public health requiring the exercise of the removal authorities under CERCLA. The Agency is unlikely to allow natural resource claims for these sites unless a natural resource of unusual significance is endangered or threatened.

The Agency will evaluate claims for damage assessments and requests for preauthorization of restoration claims according to the above criteria. In evaluating these claims and requests, the Agency will also consider:

(1) The seriousness of the problem in relation to competing demands on the Fund;

(2) The uniqueness or special significance of the affected natural resource as indicated by the trustee;

(3) The extent to which the injury has been or may be addressed by a response action;

(4) The liability of the claimant for the release or threatened release.

D. Preauthorization of Claims for Natural Resource Restoration

This proposal provides that claims for natural resource restoration may be submitted to the Fund only if they are approved in advance or "preauthorized" by the EPA. EPA interprets CERCLA to require that a plan for the restoration of natural resources must be adopted before a claim for restoration costs may be submitted to the Fund. Section 112 of CERCLA, which sets forth the procedures whereby claims may be asserted against the Fund, applies only to "all claims which may be asserted against the Fund pursuant to section 111 of this title." Thus, in order for a claim to be filed, triggering all the procedures of section 112, the claim must satisfy the prerequisites of section 111. Among those prerequisites is section 111(i), which provides:

> Funds may not be used under this Act for the restoration, rehabilitation, or replacement or acquisition of the equivalent of any natural resources until a plan for the use of such funds has been developed and adopted * * *.

While the statute does not specify when this plan must be adopted, there are several reasons to believe that it must be before a claim is filed. First, a claim is defined by section 101(4) as a "demand in writing for sum certain." Since the section 111(i) plan is essential for determining the nature and extent of the natural resources restoration, it is difficult to see how any meaningful "sum certain" could be identified before adoption of the plan. Furthermore, section 112(b)(3) of CERCLA provides that if no settlement is reached within 45 days of the filing of the claim, the President [EPA] may make and pay an award. If EPA declines to make an award, the matter is referred to the Board of Arbitrators. While section 112(b)(3) does not specifically *require* that an award be made within 45 days, it does *contemplate* that an award might be made within that time frame. The statute certainly does not contemplate the post-claim development of a section 111(i) plan, which requires "adequate public notice and opportunity for hearing and consideration of all public comments," a process which would take considerably longer than 45 days.

As noted previously, section 112(b) provides for the referral of denied claims to a member of the Board of Arbitrators, whose decision may be disturbed only for "arbitrary and capricious abuse of discretion." There is no indication in the statute or its legislative history, however, that the Board should have authority to make policy judgments on the priority of claims. Nor does the traditional role of arbitrators suggest such a result. An arbitrator would be ill-equipped to make such a policy judgment, since he would not be aware of or fully appreciate the press of other matters which are competing for the Fund's attention. It is worth noting in this regard that although Congress imposed a 15% *maximum* on amounts that could be spent on natural resource claims, there is no minimum. Indeed, the Agency could reasonably determine that no money at all should be spent on natural resource claims pending further progress in cleaning up NPL sites. Given these priorities, which are consistent with Congressional intent, it would make little sense for claims which EPA has determined to be of insufficient priority to be subject to an award by the Board of Arbitrators. There is no suggestion in the statute or its legislative history that the Board was to have the effective authority to allocate up to 15% of the Fund. Rather, the section 112 claims process makes most sense if it addresses only those claims which the Agency has

determined are of sufficient importance to merit Fund expenditure. The Agency believes that Congress has intended this result by requiring the adoption of a section 111(i) plan before the filing of a claim under section 112.

EPA recognizes that the court in *New Jersey* v. *Ruckelshaus*, Civ. Action No. 1668 (JWB) (D.N.J., Dec. 12, 1984), rejected the Agency's interpretation that preauthorization of natural resource claims is required by the Act. The Federal Government is now in the process of deciding whether to appeal the *New Jersey* order. Of course, pending a reversal or stay, the Agency will process the claims that are the subject of the order. However, even if the *New Jersey* court's opinion that the statute does not require preauthorization prevails, the Agency believes that the Act provides EPA with the discretion to impose the preauthorization requirement by regulation, as part of its responsibilities to manage the Fund and otherwise implement the Act. For this reason, EPA does not believe this proposed regulation to be inconsistent with the court order. In any event, the regulation would not apply to any purported claims, such as those that were the subject of the *New Jersey* litigation, which have already been submitted to the Fund. These claims will be handled on a case-by-case basis. To the extent that a further judicial order precludes the promulgation of the preauthorization requirement, the Agency would consider incorporating into other portions of the regulation alternative mechanisms which would allow the Agency to ensure that no awards are made for natural resource injuries that would be inconsistent with the Fund priorities which the Agency otherwise establishes. Commenters are requested to discuss the merits of such an alternative approach.

EPA believes that the preauthorization requirement is a legitimate and important part of the procedures being proposed today. First, the Agency must harmonize the requirements of section 111(i) with the procedures for submitting a claim. We believe that adoption of the section 111(i) plan *before* submitting a claim is most appropriate, in that the claims process could then focus on only those claims for which there is a reasoned basis and which the Agency has determined to be of sufficient priority. This is in accordance with the Congressional directive to spend Fund monies in a cost-effective manner. As stated by the Senate Committee Report on S. 1480: "[A]ction to restore, rehabilitate, or replace natural resources under the provisions of this Act [should] be accomplished in the most cost-effective manner possible. The process of developing such a plan will be of great assistance in avoiding unnecessary costs" (S. Rep. No. 96–848, 96th Cong., 2d Sess., p. 85 (1980)).

The primary function of the preauthorization is to allow EPA to evaluate the merits of a proposed restoration and determine whether it is of sufficient priority for Fund reimbursement. Preauthorization will be EPA's commitment to make an award to reimburse necessary and reasonable restoration costs. A maximum reimbursement may be specified at the time of the preauthorization. Preauthorization thus will provide assurance to the trustee that funds will be available, although ultimate reimbursement will depend on amounts actually available in the Fund. In addition, the preauthorization requirement will prevent the submission of large claims to the Fund which, under section 111(e) of CERCLA, must be paid in the order in which they are finally determined. By allowing the filing only of high priority claims, the Agency will ensure that one trustee does not obtain exclusive use of the Fund.

Preauthorization also serves another important function. Under section 112(a), trustees must elect whether to file a lawsuit against a responsible party or submit a claim to the Fund. Since a request for preauthorization does not constitute the filing of a claim, denial of preauthorization will preserve the trustee's right to proceed against the responsible parties. No election is made until a claim or lawsuit is actually filed.

Consistent with the priorities discussed above EPA will consider preauthorizing natural resource claims for restoration activities. With limited funds available for response actions, as well as damage assessments and restorations, trustees are encouraged to recover the costs of restoration activities from responsible parties, whenever possible, using the information in the damage assessment to support these cost recovery actions. The process by which EPA will consider both assessment claims and requests for preauthorization of restoration claims is described in IV.

E. EPA's Planning and Budgeting Process

Under its Fund management authority, EPA has established an annual planning and budgeting process to determine funding priorities for natural resource damage assessment and restoration claims. The priorities discussed above will be used by EPA to coordinate its response activities under section 104 with section 111 natural resources claims. This process is designed to ensure that Fund monies are used to address those sites which pose the greatest threat to public health and welfare and the environment. The planning for a fiscal year of funding will begin during March, some eighteen months prior to the start of that fiscal year (e.g., planning will start in March 1985 for the 1987 fiscal year which starts October 1, 1986).

The Agency encourages, but does not require, trustees to file a notice of intention to file a claim before filing an assessment claim or a request for preauthorization of a restoration. Each Federal and State trustee is requested to furnish EPA with the following information by April 1 of each year: (1) The trustee's objectives for natural resources, consistent with the priorities above, (2) the estimated costs of and schedule for such actions, (3) alternatives to funding (i.e., potential for action against a responsible party), and (4) the date of discovery of the loss. The Agency will assemble all submissions, review the sites for consistency and scheduling sequence with response activities, and establish a national ranking of priorities within a range of possible funding levels (i.e., anticipated appropriation levels).

If EPA's preliminary ranking of a trustee's notice of claim is low (due to an insufficient balance in the Fund or the low priority assigned to the site when weighed against other sites or alternative uses of the Fund) the trustee may modify the anticipated claim amount or the proposed schedule or resubmit the request in its original form in a following fiscal year.

The trustee's annual submission may request, and the EPA appropriation may allow, all or any portion of the proposed restoration activities. The Agency will impose, through the preauthorization process, a limit on the sums which may be recovered from the Fund for all sites for which an appropriation is available.

After the trustee's review of and comment on the Agency's preliminary annual priorities, the Agency will submit a proposed budget to the Office of Management and Budget. The budgeting will then follow the traditional Federal budget process.

There are two principal benefits to the trustee for participating in the planning process: (1) The Agency can better attempt to address conditions at the site in concert with response activities, and (2) the trustee will have some assurance

as to which natural resource activities may be reimbursed through the Fund.

IV. Procedures for Pursuing Natural Resource Claims Against the Fund

A. Trustee and Lead Trustee Responsibilities

In case where there are multiple trustees, because of co-existing or contiguous natural resources or concurrent jurisdiction, such trustees shall coordinate and cooperate in carrying out their responsibilities. For example, if one trustee has responsibility for a species which inhabits land or water under the protection or control of another trustee, those trustees shall coordinate their planning and any subsequent actions. If the injury or any subsequent remedy is realistically divisible (e.g., contamination of ground water and aquatic life from the same release), the trustees may act independently and pursue separate requests for funding or preauthorization. Conversely, where there are multiple trustees and the resources are not realistically divisible, the trustees must coordinate their actions and submit a single request to EPA. The Agency proposes in this regulation a set of procedures for claims against the Fund in the event that multiple trustees are affected by the same release of a hazardous substance and desire to seek recourse against the Fund. Under this proposal, trustees must: (1) Notify other potential trustees of their plan to pursue a claim against the Fund, (2) select a single trustee to act as "lead trustee" for purposes of administering the claim, and (3) coordinate among themselves so that they file a request which respects all trustees' interests.

The basic for requiring a "lead trustee" for claims against the Fund is to facilitate processing of annual requests, the claim, and any requests for supplementary information. The lead trustee will act as the central contact for Agency communications regarding the claim and should be selected by the multiple trustees affected by the release. Should the trustees fail to agree on a lead trustee, EPA will designate, at its discretion, a trustee to serve as lead trustee for the purposes of claims against the Fund. (Hereinafter, the term "trustee" also means "lead trustee", where applicable.)

B. Approaches to Natural Resource Damage Assessment

Guidelines for conducting both simplified and alternative protocol damage assessments mandated under section 301(c)(2) are scheduled for proposal by the Department of Interior in April 1986 and December 1985, respectively. The Act sets forth two basic types of damage assessments: (1) *Simplified damage assessments*, specified in section 301(c)(2)(A), require minimal field observations and include establishing measures of damages based upon units of discharge or release, or units of affected area. Such assessments should be straightforward and inexpensive to conduct and take relatively little time. (2) *Alternctive protocol damage assessments*, specified in section 301(c)(2)(B), require a determination of the type and extent of short- and long-term injury to natural resources. Such assessments shall utilize the best available procedures to determine damages, including both direct and indirect injury, destruction, or loss, and take into consideration factors including replacement value, use value, and the ability of the ecosystem or resource to recover. When trustees intend to submit a restoration claim to the Fund, a detailed restoration plan must also be prepared. A claim for assessment costs may include the costs of preparing the restoration plan.

The best time to undertake a damage assessment will depend on the particular situation at the site. In some circumstances, it may be before or during a remedial investigation; while, in others, it may not be until after the feasibility study, or even construction, has been completed. The trustee must carefully weigh the issue of the statute of limitations since discovery of the loss of the natural resource may occur during the remedial phase. Under today's proposal, the filing of a damage assessment claim would satisfy the statute of limitations for a future restoration claim against the Fund.

C. Rebuttable Presumption for Assessments

Section 111(h)(1) provides that in accordance with regulations to be promulgated under section 301(c) of CERCLA, injury to natural resources resulting from releases of hazardous substances shall be assessed by designated Federal officials. Section 111(h)(2) provides that an assessment of injury to, destruction, or loss of natural resources shall have the effect of a rebuttable presumption on behalf of a claimant in any proceeding under CERCLA or section 311 of the Federal Water Pollution Control Act.

As noted in the proposed revision to the NCP (50 FR 5862 *et seq.* February 12, 1985), the Agency is considering whether to adopt one of three possible approaches for resolving the issue of whether and under what circumstances assessments of injury to natural resources conducted by State trustees are entitled to the rebuttable presumption established in section 111(h)(2) of CERCLA.

The first approach is to amend the NCP to designate Federal officials who could perform appropriate assessments of State natural resources at the request of State trustees. States could also perform assessments; however, only such Federal assessments, performed in accordance with the regulations required by section 301(c) of CERCLA, would be entitled to the rebuttable presumption established in section 111(h)(2) of CERCLA.

The second approach would be that only States would perform assessments of State natural resources, and such assessments performed by States would be entitled to the rebuttal presumption in section 111(h)(2).

The final approach would be that only States would perform assessments of State natural resources, but that such assessments would be entitled to the rebuttable presumption in section 111(h)(2) only where they are performed in accordance with regulations promulgated under section 301(C) of CERCLA.

The preamble to the proposed NCP revision solicits comments on the role of Federal trustees in assessing State resources. EPA's decision on this matter will be embodied in the final promulgation of this proposed regulation and the NCP revisions. If EPA concludes that only assessments of natural resources by Federal trustees are eligible for the rebuttable presumption, it would be the responsibility of the State trustee who desires the benefit of a rebuttable presumption to contact the appropriate Federal agency to arrange for such assessments or for Federal review and approval of a State's assessment.

D. Requests for Preauthorization of Natural Resource Restorations

Requests for preauthorizaton of restoration activities may only be submitted to the Agency after a restoration plan is developed and approved by all affected Federal agencies (except EPA) and the State(s).

A request for preauthorization of natural resource restoration must include: (1) A description of the injured natural resource and its uses at the time of the release, and may include a statement of the uniqueness and special significance of the resource(s); (2) a brief description of the extent of injuries (the damage assessment will be an attachment), the hazardous substances

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from which the injury resulted, and their sources; (3) the identity of any known potentially responsible parties and any contacts with such parties (supporting information shall be provided as an appendix); (4) the plan, developed by the trustee and approved by affected Federal agencies (other than EPA) and states, for restoration (divided into major phases or segments if appropriate), including the steps necessary to carry out the selected course of action, and reasons for selecting the remedy (a copy of the plan will be an attachment), (5) a description of the steps taken to ensure public comment on and review of the plan; (6) itemized estimates for restoration costs; and (7) the timetable for carrying out the plan.

The plan referred to in item (4) is required by section 111(i) of CERCLA. The trustee must provide adequate opportunity for public comment and hearing on the Plan. While EPA may comment on the Plan during the public comment period, the Plan would not be finally adopted unless and until the Agency preauthorizes the restoration claim. At a minimum, the trustee must provide an adequate opportunity for public review and comment, and a public meeting on the restoration plan. Additional activities may be undertaken in accordance with EPA's *Community Relations in Superfund: A Handbook* (September, 1983). (See also EPA's policy statement entitled *Superfund Community Relations Policy*, May 1983.) EPA's involvement in the development of the restoration plan is likely to ensure that the remedy selected will fit within the CERCLA budgetary constraints, and thus minimize the probability of a subsequent approval by EPA of the trustee's preauthorization request for less than the amount necessary to implement the selected remedy.

Forms and instructions for requesting preauthorization are contained in Appendix A to the regulation. Additional copies may be obtained from any EPA Regional Office. The current addresses for these offices are contained in Appendix I to this preamble. These forms must be filled out completely, signed and submitted to EPA in Washington, D.C.

EPA will endeavor to make final decisions on preauthorization request for restorations within 60 days. If, as a result of EPA's preauthorization decision, the trustee decides to undertake a restoration of narrower scope than that contained in the restoration plan, the trustee is required to notify the public before undertaking the restoration. As discussed above, a notice of intent to request preauthorization will aid EPA's budgeting process and expedite the Agency's decision-making on preauthorization.

E. Actions by Trustees in Emergency Situations

In accordance with section 111(i), EPA will not require preauthoization of restorations in situations where genuine emergency circumstances exist. EPA recognizes that some limited situations may require immediate action in order to avoid irreversible loss or to prevent continuing danger to natural resources (e.g., where continuing contamination must be abated in order to avoid the complete destruction of a resource, or where continuing degradation threatens more and more of the resource or the ecosystem). However, the trustee should, if at all possible, contact the EPA Regional Office serving the area in which the release occurs and notify it that a restoration is underway. Minimally, the trustee must, within five days of initiating the restoration, send a written notification that an emergency restoration is underway to EPA in Washington, D.C. Further, the trustee may undertake only those actions necessary to abate the emergency situation. EPA will require the trustee to follow normal preauthorization procedures before undertaking any action over and above what is necessary to abate the emergency situation. The burden of proving, based on information available at that time, that irreversible harm would have resulted if the emergency restoration were not undertaken, will rest with the trustee. EPA will award claims from the Fund only if it determines that an actual emergency existed requiring immediate restoration measures. The trustee will have the burden of demonstrating that an apparent emergency existed at the time the action was taken, based on information then available. Additionally, the trustee must prove that costs associated with emergency actions were both reasonable and necessary. Of course, claims for emergency assessments and restorations will be paid as funds are available.

The Agency, in the case of an emergency, encourages trustees to contact EPA or the National Response Center (800 424–8802) to report the actual or threatened release. The Agency or the U.S. Coast Guard may determine that immediate response action is required under section 104 of CERCLA. In such cases, the trustee may find that the emergency situation is abated and an emergency assessment or restoration is not required.

V. Submission of Natural Resource Claims

This section describes the election which the trustee must make between filing against the Fund or commencing an action against the responsible party. The section also explains the requirement that trustees submit the claim for an assessment or preauthorized restoration to the responsible party after the restoration is completed, but before the claim is submitted to EPA.

A. Election to Commence a Court Action or File a Claim

Up to the point where a trustee actually files a claim for an assessment or a preauthorized natural resource claim, he is free, pursuant to section 112(a), to decide either to pursue the Fund route or to sue under section 107 of CERCLA for the costs of an assessment or a restoration. This means that the trustee has not made his election at the time a notice of claim for an assessment is filed through the planning process and throughout the assessment, or at the time preauthorization is requested and throughout the conduct of the restoration. That is, a trustee preserves the option of seeking reimbursement either through a court action or an administrative claim throughout the completion of the specific action. However, the filing of an assessment claim under section 112 is an election to proceed against the Fund for assessment costs, and the filing of a restoration claim is an election to proceed against the Fund for restoration costs. EPA will not consider a damage assessment claim or a preauthorized restoration claim while an action for the same costs is before the courts. However, the trustee is free to pursue a claim against the Fund, if all other requirements for filing a claim are satisfied, if he fails to obtain judicial relief through a 107 action. Likewise, the trustee is free to initiate judicial action if his claim against the Fund is denied in part or in whole.

The trustee may, however, elect to simultaneously pursue a claim against the Fund for a damage assessment and a court action against potentially responsible parties for restoration costs and other damages at the same site. The most cost-effective use of the limited Fund resources may be to provide funding to a trustee for an assessment (instrumental in the preparation of many cases) and then encourage the trustee to institute a court action for the costs of conducting any required restoration. Claims may be filed against the Fund only for the costs of restoration.

rehabilitation, replacement or acquiring the equivalent of a natural resource. Other measures of damages are not recoverable from the Fund, but are potentially recoverable under section 107.

B. Presentation of Claims to the Potentially Responsible Party

Section 112(a) states that claims may not be submitted against the Fund unless they have first been presented to the owner, operator, or guarantor of the vessel or facility from which the hazardous substance has been released or to any other person who may be liable under section 107. The requirement applies to trustees with either an assessment or a preauthorized restoration claim. If applicable, notice to potentially responsible parties of a damage assessment claim should include notice that a restoration claim will be filed against the Fund subsequently. If the potentially responsible party or any other person who may be liable under section 107 of CERCLA is unknown, the trustee must conduct a reasonable search for the party believed responsible for the release. The standard for determining what is a "reasonable" search will depend on the circumstances of the release; however, a reasonable search should include a search of deed records, a letter to the last known address requesting a forwarding address, and a notice in a local newspaper requesting information on, or witnesses to the release. These efforts must be documented and available for EPA's review. Additionally, any reply received from the potentially responsible party should be retained and submitted with the claim. If the trustee is unable to locate the potentially responsible party, he may submit a claim against the Fund.

Upon a request from the trustee, EPA will provide that trustee with the names and addresses of potentially responsible parties to whom the Agency has sent notice letters under section 106 of CERCLA, or potentially responsible parties who have reported a release at the site pursuant to section 8(e) of the Toxic Substances Control Act or section 103(a) of CERCLA.

Trustees able to identify the potentially responsible party should make a reasonable effort to settle the claim. If the claim against the potentially responsible party remains unsatisfied after sixty days, the trustee may present the preauthorized claim to the Fund for payment.

C. Presentation to EPA

Only trustees who have obtained EPA's preauthorization of a restoration, performed the work as preauthorized, and who have first presented their claim to the potentially responsible party (when identified) can submit a claim for reimbursement against the Fund. For assessments, trustees must perform the work, and then present their claim to the potentially responsible party, before submitting a claim for reimbursement against the Fund.

The EPA will approve assessment claims only if a fully completed claims form is submitted to EPA in Washington, D.C. (Attention: Director, Office of Emergency and Remedial Response), and the Agency determines that the claim is of sufficient priority to merit reimbursement from the Fund.

In order for a restoration claim to be considered by EPA, a fully completed claim form must be submitted to EPA in Washington, D.C. Claims for restoration may be filed only after the restoration, or an authorized phase of the restoration, is completed.

Forms and instructions for filing a claim are contained in Appendix A to the regulation. Additional copies may be obtained from any EPA Regional Office. The current addresses for these offices are contained in Appendix A to this preamble.

Among other things, the claim forms require: certification that the restoration was preauthorized by EPA, itemization of the claimed costs, and a statement of the procedures followed in searching for or identifying the party believed responsible for the release and the results of any contact. The forms must be filled out completely, signed and submitted to EPA in Washington, D.C., Attention: Director, Office of Emergency and Remedial Response.

VI. EPA Review and Payment of Claims Against the Fund

Upon receiving an assessment claim or preauthorized restoration claim, EPA will notify any known affected parties of the existence of the claim and will attempt to promote and arrange a settlement between the trustee and any person(s) who may be liable. Pursuant to section 112(b)(2)(A) of CERCLA, where the trustee and the responsible party(ies) agree upon a settlement, it is final and binding upon them. Parties to a settlement waive all recourse against the Fund.

Where the responsible party is unknown and cannot be identified, or if no settlement among the parties has been reached, EPA will consider the claim against the Fund. EPA will review the forms and documentation and determine whether all filing requirements have been met. Where the trustee has complied with all filing requirements, the assessment claim or restoration claim will be considered "perfected." It is only after a claim is perfected that the statutory time limits (i.e., 45 days to reach a settlement, 90 days for decision by an Arbitrator, and 20 days for payment) for processing and disposition of claims begins to run. When EPA is unable to evaluate the claim because of omissions in filed documents, the Agency will return the materials and advise the claimant of the specific problems with the filing. When EPA needs additional information to properly evaluate the claim's validity, EPA will suspend further processing of the claim and will request that the claimant provide the necessary information. A claim that EPA returns because of a filing deficiency may be corrected and resubmitted to EPA. Failure of the claimant to provide the information in a timely manner can form the basis for denial of the claim.

Claims will be adjusted using the services of a private claims adjusting firm (section 112(b)(2)(C)). EPA will make awards of restoration claims only to the extent that the Agency determines that the expenditures were reasonable and within the scope of the preauthorization. EPA will utilize several criteria to determine if the trustees' costs for both assessments and restorations are reasonable. These include: (1) A review of the trustee's documentation supporting the decision to perform an activity in-house or to contract it out, and (2) a determination that all contracts were awarded using maximum open and free competition. These criteria are designed to conserve Fund monies and ensure against fraud and abuse. In most instances, applicable State and Federal procurement practices (formal advertising, competitive negotiations or other procurement methods) will meet the test for contracts. Trustees may demonstrate alternative costs by providing cost estimates from firms qualified in such areas, the results of competitive procurements for similar activities, or documentation of market costs based on similar procurements by others.

Since only preauthorized restoration claims may be submitted to the Fund, the Agency will not deny such claims, except to the extent the costs claimed were not reasonable or necessary or in accordance with the preauthorization. Denied restoration claims will be referred to the Board of Arbitrators. However, damage assessment and emergency restoration claims may be submitted without preauthorization. If the Agency determines that a damage assessment or emergency restoration

claim is not of sufficient priority, it will deny the claim. Assessment claims denied on such grounds will not be referred to the Board of Arbitrators.

Where a State trustee disagrees with the amount of an award, the matter can be referred for resolution to the Board of Arbitrators (the "Board") established by EPA. The trustee bears the burden of proof in arbitration (section 112(b)(4)(D) of CERLA). Additionally, where EPA declines to make an award on a claim, the State's claim will be referred to the Board. However, decisions by EPA to deny damage assessment claims on the basis of Fund priorities will not be referred to the Board. Title 40 CFR Part 305, proposed elsewhere in today's **Federal Register**, defines the role and jurisdiction of the Board of Arbitrators. Federal trustees will utilize internal Executive Branch dispute resolution procedures, including resolution by the Executive Office of the President.

EPA will pay the award within 30 days. Any augmentation of the award by the Board of Arbitrators or a court will be paid within 20 days of the expiration of the appeal period for such arbitral or judicial decision, unless an appeal is in fact taken. In order for the claimant to receive payment, the claimant must waive further recourse against the Fund and subrogate his or her rights to the United States (section 112(c) of CERCLA). A claimant receiving an award from the Fund must retain the documentation supporting the claim for a period of six years or until EPA has pursued a cost recovery action against potentially responsible parties.

VII. Statute of Limitations

Section 112(d) of CERCLA provides:

> No claim may be presented, nor may an action be commenced for damages under this title, unless that claim is presented or action commenced within three years from the date of the discovery of the loss or the date of enactment of this Act, whichever is later • • •.

CERCLA was enacted on December 11, 1980. Therefore, after December 13, 1983, trustees could not file claims for injury to natural resources where the loss was discovered prior to December 11, 1980. Congress designated passage of the Act or "discovery of the loss" as the event which triggers the time limitation within which the trustee must file a claim. This raises the issue of when the loss may be considered to be "discovered" for purposes of the statute of limitations.

While the legislative history of CERCLA does not speak directly to this point, Congress did not intend that "Date of discovery" be used to indefinitely extend the period within which trustees could act. (Senate Report 96-848, p. 67.) However, "date of discovery of the loss" is not a self-defining term. While a citizen may have discovered a loss at some early date, that knowledge cannot reasonably be imputed to the trustee. EPA believes that the date of discovery must be linked to some formal indication that the trustee has knowledge of the loss. The reliability and adequacy of the information are of obvious concern to the trustee. As a public official, the trustee can only be expected to act (i.e., to prepare to file a claim) on information that is reliable (i.e., confirmed by some Federal, State, or local government official) and factually adequate (i.e., sufficiently describes the loss). The initial observation of natural resource injury may not in every case constitute discovery by the trustee. At the other end of the spectrum, the damage assessment, which is usually performed some time after identification of the loss, will take place long after the actual point of discovery. Somewhere in the period between these events, a document or memorandum prepared for the trustee should identify for the first time the natural resources injured, the types of injury, and the hazardous substances involved. This document or memorandum should provide the reasonably diligent trustee with adequate information to constitute discovery.

While the date of discovery will be determined by the facts of each case, the Agency proposes the following definition of "date of discovery", which incorporates information that must be available to make a determination that a loss compensable under CERCLA has occurred:

> The date on which the trustee became aware of the injury to the natural resource. For an injury that can be visually observed, this is the date on which the trustee has available, or reasonably should have available, a document or memorandum prepared for the trustee verifying the observed injury to the natural resource, the types of injury, and which suggests that the injury may be related to the release of a hazardous substance.
>
> For an injury that cannot be visually observed, this is the date on which the trustee has available, or reasonably should have available, a document or memorandum prepared for the trustee, including such sampling and laboratory analysis as is necessary, which identifies the injured natural resource, the types of injury, and which suggests that the injury may be related to the release of a hazardous substance.

This proposed definition attempts to strike a balance between the earliest possible date and the point at which a reasonable basis for a decision exists.

VIII. Regulatory Status and Required Analyses

Proposed and final rules issued by Federal agencies are governed by several statutes and executive orders. These include Executive Order 12291, the Regulatory Flexibility Act, and the Paperwork Reduction Act.

A. Executive Order 12291

Rulemaking protocol under Executive Order 12291 requires that proposed regulations be classified as major or non-major for purposes of review by the Office of Management and Budget. According to the E.O. 12291, major rules are regulations that are likely to result in:

(1) An annual effect on the economy of $100 million or more; or

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

EPA has determined that this regulation is a non-major rule under Executive Order 12291 because it is unlikely to result in any of the impacts identified above. Therefore, the Agency has not prepared a regulatory impact analysis for this regulation.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires that a Regulatory Flexibility Analysis be performed for all rules that are likely to have "significant impact on a substantial number of small entities." EPA certifies that this regulation will not have a significant impact on a substantial number of small entities, because only Federal and State trustees may submit claims under this regulation. Further, this regulation imposes no capital expenditures, nor any compliance requirement on any industrial sector.

C. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., the reporting or recordkeeping provisions that are included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under Section 3504(h) of the Paperwork Reduction Act. Any final rule will include an explanation of how the reporting or recordkeeping provisions contained therein respond to any comments by OMB and the public.

List of Subjects in 40 CFR Part 306

Chemicals, Hazardous materials, Intergovernmental relations, Natural resources, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal.

Dated: February 28, 1985.

Lee M. Thomas,

Administrator.

[**Note.**—This Appendix will not appear in the CFR.]

Appendix I

Environmental Protection Agency—Region I, John F. Kennedy Federal Building, Boston, Massachusetts 02203
Environmental Protection Agency—Region II, 26 Federal Plaza—Room 402, New York, New York 10278
Environmental Protection Agency—Region III, Curtis Building, 6th and Walnut Streets, Philadelphia, Pennsylvania 19106
Environmental Protection Agency—Region IV, 345 Courtland Street NE., Atlanta, Georgia 30365
Environmental Protection Agency—Region V, 230 South Dearborn Street, 13th Floor (HR-13), Chicago, Illinois 60604
Environmental Protection Agency—Region VI, First International Building, 1201 Elm Street, Dallas, Texas 75270
Environmental Protection Agency—Region VII, 324 East 11th Street, Kansas City, Missouri 64016
Environmental Protection Agency—Region VIII, 1860 Lincoln Street, Denver, Colorado 80095
Environmental Protection Agency—Region IX, 215 Fremont Street, San Francisco, California 94105
Environmental Protection Agency—Region X, 1200 Sixth Avenue, Seattle, Washington 98101.

Part 306, Title 40 of the Code of Federal Regulations is added as set forth below.

PART 306—COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA) NATURAL RESOURCE CLAIMS PROCEDURES

Subpart A—General

Sec.

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Appendix A—Application for Preauthorization of Natural Resource Restoration Claim
Appendix B—Claim for CERCLA Natural Resource Action

Authority: Secs. 111 and 112, Pub.L. 96-510, 94 Stat. 2767-2811 (42 U.S.C. 9601 et seq.) and E.O. 12316, Sec. 7(a) and 7(e), 46 FR 42237, (August 20, 1981).

Subpart A—General

§ 306.10 Purpose.

This regulation establishes forms and procedures for presenting claims for injury to, or destruction, or loss of natural resources to the Fund.

§ 306.11 Scope and applicability.

Claims for injury to, or destruction, or loss of natural resources, including costs of damage assessment, may be submitted only through the procedures established by this regulation. Under this regulation, trustees may bring claims for the cost of restoring, rehabilitating, or replacing, or acquiring the equivalent of natural resources injured as a result of the release of a hazardous substance, and the costs for assessing injury to such natural resources.

§ 306.12 Definitions.

Terms not defined in this section or restated herein, have the meaning given by section 101 of CERCLA. *Except when otherwise specified:*

(a) "Act," means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

(b) "Board of Arbitrators," or "Board" means a panel of one or more persons selected in accordance with section 112(b)(4)(A) of CERCLA and governed by the provisions in 40 CFR Part 305.

(c) "CERCLA," means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601 *et seq.*

(d) "Claim," means a demand in writing for a sum certain.

(e) "Claimant," means any person who presents a claim for compensation under section 112 of CERCLA.

(f) "Damage assessment claim," means a claim for assessment costs described in section 111(c)(1) of CERCLA.

(g) "Date of discovery," means the date on which the trustee became aware of the injury to the natural resource: (1) For an injury that can be visually observed, this is the date on which the trustee has available, or reasonably should have available, a document or memorandum prepared for the trustee verifying the observed injury to the natural resource, the types of injury, and which suggests that the injury may be related to the release of a hazardous substance; or (2) For an injury that cannot be visually observed, this is the date on which the trustee has available, or reasonably should have available, a document or memorandum prepared for the trustee, including such sampling and laboratory analysis as is necessary, which identifies the injured natural resource, the types of injury, and which suggests that the injury may be related to the release of a hazardous substance.

(h) "Fund," means the Hazardous Substance Response Trust Fund established under section 221 of CERCLA.

(i) "Hazardous substance," means (1) any substance designated pursuant to section 311(b)(2)(A) of the Federal Water Pollution Control Act, (2) any element, compound, mixture, solution, or substance designated pursuant to section 102 of this Act, (3) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Act of Congress), (4) any toxic pollutant listed under section 307(a) of the Federal Water Pollution Control Act, (5) any hazardous air pollutant listed under section 112 of the Clean Air Act, and (6) any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to section 7 of the Toxic Substances Control Act. The term does not include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under subparagraphs (1) through (6) of this paragraph, and the term does not include natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas).

(j) "Lead trustee," means a trustee authorized to act on behalf of all affected trustee where there are multiple

trustees because of co-existing or contiguous natural resources or concurrent jurisdiction.

(k) "National Contingency Plan," or "NCP," means the National Oil and Hazardous Substances Contingency Plan developed under section 311(c) of the Clean Water Act and revised pursuant to section 105 of CERCLA (40 CFR Part 300).

(l) "Natural resources," means land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conservation zone established by the Fishery Conservation and Management Act), any State or local government, or any foreign government.

(m) "Notice of claim," means a written notice of intent to file a claim in accordance with §306.22 of this Part.

(n) "Perfected," means the point at which EPA determines that the filing requirements for a claim have been met.

(o) "Potentially responsible party," means either: (1) An owner, or operator of the vessel or facility from which there is a release or threatened release of a hazardous substance, or (2) any other person who may be liable under section 107 of CERCLA.

(p) "Preauthorization," means EPA's approval to submit a claim for reimbursement to the Fund.

(q) "Response action," means remove, removal, remedy, and remedial action.

(r) "Response claim," means a preauthorized demand in writing for a sum certain for response costs referred to in section 111(a)(2) of CERCLA.

(s) "Restoration," or "Restoring," means the restoration, rehabilitation, replacement, or acquiring the equivalent of any natural resource injured, destroyed, or lost as a result of a release of a hazardous substance.

(t) "Restoration claim," means a preauthorized demand in writing for a sum certain for the cost of restoring, rehabilitating, replacing or acquiring the equivalent of any natural resource injured as a result of the release of a hazardous substance.

(u) "Trustee," means any Federal natural resources management agency designated in subpart G of the NCP, and any State agency that may prosecute claims for damages under section 111(b) of CERCLA.

§ 306.13 Penalties and statute of limitations

(a) Any person who knowingly gives or causes to be given any false information as a part of a claim against the Fund may, upon conviction, be fined up to $5,000 or imprisoned for not more than one year, or both.

(b) No damage assessment claim may be filed against the Fund more than three years from the date of the discovery of the loss of or injury to the natural resource for which the assessment was made.

(c) No restoration claim may be filed against the Fund unless:

(1)(i) An assessment claim with respect to the same natural resource was filed with EPA within three years from the date of the discovery of the loss of or injury to the natural resource for which the restoration claim is made; and

(ii) Any known potentially responsible parties were informed prior to the filing of such assessment claim so that a subsequent restoration claim may be presented to the Fund; or

(2) That preauthorized restoration claim is made to EPA within three years from the date of the discovery of the loss of or injury to the natural resource for which that claim is made.

Subpart B—Natural Resource Claims

§ 306.20 Who may present claims.

Damage assessment and restoration claims may be asserted by:

(a) Any trustee for the natural resource in question, except as provided in § 306.20(b).

(b) If a release results in injury to, destruction or loss of natural resources represented by multiple trustees, a "lead trustee" selected by the trustees, to assert the claim on behalf of all trustees. Should the trustees fail to agree on a lead trustee, EPA in its sole discretion shall appoint a lead trustee for the purposes of asserting a claim against the Fund on behalf of all trustees.

§ 306.21 Scope of coverage.

(a) Subject to the provisions of this subpart, only two types of costs are eligible for reimbursement from the Fund under this Part:

(1) Necessary and reasonable restoration costs where the injury, loss or destruction resulted from the release or threat of release of a hazardous substance from a vessel or facility; and

(2) Necessary and reasonable costs associated with:

(i) Assessing both short-term and long-term injury to, destruction of, or loss of any natural resource resulting from a release or threat of release of a hazardous substance; and

(ii) Administrative costs and expenses reasonably necessary for, and incidental to, the restoration.

(b) No money in the Fund may be used to pay natural resource claims where such expenses are associated with injury or loss resulting from long-term exposure to ambient concentrations of air pollutants from multiple or diffuse sources.

(c) Natural resource claims may not be presented where the injury, destruction, or loss of natural resources and the release of a hazardous substance from which such damages resulted have occurred wholly before December 11, 1980, the effective date of the Act.

§ 306.22 Preauthorization.

(a) Except as provided in § 306.23, no claim may be asserted against the Fund for costs of restoration of natural resources, unless such claim has been preauthorized by the Administrator.

(b) Trustees may submit requests for preauthorization to the Administrator, EPA, Washington, D.C. 20460, Attention: Director, Office of Emergency and Remedial Response.

(c) Requests for preauthorization may be submitted on EPA Form _____, found at Appendix A to this part.

(d) An application for preauthorization must include, where possible:

(1) A description of the location and nature of the natural resource injured, destroyed or lost;

(2) A description of the location and nature of the release of a hazardous substance from which the injury to or loss of a natural resource resulted, including the date upon which the release was discovered;

(3) The date on which the injury to or loss of the natural resource was discovered;

(4) A plan for the use of the Funds for which the claim will be made, developed in accordance with paragraph (e) of this section;

(5) A copy of the damage assessment, if any, relating to the natural resource at issue, including any determination by EPA on whether to pay a damage assessment claim and any judicial order with respect to the damage assessment;

(6) A description of the methods used to assess the damage or injury to the natural resource;

(7) Reference to the applicant's authority to act as trustee or lead trustee for the injured natural resource;

(8) Identity of other known or potential trustees for resources at or about the same location;

(9) The identity of known potentially responsible parties, and any contact with such parties; and

(10) Proposed schedule and projected costs of restoration activities.

(e) The plan required in § 306.22(d)(4) shall meet the following requirements:

(1) The plan shall be developed by the trustee and adopted by any affected Federal agency (other than EPA) and by the Governors of any States which managed the natural resource in question or to which the natural resource belonged or appertained;

(2) The trustee shall allow adequate public notice of the plan and an opportunity for a hearing. Notice of the plan shall also be given to EPA. In submitting the plan to EPA as part of the preauthorization, the trustee shall include responses to all relevant public comments: and

(3) The plan will not be adopted unless and until it is approved by EPA.

(f) The trustee may modify the preauthorization request at any time before commencing restoration work which is the subject of the modified request.

§ 306.23 Emergency actions to avoid irreversible loss.

(a) Preauthorization is not required with respect to a situation requiring immediate action to:

(1) Avoid substantial loss of evidence of the release from which injury to a natural resource resulted;

(2) Avoid an irreversible loss of a natural resource; or

(3) Prevent or reduce any continuing danger to a natural resource, or similar need for emergency action.

(b) Trustees who undertake actions under § 306.23(a) must, within five days, notify EPA in writing that such action is underway.

(c) The burden of proving that emergency action was required shall rest with the trustee.

(d) The trustee must request preauthorization for that portion of the restoration which is not immediately required.

§ 306.24 Review of natural resource preauthorization applications.

(a) The Administrator shall review each preauthorization application and will notify the trustee or the lead trustee of the decision.

(b) Each request for preauthorization will be evaluated based on the following non-exclusive list of criteria:

(1) The seriousness of the problem when compared with competing uses of the Fund;

(2) The uniqueness or importance of the affected natural resource as stated by trustee;

(3) The extent to which the injury has been or may be addressed by a response action;

(4) The extent to which the claimant is liable for the release or threat of release from which the injury to the natural resource resulted.

(c) The Administrator may preauthorize all or part of a proposed restoration.

(1) The Administrator may set a limit on the amount that may be claimed as reimbursement from the Fund for any restoration.

(2) If, as a result of EPA's preauthorization decision, the trustee plans to undertake a restoration action of narrower scope than that contained in the restoration plan, the trustee shall notify the public before undertaking the restoration.

(d) If EPA denies a preauthorization request because of an insufficient balance in the Fund or the low priority assigned to the restoration when weighed against other requests, the trustee may resubmit the application in another fiscal year. If a preauthorization request is denied because of substantive inadequacies in the damage assessment or restoration plan, the trustee may resubmit the request only after correcting the noted deficiencies.

§ 306.25 Requesting payment from the responsible party.

(a) Where the responsible party is unknown, the trustee must make a goodfaith, reasonable effort to identify the responsible party prior to submitting a claim. If the responsible party is identified, the trustee must then comply with the procedures of § 306.25 (a) and (b). Where a responsible party cannot be identified, the trustee may submit a claim to the Fund pursuant to subpart C. Claims submitted under this subsection must be accompanied by documentation of efforts to identify responsible parties.

(b) A trustee or lead trustee must present both damage assessment claims and preauthorized restoration claims to all known responsible parties at least 60 days before filing a claim against the Fund. The presentation to the responsible party must be a written request for payment, delivered either by certified mail (return receipt requested) or in such a manner as will establish the date of receipt. At a minimum this request must contain:

(1) The name(s) of the State(s), Commonwealth(s), or U.S. Trust Territory(ies), or Federal agency(ies), or other authorized trustee(s):

(2) The name(s) title(s), and address(es) of any authorized representative or lead trustee;

(3) The location of the injuries;

(4) The owner(s) of the property, where the release of a hazardous substance from which injury to a natural resource resulted;

(5) The date(s) of the release and its discovery;

(6) A copy of the damage assessment;

(7) The amount of the request (in dollars) including costs of any preliminary resource investigation, and the assessment, or the restoration activities; and

(8) If applicable, notice of intent to file subsequently a restoration claim against the Fund subsequently.

(c) If the trustee and the responsible party agree to a settlement, it shall be final and binding upon them, and the trustee(s) will have waived all recourse against the Fund for damage arising out of the release which resulted in injury to the natural resource at issue. This waiver shall not affect the rights of the trustee to proceed against other potentially responsible parties for further or additional relief.

(d) If the claim is denied by the party believed responsible, and has not been satisfied after 60 days of presentation to such party, the trustee may submit a claim to the Fund in accordance with subpart D.

Subpart C—Procedures for Filing and Processing Natural Resource Claims

§ 306.30 Filing procedures.

(a) For purposes of this regulation, a natural resource claim is deemed perfected when EPA determines that the claim complies fully with all filing requirements. When the claim is perfected, a notice will be provided to the trustee of EPA's receipt and acceptance for evaluation.

(b) A restoration claim must be submitted on EPA Form _____ and must include:

(1) Documentation showing that the claimed restoration activities were preauthorized by EPA; and

(2) Documentation showing that the restoration activity was accomplished; and

(3) Documentation that a search in accordance with 306.26 was conducted to identify potentially responsible parties and any contacts with such parties; and

(4) Substantiation that all claimed costs are reasonable and necessary.

The following criteria will be used to determine if the costs are reasonable and necessary:

(i) Documentation supporting the trustee's decision to use employees or contractors to carry out restoration activities, as applicable;

(ii) Documentation demonstrating that contracts were awarded using maximum open and free competition.

The trustee may not seek compensation for restoration expenses that have not been preauthorized.

(c) A natural resource damage assessment claim must be submitted on EPA Form _____ and must include:

(1) Documentation showing what the assessment activity accomplished; and

(2) Documentation that a search in accordance with § 306.25 was concluded to identify potentially responsible parties and any contacts with such parties; and

(3) Substantiation that all claimed costs are reasonable and necessary. The following criteria will be used to determine if the costs are reasonable and necessary:

(i) Documentation supporting the trustee's decision to use employees or contractors to carry out restoration activities, as applicable;

(ii) Documentation demonstrating that contracts were awarded using maximum open and free competition.

(d) Trustees (or their authorized representatives) may amend their claims at any time before final action by EPA. Amendment of claims after final action by EPA will be allowed only at EPA's discretion. Each amendment must be submitted in writing and signed by the trustee or authorized representative. The time limitations of §306.31(g) begin from the date the amendment is filed.

(e) Trustees may not pursue both an action in court against potentially responsible parties and a claim against the Fund at the same time for the same injury to a natural resource. EPA will return claims presented under this subpart when the Agency determines that a trustee has initiated an action for recovery of the same costs, in court, against a party potentially liable under section 107 of CERCLA.

§ 306.31 Verification, settlement, and adjustment requirements.

(a) Upon receipt of a natural resource claim, EPA will verify that it complies with all filing requirements. Where the claim is incomplete or has significant defects, EPA will return the claim to the trustee with written notification of its deficiencies.

(b) A claim returned to the trustee for failure to comply with the filing requirements may be resubmitted to EPA. Resubmitted claims are new claims for purposes of the time limitations of paragraph (g) of this section.

(c) Where a claim complies with all filing requirements, it is deemed perfected for purposes of this regulation.

(d) After a claim is perfected, EPA will attempt to promote a settlement between the claimant and any known responsible parties. If the parties agree upon a settlement, it is final and binding upon them, and they are deemed to have waived all recourse against the Fund for compensation arising out of the incident giving rise to the settlement.

(e) If no settlement is reached within 45 days of the filing of a perfected claim (unless extended in accordance with § 306.33), the Administrator will proceed to determine whether to make an award on the claim and, if an award is made, the amount of such award. Awards will be made:

(1) Only for costs which are reasonable and necessary;

(2) In the case of claims for restoration costs, only to the extent that the claim was preauthorized by EPA pursuant to 40 CFR 306.24;

(3) In the case of claims for damage assessments, only to the extent the Administrator determines that the claim is of sufficient priority to merit Fund expenditure.

Where a restoration activity is determined to have been ineffective due to acts or omissions of the trustee, payment of the claim will be adjusted to disallow the costs associated with the activity. EPA may require the claimant to submit any additional information needed to determine whether the actions taken were reasonable and necessary.

(f) If EPA determines that it cannot complete its evaluation of a claim because of insufficient information, it will request the necessary information from the trustee. This information must be submitted within 30 days unless specifically extended by EPA. The failure of the trustee to provide in a timely manner the requested information without reasonable cause can be used by EPA as a basis for denying the claim. The time limitations of paragraph (g) of this section will be suspended during this period.

(g) Where settlement in accordance with either paragraph (d) or (e) of this section is not reached within 45 days of the claim's perfection (unless extended in accordance with § 306.33), EPA will proceed to:

(1) Make an award on the claim; or

(2) Decline to make an award and refer the claim to the Board of Arbitrators under the provisions of 40 CFR Part 305, except that, if the Administrator's decision is made pursuant to subsection (e)(3), the claim shall not be referred to the Board of Arbitrators.

(h) If the claimant is dissatisfied with the amount of an award, the claimant may submit claim to the Board of Arbitrators in accordance with 40 CFR Part 305.

(i) Notice of an award under paragraph (g)(1) of this section will be given by First Class Mail within five days of the date of the decision. Payment of approved claims will be made according to § 306.40 of this regulation.

(j) Not withstanding any provision of this Part, no claims submitted by Federal trustees shall be submitted to the Board.

§ 306.32 Records retention.

A trustee receiving an award from the Fund is required to maintain all cost documentation and any other records relating to the claim and to provide EPA with access to such records. These records must be maintained for at least six years from the date of the award or until cost recovery is completed by EPA.

§ 306.33 Extension of settlement period.

(a) Where EPA determines that, because of a large number of claims arising from an incident or set of incidents, it is in the best interest of the parties concerned, the time for prearbitral settlement (§ 306.31) or for rendering an arbitral decision (40 CFR 305.43) may be extended by up to 60 days.

(b) Where all parties to the claim agree, the time limits of § 306.31 and 40 CFR 305.43 may be extended for a mutually agreed-upon time period.

Subpart D—Payments and Subrogation

§ 306.40 Payment of approved claims.

(a) An award against the Fund can only be paid when monies are available. An award against the Fund in excess of available appropriations in the Fund may be paid only when additional money is collected, appropriated, or otherwise added to the Fund. As appropriations in the Fund become available, payment of awards will be made in the order in which the claim was finally determined.

(b) Subject to the conditions in paragraph (a), payment will be made, as applicable, within:

(1) 30 days of EPA's decision to make an award in accordance with § 306.31(g)(1); or

(2) 20 days of the expiration of the period for appeal of any arbitral award; or

(3) 20 days of the final judicial decision of any appeal taken.

§ 306.41 Subrogation of claimants' rights to the fund.

(a) Payment of a claim by the Fund is subject to the United States' acquiring by subrogation all rights of the trustee to recover the cost of assessment or restoration awarded by the Fund from the person or persons liable for such release to the extent to which the claimant is compensated.

(b) Any person, including the Fund, who compensates any trustee in accordance with the Act for restoration costs resulting from a release of a hazardous substance will be subrogated to all rights, claims, and causes of action for such costs of restoration that the trustee has under the Act or any other law.

Appendix A—Application for Preauthorization of Natural Resource Restoration Claim

United States Environmental Protection Agency, Washington, D.C. 20460

Application for Preauthorization of Natural Resource Restoration Claim

EPA Docket Number

General Instructions: Complete all items in ink or by typewriter. Where applicable, insert the word "none." Use additional sheets if necessary. Read carefully the specific instructions on the opposite page.

I. Name, Title and Address of Trustee/Lead Trustee (Attach delegation establishing authority to represent all affected trustees)

II. Name, Title and Address of Authorized Agent (if any) to Represent Trustee/Lead Trustee

III. Relates to Actual Release of a Hazardous Substance
- A. Date/time (am/pm) of release (if known)
- B. Date of discovery of loss of natural resource(s)
- C. Location of release and injured natural resource(s)
- D. Description of release
- E. Description of natural resource(s)
- F. Are any potentially responsible parties (PRPs) known to you?
  ____ Yes. If yes, attach a list of identified PRPs and describe results of any contacts with them.
  ____ No. If no, describe efforts to identify PRPs.

IV. Relates to Natural Resource Damage Assessment
- A. Provide date/briefly describe the findings of the damage assessment.
- B. Briefly describe the methodology used to assess the natural resource injury.
- C. Was court action filed to recover assessment costs?
  ____ Yes. If so, describe the results and provide case name, case number, jurisdiction of the court, and date of determination.
  ____ No.

EPA Form____ (2/85)
- D. Was a notice of intent to submit a claim for an assessment filed with EPA?
  ____ Yes. If so, give date.
  ____ No.
- E. Was a claim filed against the Fund to recover assessment costs?
  ____ Yes. If so, give date, describe the results and attach a copy of the Agency's determination.
  ____ No.

V. Relates to Natural Resource Restoration Plan
- A. Briefly describe the options considered in developing the restoration plan. (Attach copy of plan)
- B. Describe in detail the option(s) selected as the basis for the restoration plan.
- C. Briefly describe the procedures used to notify the public and to obtain public comments.
- D. Was the restoration plan adopted by all trustees and affected Federal agencies?
  ____ Yes. (Provide documentation)
  ____ No. If no, explain.

VI. Relates to Preauthorization of Restoration
- A. Briefly describe the restoration for which you seek preauthorization.
- B. Do you propose more than one phase?
  ____ Yes. If yes, describe each phase.
  ____ No.
- C. Was a notice of intent to submit a claim for the restoration filed with EPA?
  ____ Yes. If yes, give date.
  ____ No.

VII. Projected Costs of Restoration		EPA—Approved Costs (EPA Use Only)		
		Phase 1	Phase 2	Phase 3
Restoration	$	$	$	$
Other	$	$	$	$
Total	$	$	$	$

VIII. Is This Proposal Within EPA's Planned Annual Budgetary Appropriation?
____ Yes. ____ No.

IX. Does This Application Revise a Previous Request?
____ Yes. ____ No.

EPA Docket Number of Previous Request

Certification

I certify that all information contained herein is true to the best of my knowledge. I agree to supply additional information, as requested, in support of this application and access to the site for purpose of inspection.

Signature of Claimant_____

Date _____

Civil Penalty for Presenting Fraudulent Claim

The claimant will forfeit and pay to the United States $2,000, plus double the amount of damages sustained by the United States. (31 USC 3729 and 3730.)

Criminal Penalty for Presenting Fraudulent Claim or Making False Statements

The claimant will be charged a maximum fine of not more than $10,000 or be imprisoned for a maximum of 5 years, or both. (See 62 Stat. 696, 749; 18 USC 287, 1001.)

Instructions for Applying for Preauthorization of Natural Resource Restoration Claim

I. Name any Federal natural resource management agency, principal State, commonwealth, U.S. Trust Territory, or other political entity acting on behalf of all affected trustees. Provide a list (including name, title and address) of all trustees for the injured natural resources and supporting evidence authorizing them to prosecute claims for damages, as defined in 111(b) of CERCLA. If you are the lead trustee, provide this evidence and discribe your efforts to identify and coordinate with other trustees.

II. Self-explanatory.

III. A. provide documentation of the date and time of the release, if known.

B. Provide the date of the initial report first establishing that the injury resulted from the release (III. A.) and provide a copy. (Date of the actual assessment is required in IV. A.).

C. Provide the name of the city or town and State where the release and injury occurred. If the location is outside the city's limits, indicate the distance between it and the nearest city or town.

D. Describe in detail all the known facts and circumstances associated with the release of the hazardous substance. Include the name of the substances released (see "Superfund Notification Requirement and Reportable Quantity Adjustments", 40 CFR Part 302), and the type of facility that released the substances (e.g., any building or structure, pipe or pipeline, well, lagoon, landfill, storage container, motor vehicle).

E. Describe in detail the resource(s), its use(s) prior to the release and injury, and its uniqueness or special characteristics. Indicate whether its use and characteristics at the time of the injury were residential, commercial/industrial, agricultural, forestral, recreational, mixed use, etc.

F. List all potentially responsible parties (PRPs) known to you. Describe efforts to locate PRPs, date of presentation of your claim, and any reply from the PRPs.

IV. A. Summarize the natural resource impacts, including known and potential injury to both media and living organisms. Attach a copy of the damage assessment. Also indicate who approved the assessment, who conducted the assessment, when it was conducted and when it was completed.

B. Does the methodology selected comply with the section 301 damage assessment regulations, or some other reasonable methodology?

C. Self-explanatory.

D. Supply date. EPA recommends that trustees submit a notice of intent to file an assessment claim by means of the annual planning process.

E. Self-explanatory.

V. A. Identify the options considered, e.g., restoration, replacement, rehabilitation, acquisition of the equivalent, or "no action". (Hereinafter, "restoration" refers to restoring, rehabilitating, replacing, or acquiring the equivalent of injured natural resources).

B. Describe the basis for selection of the alternative(s) (e.g., cost-effectiveness, cost-benefit, total cost, impact on affected ecosystems). Attach a copy of the restoration plan.

C. For example, was there a town meeting, public hearing, etc.? How were the public's concerns addressed?

D. Self-explanatory.

VI. A. Provide the timetable for discrete activities, including start and completion

dates. Indicate the projected schedule for submission of the claim(s).

B. Trustees may propose claims for operable units (i.e. phases) of work. If appropriate, include the timetable for each phase of the planned activities and the projected schedule for submitting each preauthorization request and subsequent claim.

C. Supply date. EPA recommends that trustees submit a notice of intent to file a restoration claim by means of the annual planning process.

VII. Provide an itemization of the estimated costs of restoring the injured natural resources for each category. For the costs projected for actions no identified (i.e., "Other"), provide a written statement indicating the nature and extent of said activity. Supply the basis for all estimated costs. If phased claims are requested, provide separate itemization of costs by phase. Explain why the estimated costs and expenses are reasonable and necessary for restoring the injured natural resource(s).

VIII. If EPA notified you that a sufficient level of funding exists to cover your planned restoration, please check "Yes".

IX. Self-explanatory.

Appendix B—Claim for CERCLA Natural Resource Action

United States Environmental Protection Agency, Washington, D.C. 20460

Claim for CERCLA Natural Resource Action

EPA Docket Number

General Instructions: Complete all items in ink or by typewriter. Where applicable, insert the word "none." Use additional sheets if necessry. Read carefully the specific instructions on the opposite page. Check as appropriate: ☐ Assessment Claim ☐ Restoration Claim

I. Name, Title, and Address of Trustee/Lead Trustee

II. Name, Title, and Address of Authorized Agent (if any) to Represent Trustee/Lead Trustee

III. EPA ID Number and Date (For Preauthorized Restoration Claims Only)

IV. Relates to Actual Release of a Hazardous Substance

A. Date/time(am/pm) of release (if known)

B. Date of discovery of loss of natural resource(s)

C. Location of release and injured natural resource(s)

D. Was the claim presented to the responsible party?

_____ Yes. If yes, give date and results.

_____ No.

V. Relates to Damage Assessment Claims Only

A. Are claimed costs contained within EPA's annual appropriations?

_____ Yes. If so, give date.

_____ No.

B. Briefly describe the findings of the damage assessment.

C. Briefly describe the methodology used to assess the natural resource injury.

VI. Relates to Restoration Claims Only

A. Does this claim relate to a previously filed assessment claim?

_____ No.

_____ Yes. If yes, give date and number of claim.

B. Indicate date of Agency preauthorization of restoration claim.

EPA Form _____ (2/85)

C. Indicate date of completion of restoration project (or preauthorized phase).

D. Detail, if appropriate, how the incident's descrption and activities as completed have deviated from the given in the approved preauthorization and the reasons for it.

VII. Amount of Damage Assessment Claim (Attach all documents that support this claim)

A. Damage Assessment Claim $

B. Other (Specify and justify $

C. Total $

VIII. Amount of Restoration Claim (Indicate whether the claim is for total or partial authorized costs, and attach all documents that support this claim)

	Preauthorized Costs	Actual Costs
A. Restoration, rehabilitation, replacement, or acquisition of the equivalent	$	$
B. Other (Specify and justify)	$	$
	$	$
C. Total	$	$

Check One: ☐
Total authorized costs ☐
Partial authorized costs ☐

Certification

I certify that the information contained herein is true to the best of my knowledge. I agree to supply additional information, as requested, in support of this claim and access to the site for purposes of inspection.

Signature of Claimant _____

Date _____

Civil Penalty for Presenting Fraudulent Claim

The claimant will forfeit and pay to the United States $2,000, plus double the amount of damages sustained by the United States. (31 USC 3729 and 3730.)

Criminal Penalty for Presenting Fraudulent Claim or Making False Statements

The claimant will be charged a maximum fine of not more than $10,000 or be imprisoned for a maximum of 5 years, or both. (See 62 Stat. 698, 749; 18 USC 287, 1001.)

Instructions for Submitting a Claim for Natural Resource Action

I. Name any Federal natural resource management agency, principal State, commonwealth, U.S. Trust Territory, or other political entity acting on behalf of all affected trustees.

II. Self-explanatory.

III. See the upper right-hand corner of the approved preauthorization form.

IV. A. Provide documentation of the date and time of the release, if known.

B. Provide the date of the initial report first establishing that the injury resulted from the release of a hazardous substance (IV. A.). (Date of actual damage assessment required in V. B.).

C. Provide the name of the city or town and State where the release and the injury occurred. If the location is outside the city's limits, indicate the distance between it and the nearest city or town.

D. List all potentially responsible parties (PRPs) known to the trustee. Describe efforts to locate PRPs, date of presentation of your claim, and any reply from the PRPs.

V. A. It is recommended that the trustee submit a notice of intent to file an assessment claim by means of the annual planning process. If you have followed this process, give the date of receipt of Federal government approval. If you check "No", indicate which of these two conditions apply: (1) you submitted a notice of claim as part of the annual planning process, but the assessment was deemed a low priority, or (2) you declined to file a notice of claim.

B. Summarize the natural resource impacts, including known and potential harm to both media and living organisms. Attach a copy of the damage assessment. Also indicate who approved the assessment, who conducted the assessment, when it was conducted and when it was completed.

C. Does the methodology selected comply with the Section 301 damage assessment regulations, or some other reasonable methodology? Specify if you are asserting that your assessment is entitled to rebuttable presumption.

VI. A. If this restoration claim relates to a previously filed assessment claim for the same injury. Supply the date on which the claim was filed and the number assigned by EPA. (Hereinafter, "restoration" refers to restoring, rehabilitating, replacing, or acquiring the equivalent of an injured natural resource).

B. C. Self-explanatory.

D. Describe and justify any methods used in taking the natural resource action that deviated from the preauthorized approach. If such deviation required modifying the preauthorized actions or project costs, a request for preauthorization detailing such modifications must be resubmitted and approved. (see § 306.——)

VII. Document that all actions conducted by employees were more economical than using contractors and that all contractors were selected through maximum competition.

A. Submit proof of all aspects of the claimed costs associated with ascertaining actual injury to natural resources.

B. Submit proof of all aspects of the claimed costs associated with actions not identified in "A" above.

VIII. Document that all actions conducted by employees were more economical than using contractors and that all contractors were selected through maximum competition.

A. Supply preauthorized costs and actual

costs. Submit proof of all aspects of the claimed costs associated with restoration of injured natural resources and a written statement indicating the nature and extent of such activity.

B. Supply preauthorized costs and actual costs. Submit proof of all aspects of the claimed costs associated with actions not identified in "A" above.

If EPA approved a phased approach authorizing partial reimbursement, check "partial authorized costs;" if EPA approved total reimbursement, check "total authorized costs."

[FR Doc. 85-5355 Filed 3-7-85; 8:45 am]
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Rules and Regulations

Federal Register
Vol. 50, No. 47
Monday, March 11, 1985

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 409

[Docket No. 2075S]

Arizona-California Citrus Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Notice of extension of sales closing date.

SUMMARY: Under the authority contained in the Federal Crop Insurance Act, as amended, the Federal Crop Insurance Corporation (FCIC) herewith gives notice of the extension of the sales closing date for accepting applications for crop insurance in Arizona and California on citrus by reopening the sales period through the month of April, effective for the 1986 crop year only. This action is being taken on an experimental basis to determine the increase in participation and any administrative problems that might arise. The intended effect of this notice is to advise all interested parties of the extension of sales closing dates and to comply with the Arizona-California Citrus Crop Insurance Regulations with respect to the authority of the Manager to extend sales closing dates.

EFFECTIVE DATE: March 11, 1985.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: Under the provisions contained in the Arizona-California Citrus Crop Insurance Regulations (7 CFR Part 409), the Manager, FCIC, is authorized to extend the sales closing date for accepting applications for crop insurance in any county. In counties in Arizona and California the closing date for accepting applications for the citrus crop insurance is November 30.

FCIC is extending the period for accepting applications for citrus crop insurance by reopening the sales period for the month of April. This action is for the 1986 crop year only, and on an experimental basis to determine increase in participation and any administrative problems. It has been determined that no potential for adverse selection will result from such reopening since all applications would require a pre-acceptance field inspection to determine eligibility. The extended period for accepting applications for citrus crop insurance in Arizona and California will be from April 1 through the close of business on April 30, 1985, effective for the 1986 crop year only.

Notice

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 et seq.), the Federal Crop Insurance Corporation herewith gives notice of the reopening of the sales period for accepting applications for citrus crop insurance in Arizona and California under the provisions of 7 CFR 409.7(b), effective for the 1986 crop year only, from April 1, 1985, through the close of business on April 30, 1985.

Done in Washington, D.C., on February 28, 1985.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Dated: March 4, 1985.

Approved by:

Merritt W. Sprague,

Manager.

[FR Doc. 85–5655 Filed 3–8–85; 8:45 am]

BILLING CODE 3410–08–M

7 CFR Part 440

[Docket No. 2081S]

Texas Citrus Tree Crop Insurance Regulations; Correction

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Correction.

SUMMARY: Federal Crop Insurance Corporation (FCIC) published a final rule in the **Federal Register** on Friday, April 6, 1984, at 49 FR 13671, issuing a new Part 440 in Title 7 of the Code of Federal Regulations to be known as 7 CFR Part 440—Texas Citrus Crop Insurance Regulations (7 CFR Part 440). These regulations, as published, provide that an application for insurance may be made by any person to cover such person's insurable share in the trees as landlord, owner-operator, or tenant. This reference to tenant was inadvertently included. The policy for crop insurance states that the insured share shall be the policyholder's share as landlord or owner-operator with no reference to "tenant." Further, Section 17 of the policy, titled "Meaning of Terms", defines an insured as being the person (owner or owners) who submitted the application accepted by us.

The word "tenant" is clearly in error and should be removed from the regulation. This notice is published to correct that reference.

ADDRESS: Written comments on this correction may be sent to the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: FR Doc. 84–9204, appearing at page 13671, is corrected on page 13672 by removing the phrase "or tenant" in the first sentence of 7 CFR 400.7(a), and by adding the word "or" between the words "landlord," and "owner-operator".

The Authority citation for 7 CFR Part 440 is:

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516)

Done in Washington, D.C. on February 28, 1985.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Dated: March 4, 1985.

Approved by:

Merritt W. Sprague,

Manager.

[FR Doc. 85–5656 Filed 3–8–85; 8:45 am]

BILLING CODE 3410–08–M

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Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 506]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 280,000 cartons during the period March 10–16, 1985. Such action is needed to provide for orderly marketing of fresh lemons for the period due to the marketing situation confronting the lemon industry.

DATES: Effective for the period March 10–16, 1985.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291, and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This final rule is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act of 1937 as amended (7 U.S.C. 601–674). The action is based upon recommendations and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy currently in effect. The committee met publicly on March 5, 1985, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that lemon demand is good on mid sizes and improving on the larger sizes of fruit.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing Agreements and Orders, California, Arizona, Lemons.

PART 910—[AMENDED]

Section 910.806 is added as follows:

§ 910.806 Lemon Regulation 506.

The quantity of lemons grown in California and Arizona which may be handled during the period March 10, 1985, through March 16, 1985, is established at 280,000 cartons.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: March 6, 1985.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 85–5803 Filed 3–8–85; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 141, 143, 145, 147, 172 and 177

[T.D. 85–39]

Customs Regulations Amendments Relating to Elimination of the Special Customs Invoice, Customs Form 5515

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs regulations relating to invoices by eliminating the Special Customs Invoice and requiring that the commercial invoice identify by name a responsible employee of the exporter, who has knowledge, or who can readily obtain knowledge, of the facts of the transaction.

Because of (1) statutory amendments which simplified the methods used to determine the value of imported merchandise, (2) the fact that the information required on the Special Customs Invoice also appears on the commercial invoice presented at the time of entry, and (3) increased sophistication on the part of the importing community, there is no longer any need to require the Special Customs Invoice.

EFFECTIVE DATE: May 10, 1985.

FOR FURTHER INFORMATION CONTACT: Herbert Geller, Duty Assessment Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229 (202–535–4161).

SUPPLEMENTARY INFORMATION:

Background

This document amends Part 141, Customs Regulations (19 CFR Part 141), relating to invoices, to eliminate the Special Customs Invoice, Customs Form 5515 (SCI),and require that the commercial invoice identify by name a responsible individual who has knowledge, or can readily obtain knowledge, of the facts of the transaction. Conforming amendments are made to other parts of the Customs Regulations referencing the SCI and the commercial invoice.

Section 141.83, Customs Regulations (19 CFR 141.83), provides that a SCI shall be filed for each shipment of merchandise imported into the U.S. if the purchase price exceeds $500 and the rate of duty is dependent in any manner upon the value of the merchandise. The SCI also is required for merchandise not imported pursuant to a purchase, or agreement to purchase, if the value is over $500.

The general information required by section 481(a), Tariff Act of 1930 (19 U.S.C. 1481(a)), to be shown on the SCI and all other invoices for merchandise imported into the U.S., is set forth in § 141.86(a), Customs Regulations (19 CFR 141.86(a)).

Pursuant to section 481(d), Tariff Act of 1930 (19 U.S.C. 1481(d)), such exemptions from the requirements of 19 U.S.C. 1481(a), may be made by the Secretary of the Treasury as he deems advisable.

Furthermore, section 484(b), Tariff Act of 1930, as amended (19 U.S.C. 1484(b)), provides that the Secretary shall provide by regulation for the production of a certified invoice (i.e. SCI) for imported merchandise when he deems it advisable and the terms and conditions under which such merchandise may be permitted entry without the production of a certified invoice.

Because of (1) Pub. L. 96–39, the "Trade Agreements Act of 1979," which simplified the methods used to

determine the value of imported merchandise, (2) the fact that the information required on the SCI also appears on the commercial invoice presented at the time of entry, and (3) increased sophistication on the part of the importing community, Customs believed the SCI no longer served a useful purpose. Accordingly, on February 1, 1982, instructions were sent to Customs personnel advising that effective March 1, 1982, a SCI would not be required when a signed commercial invoice is provided which contains the information required by § 141.86, Customs Regulations. The instructions further indicated that when a signed commercial invoice was not provided the SCI could still be waived in accordance with § 141.92, Customs Regulations (19 CFR 141.92).

However, on August 20, 1979, the U.S. accepted the "Recommendation of the Customs Co-operation Council Concerning Customs Requirements Regarding Commercial Invoices", which states that Council members should refrain from requiring a signature, for customs purposes, on commercial invoices. Accordingly, it was decided that the present practice of accepting a signed commercial invoice should be changed to require that the name of a responsible individual who has knowledge of the transaction be placed on the commercial invoice.

Therefore, on April 20, 1984, a notice proposing to amend the Customs Regulations was published in the **Federal Register** (49 FR 16803), soliciting public comments. It also was proposed to incorporate the present requirements of § 141.86(j) (2), (4), and (8), relating to country of origin of the merchandise, exchange rate and goods and services furnished, respectively, which are not included in the invoice, into § 141.86(a), Customs Regulations, relating to general information required on the invoice. Eleven comments were received in response to the notice. A discussion of these comments and our responses follow.

Discussion of Comments

Comment: Requiring a name on a commercial invoice is contrary to the agreement reached by the Customs Cooperation Council (of which the U.S. is a member) that Council members should refrain from requiring a signature, for Customs purposes, on commercial invoices.

Response: We disagree. The proposed amendment asks that the name of a person who has knowledge of the transaction be shown on the invoice. A signature of an official is not required.

Comment: It would be difficult to provide Customs with the name of any single individual who has knowledge of the transaction. Many transactions are multi-invoiced, i.e., they involve numerous individuals with knowledge of only certain aspects of the transaction. Moreover, the cost and effort sustained by foreign exporters in identifying and placing names of persons with knowledge of transactions on millions of commercial invoices far exceeds any benefit to Customs.

Response: We disagree. The rule does not require the named individual to be knowledgeable of the transaction in every minute detail, but simply requires that the name of a responsible individual who has knowledge of the transaction appear on the invoice. It is reasonable to assume that there is at least one employee of an exporting firm that has general knowledge of the transaction.

Also, we do not believe that it would be costly for exporters merely to identify and type or print in the name of one individual on the commercial invoice. Customs, as well as the importer, would benefit by having a person identified to whom questions could be referred concerning the transaction.

Comment: The naming of an individual on the commercial invoice implies individual liability rather than corporate liability.

Response: We disagree that the mere placing of a name on an invoice implies liability. Placing the name on the invoice is done only for obtaining information about the transaction. The individual named may ultimately be held responsible if, after investigation, the evidence supports this finding. The assessment of liability, however, is not the purpose of the amendment.

Comment: The proposal to name an individual knowledgeable of the transaction on the commercial invoice is vague. One could conclude that the name listed on the invoice could be a broker, an employee of the importer, or an employee of the exporter, as long as that person had knowledge of the transaction.

Response: We agree. The person named on the commercial invoice should be an employee of the exporter so that, for investigative purposes, the person can be contacted quickly. The proposed amendment has been further amended to clarify this point.

Comment: Several commenters proposed that the rule regarding the naming of an individual on the invoice be amended to require the name of a responsible individual who has knowledge of *or who can readily obtain knowledge of* the facts of the transaction.

Response: We concur. The final rule includes this provision.

Comment: One commenter suggested that there should be a 6-month transition period before the SCI is eliminated because exporters have computerized documentation systems based on the use of this invoice.

Response: We disagree. Customs notified brokers and the importing/exporting community in February, 1982, that the SCI would not be required after March 1, 1982. All parties have had ample time, therefore, to adjust to the elimination of the SCI. Customs will continue, however, to accept a SCI prepared in conjunction with a commercial or pro forma invoice.

Comment: The country of origin statement on the commercial invoice is not practical inasmuch as many exporters do not know the country of origin and few problems have arisen on this matter.

Response: We disagree. The country of origin statement is extremely important considering the fact that much imported merchandise is subject to quota limitations and visa requirements. The statement would assist importers in determining the country of origin of goods, thereby alleviating possible liability on domestic importers' parts if a false country of origin were shown on the invoice prepared by the exporter. Therefore, we are retaining this provision in § 141.86(a).

Comment: It is unnecessary to include the exchange rate on the commercial invoice, as proposed in the notice.

Response: We agree. This provision has been eliminated from § 141.86(a)(7).

Comment: Proposed § 141.86(a)(11) should be revised to exclude goods or services undertaken in the U.S. and to include a provision for acceptance of annual reports for goods and services.

Response: We agree. Section 141.86(a)(11) excludes goods or services undertaken in the U.S., and it includes a provision for acceptance of annual reports for goods and services, when approved upon application to the district director.

After consideration of all the comments and further review of the matter, we have decided to adopt the proposed amendments with the modifications noted.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in section 1(b) of E.O. 12291. Accordingly,

no regulatory impact analysis has been prepared.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to these amendments because the rule will not have a significant economic impact on a substantial number of small entities. The amendments remove a regulatory burden and will result in reduced cost to the importing community.

Accordingly, it is certified under the provisions of § 3, Regulatory Flexibility Act (5 U.S.C. 605(b)), that the rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The collection of information requirements contained in § 141.86(a)(10) and (11) and § 141.86(j) are subject to the provisions of the Paperwork Reduction Act (44 U.S.C. 3504) and have been cleared by the Office of Management and Budget. They have been assigned OMB No. 1515–0120.

Drafting Information

The principal author of this document was Susan Terranova, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects in 19 CFR Parts 141, 143, 145, 172 and 177

Customs duties and inspection, Imports.

Amendments to the Regulations

Parts 141, 143, 145, 147, 172, and 177, Customs Regulations (19 CFR Parts 141, 143, 145, 147, 172, 177), are amended as set forth below.

William von Raab,

Commissioner of Customs.

Approved: February 21, 1985.

Edward T. Stevenson,

Acting Assistant Secretary of the Treasury.

PART 141—ENTRY OF MERCHANDISE

§ 141.81 [Amended]

1. The first sentence of § 141.81 is amended by removing the words "A special Customs invoice, a" and inserting, in their place, the word "A".

2. Section 141.83 is amended by removing paragraph (a) and reserving it; removing the second sentence of paragraph (b); and revising the first sentence of paragraph (c)(1) to read as follows:

§ 141.83 Type of invoice required.

* * * * *

(c) *Commercial invoice.* (1) A commercial invoice shall be filed for each shipment of merchandise not exempted by paragraph (d) of this section. * * *

3. Section 141.83(d) is amended by removing the words "Special Customs or commercial" in the paragraph heading and inserting, in their place, the word "Commercial", and removing the words "A Special Customs Invoice or a" in the first sentence and inserting, in their place, the word "A".

§ 141.84 [Amended]

4. Section 141.84 is amended by removing the words "original special Customs invoice or" in the first sentence of paragraph (a); the words "a special Customs invoice or" in the first sentence of paragraph (c); and the words "a special Customs invoice or" both times they are used in paragraph (e) and, in the second instance inserting, in their place, the word "the".

§ 141.85 [Amended]

5. The first sentence of the Pro Forma Invoice form set forth in § 141.85 is amended by removing the words "special or".

6. Section 141.86 is amended by removing the words, "except the Special Customs Invoice (Customs Form 5515) (see paragraph (j) of the section)" in the first sentence of paragraph (a); removing the word "and" at the end of paragraph (a)(8); removing the period at the end of paragraph (a)(9), and inserting, in its place, a semicolon; and adding new paragraphs (a)(10) and (a)(11) to read as follows:

§ 141.86 Contents of invoices and general requirements.

(a) * * *

(10) The country of origin of the merchandise; and,

(11) All goods or services furnished for the production of the merchandise (e.g., assists such as dies, molds, tools, engineering work) not included in the invoice price. However, goods or services furnished in the United States are excluded. Annual reports for goods and services, when approved by the district director, will be accepted as proof that the goods or services were provided

* * * * *

7. Section 141–86 is further amended by revising paragraph (j) to read as follows:

§ 141.86 Contents of invoices and general requirements.

* * * * *

(j) *Name of responsible individual.* Each invoice of imported merchandise shall identify by name a responsible employee of the exporter, who has knowledge, or who can readily obtain knowledge, of the transaction.

(The collection of information requirements contained in § 141.86 have been approved by the Office of Management and Budget under Control Number 1515–0120)

(R.S. 251, as amended, secs. 448, 481, 484, 624, 46 Stat. 714, as amended, 719, 722, as amended, 759; 19 U.S.C. 66, 1448, 1481, 1484, 1624)

PART 143—CONSUMPTION, APPRAISEMENT, AND INFORMAL ENTRIES

Section 143.27 is revised to read as follows:

§ 143.27 Invoices.

In the case of merchandise imported pursuant to a purchase or agreement to purchase, or intended for sale and entered informally, the importer shall produce the commercial invoice covering the transaction or, in the absence thereof, an itemized statement of value.

(R.S. 251, as amended, secs. 481, 624, 46 Stat. 719, 722, as amended, 759 (19 U.S.C. 66, 1481, 1484, 1624))

PART 145—MAIL IMPORTATIONS

§ 145.11 [Amended]

Section 145.11 is amended by removing pararaph (c) and reserving it.

(R.S. 251, as amended, secs. 481, 624, 46 Stat. 719, 722, as amended, 759 (19 U.S.C. 66, 1481, 1484, 1624))

PART 147—TRADE FAIRS

Section 147.12 is revised to read as follows:

§ 147.12 Invoices.

Articles intended for a fair under the provisions of the Act are subject to the invoice requirements of Subpart F, Part 141 of this Chapter.

(R.S. 251, as amended, secs. 481, 484, 624, 46 Stat. 719, 722, as amended, 759 (19 U.S.C. 66, 1481, 1484, 1624))

PART 172—LIQUIDATED DAMAGES

§ 172.22 [Amended

Section 172.22(b) is amended by removing the words "Special Customs Invoices or" in the paragraph heading; the words "Special Customs Invoice, Customs Form 5515, or a " in the first sentence of paragraph (b); and the words "special Customs or" in paragraph (b)(3)(i).

(R.S. 251, as amended, secs. 481, 484, 624, 46 Stat. 719, 722, as amended, 759 (19 U.S.C. 66, 1481, 1484, 1624))

PART 177—ADMINISTRATIVE RULINGS

§ 177.2 [Amended]

Sections 177.2 is amended by removing the words "a Special Customs Invoice" in the first sentence of paragraph (b)(2)(iii) and inserting, in their place, the words "an invoice".

(R.S. 251, as amended, secs. 481, 484, 624, 46 Stat. 719, 722, as amended, 759 (19 U.S.C. 66, 1481, 1484, 1624))

[FR Doc. 85-5709 Filed 3-8-85; 8:45 am]

BILLING CODE 4820-02-M

Internal Revenue Service

26 CFR Part 1

[T.D. 8012]

Income Tax; Taxable Years Beginning After December 31, 1953; Aggregation of Certain Activities for Purposes of the At-Risk Rules

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the aggregation of certain activities for purposes of the at-risk rules. Changes to the applicable law were made by the Tax Reform Act of 1984. The regulations provide the public with the guidance needed to comply with the law and affect certain taxpayers engaged in those activities.

EFFECTIVE DATE: The regulations are effective for taxable years beginning after December 31, 1983 and before January 1, 1985.

FOR FURTHER INFORMATION CONTACT: Alice M. Bennett of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue N.W., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-3238, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document amends the Income Tax Regulations (26 CFR Part 1) to provide rules relating to the aggregation of certain activities under section 465 of the Internal Revenue Code of 1954. Section 465 was added to the Code by section 204 of the Tax Reform Act of 1976 (90 Stat. 1531). Section 465 subsequently was amended by sections 201-204 of the Revenue Act of 1978 (92 Stat. 2763), section 402(e) of the Energy Tax Act of 1978 (92 Stat. 3174), section 102(a)(1) of the Technical Corrections Act of 1979 (94 Stat. 194), section 5(a)(31) of the Subchapter S Revision Act of 1982 (96 Stat. 1669), and section 432 of the Tax Reform Act of 1984 (98 Stat. 811). In general, section 465 provides a limit on the amount of losses a taxpayer may deduct in a taxable year with respect to certain activities.

Prior to the enactment of the Tax Reform Act of 1984, section 465 provided special aggregation rules for partnership and S corporation activities listed in section 465(c)(1). Under those aggregation rules, a partner or S corporation shareholder treated all the films and videotapes of the partnership or S corporation as a single activity for purposes of section 465, and similarly treated all farms, all section 1245 properties leased or held for leasing, all oil and gas properties, and all geothermal properties of the partnership or S corporation as single activities for purposes of section 465. Taxpayers engaged in the activities listed in section 465(c)(1) other than through a partnership or S corporation, however, were required to treat each film, video tape, farm, section 1245 property that is leased or held for leasing, oil and gas property, and geothermal property as a separate activity for purposes of section 465.

The Tax Reform Act of 1984 changed the aggregation rules with respect to the activities listed in section 465(c)(1) for taxable years beginning after December 31, 1983. Section 465(c)(2) (as amended by the Tax Reform Act of 1984) generally requires partners and S corporation shareholders to separate activities listed in section 465(c)(1) that are engaged in by a partnership or S corporation on a property-by-property basis. Thus, partners and S corporation shareholders generally must treat each of the partnership's or S corporation's films, video tapes, farms, oil and gas properties, and geothermal properties as a separate activity. A special aggregation rule applies to section 1245 property that is leased or held for leasing; section 465(c)(2)(B) provides that partners and S corporation shareholders shall aggregate the partnership's or S corporation's section 1245 properties by reference to the taxable year in which the property is placed in service.

Section 465(c)(2) (as amended by the Tax Reform Act of 1984) also provides that taxpayers (including partners and S corporation shareholders) shall aggregate activities listed in section 465(c)(1) under rules similar to the rules provided in section 465(c)(3)(B), relating to active trades or businesses. In addition, the Secretary's authority to aggregate or separate activities by regulations is extended to the activities listed in section 465(c)(1). Prior to the enactment of the Tax Reform Act of 1984, the aggregation rules of section 465(c)(3)(B) and the Secretary's authority to aggregate or separate activities by regulations applied only to activities not listed in section 465(c)(1).

The Service recognizes that the new rules for separating film and video tape, farming, oil and gas, and geothermal activities engaged in by a partnership or S corporation on a property-by-property basis may create difficult allocation problems. In addition, if the aggregation rule under section 465(c)(3)(B) for active trades or businesses does not apply, the paperwork burden associated with the filing of partners' and shareholders' income tax returns may be substantial.

Therefore, the temporary regulations provide that, for taxable years beginning during 1984, partners and S corporation shareholders may aggregate the activities of a partnership or S corporation with respect to films and video tapes, farms, oil and gas properties, and geothermal properties in the same manner as provided under section 465 for taxable years beginning before January 1, 1984. The temporary regulations do not extend this aggregation rule to partnership or S corporation leasing activities since the special aggregation rule provided in section 465(c)(2)(B) reduces substantially the allocation and paperwork burdens.

The temporary regulation applies only to taxable years beginning during 1984. The Service intends to study the problems raised by the aggregation rules (as amended by the Tax Reform Act of 1984) and anticipates issuing guidance for future taxable years in additional temporary or final regulations. One alternative being considered is to allow taxpayers to aggregate these activities in a manner similar to the special aggregation rule provided under section 465(c)(2)(B) for leasing activities.

Special Analyses

The Commissioner of Internal Revenue has determined that this temporary rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis therefore is not required. A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for temporary regulations. Accordingly, the temporary regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Drafting Information

The principal author of these regulations is Alice M. Bennett of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations on matters of both substance and style.

List of Subjects in 26 CFR 1.441–1—1.483–2

Income taxes, Accounting, Deferred compensation plans.

Amendments to the Regulations

PART 1—[AMENDED]

The amendments to 26 CFR Part 1 are as follows:

The following new § 1.465–1T shall be added at the appropriate place:

§ 1.465–1T Aggregation of certain activities (Temporary).

(a) *General rule.* A partner in a partnership or an S corporation shareholder may aggregate and treat as a single activity—

(1) The holding, production, or distribution of more than one motion picture film or video tape by the partnership or S corporation,

(2) The farming (as defined in section 464 (e)) of more than one farm by the partnership or S corporation,

(3) The exploration for, or exploitation of, oil and gas resources with respect to more than one oil and gas property by the partnership or S corporation, or

(4) The exploration for, or exploitation of, geothermal deposits (within the meaning of section 613(e)(3)) with respect to more than one geothermal property by the partnership or S corporation.

Thus, for example, if a partnership or S corporation is engaged in the activity of exploring for, or exploiting, oil and gas resources with respect to 10 oil and gas properties, a partner or S corporation shareholder may aggregate those properties and treat the aggregated oil and gas activities as a single activity. If that partnership or S corporation also is engaged in the activity of farming with respect to two farms, the partner or shareholder may aggregate the farms and treat the aggregated farming activities as a single separate activity. Except as provided in section 465(c)(2)(B)(ii), the partner or shareholder cannot aggregate the farming activity with the oil and gas activity.

(b) *Effective date.* This section shall apply to taxable years beginning after December 31, 1983 and before January 1, 1985.

There is need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impractical to issue this Treasury decision with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

This Treasury decision is issued under the authority contained in sections 465(c)(2)(B) and 7805 of the Internal Revenue Code of 1954 (98 Stat. 814, 68A Stat. 917; 26 U.S.C. 465(c)(2)(B) and 7805).

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: February 26, 1985.

Ronald A. Pearlman,

Assistant Secretary of the Treasury.

[FR Doc. 85–5752 Filed 3–7–85; 10:13 am]

BILLING CODE 4830–01–M

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26 CFR Part 1

[T.D. 8000]

Income Tax: Taxable Years Beginning After December 31, 1953; Withholding Upon Dispositions of U.S. Real Property Interests by Foreign Persons

Correction

In FR Doc. 84–33786, beginning on page 50667, in the issue of Monday, December 31, 1984, make the following corrections:

1. On page 50672, first column, eleventh and twelfth lines of § 1.1445–1T(c)(1), "will be stamped as their timely filing", should read, "by U.S. mail will be treated as their timely filing".

2. On page 50676, third column, in § 1.1445–2T(d)(3) (ii) and (iii), in both the thirteenth line down and the tenth line from the bottom of the column, "of" should be corrected to read, "or".

3. On page 50682, first column, seventh line in § 1.1445–5T(b)(3)(ii)(A), "of" should read, "not".

BILLING CODE 1505–01–M

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26 CFR Parts 1, 31, and 54

[T.D. 8004]

Taxation of Fringe Benefits

Correction

In FR Doc. 85–292 beginning on page 747 in the issue of Monday, January 7, 1985, make the following corrections:

1. On page 748, in the second column, in the third line, "not" should read "nor".

2. On page 749, in the second column, in the first line, the section number now reading "§ 1.61–2" should read "§ 1.61–2T".

3. On page 755, in the third column, in the first line, the section number now reading "§ 31.312(a)–1T" should read "§ 31.3121(a)–1T".

BILLING CODE 1505–01–M

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26 CFR Part 301

[T.D. 8013]

Procedure and Administration; Restrictions on Church Tax Inquiries and Examinations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the procedures for conducting church tax inquiries and examinations. Changes to the applicable law were made by the Tax Reform Act of 1984. The regulations provide guidance concerning the procedures described in the Act and affect church tax inquiries and examinations within the scope of section 7611 of the Internal Revenue Code of 1954 as well as certain other requests for information relating directly or indirectly to churches.

DATES: The regulations apply to all church tax inquiries and examinations beginning after December 31, 1984 and are effective after December 31, 1984. Church examinations commenced prior to January 1, 1985, will be conducted pursuant to section 7605(c) of the Internal Revenue Code of 1954.

FOR FURTHER INFORMATION CONTACT: Monice Rosenbaum of the Employee Plans and Exempt Organizations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224 (Attention: CC:EE) (202–566–3938) (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains temporary regulations on Procedure and Administration (26 CFR Part 301) under section 7611 of the Internal Revenue Code of 1954, enacted by section 1033 of the Tax Reform Act of 1984 (Pub. L. 98–369, 98 Stat. 1034–1039). The legislative background of section 7611 is found in the conference report published in H.R.

Rep. No. 861, 98th Cong., 2d Sess., pp. 1101–1114 (1984).

Format

These regulations are presented in the form of questions and answers. No inference should be drawn regarding issues not expressly raised that may be suggested by a particular question or answer or by the inclusion or exclusion of certain questions.

Regulatory Flexibility Act

No general notice of proposed rulemaking is required by 5 U.S.C. 533(b) for temporary regulations. Accordingly, the Regulatory Flexibility Act does not apply and no Regulatory Flexibility Analysis is required for this rule.

Non-Applicability of Executive Order 12291

The Treasury Department has determined that these temporary regulations are not subject to review under Executive Order 12291 or the Treasury and OMB implementation of that Order dated April 29, 1983.

Drafting Information

The principal author of these regulations is Monice Rosenbaum of the Employee Plans and Exempt Organizations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impracticable to issue it with notice and public procedure under subsection (b) of section 533 of title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

List of Subjects in 26 CFR Part 301

Administrative practice and procedure, Bankruptcy, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Penalties, Pensions, Statistics, Taxes, Disclosure of information, Filing requirements.

Amendments to the Regulations

The amendments to 26 CFR Part 301 are as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. There is added in the appropriate place the following new § 301.7611–1T:

§ 301.7611–1T Questions and answers relating to church tax inquiries and examinations (Temporary).

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Church Tax Inquiry

Q–1: When may the Internal Revenue Service begin an inquiry of a church's tax liability?

A–1: Under section 7611 of the Internal Revenue Code, the Internal Revenue Service may begin a church tax inquiry only when the appropriate Regional Commissioner (or higher Treasury official) reasonably believes, on the basis of facts and circumstances recorded in writing, that the organization (1) may not qualify for tax exemption as a church; (2) may be carrying on an unrelated trade or business (within the meaning of section 513); or (3) may be otherwise engaged in activities subject to tax. Information received by the Internal Revenue Service at its request may not be used to form the basis of a reasonable belief to begin a church tax inquiry, unless the Service's request is made within the procedures of section 7611, is a request permitted by these questions and answers to be made without application of the procedures of section 7611, or is a request to which the procedures of section 7611 do not apply.

Q–2: What is a church tax inquiry within the meaning of section 7611?

A–2: A church tax inquiry is any inquiry to a church (other than a routine request described in Q and A–4, an inquiry described in Q and A–5, an investigation described in Q and A–6 or an examination described in Qs and As 10 and 14), to serve as a basis for determining whether the organization qualifies for tax exemption as a church or whether it is carrying on an unrelated trade or business or is otherwise engaged in activities subject to tax. An inquiry is considered to commence when the Internal Revenue Service requests information or materials from a church of a type contained in church records. The term "church tax inquiry" does not include routine requests for information or inquiries regarding matters which do not primarily concern the tax status or liability of the church itself. See Q and A–4 with respect to routine requests regarding, among other things, withholding responsibilities for income tax or FICA (social security) tax liabilities. See Q and A–6 with respect to the types of investigations, other than routine requests, that are outside the scope of the procedures of section 7611. See Q and A–5 with respect to requests for third party records that are outside the scope of the procedures of section 7611.

Q–3: What is a "church" for purposes of the church tax inquiry and examination procedures of section 7611?

A–3: Solely for purposes of applying the procedures of section 7611, and as used in these questions and answers, the term "church" includes any organization claiming to be a church and any convention or association of churches. For purposes of the procedures of section 7611 and these questions and answers a church does not include separately incorporated church-supported schools or other organizations incorporated separately from the church.

Routine Requests

Q–4: What is a routine request to a church that is outside the scope of and does not necessitate application of the procedures set forth in section 7611?

A–4: Routine requests to a church will not be considered to commence a church tax inquiry and will not necessitate application of the procedures set forth in section 7611. Routine requests for this purpose include (but are not limited to) questions regarding (1) the filing or failure to file any tax return or information return by the church; (2) compliance with income tax or FICA (social security) tax withholding responsibilities by the church; (3) any supplemental information needed to complete the mechanical processing of any incomplete or incorrect return filed by the church; (4) information necessary to process applications for exempt status and letter ruling requests; (5) information necessary to process and update periodically a church's (i) registrations for tax-free transactions (excise tax), (ii) elections for exemption from windfall profit tax, or (iii) employment tax exemption requests; (6) information identifying a church that is used to update the Cumulative List of Tax Exempt Organizations (Publication No. 78) and other computer files; and (7) confirmation that a specific business is or is not owned or operated by a church.

Third Party Records

Q–5: To what extent may the Internal Revenue Service gain access to third party records?

A–5: The Internal Revenue Service may request a church to provide information necessary to locate third-party records (for instance, bank records), including information regarding the church's chartered name, state and year of incorporation, and location of checking and savings accounts, without application of the procedures of section 7611.

Records (for instance, cancelled checks or other records in the possession of a bank) held by third party recordkeepers, as defined in section 7609, are not considered church records. Thus, subject to the provisions set forth in section 7609 regarding third party summonses, access is permitted to such records without regard to the requirements of the procedures set forth in section 7611. The Internal Revenue Service is generally required, under other rules, to inform a church of any Internal Revenue Service requests for materials.

Third party materials may be acquired without application of the procedures of section 7611; however, a determination that a church is not entitled to an exemption, or an assessment of tax for unrelated business income against a church, may not be made solely on the basis of third party records, without first complying with the requirements of two notices and offering of a conference (see Qs and As 9 and 10) pursuant to the procedures set forth in section 7611. This limitation does not apply to assessments of tax other than income tax resulting from loss of exemption or for unrelated business income (for instance, assessments of social security or other employment taxes). Third party bank records will not be used in a manner inconsistent with the procedures set forth in section 7611 or in these questions and answers.

Scope of Section 7611

Q–6: What types of investigations, other than routine requests and requests for information necessary to locate and examine third party records, and examination of those records, are outside the scope of the procedures of section 7611?

A–6: The church inquiry and examination procedures described in section 7611 do not apply to (1) any inquiry or examination relating to the tax liability of any person other than a church; (2) any termination assessment under section 6851 or jeopardy assessment under section 6861; or (3) any case involving a knowing failure to file a return or a willful attempt to defeat or evade tax (including but not limited to any case involving a failure by the church to withhold or pay social security or other employment taxes or income tax required to be withheld from wages). Additionally, the church inquiry and examination procedures do not apply to any criminal investigations.

The church tax inquiry and examination procedures also do not apply to inquiries or examinations which relate primarily to the tax status (including, but not limited to, social security or self-employment tax or income tax required to be withheld from wages) or liability of persons other than the church (including, but not limited to, the tax status or liability of a contributor or contributors to the church), rather than the tax status or liability of the church itself. These may include, but are not limited to: (1) inquiries or examinations regarding the inurement of church funds to a particular individual or individuals or to another organization, which may result in the denial of all or part of such individual's or organization's deduction for charitable contributions to a church; (2) inquiries or examinations regarding the assignment of income or services or contributions to a church; and (3) inquiries or examinations regarding a vow of poverty by an individual or individuals followed by a transfer of property or an assignment of income or services to a church. Inquiries may be made to a church regarding these matters without being considered to have commenced a church tax inquiry under section 7611, and an examination of church records may be made relating to these issues (including enforcement of a summons for access to such records) without application of the requirements contained in section 7611 applicable to church tax inquiries and examinations. Such examinations are subject to the general rules regarding examinations of taxpayer books and records.

Q–7: What action may be taken if the church or its agents fail to respond to routine requests, or questions regarding other individuals' or organizations' tax liabilities?

A–7: Repeated (two or more) failures by a church or its agents to reply to routine requests (see Q and A–4) will be considered by the appropriate Internal Revenue Service Regional Commissioner to be a reasonable basis for commencement of a church tax inquiry under the church tax inquiry and examination procedures of section 7611. The failure of a church to respond to repeated requests for information regarding individuals' or other organizations' tax liabilities (see Q and A–6) will be considered a reasonable basis for commencement of a church tax inquiry. Failure by a church to provide information necessary to locate third-party records (see Q and A–5) will be a factor, but not a conclusive factor, in determining if there is reasonable cause for commencing a church tax inquiry. For this purpose, a failure to respond to a request means either that no response has been made or that the response does not make a reasonable attempt to submit the information called for by the specific language of the request.

Q–8: Where an inquiry or examination is outside the scope of and does not necessitate application of the procedures of section 7611, what are the limitations on the Internal Revenue Service's actions?

A–8: Inquiries or examinations which are outside the scope of the procedures of section 7611 and therefore are conducted without application of the procedures of section 7611 (for instance, those addressed in Q and A–6) will be limited to the determination of facts and circumstances specifically relating to the tax liabilities of the individuals or other organizations in question. For example, in a case against an individual or other organization, information may be requested or church records examined, if pertinent, regarding amounts of money, property, or services transferred to the individual or individuals in question (including, but not limited to wages, loans, or noncontractual transfers), the use of church funds for personal expenses, or other similar matters, without having to follow the church tax inquiry and examination procedures. As one example, in an assignment of income case against an individual or other organization, information could be requested or church records examined if relevant to an individual's assignment of particular income, donation of property, or transfer of a business to a church. However, without following the church tax inquiry and examination procedures, no examination of a contributor or membership list in the possession of the church will be made, other than under the applicable procedures of section 7611, for the purpose of determining the overall financial structure of the church, merely because such structure was relevant to the church's qualification as a tax-exempt entity and therefore indirectly relevant to the validity of contributors' deductions in general. Inquiries or examinations regarding individuals' or other organizations' tax liabilities will not be used in a manner inconsistent with the procedures set

forth in section 7611 or in these questions and answers.

Notice Requirements

Q–9: What satisfies the inquiry notice requirement (first notice) upon commencement of a church tax inquiry?

A–9: Upon commencing a church tax inquiry, the appropriate Regional Commissioner is required to provide written notice to the church of the beginning of the inquiry. This notice will include (1) an explanation of the concerns which gave rise to the inquiry and the general subject matter of the inquiry, which is sufficiently specific to allow the church to understand the particular area of church activities or behavior which is at issue; (2) a general explanation of the provisions of the Internal Revenue Code which authorize the inquiry or which may otherwise be involved in the inquiry; and (3) a general explanation of applicable administrative and constitutional provisions with respect to the inquiry, including the right to a conference with the Internal Revenue Service before an examination of church records is commenced. The inquiry notice (first notice) may also request information in an effort to alleviate the concerns which gave rise to the inquiry.

However, the Internal Revenue Service is not precluded from expanding its inquiry beyond the concerns expressed in the inquiry notice (first notice) as a result of facts and circumstances which subsequently comes to its attention (including, where appropriate, an expansion of an unrelated business income inquiry to include questions of tax-exempt status, and vice-versa).

The inquiry notice requirement (first notice) does not require the Internal Revenue Service to share particular items of evidence with the church, or to identify its sources of information regarding church activities, if providing such information would be damaging to the inquiry or to the sources of information. For example, in an inquiry regarding unrelated business income, the Internal Revenue Service might state that its inquiry was prompted by a local newspaper advertisement regarding a church-owned business. However, the Internal Revenue Service would not be required to reveal the existence or identity of any so-called "informers" within a church (including present or former employees).

Q–10: What must be done to satisfy the examination notice requirement (second notice) before commencing an examination of church records or religious activities with respect to an examination conducted under section 7611?

A–10: Where an examination is conducted under section 7611, church records or religious activities of a church may be examined only if, at least 15 days prior to the examination, written notice of the proposed examination is provided to the church and to the appropriate Regional Counsel. This notice is in addition to the notice of commencement of inquiry (first notice) previously provided to the church.

The notice of examination (second notice) is required to include (1) a copy of the church tax inquiry notice (first notice) previously provided to the church; (2) a description of the church records and activities sought to be examined; and (3) a copy of all documents which were collected or prepared by the Internal Revenue Service for use in the examination, and which are required to be disclosed under the Freedom of Information Act (5 U.S.C. 552) as supplemented by section 6103 of the Code (relating to disclosure and confidentiality of tax return information). The documents to be supplied under this provision will be limited to documents specifically concerning the church whose records are to be examined and will not include documents relating to other inquiries or examinations or to Internal Revenue Service practices and procedures in general. Disclosure to the church will be subject to restrictions regarding the disclosure of the existence or identity of informants. Although a description of materials to be examined will be provided in the notice of examination (second notice), the description does not restrict the ability of the Internal Revenue Service to examine church records or religious activities which are not specifically mentioned in the notice of examination (second notice) but which are properly within the scope of the examination (see Q and A–9).

At the time the notice of examination (second notice) is provided to the church, a copy of the same notice will be provided to the appropriate Regional Counsel. The Regional Counsel is then allowed 15 days from issuance of the second notice in which to file an advisory objection to the examination. (This is concurrent with the 15-day period during which an examination of church records is prohibited pending a request for a conference.)

As part of the notice of examination (second notice), the church will be offered an opportunity to meet with an Internal Revenue Service official to discuss the concerns which gave rise to the inquiry and the general subject matter of the inquiry. An examination will not begin until 15 days after the mailing of the notice of examination (second notice). The organization may request a conference at any time prior to beginning of the examination and a conference so requested will be scheduled within a reasonable time after the request is made.

The purpose of the conference is to remind the church, in general terms, of the stages of the church tax inquiry and examination procedures and to discuss the relevant issues that may arise as part of the inquiry, in an effort to resolve the issues of tax exemption or liability without the necessity of an examination of church records or activities. Information properly excludable from a written notice of examination (second notice) (including information regarding the identity of third-party witnesses or evidence provided by such witnesses) is not a subject for discussion at, and will not be revealed during, a conference.

Once a conference request is timely made, an examination will begin only following the conference. The conference requirement may not be utilized to delay an examination beyond the time reasonably necessary to prepare for and hold the conference. The holding of one conference with the church will be sufficient to satisfy the requirements of section 7611 and these questions and answers.

Action After Issuance of Notice

Q–11: What action may be taken after issuance of the examination notice (second notice)?

A–11: After the examination notice (second notice) is issued, the organization may request a conference as described in Q and A–10 (see Q and A–12 with respect to time for issuance of examination notice). If the matters of concern which gave rise to the issuance of the examination notice (second notice) are resolved at the conference, it may be determined that an examination is not necessary. If the matters of concern are not resolved at the conference, or if the organization does not request a conference, the examination will ordinarily begin.

The examination will be conducted under the Internal Revenue Service's general examination procedures and the procedures of section 7611. The outcome of such an examination will ordinarily be: (1) No change in tax-exempt status or tax liability; (2) no change in such status or liability, conditioned on compliance with a request to modify in future tax periods matters such as internal accounting practices and procedures or coupled with a caution to refrain from increasing certain activities

limited by the Internal Revenue Code, such as lobbying programs aimed at influencing legislation; (3) a proposal to revoke tax-exempt status; (4) a proposal asserting unrelated business income tax liability; or (5) a proposal asserting liability for other taxes.

In certain exceptional circumstances the Internal Revenue Service may, in lieu of an examination, propose to revoke the organization's exemption based upon the facts and circumstances which form the basis for a reasonable belief to commence an inquiry under section 7611 and any other appropriate information that becomes apparent as a result of the inquiry, the conference, or both.

Pursuant to section 7611(d), the Regional Counsel is required to approve, in writing, certain final determinations that are within the scope of section 7611 and adversely affect tax-exempt status or increase any tax liability. The Regional Counsel will review and approve (1) a determination that an organization is not entitled to tax-exempt status; (2) a determination that an organization is not entitled to receive tax-deductible contributions; or (3) the issuance of a notice of tax deficiency to a church arising out of an inquiry or examination or, in cases where deficiency procedures are inapplicable, the assessment of any underpayment of tax by the church arising out of an inquiry or examination. The Regional Counsel will also state in writing that there has been substantial compliance with section 7611, when applicable.

Procedural Time Limitations

Q–12: When may the notice of examination (second notice) be sent?

A–12. The notice of examination (second notice) may be mailed to a church not less than 15 days after the notice of commencement of a church tax inquiry (first notice). Thus, at least 30 days must pass between the first notice and the actual examination of church records since an examination may not begin until 15 days after the notice of examination (second notice). For example, if notice of commencement of an inquiry is mailed to a church on March 1st, the notice of proposed examination may be mailed to the church no earlier than the 15th day after the date of the inquiry notice, or March 16th. If the notice of examination (second notice) was mailed March 16th, no examination of church records may be made prior to day 30; thus, the earliest date the examination may commence is March 31st. If an organization does not request a conference prior to day 30, the Internal Revenue Service may proceed to examine church records and complete its investigation or make a determination based on the information already in its possession.

Q–13: What is the limitation on the amount of time the Internal Revenue Service has to complete inquiries and examinations?

A–13: The Internal Revenue Service is required to complete any church inquiry or examination, and to make a final determination with respect thereto, not later than two years after the date on which the notice of examination (second notice) is mailed to the church. The running of this two-year period is suspended for any period during which (1) a judicial proceeding brought by the church or its officials or agents against the Internal Revenue Service with respect to the church tax inquiry or examination is pending or being appealed (even though section 7611(e)(2) describes the exclusive remedy for a violation of the church tax inquiry and examination procedures; see Q and A–17); (2) a judicial proceeding brought by the Internal Revenue Service against the church (or any official or agent thereof) to compel compliance with any reasonable request for examination of church records or religious activities is pending or being appealed; or (3) the Internal Revenue Service is unable to take actions with respect to the church tax inquiry or examination by reason of an order issued in a suit under section 7609 involving access to records held by third-party recordkeepers. The two-year period is also suspended for any period in excess of 20 days (but not in excess of 6 months) in which the church or its agents fail to comply with any reasonable request for church records or other information. The two-year period may be extended by mutual agreement of the church and the Internal Revenue Service.

In cases where the inquiry is not followed by an examination notice (second notice), the inquiry must be concluded and a final determination made within 90 days of the date of the notice of inquiry (first notice). This 90-day period is suspended during any period for which the two year period for duration of a church examination would be suspended; except that the 90-day period will not be suspended because of the church's failure to comply with requests for information made prior to the notice of examination (second notice).

Q–13a: When do the church tax inquiry and church tax examination periods commence and conclude?

A–13a: A church tax inquiry commences when the church tax inquiry notice (first notice) is mailed. A church tax inquiry must be concluded not later than 90 days after the church tax inquiry notice (first notice) date. The period is counted from the day after the inquiry notice (first notice) is mailed. A church tax inquiry is concluded when the results of the inquiry or the notice of examination, as appropriate, is mailed. For example, if the inquiry notice (first notice) is mailed on November 1, 1985, the church tax inquiry must be concluded, in the absence of a permissible suspension of the period (see Q and A–13), on or before January 30, 1986.

A church tax examination commences when the church tax examination notice (second notice) is mailed. A church tax examination must be concluded not later than the date which is 2 years after the examination notice (second notice) date. The period is counted from the day after the examination notice (second notice) is mailed. A church tax examination is concluded when the final determination is mailed. For example, if the examination notice is mailed November 16, 1985, the final determination must be made, in the absence of a permissible suspension of the period (see Q and A–13), on or before November 16, 1987.

Examination of Records or Religious Activities

Q–14: To what extent may church records or religious activities of a church be examined?

A–14: In cases conducted under section 7611, an examination of church records may be made only after complying with the notice provisions of section 7611 (see Qs and As 9, 10 and 12) unless the church files a written waiver of the provisions of section 7611 or a part thereof. In cases conducted under section 7611 where no written waiver has been filed, church records may be examined only to the extent necessary to determine the liability for, and the amount of, any Federal tax. This includes examinations (1) to determine the initial or continuing qualification of the organization whose records are being examined as a tax-exempt church under section 501(c)(3); (2) to determine whether the organization qualifies to receive tax-deductible contributions under section 170(c); or (3) to determine the amount of tax (including unrelated business income tax), if any, which is to be imposed on the organization.

Church records include all regularly kept church corporate and financial records including (but not limited to) corporate minute books, contributor or membership lists, and any materials which qualifies as church books of

account under section 7605(c), as in effect on December 31, 1984. Church records include private correspondence between a church and its members that is in the possession of the church. However, church records do not include records previously filed with a public official or newspapers or newsletters distributed generally to church members.

The religious activities of an organization claiming to be a church (see Q and A–3 for a definition of the term "church" as used in section 7611 and in these questions and answers) may be examined only to the extent necessary to determine if the organization actually is a church exempt from tax. This includes a determination of the organization's qualification as a church for any period.

Limitations on Period of Assessment or Proceedings for Collection Without Assessment

Q–15: What are the special limitations on the period of assessment or proceedings for collection without assessment?

A–15: The special limitation periods for church tax liabilities are described below and are not be to construed to increase an otherwise applicable limitation period. Thus, a three-year limitation period would apply where a church filed a tax return before an examination was held and did not substantially understate income. No limitation period is to apply in any case of fraud, willful tax evasion, or knowing failure to file a return which should have been filed.

In the case of any church tax examination with respect to the revocation of tax-exempt status under section 501(a), any tax imposed by chapter 1 (other than section 511) may be assessed, or a proceeding in court for collection of such tax may be begun without assessment, only for the three most recently completed taxable years preceding the examination notice date (*i.e.*, the date the notice of examination is mailed to the church). If an organization is not a church exempt from tax under section 501(a) for any of the three years described in the preceding sentence, then the period of assessment will apply to the six most recently completed taxable years ending before the examination notice date.

For examinations concerning qualification for tax-exempt status, the examination is limited initially to an examination of church records which are relevant to a determination of tax status or liability for the three most recently completed taxable years ending before the examination notice date. If it is determined that an organization is not a church exempt from tax for one or more of the three most recently completed taxable years and no return has been filed for the three years ending before the three most recently completed taxable years, an examination of relevant records may be made, as part of the same examination, for the six most recently completed taxable years ending before the examination notice date. (This assumes that no returns were filed for any of the three years to which the examination is to be extended. If a return was timely filed for any such year, the filing of that return determines the applicable statute of limitations for that year in the absence of other factors, for example, fraud, willful tax evasion or substantial understatement, which ordinarily would extend the statute of limitations.)

For purposes of section 7611(d)(2)(A) and this question and answer, an organization is determined not to be a church exempt from tax for one or more of the three most recently completed taxable years ending before the examination notice date, when the appropriate Regional Commissioner approves, in writing, the completed findings of the examining agent that the organization is not a church exempt from tax for one or more of such years. Such approval may not be delegated by the Regional Commissioner to a subordinate official. The completed findings of the examining agent, as approved by the appropriate Regional Commissioner for this purpose, do not constitute a final revenue agent's report under section 7611(g).

Church records of a year earlier than the third or sixth completed taxable year, as applicable, may be examined if material to a determination of tax-exempt status during the applicable three or six year period.

For examinations concerning unrelated business taxable income, where no return has been filed by the church, tax may be assessed or collected for the six most recently completed taxable years ending before the examination notice date. Church records of a year earlier than the sixth year may be examined if material to a determination of unrelated business income tax liability during the six year period.

For examinations involving issues other than revocation of exempt status or unrelated business income (*e.g.*, examinations relating to social security or other employment taxes), no limitation period is to apply if no return has been filed.

The applicable limitation period may be extended by mutual agreement of the church and the Internal Revenue Service.

Multiple Examinations

Q–16: What are the special multiple examination rules applicable to churches?

A–16: The Assistant Commissioner (Employee Plans and Exempt Organizations) is required to approve, in writing, any second inquiry or examination of a church, if the second inquiry or examination is to be undertaken within five years of an earlier inquiry or examination and if the earlier inquiry or examination did not result in either (1) revocation of tax exemption, notice of deficiency or an assessment of tax, or (2) a request for any significant changes in church operational practices (including the adequacy or sufficiency of records maintained to reflect income). The Assistant Commissioner's approval is required only if the second inquiry or examination involves the same or similar issues as the earlier inquiry or examination. The 5-year period is counted from the examination notice date of the earlier examination or, if no notice of examination was mailed, the inquiry notice date of the earlier examination. This 5-year period is to be suspended for periods during which the two-year period for completion of an examination is suspended (as described in Q and A–13) unless the prior examination was actually concluded within 2 years of the notice of examination.

In determining whether the second church tax inquiry or examination involves the same or similar issues as the preceding inquiry or examination, the substantive factual issues involved in the two examinations, rather than legal classifications, will govern. For example, where a prior examination and a current examination of unrelated business income involve income from different sources, the current examination involves different issues than the prior examination and the approval of the Assistant Commissioner (Employee Plans and Exempt Organizations) is not necessary.

Remedy for Violations of Section 7611

Q–17: What remedy is available for a violation of the church inquiry and examination procedures?

A–17: The exclusive remedy for any Internal Revenue Service violation of the church tax inquiry and examination procedures is as follows: Failure to comply substantially with the requirements that (1) two notices be sent to the church; (2) the Regional

Commissioner approve the commencement of a church tax inquiry; or (3) an offer of a conference with the church be made (and a conference held if timely requested), will result in a stay of proceedings in a summons proceeding to gain access to church records (but not in dismissal of such proceeding), until these requirements are satisfied. The two-year limitation on duration of a church tax examination will not be suspended during stays of summons proceedings resulting from violations described above; however, violations may be corrected without regard to the otherwise applicable time limits prescribed under the procedures of section 7611. In determining whether a stay is necessary, a court must consider the good faith effort of the Internal Revenue Service and the effect of any violation of the proper examination procedures.

Section 7611(e)(2) provides that no suit may be maintained and no defense may be raised, other than a stay in a summons enforcement proceeding, by reason of any noncompliance with the requirements of section 7611. Thus, failure to comply with any of these requirements may not be raised as a defense or affirmative ground for relief in any judicial proceeding including, but not limited to, a summons proceeding to gain access to church records; a declaratory judgment proceeding involving a determination of tax-exempt status under section 7428; a proceeding to collect unpaid tax; or a deficiency or refund proceeding. Additionally, failure to substantially comply with the requirements that two notices be sent, that the Regional Commissioner approve an inquiry, and that a conference be offered (and the conference held if requested) may not be raised as a defense or as an affirmative ground for relief in a summons proceeding or any other judicial proceeding other than as specifically set forth above. Therefore, a church or its representatives will not be able to litigate the issue of the reasonableness of the appropriate Regional Commissioner's belief in approving the commencement of a church tax inquiry (*i.e.*, that the church may not be tax-exempt or may be engaged in taxable activities) in a summons proceeding or any other judicial proceeding. The church retains the right to raise any substantive or procedural argument which would be available to taxpayers generally in an appropriate proceeding.

Effective Date

Q–18: What is the effective date of the church examination procedures?

A–18: The procedures set forth in section 7611 apply to all tax inquiries and examinations beginning after December 31, 1984. The procedures of section 7605 will apply to any examination commenced before January 1, 1985. Any activities commenced after December 31, 1984, that would constitute a new inquiry or new examination must comply with the procedures of section 7611.

This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: February 19, 1985.

Ronald A. Pearlman,

Acting Assistant Secretary of the Treasury.

[FR Doc. 85–5750 Filed 3–7–85; 10:13 am]

BILLING CODE 4830–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

Permanent State Regulatory Program of Illinois; Consideration of Modification of Deadline for Conditions of Approval

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: The Office of Surface Mining (OSM) is announcing the Secretary of the Interior's decision to extend the deadline for Illinois to meet two conditions of approval of its State permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Condition (b) concerns covering the pit floor and highest coal seam with water and condition (c) concerns sedimentation ponds.

EFFECTIVE DATE: March 11, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. James Fulton, Field Office Director, Springfield Field Office, 600 East Monroe Street, Room 20, Springfield, Illinois 62701; Telephone: (217) 492–4495.

SUPPLEMENTARY INFORMATION:

Background

The Illinois program was conditionally approved by the Secretary of the Interior on June 1, 1982 (47 FR 23858). Information pertinent to the general background, revisions, modifications and amendments to the proposed program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval can be found in the June 1, 1982 **Federal Register**.

Under 30 CFR 732.13(j), the Secretary may conditionally approve a State permanent regulatory program which contains minor deficiences where the deficiencies are of such a size and nature as to render no part of the program incomplete, the State is actively proceeding with steps to correct the deficiencies, and the State agrees to correct the deficiencies according to a schedule set forth in the notice of conditional approval. The schedule is established in consultation with the State based on the time required for changes to be adopted under State procedures or legislative schedules.

In accepting the Secretary's conditional approval, Illinois agreed to satisfy conditions (a), (d), and (e) by December 1, 1982 and conditions (b) and (c) by June 1, 1983. Conditions (a), (d), and (e) have been removed (48 FR 23412, May 25, 1983, and 48 FR 51619, November 10, 1983).

On May 23, 1983, Illinois requested a six-month extension of the June 1, 1983 deadline to satisfy conditions (b) and (c). August 19, 1983, OSM announced the decision to extend the deadline to December 1, 1983 (48 FR 37625).

On December 1, 1983, Illinois requested a further extension of the deadline for satisfying conditions (b) and (c), until June 1, 1984. In its request, the State pointed to certain developments in the litigation on the approval of the Illinois program. The State noted that the United States District Court for the Central District of Illinois had granted, on November 30, 1983, the Secretary's motion to remand the *Illinois South Project* v. *Watt* (Civ. No. 82–2229) case to the Secretary for review in light of legal developments that have occurred since the approval date. Conditions (b) and (c) concern subjects that are directly at issue in the litigation and which may be affected by the Secretary's review on remand. In order to avoid rulemaking proceedings which may prove to be unnecessary, the State requested a six-month extension of the December 1, 1983 deadline. On February 22, 1984, OSM announced the decision to extend the deadline to June 1, 1984 (49 FR 6487).

On May 31, 1984, Illinois requested a further extension of the deadline, until November 30, 1984. The State noted that the conditions are directly affected by two cases which are still unresolved—*Illinois South Project* v. *Watt* and

Illinois Department of Mines and Minerals v. *Watt*. The State indicated that it had hoped that the cases would have been resolved by June 1, 1984, but as they have not been, Illinois requested that possibly unnecessary rulemaking proceedings be delayed for six months. In the interim, Illinois stated that it would continue to enforce its regulations in accordance with the Federal regulations. On August 24, 1984, OSM announced the decision to extend the deadline to November 30, 1984 (49 FR 33645).

Condition (b) stipulates that Illinois must amend its program to require a cover of the pit floor and highest coal seam with a minimum of ten meters (33 feet) of water, and that pending completion of the above, Illinois may not use its authority to approve covering with less than 10 meters of water or the approval will terminate. Condition (c) stipulates that Illinois must amend its program to demonstrate that Illinois understands that at the present time the best technology currently available for sediment control is sedimentation ponds and should Illinois wish to approve any other technology, the State will first send the proposal to OSM for review and approval as either an experimental practice or a program amendment. Furthermore, pending completion of the above Illinois may not use its authority to approve siltation structures other than sedimentation ponds or the approval will terminate.

Extension of the Deadline

On November 28, 1984, Illinois requested a further extension of the deadline until May 30, 1985. The State noted that the remaining conditions were and remain directly affected by two cases which are still unresolved: *Illinois South Project et al.* v. *Watt* and the Federal District Court Case of the *Illinois Department of Mines and Minerals* v. *Watt*. The State indicated that it had hoped the cases would have been resolved by the November deadline, but unfortunately must again request an extension until May 30, 1985, to pursue rulemaking. Illinois stated hopefully this six-month period will be sufficient time for the litigation to be resolved and the exact nature of the rulemaking to be delineated.

On January 4, 1985, OSM published a notice in the **Federal Register** (50 FR 485) to propose an extension of the deadline to meet conditions (b) and (c) to May 30, 1985. Comment on the proposal was solicited for 30 days ending February 5, 1985.

Public Comment

In response to the January 4, 1985 **Federal Register** notice announcing the comment period on the extension of the deadline for meeting Illinois program conditions (b) and (c), OSM received one written comment from the Illinois South Project, Inc. (ISP).

The commenter noted that the State has requested a deadline extension on three previous occasions because the two conditions remain directly affected by unresolved litigation. The commenter states that these extensions were allowed in contravention of OSM's rules regarding program conditions under 30 CFR 732.13(j)(4).

OSM disagrees for several reasons. Illinois has agreed to continue to enforce its regulations in accordance with the Federal regulations until the issues involved in the litigation are resolved. Also, Illinois has provided a valid explanation of the circumstances related to the current inability to modify its program as outlined in conditions (b) and (c).

The ability of the Secretary to impose conditions on the approval of State programs under 30 CFR 732.13(j) must by necessity include the ability to modify or extend conditions as circumstances change. OSM concludes that as long as Illinois continues to apply the Federal standards to the areas subject to conditions (b) and (c), no deficiencies actually exist with regard to the State's administration of the approved program.

Secretary's Determination

The Secretary has determined that an extension of the deadline for Illinois to satisfy conditions (b) and (c) is warranted. As noted above, since Illinois has agreed to operate its program in accordance with the terms of the conditions until such time as its rules are amended there will be no substantial effect in the regulation of surface coal mining operations in Illinois.

Procedural Matters

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 913

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Accordingly, Part 913 of Title 30 is amended as set forth herein.

Dated: March 6, 1985.

John D. Ward,

Director, Office of Surface Mining.

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

PART 913—ILLINOIS

§ 913.11 [Amended]

1. Section 913.11 is amended in paragraphs (b) and (c) by substituting "May 30, 1985" for "November 30, 1984" each time it appears.

[FR Doc. 85–5717 Filed 3–8–85; 8:45 am]
BILLING CODE 4310–05–M

VETERANS ADMINISTRATION

38 CFR Part 21

Vocational Rehabilitation Amendments; Corrections

AGENCY: Veterans Administration.

ACTION: Final regulations; corrections.

SUMMARY: This document corrects a final rule document implementing title 1 of Pub. L. 96–466, Education and Rehabilitation Amendments of 1980, which was published on October 18, 1984 (49 FR 40810).

FOR FURTHER INFORMATION CONTACT: Celia Fasone, Paperwork Management and Regulations Service (731), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420, 202–389–2340.

Dated: March 5, 1985.

Nancy C. McCoy,

Chief, Directives Management Division.

SUPPLEMENTARY INFORMATION: Accordingly the Veterans Administration is correcting the regulation published on October 18, 1984 (49 FR 40810) as follows:

1. The amendatory instruction on page 40814 should have read "The table of contents for Subpart A of Part 21 is revised to read as follows:".

2. An amendment is added after the table of contents on page 40815 to read as follows: "The authority citation for 38 CFR Part 21, Subpart A, is revised to read as follows:

"**Authority:** 38 U.S.C. 210(c) and as otherwise noted."

3. In § 21.1, paragraph (a) is corrected by inserting the word "to" preceding the words "provide to eligible veterans".

4. In § 21.35(i)(1)(ii), the word following "employment;" should be changed from "or" to "and".

5. In § 21.40, paragraph (a)(1) is corrected by removing the word "a" preceding "retired pay".

6. Section 21.41 is corrected by inserting the word "during" following "rehabilitation services".

7. In the introductory paragraph of § 21.42, insert the words "begin to" following "eligibility does not".

8. In § 21.51(g) remove the word "delete".

9. In § 21.70(b)(1)(ii) remove the word "or" following "suitable employment;".

10. In § 21.84(b)(6) delete the words "is included".

11. In § 21.120(c)(1)(iii) insert word "or" following "distance;"

12. In § 21.123(b) the authority cite should read "38 U.S.C. 1504(a)(7)".

13. In § 21.124 (a)(4) and (b)(4) the authority cites should read "38 U.S.C. 1504(a)(7)".

14. In § 21.126(e)(2) the authority cite should read "38 U.S.C. 1504(a)(7)".

15. In § 21.196(c), insert the words "under § 21.284" following "'rehabilitated' status".

16. In § 21.214(e) remove the word "subject which may be furnished.".

17. In § 21.250(c)(1), the cite "§ 21.52" should read "§ 21.51".

18. In § 21.256(b)(2), the cite "§ 21.290" should read "§ 21.292".

19. In § 21.258(b) the cite § 21.254(e) should read "§ 21.214(e)".

20. In § 21.260 the cite "38 U.S.C. 1508(b)" should follow the footnotes on the chart in paragraph (b).

21. In § 21.272(d)(2) delete the word "services".

22. Instruction line 55 should read: "The center heading "Termination of Training" and §§ 21.280, 21.281, 21.283, 21.286, 21.287 and 21.288 are removed.

23. In § 21.294(c) insert the title: "Use of facilities."

24. Section 21.296(a)(8) should read: (8) Agree to pay the veteran during training (except as provided in paragraph (b) of this section) a salary or wage rate;

25. In § 21.298(b) the last word of the introductory text should be "farm" not "firm".

26. In § 21.332(c)(2) the word "unstitution" should read "institution".

27. In § 21.342(b) change the word "of" to "or" preceding "family problems".

28. In § 21.370(b)(2)(xi) the cite should read "(38 U.S.C. 111)".

29. In § 21.374(c)(1)(ii) the cite should read "(5 U.S.C. chapter 57)".

[FR Doc. 85-5583 Filed 3-8-85; 8:45 am]

BILLING CODE 8320-01-M

POSTAL SERVICE

39 CFR Part 111

Merchandise Return Service

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This document establishes final regulations for various changes to the Merchandise Return Service, effective June 30, 1985. The rule prescribes changes intended to make the service more attractive to merchandise return permit holders, to simplify mailing by the recipient, to streamline postage payment procedures, and to extend the control of the permit application to the Management Sectional Center (MSC) level. These changes will:

1. Replace the current dual label system with a one-part label to eliminate confusion by permit holders, the designated customers, and postal employees.

2. Replace dual mailing procedures and allow designated customers to deposit merchandise return mail according to the current method used for the one-part label.

3. Replace the permit application, Form 3625, *Merchandise Return Permit Application*, with one that requires approval by the MSC manager. The postmaster would continue to issue the permit.

EFFECTIVE DATE: June 30, 1985.

FOR FURTHER INFORMATION CONTACT: F.E. Gardner, (202) 245-4565.

SUPPLEMENTARY INFORMATION: A detailed explanation of the nature and background of the proposed rule, including the reasons for its proposed adoption and a discussion of the major changes, accompanied its publication in the **Federal Register** on December 24, 1984 (49 FR 49859).

Two letters were received with comments on the proposed regulations. The comments and the Postal Service response are as follows:

1. One commenter suggested that 919.61 should be amended so that merchandise return parcels may also be mailed in "any mail deposit receptacle," since this would be in keeping with the previous deposit procedures under the previous one part label. We agree, and have revised 919.61 as suggested. We also made a similar conforming change to 919.16. The commenter also requested that the Postal Service postmark all merchandise return parcels so that, if the return address should not be on the parcel, the postmark could be used as the point of origin to determine the correct postage rate. We are not adopting this suggestion. The Postal Service postmarks merchandise return parcels only when they require ancillary services such as insurance or a certificate of mailing. In such cases the parcel must be mailed at a post office so that it can be processed, including postmarking, by an acceptance clerk. Merchandise return parcels requiring no ancillary services may be mailed at a post office or in any mail deposit receptacle; they need no special processing at the mailing point by an acceptance clerk. If we were to adopt the commenter's suggestion all merchandise return parcels would have to be specially processed at their point of mailing, thereby increasing costs for all who use the service. We believe it would not be in the interest of merchandise return mailers generally or the Postal Service to impose this requirement.

2. The other commenter requested that a core set of acceptance instructions be printed on the side of merchandise return labels to eliminate any difficulties some acceptance employees may have with the labels. The merchandise return label lacks space for additional core instructions. We have, however, added a reference on the label to 919.6 of the Domestic Mail Manual, where the complete instructions may be found. The commenter also noticed an erroneous cross reference in 919.443. We are pleased to change the reference from 724.1 to 764.11.

In order to obtain a new permit after revocation of the old one for failure to follow format requirements, 919.243b establishes certain requirements. In the final rule we added in this section the

suggestion that funds to cover at least two weeks normal returns should be maintained in the permit holder's advance deposit account; this is a non-mandatory interpretation of the requirement that "sufficient funds" be maintained in such accounts. See 919.332.

Consistent with the new rates and fees that went into effect on February 17, 1985 (50 FR 2787, 2816), we changed the annual fee in 919.31 for each permit issued to $50, and the transaction fee in 919.32 for each item returned to 30¢ per parcel.

For the reasons given and after careful consideration, the Postal Service hereby adopts the following amendments to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations.

See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

Part 919, Domestic Mail Manual (DMM) is revised to read as follows:

DMM 919 MERCHANDISE RETURN

919.1 Description.

.11 General. Merchandise Return Service allows authorized permit holders to pay the postage and fees on First-Class (Priority), third-class, and fourth-class mail to be returned by their designated customers.

.12 Activation. The service is activated by the use of labels which are provided by permit holders to those designated customers they authorize to use the service.

.13 Merchandise Return Label. The label used for this service must contain: The delivery address of the postage due unit at the post office where the permit is held, the address of the permit holder, and a space for the return address of the designated customer. It must also identify the class of mail (see 919.4).

.14 Label Instructions. The permit holder must provide written instructions with the label to advise the designated customer how to use the label and how to mail the parcel.

.15 Distribution. Merchandise return labels may be distributed by permit holders for return to the postage due unit at a post office where a merchandise return permit is held. Merchandise Return Service may be established at the post offices in the United States, its territories and possessions, and at military post offices overseas. Service is not available for any foreign country.

.16 Acceptance. Designated customers may mail parcels using merchandise return labels at any post office, at any place locally designated by the postmaster for the receipt of mail, or in any mail deposit receptacle.

919.2 Permits

.21 General. A merchandise return permit is required at every post office where parcels mailed under the service will be returned.

.22 Application. A form 3625, *Merchandise Return Permit Application* (see Exhibit 919.2), must be submitted at each post office where the mail will be returned. Permit holders must furnish copies of their labels and instructions for approval with the application, and before changes are made.

.23 Processing Application. Upon receipt of the application and the annual permit fee, the postmaster will complete the indicated section and forward it to the MSC manager for approval. Upon approval by the MSC manager, the application must be returned to the postmaster for issuance of the permit. The postmaster will complete and give the customer its part of Form 3625. The permit is valid for one calendar year ending December 31.

.231 Filing Forms. Post offices file Form 3625 by permit holder in alphabetical order.

.232 Annual Permit Renewals. The permit holder must renew the permit by sending the annual fee to the post office issuing the permit by December 31.

.233 Nonrenewed Permits. When records indicate a permit was not renewed, the permit holder will be informed in writing by certified mail with a return receipt that if the permit is not renewed all merchandise return mail will be held for ten days and then returned to the sender. The following methods will be followed if the permit is not renewed after the mailer has been notified in writing and ten days have elapsed.

a. Merchandise return mail will be returned to the sender.

b. Merchandise return mail that does not contain the sender's return address will be forwarded to the nearest dead parcel branch for proper handling with the endorsement "Permit Cancelled."

.24 Cancellation of Permit. A permit may be cancelled by the postmaster, with the approval of the MSC manager, for any violation of postal regulations, including:

.241 Refusal to Pay. Refusal to accept and pay the required charges for merchandise return offered for delivery.

.242 Insufficient Funds. Failure to maintain sufficient funds in the advance deposit account to cover postage and fees chargeable on return parcels.

.243 Nonconforming Labels. Distributing merchandise return labels which do not conform to Postal Service specification.

a. The permit holder will be notified in writing by certified mail of specific errors when merchandise return formats do not meet current postal requirements. He will be allowed ten days to respond. The permit holder is responsible for correcting merchandise return formats and ensuring that future formats meet specifications.

b. To obtain a new permit after a merchandise return permit has been revoked for failure to follow merchandise return format requirements, a new application (Form 3625) must be completed, a new merchandise return permit fee must be paid, and two samples of all merchandise return formats must be submitted annually to the appropriate post office for approval. In addition, funds to cover at least two weeks' normal returns should be maintained in the advance deposit account (see .332) at all times.

.244 Receipt of Parcels After Cancellation. When a permit is cancelled, parcels received after the cancellation will be treated the same as in 919.233 a and b.

919.3 Postage and Fees.

.31 Annual Fee. An annual fee of $50 will be charged for each calendar year or part thereof for each permit issued.

.32 Transaction Fee. The fee for each item returned is 30¢ per parcel in addition to the postage and insurance fees.

.33 Postage Payment.

.311 Applicable Rate. The applicable postage for the single-piece First-Class (Priority), third-class, or fourth-class rate will be charged on each piece returned under the Merchandise Return Service.

.332 Advance Deposit Account. Postage and fees must be paid through a postage due advance deposit account. Parcels will be delivered under this service only when sufficient funds are in an advance deposit account to pay applicable postage and fees. Permit holders may use the same advance deposit for this service as they use for other postage due mail (see 146.34).

919.4 Format.

* * * * *

.42 Required Format Elements.

.421 Preprinted Endorsements.

* * * * *

d. The following information must be shown in capital letters above the merchandise return legend (see Exhibit 919.4):

DELIVERY POST OFFICE

COMPUTE POSTAGE DUE

(SEE 919 DOMESTIC MAIL MANUAL)

ACCEPTANCE POST OFFICE

FOR ANCILLARY SERVICES ONLY

ADD: POSTAGE ——————————

MERCHANDISE RETURN FEE ——————

INSURANCE FEE, IF ANY ——————

TOTAL POSTAGE DUE ——————

(SEE 919.6 DOMESTIC MAIL MANUAL)

.422 Required Markings. Horizontal bars as prescibed in 917.526 must be placed on labels. A Facing Identification Mark (FIM) as prescribed in 917.527 is not required on this label.

.43 Addressing of Merchandise Return Labels. Space in the upper left corner of the label must contain the return address of the person who sends the matter to the permit holder. The merchandise return label must bear the address of the postage due unit of the post office where the permit is held. The address must be arranged in the manner prescribed in 122.2. A margin of at least one inch is required between the left edge of the piece and the address. The address must contain the following information:

First line in capital letters at least 3/16 of an inch high	Postage Due Unit
Second line	U.S. Postal Service
Third line	(Post Office, State and ZIP Code of the post office)

.44 Class of Mail Endorsement

.441 If endorsement of class of mail appears the parcel will be accepted at the applicable single piece third-class or fourth-class parcel post rate according to weight.

.442 Parcels will be returned as First-Class Mail if the permit holder endorses the label "First-Class". The endorsements must be in letters at least ¼ of an inch high and must be printed or rubber stamped to the left of the merchandise return legend and above the address.

Note.—First-Class Mail cannot be insured unless the contents contain third- or fourth-class matter and are so labeled.

.443 Parcels qualifying for special rate fourth-class or library rate will be returned at those rates provided the appropriate identifying endorsement prescribed in 725.1, 764.11 or 767.1 is preprinted or rubber stamped in letters at least ¼ of an inch high to the left of the "Merchandise Return Label" legend and above the address on the label.

.45 Illustration of Merchandise Return Label. Permit holder's requirements and resources for making labels may vary. Exhibit 919.4 is a suggested example which would meet all address and endorsement requirements.

919.5 Ancillary Services.

.51 Insured Mail Service.

.511 Only the permit holder may obtain insured mail service in conjunction with merchandise return service. The recipient may not obtain insured mail service. To request insured mail service, the permit holder must place the following endorsement and information on the merchandise return label to be attached or affixed to the parcel:

Insurance Desired by Shipper for $ (value)

The endorsement must be printed or rubber stamped to the left and above the *Merchandise Return Label* legend and below the return address. The permit holder must indicate the specific dollar amount of insurance applicable to the parcel.

Note.—First-Class (Priority) Mail cannot be insured unless the parcel contains third- or fourth-class matter and is so labeled.

.512 When a Merchandise Return Service parcel contains the insurance indorsement the article must be presented at a post office for rating.

.513 When a merchandise return article is presented at a post office for return to the permit holder, the accepting Postal Service employee will take the following actions if the return label is endorsed with the *insurance requested* endorsement.

a. Look at the endorsement to see how much insurance is desired by the permit holder and enter the appropriate insurance fee for the coverage desired on the mailing lable on the *Add Insurance Fee If Any* line.

b. If the article is to be insured for $25.00 or less, stamp the article *Insured*, complete a Form 3813, *Receipt for Domestic Insured Parcel*, and give the receipt to the recipient, and instruct the recipient to keep the receipt as evidence of mailing the insured article.

c. If the article is to be insured for more than $25.00 complete a Form 3813–P, *Receipt for Insured Mail, Domestic-International*, affix the insured label with the insurance number on it to the article, give the receipt portion of the Form 3813–P to the recipient, and instruct the recipient to keep the receipt as evidence of mailing the insured article.

.52 Certificate of Mailing.

.521 The designated customer mailing a Merchandise Return Service article may obtain a certificate of mailing at his own expense at the time of mailing.

.522 When the designated customer desires a certificate of mailing, he must present it at a post office to obtain the receipt.

919.6 Acceptance.

.61 General. Merchandise Return Service parcels requiring no ancillary services must be mailed at the designated customer's return address post office, at a place designated by the postmaster for receipt of mail, or in any mail deposit receptacle.

.62 Ancillary Services. Merchandise Return Service parcels requiring insurance or a certificate of mailing must be mailed at a post office so that they can be processed by an acceptance clerk. The accepting employee will:

a. Accept the parcel and verify that the label has been filled out completely.

b. Check to see if an insurance endorsement is preprinted on the label. (See DMM 919.51)

c. Check for the class of mail endorsement by the permit holder. (See DMM 919.44)

d. Compute the postage and fees for the parcel, following all normal procedures required for insured mail service if requested, and apply any required endorsements or labels to the parcel.

e. Record the postage and verify the insurance fee, if applicable, in the spaces provided on the portion of the label to be affixed or attached to the parcel.

f. Total the postage and fees, including the merchandise return fee, and fill in the appropriate spaces on the portion of the label to be affixed to the parcel.

g. Postmark the label in the space directly above the merchandise return legend.

h. Provide a receipt for the insurance or the certificate of mailing to the recipient mailer when that service is requested.

919.7 Delivery. When the parcel is received at the postage due unit, the postage due unit will:

a. Compute the postage and fees.

b. Withdraw the amount due from the permit holder's advance deposit account.

c. Dispatch the parcel for delivery to the permit holder.

d. When numbered insured merchandise return articles are delivered, the delivery Postal Service employee will obtain a delivery receipt for the articles on Form 3849–A, *Delivery Notice or Receipt*, Form 3849–

B, *Delivery Reminder or Receipt*, or Form 3883, *Firm Delivery Book—Registered, Certified and Numbered and Insured Mail.*

Note.—Parcels received without a return address or postmark will be charged the appropriate single piece First-Class (Priority), third-class or fourth-class rate for zone 4 in addition to other required fees. Special fourth-class and Library Rate parcels will be charged the appropriate postage.

A transmittal letter making these changes in the Domestic Mail Manual will be published and will be transmitted to subscribers automatically. These changes will be published in the **Federal Register** as provided in 39 CFR 111.3.

(39 U.S.C. 401, 404(a)(1))

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

BILLING CODE 7710-12-M

U.S. POSTAL SERVICE

MERCHANDISE RETURN PERMIT APPLICATION

Application is made to use merchandise return service for return of parcels without prepayment of postage and fees under DMM 919. All postage and fees will be paid by the permit holder on all pieces returned under this privilege. Applicant agrees to prepare merchandise return labels in accordance with DMM 919.4 or 919.5, and understands that failure to conform with those requirements may be considered basis for cancellation of this permit. The annual merchandise return permit fee must accompany this request.

NAME AND ADDRESS OF APPLICANT (Print or type)	NAME		TELEPHONE NO
	STREET	CITY AND STATE	ZIP CODE

PERMIT FOR PRIORITY _____, THIRD-CLASS _____, FOURTH-CLASS _____ (SUB-CLASS _____)

POST OFFICE TO WHICH SUBMITTED (*City, State and ZIP Code*)	SIGNATURE AND TITLE OF APPLICANT	DATE

TO BE COMPLETED BY POSTMASTER

☐ RECOMMEND APPROVAL ☐ RECOMMEND NON-APPROVAL DATE

REASON FOR RECOMMENDING NON-APPROVAL

TO BE COMPLETED BY MSC MANAGER

☐ APPLICATION APPROVED ☐ APPLICATION DENIED DATE

REASON FOR DENIAL

DATE OF ISSUANCE	DATE OF EXPIRATION	SIGNATURE OF POSTMASTER

PS Form 3625

POSTMASTER: Retain application in your file. After application has been approved, deliver authorization to permit holder.

U.S. POSTAL SERVICE

MERCHANDISE RETURN PERMIT AUTHORIZATION

PERMIT NUMBER	DATE OF ISSUANCE	DATE OF EXPIRATION	SIGNATURE OF POSTMASTER

You are authorized to use merchandise return service under the provisions of DMM 919. Your permit number must be shown on each label. Please notify this office of any change of name, address or abandonment of permit. Only mail properly prepared in the format described in DMM 919.4 or 919.5 will be accepted. Annual permit renewal fee must be received by the post office issuing the permit by December 31.

Enter name of permit holder, street address, city, state and ZIP Code	POST OFFICE State and ZIP Code

Exhibit 919.2

BILLING CODE 7710-12-C

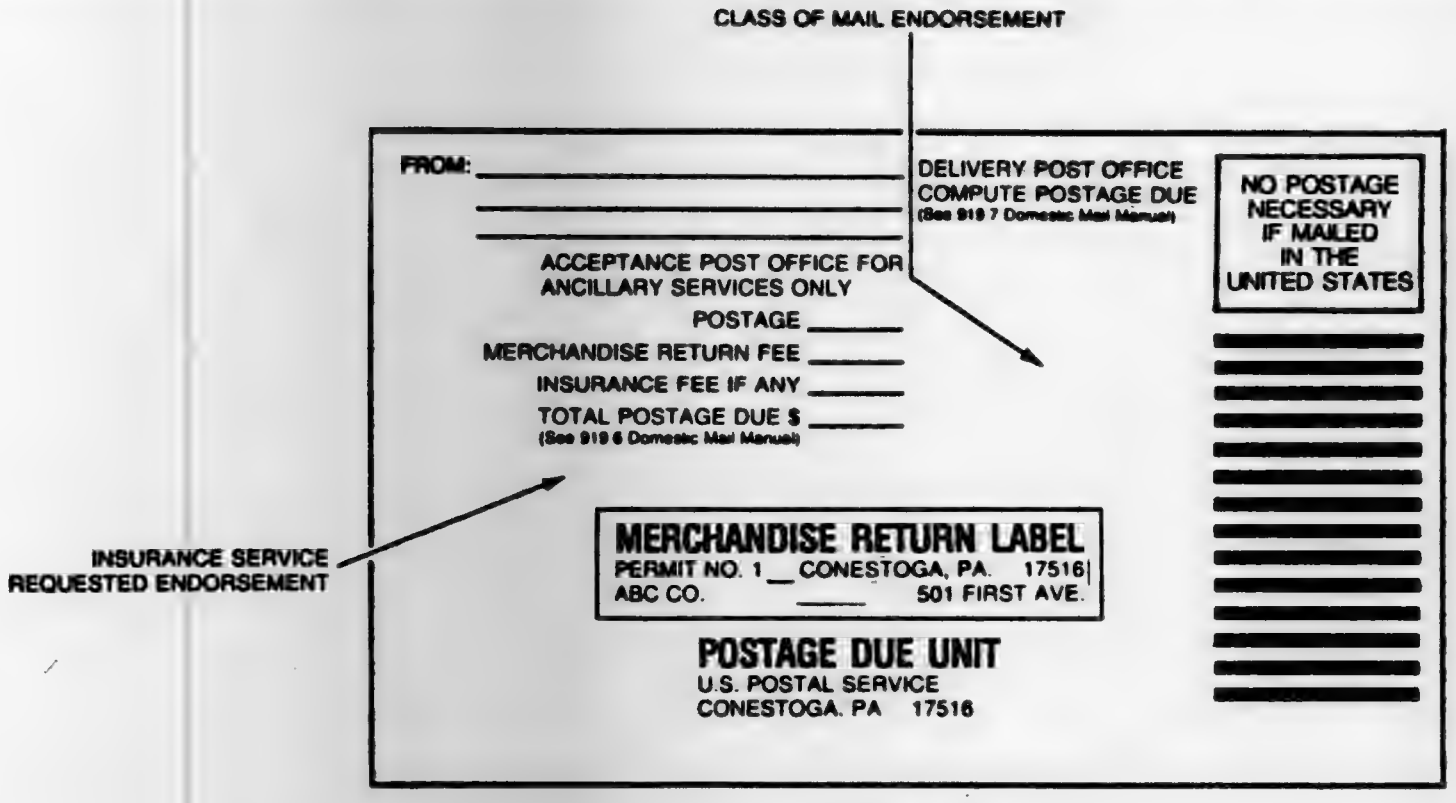


EXHIBIT 919.4

[FR Doc. 85-4270 Filed 3-8-85; 8:45 am]
BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA Docket No. AM204MD; A-3-FRI-279-25]

Approval of State Plans for Designated Facilities and Pollutants; Maryland

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This notice approves the State of Maryland Air Management Administration's plan for the control of total fluoride emissions from primary aluminum reduction plants as required under Section 111(d) of the Clean Air Act. The plan is applicable statewide, but affects only the Eastalco Aluminum plant located in Frederick County. This plan is approvable as it meets all of the applicable requirements of Section 111(d) of the Clean Air Act and 40 CFR Part 60.

EFFECTIVE DATE: April 10, 1985.

ADDRESSES: Copies of the 111(d) plan, as well as accompanying support documentation submitted by the Maryland Air Management Administration (MAMA) and interested citizens, are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region III, Air Management Division (3AM10), Curtis Building, 6th & Walnut Streets, Philadelphia, PA 19106, Attn: James B. Topsale, P.E.

Maryland Department of Health and Mental Hygiene, Air Management Administration, 201 W. Preston Street, Baltimore, MD 21201, Attn: George P. Ferreri

FOR FURTHER INFORMATION CONTACT: Mr. James B. Topsale, (3AM13), 215/597-4553 or at the EPA Region III address indicated above.

SUPPLEMENTARY INFORMATION:

Background

In accordance with Section 111 of the Clean Air Act, "Standards of Performance for New Stationary Sources," EPA has promulgated standards of performance for new sources of criteria pollutants (pollutants for which National Ambient Air Quality Standards have been published) and non-criteria (or designated) pollutants. Paragraph (d) of Section 111 requires states to develop control plans for designated pollutant emissions from existing stationary sources of the type regulated by standards of performance for new sources of designated pollutants. The requirements for such plans are set forth in Subpart B of 40 CFR Part 60.

On January 24, 1984, the State of Maryland submitted a plan for controlling fluoride emissions from primary aluminum plants. EPA proposed approval of this plan in the Federal Register on August 27, 1984 (49 FR 33905). Today, EPA is giving final approval to the Maryland 111(d) Plan.

Primary Aluminum Fluoride Plan

The plan for controlling emissions of fluorides from existing primary aluminum plants specifies the following emission limits:

(1) Total fluoride emissions discharged from all potlines shall not exceed a quarterly average of 2.5 lbs/ton of aluminum produced.

(2) Total fluoride emissions discharged from an anode bake plant shall not exceed a quarterly average of 0.1 lbs/ton of aluminum produced.

The Eastalco Aluminum reduction plant may not cause or permit the discharge of fluoride emissions which will cause a violation of either the above emission standards as defined in the Code of Maryland Regulations

(COMAR) 10.18.06.07B(2) or the fluoride ambient air quality standards as defined in COMAR 10.18.04. To determine compliance, a specific testing procedure has been established for both the potline and anode bake oven control systems. The stack test procedure, also approved in today's notice, adds Method 1014 to the MAMA's existing test procedures, AMA–TM 83–05. The manner, scope, and duration of a required ambient surveillance program will be determined by the MAMA.

In addition, two revised regulations relocate the requirements for conducting a fluoride surveillance program and for developing an approvable procedure for records maintenance. These are moved from COMAR 10.18.01.04 and .05 to COMAR 10.18.06.07B(1)(b) and D, respectively.

The MAMA believes the emission standards for fluorides are consistent with the COMAR 10.18.04 requirements for meeting ambient air quality standards for fluorides; accordingly, no impact on public welfare is expected. Also, the above regulations are expected to have minimal impact on the affected industry.

Response to Comments

No comments were received during the official 30-day comment period ending September 26, 1984. However, comments were received later from two private citizens and from a Congresswoman on behalf of one of her constituents.

Both citizens were concerned about any impacts that the plan could have on them in the local area, and expressed their desire not to see the plan approved.

The Congresswoman's constituent felt that the fluoride plan would allow primary aluminum reduction plants to emit more fluorides than in the past.

EPA responded to both commenters, reassuring them that the fluoride emission standards proposed by the MAMA are well within EPA's guidelines, and are also consistent with the COMAR 10.18.04 requirements for meeting ambient air quality standards. Accordingly, no impact on public welfare is expected.

In regards to the Congresswoman's letter, EPA explained how the Maryland 111(d) plan now contains a Federally enforceable regulation which sets emission standards for fluorides. Previously, there had been no regulations of this kind at all. EPA believes that the Maryland 111(d) fluoride plan, together with the Maryland Ambient Air Regulations, form a complete strategy on fluoride control and does not allow a more lenient standard.

EPA Action

Based on the above information and the requirements of Subpart B of 40 CFR Part 60, EPA approves the Maryland 111(d) Plan for fluorides defined in COMAR 10.18.04 and 10.18.06.07, including test Method 1014 in AMA–TM 83–05.

The Office of Management and Budget has exempted this rule from the requirement of Section 3 of Executive Order 12291.

Under Section 307(b)(1) of the Clean Air Act, judicial review of this action is available only by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days from today. Under Section 307(b)(2) of the Act, the requirements which are the subject of today's Notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

List of Subjects in 40 CFR Part 62

Air pollution control, Fluoride, Sulfur, Administrative practice and procedure, Intergovernmental relations, Reporting requirements, Phosphate.

(42 U.S.C. 7411)

Dated: March 1, 1985.

Lee M. Thomas,

Administrator.

PART 62—[AMENDED]

Part 62 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

Subpart V—Maryland

1. Section 62.5100 is amended by adding paragraphs (b)(3) and (c)(3) to read as follows:

§ 62.5100 Identification of plan.

* * * * *

(b) * * *

(3) Control of fluoride emissions from primary aluminum reduction plants, submitted by the Secretary of Health and Mental Hygiene, State of Maryland on January 26, 1984.

(c) * * *

(3) Primary aluminum reduction plants.

2. An undesignated center heading and § 62.5103 are added as follows:

Fluoride Emissions From Primary Aluminum Reduction Plants

§ 62.5103 Identification of sources.

(a) The plan applies to the following existing primary aluminum reduction plants:

(1) Eastalco Aluminum Plant, Frederick, Maryland.

[FR Doc. 85–5579 Filed 3–8–85; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 205

Crisis Counseling Assistance and Training

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This rule implements section 413, Crisis Counseling Assistance and Training, of the Disaster Relief Act of 1974, which provides for a program of assistance for States in meeting the emotional needs of victims of major disasters. This rule replaces that currently published by the Department of Health and Human Services (HHS) (42 CFR Part 38), which is canceled by separate publication by HHS.

EFFECTIVE DATE: April 10, 1985.

ADDRESS: Federal Emergency Management Agency, 500 C Street, S.W., Room 710, Washington, D.C. 20472, 202–646–3662.

FOR FURTHER INFORMATION CONTACT: Donna M. Dannels, Individual Assistance Division, Office of Disaster Assistance Programs, 202–646–3662.

SUPPLEMENTARY INFORMATION: On Tuesday, September 4, 1984, FEMA published a proposed rule, and accepted comments until November 5, 1984. Comments were received from seven parties, and replies are being sent directly to the commenters. The Department of Human Resources in North Carolina sent supportive comments, and no changes to the rule were requested or necessary. The Chief Administrative Officer of the County of Los Angeles also sent supportive comments, one of which requested a clarification of the advisory role of the National Institute of Mental Health (NIMH). It was felt that paragraph (e)(2) stated the advisory and other NIMH roles very clearly, and no changes were made. The rest of the comments were from FEMA regional office staff. Two of these supported the rule with no

comment. The other three had the following substantive comments, grouped according to their subject matter.

Length of the Program

This comment dealt with the "short-term" nature of the program, and the stated nine-month time period, which did not appear short to the commenter. The proposed rule changes the time period from six months to nine months, because it was felt that programs could not gear up fast enough to take care of the short-term problems and phase into longer-term ongoing programs within the six-month time. Also, experience showed that FEMA often granted a three-month extension, since the program could not be completed in six months. In comparison with ongoing therapy modes, nine months is still relatively short.

Immediate Services

One comment indicated that immediate services should not include payment for assessment work. It does not; the assessment is performed by the Governor and not funded by the grant. Another comment requested information on how the FEMA Regional Director is to know whether the States' resources are insufficient and crisis counseling should be provided. The answer is, by reviewing the Governor's assessment and the recommendation of NIMH. No particular FEMA expertise in mental health resource identification or planning is expected or assumed. The same commenter wanted to know what justification would be required for the obligation and advance of FEMA funds. The answer is stated in paragraph (d)(2), wherein it is determined that State resources are insufficient in a disaster of severe proportions. This commenter also asked whether there is a limit to the amount which can be spent for immediate services. FEMA has set no limit on these funds; the amount will be determined based on the requirements for immediate staffing. Another comment questioned the consequences of a regular program denial after initial approval of immediate services. FEMA intends no adverse consequences of such action. If regular program services were found not to be necessary, the State will have had the benefit of the immediate services award. Another comment about immediate services funds was a question as to whether the immediate services funds were to be included in the overall grant. The answer is that funding for both the immediate services portion and the regular services portion will be from the same fund account, and the obligations and advances will be totaled, but the regular program grant is a separate transaction from the immediate services grant. The last comment requested confirmation of whether the FEMA Regional Director had the authority to approve immediate services funding. The answer is yes. In relation to the Regional Director's authority, the definition of "Regional Director" has been revised to include his/her delegate, the Disaster Recovery Manager, in response to several comments.

FEMA Regional Office Resources

One commenter asked what resources the FEMA national office expected the regional office to use on crisis counseling program functions during the application/funding cycle. The answer is that FEMA assumes no special expertise in needs assessment or other program functions; this role is assumed by NIMH as FEMA's technical advisor.

Reporting Requirements

One commenter requested that the State Coordinating Officer also be provided the same reports as received by the Federal Coordinating Officer and the Secretary of Health and Human Services. We agree, and have revised paragraph (i) accordingly.

Administrative Expenses

A question arose as to whether FEMA would be responsible for any administrative expenses incurred in conjunction with administering a crisis counseling program, including training. The major costs for the grantee (overhead, office space, etc.) are part of the grant, as is the training program cost. Any FEMA staff time in conjunction with the program operation is part of FEMA's normal role in monitoring disaster program delivery.

Qualifications for Program Professionals

One comment stated: "There are no minimum qualifications required for any of the positions for administering the program. The program manager should at least have clinical experience." The rule itself does not address positions which are to be filled by the State, or any qualifications for such positions. This gives the State flexibility to determine what kind of staff it needs to administer the program. If the qualifications listed in the grant proposal for certain State positions do not meet NIMH's approval upon review, NIMH will recommend disapproval until the deficiencies are corrected.

Environmental Considerations

This regulation is procedural and FEMA has determined that there will be no significant impact on the environment caused by its implementation. Recently, an amendment to FEMA's final rule on Environmental Considerations (44 CFR Part 10) was published, which provided a categorical exclusion for Crisis Counseling Assistance and Training.

Regulatory Flexibility Act

This rule has been determined not to be a "major rule" within the meaning of the Regulatory Flexibility Act (5 USC 601), for the following reasons:

(1) It will not have an annual effect on the economy of $100 million or more;

(2) It will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and

(3) It will not have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Therefore, an initial regulatory flexibility analysis will not be prepared.

Authority

This rule is issued under the authority of section 602 of the Disaster Relief Act of 1974 (Pub. L. 93–288).

Content of the Rule

The rule implements section 413 of the Disaster Relief Act of 1974. It states procedures for obtaining financial assistance for providing crisis counseling services to victims of a major disaster declared under the Act.

List of Subjects in 44 CFR Part 205

Community facilities, Disaster assistance, Grant programs, Housing and community development.

PART 205—[AMENDED]

Accordingly, FEMA revises 44 CFR 205.59, as follows:

§ 205.59 Crisis Counseling Assistance and Training.

(a) *Purpose.* This section establishes the policy, standards, and procedures for implementing section 413 of the Act, Crisis Counseling Assistance and Training. FEMA will look to the Director, National Institute of Mental Health (NIMH), as the delegate of the Secretary of Health and Human Services (HHS).

(b) *Definitions.* (1) "Assistant Associate Director" means the head of the Office of Disaster Assistance Programs, FEMA; the official who

approves or disapproves a request for assistance under section 413 of the Act.

(2) "Crisis" means any life situation resulting from a major disaster or its aftermath which so affects the emotional and mental equilibrium of a disaster victim that professional mental health counseling services should be provided to help preclude possible damaging physical or psychological effects.

(3) "Crisis counseling" means the application of individual and group treatment procedures which are designed to ameliorate the mental and emotional crises and their subsequent psychological and behavioral conditions resulting from a major disaster or its aftermath.

(4) "Federal Coordinating Officer (FCO)" means the person appointed by the Associate Director to coordinate Federal assistance in an emergency or a major disaster.

(5) "Grantee" means the State mental health agency or other local or private mental health organization which is designated by the Governor to receive funds under section 413 of the Act.

(6) "Immediate services" means those screening or diagnostic techniques which can be applied to meet mental health needs immediately after a major disaster such as those which may be provided at disaster assistance centers. Funds for immediate services may be provided directly by the Regional Director to the State or local mental health agency, prior to and separate from the regular application process of crisis counseling assistance.

(7) "Major disaster" means any hurricane, tornado, storm, flood, highwater, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, explosion, or other catastrophe in any part of the United States which, in the determination of the President, causes damage of sufficient severity and magnitude to warrant major disaster assistance under this Act, above and beyond emergency services by the Federal Government, to supplement the efforts and available resources of State and local governments, and disaster relief organizations alleviating the damage, loss, hardship, or suffering caused thereby.

(8) "Project Officer" means the person assigned by the Secretary, HHS, to monitor a crisis counseling program, provide technical assistance and guidance, and be the contact point within HHS for program matters.

(9) "Regional Director" means the director of a regional office of FEMA, or the Disaster Recovery Manager, as the delegate of the Regional Director.

(10) "Secretary" means the Secretary of HHS or his/her delegate.

(11) "State Coordinating Officer (SCO)" means the person appointed by the Governor to act in cooperation with the FCO.

(c) *Agency Policy.* (1) It is agency policy to provide crisis counseling services, when required, to victims of a major disaster for the purpose of relieving mental health problems caused or aggravated by a major disaster or its aftermath. Assistance provided under this section is short-term in nature and is provided at no cost to eligible disaster victims.

(2) The Regional Director and Assistant Associate Director, in fulfilling their responsibilities under this section, shall coordinate with the Secretary.

(3) In meeting the responsibilities under this section, the Secretary or his/her delegate will coordinate with the Assistant Associate Director.

(d) *State Initiation of the Crisis Counseling Program.* (1) Assessment. To obtain assistance under this section, the Governor or his/her authorized representative must initiate an assessment of the need for crisis counseling within 10 days of the date of the major disaster declaration. The purpose of the assessment is to provide an estimate of the size and cost of the program needed and to determine if supplemental assistance is required. The factors in the assessment must include those described in paragraph (d)(3)(ii) (C) and (D) of this section.

(2) *Immediate Services.* If, during the course of the assessment, the State determines that immediate mental health services are required because of the severity and magnitude of the disaster, and if State or local resources are insufficient to provide these services, the State may request and the Regional Director, upon determining that Stated resources are insufficient, may provide funds to the State, separate from the application process described in the remainder of this section. The Regional Director shall consult with the Secretary in evaluating the need for immediate services and the State's capability for providing the services. Immediate services are not intended to be a replacement for the regular program. Therefore, funding shall be granted only for that period of time that does not exceed 60 days following the declaration of the disaster, except that if an application for the regular program under paragraph (d)(3) of this section has been submitted, funding for immediate services may continue until a decision has been made on that application.

(3) Application for Regular Program. Assistance under section 413 is provided primarily in the form of a grant to a State, local or private mental health organization designated by the Governor to administer the crisis counseling program. The Governor or his/her authorized representative shall submit an application to the Assistant Associate Director, through the Regional Director, and simultaneously to the Secretary, not later than 60 days following the declaration of the major disaster.

(i) The application represents the Governor's agreement and/or certification:

(A) That the requirements are beyond the State and local governments' capabilities;

(B) That the program, if approved, will be implemented according to a plan approved by the Assistant Associate Director;

(C) To maintain close coordination with and provide reports to the Regional Director, the Assistant Associate Director, and the Secretary; and

(D) To include mental health disaster planning in the State's emergency plan prepared under Title II, Pub. L. 93–288.

(ii) The application must include:

(A) Standard Form 424;

(B) The geographical areas within the designated disaster area for which services will be supplied;

(C) An estimate of the number of disaster victims requiring assistance. This documentation of need should include the extent of physical, psychological, and social problems observed, the types of mental health problems encountered by victims, and a description of how the estimate was made;

(D) A description of the State and local resources and capabilities, and an explanation of why these resources cannot meet the need; and

(E) A plan of services as described in paragraph (d)(4) of this section.

(4) Plan of Services. (i) State administered programs. In accordance with paragraph (d)(3)(ii)(D) of this section, the Governor must submit a plan of services to the Regional Director. The plan of services must include:

(A) The manner in which the program will address the needs of the affected population, including the types of services to be offered, an estimate of the length of time for which mental health services will be required, and the manner in which long-term cases will be handled;

(B) A description of the organizational structure of the program, including designation by the Governor of an individual to serve as administrator of the program. If more than one agency will be delivering services, the plan to coordinate services must also be described;

(C) Training plans. If a training program for staff is planned, it must be described, and the number of workers needing such training must be indicated;

(D) Facilities to be utilized, including plans for securing office space if necessary to the project; and

(E) A detailed budget, including identification of the resources the State and local governments will commit to both services and training, proposed funding levels for the different agencies if more than one is involved, and an estimate of the required Federal contribution.

(ii) Public or private mental health agency programs. If the Governor determines during the assessment that because of unusual circumstances or serious conditions within the State or local mental health network, the State cannot carry out the crisis counseling program, he/she may identify a public or private mental health agency or organization to carry out the program or request the Regional Director to identify, with the assistance of the Secretary, such an agency or organization. Preference should be given to the extent feasible and practicable to those public and private agencies or organizations which are located in or do business primarily in the major disaster area. In order to obtain the financial assistance requested by the Governor; this agency or organization must submit a plan of services, as in paragraph (d)(4) of this section. The Governor's application is not complete without this plan of services.

(e) *Assignment of Responsibilities.* (1) The Regional Director shall:

(i) In the case of a request for immediate services, acknowledge receipt of the request, verify (with assistance from the Secretary) that State resources are insufficient, approve or disapprove the State's request, and obligate and advance funds for this purpose;

(ii) In the case of a regular program application:

(A) Acknowledge receipt of the request;

(B) Request the Secretary to conduct a review to determine the extent to which assistance requested by the Governor or his/her authorized representative is warranted;

(C) Based on the recommendation of the Secretary, recommend approval or disapproval of the application for assistance under this section; and forward the recommendation and documentation to the Assistant Associate Director;

(D) Assist the State in preliminary surveys and provide guidance and technical assistance (through the Secretary) if requested to do so; and

(E) Look to the Secretary for program oversight and monitoring.

(2) The Secretary shall:

(i) Provide technical assistance to the Regional Director in reviewing a State's application, to a State during program implementation and development, and to mental health agencies, as appropriate;

(ii) At the request of the Regional Director, conduct a review to verify the extent to which the requested assistance is needed and provide a recommendation on the need for supplementary Federal assistance. The review must include:

(A) A verification of the need for services with an indication of how the verification was conducted;

(B) Identification of the Federal mental health programs in the area, and the extent to which such existing programs can help alleviate the need;

(C) An identification of State, local, and private mental health resources, and the extent to which these resources can assume the workload without assistance under this section, and the extent to which supplemental assistance is warranted;

(D) A description of the needs; and

(E) A determination of whether the plan adequately addresses the mental health needs;

(iii) If the application is approved, provide grant assistance to States or the designated public or private entities;

(iv) If the application is approved, monitor the progress of the program and perform program oversight;

(v) Coordinate with, and provide program reports to, the Regional Director and the Assistant Associate Director; and

(vi) Make the appeal determination involving allowable costs and termination for cause as described in paragraph (h)(3) of this section.

(3) The Assistant Associate Director shall:

(i) Approve or disapprove a State's request for assistance based on recommendations of the Regional Director and the Secretary;

(ii) Obligate funds and authorize advances of funds to the Department of Health and Human Services;

(iii) Request that the Secretary designate a Project Officer; and

(iv) Maintain liaison with the Secretary.

(f) *Time Limitations.* (1) Application filing. The Governor or his/her authorized representative must, not later than 60 days from the date of declaration of a major disaster, submit an application to the Regional Director.

(2) Program period. The authorized program period shall not exceed nine months from the first day disaster crisis counselors are trained, or if training is not part of the program, the first day services are provided, except that upon the request of the Regional Director and the Secretary, the Assistant Associate Director may authorize up to 90 days of additional program period because of documented extenuating circumstances.

(g) *Eligibility Guidelines.* (1) For services. An individual may be eligible for crisis counseling services if he/she was a resident of the designated major disaster areas or was located in the area at the time of the major disaster and if:

(i) He/she has a mental health problem which was caused or aggravated by the major disaster or its aftermath; or

(ii) He/she may benefit from preventive care techniques.

(2) For training. (i) Those mental health specialists who are employed under or are consultants to the crisis counseling program are eligible for the specific instruction that may be required to enable them to provide professional mental health crisis counseling to eligible individuals.

(ii) All Federal, State and local disaster workers responsible for assisting disaster victims are eligible for general instruction designed to enable them to deal effectively and humanely with disaster victims.

(h) *Grant Awards.* (1) The amount of any regular program grant award shall be determined on the basis of the Secretary's estimate of the sum necessary to carry out the grant purpose. The Assistant Associate Director will, depending on availability of funds, advance funds to HHS for regular program funding. The Regional Director may advance funds to a State for immediate services.

(2) Neither the approval of any application nor the award of any grant commits or obligates the United States in any way to make any additional, supplemental, continuation, or other award with respect to any approved application or portion of any approved application.

(3) Several other regulations of the Department of Health and Human Services apply to grants under this

section. These include, but are not limited to:

45 CFR Part 16—HHS grant appeals procedures
42 CFR Part 50, Subpart D—PHS grant appeals procedures
45 CFR Part 74—Administration of grants
45 CFR Part 75—Informal grant appeals procedures (indirect cost rates and other cost allocations)
45 CFR Part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services (effectuation of Title VI of the Civil Rights Act of 1964)
45 CFR Part 81—Practice and procedure for hearings under Part 80
45 CFR Part 84—Nondiscrimination on the basis of handicap in Federally-assisted programs
45 CFR Part 86—Nondiscrimination on the basis of sex in Federally-assisted programs
45 CFR Part 91—Nondiscrimination on the basis of age in Federally-assisted programs.

(4) Any funds granted pursuant to this section shall be expended solely for the purposes specified in the approved application and budget, these regulations, the terms and conditions of the award, and the applicable cost principles prescribed in Subpart Q of 45 CFR Part 74.

(i) *Reporting Requirements.* (1) Grantees (States, public or private agencies). The grantees shall submit the following reports to the Secretary, the Regional Director, and the State Coordinating Officer:

(i) Quarterly progress reports, as required by the Regional Director or the Secretary;

(ii) A final program report, to be submitted within 45 days after the end of the program period;

(iii) An interim accounting of funds, to be submitted with the final program report;

(iv) A final accounting of funds, if required, upon completion of the audit; and

(v) Such additional reports as the FCO, SCO, or Secretary may require.

(2) The Secretary. As part of project monitoring responsibilities, the Secretary shall report to the Assistant Associate Director and to the Regional director at least quarterly on the progress of crisis counseling programs, in a report format jointly agreed upon by the Secretary may also be required to provide special reports, as requested by the FCO. The Secretary shall require progress reports and other reports from the grantee to facilitate his/her project monitoring responsibilities.

(j) *Financial Accountability.* All Federal funds made available to grantees under this section shall be properly accounted for as Federal funds in the accounts of the grantees. The Secretary is accountable to FEMA for funds made available to the Department under section 413. The Secretary shall, within 90 days of completion of a program, submit to the Assistant Associate Director a final accounting of all expenditures for the program and return to FEMA all excess funds. Attention is called to the requirements of 44 CFR Subpart I, relating to the reimbursement of Federal agencies by FEMA.

(k) *Federal Audits.* The crisis counseling program is subject to Federal audit. The Associate Director, the Regional Director, the FEMA Inspector General, the Secretary, and the Comptroller General of the United States, or their duly authorized representatives, shall have access to any books, documents, papers, and records that pertain to Federal funds, equipment, and supplies received under this section for the purpose of audit and examination.

Dated: February 13, 1985.

Samuel W. Speck,

Associate Director, State and Local Programs and Support.

[FR Doc. 85-5560 Filed 3-8-85; 8:45 am]

BILLING CODE 6718-61-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

List of OMB Control Numbers Assigned Pursuant to the Paperwork Reduction Act

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action amends the Commission's list of OMB approved information collection requirements contained in the Commission's Rules.

This action is necessary to comply with the Paperwork Reduction Act, which requires that agencies display a current control number assigned by the Director of the Office of Management and Budget for each agency information collection requirement.

This action will provide the public with a current list of information collection requirements in the Commission's Rules which have OMB approval.

EFFECTIVE DATE: March 11, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Jerry Cowden, Office of Managing Director (202) 632-7513.

SUPPLEMENTARY INFORMATION: List of Subjects in 47 CFR Part 0

Organization and functions (Government agencies), Reporting and recordkeeping requirements.

Order

In the matter of editorial amendment of § 0.408 of the Commission's Rules.

Adopted: March 4, 1985.
Released: March 5, 1985.

1. Section 3507(f) of the Paperwork Reduction Act of 1980 requires agencies to display a current control number assigned by the Director of the Office of Management and Budget ("OMB") for each agency information collection requirement.

2. Section 0.408 of the Commission's Rules displays the OMB control numbers assigned to the information collection requirements contained in the Commission's Rules. OMB control numbers assigned to Commission forms are not listed in this section since those numbers appear on the forms.

3. This Order amends § 0.408 to remove listings of information collections which the Commission has eliminated or to add listings of new information collections which OMB has approved.

4. Authority for this action is contained in section 4(i) of the Communications Act of 1934, as amended, and § 0.231(d) of the Commission's Rules. Since this amendment is editorial in nature, the public notice, procedure, and effective date provisions of 5 U.S.C. 553 do not apply.

5. Accordingly, it is ordered, that § 0.408 of the rules is amended in accordance with the attached appendix, effective on the date of publication in the **Federal Register**.

6. Persons having questions on this matter should contact Jerry Cowden at (202) 632-7513.

Federal Communications Commission.

Edward J. Minkel,

Managing Director.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Appendix

PART 0—[AMENDED]

47 CFR Part 0 is amended to read as follows:

1. In 47 CFR 0.408, paragraph (a) is amended by adding a sentence to read as follows:

§ 0.408 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

(a) *Purpose.* * * * OMB control numbers assigned to Commission forms are not listed in this section since those numbers appear on the forms.

* * * * *

2 In 47 CFR 0.408, paragraph (b) is amended by removing the following rule sections and their corresponding OMB control numbers:

* * * * *

(b) * * *

22.203	3060-0150
22.204	3060-0150
22.207	3060-0150
22.300	3060-0150
22.512	3060-0150
73.86	3060-0158
73.274	3060-0155
73.295	3060-0159
73.574	3060-0156
73.642	3060-0153
73.677	3060-0152
73.1810 (including footnote)	3060-0013
73.1610 (including footnote)	3060-0060
73.1830	3060-0125
73.1850	3060-0163
73.3548	3060-0159
73.4020	3060-0191
73.4025	3060-0196
74.803	3060-0244

* * * * *

3. In 47 CFR 0.408, paragraph (b) is amended by adding the following rule sections and their corresponding OMB control numbers:

* * * * *

(b) * * *

2.955	3060-0329
15.69(b)	3060-0328
15.814(b)	3060-0329
15.834(b)-(c)	3060-0329
18.80	3060-0328
18.105(c)-(d)	3060-0328
18.141(d)	3060-0328
18.142(b)	3060-0328
18.182	3060-0328
18.183	3060-0328
43.31	3060-0058
43.61	3060-0106
73.68	3060-0321
73.69	3060-0326
73.1400	3060-0320
81.403	3060-0325
97.36(c)	3060-0329

* * * * *

4. In 47 CFR 0.408 paragraph (b) is amended by changing "22.501(1)(10)(ii)" to "22.501(l)(10)(ii)". (**Note:** The paragraph designation is changed from the numeral "1" to the letter "l.")

[FR Doc. 85-5725 Filed 3-8-85; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 69

[CC Docket No. 78-72; Phase I; FCC 85-87]

MTS and WATS Market Structure

AGENCY: Federal Communications Commission.

ACTION: Final rule. Extension of existing waiver.

SUMMARY: This Order applies interstate single line end user charges to party-line subscribers, and extends until further order the existing waiver from the local transport provisions of the Commission's access charges rules. These actions have been taken to facilitate the development of charges that correspond more closely to the underlying cost characteristics that are associated with the provision of those services.

EFFECTIVE DATE: February 28, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Kent R. Nilsson, Common Carrier Bureau, Federal Communications Commission, Washington, D.C. 20554, (202) 632-6363.

SUPPLEMENTARY INFORMATION:

Notice of Proposed Rulemaking, CC Docket No. 78-72, Phase I, FCC 84-604 (released December 28, 1984), 49 FR 50413 (December 28, 1984).

List of Subjects in 47 CFR Part 69

Communications Common Carriers.

Memorandum Opinion and Order

In the matter of MTS and WATS Market Structure (CC Docket No. 78-72; Phase I).

Adopted: February 22, 1985.

Released: February 27, 1985.

Before the Commission:

I. Introduction

1. In a Notice of Proposed Rulemaking released on December 28, 1984 (*"Notice"*), we requested comments on, *inter alia*, whether we should amend or waive the provisions of Part 69 of our Rules governing multi-party subscriber line charges[1] and local transport charges.[2] In the *Notice*, we established an expedited comment schedule[3] to permit us to resolve these issues prior to March 1, 1985, the date on which the exchange carriers are required to file their access tariffs for the year beginning June 1, 1985.[4] In this Order, we amend our rules to require that multi-party subscriber line charges be assessed at the same monthly rate as single-party subscriber line charges.[5] We also extend, until further order, the existing waiver of our rules with respect to the computation of local transport charges.[6]

II. Discussion

A. Multi-Party Subscriber Line Charges

2. In the initial *Access Charge Order*,[7] we directed that multi-party subscriber line charges be calculated by dividing the single-party charge by the number of subscribers sharing each party line.[8] On reconsideration, we amended the rule to permit charges to be calculated on the basis of the average level of subscription or "fill" in each class of party-line service.[9] Those determinations were appealed to the United States Court of Appeals for the District of Columbia Circuit, and were subsequently remanded for further consideration.[10] In effect, the Court held that the Commission had not fully considered record evidence suggesting that the multi-party rate structure we

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[1] *MTS and WATS Market Structure*, CC Docket 78-72, Phase I, Notice of Proposed Rulemaking, FCC 84-604 (released December 28, 1984) at paras. 2-7.

[2] *Id.* at paras. 11-13.

[3] *Id.* at para. 23.

[4] *See* § 69.3 of the Commission's Rules, 47 CFR 69.3 (1984).

[5] *See* § 69.203 of the Commission's Rules, 50 FR 944 (January 8, 1985).

[6] *AT&T Petition for Waiver of §§ 69.1(b), 69.3(c), 69.4(b)(7) and 8, 69.111 and 69.112 of the Commission's Rules and Regulations*, 94 FCC 2d 545 (1983) (*"Transport Waiver Order"*); *MTS and WATS Market Structure*, CC Docket No. 78-72, Phase I, *Memorandum Opinion and Order*, 97 FCC 2d 834 (1984) at para. 88.

[7] *MTS and WATS Market Structure*, CC Docket No. 78-72, Phase I, 93 FCC 2d 241 (1983) (*"Access Charge Order"*), *modified on reconsideration*, FCC 83-536, 48 FR 10319, 54 RR2d 615 (released on August 22, 1983) (*"First Reconsideration Order"*), *further modified on reconsideration*, FCC 84-36, 49 FR 7810, 55 RR2d 785 (released February 15, 1984) (*"Second Reconsideration Order"*), *aff'd in part, remanded in part, Nat'l Ass'n of Regulatory Utility Comm'rs v. FCC* (*"NARUC v. FCC"*), 737 F.2d 1095 (D.C. Cir. 1984), *cert. denied*, —— *U.S.L.W.* —— (Feb. 19, 1985).

[8] *Access Charge Order* at 348. *See* 47 CFR 69.104(c) (1983).

[9] *First Reconsideration Order* at Appendix A, § 69.104(c).

[10] *NARUC v. FCC*, *supra* note 7, 737 F.2d at 1127.

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had devised (1) would result in subscriber line charges for multi-party subscribers that would not correspond to the costs associated with the provision of multi-party service, and (2) would provide "an artificial economic incentive" that would induce single-party subscribers to migrate to multi-party service.[11]

3. Comments and data submitted in response to the *Notice* strongly suggest that the costs of providing multi-party services are not proportional to either the level of subscriber fill or the maximum number of subscribers that could be accommodated by a particular grade of multi-party service.[12] This conclusion is based on several factors.

First, multi-party service is frequently provided by "bridging" parties at the central office.[13] In such cases, loop plant that is capable of providing single-party service is connected at the central office to provide multi-party service. This leads to the somewhat anomalous result that party-line service to "bridged" subscribers may entail per-subscriber costs that are equal to or greater than those incurred on behalf of single-party subscribers.[14] Second, engineering design considerations that are unique to multi-party service result in telephone plant that is more complex and more expensive than telephone plant that is devoted to single-party service.[15] Third, maintenance expenses are evidently higher on multi-party lines,[16] as are other, non-capital related, operating expenses.[17] In addition, certain traffic sensitive costs may also be higher for party-line service. For example, the absence of automatic number identification on party lines necessitates operator handling of toll and other measured services.[18]

4. These factors support the conclusion that our existing rule for multi-party subscriber line charges is not consistent with our objective of tailoring subscriber line charges to the cost characteristics of the underlying services. Moreover, the present rule has created an unintended and undesired incentive for single-party subscribers to migrate to multi-party service offerings.[19] As the Rural Telephone Coalition points out, where such migration occurs, "[i]f bridging is used all the loops remain in use but, if true party lines are created, plant is idled while revenue requirements which must be recovered from subscribers remain."[20] We thus conclude that we should modify the existing rule (1) to avoid inducing an unintended subscriber migration from single-party to multi-party service, and (2) to conform multi-party subscriber line charges more closely to the underlying nature of the costs that are associated with the provision of multi-party service.[21]

5. In the *Notice*, we suggested that one alternative to the present rule would be to assess an identical subscriber line charge on single-party and multi-party subscribers. Such a policy would not tend to induce migration from single-party to multi-party service. However, before increasing the multi-party subscriber line charge to the level found to be appropriate for single-party subscribers, we must consider whether that increase would be justified on the basis of the interstate non-traffic sensitive costs that are associated with the provision of multi-party service. As described above, the record in this proceeding supports a finding that these costs are in many cases only slightly less, and in some cases equal to or even greater, than the costs of single-party service. Furthermore, as we stated in the *Notice:*

> Even if a party-line rate should be somewhat lower than a single-line rate in a system of subscriber line charges that reflects most non-traffic sensitive costs, there may be no reason to distinguish between party-line and single-line customers for purposes of assessing initial charges of $2.00 or less. Such charges would not recover the full costs that are attributable to either single-line or party-line customers."[22]

This position has not been contested in the comments and is explicitly supported by a number of parties, who contend that the best approach to multi-party subscriber line charges would be to assess those charges at the single-party level for the 1985 and 1986 exchange carrier switched access filings.[23] We thus conclude that subscriber line charges should be identical for both single-party and multi-party subscribers.[24]

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[11] *Id. at* 1127–28.

[12] *See* Comments of the Rural Telephone Coalition (hereinafter, "RTC Comments") as supplemented on January 23, 1985, with appendices: Comments of Pacific Bell Telephone Company (hereinafter, "Pacific Bell Comments") at 8; Comments of Rochester Telephone Corporation (hereinafter, "Rochester Comments") at 2–4; Comments of United Telephone System, Inc. (hereinafter, "United Comments") at 2–4; Comments of the Mountain States Telephone and Telegraph Company, Northwestern Bell Telephone Company, and Pacific Northwest Bell Telephone Company (hereinafter, "U.S. West Comments") at 2–4; Comments of the United States Telephone Association (hereinafter, "USTA Comments") at 2.

[13] Rochester Comments at 3; RTC Comments at 4; U.S. West Comments at 3; United States Telephone Association Comments (hereinafter "USTA Comments") at 2–3.

[14] GTE Telephone Companies' Reply Comments at 3–6. U.S. West Comments at 3; RTC Comments at 3–5; USTA Comments at 2.

[15] "There are substantial cost benefits to be obtained from the use of single-party technology. Single party service greatly simplifies subscriber loop plan [sic] design since ringer isolators, bridge tap isolators and different ringer configurations for automatic number identification arrangements are not needed. Single party service results in quieter rural circuits and in simpler and less costly designs for pair gain equipment." RTC Comments at 5.

[16] Rochester Comments at 4.

[17] *See* Pacific Bell Comments at 8. ("In California, although capital costs for party line services are slightly lower than single line service, annual expenses are substantially higher.")

[18] Rochester Comments at 4. Rochester also stated that billing errors occur more frequently with multi-party services. A higher billing error frequency rate would presumably entail additional clerical expense.

[19] RTC Comments at 5.

[20] RTDC Comments at 4.

[21] *Accord* Comments of the Utah Public Service Commission and the Utah Division of Public Utilities, *passim.*

[22] *Notice* at para. 7.

[23] USTA Comments at 3; RTC Comments at 6; United Comments at 4; Rochester Comments at 4; U.S. West Comments at 4; Comments of the Bell Telephone Co. of Pennsylvania, the Chesapeake and Potomac Telephone Companies, the Diamond State Telephone Co., the Illinois Bell Telephone Co., the Indiana Bell Telephone Co., the Michigan Bell Telephone Co., the New England Telephone and Telegraph Co., the New Jersey Bell Telephone Co., the New York Telephone Co., the Ohio Bell Telephone Co., the South Central Bell Telephone Co., the Southern Bell and Telegraph Co., Wisconsin Bell, Inc. (collectively, "BCR Comments") at 6. In addition, an interexchange carrier also supported identical subscriber line charges. Comments of Satellite Business Systems at 1.

[24] Under this approach, the end user common line charge for each terminating line that is rated as multi-party service shall be the same as the single-party end user common line charge for that category of service. This means that: (1) A multi-party residential subscriber with one terminating line will be assessed the single-line charge; (2) a multi-party residential subscriber with two or more terminating lines will be assessed the single-line charge for each of those lines; (3) a multi-party buisness subscriber with one terminating line will be assessed the single-line charge; and (4) a multi-party business subscriber with two or more terminating lines would be assessed the multiline business charge for each of those lines.

With respect to the last category, the comments did not focus on whether different principles should apply to multi-party, multiline business subscribers, in light of the fact that the single-party multiline business charge is limited not to $1.00/$2.00 over the next two years, but only to the $6.00 cap provided in section 69.202(b) of our rules. While the access tariff of the National Exchange Carrier Association ("NECA") lists subscriber line charges for multi-party, multiline business subscribers, (*see* NECA Tariff, F.C.C. No. 1, § 4.7(B)) the lack of any comments on this issue may indicate that, as a practical matter, there are few such subscribers. In any event, the record does strongly support the findings that (i) the subscriber fill approach of our previous rule is seriously incongruent with the actual costs of providing party-line service, and (ii) assessing the single-party charge on multi-party service will provide a much closer match between

Continued

6. Accordingly, we hereby adopt the following addition to Subpart C of Part 69 of our rules:

Section 69.203 Interim Common Line Charges.

* * * * *

(e) The End User Common Line charge for each multi-party subscriber shall be assessed as if such subscriber had subscribed to single-party service.[25]

B. Local Transport Waiver

7. In the *Notice*, we requested comments on temporarily continuing the waiver of our rules provided in the *Transport Waiver Order* and the *Second Reconsideration Order*,[26] while we complete our analysis of the transport issues.[27] In light of the comments that have been received, we have concluded that additional time for analysis will be required. In addition, almost all of the commenting parties, including those who support the rate structure for transport provided in our current rules, supported the extension of the waiver at this time.[28] Accordingly, we shall extend the transport waiver until further order.[29]

8. The comments filed on our transport rules in response to the *Notice* will, of course, be considered in our further analysis of those issues. In addition, as we stated in the *Notice*,[30] interested persons may submit additional comments on other waiver options or possible changes in the transport rules when comments are submitted on the other issues discussed in the *Notice*. In particular, we invite such comments in light of two sets of arguments that were presented in comments already filed in response to the *Notice*. First, the Ad Hoc Telecommunications Users Committee contends that:

[T]ermination of the waiver at the earliest possible basis [sic] would: (a) provide greater incentives for interstate carriers, LECs and end users to utilize network facilities more efficiently, and, as a consequence, (b) reduce the possibility of uneconomic bypass of switched access facilities.[31]

Second, the Department of Justice (hereinafter, the "DOJ"), asserts that the "equal [charge] per unit of traffic" requirement is an essential part of the MFJ,[32] which serves the dual purposes of ensuring that (1) AT&T bears a share of the network reconfiguration costs incurred by the BOCs to provide other interexchange carriers with equal access services, and (2) there is a smooth transition to a competitive interexchange marketplace.[33] DOJ has evidently concluded that these purposes would be jeopardized if we were to terminate the waiver and enforce the local transport portions of the rules.[34] Parties are also invited to comment on DOJ's contention that the approach of the MFJ standard for transport charges has certain advantages over the existing Part 69 local transport rules, not only as a transitional approach, but as a permanent feature of the rate structure for access services in an environment with multiple interexchange carriers.[35]

III. Ordering Clauses

9. Accordingly, it is ordered That Part 69 of the Commission's Rules is amended by the addition of § 69.203(e) as shown in Appendix A.

10. It is further ordered That § 69.203(e) shall be effective February 28, 1985. We find good cause for requiring an effective date earlier than 30 days following publication in the **Federal Register** in view of the need for prompt implementation of § 69.203(e) in exchange carrier access tariffs to be filed before March 1, 1985.[36]

11. It is further ordered That the waiver of those sections of Part 69 of the Commission's Rules provided in the *Transport Waiver Order*, as extended in

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costs and charges. Furthermore, the record is devoid of any quantitative information that would support a multi-party, multiline business charge at some intermediate level, between that derived from the subscriber fill approach and the full, single-party rate. Accordingly, we conclude that the single-party multiline busness rate should apply to multi-party, multiline business subscribers. We find that this approach is both most consistent with our responsibilities under the Act and responsive to the concerns of the Court of Appeals that led it to remand the issue of multi-party charges in *NARUC v. FCC*.

[25] Assessing identical subscriber line charges on multi-party and single-party subscribers would also not be inconsistent with the goals of the Rural Electrification Act of 1936, as well as the Communications Act of 1934. *See* 7 U.S.C. 901–905 (1961); 47 U.S.C. 151 (1982). As discussed above, providing false price signals concerning the relative costs of single-party and multi-party service could create an artificial economic incentive for subscribers to migrate from the former to the latter, which could entail, for some subscribers, an unnecessary (that is regulation-driven, rather than cost-driven) degradation in the quality of service received. Among the factors that affect the relative quality of party-line service are the following:

(1) Data transmissions over party-line facilities are impeded by the noise characteristics that are induced by the additional local loop connections that are associated with party-line service.

(2) Data transmissions on party-lines are susceptible to discontinuities and errors that result from attempts by other subscribers to utilize local loop plant to complete calls. The comparative significance of these impediments will increase as data transmissions increase throughout the United States.

(3) Competition in the retail market for terminal equipment for party-line telephones is hindered by the requirement, in some exchanges, that party-line CPE needs special frequency tuning that corresponds to the signalling frequency associated with the ringing of particular telephones on party-line circuits.

(4) Toll and message rated calls for four-party and eight-party lines must be routed to an operator to identify the calling party for billing purposes, as compared with the higher level of accuracy and processing efficiency that is associated with the use of automatic number identification equipment.

(5) Custom calling features (*e.g.*, abbreviated dialing, call waiting, and call forwarding) cannot be as readily applied to party-lines without special arrangements.

(6) Testing of party-lines is more intricate and time consuming than is the case with single lines.

(7) Party-line service imposes delays upon subscribers in completing calls until the prior or contemporaneous use of common circuit plant by other party-line subscribers has concluded.

See generally, "Preliminary Technical Reference (PUB48501) Local Switching System General Requirements (December, 1980)", Director—Exchange Systems Design, American Telephone and Telegraph Company, 295 North Maple Avenue, Basking Ridge, New Jersey.

[26] *Transport Waiver Order*, *supra* note 6 (establishing waiver for period ending December 31, 1984); *Second Reconsideration Order*, *supra* note 7, at para. 88 (extending waiver through May 31, 1985).

[27] *Notice* at para. 13. The procedural history of the transport waiver and the substantive issues involved are described in the *Notice* at paras. 11–13.

[28] Ad Hoc Telecommunications Users Committee Comments at 2; BCR Comments at 1; BCR Reply Comments at 3; Competitive Telecommunications Association Comments at 3–5; Department of Justice Comments at 7–9; GTE Telephone Companies at 1; GTE Sprint Communications Corporation at 1–2, 5–10; Lexitel Comments at 2–7; MCI Comments at 2–4; MCI Reply Comments at 1–3; Rochester Comments at 4; Southwestern Bell Telephone Co. Reply Comments at 1–3; Southern New England Telephone Co. Comments at 3, 5; Satellite Business System Comments at 1–4; United Comments at 4; USTA Comments at 3–4; United States Transmission Services, Inc. Comments at 3–4; U.S. West Comments at 5–6.

[29] Exchange carriers filing access tariffs during 1985 should assume for the purpose of those filings that the transport waiver will continue through May 31, 1986.

[30] *Notice* at para. 13.

[31] Comments of the Ad Hoc Telecommunications Users Committee at 2.

[32] Modification of Final Judgment, entered in *United States v. American Telephone and Telegraph Co.*, 552 F.Supp. 131 (D.D.C. 1982), *aff'd sub. nom. Maryland v. United States*, 103 S.Ct. 1240 (1983).

[33] DOJ Comments at 4–8.

[34] For example, DOJ states: In fact, the financing of the BOCs' separate intraexchange and exchange access networks, including access tandem switching capacity, could be in question if AT&T could avoid the share of the transitional costs that it would pay under the MFJ's equal-per-unit-of-traffic provision. Additionally, a tariff rule that permitted AT&T to shift all of the access costs of new tandem switches to it competitors (*e.g.*, by permitting AT&T to specify a direct trunking route) would relieve AT&T of its agreement that until September 1, 1991, it would obtain access transport at rates no more favorable, on a usage basis, than that charged other interexchange carriers.

DOJ Comments at 7. In this regard, the views of the Bell Operating Companies with respect to DOJ's assessment would be of considerable assistance.

[35] DOJ Comments at 10–13.

[36] *See* section 553(d)(3) of the Administrative Procedure Act, 5 U.S.C. 553(d)(3) (1982), and § 69.3 of the Commission's rules.

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the *Second Reconsideration Order*,[37] is extended until further order.

12. It is further ordered That the Secretary shall cause this Memorandum Opinion and Order to be published in the **Federal Register**.[38]

Federal Communications Commission.
(Secs. 4, 201–205, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 201–205)

William J. Tricarico,
Secretary.

Appendix A

PART 69—[AMENDED]

Subpart C of Part 69 of the Commission's Rules is amended as follows: Section 69.203 is amended by adding a new paragraph (e) to read:

§ 69.203 Interim Common Line Charges.

* * * * *

(e) The End User Common Line charge for each multi-party subscriber shall be assessed as if such subscriber had subscribed to single-party service.

[FR Doc. 85–5726 Filed 3–8–85; 8:45 am]

BILLING CODE 6712-01-M

[37] *See* n.6, *supra*, and references cited therein.

[38] These actions are taken pursuant to sections 1, 4(i), and 201–205 of the Communications Act of 1934, 47 U.S.C. 151, 154(i), 201–205 (1982). We certify that the Regulatory Flexibility Act is not applicable to the rules we are adopting in this proceeding. Although some local exchange carriers are very small firms, local telephone companies do not appear to fall within the Regulatory Flexibility Act's definition of a "small entity." That Act incorporates the definition of a "small business" in section 3 of the Small Business Act as a definition of a "small entity." The latter definition excludes any business that is dominant in its field of operation. Exchange carriers, even small ones, enjoy a dominant monopoly position in their local service area. The Commission has found all exchange carriers to be dominant in the *Competitive Carrier* proceedings, 85 FCC 1, 23–24 (1980). To the extent that interexchange carriers may be affected by these rules, we hereby certify that these rules will not have a significant economic effect on a substantial number of small entities. In any event, the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164) expressly provides that its provisions are not applicable to rules that involve rates. *See* 5 U.S.C. 601(2) (1984).

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Proposed Rules

Federal Register
Vol. 50, No. 47
Monday, March 11, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1002 and 1004

[Docket Nos. AO–160–A62 and AO–71–A74]

Milk in the Middle Atlantic and New York-New Jersey Marketing Areas; Recommended Decision and Opportunity to File Written Exceptions on Proposed Amendments to Tentative Marketing Agreements and to Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision recommends expanding the Middle Atlantic and New York-New Jersey marketing areas to include 20 east central and northeastern Pennsylvania counties based on industry proposals considered at a public hearing held in July-October 1983 on 24 separate days. The Middle Atlantic marketing area would be expanded to include 5 additional unregulated east central Pennsylvania counties and the New York-New Jersey marketing area would be expanded to include 15 additional unregulated northeastern Pennsylvania counties. The decision also would revise the location adjustment provisions of the two orders to more closely align fluid milk (Class I) prices at various plant locations in the expanded territory. The order expansions and changes in location adjustments are needed to reflect current marketing conditions and to assure orderly marketing in the two Federal order marketing areas.

DATE: Comments are due on or before April 10, 1985.

ADDRESS: Comments (six copies) should be filed with the Hearing Clerk, Room 1077, South Building, United States Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Maurice M. Martin, Marketing Specialist, Dairy Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C. 20250, (202) 447–7183.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. The amendments will promote orderly marketing of milk by producers and regulated handlers.

The hearing notice specifically invited interested persons to present evidence concerning the probable regulatory and informational impact of the proposals on small business. This recommended decision contains an economic analysis and takes into consideration the impact of the proposed changes in regulation on the dairy industry, including to the extent necessary, the impact of such changes on small businesses. Although this decision is not identical to a regulatory flexibility analysis, it is based on the record evidence obtained at a public hearing and therefore serves the same purpose.

Prior document in this proceeding:

Notice of Hearing: Issued June 17, 1983; published June 23, 1983 (48 FR 28655).

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreements and the orders regulating the handling of milk in the Middle Atlantic and New York-New Jersey marketing areas. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C., 20250, by the 30th day after publication of this decision in the **Federal Register**. Six copies of the exceptions should be filed. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The proposed amendments set forth below are based on the record of a public hearing held at Allentown, Pennsylvania, on July 19-August 12 and October 17–26, 1983, and at Philadelphia, Pennsylvania, on September 12–13, 1983 pursuant to a notice of hearing issued June 17, 1983 (48 FR 28655).

This hearing was reopened on several occasions since the initial sessions were held in July-October 1983. The reopened hearings concerned issues that were not included at the July-October 1983 sessions. Set forth below is a summary of those various proceedings.

A public hearing was held on May 23, 1984, that reopened the July-October 1983 hearing pursuant to a notice issued May 2, 1984 (49 FR 19502) concerning proposed amendments to the Middle Atlantic milk order. Based on the evidence presented at the reopened hearing the Assistant Secretary issued a final decision on August 6, 1984 (49 FR 32209) and an order amending the Middle Atlantic milk order, effective September 1, 1984, on August 17, 1984 (49 FR 33431). The September 1 amendments revised "§ 1004.7 Pool plant" provisions to provide that a distributing plant would continue to be fully regulated for the immediately succeeding two months if it meets the total Class I disposition percentage requirement during the prior month and continues to meet the 15 percent in-area Class I disposition requirement during such months. The amendments also revised "§§ 1004.9 Handler and 1004.30 Reports of receipts and utilization" provisions to allow a federation of cooperative associations to act as a handler in diverting the member milk of its individual cooperative associations to nonpool plants and to report such receipts and disposition to the market adminsitrator. Finally the amendments also revised "§ 1004.12 Producer" provisions by increasing from 40 to 50 percent the percentage of a cooperative association or federation of cooperative associations member milk supply that may be diverted from pool plants to nonpool plants.

Another public hearing was held July 25–27, 1984, that reopened the July–

October 1983 hearing pursuant to notices issued June 22, 1984 (49 FR 26239) and July 3, 1984 (49 FR 27769) involving all 45 federal milk orders to consider a proposal to establish a separate class of utilization for milk used to make butter and nonfat dry milk in each milk order. The proposed minimum price under the orders for the new class would be the lower of the presently used Minnesota-Wisconsin price for manufacturing grade milk or a product formula price based on market prices for butter and nonfat dry milk. The issues considered at the July 25–27, 1984 reopened hearing are reserved for a separate decision.

The hearing was reopened again to consider proposed amendments to the Middle Atlantic order on September 13, 1984, pursuant to a notice of hearing issued August 30, 1984 (49 FR 35100). The September 13 reopened hearing concerned proposals to revise the base-excess provisions and the qualification requirements for a reserve processing plant operated by a federation of cooperative associations. Based on testimony presented at the September 13 reopened hearing the Deputy Assistant Secretary on October 17, 1984 (49 FR 42737) issued an emergency partial final decision and on November 6, 1984 (49 FR 44986) the Assistant Secretary issued an order amending the order effective November 14, 1984. The November 14 amendments revised "§ 1004.92 Computation of base for each producer" provisions to include in the computation of a producer's base milk deliveries during the 1984 base-forming period of August through December the dairy farmer's eligible deliveries to plants regulated under other Federal milk orders along with the dairy farmer's deliveries of producer milk under the Middle Atlantic order.

The other proposal considered at the September 13 reopened hearing would permit a federation of cooperative associations to qualify as a pool plant under certain conditions its reserve processing plant that is not completely separated from a nonpool plant located on the same premises. A recommended decision was issued based on the record evidence by the Deputy Administrator on January 29, 1985 (50 FR 4694) concerning this issue. The recommended decision would revise "§ 1004.7 Pool plant" provisions to afford pool plant status to a reserve processing plant operated by a federation of cooperative associations if it is proven to the satisfaction of the market administrator that a pipeline maintained between the pool plant and a nonpool plant operated by another person and located on the same premises is used only to move by-products (not milk) between such plants.

The material issues on the record of the hearing relate to:

1. Expansion of the Middle Atlantic and New York-New Jersey marketing areas.
2. Location adjustments.
3. Tank truck service charge under Order 2.
4. Classification of bulk fluid milk products in ending inventory under Order 2.
5. Pricing and payments for contaminated milk under Order 2.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *Expansion of the Middle Atlantic and New York-New Jersey marketing areas.* The marketing area of the Middle Atlantic (Federal Order No. 4) milk order should be expanded to include the additional Pennsylvania Counties of Berks, Carbon, Lehigh, Northampton, and Schuylkill. Further, the marketing area of the New York-New Jersey (Federal Order No. 2) milk order should be expanded to include the Pennsylvania Counties of Bradford, Columbia, Lackawanna, Luzerne, Lycoming, Monroe, Montour, Northumberland, Pike, Snyder, Sullivan, Susquehanna, Union, Wayne and Wyoming. Territories within the boundaries of the expanded part of each marketing area which are occupied by Government (municipal, State or Federal) reservations, institutions or other establishments should be considered as within the respective marketing areas.

The current Order 4 marketing area includes: The District of Columbia; The State of Delaware; in the State of Maryland the counties of Anne Arundel, Baltimore, Calvert, Caroline, Carrol, Cecil, Charles, Dorchester, Fredrick, Harford, Howard, Kent, Montgomery, Prince Georges, Queen Annes, Somerset, St. Marys, Talbot, Washington, Wicomico, and Worchester, and the City of Baltimore; in the State of New Jersey the counties of Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, Salem, and that part of Ocean County not included in the Order 2 marketing area; in the State of Pennsylvania the counties of Adams, Bucks, Chester, Cumberland, Dauphin, Delaware, Franklin, Fulton, Juniata, Lancaster, Lebanon, Montgomery, Perry, Philadelphia,and York; and in the State of Virginia the counties of Arlington, Fairfax, Loudoun and Prince William and the cities of Alexandria, Falls Church and Fairfax.

The current Order 2 marketing area includes: in the State of New York the counties of Albany, Broome, Chemung, Chenango, Columbia, Cortland, Delaware, Dutchess, Greene, Madison, Montgomery, Nassau, Onondaga, Orange, Otsego, Putnam, Rensselaer, Rockland, Schenectady, Schoharie, Schuyler, Sullivan, Tioga, Tompkins, Ulster, Washington, Westchester, and parts of Cayuga, Essex, Fulton, Herkimer, Oneida, Oswego, Saratoga, Steuben, Suffolk, Warren and Yates; and in the State of New Jersey the counties of Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Passaic, Somerset, Sussex, Union, Warren and the remaining part of Ocean County that is not in the Order 4 marketing area.

Three proposals concerning marketing area expansion were included in the hearing notice. The proposals involved expanding the Order 2 and 4 marketing areas to include 23 east central and northeastern Pennsylvania counties which are presently subject to the regulations of Pennsylvania Milk Marketing Board (PMMB). The PMMB establishes minimum prices for milk at the farm level and at the resale level in seven separate marketing areas which in combination embrace all of the State of Pennsylvania. Two of these seven marketing areas embrace the 23 counties proposed to be included under Federal regulations.

The two PMMB areas involved are: PMMB Area 2 which includes the counties of Berks, Lehigh, and Northampton; and PMMB Area 3 which includes the 20 counties of Bradford, Carbon, Clinton, Columbia, Lackawanna, Luzerne, Lycoming, Monroe, Montour, Northumberland, Pike, Potter, Schuylkill, Snyder, Sullivan, Susquehanna, Tioga, Union, Wayne and Wyoming. One proposal would have extended the Middle Atlantic marketing area to include the 3 counties of PMMB Area 2 and 9 of the 20 counties included in PMMB Area 3. Another proposal would have added only the 3 counties in PMMB Area 2 to the Middle Atlantic marketing area. The third proposal would have expanded the New York-New Jersey marketing area to include all of the 20 counties in PMMB Area 3. As described later, all of these proposals were modified by proponents either at the hearing or in post-hearing briefs.

Pennmarva Dairyman's Federation, Inc. (Pennmarva), a federation of cooperative associations primarily associated with the Middle Atlantic market—Capitol Milk Producers Cooperative, Inc., Inter-State Milk

Producers' Cooperative, Dairymen, Inc., Middle Atlantic Division, Maryland and Virginia Milk Producers Association, Inc., and Valley of Virginia Cooperative Milk Producers Association—proposed that the Order 4 marketing area be expanded to include the 12 Pennsylvania Counties of Berks, Carbon, Columbia, Lehigh, Luzerne, Monroe, Montour, Northampton, Northumberland, Schuylkill, Snyder and Union. Through its individual member cooperatives, the federation represents the majority of producers supplying plants presently regulated under Order 4. The other member of Pennmarva at the time of the hearing, Lehigh Valley Farmers Cooperative (Lehigh Valley), did not support the Federation's area expansion proposal. The cooperative's position regarding the area expansion issue as well as other issues considered at the hearing was represented by its marketing agent, Atlantic Processing, Inc. (API).

The Milk Distributors Association of the Philadelphia Area, Inc. (MDAPA) and the New Jersey Milk Industry Association, Inc. (NJMIA), two trade associations of milk dealers who operate regulated distributing plants in the Philadelphia and New Jersey portions of the Order 4 marketing area and the New Jersey portion of the Order 2 marketing area proposed that the Order 4 market be expanded to include the same territory proposed by Pennmarva. At the hearing and in a post-hearing brief the position of these two trade associations was part of a committee comprising 29 handlers who are regulated under either Order 2 or Order 4. This committee (referred to hereinafter as the Ad Hoc Committee) included most of the members of the MDAPA and NJMIA and a number of other handlers regulated under Order 2 who were not members of either association. The Ad Hoc Committee's witness modified the initial proposal submitted by the two handler associations to add to the Order 2 marketing area the eleven other northeastern Pennsylvania counties. The witness stated, however, that regardless of the division of the counties between the two Federal order marketing areas, the Ad Hoc Committee strongly advocated that all 23 counties be included in the marketing area of one of the two orders.

Northeast Dairy Cooperative Federation (NEDCO) and Eastern Milk Producers Cooperative Association (Eastern) proposed that the Order 2 marketing area be extended to include the 20 Pennsylvania counties that make up PMMB Area 3. NEDCO also proposed that the Order 4 marketing area be extended to include the 3 counties comprising PMMB Area 2. At the hearing NEDCO did not offer testimony suppporting this proposal. On questioning, however, the witnesses for both NEDCO and Eastern testified that it was not their intent to have the 20 counties regulated under Order 2 without the three other counties in question included under Order 4. Witnesses representing these two cooperative associations also stated that the 20-county area is an integral part of the Order 2 market because the vast majority of dairy farmers located in these counties are Order 2 producers and the reserve milk supplies for this area are carried by Order 2 producers.

In their post-hearing briefs, all of the proponents of marketing area expansion revised their positions concerning which of the 23 counties should be included in either the Order 2 or Order 4 marketing areas. In this regard, proponents recommended that the Order 4 marketing area be expanded to include the six counties of Berks, Carbon, Lehigh, Monroe, Northampton and Schuylkill and that the remaining 17 counties of PMMB Area 3 be added to the Order 2 marketing area. A basic reason stated for proposing such a configuration was that the 6–17 county split reflects the regulated market where the majority of producers in each of the 23 counties ship their milk. Another reason proponents gave for this division of the counties was that it assures a handler located in Williamsport, Pennsylvania, who would become fully regulated by the proposed area expansion and who has distribution in most of the 23 county area, to be regulated under the New York-New Jersey order without the possibility of the plant switching regulation seasonally back and forth between the two orders.

Although they were not represented at the hearing, two additional handlers joined in the post-hearing brief filed by the Ad Hoc Committee. These handlers, both of whom are located in Johnstown, Pennsylvania (PMMB Area 6), are Galliker's Quality Checked Dairy, a partially regulated distributing plant under Orders 4 and 36 and Johnstown Sanitary Dairy, a fully regulated distributing plant under the Eastern Ohio-Western Pennsylvania order (Order No. 36) with limited distribution in part of the 23-county area.

The proposals to expand the Middle Atlantic and New York-New Jersey marketing areas to include the 23-county area were opposed by API, a federation of 3 cooperative associations including Lehigh Valley Farmers, Dairylea Cooperative and Mt. Joy Farmer's Cooperative Association; Farmers Cooperative Dairy at Hazelton; Valley Farms Dairy at Williamsport; Guers Dairy at Pottsville; Freeman's Dairy at Allentown; several dairy farmer officers of the Berks County Dairy Farmers Association; and 4 dairy farmers who deliver milk to Guers Dairy. The basic reasons opponents gave for opposing the marketing area expansion were that there are no disorderly marketing conditions in the 23-county area and there have been no significant changes in marketing conditions since the March 24, 1975 decision of the Assistant Secretary that denied similar proposals to add the same 23-county area to the Middle Atlantic and New York-New Jersey marketing areas.

This 23-county area has a population of 2.3 million people based on the 1980 census. There are 8 major population centers and 10 smaller but significant population centers within the 23-county area. The 8 major centers and their 1980 population are Allentown (103,758), Scranton (88,117), Reading (78,686), Bethlehem (70,419), Wilkes Barre (51,551), Williamsport (33,401), Hazelton (27,318), and Easton (26,027). The 10 smaller population centers are Pottsville (18,195), Dunmore (16,781), Kingston (15,681), Nanticoke (13,044), Sunbury (12,292), Berwick (11,850), Bloomsburg (11,717), Carbondale (11,255), Emmaus (11,001), and Shamokin (10,357).

The 23-county area borders the Middle Atlantic and New York-New Jersey marketing areas on three sides. The Middle Atlantic marketing area borders the southern and southwestern proposed expanded counties while the New York-New Jersey marketing area borders the eastern and northern proposed expanded area. The proposed expanded area is linked to the major population centers of both the Order 2, and Order 4 markets by a network of limited access highways which included Interstate Routes, the Pennsylvania Turnpike and U.S. Routes. The area also contains numerous resorts in the Pocono Mountains that attract significant numbers of vacationers and second home residents from the major metropolitan centers of New York City and Philadelphia. Thus, this area has strong economic and social ties to the metropolitan areas of the two orders.

Most of the testimony and other evidence presented at the hearing with respect to marketing area extension was related to the PMMB Areas 2 and 3 marketing areas. Thus, the findings and conclusions set forth herein will, by necessity, focus primarily on marketing

conditions prevailing in these 2 areas rather than on a county-by-county basis.

At the time of the hearing, there were 16 [1] distributing plants located in the 23-county area. One of these plants, Dutch Valley Food Co. at Sunbury (a subsidiary of Weis markets), is a pool plant under Order 4. The record indicates that this plant distributes milk in the suburban Philadelphia area and the Harrisburg-Lancastar-York area of the Middle Atlantic market, the 23-county area, the west central area of Pennsylvania (PMMB Area 6) and in portions of Maryland, New Jersey and New York.

Another plant located in the 23-county area is API's distributing plant at Schuylkill Haven which is a temporary pool plant under Order 2. The witness representing API testified that fluid milk is distributed from this plant in Northern New Jersey, New York State, the 23-county area and the Middle Atlantic market. A more detailed account of the distribution from this plant is discussed later on.

Twelve of these plants are operated by proprietary handlers. These are: Blue Ribbon Farm Dairy at West Pittston; Clover Farms Dairy at Reading; Edgewood Farms at Troy; Freeman's Dairy at Allentown; Guers Dairy at Pottsville; Heisler's Cloverleaf at Tamaqua; Hyland Dairy at Wilkes Barre; Longacre's Modern Dairy at Barto; Maurer's Dairy at shamokin; Stocker Brothers at Easton; United Dairies at Sunbury; and Valley Farms Dairy at Williamsport. Five of these plants (Clover Farms, Guers, Longacres, Stocker Bros. and Valley Farms) also are partially regulated distributing plants under the Middle Atlantic order because of limited route distribution in the marketing area. The other plant in this area is operated by Farmers' Cooperative Dairy at Hazelton which is a cooperative association.

Clover Farms also distributes fluid milk in the NY–NJ marketing area. To cover these sales Clover Farms operates a bulk tank unit that is pooled under Order 2. In addition, the record indicates that Clover Farms distributes about 40 million pounds of fluid milk annually in PMMB Areas 2 and 3. A dairy farmer who delivers milk to Clover Farms' plant testified that 91 or 92 dairy farmers deliver milk to that plant.

A witness representing Valley Farms Dairy testified that this company distributes about 60 million pounds of fluid milk annually in 19 Pennsylvania counties. Fourteen of these counties—Bradford, Clinton, Columbia, Lackawanna, Luzerne, Lycoming, Montour, Northumberland, Schuylkill, Snyder, Sullivan, Tioga, Union and Wyoming—are in the territory that was proposed to be added to the marketing areas of the two orders. The other counties in which the handler had route distribution include Dauphin, Juniata and Perry (comprising part of the Middle Atlantic marketing area) and Centre and Mifflin which are part of PMMB Area 6. The Valley Farms witness testified that in its area of distribution its principal competitors are handlers that are regulated under Orders 2 and 4 and with federally unregulated operations. He also indicated that the majority of the handler's supply is obtained from Eastern.

A witness representing Guers Dairy testified that it receives about 15 million pounds of milk annually from 24 dairy farmers. The witness said Guers' Class I utilization was about 90 percent and that about 99 percent of the route distribution from the plant is in Schuylkill County. The remaining 1 percent is distributed in Carbon, Columbia, Dauphin, Luzerne and Northumberland counties. Also, the Guers witness testified that the company competes with at least three Order 4 handlers and three PMMB dealers. Although API distributes milk in the handler's distribution area, the witness held that API was not a competitor because API supplies large chain stores as opposed to the type of customers Guers services.

A witness representing Farmers' Cooperative Dairy testified that the cooperative received nearly 19 million pounds of milk in 1982 from its 50 member dairy farmers. The witness said its Class I utilization was about 75 percent and that about 90 percent of the cooperative's route distribution in in Luzerne County. The remaining 10 percent is distributed in Carbon, Columbia, Lackawanna, Montour and Schuylkill counties. The witness also testified that two Order 4 and two Order 2 handlers distribute milk in the cooperative's principal area of distribution.

The nine other milk dealers in the 23-county area are relatively small in terms of volume. The record evidence indicates they generally confine their fluid milk distribution to the immediate area where they are located.

All of the territory within the 23-county area, with the exception of the counties of Clinton, Potter and Tioga, should be included under Federal regulation. The record evidence indicates that, except for these three counties, substantial volumes of milk are distributed throughout the 23-county area from plants regulated by either Orders 2 or 4.

Data for 1982 indicate that 151.7 million pounds of packaged milk were distributed in PMMB Area 2. Of this total, nearly 81 million pounds (53 percent of the total) were distributed by 17 plants regulated under one of the two orders. Five of these plants were regulated under Order 2, with fluid milk sales in 1982 of nearly 47 million pounds (31 percent of the total), and 12 were regulated under Order 4, with fluid milk sales in 1982 of about 34 million pounds (22 percent). The four plants located in PMMB Area 2, Clover Farms, Freeman's, Longacre's and Stocker Brothers, had fluid milk sales of nearly 70 million pounds (46 percent).

There were 311.5 million pounds of packaged milk distributed during 1982 in PMMB Area 3. Of this total, about 207 million pounds (66 percent of the total) were distributed by eleven plants regulated under the two orders. Five of these plants were regulated under Order 2, with fluid milk sales of 168.5 million pounds in 1982 (54 percent of the total), and six were regulated under Order 4, with fluid milk sales of nearly 39 million pounds in 1982 (12 percent). However, the record does not indicate the extent of fluid milk sales in PMMB Area 3 by the dealers located therein, except for the sales of Dutch Valley and API Schuylkill Haven.

The above data demonstrate the extensive distribution of fluid milk sales in the 23-county area by plants regulated under the two orders. However, the total fluid milk distribution of 215.5 million pounds by Order 2 plants (47 million in PMMB Area 2 and 168.5 million in PMMB Area 3) is not all priced under the order. Data presented by the New York-New Jersey market administrator's office indicated that approximately 88 percent of this distribution comprised "unpriced milk" (i.e., milk that is not subject to the minimum Class price provisions of the order). Thus, even though Order 2 regulated plants distributed 215.5 million pounds in the 23-county area during 1982, probably only 26 million pounds were actually priced under the order.

The ability of some plants under Order 2 to distribute unpriced milk has had an adverse competitive impact upon those handlers regulated by Order 2 who do not use unpriced milk for their distribution in the area and upon all handlers regulated by Order 4 who distribute in the area. The witness representing the Ad Hoc Committee testified that even though many of the

[1] Official notice is taken of the commercial fact that since the close of the hearing Bear Creek Dairy at Jim Thorpe has ceased operations.

Order 2 and Order 4 members of the Committee are located relatively close to this 23-county area they have not achieved the sales volumes in these counties that are commensurate with the scope of their operations. This is because of the wide difference in producer-pay prices between regulated handlers that are required to pay at least the minimum order prices on all fluid milk sales compared to other regulated handlers that pay such prices on only those sales within the order's defined marketing area. He stated that only Federal regulation of this territory would assure that all handlers distributing in the area have uniform prices for raw milk.

At this juncture, it is appropriate to describe the operation of certain provisions under Order 2 which permit price inequities to occur between regulated handlers. Unlike other Federal orders which price all milk received at a regulated plant regardless of whether the milk is disposed of as a fluid milk product within or outside the marketing area, the New York-New Jersey order permits a regulated handler to receive milk from nonfederal order sources for fluid distribution outside the marketing area of any Federal order without having such milk priced under the order.[2] The order provides certain accounting procedures concerning the allocation of such other source receipts to classes of utilization to protect the integrity of the order with respect to the regular producers who supply the Order 2 market. These procedures are intended to assure that such milk receipt share proportionally with producer milk in the reserve supplies associated with a handler's overall fluid operation. Consequently, plants that have most of their receipts utilized in Class I (about 90 percent Class I) find it economically feasible to utilize the pass-through provisions and use "unpriced milk" to supply their sales in nonfederal order areas.

Much of the testimony and other evidence presented at the hearing regarding the marketing area extension issue focused on API's Schuylkill Haven, Pennsylvania, distributing plant which operates under competitive conditions in unregulated markets that differ from those of other regulated handers. This plant has fluid milk distribution throughout the 23-county area, in the New York-New Jersey marketing area and, to a limited extent, in the Middle Atlantic marketing area. At the time of the hearing, it also operated distributing plants at Lansdale, Pa. and Baltimore, Md. and a reserve processing plant at Allentown, Pa. These latter three plants are all regulated under Order 4.[3]

The Schuylkill Haven plant is a temporary pool plant under Order 2 because of its distribution of Class I milk in the North Jersey and Catskill mountain areas of the New York-New Jersey marketing area. The witness representing API testified that distribution in the Order 2 marketing area from this plant represents about 25 percent or more of its receipts from dairy farmers and bulk tank units. Because the plant's total Class I utilization is 90-95 percent, API can utilize the "pass-through" provisions of Order 2 which permits it to use "unpriced milk" for its Class I sales in the 23-county area. Also, since API is a federation of cooperative associations and since PMMB regulations provide for the individual-handler pooling of producer returns, it is not subject to the PMMB minimum producer price regulations with respect to its sales in the 23-county area. This combination of being able to use "unpriced milk" under Order 2 for its fluid distribution in the 23-county area and being exempt from the PMMB producer pricing provisions allows API to settle with its member cooperatives at the prevailing Federal order producer blend prices (either the Order 4 base and excess prices or the Order 2 blend prices) for the higher valued Class I milk it distributes outside Federal order areas. Proponents of marketing area expansion claim that this ability of API to pay its producers a competitive price for milk it sells for Class I use in the 23-county area gives it a significant price advantage when competing for fluid milk sales with regulated proprietary handlers who must pay the full Class I price for all of the milk they sell for fluid use.

To illustrate the magnitude of this advantage, the record evidence indicates that for 1982 the Order 4 Class I price at the Schuylkill Haven location (81–90 mile zone) was $15.172 while the weighted average blend price was $13.665, a cost advantage to API of nearly $1.50 per hundredweight vis-a-vis an Order 4 pool distributing plant located in the same mileage zone. An exhibit entered into evidence indicated that this advantage to API amounted to about $2.3 million annually of additional income.

Other evidence in the record indicates the growth of the Schuylkill Haven operation from 1973 to 1982. During the years of 1973 and 1974, Lehigh Valley Farmers (the forerunner to API and now a member of the federation) operated the Schuylkill Haven plant. In 1973, the Schuylkill Haven plant handled only 105 million pounds of milk and in 1974, 115 million pounds. Also, at that time there was little or no distribution in the Order 2 marketing area from the plant. Dairylea (which joined API and began having its milk processed at Schuylkill Haven In November 1982) operated a processing plant in Scranton, Pennsylvania, in 1973 and 1974 which had distribution primarily in PMMB area 3. During the intervening years from 1974 to 1982 the Scranton plant became an Order 2 temporary pool plant when Dairylea began distributing milk from that plant into the New York State portion of the Order 2 marketing area. In November 1982, Dairylea closed the Scranton plant and transferred the processing of that milk to the Schuylkill Haven plant. In 1982, the Schuylkill Haven plant had fluid milk distribution of nearly 260 million pounds (this includes the distribution from the Scranton plant prior to its closing), of which about 60 million pounds were distributed in the Order 2 marketing area and about 198 million pounds were distributed in the 23 Pennsylvania county area. This growth in total distribution from the Schuylkill Haven plant between 1973 and 1982 (105 million pounds represented an increase of about 150 percent. It must be concluded that this 150 percent increase in distribution is attributable, in large measure, to the fact that the Schuylkill Haven operation over a period of years has had a raw product cost advantage over other regulated handlers of as much as $1.50 per hundredweight on a large portion of its fluid milk sales.

The record evidence also indicates that some of the reserve milk supplies associated with the Schuylkill Haven plant's fluid sales in the 23-county area is carried by Order 4 producers. Pennmarva's witness testified that although Order 4 producers are not sharing in the Schuylkill Haven plant's Class I sales a large portion of the reserve milk supply (i.e., excess milk) associated with those sales in the 23-county area is pooled as producer milk on the Middle Atlantic market through API's Allentown pool manufacturing plant. The pooling of this excess milk on the Middle Atlantic market lowers the uniform prices to those Order 4 producers who regularly supply the market because API accounts to the pool for this milk at the order's lower valued Class II price (which averaged $12.51 in 1982) and receives the higher

[2] Referred to as unpriced milk and the pertinent provisions of the order are commonly referred to as "pass-through" provisions.

[3] Since the close of the hearing, the Allentown plant has become a nonpool plant.

valued uniform base price ($13.81 in 1982) for 50 percent or more of this milk and the uniform excess price ($12.37 in 1982) for the remainder of the milk. Thus, API retains for itself the sales of the higher valued Class I milk sold in the 23-county area from its Schuylkill Haven plant and causes Order 4 producers to subsidize its excess milk supplies by pooling such milk on this market.

API's witness did not refute the above described testimony of Pennmarva's witness. The witness agreed that if a nonfederal order producer delivering to the Schuylkill Haven plant had some milk delivered to API's Allentown plant such milk would be considered producer milk under Order 4. Although he thought that most of the reserve milk API might move to Allentown from Schuylkill Haven would be producer milk under Order 2, he was not certain how Lehigh Valley Farmers handled their excess milk that was associated with the Schuylkill Haven plant.

Regulated handlers testified that with respect to the local dealers located in the 23-county area that are subject to the PMMB regulations they likewise have a competitive advantage, although not as great as the advantage API's Schuylkill Haven plant enjoys. The minimum prices which the local dealers must pay for milk purchased from dairy farmers are established under the regulations of the PMMB. The PMMB Class I prices for milk used in fluid milk products that are distributed in the two designated PMMB areas are tied to the Order 2 and Order 4 Class I prices. In PMMB Area 2 the Class I price is the Order 4 announced Class I price f.o.b. the market minus 28 cents, which is equivalent to a Class I differential of $2.50. In PMMB Area 3 the Class I price is the Order 2 announced Class I price for the 201–210 mile zone, which is equivalent to a Class I differential of $2.25. Although these prices are tied directly to the Class I prices in the two Federal orders, the PMMB Class I prices apply throughout the entire territory within PMMB Areas 2 and 3 and reflect a slightly lower level than the Federal order prices that apply at plants located in these two areas. For example, in PMMB Area 3 the PMMB Class I differential is $2.25 in contrast to a Class I differential at the Schuylkill Haven location (PMMB Area 3) of $2.645 (81–90 mile zone) under Order 4 and $2.426 (121–125 mile zone) under Order 2. Similarly, at the Williamsport location the Order 4 Class I differnential is $2.54 (151–160 mile zone) and the Order 2 Class I differential is $2.294 (181–190 mile zone) while the PMMB Area 3 Class I differential applicable at this plant is $2.25.

The PMMB regulated dealers in the 23-county area pay their producers on the basis of individual-handler pooling of producer returns. Individual-handler pooling generally results in much higher blend prices being paid to producers than the Federal order marketwide pool blend prices. Under individual-handler pooling, procurement advantages accrue to the individual handler who maintains a relatively high blended return to producers. As a consequence, it gives such a handler the ability to select producers on the basis of minimizing procurement costs. If such an individual handler accumulates more than an average proportion of surplus milk the handler is under competitive pressure to reduce its purchases of milk from producers. The record evidence indicates that in the past when such conditions prevailed some of the nonfederally regulated handlers in the 23-county area have ceased receiving milk from some dairy farmers. Although it is not clear on the record where these dairy farmers now deliver their milk it was indicated that some of them now deliver milk to Federal order handlers. Thus, this is another example of Federal order producers carrying the burden of the reserve supplies for these local dealers.

Opponents of the proposals to expand Federal regulation into the 23-county area testified that the economic and regulatory conditions that exist today provide an even lesser basis for Federal order expansion into this area than they did at the time when the Assistant Secretary issued a decision in 1975 denying similar proposals to add the 23-county area to the Order 2 and Order 4 marketing areas. The witness representing API testified that an underlying need for Federal order expansion at the time of the 1974 hearing (the hearing upon which the 1975 decision was based) was the fact that the PMMB Class I prices were considerably below the rapidly increasing Federal order Class I prices. As a consequence of this, the witness said, prices to nonfederal order producers reflected primarily the nearby Federal order blend prices. However, he stated, since the 1975 decision the PMMB has adopted a new system of establishing Class I prices which relates such prices directly to the Federal order Class I prices. Thus, he said, today there are significant differences in prices established by the PMMB and the Federal orders and that today this price alignment is much more stable than it was in 1974.

It is true that the PMMB Class I prices are about the same or only slightly lower than the Federal order prices throughout this territory. However, as set forth previously, a basic problem described on this record is that the dominant distributor (API) of fluid milk throughout the 23-county area is not obligated to either the PMMB or Federal order to pay Class I prices on such sales. Further, API relies on Federal order producers to balance the excess supplies associated with its fluid milk plant. The record evidence also suggests that the majority of nonfederal order producers in the area are still paid on the basis of Federal order uniform producer blend prices. In this regard, of the estimated 550 to 700 nonfederal order producers in the 23-county area, over 500 of them belong to cooperative associations which reblend their proceeds and pay member producers a price based either on the Order 4 uniform base and excess prices or the Order 2 blend price. Thus, even though the PMMB Class I prices are not substantially below the Federal order prices the Federal order blend prices are still used as the basis for paying the vast majority of producers in the area.

Opponents also testified that there has been no significant change in the patterns of handler distribution in the 23-county area since the 1974 hearing was held. They stated that fluid milk sales throughout the 23-county area are still predominantly made by nonfederally regulated handlers and that the biggest change since the 1974 hearing has been a consolidation or merger of dealer operations within the area.

The Assistant Secretary in his 1975 decision denying the proposals to add these counties to the marketing areas of the two Federal orders found that only two Order 4 handlers and one Order 2 handler had distribution in the Allentown-Bethlehem-Easton area (counties of Berks, Lehigh and Northampton). Also, he found that only two Order 4 handlers had sales in the 20-county northeastern Pennsylvania area and that route sales and transfers of pool milk by Order 2 handlers in northeastern Pennsylvania approximated 7 percent of the total fluid milk requirements of that territory. The Assistant Secretary, further, found that the nonfederally regulated Schuylkill Haven plant of Lehigh Valley represented about 40 percent of the sales of the Allentown-Bethlehem-Easton area. Also, he found that the Schuylkill Haven plant and Dairylea's nonfederally regulated plant in Scranton were the two largest nonfederally

regulated plants distributing milk in the 20-county area at that time.

On the basis of the current record the reasons given by the Assistant Secretary in his 1975 decision for not including under Federal regulation the 23-county area no longer exist today. The current hearing record indicates that a significantly different situation exists today with respect to sales in these counties. Today, there are 17 plants regulated under the two orders that distribute milk throughout much of the 23-county area. Also, Dairylea no longer operates its Scranton plant and now has that milk processed at the Schuylkill Haven plant. Further, the Schuylkill Haven plant now is a pool plant under Order 2 and the fluid sales from this plant in 1982 represented about 30 percent of total fluid milk sales in PMMB Area 2 and 50 percent of the total fluid sales in PMMB Area 3. Further, the distribution of fluid milk products from this plant have increased about 150 percent since 1973.

The record also contains other examples of changed marketing conditions in these 23 counties that have occurred since the 1974 hearing was held. For instance, Dutch Valley Food Co. (a subsidiary of Weis supermarkets) did not operate a distributing plant until 1980. Prior to the opening of this plant at Sunbury, Weis supermarkets obtained part of its fluid milk supplies from the API Schuylkill Haven plant, particularly for its stores located in PMMB Areas 2 and 3. Also, with the opening of Dutch Valley's Sunbury plant, the quantity of Order 4 regulated milk distributed in federally unregulated areas of Pennsylvania more than doubled, from about 2.5 million to 6.0 million pounds per month.

Another significant change in milk marketing in the area that occurred since the 1974 hearing involved a nationwide chain of supermarkets (A&P Tea Co.) that formerly operated a distributing plant regulated under Order 4 at Fort Washington, Pennsylvania. In 1982, this plant was sold to a New Jersey handler who operates an Order 2 distributing plant at Flemington, New Jersey. Based on the testimony of API's witness, prior to the change in ownership of the Fort Washington plant the supermarket chain used this plant primarily to serve its stores in Philadelphia, Baltimore, Washington and New Jersey. However, most of the chain's supermarkets in the 23-county area prior to the change in ownership were served by local distributing plants including Dairylea's Scranton plant and API's Schuylkill Haven plant. Commencing in 1983, these stores were served by the Flemington handler.

Several opponent witnesses indicated that a large proportion of the fluid milk distributed in the 23-county area was by Federally regulated vertically integrated handlers who operated both processing plants and retail store outlets. In view of this, opponents argued that such vertically integrated operations did not compete for fluid sales with other handlers because the sales through their own stores were "captive sales." This, opponents stated, removed them from the sphere of competition for wholesale outlets and thus such operations were not affected by any alleged misalignment in procurement costs.

It is true that some fluid milk processors have found it economically advantageous to operate retail outlets in conjunction with their fluid milk processing operations and further that some supermaket chains have found it advantageous to operate their own processing plants. However, the purchaser of the packaged milk is the ultimate customer regardless of whether or not the fluid milk is distributed through a handler's own stores or it is distributed through other outlets. To this extent vertically integrated operations compete with all other handlers for sales and are equally affected by any competitive advantage that one handler may have over another. Accordingly, this argument is not a valid basis for rejecting the marketing area extension proposals.

In a post-hearing brief filed on behalf of three milk dealers, (Guers, Hazelton Farmers Cooperative and Valley Farms) who testified in opposition to the 23-county area extension, it was argued that the adverse effects on their operations from full Federal regulation far outweigh any possible benefit from such action. These milk dealers were particularly concerned with the impact of such regulation on their raw milk costs and administrative expenses. As described previously in this decision, milk dealers that presently are subject only to PMMB regulations generally pay slightly lower prices for milk for fluid use than do Federally regulated handlers who compete for such sales in the same area of competition. However, Federal milk orders give assurance to all regulated handlers that their competitors in the same area of competition have relatively the same product cost for the same use of milk. Thus, if extending Federal regulation, as adopted herein, results in higher product costs to these three milk dealers, it would only be to the extent, that these dealers and others similarly situated would be incurring the same product costs as their competitors.

The brief of the three milk dealers also expressed particular concern with the adverse effects of area expansion on the operations of the Hazelton Farmers Cooperative. In this regard, it was agrued that regulation of the cooperative's plant would jeopardize the existence of the cooperative because of the additional higher costs, including equalization payments into the marketwide pool, that would be imposed upon its member—owners. Since Federal milk orders give assurance to all regulated handlers that their competitors in the marketing area are paying the same prices for their milk there is no basis for the claim that the proposed extension of the marketing areas would force the cooperative or any other local dealer out-of-business. Further, it should be noted that there are several cooperative associations operating successful fluid milk processing plants in the two Federal order markets.

Also, the brief states that Federal regulation of the area could cause some of the PMMB regulated dealers to lose their local milk supplies. This appears to be very unlikely because data entered into evidence indicated that in virtually every one of the 23 counties in question there were more dairy farmers who delivered their milk to one of the two Federal order markets than who delivered to local dealers.

The brief indicated further that the greatest burden of the expanded Federal regulation would be felt by those dairy farmers who are not members of a cooperative association and who deliver milk to the PMMB regulated dealers because the price they receive for milk would decline 75 cents at $1.00 per hundredweight. The record evidence indicates clearly that the local milk dealers and Federally regulated handlers draw their milk supplies from a common production area. Since this decision concludes that the Class I sales in 20 of the 23 counties have now become an integral part of the Middle Atlantic and New-New Jersey markets, it is only reasonable to provide that all dairy farmers associated with each of these two Federally regulated markets share equally in each respective market's total Class I sales.

It is concluded that in light of the consideration set forth herein, the 20-county area of east central and northeastern Pennsylvania is a logical area to be included under federal regulation and appropriately should be incorporated within the respective marketing areas. A uniform price plan

applicable to all handlers buying milk for sale in the expanded areas will stabilize and improve marketing conditions in such areas. Accordingly, regulation of this 20-county area of east central and northeastern Pennsylvania will effectuate the declared policy of the Act by providing for:

(1) The establishment of uniform prices to handlers for milk received from producers according to a classified price plan based upon the utilization made of milk;

(2) An impartial audit it handlers' records to verify the payments of required prices;

(3) A system for verifying the accuracy of weights and butterfat content of milk purchases; and

(4) Uniform returns to producers supplying each respective market based upon an equitable sharing among all producers supplying the expanded markets of the lower returns from the sale of reserve milk which cannot be marketed as Class I milk.

The public interest will be served by the establishment of orderly marketing for milk in the proposed expanded area that will assure a continuing and adequate supply of fluid milk for the area at reasonable prices.

Having concluded that 20 of the 23 east central and northeastern Pennsylvania counties as initially proposed should be included under Federal regulation, the remaining facet of the area expansion issue to be resolved concerns which of such 20 counties should be included in each of the marketing areas of the respective orders.

As noted previously, there were several area expansion proposals that were contained in the notice of hearing and supported at the hearing by cooperative associations and proprietary handlers. Such proposals would have included under regulation 23 east central and northeastern Pennsylvania counties as extensions of either the Middle Atlantic or New York-New Jersey marketing areas. For example, one proposal would have included under the Middle Atlantic order 12 of these counties while another would have added only 3 counties to this order's maketing area. Two other proposals would have added 20 of the 23 counties to the New York-New Jersey marketing area.

In their post-hearing briefs, all of the proponents of marketing area expansion modified their proposals, urging that the 6 counties of Berks, Carbon, Lehigh, Monroe, Northampton and Schuylkill be included in the Middle Atlantic marketing area and the remaining 17 counties be added to the Order 2 marketing area. It was the general consensus of the proponents that the 6-county area was more allied to the Order 4 market than with the Order 2 market from a standpoint of procurement and Class I sales. In view of the extensive operations of the proponents in terms of procurement and fluid milk distribution throughout much of the 23-county area, consideration must be given to the unanimous position of area expansion proponents regarding how the counties should be divided between the two order.

Additional Pennsylvania Counties To Be Added to Middle Atlantic Marketing Area

The Pennsylvania counties to be included in the Middle Atlantic marketing area are Berks, Carbon, Lehigh, Northampton and Schuylkill (referred to hereafter as the "5-county area"). The total 1980 population of this 5-county area was 1,024,191. The principal population centers of the area include Allentown, Bethlehem, Easton, Emmaus, Pottsville, and Reading, with a combined 1980 population of 308,083.

Four of the 5 counties (Berks, Lehigh, Northampton and Schuylkill) join the present marketing area of Order 4. Geographically, the 5-county area forms the southeastern extremities of the 20 east central-northeasterm Pennsylvania county area proposed to be regulated.

This additional territory (5 counties) should be brought under regulation to implement continuing orderly marketing for dairy farmers supplying regulated handlers, as well as unregulated handlers, marketing milk therein. Milk is disposed of in this territory by regulated handlers on routes as well as in the form of bulk supplemental supplies.

Within the 5-county area, milk is distributed by 18 fully regulated handlers. Of this total 12 were regulated by Order 4 and 6 by Order 2. Additionally, there were 10 nonfederally regulated dealers serving the area at the time of the hearing, 6 of which operated partially regulated distributing plants under Order 4 beacuse of limited route distribution in the order's marketing area. Also, six of the seven distributing plants located in the 5-county area would become fully regulated under Order 4.

The record evidence also indicates that dairy farmers located in each of the 5 counties proposed to be included in the Order 4 marketing area supply present Order 4 handlers with substantially more milk than to Order 2 handlers. Data in the record for December 1982 indicate that of the 699 dairy farmers located in the 5-county area 343 delivered their milk to Order 4 plants, 183 delivered their milk to Order 2 plants and the remaining 173 dairy farmers probably delivered either to Federally unregulated plants or to their own operated processing facilities. Based on the testimony of Guers' witness and a dairy farmer who delivered milk to Clover Farms, it appears that these two dealers received milk from about 115 of these 173 dairy farmers. It appears that most of the remaining 58 dairy farmers located in these counties delivered their milk to Freeman's, Heisler's Cloverleaf, Longacre's and Stocker Brothers.

As described previously, since this territory has become an integral part of the Order 4 marketing area, all of the producers located in this common supply area should receive the same uniform base and excess prices for their milk. Further, because of the proximity of these counties to the Middle Atlantic market, handlers located therein must purchase their milk supplies in competition with handlers regulated under this order. At plants located in this area, the monthly uniform prices under Order 4 exceed similar prices under the New York-New Jersey order. Consequently, full regulation of these plants under the New York-New Jersey order could cause serious procurement problems for them.

Adding these five counties to the Middle Atlantic marketing area should assure that each of the six dealers located therein who would become regulated under this order will not shift regulation to the Order 2 market due to any slight shift in their sales patterns. Record evidence indicates there is the possibility that Freeman's Dairy could shift regulation between the two orders if Carbon and Northampton counties were not included within the same marketing area as Lehigh county. In view of the foregoing considerations, it is concluded that this 5-county area should be included in the Middle Atlantic marketing area. Under present circumstances, greater equity among both handlers and producers will be achieved through the inclusion of this territory under Order 4.

Monroe County, however, should be added to the Order 2 marketing area. This county was one of the six counties that the expansion proponents recommended in their briefs to be included in the Order 4 marketing area. The record evidence indicates, however, that at the time of the hearing there were apparently no Order 4 distributing plants serving the county. Instead, the record shows that at least three Order 2 plants and two partially regulated distributing plants (one of which would

become fully regulated under Order 2 as a result of this proposed action) distribute milk in the county. For this reason, it is concluded that the majority of sales in this county are more closely associated with the New York-New Jersey market than with the Middle Atlantic market and, thus, should not be included in the Order 4 marketing area.

Additional Pennsylvania Counties To Be Added to New York-New Jersey Marketing Area

Fifteen northeastern Pennsylvania counties (referred to hereinafter as the "15-county area") should be added to the New York-New Jersey marketing area. These counties are:

Bradford	Pike
Columbia	Snyder
Lackawanna	Sullivan
Luzerne	Susquehanna
Lycoming	Union
Monroe	Wayne
Montour	Wyoming
Northumberland	

This area had a population of 1,191,374 persons in 1980. The principal population centers of the area are Berwick, Bloomsburg, Carbondale, Dunmore, Hazelton, Kingston, Nanticoke, Scranton, Shamokin, Sunbury, Wilkes Barre and Williamsport. The combined population of these centers in 1980 totalled 303,364.

The inclusion of this 15-county area under Order 2 will bring under full regulation seven distributing plants, all of which are located in the area. These plants are: Valley Farms Dairy at Williamsport, Farmers Cooperative Dairy at Hazelton, United Dairies at Sunbury, Blue Ribbon Dairy at West Pittston, Edgewood Farms at Troy, Hyland Dairy at Wilkes-Barre and Maurer's Wayside Dairy at Shamokin. At the time of the hearing the Valley Farms Dairy plant was a partially regulated distributing plant under the Middle Atlantic order.

Inclusion of these 15 counties in the New York-New Jersey marketing area also would continue the regulation under Order 2 of the API Schuylkill Haven plant. Under this situation, all of the fluid milk distribution from that plant into these counties and into the five counties being added to the Middle Atlantic marketing area would now be fully priced under Order 2. Likewise, any other Order 2 regulated plant that uses "unpriced milk" for its distribution in these proposed regulated counties also would have such distribution fully priced under the order. Testimony at the hearing indicated that at least one other Order 2 regulated plant, Durling Farms at Whitehouse, N.J., also uses "unpriced milk" for its distribution in these counties.

This 15-county area had become essentially a part of and closely identified with the New York-New Jersey marketing area. Testimony on the record indicates that over 50 percent of the milk distributed in these counties is from plants regulated under Order 2. By far the most significant of these plants is API's Schuylkill Haven plant.

Testimony presented by several witnesses indicates that of the seven presently federally unregulated plants located in the 15-county area only Farmers' Cooperative Dairy and Valley Farms Dairy distribute fluid milk outside these counties. The record evidence indicates that Farmers' Cooperative Dairy has limited distribution in Carbon and Schuylkill Counties, but this distribution probably amounts to less than 5 percent of their total distribution. Valley Farms, in addition to its distribution in eleven of the 15 counties, also has distribution in three counties in the present Middle Atlantic marketing area plus one county that would be added to the Middle Atlantic marketing area and in four other Pennsylvania counties which would continue to be unregulated by either Federal order.

Valley Farms' witness testified that his company opposed any extension of Federal regulation into the unregulated area in which it distributes milk. However, he said, if the marketing areas of these two Federal orders are extended into its distribution area then the milk dealer would prefer to be regulated under Order 2. He indicated that regulating its plant under Order 2 would only increase its Class I price by 5 to 10 cents per hundredweight as compared to a 30-cent increase if the plant were regulated under Order 4. Also, he indicated that if the plant were regulated under Order 2, it would have available the "pass-through" provisions which would allow his company to use "unpriced milk" to cover its sales outside the expanded Federal order marketing areas.

The Valley Farms representative also urged that the respective marketing area boundaries be drawn so that Valley Farms would be assured continuity insofar as which order the plant would be regulated under. He emphasized that this was an important consideration since Valley Farms has widespread distribution throughout the 23-county area plus limited distribution in the present Order 4 marketing area. In the absence of such assurance, he stated that shifting regulation of the plant between the orders would have an adverse impact on his producers because of the different producer payment plans under the two orders. The marketing area extension of the two orders adopted herein should satisfy the concerns of the Valley Farms witness in this regard.

The record evidence also indicates that over 75 percent of the dairy farmers located in the 15-county area are producers under Order 2. Data indicate that of the approximately 2,750 dairy farmers located in the 15-county area 2,153 delivered their milk to plants that were regulated under Order 2 and 228 delivered to plants regulated under Order 4. The residual 369 dairy farmers probably either delivered to PMMB dairies or operated their own processing facilities. Based on the testimony of API's and Eastern's witnesses, it appears that many of these 369 dairy farmers deliver their milk to either API's Schuylkill Haven plant or to the Valley Farms plant.

The Pennsylvania counties of Clinton, Potter and Tioga should not be added to the New York-New Jersey marketing area. Proponents of marketing area extension, either at the hearing or in their post-hearing briefs, included these three counties in the territory proposed for inclusion in the New York-New Jersey marketing area.

These three counties are located in the northwest corner of PMMB Area 3 and generally are more sparsely populated than the 20 other counties involved in the hearing. The 1980 census indicates there were 97,670 people living in these counties. Although the evidence indicates that over 90 percent of the 655 dairy farmers located in these counties are producers on the Order 2 market, no fluid milk processing plants are located therein. There are two Order 2 regulated plants located in Tioga County but they are manufacturing plants and transfer stations.

Neither Order 2 nor Order 4 regulated handlers are substantially involved in distributing fluid milk products in these counties. The witness representing the Ad Hoc Committee testified that none of the committee members distributes fluid milk products in these three counties. Except for Valley Farms, no other handler who either is presently regulated or would be regulated under the expanded orders as herein adopted indicated they had distribution in the three counties. The Valley Farms' witness testified that his company has fluid milk distribution in Clinton and Tioga counties. However, Valley Farms should not be at a competitive disadvantage on these sales because they could avail themselves of the pass-through provisions under Order 2 and

use "unpriced milk" for that distribution. If API also has distribution in these counties from their Schuylkill Haven Plant, they, too, could use the pass-through provisions in Order 2 for such distribution.

A witness representing Upstate Milk Cooperative of Le Roy, New York, testified in opposition to the inclusion of Potter County in the Order 2 marketing area. The witness said his cooperative association is the dominant distributor of fluid milk in the county. He indicated that the milk for this distribution is processed at Jamestown or Arcade, New York. Other major distributors of fluid milk in the county are Meadowbrook Dairies of Cuba, New York, and Modern Dairies of Saint Marys, Pennsylvania, neither one of which are regulated under a Federal order. Further, the witness said, no federally regulated milk is distributed in Potter County. No other witness at the hearing refuted this testimony.

Upstate's witness also testified that if its dairy farmer members who deliver milk associated with these Potter County sales become producers under Order 2 their prices would be lowered about 30 cents per hundredweight. He stated that these dairy farmers as well as the dairy farmers who deliver to the two other processing plants he mentioned are located north and west of the county and are not oriented to the Order 2 market. He indicated further that all of the dairy farmers located in Potter County are presently producers under Order 2. Thus, expansion of the Order 2 marketing area into Potter County would not affect the status of the dairy farmers located in the county but could adversely affect other dairy farmers who deliver to plants located west and north of the county and who presently have little or no association with the Order 2 market.

For the reasons set forth above it would not be appropriate on the basis of this record to include Clinton, Potter and Tioga Counties in the Order 2 marketing area. Accordingly, the proposals to add these counties to the Order 2 marketing area are denied.

In the attached order language the Borough of Surf City in Ocean County, New Jersey has been added to the Middle Atlantic marketing area. This is to correct an inadvertent error of omission in the marketing area definition that was made at the time the Middle Atlantic milk order was promulgated. The Middle Atlantic order merged the marketing areas of the previous Delaware Valley, Upper Chesapeake Bay and Washington, D.C. orders under a single order. The borough of Surf City, New Jersey, prior to the merger, was part of the former Delaware Valley marketing area.

It is concluded also that, except as modified by this decision, the present provisions of the Middle Atlantic and New York-New Jersey orders are equally appropriate for the extended marketing areas of the respective orders. Accordingly, they are hereby adopted for the identical reasons as set forth in the appropriate decisions adopting such provisions for each order.

2. *Location Adjustments.*[1] The same structure of location pricing now used for each order in determining the applicable Class I prices and uniform prices to producers at various locations should be continued under the expanded orders with certain modifications. A summary of the modifications adopted for each order follows.

a. *Middle Atlantic order.* The location adjustment rate should be 2.2 cents per hundredweight for each 10-mile distance or fraction thereof at all plant locations more than 55 miles from the city hall in Philadelphia, Pennsylvania, and also more than 75 miles from the nearer of the city hall in Baltimore, Maryland, or the zero milestone in Washington, D.C. Location adjustments at plants in the Pennsylvania counties of Berks, Dauphin and Lebanon, however, should be limited to 10-cents per hundredweight.

Under the present terms of the order, the Class I and base prices applicable at all plant locations more than 55 miles from the city hall in Philadelphia, Pennsylvania, and also more than 75 miles from the nearer of the city hall in Baltimore, Maryland, or the zero milestone in Washington, D.C., are reduced 1.5 cents for each 10-mile distance or fraction thereof that such plant is from the nearest of such basing points.

b. *New York-New-Jersey order.* The present 15-cent fixed transportation differential on Class I and uniform prices applicable within the 1–70 mile zone should be extended to include the 71–80 mile zone. No other changes in the order's pricing structure are adopted.

There were four separate proposals listed in the hearing notice that would modify the location pricing structure of the orders. The basic thrust of three of the proposals was to align prices as closely as possible at various locations in the area proposed to be added to the marketing areas of Orders 2 and 4. A secondary purpose of such proposals was to reduce the disparity in the cost of Class I milk to handlers presently operating pool plants under either Orders 2 or 4. The other proposal was offered as a means of correcting an alleged intramarket competitive situation for handlers located in the south central Pennsylvania area of the Middle Atlantic marketing area. Several modifications of these proposals were proposed at the hearing by two cooperative federations. Conversely, a number of other producer groups either at the hearing or in their post-hearing briefs opposed any changes in the respective orders' pricing structure.

SCP Dairy Industry Association (SCP), a group of South Central Pennsylvania handlers operating pool distributing plants under Order 4, submitted a proposal that would reduce the Class I differential in Order 4 from $2.78 to $1.90. At the hearing, however, the association abandoned the proposal. No other support was offered at the hearing for the proposal.

Although it did not indicate any preference, the Ad Hoc Committee proposed two possible options that would affect the price alignment between Orders 2 and 4 at a number of presently regulated plants and at other plants that would become fully regulated as a result of expanding the respective orders' marketing areas. As proposed, option 1 would amend Order 2's transportation differential provisions to provide for a schedule of zone differential rates for Classes I–A and I–B milk that would be applicable to 11 designated Pennsylvania counties, 9 of which would be newly regulated counties. The effect of this proposal would, on a plant to plant basis, result in about the same Class I price for each plant whether such plant was regulated under Order 2 or Order 4.

The other option proposed by the Ad Hoc Committee would also amend Order 2. It would revise the schedule of transportation differentials for Classes I–A and I–B milk by increasing each 10-mile zone from 71 through 190 miles by 15 cents per hundredweight. Although this option would not achieve the degree of alignment that option 1 would, its intent, nevertheless, was to provide price alignment at newly regulated Order 2 plants with newly regulated Order 4 plants as a result of marketing area expansion.

A spokesman for the Ad Hoc Committee testified that either of the two options proposed was offered to correct in part a potential inequitable competitive situation that could occur if the marketing areas of Orders 2 and 4 were extended to northeastern Pennsylvania, as proposed, without

[1] Referred to as "location differentials" under the Middle Atlantic order and as "transportation differentials" under the New York-New Jersey order.

changing the application of location adjustments at plants which would become fully regulated for the first time. According to the spokesman, another purpose of the proposal was to better align Order 2 prices applicable at a regulated plant (Ft. Washington, Pennsylvania) under Order 4 so as to reduce the incentive for this plant to switch regulation to Order 2 because of a substantial price advantage.

In support of the proposal, the committee's witness presented a tabulation which showed the applicable Class I prices under Orders 2 and 4 at various plant locations for presently regulated plants and plants that would become regulated if the marketing areas of the two orders were expanded. This comparison showed Class I price differences ranging from 15 cents to 38 cents per hundredweight that presently exist between the two orders at the same plant location. The witness stated that it was the position of the handler group that it is essential for orderly marketing that the applicable Class I price at a particular plant location be structured so as to minimize price differences that a regulated handler might have under one order over a competing handler regulated by another order.

Tuscan Dairy Farms, (Tuscan) an operator of an Order 2 pool distributing plant and a member of the Ad Hoc Committee, submitted a proposal that would apply a 15-cent fixed transportation differential on all Class I milk distributed within the 1–175 mile freight zones of Order 2. Thus, under the proposal, irrespective of its location, the operator of a pool plant would pay an additional 15 cents on all Class I milk distributed within such 1–175 mile zones.

A representative of Tuscan testified that under the present order competing handlers located outside the 1–70 mile zone have a price advantage over handlers located within the 1–70 mile zone in competing for fluid milk sales because of higher transportation allowances. The witness contended that this gives such distant plants a definite competitive edge without the near-in plants, such as the Tuscan plant, being able to meet such competition because it must pay the higher zone price plus the additional trucking costs to haul packaged milk to the area of competition.

As an example, the witness cited a recent competitive experience that Tuscan had with a pool distributing plant located in the 171–175 mile zone. He stated that this distant plant took a sizeable wholesale account away from Tuscan in a town just 17 miles from Tuscan's plant. In order to meet this competition, the spokesman claimed that Tuscan was forced to reduce milk prices charged at 8 other nearby stores that the handler served. This, he argued, creates disruptive marketing practices which leads to disorderly marketing. It was the spokesman's belief that such disruptive practices could be mitigated by adopting the proposal.

SCP, whose entire membership was also part of the Ad Hoc Committee, submitted a proposal that would change the location pricing structure of Order 4. The proposal, as published in the hearing notice, would reduce the order's present no location adjustment zones from 0–55 miles and 0–75 miles, respectively, to 0–45 miles from specified locations. It would also increase the order's location adjustment rate applicable to Class I prices from 1.5 cents to 2 cents per hundredweight. As was indicated by proponent's witness, SCP was not proposing any change in the order's location adjustment provisions applicable to uniform base prices to producers.

A representative of SCP testified that the basic purpose of the proposal was to improve the alignment of class I prices in a segment of the middle Atlantic marketing area in which members of SCP compete with one another for Class I sales. The witness contended that the present 75-mile base zone provision of the order places Lancaster and York based handlers in the same pricing zone (no location adjustment zone) as Baltimore handlers even though they have little competitive relationship with the Baltimore based handlers. According to the group's spokesman, the Harrisburg-Lancaster-York area is a closely related competitive market wherein the Harrisburg area handlers have under the order at least a 12 cents per hundredweight lower Class I price than either the Lancaster or York-based handlers. He added that adoption of the proposal would provide a more appropriate price relationship in this area. However, the witness testified that SCP would not support increasing the location adjustment rate from 1.5 cents to 2.0 cents per 10 miles without reducting the 55-mile and 75-mile limits to 45 miles as proposed.

Pennmarva opposed SCP's proposal arguing that it would: (1) Create unequal pricing in a comnom market segment where equal pricing now exists; (2) reduce producer returns; (3) impair the handling of the market's reserve milk supplies; and (4) result in uneconomical movements of milk supplies among pool processing plants as well as on diversions to nonpool manufacturing plants.

At the hearing and further supported in its post-hearing brief, Pennmarva proposed two modifications to the pricing structure of Order 4. The modifications proposed would reduce the order's Class I price level by 8 cents per hundredweight and increase the order's location adjustment rate applicable to Class I milk and producer base milk from 1.5 cents per hundredweight to 2.2 cents per hundredweight per each 10 miles. Such modifications were made, however, on the basis that the federation's area expansion proposal is adopted.

According to Pennmarva's spokesman, the basis of the federation's proposed modifications in the pricing structure of Order 4 is to provide closer inter-order price alignment of Class I differentials at plants distributing in the proposed expanded area of the two orders without causing any net reduction in the Order 4 uniform base price to producers. Through an exhibit, which was received into evidence, the witness showed a comparison of the applicable Orders 2 and 4 Class I differentials at various plants serving the 12-county area that Pennmarva initially proposed to have added to the Order 4 marketing area.

This exhibit revealed that the applicable order differentials at the various plants serving the proposed expanded area varied considerably and in most cases the Order 2 Class I differential was substantially lower than the comparable Order 4 differential. Because of such differences, the proponent federation claimed that without any change in the Order 4 location price structure there would be adequate incentive for a handler serving the proposed expanded area to shift its plant's regulation from Order 4 to Order 2 which would ultimately cause instability because of Class I sales shift from one order to the order.

Pennmarva's witness also argued that the proposal to increase Order 4's location adjustment rate from 1.5 cents per hundredweight to 2.2 cents per hundredweight for each 10 miles is needed to reflect the current location value of producer milk at country locations. The witness testified that the order's present location adjustment rate is not sufficient to cover the current differential cost of moving milk from country delivery points to Philadelphia. In this regard, he prepared a chart, which was received into evidence, showing Inter-State's current differential cost of moving milk from various country delivery points to market center points. In describing the make-up of the chart, the witness indicated that it was

prepared to show the added charge to Inter-State made by haulers for transporting milk from a country receiving location at which the basic rate applies to a location at which an additional charge applies and relating those differential charges to distance. He testified that "a regression performed on 59 observations of movements of raw milk from farm pick-up area to plants in the Order 4 market, yield a variable cost of moving such milk per 10 miles, of 2.29 cents, where the cost of the haul was dependent, and the mileage traveled (in 10-mile zones) the independent variable."

In explaining the effect of Pennmarva's other proposed modification to reduce the Class I differential by 8 cents per hundredweight, the proponent witness testified that such reduction would largely offset any increase in the Order 4 base price to producers that would result from expanding the order's marketing area as proposed by Pennmarva.

Even though Pennmarva, in its post-hearing brief, modified its position regarding the area expansion issue, the federation stated that it continues to support the proposed modifications of the pricing structure of Order 4 as initially proposed at the hearing. In this regard, the federation stated that such proposed modifications are equally applicable to the revised marketing area configuration advocated by Pennmarva in the brief.

At the hearing and in its post-hearing brief, API proposed three changes regarding price alignment between the two orders. As noted by API's spokesman, the proposed changes, which would change the price structure under both orders, would apply equally to Class I and producer prices. The proposed changes would: (1) Increase the Order 4 location adjustment rate from 1.5 cents per hundredweight per 10 miles to 2.2 cents per hundredweight per 10 miles (2) apply location adjustments under Order 4 in 10-mile increments beginning at the nearest of the market centers of Baltimore, Philadelphia and Washington, D.C. and (3) extend Order 2's present 15-cent per hundredweight fixed transportation differential on Class I and uniform prices within the 1–70 miles zone to include the 71–80 miles zone.

The basis of API's proposed changes in the Order 4 pricing structure was to more nearly reflect current transportation costs in the location adjustment rates and to improve the alignment of Order 4 prices with similar prices under Order 2. It claimed that such proposed changes would also closely align prices on an intramarket basis. In this regard, the federation's witness argued that applying location adjustments beginning at the market centers of Order 4 will provide prices at a distant plant location which takes into account the cost of transporting that milk into the market center(s) and be closely aligned with prices applicable at a plant in the market center.

The spokesman for API testified that the purpose of its proposal to extend Order 2's 15-cent fixed transportation differential on Class I and uniform prices to an additional zone (71–80 mile zone) was to reduce the incentive for an Order 4 pool distributing plant (Fort Washington, Pennsylvania plant) to switch pool status to Order 2 because of lower costs for Class I milk. The witness contended that this modification is the only price change under Order 2 that is necessary at this time to permit a more equitable competitive situation for regulated handlers between the two markets involved.

NFO, which represents producers supplying regulated handlers under both Orders 2 and 4, was opposed to any change in the pricing structure of either order. It contended that, in general, the proposals: (1) Would not benefit producers because most of them would reduce producer prices; (2) would not be beneficial to consumers because handlers may not necessarily pass on any of the price reductions that could result from the proposed changes; (3) would disrupt competitive practices among handlers by misaligning prices on both an intermarket and intramarket basis; and (4) place too much importance on basing location adjustments reflecting the movement of packaged milk rather than appropriately relating the location value of milk to costs incurred in transporting milk from farms and country plants to distributing plants in the major consuming centers of the two markets.

Although neither producer organization testified at the hearing regarding the location adjustment issue, both NEDCO and Eastern submitted post-hearing briefs opposing any change in the pricing structure of Order 2 as it relates to the New York segment of the present marketing area. While recognizing the need for aligning Class I prices at plants located in the expanded marketing areas, these two producer organizations were particularly concerned that a number of the proposals and modifications would adversely affect the present alignment of Class I prices applicable to metropolitan area plants with competing "upstate" New York plants.

A number of changes in the location adjustment provisions of the two orders should be adopted. However, the adopted changes differ in some respects from what the several proponents proposed and supported at the hearing. Nevertheless, the main purpose of such changes is essentially the same as was advanced at the hearing by proponents, i.e., to correct an aberration in pricing that can result from the application of the present location adjustment provisions of the two orders to plants that would become fully regulated and are located within the 20-county area proposed to be added to the marketing areas of the respective orders. An additional need to modify the application of location adjustments is to more closely align the two markets' Class I prices applicable at a presently regulated Middle Atlantic distributing plant that has substantial distribution in the New York-New Jersey marketing area.

The present location pricing structures of the two orders were designed to encourage the movement of milk from production areas to the principal consuming centers of each market where it is processed for fluid use. Additionally, they were developed to maintain reasonable intra- and inter-market price alignment which is essential to the attraction of milk supplies to the various locations where needed. Consequently, such resulting prices have been established at a level found necessary to assure adequate supplies of milk for each plant associated with the respective markets.

The record evidence indicates there is a broad area of overlapping sales, in which handlers regulated under the two orders actively compete for fluid outlets, and a significant overlap of supply areas for both markets. Under these circumstances it would not be possible to long maintain orderly marketing in the region in question unless there were a close interrelationship of handler milk costs and producer returns. It is quite apparent that orderly marketing could not persist if the present location adjustment provisions of the Middle Atlantic order established the effective price at the various plant locations in the expanded territory.

Accordingly, the modifications in the location adjustment provisions of the two orders herein adopted will provide reasonable price alignment reflecting the existing competitive situation in the general region. They will help insure handlers competing for supplies and sales in the same geographic locations relatively equal product costs and thus remove a potential source of market

instability which could otherwise result. At the same time, the adopted modifications will have minimal impact on prices that the present regulated handlers are required to pay for milk for Class I use under each order.

The location adjustment rate of 1.5 cents per hundredweight per each 10 miles under the Middle Atlantic order should be increased to 2.2 cents. This increase in the location adjustment rate will reflect the higher hauling costs that prevail today for transporting milk from country supply areas to metropolitan centers where the fluid milk is consumed. Such increase also will provide closer price alignment at distributing plants throughout the 20 counties that will become regulated as a result of this decision. As indicated previously, the distribution areas of handlers that would be fully regulated under either of the two expanded orders overlap extensively with each other. For some plants, any substantial change in sales in a particular market could result in a shift of regulation from one order to another. This could result from either a gain or loss in sales or from a business decision on the part of a handler to achieve lower product costs. Also, to a substantial extent, the supply areas of the proposed expanded markets are intermingled, with producers being so located that they have general accessibility to plants that would be regulated under either expanded order. Essentially, proponents of revising the respective orders' location adjustment provisions testified that reasonable interorder price alignment could be achieved so long as the prices of the two orders applicable at the same plant location did not differ by more than 15 cents per hundredweight.

Within this context, the only change that should be made in the location adjustment provisions of Order 2 is that the present 15-cent fixed transportation differential on Class I and uniform producer prices be extended an additional zone (71–80 miles zone). This proposed change will reduce the incentive for the Fort Washington Order 4 pool distributing plant to switch pool status to Order 2 because of significantly lower costs for Class I milk under the latter order. The record does not support any other change in the location pricing structure of Order 2.

It is necessary, however, to limit the effect of the change in location adjustment provisions under the Middle Atlantic order in the Pennsylvania counties of Berks, Dauphin and Lebanon to 10 cents per hundredweight. Such a limit is needed to continue the historical intraorder price relationship among handlers in this general area, which includes the population centers of Harrisburg, Lancaster, Lebanon, Reading and York. If the 2.2 cents per 10-mile rate were to apply to plants in Berks, Dauphin and Lebanon Counties, then handlers located in these three counties could have Class I prices that are 17 to 20 cents per hundredweight lower than the prices paid by competing handlers who are located only about 25 miles away in Lancaster and York Counties. Limiting the location adjustment to 10 cents in Berks, Dauphin and Lebanon Counties will continue about the same price structure that presently exists in this heavily populated 5-county area.

While the Ad Hoc Committee's proposed location pricing scheme would have the effect of increasing the Order 2 Class I prices at several plant locations, it would also disrupt the historical farm or producer price relationships throughout and beyond the territory proposed to be regulated. Under this latter situation, producers would have an added incentive to want to deliver their milk only to the plants located nearest their farms. This is because they would not be reimbursed through higher prices for the additional hauling costs involved in moving milk greater distances to plants at the market centers where milk is needed for fluid processing. If this were allowed to occur, the likely result would be to increase the total handling and transportation costs for some handlers as opposed to others in obtaining adequate supplies. Accordingly, the Ad Hoc Committee's proposed location pricing scheme for Order 2 as it would apply to the proposed territory to be regulated and beyond would be inappropriate and could contribute to disorderly marketing conditions.

The argument of Tuscan that it has substantial sales in certain segments of the market in competition with other Order 2 handlers that have lower costs provides no basis, in itself, for requiring such handlers to pay 15-cents per hundredweight more for Class I milk distributed in Tuscan's sales area (0–175 mile zone area). It is not the purpose of the order to guarantee a handler relatively equal pricing with such handler's competition regardless of where the handler chooses to market milk. When a handler chooses to sell milk in a lower priced area, the handler must assume any competitive risk involved. It would be uneconomic to have the order provide a handler with cost comparability at any location the handler may choose to distribute milk.

The SCP proposal that would have applied a location adjustment at Order 4 plants 45 miles or more from the nearest of Baltimore, Philadelphia and Washington, D.C., should not be adopted. Although the thrust of the proposal was to improve the intraorder price relationship among Harrisburg-Lancaster-York, Pennsylvania, handlers, it would have had a much broader impact on the order's price structure at various locations. Under the proposal, the application of such location adjustments would have reduced the Class I prices at regulated plants in the Lancaster-York area as well as a number of other locations. Consequently, the proposal would have changed substantially the location pricing structure of the order.

Beyond this, the record evidence does not demonstrate that the present order's Class I price structure applicable to the Harrisburg-Lancaster-York area is inappropriate or is contributing to disorderly marketing. To the contrary, it appears that the order's present price structure is providing adequate supplies at all locations within the area in question where producer milk is received. It also is providing the necessary price alignment in the various segments of the area where there is extensive competition for fluid milk sales. Accordingly, the same price structure that now applies at plants in the Lancaster-York area should be continued under the expanded order.

As noted earlier, however, the applicable location adjustment at plants in the Pennsylvania counties of Berks, Dauphin and Lebanon should be limited to minus 10-cents per hundredweight. Specifying a maximum location adjustment of 10 cents at plants located in these three counties recognizes that such plants are located relatively near each other and compete for supplies and sales with nearby plants (Lancaster-York plants) at which no location adjustments apply.

The API proposal made at the hearing which would have applied under Order 4 a location adjustment at plants more than 10 miles from the nearest basing point of Baltimore, Philadelphia or Washington should be denied. Applying location adjustments in such a manner would have reduced the Class I and uniform prices at nearly all plants associated with the Middle Atlantic market. This would have significantly altered the historical price relationships which have existed for many years among fully regulated plants under Order 4. There is no compelling evidence on this record to justify any change in interplant price relationships

among those fully regulated plants under the order at which no location adjustments apply.

Pennmarva's proposal to reduce the Order 4 Class I differential from $2.78 to $2.70 likewise should be denied. Proponent testified that the proposal was a necessary feature of its overall objective to improve price alignment at various plant locations between the two orders. The intent of the proposal as indicated by proponent's spokesman was to maintain the same return to Order 4 producers for milk that they now receive, after giving consideration to the effect of the proposed area expansion.

The proposal should be denied primarily for two reasons. First, the marketing area expansion of the Middle Atlantic order as adopted herein, and which is very similar to the one recommended by Pennmarva in its post-hearing brief, would only have a minimal impact on returns to producers. Consequently, adoption of the proposal could have a negative effect on producer returns, which would be contrary to proponent's intent of the proposed Class I price reduction.

Also, the proposed Class I price reduction could disrupt the close price alignment that now exists between Order 2 and Order 4 at the market centers of New York City and Philadelphia. It is essential that the Class I prices under the two orders at these two locations be closely aligned because of the intense intermarket competition. To do otherwise could lead to an unstable market situation.

Under the Middle Atlantic order, the uniform base price paid producers delivering to plants at which location adjustments apply should continue to be adjusted at the same rates applicable to Class I milk so as to reflect the value of milk f.o.b. the plant to which it is delivered. Such application of location adjustments to the uniform base price recognizes that producer milk received at plants in the market center(s) has a greater value to handlers than milk received at distant plants. Accordingly, producers delivering milk directly to the market center receive a uniform base price applicable at that location while those delivering to distant plants receive a lower price. If this were not the case, as was advocated by the spokesmen for SCP and the Ad Hoc Committee, a producer would have no incentive to deliver milk directly to a market center plant instead of to a closer pool plant outlet located nearer to the production area. Therefore, the uniform base price paid to a producer under Order 4 should continue to be at the same rate and for the same reason as location adjustments apply to the Class I price.

3. *Tank truck service charge deductions under Order 2.* The proposal that would revise the method of determining the maximum allowable tank truck service charge deductions by a handler from producer payments under Order 2 should not be adopted.

The order now permits handlers through negotiations with their producers or their cooperatives to recover any farm-to-first plant hauling costs. However, any such deduction plus the transportation credit and plus the amount of the increase in class use location value of the milk at the plant compared to the unit may not exceed the actual transportation costs incurred.

Tuscan proposed that, in computing the maximum negotiable hauling deduction from producers, costs associated with moving direct-shipped milk from a bulk tank unit to a plant should reflect a "fair market value of all transportation services, including general overhead" rather than be based on actual transportation costs as is now the case. According to the handler's witness, the principal intent of the proposal is to enable a proprietary handler that hauls its own milk to recover from producers similar hauling costs that are now reflected in the hauling charge or rates of independent haulers.

Proponent's witness testified that the problem the proposal attempts to mitigate stems from the basis used by the market administrator in allowing only costs of items directly related to the transportation of milk from the farm to first plant of receipt. The Tuscan witness claimed that the cost verification method used by the market administrator, which is based on the actual costs reported to the Internal Revenue Service for tax purposes, is not in accordance with sound accounting principles. He was particularly concerned with the market administrator's determination with respect to depreciation allowances for the 9 tank trucks used by Tuscan in transporting milk from producers' farms to its processing plant.

Proponent's witness said that the handler operates 9 bulk tank trucks and maintains a spare used in picking-up milk at producers' farms. When the present provisions were incorporated into the order on September 1, 1981, he testified that these tanks had a depreciated value for income tax purposes of only $2.161 but their replacement value was much greater than that. However, he stated that in computing the tank truck service charge the market administrator allowed Tuscan only to use the book depreciated value of the tanks rather than their actual replacement value. He also said that the market administrator permits Tuscan to include the cost of direct labor and parts when the tanks need repair or servicing, but does not allow the handler to include the cost of the garage, heat, lights, etc. as part of total transportation costs. The witness indicated that the adoption of its proposal would allow Tuscan to increase the bulk tank service charge about 3 cents per hundredweight.

This proposal should not be adopted. It would permit a handler that operates its own farm pickup trucks to charge producers a bulk tank service charge that exceeded actual hauling expense. For example, if a handler could include in its hauling charge the cost of the bulk tank trucks on the basis of replacement costs, the handler could collect from the producers involved several times over the original investment in the tank trucks. Also, with respect to general overhead, the handler could assess producers for expenses that are not related to the farm to plant transportation function. In essence, this proposal if adopted, would provide handlers who operate their own farm pickup trucks with a means of effectively reducing the minimum class prices established by the order by allowing handlers to pass some of their costs of milk on to their producers in the form of higher hauling charges.

Beyond this, if adopted , the proposal would not necessarily provide assurance that costs of direct-shipped milk would be uniform among handlers without the market administrator developing and adopting an elaborate uniform system of cost accounting. To do this, would place an administrative burden on both handlers and the market administrator and would not be cost effective.

In view of these considerations, the proposal is denied.

4. *Classification of bulk fluid milk products in ending inventory under Order 2.* No change should be made in the present provisions of Order 2 concerning the classifcation of bulk fluid milk products in ending inventory. Under the existing order, ending inventories of bulk fluid milk products are classified as Class II and subject in the following month to reclassification as determined through the order's allocation and assignment procedure of receipts to utilization.

NEDCO proposed that all bulk fluid milk products in ending inventory be classified pro rata to the receiving

handler's utilization. The basis of the federation's proposal stemmed from an amendment to the order on September 1, 1981, which authorized a negotiable bulk tank truck service charge. Under this provision, a handler is permitted to recover any farm-to-first plant hauling costs that are in excess of the transportation pool credit and the amount that the class use location value at the plant of first receipt exceeds its location value where the milk was accounted for as a receipt in the bulk tank unit from which the milk was transferred.

Proponent contended that because the present order classifies all bulk milk in transit from farm to plant at the end of a month as Class II regardless of how it is finally used and which is accounted for in accordance with the market administrator's "Classification and Accounting Rules and Regulations", the allowable tank truck service charge to producers on such classified milk movements is substantially higher than that for similar milk movements classified as Class I. With respect to the market administrator's "Classification and Accounting Rules and Regulations", they specify that bulk tank unit milk transferred (picked up at the farm) in the current month, and which is actually received in the following month at the plant of first receipt, is considered as received at the plant in the month the milk is shipped and included in such plant's closing inventory and classified as Class II regardless of how it is finally utilized in the following month.

In outlining the problem, proponent's witness testified that the difference between the use location value of milk classified during the month as Class I and Class II and which is moved from the 201–210 mile zone to the 1–10 mile zone is 51 cents per hundredweight. Under this example, the withness stated that the allowable tank truck service charge to producers for moving milk for Class II purposes between these zones is 51 cents per hunderdweight higher than for moving milk for Class I purposes. The witness argued that since ending inventories of bulk tank unit milk in transit are largely used in Class I but are all classified in Class II, milk producers and their cooperatives are forced to absorb unfair and unrealistic higher bulk tank service charges than if such milk were classified according to its ultimate use.

The witness added that this economic burden on a cooperative occurs because the tank truck service charge assessed against a producer member by the cooperative is based on where most of a producer's milk is delivered. Hence, according to the witness, it is impractical, if not impossible, to pass back directly to producers the higher bulk tank service charge that may be assessed on bulk milk in transit at the end of the month. In this regard, the federation's spokesman testified that the estimated cost to the federation of not being able to collect from its producer members the higher bulk tank charge on such milk was $48,000 during the first six months of 1983. However, NEDCO in its post-hearing brief, indicated that upon review the $48,000 figure was overstated because of the inclusion of unrelated losses in the figure. Regardless of the magnitude of the cost to NEDC, however, it urged that the closing inventory provisions be revised so that "all tank truck service charges to producrers will be computed on actual utilization".

The proposal should not be adopted. It cannot be concluded on the basis of the record evidence that the magnitude of the problem warrants special consideration through the adoption of the proposal. The record does not support changing the present order's entire classification scheme pertaining to closing inventories of bulk fluik milk products solely to mitigate the effect on the negotiable bulk tank truck service charge from the inclusion in Class II of bulk milk in transit at the end of the month. To do otherwise could have a significant impact on the total amount of bulk milk in ending inventories that would be classified as Class I. In turn, it could result in a handler being required to pay the Class I price for some bulk milk in the month prior to its actual use in such class. At present interest rates, this could substantially increase a handler's cost of milk and cash-flow position. Accordingly, the proposal is denied.

5. *Pooling and pricing milk under Order 2 that is contaminated with antibiotics.* Proposals that would change the method of pricing and payments to producers for contaminated milk under Order 2 should not be adopted.

The North Atlantic Milk Processors' Association (NAMPA), a trade association of milk manufacturers and processors regulated by Order 2, proposed two changes regarding the treatment of contaminated milk under Order 2. The first proposal would eliminate a handler's minimum payment obligation to producers or cooperative associations for milk that was contaminated or was unfit to be sold as market milk at the time of receipt. To implement the intent of this proposal, NAMPA proposed that the "Pool milk" provisions of the present order be revised to exclude from this definition any receipt from a producer which is determined by a state regulatory agency to be contaminated or otherwise not meeting the requirements for market milk, including any milk produced on a dairy farm during the period of days when such production is required to be excluded as marketable milk by the state regulatory agency having authority in the matter.

NAMPA's other proposal would amend the order's "Time and rate of payments" provisions to permit a handler to deduct from monies due a producer any penalty assessed against such producer by a state regulatory agency and also any damages to a handler resulting from the failure of a producer to comply with such regulations.

The president of NAMPA, who also is president of Friendship Dairies, Inc., a regulated handler under Order 2, testified on behalf of the association in support of the proposals. According to the witness, the purpose of the proposals was to conform Order 2 to the State of New York's regulations with respect to "contaminated milk." In this regard, he stated that the regulations pertaining to the production of Grade A milk in the State of New York require that if the milk from a dairy farmer contains any detectable antibiotics, such milk must be excluded from the plant's receipts for two to four days depending upon the frequency of the violation or, in lieu of the exclusion, a fine may be levied upon the dairy farmer in an amount equivalent to the value of milk produced during such otherwise exclusionary period. The witness stated that the exclusionary period did not include the days in which the milk was actually contaminated because such milk must be destroyed under all circumstances. The witness testified that officials of the NYS Department of Agriculture informed him that the intention of the law was to permit the receiving handler of the contaminated milk to both levy and retain the fine assessed against the producer involved. He claimed that the state regulation is in direct conflict with the provisions of Order 2 because the market administrator would not permit a handler to deduct the fine from the monies due a producer for payment of milk receipts.

To illustrate further the need for such amendments, the witness described an incident that occurred in 1982 at Friendship Dairies' plant involving contaminated milk. He said that unknown to the handler at the time, highly contaminated milk was picked up

at a producer's farm which was commingled with other producer milk in a bulk tank pickup truck. At the Friendship plant, the load of contaminated milk was diluted further when it was pumped into the plant's 50,000 gallon silo tank. However, because of the time required to run a test to determine whether or not any of the milk was contaminated, some of the milk had already been processed into cheese, cheese products, and butter. He indicated further that in the course of a routine inspection by the NYS Department of Agriculture, it was determined that the milk products manufactured from this batch of milk were contaminated. Consequently, the State Department of Agriculture immediately embargoed the sale of such products. The witness added that by the time the embargo was removed, Friendship could no longer sell the dated products in normal commercial channels and thus had to sell them at a specially reduced price. He indicated that this incident cost Friendship Dairies between $500 and $2,000. He stated that the Order 2 market administrator would not allow him to recover such losses from the producer who initially was responsible for the contaminated milk.

At the hearing, an NFO witness testified in opposition to these two proposals dealing with contaminated milk. Also, API and Eastern filed post-hearing briefs opposing the proposals. These producer organizations were opposed to any action that would relieve handlers of making minimum payments to producers and cooperative associations for any milk, including contaminated milk, that a handler receives. In this regard, opponents held that it was the responsibility of the receiving handler to assure that "unmarketable" milk does not become commingled with the rest of such handler's total milk supply. They claimed that the proposed handler authorization under the order for withholding payments to producers and cooperatives would be a punitive measure and as such would go beyond the intended purpose of the order.

It is apparent from the record evidence that the incidence of antibiotic contamination is not a significant problem in terms of the overall milk supply for Order 2. In fact, the proponent indicated that the problem he sought to correct by the proposals occurred only once and that he was not aware of any other instances in which it had occurred. The witness also indicated that his company is taking steps through several screening procedures to prevent the possibility of receiving contaminated milk in the future. There is every indication on the record that producers and handlers continue to provide high quality milk and dairy products.

The proposals would result in an extension of the Federal order program with respect to the establishment and enforcement of quality standards for milk. The establishment and enforcement of such standards are the function of other jurisdictions that have the responsibility for assuring the maintenance of minimum quality standards relating to public health considerations. The order regulates only the economic aspects of milk marketing while other agencies have the responsibility for developing and enforcing standards to promote the public health. The proposals would require the market administrator to interpret the regulations of NYS with respect to whether or not a producer had delivered contaminated milk and establish guidelines to determine the amount of the fines and damages a handler could charge to the producer. This would amount to placing the market administrator in the position of enforcing health laws established by other agencies and would result in an inappropriate expansion of the scope of the marketing order.

The proposals also would apply only to the New York producers who deliver milk to the Order 2 market since the problem confronting the proponent stems from the NYS Regulations only. Proponent said he had not considered similar regulations that apply in the several other states in which Order 2 producers are located. Data in the record indicate that during 1982 Order 2 producers were located in the states of New York, New Jersey, Pennsylvania, Maryland and Vermont. In view of this, the proposals would have no bearing on the producers located outside New York State.

It would not be appropriate to allow a regulated handler to receive producer milk that meets the Grade A fluid milk requirements and pay a price for the milk below the Order's minimum prices because milk delivered by such producer previously had been contaminated. This would be a primary result of the proposal. Such a provision would be contrary to one of the basic purposes of the Order which is to assure that all handlers are paying uniform prices for milk. Accordingly, for the reasons set forth above, the proposal is hereby denied.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when each of the aforesaid orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

The following findings are hereby made with respect to each of the aforesaid tentative marketing agreements and orders:

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held; and

(d) All milk and milk products handled by handlers, as defined in the tentative marketing agreement and the order as hereby proposed to be amended, are in the current of interstate commerce or directly burden, obstruct,

or affect interstate commerce in milk or its products.

Recommended Marketing Agreement and Order Amending the Order

The recommended marketing agreement for each marketing area is not included in this decision because the regulatory provisions thereof would be the same as those contained in the orders, as hereby proosed to be amended. The following order amending the orders, as amended regulating the handling of milk in the aforesaid marketing areas is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out.

List of Subjects in 7 CFR Parts 1004 and 1002

Milk marketing orders, Milk, Dairy products.

PART 1004—MILK IN THE MIDDLE ATLANTIC MARKETING AREA

1. In § 1004.2, paragraphs (d)(2)(ii) and (e) are revised to read as follows:

§ 1004.2 Middle Atlantic marketing area.

* * * * *

(d) * * *
(2) * * *
(ii) The boroughs of:

Barnegat Light, Beach Haven, Harvey Cedars, Ship Botton, Surf City, Tuckerton.

(e) In the State of Pennsylvania, the counties of:

Adams, Berks, Bucks, Carbon, Chester, Cumberland, Dauphin, Delaware, Franklin, Fulton, Juniata, Lancaster, Lebanon, Lehigh, Montgomery, Northampton, Perry, Philadelphia, Schuylkill, York.

* * * * *

2.In § 1004.52, paragraph (a) is revised to read as follows:

§ 1004.52 Location differentials to handlers.

(a) For that milk received from producers and from a handler described in § 1004.9(c) at a pool plant and which is assigned to Class I milk, subject to the limitations pursuant to paragraph (b) of this section, and for other source milk for which a location adjustment is applicable, the Class I price shall be reduced by the amount stated in paragraph (a) (1) and (2) of this section for the location of such plant.

(1) For a plant located in any of the following Pennsylvania counties, the adjustment shall be minus 10 cents.

Berks
Dauphin
Lebanon

(2) For a plant located outside the area described in paragraph (a)(1) of this section, and which is 55 miles or more from the city hall in Philadelphia, Pennsylvania, and also 75 miles or more from the nearer of the zero milestone in Washington, D.C., or the city hall in Baltimore, Maryland, (all such distances to be based on the shortest highway distance as determined by the market administrator), the adjustment shall be minus 2.2 cents per 10 miles distance or fraction thereof that such plant location is from the nearest of such basing points.

* * * * *

3. Section 1004.75 is revised to read as follows:

§ 1004.75 Location differentials to producers and on nonpool milk.

(a) In making the payments required pursuant to § 1004.73, the uniform price for base milk computed pursuant to § 1004.61(b) shall be reduced by the amounts set forth in § 1004.52 according to the location of the plant where the milk being priced was received.

(b) For purposes of computations pursuant to §§ 1004.71 and 1004.72 the weighted average price shall be reduced by the amounts set forth in § 1004.52 applicable at the location of the nonpool plant from which the milk was received, except that the adjusted weighted average price shall not be less than the Class II price.

PART 1002—MILK IN THE NEW YORK-NEW JERSEY MARKETING AREA

1. Section 1002.3 is revised to read as follows:

§ 1002.3 New York-New Jersey marketing area.

"New York-New Jersey marketing area" (hereinafter called the "marketing area") means all of the territory within the boundaries of the city of New York, and the counties and parts of counties set forth below together with all piers, docks, and wharves connected therewith, and all craft moored thereat, and including territory within such boundaries which is occupied by Government (municipal, State, Federal, or international) reservations, installations, institutions, or other establishments.

New York Counties

Albany, Broome, Cayuga (except the townships of Sterling, Victory, Conquest, and Montezuma), Chemung, Chenango, Columbia, Cortland, Delaware, Dutchess, Essex (Schroon, Ticonderoga, Crown Point, and Moriah townships only), Fulton (except the township of Stratford), Greene, Herkimer (except the townships of Webb, Ohio, and Salisbury), Madison, Montgomery, Nassau, Oneida (except the townships of Ava, Boonville, Forestport, and Florence), Onondaga, Orange, Oswego (except the townships of Redfield and Boylston), Otsego, Putnam, Rensselaer, Rockland, Saratoga (except the townships of Day, Edinburg, and Providence), Schenectady, Schoharie, Schuyler, Steuben (Addison, Corning, and Erwin townships only), Suffolk (except Fisher's Island), Sullivan, Tioga, Tompkins, Ulster, Warren (except the townships of Johnsburg, Thurman, and Stony Creek), Washington, Westchester, Yates (except the townships of Italy, Middlesex, and Potter).

New Jersey Counties

Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Ocean (except the boroughs of Barnegate Light, Beach Haven, Harvey Cedars, Ship Bottom, Surf City, Tuckerton, and the townships of Barnegat, Eagleswood, Lacery, Little Egg Harbor, Long Beach, Ocean, and Stafford), Passaic, Somerset, Sussex, Union, Warren.

Pennsylvania Counties

Bradford, Columbia, Lackawanna, Luzerne, Lycoming, Monroe, Montour, Northumberland, Pike, Snyder, Sullivan, Susquehanna, Union, Wayne, Wyoming.

2. In § 1002.51, paragraph (c) is revised to read as follows:

§ 1002.51 Transportation differentials.

* * * * *

(c) The differential rates applicable at plants shall be set forth in the following schedules:

A-freight zone (miles)	B-classes 1–A and 1–B (cents per cwt)	C-class II (cents per cwt)
1 to 10	+59.0	+8
11 to 20	+56.8	+8
21 to 25	+54.8	+8
26 to 30	+54.6	+7
31 to 40	+52.4	+7
41 to 50	+50.2	+7
51 to 60	+48.0	+6
61 to 70	+45.8	+6
71 to 75	+43.6	+6
76 to 80	+43.6	+5
81 to 90	+26.4	+5
91 to 100	+24.2	+5
101 to 110	+22.0	+4
111 to 120	+19.8	+4
121 to 125	+17.6	+4
126 to 130	+17.6	+4
131 to 140	+15.4	+3
141 to 150	+13.2	+3
151 to 160	+11.0	+2
161 to 170	+8.8	+2
171 to 175	+6.6	+2
176 to 180	+6.6	+1
181 to 190	+4	+1
191 to 200	+2.2	+1
201 to 210	0.0	0
211 to 220	−1.5	0
221 to 225	−3.0	0
226 to 230	−3.0	-1
231 to 240	−4.5	−1
241 to 250	−6.0	−1
251 to 260	−7.5	−2
261 to 270	−9.0	−2
271 to 275	−10.5	−2
276 to 280	−10.5	−3
281 to 290	−12.0	−3
291 to 300	−13.5	−3
301 to 310	−15.0	−4
311 to 320	−16.5	−4
321 to 325	−18.0	−4
326 to 330	−18.0	−5
331 to 340	−19.5	−5
341 to 350	−21.0	-5
351 to 360	−22.5	-6

A-freight zone (miles)	B-classes 1-A and 1-B (cents per cwt)	C-class II (cents per cwt)
361 to 370	-24.0	-6
371 to 375	-25.5	-6
376 to 380	-25.5	-7
381 to 390	-27.0	-7
391 to 400	-28.5	-7
401 and over	-30.0	-8

(Secs. 1-19, 48 Stat. 31, as amended 7 U.S.C. 601-674)

Signed at Washington, D.C., on March 5, 1985.

William T. Manley,

Deputy Administrator, Market Programs.

[FR Doc. 85-5675 Filed 3-8-85; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 1094

[Docket No. AO-103-A44]

Milk in the New Orleans-Mississippi Marketing Area; Decision on Proposed Amendments to Marketing Agreement and to Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision adopts changes in the New Orleans-Mississippi milk order. The order changes would add 12 counties of northeastern Mississippi to the marketing area. Plant location adjustments to prices would be revised to accommodate the area expansion. Also, the proportion of member milk that must be received at pool distributing plants for a cooperative association to qualify its plant for pooling is reduced five percentage points. The order changes were considered at a public hearing held on August 28, 1984, in Tupelo, Mississippi. The order changes were requested by several cooperative associations and are necessary to reflect current marketing conditions and to insure orderly marketing conditins in the New Orleans-Mississippi marketing area.

FOR FURTHER INFORMATION CONTACT: Clayton H. Plumb, Marketing Specialist, Diary Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C. 20250, (202) 447-6274.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of Section 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

William T. Manely, Deputy Administrator, Agricultural Marketing Sevice, has certified that this action will not have significant economic impact on a substantial number of small entities. The amendments will promote orderly marketing of milk by producers and regulated handlers.

Prior documents in this proceedings:

Notice of Hearing: Issued July 24, 1984; published July 30, 1984 (49 FR 30316).

Recommended Decision: Issued January 14, 1985; published January 18, 1985 (50 FR 2678).

Preliminary Statement

A public hearing was held upon proposed amendments to the marketing agreement and the order regulating the handling of milk in the New Orleans-Mississippi marketing area. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice (7CFR Part 900), at Tupelo, Mississippi on August 28, 1984. Notice of such hearing was issued on July 24, 1984, and published July 30, 1984 (49 FR 30316).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, Agricultural Marketing Service, on January 14, 1985, filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto.

The material issues, findings and conclusions, rulings, and general findings of the recommended decision are hereby approved and adopted and are set forth in full herein.

The material issues on the record related to:

1. Marketing area expansion.
2. Handler location adjustments.
3. Pooling a cooperative association plant.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

The New Orleans-Mississippi milk order should be changed to add 12 Mississippi counties to the marketing area. The 12 counties are: Alcorn, Benton, Chickasaw, Clay, Itawamba, Lee, Monroe, Pontotoc, Prentiss, Tippah, Tishomingo, and Union.

Also, the above counties of Chickasaw, Clay, and Monroe should be added to the present Zone 5 of the order marketing area. The remaining 9 counties would be added to a new Zone 6.

At present, Zone 5 of the Order 94 marketing area comprises the Mississippi counties of Calhoun, Coahoma, Grenada, Quitman, Tallahatchie, and Yalobusha. A location adjustment of minus 65 cents applies to Class I and uniform prices at pool plants located in the Zone, and that rate would not be changed. The applicable Class I differential for the Zone is $2.20.

For Zone 6, a location adjustment of minus 75 cents would apply, and the applicable Class I differential would be $2.10. Also, the minus 75-cent adjustment would apply to a plant located in the State of Mississippi, but outside the marketing area.

It is anticipated that two added pool distributing plants would be subject to the minus 75-cent adjustment, one added pool distributing plant to the minus 65-cent adjustment, and none to the adjustment outside the marketing area but within Mississippi.

A third change to the order would lower to 45 percent (from 50 percent) the proportion of member milk that must be received at pool plants for a cooperative association to qualify its plant for pooling.

The marketing area and location adjustment changes were proposed by Associated Milk Producers, Inc. (AMPI), and Dairymen, Inc. (DI). The cooperative plant pooling change was proposed by Gulf Dairy Association, Inc. (Gulf).

Proponents' Presentation

The Following points were made by witnesses for AMPI and DI in connection with their proposals.

A. *A representative of Barber Pure Milk Company of Tupelo, Mississippi (Barber), testified for AMPI as follows:*

1. Barber operates a fluid milk plant at Tupelo, Mississippi, regulated under the Alabama-West Florida Federal milk order.

2. If the marketing area is expanded, the plant would be regulated by the New Orleans-Mississippi order.

3. Approximately 52 percent of Barber's milk sales from the Tupelo plant is distributed in the proposed 12-county area, a lesser amount in the Alabama-West Florida marking area, and a small quantity in the Memphis marketing area.

4. Barber purchases milk from Northeast Mississippi Milk Producers, Inc., and from AMPI.

5. There are 15 handlers who have Class I sales in the 12-county area.

6. Thirteen of the 15 handlers have been regulated for a substantial period of time under various Federal milk marketing orders.

7. The remaining two handlers are Turner Dairies at New Albany,

Mississippi (Turner), and Reese Dairy at Amory, Mississippi.

8. Turner, New Albany was fully regulated for the first time in July 1984 by the Memphis order.

9. Turner was regulated by the Memphis order as a result of some distribution in that order area by a former Sealtest distributor, acquired by Turner when the Sealtest plant in Memphis, Tennessee, closed.

10. Barber does not know if its purchase price for milk is competitive with an unregulated plant and if the sales of an unregulated plant are audited.

11. The milk business is very competitive and a cent per gallon can make a very large difference in the marketplace. Barber could be uncompetitive with an unregulated handler who is not paying at least the same Federal order Class I price as Barber.

12. The entry of an unregulated source of milk in the 12-county area has resulted in an erosion of resale prices. In 1983, Malone and Hyde in Nashville, Tennessee, sold fluid milk products in northeastern Mississippi under their private label on a "drop price" basis. Drop price sales do not include services.

13. Turner, in order to meet competition from Malone and Hyde, offered full service sales at "drop prices."

14. Barber's margins declined in order to meet this competition.

15. Barber, with the help of AMPI, conducted a 12-county sales survey.

16. The major portion of Class I sales in the 12-county area are by handlers fully regulated.

17. If the 12-county area is not included in the New Orleans-Mississippi marketing area, disruptive and disorderly marketing conditions will result.

18. Barber estimates that Turner disposes of 850,000 pounds of Class I sales per month into northeastern Mississippi and that Turner would be regulated under the New Orleans-Mississippi order.

19. Sales of only 1,000 pounds per day into the Memphis order marketing area are sufficient to fully regulate a plant under that order.

B. *A representative of AMPI testified as follows:*

1. AMPI estimates that approximately 5.5 million pounds of fluid milk products per month are disposed of in the 12-county area.

2. More than 86 percent of Turner's fluid milk sales from the New Albany plant are in the 12-county area.

3. AMPI delivers milk to Barber at Tupelo, Mississippi, and Turner at New Albany, Mississippi.

4. AMPI also delivers milk to other handlers selling in the 12-county area.

5. All of this milk, except the milk delivered to Turner, is producer milk under some Federal order.

6. AMPI, in July 1984, delivered approximately 70 percent of Turner's milk receipts.

7. AMPI expects five of its members to become independent producers shipping to Turner.

8. Milk from some of the members of the Northeast Mississippi Milk Producers, Inc., will be delivered to Turner as nonmember milk.

9.Turner is offering more for milk than AMPI is able to pay.

10. Turner is almost 100 percent Class I utilization.

11. If Turner buys milk at what amounts to a blend price, that price becomes its Class I milk cost.

12. The difference between a fully regulated handler's classified use value and the blend price, is available to an unregulated handler to use for distribution of packaged fluid milk products or to acquire a supply of milk.

13. AMPI expects Turner to continue to purchase milk from the cooperative in order to balance its supply.

14. Turner could supply this 12-county area from its plants at Covington, Tennessee, or Fulton, Kentucky.

15. Turner, during the flush production months, has the ability to cut back on AMPI or other cooperatives supplying milk. Therefore, some other Federal order would be carrying the burden of that surplus.

16. At the present time, Turner has the flexibility in any month to avoid regulation by shifting sales from its Covington, Tennessee, or Fulton, Kentucky, plants.

17. Turner Dairies in Covington, Tennessee, supplies a distribution point at Houston, Mississippi, which is in the 12-county area.

18. AMPI believes that the 12-county area should be included in the marketing area in order to preserve orderly marketing.

19. Turner would have a procurement and distribution advantage in the absence of the expansion of the marketing area because of their ability to become unregulated.

20. The advantage is even greater in the summer months when the utilization percentages under the New Orleans-Mississippi order are approximately 65 percent Class I and 35 percent Class II. Since Turner is almost 100 percent Class I, it could pay dairy farmers on this 65–35 percent blend price value and have a substantial price advantage.

21. Since all of Turner's Class II distribution comes from its Covington, Tennessee, plant, the Memphis order producers bear this burden.

22. If the 12-county area becomes part of the marketing area, New Orleans-Mississippi handlers would have almost 77 percent of the Class I sales in this area. Georgia order handlers would have about 3.8 percent, Paducah order handlers 2 percent, and Memphis handlers 7 percent.

23. Turner was regulated by the Memphis order for July 1984 because of the small quantities of fluid milk products disposed of in that market.

24. There is free and unrestricted movement of Grade A milk in the 12-county area because of reciprocal agreements. Grade A health requirements for the 12-county area are administered by the State of Mississippi and are based on the U.S. Public Health Code.

25. AMPI supports D.I.'s proposal to change the minus plant location adjustment from a minus 65 cents to a minus 75 cents for a plant located in the State of Mississippi but outside the marketing area.

C. *A representative of DI testified as follows:*

1. DI supports AMPI proposals 3 and 4. The proposals of both organizations are identical in purpose.

2. The proposals to restructure Zone 5 and add a Zone 6 will result in reasonable alignment of Class I prices under the order with Class I prices under nearby or adjacent Federal orders.

3. The recent purchase of the New Albany plant by Turner Dairies has intensified the need for Federal regulation in the 12-county area.

4. The New Albany plant prior to July 1984, was not regulated.

5. Regulatory status of the New Albany plant can be affected by rearranging sales between Turner's plants at Covington, Tennessee, Fulton, Kentucky, and New Albany, Mississippi.

6. The twelve county area should be regulated in order to promote equitable treatment among all handlers selling Class I milk within the area.

7. Adoption of the proposals will price producer milk on a uniform basis to all competing handlers and eliminate the opportunity for a handler in the area to purchase milk advantageously on a blend or flat price basis.

8. The inclusion of this area in any other Federal milking marketing area would not be logical because of the clear interrelationship between this area

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and the current New Orleans-Mississippi order marketing area.

9. DI supplies Turner Dairies at Fulton, Kentucky, and other handlers who distribute fluid milk products in the 12-county area.

10. Unless the proposals to expand the marketing area are adopted, DI believes that disorderly marketing conditions will develop in the area.

11. Unregulated handlers can pay higher than the blend price and still have an advantage.

The proposals to expand the marketing area also were supported by a proprietary handler and two cooperative associations.

A witness for Borden, Inc. (Borden) testified that Borden has three fluid milk plants regulated under the New Orleans-Mississippi milk order. The Borden plant at Jackson, Mississippi, he said, sells fluid milk products in the 12-county area.

The witness stated that at one time Borden enjoyed the benefits of having an unregulated plant at Pensacola, Florida. He said that if Borden is going to be regulated, all handlers should be regulated. The witness testified that if an unregulated plant is surrounded by regulated plants, the unregulated plant has a price advantage in acquiring milk. This, he says, is because the unregulated plant can pay a higher price for milk from independent dairy farmers than a cooperative association can pay its members. A cooperative has taken on the responsibility of balancing the milk supply to regulated handlers in the market. The Borden witness said that even though an unregulated plant may pay more than the blend price for its milk, its total costs are lower than regulated plants paying class prices.

A witness for Southern Milk Sales, Inc., testified that it delivers milk to plants regulated under the New Orleans-Mississippi milk order and supports the AMPI proposals. Also, a witness for Gulf Dairy Association, Inc., testified that it supports all proposals.

Opponent's Presentation

The marketing area proposals were opposed by Turner Dairies (Turner) on the following basis:

1. Turner sales were fully regulated, except for the period of January 1984 through June 1984.

2. DI was the most disturbing influence in the market at the time Turner acquired the New Albany, Mississippi, plant.

3. Turner's plant at New Albany, Mississippi, was fully regulated in July 1984 and not marginally regulated by the Memphis milk order.

4. In July 1984, approximately 189,000 pounds of fluid milk products or 17 percent of Turner's receipts were disposed of in the Memphis marketing area. This is far more than the minimum sales requirement in order to be regulated under the Memphis milk order.

5. At no time has Turner's New Albany plant paid less than the Memphis or New Orleans-Mississippi blend price for milk.

6. Because a cooperative association is not regulated on what it pays for milk, Turner does not know their costs.

7. Turner does not understand why its plant at New Albany, Mississippi, prior to July 1984, would be a disturbing influence in the New Orleans-Mississippi market.

8. Premiums charged by cooperative associations are a disturbing influence in the market.

9. The 12-county area more logically is associated with the Memphis milk order area than with the New Orleans-Mississippi milk order area. In July 1984, on the basis of the total number of handlers selling in the 12-county area, 28 percent of the handlers were regulated by the Memphis milk order and only 16 percent were regulated by the New Orleans-Mississippi milk order.

10. Publications written by the United States Department of Agriculture, in Turner's opinion, say that a milk plant should be regulated by the milk order area that is close to the area that the plant serves.

11. Disturbing factors in the market, far more often, come from other places than the entry of Turner's New Albany plant. The Malone and Hyde plant, for example, regulated under the Memphis order, but located in Nashville, Tennessee, was a disturbing factor.

12. In July 1984, the New Albany, Mississippi, plant received over 1.1 million pounds of milk and disposed of 1.0 million pounds or better than 90 percent as Class I. Seventeen percent of the total Class I sales was in the Memphis marketing area and the balance was disposed of in the 12-county area.

13. The acquisition of a former Sealtest distributor, who served part of the Memphis marketing area, was the reason for Turner's sales in that area for July 1984.

14. Turner acquired the New Albany plant in January 1984 and at that time the volume of milk at the plant was small. Most of Turner's packaged milk disposed of in the 12-county area in early 1984 came from its plants at Fulton, Kentucky, and Covington, Tennessee.

15. The New Albany, Mississippi, plant has been upgraded to handle more volume.

16. Additional milk needed at the New Albany, Mississippi, plant is purchased from AMPI. Turner expects to take on about 10 AMPI and Northeast Mississippi Dairymen Association members as independent dairy farmers delivering milk to the New Albany, Mississippi plant.

17. The price they pay for milk at New Albany, Mississippi, is related to the Federal order blend price.

Discussion of the Issues

1. Orderly marketing conditions for all milk dealers who sell fluid milk products in the counties of Alcorn, Benton, Chickasaw, Clay, Itawambe, Lee, Monroe, Pontotoc, Prentiss, Tippah, Tishomingo, and Union, in northeastern Mississippi, can be assured by adding the 12 counties to the New Orleans-Mississippi, marketing area (order No. 94).

The proposal to add the 12 counties to the New Orleans-Mississippi marketing area was made by Associated Milk Producers, Inc. (AMPI), and by Dairymen, Inc. (DI). AMPI has members whose milk is processed and distributed in the 12-county area. The cooperative supplies milk to the Barber Pure Milk Company (Barber) at Tupelo, Mississippi, (Lee County), and to Turner Dairies (Turner) at New Albany, Mississippi, (Union County). The cooperative also supplies milk to 6 handlers outside the 12-county area, in Mississippi and 3 other states, who sell fluid milk products in the 12 counties and are regulated by various Federal milk order. For July 1984, AMPI supplied 70 percent of the milk receipts of Turner at New Albany.

AMPI is concerned that if the 12 counties are not included in the New Orleans-Mississippi marketing area, Turner would have the option to become unregulated at any time, with a competitive advantage in milk procurement and distribution over regulated handlers selling milk in the 12 counties.

A witness for DI testified that the January 1984 purchase of the plant at New Albany by Turner has intensified the need for the Federal regulation of all handlers distributing milk in the 12 counties.

A principal witness for AMPI was a representative of Barber who described disorderly marketing conditions that result when an unregulated milk handler exploits that status in competition with regulated handlers.

As indicated, the 12 counties are in northeastern Mississippi. The population of the counties was 297,964 or about 11.8 percent of the population of the State of Mississippi, based on the United States Census of 1980. At that time, Tupelo, which is near the center of the 12-county area, had about 25,000 persons and was the largest population center for the area.

The handling of milk in the 12 counties is in the current of interstate commerce, and directly burdens, obstructs, and affects interstate commerce in milk and milk products. Also, the Grade A health requirements for the 12 counties are based on the recommended U.S. Public Health Service Code, and are administered by the State of Mississippi.

In July 1984, fifteen milk handlers were selling fluid milk products in the 12-county area. Eight of them were from Mississippi, four of them from Tennessee, and one each from Alabama, Kentucky, and Arkansas. It is estimated that the milk handlers distributed about 4.9 million pounds of fluid milk products in the area for that month. Fourteen of the milk handlers were regulated by various Federal milk orders. Reese Dairy at Amory, Mississippi (Monroe County) was the only unregulated milk handler with fluid sales in the 12-county area in July 1984.

Three of the handlers selling fluid milk products in the 12-county area are regulated by the New Orleans-Mississippi order, three by the Alabama-West Florida order, five by the Memphis order, and one each by the Paducah, Central Arkansas and Georgia order.

The estimated percentages of total Class I sales in the 12 counties by handlers for July 1984 are as follows:

Handlers	Percentage
1—Order 7 (Georgia)	3.75
3—Order 93 (Alabama)	40.58
3—Order 94 (New Orleans)	16.07
5—Order 97 (Memphis)	26.30
1—Order 98 (Paducah)	2.00
1—Order 108 (Cent. Arkansas)	0.20
1—Unregulated	5.07
15 Handlers	100.0

Turner, New Albany, became regulated by the Memphis order in July 1984. Previously, the plant was unregulated. It became regulated by the Memphis order when some distribution in that area by a former Sealtest distributor was acquired by Turner when the Sealtest plant at Memphis was closed. In July 1984, about 189,000 pounds of fluid milk products or 17 percent of the New Albany plant receipts were disposed of in the Memphis marketing area. Turner sells about 850,000 pounds of fluid milk products per month in the 12-county area, and would be regulated by the New Orleans-Mississippi order if the 12 counties are added to the New Orleans-Mississippi marketing area.

Turner acquired the New Albany plant on January 1, 1984. It upgraded the plant, and put additional equipment in it to handle more volume. The objective was to save hauling costs from its plants at Fulton, Kentucky, and Covington, Tennessee, by buying milk in the 12-county area and processing it and selling it there.

Historically, the previous owners of the New Albany plant were supplied with milk by producers who were not members of a cooperative association. Turner has continued that policy except that in expanding the New Albany operation, Turner has bought milk from AMPI on a regular basis. Some of that supply is now being supplanted by 10 newly acquired independent producers who formerly were members of AMPI and the Northeast Mississippi Dairymen's Association.

The need to include the 12-county area in the New Orleans-Mississippi marketing area is centered on the operations of Turner Dairies. Although the New Albany plant was regulated by the Memphis order at the time of the hearing, previously it was unregulated. In that capacity, it contributed to disorderly marketing conditions for milk in the 12-county area. If the 12 counties are not added to the New Orleans-Mississippi marketing area, the previous disorderly marketing conditions could be repeated.

Turner operates plants at New Albany, Mississippi; Covington, Tennessee; and Fulton, Kentucky. At present, all the plants are regulated by Federal milk orders. If the 12 counties are not included in the New Orleans-Mississippi marketing area, the Turner plant at New Albany could be operated as an unregulated plant.

Turner at Fulton, Kentucky historically has been regulated under the Paducah, Kentucky, milk order, and the Turner plant at Covington, Tennessee, has been regulated by the Memphis order. Prior to July 1984, the New Albany plant had not been regulated by any Federal milk order. By rearranging sales among its three plants, Turner could determine the regulatory status of the New Albany plant.

In operating an unregulated plant, Turner would not be obliged to pay an order Class I price for milk as regulated competitors must do. In July 1984, the Turner Class I utilization was 91 percent of producer receipts at the New Albany plant. Even though, in an unregulated capacity, Turner might pay a Federal order blend-price to producers, the firm still would have a competitive advantage over regulated handlers in procuring or selling milk. This results because Turner would not have to pay an order Class I price for its high Class I utilization.

The uniform prices to producers under the New Orleans-Mississippi order for 1983 reflected an average Class I utilization of 63 percent. The average uniform price of the New Orleans-Mississippi order for 1983 was $14.47 a hundredweight for milk testing 3.5 percent butterfat. The average Class I price was $15.39, a difference of 92 cents a hundredweight. At 46.5 quarts a hundredweight, the difference amounts to 1.98 cents a quart, or 8 cents a gallon.

Turner testified that in an unregulated capacity the firm has paid its producers the New Orleans-Mississippi blend price. When the Turner plant is unregulated and buys milk at a Federal order blend price, that price becomes its effective Class I price. The difference between the order Class I price and the blend price is what would be available to Turner to use competitively in milk procurement or distribution.

When the Turner plant at New Albany was unregulated, the firm became involved in at least one price war with another milk handler. The disorderly marketing conditions that resulted were detrimental to regulated handlers distributing fluid milk products in the 12-county area. The competitive advantage that Turner could exploit as an unregulated milk handler could be detrimental to orderly marketing even without price wars. Milk handlers who can buy milk on an unregulated basis can be a disruptive factor in competing with handlers who are regulated and who must account for fluid milk sales at the Class I prices of an order.

Turner opposed the proposals concerning the 12 counties chiefly on the basis that the area was more appropriately associated with the Memphis order because the largest block of handlers distributing in the 12 counties, five out of fifteen, are regulated by the Memphis order.

The addition of the 12 counties to the New Orleans-Mississippi marketing area, specifically, is supported by the record. Five handlers distributing in the 12 counties are regulated by the Memphis order. However, excluding Turner, New Albany, the distribution of four Memphis handlers in the 12-county area amounted to 9 percent of the fluid sales there in July 1984. Turner's fluid milk disposition in the 12-county area

for the month amounted to 850,000 pounds compared with 189,000 pounds in the Memphis order. Also, a majority of Barber's fluid sales would be in the New Orleans-Mississippi order with the 12-county area included. Turner and Barber account for over 55 percent of the fluid sales in the 12 counties. Three New Orleans-Mississippi handlers account for an additional 16 percent—a total of 71 percent for the 5 handlers. It is concluded that adding the 12 counties to the New Orleans-Mississippi marketing area would be reasonable and appropriate.

All participants at the hearing who testified on this issue, except Turner, supported the addition of the 12 counties to the New Orleans-Mississippi marketing area. The witnesses included representatives of Barber Pure Milk Company, Borden, Inc., Associated Milk Producers, Inc., Dairymen, Inc., Southern Milk Sales, and Gulf Dairy Association.

The record is clear that by not having the 12 counties included in the New Orleans-Mississippi marketing area, Turner Dairies could exploit the competitive advantage available to it from an unregulated status whenever it chose to do so. However, if this option were available for Turner Dairies, or any milk firm similarly situated, disorderly marketing conditions could result.

By including the 12 counties in the New Orleans-Mississippi marketing area, the milk of all handlers distributing there would be accounted for on a classified-price basis. This would eliminate the option of a handler, such as Turner, to buy producer milk on a blend or flat price basis and thereby gain a competitive advantage in the cost of milk over competing handlers who are buying milk on a Federal order classified-price basis.

It is concluded that the adoption of the proposal would promote competitive equity in the cost of milk among handlers, and provide greater marketing stability for the 12 counties than has been the case previously. Inclusion of the 12 counties in the New Orleans-Mississippi marketing area is needed to minimize disruptive marketing conditions for milk in northeastern Mississippi. The public interest will be served by assuring orderly marketing for milk in the 12-county area that will provide a continuing and adequate supply of fluid milk for the area at reasonable prices.

2. The plant location adjustments to Class I and uniform prices that were proposed by AMPI and DI should be adopted.

The cooperatives proposed that Chickasaw, Clay, and Monroe Counties, Mississippi, be added to present Zone 5 of Order 94. In Zone 5 a plant location adjustment of minus 65 cents is applicable, or a Class I differential of $2.20. The cooperatives also proposed that a new Zone 6 be provided consisting of the Mississippi counties of Alcorn, Benton, Itawamba, Lee, Prentiss, Pontotoc, Tippah, Tishomingo, and Union. The Zone 6 location adjustment would be minus 75 cents, or a Class I differential of $2.10. Also, the minus 75-cent adjustment would apply to a plant located in the State of Mississippi, but outside the marketing area. These adjustments would provide reasonable and appropriate Class I price alignment with other Federal milk orders.

The Class I differential of the Barber plant at Tupelo, Mississippi, is $2.10 under the Alabama-West Florida order, and would be the same under Zone 6 of the New Orleans-Mississippi order.

The Turner plant at new Albany, Mississippi, regulated by the Memphis order, has a Class I differential of $2.075. Under the amendment adopted herein, if the Turner plant at New Albany were regulated by Order 94, the applicable Class I differential would be $2.10.

This differential is appropriate for the Barber and Turner plants. The chief competition of the Barber plant outside the 12-county area of northeastern Mississippi is with plants regulated by the Alabama-West Florida order. When the Barber plant is regulated by the order, the applicable Class I differential is $2.10. Thus, being regulated by Order 94 will not change principal competitive price relationships for the plant. Also, the new Zone 6 for Order 94 corresponds geographically with Zone 1 of the Alabama-West Florida order applicable to 11 counties of northern Alabama.

Because Class I differentials of Federal milk orders generally increase 1.5 cents for each 10 miles of distance from Eau Claire, Wisconsin, a Class I differential of $2.10 for Zone 6 of Order 94 that corresponds with Zone 1 of Order 93 will maintain this price aligment policy.

The Class I differential of $2.10 will be appropriate for the Turner plant at New Albany because the plant is located in Zone 6 within 23 miles of Tupelo, Mississippi. The record evidence is that 83 percent of Turner's fluid sales are in the 12-county area, and that a principal competitor is Barber. It is appropriate that the Class I differentials applicable at these plants be the same considering prevailing marketing conditions.

The inclusion of Chickasaw, Clay, and Monroe Counties in the present Zone 5 of Order 94, with a Class I differential of $2.20 also is appropriate. The three countries are a logical extension eastward to the Mississippi-Alabama line. Also, the Zone 5 differential will maintain proper alignment of the Zone 5 Class I price with a counterpart Class I price zone under Order 93. The differential would apply to Reese Dairy, Amory, Mississippi, in Monroe County. In July 1984, the plant distributed and estimated 250,000 pounds of fluid milk products in the 12-county area. This distribution represented an estimated 5 percent of total fluid sales by all handlers in the area, and 100 percent of the Reese plant distribution.

The purpose of the plant location adjustment is to reflect the location value of bulk milk received at a handler's plant in relation to other plants regulated by an order and in relation to prices established under other Federal milk orders. There is no evidence in the record that the adjustments adopted herein would make it difficult for any handler to acquire a supply of milk, or to compete for sales with other handlers.

3. The New Orleans-Mississippi milk order should be changed to provide that a cooperative association deliver each month at least 45 percent of the milk of member producers to pool distributing plants to quality the cooperative's plant for pooling.

The order presently provides that any plant located in the marketing area that is operated by a cooperative association shall be a pool plant if such status is requested by the cooperative association and 50 percent or more of the producer milk of members of the cooperative association is physically received during the month in the form of a bulk fluid milk product at pool distributing plants either direct from farms or by transfer from plants of the cooperative associations for which pool status has been requested, subject to specified conditions. The single change made herein reduces the numeral "50 percent" to "45 percent".

The proponent's witness testified that Gulf Dairy Association operates a fluid milk plant at Kentwood, Louisiana. This plant, he said, normally qualifies as pool plant under the New Orleans-Mississippi milk order by shipping 50 percent of its members' milk to pool distributing plants.

The witness indicated that Gulf markets a relatively small volume of milk and they are not in the business to sell Class III milk. Gulf sometimes has some excess supplies due to variations in production and sales.

Proponent's witness said that presently, milk production is substantially down in the Kentwood,

Louisiana, region. Therefore, Gulf is not experiencing any difficulty in shipping 50 percent of its members' milk to pool distributing plants.

The spokesman indicated, however, that in prior years, when milk production was higher, the plant often experienced difficulty in meeting the 50 percent shipping requirement. Gulf does not know in advance if variations in production and sales will enable the association to meet the 50 percent shipping standards. Furthermore, the witness said, if the plant were qualified as supply plant, only 45 percent of its members' milk would have to be transferred to pool distributing plants to qualify its plant for pooling.

The cooperative association's plant at Kentwood, Louisiana, functions as a "balancing plant." When milk is temporarily not needed by distributors, producers can pool their milk by delivery to a balancing plant. The plant becomes an outlet for reserve milk without involving the need to divert milk from distributing plants in order to keep the milk pooled.

Although milk should be moved, when possible, directly from the farm to distributing plants, there are occasions when balancing plants are called upon for supplemental supplies. Pool status for balancing plants facilitates the transfer of milk from the plant to distributing plants.

It is necessary, however, that there be a reasonable demonstration that the milk pooled through balancing plants be a part of the regular market supply. Milk should not be permitted to be associated with the market merely for manufacturing purposes since this would reduce returns to producers and discourage the production of an adequate supply of milk by those producers regularly supplying the fluid market. Any shipping requirements for a balancing plant would be inconsistent with the balancing function of the plant. For this reason, the pooling of a cooperative balancing plant should be contingent on its function with respect to the milk supply for the fluid market and this is reasonably reflected in how much of the cooperative's total milk supply from member producers is furnished to pool distributing plants.

When the balancing plant provisions were first adopted, (Final Decision, 41 FR 4542, January 26, 1976), the 50 percent pooling standard was considered reasonable in view of marketing conditions at that time. The 50 percent standard demonstrated a substantial association of the cooperative's total milk supply with the fluid market and minimized the opportunity to pool unneeded milk through balancing plants.

Marketing conditions since 1976 have changed substantially in the New Orleans-Mississippi market. Class I utilization, as a percentage of producer milk for the year 1976, dropped from a yearly average of 70 percent [1] to 63.5 percent for 1983. Although Class I utilization for the first 6 months of 1984 is higher than the same period of 1983, this is due to the substantial decline in milk production. Milk production for the first six months of 1984 declined from 613.0 million pounds to 538.7 million pounds for the same period of 1983 or 13.8 percent. Milk production throughout the southeastern region of the United States has declined in response to several national programs intended to reduce the national surplus of milk and the Government's purchase of diary products under the price support program.

Based on marketing conditions, it is concluded that there is merit to the proposal, particularly since the shipping standard for a supply plant during the months of August through November is 45 percent.

On the basis of this record, it is concluded that lowering the balancing plant performance percentage would not create any disorderly marketing conditions or lower the returns of producers by pooling unneeded milk. The plant is located in the marketing area which encompasses most of the production area and provides a service for the market.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the New Orleans-Mississippi order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity price of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and whole milk, and be in the public interest;

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held;

(d) All milk and milk products handled by handlers, as defined in the tentative marketing agreement and the order as hereby proposed to be amended, are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products; and

(e) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, 5 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to milk specified in §1094.85 of the aforesaid tentative marketing agreement and the order as proposed to be amended.

Rulings on Exceptions

No exceptions were filed.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents, a Marketing Agreement regulating the handling of milk, and an Order amending the order regulating the handling of milk in the New Orleans-Mississippi marketing area, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That this entire decision, except the attached marketing

[1] Official notice is taken of "Federal Milk Order Market Statistics, Annual Summary for 1976." USDA-AMS, Statistical Bulletin 575, June 1977.

agreement, be published in the **Federal Register**. The regulatory provisions of the marketing agreement are identical with those contained in the order as hereby proposed to be amended by the attached order which is published with this decision.

Determination of Producer Approval and Representative Period

December 1984 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the order, as amended and as hereby proposed to be amended, regulating the handling of milk in the New Orleans-Mississippi marketing area is approved or favored by producers, as defined under the terms of the order (as amended and as hereby proposed to be amended), who during such representative period were engaged in the production of milk for sale within the aforesaid marketing area.

List of Subjects in 7 CFR Part 1094

Milk marketing orders, Milk, Dairy products.

(Secs. 1–19, 48 Stat. 31, as amended, 7 U.S.C. 601–674)

Signed at Washington, D.C., on: March 5, 1985.

Karen K. Darling,

Deputy Assistant Secretary, Marketing & Inspection Services.

Findings and Determinations

Order [2] Amending the Order, Regulating the Handling of Milk in the New Orleans-Mississippi Marketing Area

The findings and determinations hereinafter set forth supplement those that were made when the order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the New Orleans-Mississippi marketing area. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area; and the minimum prices specified in the order as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held;

(4) All milk and milk products handled by handlers, as defined in the order as hereby amended, are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products; and

(5) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, 5 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to milk specified in § 1094.85.

Order relative to handling. It is therefore ordered that on and after the effective date hereof, the handling of milk in the New Orleans-Mississippi marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby amended, as follows:

The provisions of the proposed marketing agreement and order amending the order contained in the recommended decision issued by the Deputy Administrator, Agricultural Marketing Service, on January 14, 1985, and published in the **Federal Register** on January 18, 1985 (50 FR 2678), shall be and are the terms and provisions of this order, amending the order, and are set forth in full herein.

PART 1094—MILK IN THE NEW ORLEANS-MISSISSIPPI MARKETING AREA

1. In § 1094.2, Zone 5 is revised to read as follows:

§ 1094.2 New Orleans-Mississippi marketing area.

* * * * *

Zone 5

Mississippi Counties

Calhoun, Chickasaw, Clay, Coahoma, Grenada, Monroe, Quitman, Tallahatchie, Yalobusha.

* * * * *

2. In § 1094.2, add a new Zone 6 to read as follows:

§ 1094.2 New Orleans-Mississippi marketing area.

* * * * *

Zone 6

Mississippi Counties

Alcorn, Benton, Itawamba, Lee, Pontotoc, Prentiss, Tippah, Tishomingo, Union.

3. In § 1094.7, paragraph (c) is revised to read as follows:

§ 1094.7 Pool plant.

* * * * *

(c) Any plant located in the marketing area that is operated by a cooperative association if pool plant status under this paragraph is requested for such plant by the cooperative association and 45 percent or more of the producer milk of members of the cooperative association is physically received during the month in the form of a bulk fluid milk product at pool plants described in paragraph (a) of this section either directly from farms or by transfer from plants of the cooperative association for which pool status under this paragraph has been requested, subject to the following conditions:

* * * * *

4. In § 1094.52, paragraph (a)(1), the table is revised to read as follows:

§ 1094.52 Plant location adjustment for handlers.

(a) * * *

(1) * * *

Adjustment per hundredweight

Zone 1—No adjustment.
Zone 2—Minus 18 cents.
Zone 3—Minus 40 cents.
Zone 4—Minus 55 cents.
Zone 5—Minus 65 cents.
Zone 6—Minus 75 cents.

* * * * *

5. In § 1094.52, paragraph (a)(3) is revised to read as follows:

§ 1094.52 Plant location adjustments for handlers.

(a) * * *

[2] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

(3) For a plant located in the State of Mississippi outside the marketing area the adjustment shall be minus 75 cents;

* * * * * *

[FR Doc. 85-5673 Filed 3-8-85; 8:45 am]

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7 CFR Part 1126

[Docket No. AO-231-A51]

Milk in the Texas Marketing Area; Decision on Proposed Amendments to Marketing Agreement and to Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision provides that the handler and producer location adjustments be increased by 18 cents per hundredweight in the Houston portion of the Texas marketing area. The price increase is necessary to reflect increases in hauling costs and to assure the orderly marketing of substantial quantities of milk that must be shipped long distances to supply the fluid milk needs of the most heavily populated area in the market. The decision also provides for a change in the computation of the uniform price to allow for a reduction in the producer-settlement fund reserve balance. The amendments are based on the record of a public hearing held October 4–7, 1983, in Irving, Texas.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, Dairy Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C. 20250, (202) 447–2089.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. The amendments will promote orderly marketing of milk by producers and regulated handlers.

The hearing notice specifically invited interested persons to present evidence concerning the probable regulatory and informational impact of the proposals on small businesses. Interested parties testified and presented evidence with respect to the probable impacts of various combinations of the pricing changes that were proposed, and such impacts were considered in the economic analysis that sets forth the need for the proposed amendments contained herein.

Prior documents in this proceeding:

Notice of Hearing: Issued August 29, 1983; published September 1, 1983 (48 FR 39643).

Correction to Notice of Hearing: Published September 12, 1983 (48 FR 40894).

Extension of Time for Filing Briefs: Issued November 25, 1983; published December 12, 1983 (48 FR 54243).

Partial Recommended Decision: Issued December 6, 1983; published December 12, 1983 (48 FR 55290).

Correction to Partial Recommended Decision: Published December 19, 1983 (48 FR 56060).

Extension of Time for Filing Briefs and Exceptions: Issued December 22, 1983; published December 29, 1983 (48 FR 57310).

Extension of Time for Filing Exceptions: Issued January 27, 1984; published February 1, 1984 (49 FR 4006).

Extension of Time for Filing Exceptions: Issued February 21, 1984; published February 24, 1984 (49 FR 6910).

Partial Final Decision and Termination of Proceeding: Issued May 14, 1984; published May 17, 1984 (49 FR 20825).

Recommended Decision: Issued October 25, 1984; published October 31, 1984 (49 FR 43692).

Extension of Time for Filing Exceptions: Issued November 29, 1984; published December 5, 1984 (49 FR 47495).

Preliminary Statement

A public hearing was held upon proposed amendments to the marketing agreement and the order regulating the handling of milk in the Texas marketing area. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice (7 CFR Part 900), at Irving, Texas, on October 4–7, 1983. Notice of such hearing was issued on August 29, 1983, and published on September 1, 1983 (48 FR 39643).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, Marketing Programs, on October 25, 1984, filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto.

The material issues, findings and conclusions, rulings, and general findings of the recommended decision are hereby approved and adopted and are set forth in full herein, subject to the following modifications:

1. In issues No. 3, one paragraph has been added after the 17th paragraph, four paragraphs after the 44th paragraph, two paragraphs after the 47th paragraph, four paragraphs after the 55th paragraph, two paragraphs after the 60th paragraph, one paragraph after the 61st paragraph, and two paragraphs after the last (65th) paragraph.

2. In issue No. 4, one paragraph has been added after the last paragraph.

3. In the Rulings on Proposed Findings and Conclusions, one paragraph has been added after the last paragraph.

The material issues on the record relate to:

1. The Class III price level for producer milk used in butter, nonfat dry milk and cheddar cheese for December 1983, and March through June 1984.

2. Whether an emergency exists to warrant the omission of a recommended decision and the opportunity to file written exceptions thereto with respect to issue No. 1.

3. The Class I price level and location adjustments within the marketing area.

4. The Class II price level and location adjustments within the marketing area.

5. Location adjustments applicable for milk delivered to plants located outside the marketing area.

6. Classification of milk contaminated with antibiotics.

7. Shipping percentages applicable to pool supply plants.

8. Computation of the uniform price.

This decision deals only with issues 3 through 8. Issues 1 and 2 were considered in a previous decision on the record:

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

Background for Pricing Proposals Concerning Material Issues 3, 4, and 5

Schepps Dairy, Inc. (Schepps), which operate a pool distributing plant in Dallas, offered and supported proposals to revise the pricing structure under the Texas order. Generally, the proposals are intended to increase the difference between minimum order prices applicable at plants located in northern portions of the marketing area (primarily Dallas) and southern portions of the marketing area (primarily Houston) because of increases in the cost of hauling milk. These proposals (proposals 3 and 4 as contained in the Notice of Hearing) included a restructing of Class I location adjustments

applicable inside and outside the marketing area; the implementation of direct-delivery differentials in certain pricing zones in conjunction with or as an alternative to a revision of Class I location adjustments; and the implementation of plus location adjustments for milk in Class II uses in certain pricing zones. These proposals are the subject of material issues 3, 4, and 5 as set forth previously. The proposal are included as a group in this background discussion because the proponent presented them as alternative means for dealing with a common problem. In addition, opposing parties viewed the pricing proposals as a unit. This discussion contains background information on pricing issues in the Texas market and the basic arguments presented by proponents and opponents. A more detailed examination of each of the material issues follows this background discussion.

The current zone pricing structure under the Texas order dates to the July 1, 1975, merger of six smaller markets into the Texas marketing area. Official notice was taken of the Assistant Secretary's decision of May 2, 1975 (40 FR 20004) that accomplished this action. For pricing purposes, the Texas marketing area was divided into 12 pricing zones. Location adjustments were specified for each zone (groups of counties) that resulted in Class I prices that were essentially the same as the prices applicable in such areas under the formerly separate marketing orders. Zone 1 (which includes the Dallas/Ft. Worth area) was established as the basing point at which location the Class I price to handlers and the blend price to producers are announced each month. A zero location adjustment applies to plants in Zone 1 and the Class I price is the Minnesota-Wisconsin price for the second preceding month plus $2.32 per hundredweight. Plus adjustments to the Zone 1 price were established for each succeeding zone, ranging from plus 6 cents in Zone 2 (Tyler, Marshall) to plus 75 cents in Zone 12 (Edinburg, Harlingen). The plus adjustments apply to milk used in fluid milk products (Class I uses) by plants in each zone as well as to the blend price payable to producers whose milk is received in each zone. It is note that a thirteenth zone (Zone 1–A) was added to the marketing area effective January 1, 1983. The plant location adjustment in Zone 1–A is minus 12 cents from the Zone 1 price and is identical to the location adjustment applicable to such area under the Texas order prior to its inclusion in the marketing area.

The current zone pricing system under the order results in increasing, from North to South Texas, minimum order Class I prices to handlers and blend prices payable to producers. The price differences among the various cities in the marketing area were unchanged (with some minor exceptions) by the merger of the marketing area. Consequently, the current 36-cent Class I price difference between Dallas and Houston dates to the 1968 decision that implemented the South Texas milk order effective October 1, 1968. This price difference represented the cost of transporting bulk milk from Dallas to Houston based on a transportation rate of 1.5 cents per hundredweight per 10 miles. Official notice is taken of the Under Secretary's final decision issued August 8, 1968 (33 FR 11486) to implement the South Texas order. A review of this decision indicates that the same transportation rate was used to establish Class I prices under the former San Antonio, Austin-Waco and Corpus Christi orders. The Class I prices under these orders reflected the Class I price under the North Texas order plus 1.5 cents per hundredweight for each 10 miles between Dallas and the various basing points under the respective other orders.

The 1975 merger decision considered various proposals to increase Class I prices throughout the market and to change the relative price relationship between certain zones within the marketing area. One proposal would have increased the Class I price applicable at plants in the base zone (Zone 1–Dallas/Ft. Worth) by 58 cents per hundredweight. This proposal reflected the Class I price applicable at Eau Claire, Wisconsin, plus an adjustment for transportation to Dallas at 2 cents per hundredweight per 10 miles rather than the traditional 1.5-cent rate. Another proposal would have altered the location adjustments within the marketing area to reflect a transportation rate of 2.2 cents per 10 miles, which would have increased the Class I price difference between Dallas and other cities in the marketing area.

The 1975 merger decision acknowledged the fact that transportation costs had increased since 1968. However, the decision stated that market supply-demand conditions must be considered along with the cost of transporting milk from distant supply areas when determining the appropriate minimum order Class I price. The Assistant Secretary concluded that in spite of some increases in hauling costs, raw milk supplies were being made available to handlers in all parts of the marketing area and that substantial quantities of raw milk were being moved from the North Texas supply area to the consumption centers in South Texas. Thus, the decision concluded that the supply-demand relationship for the combined markets indicated that the prevailing Class I price structure was bringing forth an adequate, but not excessive, supply of milk for consumers. A high minimum price level could stimulate additional production, not needed for fluid use, thereby resulting in a misallocation of agricultural resources. The decision also set forth, in substantial detail, the need to maintain an alignment of Class I prices among the various consumption centers within the marketing area to reflect the economic service performed in moving milk to such consumption centers from the heavy production areas in North Texas. Particularly noteworthy with respect to this proceeding was the conclusion that there was a greater economic service provided by producers for San Antonio area handlers than Houston area handlers since San Antonio is further from the North Texas supply area than is Houston.

In this proceeding, Schepps makes some of the same arguments that were presented in 1957 to attempt to justify increasing location adjustments to reflect a higher transportation rate than 1.5 cents per hundredweight per 10 miles. The stated objectives of Schepps' proposals is to restore price uniformity among producers and handlers by having order prices reflect the cost of transporting milk to plants located in deficit supply areas of the market. Schepps contends that since the present zoned Class I price structure does not cover the cost of hauling milk, market forces establish prices that are not uniform among either handlers or producers. Specifically, Schepps contends that the market price structure allows handlers in South Texas to obtain milk supplies at prices that do not reflect the full cost of transporting milk from the North Texas supply area. As a result, Schepps contends that producers are subsidizing in part the cost of the economic service they provide in shipping milk substantial distances to South Texas plants and, consequently, returns to producers are not uniform. Also, Schepps contends that the prices paid for milk in Class I uses by North Texas handlers are also used to subsidize, in part, the cost of moving milk to South Texas plants with whom North Texas handlers compete for sales of fluid milk products in South Texas. Schepps concludes that the resulting nonuniformity of prices to

handlers and returns to producers are inconsistent with the requirements of the Agricultural Marketing Agreement Act of 1937, as amended; represent disorderly marketing conditions; and are the direct result of the failure of the order minimum price structure to reflect the cost of transporting milk.

Schepps' pricing proposals were opposed by a large number of handlers who are regulated under the order. In total these handlers (The Southland Corporation; Borden, Inc.; Carnation Company; Foremost Dairies, Inc.; Blue Bell Creamery; H. E. Butt Grocery Company; Hygeia Dairy Company, Inc.; and Safeway Stores, Inc.) operate 22 of the 34 distributing plants that are fully regulated under the order. Such handlers also operate at least 13 other plants that distribute fluid milk and dairy products within the Texas marketing area and seven nonpool plants at which milk pooled under the Texas order is processed into Class II products.

These handlers contended that the proposals should be denied because the proposed price adjustments: (1) Would result in substantial cost increases to South Texas area handlers and consumers and generally discriminate against South Texas handlers; (2) would disrupt competitive conditions among handlers by distorting the inter- and intra-order alignment of prices; (3) are unrelated to any competent testimony that could establish the cost of hauling milk and, further, are inconsistent with any argument that hauling costs have increased because of proposed price reductions in North Texas areas; (4) are unnecessary because adequate supplies of milk are being made available to handlers throughout the entire market; (5) would not benefit producers, and further, were not supported by producers who proponent claims are subsidizing the cost of hauling milk to South Texas plants; and (6) cannot be adopted because the Department failed to comply with the requirements of the Regulatory Flexibility Act prior to the hearing.

Basically, opponents argue that adequate supplies of milk are being made available to all handlers throughout the marketing area under the current pricing structure in the market. They contend that since there is an adequacy of supply, and that milk is moving substantial distances under the current price structure, there is no basis upon which the Secretary can justify a price increase in South Texas areas. They further contend that the purpose of the proposals is nothing more than an attempt to improve proponent's competitive position with respect to packaged fluid milk sales in certian South Texas areas (primarily San Antonio and Houston) that account for about one-half of proponent's total fluid milk sales. Consequently, opponents contend that the purpose of the proposals is the same as that advanced by the same proponent at the hearing to merge six marketing areas under the Texas order, and that the proposals should be denied on the same basis as set forth by the Assistant Secretary in denying similar proposals in the 1975 merger decision. In this regard, opponents cite the decision's conclusion concerning the need to maintain Class I price alignment among Federal order markets and within the Texas market on the same basis, as well as the finding that milk moved substantial distances to meet all handlers' needs despite the fact that hauling costs exceeded the transportation rate reflected under the order. Opponents point out that the rational advanced in the 1975 decision was upheld in *Schepps Dairy, Inc.* v. *Bergland*, 628 F. 2d 11, (D.C. Cir. 1979).

Opponents further contend that the issue raised by Schepps is one that primarily affects milk produces who pay the cost of hauling milk to plants. They point out that no producers or their cooperative associations supported Schepps' proposal. In this regard, Mid-America Dairymen, Inc., (Mid-Am) opposed those parts of the proposal that would reduce prices in Zone 1 (Base Zone) and at Aurora, Missouri. Mid-Am represents producers who are located in Zone 1 and the cooperative also operates a supply plant that is located at Aurora, Missouri, that is pooled under the Texas order. Mid-Am contends that the proposed lower price for these areas would reduce milk production in such areas, thus jeopardizing the maintenance of milk supplies that are necessary to meet the fluid milk needs of southern deficit production areas. Mid-Am also contended that the proposed lower Zone 1 price would disrupt the price alignment among Federal order markets and that if any such price reduction is to be pursued it should be considered on a broader scale to consider the Class I price alignment with surrounding markets. Mid-Am contends that if a price incentive is necessary to attract milk to deficit southern areas, it should be accomplished by increasing prices in such areas rather than by reducing prices in Zone 1. Several nonmember producers also opposed any price reduction in Zone 1.

Associated Milk Producers, Inc. (AMPI), a cooperative association that represents a substantial majority of the dairy farmers who furnish milk to handlers located throughout the marketing area, presented no testimony and took no position either in support of or in opposition to the proposed pricing changes in the marketing area. In its brief, AMPI opposed the changes in location adjustments at plants located outside the marketing area. One other interested party who operates a pool distributing plant in Zone 1–A (Preston Dairy) supported increasing the location adjustments under the order for deficit supply areas in the south to recognize increases in transportation costs that have occurred since the 1960's. One additional handler, Land O'Pine Dairy, who operates a pool distributing plant at Lufkin (Zone 4), proposed that Zones 2 and 4 be included in the same pricing zone. The handler stated that the basis for this modification is to improve his competitive position with respect to plants located in Zone 2 that now have a 12-cent lower Class I price under the order than applies to Zone 4.

3. *The Class I price level and location adjustments within the marketing area.* The order should be amended to increase the plus location adjustment in Zone 8 (Houston-Beaumont) to 54 cents per hundredweight. The 18-cent per hundredweight increase in the Class I and blend prices is necessary to reflect increases in hauling costs and to assure an adequate supply of milk for fluid use for the largest consumption center in the marketing area and to promote the orderly marketing of the substantial volumes of milk that must be shipped great distances from the major production areas in the market to meet the fluid milk needs of this deficit supply area. No other pricing changes that were proposed should be adopted on the basis of this record.

As previously stated in the background for the pricing issue, Schepps offered two proposals to revise the pricing structure under the order. One of the proposals would move the base zone (the zone at which location adjustments do not apply) southward from Zone 1 to Zones 3, 4, and 5. The current Class I differential in Zone 1 that is added to the basic formula price to establish the Class I price for the month is $2.32 per hundredweight. Movement of the base zone to the south would result in a reduction of the Class I price in Zones 3, 4, and 5. The proposal would also establish minus location adjustments from the new base zone for Zones 1, 1–A, and 2. Plus adjustments to the new base zone price are proposed for Zones 6 through 12. In conjunction with the location adjustments, Schepps also proposed that direct-delivery

differentials be applied to Zones 8 and 9 in the amount of 18 and 6 cents, respectively.

The objective of the proposal is to increase the difference in the order Class I and blend prices between northern and southern portions of the marketing area to reflect increases in the cost of hauling milk. For purposes of illustrating the magnitude of the proposal, the Class I differentials that would result in each zone are set forth below. The proposed differentials are compared to the current order Class I differentials that apply to plants in each zone as a result of current order location adjustments. The location adjustments that establish Class I prices at plants in each zone are also used to adjust the blend price to producers for milk received at plants in such zone. Although each zone consists of groups of counties, the major cities within such zones are indicated below for reference purposes.

CLASS I DIFFERENTIALS

Zone/cities	Dollars per hundredweight		
	Current	Proposed	Difference
1-A Burkburnett	$2.20	$2.10	−.10
1 Dallas, Ft. Worth	2.32	2.22	−.10
2 Tyler, Marshall	2.38	2.27	−.12
3 Waco	2.47	2.32	−.15
4 Lufkin	2.50	2.32	−.18
5 Bryan	2.52	2.32	−.20
6 Abilene, San Angelo	2.57	2.62	+.05
7 Austin	2.62	2.67	+.05
8 Beaumont, Houston	2.68	2.95	+.27
9 San Antonio	2.74	2.89	+.15
10 Victoria	2.86	2.94	+.09
11 Corpus Christi	2.98	3.07	+.09
12 Edinburg, Harlingen	3.07	3.16	+.09

Schepps presented an alternative to the above proposal that was advanced by proponent as his preferred method of increasing prices in southern areas. This proposal would establish direct-delivery differentials to be paid by plants located in Zones 2 through 12 to their dairy farmer suppliers. Such differentials would apply to all milk received by handlers, regardless of use, and would be applied in addition to the current order location adjustments. For Zones 2 through 5, a direct-delivery differential of 10 cents per hundredweight would be established. A direct-delivery differential of 5 cents, 19 cents, 36 cents, and 23 cents would be established for Zones 6 through 9, respectively. The proposed direct-delivery differentials for Zones 10 through 12 would be 19 cents per hundredweight.

Either of the proposals would significantly increase the effective transportation allowance under the order to move milk from north to south, with particular emphasis on the Houston and San Antonio zones. The proposed Class I price at Houston would be 72 or 73 cents per hundredweight higher than the Class I price at Dallas compared to the 36-cent difference that currently exists. Based on the mileage from Dallas to Houston, the proposed price change would reflect a transportation rate of about 3 cents per hundredweight per 10 miles compared to the 1.5-cent rate currently reflected under the order. Also, the proposed price difference between Dallas and San Antonio would reflect a transportation rate slightly below 2.5 cents per hundredweight based on the mileage from Dallas to San Antonio.

Schepps contends that hauling costs have increased significantly since 1968. As evidence to support this claim, Schepps relied upon USDA and university hauling cost studies and changes in indices reported by the Bureau of Labor Statistics that relate to hauling costs. Based on these studies, Schepps contends that a 3.6-cent per hundredweight per 20-mile hauling rate would be a reasonable approximation of the current cost of hauling bulk milk. Schepps contends that such rate is supported by the company's own experience in shipping packaged fluid milk products. Schepps testified that its current hauling costs for packaged products is 4.1 cents per hundredweight per 10 miles and that, based on comparative studies that indicate about a 15 percent higher cost for packaged than for bulk milk, a 3.6-cent rate is reasonable. Also, Schepps testified that its hauling costs had increased by 267 percent from 1970 to 1982 and that, therefore, the 240 percent proposed increase (from 1.5 cents to 3.6 cents) is appropriate.

Schepps further testified that such transportation rate is supported by the bulk milk hauling costs charged by AMPI that increased from $1.00 per loaded mile to $1.60 per loaded mile from 1978 to 1980. Schepps testified that such cost equates to a rate of 3.52 cents per hundredweight per 10 miles based on the average weight of 45,500 pounds of tank loads of milk received by Schepps from AMPI during August 1 through September 18, 1983. Schepps further contended that the 3.6-cent rate is consistent with the findings of the Assistant Secretary concerning hauling costs in the March 30, 1983, decision concerning the Georgia and certain other milk marketing orders (48 FR 14604).

Schepps argues that the failure of the order to reflect current transportation costs results in producer and handler inequities that are intensified by the disparate geographic distribution of population and milk production within the Texas marketing area. Schepps presented evidence concerning the population changes that occurred within the current Texas order pricing zones between 1970 and 1980 and statistics from the office of the market administrator. These statistics concern the percentage of milk priced in the various pricing zones that is produced in the major milk producing counties in the market, the relationship of milk production by zone to the volume of bulk milk received by plants in the same zone, the distances that bulk milk moves to supply the needs of fluid milk plants in the various zones, and maps that indicate the changes in the source of supply for the various pricing zones over time.

Schepps' testimony relative to the above statistics addressed primarily the circumstances existing with respect to Houston, (Zone 8). Schepps contends that Zone 8 is extremely deficit in terms of local production, and that substantial quantities of milk must be shipped long distances to meet the fluid milk needs of Zone 8 plants. Schepps points out that more than 50 percent of the bulk fluid milk needs of Zone 8 plants is shipped more than 250 miles and that the per hundredweight cost is 90 cents based on current hauling rates of 3.6 cents per 10 miles. Consequently, Schepps argues that the additional 54 cents in hauling costs that is not reflected in the order (now a 36-cent price difference between Dallas and Houston) is absorbed by producers who supply Zone 8 plants. Since most of such milk is shipped by AMPI, Scheppe contends that AMPI is unable to return as high a price to its member producers as are returned to the nonmember producers that are located in the heavy production areas of the market around Sulphur Springs (Hopkins County), despite the fact that AMPI charges in excess of the order's minimum prices to the handlers the cooperative supplies. Schepps contends that handlers in Zone 1 (some of whom also operate plants in Zone 8) are able to purchase milk from nonmember producers at a lesser cost than is charged by AMPI but are able to return a blend price to nonmember producers that is in excess of the order blend because such handlers do not have the burden of subsidizing the cost of transporting milk to deficit southern markets. Consequently, Schepps argues that neither returns to producers nor costs to handlers are uniform as a result of transportation cost subsidization by AMPI that is incurred by supplying deficit southern markets such as Houston.

Schepps also presented additional information concerning his actual cost for milk received from AMPI at his Dallas plant as well as comparisons between such cost and a constructed cost for AMPI milk received at Houston on the basis of AMPI price announcements. Schepps notes that prior to May 1983, the difference between AMPI's announced prices at Dallas and Houston reflected a greater amount of the actual, additional transportation cost incurred in shipping milk to Houston. However, Schepps testified that he was charged the Houston price at his Dallas plant on that portion of his total fluid milk sales in Zone 8, which represent about one-half of his total sales. As a result, Schepps contends that he was charged a price that reflected a part of the cost incurred by AMPI in shipping milk to Houston, and that such charge represents a cost for a service Schepps did not receive. In addition, Schepps contends that such charge was in effect used to subsidize the cost of hauling milk to plants in Houston with whom Schepps competes for fluid milk sales in the Houston area. Since May of 1983 Schepps contends that a significant transportation subsidy exists since the over-order pricing structure was revised to result in a price difference of 36 cents between Dallas and Houston.

As a result of all of the above, Schepps contends that neither costs to handlers nor returns to producers are uniform under current marketing conditions. Opponents of the proposal, in addition to their views previously set forth, contend that Schepps' claims of disorder are a result of AMPI pricing practices and are a matter to be settled between AMPI and Schepps. Schepps' counter argument to such claim is that because of competitive conditions in the marketplace, AMPI is unable to institute an equitable pricing structure to reflect the cost of transporting milk that is not provided for under the order.

Resolution of the Class I pricing issue involves the consideration of the overall Class I price level for the market that is necessary to result in an adequate supply of milk for fluid use as well as the differences in the value of milk at various locations within the market that may be necessary to encourage its movement from where it is produced to where it is needed. As indicated hereafter, some intra-market price adjustment is necessary to provide incentives for milk movements. However, there is no indication that the overall price level in the market is inappropriate in terms of the overall market supply/demand relationship.

Although the Texas market can be characterized as having a relatively tight supply/demand situation compared to other Federal order markets, the market has experience a general increase in supplies in recent years that is representative of the national supply situation. For example, the Class I utilization of producer milk for the Texas market declined from 74.5 percent in 1981 to about 69 percent in 1982 and the monthly Class I utilization of producer milk during January through August of 1983 was below the Class I utilization during each of the corresponding months in 1982. In fact, concern with respect to handling the amount of milk available for manufacturing was the issue that was dealt with in a previous decision issued on the record of this proceeding.

Although the market supplies have increased, there has not been a sufficient showing by proponent that the Class I price level should be reduced in the primary northern production regions of the Texas market. In fact, proponent's only attempt to justify the proposed Class I price reduction in northern areas was that such reductions were necessary to offset the proposed price increases in southern portions of the marketing area so that the overall impact on returns to producers would be minimal. This aspect of the proposal, which was opposed by Mid-Am and independent milk producers, could jeopardize the maintenance of adequate supplies of milk in the heavy producing regions of the market that are necessary to meet the fluid milk needs of deficit producing regions of the market. In addition, the proposed Class I price reductions in northern areas would significantly alter the pricing relationship with other Federal order markets whose pricing provisions are not open for consideration on this record.

The price reduction aspect of the proposals must be denied primarily on the basis that there has been no showing that the increases in production in recent years are a result of the Class I differential. The recent supply/demand situation in the Texas market is not materially different from the national dairy situation where production has exceeded the demand for dairy products. National production increases have been in response to the price support levels established for manufactured dairy products as well as to other economic factors affecting the production and sale of milk and dairy products. Efforts are currently being taken under the price support program to deal with the surplus situation on a national basis. There is no indication that there need be any further incentive to encourage a reduction of production by reducing the Class I price level under the Texas order. In fact, any further reduction in prices applicable to the major milk production areas of the Texas market, in addition to the efforts being made under the price support program, could jeopardize the maintenance of an adequate supply of milk for current and anticipated future fluid milk needs in the market. Consequently, those portions of Schepps proposals that would reduce prices in certain portions of the market (Zones 1–A through 5) must be denied at this time. Such conclusion thus places a constraint on the remaining consideration of the issue to one of considering what plus adjustments to the base zone price may be necessary.

In this regard, there can be no significant increase in returns to producers at this time that would tend to bring forth additional supplies of milk. Such action would be contrary to efforts currently being taken under the price support program to reduce the overall supply of milk on a national basis. Any increase in producer returns that may be necessary must be kept to the minimum level necessary to encourage the movement of milk to deficit areas. In this regard, proponent's preferred option of establishing direct-delivery differentials on top of existing location adjustments would increase producer returns more than any other alternative proposed. It was estimated that the total adoption of such proposal would increase returns to dairy farmers by about $339 thousand to $346 thousand per month. Proponent argues that such an increase would be appropriate because it would not affect the pool value of the milk involved and thus would not increase the blend price since the additional dollars to cover transportation would accrue only to those producers who actually delivered milk to plants located in Zones 2 through 12. However, it is the total impact of the proposal on returns to producers that must be considered, not just the impact on pool proceeds. In this regard, the proposed increase in returns to producers under the direct-delivery proposal is more than is considered necessary to encourage the movement of milk to deficit supply areas.

A partial application of proponent's direct-delivery differential proposal with respect to certain areas (such as Zones 8 and 9) also should not be adopted. Direct-delivery differentials, as

proposed, would apply to all milk delivered by producers directly from farms to plants regardless of whether such milk is utilized in Class I, II, or III uses. Application of such differentials to Class II and III uses at plants in Zones 8 and 9 raises issues with respect to the appropriate price levels of milk in such uses. Although this is discussed more fully under issue number 4, application of such differentials are, to an extent, contrary to the need to maintain a uniform application of the classification and pricing of milk in Class II and Class III uses. Such issues broaden the scope of the proceeding beyond what is necessary to consider the intra-market pricing of milk in fluid uses in the Texas market.

Exceptions filed on behalf of Schepps contend that the implementation of the direct-delivery differential proposal would remove any rational basis for AMPI to continue over-order prices at current levels and, thus, total returns to producers would not be enhanced. There is no basis in the record to support such claim or to alter the conclusion, as hereinafter set forth, that only a minimal price adjustment in Zone 8 is necessary at this time.

Although there are sufficient supplies of milk overall that are associated with the Texas market, certain portions of the market are extremely deficit in terms of local production. As a result, substantial amounts of milk must be shipped long distances to meet the fluid milk needs of certain southern portions of the marketing area. The current order price structure is based on the need to increase prices from north to south and maintains an alignment of prices among plants to provide an incentive for milk to move from where it is produced to the consuming centers where it is needed. In this regard, opponents' contention that they would be placed at a competitive disadvantage in making fluid milk sales relative to plants in northern areas is misplaced. It is true that significant price differences among nearby plants would result in competitive inequities among such plants in selling fluid milk products. However, the primary emphasis with respect to the alignment of prices must be placed on the alignment of prices among various locations that is necessary to attract a supply of milk to such locations from areas that must be relied upon for sources of supply. If prices are too low at any location relative to another area that relies upon the same source of supply, there is a danger that the lower priced area will not be able to procure a sufficient supply of milk. The appropriate alignment of prices must be a reflection of the difference in the cost of transporting milk to the alternative outlets from a common production area. It is, however, impossible to establish a precise alignment of prices among areas because of the variability in the costs of hauling milk. At best, an alignment of prices usually represents an average of the variable costs of hauling milk that is representative of market experience.

Also, it is not necessary at all times to recognize the average cost of hauling milk to alternative outlets, particularly in areas where, or during periods when, there are substantial supplies of relatively nearby milk available to meet fluid milk needs. In effect, in such situations, milk is made available because of a lack of alternative outlets. No price adjustments are necessary to reflect increased hauling costs if there is sufficient evidence that ample supplies are being made available under orderly marketing practices and under circumstances from which it could be concluded that sufficient supplies of milk are likely to continue to be made available.

The record indicates that milk is moving substantial distances to meet fluid milk needs and that plants operating in the various pricing zones throughout the marketing area appear to be adequately supplied. However, contrary to the views expressed by opponents of any pricing changes, the current adequacy of supply is not the sole basis for determining whether price changes in any area are necessary. The testimony reveals that the market pricing structure, as it currently exists and has been modified during recent years, has resulted in nonuniform returns to producers and nonuniform costs to handlers. These inequities among producers and handlers are not conducive to the orderly marketing of milk that must be transported substantial distances on a continuing basis to meet the fluid milk needs of certain southern deficit areas. A failure to recognize the minimum price adjustments that are necessary could jeopardize the continued movement of milk from northern production areas to southern consumption centers.

The population of the Texas marketing area increased by 28.6 percent from 1970 to 1980. However, there are three dominant consumption centers within the marketing area (Zone 1–Dallas/Ft. Worth; Zone 8–Houston/Beaumont; and Zone 9–San Antonio) that combined, accounted for about 67 percent of the total marketing area population. From 1970 to 1980, the population increase for Zones 1, 8, and 9 was 24.2, 37.8 and 20.2 percent, respectively. With the increase in population, Zone 8 accounted for 29 percent of total marketing area population in 1980, surpassing Zone 1 as the most heavily populated area. In 1980, Zone 1, accounted for 27.6 percent of marketing area population, versus 28.5 percent in 1970. Also, Zone 9 accounted for 10.5 percent of total population in 1980, down from 11.2 percent in 1970. All other pricing zones, although representing a relatively small proportion of total population, have shown increases in population from 1970 to 1980, ranging from 2.3 percent in Zone 1–A to 51.2 percent in Zone 12.

The increasing population, particularly in the major population centers in Zones 8 and 9, continues to rely on the major milk producing regions in North Texas for fluid milk needs. The degree to which each of the pricing zones must rely on alternative sources of supply is illustrated by record evidence that compares the milk production within each zone to the actual receipts of bulk fluid milk at distributing plants in each zone. The ratios of production to receipts, in addition to identifying those deficit zones that must rely on alternative sources of supply, identify those zones that contain sufficient reserve supplies for the deficit areas.

On an individual zone basis, the greatest surplus of production relative to individual zone fluid milk receipts is within Zones 3 and 5. During May 1983, production within Zones 3 and 5 represented 2,666 percent and 698 percent, respectively, of the bulk fluid milk received at distributing plants within such zones. During the same month, production within Zones 1–A and 4 represented 210 and 238 percent of the bulk milk receipts aqt distributing plants within such zones. In Zone 1, which has the greatest volume of production, production represented 145 percent of bulk milk receipts at such plants. Zone 2, which is east of Dallas, is deficit in terms of local production (production was 39 percent of bulk milk receipts) but contains only 2.85 percent of marketing area population and is surrounded by Zones 1, 3, and 4 that have a surplus of production relative to bulk receipts at distributing plants in such zones. Zone 6, which is the West Texas area, including Abilene and San Angelo, is reasonably well balanced in terms of zone production and receipts. In May of 1983, Zone 6 production represented 117 percent of bulk milk receipts, while such ratio was 95 percent in October 1982 when the market supply/demand relationship is tighter.

Collectively, Zones 1–A through 6 of the Texas market contain sufficient supplies of milk in excess of the fluid milk needs of those zones to meet the fluid milk demands of the more southern zones of the marketing area. However, the greatest volume of production is included within Zones 1 and 3, which contain 9 of the top 10 milk producing counties in the Texas marketing area, and which are nearest alternative sources of supply for the southern pricing zones.

The ratios of zone production to bulk fluid milk receipts at distributing plants illustrate the degree to which Zones 7 through 12 are deficit in terms of zone production. During May of 1983, the ratios of production within each zone to the amount of bulk milk received were 48.4 percent for Zone 7 (Austin), 13.5 percent for Zone 8 (Houston), 30.8 percent for Zone 9 (San Antonio), 44.2 percent for Zone 11 (Corpus Christi), and 42.0 percent for Zone 12 (Edinburg). No ratios were computed for Zone 10 since there are no longer any distributing plants located in such zone. The most deficit zones contain the major consumption centers of Houston and San Antonio. During October 1982, when the market supply/demand relationship was tighter than in May 1983, the ratios of production to receipts for Zones 8 and 9 were 11.7 and 24.8 percent, respectively. The size of these consumption centers, in conjunction with the degree to which they are deficit producing areas, amplifies the need to maintain a pricing structure to assure these areas of a sufficient supply of milk. However, consideration must also be given to the distances that such deficit consumption centers must reach to obtain sufficient supplies of milk.

Evidence in the record establishes that plants located in the southern deficit Zones 7 through 12 (exclusive of Zone 10) must reach out varying distances to obtain the necessary supplies of milk for fluid use. As one would expect, plants in Zone 7, which is adjacent to the supplies of milk available in Zones 3 and 5, reach out the least distance to obtain their supplies. In July 1983, the weighted average distance of acutal milk movements to Zone 7 plants was about 84 miles from Austin, with over 90 percent of the milk movements being less than 150 miles. For Zone 8, however, the weighted average distance of milk movements to Houston was almost 200 miles. In terms of milk movements in 50-miles increments, 49 percent of the milk supplies originated between 251 and 300 miles from Houston and more than half of the milk shipped to Houston fluid milk plants was produced more than 251 miles from Houston.

Plants at San Antonio in Zone 9 reach out about 161 miles, on a weighted average basis, to obtain milk supplies. About 40 percent of the milk received at distributing plants originated in areas between 201 and 250 miles from San Antonio. Consequently, plants in Zone 9 do not reach out quite as far for milk as plants in Zone 8, although San Antonio is about 33 miles farther south from Dallas than is Houston.

The weighted average distance of milk movements to plants in Zones 11 and 12 is about 118 and 120 miles, respectively. Most of the milk supplies for Zone 11 are obtained from areas within 200 miles of Corpus Christi whereas plants in Zone 12 reach between 201–250 miles from Edinburg for a large proportion of total supplies.

Milk moves greater distances on a regular basis to meet fluid milk needs of plants in Zones 8 and 9 (Houston and San Antonio) that with respect to the other southern deficit zones. Also, it is obvious that substantial quantities of milk must be transported over these long distances to meet the needs of these major population centers. Also, record evidence establishes that both the distances and quantities moved have increased substantially over a period of years (1961 to 1983) and that the greatest northward expansion of the procurement areas has occured with respect to Zones 8 and 9.

The current distance from which Zone 8 plants must obtain milk supplies extends to the heavy milk producing counties in North Texas that are located northeast of Dallas. This area includes Hopkins County, which is the largest milk producing county in the Texas marketing area, as well as three of the other top ten producing counties (Franklin, Upshur and Wood). More than half of the bulk milk shipped to Zone 8 distributing plants originates beyond 251 miles from Houston, and the distance from Houston to Sulphur Springs (the County Seat of Hopkins County) is 253 miles.

Zone 8 plants also obtain substantial volumes of milk from the heavy producing areas of Comanche and Erath Counties that are located southwest of Dallas. Stephenville, the County Seat of Erath County, is 267 miles from Houston.

Plants in Zone 9 also reach to the heavy producing areas of north Texas for substantial supplies of milk, primarily the counties of Comanche and Erath. San Antonio is 205 miles from Stephenville and about 40 percent of the milk shipments to Zone 9 plants originate between 201 and 250 miles from San Antonio. The procurement area for Zone 9 does not extend to any significant degree to the Hopkins County area, which is about 335 miles from San Antonio as measured to Sulphur Springs.

The purpose of the current order pricing structure of increasing prices from north to south is to provide assurance that milk will move to the deficit southern consumption centers. From the previous description of the relationships of the locations of supplies of and demand for fluid milk, it is obvious that such a pricing structure continues to be necessary under current marketing conditions. However, it appears that a consideration of whether the current order location adjustments are continuing to provide the necessary price incentives for milk movements is critical only with respect to Zones 8 and 9. These zones contain major consumption centers, are extremely deficit in terms of local production, and must obtain increasing supplies of milk from distant alternative sources.

In this regard, no significant testimony or evidence was presented with respect to the need to adjust prices because of disorderly marketing conditions in zones other than Zones 1, 8, and 9. It appears that the price changes that would result from proponents' proposals were an attempt to maintain an alignment of prices among zones, with some adjustments for individual zone supply/demand relationships, on the basis of a higher transportation rate. For the most part, however, proponents' testimony concerning disorderly marketing conditions resulting from a current inadequacy of location adjustments and the need to increase southern prices centered primarily on the price relationships among Zones 1, 8, and 9, and in particular with the current price level in Zone 8.

For the previous reasons, it does not appear necessary at this time to undertake a total restructuring of the price relationships among all pricing zones in the marketing area. However, consideration of the current prices applicable in Zones 8 and 9 and their relationship to each othe and to the current Zone 1 prices is necessary.

It is obvious that the current alignment of prices among Zones 1, 8, and 9 at the rate of 1.5 cents per hundredweight per 10 miles does not reflect the current cost of hauling milk. No testimony or evidence presented by any interested party disputed this fact, although opponents contend that there is no credible evidence from which a hauling cost reflecting average, marketwide hauling experience can be

derived. Further, they contend that no marketing problems exist even though hauling costs are not covered by current location adjustments since milk is currently moving long distances and all plants receive sufficient supplies of milk. This latter argument is superficial in that it totally disregards the inequities that are occuring among producers and handlers and the potential for such inequities to disrupt the movement of substantial quantities of milk to expanding consumption centers in South Texas, particularly Houston. Also, there is sufficient evidence in the record from which a conservative estimate of hauling costs can be incorporated in a location adjustment that will provide a greater measure of equity among market participants and a greater incentive for southern shipments of milk.

Additional transportation costs that are not reflected in order location adjustments must be either paid for by the handler receiving the milk or subsidized through a net reduction in returns to producers who supply such plants. Either option can result in inequities among market participants if there is a disproportionate application of the additional costs. The problem is, of course, a matter of degree, which depends on how much milk must be moved, the distance involved, and the transportation rate.

AMPI is the largest supplier of milk to handlers located throughout the marketing area and represents about two-thirds of the producers who supply the market. AMPI also markets the milk of Mid-Am producers through arrangements between the two cooperatives. AMPI establishes prices to buying handlers in excess of Federal order minimum Class I prices. These over-order prices cover a variety of services provided to handlers, including the cost of hauling milk from where it is produced to where it is needed for fluid use.

Record evidence established that the over-order charges varied over time and were also subject to various competitive credits from such prices and that hauling surcharges of varying amounts were also established. For most of the 1981 through 1982 period, the end result of the announced prices was that Class I prices in Houston were about 72 cents per hundredweight higher than in Dallas. This would indicate that such over-order prices represented differences in the location value of milk on the basis of a more current transportation rate. Since May of 1983, however, the over-order price structure was modified so that the difference in prices between Dallas and Houston reflected only the 36-cent price difference that applies under the order.

Since the order location adjustment does not cover the cost of hauling milk to Houston, AMPI producers must be subsidizing the additional transportation cost incurred in supplying Houston handlers under the pricing structure established in May 1983. The subsidization of transportation costs results in a lower blend price to AMPI producers relative to those producers who do not incur the additional transportation costs that result from supplying distantly located deficit southern zones of the marketing area. Substantial quantities of milk are shipped to Zones 8 and 9 from the heavy milk producing regions located northeast and southwest of Dallas. Record evidence established that there are a large number of nonmember producers located in the heavy northeast production area but that there is no nonmember milk shipped from there to Houston. Consequently, it is AMPI producers who bear the burden of shipping milk to Houston and as a result there are inequities among producers in the heavy northeast milk producing countries.

There is no detailed information in the record that establishes precisely the extent to which AMPI pays prices are less than prices to other producers who supply the Texas market. However, testimony does indicate that AMPI pay prices have been slightly below the order blend price while pay prices to nonmember producers who supply Zone 1 plants have been in excess of the order blend price. However, even if additional information on AMPI pay prices were included in the record, it would not be known to what extent the Texas market AMPI pay prices are affected by the total marketing operations of AMPI, which extends well beyond the Texas market and includes all of the Federal order markets covered by AMPI's Southern Region. The AMPI Southern Region includes all of the area from Texas to Kansas and New Mexico to Alabama. However, this information is not necessary. Since substantial quantities of AMPI milk are shipped to deficit southern areas and additional transportation costs are not recovered under the current pricing structure, returns to AMPI logically must be reduced relative to other producers who do not incur the additional transportation costs that are not reflected in the order.

As previously stated, prior to May 1983, the difference in market Class I prices at Dallas and Houston reflects the higher cost of the service involved in supplying Houston area plants. The net differences in over-order Class I prices are computed by subtracting the order Class I price from the AMPI announced Class I price, and then adjusted by the competitive credit applicable to the Dallas and Houston areas. For all of 1981 and the first two months of 1982, the Houston area competitive credit (or discount) was 26 cents per hundredweight less than the Dallas area credit. During most of the remaining months in 1982, the difference in the credits was 16 cents per hundredweight. Application of the lower credit for Houston area handlers resulted in a higher Houston Class I price relative to Dallas. However, during this entire period, the Houston area credit was applied by AMPI to receipts at Schepps' Dallas plant on that portion of Schepps' sales in Houston (about one-half of Schepps' total sales of packaged fluid milk products). This meant that Schepps was paying a higher price for milk sold in Houston than for milk sold in Dallas, and that such higher price approached the price paid by Houston handlers even though the milk was being received at Dallas from nearby production areas. To the extent that the AMPI price differences between Dallas and Houston reflect the additional cost of hauling milk, the application of the Houston area credit to receipts at Dallas represents a charge for a service that Schepps did not receive, namely, the transportation of milk to Houston. Consequently, costs among handlers that resulted from the application of over-order prices to recover hauling costs not reflected under the order were not uniform or related to specific services.

For 1981 through April 1983, AMPI's announced prices were adjusted to include a hauling surcharge for the delivery of milk to certain areas. From January 1981 through February 1982, the hauling surcharge to Houston was 10 cents per hundredweight higher than for delivery to Dallas. In March 1982, the difference in the hauling surcharge was increased to 20 cents and beginning in May 1983, the difference in the hauling surcharge between Dallas and Houston was eliminated. The most recent changes in the over-order price structure were implemented in view of the impact of the overall supply/demand balance in the market that was resulting in a loss of fluid markets by AMPI.

The previous and current over-order price structure has been affected by competitive conditions that are influenced by market supply/demand relationships. There is every indication that at times there has been a lack of

uniformity in costs to handlers and returns to producers that is not representative of orderly marketing conditions. The inequities among handlers and producers, to a large degree, are a result of the failure of the order pricing structure to reflect a sufficient amount of the current cost of hauling milk. The magnitude of the deficiency is amplified because of the substantial distances involved and the amounts of milk that must be moved to the major consumption centers in the South. Consequently, a greater transportation allowance needs to be considered under the order to attract milk to the deficit Zones 8 and 9 from the nearest alternative sources of supply that are available to meet fluid milk needs.

Exceptions filed on behalf of handlers who operate distributing plants in Zone 8 (Borden, Inc.; Carnation Co.; Safeway Stores, Inc.; and The Southland Corporation) contend that the previous findings concerning the existence of inequities among producers and handlers are not supported by substantial evidence. Exceptors contend that there is no evidence to establish that a difference in pay prices to producers is a result of AMPI subsidizing hauling costs to Houston and, further, that the Secretary has no authority to bring about uniformity in actual pay prices to producers. They contend that differences in pay prices do not mean that there are disorderly marketing conditions and that the Secretary's power to address disorderly marketing conditions is limited to those conditions which cause unreasonable changes in supplies and prices. They conclude that there are no disorderly marketing conditions since Houston handlers are obtaining an adequate supply of milk and that there is no indication that there will be any future problems in obtaining milk supplies. Exceptors further state that at the time of the hearing, they were paying 67 cents per hundredweight in excess of the order Class I price, 19 cents of which is a hauling surcharge. Consequently, they contend, that with the 19-cent hauling surcharge and the 36-cent location adjustment for Zone 8, they were paying for the cost of hauling milk to Houston. Furthermore, they contend that since no AMPI witness was available to explain the purpose for which premium dollars were spent, there is no assurance that the additional 68-cent premium above the hauling surcharge was not available to cover transportation costs. With respect to the issue of whether costs to handlers are uniform, exceptors contend that the recommended decision attempts to establish uniform costs among handlers in all areas in which they seek to compete for fluid milk sales. Exceptors state that the Act requires that handlers' costs be the same as all other handlers in the same location and that there was no contention that Schepps paid any more or less for milk than competitor plants located in Dallas.

Exceptors' views overlook basic market facts and evidence contained in the record and logical conclusions that are set forth in this decision, which establish the need to increase the location adjustment in Zone 8. The Houston area has experienced a significant increase in population and an increasing proportion of milk supplies from distant areas must be obtained to meet fluid milk needs. At the same time, transportation costs have increased to the point that the current Zone 8 location adjustment no longer represents a sufficient degree of the added service or cost involved in supplying milk to plants in such area. Although the record indicates that Zone 8 plants have obtained sufficient supplies of milk it also establishes that, because of higher transportation costs and various changes in the over-order pricing structure, inequities exist both among producers and handlers. These inequities are representative of disorderly and unstable marketing conditions that threaten the continued availability of milk supplies for Zone 8 plants and, therefore, must be addressed by the Secretary under the purposes and requirements of the Act. Certainly it is appropriate for the Secretary, under the authority of the Act, to review and rectify those marketing conditions (such as nonuniform returns to producers and costs to handlers) that result from a failure of the order to reflect an appropriate location value of milk.

The record establishes the existence of various over-order prices as well as changes in the over-order pricing structure over time. Although exceptors contend that they paid the full hauling cost, and thus there could be no producer subsidy, the record establishes that the same premium, including that 19-cent surcharge, applied to all handlers. Therefore, the net difference in the charge between Dallas-area and Houston-area plants was 36 cents per hundredweight. Also, AMPI testified that virtually all of the over-order charge was absorbed in the cost of moving milk from where it is produced to where it is needed. Since 36 cents does not cover the cost, logically, AMPI producers must be subsidizing the cost of hauling milk to Zone 8 plants and their returns are therefore lower than the returns to other producers located in the heavy northeast production area who do not incur the cost of shipping milk to Houston.

Prior to the revision of the pricing structure in May 1983, a greater proportion of the hauling cost is evident in the difference in prices between Zones 1 and 8. However, as previously stated, the higher Houston price was applied to Schepps in Zone 1. Consequently, contrary to exceptors' contentions, prices were not uniform among handlers as at least two different prices applied at the same location. Also, it is obvious that Schepps paid a higher price than competitors in Dallas.

Contrary to exceptors' contentions, the change in the location adjustment provided herein is not intended in any way to equate costs among all handlers on the basis of the areas in which they seek to compete. The price change is based on the nedd to reflect a greater proportion of the current hauling costs in the current order location adjustments to assure that sufficient supplies of milk will be made available to Houston—area plants and to lessen the inequities that have and are continuing to occur among handlers in Dallas and producers in northeast Texas because of costs associated with supplying Houston handlers. The location adjustment increase applies uniformly to all handlers at the same locations.

There is no broad-based statistical evidence in the record from which any precise transportation rate can be calculated that would represent a marketwide average variable cost of hauling milk. However, evidence presented through a number of witness indicated various costs or charges that are applicable in the Texas and surrounding marketing areas for hauling bulk milk. The hauling charges ranged from $1.60 to $1.80 per loaded mile. The lower charge, which converts to a rate of 3.2 to 3.5 cents per hundredweight per 10 miles, depending on the weight of the load, is AMPI's freight rate quotation for hauling services provided to buyers and such charge was also attributed to an independment hauler. In addition, Mid-Am indicated that it pays $1.64 per loaded mile for transporting milk on regular long distance hauls. Although this evidence does not establish a precise average or standard market price for milk transportation services, it does show that the cost of hauling bulk raw milk is significantly greater than 1.5 cents per hundredweight per 10 miles.

In view of the lack of centainty over the extent to which hauling costs have increased, a conservative estimate of hauling costs should be used to consider

the location adjustment change that is necessary at this time. If location adjustments were based on a rate in excess of costs, significant economic incentive could be created to move milk to obtain hauling profits. A conservative hauling rate, which falls short of covering actual costs, would maintain incentives to implement hauling efficiencies.

In view of the above, the hauling rate should be slightly below the lowest rate identified on the record as being representative of the cost of hauling milk in the Texas marketing area. It is concluded that a rate of 3 cents per hundredweight per 10 miles should be used to consider the location adjustments that are appropriate for Zone 8 and 9 of the marketing area. Such rate should encourage the continued implementation of hauling efficiencies and at the same time cover a significantly greater proportion of current hauling costs than are currently reflected under the order.

Exceptions filed on behalf of Schepps and Houston handlers contend that the 3-cents rate does not reflect current hauling costs. Schepps contends that such rate is insufficient to cover current costs in that hauling charges identified in the record were in excess of 3.5 cents per hundredweight per 10 miles. Houston handlers, although acknowledging that 1.5 cents does not cover current costs, contend that there is no evidence to support the conclusion that the 3-cent rate represents a conservative estimate of current costs.

The record identifies a number of current charges that prevail in the marketing area for hauling bulk milk as previously discussed. As previously stated, the record does not establish a precise, average, marketwide rate of transportation. It does, however, contain sufficient information to establish a conservative rate. The arguments presented in exceptions do not provide a basis for altering the conclusion that a lower rate than those in evidence would provide incentive for transportation efficiencies while also covering a significantly greater proportion of current costs than are now reflected under the order.

As previously stated, the current relationship of prices among Zones 1, 8 and 9 is based on the distance between Dallas and Houston and Dallas and San Antonio. Application of the 1.5-cent rate to the current distance of 237 miles between Dallas and Houston results in a 36-cent higher price at Houston. Also, on the same basis, the 270 miles between Dallas and San Antonio results in approximately a 42-cent higher price at San Antonio relative to Dallas. The merger decision concluded that the resulting price relationship between Houston and San Antonio was appropriate because San Antonio was further from the North Texas supply area than Houston.

Continuing to align prices from Dallas but at the higher transportation rate of 3 cents per hundredweight would result in location adjustments of 72 cents in Zone 8 and 81 cents in Zone 9. However, in addition to using a higher transportation rate, a refinement of the alignment of prices is necessary to better reflect the different distances that milk must move from common supply areas to alternative outlets, and because of an increase in production in certain areas that are advantageously located to supply the fluid milk needs in Zone 9.

Plants in Zone 9 receive substantial quantities of milk from the heavy producing Comanche-Erath County area that is located southwest of the Dallas/Ft. Worth Area. This area is 205 miles from San Antonio (as measured to Stephenville, the County Seat of Erath County). This two-county area also furnishes substantial supplies of milk to Zone 8 handlers but is 267 miles from Houston. On this basis, the location adjustment should be lower for Zone 9 than for Zone 8, which is contrary to the current alignment of prices under the order. Producers in the Stephenville area provide a lesser service by supplying Zone 9 handlers than they provide in supplying Zone 8 handlers since they are 62 miles closer to San Antonio than Houston.

Since Zone 9 handlers have been able to secure a supply of milk from increased production that has occurred in the Comanche-Erath County area, the appropriate location adjustment for Zone 9 should be based on this supply area. However, this two-county area also supplies the major Dallas/Ft. Worth consumption area in Zone 1. The Stephenville area is 97 and 67 miles from Dallas and Ft. Worth, respectively. (Official notice is taken of the Official State Mileage Guide, Texas Statistical Research Service, Austin, Texas.) Producers supplying the Dallas/Ft. Worth area receive the Zone 1 price and must pay the farm-to-plant hauling cost. Consequently, in order to be indifferent to supplying the San Antonio area, only the additional mileage in moving milk to San Antonio must be considered in establishing the Zone 9 location adjustment. Based on the Dallas/San Antonio alternative, there is a difference of 108 miles, which equates to a location adjustment of 33 cents with the 3-cent hauling rate. Based on the Ft. Worth-San Antonio comparison, the location adjustment would be 42 cents, (205 + 67 = 138 or 14 ten-mile increments × 3¢) which is the current location adjustment for Zone 9. Consequently, even though hauling costs have increased, no price increase is necessary for Zone 9 because of the increase of production in an area that is advantageously located to supply the fluid milk needs of handlers operating plants in Zone 9.

The same procedure as previously set forth for Zone 9 should also be used to consider the appropriate location adjustment for Zone 8. To the extent that Zone 8 needs to rely on the Stephenville area for a source of supply, the location adjustment for Zone 8 would need to result in a price that would make Stephenville area producers indifferent to supplying San Antonio or Houston. As such, the price at Houston would have to cover the additional distance that milk must be hauled to supply Houston rather than San Antonio. In this case, the additional distance is 62 miles, which translates to a 21-cent higher price at Houston than at San Antonio. In other words, based on price adjustments from Dallas, the Zone 8 location adjustment would be 63 cents.

However, in establishing location adjustments, incentives should be created to attract milk from the nearest alternative supply areas that are available to supply fluid milk needs. In this case, Houston is nearer to the heavy supply areas that are located northeast of Dallas (the Hopkins County area) than to the Stephenville area. Houston is 253 miles from Sulphur Springs (the County Seat of Hopkins County), about one ten-mile zone closer than Houston is from Stephenville. Although a greater proportion of the supplies for Houston plants originates in the Stephenville area than in the Sulphur Springs area, the Zone 8 location adjustment should be based on the price incentive necessary to attract milk supplies from the nearer Sulphur Springs area.

As was the case with the Stephenville area, the Sulphur Springs area supplies a substantial proportion of the fluid milk needs of the large Dallas/Ft. Worth consumption center. In order to establish an incentive for milk to move to Houston, the Zone 8 location adjustment must reflect the additional miles involved in hauling milk to Houston rather than Dallas. In this case, Houston is 174 miles farther from Sulphur Springs than is Dallas. Thus, the 18 ten-mile zones at 3 cents per ten miles require a location adjustment of 54 cents in Zone 8, an increase of 18 cents over the current location adjustment.

The modification to the Zone 8 location adjustment is the only price

change that is necessary at this time. The higher price will cover a greater proportion of current transportation costs, establish a greater degree of equity among producers and handlers, provide a greater assurance that supplies of milk will be made available to supply the fluid milk needs of the largest consumption center in the marketing area and promote stable and orderly marketing conditions as required by the Act. Also, the increased location adjustment represents a refinement of the current price alignment among Zones 1, 8 and 9 by recognizing the nearest alternative different sources of supply for Zones 8 and 9 and the proximity of such supply areas to Zone 1 consumption centers.

Exceptions filed on behalf of Schepps and Houston handlers contend that the recognition of actual and potential supply areas in considering the price adjustments necessary for Zones 8 and 9 represents a significant departure from the historical practice of basing location adjustments on mileage from Dallas. Proponent contends that the use of incremental mileage (for example, the difference between the mileage from Sulphur Springs to Dallas and the mileage from Sulphur Springs to Houston) results in an understatement of the price adjustment that is necessary to cover the cost of hauling milk to Houston. Opponents contend that the procedure: (1) Was not noticed for hearing; (2) was not advocated by any witness; (3) is not utilized in establishing location adjustments under any other Federal milk order; (4) ignores the realities of the way milk moves; (5) discriminates against Houston handlers since Zone 8 is the only pricing zone that has a location adjustment that recognizes distance from its source of supply; and (6) if used for other pricing zones, would destroy any concept of price alignment among competing dealers and cause extraordinary supply dislocations throughout the market.

This decision sets forth the alternative pricing proposals contained in the Notice of Hearing to revise the pricing structure under the order, including price increases of 27 to 36 cents for Zone 8 and price increases of 15 to 23 cents for Zone 9. Within the context of these proposals, and in conjunction with the record evidence concerning the current and potential supply areas for plants in Zones 8 and 9, it is appropriate to recognize the realities of the way milk moves in considering the price adjustments that are necessary. Although no witness advocated the specific methodology used to consider the price adjustment provided herein, several witnesses recognized the obvious importance of actual and potential supply areas in determining price adjustments that might be necessary in any area, as well as the difference in the cost of hauling milk from a common supply area to alternative outlets. In addition, although location adjustments have primarily been based on distances from Dallas in the past, recognition of the supply area was considered in the past in establishing the current price adjustment for Zone 9 as previously set forth in this decision. Evidence in this record establishes that the Zone 9 location adjustment should not be based on the mileage from Dallas because of the increase in milk supplies located nearer to San Antonio than the supplies of milk located northeast of Dallas. A failure to recognize this basic change, and continuing to base the Zone 9 location adjustment on the total mileage between Dallas and San Antonio, would result in establishing a Zone 9 price that is higher than necessary to attract a supply of milk from the nearer production area. Likewise, basing the Zone 8 location adjustment on the distance between Dallas and Houston would result in a need to establish a price that would be in excess of the price necessary to attract milk from supply areas that must be relied on to provide a sufficient supply of milk for fluid use. Consequently, the rationale set forth in this decision for the price increase in Zone 8, as well as the denial of any price increase in Zone 9, recognizes the realities of way bulk milk moves in the market and is sound in its economic reasoning. Also, the decision is consistent with the application and purposes of location adjustments throughout the Federal milk order system; namely, to reflect the cost of transporting milk from production areas to consuming centers.

Houston handlers also contend that recognition of the actual supply area in establishing zone prices provides the opportunity for cooperative associations to manipulate order prices by altering the source of supply for particular consumption centers. In this regard, potential alternative sources of supply that are located nearer to consumption centers are also considered in establishing location adjustments. This decision establishes the location adjustment for Zone 8 on the basis of the nearer Sulphur Springs supply area rather than on the supply area southwest of Dallas that currently furnishes a greater proportion of the milk supply for Zone 8 handlers.

Opponents' contention that a misalignment of prices would result if the approach used to consider the appropriate location adjustments for Zones 8 and 9 were also used for all other zones is a moot issue since no other price adjustments are provided. A price increase for Zone 8 is necessary to establish orderly marketing conditions by reflecting a greater proportion of the cost of hauling milk to Zone 8 plants. Also, a refinement of the alignment of prices among Zones 1, 8 and 9 is necessay because of the increase in milk production in counties southwest of Dallas that is available to plants in Zones 1, 8 and 9. Furthermore, the Zone 8 price increase is reviewed in light of the current prices applicable in other zones to determine if a significant misalignment of prices would result that would disrupt or hinder the ability of plants in the various zones to attract sufficient supplies of milk. As hereinafter set forth, it is concluded that the Zone 8 price increase would not result in a misalignment of prices among plants in the various pricing zones.

The price increase in Zone 8 that improves the price alignment among Zones 1, 8 and 9, does not significantly disrupt the price alignment among Zone 8 and other zones of the marketing area. Distributing plants located at Lufkin and Bryan (which are in Zones 4 and 5, respectively) are 119 and 95 miles from Houston. Under the current order price structure, the Houston price is 16 cents higher than the price at Bryan and 18 cents higher than the price at Lufkin. With the price increase at Houston, the Zone 8 price will be 34 cents higher than the price at Byan and 36 cents higher than the price at Lufkin.

Based on the distance from Bryan to Houston, and the 3-cent hauling rate, a precise alignment of prices between Bryan and Houston would be accomplished with a 50-cent location adjustment at Houston, rather than the 54-cent adjustment adopted herein. The additional 4 cents that is provided herein should help attract milk from the Zone 5 area, yet it would not be so great as to jeopardize the maintenance of a supply of milk for the one distributing plant in Zone 5. As previously stated, there is a substantial amount of production in Zone 5 that is in excess of the bulk fluid milk receipts at the distributing plant in such Zone. Also, fluid milk needs are relatively small as the total population in Zone 5 represents only about 1.7 percent of total marketing area population.

Based on the distance between Lufkin and Houston and the 3-cent hauling rate, the 36-cent higher price at Houston

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relative to Lufkin represents a precise alignment of prices. Beaumont, which is located in Zone 8 northeast of Houston, is 108 miles from Lufkin. Consequently, the price at Beaumont will be only 3 cents per hundredweight higher than the price in Lufkin plus the implied transportation cost of 33 cents between Lufkin and Beaumont.

The price increase in Zone 8, although designed to provide the incentive for milk supplies to be procured from the nearest heavy producing area around Sulphur Springs, results in a total expansion of the theoretical procurement area for Zone 8 plants. The higher price shifts the procurement area to the west and northwest towards the Zone 9 procurement area. It has already been noted that both zones procure milk supplies from the Comanche-Erath County area even though the current Zone 8 price is not currently competitive in such area relative to the Zone 9 price. Even though the proposed Zone 8 price moves the potential supply area for Houston towards the San Antonio supply area, the price would not be so high as to jeopardize the supply of milk for Zone 9 plants that are advantageously located with respect to the heavy producing Comanche-Erath County area.

The Zone 8 price incease also shifts its theoretical procurement area south towards Corpus Christi by about 60 miles. Such shift does not extend into the current primary procurement areas of plants located in Zones 11 and 12 to any signficant degree. Most of the milk supplies for plants in these zones are procured from areas in competition with Zone 9 plants and the price relationships in Zones 9, 11 and 12 are not altered in this decision.

Additional arguments in exceptions filed on behalf of Houston handlers contend that the Zone 8 price increase discriminates against such handlers who now will have a disadvantage in competing with handlers in Zone 9 to the west and handlers in Zone 4 to the east. Exceptors contend that if hauling costs have increased, they have increased for everyone and that there is no basis for establishing a location adjustment reflecting a 3-cent per hundredweight hauling rate for Zone 8 plants while location adjustments for other zones reflect a 1.5-cent hauling rate.

As previously stated, the purposes of location adjustments is to provide incentives for the delivery of supplies of bulk milk to various plant locations. The evidence in the record establishes that the cost of hauling milk to Houston is in excess of the transportation allowance provided under the order and that inequities among producers and handlers have resulted because of an inability of the over-order pricing structure to effectively recover the costs or to apportion the costs equitably among handlers. As a result, handlers and producer in northern areas, at various times and to various degrees, have subsidized the costs incurred in shipping milk to the Houston area. Consequently, the major thrust of the pricing proposal and the intent of the decision is to establish a more equitable pricing structure by assessing more of the costs associated with moving the milk into Zone 8 upon those plants that receive the milk and occasion the costs.

The proposed modification to combine Zone 2 and 4 into one pricing zone that was supported by the handler who operates a plant at Lufkin should not be adopted. Proponent's claim of being at a competitive disadvantage in selling fluid milk products in competition with Zone 2 handlers is not a proper basis for the proposed action. The current 12-cent difference in the Class I price between the two zones must be maintained to facilitate the southward movement of milk. If the price in Zone 4 were reduced to the Zone 2 price, the maintenance of the milk supply for the Lufkin plant would be jeopardized because of the incentive for producers to ship milk further south to the deficit Zone 8. The need to maintain the current Zone 4 price at its current level is even greater because of the price increase adopted herein for Zone 8. On the other hand, if the Zone 2 price were increased to the Zone 4 level, such price would be too high relative to the price at Dallas and the proximity of Zone 2 to the heavy northeast Texas production area. As such, an increase in the Zone 2 price would negate the primary objective of the price increase in Zone 8 to attract a supply of milk from the northeast Texas supply area.

The handler who operates the plant in Zone 4 requested that the previous conclusions denying the proposal to combine Zones 2 and 4 into one pricing zone be reconsidered. However, no arguments were presented that would indicate a need to alter the findings and conclusions concerning the proposal.

Opponents to the pricing proposals contend that the proposals cannot be considered because the Department failed to publish an initial regulatory flexibility analysis prior to holding the hearing, which they contend is required by the Regulatory Flexibilty Act.

Section 608c(4) of the Agricultural Marketing Agreement Act of 1937, as amended, provides that the Secretary must base a marketing order on evidence contained in the record of a public hearing. Therefore, proceedings to amend Federal milk orders are governed by sections 556 and 557 of Title 5 of the United States Code. Under these "formal" rulemaking procedures, decisions can be based only on evidence contained in the record of a public hearing. As a result, it would not be appropriate for the Secretary to publish an analysis containing conclusions that describe the impact of the proposals on small businesses prior to holding a public hearing to gather evidence on which the decision must be based. Therefore, publication of an analysis or a certification that the proposed amendments, if promulgated, would not have a significant economic impact on a substantial number of small entities is not made until the recommended or final decision stage of a proceeding that provides for amendatory action.

The notice scheduling the hearing specifically invited interested parties to present evidence on the probable impact on small businesses of the hearing proposals or modifications of the proposals for the purpose of tailoring their applicability to small businesses. In opposing any of the pricing changes, opponents testified to the probable impacts of various combinations of proposed pricing changes in terms of changes in the value of producer milk and cost to handlers.

This testimony on the probable impact of the proposed pricing changes was condidered in this decision which contains a certification that the proposed amendments, which include the minimum price change for Zone 8, will not have a significant economic impact on a substantial number of small entities. The 18-cent price increase in Zone 8 will not be significant, as it represents only a 1.2 percent increase from the minimum order Class I price at Houston in effect at the time of the hearing. As discussed in this decision, the price increase is intended to cover only a part of the current cost of shipping milk long distances on a regular basis to meet increased fluid milk needs of the largest population center in the marketing area. As an intentional consequence the amendment will have only a minimum impact on returns to producers so as not to encourage additonal production or to further discourage the production of milk that is necessary to meet the fluid milk needs of the market.

Execptions filed on behalf of Houston handlers request that, in the event that their arguments in opposition to any price do not prevail, amendatory action be delayed until June 1, 1985, when existing school contracts expire.

Exceoptors contend that annual school contracts are awarded on bid basis and that an increase in the minimum order price would immediately force handlers having such contracts into loss situations.

Record evidence indicates that school contracts are awarded to bedders who prevail by fractions of a cent. However, there is no evidence in the record to indicate how handlers anticipate monthly changes in prices or how such changes may be incorporated into school contracts. In the absence of any evidence concerning potential problems with existing contracts, it cannot be concluded that it is necessary to delay implementation of the amended order.

4. *The Class II price level and location adjustments within the marketing area.* No changes should be made with respect to pricing of milk in Class II uses under the order.

Milk in Class II uses is currently priced at the same level throughout the marketing arrea, as is the case in nearly all Federal order markets. The Class II price is the price for milk in Class III (manufactured) uses plus a formula derived differential. The Texas order Class III price is the same as the minimum Class II price under 32 other Federal order markets and the classification of milk in such uses is uniform throughout most Federal order markets.

Schepps proposed that for certain pricing zones the Class II price under the Texas order be subject to the same location adjustments that were proposed to apply in those zones to Class I milk. Specifically, Schepps proposed that the Class II price for plants in Zones 6 through 12 be increased from the Class II price announced for the market. Proposed increases to the Class II price for these zones were: Zone 6, 30 cents; Zone 7, 35 cents; Zone 8, 45 cents; Zone 9, 51 cents; Zone 10, 62 cents; Zone 11, 75 cents; and Zone 12, 84 cents. For Zones 1 thorugh 5, no location adjustments were proposed so that Class II prices would be the same as the Class II price that currently applies throughout the marketing area.

The plus location adjustments were proposed for those zones that proponent considers to be deficit in terms of milk production. Proponent contends that since plants in these deficit zones must reach out to alternatives areas for sources of supply, the prices they pay for milk should cover the transportation cost incurred in moving milk to their plants regardless of whether the milk is utilized in Class I or Class II uses. Proponent contends that producers who ship milk to plants incur the transportation cost for total milk shipments, regardless of how it is used. Proponent also contends that the higher Class II prices in deficit zones would provide an incentive for milk in Class II uses to be processed at plants in surplus production zones of the market rather than in deficit supply areas. Proponent contends that this would result in overall marketing efficiences by eiminating the transportation costs for the liquids that are eliminated in the process of making Class II products.

Opponents of the pricing proposals opposed this proposal on the basis that it not only discriminates against South Texas handlers relative to handlers in North Texas, but would place South Texas handlers at a competitive disadvantage with respect to substantial competition from Class II manufacturers throughout the country. They contend that the proposal would result in marketing inefficiencies in that South Texas handlers could not afford to utilize surplus cream in Class II products that is associated with the standardization of producer milk use in fluid milk products. They contend that the incentives for handlers to attemept to receive milk uniformly on a seven-day basis would be reduced because of the inability to utilize those receipts in Class II uses. Opponents also contend that the proposal would provide an economic incentive for South Texas handers to use manufactured milk ingredients (such as butter and nonfat dry milk) to make Class II products rather than fluid cream. They contend that this would result in a lowering of returns to producers since the manufactured ingredients would be priced at the Class III (manufacturing) level rather than at the Class II price.

Increasing Class II price through location adjustments would not provide any incentive for milk to be shipped from the relatively surplus areas of the Texas market to those more deficit areas of the market on a direct farm-to-plant shipped basis. The blend price payable to producers is adjusted by the same location adjustments that are applicable to milk in Class I uses. For example, producers who supply plants in Zone 8 would receive a blend price that is 54 cents per hundredweight higher than the blend price payable to producers who supply plants in Zone 1, as adopted under the previous issue. Consequently, the application of Class II location adjustments, all other things being equal, would result in an increase in the total value of milk pooled under the order and, consequently, increase the blend price level to all producers supplying the market. There is no indication that producer returns need be increased to provide an additional incentive to producers to increase production to satisfy the Class I and Class II needs of the market.

More importantly, however, the proposed increase in the Class II price level through location adjustments ignores the need to maintain uniformity in both the classification and pricing of milk in other than fluid milk uses in view of the competitive situation among handlers and producers over a much broader area than occurs with the sale of fluid milk products. The uniform pricing and classification provisions for 39 Federal order markets became effective on August 1, 1974, and official notice is taken of two decisions issued by the Assistant Secretary on February 19, 1974, concerning such provisions under 32 orders (Georgia, et. al., 39 FR 8452, 8712, 9012) and under seven orders (Chicago Regional, et. al., 39 FR 8202). There "uniform classification" proceedings involved all of the then existing Federal order markets that were subsequently merged to form the Texas marketing area, except the South Texas marketing area. However, the South Texas order was also amended effective August 1, 1974, after the issuance of a separate decision based on evidence presented at the hearing to merge the marketing areas of six Texas orders. Consequently, official notice is also taken of the Deputy Assistant Secretary's decision of April 24, 1974 (39 FR 14950). The decision concluded that it was necessary to implement the uniform classification and pricing provisions under the other Texas orders and that procedures to merge the marketing areas could not be completed by the August 1 effective date. The decision concluded that an interim implemetation of the uniform classification and pricing provisions in the South Texas order was necessary because of the substantial competition between South Texas handlers and handlers regulated under the other Texas orders.

The marketing of Class II products is conducted on a wider regional basis, relative to the marketing of fluid milk products, as was recognized in the uniform classification and pricing decisions, and is illustrated by the examples of the locations of plants that distribute such products in the Texas marketing area. Consequently, the competitive relationships among handlers and producers extend far beyond the Texas marketing area. The record of this proceeding does not demonstrate that the minimum order value of milk in Class II uses in certain zones of the Texas marketing area should be significantly different than the

value of Class II milk in other Federal order markets. If there were a need to consider a higher value of milk in such uses, the competitive relationship among handlers and producers over a broad area is necessarily involved and cannot be appropriately addressed in an amendatory proceeding involving one market.

Exceptions filed on behalf of Schepps contend that the major issue to be decided with respect to pricing milk in Class II uses is whether producers or handlers should bear the cost of shipping milk to deficit areas for Class II uses. Such contention does not provide a basis for revising the pricing of milk in Class II uses under the Texas order for reasons previously set forth.

5. *Location adjustments applicable for milk delivered to plants located outside the marketing area.* No change should located outside the marketing area.

The order currently provides for adjusting the Class I and producer prices for milk received at plants that are not located in the marketing area. The provisions were established when the present Texas marketing area became regulated under one order and are necessary to price Texas order producer milk that may be diverted to distantly located plants for manufacturing, as well as to establish prices at distant plants that may become associated with the Texas market. The Texas order Class I and producer prices at plants outside the marketing area but in Texas and most of Oklahoma are adjusted for location on a zone pricing basis but are related to Class I prices under Federal orders applicable in those areas. At most other out-of-area plants, a minus location adjustment applies at the rate of 1.5 cents per hundredweight for each 10 miles that such plant is located from Dallas. No location adjustments apply at plants in Louisiana, New Mexico, or El Paso County, Texas.

Schepps proposed that the location adjustment for plants located in the States of Oklahoma, Arizona, Colorado, Kansas, Missouri, Arkansas and Louisiana be computed on the basis of the difference between the Texas order Class I price and the Federal order Class I prices applicable in such States. For any specific plant in such States, the location adjustment would be the difference between the current Zone 1 Class I price and the Class I price applicable at such plant if it had been regulated under the Federal order for the marketing area nearest to such plant as measured from the plant to the zero pricing point in the orders applicable in such a State. For locations outside the above-listed States, the location adjustment would be the difference between the announced Texas order Class I price (the price that applies in Zones 3, 4 and 5 under Schepps' in-area pricing proposal) and the higher of the Class I prices at Dallas, Abilene and San Antonio reduced by 3.6 cents per hundredweight per 10 miles that the plant is located from each of these cities.

Proponent contends that the out-of-area location adjustment proposal is necessary to maintain price alignment betweem the Texas order and other Federal order markets, even though the differentials between markets do not reflect the cost of hauling milk. For more distant areas than those in the listed States, the location adjustment rate advocated by Schepps. Proponent contents that use of such rate would establish an economic incentive for milk to be shipped to the Texas market when needed.

The proposal was opposed by Mid-Am because it would result in a change in pricing at the cooperative's supply plant in Aurora, Missouri. Mid-Am contends that the proposal would increase the current minus 60-cent location adjustment at its plant to as must as minus 99 cents per hunderweight. Mid-Am contends that such price reduction would jeopardize the maintenance of a reserve supply of milk for the Texas market. Mid-Am points out that milk is currently shipped from its plant to Texas pool distributing plants and that, based on projected population increases for the State of Texas, there will be an increasing need for the Texas market to rely on areas such as southwest Missouri for supplemental supplies of milk. Mid-Am contends that the present method of calculating location adjustments for the Aurora plant has not resulted in any disorderly marketing conditions.

In its brief, AMPI opposed the out-of-area location adjustment proposal because of pricing disparities that would result at locations in New Mexico and areas in the State of Texas that are outside the Texas marketing area. For example, AMPI pointed out that the proposal would result in a price at El Paso, Texas, that would be about $1.00 per hunderweight lower than the price at that location under the Rio Grande Valley order.

The major thrust of the out-of-area location adjustment proposal was to maintain the relationship of prices among the Texas and other orders that currently exists. Apparently, such proposal was considered necessary to conform with the overall intra-market pricing changes that were proposed that included a 10-cent reduction in the current Zone 1 price and the southern movement of the base zone to Zones 3, 4 and 5. However, since these changes were denied as indicated under issue number 3, conforming changes are not necessary to maintain the current price relationship and, thus, the issue is moot.

It must also be pointed out that the mechanics of the proposal were deficient in maintaining current price relationships as evidenced by the change in location adjustments that would occur at various locations. Proponent offered no evidence to establish any need for changes in location adjustments in these out-of-area locations. It should also be pointed out that even if the proposal had resulted in maintaining the current price relationship, the location adjustments could be subsequently modified on the basis of amendatory proceedings for the other markets rather than for the Texas market. Although there is a need to maintain a coordination among order prices, it would be preferable that the Texas order prices at all locations be made on the basis of a hearing for the Texas market.

6. *Classification of milk contaminated with antibiotics.* A proposal to permit the pooling at certain contaminated milk without such milk being either received at or diverted from pool plants should not be adopted.

The Southland Corporation proposed that the "Producer milk" and "Classes of utilization" provisions of the order be amended to permit the pooling of milk that is rejected by a handler because of antibiotic contamination. Under the proposal, rejected, contaminated, tank truck loads of milk would be treated as producer milk (except for the milk of the producer'(s) responsible for the antibiotics) and would be classified and priced under the order, provided that the market administrator is notified of the rejection and given the opportunity to verify the antibiotics. Such milk could be disposed of by the handler for animal feed or be dumped and thus be subject to Class III utilization and pricing to the handler. Producers, except the producer(s) responsible for the contamination problem, would receive the order blend price.

The Southland Corporation operates five distributing plants under the order, four of which are either totally or partially supplied by nonmember producers. Southland's witness testified that the purpose of the proposal is to alieviate to some extent problems incurred in handling milk from nonmember producers that is contaminated with antibiotics. Such milk cannot be disposed of for human

consumption, and Southland takers precautions to prevent the receipt of such milk in its fluid milk plants by performing tests to detect for the presence of antibiotics on each tank truck before unloading the milk. This initial test takes 15 to 30 minutes to complete. If the test is positive, the tanker is held while a second test is positive, the load is rejected.

Southland testified that prior to September 1982, there was an outlet for manufacturing animal feed from such rejected milk. Disposition to the manufacturing plant qualified as a diversion, and, thus, Southland was able to pool the milk of the producers who did not cause the problem. Southland stated that its returns for such milk were small, but that the company's total cost of the milk was the difference between its returns from the sale of the milk and the Class III price applicable to Southland for such milk under the order. Producers who did not cause the problem, but whose milk was nevertheless contaminated by being commingled with other milk in the tank truck, received the order blend price.

Southland further testified that the outlet for processing such milk into animal feed discontinued receiving the milk in September 1982, and that there is no other outlet available that provides the opportunity for the contaminated milk to be pooled on a diverted basis. Furthermore, according to Southland, the only feasible outlet that the company has found provides no return and, thus, Southland's cost for the milk of the producers who did not cause the problem is the order blend price. Although the order does not require payment for milk that is not received by a handler, Southland feels compelled to return such price to producers since the milk is contaminated through no fault of their own and to preserve such producers as a source of supply.

AMPI opposed the proposal on the basis that the pooling provisions of the order should not be relaxed in any way to permit milk to share in the pool if it is not physically received at a pool plant or diverted to a nonpool plant. Furthermore, AMPI testified that since such milk must be dumped or disposed of for other than human consumption according to Texas Health Department regulations, it should not be pooled under the order. AMPI further opposed the proposals on the basis that the cost of administering the order would be increased because the market administrator would have to physically verify the rejection, the reason for the rejection, the disposition of the milk and also verify the identify of the producer who caused the problem whose milk would not be pooled. AMPI further testified that the proposal would place the market administrator in the position of performing the duties of a "duly constituted regulatory agency" for determining quality standards, and that the performance of such duties goes beyond the role of Federal milk orders. AMPI also testified that adoption of the proposal could set a precedent for other proposals to pool milk (that is neither received nor diverted) that a handler claims is not suitable for processing for any number of reasons pertaining to quality and flavor.

AMPI further contended that the proposal does not address the solution to the problem. AMPI suggested that all segments of the industry should work together to obtain better enforcement of existing health regulations by regulatory agencies. Also, AMPI contended that adoption of the proposal would weaken the industry incentive to develop programs to avoid the incidence of antibiotic contamination.

Record evidence does not indicate that the incidence of antibiotic contamination is any significant problem in terms of the overall milk supply. Industry efforts outside the order provisions, as portrayed by the activities of Southland and AMPI, are geared to prevent the delivery or receipt of any contaminated milk. There is every indication that producers and handlers have significant incentives to continue to provide high quality milk and dairy products.

The proposal should not be adopted because it would result in an extension of the Federal order program to establishing and enforcing quality standards for milk. The establishment and enforcement of such standards are the function of other jurisdictions that have the responsibility for assuring the maintenance of minimum quality standards relating to public health considerations. The Texas order refers to the applicable health authorities in general terms as "a duly constituted regulatory authority" to encompass the full range of agencies that may have the authority to establish the state or local health standards, including various health departments and state departments of agriculture. The order refers to these agencies in the various pool plant and producer milk definitions. In order to market milk or dairy products under the Texas order, milk plants and dairy farmers must be approved by a duly constituted regulatory agency for the production, disposition, processing or packaging of Grade A milk. Once approval is obtained from the appropriate agencies, the marketing of such milk and dairy products is regulated under the terms and provisions of the order. The order thus regulates only the marketing activities while other agencies have the responsibility for developing and enforcing the standards to promote the public health.

If a handler were to reject milk under the proposal, the market administrator would have no specific standards within the order to determine whether such milk should or should not be rejected. Presumably, in the absence of such standards, the market administrator would have to rely upon standards developed by other regulatory agencies that are responsible for the public health. This would amount to placing the market administrator in the position of enforcing health laws established by other agencies and would result in an inappropriate expansion of the scope of the marketing order.

7. *Shipping percentages applicable to pool supply plants.* No change should be made to the current shipping standards for pooling supply plants under the order.

The order currently provides for the pooling of two categories of supply plants if certain minimum performance standards are met in supplying the fluid milk needs of distributing plants. The pooling standard for one category of supply plants is based on shipments to pool distributing plants while the pooling standard for the other category of supply plants recognizes shipments to distributing plants that are regulated under other orders. The pooling standards for pooling both categories of supply plants, however, are similar in that 50 percent or more of such plants' Grade A receipts must be shipped to distributing plants during the month in order to attain pool plant status. During the months of August and December, however, the shipping standard is 15 percent of receipts if the supply plant was pooled during the immediately preceding month. Also, any supply plant that is pooled during each of the immediately preceding months of September through January retains pool plant status during the months of February through July without making qualifying shipments, unless the plant operator requests nonpool status.

Mid-Am proposed that the order be amended to provide the Director of the Dairy Division with the authority to temporarily increase or decrease the order shipping standards by up to 10 percentage points if the Director finds that such revision is needed to either obtain needed shipments or to prevent

uneconomic shipments. Before making such a finding, the Director would investigate the need for the revision, either on his own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the Director would issue a notice stating that a temporary revision of the shipping standard is being considered and inviting views of interested persons concerning the proposed revision. After evaluating such views, the Director would then decide whether a temporary revision is warranted.

Mid-Am's witness pointed out that under current procedures the order shipping standards can be revised only through a time-consuming amendatory proceeding or by a suspension action. In addition, changes accomplished through suspension are limited because of procedural requirements to relaxing rather than increasing the shipping standards. Thus, Mid-Am contends that the inclusion of a provision to adjust the supply plant shipping standards on a temporary basis would enhance the ability of the order to deal in a timely manner with short-run changes in supply/demand conditions. Mid-Am further testified that, for the purposes of its proposal, a temporary period is defined as one or more months during the qualifying period when supply plants must make shipments to distributing plants to obtain pool plant status.

The basic thrust of Mid-Am's proposal is to provide for additional flexibility under the order to deal with short-run changes in supply/demand conditions. Also, Mid-Am contends that a temporary revision of the shipping standards could be accomplished more rapidly than a suspension action.

The Mid-Am witness testified that its supply plant located at Aurora, Missouri, which has been pooled under the order since August 1982, would be the only plant affected by the proposal. The witness stated that if the proposal had been in effect in August of 1983, Mid-Am would have requested a reduction of 10 percentage points in the shipping standards. The witness contended that shipments were made from the supply plant to pool distributing plants during that month solely for the purpose of meeting the pooling standards since the milk was not needed by distributing plants. The witness stated that the cooperative was unaware that it could not meet the shipping standards without making unnecessary shipments until it was too late to request a suspension of the supply plant pooling standards for August.

AMPI supported the proposal for essentially the same reasons presented by Mid-Am. The AMPI witness testified that the purpose of pooling standards for supply plants is to assure that such plants would ship milk at the times and in the quantities needed to meet fluid milk needs, but that supply plants should not be forced to make uneconomic shipments to distributing plants when milk is not needed. The witness testified that at times additional shipments were made from its supply plant located in Hillsboro, Kansas, to Texas pool distributing plants to meet the pooling standards, particularly during the months of August and December 1982.

At the time of the hearing there were only two supply plants pooled under the order. In addition to Mid-Am's plant at Aurora, Missouri, a pool supply plant operated by Southern Milk Sales at Yantis, Texas, was pooled under the order on the basis of shipments to pool distributing plants during October 1983. This plant has been pooled under various pooling categories during 1982 and 1983, including the provisions for pooling a cooperative association plant that are not at issue under the Mid-Am proposal. (Official Notice is taken of the Market Administrator's monthly *List of Handlers*, January 1982 through October 1983). An additional supply plant operated by AMPI at Hillsboro, Kansas, ceased being pooled under the Texas order effective August 1, 1982.

Proponent's contention that the proposal could be effective in bringing forth additional quantities of milk for fluid use, should the need arise, is not supported by the prevailing supply structure of the market. The Texas market distributing plants are basically supplied on a direct-shipped basis with little reliance on supply plant shipments to meet the fluid milk needs of the market. As indicated by Mid-Am, the proposal would apply essentially to only one supply plant. Consequently, any temporary action to increase the shipping standard by the full 10 percentage points would have virtually no impact in bringing forth any significant quantity of milk to meet the fluid milk needs of a market that pools in excess of an average of 349 million pounds of producer milk per month.

Rather than temporarily increasing the shipping standards, it appears that the major concern of proponent is to provide a mechanism to temporarily lower the shipping standards, particularly for the months of August and December. In this regard, the current supply plant pooling standards have been in effect since the Texas order was implemented July 1, 1975, and there have been no suspension actions taken to relax the pooling standards for supply plants under the order. The current pooling standards were based on marketing conditions existing at that time and specifically recognized the seasonal changes in supply/demand conditions during August and December by providing a pooling standard of 15 percent for plants pooled in the immediately preceding months, rather than the 50 percent standard applicable during the remaining shipping period for supply plants. A review of the seasonal variation in the percentage of producer milk in Class I uses does not indicate that the shipping standard for August and December are out of line with marketwide supply/demand conditions. In any event, because of the limited shipping standard during these months, any additional flexibility provided by the authority to lower the shipping standard, versus a suspension of the pooling standards, is of dubious value.

Proponent's major contention is that the proposal would provide for a mechanism to reduce the pooling standard more quickly than can be accomplished through current suspension procedures. This is simply not the case. The proposal provides for the issuance and publication of proposed rule making with the opportunity for public comment, and the issuance of and publication of final temporary rules. Essentially, this is the same procedure that is applicable to suspension actions. Therefore, if supply plant operators do not recognize or anticipate changes in supply/demand conditions in time to request a suspension action, there would also be insufficient time to request a temporary lowering of the supply plant shipping standards. In such a situation, the proposal would be of no useful value to proponents.

8. *Computation of the uniform price.* A minor revision should be made in the order provisions concerning the computation of the uniform price as proposed by the Dairy Division. Specifically, the 4-cent per hundredweight lower limit on the amount to be retained in the producer-settlement fund should be removed. Adoption of the proposal, which was not opposed by any interested party, will provide for the opportunity to reduce the reserve balance in the producer-settlement fund.

The producer-settlement fund reserve is maintained through the computation of the uniform price. Each month, current order provisions require that not less than one-fourth of the unobligated

balance in the producer-settlement be added to the handlers' value of milk. Also, the order requires that not less than 4 cents nor more than 5 cents per hundredweight be subtracted from the total aggregate value of milk to maintain the producer-settlement fund reserve for subsequent months. The purpose for the reserve under the order is to facilitate the handling of audit adjustments on handlers' receipts and dispositions.

Unlike most Federal orders, the Texas order provides for a payment system whereby all obligations by plants for milk purchased from producers and cooperatives are paid to the producer-settlement fund. The market administrator then pays producers and cooperatives, as well as handlers who wish to pay their own producers, from the producer-settlement fund. The order provides that any shortage in payments by any handler be reflected by reduced payments to such handler or the handler's producer suppliers and that producer-settlement funds not be used to supplement such payments. Also, as a result of the payment practices under the order, the producer-settlement fund reserve is not necessary for handling audit adjustments. Such adjustments are handled by debiting and crediting handler accounts each month.

Under current order operations, the entire unobligated balance in the producer-settlement fund is added to the current month's uniform price computation. However, between 4 and 5 cents per hundredweight must then be deducted from the uniform price computation. This results in a producer-settlement fund balance of a minimum of about $150,000 on a monthly basis.

Such a balance in the producer-settlement fund is not necessary under the current payment practices under the order. Elimination of the current lower 4-cent limit that can be deducted in the uniform price computation will provide the means by which the producer-settlement fund reserve can be reduced.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

A ruling of the Administrative Law Judge to which a specific objection was taken in a brief has been reviewed. An objection was raised by the attorney representing Schepps Dairy to the Administrative Law Judge excluding the admissions of two exhibits offered as evidence. The exhibits were marked for identification and were proffered as an offer of proof when the Administraitve Law Judge excluded them.

The exhibits are reproductions of advertisements that were included in a supplement to a newspaper published in Sulphur Springs, Texas. The advertisements for a grocery and feed store contain milk prices reportedly paid to producers in Zone 1 by cooperatives and proprietary handlers including AMPI, Cabell, Foremost, Metzgers, Mid-Am, and Southern Milk for August 1982 through July 1983. A witness for Schepps testified that the store proprietor told him how he obtained the information which was used for the store advertisements. According to arguments presented at the hearing and in the brief, the exhibit should have been received to illustrate the disparity among pay prices to producers in Zone 1 and that the accuracy of the prices was corroborated by witnesses representing AMPI and Mid-Am. An attorney representing handlers who oppose Schepps' proposals objected to the exhibit as being hearsay, while the attorney for AMPI objected on the basis of the information being totally unreliable for the purpose of comparing the listed prices.

In rejecting the exhibits, the Administrative Law Judge noted that the pay prices listed in the exhibit were not reported by a newspaper, but were inserted by a grocery and feed store. The Administrative Law Judge's ruling to exclude the exhibits has been reviewed in light of the arguments presented and is affirmed on the basis that the exhibits are not sufficiently reliable sources of information on the magnitude of the pay price differences among producers. The reliability of the exhibits is so attenuated by the particular hearsay nature of the information that they are not the sort of evidence, "upon which responsible persons are accustomed to rely." [7 CFR 900.8(d)(1)].

Schepps excepted to the affirmation of the Administrative Law Judge's ruling and reiterated the arguments that were presented in briefs. These arguments were previously considered and do not provide a basis for reversing the ruling of the Administrative Law Judge.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Texas order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Rulings on Exceptions

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions, and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents, a Marketing Agreement regulating the handling of milk, and an ORDER amending the order regulating the handling of milk in the Texas marketing area, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That this entire decision, except the attached marketing agreement, be published in the **Federal Register.** The regulatory provisions of the marketing agreement are identical with those contained in the order as

hereby proposed to be amended by the attached order which is published with this decision.

Determination of Producer Approval and Representative Period

December 1984 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the order, as amended and as hereby proposed to be amended, regulating the handling of milk in the Texas marketing area is approved or favored by producers, as defined under the terms of the order (as amended and as hereby proposed to be amended), who during such representative period were engaged in the production of milk for sale within the aforesaid marketing area.

List of Subjects in 7 CFR Part 1126

Milk Marketing Orders, Milk, Dairy products.

Signed at Washington, D.C., on: March 6, 1985.

Karen Darling,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 85-5723 Filed 3-8-85; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 310

[Docket No. 80N-0419]

Aphrodisiac Drug Products for Over-the-Counter Human Use

Correction

In FR Doc. 85-676 beginning on page 2168 in the issue of Tuesday, January 15, 1985, make the following correction:

On page 2170, first column, in § 310.528(a), in the second line, "gotu kola ginseng," should read "gotu kola, Korean ginseng,".

BILLING CODE 1505-01-M

21 CFR Part 334

[Docket No. 78N-036L]

Laxative Drug Products for Over-the-Counter Human Use; Tentative Final Monograph

Correction

In FR Doc. 85-668 beginning on page 2124 in the issue of Tuesday, January 15, 1985, make the following correction:

On page 2130, first column, last line of the column, insert the following after "word": " 'warning' be replaced by the signal word".

BILLING CODE 1505-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[EE-1-85]

Restrictions on Church Tax; Inquiries and Examinations; Proposed Rulemaking

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing Temporary Procedure and Administration Tax Regulations § 301.7611-1T (Treasury Decision 8013) relating to the procedures for conducting church tax inquiries and examinations. The text of those temporary regulations also serves as the comment document for this notice of proposed rulemaking.

DATES: Written comments and requests for a public hearing must be delivered or mailed before May 10, 1985. The regulations are proposed to apply to all church tax inquiries and examinations beginning after December 31, 1984 and are proposed to be effective after December 31, 1984. Examinations commenced prior to January 1, 1985, will be conducted pursuant to section 7605(c) of the Internal Revenue Code of 1954.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (EE-1-85), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Monice Rosenbaum of the Employee Plans and Exempt Organizations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, Attention: CC:LR:T (EE-1-85), 202-566-3938 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations in the Rules and Regulations portion of this issue of the **Federal Register** amends 26 CFR by adding a new § 301.7611-1T. The final regulations which are proposed to be based on the temporary regulations would amend 26 CFR by adding new § 301.7611-1 to Part 301 (Procedure and Administration). The regulations are proposed to be issued under the authority contained in section 7805 of the Code (68A Stat. 917, 26 U.S.C. 7805). For the text of the temporary regulations, see F.R. Doc. 85-5750 (T.D. 8013) published in the Rules and Regulations portion of this issue of the **Federal Register**.

Special Analysis

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. Although this document is a notice of proposed rulemaking which solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Comments and Requests for a Public Hearing

Before adopting the temporary regulations referred to in this document as final regulations, consideration will be given to any written comments that are submitted (preferably 8 copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Monice Rosenbaum of the Employee Plans and Exempt Organizations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects in 26 CFR Part 301

Administrative practice and procedure, Bankruptcy, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Penalties, Pensions, Statistics, Taxes,

Disclosure of information, Filing requirements.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 85-5751 Filed 3-7-85; 10:13 am]

BILLING CODE 4830-01-M

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

28 CFR Part 31

Formula Grants for Juvenile Justice

Correction

In FR Doc. 85-3507 beginning on page 6098 in the issue of Wednesday, February 13, 1985, make the following correction on page 6101:

§ 31.301 [Corrected]

In the first column, in § 31.301(e) remove the fourth line and add, "the fund allotment under section 222(a), of a State which chooses not to participate or loses its eligibility to participate in the formula grant program, directly available to local public and private nonprofit agencies within the nonparticipating State. The funds may be used only for the purpose(s) of".

BILLING CODE 1505-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 920

Public Comment Period and Opportunity for Public Hearing on Modified Portions of the Maryland Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing procedures for a public comment period and hearing on the substantive adequacy of a program amendment submitted by the State of Maryland as a modification to its permanent regulatory program which was conditionally approved by the Secretary of the Interior under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The Maryland submission consists of proposed regulation changes to the State requirements governing the use of explosives. The submission is intended to satisfy a required amendment to the State's program and also makes certain additional changes to the State's proposed regulations approved by the Director on January 22, 1985.

This notice sets forth the times and locations that the Maryland program and proposed amendment are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment and the procedures that will be followed regarding the public hearing.

DATES: Written comments not received on or before 4:00 p.m. on April 10, 1985 will not necessarily be considered. A public hearing on the proposal will be held from 7:00 p.m. to 9:00 p.m. on April 1, 1985 at the Maryland Bureau of Mines office listed below under **"SUPPLEMENTARY INFORMATION"**. Any person interested in making an oral or written presentation at the hearing should contact Mr. Danny Ellis at the OSM Charleston Field Office by the close of business on or before March 28, 1985. If no one has contacted Mr. Elllis to express an interest in participating in the hearing by that date, the hearing will not be held. If only one person has so contacted Mr. Ellis, a public meeting, rather than a hearing, will be held and the results of the meeting included in the Administrative Record.

ADDRESS: Written comments should be mailed or hand delivered to: Office of Surface Mining Reclamation and Enforcement, Charleston Field Office, 603 Morris Street, Charleston, West Virginia 25301, Attention: Maryland Administrative Record, Telephone: (304) 347-7158

See **"SUPPLEMENTARY INFORMATION"** for addresses where copies of the Maryland program, the amendment and the administrative record on the Maryland program are available. Each requestor may receive, free of charge, one single copy of the proposed program amendment by contacting the OSM Charleston Field Office listed above.

FOR FURTHER INFORMATION CONTACT: Mr. Danny Ellis, Acting Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 603 Morris Street, Charleston, West Virginia 25301. Telephone: (304) 347-7158.

SUPPLEMENTARY INFORMATION: Copies of the proposed modifications to the program, the Maryland program, and the administrative record on the Maryland program are public review and copying at the OSM offices and the Office of the State Regulatory Authority listed below, Monday through Friday, 9:00 a.m. to 4:00 p.m., excluding holidays.

Office of Surface Mining Reclamation and Enforcement, Charleston Field Office, 603 Morris Street, Charleston, West Virginia 25301, Telephone: (304) 347-7158

Office of Surface Mining Reclamation and Enforcement, 1100 L Street NW., Room 5124, Washington, D.C. 20240, Telephone: (202) 343-7896

Maryland Bureau of Mines, 69 Hill Street, Frostburg, Maryland 21532, Telephone: (301) 689-4136.

In addition, copies of the proposed amendment are available for inspection and copying during regular business hours at the following location: Office of Surface Mining Reclamation and Enforcement, Morgantown Area Office, 75 High Street, Room 229, Morgantown, West Virginia 26505, Telephone: (304) 291-5821.

For Further Information Contact: Mr. Danny Ellis, Acting Field Office Director, Charleston Field Office, Office of Surface Mining, 603 Morris Street, Charleston, West Virginia 25301; Telephone: (304) 347-7158.

Background on the Maryland Program

The Maryland program was conditionally approved by the Secretary of the Interior on December 1, 1980 (45 FR 79430-79451). Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Maryland program can be found in the December 1, 1980 **Federal Register**. On February 18, 1982, following submission of program amendments to satisfy the conditions of program approval, the Maryland program was fully approved by the Secretary (47 FR 7214-7217).

Submission of Revisions

On May 28, 1984, Maryland submitted statute and regulations and other material which would establish requirements for the training, examination and certification of blasters working in surface coal mining operations and revise the State's performance standards for the use of explosives. Additional information was submitted on June 13, 1984. These materials were later supplemented by additional information submitted by the State on October 5, 1984. These proposed modifications were approved by the Director on January 22, 1985 (50 FR 2782-2785). The Director's approval required that one provision of the proposed requirements for the use of explosives be revised and submitted as

a program amendment by March 25, 1985. The required amendment related to the provisions of 30 CFR 816.62(a) which requires information on how to request a preblasting survey to be provided to residents or owners of dwellings or other structures within ½ mile of the permit area at least 30 days prior to blasting. The proposed regulations which are currently being considered are intended to address this required amendment and make other revisions as desired by the State. Most of the revisions are editorial in nature and have no effect on the requirements approved by the Director on January 22, 1985. All of the changes are identified in the January 30 submission. The Director is now seeking public comment on the adequacy of these proposed modifications. If the modifications are approved, they will become part of the Maryland program and the required amendment will be satisfied.

Additional Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 920

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

Dated: March 6, 1985.

John D. Ward,

Director, Office of Surface Mining

[FR Doc. 85–5719 Filed 3–8–85; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Part 950

Public Comment Period and Opportunity for Public Hearing on an Amendment to the Wyoming Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing procedures for a public comment period and for a public hearing on an amendment submitted by the State of Wyoming to amend its permanent regulatory program which was conditionally approved by the Secretary of the Interior under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to the water quality provisions of the approved program which are administered by the Wyoming Water Quality Division.

This notice sets forth the times and locations that the proposed amendment is available for public inspection, the comment period during which interested persons may submit written comments on the proposed program amendment and information pertinent to the public hearing.

DATES: Written comments not received on or before 4:00 p.m. on April 10, 1985 will not necessarily be considered. A public hearing on the proposal will be held, if requested on April 5, 1985, at the address listed below under "**ADDRESSES.**"

Any person interested in making an oral or written presentation at the hearing should contact Mr. William Thomas at the OSM Casper Field Office by 4:00 p.m. on April 1, 1985. If no one has contacted Mr. Thomas to express an interest in participating in the hearing by that date, the hearing will not be held. If only one person has so contacted Mr. Thomas, a public meeting, rather than a hearing may be held and the results of the meeting included in the Administrative Record.

ADDRESSES: The public meeting will be held at the Herschler Office Building, 122 W. 25th Street, Cheyenne, Wyoming 82002.

Written comments should be mailed or hand-delivered to Mr. William R. Thomas, Office of Surface Mining Reclamation and Enforcement, P.O. Box 1420, 935 Freden Building, Pendell Boulevard, Mills, Wyoming 82644.

See "**SUPPLEMENTARY INFORMATION**" for address where copies of the Wyoming program amendment and administrative record on the Wyoming program are available. Each requestor may receive, free of charge, one single copy of the proposed program amendment by contacting the OSM Casper Field Office listed above.

FOR FURTHER INFORMATION CONTACT: Mr. William Thomas, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, Freden Building, 935 Pendell Boulevard, Mills, Wyoming 82644, Telephone: (307) 261–5824.

SUPPLEMENTARY INFORMATION: Copies of the Wyoming program amendment, the Wyoming program and the administrative record on the Wyoming program are available for public review and copying at the OSM offices and the office of State regulatory authority listed below, Monday through Friday, 9:00 a.m. to 4:00 p.m., excluding holidays:

Office of Surface Mining Reclamation and Enforcement, Administrative Record Room, 1100 L Street NW., Washington, D.C. 20005

Office of Surface Mining Reclamation and Enforcement, Freden Building, 935 Pendell Boulevard, Mills, Wyoming 82644

Wyoming Department of Environmental Quality, Land Quality Division, Herschler Office Building, 122 W. 25th Street, Cheyenne, Wyoming 82002.

Background

The general background on the permanent program, the general background on the State program approval process, the general background on the Wyoming program, and the conditional approval can be found in the Secretary's Findings and conditional approval published in the November 26, 1980 **Federal Register** (45 FR 78637–78684).

Proposed Amendment

On January 22, 1985, the State of Wyoming submitted to OSM an amendment to its approved permanent regulatory program. The amendment addresses water quality standards and related provisions that are administered by the Wyoming Water Quality Division. Specifically, the amendment consists of proposed regulations addressing definitions relating to water quality, effluent limitations for coal mining operations, water testing procedures, discharge points, application requirements for

construction of sedimentation control facilities, minimum design standards for sedimentation control facilities and enforcement of the water quality provisions.

OSM is seeking comment on whether the Wyoming proposed modifications are consistent with the requirements of the Federal provisions and satisfy the criteria for approval of State program amendments at 30 CFR 732.15 and 732.17.

The full text of the program modification submitted by Wyoming for OSM's consideration is available for public review at the addresses listed under **"ADDRESSES."**

Additional Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 950

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

Dated: March 6, 1985.

John D. Ward,

Director, Office of Surface Mining.

[FR Doc. 85–5718 Filed 3–8–85; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD13 85–03]

Seattle Opening Day Yacht Parade and Crew Race

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rule making.

SUMMARY: The Coast Guard is considering a proposal establishing a restricted zone in the areas of Union Bay, Portage Bay and Lake Washington on May 3, 1985 from 3:00 p.m. until 4:00 p.m. and on May 4, 1985 from 8:00 a.m. until 3:00 p.m. This action is required to permit the conducting of an approved marine event. It is intended to restrict general navigation in the area for the safety of the spectators and participants in the event.

DATE: Comments must be received on or before April 5, 1985.

ADDRESS: Comments should be mailed to Commander, U.S. Coast Guard Group, 1519 Alaskan Way South (Pier 36), Seattle, WA 98134. Normal office hours are 7:30 a.m. to 3:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Lieutenant John M. HOLMES, Operations Officer (206) 442–1874.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rule making by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD13 85–03) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed.

The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rule making process.

Drafting Information

The drafters of this notice are Lieutenant John M. Holmes, USCG, Project Officer, USCG Group Seattle, Operations Office and Lieutenant Commander D. Gary Beck USCG, project attorney, Thirteenth Coast Guard District Legal Office.

Discussion of Proposed Regulation

The annual yachting season Opening Day Yacht Parade, sponsored by the Seattle Yacht Club, is scheduled to be held on the 3rd and 4th of May 1985, in the Lake Washington Ship Canal between Portage Bay and Webster Point. The event will begin at 3:00 p.m. and end at 4:00 p.m. on May 3 and begin at 8:00 a.m. and end at 3:00 p.m. on May 4. Crew races will be conducted in the area between 3:00 p.m. and 4:00 p.m. on May 3 and 11:00 a.m. and 12:00 noon on May 4. As a result of these events, traffic in Portage Bay, Portage Cut (also known as Montlake Cut) and Bay Reach will be congested. For this reason it is proposed that sailing vessels in the restricted zone maneuver by propelling machinery. Use of spinnakers will be allowed if the vessel's ability to maneuver is not jeopardized. By the authority contained in Title 46, U.S.C. 454 as implemented by Title 33, Part 100, U.S. Code of Federal Regulations, a Special Local Regulation controlling navigation on the water described will be promulgated. The waters involved will be patrolled by vessels of the U.S. Coast Guard. Coast Guard Officers and/or Petty Officers will enforce the regulation and cite persons and vessels in violation.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. No major shipping industry or trade will be interfered with.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

PART 100—[AMENDED]

Proposed Regulations: In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Title 33, Code of Federal Regulations, by adding § 100.35–1301 to read as follows:

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§ 100.35–1301 Lake Washington/Portage Bay/Union Bay/opening day crew race and yacht parade.

(a) This event will take place on May 3, 1985 between 3:00 p.m. and 4:00 p.m. and on May 4, 1985 between the hours of 8:00 a.m. and 3:00 p.m.

(b) Patrol of the described areas will be under the direction of a designated Coast Guard Patrol Commander. This individual is empowered to control the movement of vessels on the parade course and in the adjoining water areas. The Coast Guard Patrol Commander will exercise the authority granted herein prior to, during, and after the parade for such time as he finds it necessary for the safe and orderly conduct of the program. Portage Cut will be closed to all traffic except crew shells and vessels in the parade from 3:00 p.m. to 4:00 p.m. on May 3, 1985, and from 10:30 a.m. until the termination of the yacht parade on May 4, 1985.

(c) All sailing vessels in the restricted zone shall use propelling machinery for maneuvering. Spinnakers may be used, in addition to propelling machinery, to the extent that control of the vessel is not impaired.

(d) Specific areas restricted to general navigation or anchorage from 3:00 p.m. to 4:00 p.m. on May 3 and from 8:00 a.m. until termination of the yacht parade on May 4 are:

(1) The waters of Portage Bay Southeast of a line running from the Western corner of the pier (Showboat) 70 yards South of 47°39'N, 122°18'40"W, 425 yards South-West across Portage Bay to the North-West corner of the "L" shaped moorage (at the foot of East Shelby St.) at 47°39'52"N, 122°18'52"W

(2) All waters of Portage Cut (also known as Montlake Cut), to Union Bay Channel Buoy 27 and Union Bay Channel Buoy 28.

(3) All waters between an East and West line connecting Union Bay Channel Buoy 27, Union Bay Channel Buoy 29 and Union Bay Channel Buoy 31 and Webster Point Light 33 and an East/West line connecting Union Bay Channel Buoy 28, Union Bay Channel Buoy 30, 470 yards East of Union Bay Channel Buoy 30 to a point 80 yards South of Webster Point Light 33.

(4) The waters between the judging and reviewing vessels and the Southern edge of the channel described above. This area is south of Union Bay Channel Bouy 28 and North of Foster Island. The judging and reviewing vessels will be identified by appropriate signs.

(e) A succession of sharp, short signals by whistle or horn from vessels patrolling the areas under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels signaled shall stop and shall comply with the orders of the patrol vessel. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(46 U.S.C.A. 454; 49 U.S.C. 108; 49 CFR 1.46(b); and 33 CFR 100.35)

Dated: March 1, 1985.

H.W. Parker,

Rear Admiral, U.S. Coast Guard, Commander, 13th Coast Guard District.

[FR Doc. 85–5711 Filed 3–8–85; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 166

[CGD 84–010]

Port Access Study, Gulf of Mexico

AGENCY: Coast Guard, DOT.

ACTION: Notice of study results.

SUMMARY: The purpose of this notice is to publish results of the Port Access Route Studies announced in the **Federal Register** on March 19, 1984 (49 FR 10127; corrected at 49 FR 14538) and on July 10, 1984 (49 FR 28074). These studies encompassed two areas in the Gulf of Mexico, one in the vicinity of the Galveston approach, and the other in the vicinity of the Louisiana Offshore Oil Port (LOOP). As a result of these studies, the Coast Guard recommends that:

a. A new fairway be established to permit deep draft vessels to navigate safely around the area of the Heald Bank shoals in the approach to Galveston.

b. The existing fairway system in the approach to LOOP remain as it was originally established.

c. The existing LOOP fairway system be incorporated into Part 166 of Title 33 Code of Federal Regulations, to consolidate all fairways in a single Part.

ADDRESSES: The Eighth Coast Guard District Port Access Route Study documents on which the present notice is based are available for inspection and copying at the office of the Marine Safety Council, Room 2110, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, D.C. 20593, between the hours of 8 a.m. and 4 p.m., Monday through Friday. The report is on file under the docket number of this notice [CGD 84–010].

Details of this report are also available from the Eighth Coast Guard District Commander (mps), Eighth Coast Guard District, Room 1341, Hale Boggs Federal Building, 500 Camp Street, New Orleans, LA 70130, telephone (504) 589–6901.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Young, Office of Navigation (G–NSR–3), Room 1408, U.S. Coast Guard Headquarters, 2100 Second St., SW., Washington D.C. 20593, telephone (202) 245–0108, between 8:00 a.m. and 3:30 p.m., Monday through Friday. Information is also available from LCDR Mike Brown, Eighth Coast Guard District (mps), at telephone (504) 589–6901.

SUPPLEMENTARY INFORMATION:

Background

In February 1983, Conoco, Inc., requested that the Coast Guard modify the LOOP Safety Fairway to allow exploratory drilling in one segment. The Fairway, in which no fixed structures are permitted, was established in December 1980 (45 FR 85644; 33 CFR 150). A tract within the fairway was leased by Conoco in March 1982. Conoco requested that a segment of the two-mile wide fairway be reduced to a one mile width to allow surface occupancy in the tract, half of which extends into the safety fairway. In the alternative, Conoco proposed that the whole fairway be relocated either one mile to the west, or approximately eight miles to the east. The Coast Guard initiated this study to evaluate Conoco's proposals.

The Coast Guard Study also examined an existing fairway in the approach to Galveston, on the advice of the Houston/Galveston Navigation Safety Advisory Committee. In 1983, the Committee advised the Coast Guard that there was a shoaling problem in the vicinity of Heald Bank. There are four fairway approaches to Galveston. The northwest-southeast leg of the Galveston Entrance Fairway [33 CFR 166.200(d)(10)], is the most direct route for the majority of traffic using the Houston/Galveston port complex. Within this fairway there is an area of shallow water (approximately 34 feet). The Coast Guard estimates that 27% of the inbound vessels and 34% of the outbound vessels on this route have drafts greater than 30 feet. Many of these vessels leave the fairway to avoid the shallow water and navigate where they have greater under-keel clearance. The Advisory Committee recommended that the Coast Guard designate a secondary fairway through deeper water. The notice of study proposed two alternative configurations on which strong objections were received. A more favorable configuration was developed during the study.

The Ports and Waterways Safety Act (92 Stat. 1473, 33 U.S.C. 1223, hereinafter

referred to as the Act) authorizes the Coast Guard to designate necessary fairways to allow vessels unobstructed, safe access to U.S. ports. The Act also gives the Coast Guard discretionary authority to modify or relocate existing safety fairways to accommodate other uses such as offshore mineral exploration and exploitation (33 U.S.C. 1223(4)(c)(5)(C)). Safety fairways are areas in which no fixed structures are permitted, and therefore may inhibit exploration and exploitation of mineral resources in the area so designated. Fairways may be viewed as a necessary compromise between convenient mineral exploitation and concern for navigation safety. In order to ensure that the interests of all affected parties are considered, the Act mandates that a port access route study be conducted when new fairway areas are contemplated. Publication of a study notice advises all bidders in future lease sales within the study area that occupancy rights may be restricted by a routing system developed as a result of the study [33 U.S.C. 1223(4)(c)(2)].

To be effective a fairway must be reliable, stable and functional. A fairway must be a reasonable port access route which can be relied upon the mariner. To be safe and effective, a fairway must be clearly marked on navigation charts, and mariners must have confidence that a charted location is, in fact, the actual location and boundary of the fairway. To encourage the maximum use of fairways, it is imperative that they be charted, fixed, and relatively permanent.

Changes to the fairway network fall into two categories: adjustment of the configuration within the boundary of the existing fairway, and establishment of a new fairway in a previously undesignated area. Changes to existing fairways or creation of new fairways can only be accomplished by rulemaking. The purpose of this study is to determine whether rulemaking is appropriate or feasible under two separate circumstances in the Gulf of Mexico.

Guidance for making adjustments to existing fairways is provided in the Ports and Waterways Safety Act:

> The Secretary may, from time to time, as necessary, adjust the location or limits of designated fairways of traffic separation schemes, in order to accommodate the needs of other uses which cannot be reasonably accommodated otherwise; Provided, that such an adjustment will not, in the judgment of the Secretary, unacceptably adversely affect the purpose for which the existing designation was made and the need for which continues. (33 U.S.C. 1223(4)(c)(5)(C))

This three-pronged test requires that the Coast Guard give consideration to the following:

a. Whether the adjustment is "necessary," i.e., whether other uses, such as resource exploration and exploitation, can be reasonably accommodated if the fairway is not changed. The test of reasonableness consists of several factors including cost, time, and technical convenience. The Coast Guard will normally accept information form the requesting party as prima facie evidence of need; however, supporting information may be submitted by the Minerals Management Service or another government agency.

b. Whether the existing port access route is still needed.

c. Whether the adjustment would continue to provide an acceptable level of navigation safety. The Act states "* * * that such adjustment will not * * * *unacceptably* adversely affect the purpose for which the existing designation was made" (emphasis added). The purpose of fairways is to provide safe access to U.S. ports, a route along which no fixed structures will obstruct the flow of navigation and pose an unacceptable risk of a casualty. Where a need for the fairway continues to exist, and where the existing fairway network is considered safe, an adjustment that is less navigationally safe could be acceptable only if it was also justified by other considerations and did not result in an unsafe condition.

In effect, a relocation of an existing fairway is equivalent to the establishment of a new fairway and must be accomplished in compliance with all statutory requirements for a new designation (33 U.S.C. 1223(4)(c)).

In the interest of promoting a multiple use approach to offshore waters, the Coast Guard, as far as practicable, will try to minimize impacts on leases which were granted before a study of the need for a fairway was announced.

As a result of both the Port Access Route Study conducted in 1979–1981 encompassing the entire Gulf of Mexico, and the Deepwater Port licensing process for the Louisiana Offshore Oil Port, the Coast Guard concluded that the fairway network in the Gulf of Mexico is effective, and that no additional general studies of the Gulf are needed (46 FR 49989, October 8, 1981). The Coast Guard conducted the present study as a result of two specific requests for fairway adjustments. This study included consideration of minimum fairway width, the existing fairway configuration, and several alternative configurations.

Method

The Port Access Route Study for both the LOOP and Galveston Approaches was conducted by the Eighth Coast Guard District. The study encompassed the two following areas:

a. The area in the vicinity of the Louisiana Offshore Oil Port (LOOP) bounded by a line connecting the following geographic positions:

Latitude	Longitude
29°00'00" N	90°10'00" W
29°00'00" N	89°30'00" W
27°40'00" N	89°30'00" W
27°40'00" N	90°10'00" W

b. An area in the vicinity of the Galveston Entrance bounded by a line connecting the following geographic positions:

Latitude	Longitude
29°00'00" N	94°40'00" W
29°00'00" N	93°50'00" W
28°40'00" N	93°50'00" W
28°30'00" N	93°18'00" W
28°30'00" N	93°50'00" W
28°00'00" N	93°50'00" W
28°00'00" N	94°40'00" W

The Port Access Route Study for these areas was performed in accordance with section 4(c)(3) of the Ports and Waterways Safety Act. The study involved contacts with other Federal agencies, state government officials, and representatives of a wide variety of interests in the area. Discussions we held with representatives of Shell, Texaco, Conoco and the Louisiana Offshore Oil Port. The Coast Guard received 29 written comments as a result of this study.

Discussion of Comments

Comments received on issues of significance to the study are summarized below.

LOOP Approach

a. Fifteen comments were received on the alternative of reducing the LOOP Fairway in width from two miles to one mile for a short stretch. Nine were in favor and six opposed. The commenters in favor were all oil interests while those opposed represented both oil and transportation interests. Those in favor supported the alternative because it would open an additional area for exploration while not affecting any additional lease tracts. Those opposed to the alternative objected because it could require vessels to make two additional course changes and would be less navigationally safe. One commenter said the lack of position-fixing accuracy

offshore at the distance contemplated was such that having only a one mile wide fairway was inadequate for the mariner.

In addition, some commenters felt that deleting part of the fairway would put them at a competitive disadvantage as bids for offshore tracts in the current fairway were calculated with a risk factor based on the restrictions on exploration in portions of the block and the higher costs involved in directional drilling. According to these commenters, making those blocks accessible to fixed surface structures now by lifting the restriction would negate that risk factor after the bids had been made and the tracts leased.

b. Fourteen comments were received on the alternative of relocating the LOOP Fairway one mile to the West. Five were in favor and nine opposed. The five commenters in favor were all oil interests who supported the alternative because it would open currently leased blocks to exploration. The nine opposed represented navigation and other oil interests. The navigation interests were opposed to the alternative because they felt the existing fairway was adequate and well known. They felt it would be confusing to the mariner for the fairway to be relocated. In addition, they were concerned about the precedent that any fairway relocation would have in regard to other Gulf Fairways. These navigation interests felt that stability of fairway locations was imperative and were concerned that once the precedent of relocating fairways was started the location of fairways would be constantly changing, causing severe difficulties for the mariner.

The oil and gas interests against the relocation alternative were opposed because the relocation would adversely affect the ability to explore and exploit their existing leases. In addition, two of the commenters felt that the relocation of the fairway would put them at a competitive disadvantage as outlined above.

c. Seventeen comments were received on the alternative of relocating the LOOP Fairway approximately 8 miles to the East. Ten were in favor and seven opposed. In addition, one commenter recommended a fairway configuration similar to this alternative. The commenters supporting the alternative were oil interests, who supported the proposal for the reasons given above in paragraph b, and one navigation interest who supported the alternative because it would involve shorter transit times. Those opposed to the alternative represented both navigation and oil interests that objected for the same reasons as listed in paragraphs a and b above.

Galveston Approach (Heald Bank Shoals)

a. Six comments were received on the alternative of a new fairway approximately 34 miles off the Galveston Entrance. Five were in favor and one opposed. Those in favor supported the alternative because it would allow transiting vessels to avoid the shoaling in the vicinity of Heald Bank. The commenter in opposition objected because the alternative would pass over that commenter's leased tract.

b. Nine comments were received on the alternative of establishing a new fairway approximately 68 miles off the Galveston Entrance. Six were in favor and three opposed. The commenters supporting the alternative were in favor becasue it would allow transiting vessels to avoid the shoaling in the vicinity of Heald Bank. Those opposing the proposal objected because the alternative would cross over their leased tracts.

c. Other alternative fairway configurations were developed during the study. A further opportunity for comment will be offered when a Notice of Proposed Rulemaking is published.

Fairway Width and Configuration

Seven comments were received on the issue of how wide fairways should be. Five of the commenters recommended that the minimum fairway width be at least two miles, while two commenters felt that a fairway width of less than two miles was acceptable. The comments from the navigation interests were unanimous in the opinion that two miles was the minimum safe width for any safety fairway.

Conclusions

Fairway Widths and Configurations

Although many considerations will influence the appropriate width of a safety fairway, experience over many years in the Gulf of Mexico has indicated that a two mile width is effective. The Eighth Coast Guard District has concluded that a two mile width is the minimim acceptable width for a fairway in which deep draft vessels are expected to operate in an area of concentrated offshore drilling activity. This is based in part on comments received from the marine industry, and on data generated as a result of a study conducted for the Environmental Impact Statement during the licensing process for the Louisiana Offshore Oil Port before the LOOP fairways were established. That study concluded that a 1.5 mile wide fairway was the minimum safe width for one-way deep draft traffic. This 1.5 mile width was predicated on 400,000 dwt vessels, the largest likely to be utilizing LOOP. The largest vessel likely to be using other fairways in the Gulf of Mexico is approximately 160,000 dwt. A vessel of 160,000 dwt and one of 400,000 dwt have similar maneuverability problems with respect to stopping distance and turning radius, and the need for a wide navigable area for executing course changes. The Eighth Coast Guard District considers 1.5 miles an effective minimum width for most Gulf fairways. However, for fairways supporting 2-way deep draft traffic, a Closest Point of Approach (CPA) of not less than one-half mile between vessels is desirable. A minimum fairway width of 2 miles allows for these dimensions without forcing vessels to transit too closely to structures which may be located along the boundary of the fairway.

The Eighth Coast Guard District also concluded that this two mile width standard should be maintained throughout the entire length of a fairway, except for its terminus, because reductions in width require additional course changes and because no one can predict where meeting or overtaking situations will occur along a fairway. Since platforms and drilling rigs can presently be located to the edge of a fairway, any reduction in width can lead to "choke points." Such choke points in the middle of a fairway reduce the level of safety and will generally not be acceptable.

The Coast Guard received no specific comments on the design and configuration of safety fairways. However, on the basis of experience and maneuvering characteristics of deep draft vessels, the Eighth Coast Guard District recognizes the following as reasonable guidelines for fairway design:

a. In consideration of the principles of ships' routing adopted by the International Maritime Organization (IMO), each segment of a fairway should be as straight as possible. The IMO principle states:

> Course alterations along a route should be as few as possible and should be avoided in the approaches to convergence areas and route junctions or where crossing traffic may be expected to be heavy.

Although IMO does not adopt fairway systems as it does traffic separation schemes, the principle is applicable to both.

b. A second IMO principle is also relevant: "The number of convergence areas and route junctions should be kept to a minimum, and should be as widely separated from each other as possible."

LOOP

The following factors had a significant influence on the Eighth Coast Guard District's recommendation not to adjust the LOOP fairway to allow for a drilling operation by Conoco:

a. Nature and degree of risk involved. Tankers bound for LOOP can carry an average of 1.6 million barrels of crude oil. A casualty involving one of these vessels could result in significant environmental damage.

b. Serious navigation safety concerns about reducing the width of an existing, effective fairway.

c. The type of vessel traffic and potential traffic density using the existing fairway. LOOP is designed to accommodate very large crude carriers (VLCC) over 150,000 dwt with limited maneuverability.

d. Objections by the State of Louisiana (Louisiana Offshore Terminal Authority, Department of Transportation and Development) to any change to the system which has proven its effectiveness.

e. Actual and constructive notice that the fairway restrictions were effective when the Conoco lease was acquired.

f. The uniqueness of the LOOP fairway insofar as it was designed during a complex licensing process for the first deep water port on the U.S. OCS, during which navigation safety was scrutinized and projections of growth over the 20 year license were considered.

g. Potential and direct impacts on tracts leased before the study was announced which would result from any navigationally sound alternate relocation of the fairway.

In summary, the Eighth Coast Guard District determined that several alternative fairway configurations could meet the navigation needs now met by the existing fairway; but all such configurations would pass over blocks which were leased before the study was announced. Under the Act, the Coast Guard cannot deny the effective exercise of those lease rights by the establishment of a fairway. Comments on specific alternatives from affected leaseholders indicated strong objection to the locations because of inhibitions on their ability to develop their leases. Also, comments were received which objected to the changes of status of the Conoco tract, since the original bidding had taken the fairway into account.

Based on available data, the Eighth Coast Guard District can only conclude that it would be impossible to select an alternative routing which would not deny the effective exercise of a lease right. In light of the above the Coast Guard does not find it feasible to proceed with rulemaking as, in the absence of information to the contrary, it appears that any relocation which would not unacceptably adversely affect navigation safety would interfere with the effective exercise of preexisting lease rights. Since navigation safety is not now in jeopardy, the Coast Guard is not compelled to arbitrate between oil and gas leaseholders on a case-by-case basis.

It is clear from the present study that requests for fairway adjustments can be handled most expeditiously if the following is available.

a. A showing of need for a fairway adjustment (i.e., evidence that a use of the area cannot be reasonably accommodated unless the boundary or location of the fairway is adjusted).

b. Specific alternative fairway configurations which would fit logically within the overall existing fairway system.

c. Written statements from each potentially affected leaseholder that no objection will be raised to the proposed fairway adjustment.

d. Certification from the Minerals Management Service that no person would be deprived of an effective exercise of a lease right if the fairway was established as proposed; and an estimated value of unleased tracts within the proposed fairway.

e. Certification from the Corps of Engineers that no person would be deprived of the effective exercise of a permit right if the fairway was established as proposed.

This kind of information would permit the Coast Guard to study the specific navigation safety aspects of the fairway adjustments, separately from the issues of potential lease infringements.

One minor, technical amendment to the LOOP fairway, is recommended at this time. The provisions of the present LOOP fairway are contained in 33 CFR 150, the Deepwater Port Regulations, as an Annex. Since all other safety fairway regulations were adopted from the Corps of Engineers and promulgated in 33 CFR 166, the Eighth Coast Guard District recommends that the LOOP fairway regulations be incorporated into Part 166 for consistency.

Additionally, some doubt was raised during the study as to the sufficiency of the anchor clearance regulations now contained in 33 CFR 166.200(b)(2) for the LOOP approach. This matter will be addressed in detail in a future rulemaking document.

Galveston Approach (Heald Bank)

The following factors had a significant influence on the Eighth Coast Guard District's recommendation to establish a new fairway in the vicinity of Heald Bank in the approach to Galveston.

a. The charted depth of the fairway in the vicinity of Heald Bank.

b. The draft of vessels intended to use the existing fairway.

c. The requirement of deep draft vessels to leave the fairway to find adequate under-keel clearance, thus being forced to navigate among offshore structures with increased risk of ramming.

d. The maneuverability restrictions of the deep draft vessels as related to the effective width of the fairway.

e. Potential and direct impacts on leased tracts which would result if the proposed fairway was established.

The design criteria used in developing the recommended alternative fairway are as follows: it was to be at least 2 miles wide; it was to avoid, as far as practicable, any acute angles in necessary course changes.

Several alternative fairway configurations were evaluated. The Eighth Coast Guard District recommends that a new fairway be established in the area enclosed by rhumb lines joining at the following geographical positions:

Latitude	Longitude
28°57'15" N.	94°23'55" W
28°51'30" N.	93°56'30" W
28°48'30" N.	93°51'45" W
28°55'15" N.	94°23'55" W

The fairway would be identified as the Heald Bank Cutoff Safety Fairway. It would be approximately 25 miles long, and approximately 40 miles offshore and lies in the area between the two alternatives described in the study notice. It would run generally east-west (104° T–284° T) and would join the north-south segment of the Galveston Entrance fairway. It would slightly affect one leased tract (High Island Area A–45). But the tract was leased *after* the notice of study was published, with knowledge of the restrictions associated with a fairway designation. Moreover, the fairway would only infringe on a small segment of the tract. Navigationally, it is the most satisfactory among the alternative configurations because it joins the northwest-southeast and the north-south segments of the Galveston Entrance Fairway at very shallow angles. Also, it

affects a minimum of unleased tracts, which is compatible with a multiple use approach to offshore waters.

Implementation

Implementation of the above study recommendations will require the following:

a. The existing LOOP Fairway will be promulgated in 33 CFR Part 166. This will be accomplished as an administrative action in a Final Rule.

b. The recommended new Heald Bank Cutoff Safety Fairway will be published as a notice of proposed rulemaking. This action is scheduled for Fall 1985.

Dated: March 6, 1985.

T.J. Wojnar,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation.

[FR Doc. 85-5710 Filed 3-8-85; 8:45 am]

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ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Part 1154

Enforcement of Nondiscrimination on the Basis of Handicap in Architectural and Transporation Barriers Compliance Board Programs

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed regulation provides for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap, as it applies to programs or activities conducted by the Architectural and Transportation Barriers Compliance Board (ATBCB).

DATES: To be assured of consideration, comments must be in writing and must be postmarked or received on or before July 9, 1985.

Comments should refer to specific sections in the regulation.

ADDRESSES: Comments should be sent to: Merrily Raffa, General Counsel, ATBCB, Room 1010, 330 C Street, SW, Washington, D.C. 20202.

Comments received will be available for pubic inspection in Room 1010 from 9 a.m. to 5:30 p.m. Monday through Friday. Copies of this notice are available on tape for those with impaired vision. They may be obtained at the above address.

FOR FURTHER INFORMATION CONTACT: Merrily Raffa, General Counsel, or Linda Potter, Attorney, ATBCB, Room 1010, 330 C Street, SW., Washington, D.C. 20202, (202) 245-1801 (Voice or TDD).

SUPPLEMENTARY INFORMATION:

Background

The purpose of this proposed rule is to provide for the enforcement of section 504 of the Rehabilitation act of 1973, as amended (29 U.S.C. 794), as it applies to programs and activities conducted by the Architectural and Transportation Barriers Compliance Board. As amended by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (sec. 119, Pub. L. 95-602, 92 Stat. 2982), section 504 of the Rehabilitation Act of 1973 states that

> No otherwise qualified handicapped individual in the United States, * * * shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance *or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.*
>
> (29 U.S.C. 794) (amendment italicized).

The substantive nondiscrimination obligations of the agency, as set forth in this proposed rule, are, for the most part, identical to those established by Federal regulations for programs or activities receiving Federal financial assistance. *See* 28 CFR Part 41 (section 504 coordination regulation for federally assisted programs). This general parallelism is in accord with the intent expressed by supporters of the 1978 amendment in floor debate, including its sponsor, Rep James M. Jeffords, that the Federal Government should have the same section 504 obligations as recipients of Federal financial assistance. 124 Cong. Rec. 13, 901 (1978) (remarks of Rep. Jeffords); 124 Cong. Rec. E2668, E2670 (daily ed. May 17, 1978) *id.*; 124 Cong. Rec. 13, 897 (remarks of Rep. Brademas); *id.* at 38,552 (remarks of Rep. Sarasin).

This regulations has been reviewed by the Department of Justice. It is an adaptation of a prototype prepared by the Department of Justic under Executive Order 12250 (45 FR 72995, 3 CFR 1980 Comp., p. 298) and distributed to Executive agencies on April 15, 1983.

This regulation has also been reviewed by the Equal Employment Opportunity Commission under Executive Order 12067 (43 FR 28967, 3 CFR 1978 Comp., p. 206).

As an independent regulatory agency, the Architectural and Transportation Barriers Compliance Board voluntarily submitted this regulation to the Office of Management and Budget for review in accordance with Executive Order 12291. This regulation carriers out current policies of the ATBCB and, therefore, it is not considered a major rule within the meaning of Executive Order 12291 (46 FR 13193, 3 CFR, 1981 Comp., p. 127). Accordingly, a regulatory impact analysis has not been prepared.

This regulation does not have an impact on small entities. It is not, therefore, subject to the Regulatory Flexibility Act (5 U.S.C. 601-612).

Section-by-Section Analysis

Section 1154.101 Purpose.

Section 1154.101 states the purpose of the proposed rule, which is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

Section 1154.102 Application.

The proposed regulation applies to all programs or activities conducted by the agency.

Section 1154.103 Definitions.

"Agency." For purposes of this regulation "agency" means the Architectural and Transportation Barriers Compliance Board.

"Assistant Attorney General." "Assistant Attorney General" refers to the Assistant Attorney General, Civil Rights Division, United States Department of Justice. The Assistant Attorney General is a member of the Board and may serve as Chairperson. Nevertheless, the functions assigned to the Assistant Attorney General and the Chairperson are distinct, and the Board finds no conflict in having one individual function in both capacities.

"Auxiliary aids." "Auxiliary aids" means services and/or devices that enable persons with impaired sensory, manual, and/or speaking skills to have an equal opportunity to participate in and enjoy the benefits of the agency's programs or activities. The definition provides examples of commonly used

auxiliary aids. Although auxiliary aids are required explicitly only by § 1154.160(a)(1), they may also be necessary to meet other requirements of the regulations.

"Complete complaint." The definition of "complete complaint" enables the agency to determine the beginning of its obligation to investigate a complaint (see § 1154.170(d)).

"Facility." The definition of "facility" is similar to that in the section 504 coordination regulation for federally assisted programs, 28 CFR 41.3(f), except that the term "rolling stock or other conveyances" has been added and the phrase "or interest in such property" has been deleted to clarify its coverage. The phrase, "or interest in such property," is deleted, because the term "facility," as used in this regulation, refers to structures and not to intangible property rights. It should, however, be noted that the regulation applies to all programs and activities conducted by the agency regardless of whether the facility in which they are conducted is owned, leased, or used on some other basis by the agency. The term "facility" is used in § 1154.149, § 1154.150 and § 1154.170(f).

"Handicapped person." The definition of "handicapped person" is identical to the definition appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.31).

"Qualified handicapped person." The definition of "qualified handicapped person" is a revised version of the definition appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.32).

Subparagraph (1) deviates from existing regulations for federally assisted programs because of intervening court decisions. It defines "qualified handicapped person" with regard to any program under which a person is required to perform services or to achieve a level of accomplishment. In such programs a qualified person is one who can achieve the purpose of the program without modifications in the program that would result in a fundamental alteration in its nature. This definition reflects the decision of the Supreme Court in *Southeastern Community College* v. *Davis*, 442 U.S. 397 (1979).

In that case, the Court ruled that a hearing-impaired applicant to a nursing school was not a "qualified handicapped person" because her hearing impairment would prevent her from participating in the clinical training portion of the program. The Court found that, if the program were modified so as to enable the respondent to participate (by exempting her from the clinical training requirements), "she would not receive even a rough equivalent of the training a nursing program normally gives." *id.* at 410. It also found that "the purpose of [the] program was to train persons who could serve the nursing profession in all customary ways," *id.* at 413, and that the respondent would be unable, because of her hearing impairment, to perform some functions expected of a registered nurse. It therefore concluded that the school was not required by section 504 to make such modifications that would result in "a fundamental alteration in the nature of the program." *id.* at 410.

We have incorporated the Court's language in the definition of "qualified handicapped person" in order to make clear that such a person must be able to participate in the program offered by the agency. The agency is required to make modifications in order to enable a handicapped applicant to participate, but is not required to offer a program of a fundamentally different nature. The test is whether, with appropriate modifications, the applicant can achieve the purpose of the program offered; not whether the applicant could benefit or obtain results from some other program that the agency does not offer. Although the revised definition allows exclusion of some handicapped people from some programs, it requires that a handicapped person who is capable of achieving the purpose of the program must be accommodated, provided that the modifications do not fundamentally alter the nature of the program.

In determining whether a modification fundamentally alters the nature of the program, the mission of the agency—achieving accessibility for handicapped persons—must be given considerable weight. Considerable weight must also be given to the fact that the vast majority of people served by the agency are handicapped. In keeping with the spirit of its mission, the agency must be particularly careful about investigating all possible alternatives when it determines that an action is not required by section 504.

The agency has the burden of demonstrating that a proposed modification would constitute a fundamental alteration in the nature of its program or activity. Furthermore, in demonstrating that a modification would result in such an alteration, the agency must follow the procedures established in §§ 1154.150(a)(2) and 1154.160(d), which are discussed below, for demonstrating that an action would result in undue financial and administrative burdens. That is, the decision must be made by the agency head or his or her designee in writing after consideration of all resources available for the program or activity and must be accompanied by an explanation of the reasons for the decision. If the agency head determines that an action would result in a fundamental alteration, the agency must consider options that would enable the handicapped person to achieve the purpose of the program but would not result in such an alteration.

For programs or activities that do not fall under the first subparagraph, subparagraph 2 adopts the existing definition of "qualified handicapped person" with respect to services (28 CFR 41.32(b)) in the coordination regulation for programs receiving Federal financial assistance. Under this definition, a qualified handicapped person is a handicapped person who meets the essential eligibility requirements for participation in the program or activity.

"Section 504." This definition makes clear that, as used in this regulation, "section 504" applies only to programs or activities conducted by the agency and not to programs or activities to which it provides Federal financial assistance.

Section 1154.110 Self-evaluation.

The agency shall conduct a self-evaluation of its compliance with section 504 within one year of the effective date of this regulation. The process shall include consultation with interested persons, including consultation with handicapped persons or organizations representing handicapped persons. The self-evaluation requirement is present in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.5(b)(2)). Experience has demonstrated the self-evaluation process to be a valuable means of establishing a working relationship with handicapped persons that promotes both effective and efficient implementation of section 504.

Section 1154.111 Notice.

Section 1154.111 requires the agency to disseminate sufficient information to employees, applicants, participants, beneficiaries, and other interested persons to apprise them of rights and protections afforded by section 504 and this regulation. Methods of providing this information include, for example, the publication of information in handbooks, manuals, and pamphlets that are distributed to the public to describe the agency's programs and activities; the display of informative posters in service centers and other

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public places; or the broadcast of information by television or radio

Section 1154.130 General prohibitions against discrimination.

Section 1154.130 is an adaptation of the corresponding section of the section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.51).

Paragraph (a) restates the nondiscrimination mandate of section 504. The remaining paragraphs in § 1154.130 establish the general principles for analyzing whether any particular action of the agency violates this mandate. These principles serve as the analytical foundation for the remaining sections of the regulation. If the agency violates a privision in any of the subsequent sections, it will also violate one of the general prohibitions found in § 1154.130. When there is no applicable subsequent privision, the general prohibitions stated in this section apply.

Paragraph (b) prohibits overt denials of equal treatment of handicapped persons. The agency may not refuse to provide a handicapped person with an equal opportunity to participate in or benefit from its program simply because the person is handicapped. Such blatantly exclusionary practices often result from the use of irrebuttable presumptions that absolutely exclude certain classes of disabled persons (*e.g.*, epileptics, hearing-impaired persons, persons with heart ailments) from participation in programs or activities without regard to an individual's actual ability to participate. Use of an irrebuttable presumption is permissible only when in all cases a physical condition by its very nature would prevent an individual from meeting the essential eligibility requirements for participation in the activity in question.

Section 504, however, prohibits more than just the most obvious denials of equal treatment. It is not enough to admit persons in wheelchairs to a program if the facilities in which the program is conducted are inaccessible. Subparagraph (b)(1)(iii), therefore, requires that the opportunity to participate or benefit afforded to a handicapped person be as effective as that afforded to others. The later sections on program accessibility (§§ 1154.149—1154.151) and communications (§ 1154.160) are specific applications of this principle.

Despite the mandate of paragraph (d) that the agency administer its programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons, subparagraph (b)(1)(iv), in conjunction with paragraph (d), permits the agency to develop separate or different aids, benefits, or services when necessary to provide handicapped persons with an equal opportunity to participate in or benefit from the agency's programs or activities. Subparagraph (b)(1)(iv) requires that different or separate aids, benefits, or services be provided only when necessary to ensure that the aids, benefits, or services are as effective as those provided to others. Even when separate or different aids, benefits, or services would be more effective, paragraph (b)(2) provides that a qualified handicapped person still has the right to choose to participate in the program that is not designed to accommodate handicapped persons.

Subparagraph (b)(1)(v) prohibits the agency from denying a qualified handicapped person the opportunity to participate as a member of a planning or advisory board.

Subparagraph (b)(1)(vi) prohibits the agency from limiting a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving any aid, benefit, or service.

Subparagraph (b)(3) prohibits the agency from utilizing criteria or methods of administration that deny handicapped persons access to the agency's programs or activities. The phrase "criteria or methods of administration" refers to official written agency policies and the actual practices of the agency. This subparagraph prohibits both blatantly exclusionary policies or practices and nonessential policies and practices that are neutral on their face, but deny handicapped persons an effective opportunity to participate.

Subparagraph (b)(4) specifically applies the prohibition enunciated in § 1154.130(b)(3) to the process of selecting sites for construction of new facilities or existing facilities to be used by the agency. Subparagraph (b)(4) does not apply to construction of additional buildings at an existing site.

Subparagraph (b)(5) prohibits the agency, in the selection of procurement contractors, from using criteria that subject qualified handicapped persons to discrimination on the basis of handicap.

Paragraph (c) provides that programs conducted purusant to Federal statute or Executive order that are designed to benefit only handicapped persons or a given class of handicapped persons may be limited to those handicapped persons.

Section 1154.140 Employment.

Section 1154.140 prohibits discrimination on the basis of handicap in employment by Executive agencies. This regulation is in accord with a decision of the Fifth Circuit that holds that, despite the resulting overlap of coverage with section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), Congress intended section 504 to cover the employment practices of Executive agencies. The court also held that in order to give effect to both section 504 and section 501, the administrative procedures of section 501 must be followed in processing section 504 complaints. *Prewitt* v. *United States Postal Service*, 662 F.2d 292 (5th Cir. 1981).

Consistent with that decision, this section provides that the standards, requirements, and procedures of section 501 of the Rehabilitation Act, as established in regulations of the Equal Employment Opportunity Commission (EEOC) at 29 CFR Part 1613, shall be those applicable to employment in federally conducted programs or activities. In addition to this section, § 1154.170(b) of this regulation specifies that the agency will use the existing EEOC procedures to resolve allegations of employment discrimination. Responsibility for coordinating enforcement of Federal laws prohibiting discrimination in employment is assigned to the EEOC by Executive Order 12067 (43 FR 28967, 3 CFR, 1978 Comp., p. 206). Under this authority, the EEOC establishes government-wide standards on nondiscrimination in employment on the basis of handicap.

Section 1154.149 Program accessibility: Discrimination prohibited.

Section 1154.149 states the general nondiscrimination principle underlying the program accessibility requirements of sections 1154.150 and 1154.151.

Section 1154.150 Program accessibility: Existing facilities.

This regulation adopts the program accessibility concept found in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.56–41.57), with certain modifications. Thus, § 1154.150 requires that the agency's program or activity, when viewed in its entirety, be readily accessible to and usable by handicapped persons. The regulation also makes clear that the agency is not required to make each of its exisitng facilities accessible(§ 1154.150(a)(1)). However, § 1154.150, unlike 28 CFR 41.56–41.57, places explicit limits on the

agency's obligation to ensure program accessibility (§ 1154.150(a)(2)).

Subparagraph (a)(2) generally codifies recent case law that defines the scope of the agency's obligation to ensure program accessibility. This subparagraph provides that in meeting the program accessibility requirement the agency is not required to take any action that would result in a fundamental alteration in the nature of its program or activity or in undue financial and administrative burdens. A similar limitation is provided in § 1154.160(d). This provision is based on the Supreme Court's holding in *Southeastern Community College* v. *Davis*, 442 U.S. 397 (1979), that section 504 does not require program modifications that result in a fundamental alteration in the nature of a program, and on the Court's statement that section 504 does not require modifications that would result in "undue financial and administrative burdens." 442 U.S. at 412. Since *Davis*, circuit courts have applied this limitation on a showing that only one of the two "undue burdens" would be created as a result of the modifications sought to be imposed under section 504. *See, e.g., Dopico* v. *Goldschmidt*, 687 F.2d 644 (2d Cir. 1982); *American Public Transit Association* v. *Lewis (APTA)*, 655 F.2d 1272 (D.C. Cir. 1981). Thus, in *APTA* the United States Court of Appeals for the District of Columbia Circuit applied the *Davis* language and invalidated the section 504 regulations of the Department of Transportation. The court in *APTA* noted "that at some point a transit system's refusal to take modest, affirmative steps to accommodate handicapped persons might well violate section 504. But DOT's rules do not mandate only modest expenditures. The regulations require extensive modifications of existing systems and impose extremely heavy financial burdens on local transit authorities." 655 F.2d at 1278.

The inclusion of subparagraph (a)(2) is an effort to conform the agency's regulation implementing section 504 to the Supreme Court's interpretation of the statute in *Davis* as well as to the decisions of lower courts following the *Davis* opinion. This subparagraph acknowledges, in light of recent case law, that in some situations, certain accommodations for a handicapped person may so alter an agency's program or activity, or entail such extensive costs and administrative burdens that the refusal to undertake the accommodations is not discriminatory. The failure to include such a provision could lead to judicial invalidation of the regulation or reversal of a particular enforcement action taken pursuant to the regulation.

This subparagraph, however, does not establish an absolute defense; it does not relieve the agency of all obligations to handicapped persons. Although the agency is not required to take actions that would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens, it nevertheless must take any other steps necessary to ensure that handicapped persons receive the benefits and services of the federally conducted program or activity.

It is our view that compliance with § 1154.150(a) would in most cases not result in undue financial and administrative burdens on the agency. In determining whether an action will result in a fundamental alteration or undue financial and administrative burdens, the mission of the agency—achieving accessibility for handicapped persons—must be given considerable weight. Considerable weight must also be given to the fact that the vast majority of people served by the agency are handicapped. In keeping with the spirit of its mission, the agency must be particularly careful about investigating all possible alternatives when it determines that an action is not required by section 504. Moreover, in determining whether financial and administrative burdens are undue, all agency resources available for use in the funding and operation of the conducted program or activity should be considered. The burden of proving that compliance with § 1154.150(a) would fundamentally alter the nature of a program or activity or would result in undue financial and administrative burden rests with the agency. The decision that compliance would result in such alteration or burdens must be made by the agency head and must be accompanied by a written statement of the reasons for reaching that conclusion. Any person who believes that he or she or any specific class of persons have been injured by the agency head's decision or failure to make a decision may file a complaint under the compliance procedures established in § 1154.170.

Paragraph (b) sets forth a number of means by which program accessibility may be achieved, including redesign of equipment, reassignment of services to accessible buildings, and provision of aides. In choosing among methods, the agency shall give priority consideration to those that will be consistent with provision of services in the most integrated setting appropriate to the needs of handicapped persons. Structural changes in existing facilities are required only when there is no other feasible way to make the agency's program accessible. The agency may comply with the program accessibility requirement by delivering services at alternate accessible sites or making home visits as appropriate.

Paragraphs (c) and (d) establish time periods for complying with the program accessibility requirement. As currently required for federally assisted programs by 28 CFR 41.57(b), the agency must make any necessary structural changes in facilities as soon as practicable, but in no event later than three years after the effective date of this regulation. Where structural modifications are required, a transition plan shall be developed within six months of the effective date of this regulation. Aside from structural changes, all other necessary steps to achieve compliance shall be taken within sixty days.

Section 1154.151 Program accessibility: New construction and alterations.

Overlapping coverage exists with respect to new construction under section 504, section 502 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 792), and the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157). Section 1154.51 provides that those buildings that are constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered to be readily accessible to and usable by handicapped persons in accordance with 41 CFR 101–19.600 to 101–19.607. This standard, promulgated by the General Services Administration (GSA) pursuant to the Architectural Barriers Act of 1968, as amended (42 U.S.C 4151–4157), incorporates the Uniform Federal Accessibility Standard developed by GSA, the United States Postal Service, the Department of Defense and the Department of Housing and Urban Development (49 FR 31527 (1984)). We believe that it is appropriate to adopt the existing Architectural Barriers Act standard for section 504 compliance because new and altered buildings subject to this regulation are also subject to the Architectural Barriers Act and because adoption of the standard will avoid duplicative and possibly inconsistent standards. However, the ATBCB is encouraged to utilize the Minimum Guidelines and Requirements for Accessible Design, 36 CFR 1190, where to do so would enhance accessibility. The Minimum Guidelines, established by the ATBCB, are the basis for the Uniform Federal Accessibility

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Standard and represent current ATBCB policy.

Existing buildings leased by the agency after the effective date of this regulation are not required to meet the new construction standard. They are subject, however, to the requirements of § 1154.150. Furthermore, in determining which space to lease, the agency must be cognizant of the fact that not only are a significant number of current ATBCB staff handicapped, but, by statute, at least five of the public Board members must be handicapped. It would be unconscionable for the ATBCB ever to lease space inaccessible to its own Board members.

Section 1154.160 Communications.

Section 1154.160 requires the agency to take appropriate steps to ensure effective communication with personnel of other Federal entities, applicants, participants, and members of the public. These steps shall include procedures for determining when auxiliary aids are necessary under § 1154.160(a)(1) to afford a handicapped person an equal opportunity to participate in, and enjoy the benefits of, the agency's program or activity. They shall also include an opportunity for handicapped persons to request the auxiliary aids of their choice. This expressed choice shall be given primary consideration by the agency (§ 1154.160(a)(1)(i)). The agency shall honor the choice unless it can demonstrate that another effective means of communication exists or that use of the means chosen would not be required under § 1154.160(d). That paragraph limits the obligation of the agency to ensure effective communication in accordance with *Davis* and the circuit court opinions interpreting it (*see supra* preamble § 1154.150(a)(2)). Unless not required by § 1154.160(d), the agency shall provide auxiliary aids at no cost to the handicapped person.

It is our view that compliance with § 1154.160 would in most cases not result in undue financial and administrative burdens on the agency. In determining whether an action will result in a fundamental alteration or undue financial and administrative burdens, considerable weight must be given to the fact that the mission of the agency is to achieve accessibility for handicapped persons. Considerable weight must also be given to the fact that the vast majority of people served by the agency are handicapped and many are vision, speech, and hearing-impaired. In keeping with the spirit of its mission, the agency must be particularly careful about investigating all possible alternatives when it determinnes that an action is not required by section 504. Moreover, in determining whether financial and administrative burdens are undue, all agency resources available for use in the funding and operation of the conducted program or activity should be considered. The burden of proving that compliance with § 1154.160 would fundamentally alter the nature of a program or would result in undue financial and administrative burdens rests with the agency. The decision that compliance would result in such alteration or burdens must be made by the agency head and must be accompanied by a written statement of the reasons for reaching that conclusion. Any person who believes that he or she or any specific class of persons has been injured by the agency head's decision or failure to make a decision may file a complaint under the compliance procedures established in § 1154.170.

In some circumstances, a notepad and written materials may be sufficient to permit effective communications with a hearing-impaired person. In many circumstances, however, they may not be, particularly when the information being communicated is complex or exchanged for a lengthy period of time (*e.g.*, a meeting) or where the hearing-impaired applicant or participant is not skilled in spoken or written language. Then, a sign language interpreter may be appropriate. For vision-impaired persons, effective communication might be achieved by several means, including readers and audio recordings. In general, the agency intends to make clear to the public (1) the communications services it offers to afford handicapped persons an equal opportunity to participate in or benefit from its programs or activities, (2) the opportunity to request a particular mode of communication, and (3) the agency's preferences regarding auxiliary aids if it can demonstrate that several different modes are effective.

The agency shall ensure effective communication with vision, speech and hearing-impaired persons involved in hearings conducted by the agency. Auxiliary aids must be afforded where necessary to ensure effective communication at the proceedings. If sign language interpreters are necessary, the agency may require that it be given reasonable notice prior to the proceeding of the need for an interpreter. Moreover, the agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature (§ 1154.160(a)(1)(ii)). For example, the agency need not provde eye glasses or hearing aids to applicants or participants in its programs. Similarly, the regulation does not require the agency to provide wheelchairs to persons with mobility impairments.

Paragraph (b) requires the agency to provide information to handicapped persons concerning accessible services, activities, and facilities. Paragraph (c) requires the agency to provide signage at inaccessible facilities.

Section 1154.170 Compliance procedures.

Paragraph (a) specifies that paragraphs (c) through (l) of this section establish the procedures for processing complaints other than employment complaints. Paragraph (b) provides that the agency will process employment complaints according to procedures established in existing regulations of the EEOC (29 CFR Part 1613) pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

The agency is required to accept and investigate all complete complaints (§ 1154.170(d)). If it determines that it does not have jurisdiction over a complaint, it shall promptly notify the complainant and make reasonable efforts to refer the complaint to the appropriate entity of the Federal Government (§ 1154.170(e)).

Paragraph (f) requires the agency to notify its Director of Compliance and Enforcement upon receipt of a complaint alleging that a building or facility subject to the Architectural Barriers Act of section 502 of the Rehabilitation Act of 1973 (29 U.S.C. 792) was designed, constructed, or altered in a manner that does not provide ready access and use to handicapped persons.

Paragraph (g) requires the agency to provide to the complainant, in writing, findings of fact and conclusions of law, the relief granted if noncompliance is found, and notice of the right to appeal (§ 1154.170(g)). One appeal within the agency shall be provided (§ 1154.170(i)). The appeal will not be heard by the same person who made the initial determination of compliance or noncompliance (§ 1154.170(i)).

Paragraph (l) permits the agency to delegate its authority for investigating compliants to other Federal agencies. However, the statutory obligation of the agency to make a final determination of compliance or noncompliance may not be delegated.

List of Subjects in 36 CFR Part 1154

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Handicapped,

Nondiscrimination, Physically handicapped.

For the reasons set forth in the preamble, Chapter XI of title 36 of the Code of Federal Regulations is proposed to be amended as follows:

Part 1154 is added to read as follows:

PART 1154—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Sec.

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Authority: 29 U.S.C. 794.

§ 1154.101 Purpose.

The purpose of this part is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 1154.102 Application.

This part applies to all programs or activities conducted by the agency.

§ 1154.103 Definitions.

For purpose of this part, the term—

"Agency" means the Architectural and Transportation Barriers Compliance Board.

"Assistant Attorney General" means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

"Auxiliary aids" means service or devices that enable persons with impaired sensory, manual, and/or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

"Complete complaint" means a written statement that contains the complainant's name and address and describes the agency's actions in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

"Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

"Handicapped person" means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

As used in this definition, the phase:

(1) "Physical or mental impairment" includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebal palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(2) "Major life activities" includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) "Is regarded as having an impairment" means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in subparagraph (1) of this definition but is treated by the agency as having such impairment.

"Qualified handicapped person" means—

(1) With respect to any agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, a handicapped person who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature; and

(2) With respect to any other program or activity, a handicapped person who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity.

"Section 504" means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93–516, 88 Stat. 1617), and the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95–602, 92 Stat. 2955). As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

§§ 1154.104–1154.109 [Reserved]

§ 1154.110 Self-evaluation.

(a) The agency shall, within one year of the effective date of this part, evaluate, with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons, its current policies and practices and the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any such policies and practices is required, the

agency shall proceed to make the necessary modifications.

(b) The agency shall, for at least three years following completion of the evaluation required under paragraph (a) of this section, maintain on file and make available for public inspection—

(1) A list of the interested persons consulted;

(2) A description of areas examined and any problems identified; and

(3) A description of any modifications made.

§ 1154.111 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the agency head finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulation.

§§ 1154.112—1154.129 [Reserved]

§ 1154.130 General prohibitions against discrimination.

(a) No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b)(1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons than is provided to others unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified handicapped person in the enjoyment of any rights, privilege, advantage, or opportunity rejoyed by others receiving the aid, benefit, or service.

(2) The agency may not deny a qualified handicapped person the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified handicapped persons to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to handicapped persons.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude handicapped persons from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to handicapped persons.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified handicapped persons to discrimination on the basis of handicap.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive Order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or Executive Order to a different class of handicapped persons is not prohibited by this part.

(d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

§§ 1154.131–1154.139 [Reserved]

§ 1154.140 Employment.

No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established in 29 CFR Part 1613, shall apply to employment in federally-conducted programs or activities.

§§ 1154.141—1154.148 [Reserved]

§ 1154.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in §§ 1154.150, no qualified handicapped person shall, because the agency's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

§ 1154.150 Program accessibility: Existing facilities.

(a) *General.* The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usuable by handicapped persons. This paragraph does not—

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by handicapped persons; or

(2) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 1154.150(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that handicapped persons receive the benefits and services of the program or activity.

(b) *Methods.* The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of

aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by handicapped persons. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activites to qualified handicapped persons in the most integrated setting appropriate.

(c) *Time period for compliance.* The agency shall comply with the obligations established under this section within sixty days of the effective date of this part except that where structural changes in facilities are undertaken, such changes shall be made within three years of the effective date of this part, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop, within six months of the effective date of this part, a transition plan setting forth the steps necessary to complete such changes. The plan shall be developed with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons. A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to handicapped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period;

(4) Indicate the official responsible for implementation of the plan; and

(5) Identify the persons or groups with whose assistance the plan was prepared.

§ 1154.151 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by handicapped persons. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151–4157), as established in 41 CFR §§ 101–19.600 to 101–19.607, apply to buildings covered by this section.

§§ 1154.152–1154.159 [Reserved]

§ 1154.160 Communications.

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford a handicapped person an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the handicapped person.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants, beneficiaries, and members of the public by telephone, telecommunications devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used.

(b) The agency shall ensure that interested persons, including persons with impaired vision, speech or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signage at a primary entronce to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 1154.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such brudens, the agency shall take any other action that would not result in such an alteration or such a burden but would nevertheless ensure that, to the maximum extent possible, handicapped persons receive the benefits and services of the program or activity.

§§ 1154.161—1154.169 [Reserved]

§ 1154.170 Compliance procedure.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs or activities conducted by the agency.

(b) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established in 29 CFR 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) Responsibility for implementation and operation of this section shall be vested in the Equal Employment Opportunity Director.

(d) The agency shall accept and investigate all complete complaints over which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The agency may extend this time period for good cause.

(e) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.

(f) The agency shall notify the Director of the Compliance and Enforcement Division of any complaint alleging that a building or facility is not readily accessible to and usable by handicapped persons. The Director of the Compliance and Enfrocement Division shall determine whether or not the building or facility is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), or

section 502 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 792).

(g) Within 180 days of the receipt of a complete complaint over which it has jurisdiction, the agency shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the agency of the letter required by § 1154.170(g). The agency may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the Chairperson.

(j) The agency shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the agency determines that it needs additional information from the complainant, it shall have 60 days from the date it receives the additional information to make its determination of the appeal.

(k) The time limits cited in (g) and (h) above may be extended with the permission of the Assistant Attorney General.

(l) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated.

§§ 1154.171—1154.999 [Reserved]

Signed this 27th day of February, 1985.

Madeleine Will,

Acting Chairperson Architectural and Transportation Barriers Compliance Borad.

[FR Doc. 85-5737 Filed 3-8-85; 8:45 am]

BILLING CODE 6820-BP-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 52

[AD-FRL-2793-3]

Requirements for Preparation, Adoption, and Submittal of Implementation Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Amendment of notice of proposed rulemaking and notice of availability.

SUMMARY: On December 7, 1984 (49 FR 48018), EPA proposed certain amendments to its regulations concerning air quality models used to estimate ambient concentrations of air pollutants, and proposed to substitute by reference a revised version of its Guideline on Air Quality Models.

By inadvertence, the draft revised Guideline included a paragraph (8.2.1.3) that expressed interpretations of EPA's National Ambient Air Quality Standards (NAAQS). EPA does not intend the draft revised Guideline to address these questions of interpretation of the NAAQS, and paragraph 8.2.1.3 is hereby withdrawn from it.

EPA also gives notice that it has recently added three documents to Docket Number A-80-46, the docket established for the above-referenced rulemaking proposal. EPA intends to rely on these documents as support for parts of its promulgation. These documents, which are available for public inspection and comment, are: (1) A Method for Calculating Dispersion Modeling Uncertainty Applied to the Regulation of an Emission Source (Doc. No. IV-G-1); (2) An Evaluation of Results from the CDM Plume Sigmas, Buoyancy-Induced Dispersion and Wind Speed Profile Exponents (Doc. No. IV-G-2); and (3) Summary of Complex Terrain Model Evaluation (Doc. No. IV-A-1).

FOR FURTHER INFORMATION CONTACT: Joseph A. Tikvart, Source Receptor Analysis Branch (MD-14), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, N.C. 27711; (919) 541-5561.

Dated: March 1, 1985.

Charles L. Elkins,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 85-5699 Filed 3-8-85; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 81

[EPA Docket Nos. 107PA-20, 21, 22; A-3-FRL-2793-4]

Attainment Status Designations; Pennsylvania

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a request from the Commonwealth of Pennsylvania to revise the attainment status designation of twenty-five (25) areas in Pennsylvania with respect to Total Suspended Particulates (TSP). EPA is also proposing to approve a request from the Commonwealth to revise the attainment status designation of the Upper Beaver Valley Air Basin from "Cannot Be Classified" to "Better Than National Standards" with respect to Sulfur Dioxide (SO_2). Furthermore, EPA is proposing to approve a request from the Commonwealth to revise the attainment status designation of four (4) counties from "Does Not Meet Primary Standards" (nonattainment) to "Cannot be Classified or Better Than National Standards" (attainment/unclassifiable) with respect to Ozone.

Additionally, EPA is proposing to disapprove the Commonwealth's request to redesignate three (3) counties with respect to the ozone NAAQS. The intent of this notice is to discuss the results of EPA's review of the Commonwealth's redesignation request and to solicit public comments on the revisions and EPA's proposed action.

DATE: Comments must be submitted on or before April 10, 1985.

ADDRESSES: Copies of the proposed redesignation request and accompanying support material are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region III, Air Management Division, Curtis Building, Tenth Floor, Sixth & Walnut Streets, Philadelphia, PA 19106, Attn: Donna Abrams

Commonwealth of Pennsylvania, Department of Environmental Resources, Bureau of Air Quality Control, 200 North 3rd Street, Harrisburg, PA 17120, Attn: Mr. Gary Triplett.

All comments on the proposed revisions submitted within 30 days of publication of this notice will be considered and should be directed to Mr. Glenn Hanson, Chief of the PA/WVA Section of the EPA, Region III, Curtis Building, 6th and Walnut Streets, Philadelphia, PA 19106, EPA Docket Nos. 107-PA-20, 21, 22.

FOR FURTHER INFORMATION CONTACT: Donna Abrams (3AM11) at the EPA, Region III address above or call (215) 597-9134.

SUPPLEMENTARY INFORMATION: Under section 107(d) of the Clean Air Act (Act) the Administrator of EPA has promulgated the National Ambient Air Quality Standards (NAAQS) attainment status for all areas within each State (see 43 FR 8962 (March 3, 1978)). These area designations are subject to revision whenever sufficient data become available to warrant a redesignation.

Total Suspended Particulate Matter

The Pennsylvania Department of Environment Resources (DER) has

submitted to the U.S. Environmental Protection Agency (EPA), on July 27 1984, a request to have the following areas redesignated with respect to TSP:

Coplay Boro, Whitehall Twp., Northampton Boro, Allen Twp., City of Monessen, Rostraver Twp., Aliquippa Boro, Baden Boro, and Midland Boro redesignated from "Does Not Meet Primary Standards" to "Better Than National Standards."

Pottstown Boro, South Coatesville Boro, City of Lancaster, Manheim Twp., remaining portions of the Lower Bearver Valley Air Basin, Wesleyville Boro and Lawrence Park Twp., redesignated from "Does Not Meet Secondary Standards" to "Better Than National Standards."

West Pottsgrove Twp., Upper Pottsgrove Twp., City of Coatesville, and Doylestown Twp., redesignated from "Cannot Be Classified" to "Better Than National Standards."

East Conemaugh Boro, Franklin Boro, Ellwood City Boro, City of Sharon, and the City of Farrell redesignated from "Does Not Meet Primary Standards" to "Does Not Meet Secondary Standards."

The air quality data for January 1982 through the end of 1983 indicate that these areas show no violations of the TSP air quality standards. EPA has examined the air quality data collected from the monitoring sites used to demonstrate attainment and found that the data were collected in accordance with all EPA requirements. In addition, these areas all have an approved control strategy which is covered in Article III of the Pennsylvania Air Resources Regulations, § 123.11 (particulate matter emissions).

Sulfur Dioxide

On July 27, 1984, the Pennsylvania Department of Environmental Resources also submitted a request to have the Upper Beaver Valley Air Basin redesignated from "Cannot Be Classified" to "Better Than National Standards" for SO_2.

The only major source of SO_2 in Lawrence County is the Pennsylvania Power Company's West Pittsburgh station. The Pennsylvania Power Company constructed a new 750-foot stack in order to reduce the local impact of their emissions at ground level. Under Federal regulations, only that portion of the stack height, termed the good engineering practice (GEP) height, can be allowed for use in the compliance case modeling. EPA determined this height to be 475 feet. The previous stack height (prior to construction of the new "tall stack") was 230 feet. Also as part of the construction, Pennsylvania Power Company combined the flue gases from their other existing stacks into this one stack for purposes of installing an electrostatic precipitator in order to control the emissions of particulate matter into the environment.

On November 9, 1984 (49 FR 44878), EPA proposed revised stack height regulations in response to the recent court decision [*Sierra Club* v. *U.S. EPA*, 719 F.2d 436 (D.C. Cir. 1983)]. When the revised stack height regulations are finalized, SIP's may need to be revised to incorporate and implement specific provisions necessary to carry out the requirements contained in the revised regulations.

EPA is today proposing to redesignate the Upper Beaver Valley Air Basin from cannot be classified to better than national standards in accordance with interim guidance established for redesignations of this type established on August 17, 1984, "Impact of the Stack Heights Decision by the Supreme Court on the Stack Height Interim Policy", Darryl D. Tyler, Director, Control Programs Development Division. When the final stack height regulations are finalized, this source will be reviewed in order to determine if it incorporates and implements the specific provisions contained in the new regulations.

The air quality data for January 1982 through the end of 1983 indicate that this area shows no violations of the SO_2 air quality standards. EPA has examined the air quality data collected from the monitoring site used to demonstrate attainment and found that the data were collected in accordance with all EPA requirements. Also, the H. E. Cramer modeling study (EPA–903/9–18–001) has demonstrated SO_2 attainment for the Upper Beaver Valley Air Basin, considering the greater of either the SIP allowable emission rate or the actual emission rate for the sources in that area. Additionally, the Upper Beaver Valley Air Basin has an approved control strategy, for sulfur compound emissions, which is covered in Article III of the Pennsylvania Air Resources Regulations, Section 123.25(c).

Ozone

On July 27, 1984, the Pennsylvania Department of Environmental Resources submitted a request to have the following counties redesignated from "Does Not Meet Primary Standards" to "Cannot Be Classified or Better Than National Standards": Bedford, Blair, Cambria, Centre, Clearfield, Indiana, and Somerset.

When considering a redesignation request for Ozone, a number of criteria must be considered. The most important is the National Ambient Air Quality Standard (NAAQS) for ozone which is specified in 40 CFR Part 50. The NAAQS for ozone is defined to be violated when the annual average expected number of daily exceedances of the standard (0.12 parts per million (ppm), 1-hour average) is greater than one (1.0). A daily exceedance occurs when the maximum hourly ozone concentration during a given day exceeds 0.124 ppm ("Guidelines for the Interpretation of Ozone Air Quality Standards," EPA–450/4–79–003). The expected number of daily exceedances is calculated from the observed number of exceedances by making the assumption that non-monitored days (invalid or incomplete) have the same fraction of daily exceedances as those observed on monitored days (EPA–450/4–79–003).

Specific criteria for ozone redesignation reviews are given in a December 7, 1979, policy memorandum from Richard G. Rhoads, former Director of U.S. EPA's Control Programs Development Division, and an April 21, 1983, policy memorandum from Sheldon Meyers, Director, Office of Air Quality Planning and Standards. These memoranda indicate that the average number of expected exceedances for each monitoring site is to be based on ozone concentrations contained in the most recent 3 years of data, if 3 years of data are available.

For a non-monitored area, EPA considers its proximity to major precursor source areas (generally major urban areas) and wind directions. Data from areawide ozone-precursor studies in the vicinities of major urban areas, such as St. Louis and Philadelphia, as well as data from rural monitoring sites in Region III, indicate that ozone transport, at significant levels, can occur over considerable distances downwind from urban areas. Based on these studies and data, and in the absence of any monitoring data, counties immediately downwind from major urban areas are generally assumed to be nonattainment.

Given the regional nature of ozone concentrations, as confirmed in the St. Louis and Philadelphia studies, it is reasonable to assume that non-monitored counties adjoining monitored nonattainment areas are, themselves, probable nonattainment areas. The probability of nonattainment is particularly high in those counties which are both immediately downwind of major urban areas and adjoining geographically similar monitored rural nonattainment areas.

The results of EPA's review of the Commonwealth's proposed ozone redesignations are presented below. The presentation is divided into two sections: proposed approval and proposed disapproval.

Proposed Approval

EPA finds that a redesignation of several counties in Pennsylvania is approvable at this time. Based on EPA's review of available ambient ozone monitoring data, and on the proximity of some of these counties to a major urban area, EPA believes that four counties in Pennsylvania's redesignation request have attained the ozone NAAQS. Included below is a table which

contains a brief explanation of the basis for each proposed approval.

Counties requested by DER to be redesignated attainment	EPA comment
Cambria	No monitored exceedances in the last three years (82–84).
Clearfield	Rural area with no monitoring data. Adjacent to Cambria Co. which has measured attainment.
Indiana	Rural area with no monitoring data. Adjacent to Cambria Co. which has measured attainment.
Somerset	Rural area with no monitoring data. Adjacent to Cambria Co. which has measured attainment.

In addition, the areas covered by statewide RACT regulations will remain in effect after this designation.

Proposed Disapproval

EPA finds that a redesignation of three Counties is not approvable at this time. Included below is a table which contains a brief explanation of the basis for each proposed disapproval:

Counties requested by DER to be redesignated attainment	EPA comment
Blair	82–84 data shows four exceedances. Therefore, the average number of exceedances per year, of the ozone NAAQS, is greater than one.
Bedford	Rural area with no monitoring data. Adjacent to Blair County which has monitored nonattainment.
Centre	Rural area with no monitoring data. Adjacent to Blair County which has monitored nonattainment.

Interested parties are invited to submit comments on this action. EPA will consider comments received within 30 days of publication of this notice.

Under 5 U.S.C. section 605(b), the Administrator has certified that redesignations do not have a significant economic impact on a substantial number of small entities (see 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

(Sec. 107(d) of the Act, as amended (42 U.S.C. 7407))

Dated: December 6, 1984.

Stanley L. Laskowski,

Acting Regional Administrator.

[FR Doc. 85–5701 Filed 3–8–85; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 4100

Administration of Grazing—Exclusive of Alaska; Amendments to Grazing Regulations

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rulemaking.

SUMMARY: This proposed rulemaking would provide procedures for carrying out the requirements of the 1985 Interior Appropriations Act which were applicable to livestock grazing lessees and permittees on the date of enactment of the Act and identifies the authorities of the Bureau of Land Management for implementing these requirements.

DATE: Comments should be submitted by May 10, 1985. Comments received or postmarked after the above date may not be considered as part of the decisionmaking process on the issuance of a final rulemaking.

ADDRESS: Comments should be sent to: Director (140), Bureau of Land Management, 1800 C Street, NW., Washington, D.C. 20240.

Comments will be available for public review in Room 5555 of the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Robert Alexander, (202) 653–9210.

SUPPLEMENTARY INFORMATION: Under Pub. L. 98–473, the Department of the Interior Appropriations Act of 1985, Congress provided "That the dollar equivalent of value, in excess of the grazing fee established under law and paid to the United States Government, received by any permittee or lessee as compensation for an assignment or other conveyance of a grazing permit or lease, or any grazing privileges or rights thereunder, and in excess of the installation and maintenance cost of grazing improvements provided for by the permittee in the allotment management plan or amendments or otherwise approved by the Bureau of Land Management shall be paid to the Bureau of Land Management * * *."

Congress further provided "[t]hat if the dollar value prescribed above is not paid to the Bureau of Land Management, the grazing permit or lease shall be canceled."

This proposed rulemaking would set out the procedure that would be followed by the Bureau of Land Management in carrying out the existing statutory requirements. The proposed rulemaking reflects the intent of the Act that the excess dollar equivalent amount received by a permittee or lessee for subleasing a grazing permit or lease must be paid to the United States and establishes the procedures that will be used by the Bureau of Land Management in meeting its responsibility as an agent of the United States under this Congressional mandate. If the dollar equivalent is not paid within 30 days, the Act requires that the lease or permit be cancelled. Even though this is a proposed rulemaking requesting public comment, the public should understand that the provisions of the Act were effective as of the date of its enactment, October 12, 1984, and notice is hereby given that the Bureau will fulfill its responsibility under the Act and collect any obligations due and owing the United States since the Act's effective date.

The following discussion summarizes the specific provisions of the proposed rulemaking, and explains their basis and purpose.

Section 4100.0–3 Authority.

This section would be revised to include citation of the Department of the Interior Appropriations Act for Fiscal Year 1985 as the legal authority for this proposed rulemaking.

Section 4100.0–5 Definitions.

This rulemaking would place two new definitions in § 4100.0–5. The word "control" would be defined to mean responsibility for and providing care and management of base property and/or livestock. The definition of control is important because of its use in the definition of the prohibited act of subleasing.

The term "subleasing" would be defined as the act of a permittee or lessee entering into an agreement that either (1) allows someone other than the permittee or lessee to graze livestock on the public lands without controlling the base property supporting the permit or lease or (2) allows grazing on the public lands by livestock that are not owned or controlled by the permittee or lessee. The definition of subleasing is consistent with the existing regulatory requirements that any person grazing livestock on public lands must own or control base property and livestock. (See 43 CFR 4110.1 and 4130.5(a).)

Section 4130.5 Ownership and identification of livestock.

This section would be revised by adding two new paragraphs, §§ 4130.5(d) and 4130.5(e). The new provisions would require that in cases

where a permittee or lessee controls, but does not own the livestock which graze on the public lands, any agreement between the permittee or lessee and the person owning the livestock shall be filed with the authorized officer. Further, the proposed rulemaking would clarify the existing reqiurement that the brand and other identifying marks on the livestock controlled but not owned by the permittee or lessee be filed with the authorized officer. These clarifying provisions would enable the authorized officer to review leasing arrangements and assure that they are consistent with regulation requirements.

Section 4140.1 Prohibited Acts.

This section would be revised by adding a new paragraph to § 4140.1(a)(6) to establish that subleasing, as defined earlier, is prohibited on public lands and other lands where grazing is administered by the Bureau of Land Management. Existing regulations do not explicitly establish subleasing as a prohibited act. Subleasing implicitly violates either §4110.1's requirement of owning or controlling base property or §4130.5(a)'s requirement of owning or controlling the livestock which graze the public lands. This proposed rulemaking would assist in the public understanding that subleasing is prohibited by first defining subleasing in §4100.0–5 and then including subleasing among the acts and practices which are prohibited by § 4140.1

Section 4170.1 Penalties.

This section would be revised by inserting a new paragraph (d) which carrys out the Congressional mandate and establishes that a permittee or lessee who engages in subleasing as defined in § 4100.0–5 must pay the Bureau of Land Management any amount or dollar equivalent value of all compensation received for a sublease which exceeds the sum of the grazing fee plus the amount spent for installation and maintenance of range improvements. As required by the Act, if that amount is not paid to the authorized officer within 30 days, the permit or lease shall be cancelled. However, the monetary payment will not affect the penalty that may be imposed by the authorized officer for subleasing or other additional penalties that may be imposed by the authorized officer upon the sublessor for making unauthorized use of grazing pursuant to § 4140.1(a). The purpose of this section is to integrate the Department of the Interior's requirements concerning ownership and control of livestock grazing on the public lands with the requirements of the 1985 Appropriations Act.

The Department of the Interior Appropriations Act for Fiscal Year 1985 was signed on October 12, 1985, and applies to the 1985 fiscal year and it is important that the Department identify the requirements that the Act places on permittees and lessees and to establish the Bureau of Land Management's authority to implement the Act's provisions. This proposed rulemaking would establish the procedures that will be used by the Bureau of Land Management to meet its responsibility under the Act.

The primary author of this proposed rulemaking is Robert Alexander, Division of Rangeland Resources, assisted by the staff of the Office of Legislation and Regulatory Management, Bureau of Land Management.

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

This proposed rulemaking contains no new information collection requirements. Information to be collected under this proposed rulemaking has already been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1004–0047.

List of Subjects in 43 CFR Part 4100

Administrative practice and procedure, Grazing lands, Livestock, Penalties, Range management.

Under the authority of the Taylor Grazing Act of 1934, as amended (43 U.S.C. 315 et seq.), the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1701 et seq.), the Public Rangelands Improvement Act of 1978, (43 U.S.C. 1901 et seq.), and the Department of Interior Appropriations Act for Fiscal Year 1985 (Pub. L. 98–473), it is proposed to amend Part 4100, Group 4100, Subchapter D, Chapter II of Title 43 of the Code of Federal Regulations as set forth below:

PART 4100—[AMENDED]

1. Section 4100.0–3 is revised by adding a new paragraph (g) to read as follows:

§ 4100.0–3 Authority.

* * * * *

(g) The Department of the Interior Appropriations Act for Fiscal Year 1985 (Pub. L. 98–473).

§ 4100.0–5 [Amended]

2. Section 4100.0–5 is amended by adding in appropriate order definitions of the following terms:

" 'Control' means being responsible for and providing care and management of base property and/or livestock."

" 'Subleasing' means the act of a permittee or lessee entering into an agreement that either (1) allows someone other than the permittee or lessee to graze livestock on the public lands without controlling the base property supporting the permit or lease or (2) allows grazing on the public lands by livestock that are not owned or controlled by the permittee or lessee.

2. Section 4130.5 is amended by adding new paragraphs (d) and (e) to read:

§ 4130.5 Ownership and identification of livestock.

* * * * *

(d) Where a permittee or lessee controls but does not own the livestock which graze on the public lands, any agreement between the permittee or lessee and the person owning the livestock shall be filed with the authorized officer.

(e) The brand and other identifying marks on livestock controlled, but not owned, by the permittee or lessee shall be filed with the authorized officer.

3. Section 4140.1 is amended by adding a new paragraph (a)(6) to read as follows:

§ 4140.1 Acts prohibited on public lands.

(a) * * *

(6) Subleasing as defined in this subpart.

4. Section 4170.1–1 is amended by adding a new paragraph (d) to read:

§ 4170.1–1 Penalty for violations.

* * * * *

(d) Any person who is found to have violated the provisions of § 4140.1(a)(6) since October 12, 1984, shall be required to pay to the authorized officer the dollar equivalent value, as determined by the authorized officer, of all compensation received for the sublease which is in excess of the sum of the established grazing fee and the cost of

installation and maintenance of authorized range improvements. If the dollar equivalent value is not received by the authorized officer within 30 days of receipt of the final decision, the grazing permit or lease shall be cancelled. Such payment shall be in addition to any other penalties the authorized officer may impose under § 4170.1–1(a) of this title.

J. Steven Griles,

Deputy Assistant Secretary of the Interior.

February 24, 1985.

[FR Doc. 85–5642 Filed 3–8–85; 8:45 am]

BILLING CODE 4310–84–M

VOL 50 ISS 47 MR 11 1985 UMI

Notices

Federal Register
Vol. 50, No. 47
Monday, March 11, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Soil Conservation Service

Middle River Watershed Project, GA; Intent to Deauthorize Federal Funding

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of intent to deauthorize Federal funding.

SUMMARY: Pursuant to the Watershed Protection and Flood Prevention Act, Pub. L. 83–566, and the Soil Conservation Service Guidelines (7 CFR 622), the Soil Conservation Service gives notice of the intent to deauthorize Federal funding for the Middle River Watershed project, Franklin and Stephens Counties, Georgia.

FOR FURTHER INFORMATION CONTACT: B. C. Graham, State Conservationist, Soil Conservation Service, 355 East Hancock Avenue, Athens, Georgia 30601, telephone: 404–546–2273.

SUPPLEMENTARY INFORMATION: A determination has been made by B.C. Graham that the proposed works of improvement for the Middle River project will not be installed. The sponsoring local organizations have concurred in this determination and agree that Federal funding should be deauthorized for the project. Information regarding this determination may be obtained from B.C. Graham, State Conservationist, at the above address and telephone number.

No administrative action on implementation of the proposed deauthorization will be taken until 60 days after the date of this publication in the **Federal Register**.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention. Office of Management and Budget Circular A–05 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

B. C. Graham,
State Conservationist.
March 4, 1985.
[FR Doc. 85–5739 Filed 3–8–85; 8:45 am]
BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

International Trade Administration

[Case No. 653]

Paul C. Carlson and C–O Manufacturing Co., Inc.; Order

The Office of Export Enforcement, International Trade Administration, U.S. Department of Commerce (Department), initiated administrative proceedings pursuant to Section 11(c) of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401–2420 (1982)) (the Act),[1] and Part 388 of the Export Administration Regulations (currently codified at 15 CFR Parts 368–399 (1984)) the Regulations) against Paul C. Carlson (Carlson) and C–O Manufacturing Company, Inc. by issuing Charging Letters alleging that Carlson and C–O Manufacturing Company, Inc. violated §§ 387.2, 387.3, 387.5 and 387.6 of the Regulations.

The Department, Carlson and C–O Manufacturing Company, Inc. have entered into a Consent Agreement whereby each party has agreed that the matter will be settled by denying Carlson and C–O Manufacturing Company, Inc. all validated license export privileges and reexport authorizations for a period of 15 year from the date of this Order.

The Hearing Commissioner approves the Consent Agreement.

It is therefore ordered,

First, For a period ending 15 years from the date of this Order, Carlson and C–O Manufacturing Company, Inc. are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction which requires a validated export license or reexport authorization from the Office of Export Administration:

(a) Without limiting the generality of the foregoing, participation prohibited in any such transaction, either in the United States or abroad, shall include, but not be limited to, participation: (i) As a party or as a representative of a party to any validated export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated export license or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of any commodities or technical data, in whole or in part, exported or to be exported from the United States and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend only to commodities and technical data which require a validated license or reexport authorization under the Regulations;

(b) Such denial of export privileges shall extend not only to Carlson and C–O Manufacturing Company, Inc. but also to their agents, employees and successors. After notice and opportunity for comment, such denial may also be made applicable to any person, firm, corporation, or business organization with which Carlson or C–O Manufacturing Company, Inc. is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of export trade or related services;

(c) No person, firm, corporation, partnership or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Administration, shall, with respect to U.S.-origin commodities and technical data which are subject to the denial of export privileges set out herein, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with Carlson, C–O Manufacturing Company, Inc. or anyone who is now or may be subsequently

[1] The authority granted by the Act terminated on March 30, 1984. The Regulations have been continued in effect by Executive Order 12470, 49 FR 13099, April 3, 1984, under the authority of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (1982)).

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named as a related party, or whereby Carlson, C–O Manufacturing Company, Inc. or any related party may obtain any benefit therefrom or have any interest in or participation therein, directly or indirectly: (i) apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshippment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for Carlson, C–O Manufacturing Company, Inc. or any related party denied export privileges; or (ii) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any export, reexport, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States;

Second, The Charging Letters, the Consent Agreement and this Order shall be made available to the public, and this Order shall be published in the Federal Register.

This Order is effective immediately.

Dated: March 5, 1985.

Thomas W. Hoya,

Hearing Commissioner.

[FR Doc. 85–5685 Filed 3–8–85; 8:45 am]

BILLING CODE 3510-DT-M

[A–428–037]

Drycleaning Machinery From West Germany; Preliminary Results of Administrative Review of Antidumping Finding

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of preliminary results of administrative review of antidumping finding.

SUMMARY: The Department of Commerce has conducted an administrative review of the antidumping finding on drycleaning machinery from West Germany. The review covers the two known manufacturers and/or exporters of this merchandise to the United States, two consecutive periods from July 1, 1980, through October 31, 1982, and certain other U.S. sales deferred from the last administrative review. The review indicates the existence of dumping margins during the periods.

As a result of the review, the Department has preliminarily determined to assess dumping duties equal to the calculated differences between United States price and foreign market value on each of the sales during the periods. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: March 11, 1985.

FOR FURTHER INFORMATION CONTACT: Arthur N. DuBois or Linnea Bucher, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377–1130.

SUPPLEMENTARY INFORMATION:

Background

On January 10, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 1256) the final results of its last administrative review of the antidumping finding on drycleaning machinery from West Germany (37 FR 23715, November 8, 1972) and announced its intent to conduct the next administrative review. The Department has now conducted that review.

Scope of the Review

Imports covered by the review are shipments of drycleaning machinery. Such merchandise is currently classifiable under item 670.4100 of the Tariff Schedules of the United States Annotated.

The review covers the two known manufacturers and/or exporters of this merchandise to the United States, Boewe Maschinenfabrik GmbH and Seco Maschinenbau GmbH & Co., two consecutive periods from July 1, 1980, through October 31, 1982, and certain other U.S. sales deferred from the last administrative review. We will review the remaining previously deferred sales in a subsequent review.

Multimatic, Inc., the U.S. susidiary of Seco, failed to provide certain data requested during our on-site verification of its response to our questionnaire. For that firm, we used the best information available for the missing data.

United States Price

In calculating United States price the Department used either purchase price or exporter's sales price ("ESP"), both as defined in section 772 of the Tariff Act of 1930 ("the Tariff Act"), as appropriate. Purchase price and ESP were based on the c.i.f. delivered, packed price to the first unrelated purchaser in the United States. Where applicable, we made adjustments for U.S. and foreign inland freight, U.S. customs duties, ocean freight, marine insurance, brokerage charges, commissions to unrelated parties, and the U.S. subsidiary's selling expenses. We also made adjustments, where appropriate, for any increased value resulting from further assembly performed on the imported merchandise after importation and before its sales to an unrelated purchaser in the U.S. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used either home market price, when sufficient quantities of such or similar merchandise were sold in the home market to provide a basis of comparison, or prices to a third country (United Kingdom) when there were insufficient quantities of such or similar merchandise sold in the home market to provide a basis for comparison, both as defined in section 773 of the Tariff Act.

We made adjustments, where applicable, for inland freight, cash discounts, differences in commissions to unrelated parties, direct advertising, guarantee, credit and packing costs. We made further adjustments, where applicable, for differences in the physical characteristics of the merchandise and for indirect selling expenses to offset U.S. selling expenses in ESP calculations.

Where possible, we compared sales by Boewe's American subsidiary (Boewe Systems and Machinery) to distributors with Boewe's sales in West Germany through agents to end-users. However, when there were no contemporaneous home market sales through agents, we compared sales to distributors in the U.S. with direct sales to end-users in the home market. We made no adjustment for claimed level of trade differences because the claims were not adequately quantified.

We disallowed claimed adjustments for warranty, servicing, product maintenance, sales office expenses, research and development expenses, payments to retired agents and certain advertising expenses, certain "other" payments made on behalf of the customer, technical services, traffic department expenses, certain management expenses, general and administrative expenses because these claimed adjustments were either inadequately quantified, not directly related to the sales used for comparison purposes, or not selling expenses. We also disallowed claimed adjustments for "trade-in losses" by Boewe and Seco as price reductions. We do not consider the amounts deducted from the price of a new machine for a trade-in to be a discount. The amount of the credit is a measure of the value to the company of the used machines. No other adjustments were claimed or allowed.

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value, we preliminary determine that the following margins exist:

Manufacturer/exporter	Time period	Margin (percent)
Boewe Maschinenfabrik GmbH	7/1/80–10/1/81	17.45
	11/1/81–10/31/82	.45
Seco Maschinenbau GmbH & Co	7/1/80–10/1/81	10.70
	11/1/81–10/31/82	9.96

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days the date of publication. The Department will publish the final results of the administrative review, including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, dumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Further, as provided by § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties based on the most recent of the above margins shall be required for those firms. Because the most recent margin for Boewe is less than 0.50 percent and, therefore, *de minimis* for cash deposit purposes, the Department shall waive the depost requirement for that firm. For any future entries from a new exporter not covered in this or prior reviews, whose first shipment occurred after October 31, 1982, and who is unrelated to any reviewed firm, a cash deposit of 9.96 percent shall be required. These deposit requirements and waiver are effective for all shipments of West German drycleaning machinery entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53 of the Commerce Regulations (19 CFR 353.53).

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

March 4, 1985.

[FR Doc. 85–5683 Filed 3–8–85; 8:45 am]

BILLING CODE 3510-DS-M

[A–351–410]

Termination of Antidumping Investigation; Certain Large Diameter Carbon Steel Welded Pipes From Brazil

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On March 1, 1985, Berg Steel Pipe Corporation withdrew its antidumping petition, filed on March 21, 1984, on Certain Large Diameter Carbon Steel Welded Pipes from Brazil. Based on the withdrawal, we are terminating the investigation.

EFFECTIVE DATE: March 11, 1985.

FOR FURTHER INFORMATION CONTACT: Paul Aceto, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 377–3534.

SUPPLEMENTARY INFORMATION:

Case History

On March 21, 1984, we received a petition from Berg Steel Pipe Corporation filed on behalf of the U.S. industry producing certain large diameter carbon steel welded pipes.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping investigation. We notified the ITC of our action and initiated the investigation on April 10, 1984, (50 FR 15248). On May 7 the ITC found that there is a reasonable indication that imports of Certain Large Diameter Carbon Steel Welded Pipes from Brazil materially injure, or threaten material injury to, a United States industry. On August 28, 1984 we made a preliminary determination that Certain Large Diameter Carbon Steel Welded Pipes from Brazil was being or was likely to be, sold in the United States at less than fair value. On January 28, 1985, we made a final determination that Certain Large Diameter Carbon Steel Welded Pipes from Brazil was being or was likely to be, sold at less than fair value (50 FR 3823).

Scope of Investigation

The merchandise covered by this investigation is certain large diameter carbon steel welded pipes of circular cross section, with an outside diameter greater than 16 inches, not suitable for use in boilers, superheaters, heat exchangers, condensers, and feedwater heaters and not cold drawn.

At the time this case was initiated, this merchandise was provided for in item numbers 610.3211 and 610.3251 of the Tariff Schedules of the United States Annotated (TSUSA). In April, 1984, the TSUSA numbers were changed. Item number 610.3211 is now classified under item numbers 610.3262 and 610.3264. This merchandise includes American Petroleum Institute (A.P.I.) and non-A.P.I. welded carbon steel oil well casing.

Withdrawal of Petition

On March 1, 1985, petitioner notified us that it was withdrawing its petition, and requested that the investigation be terminated. Under section 734(a) of the Act, as amended by section 604 of the Trade and Tariff Act of 1984, upon withdrawal of a petition, the administering authority may terminate an investigation after giving notice to all parties to the investigation. This withdrawal is based on arrangements with the Government of Brazil to limit the volume of imports of this product. We have assessed the public interest factors set out in section 734(a)(2) of the Act and consulted with potentially affected producers, workers, and consuming interests. On the basis of our assessment of the public interest factors and our consultations with affected interests, we have determined that termination would be in the public interest.

We have notified all parties to the investigation of petitioner's withdrawal and our intention to terminate. For these reasons we are terminating our investigation.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

March 1, 1985.

[FR Doc. 85–5684 Filed 3–8–85; 8:45 am]

BILLING CODE 3510-DS-M

[C–201–008]

Yarns of Polypropylene Fibers From Mexico; Final Results of Administrative Review of Suspension Agreement

AGENCY: International Trade Administration Import Administration, Commerce.

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ACTION: Notice of final results of administrative review of suspension agreement.

SUMMARY: On October 11, 1984, the Department of Commerce published the preliminary results of its administrative review of the agreement suspending the countervailing duty investigation on yarns of polypropylene fibers from Mexico. The review covers the period February 7, 1983, through June 30, 1983.

We gave interested parties an opportunity to comment on the preliminary results. After review of all timely comments received, the final results of the review are the same as the preliminary results.

EFFECTIVE DATE: March 11, 1985.

FOR FURTHER INFORMATION CONTACT: Stephen Nyschot or Patricia Stroup, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On October 11, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 39890) the preliminary results of its administrative review of the agreement suspending the countervailing duty investigation on yarns of polypropylene fibers from Mexcio (48 FR 5581, February 7, 1983). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by the review are shipments of Mexican yarns of polypropylene fibers. Such merchandise is currently classifiable under items 310.0214, 310.1114, 310.5015, 310.5051, 310.6029, 310.6038, and 310.800 of the Tariff Schedules of the United States Annotated. Yarns of polypropylene fibers are used primarily in the manufacture of fabrics, particularly those for upholstery.

The review covers the only know exporter of Mexican yarns of polypropylene fibers to the United States, Industrias Polifil, S.A. de C.V., the signatory to the suspension agreement.

The review covers the period February 7, 1983, through June 30, 1983, and eight programs: (1) CEDI, (2) FOMEX, (3) CEPROFI, (4) FONEI, (5) FOGAIN, (6) state tax incentives, (7) import duty reductions and exemptions, and (8) NDP preferential price discounts.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received timely comments in the form of questions from the American Textile Manufacturers Institute ("the Institute"), the Amalgamated Clothing and Textile Workers Union and the International Ladies Garment Workers Union ("the Unions").

Comment 1: Did the Department examine the possiblity that Polifil benefited from equity infusions by Nacional Financeria, S.A. ("NAFINSA") into Polifil's parent company, Grupo Pliana, or from other NAFINSA subsidies conferred on the parent?

Department's Position: The Department has examined only NAFINSA loans and found them not to be countervailable. (*See* Final Affirmative Countervailing Duty Determination on oil country tubular goods from Mexico (49 Fr 47054, November 30, 1984)). Until we received the Institute's and the Unions' comments, the issue of NAFINSA equity infusions into Grupo Pliana had never been raised. We have not examined this issue.

Comment 2: Did the Department consider whether benefits conferred on Grupo Pliana under any of the eight programs in our review flowed to Polifil?

Department's Position: Until we received the Institute's and the Unions' comments, the issue of benefits passing through Grupo Pliana to Polifil had not been raised. We have not specifically examined this issue. However, our examination of Polifil's books and records during verification unearthed no benefits under the eight programs examined.

Final Results of the Review

After review of the timely comments received, the final results of the review are the same as the preliminary results. We determine that Polifil has complied with the terms of the suspension agreement for the period February 7, 1983, through June 30, 1983. Therefore, the suspension agreement for Mexican yarns of polypropylene fibers shall remain in effect.

The Department encourages interested parties to review the public record and submit applications for protective orders, if desired, as early as possible after the Department's receipt of the requested information.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.41 of the Commerce Regulations (19 CFR 355.41).

Dated: March 5, 1985.

Alan F. Holmer,

Deputy Assistant Secretary Import Administration.

[FR Doc. 85-5707 Filed 3-8-85; 8:45 am]

BILLING CODE 3510-DS-M

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Issuance of an Export Trade Certificate of Review.

SUMMARY: The Department of Commerce has issued a second amendment to an export trade certificate of review to Crosby Trading Company ("Crosby"). This notice summarizes the conduct for which certification has been granted.

ADDRESS: The Department requests public comments on the certificate. Interested parties should submit their written comments, original and five (5) copies, to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington, D.C. 20230.

Comments should refer to the certificate as "Export Trade Certificate of Review, application number 84-2A002."

FOR FURTHER INFORMATION CONTACT: James V. Lacy, Director, Office of Export Trading Company Affairs, International Trade Administration, 202-377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. No. 97-290) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing the Act are found at 15 CFR Part 325 (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.5(b), which requires the Secretary of Commerce to publish in the **Federal Register** a summary of each certificate issued. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

The initial export trade certificate of review issued to Crosby (49 FR 25889, June 25, 1984) protected only Crosby for planning activities associated with

formulating an export joint venture, and allowed meetings with interested producers to occur within a thirty day period. The first amendment to the certificate (49 FR 47519, December 5, 1984) extended the protection of the certificate during the planning stage to firms named as members.

The second amendment extends the period within which Crosby and interested producers may hold planning stage discussions to March 31, 1985, and allows three such meetings. The second amendment also removes protection from four firms that determined that they do not wish to participate in the proposed export joint venture. Accordingly, the following firms are deleted as members: Westvaco Corporation, New York, NY, National Distillers and Chemical Corporation, New York, NY, Georgia-Pacific Corporation, Atlanta, GA, and Monsanto Company, St Louis, MO.

Effective Date

In accordance with section 304(a)(2) of the Act and 15 CFR 325.7, this amendment is effective from December 20, 1984, the date on which the application was deemed submitted. The certificate remains effective through May 27, 1985.

A copy of each certificate is available for inspection and copying in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Consitution Avenue, NW., Washington, D.C. 20230.

Richard H. Shay,

Acting General Counsel.

[FR Doc. 85-5762 Filed 3-8-85; 8:45 am]

BILLING CODE 3510-DR-M

National Oceanic and Atmospheric Administration

National Marine Fisheries Service; Modification No. 1 To Permit No. 435; Dr. Roger Payne

Notice is hereby given that pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), § 222.25 of the Regulations Governing Endangered Species Permits (50 CFR Part 222), Scientific Research Permit No. 435 issued to Dr. Roger Payne, 191 Weston Road, Lincoln, Massachusetts 01773, on October 5, 1983, is modified to extend the period of authorized taking for five years.

Accordingly, Section B-8 is deleted and replaced by: "8. This Permit is valid with respect to the taking authorized herein until December 31, 1987."

This modification was effective January 1, 1985.

The Permit as modified and documentation pertaining to the modification are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, D.C.;
Regional Director, National Marine Fisheries Service, Northeast Region, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930;
Regional Director, National Marine Fisheries Service, Northwest Region, 7600 Sand Point Way NE., BIN C15700, Seattle, Washington 98115;
Regional Director, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731; and
Regional Director, National Marine Fisheries Service, Alaska Region, P.O. Box 1668, Juneau, Alaska 99802.

Dated: February 28, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85-5741 Filed 3-8-85; 8:45 am]

BILLING CODE 3510-22-M

National Marine Fisheries Service; Proposed Modification to Permit No. 464 (P77 #9); Northwest and Alaska Fisheries Center

Notice is hereby given that the Northwest and Alaska Fisheries Center, National Marine Fisheries Service, 2725 Montlake Boulevard East, Seattle, Washington 98112 has requested a modification of Permit No. 464 issued on April 25, 1984 (49 FR 17795) under the authority of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407) and the Regulation Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

The Permit Holder is requesting an increase in the dose rate of Ketamine hydrochloride to insure full immobilization of seals, to administer a pre-Ketamine hydrochloride injection of the sedative Xylazine to reduce the chances of elephant seals exhibiting breath-holding behavior; and an increase in the number of animals that may be killed or injured prior to the suspension of research activities. Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of the modification request to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this modification request should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235 within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular modification request would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in the modification are summaries of those of the Applicant.

Documents submitted in connection with the above modification are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW, Washington, D.C.;
Regional Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731; and
Regional Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way, NE, Seattle, Washington 98115.

Dated: March 1, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85-5740 Filed 3-8-85; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Agent Assistance in the Licensing of Government-Owned Patents

The Office of Federal Patent Licensing (OFPL), Center for the Utilization of Federal Technology, has received custody from other agencies of a number of U.S. and foreign patent rights assigned to the United States of America.

To broaden the marketing of inventions which have already been licensed nonexclusively, OFPL is prepared to make similar agreements with selected, qualified patent-licensing or technology-transfer agents and brokers to locate additional, prospective licensees thereby making the benefits of such inventions more extensively and expeditiously available to the public.

Parties qualified for this program should make their interest, capabilities and prior experience known in writing to: David T. Mowry, Office of Federal Patent Licensing, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virginia 22151.

Douglas J. Campion,

Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 85-5743 Filed 3-8-85; 8:45 am]

BILLING CODE 3510-04-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting the Import Restraint Levels for Certain Cotton Textile Products Produced or Manufactured in Brazil

March 5, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on March 11, 1985. For further information contact James Nader, International Trade Specialist (202) 377-4212.

Background

A CITA directive dated March 28, 1984 (49 FR 13064) established restraint limits for certain specified categories of cotton and man-made fiber textiles and textile products, including Categories 314 (poplin and broadcloth) and 320 (other woven fabrics, n.e.s.), produced or manufactured in Brazil and exported during the agreement year began on April 1, 1984 and extends though March 31, 1985. Under the terms of the Bilateral Cotton and Man-Made Fiber Textile Agreement of March 31, 1982, as amended, between the Governments of the United States and the Federative Republic of Brazil, and at the request of the Government of the Federative Republic of Brazil, the Government of the United States has agreed to increase the consultation levels for Categories 314 and 320 to 1,900,000 and 4,400,000 square yards, respectively, for the current agreement year. The letter to the Commissioner of Customs which follows this notice further amends the March 28, 1984 directive to icrease these levels.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR. 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1985).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

March 5, 1985.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury Washington, D.C.

Dear Mr. Commissioner: This directive futher amends, but does not cancel, the directive of March 28, 1984, which established import restraint limits for certain categories of cotton and man-made fiber textiles and textile products, produced or manufactured in Brazil and exported during the twelve-month period which began on April 1, 1984.

Effective on March 11, 1985, the directive of March 28, 1984 is heaby further amended to include the following adjusted restraint levels for cotton textile products in Categories 314 and 320:

Category	Adjusted 12-mo restraint level [1]
314	1,900,000 square yards.
320	4,400,000 square yards.

[1] In levels have not been adjusted to account for any imports exported after March 31, 1984

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenanan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-5688 Filed 3-8-85; 8:45 am]

BILLING CODE 3510-DR-M

New Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Indonesia

March 5, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on March 11, 1985. For further information contact James Nader, International Trade Specialist, (202) 377-4212.

Background

On July 2, August 30, November 2, November 15 and December 28, 1984, notices were published in the **Federal Register** (49 FR 27194, 34391, 44119, 45207 and 50423) which established restraint limits (variously) for cotton and man-made fiber textile products in Categories 317, 334, 339, 369pt (only shop towels in T.S.U.S.A. 366.2740), 630 and 640, produced or manufactured in Indonesia and exported during designated periods. The limits for Categories 317 and 339, among others, are filled.

During consultations held January 17-19, 1985, pursuant to the terms of their Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of October 13 and November 9, 1982, as amended, the Governments of the United States and the Republic of Indonesia agreed to establish specific limits for all of the foregoing categories. As stipulated in the bilateral agreement, the new specific limits for Categories 317, 334, 369pt. (shop towels) and 640 have been prorated to conform to the applicable call periods and apply to goods exported during those periods. The limits for Categories 339 and 639 are annual limits applicable to goods exported during the twelve-month period which began on July 1, 1984 and extends through June 30, 1985.

On December 24, 1984 a further notice was published in the **Federal Register** (49 FR 49879) announcing that, as of January 1, 1985, the Committee for the Implementation of Textile Agreements, in order to prevent market disruption, would direct the U.S. Customs Service, as appropriate, to permit entry into the United States for consumption, or withdrawal from warehouse for consumption, of such goods which were exported during a prior restraint period in excess of the restraint limit at a prescribed rate per month during each of the first five months of the following period. CITA had decided, in the case of imports in Categories 317 and 339, exported from Indonesia on and after July 31, 1984 to direct Customs to permit entry in amounts not to exceed 1,800,000 square yards in Category 317 and 48,000 dozen in Category 339 during each of the thirty-day periods beginning on March 11, 1985. The thirty-day periods are stipulated in the letter to the Commissioner of Customs which follows this notice.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July

16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1985).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

March 5, 1985.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: This directive amends, but does not cancel, directives of June 27, August 27, October 29, December 21, 1984 and February 7, 1985 which established restraint limits (variously) for cotton and man-made fiber textile products in Categories 317, 334, 339, 369pt. (only TSUSA number 366.2740), 639 and 640, produced or manufactured in Indonesia and exported during the designated periods.

Effective on March 11, 1985, the foregoing directives are hereby amended to include the following restraint limits for Categories 317, 334, 339, 369pt. (only TSUSA number 366.2740), 639 and 640 for goods exported during the periods indicated:

Category	Restraint limit	Period
317	6,280,000 square yards of which 1,840,000 square yards shall be in TSUS items 320.— through 331.— with statistical suffixes 50, 87, and 93.	July 31, 1984–June 30, 1985.
334	18,240 dozen	Sept. 28, 1984–June 30, 1985.
339	240,000 dozen	July 1, 1984–June 30, 1985.
369pt (only TSUSA 366.2740).	502,500 pounds	Oct. 30, 1984–June 30, 1985.
639	360,000 dozen	July 1, 1984–June 30, 1985.
640	201,000 dozen	Oct. 31, 1984–June 30, 1985.

Also effective on March 8, 1985, merchandise in Categories 317 and 339 which is in excess of the limits previously established, in the case of Category 317, for exports during the period which began on July 31, 1984 and extends through June 30, 1985, and, in the case of Category 339, for exports during the period which began on July 1, 1984 and extends through June 30, 1985, shall be permitted entry into the United States for comsumption, or withdrawal from warehouse for consumption, in the following amounts during each of the thirty-day periods set forth below:

Category	Amount to be entered per 30-day period
317	1,800,000 square yards.
339	48,000 dozen.

The thirty-day periods shall be as follows:
March 11, 1985 through April 9, 1985.
April 10, 1985 through May 9, 1985.
May 10, 1985 through June 8, 1985.
June 9, 1985 through June 30, 1985.

The committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-5686 Filed 3-8-85; 8:45 am]
BILLING CODE 3510-DR-M

New Limit for Certain Wool Textile Products Produced or Manufactured in the Hungarian People's Republic

March 5, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on March 11, 1985. For further information contact Eve Anderson, International Trade Specialist (202) 377–4212.

Background

By an exchange of notes dated January 18 and February 6, 1985, the Governments of the United States and the Hungarian People's Republic have agreed to further amend their Bilateral Wool Textile Agreement of February 15 and 25, 1983, as amended, to establish a specific limit of 50,000 dozen for wool sweaters in Category 445/446, produced or manufactured in Hungary and exported during the fifteen-month period which began on October 1, 1984 and extends through December 31, 1985. The following letter to the Commissioner of Customs establishes the new specific limit.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5 Schedule 3 of the TARIFF SCHEDULES OR THE UNITED STATES ANNOTATED (1985).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

March 5, 1985.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Wool Textile Agreement of February 15 and 25, 1983, as amended, between the Governments of the United States and the Hungarian People's Republic; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on March 11, 1985, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in categories 445/446, produced or manufactured in Hungary and exported during the fifteen-month period which began on October 1, 1984 and extends through December 31, 1985 in excess of the following restraint limits:

Category	15-mo restraint limit [1]
445/446	50,000 dozen of which not more than 37,500 dozen shall be in Category 445 and not more than 37,500 dozen shall be in category 446.

[1] The limits have not been adjusted to reflect any imports exported after September 30, 1984.

Textile products in Category 445/446 which have been exported to the United States prior to Octobver 1, 1984 shall not be subject to this directive.

Textile products in Category 445/446 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

The levels set forth above are subject to adjustment in the future pursuant to the provisions of the bilateral agreement of February 17 and 25, 1983, as amended, between the Governments of the United States and the Hungarian People's Republic, which provide, in part that: (1) With the exception of Category 433, the restraint limits may be exceeded by not more than five percent during an agreement year, provided the increase is compensated for by an equal decrease in equivalent square yards in another specific limit, other than Category 433; (2) the limits may be increased for carryforward up to 6 percent of the applicable category limit; and (3) administrative arrangements or adjustments

may be made to resolve minor problems arising in the implementation of the agreement.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1985).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foregin affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementaotion of Textile Agreements.

[FR Doc. 85-5887 Filed 3-8-85; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Public Information Collection Requirement Submitted to OMB for Review

The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

New

Survey of Former Department of Defense Civilian Employees

Survey results will provide unique data on characteristics of former Department of Defense (DoD) civilian employees which are related to the willingness of critical-skill holders, to return to DoD and to relocate in order to work, and on policy changes possibly required in order to attract an optimum of skilled employees during mobilization.

Responses 12,000 respondents.

Burden hours 6,000.

ADDRESS: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503, and Mr. Daniel Vittiello, DoD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, telephone (202) 746-0933.

SUPPLEMENTAL INFORMATON: A copy of the information collection proposal may be obtained from Mr. Robert L. Newhart, OASD MI&L (PI), Room 3C800, Pentagon, Washington, DC 20301-4000, telephone (202) 695-0643.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense

March 6, 1985.

[FR Doc. 85-5681 Filed 3-8-85; 8:45 am]

BILLING CODE 3810-01-M

Office of the Secretary Changes in Per Diem Rates; Travel and Transportation

AGENCY: Per Diem, Travel and Transportation Allowance Committee, DOD.

ACTION: Notice of Publication of Changes in Per Diem Rates.

SUMMARY: The Per Diem, Travel Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 126. This bulletin lists changes in per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, and possessions of the United States. Bulletin Number 126 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

EFFECTIVE DATE: March 1, 1985.

SUPPLEMENTARY INFORMATION: This document gives notice of changes in per diem rates prescribed by the Per Diem, Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. Distribution of Civilian Per Diem Bulletins by mail was discontinued effective June 1, 1979. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of change in per diem rates to agencies and establishments outside the Department of Defense.

The test of the Bulletin follows:

Civilian Personnel Per Diem Bulletin Number 126 to the Heads of the Executive Departments and Establishments

Subject: Table of maximum per diem rates in lieu of subsistence for United States Government civilian officers and employees for official travel in Alaska, Hawaii, the Commonwealth of Puerto Rico and possessions of the United States.

1. This bulletin is issued in accordance with Memorandum for Heads of Executive Departments and Establishments from the Deputy Secretary of Defense dated 17 August 1966, subject: Executive Order 11294, August 4, 1966, "Delegating Certain Authority of the President to Establish Maximum Per Diem Rates for Government Civilian Personnel in Travel Status" in which this Committee is directed to exercise the authority of the President (5 U.S.C. 5702(a)(2)) delegated to the Secretary of Defense for Alaska, Hawaii, the Commonwealth of Puerto Rico, the Canal Zone and possessions of the United States. When appropriate and in accordance with regulations issued by competent authority, lesser rates may be prescribed.

2. The maximum per diem rates shown in the following table are continued from the preceding Bulletin Number 125 except for the cases identified by asterisks which rates are effective on the date of this Bulletin.

3. Each Department or establishment subject to these rates shall take appropriate action to disseminate the contents of this Bulletin to the appropriate headquarters and field agencies affected thereby.

4. The maximum per diem rates referred to in this Bulletin are:

Locality	Maximum rate
Alaska	
*Adak [1]	$19.00
Anaktuvuk Pass	140.00
*Anchorage	116.00
Atqasuk	215.00
Barrow	139.00
Bethel	138.00
Coldfoot	122.00
*College	116.00
Cordova	124.00
Deadhorse	131.00
Dillingham	103.00
Dutch Harbor	105.00
*Eielson AFB	104.00
*Elmendorf	116.00
*Fairbanks	104.00
*Ft. Richardson	116.00
*Ft. Wainwright	104.00
Juneau	109.00
*Ketchikan	113.00
*Kodiak	129.00
*Kotzebue [3]	123.00
*Murphy Dome [3]	104.00
*Noatak	123.00
*Nome	136.00
*Noorvik	123.00

Locality	Maximum rate
*Petersburg	113.00
Point Hope	100.00
Point Lay	179.00
Prudhoe Bay	131.00
Sand Point	103.00
Shemya AFB [3]	30.00
*Shungnak	123.00
*Sitka-Mt. Edgecombe	113.00
*Skagway	113.00
*Spruce Cape	129.00
St. Mary's	100.00
*Tanana	136.00
Valdez	128.00
Wainwright	165.00
*Wrangell	113.00
Yakutat	100.00
All Other Localities [2]	90.00
American Samoa	81.00
Guam M. I.	74.00
Hawaii:	
Hawaii, Island of	83.00
All Other Islands	83.00
Johnson Atoll [3]	21.25
Midway Islands [1]	12.50
Puerto Rico:	
Bayamon:	
12-16—5-15	132.00
5-16—12-15	99.00
Carolina:	
12-16—5-15	132.00
5-16—12-15	99.00
Fajardo (Including Luquillo):	
12-16—5-15	132.00
5-16—12-15	99.00
Ft. Buchanan (Incl. GSA Service Center, Guaynabo):	
12-16—5-15	132.00
5-16—12-15	99.00
Ponce (Incl. Ft. Allen NCS)	92.00
Roosevelt Roads:	
12-16—5-15	132.00
5-16—12-15	99.00
Sabana Seca:	
12-16—5-15	132.00
5-16—12-15	99.00
San Juan (Including San Juan Coast Guard Units):	
12-16—5-15	132.00
5-16—12-15	99.00
All Other Localities	111.00
Virgin Islands of U.S.:	
12-1—4-30	126.00
5-1—11-30	93.00
Wake Island [3]	20.00
All Other Localities	80.00

[1] Commercial facilities are not available. The per diem rate covers charges for meals in available facilities plus an additional allowance for incidental expenses and will be increased by the amount paid for Government quarters by the traveler. For Adak, Alaska—when Government quarters are not utilized, and quarters are obtained at the Simons Construction, Inc. camp, a daily travel per diem allowance of $71.50 is prescribed to cover the cost of lodging, meals and incidental expenses at this facility.

[2] Commercial facilities are not available. Only Government-owned and contractor operated quarters and mess are available at this locality. The per diem rate is the amount necessary to defray the cost of lodging, meals and incidental expenses.

[3] On any day when US Government or contractor quarters and US Government or contractor messing facilities are used, a per diem rate of $13 is prescribed to cover meals and incidental expenses at Shemya AFB and the following Air Force Stations: Cape Lisburne, Cape Newenham, Cape Romanzof, Clear, Cold Bay, Fort Yukon, Galena, Indian Mountain, King Salmon, Kotzebue, Murphy Dome, Sparrevohn, Tatalina and Tin City. This rate will be increased by the amount paid for US Government or contractor quarters and by $4.00 for each meal procured at a commercial facility. The rates of per diem prescribed herein apply from 0001 on the day after arrival through 2400 on the day prior to the day of departure.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

March 6, 1985.

[FR Doc. 85-5682 Filed 3-8-85; 8:45 am]

BILLING CODE 3810-01-M

Corps of Engineers; Department of the Army

Fort A.P. Hill; Finding of No Significant Impact On The Environment

Commander, Fort A.P. Hill, Attn: ATZM—FHE, Fort A.P. Hill VA 22427, Telephone Number: (804) 633-8215.

To all interested agencies, groups and persons:

1. *Proposed Action:* The proposed action is the cleanup, storage and disposal of Building 225 and all soil in the vicinity that has been contaminated by the herbicides 2,4-D, Silvex and 2,4,5-T as well as dioxin. Building 225 will be demolished and the contaminated soil will be excavated. Contaminated material will be containerized and temporarily stored at Fort A.P. Hill in an approved storage facility pending availability of an Environmental Protection Agency approved disposal/treatment method.

2. *Purpose of the Action:* The purpose of the action is to eliminate a potential for further environmental degradation and possible health effects as a result of the herbicide and dioxin contamination.

3. *Alternatives Considered:*

a. Status Quo.

b. Demolition and storage of Building 225. Placement of impermeable cap on contaminated soil and install fencing around area.

c. Demolition of Building 225. Excavation of contaminated soil. Containerization of contaminated material. Pay contractor to remove and store material until acceptable disposal/treatment method available.

d. Demolition of Building 225. Excavation of contaminated soil, Containerization and storage of contaminated material in existing approved Hazardous Waste Storage Facility on federal property other than Fort A.P. Hill.

e. Demolition of Building 225. Excavation of contaminated soil. Containerization and shipment of contaminated material to Johnson Island for incineration as part of research burn to be conducted by EPA.

f. Preferred alternative. Demolition of Building 225. Excavation of contaminated soil. Containerization and temporary storage of contaminated material in approved storage facility to be constructed at Fort A.P. Hill until approved disposal/treatment method becomes available.

4. *Environmental Impact of the Proposed Action:* It has been determined that the preferred alternative would not constitute an action significantly affecting the quality of the human environment. Accordingly, the Commander, Fort A.P. Hill, has decided not to prepare an Environmental Impact Statement (EIS) under the National Environmental Policy Act of 1969 (PL 91-190). Reasons for the decision not to prepare such a statement are as follows:

a. The proposd action will eliminate the potential for contamination of surface and ground water.

b. The proposed action will not significantly affect air quality.

c. The proposed action will not produce solid waste for disposal on the installation.

d. The proposed action will not significantly deplete energy resources.

e. The proposed action will not significantly alter present federal land use patterns.

f. The proposed action will not significantly impact any known or predicted historical or cultural resources.

5. *Environmental Review File:* An environmental review file containing pertinent environmental documents more fully setting forth the reasons why an EIS is not required is available for public examination, upon request, at the Directorate of Facilities Engineering, Fort A.P. Hill, Virginia. Such requests should be directed to the telephone number listed above. All interested agencies, groups, and persons not in agreement with this decision are invited to submit written comments for consideration by the Commander, Fort A.P. Hill within thirty (30) days of the appearance of this notice. Comments should be directed to the address listed above.

John O. Roach, II,

Army Liaison Officer with the Federal Register.

[FR Doc. 85-5693 Filed 3-8-85; 8:45 am]

BILLING CODE 3710-08-M

Department of the Navy

Board of Visitors to the United States Naval Academy; Meeting

Pursuant to the provisions of the Federal advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Board of Visitors to the United States Navel Academy will meet on 26 March 1985, at the U.S. Naval Academy, Annapolis, Maryland. The session, which is open to the public, will commence at 8:30 a.m. and terminate at 11:55 a.m., 26 March 1985, in Room 301, Rickover Hall.

The purpose of the meeting is to make such inquiry as the Board shall deem necessary into the state of morale and discipline, the curriculum, instruction,

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physical equipment, fiscal affairs, and academic method of the Naval Academy.

For further information concerning this meeting contact:

Rear Admiral Robert W. McNitt, USN (Retired), Secretary to the Board of Visitors, Dean of Admissions, U.S. Naval Academy, Annapolis, Maryland 21402, (301) 267–4361.

Dated: March 7, 1985.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 85–5833 Filed 3–8–85; 8:45 am]

BILLING CODE 3810-AE-M

ENVIRONMENTAL PROTECTION AGENCY

[OPPE–FRL–2792–8]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) requires the Agency to publish in the **Federal Register** a notice of proposed information collection requests (ICRs) that have been forwarded to the Office of Management and Budget for review. The ICR describes the nature of the solicitation and the expected impact, and, where appropriate, includes the actual data collection instrument. The following ICR is available to the public for review and comment.

FOR FURTHER INFORMATION CONTACT: Nanette Liepman (PM–223); Office of Standards and Regulations; Regulation and Information Management Division; U.S. Environmental Protection Agency; 401 M Street, S.W.; Washington, D.C. 20460; telephone (202) 382–2742 or FTS 382–2742.

SUPPLEMENTARY INFORMATION:

Resource Conservation and Recovery Program

• Title: RCRA Closure and Post-Closure (EPA #0807) (This is an extension of a previously cleared activity.)

Abstract: In order to obtain a RCRA permit, owners and operators of hazardous waste facilities must prepare plans for properly closing their facilities. These plans give notice to the public about closing a facility; ensure minimum post-closure maintenance; and ensure control of elimination of waste, leachate, and contaminated rainfall or waste decomposition products.

Respondents: Owners and operators of hazardous waste management facilities.

Agency PRA Clearance Requests Completed by OMB

EPA #0160, Pesticides Report for Pesticide Producing Establishments' Form (EPA Form 3540–16), was approved 1/25/85 (OMB #2000–0029: Expires 1/31/88)

EPA #0874, Application for Federal Assistance (Construction), was approved 1/24/85 (OMB #2010–0003: Expires 9/30/87)

EPA #1144, Survey of Antimicrobials Usage in Hospitals, was approved 2/13/85 (OMB #2070–0066: Exipres 1/31/86)

EPA #1166, 404 State Program Annual Report, was approved 10/1/84 (OMB #2090–0011: Expires 10/31/87)

Comments on all parts of this notice should be sent to:

Nanette Liepman (PM–223), U.S. Environmental Protection Agency, Office of Standards and Regulations, Regulation & Information Management Division, 401 M Street, S.W., Washington, D.C. 20460,

and

Nancy Baldwin, Office of Management and Budget, Office of Information and regulatory Affairs, New Executive Office Building (Room 3228), 726 Jackson Place, N.W., Washington, D.C. 20503.

Dated: March 4, 1985.

Daniel J. Fiorino,

Acting Director, Regulation and Information Management Division.

[FR Doc. 85–5577 Filed 3–8–85; 8:45 am]

BILLING CODE 6560-50-M

[OW–9–FRL–2793–5]

Tentative Denial of Applications for Variances Submitted Under Section 301(M) of the Clean Water Act; Extension of Public Comment Period; Simon Paper Co. and Louisiana-Pacific Corp.

AGENCY: Environmental Protection Agency.

ACTION: Notice of extension of public comment period.

SUMMARY: The United States Environmental Protection Agency (EPA) is today providing notice that the public comment period of EPA's tentative decisions to deny variance requests submitted by the Louisiana-Pacific Corporation, Samoa, California, and the Simpson Paper Company, Fairhaven, California, pursuant to section 301(m) of the Clean Water Act, is being extended.

DATE: Interested persons may submit written comments on the tentative decisions to deny the 301(m) variance requests and on the administrative record to the address below. All comments must be received at the address below on or before April 15, 1985.

ADDRESS: Send written comments on the tentative decisions to U.S. Environmental Protection Agency, Region 9 (ORC), attn: Lorraine Pearson, Regional Hearing Clerk, 215 Fremont Street, San Francisco, California, 94105.

FOR FURTHER INFORMATION CONTACT: For further information on these actions, or to make requests for copies of the Tentative Decision Documents, contact Doug Eberhardt, 301(m) Project Officer, U.S. Environmental Protection Agency, Region 9 (W–5–3), 215 Fremont Street, San Francisco, California 94105, (415) 974–8300.

SUPPLEMENTARY INFORMATION: On January 8, 1983, President Reagan signed into law section 301(m) of the Clean Water Act (CWA), which provides the opportunity for two pulp mills located on the Samoa Peninsula in California to apply to the EPA for permit modifications from nationally applicable Best Practicable Technology (BPT) and Best Conventional Technology (BCT) effluent limitations, and the requirements of section 403 of the CWA, for biochemical oxygen demand (BOD) and pH.

These two companies hold National Pollutant Discharge Elimination System (NPDES) permits numbered CA0005894 and CA0005282. On September 26, 1983, the companies submitted to EPA applications for such variances. EPA requested supplementary information from both applicants on December 29, 1983, and March 15, 1984, and received such information shortly thereafter.

EPA proposes to deny the 301(m) applications. On December 14, 1984, the Regional Administrator, EPA Region 9, signed Tentative Decision Documents denying the 301(m) applications. Notice of the tentative denials was provided on December 20, 1984 (49 FR 49501). EPA held a public workshop on January 23, 1985, in the Council Chambers, Eureka City Hall, for the purpose of explaining to the public the proposed EPA action. A public hearing was held on February 6, 1985, at which time EPA received oral comments and written statements from the public regarding EPA's tentative denials.

Originally, the public comment was scheduled to end on March 1, 1985. Subsequently, EPA has received several requests to extend the comment period from various elected officials, the applicants, and the general public. Given the substantial public interest in these decisions, EPA finds that an extended comment period is appropriate to allow all those interested to comment in more depth on the tentative decisions. Therefore, EPA is now extending the public comment period through April 15, 1985. All interested persons are invited to express their views in writing to EPA. All comments should be mailed in time to be received at the address above before the close of business on April 15, 1985. All substantive comments or questions will be fully considered y EPA in preparing final decisions on the 301(m) applications, and will be responded to in a document accompanying the final decisions.

If EPA issues final denials of these variances, the State of California, a delegated NPDES state, will reissue the NPDES discharge permits under which the applicants are now operating. The new permits would have BPT/BCT effluent limitations. If EPA reverses it decision and issues final approvals of the variances, then EPA will issue the modified NPDES permits with appropriate modified effluent limitations.

Dated: March 1, 1985.

Judith E. Ayres,

Regional Administrator, Region 9.

[FR Doc. 85-5702 Filed 3-8-85; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59705; FRL 2786-2]

Certain Chemicals; Premanufacture

Correction

In FR Doc. 85-4995, appearing on page 8390, in the issue of Friday, March 1, 1985, in the second column, the thirteenth line from the bottom should read, "Chemical. (G) Polyester/polyol."

BILLING CODE 1505-01-M

FEDERAL COMMUNICATIONS COMMISSION

Bryan Industrial Electronic Inc. and Arnold Anderson; Applications for Hearing

In re applications of Bryan Industrial Electronics, Inc. (CC Docket No. 85-34; File No. 23182-CD-P-4-81). For a construction permit to establish additional two-way facilities near Brenham, Texas to operate on 152.18 MHz for Station KWU336 in the Public Land Mobile Service. Arnold Anderson, (File No. 22491-CD-P-81). For a construction permit to establish additional two-way facilities at Giddings, Texas to operate on 152.18 MHz for Station WQZ970 in the Public Land Mobile Service.

Adopted February 6, 1985.
Released March 7, 1985.

By the Common Carrier Bureau.

1. On July 22, 1981, Arnold Anderson (Anderson) filed an application for a construction permit to establish an additional two-way facility to operate on frequency 152.18 MHz at Giddings, Texas. The application was accepted for filing by Public Notice of August 5, 1981. Bryan Industrial Communications, Inc. (Bryan) filed an application on September 25, 1981, for a construction permit to establish an additional two-way facility near Brenham, Texas, to operate on frequency 152.18 MHz. No pleadings have been filed.

2. After careful examination, we find the applicants to be legally, technically, and otherwise qualified to construct and operate the proposed facilities. We further find that the proposals of Anderson and Bryan to use the same frequency, 152.18 MHz, in the same geographical area are electrically mutually exclusive. Since the application of Arnold Anderson was filed prior to August 1981, these applications are not subject to lottery selection;[1] therefore, a comparative hearing will be held to determine which applicant would best serve the public interest.

3. Accordingly, it is ordered , That the applications of Arnold Anderson (File No. 22491-CD-P-4-81) and Bryan Industrial Electronics, Inc. (File No. 23182-CD-P-4-81) are designated for hearing in a consolidated proceeding pursuant to Section 309(e) of the Communications Act of 1934, as amended, upon the following issues:

(a) To determine on a comparative basis, the nature and extent of service proposed by each appliant, including the rates, charges, maintenance, personnel, practices, classifications, regulations, and facilities pertaining thereto;

(b) To determine on a comparative basis, the areas and populations that each applicant will serve within the prospective interference-free area within the 37 dBu contours,[2] based upon the standards set forth in § 22.504(a) of the Commission's Rules,[3] and to determine and compare the relative demand for the proposed services in said areas; and

(c) To determine, in light of the evidence adduced pursuant to the foregoing issues, what dispositon of the referenced applications would best serve the public interest, convenience, and necessity.

4. It is further ordered, that the hearing shall be held at a time and place and before an Administrative Law Judge to be specified in a subsequent Order.

5. It is further ordered, That the Chief, Common Carrier Bureau, is made a party to the proceeding.

6. It is further ordered, That the applicants may file written notices of apperance under Section 1.221 of the Commission's Rule within 20 days of the release date of this Order.

7. The Secretary shall cause a copy of this order to be published in the **Federal Register.**

Michael Deuel Sullivan,

Chief, Mobile Services Division Common Carrier Bureau.

[FR Doc. 85-5728 Filed 3-8-85; 8:45 am]

BILLING CODE 6712-01-M

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[1] *See,* Second Report and Order, Gen. Docket 81-768, released May 27, 1983, 91 FCC 2d 911, para. 129.

[2] For the purpose of this proceeding, the interference-free area is defined as the area within the 37 dBu contour as calculated from § 22.504, in which the ratio of desired-to-undesired signal is equal to or greater than R in FCC Report No. R-6404, equation 8.

[3] Section 22.504(a) of the Commission's rules and regulations describes a field strength contour of 37 decibles above one microvolt per meter as the limits of the reliable service area for base stations engaged in one-way communications service on frequencies in the 150 MHz band. Propagation data set forth in § 22.504(b) are the proper bases for establishing the location of service contours F(50,50) for the facilities involved in this proceeding. (The applicants should consult with the Bureau counsel with the goal of reaching joint technical exhibits.)

Charles Ray Shinn et al; Hearing Designation Order

In re applications of Charles Ray Shinn, (MM Docket No. 85-49) Grant Cotton, et. al, d/b/a Cotton Broadcasting Company, file No. BPCT-840820KG, The L Broadcasting Company, File No. BPCT-841004KF, Howard N. Lee and Henry Middleton, d/b/a Raleigh Community Broadcasting Co., Ltd, File No. BPCT-841005KR, P. Michael Shanley and Josie Montgomery, d/b/a Brahman Communications, File No. BPCT-841005KS, For Construction Permit for New Television Station Raleigh, North Carolina, File No. BPCT-841005LE.

Adopted: February 21, 1985
Released: March 8, 1985

By the Chief, Video Services Division:

1. The Commission, by the Cheif, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications for authority to construct a new commercial television station on Channel 50, Raleigh, North Carolina.

2. On October 1, 1984, the Association of Maximum Service Telecasters, Inc. filed an informal objection to the application of Charles Ray Shinn on the grounds that his proposed transmitter site would be short-spaced 3 miles to WUNP–TV, Channel 36, Roanoke Rapids, North Carolina. Section 736.10 of the Commission's Rules requires a minimum separation of 60 miles between a station operating on Channel 50 and a station or city to which Channel 36 is allocated. Accordingly, an issue will be specified to determine whether circumstances exist warranting a waiver of the rule. In assessing the circumstances to determine whether a waiver is warranted, the Administrative Law Judge will consider the fact that other applicants have specified fully spaced sites.

3. No determination has been reached that the tower heights and locations proposed by L Broadcasting Company, Raleigh Community Broadcasting and Brahman Communications would not constitute a hazard to air navigation. Accordingly, an issue regarding this matter will be specified.

4. The effective radiated visual power, antenna height above average terrain and other technical data submitted by each applicant indicate that there would be a significant difference in the size of the area and population which would be served by each. Consequently, the areas and populations which would be within the predicted 64 dBu (Grade B) contour, together with the availability of other television service of Grade B or greater intensity, will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to any of the applicants.

5. Section V–C, Item 10, FCC Form 301, requires that an applicant submit the area and population within its predicted Grade B contour. The figures which Brahman Communications has submitted indicates that the area within its Grade B contour would be 1450 square miles, which would correspond to a Grade B distance of about 21.5 miles. Such a distance, however, does not agree with the figures set out in responses to Section V–C, Item 15, FCC Form 301, or to the contour map which has been furnished accordingly, Brahman Communications must, within 20 days of the date of release of this Order, submit a corrective amendment to the presiding Administrative Law Judge.

6. Section 73.3555(a)(3) of the Commission's Rules states that no license for a television broadcast station shall be granted to any party if such party directly or indirectly owns, operates, or controls or of more broadcast stations in the same service and the grant of such license will result in any overlap of the Grade B contours of the existing and proposed stations, computed in accordance with Section 73.684. Grant Cotton, a 51% general partner of Cotton Broadcasting Company, owns 70.2% of the stock of Family Television Corp., licensee of WLFL–TV, Raleigh, North Carolina. However, an application to assign the license (BALCT–841024KE) of WLFL–TV from Family Television Corp to S&F Communications Corporation was granted on December 21, 1984. The Commission has not been notified that the assignment has been consummated. Mr. Cotton has stated, in his application, that if Cotton Broadcasting is the successful applicant in this proceeding, he will divest himself of all interest in and connection with the licensee of Station WLFL–TV in Raleigh. If the assignment is consummated prior to the termination of this proceeding, the multiple ownership problem would, of course, be moot. Since there is no assurance that the assignment will be consummated, we will continue a grant of Cotton's application on divestiture of his interest in the license of WLFL–TV.

7. Except as indicated by the issues specified below, the applications are qualified to construct and operate as proposed. Since these applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant would serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

8. Accordingly, it is ordered, that pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine with respect to L Broadcasting Company, Raleigh Community Broadcasting and Brahman Communications, whether there is a reasonable possibility that the tower height and location proposed by each would constitute a hazard to air navigation.

2. To determine with respect to Charles Ray Shinn, whether the proposal is consistent with §73.610 of the Commission's rules and, if not, whether circumstances exist which would warrant a waiver of the rule.

3. To determine which of the proposals would, on a comparative basis, best serve the public interest.

4. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

9. It is further ordered, That, Brahman Communications shall submit an appropriate amendment as required by paragraph 5, *supra*, to the presiding Administrative Law Judge within 20 days of the release of this Order.

10. It is further ordered, That the Federal Aviation Administration is made a party respondent to this proceeding with respect to isssue 1.

11. It is further ordered, That, in the event of a grant of the application of Cotton Broadcasting Company and the assignment of the license of Station WLFL–TV From Family Television Corp. to S&F Communications Corporation has not been consummated, the grant shall be subject to the following condition:

Prior to the commencement of operation of the television station authorized herein, the permittee shall certify to the Commission that Grant Cotton has divested himself of all interest in and connection with the licensee of Station WLFL–TV, Raleigh North Carolina.

12. It is further ordered, That Association of Maximum Service Telecasters, Inc., is made a party respondent to this proceeding.

13. It is further ordered, That to avail themselves of the opportunity to be heard, the applicants and the parties respondent herein shall, pursuant to §1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

14. It is further ordered, That the applicants herein shall, purusant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by §73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 85–5727 Filed 3–8–85; 8:45 am]

BILLING CODE 6712–01–M

Jackson Company Broadcasting, Inc. and Jerry J. Collins; Hearing Designation Order

In re applications of Jackson Company Broadcasting, Inc. KJCB, Lafayette, Louisiana, Has: 770 kHz, 0.5 kW, 1 kW–LS, DA–N, U Req: 770 kHz, 0.5 kW, 5 kW–LS, DA–2, U MM Docket No. 85–43, File No. BP–830902AD. Jerry J. Collins, Lynn Haven, Florida, Req: 770 kHz, 0.5 kW, 5 kW–LS, DA–2, U File No. BP–831031AQ for construction permit.

Adopted: February 15, 1985.
Released: March 7, 1985.

By the Chief, Mass Media Bureau:

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has under consideration the above-captioned applications for a new broadcast station and for changes in the facilities of an existing station.

2. Except as indicated by the issues specified below the applicants are qualified to construct and operate as proposed.[1] However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding. As the proposals are for different communities, we will specify issues to determine pursuant to section 307(b) of the Communications Act of 1934, as amended, which proposals would better provide a fair, efficient and equitable distribution of radio service. We will also specify a contingent comparative issue, should such an evaluation of the proposals prove warranted.

3. Accordingly, it is ordered, That pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine: (a) the areas and populations which would receive primary aural service from the proposals and the availability of other primary service to such areas and populations, and (b), in light thereof and pursuant to section 307(b) of the Communications Act of 1934, as amended, which of the proposals would better provide a fair, efficient and equitable distribution of radio service.

2. To determine in the event that a choice between the applicants should not be based solely on considerations relating to section 307(b), which of the proposals would on a comparative basis, better serve the public interest..

3. To determine in a light of the evidence adduced pursuant to the foregoing issues, which of the applications, if any, should be granted.

4. It is further ordered, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M Street, NW., Washington, D.C 20554.

5. It is further ordered, That to avail themselves of the opportunity to be heard and pursuant to § 1.221(c) of the Commission's rules, the parties shall within 20 days of the mailing of this Order, in person or by aattorney, file with the Commission, in triplicate, written appearances stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

6. It is further ordered, That pursuant to section 311(a) of the communications Act of 1934, as amended, and § 73.3594 of the Commission's rules, the applicants shall give notice of the hearing as prescribed in the rules, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the rules.

Federal Communications Commission.

W. Jan Gay,

Assistant Chief, Audio Services Division Mass Media Bureau.

[FR Doc. 85–5730 Filed 3–8–85; 8:45 am]

BILLING CODE 6712–01–M

[1] The facilities specified herein are subject to modification, suspension or termination without right of hearing, if found by the Commission to be necessary in order to conform to the Final Acts of the ITU Administrative Conference on Medium Frequency Broadcasting in Region 2, Rio de Janerio 1981, asnd to bilateral and other multilateral agreements between the United States and other countries.

Josie Moore and Felice-Tec; Hearing Designation Order

In re applications of Josie Moore, MM Docket No. 85–56, File No. BPCT–840924KE, Felice-Tec, File No. BPCT–841010KM, for Construction Permit for a New Television Station Big Bear Lake, California.

Adopted: February 25, 1985.
Released: March 7, 1985.

By the Chief, Video Services Division:

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications for authority to construct a new commercial television station on Channel 59, Big Bear Lake, California.

2. The effective radiated visual power, antenna height above average terrain and other technical data submitted by the applicants indicate that there would be a significant difference in the size of the area and population that each proposes to serve. Consequently, the areas and populations which would be within the predicted 64 dBu (Grade B) contours, together with the availability of other television service of Grade B or greater intensity, will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to either of the applicants.

3. No determination has been reached that the tower height and location proposed by each of the applicants [1] would not constitute a hazard to air navigation. Accordingly, an issue regarding this matter will be specified.

4. Josie Moore's proposed tower is to be located 1.93 miles from the directional tower of AM station KBBV, Big Bear Lake, Califorinia. Because of the proximity of the proposed tower to KBBV, grant of a construction permit to Moore will be conditioned to ensure that KBBV's radiation pattern is not adversely affected by the construction of the proposed station.

5. Section V–C, Item 11, FCC Form 301 inquires whether the city grade contour completely encompasses the principal community. Ms. Moore answered negatively to Item 11; however, she answered affirmatively in the Engineering Statement submitted as an exhibit. Since we can not independently determine from the information before us whether principle city coverage will be provided, Ms. Moore must, within 20 days after this Order is released, submit a clarification to the presiding Administrative Law Judge.

6. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since these applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant would serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

7. Accordingly, it is ordered, That pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

[1] The Commission is not in receipt of FAA's determination for the tower proposed by Josie Moore.

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1. To determine whether there is a reasonable possibility that the tower height and location proposed by each of the applicants would constitute a hazard to air navigation.

2. To determine which of the proposals would, on a comparative basis, better serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

8. It is further ordered, That, in the event of a grant of Josie Moore's application, the construction permit shall contain the following condition:

"Prior to construction of the tower authorized herein, permittee shall notify AM Station KBBV, Big Bear Lake, California, so that, if necessary, the AM station may determine operating power by the indirect method and request temporary authority from the Commission in Washington, D.C. to operate with parameters at variance in order to maintain monitoring point field strengths within authorized limits. Permittee shall be responsible for the installation and continued maintenance of detuning apparatus necessary to prevent adverse effects upon the radiation pattern of the AM station. Both prior to construction of the tower and subsequent to the installation of all appurtenances thereon, a partial proof of performance, as defined by § 73.154(a) of the Commission's rules, shall be conducted to establish that the AM array has not been adversely affected and, prior to or simultaneous with the filing of the application for license to cover this permit, the results submitted to the Commission."

9. It is further ordered, that Josie Moore shall submit an appropriate amendment as required by paragraph 5, *supra*, to the presiding Administrative Law Judge within 20 days of the release of this Order.

10. It is further ordered, that the Federal Aviation Administration is made a party respondent to this proceeding with respect to issue 1.

11. It is further ordered, that to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commissions' Rules, in person or by attorney, within 20 days of the mailing of this order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

12. It is further ordered, that the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 85-5724 Filed 3-8-85; 8:45 am]

BILLING CODE 6712-01-M

The Great American Broadcasting Corp. and Dorsey E. Newman; Hearing Designation Order

In re applications of The Great American Broadcasting Corp. MM Docket No. 85-47, File No. BP-830912AC, Has: 1360 kHz, 0.5 kW, DA-D Req: 730 kHz, 1 kW, D. Dorsey E. Newman, WHRT, Hartselle, Alabama File No. BP-831103AD, Has: 860 kHz, 0.25 kW, D Req: 730 kHz, 0.5 kW, D, For construction permit.

Adopted: February 15, 1985.
Released: March 7, 1985.

By the Chief, Mass Media Bureau:

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has under consideration the above-captioned mutually exclusive applications to modify existing AM broadcast stations.

2. The WHRT application indicates that the proposal would present no change in the existing antenna and ground system. However, WHRT's licensed authorization shows the height of the tower to be 250 feet, whereas, its proposal shows a tower height of 224 feet. The applicant must, therefore, file an amendment as indicated below, to show the correct tower height in order to be consistent with its previously licensed authorizations.

3. Except as indicated by the issues specified below, all applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding. As the proposals are for different communities, we will specify an issue to determine pursuant to Section 307(b) of the Communications Act of 1934, as amended, which proposal would better provide a fair, efficient and equitable distribution of radio service. We will also specify a contingent comparative issue, should such an evaluation of the proposals prove warranted.

4. Accordingly, it is ordered, That pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order upon the following issues:

1. To determine: (a) the areas and populations which would receive primary aural service from the proposals and the availability of other primary service to such areas and populations, and (b) in light thereof and pursuant to section 307(b) of the Communications Act of 1934, as amended, which of the proposals would better provide a fair, efficient and equitable distribution of radio service.

2. To determine, in the event it be concluded that a choice between the applicants should not be based solely on considerations relating to section 307(b), which of the proposals would on a comparative basis better serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

4. It is further ordered, that Dorsey E. Newman shall file the amendment described in paragraph 2 above within 30 days of the release of this Order.

5. It is further order, that in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M Street, N.W., Washington, D.C. 20554.

6. It is further ordered, that to avail themselves of the opportunity to be heard and pursuant to Section 1.221(c) of the Commission's Rules, the applicants shall within 20 days of the mailing of this Order, in person or by attorney, file with the Commission in triplicate written appearances stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

7. It is further ordered, That pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, the applicants shall give notice of the hearing as prescribed in the rule, and shall advise the Commission of the publication of the notice as required by § 73.3594(g) of the rules.

Federal Communications Commission.

W. Jan Gay,

Assistant Chief Audio Services Division Mass Media Bureau.

[FR Doc. 85-5729 Filed 3-8-85; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

Title of Information Collection: Consolidated Reports of Income and Condition (Savings Banks) (OMB No. 3064–0054).

Background: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a form SF–83, "Request for OMB Review," for the information collection system identified above.

ADDRESS: Written comments regarding the submission should be addressed to Judy McIntosh, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 and to John Keiper, Office of the Executive Secretary, Federal Deposit Insurance Corporation, Washington, D.C. 20429.

FOR FURTHER INFORMATION CONTACT: Requests for a copy of the submission should be sent to John Keiper, Office of the Executive Secretary, Federal Deposit Insurance Corporation, Washington, D.C. 20429, telephone (202) 389–4351.

SUMMARY: The FDIC is submitting for OMB approval major revisions to the Consolidated Reports of Income and Condition (Call Reports) filed by insured state-chartered savings banks. The revisions are based on those proposed for public comment in June 1984 (49 FR 25679, June 22, 1984). Most of the changes would be implemented beginning with the March 1986 call date. However, the new Schedule RC-J (Repricing Opportunities for Selected Balance Sheet Categories) would be implemented with the December 1985 call date. It is estimated that the average savings bank's r porting burden would be increased by 9.3 hours per calendar quarter as a result of the revisions. The revised reporting requirements will assist the FDIC in its efforts to more effectively and efficiently monitor the financial condition and performance of savings banks.

Dated: March 4, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85–5732 Filed 3–8–85; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Privacy Act of 1974; Proposed New Routine Uses to Existing Systems of Records

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed routine uses to existing systems of records.

SUMMARY: The purpose of this notice is to add new routine uses to existing systems of records entitled, "FEMA/NPP–1, National Defense Executive Reserve System," "FEMA/GC–1, Claims (litigation)," and "FEMA/GC–2, FEMA Enforcement (Compliance)."

The Federal Emergency Management Agency maintains a master list of all National Defense Executive Reservists assigned to the various Federal agencies throughout the government. One of the proposed routines uses to "FEMA/NPP–1, National Defense Executive Reserve System" would permit the Federal Emergency Management Agency to forward copies of the master list of reservists assigned to a particular department/agency to such department/agency for the purpose of updating the information and deleting individuals who are no longer involved in the program or adding individuals who have joined the program since the information was entered into the system. The other proposed routine use would permit the Federal Emergency Management Agency to provide the names and addresses of National Defense Executive Reserve reservists to the Association of the National Defense Executive Reserve and the National Defense Executive Reserve Conference Association to facilitate training and relevant information dissemination efforts for reservists included in the National Defense Executive Reserve program.

The routine use currently published for "FEMA/GC–1, Claims (litigation)" and "FEMA/GC–2, FEMA Enforcement (Compliance)" to permit disclosure of information to FEMA employees responsible for processing allegations, investigating the allegations, making recommendations concerning the validity of the allegation and making decisions as to what action, if any, should be taken against the individual is being deleted. Section (b)(1) under Conditions of Disclosure of the Privacy Act of 1974, as amended, provides disclosure to those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties and the above-referenced routine use is not necessary and is being deleted. One new routine use is being proposed for both the FEMA/GC–1 and FEMA/GC–2 systems of records to permit disclosure of information to former FEMA employees, former servicing company employees, contractors, subcontractors, or any expert whose opinion is sought in connection with the processing, investigation, approval or denial of any claim(s) or in the prosecution or defense of litigation or preparation for litigation before a Court or a proceeding before an adjudicative body before which FEMA is authorized to appear. One routine use published on December 13, 1984, (49 FR 48612) is being revised to include disclosure to private attorney(s) handling or considering handling a ratified subrogation action and to include an adjudicative body in the event a proceeding before it involves: (a) The Federal Emergency Management Agency (FEMA), any components of FEMA, or any employee of FEMA in his or her official capacity; (b) any employee of FEMA in his or her individual capacity where the Department of Justice has agreed to represent such employee; (c) the United States where FEMA determines that the claim, if successful, is likely to affect it, its operations, or any of its components; or (d) an insured or former insured of FEMA or any of the programs which FEMA administers. FEMA may disclose such records as it deems relevant or necessary to the Department of Justice, private attorney(s) handling a subrogation action, and/or a Court or adjudicative body when it has been determined that any of the above-referenced has an interest in the litigation or the proceeding and such records are determined by FEMA to be arguably relevant thereto and such disclosure is compatible with the purpose for which the records were collected. The complete language of the current routine use may be reviewed in the December 13, 1984, **Federal Register** issue on pages 48612–48613. We are, however, publishing the entire routine use provisions of FEMA/GC–1 and FEMA/GC–2 which includes the proposed revised section relating to litigation before a Court or a proceeding before an adjudicative body.

EFFECTIVE DATE: The proposed routine uses and revised routine uses will

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become effective, without further notice, on April 10, 1985, unless otherwise dictated otherwise.

FOR FURTHER INFORMATION CONTACT: Linda M. Kenner, FOIA/Privacy Specialist, (202) 287-0313.

SUPPLEMENTARY INFORMATION: Under the Privacy Act of 1974, as amended by the Congressional Reports Elimination Act of 1982 (Pub. L. 97-375), agencies are required to publish a notice of the systems of records they maintain that are subject to the Act only when the agency is establishing a new system or when it substantively alters an existing system. A substantive change to an existing system is one which would also require a "Report on New Systems" and is described in the Office of Management and Budget's Circular No. A-108, Transmittal Memorandum No. 1 and 3. Thus, a change to a system notice that does not require such a report need only be described in a **Federal Register** notice, without the necessity of publishing the complete text of the notice.

On November 26, 1982, (47 FR 53493), the Federal Emergency Management Agency published the complete text of the system of records entitled, "FEMA/NPP-1, National Defense Executive Reserve System." On October 7, 1981 (46 FR 49471), the Federal Emergency Management Agency published the complete text of the system of records entitled, "FEMA/GC-1, Claims (litigation)." Revisions to this system of records were published on October 25, 1983 (48 FR 49376) and December 13, 1984 (49 FR 48612). The complete text of the system of records entitled, "FEMA/GC-2, FEMA Enforcement (Compliance)" was published on October 7, 1981 (46 FR 49742), and revisions were published on October 25, 1983 (48 FR 49376), and December 13, 1984 (49 FR 48613).

Dated: March 4, 1985.

James L. Holton,

Director, Office of Public Affairs, Federal Emergency Management Agency.

FEMA/NPP-1

SYSTEM NAME:

National Defense Executive Reserve System.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A master list of National Defense Executive Reserve reservists assigned to a particular department/agency may be made available to such department/agency for the purpose of updating the information and deleting individuals who are no longer involved in the program or including individuals who have joined the program since the information was entered into the system; names and addresses may be made available to the Association of the National Defense Executive Reserve and the National Defense Executive Reserve Conference Association to facilitate training and relevant information dissemination efforts for reservists in the National Defense Executive Reserve program.

Routine uses may include Nos. 1, 2, 3, 5 and 8 of Appendix A.

* * * * *

FEMA/GC-1

SYSTEM NAME:

Claims (litigation).

* * * * *

Delete the current routine use section and revise to read:

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To those former FEMA employees, former servicing company employees, contractors, subcontractors, or any expert whose opinion is sought in connecton with the processing, investigation, approval or denial of any claim(s) or in the prosecution or defense of litigation or preparation for litigation before a Court or a proceeding before an adjudicative body before which FEMA is authorized to appear; to other investigative or similar authorities responsible for investigating or making recommendations on complaints or claims, whether or not a part of FEMA or some other agency; to decisionmaking authorities outside of FEMA when required by law, regulation or order; to the Department of Justice, private attorney(s) handling or considering handling a ratified subrogation action, and/or a Court or adjudicative body in the event a proceeding before it involves: (a) The Federal Emergency Management Agency (FEMA), any component of FEMA, or any employee of FEMA in his or her official capacity; (b) any employee of FEMA in his or her individual capacity where the Department of Justice has agreed to represent such employee; (c) the United States where FEMA determines that the claim, if successful, is likely to affect it, its operations, or any of its components; or (d) an insured or former insured of FEMA or any of the programs which FEMA administers. FEMA may disclose such records as it deems relevant or necessary to the Department of Justice, private attorney(s) handling or considering handling a ratified subrogation action, and/or a Court or adjudicative body when it has determined that any of the above-referenced has an interest in the litigation or the proceeding and such records are determined by FEMA to be arguably relevant thereto and such disclosure is compatible with the purpose for which the records were collected.

Additional routine uses may include Nos. 2, 3, 5, 6 and 8 of Appendix A.

* * * * *

FEMA/GC-2

SYSTEM NAME:

FEMA Enforcement (Compliance).

* * * * *

Delete the current routine use section and revise to read:

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To other agencies charged with investigative responsibilities and enforcement actions of any nature including prosecution for violations of criminal laws; to employers, whether Federal, State or local agencies, whose employee is involved; to State and local investigative authorities; to those former FEMA employees, former servicing company employees, contractors, subcontractors, or any expert whose opinion is sought in connection with the processing, investigation, approval or denial of any claim(s) or in the prosecution or defense of litigation or preparation for litigation before a Court or a proceeding before an adjudicative body before which FEMA is authorized to appear; to the Department of Justice, private attorney(s) handling or considering handling a ratified subrogation action, and/or a Court or adjudicative body in the event a proceeding before it involves: (a) The Federal Emergency Management Agency (FEMA), any component of FEMA, or any employee of FEMA in his or her official capacity; (b) any employee of FEMA in his or her individual capacity where the Department of Justice has agreed to represent such employee; (c) the United States where FEMA determines that the claim, if successful, is likely to affect it, its operations, or any of its components; or (d) an insured or former insured of FEMA or any of the programs which FEMA administers. FEMA may disclosure such records as it deems relevant or necessary to the Department of Justice, private attorney(s) handling or considering handling a ratified subrogation action, and/or a Court or

adjudicative body when it has determined that any of the above-referenced has an interest in the litigation or the proceeding and such records are determined by FEMA to be arguably relevant thereto and such disclosure is compatible with the purpose for which the records were collected.

Additional routine uses may include Nos. 1, 2, 3, 4, 5, 6 and 8 of the Appendix A.

* * * * *

[FR Doc. 85-5708 Filed 3-8-85; 8:45 am]
BILLING CODE 6718-01-M

FEDERAL RESERVE SYSTEM

American Discount Bankholding Corp. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, idenifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 1, 1985.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *American Discount Bankholding Corporation*, New York, New York; to become a bank holding company by acquiring 100 percent of the voting shares of Israel Discount Bank of New York, New York, New York.

2. *Canandaigua National Corporation*, Canandaigua, New York, to become a bank holding company by acquiring 100 percent of the voting shares of The Canandaigua National Bank and Trust Company, Canandaigua, New York.

B. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia Pennsylvania 19105:

1. *Community Independent Bank, Inc.*, Bernville, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of Bernville Bank, N.A., Bernville, Pennsylvania

C. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Hartsville Bancshares, Inc.*, Hartsville, South Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of The Bank of Hartsville, Hartsville, South Carolina.

D. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *First Santa Rosa Holding Corporation*, Milton, Florida; to become a bank holding company by acquiring 80 percent of the voting shares of First National Bank of Santa Rosa, Milton, Florida.

E. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locus Street, St. Louis, Missouri 63166:

1. *Union Bancshares of Benton, Inc.*, Benton, Arkansas; to become a bank holding company by acquiring at least 80 percent of the voting shares of The Union Bank of Benton, Benton, Arkansas.

F. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Cattail Bancshares, Inc.*, Atwater Minnesota; to become a bank holding company by acquiring 99 percent of the voting shares of Atwater State Bank, Atwater, Minnesota, and 97.87 percent of the voting shares of State Bank of Kimball, Kimball, Minnesota.

G. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Cross Plains Bankshares, Inc.*, Cross Plans, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Citizens State Bank, Cross Plains, Texas.

Board of Governors of the Federal Reserve system, March 5, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-5666, Filed 3-8-85; 8:45 a.m.]
BILLING CODE 6210-01-M

Marshall & Ilsley Corp.; Application To Engage de Novo in Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)), to engage *de novo* through a national bank subsidiary in deposit-taking, including the taking of demand deposits, and other activities specified below. The proposed subsidiary will not engage in commercial lending transactions as defined in Regulation Y. The Board has determined by order that such activities are closely related to banking. *U.S. Trust Company* (70 Federal Reserve Bulletin 371 (1984)). Although the Board is publishing notice of this application will, under established Board policy the record of the application not be regarded as complete and the Board will not act on the application unless and until a preliminary charter for the proposed national bank subsidiary has been submitted to the Board.

The application is availabale for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any requests for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Federal Reserve Bank or the office of the Board of Governors not later than April 1, 1985.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Marshall & Ilsley Corporation*, Milwaukee, Wisconsin; to engage through a national bank subsidiary, Marshall & Ilsley Trust Company of Florida, N.A., Naples, Florida, in making of loans to individuals for personal family, household, or charitable purposes and to accept time deposits and demand deposits from the general public. These activities would be conducted in Collier County, Florida.

Board of Governors of the Federal Reserve System, March 5, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-5667 Filed 3-8-85; 8:45 am]

BILLING CODE 6210-01-M

Texas Commerce Bancshares, Inc., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have failed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 29, 1985.

A. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Texas Commerce Bancshares, Inc.*, Houston, Texas; to engage *de novo* through its subsidiary, Texas Commerce Information Systems, Inc., Houston, Texas, in providing data processing and data transmission facilities to non-affiliated financial institutions.

B. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *GCS Bancorp*, Scottsdale, Arizona; to engage *de novo* through its subsidiary, GCS Mortgage Corporation, Scottsdale, Arizona, in making, acquiring, and servicing loans or other extension of credit for its own account or for the accounts of others such as would be made by a mortgage company.

Board of Governors of the Federal Reserve System, March 5, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-5668 Filed 3-8-85; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

[GSA Bulletin FPMR G-166]

Government-Wide Motor Vehicle Rental Program

AGENCY: Office of Federal Supply and Services, GSA.

ACTION: GSA Bulletin.

SUMMARY: This bulletin announces an enhanced Government-wide motor vehicle rental program.

EFFECTIVE DATE: March 1, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. John Whalen, Travel and Transportation Services Division (FTE), FTS 557-1264, (703) 557-1264.

Dated: February 28, 1985.

By delegation of the Assistant Administrator.

James J. Grady, Jr.

Director of Policy and Agency Assistance.

GSA Bulletin FPMR G-166—Transportation and Motor Vehicles

To: Heads of Federal agencies

Subject: Government-wide motor vehicle rental program

1. *Purpose.* This bulletin announces an enhanced Government-wide motor vehicle short-term rental program, in support of Government employees on official temporary duty (TDY) travel and for local agency use (non-TDY).

2. *Expiration date.* This bulletin contains material of a continuing nature and will remain in effect until superseded or canceled.

3. *Background.* The General Services Adminstration (GSA) will no longer contract for vehicle rental services when the current Federal Supply Schedule FSC 751, Motor Vehicle Rental Without Driver, expires February 28, 1985. Instead, Federal departments and agencies are advised that they should use a number of rental car companies that have agreed to make special flat daily rates with unlimited mileage (mileage rates may apply in some instances), as negotiated by the Military Traffic Management Command, available to all Government employees. GSA has taken this action because of frequent concerns raised by agencies relative to the level of services provided by GSA vehicle rental contractors. This enhanced program should be considered the first source of supply for rental vehicles. Utilization of this program will ensure an enhanced level of service at little or no increase in costs or perhaps even a decrease in costs, depending on employee driving needs and distance to be-traveled.

4. *Program summary.*

a. *Vehicle rental rates.* The vehicle rental rates generally are flat daily rates with unlimited free mileage (mileage rates may apply in some cases) with the Government employee paying for the fuel used. The cost of fuel to the employee is reimbursable. For vehicle rentals of a week or more, special rates may be available from certain rental car companies.

b. *Eligibility for rates.* Government travel orders, Government identification (ID) cards or car rental company ID cards will be accepted as proof of eligibility for the Government vehicle rental rates.

c. *Reservations and payments.*

(1) *TDY use.* Employees should make reservations through GSA's travel management centers (TMC's) or directly with the car rental company. Payments may be made using cash, a personal credit card or the Government Diners Club charge card. If the traveler does not have a credit card or a Government Diners Club charge card, travel orders normally will be accepted instead of the cash deposit usually required by rental car companies. However, the traveler should confirm the cash deposit policy with the local car rental company at the time the reservation is made.

(2) *Local agency use (non-TDY).* Reservations, billing and payment will

be handled by the nearest GSA Fleet Management Center (see attachment A). In the case of local use (non-TDY), charges for damages to rental vehicles will be billed directly to the employee's agency (see paragraph e, below).

d. *Availability.* Generally, participating vehicle rental companies have facilities inside most major airports or at convenient downtown city locations. Employees should verify the availability of Government rates when making vehicle reservations as all locations of the vehicle rental companies are not participating in the rate agreement program. In locations where the participating rental car companies cannot satisfy local agency (non-TDY) vehicle requirements, the nearest GSA Interagency Fleet Management Center (see attachment A) may establish alternative sources of service.

e. *Insurance.* Vehicle rental rates generally do not include full collision damage coverage. If an employee is responsible for damage to a rental vehicle, the Federal Tort Claims Act may be used as authority for reimbursement of such charges when damage is incurred in the conduct of official business. Therefore, collision damage waiver charges, if accepted by the employee, will not be reimbursed.

f. *Sales tax.* Any sales tax added to the vehicle rental charges must be paid by the employee, unless arrangements have been made to bill the agency directly, or the GSA Interagency Fleet Management Center (in the case of non-TDY travel). The sales tax is reimbursable to the employee.

g. *Additional information and procedures.*

(1) Additional information and procedures including the names, rental rates and telephone numbers of the participating vehicle rental companies are published in the "Ground Transportation Information" section of the Federal Travel Directory (FTD). The names, locations, and telephone numbers of GSA's TMC's are also listed in the FTD. The FTD, which is issued monthly by GSA, may be obtained by Government employees through their appropriate agency headquarters administrative offices. Single copies may also be obtained from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. Telephone Number (202) 783–3238. (GPO Stock Number 022–005–80002–9).

(2) Questions concerning this vehicle rental program should be directed to Mr. John Whalen, Travel and Transportation Services Division (FTE), Office of Transportation, FTS 557–1264/(703) 557–1264.

6. *Cancellation.* GSA Bulletin FPMR G–164 is canceled effective March 1, 1985.

Attachment A

GSA region and State jurisdiction	Fleet management center
1—Boston, MA: CT MA ME NH RI VT.	Waltham, MA, FTS 223–1134, (617) 223–1134.
2—New York, NY: NJ NY PR VI.	Brooklyn, NY, FTS 663–5114, (212) 965–5114.
	Albany, NY, FTS 562–4544, (518) 472–4544.
	Buffalo, NY, FTS 437–4596, (716) 846–4506.
	Bele Meade, NJ, FTS 342–5396, (201) 359–4043.
	Atlantic City, NJ, FTS 482–4432, (609) 484–4432.
	San Juan, PR, FTS (809) 753–4371, (809) 753–4371.
3—Phila., PA: DE MD (except near DC) PA VA WVA.	Pittsburgh, PA, FTS 722–2687 (412) 644–2687.
Philadelphia, PA, FTS 596–4380, (215) 596–4380.	
	Richmond, VA, FTS 925–2511, (804) 771–2511.
	Norfolk, VA, FTS 827–6356, (804) 441–6356.
	Huntington, WV, FTS 924–5584, (304) 529–5584.
4—Atlanta, GA: AL FL GA KY MS NC SC TN.	Atlanta, GA, FTS 242–3348 (404) 221–3348.
	Nashville, TN, FTS 852–5235, (615) 251–5235.
	Raleigh, NC, FTS 672–4176, (919) 755–4176.
	Mobile, AL, FTS 537–2068, (205) 690–2068.
	Bay St. Louis MS, FTS 494–2064, (601) 688–2064.
	Louisville, KY, FTS 352–5131, (502) 582–5131.
	Miami, FL, FTS 350–6884, (305) 350–6884.
	Kennedy Space Center, FL, FTS 823–4902, (305) 867–4902.
5—Chicago, IL: IL IN MI MN OH WI.	Chicago, IL, FTS 353–6158 (312) 353–6158.
	Detroit, MI, FTS 226–3193, (313) 226–3193.
	Dayton, OH, FTS 774–2993, (513) 225–2993.
	Minneapolis/St. Paul, MN, FTS 725–4425, (612) 725–4425.
6—Kansas City, MO: IA KN MO NE.	Kansas City, MO, FTS 926–7551 (816) 926–7551.
	St. Louis, MO, FTS 273–3023, (314) 273–3023.
	Omaha, NE, FTS 864–4755, (402) 221–4755.
7—Fort Worth, TX: AK LA NM OK TS.	Fort Worth, TX, FTS 334–3135 (817) 334–3135.
	Houston, TX, FTS 526–4892, (713) 229–2892.
	San Antonio, TX, FTS 730–5540, (512) 229–5540.
	El Paso TX, FTS 572–7542, (915) 543–7542.
	New Orleans, LA, FTS 682–6671, (504) 589–6671.
	Oklahoma City, OK, FTS 736–4436, (405) 231–4436.
	Little Rock, AK, FTS 740–5514, (501) 378–5514.
	Albuquerque, NM, FTS 474–2303, (505) 766–2303.
	Gallup, NM, FTS 571–9332, (505) 863–9571.
	Farmington, NM, FTS 572–6251, (505) 325–4574.
8—Denver, CO: CO MT ND SD UT WY.	Denver, CO, FTS 776–7963, (303) 236–7963.
	Salt Lake City, UT, FTS 588–5266, (801) 524–5266.
	Casper, WY FTS 328–5238, (307) 261–5238.
	Billings, MT, FTS 585–6279, (406) 657–6279.
	Bismarck, ND, FTS 783–4318, (701) 255–4011, x4318.
9—San Francisco, CA: AZ CA NV HI.	San Francisco, CA, FTS 556–1305 (415) 556–1035.
	Los Angeles, CA, FTS 985–6525, (213) 267–6525.
	San Diego, CA, FTS 895–5657, (619) 293–5657.
	Sacramento, CA, FTS 448–2421, (916) 440–2421.
	Santa Maria, CA, FTS 765–3183, (805) 865–3183.
	Las Vegas, NV, FTS 598–6388, (702) 385–6388.
	Phoenix, AZ, FTS 261–5110, (602) 241–5110.
	Holbrook, AZ, FTS (602) 524–3973.
	Honolulu, HI, FTS (808) 546–7193, (808) 546–7193.
10—Auburn, WA: AK ID OR WA.	Seattle, WA, FTS 399–3426 (206) 764–3426.
	Santa Maria, WA, FTS 422–7651, (206) 696–7651.
	Spokane, WA, FTS 439–2504, (509) 456–2504.
	Boise, ID, FTS 554–1264, (208) 334–1264.
	Medford, OR, FTS 424–4284, (503) 776–4284.
	Anchorage, AK, FTS (907) 271–4007, (907) 271–4007.
	Fairbanks, AK, FTS (907) 456–0221, (907) 456–0221.
National Capital Region: Wash, DC Nearby MD and VA.	Washington, DC FTS 472–2633 (202) 472–2633.

[FR Doc. 85–5764 Filed 3–8–85; 8:45 am]

BILLING CODE 6820–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Twentieth National Immunization Conference; Meeting

A National Immunization Conference will be held May 6–9, 1985, at the Sheraton Park central, Dallas, Texas, telephone (214) 385–3000. The Conference is sponsored by the Centers for Disease Control (CDC).

Federal, State, and local public health officials, as well as representatives from the private sector who are involved in the organization and implementation of immunization activity will participate. The meeting is open to the public, limited only by the space available

Registration will begin at 8:00 a.m. on Monday, May 6, 1985, and the program is scheduled to begin at 8:30 a.m., Tuesday, May 7, at the Sheraton Park Central.

All inquiries should be sent to: Mr. Ronald D. Teske, Chief, Program Support Section, Division of immunization, Center for Prevention Services, Centers for Disease Control, Atlanta, Georgia 30333, Telephones:

FTS: 236–1836, Commercial: (404) 329–1836.

Dated: March 5, 1985.

Elvin R. Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 85–5661 Filed 3–8–85; 8:45 am]

BILLING CODE 4160–18–M

Future Research in Tuberculosis—Prospects and Priorities for Eradication of the Disease; Meeting

The following conference will be cosponsored by the Center for Disease Control, the National Institutes of Health, the American Thoracic Society, and the Pittsfield (Massachusetts) Antituberculosis Association and will be open to the public for observation and participation, limited only by the space available.

Future Research in Tuberculosis—Prospects and Priorities for Eradication of the Disease

Dates: June 5–7, 1985.

Time: Begins 8:30 a.m., June 5. Adjourns at 12:00 Noon, June 7.

Place: Hilton Inn, Berkshire Common, South Street, Pittsfield, Massachusetts 01201.

Purpose: To identify priority areas of research which might lead ot the accelerated eradication of tuberculosis. A written report will be prepared for the sponsoring agencies and for publication in scientific journals.

Additional information may be obtained from: Dixie E. Snider, Jr., M.D., Chief, Research and Development Branch, Division of Tubercolosis Control, Center for Prevention Services, Centers for Disease Control, Atlanta, Georgia 30333, Telephone: FTS: 236–2523, Commercial: (404) 329–3223.

Dated: March 5, 1985.

Elvin R. Hilyer,

Associate Director for Policy Coordination, Center for Disease Control.

[FR Doc. 85–5662 Filed 3–8–85; 8:45 am]

BILLING CODE 4160–18–M

Surveillance Systems, Diabetic Sentinel Health Events; Meetings

The Centers for Disease Control will convene the following meeting in Atlanta, Georgia, of a work group to discuss the establishment of surveillance systems for death among persons with diabetes under age 45 and preinatal death among offspring of women with diabetes. The meeting will be open to the public, limited only by space available.

Surveillance Systems—Diabetic Sentinel Health Events

Dates: March 14–15, 1985.

Time: 8:00 a.m.–4:30 p.m., Thursday, March 14, 8:00 a.m.–12:00 Noon, Friday, March 15.

Place: Rooms 314 and 316, 1600–B Tullie Circle, N.E., Atlanta, Georgia 30333.

Additional information may be obtained from: Diane Bild, M.D., M.P.H., Medical Epidemiologist, or Stephen Sepe, M.P.H., Epidemiologist, Division of Diabetes Control, Center for Prevention Services, Centers for Disease Control, Atlanta, Georgia 30333, Telephones: FTS: 236–1844, Commercial: (404) 329–1844.

Dated: March 5, 1985.

Elvin R. Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 85–5663 Filed 3–8–85; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

[Docket No. 85N–0018]

Studies on Comparative Drug Metabolism in Fish and Other Aquatic Animals Used for Food; Cooperative Agreements; Availability of Funds

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA), Center for Veterinary Medicine, is announcing the availability of approximately $200,000 for fiscal year 1985 for cooperative agreements to support studies on the range and extent of drug metabolism in fish and other aquatic animals used for food. The purpose of these agreements is to provide financial assistance to support research on drug metabolism, metabolic profiles, and pharmacokinetics in aquatic animals used for food. FDA anticipates making three or four awards averaging $50,000 to $70,000 (direct costs and indirect costs) each per year. Support for this program may be for a period of up to 3 years.

DATES: Prospective applicants are requested to submit letters of intent by April 25, 1985. Applications must be received by 5 p.m. on June 10, 1985. The earliest date for award is September 25, 1985.

ADDRESSES: Letters of intent are to be submitted to David B. Batson (address below). Completed application should be submitted to, and applications kits are available from, Kathryn McKnight, Grants and Assistance Agreements Section (HFA–522), Food and Drug Administration, Rm. 15A–17, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6170.

FOR FURTHER INFORMATION CONTACT: David B. Batson, Center for Veterinary Medicine (HFV–500), Food and Drug Administration, Rm. 8–89, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6954.

SUPPLEMENTARY INFORMATION: FDA's authority to fund research projects is under section 301 of the Public Health Service Act (42 U.S.C. 241). Cooperative agreements are authorized under Public Law 95–224. FDA's research program is described in the Catalog of Federal Domestic Assistance No. 13.103.

I. Background

In the **Federal Register** of January 14, 1983 (48 FR 1922), FDA published regulations (21 CFR 514.1(d)) which codify agency policy on minor use animal drugs, which include drugs for fish and other aquatic animals used for food. The policy requires that a metabolic evaluation of minor use drugs be made before the approval of products for use in these species. Research studies on this subject would greatly diminish the work required for the approval of potential minor use products in fish and other edible aquatic species. In addition, the existence of a body of information on the disposition of drugs in representative aquatic species would greatly facilitate the evaluations needed for these products relative to bioaccumulation and the potential for these drugs to impact on the environment.

The agency is supporting research studies on comparative drug metabolism because there is a need for approved drugs in aquatic animal used for food. Furthermore, the current, relatively small aquaculture industry does not appear to provide sufficient markets for minor use drugs to justify the expenditure of research and development resources by drug sponsors. Although the agency's minor use policy has attempted to abbreviate the approval process of drugs for minor use, certain minimal information is needed. The basic information developed by research cooperative agreements should support approvals of minor use drugs in aquatic animals by providing a backgound of basic scientific information from which decisions of drug metabolism, drug disposition, and bioaccumulation of drug residues can be made.

II. Research Goals and Objectives

The specific goals for these cooperative agreements will be to provide financial assistance to investigators conducting research on the range and extent of drug metabolism in fish and other edible aquatic animal species raised for food.

FDA will consider research projects which will:

1. Investigate the absorption, disposition, and depletion of several classes of animal drugs which are, or probably could be, routinely used for the treatment of serious diseases in cold water fish (e.g., trout), warm water fish (e.g., catfish), and certain aquaculture or mariculture species (e.g., shrimp, lobster, and other shellfish).

2. Investigate the metabolic profiles of these drugs in muscle, liver or its equivalent, bile, urine, and feces. The metabolic profile in excreta is useful to assess the possibility of drug recycling and drug degradation in aquaculture settings.

3. Investigate the pharmacokinetic parameters of drugs in aquatic animals.

4. Compare the metabolic profiles observed in aquaculture species with those found in mammalian species.

The drugs to be studied must be justified in terms of their usefulness or potential usefulness to the aquatic food animal industry. The drugs must be approved or have a significant potential to be approved for the treatment of major disease problems in economically important edible aquatic animals. Drugs to be considered include, but are not limited to, oxytetracycline, sulfamerazine, sulfadimethoxine, ormetoprim, and erythromycin. Other drugs that have potential for approval will also be considered; however, the approval of a known or suspected carcinogen or a known mutagen will not likely occur due to the extensive toxicity, metabolism, and residue testing that such a compound would undergo. Drugs for use in minor species will most likely be confined to those that are already approved in a major food-producing species.

III. Reporting Requirements

Financial status reports will be required on an annual basis to be submitted within 90 days from the last day of the budget period. The progress reports required under a grant award (45 CFR Part 74) should be submitted by the principal investigator or project manager.

IV. Mechanism of Support

A. Award Instrument

Support for this program will be in the form of cooperative agreements awards. These awards will be subject to all policies and requirements that govern the research grant programs of the Public Health Service, including the provisions of 42 CFR Part 52, 45 CFR Part 74, and cost-sharing requirements.

B. Eligibility

These cooperative agreements are available to any public or private nonprofit organization (including State and local units of government) and for profit organizations.

C. Length of Support

The length of support will depend on the nature of the study and may extend beyond 1 year but not exceed 3 years. For studies where the expected date of completion is more than 1 year, however, continuation of support beyond the first year will be based upon review of performance during the preceding year and the availability of funds.

D. Funding Plan

The number of studies funded will depend on the quality of the applications received and the availability of funds.

V. Delineation of Substantive Involvement

Inherent in the cooperative agreement award is substantive involvement by the awarding agency. Accordingly, FDA will have a substantive involvement in the programmatic activities of all the projects funded under this request for applications (RFA). Involvement may be modified to fit the unique characteristics of each application. Substantive involvement includes, but is not limited to, the following:

1. FDA will appoint project officers who will actively monitor the FDA supported program under each award. During monitoring, FDA may direct or redirect the selection of drugs to be studied.

2. FDA will establish a Comparative Drug Metabolism Advisory Group, which will provide guidance and direction to the programs, in particular, with regard to the drugs and animal species to be investigated. In some cases, FDA scientists will collaborate with grantees in determining the methodological approaches to be used.

3. FDA scientists will collaborate with the recipient and have final approval on the experimental protocol. This collaboration may include protocol design, data analysis, interpretation of findings, and coauthorship of publications.

VI. Review Procedures and Criteria

A. Review Methods

Applications will undergo initial review by experts in the field of aquatic animal drug metabolism. The committee will review and evaluate each application based on its scientific merit. The applications will be subject to a second-level review to evaluate them based on their relevance to FDA's mission in the regulation of animal drugs.

B. Review Criteria

Applications must be responsive to this RFA. Applications that are judged to be unresponsive will not be considered for funding under this RFA and will be returned to the applicant. Applications will be reviewed according to the following criteria:

1. Responsiveness to the RFA.

2. The appropriateness of the study design to answer the question posed.

3. The availability and adequacy of laboratory and aquatic animal facilities.

4. The adequacy and availability of support services, e.g., biostatistical, computer, etc.

5. The research experience, training, and competence of the principal investigator and support staff.

VII. Method of Application

A. Letter of Intent

Prospective applicants are requested to submit a brief one page letter of intent, which should include a short synopsis of the research plan. This letter should be received no later than April 25, 1985. The letter is to be submitted to David B. Batson (address above).

FDA requests letters of intent only to provide an indication of the number and scope of applications to be received. A letter of intent is not binding and it will not enter into the review of a proposal subsequently submitted. A letter of intent is not a necessary requirement for application.

B. Format for Applications

Applications must be submitted on Form PHS-398 (Application for Public Health Service Grant). The face page of the application must reflect the RFA number, RFA–FDA–CVM–85–1. To ensure confidentiality of individual

salary information, applicants may choose to include that information on the original application only. In that case, all copies of the application should reflect only a total amount for salaries and fringe benefits.

No action will be taken by the funding agency to delete confidential information. Data included in the application, if restricted with the legend specified below, may be entitled to confidential treatment as trade secret or confidential commercial information within the meaning of the Freedom of Information Act (5 U.S.C. 552(b)(4)) and the regulations of the Food and Drug Administration implementing that act (21 CFR 20.61).

The collection of information requested on Form PHS-398 and the instructions have been submitted by the Public Health Service to the Office of Management and Budget (OMB), and were approved and assigned OMB control number 0925–0001.

C. Legend

Unless disclosure is required by the Freedom of Information Act, as amended, as determined by the freedom of information officials of the Department of Health and Human Services, data contained in the portions of this application that have been specifically identified by page number, paragraph, etc., by the applicant as containing restricted information shall not be used or disclosed except for evaluation purposes.

The original and six copies of the completed application should be delivered to, and application kits are available from Kathryn McKnight (address above).

Note.—Do not mail the application to the National Institutes of Health.

Prospective applicants should label the outside of the mailing package and the top of the application face page with "Response to RFA–FDA–CVM–85–1."

Applications must be received by 5 p.m. on June 10, 1985. A package carrying a legible proof-of-mailing date assigned by the carrier, and which is no later than 1 week prior to the receipt date, is also acceptable. The receipt date will be waived only in extenuating circumstances. To request such a waiver, include an explanatory letter with the signed completed application. No waiver will be granted prior to receipt of application. Unless a waiver is granted, applications received after the deadline date will be returned to the applicant.

Dated: February 26, 1985.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 85–5660 Filed 3–8–85; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Serial No. I–7322]

Idaho; Proposal withdrawal and Public Meetings

Correction

In FR Doc. 85–4327, appearing on page 7234, in the issue of Thursday, February 21, 1985, in the last paragraph of column one, the words, "surface entry and mining since October 2, 1968, under the", should be inserted immediately after the text of line four.

BILLING CODE 1505–01–M

[AA–6661–C]

Alaska Native Claims Selection; Eklutna Inc.

In accordance with Departmental regualtion 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Section 12(a) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1611, will be issued to Eklutna, Inc. for approximately 105 acres. The land involved are in Sec. 19, T. 16 N., R. 1 E., Seward Meridian.

A notice of the decision will be published once a week for four (4) consecutive weeks, in The Anchorage Times. Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision shall have until April 10, 1985, to file an appeal. However, parties receiving service by certified mail shall have thirty days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E (1983) (as amended, 49 FR 6371, February 21, 1984) shall be deemed to have waived their rights.

Olivia Short,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 85–5713 Filed 3–8–85; 8:45 am]

BILLING CODE 4310–JA–M

[AA–10538]

Alaska Native Claims Selection; Olsonville, Inc.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(h)(2) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1603(d), 1613(h)(2), will be issued to Olsonville, Incorporated for approximately 6,803 acres. The lands involved are within the selection area for Olsonville.

Seward Meridian, Alaska (Unsurveyed)

T. 20 S., R. 57 W.,
Secs. 4 and 5 (fractional);
Sec. 6;
Secs. 7, 8, 18, and 19 (fractional).
Containing approximately 2,284 acres.
T. 20 S., R. 58 W.,
Sec. 13;
Sec. 23, excluding U.S. Survey No. 6321;
Secs. 24, 25, and 26 (fractional), excluding U.S. Survey No. 6321;
Secs. 31 to 35 (fractional), inclusive.
Containing approximately 4,259 acres.
T. 20 S., R. 59 W.,
Sec. 36, (fractional).
Containing approximately 250 acres.
T. 21 S., R. 59 W.,
Secs. 1 and 2 (fractional).
Containing approximately 10 acres.
Aggregating approximately 6,803 acres.

A notice of the decision will be published once a week for four (4) consecutive weeks, in the Anchorage Daily News. Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513. ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision shall have until April 10, 1985, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E (1983) (as amended, 49 FR 6371,

February 21, 1984) shall be deemed to have waived their rights.

Barbara A. Lange,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 85-5712 Filed 3-8-85; 8:45 am]

BILLING CODE 4310-JA-M

[4-00164-ILM]

Availability of Report Concerning the Application of Coal Unsuitability Criteria

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of report concerning the application of coal unsuitability criteria.

SUMMARY: This report implements part of former Secretary Clark's July 9, 1984, response to Congress concerning a recommendation made by the Office of Technology Assessment (OTA) in its report entitled *Environmental Protection in the Federal Coal Leasing Program;* May 1984. Specifically, among other things, the OTA noted concern regarding amendments in the regulations of the Federal coal management program dealing with the application of an unsuitability screen. An interagency task force has evaluated the Bureau of Land Management's (BLM) experience with these changes and is reporting on its evaluation. This report contains findings and conclusions concerning the application of unsuitability criteria and the need to assess the adequacy of data used in this screening process.

Interested parties (Federal/State agencies and the general public) were encouraged to express their concerns with changes in the unsuitability criteria and to submit information on the effects of those changes at a series of public meetings conducted in each Federal coal region in November and December 1984. An interdisciplinary team consisting of professional staff and managers from the BLM, the Office of Surface Mining Reclamation and Enforcement (OSM), the Fish and Wildlife Service (FWS) and the Forest Service (FS) prepared the report analyzing the expressed concerns and suggested means to improve the application of the unsuitability criteria screen. This report will be available for comment during the remainder of the public comment period on the draft EIS supplement, which ends April 9, 1985. *The Final Programmatic Environmental Impact Supplement (FEIS)* for the Federal coal management program will contain an analysis of comments received on this report. Copies of this report have been mailed to all persons and organizations on the BLM's mailing list of those requesting to receive the draft EIS.

DATE: Comments should be received on or before April 9, 1985.

ADDRESS: Any comments or questions concerning this report should be addressed to: Director (640), Attention: Mike Giblin, Bureau of Land Management, 18th and C Streets, NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Michael Giblin, (202) 343-4790, or Douglas Blankinship, (202) 343-2091.

Dated: March 7, 1985.

James M. Parker,

Acting Director, Bureau of Land Management.

[FR Doc. 85-5891 Filed 3-8-85; 8:45 am]

BILLING CODE 4310-84-M

[4-00164-ILM]

Availability of Coal Production Forecast Technical Report

AGENCY: Bureau of Land Management.

ACTION: Notice.

SUMMARY: This report supplements Chapter 3 of the February 1985 Draft Environmental Impact Statement (DEIS) supplement to the 1979 Final Environmental Statement for the Federal Coal Management Program (FES). Chapter 3 (Production Forecasts) of the 1985 DEIS describes western U.S. coal production forecasts and how they were derived, explains their significance, and compares these and other recent forecasts to those compiled for the 1979 FES. A technical report is now available (Coal Production Forecast Technical Report) which presents the forecasting methodology and results summarized in Chapter 3 in greater detail, describes the sensitivity analysis used as the basis for forecasting production levels, and provides more information on the derivation of regional coal production capacity estimates.

DATE: Comments should be received on or before April 9, 1985.

ADDRESS: Copies of this report may be obtained from the Director (500), Attn: John Broderick, Bureau of Land Management, 18th and C Streets, NW., Washington, D.C. 20240. Any comments or questions on this report should also be sent to the above address.

FOR FURTHER INFORMATION CONTACT: John Broderick, (202) 343-5517.

Dated: March 7, 1985.

James M. Parker,

Acting Director, Bureau of Land Management.

[FR Doc. 85-5892 Filed 3-8-85; 8:45 am]

BILLING CODE 4310-84-M

[N-41271]

Realty Action; Noncompetitive Sale of Public Land in Carson City, NV

March 1, 1985.

The following described land, comprising 2.5 acres, has been identified as suitable for sale under section 203 of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2750), 43 U.S.C. 1713:

Mount Diablo Meridian, Nevada

T. 16 N., R. 20 E.,
Sec. 31: SE¼SE¼NE¼SW¼.

The land will initially be offered at the appraised fair market value to Carson Masonic Lodge No. 1 which has held the property under a Recreation and Public Purposes Act lease since 1977. The Lodge's uncertain timetable for development makes continued leasing under the Recreation and Public Purposes Act inappropriate. The land is adjacent to property owned by Carson Masonic Lodge No. 1 and is an integral part of the project planned by the Lodge. The land has been identified for disposal in the Reno Management Framework Plan. It is not needed in support of any federal program. Sale of the land is consistent with local planning and zoning.

Failure to accept the offer to purchase the land within the time specified by the authorized officer shall constitute a waiver of the preference consideration. If the preference consideration is waived by the Carson Masonic Lodge #1, the land will be offered for sale through competitive procedures at a time and place to be announced.

Patent, if and when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States; Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945.

2. All mineral deposits in the land so patented, and to it, or persons authorized by it, the right to prospect, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

Since there is no known value for locatable minerals in the land and saleable mineral values are insignificant in comparison to development values of

the land, such interests can be coveyed simultaneously with the surface estate in accordance with section 209(b)(1)(1) of Pub. L. 94–579, upon the completion of an application to purchase the mineral interests and a $50 processing fee. The aforementioned mineral reservation will be modified if the patentee elects to purchase the locatable and saleable mineral interests of the United States. Leasable minerals will be reserved to the United States.

The patent will also be subject to:

1. A right-of-way not exceeding 30 feet in width, for roadway and public utility purposes, along the east boundary.

2. Those rights for highway purposes which have been granted to the Nevada Highway Department, its successors or assigns, by Permit No. CC–021553 under the Act of November 9, 1921, 42 Stat. 212.

Detailed information concerning the sale is available for review at the Carson City District Office.

Upon publication of this notice in the **Federal Register**, the land described above will be segregated from all forms of nondiscretionary appropriation under the public land laws, including the mining laws, except the mineral leasing laws. The segregative effect of this notice of realty action shall terminate upon issuance of patent or other document of conveyance to such land, upon publication in the **Federal Register** of a termination of the segregation or 270 days from the date of publication, whichever occurs first.

The land will not be offered for sale sooner than 60 days after the date of this notice. For a period of 45 days after the date of this notice, interested parties may submit comments to the Bureau of Land Management, Carson City District Office, 1050 E. William Street, Suite 335, Carson City, Nevada 89701. Any adverse comments will be evaluated by the District Manager. The Nevada State Director, Bureau of Land Management, may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of the Interior.

Norman L. Murray,

Acting District Manager, Carson City District.

[FR Doc. 85–5742 Filed 3–8–85; 8:45 am]

BILLING CODE 4310–HC–M

Elko District Advisory Council; Open Meeting

In accordance with Pub. L. 92–463, the Federal Advisory Committee Act, notice is hereby given that the BLM Elko District Advisory Council will meet at 9:00 A.M. on April 8, 1985, in the new Elko District Office Conference Room, 3900 East Idaho Street, Elko, Nevada.

Topics to be discussed are: (1) Duties and Functions of the Council and Overview of District Programs; (2) Organization of the Council; (3) BLM/Forest Service Land Interchange Program; (4) Status of District Land Use Planning; (5) District Private Land Exchange Program; and (6) New Building Complex.

The meeting is open to the public. Interested persons may make oral statements for the Council's consideration between 1:00 and 2:00 P.M. on the meeting date. Anyone wishing to make a statement must notify the District Manager, BLM, P.O. Box 831, Elko, Nevada 89801, or call 720–738–4071, no later than April 3, 1985.

Summary minutes of the meeting will be prepared and available for public inspection and reproduction during regular business hours within 30 days following the meeting.

Merle Good,

Acting District Manager.

February 27, 1985.

[FR Doc. 85–5765 Filed 3–8–85; 8:45 am]

BILLING CODE 4310–84–M

Minerals Management Service

Development Operations Coordination Document

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that ARCO Oil and Gas Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS 0438, Block 175, Eugene Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Amelia, Louisiana.

DATE: The subject DOCD was deemed submitted on February 28, 1985.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838–0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: February 28, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85–5734 Filed 3–8–85; 8:45 am]

BILLING CODE 4310–MR–M

Development Operations Coordination Document

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Exxon Company U.S.A. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS 026, Block 30, West Delta Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Grand Isle, Louisiana.

DATE: The subject DOCD was deemed submitted on February 28, 1985.

ADDRESS: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section;

Exploration/Development Plans Unit; Phone (504) 838–0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: February 25, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85–5733 Filed 3–8–85; 8:45 am]

BILLING CODE 4310–MR–M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget Interior Desk Officer, Washington, D.C. 20503, telephone 202–395–7340.

Title: Restrictions of Financial Interests of State Employees, 30 CFR 705.

Abstract: Collect employment and financial interests information on State regulatory authority employees under Section 517(g), Surface Mining Control and Reclamation Act of 1977, Pub. L. 95–87, as no employee performing any function or duty under the Act shall have a direct or indirect financial interest in any underground or surface coal mining operation.

Bureau Form Number: OSM–23.

Frequency: Annually.

Description of Respondents: Any State regulatory authority employee who performs any function or duty under the Act is required to file a statement of employment and financial interests.

Annual Responses: 1924.

Annual Burden Hours: 639.

Bureau Cleance Officer: Dalene Boyd, 202–343–5447.

Dated: February 26, 1985.

Carson W. Culp, Jr.,

Assistant Director, Budget and Administration.

[FR Doc. 85–5657 Filed 3–8–85; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–240 and 241 (Preliminary) and 731–TA–249 Through 251 (Preliminary)]

Oil Country Tubular Goods From Austria, Romania, and Venezuela; Import Investigations

AGENCY: International Trade Commission.

ACTION: Institution of preliminary countervailing duty and antidumping investigations and scheduling of a conference to be held in connection with the investigations.

SUMMARY: The Commission hereby gives notice of the institution of preliminary countervailing duty investigations Nos. 701–TA–240 and 241 (Preliminary) under section 703(a) of the Tariff Act of 1930 (19 U.S.C. § 1671b(a)) and of preliminary antidumping investigations Nos. 731–TA–249, 250 and 251 under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Austria and Venezuela of oil country tubular goods,[1] provided for in items 610.32, 610.37, 610.39, 610.40, 610.42, 610.43, 610.49 and 610.52 of the Tariff Schedules of the United States, which are alleged to be subsidized by the Governments of Austria and Venezuela, and of these goods from Austria, Romania, and Venezuela which are alleged to be sold in the United States at less than fair value. As provided in sections 703(a) and 733(a), the Commission must complete preliminary countervailing duty and antidumping investigations in 45 days, or in this case by April 15, 1985 (see sections 735(a) and 735(b) of the act (19 U.S.C. 1673d(a) and 1673d(b))).

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, subparts A and B (19 CFR Part 207), and Part 201, subparts A through E (19 CFR Part 201, as amended by 49 FR 32569, Aug. 15, 1984).

EFFECTIVE DATE: February 28, 1985.

FOR FURTHER INFORMATION CONTACT: Judith Zeck (202–523–0300), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to petitions filed on February 28, 1985, by the U.S. Steel Corp. of Pittsburgh, Pa.

Participation in the Investigations

Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service List

Pursuant to § 201.11(d) of the Commission's rules (19 CFR § 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with § 201.16(c) of the rules (19 CFR 201.16(c) as amended by 49 FR 32569, Aug. 15, 1984), each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Conference

The Commission's Director of Operations has scheduled a conference in connection with these investigations

[1] For purposes of these investigations, "oil country tubular goods" includes drill pipe, casing and tubing for drilling oil or gas wells, of carbon or alloy steel, whether such articles are welded or seamless, whether finished or unfinished, and whether or not meeting American Petroleum Institute (API) specifications.

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for 9:30 a.m. on March 25, 1985 at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Parties wishing to participate in the conference should contact Judith Zeck (202–523–0300) not later than March 21, 1985 to arrange for their appearance. Parties in support of the imposition of countervailing and antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written Submissions

Any person may submit to the Commission on or before March 27, 1985 a written statement of information pertinent to the subject of the investigations, as proivdes in § 207.15 of the Commisson's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8, as amended by 49 FR 32569, Aug. 15, 1984). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6, as amended by 49 FR 32569, Aug. 15, 1984).

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

Issued: March 5, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–5653 Filed 3–8–85; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30584]

Rail Carriers; Burlington Northern Railway Co.; Trackage Rights Exemption Soo Line Railroad Co. et al.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of prior approval under: (1) 49 U.S.C. 11343, the acquisition by Burlington Northern Railway Company of trackage rights over lines of railroad owned by Soo Line Railroad Company; Duluth, Missabe & Iron Range Railway Company; Duluth, Winnipeg & Pacific Railway Company (DWP); and Minnesota, Dakota and Western Railway Company (MDW) from Superior, WI, to International Falls, MN, subject to labor protective conditions; and (2) 49 U.S.C. 10901, the construction of a necessary connector track between DWP and MDW at Ranier, MN.

DATES: The exemption is effective on April 10, 1985. Petitions for reconsideration must be filed by April 1, 1985. Petitions for stay must be filed by March 21, 1985.

ADDRESSES: Send petitions referring to Finance Docket No. 30584 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Peter M. Lee, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

Decided: March 1, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley, and Strenio.

James H. Bayne,

Secretary.

[FR Doc. 85–5677 Filed 3–11–85; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 30601]

Rail Carriers; Missouri Pacific Railroad Co.; Trackage Rights Exemption; Cook County, IL

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of 49 U.S.C. 11343 *et seq.*, the acquisition by Missouri Pacific Railroad Company of trackage rights over approximately 7.8 miles of rail line owned by Chicago and Western Indiana Railroad Company in Cook County, IL.

DATES: This exemption will be effective on April 10, 1985. Petitions for reconsideration must be filed by April 1, 1985. Petitions for stay must be filed by March 21, 1985.

ADDRESSES: Send pleadings referring to Finance Docket No. 30601 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioners' representatives: Mark A. Kalafut, 1416 Dodge Street, Omaha, NE 68179

(3) J.H. Park, 428 W. 47th Steet, Chicago, IL 60609

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

Decided: March 1, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley, and Strenio.

James H. Bayne,

Secretary.

[FR Doc. 85–5678 Filed 3–8–85; 8:45 am]

BILLING CODE 7035–01–M

[Ex Parte No. 388]

State Intrastate Rail Rate Authority (Pub. L. 96–448); Decision

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision.

SUMMARY: *State Insurance Rail Rate Authority—Pub. L. 96–448, 365* I.C.C. 700 (1982) is corrected by directing parties seeking to continue litigation of rail rate cases pending before the State Commissions of California, Connecticut, Delaware, Nevada, and North Carolina, to advise Deputy Director Louis E. Gitomer, Rail Section, Office of Proceedings. Parties in any pending section 229 cases in these States should consult with Chief Administrative Law Judge David Allard. The California Public Service Commission must transfer the official records in two rate proceedings to this Commission for disposition.

DATE: Transfer of records by the California Public Service Commission must occur by April 10, 1985.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to T.S. Info Systems, Inc. Room 2227, Interstate Commerce Commission, Washington, D.C. 20423, or call 289–4357 (DC Metropolitan Area) or toll free (800) 424–5403.

Decided: February 28, 1985.

By the Commission, Reese H. Taylor, Jr., Chairman.

James H. Bayne,

Secretary.

[FR Doc. 85–5679 Filed 3–8–85; 8:45 am]

BILLING CODE 7035–01–M

[Docket Nos. AB–105 and AB–72 (Sub–4X)]

Rail Carriers; the Western Pacific Railroad Co. and Sacramento Northern Railway; Discontinuance and Abandonment of Service; Solano and Yolo Counties, CA; Exemption

The Western Pacific Railroad Company (WPR) and the Sacramento Northern Railway (SNR) filed a notice of exemption under 49 C.F.R. 1152 Subpart F—*Exempt Abandonments.* The line involved is known as the Holland Branch, extending from milepost 6.17 to milepost 15.78, a distance of 9.61 miles, in Solano and Yolo Counties, CA. WPR will discontinue service and SNR will abandon the line.

WPR and SNR have certified (1) that no local traffic has moved over the line for at least 2 years and that any overhead traffic on the line can be rerouted over other lines, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or has been decided in favor of the complainant within the 2-year period. The Public Service Commission (or equivalent agency) in California has been notified in writting at least 10 days prior to the filing of the notice. See *Exemption of Out of Service Rail Lines,* 366 I.C.C. 885 (1983).

As a condition to use of this exemption, any employees affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

The exemption will be effective on April 11, 1985 (unless stayed pending reconsideration). Petitions to stay the effective date of the exemption must be filed by March 21, 1985, and petition for reconsideration, including environmental, energy, and public use concerns, must be filed by March 30, 1985, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

Any petitions filed regarding AB–72 (4X) should be marked "See AB–105(4X)". A copy of any petitions filed with the Commission must be sent to WPR and SNR's representative: Joseph D. Anthofer, 1416 Dodge Street, Omaha, NE 68179.

If the notice of exemption contains false or misleading information, the use of the exemption is void *ab initio.*

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: March 5, 1985.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85–5680 Filed 3–8–85; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Information Collection(s) Under OMB Review

March 6, 1985.

The Office of Management and Budget (OMB) has been sent for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. The list has all entries grouped into new forms, revisions, or extensions. Each entry contains the following information:

(1) The name and telephone number of the Agency Clearance Officer (from whom a copy of the form and supporting documents is available;

(2) The office of the agency issuing the form;

(3) The title of the form;

(4) The agency form number, if applicable;

(5) How often the form must be filled out;

(6) Who will be required or asked to report;

(7) An estimate of the number of responses;

(8) An estimate of the total number of hours needed to fill out the form;

(9) An indication of whether section 3504(h) of Public Law 96–511 applies; and,

(10) The name and telephone number of the person or office responsible for the OMB review.

Copies of the proposed form(s) and the supporting documentation may be obtained from the Agency Clearance Officer whose name and telephone number appear under the agency name. Comments and questions regarding the items contained in this list should be directed to the reviewer listed at the end of each entry and to the Agency Clearance Officer. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the reviewer and the Agency Clearance Officer of your intent as early as possible.

Department of Justice

Agency Clearance Officer: Larry E. Miesse, 202/633–4312.

- *Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection*

(1) Larry E. Miesse, 202/633–4312.

(2) Torts Branch, Civil Division, Department of Justice.

(3) Claim for Damage, Injury, or Death (SF–95) (CIV).

(4) SF–95.

(5) Occasion.

(6) Individuals or households. Persons with claims against the United States Government for property damage, personal injury, or wrongful death, use this form to present a claim under the Federal Tort Claims Act.

(7) 400,000 respondents.

(8) 100,000 burden hours.

(9) Not applicable under 3504(h).

(10) Robert Veeder—395–4814.

Larry E. Miesse,

Departmental Clearance Officer.

[FR Doc. 85–5672 Filed 3–8–85; 8:45 am]

BILLING CODE 4410–01–M

Office of Justice Programs

Programs and Activities Covered by Executive Order 12372

AGENCY: Office of Justice Programs, Justice.

ACTION: Notice of Change in Programs and Activities Covered By Executive Order 12372.

SUMMARY: The purpose of this Notice is to inform state and local governments and other interested persons of programs and activities included within the scope of Executive Order 12372, "Intergovernmental Review of Federal Programs." A full understanding of the requirements of the Order may be gained by referring to the final rules

published in 28 CFR Part 30 at 48 FR 29236, published June 24, 1983.

EFFECTIVE DATE: March 11, 1985.

FOR FURTHER INFORMATION CONTACT: Lynn C. Dixon, Planning and Management Staff, Office of Justice Programs, 633 Indiana Avenue, N.W., Washington, D.C. 20531 (Telephone 202–272–6838).

Statutory Authority:

Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. Sec. 3701, *et seq.*, as amended (Pub. L. 90–351, as amended by Pub. L. 93–83, Pub. L. 93–415, Pub. L. 94–430, Pub. L. 94–503, Pub. L. 95–115, Pub. L. 96–157, and Pub. L. 98–473) (referred to as the Justice Assistance Act of 1984).

Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. Sec. 501, *et seq.*, as amended (Pub. L. 93–415, as amended by Pub. L. 94–503, Pub. L. 95–115, Pub. L. 96–509, and Pub. L. 98–473).

Victims of Crime Act of 1984, 42 U.S.C., 10601 note, Pub. L. 98–473.

SUPPLEMENTARY INFORMATION: This Notice lists those programs and activities of the Office of Justice Programs that are covered by Executive Order 12372 and incorporates new programs and activities authorized pursuant to the Justice Assistance Act of 1984; the Juvenile Justice, Runaway Youth, and Missing Children's Act Amendments of 1984; and the Victims of Crime Act of 1984. The Justice Assistance Act creates an Office of Justice Programs (OJP) in the Department of Justice. It establishes within OJP a new Bureau of Justice Assistance to administer state and local assistance programs, and reauthorizes the Bureau of Justice Statistics and the National Institute of Justice. A separate Office for Victims of Crime in the Office of Justice Programs has been established by administrative action. The Office of Juvenile Justice and Delinquency Prevention is continued by the Juvenile Justice Act amendments.

In order to reflect these changes and to notify state and localities of the programs and activities of the Office of Justice Programs covered by Executive Order 12372, the Office is publishing the following list of "covered" programs and activities.

Program/Activity (Parenthetical Numbers are Catalog of Federal Domestic Assistance (CFDA) References)

Office of Juvenile Justice and Delinquency Prevention—Formula Grant Program (16.540).

Office of Juvenile Justice and Delinquency Prevention—Special Emphasis and Technical Assistance Grants, except grants to non-governmental entities (16.541).

Bureau of Justice Statistics—Criminal Justice Statistics Development Grants (16.550).

Bureau of Justice Assistance—Criminal Justice Block Grants (16.573).

Bureau of Justice Assistance—Criminal Justice Discretionary Grants, except grants to non-governmental entities for national scope purposes (16.574).

Bureau of Justice Assistance—Transfer of Surplus Real Property for Correctional Purposes (no CFDA Number).

Bureau of Justice Assistance—Regional Information Sharing Systems (no CFDA Number).

Rick Abell,

Deputy Assistance Attorney General.

[FR Doc. 85–5659 Filed 3–8–85; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Office of Pension and Welfare Benefit Programs

[Application No. D–5639 et al.]

Proposed Exemptions: People's Bank of Bridgeport, et al.

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, NW., Washington, D.C. 20216.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

People's Bank of Bridgeport Employee Group Life Insurance Plan (the Plan) Located in Bridgeport, Connecticut

[Application No. D–5639]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406 (a) and (b) of the Act shall not apply to the reinsurance of risks and the receipt of premiums therefrom by the Life Insurance Department of People's Bank (the Reinsurer) from the group life insurance contracts sold by the Metropolitan Life Insurance Company (Metropolitan) to provide benefits to the Plan, provided the following conditions are met:

(a) The Reinsurer—

(1) Is a party in interest with respect to the Plan by reason of section 3(14) (C) of the Act,

(2) Is licensed to sell insurance in at least one of the United States or the District of Columbia,

(3) Has obtained a Certificate of Authority from the Insurance Department of its domiciliary state, Connecticut, which has neither been revoked nor suspended, and

(4)(A) Has undergone an examination by an independent certified public accountant for its last completed taxable year immediately prior to the taxable year of the reinsurance transaction; or

(B) Has undergone a financial examination (within the meaning of the law of its domiciliary state, Connecticut) by the Insurance Department of the State of Connecticut within 5 years prior to the end of the year preceding the taxable year of the reinsurance transaction.

(b) The Plan pays no more than adequate consideration for the life insurance contracts;

(c) No commissions are paid with respect to the direct sale of the contracts, or the reinsurance thereof; and

(d) For each taxable year of the Reinsurer, the gross premiums and annuity considerations received in that taxable year by the Reinsurer for life and health insurance or annuity contracts for all employee benefit plans (and their employers) with respect to which the Reinsurer is a party in interest by reason of section 3 (14) (C), (E), or (G) of the Act does not exceed 50 percent of the gross premiums and annuity considerations received for all lines of insurance (whether direct insurance or reinsurance) in that taxable year by the Reinsurer. For purposes of this condition (d), the term "gross premiums and annuity considerations received" means the total of premiums and annuity considerations received, both for the subject reinsurance transactions as well as for any direct sale of other reinsurance of life insurance, health insurance or annuity contracts to such plans (and their employers) by the Reinsurer. This total is to be reduced (in both the numerator and denominator of the fraction) by experience refunds paid or credited in that taxable year by the Reinsurer.

Preamble

On August 7, 1979, the Department published a class exemption (Prohibited Transaction Exemption 79–41 (PTE 79–41), 44 FR 46365) which permits insurance companies that have substantial stock or partnership affiliations with employers establishing or maintaining employee benefit plans to make direct sales of life insurance, health insurance or annuity contracts which fund such plans, if certain conditions are satisfied.

In PTE 79–41, the Department stated its views that if a plan purchases an insurance contract from a company that is unrelated to the employer pursuant to an arrangement or understanding written or oral under which it is expected that the unrelated company will subsequently reinsure all or part of the risk related to such insurance with an insurance company which is a party in interest with respect to the plan, the purchase of the insurance contract would be a prohibited transaction.

The Department further stated that as of the date of publication of PTE 79–41, it had received several applications for exemption under which a plan or its employer would contract with an unrelated comany for insurance, and the unrelated company would, pursuant to an arrangement or undertanding, reinsure part or all of the risk with (and cede part of all of the premiums to) an insurance company affiliated with the employer maintaining the plan. The Department felt that it would not be appropriate to cover the various types of reinsurance transactions for which it had received applications within the scope of the class exemption, but would instead consider such applications on the merits of each individual case.

Summary of Facts and Representations

1. People's Bank (the Bank) is a mutual savings bank with its home office in Bridgeport, Connecticut. The Reinsurer is the Bank itself, operating through its separate Insurance Department. The Reinsurer is maintained as a separate entity from the Savings Department of the Bank, and its assets are liable only for the applicable only to the payment and satisfaction of the liabilities, obligations and expenses of the Reinsurer. No transfer of assets is permitted between Departments. The Reinsurer actively solicits life insurance business in the State of Connecticut where it is licensed. At the end of 1983, it had a surplus of $1,483,900. During 1983, the Reinsurer collected $1,058,270 in total gross premiums.

2. The Plan, a welfare benefit plan, is a group life insurance plan covering employees of the Bank. The Plan is funded entirely through the purchase of group life insurance policies at competitive rates from Metropolitan. Metropolitan is not related to the Bank or the Reinsurer. The Plan covers approximately 1,757 participants.

3. Metropolitan, as direct insurer of the Plan, proposes to enter into a reinsurance contract with the Reinsurer with respect to certain risks it insures under the Plan. The reinsurance contract would cover only the first $100,000 of life insurance on each life. Of this covered amount, the reinsurance contract will provide that Metropolitan will pay the Reinsurer 50% of the group life premiums received from the Plan, in exchange for which the Reinsurer reinsures Metropolitan for 50% of the risk of such group life business. The reinsurance contract would in no way affect Metropolitan's liability for all of the benefits promised under its contracts with the Plan.

4. The Plan would have purchased the group life insurance policies directly from the Reinsurer, and therefore would have come within the scope of the statutory exemption contained in section 408(b)(5)(A) of the Act, except that pursuant to Connecticut law, the Reinsurer can only issue insurance in amounts not exceeding $50,000 per insured life, and this limit was too low to satisfy the requirements under the Plan. The applicant represents that the conditions of section 408(b)(5)(A) of the Act would have been satisfied in that (a) the Reinsurer is the employer maintaining the Plan; (b) the Reinsurer is licensed to do business in Connecticut; and (c) the Plan pays no more than adequate consideration for the contracts.

5. The applicant represents that the subject reinsurance transactions satisfy the conditions set forth in PTE 79–41 governing the direct sales of insurance (except that the Reinsurer is a party in interest by reason of being an employer whose employees are covered by the Plan) as follows:

(a) The Reinsurer is licensed to sell insurance in Connecticut;

(b) The Reinsurer was first authorized to do business in 1941. Such authorization is automatically renewed each year by the Insurance Department of Connecticut and continues to be effective unless rescinded. Reinsurer's certification has never been rescinded;

(c) The Reinsurer underwent a financial examination by the Insurance Department of Connecticut in 1981;

(d) The Reinsurer has undergone an examination by an independent certified public accountant for 1983, its last completed taxable year;

(e) The Plan pay no more than adequate consideration for the insurance contracts. Because Metropolitan is one of the largest group insurance underwriters in the country and enjoys substantial economies of

scale in overall policy administration, the premium charged to the Plan is highly competitive. The proposed reinsurance transactions are not a factor in the premium computation and thus will not in any way affect the cost of the Plan;

(f) No commissions will be paid with respect to either the insurance contracts with Metropolitan or the subject reinsurance transactions; and

(g) It is projected that the gross premiums and annuity considerations to be received by the Reinsurer for its reinsurance under the proposed contract will amount to only 14 percent of the Reinsurer's 1984 gross premiums and annuity considerations. The applicant represents that for the future the Reinsurer will not derive more than 50 percent of its gross premiums and annuity considerations received for all lines from transactions involving the subject reinsurance contract.

6. In summary, the applicant represents that the subject transactions meet the criteria of section 408(a) of the Act because: (a) participants and beneficiaries of the Plan are afforded insurance protection by Metropolitan, one of the largest and most experienced group insurers in the United States, at competitive rates arrived at through arm's-length negotiations; (b) the Reinsurer is a sound, viable insurance company which has been in business for many years, and which does a substantial amount of business outside the Bank; and (c) each of the protections provided to the Plan by PTE 79–41 will be met under the subject reinsurance transactions.

Notice of Interested Persons: Within 20 days of the publication of this proposed exemption in the **Federal Register**, notice of the proposed exemption will be provided to all interested persons in the manner agreed upon by the applicant and the Department. Comments and requests for a hearing are due 50 days after the date of publication of this notice in the **Federal Register.**

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Robert L. Andronici Self Employed Retirement Plan (the Plan) Located in Medford, New Jersey

[Application No. D–5729]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed sale of a parcel of real property by the Plan to Mr. Robert L. Andronici (Mr. Andronici), a disqualified person with respect to the Plan, for $23,000 in cash, and the assumption by Mr. Andronici of the remaining indebtedness of the Plan on the property, provided that the terms of sale for the property are not less favorable to the Plan than those obtainable in an arm's length transaction with an unrelated party.[1]

Summary of Facts and Representations

1. The Plan, a Keogh plan, was established on November 19, 1981, with Mr. Andronici being the sole participant. Contributions to the Plan for 1981 and 1982 totaled $16,650.

2. On November 26, 1981, the Plan purchased a parcel of unimproved real property (the Property) located in Punta Gorda Isles, Florida. The Plan paid $36,470 for the Property, with a down payment of $6,320 and a purchase money mortgage of $30,150 for the balance.

3. On October 1, 1982, Mr. Andronici discontinued operation of his business. He then accepted employment with an organization which included him in the company sponsored profit-sharing plan. Therefore, Mr. Andronici represents that since he is no longer self-employed, he is precluded from making any further contributions to the Plan. As a result, the Plan has been unable to make the required mortgage payments on the Property and the Property is presently threatened with foreclosure. The outstanding balance on the mortgage plus accrued interest is $27,662.82.

4. In order to get the Plan out of its present dilemma, Mr. Andronici proposes to purchase the Property from the Plan. The Property was appraised on October 12, 1984 by Mr. J. Steven Persons of the Charlotte Appraisal Company, Charlotte, Florida, to have a fair market value of $23,000. Mr. Andronici recognizes that by paying the current appraised value for the Property there would still be an outstanding mortgage balance on the Property of $4,662.82. Mr. Andronici therefore proposes to pay the Plan $23,000 in cash and assume the remaining indebtedness on the Property. He will also pay all costs relative to the transfer of the Property.

5. In summary, Mr. Andronici represents that the proposed transaction meets the statutory criteria of section 4975(c)(2) of the Code because:

(a) The sale is a one time transaction for cash;

(b) All expenses relative to the sale will be borne by Mr. Andronici; and

(c) The only person to be affected by the transaction is Mr. Andronici and he desires that the transaction be consummated.

Notice to Interested Persons: Since Mr. Andronici is the sole Plan participant, it has been determined that there is no need to distribute the notice of pendency to interested persons. Comments and hearing requests are due 30 days after the date of publication in the **Federal Register.**

For Further Information Contact: Mr. Alan Levitas of the Department, telephone (202) 523–8971. (This is not a toll-free number.)

Heilig-Meyers Company Employees' Profit-Sharing Retirement Plan (the Plan) Located in Richmond, Virginia

[Application No. D–5808]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the past cash sale by the Plan of two promissory notes (collectively, the Notes) to the Heilig-Meyers Company (the Employer), provided that the terms and conditions of the sale were not less favorable to the Plan as those obtainable in a similar transaction between unrelated parties.

Effective Date: If granted, the exemption will be effective September 14, 1984.

Summary of Facts and Representations

1. The Plan is a defined contribution pension plan which had 859 participants and net assets of approximately $8,502,927 as of March 31, 1984. The Plan is administered by a committee of trustees (the Trustees) appointed by the Employer's board of directors. The Plan authorizes the Trustees to appoint investment managers and provides that

[1] Since Mr. Andronici was the sole owner of the Plan sponsor and the only participant in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3–3(c)(1). However, there is jurisdiction under Title II of the Act under section 4975 of the Code.

investment managers so appointed shall be solely responsible for the management of assets under their control. One of the Plan's investment advisors was Capital Management Corporation (Capital). Capital was subsequently removed as an investment manager for the Plan.

2. On June 3, 1983, Capital invested $500,000 of the Plan's assets in an interest-bearing promissory note (the Crossroad Note) in the same face amount, due January 31, 1988 and made by Crossroads Center Associates (Crossroads), a North Carolina limited partnership. The Crossroads Note is secured by collateral which includes a lien against Crossroads Shopping Center (Crossroads Center), located in Asheboro, North Carolina. The Crossroads Note is subordinate and inferior to other mortgage indebtedness secured by Crossroads Center.

On September 8, 1983, Capital invested an additional $500,000 of the Plan's assets in an interest-bearing promissory note (the Heritage Note) in the same face amount, due December 31, 1988 and made by Heritage Square Associates (Heritage), also a North Carolina limited partnership. The Heritage Note is secured by collateral which includes a lien against Heritage Square Shopping Center (Heritage Square) located in Summerville, South Carolina and certain promissory notes of the partners of Heritage. The Heritage Note is subordinate and inferior to other mortgage indebtedness secured by Heritage Square. Both the Crossroads Note and the Heritage Note bear interest at 20% per annum, of which 15% is payable currently each quarter. The remaining 5% is due upon the maturity of the final principal payment of each of the Notes. Heritage, Crossroads and the general partner of both Heritage and Crossroads are unrelated to the Plan and to the Employer.

3. Shortly after July 1, 1984, the Trustees were informed that the Heritage Note and the Crossroads Note, as well as certain of the superior indebtedness, were in default. Thereafter, the holders of the superior indebtedness threatened to foreclose on Crossroads Center and Heritage Square. The general partner of Crossroads and Heritage, according to the best knowledge of the Trustees, is unable to meet the obligations of the partnerships. The limited partners of Heritage have refused to pay their notes. There may be prolonged litigation among the principals involved in the development of the Crossroads Center and the Heritage Center and their creditors. After considering the means of recovering the amounts due under the Notes and the methods of protecting their investment, the Trustees concluded that the Plan would suffer substantial expense, delay, and risk of loss without assurance that it might recover its losses.

4. On July 16, 1984, Wheat, First Securities, Inc. (Wheat), a regional investment banking firm, was engaged, at the Employer's expense, to analyze alternative methods of recovering the Plan's investments in the Notes and to appraise the Notes. Wheat is independent of all parties involved in the Notes and the sale, except for a minimal business relationship with the Employer.[2] Wheat manages assets of approximately $370 million and has extensive experience in investment analysis, securities brokerage and underwriting, and research services. In the course of its engagement, Wheat employed three real estate appraisers and a consulting engineer, and made diligent efforts to confirm data regarding the Notes and the security from several sources. The analysis, which individually evaluated four separate alternatives, concluded that the Plan would not recover any substantial part of its investments from the proceeds of a distressed sale.

Wheat also examined alternative methods of working out the situation with the principals and their creditors. Based on the data provided and its own analyses, wheat concluded that if a new general partner of Heritage Center Associates was appointed and limited partners paid in amounts owed by them when due, it appeared that the Plan could recover its initial investment in the Heritage Note plus the anticipated 20% return on investment; however, this approach would require modification and extension of the term of the note and the infusion of approximately $250,000 of additional short term capital by the new general partner, the limited partners or the Plan. With respect to the Crossroads Notes, Wheat concluded that the Crossroads property does not have the recovery potential of Heritage. Under similar substitution of general partners and recasting of the Plan's debt, the Plan could expect to recover its investment with little or no additional capital investment; however, it is not as likely that the Plan would receive the originally anticipated return on investment.

[2] Wheat has done some work for the Employer, participating in the underwriting of two public offerings of the Employer's common stock; however, its compensation for these services constituted less than 1% of its annual gross revenues.

5. On September 14, 1984, the Trustees, in an effort to minimize the Plan's risk of losses and heavy expenses and to protect the benefits of Plan participants, agreed to sell the Notes to the Employer. Under the agreement, the Trustees assigned to the Employer any and all causes of action that the Trustees may have had in connection with the Notes and the collateral securing the Notes under any theory of possible liability. The Employer agreed to hold the Trustees harmless against all losses, claims, liabilities, costs or expenses incurred in connection with any litigation or threatened litigation relating to rights and property transferred to the Employer. The Employer also agreed to pay over to the Trustees all amounts collected by the Employer in excess of the amount paid by the Employer for the Notes, less expenses incurred by the Employer in connection with collection of the Notes and recovery of losses.

6. In a letter of September 14, 1984, Wheat stated that the current fair market value of the Notes would not exceed the sum of their face value plus all accrued and unpaid interest. The Trustees and the Employer exchanged the Notes and cash consideration on September 17, 1984. The Employer paid the purchase price in cash, which was in an amount equal to the sum of the face amounts of the Notes, plus all accrued and unpaid interest (at the rate of 20% per annum plus late charges) through September 17, 1984. The applicant states that the purchase could not be delayed by processing an exemption application in advance because delays would have prejudiced the Employer's efforts to minimize its losses. No costs were paid by the Plan with respect to the sale.

7. Other than interests as fiduciaries of the Plan, neither the Trustees nor the Employer, nor any other party in interest to the knowledge and belief of the applicant, had at the time of the investments or now have (other than as purchaser of the Notes), any affiliation with or interest, economic, beneficial or otherwise, in Capital, Heritage, Crossroads, Heritage Square, Crossroads Center, or any secured creditor of any of the foregoing.

8. The Trustees represent that the sale of the Notes to the Employer was in the best interest and protective of the Plan's participants and beneficiaries because, after considering alternative means of recovering the amounts due under the Notes, they concluded that the Plan would suffer substantial expense, delay and risk of loss without assurance that it might recover its losses.

9. In summary, the applicant represents that the sale of the Notes by the Plan to the Employer satisfies the criteria of section 408(a) of the Act because: (a) the Trustees and Wheat, a qualified independent party, determined that the Plan would not recover any substantial part of its investments in the Notes from the proceeds of a distressed sale and any other alternatives would involve substantial expense, delay and risk; (b) the sale was a one-time transaction for cash; (c) the sale price was determined to be at least the fair market value of the Notes by Wheat; and (d) the Plan paid no costs with respect to the sale.

For Further Information Contact: Ms. Katherine D. Lewis of the Department, telephone (202) 523-8882. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 6th day of March, 1985.

Elliot I. Daniel,

Acting Assistant Administrator for Regulations and Interpretations, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 85-5746 Filed 3-8-85; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 85-50; Exemption Application No. D-5409 et al.]

Grant of Individual Exemptions; Cumberland Farms, et al.

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Cumberland Farms Employees' Retirement Trust (the Trust) Located in Canton, Massachusetts

[Prohibited Transaction Exemption 85-50; Exemption Application No. D-5409]

Exemption

The restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the continuation beyond June 30, 1984 of: (1) twelve loans (the Loans) from the Trust to V.S.H. Realty, Inc. (V.S.H.) and/or Cumberland Farms, Inc. (Cumberland), the successor in interest to V.S.H.; (2) guarantees of the Loans by Delaware Food Store, Inc. (Delaware) until October 1, 1984; and (3) conditional assignments of rents from V.S.H. and/or Cumberland to the Trust, provided that the terms and conditions of the Loans as of July 1, 1984, are at fair market value.

Effective Date: The exemption is effective July 1, 1984.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the noitce of proposed exemption published on November 9, 1984 at 49 FR 44825.

Comments

The only comments received by the Department were submitted by counsel for the applicant and by the independent fiduciary (Fiduciary) which is representing the Trust in determining whether the transactions which are the subject of the exemption are in the best interests of the Trust. Counsel for the applicant informed the Department that, effective October 1, 1984, a corporate reorganization was accomplished under

which each of the wholly-owned subsidiaries of Delaware was merged into Delaware and, immediately thereafter, Delaware and V.S.H. were merged into Cumberland, a newly-formed corporation. Thus, Cumberland, as the sole surviving entity of the reorganization, has succeeded to all of the assets and liabilities of Delaware, V.S.H., and all the wholly-owned subsidiaries of Delaware. The Fiduciary has considered the impact of the reorganization on the Loans and determined that the reorganization will not have any meterial adverse impact on the Trust's interest in the Loans. Accordingly, the Fiduciary has determined that the continuation of the Loans remains in the best interest of the Trust, its participating plane, and their participants and beneficiaries. The Department has considered this information and has determined, on the basis considered this information and has determined, on the basis of the entire record in this case, that the exemption should be granted.

For Further Information Contact: Mrs. Mary Jo Fite of the Department, telephone (202) 523-8671. (This is not a toll-free number.)

United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO, Union No. 198 Education Trust Fund (the Fund) Located in Baton Rouge, Louisiana

[Prohibited Transaction Exemption 85-51; Exemption Application No. L-5431]

Exemption

The restriction of section 406(a), 406(b)(1) and 406(b)(2) of the Act shall not apply to the sale of a building (the Building) by the Fund to United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO, Local Union No. 198, an employee organization whose members are covered by the Fund, provided that the Fund received no less than the fair market value of the Building on the date of sale.

Effective Date: The exemption is effective August 12, 1982.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on December 14, 1984 at 49 FR 48821.

For Further Information Contact: Mrs. Mary Jo Fite of the Department, telephone (202) 523-8671. (This is not a toll-free number.)

United Mine Workers of America 1950 Benefit Plan and Trust Located in Washington D.C.

[Prohibited Transaction Exemption 85-52; Exemption Application No. L-5777]

Exemption

The restrictions of section 406(a) and 406(b)(1) of the Act shall not apply, effective October 1, 1984, to the final and binding resolution by the trustees (the Trustees) of the United Mine Workers of America 1950 Benefit Plan and Trust (the 1950 Benefit Plan) of certain disputes (the Disputes) arising in connection with the provision of health and other benefits provided under certain individual employer maintained welfare plans established pursuant to collective bargaining under the National Bituminous Coal Wage Agreements (the Agreements), and to the receipt of monies from the 1950 Benefit Plan as payment for providing such services, provided that such Trustees maintain and make available to the Department and the parties to the Agreements, upon request, records adequate to ascertain both the cost of rendering such services and the portion of such costs which may be attributed to the resolution of each of the three types of Disputes which the Trustees may consider.

Effective Date: The exemption is effective October 1, 1984.

Written Comments

The Department received six comments in response to the notice of proposed exemption. Those comments did not address the questions of whether or not the Department should grant an exemption for the subject transaction. Accordingly, the Department has determined to grant the exemption as proposed.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on December 14, 1984 at 49 FR 48830.

For Further Information Contact: Mr Paul Antsen of the Department, telephone (202) 523-8753. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 6th day of March 1985.

Elliot I. Daniel,

Acting Assistant Administrator for Regulations and Interpretations, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 85-5745 Filed 3-8-85; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 85-16]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Agency Report Forms Under OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made the submission.

Copies of the proposed forms, the requests for clearance (S.F. 83's), supporting statements, instructions, transmittal letters, and other documents

submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Reviewer.

DATE: Comments must be received in writing by March 21, 1985. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Clearance Officer of your intent as early as possible.

ADDRESS: Carl F. Steinmetz, NASA Agency Clearance Officer, Code NIM, NASA Headquarters, Washington, DC 20546; Kenneth Allen, Office of Information and Regulatory Affairs, OMB, Room 3235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Carl F. Steinmetz, NASA Agency Clearance Officer, (202) 453–2941.

Reports

Title: New Technology Transmittal.
OMB Number: 2700–0009.
Type of Request: Extension.
Frequency of Report: On occasion.
Type of Respondent: Businesses or other for-profit, federal agencies or employees, non-profit institutions, small businesses or organizations.
Annual Responses: 2,000.
Annual Reporting Hours: 500.
Number of Forms: One.

Abstract-Needs/Uses: The NASA Form 666 is used to transmit information from a NASA contractor who has developed technological innovation under the contract which might be useful to others to the cognizant NASA official. Such reporting is required under the contract.

L.W. Vogel,

Director, Logistics Management and Information Programs Division.

[FR Doc. 85–5654 Filed 3–8–85; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Council on the Arts the Theater Advisory Panel; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Theater Advisory Panel (Companies Section) to the National Council on the Arts will be held on March 26–30, 1985 from 9:00 am—9:00 pm in Room MO–9 of the Nancy Hanks Center 1100 Pennsylvania Avenue, NW, Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to substances (c) (4), (6) and 9(d) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: March 4, 1985.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 85–5658 Filed 3–8–85; 8:45 am]

BILLING CODE 7537-01-M

Design Arts Advisory Panel (Challenge/Advancement Section); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. Law 92–463), as amended, notice is hereby given that a meeting of the Design Arts Advisory Panel (Challenge/Advancement Section) to the National Council on the Arts will be held on March 28–29, 1985, from 9:00 a.m.–5:00 p.m. in room M–14 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506.

This meeting is for the purpose of Panel review, discussion evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682–5433.

Dated: March 5, 1985.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 85–5735 Filed 3–8–85; 8:45 am]

BILLING CODE 7537-01-M

Literature Advisory Panel (Overview/Professional Development Section); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. Law 92–463), as amended, notice is hereby given that a meeting of the Literature Advisory Panel (Overview/Professional Development Section) to the National Council on the Arts will be held on March 28–29, 1985, from 9:00 a.m.–5:30 p.m. in room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506.

A portion of this meeting will be open to the public on March 29, from 9:00 a.m.–5:30 p.m. to discuss policy and guidelines.

The remaining sessions of this meeting on March 28, from 9:00 a.m.–5:30 p.m. are for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682–5433.

Dated: March 5, 1985.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 85–5736 Filed 3–8–85; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide; Withdrawal

Regulatory Guides 1.46, "Protection Against Pipe Whip Inside Containment,"

and 1.48, "Design Limits and Loading Combinations for Seismic Category I Fluid System Components," have been withdrawn.

Regulatory Guide 1.46 was issued in May 1973 to provide guidance for selecting the design locations and orientations of postulated breaks in fluid system piping. The July 1981 revision of Standard Review Plan 3.6.2, "Determination of Rupture Locations and Dynamic Effects Associated with the Postulated Rupture of Piping," provides more current information in this area.

Regulatory Guide 1.48 issued in May 1973 to delineate design limits and appropriate combinations of loadings for the design of Seismic Category I fluid system components. The July 1981 revision of Standard Review Plan 3.9.3, "ASME Code Class 1, 2, and 3 Components, Component Supports, and Core Support Structures," provides more current information in this area.

Therefore, Regulatory Guides 1.46 and 1.48 are being withdrawn. Withdrawal of these guides is in no way intended to alter any prior or existing licensing commitments based on their use.

Regulatory guides may be withdrawn when they are superseded by the Commission's regulations, when equivalent recommendations have been incorporated in applicable approved codes and standards, or when changes in methods and techniques or in the need for specific guidance have made them obsolete.

(5 U.S.C. 552(a))

Dated at Silver Spring, Maryland, this 4th day of March 1985.

For the Nuclear Regulatory Commission.

Robert B. Minogue,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 85-5748 Filed 3-8-85; 8:45 am]

BILLING CODE 7590-01-M

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provision of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

SUMMARY: 1. Type of submission, new, revision or extension: Revision.

2. The title of the information collection: Proposed Staff Actions to Improve and Maintain Diesel Generator Reliability.

3. The form number, if applicable: Not applicable.

4. How often the collection is required: One time only.

5. Who will be required to ask to report: Licensees of operating nuclear power plants.

6. An estimate of the number of responses: 80.

7. An estimate of the total number of hours needed to complete the requirement or request: 12,800 hours.

8. An indication of whether Section 3504(h), Pub. L. 96-511 applies: Not applicable.

9. Abstract: The information is requestred to ensure that the reliability of diesel generators is maintained at an acceptable level at the operating nuclear power plants.

ADDRESS: Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 1717 H Street, N.W., Washington, D.C. 20555.

FOR FURTHER INFORMATION CONTACT: Comments and questions should be directed to the OMB reviewer, Jefferson B. Hill, (202) 395-7340. NRC Clearance Officer is R. Stephen Scott, (301) 492-8585.

Dated at Bethesda, Maryland, this 5th day of March 1985.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Director, Office of Administration.

[FR Doc. 85-5749 Filed 3-8-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-317 and 50-318]

Baltimore Gas and Electric Co.; Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for Prior Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR-53 and DPR-69 issued to Baltimore Gas and Electric Company (the licensee), for operation of the Calvert Cliffs Nuclear Plant Unit Nos. 1 and 2 located to Calvert County, Maryland.

The amendments would revise provisions in the Technical Specifications (TS) to allow use of the 4-inch post-accident hydrogen purge line for containment purge during normal operation. The proposed TS revision is in accordance with the licensee's application for amendments dated December 22, 1983 and March 26, 1984.

Prior to issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By April 10, 1985, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall

be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to James R. Miller: (petitioner's name and telephone number); (date petition was mailed); (plant name); and (publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to D. A. Brune, Jr., General Counsel, G and E Building, Charles Center, Baltimore, Maryland 21203, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the applications for amendments dated December 22, 1983 and March 26, 1984, which are available for public inspection at the Commission's Public Document Room, 1717 H Street N.W., Washington, D.C., and at the Calvert County Library, Prince Frederick, Maryland.

Dated at Bethesda, Maryland, this 5th day of March 1985.

For the Nuclear Regulatory Commission.

James R. Miller,

Chief, Operating Reactors Branch No. 3, Division of Licensing.

[FR Doc. 85-5755 Filed 3-8-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-250-OLA, 50-251-OLA; ASLBP No. 84-496-03 LA (Vessel Flux Reduction)]

Florida Power and Light Co. (Turkey Point Nuclear Generating Plant, Units 3 & 4); Order Designating Hearing Room for Prehearing Conference

March 5, 1985.

Before Administrative Judges: Dr. Robert M. Lazo, Chairman, Dr. Richard F. Cole, Dr. Emmeth A. Luebke.

Please take notice that the prehearing conference in the above-identified proceeding scheduled for March 26, 1985, commencing at 9:30 a.m. local time,[1] will be held in: Moot Court Room 216, School of Law, Corner of Miller Drive (S.W. 52nd St.) and San Amaro Drive, University of Miami, Coral Gables, Florida 33124.

Dated at Bethesda, Maryland, this 5th day of March, 1985.

For the Atomic Safety and Licensing Board.

Robert M. Lazo,

Chairman, Administrative Judge.

[FR Doc. 85-5759 Filed 3-8-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-250-OLA-2, 50-251-OLA-2; ASLBP No. 84-504-07 LA (Spent Fuel Pool Expansion)]

Florida Power and Light Co. (Turkey Point Nuclear Generating Plant, Units 3 & 4); Order Designating Hearing Room for Prehearing Conference

March 5, 1985.

Before Administrative Judges: Dr. Robert M. Lazo, Chairman, Dr. Richard F. Cole, Dr. Emmeth A. Luebke.

Please take notice that the prehearing conference in the above-identified proceeding scheduled for March 27, 1985, commencing at 9:30 a.m. local time,[1] will be held in: Moot Court Room 216, School of Law, Corner of Miller Drive (S.W. 52nd St.) and San Amaro Drive, University of Miami, Coral Gables, Florida 33124.

Dated at Bethesda, Maryland, this 5th day of March, 1985.

For the Atomic Safety and Licensing Board.

Robert M. Lazo,

Chairman, Administrative Judge.

[FR Doc. 85-5760 Filed 3-8-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-250-OLA-3, 50-251-OLA-3; ASLBP No. 84-505-08 LA (Increased Fuel Enrichment)]

Florida Power and Light Co. (Turkey Point Nuclear Generating Plant, Units 3 & 4); Order Designating Hearing Room for Prehearing Conference

March 5, 1985.

Before Administrative Judges: Dr. Robert M. Lazo, Chairman, Dr. Richard F. Cole, Dr. Emmeth A. Luebke.

Please take notice that the prehearing conference in the above-identified proceeding scheduled for March 28, 1985, commencing at 9:30 a.m. local time,[1] will be held in: Moot Court Room 216, School of Law, Corner of Miller Drive (S.W. 52nd St.) and San Amaro Drive, University of Miami, Coral Gables, Florida 33124.

Dated at Bethesda, Maryland, this 5th day of March, 1985.

For the Atomic Safety and Licensing Board.

Robert M. Lazo,

Chairman, Administrative Judge.

[FR Doc. 85-5761 Filed 3-8-85; 8:45 am]

BILLING CODE 7590-01-M

Manhattan College; Finding of No Significant Environmental Impact Regarding Proposed Amendment to Facility Operating License No. R-94

[Docket No. 50-199]

The Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. R-94 for the Manhattan College research reactor located on the College campus in New York City, New York.

The amendment will renew the Operating License for twenty years from its date of issuance, in accordance with the licensee's application dated August 26, 1983, as supplemented. Opportunity for hearing was afforded by the Notice of Proposed Renewal of Facility License

[1] The date, time and purpose of the prehearing conference, but not the specific location, were announced in an order entered February 8, 1985 by the Licensing Board. 50 FR 6293-4 (February 14, 1985).

[1] The date, time and purpose of the prehearing conference, but not the specific location, were announced in an order entered February 7, 1985 by the Licensing Board. 50 FR 6085 (February 13, 1985).

[1] The date, time and purpose of the prehearing conference, but not the specific location, were announced in an order entered February 7, 1985 by the Licensing Board. 50 FR 6085 (February 13, 1985)

published in the **Federal Register** on September 30, 1983, at 48 FR 44952. No request for a hearing or petition for leave to intervene was filed following notice of the proposed action.

Continued operation of the reactor will not require alteration of buildings or structures, will not lead to changes in effluents released from the facility to the environment, will not increase the probability or consequences of accidents, and will not involve any unresolved issues concerning alternative uses of available resources. Based on the foregoing and on the Environmental Assessment, the Commission concludes that renewal of the license will not result in any significant environmental impacts.

Finding of No Significant Impact

The Commission has prepared an Environmental Assessment of this action and has concluded that the proposed action will not have a significant effect on the quality of the human environment. Therefore, the Commission has determined not to prepare an Environmental Impact Statement for the proposed action.

Summary of Environmental Impacts As Described in the Environmental Assessment

The proposed action would authorize the licensee to continue operating the reactor in the same manner that it has been operated since 1964. The environmental impacts associated with the continued operation of the facility are discussed in an Environmental Assessment dated February 6, 1985 associated with this action. The Assessment concluded that continued operation of the reactor for an additional twenty years will not result in any significant environmental impacts on air, water, land, or biota in the area, and that an Environmental Impact Statement need not be prepared. These conclusions were based on the following:

(a) The excess reactivity available under the technical specifications is insufficient to support a reactor transient generating enough energy to cause overheating of the fuel or loss of integrity of the cladding;

(b) The expected consequences of a broad spectrum of postulated credible accidents have been considered, emphasizing those likely to cause loss of integrity of fuel element cladding. The staff performed conservative analyses of the most serious credible accidents and determined that the calculated potential radiation doses in unrestricted areas are small fractions of 10 CFR Part 20 guidelines;

(c) The systems provided for control of radiological effluents can be operated to ensure that releases of radioactive wastes from the facility are within the guideline limits of 10 CFR Part 20 and are as low as is reasonably achievable (ALARA); and

(d) The licensee's technical specifications, which provide limiting conditions for the operation of the facility, are such that there is a high degree of assurance that the facility will be operated safely and reliably.

For further details with respect to this proposed action, see the application for license renewal dated August 26, 1983, as supplemented, the Environmental Assessment, and the Safety Evaluation Report (NUREG–1098) prepared by the staff.

These documents are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555. Copies may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, ATTN: Director, Division of Licensing.

Copies of NUREG–1098 may be purchased by calling (301) 492–9530 or by writing to the Publication Services Section, Document Management Branch, Division of Technical Information and Document Control, U.S. Nuclear Regulatory Commission, Washington, DC 20555; or purchased from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161.

Dated at Bethesda, Maryland, this 6th day of March 1985.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Assistant Director for Safety Assessment, Division of Licensing.

[FR Doc. 85–5756 Filed 3–8–85; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–277 and 50–278]

Philadelphia Electric Co., et al.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of Appendix R to 10 CFR Part 50 to the Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company and Atlantic City Electric Company (the licensees) for the Peach Bottom Atomic Power Station, Units 2 and 3, located in York County, Pennsylvania.

Environmental Assessment

Identification of Proposed Acting: The exemption would relax certain requirements of Appendix R to 10 CFR Part 50 as follows:

(a) The provisions of section III.F requiring that automatic fire detection systems be installed in all areas of the plant that contain or present an exposure fire hazard to safe shutdown or safety-related systems or components would be relaxed to permit lack of early warning automatic fire detection in the main steam isolation valve (MSIV) rooms, chemical waste tank room, offgas line tunnel, and the diesel generator building supply enclosure. The fire load in these areas is low. If a fire were to occur in these areas, it would be detected by fire detection in adjoining locations or by plant operators who would summon the fire brigade. The safety-related and safe shutdown equipment in these areas would not be prone to fire damage.

(b) The requirements of subsection III.G.2 to provide a complete 3-hour rated fire barrier for the separation of redundant trains of equipment necessary for safe shutdown would be relaxed with respect to 1½-hour fire rated dampers in 3-hour barriers. In each area where the 1½-hour dampers are installed, early warning fire detection has been provided. The use of the existing 1½-hour fire rated dampers and early warning fire detection systems provide a level of safety equivalent to the technical requirements of section III.G.

(c) The requirements of subsection III.G.2 to provide installation of automatic suppression systems would be relaxed in Fire Areas 05 and 12, 06 and 13, 47 and 48 and 25. In these areas, the combustible load is low, and early warning fire detection and manual fire suppression are available. The existing fire detection features together with a low combustible loading provide a level of fire protection equivalent to the technical requirements of section III.G.

(d) The requirements of subsection III.G.3 to provide installation of a fixed suppression system would be relaxed in Fire Area 29 (the Control Room). The control room is required to be continuously manned by operations personnel. These personnel constitute, in essence, a continuous fire watch. The fuel load in the area is low and manual suppression, if a fire occurred, would be prompt and effective. The continuously manned status of the control room together with a low fire load and prompt manual suppression provide a level of fire protection equivalent to the

technical requirements of section III.G. The exemptions are responsive to the licensees' applications for exemptions dated May 27, 1983, September 16, 1983, and December 21, 1983.

The Need for the Proposed Action: The proposed exemption is needed because the existing design features relating to these fire protection items are the most practical methods for meeting the intent of Appendix R to 10 CFR Part 50 and literal compliance would not significantly enhance fire protection capability at the facility.

Environmental Impact of the Proposed Action: The proposed exemption will provide a degree of fire protection equivalent to that required by Appendix R to 10 CFR Part 50 such that there is no increase in the risk from fires at the facility. The probability of fires is not increased and post-fire radiological risk is not greater than determined previously and the proposed exemption does not otherwise affect plant radiological effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this exemption.

The proposed exemption involves design features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect plant nonradiological effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological impacts associated with the proposed exemption.

Alternative Use of Resources: This action does not involve the use of resources not previously considered in the Final Environmental Statement (operating license) for the Peach Bottom Atomic Power Station, Units 2 and 3.

Agencies and Persons Consulted: The Commission's staff reviewed the licensees' request. The staff did not consult other agencies or persons.

Finding of no Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed action.

Based on the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the applications for exemptions dated May 27, 1983, September 16, 1983, and December 2, 1983. These documents are available for inspection by the public at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., and at the Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania.

Dated at Bethesda, Maryland, this 4th day of March 1985.

For the Nuclear Regulatory Commission.

Gus C. Lainas,

Assistant Director for Operating Reactors, Division of Licensing.

[FR Doc. 85-5757 Filed 3-8-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-361]

Southern California Edison Co., et al.; Denial of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied in part a request by the licensees for an amendment to Facility Operating License No. NPF-10, issued to the Southern California Edison Company, San Diego Gas and Electric Company, the City of Riverside, California and the City of Anaheim, California for operation of the San Onofre Nuclear Generating Station, Unit 2 in San Diego County, California. The Notice of Consideration of Issuance of Amendments was published in the **Federal Register** on November 21, 1984 (49 FR 45864).

The amendment, as proposed by the licensees, would change the Unit 2 and 3 Technical Specifications to revise the minumum allowable value of the addressable constant TR (azimuthal tilt allowance) from 1.02 to 1.0 in Table 2.2-2, "Core Protection Calculator Addressable Constants". The purpose of the proposed Technical Specification change to lower the minimum allowable value of TR is to reflect the reduced COLSS tilt estimate in the situation where there is no appreciable azimuthal power tilt in the core. However, since the minimum value of azimuthal tilt is 1.0 use of 1.0 for the TR in the CPC would result in frequent occurrences of the azimuthal tilt exceeding the TR, and therefore violating Technical Specification 3.4.2.3. This would increase the burden of the plant operators for compliance with the Action requirements specified in the Technical Specification. Therefore, the proposed Technical Specification change to reduce the minimum allowable value of the TR from 1.02 to 1.0 is not acceptable for the SONGS Units 2 and 3 Cycle 2 operation.

By April 10, 1985 the licensee may demand a hearing with respect to the denial described above and any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for a hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., by the above date.

A copy of any petitions should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Charles R. Kocher, Esq., Southern California Edison Company, 2244 Walnut Grove Avenue, P.O. Box 800, Rosemead, California 91770 and Orrick, Herrington and Sutcliffe, Attention: David R. Pigott, Esq., 600 Montgomery Street, San Francisco, California 94111, attorney for the licensees.

For further details with respect to this action, see (1) the application for amendment dated October 1 1984, and (2) the Commission's Safety Evaluation issued with Amendments 32 and 21 to NPF-10 and NPF-15 dated March 1, 1985, which are available for public inspection at the Commission 's Public Document Room, 1717 H Street, N.W., Washington, D.C., and at the San Clemente Library, 242 Avenida Del Mar, San Clemente, California. A copy of Item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 1st day of March, 1985.

For the Nuclear Regulatory Commission.

George W. Knighton,

Chief, Licensing Branch No. 3, Division of Licensing.

[FR Doc. 85-5758 Filed 3-8-85; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-14401 (File No. 812-5728)]

Rochester Tax Managed Fund, Inc., et al.; Filing of Application

March 5, 1985.

Notice is hereby given that Rochester Tax Managed Fund, Inc. ("RTMF"), and Rochester Growth Fund, Inc. ("RGF"), open-end management investment companies registered under the Investment Company Act of 1940 ("Act"); Fielding Management Company, Inc. ("FMC"), investment adviser to RTMF and RGF and a registered investment adviser under the Investment Advisers Act of 1940; and

Rochester Fund Distributors, Inc. ("RFD"), principal underwriter to RTMF and RGF and a registered broker-dealer under the Securities Exchange Act of 1934 (collectively referred to as "Applicants"), all of which are incorporated in the State of New York, and located at 183 East Main Street, Rochester, New York 14604, filed an application on December 19, 1983, and amendments thereto on July 5, 1984, January 7, 1985, and February 19, 1985, for an order of the Commission pursuant to Section 17(d) of the Act and Rule 17d–1 thereunder, or, in the alternative, pursuant to Section 6(c) of the Act, permitting Applicants to allocate a monetary award settlement resulting from litigation commenced by Applicants. All interested persons are referred to the application on file with the Commission for a statement of the representatives made therein, which are summarized below, and to the Act and the rules thereunder for further information as to the provisions which are relevant to a consideration of the application.

Applicants state that, in the conduct of their respective businesses, they are concurrently using a distinctive trademark ("the Trademark"), as permitted by a tacit licensing arrangement among them. It is represented that Rochester Shares Management Company ("RSM"), RTMF's original investment adviser, and RTMF, apparently concurrently in 1967 and 1968, commenced use of the Trademark. Applicants believe that RSM probably used the Trademark during 1967 and early 1968 in connection with its business activities which were concerned primarily in causing the registration statement of RTMF to become effective on May 31, 1968, and that RTMF's use of the Trademark probably commenced upon the effectiveness of its registration statement in connection with the sale of its common shares to the general public. The application represents that the Trademark was used concurrently by RTMF and RSM until December 15, 1980, at which time RTMF and RSM commenced use of a different logo. RSM no longer conducts business activities. On April 30, 1982, FMC was approved by shareholders to act as RTMF's investment adviser.

According to the application, RTMF resumed the use of the Trademark subsequent to the 1982 shareholders meeting after changing investment advisers from RSM to FMC. On January 31, 1983, RTMF filed an application for registration of the Trademark under the General Business Law of the State of New York and under the Lanham Act, the Federal Trademark Statute. On June 30, 1983, the New York State trademark registration became effective; the Federal trademark registration has not yet been granted. Applicants further state that, even though New York State requested that the New York State application be made only in the name of one entity, Applicants consider the Trademark to be the property of all the Applicants.

According to the application, in January, 1983, it came to the attention of Applicants that another organization ("Defendants") was using a trademark substantially similar to the Trademark. Applicants represent that they demanded that Defendants cease using the Trademark and, in February, 1983, when Defendants failed to comply, Applicants commenced litigation against Defendants alleging trademark infringements. Applicants further represent that negotiations between the parties began and resulted in (1) settlement of the dispute between the parties, (2) license of the Trademark for a one year period from Applicants to Defendants, (3) payment by Defendants of a license fee, and (4) discontinuance of the litigation. According to the application, at a meeting of Applicants' combined Boards of Directors ("Boards") (including a majority of the disinterested members of the Boards of Directors of RGF and RTMF) on July 19, 1983, the Boards adopted a proposed Plan of Allocation ("Plan") authorizing a distribution of the monetary settlement resulting from the litigation whereby the settlement award less attorney's fees and disbursements ("Net Settlement Amount") (approximately $79,600) would be divided between FMC and RFD. FMC would receive two-thirds, or approximately $53,100, and RFD would receive one-third, or approximately $26,500. In lieu of receiving any direct portion of the Net Settlement Amount, under the Plan, RTMF would receive a reduction from FMC of its management fee for the 1983 calendar year in an amount of at least $53,100 together with a commitment from FMC that the total expense ratio of RTMF would not exceed 2% of RTMF's assets retroactive to the beginning of the 1983 calendar year. The portion of the Net Settlement Amount payable under the Plan to RFD, approximately $27,000, would be kept in a segregated account to be distributed by RTMF's directors who are not "interested persons" for the purpose of implementing RTMF's Rule 12b–1 Distribution Plan. Finally, in lieu of receiving any direct portion of the Net Settlement Amount, under the Plan, RGF would receive from FMC a complete waiver of its management fee for the 1983 calendar year estimated at approximately $4,000.

According to the application, the Applicants' Boards of Directors each recognize the requirement under Rule 17d–1 that an application be filed with the Commission and that an order be granted by the Commission prior to the consummation of the proposed transaction under Section 17(d) of the Act and Rule 17d–1 thereunder. It is represented, however, that RTMF received from FMC a reduction of its management fees due FMC for the 1983 calendar year in an amount of $52,850, together with the commitment from FMC that if the ratio of RTMF's expenses exclusive of interest, taxes, brokerage commissions and extraordinary expenses, to net assets exceeded 2%, FMC would reimburse RTMF for the excess expenses. Accordingly, RTMF has executed a Promissory Note dated January 2, 1985, by which it has obligated itself to pay to FMC the sum of $52,850 with interest at the rate of 11% per annum, under the terms of which Promissory Note RTMF's obligations are expressly conditioned upon the issuance by the Commission of an order denying the application. If the exemption requested by the application is granted, then the Promissory Note will be cancelled.

In addition, RGF received from FMC a complete waiver of its management fee due FMC for the 1983 calendar year in an amount of $5,593. Accordingly, RGF has executed a Promissory Note dated January 2, 1985, obligating itself to pay to FMC the sum of $5,593, together with interest at the rate of 11% per annum, under the terms of which Promissory Note the obligations of RGF are expressly conditioned upon the issuance by the Commission of an order denying the application. If the exemption requested by the application is granted, then the Promissory Note will be cancelled.

Finally, the application states that RFD received a portion of the Net Settlement Amount ($27,000) to be distributed only upon the approval of RTMF's Section 12b–1 directors for the specific purpose of implementing the Rule 12b–1 Distribution Plan which received shareholder approval at the Annual Meeting of Shareholders of RTMF held on April 19, 1983. Accordingly, RFD has executed a Promissory Note dated January 2, 1985, obligating itself to pay to an escrow agent designated by the Applicants, or if none is so designated, to Mousaw, Vigdor, Reeves, Heilbronner & Kroll as

attorneys for RTMF, RGF, RFD, and FMC, the sum of $27,000 together with interest at the rate of 11% per annum, under the terms of which Promissory Note the obligations of RFD are expressly conditioned upon the issuance by the Commission of an order denying the application. If the exemption requested is granted, then the Promissory Note will be cancelled.

Applicants assert that the Plan is consistent with the provisions, policies, and purposes of the Act and that the participation in the transaction by RTMF and RGF is no less advantageous than that of other participants. It is also submitted that the circumstances described in the application justify exercise by the Commission of the exceptional power granted in Section 6(c) of the Act and that the requested exemption would be appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

According to the application, in adopting the Plan, the Boards considered the issue of whether one or more parties could be determined to be the sole owner of the Trademark. It is represented that the Boards were unable to conclude that any one Applicant was the sole owner of the Trademark. Further, the Boards concluded that the time, energy and expense required to reach a final determination of the issue (if in fact any such determination was possible), was not in the best interest of the shareholders of any of the Applicants. The Boards are said to have also considered the effect upon the capital accounts which would occur by allocating the entire Net Settlement Amount to one or more of the Applicants. With regard to RTMF and RFG, any increase in net asset value per share was considered to be *de minimus* when compared to the benefits to RTMF and RFG to be derived from the proposed Plan of Allocation. The application states that the Boards of Directors of RTMF and RGF believe that the Plan presents the best use of the Net Settlement Amount to reduce expenses for the benefit of the shareholders of both entities.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than March 29, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-5580 Filed 3-8-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-21810; File No. SR-MSE-85-1]

Self-Regulatory Organizations; Proposed Rule Change; Midwest Stock Exchange, Inc.; MAX Execution Policy

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on January 30, 1985, the Midwest Stock Exchange, Incorporated filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The statement of purpose in Item II(A) below contains a description and summary of the terms of substance of the proposed rule change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Section IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its Notice to Floor Members dated July 23, 1981 (SR-MSE-82-5), the Exchange instituted new limit order execution criteria for use in its order handling and execution system (MAX). The limit order criteria requires a specialist to manually executive 300 shares for every 500 shares that trade at the limit price in the primary market. When a limit order is received over the MAX system and prints out, the specialist holds the order and determines when each limit order received should be executed based on his observation of the volume traded in the primary market.

Some confusion has arisen as to the procedures to be followed in executing a MAX limit order under the 3 for 5 criteria when a specialist already has possession of a manually entered limit order at the same price. Prior to the 1981 Notice establishing the 3 for 5 criteria, the specialist, under existing priority rules, would hold the MAX order until the resting order was completely filled. The implementation of the 3 for 5 criteria in 1981, however, was designed to recognize the differences between the expectations of member firms utilizing an automated execution system and those transmitting orders through their representatives on the trading floor. Thus, criteria was established which would be equitable to both.

The proposed rule change clarifies how specialists should be handling existing orders in the book when executing a MAX limit order using the 3 for 5 criteria. Upon the printing of 500 shares in the primary market the specialist should execute both the MAX order under the 3 for 5 criteria and 300 shares of the resting order. [For purposes of this clarification only, multiple resting orders at the same price will be considered as one order.] The printing on the NYSE of any trade in excess of 500 shares will result in multiple MAX limit orders (up to 300 shares each) being executed on a 3 for 5 basis proportionately.[1]

The proposed rule change is consistent with Section 6(b)(5) of the Securities Exchange Act of 1934 in that it facilitates transactions in securities and removes impediments to and

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[1] For example, if 1000 shares print on the NYSE, 2 MAX orders of 300 shares each will be executed, together with 600 shares of the resting orders. *See* letter from J. Craig Long, Vice President, MSE to Judith Levy, Staff Attorney, SEC, dated February 14, 1985.

perfects the mechanism of a free and open market and a national market system.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Midwest Stock Exchange, Incorporated does not believe that any burdens will be placed in competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments have neither been solicited nor recieved.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C., 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 5th Street NW., Washington, D.C. Copies of such filing will also be available for inspection and coying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by April 1, 1985.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 4, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-5671 Filed 3-8-85; 8:45 pm]

BILLING CODE 8010-01-M

[Release No. 34-21811; SR-MSE-84-14]

Self-Regulatory Organizations; Midwest Stock Exchange, Inc; Order Granting Accelerated Approval of Proposed Rule Change

March 5, 1985.

The Midwest Stock Exchange, Inc. ("MSE") submitted on December 27, 1984, copies of a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b-4 thereunder, to modify MSE Article XX, Rule 8, Interpretations and Policies 0.2 (Recognized Quotations), to prohibit specialists utilizing the AutoQuote mode from disseminating a bid and/or offer that is more than ⅛ point away from the best Intermarket Trading System market.

Interested persons are invited to submit written data, views and arguments concerning the proposed rule change within 21 days from the date of publication of the submission in the **Federal Register**. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 5th Street NW., Washington, D.C. 20549. Reference should be made to File No. SR-MSE-84-14.[1]

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 5th Street NW., Washington, D.C. Copies of the filing and of any subsequent amendments also will be available at the principal office of the MSE.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and in particular, the requirements of Section 6 and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof, in that MSE is ready to implement this rule proposal, and the effect of the proposed rule change will be to narrow the spread between the bid and asked prices disseminated by MSE specialists utilizing AutoQuote. Such change will require MSE specialists to disseminate quotations a closely related to quotations prevailing among other ITS participants, thereby fostering the maintenance of fair and orderly markets.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change referenced above be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-5670 Filed 3-8-85; 8:45 am]

BILLING CODE 8010-01-M

[1] The Commission issued a notice of filing of the proposed rule change in Securities Exchange Act Release No. 21678, January 23, 1985; 32 *SEC Docket* 513, February 5, 1985.

[Release No. 34-21804; SR-PSE-85-4]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc., Notice of Filing of Proposed Rule Change

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 12, 1985, the Pacific Stock Exchange, Inc. ("PSE") filed with the Securities and Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested person.

The proposed rule changes would modify Articles II (Government), III (Elections, Meetings, Terms of Office, Proxies), and VIII (Member Firm Requirements) of the PSE Constitution, and Rule 1 (Dealings upon the Exchange) of the PSE Rules to provide that: (1) "Regular" meetings of PSE's Board of Governors ("Board") could be held without notice and that "special" meetings of the Board could be held on four days' written notice unless a Board member waives such notice; (2) a PSE Board member elected as a representative of the public would be exempted from PSE's existing restriction that no Board member may serve for more than two consecutive three-year terms; (3) the period within which PSE's

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Nominating Committee must meet would be changed from "not less than thirty-five days" to "not less than sixty-five days" before an election; (4) the period within which members may nominate by petition would be changed from "at least twenty days" to "at least forty-five days" before an election; and (5) the term "floor representative" as defined in PSE Rule 1, Section 4(a) would be replaced by the term "floor member."

PSE states that the proposed rule changes will facilitate exchange administration involving meetings and elections and that in the past notice and meeting requirements have proved overly restrictive and have allowed inadequate time within which to mail proxy materials and receive enough proxies to establish quorums for annual meetings. PSE further states that the proposed rule changes are consistent with Section 6(b) of the Act and, in particular, Section 6(b)(3) of the Act.

In order to assist the Commission in determining whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days after the date of publication in the **Federal Register**. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 5th Street NW., Washington, D.C. 20549. Reference should be made to File No. SR-PSE-85-4.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relalting to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be availble for inspection and copying at the Commission's Public Reference Room, 450 5th Street NW., Washington, D.C. Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

March 4, 1985.

[FR Doc. 85-5669 Filed 3-8-85; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice 933]

Gifts to Federal Employees From Foreign Governments Reported to Employing Agencies in Calendar Year 1984

The Department of State submits the following comprehensive listing of the statements which, as required by law, Federal employees filed with their employing agencies during calendar year 1984 concerning gifts received from foreign government sources. The compilation includes reports of both tangible gifts and gifts of travel or travel expenses of more than minimal value, as defined by statute.

Publication of this listing in the **Federal Register** is required by Section 7342(f) of Title 5, United States Code, as added by Section 515(a)(1) of the Foreign Relations Authorization Act, Fiscal Year 1978 (Pub. L. 95-105, August 17, 1977, 91 Stat. 865).

Dated: March 1, 1985.

Ronald I. Spiers,

Under Secretary for Management.

REPORT OF TANGIBLE GIFTS

[January 1 through December 31, 1984]

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Agency—Executive Office of the President, All Gifts Received From Foreign Officials Over Minimum Dollars			
President and First Lady	Household: Clock, empire portal style, brown wood housing, ormolu figures on top and in center and an ormolu eagle finial; four alabaster columns and a tri-sided mirrored background; a mythical figure decorates the dropped pendulum; 30-hour key-wound mechanism with 15-minute strike; made in 1820, Vienna, provided by Karl Hofer and son; 24" high x 13½" wide x 6½" deep ($3400), residence; for official use/display.	His Excellency Dr. Rudolf Kirchschlaeger, President of the Republic of Austria, Austria.	Non-acceptance would have caused donor embarrassment.
Do	Photograph: Color photograph of President and Mrs. Kirchschlaeger, inscribed; in red polished, simulated leather frame with Austrian crest at top; 15½" x 12" ($185) West wing; for official use/display. Recd: Feb. 28, 1984. Est. value: $3,585	...do	Do.
Do	Flowers: Roses, four dozen, long-stemmed red-orange. Residence; for official use/display. Recd: Dec. 24, 1984. Est. Value: $180.	His Excellency GHazi Muhammand Al-Gosaibi, Ambassador of the State of Bahrain, Bahrain.	Do.
Do	Assortment: Two procelain plates etched with the President and Mrs. Reagan's portraits, 16" in diameter with easels, a book, "Chinese Silk", and two bolts of silk fabric, one solid red and one red with blue and white floral design, 6 yards of each. Archives, foreign. Recd: Apr. 28, 1984. Est. value: $297	His Excellency Xiannian Li, President of the People's Republic of China, People's Republic of China.	Do.
Do	Artwork: Needlepoint portrait of President and Mrs. Reagan with Premier Zhao, in elaborate gold-painted wood frame; 47" x 34" overall; image, 37" x 24" ($650); Archives, Foreign.	His Excellency Ziyang Zhao, Premier of the State Council of the People's Republic of China, People's Republic of China.	Do.
	Novelty: "Health Balls," two pairs of silver-colored metal balls. ($44) Archives, Foreign. Recd: Apr. 26, 1984. Est. value: $694		
Do	Artwork: Painting, "La Piramide de la Paz" (The Pyramid of Peace), by Fernando Llort, 1984, signed, mixed media on styrene, in brown wood frame with presentation plaque; inscribed on reverse, 30" x 36" overall, included are four small prints of the artist's work, inscribed for the President and Mrs. Reagan, unframed. Archives, Foreign. Recd. Oct. 31, 1984. Est value: $1000	Colonel Adolfo O. Blandon, Chief of Staff, Armed Forces of El Salvador, El Salvador	Do.

REPORT OF TANGIBLE GIFTS—Continued

[January 1 through December 31, 1984]

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Do	Household: Cigarette box, sterling silver, with gold-washed interior; engraved on lid (in Commemoration of the President and First Lady's Anniversary); 6⅛" x 4" x 2". Residence; for official use display. Recd: Mar. 4, 1983. Est. value: $650.	Her Majesty Elizabeth II Queen of England, England.	Do.
Do	Household: Two bowls, one is a large "Tanoa," made from sacred vesi wood used for religious vessels; attached with coconut fibre rope and adorned with white egg cowrie shells; metal plaque engraved "From the Government and People of Fiji," five-footed, 23¼" in diameter; and a dark wood double bowl, designed as a turtle, and carved from a single block of nawanawa wood, used for serving fruit, 20" x 12", Archives. Foreign. Recd: Nov. 27, 1984. Est. value: $220.	The Right Honorable Ratu Sir Kamisese Mara, Prime Minister of Fiji, Fiji.	Do.
Do	Photograph: Color photograph of Prime Minister and Mrs. Fitzgerald, inscribed: matted under glass in brown and gold frame; 15" x 16½". West Wing; for official use display. Recd: June 4, 1984. Est. value: $75.	His Excellency Dr. Garret Fitzgerald, Prime Minister of Ireland, Ireland.	Do.
Do	Award: 2 awards. "Order of the Golden Lion of Nassau" gold cross enamelled in white with four golden "N's," and bearing heraldic lion of House of Nassau, suspended from an orange ribbon; included is an 8-.pointed silver star with lion in center; and, "Order of Adolphus of Nassau" gold cross enamelled in white with 8 points and bearing the letter "A" with imperial crown, suspended from a blue ribbon; included is an 8-pointed star with letter "A" with two certificates. ($1570); Archives, Foreign. Household: Porcelain clock, round brass 8-day key-wound clock displayed in a white porcelain triangular holder with separate porcelain stand; clock by Imhof, porcelain by Villeroy & Boch; overall 15" high x 7" wide 4½" deep; and a pair of white porcelain candlesticks, also by Villeroy & Boch, 10" high. ($850); Residence; for official use/display. Artwork: Watercolor entitled "Summer Flowers" by Marie Paule Fixmer, signed; in gold leaf frame; overall 29" x 35". ($550); Archives, Foreign. Photograph: Color photograph of the Grand Duke and Duchess, inscribed; in sterling silver frame with crown; 11¼" x 7¼". ($150). West Wing; for official use/display. Recd: Nov. 13, 1984. Est. value: $3,120.	His Royal Highnes Jean Grand Duke of Luxembourg, Luxembourg.	Do.
Do	Household: Virgin wool carpet (new), star and bird motifs, plain background edged with white fringe, handmade, "Tapetes Mexicanosternoayo," 47" x 35 "; WATERCOLOR OF A CATHEDRAL/MARKET SCENE, EDGARDO COGHLAN, SIGNED, IN POLISHED DARK WOOD FRAME, 36" x 34" overall; book, 1975, "Dibujos Acuarelas Oleos," Edgardo Coghlan, numbered and signed by the author, leather-bound; and a color photograph of the President and Mrs. de la Madrid, inscribed, navy blue leather frame, 11" x 14". Archives, Foreign. Recd: May 14, 1984. Est. Value: $2,920.	His Excellency Miguel de la Madrid Hurtado, President of the United Mexican States, Mexico.	Do.
Do	Household: Desk set, burgundy moroccan leather, consisting of a pencil cup, hinged blotter pad, letter holder, stationery holder, and an all-purpose box; all with gold-stamped borders ($600); Archives, Foreign. Consumables; Wine, 6 bottles, "Toulal," and 45 "Clementine" seedless tangerines, 9 pounds. ($35). Perishable. Recd: Dec. 18, 1984. Est. value: $635.	His Excellency Maati Jorio Ambassador of Morocco, Morocco.	Do.
Do	Photograph: Black and white photograph of their majesties the King and Queen of Nepal, inscribed, 1983; in sterling silver frame with gold crest and leather easel; 10" x 14". West Wing; for official use/display. Recd: Dec. 7, 1983. Est. value: $175.	His Majesty Bir Bikram Shah Dev Birendra, King of Nepal, Nepal.	Do.
Do	Artwork: Silver knight on camel, 16" x 12" x 4", displayed in leather-covered chest and a black and white photograph of President Kountche, inscribed, in a silver and vermeil octagonal frame, 9" x 11½". ($4750); West Wing; for official use/display. Medallions: A display of twenty-one silver medallions, each 1" x 2," in a leather-covered case, 15" x 14" ($1000). Archives, Foreign. Recd: Dec. 11, 1984. Est value: $5,750.	His Excellency General Seyni Kountche, President of the Supreme Military Council of the Republic of Niger, Niger.	Do.
Do	Flowers: A large arrangement of French tulips and red winterberries. Residence; for official use/display. Recd: Dec. 20, 1984. Est. value: $500.	His Excellency and Mrs. A.B. Al-Ameri, Ambassador of the State of Qatar, Qatar.	Do.
Do	Household: Tea service. 4-piece (teapot, creamer, sugar pot, tray); silver; all except the tray have rows of semi-precious stones at top and bottom; tray: 14" diameter; teapot: 8½" high; creamer and sugar pot: 6" high each ($3150); Archives, Foreign. Photograph: Color photograph of President and Mrs. Jayewardene; displayed in silver frame with floral motif; 11" x 13" overall ($600). Archives, Foreign. Recd: June 18, 1984. Est. value: $3,750.	His Excellency J.R. Jayewardene, President of the Democratic Socialist Republic of Sri Lanka, Sri Lanka.	Do.
Do	Artwork; Wooden fish, "The Carp Jumps the Dragon Gate" (a traditional Chinese saying): handcarved of a blond-colored wood; metal presentation plaque detached; 20½" high x 13½" wide x 6" deep. Archives, Foreign. Recd: June 13, 1983. Est. value: $250.	The Honorable Su Nan-Cheng, Mayor of Tainan City, Tarwan.	Do.
Do	Assortment: Book, "Vasily Surikov," by V. Kemenov; tablecloth, black background with multi-colored floral design and 6" black fringe; and a lacquered box, 5½" x 3½" x2" deep, scene of the Russian countryside on top with black sides and base, red interior. Archives, foreign. Recd: Sep. 29, 1984. Est. value: $325.	His, Excellency and Mrs. Andrei Gromyko, Minister of Foreign Affairs of the Union of Soviet Socialist Republics, Union of Soviet Socialist Republics.	Do.
Do	Assortment: Set of 17 bronze-plated medallions (including a rectangular plaque) commemorating the bicentennial of the birth of Simon Bolivar by, Monnaie de Paris; No. 50 of 50 sets, in a leather-covered box bearing, Bolivar's facsimile signature; eleven books, English and Spanish texts; three enamellized copper bowls (diameters of 8, 5, and 4 inches; 9" deep) by Lamis Feldman; and a framed color photograph of President Lusinchi, inscribed. Archives, foreign. Recd: Dec. 04, 1984. Est. Value: $3955.	His Excellency Dr. Jaime Lusinchi, President of the Republic of Venezuela, Venezuela.	Do.
President	Coins: Five sterlings silver United Nations commemorative coins; dated 1977, 1980, 1982, and 1983; displayed in a polished wood box with an Engraved presentation plaque inside the lid; each coin is 1½" in diameter; box is 12" x 8½" x 1⅛". Archives, foreign. Recd: Sep. 22, 1984. Est. value: $275.	His Excellency Dr. Javier Perez de Cuellar Secretary-General of the United Nations.	Do.
Do	Artwork: Thirty miniature soldiers displayed in a glass case; case measures 17" x 9" x 6½" high. West wing: for official use/display. Recd: Jul. 23, 1984. Est. value: indeterminable.	The Honorable Guy Lutgen Senator in the Belgian Parliament from the Province of Luxembourg and Mayor of the city of Bastogne, Belgium.	Do.

REPORT OF TANGIBLE GIFTS—Continued

[January 1 through December 31, 1984]

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Do	Artwork: Collage portrait of President Reagan composed of butterfly wings, created by artist Alphonse Ngeusdeke of the Tasdermie de Bangui; under glass in wood frame embellished with cola nuts; 24" x 30". Archives, foreign. Recd: May 22, 1984. Est. value: $500.	His Excellency General Andre-Dieudonne Kolingba, Pres. of the Military Committee for National Recovery & Chief of State, Central African Republic.	Do.
Do	Artwork: Sculpture, Qin Terra Cotta Museum Replica of one of the soldier Figures unearthed in xi' an in 1975; 17" high; contained in polished wood box with presentation plaque in Chinese, box is 19½" x 8" x 7". West wing; for official use/display. Recd: May 01, 1984. Est. value: $225.	The Honorable Qingwei Li Governor of Shaanxi Province, People's Republic of China.	Do
Do	Artwork: Snuff bottle, glass/crystal, handpainted with a portrait of President Reagan inside, 2" high. Archives, foreign. Recd: Apr. 26, 1984. Est. Value: $300.	Snuff-bottle study group China Institute of Arts and Handicrafts, People's Republic of China.	Do
Do	Artwork: Figure (reproduction) of a Tang tri-colored pottery horse; glazed earthenware; displayed on wood base with engraved brass plaque, 35½" high x 40" Long x 11" wide; enclosed in a brocade-covered box; included is a color photograph of the premier, inscribed, in folder, 10" x 12". Residence for official use/display. Recd: Jan. 12, 1984. Est value: $1200.	His Excellency, Ziyang Zhao, Premier of the State Council of the People's Republic of China, People's Republic of China.	Do
Do	Artwork: Watercolor of an eagle, with Chinese character legend commemorating President Reagan's visit, by Liang Huangzhou; on paper with fabric border in plain wood frame; 81½" x 50" Overall; Image: 33" x 56" Archives, foreign. Recd: Apr. 26, 1984. Est. value: $1200.	His Excellency Ziyang Zhao, Premier of the State Council of the People's Republic of China, People's Republic of China.	Do
Do	Historic artifacts. Silver coins, encrusted in coral, discovered in 1978 off the coast of the Dominican Republic originally part of the cargo of the Spanish galleon, "Nuestra Senora de la Pura y Limpia Concepcion," sailing in 1641; displayed in a mahogany chest with carved seal of the Dominican Republic on lid, key included; 14" x 9" x 4" Archives, foreign. Recd: Apr. 03, 1984. Est. value: $1835.	His Excellency Salvador Jorge Blanco, President of the Dominican Republic, Dominican Republic	Do
Do	Household: A polished wood humidor with seal of the Dominican Republic on the lid, 17" x 12" x 5", key included; containing 84 "La Habanera Fabricados" cigars, wrappers personalized with the President's name. Archives, foreign. Recd: Jul. 19, 1984. Est. value: $250.	His Excellency Salvador Jorge Blanco, President of the Dominican Republic, Dominican Republic.	Do
Do	Artwork: Color print enlargement of the stamp depicting Lancaster House, produced to mark the London economic summit, by Paul Hogarth, No. 2 of 8 limited edition prints, produced from the artist's original work, signed; under glass in aluminum frame; 18" x 21½"; included is a Lucite paperweight depicting the stamp; personalized; 3¼" x 3½". Archives, foreign. Recd: Jun. 06, 1984. Est. value: $185.	Ron Dearing Esquire, Chairman, the Post Office, England	Do
Do	Household: Two vases, hexagonal, depicting the "Old Imari" pattern (red, blue, and gold); by Royal Crown Derby; 4½"high. Archives, foreign. Recd: Jun. 08, 1984. Est. value: $250.	The Honorable Greg Knight, M.P., House of Commons; England.	Do
Do	Artwork: Color lithographic print of the Tower of London and the Mint by Thomas Shotter Boys; matted under glass in goldleaf frame, title card on reverse; 15½" x 24" overall; image 10" x 18". Included is a gold-plated medallion in plastic, lettered "Lancaster House, 7–8 June 1984" and "The 1984 London Economic Summit" on reverse, 1½" diameter. Archives, foreign. Recd: Jun. 04, 1984. Est. value: $530.	The Right Honorable Margaret Thatcher M.P.; Prime Minister, England	Do
Do	Athletic equipment; Cross-country saddle of medium brown smooth leather with machine stitching, steel and brass hardware; attached plaque lettered "Fernand Meffre, artisan, 13200 NAS-Thibert", included is a bridle of the same leather with steel hardware and a checkered wool and leather saddle blanket. Archives, foreign. Recd: Mar. 22, 1984. Est. value: $1500.	His Excellency Francois Mitterrand, President of the French Republic; France.	Do
Do	Consumables: 12 bottles of German wine (3 bottles Riesling Trockenbeeren Auslese 1959; 2 bottles Riesling Beerenauslese, 1976; 3 bottles Erzeuger-Abfullung, 1973; 2 bottles Erbacher Macrobrunn, 1973; and 2 bottles Forster Pechstein Riesling Auslese, 1976). For use at official functions. Recd: Dec. 04, 1984. Est. value: $505.	His Excellency Dr. Helmut Kohl, Chancellor of the Federal Republic of Germany; Federal Republic of Germany.	Do
Do	Artwork: Plaque, "Coat of Arms Tipperary South Riding"; hand-hammered copper in wood frame with presentation plaque; 25½" square. ($200). Archives, foreign. Artwork: Plaque, walnut, depicting a Reagan coat of arms, 12" x 14". ($45). residence; for official use/display. Recd: Jun. 03, 1984. Est. value: $245.	Mr. Edmond Brennan; Chairman, Tipperary County Council; Ireland.	Do
Do	Household: Vase, crystal, compote style, by Galway, 8½" high x 7½" in diameter; (filled with shamrocks). Archives, foreign. Recd: Mar. 13, 1984. Est. value: $190.	His Excellency Dr. Garret Fitzgerald; Prime Minister of Ireland, Ireland.	Do
Do	Clothing and accessories. Sweater, handknit Aran fisherman's pullover style, off-white wool. Archives, foreign. Recd: Jun. 04, 1984. Est. value: $250.	....do	Do
Do	Assortment: Two octagonal crystal ashtrays depicting Ireland and lettered "June 1984 Ireland," by Clarenbridge, 4½" diameter; ring, 18 kt. gold, engraved inside; leather and parchment scroll, marking quincentennial of Galway, 24" x 10"; and decanter, round crystal with stopper, Waterford, 10" high; containing "Irish Mist" whiskey ($628). Archives, foreign. Household; Crystal punch bowl etched with seal of U.S. congress, "G" (Galway) motif, and presentation Mug, 7½" high x 9" diameter; and a bone china bowl, "Royal Tara quincentennial Rose Bowl." No. 1 of a limited edition of 500. 7¾" diameter, 3" high ($448) West wing; for official use/display. Recd: Jun. 01, 1984. est. value: $1076.	The Honorable Michael Leahy, Mayor of Galway, Ireland.	Do
Do	Artwork: Watercolor of "Cliffs of Moher," by M. Ricks, 1984; matted under glass in brown wood frame with gold liner; 31" x 39" overall; image 22" x 29" Archives, foreign. Recd: Jun. 01, 1984. Est. Value: $175.	Mr. Johnny Moloney chairman, Clare County Council, Ireland.	Do
Do	Household: Waterford crystal pedestal boat-bowl, 9" high x 13" long x 8" deep. West wing; for official use/display. Recd: Aug. 02, 1984. Est. value: $590.	Alderman, Stephen Rogers, Acting Mayor of Waterford City, Ireland.	Do
Do	Book: Nine volume encyclopedia on Japan; first edition 1983. Archives, foreign. Recd: Jul. 03, 1984. Est. value: $550.	His Excellency Yasuhiro Nakasone, Prime Minister of Japan, Japan.	Do.
Do	Photograph: Two albums, both containing color photographs of the President and Mrs. Reagan, et al., during their visit to Japan; one covered in navy blue cloth with gold Japanese seal, the other is covered in a gold fabric with cloud designs; 15" x 17" and 13" x 15" respectively. Archives, foreign. Recd: Jan. 25, 1984. Est. value: $1088.	His Excellency Yoshie Okawara, Ambassador of Japan, Japan.	Do

REPORT OF TANGIBLE GIFTS—Continued

[January 1 through December 31, 1984]

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Do	Photograph: Black and white photograph of Prime Minister Mahathir, inscribed; in silver repousse frame; 11½" x 9¼"; in navy blue vinyl-covered case. ($450); West wing; for official use/display. Dagger: Traditional Malaysian dagger called a "Kris" with a wavy steel blade and carved ivory and gold handle in an ivory and gold sheath; 17" long; displayed on a carved wood base with engraved plaque and a plexiglass cover: case is 18½" long x 10" high x 7½" wide. ($240). West wing for official use/display. Recd: Jan. 18, 1984. Est. value: $690.	His Excellency Dr. Mahathir Bin Mohamed, Prime Minister of Malaysia, Malaysia.	Do.
Do	Household: Sterling silver tray, engraved to the President and depicting a circular geometrical motif in center in repousse; 11" diameter. Archives, foreign. Recd: May 17, 1984. Est. value: $300.	The Honorable Miguel Gonzalez Avelar, President of the Senate's Grand Commission, Camara de Senadores, Mexico.	Do.
Do	Household: Container, sterling siver, designed as a stooped figure of a man; 5" high x 6" diameter; displayed in a leather box. West wing; for official use/display. Recd: Jan. 11, 1984. Est. value $1472.	His Excellency Miguel de la Madrid Hurtado, President of the United Mexican States, Mexico.	Do.
Do	Artwork: 22 glazed earthenware tiles, blue design on white background, encoded on reverse to create a seascape panel when mounted; 5¾" square each. Archives, foreign. Recd: Jun. 12. 1984. Est. value: $485.	His excellency General Antonio Dos Santos Ramalho Eanes, President of the Republic of Portugal, Portugal.	Do.
Do	Household: Silver pear-shaped dish with travertine center; 10" x 6½" Archives. foreign. Recd Mar. 14, 1984 Est. value: $170.	His Excellency Mario Soares, Prime Minister of Portugal, Portugal.	Do.
Do	Award: Trophy depicting the Saudi Arabia Olympic logo and the U.S. Olympic logo with the Saudi Arabian crossed sabers and palm tree crest, all within circular surrounds, mounted on gold-plated brass shafts and malachite, inscribed base: 18" high x 9" wide x 4½" deep; displayed in a suede, custom-made case; included is a white olympic team T-shirt depicting a "RSAF" jet and lettered "The Kingdom Strikes Back" with Saudi Crest. Archives, foreign. Recd: Aug. 13, 1984. Est. value: $700.	His Royal Highness Prince Faisal Fahd Abdul Aziz Al Saud President of the Arabian Olympic Committee, Saudi Arabia.	Do.
Do	Elephant: "Jayathu," 18 months old, 3 feet high, 280 lbs (indeterminable value); National Zoological Park for official use/display. Book: Assortment—"Island-Ceylon" by Roloff Beny; "The President" (Felicitation volume); "Mediaeval Sinhalese Art", by Ananda K. Coomaraswamy, published by Pantheon Books: and, 2 paperbacks, "Golden Threads" and "Selected Speeches and Writings" by J.R. Jayewardene. ($118). Archives, foreign. Recd: Jun. 18, 1984. Est. value: Indeterminable.	His Excellency J.R. Jayewardene, President of the Democratic Socialist Republic of Sri Lanka, Sri Lanka.	Do.
Do	Household: Desk clock, "Naviquartz III," model No. 1215 hf; a quartz clock with second hand, houses in a polished mahogany case with brass fittings and an engraved presentation plaque inside hinged lid; by Patek Philippe, Switzerland: 6½" x 5" x 3¼". Archives, foreign. Recd: Feb. 03. 1984. Est. value: $3150.	His Excellency Kurt Furgler Vice President of the Swiss Confederation, Switzerland.	Do.
Do	Household: Green leatherette, gold-stamped chest, containing six interior pull-out drawers filled with Tunisian dates on vine, sweet cakes, etc.; chest is 22" x 14" x 16½". Archives, foreign. Recd: Dec. 20 1984. Est. value: Indeterminable.	His Excellency Habib Bourguiba, President of the Republic of Tunisia, Tunisia.	Do.
Do	Artwork: Etching, copper, of an original watercolor of a town in Yugoslavia, original dated 1849, reproduced in 1987, signed Giuseppe Nittia; under glass plate: 15½" x 22½". ($100): Archives. foreign. Photograph: Color photograph of President Spiljak, inscribed; in silver (800) frame; 8½" x 11". ($85). West wing; for official use/display. Recd: Feb. 01, 1984. Est. value: $185.	His Excellency Milka Spiljak President of the Presidency, Socialist Federal Republic of Yugoslavia, Yugoslavia.	Do.
First Lady	Jewelry: Pin, opaque glass flowers set with three pearls and nine diamonds; 2½" in diameter. Archives, foreign. Recd. Feb. 28, 1984. Est. value: $1400.	His Excellency Dr. Rudolf Kirchschlaeger, President of the Republic of Austria, Austria.	Do.
Do	Photograph: Cloth-covered album of twenty-four color photographs of the first lady's visit to China; measures 12" x 15" overall. Archives. foreign. Recd. Jun. 25, 1984. Est. value: $212.	Ministry of Foreign Affairs, People's Republic of China.	Do.
Do	Artwork, Embroidery. double-faced, of "White Cat Ptaying With Mantis;" a new piece crafted by the Suzhou Embroidery Research Institute; under glass in black wood frame; displayed in black scroll stand; 27" high x 16" wide; enclosed in brocade-covered case. Residence; for official use/display. Recd: Jan. 12, 1984. Est. value; $500.	His Excellency Ziyang Zhao, Premier of the State Council of the People's Republic of China, People's Republic of China.	Do.
Do	Jewelry: 14 kt gold charm of an ancient Central American God; 2" diameter. Archives, foreign. Recd: Apr. 24, 1984. Est. value: $450.	Dr. Manuel Emilio Mantero, Executive President, Costa Rican Institute of Tourism, Costa Rica.	Do.
Do	Jewelry: Necklace, amber (Dominican), four twisted strands with 14 kt. gold clasp: and, a pair of matching earrings (one piece of amber each) also set with 14 kt. gold clasps; displayed in a mahogany box with lid inlaid with multi-colored woods and a piece of amber containing one specimen (bug, 50 million years old) and lettered "NDR;" 8" x 6½" x 1½" box archives, foreign. Recd: Apr. 10, 1984. Est. value: $450.	Mrs. Asela Mera De Jorge Blanco, wife of the President of the Dominican Republic Dominican Republic.	Do.
Do	Household: Porcelain dinnerware: 12 Dinner plates (10" diameter); 12 salad plates (9" diameter); 12 bread and butter plates (6½" diameter); 12 bowls (shallow plates, 8" diameter); and, 1 platter (11½" diameter); all with gold cloud design, by Sevres; signed "Jame-Guite 70". Archives, foreign Recd: Mar 22, 1984. Est. Value: $5000.	His Excellency Francois Mitterrand, President of the French Republic France.	Do.
Do	Household: Fabric heavy cotton, multi-colored (predominantly blues): 10 feet long x 3 feet, 3½" wide. ($90): Archives, foreign.. Jewelry: Earrings, clip and drop style and a pin square filigree design; both sterling silver and enclosed in separate mniature baskets. ($160). Archives, foreign. Recd: Apri. 30, 1984. Est. value: $250.	His Excellency Rodolfo Perdomo Minister of Agriculture of Guatemala, Guatemala.	Do.
Do	Clothing and accessories; dress, "Hashmi," dark green guaze type fabric with gold sequined and handsewn floral designs; floor-length caftan style; by Iraqi Fashion House, Bagdad. Archives, Foreign. Recd: Dec. 18, 1984. Est. value: $500.	Mrs. Sahar Hamdoon, wife of the charge d'affaires of the Republic of Iraq embassy of Iraq, Iraq.	Do.
Do	Jewelry: Necklace of pearls, coral, amethysts turquois, jade, onyx, garnet, etc., 16" angle strand. Archives, foreign. Recd: Aug. 20, 1984. Est. value: $900.	The Honorable Akiko Santo, Congresswoman House of Councillors, Japan.	Do.
Do	Household: Hexagonal jewelry box, silver with overall filigree design; removable lid; velvet lined; 5½" diameter, 2" higher. Archive, foreign. Recd: Jan. 18, 1934. Est. value: $170.	His Excellency Dr. Mahathir Bin Mohamed, Prime Minister of Malaysia, Malaysia.	Do.
Do	Flowers: Large arrangement of peonies, tulips, roses, pussy willow, etc., in a woven basket. Residence: for official use display, Recd: May 14, 1984. Est. value: $200.	His Excellency Miguel de la Madrid Hutado, President of the United Mexican States, Mexico.	Do.

REPORT OF TANGIBLE GIFTS—Continued

[January 1 through December 31, 1984]

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Do	Flowers: Large arrangement of spring flowers, consisting of rubrum lilies, white lilacs, tulips, gerber darses, etc. Residence, for official use/display. Recd: Feb. 18, 1984. Est. value: $300.	Her Excellency Madame Imelda R. Marcos, First Lady of the Philippines, Philippines.	Do
Do	Household: Bed Linens—66 white satin pillows, monogrammed "NRD," 14" square, 22 heart-shaped pillows, 11" x 13", 16 white stain sheets, 120" x 114", 9 bedspreads, 113" x 118", 2 beige bed covers, 109" x 104", 18 pillow cases, 20" x 30", 2 off-white silk covers, 1 white silk sheet, 2 large bed pillows with slips, 6 beige cotton pillow slips, a red chest with 12 mother-of-pearl plates with knife and work, 2 salt and pepper sets with trays, 12 Ecru linen napkins, 14" square. Archives, foreign. Recd: Apr. 2, 1984. Est. value: $5170.	do	Do
Do	Jewelry: Charm, gold heart with enamelled floral designs, 1" diameter. Archives, foreign. Recd: Mar. 14, 1984. Est. value: $170.	His Excellency Mario Soares, Prime Minister of Portugal, Portgual	Do
Do	Artwork: Two watercolors, one is a scene of an oriental house and the other depicts branches of bamboo; both in circular black plastic frames depicted through rectangular openings, 18" in diameter. Archives, foreign. Recd: Jun. 13, 1984. Est. value: $100.	The Honorable Su Nan-Cheng, Mayor of Tainan City, Tainan	Do
Frederick L. Ahearn, Advance Representative.	Household: 1 Waterford crystal ashtray, 7" in diameter ($118). GSA.	His Excellency Dr. Garret Fitzgerald, Prime Minister of Ireland, Ireland	Do
	Household: 1 100% wool blanket by Avoca of Ireland, plaid, 54" x 60" ($65). GSA. Recd: Jun. 26, 1984. Est. value: $183.		
James A. Baker III, Chief of Staff and Assistant to the President.	Household: A porcelain lamp vase of white open fretwork with three dimensional applied flowers on front, jade green color banding at top and bottom with gold line and banding accents, 16" tall, 6" diameter, black wood base also included. GSA. Recd: Feb. 13, 1984. Est. value: $185.	His Excellency Ziyang Zhao, Premier of the State Council of the People's Republic of China, People's Republic of China.	Do
Richard G. Darman, Assistant to the President and Deputy to the Chief of Staff.	Jewelry: A pair of jade and gold cuff links. GSA. Recd: Nov. 30, 1983. Est. value: $375.	His Excellency Chun Doo Hwan, President of the Republic of Korea, Republic of Korea.	Do
Michael K. Deaver, Deputy Chief of Staff and Assistant to the President.	Household: A brown leather briefcase. Presidential staff; for official use/display. Recd: Feb. 15, 1984. Est. value: $225.	Mr. Ted Johnson, Executive Assistant to the Prime Minister, Canada.	Do
Do	Household: A porcelain lamp vase of white open fretwork with three dimensional applied flowers on front; jade green color banding at top and bottom with gold line and banding accents; 16" tall, 6" diameter; black wood base also included. GSA. Recd: Feb. 13, 1984. Est. value: $185.	His Excellency Ziyang Zhao, Premier of the State Council of the People's Republic of China, People's Republic of China.	Do
Do	Jewelry: Gold cuff links with "ER" monogram ($150); GSA.	Her Majesty Elizabeth II, Queen of England, England.	Do
	Household: A small silver box with "ER" on the lid (intended for spouse ($150). Presidential staff; for official use/display. Recd: Mar. 7, 1983. Est. value: $300.		
Do	Household: 1 Waterford crystal ashtray, 7" in diameter ($118), Presidential Staff, for official use/display.	His Excellency Dr. Garret Fitzgerald, Prime Minister of Ireland, Ireland	Do
Do	Household: One 100% wool blanket by Avoca of Ireland, plaid, 54" x 60" ($65) GSA. Recd: Jun. 26, 1984. Est. value: $183.		
Do	Household: A waterford crystal vase 10" tall, 7¼" top diameter, 4" base diameter presidential staff; for official use/display. Recd: Mar. 26, 1984. Est. value: $200.	Officials at Shannon Airport Ireland	Do
Do	Book: "Traditional Islamic Craft in Moroccan Architecture" by Andre Paccard (two volume set). Presidential staff; For official use/display. Recd: May 23, 1984. Est. value: $495.	His Excellency Ali Bengelloun, Ambassador of Morocco, Morocco.	Do
David R. Gergen, Assistant to the President for Communications.	Jewelry: A pair of jade and gold cuff links. GSA. Recd: Nov. 30, 1983. Est. value: $375.	His Excellency Chun Doo Hwan President of the Republic of Korea Republic of Korea.	Do
William Henkel, Deputy Assistant to the President for Presidential Advance.	Household: One waterford crystal ashtray, 7" in diameter ($118). GSA.	His excellency Dr. Garret Fitzgerald, Prime Minister of Ireland, Ireland.	Do
	Household: One 100% wool blanket by Avoca of Ireland, plaid, 54" x 60" ($65). GSA. Recd: Jun. 26, 1984. Est. Value: $183.		
Edward V. Hickey, Jr., Assistant to the President and Director of Special Support Services.	Jewelry: A pair of jade and gold cuff links. GSA. Recd: Nov. 30, 1983. Est. value: $375.	His Excellency Chun Doo Hwan, President of the Republic of Korea, Republica of Korea.	Do
Robert C. McFarlane, Assistant to the President for National Security Affairs.	Household: A porcelain lamp base of white open fretwork with three-dimensional applied flowers on front, jade green color banding at top and bottom with gold line and banding accents, 14" tall, black wood base also included. Presidential staff; for official use/display. Recd: Jan. 30, 1984. Est. value: $175.	His excellency Ziyang Zhao, Premier of the State Council of the People's Republic of China, People's Republic of China.	Do
Michael A. McManus, Jr., Deputy Assistant to the President and Deputy to Deputy Chief of Staff.	Jewelry: A pair of jade and gold cuff links, GSA. Recd: Nov. 30, 1983. Est. value: $375.	His excellency Chun Doo Hwan, President of the Repbulic of Korea, Republic of Korea.	Do
Edwin M. Meese III, Counsellor to the President.	Household: A cloisonne vase depicting flowers and birds, multi-colored; 10" tall, 6" diameter; wooden base also included. GSA. Red'd: Feb. 2, 1984. Est. value: $175.	His excellency Ziyang Zhao, Premier of the State Council of the People's Republic of China, People's Republic of China.	
Do	Jewelry: A pair of jade and gold cuff links, GSA. Recd: Nov. 30, 1983. Est. value: $375.	His excellency Chun Doo Hwan, President of the Republic of Korea, Republic of Korea.	Do
Do	Artwork: "Puzzle Ball," wc. / figurine of three elephants on a pedestal stand, holding hands and supporting with their trunks a carved sphere with holes that reveal other "holey" spheres within the outer one, carved out of a single piece of ivory. GSA. Recd: Nov. 15, 1984. Est. value: $400.	Lu Kuo-Hua, General Secretary, Chinese Federation of Labor, Taiwan	Do
Gaston J. Sigur, Jr. Special Assistant to the President for National Security Affairs.	Jewelry: A pair of jade and gold cuff links. GSA. Recd: Nov. 30, 1983. Est. Value: $375.	His Excellency Chun Doo Hwan, President of the Republic of Korea, Republic of Korea.	Do
William F. Sittman, Special Assistant to the President and to the Deputy Chief of Staff.	Household: Silver cigarette box with granulated or rough surface; on cover is monogram of "E II R" with a crown above it in gold, interior of the box is smooth and Gold-toned; measures 5" x 3¼". Presidential staff; for official use/display. Recd: Mar. 07, 1983. Est. Value: $500.	Her Majesty Elizabeth II Queen of England, England.	Do
Larry M. Speakes, Deputy Assistant to the President and Deputy Press Secretary.	Jewelry, a pair of jade and gold cuff links. GSA. Recd: Nov. 30 1983. Est. Value: $375.	His Excellency Chun Doo Hwan President of the Republic of Korea, Republic of Korea.	Do

REPORT OF TANGIBLE GIFTS—Continued

[January 1 through December 31, 1984]

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Charles P. Tyson, Deputy Assistant to the President for National Security Affairs.	Household: Sugar and Creamer, silver cloisonne, with two spoons and a tray. Recd. Apr 06, 1984 Est. Value: $875	Fnu Wu, Republic of Korea	Do
	Agency—Office of the Vice President		
George Bush	Miniature lacquer folding screen. Recd February 1984. Est value $265. Stored in OVP safe	Christian delegation of Taiwan, Religious group, Taiwan	Non-acceptance would have caused embarrassment to the donor
Do	20" handpainted ceramic bowl Recd February 1984 Est. value $550. On display at Vice President's residence.	Sukru Elekdag, Ambassador, Turkey	Do
Do	Three silver coins (½ oz.). Three gold coins (¼ oz.): Recd January 1984 Est. value $650. On display in Vice President's White House office	Grand Duke Jean, Luxembourg	Do
Do	Brass statuette of dancer Recd June 1984 Est value $250. Stored in OVP safe.	Bir Bikram Shah Gyanendra, Prince, Nepal.	Do
Do	Three silver coins: Recd April 1984 Est. value $225 On display in Vice President's White House office.	Salvador Jorge Blanco, President, Dominican Republic.	Do
Do	Floral bone china lamp: Recd February 1984. Est. value $220 In use at the Vice President's residence	Rudolf Kirchschlaeger, President, Austria	Do
Do	Cloisonne plate with Japanese cherry blossoms Recd July 1984 Est. value $200 On display in Vice President's residence.	Toshio Kohmoto, Director of Economic Planning, Japan	Do
Do	Lead crystal floral vase: Recd March 1984. Est. value $395 On display at Vice President's residence.	Francois Mitterrand, President, France	Do
Barbara Bush	Pearl bracelet: Recd November 1984. Est value $200 Stored in OVP safe	Kozaburo Nozawa, Citizen, Japan	Do
Do	Silver flowered bolt of silk Recd May 1984. Est. value $200 Stored in OVP safe.	Shuja-ur Rehman, Mayor of Lehore, Pakistan.	Do.
George Bush	Black material with gold threading: Recd May 1984. Est. value $250 Stored in OVP safe.	Shuja-ur Rehman, Mayor of Lehore, Pakistan.	Do
Do	Red silk tablecloth with gold threading. Recd May 1984 Est. value $250. Stored in OVP safe.	Azmat Riaz, Commandant, Khyber Pass, Pakistan	Do
Do	Gold plated sword and sheath: Recd May 1984 Est value $1,200 On display in Vice President's OEOB office.	Salim Al Sabah, Minister of Defense, Kuwait.	Do
Do	Gold sword with semi-precious stones and ivory hilt: Recd May 1984. Est. value $2,000. Stored in OVP safe.	Soeharto, President, Indonesia	Do
Barbara Bush	Silver serving set: Recd May 1984. Est value $3,000 Stored in OVP safe	Mrs. Soeharto, Wife of President, Indonesia.	Do
Do	Gold Peace Dove pin: Recd January 1984. Est value $250. Stored in OVP safe.	Mrs. John Swan, Wife of Premier, Bermuda	Do
George Bush	Royal Crown Derby bone china bowl: Recd February 1984. Est. value $250. On display at Vice President's residence.	Margaret Thatcher, Prime Minister, Great Britain	Do
Barbara Bush	Red silk with gold threading: Recd June 1984 Est. Value $300. Stored in OVP safe.	Mrs. Wirahadikusumah Umar, Wife of Vice President, Indonesia.	Do
George Bush	White china bowl with gold piping: Recd February 1984. Est. value $210 On display at Vice President's residence.	Pierre Werner, Prime Minister, Luxemburg	Do
Barbara Bush	Turquoise silk tablecloth: Recd February 1984. Est value—$200. In use at Vice President's residence.	Zhao Ziyang, Premier, China	Do.
George Bush	Blue and white porcelain vase on wooden stand: Recd February 1984. Est. value $250 On display at Vice President's residence.	....do	Do
Do	Wool handwoven rug: Recd May 1984. Est value $800. In use at the Vice President's residence.	Begum M Zia-ul Haw, President, Pakistan.	Do.
Do	Wooden inlaid writing desk: Recd May 1984. Est. value—$500 On display in Vice President's OEOB office.	....do	Do.
	Agency—U.S. Senate		
Dennis DeConcini, U.S. Senator	Rug with browns & maroons: Recd April 1984 Est. value—$350. Held in Senator's Office for display penaing approval by Ethics Committee.	President Zia, Pakistan	Non-acceptance would have caused embarrassment to donor and U.S. Government
Do	Maroon san with gold threads: Recd April 1984. Est. value $350. Held in Senator's office for display pending approval by Ethics Committee.	....do	Refusal would likely cause offense or embarrassment
Robert W. Kasten, Jr., U.S Senator	Moroccan rug, 9×12 feet with red-blue-yellow pattern. Recd December 1984. Est. value $550. Requested approval from the Select Committee on Ethics on January 31, 1984 for official use of item during tenure in Senate.	Col.-Major Kabbj, Morocco	Do
Edward M. Kennedy, U.S Senator	Silver Tray: Recd December 27, 1984. Est value $200. Deposited with Secretary of the Senate for transmittal to the Commission on Arts and Antiquities of the U.S Senate	President Gaafar H. Nimeiri, Republic of Sudan	Do
Mack Mathngly, U.S. Senator	Large book of landscapes, orchid, bamboo and flower paintings by Madame Chaing Kai-shek. Recd December 8, 1984. Est. value $165 Deposited with Secretary of the Senate for transmittal to the Commission on Arts and Antiquities of the U.S. Senate	Dr. Chin Hsiao-yi, Director, National Palace Museum, Republic of China	Do
Sam Nunn, U.S. Senator	Persian Rug, Kashan design; 49" x 72" wool, center medallion, leaf motif border, mauve and dark blue. Recd December 1984. Est. value $650. Requested approval from the Select Committee on Ethics on February 4, 1984 for official use of item during tenure in Senate.	Pakistani Government	Do

REPORT OF TRAVEL OF EXPENSES OF TRAVEL

Name and title of recipient	Brief description of Travel or travel expenses occurring entirely outside United States	Identity of foreign donor and government	Circumstances justifying acceptance
	Agency: U.S. Senate		
Lawrence C. Horowitz, Administrative Assistant to Senator Kennedy	January 16-19, 1984; Recd lodging and food at Hotel Sovietski in Moscow	U.S.S.R	Refusal would likely cause offense or embarrassment
Do	May 7-10, 1984, Recd lodging and food at Hotel Sovietski in Moscow	....Do	Do

REPORT OF TANGIBLE GIFTS

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Agency: Committee on Standards of Official Conduct, U.S. House of Representatives			
Ken Kramer, Member of Congress.	Watch (Value: $200). Cufflinks (Value: $600). Received 7/18/84. Deposited with Office of the Clerk for transmittal to GSA for disposition.	Republic of China	Non-acceptance would have caused embarrassment to donor and U.S. Government
Stephen J. Solarz, Member of Congress.	100 Kuwaiti dinar gold coin (Value: $340). Received 8/15/84. Deposited with Office of the Clerk for transmittal to GSA for disposition.	Undersecretary of the Ministry of Information Kuwait.	Do.
Howard Wolpe, Member of Congress.	Pair of elephant tusks (Est. Value: $3,000). Received Nov. 1983/Approved, for official display Jan. 1984.	President Gnassingbe Eyadema, Togo	Do.

REPORT OF TRAVEL OR EXPENSES OF TRAVEL

Name and title of recipient	Brief description of travel of travel expenses occurring entirely outside United States	Identity of foreign donor and government	Circumstances justifying acceptance
Agency: Committee on Standards of Official Conduct, U.S. House of Representatives			
Steven Gunderson, Member of Congress.	Transportation, logging and meals in Canada	Canada	Fact-finding trip.
Barbara Kennelly, Member of Congress.	Lodging and meals in Cyprus (April 1983 and not previously reported)	Cyprus House of Representative	Do.
Bill McCollum, Member of Congress.	Lodging in Bangkok, Thailand, for 3 nights	Thailand Foreign Ministry	Refusal would cause offense or embarrassment.
Andrea T. Simmons, Office Hon. Julian C. Dixon.	Transportation to military base at Kinmen, Republic of China	Republic of China	Only means of transportation for fact-finding trip.

REPORT OF TANGIBLE GIFTS

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Agency: Forest Service—Department of Agriculture			
John D. Berry, District Ranger, Siskiyou National Forest.	Recd 9/22/84, a 8 oz Silver Medallion, limited edition. Est. Value $165.00 +. Framed photograph of Mr. Bolivar.—$145.00 value. Both items were accepted for the Forest Service and placed in the historical collection at Powers Range District.	Oscar Hernandez, Venezuela Consul	Dedication to Mr. Bolivar at the Ranger District.

REPORT OF TRAVEL OR EXPENSES OF TRAVEL

Name and title of recipient	Brief description of travel or travel expenses occurring entirely outside United States	Identity of foreign donor and government	Circumstances justifying acceptance
Agency: Foreign Service—Department of Agriculture			
Gary Leatham, Research Chemist, Forest Products Lab.	Recd April 17, per diem and local transportation in Manchester, England. Est. Value $603.50.	British Mycological Society Manchester, United Kingdom.	Agreement executed specifying reimbursement to FPL. The Mycological Society insisted on reimbursing Leatham. Rather than create problems, Leatham accepted.

REPORT OF TANGIBLE GIFTS

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Agency: Department of the Air Force			
Dept. of the Air Force, Air Force Office of Special Investigation (AFOSI), Dist 4, Andrews AFB MD	Cash. Recd May 8, 1984. Est. Value—$8,200.00. US Treasury Check #07,094,538 deposited at the Randolph AFB Accounting and Finance Office.	Sheik Salm Al-Sabah Al-Sabah, Kuwait Minister of Defense Delegation.	Nonacceptance would have caused embarrassment to donor and US Government.
Dept. of the Air Force, AFOSI, Det. 1401, Dist. 14, Peterson AFB CO	Cash. Recd April 13, 1984. Est. Value—$2,000.00. US Treasury Check #03,684,999 deposited at the Randolph AFB Accounting and Finance Office.	do	Do.
Dept. of the Air Force, AFOSI, Dist. 18, Norton AFB CA.	Cash. Recd April 20, 1984. Est. Value—$2,400.00. US Treasury Check #01,369,341 deposited at the Randolph AFB Accounting and Finance Office.	do	Do.
Brig. Gen. Richard S. Beyea, Jr., AFOSI Commander.	Silver Pocket Watch (#994 in front case & #171994 in back). Recd April 11, 1984. Est. Value—$275.00. Approved for official use in the HQ AFOSI Protocol/Waiting Room.	Mr. Sukru Balci, Chief of Police and Governor, Istanbul, Turkey.	Do.
Gen. Charles A. Gabriel, Chief of Staff, USAF	Black Power [sic] Pistol (barrel length—8¾". Recd April 11, 1984. Est. Value—$200.00. Approved for official use in the Office of the AF Chief of Staff.	Gen Jose Peralba, Chief of Staff, Spanish Air Force.	Do.
Gen. Charles A. Gabriel, Chief of Staff, USAF	Oriental Rug (8'x12', red with multicolor trim). Recd July 3, 1984. Est. Value—$800.00. Approved for official use in the office of the AF Chief of Staff.	Colonel Major Mohamed Kabbaj, Inspector (Chief of Staff), Moroccan Air Force.	Do.
Mrs. Barbara Mullins, wife Gen. James P. Mullins, Commander Air Force Logistics Command.	Omega Gold Watch (Serial #1375). Recd February 26, 1984. Est. Value—$450.00. Stored in HQ AFMPC/MPCASA.	Lt. Gen. Mohammed Sabri, Chief of Staff, Royal Saudi Air Force.	Do.

REPORT OF TANGIBLE GIFTS—Continued

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Gen. Jerome F. O'Malley, Commander in Chief, Pacific Air Forces (PACAF).	Korean Silk Tiger Painting (23'x61'). Recd March 22, 1984. Est. Value—$2,500.00. Approved for official use at HQ PACAF.	Gen. Kim Sang Tae, Chief of Staff Republic of Korea Air Force.	Do.
Dr Thomas E. Cooper, Assistant Secretary (Research, Development and Logistics).	STRYR 9mm Pistol. Ser #P11856. Recd May 29, 1984. Est. Value—$300.00. Approved for display in Office of the Secretary.	Minister Frischenschlager, MOD Austria	Do.
	Agency: Department of the Army		
Lieutenant General John N. Brandenburg, Commander, I Corps, Fort Lewis, WA.	Sword, scabbard and box container. Recd April 1984. Est. Value—$500. Post Museum, Fort Lewis, WA.	Minister of Defense, Kuwait	To preclude potential embarrassment to US Government and donor.
Colonel Eugene D. George, Chief, Neurosurgery Service, Walter Reed Army Medical Center.	Rolex watch. Recd May 1984. Est. Value—$1,995. Federal Bureau of Investigation, Washington, DC.	Unknown patient	To preclude embarrassment with the patient.
Brigadier General John R. Greenway, Deputy Chief of Staff for Doctrine, Fort Monroe, VA	Taurus 9MM. Handgun, serial number B310093. Recd March 1984. Est. Value—$184. US Army Military Personnel Center, Alexandria, VA.	Deputy Chief of Staff (Doctrine), Brazilian Army.	To preclude potential embarrassment to US Government and donor.
Lieutenant General Lewis C. Menetry, Commander, Combined Field Army, Korea.	Sam Jung Do. Saber, scabbard and box container. Recd October 1983. Est. Value—$1,000. Headquarters, Combined Field Army, Korea.	President, Republic of Korea	Do
General Robert W. Sennewald, Commander in Chief, US Forces, Korea.	3 Mother of Pearl inlaid tables. Recd May 1984. Est. Value—$2,075. Headquarters, US Army Forces Command, Fort McPherson, GA.	Chairman, Joint Chiefs of Staff, Republic of Korea.	Do.
Do	Sam Jung Do. Saber, scabbard and box container. Recd October 1983. Est. Value—$1,000. Headquarters, US Army Forces Command, Fort McPherson, GA.	President, Republic of Korea	Do.
General John A. Wickham, Jr., Army, Chief of Staff.	2 Silver candelabras. Recd March 1984. Est. Value—$700. Headquarters, Department of the Army, Pentagon, Official Use.	Chief of Staff, Royal Thai Army	Do
	Agency: Central Intelligence Agency		
William J. Casey, Director, CIA	Indo-Keshan rug. 5.5 x 3.1. Ivory ground with trellising vine field centering a pulled marquise medallion, gray spandrels, palmette and trellising vine guard border on brick red ground. Recd October 1984. Est. Value—$350. Retained for official display.	Public Law 95-105 A(F)(4)	Non-acceptance would have caused embarrassment to donor.
Do	Indo-Tabriz Garden rug. 6.4 x 4.9. Gold ground with flowering branch and exotic bird field centering a pulled marquise medallion on burgundy ground, palmette and trellising vine guard border on burgundy ground. Recd January 27, 1984. Est. Value—$850. Retained for official display.	do	Do.
Do	(a) Pakistan 940-silver repousse four-piece tea set. Consisting of footed teapot, covered sugar, creamer and rectangular tray. L: of tray 18; Wt. 85 oz. To be reported to GSA for disposition (tea set). (b) Pakistan Bokhara rug. 6.7 x 4.1. Shaded beige ground with diagonal rows of rosettes, rosette guard border on beige ground. Recd October 1984. Est. Value—$800. Retained for official display.	do	Do.
Do	(a) Ladies Rolex Oyster Perpetual date watch. Yellow gold filled and stainless steel case and attachment. Number 6917. (b) Middle East repousse yellow gold bangle bracelet. Recd February 1984. Est. Value—$275. To be reported to GSA for disposition.	do	Do.
Do	Pakistan brass inlaid rosewood buffet. Rectangular molded edge top above three aligned drawers and three drawers flanked by two double door compartments, raised on cabriole legs, with serpentine backsplash. L: 74. Recd February 1984. Est. Value—$1,200. To be reported to GSA for disposition.	do	Do.
Do	Pair Indo-Keshan rugs. 7.3×4.6. Ivory ground with pulled marquise medallion on brick red ground, lavender spandrels, trellising floral spray guard border on dark blue ground. Recd March 30, 1983. Est. Value—$2,400. Retained for official display.	do	Do.
Do	(a) Indo-Keshan rug. 7.2×4.6. Ivory ground with trellising vine and palmette field centering a pulled lobed medallion, wine red-beige-blue spandrels, palmette and trellising vine guard border on beige ground. Retained for official display. (b) Indo-Tabriz rug. 6.1×4.1. Red ground with bird and trellising vine field, honey-comb spandrels, palmette and trellising vine guard border on navy blue ground. Retained for official display. (c) Emerald and pearl ensemble, consisting of a necklace, pair pendant earrings and a finger-ring. Yellow gold mount set with round faceted emeralds, seed and fresh water pearls. Recd February 1984. Est. Value—$2,900. To be reported to GSA for disposition (Emerald and pearl ensemble).	do	Do
John N. McMahon, Deputy Director, CIA.	Sako three-in-one automatic pistol. 22/32-caliber. The automatic pistol with three interchangeable barrels: 22LR, 22 short and 32-calibor. Together with carrying case. Recd September 5, 1984. Est. Value—$175. Retained for official display.	do	Do.
Do	(a) Pakistan brass inlaid rosewood beau brummel. The rectangular molded edge hinged top above four drawers, raised on cabriole legs ending in pad feet. W. approximately 25. (b) Pakistan brass inlaid wood octagonal top side table. Having an eight-section folding base. Top square 22. (c) Octagonal side table en suite with preceding. (d) Pakistan brass inlaid wood two-handle service tray. L: approximately 21. (e) Pakistan brass inlaid rosewood two-deck tea cart with spoked wheels. (f) Pakistan brass inlaid wood octagonal top cocktail table. With eight-sectoin folding base. L: 48. Recd February 1984. Est. Value—$985. To be reported to GSA for disposition.	do	Do
Agency employee	Indo-Isphahan rug. 6.3×3.9. Navy blue ground with flowering vine field centering a pulled star medallion, ivory-gray spandrels, palmette and trellising vine guard border on ivory ground. Recd 1984. Est. Value—$550. Retained for official display.	do	Do.
Do	Chinese sculptured oval picture rug. 4×3. Mountainous river landscape with figures in boat Recd 1984. Est. Value—$175. Retained for official display.	do	Do.

REPORT OF TANGIBLE GIFTS—Continued

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Do	Persian silver footed two-handle service tray. Allover repousse chased decoration centering a marquise medallion, raised on four cabriole legs with shell capitals. L: 37; H: approximately 13; Wt. of tray 175 oz. Recd 1984. Est. Value—$650. To be reported to GSA for disposition.	do	Do
Do	Pakistan Bokhara rug 5.1 ×3.3. Wine red ground with two rows of twelve botehs, rosette guard border on wine red ground. Recd October 2, 1984 Est. Value—$300. Retained for official display	do	Do
Do	(a) Diamond "R" tie tac. Unmarked yellow gold mount set with fifteen round diamonds weighing approximately .25 carats. (b) Ruby, emerald, sapphire and diamond floral spray brooch. Unmarked yellow gold mount set with six round faceted rubies, six round faceted blue sapphires, three round diamonds and four fancy canary marquise diamonds. Total wt. of diamonds approximately .35 carats. Recd June 24, 1984. Est. Value—$575. To be reported to GSA for disposition.	do	Do
Do	Sapphire and diamond ring. Unmarked white metal mount set with six oval faceted blue sapphires and five round diamonds. Total wt. of diamonds approximately .05 carats. Recd 1983. Est. Value—$350. To be reported to GSA for disposition.	do	Do.
Do	(a) Pair Chinese cloisonne vases, contemporary. Blue ground with allover floral design, baluster-form; on carved wood bases. H: of vases 12. (b) Silver plated champagne cooler, maker Galleon. Campana-form H. 10. (c) Three porcelain miniature covered soup tureens with attached undertrays, floral transfer decorations. Recd unknown. Est. Value—$302.50. To be reported to GSA for disposition.	do	Do.
Do	(a) Italian silk man's neck tie. Brown with spread winged eagle design. (b) Selangor pewter vase. Bulbous body with long flaring neck. H: 11. (c) Pearl and ruby ensemble, consisting of a pair pierced-clip type earrings, pendant, and a finger ring. Each 14 karat yellow gold mount set with gray Mabe half-pearls and round faceted rubies. Recd March 28, 1984. Est. Value—$370. To be reported to GSA for disposition.	do	Do.
Do	Zebra skin trophy. L: approximately 88, Recd May 1983. Est. Value—$300. To be reported to GSA for disposition.	do	Do
Do	Ladies Longines quartz watch. 18 karat (750) mesh gold attachment and case, case number 020150807. Recd unknown. Est. Value—$400. To be reported to GSA for disposition.	do	Do
Do	Man's Rolex Oyster Perpetual Date-just wrist watch. Yellow gold filled and stainless steel case and bracelet attachment, movement number 16013. Recd 1984. Est. Value—$250. To be reported to GSA for disposition.	do	Do
Do	(a) Man's Rolex Oyster Perpetual Dae-just watch. Yellow gold filled and stainless steel case and attachment; movement number 16013. (b) Egyptian vermeil bright cut engraved silver dagger and sheath, bearing the Seal of Egypt. Recd unknown. Est. Value—$325. To be reported to GSA for disposition.	do	Do
Do	Persian repousse silver six-piece coffee-tea service. Consisting of a coffee pot, teapot, two sugars and two creamers (one pot, one sugar and one creamer stamped on bottom "German Silver"). Total wt. 72 oz. Recd unknown. Est. Value—$250. To be reported to GSA for disposition.	do	Do
Do	Man's Cartier 18 karat (750) yellow gold wrist watch. Octagonal-form with black Roman numeral dial, brown reptile band; number 170011714. Recd May 1984. Est. Value—$400. Retained for official display.	do	Do
Do	(a) Pakistan brass inlaid rosewood beau brummel. The rectangular molded edge hinged top above four drawers, raised on cabriole legs ending in pad feet (b) Pakistan brass inlaid rosewood canterbury (magazine rack). Rectangular molded edge top above four horizontal shelves. (c) Pakistan brass inlaid wood octagonal top side table. Having an eight-section folding base. Top square 22. (d) Octagonal side table ensuite with preceding. (e) Pakistan brass inlaid rosewood two-deck tea cart with spoked wheels. (f) Pakistan brass inlaid wood octagonal top cocktail table, with eight-section folding base. L: 48. Recd July 1984. Est Value—$1,015. To be reported to GSA for disposition.	do	Do
Agency: Commodity Futures Trading Commission			
Marshall Hanbury, Counsel/Executive Assistant to the Chairman.	Singapore medallion coin. Rec'd January 27, 1984. Est. Value—$184. Retained by CFTC for official display	Ng Kok Song, Singapore	Non-acceptance would have caused embarrassment to donor and U.S. Government
Susan M. Phillips, Chairman	do	do	Do
Agency: Department of the Defense			
Richard L. Armitage, Assistant Secretary of Defense (International Security Affairs)	Jeweled sword in box Recd April 10, 1984. Est. Value—$750. Approved for official display in office of Donee.	Sheikh Salem Sabah al-Salam Al-Sabah, Minister of Defense, Kuwait	Non-acceptance would have caused embarrassment to donor
Maj. Gen. Kenneth D. Burns, USAF, Deputy Assistant Secretary of Defense (Near Eastern and South Asian Affairs).	Algenan-made rug (81" × 130"), brown and tan with diamond pattern in center. Recd September 1984. Est. Value—$400. Stored in Space Management and Services pending disposition	Colonel Abdelli, Director, Algenan AF	Do
Do	Algenan-made rug (74" × 116"), light tan and pink with red flowers with crisscross pattern. Recd September 1984. Est. Value—$225. Stored in Space Management and Services pending disposition.	do	Do.
Lt. Gen. Philip C. Gast, USAF, Director, Defense Security Assistance Agency	Haddad cutlery set (40-piece, stainless steel, flatware service), in large black silverware chest with drawer. Recd January 19, 1984. Est. Value—$250.	Gen. Ibrahim Tannous, Commanding General, Lebanese Armed Forces.	Do
Col. Ronald A. Hofman, USA, Office of Deputy Assistant Secretary of Defense (Near Eastern and South Asian Affairs).	Algerian-made rug (78" × 112"), tan with diamond pattern surrounded by brown. Recd September 1984. Est. Value—$175. Stored in Space Management and Services pending disposition	Colonel Abdelli, Director, Algerian AF	Do

REPORT OF TANGIBLE GIFTS—Continued

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Talbot S. Lindstrom, Deputy Under Secretary of Defense (International Programs and Technology).	9×19mm PARA handgun, made in Austria by Glock. Recd May 29, 1984. Est. Value—$500. Delivered to GSA.	Austan MOD, Frischenschlager	Do
Do	Silver Tutle Boat in glass case. Recd December 5, 1984. Est. Value—$262 Approved for official display in office of Donee.	Samsung Precision Instruments Company, Changwon Industrial Complex, Republic of Korea.	Do.
James P. Wade, Jr., Principal Deputy Under Secretary of Defene for Research and Engineering.	9×19mm PARA handgun, made in Austria by Glock. Recd May 1984. Est. Value—$500 Delivered to GSA.	Austrian MOD, Frischenschlager	Do.
Caspar W. Weinberger, Secretary of Defenee.	Model sailing ship in large case. Recd April 10, 1984. Est. Value—$50. Approved for official display in office of Donee.	Sheikh Salim, Minister of Defens of Kuwait.	Do.
Do	Large sword encased in gold-finished sheath, decorated with red stones, in large box with mother-of-pearl and wood inlaid design, Recd Apnl 10, 1984. Est. Value—$750. Approved for official display in office of Donee	....do	Do
Do	Oil painting of boat scene on canvas in gilded frame, 3'×3' Recd April 10, 1984. Est. Value—$75. Delivered to GSA.	....do	Do.
Mrs. Caspar W. Weinberger, Wife of Secretary of Defense.	Pearl necklace set of rubies, seed pearls and 18K gold, with matching ring, bracelet and drop earrings, in large blue, plush-covered box. Recd Apnl 11, 1984. Est Value—$9,000. Delivered to GSA.	Sheikh Salim, Minister of Defense of Kuwait.	Do
Caspar W. Weinberger, Secretary of Defense.	Small black lacquer table. Recd May 10, 1984. Est. Value—$75. Approved for official display in office of Donee.	Korea	Do.
Do	Small black lacquer chest, with mother-of-pearl design on top and side. Recd May 10, 1984. Est. Value—$200. Approved for official display in office of Donee.	....do	Do.
Do	Crystal bowl with figures and name plate. Recd August 8, 1984. Est. Value—$250. Approved for official display in office of Donee.	Minister of Defense, Freddy Vreven of Belgium.	Do.
Do	Sterling silver plate, embossed design 11⅛" in diameter. Recd October 14, 1984. Est. Value—$500. Approved for official display in office of Donee.	Lt. Gen. Mohamed Helmi, Commander of Egyptian Air Forces.	Do
Do	Large round, mosaic wall hanging. Recd October 14, 1984. Est. Value—$500. Reported to GSA and stored in Space Management and Services pending disposition by GSA.	MOD Sladhhine Baly of Tunisia	Do.
Do	3500-year old sword in wooden box. Recd October 15, 1984. Est. Value—$600. Approved for official display in office of Donee.	MOD Itzhk Rabin of Israel	Do.
Do	Long gold sword in fancy case and blue box. Recd December 6, 1984. Est. Value—$1,000. Approved for official display in office of Donee.	King Fahd of Saudi Arabia	Do.
Agency: Environmental Protection Agency			
Kenneth E. Biglane, Director, Hazardous Response Support Division (HRSD), Office of Emergency and Remedial Response (OERR), EPA	Man's Rolex Swiss Watch, Oyster Perpetual Datejust Stainless Steel case and band, yellow gold face. Est. Value—$1,200.	H.E. Hamand Abdul Rahman al-Medfa, Minister of Health, United Arab Emirates.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
J. Stephen Dorrler, Chief, Environmental Response Team, Hazardous Response Support Division, Office of Emergency and Remedial Response EPA/OSWER.	Man's Rolex Swiss Watch, Oyster Perpetual Datejust Stainless steel case and band. blue face with Roman numerals. Est. Value—$1,200.	....do	Do

REPORT OF TRAVEL OR EXPENSES OF TRAVEL

Name and title of recipient	Brief description of travel or travel expenses occurring entirely outside United States	Identity of foreign donor and government	Circumstances justifying acceptance
Agency: Federal Communications Commission			
Mimi Weyforth Dawson, Commissioner.	During February 1984, Commissioner Dawson traveled from Washington, D.C. to Brussels to attend a meetng in connection with her duties as Secretary-General of the Atlantic Association of Young Political Leaders, (AAYPL). The AAYPL paid for her miscellaneous travel expenses, while in Brussels. Estimated Value: $142.	Atlantic Association of Young Political Leaders, a multnational organization is funded by NATO.	These were routine and ordinary expenses associated with her position as Secretary-General of the AAYPL.
Margaret Reitzel, Confidential Assistant to Commissioner	During October 1984, Ms. Reitzel traveled from Washington, D.C. to Toronto, Canada to attend a study tour and the Atlantic Treaty Association Annual Assembly. Reitzel, as part of the American Delegation, accompanied Commissioner Dawson, who participated in her capacity as Secretary-General of the AAYPL. The Canadian Association of Yound Political Leaders (AAYPL) paid for Reitzel's lodging and mal expenses in Toronto. (Dawson's expenses were borne by the Amencan Council of YPL). Estimated Value: $900.	The Canadian Association of Young Political Leaders is member of the AAYPL. The AAYPL, a multnational organization is funded by NATO.	To provide assistance to the Secretary-General of the AAYPL, and perform necessary related duties.

REPORT OF TANGIBLE GIFTS

Name and title of recipient	Grft, Date of acceptance, Estimated, value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Agency: Board of Governors of the Federal Reserve System			
Paul Volcker, Chairman	Set of 4 coins. Recd. June 1984. Est Val. $175. Retained for Board use	Djordje Peklic, Governor, National Bank of Bosnia and Herzegovia.	Non-acceptance would have caused embarrassment.
Do	Set of Italian Books Recd July 1984. Est. Val. $300. Retained for Board use	Dr. Mano Rivosecchi, Managing Director, Credito Italiano.	Do.
Preston Martin, Vice Chairman	....do	....do	Do

REPORT OF TRAVEL OR EXPENSES OF TRAVEL

Name and title of recipient	Brief description of travel or travel expenses occurring entirely outside United States	Identity of foreign donor and government	Circumstances justifying acceptance
Agency: Foreign Claims Settlement Commission—U.S. Department of Justice			
Joseph W. Brown, Part-time Commissioner.	Airfare—$1,500 Hotel—$700	Taiwan	Member of delegation of Prominent Nevada residents on good will "Sister State" trip.
Mrs. Joseph W. Brown (spouse)	Airfare—$1,500, Hotel—$700, 7 days—April 1984	do	Do.
Agency: Department of Health and Human Services			
Margaret M. Heckler, Secretary of Health and Human Services.	August 30, 1984. Helicopter travel to and from Bertestolen Health Sports Center for the Disabled.	Government of Norway	Official fact-finding trip.
David E. Hobman, Director, Office of International Affairs.	do	do	Do.
Patti Birge Tyson, Executive Assistant to the Secretary.	do	do Do.	

REPORT OF TANGIBLE GIFTS

Name and title of recipient	Gift, date of Acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Agency: National Aeronautics and Space Administration			
Concetta P. Thibideau (spouse of P. Thibideau, Manager of International Scientific and Technical Information Activities, Scientific and Technical Information Branch, NASA Headquarters). Mrs. Thibideau is an Italian citizen	Educational Scholarship Est. Value—$1885.00. Scholarship began December 1, 1982 and extended to Fall 1984.	Italian Ministry of Foreign Affairs University of Rome.	Acceptance of scholarship is in accordance with NASA regulations.

REPORT OF TRAVEL OR EXPENSES OF TRAVEL

Name and title of recipient	Brief description of travel or travel expenses occurring entirely outside United States	Identity of foreign donor and government	Circumstances justifying acceptance
Agency: National Aeronautics and Space Administration			
Helen S. Kupperman, Asst. General Counsel for General Law.	Food, lodging and local transportation in Moscow and Leningrad, USSR. Recd. April 2–8, 1984. NASA est. value—$910.00.	USSR Academy of Sciences, Government of USSR.	Accompanying husband while on annual leave, approved by NASA Associate Deputy Administrator, in accordance with NASA regulations.
Dr. Robert H. Kupperman, Executive Director of Science and Technology, Georgetown University Center for Strategic and International Studies.	Food, lodging and local transportation in Moscow and Leningrad, USSR	do	At the invitation of USSR Academy of Sciences to attend series of discussions on crises management and arms control. Activity was coordinated with U.S. National Security Advisor.

REPORT OF TANGIBLE GIFTS

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Agency: National Security Agency (NSA)			
Senior NSA Official	Engraved Silver Tray. Recd 18 January 1984. Est. Value—$350.00. Tray was presented to the National Cryptologic School for retention.	Senior Official of a Foreign Government—Public Law 95–105A(F)(4).	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Agency: Department of the Navy			
Commodore Richard F. Donnelly, USN, Program Manager, Saudi, Naval Expansion Program, Naval Material Command.	Rolex oyster wrist watch (man's). Precision—Serial 6426. Recd July 25, 1984. Est. Value—$2,000. Presently located in Chief of Naval Operations (OP-09B33) awaiting instructions from GSA.	Commodore Talal Salem Al-Mofadi, Saudi Arabia.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Do	Rolex oyster wrist watch (woman's). Perpetual Date—Serial 69160. Recd July 25, 1984. Est. Value—$2,000. Presently located in Chief of Naval Operations (OP-09B33) awaiting instructions from GSA.	do	Do.
Vice Admiral Crewford A. Eastering, USN, Commander Naval Air Force, U.S. Pacific Fleet.	Gold plated engraved sword wooden in-layed presentation case. Recd April 16, 1984. Est. Value—$860. Presently located in chief of Naval Operations (OP-09B33), awaiting instructions from GSA.	Sheikh Salim Al-Sabah, Minister of Defense, Kuwait.	Do.
Do	Wooden model of fishing boat in blue velveteen presentation case. Recd April 16, 1984. Est. Value—$500. Presently located in chief of Naval Operations (OP-09B33), awaiting instructions from GSA.	do	Do.
Rear Admiral Frederick W. Kelley, USN, Commander U.S. Naval Forces Korea.	Sam Jung Do Ceremonial Saber in presentation case. Recd October 1, 1983. Reported August 22, 1984. Est. Value—$1,000. Presently located in Chief of Naval Operations (OP-09B33) awaiting instructions from GSA.	The Honorable Chun, Doo Hwan, Republic of Korea.	Do.

REPORT OF TANGIBLE GIFTS—Continued

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Rear Admiral Dickinson M Smith, USN, Commander U.S. Naval Forces Philippines.	Set of stacking tables. Recd December 1983. Reported January 19, 1984. Est. Value—$179. Approved for official Display in U.S. Naval Forces, Philippines Headquarters.	Mrs. Amelia J. Gordon, Former Mayor of Olongapo City.	Do
Admiral James D. Watkins, USN, Chief of Naval Operations	Footed 900 silver mate vessel with embossed design. Recd September 1984. Est. Value—$225. Approved for official display in Tingey House.	Vice Admiral Patrico Carvajal, Minister of Defense, Chile.	Do
Do	900 silver cigarette box with enamel signature, flag and engraved legend. Recd September 1984. Est. Value—$200. Approved for official display in Tingey House.	do	Do
Admiral James D. Watkins, USN Chief of Naval Operations.	10½" silver filigree sailing vessel on brown marble base with silver presentation plaque, box. Recd September 1984. Est. Value—$750. Approved for official display in Tingey House.	Vice Admiral Jorge Du Bois Gervasi, Minister of the Peruvian Navy.	Do
Do	10½" round sterling presentation tray with gadroon border, seal in the center. Recd September 1984. Est. Value—$400. Approved for official display in Tingey House.	D. Raul Antonia Borres, Minister of Defense, Argentina	Do
Agency: Office of Personnel Management			
Donald J. Devine, Director	24 karat gold crown with pieces of jade; presented April 9, 1984, a similar gift was valued by GSA at $3,000.00 in 1977; the gift is on official display at the office of the Donee.	Mr. Ahn Kong-Hyuk, Inspector General of the Ministry of Finance of the Republic of Korea.	The gift is a highly valued symbol of Korean national pride. Non acceptance would have caused embarrassment to the Donor.
Agency: Smithsonian Institution			
Robert McC. Adams, Secretary	Mandala thanka—silk scroll depicting symobolic representation of Nepal. Recd September 28, 1984. Est. Value—$900. Transferred to the Anthropology, collections of the National, Museum of Natural History.	Lain S. Bangdel, Chancellor, Royal Nepal Academy, Nepal	Non-acceptance may have been perceived as a discourtesy
Agency: Department of State			
Jeffrey R. Cunningham, Petroleum Officer, U.S. embassy, Jakarta, Indonesia.	Man's Cartier wristwatch, silvertone with gold tone trim, maroon face, in red simulated leather case with gold embossing. Recd July 28, 1984. Est Value—$400. Delivered to GSA for disposition November 14, 1984.	Hasmoro, Director of General Affairs, Pertamina, State Oil Co., Indonesia.	Non-acceptance would have caused embarrasment to donor and U.S Government.
Mrs. Walter Cutler, Wife of the U.S. Ambassador to Saudi Arabia.	Lady's Roberge wristwatch, 18K gold and two diamond chips in body of watch, 2-color link watchband. Serial No. 2616-387. Recd April 8, 1984. Est. Value—$2,000. Delivered to GSA for disposition, November 14, 1984.	Spouse of senior member of the Royal Family of Saudi Arabia	Do
Do	Seed pearl necklace with ornate gold centerpiece containing rubies and pearls; matching earrings and ring. Recd December 1984. Est. value—$2,500. Being held in the Office of Protocol pending transfer to GSA.	Member of the Royal Family of Saudi Arabia.	Do.
Kenneth W. Dam, Deputy Secretary of State.	Waterford crystal captain or ship's decanter, approx. 11" high. Recd April 18, 1983. Est. Value—$145. Delivered to GSA for disposition November 14, 1984.	Dan Browne, Lord Mayor of Dublin, Ireland.	Decanter was thought to be worth less than $100 and non-acceptance would have caused embarrassment to donor and U.S Government
Do	Set of books: "The Arts of Korea," six volumes, published by Dong Hwa Publishing Co. Publishing Co. Recd May 5, 1983. Est. value—$175 approx. Delivered to GSA for disposition November 14, 1984.	HE Bum Suk Lee, Minister of Foreign Affairs of Korea.	Non-acceptance would have caused embarrassment to donor and U.S. Government
Mrs. Barrington King, Wife of U.S. Ambassador to Brunei	18k gold pen and pencil set with royal seal of Brunei on clip of each, diamond and ruby chips encircling ends of both, in blue simulated leather case. Recd November 15, 1984. Est. Value—$600. Being held in the Office of Protocol pending transfer to GSA.	Wife of the Sultan of Brunei	Gift wrapped as souvenir at conclusion of tea. Non-acceptance would have caused embarrassment to donor and U.S. Government.
Jeane J. Kirkpatrick, U.S. Permanent Representative to the United Nations.	Mahogany chest, inlaid with mother-in-pearl, 34" × 17½" × 16". Recd May 30, 1984. Est. Value—$200 approx. Delivered to GSA for disposition November 14, 1984.	HE Ferdinand Marcos, President of the Philippines.	Non-acceptance would have caused embarrassment to donor and the U.S Government.
Richard Krieger, Associate Coordinator, for Refugee Affairs.	Cheetah skin, 3', brown with black stripes Recd July 11, 1984. Est. Value—$165. Delivered to GSA for disposition November 14, 1984.	Amb. El Ahmadi, Commissioner for Refugees, Sudan.	Do
J. William Middendorf, II, U.S. Representative to the Organization of American States.	Mahogany sculpture of Suriname woman approx. 50" high, on wooden base, with plaque inscribed to donee from PM of Suriname. Recd April 23, 1984. Est. Value—$1,200. Approved for official display in office of donee.	The Prime Minister of Suriname	Do
Richard W. Murphy, Assistant Secretary of State.	Silver tray in shape of island of Sri Lanka, 6" × 8", and six silver demitasse spoons with semi-precious stones. Recd June 21, 1984. Est. Value—$200. Delivered to GSA for disposition on November 14, 1984.	The President of Sri Lanka and Mrs. Jayewardene.	Do.
Do	(a) Portable liquor cabinet, 19½" × 19½" × 16", with inlaid shell design on cover, containing 4 decanters, 5 glasses, ice bucket, 2 gold plated bottle openers, 1 ice tong (b) A sterling silver tray approx. 12" diameter engraved to donor from donee. Recd January 24, 1984. Est. Value—$1,500 combined. (a) Liquor cabinet approved for official use in the Office of the Secretary of State. (b) Tray delivered to GSA for disposition on November 14, 1984.	Prince Turki bin Abd al-Aziz, Ambassador at Large, Saudi Arabia.	Do
Do	Oriental rug, 3' × 5', maroons and blues, with fringe. Recd October 25, 1984. Est. Value—$400. Approved for official display in office of donee.	Gen. Muhammad Zia-ul-Haq, President, Islamic Republic of Pakistan.	Do
Richard W. Murphy (while U.S. Ambassador to Saudi Arabia).	Caran d'Ache Clock and Pen Desk Set, gold and black, made in Geneva. Recd August 1983. Est. Value—$402. Approved for official use at U.S. Embassy in Saudi Arabia.	Abdullah Bakr, Consultant to Saudi Foreign Ministry.	Do.
Gregory J. Newell, Assistant Secretary of State.	Leather portfolio, 10" × 15", dark maroon with gold tone reinforcements at corners. Recd July 2, 1984. Est. Value—$75. Delivered to GSA for disposition November 14, 1984.	Ahmed Fizazi, Grand Wali of Casablanca, Morocco.	Do
Robert Pelletreau, Deputy Assistant Secretary of State.	Set of silver filigree jewelry consisting of necklace, ring and earrings in locust motif, manufactured in Egypt. Recd May 31, 1984. Est. Value—$170. Delivered to GSA for disposition November 14, 1984.	MG Nammer, Director of Military Intelligence, Egypt.	Do.
A.C.E. Quainton, U.S. Ambassador to Kuwait.	(a) Two Waterman wristwatches, one round and one square with black alligator straps. (b) One silver cigarette lighter. Recd December 1984. Est. Value—$800 combined. Being held in Office of Protocol pending transfer to GSA	Director General of Civil Aviation, Kuwait	Do

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REPORT OF TANGIBLE GIFTS—Continued

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Norman Shaft, Economic Officer, U.S. Embassy, Kuwait.	S.C. Dupont man's wristwatch, oblong shaped, quartz, two-toned gray striped face with gold-tone trim, black alligator watchband #73CAJ68, made in Paris. Recd December 1984. Est. Value—$600. Being held in Office of Protocol pending transfer to GSA.	Managing Director, Kuwait Oil Tanker Corp.	Do.
George P. Shultz, Secretary of State (all gifts for Secretary Shultz, except where noted for Mrs. Shultz).	(a) Framed lithograph, approx. 19¾" x 23". No. 10, "Grenadier Kaserne" (b) Augarten porcelain figurine of a lady cellist. (Secretary and Mrs. Shultz.) Recd February 24, 1984. Est. Value—$400 combined. Delivered to GSA for disposition November 14, 1984.	HR Dr. Rudolph Kirchschlaeger, President of Austria.	Do.
Do	(a) Five meters silk, herringbone pattern, aqua and white. (b) Five meters silk, yellow, purple pink and aqua dots. (c) lacquered jewelry box, 5⅛" x 10", mother-of-pearl design on top, duck and pogoda design on cover. (Secretary and Mrs. Shultz.) Recd May 1, 1984. Est. Value—$250 combined. Delivered to GSA for disposition November 14, 1984.	HE Won-Kyung Lee, Minister of Foreign Affairs of Korea, and Mrs. Lee.	Do.
Do	Six silver demitasse spoons and Six silver forks, each approx. 5⅛" long, embossed with a gold colored flower on the handle. (Mrs. Shultz.) Recd May 2, 1984. Est. Value—$180. Delivered to GSA for disposition November 14, 1984.	Mrs. Chun Doo Hwan, Wife of the President of the Republic of Korea.	Do.
Do	Reproduction of Pre-Colombian art piece, mythological bird done in 24K gold, 2" x 2½" on a round plastic base. Recd May 31, 1984. Est. Value—$500. Delivered to GSA for disposition November 14, 1984.	HE Rodrigo Lloreda Caicedo, Minister of Foreign Relations of Colombia.	Do.
Do	(a) One elephant statute, 6½" high, ebony body, silver saddle and decorations on ears, head, feet and trunk. Carousel-like object on its ack, a silver wisk attached to each earpiece. Semi-precious stones inlaid in silver work. (b) Six silver iced tea spoons, 7½" long, with scroll work on front with a semi-precious stone on each spoon. (c) Five books: "Selected Speeches and Writings" by J.R. Jayewardene, "Golden Threads" by J.R. Jayewardene, "The President," Felicitation Volume, Mediaeval Sinhalese Art" by Ananda K. Coomaraswamy, "Island Ceylon" by Rotoff Beny and John Lindsay Opie. (Secretary and Mrs. Shultz.) Recd June 18, 1984. Est. Value—$250 combined. Delivered to GSA for disposition November 14, 1984.	HE J. R. Jayewardene, President of Sri Lanka, and Mrs. Jayewardene.	Do.
Do	Replica of Silla Dynasty Crown, approx. 12" high, gold plated with pieces of jade, in wood box. Recd June 22, 1984. Est. Value—$250. Delivered to GSA for disposition November 14, 1984.	International Cultural Association of Korea.	Received by U.S. Embassy in Seoul and forwarded to the Secretary.
Vernon A. Walters, Ambassador at Large.	(a) Jade vase, approx. 7" high, 3" diameter, gold braid around middle of vase. (b) Two jade goblets, approx. 3" high, 4" diameter, gold braid around bottom of pedestal. Recd March 29, 1984. Est. Value—$4,000 combined. Delivered to GSA for disposition November 14, 1984.	HM King Hassan II of Morocco	Presented during office visit by Col. Kostali, Moroccan Defense Attached, as a gift from the King. Non-acceptance would have caused embarrassment to donor and U.S. Government.
Do	Leopard skin (or cheetah) rug. Recd March 6, 1984. Est. Value—$200. Delivered to GSA for disposition November 14, 1984.	Omer Mohamed El Tayeb, First Vice President and Chief of State Security, Democratic Republic o Sudan.	Non-acceptance would have caused embarrassment to donor and U.S. Govt.
Paul D. Wolfowitz, Assistant Secretary, of State.	Pair of jade and gold cufflinks with phoenix design in gold. Recd November 13, 1983. Est. Value—$375. Delivered to GSA for disposition November 14, 1984.	HE Chun Doo-Hwan, President of the Republic of Korea.	Do.
Donald H. Rumsfeld, Special Middle East Envoy.	Antique map of Israel showing Holy Land withe the division of the tribes. Map is copper engraving, published ca. 1770 by R. Ware, London, 24 x 20 framed. Recd October 19, 1984. Est. Value—$600. Being held in Office of Protocol pending transfer to GSA.	Major General Un Simchoni of Israel	Received through United Parcel Service
Bonnie Pounds, Director US-Saudi Joint Commissions.	Jewelry 8" chain necklace, 18 carat gold chain, w/small broach and stones. Recd February 1984. Est. Value—$150. Reported and delivered to GSA.	Muhammad Abalkhail, Finance Minister, Saudi Arabia	Non-acceptance would have caused embarrassment to donor.

REPORT OF TRAVEL OR EXPENSES OF TRAVEL

Name and title of recipient	Brief description of travel or travel expenses occurring entirely outside United States	Identity of foreign donor and government	Circumstances justifying acceptance
AGENCY: Veterans' Administration			
Peter Ivanovich, M.D., Staff Physician, VA Medical Center (Lakeside), Chicago, IL	Air Fare to Saudi Arabia. Value—$2,213. Recd. February 1984.	Saudi Arabia	Acted as a Consultant to the Ministry of Health of Saudi Arabia on Renal/Cadaveric Transplantation; on annual leave during time of consultation.
Hideyo Yokoo, M.D., Staff Physician, VA Medical Center (Lakeside), Chicago, IL	Air Fare to and expenses while visiting Japan. Value—$2300 per month in Japanese currency. Recd. October 1983 to September 1984.	Radiation Effects Research Foundation of Hiroshima and Nagasaki, Japan	To consult with the Japanese Ministry of Health and Welfare on a cooperative Japanese-U.S. research study on the pathological aspects of late radiation effects on the Atomic Bomb survivors; on annual leave and leave without pay during the time of consultation.

[FR Doc. 85-5499 Filed 3-8-85; 8:45 am]

BILLING CODE 4710-20-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Notice 85-5]

Commercial Space Transportation Advisory Committee; Open Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub.L. 92-463, 5 U.S.C., App. I), notice is hereby given of a meeting of the Commercial Space Transportation Advisory Committee. The meeting will take place on Monday, March 25, 1985, from 9:00 a.m. to 5:00 p.m. e.t., and Tuesday, March 26, 1985 from 8:30 a.m. to 12:00 noon e.t., in Room 2230 of the Department of Transportation Headquarters Building, 400 Seventh Street SW., Washington, D.C. This will be the second meeting of the Committee, which will address the proposed policy statement on the licensing process for commercial space launch activities, as well as economic and policy issues related to the commercial development of expendable launch vehicles. The members of the committee are:

Lionel Alford, Vice President for Aerospace, Boeing;
Joel Alper, President, Comsat World Systems Division, Communications Satellite Corporation;
Norman Augustine, Vice President, Martin-Marietta;
Jonathan Conrad, Sconset Group;
Leonard Cormier, President, Third Millennium (MMI);
Gregg Fawkes, National Chamber Foundation;
Dr. Jerry Grey, Editor, American Institute of Aeronautics and Astronautics, and consultant to the space industry;
David Grimes, Chairman and Chief Technical Officer, Transpace Carriers;
Kip Hawley, White House liaison to State and local governments;
T. Allan McArtor, Vice President, Satellite Systems Division, Federal Express Corporation;
Adolph Medica, Executive Vice President, Chemical Systems, United Technology/Aerojet;
Gerald Mossinghoff, Pharmaceutical Manufacturers Association;
William Rector, Vice President, General Dynamics;
George Robinson, Smithsonian Institution;
Robert Roney, Vice President, Space and Communications, Hughes;
Daniel A. Ruskin, Vice President, Government Requirements, Lockheed Missiles;
Bernard Schriever, General, United States Air Force (Retired), consultant to the aerospace industry;
Jerry Simonoff, Vice President, Citicorp Industrial Credit, Inc.;
Alton Slay, President, Slay Enterprises, Inc.
Donald (Deke) Slayton, President, Space Services, Inc., and former astronaut; and
Ronald F. Stowe, Vice President, Government and Commercial Affairs, Satellite Business Systems.

This meeting is open to the interested public, but may be limited to the space available. Additional information may be obtained from the DOT Office of Commercial Space Transportation, Room 10401, 400 Seventh Street SW. 20590, Contact: Leah G. Levy, Telephone 202/426-6170.

Please Note: New security procedures restrict admittance to the Department of Transportation Building. Your admittance will be facilitated if you call the telephone number above before arrival.

Issued in Washington, DC, on March 6, 1985.

Jennifer L. Dorn,
Director, Office of Commercial Space Transportation.

[FR Doc. 85-5747 Filed 3-8-85; 8:45 am]
BILLING CODE 4910-62-M

Federal Railroad Administration

[FRA General Docket No. H-83-2]

Petitions for Waiver of Compliance

The Federal Railroad Administration's Freight Car Safety Standards (49 CFR Part 215) prohibit a railroad from keeping a freight car in service if it has a defective wheel. Since a wheel that has been thermally abused presents a significant risk of sudden failure and consequent derailment, § 215.103(h) defines such wheels as defective.

FRA recently initiated a rulemaking proceeding to improve the clarity of this provision. In response to the notice of proposed rulemaking issued on June 22, 1984, one commenter suggested that FRA's regulatory approach to thermally abused wheels was intrinsically flawed because it relies on a scientifically unjustified detection methodology. This commenter, the Association of American Railroads (AAR), suggested that FRA consider initiating a test program to obtain data about the thermal abuse of freight car wheels. The test program contemplated by the AAR would involve a waiver of compliance with FRA's regulation to permit one type of freight car wheel, generally described as a "curved plate," "S plate," or "low stress" wheel, to remain in service until that wheel displays clear evidence of thermal abuse such as thermal cracking. The service record of these wheels would then be compared to that of wheels removed from service under FRA's rule so as to validate or invalidate the current industry detection approach, which is premised on visual observation of discoloration criteria.

Six railroads, Norfolk Southern Corporation (NS), Consolidated Rail Corporation (Conrail), Union Pacific (UP), Atchison, Topeka and Santa Fe (ATSF), Missouri Pacific (MoPac), and Illinois Central Gulf (IOG) have now filed specific proposals with FRA concerning a suggested test program. The NS and Conrail proposals were described by FRA in notices that appeared in the March 1, 1985 issue of the **Federal Register** (50 FR 8432) and the UP and ATSF proposals appeared in the March 6, 1985 issue (50 FR 9146). In the recently filed MoPac and IOG proposals, FRA has been offered additional equipment to be used in any test program that FRA deems appropriate. MoPac volunteered the use of a fleet of approximately 21,000 freight cars that includes box, flat, hopper and gondola cars and notes that these cars are in dedicated service. These cars accumulate between 50 and 95 percent of their annual mileage on MoPac's own trackage. The commodities normally hauled in these cars include grain, automobile parts, scrap metal, pulpwood, aggregate and coal.

In addition, ICG has offerd the use of a fleet of approximately 2,800 freight cars of gondola and hopper cars. None of these cars are used to haul commodities that are classified as hazardous materials and they accumulate nearly all of their mileage while operating on ICG's own lines.

FRA invites interested parties to participate in this proceeding by submitting written comments, data or views on the appropriateness of initiating any test program concerning this topic; the nature and scope of the test program being requested by NS, Conrail, ATSF, UP, MoPac, and ICG, if a test program is deemed appropriate; and the safeguards or conditions needed to assure the safety of operations during any recommended test program. Interested parties also may desire to attend the public hearing scheduled for March 12, 1985. This hearing was announced in the **Federal Register** on December 17, 1984 (49 FR 48952) in connection with FRA's pending proposal to clarify its existing regulatory provision on this issue. FRA anticipates

that persons testifying at this hearing will address the topic of initiating the type of test program sought by ATSF, UP, NS, MoPac, ICG, and Conrail as a means of validating or invalidating FRA's regulatory provision. This hearing is scheduled to begin at 1:00 pm on March 12, 1985, in Room 8334 of the Nassif Building located at 400 Seventh Street SW., Washington, D.C.

All communications concerning this proceeding should identify the appropriate docket number (FRA General Docket No. H–83–2) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street SW., Washington, D.C. 20590. Communications received before April 15, 1985 will be considered by FRA before taking any further action. Comments received after that date will be considered as far as practicable. All written communications concerning this proceeding are available for examination during regular business hours (9 a.m.–5 p.m.) in Room 8201 of the Nassif Building at the above address.

Issued in Washington, D.C., on March 6, 1985.

Joseph W. Walsh,

Associate Administrator for Safety.

[FR Doc. 85–5763 Filed 3–8–85; 8:45 am]

BILLING CODE 4910–06–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Art Advisory Panel; Closed Meetings

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of closed meetings of Art Advisory Panel.

SUMMARY: Closed meetings of the Art Advisory Panel will be held in Washington, D.C.

DATE: The meetings will be held April 10 and 19, 1985.

FOR FURTHER INFORMATION CONTACT: Karen Carolan, CC:C:E:V, 1111 Constitution Avenue, NW., Room 2575, Washington, D.C., 20224, Telephone No. (202) 566–9259, (not a toll free number).

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. app. (1976), that closed meeting of the Art Advisory Panel will be held on April 10 and 19, 1985 beginning at 9:30 a.m. in Room 3411, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, D.C. 20224.

The agenda will consist of the review and evaluation of the acceptability of fair market value appraisals of works of art involved in federal income, estate, or gift tax returns. This will involve the discussion of material in individual tax returns made confidential by the provisions of section 6103 of Title 26 of the United States Code.

A determination as required by section 10(d) of the Federal Advisory Committee Act has been made that these meetings are concerned with matters listed in section 552b(c)(3), (4), (6), and (7) of Title 5 of the United States Code, and that the meetings will not be open to the public.

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury Directive appearing in the **Federal Register** for Wednesday, November 8, 1978. (43 FR 52122.)

[FR Doc. 85–5753 Filed 3–8–85; 8:45 am]

Roscoe L. Egger, Jr.,

Commissioner.

BILLING CODE 4830–01–M

[Delegation Order No. 154]

Delegation of Authority

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of authority.

SUMMARY: In order to expedite refunds to taxpayers and to expedite the processing of Joint Committee reports, the authority to sign Joint Committee reports may be redelegated to the Chiefs of Appeals Officers.

The text of the delegation order appears below

1. Pursuant to the authority vested in the Commissioner of Internal Revenue by section 3777(a) of the Internal Revenue Code of 1939, Treasury Department Order No. 150–2, Sections 6405 and 7851(b)(3) of the Internal Revenue Code of 1954, and Treasury Department Order No. 150–36, authority is hereby delegated to:

a. Regional Commissioners and Regional Counsel to make the decision and report to the Joint Committee on Taxation as required by section 6405 of the Internal Revenue Code of 1954 on cases within their regional jurisdiction.

b. Assistant Commissioner (Examination), the Chief Counsel, and the Director, Appeals Division, to take final action for the Commissioner on issues or matters formally presented by the Joint Committee on Taxation relating to reports submitted under section 6405 of the Internal Revenue Code of 1954. The Director, Appeals Division, is responsible for bringing any important matters to the attention of the Chief Counsel.

2. The authority delegated herein may not be redelegated except that the authority delegated to Regional commissioners and Regional Counsel in 1.a. above may be redelegated by:

a. Regional Commissioners to Assistant Regional Commissioners (Examination) or to District Directors of the Joint Committee Program Key districts.

b. Regional Counsel to Deputy Regional Counsel (Tax Litigation) and Chiefs, Appeals Offices.

3. Delegation Order No. 154 (Rev. 3) issued September 24, 1982, is hereby superseded.

EFFECTIVE DATE: February 22, 1985.

FOR FURTHER INFORMATION CONTACT: Robert L. Kukler, CC:AP:PT, 1111 Constitution Ave., NW., Room 2018, Washington, D.C. 20224 (202) 566–4458.

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury directive appearing in the **Federal Register** for Wednesday, November 8, 1978.

Howard T. Martin,

Director, Appeals Division.

Order No. 154 (Rev. 4)

Effective date: 2–22–85

Decision on Reports of Refunds and Credits to the Joint Committee on Taxation

1. Pursuant to the authority vested in the Commissioner of Internal Revenue by Section 3777(a) of the Internal Revenue Code of 1939, Treasury Department Order No. 150–2, Sections 6405 and 7851(b)(3) of the Internal Revenue Code of 1954, and Treasury Department Order No. 150–36, authority is hereby delegated to:

a. Regional Commissioners and Regional Counsel to make the decision and report to the Joint Committee on Taxation as required by Section 6405 of the Internal Revenue Code of 1954 on cases within their regional jurisdiction.

b. Assistant Commissioner (Examination), the Chief Counsel, and the Director, Appeals Division to take final action for the Commissioner on issues or matters formally presented by the Joint Committee on Taxation relating to reports submitted under Section 6405 of the Internal Revenue Code of 1954. The Director, Appeals Division is responsible for bringing any important matters to the attention of the Chief Counsel.

2. The authority delegated herein may not be redelegated except that the

authority delegated to Regional Commissioners and Regional Counsel in 1.a. above may be redelegated by:

a. Regional Commissioners to Assistant Regional Commissioners (Examination) or to District Directors of the Joint Committee Program key districts.

b. Regional Counsel to Deputy Regional Counsel (Tax Litigation) and Chiefs, Appeals Offices.

3. Delegation Order No. 154 (Rev. 3), issued September 24, 1982, is hereby superseded.

Dated: February 22, 1985.

Approved:

James I. Owens,

Deputy Commissioner.

[FR Doc. 85-5754 Filed 3-8-85; 8:45 am]

BILLING CODE 4830-01-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 47
Monday, March 11, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: Monday, March 18, 1985, 2:00 PM (Eastern Time).

PLACE: Clarence M. Mitchell, Jr., Conference Room No. 200–C on the 2nd Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW., Washington, DC 20507.

STATUS: Closed to the public.

MATTER TO BE CONSIDERED:

Closed

Litigation Authorization: GC Recommendations
Proposed Commissioner Decisions and Settlements.

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission Meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634–6748.

Cynthia C. Matthews,
Executive Officer.

This Notice Issued March 6, 1985.

[FR Doc. 85–5782 Filed 3–7–85; 11:30 am]
BILLING CODE 6750–06–M

2

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: Tuesday, March 19, 1985, 9:30 AM (Eastern Time).

PLACE: Clarence M.- Mitchell, Jr., Conference Room No. 200–C on the 2nd Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW., Washington, DC 20507.

STATUS: PART WILL BE OPEN TO THE PUBLIC AND PART WILL BE CLOSED TO THE PUBLIC.

MATTERS TO BE CONSIDERED:

1. Announcement of Notation Vote(s)
2. A Report on Commission Operations: A Briefing on the Sunshine Act
3. Proposed Compliance Section 84, Referral of Cases to Department of Justice
4. Proposed Contract for Expert Service in Connection with a Court Case

Closed

Litigation Authorization; General Counsel Recommendations
Proposed Commission Decisions and Settlements

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission Meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634–6748 at all times for information on these meetings).

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews Executive Office, Executive Secretariat, at (202) 634–6748.

Cynthia C. Matthews,
Executive Officer, Executive Secretariat.

This notice Issued March 6, 1985.

[FR Doc. 85–5781 Filed 3–7–85; 11:30 am]
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FEDERAL ENERGY REGULATORY COMMISSION

March 6, 1985.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. 94–409, 5 U.S.C. 552b:

TIME AND DATE: March 13, 1985, 10:00 a.m.

PLACE: 825 North Capitol Street, NE., Room 9306, Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

*Note—Items listed on the agenda may be deleted without further notice

CONTACT PERSON FOR: Kenneth F. Plumb, Secretary, Telephone (202) 357–8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the division of public information.

Consent Power Agenda, 809th Meeting—March 13, 1985, Regular Meeting (10:00 a.m.)

CAP–1.
Project No. 5896–001 city of Rome, New York
CAP–2.
Project No. 6590–002, Hy-Tech Company
CAP–3.
Project No. 7120–003, Stewart Ranches, Inc.
CAP–4.
Project No. 8438–001, Schaffner Power Company
CAP–5.
Project Nos. 8156–002 and 003, James W. Caples
Project Nos. 8157–003 and 004, Warren Osborne
Project Nos. 8194–003 and 005, James W. Caples
Project Nos. 8229–004 and 005, Cook Electric Incorporated
CAP–6.
Project No. 2142–002, Central Maine Power Company
CAP–7.
Project No. 2725–013, Georgia Power Company
CAP–8.
Project No. 2969–001, Borough of Weatherly
CAP–9.
Project No. 3939–001, city of Denton, Texas
CAP–10.
Project No. 2149–017, Public Utility District No. 1 of Douglas Couty, Washington
CAP–11.
Docket No. EL85–13–000, Georgia Power Company
CAP–12.
Docket Nos. ER85–130–001 and 002, Illinois Power Company
CAP–13.
Docket No. ER 84–576–006, Wisconsin Power & Light Company
CAP–14.
Docket No. ER 84–574–003, Holyoke Water Company and Holyoke Power and Electric Company
CAP–15.
Docket No. EL83–24–006, Seminole Electric Cooperative, Inc.
Docket No. ER84–379–004, Florida Power and Light Company
CAP–16.
Docket Nos. ER83–628–006 and ER83–131–004, Kansas Gas and Electric Company

Consent Miscellaneous Agenda

CAM–1.
Omitted
CAM–2.
Docket No. GP83–57–000, State of Oklahoma, Section 108 NGPA determination, Tenneco Oil Exploration and Production Company, Hattie Harrell No. 4 well, FERC JD No. 80–24335
Docket No. GP83–58–000, Bureau of Land Management Albuquerque, N.M., Tenneco Oil Exploration and Production Company, Warren No. 1 well, FERC JD No. 81–40571, State Docket No. NM0661–81, Lodewick No. 3 well, FERC JD No. 82–40257, State Docket No. NM09861–81 J.C.

Gordon Federal No. 1, State Docket No. MN1295–80, FERC JD No. 81–05664
Docket No. GP83–60–000, State of Oklahoma, Section 108 NGPA determination, Tenneco Oil Exploration and Production Company, Hattie Harrell No. 5 well, FERC JD No. 80–24336

Consent Gas Agenda

CAG–1.
Docket Nos. TA85–2–51–000, 001 and 0002 (PGA85–2a), Great Lakes Gas Transmission Company
CAG–2.
Omitted
CAG–3.
Docket No. RP85–58–002, El Paso Natural Gas Company
CAG–4.
Docket Nos. RP85–47–000 and 003, East Tennessee Natural Gas Company
CAG–5.
Docket No. TA85–1–59–002, Northern Natural Gas Company
CAG–6.
Docket Nos. RP85–19–001 and 002, Trunkline Gas Company
Docket Nos. RP85–20–001 and 002, Panhandle Eastern Pipeline Company
CAG–7.
Docket No. RP85–37–001, High Island Offshore System
CAG–8.
Omitted
CAG–9.
Omitted
CAG–10.
Docket Nos. RP85–68–000, TA85–1–15–000 and 001, Mid-Louisiana Gas Company
CAG–11.
Docket Nos. TA85–1–32–000, TA84–1–32–000, 002 and TA83–1–32–002, Colorado Interstate Gas Company
CAG–12.
Docket No. TA85–1–18–000, Texas Gas Transmission Corporation
CAG–13.
Docket Nos. TA83–1–53–000, TA84–1–53–000 and TA85–1–53–000, KN Energy, Inc.
CAG–14.
Docket No. RP83–30–020, Transcontinental Gas Pipe Line Corporation
CAG–15.
Docket No. TA85–1–42–001, Transwestern Pipeline Company
CAG–16.
Docket Nos. TA84–2–37–000, 001, TA85–1–37–000, 001, TA85–2–37–000, 001 and RP85–1–000, Northwest Pipeline Corporation
CAG–17.
Docket Nos. ST81–181–001, 002, ST81–201–001, 002, ST84–671–000, ST82–323–001, ST80–260–002 and ST80–186–002, Transok, Inc.
CAG–18.
Docket Nos. ST85–97–000, Phenix Transmission Company
CAG–19.
Docket Nos. ST82–383–001, 002, ST83–75–001, 002, ST81–43–002 and 003, Rocky Mountain Natural Gas Company
CAG–20.
Docket Nos. CI84–510–001 and 002, Sun Exploration and Production Company
CAG–21.
Docket No. CI80–264–001, Southern Union Gathering Company
CAG–22.
Docket No. CI73–402–001, et, al., Mobil Oil Exploration and Producing Southeast, Inc. (Successor to Mobil Oil Corporation), et al.
CAG–23.
Docket No. CI85–173–000, Marathon Oil Company
CAG–24.
Docket No. CI85–176–000, Kerr-McGee Corporation
CAG–25.
Docket No. CI84–29–000, Jakes Branch Gas Company
Docket No. CP–75–288–001, Kentucky West Virginia Gas Company
CAG–26.
Docket Nos. CP83–14–070, and 074, Northern Natural Gas Company, Division of Internorth, Inc.
CAG–27.
Docket Nos. CP85–13–001 and TC85–4–001, Montana-Dakota Utilities Company
CAG–28.
Docket No. CP82–355–006, Natural Gas Pipeline Company of America
CAG–29.
Docket No. CP85–105–001, United Gas Pipe Line Company
CAG–30.
Docket Nos. CP84–539–001 and 002, El Paso Natural Gas Company and Producer-Suppliers of El Paso Natural Gas Company
CAG–31.
Docket No. CP85–60–000, KN Energy, Inc.
CAG–32.
Docket Nos. CP75–23–022 and CP75–120–015, Tennessee Gas Pipeline Company, A Division of Tenneco Inc.
Docket No. CP84–307–000, Southern Natural Gas Company
CAG–33.
Docket Nos. CP75–57–010 and CP75–57–011, KN Energy, Inc.
Docket No. CP75–154–009, Montana-Dakota Utilities Company
CAG–34.
Docket No. CP83–348–003, Algonquin Gas Transmission Company

I. Licensed Project Matters

P–1.
Omitted

II. Electric Rate Matters

ER–1.
Docket Nos. ER85–251–000 and ER85–81–000, West Texas Utilities Company
ER–2.
Docket No. QF85–113–000, William G. Brown
ER–3.
Docket No. QF83–175–003, James A. Drake and Miller's Plant Farm—Foliage and Chrysanthemum Division of Dustin, Oklahoma, Inc.
ER–4.
Docket No. EL84–25–000, Snow Mountain Pine Company v. CP National Corporation and Idaho Power Company
ER–5.
Docket No. ER82–703–000, New England Power Company

Miscellaneous Agenda

M–1.
Reserved
M–2.
Reserved
M–3.
Docket Nos. RM83–72–001 through 009, first sales of pipeline production under Section 2(21) of the Natural Gas Policy Act of 1978
Docket Nos. RM82–16–001 through 009, first sales by affilates
M–4.
Docket No. GP84–23–000, Stowers Oil & Gas Company, et al.
M–5.
Docket No. GP82–26–000, Union Carbide Corporation and Tonkawa Gas Processing Company

I. Pipeline Rate Matters

RP–1.
Reserved

II. producer Matters

CI–1.
Docket No. RI84–9–000, Grace Petroleum Corporation
CI–2.
Docket Nos. CI83–269–000, CI83–269–024 through 034, 036 and 037, Tenneco Oil Company, Houston Oil & Minerals Corporation, Tenneco Exploration, Ltd., Tenneco Exploration II, Ltd., Tinco, Ltd. and Tenneco West, Inc.
Docket Nos. RP83–11–027 through 035 and RP83–30–023 through 031, Transcontinental Gas Pipe Line Corporation
Docket Nos. CP83–279–013, 014 and CP83–340–016, through 025, producer-suppliers of Transcontinental Gas Pipe Line Corporation
Docket Nos. CP83–340–014, 015 and CP83–340-017 through 025, producer-suppliers of Transco Gas Supply Company
Docket Nos. CP83–428–022, 023 and CP83–428–025 through 033, producer-suppliers of Transco Supply Company and Transcontinental Gas Pipe Line Corporation
Docket Nos. CP83–452–000 and, CP83–452–017 through 027, Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company
Docket Nos. CP83–502–015 through 021, Tennessee Gas Pipe Line Company, A Division of Tenneco Inc.
Docket Nos. CP83–333–019 through 028, Panmark Gas Company
Docket Nos. CP83–342–002 and 003, Trunkline Gas Company
Docket Nos. CP83–343–003 and 004, Panhandle Eastern Pipe Line Company
Docket No. CP83–354–021, Trunkline Gas Company and Panmark Gas Company
Docket No. CP83–355–002, Panhandle Eastern Pipe Line Corporation and Panmark Gas Company
Docket Nos. CP84–244–002 through 008, Texas Eastern Transmission Corporation and producer-suppliers of Texas Eastern Transmission Corporation
Docket Nos. CI84332–004 through 012, Cities Service Oil and Gas Corporation,

Cities Offshore Production Company and Oxy Petroleum, Inc.
Docket Nos. CI84–374–003 through 012, TXP Operating Company
Docket Nos. CI84–485–003 through 013, Amoco Production Company
Docket Nos. CP84–539–002 through 003, El Paso Natural Gas Company

III. Pipeline Certificate Matters

CP–1.
Docket No. CP82–342–001, Consolidated Gas Company of Florida, Inc. v. Florida Gas Transmission Company

CP–2.
Docket Nos. CP81–107–016 through 023, Boundary Gas, Inc., et al.

CP–3.
Docket No. CP84–533–000, Columbia Gas Transmission Corporation v. Transcontinental Gas Pipe Line Corporation

CP–4.
Omitted

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–5790 Filed 3–7–85; 11:48 am]

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Part II

Department of Health and Human Services

National Institutes of Health

Recombinant DNA Research; Actions Under Guidelines; Notice

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Recombinant DNA Research; Actions Under Guidelines

AGENCY: National Institutes of Health, PHS, HHS.

ACTION: Notice of Actions Under NIH Guidelines for Research Involving Recombinant DNA Molecules.

SUMMARY: This notice sets for actions taken by the Director, National Institutes of Health (NIH), under the November 1984 NIH Guidelines for Research Involving Recombinant DNA Molecules (49 FR 46266, November 23, 1984.

EFFECTIVE DATE: March 11, 1985.

FOR FURTHER INFORMATION CONTACT: Additional information can be obtained from Dr. William J. Gartland, Office of Recombinant DNA Activities (ORDA), National Institutes of Health, Bethesda, Maryland 20205, (301) 496–6051.

SUPPLEMENTARY INFORMATION: One change in the NIH Guidelines for Research Involving Recombinant DNA Molecules is being promulgated today. This proposed change was published for comment in the **Federal Register** of September 20, 1984 (49 FR 37016), and reviewed and recommended for approval by the Recombinant DNA Advisory Committee (RAC) at its meeting on October 29, 1984. In accordance with section IV–C–1–b of the NIH Guidelines, this action has been found to comply with the NIH Guidelines and to present no significant risk to health or the environment.

The decision on a second proposal published for comment in the **Federal Register** of September 20, 1984 (49 FR 37016), and reviewed and recommended for disapproval by the RAC at its meeting on October 29, 1984, is also described in this announcement.

Part I of this announcement provides background information on the proposals. Part II gives the change in the NIH Guidelines effective today.

I–A. Proposed Amendment of Section III–D of the NIH Guidelines

In a letter dated August 21, 1984, Mr. C. Searle Wadley and Dr. John H. Keene of Abbott Laboratories, North Chicago, Illinois, proposed that the following sentence be added to Section III–D of the NIH Guidelines:

Although these experiments are exempt, it is recommended that they be performed at the appropriate biosafety level for the host or recombinant organism (for biosafety levels see "Biosafety in Microbiological and Biomedical Laboratories").

In support of their proposal, Mr. Wadley and Dr. Keene stated it would be advisable to recommend appropriate biosafety levels be considered for those recombinant experiments that are exempt from the NIH Guidelines.

This proposed amendment was published for public comment in the September 20, 1984, **Federal Register** (49 FR 37016). No comments were received on this proposal. The RAC discussed this proposed modification of the NIH Guidelines at its October 29, 1984, meeting.

Several RAC members endorsed the addition of the proposed language to the NIH Guidelines. However, RAC recommended the proposed language be added to the introductory language of Appendix A, *Exemptions Under Section III–D–4*, rather than Section III–D. In addition, RAC suggested the reference to the booklet "Biosafety in Microbiological and Biomedical Laboratories" be added to the proposed language. A motion to this effect was accepted by the RAC by a vote of twenty-two in favor, none opposed, and no abstentions.

I accept this recommendation, and Appendix A of the NIH Guidelines will be so modified.

I–B. Proposed Addition of Prohibited Experiments to the NIH Guidelines.

Mr. Jeremy Rifkin of the Foundation on Economic Trends, Washington, D.C., proposed that the NIH Guidelines for Research Involving Recombinant DNA Molecules be amended to prohibit any experimentation involving the transfer of a genetic trait from one mammalian species into the germline of another unrelated mammalian species.

The description of the review of Mr. Rifkin's proposal is organized as follows:

I–B–1. Description of the Proposal
I–B–2. Comments on the Proposal in Response to the September 20, 1984, **Federal Register** Notice
I–B–3. The Draft Minutes of the Relevant Part of the October 29, 1984, RAC Meeting
I–B–4. Decision

I–B–1. Description of the Proposal

Mr. Rifkin submitted the following letter dated August 21, 1984, to the NIH:

I am formally requesting that the following item be placed on the agenda for the October 29, 1984 meeting of the Recombinant DNA Advisory Committee of the National Institutes of Health.

It has come to our attention that the National Institutes of Health and the National Science Foundation are helping to fund specific experiments by Dr. Ralph Brinster of the University of Pennsylvania in which human genes regulating growth hormone is being injected into sheep and pig embryos with the express purpose of incorporating these human genes permanently into the germ line fo these other mammalian species. These experiments are currently being conducted, in part, with the assistance and cooperation of the USDA at its agricultural experimental station at Beltsville, Maryland.

If successful, these experiments would represent the second time in history that a segment of the genetic make-up of homo-sapiens has been permanently transferrred into the genetic make-up of another species. The Brinster team has already successfully transferred the human growth hormone gene into the germ line of mice. Thus, a dramatic new technological threshold has been crossed, making it imperative that the Federal Government act immediately and expeditiously to establish a policy in regard to such experimentation.

Therefore, I am proposing the following amendment to the NIH guidelines for recombinant DNA experimentaion:

The NIH prohibits any experimentation involving the transfer of a genetic trait from one mammalian species into the germ line of another unrelated mammalian species. 'Unrelated' shall be defined as any two species that cannot mate and produce one generation of offspring either in the wild or under pre-existing domestic breeding programs.

This NIH guideline shall encompass all mammalian species, including homo-sapiens. Upon adoption of this guideline by the NIH, said agency shall immediately discontinue funding any current experimental research involving the transfer of genetic traits from one mammalian species into the germ line of another unrelated mammalian species and shall instruct all institutions receiving NIH grants that any such experimentation using private funds shall be grounds for the immediate suspension of all NIH research grants to the institution. This amendment shall also cover all private companies who are signatories of license agreements with NIH funded institutions where said agreements contain clauses requiring the licensee to adhere to the NIH guidelines involving recombinant DNA experimentation.

The intent of this amendment to the NIH guideline is to protect the biological integrity of every mammalian species. Existing Federal policy, as reflected in many Federal statutes, protects the integrity and well being of species. The crossing of species borders and the incorporation of genetic traits from one species directly into the germ line of another species represents a fundamental assault on the principle of species integrity and violates the right of every species to exist as a separate, identifiable creature.

Certainly most human beings would condemn any attempt to introduce animal genes permanently into the germ line of homo-sapiens. We would abhor any such experiment as a gross and unconscionable violation of our telos as a species. In like manner this amendment establishes the principle that similar experiments between all other mammalian species be condemned

and outlawed on the same grounds, i.e. that such an intrusion violates the telos of each species and is to be condemned as morally reprehensible.

As to non-mammalian species, the same principle of species integrity ought to apply. Therefore, I am proposing that in addition to the adoption of the above amendment to the NIH guidelines, the RAC immediately establish a working sub-group whose purpose will be to propose any additional protocols or guidelines that might be necessary to ensure compliance with the spirit of the above amendment in regard to the protection of the germ line of all species.

On August 23, 1984, Mr. Rifkin submitted an additional letter to NIH:

I am submitting an additional item for placement on the agenda for the October 29, 1984 meeting of the Recombinant DNA Advisory Committee of the National Institutes of Health. The following amendment to the NIH guidelines should be raised for discussion and debate along with the proposed amendment which I forwarded to you in my letter dated August 21, 1984. I would like this enclosed amendment to be considered first on the agenda and the amendment in my August 21 letter to be considered second.

The amendment shall read as follows:

The National Institutes of Health prohibits any experimentation involving the transfer of a genetic trait from a human being into the germ line of another mammalian species. The National Institutes of Health also prohibits any experimentation involving the transfer of a genetic trait from any mammalian species into the germ line of a human being. Furthermore, the National Institutes of Health considers any such experimentation involving the transfer of genetic traits between animal and human germ lines to be morally and ethically unacceptable.

Thank you for your time and consideration on this matter.

I–B–2. Comments on the Proposal in Response to the September 20, 1984, Federal Register Notice

These proposed actions were published in the September 20, 1984 (49 FR 37016), **Federal Register** for public comment.

Prior to the October 29, 1984, RAC meeting, 360 letters containing 434 signatures were received by the NIH. Three hundred and fifty-nine letters with 433 signatures opposed Mr. Rifkin's proposed actions. One letter with one signature supported the proposal.

A total of 297 letters containing 313 signatures opposing Mr. Rifkin's proposal were received from the general public. These letters can be divided by geographical area as follows: 129 letters with 133 signatures from Elizabethtown, Kentucky; 47 letters with 52 signatures from Athens, Ohio; 24 letters with 24 signatures from Louisville, Kentucky; 28 letters with 29 signatures from Nelsonville, Ohio; 15 letters with 16 signatures from Zanesville, Ohio; 14 letters with 14 signatures from New Marshfield, Ohio; 10 letters with 10 signatures from Rockbridge, Ohio; 5 letters with 5 signatures from Akron, Onio; 3 letters with 4 signatures from Albany, Ohio; 4 letters with 4 signatures from West Point, Kentucky, 2 letters with 3 signatures from The Plains, Ohio; 2 letters with 2 signatures from Logan, Ohio; 2 letters with 2 signatures from Rineysville, Kentucky; 2 letters with 2 signatures from Seminole, Florida; 2 letters with 2 signatures from Anchorage, Kentucky; 1 letter with 2 signatures from Lancaster, Kentucky; and 1 letter with 1 signature each from: Radcliff, Kentucky; Jefferson, Kentucky; Hodgenville, Kentucky; Nashport, Ohio; Greysville, Ohio; Mount Perry, Ohio; Durham, North Carolina; Salem, Indiana; and St. Petersburg, Florida.

Comments typical of the letters received from this segment of the population can be seen in the letters from Ms. Charlene Thompson of Elizabeth, Kentucky, Mr. James E. Bee of Zanesville, Ohio, Ms. Barbara Walence of New Marshfield, Ohio, Mr. H. Erick Layton of Durham, North Carolina, Ms. Jeannie Clark of Elizabethtown, Kentucky, and Mrs. Bonnie C. Vail of Athens, Ohio.

Ms. Charlene Thompson wrote:

I am strongly urging the committee to overrule the proposed amendment. * * *

Mr. James E. Bee wrote:

I am very concerned that Mr. Rifkin's proposal does not take into consideration the discontinuance of important medical research relative to genetic disorders, cancer and other diseases.

Ms. Barbara Walence wrote:

If this procedure is prohibited, you are limiting the search for a cure for this genetic problem.

Mr. H. Erick Layton wrote:

Please act to establish a wise and humane policy. * * *

Ms. Jeannie Clark wrote:

I feel we, as caring people, need to help those less blessed than we that are born with good health. One way to help I feel is through research so I come before you and ask you to overrule the proposed amendment. * * *

Mrs. Bonnie C. Vail wrote:

I am saddened to think that all medical research would be delayed or prohibited.

Thirty-three letters with 80 signatures were received from scientists and researchers opposed to Mr. Rifkin's proposal. The following types of arguments were offered by this group.

Dr. Finnie A. Murray of Ohio University wrote:

It is apparent that Mr. Rifkin believes that introduction of a gene derived from one species into the genome of another species violates some essential essence of the species, what he calls the species 'border'. It is a misconception that one or a few genes are sufficient to violate the integrity of a species. Individuals within species possess only a portion of the gene pool of the species, and the gene pool is dynamically evolving, with loss and gain of genetic variation. Introduction of 'new' genetic material into a species can be argued to be beneficial to the ability of the species to compete and survive, because it is the limit in genetic variation within a species that determines its long-term survivability. An individual within a species is not the definition of that species, it is only a representative of that species.

Dr. Roy D. Schmickel of the University of Pennsylvania wrote:

The use of interspecies constructs has proven to be extremely useful and permits a careful analysis of small differences between species. The work by Ralph Brinster here at the University of Pennsylvania has been extraordinary in its productivity and represents one of the most fruitful avenues of investigation of hormone action. Only when a gene is injected into germ cells can the effect of the gene be seen in an entire organism, and only when a human gene has been injected into another mammal can we ethically study the embyrological action of a human gene. When we consider the enormous number of diseases that are caused by hormonal deficiencies or abnormalities, it is imperative that we continue this type of study of hormonal genes. It is not difficult to look ahead slightly to see the enormous impact that such experiments will have in helping us understand ways to prevent developmental birth defects.

Dr. Ira Herskowitz of the University of California, San Francisco, wrote:

DNA transfer from humans or other mammals into non-human mammals makes it possible to address fundamental questions in developmental biology concerned with gene expression. In addition such transfer experiments make it possible to address fundamental questions concerned with carcinogenesis. Information gleaned from these experiments is certain to provide important new insights into disease processes both in humans and in other mammals. The end result will be a literal strengthening of species, a deeper understanding that will improve the ability of these species to combat disease.

Dr. Oliver Smithies of the University of Wisconsin-Madison wrote:

In all my studies I am constantly made aware of the great commonality of genetic material. Mammalian species that have no possible means of breeding at the present time have features in their genomes of remarkable similarity. Nowhere do I find evidence supporting any inviolate principle of species integrity. Indeed, there is increasing evidence that genetic material can be transferred from one species to another by viral and other microbial agents. Such transfers, although infrequent, appear to be

natural steps in evolution. Mr. Rifkin is surely not well-informed when he tries to protect a non-existent principle of species integrity.

* * * Mr. Rifkin is asking for a blanket prohibition *on moral grounds*. In doing this he shows that his view of morality is sorely limited, for he does not consider the moral harm of allowing human genetic abnormalities, some of which cause great misery, to go uninvestigated when we have available tools for their study and possible treatment. The door would be closed on important avenues to the alleviation of human suffering if Mr. Rifkin's amendments were to be passed.

Dr. David Baltimore, Director of the Whitehead Institute, wrote:

I oppose this proposal * * * it would seriously hamper experimental research. The transfer of genes from one species into another is often a necessary part of protocols designed to understand how inserted genes behave in host organisms. If the gene is not foreign to the host species, its activity is often impossible to distinguish from that of endogenous genes.

Regarding Mr. Rifkin's contention concerning the "telos" of species, Dr. Baltimore wrote:

Genes of human and dogs are not imprinted with human or canine qualities; they are parts of systems and often they are virtually identical.

Dr. B. L. Horecker of the Roche Institute of Molecular Biology wrote:

I would oppose any such blanket restriction on research and the quest for new scientific information as a dangerous precedent that is incompatible with scientific freedom. How the results of such research are implemented becomes a matter for regulation, but not the conduct of the research *per se*.

Dr. Robert M. Bock of the University of Wisconsin-Madison wrote:

Rifkin's edict could sentence humans to continued suffering from autoimmune and genetic diseases even after future understanding shows safe ways to prevent such sufferings and loss of life.

Fourteen letters containing fifteen signatures opposed to Mr. Rifkin's proposal were received from various societies. These letters were from Dr. K. W. Allard, President, Genetics Society of America; Dr. Robert H. Foote, President, Society for the Study of Reproduction; Dr. Andrzj Bartke, Executive Vice President for the Society for the Study of Reproduction and Immediate Past President of the American Society of Andrology; Dr. Charles F. Whitten for the Board of Directors of the National Association for Sickle Cell Disease; Dr. Warren H. Pearse, Executive Director of the American College of Obstetricians and Gynecologists; Mr. George Zeidenstein of the Population Council; Mr. C. William Swank, Executive Vice President of the Ohio Farm Bureau Federation, Inc.; Dr. Elizabeth M. Short, Director, Division of Biomedical Research and Faculty Development of the Association of American Medical Colleges; Dr. Harlyn O. Halvorson, Chairman, Public and Scientific Affairs Board and Dr. Monica Riley, Chairman, Committee on Genetic and Molecular Microbiology, American Society for Microbiology; Dr. Sheldon J. Segal of the Rockefeller Foundation; Dr. Preston V. Dilts, President, Association of Professors of Gynecology and Obstetrics; Dr. David E. Rogers of the Robert Wood Johnson Foundation; Mr. Harvey S. Price, Executive Director, Industrial Biotechnology Association; and Dr. Charles Yanofsky, President, American Society of Biological Chemists.

Nine letters with twelve signatures opposed to Mr. Rifkin's proposal were received from physicians.

Dr. Henry A. Peters of the University Hospital and Clinics of the University of Wisconsin-Madison wrote:

As a member of the Medical Advisory Board of the Muscular Dystrophy Association, I would like to express my objections to this unscientific proposal, which, because of its probable effect on research and hopefully treatment, poses a very amoral act.

Five letters with twelve signatures opposed to Mr. Rifkin's proposal were received from individuals involved in animal care and animal husbandry.

Among this group, Dr. Neal L. First of the University of Wisconsin-Madison, wrote:

. . . the added gene to the genome of a cow, sheep, or pig may add to the diversity of that species in a way which enhances its survival or well-being as countless mutations have done through the generations.

A letter commenting on Mr. Rifkin's proposal was also received from Mr. Alexander Morgan Capron, Professor of Law, Ethics and Public Policy of the Georgetown University Law Center. In stating his opposition to Mr. Rifkin's proposal, Mr. Capron wrote:

. . . scientific knowledge and discovery . . . are high values in our society and attempts to control experimentation that stand in the way of advances in knowledge or discovery of medically useful procedures require substantial justification.

It seems to me that this justification is absent in the case of Mr. Rifkin's proposal. . . .

Through December 31, 1984, 26 additional letters with 28 signatures were received after the October 29, 1984, RAC meeting. Twenty-five of these letters with 27 signatures were opposed to Mr. Rifkin's proposal. Of these letters, twenty-two letters with 24 signatures were received from the general public. These letters originated from: Boston, Massachusetts; Salem, Massachusetts; Winthrop, Massachusetts; Logan, Ohio; Athens, Ohio; Louisville, Kentucky; McArthur, Ohio; New Straitsville, Ohio; Albany, Ohio; and Elizabethtown, Kentucky. Three letters with three signatures were sent by scientists. One letter containing one signature supported Mr. Rifkin's proposal.

I–B–3. The Draft Minutes of the Relevant Part of the October 29, 1984, RAC Meeting

Mr. Mitchell asked Mr. Jeremy Rifkin of the Foundation on Economic Trends to present his proposal (tabs 1182, 1183, 1184, 1186/II, 1187, 1194, 1195).

Mr. Rifkin said while closely related species may be bred by traditional practices, nature rather narrowly proscribes what can be accomplished. "Species walls, mating boundaries establish some limits as to the kind of recombinations that may occur through natural methods." Mr. Rifkin contended the experiments of Dr. Brinster of the University of Pennsylvania in which genes from one mammalian species are introduced into another species are qualitatively different from preexisting breeding programs.

Mr. Rifkin said to date the biological unit of manipulation has been the organism; now the unit of manipulation has become the gene. The unit of importance ceases to be the species itself, but rather the composition of genetic materials. Mr. Rifkin contended society is beginning a very long, protracted journey which will reshape our concept of life so that we will increasingly see the importance of life at the genetic level and not at the species level.

Mr. Rifkin said some researchers argue the human growth hormone gene transferred into mice by Dr. Brinster is not unique, that it's only a chemical. Mr. Rifkin said this argument is a form of scientific reductionism; if this gene is simply a chemical, then certainly every other gene that makes up the human species is simply a chemical. If there is nothing unique about transferring this gene and if the transfer of this gene poses no ethical, moral, or public policy questions, "at what level would there be questions posed?" Would the animal have to take on human characteristics before a problem would be identified?

Mr. Rifkin asked RAC to develop detailed criteria. "What genes are permissible in the human gene pool to transfer other species? What genes in

the human gene pool are impermissible to transfer to other species? If the committee decides such criteria cannot be developed, then all human genes could potentially be transferred to other species for some short-term medical or economic benefit. Mr. Rifkin said this possibility poses a major ethical and policy question.

Mr. Rifkin said every major scientist, institution, and association in the United States has responded to the **Federal Register** announcement of his proposals and almost all have stated that they find absolutely no ethical problems in transferring genes between species. Mr. Rifkin noted, however, that several commentators including Dr. David Baltimore, Director of the Whitehead Institute, wrote that some ethical questions might arise if genes from other species are transferred into the human germline. Mr. Rifkin said he could not understand why introducing a gene from another species into the human germline might pose an ethical problem while transferring a human gene into the germline of other species would not pose a problem. He contended the NIH should have considered the ethical issues of transferring genes between species before funding Dr. Brinster's grant.

Mr. Rifkin in concluding his remarks said:

> Finally, this committee could decide today on a quick vote, which it has done many times in the past—and we've been together many times—that there are no problems here, a quick vote up or down, no ethical concerns on transferring genes between species; but I would like to say that even if that vote comes today the concerns of this committee might not be the concerns of the rest of the American public. Now, I know that many scientists think the American public are not educated, they can't possibly understand all the complex questions raised by this technology, that unfounded fears are often raised in dealing with this. I suggest that that's not a correct analysis. Genetic engineering gives us the most potentially powerful instrument to change the biology of this planet that we have ever had at our disposal. Certainly the American public has every right to believe there are some ethical and social questions at each stage, and I would say that this stage is a fundamental precedent stage today. This committee, by its vote, will say to the Director of the NIH that it is your opinion that there is no ethical problem as we proceed with this technology in transferring genetic traits between species; and therefore, it should be the accepted policy of the United States government to proceed.

Mr. Rifkin said Dr. Michael Fox, Scientific Director of the Humane Society of the United States and co-plaintiff with the Foundation on Economic Trends in a lawsuit against the NIH, also wished to comment on the proposal.

Dr. Fox said he represents some quarter of a million members of the Humane Society and is "speaking for the animal kingdom." Dr. Fox said interferring with animal genomes raises ethical issues. Nature, in her wisdom, may well have set up species barriers for a particular purpose, i.e., for managing natural ecosystems and their coevolution.

Dr. Fox said just as there are multiple genetic defects in purebred dogs and cats as a consequence of selective breeding, use of recombinant DNA techniques may also jeopardize animal welfare. He said traditional breeding programs have produced animals with multiple inbred genetic defects, not for utilitarian purposes but for sheer esthetic reasons.

Dr. Fox said selective breeding of high yield strains of farm animals results in a variety of so-called "production diseases:" Lameness, osteoporosis, growth abnormalities, metabolic disorders affecting magnesium and calcium levels, and many other health problems.

Dr. Fox said Dr. Brinster's idea is to create a pig or sheep that will grow twice as big, twice as fast. Dr. Fox asked what is saved if they will grow twice as big, twice as fast. He replied, "Time not food, because one never gets something for nothing." He contended Dr. Brinster's research has demonstrated that supplementation of dietary zinc is needed for the modified mice to grow normally. Dr. Fox said that before the need for zinc supplementation was discovered there was considerable animal suffering.

Dr. Fox said we are on the point of turning animals into biological machines. He said Dr. Brinster stated that genes for valuable proteins could be introduced into animals, and the protein products harvested from the blood or milk of these animals. Dr. Fox asked if modifying animals for this purpose is ethically and morally acceptable. He said the animal's soma will be modified if animals are made into biological machines; but "the psyche of the animal, its telos, its intrinsinc nature" will not be affected. In such a situation, the mind of the animal may be trapped in a totally alien body. He asked RAC to address this issue.

Dr. Fox said an environmental impact assessment should be done if introduction of genetically modified microorganisms into the intestines of animals is proposed. He also said that perhaps a person with veterinary or animal science expertise should be appointed to RAC.

In regard to what mankind is going to do to the animal kingdom, Dr. Fox urged the committee to consider the word "dominion" which he said is not derived from the Latin word "domino," to rule over, but from the Hebrew word "rache," to steward with compassion and understanding.

Dr. Clowes said RAC has received an impressive body of letters almost all opposing Mr. Rifkin's proposal. He asked the assembly's indulgence as he quoted from several letters.

Dr. Clowes said one philosophical argument advanced by a number of geneticists and stated by Dr. Maxine Singer of the National Institutes of Health is that:

> The notion that a species has a telos (a purpose) contravenes everything we know about biology. A species can have, and may in the past have had a telos (an end) namely extinction. That is the only telos known to exist. No species we know of has a fixed genome. Quite the contrary. Genetic studies throughout this century have again and again confirmed that the genetic makeup of organisms within a species is continually changing through recombination, mutation, deletion, duplication, rearrangement and the insertion of DNA sequences. Recent experiments have, in anything, shown us that this remarkable plasticity is more extensive than we imagined and is a fundamental property of living matter.

Dr. Clowes said a number of letters emphasized the potential practical aspects of gene transfer experimentation. Dr. Donald Brown, Director, Carnegie Institution of Washington, states:

> The introduction of foreign genes into the germlike of mammals other than humans has many potential benefits for mankind. Genetic changes by modern methods can be done rapidly and with much greater precision than conventional breeding and selection programs.

Dr. Clowes then quoted from a letter from Dr. David Kunkle, Assistant Professor at the University of Texas Medical Branch at Galveston who wrote he opposed Mr. Rifkin's proposal because:

> If adopted * * * [the proposal] would have a most far-reaching adverse impact on a promising future approach to the treatment of human genetic diseases. Some of these diseases cause by enzyme deficiencies in a well-defined target area may soon prove amenable to treatment by somatic gene therapy in which the wild type gene would be introduced in somatic cells of the affected organs. . . . Obviously, detailed animal experiments would have to precede any possible human trials of such a scheme. Since animal models of only a few genetic diseases are available, most of such experiments would attempt to detect expression of exogenous genes against a wild type

background. To establish definitively the nature of any increased expression, heterologous genes would have to be used. But it is precisely those experiments which Mr. Rifkin now seeks to ban. Thus, his proposal would forever seal off this promising area of research.

Dr. Clowes said the American public had expressed its point of view on this topic and called attention to the several hundred letters from individuals opposed to the proposed prohibition. Dr. Clowes quoted from a letter from Ms. Kristie Baird of Elizabethtown, Kentucky, who wrote, "I believe that anytime it is possible to save people's lives, it should be done."

Dr. Friedman first addressed Mr. Rifkin's statement that the American public is not educated. Dr. Friedman said in fact the American public is educated and has made a basic decision that research on animals to ameliorate human disease is not only acceptable but should be done.

Dr. Friedman said one person's ethics may differ from another's. In his mind, treating human diseases and alleviating human suffering is a primary moral imperative. Dr. Friedman said Mr. Rifkin's proposal would eliminate one method of researching certain diseases and making broad gains in the therapy of these diseases.

Dr. Friedman said the language of Mr. Rifkin's proposal is very vague. For example, the term "genetic trait" is used but not defined. One could argue that a whole gene could be transferred without affecting a genetic trait; e.g., eye color may depend on a number of genes, and transferring one of these genes may not change eye color.

Dr. Friedman said it is difficult to define a unique gene because in some cases the gene of one species differs from the gene of another species by a single base pair. The differences within members of the species may be more broad than the differences between the species. In addition, gene exchange between species probably occurs in nature; viruses pick up genetic material and probably carry such material across species lines.

Dr. Gottesman reviewed the current status of gene transfer experiments under the NIH Guidelines for Research Involving Recombinant DNA Molecules: (1) Any experiment which involves the introduction of recombinant DNA into humans must be reviewed by RAC and approved by NIH; this would include both proposed introduction into somatic or germline cells although no germline experiments are anticipated in the near future; and (2) experiments in which recombinant DNA is introduced into animals are covered by Section III–B of the Guidelines and are subject to review and approval by the local Institutional Biosafety Committee (IBC).

Dr. Gottesman said gene transfer experiments are an important tool through which questions about gene regulation and the development of complex systems such as animals or humans can be addressed. She pointed out that at this time no other method exists for approaching these types of studies. Dr. Gottesman said these studies will result in advances in treating human diseases, in treating animal diseases, and in using animals more efficiently as food sources. She said Mr. Rifkin's proposal would prohibit these types of experiments and would stop extremely important research.

Dr. Gottesman said she is aware of the controversy surrounding the ethics of using animals in research; however, the viewpoint that animals should not be used in research is one which she did not share. She did not think the majority of people in this country shared this viewpoint. She thought most people would come down very strongly in favor of using animal models to test disease therapies.

Dr. Gottesman said she was overwhelmed by the number of letters received in response to the **Federal Register** announcement of the proposed prohibition. Anyone who has attempted to obtain public reponse to any type of announcement knows how hard it is to obtain comments. Yet in addition to the approximately fifty letters from scientists who considered it important to write both for their own research and for society's ability to treat human disease or deal with hunger, over 250 letters have been received from the general public. Dr. Gottesman said clearly a number of people in this country consider this type of research extremely important.

Dr. Gottesman recommended that RAC not only not pass the proposed amendment to the Guidelines, but she urged RAC to approve a motion indicating that RAC considers gene transfers experiments to be very important research which should be fostered.

Dr. Landy said the American people are entitled to an intelligent and national discussion of the ethical issues raised by technological advances. Dr. Landy felt, however, Mr. Rifkin had behaved irresponsibily in ignoring all that is known about genetics and evolution and had obfuscated the issues.

Dr. Landy said increasing the human lifespan has increased the world population. Technology for producing more food, more efficiently is necessary. Dr. Landy quoted from a letter from Dr. Charles Yanofsky of Stanford University:

> Modern medicine has already done much to keep individuals with genetic defects alive to the child-bearing age and beyond. Since society and the medical profession welcome these efforts, we must not prohibit exploration of any possibility of correcting a serious genetic defect.

Dr. Landy said many of the undesired consequences of animal breeding alluded to by Dr. Fox are a result of limitations in animal husbandry. Recombinant DNA technology may allow introduction of a particular desirable gene into an animal without introducing undesirable traits, and this is an argument in favor of continuing research in this area.

Dr. Landy said he was impressed by the number and breadth of the letters the NIH received concerning Mr. Rifkin's proposal. There are letters from high officers of academic and research institutions, not only in the sciences but also in the humanities and law; letters from individual scientists engaged in research and education, including many of recognized international stature; letters from private foundations dedicated to improvement of human welfare; letters from organizations and individuals concerned with animal husbandry and efficiency of food production; letters from medical practitioners and educators in heath care delivery; and rather touching letters from individual citizens concerned about the future prospects for solutions to now intractable health problems.

Dr. Wensink said the issues are clear cut and well-described. He thought clearly defined potential benefits have been enumerated and are opposed by unsupported, mythical fears of risks.

Dr. Bowman said gene transfer may be the only feasible way of curing a disease such as cystic fibrosis. She said to even consider stopping the gene transfer research needed to address this disease is out of the question.

Dr. McKinney said he wished to point out that in addition to proposing modifications to the NIH Guidelines, Mr. Rifkin has chosen to interpret how the NIH should apply the proposed modifications; Mr. Rifkin contends the NIH should extend its purview to commercial companies engaged in recombinant DNA research under a licensing agreement with an NIH funded institution which cited the NIH Guidelines in the licensing agreement. Dr. McKinney said Mr. Rifkin was attempting to involve the NIH, which is not a regulatory agency, in an area where it has no authority. Dr. McKinney

urged the RAC to reject Mr. Rifkin's proposal.

Dr. McGarrity said Mr. Rifkin's statement that RAC ignores the public is false. Public members have long been part of RAC's composition, and RAC has actively sought to include the public in its deliberations. Dr. McGarrity said Mr. Rifkin underestimates the intelligence and knowledge of the public. Dr. McGarrity stated that Mr. Rifkin's contention RAC would be saying there are no ethical problems if Mr. Rifkin's proposals are not approved is utter nonsense. Dr. McGarrity said major points of concern exist, but the scientific approach examines the data and bases a decision on a case-by-case review.

Dr. Walters responded to Mr. Rifkin's implication that RAC has always given permission to proceed. Dr. Walters noted that until recently NIH procedures permitted the local IBCs and Institutional Review Boards (IRBs) to approve human gene therapy protocols without RAC review and NIH approval. The NIH Guidelines were revised to require the much more rigorous process of national review.

Dr. Walters said transfer of genes into the human germline would involve the use of *in vitro* fertilization (IVF). NIH funded IVF research is currently under a *de facto* moratorium; national review by an Ethics Advisory Board is required, and at present, such a board does not exist.

Dr. Walters said animal welfare, either in the laboratory or in animal husbandry, is a real issue. RAC, however, is not the appropriate group to address this issue. Some states have animal welfare rules and the NIH Office for Protection from Research Risks is participating in the process of revising existing Public Health Service animal welfare guidelines. Dr. Walters felt local review committees charged with animal welfare are the appropriate bodies to deal with this issue. Dr. Walters suggested RAC reject Mr. Rifkin's proposal in light of the potential benefits gene transfer research might provide.

Dr. Fox though public support of gene transfer research is based on fear of death and suffering. He said Aristotle's original meaning of "telos" was not a final endpoint but the organism's intrinsic nature expressed in the here and now. Society's responsibility is to the present not to the future. He said we are not progressing anywhere.

Dr. Fox contended that what is often regarded as progress is simply dealing with residual problems passed from one generation to the next. He said humans have a tremendous responsibility to the animal kingdom, and he is concerned with RAC's human-centered rhetoric and rationalizations. He said he had to leave to wash his hands.

Dr. Miller of the Food and Drug Administration said he wished "to address some glaring factual errors in Dr. Fox's remarks in what I thought was otherwise a rather absurd presentation." Dr. Miller said early field trials of bovine growth hormone in dairy cows suggest the cows utilize food stocks more efficiently with as much as a 15 percent improvement in milk output without a concomitant increase in food consumption, in effect, "getting something for nothing" through improved nitrogen utilization.

Dr. Miller said Dr. Fox had not understood the function of zinc supplementation in the diet of Dr. Brinster's genetically engineered mice. Dr. Miller explained that the recombinant vector was constructed so that the human growth hormone gene is under the control of a zinc-sensitive promotor. Dietary zinc supplementation increases the activity of the human growth hormone gene, and the mice grow larger than normal. However, in the absence of zinc supplementation, they are of normal size and do not suffer.

Dr. Miller said adopting Mr. Rifkin's proposal would inflict incalculable harm on several very important areas of scientific inquiry; e.g., the study of genetic susceptibility to diseases such as breast cancer. Harm would also be inflicted on research aimed at developing therapies for human genetic diseases since animal studies which are necesssary prior to human clinical trials could not be carried out.

Dr. Miller said Mr. Rifkin's proposal is:

> * * * yet another highly contrived issue that is another manifestation of what 'Nature' * * * alluded to in characterizing Mr. Rifkin as someone whose nuisance to substance ratio is high.

Dr. Joklik said he questioned what he was hearing when the proposition is made that progress is not only elusory but possibly even undesirable, or when the implication is made that the health of this nation is no better today than it was 100 years ago, or when the discussion centers on what was in Aristotle's mind when he used certain phrases.

Dr. Joklik said the practical benefits of this type of research for humankind is unquestionable; the evidence supporting this position is irrefutable. He called absurd the proposition that the prospect of benefit to untold humans through generations to come should be outweighed by putative discomfort to a small number of laboratory animals.

Dr. Joklik said a concept of "species" was being invoked in support of Mr. Rifkin's proposals. Dr. Joklik said he is a member of the International Committee for the Taxonomy of Viruses which has been trying to develop a definition of species with regard to viruses. Dr. Joklik said it has been utterly impossible for this committee to arrive at a definition of a species. Species are constantly evolving, and the transfer of genes from one "species" to another has occurred throughout evolution.

Dr. Joklik supported Dr. Gottesman's recommendation that RAC forcefully state research on gene transfer be fostered and not hindered.

Dr. Rapp supported Dr. Joklik's comments. He pointed out that medical research has tremendously benefited a variety of animal species. The development of a rabies vaccine is one example.

Dr. Rapp said Dr. Fox does not like the fact that humans are human-centered, but species tend to be self-centered. Dr. Rapp stated that stewarding and handling animals in a humane manner is important, but to think about preventing certain lines of research in any species is a very dangerous idea. If this concept were to be seriously supported, society should consider the "telos" of bacteria and viruses.

Dr. Rapp said he supported Dr. Gottesman's proposal that RAC issue a statement in support of this type of research. He agreed ethical issues might exist, but the consequences of forfeiting all benefits of gene transfer research for what at the moment appear to extremely minor risks are so great that RAC should not support Mr. Rifkin's proposals.

Dr. Saginor said that:

> * * * although some of Mr. Rifkin's original purposes may have been sincerely based, it appears that various catch phases are uttered and written to engender pubic fear and potential press coverage with almost McCarthy-type tactics. I want to address a statement such as "a quick vote" * * * by our committee. I resent the overt implications, and I resent this playing to potential inflammatory press quotes, and I particularly resent you implying that our committee and subcommittees do not care * * * and do not carefully consider various ramifications of our decisions before a vote is taken.

Dr. Saginor said it is important to address the issues and not strike fear into the American public. He said he strongly supports Dr. Gottesman's suggestion.

Dr. Gottesman moved that:

> The RAC reject the amendments proposed by Mr. Rifkin and published in the **Federal Register** of September 20, 1984, Section II.

Both its importance in current scientific research and the long-term possibilities for treatment of human disease and the development of more efficient food sources make it a moral imperative that we strongly oppose the blanket prohibition of this class of experiments.

Dr. McKinney seconded the motion.

Mr. Rifkin said he believed RAC members were well-intentioned; they would not be part of the medical research community if they did not think they were trying to improve the lot and welfare of humanity. Mr. Rifkin said it is very difficult for any profession to critique itself. He asked the members of the committee to look at their world view before they made any "hasty" decision.

Mr. Rifkin suggested RAC members were affected by the views they held about modern science; he asked the members of RAC to look a those assumptions and consider that there are other people who do not share that world view.

Mr. Rifkin said the history of every technological revolution shows that every great technology brings both benefits and costs. The more powerful and impressive the technology, the better able to expropriate, secure, and use natural resources for human needs, the greater the potential costs that will be heaped on the ecosystem and paid by future generations. Mr. Rifkin thought it either naive or disingenuous to believe that there are no risks, no costs associated with the biotechnology revolution.

Mr. Rifkin reiterated his position that technologies mortgage the future to provide security for the present. He said:

I think there are certain technologies that are so powerful inherent to the technological categories themselves that we have to ask the question, is it appropriate to use them.

Mr. Rifkin said Dr. Brinster's experiments are an attempt to develop superanimals, animals that would grow bigger and faster and provide commercial advantage in the market place. Mr. Rifkin contended that if this procedure becomes commercially feasible, livestock will be dramatically affected. The long-term implications are "model culturing" and the loss of gene diversity. "Model culturing" of animals will affect the well-being of society because society becomes more vulnerable to losses of these animals because the animals lack genetic diversity.

Mr. Rifkin said:

There are specific parts of this genetic therapy that are more problematic than others but to suggest that at every juncture if we don't give the scientific community full license to pursue any kind of research in any area that we will be in some way condemning all present and future human beings on this planet to suffering, disease, death, that to me suggests a syndrome of fear and it needs to be addressed. . . .

Mr. Rifkin asked how RAC so "prematurely" reached the conclusion that the benefits in the long-run outweigh the risks; only a few experiments of this type have been done. How can RAC be so convinced the long-term benefits outweigh the cost?

He suggested that:

. . it would be very very foolhardy in a one hour discussion on crossing genetic lines for you to pass a resolution saying that you would encourage this from here henceforward. I think it's more responsible to put a moratorium on this research until such time as these questions are being properly addressed by the American public.

Mr. Rifkin thought the letters that had been received on this topic did not represent an accurate cross-section of the American public.

Dr. McKinney felt Mr. Rifkin had either misunderstood or misconstrued the comments of RAC members. Dr. McKinney did not think any member of RAC had suggested there are not problems associated with any area of research. However, the history of RAC has been an orderly process of consistently exercising care and prudence in approaching the utiliztion of recombinant DNA technology. Dr. McKinney thought Gottesman's motion was to continue this orderly process so the potential benefits of this technology might be assessed.

Mr. Mitchell pointed out that Mr. Rifkin proposal would prohibit certain experimentation involving the transfer of genes; thus, the question before the RAC is whether this area of scientific research should be prohibited.

Dr. Rapp stressed that at least he and probably most RAC members had not spent "one hour" considering this issue. Most members have been thinking about these issues for a number of years. RAC members recognize there are risks associated with any new technology; however, a total prohibition will prevent society from ever learning whether these potential risks are real or mythical.

Dr. Rapp said in our lifetime smallpox virus has been wiped out; he did not think the world was poorer for this action. He thought the Brinster experiments had to be considered in the context of the overall pattern and overall benefits of genetic engineering. Dr. Rapp said some studies of gene regulation, translation, and expression have to be done in foreign hosts. Studies such as these are leading, hopefully, to solution of problems such as cancer. Prohibiting these type of experiments would destroy efforts to study very major human disease syndromes. Dr. Clowes said there are a number of scientific developments in which the benefits enormously outweigh the costs.

Dr. Rapp said a total prohibition would stop a whole field of science in its tracks. Such attempts at prohibition have not worked at any time in history. RCA should continue to evaluate proposals; otherwise, researches would perform these experiments in other part of the world. Should this occur, the U.S. government would lose whatever control it now has over these types of experiments. Dr. Rapp said he favored Dr. Gottesman's motion.

Dr. Holmes said Mr. Rifkin and the RAC do have differences in perspective; however, it's not that RAC only sees the benefits where Mr. Rifkin only sees the risks. The difference in world view is that seeing both the risks and benefits, Mr. Rifkin would prohibit seeking the benefits whereas the RAC would prefer to press on to try and maximize the benefits while minimizing the risks.

Dr. Joklik said many RAC members have thought about these types of problems for many years; the aim of biomedical research has been to make our children and our children's children healthier.

Dr. Joklik said a difficulty in communicating with Mr. Rifkin is that as soon as one of Mr. Rifkin's concerns is allayed, another concern surfaces. Dr. Joklik said Mr. Rifkin now asks how scientists can be sure this new technology will provide benefits for mankind. Recombinant DNA is the means for answering many questions. Ten years after the inception of this new technique, so much more about the working of the human cell and the human organism is known, including a more detailed knowledge of the nature of human genetic material. In addition, we now have the ability to manipulate the genetic material. One simply has to ask oneself how much more will we know in another ten years, a very short time in the experience of mankind.

Dr. Joklik said Mr. Rifkin was attempting to arrest a process which has been spectacularly successful.

Dr. Walters asked Dr. Gottesman if she would accept a friendly amendment to her motion; he proposed to add to the motion the notion of protecting animal welfare as well as human welfare through a better understanding of animal diseases. Dr. Gottesman agreed to add such language to her motion. Dr. McKinney, the seconder of the motion, also agreed.

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Dr. Landy said RAC is saying it is unconscionable to prohibit exploring this avenue of research. He asked Mr. Rifkin if there are any examples in history where a social problem has been successfully solved before the technology was developed to address the problem.

Mr. Rifkin said the Iroquois nation of North America had a civilized and advanced culture. These people followed a specific procedure whenever they considered some environmental, social, or cultural change. They asked in the deliberation process what effect the proposed change would have seven generations in the future. In some cases, the Iroquois decided the particular change would have more costs than benefits and decided not to implement it.

Mr. Rifkin said genetic engineering is one approach to the future; it is not the only approach. He emphasized that there are other approaches to solving problems. He offered as an example attempts to deal with heart and lung diseases and cancer. He said these diseases have an environmental component as well as a genetic component. Mr. Rifkin said he would be thrilled if NIH money were spent studying how the environment triggers genetic diseases rather than on research on gene transfers.

Mr. Mitchell asked Dr. Bowman whether environmental factors are a cause of cystic fibrosis. Dr. Bowman said environmental factors are not a cause; cystic fibrosis is a genetic illness

Dr. Gottesman said Mr. Rifkin's characterization of RAC's activities as always giving the go-ahead is untrue as RAC has often turned down requests to proceed. Dr. Gottesman asked Mr. Rifkin to be honest and accurate in his portrayal of RAC and RAC's activities, and of the question currently before RAC. In this instance, a single gene will be moved from one organism to another; all sheep are not about to be turned into giant sheep nor are people with bat wings going to be created.

Mr. Richard Pollack identified himself as having been associated for a two year period with Sandia Laboratories as a consultant to the Nuclear Regulatory Commission (NRC), as having served with the NRC on the Three Mile Island investigation, and as being "close" to Mr. Rifkin.

Mr. Pollack said Mr. Rifkin was asking:

> . . . if the basic question of the environmental impact . . . has been ignored by this committee . . . What kind of road are we moving down? . . . with such a powerful tool with such great consequences, not to have that kind of basic methodology to assure the public is very disconcerting, whether on a concrete issue or on a less abstract issue. . . .

Dr. Fox asked why others seem to think there is an ethical issue to be discussed. He said, "Surely there is not some dialectical tension here that cannot be reconciled, that somewhere between us is meaning and substance to the reality around us."

Dr. McKinney reminded the proponents of what their proposal entailed; a complete prohibition of certain types of research. He then called the question.

By a vote of nineteen in favor, two opposed, and one abstention, the RAC agreed to close debate.

Dr. Gottesman then repeated the language of her modified motion:

> That RAC reject the amendments proposed by Mr. Rifkin and published in the **Federal Register** of September 20, 1984, Section II. Both the importance of this class of experiments in current scientific research and the long-term possibilities for treatment of human and animal disease and the development of more efficient food sources make it a moral imperative that we strongly oppose the blanket prohibition of this class of experiments.

By a vote of twenty-two in favor, none opposed, and no abstentions, the RAC approved Dr. Gottesman's motion.

Mr. Mitchell suggested that a document be prepared to set forth the statements and concerns of the RAC and others. Dr. Gottesman said the minutes of the RAC meeting could form the basis of that document.

I–B–4. Decision

On the basis of the RAC recommendation and the large public response opposing Mr. Rifkin's proposal, I reject the proposed amendments to the NIH Guidelines and endorse RAC's statement affirming the importance of this class of experiments in current scientific research and the long-term possibilities for treatment of human and animal disease and the development of more efficient food sources.

II. Change in the NIH Guidelines

A new third paragraph is added to Appendix A, *Exemptions under section III–D–4,* to immediately precede "Sublist A," to read as follows:

> Although these experiments are exempt, it is recommended that they be performed at the appropriate biosafety level for the host or recombinant organism (for biosafety levels see *Biosafety in Microbiological and Biomedical Laboratories,* 1st Edition (March 1984), U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control, Atlanta, Georgia 30333, and National Institutes of Health, Bethesda, Maryland, 20205).

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning the official government programs contained in the *Catalog of Federal Domestic Assistance.* Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every federal research program in which DNA recombinant molecule techniques could be used, it has been determined to be not cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every federal program would be included as many federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the *Catalog of Federal Domestic Assistance* are affected.

Dated: March 1, 1985.

James B. Wyngaarden,

Director, National Institutes of Health.

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Part III

Department of Health and Human Services

Social Security Administration

Disability Programs; Determination of Disability in Cases of Mental Impairment; Notice

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

Disability Programs; Determination of Disability in Cases of Mental Impairment; Request for Comments on Proposed Use of Work Evaluation Facilities

The Social Security Administration (SSA) as part of the Secretary of Health and Human Services initiative to conduct a review of the Social Security disability program, has developed proposed policy guides for consideration which are intended to help determine whether a person with a mental impairment meets the definition of disability under titles II and XVI of the Social Security Act.

The purpose of this notice is to obtain public comment on the proposed policy guides, which pertain to *work* evaluation in the case of mental impairments. Because policy guides in this area are interrelated with the proposed regulations revising the *medical* evaluation criteria for mental disorders (50 FR 4948; February 4, 1985), publication of this notice in the **Federal Register** during the same time period that the revised medical criteria are published is important. It is not intended, however, that publication of this notice be considered as a precedent for consideration by SSA in future policy issuances. These proposed policy guides were developed in response to suggestions that SSA should make greater use of work evaluation facilities as sources of information regarding an individual's ability to carry out the mental requirements of work on a sustained basis. SSA already has general policy guides dealing with the use of work evaluation facilities as sources of information in disability claims. The following more detailed guides are proposed for use in evaluating the initial eligibility of individuals filing for and the continuing eligibility of individuals receiving Social Security Disability Insurance Benefits and Supplemental Security Income Benefits based on disability involving mental impairments.

Following receipt and evaluation of public comments and suggestions the proposed policy guides will form the basis for SSA action in this area.

DATES: Your comments will be considered if we receive them no later than April 25, 1985.

ADDRESSES: Comments should be submitted in writing to the Acting Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1583, Baltimore, Maryland 21203. They may also be delivered to the Office of Regulations, Social Security Administration, 3–A–3 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235 between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Lawrence V. Dudar, Room 3–B–4, Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 594–7459.

Dated: March 5, 1985.

Martha A. McSteen,

Acting Commissioner of Social Security.

A. Sequential Evaluation of Mental Impairment Claims

The five steps of the sequential evaluation process that are described in the Social Security disability regulations apply to Social Security disability claims regardless of the specific kind of impairment. The last two steps of the process require answers to the questions: "Does the individual have any impairment which prevents past relevant work?" and, if yes, "Does the individual's impairment prevent other work?". To answer these questions, it is necessary to determine the nature and extent of the physical and mental abilities that the person retains (residual functional capacity (RFC)).

The Social Security disability regulations provide some examples of the mental functions to be evaluated in determining the RFC of a person with a mental impairment. The regulations say that in assessing an impairment because of mental disorders, factors such as the ability to understand, to carry out and remember instructions, and to respond appropriately to supervision, coworkers, and customary work pressures in a work setting must be considered. These basic job requirements are understood to be common to all or most occupations. Other kinds of basic functions may be identified as an issue in a particular claim, depending on the nature of the mental impairment or the specific mental demands of a past job.

Assessment of RFC represents the measurement of the individual's capacity for work-related functions, such as the factors cited above, on a sustained work day basis. This also may be referred to as functional assessment.

The RFC assessment must be sufficiently detailed to permit comparison to the requirements of past jobs and other jobs in the national economy. For example, if the person is limited in the extent to which he or she can interact with other people, it is important for functional assessment to establish whether the person can receive instructions and correction from a supervisor. The functional assessment also may raise a question whether the person would be distracting to or distracted by persons working nearby. Other functional issues may arise from the clinical and supporting evidence. If the necessary information to resolve those issues can be derived from the clinical evidence and supporting evidence, the last two steps of the sequential evaluation can be completed. These two steps are referred to here as work evaluation. The person's RFC is compared to the requirements of his or her past relevant work. If past relevant work would be precluded, RFC is compared to the requirements of other work in the economy that would be appropriate for the individual. The last two steps of sequential evaluation, then, require both a functional assessment and an evaluation of the mental demands of work in order to complete the sequential evaluation process.

An essential component of work evaluation is vocational assessment, by which the description of RFC is compared to the functional requirements of past jobs and other jobs in the economy. There are circumstances, described below, when work evaluation requires referral to a work evaluation facility because the information the facility can provide is necessary to complete the functional and vocational assessment. Therefore, work evaluation consists of the following two alternatives, which depend on the specificity of the assessment of RFC:

1. When the extent of the mentally impaired person's ability or inability to function on a sustained basis in a competitive work environment can be fully assessed from the clinical and supporting evidence, the work evaluation can be completed by comparing occupational descriptions in vocational reference sources to the assessment of RFC. When such an evaluation cannot be made by a disability adjudicator in the State Disability Determination Services (DDS), referral of the case may be made to a vocational specialist, who is skilled in using the *Dictionary of Occupational Titles* (DOT) and other sources. In some cases it may be appropriate to consult a private vocational expert to make specific findings of jobs and fields of work, if any, in which the claimant/beneficiary can engage if vocational reference sources do not provide sufficient documentation to establish the

existence of work in which the person can engage.

2. When, despite complete and comprehensive clinical examination and description of activities of daily living, the functional assessment of a mental impairment does not fully resolve the person's ability or inability to function in a competitive work environment on a sustained basis, a work evaluation facility may be able to provide additional information—which, when considered in conjunction with all of the other evidence on file, is persuasive to make a full assessment of competitive work capability and make findings as to jobs or kinds of work in which the person can engage.

After evidence from a work evaluation facility is obtained, the assessment of RFC will be completed by determining whether the work evaluation facility evidence, together with the clinical and supporting evidence, establish that there is a substantial limitation in one or more work-related functions, or that the person is able to function in a competitive work environment.

The DDS's, which are empowered by law and regulations to make disability determinations for SSA and who ordinarily make arrangements for referral to work evaluation facilities, must augment their knowledge of the expertise of such facilities through visits by staff members, discussions with the facility staff, and, if possible, a review of sample evaluation reports. (See action C, below, for liaison activities.) This preparation will ensure the referral of only those claimants/beneficiaries for whom work evaluation is necessary for a disability decision.

B. Selection of Cases for Referral to a Work Evaluation Facility

Any claimant/beneficiary with a severe mental impairment which does not meet or equal the severity of the disabling impairments listed in Social Security Regulations, and whose ability or inability to function in a competitive work environment on a sustained basis has not been established by clinical and supporting evidence, should be considered for referral to a work evaluation facility unless there is no appropriate facility available or there are specific reasons why the person cannot attend. (See section C, below, for alternatives in these circumstances.) The general guide in A.2, above, should be followed to select cases for referral to a work evaluation facility. These guidelines apply to all disability cases involving mental impairments. (It is important to make sure that the guide is or has been appropriately applied when adjudicating an appeal of denial or cessation, and when a treating or consultative examiner has recommended work evaluation.) The facility should be requested to conduct an evaluation of the person and to furnish detailed report of the evaluation for purposes of a Social Security disability determination. Some examples of the application of the guide are:

1. Persons with IQ's of 60–69 who either have no gainful work history or have had episodes of unsuccessful work *and* whose activities and interests are significantly limited: These circumstances often raise a question of the person's ability to understand, carry out, and remember instructions in a competitive work setting.

Example: A 25-year-old mentally handicapped person who had worked only 3 months in an unskilled job scored a full-scale IQ of 63 on a psychological examination. The report said that she had poor orientation, and would probably require close supervision and direction in a work context. She lived in her parents' home and her activities were limited to helping her mother with housekeeping chores, such as washing dishes. She did not have any activities outside the home. Based on the medical and nonmedical evidence, her capability for competitive work could not be adequately determined.

The work evaluation facility report showed that her ability to comprehend, recall, and follow up on instructions is quite adequate. She comprehended verbal instructions without having them repeated and was very thorough in her work. She was able to follow up on instructions without close supervision, and had the initiative to perform tasks without being told to do so. She interacted well with the facility staff and maintained a good pace throughout the work samples. Even though her production speed was not up to the norm for unimpaired workers, she improved with practice. The work evaluation facility report concluded that she had the capability to function in a competitive work environment.

The person's behavior described in the work evaluation facility report showed that she was able to perform well in the period covered by the evaluation without an unusual amount of supervision. Combined with the clinical evidence, the work evaluation facility report established that she should be able to do a wide range of competitive unskilled work.

2. Persons who are diagnosed as having chronic schizophrenic disorder or residuals of brain trauma: These circumstances often raise a question of ability to respond appropriately to supervision, coworkers, and customary work pressures in a work setting.

Example: A 33-year-old person had hemiparesis due to brain injury 5 years earlier. Psychological examination noted some emotional lability, blunt responses, and lack of sensitivity and social awareness. Daily activities were confined to the home and immediate family. However, her attitude and behavior were cooperative, and she showed no significant fluctuations in mod or affect. Since the clinical evidence and description of daily living activities presented an uncertain picture of the claimant's ability to function under competitive work pressure, a referral was made to a work evaluation facility to resolve this issue.

Throughout the evaluation, the person was never observed initiating or carrying on conversations with either the supervisory staff or her coworkers. She spoke only when directly addressed and her answers were usually only one-word responses. Her reaction to various work tasks, especially when encountering work-related problems, consisted of indications of anger, low self-esteem, and much frustration. Even though it appeared that she was sincerely attempting to do her best, her attention and retention spans became shorter. She became increasingly confused on repetitive work samples. When retested on the same work sample, her performance deteriorated rather than improved.

The work evaluation facility report provided evidence that the person has a substantial limitation in her ability to sustain work under reasonable production norm standards. Based on her irritabilty and dependence in a situation in which she has to follow instructions, she would be unable to interact and respond appropriately to coworkers and supervisors. Her decreased speed of work with extend periods of working indicated that she would not be able to sustain work in a way that would be required in a routine pressure work setting.

This information in conjunction with the medical findings provided a sound basis for concluding that she has substantial functional limitations which prevent her from performing her past work as a production checker and would also severely limit her ability to do unskilled work in a competitive environment.

Normally, a 5-day evaluation is sufficient to determine a person's ability to sustain competitive employment; however, some referrals may result in shorter or longer periods of evaluation.

For example, an individual who is found upon entering an evaluation program to be obviously unable to function within a work setting, need not, if determined by the evaluator, continue beyond this point in the evaluation process. On the other hand, if the facility is unable to answer the evaluation questions within a week's period, it may request and been granted additional time in which to test and observe the person.

C. Arranging for Evaluation by a Work Evaluation Facility

Each DDS should designate at least one individual, preferably a vocational specialist, to serve as liaison with all work evaluation facilities in the State and carry out any educational activities that are needed to establish a useful relationship with them. Such facilities may be known by diverse names, such as rehabilitation center, sheltered workshop, work activity center, etc. They have in common the ability to perform the evaluation services described in the following section. The State Vocational Rehabilitation Agency may be able to provide a list of approved work evaluation facilities. This should not be considered a complete listing, however, and other facilities may be able to provide adequate services that are not on the State's list. A determination should than be made by the DDS as to which facilities are able to provide the quality and type of services needed. The DDS liaison should carefuly review the credentials of the facility and find out what agencies, organizations, and geographic areas it serves. A facility that is accredited by a professional accreditation organization or is recognized for State rehabilitation or workers' compensation; purposes is likely to comply with safety codes and to have experienced and trained staff and management.

In advance of referral of the claimant/beneficiary, the DDS should provide the work evaluation facility with the available medical and vocational information, and a detailed explanation of the questions the evaluation is expected to resolve. If medication has been prescribed for the person's condition, this information should be included in the medical evidence.

The DDS should find out whether the person can go to a work evaluation facility. This will include an explanation of the evaluation and a general description of what the person may expect. The explanation should be given by the most effective means available to the DDS—personal contact, telephone or mail, directly to the claimant/beneficiary or through an intermediary. If the person is unable to attend because of the need to care for children, or because it would impose unreasonable travel requirements, information from other sources should be solicited, if possible, to obtain more information about the person's functional ability. The person should be interviewed in his or her home or at a local facility, preferably one with which the person is familiar. (A public or private facility may charge a fee for this.) The interviewer should be a qualified rehabilitation counselor who is trained in job development, work adjustment counseling, and job placement. The interviewer should obtain a detailed description of the person's activities of daily living and make observations which will help resolve the person's ability to function in a competitive work environment on a sustained basis. (This should *not* be an opinion of whether the person is or is not disabled.) Such an interview also may be used as prescreening of persons who can go to the work evaluation facility but for whom there is some doubt whether the evaluation will be effective, e.g., the person seems especially resistant to referral.

The work evaluation facility should be as close to the person's home as possible. However, when there is none available in the desired locality, the DDS must make safe and feasible arrangements for the person to travel to the closest suitable facility, including a facility in another State, if necessary. Arrangements and payment for food and lodging also must be made when the person must stay away from home. Inquiry should be made as to whether the facility has a boarding arrangement, as this costs less than motel accommodations and the boarding facility may have experience dealing with impaired persons.

D. The Function of a Work Evaluation Facility

A work evaluation facility uses a number of techniques to obtain information about an individual's vocational assets, limitations, and behaviors in the context of a work environment in which the individual might function. Vocational evaluation in the work evaluation facility is a comprehensive process that systematically uses work, real or simulated, as a focal point for assessment. The full program includes a detailed interview that is usually held on the first day. It incorporates medical, psychological, social and vocational data to determine an individual's current level of functioning and potential for employment.

Work evaluation facilities use situational assessments, job tryouts, work samples, psychometric tests, and combinations of these techniques as part of the assessment process. The work sample results can indicate which job tryouts and situational tasks would be most appropriate and meaningful for a more specific evaluation. Although definitions may vary according to source, some generally accepted definitions of the principal components of vocational evaluation are:

The Situational Assessment—This is a technique used to make behavioral observations. A client is placed in a work situation and assigned tasks to perform over a period of days. This type of evaluation is oftentimes used as a method of observing general work behaviors, attitudes, and skills and can be quite valuable in mental impairment cases in determining ability to do unskilled work and to function appropriately in a competitive work environment.

Job Tryout.—This assessment tool is used to assess the total capacity of a client by placing him or her in a real work situation for a limited period of time, usually more than 5 days. The tryout supplements the information already obtained on client performance.

Work Samples—A work sample is used to determine an individual's work aptitude to perform a specific task or set of tasks within a given occupational area. A group of integrated samples may comprise a system, usually with graduated levels of complexity, to find the person's optimal level of vocational capability. Samples can be completed in most cases in less than a week. Retesting on a particular sample is a useful technique in some circumstances (see example 2, section B above).

Some work samples are derived from worker trait analysis, using such headings as handling, sorting, filing, and inspecting. Other samples are based on job analysis, under such headings as small tools, clerical comprehension and aptitude, and simulated assembly. Work samples are scored for production and accuracy, and the raw scores are converted to percentiles based on norm groups that were used to validate the samples. Some work sample performance may be rated in simple binary terms, e.g., successful—unsuccessful, acceptable—unacceptable. (Section F, below, contains a caution on the use of work sample ratings in evaluating the work evaluation facility report for disability purposes.)

Psychometric Testing—Psychometric testing may be conducted prior to the

evaluation or during the initial or latter stages.

Testing can include a battery of tests to measure intelligence, aptitude, achievement, interest, personality, dexterity and level of adjustment. Other tests used in vocational evaluation include clerical aptitude, spatial aptitude, numerical ability, and verbal skills. Standardized tests to measure reading and mathematics are also administered. These tests are used by the facility to identify problem areas and plan the scope of the evaluation.

The results of work sampling, job tryout and/or situational assessment are accompanied by a report of observation of the person's behavior, not only while working at the task, but throughout his or her attendance at the work evaluation facility. The evaluator is skilled in observing and recording the important aspects of traits and abilities exhibited in the work environment such as appearance and general demeanor, self-expression and interpersonal relations, attitude and effort, attention span, memory, perseverance, and ability to work independently of close supervision.

E. Information Provided in Work Evaluation Facility Reports

The work evaluation facility must provide a narrative report that helps to answer the questions discussed in section A above.

Accordingly, the report should describe the person's performance on each sample or task that he or she performs. The report must discuss the quality and quantity of work performed, the person's level of understanding, motivation, effort expended in accomplishing assigned tasks, and his or her personal integration within the work or testing environment. A work evaluation report must do more than provide conclusions: it must provide observational detail to corroborate them. The following guide may help to develop the evaluation questions posed to the facility and to evaluate the thoroughness of the report:

1. The person's ability to understand, remember, and carry out job instructions.

a. *Direction*—The ability to follow simple directions or procedures in order to perform a task.

b. *Memory.*—The ability to remember locations and workday procedures during the period of evaluation.

c. *Work Independence*—The ability to proceed from one step in a sequence to another without prompting or constant supervision.

D. *Accuracy*—The ability to discriminate within a basic level of tolerance, as in sorting perceptibly different items.

e. *Choice*—The ability to select among simple alternatives to accomplish a task or complete a step in a sequence.

f. *Caution—The ability to be aware of normal hazards and take necessary precautions.*

g. *Timing*—The ability to perform activities within a schedule, maintain regular attendance, and be punctual within customary tolerances.

2. The person's ability to interact with supervisors and coworkers.

a. *Self-expression*—The ability to communicate, to ask simple questions or request assistance.

b. *Sociability*—the ability to accept instructions and criticism from supervisors and get along with coworkers without extremes of shyness or aggressiveness.

c. *Appearance*—The ability to adhere to basic standards of cleanliness, neatness, appropriateness.

d. *Teamwork*—The ability to work in coordination or proximity to other workers without being distracted or distracting others.

3. The person's ability to remain at, and to maintain concentration and attention in, a competitive work environment.

a. *Pace*—The ability to perform at a consistent pace for acceptable periods of work without an unreasonable number and length of rest periods.

b. *Repetitiveness*—The ability to perform repeated sequences of action to complete a task or achieve a given objective.

c. *Perseverance*—The ability to maintain relatively continuous performance as long as there is work to be done or a task objective to be completed.

d. *Physical Stamina.*—The ability to maintain a consistent work pace without extreme fatigue or psychological stress for a normal workday in the absence of any physical impairment.

The DDS should inform the facility before the evaluation of the specific information that it needs to more accurately determine the mentally impaired person's RFC. The above outline may be used as a guide for the DDS to tell the facility what information it needs, and to review the adequacy of the report. It may be modified as needed.

F. Use of Work Evaluation Facility Report in Deciding Disability

The work evaluation facility report will contain a narrative description of how the person behaved in the facility and how he or she performed each task. The report should conclude with an assessment of the person's work abilities and their applicability to competitive work that exists in the national economy.

A report from a work evaluation facility should not be confined to a statement of quantitative finding such as those that are derived from work samples and psychometric tests, nor should conclusions as to function be based solely on such findings. For example, the percentiles and ratings for work samples are meaningless unless the norm group is identified. If the report omits this information, it should be available upon request. However, even when norm groups are identified, the interpreter should not base a disability decision solely on the percentiles and ratings. A norm group comprised of an institutionalized population or candidates for rehabilitation does not provide a correct comparison to determine ability to engage in any competitive employment. Even when the norm group consists of employed workers, the base may be too narrow to determine ability to perform work that exists in the national economy. Regard situational assessment, job tryouts, and work samples as vehicles for the exhibition of basic work abilities, not as exact instruments for disability adjudication purposes.

The work evaluation facility report should be reviewed to determine whether the evidence describes a functional limitation that would substantially limit the range of work in which the person may be able to engage. However, a conclusion given in the report that the person cannot engage in competitive work is not substantial evidence unless it is supported by the facts upon which the conclusion is based. If such information is not in the original report, a supplemental report should be requested, but good liason with the facility before referral should ensure satisfactory reporting.

Isolated or independent deficiencies in performance such as a high rate of error or below-standard production do not, in themselves, establish a significant functional limitation. They must be related to descriptions of behavior which explain how the deficiencies are attriutable to functional limitations. All performance deficiencies should be explained in the workshop evaluation report.

Significant functional limitations exhibited in a work evaluation facility must, in turn, be attributable to a diagnosed impairment that is documented by the clinical evidence. Thus, such characteristics as excessive dependence on supervision, inability to

remember simple instructions, or socially inappropriate behavior must be related to signs, symptoms, and laboratory findings, even though the latter may not establish the extent of limitation.

' A *substantial* functional limitation, as established by the clinical evidence and a fully documented work evaluation facility report, will result in the vocational conclusion that the person cannot engage in a full range of unskilled work regardless of age or physical capability. For example, the ability to work only in very limited circumstances or only with rehabilitation services does not represent an ability to engage in "competitive unskilled work which exists to a significant extent in the national economy" unless the person has actually engaged in substantial gainful activity under those conditions.

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Part IV

Environmental Protection Agency

40 CFR Part 110
Water Programs; Discharge of Oil; Proposed Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 110

[FRL 2742-7]

Water Programs; Discharge of Oil

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency is today proposing amendments to the discharge of oil regulation (40 CFR Part 110), which implements section 311 of the Clean Water Act (CWA).

The original regulation established a trigger for notifying the federal government of oil discharges that are harmful to public health or welfare. The regulation defined a harmful quantity as the amount of oil that violates applicable water quality standards or causes a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or causes a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines. It has come to be known as the "sheen regulation."

Today's proposed regulation incorporates the 1977, 1978, and 1980 amendments to section 311 of the CWA and implements section 18(m)(3) of the Deepwater Port Act of 1974. The Agency invites comment on the incorporation of the CWA amendments and implementation of section 18(m)(3) of the Deepwater Port Act of 1974. The Agency is also soliciting comments on two suggestions by industry for modifications to the requirements of 40 CFR Part 110.

DATE: Comments must be received on or before May 10, 1985.

ADDRESS: Comments should be submitted in triplicate to: Emergency Response Division, Docket Clerk, Attention: Docket Number 311 CWA-OSA, U.S. Environmental Protection Agency, 401 M Street SW., WH-548/B, Washington, D.C. 20460.

Docket: Copies of materials relevant to this rulemaking are contained in Room S325 at the U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. The docket is available for review between the hours of 8:00 a.m. and 4:00 p.m. Monday through Friday. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Dr. K. Jack Kooyoomjian, Response Standards and Criteria Branch, Emergency Response Division (WH-548/B), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C., or the RCRA/Superfund Hotline, (800) 424-9346, in Washington, D.C., 382-3000.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

I. Introduction
II. Background
III. Statutory Changes Affecting the Oil Discharge Regulation
  A. 1977, 1978, and 1980 Statutory Amendments; Deepwater Port Act of 1974
IV. Requests for Changes in the Oil Discharge Regulation
  A. Volumetric Alternatives to Sheen Test
  B. Special Use Applications of Oil
V. Summary of Supporting Analyses
  A. Classification and Regulatory Impact Analysis
  B. Certification Why a Regulatory Flexibility Analysis Is Not Necessary
  C. Paperwork Reduction Act
VI. List of Subjects in 40 CFR Part 110

I. Introduction

The discharge of oil regulation (40 CFR Part 110), also known as the "sheen regulation," has been codified since September 1970. Over the years since its original promulgation, it has been extremely effective in requiring timely notice of oil spills. Prior to this regulation, there was no requirement to report oil spills promptly. This regulation and the level of consciousness it has raised among responsible parties and governmental officials have made the United States a leader in response to oil spills.

The sheen regulation is simple in concept. The regulation implements the CWA's prohibition against discharges of "harmful quantities" of oil and requires the responsible party to report to the National Response Center (NRC) or an appropriate EPA Regional Office or United States Coast Guard (USCG) District Office as soon as that party has knowledge of such a release of oil. This regulation is easy to understand, implement, and enforce. Detecting a sheen does not require sophisticated instrumentation since a sheen is easily perceived by visual inspection. The sheen test has been proposed, commented upon, and implemented successfully. It has also withstood legal challenges.

In today's preamble, we discuss the proposed changes in the regulation that implement congressionally mandated changes. They include the following:

1. The extension of geographical scope from the contiguous zone seaward to 200 miles.

2. Modification of the harmful quantity definition from discharges of such quantities of oil "determined" to be harmful to the public health or welfare of the United States to such quantities "as may be harmful" to the public health or welfare of the United States.

3. The exemption of oil discharges controlled under CWA Section 402's National Pollutant Discharge Elimination System (NPDES) from coverage under Section 311 provisions.

4. The incorporation in the regulation of the provisions under the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 (MARPOL 73/78), Annex I.

5. The extension and application of the CWA definition of harmful quantities of oil for purposes of Section 18(m)(3) of the Deepwater Port Act (DWPA).

The preamble also solicits comment on the following suggested changes to 40 CFR Part 110 that have been requested by the regulated community:

1. Chevron has asked the Agency to consider a volumetric trigger for notification to replace the sheen.

2. Esgard has requested that EPA exempt its vegetable-oil-based product, a corrosion inhibitor in ballast tanks, from notification requirements.

II. Background

On September 11, 1970, regulations were promulgated setting forth a determination of "those quantities of oil the discharge of which * * * will be harmful to the public health or welfare of the United States" (35 FR 14306-14307, September 11, 1970; 18 CFR Part 610) pursuant to Section 311(b)(3) of the Federal Water Pollution Control Act, as amended (33 U.S.C. 466; now 33 U.S.C. 1251 *et seq.*), commonly referred to as the Clean Water Act (CWA). In 1971 and 1976, the regulations were modified in a minor way to reflect, first, a new codifiction that was established for EPA to conform to the provisions of a reorganization plan (18 CFR Part 610 became 40 CFR Part 110) and, second, statutory amendments to the CWA adopted by Congress in 1972 (41 FR 49810-49811, November 11, 1976).

The 1977, 1978, and 1980 amendments that are incorporated into the regulation by this proposal are discussed below.

III. Statutory Changes Affecting the Oil Discharge Regulation

A. 1977, 1978, and 1980 Statutory Amendments; Deepwater Port Act of 1974

1. *Extension of Geographical Scope.* In the 1977 amendments to the CWA (Pub. L. 95-217), Congress expanded the geographical scope of Section 311

beyond the contiguous zone, which extends seaward to 12 miles, to include the fishery conservation zone, which extends out to 200 miles. Specifically, sections 311 (b) and (c) of the Act were amended to apply not only to discharges into navigable waters and the contiguous zone of oil or hazardous substances in harmful quantities, but also to such discharges

> * * * in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Fishery Conservation and Management Act of 1976) * * * (33 U.S.C. 1321 (b) and (c)).

The Agency proposes to amend the jurisdictional provisions of 40 CFR Part 110 to reflect the expanded scope of section 311 as provided by Congress in 1977.

2. *Modification of Harmful Quantity.* In 1978 Congress modified the harmful quantity criteria of section 311 by changing the quantities of oil discharged that trigger the notification and other provisions of this section from those quantities that "will be harmful" to quantities that "may be harmful." More specifically, Congress modified the scope of prohibited discharges under section 311(b)(4) from quantities the "discharge of which, at such times, locations, circumstances, and conditions, *will be harmful*" (emphasis added) to such quantities the "discharge of which *may be harmful*" (emphasis added) (Pub. L. 95–576). Section 311(b)(3) was also amended to reflect this change.

The existing oil sheen test was promulgated pursuant to the pre-1978 standard of " will be harmful." The agency views the revised statutory standard ("may be harmful") as being, at a minimum, at least as stringent and environmentally protective as the prior "will be harmful" standard. In view of the successful and effective implementation of the existing oil sheen test over the past 14 years and the Agency's continued confidence in that procedure, and because the Agency at the moment has insufficient information upon which to establish an alternative test that would meet the statutorily based criteria of environmental protection and assure reliability and ease and consistency in implementation and enforcement, the Agency proposes to incorporate the new "may be harmful" language in 40 CFR Part 110, but is not proposing to change the existing oil sheen test itself.

As discussed in Section IV. A of the preamble, the Agency has received a suggestion to change the present trigger for notification from the oil sheen test to a volumetric determination. The Agency is requesting comment on that suggestion and welcomes any information or analysis that those who comment believe might be of assistance in considering this suggested approach. However, as noted above and discussed further in Section IV. A, the Agency is not proposing to modify the present oil sheen test at this time.

3. *Exemption of Discharges Permitted under Section 402 of the CWA.* In addition to changing the harmful quantity language in the 1978 amendments to the CWA, Congress also modified the definition of "discharge" in section 311(a)(1) to exclude from Section 311 coverage three types of discharges that are subject to the Section 402 National Pollutant Discharge Elimination System (NPDES) and Section 309 enforcement provisions. Specifically, Congress provided that the following discharges be excluded from section 311 coverage:

> (A) discharges in compliance with a permit under section 402 of this Act, (B) discharges resulting from circumstances identified and reviewed and made a part of the public record with respect to a permit issued or modified under section 402 of this Act, and subject to a condition in such permit, and (C) continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under section 402 of this Act, which are caused by events occurring within the scope of relevant operating or treatment systems.

The basis for this specific exclusion stems from the uncertainty under the old statute as to whether and to what extent discharges from facilities with NPDES permits were subject to the provisions of section 311. Senator Stafford, a principal sponsor of the amendment to section 311, explained the gereral nature of the changes:

> * * * we are attempting to draw a line between the provisions of the act under sections 301, 304, 402 regulating chronic discharges and 311 dealing with spills. At the extremes it is relatively easy to focus on the difference but it can become complicated. The concept can be summarized by stating that those discharges of pollutants that a reasonable man would conclude are associated with permits, permit conditions, the operation of treatment technology and permit violations would result in 402/309 sanctions; those discharges of pollutants that a reasonable man would conclude are episodic or classical spills not intended or capable of being processed through the permitted treatment system and outfall would result in the application of section 311 (124 *Congressional Record* 37683 (1978)).

More specifically, Senator Stafford related that "the changes make it clear that discharges, from a point source permitted under section 402 which are associated with manufacturing and treatment, are to be regulated under sections 402 and 309. 'Spill' situations will be subject to section 311, however, regardless of whether they occur at a facility with a 402 permit" (124 *Congressional Record* 37683 (1978)).

In the modified definition of discharge, the first exclusion applies to discharges of oil in compliance with a 402 permit limitation specifically applicable to the oil. Such limitations include those that are designated by the permitting authority as an indicator of that substance and those that are application-based. The second exclusion applies to discharges from a point source: *Provided*, that the type of oil, amount, source, and treatment system are identified in the public record, and the oil to be discharged is subject to a permit condition requiring treatment of the discharge. The third exclusion applies to chronic and anticipated intermittent discharges from a point source identified in a permit or permit application. The third exclusion will remain applicable after permit reissuance or revision.

Discharges that are not subject to a limitation or that are not covered by the second or third exclusion will be subject to the notification, civil penalty, and removal cost provisions of section 311. Each of the exclusions is explained in greater detail below.

Exclusion 1. In some cases, permit effluent limitations representing an appropriate waste treatment technology level exceed the section 311 reportable quantity for oil. Thus, a permittee may be in compliance with his permit while discharging oil in amounts greater than the reportable quantity. Under these regulations, if a discharge is in compliance with a permit issued under Section 402, such discharge is excluded from section 311. This exclusion applies when the permit contains a limitation specifically applicable to oil. In cases where specific technology-based effluent limits are not applicable, permits may contain effluent limitations based on discharge amounts (or some multiple of these amounts) reported in permit applications. Such limits (known as application-based limits) would also be considered permit limitations for purposes of these regulations, and discharges from point sources complying with such limits would be excluded from section 311.

Exclusion 2. Some discharges of oil from permitted point sources may result from circumstances that were identified and considered in the issuance of a permit, but are not subject to any specific effluent limitations. The second

exclusion addresses these situations and applies where the source, nature, and amount of potential discharge were identified and made a part of the public record, and a treatment system demonstrated as capable of preventing that potential discharge was made a permit requirement.

The "public record" has been defined to include the permit application and any supplemental documents contained in the "record for final permit" as defined in 40 CFR 124.122. The public record must identify the type of oil to be excluded, as well as the amount and origin or source of the oil.

The second exclusion exempts discharges "resulting from circumstances identified, reviewed and made a part of the public record [of a permit] * * * and subject to condition in [a] permit." On its face, this exclusion applies to a broad range of discharges, including those resulting from onsite spills to the treatment system as well as to chronic process discharges originating in the operating or treatment systems, provided they are subject to a specific permit condition. Owing to overlap between the second and third exclusions, however, certain continuous and anticipated intermittent discharges are exempted by the third exclusion, regardless of the existence of an applicable permit condition. Thus, the second exclusion will, as a practical matter, cover principally those discharges resulting from onsite spills to the permitted treatment system.

The legislative history makes it clear that Congress intended discharges caused by onsite spills to be excluded from Section 311 (and subject to Section 402) only where it could be demonstrated that such onsite spills had been contemplated and had been processed through a treatment system that should have been capable of preventing a reportable discharge (see *Congressional Record* of October 14, 1978 (S19259)). Thus, the "condition" contemplated in 311(a)(2)(B) will be placed in permits to exclude discharges caused by spills only where the permittee demonstrates that the treatment system is in fact sufficient to treat the potential spill identified. For example, if a discharger has a drainage system that will route spilled material from a broken hose connection to a holding tank or basin for subsequent treatment and discharge at a specified rate, documentation must be submitted with the application. The proposed permit condition must be sufficient to treat the maximum potential spill from the identified source. This exclusion will not exempt a discharge that results from an onsite spill larger than the spill contemplated in the public record.

Exclusion 3. The third exclusion applies to all continuous or anticipated intermittent discharges originating in the manufacturing or treatment systems, including chronic discharges and those caused by upsets and treatment system failures. The exclusion is not dependent on the scope of the permit, so long as a permit application has been submitted, or a permit exists, covering the point source in question. Discharges caused by spills or episodic events that release oil within the manufacturing system or to the treatment system are not covered by this exclusion.

4. *Exemption of Discharges Permitted under MARPOL 73/78.* Annex I of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 (MARPOL 73/78), entered into force on October 2, 1983 (see 48 FR 45704–45727, October 6, 1983). The purpose of MARPOL 73/78, which supersedes the International Convention for the Prevention of Pollution of the Sea by Oil, 1954, is to eliminate marine pollution from ships.

Many of the requirements of MARPOL 73/78 were implemented by the Port and Tanker Safety Act of 1978 (Pub. L. 95–474). The Act to Prevent Pollution from Ships, 1980 (Pub. L. 96–478; 33 U.S.C. 1901–1911), implemented the remainder of the provisions of MARPOL 73/78. Pub. L. 96–478 also amended the CWA to reflect the supersession of the 1954 Convention by MARPOL 73/78.

Section 13(b) of Pub. L. 96–478 amended section 311(b)(3)(A) of the CWA to exempt certain discharges into waters seaward of the territorial sea permitted under MARPOL 73/78. Such discharges include the operational discharge of limited quantities of oil-water mixtures from ships. Thus, discharges into those waters from ships made in compliance with the requirements of Regulation 9 of MARPOL 73/78, Annex I (as implemented through 33 CFR Parts 151 and 157), are not subject to notification and liability provisions under the CWA even if they would otherwise be of "a quantity that may be harmful" under the CWA. The MARPOL exemption does not apply, however, to discharges into the internal waters and the territorial seas of the United States. Such discharges must satisfy the CWA "quantity that may be harmful" discharge standard even if the MARPOL 73/78 discharge standards are met.

Regulation 9 of MARPOL 73/78 applies to all "ships" operating in the marine environment. Such "ships" include all vessels and both fixed and floating platforms. As provided under 33 CFR Part 151, however, compliance with an NPDES permit by a fixed or floating drilling rig or other platform satisfies the requirements of MARPOL 73/78. With certain specific exemptions, Regulation 9 of MARPOL 73/78, Annex I, like Section 311 of the CWA, prohibits the discharge of oil. One exception to the general prohibition allows operational discharges from the machinery space bilges and fuel oil tanks of ships, but requires that the oil content of the effluents be fewer than 15 parts per million (ppm) when within 12 nautical miles of land and fewer than 100 ppm when more than 12 miles from land. Another exception applies to operational cargo-related discharges from oil tankers; it requires that discharges be made only beyond 50 nautical miles from land and at a rate not to exceed 60 liters of oil per nautical mile. Finally, the total quantity of oil allowed to be discharged is limited to 1/30,000 and 1/15,000 of the total quantity of the particular cargo carried onboard for "new" and "existing" tankers, respectively. As stated above, these MARPOL 73/78 discharge limitations are contained in 33 CFR Parts 151 and 157.

In addition to the operational limitations noted above, Regulations 9 and 11 ("Exceptions") prohibit, for purposes of section 311(b)(3) of the CWA, oil discharges resulting from damage to a ship or its equipment when (1) measures are not taken to prevent or minimize a discharge, or (2) the master intended to cause damage or was reckless and knew damage would result. The only exceptions to the general discharge prohibition of Regulation 9 are: (1) intentional discharges necessary for the safety of the ship and to save life at sea; (2) any discharges resulting from damage to a ship or its equipment (except as prohibited above); and (3) the use of approved substances to combat specific pollution incidents. Discharges allowed by these emergency exceptions are not "permitted" discharges. This provision simply recognizes for purposes of MARPOL 73/78 that, under certain circumstances, a discharge cannot be avoided. All discharges not complying with MARPOL 73/78 discharge limitations, including "emergency discharges," are prohibited by section 311(b)(3) of the CWA and must be reported. It should also be noted that all discharges, including permitted ones, must be recorded in the ship's Oil Record Book as required by 33 CFR 151.25.

Because discharges subject to and complying with Regulation 9 are permitted by the CWA, they do not have to be reported under Section 311(b)(5) even if they would otherwise constitute a quantity that may be harmful.

5. *Discharges at Deepwater Ports.* In addition to implementing the 1977, 1978, and 1980 amendments to the CWA, this proposed rulemaking defines harmful quantities of oil for purposes of the Deepwater Port Act (DWPA) of 1974 (33 U.S.C. 1501–1524). The DWPA applies to the construction and operation of deepwater ports off the U.S. coast. It contains provisions that prohibit the discharge of oil into the marine environment from deepwater ports and from vessels within the "safety zones" around such ports. The DWPA also establishes deepwater port licensee and vessel owner or operator liability for cleanup costs and damages that result from a discharge of oil. Other features of the DWPA include discharge notification requirements, penalty provisions, and the establishment of the Deepwater Port Liability Fund. The fund is liable, without regard to fault, for all cleanup costs and damages in excess of those actually compensated by a liable deepwater port licensee or vessel owner or operator.

Action under each of the key pollution provisions of the DWPA is triggered by a discharge of oil in harmful quantities. Although the USCG has overall responsibility for administering the Deepwater Port Liability Fund and related statutory provisions of the DWPA (see 33 CFR Part 137), the DWPA directs EPA to define the term "discharge." Section 18(m)(3) of the DWPA defines "discharge" in terms of those "quantities of oil determined to be harmful pursuant to regulations issued by the Administrator of the Environmental Protection Agency" (33 U.S.C. 1517(m)(3)).

The legislative history of section 18 of the DWPA shows that Congress expected the Administrator "to define harmful quantities of oil as defined in regulations issued under section 311 of the Federal Water Pollution Control Act" (Sen. Rep. No. 93–1217, 93d Cong., 2d Sess. (1974)). Consequently, EPA proposes that the definition of harmful quantities of oil in 40 CFR Part 110 (as revised by this rulemaking) be used for purposes of the DWPA, including the Section 402 CWA permit-related exclusions. (Although the Agency is proposing to use the sheen test, subject to the noted exclusions, as the reporting trigger for deepwater ports, we would like to receive comments on the alternative volumetric approach as discussed under Section IV. A. of the preamble.)

It was though during the energy crises of the 1970's that there would be constructed a number of deepwater ports to accommodate supertankers. There is, however, currently only one operational U.S. deepwater port: the Louisiana Offshore Oil Port, Inc. (LOOP), which is located in the Gulf of Mexico, approximately 19 miles south of Grand Isle, Louisiana. Only that port and the vessels calling there will be immediately subject to the definition of a "discharge" proposed by this rulemaking.

Because of the statutory changes discussed above, it has become necessary to redesignate §§ 110.6 (Exception for vessel engines), 110.7 (Dispersants), 110.8 (Demonstration projects), and 110.9 (Notice) as §§ 110.8, 110.9, 110.10, and 110.11, respetively.

IV. Requests for Changes in the Oil Discharge Regulation

The Agency plans to promulgate promptly the statutorily mandated changes discussed above and today solicits comments on them. In addition, EPA requests comment and information on other issues pertaining to 40 CFR Part 110, described below.

A. Volumetric Alternatives to Sheen Test

Chevron U.S.A. Inc., of San Francisco, California, has commented to EPA that the sheen test is too stringent and that alternative, volumetric limits would provide sufficient water quality protection at a lesser cost to the company. Chevron has suggested that the reportable quantity threshold be changed to 1 barrel (42 gallons), except where water quality standards are more stringent. The company maintains that spills of less than 1 barrel "rarely, if ever, cause environmental damage." Chevron claims, in material submitted to EPA, that approximately 75 percent of the spills it reports are of under 1 barrel and estimates that the cost to the company is $500 to $6,000 per spill report.

EPA is interested in receiving comments on the appropriateness of a volumetric reporting test of 1 barrel, 50 barrels, or any other appropriate level. As discussed above, the statutory requirement under the CWA is that the reporting threshold is to be a "quantity as may be harmful." Any alternative reporting threshold must be consistent with this statutory requirement.

As noted above, EPA views the revised "may be harmful" criteria of Section 311 as being at least as stringent and environmentally protective as the prior "will be harmful" standard. Compared to the present oil sheen test, the alternative volumetric suggestion by Chevron would allow greater quantities of oil to be discharged without being subject to the notification requirements or liability provisions of section 311. The information submitted by Chevron, however, does not provide an adequate basis for concluding that such a volumetric alternative is, in fact, at least as environmentally protective as the present oil sheen test. Moreover, initial comment from the USCG and from EPA field personnel indicates that a change to a volumetric limit of, for example, 1 barrel, would be less environmentally protective and less enforceable than the sheen test since it is difficult to determine the precise volume of oil once it is discharged into the water. Finally, those who implement the current regulation seem to agree that it has been successful in creating an effective early-warning system, in improving oil-handling techniques, and in reducing spillage.

EPA, therefore, is not proposing a change to the present oil sheen test. The Agency does, however, request data on industry's suggestion.

EPA would like to receive comments on the environmental impacts reporting costs, administrative impacts, and enforceability of volumetric reporting test. The Agency is especially interested in a comparison of the environmental effectiveness of the volumetric approach and the present sheen test. Those who comment should, insofar as possible, provide supporting documentation and analysis in addition to their opinions on this issue.

Other information that EPA is interested in receiving includes:

1. Environmental impacts of various sizes of spills (for example, under 1 barrel, 50 barrels, 100 barrels);
2. Circumstance affecting harm (type of receiving water—fresh, brackish, salt—type of oil, and so forth);
3. Cumulative environmental impacts of small release, need for cleanup actions for accumulations of small releases, and property damage resulting from such accumulations;
4. Effectiveness of the sheen and the volumetric alternative as an early warning system to prevent larger spills;
5. Frequency with which corrective action is necessary or required for small releases;
6. Effectiveness of the sheen reporting threshold in inducing effective spill prevention practices on the part of oil handlers;
7. Number of spills reported each year; number under 1 barrel;

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8. Estimated number of small sills not reported;

9. Discharges' reporting costs for reporting small spills: direct, admnistrative/recordkeeping, down time, other (provide documentation);

10. Extent to which reporting costs are (a) required by law or regulation; (b) a responsible practice, but not directly required; or (c) other;

11. Extent to which reporting costs vary as a function of spill size, type, or location;

12. Frequency with which the On-Scene-Coordinator responds in person to reports of spills of 1 barrel or less;

13. Estimated administrative cost of responding to small spills;

14. Difficulty and range of uncertainty in determining volume of oil once it is spilled (for example, would it be clearly apparent that a 10-barrel spill was greater than a 1-barrel spill?); compliance/enforcement impact of uncertainty in juding size of a spill after the fact;

15. Extent to which a sheen is or is not caused by different fractions and types of oil;

16. Extent to which a volumetric limit would be inconsistent with related programs (such as MARPOL limits, water quality standards);

17. Extent to which discharges smaller than a volumetric quantity would be reportable any way under MARPOL provisions;

18. Extent to which the reporting and/or sanctions mechanisms under MARPOL might be less effective than those under the CWA;

19. Problems that might result if onshore facilities (covered under the CWA only) have a different reportable quantity than ships and offshore facitites (which must report under MARPOL); and

20. Problems that might result if the liability provisions under Section 311(f) are triggered at some volumetric release level, resulting in an inability to recover removal costs for individual and/or cumulative effects of the release less than the volumetric reportable quantity (even though smaller releases must be *reported* under MARPOL).

EPA also welcomes any additional information or comments bearing on these issues.

B. Special use Applications of Oil

EPA has authority under the CWA, section 311 (b)(3(B), and Executive Order 11735 (38 FR 21243) to permit the discharge of oil "in quantities and at times and locations or under such circumstances or conditions" as the Agency determines not to be harmful. Thus, EPA may grant exemptions to section 311 (b) and the sheen regulation under appropriate circumstances. As this section of the preamble explains, the Agency has received the following request for an exemption for vegetable oil products on which it would like to receive public comments.

The ballast tanks of ships and semisubmersible oil rigs are subject to significant corrosion from sea water. This corrosion threatens the structural integrity of the tanks. The tanks can, however, be protected by floating oil on the surface of the ballast water; when the tanks are flushed or emptied, some of the floating oil coats the tank walls and makes them less susceptible to corrosion. Petroleum oil is sometimes used for this purpose. Upon discharge of the ballast water into a harbor or bay, however, the coating oil is sometimes released, thus creating an oil sheen. This sheen is, of course, subject to the notification requirements of the oil discharge regulation. MARPOL 73/78 does not apply to vegetable (or animal) oils and thus does not pertain to this issues.

EPA has received a request to exempt from the sheen regulation a vegetable oil product manufactured by Esgard, Inc.., of Lafayette, Louisiana, that is used to prevent salt water corrosion in the ballast tanks and void spaces of ships and semisubersible oil rigs. This product, which is composed primarily of a food-grade vegetable oil and calcium soaps of fatty triglycerides, floats on the surface of the ballast water to coat and protect the steel surfaces. When discharged, the product produces a sheen on the water's surface.

The Agency is considering a number of regulatory options on such products. They include the following:

1. Exempting discharges of vegetable-based products used for tank coating from reporting requirements under 40 CFR Part 110 (this option would require the development of criteria for selecting the products to be exempted);

2. Exempting discharges of such products on case-by-case basis;

3. Requiring the discharge to be reported to the appropriate authorities in all cases.

The Agency requests comments on these regulatory options.

The Agency also requests specific technical and scientific data on the following items:

1. Evironmental impacts of the use of vegetable and other nonmineral oils, particularly fish oils;

2. Biodegradability of such oils;

3. Conditions under which discharges of such oils may be harmful;

4. Benefits of the use of such oils, including data on the various uses;

5. Volume and frequency of discharges of such oils from the ballast tanks and void tanks of ships and semisubmersible oil rigs;

6. Biological oxygen demand/chemical oxygen demand requirements for degradation;

7. Volume of material used per square foot;

8. Volume discharges per day;

9. Length of time of discharge;

10. Other methods of tank coating for corrosion protection in lieu of an oil "float coat"; and

11. Any other relevant information.

V. Summary of Supporting analyses

A. Classification and Regulatory Impact Analysis

Proposed regulations must be classified as major or nonmajor to satisfy the rulemaking protocol established by Executive Order 12291. E.O. 22291 established the following criteria for a regulation to qualify as a major rule:

1. An annual effect on the economy of $100 million or more;

2. A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

3. Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.The proposed oil discharge regulation is a nonmajor rule because the Agency has concluded that it meets none of the above criteria. Data supporting this conclusion can be found in the rulemaking docket.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, Whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and maked available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will not have a significant economic impact on small entities. There may be some incremental costs of compliance owning to the extension of jurisdiction beyond the contiguous zone to 200 miles. These costs will, however, be borne by owners

of vessels larger than those defined as small entites. Accordingly, I herby certify that this proposed regulation would not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require regulatory flexibility analysis.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Submit comments on these requirements to the Office of Information and Regulatory Affairs, OMB, 726 Jackson Place, N.W., Washington, D.C. 20503, market "Attention: Desk Officer for EPA." The final rule will respond to any OMB or pubic comments on the information collection requirements.

VI. List of Subjects in 40 CFR Part 110

Administrative practice and procedure, Coastal zone, Continental shelf, Environmental protection, Fisheries, Hazardous substances, Intergovernmental relations, Liabilities, Marine resources, Natural resources, Oil pollution, Penalties, Petroleum, Public health, Reporting and recordkeeping requirements, Rivers, Treaties, Vessels, Water pollution control, Water resources, Waterways.

Dated: March 1, 1985.

Lee M. Thomas,

Administrator.

For the reasons set out in the preamble, 40 CFR Part 110 is proposed to be revised as follows.

PART 110—DISCHARGE OF OIL

Sec.

110.1 Definitions.
110.2 Applicability.
110.3 Discharge into navigable waters of such quantities as may be harmful.
110.4 Discharge into contiguous zone of such quantities as may be harmful.
110.5 Discharge beyond contiguous zone of such quantities as may be harmful.
110.6 Discharge at deepwater ports.
110.7 Discharge prohibited.
110.8 Exception for vessel engines.
110.9 Dispersants.
110.10 Demonstration projects.
110.11 Notice.

Authority: Secs. 311 and 501(a), Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1251 *et seq.* as amended); Section 18(m)(3) of the Deepwater Port Act of 1974 (33 U.S.C. 1517(m)(3)); sec. 12(b) of the Act to Prevent Pollution from Ships (33 U.S.C. 1901 *et seq.*).

§ 110.1 Definitions.

As used in this part, the following terms shall have the meaning indicated below:

"Act" means the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 *et seq.*, also known as the Clean Water Act;

"Administrator" means the Administrator of the Environmental Protection Agency (EPA);

"Applicable water quality standards" means State water quality standards adopted by the State and approved by EPA pursuant to Section 303 of the Act or promulgated by EPA pursuant to that section;

"Contiguous zone" means the entire zone established or to be established by the United States under article 24 of the Convention on the Territorial Sea and the Contiguous Zone;

"Deepwater port" means an offshore facility as defined in Section (3)(10) of the Deepwater Port Act of 1974 (33 U.S.C. 1502(10));

"Discharge" includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, or dumping, but excludes (A) discharges in compliance with a permit under section 402 of the Act, (B) discharges resulting from circumstances identified and reviewed and made a part of the public record with respect to a permit issued or modified under Section 402 of the Act, and subject to a condition in such permit, and (C) continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under section 402 of this Act, that are caused by events occurring within the scope of relevant operating or treatment systems;

A discharge "in connnection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or that may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Magnuson Fishery Conservation and Management Act)," means: (1) A discharge into any waters beyond the contiguous zone from any vessel or onshore or offshore facility, which vessel or facility is subject to or is engaged in activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, and (2) any discharge into any waters beyond the contiguous zone that contain, cover, or support any natural resource belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Magnuson Fishery Conservation and Management Act);

"MARPOL 73/78" means the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978, Annex I, which regulates pollution from oil and which entered into force on October 2, 1983;

"Navigable waters" means the waters of the United States, including the territorial seas. The term includes:

(a) All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide;

(b) Interstate waters, including interstate wetlands;

(c) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, and wetlands, the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

(1) That are or could be used by interstate or foreign travelers for recreational or other purposes;

(2) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce;

(3) That are used or could be used for industrial purposes by industries in interstate commerce;

(d) All impoundments of waters otherwise defined as navigable waters under this section;

(e) Tributaries of waters identified in paragraphs (a)—(d) of this section, including adjacent wetlands; and

(f) Wetlands adjacent to waters identified in paragraphs (a)—(e) of this section: *Provided,* That waste treatment systems (other than cooling ponds meeting the criteria of this paragraph) are not waters of the United States;

"NPDES" means National Pollutant Discharge Elimination System;

"Offshore facility" means any facility of any kind located in, on, or under any of the navigable waters of the United States, and any facility of any kind that is subject to the jurisdiction of the United States and is located in, on, or under any other waters, other than a vessel or a public vessel;

"Oil" means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil;

"Onshore facility" means any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under any land within the United States, other than submerged land;

"Person" includes an individual, firm, corporation, association, and a partnership;

"Public vessel" means a vessel owned or bareboat chartered and operated by the United States, or by a State or political subdivision thereof, or by a foreign nation, except when such vessel is engaged in commerce;

"Sheen" means and iridescent appearance on the surface of water;

"Sludge" means an aggregate of oil or oil and other matter of any kind in any form other than dredged spoil having a combined specific gravity equivalent to or greater than water;

"United States" means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands;

"Vessel" means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water other than a public vessel; and

"Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency or duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include playa lakes, swamps, marshes, bogs, and similar areas such as sloughs, prairie potholes, wet meadows, prairie river overflows, mudflats, and natural ponds.

§ 110.2 Applicability.

The regulations of this part apply to the discharge of oil into or upon the waters of the United States or adjoining shorelines or into or upon the waters of the contiguous zone, or in connection with activities under the Outer Continental Shelf Lands Act of the Deepwater Port Act of 1974, or that may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Magnuson Fishery Conservation and Management Act), prohibited by section 311(b)(3) of the Act.

§ 110.3 Discharge into navigable waters of such quantities as may be harmful.

For purposes of section 311(b) of the Act, discharges of oil into or upon the navigable waters of the United States or adjoining shorelines in such quantities that it has been determined may be harmful to the public health or welfare of the United States, except as provided in § 110.8 of this part, include discharges of oil that:

(a) Violate applicable water quality standards, or

(b) Cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

§ 110.4 Discharge into contiguous zone of such quantities as may be harmful.

For purposes of section 311(b) of the Act, discharges of oil into or upon the waters of the contiguous zone in such quantities that it has been determined may be harmful to the public health or welfare of the United States, except as provided in § 110.8, include discharges of oil that:

(a) Violate applicable water quality standards, or

(b) Cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

§ 110.5 Discharge beyond contiguous zone of such quantities as may be harmful.

For purposes of section 311(b) of the Act, discharges of oil in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or that may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Magnuson Fishery Conservation and Management Act) in such quantities that it has been determined may be harmful to the public health or welfare of the United States, except as provided in § 110.8, include discharges of oil that:

(a) Violate applicable water quality standards, or

(b) Cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

§ 110.6 Discharge at deepwater ports.

(a) For purposes of section 18(m)(3) of the Deepwater Port Act of 1974, the term "discharge" shall includ, but not be limited to, any spilling, leaking, pumping, pouring, emitting, emptying, or dumping into the marine environment of quantities of oil that:

(1) Violate applicable water quality standards, or

(2) Cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

(b) The term "discharge" excludes: (1) Discharges in compliance with a permit under Section 402 of the Act, (2) discharges resulting from circumstances identified and reviewed and made a part of the public record with respect to a permit issued or modified under section 402 of the Act, and subject to a condition in such permit, and (3) continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under seciton 402 of this Act, that are caused by events occurring within the scope of relevant operating or treatment systems.

§ 110.7 Discharge prohibited.

As provided in Section 311(b)(3) of the Act, no person shall discharge or cause or permit to be discharged into or upon the navigable waters of the United States or adjoining shorelines or into or upon the waters of the contiguous zone or in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or that may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Magnuson Fishery Conservation and Management Act) any oil in such quantities as may be harmful as determined in §§ 110.3, 110.4, and 110.5, and discharges under 110.6 except as the same may be permitted in the contiguous zone and seaward under MARPOL 73/78, Annex I, as provided in 33 CFR Part 151.09.

§ 110.8 Exception for vessel engines.

For purposes of section 311(b) of the Act, discharges of oil from a porpoerly functioning vessel engine are not deemed to be harmful, but discharges of such oil accumulated in a vessel's bilges shall not be so exempt.

§ 110.9 Dispersants.

Addition of dispersants or emulsifiers to oil to be discharged that would circumvent the provisions of this part is prohibited.

§ 110.10 Demonstration projects.

Notwithstanding any other provisions of this part, the Administrator may permit the discharge of oil into or upon the navigable waters of the United States or adjoining shorelines or into or upon the waters of the contiguous zone or in connection with activities under the Outer Continental Shelf Lands Act or the Deepwaterport Act of 1974, or that may affect natural resources belonging to, appertaining to, or under

the exclusive management authority of the United States (including resources under the Magnuson Fishery Conservation and Management Act), inconnection with research, demonstration projects, or studies relating to the prevention, control, or abatement of oil pollution.

§ 110.11 Notice.

Any person in charge of any vessel or onshore or offshore facility shall, as soon as he has knowledge of any discharge of oil from such vessel or facility in violation of § 110.7, immediately notify the National Response Center (800–424–8802; in the Washington, D.C., metropolitan area, (202) 426–2675), or if not practicable, the appropriate predesignated On-Scene-Coordinator in the EPA Regional Office or U.S. Coast Guard District Office of such discharge in accordance with such procedures as the Secretary of Transportation may prescribe. The procedures for such notice are set forth in U.S. Coast Guard regulations, 33 CFR Part 153, Subpart B.

[FR Doc. 85–5700 Filed 3–8–85; 8:45 am]

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Quarantine
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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 85-303]

Citrus Canker Quarantine and Regulations; Certification Under the Regulatory Flexibility Act

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Certification under the Regulatory Flexibility Act.

SUMMARY: This document gives notice that the Administrator of the Animal and Plant Health Inspection Service (APHIS) has certified that the interim rule established to prevent the spread of the citrus canker bacteria from Florida to noninfested areas in the United States does not have a significant economic impact on a substantial number of small entities.

EFFECTIVE DATE: March 12, 1985.

FOR FURTHER INFORMATION CONTACT: Thomas O. Gessel, Director, Regulatory Coordination Staff, Animal and Plant Health Inspection Service, United States Department of Agriculture, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-5533.

SUPPLEMENTARY INFORMATION: On September 19, 1984, APHIS published an interim rule in the **Federal Register** (49 FR 36623-36626) adding a new "Subpart—Citrus Canker" (contained in 7 CFR 301.75 *et seq.*, and referred to below as regulations) which prohibited the interstate movement from anywhere in Florida of articles designated as regulated articles except under certain circumstances. The regulations were established in order to prevent the interstate spread of citrus canker from infested areas in Florida to noninfested areas of the United States.

Section 301.75-2 of the regulations designates the following articles as regulated articles:

Section 301.75-2

(a) Plants and any plant parts, including fruit and seeds, of any of the following:

Calamondin orange (*Citrus mitis*)
Citrus citron (*Citrus medica*)
Grapefruit (*Citrus paradisi*)
Kumquat (*Fortunella japonica*)
Lemon (*Citrus limon*)
Lime (*Citrus aurantifolia*)
Mandarin orange (Tangerine) (*Citrus reticulata*)
Pummelo (*Shaddock*) (*Citrus maxima*)
Sour orange (*Citrus aurantium*)
Sweet orange (*Citrus sinensis*)
Tangelo (*paradisi x. c. reticulata*)
Temple orange (*reticulata x. c. sinensis*)
Trifoliate orange (*Poncirus trifoliata*)

(b) Any other product, article, or means of conveyance, of any character whatsoever, not covered by paragraph (a) when it is determined by an inspector that it presents a risk of spread of the citrus canker and the person in possession thereof has actual notice that the product, article, or means of conveyance is subject to the provisions of this Subpart.

Articles are designated as regulated articles in § 301.75-2(a) if it is determined, based on research and experience, that they are articles likely to cause the artificial spread of the citrus canker. In addition, since other products, articles, or means of conveyance could, under certain circumstances, be found to present a risk of spreading the citrus canker, these other articles are regulated by paragraph (b). Articles regulated by paragraph (b) are determined to present a risk of spread of the citrus canker by an inspector on a case-by-case basis since it cannot be anticipated specifically which other products, articles, or means of conveyance, if any, would present such a risk.

The regulations provide special provisions in § 301.75-4 allowing regulated articles to be moved interstate from a quarantined area for scientific and experimental purposes. In addition, § 301.75-5 of the regulations allow fruit designated as a regulated article to be moved interstate from a quarantined area interstate to any State or Territory other than to American Samoa, Arizona, California, Hawaii, Louisiana, Puerto Rico, or Texas (referred to below as citrus producing States and Territories) if moved pursuant to a limited permit issued and attached in accordance with § 301.75-7 of the regulations, and if not unloaded in any of the jurisdictions listed above without permission from an inspector. Fruit moved interstate under a limited permit is also prohibited from being moved interstate from a nonquarantined area to any citrus producing State or Territory (see 49 FR 43448-43449).

Under § 301.75-5(b) of the regulations, a limited permit shall be issued by an inspector for the movement of fruit designated as a regulated article if such inspector:

(1) Determines that the fruit originated in an area found to be free of citrus canker disease based on surveys conducted by inspectors appointed by the Deputy Administrator,

(2) Determines that the fruit is free of leaves, litter, and stems other than stems less than one inch in length attached to the fruit, and

(3) Determines that the fruit has been treated by a thorough wetting with a solution containing 200 parts per million active chlorine for a period of at least two minutes.

Basis of Certification

An analysis of the impact the regulations would have on small entities has been completed and, for reasons explained below, the Administrator of the Animal and Plant Health Inspection Service has determined that the regulations would not have a significant economic impact on a substantial number of small entities.

Specifically, with regard to nursery stock designated as regulated articles, a review of the Florida Nursery Industry indicates that, although there are over 7,000 certified wholesale and wholesale/retail nurseries in Florida, only 141 nurseries [or about 1.8 percent of all nurseries in Florida, and 3.1 percent of all wholesale and wholesale/retail nurseries in Florida] are certified to produce nursery stock designated as regulated articles for commercial groves in Florida. In addition to these wholesale and wholesale/retail nurseries, other nurseries produce nursery stock for ornamental plantings. It appears that many of the wholesale and wholesale/retail nurseries are small

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entities. However, it appears that the primary market for all nursery stock designated as regulated articles is in Florida, although prior to the establishment of the regulations, very small amounts of such Florida nursery stock were sold for use in citrus groves in Louisiana, Texas, Hawaii, Puerto Rico, and American Samoa. Also, only an insignificant number of nurseries that produced nursery stock for ornamental plantings move such nursery stock interstate. Therefore, it has been determined that regulations affecting the productions or sale of nursery stock will not have a significant economic impact on a substantial number of small entities.

With regard to fruit designated as regulated articles (primarily citrus fruit), it also appears that the regulations will not have a significant effect on a substantial number of small entities. Specifically, the regulations affect only fresh fruit and less than 20 percent of Florida citrus fruit is sold fresh. Further, the regulations permit fresh fruit designated as a regulated article to be shipped interstate if certain conditions are met including the requirement that the fresh fruit not be shipped directly or indirectly to other citrus producing states. Shipments of fresh fruit from Florida to other citrus producing states have historically only involved about 1 percent of the total Florida citrus production. Therefore, it appears that, although many of the entities that produce or sell citrus fruit may be small, the regulations will not have a significant economic impact on these entities or any other small entities.

Further, with regard to seeds designated as regulated articles, it appears that prior to the establishment of the regulations, there were an insignificant amount of such seeds shipped interstate from Florida.

Certification

Therefore, under the circumstances explained above, the Administrator of the Animal and Plant Health Inspection Service, has determined, pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), that the citrus canker interim rule does not have a significant economic impact on a substantial number of small entities.

Bert W. Hawkins,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 85-5722 Filed 3-11-85; 8:45 am]

BILLING CODE 3410-34-M

7 CFR Parts 301, 318, and 319

[Docket No. 84-338]

Deletion of Approved Treatments Using EDB on Citrus Fruits, Papayas, and Other Fruits and Vegetables

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends the "Mexican Fruit Fly Quarantine and Regulations," the "Hawaiian Fruits and Vegetables" quarantine and regulations, the "Fruits and Vegetables from Puerto Rico or Virgin Islands" quarantine and regulations, and the "Fruits and Vegetables" quarantine and regulations by deleting provisions providing for the use of ethylene dibromide (EDB) as a fumigant on certain fruits and vegetables as a condition of their movement into the United States or interstate. This action is necessary because such uses of EDB are no longer approved by the Environmental Protection Agency.

EFFECTIVE DATE: The effective date of this document is March 12, 1985.

ADDRESS: Written comments concerning this document should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Written comments received may be inspected at Room 728 of the Federal Building between 8 a.m. 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Charles M. Amyx, Senior Staff Officer, Technology Analysis and Development Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 671, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8896.

SUPPLEMENTARY INFORMATION:

Background

The regulations in "Subpart—Mexican Fruit Fly Quarantine and Regulations" (7 CFR 301.64 et. seq.), in "Subpart—Hawaiian Fruits and Vegetables" quarantine and regulations (7 CFR 318.13 et. seq.), in "Subpart—Fruits and Vegetables from Puerto Rico or Virgin Islands" quarantine and regulations (7 CFR 318.58 et. seq.), and in "Subpart—Fruits and Vegetables" quarantine and regulations (7 CFR 319.56 et. seq.) contain provision approving treatments for citrus fruits, papayas, mangoes, and other fruits and vegetables. This document removes from the regulations all but four ethylene dibromide (EDB) treatments that have been approved as a fumigant for certain fruits and vegetables as a condition of importation into the United States or movement interstate. Treatments approving the use of EDB in Mexico on mangoes from Mexico, and the use of EDB in Central America, the West Indies and Brazil on mangoes from these countries have not been deleted for reasons discussed below.

Action by EPA

Prior to September 1, 1984, EDB had been approved for use as a fumigant on citrus fruits, papayas, mangoes, and other tropical fruits and vegetables because of its effectiveness in destroying the fruit flies known to infest these fruits and vegetables. However, on September 1, 1984, the Environmental Protection Agency (EPA) cancelled the registration of EDB as a post harvest fumigant in the United States for all citrus fruits, papayas, mangoes, and other fruits and vegetables, except when used as a quarantine fumigant for exported citrus fruits and papayas (see 48 FR 46234 through 46248 and 49 FR 14182 through 14186). Also, on September 1, 1984, the tolerances established by EPA in 40 CFR 180.397 for residues of EDB per se in or on papayas and citrus fruit expired (see 49 FR 22083 through 22085), and on January 23, 1985, the tolerances established by EPA in 40 CFR 180.146 for residues of total combined bromine and for residues of inorganic bromides in or on plums and certain other tropical fruits and vegetables (but not on mangoes) fumigated with EDB expired (see 50 FR 2981 through 2982). As a result of these actions by EPA, the use of EDB in the manner described in the treatments below are no longer approved by EPA for use as a fumigant. As such, these treatments are no longer approved by USDA as a condition of movement of certain fruits and vegetables into the United States or interstate. This document therefore deletes these treatments from the regulations.

Approved Treatments

The following provisions prescribing the use of EDB are being deleted from the regulations by this document:

1. Section 301.64-10(b) (Subpart—Mexican Fruit Fly) which had listed the use of EDB as an approved treatment on grapefruits, oranges, plums and tangerines as a condition of their movement interstate from areas in Texas to prevent the spread of Mexican fruit fly [*Anastrepha ludens* (Loew)];

2. Section 318.13–4b (Subpart—Hawaiian Fruits and Vegetables) which had listed the use of EDB as an approved treatment on bitter melons, Cavendish bananas, Hawaiian Bluefield bananas (Gros Michel), apple bananas, green cooking bananas, fresh litchi nuts, cucumbers, papayas, pineapples (other than smooth cayenne), string beans, and zucchini squash as a condition of their movement interstate from Hawaii to prevent the spread of the Mediterranean fruit fly [*Ceratitis capitata* (Wied.)], the melon fly [*Dacus cucurbitae* (Coq.)], and the Oriental fruit fly [*Dacus dorsalis* (Hendl)];

3. Section 318.56–3d (Subpart—Fruits and Vegetables from Puerto Rico, or Virgin Islands) which had listed the use of EDB as an approved treatment on mangoes as a condition of their movement interstate from Puerto Rico to prevent the spread of Mexican fruit fly and West Indian fruit fly (*A. obliqua*);

4. Section 319.56–2e (Subpart—Fruits and Vegetables) which had listed the use of EDB as an approved treatment on oranges, grapefruits and tangerines from Mexico, Belize (British Honduras), Honduras, El Salvador, Guatemala, and Panama as a condition of their movement into the United States to prevent the introduction of fruit flies of the genus Anastrepha;

5. Section 319.56–2i (Subpart—Fruits and Vegetables) which had listed the use of EDB as an approved treatment at a port of entry in the United States on mangoes from Central America, the West Indies, and Brazil as a condition of their movement into the United States to prevent the introduction of the Mediterranean fruit fly and fruit flies of the genus Anastrepha;

6. Section 319.56–2j (Subpart—Fruits and Vegetables) which had listed the use of EDB as an approved treatment at a port of entry in the United States on mangoes and plums from Mexico, and on plums from Guatemala as a condition of their movement into the United States to prevent the introduction of fruit flies of the genus Anastrepha; and

7. Section 319.56–2p (Subpart—Fruits and Vegetables) which had listed the use of EDB as an approved treatment on oranges, grapefruits, citrons (*Citrus medica*), and tangerines from any country where Mediterranean fruit fly exists as a condition of their entry into the United States to prevent the introduction of the Mediterranean fruit fly.

Note that use of EDB on mangoes is still permitted by EPA if the fumigation is conducted outside of the United States and if the residue level of EDB on such mangoes does not exceed established tolerances.[1] However, fumigation conducted outside of the United States on mangoes with EDB as a condition of entry into the United States must be performed at facilities approved by USDA. The USDA has approved facilities in Brazil, and in countries in Central America and in the West Indies, for use in fumigating mangoes from these countries with EDB as a condition of entry into the United States (see §§ 319.56–2i and 319.56–2j). For these reasons, this document does not delete from the regulations that portion of § 319.36–2j which pertains to use of EDB in Mexico on mangoes from Mexico, or that portion of § 319.56–2i which pertains to use of EDB on mangoes in countries in Central America, the West Indies, and Brazil on mangoes from these countries (references to such treatments for plums from Guatemala and Mexico, and treatments of EDB at the ports of entry in §§ 319.56–2i and 319.56–2j are deleted).

Miscellaneous Changes

In addition to the deletions described above, this document amends the regulations by making certain miscellaneous changes, including renumbering sections in each of the amended subparts.

Emergency Action

Harvey L. Ford, Deputy Administrator of the Animal and Plant Health Inspection Service for Plant Protection and Quarantine, has determined that an emergency situation exists which warrants publication without prior opportunity for a public comment period on this final action. It is necessary to make this interim rule effective immediately. Because of action taken by EPA under the Federal Insecticide, Fungicide and Rodenticide Act, as amended (7 U.S.C. 136 et seq.; referred to below as FIFRA), EDB may no longer be used as an approved treatment for certain fruits and vegetables as a condition of their movement into the United States or interstate.

Further, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that prior notice and other public procedure with respect to this emergency final action are impracticable and contrary to the public interest; and good cause is found for making this emergency final action effective less than 30 days after publication of this document in the **Federal Register**. Comments will be solicited for 60 days after publication of this document, and a final document discussing comments received and any amendments required will be published in the **Federal Register** as soon as possible.

Executive Order 12291 and Regulatory Flexibility Act

The interim rule is issued in conformance with Executive Order 12291 and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that this interim rule will not have a significant effect on the economy; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. This document merely reflects action taken by EPA under FIFRA to disallow the use of EDB in the United States as a fumigant on certain fruits and vegetables. Also, for this reason, no analysis of this action has been made under the Regulatory Flexibility Act.

List of Subjects

7 CFR Part 301

Agricultural commodities, Mexican fruit fly, Plant diseases, Plant pests, Plants (agriculture), Quarantine, Transportation.

7 CFR Part 318

Agriculutral commodities, Fruit, Guam, Plant diseases, Plant pests, Plants (agriculture), Puerto Rico, Quarantine, Transportation, Vegetables, Virgin Islands.

7 CFR Part 319

Agricultural commodities, Fruits, Imports, Plant diseases, Plant pests, Plants (agriculture), Quarantine, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

Under the circumstances referred to above, the "Mexican Fruit Fly Quarantine and Regulations" (7 CFR 301.64 through 301.64–10) are amended as follows:

[1] Note that the tolerances established by the EPA in 40 CFR 180.148 and currently in effect for residues of EDB in mangoes fumigated with EDB are considerably lower than the tolerances in effect when these treatments were approved by USDA (see 50 FR 2546–2550). These new tolerance levels may be difficult to meet under trade practices in effect prior to the amendment by EPA of the tolerance levels for residues of EDB in mangoes.

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§ 301.64–10 [Amended]

1. In § 301.64–10, paragraph (b) and the words "EDB and" in the last sentence of paragraph (c) are removed, and paragraph (c) is renumbered as paragraph (b).

PART 318—HAWAIIAN AND TERRITORIAL QUARANTINE NOTICES

Under the circumstances referred to above, the "Subpart—Hawaiian Fruits and Vegetables" (7 CFR 318.13 through 318.13–17) and the "Subpart—Fruits and Vegetables from Puerto Rico or Virgin Islands" (7 CFR 318.58 through 318.58–14) are amended as follows:

§ 318.13–4b [Removed]

§§ 318.4c—318.13–4g [Redesignated as §§ 318.13–4b—318.13–4f]

1. In Subpart 318.13, § 318.13–4b is removed, and §§ 318.4c through 318.13–4g are redesignated as §§ 318.13–4b through 318.13–4f, respectively.

§ 318.58–3d [Removed]

2. In Subpart 318.58, § 318.58–3d is removed.

PART 319—FOREIGN QUARANTINE NOTICES

Under the circumstances referred to above, the "Subpart—Fruits and Vegetables" (7 CFR § 319.56 through 319.56–8) are amended as follows:

Subpart 319.56—[Amended]

1. In Subpart 319.56, §§ 319.56–2e and 319.56–2p are removed and §§ 319.56–2f, 319.56–2g, 319–56–2h, 319.56–2i, 319.56–2j, 319.56–2k, 319.56–2l, 319.56–2m, 319.56–2g, 319.56–2h, 319.56–2i, 319.56– and 319.56–2u are redesignated as §§ 319.56–2e through 319.56–2q, respectively.

§ 319.56–2h [Amended]

2. In Subpart 319.56, newly designated § 319.56–2h (formerly § 319.56–2i) is amended by removing paragraph (c)(1), by renumbering paragraph (c)(2) as paragraph (c); by removing the phrase "transportation of the mangoes from the place of unloading to the treatment facilities," in the second sentence of paragraph (e); and by removing the phrase "If any part of the" in the beginning of the third sentence of paragraph (e) and adding the word "When" in place thereof.

3. In Subpart 319.56, newly designated § 319.56–2i (formerly § 319.56–2j) is amended by removing paragraph (a)(1), by redesignating paragraph (a)(2) as paragraph (b)(1), and by revising the title and the first sentence in paragraph (a) to read as follows:

* * * * *

§ 319.56–2i Administrative instructions prescribing method of fumigation of mangoes from Mexico.

(a) *Authorized procedure.* Fumigation of mangoes in Mexico with ethylene dibromide at normal atmospheric pressure, in accordance with the following procedures and as so certified by an inspector, is hereby prescribed as a condition of entry under permit in accordance with § 319.56–2, through ports specified in the permit, for mangoes produced in Mexico.

* * * * *

4. In Subpart 319.56, newly designated § 319.2i (formerly § 319.56–2j) is amended by removing the entire second sentence and the words "and plums" in the third sentence in newly designated paragraph (b)(1)(iii), and by revising the first sentence in newly designated paragraph (b)(1)(iii) to read as follows:

§ 319.56–2i Administrative instructions prescribing method of fumigation of mangoes from Mexico.

* * * * *

(b)(1)(iii) Mangoes to be fumigated may be fumigated in open field boxes or may be packed prior to fumigation in export flats with wood excelsior.

* * * * *

§ 319.56–2i [Amended]

5. In Subpart 319.56, newly designated § 319.56–2i (formerly § 319.56–2j) is amended by removing paragraphs (a)(3), (a)(4), (a)(5), (b) introductory text, and (b)(1).

* * * * *

6. In Subpart 319.56, newly designated § 319.56–2i is amended by removing the words "and plums" from the last sentence in paragraph (a), from the first sentence in paragraph (b)(2)(i), from the first sentence of paragraph (b)(4), and from the first sentence in paragraph (b)(5).

* * * * *

Authority: Secs. 5, 8 and 9; 37 Stat. 316, 318, as amended (7 U.S.C. 159; 161–162); Secs. 103, 105, 106, and 107; 71 Stat. 32–34; 7 U.S.C. 150bb, 150dd, 150ee, and 150ff; 7 CFR 2.17, 2.51, and 371.2(c).

Done at Washington, D.C., this 7th day of March, 1985.

H.L. Ford,

Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inpsection Service.

[FR Doc. 85–5801 Filed 3–11–85; 8:45 am]

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Food Safety and Inspection Service

9 CFR Parts 319 and 327

[Docket No. 83–005F]

Control of Added Substances and Labeling Requirements for Imported Cured Pork Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends the Federal meat inspection regulations by establishing monitoring and retention procedures for imported cured pork products at the ports of entry and within the United States. These procedures will assure that imported cured pork products adhere to the same standards as do domestic cured pork products as set forth in §§ 319.104 and 319.105 of the Federal meat inspection regulations (9 CFR 319.104 and 319.105). Under a regulation published April 13, 1984 (49 FR 14856), the standards for domestic cured pork products are based on a minimum meat protein content determined on a fat free basis (PFF) in the various finished cured pork products. The procedures will assure that imported cured pork products meet PFF standards at least equal to those for domestic products.

EFFECTIVE DATE: April 15, 1985.

FOR FURTHER INFORMATION CONTACT: W. J. Havlik, Assistant Director, Foreign Programs Division, International Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–6933.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Administrator, Food Safety and Inspection Service, has made an initial determination that this rule is not a major rule under Executive Order 12291. It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Under the rule, the domestic meat processing industry will have assurance of protection against unfair competition by noncompliant imported products. Consumers will benefit from assurance that imported cured pork

products are accurately labeled and in compliance with the Department's standards for those products, domestic or imported. The rule will allow the same range of imported products to be marketed as permitted for domestically prepared products.

Effect on Small Entities

The Administrator, Food Safety and Inspection Service, has determined that this action will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act, Pub. L. 96–354 (5 U.S.C. 601). The rule will have an impact on those foreign plants certified as eligible to export cured pork products to the United States. The Department keeps a list of these plants and there are 60 such foreign companies that exported cured pork products to the United States in 1984. Forty-two of them are small businesses (defined as businesses that have less than 3 million pounds of product inspected per year). There is a potential adverse effect on businesses in the United States which are primarily brokers of imported cured pork products if (1) the major portion of the products handled originated from one foreign plant, and (2) such products from that plant were placed in retention as defined by the rule. This rule will not, however, have any adverse effect on meat processors in the United States.

Background

The Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*) authorizes the Secretary of Agriculture to administer a program which assures consumers that meat products distributed to them are wholesome, not adulterated, and properly marked, labeled, and packaged. Consistent with that authority, on April 13, 1984, the Department published in the **Federal Register** (49 FR 14856) a final rule establishing standards and labeling requirements for cured pork products based on the protein fat free (PFF) content of the finished product (9 CFR 319.104 and 319.105) and permitted a broader range of cured pork products to be marketed. The rule also prescribed procedures for the Department's use in determining the compliance of domestic cured pork products with these requirements.

On October 9, 1984, the Department published in the **Federal Register** (49 FR 39560–39564) a proposed rulemaking titled "Control of Added Substances and Labeling Requirements for Imported Cured Pork Products." The proposal prescribed procedures for monitoring, at the ports of entry and within the United States, the compliance of imported cured pork products with the PFF standards in §§ 319.104 and 319.105 of the Federal meat inspection regulations. The proposed monitoring procedures applied to the reinspection of imported product at the ports of entry (POE) into the United States. The proposal also detailed actions to be taken when the Department discovers at the POE or in the marketplace that an imported cured pork product is not in compliance with regulatory standards.

Although the PFF compliance procedures used by foreign governments may differ from those set forth in § 318.19 of the Federal meat inspection regulations (9 CFR 318.19), the system chosen by the foreign country must be at least equal to that used in the United States.

Part 327 of the Federal meat inspection regulations (9 CFR Part 327) contains the Department's requirements for assuring that imported products are produced under requirements at least equal to those imposed on domestic establishments. The Department's Food Safety and Inspection Service (FSIS) is responsible for reviewing and evaluating the inspection program of each foreign country that exports meat products to the United States to assure that such programs are maintained in an at least "equal to" status regarding all requirements of the FMIA.

Comments on Proposed Rule

The Department received 16 comments from interested parties during the 60-day comment period that closed December 10, 1984. Eight comments were submitted by foreign meat inspection programs or industry groups, 3 were submitted by domestic processors, 3 came from national or regional trade associations, and 2 from private citizens.

Seven commenters supported the proposal and expressed satisfaction that imported products would be required to meet the same standards as domestic products; i.e., that imported cured pork products meet PFF standards at least equal to those for domestic cured pork products. It was recommended that imported meat be subject also to the same inspection, sanitary quality, species verification, and residue standards and regulations as are applied to meat produced in the United States.

The following is a discussion of the issues raised by the comments and the Department's response to each.

1. *Comment:* A U.S. trade association said the proposal was reasonable, provided sufficient sampling by country of origin, and contained appropriate sanctions against countries and individual foreign processors if product did not meet the (absolute) minimum PFF values. However, the commenter recommended that sampled lots be retained until analytical results are available, even during the normal monitoring phase.

In addition, the trade association suggested that USDA be particularly diligent in verifying and monitoring the procedures in plants certified for export to the United States, since domestic producers are concerned that the accuracy of the final analytical check must rely on in-plant procedure checks that cannot be readily verified. This commenter also pointed out that because the analytical methods for PFF monitoring are less accurate than desired, USDA should be particularly attentive to processing procedures in foreign establishments.

Response: The Department considers all product produced in official establishments, including certified foreign establishments, to be in compliance unless other information is available. If all randomly sampled lots of product were retained pending laboratory analysis, movement of compliant product would be restricted without cause and result in unnecessary and costly delays. If a laboratory analysis indicates a violation, existing procedures will be invoked to retain the noncompliant product.

The Department has long recognized the need for in-plant reviews, and FSIS Foreign Programs Officers (FPOs) routinely review all exporting establishments in countries eligible to export product to the United States. At present, a group of 20 FPOs and Area Supervisors are continuously engaged in on-site reviews. If serious deficiencies are observed, restrictive actions are taken including, if necessary, delistment of an establishment or withdrawal of a country's eligibility to export product to the United States. Such actions remain in effect until the Department is satisfied that corrective measures have been taken.

2. *Comment:* Two domestic processors and one trade association expressed concern about the possible addition of nonmeat protein to imported cured pork products in the absence of analytical detection methods or continuous USDA inspection.

Response: Currently, there is no satisfactory analytical method available to USDA for detection of nonmeat and miscellaneous animal protein in finished products. The addition of flavoring and other substances that can contribute some protein to cured pork products is controlled by requiring the use of approved formulations. Formulation and

processing procedures are submitted with label approval applications to FSIS. Although USDA does not have direct supervision of origin establishments, no foreign inspection system is approved without sufficient qualified inspection staff in each plant. Foreign meat inspectors have responsibilities comparable to USDA inspectors in domestic establishments.

USDA periodically reviews inspection and production activities in each foreign establishment. One of the major areas of review deals with restricted ingredients, product formulation, inspection knowledge, records, quality control systems, and laboratory support. The Department is satisfied with the existing formulation controls used to monitor the addition of nonmeat and miscellaneous animal proteins to products produced in foreign establishments.

3. *Comment:* Strong disagreement was expressed by a processor who thought the proposal set PFF standards for imported products on the basis of total protein in contrast to the domestic requirement for meat protein.

Response: The PFF requirement for both imported and domestic products is based on meat protein, not on total protein in the sample. Approved labels are filed at each POE. At the time of product inspection, each label is required to be checked and formulation information is recorded on forms accompanying samples to the laboratory. If label ingredients include any substance which can contribute protein to the product, the formulation percentage is included and the laboratory makes the necessary analytical adjustments for the substance.

4. *Comment:* A processor stated that although the acceptability of foreign inspection systems is salutary, it is also necessary to consider the wide variations in compliance that can occur among various processors in any given exporting country. It was suggested that USDA maintain separate PFF compliance records for individual processors under the same product and group cumulative sum statistical methods used to monitor domestic manufacturers.

Response: Meat inspection systems in each exporting country are responsible for conducting inspection in each establishment and for maintaining records of establishment activities such as product value and group value charts. USDA maintenance of such records would be unnecessary and duplicative. The Department recognizes the possibility of variations in compliance among various processors in any given exporting country, and adequate tolerance has consequently been provided for individual lot results and the 36 lot averages. Process and quality control systems that assure finished product compliance with regulatory requirements are the responsibility of each foreign establishment. Foreign meat inspection systems should monitor each plant's system to determine that inplant controls are functioning and ensure that products not meeting the regulatory requirements are not exported to the United States. The FSIS long-term monitoring system is a 100 lot average of a country's product and is designed to assure that imported products meet minimum PFF requirements.

5. *Comment:* One domesic trade association mentioned the possibility of retail mislabeling of imported cured pork products by uninformed store clerks. A label such as "imported ham" without qualifying statements was presented as an example of how consumers could be deceived by a store produced label. The association suggested that point-of-purchase sample testing should be required for imported products. This commenter also expressed concern about the export subsidized dumping of imported product on the U.S. market. The commenter described the 36 lot average action level as lenient and granting importers unfair advantage over domestic producers.

Response: Discussion on the issue of trade subsidies is beyond the scope of this proposal. The question of mislabeling, retail sampling, and compliance was discussed in detail in the final rule on Control of Added Substances and Labeling Requirements for Cured Pork Products; Updating of Provisions, published in the **Federal Register** on April 13, 1984 (49 FR 14856). USDA has clear authority under the Federal Meat Inspection Act to collect samples of product at any point in commerce, including the point of retail sale in order to determine compliance with requirements of the Act (see section 202 of the Act; 21 U.S.C. 642). It should be noted that misrepresenting a product to consumers by omitting any part of the name constitutes misbranding under the Act and is subject to civil action or criminal prosecution under the Act.

6. *Comment:* Some foreign countries opposed the concept of placing the exporting country under retention procedures. Commenters argued that poor performance by some establishments may result in trade sanctions for the exporting country, thereby forcing the country to set up more intensive controls than are required by the proposed rule. One commenter noted that "Even though neither the more intensive control nor the elevated protein content is explicitly required according to the rules, they are an inevitable result of the fact that all products from a foreign country are treated as a whole and, accordingly, we must conclude that the rules implicitly contain an imbalanced to the disadvantage of the exporting country as compared to U.S. producers." Another commenter described the proposed rule as "a major departure from established policies and practices on the control of meat products. The proposal to tighten inspection for the whole exporting country based on the poor performance of some establishments is viewed as having possible serious implications should the Department decide to generalize this procedure for all meat products." Concern was also expressed on the possibility that this new rule could result in refusing entry of all shipments from exporting countries due to noncompliance of one or more shipments from one establishment.

Response: The Department is responsible for determining eligibility of each foreign country to export meat and/or poultry products to the United States. This is accomplished through an indepth review of the country's laws and regulations, the organization of the meat and poultry inspection system, and the system's implementation and enforcement of inspection requirements in plants certified to export to the United States. Each eligible foreign meat and/or poultry inspection system is responsible for certifying that all products exported to the United States meet at least "equal to" requirements. These requirements pertain to product specifications such as PFF, sanitary production techniques, and disease inspection procedures. The continuing review of eligible foreign inspection systems and the information obtained from POE product sampling provide the Department with appropriate data to continually evaluate the at least "equal to" status of each foreign inspection system.

In the past, when POE product sampling information indicated an inspection procedure used by a foreign inspection system resulted in unsatisfactory product being exported to the United States, the Department stopped or restricted importation of some or all products from the country or removed country eligibility when appropriate.

The PFF inspection procedures used by foreign inspection systems and the Department must meet the same goals.

Variability in processing procedures is recognized by the Department's POE sampling plan; therefore, more intensive controls by a foreign country are not necessary to prevent POE retention procedures. Both domestic and foreign producers must meet the same PFF requirements. Further, noncomplying shipments do not result in refused entries for those shipments which comply with PFF requirements. The additional POE sampling procedures are necessary for the Department to obtain more detailed information about the compliance of each shipment with PFF requirements, as well as to determine when the foreign country's program again results in satisfactory product being exported to the United States.

7. *Comment:* Some comments pointed out the possibility of one or two poor performing establishments placing the country under retention procedures.

Response: The possiblility of such an incident is remote. One poor performing establishment or an isolated breakdown in processing controls will not seriously affect the country's short-term or long-term averages. Under normal manufacturing conditions, PFF values must be close to the required values for the cured pork products. Establishments producing products within the limits of the group value and the product value cumulative sum charts should not have a single sample result low enough to cause country retention procedures. The Department's statistical sampling plans are based on the country's total export of product to the United States. Sampling will be random and every establishment will have an equal chance of being sampled. However, large exporting establishments will naturally be sampled more often than smaller ones. The sampling system tracks product compliance utilizing a low sampling rate until there is an indication of inadequate process controls or ineffectiveness of a country's inspection procedures. At that point, the frequency of sampling is intensified by instituting establishment or country retention procedures.

Should a randomly selected single sample fail to meet the absolute minimum PFF requirement, the represented lot will be retained if it is still at the inspection point. If elsewhere, it will be subject to administrative detention, and retention procedures will be instituted on future shipments of that product from that establishment. Samples collected during establishment retention procedures will not be counted in the country's 36 or 100 lot averages. The violative sample, of course, will become part of the averages.

This procedure effectively monitors the performance of individual establishments. Poor performing establishments are isolated and not allowed to influence the entire country's performance until their performance is found to be satisfactory. Therefore, one establishment can contribute only one poor result to a country's averages. Several poor performing establishments would be needed at one time to influence the averages to a point that regulatory action would be taken aganist the country's product. Such events indicate that the country's controls are not working and necessitate USDA action. The Department would start looking at the country's products more closely to determine compliance with the U.S. regulations.

Products manufactured under sophisticated quality control systems that maintain PFF values on the negative side but within the allowed limits for individual samples may lower the country's average requiring retention procedures by USDA. However, this practice cannot be continued in any foreign establishment for extended periods of time because the product values and group values will eventually reach action limits resulting in accelerated sampling and/or retention procedures being imposed by the foreign meat inspection system. Eligible foreign inspection systems are required to have their PFF control procedures at least equal to the U.S. controls. Product value and group value CUSUM charts or an equivalent quality control procedure are to be maintained for each establishment. Establishments not complying with these values should not be allowed to manufacture and export product to the United States. Adequate inspectional controls will allow the detection of poor performing establishments followed by corrective action at establishment levels without affecting the country's performance.

8. *Comment:* Commenters stated that import reinspection procedures are unnecessary since approved foreign meat inspection systems are accepted to be at least equal to those of the United States.

Response: It should be noted that POE procedures are only one of the methods employed by USDA to continually evaluate a foreign country's at least "equal to" status. If several foreign establishments are producing product which is marginally below the required PFF value or several establishments violate the absolute minimum PFF requirements at a time, then USDA will have valid evidence to start reinspecting all product at POE to assure compliance with the U.S. standards.

9. *Comment:* Some foreign commenters suggested that the new POE procedures are more severe than those for U.S. processors. It was also pointed out that the domestic processor is permitted to build up a "PFF debt" which could be everlasting, and this could be done simultaneously by all U.S. establishments.

Response: The domestic and import inspection controls are designed to achieve the same goals, although they do so by different means. The basic similarities are: (1) Required and absolute minimum PFF standards are the same for domestic and imported products and (2) violation of the absolute minimum PFF requirement results in retention procedures in both cases. Differences in domestic and import control procedures are due to the inherent nature of the two systems, the domestic system being a direct monitoring program and the import system being a reinspection of a compliance system operated by a foreign country.

Each domestic or imported sample lot must meet the absolute minimum PFF requirement. In addition, domestic product must comply with product value and group value requirements. Even though all product meets absolute minimum PFF standards, retention procedures may be initiated if product values are out of limits, or accelerated sampling may be initiated due to the violation of group values. These two requirements are meant to assure that over a period of time, in any establishment, average PFF values are equal to or greater than the required standards. Noncompliant products in a domestic establishment are placed under retention procedures and, under certain conditions, results obtained during the retention period may not contribute to group values. Similar restrictions are imposed on imported products without penalizing the entire country's products.

In addition, domestic establishments will not be able to carry a "PFF debt" forever. The cumulative sum charts maintain group values; a large downward shift indicates the loss of process control and corrective actions can be initiated. The CUSUM chart reflects the product compliance history from the date the plant started production of the PFF product. These statistically calculated charts are similar to X bar (averages) charts and are useful for predicting the potential for producing noncompliant product.

The lot averages maintained for imported products are designed to achieve the same goal. They are not historic but rather a long-term and short-term look at the foreign inspection system's ability to control PFF product production. When lot averages for a country fall below the accepted limits, the country is required to return them to zero or higher. Similarly, when the product or group values for a domestic producer reach the action limits, corrective action is taken and the values are returned to zero or higher. Thus, both domestic and foreign producers must manufacture PFF products in compliance with the standards over a period of time. All negative values, no matter how small, must be corrected when the action limits are reached.

10. *Comment:* One foreign commenter suggested that the 36 lot average criteria is unnecessary in the presence of a long-term monitoring program based on 100 lot averages and that there is no need for corrective action to violating limits of 36 lot averages if the 100 lot averages are within limits. Another foreign commenter requested USDA to delete weighted averages and use only arithmetic averages.

Response: The 36 lot averages are needed because the 100 lot averages will not detect violations when only a few lots of cured pork product are involved and when the 100 lot averages are spread over a long period of time. The use of unweighted averages would allow a country to concentrate inspection efforts in smaller plants, and the smaller lots, if produced in large enough numbers, would tend to keep the lot averages of cured pork product high enough to keep the country's PFF status satisfactory. The use of weighted averages, which place more emphasis on larger lots, eliminates any possibility of biasing the country's PFF status in that manner.

11. *Comment:* Three foreign commenters requested that compliance criteria for the 100 lot average be moved from zero to −0.16 or −0.17, based on the procedure followed for 36 lot averages.

Response: The Department considers the 100 lot average to be sufficiently large to reduce sampling error to the point where it is inconsequential. The value of zero or higher was selected for simplicity and to assure that, on the average, all product produced from any country meets the minimum PFF requirements.

12. *Comment:* Two foreign commenters requested that sampling of retained lots be expanded from five to 15 samples per lot.

Response: The decision to collect five samples per retained lot was made to avoid economic loss associated with destructive sampling and increased laboratory workload.

13. *Comment:* One foreign government requested that retained lots be allowed to be divided into sublots based on production dates. The same government suggested that a country under retention be returned to normal sampling when the average responsible for triggering the retention procedure returns to an acceptable level and that the other three averages should not be a factor in returning the country to normal monitoring.

Response: Requests for sublot division will be considered on a case-by-case basis. In regard to the latter suggestion, there appears to be some misunderstanding of the rule on averages and retention procedures. The rule states that if any of the four averages is in violation, the country will be placed in the retention phase. If, for instance, a country is placed under retention because the 100 lot average falls below zero, it is returned to normal monitoring when that average is within limits again. But, if during this period, one of the 36 lot averages falls below the acceptable limit, that violation, independent of any previous violation, requires retention procedures for the country. So, at any given time, a country cannot be returned to normal monitoring procedures if any of the four averages is below the acceptable level. In addition to the averages, the 25 consecutive lot criteria must also be satisfied before the country returns to normal monitoring procedures. This rule reassures that PFF processing procedures are under control before returning the country to normal monitoring procedures.

14. *Comment:* Another commenter asked that PFF results be frequently communicated to the country of origin so they can observe the variation in laboratory analysis and prepare for a smooth transition to the new system.

Response: The Department concurs and will provide such information to exporting countries on a regular basis or when requested.

Miscellaneous Amendments

The Department has made the following clarifying changes in this rule.

1. The formula for calculating a PFF Standardized Difference has been deleted from § 327.23(a)(4). The formula was incorrectly printed; however, the definition as stated in the text is correct and remains unchanged.

2. The date for starting the country averages has been changed from "the date of publication of the rule" to "April 15, 1985." This change provides the same implementation date for both domestic and imported cured pork products.

3. Section 327.23(c)(1) has been amended to indicate that the "Department" rather than the "importer" will collect and determine the PFF of each sample unit for lots subject to retention.

4. Section 327.23(c)(4) has been added to clarify that PFF values of sample units collected when a foreign establishment is under retention procedures will not be included in the PFF standardized averages for 36 and 100 consecutive lots.

Final Rule

After careful consideration of the issues addressed by the comments, the Administrator has determined that the Federal meat inspection regulations should be amended as set forth below.

List of Subjects

9 CFR Part 319

Meat inspection, Food labeling, Imported products.

9 CFR Part 327

Meat inspection, Food labeling, Imported products.

1. The authority citation for Parts 319 and 327 reads as follows:

Authority: 34 Stat. 1260, 81 Stat. 584, as amended (21 U.S.C. 601 *et seq.*); 72 Stat. 862, 92 Stat. 1069, as amended (7 U.S.C. 1901 *et seq.*); 76 Stat. 663 (7 U.S.C. 450 *et seq.*).

PART 319—[AMENDED]

2. Section 319.104(a) (See 49 FR 14879, dated April 13, 1984) is amended by revising footnote 1 of the chart to read as follows:

§ 319.104 Cured pork products.

(a) * * * [1]

[1] The minimum meat PFF percentage shall be the minimum meat protein which is indigenous to the raw unprocessed pork expressed as a percent of the non-fat portion of the finished product; and compliance shall be determined under § 318.19 of this subchapter for domestic cured pork product and § 327.23 of this subchapter for imported cured pork product.

PART 327—[AMENDED]

3. Part 327 (9 CFR Part 327) is amended by adding a new § 327.23 to read as follows:

§ 327.23 Compliance procedure for imported cured pork products.

(a) *Definitions.* For the purposes of this section:

(1) A *Product* is that cured pork article which is contained within one Group as

defined in paragraph (a)(2) of this section and which purports to meet the criteria for a single product designated under the heading "Product Name and Qualifying Statements" in the chart in § 319.104 or § 319.105 of this subchapter.

(2) A *Product Group* or a *Group* means one of the following:

(i) Group I, consisting of cured pork products which have been cooked while imperviously encased. Any product that fits into the Group shall be placed in this Group regardless of any other considerations.

(ii) Group II, consisting of cured pork products which have been water cooked. Any product that does not fit into Group I but does fit into Group II shall be placed into Group II regardless of any other considerations.

(iii) Group III, consisting of boneless, smokehouse heated cured pork products. Any boneless product that does not fit into Group I or II shall be placed in Group III.

(iv) Group IV, consisting of bone-in or semi-boneless smokehouse heated cured pork products. Any product that is not completely boneless or still contains all the bone which is traditional for bone-in product and does not fit into Group I, II, or III shall be placed in this Group.

(3) *Protein Fat-Free Percentage, Protein Fat-Free Content, PFF Percentage, PFF Content or PFF* of a product means the meat protein (indigenous to the raw, unprocessed pork cut) content expressed as a percent of the non-fat portion of the finished product.

(4) A *PFF Standardized Difference* is the PFF of the sample minus the minimum PFF requirement, set forth in § 319.104 and § 319.105 of this subchapter, for the product being analyzed, divided by the Appropriate Standard Deviation for the product group.

(5) The *Absolute Minimum PFF Requirement* is that no laboratory result of an individual sample for PFF content be below the applicable minimum requirement of § 319.104 or § 319.105 of this subchapter by 2.3 or more percentage points for a Group I or II product or 2.7 or more percentage points for a Group III or IV product.

(6) A *PFF Standardized Arithmetic Average of the Country's Products* is the arithmetic average of PFF Standardized Differences from either 36 or 100 consecutively sampled lots of product entering the United States from a given producing country.

(7) A *PFF Standardized Weighted Average of the Country's Products* is an estimate of the average of the PFF Standardized Differences from either 36 or 100 consecutively sampled lots, adjusted for the size of the lot, of different types of cured pork product entering the United States from a given producing country. A Standardized Weighted Average is computed by multiplying the PFF Standardized Difference calculated for each lot by the number of pounds of product in each lot, adding those results together, and dividing the sum by the total weight of product from all the lots making up the average.

(8) The *Appropriate Standard Deviation* is based on within lot variability. That assigned to Groups I and II = 0.75 percent PFF and that assigned to Groups III and IV = 0.91 percent PFF.

(9) A *Lot* is all product of one type from one establishment presented by an importer as the unit for inspection at the Port of Entry.

(b) *Normal Monitoring Procedures.* The Department shall collect sample(s) of cured pork product on a random basis from lots presented for importation at the Port of Entry and, after analyzing the sample for fat and indigenous protein content, calculate the PFF percentage. The product shall not be held pending laboratory results during the monitoring phase. The PFF percentage for each sample shall be considered along with the cumulative results of prior samples to assess the effectiveness of a country's overall compliance program and to determine the course of action for subsequent lots of product.

(1) Factors determining whether a country's inspection system is functioning adequately:

(i) The PFF percentage for each sample must not be below the minimum PFF requirement by 2.3 percentage points for cured pork products in Groups I and II or 2.7 percentage points for cured pork products in Groups III and IV.

(ii) Both of the PFF Standardized Averages, Arithmetic and Weighted, for the last 100 consecutive lots of all cured pork products from the country must be equal to or greater than zero. The count for the 100 consecutive lots starts with the lots arriving from that country after April 15, 1985.

(iii) Both of the PFF Standardized Averages, Arithmetic and Weighted, for the last 36 consecutive lots of all cured pork products from the country must be above the lowest 5 percent of the Normal distribution. This minimum value is minus 0.28 (−0.28) for the Arithmetic Average and depends on the production volume for the Weighted Average.

(2) Actions when calculations indicate that processing procedures in a country are out-of-compliance:

(i) If the PFF level of a sample taken during normal monitoring procedures is found to be as low as the Absolute Minimum PFF Requirement, the country of origin shall be notified; the lot involved shall be retained if still available in an official establishment or subject to detention or other actions pursuant to the Act; and all subsequently presented lots of that cured pork product from the same foreign establishment shall be held under retention until the provisions of paragraph (c) are satisfied.

(ii) If either of the PFF Standardized Averages, Arithmetic or Weighted, for the last 100 consecutive lots falls below zero or either of the PFF Standardized Averages for the last 36 consecutive lots falls below the upper 95 percent of the Normal distribution, all available cured pork product from the foreign country shall be subject to administrative retention and all subsequently presented lots of cured pork product from the foreign country shall be held under retention until the provisions of paragraph (c) are satisfied. The country of origin shall be notified, and shall be subject to other actions pursuant to the Act.

(c) *Retention.* When lots of cured pork product are under retention they shall be refused entry and reexported in accordance with § 327.13 of this subchapter unless they can be released in accordance with the provisions of paragraph (c)(1), establishments may be returned to normal monitoring procedures in accordance with paragraph (c)(2), and countries may be returned to normal monitoring procedures in accordance with paragraph (c)(3).

(1) If a lot is subject to retention procedures under this section, the Department shall collect five randomly selected sample units from each lot and determine the PFF of each sample unit. The lot may be released into commerce if:

(i) The average PFF percentage of the five randomly selected sample units is equal to or greater than the applicable minimum PFF percentage required by § 319.104 or § 319.105 of this subchapter, or

(ii) The product is relabeled under the supervision of a program employee so that it conforms to the provisions of § 319.104 or § 319.105 of this subchapter

(2) If product from a foreign establishment is subject to retention procedures under this section, the

foreign establishment may be returned to normal monitoring procedures when:

(i) Ten consecutively presented lots of that cured pork product from that establishment have been sampled as provided in paragraph (c)(1) of this section and the average of each set of five sample units representing each lot have been found to be equal to or greater than the required minimum PFF percentage; and

(ii) The PFF percentage of each sample unit (50 in all) is above the Absolute Minimum PFF Percentage.

(3) If a country is subject to retention procedures under this section, the country shall be returned to normal monitoring procedures when:

(i) Twenty-five consecutively presented lots of cured pork product have been sampled as required in paragraph (c)(1) of this section and the average of each set of five sample units representing each lot have been found to be equal to or greater than the required minimum PFF percentage; and

(ii) The PFF percentage of each sample unit (125 in all) is above the Absolute Minimum PFF Percentage; and

(iii) Both of the PFF Standardized Averages for 36 consecutive lots are in the required percentage of the Normal distribution; and

(iv) Both of the PFF Standardized Averages for 100 consecutive lots are zero or higher.

(4) The sample units collected under retention procedures as provided in paragraph (c)(2) of this section will not be included in the PFF standardized averages for 36 and 100 consecutive lots.

(d) *Adulterated and Misbranded Products.* Products not meeting specified PFF requirements, determined according to procedures set forth in this section, may be deemed adulterated under section 1(m)(8) of the Act (21 U.S.C. 601(m)(8)) and misbranded under section 1(n) of the Act (21 U.S.C. 601(n)).

(e) Activities requiring additional inspectional supervision, such as relabeling, shall be at the importer's expense. In addition, if the importer wishes, he or she may have samples analyzed at an accredited laboratory.

Done at Washington, DC, on: February 28, 1985.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 85-5879 Filed 3-11-85; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-CE-8-AD; Amendment 39-5011]

Airworthiness Directives; Piper Model PA-31P Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to Piper Model PA-31P airplanes, which requires initial and repetitive dye-penetrant inspections of the fuselage bulkhead at station 332.0 for cracks, and reinforcement or replacement of cracked bulkheads. Cracks have occurred in this bulkhead in the area of the stabilizer main spar attachments. If these cracked bulkheads are not reinforced, or the bulkheads are not replaced, propagation of the cracks may compromise the structural integrity of the stabilizer main spar attachment to the fuselage and result in loss of airplane control. The inspections and reinforcement or replacement of affected bulkheads will prevent these conditions.

DATES: Effective March 15, 1985.

Compliance: As prescribed in the body of the AD.

ADDRESSES: Piper Service Bulletin (S/B) No. 802, dated December 12, 1984, applicable to this AD may be obtained from Piper Aircraft Corporation, 3000 Medulla Road, Lakeland, Florida 33803. A copy of this information is also contained in the Rules Docket, FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 85-CE-8-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Charles L. Perry, ACE-120A, Aerospace Engineer, Airframe Branch, Atlanta Aircraft Certification Office, FAA, 1075 Inner Loop Road, College Park, Georgia 30337; Telephone (404) 763-7407.

SUPPLEMENTARY INFORMATION: Two instances have been reported or cracks in the fuselage bulkhead at station 332.0 on Piper Model PA-31P airplanes, in the area of the front horizontal stabilizer spar attachment. No structural failure or incidents have resulted from these cracks. Piper Aircraft Corporation has made available a Reinforcement Kit for those bulkheads with cracks that do not exceed acceptable limits, and a Reinforced Bulkhead Assembly to replace those bulkheads with cracks exceeding these limits. The manufacturer has also issued S/B No. 802, dated December 12, 1984. The Service Bulletin contains instructions for the inspection of this bulkhead, provides acceptable crack criteria, and makes available the Reinforcement Kit and the Reinforced Bulkhead Assembly. The FAA has determined that cracks found on the fuselage bulkhead at station 332.0 on certain PA-31P series airplanes, if uncorrected, can result in loss off structural integrity and possible loss of control of the airplane.

Since the FAA has determined that the unsafe condition described herein is likely to exist or develop in other airplanes of the same type design, an AD is being issued applicable to Piper Model PA-31P airplanes which requires initial and repetitive dye-penetrant inspections of this bulkhead for cracks, and if necessary repair or replacement of the bulkhead in accordance with Piper S/B No. 802, dated December 12, 1984. Because an emergency condition exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

There are approximately 273 airplanes that are affected by this AD at a cost of $1,970 per airplane. Accordingly, the estimated total cost to the private sector of compliance with this AD is $537,810. This cost of compliance is so small that the expense of compliance will not have a significant financial impact on any small entities operating these airplanes.

Note.—The FAA has determined that this regulation is an emergency regulation that is not major under Section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the Rules Docket under the caption "ADDRESSES" at the location identified.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft safety, Aircraft, Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new AD.

Piper: Applies to Model PA–31P (Serial Numbers 31P–3 through 31P–7730012) airplanes certificated in any category.

Compliance: Required as indicated, unless already accomplished.

To prevent the propagation of cracks in the fuselage bulkhead at station 332.0, and loss of stabilizer front spar structural support, accomplish paragraph (a) as follows:

(a) Within the next 25 hours time-in-service after the effective date of this AD, and thereafter at intervals not exceeding 200 hours time-in-service, inspect, using a dye-penetrant method, the fuselage station 332.0 bulkhead in accordance with Piper S/B No. 802 dated December 12, 1984.

(1) If no cracks are found to exist, make appropriate maintenance record entry of compliance.

(2) If cracks are found that do not exceed the acceptable limitations given in Piper S/B No. 802, prior to further flight stop drill the crack(s), and install Reinforcement Kit, Piper Part Number 764–983, or reinforced bulkhead assembly, Piper Part Number 45583–16.

(3) If cracks are found that exceed the acceptable limitations given in Piper S/B No. 802, prior to further flight replace the bulkhead assembly with Reinforced Bulkhead Assembly, Piper Part Number 45583–16.

(b) The repetitive inspections required by paragraph (a) of this AD may be discontinued when Reinforcement Kit Piper Part Number 764–983, or Replacement Bulkhead Piper Part No. 45583–16 is installed.

(c) The intervals between repetitive inspections required by this AD may be adjusted up to 10 percent of the specified interval to allow accomplishing these inspections concurrent with other scheduled maintenance of the airplane.

(d) The airplanes may be flown, in accordance with FAR 21.197, to a location where the AD may be accomplished.

(e) An equivalent method of compliance with this AD may be used if approved by the Manager, Atlanta Aircraft Certification Office, ACE–115A, FAA, Central Region, 1075 Inner Loop Road, College Park, Georgia 30337; Telephone (404) 763–7428.

This amendment becomes effective on March 15, 1985.

(Sections 313(a), 601 through 603 of the Federal Aviation Act of 1958 as amended (49 U.S.C. 1354(a), 1421 and 1423); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and Section 11.89 of the Federal Aviation Regulations (14 CFR 11.89)).

Issued in Kansas City, Missouri, on March 1, 1985.

Murray E. Smith,

Director, Central Region.

[FR Doc. 85–5778 Filed 3–11–85; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 91

Removal of Special Federal Aviation Regulation No. 42

EDITORIAL NOTE: By letter dated February 20, 1985, the Acting Chief Counsel of the Federal Aviation Administration notified the Office of the Federal Register that Special Federal Aviation Regulation No. 42 expired by its own terms on March 1, 1980.

Therefore, pursuant to his authority to assure orderly development of the Code of Federal Regulations (1 CFR 8.2) the Director of the Federal Register is removing Special Federal Aviation Regulation No. 42 in Title 14, Code of Federal Regulations as obsolete. Special Federal Aviation Regulation No. 42 will not appear in the 1985 edition of the Code of Federal Regulations.

BILLING CODE 1505–01–M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. C–3093]

American Motors Corporation, et al.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Set Aside Order.

SUMMARY: This Order reopens the proceeding and grants the petitions of a utility vehicle manufacturer and its subsidiary to set aside the FTC Consent Order issued on July 6, 1982 (100 F.T.C. 229; 47 FR 31681), which requires them to attach to each new Jeep CJ a sticker warning that multipurpose vehicles handle differently from ordinary passenger cars and sudden sharp turns or abrupt maneuvers may result in loss of control; and to include additional safety disclosures in Owner's Manuals and Supplements. Petitions' request that the Order be set aside was on the basis of changes in law and fact and on public interest considerations. The manufacturers asserted that a new regulation promulgated by the National Highway Traffic Safety Administration ("NHTSA"), which became effective on September 1, 1984, covers the same subject matter as the FTC Order and therefore makes the Order unnecessary. Further, while the regulation requires all manufacturers of utility vehicles to place a sticker on such vehicles and to disclose in their Operating Manuals information "to alert drivers that the particular handling and maneuvering characteristics of utility vehicles requires special driving practices when those vehicles are operated on paved roads," respondent is the only manufacturer of such vehicles subject to dual liability. After considering all the arguments presented by petitioners, and noting that NHTSA, the federal agency with the specific statutory responsibility to regulate automobile traffic, has in effect a regulation, enforceable by the assessment of penalties, that adequately addresses the problem that led to issuance of FTC's Order, the Commission concluded that petitioners had adequately shown that changed conditions of law and fact and public interest considerations require that the Order be set aside. Accordingly, the matter was reopened and the Order set aside.

DATES: Consent Order issued on July 6, 1982; Set Aside Order issued February 14, 1985.

FOR FURTHER INFORMATION CONTACT: FTC/B 423–2, Jerry McDonald, Washington, D.C. 20580, (202) 376–3484.

SUPPLEMENTARY INFORMATION: In the Matter of American Motors Corporation, et al.

List of Subjects in 16 CFR Part 13

Motor vehicles, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Before Federal Trade Commission

[Docket No. C–3093]

In the matter of American Motors Corporation, et al.; order reopening the proceeding and setting aside cease and desist order.

Commissioners: James C. Miller III, Chairman, Patricia P. Bailey, George W. Douglas, Terry Calvani, Mary L. Azcuenaga.

On September 13, 1984, American Motors Corporation and its wholly-owned subsidiary, Jeep Corporation, respondents in the captioned matter, filed a petition pursuant to Rule 2.51 of the Commission's Rules of Practice to reopen the proceeding and set aside the Consent Order entered therein.

The Order, which was issued on July 6, 1982, requires, *inter alia*, that respondents affix a sticker to the instrument panel or windshield frame of each new Jeep CJ reading as follows:

This multipurpose vehicle handles and maneuvers differently from an ordinary passenger car. As with other vehicles of this type, sudden sharp turns and abrupt maneuvers may result in loss of control. Read driving guidelines in Owner's Manual and Supplement.

WEAR SEATBELTS AT ALL TIMES

The Order also requires respondents to disclose in the Owner's Manual for

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new Jeep CJ's and in an informational Supplement to the Owner's Manual the following:

Utility vehicles have higher ground clearance and narrower track to make them capable of performing in a wide variety of off-road applications. Specific design characteristics give them a higher center of gravity than ordinary cars. An advantage of the higher ground clearance is a better view of the road allowing you to anticipate problems. They are not designed for cornering at the same speeds as conventional 2WD vehicles any more than low-slung sports cars are designed to perform satisfactorily under off-road conditions. If at all possible, avoid sharp turning maneuvers. As with other vehicles of this type, failure to operate this vehicle correctly may result in loss of control or an accident.

The Order further mandates that respondents include the following statement in the introduction to the Supplement:

As with other vehicles of this type, failure to operate this vehicle correctly may result in loss of control or an accident. Be sure to read on-pavement and off-road driving guidelines which follow.

Petitioners' request that the Order be set aside is based on changes in law and fact and on public interest considerations. The petition asserts that a new regulation of the National Highway Traffic Safety Administration ("NHTSA") became effective on September 1, 1984, which covers the same subject matter as the Commission's Order. 49 CFR 575.105, *reprinted* in 49 FR 20016 (1984). NHTSA's regulation requires all manufacturers of utility vehicles to place a sticker on such vehicles and to disclose in their Operating Manuals information "to alert drivers that the particular handling and maneuvering characteristics of utility vehicles require special driving practices when those vehicles are operated on paved roads." While the sticker and the disclosures required by the NHTSA regulation were patterned after those in the Commission's Order against petitioners, the language therein differs substantively from the exact language required by the Commission's Order. Violations of both the NHTSA regulation and the Commission's Order may subject petitioners to civil penalties.

Petitioners argue that the new regulation promulgated and implemented by NHTSA constitutes a change of law. The regulation covers the same subject matter as the Commission's Order, and NHTSA is the federal agency with specific statutory authority to regulate traffic safety. See 15 U.S.C. 1381 (1982). "In short," petitioners' assert, "the NHTSA regulation has made the Order unnecessary."

As a changed condition of fact, petitioners argue that the new NHTSA regulation ensures that they will continue to make disclosures concerning the handling of utility vehicles. The regulation applies to all utility vehicles, and AMC is the only manufacturer of such vehicles subject to dual liability.

Petitioners are, therefore, injured competitively. Furthermore, they contend that they have been placed in an untenable regulatory dilemma. If they comply with the NHTSA regulation, they are in violation of the Commission's Order, and compliance with the Order constitutes non-compliance with the NHTSA regulation. Penalties are assessable for violations of both the regulation and the Order.

Finally, petitioners contend that the public interest requires that the Order be set aside because inconsistent and overlapping regulatory schemes do not serve the goal of efficient government administration.

Under section 5(b) of the Federal Trade Commission Act and Rule 2.51 of the Commission's Rules, the Commission must reopen the proceeding and consider altering, modifying or setting aside an Order if a respondent files a request showing that changed conditions of law or fact require the Order to be altered, modified or set aside, in whole or in part, or that the public interest so requires.

The National Highway Traffic Safety Administration, the federal agency with the specific statutory responsibility to regulate automobile traffic safety, has in effect a regulation, enforceable by the assessment of penalties, that adequately addresses the problem that led to the issuance of the Commission's Order. Therefore, the Commission has concluded that petitioners have adequately shown that changed conditions of law and fact and public interest considerations require that the Order be set aside.

Accordingly, it is ordered that the proceeding in this matter be reopened and the Order set aside.

By direction of the Commission.

Issued: February 14, 1985.

Emily H. Rock,

Secretary.

[FR Doc. 85-5800 Filed 3-11-85; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 6, 12, 18, 19, 141, 143, 144, and 146

[T.D. 85-38]

Customs Regulations on Textiles and Textile Products; Effective Date Clarification

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Clarification of effective date.

SUMMARY: On March 5, 1985, a final rule amending the Customs Regulations relating to imported textiles and textile products was published as T.D. 85-38 in the **Federal Register** (50 FR 8710), pursuant to section 204 of the Agricultural Act of 1956. The regulations were prepared to prevent circumvention or frustration of visa or export license requirements contained in multilateral and bilateral agreements to which the U.S. is a party and to facilitate the efficient and equitable administration of the U.S. Textile Import Program. The document stated that the final rule is effective on April 4, 1985. This document clarifies the effective date. The final rule is effective for all textiles and textile products subject to section 204, Agricultural Act of 1956, as amended, exported from the country of origin, as defined by section 12.130, of the final rule on or after April 4, 1985.

EFFECTIVE DATE: For a clarification of the effective date provision of the final rule published as T.D. 85-38 in the **Federal Register** on March 5, 1985 (50 FR 8710), see **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: Philip Robins, Classification and Value Division (202-566-8181), U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229.

SUPPLEMENTARY INFORMATION:

Background

Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), provides authority for the President to negotiate agreements with foreign governments limiting exports of textiles and textile products from such countries into the U.S. The Act also grants authority to issue regulations governing entry of textiles and textile products. Executive Order 12475 of May 9, 1984, was issued by the President to prevent circumvention or frustration of textile product quotas or visa requirements contained in multilateral and bilateral

agreements to which the U.S. is a party and to facilitate the efficient and equitable administration of the U.S. Textile Import Program. By the Executive Order the President delegated the authority to issue regulations to the Secretary of the Treasury and directed that the regulations be promulgated within 120 days of the May 11, 1984, effective date of the Executive Order.

Accordingly, on August 3, 1984, interim Customs Regulations were published in the **Federal Register** (49 FR 31248). On March 5, 1985, final regulations were published as T.D. 85–38 in the **Federal Register** (50 FR 8710). The final rule stated that the regulation is effective on April 4, 1985. This document clarifies the effective date of the final rule as set forth below.

Clarification of Effective Date

The effective date provision of the final Customs Regulations published as T.D. 85–38 in the **Federal Register** on March 5, 1985 (50 FR 8710), is amended by removing the stated "Date" and inserting, in its place, the following:

EFFECTIVE DATE: This regulation is effective on April 4, 1985. It is applicable to all textiles and textile products subject to section 204, Agricultural Act of 1956, as amended, exported from the country of origin, as defined by § 12.130 of the final rule (19 CFR 12.130), on or after April 4, 1985.

Dated: March 6, 1985.

Alfred R. DeAngelus,

Acting Commissioner of Customs.

[FR Doc. 85–5834 Filed 3–11–85; 8:45 am]

BILLING CODE 4820–02–M

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19 CFR Part 10

[T.D. 85–40]

Customs Regulations Amendments Relating to Cancellation of Temporary Importation Bonds

AGENCY: U.S. Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by eliminating the requirement that Customs examine merchandise imported temporarily under bond or under an A.T.A. carnet, before exportation, and to supervise the exportation process in order to have the temporary importation bond or carnet cancelled. Proof of exportation will now be verified by documentary evidence ordinarily submitted to Customs. Elimination of these requirements will ease the Customs workload and benefit importers who use the temporary importation bond procedures.

EFFECTIVE DATE: April 11, 1985.

FOR FURTHER INFORMATION CONTACT: Donald Beach, Carriers, Drawback and Bonds Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229 (202–566–5856).

SUPPLEMENTARY INFORMATION:

Background

Under the provisions of Schedule 8, Part 5, Subpart C, Tariff Schedules of the United States (19 U.S.C. 1202), certain classes of articles may be imported into the U.S. on a temporary basis under bond. Such articles, when not imported for sale or sale on approval, may be admitted into the U.S. without the payment of duty by furnishing Customs with a bond which provides for exportation of the articles under Customs supervision. Exportation must be within one year from the date of importation. This period may be extended upon application for one or more periods which when added to the initial one year period will not exceed a total of three years. The Customs Regulations governing temporary importations under bond are found in § 10.31 *et seq.* (19 CFR 10.31 *et seq.*).

An A.T.A. carnet is an international customs document which may be used for the temporary duty-free importation of certain articles into a country in lieu of the usual customs documents required. This carnet serves as a guarantee against the payment of customs duties which may become due on articles temporarily imported and not exported. The Customs Regulations governing A.T.A. carnets are found in § 10.31 *et seq.*, and Part 114, Customs Regulations (19 CFR 10.31 *et seq.*, Part 114).

Section 10.38(a), Customs Regulations (19 CFR 10.38(a)), states that articles entered under a temporary importation bond or carnet may be exported at the port of entry or at another port. An Application for Exportation of Articles Under Special Bond, Customs Form 3495, must be filed with the district director a sufficient length of time in advance of the date of exportation to permit Customs to examine and identify the articles of circumstances warrant examination. The past practice had been to examine most articles before exportation. Articles entered under A.T.A. carnet are examined at the port from which they are to be exported.

If Customs decides to examine the articles, all expenses in connection with the delivery of the articles to Customs for examination, the cording and sealing of the articles, and their transfer for exportation are paid for by the parties in interest. Customs is required to supervise the exportation process. Section 10.39, Customs Regulations (19 CFR 10.39), sets forth the procedures for cancellation of bonds.

Because of increased demands for Customs service and decreased staffing, the requirements of examination and supervision of exportation are now unrealistic. This procedure was instituted to ensure that the articles were in fact exported. However, this is no longer necessary. Documentary evidence, such as a copy of a bill of lading, a landing certificate, a vessel or vehicle manifest, a certificate of lading, or a Notice of Exportation, Customs Form 7511, certified by Customs, which shows that the articles were exported, is adequate proof of exportation.

As explained in a notice published in the **Federal Register** on September 9, 1983 (48 FR 40738), because of the benefit which accrues to the public by modifying the procedure to allow exportations to be proven by documentary evidence and the benefit to Customs by eliminating physical supervision, on April 3, 1981, Customs notified all field offices that an importer of a temporarily imported article may cancel the bond or carnet by filing documentary evidence of exportation. By T.D. 81–124, published in the Customs Bulletin on May 20, 1981, notice was given to the public that the requirements of §§ 10.38 and 10.39, Customs Regulationss, were being suspended at the importer's option. Since that time, most importers have exercised the option without problem. Accordingly, the notice proposed to amend Parts 10 and 114, Customs Regulations, to eliminate the necessity of examination by Customs of merchandise imported temporarily under bond or carnet and the requirement of supervision of the exportation process. Because of the unique nature of mail or parcel post exportations, supervision of their exportation will continue. A discussion of the 15 comments received in response to the notice and our responses follow.

Discussion of Comments

Comment: Four commenters suggested extensions of the time for filing proof of export. One suggested that 60 days from the date of exportation be allowed, instead of the 30 days in the proposal. Another suggested 90 days to accommodate multi-users of temporary importations under bond (hereinafter TIB's). A third suggested 30 days from the end of the bond period, instead of

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the 10 days proposed. The last commenter requested that we delete any reference to the 30-day from date of exportation period, allowing all users 10 days from the end of the bond period.

Response: We agree that the 30-day after exportation or 10-day after the expiration of the bond periods, whichever occurs first, are too short. However, a 90-day from date of exportation or 30-day from end of bond period are too long. Also, deleting the 30-day period altogether, thereby allowing all users 10 days from the end of the bond period to prove exportation, is not practical. It would result in too many open TIB's, *i.e.*, cases where exportation occurs long before the expiration of the bond period but no proof of exportation is submitted to cancel the bond because of the long period allowed to submit the proof.

We believe that for the submission of proof of exportation, 60 days from the date of exportation *or* 20 days from the expiration of the bond or carnet period, whichever occurs first, are sufficient periods of time to accommodate most users of TIB's. Section 10.38(a) is amended to reflect these time periods.

Comment: Customs Form 3495, the "Application for Exportation of Articles under Special Bond," which is required to be submitted prior to exportation as a request to cancel the TIB, is eliminated under the proposal. This form should be retained to aid in the cancellation of TIB's for merchandise exported to Canada by truck.

Response: As proposed, § 10.38(a) does not prohibit the use of Customs Form 3495. Anyone who wishes to use this form as a request for cancellation may do so, as long as sufficient proof of exportation is submitted with the request.

Comment: Proposed § 10.38(a) should specifically state that one proof of exportation is required—a bill of lading. The language "Evidence sufficient to prove exportation * * * includes, but is not limited to, a bill of lading, landing certificate, vessel or vehicle manifest, certificate of lading or certified notice of exportation" may lead TIB users to conclude that all those papers are necessary to prove exportation.

Response: It is clear from the proposed language that evidence sufficient to prove exportation "includes, but is not limited to" the specified documents. It only requires the submission of what is necessary to establish the fact and date of exportation, which may be one or more of the suggested forms, or other forms.

Comment: In the penultimate sentence of proposed § 10.38(a), the word "must" should be replaced with the word "may," thereby making the requirement of submitting a copy of the t.i.b. import entry optional. Since Customs keeps a copy of the import entry, this requirement is superfluous.

Response: We disagree. The requirement enables Customs to compare its copy with the submitted copy, thereby helping to verify the document.

Comment: The exporter's summary procedure used in drawback claims, whereby the exporter files one document for several drawback claims, should be adopted for multi-users of TIB's.

Response: This procedure is not practical for TIB users inasmuch as they, unlike drawback claimants, must satisfy a bond requirement for the TIB's, which requires the submission of a separate document for each TIB.

Comment: There should be a provision covering partial exportation or articles imported under a TIB because sometimes these articles are not exported at the same time, thereby requiring the submission of multiple evidence of exportation.

Response: We disagree. A TIB is not eligible for cancellation until all articles covered by the TIB are exported. Therefore, there can be no provision for partial exportation. However, evidence of partial exportation may be submitted for mitigation of claims for liquidated damages for failure to export all the TIB articles.

Comment: One commenter asked why the regulations cannot provide for submission of evidence of destruction, rather than requiring the destruction to be made under Customs supervision.

Response: For Customs purposes, destruction is a term with a specific legal meaning. Because only Customs can make the determination that a legal destruction of articles has occurred, it must take place under our supervision.

Comment: Cessation of the examination/supervision procedures for TIB merchandise will induce fraud and disrupt interdictory programs such as operation EXODUS.

Response: We disagree. Under the new TIB procedures, Customs retains the authority to examine any merchandise prior to exportation. In cases where fraud is suspected, an examination of the out-bound merchandise will be made. Further, we are aware of no documented or alleged fraudulent acts connected with the exportation of TIB merchandise since April 1981, when exporters were given the option of exporting TIB merchandise without examination or supervision.

Comment: An export invoice should be required in order to cancel a TIB. Also, the TIB number should be required to be placed on any document used to establish exportation.

Response: We believe that requiring an export invoice is unnecessary and only increases the paperwork burden for the public and Customs. However, requiring the TIB number on any document submitted to prove exportation is advisable in order to help identify the TIB entry.

Comment: Language indicating that the Customs officer must be satisfied of the fact of exportation should be included in the regulations.

Response: The proposed regulation requires that "timely exportation" be established. No further language is needed to provide for the requirement of proof of exportation.

Comment: As with mail exportations, the regulations should provide for cancellation of TIB's for salespersons' samples at ports other than the port of entry.

Response: All a salesperson need do to cancel a TIB when departing with samples at a port other than that of entry is to have Customs certify a notice of exportation at the departure point. The salesperson may then mail the request for cancellation along with the notice of exportation to the port of importation, where the TIB will be cancelled. There is no necessity to provide for cancellation of the TIB at the port of exportation.

Comment: The reference to carnets only in the last paragraph of proposed § 10.38, and not in § 10.39 which deals with cancellation of TIB's may confuse the public, causing it to believe that the amended regulations cover only cancellation of TIB's and not carnets as well.

Response: We disagree. Carnets are sufficiently mentioned throughout the document, from which the public could conclude that the regulations apply to carnets as well as TIB's. Also, reference is being made in the document to the specific regulations governing carnets, found in § 114.26. However, the proposed amendment to § 114.26(a), which would eliminate the supervision requirement for merchandise exported under a TIR carnet, is being withdrawn since a TIR carnet is not used with temporary importations under bond. Therefore, there is no need to amend § 114.26 for this purpose.

Comment: Proposed § 10.39(e)(3) provides for the cancellation of liquidated damages upon payment of a lesser amount, or without collection of liquidated damages, if the TIB merchandise is timely exported but timely request for cancellation is not

made and satisfactory proof of exportation is submitted. One commenter asked what the disposition would be of a case in which no proof of exportation is submitted until after liquidated damages have been assessed.

Response: Section 10.39(e) concerns the cancellation of the liability for payment of liquidated damages. Therefore, it is presumed that liquidated damages have already been assessed when proof of exportation is furnished to Customs under a § 10.39(e)(3) situation. These liquidated damages may be cancelled upon payment of a lesser amount. If the district director has not assessed liquidated damages by the date of the untimely filing of proof of exportation, in his discretion, he need not assess any liquidated damages.

Upon consideration of the comments received, and further review of the matter, it has been determined advisable to adopt the proposal with the modification noted.

Executive Order 12291

These amendments do not meet the criteria for a "major rule" as defined by section 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Regulatory Flexibility Analysis

The provisions of the Regulatory Flexibility Act, relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604), are not applicable to these amendments because they will not have a significant economic impact on a substantial number of small entities.

Accordingly, it is certified under the provisions of § 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this rule will not have a significant economic impact on a substantial number of small entities.

Drafting Information

The principal author of this document was Susan Terranova, Regulations Control Branch, Customs Headquarters. However, personnel from other Customs offices participated in its development.

List of Subjects in 19 CFR Part 10

Customs duties and inspection, Imports, Temporary importation under bond.

Amendments to the Regulations Part 10

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

Part 10, Customs Regulations (19 CFR Part 10), is amended as set forth below.

1. Section 10.38 is revised to read as follows:

§ 10.38 Exportation.

(a) *General.* Articles temporarily imported under bond or an A.T.A. carnet may be exported without Customs examination or supervision. Bond liability will be cancelled or no claim will be brought against the guaranteeing associated on an A.T.A. carnet under § 10.39 of this chapter if satisfactory written proof of timely exportation by the person principally liable under the bond or A.T.A. carnet, or an authorized representative or agent, is provided to the district director at the port of importation within (1) 60 days of exportation or (2) 20 days of the end of the period during which the articles were authorized to remain in the customs territory of the United States under bond or carnet, whichever occurs first. Evidence sufficient to prove exportation of articles entered temporarily under bond includes, but is not limited to, a bill of lading, landing certificate, vessel or vehicle manifest, certificate of lading or certified notice of exportation. The request for cancellation of the bond must also include a copy of the import entry or a copy of the invoice used on entry. In the case of an A.T.A. carnet, the carnet shall be presented for certification, together with the importation and/or reexportation vouchers. The cancellation, discharge or nonacceptance of carnets is addressed in § 114.26 of this chapter.

(b) *Mail or parcel post exportations.* If articles are exported by mail or parcel post, the package containing the articles shall be presented to Customs for mailing under Customs supervision. If presented for mailing at a port other than the port of entry, the request for cancellation of the bond shall be presented in duplicate along with the package. After the package is mailed, the district director shall certify the original of the request and forward it to the port of entry.

(c) *Verification.* Whenever the circumstances warrant, and occasionally in any event, district directors shall cause the fact of exportation to be verified in accordance with the procedures provided for in §§ 18.7 and 22.43 of this chapter.

2. Section 10.39(e) is amended by removing the words "under Customs supervision" from paragraph (2) and by revising the first sentence of paragraph (3) to read as follows:

§ 10.39 Cancellation of bond charges.

* * * * *

(e) * * *

(3) If the article was exported within the bond period, but a timely request for cancellation of the bond was not made, and satisfactory documentary evidence of actual exportation (e.g., foreign landing certificate), or of death or other complete destruction (e.g., veterinarian's certificate or certificates of two disinterested witnesses) is furnished, upon the payment of such lesser amount, or without the collection of liquidated damages, as the district director may deem appropriate under the law and in view of the circumstances. * * *

* * * * *

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

William von Raab,

Commissioner of Customs.

Approved: February 21, 1985.

E.T. Stevenson,

Acting Assistant Secretary of the Treasury.

[FR Doc. 85-5835 Filed 3-11-85; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF LABOR

Employment Standards Administration

20 CFR Parts 701, 702 and 703

Longshore and Harbor Workers' Compensation Act and Related Statutes; Extension of Comment Period

AGENCY: Employment Standards Administration, Labor.

ACTION: Extension of comment period.

SUMMARY: This notice extends the period of comment on the interim final rules published in the **Federal Register** on January 3, 1985 (50 FR 384). The interim final rules implement the Longshore and Harbor Workers' Compensation Act Amendments of 1984, Pub. L. 98-426, 98 Stat. 1639 which amended the Longshore Act (33 U.S.C. 901 *et seq.*) in many substantive respects. The comment period is being extended from March 4, 1985, to March 22, 1985, in response to the requests from the International Longshoremen's Association and others that additional time was needed to prepare comments.

DATE: Comments must be submitted by March 22, 1985.

ADDRESS: Written comments should be sent to Richard A. Staufenberger, Deputy Director, Office of Workers' Compensation Programs, Employment Standards Administration, U.S. Department of Labor, 200 Constitution Ave., NW., Room S-3524, Washington, D.C. 20210: Telephone (202) 523-7503.

FOR FURTHER INFORMATION CONTACT: Richard A. Staufenberger, Tel. (202) 523-7503.

Signed at Washington, D.C., this 7th day of March, 1985.

Ford B. Ford,

Under Secretary of Labor.

[FR Doc. 85-5884 Filed 3-11-85; 8:45 am]

BILLING CODE 4510-27-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 524

New Animal Drugs; Change of Sponsor

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect the change of sponsor of a new animal drug application (NADA) from Burns-Biotec Laboratories, Inc., to National Dermaceutical Products, Inc.

EFFECTIVE DATE: March 12, 1985.

FOR FURTHER INFORMATION CONTACT: David L. Gordon, Center for Veterinary Medicine (HFV-238), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6243.

SUPPLEMENTARY INFORMATION: National Dermaceutical Products, Inc., 8749 Surrey Place, Maineville, OH 45039, informed FDA that it has acquired NADA 31-555, providing for the topical use of trypsin, balsam, and castor oil to treat horses, cattle, dogs, and cats, from Burns-Biotec Laboratories, Inc. Burns-Biotec has confirmed the change of sponsor. In addition, National Dermaceutical Products, Inc., has not been previously added to the list of NADA sponsors in 21 CFR 510.600(c). Part 510 is amended to include the new sponsor. Part 524 is amended to reflect the change of sponsor.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting requirements.

21 CFR Part 524

Animal drugs, topical.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.83), Parts 510 and 524 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. Part 510 is amended in § 510.600 by adding a new entry alphabetically to paragraph (c)(1) and numerically to (c)(2) to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * *	
National Dermaceutical Products, Inc., 8749 Surrey Place, Maineville, OH 45039	051268
* * * * *	

(2) * * *

Drug labeler code	Firm name and address
* * * * *	
051268	National Dermaceutical Products, Inc., 8749 Surrey Place, Maineville, OH 45039
* * * * *	

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

§ 524.2620 [Amended]

2. In Part 524, § 524.2620 *Liquid crystalline trypsin, Peru balsam, castor oil* is amended in paragraph (b)(2) by removing the number "000845" and inserting in its place "051268."

Effective date. March 12, 1985.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: March 5, 1985.

Marvin A. Norcross,

Acting Associate Director for Scientific Evaluation.

[FR Doc. 85-5774 Filed 3-11-85; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR PART 520

Oral Dosage Form New Animal Drugs Not Subject to Certification; Trimethoprim and Sulfadiazine Tablets; Correction

AGENCY: Food and Drug Administration.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a document that amended the animal drug regulations to reflect approval of a supplemental new animal drug application. This document corrects a drug sponsor number.

EFFECTIVE DATE: August 24, 1982.

FOR FURTHER INFORMATION CONTACT: David L. Gordon, Center for Veterinary Medicine (HFV-238), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6243.

SUPPLEMENTARY INFORMATION: In FR Doc. 82-22986 appearing on page 36814 in the issue of Tuesday, August 24, 1982, in the third column under § 520.2610 *Trimethoprim and sulfadiazine tablets* in paragraph (b), "000081" is corrected to read "17220".

Dated: March 5, 1985.

Marvin A. Norcross,

Acting Associate Director for Scientific Evaluation.

[FR Doc. 85-5773 Filed 3-11-85; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Parts 610 and 660

[Docket No. 81N-0417]

Additional Standards for Anti-Human Globulin

Correction

In FR Doc. 85-3305 beginning on page 5574 in the issue of Monday, February 11, 1985, make the following corrections:

1. On page 5577, in the third column, in paragraph 14, in the third line, "work" should read "word".

2. On page 5580, in the second column, in the table, under "Antibody designation on container label", in the first line, "Anti-igG," should read "Anti-IgG,".

BILLING CODE 1505-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

Occupational Exposure to Ethylene Oxide; Change in Effective Date and Approval of Information Collection Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of amendment of effective date of final rule; approval of information collection requirements.

SUMMARY: On June 22, 1984, the Occupational Safety and Health Administration (OSHA) published a final standard for ethylene oxide (EtO) (29 CFR 1910.1047, 49 FR 25734). This rule was transmitted to the Office of Management and Budget (OMB) for review and clearance of the information collection requirements contained in the final rule, in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and 5 CFR Part 1320. The information requirements contained in the EtO final rule, paragraphs (a)(2), (d), (e), (f)(2), (g)(3), (h), (i), and (j), of § 1910.1047, have now received OMB paperwork clearance, and have been assigned OMB clearance number 1218–0108. The OMB clearance expires January 31, 1986.

The above mentioned paragraphs in the EtO rule are therefore effective as of the date of publication of this notice in the **Federal Register**. Start-up dates in paragraph (m)(2) are to be calculated from the effective dates of the various provisions of the final rule.

EFFECTIVE DATE: March 12, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. James Foster, Occupational Safety and Health Administration, Office of Public Affairs, Room N 3641, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210, Telephone (202) 523–8148.

SUPPLEMENTARY INFORMATION: OSHA published a proposed rule on EtO on April 21, 1983 (48 FR 17284) and adopted the final rule on June 22, 1984 (49 FR 25734). The final rule contained the following paragraphs which were determined by OMB to constitute information collection requirements under the Paperwork Reduction Act: (a)(2), Scope and application; (d), Exposure monitoring; (e), Regulated areas; (f)(2), Compliance program; (g)(3), Respirator program; (h), Emergency situations; (i), Medical surveillance; and (j), Communication of EtO hazards to employees. Paragraph (m)(1) of the final rule provided for an effective date for the standard of August 21, 1984. Paragraph (m)(2)(i) established a start-up date for compliance with all paragraphs, except engineering controls, within one-hundred and eighty (180) days after the effective date. The start-up date for implementation of engineering controls was established by paragraph (m)(2)(ii) to be one (1) year from the effective date.

However, as noted in the final rule at 49 FR 25734, the information collection provisions had not been cleared by OMB at that time. Accordingly, the effective dates for those requirements in the final EtO standard have remained in abeyance pending OMB paperwork clearance. OMB has now cleared the information collection requirements contained in § 1910.1047 under clearance number 1218–0108, through January 31, 1986. In accordance with that clearance, OSHA is hereby amending paragraph (m)(1) of the final EtO standard to establish a new effective date of March 12, 1985 for paragraphs 1910.1047 (a)(2), (d), (e), (f)(2), (g)(3), (h), (i), and (j). The time period provided after the effective date for compliance with these paragraphs (start-up dates) remains 180 days, the same as prescribed originally by paragraph (m)(2) of the EtO standard. That is, the start-up date for paragraphs (a)(2), (d), (e), (f)(2), (g)(3), (h), (i), and (j) is one-hundred and eighty days (180) from the new effective date, or September 9, 1985. Paragraphs not requiring OMB clearance went into effect on August 21, 1984, and, with the exception of implementation of engineering controls required by paragraph (f)(1), have a start-up date 180 days from that date, or February 19, 1985. These paragraphs include compliance with the 1 ppm TWA (paragraph (c)), institution of work practice controls (paragraph (f)(1)), and provision for and selection of respirators (paragraphs (g) (1) an (2)). The start-up date for implementation of engineering controls specified in paragraph (f)(1) is one year from its effective date, or August 21, 1985.

Authority

This document was prepared under the direction of Robert A. Rowland, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Ave., N.W., Washington, D.C. 20210.

This action is taken pursuant to sections 4(b), 6(b) and 8(c) of the Occupational Safety and Health Act of 1970 (84 Stat. 1592, 1593, 1599, 29 U.S.C. 653, 655, 657), Secretary of Labor's Order No. 9–83 (48 FR 35736) and 29 CFR Part 1911.

List of Subjects in 29 CFR Part 1910

Ethylene oxide, Occupational safety and health, Chemicals, Cancer, Health, Risk assessment.

Signed at Washington, D.C. this 4th day of March 1985.

Robert A. Rowland,
Assistant Secretary of Labor.

PART 1910—[AMENDED]

Part 1910 of Title 29 the Code of Federal Regulations is amended as set-forth below:

1. By revising paragraph (m) of § 1910.1047 to read as follows:

§ 1910.1047 Ethylene Oxide.

* * * * *

(m) *Dates*—(1) *Effective date.* The paragraphs contained in this section shall become effective August 21, 1984, except for paragraphs (a)(2), (d), (e), (f)(2), (g)(3), (h), (i), and (j) which shall become effective on March 12, 1985.

(2) *Start-up dates.* (i) The start-up date for the requirements in those paragraphs that were effective on August 21, 1984, including institution of work practice controls specified in paragraph (f)(1), shall be February 19, 1985, except as provided for in paragraph (m)(2)(ii), and the start-up date for paragraphs (a)(2), (d), (e), (f)(2), (g)(3), (h), (i), and (j) shall be September 9, 1985.

(ii) Engineering controls specified by paragraph (f)(1) of this section shall be implemented by August 21, 1985.

* * * * *

§ 1910.1047 [Amended]

2. By adding the following language at the end of § 1910.1047:

(Approved by the Office of Management and Budget under control number 1218–0108, through January 31, 1986)

[FR Doc. 85–5612 Filed 3–11–85; 8:45 am]
BILLING CODE 4510–26–M

DEPARTMENT OF COMMERCE

Assistant Secretary for Productivity, Technology and Innovation

37 CFR Ch. IV

[Docket No. 41277–4177]

Licensing of Government Owned Inventions

AGENCY: Commerce Department.

ACTION: Final rule.

SUMMARY: Pursuant to Pub. L. 96–620, which amended section 208 of Title 35, United States Code, authority to promulgate regulations concerning the licensing of Federally owned inventions has been shifted from the Administrator of General Services to the Secretary of Commerce. By this rule the Secretary is issuing final regulations which are identical in substance to and which supersede the regulations of GSA currently found at 41 CFR Subpart 101–4.1.

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EFFECTIVE DATE: This rule is effective as of November 9, 1984, the effective date of Pub. L. 98–620. Suggestions for changes should be submitted by March 1, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Norman Latker, Director, Federal Technology Management Policy Division, Rm. H4835, Department of Commerce, Washington, D.C. 20230, Phone: (202) 377–0659.

SUPPLEMENTARY INFORMATION: To avoid any uncertainty as to applicable licensing procedures under section 208 of Title 35, United States Code, as amended by Pub. L. 98–620, we are adopting the following regulations, which are identical in substance to the GSA regulations that are superseded. The Department of Commerce will shortly be reviewing these regulations to determine if any changes are desirable. We welcome any suggestions for changes. It is the intent of the Department to issue a Notice of Proposed Rulemaking before revising these regulations.

This rulemaking relates to contracts and section 553(a)(2) of the Administrative Procedures Act provides an unqualified exclusion from every requirement of section 553 of the APA for all rules relating to "public property, loans, grants, benefits and contracts." 5 U.S.C. 553(a)(2). Therefore notice and comment and the 30 day delayed effective date are not required. The Regulatory Flexibility Act does not apply to this rulemaking because notice and comment are not required by 5 U.S.C. 553 or any other law. This rulemaking has no substantive effect, and consequently is not a major rule as defined in Executive Order 12291. The collection of information under this regulation has been approved by the Office of Management and Budget under GSA Control No. 3090–0108. A new Department of Commerce number will be assigned.

(35 U.S.C. 206)

List of Subjects 37 CFR Ch. IV

Inventions and patents.

Dated: March 6, 1985.

D. Bruce Merrifield,

Assistant Secretary for Productivity, Technology and Innovation.

Accordingly, a new Chapter IV is added to Title 37 of the Code of Federal Regulations consisting of Parts 400–403 which are reserved, and Part 404, to read as follows:

CHAPTER IV—ASSISTANT SECRETARY FOR PRODUCTIVITY, TECHNOLOGY AND INNOVATION, U.S. DEPARTMENT OF COMMERCE

PARTS 400–403 [RESERVED]

PART 404—LICENSING OF GOVERNMENT OWNED INVENTIONS

Sec.

404.1 Scope of part.
404.2 Policy and objective.
404.3 Definitions.
404.4 Authority to grant licenses.
404.5 Restrictions and conditions on all licenses granted under this part.
404.6 Nonexclusive licenses.
404.7 Exclusive and partially exclusive licenses.
404.8 Application for a license.
404.9 Notice to Attorney General.
404.10 Modification and termination of licenses.
404.11 Appeals.
404.12 Protection and administration of inventions.
404.13 Transfer of custody.
404.14 Confidentiality of information.

Authority: 35 U.S.C. 208; and section 3(g) of DOO 10–1.

§ 404.1 Scope of part.

This part prescribes the terms, conditions, and procedures upon which a federally owned invention, other than an invention in the custody of the Tennessee Valley Authority, may be licensed. It supersedes the regulations at 41 CFR Subpart 101–4.1. This part does not affect licenses which (a) were in effect prior to July 1, 1981; (b) may exist at the time of the Government's acquisition of title to the invention, including those resulting from the allocation of rights to inventions made under Government research and development contracts; (c) are the result of an authorized exchange of rights in the settlement of patent disputes; or (d) are otherwise authorized by law or treaty.

§ 404.2 Policy and objective.

It is the policy and objective of this subpart to use the patent system to promote the utilization of inventions arising from federally supported research or development.

§ 404.3 Definitions.

(a) "Federally owned invention" means an invention, plant, or design which is covered by a patent, or patent application in the United States, or a patent, patent application, plant variety protection, or other form of protection, in a foreign country, title to which has been assigned to or otherwise vested in the United States Government.

(b) "Federal agency" means an executive department, military department, Government corporation, or independent establishment, except the Tennessee Valley Authority, which has custody of a federally owned invention.

(c) "Small business firm" means a small business concern as defined in section 2 of Pub. L. 85–536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration.

(d) "Practical application" means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are to the extent permitted by law or Government regulations available to the public on reasonable terms.

(e) "United States" means the United States of America, its territories and possessions, the District of Columbia, and the Commonwealth of Puerto Rico.

§ 404.4 Authority to grant licenses.

Federally owned inventions shall be made available for licensing as deemed appropriate in the public interest. Federal agencies having custody of federally owned inventions may grant nonexclusive, partially exclusive, or exclusive licenses thereto under this part.

§ 404.5 Restrictions and conditions on all licenses granted under this part.

(a)(1) A license may be granted only if the applicant has supplied the Federal agency with a satifactory plan for development or marketing of the invention, or both, and with information about the applicant's capability to fulfill the plan.

(2) A license granting rights to use or sell under a federally owned invention in the United States shall normally be granted only to a licensee who agrees that any products embodying the invention or produced through the use of the invention will be manufactured substantially in the United States.

(b) Licenses shall contain such terms and conditions as the Federal agency determines are appropriate for the protection of the interests of the Federal Government and the public and are not in conflict with law or this part. The following terms and conditions apply to any license:

(1) The duration of the license shall be for a period specified in the license agreement, unless sooner terminated in accordance with this part.

(2) The license may be granted for all or less than all fields of use of the

invention or in specified geographical areas, or both.

(3) The license may extend to subsidiaries of the licensee or other parties if provided for in the license but shall be nonassignable without approval of the Federal agency, except to the successor of that part of the licensee's business to which the invention pertains.

(4) The licensee may provide the license the right to grant sublicenses under the license, subject to the approval of the Federal agency. Each sublicense shall make reference to the license, including the rights retained by the Government, and a copy of such sublicense shall be furnished to the Federal agency.

(5) The license shall require the licensee to carry out the plan for development or marketing of the invention, or both, to bring the invention to practical application within a period specified in the license, and to continue to make the benefits of the invention reasonably accessible to the public.

(6) The license shall require the licensee to report periodically on the utilization or efforts at obtaining utilization that are being made by the licensee, with particular reference to the plan submitted.

(7) Licenses may be royalty-free or for royalties or other consideration.

(8) Where an agreement is obtained pursuant to § 404.5(a)(2) that any products embodying the invention or produced through use of the invention will be manufactured substantially in the United States, the license shall recite such agreement.

(9) The license shall provide for the right of the Federal agency to terminate the license, in whole or in part, if:

(i) The Federal agency determines that the licensee is not executing the plan submitted with its request for a license and the licensee cannot otherwise demonstrate to the satisfaction of the Federal agency that it has taken or can be expected to take within a reasonable time effective steps to achieve practical application of the invention;

(ii) The Federal agency determines that such action is necessary to meet requirements for public use specified by Federal regulations issued after the date of the license and such requirements are not reasonably satisfied by the licensee;

(iii) The licensee has willfully made a false statement of or willfully omitted a material fact in the license application or in any report required by the license agreement; or

(iv) The licensee commits a substantial breach of a covenant or agreement contained in the license.

(10) The license may be modified or terminated, consistent with this part, upon mutual agreement of the Federal agency and the licensee.

(11) Nothing relating to the grant of a license, nor the grant itself, shall be construed to confer upon any person any immunity from or defenses under the antitrust laws or from a charge of patent misuse, and the acquisition and use of rights pursuant to this part shall not be immunized from the operation of state or Federal law by reason of the source of the grant.

§ 404.6 Nonexclusive licenses.

(a) Nonexclusive licenses may be granted under federally owned inventions without publication of availability or notice of a prospective license.

(b) In addition to the provisions of § 404.5, the nonexclusive license may also provide that, after termination of a period specified in the license agreement, the Federal agency may restrict the license to the fields of use or geographic areas, or both, in which the licensee has brought the invention to practical application and continues to make the benefits of the invention reasonably accessible to the public. However, such restriction shall be made only in order to grant an exclusive or partially exclusive license in accordance with this subpart.

§ 404.7 Exclusive and partially exclusive licenses.

(a)(1) Exclusive or partially exclusive domestic licenses may be granted on federally owned inventions three months after notice of the invention's availability has been announced in the **Federal Register**, or without such notice where the Federal agency determines that expeditious granting of such a license will best serve the interest of the Federal Government and the public; and in either situation, only if;

(i) Notice of a prospective license, identifying the invention and the prospective licensee, has been published in the **Federal Register**, providing opportunity for filing written objections within a 60-day period;

(ii) After expiration of the period in § 404.7(a)(1)(i) and consideration of any written objections received during the period, the Federal agency has determined that;

(A) The interests of the Federal Government and the public will best be served by the proposed license, in view of the applicant's intentions, plans, and ability to bring the invention to practical application or otherwise promote the invention's utilization by the public;

(B) The desired practical application has not been achieved, or is not likely expeditiously to be achieved, under any nonexclusive license which has been granted, or which may be granted, on the invention;

(C) Exclusive or partially exclusive licensing is a reasonable and necessary incentive to call forth the investment of risk capital and expenditures to bring the invention to practical application or otherwise promote the invention's utilization by the public; and

(D) The proposed terms and scope of exclusivity are not greater than reasonably necessary to provide the incentive for bringing the invention to practical application or otherwise promote the invention's utilization by the public;

(iii) The Federal agency has not determined that the grant of such license will tend substantially to lessen competition or result in undue concentration in any section of the country in any line of commerce to which the technology to be licensed relates, or to create or maintain other situations inconsistent with the antitrust laws; and

(iv) The Federal agency has given first preference to any small business firms submitting plans that are determined by the agency to be within the capabilities of the firms and as equally likely, if executed, to bring the invention to practical application as any plans submitted by applicants that are not small business firms.

(2) In addition to the provisions of § 404.5, the following terms and conditions apply to domestic exclusive and partially exclusive licenses;

(i) The license shall be subject to the irrevocable, royalty-free right of the Government of the United States to practice and have practiced the invention on behalf of the United States and on behalf of any foreign government or international organization pursuant to any existing or future treaty or agreement with the United States.

(ii) The license shall reserve to the Federal agency the right to require the licensee to grant sublicenses to responsible applicants, on reasonable terms, when necessary to fulfill health or safety needs.

(iii) The license shall be subject to any licenses in force at the time of the grant of the exclusive or partially exclusive license.

(iv) The license may grant the licensee the right of enforcement of the licensed patent pursuant to the provisions of Chapter 29 of Title 35, United States Code, or other statutes, as determined appropriate in the public interest.

(b)(1) Exclusive or partially exclusive licenses may be granted on a federally owned invention covered by a foreign patent, patent application, or other form of protection, provided that;

(1) Notice of a prospective license, identifying the invention and prospective licensee, has been published in the **Federal Register**, providing opportunity for filing written objections within a 60-day period and following consideration of such objections;

(ii) The agency has considered whether the interests of the Federal Government or United States industry in foreign commerce will be enhanced; and

(iii) The Federal agency has not determined that the grant of such license will tend substantially to lessen competition or result in undue concentration in any section of the United States in any line of commerce to which the technology to be licensed relates, or to create or maintain other situations inconsistent with antitrust laws.

(2) In addition to the provisions of § 404.5 the following terms and conditions apply to foreign exclusive and partially exclusive licenses:

(i) The license shall be subject to the irrevocable, royalty-free right of the Government of the United States to practice and have practiced the invention on behalf of the United States and on behalf of any foreign government or international organization pursuant to any existing or future treaty or agreement with the United States.

(ii) The license shall be subject to any licenses in force at the time of the grant of the exclusive or partially exclusive license.

(iii) The license may grant the licensee the right to take any suitable and necessary actions to protect the licensed property, on behalf of the Federal Government.

(c) Federal agencies shall maintain a record of determinations to grant exclusive or partially exclusive licenses.

§ 404.8 Application for a license.

An application for a license should be addressed to the Federal agency having custody of the invention and shall normally include:

(a) Identification of the invention for which the license is desired including the patent application serial number or patent number, title, and date, if known;

(b) Identification of the type of license for which the application is submitted;

(c) Name and address of the person, company, or organization applying for the license and the citizenship or place of incorporation of the applicant;

(d) Name, address, and telephone number of the representative of the applicant to whom correspondence should be sent;

(e) Nature and type of applicant's business, identifying products or services which the applicant has successfully commercialized, and approximate number of applicant's employees;

(f) Source of information concerning the availability of a license on the invention;

(g) A statement indicating whether the applicant is a small business firm as defined in § 404.3(c)

(h) A detailed description of applicant's plan for development or marketing of the invention, or both, which should include:

(1) A statement of the time, nature and amount of anticipated investment of capital and other resources which applicant believes will be required to bring the invention to practical application;

(2) A statement as to applicant's capability and intention to fulfill the plan, including information regarding manufacturing, marketing, financial, and technical resources;

(3) A statement of the fields of use for which applicant intends to practice the invention; and

(4) A statement of the geographic areas in which applicant intends to manufacture any products embodying the invention and geographic areas where applicant intends to use or sell the invention, or both;

(i) Identification of licenses previously granted to applicant under federally owned inventions;

(j) A statement containing applicant's best knowledge of the extent to which the invention is being practiced by private industry or Government, or both, or is otherwise available commercially; and

(k) Any other information which applicant believes will support a determination to grant the license to applicant.

§ 404.9 Notice to Attorney General.

A copy of the notice provided for in §§ 404.7(a)(1)(i) and 404.7(b)(1)(i) will be sent to the Attorney General.

§ 404.10 Modification and termination of licenses.

Before modifying or terminating a license, other than by mutual agreement, the Federal agency shall furnish the licensee and any sublicensee of record a written notice of intention to modify or terminate the license, and the licensee and any sublicensee shall be allowed 30 days after such notice to remedy any breach of the license or show cause why the license shall not be modified or terminated.

§ 404.11 Appeals.

In accordance with procedures prescribed by the Federal agency, the following parties may appeal to the agency head or designee any decision or determination concerning the grant, denial, interpretation, modification, or termination of a license:

(a) A person whose application for a license has been denied.

(b) A licensee whose license has been modified or terminated, in whole or in part; or

(c) A person who timely filed a written objection in response to the notice required by § 404.7(a)(1)(i) or § 404.7(b)(1)(i) and who can demonstrate to the satisfaction of the Federal agency that such person may be damaged by the agency action.

§ 404.12 Protection and administration of inventions.

A Federal agency may take any suitable and necessary steps to protect and administer rights to federally owner inventions, either directly or through contract.

§ 404.13 Transfer of custody.

A Federal agency having custody of a federally owned invention may transfer custody and administration, in whole or in part, to another Federal agency, of the right, title, or interest in such invention.

§ 404.14 Confidentiality of information.

Title 35, United States Code, section 209, provides that any plan submitted pursuant to § 404.8(h) and any report required by § 404.5(b)(6) may be treated by the Federal agency as commercial and financial information obtained from a person and privileged and confidential and not subject to disclosure under section 552 of Title 5 of the United States Code.

[FR Doc. 85-5832 Filed 3-11-85; 8:45 am]

BILLING CODE 1310-18-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 84-460; RM-4709]

FM Broadcast Stations, Lordsburg, NM; Change in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein substitutes Class C Channel 250 for Channel 249A at Lordsburg, New Mexico, and modifies the Class A permit for Station KXKK (FM) in response to a petition filed by C.R. Crisler.

EFFECTIVE DATE: April 5, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner or Jeffery D. Sutherland, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Lordsburg, New Mexico); MM Docket No. 84–460, RM–4709.

Adopted: February 15, 1985.
Released: February 27, 1985.

By the Chief, Policy and Rules Division.

1. The Commission herein considers its *Notice of Proposed Rule Making*, 49 FR 21968, published May 24, 1984, issued in response to a request filed by C.R. Crisler ("petitioner"), which seeks to substitute Class C Channel 250 for Channel 249A at Lordsburg, New Mexico. Supporting comments were filed by petitioner in which he reiterated his intention to apply for the channel, if assigned. No oppositions to the proposal were received.

2. Petitioner identifies himself as a major stockholder and managing partner of Interstate 10 Broadcasting of New Mexico, which is the permittee of Station KXKK (FM) (Channel 249A) at Lordsburg. Further, petitioner advises that Interstate is willing to amend its permit authorization to specify operation on Channel 250 to enable it to provide expanded coverage.

3. We believe the public interest would benefit from the substitution of Class C Channel 250 for Channel 249A at Lordsburg, as proposed, since it could provide service to a wider coverage area in the region. A site restriction of 4.5 miles [1] northeast of Lordsburg is required to avoid short-spacing to a construction permit for Channel 249A, issued to Station KAVV (FM), at Benson, Arizona, and to vacant Channel 251A at Naco, Sonora, Mexico.

4. Since the proposed assignment is within 320 kilometers (199 miles) of the common U.S.-Mexican border, concurrence of the Mexican government was obtained.

5. In view of the foregoing, we have authorized, *infra*, a modification of the petitioner's permit for Station KXKK (FM) to specify operation on Channel 250, since no other expressions of interest in the Class C channel were received. See, *Cheynne, Wyoming*, 62 F.C.C. 2d 63 (1976).

6. Accordingly, pursuant to the authority contained in §§ 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communcations Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective April 5, 1985, the FM Table of Assignments, § 73.202(b) of the Rules, is amended as follows:

City	Channel No.
Lordsburg, New Mexico	250

[1] The *Notice* indicated that a site restriction of 4.2 miles northeast of Lordsburg would be required for this proposal.

7. It is further ordered, That pursuant to § 316(a) of the Communications Act of 1934, as amended, the permit of Station KXKK (FM) is modified to specify operation on Class C Channel 250 in lieu of Channel 249A at Lordsburg, New Mexico, subject to the following conditions:

(a) At least 30 days before operating on Channel 250 the licensee shall submit to the Commission a minor change application for a construction permit (Form 301);

(b) Upon grant of the construction permit, program tests may be conducted in accordance with § 73.1620.

(c) Nothing contained herein shall be construed to authorize a major change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to § 1.1301 of the Commission's Rules.

8. It is further ordered, That the Secretary shall send a copy of this *Order* by certified mail, return receipt requested, to: C.R. Crisler, Interstate 10 Broadcasting of New Mexico, Station KXKK, Rte. 3, Box A615, Greenwood, AK 72936.

9. It is further ordered, That this proceeding is terminated.

10. For further information concerning the above, contact Nancy V. Joyner or Jeffery D. Sutherland, Mass Media Bureau, (202) 634–6530.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85–5789 Filed 3–11–85; 8:45 am]

BILLING CODE 6712–01–M

VOL 50 ISS 48 MR 12 1985 UMI

Proposed Rules

Federal Register
Vol. 50, No. 48
Tuesday, March 12, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Chapter IV

[Docket No. 2077S]

Various Crop Insurance Regulations; Advance Notice of Proposed Rulemaking

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Advance notice of proposed rulemaking; request for public comment.

SUMMARY: The purpose of this pre-rulemaking announcement is to give advance notice that FCIC is considering the feasibility and advisability of providing insurance to producers of agricultural commodities through the underwriting of policies sold by commercial companies rather than through its present direct insurance operation. Under this proposal, FCIC would be restructured to more closely resemble a commercial reinsurance company.

If such a course of action is determined feasible and advisable, conversion would be October 1, 1985, the date the current Agency Sales and Service (Master Marketing) Agreement expires.

FCIC invites public comment on this concept. FCIC, after reviewing all comments received pursuant to this notice, may propose that such amendments be made in a notice of proposed rulemaking to be published in the **Federal Register** at a later date.

DATE: Written comments, data, and opinions on this advance notice of proposed policy rulemaking must be submitted not later than April 11, 1985, to be sure of consideration.

ADDRESS: Written comments on this advance notice of proposed policy rulemaking should be sent to the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 447–3325.

All comments made pursuant to this notice will be available for public inspection in the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, D.C., during regular business hours, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Federal Crop Insurance Corporation (FCIC) issues this advance notice of intent to publish Proposed Rulemaking to amend current FCIC policy regulations.

If a decision is made to restructure FCIC along more commercial reinsurance company lines, FCIC will continue to comply with all requirements set forth in the Federal Crop Insurance Act (Act). Among other functions, FCIC would continue to set and/or approve rates and coverages of crop insurance policies, provide program direction, and maintain quality assurance capability.

Should such a conversion be deemed feasible and advisable, FCIC will maintain operations of sufficient capacity to service carryover FCIC direct insurance business until such time as the business can be converted to reinsured policies.

A new Reinsurance Agreement would be developed which would be adequate to accommodate the additional responsibilities that will be assumed by reinsured commercial companies under this proposal.

This action is being considered in order to make more effective and efficient use of taxpayer dollars. There has been a steady increase in the volume of crop insurance sold through reinsured companies. Since 1981, premium income on reinsured paper has increased from $12.8 million to an estimated $378 million for crop year 1985 * * * an increase of 2,900 percent.

During the same time period, the share of business written by reinsured companies compared with FCIC direct insurance has risen from 3 percent to 70–80 percent according to available estimates.

In the opinion of FCIC management, it is prudent to reconsider the wisdom of maintaining a full government operation to handle as little as 20 percent of the volume of business for which it was designed. The action that is being considered is intended to assure the highest possible return on every federal dollar spent, while providing the highest level of service to America's agricultural producers.

The conversion of FCIC from a direct writer of insurance to strictly a reinsurer may result in substantial government cost savings due to the reduced need for a support system for a direct insurance operation. Preliminary estimates suggest that initial savings may be in the $37–39 million range, with long range annual savings of around $29 million.

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516)

Issued in Washington, D.C., on March 6, 1985.

Dated: March 6, 1985.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Approved by:

Edward Hews,

Acting Manager.

[FR Doc. 85–5744 Filed 3–11–85; 8:45 am]

BILLING CODE 3410–08–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85–CE–6–AD]

Airworthiness Directives; British Aerospace Model 3101 Jetstream Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This Notice proposes to adopt a new Airworthiness Directive (AD), applicable to certain British Aerospace (BAe) Model 3101 Jetstream airplanes which would require inspection of the engine rear turbine bearing oil feed pipe for proper clearance between the oil feed pipe and the bleed air pre-cooler. BAe has reported that insufficient clearance can exist which can cause damage to the oil feed pipe, loss of the engine oil, and subsequent engine failure. This AD will

detect and correct improper oil feed pipe clearances to preclude engine failure.

DATES: Comments must be received on or before April 15, 1985.

ADDRESSES: BAe Alert Service Bulletin (ASB) No. 71–A–JM7418, dated May 25, 1984, applicable to this AD may be obtained from British Aerospace, Engineering Department, Post Office Box 17414, Dulles International Airport, Washington, D.C. 20041; Telephone (703) 435–9100 or the Rules Docket at the address below.

Send comments on the proposal in duplicate to Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 85–CE–6–AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at the location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. H. Chimerine, Brussels Aircraft Certification Office, AEU–100, Europe, Africa and Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium; Telephone 513.38.30; or Mr. B. Sexton, FAA, ACE–109, 601 East 12th Street, Kansas City, Missouri 64106; Telephone (816) 374–6932.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the proposed rule. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85–CE–6–AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

BAe has received a report of fouling between the rear turbine oil feed pipe on the right hand side of the engine and the bleed air pre-cooler which caused chafing of the oil feed pipe. Investigation has revealed that the clearance between the oil pipe and the bleed air pre-cooler can be less than required. Failure of the oil feed pipe will lead to loss of engine oil and subsequent engine failure. As a result, BAe has issued ASB No. 71–A–JM418, dated May 25, 1984, which specifies (1) an initial inspection of the oil feed pipe for chafing and adequate clearance from the bleed air pre-cooler and (2) corrective actions for any airplane which does not meet the specified clearance criteria. The United Kingdom Civil Aviation Authority (UKCAA) who has responsibility and authority to maintain the continued airworthiness of these airplanes in the United Kingdom has classified this Alert Service Bulletin and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected airplanes. On airplanes operated under United Kingdom registration, this action has the same effect as an AD on airplanes certified for operation in the United States. The FAA relies upon the certification of the UKCAA combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness conformity of products of this design certified for operation in the United States.

The FAA has examined the available information related to the issuance of BAe ASB No. 71–A–JM7418, Dated May 25, 1984, and the mandatory classification of this Alert Service Bulletin by the UKCAA. Based on the foregoing, the FAA believes that the condition addressed by this Alert Service Bulletin is an unsafe condition that may exist on other products of this type design certified for operation in the United States. Consequently, the proposed AD would require inspection of the rear turbine bearing oil feed pipe within 100 hours time-in-service and, if required as a result of the inspection, periodic inspections or modification of the oil feed pipe/bleed air pre-cooler assemblies at intervals defined in the AD.

There are approximately eleven airplanes affected by the proposed AD. The cost of complying with the proposed AD is estimated to be $2,750 to the private sector.

Therefore, I certify that this action (1) is not a major rule under the provisions of Executive Order 12291, (2) is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation has been prepared for this action and has been placed in the public docket. A copy of it may be obtained by contacting the Rule Docket at the location identified under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new AD:

British Aerospace: Applies to Model 3101 Jetstream (serial numbers 601 to 624 inclusive, and 627), airplanes certified in any category. Compliance: Required within 100 hours time-in-service after the effective date of this AD, unless already accomplished. To assure that adequate clearance exists between the rear turbine bearing oil feed pipe and the bleed air pre-cooler accomplish the following:

(a) Inspect the rear turbine bearing oil feed pipe for chafing and for adequate clearance between the rear turbine bearing oil feed pipe and the bleed air pre-cooler on LH and RH engines in accordance with sub-paragraphs (a), (b) and (c) of the *Part A—Inspection* requirements of paragraph 2 of British Aerospace (BAe) Alert Service Bulletin No. 71–A–JM7418.

(1) If no damage is apparent and clearance is 0.25 inches (6.35 mm) or greater, no further action is required.

(2) If clearance is less than 0.25 inches and no pipe damage is apparent repeat the inspection required by paragraph (a) of this AD at intervals not to exceed 400 hours time-in-service or until either BAe Modification JM7418 or BAe Modification JM7388 is accomplished.

(3) If pipe damage is apparent, prior to further flight, accomplish either BAe Modification JM7418 or BAe Modification JM7388.

(b) Aircraft may be flown in accordance with Federal Aviation Regulation 21.197 to a location where this AD can be accomplished.

(c) An equivalent method of compliance with this AD, if used, must be approved by the Manager, Aircraft Certification Staff, AEU–100, Europe, Africa and Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium.

(Secs. 313(a), 601 and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421 and 1423); 49 U.S.C 106(g) (Revised Pub. L. 97-449, January 12, 1983); and Section 11.85 of the Federal Aviation Regulations (14 CFR 11.85)

Issued in Kansas City, Missouri, on March 1, 1985.

Murray E. Smith,

Director, Central Region.

[FR Doc. 85-5777 Filed 3-11-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 84-NM-80-AD]

Airworthiness Directives: Canadair Model CL-600-1A11 (CL-600) and CL-600-2A12 (CL-601) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking; withdrawal and reissuance.

SUMMARY: This document withdraws an earlier proposed airworthiness directive (AD) that would have required removing paint from the wing center section lower surface if that surface was not properly finished, and, as modified, reissues the proposal. The original proposal did not address improperly finished filler caps on the wing. It is necessary to reissue the proposal to provide for adequate lightning protection for the lower wing center section skin surface and the filler caps in order to prevent arcing in the fuel tank, which could ignite vapors.

DATES: Comments must be received no later than April 29, 1985.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 84-NM-80-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information specified in this AD may be obtained upon request from Canadair Limited, 1800 Laurentien Blvd., Saint-Laurant, Quebec H4R 1K2, Canada, or may be examined at the Federal Aviation Administration, Northwest Mountain Region, Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Harold N. Wantiez, Foreign Aircraft Certification Branch, Seattle Aircraft Certification Office; telephone (206) 431-2977. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 84-NM-80-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The Canadian Department of Transport (DOT) has issued airworthiness directive CF-84-06, requiring removal of any incorrect finish applied to the lower wing center section surface of Model CL-600-1A11 and CL-600-2A12 airplanes within six calendar months. This finish must be removed and replaced with an aluminum loaded paint or, alternatively, the surface must be left unpainted. Until the finish modification is accomplished, a placard must be installed in the cockpit prohibiting flight into areas where lightning conditions are known to exist.

Tests and analysis indicate that the skin thickness of the lower wing center section, which is between 0.05 and 0.06 inches, may not be adequate to protect the fuel tank at that location from lightning swept strokes, if a paint with insufficient conductivity is applied. Stroke attachment may build up enough energy to cause arcing on the inside of the fuel tank, which could ignite vapors. An NPRM (49 FR 36866) was published in the **Federal Register** on September 20, 1984, which requested comments concerning a proposal to require inspection and repainting of the wing center section lower surface, as necessary. One comment was received which stated that the NPRM required inspection and finishing in accordance with Canadair engineering drawings which were not readily available to the operators. The commenter further stated that the manufacturer had recently issued alert service bulletins which addressed the proposed inspections and refinishing, and also addressed an additional problem not mentioned in the NPRM, namely, the inspection and refinishing, as necessary, of the wing gravity filler caps. The commenter recommended that the final rule reflect the contents of these service bulletins. The FAA agrees with the commenter and has determined that the previous NPRM should be withdrawn and a new NPRM issued which would require compliance with the service bulletins.

This airplane model is manufactured in Canada and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable airworthiness bilateral agreement.

Since this condition is likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed which would require the proper finishing of the wing center section lower surface and the wing gravity filler caps in accordance with the manufacturer's service bulletins.

It is estimated that approximately 50 airplanes of U.S. registry would be affected by this AD, that it would take approximately 40 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Materials are estimated at $600 per airplane. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $110,000.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Canadair CL-600 or CL-601 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket. A copy may be obtained by contacting the person identified under the caption **FOR FURTHER INFORMATION CONTACT.**

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Withdrawal

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator, the proposed airworthiness directive published in the **Federal Register** on September 20, 1984 (49 FR 36866), is hereby withdrawn.

The Proposed Amendment

Further, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new airworthiness directive:

Canadair: Applies to all Canadair Model CL-600-1A11 (CL-600) and CL-600-2A12 (CL-601) airplanes certificated in all categories. Compliance is required as indicated, unless already accomplished. To provide adequate lightning protection for the wing center section lower skin and the wing gravity filler caps, accomplish the following:

A. Within 30 days after the effective date of this AD, unless the center wing fuel tank lower skin surface and the gravity filler fuel caps are unpainted or have been painted in accordance with Canadair Alert Service Bulletin A600-0416 dated 7/30/84 (for CL-600 airplanes), or A601-0069 dated 7/30/84 (for CL-601 airplanes), install a placard, which may be locally manufactured, on the left hand main instrument panel using letters of ⅛-inch minimum height, which reads as follows: "NOT APPROVED FOR FLIGHT INTO AREAS WHERE LIGTHTNING CONDITIONS ARE KNOWN TO EXIST."

B. Within the next six calendar months after the effective date of this AD, ensure that the center wing fuel tank lower skin surface and the wing gravity filler fuel caps are either unpainted or painted with an aluminum loaded paint and primer, in accordance with the above service bulletins, as applicable.

C. Upon completion of paragraph B, remove placard installed in accordance with paragraph A.

D. Alternative means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

(Sec. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.85)

Issued in Seattle, Washington, on February 28, 1985.

Thomas J. Howard,

Acting Director, Northwest Mountain Region.

[FR Doc. 85-5779 Filed 3-11-85; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 73

[Airspace Docket No. 84-ASO-26]

Proposed Alteration of Restricted Areas; Fort Stewart, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to realign the internal boundaries of Restricted Areas R-3005 A, B, C, D, and E, located in the vicinity of Fort Stewart, GA. This action would increase the availability of portions of the restricted areas during times when the areas are being used for ground firing activity.

DATES: Comments must be received on or before April 25, 1985.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Southern Region, Attention: Manager, Air Traffic Division, Docket No. 84-ASO-26, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Air Traffic Rules Branch (ATO-230), Airspace—Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-8526.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airpace Docket No. 84-ASO-26." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filled in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 73.30 of Part 73 of the Federal Aviation Regulations (14 CFR Part 73) to realign the internal boundaries of Restricted Areas R-3005 A, B, C, D, and E, located in the vicinity of Fort Stewart, GA. The realignment of the areas was the result of negotiations between representatives of the Southern Region and representatives of the 24th Infantry Division, Fort Stewart, GA. The external boundaries of R-3005 A, B, C, D, and E will remain the same. This action would release portions of the restricted areas for public use when military training missions involve only ground firing. Section 73.30 of Part 73 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 3, 1984.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034;

February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 73

Restricted areas, Aviation safety.

The Proposed Amendment

PART 73—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 73.30 of Part 73 of the Federal Aviation Regulations (14 CFR Part 73) as follows:

§ 73.30 [Amended]

R-3005A Fort Stewart, GA [Amended]

Boundaries. Beginning at lat. 32°07'00" N., long. 81°43'30" W.; to lat. 31°56'00" N., long. 81°43'30" W.; thence west along Georgia Highway 144 to lat. 31°55'30" N., long. 81°53'00" W.; to lat. 31°57'00" N., long. 81°53'15" W.; to lat. 31°59'45" N., long. 81°51'08" W.; to lat. 32°02'21" N., long. 81°50'42" W.; to lat. 32°02'59" N., long. 81°51'26" W.; to lat. 32°05'24" N., long. 81°50'03" W.; to lat. 32°07'28" N., long. 81°47'17" W.; to the point of beginning.

R-3005B Fort Stewart, GA [Amended]

Boundaries. Beginning at lat. 32°06'45" N., long. 81°37'00" W.; thence south along Georgia Highway 119 to lat. 31°54'00" N., long. 81°38'15" W.; thence northwest along Georgia Highway 144 to lat. 31°56'00" N., long. 81°43'30" W.; to lat. 32°07'00" N., long. 81°43'30" W.; to the point of beginning.

R-3005C Fort Stewart, GA [Amended]

Boundaries. Beginning at lat. 32°04'45" N., long. 81°28'30" W.; to lat. 31°57'30" N., long. 81°26'30" W.; thence southwest along Georgia Highway 144 to lat. 31°53'11" N., long. 81°37'51" W.; thence north along Georgia Highway 119 to lat. 32°08'45" N., long. 81°37'00" W.; to lat. 32°08'15" N., long. 81°31'30" W.; to lat. 32°05'30" N., long. 81°31'30" W.; to lat. 32°05'15" N., long. 81°30'00" W.; to the point of beginning.

R-3005D Fort Stewart, GA [Amended]

Boundaries. Beginning at lat. 31°57'30" N., long. 81°28'30" W.; to lat. 32°04'45 N., long. 81°26'30" W.; to lat. 32°04'15" N., long. 81°22'30" W.; thence along the Ogeechee River to lat. 32°00'30" N., long. 81°19'30" W.; to lat. 31°58'45" N., long. 81°19'45" W.; to lat 31°56'15" N., long. 81°23'00" W.; to lat. 31°54'03" N., long. 81°28'45" W.; thence counterclockwise along the arc of a 5-mile radius circle centered at lat. 31°53'20" N., long. 81°33'45" W.; to lat. 31°56'48" N., long. 81°30'42" W.; thence east along Georgia Highway 144 to the point of beginning.

R-3005E Fort Stewart, GA [Amended]

Boundaries. Beginning at lat. 31°54'00" N., long. 81°38'15" W.; to lat. 31°53'11" N., long. 81°37'51" W.; to lat. 31°52'20" N., long. 81°38'10" W.; to lat. 31°51'55" N., long. 81°39'50" W.; to lat. 31°51'30" N., long. 81°41'45" W.; to lat. 31°55'00" N., long. 81°53'00" W.; to lat. 31°55'30" N., long. 81°53'00" W.; thence east along Georgia Highway 144 to the point of beginning.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983)); and 14CFR 11.65)

Issued in Washington, D.C., on March 4, 1985.

John W. Baier,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR. Doc. 85-5576 Filed 3-11-85; 8:45 am]

BILLING CODE 4910-13-M

RAILROAD RETIREMENT BOARD

20 CFR Parts 260 and 320

Appeals Procedure Under the Railroad Retirement and Railroad Unemployment Insurance Acts

AGENCY: Railroad Retirement Board.

ACTION: Proposed rule.

SUMMARY: The Railroad Retirement Board (Board) hereby proposes to amend §§ 260.9 and 320.39 of its regulations to make minor revisions in the procedures for filing appeals to the Board under the Railroad Retirement and Railroad Unemployment Insurance Acts. The proposed amendments would conform the procedures for appeals to the Board under the two Acts by shortening the appeal period applicable to Railroad Unemployment Insurance Act appeals from the current 90 days to 60 days and by adding language to the regulations under both Acts to permit the Board to waive compliance with the requirement to file within the appeals period where the appellant requests an extension based on a showing of good cause for failure to make a timely filing.

DATE: Comments must be received by the Secretary to the Board on or before April 11, 1985.

ADDRESS: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Steven A. Bartholow, Deputy General Counsel, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751-4935 (FTS 387-4935).

SUPPLEMENTARY INFORMATION: The Board's regulations governing appeals from decisions issued by the Board's Bureau of Hearings and Appeals (20 CFR 260.9 and 320.39), currently provide that appeals to the Board under the Railroad Retirement Act must be filed within 60 days after notice of the decision by the Bureau of Hearings and Appeals, whereas appeals from such decisions under the Railroad Unemployment Insurance Act must be filed within 90 days. There is no particular reason for this difference and it has caused confusion concerning the filing of appeals. Accordingly, the Board proposes to conform the time periods under the two Acts.

In addition, where an appellant has been unavoidably prevented for good cause from filing an appeal within the allowable time period, the proposed amendments provide a mechanism whereby the appellant may request an extension of time to file.

The Board has determined that this is not a major rule for purposes of Executive Order 12291. Therefore, no Regulatory Impact Analysis is required. Sections 260.9(c) and 320.39 contain reporting requirements that are subject to OMB reveiw under the Paperwork Reduction Act of 1980. In accordance with § 3504(h) of that Act, the Board will submit these reporting requirements to OMB for review.

List of Subjects

20 CFR Part 260

Railroad employees, Railroad retirement, Railroads.

20 CFR Part 320

Railroad employees, Railroad unemployment insurance, Railroads.

PART 260—[AMENDED]

Title 20 CFR Chapter II, is proposed to be amended as follows:

1. Section 260.9(c) of the Board's regulations is proposed to be revised to read as follows:

§ 260.9 Final appeal from a decision of the referee.

* * * * *

(c) *Timely filing.* The right to further review of a decision of a referee shall be forfeited unless formal final appeal is filed in the manner and within the time prescribed in § 260.9(b). However, when a claimant fails to file an appeal before the Board within the time prescribed in this section, the Board may waive this requirement if, along with the final appeal form, the appellant in writing requests an extension of time. The request for an extension of time must give the reasons why the final appeal form was not filed within the time limit prescribed in this section. If in the

judgment of the Board the reasons given establish that the appellant had good cause for not filing the final appeal form within the time prescribed, the Board will consider the appeal to have been filed in a timely manner. The Board will use the standards found in § 260.3(d) of this chapter in determining if good cause exists.

* * * * *

(45 U.S.C. 231f(b)(5))

PART 320—[AMENDED]

2. Section 320.39 of the Board's regulations is proposed to be revised to read as follows:

§ 320.39 Execution and filing of appeal to Board from decision of referee.

An appeal to the Board from the decision of a referee shall be filed on the form provided by the Board and shall be executed in accordance with the instructions on the form. Such appeal shall be filed within 60 days from the date upon which notice of the decision of the referee was mailed to the parties. The right to further review of a decision of a referee shall be forfeited unless formal final appeal is filed in the manner and within the time prescribed in this section. However, when a claimant fails to file an appeal before the Board within the time prescribed in this section, the Board may waive this requirement if, along with the final appeal form, the appellant in writing requests an extension of time. The request for an extension of time must give the reasons why the final appeal form was not filed within the time limit prescribed in this section. If in the judgment of the Board the reasons given establish that the appellant had good cause for not filing the final appeal form within the time prescribed, the Board will consider the appeal to have been filed in a timely manner. The Board will use the standards found in § 260.3(d) of this chapter in determining if good cause exists.

(45 U.S.C. 362(l))

By Authority of the Board.
Dated: March 5, 1985.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 85-5793 Filed 3-11-85; 8:45 am]

BILLING CODE 7905-01-M

VETERANS ADMINISTRATION

38 CFR Part 17

Amount of Aid Payable to State Veterans Homes

AGENCY: Veterans Administration.

ACTION: Proposed regulation.

SUMMARY: The Veterans Administration is amending its medical regulations (38 CFR Part 17) to provide regulatory authority for the amount of aid payable to State Veterans Homes. The current regulation states the actual dollar amount as specified in 38 U.S.C. 641(a). This amendment removes the actual dollar amount from the regulation and refers the reader to 38 U.S.C. 641(a). This amendment will relieve the agency from re-publishing the regulation every time the rates change. The actual dollar amounts of the rates will be available to the public through publication of a notice in the **Federal Register** each time the rates change.

DATES: Comments must be received before April 11, 1985. It is proposed to make this rule effective 30 days after publication of the final regulations.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections to: Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW, Washington, D.C. 20420. All written comments received will be available for public inspection only at the Veterans Administration Central Office, Veterans Service Unit, Room 132, at the above address, between the hours of 8:00 am and 4:30 pm, Monday through Friday (except holidays) until April 25, 1985.

FOR FURTHER INFORMATION CONTACT: F. Brent Baker (202) 389-3854.

SUPPLEMENTARY INFORMATION: 38 CFR 17.166c has historically listed the actual dollar amount of per diem rates for eligible veterans receiving care in State Veterans Homes. Pub. L. 98-160, Veterans Administration Health Care Programs, raises the possibility of having these rates change more frequently. The VA proposes to remove the actual rates from the regulation in order to avoid the expense of publishing amendments to the regulation whenever the rates change. This amendment proposes inserting a reference to 38 U.S.C. 641(a) into the regulation, to refer the reader directly to the dollar amounts. For those readers who have limited access to the United States Code, the VA proposes to publish the actual per diem rates, whenever they change, in the form of a **Federal Register** Notice. This method would give the public notice of the actual rates, yet avoid the expense of the rulemaking process.

This amendment to VA regulations is considered nonmajor under the criteria of Executive Order 12291 on the basis that it will not have an annual effect on the economy of $100 million or more; it will not result in major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions, nor will it have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator of Veterans Affairs certifies that this amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), these regulations are exempt from the initial and final regulatory flexibility analyses requirements of sections 603-604. The reason for this certification is that this rule will affect only per diem rates for eligible veterans receiving care in State Veterans Homes. It will therefore, have no significant impact on small entities (i.e., small business, small private and nonprofit organizations, and small governmental jurisdictions.)

List of Subjects in 38 CFR Part 17

Health care, Health facilities, Nursing Homes, Government contracts, Veterans.

The catalog of Federal Domestic Assistance Program Numbers are 64.014, 64.015, 64.016.

Approved: February 8, 1985.

By direction of the Administrator:

Everett Alvarez, Jr.,

Deputy Administrator.

PART 17—MEDICAL

38 CFR Part 17, MEDICAL, is amended by revising § 17.166c to read as follows:

§ 17.166c Amount of aid payable.

The amount of aid payable to a recognized State home shall be at the per diem rates established by Title 38, U.S.C. Section 641(a)(1) for domiciliary care; Section 641(a)(2) for nursing home care; and Section 641(a)(3) for hospital care. In no case shall the payments made with respect to any veteran exceed one-half of the cost of the veteran's care in the State home.

(38 U.S.C. 641 as amended by Pub. L. 98-160, sec. 105(a)(1))

[FR Doc. 85-5807 Filed 03-11-85; 8:45 am]

BILLING CODE 8320-01-M

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Notices

Federal Register
Vol. 50, No. 48
Tuesday, March 12, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Exporter's Textile Advisory Committees; Re-establishment

In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2, and 41 CFR Part 101–6, as amended, Federal Advisory Committee Management Interim Rule, and after consultation with GSA, the delegate of the Secretary of Commerce has determined that the re-establishment of the Exporters' Textile Advisory Committee is in the public interest in connection with the duties imposed on the Department by law. The Committee will be re-established 15 days from the date of this notice.

The Exporters' Textile Advisory Committee was initially established on March 24, 1966, and renewed on February 23, 1983. It was established to advise Department officials on the identification and surmounting of barriers to the expansion of textile exports, and on methods of encouraging textile firms to participate in export expansion.

The Committee functions solely as an advisory body in accordance with the provisions of the Federal Advisory Committee Act.

Comments on the re-establishment of the Committee may be directed to Helen L. LeGrande (202/377–3737).

Dated: March 7, 1985.

Katherine M. Bulow,

Assistant Secretary for Administration.

[FR Doc. 85–5890 Filed 3–11–85; 8:45 am]

BILLING CODE 3510-CW-M

Importers and Retailers' and Management-Labor Textile Advisory Committees; Re-establishment

In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2, and 41 CFR Part 101–6, as amended, Federal Advisory Committee Management Interim Rule, and after consultation with GSA, the delegate of the Secretary of Commerce has determined that the re-establishment of the Importers and Retailers' (IRTAC) and Management-Labor (MLTAC) Textile Advisory Committees is in the public interest in connection with the duties imposed on the Department by law. The Committees have been re-established for a two-year period.

IRTAC

The Importers and Retailers' Textile Advisory Committee was first established on August 13, 1963, and most recently renewed on February 23, 1983. It was established to advise Department officials of the effects on import markets and retailing of the bilateral cotton, wool, and man-made fiber textile and apparel agreements negotiated by the United States.

MLTAC

The Management-Labor Textile Advisory Committee was first established on October 18, 1961, and most recently renewed on February 23, 1983. It was established to advise Department officials on problems and conditions in the textile and apparel industry and to furnish information on world trade in textiles and apparel to officials in the Department of Commerce and to the Committee for the Implementation of Textile Agreements, and the Textile Trade Policy Group, U.S. representatives to the General Agreement on Tariffs and Trade, and U.S. negotiators of textile agreements.

The Committees function solely as advisory bodies in accordance with the provisions of the Federal Advisory Committee Act.

For further information contact Helen L. LeGrande (202/377–3737).

Dated: March 7, 1985.

Katherine M. Bulow,

Assistant Secretary for Administration.

[FR Doc. 85–5889 Filed 3–11–85; 8:45 am]

BILLING CODE 3510-CW-M

International Trade Administration

[A-485-006]

Hot-Rolled Carbon Steel Plate From Romania; Cancellation of Suspension Agreement and Resumption of Antidumping Duty Investigation

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Cancellation of Suspension Agreement and Resumption of Antidumping Duty Investigation.

SUMMARY: The Department of Commerce has reconsidered the agreement to suspend the antidumping duty investigation on hot-rolled carbon steel plate from Romania, and has concluded that the suspension agreement no longer meets the requirement of the Tariff Act of 1930 that the agreement be in the public interest. Therefore, the Department is cancelling the suspension agreement and resuming the antidumping duty investigation.

EFFECTIVE DATE: March 12, 1985.

FOR FURTHER INFORMATION CONTACT: David Binder, Office of Investigations, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377–5497.

SUPPLEMENTARY INFORMATION:

Background

On January 4, 1983, the Department of Commerce ("the Department") published in the **Federal Register** (48 FR 317) a notice of suspension of the antidumping duty investigation on hot-rolled carbon steel plate from Romania.

In the suspension agreement Metalexportimport, the Romanian exporter of carbon steel plate to the United States, agreed to make any necessary price adjustments to eliminate sales of carbon steel plate at less than fair value. Under the terms of the suspension agreement, fair value was to be the Department's estimate of foreign market value, determined on the basis of the price of such or similar merchandise in a surrogate country with appropriate adjustments. The Department at that time determined that

the suspension agreement would eliminate sales at less than fair value, could be monitored effectively, and was in the public interest. The suspension agreement specified that the Department would reopen the investigation if the agreement no longer met the requirements of sections 734 (b) or (d) of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Agreement

The merchandise covered by the agreement is hot-rolled carbon steel plate, currently classifiable under items 607.6620, 607.6625, 607.9400, 608.0710 and 608.1100 of the Tariff Schedules of the United States Annotated.

Cancellation

The Department has concluded that the suspension agreement is no longer in the public interest and therefore no longer meets the requirements of section 734(d)(1)(A) of the Tariff Act. The suspension agreement no longer satisfies the public interest requirement because rapidly escalating imports of carbon steel plate from Romania jeopardize restraint arrangements recently initialed by the United States government and numerous other countries and would be detrimental to the U.S. domestic industry.

Under the terms of the recent arrangements, numerous governments accepted quantitative restrictions on their exports of certain steel products into the U.S., based on relative market shares.

Since the suspension agreement was concluded, imports of hot-rolled carbon steel plate from Romania have risen sharply and there are clear indications that total imports in 1985 will be so massive that Romania could become the single largest exporter of the merchandise to the United States. The current and anticipated levels of market penetration of hot-rolled carbon steel plate from Romania threaten the viability of the restraint arrangements.

Massive imports of hot-rolled carbon steel plate from Romania will further depress the sales and profits of the U.S. domestic industry at a time when the United States government has undertaken a program to improve the vitality and performance of that industry. The suspension agreement therefore no longer satisfies the public interest requirement of section 734(d)(1)(A) of the Tariff Act.

Suspension of Liquidation

As provided for in section 734(i)(1) of the Tariff Act, the Department will instruct the Customs Service to suspend liquidation of unliquidated entries of Romanian hot-rolled carbon steel plate entered, or withdrawn from warehouse, for consumption on or after the date 90 days before the date of publication of this notice.

Resumption of Antidumping Duty Investigation

As provided by section 734(i)(1) of the Tariff Act, the Department will resume the investigation as if the Department's affirmative preliminary determination under section 733(b) of the Tariff Act were made on the date of publication of this notice.

The Department will instruct the Customs Service to require a cash deposit of estimated antidumping duties or bond of 13.2 percent of the entered value on all entires of Romanian hot-rolled carbon steel plate entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice.

This notice is published in accordance with section 734(i)(1) of the Tariff Act (19 U.S.C. 1673c(i)(1)) and § 353.43 of the Commerce Regulations.

Dated: March 6, 1985.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-5805 Filed 3-11-85; 8:45 am]

BILLING CODE 3510-05-M

[A-427-044]

Stainless Steel Wire Rods From France; Final Results of Administrative Review of Antidumping Finding

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Final Results of Administrative Review of Antidumping Finding.

SUMMARY: On August 15, 1984, the Department of Commerce published the preliminary results of its administrative review of the antidumping finding on stainless steel wire rods from France. The review covers the one known exporter of this merchandise to the United States currently covered by the finding, the period August 1, 1982, through July 31, 1983, and certain other U.S. sales that we deferred during the last administrative review.

We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received, we have changed the margins from those presented in the preliminary results of review.

EFFECTIVE DATE: March 12, 1985.

FOR FURTHER INFORMATION CONTACT: Phyllis Derrick or John Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-3601.

SUPPLEMENTARY INFORMATION:

Background

On August 15, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 32637) the preliminary results of its administrative review of the antidumping finding on stainless steel wire rods from France (38 FR 22961, August 28, 1973). The Department has now completed that administrative review.

Scope of the Review

Imports covered by the review are shipments of stainless alloy steel wire rods, tempered, treated, or partly manufactured, currently classifiable under item 607.4300 of the Tariff Schedules of the United States Annotated.

The review covers the one known exporter of French stainless steel wire rods to the United States currently covered by the finding, Ugine Aciers, the period August 1, 1982, through July 31, 1983, and certain other U.S. sales that we deferred during the last administrative review.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. We received written comments from both the petitioners, AL Tech Specialty Steel Corporation, Armco Inc., Carpenter Technology Corporation, and Crucible Materials Group of Colt Industries, and the exporter.

Comment 1: As in the last administrative review, the respondent objects to our exclusion of sales to related customers in establishing foreign market value. The petitioners argue that the Department should continue to exclude such sales unless the Department can verify that these sales were at arm's length.

Department's Position: as we stated in the final results of the previous administrative review (49 FR 22844), the respondent has not demonstrated that such sales were made at arm's length. More specifically, the prices to the related firms were at prices significantly lower than to unrelated firms. The respondent's assertion that the lower prices reflected larger quantities was unsupported.

Comment 2: Ugine Aciers argues that the Department should not use a "cap" to offset U.S. selling expenses in exporter's sales price comparisons, basing its objection on the decision of the Court of International Trade in

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Silver Reed America, Inc. v. *United States* (590 F. Supp. 1254 (1984)).

Department's Position: In ESP calculations we are continuing to limit the adjustment of indirect selling expenses in the home market to the amount claimed on U.S. sales. (See *Consumer Products Division, SCM Corp.* v. *Silver Reed America, Inc. and Silver Seiko, Ltd.*, Appeal No. 84–1118 (CAFC, January 28, 1985) in which this position was sustained).

Comment 3: The respondent objects to the Department's refusal to allow each party an opportunity to comment on the other's written comments.

Department's Position: We generally permit the filing of written comments up to 30 days after publication of our preliminary results; if parties file comments before the 30-day cutoff, and then also submit rebuttal comments within the 30 days, we would consider them. We do not believe that we deny any interested party the opportunity to participate meaningfully in the administrative review through our general use of a 30-day cutoff. As the respondent concedes, do we offer the opportunity for a hearing, and none was requested here.

Comment 4: The petitioners argue that the Department should not consider any reported home market sales of rod whose diameters were greater than 0.74 inche, the maximum diameter of a wire rod under the definitions set forth in the Tariff Schedules of the United States.

Department's Position: We agree. However, Ugine Aciers did not report any home market sales with rod diameters greater than 0.74 inche.

Comment 5: The petitioners argue that the Department should require Ugine Aciers to submit more detailed home market product descriptions to allow proper comparisons with its United States sales. Specifically, the respondent should provide descriptions not based merely on the French equivalents of AISI categories but rather using the narrower descriptions of diameter and chemical composition. The Department should require reporting that permits the Department, rather than the respondent, to decide which home market sales are of comparable merchandise; further, the Department should then make the appropriate adjustments for physical differences in merchandise.

Department's Position: We compared rods of similar chemical compositions and adjusted, where appropriate, for differences in the physical characteristics. When Ugine Aciers did not provide sufficient data to make an adjustment for diameter differences, we compared the U.S. sales with the next smaller rod sold contemporaneously in the home market (since such rod is more expensive to produce), without any adjustment for differences in physical characteristics.

Comment 6: The petitioners argue that Ugine Aciers improperly provided only weighted-average amounts for home market charges such as inland freight and insurance. They argue that only the Department has the authority to use averaging techniques.

Department's Position: We agree that we have the authority to use average amounts for charges. We are satisfied that the average amounts used for inland freight and insurance are accurate and do not distort the results.

Comment 7: In adjusting for selling expenses in the home market in ESP calculations, the petitioners argue that the Department should ensure no double-counting through allowance of two categories of selling expenses—central selling expenses and French sales office expenses. Further, the Department should use total sales as its base rather than only direct factory sales.

Department's Position: As a result of verification, we determined there were no double-counted selling expenses. As for the second point, we agree and have used that methodology.

Comment 8: The petitioners argue that, by apparently reporting sales price net of the applicable discount or rebate, the respondent provided insufficient information concerning discounts and rebates offered in the home market. Further, the Department should disregard any prices, discounts, or rebates not authorized by European Community price lists ("CECA"), since such sales cannot be in the ordinary course of trade.

Department's Position: We verified that all net prices as reported are accurate. The European Community pricing regulations do not define the ordinary course of trade. In this review, we considered and verified the actual prices—the amounts received by Ugine Aciers—for its home market transactions. (*See* Early Determination of Antidumping Duty regarding certain stainless steel sheet and strip products from France, 49 FR 8647, March 8, 1984).

Comment 9: The petitioners argue that for its United States sales Ugine Aciers failed to report actual (rather than average) French inland freight, loading, and transit expenses as indicated in the verification report, and that the Department should require the company to supply this information.

Department's Position: Since Ugine Aciers failed to supply any information on these expenses during the review, we used the best information available to determine the amounts.

Comment 10: The petitioners claim that in its questionnaire response Ugine Aciers did not supply the diameters for its U.S. sales.

Department's Position: The petitioners are correct. However, the related U.S. reseller, Intsel Corporation, provided the information in its questionnaire response.

Comment 11: The petitioners argue that, in those instances where price renegotiations occurred, the Department should use the final renegotiated United States sales prices, rather than the original order prices, in its calculations.

Department's Position: We agree and have done so.

Final Results of the Review

As a result of our review of all of the comments received, we have changed the margins from those presented in our preliminary results and we determine that the following margins exist for Ugine Aciers:

Period	Margin (percent)
July 1, 1981 to July 31, 1982	3.21
Aug. 1, 1982 to July 31, 1983	3.53

The Department shall determine, and the U.S. Customs Service shall assess, dumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for by § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties of 3.53 percent, based on the most recent of the above margins, shall be required on all shipments of French stainless steel wire rods produced and exported by Ugine Aciers and entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. For any future entries from a new exporter not covered in this or prior reviews, whose first shipments occurred after July 31, 1983, and who is unrelated to any covered firm, a cash deposit of 3.53 percent shall be required. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

The Department encourages interested parties to review the public record and submit applications for protective orders as early as possible.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act of 1930 (19 U.S.C. 1675(a)(1)) and § 353.53 of the Commerce Regulations (19 CFR 353.53).

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

March 2, 1985.

[FR Doc. 85-5806 Filed 3-11-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-429-403]

Carbon Steel Wire Rod From the German Democratic Republic; Preliminary Determination of Sales at Less Than Fair Value

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that carbon steel wire rod (wire rod) from the German Democratic Republic (GDR) is being, or is likely to be, sold in the United States at less than fair value, and that "critical circumstances" do not exist with respect to imports of the merchandise under investigation. We have notified the U.S. International Trade Commission (ITC) of our determination, and we have directed the U.S. Customs Service to suspend the liquidation of all entries of the subject merchandise as described in the "Suspension of Liquidation" section of the notice. If this investigation proceeds normally, we will make a final determination by May 20, 1985.

EFFECTIVE DATE: March 12, 1985.

FOR FURTHER INFORMATION CONTACT: Raymond Busen, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; Telephone: (202) 377-2830.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

Based upon our investigation, we preliminarily determine that wire rod from the GDR is being, or is likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act). We have preliminarily determined the weighted-average margin of sales at less than fair value to be 26.3 percent. We also found that critical circumstances do not exist with respect to exports of wire rod from the GDR.

If this investigation proceeds normally, we will make a final determination by May 20, 1985.

Case History

On September 26, 1984, we received a petition from Atlantic Steel Company, Continental Steel Corp., Georgetown Steel Corp., North Star Steel Texas, Inc., and Raritan River Steel Company, filed on behalf of the domestic producers of wire rod. In compliance with the filing requirements of § 353.36 of our regulations (19 CFR 353.36), the petitioners alleged that imports of wire rod from the GDR are being, or are likely to be, sold in the United States at less than fair value within the meaning of the Act, and that these imports materially injure or threaten material injury to a United States industry. Petitioners also alleged that critical circumstances exist, as defined in section 733(e) of the Act. After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping investigation. We notified the ITC of our action and initiated such an investigation on October 16, 1984 (49 FR 42773). On November 13, 1984, the ITC determined that there is a reasonable indication that imports of wire rod are materially injuring a U.S. industry.

On January 22, 1985, a questionnaire was sent to Metallurgiehandel Ve Aussen-und-Binnenhandelsbetrieb der DDR (Metallurgiehandel). On February 28, 1985, the respondent advised the Department that it would not be submitting sales data prior to the preliminary determination.

As discussed under the "Foreign Market Value" section of this notice, we have preliminarily determined that the GDR is a state-controlled-economy country for the purpose of this investigation.

Scope of Investigation

The merchandise covered by this investigation is carbon steel wire rod, as currently provided for in item 607.17 of the Tariff Schedules of the United States (TSUS).

Because Metallurgiehandel accounted for all exports of this merchandise to the United States, we limited our investigation to that firm. We investigated all sales of wire rod for the period April 1, 1984 through September 30, 1984.

Fair Value Comparison

To determine whether sales in the United States of the subject merchandise were made at less than fair value, we compared the United States price with the foreign market value.

United States Price

As provided in section 772 of the Act, we calculated the purchase price of wire rod by using the best information available, which was average GDR price information gathered from Department Special Summary Steel Invoice (SSI) statistics. We made deductions for foreign inland freight, ocean freight, marine insurance, and duty.

Foreign Market Value

In accordance with section 773(c) of the Act, we used surrogate prices of wire rod imported to the United States to determine foreign market value. Petitioners alleged that the GDR is a state-controlled-economy country and that sales of the subject merchandise from that country do not permit a determination of foreign market value under section 773(a), citing the prior investigation of Unrefined Montan Wax from the German Democratic Republic (46 FR 38555 (1981)). After an analysis of the GDR's economy, and consideration of the briefs submitted by the parties, we have preliminarily concluded that the GDR is a state-controlled-economy country for purposes of this investigation. Central to our decision on this issue is the fact that the central government of the GDR strictly controls the prices and levels of production of the GDR wire rod industry, as well as the internal pricing of the factors of production.

As a result, section 773(c) of the Act requires us to use prices or the constructed value of such or similar merchandise in a "non-state-controlled-economy" country. Our regulations establish a preference for foreign market value based upon sales prices. They further stipulate that, to the extent possible, we should determine sales prices on the basis of prices in a "non-state-controlled-economy" country at a stage of economic development comparable to the country with the state-controlled economy.

After an analysis of countries producting wire rod, we determined that Australia would be an appropriate surrogate. However, we have been unable to develop actual prices for wire rod in the Australian home market prior to the preliminary determination.

Therefore, pursuant to § 353.8(a)(1) of our regulations, we based foreign market value on the average Australian ex-mill price of low carbon wire rod for export to resellers in the United States. We considered only low carbon wire rod to resellers because that is the quality of wire rod which the GDR exported to the United States through

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resellers during the period investigated. We gathered average price information from SSSI statistics, which was the best information available. We made deductions for foreign wharfage, ocean freight, and marine insurance. We also made deductions, where applicable, for U.S. wharfage and handling.

Preliminary Negative Determination of Critical Circumstances

Counsel for the petitioners alleged that imports of wire rod from the GDR present "critical circumstances." Under section 733(e) of the Act, critical circumstances exists if we have a reasonable basis to believe or suspect that (1) there is a history of dumping in the United States or elesewhere of the class or kind of the merchandise which is the subject of the investigation; or the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value; and (2) there have been massive imports of the class or kind of merchandise that is the subject of the investigation over a relatively short period.

In determining whether there is a history of dumping of wire rod from the GDR in the United States or elsewhere, we reviewed past antidumping findings of the Department of the Treasury as well as past Department of Commerce antidumping duty orders. We also reviewed the antidumping actions of other countries, and found no past antidumping determinations on wire rod from the GDR.

We then considered whether the person by whom, or for whose account, this product was imported knew or should have know that the exporter was selling this product at less than its fair value. It is the Department's position that this test is met where margins calculated are sufficiently large that the importer knew or should have known that prices for sales to the United States (as adjusted according to the antidumping law) were significantly below foreign market value. In investigations involving a product from state-controlled economy countries, it is more difficult to impute to importers knowledge of sales at less than fair value. We must make a determination on a case-by-case basis using the available information and drawing upon market conditions in the industry which is the subject of the investigation.

In this case, we believe that the margins calculated are not sufficiently large that the importer knew, or should have known, that the merchandise was being sold in the United States at less than fair value.

Accordingly, we preliminarily determine that critical circumstances do not exist with respect to imports of wire rod from the GDR.

Verification

We will verify all data used in reaching the final determination in this investigation.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to suspend liquidation of all entries of wire rod from the GDR that are entered or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeded the United States price, which was 26.3 percent of the ex-factory value. This suspension of liquidation will remain in effect until further notice.

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry before the later of 120 days after we make our preliminary affirmative determination, or 45 days after we make our final determination.

Public Comment

In accordance with section § 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 10:00 a.m. on April 10, 1985, at the U.S. Department of Commerce, room 1851, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room 3099B, at the above address within 10 days of this notice's publication. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by April 3, 1985. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within 30 days of publication of this notice, at the above address in at least 10 copies.

Dated: March 5, 1986.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-5827 Filed 3-11-85, 8:45 am]

BILLING CODE 3510-DS-M

[C-489-401]

Certain Textile Mill Products and Apparel From Turkey; Termination of Countervailing Duty Investigations Under Section 303; Preliminary Affirmative Countervailing Duty Determinations Under Title VII; and Rescission of Initiation With Respect to Woven Sisal

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Termination of Countervailing Duty Investigations under Section 303; Preliminary Affirmative Countervailing Duty Determinations under Title VII; and Rescission of Initiation with Respect to Woven Sisal.

SUMMARY: Turkey has become a "country under the Agreement." Accordingly, we are terminating the pending countervailing duty investigations under section 303 of the Tariff Act of 1930, as amended ("the Act"), and the investigations shall be subject to the provisions of title VII of the Act as if preliminary determinations under section 703 were made on February 25, 1985, the effective date of the application of title VII to Turkey. We are also rescinding the initiation of investigation with respect to woven sisal.

EFFECTIVE DATE: February 25, 1985.

FOR FURTHER INFORMATION CONTACT: Mary A. Martin, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and

Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 377–3464.

SUPPLEMENTARY INFORMATION:

Initiation of Investigations and Preliminary Determinations

On July 20, 1984, we received a petition from the American Textile Manufacturers Institute, the Amalgamated Clothing and Textile Workers Union, and the International Ladies' Garment Workers Union, on behalf of the U.S. industry producing certain textiles and textile products. In compliance with the filing requirements of § 355.26 of our regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in Turkey of textiles and textile products receive, directly or indirectly, benefits which constitute bounties or grants within the meaning of section 308 of the Act.

We found that the petition contained sufficient grounds upon which to initiate countervailing duty investigations, and on August 9, 1984, we initiated such investigations (49 FR 32641). We stated that we expected to issue preliminary determinations by October 15, 1984. On September 21, 1984, we determined these investigations to be "extraordinarily complicated," as defined in section 703(c)(1)(B) of the Act. Therefore, we extended the period for making our preliminary determinations by 65 days until December 17, 1984 (49 Fed. Reg. 40198).

On December 17, 1984, we issued our determinations that certain benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Turkey of certain textile mill products and apparel.

On December 3, 1984, the petitioners amended their petitions to include the following ATMI member firms as individual petitioners with respect to textile mill products:

- Belton Industries, Inc., of Belton, S.C.
- Burlington Industries, Inc., of Greensboro, N.C.
- Chatham Manufacturing Company of Elkin, N.C.
- Milliken & Company of Spartanburg, S.C.
- Mount Vernon Mills, Inc., of Greensville, S.C.
- Shuford Mills, Inc., of Hickory, N.C.
- J.P. Stevens & Co., Inc., of New York, N.Y. and
- West Point-Pepperell, Inc., of West Point, Ga.

On December 17, 1984, the Department determined that ATMI is not an "interested party" under section 771(9)(E) of the Act, and has no standing as a petitioner in these investigations. The Department accepted the amendment to add the eight firms listed above as petitioners with respect to textile mill products.

On February 25, 1985, the Office of the United States Trade Representative announced that Turkey was a "country under the Agreement," as set out in section 701(b) of the Act (50 FR 8428). As a result title VII of the Act became applicable to the then pending countervailing duty investigations. According to section 102 of the Act, once title VII becomes applicable, any pending investigation under section 303 of the Act must terminate. Where a preliminary determination, but not a final determination has been made under section 303, the case is to be treated as if the preliminary determination under section 703 was made the day title VII first applied to that country. Therefore, we are terminating the investigations we initiated on August 9, 1984, under section 303 of the Act. The investigations shall be subject to the provisions of title VII of the Act as if the affirmative preliminary determinations made on December 17, 1984, under section 303 (49 FR 49655) were affirmative preliminary determinations under section 703 of the Act made on February 25, 1985. The final determinations in these investigations now are due by May 13, 1985.

Scope of the Investigations

The products covered by these investigations are certain textile mill products and apparel which are described in Appendix A, attached to this notice.

Rescission of Initiation of Investigation With Respect to Woven Sisal

The government of Turkey has requested that the Department terminate the instant investigation with respect to woven sisal imported from Turkey under TSUSA item number 361.5660. The government argues that because the Department determined that these petitioners have failed to establish that they have standing with respect to woven sisal in the parallel investigation of "Certain Textile Mill Products from Mexico" and rescinded the initiation of the investigation with respect to certain articles of sisal (50 FR 301), the Department should terminate its investigation of products imported from Turkey under TSUSA item number 361.5660.

In the investigation of certain textile mill products from Mexico, petitioners admitted that they do not produce products of sisal but argued that woven fabrics of man-made fiber are competitive with and "like" the Mexican products made from woven sisal. The Department noted that several U.S. purchasers and distributors had submitted letters stating that woven sisal is of a higher quality, and is more expensive and appealing to buyers than wall and floor coverings produced in the United States. The Department concluded that "[g]iven the evidence that woven sisal has qualities that distinguish it from most floor and wall coverings, and the fact that it is not used as a fabric," the petitioners failed to show that they have standing with respect to woven sisal. We agree with the government of Turkey that petitioners have failed to establish their standing with respect to woven sisal. Therefore, we are rescinding our notice of initiation with respect to woven sisal.

Notification to ITC

Pursuant to section 703(f) of the Act, we are notifying the U.S. International Trade Commission (ITC) and making available to it information relating to the matter under investigation. We will make available to the ITC all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

After our final determinations, the ITC will determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded by reason of imports of certain textile mill products and apparel from Turkey.

Dated: March 4, 1985.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

Appendix A

The products covered by these investigations are certain textile mill products and apparel, which are currently classified under the item numbers of the Tariff Schedules of the United States, Annotated (TSUSA) listed below.

A. TEXTILE MILL PRODUCTS						
Yarns						
301.1100	301.2000	301.3000	301.4000	302.1022	302.1024	303.2042
307.6810	307.6830	307.6850	310.0214	310.4027	310.6045	310.6050
310.9000	310.9120	.....				
Fabric						
320.1019	320.1034	320.1045	320.1071	320.1077	321.4016	321.4023
321.4009	321.4073	322.2015	322.2017	322.2029	322.2036	322.2040
322.2047	322.2055	322.2056	322.2065	322.2070	322.2079	322.2097
336.6447	338.1574	338.1578	.....			
Special Construction Fabrics						
346.6050	.....					
Textile Furnishings						
360.4215	360.4815	360.4825	360.4855	360.8400	361.0510	361.2405
361.5000	360.7000	361.5630	361.5650	363.1040	363.2580	363.5130
363.6540	363.7500	364.1300	364.2300	365.7825	366.1880	366.2180
366.2460	366.2480	366.2780	366.4600	366.7925	366.7930	367.3424
367.3428	367.4500	.....				
Miscellaneous						
386.0600	386.5045	388.4000	389.6265	706.3400	706.3850	706.4106
706.4111	.....					
B. APPAREL						
Apparel						
370.8440	372.1020	372.1030	372.1040	372.1050	372.1540	372.3500
372.4500	372.6520	373.1000	373.2200	374.3530	374.3550	374.5040
374.6040	378.1030	378.1540	379.3915	379.3925	379.3930	379.4020
379.4030	379.4050	379.4060	379.4110	379.4140	379.4640	379.4670
379.4910	379.4920	379.5520	379.5545	379.5550	379.5565	379.6220
379.6240	379.7605	379.7620	379.8356	379.8357	379.8358	379.8359
379.9020	379.9562	379.9564	379.9566	379.9568	383.0213	383.0219
383.0222	383.0218	383.0236	383.0305	383.0306	383.0390	383.0505
383.0606	383.0622	383.0631	383.0630	383.0805	383.0820	383.0841
383.0860	383.1319	383.1321	383.1610	383.2205	383.2305	383.2706
383.2710	383.2712	383.2714	383.2715	383.2716	383.2718	383.2721
383.2722	383.2724	383.2726	383.2728	383.2730	383.2732	383.2736
383.2738	383.2750	383.2752	383.2754	383.2758	383.2807	383.2809
383.2814	383.2816	383.2818	383.2821	383.2820	383.2820	383.2835
383.2910	383.3010	383.3020	383.3030	383.3040	383.3037	383.3038
383.3060	383.3090	383.3200	383.3445	383.3448	383.3465	383.3466
383.3710	383.3770	383.4200	383.4300	383.4702	383.4705	383.4709
383.4711	383.4721	383.4724	383.4726	383.4747	383.4761	383.4762
383.4764	383.4816	383.4821	383.4825	383.5026	383.5027	383.5051
383.5054	383.5090	383.5395	383.6310	383.6330	383.6345	383.6360
383.6371	383.6395	383.7010	383.7020	383.7205	383.7210	383.7510
383.7522	383.7532	383.7534	383.7536	383.7538	383.7542	383.7544
383.7546	383.7548	383.7552	383.7554	383.7556	383.7528	383.7558
383.7582	383.7595	383.7764	383.7768	383.7769	383.7770	383.7771
383.7783	383.7881	383.7883	383.7884	383.7887	383.7888	383.7892
383.8012	383.8045	383.8069	383.8071	383.8073	383.8300	383.8400
383.8620	383.8663	383.9015	383.9025	383.9050	383.9056	383.9057
383.9058	383.9059	383.9061	383.9062	383.9063	383.9064	383.9066
383.9225	702.0600	702.8000	704.2000	704.6500	704.8550	704.9000

[FR Doc. 85-5829 Filed 3-11-85; 8:45 am]
BILLING CODE 3510-DS-M

[C-549-401]

Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Certain Apparel From Thailand

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that certain benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Thailand of certain apparel. The estimated net bounty or grant is 1.23 percent *ad valorem*. We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of certain apparel from Thailand that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice, and to require a cash deposit on entries of these products in the amount equal to the estimated net bounty or grant.

EFFECTIVE DATE: March 12, 1985.

FOR FURTHER INFORMATION CONTACT: Barbara Tillman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; Telephone: (202) 377-1785.

SUPPLEMENTARY INFORMATION: .

Final Determination

Based upon our investigation, we determine that certain benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Thailand of certain apparel. For purposes of this investigation, the following programs are found to confer a bounty or grant:

- Export Packing Credits.
- Rediscounts of Industrial Bills.
- Electricity Discounts for Exporters.
- Tax Certificates for Exports.
- Assistance to Trading Companies.

We estimate the net bounty or grant to be 1.23 p ercent *ad valorem*.

Case History

On July 20, 1984, we received a petition from the American Textile Manufacturers Institute, the Amalgamated Clothing and Textile Workers Union, and the International Ladies' Garment Workers Union, on behalf of the U.S. industries producing certain textiles and textile products. In compliance with the filing requirements of § 355.26 of our regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in Thailand of textiles and textile products receive, directly or indirectly, benefits which constitute bounties or grants within the meaning of section 303 of the Act.

We found that the petition contained sufficient grounds upon which to initiate

a countervailing duty investigation on certain apparel and, on August 9, 1984, we initiated such an investigation (49 FR 32641). This investigation is one of those initiated by the Department unde the title "Certain Textiles and Textile Products from Thailand." Because of the number of products covered, and the differences in those products, the Department determined that it should conduct separate investigations—one of textiles and non-apparel textile products, and one of apparel. Because of the potential for confusion, as apparel can also be considered a textile product, we changed the titles of our investigations to "Certain Textile Mill Products and Apparel from Thailand." With respect to certain textile mill products, the producers and exporters of certain textile mill products have entered into a suspension agreement. Thus, this notice pertains only to our investigation of certain apparel as defined in the "Scope of Investigation" section of this notice.

We stated that we expected to issue a preliminary determination by October 15, 1984. On September 21, 1984, we determined this investigation to be "extraordinarily complicated," as defined in section 703(c)(1)(B) of the Act. Therefore, we extended the period for making our preliminary determination by 65 days until December 17, 1984 (49 FR 40198).

Since Thailand is not a "country under the Agreement" within the meaning of section 701(b) of the Act and the merchandise being investigated is dutiable, sections 303 (a)(1) and (b) of the Act apply to this investigation. Accordingly, petitioners are not required to allege that, and the U.S. International Trade Commission is not required to determine whether, imports of these products cause or threaten material injury to a U.S. industry.

Due to the scope of this investigation, we employed a two-step questionnaire process. We presented a preliminary questionnaire to the government of Thailand in Washington, D.C., on August 27, 1984. Based on the responses to the preliminary questionnaire, we identified the 18 apparel producers and exporters who accounted for at least 60 percent of the value of certain apparel exported to the United States. In addition, we requested responses from the four trading companies that exported the subject merchandise manufactured by the selected producers to the United States. On October 25, 1984, we presented the detailed government and company questionnaires to the government of Thailand in Washington, D.C. The responses to our detailed questionnaires were received on November 27, November 30, December 3 and December 7, 1984.

Certain respondents in the "Certain textile Mill Products and Apparel" investigations have raised the issue as to whether petitioners have standing to file these cases. Petitioners have also made comments regarding our methodology in selecting companies to receive detailed questionnaires, and our investigation of only those companies that account for sixty percent of exports of the subject merchandise to the United States. We have addressed these issues in our final determinations on "Certain Textile Mill Products and Apparel from Malaysia," published concurrently with this notice. See that notice for our positions on these issues.

On December 17, 1984, we issued our preliminary determination in this investigation (49 FR 49661). We preliminarily determined that benefits constituting bounties or grants within the meaning of the Act are being provided to manufacturers, producers, or exporters in Thailand of the subject merchandise.

As announced in the notice of preliminary determination, we gave interested parties an opportunity to submit oral and written views. We held a public hearing on February 12, 1985. Both petitioners and respondents submitted comments on this proceeding.

This final determination applies only to certain apparel. On February 1, 1985, we initialed a proposed suspension agreement with respect to certain textile mill products, and on March 4, 1985, a suspension agreement was signed.

Scope of the Investigation

The products covered by this investigation are certain apparel, which are described in the Appendix attached to this notice.

Analysis of Programs

Throughout this notice, we refer to certain general principles applied to the facts of the instant investigation. These principles are described in the "Subsidies Appendix" attached to the notice of "Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina; Final Affirmative Countervailing Duty Determination and Countervailing Duty Order" which was published in the April 26, 1984 issue of the **Federal Register** (49 FR 18006).

For purposes of this determination, the period for which we are measuring bounties or grants ("the review period") is calendar year 1983.

Based upon our analysis of the petition, the responses to our questionnaires, our verification, and comments submitted by interested parties, we determine the following:

I. Programs Determined To Confer Bounties or Grants

We determine that bounties or grants are being provided to manufacturers, producers, or exporters in Thailand of certain apparel under the following programs.

A. Export Packing Credits

Export packing credits are short-term loans used for either pre-shipment or post-shipment financing. These loans, which are provided through commercial banks, can be rediscounted at the Bank of Thailand through its export refinancing facility. Under the "Regulations Governing the Rediscount of Promissory Notes Arising from Exports" (B.E. 2514), the commercial banks, during the review period, charged the borrower a maximum of seven percent interest per annum for the export credit, and then the bank rediscounted these loans at five percent interest with the Bank of Thailand. These loans are provided in baht for up to 90 days.

Because only exporters are eligible for these loans, we determine that they are countervailable to the extent that they are provided at preferential rates. As the benchmark for short-term loans, it is our practice to use the national average commercial interest rate or the most comparable, predominant commercial interest rate. For purposes of this determination we are using the average interest rate charged by commercial banks during 1983. We verified this rate at the Bank of Thailand. Comparing this average interest rate to the rate charged on export packing credits, we find that the rate on export packing credits is preferential, and, therefore, these loans confer bounties or grants on the products under investigation. Applying this average commercial bank interest rate as the benchmark, we calculate an estimated net bounty or grant of 0.69 percent *ad valorem* for apparel.

B. Rediscount of Industrial Bills

The Bank of Thailand authorizes rediscounts for short-term promissory notes arising from industrial activity. The Bank of Thailand's "Regulations Governing the Rediscount of Promissory Notes Arising from Industrial Undertakings" permit commercial banks to rediscount short-term promissory notes for industrial purchases, provided that the manufacturer issuing the short-term promissory note is creditworthy and that the bank discounts the note at

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a rate not exceeding seven percent per annum (the seven percent rate was applicable during the review period). In turn, commercial banks may rediscount these industrial promissory notes at five percent with the Bank of Thailand. These industrial promissory notes are also called industrial bills.

As specified in the regulations, the maximum amounts which may be rediscounted each year under these regulations are determined by the Bank of Thailand, and are based on the following criteria:

- For basic industries (*i.e.*, those essential to economic development) the maximum amount of rediscount shall not exceed 90 percent of the annual operating expenses which the Bank of Thailand deems necessary for each industry;
- For industries which use local agricultural raw materials equivalent to no less than 20 percent of the total value of raw materials used, the maximum amount of rediscount shall not exceed 80 percent of the annual operating costs which the Bank of Thailand deems necessary for each industry;
- For industries which export goods equivalent to no less than 20 percent of the total value of sales, the maximum amount of rediscount shall not exceed 80 percent of the annual operating costs which the Bank of Thailand deems necessary for each industry;
- For industries using local raw materials equivalent to no less than 50 percent of the total value of raw materials used, the maximum amount of rediscount shall not exceed 70 percent of the annual operating costs which the Bank of Thailand deems necessary for each industry; and
- For industries not classified above but which are directly involved in the production process and which utilize local raw materials and local expenditures equivalent to no less than 50 percent of the total cost or in which labor represents the main factor of production, the maximum amount of rediscount shall not exceed 60 percent of the annual operating costs which the Bank of Thailand deems necessary for each industry.

To determine whether these industrial bills are countervailable, we must determine whether the categories in which apparel producers are represented are limited to a specific group of industries or are tied to export performance. To make this determination, we examine the criteria authorizing the maximum amount of rediscount in each category.

As we found at verification, the Bank of Thailand reviews a company's application and determines the category for which it is eligible. Then the Bank of Thailand sets the credit line available to that company. The credit line corresponds to the maximum level of rediscount specified in each category. As specified in the criteria, basic industries are authorized a maximum rediscount of 90 percent. We verified that basic industries must be designated by the government of Thailand, and that during 1983 only four basic industries were represented in the 90 percent category, including at least one apparel producer that also produces textiles. Therefore, we determine that the basic industry category is limited to a specific group of industries.

The next two categories require the use of agricultural raw materials in production or a certain level of export sales. The maximum level of rediscount for both these categories is 80 percent. With respect to the agricultural raw materials category, no apparel producers are classified in this category. Apparel producers are classified in the export category. Since eligibility in this category is tied to export performance, we find that a bounty or grant is being provided to the extent that export sales are receiving preferential treatment over domestic sales.

The fourth category requires industries to use a certain percentage of local raw materials and provides up to 70 percent rediscount. The fifth and last category requires that industries use both local raw materials and local expenditures for value added and authorizes a 60 percent rediscount. No apparel producers are currently receiving loans in these last two categories.

Since we have determined that the basic industry category is limited to a specific group of industries and the export category is tied to export performance, we must now determine the amount of the countervailable benefit received. In order to calculate the benefit received by apparel producers represented in the basic industry category and the export category, we must detemine whether the interest rate on industrial bills is preferential and whether the entire loan amount is countervailable. First, using the benchmark rate described in the section on "Export Packing Credits," the seven percent interest rate is preferential. Second, we determine that the industry-neutral eligibility criteria for the fifth category indicates that within this category there is no *de jure* limitation to a specific enterprise or industry or group of enterprises on industries. We verified that 10 diverse industries ranging from floor tiles to printing are represented in this category. Therefore, we determine that within the fifth category, there is no *de facto* limitation either. Moreover, combining the industries eligible in this fifth category with industries in the categories with higher eligibility, we find that most industries in Thailand are eligible to rediscount bills accounting for at least 60 percent of their operating expenses.

Accordingly, we determine that the threshold percentage of rediscount that is not limited to a group of industries is 60 percent, which is the lowest level of rediscount that companies participating in this program can receive. Therefore, that portion of the loans received in the basic industry category and the export category that is above the 60 percent threshold is countervailable. We multiplied this portion by the difference between the benchmark and the discount rate to calculate an estimate net bounty or grant of 0.01 percent *ad valorem* for apparel.

C. Electricity Discounts for Exporters

The three electricity authorities in Thailand provide a discount of 20 percent on the electricity rates charged to producers of export products. The discount is calculated as a credit which is deducted from each company's electric bill. Because these discounts are available only to exporters, we determine that electricity discounts confer bounties or grants on exports of the products under investigation. To calculate the bounty or grant, we divided the total amount of electricity discounts received during the review period by total export sales. The estimated net bounty or grant is 0.08 percent *ad valorem* for apparel.

D. *Tax Certificates for Exports*

The government of Thailand issues tax certificates to exporters to rebate indirect taxes on inputs into the exported product. In Thailand indirect tax rebates are authorized under two programs.

In 1981, a program for rebating indirect taxes was implemented through the "Tax and Duty Compensation of Exported Goods Produced in the Kingdom Act" (hereinafter the Tax and Duty Act). The rebate rates under the Tax and Duty Act are computed on the basis of a 1975 input/output (I/O) study. The statistical base for the I/O study was updated in 1980. Using the I/O study, the Thai Ministry of Finance computes the value of total inputs (both imports and local purchases) at ex-factory prices. They also calculate the import duties and indirect taxes on each input. The Ministry then calculates the

ratio of indirect taxes to the ex-factory prices of the final product to determine the rebate rate for each type of product. This rate is then applied to the FOB value of the export to determine the amount of rebate that will be provided. Under the Tax and Duty Act the rebates are paid to companies through tax certificates which can be used to pay other tax liabilities. These tax certificates can also be transferred to other companies which can use them to pay their tax liabilities. The current rebate rates on 99 covered products are listed in the "Notification of the Ministry of Finance" No. Or. 1/2524.

The alternative program authorizing the rebate of indirect taxes is the "Announcement of the Ministry of Finance" No. Chor Phor 1/2514. This rebate authorization was announced in 1971 and was revised in 1978 by No. Or. 126/2521. The Announcement specifies that indirect taxes on materials, equipment, machinery, fuel and other energy sources will be given consideration for compensation. Under this program, only indirect taxes and import duties on raw materials, fuel and spare parts are included in the rebate. The rebate under this program is calculated as a flat rate in baht per kilogram. The baht per kilogram rates were established in 1972 and revised in 1975. The amount of the rebate was based on studies of the incidence of indirect taxes and import duties on textile mill products and apparel. This flat rate rebate program is scheduled for termination on March 31, 1985.

Currently, exporters can choose the program under which they will claim rebates of indirect taxes. After March 31, 1985, exporters will only be able to claim rebates under the Tax and Duty Act.

Traditionally, we have applied a three-prong test to determine whether the rebate of prior stage cumulative indirect taxes borne by inputs that are physically incorporated into the final product is a subsidy. Under this test, we examine whether: (1) The program involved operates for the purpose of rebating indirect taxes; (2) there is a clear link between eligibility for payments on exports and indirect taxes paid; and (3) the government has reasonably calculated and documented the actual tax incidence borne by the product concerned and has demonstrated a clear link between such tax incidence and the rebate amount paid on export.

Where an indirect tax rebate system incorporates rebates on import duties, or where there is a fixed duty drawback system instead of an individual duty drawback system (Thailand operates an individual duty drawback system which is addressed in the section on "Duty Drawback or Exemption"), we have determined that we must apply a linkage analysis similar to our test for rebate systems that are designed only to rebate indirect taxes. The Department first looks to whether the system is intended to operate as a drawback system. Next, the Department analyzes whether the government properly ascertained the level of the fixed drawback. This includes review of the sample and of the ability to document, and the accuracy of, the information gathered from the sample on input coefficients, import prices and rates of duty on imported inputs, the ratio of imported inputs to domestically produced inputs (when, for a given imported input, there is also domestic production of the input), and the exchange rates used to convert import prices denominated in a foreign currency to the local currency.

Finally, the schedules must be revised periodically so that the drawback amounts reflect the amount of duty and indirect taxes paid. Where these conditions are met, the Department will consider that a rebate system that rebates both indirect taxes and import duties, or a fixed duty drawback system, does not confer a bounty or grant when the amount rebated for duties and indirect taxes on physically incorporated inputs equals (or is less than) the fixed amount set in the schedule for the exported product. When the system rebates duties and indirect taxes on both physically incorporated and non-physically incorporated inputs, we would find a bounty or grant exists to the extent that the fixed rebate exceeds the allowable rebate on physically incorporated inputs. Based on these tests, we determine the following.

The Tax and Duty Act provides that the taxes and duties eligible for rebate include those on materials, equipment, spare parts, machinery, fuels and other energy used in production. Taxes such as income tax, payment of royalties to the government for mineral rights, and taxes which are otherwise refundable or exempt are excluded from the rebate. Under the flat rate rebate program, the same general eligibility criteria apply and direct taxes such as income taxes are excluded. Thus, the programs operate to rebate indirect taxes and import duties.

The eligibility criteria for each of these two rebate programs, when considered in conjunction with the government's response and the information obtained during verification on the methodology and sampling used in calulating the rebate rates, lead us to conclude that there is a link between eligibility for the rebates and indirect taxes and import duties actually paid.

We have reviewed the documentation submitted by the government in their response and at verification showing their detailed calculation of the rebate rates. Under the Tax and Duty Act, these calculations itemize the inputs and list ex-factory prices, import values, import taxes, and domestic indirect taxes. The inputs itemized in the government's calculations include non-physically incorporated items such as plastics and tools.

The government's calculations establish rates for 134 goods under the I/O classification system. The National Economic and Social Development Board of Thailand (NESDB) then converts these 134 rates into rates for 99 groups of products classified according to the Thai customs tariff nomenclature. These 99 rates are the rates that are published and which producers and exporters receive. We verified the conversion formula used when converting the 134 rates into 99 rates.

Under the flat rate rebate program, the government provided documentation support its calculations of the tax incidence borne by the product. The amount paid on export equals the amount of the calculated tax incidence. These flat rate rebates cover both physically incorporated and non-physically incorporated items.

Because under both rebate programs non-physically incorporated items are included in the rebate calculations at the final stage, we determine that there is an excessive remission of indirect taxes on exported goods. To calculate the amount of the overrebate, we have taken into account the following factors. We verified that companies can only claim a rebate for a particular export sale under one program, not both. Under the Tax and Duty Act rebate, all three of the inputs in the flat rate rebate program are included as well as a number of other inputs. Under both programs, the government calculates a "full" rebate rate that includes import duties and indirect taxes, and a "normal" rebate rate which is the rate received by firms when they participate in the customs duty drawback or exemption programs on imported raw materials, or when firms do not use imported materials in the production process. For purposes of this determination, we are calculating the overrebate based only on the full rate that includes import duties since we have no verified infomation on the proportion that normal rebates represent of total rebates received by our respondent companies.

Since companies can only claim a rebate on a particular export sale under either the Tax and Duty Act or the flat rate program, and because all the inputs identified in the flat rate program are included in the Tax and Duty Act, we are using the data in the Tax and Duty Act rebate programs as the basis of our calculation of the overrebate. If any new information on the flat rate program is received or if this program is not terminated on March 31, 1985, we will examine this program again in our administrative review under section 751 of the Act.

To determine the estimated net bounty or grant from this excessive remission of indirect taxes, we recalculated, for each Thai customs category for apparel, the indirect tax incidence (including import duties) on physically incorporated input at FOB prices. We compared this allowable rebate to the authorized rebate received by apparel producers. We then weighted the percentage by which the authorized rebate exceeded the allowable rebate by the proportion that the corresponding apparel category represented of total export sales. Using this methodology, we calculated an estimated net bounty or grant of 0.44 percent *ad valorem* for apparel.

E. Assistance to Trading Companies

Petitioners alledged that the Board of Investments provides the following benefits to qualified international trading companies:

- Exemption of import duties and business taxes on imported materials used to produce export goods;
- Financing support from the Bank of Thailand including the holding of foreign currency accounts;
- Tax holidays and accelerated depreciation; and
- Deduction from taxable income of 200 percent of foreign marketing expenses.

In 1978 the Board of Investments authorized certain incentives to eligible trading companies under section 36 of the Investment Promotion Act. These incentives included duty exemption for both raw materials and essential materials used in export production, exemptions of certain business taxes, double deduction of foreign marketing expenses for income tax purposes and permission to maintain foreign currency accounts. Eligibility for this program was terminated on March 11, 1981, pursuant to the Announcement of the Board of Investment No. Gnor 1/1981. However, those trading companies that qualified for the program prior to the termination date continue to receive incentives.

During the review period, the trading companies received the following incentives: Export packing credits, duty exemptions on imported raw materials, permission to hold foreign currency accounts and the double deduction of foreign marketing expenses from income taxes. With respect to the export packing credits provided to trading companies, these loans are determined to confer bounties or grants and are included in the calculation of the *ad valorem* rate specified in the section of the notice on "Export Packing Credits." With respect to import duty exemptions, we verified that the program functions in the same way as the duty drawback program which we have determined does not confer a bounty or grant (see the section of the notice on "Duty Drawback or Exemption"). With respect to foreign currency accounts, only one trading company had permission to hold foreign currency accounts during the review period. We verified that the only foreign currency account held by this company in which deposit and withdrawal transactions took place was a non-U.S. dollar account. Thus, if any benefits were derived from the holding of this foreign currency account, they would accrue solely to non-U.S. exports.

With respect to the double deduction of foreign marketing expenses for income tax purposes, we determine that this incentive is countervailable because it is limited to exports. We verified that only one trading company claimed this double deduction. During the review period, this trading company exported only apparel produced by the manufacturers selected to respond to our questionnaire. To calculate the benefit, we determined the tax savings received during the review period and found an estimated net bounty or grant of 0.01 percent *ad valorem* for apparel.

II. Programs Determined Not To Confer Bounties or Grants

We determine that bounties or grants are not being provided to manufacturers, producers or exporters in Thailand of certain apparel under the following program.

Duty Drawback or Exemption

Petitioners alleged that producers and exporters of the products under investigation received countervailable benefits from the drawback of, or exemption from, import duties, business taxes and municipal taxes on imports used in export production.

Under the Thai Customs Act (B.E. 2482), materials that are imported and that are used in the production, mixing, assembling, or packaging of an exported product are eligible to receive either a duty exemption or a duty drawback. In addition, under provisions established in B. E. 2469, companies can import materials under bond and obtain a bank guarantee for the duties, which is deposited with the Customs Service. The bank guarantee for the duties is returned as a drawback when the company provides documentation showing that the imported material was used in the production, mixing, assembly, or packaging of the exported finished goods.

During verification, we reviewed the operation of the duty drawback system. To be eligible for duty drawback, a company must apply to the Customs Department. The company must submit, for Customs approval, the production formulas for each exported item. The formula must identify the imported raw material inputs; including packing materials, and must calculate the input used per unit of output. The Customs Department investigates the formula and may adjust the formula based on its findings. Once the formula is approved, the company can apply to receive drawback. The Customs Department maintains a computerized system to keep track of each imported input that is eligible for drawback. When the products incorporating that imported input are exported, the Customs Department draws back the corresponding amount of duties and indirect taxes based on the amount of each import that was used in the export sale. If after six months, the imported input is not entirely used in export sales, the company must pay the balance of duties due on that import.

The duty exemption system, which can be used by trading companies, operates in a similar manner. An exemption is not granted until Customs approves the production formula and exporters show that the import is used in its exports. We verified that neither imports of machinery and equipment nor imports of products used in the production process that are not physically incorporated are eligible for exemption or drawback, and that the amount of drawback does not exceed the duties originally paid. Therefore, we determine that the duty drawback and exemption systems do not confer a bounty or grant on the subject merchandise.

III. Programs Determined Not To Be Used

We determine that the manufacturers, producers or exporters in Thailand of certain apparel do not use the following programs which were listed in our notice of initiation.

A. Investment Promotion Act

The Investment Promotion Act (B.E. 2520) of 1977 provides incentives for investment to promote development of the Thai economy. Administered by the Board of Investment, the Investment Promotion Act authorizes the exemption of import duties and certain taxes. Under Section 35 of the Investment Promotion Act, these benefits are provided to companies located in one of four investment zones and, under section 36 of the Investment Promotion Act, certain benefits are provided to promote enterprises which export.

We verified that none of the producers responding to our questionnaire are located in an investment promotion zone or receive benefits under the Investment Promotion Act. Certain of the trading companies responding to our questionnaire receive incentives under section 36 of the Investment Promotion Act. These incentives are discussed in the section of the notice on "Assistance to Trading Companies."

B. Export Processing Zones

In 1979, Export Processing Zones were authorized through the "Industrial Estates Authority of Thailand Act" (B.E. 2522). One export processing zone has been set up in Thailand. We verified that none of the companies responding to our questionnaire are located in this zone and, thus, they receive no benefits under this program.

C. Financing From the Industrial Finance Corporation of Thailand

Petitioners alleged that producers and exporters of the subject merchandise receive countervailable medium- and long-term loans from the Industrial Finance Corporation of Thailand (IFCT). We verified that none of the producers or exporters selected to respond to our questionnaire had outstanding medium- and long-term loans from the IFCT during the review period.

The IFCT also provides short-term loans to banks, financial institutions and limited companies. Limited companies can include trading companies. None of the trading companies selected to respond to our questionnaire received short-term IFCT loans.

IV. Program Not in Existence

We determine that the following program was not in existence during the review period.

Loans to Finance Imports Necessary for Export Industries

The response of the government of Thailand stated that this program does not exist and we found no evidence during verification that contradicts the government's response.

Comments by Parties to the Proceeding

Petitioners' Comments

Comment 1: Petitioners contend that the appropriate benchmark for countervailable short-term loans is the 17 percent rate published by the Bank of Thailand (BOT) and not the average commercial bank interest rate provided by the BOT.

DOC Position: In the BOT's Quarterly Bulletins, the published rate is identified as a ceiling rate. Thus, it would not be considered the most appropriate national average benchmark unless the government of Thailand could not provide verifiable statistics on average interest rates. Based on our verification, we consider that the government has satisfactorily demonstrated that average actual interest rates are lower than the published ceiling rate. Therefore, we are using as the benchmark the average commercial bank interest rate that we verified at the Bank of Thailand.

Comment 2: Petitioners argue that we should look at interest rates charged on loans from financial institutions other than banks to find the benchmark. They contend that it is established Departmental practice to compare preferential short-term export financing to the cost of alternative financing generally available in the lending marketplace of the country.

DOC Position: Established Department practice is to use the most comparable, predominant method of financing as the source for short-term loan benchmarks. Thus, we usually look for a commercial interest rate charged by commercial banks. We are satisfied that the benchmark we have chosen represents a commercial interest rate and the one which the apparel producers and exporters are likely to have paid absent access to preferential financing.

Comment 3: Petitioners argue that we have allocated the benefits incorrectly for the Export Packing Credit program. They contend that, unless respondents identified and we verified which export packing credits were tied to U.S. exports, we should consider that all export packing credits are tied to sales. Accordingly, the appropriate denominator for this subsidy calculation should be U.S. exports rather than all exports. They also argue that respondents did not adequately answer the request for the "purpose and use of these loans" in our questionnaire.

DOC Position: The intent of countervailing duty investigations is to determine the subsidy rate applicable to exports to the United States of the subject merchandise. To calculate the *ad valorem* rate we take the total amount of the benefits under a particular program and divide it by the relevant sales value—export sales for export subsidies and total sales for domestic subsidies. While we prefer to separate benefits accruing on sales to the United States and divide this by exports to the United States, we often find that, in the short time mandated for a countervailing duty investigation, companies cannot separate in their records those benefits which are tied to a particular subset of sales, such as sales to the United States. Under the Export Packing Credit program, the amount of the loan is based on the value of the export and all exports are eligible for refinancing under this program. Therefore, we can assume that the apparel companies took out export packing loans on all export sales and that the countervailing duty rate should be essentially the same, using either loans on United States exports or total loans on total exports.

Furthermore, we consider that respondents did provide sufficient information on the purpose and use of these loans. The purpose is to finance export sales and the companies used the loans in the production of goods for export.

Comment 4: Petitioners argue that the entire principal of the loans under the Rediscount of Industrial Bills program is countervailable because loans at 7 percent under Category 5(e) are not generally available. They further argue that in order for the total loan not to be countervailable the government must establish both that (1) alternative financing at 7 percent would have actually been available for the same transactions and (2) alternative 7 percent financing is not in itself a countervailable bounty or grant.

DOC Position: We disagree with petitioners' first comment. See the section of the notice "Rediscounts of Industrial Bills" for our determination on this program. With respect to petitioners' second comment, two tests must be applied to determine whether a domestic subsidy exists. First, we determine whether the program is limited to a specific enterprise or industry or group of enterprises or industries. If it is limited, then, for loan programs, we examine whether the loans are inconsistent with commercial considerations. We have verified that within category 5(e) there is neither *de jure* nor *de facto* limitation to a specific group of industries. Since this first test has not been met, a domestic subsidy does not exist for that category. Thus,

category 5(e) acts as the threshold in calculating the benefits on the countervailable loans in the basic industry and in the export category.

We do not have to determine whether alternative 7 percent financing is in itself a subsidy because where we determine that there is no limitation within a domestic program, then a subsidy does not exist.

Comment 5: Petitioners argue that the entire amount of the rebate received under the Tax Certificate Program should be countervailed because the input/output study is ten years old, the statistical base is five years old, the rebate is calculated on ex-factory rather than FOB prices, and the rebate program under the "Announcement of the Ministry of Finance" does not meet the Department's test for indirect tax rebate programs. They also argue that we should either find individual rates for each like product or we should use a trade-weighted average to calculate a rate for each class or kind of merchandise.

DOC Position: We believe that the input/output (I/O) study for Thailand provides an adequate basis for calculating indirect tax incidence. The study is being updated and the revised I/O tables are scheduled for publication during 1985. I/O studies are an ongoing process that provides a reasonable statistical base on which to calculate indirect tax incidence and indirect tax rebates.

We agree with petitioners that the calculation of indirect taxes should have the same basis as the calculations of the rebate rate. Therefore, we have used best information available to recalculate the incidence of indirect taxes and import duties on an FOB price basis. We then compared this allowable rebate to the authorized tax rebate which is based on FOB prices. We also consider that our calculation of the overrebate under the Tax and Duty Act incorporates any overrebate that may have been received under the "Announcement of the Ministry of Finance." Our reasons are set forth in the section of the notice "Tax Certificates for Export." With respect to petitioners' last argument, we have used a trade-weighted average to calculate the rebate rates because the rebate rates differ by product.

Comment 6: Petitioners contend that the Department understated the subsidy from the double deduction of foreign marketing expenses because there is nothing in the record that indicates that this deduction was not just for U.S. exports. In addition, petitioners argue that due to our "sampling" technique, we have not captured the total amount of subsidy on this program and that we used the wrong denominator in our preliminary determinations.

DOC Position: Petitioners first argument has been addressed in the "DOC Position" on Petitioners' Comment 1. Our position with respect to the methodology employed by the Department to select companies to respond to our questionnaire is addressed in the final determinations on "Certain Textile Mill Products and Apparel from Malaysia" published elsewhere in this issue of the **Federal Register**. Finally, we appropriately used total exports by the trading companies exporting apparel to calculate this benefit because there is no evidence that this program is limited to exports to the United States. All foreign marketing expenses incurred by the trading company can be included in the deduction, without limitation as to type of product or country of destination.

Comment 7: Petitioners argue that the Customs Duty Drawback and Duty Exemptions Programs are countervailable and the *ad valorem* rate should be calculated on best information available.

DOC Position: As petitioner correctly points out, we preliminarily determined that we needed additional information on these programs in order to determine whether they are counteravailable. However, we have determined that this program is not countervailable as stated in the section of the notice "Duty Drawback or Exemption." We verified that the program is limited to physically incorporated imported inputs and does not include items such as machinery and equipment.

Comment 8: Petitioners argue that the Department should determine that the holding of foreign currency accounts is a subsidy.

DOC Position: Our determination with respect to this program is discussed in the section of the notice on "Assistance to Trading Companies."

Respondents' Comments

Comment 1: Respondents argue that the Industrial Bill Rediscount Program is not countervailable because it is not limited to a group of enterprises or industries under section 771(5)(B) of the Act.

DOC Position: We disagree. For our determination with respect to this program, see the section of the notice on "Rediscounts of Industrial Bills."

Comment 2: Respondents argue that all firms are eligible to receive financing for at least 60 percent of their operating expenses under the Industrial Bill Rediscount Program. Therefore, if the Department finds this program countervailable, we should only determine a benefit on the portion of the financing which is limited to a group of industries within the meaning of section 771(5)(B) of the Act.

DOC Postion: We agree. It is our policy that when a portion of the benefits of a program are "generally available," we determine the countervailable benefit of that program to be the portion which is limited to a specific enterprise or industry or group of enterprises or industries. See, for example, our treatment of the FOGAIN program in Mexico in the "Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Lime from Mexico" (49 FR 35672).

Comment 3: Respondents argue that the Department, when determining whether there is an overrebate of indirect taxes, should use the cumulative incidence of prior-stage indirect taxes on items physically incorporated into the exported product and not limit our consideration to those taxes levied at the final stage of production.

DOC Position: We consider that our calculations should be based on the rebate system structured by the government of Thailand. Their rebate system is based on an input/output study. Therefore, the prior stage indirect taxes on material inputs into each product have already been taken into account in the rebate calculations since indirect taxes are passed forward from prior stages to the final stage.

Comment 4: Respondents argue that since foreign borrowing constitutes a significant portion of total borrowing in Thailand, it is appropriate for the Department to include foreign borrowing in the benchmark for Export Packing Credits.

DOC Postion: We use as our benchmark for short-term loans the national average commercial interest rate or the most comparable, predominant short-term interest rate. As stated in the Subsidies Appendix, this benchmark must be applicable to loans denominated in the same currency as the loans under consideration. Thus, it would be inappropriate to include foreign currency loans in our calculations of the benchmark for a baht currency loan program.

Comment 5: Respondents argue that the Department should take into account the program-wide change in interest rates that occurred in October, 1984 in the Export Packing Credit program.

DOC Position: We attempt to take into account program-wide changes that occur prior to our preliminary determination when the changes can be verified. However, for certain types of

programs this is not always possible. The effects of modifications in short-term loan programs are not easily quantified, nor do they occur immediately. While we may be able to assume that the change in interest rate could result in proportionally the same rate of program usage and the same level of sales, it would be unlikely, under the deadlines imposed for countervailing duty investigations, that we could obtain verifiable information on benchmarks corresponding to the period after the interest rate change. In the instant investigation, respondents provided no information on the average commercial interest rate in Thailand corresponding to the period after the program-wide change.

Comment 6: Respondents argue that the Department should convert the export packing credit discount rate into an annual interest rate since the benchmark we used in the preliminary determination was an effective annual interest rate.

DOC Position: We disagree. We verified the average interest rate submitted by the Bank of Thailand, but they provided no evidence to demonstrate that this interest rate is effective rather than nominal. Therefore, it is not appropriate to convert the nominal 7 percent discount rate on export packing credits into an effective rate.

If respondents also are arguing that we should convert the 7 percent rate to an annualized rate, we disagree, because both the 7 percent rate and the benchmark rate are annual rates.

Verification: In accordance with section 776(a) of the Act, we verified the data used in making our final determination. During this verification, we followed normal procedures, including meetings with government officials and inspection of documents, as well as on-site inspection of the records and operation of the companies exporting the subject merchandise to the United States.

Administrative Procedures

We afforded interested parties an opportunity to present information and written views in accordance with Commerce regulations (19 CFR 355.34(a)). A public hearing was held on February 12, 1985. Written views have been received and considered in reaching this final determination.

Suspension of Liquidation

The suspension of liquidation ordered in our preliminary affirmative determination on apparel shall remain in effect until further notice. The estimated net bounty or grant for duty deposit purposes is 1.23 percent *ad valorem* for apparel. In accordance with section 706(a)(3) of the Act, we are directing the U.S. Customs Service to require a cash deposit in the amount indicated above for each entry of the subject merchandise from Thailand which is entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register** and to assess countervailing duties in accordance with sections 706(a)(1) and 751 of the Act.

This notice is published pursuant to sections 303, 705 and 706 of the Act (19 U.S.C. 1303, 1671d, 1671e).

William T. Archey,

Acting Assistant Secretary for Trade Administration.

March 4, 1985.

Appendix.—List of TSUSA Codes Which Covered Thailand's Exports of Certain Apparel to the United States in 1983

Apparel						
Wearing Apparel						
303.0608	372.1560	373.2000	373.2200	376.2430	376.2830	376.5409
376.5612	379.0220	379.0240	379.0615	379.0620	379.0630	379.0640
379.0642	379.0646	379.0970	379.2320	379.2360	379.2630	379.3120
379.3130	379.3140	379.3190	379.3540	379.3925	379.3940	379.3947
379.3949	379.4020	379.4030	379.4040	379.4050	379.4060	379.4330
379.4615	379.4670	379.5520	379.5530	379.5540	379.5545	379.5550
379.5560	379.5565	379.6210	379.6217	379.6219	379.6220	379.6230
379.6240	379.6250	379.6260	379.6280	379.6450	379.6470	379.6942
379.6992	379.7250	379.7620	379.7630	379.8735	379.8906	379.8910
379.8911	379.8915	379.8930	379.8935	379.8940	379.9010	379.9020
379.9030	379.9035	379.9040	379.9100	379.9250	379.9410	379.9470
379.9575	379.9580	379.9585	379.9645	379.9650	379.9660	379.9862
379.9864	379.9868	379.9870	379.9872	379.9874	379.9876	383.0015
383.0205	383.0213	383.0218	383.0219	383.0222	383.0232	383.0234
383.0236	383.0244	383.0305	383.0335	383.0350	383.0505	383.0507
383.0509	383.0606	383.0608	383.0622	383.0631	383.0638	383.0640
383.0805	383.0820	383.0835	383.0838	383.0841	383.0856	383.0860
383.1205	383.1220	383.1319	383.1321	383.1802	383.1804	383.1805
383.1806	383.1807	383.1809	383.1811	383.1812	383.1822	383.1824
383.1841	383.1843	383.1846	383.1848	383.1880	383.1910	383.1922
383.1924	383.1926	383.1928	383.1935	383.1940	383.2005	383.2013
383.2035	383.2040	383.2050	383.2052	383.2058	383.2205	383.2210
383.2225	383.2245	383.2305	383.2310	383.2320	383.2325	383.2335
383.2340	383.2352	383.2365	383.2570	383.2575	383.2590	383.2706
383.2707	383.2708	383.2709	383.2720	383.2725	383.2730	383.2731
383.2750	383.2820	383.2835	383.2910	383.3020	383.3030	383.3040
383.3050	383.3065	383.3090	383.3405	383.3415	383.3435	383.3445
383.3448	383.3465	383.3466	383.3600	383.3770	383.4300	383.4702
383.4704	383.4705	383.4709	383.4711	383.4715	383.4720	383.4721
383.4730	383.4747	383.4749	383.4753	383.4755	383.4761	383.4762
383.4764	383.4814	383.4821	383.4825	383.5027	383.5028	383.5033
383.5034	383.5037	383.5041	383.5051	383.5080	383.5082	383.5088
383.5090	383.6000	383.6200	383.6260	383.6271	383.6310	383.6340
383.7810	383.7881	383.7883	383.7884	383.7885	383.7886	383.7887
383.7888	383.7892	383.8002	383.8007	383.8009	383.8011	383.8012
383.8014	383.8017	383.8019	383.8024	383.8026	383.8028	383.8030
383.8045	383.8048	383.8050	383.8052	383.8069	383.8071	383.8073
383.8108	383.8110	383.8114	383.8115	383.8117	383.8125	383.8137
383.8139	383.8141	383.8143	383.8145	383.8147	383.8156	383.8158
383.8162	383.8164	383.8300	383.8605	383.8620	383.8645	383.8650
383.8660	383.8663	383.8667	383.8669	383.8670	383.9005	383.9010
383.9015	383.9020	383.9025	383.9027	383.9029	383.9032	383.9035
383.9040	383.9042	383.9050	383.9051	383.9068	383.9069	383.9070
383.9072	383.9074	383.9076	383.9210	383.9225	383.9230	383.9235
383.9240	383.9245	383.9255	383.9265	383.9270	383.9290	383.9291
383.9562	383.9564	383.9566	383.9568	383.9570	383.9572	383.9574
383.9576	383.9578	383.9579				
Gloves						
704.1020	704.3220	704.3240	704.4010	704.4025	704.4055	704.4504
704.4506	704.4508	704.4555	704.8520	704.8550		
Luggage and Handbags						
706.3640	706.3650	706.3680	706.3840	706.3850	706.3900	706.4106
706.4111	706.4121	706.4140	706.4150			

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[C-542401]

Final Affirmative Countervailing Duty Determinations and Orders; Certain Textile Mill Products and Apparel From Sri Lanka; Cotton Inspectors' Gloves

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that certain benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Sri Lanka of certain textile mill products and apparel. The estimated net bounty or grant is 5 percent *ad valorem* for certain textile mill products and 3.06 percent *ad valorem* for apparel. We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of certain textile mill products and apparel from Sri Lanka, except "Cotton Inspectors' Gloves," and products produced by Texwood Industries Limited, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice, and to require a cash deposit on entries of the subject merchandise in the amount equal to the estimated net bounty or grant.

EFFECTIVE DATE: March 12, 1985.

FOR FURTHER INFORMATION CONTACT: Laura Campobasso or Vincent Kane, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377–5403 or 377–5414.

SUPPLEMENTARY INFORMATION:

Final Determinations

Based upon our investigations, we determine that certain benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Sri Lanka of certain textile mill products and apparel. For purposes of these investigations, the following programs are found to confer a bounty or grant:

- Investment Promotion Zone
- Export Expansion Grants
- Pre-Shipment Export Refinancing
- Rebate of Import Duties and Indirect Taxes
- Export-Related Corporate Tax Exemption for Non-Zone Companies

We estimate the net bounty or grant to be 5 percent *ad valorem* for certain textile mill products and 3.06 percent *ad valorem* for apparel.

Case History

On July 20, 1984, we received a petition from the American Textile Manufacturers Institute ("ATMI"), the Amalgamated Clothing and Textile Workers Union ("ACTWU"), and the International Ladies' Garment Workers Union ("ILGWU"), on behalf for the U.S. industry producing certain textiles and textile products. In compliance with the filing requirements of section § 355.26 of our regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in Sri Lanka of textiles and textile products receive, directly or indirectly, benefits which constitute bounties or grants within the meaning of section 303 of the Act.

We found that the petition contained sufficient grounds upon which to initiate countervailing duty investigations, and on August 9, 1984, we initiated such investigations (49 FR 32646). These investigations were initiated by the Department under the title "Certain Textile and Textile Products from Sri Lanka." Because of the number of products covered, and the differences in those products, the Department determined that it should conduct separate investigation—one for textiles and non-apparel textile products, and one of apparel. Because of the potential for confusion, as apparel can also be considered a textile product, we changed the titles of these investigations to "Certain Textile Mill Products and Apparel from Sri Lanka." Except for the product with respect to which we are rescinding our initiation, the scope of these investigations remains the same as announced in the initiation and the preliminary determinations.

We stated that we expected to issue preliminary determinations by October 15, 1984. On September 21, 1984, we determined these investigations to be "extraordinarily complicated," as defined in section 703(c)(1)(B) of the Act. Therefore, we extended the period for making our preliminary determinations by 65 days until December 17, 1984 (49 FR 40198).

Since Sri Lnaka is not a "country under the Agreement" within the meaning of secion 701(b) of the Act and the merchandise being investigated is dutiable, sections 303 (a)(1) and (b) of the Act apply to these investigations. Accordingly, the petitioners are not required to allege that, and the U.S. International Trade Commission is not required to determine whether, imports of these products cause or threaten material injury to a U.S. industry.

Due to the scope of these investigations, we employed a two-step questionnaire process. We presented a preliminary questionnaire to the Government of Sri Lanka in Washington, D.C., on August 27, 1984. Based on the response to the preliminary questionnaire, we identified the 17 apparel producers who accounted for at least 60 percent of the exports of apparel to the United States.

We initially requested the 17 apparel producers and exporters to respond to the detailed questionnaire, because we believed that only apparel was exported from Sri Lanka to the United States. On October 25, 1984, we presented the detailed government and company questionnaire to the Government of Sri Lanka in Washington, D.C. The responses to our detailed questionnaires were received on November 26, 1984. During the course of our investigations, we discovered that some textile mill products also were exported from Sri Lanka to the U.S. and we identified and requested a response from the company that accounts for at least 60 percent of exports of textile mill products to the United States. We received a response from the company of January 25, 1985.

We also sent detailed questionnaires to three companies that had filed timely requests for exclusion: Sinotex Lanka Limited (Sinotex), Texwood Industries Limited (Texwood), and Asiaknit Limited. We verified that Texwood received benefits which are *de minimis*, and it is therefore exluded from these final determinations. Sinotex and Asiaknit receive countervailable benefits above the *de minimis*, rate of 0.50 percent. Therefore, we have not excluded Sinotex and Asiaknit from these final determinations and orders.

Certain respondents in the *Certain Textile Mill Products and Apparel* investigations have raised issues as to whether petitioners have standing to file these cases. Petitioners have also made

comments regarding our methodology in selecting companies to receive detailed questionnaires, and our investigation of only those companies that account for sixty percent of exports on the subject merchandise to the United States. We have addressed these issues in our final determinations of *Certain Textile Mill Products and Apparel from Malaysia*, published concurrently with this notice. See that notice for our comments on these issues.

On December 21, 1984, we issued our preliminary determinations in these investigations (49 FR 49687). We preliminarily determined that benefits constituting bounties or grants within the meaning of the Act are being provided to manufacturers, producers, or exporters in Sri Lanka of the subject merchandise. We conducted verification on Sri Lanka of the subject merchandise. We conducted verification in Sri Lanka from January 23, 1985, through February 1, 1985. A hearing was held February 15, 1985, and comments have been received from the parties to the proceeding.

Scope of the Investigations

The products covered by these investigations are certain textile mill products and apparel which are described in the Appendix attached to this notice.

Rescission of Initiation of Investigation

The John Plant Company, a domestic U.S. manufacturer and importer of lightweight cotton lisle disposable work gloves from Sri Lanka, has requested that the Department rescind its initiation of investigation with respect to lightweight cotton lisle disposable work gloves from Sri Lanka. Commonly known as inspectors' gloves, lightweight cotton lisle disposable work gloves ("cotton inspectors' gloves") are imported from Sri Lanka under TSUSA item number 704.4506. The John Plant Company argues that cotton inspectors' gloves constitute a separate "like product" in that they are not "like" other cotton work gloves, and that petitioners lack standing to seek imposition of countervailing duties on cotton inspectors' gloves from Sri Lanka.

The U.S. Court of International Trade has held that the Department has the authority to rescind an initiation of an investigation if the Department determines that the petitioners lack standing. *Gilmore Steel Corp.* v. *United States*, 585 F. Supp. 670 (1984). Thus, the Department has the authority to rescind its initiation in this case should it determine that petitioners lack standing with respect to cotton inspectors' gloves. Under section 702(b)(1) of the Act, in order to have standing to file a countervailing duty petition, a petitioner must be a domestic interested party within the meaning of sections 771(9) (C), (D), or (E), and must file the petition on behalf of an industry in the United States. In this case, in order for petitioners to be an interested party with respect to cotton inspectors' gloves, the unions must be "representative of an industry engaged in the manufacture of a like product". 19 U.S.C. 1677(9)(D). Both the definitions of "domestic interested party" and "industry" depend upon the definition of "like product," which is defined in section 771(10) of the Act as:

> A product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.

Petitioners here have essentially argued that all gloves are one "like product," and that the industry producing all types of gloves is one domestic industry. Thus, if the unions have members producing any type of glove, they are representative of the entire industry and have standing with respect to all gloves as one "like product." Evidence on the record indicates that the unions represent workers who produce cotton work gloves; however, the domestic producers of cotton inspectors' gloves do not have union workers. The threshold question therefore is whether cotton work gloves are a "like product" to cotton inspectors' gloves.

In making this determination, we have examined various competitive factors in the U.S. market, primarily the general physical characteristics and intended use of the gloves, the channels of trade in which the gloves are sold, ultimate use and consumer expectations, and cost of the gloves.

Cotton inspectors' gloves are made of lightweight cotton lisle to allow flexible hand movements, are disposed of after short-term use, and are not designed for reuse. Cotton inspectors' gloves have a different function from other work gloves, in that they are designed to protect delicate industrial equipment from contact with workers' hands. Traditional cotton work gloves are made of heavier-weight cotton materials for long-term and repeated use under heavy-duty work conditions and are designed with cuffs and other reinforcements to protect workers' hands from outside elements or injury. Cotton inspectors' gloves are not designed to offer hand protection, and are not decorated in any way to make them suitable for non-industrial use. A consumer would not expect such gloves to provide hand protection.

Cotton inspectors' gloves are sold in bulk, usually on an annual contract basis, to certain industrial users in the nuclear utility, jet aircraft, and electronic equipment manufacturing industries. Traditional cotton work gloves are sold in small or large quantities on a wholesale basis to industrial users or on a retail basis to various consumers, including households.

Finally, because of their lightweight fabric, lack of cuffs or other ornamentation, and disposable nature, cotton inspectors' gloves are much less expensive than traditional cotton work gloves.

Therefore, we determine that cotton work gloves are not "like products" with respect to cotton inspectors' gloves. Because the unions do not represent workers who make a "like product," petitioners lack standing to file a countervailing duty petition on such merchandise. The evidence on the record supports the conclusions that domestic U.S. producers of cotton inspectors' gloves are neither included among the petitioners nor support the petition and that workers in the domestic cotton inspectors' glove industry are not members of any union supporting this petition. The John Plant Company itself is the largest domestic U.S. producer of cotton inspectors' gloves.

Therefore, we are rescinding our initiation of investigation with respect to cotton inspectors' gloves imported from Sri Lanka under TSUSA item 704.4506.

Analysis of Programs

Throughout this notice, we refer to certain general principles applied to the facts of the instant investigations. These principles are described in the "Subsidies Appendix" attached to the notice of "Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina; Final Affirmative Countervailing Duty Determination and Countervailing Duty Order," which was published in the April 26, 1984, issue of the **Federal Register** (49 FR 18006).

For purposes of these determinations, the period for which we are measuring bounties or grants ("the review period") is April 1983 through March 1984.

Based upon our analysis of the petition and the responses to our questionnaires, we determine the following:

I. Programs Determined To Confer Bounties or Grants

We determine that bounties or grants are being provided to manufacturers, producers, or exporters in Sri Lanka of

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certain textile mill products and apparel under the following programs:

A. Investment Promotion zone

Petitioners alleged that the government of Sri Lanka provides benefits to producers and exporters of the subject merchandise through an Investment Promotion Zone (IPZ). They alleged that benefits received under this program by firms that locate in the IPZ include exemptions from taxes on corporate and personal income, exemptions from taxes on royalties and dividends for up to 10 years, availability of developed factory sites at nominal charges, and exemptions from paying import duties on machinery, equipment, and materials.

Law No. 4 of 1978, amended by Act No. 43 of 1980 and Act No. 21 of 1983, establishes an IPZ, operated by the Greater Colombo Economic Commission (GCEC). We verified that the entire production of the firms located in the IPZ must be marketed abroad. As specified in the responses and verified, firms locating in the zone are eligible for (1) exemptions from payment of corporate income taxes; (2) exemptions from payment of import duties and indirect taxes on imports; (3) exemptions from payment of taxes on dividends; and (4) exemptions from payment of taxes on royalties paid to non-resident persons or companies.

We further verified that the GCEC does not build factories within the zone for lease to investors or provide land at nominal prices. All investors must build their own factories and no government financial assistance is provided for construction. Factory sites are available on a commercial basis.

The Department verified that the respondent for textile mill products was not eligible to receive these benefits because it is not located in the zone. Of the apparel firms who responded to our questionnaire, ten are located in the IPZ. These firms receive the following benefits: Corporate income tax exemptions or tax holidays, and import duty and indirect tax exemptions on machinery, equipment, and raw materials. We find no countervailable benefits with respect to duty and indirect tax exemptions on imported raw materials, because duty and indirect tax exemptions on raw materials that are physically incorporated in the final exported products are not considered bounties or grants under the Act. With respect to exemptions from payment of taxes on royalties paid to a non-resident person or company, there is no evidence on the record that apparel companies have used this program. With regard to exemptions from payment of taxes on dividends, all of the companies responding to the Department's questionnaire, including those located outside the IPZ, indicated that they did not benefit from any such exemptions. In addition, though several of the financial statements of these companies indicate that the companies did declare dividends during the review period, in only one instance did a statement indicate dividends that were "free of tax," and those dividends were distributed prior to the review period.

All of the firms we investigated are majority foreign-owned; some are 100 percent foreign-owned. In prior determinations, the Department has found that dividend tax exemptions for non-resident shareholders do not confer a countervailable benefit. See *Bicycle Tires and Tubes from Korea*, 48 FR 32205 (1983). If any new information on tax exemptions on dividends is received, we will analyze this program further in the administrative review under section 751 of the Act.

Regarding exemptions from corporate income taxes, we determine that these exemptions are countervailable because they apply solely to export income. To calculate the benefit from corporate income tax exemptions for the review period, the amount of tax savings received under this program was divided by the total value of exports in the review period to determine an estimated net bounty or grant of 1.93 *ad valorem* for apparel.

Exemption from import duties and indirect taxes on machinery and equipment confer a bounty or grant because they are available only to the exporting firms located in the IPZ. To calculate the benefits from exemptions on import duties, we divided the amount of import duties and indirect taxes exempted during the review period by the total value of exports. The estimated net bounty or grant is .08 percent *ad valorem* for apparel.

B. Export-Related Corporate Tax Exemptions for Non-Zone Companies

According to supplemental responses, companies not located in the IPZ, which are engaged in the manufacture and export of textile mill products and apparel, other than apparel under quota, are eligible for a five year tax holiday related to their export profits. In order to receive the tax holiday, an apparel company must apply and receive approval from the Minister of Finance Planning.

We verified that the respondent for textile mill products was not eligible to receive this benefit. Thus, for textile mill products, we determine that the program was not used.

With respect to apparel, we determine that these exemptions of corporate income tax are countervailable because the program is limited to exporters. To calculate the benefit from the exemptions of corporate income tax for the review period, the amount of tax savings received under this program was divided by the total value of exports in the review period to determine an estimated bounty or grant of .40 percent *ad valorem* for apparel.

C. Rebate of Import Duties and Indirect Taxes

The government of Sri Lanka operates two separate programs that rebate import duties and indirect taxes. One applies to textile mill products and the other to apparel. In the final determination on *Certain Apparel from Thailand*, published concurrently with this notice, we explain our test for determining whether rebate systems that are designed to rebate both prior stage indirect taxes and import duties confer bounties or grants upon exports. The test for such rebate systems is similar to the so-called linkage test for systems which purport to rebate prior-stage indirect taxes only.

Based on our investigations, we determine that the customs duty rebate program for apparel is designed to rebate import duties and indirect taxes. The program is administered by a Duty Rebate Committee. This committee sets rates on both a case-by-case basis and on a product-wide basis. The Minister of Finance must approve the rates set by the Duty Rebate Committee. Prior to establishing a rate, the committee collects company or industry cost data. When the duty or turnover tax rate changes, a study is prepared.

The last study on apparel was conducted in September 1983 following duty increases in February 1983. In the study, cost structure statements were collected from the manufacturers and exporters of various types of apparel. For each type of apparel a detailed analysis was completed that identified the company, individual export sales, the FOB value of the sales, the import duties paid on imported materials used in the exported merchandise, and the import duty as a percent of FOB value. For each type of apparel, the sum of import duties divided by the sum of FOB values provides the weighted-average rebate rate for import duties for that particular type of apparel. The sum of import duties paid on all seven types of apparel divided by the FOB values for all seven types of apparent equals the

weighted-average incidence of import duties on the FOB value of apparel.

The analyses for each type of apparel and for all apparel combined also included import duty and turnover tax incidence on locally purchased raw materials as well as a factor covering the cost of bank guarantees and a factor for incentives. The rebate rate that was approved on the basis of this study is equal to only the incidence of import duties on imported raw materials and the indirect taxes on locally purchased raw materials as a percentage of FOB value.

This study was subsequently reviewed by a consultant who analyzed the collective impact of import duties and turnover taxes paid on the raw materials and ancillaries (buttons, zippers, ribbon, etc.) and packing materials used in the manufacture of apparel for export. The consultant's report and the supporting analyses stated that the collective incidence of duties and turnover taxes imposed on imported raw materials and local and imported packing materials in garment exports equals 32.1 percent. The authorized rebate rate is 32 percent. The consultant also reviewed the rebate rates established for individual companies on a case-by-case basis. The actual incidence of import duties and turnover taxes correlates with the rebate received.

Based on the analysis outlined above, we determine the rebate program for apparel does not constitute an excessive remission of indirect taxes or import duties on exports of apparel. Therefore, we find the apparel rebate program not to be countervailable.

With regard to textile mill products, the government stated that the rebate program for textiles was designed to rebate customs duties and indirect taxes paid on items physically incorporated into exported products. However, the government was unable to provide any reliable documentation to support the level of rebate authorized.

Therefore, we determine the government of Sri Lanka provides an excessive rebate on exports of certain textile mill products. The authorized rebate for textile mill products is 15 percent of the F.O.B. value of exported textile mill products. We verified however, that the textile company actually receives only 5 percent of the F.O.B. value of the exported good. Accordingly, the estimated net bounty or grant is 5 percent *ad valorem* for certain textile mill products.

D. Export Development Board

The Export Development Act No. of May 1979 created the Sri Lanka Export Council of Ministers and established the Sri Lanka Export Development Board (EDB). The EDB provides tax-free export expansion grants to exporting firms with net foreign exchange earnings equal to 20 percent or more of export value, and export-marketing services and financial aid to export ventures.

The EDB created an original Export Expansion Grant Scheme in 1981, and devised another Export Expansion Grant Scheme in 1983. Through this Scheme, firms may apply for expansion grants to be used for export-oriented projects. The Export Expansion Grant Scheme is funded by the Export Development Fund (EDF), which is administered by the EDB. We verified that only producers and exporters of apparel received export expansion grants.

Because receipt of the export expansion grants is contingent upon exportation, they confer a bounty or grant on exports. To calculate the benefit from the export expansion grants, we used the grant methodology outlined in the Subsidies Appendix and found an estimated net bounty or grant to be .38 percent *ad valorem* for apparel.

The EDB also has the authority to assist firms with export marketing by sponsoring participating in international trade fairs and trade missions abroad. However, we verified that the EDB has not provided any such sponsorship to exporters of the subject merchandise to the United States during the review period. We also verified that the EDB has not provided any financial aid to export ventures for producers and exporters of the subject merchandise during the review period.

E. Short-Term Working Capital Loans for Exporters

Short-term working capital loans are available to exporters under the pre-shipment export refinancing program.Commercial banks determine which loans will be submitted to the Central Bank of Sri Lanka for refinancing. The amount of refinancing available from each individual commercial bank is subject to aggregate limits established by the Central Bank.

The Department verified that only exporters of apparel receive such refinancing. Because the refinancing is available only for export loans, we determine that this program confers a bounty or grant on exports to the extent that these loans are made at preferential rates. As specified in the Subsidies Appendix, the benchmark rate for short-term export loans is the national average commercial interest rate for short-term financing. For the preliminary determinations, the Government of Sri Lanka provided the weighted-average short-term lending rates of commercial banks published in the "Central Bank Annual Surveys of Bank Deposits and Advances." Because this benchmark rate included the export loans in question, the Department requested and received from the Central Bank of Sri Lanka interest rates excluding the refinanced loans. Because this benchmark rate is higher than the rates on the pre-shipment export loans, we determine that these loans confer bounties or grants on the products under investigation for apparel producers. Applying this benchmark rate we calculate a bounty or grant of .27 percent *ad valorem* for apparel.

II. Programs Determined Not to Confer Bounties or Grants

We determine that bounties or grants are not being provided to manufacturers, producers, or exporters in Sri Lanka of certain textile mill products and apparel under the following program.

A. Textile Self-Sufficiency Program

Petitioners alleged that the government of Sri Lanka provides the producers and exporters of the subject merchandise with the following benefits under a textile self-sufficiency program: Modernization projects for mills that produce fabrics and man-made fiber textile products, construction of new mills and assistance to the powerloom sector. Based on the responses and our verification, we determine that the government of Sri Lanka does not administer a textile self-sufficiency program. The government, through the Ministry of Textile Industries, owns a number of textile mills engaged in the production and sale of cotton and synthetic textile products; however, none of the output of these mills is exported to the United States. We verified that only one of the producers and exporters selected to respond to our questionnaire purchased the output of government-owned mills. The prices paid for the products were comparable to private mill prices.

In addition to owning certain textile mills, the government of Sri Lanka operates the State Trading Corporation of Sri Lanka, which is called Salusala. Salusala was established to import textile products and distribute them in the local market. The company also purchases from local mills. Salusala does not purchase from government-owned mills and it sells all merchandise at market prices. Salusala did not export to the U.S. during the review period.

The responses indicated, and the Department verified, that private

companies exporting to the U.S. during 1983 have never received government assistance directed at improving or constructing new ones.

Based on our review of the information on the record to date, we determine that no countervailable benefits are being provided to the selected producers and exporters of the subject merchandise through government-owned mills or through Salusala and that the government has not provided any assistance to producers and exporters for improvement of existing mills or construction of new mills.

III. Programs Determined Not To Be Used

We determined that manufacturers, producers or exporters in Sri Lanka of certain textile mill products and apparel did not use the following programs which were listed in our notice of initiation.

Medium- and Long-Term Credit Fund

The Central Bank of Sri Lanka provides medium- and long-term refinancing for export-related investment.

The refinancing program for medium- and long-term loans is operated by the Central Bank of Sri Lanka through the development and commercial banks. Development and commercial banks may apply for refinancing of medium- and long-term loans for export-related investments under the Government's Medium- and Long-Term Credit Fund (MLCF) program. The Central bank conducts its own independent evaluation of each loan application before refinancing the loan. Even if the loan is refinanced by the Central Bank, the risk of default is borne by the commercial bank.

Neither the textile mill products producer nor the apparel producers received any medium- and long-term loans under the MLCF program. Therefore, we determine that the MLCF program was not used.

Petitioners Comments

Comment 1: In their prehearing brief, Petitioners asked that the Department investigate whether textile and apparel producers located outside of the IPZ benefit from corporate income tax exemptions and other benefits such as duty exemptions on machinery and equipment similar to those benefits provided to companies located in the zone.

DOC Position: The Department has addressed the issue of export-related tax exemptions in the section of the notice "Export-Related Corporate Tax Exemptions for Non-Zone Companies." With regard to duty exemptions on machinery and equipment, there is no evidence on record that companies located outside the zone are entitled to such duty exemptions.

Comment 2: Petitioners argue that textile and apparel producers located both in and out of the IPZ receive countervailable benefits through the tax-exempt status of their dividends.

DOC Position: The Department has addressed this issue in the notice. Refer to the section, of the notice "Investment Promotion Zone".

Comment 3: Petitioners argue that the benchmark used in calculating the benefit from pre-shipment export financing loans in the preliminary determination included preferential export financing. Petitioners contend that the Department should use a benchmark that has the preferential rates factored out.

DOC Position: For these final determinations, the Department has used a benchmark from which refinanced export loans have been excluded.

Comment 4: Petitioners argue that textile and apparel producers located outside of the zone may benefit from import duty rebates in excess of the duties paid on goods physically incorporated in exported products.

DOC Position: The Department has addressed this issue in the notice. Refer to section of the notice "Rebater of Import Duties and Indirect Taxes".

Comment 5: Petitioners argue that the Department should find financing received through Foreign Currency Banking Units (FCBU's) to be countervailable. They contend that because the interest rates charged by FCBU's are only one or two points above the London InterBank Offered Rate (LIBOR), and are only available to Investment Promotion Zone (IPZ) companies, that FCBU loans are preferential in nature.

DOC Position: The Department does not consider FCBU loans to be countervailable. FCBU's provide the only banking services available to companies in the IPZ. Since IPZ companies do not have access to the domestic banking system, these units constitute an alternative banking system designed for the IPZ companies. FCBU loans are in dollars and the interest rates charged. 1.5 to 2 points above LIBOR, are comparable to commercial rates on foreign currency loans outside the IPZ.

Comment 6: Petitioners assert that there is no basis for excluding inspectors' gloves or cotton work gloves from this investigation. Petitioners submit that while there may be numerous types of gloves, and while some may be more suitable for certain tasks than others, there is no justification for breaking down the category of gloves into more than one like product. Petitioners rely on a 1978 International Trade Commission investigation of Certain Gloves from the People's Republic of China (Inv. No. TA-406-1, U.S.I.T.C. Pub. No. 867 (March, 1978) to support their assertion that all gloves are produced by a single glove industry.

DOC Position: While we agree with petitioners with regard to cotton work gloves because it appears that union workers do produce cotton work gloves, we disagree that petitioners have standing with regard to lightweight disposable cotton inspectors' gloves. As explained in this notice, inspectors' gloves have different physicial characteristics and uses from other cotton work gloves, and consumer expectations differ to the extent that there is no head-to-head competition between inspectors' gloves and other types of work gloves. While it might be argued that all gloves have similar uses and physical characteristics in that all are designed to cover the hands, we believe that such a broad interpretation of "like product" would allow imposition of countervailing duties on particular products when a petitioning domestic producer is not adversely affected by imports of those products. For example, we do not believe that a domestic producer of heavy-gauge welder's gloves could properly petition for imposition of countervailing duties on imports of knitted children's gloves on the theory that all gloves are one "like product". It is not unreasonable to posit that the "like product" definition should not be interpreted so broadly as to permit the imposition of countervailing duties on a product where the petitioner does not produce a competing product, especially where, as here, a major domestic producer of an identical product opposes that petition. Further, we do not believe that the 1978 ITC report is dispositive of the issues in this case. The ITC investigation was conducted pursuant to a different law; i.e., section 406 of the Trade Act of 1974. That law does not use the phrase "like product." Moreover, the specific "like product" issue could not have been reached in that case, especially as respondents assert that there were no imports of inspectors' gloves from China during the period covered by the ITC investigation. The ITC acknowledged that "several distinct types" of gloves, including inspectors' gloves are

produced "by the domestic industry." However, even in current antidumping and countervailing duty investigations, the ITC is permitted in some cases to find that there is only one domestic industry for injury purposes, although there may be a number of "like products." *See* 19 U.S.C. 1677(4)(D). Thus, the ITC determination of "like product" for injury purposes may not coincide with our determination of "like product" for purposes of determining standing. The record in this case supports our conclusion that the domestic workers producting inspectors' gloves are not union members, and thus, the unions have no standing as interested parties with regard to this product.

Respondents' Comments

Comment 1: Respondents argue that both justice and sound policy require that if it is determined that a firm that made a timely request for exclusion from any affirmative determination was subsequently found to have received benefits that exceed *de minimis* levels, then that firm's data should be utilized in the calculation of country-wide benefits.

DOC Position: Early on in these investigations, the Department informed both petitioners and respondents that our calculation of country-wide benefits would be based on our investigation of firms that account for 60 percent of the exports of the subject merchandise to the United States, and that that 60 percent would not include firms that had filed a timely request for exclusion. We believe that our methodology represents just and sound policy.

Comment 2: Respondents argue that the Department should reserve its preliminary determination and rescind its initiation of investigation with respect to textile mill products. They argue that textile companies in Sri Lanka do not receive countervailable benefits under any programs alleaged by the petitioners. Further, they assert that the petitioners lack standing with respect to textile products exported from Sri Lanka, because all their products are handloomed products, and are thus not "like" other textile mill products. Respondents add that handloom textile products do not compete with textile mill products produced in the United States.

DOC Position: In determining whether products are "like products", the Department examines those products in terms of competitive factors in the U.S. market, including the general physical characteristics and intended use of the products, the channels of trade in which the products are sold, and the ultimate use and cost of the products.

Respondents did not provide sufficient information for any such "like product" analysis. Respondents simply assert that because textile mill products in Sri Lanka are loomed on rudimentary machines, they are categorically not "like" domestic textile mill products.

Based on the information in the record we are unable to find that there are no domestic textile mill products that are "like, or in absence of like, most similar in characteristics and use with" textile mill products produced in Sri Lanka.

Comment 3: Star Garments, Ltd., an exporter of apparel from Sri Lanka, argues that it should be excluded from the Department's determination because it does not receive any benefits under any program found by the Department to confer a bounty or grant.

DOC Position: Under our regulations, (19 CFR 355.58) individual companies may seek, on a timely basis, exclusions from a countervailing duty order. Because Star Garments did not file request for exclusion within 30 days after the date of publication of the notice of initiation, we consider their request untimely and we have not excluded this firm from countervailing duty order.

Verification

In accordance with section 776(a) of the Act, we verified the data used in making our final determinations. During this verification, we followed normal procedures, including meetings and inspection of documents with government officials and on-site inspection of the records and operation for the companies exporting the merchandise under investigation to the United States.

Administrative Procedures

We afforded interested parties an opportunity to present information and written views in accordance with Commerce regulations (19 CFR 355.34(a)) we held a public hearing on February 15, 1985. Written views have been received and considered in reaching these final determinations.

Suspension of Liquidation

The suspension of liquidation ordered in our preliminary affirmative determinations shall remain in effect except with respect to cotton inspectors' gloves and apparel products produced and exported by Texwood Industries, until further notice. The estimated net bounty or grant for duty deposit purposes is 5 percent *ad valorem* for certain textile mill products and 3.06 percent *ad valorem* for apparel.

In accordance with section 706(a)(3) of the Act, we are directing the U.S. Customs Service to require a cash deposit in the amount indicated above for each entry of the subject merchandise from Sri Lanka which is entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register** and to assess countervailing duties in accordance with sections 706(a)(1) and 751 of the Act.

This notice is published pursuant to sections 303, 705 and 706 of the Act (19 U.S.C. 1303, 1671d, 1671e).

William T. Archey,

Acting Assistant Secretary for Trade Administration.

March 4, 1985.

Appendix.—List of TSUSA Codes Which Covered SRI Lanka's Exports of Certain Textile Mill Products and Apparel to the United States in 1983

Textile Furnishings						
363.0520	363.3040	363.5015	363.5115	363.5130	364.1800	365.7865
366.1855	366.1880	366.2740	366.2760	336.2780	366.4660	366.7925
367.6040						
Miscellaneous						
		385.5300		386.5045		
B. Apparel						
Apparel						
376.2430	376.2830	376.5408	376.5609	376.5612	376.5630	379.0211
379.0212	379.0615	379.0620	379.0630	379.0640	379.0642	379.0646
379.2320	379.2350	379.3110	379.3120	379.3905	379.4020	379.4030
379.4050	379.4060	379.4140	379.4330	379.4610	379.4650	379.4660
379.4670	379.5220	379.5520	379.5530	379.5535	379.5540	379.5545
379.5550	379.5560	379.5565	379.6210	379.6220	379.6230	379.6240
379.6250	379.6260	379.6270	379.6448	379.6470	379.7250	379.7620
379.7630	379.8340	379.8735	379.9030	379.9035	379.9220	379.9520
379.9525	379.9530	379.9540	379.9550	379.9555	379.9575	379.9580

Appendix.—List of TSUSA Codes Which Covered SRI Lanka's Exports of Certain Textile Mill Products and Apparel to the United States in 1983—Continued

379.9585	379.9643	379.9650	383.0213	383.0219	383.0222	383.0236
383.0252	383.0284	383.0286	383.0288	383.0505	383.0506	383.0507
383.0509	383.0606	383.0608	383.0612	383.0614	383.0618	383.0618
383.0622	383.0631	383.0638	383.0640	383.0805	383.0820	383.0841
383.0850	383.0860	383.2005	383.2052	383.2205	383.2225	383.2305
383.2340	383.2352	383.2360	383.2706	383.2710	383.2712	383.2714
383.2715	383.2716	383.2718	383.2721	383.2722	383.2724	383.2726
383.2728	383.2730	383.2732	383.2736	383.2738	383.2750	383.2820
383.2826	383.2828	383.2835	383.3040	383.3037	383.3038	383.3200
383.3405	383.3415	383.3435	383.3445	383.3446	383.3448	383.3450
383.3460	383.3465	383.3466	383.3770	383.4015	383.4300	383.4702
383.4704	383.4705	383.4709	383.4711	383.4716	383.4717	383.4718
383.4720	383.4721	383.4724	383.4726	383.4747	383.4748	383.4750
383.4753	383.4754	383.4756	383.4761	383.4762	383.4764	383.4765
383.4818	383.4825	383.5027	383.5028	383.5029	383.5031	383.5033
383.5034	383.5041	383.5043	383.5051	383.5078	383.5082	383.5086
383.5088	383.5090	383.5304	383.5830	383.6345	383.6360	383.6371
383.6632	383.6634	383.6636	383.6638	383.6642	383.6644	383.6646
383.6647	383.6648	383.7210	383.7522	383.7532	383.7534	383.7536
383.7538	383.7542	383.7544	383.7546	383.7548	383.7552	383.7554
383.7556	383.7708	383.8002	383.8012	383.8014	383.8017	383.8019
383.8024	383.8026	383.8045	383.8073	383.8110	383.8114	383.8145
383.8162	383.8164	383.8620	383.8665	383.9010	383.9015	383.9020
383.9025	383.9027	383.9029	383.9032	383.9035	383.9040	383.9042
383.9050	383.9051	383.9056	383.9057	383.9058	383.9059	383.9061
383.9062	383.9063	383.9064	383.9066	383.9068	383.9069	383.9070
383.9072	383.9074	383.9076	383.9225	383.9235	383.9245	383.9270
383.9273	383.9276	383.9290	383.9291			

Gloves

704.4010	704.4025	704.4504	704.4506	704.4508	704.5015	704.8520
704.8550	707.9000					

Luggage and Hand Bags

706.3640 706.4111

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[C-549-401]

Certain Textile Mill Products From Thailand; Suspension of Countervailing Duty Investigation

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice of Suspension of Countervailing Duty Investigation.

SUMMARY: The Department of Commerce has decided to suspend the countervailing duty investigation involving certain textile mill products from Thailand. The basis for the suspension is an agreement to offset or eliminate completely all benefits provided by the government of Thailand which we find to constitute bounties or grants on exports of certain textile mill products to the United States.

EFFECTIVE DATE: March 12, 1985.

FOR FURTHER INFORMATION CONTACT: Barbarba E. Tillman, Office of Investigations, or Richard Moreland, Office of Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, Telephone: (202) 377-1785 or (202) 377-2786.

SUPPLEMENTARY INFORMATION: On July 20, 1984, we received a petition from the American Textile Manufacturers Institute, the Amalgamated Clothing and Textile Workers Union, and the International Ladies' Garment Workers Union, on behalf of the U.S. industries producing certain textiles and textile products. In compliance with the filing requirements of § 355.26 of our regulations (19 CFR 355.26), the petition alleged that manufacturers, producers, or exporters in Thailand of certain textile and textile products receive, directly or indirectly, benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act).

We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation and, on August 15, 1984, we initiated such an investigation (49 FR 32639). We stated that we expected to issue a preliminary determination by October 15, 1984. This investigation is one of those initiated by the Department under the title "Certain Textiles and Textile Products from Thailand." Because of the number of products covered, and the differences in those products, the Department determined that it should conduct separate investigations—one of textiles and non-apparel textile products, and one of apparel. Because of the potential for confusion, as apparel can also be considered a textile product, we changed the titles of our investigations to "Certain Textile Mill Products and Apparel from Thailand." This suspension agreement pertains only to certain textile mill products. Our final determination on "Certain Apparel from Thailand" is published elsewhere in this issue of the **Federal Register**. On September 21, 1984, we determined that this investigation is "extraordinarily complicated," as defined in section 703(c)(1)(B) of the Act. Therefore, we extended the period for making our preliminary determination by 65 days until December 17, 1984 (49 FR 40198).

Since Thailand is not a "country under the Agreement" within the meaning of section 701(b) of the Act and the merchandise being investigated is dutiable, section 303 (a)(1) and (b) of the Act apply to this investigation. Accordingly, petitioners are not required to allege that, and the U.S. International Trade Commission is not required to determine whether, imports of these products cause or threaten material injury to a U.S. industry.

Due to the scope of this investigation, we employed a two-step questionnaire process. We presented a preliminary questionnaire to the government of Thailand in Washington, D.C. on August 27, 1984. Based on the responses to the preliminary questionnaire, we identified the three textile mill products producers and exporters who accounted for at least 60 percent of the value of certain textile mill products exported to the United States. In addition, we requested a response from the trading company that exported the subject merchandise manufactured by the selected producers to the United States. On October 25, 1984, we presented the detailed government and company questionnaires to the government of Thailand in Washington, D.C. The responses to our detailed questionnaries were received on November 27, November 30, December 3 and December 7, 1984.

We issued an affirmative preliminary determination on December 21, 1984 (49 FR 49661). We preliminarily determined that there was reason to believe or suspect that certain benefits which constitute bounties or grants within the meaning of the Act are being provided to manufacturers, producers or exporters in Thailand of certain textile mill products. We preliminarily determined that the net bounty or grant was 6.01 percent *ad valorem* for certain textile mill products. The programs preliminarily determined to bestow countervailable benefits were:

- Export packing credits.
- Rediscounts of industrial bills.
- Electricity discounts for exporters.
- Tax certificates for export.
- Assistance to trading companies.

We directed the U.S. Customs Service to suspend liquidation of all entries of the products under investigation which were entered, or withdrawn from warehouse, for consumption, and to require a cash deposit or the posting of a bond on these products in an amount equal to the estimated net bounty or grant. We conducted verification of the questionnaire responses from the government and companies in Thailand from January 9 through January 22, 1985.

Our notice of preliminary determination gave interested parties an opportunity to submit oral and written views. We held a public hearing on February 12, 1985. Both petitioners and respondents submitted comments on this proceeding.

On February 1, 1985, we initiated a proposed suspension agreement with respect to certain textile mill products. Petitioners have had 30 days in which to submit comments regarding the proposed suspension agreement on certain textile mill products. Their comments have been received and taken into consideration.

Certain respondents in the "Certain Textile Mill Products and Apparel" investigations have raised the issue as to whether petitioners have standing to file these cases. Petitioners have also made comments regarding our methodology in selecting companies to receive detailed questionnaries and our investigation of only those companies that account for sixty percent of exports of the subject merchandise to the United States. We have addressed these issues in our final determinations on "Certain Textile Mill Products and Apparel from Malaysia," published concurrently with this notice. See that notice for our positions on these issues.

Scope of Investigation

The products covered by this investigation are certain textile mill products which are described in Appendix II to the suspension agreement annexed to this notice.

Changes Since the Preliminary Determination

A. Financing From the Industrial Finance Corporation of Thailand

Petitioners alleged that producers and exporters of the subject merchandise receive countervailable below market financing from the Industrial Finance Corporation of Thailand (IFCT). We verified that the IFCT is a development financing institution which provides long- and medium-term loans to finance development projects and promote industrial enterprises in the private sector.

We verified that IFCT loans are not limited to a specific enterprise or industry, or group of enterprises or industries, and are, therefore, not countervailable. Moreover, we verified that the textile industry has not received a disproportionate share of IFCT loans. While the IFCT's criteria for deciding whether to fund a project include its impact on the balance of payments and whether it is export-oriented, these constitute only a few of the criteria used by the IFCT in evaluating a loan. We also are convinced that the IFCT lending decisions approximate those of a commercial bank and that the commercial and financial feasibility of the project are paramount.

The IFCT also provides short-term loans to banks, financial institutions and limited companies. Limited companies can include trading companies. The trading company exporting textile mill products responding to our questionnaire received short-term IFCT loans. These loans, which are very short-term, are placed in the market to earn the IFCT interest on its "idle" funds. Idle funds are those funds which the IFCT has received from various funding sources like the Asian Development Bank but which have not yet been lent out to specific projects. These loans are comparable to "call-money" loans and we verified that the interest rates charged are comparable to published commercial call-money rates.

B. Duty Drawback or Exemption

Petitioners alleged that producers and exporters of the products under investigation are allowed drawback or exemptions from import duties, business taxes and municipal taxes on imports used in export production.

Under the Thai Customs Act (B.E. 2482), materials that are imported and that are used in the production, mixing, assembling, or packaging of an exported product are eligible to receive either a duty exemption or a duty drawback. In addition, under provisions established in B.E. 2469, companies can import materials under bond and obtain a bank guarantee for the duties, which is deposited with the Customs Service. The bank guarantee for the duties is returned as a drawback when the company provides documentation showing that the imported material was used in the production, mixing, assembly, or packaging of the exported finished good.

During verification, we reviewed the operation of the duty drawback system. To be eligible for duty drawback, a company must apply to the Customs Department. The company must submit, for Customs approval, the production formula for each exported item. The formula must identify the imported and local raw material inputs, including packing materials, and must calculate the input used per unit of output. The Customs Department investigates the formula and may adjust the formula based on its findings. Once the formula is approved, the company can apply to receive drawback. The Customs Department maintains a computerized system to keep track of each imported input that is eligible for drawback. When the products incorporating that imported input are exported, the Customs Department draws back the corresponding amount of duties and indirect taxes based on the amount of imports that were used in each export sale. If after six months, the imported input is not entirely used in export sales, the company must pay the balance of duties due on that import.

The duty exemption system, which can be used by trading companies, operates in a similar manner. An exemption is not granted until Customs approves the production formula and the exporter shows that the import is used in its exports. We verified that neither the imports of machinery and equipment nor imports used in the production process that are not physically incorporated are eligible for exemption or drawback, and that the amount of drawback does not exceed the duties originally paid. Therefore, we determine that the duty drawback and exemption systems do not confer a bounty or grant on the subject merchandise.

C. Rediscount of Industrial Bills

We verified that our understanding of the amount of discount granted to different industries, as stated in the preliminary determination in this case (49 FR 49661), was correct. We learned, however, that the textile producers did not receive a disproportionate share of

total rediscounts under the entire program and, thus, there is no *de facto* limitation in the way the program operates. However, we have determined that the basic industry category in which textile producers are classified is limited to a specific group of industries and that the export category is tied to export performance. On the other hand, we verified that Article 5(e) in the Bank of Thailand's "Regulations Governing the Rediscount of Promissory Notes Arising from Industrial Undertakings" is not limited to a specific enterprise or industry, or group of enterprises or industries, because any firm which is directly involved in the production process and which uses local raw material and local expenditures equal to no less than 50 percent of the total cost or in which labor is the main factor of production is eligible to receive benefits under this article. Therefore, the suspension agreement requires that the producers and exporters renounce all benefits beyond what they might receive under Article 5(e).

Petitioners' Comments

Comment 1: The draft suspension agreement is not signed by exporters of substantially all of each of the distinct "like products" covered by the investigation as required by section 704(b) of the Act. Since the Department determined that there are many different textile "like products" in this investigation, the suspension agreement must cover exporters who account for "substantially all" of each distinct "like product" covered by the investigation.

DOC Postion: As stated in our discussion of our selection of companies in the final determinations of "Certain Textile Mill Products and Apparel from Malaysia, "published concurrently with this notice, "like product" and "class or kind" of merchandise are different terms performing different functions. Section 704(b) of the Act requires that "exporters who account for substantially all of the imports of the merchandise which is the subject of the investigation" sign a suspension agreement, and makes no reference to "like product." The suspension agreement in this case covers the exporters accounting for over 85 percent of the imported textile mill products under investigation (i.e., the " class or kind" of merchandise), as the statute and § 355.31(c) of our regulations (19 CFR 353.31(c)) require.

Comment 2: There is no satisfactory evidence in the record that the signatory exporters account for "substantially all of the imports" as required by section 704(b) of the Act.

DOC Position: We disagree. Information in the record shows that the signatories to the agreement exported over 90 percent of the products covered by the agreement in January through August, 1984, the most recent representative period.

Comment 3: The proposed agreement would violate the requirements of section 704(i)(1) of the Act regarding action by the Department if the signatory exporters cease at any time to represent 85 percent of exports. The legislative history of the Act (H.R. Rep. No. 317, 96th Cong., 1st Sess. 54 (1979)) is clear that the suspension will cease to have effect if exporters party to the agreement represent at any time less than 85 percent of the imports of the merchandise.

DOC Position: We disagree that the wording in the statute, regulations, or legislative history means that the signatories must account for at least 85 percent of imports at each moment in time during the life of the agreement. Logic dictates that the calculation as to whether signatories account for this amount must be done using representative periods of time, not individual moments in time.

We agree, however, that signatory exporters must account for at least 85 percent of imports of the United States for each representative period throughout the life of the agreement. Thus, we have amended section III.6 of the agreement to take this comment into consideration. In addition, we note that, if the signatories to the agreement fall below 85 percent of exports to the United States, the Department may attempt to negotiate with additional producers or exporters or may terminate the agreement. The agreement also has been amended to provide that the government of Thailand agrees to inform the Department should it learn of any new exporter of the subject products to the United States. If we learn of new shippers who are not large enough to cause the signatories to the agreement to fall below 85 percent of imports to the United States of the subject products, the Department still may decide that it should negotiate with them and amend the agreement to include them.

Comment 4: If the Department finds that imports from signatories have fallen below 85 percent for any month, the suspension agreement should cease to have effect.

DOC Position: The signatories to the agreement have agreed to provide us with quarterly value and volume of exports to the United States. The Department can check these numbers against U.S. Customs import statistics to monitor the percent of imports that signatories to the agreement represent. We do not believe that monitoring on a monthly basis is practicable or required by the statute. Moreover, because we have the authority to order suspension of liquidation as of 90 days before the notice of suspension is published if we find the agreement no longer meets the requirements of section 704(b) of the Act, we do not believe monthly monitoring is necessary.

Comment 5: The exporters do not agree, as required by section 704(b) of the Act, to eliminate the subsidy completely with respect to the subject merchandise exported to the United States. In the proposed agreement the exporters only agree that they will not receive subsidies on their export shipments, leaving open the possibility that they may export the subject products manufactured by others who have received countervailable subsidies.

DOC Position: The suspension agreement pertains to both producers and exporters of the subject products whose merchandise is exported to the United States directly or indirectly. Thus, both producers and exporters agree that they will not receive subsidies on their merchandise which is exported to the United States. The Department believes that the agreement's language is unambiguous. To clarify any possible misunderstanding, however, we hereby state that we intend the language in the ageement to mean that there can be no countervailable subsidy on the subject products exported to the United States. If we find that the subject products entering the United States have benefitted from a countervailable subsidy, we will consider the agreement to have been violated.

Comment 6: The proposed agreement fails to address benefits received under several important programs covered by the Department's initiation, such as financing from the Industrial Finance Corporation of Thailand (IFCT), Customs Department exemptions or duty drawback under the Thai Customs Act, and the rebate of indirect taxes through the flat tax program.

DOC Position: The Department has found that IFCT loans are not countervailable (see the "Changes Since the Preliminary Determination" section of this notice). We verified that the duty exemptions and duty drawback are given only for physically incorporated inputs in the case of textile mill products and are not excessive; thus, they do not provide countervailable subsidies. We have amended the suspension agreement to provide that the

signatories will not apply for or receive the rebate of indirect taxes through the flat tax program on exports of the subject merchandise to the United States. At verification, the government of Thailand said the flat tax rebate program was scheduled to be phased out as of March 31, 1985.

Comment 7: The agreement improperly allows, and anticipates, that the exporters will continue to receive subsidies under the tax certificate rebate or indirect taxes program. Thus, it does not eliminate or offset completely the amount of the net subsidy, as required by section 704(b) of the Act.

DOC Position: We believe that section II.c. is clearly worded when it states that "producers and exporters will not apply for, or receive, tax certificates or other rebates, remissions or exemptions under the Act on Tax and Duty Compensation of Exported Goods Produced in the Kingdom * * * on shipments of the subject products exported * * * to the United States in excess of the import duties and indirect taxes paid on inputs physically incorporated into the exported products."

We have verified that the Thai system of rebating indirect taxes (including import duties) through tax certificates under the above-mentioned act satisfies our test regarding the rebate of indirect taxes. This test is fully described in our final determination on "Certain Apparel from Thailand" published elsewhere in this issue of the **Federal Register.** We recognize that there is a difference between the rebate payments on the subject products and the indirect tax incidence borne by the inputs which are physically incorporated in the subject products. The latter is the only amount we allow to be rebated for subsidy/countervailing duty purposes and we have explained the difference to the government of Thailand. We also have provided an example of our calculation of the appropriate amount of indirect tax rebate in Thailand; (see our final determination on "Certain Apparel from Thailand" published elsewhere in this issue of the **Federal Register**). Therefore, we believe that the Thai government has sufficient knowledge of our method of calculation regardiang this program so that our method of calculation regarding this program so that, if we find more than an inconsequential amount of overrebate of indirect taxes in any review of this suspension agreement, we will consider the agreement to have been violated.

Due to the nature of indirect tax rebate calculations, which are based on production models which change over time, we believe it is appropriate to take into consideration the possibility that there may be at some time a slight overrebate. Accordingly, we believe that there should be a provision for offsetting such an inconsequential overrebate. This will ensure that there is no net benefit to the subject products while preventing an inconsequential overrebate from forcing the cancellation of the entire suspension agreement.

In order to monitor this program in the agreement, we have added a requirement that the government of Thailand will notify us of any changes that have taken effect in the rebate rates for the subject products. In this manner, we will be able to confirm that no overrebates are received, as petitioners request we do.

Comment 8: The proposed agreement assumes, without adequate basis in the record, that benefits under Article 5(e) of the rediscounting of industrial bills program are generally available.

DOC Position: The initialed suspension agreement ws based on verified information that the Department possessed, but which had not been released to petitioners at the time of the initialling. This information has since been made available to petitioners. To reiterate, at verification we learned that numerous different enterprises and industries had received benefits under Article 5(e). Therefore, benefits under this article are not "provided or required by government action to a specific enterprise or industry, or group of enterprises or industries," and are not countervailable.

Comment 9: Several provisions in the proposed agreement regarding the use of certain financing on "commercial (non-preferential)" terms are so vague that they are susceptible to evasion or misunderstanding and would be practically impossible to enforce effectively. The agreement should be revised to eliminate these vague provisions, or scrapped altogether.

DOC Position: We believe that the wording in the suspension agreement is appropriate. The Department, not the producers and exporters or the government of Thailand, will decide, for purposes of this suspended countervailing duty investigation, whether loans have been granted at commercial (non-preferential) interest rates and terms in the context of an administrative review. We believe that these words are the clearest financial terms of art that we could have used.

Taking into consideration the petitioners' point, however, we have placed in the record a memorandum explaining in greater detail some of the parameters of what we intend by using the terms commercial and non-preferential. We have also given an indication of what we believe are commercial interest rates and terms through our choice of a benchmark in the final determination in the countervailing duty investigation on apparel from Thailand.

We believe it would have been inappropriate to specify a particular interest rate since that would presumably fluctuate over time. We also believe it would be inappropriate to forbid the producers and exporters access to any Bank of Thailand financing as long as such financing was not countervailable. As stated above, however, if the producers and exporters use such funds and we find them preferential (non-commercial), we will consider the agreement to have been violated.

Comment 10: The sections of the proposed agreement which attempt to cover additional countervailable subsidies not specifically dealt with elsewhere are insufficiently rigorous. The producers and exporters should be required to notify the Department of any new benefit that conceivably might be countervailable. They should not be able to take any benefit before either the Department has notified them that the benefit is not likely to be countervailable or 60 days have passed after the notification by the signatory to the Department. In addition, the provisions should not be limited to new benefits, but should include all programs except those explicitly covered in the agreement or found in a final determination in this proceeding to be not countervailable. Finally, the confusion in section II.f over "benefits" and "bounties or grants" should be resolved.

DOC Position: We disagree with the petitioners' first and second points. We believe that the wording in section II.g, "likely to be found countervailable," is sufficiently strong, and that the revision suggested by petitioners, ("conceivably might be regarded to be countervailable under the Act") is too tenuous. In any case, the burden is on the respondents to notify us of any potential problem before it arises. The meaning in II.g is clear: the signatories may not receive any "bounties or grants," as used in section 303 of the Act. As to petitioners' second point, we believe that the 30 days of prior notice in section II.g of the agreement allows the Department sufficient time to monitor this agreement adequately. We believe the petitioners' third point is moot; we have covered in section II all programs that we investigated that we believe may provide bounties or grants. The

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programs that we have found do not confer bounties or grants are mentioned in the section of this notice entitled "Changes Since the Preliminary." We agree with petitioners' fourth point and have amended the agreement to include this.

Comment 11: The proposed agreement fails to deal adequately with transshipments. The proposed agreement should require the signatories to notify the Department when anyone transships the subject products to the United States. If the signatories are not in a position to do this, effective monitoring of the agreement is not practicable, as required by section 704(d)(1)(B) of the Act.

DOC Position: We disagree. If a signatory transships to the United States, it must notify the Department. If anyone else transships the subject products to the United States, the merchandise should be labelled as a product of Thailand and the Department will then know of the shipment. If it is mislabelled, the U.S. Customs Service is the proper authority to conduct an investigation.

Comment 12: The proposed agreement is procedurally out of time. Since an investigation must be suspended before a final determination, a copy of the proposed suspension agreement, and an explanation of how it will be carried out and enforced, must be provided 30 days before a final determination. Here the Department provided a copy of the proposed agreement on the thirtieth day before the date of the final determination, but provided no consultation and explanation until 9 days later.

DOC Position: The Department notified petitioners of the proposed suspension agreement, stating that we intended to sign the agreement in 30 days and inviting their comments on the proposed agreement. We offered petitioners a copy of the agreement and a full explanation on February 1, 1985, the date the agreement was initialled. However, they declined, saying it could wait. Petitioners picked up a copy of the agreement on February 4 and we held a lengthy meeting on the date that petitioners requested, to allow the petitioners sufficent time to read the document and develop questions in order to facilitate their meaningful participation in this case.

Comment 13: Petitioners have been denied a meaningful opportunity to comment on the proposed agreement because pertinent information in the record has been improperly withheld. The Department is withholding new information submitted during verification from release to petitioners' counsel under an administrative protective order (APO).

DOC Position: The Department disagrees. We have released the business proprietary version of the verification reports to petitioners' counsel under APO. The only information in the record to which petitioners' counsel has not had access are the non-public exhibits to the verification report, which we do not release in any event. These exhibits consist of photocopied documents from company and government records which we examined during the verification. Our findings, based on the records, are included in the verification report. The exhibits are simply back-up documentation for the report and are gathered to aid the Department's analysts in remembering what they examined.

Comment 14: The proposed agreement is not in the public interest and not in the interest of the domestic industry. The proposed agreement will not be as effective as a countervailable foreign subsidies on Thai exports of textiles. In addition, the Department has made no finding that the proposed agreement is in the interest of the domestic industry.

DOC Position: We disagree. We believe that the proposed agreement has the same effect as that of a countervailing duty order in this case—eliminating bounties or grants on the exports of the products under investigation from Tailand to the United States. Thus, the domestic industry is receiving the same relief that it would receive were a counternvailing duty order issued. In addition, the public interest is served because trade in these products can flow without the uncertainty involved in a countervailing duty order when final duties are assessed some time after the goods are entered and sold. In addition, the Department believes that this suspension agreement, based on the renunciation of bounties or grants, serves the public interest by removing these trade distorting measures on the subject products from the U.S. market. We also note that petitioners are misguided in their assertion that the agreement must be more beneficial to the U.S. industry than an order. That requirement is only applicable to suspension agreements under section 704(c). This agreement is pursuant to section 704(c).

Comment 15: Effective monitoring of the proposed agreement is not practicable, which section 704(d)(1)(B) of the Act requires. The proposed agreement does not have adequate provisions for monitoring transshipments, market share of the signatories, the segregation or allocation of subsidy benefits, the actual incidence of subsidy benefits received, or the receipt of new benefits.

DOC Position: We disagree. These issues are discussed in the comments and DOC positions above, and all these items are covered by the monitoring provisions of the agreement. In addition, we have made changes to strengthen the effectiveness of the provisions of the agreement on market share of the signatories, the actual incidence of subsidy benefit received, and the receipt of new benefits.

Comment 16: Petitioners have been prejudiced by the late release of business proprietary information to them.

DOC Response: We delayed the release of business proprietary information from the respondents to the petitioners until we received information from the petitioners confirming that they had standing to file this case. While there was still the question whether the petitioners had standing, we believed the balancing test in § 355.20(a)(3) of the regulations required us to maintain the confidentiality of the information.

Comment 17: The Department has refused, despite petitioners' requests, to investigate all of the programs covered by its initiation and, instead, has limited itself to benefits received by three textile firms, even though the Department was aware that other firms received different benefits and benefits under other programs. The suspension agreement, based on that "truncated" investigation, is inappropriately limited in scope.

DOC Position: The Department disagrees. We initiated the investigation on all programs alleged in the petition to confer bounties or grants on textiles in Thailand, except the Small Industry Finance Office (see the initiation notice, 49 FR 32639, for our explanation). The petitioners have not questioned, until now, our decision not to investigate this program. We did limit the investigation to the three firms which consitituted approximately 60 percent of exports of textile mill products to the United States and to the one trading company that exported the subject merchandise produced by these three firms. While we limited our investigation to these three

firms, we examined all alleged subsidy programs in Thailand. We listed in section II.a–f. of the agreement all programs which we found were used by the firms we investigated. In addition, we listed specifically in section II.i. those programs which seem, on their face, probably to constitute countervailable bounties or grants, even though they were not used by the firms we investigated. Finally, we believe the provisions in Section II. g. and h. adequately provide that producers and exporters of certain textile mill products from Thailand shipped to the United States will not receive any bounties or grants and will notify us before applying for any benefit likely to constitute such a bounty or grant. To reinforce the affirmative obligation of the signatories to notify us, the government of Thailand will also notify us if any signatory applies for any benefits mentioned in the agreement.

Suspension of Investigation

The Department has consulted with the petitioners and has considered their comments submitted with respect to the proposed suspension agreement. We have determined that the agreement will offset completely the amount of the net bounty or grant with respect to the subject merchandise exported directly or indirectly to the United States, that the agreemnt can be monitored effectively and that the agreement is in the public interest. Therefore, we find that the criteria for suspension of an investigation pursuant to section 704 of the Act have been met. The terms and conditions of the agreement, signed March 4, 1985, are set forth in Annex 1 to this notice.

Pursuant to section 704(f)(2)(A) of the Act, the suspension of liquidation of all entries, entered or withdrawn from warehouse, for consumption, of certain textile mill products from Thailand effective December 21, 1984, as directed in our notice of "Preliminary Affirmative Countervailing Duty Determination; Certain Textile Mill Products and Apparel from Thailand", 49 FR 49661, is hereby terminated. Any cash deposit on entries of certain textile mill products from Thailand pursuant to that preliminary affirmative determination shall be refunded and any bonds shall be released.

Notwithstanding the suspension agreement, the Department will continue the investigation, if we receive such a request in accordance with section 704(g) of the Act within 20 days after the date of publication of this notice.

This notice is published pursuant to section 704(f)(1)(A) of the Act (19 U.S.C. 1671c(f)(1)(A)).

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

March 4, 1985.

Suspension Agreement

Pursuant to the provisions of section 704 of the Tariff Act of 1930 ("the Act") and § 355.31 of the Department of Commerce Regulations, the Department of Commerce ("the Department") and the producers and exporters, including trading companies, of certain textile mill products in Thailand listed in Appendix 1 hereto (hereinafter "the producers and exporters"), enter into the following Suspension Agreement ("the Agreement"). In consideration of this Agreement, the Government of Thailand agrees to take such steps as are necessary to ensure that the renunciation of benefits by the producers and exporters is effectively implemented and monitored. On the basis of the foregoing, the Department shall suspend its countervailing duty investigation initiated on August 15, 1984 (49 FR 32,639) with respect to the textile mill products from Thailand subject to the terms and conditions set forth below.

I. Scope of the Agreement

The Agreement applies to the textile mill products described in Appendix 2 ("the subject products") exported directly or indirectly from Thailand to the United States.

II. Basis of the Agreement

The producers and exporters listed in Appendix 1, accounting for more than 85 percent of the total exports of the subject products from Thailand to the United States, agree as follows:

a. The producers and exporters will not apply for, or receive, any export credits (also known as export packing credits) under the Bank of Thailand facility permitting the rediscounting of promissory notes arising from shipments of the subject products exported, directly or indirectly, from Thailand to the United States, other than those offered at commercial rates and on commercial terms. Any export credit loan based on exports to the United States of the subject porducts outstanding as of the effective date of this Agreement shall be repaid, or refinanced at a commercial (non-preferential) interest rate and on commercial terms, by the original due date of the loan, or by the thirtieth day from the effective date of this Agreement, whichever comes first;

b. The producers and exporters will not apply for, or receive, any discount on electricity rates provided by the electricity authorities in Thailand (the Electricity Generating Authority of Thailand (EGAT), Metropolitan Electricity Authority (MEA) or Provincial Electricity Authority (PEA)) for shipments of the subject products exported, directly or indirectly, from Thailand to the United States;

c. The producers and exporters will not apply for, or receive, tax certificates or other rebates, remissions or exemptions under the Act on Tax and Duty Compensation of Exported Goods Produced in the Kingdom or any other provision of law (such as duty drawback or exemptions) on shipments of the subject products exported, directly or indirectly, from Thailand to the United States in excess of the import duties and indirect taxes on items that are physically incorporated into the exported products. If necessary, the producers and exporters agree to repay to the Government, in an annual adjustment, any amount by which the tax certificates or other rebates, remissions or exemptions exceed the amount of indirect taxes and import duties on physically incorporated inputs. Such payment may be made in cash or by surrendering unused tax certificates. The annual adjustments shall be calculated as follows:

(i) Any amount of overrebate found by the Department to exist during the course of an administrative review of this Agreement under section 751 of the Act; plus

(ii) Interest on that amount, calculated in accordance with section 778(b) of the Act, from the date of issuance of the tax certificate or other rebate, remission or exemption, to the date of payment of the annual adjustment;

d. The producers and exporters will not apply for, or receive, tax certificates or other rebates, remissions or exemptions of indirect taxes on exports, directly or indirectly, from Thailand to the United States under "Announcement of the Ministry of Finance" No. Chor Phor 1/2514;

e. The producers and exporters will not apply for, or receive, the double deduction of foreign marketing expenses for income tax purposes or financing on concessionary terms from the Bank of Thailand on exports, directly or indirectly, from Thailand to the United States under Announcement of the Board of Investment No. 40/2521, or its successor. Any financing on concessionary terms arising from shipments of the subject product exported, directly or indirectly, from

Thailand to the United States which is outstanding as of the effective date of this Agreement shall be repaid, or refinanced at a commercial (non-preferential) interest rate and on commercial terms, by the original due date of the loan, or by the thirtieth day from the effective date of this Agreement, whichever comes first;

f. The producers and exporters will not apply for, or receive, any credits under the Bank of Thailand's Regulations Governing the Rediscount of Promissory Notes Arising From Industrial Undertakings, or its successor, beyond those existing in Article 5(e) of those regulations (which the Department determines are not limited to a specific enterprise or industry, or group of enterprises or industries). Any credit, beyond that allowable in Article 5(e), which pertains in any way to the production or exportation of the subject products or which was based on exports of the subject products and which is outstading as of the effective date of this Agreement shall be repaid, or refinanced at a commercial (non-preferential) interest rate and on commercial terms, by the original due date of the loan, or by the thirtieth day from the effective date of this Agreement, whichever comes first;

g. The producers and exporters agree that they will not apply for, or receive, any bounties or grants on shipments of the subject products exported, directly or indirectly, from Thailand to the United States which are countervailable under the Act. Bounties or grants on exports of the subject products to the United States are those which have been found countervailable or are likely to be found countervailable in any investigation or review under section 751 of the Act, including countervailable benefits which may apply to other products or exports to other destinations that cannot be segregated as applying solely to such other products or exports;

h. The producers and exporters shall notify the Department in writing at least thirty days prior to applying for or accepting any new benefit which is, or is likely to be, a counter-vailable bounty or grant on shipments of the subject products exported, directly or indirectly, from Thailand to the United States, including counte ·ailable benefits which may apply to othe products or exports to other destinations that cannot be segregated as applying solely to such other products or exports; and

i. The producers and exporters shall notify the Department in writing prior to making an application to locate in an Export Processing Zone and prior to applying for, or receiving, benefits under sections 35 and 36 of the Investment Promotion Act (or any announcements or regulations relating to sections 35 or 36) on shipments exported, directly or indirectly, from Thailand to the United States.

III. Monitoring of the Agreement

1. The producers and exporters agree to supply any information and documentation which the Department deems necessary to demonstrate that there is full compliance with the terms of this Agreement.

2. Each producer or exporter will notify the Department if it:

a. Transships the subject products through third countries to the United States;

b. Alters its position with respect to any terms of the Agreement; or

c. Applies for, or receives, directly or indirectly, the benefits of the programs described in Section II for the manufacture or export of the subject products exported, directly or indirectly, from Thailand to the United States.

3. The Department will request information and may perform verifications periodically pursuant to administrative reviews conducted under section 751 of the Act, in addition to exercising its rights under paragraphs III. 1 and 2, above.

4. The producers and exporters agree to permit such vertification and data collection as deemed necessary by the Department in order to monitor this Agreement.

5. The producers and exporters agree to provide to the Department, through the Thai Textile Manufacturers' Association, a periodic certification that they continue to be in compliance with the terms of the Agreement. A certification will be provided within 45 days from the end of each calendar guarter beginning with the quarter ending March 31, 1985.

6. The producers and exporters agree to provide to the Department, through the Thai Textile Manufacturers' Association, within 45 days from the end of each calendar quarter, beginning with the calendar quarter ending March 31, 1985, the value and volume of exports of the subject products to the United States by the producers and exporters.

IV. General Provisions

1. In entering into this Agreement, the producers and exporters do not admit that any of the programs investigated constitute countervailable benefits within the meaning of the Act or the GATT Subsidies Code.

2. The provisions of section 704(i) shall apply if:

a. The producers and exporters withdraw from this Agreement; or

b. The Department determines that the Agreement is being or has been violated or no longer meets the requirements of section 704 of the Act.

3. Additionally, should exports to the United States of the producers and exporters account for less than 85 percent of the subject products imported, directly or indirectly, into the United States from Thailand, the Department may attempt to negotiate an agreement with additional producers or exporters or may terminate this Agreement and reopen the investigation or issue a countervailing duty order as appropriate under § 355.32 of the Commerce Regulations. If reopened, the investigation will be resumed for all producers and exporters of the subject products as if the affirmative preliminary determination were made on the date that the Department terminates this Agreement.

4. If, pursuant to section 704(g) of the Act, the investigation is continued after the Notice of Suspension of Investigation, the application of this Agreement shall be consistent with the final determination issued in the continued investigation.

V. Undertaking by the Government of Thailand

1. In consideration of the foregoing Agreement between the producers and exporters of certain textile mill products in Thailand and the Department of Commerce, the Government of Thailand agrees to take such steps as are necessary to ensure that the renunciation of benefits by the producers and exporters in this Agreement is effectively implemented and monitored, including:

a. Notifying the relevant authorities of the Government of Thailand of the terms of this Agreement in order to ensure action by those agencies consistent with the terms of this paragraph;

b. Supplying any information and documentation that the Department deems necessary to demonstrate full compliance by the producers and exporters with the terms of this Agreement;

c. Permitting such vertification and data collection as deemed necessary by the Department in order to monitor this Agreement;

d. Notifying the Department if it becomes aware that a producer or exporter is transshipping the subject products through third countries to the United States;

e. Notifying the Department if it alters its position with respect to any of the terms of this Agreement;

f. Notifying the Department of any changes which have taken effect in the rebate rate under the "Act on Tax and Duty Compensation of Exported Goods Produced in the Kingdom" for the subject products;

g. Notifying the Department if a producer or exporter of the subject products exported, directly or indirectly, from Thailand to the United States applies for, or receives, directly or indirectly, the benefits of the programs described in paragraphs IIa–f for the manufacture or export of subject products exported, directly or indirectly, from Thailand to the United States;

h. Notifying the Department if the producers or exporters become eligible for, apply for, or receive any new or substitute benefits on the subject products exported, directly or indirectly, from Thailand to the United States in contravention of section II.g. of the Agreement;

i. Notifying the Department if a producer or exporter makes an application to locate in an export processing zone or applies for benefits under sections 35 and 36 of the Investment Promotion Act;

j. Notifying the Department of any new firms that it learns are exporting the subject products to the United States; and

k. Notifying the Department when the rebate of indirect taxes under the "Announcement of the Ministry of Finance" No. Chor Phor 1/2514 (the flat rate rebate) has been terminated.

2. The Government of Thailand agrees to provide to the Department within 45 days of the end of each calendar quarter beginning with the quarter ending March 31, 1985, all relevant information deemed by the Department to be necessary to maintain this Agreement. The information shall include, but not be limited to:

a. A certification (provided after consultation with each agency responsible for administering the programs in paragraphs a–f of section II) that the producers and exporters have not applied for or received any benefits described in paragraphs a–f of section II on shipments of the subject merchandise exported, directly or indirectly, from Thailand to the United States;

b. A certification that the producers and exporters continue to account for 85 percent of exports of the subject products exported, directly or indirectly, from Thailand to the United States; and

c. A certification that the producers and exporters continue to be in full compliance with this Agreement.

3. The Government of Thailand's undertaking under this section is not an admission that any of the programs investigated constitute countervailable benefits under the Act or the GATT Subsidies Code.

4. The Government of Thailand recognizes that its undertaking is essential to the continuation of this Agreement.

VI. Effective Date

The effective date of this Agreement is the date of publication in the **Federal Register**. The provisions of paragraphs II.a–i apply with respect to exports of the subject products to the United States on or after the effective date. No applications may be made after the effective date of this Agreement for the benefits described in section II on subject products exported, directly or indirectly, from Thailand to the United States before the effective date.

Signed on this 4th day of March 1985, for the Government of Thailand.

Dumrong Indharameesup,

Commercial Counsellor, Embassy of Thailand.

Signed on this 4th day of March 1985, for the producers and exporters.

William H. Barringer,

Wald, Harkrader & Ross.

I have determined pursuant to section 704(b) of the Act that the provisions of section II eliminate the subsidies that the Government of Thailand is providing with respect to certain textile mill products exported, directly or indirectly, from Thailand to the United States. Furthermore, I have determined that suspension of the investigation is in the public interest, that the provisions of sections III and V ensure that this Agreement can be monitored effectively, and that this Agreement meets the requirements of Section 704(d) of the Act.

United States Department of Commerce.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

March 4, 1985.

Appendix 1

List of Producers and Exporters to the U.S.

1. Saha Union Corp., Ltd.
2. Union Textile Industries, Ltd.
3. The Bangkok Weaving Mills Ltd.
4. Thai Industries Development Co., Ltd.
5. Luckytex (Thailand) Ltd.
6. The Thai Durable Textile Co., Ltd.
7. Union Thread Industries Co., Ltd.
8. Thai American Textile Co., Ltd.
9. Thai Synthetic Textile Industry Co., Ltd.
10. Thai Blanket Textile Industry Co., Ltd.
11. Dusit Textile Co., Ltd.
12. The Unity Textile Ltd. Partnership
13. Erawan Textile Co., Ltd.
14. Piphattanakit Textile Co., Ltd.
15. The Thai Textile Co., Ltd.
16. Chiem Patana Knitting Co., Ltd.
17. Metro Spinning Textile Co., Ltd.
18. Thai Textile Industry Co., Ltd.
19. Thai Kurabo Textile Co., Ltd.
20. K. Cotton & Gauze Co., Ltd.
21. Thai Acrylic Co., Ltd.
22. Asia Fibre Co., Ltd.
23. Thai Melon Textile Co., Ltd.
24. TBI Group International Trade Co., Ltd.

Appendix II.—List of TSUSA Codes Which Covered Thailand's Exports of Certain Textile Mill Products to the United States in 1983

Certain Textile Mill Products						
Yarns						
300.6026	300.6028	303.2040	303.2042	308.5500	310.0209	310.1110
310.1135	310.4047	310.5030	310.5047	310.5049	310.9120	310.9140
310.1109						
Fabrics [1]						
320.0012	320.0013	320.0019	320.0032	320.0033	320.0034	320.0043
320.0044	320.0045	320.0062	320.0063	320.0071	320.0077	320.1012
320.1013	320.1019	320.1021	320.1022	320.1024	320.1031	320.1032
320.1033	320.1034	320.1038	320.1042	320.1043	320.1044	320.1045
320.1049	320.1050	320.1051	320.1052	320.1054	320.1057	320.1062
320.1063	320.1065	320.1071	320.1072	320.1074	320.1077	320.1080
320.1085	320.1087	320.1089	320.1091	320.1093	320.1095	320.1098
320.2018	320.2021	320.2022	320.2024	320.2027	320.2031	320.2038
320.2042	320.2049	320.2050	320.2051	320.2052	320.2054	320.2057
320.2065	320.2072	320.2074	320.2080	320.2087	320.2093	320.2098
320.3016	320.3018	320.3023	320.3027	320.3069	320.3073	320.5003
320.5021	320.5022	320.5024	320.5038	320.5042	322.1021	322.1022
322.1024	322.1031	322.1038	322.1042	322.1049	322.1054	322.1057

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Appendix II.—List of TSUSA Codes Which Covered Thailand's Exports of Certain Textile Mill Products to the United States in 1983—Continued

322.1065	322.1072	322.1074	322.1080	322.1098	322.2003	322.2021
322.2022	322.2024	322.2038	322.2042	322.2049	322.2054	322.2057
322.2065	322.2072	322.2074	322.2080	322.2098	322.4016	322.4021
322.4022	322.4023	322.4024	322.4031	322.4038	322.4042	322.4049
322.4054	322.4057	322.4065	322.4069	322.4072	322.4073	322.4074
322.4080	322.4098	326.1019	326.1034	326.1045	326.1071	326.1077
326.2016	326.2018	326.2023	326.2027	326.2069	326.2073	326.3016
326.3018	326.3019	326.3021	326.3022	326.3023	326.3024	326.3027
326.3031	326.3034	326.3038	326.3042	326.3045	326.3049	326.3054
326.3057	326.3065	326.3069	326.3071	326.3072	326.3073	326.3074
326.3077	326.3080	326.3098	326.6016	326.6023	326.6069	326.6073
327.3016	327.3023	327.3069	327.3073	327.4003	327.4021	327.4022
327.4024	327.4038	327.4042	327.4049	327.4054	327.4057	327.4065
328.3016	328.3023	328.3069	328.3073	328.4003	328.4021	328.4022
328.4024	328.4038	328.4042	328.4049	328.4054	328.4057	328.4065
328.4072	328.4074	328.4080	328.4098	335.9500	336.6447	337.9010
337.9013	337.9035	338.5006	338.5035	338.5038	338.5039	338.5045
338.5046	338.5049	338.5069				

Special Construction Fabrics

347.2600	347.5000	353.5042	355.0200

Textile Furnishings

360.1015	360.1515	360.1520	360.2000	360.4825	360.4855	360.7000
360.7800	361.4500	363.0120	363.0515	363.0520	363.0525	363.3020
363.5115	363.5130	363.6015	363.8000	364.1300	365.7825	365.7865
366.1520	366.1820	366.1840	366.1865	366.1880	366.2160	366.2420
366.2420	366.2480	366.2720	366.4600	366.4700	366.6500	366.7700
366.7930	367.4500	367.6040	367.6080			

Miscellaneous

385.6140	386.0430	386.1500	386.4000	386.5045	387.3700
389.3000	389.5000	389.6255	389.6265		

[1] For the woven cotton fabrics under investigation, the U.S. Department of Commerce, in preparing the Appendices for these investigations, has used the U.S. Import Statistical Numbers which closely parallel the TSUSA numbers. For example, U.S. Import Statistical Number 323.0012 represents TSUSA numbers 323.0112 through 323.0912 and 328.4098 represents TSUSA numbers 328.4098 through 328.4698. The fourth and fifth digits of these TSUSA numbers are the yarn count numbers.

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[C-559-401]

Final Negative Countervailing Duty Determinations; Certain Textile Mill Products and Apparel from Singapore

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that no benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Singapore of certain textile mill products and apparel. The estimated net countervailable benefits are *de minimis*, and therefore our final countervailing duty determinations are negative.

EFFECTIVE DATE: March 12, 1985.

FOR FURTHER INFORMATION CONTACT: Rick Herring or Melissa Skinner, Office of Investigations and Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377-0187 or 377-4412.

SUPPLEMENTARY INFORMATION:

Final Determinations

For purposes of these investigations, the following programs are found to confer countervailable benefits:

- Monetary Authority of Singapore Rediscount Facility.
- Double Deduction of Export Promotion Expenses.

The estimated net countervailable benefit is 0.005 percent *ad valorem* for textile mill products and 0.013 percent *ad valorem* for apparel. These amounts are *de minimis*. Therefore, we determine that no benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Singapore of certain textile mill products and apparel.

Case History

On July 19, 1984, we received a petition from the American Textile Manufacturers Institute, the Amalgamated Clothing and Textile Workers Union, and the International Ladies' Garment Workers Union, on behalf of the U.S. industries producing certain textile mill products and apparel. In compliance with the filing requirements of § 355.26 of our regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in Singapore of textile mill products and apparel receive, directly or indirectly, benefits which constitute bounties or grants within the meaning of section 303 of the Act.

We found that the petition contained sufficient grounds upon which to initiate countervailing duty investigations, and on August 8, 1984, we initiated such investigations (49 FR 32439). We stated that we expected to issue preliminary determinations by October 12, 1984. On September 21, 1984, we determined these investigations to be "extraordinarily complicated," as defined in section 703(c)(1)(B) of the Act. Therefore, we extended the period for making our preliminary determinations by 65 days until December 17, 1984 (49 FR 40198).

Since Singapore is not a "country under the Agreement" within the meaning of section 701(b) of the Act and the merchandise being investigated is dutiable, sections 303 (a)(1) and (b) of the Act apply to these investigations. Accordingly, the domestic industry is not required to allege that, and the U.S. International Trade Commission is not required to determine whether, imports of these products cause or threaten material injury to a U.S. industry.

Due to the scope of these investigations, we employed a two-step questionnaire process. We presented a preliminary questionnaire to the government of Singapore in Washington, D.C., on August 24, 1984. Based on the responses to the preliminary questionnaire, we identified the three textile mill products producers and exporters, and the sixteen apparel producers and exporters who accounted for at least 60 percent of the textile mill products and apparel exported to the United States. Two additional companies made timely requests for exclusion. These twenty-one firms were selected to respond to the detailed company questionnaire. On October 26, 1984, we presented the detailed government and company questionnaires to the government of Singapore in Washington, D.C. The

responses to our detailed questionnaires were received on December 3 and 4, 1984.

On December 21, 1984, we published our preliminary determinations that no benefits constituting bounties or grants are being provided to manufacturers, producers, or exporters in Singapore of certain textile mill products and apparel (49 FR 49683). We conducted verification of the responses of the government of Singapore and the textile and apparel companies between January 8 and January 16, 1985 in Singapore. Our notice of preliminary determinations gave interested parties an opportunity to submit oral and written views. We received written views from interested parties and have taken them into consideration in this determination.

Certain respondents in the *Certain Textile Mill Products and Apparel* investigations have raised issues as to whether petitioners have standing to file these cases. Petitioners have also made comments regarding our methodology in selecting companies to receive detailed questionnaires, and our investigation of only those companies that account for sixty percent of exports of the subject merchandise to the United States. We have addressed these issues in our final determinations of *Certain Textile Mill Products and Apparel from Malaysia*, published concurrently with this notice. See that notice for our comments on those issues.

Scope of the Investigations

The products covered by these investigations are certain textile mill products and apparel, which are described in Appendix A, that is attached to this notice.

Analysis of Programs

Throughout this notice, we refer to certain general principles applied to the facts of the instant investigations. These principles are described in the "Subsidies Appendix" attached to the notice of "Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina; Final Affirmative Countervailing Duty Determination and Countervailing Duty Order," which was published in the April 26, 1984 issue of the **Federal Register** (49 FR 18016).

For purposes of these determinations, the period for which we are measuring bounties or grants ("the review period") is calendar year 1983. For companies on a non-calendar fiscal year, we used their most recent completed fiscal year.

Based upon our analysis of the petition, the responses to our questionnaires, our verification, and comments submitted by interested parties, we determine the following:

1. Programs Determined to Confer Countervailable Benefits

We determine that countervailable benefits are being provided to manufacturers, producers, or exporters in Singapore of certain textile mill products and apparel under the following programs.

A. Monetary Authority of Singapore Rediscount Facility

Petitioners allege that producers and exporters of the products under investigation benefit from the provision of preferential financing through the Monetary Authority of Singapore's (MAS) rediscount facility for eligible export and pre-export bills of exchange.

The Monetary Authority of Singapore operates a rediscounting facility at which banks are permitted to rediscount qualified pre-export and export bills of exchange. Most exporters of manufactured products are eligible to receive financing from commercial banks using this facility. Banks negotiating rediscounted bills are allowed to charge a maximum commission of not more than one and one-half percent, per annum, above the rediscount rate charged by the Authority. The Authority's rediscount rate is subject to change from time to time. The rediscount rate during the review period was 6.5 percent and the commission that banks were allowed to charge under this program was 1.5 percent; therefore, the rate charged to exporters for this financing was eight percent. This was lower than the interest rate on three month commercial bill discounts, which is the most comparable, predominant short-term debt instrument. During the review period the average annual rate, including the bank commission of 0.5 percent, for commercial bill discounts was 8.12 percent. Since the rediscount facility is only available for use by exporters and the rate of interest charged is less than commercial interest rates on comparable loans, we determine that the provision of financing by the rediscount facility of the Monetary Authority of Singapore constitutes a countervailable export benefit.

The benefit provided under this program was determined by applying the interest differential between the commercial bill discount rate and the rate charged for MAS financing to the principal amount of the loans received in 1983 and used to finance exports to the U.S., for the weighted-average number of days the loans were outstanding. We then allocated the aggregate benefit over total U.S. exports of the products under investigation. On this basis, we calculated a countervailable benefit in the amount of 0.005 percent *ad valorem* for textile mill products and 0.013 percent *ad valorem* for apparel.

B. Double Deduction of Export Promotion Expenses

Petitioners allege that firms exporting the merchandise under investigation are receiving benefits under the Singapore tax law which allows a double deduction from gross corporate income of expenses incurred in export promotion.

This program allows the double deduction of approved expenses incurred in the overseas promotion of Singapore-made products. Any company undertaking the following promotion activities is eligible for the benefit:

- Participation in an overseas trade fair, trade exhibition, and trade mission;
- Participation in an approved trade fair or exhibition;
- Maintaining an approved overseas trade office;
- Overseas market development program; and
- Advertising in an approved publication.

Every company is allowed a single deduction for promotional expenses, but since the double deduction is available only to exporters, we determine that this program confers a countervailable benefit upon the products under investigation. Only one company received tax benefits under this program. To calculate the benefit from this program, we determined the tax savings (half the amount of the double deduction claimed on the tax return filed during the review period applied to the corporate tax rate) and allocated that amount over the total value of export sales in 1983 to determine a countervailable benefit of less than 0.001 percent *ad valorem* for apparel.

II. Programs Determined not to Confer Bounties or Grants

We determine that bounties or grants are not being provided to manufacturers, producers, or exporters in Singapore of certain textile mill products and apparel under the following programs.

A. Part VIA of the Economic Expansion Incentives Act (Investment Allowance)

Petitioners allege that under this program, producers and exporters receive tax credits for up to 50 percent of the outlays on approved new investments in plant, machinery, and factory buildings.

Under the Investment Allowance program, a company is granted a tax exemption on a specific amount of profits equal to a percentage of the fixed investments in plant and equipment incurred by the company on the project. Companies can receive the investment allowance if the investment meets one of the following criteria:

- The investment results in greater efficiency in resource utilization;
- The investment introduces new technology into an existing industry;
- The project is significantly more efficient in resource utilization than the industry average; or
- The project produces parts and components used by other industries.

We verified that all manufacturing companies investing in new productive equipment are eligible to participate in the program and that any such company which meets the above criteria will be approved to receive the investment allowance. Because the program is not limited, either *de jure* or *de facto*, to a specific enterprise or industery, or group of enterprises or industries, we determine that the program does not constitute a bounty or grant

B. Skills Development Fund

Petitioners allege that the Singapore Development Board provides countervailable assistance to producers and exporters of the products under investigation through the Skills Development Fund, which provides assistance, usually in the form of grants, to employers undertaking to upgrade employee kills or to increase efficient production. The three programs under the Skills Development Fund are Training Grants, Interest Grants for Mechanisation, and the Development Consultancy Scheme.

The Skills Development Fund (SDF) was established in October 1979 to promote the training of the Singapore labor force. The SDF is financed through a levy on employers, currently amounting to four percent of the salaries of all employees earning less than $750 per month. We verified that all sectors of the economy are eligible to participate in the program. Because the program is not limited, either *de jure* or *de facto*, to a specific enterprise or industry, or group of enterprises or industries, we determine that this program does not constitute a bounty or grant.

C. Textile and Garment Industry Training Centre

Petitioners allege that the producers and exporters of the products under investigation receive a countervailable grant through the government's operation of a training center specifically for textile workers to the extent that this program involves an assumption of manufacturing and production costs.

The Textile and Garment Industry Training Centre was established, and is operated, by the Singapore Textile and Garment Manufacturers' Association (STGMA). The Centre provides to all employees of the textile and garment industry a wide range of courses aimed at training new workers and upgrading the skills of existing workers. The cost of courses taken is the responsibility of the participants' employers. Employers may apply to the Skills Development Fund (SDF) for training grants to cover these costs (see previous section).

The STGMA received funds from the SDF to assist in covering the Centre's start-up cost. We verified that this Centre is one of eleven centers in a wide range of industries, which were or are in the process of being established with funds provided by the SDF. We verified that the government of Singapore has made funds available to all other trade associations which have requested training centers. Since the provision of grants by the SDF to industry associations is not limited, either *de lure* or *de facto*, to a specific industry or group of industries, we determine that the Textile and Garment Industry Training Centre does not confer a bounty or grant upon the production or exportation of the products under investigation.

D. Public Utility Board Surcharge Exemption Programme

This program provides for exemption from the ten percent surcharge on Public Utility Board (PUB) bills. Exemption from the surcharge is granted on an approval basis to industrial establishments with a monthly electricity consumption of at least 100,000 kwh.

Criteria of energy conservation are the sole bases for determining whether a company qualifies for the exemption. A company with monthly electricity consumption of at least 100,000 kwh qualifies for the exemption as long as it meets one of the following criteria: (a) The company's energy efficiency in the current year is better than in the previous year, (b) the company's energy efficiency is better than the average for the same industry group, or (c) new investments in energy conservation equipment are equal to or greater than 15 percent of total annual energy costs.

We verified that any company meeting any of the above criteria which applies for the exemption has its application approved. We also verified that companies which apply, and whic' do not meet the specifications for approval, are denied the exemption. Since this program is not limited, either *de jure* or *de facto*, to a specific enterprise or industry, or group of enterprises or industries, we determine that this program does not constitute a bounty or grant.

E. Small Industries Finance Scheme

Under this program, the Economic Development Board provides fixed interest funds to financial institutions participating in the program for onward lending to qualifying small companies. Loans made to such companies are currently set at nine percent. The Economic Development Board and the participating financial institutions jointly administer the program and share equally in the credit risk. We verified that all small companies in manufacturing activities qualify for the program as long as they meet the normal credit risk criteria set by the participating financial institutions. We found in practice that there is no limitation on the companies which receive financing under this program, other than the regulatory guidelines of the program.

Since this program is not limited, either *de jure* or *de facto*, to a specific enterprise or industry, or group of enterprises or industries, we determine that this program does not constitute a bounty or grant.

III. Programs Determined Not To Be Used

We determine that manufacturers, producers or exporters in Singapore of certain textile mill products and apparel did not use the following programs which were listed in our notice of initiation.

A. Parts II, III, IV, IVA, IVB, and V of the Economic Expansion Incentives Act

Petitioners allege that the producers and exporters of the products under investigation benefit from exemptions on income tax based upon their classification under the Economic Expansion Incentives Act. We verified that the only part of the Economic Expansion Incentives Act used by producers and exporters was the investment allowance allowed under Part VIA of the Act (see the section "Programs Determined Not To Confer Bounties Or Grants").

B. Capital Assistance Scheme

Petitioners allege that producers and exporters of the products under investigation receive preferential loans

and loan guarantees under the Capital Assistance Scheme which is administerd by the Singapore Economic Development Board. We verified that the textile and apparel companies did not use this program.

C. Production Development Assistance Scheme

Petitioners allege that producers and exporters of the products under investigation receive grants from the Singapore Economic Development Board under the Product Development Assistance Scheme to finance technical improvements in products or manufacturing processes. We verified that the textile and apparel companies did not use this program.

D. Research and Development Tax Incentives

Petitioners allege that the producers and exporters of the products under investigation receive special tax treatment for approved research and development costs. We verified that the textile and apparel companies did not use this program.

E. Export Credit Insurance Corporation

Petitioners allege that exporters benefit from the provision of export credit insurance at concessional rates not consistent with commercial considerations, which are inadequate to cover the long-term operating costs of the program.

The Export Credit Insurance Corporation insures exporters against the risk of non-payment. To qualify for export credit insurance coverage, the exporter must be a company incorporated in Singapore and operating out of a permanent establishment in Singapore. During verification we found that this program was not used to insure exports to the U.S.

Petitioners' Comments

Comment 1: Petitioners argue that the Skills Development Fund, the Textile and Garment Industry Training Centre, the Public Utility Board Surcharge Exemption Programme, and the Small Industries Finance Scheme may not be limited *de jure* to a specific industry or group of industries, but that they are administerd *de facto* in a way that particularly benefits the textile and apparel industries in Singapore.

DOC Position: During verification of these programs, we examined the administration of these programs and determined that the administration did not provide preferential treatment to selected companies or industries. The only criterion in determining whether a company was approved or denied participation in a program was whether it met the regulatory guidelines of the program.

Comment 2: Petitioners argue that we should determine the Textile and Garment Industry Training Centre to be countervailable because during the period of review, the textile and apparel industries were the sole beneficiaries of this program.

DOC Position: We disagree. We verified that the Textile and Garment Industry Training Centre is one of eleven centers that have and are being established with government assistance. Every trade association which has applied has received this assistance. This assistance is neither *de facto* or *de jure* limited to a specific enterprise or industry or group of enterprises or industries.

Comment 3: Petitioners argue that the Small Industries Finance Scheme should be determined countervailable because a program benefiting small businesses discriminates among businesses based on size. They state that the Department has consistently found that regional programs provide bounties or grants. Therefore, the Department should find programs discriminating in favor of small businesses countervailable as well.

DOC Position: We disagree. The Department has consistently held that small and medium sized businesses constitute more than one group of enterprises or industries. (See for example, *Certain Softwood Products from Canada*, 48 FR 24159.)

Comment 4: Petitioners argue that the Department's use in the preliminary determination of the average prime rate as the benchmark for calculating benefits of the loans rediscounted with MAS was in error. The appropriate benchmark is the weighted-average interest rate reported by the companies in the responses and represents the actual borrowing experience of the exporting firms.

DOC Position: We disagree with petitioners' argument that we should use a weighted-average company-specific interest rate as our benchmark in the final determination. It is a long-standing Department policy to use a comparable national average commercial interest rate as a benchmark in measuring the preferentiality of short-term financing. See our Subsidies Appendix (49 FR 18016), for an elaboration of our reasoning for using a national average benchmark. We believe that the commercial bill discount rate is the appropriate national average commercial benchmark rate.

For our final determination, we used the rate of three month commercial bill discounts as our benchmark because we determined that it was the most comparable, predominant short-term debt instrument. We used the prime rate for our benchmark in the preliminary determination because we were unsure whether the rates on the commercial bill discounts which were published in the Monetary Authority of Singapor's *Monthly Statistical Bulletin* were nominal or effective rates. We had also used the prime rate in the preliminary determination of *Certain Refrigeration Compressors from Singapore* (48 FR 39109) in measuring the preferentiality of MAS rediscounting. During verification we obtained information on the amount of additional bank charges which are normally added to the published commercial bill discount rates. We also verified the value of commercial bill transactions and found that the commercial bill discounting operates in a similiar manner to the rediscounting of bills with the MAS. These factors led us to conclude that the three month commercial bill discount rate is the more appropriate commercial benchmark for measuring the preferentiality of MAS rediscounting.

Comment 5: Petitioners argue that under the MAS program banks may charge up to a 1.5 percent commission, which is three times higher than the commission banks charge on commercial bills. Therefore, although the interest rates charged to borrowers appear to be the same, banks have an incentive to provide MAS loans over loans based on commercial bills. This provides, in effect, a preference for MAS loans.

DOC Position: Banks are not limited on the rates of commission they may charge on commercial bill discounts. Therefore, the amount of commission they are able to charge under the MAS rediscount program does not provide an incentive to the banks to provide MAS loans over commercial bill discount financing.

Comment 6: Petitioners argue that we should reject respondents claim that the Skills Development Fund is not countervailable because it is paid for our of employer levies.

DOC Position: We did not address this issue because we determined that the Skills Development Fund is not limited to a specific enterprise or industry, or group of enterprises or industries.

Respondents Comments

Comment 1: Respondents argue that the Department used the wrong commercial benchmark to measure the preferentiality of loans rediscounted at

the MAS rediscount facility. The correct commercial benchmark is the rate for three month commercial bill discounting, which is the predominant source for short-term financing of trade transactions.

DOC Position: We agree that the three month commercial bill discount rate is the appropriate benchmark. See the DOC position on Petitioners' Comment 4.

Verification

In accordance with section 776(a) of the Act, we verified the data used in making our final determinations. During verification we followed normal verification procedures, including meetings with government officials and inspection of documents and on-site inspection of accounting records of companies exporting merchandise under investigation to the United States.

Administrative Procedures

We afforded interested parties an opportunity to present oral views in accordance with our regulations (19 CFR 355.35). Neither petitioners nor respondents requested a public hearing. In accordance with the Department's regulations (19 CFR 355.34(a)), written views have been submitted and considered in this determination.

This notice is published pursuant to section 705(d) of the Act (19 U.S.C. 1671d(d)).

William T. Archey,

Acting Assistant Secretary for Trade Administration.

March 4, 1985.

Appendix.—List of TSUSA Codes Which Covered Singapore's Exports of Certain Textile Mill Products and Apparel to the United States in 1983

A. Textile Mill Products

Yarns

300.8028 310.1135 310.4047 310.5049 310.9140

Fabrics

312.0012 320.0013 320.0032 320.0033 320.0034 320.0043 320.0044
320.0045 320.0050 320.0051 320.0052 320.0062 320.0063 320.0071
320.0077 320.0085 320.0089 320.0091 320.0095 320.1001 320.1012
320.1013 320.1018 320.1019 320.1021 320.1022 320.1024 320.1031
320.1032 320.1033 320.1034 320.1038 320.1042 320.1043 320.1044
320.1045 320.1049 320.1050 320.1051 320.1052 320.1054 320.1057
320.1062 320.1063 320.1065 320.1071 320.1072 320.1074 320.1077
320.1080 320.1085 320.1089 320.1091 320.1095 320.1098 320.1027
320.2021 320.2022 320.2024 320.2031 320.2038 320.2042 320.2049
320.2054 320.2057 320.2065 320.2072 320.2074 320.2080 320.2098
322.1012 322.1013 322.1021 322.1022 322.1024 322.1031 322.1032
322.1033 322.1038 322.1042 322.1043 322.1044 322.1049 322.1054
322.1057 322.1062 322.1063 322.1065 322.1072 322.1074 322.1080
322.1098 322.3003 322.3021 322.3022 322.3024 322.3038 322.3042
322.3049 322.3054 322.3057 322.3065 322.3072 322.3074 322.3080
322.3098 322.4016 322.4023 322.4069 322.4073 322.5003 322.5021
322.5022 322.5024 322.5038 322.5042 322.5049 322.5054 322.5057
322.5065 322.5072 322.5074 322.5080 322.5098 322.6003 322.6021
322.6022 322.6024 322.6038 322.6042 322.6049 322.6054 322.6057
322.6065 322.6072 322.6074 322.6080 322.6098 323.1021 323.1022
323.1024 322.1031 322.1038 322.1042 322.1049 322.1054 322.1057
322.1065 322.1072 322.1074 322.1080 322.1098 323.2003 323.2021
323.2024 323.2038 323.2042 323.2049 323.2054 323.2057 323.2065
323.2072 323.2074 323.2080 323.2098 326.0001 326.0050 326.0051
326.0052 326.0062 326.0063 326.0085 326.0089 326.0091 326.0095
326.1001 326.1062 326.1063 328.2003 328.2021 328.2022 328.2024
328.2038 328.2042 328.2049 328.2054 328.2057 328.2065 328.2072
328.2074 328.2080 328.2098 328.3018 328.3023 328.3089 328.3073
328.4003 328.4021 328.4022 328.4024 328.4038 328.4042 328.4049
328.4054 328.4057 328.4065 328.4072 328.4074 328.4080 328.4098
329.1021 329.1022 329.1024 329.1031 329.1038 329.1042 329.1049
329.1054 329.1057 329.1065 329.1072 329.1074 329.1080 329.1098
336.6451 336.6453 337.2005 337.2015 338.5008 338.5009 338.5010
338.5012 338.5015 338.5035 338.5065

Special Construction Fabrics

345.1040 349.1060 351.6030 353.5052 355.6510 357.9000 358.0290

Textile Furnishings

360.1515 360.1520 360.3000 360.4225 360.4825 360.7000 363.5030
363.5130 363.6015 366.2460 367.3428 367.7500

Miscellaneous

385.1500 385.5000 385.5500 385.6120 386.3000 386.5045 389.6265
389.7000

Appendix.—List of TSUSA Codes Which Covered Singapore's Exports of Certain Textile Mill Products and Apparel to the United States in 1983— Continued

B. Apparel

Wearing Apparel

373.0500	373.2500	373.2700	374.3550	376.5412	376.5809	376.5612
378.0550	379.0211	379.0212	379.0220	379.0230	379.0240	379.0252
379.0254	379.0370	379.0610	379.0615	379.0620	379.0630	379.0640
379.0642	379.0646	379.0650	379.1710	379.1742	379.1744	379.1746
379.1748	379.2320	379.2360	379.2350	379.2610	379.2620	379.2630
379.3120	379.3130	379.3140	379.3190	379.3310	379.3332	379.3925
379.3930	379.3940	379.4020	379.4030	379.4050	379.4060	379.4330
379.4620	379.4640	379.4650	379.4660	379.4670	379.5510	379.5520
379.5525	379.5530	379.5535	379.5540	379.5545	379.5550	379.5555
379.5560	379.5565	379.5800	379.6210	379.6217	379.6219	379.6220
379.6230	379.6240	379.6250	379.6260	379.6270	379.6280	379.6470
379.6984	379.6992	379.7620	379.8730	379.7650	379.8318	379.8360
379.8420	379.8906	379.8911	379.8915	379.8930	379.8935	379.8940
379.9010	379.9020	379.0925	379.9030	379.9035	379.9040	379.9250
379.9515	379.9520	379.9530	379.9540	379.9555	379.9575	379.9580
379.9585	379.9605	379.9630	379.9820	379.9822	379.9824	379.9826
379.9828	379.9830	379.9832	383.0205	383.0213	383.0219	383.0222
383.0226	383.0228	383.0232	383.0234	383.0305	383.0335	383.0350
383.0390	383.0505	383.0506	383.0507	383.0509	383.0608	383.0612
383.0622	383.0631	383.0606	383.0622	383.0631	383.0616	383.0605
383.0615	383.0858	383.1802	383.1804	383.1805	383.1806	383.1807
383.1809	383.1811	383.1812	383.1820	383.1841	383.1843	383.1846
383.1848	383.1860	383.1910	383.1915	383.1922	383.1924	383.1926
383.1928	383.1935	383.1940	383.2013	383.2016	383.2020	383.2035
383.2040	383.2052	383.2056	383.2058	383.2205	383.2225	383.2227
383.2228	383.2229	383.2231	383.2232	383.2233	383.2234	383.2236
383.2237	383.2241	383.2243	383.2245	383.2250	383.2305	383.2320
383.2354	383.2590	383.2706	383.2715	383.2716	383.2718	383.2721
383.2720	383.2726	383.2728	383.2730	383.2731	383.2750	383.2815
383.2814	383.2816	383.2818	383.2821	383.2820	383.2825	383.2828
383.2835	383.2838	383.2842	383.2844	383.2910	383.2920	383.3030
383.3040	383.3050	383.3060	383.3069	383.3080	383.3085	383.3090
383.3415	383.3430	383.3435	383.3440	383.3445	383.3446	383.3448
383.3450	383.3452	383.3460	383.3465	383.3486	383.4300	383.4702
383.4704	383.4705	383.4709	383.4711	383.4720	383.4724	383.4726
383.4747	383.4748	383.4750	383.4753	383.4754	383.4756	383.4761
383.4762	383.4764	383.4765	383.4818	383.4821	383.4825	383.4900
383.5020	383.5027	383.5028	383.5029	383.5090	383.5032	383.5034
383.5037	383.5041	383.5042	383.5043	383.5046	383.5051	383.5054
383.5082	383.5066	383.5090	383.5304	383.5365	383.5366	383.5830
383.6200	383.6371	383.6385	383.6395	383.6610	383.6649	383.6651
383.7210	383.7510	383.7522	383.7532	383.7534	383.7536	383.7538
383.7542	383.7544	383.7546	383.7548	383.7552	383.7554	383.7556
383.7528	383.7558	383.7562	383.7595	383.7768	383.7772	383.8002
383.8007	383.8009	383.8011	383.8012	383.8014	383.8017	383.8019
383.8024	383.8026	383.8028	383.8030	383.8045	383.8048	383.8050
383.8052	383.8069	383.8071	383.8073	383.8110	383.8114	383.8115
383.8117	383.8125	383.8126	383.8137	383.8139	383.8141	383.8143
383.8145	383.8147	383.8156	383.8158	383.8162	383.8164	383.8605
383.8620	383.8621	383.8622	383.8635	383.8645	383.8650	383.8660
383.8661	383.8663	383.8667	383.8669	383.8670	383.9010	383.9015
383.9020	383.9025	383.9027	383.9029	383.9035	383.9040	383.9032
383.9042	383.9050	383.9051	383.9056	383.9057	383.9058	383.9059
383.9061	383.9062	383.9063	383.9064	383.9066	383.9065	383.9070
383.9072	383.9074	383.9076	383.9210	383.9211	383.9215	383.9225
383.9240	383.9270	383.9276	383.9280	383.9291		

Footwear

700.4506	

Gloves

704.4508	704.5015	704.8520	704.8550

Luggage and Handbags

706.4121	706.4140	706.4150

1. For the woven cotton fabric under investigation the U.S. Department of Commerce, in preparing the Appendices for these investigations, has used the U.S. Import Statistical Numbers which closely parallel the TSUSA numbers. For example U.S. Import Statistical Number 320.0012 represents TSUSA numbers 320.0112 through 320.0912 and 329.1098 represents TSUSA numbers 329.1098 through 329.1998. The fourth and fifth digits of these TSUSA numbers are the yarn count numbers.

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[C-357-404]

Final Affirmative Countervailing Duty Determinations and Countervailing Duty Orders; Certain Textile Mill Products and Apparel From Argentina

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that certain benefits which constitute bounties or grants within the meaning of the countervailing duty laws are being provided to manufacturers, producers, or exporters in Argentina of certain textile mill products and apparel. The estimated net bounty or grant is 4.53 percent *ad valorem* for certain textile mill products and 15.87 percent *ad valorem* for apparel. We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of certain textile mill products and apparel from Argentina that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice, and to require a cash deposit on entries of these products in the amount equal to the estimated net bounty or grant for duty deposit purposes.

EFFECTIVE DATE: March 12, 1985.

FOR FURTHER INFORMATION CONTACT: Terry Link, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-0189.

SUPPLEMENTARY INFORMATION:

Final Determinations and Orders

Based upon our investigations, we determine that certain benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Argentina of certain textile mill products and apparel. For purposes of these investigations, the following programs are found to confer a bounty or grant:

- Post-Export Financing under Circular OPRAC 1-9.
- Circular RF-153 (Pre-Export Financing through Dollar-Indexed Peso Loans).
- Reembolso (Tax and Duty Rebate on Exports).
- Regional Tax Incentives.
- Incentives for Exports from Southern Ports.

We determine the estimated net bounty or grant to be 4.53 percent *ad valorem* for certain textile mill products and 15.87 percent *ad valorem* for apparel.

Case History

On July 20, 1984, we received a petition from the American Textile Manufacturers Institute, the Amalgamated Clothing and Textile Workers Union, and the International Ladies' Garment Workers Union, on behalf of the U.S. industries producing certain textile mill products and apparel. In compliance with the filing requirements of § 355.26 of our regulations (19 CFR 355.26), the petition alleged that manufacturers, producers, or exporters in Argentina of textile mill products and apparel receive, directly or indirectly, benefits which constitute bounties or grants within the meaning of section 303 of the Act.

We found that the petition contained sufficient grounds upon which to initiate countervailing duty investigations, and on August 9, 1984, we initiated such investigations (49 FR 32641). These investigations were initiated by the Department under the title "Certain Textiles and Textile Products from Argentina." Because of the number of products covered, and the differences in those products, the Department determined that it should conduct separate investigations—one of textiles and non-apparel textile products, and one of apparel. Because of the potential for confusion, as apparel can also be considered a textile product, we changed the titles of these investigations to "Certain Textile Mill Products and Apparel from Argentina." The scope of these investigations remains the same as announced in the initiation and the preliminary determinations.

We stated that we expected to issue preliminary determinations by October 15, 1984. On September 21, 1984, we determined these investigations to be "extraordinarily complicated," as defined in section 703(c)(1)(B) of the Act. Therefore, we extended the period for making our preliminary determinations by 65 days until December 17, 1984 (49 FR 40198).

Since Argentina is not a "country under the Agreement" within the meaning of section 701(b) of the Act and the merchandise under investigation is dutiable, sections 303 (a)(1) and (b) of the Act apply to these investigations. Accordingly, the petitioners are not required to allege that, and the U.S. International Trade Commission is not required to determine whether, imports of these products cause or threaten material injury to a U.S. industry.

Due to the scope of these investigations, we employed a two-step questionnaire process. We presented a preliminary questionnaire to the government of Argentina in Washington, D.C., on August 24, 1984. On October 23, 1984, we presented the detailed government and company questionnaires to the government of Argentina in Washington, D.C. Because the responses to the preliminary questionnaire were incomplete, we requested the government of Argentina to present the detailed questionnaire to the largest producers who account for at least 60 percent of the textile mill products and 60 percent of the apparel exported to the United States. We received only three responses to our detailed questionnaires on November 27, 1984. The three responses were from textile mill product producers and exporters. No apparel producers or exporters responded to the detailed questionnaire.

On December 17, 1984, we preliminarily determined that benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Argentina of textile mill products and apparel (49 FR 49667).

The government of Argentina subsequently supplemented its response to include responses from five additional textile companies and one apparel producer.

For purposes of the investigation of textile mill products, we are basing our final determination on the four largest textile companies which account for over 60 percent of the textile exports to the United States during our period of investigation. One of the four textile companies, Primotex, did not respond to our questionnaire until January 30, 1985, the last day of verification. We received this response in Spanish and it was not served on petitioners. Consequently, for this company we are using as best information available for each program, the highest benefit received by a textile company for that program.

For purposes of the apparel investigation, only one apparel firm responded to our questionnaire. The responding firm accounted for approximately 44 percent of the apparel exports to the United States during our period of investigation. Since our 60 percent requirement was not met by the one company that responded, we are using best information available for our final determination on apparel. As best information, we are using a weighted average of the responding company's rate and the highest rate, from both company and petitioner provided data, for each program.

A hearing was requested and took place on February 7, 1985. We received briefs from the parties to the proceeding on February 1 and 15.

Certain respondents in the *Certain Textile Mill Products and Apparel* investigations have raised issues as to whether petitioners have standing to file these cases. Petitioners have also made comments regarding our methodology in selecting companies to receive detailed questionnaires and our investigation of only those companies that account for 60 percent of exports of the subject merchandise to the United States. We have addressed these issues in our final determinations on *Certain Textile Mill Products and Apparel from Malaysia*, published concurrently with this notice. See that notice for our comments on these issues.

Scope of the Investigation

The products covered by these investigations are certain textile mill products and apparel which are described in Appendix A, which is attached to this notice.

Analysis of Programs

Throughout this notice, we refer to certain general principles applied to the facts of the instant investigations. These principles are described in the "Subsidies Appendix" attached to the notice of "Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina; Final Affirmative Countervailing Duty Determination and Countervailing Duty Order," which was published in the **Federal Register** on April 26, 1984 (49 FR 18006).

For purposes of these determinations, the period for which we are measuring bounties or grants is calendar year 1983.

Based upon our analysis of the petition, responses to our questionnaires and information gathered at verification, we determine the following:

I. Programs Determined to Confer Bounties or Grants

We determine that bounties or grants are being provided to manufacturers, producers, or exports in Argentina of certain textile mill products and apparel under the following programs.

A. Post-Export Financing Under Circular OPRAC 1–9

On September 24, 1982, the Central Bank of Argentina established a post-financing program for exports under Circular OPRAC 1–9. OPRAC 1–9 loans are granted for up to 30 percent of the peso equivalent of the foreign currency in which the export transaction was paid. The term of the loan is 180 days. The interest rate charged on OPRAC 1–9 loans is the regulated rate used by commercial banks, as established by Central Bank Regulations. The system of financing is through the Central Bank of Argentina, which delegates the responsibility for granting the loans to intermediary banks.

In June 1982, the Central Bank of Argentina restructured the banking and financial system. All outstanding short-term loans were refinanced under a regulated interest rate, which is set monthly by the Central Bank. During this period banks also were allowed to lend a portion of their deposits at an unregulated rate, known as the tasa libre.

During the period for which we are measuring bounties or grants, various short-term borrowing rates were available from Argentine banks. From April 1983 to July 1983 the regulated and unregulated rates were in effect. Beginning August 10, 1983, funds were no longer lent at the unregulated rate. For the months of August and September, only the regulated rate was in effect. In October 1983, the acceptance rate came into use in Argentina. Acceptance lending involves the bank acting as an intermediary between cash rich and cash poor firms. The bank puts the two firms in touch with one another, and endorses the loan agreement between the firms. The terms for acceptance loans are for up to 90 days.

Because the amount of credit that can be extended by Argentine banks is closely controlled by the government, two types of extra-bank lending have come into practice in Argentina. While not illegal, these forms of borrowing are not monitored or regulated by the banking system in any way, and thus no official government statistics on the lending rates or on the size of these credit pools exist. One type of extra-bank loan, known as Bonex repurchase agreements, involves an agreement which is guaranteed by the sale and repurchase of Argentine government dollar-denominated bonds. The other type of extra-bank transaction is a loan guaranteed by a post-dated check. Both forms of borrowing are for very short periods, normally two to seven days.

While the regulated rate makes up the major portion of bank lending, we do not consider that this rate alone adequately represents the national average rate for comparable alternative short-term borrowing. Because the amount of lending which can occur at the regulated rate is restricted by the Central Bank, it is likely that if a firm had to seek alternative borrowing, it could not fulfill all of its short-term export financing requirements at the regulated rate. We consider that the most likely secondary sources of borrowing would be the tasa libre and acceptance rate lending.

In calculating a weighted-average benchmark, we have included the regulated rate, the unregulated (tasa libre) rate and the acceptance rate, because we felt that these rates best represent the national average rate for comparable alternative short-term borrowing. We have not included the Bonex repurchase rates or rates on loans guaranteed by post-dated checks, because these loans are outside the banking system and are for very short periods. Thus, they would not be a likely source of borrowing to finance 180-day transactions.

To determine if the loans provided under the OPRAC 1–9 program constitute a bounty or grant, we compared the rate of interest charged on the OPRAC 1–9 loans with the national average commercial rate for short-term borrowing, as required in the Subsidies Appendix.

Using this weighted average as a benchmark, we calculate an estimated net bounty or grant of 0.75 percent *ad valorem* for textile mill products and 0.18 percent *ad valorem* for apparel.

B. Circular RF–153 (Pre-Export Financing Through Dollar-Indexed Peso Loans)

This program was authorized by Central Bank Circular RF–153. This program permits exporters to receive pre-export financing through peso loans equal to 60 percent of the export sale's f.o.b. value. The loans are given in pesos but are denominated in U.S. dollars at the exchange rate prevailing at the time of the loan. Repayment also must be in pesos, but the peso amount is established by the exchange rate prevailing at the time of repayment. In addition to repaying the peso amount of the loan at the exchange rate prevailing

at the time of repayment, the borrower must also pay a one-percent interest rate. The funds are drawn from the Central Bank of Argentina and then loaned through private commercial banks to individual corporate borrowers. The maximum length of the loan is 120 days, but repayment must take place no later than 60 days from the effective export date.

We compared the cost for these loans with what the firms would have paid commercially for the same loan, using as the benchmark the weighted average of the regulated rate, the tasa libre rate and the acceptance rate. On this basis, we determine Circular RF–153 loans confer an estimated net bounty or grant of 1.04 percent *ad valorem* for textile mill products and 0.24 percent *ad valorem* for apparel.

C. Reembolso—Tax Rebate on Exports

The reembolso program was established in 1971. It authorized a refund by cash payment on export of taxes and import duties "that bear directly or indirectly" on exported products and/or their component raw materials for the purposes of promoting exports. The amount of the reimbursement is equal to a fixed percentage of the f.o.b. value of the exported merchandise. This percentage varies by industry, and only some industries are reimbursed for duties.

In the final determinations on *Certain Textile Mill Products and Apparel from Thailand,* published concurrently with this notice, we explain our policy for determining whether rebate systems that are designed to rebate both prior-stage indirect taxes and import duties confer bounties or grants upon exports. The test for such rebate systems is similar to the so-called linkage test for systems which purport to rebate prior-stage indirect taxes only.

Based on our investigations, we determine that the reembolso is designed to rebate prior-stage taxes and import duties. For textile mill products, we further determine that the Argentine government has reasonably calculated the incidence of indirect taxes and import duties on the exported products and imputs into these products. Therefore, the only question remaining is whether the reembolso constitutes an excessive remission of indirect taxes and import duties. This is discussed below.

For apparel, we determine that the government has not reasonably calculated, nor can it demonstrate the bases for its calculations, of the level of the reembolso payment. Therefore, for apparel products we find the entire reembolso of 10 percent to be an excessive remission of indirect taxes and import duties. On this basis, we determine that the reembolso confers and estimated net bounty or grant of 10 percent *ad valorem* on apparel during the period of investigation.

For textile mill products, the Argentine government submitted three studies on cotton yarn, wool fabric, and towels. In these studies, the Argentine government listed various types of direct and indirect taxes and import duties which have an incidence on the final products and inputs into those products. We determine that the government has adequately documented the incidence of indirect taxes and import duties on domestic raw materials, imported raw materials and packing materials, and that these inputs meet our test for physical incorporation. Therefore, we are allowing the amounts claimed for these inputs. The government studies also included prior-stage taxes on such non-physically incorporated inputs as labor, fuel, energy and indirect expenses. We are disallowing the amounts claimed on these items. The government study demonstrated the incidence of final stage taxes, including municipal taxes, capitals taxes (an inventory turnover tax), and taxes paid upon export. We determine that these amounts claimed are allowable because they are final-stage indirect taxes.

Of the total tax incidence calculated in the studies, the following amounts are allowable as explained above: 8.62 percent for cotton yarns, 5.64 percent for wool fabric, and 12.16 percent for towels. During the period of investigation, the reembolso rate was 5 percent for cotton yarns and wool fabric, and 10 percent for towels. Since the allowable tax incidence exceeds the reembolso rate for all three products, we determine that there is no excessive remission of taxes or duties. On this basis, we conclude that the reembolso did not confer a countervailable benefit on textile mill products.

As of October 29, 1984, the reembolso rate was reduced by 6 percent on all products, including the products subject to these investigations. As of that date the reembolso rates in effect are zero percent for cotton yarns and wool fabric, and 4 percent for towels and apparel. Consequently, we determine the cash deposit rate to be 4.00 percent *ad valorem* for apparel.

D. Corrientes Regional Tax Incentives

Under National Law 20560, Corrientes Law 5751/74, and Decrees 2633/75, 9641/81 and 32031/76, companies located in the Corrientes Province are eligible for certain tax benefits. One company, Tipoiti, has four plants located in the Province of Corrientes and has used some of these benefits. Because this is a national law which benefits companies in a specific region, we determine that it provides countervailable benefits to the products under investigation. The beneifits are described below:

1. Exemption for 10 years starting in 1977, of all provincial real estate, stamp and municipal taxes. Tipoiti benefitted from exemptions from turnover and real estate taxes.

2. Reduction for 10 years, beginning in 1977, from income taxes on a decreasing scale. We verified that two plants received a 90 percent reduction in income taxes and two plants were exempted from income taxes.

3. Exemption from the capital tax. Tipoiti received an exemption from the capital tax during the period of investigation.

4. Exemption from the value added tax based on a percentage of the scale used in determining the income tax exemption in number 2 above. All four of Tipoiti's plants used this benefit during the period of investigation.

5. Exemption from taxes on the amount of private investment in a company located in Corrientes. Tipoiti benefitted from this provision during the period of investigation.

To calculate the value of these regional benefits, we assumed, as best information available, that Primotex received these tax exemptions. Therefore, we allocated the total amount of taxes exempted for these firms in 1983 over the total 1983 sales value for the four textile firms. On this basis, we determine that this program provides an estimated net bounty or grant of 2.74 percent *ad valorem* on textile mill products.

Based on the fact that one textile company received regional tax benefits, we determine, as best information available, that apparel producers also might have benefitted form regional tax benefits. Since we have no information on the level of usage with which to calculate benefits, we are using a weighted average of the information provided in petitioners' prehearing brief and the apparel producer's response. On this basis, we determine that this program provides an estimated net bounty or grant of 3.78 percent *ad valorem* on apparel.

E. Incentives for Exports From Southern Ports

Petitioners alleged that manufacturers, producers and exporters of textile mill products and apparel

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received incentives for exports from southern Argentine ports. From the government of Argentina's response, we know that several firms are located in southern Argentina. Therefore, for apparel, as best information available, we assume that at least one apparel produdcer would be located in southern Argentina and would use this program. To calculate the benefit, we relied on a weighted average of the rate in the final results of administrative review of the countervailing duty order on wool from Argentina (49 FR. 17559) and the response from the apparel producer. On this basis, we determine that this program confers an estimated net bounty or grant of 1.67 percent *ad valorem* on apparel.

II. Programs Determined not to be used

We determine that manufacturers, producers, or exporters in Argentina of certain textile mill products and apparel did no use the following programs which were listed in our notice of initiation.

A Tax Reductions for Investors

Petitioners alleged that manufacturers, producers and exporters of textile mill products and apparel have benefited under Decree No. 2332/83, which grants tax benefits to investors in Patagonian corporations. The government of Argentina stated in its response and we verified that due to their geographic location, investors in firms subject to these investigations are not eligible for benefits under this program.

B. Refund on Patagonian Exports

Petitioners alleged that exports originating from Patagonia qualify for a refund if they originate in, or are exported from, Patagonia. The government of Argentina replied in its response and we verified that because of their geographic location the manufacturers, producers and exporters of textile mill products and apparel are ineligible for benefits under this program.

C. Industrial Parks

Petitioners alleged that firms which operate in designated industrial parks receive special credit from local banks, tax exemptions and infrastructure benefits. The government of Argentina reported and we verified that the firms under consideration in these investigations are not eligible for this program.

D. Low Cost Loans for Projects Outside Buenos Aires

Petitioners alleged that manufacturers, producers and exporters of textile mill products and apparel benefit from government mandated medium- and long-term loans under the 1977 Industrial Promotion Law for Projects Outside Buenos Aires. The companies under consideration in these investigations stated and we verified that they did not receive benefits under this program.

E. Corrientes Regional Tax Incentives

Under National Law 20560, Corrientes Law 5751/74, and Decrees 2633/75, 9641/81, and 32031/76, companies located in the Corrientes Province are eligible for certain tax benefits. One company, Tipoiti, has four plants located in the Province of Corrientes.

1. Exemption from capital tax on assets for new projects during the period between the approval of a new project and the beginning of its operations. Tipoiti did not use this benefit during the period of investigation.

2. Exemption from the stamp tax on all national and provincial contracts, and on the issuance of stock. Tipoiti did not use this benefit during the period of investigation.

3. Waiver of the value-added tax during the stage(s) of production occurring in Corrientes, only if the product is sold as raw material to another processor in Corrientes. No benefit was received by Tipoiti from this provision.

4. Exemption from import duties on machinery imported under approved investment projects. Tipoiti did not use this benefit during the period of investigation.

F. Discounts of Foreign Currency Accounts Receivable Under Circular RF–21

This program was not alleged in the petition. During verification the Argentine government referred to transactions involving a 7.5 percent interest rate. We have determined that these transactions are the discounting of foreign currency accounts receivable authorized by Central Bank Circular RF–21. We have no information that any of the companies used this program during the period of investigation. If, however, during our administrative review of this program, we find that this program is used, we will reexamine it at that time.

III. Programs Determined to Have Been Suspended

A. Income Tax Exemptions for Exports

Petitioners alleged that manufacturers, producers and exporters of textile mill products and apparel in Argentina benefit from an income tax exemption for exports. The government of Argentina states and we verified that this program was terminated as of June 30, 1980, and, therefore, manufacturers, producers and exporters cannot benefit from this program.

Petitioners' Comments

Comment 1: Petitioners argue that the Department should continue to find the reembolso fiscal incidence study in the record to be inadequate. They further argue that the 3.60 percent deduction in the preliminary determinations should be disallowed because the government of Argentina has not satisfied the requirement that "the [foreign] government has reasonably calculated and documented the actual tax incidence borne by the product concerned. . . ." No deductions should be made, petitioners argue, if that requirement is not met.

In addition, petitioners argue that:

- the Department may not take account of post-initiation changes in the reembolso, but rather should base its calculations on verified calendar year 1983 information; and
- even if the Department considers the new reembolso rates, it should find these rates fully countervailable because the government has supplied no fiscal-incidence study to justify the rate.

DOC Position: We agree with the first argument insofar as it concerns apparel. In that investigation, the Argentine government submitted a study regarding wool apparel, but did not list the indirect taxes borne by raw material imports or the rates of these taxes. Because raw materials account for over 80 percent of the cost of producing apparel, we cannot conclude that the Argentine government has either reasonably calculated or adequately documented the actual tax incidence borne by apparel. Accordingly, for apparel we have countervailed the entire amount of the reembolso.

With respect to textile mill products, we find that the Argentine government has adequately documented the tax incidence on the finished products as well as their inputs. The studies also included the various taxes applicable to each input and the rates of each tax. Further, since there have been no significant changes in tax incidence on these products since 1981, we consider the studies a proper basis for our conclusion that the Argentine government adequately documented the fiscal incidence on textile mill products.

We disagree with petitioners' position that the Department may not take into account post-initiation changes in the reembolso rate for apparel. When there is a fundamental change in the benefit

from a program after the period of investigation, we take cognizance of that change if we have been able to confirm that the change has occurred through verification and if there is no reason to believe that there has been a shift of these benefits to other programs. In the final determinations on *Certain Textile Mill Products and Apparel from Peru*, published concurrently with this notice, we explain our policy on post-initiation changes in a program.

In this case we verified that the change did occur and that it applied to the entire reembolso program. The reduction of the maximum allowable rate from 10 percent to 4 percent is, in fact, the latest in a series of reductions over a number of years designed to gradually eliminate the program. Further, the change encompasses exports of all products to all countries. We also have no reason to believe that the benefits have been shifted to other programs. Accordingly, we have followed Department practice by adjusting the cash deposit rate to reflect the change in the reembolso rate from 10 percent to 4 percent as of October 29, 1984.

With respect to petitioners' last argument, we have adopted the 10 percent reembolso rate as the best information available for apparel for the investigation period, because it is the highest rate respondent could have received during that period. We have assumed the full amount of the reembolso to be countervailable at this maximum rate because the Argentine government failed to provide adequate documentation to justify the rate claimed by the respondent. We have also verified that the highest rate currently available to apparel producers is 4 percent. Again, we have used the maximum, unadjusted rate in determining the cash deposit rate in view of the government's failure to provide an adequate fiscal incidence study.

Comment 2: Petitioners argue that the Department's method of analyzing the potential benefit from RF–153 loans is incorrect. They contend that these loans effectively operate as dollar loans for which the only cost is the 1 percent interest rate.

DOC Position: We believe that RF–153 loans, which are provided in pesos but indexed to the dollar, are peso loans, and that the most appropriate benchmark is the weighted average of the regulated, tasa libre, and the acceptance rates. Indexing these loans to the dollar is simply a method by which banks can account for the falling value of the peso, much like indexing loans to the rate of inflation.

Comment 3: Petitioner argue that the subsidy rate for RF–153 and OPRAC 1–9 export loans is understated because the Department did not take into account, in calculating its benchmark rate, post-dated check arrangements and Bonex repurchase agreements for August–December 1983.

DOC Position: As stated in the "Analysis of Programs" section of this notice, we have not included rates for Bonex repurchases or loans guaranteed by post-dated checks, in calculating a weighted-average benchmark, because such loans do not constitute comparable alternative instruments of borrowing to either OPRAC 1–9 or RF–153 loans. We base this on the fact that Bonex repurchase and post-dated check loans are normally extended for periods of two to seven days, which make them noncomparable to the preferential loans in question. In addition, it is our practice to look first to the normal banking sector in our search for a national average commercial benchmark rate. In Argentina, the preponderant source of lending is the banking sector, and thus we have no reason to look beyond this sector in calculating a benchmark. Bonex repurchase and post-dated check loans constitute extra-bank borrowing, which are not monitored or regulated in any way by the Argentine banking authorities.

Comment 4: Petitioners argue that because two firms outside the Department's "sample" are reported to be located in southern Argentina, best information available should be used to calculate a subsidy rate for these firms.

DOC Position: We have addressed the issue of our selection of companies in our final determinations of *Certain Textile Mill Products and Apparel from Malaysia*, published concurrently with this notice. See that notice for our comments with respect to textile mill products.

For apparel, we are using best information available, since we received only one response from a firm which accounted for less than 60 percent of apparel exported to the United States. Consequently, we agree with petitioners and have calculated a bounty or grant rate based on a weighted average of the rate in the final administrative review of the countervailing duty order on wool from Argentina (49 FR 17559) and the apparel producer's response.

Comment 5: Petitioners argue that the Argentine textile mill products industry used tax incentives for firms in Catamarca and Corrientes and that these benefits should be included in the final determinations.

DOC Position: We agree. One of the textile companies upon which we are basing our final determination was located in the Province of Corrientes and benefitted from regional tax incentives. We have also assumed as best information available that Primotex also benefitted from these incentives. See discussion of this program earlier in this notice.

For apparel, we have calculated a rate for regional tax incentives based on a weighted average of petitioners' information and the apparel producer's response.

Comment 6: Petitioners argue that the export financing program for dollar loans at a 7.5 percent rate of interest, referred to in the government's response of February 6, 1985, should be countervailed because the terms are not consistent with commercial considerations.

DOC Position: We have reviewed this program and determine that it is properly classified as discounts of foreign currency accounts receivable under Circular RF–21. This program was not used by any of the selected companies during the period of investigation. See discussion earlier in this notice.

Respondents' Comments

Comment 1: Respondents argue that the Department should use the information provided in the responses, not the best information available, in its final determinations in these cases. Respondents state that over 70 percent of textile mill products exports were covered in the responses and over 60 percent were verified.

DOC Position: For apparel we are using best information available. We requested responses from the largest exporters of apparel who together accounted for at least 60 percent of the exports of apparel to the United States during the period of investigation. We received only one response from an apparel producer, representing approximately 44 percent of apparel exports to the United States. This did not meet our 60 percent requirement. Therefore, we are using best information available for our final determination on apparel.

We also requested responses from the largest exporters of textile mill products who together accounted for 60 percent of the exports of textiles to the United States during the period of investigation. We received responses from textile mill products firms accounting for over 60 percent of the textile exports to the United States. We did not, however, receive a response from the third largest textile exporter, Primotex, until January 30, 1985, the last day of verification. The

response was received in Spanish with no English translation and was not served on petitioners.

Consequently, we are using company provided, verified information for three of the textile mill products companies, and we are using best information available for Primotex.

Comment 2: Respondents argue that the reembolso program does not confer a countervailing benefit in this case because:

- the applicable reembolso rates are either 4 percent or 0 percent, depending upon the particular product; and
- the allowable tax incidence verified in this case exceeds the applicable reembolso rate for each product.

DOC Position: We agree with respect to textile mill products. However, as the government of Argentina was not able to document the fiscal incidence on apparel, we found the reembolos on apparel countervailable in its entirety.

Verification

In accordance with section 776(a) of the Act, we verified the data used in making our final determinations. During this verification, we followed normal procedures, including inspection of documents, meetings with government officials, and on-site inspection of the records and operation of the companies exporting the merchandise under investigation to the United States.

Administrative Procedures

The Department has afforded interested parties an opportunity to present oral views in accordance with its regulations (19 CFR 355.35). A public hearing was held on February 7, 1985. In accordance with the Department's regulations (19 CFR 355.34(a)), all written views have been received and considered in reaching these final determinations.

Suspension of Liquidation

The suspension of liquidation ordered in our preliminary affirmative determinations shall remain in effect until further notice. The estimated net bounty or grant for duty deposit purpose is 4.53 percent *ad valorem* for certain textile mill products and 9.87 percent *ad valorem* for apparel.

In accordance with section 706(a)(3) of the Act, we are directing the U.S. Customs Service to require a cash deposit in the amounts indicated above for each entry of the subject merchandise from Argentina which is entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register** and to assess countervailing duties in accordance with sections 706(a)(1) and 751 of the Act.

This notice is published pursuant to sections 303, 705 and 706 of the Act (19 U.S.C. 1303, 1671d, 1671e).

William T. Archey,

Acting Assistant Secretary for Trade Administration.

March 4, 1985.

Appendix A.—Imports of Certain Textile Mill Products and Apparel From Argentina in 1983 Subject to the Petition; Tariff Schedule Numbers of Imports Subject to Investigations

A. Textile Mill Products

Yarns					
301.0000	301.1000	301.2000	301.3000	302.0024	302.1020
302.1024	302.1026	302.2020	302.2024	302.3022	302.3026
303.2042	307.6810	307.6850			

Fabrics [1]					
323.1021	323.1022	323.1024	323.1031	323.1038	323.1042
323.1049	323.1054	323.1057	323.1065	323.1072	323.1074
323.1080	323.1098	335.9500	336.6247	336.6249	336.6251
336.6253	336.6255	336.6257	336.6441	336.6447	336.6451
337.9035	338.1530	338.1574	338.1578	338.5021	338.5048

Special Construction Fabrics
346.6065

Textile Furnishings				
366.2420	366.2440	366.2460	366.2780	

Miscellaneous				
385.5500	385.6120	388.4000	389.6265	390.4000

B. Apparel

Apparel					
372.7540	374.2500	374.3530	374.6500	376.2830	379.0640
379.0642	379.0646	379.4050	379.4060	379.4670	379.5550
379.6240	379.9030	379.9035	379.9540	379.9585	383.0207
383.0208	383.0212	383.0236	383.0306	383.0335	383.0350
383.0390	383.0608	383.0805	383.0844	383.0855	383.1000
383.1319	383.1321	383.1611	383.1612	383.1613	383.1680
383.1920	383.2005	383.2016	383.2050	383.2716	383.2718
383.2721	383.2722	383.2724	383.2726	383.2728	383.2730
383.2750	383.3465	383.4709	383.4747	383.4761	383.4825
383.5034	383.5090	383.5326	383.5830	383.6310	383.6330
383.6340	383.6350	383.6360	383.6371	383.6372	383.6385
383.7010	383.7020	383.7210	383.7510	383.7522	383.7532
383.7534	383.7536	383.7538	383.7542	383.7544	383.7546
383.7548	383.7552	383.7554	383.7556	383.7528	383.7558
383.7562	383.7595	383.8024	383.8026	383.8073	383.8125
383.8300	383.9015	383.9245			

Gloves
704.6500

[1] For the woven cotton fabric under investigation the U.S. Department of Commerce, in preparing the Appendixes for these investigations, has used the U.S. Import Statistical Numbers which closely parallel the TSUSA numbers. For example, U.S. Import Statistical Number 323.1021 represents TSUSA number 323.1021 through 323.1921, and 323.1098 represents TSUSA number 323.1098 through 323.1998. The fourth and fifth digits of these TSUSA numbers are the yarn count numbers.

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[C-557-401]

Final Negative Countervailing Duty Determinations; Certain Textile Mill Products and Apparel From Malaysia

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that no benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Malaysia of certain textile mill products and apparel. The net countervailable benefits are *de minimis*, and therefore our final determinations are negative.

EFFECTIVE DATE: March 12, 1985.

FOR FURTHER INFORMATION CONTACT: Loc Nguyen, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377-0167.

SUPPLEMENTARY INFORMATION:

Final Determinations

For purposes of these investigations, the following programs are found to confer countervailable benefits:

- Tax Incentives for Exports.
- Preferential Short-Term Financing.

The estimated net countervailable benefit is 0.22 percent *ad valorem* for textile mill products and 0.27 percent *ad valorem* for apparel. These amounts are *de minimis*. Therefore, we determine that no benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Malaysia of certain textile mill products and apparel.

Case History

On July 20, 1984, we received a petition from the American Textile Manufacturers Institute (ATMI), the Amalgamated Clothing and Textile Workers Union (ACTWU), and the International Ladies' Garment Workers Union (ILGWU), on behalf of the U.S. industries producing certain textile mill products and apparel. In compliance with the filing requirements of § 355.26 of our regulations (19 CFR 355.26), the petition alleged that manufacturers, producers, or exporters in Malaysia of textile mill products and apparel receive, directly or indirectly, benefits which constitute bounties or grants within the meaning of section 303 of the Act.

We found that the petition contained sufficient grounds upon which to initiate countervailing duty investigations, and on August 9, 1984, we initiated such investigations (49 FR 32641).

These investigations were initiated by the Department under the title "Certain Textiles and Textile Products from Malaysia." Because of the number of products covered, and the differences in those products, the Department determined that it should conduct separate investigations—one of textile and non-apparel textile products, and one of apparel. Because of the potential for confusion, as apparel can also be considered a textile product, we changed the titles of these investigations to "Certain Textile Mill Products and Apparel from Malaysia." The scope of these investigations remains the same as announced in the initiation and the preliminary determinations.

We stated that we expected to issue preliminary determinations by October 15, 1984. On September 21, 1984, we determined these investigations to be "extraordinarily complicated," as defined in section 703(c)(1)(B) of the Act. Therefore, we extended the period for making our preliminary determinations by 65 days until December 17, 1984 (49 FR 40198).

Since Malaysia is not a "country under the Agreement" within the meaning of section 701(b) of the Act and the merchandise being investigated is dutiable, sections 303 (a)(1) and (b) of the Act apply to these investigations. Accordingly, petitioners are not required to allege that, and the U.S. International Trade Commission is not required to determine whether, imports of these products cause or threaten material injury to U.S. industries.

Due to the scope of these investigations, we employed a two-step questionnaire process. We presented a preliminary questionnaire to the government of Malaysia in Washington, D.C., on August 24, 1984. Based on the responses to the preliminary questionnaire, we identified the four textile mill products producers and exporters, and the six apparel producers and exporters who account for at least 60 percent of the textile mill products and apparel exported to the United States. Two additional companies made timely requests for exclusion. These twelve firms were selected to respond to the detailed company questionnaire. On October 24, 1984, we presented the detailed government and company questionnaires to the government of Malaysia in Washingon, D.C. The responses to our detailed questionnaires were received on November 26, 1984.

On December 21, 1984, we published our preliminary determinations that benefits constituting subsidies were being provided to manufacturers, producers or exporters in Malaysia of certain apparel, and that no benefits constituting subsidies were being provided to manufacturers, producers, and exporters of certain textile mill products (49 FR 49651).

With regard to the two apparel companies, Eastern Garment Mfg. Co. Sdn. Bhd. ("Eastern") and Palace Garment Mfg. Sdn. Bhd. ("Palace"), which had requested exclusion, Eastern's response indicated that it received benefits which were *de minimis*, and it was, therefore, excluded from the preliminary determination. Palace, however, received countervailable benefts above the *de minimis* rate of 0.50 percent, and we, therefore, included Palace in the suspension of liquidation pursuant to the preliminary determination.

We conducted verification of the questionnaire responses of the government of Malaysia and the textile and apparel companies between January 9 and January 21, 1985, In Malaysia.

On February 2, 1985, a proposed suspension agreement was initialed which provided for the renunciation of all subsidies by the producers and exporters accounting for more than 85 percent of the total exports of textile mill products and more than 85 percent of the total exports of apparel from Malaysia to the United States. On March 1, 1985, the Malaysian respondents informed the Department that they no longer wished to enter into a suspension agreement.

At the request of both petitioners and respondents, we held a hearing on February 13, 1985, to allow the parties an opportunity to address the issues arising in the investigations. We received pre-hearing briefs from the respondents and petitioners on February 6 and 7, respectively. Post-hearing briefs were received on February 22.

Standing of Petitioners

The issue of whether the petitioners have standing has been protracted and contentious. We addressed this issue initially in our preliminary determinations. See *Textile Mill Products and Apparel from Indonesia*, 49 FR 49672 (1984). At that time, we determined that ATMI did not have standing. However, we determined that the eight individual U.S. companies, substituted as petitioners by

amendments to the petitions dated December 3, 1984, did have standing with respect to textile mill products. In addition, we determined that the two unions, ACTWU and ILGWU, had standing with respect to apparel.

After the preliminary determinations, various respondents continued to argue that petitioners lack standing, and that the Department should rescind its initiations of these investigations. On January 16, 1985, various respondents in the Philippines, Thailand, Colombia, and Malaysia investigations filed suit in the U.S. Court of International Trade to enjoin the disclosure pursuant to administrative protective order of confidential information to petitioners' counsel. The plaintiffs in these cases argued, *inter alia*, that disclosure was improper, because the investigations were invalid due to petitioners' alleged lack of standing. The court denied plaintiffs' motions for temporary restraining orders. Plaintiffs subsequently moved for dismissal and the cases were dismissed.

In the meantime, the Department had sent questionnaires to petitioners and to those U.S. companies that had expressed opposition to the investigations. The purpose of these questionnaires was to enable the Department to determine the extent of the opposition and whether rescissions of the initiations were appropriate. The Department received very limited responses to these questionnaires from companies that had expressed opposition to the petitions. The Department did receive some additional information from petitioners.

For purposes of these final determinations, the Department reaffirms its preliminary decisions concerning standing. ATMI lacks standing as an interested party, because this trade association has failed to establish that a majority of its members produce any of the 152 like products involved in these investigations. 19 U.S.C. 1677(9)(E). The eight companies have standing because collectively they are interested parties for all of the like products involved, 19 U.S.C. 1677(9)(C), and because they have filed on behalf of the concerned textile mill products industry. The two unions have standing because they are interested parties, 19 U.S.C. 1677(9)(D), and because they, too, have filed on behalf of the concerned apparel industries.

Respondents' arguments that petitioners lack standing challenge the basis of our investigations, and we will address their arguments herein. Although the various respondents expressed their arguments somewhat differently, the gravamen of their respective arguments was the same.

1. The Standing of the Eight Companies

With respect to the eight companies, respondents argue that the companies have failed to establish affirmatively that they have filed "on behalf of" the industries involved. Respondents rely on *Gilmore Steel Corp.* v. *United States*, 585 F Supp. 670, 676 (Ct. Int'l. Trade 1984), in which the court stated that in order to have standing a petitioner "[m]ust also show that a majority of [the] industry backs its petition."

We do not believe that the holding of *Gilmore* requires petitioners to establish affirmatively that a majority of the relevant industries back their petitions. In *Gilmore*, unlike the present case, a majority of the U.S. industry affirmatively *opposed* Gilmore's petitions, and so indicated to the Department. Under these circumstances, the court held that Gilmore lacked standing. However, this holding does not amount to a requirement that a petitioner somehow prove, when a petition is filed, that at least 51 percent of an industry has expressed itself in support of a petition. To the extent that language in *Gilmore* suggests such a requirements, such language is *dictum*. Moreover, when the Department promulgated the current countervailing duty regulations, it rejected a proposal "[t]hat petitioners be required to state the position of other industry members on the petition." 45 FR 4935 (1980). We continue to believe that such a requirement is unduly burdensome, is unwarranted, and is not required by the statute. Nothing in the statute or its legislative history indicates that Congress intended that anyone wishing to file a petition be required to poll all of the domestic industry.

In the instant investigations, the eight companies continue to receive the support of ATMI, whose members account for over 85 percent of U.S. textile mill products production. Moreover, in light of the inadequacy of information provided by those who expressed opposition to the petitions, the Department cannot presume that a majority of a particular industry opposes the petitions. We cannot presume even that there is any substantial opposition.

The other principal argument against the standing of the eight companies is that the amendments to the petitions, substituting the eight companies as petitioners, were untimely, and that petitioners cannot cure an allegedly defective petition by amendment.

The statute provides that a "[p]etition may be amended at such time, and upon such conditions, as the [Department] * * * may permit." 19 U.S.C. 1671a(b)(1). This language grants the Department considerable discretion. Moreover, the legislative history does not detract from this discretionary authority. S. Rep. No. 249, 96th Cong., 1st. Sess. 46 (1979); H.R. Rep. No. 317, 96th Cong., 1st Sess. 50 (1979).

In seeking guidance on the exercise of this discretionary authority to permit amendments to petitions, we find *Zenith Radio Corp.* v. *United States*, 5 C.I.T. 178 (1983), instructive. In that case, a situation analagous to the instant one existed. The court had ruled that COMPACT, an "umbrella" organization, lacked standing to challenge a Department determination, because COMPACT was not an interested party within the meaning of section 771(9). Subsequently, COMPACT moved to substitute as plaintiffs three of its member unions which were interested parties and which the court found had been parties to the administrative proceeding. The Government and defendant-intervenors opposed the motion to substitute on the grounds that it was unjustifiably late and prejudiced their interests. The court ruled in favor of the unions, because it was

> [i]nclined to exercise its discretion in a lenient manner, where it sees the late emergence of the correct party as understandable in the context of a relatively new and complex field of litigation.

id. at 179.

Given the circumstances of these investigations, we are inclined at this time to follow the example of leniency set by the court. The standing rules for countervailing duty and antidumping investigations are still in the process of development. Moreover, the acceptance by the Department of ATMI as an interested party in *Textiles, Apparel, and Related Products from the People's Republic of China*, 48 FR 46600 (1983), although incorrect in hindsight, gave ATMI some reason to believe that the Department would accept it as an interested party for purposes of the instant investigations. As soon as ATMI realized that the Department was likely to correct its error, ATMI substituted the eight companies as petitioners. Thus, under these circumstances, we consider the amendments to the petitions to be timely.

As for prejudice to respondents as a result of the amendments, the only real prejudice is that the focus of their standing arguments had to shift from ATMI to the companies. However, these arguments were largely restatements of the same *Gilmore*-type arguments that respondents had made from the outset

of these investigations. Thus, we cannot conclude that the substitution of the eight companies created any undue hardship for respondents.

2. The Standing of the ACTWU and the ILGWU

The question of the standing of the ACTWU and the ILGWU is more difficult. It is an issue of first impression, and the relevant statutory provisions are less than precise.

The first issue concerns whether the ACTWU and the ILGWU are "interested parties." Section 771(9)(D) provides that an "interested party" may consist of

> a certified union or recognized union or group of workers which is representative of an industry engaged in the manufacture, production or wholesale in the United States of a like product." " "

Section 771(4)(A) of the Act, as amended by the Trade and Tariff Act of 1984, defines "industry," in pertinent part, as

> [t]he domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product." " "

Relying on a strict approach to statutory construction, one could conclude that in order to have standing, unions must represent companies. The logic would be that under section 881(9)(D), a union must represent an "industry," which the statute arguably defines as companies producing the like product in question. *See* 19 U.S.C. 1677(4)(D) and 1677(9)(C). However, this approach would conflict with the clear congressional intent to give unions standing if they "[r]epresent *workers* in the relevant U.S. industry." S. Rep. No. 249, 96th Cong., 1st Sess. 90 (1979) (emphasis added). Because Congress intended only that unions be representative of workers, we conclude that the term "producers," as used in section 771(4)(A), refers to workers, as well as companies, for purposes of determining standing.[1]

We then must determine how "representative" of workers the union must be, and how this "representative" status can be established. Several respondents have argued that a majority of the workers in each of the apparel industries identified in these investigations must be members of the ACTWU and the ILGWU in order for these unions to be representative of each industry. Respondents derive this 50 percent requirement from the U.S. labor laws, which, according to respondents, provide that a union is not representative of a company unless it represents at least 50 percent of the workers in that company. Respondents argue that there is no reason why a similar 50 percent requirement should not apply for purposes of determining standing under the countervailing duty law.

We disagree with respondents' conclusion. In section 771(9), Congress imposed a "majority" requirement three times. 19 U.S.C. 1677(9) (A), (E), and (F). Such a requirement is notably absent from section 771(9)(D). If Congress had intended a "majority representation" requirement for unions, it easily could have used language similar to that used in the other paragraphs of section 771(9). This suggests that Congress did not intend a "majority representation" requirement for purposes of determining a union's status as an "interested party." Moreover, there is no indication in the legislative history that Congress intended to engraft the standards of the labor laws onto section 771(9)(D). Therefore, we conclude that because the ACTWU and the ILGWU have demonstrated that they represent workers producing each of the apparel like products, they have established their status as "interested parties."

The remaining question is whether the ACTWU and the ILGWU have filed "on behalf of" the apparel industries. With respect to this question, our discussion of this issue concerning the eight companies, *supra*, is pertinent. As with the eight companies, we do not believe that the statute or the regulations require the unions to establish affirmatively that they have the majority support of a particular industry. Rather, the question is whether a majority of a particular industry opposes a petition.

Here, too, the question of who are the "producers," and thus what constitutes the "industry," is relevant. In the case of apparel products, many leading companies have voiced opposition to the petitions. If these companies, as opposed to the unions, are regarded as the "industries," arguably the unions do not have standing due to the companies' opposition. As indicated *supra*, we are inclined towards the view that an "industry" can consist of either workers or companies producing a like product.

However, we need not resolve this issue here. As discussed *supra*, the Department sent questionnaires to those companies expressing opposition to the petitions, and received inadequate responses. The Department was not able to determine for any particular apparel like product involved in these investigations that companies accounting for a majority of the domestic production of that product opposed the petitions. Therefore, while there may be opposition to the apparel petitions, there is insufficient evidence to warrant a conclusion that the ACTWU and the ILGWU have not filed "on behalf of" the relevant apparel industries.

The Department's Selection of Companies to Receive Questionnaires

When this and the other textile mill and apparel products investigations began, the Department immediately realized that, given the tremendous number of foreign companies producing or exporting the subject merchandise, it would be impossible to investigate each of these companies individually within the statutory deadlines. Therefore, the Department decided to use a two-stage questionnaire process. The Department sent an initial set of questionnaires to the concerned foreign governments in order to solicit preliminary information as to the companies and programs involved. The Department anticipated that the information provided in response to this first questionnaire would enable the Department to devise a sample of firms to whom the Department could issue detailed countervailing duty questionnaires.

The responses to the first set of questionnaires confirmed the Department's prior conclusion that the number of companies exporting the subject merchandise was so large as to make it administratively impossible to issue detailed questionnaires to each company involved. However, the responses also revealed that the proper application of scientific sampling techniques was not feasible. The Department either would have had to sample a number of companies, once again too large to be administratively possible, or would have been faced with the unacceptably large degree of statistical uncertainty inherent in small sample results.

Given this situation, the Department decided to follow its normal practice of obtaining at least 60 percent coverage of the merchandise in question. Thus, the Department issued detailed questionnaires to those companies which accounted for at least 60 percent of textile mill products exported to the United States and at least 60 percent of apparel products exported to the United States from each of the countries involved. This practice is codified in the antidumping regulations in 19 CFR 383.38(a). Although the countervailing duty regulations do not contain a comparable provision, the Department

[1] In this regard, we note that certain of the statutory criteria for determining injury to a U.S. industry expressly concern the effects of imports on workers, as opposed to companies. 19 U.S.C. 1677(7)(C)(iii)(III).

has followed this 60 percent rule in countervailing duty investigations. See, e.g., *Bars and Shapes from Mexico*, 49 FR 32887 (1984); and *Oil Country Tubular Goods from Mexico*, 49 FR 47054 (1984).

In their letter of October 23, 1984, petitioners objected to the Department's approach, claiming that the Department's so-called "sampling" was not permitted by law. Petitioners requested that the Department send detailed questionnaires to all firms identified as producers or exporters of the subject merchandise. Alternatively, petitioners requested that the Department use a sampling approach which, presumably in petitioners' view, was "scientific."

We considered, but rejected, both of petitioners' requests. With respect to petitioners' suggestion that we examine *all* companies, as discussed *supra*, such an approach would have been administratively impossible in these cases. Moreover, the Department is not required to examine 100 percent of exports to the United States in a countervailing duty investigation. During the course of these investigations, Department officials asked, both formally and informally, that counsel for petitioners cite to any authority for their claim that the Department must examine 100 percent of exports. For example, at the hearing on the Peruvian investigations, a Department official asked counsel to "[a]ddress the specific portion of the statute that you feel requires us to look at 100 percent of the exports of the subject merchandise." Transcript, at 38. In response to this request, in their post-hearing briefs petitioners merely cited, without any explanation, section 702(b) of the Act, 19 U.S.C. 1671a(b). We do not see anything in the cited provision which supports petitioners' theory.

Petitioners have cited repeatedly section 777A of the Act, as amended by the Trade and Tariff Act of 1984. Section 777A provides that under certain circumstances, the Department may use "generally recognized sampling techniques" in antidumping proceedings and countervailing duty administrative reviews under section 751 of the Act, 19 U.S.C. 1675. According to petitioners, this express grant of authority to sample in countervailing duty administrative reviews implies a lack of authority to sample in a countervailing duty investigation.

We are not sure exactly what point petitioners are trying to make with this argument. To the extent that petitioners argue that the Department may not use generally recognized sampling techniques in countervailing duty investigations, we disagree. However, this argument is irrevelant here, because the Department's 60 percent approach was not, and never purported to be, a scientific sample as envisaged by section 777A. Indeed, it was because the Department concluded that it could not devise a scientific sampling method that it chose to proceed with its standard 60 percent coverage approach.

To the extent that petitioners argue that section 777A requires the Department to examine 100 percent of exports in countervailing duty investigations, we also disagree. We do not find in section 777A, its legislative history, or in administrative or judicial precedent support for the proposition that the Department must examine 100 percent of exports.

Moreover, nothing in the statute requires the Department to examine any particular percentage of exports or companies. *Cf., American Spring Wire Corp.* v. *United States*, 590 F. Supp. 1273 (Ct. Int'l Trade 1984), *appeal filed*, Sept. 10, 1984. The statute expressly provides that the Department may estimate the amount of the net subsidy. 19 U.S.C. 1671e(a)(1). In addition, with respect to the suspension agreement provisions of section 704(b) of the Act, 19 U.S.C. 1671c(b), Congress provided that an agreement signed by exporters accounting for less than 100 percent of exports is sufficient to suspend an investigation.

With respect to petitioners' alternative request that we devise a "scientific" sampling approach, we note again that the Department believes that in the instant investigations, application of such an approach would either have been administratively impossible, or have yielded unacceptably uncertain results. Petitioners' specific suggestions would not result in an unbiased, statistically valid sample, but merely would produce a sample biased in favor of petitioners and against respondents.

Subsequent to their October 23 letter, petitioners raised additional objections to the Department's approach. In their pre-hearing briefs, petitioners argued that the Department's approach violates section 776(a) of the Act, 19 U.S.C. 1677e(a). Section 776(a) requires the Department to verify information relied upon by it in its final determinations. According to petitioners, implicit in any sampling approach is the assumption that the distribution and level of benefits among companies not sampled would yield a rate the same as for the nonsampled companies. Because the Department has not verified this assumption, petitioners argue, the Department's methodology violates section 776(a)

Again, petitioners have missed the point. As Department officials informed counsel on numerous occasions, the Department's methodology is not a scientific or statistical sampling approach, and therefore is not based on the assumption cited by petitioners. The Department has not "assumed" anything regarding the 40 percent of exports not covered by its questionnaires. All the Department sought to do was to ensure accurate subsidy rates for the covered exports. As stated *supra*, petitioners have not provided any authority for their theory that the Department must investigate 100 percent of exports and all alleged subsidy programs.

In their pre-hearing briefs, petitioners also argued that the Department should have sent questionnaires to those companies accounting for 60 percent of each of the 152 like products preliminarily found by the Department to exist for purposes of determining petitioners' standing to file the subject petitions. Here, petitioners are confusing two basic statutory terms of art: "class or kind" and "like product." "Class or kind," which is not defined in the statute, governs the scope of the Department's investigations. 19 U.S.C. 1671(a)(1), 1671a(c)(2). "Like product," which is defined in section 771(10) of the Act, 19 U.S.C. 1677(10), governs the definition of "industry" for purposes of determining injury and the standing of petitioners. 19 U.S.C. 1671(a)(2), 1671a(b)(1), 1677(4). It is not unusual in a particular case that "like product" is defined differently than "class or kind," as is the case here. See, e.g., *Oil Country Tubular Goods from Brazil, Korea, and Spain*, USITC Publication No. 1633 (Jan. 1985), in which the ITC divided the Department's single class or kind of merchandise, oil country tubular goods, into more than one like product. Given the different purpose of the term "like product," it would have been inappropriate for the Department to send questionnaires on the basis of its 152 "like product" categories. Instead, the Department acted correctly and in accordance with prior practice by basing its questionnaires upon the "class or kind" of merchandise in these investigations.

Petitioners also argue that the Department should use the best information available with respect to those companies to which the Department did not send questionnaires. We also disagree with this argument. Section 776(b) of the Act provides, *inter alia*, for the use of the best information otherwise available in making a determination "whenever a party or any other person refuses or is unable to

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produce information requested in a timely manner and in the form required. * * *" We do not believe that this provision mandates the use of the best information available where we have received the information we requested, we have been able to verify that information, and the information provides a sufficient basis for our final determinations.

Finally, petitioners also alleged in their letter of October 23, 1984, that they were "[e]xcluded from meaningful participation in the development and formulation of the staff's 'sampling' plan." We object to this statement, and in order to clarify the record, we note that staff of Import Administration and the Office of the General Counsel met with counsel for petitioners prior to a decision as to the methodology to be used in these investigations. Counsel's views were considered fully, and, in fact, the Department did adopt petitioners' suggestion to send questionnaires to all foreign companies requesting exclusion. Petitioners also were able to review the detailed questionnaires and make numerous suggestions, many of which the Department adopted. The fact that the Department did not adopt petitioners' other suggestions does not mean that petitioners were "excluded from meaningful participation"; it simply means that the Department reached different conclusions.

Scope of the Investigation

The products covered by these investigations are certain textile mill products and apparel which are described in Appendix A attached to this notice.

Analysis of Programs

Throughout this notice, we refer to certain general principles applied to the facts of the instant investigations. These principles are described in the "Subsidies Appendix" attached to the notice of "Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina; Final Affirmative Countervailing Duty Determination and Countervailing Duty Order," which was published in the April 26, 1984 issue of the **Federal Register** (49 FR 18006).

For purposes of these determinations, the period for which we are measuring bounties or grants ("the review period") is calendar year 1983.

Based upon our analysis of the petition, the responses to our questionnaires, our verification, and comments submitted by interested parties, we determine the following:

I. Programs Determined To Confer Countervailable Benefits

We determine that countervailable benefits are being provided to manufacturers, producers, or exporters in Malaysia of certain textile mill products and apparel under the following programs.

A. Tax Incentives for Exports

The government of Malaysia uses several tax incentives to promote textile exports. First, a double tax deduction is granted for expenses related to export sales, including advertising costs outside Malaysia, export market research, participation in trade exhibitions and overseas sales offices. Secondly, Malaysian companies can deduct from net taxable income eight percent of the FOB value of export sales if Malaysian content of the product is more than 50 percent; they can deduct five percent if Malaysian content is less than 50 percent.

We verified that section 27 of the Investment Incentives Act of 1968 allows exporters to obtain a double deduction of eligible export promotion expenses in determining taxable income. In addition, section 29 of the same act provided (for tax years prior to 1983) a deduction of two percent of the ex-factory value of exports from taxable income and a deduction of 10 percent of the increase in export value from the preceding year. In 1983, the government of Malaysia amended the "export allowance" provisions, i.e., section 29 of the law, by eliminating the two types of deductions provided under that section and by providing only a deduction of five percent of export revenues from taxable income.

Because these special tax deductions are granted on the basis of exports, we determine that they confer a subsidy. To calculate the benefit from these deductions, we determine the tax savings directly attributable to their use and allocated that amount over the total value of export sales in 1983. We calculated a net benefit of 0.09 percent for apparel. We verified that none of the textile mill products companies under investigation claimed these special export tax deductions during the review period.

B. Preferential Short-Term Financing

Petitioners allege that the government of Malaysia provided preferential pre- and post-export short-term refinancing through the Malaysian banking system. The commercial banks allegedly provide loans to exporters at the preferential rate of 4.5 percent, which the central bank then refinances.

We verified that Bank Negara Malaysia, Malaysia's central bank, maintains an export credit refinancing facility for both pre- and post-shipment refinancing. This facility allows commercial banks to finance export transactions for a period of up to 92 days. Access to these funds is usually limited to 3 million Malaysian dollars for each exporter. The annual interest rates on these loans varied between 4.5 and 6 percent in 1983.

Because these loans are granted to finance exports and because the interest rates on these loans are lower than those available from commercial sources, we determine that these loans confer a countervailable benefit upon certain textile mill products and apparel from Malaysia. To calculate the benefit, we used as our benchmark the average Banker's Acceptance rate for 1983 of 8.9 percent. The Banker's Acceptance is the most comparable and commonly used alternative source of short-term financing. We then calculated the amount of the benefit using our short-term loan methodology. We calculated a benefit of 0.22 percent for textile mill products and 0.18 percent for apparel.

II. Programs Determined Not To Confer Bounties or Grants

We determine that bounties or grants are not being provided to manufacturers, producers, or exporters in Malaysia of certain textile mill products and apparel under the following programs:

A. Free Trade Zones

Petitioners allege that textile and apparel exporters located in Free Trade Zones (FTZ's) receive countervailable benefits from tax and duty exemptions on imports of capital equipment and on other materials not physically incorporated into exported products.

We verified that companies located in the FTZ's do not receive treatment that differs from the treatment received by similar entities located outside the FTZ's. Since 1960, the government of Malaysia has imposed no import duties on imports of machinery for new manufacturing enterprises or expansion of existing enterprises regardless of a company's location. Companies which have received such exemptions have included the producers of textiles, chemicals, electronics, food products, metal products, and wood-based products.

As for import duties on "materials other than those physically incorporated into the exported products," we verified that companies located in the FTZ's like other companies, have to pay import duties on these materials.

Because companies located in the FTZ's do not receive preferential treatment vis-a-vis companies located outside the FTZ's, we determine that this program does not constitute a bounty or grant.

B. Reinstatement Allowance

Petitioners allege that textile and apparel manufacturers benefit from a Reinvestment Allowance which permits manufacturing companies to deduct 25 percent of their expansion costs in plant, equipment and machinery.

Schedule 7A of the Income Tax Act of 1967 authorizes a reinvestment allowance of 25 percent of the approval expenditure under the Industrial Coordination Act of 1975. In its response, the government of Malaysia stated that the program is not limited to any region, product or sector, and that according to section 4(3) of the Industrial Coordination Act, the approval of a license is based only on whether the project is "consistent with the rational economic and social objectives and would promote the orderly development of manufacturing activities in Malaysia."

During verification, we found that all kinds of companies involved in every industrial sector are eligible for and have received benefits from a reinvestment allowance. We also found that the approval process regarding expansion projects is merely a monitoring devide for the government to keep abreast of the industrial capacity of the country. Because the program is not limited, either *de jure* or *de facto*, to a specific enterprise or industry, or groups of enterprises or industries, we determine that the program does not constitute a bounty or grant.

Industrial Estates

Petitioners allege that under this program the government of Malaysia sponsors and finances industrial estates which provide real estate and financing at preferential rates to export-oriented, resource-based, labor-intensive industries. Petitioners claim the purpose of this program is to induce companies to settle away from congested areas.

We verified that the industrial estates in Malaysia are under the control of the state authorities. These industrial estates are a means of restricting commercial activities to certain areas, much the same as local U.S. zoning laws do. We also verified that there are industrial estates scattered throughout Malaysia and that a very wide and diversified range of industrial and commercial users are located in these estates. We found no evidence that there are restrictions in eligibility to become a tenant, nor did we find that the ability to locate in the industrial estates is in any way dependent upon export objectives or performance.

Because the program is not designed to promote exports, is not limited to any specific regions of the states or the country, and is not limited, either *de jure* or *de facto*, to a specific enterprise or industry, or group of enterprises or industries, we determine that the program does not constitute a bounty or grant.

III. Programs Determined Not To Be Used

We determine that manufacturers, producers, and exporters in Malaysia of certain textile mill products and apparel did not use the following programs which were listed in our notice of initiation:

A. Export Credit Insurance

Petitioners allege that exporters benefit from the provision of export credit insurance at rates which are inconsistent with commercial considertions and which are inadequate to cover the long-term operating risks of the insurance program. We verified that none of these companies used export credit insurance during the review period.

B. Preferential Financing for Bumiputras

Petitioners allege that textile and apparel manufacturers benefit from preferential financing and other types of assistance that are especially available to Bumiputras, the indigenous people of Malaysia. We verified that none of these companies received such financing or assistance during the review period.

C. Labor Utilization Relief Program

Petitioners allege that companies in labor-intensive industries such as textiles and apparel receive tax relief under the Labor Utilization Relief Program. We verified that none of these companies applied for or received benefits under this program during the review period.

D. Investment Tax Credits

Petitioners allege that exporters benefit from investment tax credits of at least 25 percent of capital expenditures on factories, machinery and equipment for use on a government-approved project. We verified that none of these companies has been approved for receipt of the investment tax credit during the review period.

E. Increased Capital Allowance

Petitioners allege that textile and apparel exporters benefit from an increased capital allowance for deductions on new equipment and modernization costs. We verified that none of these companies received the increased capital allowance during the review period.

F. Locational Incentives Program

Petitioners allege that exporters may benefit from a Locational Incentives Program, which provides up to 10 years of tax relief to companies which are located away from congested areas, and which have been deemed by the government to be a priority industry or whose products contain a certain percentage of Malaysian content. We verified that none of these companies received locational incentives benefits during the review period.

G. Industrial Building Allowance

Petitioners allege that exporters benefit from an Industrial Building Allowance, instituted by the government, which provides exporters with deductions from the cost of acquisition of warehouses and facilities. We verified that none of these companies claimed a deduction for the special building allowance for export-related warehouse and storage facilities during the review period.

H. Accelerated Depreciation for Exports

Petitioners allege that the Malaysian manufacturers benefit from accelerated depreciation on equipment used to build, modernize or expand plant facilities when their exports total more then 20 percent, by value, of total production. We verified that none of these companies used the special accelerated depreciation available to exporters during the review period.

Comments

Comment 1: Petitioners argue that respondents failed to submit certain documents such as income tax returns, lists of short-term and long-term loans and annual reports and statistical publications of the Central Bank Malaysia. Therefore, the Department must reject respondents' questionnaire responses for purposes of its final determinations and must instead base its findings with respect to preferential financing and tax benefits on the best available information.

DOC Position: During verification, we received and verified all information necessary to make the final determinations. In addition, the documents mentioned are ordinarily received during verification rather than included with questionnaire responses. They are in the nature of verification

exhibits, and do not themselves constitute a questionnaire response.

Comment 2: Petitioners allege that Malaysian producers of textiles and apparel located in Free Trade Zones benefit from preferential exemption of customs duties and taxes on imported capital equipment and other goods not physically incorporated into exported textiles and apparel. They argue that it is not apparent whether all imports of machinery listed as "eligible for exemption" are automatically exempted from the payment of all customs duties and sales taxes. They also argue that, unless respondents can prove that goods, other than those physically incorported in exported products, imported by companies not located in FTZ's are actually exempted from duties and taxes to the same extent as goods imported by companies located in the FTZ's and, unless respondents can prove that the exemption of goods outside of the zones does not benefit specific industries, these programs must be considered as countervailable benefits.

Respondents argue that location in an FTZ does not confer any countervailable benefit because there are no cash savings that result from being located in an FTZ.

DOC Position: With regard to duties on imports of machinery and equipment, Malaysian law has exempted all machinery for new manufacturing enterprises or expansion of existing enterprises from import duties since 1980. We verified through checking the Trade Classification Customs Tariff, 1978, and Related Customs Regulations that non-payment of import duties on machinery and equipment is not limited to a specific enterprise or industry or a group of enterprises or industries.

With regard to duties on goods other than those physically incorporated in exported products, we verified that all companies, whether located in an FTZ or not, have to pay import duties on these goods.

Comment 3: Petitioners argue that the rates for land and services provided to companies in industrial estates are inadequate to cover the costs incurred by the administering entities in developing and administering the estates and are less than the rates charged for similar land and services outside of the industrial estates. Therefore, this program is a subsidy.

Respondents argue that location in an industrial estate does not confer any countervailable benefits because "nothing in the laws indicate any preferential treatment of companies in an industrial estate." Moreover, even if there were some benefits derived from locating in an industrial estate, these benefits are generally available and, therefore, not countervailable.

DOC Position: We verified that this program does not promote exports or regional development and that eligibility to become a tenant in the industrial estates is not limited to a specific enterprise or industry or group of enterprises or industries. Therefore, we determine that this program does not confer countervailable benefits.

In view of the finding of no limitation, the issue of whether the rates for the land and services provided to companies in industrial estates are inadequate to cover the costs incurred by the administering entities or whether they are less than the rates charged for similar land and services outside of the industrial estates is not relevant.

Comment 4: Petitioners argue that the reinvestment allowance benefits a specific enterprise or group of enterprises as a result of administrative discretion, and, therefore, is a subsidy.

Respondents argue that the reinvestment allowance is generally available, and, therefore, does not confer countervailable benefits.

DOC Position: We verified that the reinvestment allowance is not discretionary and does not benefit a specific enterprise or industry or a group of enterprises or industries. For more detailed discussion of this program see Section II B.

Comment 5: Petitioners argue that the accelerated depreciation deduction available under section 28 of the Investment Incentives Act which allows Malaysian enterprises to depreciate in one year the entire value of equipment purchased between January 1, 1981 and January 1, 1986, is not available equally to all industries or for all types of equipment, and, therefore, must be considered a subsidy.

DOC Position: We verified that the accelerated depreciation on factory machinery and equipment (ADA) is not limited to a specific enterprise or industry or group of enterprises or industries. All businesses are eligible for accelerated depreciation unless they are exempt from taxation under such programs as pioneer status, labor utilization, etc. At the expiration of their domestic tax holidays, these companies, too, can claim the ADA.

Comment 6: Petitioners argue that the Department should adjust the short-term financing benchmark used in its preliminary determination (1) to factor out preferential financing, and (2) to include sources of commercial financing other than commercial banks.

Respondents argue that the benchmark used in the preliminary determination does not accurately reflect the true cost of commercially available trade financing in Malaysia and that it vastly overstates the benefit received by exporters from Bank Negara Malaysia financing. They argue that the most comparable commercial financing is the Bankers Acceptance rate.

DOC Position: According to the 1983 annual report of Bank Negara Malaysia, Bankers Acceptances account for nearly 60 percent of all trade bill financing in Malaysia. Thus, it is clearly the predominant form of commercially available financing comparable to the preferential pre- and post-shipment financing examined in these investigations. For this reason, we believe that the Bankers Acceptance rate is a much more accurate measure of comparable commercially available financing than the weighted-average benchmark used in the preliminary determination—however adjusted—which included all types of financing such as long-term loans and consumer loans.

Comment 7: Petitioners argue that, in calculating the benefit conferred by the export allowance and the export deductions, the Department should not permit the deduction from taxable income of the reinvestment allowance or the reinvestment carried forward, prior to calculating the countervailable benefit from the export allowance and export deductions. It is petitioners' understanding that the export allowance must be used in the year it is incurred, while the reinvestment allowance may be carried forward to future years if the company has more reinvestment allowance than it has net taxable income. Therefore,

the reinvestment allowance carried forward would not be available to offset taxable income of the responding companies, absent the export allowance and the export deductions claimed in 1982, and is therefore countervailable. The reinvestment allowance for 1983 will presumably not be used by the responding companies in 1983, and will be carried forward again because of the export allowance available in 1983. The reinvestment allowance should thus not be credited against taxable income in 1983, and the benefit from the export allowance and export deductions should be increased accordingly.

DOC Position: We verified that both the reinvestment allowance and the export deductions, as well as all other deductions, can be carried forward from year to year. Therefore, the companies are free to use any deductions they are eligible for in the year of their choice.

We have determined that the reinvestment allowance is not

countervailable (see section IIB). Therefore, we are treating it as we would treat any normal deduction and have allowed the total reinvestment allowance claimed as an offset against taxable income for 1983 and see no reason to increase the value of the export deduction as if the reinvestment allowance were not used.

Verification

In accordance with section 776(a) of the Act, we verified the data used in making our final determinations. During this verification, we followed normal procedures, including meetings with government officials and inspection of documents and on-site inspection of accounting records of certain companies exporting the merchandise under investigation to the United States.

Administrative Procedures

We afforded interested parties an opportunity to present information and written views in accordance with Commerce regulations (19 CFR 355.34). A hearing was held and written views have been received and considered in reaching these final determinations.

Suspension of Liquidation

Pursuant to section 705(c)(2) of the Act, the suspension of liquidation of all entries entered, or withdrawn from warehouse, for consumption of certain apparel from Malaysia effective December 21, 1984, as directed in our notice of "Preliminary Affirmative Countervailing Duty Determination: Certain Apparel from Malaysia", (49 FR 49651) is hereby terminated. Any cash deposits on entries of certain apparel from Malaysia pursuant to that suspension of liquidation shall be refunded and any bonds shall be released.

This notice is published pursuant to sections 303 and 705 of the Act (19 U.S.C. 1303, 1671d).

William T. Archey,

Acting Assistant Secretary for Trade Administration.

March 4, 1985.

Appendix A.—List of TSUSA Codes Which Covered Malaysia's Exports of Certain Textile Mill products and Apparel to the United States in 1983

A. Textile Mill Products

Yarns and Threads

310.4047	310.5049

Woven Fabrics

320.0012	320.0013	320.0032	320.0033	320.0034	320.0043	320.0044
320.0045	320.0050	320.0051	320.0052	320.0062	320.0063	320.0071
320.0077	320.0085	320.0089	320.0091	320.0095	320.1019	320.1034
320.1038	320.1045	320.1054	320.1071	320.1077	320.1094	320.2038
320.4028	322.1050	322.1051	322.1052	322.1087	322.1093	323.1021
323.1022	323.1024	323.1031	323.1038	323.1042	323.1049	323.1054
323.1057	323.1065	323.1072	323.1074	323.1080	323.1098	325.1050
325.1051	325.1052	325.1087	325.1093	325.8003	325.8021	325.8022
325.8024	325.8031	325.8038	325.8042	325.8049	325.8054	325.8057
325.8065	325.8072	325.8074	325.8080	325.8098	326.3034	326.3042
326.3071	326.3077	326.4021	326.4022	326.4024	326.4031	326.4038
326.4042	326.4049	326.4054	326.4057	326.4065	326.4072	326.4074
326.4080	326.4098	326.6016	326.6023	326.6069	326.6073	327.1034
327.1045	327.1071	327.1077	327.2092	327.3050	327.3051	327.3052
327.3065	327.3067	327.3069	327.3091	327.3093	327.3095	327.4021
327.4022	327.4024	327.4031	327.4038	327.4042	327.4049	327.4054
327.4057	327.4065	327.4072	327.4074	327.4080	327.4098	328.0021
328.0022	328.0024	328.0031	328.0038	328.0042	328.0049	328.0054
328.0057	328.0065	328.0072	328.0074	328.0080	328.0098	328.1050
328.1051	328.1052	328.1089	328.1091	328.1095	328.1085	328.1092
328.2021	328.2022	328.2024	328.2031	328.2034	328.2038	328.2042
328.2045	328.2049	328.2050	328.2051	328.2052	328.2054	328.2057
328.2065	328.2071	328.2072	328.2074	328.2077	328.2080	328.2085
328.2089	328.2091	328.2094	328.2095	328.2098	328.3014	328.3016
328.3023	328.3038	328.3034	328.3035	328.3039	328.3046	328.3064
328.3067	328.3069	328.3071	328.3073	328.3077	328.3078	328.3092
328.4021	328.4022	328.4024	328.4031	328.4038	328.4042	328.4049
328.4054	328.4057	328.4058	328.4065	328.4072	328.4074	328.4080
328.4094	328.4098	328.5058	328.5068	328.9021	328.9022	328.9024
328.9031	328.9038	328.9042	328.9049	328.9054	328.9057	328.9065
328.9068	328.9072	328.9074	328.9080	328.9098	330.2021	330.2022
330.2024	330.2031	330.2038	330.2042	330.2049	330.2054	330.2057
330.2065	330.2072	330.2074	330.2080	330.2098	331.1021	331.1022
331.1024	331.1031	331.1038	331.1042	331.1049	331.1054	331.1057
331.1065	331.1072	331.1074	331.1080	331.1098	331.2021	331.2022
331.2024	331.2031	331.2038	331.2042	331.2049	331.2054	331.2057
331.2065	331.2072	331.2074	331.2080	331.2098	331.4021	331.4022
331.4024	331.4031	331.4038	331.4042	331.4049	331.4054	331.4057
331.4065	331.4072	331.4074	331.4080	331.4098	331.7003	331.7021
331.7022	331.7024	331.7038	331.7042	331.7049	331.7054	331.7057
331.7065	331.7072	331.7074	331.7080	331.7098	338.5009	338.5010
338.5021	338.5024	338.5030	338.5031	338.5035	338.5036	338.5039
338.5041	338.5043	338.5044	338.5045	338.5048	338.5054	338.5069

Textile Furnishings						
366.4700			366.6550			
Miscellaneous						
389.6265						
B. Apparel						
370.0800	372.1540	372.1560	372.7520	374.4000	374.5020	376.2425
376.5408	376.5412	378.0550	378.1535	379.0240	379.0620	379.0640
379.0642	379.0646	379.2320	379.2360	379.2630	379.2650	379.3120
379.3905	379.3930	379.4020	379.4030	379.4040	379.4050	379.4060
379.4070	379.4330	379.4615	379.4620	379.4650	379.4660	379.4670
379.5220	379.5510	379.5520	379.5525	379.5530	379.5535	379.5545
379.5550	379.5555	379.5560	379.5565	379.5800	379.6210	379.6217
379.6219	379.6230	379.6240	379.6250	379.6260	379.6270	379.6280
379.6450	379.6470	379.7400	379.7610	379.7620	379.7630	379.7640
379.8311	379.8356	379.8357	379.8358	379.8359	379.8635	379.8915
379.8930	379.8940	379.9010	379.9020	379.9030	379.9035	379.9040
379.9250	379.9505	379.9525	379.9530	379.9535	379.9540	379.9545
379.9550	379.9555	379.9560	379.9562	379.9564	379.9566	379.9568
383.0213	383.0219	383.0222	383.0226	383.0228	383.0232	383.0234
383.0335	383.0350	383.0505	383.0506	383.0507	383.0509	383.0601
383.0603	383.0604	383.0606	383.0622	383.0631	383.0608	383.0616
383.0657	383.0805	383.0841	383.0850	383.1807	383.1822	383.1824
383.1841	383.1843	383.1846	383.1848	383.1910	383.1935	383.1940
383.2040	383.2052	383.2056	383.2205	383.2210	383.2227	383.2228
383.2229	383.2231	383.2232	383.2233	383.2234	383.2236	383.2237
383.2230	383.2352	383.2356	383.2365	383.2706	383.2715	383.2716
383.2718	383.2721	383.2722	383.2724	383.2726	383.2728	383.2730
383.2732	383.2736	383.2738	383.2750	383.2752	383.2754	383.2758
383.2807	383.2809	383.2820	383.2826	383.2828	383.2835	383.2838
383.2842	383.2844	383.2910	383.2920	383.3030	383.3040	383.3037
383.3038	383.3060	383.3069	383.3070	383.3200	383.3415	383.3435
383.3445	383.3448	383.3450	383.3452	383.3465	383.3466	383.4200
383.4300	383.4702	383.4704	383.4705	383.4707	383.4709	383.4711
383.4720	383.4721	383.4724	383.4726	383.4747	383.4748	383.4750
383.4753	383.4654	383.4756	383.4757	383.4761	383.4762	383.4764
383.4765	383.4821	383.4825	383.5027	383.5041	383.5051	383.5086
383.5090	383.5830	383.6200	383.6310	383.6340	383.6360	383.6371
383.6372	383.7532	383.7534	383.7536	383.7538	383.7542	383.7544
383.7546	383.7548	383.7552	383.7887	383.7888	383.7892	383.8002
383.8007	383.8009	383.8011	383.8012	383.8005	383.8024	383.8026
383.8028	383.8030	383.8045	383.8048	383.8050	383.8052	383.8073
383.8110	383.8117	383.8141	383.8143	383.8162	383.8164	383.8660
383.8663	383.8869	383.8670	383.9010	383.9015	383.9025	383.9027
383.9029	383.9035	383.9040	383.9050	383.9051	383.9068	383.9069
383.9070	383.9210	383.9215	383.9225	383.9270	383.9290	383.9291
Miscellaneous						
702.1200	703.1610	703.1620	703.1630	703.1640	703.1650	704.3220
704.4010	704.4025	704.4502	704.4504	704.4506	704.4508	704.8520
704.8550	704.8520	704.3640	704.3680	704.3900	704.4106	

Note.—For the woven cotton fabric under investigation the U.S. Department of Commerce, in preparing the Appendices for these investigations, has used the U.S. Import Statistical Numbers which closely parallel the TSUSA numbers For example U.S. Import Statistical Number 320.0012 represents TSUSA numbers 320.0112 through 320.0912 and 331.7098 represents TSUSA numbers 331.7098 through 331.7998. The fourth and fifth digits of these TSUSA numbers are the yarn count numbers.

[FR Doc. 85–5830 Filed 3–11–85; 8:45 am]

BILLING CODE 3510-DS-M

Management-Labor Textile Advisory Committee; Partially Closed Meeting

A meeting of the Management-Labor Textile Advisory Committee will be held on March 14, 1:00 p.m., Herbert C. Hoover Building, Room 4830, 14th Street and Constitution Avenue, NW., Washington D.C. 20230. (The Committee was established by the Secretary of Commerce on August 13, 1963 to advise Department officials of the effects on import markets of cotton, wool, and man-made fiber textile and apparel agreements).

General Session: 1:00 p.m. Review of import trends, international activities, report on conditions in the market, and other business.

Executive Session: 2:00 p.m. Discussion of matters properly classified under Executive Order 12356 (3 CFR 166 (1982)) and listed in 5 U.S.C. 552b(c)(1).

The general session will be open to the public with a limited number of seats available. A Notice of Determination to close meetings or portions of meetings to the public on the basis of 5 U.S.C. 552b(c)(1) has been approved in accordance with the Federal Advisory Committee Act. A copy of the notice is available for public inspection and copying in the Central Reference and Records Inspection Facility Room 6628, U.S. Department of Commerce, (202) 377–4217.

This meeting is being called on short notice because of bilateral negotiations scheduled for this month with a number of countries and the need for public comments and committee members' views before such negotiations and consultations take place.

For further information or copies of the minutes contact Helen L. LeGrande (202) 377–3737.

Dated: March 7, 1985.

Walter C. Lenahan,

Deputy Assistant Secretary for Textiles and Apparel.

[FR Doc. 85–5836 Filed 3–11–85; 8:45 am]

BILLING CODE 3510-DR-M

Importers and Retailers' Textile Advisory Committee; Partially Closed Meeting

A meeting of the Importers and Retailers's Textile Advisory Committee will be held on March 13, 1985, 10:30 a.m., Herbert C. Hoover Building, Room 4830, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. (The Committee was established by the Secretary of Commerce on August 13, 1963 to advise Department officials of the effects on import markets of cotton, wool, and man-made fiber textile and apparel agreements).

General Session: 10:30 a.m. Review of import trends, international activities, report on conditions in the market, and other business.

Executive Session: 11:00 a.m. Discussion of matters properly classified under Executive Order 12356 (3 CFR 166 (1982)) and listed in 5 U.S.C. 552b(c)(1).

The general session will be open to the public with a limited number of seats available. A Notice of Determination to close meetings or portions of meetings to the public on the basis of 5 U.S.C. 552b(c)(1) has been approved in accordance with the Federal Advisory Committee Act. A copy of the notice is available for public inspection and copying in the Central Reference and Records Inspection Facility Room 6628, U.S. Department of Commerce, (202) 377–4217.

This meeting is being called on short notice because of bilateral negotiations

scheduled for this month with a number of countries and the need for public comments and committee members' views before such negotiations and consultations take place.

For further information or copies of the minutes contact Helen L. LeGrande (202) 377–3737.

Dated: March 7, 1985.

Walter C. Lenahan,

Deputy Assistant Secretary for Textiles and Apparel.

[FR Doc. 85–5837 Filed 3–11–85; 8:45 am]

BILLING CODE 3510-DR-M

[C–560–401]

Termination of Countervailing Duty Investigations Under Section 303 and Preliminary Affirmative Countervailing Duty Determinations Under Title VII; Certain Textile Mill Products and Apparel From Indonesia

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: Indonesia has become a "country under the Agreement." Accordingly, we are terminating the pending countervailing duty investigations under section 303 of the Tariff Act of 1930, as amended ("the Act"), and the investigations shall be subject to the provisions of Title VII of the Act as if preliminary determinations under section 703 were made on March 4, 1985, the effective date of the application of Title VII to Indonesia.

EFFECTIVE DATE: March 4, 1985.

FOR FURTHER INFORMATION CONTACT: Alain Letort, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377–5050.

SUPPLEMENTARY INFORMATION:

Initiation of Investigations and Preliminary Determinations

On July 20, 1984, we received a petition from the American Textile Manufacturers Institute, the Amalgamated Clothing and Textile Workers Union, and the International Ladies' Garment Workers Union, on behalf of the U.S. industry producing certin textiles and textile products. In compliance with the filing requirements of § 355.26 of our regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in Indonesia of textiles and textile products receive, directly or indirectly, benefits which constitute bounties or grants within the meaning of section 303 of the Act.

We found that the petition contained sufficient grounds upon which to initiate countervailing duty investigations, and on August 9, 1984, we initated such investigations (49 Fed. Reg. 32642). We stated that we expected to issue preliminary determinations by October 15, 1984. On September 21, 1984, we determined these investigations to be "exraordinarily complicated," as defined in section 703(c)(1)(B) of the Act. Therefore, we extended the period for making our preliminary determinations by 65 days until December 17, 1984 (49 FR 40198).

On December 17, 1984, we issued our preliminary determinations that certain benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Indonesia of certain textile mill products and apparel (49 FR 49672).

On December 3, 1984 the petitioners amended their petitions to include the following ATMI member firms as individual petitioners with respect to textile mill products:

- Belton Industries, Inc., of Belton, S.C.
- Burlington Industries, Inc., of Greensboro, N.C.
- Chatham Manufacturing Company of Elkin, N.C.
- Milliken & Company of Spartanburg, S.C.
- Mount Vernon Mills, Inc., of Greensville, S.C.
- Shuford Mills, Inc., Hickory, N.C.
- J.P. Stevens & Co., Inc., of New York, N.Y. and
- West Point-Pepperell, Inc., of West Point, Ga.

On December 17, 1984, the Department determined that ATMI is not an "interested party" under section 771(9)(E) of the Act, and has no standing as a petitioner in these investigations. The Department accepted the amendment to add the eight firms listed above as petitioners with respect to textile mill products.

On March 4, 1985, the Office of the United States Trade Representative announced that Indonesia was a "country under the Agreement," as set out in section 701(b) of the Act (50 FR 9342). As a result, Title VII of the Act became applicable to the then pending countervailing duty investigations. According to section 102 of the Act, once Title VII becomes applicable, any pending investigation under section 303 of the Act must terminate. Where a preliminary determination, but not a final determination has been made under section 303, the case is to be treated as if the preliminary determination under section 703 was made the day Title VII first applied to that country. Therefore, we are terminating the investigations we initiated on August 9, 1984, under section 303 of the Act. The investigations shall be subject to the provisions of Title VII of the Act as if the affirmative preliminary determinations made on December 17, 1984, under section 303 (49 FR 49672) were affirmative preliminary determinations under section 703 of the Act made on March 4, 1985. The final determinations in these investigations now are due by May 20, 1985.

Scope of the Investigations

The products covered by these investigations are certain textile mill products and apparel which are described in the Appendix to this notice.

ITC Notification

Pursuant to section 703(f) of the Act, we are notifying the U.S International Trade Commission (ITC) and making available to it information relating to the matter under investigation. We will make available to the ITC all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

After our final determinations, the ITC will determine whether a industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded by reason of imports of certain textile mill products and apparel from Indonesia.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

Appendix.—Imports of Certain Textile Mill Products and Apparel

Tariff Schedule Numbers Subject to Investigations

A. Textile Mill Products						
Yarns and Threads						
310.0250				310.5049		
Woven Fabrics						
320.0001	320.0012	320.0013	320.0019	320.0032	320.0033	320.0034
320.0043	320.0044	320.0045	320.0062	320.0063	320.0071	320.0077
320.1019	320.1034	320.1045	320.1071	320.1077	322.1015	322.1017
322.1029	322.1036	322.1040	322.1047	322.1055	322.1058	322.1065
322.1068	322.1070	322.1079	322.1097	322.3003	322.3018	322.3021
322.3022	322.3024	322.3027	322.3038	322.3042	322.3049	322.3054
322.3057	322.3065	322.3072	322.3074	322.3080	322.3098	322.4003
322.4021	322.4022	322.4024	322.4031	322.4038	322.4042	322.4049
322.4054	322.4057	322.4065	322.4072	322.4074	322.4080	322.4098
322.5021	322.5022	322.5024	322.5031	322.5038	322.5042	322.5049
322.5054	322.5057	322.5065	322.5072	322.5074	322.5080	322.5098
322.8003	322.8021	322.8022	322.8024	322.8038	322.8042	322.8049
322.8054	322.8057	322.8065	322.8072	322.8074	322.8080	322.8098
325.8021	325.8022	325.8024	325.8031	326.1050	326.1051	326.1052
326.1085	326.1089	326.1091	326.1095	326.3016	326.3018	326.3021
326.3022	326.3023	326.3024	326.3027	326.3031	326.3038	326.3042
326.3049	326.3054	326.3057	326.3065	326.3069	326.3072	326.3073
326.3074	326.3080	326.3098	332.4040	338.5021	338.5024	338.5030
338.5031	328.5035	328.5036	328.5039	338.5064	338.5069	
Special Construction Fabrics						
347.3380						
Textile Furnishings						
361.4500	363.4500	363.5115	365.7825	365.7865	366.2740	366.2780
366.4600	366.4700	366.7925	366.7930	727.8630		
Luggage and Handbags						
706.3400	706.3640	706.3680	706.3650	706.4106	706.4111	706.4140
706.4150						
Miscellaneous						
386.1500	386.4000	386.5045	389.3000	389.7000		
B. Apparel						
Wearing Apparel						
372.1080	372.1540	372.1560	372.2000	372.7000	372.7520	378.1540
379.0220	379.0620	379.0640	379.0642	379.0648	379.0810	379.2350
379.2630	379.3120	379.3940	379.4010	379.4020	379.4040	379.4050
379.4330	379.4630	379.4640	379.4650	379.4660	379.4670	379.5210
379.5220	379.5510	379.5520	379.5525	379.5530	379.5535	379.5540
379.5545	379.5550	379.5560	379.5565	379.5800	378.6210	379.6220
379.6230	379.6240	379.6250	379.6470	379.8915	379.9025	379.9030
379.9040	379.9250	379.9530	379.9535	379.9540	379.9545	379.9550
379.9555	379.9570	379.9575	379.9580	379.9585	379.9641	379.9650
383.0219	383.0222	383.0226	383.0228	383.0232	383.0234	383.0238
383.0242	383.0246	383.0248	383.0262	383.0264	383.0266	383.0268
383.0272	383.0305	383.0335	383.0361	383.0505	383.0506	383.0507
383.0509	383.0606	383.0608	383.0612	383.0614	383.0618	383.0622
383.0631	383.0616	383.0630	383.0638	383.0640	383.0805	383.0835
383.0838	383.0841	383.0856	383.0859	383.0860	383.1305	383.1802
383.1804	383.1805	383.1806	383.1807	383.1822	383.1824	383.1841
383.1910	383.1915	383.1920	383.1922	383.1924	383.1926	383.1928
383.2005	383.2013	383.2014	383.2020	383.2025	383.2035	383.2040
383.2050	383.2052	383.2058	383.2060	383.2205	383.2210	383.2212
383.2214	383.2225	383.2227	383.2228	383.2229	383.2231	383.2232
383.2233	383.2234	383.2235	383.2236	383.2237	383.2239	383.2241
383.2243	383.2245	383.2248	383.2251	383.2255	383.2305	383.2315
383.2320	383.2325	383.2330	383.2335	383.2340	383.2350	383.2252
383.2354	383.2356	383.2360	383.2365	383.2535	383.2550	383.2590
383.2710	383.2712	383.2714	383.2715	383.2716	383.2718	383.2721
383.2722	383.2724	383.2726	383.2728	383.2730	383.2732	383.2738

Tariff Schedule Numbers Subject to Investigations—Continued

383.2738	383.2814	383.2816	383.2818	383.2821	383.2826	383.2828
383.2835	383.2910	383.3030	383.3040	383.3060	383.3080	383.3090
383.3200	383.3430	383.3435	383.3445	383.3446	383.3448	383.3450
383.3460	383.3465	383.3466	383.3770	383.4015	383.4300	383.4702
383.4704	383.4705	383.4707	383.4709	383.4711	383.4716	383.4717
383.4718	383.4720	383.4721	383.4724	383.4726	383.4747	383.4748
383.4750	383.4753	383.4754	383.4756	383.4761	383.4762	383.4764
383.4765	383.4821	383.4825	383.4900	383.5028	383.5027	383.5028
383.5031	383.5034	383.5037	383.5043	383.5051	383.5078	383.5082
383.5084	383.5086	383.5088	383.5090	383.5295	383.5395	383.6371
383.7887	383.7888	383.7892	383.8002	383.8007	383.8009	383.8011
383.8012	383.8014	383.8017	383.8019	383.8024	383.8026	383.8028
383.8030	383.8045	383.8048	383.8050	383.8052	383.8069	383.8071
383.8073	383.8115	383.8137	383.8139	383.8145	383.8162	383.8164
383.8605	383.8620	383.8635	383.8645	383.8660	383.8663	383.8669
383.8670	383.8810	383.9005	383.9010	383.9015	383.9020	383.9025
383.9027	383.9029	383.9050	383.9051	383.9056	383.9057	383.9058
383.9059	383.9061	383.9062	383.9063	383.9064	383.9066	383.9068
383.9069	383.9070	383.9210	383.9220	383.9225	383.9235	383.9240

Headwear

702.1400

Gloves

704.4010	704.4025	704.4504	704.4506	704.4508	704.5015

Note.—For the woven cotton fabric under investigation the U.S. Department of Commerce, in preparing the Appendices for these investigations, has used the U.S. Import Statistical Numbers which closely parallel the TSUSA numbers. For example U.S. Import Statistical Number 320.0001 represents TSUSA numbers 320.0101 through 320.0901 and 326.3098 represents TSUSA numbers 326.3098 through 326.3998.

[FR Doc. 85-5825 Filed 3-11-85; 8:45 am]

BILLING CODE 3510-DS-M

[C-301-401]

Certain Textile Mill Products and Apparel from Colombia; Suspension of Countervailing Duty Investigations

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice of Suspension of Countervailing Duty Investigations.

SUMMARY: The Department of Commerce has decided to suspend the countervailing duty investigations involving certain textile mill products and apparel from Colombia. The basis for the suspension is an agreement to renounce completely all benefits provided by the government of Colombia which we find to constitute bounties or grants on certain textile mill products and apparel exported to the United States.

EFFECTIVE DATE: March 12, 1985.

FOR FURTHER INFORMATION CONTACT: Tom Bombelles, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 377-3174.

SUPPLEMENTARY INFORMATION:

Case History

On July 23, 1984, we received a petition from the American Textile Manufacturers Institute, the Amalgamated Clothing and Textile Workers Union, and the International Ladies' Garment Workers Union, on behalf of the U.S. industry producing certain textiles and textile products. In compliance with the filing requirements of § 355.26 of our regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in Colombia of textiles and textile products receive, directly or indirectly, benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act).

We found that the petition contained sufficient grounds upon which to initiate countervailing duty investigations, and on August 13, 1984, we initiated such investigations (49 FR 32892). These investigations were initiated by the Department under the title "Certain Textiles and Textile Products from Colombia." Because of the number of products covered, and the differences in those products, the Department determined that it should conduct separate investigations—one of textiles and non-apparel textile products, and one of apparel. Because of the potential for confusion, as apparel can also be considered a textile product, we changed the titles of these investigations to "Certain Textile Mill Products and Apparel from Colombia." The scope of these investigations remains the same as announced in the initiation and the preliminary determinations.

We stated that we expected to issue preliminary determinations by October 16, 1984. On September 21, 1984, we determined these investigations to be "extraordinarily complicated," as defined in section 703(c)(1)(B) of the Act. Therefore, we extended the period for making our preliminary determinations by 65 days until December 20, 1984 (49 FR 40198).

Since Colombia is not a "country under the Agreement" within the meaning of section 701(b) of the Act and the merchandise being investigated is dutiable, sections 303 (a)(1) and (b) of the Act apply to these investigations. Accordingly, the petitioners are not required to allege that, and the U.S. International Trade Commission is not required to determine whether, imports of these products cause or threaten material injury to U.S. industries.

Due to the broad scope of these investigations, we employed a two-step questionnaire process. We presented a preliminary questionnaire to the government of Colombia in Washington, D.C., on August 24, 1984. Based on the response to the preliminary questionnaire, we selected four textile producers and exporters and three apparel producers and exporters who account for at least 60 percent of the textile mill products and apparel exported to the United States from Colombia. On October 23, 1984 we presented a supplemental questionnaire to the government of Colombia in Washington, D.C. requesting responses from these companies. We received responses to our supplemental questionnaire on December 4, 1984. One textile producer, Polymer, S.A., did not respond to our questionnaire. Although the response to the preliminary questionnaire states that Polymer receives certain export benefits, respondents have informed us that Polymer does not, in fact, export any products under investigation. One company, Creaciones Inesita, requested exclusion from these investigations on the grounds that it does not export any textile mill products or apparel.

On December 20, 1984, we issued our preliminary determinations in these investigations (49 FR 50753, December 31, 1984). We preliminarily determined that benefits constituting bounties or grants within the meaning of the Act were being provided to the manufacturers, producers, or exporters in Colombia of the subject merchandise.

We conducted verification of the responses of the government of Colombia and the textile and apparel companies between January 29 and February 8, 1985, in Washington, D.C. Petitioners and respondents waived the opportunity to participate in a public hearing. However, we did receive their written comments regarding our investigations in briefs received on February 1, and February 25, 1985.

Certain respondents in the *Certain Textile Mill Products and Apparel* investigations have raised the issue as to whether petitioners have standing to file these cases. Petitioners have also made comments regarding our methodology in selecting companies to receive detailed questionnaires, and our investigation of only those companies that account for sixty percent of exports of the subject merchandise to the United States. We have addressed these issues in our final determinations of *Certain Textile Mill Products and Apparel from Malaysia*, issued on March 4, 1985. See that notice for our comments on those issues.

Scope of the Investigations

The products covered by these investigations are certain textile mill products and apparel, which are described in Appendix A, attached to this notice.

Changes Since the Preliminary Determination

A. Tax Reimbursement on Exports Under Law 636 of 1984

The government of Colombia provides payments to exporters of textile mill products and apparel in the form of negotiable tax certificates ("CATs") that may be used for the payment of various taxes or sold on the stock exchange at a discount. Rebates are calculated as a percentage of the value of the exported product attributable to the domestic value-added and imported inputs on which duties have been paid. The government of Colombia contends that the CAT represents a non-excessive rebate of indirect taxes.

In the final determinations on *Certain Textile Mill Products and Apparel from Thailand*, issued on March 4, 1985, we explain our policy for determining whether rebate systems that are designed to rebate both prior-stage indirect taxes and import duties confer bounties or grants upon exports. The test for such rebate systems is similar to the so-called linkage test for systems which purport to rebate prior-stage indirect taxes only.

The taxes and duties rebated under the CAT program include those on inputs that are physically incorporated in the final product. We examined documents submitted by the Colombian government itemizing the taxes and duties eligible for inclusion in the CAT rebate on textiles and apparel. We conclude that a significant portion of the CAT rebate applies to import duties and indirect taxes on inputs physically incorporated in the exported products. Therefore, we determine that the CAT program operates for the purpose of rebating import duties and indirect taxes with respect to textiles and apparel.

In its questionnaire response, the government of Colombia states that each of the major product categories of textile mill products and apparel was analyzed in the 1978 tax incidence study. Cost structures were established on a firm-by-firm basis for the major firms and the major products and the tax incidence on each input was calculated to determine the value of the taxes and import duties in the f.o.b. value of the final product.

On April 1, 1984, the Colombian government abolished the CAT program and replaced it with a new tax reimbursement program, the CERT. We have reviewed the documents submitted by the Columbian government at verification showing its detailed recalculations of the rebate rates in 1983 and 1984. These calculations separate the inputs for each product and list import duties and domestic indirect taxes, as well as indirect taxes embedded in domestically-produced inputs. The government also includes in its calculation of the CAT rebate rate payroll taxes and allowances for reductions in the value of the CAT due to devaluation and delays in receipt of the rebate. The rebate rate under the CERT program is 15.00 to 20.00 percent for textiles and 20.00 percent for apparel.

Review of documentation submitted with the questionnaire response and the information obtained during verification on the methodology used to calculate the rebate rates leads us to conclude that the government has reasonably calculated and documented the level of indirect taxes, and that the government has properly ascertained the level of the fixed drawback. Thus the only task that remains is to determine the extent to which the CERT is an excessive remission of indirect taxes and import duties.

To determine the allowable rebate of indirect taxes and import duties, we have calculated the average incidence of indirect taxes and import duties on physically incorporated inputs for textiles and apparel. The Colombian government provided tables at verification that show the average incidence of indirect taxes and import duties on physically incorporated inputs in textiles and apparel. In addition, we have allowed an adjustment to this rate based on the fact that the tax and duty incidence is calculated on the f.o.b. value of exported products, while the amount of CERT rebate upon export is determined by multiplying the CERT rate by the portion of the value of the exported product attributable to domestic value-added and imported inputs on which duties have been paid. Based on this calculation, we find an allowable rebate of 9.60 percent for textiles and 6.00 percent for apparel.

B. Export Financing Through the Export Promotion Fund

1. *Working Capital Loans Under Resolution 59.* Colombian exporters of certain textile mill products and apparel receive short-term financing under Resolution 59. Resolution 59 was passed by the Monetary Board of Colombia on August 30, 1972. It authorizes the provision of working capital loans to companies which produce, store or sell merchandise other than coffee and petroleum exclusively for export. Resolution 59 financing is administered by the Export Promotion Fund ("PROEXPO"), a government agency, and is disbursed by banks and other financial institutions.

The interest rate on such loans during the period of investigation was 19 percent until March 31, 1983, and 18 percent afterwards. The duration of these loans is six months, and the maximum principal is 80 percent of the value of the merchandise. In our preliminary determinations, we chose an interest rate of 36 percent, based on best evidence, as the short-term commercial interest rate against which to measure the benefit conferred by Resolution 59 loans.

At verification we examined data from the Central Bank, the Monetary Board, commercial banks and other financial institutions. The information we examined indicated that there is no predominant alternative source of non-preferential short-term financing to industry in Colombia.

In order to assist the country's economic development, the Colombian government has established many different lines of credit with fixed interest rates, rediscount rates and rediscount margins. Some credit lines, such as PROEXPO, are targeted to specific economic sectors, while others are available to all sectors of the economy. Through high reserve requirements and a variety of forced

investments in Agrarian Bonds and Treasury Bonds, the government controls a majority of the available lending capital in the economy. These funds are used to capitalize the diverse credit lines, which are lent to borrowers through banks and other financial institutions. The remaining resources of the credit institutions may be lent at or below the legal maximum interest rate of 36 percent per annum. they may also be lent in conjunction with the government-directed special credit lines. The total amount of government-directed loans that any credit institution processes is not limited to its required reserves and forced investments. Although credit institutions may lend from their own resources at rates as high as 36 percent, they may find it more profitable to process a government fund loan. The high rediscount margin of most government funds requires the credit institution to furnish on average only 10 percent of the principal amount of the loan, theoretically allowing a bank to increase its loan portfolio tenfold, albeit at a lower interest rate.

We have found that borrowers in Colombia generally negotiate a "package" loan agreement with a bank. The package will consist of funds drawn from several credit lines at statutorily-controlled interest rates and may include funds from the bank's own resources at an interest rate of 30 to 36 percent.

Thus, we determine that the predominant alternative to Resolution 59 loans is a package of government credit lines available to broad sectors of the economy and commercial bank's own resources. To calculate the short-term benchmark, we used Central Bank data to estimate the amount of capital lent through non-targeted government credit lines and the proportion of banks' own resources that is available for lending at unregulated (i.e., below 36 percent) interest rates. We then weight-averaged the statutory interest rates on the non-targeted government funds and the average interest rate in 1983 on the bank's own resources to find a short-term benchmark interest rate of 28.19 percent.

2. *Special Line of Credit to the Textile Industry.* In 1982 the goverment of Colombia established a special line of credit to the textile industry, which refinanced all outstanding PROEXPO loans. All loans under this program were refinanced in December 1982, or early 1983, for a term of two years at an interest rate of 18 percent.

At verification, we learned that one of the conditions set by the government for refinancing under this program was that the companies meet minimum export goals for 1983. Since the refinancing is contingent upon export performance, we determine that the program constitutes an export bounty or grant to the extent that financing is made available at preferential rates.

In our preliminary determinations, we used the short-term commercial loan benchmark of 36 percent as the best information available for a long-term loan benchmark. During verification, we learned that all commercial banks and credit institutions are prohibited from lending at terms longer than one year. The only sources of long-term financing in Colombia are the various financial funds and special credit lines established by the government. The terms, conditions, and interest rates for all of these funds are regulated by the government. In Colombia, the cost of long-term credit does not vary widely from company to company because the interest rates are set by the government.

We determine that the most appropriate long-term benchmark is the weighted-average interest rate of those government funds that offer long-term financing to a broad spectrum of industries. These funds include the Industrial Financial Fund (FFI), the Private Investment Fund (FIP), the Industrial Development Institute (IFI), and the Capital Formation Fund (FCE). We calculated the weighted-average benchmark rate according to the total amount of loans made through each of these funds in 1983 and the corresponding average long-term interest rate esteblished for each one. In this way, we determine that the national average long-term interest rate in Colombia during 1983 was 25.55 percent.

One of the firms that we verified, Fabricato, entered into court-ordered reorganization during the period of review. Interest and principal payments on all its outstanding debt were suspended. We verified that this practice is consistent with Colombian bankruptcy laws and procedures.

3. *Credits for Capital Investment Under Decree 2366.* Under Decree 2366, PROEXPO provides long-term financing for capital investment through commercial banks. The annual amount of the loan cannot exceed two million pesos and the maximum term is five years. The annual interest rate for these loans is 14 percent, though we found that banks can charge a spread over this amount in special circumstances.

This financing is available only to applicants whose investment projects are approved by PROEXPO. We determine that the most appropriate benchmark for this program is the long-term benchmark described under the Special Credit Line for Textiles.

C. Domestic Line of Credit to the Textile Industry

At verification we learned that a refinancing program was made available to the textile and apparel industries under Resolutions 24 and 64 of 1983. This program allows the refinancing of debts to domestic creditors and suppliers at a statutory rate of 26 percent per annum for a term of up to four years.

Although this line of credit is available only to the textile and apparel industries, we have found that it is not extended on terms inconsistent with commercial considerations. Therefore, we determine that this program does not confer countervailable benefits.

D. Financing through the Private Investment Fund and the Industrial Development Institute

The Private Investment Fund (FIP) and the Industrial Development Institute provide long-term financing to certain sectors and for selected projects. In our preliminary determination, we stated that these programs provide countervailable benefits. We verified that financing from these institutions is provided to more than a specific industry or enterprise or group of industries or enterprises and, thus, does not confer countervailable benefits.

E. Countertrade

The government-authorized program of countertrade, established by Decree 370 of February 15, 1984, allows any company to engage in countertrade, if such trade will create new markets for new products. In our preliminary determinations, we stated that we did not have enough information to determine whether this program provides countervaliable benefits. We now determine that this program was not used by the companies under investigation.

Petitioner's Comments

Comment 1: The draft suspension agreement is not signed by exporters of substantially all of each of the distinct "like products" covered by the investigations, as required by section 704(b) of the Act. Since the Department determined that there are many different texile "like products" in this investigation, the suspension agreement must cover exporters who account for "substantially all" of each distinct "like product" covered by the investigation.

DOC Position: As stated in our discussion of our selection of companies in the final determinations of "Certain Textile Mill Products and Apparel from Malaysia," published on March 4, 1984,

"like product" and "class or kind" of merchandise are different terms performing different functions. Section 704(b) of the Act requires that "exporters who account for substantially all of the imports of the merchandise which is the subject of the investigation" sign a suspension agreement, and makes no reference to "like product." The suspension agreement in this case covers the exporters accounting for over 85 percent of the imported textile mill products and over 85 percent of the imported apparel under investigation (i.e., the "class or kind" of merchandise), as § 355.31(c) of the Department of Commerce Regulations requires.

Comment 2: There is no satisfactory evidence in the record that the signatory to the agreement ("signatories") account for "substantially all of imports" as required by section 704(b).

DOC Position: We disagree. Information in the record shows that the signatories to the agreement exported over 85 percent of the products covered by the agreement in 1983, the period of investigation.

Comment 3: The proposed agreement violates the requirements of section 704(i)(1) regarding action by the Department if the signatories cease at any time to represent 85 percent of exports. The legislative history of the Act (H. R. Rep. No. 317, 96th Cong., 1st Sess. at 54) is clear that the suspension will cease to have effect if the signatories represent at any time less than 85 percent of the imports of the merchandise.

DOC Position: We disagree that the wording in the statue, regulations, or legislative history means that the signatories must account for at least 85 percent of imports at each moment in time during the life of the agreement. Logic dictates that the calculation as to whether signatories account for this amount must be done using representative periods of time, not individual moments in time.

We agree, however, that the signatories must account for at least 85 percent of imports to the United States in each representative period throughout the life of the agreement. Thus, we have amended sectons IV.3 and 4 of the agreement to take this comment into consideration. In addition, we note that if the signatories to the agreement fall below 85 percent of exports to the United States the Department may attempt to negotiate with additional producers or exporters or may terminate the agreement. Furthermore, the government of Colombia has agreed in the letter attached to the agreement to tell the Department if it learns of any new exporter of the subject products to the United States. If we learn of new shippers who are not large enough to cause the signatories to fall below 85 percent of imports to the United States of the subject products, the Department still may decide that it should negotiage with them and amend the agreement to include them.

Comment 4: If the Department finds that imports from the signatories have fallen below 85 percent for any month, the suspension agreement should cease to have effect.

DOC Position: The signatories have agreed to provide us with quarterly value and volume of exports to the United States. The Department can check these numbers against U.S. Custom import statistic represent. We do not believe that monitoring on a monthly basis is practicable or necessary, since we have the authority to order suspension of liquidation as of 90 days before the notice of suspension is published if we find that the agreement no longer meets the requirements of section 704(b).

Comment 5: The exporters do not agree, as required by section 704(b), to eliminate the subsidy completely with respect to the subject merchandise exported to the United States. In the proposed agreement the exporters only agree that they will not receive subsidies on their shipments, leaving open the possibility that they may export the subject products manufactured by others who have received countervailable subsidies.

DOC Position: The suspension agreement pertains to products made by both producers and exporters whose merchandise is exported to the United States directly or indirectly. Thus, both producers and exporters agree that they will not receive subsidies on their merchandise which is exported to the United States. The Department believes that the agreement's language is unambiguous. To clarify any possible misunderstanding, however, we hereby state that we intend the language in the agreement to mean that there can be no countervailable subsidy on the subject products exported to the United States. If we find that the subject products entering the United States have benefitted from a countervailable subsidy, we will consider the agreement to have been violated.

Comment 6: The proposed agreement fails to address benefits received under several important programs covered by the Department's initiation, such as the SENA employee training program, the FFI financing program, short-term loans under special credit lines to the textile industry, and duty exemptions for imported capital equipment under Plan Vallejo.

DOC Position: The Department has found that the SENA employee training program does not confer a bounty or grant because it is not limited to a specific industry, group of industries, or region. We also verified that loans under the FFI program are provided to more than a specific industry or group of industries and, thus, do not confer a countervailable benefit. We have amended the agreement to short-term loans refinanced under special credit lines to the textile industry, and cover duty exemptions for capital equipment imported under Plan Vallejo.

Comment 7: The proposed agreement contains impermissibly narrow terms with respect to IFI financing. It should include all IFI loans without limitation as to purpose. Further, the limitation to "long-term" IFI loans is vague in that long-term is not defined.

DOC Position: The Department has found that IFI loans are not countervailable because they are not limited to a specific enterprise or industry, or group of enterprises or industries (see the "Changes Since the Preliminary Determination" section of this notice). Therefore, we have amended the agreement to exclude IFI financing.

Comment 8: The proposed agreement contains standards that are vague and susceptible to abuse. For example, Section II.b. does not define the "commercial interest rate" in Colombia. The agreement should require the producers and exporters to repay immediately all loans under the programs covered by the agreement.

DOC Position: We have amended the agreement to specify that any loans received from PROEXPO or under any special credit line for textile products shall be at the most recent benchmark interest rate determined by the Department. The Department, not the producers and exporters or the government of Colombia, will decide, for purposes of these suspended countervailing duty investigations, whether loans have been granted at non-preferential interest rates and terms in the context of an administrative review. We believe that requiring the producers and exporters to refinance outstanding preferential loans at the benchmark interest rate calculated by the Department eliminates the countervailable benefits conferred by these loans.

Comment 9: The proposed agreement improperly allows the exporters to continue to receive subsidies under the CERT program. Thus, it does not

eliminate or offset completely the amount of the net subsidy, as required by section 704(b) of the Act.

DOC Position: We believe that section 11.a. is clearly worded where it states that "producers and exporters will not apply for, or receive, tax certificates or other rebates, remissions or exemptions under the Tax Certificate Rebate Program (CAT/CERT) . . . on shipments of the subject products exported . . . to the United States in excess of the import duties and indirect taxes on inputs physically incorporated into the exported products."

We have verified that the Colombian system of rebating indirect taxes and import duties through tax certificates under this program operates for the purpose of rebating indirect taxes and import duties and that the level of rebate has been reasonably calculated by the Colombian Government.

We have examined extensive documentation concerning the calculation of the level of rebate under this program and have established the allowable levels of rebate by disallowing charges which do not constitute duties or taxes on physically incorporated inputs.

Due to the nature of indirect tax rebate calculations, which are based on production models which change over time, we believe it is appropriate to take into consideration the possibility that there may be at some time a slight overreabate. Accordingly, we believe that there should be a provision for offsetting such an inconsequential overrebate. This will ensure that there is no net benefit to the subject products while preventing an inconsequential overrebate from forcing the cancellation of the entire suspension agreement.

In order to monitor this program in the agreement, we have added a requirement that the government of Colombia will notify us of any changes that have taken effect in the rebate rates or in the rates of indirect taxes or import duties applicable to the subject products. In this manner, we will be able to confirm that no overrebates are received, as petitioners request.

Comment 10: The sections of the proposed agreement which attempt to cover additional countervailable subsidies not specifically dealt with elsewhere are insufficiently rigorous. The producers and exporters should be required to notify the Department of any new benefit that conceivably might be countervailable. They should not be able to take any benefit before either the Department has notified them that the benefit is not likely to be countervailable or 60 days have passed after the notification by the signatory to the Department. In addition, the provisions should not be limited to new benefits but should include all programs except those explicitly covered in the agreement or found in a final determination in this proceeding to be not countervailable. Finally, the confusion in section 11.f over "benefits" and "bounties or grants" should be resolved.

DOC Position: We disagree with the petitioners' first and second points. We believe that the wording in section II.f. "likely to be found countervailable," is sufficiently strong, and that the revision suggested by petitioners ("conceivably might be regarded to be countervailable under the Act") is too tenuous. In any case, the burden is on the respondents to notify us of any potential problem before it arises. The meaning in II.f is clear. The signatories may not receive any countervailable "bounties or grants," as used in section 303 of the Act.

As to petitioners' second point, we believe that the 30 days of prior notice in section II.g of the agreement allows the Department sufficient time to adequately monitor this agreement. We believe the petitioners' third point is moot. We have covered in section II all programs under investigation that we believe may provide countervailable benefits. The programs that we have found not to confer countervailable benefits are mentioned in the section of this notice entitled "Changes Since the Preliminary." We agree with petitioners' fourth point and have amended the agreement to include this.

Comment 11: The proposed agreement fails to deal adequately with transshipments. The proposed agreement should require the signatories to notify the Department when anyone transships the subject products to the United States. If the signatories are not in a position to do this, effective monitoring of the agreement is not practicable, as required by section 704(d)(1)(B) of the Act.

DOC Position: We disagree. If a signatory transships to the United States, it must notify the Department. If anyone else transships the subject products to the United States, the merchandise should be labelled as a product of Colombia and the Department will then know of the shipment. If it is mislabelled, the U.S. Customs Service is the proper authority to conduct an investigation.

Comment 11: The proposed agreement is procedurally out of time. Since an investigation must be suspended before a final determination, a copy of the proposed suspension agreement and an explanation of how it will be carried out and enforced must be provided 30 days before a final determination. Here the Department provided a copy of the proposed agreement on the thirtieth day before the date of the final determination, but provided no consultation and explanation until 9 days later.

DOC Position: The Department notified petitioners of the proposed suspension agreement on the date it was initialled, stating that we intended to sign the agreement in 30 days and inviting their comments on the proposed agreement. Petitioners picked up a copy of the agreement on February 4.

We held a lengthy meeting on the date that petitioners requested, to allow the petitioners sufficient time to read the document and develop questions in order to facilitate their meaningful participation in this case.

Comment 13: Petitioners have been denied a meaningful opportunity to comment on the proposed agreement because pertinent information in the record has been improperly withheld. The Department is withholding new information submitted during verification from release to petitioners' counsel under an administrative protective order (APO).

DOC Position: The Department disagrees. We have released the verification reports to petitioners' counsel. The only information in the record to which petitioners' counsel has not had access are the non-public exhibits to the verification report, which we do not release in any event. These exhibits consist of photocopied documents from company and government records which we examined during the verification. Our findings, based on the records, are included in the verification report. The exhibits are simply back-up documentation for the report and are gathered to aid the Department's analysts.

Comment 14: The proposed agreement is not in the public interest and not in the interest of the domestic industry. The proposed agreement will not be as effective as a countervailing duty order in eliminating the impact of countervailable benefits on Colombian exports of textiles and apparel. In addition, the Department has made no finding that the proposed agreement is in the interest of the domestic industry.

DOC Position: We disagree. We believe that the proposed agreement has the same effect as that of a countervailing duty order in this case—eliminating bounties or grants on the exports of the products under investigation from Colombia to the United States. Thus, the domestic

industry is receiving the same relief that it would receive were a countervailing duty order issued. The Department believes that this suspension agreement, based on the renunciation of bounties or grants, serves the public interest by removing these trade distorting measures on the subject products from the U.S. Market. We note that petitioners are misguided in their assertion that the agreement must be more beneficial to the U.S. industry than an order. That requirement is only applicable to suspension agreements under section 704(c). This agreement is pursuant to section 704(b).

Comment 15: Effective monitoring of the proposed agreement is not practicable, which section 704(d)(1)(B) of the Act requires. The proposed agreement does not have adequate provisions for monitoring transshipments, market share of the signatories, the segregation or allocation of subsidy benefits, the actual incidence of subsidy benefits received, or the receipt of new benefits.

DOC Position: We disagree. These issues are discussed in the comments and DOC positions above. All these items are covered by the monitoring provisions of the agreement. In addition, we have made changes to strengthen the effectiveness of the provisions of the agreement on market share of the signatories, the actual incidence of subsidy benefit received, and the receipt of new benefit.

Suspension of Investigation

The Department has consulted with the petitioners and has considered the comments submitted with respect to the proposed suspension agreement. The agreement has been signed by a representative of producers and exporters who account for at least 85 percent of exports of certan textile mill products and apparel from Colombia to the United States. We consider the active participation of the government of Colombia essential to the effective implementation and monitoring of this agreement.

Therefore, the government of Colombia has agreed to take certain steps essential to the implementation and operation of the renunciation of benefits by the producers and exporters. We have determined that the agreement will eliminate or offset completely the net bounty or grant with respect to the subject merchandise exported directly or indirectly to the United States, that the agreement can be monitored effectively, and that the agreement is in the public interest. Therefore, we find that the criteria for suspension of an investigation pursuant to section 704 of the Act have been met. The terms and conditions of the agreement, signed March 5, 1985 are set forth in Appendix B to this notice.

Pursuant to section 704(f)(2)(A) of the Act, the suspension of liquidation of all entries, entered or withdrawn from warehouse, for consumption of certain textile mill products and apparel from Colombia, effective December 31, 1984, as directed in our notice of "Preliminary Affirmative Countervailing Duty Determination; Certain Textile Mill Products and Apparel from Colombia," 49 FR 50753, is hereby terminated. Any cash deposits on entries of the subject merchandise from Colombia pursuant to that suspension of liquidation shall be refunded and any bonds shall be released.

The Department intends to conduct an administrative review within 12 months of the anniversary date of publication of this suspension of investigation pursuant to section 751 of the Act.

Notwithstanding the suspension agreement, the Department will continue the investigation if we receive such a request in accordance with section 704(g) of the Act within 20 days after the date of publication of this notice.

This notice is published pursuant to section 704(f)(1)(A) of the Act.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

Appendix A—List of TSUSA Codes Under Which There Were Imports From Colombia Into the United States During 1983

The products covered by these investigations are certain textile mill products and apparel. The merchandise is currently classified under the item numbers of the *Tariff Schedules of the United States Annotated (TSUSA)* listed below.

Textile Mill Products

Yarns and Threads

3006020	3006028	3010000	3012000	3013000	3022024	3023026	.....
3024026	3024028	3025026	3032042	315047	3109120		

Fabric

3200019	3200034	3200045	3200050	3200051	3200052	3200062	3200063
3200071	3200077	3200085	3200089	3200091	3200095	3201019	3201021
3201022	3201024	3201031	3201034	3201038	3201042	3201045	3201049
3201050	3201051	3201052	3201054	3201057	3201063	3201065	3201071
3201072	3201074	3201077	3201085	3201087	3201089	3201091	3201093
3201095	3201080	3201098	3202018	3202021	3202022	3202024	3202027
3202031	3202038	3202042	3202049	3202050	3202051	3202052	3202054
3202057	3202065	3202072	3202074	3202080	3202085	3202089	3202091
3202095	3202098	3203016	3203023	3203050	3203051	3203052	3203069
3203073	3203085	3203089	3203091	3203095	3204003	3204021	3204022
3204024	3204038	3204042	3211062	3201063	3211021	3211022	3211024
3211031	3211038	3211042	3211049	3211054	3211057	3211062	3211065
3211072	3211074	3211080	3211098	3221050	3221051	3221052	3221085
3221089	3221091	3221095	3223021	3223022	3223024	3223031	3223038
3223042	3223049	3223054	3223057	3223065	3223072	3223074	3223080
3223098	3230066	3230072	3230074	3230080	3230098	3230021	3230022
3230024	3230031	3230038	3230042	3230049	3230054	3230057	3230065
3230066	3230072	3230074	3230080	3230098	3231066	3231072	3231074
3231080	3231098	3241021	3241022	3241024	3241031	3241038	3241042
3241049	3241054	3241057	3241065	3241072	3241074	3241080	3241098
3251021	3251022	3251025	2351031	3261021	3261022	3261024	3261031
3261038	3261042	3261049	3261054	3261057	3261065	3261072	3261074
3261080	3261098	3312014	3312035	3312039	3312046	3312064	3312067
3312078	3313014	3313035	3313039	3313046	3313064	3313067	3313078
3361540	3366457						

Special Construction Fabrics

3455075	3461000	3513000	3514010	3518060	3556510	3571500
3574500						

Textile Furnishings

3601515	3604825	3630520	3631500	3636540	3638000	3642300
3657825	3657865	3658640	3658670	3658680	3661540	3662180
3662460	3662480	3666500	3666900	3667925	3676025	

Miscellaneous						
3865045	3894000	3896265				
Wearing Apparel						
Apparel						
3702400	3702800	3721030	3721050	3721060	3724500	3741000
3743550	3746040	3762430	3762830	3762886	3780550	3780553
3786030	3786530	3790210	3790220	3790240	3790490	3790640
3790642	3790646	3792020	3792350	3792610	3793162	3793164
3793166	3793168	3793180	3794020	3794050	3794320	3794620
3794640	3794670	3795550	3796210	3796217	3796219	3796220
3796230	3796240	3796260	3796280	3797250	3797630	3798311
3798340	3798351	3798356	3798357	3798358	3798359	3798360
3798420	3798735	3798904	3798922	3798924	3798926	3798928
3799020	3799510	3799530	3799540	3799555	3799562	3799564
3799566	3799568	3799575	3799585	3799610	3799620	3799645
3830213	3830226	3830228	3830306	3830330	3830350	3830390
3830505	3830506	3830570	3830608	3830606	3830622	3830631
3830616	3830630	3830805	3830810	3830815	3830841	3830860
3831510	3831611	3831612	3831613	3831660	3831841	3832014
3832016	3832060	3832205	3832212	3832214	3832230	3832240
3832305	3832310	3832315	3832325	3832330	3832340	3832350
3832352	3832360	3832365	3832715	3832730	3832920	3833010
3833090	3833445	3833448	3833465	3833770	3834300	3834709
3834716	3834717	3834718	3834724	3834726	3834753	3834761
3834765	3835026	3835028	3835041	3835086	3835090	3835830
3836200	3836330	3836360	3836371	3837205	3837210	3837522
3837532	3837534	3837536	3837538	3837542	3837544	3837546
3837548	3837552	3837554	3837556	3837528	3837558	3837562
3837595	3838012	3838045	3838125	3838621	3838670	3839015
3839032	3839037	3839040	3839050	3839056	3839057	3839058
3839059	3839061	3839062	3839063	3839064	3839066	3839070
3839211	3839225	3839230	3839240	3839245	3839255	.....
Headwear						
7020600	7021200	7031610	7031620	7031630	7031640	7031650
Gloves						
7041595						
Luggage and Handbags						
7063640	7064100	7064150				
Mattresses, Pillows and Cushions						
7278200						

Note.—For the woven cotton fabric under investigation the U.S. Department of Commerce, in preparing the Appendices for these investigations, has used the U.S. Import Statistical Numbers which closely parallel the TSUSA numbers. For example U.S. Import Statistical Number 320.0019 represents TSUSA numbers 320.0119 through 320.0919 and 331.3078 represents TSUSA numbers 331.3078 through 331.3978. The fourth and fifth digits of these TSUSA numbers are the yarn count numbers.

Appendix B—Suspension Agreement

Pursuant to the provisions of section 704 of the Tariff Act of 1930 ("the Act") and § 355.31 of the Department of Commerce Regulations, the Department of Commerce ("the Department") and the producers and exporters of certain textile mill products and apparel in Colombia listed in Appendix 1 hereto (hereinafter "the producers and exporters"), enter into the following Suspension Agreement ("the Agreement"). In consideration of this Agreement, the Central Bank of Colombia, PROEXPO and any other administering authority have agreed voluntarily to take certain steps essential to the implementation and operation of the renunciation of benefits by the producers and exporters. On the basis of the foregoing, the Department shall suspend its countervailing duty investigation initiated on August 17, 1984 (49 FR 32892) with respect to textile mill products and apparel from Colombia subject to the terms and conditions set forth below.

I. Scope of the Agreement

The Agreement applies to the textile mill products and apparel described in Appendix 2 ("the subject products") exported directly or indirectly from Colombia to the United States.

II. Basis of the Agreement

The producers and exporters listed in Appendix 1, accounting for more than eighty-five (85) percent of the total exports of the textile mill products, and more than eighty-five (85) percent of the total exports of apparel from Colombia to the United States, agree as follows:

a. The producers and exporters will not apply for, or receive, tax certificates or other rebates, remissions or exemptions under the Tax Rebate Certificate Program (CAT/CERT) or any other provision of law on shipments of the subject products exported, directly or indirectly, from Colombia to the United States in excess of the import duties and indirect taxes on items that are physically incorporated into the exported products. Non-excessive indirect taxes on items that are physically incorporated into the subject products shall be equal to the most recent amount determined by the Department to exist in this proceeding. If necessary, the producers and exporters agree to repay to the Government, in an annual adjustment, any amount by which the tax certificates or other rebates, remissions or exemptions exceed the amount of indirect taxes and import duties. Such payment may be made in cash or by surrendering unused tax certificates. The annual adjustments shall be calculated as follows:

(i) Any amount of overrebate found by the Department to exist during the course of an administrative review of this Agreement under section 751 of the Act; plus

(ii) Interest on that amount, calculated in accordance with section 778(o) of the Act, from the date of issuance of the tax certificate or other rebate, remission or exemption, to the date of payment of the annual adjustment.

b. The producers and exporters will not apply for, or receive, any short-term export financing provided by the Export Promotion Fund, PROEXPO (e.g., Resolution 59 loans) and under any special government credit line for textile products on or after the effective date of the Agreement, other than those offered at or above the most recent short-term benchmark interest rate determined by the Department, and on non-preferential terms. Any such financing outstanding as of the effective date of this Agreement shall be repaid, or refinanced at the most recent short-term benchmark interest rate determined by the Department, and on non-preferential terms, by the original due date of the loan, or by the thirtieth day from the effective date of this Agreement, whichever comes first.

c. The producers and exporters will not apply for, or receive, any long-term financing provided by the Export Promotion Fund, PROEXPO (e.g., Resolution 2366 loans and Resolution 14 loans) and under any special government credit line for textile products, other than those offered at or above the most recent long-term benchmark interest rate determined by the Department, and on non-preferential terms. Any such financing outstanding as of the effective date of this Agreement shall be repaid, or refinanced at the most recent long-term benchmark interest rate determined by the Department, and on

non-preferential terms, by the original due date of the loan, or by the sixtieth day from the effective date of this Agreement, whichever comes first. Any such repayment must be consistent with Colombian bankruptcy laws and procedures.

d. The producers and exporters will not apply for, or receive any benefits from duty free importation of capital equipment as a result of location in a Free Industrial Zone, or duty and tax exemptions for capital equipment under the Plan Vallejo. Also, the producers and exporters will not apply for or receive any benefits from the Export Credit Insurance program with respect to exports of the subject products exported, directly or indirectly, to the United States.

e. The producers and exporters shall notify the Department in writing prior to applying for approval for any countertrade transaction.

f. The producers and exporters agree that they will not apply for, or receive, any bounties or grants on shipments of the subject products exported, directly or indirectly, from Colombia to the United States which are countervailable under the Act. Bounties or grants on exports of the subject products to the United States include any which have been found or are likely to be found countervailable in any investigation or review under section 751 of the Act, including bounties or grants which the Department determines may apply to other products or exports to other destinations that cannot be segregated as applying solely to such other products or exports.

g. The producers and exporters shall notify the Department in writing at least thirty days prior to applying for or accepting any new benefit which is, or is likely to be, a countervailable bounty or grant on shipments of the subject products exported from Colombia.

h. If any program under which benefits have been received in the past, and which is included in this Agreement, is found not to constitute a bounty or grant under the Act in the notice of suspension of investigation, the final determination, or the final results of an administrative review of this Agreement under section 751 of the Act in this proceeding, then the renunciation of the benefits under that program will no longer be required.

III. Monitoring of the Agreement

1. The producers and exporters agree to supply any information and documentation which the Department deems necessary to demonstrate that there is full compliance with the terms of this Agreement.

2. Each producer or exporter will notify the Department if it:

a. Transships the subject products through third countries to the United States;

b. Alters its position with respect to any terms of the Agreement; or

c. Applies for, or receives, directly or indirectly, the benefits of the programs described in Section II for the manufacture or export of the subject products exported, directly or indirectly, from Colombia.

3. The Department will request information and may perform verifications periodically pursuant to administrative reviews conducted under section 751 of the Act, in addition to exercising its rights under paragraphs III.1 and 2, above.

4. The producers and exporters agree to permit such verification and data collection as deemed necessary by the Department in order to monitor this Agreement.

5. The producers and exporters agree to notify the Department of the value and volume of exports of the subject products to the United States within 45 days from the end of each calendar quarter beginning with the quarter ending March 31, 1985.

6. All producers and exporters agree to provide to the Department a periodic certification that they continue to be in compliance with the terms of the Agreement. A certification will be provided within 45 days from the end of each calendar quarter beginning with the quarter ending March 31, 1985

IV. General Provisions

1. In entering into this Agreement, the producers and exporters do not admit that any of the programs investigated constitute countervailable benefits within the meaning of the Act or the GATT Subsidies Code.

2. The provisions of section 704(i) shall apply if:

a. The producers and exporters withdraw from this Agreement; or

b. The Department determines that the Agreement is being or has been violated or no longer meets the requirements of section 704 of the Act.

3. If the Department learns of any new producers or exporters to the United States of the subject products, it may attempt to negotiate an agreement with the additional producers or exporters.

4. Additionally, should exports to the United States by the producers and exporters of either textiles or apparel account for less than 85 percent of the textiles or apparel imported, directly or indirectly, into the United States from Colombia, the Department may attempt to negotiate an agreement with additional producers or exporters or may terminate this Agreement and reopen the investigation or issue a countervailing duty order as appropriate under § 355.32 of the Commerce Regulations. If reopened, the investigation will be resumed for all producers and exporters of the subject products as if the affirmative preliminary determination were made on the date that the Department terminates this Agreement.

5. If, pursuant to section 704(g) of the Act, the investigation is continued after the notice of suspension of investigation, the application of this Agreement shall be consistent with the final determination issued in the continued investigation.

V. Effective Date

The effective date of this Agreement is the date of publication in the **Federal Register.** The provisions of paragraphs II.a-h apply with respect to exports of the subject products on or after the effective date. No applications may be made after the effective date of this Agreement for the benefits described in Section II on the subject products exported from Colombia before the effective date.

Signed on this 5th day of March, 1985, for the producers and exporters.

Walter J. Spak,

Wald, Harkrader & Ross.

I have determined pursuant to section 704(b) of the Act that the provisions of Section II completely eliminate the subsidies that the Government of Colombia is providing with respect to certain textile mill products and apparel exported, directly or indirectly, from Colombia to the United States. Furthermore, I have determined that suspension of the investigation is in the public interest, that the provisions of Sections III and the attached undertaking of the Government of Colombia ensure that this Agreement can be monitored effectively, and that this Agreement and attached undertaking meet the requirements of section 704(d) of the Act.

United States Department of Commerce

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

Appendix 1

The following companies represent over eighty-five (85) percent of the exports of textile mill products from Colombia to the United States:

1. Mishaan Hermanos Limitada Textiles
2. FCA de Prods Textiles Protela Ltda.
3. FCA Nal de Tejidos Lafayette
4. Hilaturas Colombia Ltda.
5. Textiles Konkord Ltda.
6. Textiles Espinal
7. Tejidos el Condor S.A.
8. Cia Col. de Tejidos S.A. Coltejer
9. Cia Textil Col. Satexco
10. FCA de Hilados y Tejidos del Hato
11. FCA de Calcetines Crystal, Ltda.

The following companies represent over eighty-five (85) percent of the exports of apparel products from Colombia to the United States:

1. De la Pava Palacio Gustavo
2. Celis Cantor Hernando
3. Forero Orosa Heli
4. De Gutierrez Ana Maria
5. Rodriguez Latorre America de
6. Vivas Rincon Raquel
7. Villegas Beatriz de Restrepo
8. Porras de Quiroz Ana Cecilia
9. Velenzuela Maria Cristina
10. Schonwald Herard Andres
11. Panda Leather Mcader M
12. Manhattan de Colombia Ltda.
13. Textiles Sabrina Ltda.
14. Artesanias de Colombia
15. Ind Persa Ltda.
16. Tapetes Tab Ltda.
17. Esmegatex y Cia Ltda.
18. El Tejedor el Gusano de Lana
19. Prodeco S.A.
20. Fundacion Menonita Para el Desarrollo
21. Textiles Konkord Ltda.
22. Vicky Ltda.
23. Monserrate Ltda-Represent. E Inv.
24. La Tribu Ltda.
25. Artesanias Bochica Ltda.
26. Industrias Kempes y Cia Ltda.
27. Confecciones Mony
28. Comercializadoras Internal Andina Ltda.
29. Bermudez Jose Alejandro
30. Lynch W Dennis
31. Confecciones SAAD Ltda.
32. Confecciones Vanytor Ltda.
33. Artesoro Ltda.
34. Confecciones Vargas Ltda.
35. Dismoda Ltda.
36. Anglo American Carpet Co. Ltda.
37. Jose E Isodoro Esquenazi y Cia Ltda.
38. Uribe Obyrne Ltda.
39. Plasticos Aliados Ltda.
40. Seccol Ltda.
41. Creaciones Lady Joanne Y Cia
42. Confecciones Colombia
43. Industrias e Inversiones Cid. Ltda.
44. Comercializadora Internacional Ley S.A.
45. Industrias Crisaza C P A
46. Industrias Charles Imperial Ltda.
47. Caribu Internacional S A
48. C.I. Agroindustrial S A Cinsa
49. Ind. de Bordados Clemdorada y Confecciones Ltda.
50. Confecciones Valher S A
51. Nicole Ltda.

March 5, 1985

Investigation No. C–301–401

Mr. Alan F. Holmer,

Deputy Assistant Secretary for Import Administration, U.S. Department of Commerce, 14th & Constitution Ave. NW., Room 3099, Washington, D.C.

Re: Countervailing Duty Investigation Involving Certain Textile Mill Products and Apparel from Colombia

Dear Mr. Holmer: In consideration of the Suspension Agreement between the producers and exporters of certain textile mill products and apparel in Colombia and the Department of Commerce, the Central Bank of Colombia, PROEXPO, and any other administering authority voluntarily agree to take certain steps essential to the implementation and operation of the renunciation of benefits by the producers and exporters in the Agreement, including:

1. Notifying the relevant authorities of the Government of Colombia of the terms of this Agreement in order to ensure action by those agencies consistent with the terms of this paragraph;
2. Supplying any information and documentation that the Department deems necessary to demonstrate full compliance by the producers and exporters with the terms of this Agreement;
3. Permitting such verification and data collection as deemed necessary by the Department in order to monitor this Agreement;
4. Notifying the Department if it becomes aware that a producer or exporter is transshipping the subject products through third countries to the United States;
5. Notifying the Department if it alters its position with respect to any of the terms of this Agreement;
6. Notifying the Department if it changes the tax rebate under the CERT program for the subject products, indirect tax rates, or import duty rates;
7. Notifying the Department if a producer or exporter of the subject products exported, directly or indirectly, from Colombia to the United States applies for, or receives, directly or indirectly, the benefits of the programs described in paragraph II a–f;
8. Notifying the Department if the producers or exporters become eligible for, apply for, or receive any new or substitute benefits on the subject products exported from Colombia in contravention of paragraph II.g. of the Agreement; and
9. Notifying the Department of any new firms that it learns are exporting the subject products to the United States.

The Central Bank, PROEXPO and any other administering authority also voluntarily agree to provide to the Department within 45 days of the end of each calendar quarter, beginning with the quarter ending March 31, 1985, all relevant information deemed by the Department to be necessary to maintain this Agreement. The information shall include, but not be limited to:

1. A verification (provided after consultation with each agency responsible for administering the programs in Section II) that the producers and exporters have not applied for or received any benefits described in Section II on shipments of the subject products exported from Colombia;
2. A certification that the producers and exporters continue to account for 85 per-cent of total exports of textile mill products, and 85 per-cent of total exports of apparel, exported, directly or indirectly, from Colombia to the United States; and
3. A certification that the producers and exporters continue to be in full compliance with this Agreement.

The Central Bank, PROEXPO and any other administering authority's voluntary undertaking is not an admission that any of the programs investigated or included in the Suspension Agreement constitute countervailable benefits under the Act of the Subsidies Code.

The Central Bank, PROEXPO and any other administering authority recognize that their undertaking is essential to the continuation of the Agreement.

Sincerely yours,

Andres Lloreda,

Commercial Attache.

[FR Doc. 85–5828 Filed 3–11–85; 8:45 am]

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[C–333–402]

Final Affirmative Countervailing Duty Determinations and Countervailing Duty Orders; Certain Textile Mill Products and Apparel From Peru; and Rescission of Initiation of Investigations With Respect to Hand-Made Alpaca Apparel and Hand-Made Carpets and Tapestries

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that certain benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Peru of certain textile mill products and apparel. The estimated net bounty or grant during the period we investigated is determined to be 22.28 percent *ad valorem* for certain textile mill products and 19.91 percent *ad valorem* for apparel. However, prior to our preliminary determinations the government of Peru eliminated the eligibility of textile and apparel exporters for two major subsidy programs. Thus, we are directing the U.S. Customs Service to continue to suspend liquidation of all entries of certain textile mill products and to suspend liquidation of all entries of certain apparel from Peru that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice, and to require a cash deposit on entries of these products in the amount equal to 2.88 percent *ad valorem* for certain textile mill products and zero percent *ad valorem* for apparel.

EFFECTIVE DATE: March 12, 1985.

FOR FURTHER INFORMATION CONTACT: Terry Link or Peter Sultan, Office of Investigations, Import Administration, International Trade Administration, U.S.

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Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone: (202) 377–0189 or 377–2815.

SUPPLEMENTARY INFORMATION:

Final Determinations and Orders

Based upon our investigations, we determine that certain benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Peru of certain textile mill products and apparel. For purposes of these investigations, the following programs are found to confer a bounty or grant:

- Certificate of Tax Rebate System (CERTEX).
- Non-traditional Export Fund (FENT).
- Law for the Promotion of Exports of Nontraditional Goods (Export Law).
- Revaluation of Assets for Textile Firms.
- Employment Benefit for Decentralized Companies.

We determine the estimated net bounty or grant to be 22.28 percent *ad valorem* for certain textile mill products and 19.91 percent *ad valorem* for apparel.

Case History

On July 19, 1984, we received a petition from the American Textile Manufacturers Institute, the Amalgamated Clothing and Textile Workers Union, and the International Ladies' Garment Workers Union, on behalf of the U.S. industry producing certain textiles and textile products. In compliance with the filing requirements of § 355.26 of our regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in Peru of textile mill products and apparel receive, directly or indirectly, benefits which constitute bounties or grants within the meaning of section 303 of the Act.

We found that the petition contained sufficient grounds upon which to initiate countervailing duty investigations, and on August 8, 1984, we initiated such investigations (49 FR 3261). These investigations were initiated by the Department under the title "Certain Textiles and Textile Products from Peru." Because of the number of products covered, and the differences in those products, the Department determined that it should conduct separate investigations—one of textiles and non-apparel textile products, and one of apparel. Because of the potential for confusion, as apparel can also be considered a textile product, we changed the titles of these investigations to "Certain Textile Mill Products and Apparel from Peru." Except as to the products for which we are rescinding our investigations, discussed below, the scope of these investigations remains the same as announced in the initiation and the preliminary determinations. We stated that we expected to issue preliminary determinations by October 12, 1984. On September 21, 1984, we determined these investigations to be "extraordinarily complicated," as defined in section 703(c)(1)(B) of the Act. Therefore, we extended the period for making our preliminary determinations by 65 days until December 17, 1984 (49 FR 40198).

Since Peru is not a "country under the Agreement" within the meaning of section 701(b) of the Act and the merchandise being investigated is dutiable, sections 303(a)(1) and (b) of the Act apply to these investigations. Accordingly, petitioners are not required to allege that, and the U.S. International Trade Commission is not required to determine whether, imports of these products cause of threaten material injury to a U.S. industry.

Due to the scope of these investigations, we employed a two-step questionnaire process. We presented a preliminary questionnaire to the government of Peru in Washington, D.C., on August 24, 1984. Based on the responses to the preliminary questionnaire, we identified the 5 textile mill products producers and exporters, and 1 apparel producer and exporter which account for at least 60 percent of the textile mill products and 60 percent of the apparel exported to the United States. These firms were asked to respond to the detailed questionnaire. On October 22, 1984, we presented the detailed government and company questionnaires to the government of Peru in Washington, D.C. The responses to these questionnaires were received on November 27, 1984.

On December 17, 1984, we issued our preliminary determinations in these investigations (49 FR 49678). We preliminarily determined that benefits constituting bounties or grants within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Peru of certain textile mill products, and that no such benefits have been provided to manufacturers, producers, or exporters in Peru of apparel after November 1, 1984.

Our notice of preliminary determinations gave interested parties an opportunity to submit oral and written views. On February 5, 1985, a hearing was held. We received briefs from the parties to the proceeding. We also received written views from other parties and have taken them into consideration in these determinations.

Certain respondents in the *Textile Mill Products and Apparel* investigations have raised issues as to whether petitioners have standing to file these cases. Petitioners have also made comments regarding our methodology in selecting companies to receive detailed questionnaires, and our investigation of only those companies that account for sixty percent of exports of the subject merchandise to the United States. We have addressed these issues in our determinations on *Certain Textile Mill Products and Apparel from Malaysia*, published concurrently with this notice. See that notice for our positions on those issues.

Scope of the Investigation

The products covered by these investigations are certain textile mill products and apparel which are described in Appendix A to this notice.

Rescission of Initation of Investigations With Respect to Hand-Made Alpaca Apparel, and Hand-Made Carpets and Tapestries

The government of Peru has requested that the Department rescind these investigations with respect to alpaca yarns, alpaca woven fabrics, and alpaca carpets, tapestries, mufflers, scarves, shawls, sweaters, and with respect to certain textile mill products and apparel fabricated by hand (hereinafter "certain articles of alpaca and certain hand-made articles"). The government of Peru argues that rescission of these investigations with respect to these articles is warranted because petitioners do not produce "like products" and, therefore, lack standing to file countervailing duty petitions on these products.

The U.S. Court of International Trade has held that the Department may rescind an initiation of an investigation where the Department subsequently discovers that the petitioner lacks standing. *Gilmore Steel Corp.* v. *United States*, 585 F. Supp. 670 (1984). Thus, the Department has the authority to rescind its initiation in these investigations, with respect to certain articles of alpaca and certain hand-made articles, should it determine that petitioners lack standing with respect to these products.

Under section 702(b)(1) of the Act, in order to have standing to file a countervailing duty petition, a petitioner must be a domestic interest party within the meaning of sections 771(9)(C), (D), or

(E), and must file the petition on behalf of an industry in the United States. Both the definitions of domestic interested parties and industry depend upon the definition of "like product," which is defined in section 771(10) of the Act as:

> . . . a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.

If a "like product" is not produced in the United States, a potential petitioner would not have standing to file a countervailing duty petition.

The Peruvian government contends that petitioners do not produce alpaca products. It also argues that because of alpaca's special properties and characteristics and because alpaca products from Peru are mostly fabricated by hand, such products do not compete with wool or products of other fibers made in the United States. If they do not so compete, there cannot be a "like product" produced in the United States. *See Rescission of Initiation of Investigation With Respect to Hand-made Turkish Carpets*, 49 FR 49655, 49658–60 (December 21, 1984). With respect to hand-made articles that are not made of alpaca, the government of Peru argues that the workmanship, coloring, styles and patterns of these articles make them unique, and that petitioners do not produce "like products." This category of hand-made articles for which rescission is sought includes men's and women's cotton knit sweaters.

Petitioners have asserted that union members do produce apparel made of alpaca. We have, however, not received information from petitioners to substantiate this claim. The one domestic company which petitioners named as a producer of alpaca products, French Creek Sheep & Wool Company, is neither a petitioner nor are its employees members of ACTWU or ILGWU. Petitioners further argue that similar products of other high-quality fibers produced by petitioners compete with, and are "like," aplaca products.

As for hand-made articles that are not made of alpaca, petitioners also oppose a rescission.

Considering all evidence on the record, and having examined relevant samples and consulted with textile experts in the Department of Commerce we conclude that there are no domestic "like products" with respect to hand-knit apaca apparel, and hand-made carpets and tapestries.

As to alpaca, alpaca itself is a unique fiber, having a characteristic loft and tensile strength that distinguishes it from other fibers. However, as a fiber or yarn, or when machine-made into finished products, the yarn and end products are similar in characteristics and uses, and compete with, yarns and products produced in the United States of other luxury fibers such as fine wools and mohair. While a highly sophisticated consumer might prefer an alpaca yarn over other fibers, or a machine-made alpaca sweater over machine-made sweaters of other fibers, such fibers and machine-made products are generally sold through the same channels of trade and are generally competitively priced. Thus, as we preliminarily determined with respect to cotton knit sweaters from Peru, we cannot find in accordance with the statutory definition that there is no "like product" with respect to alpaca yarn and machine-made alpaca products.

However, we believe that hand-knit alpaca apparel and hand-made carpets and tapestries from Peru are sufficiently different in terms of physical characteristics, prices, channels of trade, and consumer expectations that rescission of our investigations with respect to these products is warranted. The reasoning expressed in our rescission of investigation with respect to hand-made turkish carpets, floor coverings and wall hangings is equally applicable to Peruvian hand-made carpets and tapestries. *See* 49 FR 49655, 49658–60 (December 21, 1984).

Similarly, we are persuaded that hand-knit alpaca apparel from Peru does not compete with products produced in the United States. The record supports the conclusion that there are no such hand-made products produced in the United States by union members. The imported products are hand-knit on needles by artisans in the Andes mountains. These local craftsmen use only the finest hand-dyed alpaca yarns, and many of the finished products show traditional folklore designs. Moreover, the Peruvian products of this Peruvian cottage industry are sold only in a relatively few, highly specialized stores, and at prices that clearly make them non-competitive with machine-made apparel, or even hand-made apparel of other fibers. United States merchandisers of the Peruvian products have asserted that the quality of the workmanship of these garments, and the originality of the designs—which are peculiar to the Peruvian Indians—clearly distinguish them from any other products.

Accordingly, we determine that there are no "like products" for hand-knit alpaca apparel or hand-made carpets and tapestries in the United States, and that petitioners lack standing to file a petition against these products. As to hand-made cotton sweaters, we reaffirm our decision in our preliminary determinations that petitioners have standing with regard to this product.

Analysis of Programs

Throughout this notice, we refer to certain general principles applied to the facts of the instant investigations. These principles are described in the "Subsidies Appendix" attached to the notice of "Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina; Final Affirmative Countervailing Duty Determination and Countervailing Duty Order," which was published in the April 26, 1984, issue of the **Federal Register** (49 FR 18006).

Effective November 1, 1984, the government of Peru rendered the products under investigation ineligible for benefits under the CERTEX and FENT programs. As explained in the preliminary determinations, it has long been the Department's policy to take program-wide changes into account where they are implemented after the period we investigate, but prior to a preliminary determination. We believe that this policy is desirable, because it promotes the expeditious elimination or phase-out of subsidies and deters an increase in subsidies. Normally, the Department takes such changes into account by raising or lowering, as appropriate, the rate for cash deposit or bonding purposes. In the case of apparel from Peru, when the cash deposit rate is lowered to account for program-wide changes implemented by the Peruvian government, the result is a zero rate, as exports of apparel to the United States made after November 1, 1984, do not benefit from bounties or grants.

In the preliminary determinations, we expressed the belief that our policy warranted a preliminary negative determination with respect to apparel. However, we also expressed our concern that after a negative final determination, a government could reinstitute its subsidy programs, and we detailed the actions the Department would take should an abuse occur. Because of the importance of this issue, we invited comments on our proposed method of accounting for changes implemented during a countervailing duty investigation when those changes result in a zero deposit rate.

Comments were received from U.S. Steel Corporation and counsel for LTV Steel Company and Inland Steel Company, in addition to comments from petitioners and respondents. While respondents supported a negative final determination with respect to apparel, we received many persuasive arguments

against a negative final determination from the other commenting parties.

The concern most frequently expressed in the comments is that the proposed policy provides no monitoring to ensure that the subsidy will not be quietly reinstated after a negative final determination, and no provision for the speedy reinstitution of the investigation if the same (or "substitute") bounties or grants are reinstituted. Those commenting argued that the appropriate way to deal with the reduction of a subsidy program during a countervailing duty investigation is by a suspension agreement pursuant to section 704 of the Act.

Section 704 contains safeguards, such as monitoring and annual reviews, to ensure that eliminated subsidies are not reinstituted. Commenters also expressed the concern that a negative final determination may even encourage government subsidization of exports to the United States, because a foreign government could escape the adverse consequences of a countervailing duty determination merely by terminating a subsidy prior to a preliminary determination. Finally, both U.S. Steel and counsel for LTV Steel Company and Inland Steel Company argued that the ineligibility of exporters of textile mill products and apparel for CERTEX and FENT benefits on exports to the United States is not a program-wide change.

We have analyzed all the comments received and find the arguments against a final negative determination to be persuasive. The elimination of these benefits on exports of the subject merchandise to the United States occurred outside the period of our investigation; exporters and producers of apparel in Peru did receive countervailable benefits during that period. The statute expressly provides for suspension agreements with countries that are willing to eliminate countervailable subsidies. Continued, effective monitoring is required under all such agreements, and there are express provisions for violations of agreements. It is critical to our determination that, if we were to issue a final negative determination based on the changes in the programs, we would be without any mechanism for monitoring the continued elimination of all countervailable benefits. We do not believe that the government of Peru intends to reinstate eligibility for textile and apparel exports to the United States under CERTEX and FENT; we also do not believe that eligibility for these benefits could be quietly reinstated considering the government action that would be required to reverse the ineligibility. However, we do not believe Congress intended that a government that eliminates a subsidy program due solely to the initiation of a countervailing duty investigation should be accorded the same treatment either as governments that provide no countervailable subsidies or that eliminate such subsidies without the initiation of an investigation. A final negative determination would permit governments to circumvent all the safeguards expressly provided for by Congress under suspension agreements. If a government could achieve a final negative determination by eliminating countervailable subsidies during an investigation, there would be no need for any government ever to enter into a suspension agreement.

However, we believe that it is proper to account for changes made in the CERTEX and FENT programs by appropriate reduction to the duty deposit rate in this case, even when such reduction results in a zero rate. Under the law, we cannot assess duties on products with respect to which no countervailable benefits are conferred. Here, we were able to verify the elimination of such benefits as of November 1, 1984, and the non-receipt of these benefits under these programs after that date. A deposit rate greater than zero would not be an accurate estimate of the duties likely to be assessed.

Petitioners have argued that the changes to the CERTEX and FENT programs are not "program-wide" so as to warrant our taking them into account. We note that the changes made are not company-specific, but rather apply to an entire sector of the Peruvian economy, and to hundreds of companies; that the changes were effected by the passage of a new law, and an implementing decree; and that elimination of the benefits on exports of the subject products to the United States is no more or less than what the government would have had to do if it had entered into a suspension agreement. However, we are aware that the facts of every investigation differ widely, and we wish to make it clear that we will carefully examine all facts and circumstances of any program-wide change to subsidy programs made after initiation but before a preliminary determination on a case-by-case basis.

Should it appear that changes in subsidy programs are more company-specific in fact or in effect, or easily instituted (and thereby easily reversed), or if the timing of such changes is such that we cannot verify the elimination of benefits or the amount of the reduction of benefits, we may not take account of those changes in the same manner. Moreover, if this policy results in a widespread proliferation of post-initiation changes in subsidy program, we may re-evaluate the policy accordingly.

Based on the facts of this case and our analysis of the comments received, we are issuing a final affirmative countervailing duty determination on apparel. We are, however, taking into account for our cash deposit rate the elimination of the CERTEX and FENT programs for both textile mill products and apparel after November 1, 1984. We believe that this determination fairly addresses the concerns on both sides of this issue, since it provides effective monitoring under administrative reviews to ensure the elimination of the subsidy programs, and a zero cash deposit rate which acknowledges the reduction of the government subsidy programs.

For purposes of these determinations, the period for which we are measuring bounties or grants is calendar year 1983.

Based upon our analysis of the petition, the responses to our questionnaires, our verification, and comments submitted by interested parties we determine the following:

I. Programs Determined to Confer Bounties or Grants

We determine that bounties or grants are being provided to manufacturers, producers, or exporters in Peru of certain textile mill products and apparel under the following programs:

A. *Certificate of Tax Rebate System (CERTEX).* Under this program, qualifying exporters are eligible to apply for certificates issued by the government in amounts equal to a percentage of the f.o.b. invoice price of export shipments. The applicable CERTEX percentage is determined by whether the exports are classified as being of low, medium or high value added and whether they are produced outside of the Province of Lima and/or the Constitutional Province of Callao. Once the gross amount of the rebate certificate is determined, 2 percent of this amount is issued to the Fund for the Provision of Nontraditional Exports (FOPEX), and 10 percent is issued to the Provisional Municipal Town Council of the municipality from which the product originated. The exporter then receives the balance, 88 percent of the gross amount. The value of the certificate is expressed in soles as determined by the official exchange rate on the day of shipment. CERTEX certificates may be applied against taxes owed the Peruvian government or they may be negotiated as commercial paper.

The CERTEX program is specifically export oriented. The amount of benefits available under the program is based solely on export performance. All of the five textile mill products companies and the one apparel company that were asked to respond to our questionnaire participated in the program. Consequently, we determine that the CERTEX program operated to confer countervailable export bounties or grants on Peruvian textile mill products and apparel during the period we investigated.

To calculate the benefit derived from this program prior to November 1, 1984, we allocated the total amount of CERTEX certificates received by the five textile mill products companies during the review period over the value of those companies' total exports to all markets during the review period and did the same for the apparel producer. On this basis, we determine that during the period we investigated the estimated bounty or grant conferred by this program on textile mill products exports is 17.37 percent *ad valorem* and 14.50 percent *ad valorem* for apparel.

However, as of November 1, 1984, exports to the United States of the products subject to these investigations became ineligible for receipt of CERTEX certificates. We verified that exports of the products under investigation to the United States after that date have not benefited from this program. As explained above, we have taken this into account for purposes of our duty deposit rate.

B. *Nontraditional Export Fund ("FENT").* Under this program, the government of Peru provides short-term export financing to exporters of goods not traditionally exported. Three types of short-term financing are provided: Soles loans, foreign currency loans, and mixed soles and foreign currency loans. In most instances, this financing is available at concessional rates. The loans are drawn from a fund established by the Banco Central de Reserve del Peru ("BCRP"), and passed through the Banco Industrial del Peru and a commercial disbursing bank. All of the five textile mill products companies and the one apparel company that were selected to respond to our questionnaire participated in this program during the period we investigated. However, not all companies received all three types of loans.

Because this program provides preferential financing on the basis of export performance at rates less than commercially available, we determine that it confers bounties or grants on Peruvian textile mill products and apparel. We used the following methodologies to calculate benefits for exports prior to November 1, 1984.

For soles loans, which are made for a maximum of 180 days, we calculated the interest rate differential between the rate charged on soles loans and the monthly rate charged by commercial banks on promissory notes. Both rates were adjusted to reflect the durations of the loans. To calculate the benefit, we multiplied the interest rate differential by the aggregate principal amount of loans.

Foreign currency loans are made for a maximum of 180 days at the concessional rate of 1 percent. These loans are actually disbursed in soles and are available in amounts of up to 90 percent of the export value of a given shipment. At the same time that a firm receives the loan proceeds in soles, it must borrow, from a lender outside of Peru, and amount equal to 80 percent of the value of the loan in foreign currency, usually U.S. dollars, and deposit this with the BCRP for the duration of the FENT loan. This deposit is known as the "advance account" and the company earns interest on this deposit. During the period we investigated, the cost to the firm in borrowing foreign currency exceeded the return on the advance account. To calculate the benefit, we converted the aggregate principal amount of each company's foreign currency loans from U.S. dollars to soles. We used an average exchange rate for 1983 to make this conversion. To determine the gross benefit, the aggregate principal amount, in soles, was multiplied by the difference between the FENT rate for foreign currency borrowing and the benchmark rate for the cost of short-term foreign currency borrowings from external sources. Both rates were adjusted to reflect the durations of the loans. We then calculated the net cost to each company of its foreign currency borrowings and advance account deposits. After converting this amount to soles, we subtracted it from the gross benefit to obtain the net benefit.

The mixed currency financing permits exporters to obtain pre-shipment financing in both dollars and soles for up to 90 percent of the export value of each shipment; of this 90 percent, 50 percent of the loan is available in soles and 40 percent is available in dollars. Similar to the foreign currency alternative, mixed loans require that the exporter borrow 32 percent of the total value of the loan in a foreign currency and establish an advance account with the BCRP. The foreign currency portion of these loans is disbursed in soles at a concessional rate of 1 percent. The soles portion of these mixed loans is available at the rate charged on the soles type of loan. To calculate the benefit to each company from the foreign currency portion of mixed loans, we calculated the total foreign currency loan principal for mixed loans. The amount was converted to soles using the average exchange rate for 1983. Using the same method as described above for foreign currency loans, we calculated a gross benefit, and a net cost of foreign borrowing and advance account deposits. To calculate a net benefit, we subtracted the net cost from the gross benefit. The benefit from the soles portion of mixed loans we calculated in the same manner as for soles loans.

We totaled the benefits received for each type of loan and allocated this amount over total exports for the textile mill products companies and did the same for the apparel company. We determine that during the period we investigated, there was an estimated *ad valorem* bounty or grant on exports of textile mill products to the United States of 2.01 percent and an estimated *ad valorem* bounty or grant on exports of apparel of 5.41 percent.

However, as of November 1, 1984, exports of the products subject to these investigations to the United States became ineligible for FENT financing. Exporters of these products have also been required to prepay all FENT loans outstanding as of November 1, 1984. Thus, exports of the products under investigation to the United States after November 1, 1984, have not benefited from this program. As explained in the "Analysis of Programs" section of this notice we have taken this into account for our duty deposit rate.

C. *Articles 8, 9, 12 and 16 of the Law for the Promotion of Exports of Nontraditional Goods (the Export Law).* Petitioners alleged that a number of benefits are provided to producers, manufacturers, or exporters of textile mill products and apparel in Peru under various articles of the Export Law.

The aim of the Export Law is to improve the foreign trade structure of Peru by promoting nontraditional exports. We determine that benefits are provided under Articles 8, 9, 12 and 16 as described below:

1. The General Law of Industries established for priorities for the various industrial groups, with each priority having a different percentage and selectivity index which determined the amount of net income that could be invested or reinvested free of income tax. Decree Law 22401 of December 1978, changed the reinvestment benefit from a tax deduction to a tax credit. Under Articles 8 and 9 of the Export

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Law, exporters are permitted to upgrade their priority one level. One textile mill products company used this program during the period we investigated.

Since this upgrading is contingent on export performance, we determine that it confers a bounty or grant upon exports. The value of the benefit is the additional amount of tax credit which exporters of textile mill products receive by upgrading one priority.

We calculated the benefit by totaling the additional tax credit taken on the basis of the upgrading and allocating this value over total exports. On this basis we calculate an estimated bounty or grant of 0.003 percent *ad valorem* for textile mill products. The apparel producer did not participate in this program. Therefore, we determine that this program was not used with respect to apparel.

Since the reinvestment priority system was terminated by the General Law of Industries enacted in 1982, and the textile mill products and apparel exporters are not able to benefit from these Articles after 1983, these benefits are excluded from the estimated duty deposit rates.

2. Article 12 allows exporters to claim an additional amount of depreciation on their tax returns. The amount they are able to claim is 50 percent above the normal rate of depreciation. One exporter of textile mill products used Article 12 during the period we investigated. Since the additional depreciation is contingent on export performance, we determine that Article 12 confers a bounty or grant on the export of textile mill products from Peru.

The amount of the benefit was determined by totaling the tax savings during the review period to each company and allocating this value over total exports. On this basis we calculate an estimated bounty or grant of 0.10 percent *ad valorem* for textile mill products. Since the apparel producer did not participate in this program, we determine that this program was not used with respect to apparel.

3. Article 16 of the Export Law provides for an interim suspension and eventual exemption of import duties on imported capital equipment or machinery if an exporter of nontraditional goods meets certain requirements established by law and signs a written contract with the government. To obtain the exemption, the exporter must export 40 percent of its annual production within a maximum of two years from the date of the importation of the equipment or machinery and must generate a net profit in foreign currency equal to 100 percent of the value of the imported machinery or equipment within five years of the importation.

The exporter's duties are suspended during the two-year period in which the first requirement must be met, and, if it is met, they continue to be suspended until the second requirement is met. This must occur within five years. When this second requirement is met, there is full exoneration of the suspended duties. If the exporter cannot meet the two requirements for exemption within the applicable time periods, for reasons approved by the Ministry of Industry, Tourism and Integration, it may cancel the contract with the government and repay the duties over a term of years, without penalties or interest. If the exporter otherwise fails to meet the terms of the contract, the exporter may be subject to the payment of penalties and interest.

Article 16 of the Export Law provides a suspension and/or exemption from the payment of import duties on capital equipment and machinery contingent upon export performance. Exporters of textile mill products have received suspensions and/or exemptions from import duties under Article 16. Therefore, we determine that it confers a bounty or grant on these exports.

To calculate the benefit arising from this program we treated the duty suspensions that were approved prior to 1983 and oustanding during 1983 as interest-free one-year loans on which interest, at the 1982 interest rate, would otherwise have been payable during 1983. For duty exemptions granted during 1983, we treated the amount of the exemption as a grant received during that year. We added the amount of the benefits from the duty suspensions to those from the duty exemptions and allocated the total benefits over total exports. On this basis, we calculate an estimated bounty or grant of 2.77 percent *ad valorem* for textile mill products. Since the apparel producer did not benefit from the suspension of or the exemption from import duties, we determine that this program was not used with respect to apparel.

D. *Revaluation of Assets for Textile Firms.* Supreme Decree 158–82–EFC, published on May 30, 1982, allowed textile firms to revalue their fixed assets to market value. Article 3 stated that this applied to assets bought by December 31, 1980, and that were in the books by December 31, 1981. As a result of the revalution of their assets, textile firms were able to claim higher depreciation for 1982 taxes payable in 1983.

Because the 1982 revaluation applies only to textile firms, we determine that the higher depreciation available to those firms for taxes payable in 1983 provides a benefit to a specific industry or group of industries. Therefore, the program is countervailable.

During verification we found that one textile mill products producer revalued its assets under Supreme Decree 158–82–EFC in 1982. the benefit was determined by totaling the 1983 tax savings from the increased depreciation and allocating this amount over total sales value. On this basis we calculate an estimated bounty or grant of 0.02 percent *ad valorem* for textile mill products. Since the apparel producer was not eligible to participate in this program, we determine that this program was not used by manufacturers, producers and exporters of apparel.

Subsequent to the 1982 decree, which applied only to textile firms, Supreme Decree 009–83–EFC was published. This decree established new revaluation rates for all industries in Peru. Thus, for purposes of 1983 taxes payable in 1984, all industries are eligible to revalue their assets. Consequently, from 1983 onward, no benefit is being provided to a specific industry or group of industries through the revaluation of assets. Therefore, this benefit is excluded from any estimated duty deposit rate.

E. *Employment Benefit for Decentralized Companies.* Article 8 of Decree Law 22836 provides that decentralized industrial firms, fisheries and health services may use as a tax credit an amount which is the product of multiplying the average rate of the tax by 5 percent of the total remunerations paid to employees of the enterprise.

We determine that this program confers a countervailable benefit because it is limited to firms in specific regions. One textile firm used this program during the period of investigation.

To calculate the benefit, we allocated the tax credit received during 1983 over total sales. On this basis we calculate an estimated bounty or grant of 0.008 percent *ad valorem* for textile mill products.

The apparel producer did not participate in this program. Therefore, we determine that this program was not used with respect to apparel.

Program Determined Not To Confer Counties or Grants

We determine that bounties or grants are not being provided to manufacturers, producers or exporters in Peru of certain textile mill products and apparel under the following program:

A. *Article 24 of the Export Law.* Article 24 allows an exemption from duties on raw materials and/or

unfinished goods to be used exclusively in the manufacture of finished goods for export and in the manufacture of unfinished goods for export and in the manufacture of unfinished goods which, once processed, are exported. Only one textile mill products company was exempt from import duties on raw materials. We verified that all of the imported product was exported in the finished goods. Therefore, we determine that no countervailable benefit is conferred on exports of textiles. Since the apparel producer did not participate in this program, we determine that this program was not used by manufacturers, producers, and exporters of apparel.

III. Program Determination Not To Be Used

We determine that manufacturers, producers, or exporters in Peru of certain textile mill products and apparel did not use Article 13, 14, 23, and 31 of the Law for the Promotion of Exports of Nontraditional Goods (the Export Law) and regional incentive under the 1982 Industrial law, which were listed in our notice of initiation.

A. Article 13 of the Export Law states that enterprises may capitalize the earnings invested or reinvested with an exemption from the income tax, provided that they do so within six years, inclusive of the fiscal year in which the tax exemption is obtained.

Under Decree Law 22037 of December 1977, any company may capitalize earnings which are invested or reinvested within five years, and receive an exclusion from the five percent income tax on capitalization. The benefit provided by this Article is the additional year in which exporters are allowed to capitalize earnings with an exemption from income tax. Our verification revealed that neither the textile mill products producers nor the apparel producer used this program.

B. Artilce 14 of the Export Law permits exporters of nontraditional goods that increase the number of permanent jobs in relation to those existing in the previous year to deduct as an expense of the fiscal year the amount of remuneration paid out as a result of the new jobs created. We verified that the textile mill products producers and the apparel producer did not use this program.

C. Article 23 of the Export Law permits consortia formed for the exportation of nontraditional goods as exemption from various taxes. We verified that the five textile mill products companies and the one apparel company responding to our questionnaire did not use this program.

D. Article 31 permits shippers to make preferential rates available to exporters of nontraditional goods. We verified that none of the companies selected to respond to our questionnaire use this program.

E. Under the 1982 Industrial Law, Peruvian firms may receive tax inventives for investments outside the Department of Lima or the Province of Callao. These incentives are not available until the 1983 tax year, for which returns would be filed no earlier than 1984. Since this is outside the period we investigated, we determine that this program was not used.

Petitioners' Comments

Comment 1: Petitioners argue that countervailing duties should be imposed with respect to the CERTEX and FENT programs for exports of textile mill products and apparel, unless Peru enters into a suspension agreement.

DOC Position: We disagree. See our comments in the "Analysis of Programs" section of this notice.

Comment 2: Petitioners argue that respondents have failed to show that benefits under Article 12 of the Export Law are generally available. Further, petitioners aregue that the Department must include benefits received in a year in which a company had no taxable income, unless the Department verifies that loss carry forwards are not available under Peru's tax code.

DOC Position: We agree that accelerated depreciation has not been shown to be provided to more than a specific industry or group of industries. See DOC Position on Respondents' Comment 4. We disagree with the contention that we should countervail Article 12 benefits in a year in which a company had no taxable income. Article 44 of Legislative Decree 200 expressly rules out a carry-forward of depreciation. Even if this were not so, benefits carried forward to years beyond the period we investigated would be subject to examination in the appropriate administrative review, not in these determinations

Comment 3: Petitioners argue that respondents have failed to show that benefits under Article 14 of the Export Law are generally available.

DOC Position: None of the companies subject to these investigations used this program. See "Programs Determined Not to be Used" section of this notice.

Comment 4: Petitioners argue that the Department was correct in its preliminary determinations, in treating benefits bestowed by Article 16 of the Export Law as a series of short-term loans and grants.

DOC Position: We agree that suspensions of duties should be treated as short-term loans and exemptions should be treated as grants. See DOC position on Respondents' Comment 6.

Comment 5: Petitioners argue that Article 31 of the Export Law confers countervailable benefits on the export of textile mill products.

DOC Position: We disagree. It was verified that none of the producers and exporters of textile mill products and apparel which were selected to respond to our detailed questionnaire used this program.

Comment 6: Petitioners argue that the Department should not rescind these investigations with respect to certain textile mill products and apparel which are either made of alpaca or handmade.

DOC Position: We disagree with petitioners with respect to hand-made alpaca apparel and hand-made carpets and tapestries. We agree with Petitioners with respect to all other articles which are of alpaca and/or hand-made. See our comments in the "Rescission of Investigations" section of this notice.

Respondents' Comments

Comment 1: Respondents argue that the Department can take into account changes in subsidy programs occurring after the initiation of a proceeding, and that the Department was correct in excluding CERTEX and FENT from estimated duty deposit rates in its preliminary determinations. Respondents also argue that the actions of the government of Peru in eliminating CERTEX and FENT benefits on exports of the subject merchandise to the United States should be regarded as a "program-wide change."

DOC Position: We agree. See our discussion in the "Analysis of Programs" section of this notice.

Comment 2: Respondents argue that the Department is correct in not taking account of benefits under Article 8 and 9 of the Export Law for duty deposit purposes.

DOC Position: We agree. See "Programs Determined to Confer Bounties or Grants" section of this notice.

Comment 3: Respondents argue that benefits under Article 12 of the Export Law have been shown to be a generally available tax benefit in Peru and are thus not countervailable. Respondents contend that Article 81 of D.S. No. 302-82-EFC has made accelerated depreciation available to all firms in Peru.

DOC Position: We disagree. Article 81 involves governmental discretion in

authorizing accelerated depreciation rates, providing that any firm in Peru may request, and the Directorate of Taxation may authorize, an accelerated or other depreciation rate. In contrast, Article 12 confers the absolute right to take accelerated depreciation on exporters of nontraditional goods. Furthermore, we were unable to verify that accelerated depreciation rates are available to all firms in Peru.

Comment 4: Respondents argue that Article 13 of the Export Law was not used by producers and exporters of textile mill products and apparel.

DOC Position: We agree. See "Programs Determined Not to be Used" section of this notice.

Comment 5: Respondents argue that Export Law Article 14 employment tax credits should be excluded from duty deposit rates, since such benefits have become generally available.

DOC Position: We verified that Article 14 benefits were not used by the firms investigated.

Comment 6: Respondents argue that Export Law Article 16 import duty suspensions are more appropriately treated as long-term loans or, in the alternative, as five-year bonds, than as a series of short-term loans. They also argue that the Department should not countervail for both duty suspensions as loans and exemptions as grants, in a year in which the exemption is granted.

DOC Position: We disagree. After initially obtaining a suspension of import duties on imported capital equipment or machinery, an exporter of nontraditional goods must continue to meet certain threshold requirements to maintain the suspension and, eventually, to achieve the exemption. There is also a substantial possibility that the requirements for exemption may be met well before five years have expired. Thus, a firm which has obtained a suspension of import duties cannot know, from year to year, whether the suspension will remain in effect and if and when an exemption will be granted. Such a firm may also withdraw from its commitment, without incurring penalties. For these reasons, we consider the benefit conferred by the suspension of import duties is best characterized as a series of short-term loans rather than as long-term financing. We continue to calculate the benefit from suspensions that were finally exempt during 1983 as both an interest-free loan and a grant. We have, however, adjusted our benefit calculations with respect to suspensions to ensure that the present value (in the year of importation) of the amounts countervailed over time does not exceed the face value of duties suspended.

Comment 7: Respondents argue that the textile industry in Peru did not use benefits under Export Law Article 23.

DOC Position: We agree. See "Programs Determined Not to be Used" section of this notice.

Comment 8: Respondents argue that benefits under Export Law Article 24 are an exemption from duties and are of a sort not countervailable under the Department's regulations.

DOC Position: See "Program Determined Not to Confer Bounties or Grants" section of this notice.

Comment 9: Respondents argue that Article 31 of the Export Law was not used by companies investigated and, in any case, that it does not confer countervailable benefits upon firms in Peru.

DOC Position: We agree that this program was not used. See "Programs Determined Not to be Used" section of this notice.

Comment 10: Respondents believe that these investigations should be rescinded with respect to certain textile mill products and apparel which are either made of alpaca or handmade because petitioners do not produce "like products" and therefore lack standing with respect to these products.

DOC Position: We agree with respondents with respect to hand-made alpaca apparel and hand-made carpets and tapestries. We disagree with respect to all other articles which are of alpaca or hand-made. See our comments in the "Rescission of Investigation" section of this notice.

Verification

In accordance with section 776(a) of the Act, we verified the data used in making our final determinations. During this verification, we followed normal procedures, including inspection of documents, meetings with government officials, and on-site inspection of the records and operation of the companies exporting the merchandise under investigation to the United States.

Administration Procedures

The Department has afforded interested parties an opportunity to present information and written views, in accordance with Commerce regulations (19 CFR 355.34(a)). A public hearing was held on February 5, 1985, at which interested parties had an opportunity to present oral views, in accordance with 19 CFR 355.35.

Suspension of Liquidation

The suspension of liquidation with regard to textile mill products, ordered in our preliminary affirmative determinations, shall remain in effect until further notice. We are also directing the U.S. Customs Service to suspend liquidation on all entries of certain apparel from Peru with the exception of those for which we are now rescinding our investigations, which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register.** The estimated net bounty or grant for duty deposit purposes is 2.88 percent *ad valorem* for certain textile mill products and 0.00 percent *ad valorem* for apparel.

In accordance with section 706(a)(3) of the Act, we are directing the U.S. Customs Service to require a cash deposit in the amounts indicated above for each entry of the subject merchandise from Peru which is entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register** and to assess countervailing duties in accordance with sections 706(a)(1) and 751 of the Act.

This notice is published pursuant to sections 303, 705 and 706 of the Act (19 U.S.C. 1303, 1671d, 1671e).

William T. Archey,

Acting Assistant Secretary for Trade Administration.

March 4, 1985.

Appendix A

The products covered in these investigations are certain textile mill products and apparel from Peru.

The merchandise is currently classified under the item numbers of the *Tariff Schedules of the United States, Annotated* listed below:

A. Textile Mill Products

Yarns and Threads

301.0000	303.2040	303.2042	307.6600	307.6810	307.6840	307.6850
310.9120						

Cordage						
316.4000						
Fabric [1]						
320.001	320.0003	320.0012	320.0013	320.0021	320.0022	320.0024
320.0031	320.0032	320.0033	320.0038	320.0042	320.0043	320.0044
320.0049	320.0050	320.0051	320.0052	320.0054	320.0057	320.0062
320.0063	320.0065	320.0072	320.0074	320.0080	320.0085	320.0089
320.0091	320.0095	320.0098	320.1001	320.1012	320.1013	320.1016
320.1021	320.1022	320.1023	320.1024	320.1031	320.1032	320.1033
320.1038	320.1042	320.1043	320.1044	320.1049	320.1050	320.1051
320.1052	320.1054	320.1057	320.1062	320.1063	320.1065	320.1069
320.1072	320.1073	320.1074	320.1080	320.1085	320.1089	320.1091
320.1095	320.1098	320.2003	320.2016	320.2018	320.2021	320.2022
320.2023	320.2024	320.2027	320.2031	320.2034*	320.2038	320.2042
320.2049	320.2050	320.2051	320.2052	320.2054	320.2057	320.2065
320.2069	320.2071*	320.2072	320.2073	320.2074	320.2077*	320.2080
320.2085	320.2089	320.2091	320.2095	320.2098	320.3003	320.3016
320.3018	320.3020	320.3021	320.3022	320.3023	320.3024	320.3027
320.3031	320.3034*	320.3038	320.3042	320.3045*	320.3049	320.3050
320.3051	320.3052	320.3054	320.3057	320.3065	320.3069	320.3071*
320.3072	320.3073	320.3074	320.3077*	320.3080	320.3085	320.3089
320.3091	320.3095	320.3098	320.4003	320.4021	320.4022	320.4024
320.4038	320.4042	320.4049	320.4054	320.4057	320.4065	320.4072
320.4074	320.4080	320.4098	320.5003	320.5021	320.5022	320.5024
320.5038	320.5042	320.5049	320.5054	320.5057	320.5065	320.5072
320.5074	320.5080	320.5098	320.6016	320.6023	320.6069	320.6073
320.8016	320.8023	320.8069	320.8073	321.0034	321.0045	321.0071
321.0077	321.1001	321.1021	321.1022	321.1024	321.1031	321.1034
321.1038	321.1042	321.1045	321.1049	321.1054	321.1057	321.1062
321.1063	321.1064	321.1065	321.1066	321.1071	321.1072	321.1074
321.1077	321.1080	321.1098	321.2118	320.2023	321.2027	321.2034
321.2069	321.2071	321.2073	321.2077	321.3021		
321.3022	321.3024	321.3031	321.3038	321.3042	321.3049	321.3054
321.3057	321.3065	321.3072	321.3074	321.3080	321.3098	321.4003
321.4016	321.4021	321.4022	321.4023	321.4024	321.4038	321.4042
321.4049	321.4054	321.4057	321.4065	321.4069	321.4073	322.0062
322.0063	322.1001	322.1012	322.1013	322.1016	322.1021	322.1022
322.1023	322.1024	322.1031	322.1032	322.1033	322.1034	322.1038
322.1042	322.1043	322.1044	322.1045	322.1049	322.1050	322.1051
322.1052	322.1054	322.1057	322.1062	322.1063	322.1065	322.1066
322.1069	322.1071	322.1072	322.1073	322.1074	322.1077	322.1080
322.1087	322.1093	322.1098	322.3021	322.3022	322.3024	322.3031
322.3038	322.3042	322.3049	322.3054	322.3057	322.3065	322.3072
322.3074	322.3080	322.3098	322.4003	322.4016	322.4021	322.4022
322.4023	322.4024	322.4031	322.4038	322.4042	322.4049	322.4054
322.4057	322.4065	322.4069	322.4072	322.4073	322.4074	322.4080
322.4098	322.8003	322.8021	322.8022	322.8024	322.8038	322.8042
322.8049	322.8054	322.8057	322.8065	322.8072	322.8074	322.8080
322.8098	323.0003	323.0021	323.0022	323.0024	323.0031	323.0038
323.0042	323.0049	323.0054	323.0057	323.0065	323.0066	323.0072
323.0074	323.0080	323.0098	323.1008	323.1009	323.1021	323.1022
323.1024	323.1031	323.1038	323.1042	323.1049	323.1054	323.1057
323.1058	323.1059	323.1065	323.1072	323.1074	323.1080	323.1098
324.2003	324.2021	324.2022	324.2024	324.2038	324.2042	324.2049
324.2054	324.2057	324.2065	324.2072	324.2074	324.2080	324.2098
326.0019	326.0034	326.0045	326.0071	326.0077	326.1001	326.1050
326.1051	326.1052	326.1062	326.1063	326.1087	326.1093	326.3003
326.3021	326.3022	326.3024	326.3038	326.3042	326.3049	326.3054
326.3057	326.3065	326.3072	326.3074	326.3080	326.3098	327.1001
327.1062	327.1063	327.3003	327.3021	327.3022	327.3024	327.3031
327.3038	327.3042	327.3049	327.3054	327.3057	327.3065	327.3072
327.3074	327.3080	327.3098	328.3003	328.3021	328.3022	328.3024
328.3031	328.3038	328.3042	328.3049	328.3054	328.3057	328.3065
328.3072	328.3074	328.3080	328.3098	336.1505	336.1510	336.6241
336.6243	336.6251	336.6253	336.6257	336.6441	336.6443	336.6451
336.6453	336.6455	336.6457	338.5021	338.5041	338.5059	338.5069
Special Construction Fabrics						
345.1040	346.3530	346.5200	346.6020	346.6050	352.8095	353.5032
357.1500						
Textile Furnishings						
360.0600	360.1515	360.4225	360.4825	360.7000	361.0520	361.4500

361.4800	363.0120	363.1040	363.1500	363.2000	363.4500	363.6520
363.6540	363.7000	364.2000	364.2300	365.7885	365.8610	365.8620
366.2460	366.2480	366.2780	366.4700	367.3424	367.3428	

Miscellaneous

385.3000	385.5000	386.0600	386.5045	388.1000	388.2000	388.4000

B. Apparel

Apparel

372.1010	372.1020	372.1050	372.1070	372.3000	372.3500	372.4500
372.7000	372.8000	373.1500	373.2500	374.3000	374.5020	374.5040
376.2000	378.1520	379.0252	379.0254	379.1100	379.1530	379.1720
379.3905	379.3930	379.4042	379.4040	379.4050	379.4060	379.4070
379.5520	379.5550	379.6470	379.7240	379.7250	379.7295	379.7540
379.7545	379.7550	379.7555	379.7580	379.7620	379.7630	379.7650
379.7830	379.7900	379.8318	379.8360	379.8420	383.0390	383.0805
383.1205	383.1220	383.1319	383.1321	383.1340	383.1560	383.1580
383.1611	383.1612	383.1613	383.1614	383.1616	383.1618	383.1619
383.1621	383.1626	383.1628	383.1629	383.1630	383.1680	383.2013
383.2050	383.2060	383.2305	383.2715	383.2716	383.2718	383.2721
383.2722	383.2724	383.2730	383.2732	383.2736	383.2738	383.2750
383.2752	383.2754	383.2758	383.3037	383.3038	383.3090	383.3465
383.3770	383.4705	383.4709	383.4761	383.4821	383.4825	383.5027
383.5090	383.5395	383.5510	383.5515	383.5520	383.5525	383.5540
383.5820	383.5830	383.5845	383.6200	383.6310	383.6330	383.6340
383.6345	383.6350	383.6360	383.6371	383.6372	383.6385	383.6395
383.6690	383.7010	383.7020	383.7210	383.7510	383.7522	383.7528
383.7558	383.7562	383.7595	383.9255	383.9580	383.9581	383.9583
383.9584	383.9585	383.9586	383.9587	383.9589	383.9591	383.9593
383.9595	383.9596					

Headwear

702.5400	702.5600	702.6000	702.7000	702.7500	702.8000	703.1610
703.1620	703.1630	703.1640	703.1650			

Gloves

704.2500	704.6000	704.6500

Luggage and Handbags

706.3650	706.4140

[1] For the woven cotton fabric under investigation the U.S. Department of Commerce, in preparing the Appendices for these investigations, has used the U.S. Import Statistical Numbers which closely parallel the TSUSA numbers for example, U.S. Import Statistical Numbers 320.0001 represents TSUSA numbers 320.0101 through 320.0901 and 320.0998 represents TSUSA numbers 320.3096 through 320.3998. The fourth and fifth digits of these TSUSA numbers are yarn count numbers.

Carded cotton items that are within the TSUSA numbers above, that have an "*" to their right, are excluded from these investigations.

[FR Doc. 85-5821 Filed 3-11-85; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council's Plan Team for the Gulf of Alaska Groundfish Fishery Management Plan will convene a public working session, March 14–15, 1985, at the National Marine Fisheries Service's conference room, Federal Building, 709 W. 9th Street, Juneau, AK, beginning at 9 a.m. on March 15, to complete preparation of draft decision documents for the 1985 Gulf of Alaska groundfish amendment. For further information contact Ron Berg, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802; telephone: (907) 586.7229.

Dated: March 6, 1985.

Roland Finch,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 85-5820 Filed 3-11-85; 8:45 am]

BILLING CODE 3510-22-M

South Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The South Atlantic Fishery Management Council will convene a public meeting in Beaufort, SC, March 25–28, 1985 to discuss billfish, mackerel and snapper-grouper; the FY 85 mid-year financial review and other fishery management business. A detailed agenda will be available around March 15. For further information contact David H. G. Gould, Executive Director, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407; telephone: (803) 571–4366.

Dated: March 6, 1985.

Roland Finch,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 85-5819 Filed 3-11-85; 8:45 am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's Groundfish Management Team will convene a public meeting, March 19–21, 1985, in Seattle, WA, to develop groundfish landing projections; review reports on long-range management of groundfish and minimum by-catch levels; and review a request for a groundfish plan amendment. For further information contact Joseph C. Greenley, Executive Director, Pacific Fishery Management Council, 526 S.W. Mill Street, Portland, OR 97201; telephone: (503) 221–6352.

Dated: March 7, 1985.

Joseph W. Angelovic,

Deputy Assistant Administrator for Science and Technology.

[FR Doc. 85–5878 Filed 3–11–85; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcing Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Republic of Korea; Correction

March 7, 1985.

On February 1, 1985 a notice was published in the **Federal Register** (50 FR 4720) which announced import limits for certain cotton, wool and man-made fiber textile products, produced or manufactured in the Republic of Korea and exported to the United States during 1985. Paragraph two of the letter to the Commissioner of Customs which followed that notice should be corrected to read as follows:

In carrying out this directive, entries of textile products in the foregoing categories, except Categories 337, 359 pt.[2] and 659 pt.[5], produced or manufactured in Korea and exported to the United States on and after January 1, 1984, shall, to the extent of any unfilled balances, be charged against the limits established for such goods during that twelve-month period. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the limits set forth in this letter. Textile products in Categories 337, 359 pt.[2] and 659 pt.[5] which have been exported to the United States prior to January 1, 1985 shall not be subject to this directive.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85–5845 Filed 3–11–85; 8:45 am]

BILLING CODE 3510-DR-M

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[Docket Nos. CRT 80–4, 81–1, 82–1, 83–1]

Further Amendment to Order Granting Further Partial Distributions 1979, 1980, 1981, and 1982 Cable Royalty Distribution

Correction

In Fr Doc. 85–5337 beginning on page 9112 in the issue of Wednesday, March 6, 1985, make the following correction:

On page 9114, in the third chart, first line, fifth column, "43, 765, 854" should read "43, 765, 864".

BILLING CODE 1505-01-M

DEPARTMENT OF DEFENSE

Department of the Army

Military Traffic Management Command; Direcorate of Personal Property; International Through Government Bill of Lading Household Goods Program

AGENCY: Military Traffic Management Command, DOD.

ACTION: The Military Traffic Management Command (MTMC), on behalf of the Department of Defense (DOD), is modifying procedures associated with the acquisition of rates for international through Government bill of lading (ITGBL) shipments of household goods and unaccompanied baggage for the cycle starting October 1, 1985 (Volume 51).

SUMMARY: In the past, MTMC has relied upon rate bureau/assocation military basic tenders (MBTs) for governing rules and application of accessorial rates and charges. In effect, these MBTs have been incorporated in and made a part of MTMC's ITGBL competitive rate solicitation. In the future, MTMC intends to develop rules for application of accessorial rates and charges similar to those currently in effect in the MBTs and publish such rules as an appendix to the MTMC rate solicitation for international shipments. Aside from this modification, the standing producers used for the 6-month cycle system remain unchanged along with the filing periods; viz, the initial and me-too filing periods. For the reasons stated below, MTMC intends to discontinue use of MBTs issued by carrier and forwarder rate bureaus and associations.

To assist you in understanding the modification, the following reasons are summarized. DOD expects MTMC to improve control and management of the ITGBL program. As in other Federal procurements, with this modification MTMC is determining basic terms and conditions and dealing directly with individual companies actually furnishing the services. This will reduce the anticompetitive influence on the ITGBL program which results from MTMC dealing through ratemaking bureaus or associations. This is a continuation of MTMC efforts to promote individual carrier ratemaking that began with the establishment of the ITGBL competitive rate program in 1976 and the domestic MTMC solicitation last year. The modification will also comply with the letter and spirit of recent deregulation statutes which restrict the activities of rate bureaus, which promote shipper protection, and which increase pricing competition. It will also promote greater competiton under recently legislated congressional Defense procurement policy.

Comments: Written comments concerning the intended modification will be considered if received not later than April 12, 1985.

Address comments to: Commander, Military Traffic Management Command, Attn: Rate Acquisition Division (MT–PPC–Int'l), Room 408, 5611 Columbia Pike, Falls Church, Virginia 22041–5050.

FOR FURTHER INFORMATION CONTACT: LTC Robert P. Coleman or Mrs. Naomi King, HQ Military Traffic Management Command, ATTN: MT–PPC (Room 408), 5611 Columbia Pike, Falls Church, Virginia 22041–5050, (202) 756–2385.

SUPPLEMENTARY INFORMATION: To reflect the above DOD 4500.34–R, Personal Property Management Regulation, May 1971 will be amended by adding the following to paragraph 6001h(3).

(d) Solicitations for ITGBL competitive rates will be sent to, and responsive rates will be received from, DOD-approved qualifed individual carriers and forwarders. Solicitations will contain MTMC-developed governing rules, accessorial rates and charges, rather than military basic tenders collectively issued by carrier bureaus and associations. Traffic will be awarded to those low rate responsible carriers and forwarders whose rates are responsive and most advantageous to the government. A responsible carrier is one who:

(1) Is listed on the DOD list of approved carriers and freight forwarders;

(2) Has appropriate operating authority and licenses;

(3) Has adequate financial resources;

(4) Has the ability to comply with required delivery performance schedules;

(5) Has a satisfactory record of performance and integrity and is otherwise qualified under applicable law and regulations.

Tenders, including MBTs governing rules or application of accessorial rates and charges, of rate bureaus and associations engaged in collective ratemaking functions inconsistent with the Government's goal to maximize competition, will not be solicited and will not be received.

This request for comments and the resulting determinations are being made under the authority of 10 U.S.C. 2301–2314 and DOD Directives 4500.9 and 4500.34R.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

March 6, 1985.

[FR Doc. 85–5721 Filed 3–11–85; 8:45 am]

BILLING CODE 3810-01-M

Department of the Navy

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Naval Personnel Research and Development Center (NPRDC) Review Team of the Naval Research Advisory Committee (NRAC) Panel on Laboratory Oversight will meet on March 27, 1985, at the Office of the Director of Navy Laboratories, Crystal Plaza 5, Crystal City, Virginia, and at the Office of Naval Research, 800 North Quincy Street, Arlington, Virginia. The agenda will include technical briefings from the headquarters sponsors of NPRDC which will assist the team in their efforts to make a thorough evaluation of the scientific, technical and engineering health of the activity. The first session of the meeting to be held at the Office of the Director of Navy Laboratories, Crystal Plaza 5, Crystal City, Virginia, will commence at 9:30 A.M. and terminate at 11:00 A.M. on March 27, 1985. The second and final session, to be held at the Office of Naval Research, 800 North Quincy Street, Arlington, Virginia, will commence at 1:00 P.M. and terminate at 4:00 P.M. on March 27, 1985. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to examine the scientific, technical and engineering health of NPRDC. The entire meeting will consist of classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander M. B. Kelley, U.S. Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217–5000, Telephone number (202) 696–4870.

Dated: March 7, 1985.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 85–5843 Filed 3–11–85; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF ENERGY

Office of Assistant Secretary for International Affairs and Energy Emergencies

Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation Between the Government of the United States of America and the Government of Sweden Concerning Civil Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above mentioned agreements involves approval of the following retransfer:

RTD/SW(EU)–130, from the Federal Republic of Germany to Sweden, 8,000 kilograms of uranium, enriched to approximately 3.5% in U–235. This material was originally transferred to the Federal Republic of Germany from Sweden in the form of unirradiated scrap for purification, and is now to be returned for fuel fabrication for power reactors.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: March 5, 1985.

Harold Jaffe,

Acting Deputy Assistant Secretary for International Affairs.

[FR Doc. 85–5802 Filed 3–11–85; 8:45 am]

BILLING 6450-01-M

Economic Regulatory Administration

Port Petroleum, Inc.; Proposed Remedial Order

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice of a Proposed Remedial Order which was issued to Port Petroleum, Inc. This Proposed Remedial Order alleges pricing violations in the amount of $12,458,131.51 plus interest in connection with the resale of crude oil at prices in excess of those permitted under 10 CFR Part 212 during the time period October 1978 through December 1980.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from Mary Johnson, Economic Regulatory Administration, Department of Energy, 1403 Slocum, Second Floor, Dallas, Texas 75207 or by calling (214) 767–4646. Within fifteen (15) days of publication of this notice, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, Department of Energy, Forrestal Building, 1000 Independence Ave., SW., Room: 6F–078, Washington, D.C. 20585, in accordance with 10 CFR 205.193.

Issued in Dallas, Texas, on the 15th day of February 1985.

Ben Lemos,

Director, Office of Field Operations, Economic Regulatory Administration.

[FR Doc. 85–5813 Filed 3–11–85; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER85–327–000, et al.]

Electric Rate and Corporate Regulation Filings; Gulf Power Company, et al.

Take notice that the following filings have been made with the Commission:

1. Gulf Power Company

[Docket No. ER85–327–000]

March 6, 1985.

Take notice that on February 28, 1985, Gulf Power Company (Gulf Power) tendered for filing a contract executed

between it and the Administrator of the Southeastern Power Administration (SEPA) acting on behalf of the United States Government, Department of Energy. The contract is filed with the Federal Energy Regulatory Commission because certain of its provisions provide for the payment of a transmission charge by the Government for transmission of capacity and energy to certain preference customers designated by the Government.

Gulf Power requests an effective date of February 1, 1985, and therefore requests waiver of the Commission's notice requirements.

Comment date: March 21, 1985, in accordance with Standard Paragraph E at the end of this notice.

2. Upper Peninsula Power Company

[Docket No. ER85-325-000]

March 6, 1985.

Take notice that on February 26, 1985, Upper Peninsula Power Company (UP) tendered for filing an Agreement for Wholesale electric power service between UP and the City of Escanaba. UP requests an effective date of May 1, 1985.

Comment date: March 21, 1985, in accordance with Standard Paragraph E at the end of this notice.

3. Empire District Electric Company

[Docket No. ER85-323-000]

March 6, 1985.

Take notice that on February 25, 1985, Empire District Electric Company (EDE) tendered for filing a proposed Service Schedule PR between EDE and Associated Electric Cooperative, Inc. (Associated).

EDE states that the proposed Service Schedule PR provides for the sale of 150 Mw of capacity and related energy from EDE to Associated for the period beginning January 23, 1985.

EDE requests an effective date of January 23, 1985, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing were served upon the Kansas Corporation Commission, the Missouri Public Service Commission, the Oklahoma Corporation Commission, the Arkansas Public Service Commission and Associated.

Comment date: March 20, 1985, in accordance with Standard Paragraph E at the end of this notice.

4. Public Service Company of New Mexico

[Docket No. ER85-319-000]

March 6, 1985.

Take notice that on February 25, 1985, Public Service Company of New Mexico (PNM) tendered for filing Service Schedule I (Agreement for Block Energy Sale) to the Interconnection Agreement (Rate Schedule FERC No. 46) between PNM and Texas-New Mexico Power Company (TNP).

PNM under this Agreement shall make available to TNP block energy in the Amount of up to 370 gigawatt hours at a rate of delivery of up to 50 megawatts solely and exclusively for TNP to serve its copper industry customers. Interruptibility provisions are set forth in section 4 of the Agreement. Service is scheduled to commence on March 1, 1985, and is to continue until December 31, 1985, and from month to month thereafter until terminated by either party in accordance with § 2.3 of this Agreement.

PNM requests waiver of the Commission's notice requirements to allow an effective date of March 1, 1985.

Copies of the filing were served upon TNP and the New Mexico Public Service Commission.

Comment date: March 20, 1985, in accordance with Standard Paragraph E at the end of this notice.

5. The Empire District Electric Company

[Docket No. ER85-322-000]

March 6, 1985.

Take notice that on February 25, 1985, the Empire District Electric Company (EDE) tendered for filing a proposed Power Purchase Contract between EDE and Associated Electric Cooperative, Inc. (Associated) to Springfield, Missouri.

EDE states that the proposed contract provides for the sale of 150 Mw of capacity and related energy from Associated to EDE for the period beginning January 23, 1985.

EDE requests an effective date of January 23, 1985, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing were served upon the Kansas Corporation Commission, the Missouri Public Service Commission, the Oklahoma Corporation Commission, the Arkansas Public Service Commission and Associated.

Comment date: March 20, 1985, in accordance with Standard Paragraph E at the end of this notice.

6. Indiana & Michigan Electric Company; Ohio Power Company

[Docket No. ER85-324-000]

March [illegible] 1985.

Take notice that on February 25, 1984, American Electric Power Service Corporation (AEP) on behalf of its affiliate Ohio Power Company (OPCO) and Indiana & Michigan Electric Company (I&ME), which the AEP Affiliated operating subsidiaries, Modification No. 11 dated January 15, 1985 to the Inteconnection Agreement dated December 12, 1949 among I&ME and OPCO (collectively the AEP parties) and the Cincinnati Gas & Electric Company (CG&E). The Commission has previously designated this Agreement as OPCO's Rate Schedule FERC No. 21, I&ME's Rate Schedule FERC No. 16, and CG&E's Rate Schedule FERC No. 13.

AEP states that Sections 1 and 2 of Modification No. 11 provide for an increase in the transmission demand rate for Short Term Power when the AEP parties are the supplying party to $0.46 per kilowatt per week and to $0.092 per kilowatt per day. Section 3 revises the generation demand compensation section of the Short Term Power Service Schedule to provide for a rate of "up to" each parties' present generation demand rates. The proposed rates included in this Modification No. 11 for Short Term Power are similar to the rates for Transmission Service provided by the AEP System which have been filed and accepted for filing by the Commission and are the same as the rates for Short Term Power transmission demand rates have been filed with the Commission on behalf of I&ME.

AEP requests an effective date of April 15, 1985, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing were served upon the Public Utilities Commission of Ohio, Public Service Commission of Indiana, and Michigan Public Service Commission.

Comment date: March 20, 1985, in accordance with Standard Paragraph E at the end of this notice.

7. Carolina Power & Light Company

[Docket No. ER85-318-000]

March 6, 1985.

Take notice that on February 25, 1985, Carolina Power & Light Company (CP&L) tendered for filing changes outlined below in its agreement with the City of Bennettsville, South Carolina, Brunswick EMC, central EMC, Jones-Onslow EMC, and Pitt & Greene EMC.

1. *City of Bennettsville*—An amendment to incorporate in the Service Agreement the delivery of metering pulse information under the Company's additional facilities plan.

2. Installation of special metering facilities required to provide metering pulse information to the EMCs from the Points of Delivery listed below. The metering pulse information will be provided under the Company's additional facilities plan.

Brunswick EMC—Chadbourn-Peacock 115 kV
Central EMC—Jonesboro 23 kV
Jones-Onslow EMC—Jacksonville East 115 kV, Topsail 115 kV
Pitt & Greene EMC—Farmville 12 kV, Hugo 115 kV

CP&L requests that the Supplement be made effective 60 days after filing.

Comment date: March 20, 1985, in accordance with Standard paragraph E at the end of this notice.

8. Florida Power & Light Company

[Docket No. ER85-317-000]

March 5, 1985.

Take notice that on February 25, 1985, Florida Power & Light Company (FPL) tendered for filing a document entitled "Amendment Number One to Contract for Interchange Service Between Florida Power & Light Company and Fort Pierce Utilities Authority."

FPL states that under the Amendment FPL and Fort Pierce Utilities Authority (Ft. Pierce) utilize the provisions of the existing Contract for Interchange Service between FPL and Fort Pierce, the parties to establish additional service schedules. FPL states that the additional Service Schedule X provides the parties with the necessary vehicle to better maximize the overall enconomy of power production in the State of Florida.

FPL respectfully requests that the proposed Amendment be made effective no later than 60 days from the date of filing. According to FPL, a copy of this filing was served upon Fort Pierce Utilities Authority.

Comment date: March 19, 1985, in accordance with Standard Paragraph E at the end of this notice.

9. Florida Power & Light Company

[Docket No. ER85-316-000]

March 5, 1985.

Take notice that on Fegbruary 22, 1985, Florida Power & Light Company (FPL) tendered for filing a document entitled "Amendment Number One to Contract for Interchange Service Between Florida Power & Light Company and City of Gainesville, Florida" dated October 29, 1984 (FPL Rate Schedule FERC No. 27).

FPL states that under the provisions of the existing Contract for Interchange Service between FPL and the City of Gainesville (Gainesville), the parties may modify or revise any and all Service Schedules. FPL states that this Amendment only revises Service Schedule A to the Contract to the extent that FPL and Gainesville desire to clarify the period of time during which service under Service Schedule A will be available. This amended Service Schedule A shall supersede and replace the existing Service Schedule A in its entirety.

FPL states that the effect on the amount of sales, services, or revenues, if any, brought about by the above revision cannot be projected and respectfully requests a waiver of the Commission's Regulations.

FPL respectfully requests that the proposed Amendment be made effective no later than 60 days from the date of filing. According to FPL, a copy of this filing was served upon the City of Gainesville, Florida.

Comment date: March 19, 1985, in accorance with Standard Paragraph E at the end of this notice.

Standard Paragraphs:

E. Any Person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 85-5785 Filed 3-11-85; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CI85-255-000]

Citizens Energy Corp. and Citizens Resources Corp.; Application for Commission Authorization Relating to Citizens Marketing Program

March 5, 1985

Take notice that on February 21, 1985, Citizens Energy Corporation (Citizens Energy) and Citizens Resources Corporation (Citizen Resources) of 530 Atlantic Avenue, Boston, Massachusetts 02210, filed an application for certain authorizations required in connection with the proposed "Citizens Marketing Program".

Citizens requests the Commission to grant the following authority and take the following action:

(1) Grant blanket temporary abandonment authority, pursuant to 15 U.S.C. 717f(b) and in accordance with the Commission Order of September 26, 1984 to producers for their transactions under the Citizens Marketing Program;

(2) Authorize Citizens to submit monthly reports, pursuant to 18 CFR 284.106, on behalf of interstate pipelines for transactions under the Citizens Marketing Program;

(3) Authorize Citizens to submit monthly reports, pursuant to 18 CFR 284.126 and 284.148, on behalf of intrastate pipelines for transactions under the Citizens Marketing Program;

(4) Authorize Citizens to submit monthly reports, pursuant to 18 CFR 284.222(e)(1), on behalf of intrastate pipelines for transactions under the Citizens Marketing Program;

(5) Authorize Citizens to file in its monthly reports all appropriate information as required by the Commission Order of September 26, 1984 on behalf of CMP particpants;

(6) Authorize Citizens to file all supplemental reports, pursuant to the Commission's Order of September 26, 1984 and 18 CFR Part 284, on behalf of producers, pipelines, and local distribution companies for transactions under the Citizens Marketing Program;

(7) Waive the 48-hour post-transaction reporting requirement contained in 18 CFR 284.4 as it applies to pipelines for transactions under the Citizens Marketing Program; and

(8) Issue an order declaring that participation in the Citizens Marketing Program according to the terms described in Part II.C. of this application herein, will not alter the existing jurisdictional status of participating intrastate and Hinshaw pipelines.

Any person desiring to be heard or to make any protest with reference to said applications should on or before March 22, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-5787 Filed 3-11-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL85-12-000]

City of Manti, UT; Utah Power & Light Co.; Order Setting for Hearing Application for Wheeling and Interconnection and Establishing Procedures

Issued: March 4, 1985.

Before Commissioners: Raymond J. O'Connor, Chairman; Georgiana Sheldon, A. G. Sousa, Oliver G. Richard III and Charles G. Stalon.

On November 26, 1984, the City of Manti, Utah (Manti) filed an application, pursuant to sections 211 [1] and 212 [2] of the Federal Power Act (FPA), for a Commission order directing Utah Power & Light Company (UP&L) to provide transmission service to the city on a long term basis commencing on February 4, 1986. In the alternative, Manti requests that UP&L be directed to provide transmission service until such time as the city constructs its own transmission facilities or alternative transmission facilities become available. In addition, Manti requests that the Commission direct UP&L to interconnect its transmission facilities with the city pursuant to section 210 of the FPA,[3] if such an interconnection is necessary to implement a wheeling order.

Manti owns and operates facilities for the distribution of electric power and energy at retail. It purchases power at wholesale from UP&L and the Western Area Power Administration's Colorado River Storage Project. In February 1981, UP&L gave Manti notice of its intent to terminate service under its present agreement with the city, effective February 4, 1986. The city has explored alternative power supply arrangements and has purportedly identified at least two prospective power suppliers for the period beginning on February 4, 1986; however, Manti states that it cannot finalize any alternative arrangements until it obtains assurances from UP&L that wheeling of such power is available. The city requested such assurances by letter dated September 13, 1984. UP&L responded by letter dated October 4, 1984, but, according to Manti, gave no assurance as to its willingness to provide transmission service to the city under fair and reasonable terms at compensatory rates.[4] Manti goes on to state that its application would meet the requirements for wheeling and interconnection orders set forth in sections 210, 211, and 212 of the Federal Power Act.

Notice of Manti's application appeared in the **Federal Register**,[5] with comments due on or before January 10, 1985. On December 21, 1984, UP&L filed an answer and motion to dismiss Manti's application. In support, UP&L contends that: It is willing to enter into a new resale or transmission agreement with the city; additional information from Manti as to the specifics of any alternative power supply arrangement is needed in order for UP&L to respond to the city's inquiry regarding transmission; UP&L has advised Manti of its position; and finally, Manti has made no effort to provide UP&L with the needed information. In the circumstances, UP&L contends, Manti's application does not meet the statutory standards for obtaining wheeling orders;[6] accordingly, Manti's application is premature and should be dismissed.

On January 21, 1985, Manti filed an answer in opposition to UP&L's motion to dismiss. Manti contends that it is prepared to demonstrate at a hearing that UP&L's course of conduct amounts to an actual or constructive refusal to wheel, and, therefore, disputed issues of fact exist which can only be determined after an evidentiary hearing.

On February 8, 1985, Manti filed a petition, pursuant to Rule 207 of the Commission's Rules of Practice and Procedure,[7] requesting that the Commission designate the presiding administrative law judge in *Utah Power & Light Co.*, Docket Nos. ER-571-000, *et al.*, to hear its application for wheeling. In support, Manti notes that, before the Commission can issue a wheeling order, it must find that the city is ready, willing, and able to pay UP&L the costs of transmission service and a reasonable rate of return on such costs, as required by section 212(b) of the Federal Power Act; [8] and that UP&L's cost of transmission service and required rate of return are issues pending in Docket Nos. ER84-571-001, *et al.*[9] The appointment of a single administrative law judge to preside over both dockets would, Manti alleges, avoid unncessary duplication of efforts and expenditure of resources. Manti does not request consolidation of the proceedings at this time, however, stating that its application in Docket No. EL85-12-000 raises issues unique to this docket alone.

On February 15, 1985, UP&L filed a protest to Manti's petition for special assignment of an administrative law judge. The company states that the issues pending in Docket Nos. ER84-571-000, *et al.* are unrelated to those present in this docket, and that assigning the same administrative law judge to both proceedings would frustrate, rather than serve, the interests of judicial efficiency.

Discussion

As previously indicated, UP&L requests that Manti's application be dismissed on the ground that the utility has not refused to provide electric service, a finding necessary to the issurance of any order pursuant to section 211(b) of the Federal Power Act.[10] However, Manti has applied pursuant to both section 211(b) and 211(a), which has no such requirement. We shall therefore deny UP&L's motion to dismiss Manti's application on this ground.

While denying UP&L's motion to dismiss, we agree that more specific information from Manti about alternative power supply arrangements would be necessary to enable us to make the findings required by sections 210, 211, and 212 of the Federal Power Act to issue an order providing for interconnection and wheeling. We shall set Manti's application for hearing, as provided by sections 210 and 211 of the

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[1] 16 U.S.C. 824j.

[2] 16 U.S.C. 824k.

[3] 16 U.S.C. 824l.

[4] The letters are attached as Exhibits C & D to Manti's application.

[5] 49 FR 48796 (1984).

[6] In particular, UP&L states that Manti's application does not comply with section 211(b)(1), 16 U.S.C. 824j(b)(1), which provides that the Commission may issue an order requiring wheeling by an electric utility if the utility has given actual or constructive notice that it is unwilling or unable to provide electric service to the applicant.

[7] 18 CFR 385.207 (1984).

[8] 16 U.S.C. 824k(b).

[9] By order dated January 11, 1985, the Commission, *inter alia*, accepted for filing UP&L's proposed increase in rates for transmission service to various customers and ordered a hearing as to their justness and reasonableness. *Utah Power & Light Co.*, 30 FERC ¶ 61,015 (1985).

[10] Although not clear from their pleadings, it appears that Manti and UP&L have, with respect to the issue of whether the criteria set forth in section 211(b) have been met, focused upon the company's willingness to provide *transmission* service. Section 211(b), however, refers to an electric utility's unwillingness or inability to provide *electric* service, not transmission service. Although UP&L has used the term "electric service," it has chiefly discussed its willingness to provide transmission service. Because the pleadings reflect a misunderstanding of the statutory criteria on this point, we shall not, at this time, dismiss Manti's application for a hearing under section 211(b).

Federal Power Act. However, in order for such a hearing to go forward, Manti must come forth with specific information regarding alternate power supply and transmission arrangements and the transmission it requires, as described in Attachment A.[11]

Our rules of practice do not specifically provide that utilities which are the target of an application under sections 210, 211, and 212 automatically become parties to a hearing on the application. Since UP&L is clearly a necessary party to this inquiry, we shall designate UP&L as a party-respondent to this proceeding, pursuant to Rule 102 of the Commission's Rules of Practice and Procedure.[12]

Finally, we shall deny without prejudice Manti's request to assign this docket to the presiding administrative law judge currently assigned to hear Docket Nos. ER84–571–001 *et al.* While we share the city's desire to avoid unnecessary duplication of resoruces, we believe that the parties and the presiding judge to be appointed by the Chief Administrative Law Judge are in the best position to determine how such duplication may be minimized, such as through incorpration by reference of portions of the record in Docket Nos. ER84–571–001, *et al.*, or other procedures.

The Commission orders:

(A) UP&L's motion to dismiss Manti's application is denied.

(B) UP&L's is hereby designated a party-respondent to this proceeding.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 210, 211, and 212 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR, Chapter I), a public hearing shall be held concerning Manti's application for transmission and interconnection.

(D) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately fifteen (15) days of the date of this order in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. The presiding judge is authorized to establish procedural dates, including the submission of a case-in-chief by Manti, and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(E) The Secretary shall promptly publish this order in the **Federal Register**.

By the Commission.

Kenneth F. Plumb,

Secretary.

Attachment A

For each potential power transfer involving the three power suppliers identified by Manti in its application or any other potential supplier, Manti shall provide the following data:

(1) *Quantity of Power and Energy.*

What quantity of power (MW) and energy (MWh) will be wheeled? Manti should include a description of the expected load pattern. For instance, will the power be baseload power to be transmitted at all times or peaking power to be transmitted only during specified hours? How will Manti's take vary under on-peak and off-peak conditions? Will there be seasonal variations in Manti's deliveries?

(2) *Point of Receipt.*

At what point and at what voltage level will UP&L be expected to take delivery of Manti's entitlements? Will the delivery come directly from Manti's supplier or will there be intervening wheeling parties?

(3) *Point of Delivery.*

Where and at what voltage level will UP&L be expected to deliver Manti's entitlement? Does Manti need or require optional delivery points to enhance reliability?

(4) *Nature of Entitlement.*

Does the entitlement provide for firm or nonfirm energy? Is wheeling service to be firm or nonfirm? What degree of firmness is desired?

(5) *Contract Term.*

What is the term of the requested wheeling service and how does this compare with the term of Manti's entitlement?

(6) *Scheduling.*

How does Manti intend to schedule its entitlements? Will Manti schedule a week in advance, the day before, or hourly? Will the energy be scheduled in fixed increments or in variable amounts?

(7) *Testimony.*

Manti should provide testimony supporting and explaining all data.

(8) *Notice.*

Manti shall provide the names and addresses of each affected State regulatory authority, each affected electric utility, and each affected Federal power marketing agency so that the statutorily required notice may be given. We note that the Conference Report interprets "affected electric utilities" to include those involved in the sale of power for which wheeling is requested. H. Conf. Rep. No. 95–1750, 95th Cong., 2d Sess. 6, *reprinted in* 1978 U.S. Code Cong. & Ad. News 7797, 7825. In this instance, Manti should provide the names and addresses of each potential power supplier.

[FR Doc. 85–5760 Filed 3–11–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP85–63–000 and RP85–103–000]

Northwest Pipeline Corp. v. Cascade Natural Gas Corp.; Answer to Complaint, Cross-Complaint, and Motion for Consolidation

March 5, 1985.

Take notice that on February 22, 1985, Cascade Natural Gas Corporation (Cascade) tendered for filing an Answer, Cross-Complaint, And Motion for Consolidation against Northwest Pipeline Corporation (Northwest) in response to a complaint against Cascade filed by Northwest on January 4, 1985. Northwest had requested that the Commission (1) find that the terms and conditions of Northwest's tariff, specifically Rate Schedule LS–1, carry the full force and effect of law; (2) find that Cascade has failed to comply with the lawful terms and conditions of that tariff; and (3) take whatever actions the Commission deems appropriate to assist Northwest in enforcing the terms of its tariff. In the alternative, Northwest requested that the Commission issue a declaratory order making findings (1) and (2).

Cascade, in its cross-complaint, alleges that: (1) Northwest unreasonably and unlawfully interpreted and applied the provisions of Rate Schedule LS–1 to require mandatory incurrence of avoidable variable costs; (2) Northwest's delay in seeking any necessary administrative relief to avoid the avoidable variable costs attending the liquefaction, storage, and vaporization of gas for Cascade during 1984 violated Northwest's public interest service obligation under its Section 7(c) certificate of public convenience and necessity authorizing LS–1 service; and (3) Northwest's incurrence of avoidable variable costs for (i) ODL–1 gas purchases related to 1984 liquefaction services for Cascade and (ii) liquefaction, storage, and vaporization under Rate Schedule LS–1 was

[11] We note that, in the future, failure to provide similar information may result in rejection of an application as deficient.

[12] 18 CFR 385.102 (1984).

imprudent and in violation of sections 4 and 5 of the NGA. Cascade also requests that its cross-complaint be consolidated with Northwest's complaint.

Under Rules 206(b) and 213(a), 18 CFR 385.206(b) and 385.213(a) (1984), Northwest must file an answer to Cascade's complaint with the Commission unless otherwise ordered by the Commission. Under Rule 213(e), any person failing to answer a complaint may be considered in default, and all relevant facts stated in such complaint may be deemed admitted. Northwest shall file its answer with the Commission on or before April 4, 1985.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 4, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-5769 Filed 3-11-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-206-001]

Sierra Pacific Power Co.; Refund Report

March 5, 1985.

Take notice that on February 25, 1985, Sierra Pacific Power Company (Sierra) submitted for filing a refund compliance report pursuant to the Commission's letter order issued on February 4, 1985.

Sierra's filing contains monthly billing determinants, revenue receipt dates, and revenue under the present and reduced rates.

Sierra's filing contained the following:

(1) Letter to each customer;

(2) Monthly billing determinants, revenue receipt dates, and revenues under the present and reduced rates;

(3) Monthly revenue refund and the monthly interest;

(4) Summary for the total refund period.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before March 13, 1985. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-5770 Filed 3-11-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2113]

Wisconsin Valley Improvement Company; Complaint

March 6, 1985.

On April 6, 1984, the Lac Vieux Desert Riparian Owners Association (Riparian Owners) filed a complaint against the Wisconsin Valley Improvement Company (WVIC). WVIC was issued a license for Project No. 2113 in 1959. Article 33 of that license was amended on December 2, 1983, to state:

The Licensee shall delay the fall drawdown of Lac Vieux Desert until October 15 of each year in order to provide adequate water levels for late summer recreation, unless an earlier drawdown would merely offset unseasonable wet conditions. The Licensee shall make every effort to drawdown the reservoir to 0.0 gage (1679.53 U.S.C. & G.S. datum) by December 31 of each year, but the Licensee is not required to spill water downstream in order to meet this target date.

The Riparian Owners' complaint alleges that WVIC has violated Article 33 of its Federal license for Project No. 2113 by not reaching 0.0 gage water level in over two years.

Interested parties are invited to file comments on this matter. Comments and any motions to intervene submitted pursuant to 18 CFR § 385.214 (1984), must be filed by 4:30 p.m. on April 8, 1985. Comments must be submitted to the Secretary, Federal Energy Regulatory Commission, Room 3110, 825 North Capitol Street, N.E., Washington, D.C. 20426. For further information contact George C. O'Connor, Office of the General Counsel, Room 4102C, Federal Energy Regulatory Commission, 202-357-5630.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-5771 Filed 3-11-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF85-239-000 etc.]

Richard R. Gresham et al; Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications; etc.

Comment date: Thirty days from the publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Take notice that the following filings have been made with the Commission:

1. Richard R. Gresham (Hecla Power Project)

[Docket No. QF85-239-000]

March 4, 1985.

On Februry 11, 1985, Richard R. Gresham (Applicant), of P.O. Box 158, Clipper Mills, California 95930, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 500 kilowatt hydroelectric facility (P. 6965) is located on Canyon Creek in Shoshone County, Idaho.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

2. Fluid Energy Systems, Inc.

[Docket No. QF85-242-000]

March 4, 1985.

On February 11, 1985, Fluid Energy Systems, Inc. (Applicant), of 2210 Wilshire Blvd. No. 699, Santa Monica, California 90403 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 30,590 kilowatt hydroelectric facility (P. 8257) will be located 24 miles east on State Highway 178, near the town of Bakersfield, California.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate

public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

3. Melvin R. Hall

[Docket No. QF85-245-000]

March 4, 1985.

On February 11, 1985, Melvin R. Hall (Applicant) of 7418 Silver Pine Drive, Springfield, Virginia 22153 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 105 kilowatt hydroelectric facility will be located in Rapidan, Virginia.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

4. MARMAC

[Docket No. QF85-231-000]

March 5, 1985.

On February 7, 1985, MARMAC (Applicant) of 6415 Katella Avenue, Cypress, California 90630 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in San Joaquin County, California, five miles northeast of Tracy. The facility consists of a fluidized bed combustor driven steam/turbine generator having an electric power production capacity of 10 NW. The primary energy source will be waste in the form of rice hulls.

Standard Paragraphs:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-5775 Filed 3-11-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP85-287-000 etc.]

Transcontinental Gas Pipe Line Corp., et al. Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Transcontinental Gas Pipe Line Corp.

[Docket No. CP85-287-000]

March 5, 1985.

Take notice that on February 14, 1985, Transcontinental Gas Pipe Line Corportion (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP85-287-000 pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a request for authorization to transport end-user gas on behalf of Carbonaire Company, Inc. (Carbonaire), with flexible authority to add and/or delete sources of gas and/or receipt points, under the certificate issued in Docket No. CP82-426-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Transco proposes to transport up to 4,500 dt equivalent of gas per day for use in Carbonaire's plant in Palmerton, Pennsylvania (Palmerton plant), for a term expiring June 30, 1985. It is stated that the natural gas to be transported would be purchased from Tenngasco Exchange Corporation and would be used for production of ammonia and carbon dioxide at the Palmerton plant. It is indicated that Transco would receive the gas at existing interconnections with Columbia Gas Transmission Corporation in Renova, Pennsylvania, and would redeliver such gas at existing points of delivery to Union Gas Company, a Division of Penn Fuel and Gas Company (Union Gas), in Pennsylvania. In turn, Union Gas would deliver such gas to the Palmerton plant.

Transco states that it would charge Carbonaire the currently applicable transportation rate in accordance with its Rate Schedule T-11, FERC Gas Tariff, Second Revised Volume No. 1. In addition, Transco states that it would apply its current transportation policy to the subject transportation which, among other things, requires that Carbonaire periodically provide Transco with affidavits which state that the subject transportation is not displacing sales which Transco would otherwise make under any of its firm sales rate schedules.

Transco further requests authorization to provide flexible authority on behalf of Carbonaire to add and/or delete souces of gas and/or receipt points. With respect to such flexible authority, Transco states that it would undertake within 30 days of the addition or deletion of any gas suppliers and/or receipt points, to file with the Commission the following information:

(1) A copy of the gas purchase contract between the seller and Carbonaire;

(2) A statement as to whether the supply is attributable to gas under contract to and released by pipeline or distributor, and if so, identification of the parties and specification of the current contract price;

(3) A statement of the Natural Gas Policy Act of 1978 (NPGA) pricing categories of the added supply, if released gas, and the volumes attributable to each category;

(4) If the supplier is a producer or other seller in a first sale, a statement that the gas was not committed or dedicated to interstate commerce on November 8, 1978, as such terms are used in § 157.209(e)(1)(i)(A) of the Regulations;

(5) Location of the sources and/or receipt points being added or deleted;

(6) Where an intermediary participates in the transaction between the seller and end-user, the information required by § 157.209(c)(ix) of the Regulations; and

(7) Identity of any other pipeline involved in the transportation.

Transco states that any changes made pursuant to such flexible authority would be on behalf of the same end-user, Carbonaire, for use at the same end-use location and would remain within daily and annual volume levels proposed herein.

Transco also requests flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by the end-user. The flexible authority requested applies only to points related to sources of gas

supply, not to delivery points in the market area. Transco will file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

Comment date: April 19, 1985, in accocrdance with Standard Paragraph G at the end of this notice.

2. Northwest Pipeline Corp.

[Docket No. CP85–116–001]

March 5, 1985.

Take notice that on February 14, 1985, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP85–116–001 an amendment to its pending application filed in Docket No. CP85–116–000 pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity to reflect a change in the proposed amount to be transported and the deletion of a delivery point, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Northwest states that on November 16, 1984, in Docket No. CP85–116–000, it filed an application for a limited-term certificate of public convenience and necessity authorizing the transportation of natural gas in interstate commerce for the account of The Washington Water Power Company (Water Power).

Northwest states the proposal was based on a gas purchase contract, dated September 11, 1984, wherein Water Power arranged to purchase up to 15 billion of Canadian natural gas per day from Amoco Canada Petroleum Company Ltd. (Amoco Canada) at the existing interconnection between Westcoast Transmission Company Limited (Westcoast) and Northwest at Sumas, Washington, and a transportation agreement dated November 7, 1984, wherein Northwest proposed to accept up to 10 billion per day for Water Power's account at Sumas and to transport and redeliver thermally equivalent volumes for Water Power's account to three existing delivery points located in Spokane and Whitman Counties, Washington. Northwest proposed a transportation rate for this service of 18.3 cents per million plus the GRI surcharge.

It is stated that Water Power originally intended to utilize its existing distribution facilities to sell and deliver the subject natural gas to three of its customers, Washington State University, Fairchild Air Force Base and Northwest Alloys, Inc.

Northwest states that subsequently, Amoco Canada and Water Power have entered into an amendment, dated January 3, 1985, to the September 11, 1985, gas purchase agreement which substantially restructured the original gas purchase agreement. It is explained that this amendment provides for an increase of the border purchase price from $2.70 per million (U.S.) to approximately $2.96 per million (U.S.) along with a decrease from 10 billion per day to 6 billion in the volumes of gas which Water Power would be purchasing from Amoco Canada at the international border and subsequently tendering to Northwest for transportation. The decrease in the volumes is attributable to the deletion of Washington State University as an ultimate end-user due to the increased gas costs, it is stated.

By the amendment Northwest now proposes to transport and deliver up to 6 billion of those volumes of natural gas which Water Power woud purchase at the international border and tender to Northwest at Sumas, Washington, for delivery to the two remaining customers, Northwest Alloys, Inc., and Fairchild Air Force Base, as set forth in Exhibit A to the November 7, 1984, transportation agreement.

Comment date: March 26, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

3. Columbia Gas Transmission Corp. Columbia Gulf Transmission Co.

[Docket No. CP85–280–000]

March 4, 1985.

Take notice that on February 11, 1985, Columbia Gas Transmission Corporation (Columbia Transmission), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, and Columbia Gulf Transmission Company (Columbia Gulf), 3805 West Alabama Avenue, Houston, Texas 77027, hereinafter referred to jointly as Applicants filed in Docket No. CP85–280–000 a request pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Allied Corporation (Allied) under the certificates issued in Docket Nos. CP83–76–000 and CP83–496–000, respectively, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Applicants propose to transport up to 4 billion Btu equivalent of natural gas per day on behalf of Allied for one year or until the applicable transportation authority is terminated under § 157.209 of the Regulations, whichever first occurs. Applicants state that service commenced November 1, 1984, pursuant to the self-implementing provisions of § 157.209. It is explained that Allied purchases the gas from Appalachian Oil & Gas Company, Inc. (Appalachian), and Ramco Oil & Gas Corporation, which companies own and/or operate production wells and pipeline systems in Clay, *et al.*, Counties, Kentucky. The request further reflects that Somerset Gas Service is involved in the delivery of Appalachian's gas to Columbia Gulf. All of the gas is delivered to Columbia Gulf at its measuring station #805 in Casey County, Kentucky. Under the proposal, Columbia Gulf would deliver in exchange therefor like quantities of natural gas to Columbia Transmission at existing points of interconnection, which delivery would be balanced on a monthly basis to the extent practical. Columbia Transmission proposes in turn to deliver equivalent quantities to Commonwealth Gas Pipeline Corporation (Commonwealth, an intrastate pipeline) at Bickers compressor station, Greene County, Virginia. It is explained that Commonwealth would redeliver the gas to Commonwealth Gas Services, Inc. (the distributor), for ultimate delivery to Allied for use in its Chesterfield, Virginia, plant. It is stated that the gas would be used as boiler fuel in the plant.

Applicants also request flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by Allied. The flexible authority requested applies only to points related to sources of gas supply, not to delivery points in the market area. Applicants will file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

Columbia Gulf proposes to charge the applicable rate set forth in its Rate Schedule T–2 for its transportation service: offshore to Kentucky—23.92 cents per dt equivalent of gas and 1.69 percent of the total quantity of gas delivered into its system would be retained for company-use and unaccounted-for gas; lateral onshore to Kentucky—14.28 cents per dt equivalent of gas and 1.50 percent retained; Rayne, Louisiana, to Kentucky—12.76 cents per

dt equivalent of gas and 1.50 percent retained; and Corinth, Mississippi, to Kentucky—6.38 cents per dt equivalent of gas and 0.75 percent retained.

Columbia Transmission proposes to charge the applicable rate set forth in its Rate Schedule TS–1 for its transportation service: gas received from Columbia Gulf at Leach, Kentucky—21.16 cents per dt equivalent; gas received from Columbia Gulf at receipt points other than Leach, Kentucky—29.93 cents per dt equivalent; whichever is applicable and provided the volumes are within the total daily entitlements (TDE) of Commonwealth, Columbia Transmission's existing purchaser customer. However, it is indicated that Columbia Transmission would charge 32.50 cents per dt equivalent for gas it receives from Columbia Gulf at Leach, Kentucky, and 41.27 cents per dt equivalent for gas received from receipt points other than Leach, Kentucky, if the volumes are in excess of Commonwealth's TDE. Additionally, Columbia Transmission proposes to charge the GRI rate for all the gas transported, as set forth in its Rate Schedule TS–1. Columbia Transmission further states it would retain 2.43 percent of the total quantity of gas delivered into its system for company-use and unaccounted-for gas, as set forth in its Rate Schedule TS–1.

Comment date: April 18, 185, in accordance with Standard Paragraph G at the end of this notice.

4. Columbia Gas Transmission Corp.

[Docket No. CP85–281–000]

March 4, 1985.

Take notice that on February 12, 1985, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP85–281–000 a request pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide five additional delivery points for existing wholesale custmers in Ohio under the certificate issued in Docket No. CP83–76–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Columbia proposes to construct and operate facilities for four delivery points for Columbia Gas of Ohio, Inc. (COH), and for one delivery point for Mountaineer Gas Company (Mountaineer). It is stated that both COH and Mountaineer are existing wholesale customers of Columbia and that COH and Mountaineer would use the delivery points to serve new customers, four residential and one industrial. It is explained that the three residential customers to be served by COH would be located in Fairfield, Medina and Meigs Counties, Ohio, and that each would receive 150 Mcf of gas per year and 1.5 Mcf on a peak day. It is further explained that the one industrial tap would be used to supply a new COH distribution system which would serve Honda of America's proposed plant in Anna, Ohio. Columbia asserts that this plant would receive 100,000 Mcf of gas per year and 880 Mcf on a peak day and that the gas would be used for space heating and as process gas. Columbia asserts further that the industrial tap would require construction by COH of 8.9 miles of 6–inch pipeline at an estimated cost of $77,000. Columbia states that the one residential tap for Mountaineer would be located in Wetzel, West Virginia, and would be utilized to deliver 150 Mcf of gas per year and 1.5 Mcf on a peak day. It is further stated that the gas provided through the additional delivery points would be within Columbia's currently authorized level of sales and would have no adverse impact on Columbia's other existing customers.

Comment date: April 18, 1985, in accordance with Standard Pargraph G at the end of this notice.

5. Columbia Gulf Transmission Co.

[Docket No. CP85–285–000]

March 5, 1985.

Take notice that on February 14, 1985, Columbia Gulf Transmission Company (Applicant), P.O. Box 683, Houston, Texas 77001, filed in Docket No. CP85–281–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessary authorizing the transportation of natural gas for Natural Gas Pipeline Company of America (Natural), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to transport a contract-demand volume of 6,000 Mcf per day of Natural's gas produced from West Cameron Block 509 and 510, offshore Louisiana, as well as any excess volumes Natural may request Applicant to transport, such excess volumes to be transported on a best-efforts, interruptible basis.

Applicant states it would transport the gas from a platform in West Cameron Block 531, offshore Lousiana, and would redeliver equivalent volumes to Natural at an interconnection of Applicant's and Stringray Pipeline Company's facilities in West Cameron Block 510, offshore Louisiana.

Applicant further states that Natural would pay Applicant a contract demand charge of 64.0 cents per Mcf of gas, and 2.09 cents per Mcf for excess volumes of gas received for transportation at the point of receipt. Transportation would continue for a period of three years from the the date of initial delivery and yearly thereafter unless terminated by either party.

Comment date: March 26, 1985, in accordance with Standard Pargraph F at the end of this notice.

6. El Paso Natural Gas Co.

[Docket No. CP85–302–000]

March 5, 1985.

Take notice that on February 21, 1985, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP85–302–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing El Paso to exchange nature gas with Amoco Production Company (Amoco), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The application states that El Paso and Amoco are parties to two residue gas purchase agreements, each dated October 1, 1949, as amended (Levelland residue agreements), which initially provided, *intner alia*, for the sale by Amoco's Levelland gasoline plant (Levelland plant) located in Hockley County, Texas, of all volumes of surplus residue gas attributable to Amoco's natural gas production in the vicinity of said plant.

Additionally, it is explanined, E! Paso and Amoco are parties to three residue gas purchase agreements, each dated February 20, 1949, as amended (Slaughter residue agreements) which provide, *inter alia*, for the sale by Amoco and the purchase by El Paso, at the outlet of Amoco's Slaughter plant located in Hockley County, Texas, of all volume of surplus residue gas attributable to Amoco's natural gas production in the vicinity of said plant.

El Paso has been advised that Amoco has evaluated the available natural gas production in the vicinity of its Levelland and Slaughter plants together with the economic justification of consolidating the operations of both the Levelland and Slaughter plants at one site. It is indicated that based on this evaluation, Amoco has elected to consolidate its processing activities at its Slaughter plant. Amoco has further advised El Paso that, from time to time,

the processing and liquids extraction facilities at its Slaughter plant may be out of service for brief periods due to scheduled and unscheduled maintenance and that a source of emergency fuel gas would be necessary to continue to resume processing and liquids extraction operations at said plant. Therefore, in order that Amoco may have a constant and reliable supply of pipline quality natural gas available for use as plant fuel and, further, in order to ensure the continuity of the surplus gas supply sold from the Slaughter plant by Amoco to El Paso for use by El Paso on its interstate transmission system, El Paso states that it and Amoco have entered into the emergency fuel gas agreement between the parties dated November 27, 1984, wherein El Paso has agreed to make available to Amoco, as an emergency source of fuel gas, up to to 15,000 Mcf of natural gas per day at El Paso's existing meter station located at the outlet of Amoco's Slaughter plant plant located in Hockley County, Texas. It is explained that in exchange therefor, Amoco has agreed to deliver to El Paso quantities therefor, Amoco has agreed to deliver to El Paso quantities of surplus residue gas, equivalent on a thermal basis, to the quantities of natural gas delivered by El Paso to Amoco. El Paso states that no new facilities would be required in order to effectuate the exchange arrangement as contemplated.

El Paso also states that upon receipt of the requested certificate authorization El Paso and Amoco would each file with the Commission a special rate schedule comprised of the emergency fuel gas agreement dated November 27, 1984.

Comment date: March 26, 1985, in accordance with Standard Paragraph F at the end of this notice.

7. Northwest Pipeline Corp.

[Docket No. CP85-211-000]

March 4, 1985.

Take notice that on January 8, 1985, Northwest Pipeline Corporation (Applicant), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP85-211-000 an application, as supplemented February 11, 1985, pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the exchange of natural gas with Colorado Interstate Gas Company (CIG), all as more fully set forth in the application, as supplemented, which is on file with the Commission and open to public inspection.

It is stated that the Applicant proposes to exchange up to 25,000 Mcf of natural gas per day with CIG in accordance with a gas exchange agreement (exchange agreement) dated August 2, 1984. It is further stated that pursuant to the exchange agreement, Applicant and CIG have agreed to exchange certain volumes of natural gas which each has acquired in areas remote from its own pipeline system but accessible to the pipeline system of the other. Applicant avers that it has acquired supplies of natural gas located in Oklahoma which it has arranged to have transported by ANR Pipeline Company and delivered to CIG at a point of interconnection in Beaver County, Oklahoma. In exchange for these volumes, CIG would then deliver thermally equivalent volumes to Applicant at existing delivery points located in Sweetwater County, Wyoming, and Uintah County, Utah.

It is stated that during the four-month period from November 1 of each year through February 28 of the succeeding year, the exchange agreement provides CIG the option of temporarily retaining up to 50 percent of the volume of gas tendered by Applicant for exchange. It is further stated that any such temporarily retained exchange volumes would be redelivered to Applicant by CIG during the subsequent months of March through October.

Applicant avers that it would benefit from this proposed exchange service by gaining inexpensive access to supplies of domestic natural gas remotely located from its existing system and that CIG would benefit by receiving the exchange volumes in its central major market area thus reducing the need to transport system supplies to that area and by having the option of deferring the exchange redelivery of up to 50 percent of the exchange volumes received during its period of greatest customer demands. It is proposed that the exchange service would be provided for an initial term of ten years from the date of commencement and year to year thereafter until terminated by either party.

It is avered that since the proposed exchange service is mutually beneficial, both Applicant and CIG have agreed to provide their respective service free of charge.

Comment date: March 25, 1985, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs:

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestant parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Standard Paragaraph:

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, filed pursuant to Rule 214 of the Commission's procedural rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-5786 Filed 3-11-85; 8:45 am]

BILLING CODE 6717-01

[Docket No. TA85-2-31-000 and TA85-2-31-001]

Arkla Energy Resources, a Division of Arkla, Inc., Filing of Revised Tariff Sheets Reflecting Tariff Adjustment

March 7, 1985.

Take notice that on March 1, 1985 Arkla Energy Resources (AER), a division of Arkla, Inc., formerly known as Arkansas Louisiana Gas Company, tendered for filing the following tariff sheets:

Rate Schedule G-2	Rate Schedule X-26
39th Revised Sheet No. 4	38th Revised Sheet No. 185
11th Revised Sheet No. 4A	11th Revised Sheet No. 185A

AER states that the purpose of the above described tariff sheets is to (1) reflect the average projected cost of purchased gas for the six month period commencing April 1, 1985 (2) recover or refund accumulated deferred purchased gas costs as of December 31, 1984 (3) set forth the reduced PGA and estimate incremental pricing surcharges to be billed during the PGA period and, (4) reflect the crediting to Account 191 of the jurisdictional portion of transportation revenue received by AER in excess of one cent per MMBTU plus five cents per MMBTU under its Ecoshare Transportation Program as of December 31, 1984.

AER furnishes with this filing a copy of AER's intracompany operating statement required to be furnished with this filing under § 154.38(d)(4)(v) of the Commission's rules and regulations.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before March 15, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-5863 Filed 3-11-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ID-2157-000]

Charles S. Sanford, Jr.; Application

March 6, 1985.

Take notice that on February 21, 1985 Charles S. Sanford, Jr. filed an application pursuant to section 305(b) of the Federal Power Act to hold the following positions:

President and Director, Bankers Trust New York Corporation
President and Director, Bankers Trust Company
Director, Baltimore Gas and Electric Company

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426 in accordance with Rules 211 and 214 of The Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before March 20, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-5874 Filed 3-11-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-106-000]

Lawrenceburg Gas Transmission Corp.; Proposed Change in FERC Gas Tariff

March 7, 1985.

Take notice that on February 27, 1985, Lawrenceburg Gas Transmission Corporation tendered for filing two (2) revised gas tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1 both of which are dated as issued on February 28, 1985, proposed to become effective February 28, 1985, and identified as follows:

Thirty-sixth Revised Sheet No. 4
Fourth Revised Sheet No. 4A

Lawrenceburg states that its revised tariff sheets and accompanying cost of service study were filed to comply with § 154.38(d)(4)(vi) of the Commission's Regulations. Said filing was made in order to restate Lawrenceburg's base tariff rates as a condition for its continued use of its purchased Gas Adjustment Provision.

Lawrenceburg states that copies of its filing were served upon its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with § 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 15, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-5864 Filed 3-11-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-4-37-000 and TA85-4-37-001]

Northwest Pipeline Corp.; Proposed Change in FERC Gas Tariff

March 7, 1985.

Take notice that on March 1, 1985 Northwest Pipeline Corporation ("Northwest") submitted for filing, to be a part of its FERC Gas Tariff, First Revised Volume No. 1, and Original Volume No. 2 the following tariff sheets:

First Revised Volume No. 1
Twelfth Revised Sheet No. 10-A
Third Revised Sheet No. 81
First Revised Sheet No. 83
Original Volume No. 2
Eleventh Revised Sheet No. 2
Sixth Sheet No. 2-B

Northwest states the purpose of the filing is to reflect a new Fuel Reimbursement Percentage to be effective April 1, 1985 based on the calendar year ending December 31, 1984 pursuant to the provisions contained in Northwest's FERC Gas Tariff, Volumes 1 and 2.

The proposed effective date of the tendered tariff sheets is April 1, 1985.

A copy of this filing has been served on Pacific Interstate Transmission Company, Northwest's jurisdictional customers, and affected state regulatory commissions.

Any persons desiring to be heard or protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825

North Capitol Street, N.E. Washington D.C. 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 15, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-5865 Filed 3-11-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-107-000]

Pacific Interstate Transmission Co.; Proposed Changes in FERC Gas Tariff Pursuant to Purchased Gas Cost Adjustment Provisions (Base Tariff Rate)

March 7, 1985.

Take notice that Pacific Interstate Transmission Company (Pacific Interstate) on February 28, 1985 tendered for filing as part of its FERC Gas Tariff, Original Volume No. 2, the following sheet: Twenty-seventh Revised Sheet No. 4.

Pacific Interstate states that this tariff sheet is issued pursuant to the provisions of the Natural Gas Act and § 154.38(d)(4)(vi)(a) and § 154.63 of the Commission's Regulations which require natural gas pipeline companies with PGA clauses in their tariffs to file a tariff sheet(s) restating their rates to establish a new Base Tariff Rate upon the expiration of 36 months after the effective date of the PGA clause.

Pacific Interstate states that the above tendered tariff sheet reflects no change in rates from the tariff sheets filed concurrently on February 28, 1985 for the semi-annual PGA rate adjustment to be effective April 1, 1985. Furthermore, Pacific Interstate requests that the 269.69¢ per decatherm rate filed as the semi-annual April 1, 1985 PGA rate be also accepted as the new Base Tariff Rate effective April 2, 1985.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Washington, D.C. 20426, in accordance with §§ 385.214 and 385.211 of the Commission Rules of Practice and Procedure. All such motions or protests should be filed on or before March 15, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-5866 Filed 3-11-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-2-39-000 and TA85-2-39-001]

Pacific Interstate Transmission Co., Proposed Changes in FERC Gas Tariff Pursuant to Purchased Gas Cost Adjustment Provision

March 7, 1985.

Take notice that Pacific Interstate Transmission Company (Pacific Interstate) on February 28, 1985, tendered for filing as part of its FERC Gas Tariff, original Volume No. 2, the following sheets: Twenty-sixth Revised Sheet No. 4, Tenth Revised Sheet No. 4-A, Twenty-second Revised Sheet No. 5.

Pacific Interstate states that these tariff sheets are issued pursuant to Pacific Interstate's Purchased Gas Cost Adjustment (PGCA) Provision and Incremental Pricing Provision as set forth in Sections 16 and 17, respectively, of the General Terms and Conditions of its FERC Gas Tariff, Original Volume No. 2. The proposed effective date of these tendered tariff sheets and the rates thereon is April 1, 1985.

Pacific Interstate also states that the above-tendered tariff sheets reflect a proposed April 1, 1985 Pacific Interstate Rate Schedule S-G-1 commodity rate of 271.75¢ per decatherm, an increase of 15.53¢ per decatherm from the 256.22¢ per decatherm rate effective October 1, 1984, the date of the last S-G-1 commodity rate change, and that such increase reflects a current Gas Cost Adjustment and a change in the Surcharge Adjustment.

Pacific Interstate states that the current Gas Cost Adjustment is based on an annualized gas cost increase of $1,081 and that the Surcharge Adjustment is designed to collect, over a six-month period beginning April 1, 1985 an amount of $4,389.90, which is the amount of Pacific Interstate's Unrecovered Purchased Gas Cost account at December 31, 1984. Furthermore, Pacific Interstate states that there is no incremental pricing surcharge adjustment applicable to this filing, since its only customer has no surcharge absorption capability.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Washington, D.C. 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rule of Practice and Procedure. All such motions or protests should be filed on or before March 15, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-5867 Filed 3-11-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-2-62-000 and TA85-2-62-001]

Pacific Offshore Pipeline Co.; Proposed Changes in FERC Gas Tariff Pursuant to Purchased Gas Cost Adjustment Provision

March 7, 1985.

Take notice that Pacific Offshore Pipeline Company (Pacific Offshore) on February 28, 1985, tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following sheet: Third Revised Sheet No. 4.

Pacific Offshore states that this tariff sheet is issued pursuant to Pacific Offshore's Purchased Gas Cost Adjustment (PGCA) Provision as set forth in sections 14 of the General Terms and Conditions of its FERC Gas Tariff, Original Volume No. 1. The proposed effective date of this tendered tariff sheet and the rates thereon is April 1, 1985.

Pacific Offshore also states that the above-tendered tariff sheets reflect a proposed April 1, 1985 Pacific Offshore Rate Schedule G-1 commodity rate of $2.023 per decatherm, a decrease of $.058 per decatherm from the $2.081 per decatherm rate effective October 1, 1984, the date of the revised commodity rate, and that such decrease reflects a current Gas Cost Adjustment and a change in the Surcharge Adjustment.

Pacific Offshore states that the current Gas Cost Adjustment is based on an annualized gas cost decrease of $1,234,218 and that the Surcharge Adjustment is designed to collect, over a six-month period beginning April 1, 1985 an amount of $272,492.44, which is the amount of Pacific Offshore's

Unrecovered Purchased Gas Cost account at December 31, 1984.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Washington, D.C. 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rule of Practice and Procedure. All such motions or protests should be filed on or before March 15, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-5868 Filed 3-11-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-515-001]

Resources Extraction and Processing Co.; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

March 6, 1985.

On February 28, 1985, Resources Extraction and Processing Company (Applicant), 13131 Champions Drive, Suite 203, Houston, Texas 77069, submitted for filing an amendment to its application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. The amended application seeks instead certification as a small power production facility. No determination has been made that the submittal constitutes a complete filing.

The facility currently processes natural gas to remove recoverable hydrocarbons entrained in the gas. This is accomplished by a cryogenic a turbo-expander. It is proposed to capture the energy released from this expansion process and use it to drive an electric generator with a rated capacity of 622f kW. No supplementary filing of natural gas or oil is involved in this process.

Any person desiring to be heard or to protest to the granting of qualifying status should file a petition to intervene or protest with the Federal Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 20 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-5875 Filed 3-11-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-320-000]

Southern California Edison Co.; Filing

March 6, 1985.

The filing Company submits the following:

Take notice that on February 25, 1985, Southern California Edison Company (Edison) tendered for filing a Notice of Cancellation of Rate Schedule FPC No. 125 between Edison and Portland General Electric Company.

Edison requests waiver of the Commission's notice requirements to allow an effective date of February 14, 1985.

According to Edison copies of the filing were served on Portland General Electric Company.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 20, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-5876 Filed 3-11-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP84-108-003]

Texas Eastern Transmission Corp., Proposed Changes in FERC Gas Tariff

March 7, 1985.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on February 28, 1985 tendered for filing as part of its FERC Gas Tariff, Original Volume No. 2, the following sheets:

Substitute Eighteenth Revised Sheet No. 235

Substitute Revised Tenth Revised Sheet No. 241

Substitute Nineteenth Revised Sheet No. 322

On February 7, 1985, Texas Eastern moved to place into effect on February 13, 1985, in accordance with the Commission's September 12, 1984 order issued in Docket No. RP84-108, the primary set of revised tariff sheets reflecting the Seaboard method of cost classification and adjusted for changes made in accordance with the Commission's order, changes made pursuant to Texas Eastern's FERC gas tariff and Texas Eastern's most recent PGA filing.

It has since been determined that Texas Eastern, in preparation of its motion filing on February 7, 1985, made an arithmatic error in its determination of the rate under Rate Schedule X-28 and utilized the rate from the alternate tariff sheet filed in the RP84-108 rate case instead of the primary tariff sheet for Rate Schedule X-43.

The sole purpose of this filing is to reflect the appropriate rates for such rate schedules which were misrepresented in the February 7, 1985 motion filing.

A copy of this filing is being served on the parties in these procedings.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 15, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-5869 Filed 3-11-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-1-18-002]

Texas Gas Transmission Corp; Filing or Revised Tariff Sheet

March 7, 1985.

Take notice that on *February 28, 1985* Texas Gas Transmission Corporation (Texas Gas) tendered for filing Substitute Forty-Eighth Revised Sheet No. 7 to its FPC Gas Tariff, Third Revised Volume No. 1.

The revised tariff sheet is being filed to reflect rate revisions from United Gas Pipe Line Co. and Tennessee Gas Pipeline Co. pursuant to Ordering Paragraph (D) of the Commission's Order issued January 31, 1985, in Docket Nos. TA85-1-18-000 and TA85-1-18-001.

Copies of the revised tariff sheet are being mailed to Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with Rules 2.11 and 2.14 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before March 15, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-5870 Filed 3-11-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-2-29-002]

Transcontinental Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

March 7, 1985.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) on February 26, 1985, tendered for filing Substitute Thirty-Third Revised Sheet No. 12 and Substitute Thirty-Fourth Revised Sheet No. 12 to its FERC Gas Tariff Second Revised Volume No. 1. The proposed effective dates of these sheets are February 13, 1985 and March 1, 1985, respectively. The revised tariff sheets reflect a revision to the storage "tracking" rate increase filed on January 9, 1985 in accordance with Section 26 of Transco's General Terms and Conditions. Section 26 provides for, among other things, changes in rates for storage service rendered under Transco's Rate Schedule S-2 to reflect changes in charges by Texas Eastern Transmission Corporation (Texas Eastern) under Texas Eastern's Rate Schedule X-28.

As a result of Texas Eastern's Motion filing in Docket No. RP84-108, proposed effective February 13, 1985 Transco will decrease its demand charge and demand charge adjustment in Rate Schedule S-2 in order to flow through to Transco's customers a decrease of approximately $58,000 in Texas Eastern's X-28 demand charge from the amount included in Transco's filing of January 9, 1985.

Transco states that copies of the filing are being mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rule 211 and Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before March 15, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-5871 Filed 3-11-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 7933-001]

Warren Hydro Partners; Surrender of Preliminary Permit

March 7, 1985.

Take notice that Warren Hydro Partners, Permittee for the proposed Caesar Creek Dam Project No. 7933, has requested that its preliminary permit be terminated. The preliminary permit was issued on August 8, 1984, and would have expired on January 31, 1986. The project would have been located on Caesar Creek in Warren County, Ohio. The Permittee states that a preliminary study found that the project would not be economically feasible to develop at this time.

The Permittee filed the request on February 1, 1985, and the preliminary permit for Project No. 7933 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-5872 Filed 3-11-85; 8:45 am]

BILLING CODE 6717-01-M

Blanket Notice of Determination Under the Natural Gas Policy Act for OCS Leases Issued on or After April 20, 1977

Issued March 6, 1985.

On September 27, 1983, the Federal Energy Regulatory Commission (Commission) issued Order No. 336 under Docket Nos. RM83-3 and RM81-12 (48 FR 44,508 September 29, 1983). In that order, the Commission amended its regulations relating to filing requirements for well category applications under the Natural Gas Policy Act of 1978 (NGPA). The determination process for natural gas produced from a new lease, i.e., a lease entered into on or after April 20, 1977, on the Outer Continental Shelf (OCS), and qualifying as new natural gas under Section 102 of the NGPA, was amended in two respects. First, the Commission eliminated the requirement that a determination be made for each well producing gas from a new OCS lease. Second, in lieu of filing an application for each well, the Commission now permits the grant of a new OCS lease to constitute the requisite jurisdictional agency determination that the gas is produced from a new OCS lease.

Under the new procedures, the U.S. Department of the Interior, Minerals Management Service (MMS), must file within 60 days of the grant of the lease a notice of determination which includes the lease number, the area and block number, and the date on which the OCS lease was issued by the Secretary of the Interior. This determination is subject to Commission review in the same manner as other jurisdictional agency determinations.

On January 14, 1985, the Commission received notice from MMS, Alaska OCS Region, that 227 leases were issued as a result of Sale 87, Diapir Field, on August 22, 1984. The leases include lease

numbers OCS–Y–726 through OCS–Y–835, OCS–Y–837 through OCS–Y–950 and OCS–Y–952 through OCS–Y–956. The effective date for these is listed in the following table:

Sale	Lease No. OCS–Y	Effective date
87	726–733	11–1–84
	734	10–1–84
	735–744	11–1–84
	745	10–1–84
	746–749	11–1–84
	750	10–1–84
	751–785	11–1–84
	786–787	10–1–84
	788–790	11–1–84
	791	10–1–84
	792–799	11–1–84
	800	10–1–84
	801	11–1–84
	802–806	10–1–84
	807–817	11–1–84
	818	10–1–84
	819–835	11–1–84
	836	Rejected
	837–841	11–1–84
	842	10–1–84
	843	11–1–84
	844	10–1–84
	845–848	11–1–84
	849	10–1–84
	850–851	11–1–84
	852–853	10–1–84
	854–863	11–1–84
	864	10–1–84
	865–867	11–1–84
	868–869	10–1–84
	870	11–1–84
	871–872	10–1–84
	873–878	11–1–84
	879–881	10–1–84
	882–886	11–1–84
	887–888	10–1–84
	889–896	11–1–84
	899	10–1–84
	900–920	11–1–84
	921	10–1–84
	922–950	11–1–84
	952–954	11–1–84

The list of OCS leases submitted by the MMS for this sale is available for inspection at the Commission's Division of Public Information, Room 1000, 825 North Capitol St., Washington, D.C. Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 275.204, file a protest with the Commission within twenty days after this notice is issued by the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–5873 Filed 3–11–85; 8:45 am]

BILLING CODE 6717–01–M

Energy Research Advisory Board; Demand Subpanel of the Energy R&D Strategy Panel; Open Meeting

Notice is hereby given of the following meeting:

Name: Demand Subpanel of the Energy R&D Strategy Panel of the Energy Research Advisory Board.

Date & Time: April 2, 1985—8:30 a.m.–5:00 p.m.

Place: The Westin Hotel, Streeter Room, 6100 River Road, Rosemont, IL 60018.

Contact: William L. Woodard, U.S. Department of Energy, Office of Energy Research, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 252–8933.

Purpose of the Parent Board: To advise the Department of Energy on the overall research and development conducted in DOE and to provide long-range guidance in these areas to the Department. The Demand Subpanel is a subgroup of the Energy Research Advisory Board. The Board has been charged with overall responsibility for assessing the proper scope and balance of energy R&D programs which are expected to have a payoff around 2020. The Subpanel's specific charge is to assess what will be needed in that timeframe to bring research results to the marketplace.

Tentative Agenda

- Status of Report on Staff Actions.
- Discussion of Draft Report Section.
- Future Meeting Plans.
- Public Comment (10 minute rule).

Public Participation: The meeting is open to the public. Written statements may be filed with the Subpanel either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact William Woodward at the address or telephone number listed above. Requests must be received 5 days prior to meeting and reasonable provisions will be made to include the presentation on the agenda. The Chairperson of the Subpanel is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: Available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on March 4, 1985.

Charles E. Cathey,

Deputy Director, Science and Technology Affairs Staff, Office of Energy Research.

[FR Doc. 85–5812 Filed 3–11–85; 8:45 am]

BILLING CODE 6450–01–M

Energy Research Advisory Board; Supply Subpanel of the Energy R&D Strategy Panel, Open Meeting

Notice is hereby given of the following meeting:

Name: Supply Subpanel of the Energy R&D Strategy Panel of the Energy Research Advisory Board (ERAB).

Date & Time: March 29, 1985—10:00 a.m.–5:00 p.m.

Place: U.S. Department of Energy, 1000 Independence Avenue, SW., Room 4A–110, Washington, DC 20585.

Contact: Charles E. Cathey, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 252–5444.

Purpose of the Parent Board: To advise the Department of Energy on the overall research and development conducted in DOE and to provide long-range guidance in these areas to the Department.

Purpose of the Panel: To examine the future energy needs of the Nation and develop judgments on the essential ingredients of a balanced energy R&D effort. The Panel has established Supply, Demand, Research and Infrastructure Subpanels to assist in carrying out its assignments.

Tentative Agenda

- Discussion of first working draft of Supply Subpanel Report.
- Public Comment (10 minute rule).

Public Participation: The meeting is open to the public. Written statements may be filed with the Panel either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Charles E. Cathey at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda. The Chairperson of the Subpanel is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: Available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on March 4, 1985.

Charles E. Cathey,

Deputy Director, Science and Technology Affairs Staff, Office of Energy Research.

[FR Doc. 85–5811 Filed 3–11–85; 8:45 am]

BILLING CODE 6450–01–M

Office of Hearings and Appeals

Notice of Issuance of Decisions and Orders; Week of January 14 Through January 18, 1985

During the week of January 14 through January 18, 1985, the decisions and

orders summarized below were issued with respect to applications for relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Request for Exception

J & M Distributing, 1/14/85; HEE–0101

J & M Distributing filed an Application for Exception from the provisions of the EIA reporting requirements in which the firm sought to be relieved of the obligation to prepare Form EIA–782B, entitled "Reseller/Retailers' Monthly Petroleum Product Sales Report." In considering the request, the DOE found that the one and one-half hours per month that the firm spent preparing the form did not place an excessive time restraint on the firm. The DOE therefore found that the firm was not more adversely affected by the reporting requirement than other firms of its size. Accordingly, exception relief was denied.

Motion for Discovery

Atlantic Richfield Company, 1/17/85; HRD–0226

The Atlantic Richfield Company (Arco) filed a Motion for Discovery in connection with its Statement of Objections to a Proposed Remedial Order (PRO) which was issued to it by the Economic Regulatory Administration. In part, Arco sought contemporaneous construction discovery with respect to the general allocation rule for general refinery products (GRPs) and the Special Propane Rule. Specifically, Arco requested discovery on the issue of whether the Special Propane Rule permitted a firm to recover costs that had not been incurred at the time of recovery. Arco also sought various documents concerning ERA's decision to issue the PRO.

In considering the Motion, the DOE found that under the plain meaning of the refiner price rule, a firm could not recover costs that had not been incurred as of the relevant month of measurement, i.e., the month preceding the pricing month. In rejecting the firm's contentions with respect to the meaning of the Special Propane Rule, the DOE found that the Rule was merely a limit on the refiner's right, under the general allocation rule for GRPs, to disproportionately apportion increased costs among products in the GRP group. The DOE found that the Special Propane Rule established a yearly limitation on the amount of GRP costs that could be allocated to propane and that the Rule did not affect the monthly flexibility afforded refiners by the general GRP allocation rule, except to the extent that this flexibility was circumscribed by the Rule's annual limitation. Since no ambiguity in the Rule as found, the DOE determined that contemporaneous construction discovery was not warranted. With respect to Arco's request for documents concerning the issuance of the PRO, the DOE found that there was no basis for Arco's contention that it needed further material in order to challenge the PRO. Accordingly, Arco's Motion for Discovery was denied.

Supplemental Order

Jack W. Grigsby, 1/14/85; HCX–0087

The Economic Regulatory Administration filed an Application requesting modification of the restitutionary provisions of a Remedial Order issued to Jack W. Grigsby. The RO found that Grigsby should be required to refund overcharges to four identified purchasers of crude oil. In considering the Application, the DOE pointed out that as a result of the decontrol of crude oil and petroleum products, firms were no longer obligated by regulation to pass through to their purchasers any refunds they received. The DOE found that since it had not been established that the identified purchasers were unable to pass through the Grigsby overcharges to their own customers, these four purchasers were not necessarily entitled to the full refund set forth in the RO. Accordingly, the DOE determined that a modification of the refund provisions of the RO was warranted, and that the implementation of Subpart V proceedings to identify persons entitled to a refund as a result of the Grigsby overcharge was appropriate. The Application for Modification was therefore granted.

Implementation of Special Refund Procedures

Eddy Refining Company/Key Oil Company, 1/18/85; HEF–0206

The Office of Hearings and Appeals issued a final Decision and Order setting forth procedures to be used in filing applications for refund from the settlement funds obtained as the result of a consent order that the DOE entered into with Eddy Refining Company and Key Oil Company. Under the terms of the consent order, the firms agreed to remit $244,000 to the DOE. The funds will be available to customers of the two firms who purchased refined petroleum products from Key or Eddy during the period October 1, 1973 through January 28, 1981. Specific information to be included in refund applications is discussed in the decision.

Union Texas Petroleum Corporation, 1/18/85; HEF–0009, HEF–0224

The Office of Hearings and Appeals issued a final Decision and Order setting forth procedures to be used in filing applications for refund for a portion of the settlement funds obtained as the result of two consent orders which the DOE entered into with Union Texas Petroleum Corporation. The Decision established two separate special refund proceedings, reflecting the scope of the underlying consent orders. One of the consent orders covered sales of certain UTP refined petroleum products during a limited period of time to specified classes of purchasers. The other consent order was global, and covered virtually all other UTP activities related to the federal petroleum price and allocation regulations for the period January 1, 1973 through January 28, 1981. The funds made available by the limited and global consent orders were $1,325,000 and $1,900,000, respectively. The Decision discussed the specific information to be included in refund applications in the two proceedings.

Vickers Energy Corporation, 1/16/85; HQF–0487

The Office of Hearings and Appeals (OHA) established procedures for distributing the $2,638,217 in consent order funds remitted to the DOE by Vickers Energy Corporation in settlement of alleged regulatory violations involving Vickers' motor gasoline sales. These funds remained after the conclusion of the first stage of the refund proceeding. The OHA found that since the persons injured by Vickers' sales of motor gasoline were in a limited regional area, encompassing 16 states, the funds should be channelled to those state governments on a proportionate basis. These state governments could then efficiently develop plans to provide restitution to injured consumers of Vickers motor gasoline. The DOE determined that upon submission of an appropriate plan, an eligible state would receive its share of the Vickers fund.

White Petroleum, Inc., 1/15/85; HEF–0196

The Office of Hearings and Appeals issued a final Decision and Order setting forth procedures to be used in filing applications for refund from the settlement fund of $68,627.45 plus interest, obtained under a consent order with White Petroleum, Inc. The OHA found that the funds should generally be disbursed to claimants who demonstrate that they were injured as a result of their purchases of motor gasoline, No. 2 fuel oil or No. 2 diesel fuel from White during the period November 1973 to April 1974. Specific information to be included in refund applications was discussed in the decision.

Conoco, Inc./Thrift Marts, Inc., RF34–0004; Dynamics Industries, Inc., 1/16/85; RF34–0005

Thrift Marts, Inc. and Dynamics Industries, Inc. filed Motions for Reconsideration requesting that the DOE reevaluate a prior determination involving their requests for refunds based on their purchases of gasoline from Foremost Petroleum Company and M&A Petroleum Company. That determination, which limited the firms' refunds to the threshold purchase level of 50,000 gallons per month after June 15, 1973, was based on the fact that the firms had failed to submit sufficient evidence establishing injury beyond the threshold level. In considering the firms' motions, the DOE found that new information documented the firms' claims that they had paid prices for product which significantly exceeded average prices in their market areas. Accordingly, the DOE found that Thrift Marts was entitled to receive an additional $68,386 and Dynamics an additional $64,803, based on the total volumes of their M&A and Foremost purchases.

Standard Oil Company (Indiana)/J.J. Hewell & Son, Inc., 1/16/85; RF21–12237, RF21–12238

The DOE issued a Decision and Order

concerning two Applications for Refund filed by J.J. Hewell & Son, Inc., a wholesaler of Amoco motor gasoline and a reseller of Amoco middle distillates. The firm elected to apply for a refund based upon the presumption of injury and the formulae outlined in *Office of Special Counsel*, 10 DOE ¶ 85,048 (1982). In considering these applications, the DOE concluded that Hewell should receive refunds based on the total volumes of its Amoco motor gasoline and middle distillate purchases. The refunds granted in this proceeding total $13,829.

Dismissals

The following submissions were dismissed:

Name	Case No
Action Gas, Inc	RF67-2
Independent Gas Co	RF67-4
Action Supply Company	RF47-13
Saxon Oil Company	HRO-0214
	HRD-0224
State of Texas	HRD-0187
Do	HRD-0194
Do	HRD-0197

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585. Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: March 6, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals

[FR Doc. 85-5791 Filed 3-11-85; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-66118; FRL-2784-6]

Certain Pesticide Products; Intent To Cancel Regulations

Corrections

In FR Doc. 85-4630 beginning on page 7958 in the issue of Wednesday, February 27, 1985, make the following corrections:

1. On page 7959, in the table, in the last column, entitled "Date registered", in the twenty-third line "Sept. 5, 1954" should read "Sept. 4, 1974".

2. On page 7960, in the first column, in the fourth paragraph, in the fourth line "[OPP-666118" should read "[OPP-66118]".

BILLING CODE 1505-01-M

[OPP-30093; PH-FRL 2782-8]

Compound 1080; Availability and Request for Comments on Data in Support of Application for Pesticide Product Registration

Correction

In FR Doc. 85-4357 beginning on page 7219 in the issue of Thursday, February 21, 1985, the docket line should have appeared as it does in the heading of this document.

BILLING CODE 1505-01

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511.

Copies of the submissions are available from Jerry Cowden, Federal Communication Commission, (202) 632-7513. Persons wishing to comment on these information collections should contact David Reed, Office of Management and Budget, Room 3235 NEOB, Washington, D.C. 20503, (202) 395-7231.

OMB Number: 3060-0316
Title: Section 76.305, Records to be maintained locally by cable television system operators for public inspection
Action: Revision
Respondents: Cable television system operators
Estimated Annual Burden: 3,200 Recordkeepers; 41,600 Hours

OMB Number: None
Title: State certification of detariffing procedures (Third Report and Order in CC Docket No. 81-893)
Action: New collection
Respondents: State governments
Estimated Annual Burden: 50 Responses; 350 Hours

Description: States must certify to the Commission that they have established mechanisms to deregulate customer premises equipment owned by independent telephone companies and tariffed at the state level.

William J. Tricarico,

Secretary, Federal Communications Commission.

March 6, 1985.

[FR Doc. 85-5787 Filed 3-11-85; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

[Docket No. 85-5]

Failure of Non-Vessel-Operating Common Carriers in the Foreign Commerce of the United States To Comply with the Anti-Rebate Certification Filing Requirement; Order to Show Cause

Section 15(b) of the Shipping Act of 1984 (1984 Act) (46 U.S.C. app. § 1714) requires the certification of company policies and efforts to combat rebating in the foreign commerce of the United States.[1] The 1984 Act extended the anti-rebate certification provisions of existing law to non-vessel-operating common carriers (NVOCC's).

On September 20, 1984, the Commission published in the **Federal Register** (49 FR 36856) a Final Rule in Docket No. 84-25, *Certification of Company Policies and Efforts to Combat Rebating in the Foreign Commerce of the United States*, implementing section 15(b) (46 CFR Part 582). The Final Rule, *inter alia*, required NVOCC's to file initial certifications of company policies and efforts to combat rebating in the foreign commerce of the United States, by December 15, 1984.

Extensive efforts have been made to publicize the application of the anti-rebate certification requirements to NVOCC's On November 1, 1984, the Commission issued News Release 84-55; entitled "NVO Deadline for FMC Certificates." The News Release reminded all NVOCC's that December 15, 1984 was the deadline for their chief executive officers to certify to the Commission their company policies against illegal rebates in the U.S. foreign commerce and noted that failure to make the certification on time carried a penalty up to $5,000.00 per day.

[1] Section 15(b) provides:

(b) Certification.—The Commission shall require the chief executive officer of each common carrier and, to the extent it deems feasible, may require any shipper, shippers' association, marine terminal operator, ocean freight forwarder, or broker to file a periodic written certification made under oath with the Commission attesting to—

(1) a policy prohibiting the payment, solicitation, or receipt of any rebate that is unlawful under the provisions of this Act;

(2) the fact that this policy has been promulgated recently to each owner, officer, employee, and agent thereof;

(3) the details of the efforts made within the company or otherwise to prevent or correct illegal rebating; and

(4) a policy of full cooperation with the Commission in its efforts to end those illegal practices.

Failure to file a certification shall result in a civil penalty of not more than $5,000 for each day the violation continues.

In addition, the Commission's Director, Bureau of Tariffs issued a Notice, dated November 16, 1984, addressing the filing of anti-rebate certifications by NVOCC's. The Notice was mailed to every NVOCC with a tariff on file who had not already filed the required anti-rebate certification. The November 16, 1984 Notice transmitted a copy of 46 CFR Part 582.

The NVOCC's named in the Appendix to this Order have failed to file on or before December 15, 1984 the certification of company policies and efforts to combat rebating in the foreign commerce of the United States required by section 15(b) of the Shipping Act of 1984 and the regulations of the Commission promulgated pursuant thereto, 46 CFR Part 582.

Therefore, it is ordered, That the NVOCC's named in the Appendix are named respondents in this proceeding and ordered to show cause why they should not be found in violation of section 15(b) of the Shipping Act of 1984 (46 U.S.C. app. § 1714), for failure to file by December 15, 1984, the certification of company policies and efforts to combat rebating in the foreign commerce of the United States, pursuant to 46 CFR Part 582;

It is further ordered, That this proceeding, unless otherwise determined by the Commission, shall be limited to the submission of affidavits of fact and memoranda of law and replies thereto pursuant to the following schedule:

By close of business April 8, 1985, affidavits of fact and memoranda of law shall be filed by Respondents;

By close of business May 23, 1985, reply affidavits and memoranda shall be filed by the Commission's Bureau of Hearing Counsel;

By close of business June 12, 1985, all parties must file requests for evidentiary hearing, if desired, which requests must be accompanied by a statement setting forth in detail the facts to be proven or developed, their relevance to the issues in this proceeding and why such proof cannot be submitted through further affidavits;

It is further ordered, That any person having an interest and desiring to intervene in this proceeding shall file a petition for leave to intervene in accordance with Rule 72 of the Commission's Rules of Practice and Procedure (46 CFR 502.72);

It is further ordered, That all documents submitted by any party of record in this proceeding shall be directed to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, in an original and 15 copies, and that a copy also be served on the Commission's Bureau of Hearing Counsel; and

It is further ordered, That notice of this Order be published in the **Federal Register**, and that a copy of this Order be served upon each NVOCC named in the Appendix at the carrier's last known address.

By the Commission.

Bruce A. Dombrowski,

Assistant Secretary.

Appendix

Bureau of Tariffs—Non-Vessel Operating Common Carriers Who Failed To File Timely Anti-Rebate Certifications [1]

ABC International Freight, Inc., N. Blomquist, 7130 NW. 36th Avenue, Miami, FL 33147
A. Hardrodt (Pacific) Inc., 1300 Beacon Street, Suite 105, San Pedro, CA 90731
A.I.F. Services, 3979 NW. 24th Street, Miami, FL 33124
A.O.T. (Europe), P.O. Box 146, Wood Dale, IL 60191
Aegis Logistics Systems Inc., 8107 Stayton Drive, Jessup, MD 20794
Aeropac, Gonzalo A. Concha, P.O. Box 522751, Miami, FL 33152
Africa Box Line, Inc., 550 Division Street, Elizabeth, NJ 07201
Agency International Forwarding, Inc., 3979 NW. 24th Street, Miami, FL 33124
Air & Sea Pak Company, 6170 Middlebelt Road, Romulus, MI 48174
AirNaut Express Inc., 225 Broadway, New York, NY 10017
Albury's and Bethel's Freight Service, 158 East Port Road, Riviera Beach, FL 33404
Alliance Tradeships Ltd., P.O. Box 558754, Miami, FL 33155
Allround Forwarding Co., Inc., 30 East 23rd Street, New York, NY 10010
Altamirano Shipping, Inc., 110 Wilson Avenue, Newark, NJ 07105
Ambassador Overseas Shipping Corporation, P.O. Box 2097, Westfield, NJ 07090
Amercon Ocean Freight Lines, Inc., 65 Springfield Avenue, Springfield, NJ 07081
American Intermodal Services, Inc., Joseph Guarnera, Tariff Issuing Officer, 17 Battery Place—Suite 1717, New York, NY 10004
American International Consolidators, Inc., Mr. Henry Decuba, President, 5400 NW. 32nd Court, Miami, FL 33142
American International Shipping Lines, 65 Springfield Ave., Springfield, NJ 07081
American Ocean Freight Carriers Corp., 65 Springfield Ave., Springfield, NJ 07081
American Overseas Air Freight, Inc., Ronald S. Barker, Issuing Officer, 11034 South La Cienega Boulevard, Inglewood, CA 90304
American Relief Abroad, Inc., Alex Wegiel, Vice President, 250 West 57th Street, New York, NY 10107
American Kings, Inc., 1412 NW. 82nd Ave., Miami, FL 33126
Americas Caribbean, Michael A. Malarski, President, 1300 Mark Street, Elk Grove Village, IL 60007
Ancora Shipping N.V., John B. Gorsiraweg 6, Willemstad, Netherlands Antilles
Anderson Shipping Company, Inc., Owen Anderson, Issuing Officer, P.O. Box 1554, Tustin, CA 92680
Aqua Bermuda Connection, P.O. Box 272, Flatts 3, Bermuda
Astrans USA, Inc., 1180 Pratt Blvd., Elk Grove Village, IL 60067
Australia-Far East Shipping, Inc., c/o International Tariff Services, Inc., 5 Skyline Place, 5111 Leesburg Pike, Falls Church, VA 22041
B Line Shipping Company, c/o International Tariff Services, Inc., 5 Skyline Place, 5111 Leesburg Pike, Falls Church, VA 22041
B.B. Glynn International Inc., 167–37 Porter Road, Jamaica, NY 11434
Backgammon Container Line, 110 West Ocean Blvd., Suite 320, Long Beach, CA 90802
Bermuda Forwarders (U.S.A.) Incorporated, 40 Sellers Street, Kearny, NJ 07032
Bermuda Transporters, Inc., c/o World Tariff Services, Inc., 15 Exchange Place, Suite 511, Jersey City, NJ 07302
BIC Tran International, c/o International Tariff Services, Inc., 5 Skyline Place, 5111 Leesburg Pike, Falls Church, VA 22041
Bow Patmar Container Line, Inc., 1105 Caspian Avenue, Long beach, CA 90813
Bruzzone Consolidation Inc., 2 Broadway, New York, NY 10004
Buccaneer Lines, 90 West Street—Suite #1100, New York, NY 10006
Budget International Transport, 530 East 8th Street, Los Angeles, CA 90014
Bushfinch International Enterprises, P.O. Box 19861, Raleigh, NC 27619
C Line Marine Inc., 1218 Union Street, Brooklyn, NY 11225
C.A.T. Line, d.b.a. Consolidated Atlantic Transportation Lines, Inc., Wyatt I. Hendricks, President, 6716 White Stone Road, Baltimore, MD 21207
C.C. Group Line, 10920 La Cienega Boulevard, Lennox, CA 90304

[1] Anti-Rebate Certifications were due from Non-Vessel Operating Common Carriers on December 15, 1984.

C.F.M. International Shipping Corporation, Charles McCormack, President, 400 Jericho Turnpike, Jericho, NY 11753
C.S. Greene and Company, Inc., Robert E. Gecielewski, Vice President, 2803 Butterfield Road, Oak Brook, IL 60521
C.T.C. Shipping SA, Panama City, Republic of Panama
Cargo Forwarding Incorporated, L. Brazier, President, 168–01 Rockaway Blvd., Jamaica, NY 11434
Cargo Procurement Agency, Inc., 2165 Morris Ave., Union, NJ 07083
Cargo System, 5 Canton Road, Tsimshatsui, Kowloon, Hong Kong
Cargo Ven, Inc., P.O. Box 60352 AMF, Houston, TX 77205
Cari-Cargo International, Inc., 8341 NW. 66th Street, Miami, FL 33166
Caribbean Antillean Freight, Inc., 6501 NW. 36th Street, Suite 180, Miami, FL 33166
Caribbean Container Services, Inc., 605 Park Avenue, New York, NY 10021
Caribbean Freightways, Inc., 3 St. R–45 La Milagrosa, Bayamon, Puerto Rico 00619
Caribbean Shipping Services, Inc., 5119 Church Avenue, Brooklyn, NY 11203
Caribe Transport Consolidators, Inc., 7856 NW. 72nd Avenue, Miami, FL 33166
Carrier Systems Inc., Sellers and O'Brien Street, Kearny, NY 07032
Caribbean Best Services, Inc., Jose L. Vazquez, Publishing Officer, G.P.O. Box 4811, San Juan, Puerto Rico 00936
Central Freight Forwarding Inc., 3095 B. NW. 77th Avenue, Miami, FL 33122
Century Marine, Inc., James Cirami, President, 142–82 Rockaway Boulevard, Jamaica, NY 11434
CFCE, Inc., 1000 Blair road, Carteret, NJ 07008
Charter Shipping Company, Inc., 85 Orient Way, 2nd Floor, Rutherford, NJ 07070
CHT Ltd., c/o World Tariff Services, Inc., 15 Exchange Place, Suite 511, Jersey City, NJ 07302
Cleveland Freight Services International, Inc., P.O. Box A 66496, Chicago, IL 60666
CML Container Line, Inc., 2311 Lee Avenue—Unit B, South El Monte, CA 91733
Colombian Maritime Transport, Inc., P.O. Box 623, Linden, NJ 07036
Com-Tran, Inc.—Intermodal Services Division, 2124 Atlantic Avenue, North Kansas, MO 64116
Compagnie D'Affretement Et De Transport U.S.A., Inc., 74 Trinity Place, New York, New York 10006
Consolidadora Venezolana Inc., c/o International Tariff Services, Inc., 5 Skyline Place, 5111 Leesburg Pike, Falls Church, VA 22041
Consolidated Ocean Services, Inc., 8247 N.W. 66th Street, Miami, FL 33166
Container Overseas Agency, Inc., R. Meyers, President, 340 South Stiles Street, Linden, NJ 07036
Conyma Lines, Inc., 42 Broadway—Room 1915, New York, NY 10004
D&L Latin America, Inc., 16 Provincial Place, Colts Neck, NJ 07722
DAMCO Transportation (Phila) Inc., 4425 Rising Sun Ave., Philadelphia, PA 19140
Danco International, G. Larsen—Manager, 1443 W. Collins Avenue, Orange, CA 92667
Danielle International, 145 Hook Creek Blvd., Valley Stream, NY 11581
Darrell J. Sekin & Co., Inc., 1205 Royal Ln., D/FW Airport, TX 75261
Date Line Shipping Inc., 30 Vesey Street, New York, NY 10007
DATRA Container Services, 15 Park Row, Suite 1700, New York, NY 10038
Delf Shipping (Pty.) Limited, 117 Sandown Centre, Maud Street-Sandown-Sandton—Transvaal, South Africa
Denizana Shipping Unlimited, Inc., P.O. Box 016183, Miami, FL 33101
Diamond M. International Inc., Calle 151 CM No. 37, Jardines de Country Club, Carolina, Puerto Rico 00630
DLS International, Sumner Tariff Service, Inc., 1341 G Street NW., Suite 915, Washington, D.C. 20005
Dynasty Shipping International, Inc., Global Traffic Service, Inc., 201 Massachusetts Avenue NE., Suite 207, Washington, D.C. 20002
E–C International Group, 3169 Norbrook Drive, Suite 110, Memphis, TN 38116
E.D.S. International Shipping Corp., 506–528 Cozine Avenue, Brooklyn, NY 11208
Eastern Forwarding International, Inc., Jay Goldberg, President, P.O. Box 161, Avenel, NJ 07001
Eastern Freight Forwarders, Inc., 1750 Australian Avenue, Rivera Beach, FL 33404
EKB Kieserling America, Corporation, One Executive Drive, Executive Park, Fort Lee, NJ 07024
Emery Distribution Systems, Inc., d/b/a Emery Ocean Freight, Michael A. Tarczali, Manager-Pricing, Wilton, CT 06897
Eur-A-Med Shipping, Ltd., P.O. Box 2325, Savannah, GA 31498
Euramer Consolidators Corp., Marron A. Pelota, Piso 2, OFIC No. 21 Apartado 3121, Caracas, Venezuela
Euro-Con, 1585 Holcomb Bridge Road, Suite 335, Roswell, GA 30076
European Connection Inc., Orlando Gatell, Vice-President, 3161 State Road, Bensalem, PA 19020
Euorpean Express Shipping Lines Co., 17 Battery Place, Suite 1930, New York NY 10004.
European Ocean Freight, Inc., 17 Battery Place, Suite 236, New York, NY 10004
Everest Freight Shipping Inc., 15 Park Row, New York, NY 10048
Excel International Freight, 19700 Susana Road, Compton, CA 90221
Exim Line Inc., 3580 Wilshire Blvd., Suite #2050, Los Angeles, CA 90010
Export Marine Lines, 3158 Des Plaines Ave., Des Plaines, IL 60018
Express Cargo Systems, Inc., 1601 W. Edgar Road, Bldg. A, Linden, NY 07036
Express Container Line, 270 Colfax Avenue, Clifton, NJ 07015
F. X. Coughlin Co., 27050 Wick Road, Taylor, MI 48180
Fast Container Line, 355 West Carob Street, Compton, CA 90220
FEMTCO, Far Eastern Marine Transportation Co., P.O. Box 691, San Francisco, CA 94105
First International Shipping Co., 4211 Maine Trail, Crystal Lake, IL 60014
Florida Cargo, Inc., Dori Hanna-Burnham, President, 4 East Port Road, Suite 109, Riviera Beach, FL 33404
Frances Marketing Co., Inc., c/o World Tariff Services, Inc., 15 Exchange Place, Suite 511, Jersey City, NJ 07302
Fred Pelsinger, P.O. Box 21414, Houston, TX 77218
Freightmasters, Inc., P.O. Box 264, Mount Prospect, IL 60056
Frontier Express, Inc., Patrick J. Hughs, President, 2111 W. 169th Place, Torrance, CA 90504
Fuji Express, 328 Swift Avenue, South San Francisco, CA 94080
G.F.C. Intermodal Container Line, George F. Collina, Tariff Issuing Officer, Building 15, Hook Creek Industrial Park, Valley Stream, NY 11581
G.M.S. International Corp., 328 Washington Street, Jersey City, NJ 07302
Galaxie Cargo Services Ltd., 401 Broadway, New York, NY 10013
Gas and Equipment Transport, Inc., 333 North Belt East, Suite 250, Houston, TX 77060
Gaydem Marine Systems Ltd., 191 Route De Delmas, Coindelmas 25, Port-Au-Prince, Haiti
Gedenk Shipping, Inc., 17 Battery Place, New York, NY 10004
Glacier Marine Agencies, Ltd., 5401 W. Kennedy Boulevard, Suite 999, Tampa, FL 33609
Greene Express, Ltd., Robert E. Gecielewski, Vice President, 2803 Butterfield Road, Oak Brook, IL 60521
Hap Dong Express, Inc., 1265 Broadway, New York, NY 10001
Harbour International, P.O. Box 1194, Jacksonville, FL 32201
Harbour-Link International Inc., c/o International Tariff Services, Inc., 5

Skyline Place, 5111 Leesburg Pike, Falls Church, VA 22041
Hemot Ocean Transport, Inc., 114 Liberty Street, New York, NY 10006
Hipage Company, Inc., The, 227 E. Plume Street, Norfolk, VA 23510
Ideal Union Express, c/o World Tariff Services, Inc., 15 Exchange Place, Suite 511, Jersey City, NJ 07302
Imporex, Inc., Angelo Ferreira, General Manager, 33 Broad Street, Suite 330, Boston, MA 02109
Indo Atlantic Freight U.S.A. Inc., 134 Hook Creek Boulevard, Valley Stream, NY 11581
Intercontinent Express, Inc., Tom Adyagi, President, 714 So. Isis Avenue, Inglewood, CA 90301
Interline Container Services, Ltd., 1642 International Trade Mart, New Orleans, LA 70130
Intermodal Transportation Services, P.O. Box 430, Linden, NJ 07036
International Cargo Handlers, Inc., 8401 N.W. 70th Street, Miami, FL 33178
International Customs Service Inc., Robert L. Waggoner, President, 3447 Atlantic Avenue, Suite 300, Long Beach, CA 90807
International Express Co., Ltd., Keith L. Wallace, Divisional Manager, 78–84 Ongar Road, Brentwood, Essex, C.M. 15 9BG England
International Freight Consultants, Inc., 39 Broadway, Suite 3008–3010, New York, NY 10006
International Freight Services, John J. Solano, President, Public Ledger Building, Suite 902, Philadelphia, PA 19106
International Household Export, Inc., 1195 Folsome Street, San Francisco, CA 94103
International Parcel Service, Ltd., 160 Broadway, New York, NY 10038
International Shipping Associates, Inc., 90 Western Avenue, Allston, MA 02134
International Trade Assistance Corp, 14 West Main Street, Oyster Bay, NY 11771
IPD Cargo Services, Inc., P.O. Box 192, Piermont, NY 10969
Island Consolidation, Inc., 1025 17th St. W., Riviera Beach, FL 33404
Island Shipping Co., 228 E. 93rd Street, Brooklyn, NY 11212
JIF America, Inc., 1717 19 Elmhurst Road, Elk Grove Village, IL 60007
Jacky Maeder Container Line, Inc., 39 Broadway, New York, NY 10006
Jagro Customs Brokers & Intl. Frt. Fwdrs. Inc., 170 Broadway, New York, NY 10038
Jaguar Intermodal Transport, Inc., Richard J. Eber, President, 1100 Army Street, San Francisco, CA 94124
Joint Transport (USA) Inc., 8 Hook Road, Bayonne, NJ 07002
Kelso Shipping, Inc., 1 Main Place, Suite 1090, 101 S.W. Main, Portland, OR 97204
Kenney Transport, Inc., 153–04 Rokaway Boulevard, Jamaica, NY 11434
L T L International, Ltd., c/o Studley Associates, Inc., 1101 17th Street NW., Suite 201, Washington, D.C. 20036
L.C.L., Incorporated, c/o International Tariff Services, Inc., 5 Skyline Place, 5111 Leesburg Pike, Falls Church, VA 22041
Labay/Summers Seacon Express, Inc., 1314 Texas Avenue, Houston, TX 77220
Lanna International Corp., 33–59 Vernon Blvd., Long Island City, NY 11106
Latillean Freight Consolidators, Inc., 10920 N.W. South River Drive, Miami, FL 33178
LCL Cargo, Ltd., One World Trade Center, Suite 4531, New York, NY 10048
Leschaco, Inc., 8522 Katy Freeway, Suite 223, Houston, TX 77024
Linabol, Edif. Hansa Piso 16, Casilla 8695 La PAZ—Bolivia
Lloyd International Shipping, Inc., 17 Battery Place, New York, NY 10004
Lomar Transport, Inc., Keith & New Kirk Street, Building 2H, Baltimore, MD 21224,
Lt Marine Managment, Inc., 5D Sandalwood Count, Old Bridge, NJ 08857
Lu-Med Caribbean Conf., 818 Stealing Place, Brooklyn, NY 11216
Lynden International, 5615 West Marginal Way SW., Seattle, WA 98106
Lyon Tamer System, 12 Rue De L Industrie, 69633—Venissieux, France
M—Line, P.O. Box 218159, Houston, TX 77218
MAC Loyd Lines, Ltd., c/o World Tariff Services, Inc., 15 Exchange Place, Suite 511, Jersey City, NJ 07302
Marbrac International, 27 Avenue S., Brooklyn, NY 11223
Marine Consolidators, Inc., c/o International Tariff Services, Inc., 5 Skyline Place, 5111 Leesburg Pike, Falls Church, VA 22041
Marine Pacifica Container Line 1010 Knox Street, Torrance, CA 90502
Marina Container Line Ltd., c/o James C. Olsson, Pacific Coast Tariff Bureau, 88 First Street, Suite 610, San Francisco, CA 94105
Maritima Aquatran, Inc., 68–23 Fulton, Houston, TX 77022
Maritime Company of the Pacific, 1441 Kapiolani Blvd., Suite 905–A, Honolulu, HI 96814
Marlog International, Inc., 4417 South Mingo Road, Tulsa, OK 74145
Marni Marine Transport Company, 155 Hempstead Turnpike, West Hempstead, NY 11552
Marine Air Transport Express, 53 Park Place, Suite 1101, New York, NY 10007
McLean Ocean Shipping, P.O. Box 60469 AMF, Houston, TX 77205
Medas International Moving & Shipping Corp., 803 Sterling Place, Brooklyn, NY 11216
Meiko Freight Service, Inc., 2220 East Carson Street, Long Beach, CA 90810
Mercury International Forwarders, Inc., 820 East "D" Street, Wilmington, CA 90744
Mes Container Service, Inc., Mr. John F. Hughes, President, 4000 West Jefferson, Detroit, MI 48209
Meteoro Express Corp., c/o Olympo Transport Co. of Puerto Rico, Inc., P.O. Box 5512, Puerto e Tierra, PR 00906,
Metrick Maritime Service, Inc., 401 Broadway—Room 1910, New York, NY 10013
Michael Davis (Shipping), Incorporated, 29 East 61st Street, New York, NY 10021
Mobel International, Inc., Vern Duke, General Manager, 2165—5th Avenue South, St. Petersburg, FL 33733
Modal; Transport, Inc., 1724 Sacramento St., Suite 102, San Francisco, CA 94109
Moulton Shipping Line, Limited, The, c/o Moulton Managment Company N.V. 15 Pietermaai, Curacao. Netherlands Antilles
Moyles Intermodal Systems, Inc., 2200 East Devon, Elk Grove Village, IL 60007
MPCL, Inc., c/o James C. Olsson, Tariff Publishing Officer, Pacific Coast Tariff Bureau, 88 First Street, Suite 610, San Francisco, CA 94105
MTS Agencies, Inc., 63–69 Hook Road, Bayonne, NJ 07002
Multi-Sea Maritime Inc., 26 Broadway, New York, NY 10004
Multimodal, Incorporated, 19 Pine Avenue, Long Beach, CA 90802
Mundial Enterprises, Ltd., 540 Militia Hill Road, Southampton, PA 18966
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Ned-Con Service, Inc., 10920 N.W. South River Drive, Miami, FL 33178
New World Carriers, Inc., 1150 N.W., 72nd Avenue, *510, Miami, FL 33126
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Nuasa (Florida) Express, Inc., 16201 S.W. 95th Avenue, Miami, FL 33157
NVO Carriers, Inc., 1 World Trade Center, Suite 1149, New York, NY 10048
Nyco-American, Inc., 217 N.W. 1st Avenue, Hillandale, FL 33009
Ocean Freight Consolidators, Inc., P.O. Box 527, Mataway, NJ 07747
Ocean Freight Lines, Inc., 1 World Trade Center, Suite 1149, New York, NY 10048
Ocean Freight Transport Corp., Hector S. Malaret, President, 2970 N.W. 75th Ave., Miami, FL 33122
Ocean-Air Container Service, 547 West 26th Street, New York, NY 10001
Oceanaire International Services, Inc., P.O. Box 593349, Miami, FL 33159
Oceanaire International, Inc., P.O. Box 557937, Miami, FL 33155
OCS/Myers International, Ltd., c/o World Tariff Services, Inc., 15 Exchange Place, Suite 511, Jersey City, NJ 07302
Odelco Marine Corporation, Jose F. Gonzales, President, 9815 W. Leland Avenue, Schiller Park, IL 60176
Omega Ocean Lines, Inc., 1700 S. Highland Avenue, Baltimore, MD 21224
Overseas Cargo Lines, Inc., 44 Montgomery Street, San Francisco, CA 94104
Overseas Carriers, Inc., P.O. Box 194, Panama 9A, Republic of Panama
Overseas Consolidators Company, 5730 Arbor Vitae, Los Angeles, CA 90045
Overseas Container System, Inc., Timothy Busch, Vice President, 2701 Lakeside Avenue, Cleveland, OH 44114
Overseas Express, Inc., Mr. David A. Pirigyi—President, 9635 Northwest 80th Avenue, Miami, FL 33014
Overseas Shipping & Transportation, Inc., 5730 Arbor Vitae, Los Angeles, CA 90045
P&M Line, 165515 Hedgecroft, Suite 306, Houston, TX 77060
P&O Strath Services, The, c/o International Tariff Services, Inc., 5 Skyline Place, 5111 Leesburg Pike, Falls Church, Va. 22041
P.T. Gesuri Lloyd, 45 Jim Tiang Bendera, Jakarta, Indonesia
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Pacific-Austral, 19 Pine Avenue, Suite 808, Long Beach, CA 90802
Pacific Marine Transport, Inc., 100 California Street, Suite 1060, San Francisco, CA 94111
Pan Altantic Shipping, Ltd., 290 Nye Avenue, Irvington, NJ 07111
Pan Caribbean Freightliners, Inc., c/o Trans-World Tariff & Research Service, Inc., 1341 "G" Street, N.W., Suite 915, Washington, D.C. 20005
Pan World Shipping, Inc., 1331 Royal Lane, P.O. Box 61352, D/FW Airport, TX 75261
Panatlantic CCS, Inc., 74 Broad Street, New York, NY 10004
Pelican Cargo Services, Inc., c/o International Tariff Services, Inc., 5 Skyline Place, 5111 Leesburg Pike, Falls Church, VA 22041
Pilade Giani, S.A.S., Via E. Sansoni, 7/11, 57100 Leghorn, Italy
PMA, Inc., James and Fraley Streets, Philadelphia, PA 19137
Polamer Parcel Service Company, Walter K. Kotaba, President, 3094 North Milwaukee Avenue, Chicago, IL 60618
Polonez Parcel Service, 63 ½ Cabot Street, Chicopee, MA 01013
Presto Shipping, Inc., c/o Mr. Rafael A. Cardoso, 14021 S.W. 56th Terrace, Miami, FL 33183
Prime Carriers Inc., 6450 Collins Avenue, Suite 604, Miami Beach, FL 33141
Progressive Pier Delivery, 700 First Street, Harrison, NJ 07029
Randy Express, Inc., 550 Division Street, Elizabeth, NJ 07201
Rathmor International Inc., 11 Broadway, Suit 830, New York, NY 10004
Reardon Export (Ocean) Inc., P.O. Box 107, East Boston, MA 02128
Red Oak Industries Ltd., Inc., Gerald Backus, President, Box J, Blairstown, NJ 07825
Refrigerated Container Service, Inc., 601 New Jersey Railroad Avenue, Newark, NJ 07114
Reliance Shipping Inc., 473 Putnam Avenue, Brooklyn, NY 12111
Republic Shipping Line, 330 Biscayne Blvd., Suite 1002, Miami, FL 33132
Rhode & Liesenfeld, Inc., 1 World Trade Center, Suite 8345, New York, NY 10048
Rolland International (U.K.), Ltd., 1 World Trade Center, Suite 8859, New York, NY 10048
Royal Star Shipping Corp., c/o International Tariff Services, Inc., 5 Skyline Place, 5111 Leesburg Pike, Falls Church, VA 22041
Rush International Electric & Shipping Co., Inc., 1520 West 7th Street, Los Angeles, CA 90017
Sail Shipping Systems, Inc., 17 Battery Place, Suite 1930, New York, NY 10004
SAM, Sino-Am Marine Co., Inc., One World Trade Center, Suite 3127, New York, NY 10048
Sam Jung Shipping USA, Inc., 17 Battery Place, Room 1443, New York, NY 10004
Samad Shipping Services, Inc., c/o International Tariff Services, Inc., 5 Skyline Place, 5111 Leesburg Pike, Falls Church, VA 22041
San Yang Yuan, 403 McGuigan Place, Harrison, NJ 07029
Saturn Shipping Company Incorporated, P.O. Box 1809, Manhattanville Station, New York, NY 10027
Scanfreight Continental N.V., Italielie 17, Antwerp, Belgium
Sea Express Lines, c/o International Tariff Services, Inc., 5 Skyline Place, 5111 Leesburg Pike, Falls Church, VA 22041
Sea Link Corporation, c/o Strachan Shipping, 8700 West Flagler Street, Miami, FL 33174
Seair Transport Services, Inc., 2 Main Street, Wilton, NH 03036
Seaworld Shipping, Ltd., 90 West Street, Suite 719, New York, NY 10006
Selax Transport Corp., DBA Selax Container Lines, 147–32 Farmers Blvd., Jamaica, NY 11434
Serra Shipping, Inc., 21 West Street, New York, NY 10006
Sesko International, Inc., Juan A. Abbadie, President, 4715 N.W. 72nd Avenue, Miami, FL 33166
Sesko Marine Trailers, Inc., 4715 N.W. 72nd Avenue, Miami, FL 33166
Seven Seas Containerline, Ltd., Port of Sacramento World Trade Center, West Sacramento, CA 95691,
Seven Star Container Line, c/o Summer Tariff Service, Inc., 1341 G Street, N.W., Suite 915, Washington, D.C. 20005
Ship Corporation of Hawaii, Ltd., c/o Pacific Coast Tariff Bureau, 88 First Street, Suite 610, San Francisco, CA 94105
Shipco Ocean Services, 9460 Clinton Drive Building 52, Houston, TX 77029
Shippers Management International, Inc., 4647 Long Beach Blvd., Long Beach, CA 90805
Shipping Time Gateways Overseas, Ltd., 115A Oxford Street, Port of Spain, Trinidad and Tabago
Smitty's Export/Import, Inc., 4236 Gunther Avenue, Bronx, NY 10466
Snyder Moving & Shipping Co., Ltd., c/o World Tariff Services, Inc., 15 Exchange Place, Suite 511, Jersey City, NJ 07302
Solma Intermodal, 71 Broadway, Suite 1306, New York, NY 10006
South African Navigation, Inc., 140 Cedar Street, Suite 815, New York, NY 10006
South Pacific Consolidators, Inc., 111 San Leandro Blvd., San Leandro, CA 94577
Southern International Shipping, Inc., 9066 N.W. 25th Street, Suite 2A, Miami, FL 33172
Southern Pacific International, Inc., P.J. Conners, Executive Vice Pres. & GM, One California Street, San Francisco, CA 94111
Southern Pacific Marine Transport, Inc., c/o Pacific Coast Tariff Bureau, 88

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Southern Pacific Transportation Company, K.R. Wyma, Senior Asst. Vice President, One Market Plaza, San Francisco, CA 94105
Southern Unitrans, Inc., P.O. Box 3127, Bellflower, CA 90707
Southland Pacific Shipping Inc., 20218 Doogan Ave., Compton, CA 90221
Space Lines, Inc., 4th & Vine Building, Seattle, WA 98121
Spade Ace-Allisped Forwarders Int'L., Ltd., 1870 El Camino Real, Burlingame, CA 94010
Special Shipping, Inc., c/o International Tariff Services, Inc., 5 Skyline Place, 5111 Leesburg Pike, Falls Church, VA 22041
Speedway Containere Line, Inc., Suite 421, 3605 Long Beach Blvd., Long Beach, CA 90807
Square Deal Shippers, 925 Utica Avenue, Brooklyn, NY 11203
Stalker Enterprises, Inc., c/o Trans-World Tariff & Research Service, Inc., 1341 "G" Street, NW., Suite 915, Washington, D.C. 20005
Stavers Corporation, Mr. Peter De Fasbiis, President, 84 Congress Rd., Emerson, NJ 07630
Streamline Shippers Association, Inc., 56 Pebble Drive, Baltimore, MD 21225
STT Services, Ltd., 1922 Eastern Parkway, Brooklyn NY 11233
Sunjin Shipping Company, Ltd., 217 Broadway, Suite 412, New York, NY 10007
Sunshine International Cargo Corp., 913 Richards Rd., Antioch, TN 37013
Surlington International, Inc., DBA Surlington Express, c/o World Tariff Services, Inc., 15 Exchange Place, Suite 511, Jersey City, NJ 07302
Taiwan Overseas Forwarding Company, Ltd., Mr. Willie Woo, Managing Director, No. 62, Sec. 2 Nanking E. Rd., Taipei, Taiwan
Tank Traffic America, Inc., P.O. Box 60741 AMF, Houston, TX 77205
TDY Freight Systems, Ltd., 1950 Troutman Street, Maspeth, NY 11385
Tiger Container Express, Ltd., c/o Trans-World Tariff & Research Service, Inc., 1341 "G" Street, N.W., Suite 915, Washington, DC 20005
Todd International, Inc., Frederick W. Kemph, Vice President, P.O. Box 26426, Minneapolis, MN 55426
Total Transportation Corporation, 429 Moon Clinton Road, Coraopolis, PA 15108
Tradeways International, Inc., 1538 Harmon Cove Tower, Secaucus, NJ 07094
Trans Container Line, Inc., 8600 West 67th Street, Hodgins, IL 60525
Trans Oscean Consolidators, c/o Pacific Coast Tariff Bureau, 88 First Street, Suite 610, San Francisco, CA 94105
Trans Ocean Line, Jack Lelinho, Tariff Officer, 3804 South Ocean Drive, Hollywood, FL 33019
Trans System Line, 8055 13th Street, Suite 310, Silver Spring, MD 20910
Trans Viking International, Inc., 2412 South Voss, #F312, Houston, TX 77057
Trans World Container Service, Inc., 1 World Trade Center, Suite 4541, New York, NY 10048
Trans World Export Boxing Corp., c/o Trans-World Tariff & Research Services, Inc., 1341 "G" Street, NW., Suite 915, Washington, DC 20005
Trans-Modal, Inc., Frank Hollesen, President, 1121 North Tower Lane, Bensenville, IL 60106
Trans-Orient Express, Inc., 149–10, 183 Street, Jamaica, NY 11413
Trans-World Atlantic Co., Inc., c/o Z&G Company, Inc., 232 Madision Avenue, Suite 602, New York, NY 10016
Transaction Lines Corp., 3000 N.W. 74th Avenue, Miami, FL 33122
Transcar of North America, 274 County Road, Tenafly, NJ 07670
Transcaribbean Consolidated Transport, Inc., Vincent Perez, President, 2500–83rd St.-Bldg. 10B, North Bergen, NJ 07047
Transcontainer Atlantic Pacific Canada Corp., 230–470 Granville St., Vancouver, BC V6C1V5, Canada
Transcontainer Transport Inc., Peter U. Jordi, President, 39 Broadway, New York, NY 10006
Transcontinental Transportation Systems, c/o International Tariff Services, Inc., 5111 Leesburg Pike, Falls Church, VA 22041
Trans Hansa Projects, Inc., 21 West Street, Suite 2306, New York, NY 10006
Transinternational System, Jack Stewart, President, P.O. Box 109, Worthington, OH 43085
Transmodal Cargo Carriers International, Ltd., Guenter Perl, 39 Broadway, New York, NY 10006
Transmodal Cargo Carriers, Inc., Guenter Perl, 39 Broadway, New York, NY 10006
Transmodal Express, C. Roberts, Issuing Officer, 801 West Artesia Blvd., Compton, CA 90220
Transocean Shipping, Inc., One World Trade Center–Suite 3171, New York, NY 10048
Transpacific Express, Inc., c/o Global Traffic Service, Inc., 201 Massachusetts Avenue, NE., Suite 207, Washington, DC 20002
Transportation Systems International, Inc., Larry L. Leaman, Manager/ Pricing & Tariffs, 2500 Kennedy Street, NE., Minneapolis, MN 55413
Transship, Inc., c/o World Tariff Services, Inc., 15 Exchange Place, Suite 511, Jersey City, NJ 07302
Transtainer Lines, Ltd., 107 West Side Avenue, Jersey City, NJ 07305
Transtech, Inc., William Kavanaugh, Traffic Manager, 32 Bryden Place, Ridgewood, NJ 07450
Transworld Associates, Inc., 1911 No. Fort Myer Drive, Arlington, VA 22209
Traveler's Overseas, Inc., Robert DeMorro, President, 25 James Street, New Haven, CT 06513
TSI Intermodal, Clarence J. Herr, Issuing Officer, 21055 West Road, Tranton, MI 48183
TSI Shipping (U.S.A.), Inc., One World Trade Center, Suite 3171, New York, NY 10048
Turbo Line, 290 Nye Avenue, Irvington, NJ 07111
Tuya International Corp., Jorge R. de Tuya, President, 1351 N.W. 78th Avenue, Miami, FL 33126
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U.S. International Management and Marketing, Inc., c/o World Tariff Services, Inc., 15 Exchange Place, Suite 511, Jersey City, NJ 07302
Ultramar Shipping, Inc., 170 Broadway, New York, NY 10038
Uniport Express Corp., 55 Amity Street, Jersey City, NJ 07304
United Cargo Corporation, c/o Trans-World Tariff & Research Services, Inc., 1341 "G" Street, NW., Suite 915, Washington, D.C. 20005
United Freight Systems, Inc., 145 Hook Creek Boulevard, Valley Stream, NY 11581
United Kingdom Express, c/o J.F. Mullins, Jr., 1700 "K" Street, NW., Washington, D.C. 20006
United States Container Corporation, Mike Moss, President, 50 Hilton Street, Easton, PA 18042
United Van Lines International, Inc., Mr. Larry R. Dawson, Manager Special Services, One United Drive, Fenton, MO 63026
Universal Container Bridge, 57 Avenue Theophile Gautier, 75016 Paris, France
Universal Container Lines, Division of Universal Shipping Corp., John Chai, Issuing Officer, 1441 West 132nd Street, Gardena, CA 90249
Universal Shipping Service, 61 Cabot Street, Chicopee, MA 01013
Universal Transcontinental Corporation, H.E. Schuster, Mgr., 325 Spring Street, New York, NY 10013
Valley Express, Inc., Gerald De Laurntis, President, 925 Market Street, Paterson, NJ 07513
Van Ommeren, Altenwall 205, D 2800 Bremen 1, German Federal Republic (West)
Van Ommeren (USA), Inc., c/o World Tariff Services, Inc., 15 Exchange Place, Suite 511, Jersey City, NJ 07302

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Victory International Transport, P.O. Box 13049, Fort Lauderdale, FL 33316
Virginia International Air Freight, Inc., Ms. Virginis Voiles—President, Post Office Box 6564, Lake Worth, FL 33463
Votainer Consolidation Service Pty., Ltd., 50 Clarence Street, P.O. Box 3410 GPO Sydney NSW, Australia 2001
Votainer Consolidation Services (South Atlantic) 9 Cordes Street, Charleston, SC 29402
Votainer Consolidation Services (UK), Inc., Sea Reach House—New Road, Rainham, Essex—RM13 8EJ England
W.T.C. Holding Co., Inc., 1436 Bay Street, Staten Island, NY 10305
West Coast Shipping Lines, 1525 West Wardlow Road, Long Beach, CA 90810
West Indies Freight, Inc., P.O. Box 522455, Miami, FL 33152
Wilson & Co. AB, Box 7091 S 402 32 Gothenburg, Sweden
Wilson Container Co., 113 Sierra Street, El Segundo, CA 90245
Winchester Lines, Inc., First National Bank Building Suite 2109, Mobile, AL 36652
World Consolidators (Japan), Ltd., P.O. Box 534, Palos Park, IL 60464
World Express, Inc., 26 Railroad Street, Revere, MA 02151
World Parcel Service, 425 Mission Street, P.O. Box 3372, San Francisco, CA 94119
World Ports Overseas, Ltd., 62 Claradon Road, Staten Island, NY 10305
World Wide Air Marine Freight Forwarders, Inc., c/o International Tariff Services, Inc., 5 Skyline Place, 5111 Leesburg Pike, Falls Church, VA 22041
Worldwide Consolidators, Inc., c/o Trans-World Tariff & Research Service, Inc., 1341 "G" Street, NW., Suite 915, Washington, D.C. 20005
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WSSA Intermodal Services, Inc., 11800 Sunrise Valley Dr., Suite 412 Reston, VA 22091

[FR Doc. 85–5796 Filed 3–11–85; 8:45 am]
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Tariff Rules on Free Time and Detention Applicable To Carrier Equipment Provided To Shippers, Consignees, or Their Draymen; Filing of Petition for Rulemaking

March 7, 1985.

Notice is given that a petition has been filed by American President Lines, Ltd. (APL), for institution of a rulemaking proceeding to prescribe tariff rules requiring common carrier tariffs, and when applicable, service contract essential terms publications, to include the terms and conditions on which carrier-provided containers and related equipment are made available to shippers, consignees, or persons tendering or receiving ocean cargo on their behalf. APL proposes that either the applicable terms and conditions, or a standard form equipment interchange agreement setting forth the terms and conditions, be filed in the involved publications.

Interested persons may inspect and obtain a copy of the petition at the Washington Office of the Federal Maritime Commission, 1100 L Street, NW., Room 11101.

Interested persons may submit replies to the petition to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before April 10, 1985. An original and fifteen copies of such replies shall be submitted. A copy of such replies shall also be served on filing counsel: David B. Cook, Esq., Shea & Gardner, 1800 Massachusetts Avenue, NW., Washington, D.C. 20036.

Bruce A. Dombrowski,
Assistant Secretary.

[FR Doc. 85–5797 Filed 3–11–85; 8:45 am]
BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, N.W., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No. 221-03785A-001.
Title: San Juan Terminal Agreement.
Parties:
Puerto Rico Ports Authority
International Shipping Agency

Synopsis: Agreement No. 221-03785A-001 amends the basic agreement between the parties by renewing the lease on the premises located at Pier 12, San Juan for an additional term of three years.

Agreement No. 202-008900-026.
Title: The "8900" Lines Agreement.
Parties:
A.P. Moller-Maersk Line
Barber Blue Sea Line
National Shipping Company of Saudi Arabia
Nedlloyd Lijnen, B.V. (S.A.G.)
Sea-Land Service, Inc.
Waterman Steamship Corporation
United Arab Shipping Company (S.A.G.)

Synopsis: The proposed amendment would modify the agreement to permit the parties to discuss, negotiate and agree with shippers, shipper's associations or other shipper groups and would authorize the establishment or employment of a cargo inspection system. It would also restate the agreement to conform with the format requirements of the Commission's regulations and incorporate mandatory provisions required by the Shipping Act of 1984.

Agreement No. 202-010637-006.
Title: North Europe-U.S. Atlantic Conference.
Parties:
Atlantic Container Line (G.I.E.)
Dart-ML Limited
Hapag-Lloyd AG
Intercontinental Transport (ICT)
Sea-Land Service, Inc.
Trans Freight Lines, Inc.
United States Lines, Inc.
Compagnie Generale Maritime (CGM)

Synopsis: The proposed amendment would modify the agreement to authorize allowances to shippers performing direct overland transport to European Continental loading ports in lieu of the member providing overland transportation from the bill of lading port to the loading port. The parties have requested a shortened review period.

Agreement No. 202-010676-004.
Title: Mediterranean/U.S.A. Freight Conference.
Parties:
Atlanttrafik Express Services, Ltd.
Achille Lauro
C.I.A. Venezolana de Navegacion
Compania Transatlantica Espanola, S.A.

Constellation Lines, S.A.
Costa Line
d'Amico Societa di Navigazione per Azioni
Farrell Lines, Inc.
Flota Mercante Grancolumbiana S.A.
"Italia" Societa' per Azioni de Navigazione
Jugolinija
Jugooceanija
Lykes Lines
Nedlloyd Lines
Nordana Line/Dannebrog Lines AS
Sea-Land Service, Inc.
Zim Israel Navigation Company, Ltd.

Synopsis: The proposed amendment would modify the agreement to allow the Chairman to appoint a substitute to preside at Executive Committee meetings in his absence, provided that the individual so appointed is employed by the same member line that employs the Chairman. It would also add a Special Northern Spain Section to permit those member lines serving ports in Northern Spain to have exclusive jurisdiction over certain commodities transported from such ports.

Agreement No. 202-010689-003.

Title: Transpacific Westbound Rate Agreement.

Parties:
American President Lines, Ltd.
Barber Blue Sea
The East Asiatic Company
Evergreen Marine Corp. (Taiwan), Ltd.
Hanjin Container Lines, Ltd.
Hapag-Lloyd Trans-Pacific Service
Japan Line, Ltd.
Kawasaki Kisen Kaisha, Ltd.
Korea Marine Transport Co., Ltd.
Lykes Brothers Steamship Co., Inc.
A. P. Moller-Maersk Line
Mitsui O.S.K. Lines, Ltd.
Neptune Orient Lines, Ltd.
Nippon Yusen Kaisha, Ltd.
Sea-Land Service, Inc.
Showa Line, Ltd.
United States Lines, Inc.
Yamashita-Shinnihon Steamship Co., Ltd.
Orient Overseas Container Line, Inc.
Zim Israel Navigation Co, Ltd.

Synopsis: The proposed amendment would delete Barber Blue Sea as a party to the agreement. The parties have requested a shortened review period.

Dated: March 7, 1985.

By Order of the Federal Maritime Commission.

Bruce A. Dombrowski,

Assistant Secretary.

[FR Doc. 85-5862 Filed 3-11-85; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Dominion Bankshares Corporation, et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulations Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweight possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 2, 1985.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Dominion Bankshares Corporation*, Roanoke, Virginia; to engage to *de novo* through its subsidiary, Dominion Trust Company, Roanoke, Virginia, in acting as investment or financial advisor to the extent of providing portfolio investment advice.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Jesup Banchshares, Inc.*, Jesup, Iowa; to engage directly in the *de novo* nonbanking activities of making, acquiring, or servicing loans or other extensions of credit and leasing personal or real property. These activities would be conducted in the state of Iowa.

Board of Governors of the Federal Reserve System, March 7, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-5815 Filed 3-11-85; 8:45 am]

BILLING CODE 6210-01-M

First National Cincinnati Corporation, et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act 12 (U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 4, 1985.

A. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *First National Cincinnati Corporation*, Cincinnati, Ohio; to acquire 100 percent of the voting shares or assets of The Ohio State Bank, Columbus, Ohio.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Bancorp of Taylorville, Inc.*, Taylorville, Illinois; to become a bank holding company by acquiring 100

percent of the voting shares of First National Bank in Taylorville, Taylorville, Illinois.

2. *Second National Corporation*, Richmond, Indiana; to acquire 24.9 percent of the voting shares or assets of Citizens Banking Company, Lynn, Indiana.

3. *Suburban Bancorp, Inc.*, Palatine, Illinois; to acquire 50 percent or more of the voting shares or assets of The Bartlett Bank and Trust Company, Bartlett, Illinois.

C. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *First Norton Corporation*, Norton, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of First Security Bank and Trust Company, Norton, Kansas.

Board of Governors of the Federal Reserve System, March 7, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-5816 Filed 3-11-85; 8:45 am]

BILLING CODE 6210-01-M

West Brook Bancshares, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 4, 1985.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *West Brook Bancshares, Inc.*, Westchester, Illinois; to acquire West Brook Insurance Agency, Inc., Westchester, Illinois, thereby engaging in general insurance activities in all lines of insurance except life insurance, pursuant to section 4(c)(8)(F) of the Bank Holding Company Act.

Board of Governors of the Federal Reserve System, March 7, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-5818 Filed 3-11-85; 8:45 am]

BILLING CODE 6210-01-M

Marshall & Ilsley Corporation, et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies and Acquisitions of Nonbanking Companies

The companies listed in this notice have applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed companies have also applied under § 225.23(a)(2) of Regulation Y (49 FR 794) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 U.S.C. 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 4, 1985.

A. **Federal Reserve Bank of Chicago**, (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Marshall & Ilsley Corporation*, Milwaukee, Wisconsin; to acquire 100 percent of the voting shares or assets of Heritage Wisconsin Corporation, Milwaukee, Wisconsin, thereby indirectly acquiring Heritage Bank, Wauwatosa, Wisconsin, Heritage Bank Beloit, Beloit Wisconsin, and Heritage Bank of West Bend, West Bend, Wisconsin.

Applicant has also applied to acquire Heritage Investment Advisors, Inc., thereby engaging in professional investment advisory services for the trust departments of affiliated banks, other banks, endowment funds, employee benefit plans, mutual funds, foundations and other substantial portfolios; Heritage Leasing Corporation, thereby providing lease financing for personal property; and Heritage Trust Company, thereby providing trust services to individuals, corporations, charitable institution and other organizations. Its activities as an investment/financial advisor are of a fiduciary, agency and custodian nature.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Bancshares of Knob Noster, Inc.*, Knob Noster, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Knob Noster Bancshares, Inc., Knob Noster, Missouri, thereby indirectly acquiring The Bank of Knob Noster, Knob Noster,

Missouri. Applicant has also applied to engage in the sale of general insurance in a town with a population not exceeding 5,000.

Board of Governors of the Federal Reserve System, March 7, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-5817 Filed 3-11-85; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules; Reckitt & Colman et al.

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

(1) 85-0079—Reckitt & Colman plc's proposed acquisition of voting securities of Airwick Group, (CIBA-GEIGY Limited, UPE), February 12, 1985.

(2) 85-0093—The Dexter Corporation's proposed acquisition of voting securities of Permag Corp., February 12, 1985.

(3) 85-0100—Equity Holdings', a partnership, proposed acquisition of voting securities of The Commodore Corporation, February 12, 1985.

(4) 85-0105—Perdue Farms Incorporated's (Franklin P. Perdue, UPE) proposed acquisition of voting securities of White Poultry Farms Incorporated (J. R. McFayden, Sr., Dorothy McFayden, Elizabeth M. Bryant, J. R. McFayden, Jr., and Anna C. McFayden, UPE's), February 12, 1985.

(5) 85-0111—The North American Coal Corporation's proposed acquisition of voting securities of Yale Materials Handling Corporation (Eaton Corporation, UPE), February 12, 1985.

(6) 85-0045—Humana, Inc.'s proposed acquisition of assets of Doctors Officenters Corporation (The Doctors Emergency Officenters Management Associates, UPE), February 13, 1985.

(7) 85-0060—La Telemecanique Electrique's proposed acquisition of assets of Gould Inc., February 13, 1985.

(8) 85-0081—G. Heileman Brewing CO., Inc.'s proposed acquisition of voting securities of New Process Baking Company, (Edmund Kutchins, UPE), February 13, 1985.

(9) 85-0088—The Coca-Cola Company's proposed acquisition of voting securities of Belwin-Mills Publishing Corporation, (Gulf & Western Industries, UPE), February 13, 1985.

(10) 85-0090—Marriott Corporation's proposed acquisition of voting securities of Service Systems Corporation, (R. J. Reynolds Industries, Inc. UPE), February 13, 1985.

(11) 85-0103—Rapid American Corporation's, (Meshulam Riklis, UPE) proposed acquisition of voting securities of BTK Industries, Inc., February 13, 1985.

(12) 85-0110—Masco Industries, Inc.'s proposed acquisition of assets of electrical equipment business formerly known as Hi-Ram, Inc., (Robert J. Tomsich, UPE), February 13, 1985.

(13) 85-0112—Planning Research Corporation's proposed acquisition of voting securities of Kentron International, Inc., February 13, 1985.

(14) 85-0114—Planning Research Corporation's proposed acquisition of voting securities of Kentron International, Inc., February 13, 1985.

(15) 85-0097—Loral Corporation's proposed acquisition of voting securities of Hycor Incorporated, February 15, 1985.

(16) 85-0106—Rite Aid Corporation's proposed acquisition of voting securities of Hook Drugs Inc., February 15, 1985.

(17) 85-0115—Conagra, Inc.'s proposed acquisition of voting securities of Agribasics Fertilizer Company, a newly formed Joint Venture Company, February 15, 1985.

(18) 85-0116—Scoular Investment Company's Proposed acquisition of voting securities of Agribasics Fertilizer Company, a newly formed Joint Venture Company, February 15, 1985.

(19) 85-0119—Dollar General Corporation's proposed acquisition of voting securities of Eagle Family Discount Stores, Inc., (Interco Incorporated, UPE), February 15, 1985.

(20) 85-0089—Owens-Illinois, Inc.'s proposed acquisition of voting securities of Alliance Mortgage Company, (Florida National Banks of Florida, Inc., UPE), February 19, 1985.

(21) 85-0071—Metromedia Inc.'s, (John W. Kluge, UPE) proposed acquisition of voting securities of Network I, Inc., February 20, 1985.

(22) 85-0129—National Computer Systems, Incorporated's proposed acquisition of voting securities of Commonwealth Leasing Corporation, February 20, 1985.

(23) 85-0092—Inspiration Resources Corporation's proposed acquisition of assets of the agricultural products division of Sohio (The British Petroleum Company, p.l.c., UPE), February 21, 1985.

(24) 85-0102—Maus Freres International N.V.'s proposed acquisition of assets of The Boston Store Division of Federated Department Stores, Inc., February 21, 1985.

(25) 85-0113—BTR plc's proposed acquisition of voting securities of Dunlop Holdings p.l.c., February 21, 1985.

(26) 85-0121—Merrill Lynch & Co., Inc.'s proposed acquisition of voting securities of Minnesota Valley Engineering, Inc. (Beatrice Companies, Inc., UPE), February 21, 1985.

(27) 85-0128—General Electric Company, p.l.c.'s proposed acquisition of assets of Houston Instrument Division and Inter Active Graphics Division (Bausch & Lomb Incorporated, UPE), February 21, 1985.

(28) 85-0131—Rowntree Mackintosh p.l.c.'s proposed acquisition of voting securities of The Original Cookie Company, Incorporated (CNC Associates, UPE), February 21, 1985.

(29) 85-0134—Apache Petroleum Company's proposed acquisition of assets of Houston Natural Gas Corporation, February 21, 1985.

(30) 85-0138—Canadian Pacific Limited's proposed acquisition of assets of certain oil, gas and mineral lease assets (Tom Brown, Inc., UPE), February 21, 1985.

(31) 85-0091—The British Petroleum Company p.l.c.'s proposed acquisition of assets of the coal properties of E. J. Lavino & Company, and voting securities of Bledsoe Coal Leasing Company, February 22, 1985.

(32) 85-0133—American Healthcare Management, Inc.'s proposed acquisition of assets of Greatwest Hospitals Inc., February 22, 1985.

(33) 85-0151—S & W Berisfold P.L.C.'s proposed acquisition of voting securities of Weisz Precious Metals, Inc., February 25, 1985.

(34) 85-0135—Graziadio Family Trust's proposed acquisition of voting securities of Central Soya Company, Inc., February 26, 1985.

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(35) 85–0136—Houstonian, Inc.'s proposed acquisition of voting securities of Elaine Powers Figure Salons, Inc., Zilber Ltd. (Joseph J. Zilber, UPE), February 26, 1985.

(36) 85–0094—Insilco Corporation's proposed acquisition of voting securities of Kisco Company, Inc., February 27, 1985.

(37) 85–0139—InterNorth, Inc.'s proposed acquisition of assets Valero Energy Corporation, February 27, 1985.

(38) 85–0147—The Travelers Corporation's proposed acquisition of voting securities of Brokers Mortgage Service Inc., February 27, 1985.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Legal Technician, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, DC. 20580. (202) 523–3894.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 85–5799 Filed 3–11–85; 8:45 am]

BILLING CODE 6750–01–M

GENERAL SERVICES ADMINISTRATION

Office of the Administrator Advisory Board; Meeting

Notice is hereby given that the General Services Administration (GSA) Advisory Board's Subcommittee on Organization and General Management will meet on March 20, 1985 from 9:30 a.m. to 3:30 p.m. in Room 6120, 18th & F Streets, NW., Washington, D.C. This meeting shall be open to the public.

The meeting will be devoted to a review of GSA's telecommunications program, including a discussion of the agency's Aggregated Switch Procurement (ASP) effort; progress in implementing the agency's long-range telecommunications strategic plan; and, telecommunications developments in the public and private sectors.

Less than fifteen (15) days notice of this meeting is being provided due to scheduling difficulties.

Questions regarding this notice may be directed to Mr. James Dean on (202) 566–0382.

Dated: March 7, 1985.

Thomas J. Simon,

Director of Programs Initiatives.

[FR Doc. 85–5814 Filed 3–11–85; 8:45 am]

BILLING CODE 6825–24–M

Agency Information Collection Under Review by the Office of Management and Budget; Unused Ticket Refund Procedures

AGENCY: Office of Policy and Management Systems, GSA.

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the General Services Administration (GSA) requests the Office of Management and Budget (OMB) to review an existing information collection.

ADDRESSES: Send comments to Franklin S. Reeder, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to William W. Hiebert, GSA Clearance Officer, General Services Administration (ATRAI), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: John W. Sandfort, Regulations, Procedures and Claims Branch (202–786–3014).

SUPPLEMENTARY INFORMATION:

a. *Purpose.* This information collection requires carriers (primarily airlines) to make refunds to the Government for unused tickets after they have expired (normally 1 year), even if the Government has neither returned ticket nor requested the refund.

b. *Annual reporting burden.* This is estimated as follows: Respondents and record keepers, 60 each.

c. *Copies of proposal.* Copies may be obtained from the Directives and Reports Management Branch (ATRAI), Room 3007, GS Building, Washington, DC 20405, telephone (202–566–0666).

Dated: March 5, 1985.

Johnny T. Young,

Acting Director, Information Management Division.

[FR Doc. 85–5840 Filed 3–11–85; 8:45 am]

BILLING CODE 6820–AM–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Statement of Organization, Functions, and Delegations of Authority; Food and Drug Administration

Part H, Chapter HF (Food and Drug Administration) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (35 FR 3685, February 25, 1970, as amended most recently in pertinent parts at 49 FR 10175, March 19, 1984) is amended to reflect the merger of organizations and functional statements.

The changes include the following: 1. Abolishing the Office of Voluntary Compliance and Operations, Center for Veterinary Medicine (CVM) and transferring the functions of the Office of Surveillance and Compliance, CVM; 2. Abolishing the Office of Human Food Safety, CVM and transferring the functions to the current Office of Scientific Evaluation, CVM, and renaming the Office of Scientific Evaluation, CVM as the Office of New Animal Drug Evaluation, CVM; 4. Renaming the Office of Research, CVM as the Office of Science, CVM. There are also some minor changes to clarify functional statements.

Section HF-B, *Organization and Functions* is amended as follows:

1. Delete paragraph (m–2), *Office of Voluntary Compliance and Operations (HFVY)* and paragraph (m-4, *Office of Surveillance and Compliance (HFVU)* and insert new paragraph (m-2), *Office of Surveillance and Compliance (HFVU).*

(m-2) *Office of Surveillance and Compliance (HFVU).* Advises the Center Director on surveillance and compliance policy concerning FDA regulatory responsibility with respect to animal drugs, feeds, feed additives, veterinary medical devices, and other veterinary medical products.

Plans, develops, monitors, and evaluates Center surveillance and compliance programs and coordinates their field implementation to ensure the safety and effectiveness of marketed animal drugs, feeds, feed additives, veterinary medical devices, and other veterinary medical products.

Directs and coordinates the development of scientific evidence supporting Formal Evidentiary Hearings requested by the Center.

Recommends to the Center Director the amendment or withdrawal of approved new animal drugs applications.

Develops, coordinates, and directs the Center's Voluntary Compliance Program and the Bioresearch Monitoring Program.

Prepares regulations and other **Federal Register** notices, and reviews and acts on regulatory action recommendations.

2. Delete paragraph (m-3), *Office of Scientific Evaluation (HFVT)* and paragraph (m-6), *Office of Human Food Safety (HFVW) and insert new paragraph (m-3), Office of New Animal Drug Evaluation (HFVT).*

(m-3), *Office of New Animal Drug Evaluation (HFVT).* Evaluates for

animal safety and effectiveness new animal drugs in pharmaceutical dosage forms of feed delivered products.

Evaluate the safety aspects of drug and food additive residues remaining in food produced for human consumption from animals given drugs or food additives.

Evaluates the effect of animal drugs on the environment.

Reviews and determines the adequacy of information submitted for proposed use of investigational and new animal drugs.

Evaluates manufacturing methods and procedures for new animal drug products.

Recommends to the Center Director procedures to establish the safety and effectiveness of new drugs for animal use and for the dissemination of this information to investigators, drug sponsors, and manufacturers.

Recommends to the Center Director appropriate action on new animal drug applications and acts on investigational new animal drug notices of exemption and authorization requests.

Coordinates the development and implementation of regulations and policies pertaining to new drugs intended for animal use.

Recommends, and may participate in, intramural and extramural research projects to be conducted and coordinated by the Center's Office of Science to gain further information on drugs for animals.

Establishes and plans framework for satisfying requirements of the National Environmental Policy Act (NEPA), relating to new animal drugs.

3. Delete paragraph (m-5), *Office of Research (HFVV)* and insert new paragraph (m-4), *Office of Science (HFVV).*

(m-4) *Office of Science (HFVV).* Advises and assists the Center Director and other key officials on research matters which affect Center policy direction and long-range program goals.

Provides the focal point for all research activities in the Center; serves as the liaison for intramural and extramural research.

Provides scientific review, guidance, and support for research activities (extramural research, training, and fellowship activities); serves as the Center focal point for pre-award coordination.

Evaluates and reviews the adequacy of research resources; appraises the technical aspects and contributions of Center science programs.

Reviews Center contracts and grants, interagency agreements, and international statutes with regard to enhancing the Center science program activities.

Evaluates and interprets results of scientific research; initiates and recommends action as appropriate to implement policy changes.

Effective Date: February 28, 1985.

Dated: February 28, 1985.

James O. Mason,

Acting Assistant Secretary for Health.

[FR Doc. 85-5798 Filed 3-11-85; 8:45 am]

BILLING CODE 4160-01-M

Centers for Disease Control

Public Health Service; Program Announcement; Alternate Testing Sites to Perform Human T-Lymphotropic Virus-Type III (HTLV-III) Antibody Testing; Availability of Funds for Fiscal Year 1985

Background

On March 2, 1985, an ELISA test to detect antibodies to HTLV-III was licensed by the Food and Drug Administration. This test is intended for screening units of blood for antibody to HTLV-III. CDC does not encourage the use of this test for general screening of high risk populations or as a diagnostic test for Acquired Immunodeficiency Syndrome (AIDS). However, to protect the Nation's blood supply, alternate testing sites should be available so that individuals in recognized AIDS risk groups will not donate blood simply to receive free HTLV-III antibody testing. These alternate sites will also ensure that individuals receive appropriate pretest counseling, posttest counseling, and referral for medical evaluation. Up to $12 million will be made available to assist States to establish alternate sites.

Purpose

The Centers for Disease Control (CDC) is announcing the availability of one-time, start-up resources of up to $12 million of Fiscal Year 1985 funds to assist, during the 90-day period from date of award, in helping assure that high-risk individuals are not turned away from alternate sites because they cannot afford to pay for services.

Special Assurances

Applicants will provide written assurance that: (1) Resources required are only to defray costs for services to those who could not otherwise afford them; (2) they have reduced their requests by taking into consideration funds expected from donations where such donations are permissible under local ordinance; (3) the resources requested are limited to those required for a 90-day period from the date of the award; and (4) local resources are insufficient to provide for HTLV-III testing without charge at alternate sites.

Program Authorization

This program is authorized by section 311 of the Public Health Service Act (42 U.S.C. 243), as amended. The Catalog of Federal Domestic Assistance Number is 13.118.

Eligibility

Eligible applicants for this program are the official public health agencies of State governments, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Trust Territory of the Pacific Islands, the Northern Mariana Islands, and American Samoa.

In addition, awards may *also* be made to *local health agencies* serving a high priority urban area which reported at least 650 AIDS cases that meet the CDC surveillance case definition:

1. Presence of reliably diagnosed disease at least moderately indicative of underlying cellular immune deficiency (e.g., Kaposi's sarcoma in patients who are less than 60 years of age or patients with *Pneumocystis carinii* pneumonia or other opportunistic infections); and

2. Absence of known causes of underlying immune deficiency and of any other reduced resistance reported to be associated with the disease.

Although local health agencies meeting the above requirements are eligible, they are strongly encouraged to coordinate their request for assistance with the State agency, ideally in a single application, to ensure the most efficient use of State, local, and Federal resources.

In the event an eligible State or local health agency cannot implement this program in a timely manner, they may wish to designate a nonprofit organization to apply and accept the award on their behalf. Prior approval of the Chief, Grants Management Branch, CDC, is required.

Use of Funds

Applicants will be expected to assess their individual needs and submit applications for Federal funds which would be used for the following items only insofar as is necessary to provide tests without charge for those who cannot pay: (1) Supplies, including reagents and test kits; (2) travel for laboratory personnel and counselors to attend training courses; (3) additional personnel for pretest and posttest counseling, laboratory processing of the tests, and blood collection; and (4)

courier and mail services to get specimens to laboratories.

Reporting Requirements

Final financial status and progress reports are required 90 days after the end of the project period. The final progress report should include the following: (1) Number of alternate sites established; (2) number of tests performed per site; (3) number of tests provided without charge; (4) number of positives per site; and (5) number of counseling sessions (pre/post) per site.

Application Content

Applications must include a brief narrative (no more than 25 double-spaced pages) which describes: (1) The background and need for support, including information that relates to factors by which the application will be evaluated; (2) objectives of the proposed project which are consistent with the purpose of the program outlined above; (3) the activities and methods which will be employed to accomplish the objectives; (4) the procedures which will be employed to evaluate program activities; and (5) any other information which will support the request for assistance.

Review and Award Criteria

Applications will be evaluated, and funding decisions will be made, based upon the following factors:

1. The total number of AIDS cases reported since June 1981 that meet the CDC surveillance case definition.
2. The estimated number of persons who will seek testing during the 90-day period at alternate sites who are unable to pay for the test.
3. Special written assurances requested above have been provided.
4. The capability of the applicant to effectively provide sensitive pre- and post-test counseling.
5. The probable soundness and potential operational impact of proposed collaborative efforts between the health department and organizations in the community which provide services to members of groups at high risk for AIDS to carry out the alternate site testing program.
6. Whether the stated objectives are consistent with the purpose of the program.
7. Whether the plan of operation communicates a sound approach to conducting and overseeing activities designed to meet project objectives.
8. Whether the plan for evaluation is sound.
9. The demonstrated capability or plan of the applicant to maintain maximum confidentially of all records related to counseling and clinical laboratory test results.
10. The capability of the applicant to maintain a clinic for the general public whose services to homosexual males are appropriate and nonjudgmental and whose services are sought out by an appreciable number of such individuals from the community.
11. The capability of the applicant to carry out activities to support alternate site HTLV-III testing activities including laboratory, education, and training.

Application Submission

The original and two copies of the application must be submitted to Leo A. Sanders, Chief, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE, Room 321, Atlanta, Georgia 30305, on or before 4:30 p.m. (e.s.t.) on March 18, 1985.

Deadlines

Applications shall be considered as meeting the deadline if they are either:

1. Received at the above address on or before the deadline date; or
2. Sent on or before 4:30 p.m. (e.s.t.) on March 18, 1985, and received in time for submission to the independent review groups.

Note: CDC plans to submit applications to the independent review groups on March 20, 1985. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications

Applications which do not meet the criteria in 1. or 2. above are considered late applications. Late applications will not be considered and will be returned to the applicant.

This program is not subject to the regulations (42 CFR Part 122, as amended, and Part 123) implementing the National Health Planning and Resources Development Act of 1974. This program will be subject to Executive Order 12372, Intergovernmental Review of Federal Programs, in the future. It is recommended that applicants notify their State single point of contact for Executive Order 12372 of the submission of the application for informational purposes.

Information on application procedures, copies of application forms, and other material may be obtained from Leo A. Sanders, Chief, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE, Room 321, Atlanta, Georgia 30305, or by calling (404) 262-6575 or FTS 236-6575. Technical assistance may be obtained from Jack Kirby, Division of Sexually Transmitted Diseases, Center for Prevention Services, Centers for Disease Control, Atlanta, Georgia, 30333, telephone (404) 329-2550 or FTS 236-2550.

William E. Muldoon,

Director, Office of Program Support.

[FR Doc. 85-5953 Filed 3-11-85; 8:45 am]

BILLING CODE 4160-18M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Craig District Advisory Council; Meeting

In accordance with Pub. L. 94-579, notice is hereby given that there will be a meeting of the Craig District Advisory Council on March 27, 1985.

The meeting will begin at 10 a.m. at the little Snake Resource Area Office, 1280 Industrial Avenue, Craig, Colorado.

Agenda items will include:

1. FS/BLM Land Exchange
2. Discussion on Diamond Breaks Wilderness Study Area
3. Discussion of Preferred Alternative on Little Snake Resource Management Plan

The meeting will be open to the public and interested persons may make oral statements to the Council beginning at 10:30 a.m. The District Manager may establish a time limit for oral statements, depending on the number of people wishing to speak. Any one wishing to address the Council or file a written statement, should notify the District Manager, Bureau of Land Management, 455 Emerson Street, Craig, Colorado 81625, by March 20, 1985.

Summary minutes of the Council Meeting will be maintained in the Craig District Office and will be available for public inspection and reproduction during regular business hours.

Dated: March 4, 1985.

Terry L. Plummer,

Associate District Manager.

[FR Doc. 85-5766 Filed 3-11-85; 8:45 am]

BILLING CODE 4310-JB-M

Navajo Relocation Exchange NM-58259; In Sierra County, New Mexico

AGENCY: Bureau of Land Management, Las Cruces District, Interior.

ACTION: Notice of Realty Action Designating Public Land for Transfer out of Federal Ownership in Exchange for Private Lands Selected by the Navajo Tribe for Relocation Purposes.

SUMMARY: Under the provision of sections 4 and 28 of the Navajo and Hopi Indian Relocation Amendment Act, 1980, 25 U.S.C., 640d–10 and 25 U.S.C. 640d–26, the Navajo Tribe filed a selection application on June 30, 1983, for private land in Apache County, Arizona, to be obtained by exchange for public land. Interest has been expressed by the private landowner to select the following public land for part of the compensation for the land selected by the Navajo Tribe:

NEW MEXICO PRINCIPAL MERIDIAN

	Acres
T. 15 S., R. 8 W.,	
Section 21: Lots 1, 2, 3, 6, 7, 8	235.81
Section 22: N½, N½SW¼, NW¼SE¼	440.00
Section 23: W½SW¼, SE¼SE¼	120.00
Section 25: SW¼NW¼	40.00
Section 26: NE¼	160.00
Section 35: S½, SW¼NW¼, S½NE¼	440.00

Comprising 1,435.81 acres, more or less, in Sierra County.

In accordance with the regulations in 43 CFR 2201.1(b), publication of this Notice will segregate the public land, as described in this Notice, to the extent that they will not be subject to appropriation under the public land laws, including the mining laws, but not the mineral leasing laws or Geothermal Stream Act.

The segregation of the above-described land shall terminate upon issuance of a document of conveyance to such land to the private landowners or upon publication in the **Federal Register** of a notice of termination of the segregation; or the expiration of 2 years from the date of publication, whichever occurs first.

Land use planning has already been completed on these particular parcels of land, and the Southern Rio Grande Land Use Plan has recommended them for disposal.

All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the materials.

DATE: Comments and protests should be sent to the BLM Las Cruces District Office no later than 45 days after publication of this Notice.

ADDRESS: Inquiries, comments, and protests to this Notice should be addressed to: District Manager, Bureau of Land Management, Las Cruces District, P.O. Box 1420, Las Cruces, New Mexico 88004.

FOR FURTHER INFORMATION CONTACT: Marvin James, Chief, Planning & Environmental Assistance Staff, BLM Las Cruces District, P.O. Box 1420, Las Cruces, NM 88004.

Daniel C.B. Rathbun,

District Manager.

[FR Doc. 85–5842 Filed 3–11–85; 8:45 am]

BILLING CODE 4310-32-M

[W–80707]

Wyoming; Proposed Reinstatement of Terminated Oil and Gas Lease

Pursuant to the provisions of Pub. L. 31–245 and Title 43 Code of Federal Regulations, § 3108.2–1(c), and Pub. L. 97–451, a petition for reinstatement of oil and gas lease W–80707 for lands in Natrona County, Wyoming was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 162/3 percent, respectively.

The lessee has paid the required $500.00 administrative fee and $106.25 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W–80707 effective October 1, 1984, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,

Chief, Leasing Section.

[FR Doc. 85–5839 Filed 3–11–85; 8:45 am]

BILLING CODE 4310-22-M

[W–86096]

Wyoming; Proposed Reinstatement of Terminated Oil and Gas Lease

Pursuant to the provisions of Pub. L. 31–245 and Title 43 Code of Federal Regulations, § 3108.2–1(c), and Pub. L. 97–451, a petition for reinstatement of oil and gas lease W–86906 for lands in Big Horn County, Wyoming was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre, or fraction thereof, per year and 16–⅔ percent, respectively.

The lessee has paid the required $500.00 administrative fee and $106.25 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W–86096 effective September 1, 1984, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,

Chief, Leasing Section.

[FR Doc. 85–5838 Filed 3–11–85; 8:45 am]

BILLING CODE 4310-22-M

National Park Service

National Register of Historic Places; Indiana, et al.; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before March 2, 1985. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by March 27, 1985.

Carol D. Shull,

Chief of Registration, National Register.

INDIANA

Cass County

Logansport, *Jerolaman-Long House*, 1004 E. Market St.

MARYLAND

Baltimore (Independent City)
Brewers Exchange, 20 Park Ave.

Montgomery County

Poolesville vicinity, *Mt. Nebo*, 14510 Mt. Nebo Rd.

Queen Anne's County

Wye Mills, *Wye Mill*, MD 662

Somerset County

Wellington vicinity, *Costen, William, House*, Courthouse Hill Rd.

St. Mary's County

Lexington Park vicinity, *St. Richard's Manor*, Millstone Landing Rd.

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MICHIGAN

Barry County

Shelbyville, *Dwight, Austin H. and Frankie A., Summer House*, 11456 Marsh Rd.

MISSOURI

Boone County

Columbia, *Niedermeyer Apartments*, 920 Cherry St.

MONTANA

Gallatin County

Bozeman, *Fisher, Burr, House*, 712 S. Wilson Ave.

Missoula County

Missoula, *Northern Pacific Railroad Depot*, Railroad and Higgins Ave.
Missoula, *University Apartments*, 400–422 Roosevelt Ave.

Pondera County

Valier, *Valier Public School*, 820 3rd St.

NEW MEXICO

Rio Arriba County

Los Ojos vicinity, *Manzanares, Tony, House*, (La Tierra Amarilla MRA) E. of Los Ojos Rd. and N. of La Puente Church

NEW YORK

Greene County

Greenville, *Greenville Presbyterian Church Complex*, North St., NY 32

Kings County

Brooklyn, *Clinton Hill Historic District*, Roughly bounded by Willoughby and Grand Aves., Fulton St. and Vanderbilt Ave.

New York County

New York, *United Charities Building Complex*, 105 E. 22nd St., 289 Park Ave. S. and 111–113 E. 22nd St.

Rockland County

New City, *Blauvelt House*, Zukor Rd.
Piermont, *Sparkill Creek Drawbridge*, Bridge St. over Sparkill Creek

OKLAHOMA

Caddo County

Anadarko, *Anadarko Central Business Historic District*, Roughly bounded by Main St., Rhode Island and Pacific Railway-Right-of-Way, US 281 and W. 3rd St.

Marshall County

Madill, *Worth Hotel*, 203 E. Main St

PENNSYLVANIA

Berks County

Tulpehocken Creek Historic District, Tulpehocken and Mill Creeks from Berks-Lebanon line to Blue March Dam between Millardsville and Bernville

Lancaster County

Lancaster, *Park Site 36La96*, Lancaster County Park, 1050 Rockford Rd.

TENNESSEE

Bedford County

Palmetto vicinity, *Palmetto Farm*, TN 64

Davidson County

Goodlettsville vicinity, *Shaw, Abner T., House*, 4866 Brick Church Pike Nashville, *Waverly Place Historic District*, Roughly bounded by Beech, Douglas and Bradford Aves., 10th Ave. S. and Acklen Ave

Knox County

Knoxville, *Fourth and Gill Historic District*, Roughly bounded by I–40, Broadway, Central and 5th Ave.

Lewis County

Gordonsburg vicinity, *Blackburn, Ambrose, Farmstead*, Gordonsburg Rd.

Marshall County

Mooresville vicinity, *Bear Creek Cumberland Presbyterian Church*, Bear Creek Rd.

Perry County

Linden vicinity, *Dickson, James, House*, Lower Lick Creek Rd.

Sullivan County

Piney Flats, *DeVault-Masengill House*, Andrew Johnson Hwy. US 11E

Washington County

Washington vicinity, *Broylesville Historic District*, Roughly bounded by TN 34, Taylor Mill and Gravel Hill Rds. along Little Lick Creek

WEST VIRGINIA

Jefferson County

Harper's Ferry vicinity, *Allstadt House and Ordinary*, Off US 340

[FR Doc. 85–5846 Filed 3–11–85; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30582]

Norfolk and Western Railway Co. and Interstate Railroad Co.; Construction Exemption In Wise County, VA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of 49 U.S.C. 10901, the construction by Norfolk and Western Railway Company and Interstate Railway Company of connecting tracks in Wise County, VA.

DATE: This exemption is effective on April 11, 1985. Petitions for reconsideration must be filed by April 1, 1985. Petitions for stay must be filed by March 22, 1985.

ADDRESSES: Send pleadings referring to Finance Docket No. 30582 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's Representative: Nancy S. Fleischman, 1050 Connecticut Avenue, NW., Suite 740, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

Decided: March 4, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley, and Strenio. Commissioner Lamboley concurred with a separate expression.

James H. Bayne,

Secretary.

[FR Doc. 85–5784 Filed 03–11–85; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF LABOR

Office of the Assistant Secretary for Veterans' Employment and Training

Solicitation for Grant Application; Job Training Partnership Act, Title IV, Part C, Program Year 1985

AGENCY: Office of the Assistant Secretary for Veterans' Employment and Training; Labor.

ACTION: Notice.

SUMMARY: This notice sets forth the procedures and schedule for the Solicitation for Grant Application (SGA) for the operation of employment and training programs in accordance with Title IV, Part C of the Job Training Partnership Act (JTPA). The regulations at 20 CFR Part 635 provide guidance for the development and administration of programs authorized under this part.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Juarez, Office of the Assistant Secretary for Veterans' Employment and Training, 200 Constitution Ave., N.W., Rm. S1316, Washington, D.C. 20210, Telephone (202) 523–9110, or the appropriate State Director for Veterans' Employment and Training Service.

SUPPLEMENTARY INFORMATION: The Office of the Assistant Secretary for Veterans' Employment and Training, Department of Labor, announces the availability of $7,734,000 and the schedule for Solicitation for Grant

Application and award of funds to implement programs authorized under Title IV, Part C of JTPA.

This part provides for programs to meet the employment and training needs of service-connected disabled veterans, veterans of the Vietnam era, and veterans who recently separated from military service.

On March 1, 1985, the Assistant Secretary for Veterans' Employment and Training mailed to all eligible applicants a Solicitation for Grant Application Package which consists of:

Part A—General Program Information and Requirements for Application for Funds under Title IV, Part C, JTPA

Part B—Instructions and Forms for Preparation and Submission of Applications

Eligible applicants are limited to (1) State Governors utilizing the JTPA administrative entity in each State and (2) service delivery area Administrative entities as described in Section 101 and 103 of JTPA including single statewide service delivery areas.

The Solicitation for Grant Application contains proposed funding levels for each State which range from $55,000 to $783,000. Award of funds will be made through a competitive discretionary grant process utilizing the criteria for award specified in the Solicitation.

Applications for funds must be received by the appropriate State Director for Veterans' Employment and Training (SDVETS) not later than 4:30 p.m., at the SDVETS address cited below on May 1, 1985.

Region I (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont)

Robert B. Inman, Veterans' Employment and Training Service, U.S. Department of Labor, 200 Folly Brook Boulevard, Wethersfield, CT 06115, (203) 566–3326

SDVETS William J. Rogers, Veterans' Employment and Training Service, U.S. Department of Labor, 522 Lisbon Street, Lewiston, Maine 04240, (207) 783–9171

SDVETS Richard A. Brenan, Veterans' Employment and Training Service, U.S. Department of Labor, John F. Kennedy Federal Building, Room 506B, Government Center, Boston, Massachusetts 02203, (617) 223–2759

SDVETS Emile Simard, Veterans' Employment and Training Service, U.S. Department of Labor, 55 Pleasant Street, Room 325, Concord, New Hampshire 03011, (603) 224–2589

SDVETS Arthur L. Dawson, Jr., Veterans' Employment and Training Service, U.S. Department of Labor, 507 Federal Building and Courthouse, Providence, Rhode Island 02903, (401) 528–5134

SDVETS Charles E. Healy, Veterans' Employment and Training Service, U.S. Department of Labor, P.O. Box 603, Montpelier, Vermont 05602, (802) 229–0311, Ext. 311

Region II (New Jersey, New York, Puerto Rico)

SDVETS Leon G. Scull, Veterans' Employment and Training Service, U.S. Department of Labor, John Fitch Plaza, Room 1106, Trenton, New Jersey 08625, (609) 292–2930

SDVETS Clifford M. Johnson, Veterans' Employment and Training Service, U.S. Department of Labor, Building 12, Room 503, Albany, New York 12240, (518) 457–7465

SDVETS Rafael Pujals, Veterans' Employment and Training Service, U.S. Department of Labor, P.O. Box 14337, Santurce, Puerto Rico 00916, (809) 754–5391

Region III (Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia)

SDVETS Horace H. Best, Veterans' Employment and Training Service, U.S. Department of Labor, Stockton Building, University Plaza, Newark, Delaware 19702, (302) 368–6898

SDVETS George H. Joiner, Veterans' Employment and Training Service, 500 C Street, N.W., Room 322, Washington, D.C. 20001, (202) 639–1076

SDVETS Gary Lobdell, Veterans' Employment and Training Service, U.S. Department of Labor, 100 North Eutaw Street, Rm. 209, Baltimore, Maryland 21201, (301) 383–5193

SDVETS Joseph F. Welsh, Veterans' Employment and Training Service, U.S. Department of Labor, Labor & Industry Building, Rm. 1114, Harrisburg, Pennsylvania 17121, (717) 787–5834

SDVETS Benjamin I. Trotter, Jr., Veterans' Employment and Training Service, U.S. Department of Labor, 701 East Franklin St., Suite 1409, Richmond, Virginia 23219, (804) 786–7269

SDVETS David L. Bush, Veterans' Employment and Training Service, U.S. Department of Labor, 112 California Ave., Rm. 212, Charleston, West Virginia 25305, (304) 348–5290

Region IV (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee)

SDVETS James C. Gates, Veterans' Employment and Training, 519 Industrial Relations Building, Montgomery, Alabama 36130, (205) 261–5430

SDVETS Robert I. Clark, Veterans' Employment and Training Service, U.S. Department of Labor, P.O. Box 1314, Tallahassee, Florida 32302, (904) 222–1036

SDVETS Eugene R. Wagner, Veterans' Employment and Training Service, U.S. Department of Labor, IBEW Building, Suite 419, 501 Pulliam Street, S.W., Atlanta, Georgia 30312, (404) 656–3138

SDVETS Robert M. Barnes, Veterans' Employment and Training Service, U.S. Department of Labor, c/o Bureau for Manpower Services, 275 East Main Street, Frankfort, Kentucky, 40621, (502) 564–7062

SDVETS Willie H. Cooper, Veterans' Employment and Training Service, U.S. Department of Labor, P.O. Box 1699, Jackson, Mississippi 39205, (601) 961–7588

SDVETS S. Marvin Burton, Veterans' Employment and Training Service, U.S. Department of Labor, P.O. Box 27625, Raleigh, North Carolina 27611, (919) 733–7402

SDVETS William C. Plowden, Jr., Veterans' Employment and Training Service, U.S. Department of Labor, P.O. Box 1755, Columbia, South Carolina 29202, (803) 758–3239

SDVETS Clayton Lamberth, Jr., Veterans' Employment and Training Service, U.S. Department of Labor, 301 James Robertson Parkway, Room 317, Nashville, Tennessee 37201, (615) 741–2135

Region V (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin)

SDVETS Samuel L. Parks, Veterans' Employment and Training Service, U.S. Department of Labor, 910 South Michigan Ave., Rm. 445, Chicago, Illinois 60605, (312) 793–3440

SDVETS David Bruce Redmon, Veterans' Employment and Training Service, U.S. Department of Labor, 10 North Senate Ave., Rm. 330, Indianapolis, Indiana 46204, (317) 232–6804

SDVETS William F. Wickstrom, Veterans' Employment and Training Service, U.S. Department of Labor, 7310 Woodward Avenue, Suite 407, Detroit, Michigan 48202, (313) 876–5613

SDVETS Michael Graham, Veterans' Employment and Training Service, U.S. Department of Labor, 390 North Robert Street, Rm. 537, St. Paul, Minnesota 55101, (612) 296–3665

SDVETS Joseph Andry, Veterans' Employment and Training Service, U.S. Department of Labor, P.O. Box

1618, Columbus, Ohio 43215, (614) 466–2768

SDVETS James R. Gutowski, Veterans' Employment and Training Service, U.S. Department of Labor, P.O. Box 2539, Madison, Wisconsin 53701, (608) 266–3110

Region VI (Arkansas, Louisiana, New Mexico, Oklahoma, Texas)

SDVETS Billy R. Threlkeld, Veterans' Employment and Training Service, U.S. Department of Labor, P.O. Box 128, Little Rock, Arkansas 72203, (501) 371–1559

SDVETS Robert Martin, Veterans' Employment and Training Service, U.S. Department of Labor, 701 Loyola Avenue, New Orleans, Louisiana 70113, (504) 589–2195

SDVETS Jacob Castillo, Veterans' Employment and Training Service, U.S. Department of Labor, 5301 Central N.E., Suite 1214, Albuquerque, New Mexico 87108, (505) 841–4592

SDVETS Donald A. Davis, Veterans' Employment and Training Service, U.S. Department of Labor, Will Rogers Memorial Office Bldg., Room 301, Oklahoma City, Oklahoma 73105, (405) 521–3758

SDVETS James H. Cornett, Veterans' Employment and Training Service, U.S. Department of Labor, P.O. Box 1468, Austin, Texas 78767, (512) 397–4964

Region VII (Iowa, Kansas, Missouri, Nebraska)

SDVETS Howard J. Cloe, Veterans' Employment and Training Service, U.S. Department of Labor, 1000 East Grand Avenue, Des Moines, Iowa 50319, (515) 281–5106

SDVETS John A. Hill, Veterans' Employment and Training Service, U.S. Department of Labor, 401 Topeka Boulevard, Topeka, Kansas 66603, (913) 296–5032

SDVETS Jonas N. Matthews, Veterans' Employment and Training Service, U.S. Department of Labor, P.O. Box 59, Jefferson City, Missouri 65104, (314) 751–3215, Ext. 186

SDVETS Robert T. Manifold, Veterans' Employment and Training Service, U.S. Department of Labor, P.O. Box 94600, Lincoln, Nebraska 68509, (402) 471–5289

Region VIII (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming)

SDVETS E. William Belz II, Veterans' Employment and Training Service, U.S. Department of Labor, 251 East 12th Avenue, Room 364, Denver, Colorado 80203, (303) 837–3836

SDVETS Daniel P. Antonietti, Veterans' Employment and Training Service, U.S. Department of Labor, P.O. Box 1728, Helena, Montana 59624, (406) 444–2062

SDVETS Willard M. Williamson, Veterans' Employment and Training Service, U.S. Department of Labor, P.O. Box 1632, Bismarck, North Dakota 58501, (701) 224–2865

SDVETS Earl R. Scultz, Veterans' Employment and Training Service, U.S. Department of Labor, P.O. Box 1730, Aberdeen, South Dakota 57401, (605) 225–0250, Ext. 289

SDVETS J. Dale Madsen, Veterans' Employment and Training Service, U.S. Department of Labor, 178 Social Hall Avenue, Salt Lake City, Utah 84111, (801) 524–5703

SDVETS Ernest E. Fender, Veterans' Employment and Training Service, U.S. Department of Labor, P.O. Box 2760, Casper, Wyoming 82602, (307) 235–3281

Region IX (Alaska, Arizona, California, Hawaii, Idaho, Nevada, Oregon, and Washington)

SDVETS Burton Finley, Veterans' Employment and Training Service, U.S. Department of Labor, P.O. Box 3–7000, Juneau, Alaska 99802, (907) 465–2723

SDVETS Marco A. Valenzuela, Veterans' Employment and Training Service, U.S. Department of Labor, P.O. Box 6123–SC760E, Phoenix, Arizona 85005, (602) 261–4961

SDVETS Ronald Miller, Veterans' Employment and Training Service, U.S. Department of Labor, 800 Capitol Mall, Room W2054, Sacramento, California 95814, (916) 440–2426

SDVETS Raymond S. Sumikawa, Veterans' Employment and Training Service, U.S. Department of Labor, P.O. Box 3680, Honolulu, Hawaii 96811, (808) 548–3834

SDVETS William A. Hulet, Veterans' Employment and Training Service, U.S. Department of Labor, P.O. Box 2697, Boise, Idaho 83701, (208) 334–2634

SDVETS Claude U. Shipley, Veterans' Employment and Training Service, U.S. Department of Labor, P.O. Box 3331, Reno, Nevada 89505, (702) 885–4632

SDVETS Rex A. Newell, Veterans' Employment and Training Service, U.S. Department of Labor, 304 Employment Division Bldg., 875 Union Street, N.E., Salem, Oregon 97311, (503) 378–3338

SDVETS Robert G. Hall, Veterans' Employment and Training Service, U.S. Department of Labor, P.O. Box 165, Olympia, Washington 98507

It is anticipated that grant awards will be made by October 1, 1985.

Consultation and technical assistance relative to the development of an application under the SGA is available upon request from the appropriate State Director for Veterans' Employment and Training.

Signed at Washington, D.C., this 6th day of March, 1985.

Donald E. Shasteen,

Deputy Assistant Secretary for Veterans' Employment and Training.

[FR Doc. 85–5885 Filed 3–11–85; 8:45 am]

BILLING CODE 4510–79–M

Employment and Training Administration

Revised Schedule of Remuneration for the UCA Program

Under section 8521(a)(2) of title 5 of the United States Code the Secretary of Labor is required to issue from time to time a Schedule of Remuneration specifying the pay and allowances for each pay grade of members of the military services. The Schedules are used to calculate the base period wages and benefits payable under the program of Unemployment Compensation for Ex-Servicemembers (UCX Program).

The revised schedule published with this Notice reflects increases in military pay and allowances which were effective in January 1985. The revised schedule was issued on February 7, 1985, in Unemployment Insurance Program Letter No. 8–85, and is effective with respect to UCX first claims filed on or after April 7, 1985.

Accordingly, the following new Schedule of Remuneration, issued pursuant to 5 U.S.C. 8521(a)(2) and 20 CFR 614.12, applies to "First Claims" for UCX which are effective on and after April 7, 1985:

Pay grade	Monthly rate
(1) Commissioned Officers:	
O–10	$7,046
O–9	7,046
O–8	6,989
O–7	6,207
O–6	5,224
O–5	4,297
O–4	3,606
O–3	2,958
O–2	2,275
O–1	1,774
(2) Warrant Officers:	
W–4	3,306
W–3	2,747
W–2	2,316
W–1	1,943
(3) Enlisted Personnel:	
E–9	3,034
E–8	2,547
E–7	2,172
E–6	1,846
E–5	1,552
E–4	1,317
E–3	1,164
E–2	1,071

Pay grade	Monthly rate
E-1	938

The publication of this new Schedule of Remuneration does not revoke any prior schedule or change the period of time any prior schedule was in effect.

Signed at Washington, D.C., on March 4, 1985.

Frank C. Casillas,

Assistant Secretary for Employment and Training.

[FR Doc. 85-5886 Filed 3-11-85; 8:45 am]

BILLING CODE 4510-30-M

Occupational Safety and Health Administration

Arizona State Standards; Notice of Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator-OSHA) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary), (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On October 29, 1974, notice was published in the **Federal Register** (39 FR 39037) of the approval of the Arizona plan and the adoption of Subpart CC to Part 1952 containing the decision.

The Arizona plan provides for the adoption of Federal standards as State standards after public hearing. Section 1953.20 provides that where "* * * any alteration in the Federal program could have an adverse impact on the 'at least as effective as' status of the State Program, a program change supplement to a State plan shall be required." In response to Federal Standards changes, the State has submitted its changes by letter, with attachments, dated September 6, 1984, from Larry Etchechury, Director to Russell B. Swanson, Regional Administrator, and incorporated as part of the plan. The state standards reflect Federal standard changes to 29 CFR Part 1910, Revocation of Advisory and Repetitive Standards (February 10, 1984, 49 FR 5318); 29 CFR 1910.177 Servicing of Single Piece and Multi-Piece Rim Wheels (February 3, 1984, 49 FR 4338); 29 CFR 1910.411 Commercial Diving Operations (January 6, 1984, 49 FR 881); and 29 CFR 1919.1200 Hazard Communications (November 25, 1983, 48 FR 53280). These standards are contained in the Arizona Occupational Safety and Health Standards, which were adopted after public hearings and the resolution adopted by the Industrial Commission of Arizona, Division of Occupational Safety and Health Act of 1972.

2. *Decision.* Having reviewed the state submission in comparison with Federal standards, it has been determined that the State standards are identical to the comparable Federal standards and accordingly should be approved.

3. *Location of Supplement for Inspection and Copying.* A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, 450 Golden Gate Avenue, Room 11349, San Francisco, California 94102; and Director, Division of Occupational Safety and Health, 1624 W. Adams, Phoenix AZ 85007; and Directorate of Federal/State Operations, Room N-3476, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

4. *Public Participation.* Under 29 CFR 1953.2(c) of this chapter, the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Arizona plan as a proposed change and making the OSHA Regional Administrator's approval effective upon publication for the following reasons:

The standards are identical to the Federal standards which were promulgated in accordance with Federal law including meeting requirements for public participation.

The standards were adopted in accordance with the procedural requirements of State law which included public comment, and further public participation would be repetitious.

The decision is effective March 12, 1985.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (U.S.C. 667))

Signed at San Francisco, California this 5th Day of November, 1984

Russell B. Swanson,

Regional Administrator.

[FR Doc. 85-5887 Filed 3-11-85; 8:45 am]

BILLING CODE 4510-26-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 85-17]

NASA Advisory Council; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Task Force on the Commercial Use of Space.

DATE AND TIME: April 3, 1985, 2 p.m. to 5 p.m. and April 4, 1985, 8:30 a.m. to 5 p.m.

ADDRESS: National Aeronautics and Space Administration, Johnson Space Center, Room 945, Building 1, Houston, TX 77058.

FOR FURTHER INFORMATION CONTACT: Mr. Carl R. Praktish, Code LB, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-8335).

SUPPLEMENTARY INFORMATION: The NASA Advisory Council Task Force on the Commercial Use of Space was established under the NASA Advisory Council to counsel NASA on the development of the appropriate policies, programs, and research priorities to foster the commercial use of space and on the conduct of those programs. The Task Force, chaired by Thomas A. Vanderslice, has a total of 9 members.

Visitors will be admitted to the meeting room up to its capacity, which is approximately 25 persons, including Task Force members and other participants. Visitors will be requested to sign a visitor's register.

Type of meeting: Open.

Agenda

April 3, 1985

2 p.m.—Processing of Experiments.
5 p.m.—Adjourn.

April 4, 1985

8:30 a.m.—Processing of Experiments.
10:30 a.m.—Status Reports and Work Planning.
5 p.m.—Adjourn.

Dated: March 6, 1985.

Richard L. Daniels,

Deputy Director, Logistics Management and Information Programs Division Office of Management.

[FR Doc. 85-5738 Filed 3-11-85; 8:45 am]

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NATIONAL TRANSPORTATION SAFETY BOARD

Accident Reports, Safety Recommendations and Responses; Availability of

Responses From

Railroad—*Seaboard System Railroad: Feb. 6: R–84–20:* Has no alloy rail in sections less than 122 lbs. If an emergency requires that 122 lb. or greater rail must be torch cut, a ten mph slow order is placed on the affected track section. Until gangs can be equipped to make saw cuts, (projected date, October, 1985), gangs will be allowed to torch cut rail ends provided the weld is made within thirty minutes of the torch cut.

Illinois Central Gulf: Jan. 28: R–83–93, –94, –95: In 1983, the main line rail in Fort Knox and six main line turnouts were relaid with continuously welded rail. In 1984, continuously welded rail was installed from Milepost J–33.36 to J–37, and on curves at Milepost J–104 and J–117. Maintenance levels of Louisville District track have been upgraded to meet fully the Federal Railroad Administration's Track Safety Standards for Class 3 track.

Florida East Coast Railway Company: Jan. 24: R–83–60 and –61: Semiannual Safety and Operating Rules Classes are held with operating employees. Safety films are shown and written exams are administered. Employees who fail to attend a class must attend a make-up class, and should they fail to attend the make-up class, they are held out of service pending their rewriting the complete operating rules examination.

Kansas City Southern Railway Company: Jan. 28: R–84–20: Current rules allow rails to be torch-cut; however, they must be re-cut with a rail saw or the burned metal ground off. Intend to revise this rule to read, "Rails for use in tracks must be cut with a rail saw. Rails that have burrs or swelling, caused by cutting, shall be ground or filed off, so they will not affect the fit of joint bars."

Association of American Railroads: Feb. 1: R–84–11 and –12: Is awaiting instructions from the Chief Operating Officers of the AAR member roads relating to the inspecting, maintaining and handling maintenance of way cars being operated in revenue freight trains. *Feb. 4: R–83–7 and –9:* Does not believe the study of rail fatigue defects should be expedited; this could deprive researchers of the opportunity to find additional information. Transportation inspectors audited the documentation of 71,524 trailers and containers at 159 railroad loading ramps. Performance was rated by internal supervisors as "good to excellent".

Pipeline—*Columbia Gas: Jan. 25: P–84–46 through –48:* Removed 1,200 feet of the 12-inch steel distribution pipeline installed in 1954 in York, Pennsylvania. Causes of previously repaired leaks in the vicinity of West King and South Beaver Streets, York, Pennsylvania were determined to have been due to corrosion of the steel pipe and loss of packing compression in the cast iron piping joints. The primary source of previous leakage was determined to be on a 75-foot by 4-inch bare steel bypass line, which was permanently removed from service. Metallurgical examination is employed to assist in determining the cause of pipeline failures.

American Gas Association: Feb. 4: P–84–42: Migration characteristics of gas during high pressure leaks should be emphasized during training of appropriate personnel.

Aviation—*Federal Aviation Administration: Jan. 29: A–84–17:* Revised Eastern Air Lines' Lockheed L–1011 Flight Manual to provide flightcrew procedures consistent with those in the flight attendants' manual regarding the cockpit crew informing flight attendants of the nature of the emergency and the approximate time available for cabin preparation. Additionally, the revision provides for a prearranged, standardized signal to flight attendants and/or passengers to advise them of when to assume the brace position. *Jan. 29: A–84–103:* Issued an Air Carrier Operations Bulletin recommending that FAA Principal Operations Inspectors take corrective action concerned with accidents and incidents resulting from serious errors made by flightcrews who have not properly assured that fuel on board the aircraft is adequate for completing flight safely. *Feb. 7: A–83–27:* Effective July 19, 1984, a Standard Instrument Approach Procedure was published to provide vertical guidance by a standard glidescope transmitter with an angle of 3.10 degrees and a 720-foot minimum descent altitude. The final approach course to Runway 18 at Washington National Airport was realigned to 155 degrees magnetic to prevent the possibility of an airplane striking one of several buildings located at 1000 Wilson Boulevard in Rosslyn, Virginia. *A–83–28:* A visual descent point was incorporated into the VOR/DME runway 18 approach 2.2 DME miles from the COR facility. *Feb. 11: A–82–88 and –89:* As a part of a Notice of Proposed Rulemaking under preparation, are considering a requirement for airport operators to arrange for water rescue operations with the appropriate agency having jurisdictional responsibility. NPRM should be issued in early 1985. *Feb. 11: A–84–111:* Will move ahead with refinements and continuation of the Hazardous Inflight Weather Advisory Service Program at Air Traffic Control Centers. *A–84–112:* The establishment of a HIWAS advisory service for en route facilities could significantly increase the cost of the HIWAS program; more consideration will be given this recommendation. *A–84–113:* The use of a Remote Communication Outlet or Automatic Terminal Information Service could escalate the cost of the program. More consideration of the feasibility of this program is required.

A–84–114: Broadcast procedures presently allow pilots to receive Hazardous Inflight Weather Advisory Service (HIWAS) prior to transitioning into other sectors of ARTCC airspace, but not though verbal communication. A requirement that Air Traffic Controllers advise flightcrews when safety information is being made through HIWAS would have a negative effect on the HIWAS program. *A–84–115:* Consider their present means of disseminating aviation weather information and changes to Air Traffic Control operations sufficient.

The Secretary of Defense: Feb. 4: A–84–134: Current Air Force policy calls for FDRs on all newly acquired aircraft unless specifically waived. 89th Military Airlift Wing aircraft will be retrofitted with flight data recorders.

Highway—*State of New York: Feb. 8: H–84–5 through –7:* The suggestion to place a second fire extinguisher near the rear emergency exit of all school buses has been temporarily rejected, since negative comments indicate this alternative could lead to vandalism, creating an additional hazard, and could interfere with the basic philosophy in school transportation that teaches students to abandon the bus immediately if a fire is detected.

Department of Transportation: Feb. 8: H–80–16: Has initiated a research study entitled "Correlation Between a Driver's Driving Record While Operating a Commercial Vehicle in an On-Duty Status"; completion date is targeted for April 1986. Will consider revisions to the Federal Motor Carrier Safety Regulations based on this study. *Feb. 7: H–72–60 through –62:* Conducted braking performance tests in 1974 and 1983–84. Issued a report entitled "Brake Performance Levels of Trucks," documenting analysis and comparison of these tests.

State of Alaska: Jan. 23: H–84–77 through –86: Alaska Department of

Public Safety is developing procedures for establishing sobriety checkpoints. A study was requested to determine locations in Anchorage for checkpoints and to determine if the drinking driver felt an increased risk as a result of new laws promising harsher sentencing, Anchorage's special patrols, or the mandatory and administrative license suspension actions.

Note.—Single copies of these response letters are available on written request to: Public Inquiries Section, National Transprotation Safety Board, Washington, D.C., 20594. Please include respondent's name, date of letter, and recommendation number(s) in your request. The photocopies will be billed at a cost of 14 cents per page ($1 minimum charge).

Catherine T. Kaputa,

Alternative Federal Register Liaison Officer.

March 7, 1985.

[FR Doc. 85-5893 Filed 3-11-85; 8:45 am]

BILLING CODE 7533-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-424 and 50-425]

Georgia Power Co. et al.; Issuance of Amendments to Construction Permits

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 5 to Construction Permit No. CPPR-108 and Amendment No. 5 to Construction Permit No. CPPR-109. The amendments modify construction permits to reflect issuance, by the Commission, of an Exemption dated February 5, 1985. The amendments are effective as of the date of issuance.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I, which are set forth in the amendments. Prior public notice of these amendments was not required since the amendments do not involve a significant hazards consideration.

For further details with respect to the action, see (1) the application for amendments dated January 11, 1985, (2) Amendments No. 5 to Construction Permit Nos. CPPR-108 and CPPR-109, (3) the Commission's related Safety Evaluation, (4) the Exemption dated February 5, 1985, and (5) the Notice of Environmental Assessment and Finding of No Significant Impact dated January 25, 1985. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. 20555, and at the Burke County Public library, Fourth Street, Waynesboro, Georgia 30830. In addition, a copy of items (2), (3), and (4), and (5) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing, Office of Nuclear Reactor Regulation.

Dated at Bethesda, Maryland, this 6th day of March 1985.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Chief, Licensing Branch No. 4, Division of Licensing.

[FR Doc. 85-5880 Filed 3-11-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-382]

Louisiana Power and Light Co. (Waterford Steam Electric Station, Unit 3); Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering granting of relief from a portion of the requirements of 10 CFR Part 50, Appendix E to Louisiana Power and Light Company (the licensee) for the Waterford Steam Electric Station, Unit 3, located at the licensee's site in St. Charles Parish, Louisiana approximately 24 miles west of the City of New Orleans.

Environmental Assessment

Identification of Proposed Action: The exemption from Section IV.F of Appendix E to 10 CFR Part 50 would allow the licensee to proceed above 5% of rated power without conducting another offsite emergency preparedness exercise before February 8, 1985. Section IV.F of Appendix E requires that an offsite exercise be conducted within one year before issuance of the rated power. The first and most recent full participation emergency preparedness exercise for Waterford 3 will be ready for full power operation by mid-March 1985.

Need for Proposed Action: The proposed exemption is required because Section IV.F of Appendix E would require that an offsite emergency preparedness exercise be conducted within one year prior to exceeding 5% power. In its letter dated January 25, 1985 the licensee provided justification for permitting operation beyond 5% power without conducting another offsite emergency preparedness exercise until the next scheduled exercise is held in September 1985. The NRC staff has reviewed the licensee's technical justification and agrees that an exemption from Appendix E is appropriate.

Environmental Impact of Proposed Action: The proposed exemption would not affect the environmental impact of the facility because the level of emergency preparedness is not being degraded. The February 8, 1984 exercise demonstrated that offsite emergency preparedness at Waterford 3 is adequate. The state of offsite emergency preparedness is not expected to decrease because the State of Louisiana participates in exercises with two other nuclear plants during the year and Waterford 3 holds communications drills with State and local agencies monthly. The probability of an accident will not be increased and the post-accident radiological releases will not be greater than previously determined due to the proposed exemption, nor does the proposed exemption otherwise affect radiological plant effluents, nor result in any significant occupational exposure. Likewise the proposed exemption does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant radiological or non-radiological environmental impacts associated with this proposed exemption.

Alternative to the Proposed Action: The staff has concluded that there is not measurable environmental impact associated with the proposed exemption. Thus, any alternative to the relief will have either no environmental impact or greater environmental impact.

The principal alternative would be to deny the requested exemption. Such action would not reduce environmental impacts of Waterford 3 operations and would result in an unwarranted burden to the licensee and the State and local governments.

Alternative Use of Resources: This action does not involve the use of resources not previously considered in connection with the "Final Environmental Statement Related to Operation of Waterford Steam Electric Station, Unit 3," dated September 1981.

Agencies and Persons Consulted: The NRC staff has contacted FEMA and, after review of the licensee's technical justification, both agencies are in agreement that it is appropriate to grant the requested exemption.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a

significant effect on the quality of the human environment. Acccordingly, the Commission has determined not to prepare an environmental impact statement for the proposed relief.

For further details with respect to the actions, see the licensee's request for the exemption dated January 25, 1985 which is available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana.

Dated at Bethesda, Maryland, this 5th day of March 1985.

For the Nuclear Regulatory Commission.

Thomas M. Novak,

Assistance Director for Licensing, Division of Licensing.

[FR Doc. 85-5883 Filed 3-11-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-259, 50-260 and 50-296; License Nos. DPR-33, DPR-52 and DPR-68; EA 84-106]

Tennessee Valley Authority (Browns Ferry Nuclear Plant); Order Imposing Civil Monetary Penalty

I

Tennessee Valley Authority (licensee) is holder of Operating License Nos. DPR-33, DPR-52 and DPR-68 issued by the Nuclear Regulatory Commission (Commission) which authorized the licensee to operate the Browns Ferry Nuclear Plant in accordance with the conditions specified therein. The licenses were issued on June 6, 1973, June 28, 1973 and July 2, 1976, respectively.

II

A routine safeguards inspection of the licensee's activities was conducted on August 20-24, 1984. As a result of this inspection, it appeared that the licensee had not conducted its activities in full compliance with the conditions of its licenses. A written Notice of Violation and Proposed Imposition of Civil Penalty was served upon the licensee by letter dated December 5, 1984. The Notice stated the nature of the violation, requirements of the Commission that the licensee had violated, and the amount of the civil penalty proposed for the violation in the Notice. A response to the Notice of Violation and Proposed Imposition of Civil Penalty dated December 27, 1984 was received from the licensee.

III

Upon consideration of the licensee's response and the statements of fact, explanation, and arguments for mitigation contained therein, the Director, Office of Inspection and Enforcement has determined, as set forth in the Appendix to this Order, that the violation occurred as stated and that the penalty ($50,000) proposed for the violation in the Notice of Violation and Proposed Imposition of Civil Penalty should be imposed.

IV

In view of the foregoing, and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2282, Pub. L. 92-295), and 10 CFR 2.205, it is hereby ordered that:

The licensee pay the civil penalty in the amount of Fifty Thousand Dollars ($50,000) within thirty days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Inspection and Enforcement, USNRC, Washington, D.C. 20555.

V

The licensee may, within thirty days of the date of this Order, request a hearing. A request for a hearing shall be addressed to the Director, Office of Inspection and Enforcement, USNRC, Washington, D.C. 20555. A copy of the hearing request shall also be sent to the Executive Legal Director at the same address. If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the licensee fails to request a hearing within thirty days of the date of this Order, the provisions of this Order shall be effective without further proceedings; and if payment has not been made by that time, the matter may be referred to the Attorney General for collection.

VI

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the licensee was in violation of the Commission's requirements as set forth in the Notice of Violation and Proposed Imposition of Civil Penalty referenced in Section II above, and

(b) Whether, on the basis of such violation, this Order should be sustained.

Dated at Bethesda, Maryland this 6th day of March 1985.

For the Nuclear Regulatory Commission.

James M. Taylor,

Director, Office of Inspection and Enforcement.

[FR Doc. 85-5882 Filed 3-11-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 30-17020, License No. 31-00636-07, EA 84-98]

Veterans Administration Medical Center, Bronx, New York; Order Modifying License

I

Veterans Administration Medical Center, Bronx, New York (the "licensee"), is the holder of specific byproduct Material License No. 31-00636-07 issued by the Nuclear Regulatory Commission (the "NRC") pursuant to 10 CFR Part 30.

II

On August 9-10, 1984, an NRC safety inspection of the licensee's program was conducted to review the circumstances associated with a radiation exposure of a licensee employee to iodine-125 in excess of the regulatory limit. The exposure was reported to NRC Region I by the licensee's Radiation Safety Officer on August 8, 1984.

The exposure involved a researcher at the Medical Center having a thyroid burden of 524 microcuries of iodine-125, which was identified by the Medical Center during a routine thyroid bioassay on August 3, 1984. The exposure that the individual received was the equivalent of 554 times the maximum permissible airborne concentration for a calendar quarter, resulting in an exposure to the individual's thyroid of approximately 2000 rads. The most likely cause of the uptake is through oral ingestion of the material.

Neither the licensee nor the NRC inspectors were able to conclusively determine how the researcher received the thyroid uptake. The research indicated that he had not been administered any iodine-125 for purposes of medical diagnosis or therapy. Although the individual routinely worked with millicurie quantities of iodine-125, the individual denied having mouth pipetted or using poor handling techniques, other than failing to wear a glove on his right hand while handling a stock vial containing seven millicuries of iodine-125 on July 28, 1984.

The seven millicuries of iodine-125, contained in 0.1 milliliters of solution, are no longer in the vial and cannnot be accounted for by other uses. Although

contamination as high as 3,000,000 disintegrations per minute per 100 square centimeters were found in a few areas of the individual's residence, the amount of iodine-125 in the individual's thyroid (524 microcuries) and the limited and relatively low amounts of surface contamination found in most areas of the laboratory and in his personal residence indicate that skin absorption is not likely to be the route of uptake. Much higher levels of external radioactive contamination on his person and on objects handled by him would be expected if this were the mode of entry. However, the only other credible mode of entry is by swallowing and, as noted above, the individual denied mouth pipetting.

Although no specific programmatic weaknesses in the licensee's program were identified during the inspection, the magnitude and seriousness of this exposure warrant additional actions to verify adherence by users of license material to NRC procedural requirements.

III

In view of the foregoing, and pursuant to Sections 81, 161(b), 161(o), and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Part 2 and 10 CFR Part 30, it is hereby ordered that:

(A) Within 30 days of the effective date of this Order, the licensee shall (1) retain the services of an independent third party organization to perform unannounced audits of the licensed activities during each of the four calendar quarters in 1985, to verify that users of licensed material are adhering to NRC and procedural requirements of the licensee's radiation protection program, and (2) submit to the Regional Administrator, NRC Region I, a description of the organization retained, including the name(s) and resume(s) of the individual(s) who will perform the audits. This submittal shall also include statements from the individual(s) indicating that they presently are not and previously have not been employed by the licensee.

(B) Within 30 days of the date of completion of each of the four audits, the independent third party shall provide a report of the audit findings and recommendations for corrective action, as appropriate, to the licensee's Hospital Administrator. A copy of each report, and any drafts provided to the licensee, shall be sent to the Regional Administrator, NRC Region I at the same time they are provided to the licensee.

(C) Within 30 days of the date of issuance of each report of the four audits by the independent organization, the licensee shall submit its own report to the NRC Regional Administrator describing the actions taken to correct identified deficiencies and implement each recommendation made by the independent organization during each of the four audits, or provide justification if any specific recommendation is not adopted.

The Regional Administrator, NRC Region I, may relax or terminate any of the preceding conditions for good cause.

IV

The licensee or any other person whose interest is adversely affected by this Order may request a hearing on this Order. Any request for hearing shall be submitted to the Director, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, within 30 days of the date of this Order. A copy of the request shall also be sent to the Executive Legal Director at the same address and to the Regional Administrator, NRC Region I, 631 Park Avenue, King of Prussia, Pennsylvania 19406.

If a hearing is to be held concerning this Order, the Commission will issue an Order designating the time and place of hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order shall be sustained.

This Order shall become effective upon consent or, upon expiration of the time during which the licensee may demand a hearing or, in the event that the licensee demands a hearing, on the date specified in an order issued following further proceedings on this Order.

Dated at Bethesda, Maryland, this 5th day of March 1985.

For the Nuclear Regulatory Commission.

James M. Taylor,

Director, Office of Inspection and Enforcement.

[FR Doc. 85-5881 Filed 3-11-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-250 and 50-251]

Florida Power and Light Co.; Consideration of Issuance of Amendments to Facility Operating Licenses and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR-31 and DPR-41, issued to Florida Power and Light Company (the Licensee), for operation of the Turkey Point Plant Unit Nos. 3 and 4 located in Dade County, Florida.

The amendments would revise the Technical Specifications to provide consistency in identification of the surveillance specimen capsules in the technical specifications and the actual surveillance capsules. The surveillance specimen examination schedule is also modified to provide better information in accordance with the current regulations. The proposed changes would combine the existing Reactor Materials Surveillance Program into a single integrated program which conforms to the requirements of 10 CFR Part 50, Appendices G and H. These amendments were requested in the licensee's application dated February 8, 1985 and March 6, 1985.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendments request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92(c), this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Commission has provided guidance concerning the application of these standards by providing examples of amendments considered likely, and not likely, to involve a signficant hazards consideration. These were published in the **Federal Register** on April 6, 1983 (48 FR 14870). One of the examples not likely to involve a signficant hazards consideration is example (i), a purely administrative change to the Technical Specifications: For example, a change to achieve consistency throughout the Technical Specifications, correction of an error or a change in nomenclature.

A portion of the proposed changes meet example (i) in that the current Technical Specifications do not contain nomenclature consistent with that used regarding the Turkey Point surveillance specimens. The existing Technical Specifications identify the surveillance specimen capsules by number while the actual capsules are alphatetically marked. The proposed changes to the

capsule references will correct this inconsistency.

The proposed changes relating to the surveillance specimen schedule affect only the materials surveillance program and do not involve any change to the facilities, their components, or their operation. The requirements of 10 CFR Part 50, Appendices G and H, include criteria for integrated surveillance programs in Appendix H, paragraph II.C. The Safety Evaluation provided by the licensee in support of the proposed change to the surveillance specimen schedule on Table 4.2–1, Page 4.20–1 and the revised Bases addresses each of the criteria identified in Appendix H, paragraph II.C. The Pressurized Thermal Shock issue has resulted in the licensee performing more extensive evaulations of reactor vessel material properties and core reconfigurations resulting in reduction of flux, to the beltline region. The reduction in flux, in combination with increased understanding of vessel materials, has resulted in the licensee's re-evaluation of the existing programs. In addition, the modified schedule of the integrated program will result in less personnel exposure to radiation. The proposed change to the program brings the specimen examination schedule to a position which yields better information and lower radiation exposure to personnel in accordance with the current regulations. Therefore, since the modified schedule of the integrated surveillance program involves no changes to the facilities, their components or operational limits, or the accidents evaluated, and is in accordance with the criteria in Appendix H, paragraph II.C., the proposed amendments meet the three criteria specified in 10 CFR 50.92(c) for amendments which do not involve a significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attn: Docketing and Service Branch.

By April 11, 1985, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendments under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendments request involve no significant hazards consideration, the commission may issue the amendments and make them effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

If the final determination is that the amendments involve a significant hazards consideration, any hearing held would take place before the issuance of any amendments.

Normally, the Commission will not issue amendments until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result in derating or shutdown of the facility, the Commission may issue the license amendments before the expiration of the 30-day notice period, provided that its final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Att: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW. Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union operator at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Steven A. Varga, Branch Chief, Operating Reactors Branch No. 1, Division of Licensing: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of the **Federal Register** notice. A copy of the petition

should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Harold F. reis, Esquire, Newman and Holtzinger, P.C., 1650 L Street, NW., Washington, D.C. 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i) through (v) and 2.714(d).

For further details with respect to this action, see the application for the amendments which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Environmental and Urban Affairs Library, Florida International University, Miami, Florida 33199.

Dated at Bethesda, Maryland, this 8th day of March 1985.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Chief, Operating Reactors Branch No. 1, Division of Licensing.

[FR Doc. 85-6012 Filed 3-11-85: 11:59 am]

BILLING CODE 7590-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Services Policy Advisory Committee and the Intergovernmental Policy Advisory Committee; Notice of Meetings and Determination of Closing of Meetings

The meetings of the Services Policy Advisory Committee and the Intergovernmental Policy Advisory Committee (the Advisory Committees) to be held respectively, Wednesday, February 20 and 27, 1985, from 2:00 p.m. to 5:00 p.m. in Washington, D.C., will involve a review and discussion of current trade issues relating to state and local governments of the United States. Pursuant to section 2155(f)(2) of Title 19 of the United States Code, I have determined that these meetings will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions.

More detailed information can be obtained by contacting Phyllis O. Bonanno, Director, Office of Private Sector Liaison, Office of the United States Trade Representative, Executive Office of the President, Washington, D.C. 20506.

William E. Brock,

United States Trade Representative.

[FR Doc. 85-5795 Filed 3-11-85; 8:45 am]

BILLING CODE 3190-01-M

[U.S. International Trade Commission Investigation No. 337-TA-184]

Request for Public Comments; Certain Foam Earplugs

On March 4, 1985, the United States International Trade Commission referred to the President for review its determination that there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, and in the sale, of certain foam earplugs that infringe the claims of a U.S. patent. The Commission found that the importations in question have the tendency to injure substantially an efficiently and economically operated United States industry. The Commission directed the U.S. Customs Service to exclude infringing foam earplugs from entry into the United States.

Under section 337(g), the President, for policy reasons, may disapprove the Commission's determination within sixty days following receipt of the determination and record. If disapproved by the President, the determination, and any order issued under its authority, would be without force or effect. The determination and related orders become final automatically following the sixty-day review period, if the President has not disapproved. The President also may approve the determination, making it, and any order issued under its authority, final on the date the Commission receives notice.

Interested parties may submit comments concerning foreign or domestic policy issues that should be considered by the President in making his decision regarding this case. Parties commenting on domestic policy issues should refer to the portion of the Commission's record in which that issue is discussed. Parties should provide a rationale if the domestic policy issue was not raised before the Commission.

Comments of more than 15 letter-sized pages, including attachments, will not be accepted. Twenty copies of the submission must be provided. Comments must be delivered by the close of business, Friday, March 29, 1985, to the Secretary, Trade Policy Staff Committee, 600 17th Street, N.W., Washington, D.C. 20506. For further information, call Alice Zalik (202) 395-3432.

Donald M. Phillips,

Chairman, Trade Policy Staff Committee.

[FR Doc. 85-5888 Filed 3-11-85; 8:45 am]

BILLING CODE 3190-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-14400; File No. 812-5992]

Elder's Finance & Investment Co. Limited; Application and Opportunity for Hearing

March 5, 1985.

Notice is hereby given that Elder's Finance & Investment Co. Limited ("Applicant"), c/o David O. Brownwood, Cravath, Swaine & Moore, One Chase Mahattan Plaza, New York, New York 10005, filed an application on November 26, 1984, and an amendment thereto on December 19, 1984, for an order of the Commission, pursuant to section 6(c) of the Investment Company Act of 1940 ("Act") exempting Applicant from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of all applicable provisions thereof.

According to the application, Applicant is organized under the laws of South Australia, Australia, and has a total consolidated equity of A$30 million (Australian Dollars) at June 30, 1984, which has been increased since that date by A$10 million. Applicant states that all of its outstanding capital stock is beneficially owned by Elder's IXL Limited ("Elder's IXL"), an Australian international mercantile concern with four operating groups (pastoral international trading, brewing and finance). Applicant states that Elder's IXL is one of Australia's leading companies with total assets of over A$2.4 billion as of June 30, 1984, and that Applicant is one of the largest Australian owned merchant banks and operates primarily in Australia and the Asia Pacific region. Applicant further states that it deals and makes a market in foreign currencies, trades money market securities, makes commercial loans and arranges currency and interest rate swaps, trade in futures and commodities for the account of its customers, package leases, provides corporate services and investment banking advice to customers.

underwrites offerings of securities and deals generally in securities. In addition, Applicant has acquired a 40 per cent interest in an Australian stockbroking firm. A proposed finance holding company ("Finance Holding Company"), all the capital of which will be held by Elder's IXL and which will be composed of Applicant and other finance subsidiaries of Elder's IXL, plans to apply for an Australian banking license which would entitle it to conduct a full range of retail banking activities.

Applicant claims that certain important aspects of its business are subject to regulation by Australian regulatory authorities. The application states that Applicant has been granted a general authority by the Reserve Bank of Australia under Australian Banking (Foreign Exchange) Regulations to buy and sell foreign currency. Applicant and its subsidiaries also are said to have licenses granted by the relevant Australian State Corporate Affairs Commission to deal in securities and, in addition, hold additional licenses related to their securities businesses. Furthermore, in the course of doing business under the foregoing authority and licenses it is asserted that the Applicant and its subsidiaries are subject to regulation by the relevant requirements imposed by such authorities.

Applicant and Elder's IXL propose to issue commercial paper ("Commercial Paper") in the United States and other debt securities in the Euromarket. Applicant states that a wholly-owned subsidiary of Elder's IXL, Elder's Capital Corporation Limited ("Agent"), will sign the Commercial Paper and other debt securities as agent for Applicant and Elder's IXL. Applicant states that the terms of such funding are outlined in a Facility Agreement among Applicant, Elder's IXL, the Agent and other parties and that the proposed size of the transaction contemplated by the Facility Agreement is $500 million, up to $200 million of which may be utilized by Applicant through the issuance of commercial paper. Elder's IXL will utilize the balance. Applicant further states that it will be directly liable as principal for all Commercial Paper signed by the Agent on Applicant's behalf and that the Agent will have no liability to pay the Commercial Paper. Applicant represents that the proceeds of the sale of Commercial Paper are expected to be used in the ordinary course of conducting Applicant's and its subsidiaries' businesses.

Applicant states that both Elder's IXL's and Applicant's Commercial Paper will be issued under the Facility Agreement, a depositary agreement and an issuing and paying agency agreement among the Applicant, Elder's IXL, the Agent, the Letter of Credit Banks (as defined below), a major commercial bank, acting as issuing agent and paying agent, and a major commercial bank, acting as depositary thereunder ("Depositary"), and will be supported by a "direct pay" irrevocable letter of credit ("Letter of Credit") issued by one of two banks ("Letter of Credit Banks") to the Depositary for the benefit of the holders of Commercial Paper. Applicant states that the Letter of Credit Banks will be The Chase Manhattan Bank (National Association) and The Bank of Tokyo, Ltd., acting through its New York Agency, and in the event of any change will be either major United States banks or United States branches or agencies of major foreign banks.

According to the application, the Depositary will make drawings under the applicable Letter of Credit to obtain funds to pay both Elder's IXL's and Applicant's Commercial Paper as it matures. Applicant represents that each Letter of Credit Bank will in turn be reimbursed by a group of participating banks ("Participating Banks") for any drawings under its Letter of Credit, and they will be reimbursed by Elder's IXL or Applicant, as the case may be, for their payments to the Letter of Credit Bank. Applicant further represents that, until certain conditions specified in the Facility Agreement are met, Elder's IXL will guarantee to each Letter of Credit Bank and each Participating Bank payment by Applicant of its obligations to such Letter of Credit Bank or such Participating Bank. After the Finance Holding Company is established, the Finance Holding Company and certain of its subsidiaries will provide similar guarantees in substitution for the Elder's IXL guarantee.

Applicant undertakes, in connection with the issuance and sale of its Commercial Paper, to appoint a corporate entity which acts in such capacity to accept service of process in any action commenced in any State or Federal court in the United States of America by any holder of Applicant's Commercial Paper based on such Commercial Paper. Applicant expressly accepts the jurisdiction of any State or Federal court in the Borough of Manhattan and the City and State of New York in respect of any such action. Applicant represents that such appointment of an authorized agent to accept service of process and such consent to jurisdiction will be irrevocable until all amounts due and to become due in respect of the Commercial Paper shall have been paid. Applicant states that it will also be subject to suit in any other jurisdiction because of the manner of the offering of the Commercial Paper or otherwise.

In connection with any public offering of the Commercial Paper, Applicant undertakes to ensure that the Commercial Paper will not be offered for sale to the general public, but instead will be sold through one or more commercial paper dealers to institutional investors and other sophisticated entities and investors of the type which ordinarily purchase commercial paper notes. Applicant represents that the offering for sale of the Commercial Paper will not be advertised to the general public. Applicant undertakes to ensure that each dealer in the Commercial Paper will, at or prior to any sale to an oferee of the Commercial Paper, provide to the offeree a memordum describing the respective businesses of Applicant and the applicable Letter of Credit Bank and including financial information regarding Applicant and the applicable Letter of Credit Bank. The memorandum will include a description of any material differences between the accounting principles applied in the preparation of the financial statements of the applicable Letter of Credit Bank and generally accepted accounting principles applicable to similar companies in the United States. Applicant represents that such memorandum will be at least as comprehensive as those customarily used in offering commercial paper notes in the United States and will be updated from time to time to reflect material changes in the respective business and financial status of Applicant and the applicable Letter of Credit Bank. Applicant consents to having any order granting the relief requested under section 6(c) of the Act expressly conditioned upon its compliance with the undertakings regarding disclosure memoranda.

Applicant asserts that it is uncertain as to whether it would be deemed to be an investment company because of the nature of its merchant banking business and the assets generated in the ordinary course of conducting that business. Its foreign exchange and money market trading and market-making activities are said to be similar to those conducted by many United States investment and commercial banks. Those activities may come within the exemption provided by section 3(c)(2) of the Act, but there is some uncertainty on that point. Even if section 3(c)(2) were applicable to that portion of the business, however, there

may be a further question as to the availability of the exemption because of the substantial portion of Applicant's gross income from commercial lending and, to a lesser extent, from other investment banking activities.

Applicant asserts that the issuance of an order pursuant to section 6(c) of the Act would be consistent with the policy of the Act and the protection of investors. The Commercial Paper will be supported by a "direct pay", irrevocable Letter of Credit issued by one of the Letter of Credit Banks for the benefit of the holders of the Commercial Paper and those holders would be entitled to timely and complete payment at maturity under the Letters of Credit. Applicant states that investors in the Commercial Paper would rely on the credit strength of the Letter of Credit Banks rather than on that of Applicant.

Applicant further consents to having any order subject to the following conditions: (a) That the Applicant not sell any equity securities other than to Elder's IXL or the Finance Holding Company or sell any debt securities other than (i) commercial paper of the same general type as the Commercial Paper described in the application which (A) is not advertised for sale to the general public, (B) is sold in the commercial paper market only to institutional investors or other entities which normally purchase commercial paper in large denominations, (C) has maturities not exceeding 270 days, (D) is issued in denominations of not less than $100,000 (United States Dollars) unless the purchaser of such commercial paper is a natural person, in which case the minimum denomination shall be $500,000, (E) is rated by a national United States rating agency in one of the two highest rating grades for commercial paper, (F) has the benefit of letters of credit furnished by the Letter of Credit Banks or other major United States banks or United States branches or agencies of major foreign banks whose short-term credit is rated, or whose bank holding company's short-term credit is rated (if such bank's short-term credit is not rated), by a national rating agency in one of the two highest short-term debt rating grades, (ii) debt securities offered and sold, in transactions not involving any public offering, to institutions located in the United States of America and elsewhere which are not "underwriters" of the securities within the meaning of the Securities Act of 1933, and (iii) debt securities which are not issued in the United States of America or issued or sold to United States of America nationals or residents (except to foreign branches of United States banks which take for their own account and without a view to distribution), and (b) that any such commercial paper or other debt securities will be either (A) sold outside the United States of America pursuant to agreements and procedures reasonably designed to prevent such debt securities from coming into the hands of a United States of America national or resident (except for foreign branches of United States banks which take for their own account and without a view of distribution) or (B) exempt from the provisions of the Securities Act of 1933 by virtue of section 3(a)(2), section 3(a)(3) or section 4(2) thereof, unless the Applicant shall have first given written notice to the Commission describing the proposed issuance of such additional debt securities (including notice of proposed filing of a registration statement under the Securities Act of 1933, pursuant to Commission Rule 415 or otherwise) not less than 60 days prior to the date of such proposed issuance, subject, however, to the right of the Commission upon request of the Applicant, to decrease such number of days. The Applicant further agrees that if the Commission shall, after receipt by the Commission of such written notice, determine that a substantial question exists as to whether or not the exemption granted by the order hereby requested should continue and the Commission shall, within 30 days after receipt by the Commission of such written notice from the Applicant, mail or otherwise give notice to that effect to the Applicant, the Applicant will not issue such additional debt securities unless, after receipt by the Applicant of such notice from the Commission and not less than 30 days prior to the issuance of such additional debt securities, the Applicant shall mail or otherwise give written notice to the Commission stating its intention to issue such additional debt securities, and upon the giving of such notice by the Applicant the order hereby requested shall be deemed to have terminated as of the date the Applicant shall have mailed or otherwise given such notice to the Commission.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than March 28, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-5809 Filed 3-11-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21746; File No. SR-MSRB-85-4]

Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board

March 5, 1985.

The Municipal Securities Rulemaking Board ("MSRB") on February 5, 1985, submitted copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder. This rule change is intended to indicate clearly that good delivery of a municipal security for which a notice of call applicable to the entire issue of securities has been published on or prior to the trade date has not been effected unless the security was identified as called at the time of trade.

At present, MSRB rules G-12 and G-15 provide that a delivery of a municipal security that has been called under an "in part" call published on or before the delivery date does not constitute good delivery if the certificate was not identified as called at the time of trade. The MSRB is of the view that a seller should not be allowed to deliver "called" securities in satisfaction of a contract if the bond's called status is not specified at the time of the trade. MSRB rules G-12 and G-15 at present provide that delivery of a municipal security subject to an "in whole" call notice (applicable to the entire issue) published on or prior to the delivery date is a good delivery. The MSRB believes that the risk of ownership passes to the purchaser at the time of trade, and thus the risk of an "in whole" call announced after the trade date but prior to delivery should be borne by the purchaser. the proposed rule change is designed to make clear, however, that where an "in whole" call for an issue of municipal securities has taken place on or before the trade date, the security must be

identified as "called" at the time of the trade for their to be good delivery. A similar clarification is made in the parallel reclamation provisions of rule C–12(g).

The proposed rules were adopted pursuant to section 15B(b)(2)(c) of the Act.

In order to assist the Commission in determining whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written comments concerning the submission within 21 days from the date of publication in the **Federal Register**. Persons submitting written comments should file six copies with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Comments should refer to File No. SR–MSRB–85–4.

Copies of the submission and all related items, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of the filing and of any subsequent amendments also will be available at the office of the MSRB.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

John Wheeler,

Secretary.

[FR Doc. 85–5808 Filed 3–11–85; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–23622; 70–7080]

General Public Utilities Corp., et al.; Supplemental Notice Amending Terms of Issuance and Pledge of First Mortgage Bonds

March 5, 1985.

General Public Utilities Corporation ("GPU"), 100 Interpace Parkway, Parsippany, New Jersey 07054, a registered holding company, and its electric utility subsidiaries, Jersey Central Power & Light Company ("JCP&L"), Madison Avenue at Punchbowl Road, Morristown, New Jersey 07960, Metropolitan Edison Company ("Met-Ed"), 2800 Pottsville Pike, Muhlenburg Township, Berks County, Pennsylvania 19605, and Pennsylvania Electric Company ("Penelec"), 1001 Broad Street, Johnstown, Pennsylvania 15907, (collectively the "GPU Companies"), have filed an amendment to their declaration subject to sections 6(a), and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rules 44 and 50(a)(2) thereunder.

On March 1, 1985 (HCAR No. 23618) this Commission issued a notice of the proposed issuance, sale and renewal by JCP&L, Met-Ed, and Penelec of their short-term promissory notes ("New Notes") from time to time through March 31, 1987 pursuant to a revolving credit agreement ("Agreement"). Met-Ed also proposed to secure its obligations under the Agreement by, among other things, security interests in $40 million of its first mortgage bonds, due March 31, 1987 with an interest rate of 1% above the rate applicable to the New Notes.

It is now proposed that the first mortgage bonds bear an interest rate of 1½% above Citibank's Alternate Base Rate rather than 1% above the rate applicable to the New Notes.

The amended declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested person wishing to comment or request a hearing should submit their views in writing by March 26, 1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the declarants at the addresses specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the declaration, as filed or as it may be amended, may be authorized.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85–5857 Filed 3–11–85; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–23624; 31–791]

MGTC, Inc.; Application for Order Pursuant to Section 2(a)(4)

March 6, 1985.

MGTC, Inc. ("MGTC"), 10880 Wilshire Boulevard, Los Angeles, California 90024, a Wyoming corporation and a wholly-owned subsidiary of MCO Holdings, Inc. ("MCO"), has filed with this Commission an application for an order declaring that it is not a "gas utility company" under section 2(a)(4) of the Public Utility Holding Company Act of 1935 ("Act").

MCO is a diversified corporation that, in addition to MGTC, owns a number of subsidiaries, all of which are involved in non-utility businesses. Among MCO's other subsidiaries are MIGC, Inc. ("MIGC"), an interstate natural gas pipeline located in Wyoming, and MGPC, Inc. ("MGPC"), a natural gas gatherer and processor which is, also, located in Wyoming.

MGTC owns and operates an intrastate natural gas pipeline located within Wyoming. MGTC's primary function is to transport and sell natural gas at wholesale for resale. MGTC's wholesale sales are made to another intrastate pipeline and to a distribution company that provides retail gas service to a number of communities in Wyoming. In 1983, MGTC had the following natural gas sales:

	Mcf	Amount	Number of customers
Wholesale	3,827,943	$16,648,351	2
Industrial	280,074	1,365,586	26
Rural	32,155	160,172	93
Total	4,140,172	18,174,109	121

Rural customers in 1983 accounted for approximately 0.78 percent of Mcf sales and 0.88 percent in sales revenue. The rural customers are near either MGTC's pipeline, the interstate pipeline owned by MGTC's affiliate, MIGC, or the gas gathering lines owned by MGTC's gathering and processing affiliate, MGPC. Each of these rural customers has requested permission to "tap" the line lying nearest to it. In those cases in which MIGC or MGPC lines are tapped, the gas consumed by the rural customer is sold by MIGC or MGPC to MGTC at the point of the tap. The gas is immediately resold by MGTC to the rural customer. It is the rural customer's responsibility to install facilities for transporting the gas from the tap to the point at which the customer intends to use the gas. The cost of the tap and other delivery facilities is borne by the customer, with the exception that MGTC bears the cost of meters. The gas consumed by the rural customers is used, largely, for heating buildings involved in ranching.

MGTC asserts that it is and has been primarily engaged in businesses other than that of a "gas utility company" and that by reason of the small amount of its non-industrial retail sales, regulation under the Act is not necessary in the public interest or for the protection of investors or consumers.

The application, and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by April 1, 1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact and/or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application, as filed or as it may be amended, may be authorized.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-5861 Filed 3-11-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14402; File No. 812-6040]

National Housing Partnership Realty Fund Two; Application and Opportunity for Hearing

March 5, 1985.

Notice is hereby given that National Housing Partnership Realty Fund Two (the "Partnership"), a Maryland limited partnership, its general partner, The National Housing Partnership ("NHP"), and National Corporation for Housing Partnerships ("NCHP"), the sole general partner of NHP (collectively, "Applicants"), 1133 Fifteenth Street, NW., Washington, D.C. 20005, filed an application on February 1, 1985, and an amendment thereto on March 5, 1985, pursuant to section 3(b)(2) of the Investment Company Act of 1940 (the "Act") for an order declaring that the Partnership is not an investment company or, in the alternative, pursuant to section 6(c) of the Act for an order exempting the Partnership from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of the application provisions thereof.

Applicants state that the Partnership was formed under the Maryland Revised Uniform Limited Partnership Act as of January 30, 1985, as a vehicle for equity investment in multifamily rental housing in accordance with the policies and objectives of Title IX of the Housing and Urban Development Act of 1968 ("Title IX"). Applicants state that the Partnership will operate as a "two-tier" entity; that is, the Partnership, as a limited partner, will invest in other limited partnerships ("Local Limited Partnerships"), which in turn will own and operate multifamily rental housing properties.

Applicants state that on January 31, 1985, the Partnership filed a registration statement under the Securities Act of 1933, pursuant to which the Partnership intends to offer publicly up to 18,300 limited partnership interests ("Interests") at $1,000 per Interest. It is asserted that Dean Witter Reynolds Inc. ("Dean Witter") will act as Dealer Manager for the offering of Interests. Applicants represent that the Partnership will have between a minimum of $1,500,000 and a maximum of $18,300,000 available for investment from the proceeds of this offering. It is asserted that from the amount available for investment, the Partnership will pay certain acquisition expenses and fees to NHP and NCHP.

Applicants state that subscriptions for Interests must be approved by NHP and Dean Witter, which approval shall be conditioned upon representations as to suitability of the investment for each subscriber. The application states that each subscriber will represent, among other things, that (1) he has taxable income for federal income tax purposes (without regard to the investment) for the current year (and which is expected to continue) of at least $47,670 (for married individuals filing joint federal income tax returns and surviving spouses) or $35,490 (for unmarried individuals other than surviving spouses and heads of households, and (2) he has either (a) a net worth (exclusive of homes, furnishings and automobiles) of at least $60,000 and estimates that he will have an annual gross income of at least $50,000, or (b) a net worth (as computed above) of at least $150,000 or is purchasing in a fiduciary capacity for a person or entity having the net worth and annual gross income as set forth in clause (a) of such net worth as set forth in clause (b).

The application states that all compensation to be paid to NHP and its affiliates is believed to be within applicable guidelines necessary to permit Interests to be offered and sold in the various states which prescribe such guidelines, including, without limitation, the statement of policy adopted by the North American Securities Administrators Association, Inc. with respect to real programs ("NASAA Guidelines"). It is asserted that the NASAA Guidelines have been designed to assure fair dealing by general partners with limited partners.

In support of their request, Applicants assert that such relief is both necessary and appropriate in the public interest and would be consistent with the protection of investors and the purposes and policies underlying the Act. Applicants asserts that investment in multifamily rental housing is not economically suitable for private investors without the tax and organizational advantages of the limited partnership structure. In addition, Applicants maintain that application of the Act would discourage two-tiered limited partnership arrangements and thus eliminate the best available means of attracting private equity capital into multifamily rental housing and frustrate national policy.

The application states that the contemplated arrangement of the Partnership is not susceptible to abuses of the sort that the Act was designed to remedy. Applicants represent that the Partnership Agreement and Prospectus contain numerous provisions designed to insure fair dealing by NHP with the limited partners. Applicants state that the suitability standards, requirements for fair dealing provided by the Partnership's governing instruments and pertinent governmental regulations imposed on the Partnership and each Local Limited Partnership by various federal, state and local agencies provide protection to investors in the Interests comparable to and in some respect greater than that provided by the Act.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than March 29, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-5860 Filed 3-11-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 23823; 70-7064]

New England Energy, Inc., et al.; Proposal To Amend Revolving Credit and Term Loan Agreement

March 5, 1985

New England Electric System ("NEES"), a registered holding company, and its oil and gas exploration and development subsidiary New England Energy, Inc. ("NEEI"), both at 25 Research Drive, Westborough, Massachusetts 01581, have filed an application-declaration with this Commission pursuant to sections 6(a), 7, 9(a), and 10 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50 thereunder.

By order dated August 24, 1981 (HCAR No. 22175), NEEI was authorized to enter into a revolving credit and term loan agreement with Bank of Montreal and Citibank ("Credit Agreement") which provides for borrowings by NEEI up to a total outstanding of $400 million through two tranches, Tranche A and Tranche B.

NEEI now proposed to amend the Credit Agreement to, among other things, extend the revolving credit period during which these funds are available through December 31, 1989 and to extend the term loan period to December 31, 1994; increase the total amount available from $400 million to $500 million; add an additional, as yet undetermined, bank; and, amend its terms to provide financing for the modified program contemplated by a proposed amendment to NEEI's pricing policy with new England Power Company ("NEP"), the system's electric generating subsidiary, ("Pricing Policy Amendment") currently pending in File No. 70-6958. (Notice issued June 27, 1984, HCAR No. 23346).

The total limit on borrowings under Tranche A would be increased from $300 million to $400 million, subject to the overall facility limit of $500 million. The availability under Tranche A would also be limited to 500% of the availability (based upon the value of mortgaged properties) under Tranche B. The security for Tranche A borrowings would continue to be an assignment of a Fuel Purchase Contract with NEP and a Capital Funds Agreement and Loan Agreement with NEES. Applicants-declarants proposed to enter into amendments to these agreements so that they will remain in effect throughout the term of the amended Credit Agreement.

Interest rate options for Tranche A borrowings during both the revolving credit and term loan period would be substantially the same as under the current Credit Agreement (see HCAR No. 22175) with the addition of a rate option based upon the average cost to the banks of certificates of deposit ("CD Rate"). NEEI would have the option to borrow at a rate ½% over the CD Rate during the revolving credit period and ⅞% over the CD Rate during the term loan period.

The total limit on borrowings under Tranche B would continue to be $400 million (subject to the overall facility limit of $500 million). Subject to that limit, NEEI would be able to borrow during the revolving credit period based upon the value of selected oil and gas properties which are mortgaged to the banks from time to time. At the termination of the revolving credit period on December 31, 1989, the Tranche B borrowings would convert to a five-year term loan to be repaid from the production from the mortgage properties.

Interest rate options for Tranche B borrowings during both the revolving credit and term loan periods would be substantially the same as those currently available under the Credit Agreement, with the addition of the option to borrow at a rate of ⅞% over the CD Rate during the revolving credit period, and 1% over the CD Rate during the first 33 months of the term loan period and 1⅛% over the CD Rate during the remaining 27 months of the terms loan period.

Unless and until the Commission approves the proposed Pricing Policy Amendment, all of NEEI's oil and gas expenditures will continue to be financed through the amended Tranche's A and B. When and if the Pricing Policy Amendment is approved, new credit support will be required for borrowings related to prospects not subject to (and the finacing of which is no longer secured by) the Fuel Purchase Contract. Applicants-declarants therefore propose the addition to the Credit Agreement of two Tranches, C and D, to be activated only upon approval by the Commission of the Pricing Policy Amendment in some form. Tranche C and D borrowings would be used for exploration and development and other costs on prospects not subject to the Fuel Purchase Contract. (Under the proposed Pricing Policy Amendment, this would initially be prospects recorded by NEEI on or after January 1, 1984, and, upon complete termination of the Fuel Purchase Contract, would become all prospects.)

Tranche C would provide up to $400 million (subject to the overall $500 million facility limit) under a revolving credit facility through December 31, 1989. In the same manner as under Tranche A, NEEI would be able to borrow up to (and would pay a commitment fee on) a commitment level selected semi-annually during the revolving credit period. At the expiration of the revolving credit period, NEEI's borrowings under Tranche C would convert to a five-year term loan with repayment in equal quarterly installments. NEEI would have the same interest rate options as will be available for Tranche A borrowings during the revolving credit period, and ⅛% lower than the Tranche A rates during the term loan period.

The security for Tranche C borrowings would be a proposed Capital Maintainence Agreement ("CMA") among NEES, NEEI and the Banks. Under the terms of the CMA, NEES would be required to make capital contributions or non-interest bearing subordinated loans to NEEI equal to any net loss from oil and gas operations which NEEI may incur during each calendar quarter. In addition, NEES would guarantee any scheduled repayments of Tranche C borrowings.

NEES' obligations to make payments under the CMA would be limited to the amount of Tranche C borrowings plus accrued and unpaid interest. In addition, NEES would have the option to (a) make (subject to future Commission approval) capital contributions or subordinated loans outside of the CMA in lieu of payments required by the CMA (which payments would be made directly to NEEI and would not need to be used to repay Tranche C principal) or (b) make capital contributions or loans to NEEI under the CMA at any time.

Tranche D would be a production loan secured by a mortgage with a revolving credit period through December 31, 1989. Subject to a $400 million limit (and the overall $500 million facility limit), NEEI would select a commitment level in an amount not to exceed the value of selected oil and gas properties not subject to the Fuel Purchase Contract which are mortgaged to the banks from time to time. At the termination of the revolving credit period, NEEI's borrowings under Tranche D would convert to a five-year term loan repayable from the production from the mortgaged properties. The other terms of Tranche D, including rate options, would be identical to Tranche B.

If and when the Pricing Policy Amendment goes into effect, Tranches C and D would be activated. Borrowings would immediately be made under Tranche C to repay borrowings under Tranches A and B related to prospects which are then no longer subject to the Fuel Purchase Contract. Prior to complete termination of the Fuel Purchase Contract pursuant to the Pricing Policy Amendment, the proceeds of borrowings under Tranches C and D would be used exclusively for exploration, development and other costs related to prospects not subject to the Fuel Purchase Contract. Tranches A and B would continue in effect, with their proceeds used only for costs related to prospects still under the Fuel Purchase Contract. When the Fuel Purchase Contract terminates completely, all remaining Tranche A borrowings would be immediately repaid with Tranche C borrowings. The Tranche A would then no longer be available. Tranches B and D would continue in existence. Following such termination, the availablity under Tranche C would be limited to 500% of the total availability (based upon the value of mortgaged properties) under the Tranches B and D.

The amended Credit Agreement may also provide for the banks to issue letters of credit ("LOC") to back NEEI borrowings from other sources. The face amount of any LOC would be designated as part of the commitment under one of the tranches. Any drawings on the LOC would be treated as borrowings under that tranche and would be secured in the same way. NEEI proposes to use this LOC facility when the overall cost of money is lower than for borrowings of similar maturity under the Credit Agreement.

The amendment will also include (1) restrictions on NEES's ability to participate in new oil and gas prospects with Samedan or any other partner prior to the effectiveness of the Pricing Policy Amendment, and (2) changes to permit the banks to sell participations in individual borrowings to third parties.

The application-declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by March 28, 1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicants-declarants at the address specified above. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-5858 Filed 3-11-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC 14403; File No. 812-5633]

Temporary Investment Fund, Inc., et al.; Application for Exemptive Order Permitting Separate Classes of Shares Representing Interests in the Same Portfolio

March 6, 1985.

Notice is hereby given that Temporary Investment Fund, Inc., Municipal Fund for Temporary Investment, Trust for Short-Term Federal Securities, Municipal Fund for California Investors, Inc., and Portfolios for Diversified Investment, Inc. (collectively, the "Applicants"), all at Suite 204, Webster Building, Concord Plaza, 3411 Silverside Road, Wilmington, Delaware, 19810, filed an application on August 17, 1983, and an amendment thereto on January 28, 1985, requesting an order of the Commission pursuant to section 6(c) of the Act exempting Applicants from the provisions of sections 18(f)(1), 18(g) and 18(i) of the Act to the extent necessary to permit Applicants' proposed issuance and sale of separate classes of securities representing interests in their existing and future investment portfolios (and the allocation of voting rights thereto and the payment of dividends thereon) in the manner described below. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and rules thereunder for the text of their relevant provisions.

The applications states that each of the Applicants is registered under the Act as an open-end, diversified management investment company, and has a currently effective registration statement under the Securities Act of 1933. At present, four of the Applicants each offer a single class of shares representing interests in a single investment portfolio; the other three Applicants are "series" investment companies each offering two or more classes of shares representing interests in a number of investment portfolios. (Applicants' existing and future investment portfolios are sometimes referred to hereinafter as "Portfolios", and the existing classes of shares representing interests in Applicants' existing Portfolios, together with each initial class of shares that is created by Applicants in connection with any future Portfolios, are sometimes referred to hereinafter as "Existing Shares".)

The application states that Applicants' shares are sold solely to or through institutions, such as banks, insurance companies, investment counselors and brokers. Although individuals may not purchase shares directly from Applicants, institutions may purchase shares for accounts maintained by individuals, and the application states that historically most of Applicants; institutional investors have been banks acting in a fiduciary, advisory, agency, custodial or other similar capacity on behalf of their customer accounts. According to the application, all expenses of each Portfolio are currently borne pro-rata by the shareholders of the Portfolio. Portfolio expenses consist of advisory, administration, custodial and transfer agency fees, as well as the other types of operating expenses set forth in Applicants' financial statements. With respect to some Portfolios, operating expenses include payments to certain institutional shareholders of Applicants pursuant to non-12b-1 Shareholder Service Plans (as described below) for support services provided to their customers who are the beneficial owners of Shares in those Portfolios. None of the Applicants has adopted a distribution plan pursuant to Rule 12b-1 under the Act ("12b-1 Plan"), and none currently pays its distributor for distribution services.

The application states that as a result of increased competition for the short-term investments of institutional investors, Applicants believe that it is imperative that they be able to offer services which area adopted, to the extent possible, to the investment needs of the particular investor. In order to broaden their range of services, and also to expand their marketing alternatives. Applicants are contemplating the creation of new classes of shares ("New Shares") with the following characteristics. Like the Existing Shares, the New Shares would be offered only to or through institutions and could not be purchased by individuals directly from Applicants. Further, except for its

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class designation and allocation of certain expenses and voting rights as described below, each class of New Shares would be identical in all respects to one of the classes of Existing Shares. Among other things, the "matched" sets of New Shares and Existing Shares would be subject to the same investment objective, policies and limitations, the same dividend policies and the same purchase and redemption policies. They would differ, however, in that certain classes of Shares would be offered in connection with (1) a 12b–1 Plan adopted by the Applicant involved pursuant to Rule 12b–1 under the Act; or (2) a non-12b–1 Shareholder Services Plan adopted by the Applicant involved pursuant to all the requirements of Rule 12b–1 except those relating to shareholder voting rights and automatic termination of the plan upon its assignment; or (3) no plan at all. (Those 12b–1 Plans and non-12b–1 Shareholder Services Plans are sometimes referred to hereinafter as "Plans.") The application states that the adoption and implementation of a Plan by one Applicant would be made independently of, and would not be conditioned upon, the adoption or implementation of a Plan by any other Applicant. In addition, each Plan would relate only to the shares of a particular Applicant.

As described in the application, under each type of Plan, an Applicant would enter into Servicing Agreements with institutions concerning the provision of support services to the customers of the institutions who from time to time beneficially own shares which are offered in connection with the Plan ("Customers"). In addition, Servicing Agreements under a 12b–1 Plan would contemplate the provision of distribution assistance by an institution in connection with the Plan. Applicants state that the provision of support services and distribution assistance under the Plans would augment (and not duplicate) the services that are currently provided to Applicants by their service contractors (e.g. investment adviser, administrator, distributor, custodian and transfer agent).

According to the application, under each type of Plan an Applicant would pay participating institutions for their rendering of support services and/or distribution assistance in accordance with the terms of the Plan and the relevant Servicing Agreement (such payments are referred to hereinafter as "Service Payments"). Service Payments paid to an institution would not exceed 0.75% (on an annualized basis) under a 12b–1 Servicing Agreement, or 0.50% (on an annualized basis) under a non-12b–1 Shareholder Servicing Agreement, of the average daily net asset value of those Shares beneficially owned by customers of the institution with respect to which the institution provides services and assistance under the Servicing Agreement. Further, because a Servicing Agreement necessarily contemplates the provision of services and assistance by an institution to its customers, the Applicants would not knowingly enter into a Servicing Agreement with an institution in those situations where the institution invests as principal. Applicants note that under state law and under recent letters of the Comptroller of the Currency, the ability of a bank to accept a fee from an investment company in connection with the investment of the assets of its fiduciary accounts may be restricted, and represent that to the extent that such investments are permitted they will include in their prospectuses relevant disclosure about the Comptroller's letters.

Applicants state that their governing boards of directors believe that by creating and offering shares in connection with Plans as described above, and by also offering shares independently of Plans, Applicants may be able to achieve added flexibility in meeting the service and investment needs of shareholders and future investors. Applicant's boards believe further that if shares are created and Plans adopted as described, it would be appropriate for the expense of the Service Payments made by an Applicant with respect to a class of shares to be borne exclusively by that class, but anticipate that it would be inefficient, and in some instances economically or operationally unfeasible, to organize a separate investment Portfolio for each class of New Shares created. It is asserted that not only would Applicants incur unnecessary accounting and bookkeeping costs in organizing and operating such new Portfolios, but Applicants' management of the new Portfolios, as well as their existing Portfolios, might be hampered. As an example of such difficulties, the application states that unless the new Portfolios grew at a sufficient rate and to a sufficient size, the Portfolios could face liquidity and diversification problems that would prevent them from producing a favorable yield, and that the risk that the new Portfolios would ultimately fail because of duplicative costs and management problems would not be insignificant in light of today's extremely competitive environment where investors may choose from a broad array of investment alternatives and expect to get services suited to their needs without sacrificing safety or yield.

According to the application, in order to obviate these preceived risks, Applicants contemplate that the New Shares would represent interests in the same Portfolios as the Existing Shares. Under this arrangement, each New and Existing Share in a particular Portfolio, regardless of class, would represent an equal pro-rata interest in the Portfolio and would have identical voting, dividend, liquidation and other rights, preferences, powers, restrictions, limitations, qualifications, designations and terms and conditions, except that: (1) Each class of New Shares and Existing Shares would have different class designations; (2) each class of shares offered in connection with a Plan would bear the expense of the Service Payments that were made under the Servicing Agreements that have been entered into with respect to that class; and (3) only the holders of the shares of the class or classes involved would be entitled to vote on matters pertaining to the Plan, and the Servicing Agreements, relating to such class or classes (for example, the adoption, amendment or termination of a Plan).

In particular, the application states that the net asset value of all outstanding shares representing interests in the same Portfolio would be computed on the same days and at the same times by adding the value of all portfolio securities and other assets belonging to the Portfolio and dividing the result by the number of that Portfolio's outstanding shares. Further, the gross income of the Portfolio would be allocated on a pro rata basis to each outstanding share in the Portfolio regardless of class, and all expenses incurred by the Portfolio (for example, fees of the adviser, administrator, directors, trustees, transfer agent, custodian, auditors and legal counsel, officers' salaries, registration and printing expenses, taxes, interest, brokerage fees and commissions, insurance premiums and extraordinary expenses) would be borne on a pro rata basis by such outstanding shares, except for Service Payments made under a Plan that has been adopted in connection with a class of shares. On the other hand, because of the Service Payments that would be borne by a class of shares that is offered in connection with a Plan, the net income of (and dividends payable to) that class would be somewhat lower than the net income of the "matched" class of shares that is offered without a Plan, and might be somewhat higher or lower than the net income of other classes of shares of the

same Portfolio that are offered in connection with different Plans. Dividends paid to each class of shares in a Portfolio would, however, be declared and paid on the same days and at the same times, and, except as noted with respect to the expense of Service Payments, would be determined in the same manner and paid in the same amounts.

Applicants request an exemptive order pursuant to section 6(c) of the Act to the extent that the proposed issuance and sale of classes of New Shares representing interests in Applicants' existing and future Portfolios, including dividends thereon as described above, might be deemed: (1) To result in a "senior Security" within the meaning of section 18(g) of the Act and to be prohibited by section 18(f)(1) of the Act; and (2) to violate the requirement in section 18(i) of the Act that every share of stock issued by a registered management investment company shall have equal voting rights with every other outstanding voting stock.

In support of the relief requested, Applicants assert that the issuance and sale of classes of New Shares in their Portfolios will better enable them to meet the competitive demands of today's financial services industry by facilitating the distribution of their securities and permitting them to expand the scope and depth of their services without assuming excessive accounting and bookkeeping costs or unnecessary investment risks.

Applicants assert further that the proposed allocation of expenses and voting rights relating to the Plans in the manner described is equitable and would not discriminate against any group of shareholders. Investors purchasing shares offered in connection with a Plan and receiving the services provided thereunder would bear the costs associated with such services, but would also enjoy exclusive shareholder voting rights with respect to matters affecting that Plan. Conversely, investors purchasing shares that are not covered by a Plan would not bear those expenses or exercise those voting rights.

In addition, Applicants submit that the requested exemption is appropriate in the public interest and is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants assert that the proposed arrangement does not involve borrowings and does not affect Applicants' existing assets or reserves. Nor, it is asserted, will the proposed arrangement increase the speculative character of the shares in a Portfolio, since all shares will participate pro rata in all of the Portfolio's income and all of the Portfolio's expenses (with the exception of the proposed Service Payments).

Applicants state that although they contemplate that Service Payments may be made to institutional shareholders that may be deemed to be affiliated persons of Applicants because they own, control or hold with the power to vote 5% or more of the outstanding voting securities of a Portfolio, they are not requesting exemptive relief from section 17 of the Act because they believe that such payments would not be prohibited by that section.

Applicants agree that the following conditions may be imposed in any order of the Commission granting the requested relief:

1. The only difference between each class of Shares representing interests in the same Portfolio will relate solely to priorities with respect to: (a) The payment of dividends and such priority will reflect only the impact of the Service Payments made by Applicants under the Plans relating to particular classes of Shares, and (b) voting rights on matters which pertain to Plans (and Servicing Agreements and Service Payments thereunder). In addition, the designation of each Class of Shares in a Portfolio would be different, and the Shares in the TempFund Portfolio of Temporary Investment Fund, Inc. would also differ as to dividend record dates as permitted by an exemptive order previously granted by the Commission with respect to TempFund's Existing Shares and as described in the application with respect to its New Shares. (See Investment Company Act Release No. 10713, May 30, 1979.) Temporary Investment Fund, Inc. has agreed, with respect to each class of New Shares created by it in the TempFund Portfolio, to be bound by the condition to that exemptive order that TempFund shall not reduce the amount of any dividend declared to its shareholders in order to maintain its net asset value per share at $1.00.

2. The Plans (including both 12b–1 Plans and non-12b–1 Shareholder Services Plans), Servicing Agreements and Service Payments relating to Shares will be approved and reviewed by the relevent Applicant's governing board of directors in accordance with the procedures set forth in Rule 12b–1 and, in addition, the 12b–1 Plans (and, to the extent required, the Servicing Agreements and Service Payments thereunder) relating to shares will be approved by those shareholders who are affected in accordance with that Rule. In addition, each governing board, in approving and reviewing payments to an institution pursuant to any 12b–1 Plan or non-12b–1 Shareholder Services Plan, will conclude in good faith based on information available to them that such expenditures are competitive with those offered in the industry.

3. Dividends paid by an Applicant with respect to each class of shares in a Portfolio will be calculated in the same manner and will be in the same amount as dividends paid by the Applicant with respect to each other class of shares in the same Portfolio, except that the expenses of any Service Payments made by the Applicant under the Servicing Agreements relating to a class of shares will be borne exclusively by that class.

4. Each Prospectus relating to a class of shares that is offered in connection with a Plan will: (a) Describe the services rendered by institutions under Servicing Agreements with respect to those shares and the fees payable by the Applicant involved for such services; and (b) state that the beneficial owners of those shares should read the prospectus in light of the terms governing their institutional accounts.

5. Each Servicing Agreement entered into by an Applicant will contain representations by the institution involved that: (a) The institution will provide to its customers a schedule of any fees charged by it to the customers relating to the investment of their assets in the class of shares subject to the Servicing Agreement; and (b) the compensation paid to the institution under the Servicing Agreement, together with any other compensation the institution receives from its customers for services contemplated by the Servicing Agreement, will not be excessive or unreasonable under the laws and instruments governing the institution's relationships with its customers.

6. Applicants acknowledge that the grant of the requested exemptive order does not imply Commission approval, authorization or acquiescence in any particular level of payments that Applicants may make to institutions pursuant to Plans in reliance on the exemptive order.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than April 1, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the

case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-5859 Filed 3-11-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-23620; 70-7077]

The Southern Co. and Georgia Power Co.; Proposal To Issue and Sell Short-Term Notes, Term-Loan Notes and Commercial Paper; Exception From Competitive Bidding

March 5, 1985.

The Southern Company ("Southern"), a registered holding company, 64 Perimeter Center East, Atlanta, Georgia 30346, and its public utility subsidiary, Georgia Power Company ("Georgia"), 333 Piedmont Avenue, N.E., Atlanta, Georgia 30308, have filed an application-declaration subject to sections 6 (a) and (b), 7, and 12 of the Public Utility Holding Company Act of 1935 ("Act") and Rules 45, 50(a)(2) and 50(a)(5) thereunder.

Southern and Georgia propose to issue and sell from time to time, prior to April 1, 1986, short-term notes to banks and Georgia also proposes to issue and sell term-loan notes to banks and commercial paper to dealers up to an aggregate principal amount of $100 million for Southern and $1 billion for Georgia. Southern proposes to use the proceeds of its borrowings together with treasury funds and the proceeds from other external sources to make additional equity investments in the form of capital contributions to its subsidiaries, Alabama Power Company, Georgia, Gulf Power Company, and Mississippi Power Company, in amounts not to exceed $25, $410, $15 and $5 million, respectively, and for other corporate purposes.

Southern has obtained commitments aggregating $100 million from certain banks, each commitment currently matures December 31, 1985 and is subject to renewal in accordance with its terms. At Southern's option, borrowings will bear interest at an effective rate of (a) the lender's floating prime rate, (b) a margin over the London Interbank Offered Rate ("LIBOR") or (c) a margin over the bank's cost of either its federal or other funds. Assuming 50% usage of the commitment of each bank, a tenor of 90 days, a prevailing prime interest rate of 10.50% and a LIBOR of 8.375%, the effective cost of borrowing (including commitment fees) under these facilities would range from 11.00% to 10.75% under option (a), and 9.50% to 9.125% under option (b). Southern would borrow under option (b) unless option (c) is lower.

Pursuant to separate commitment agreements with 11 banks ("Bank") Georgia may borrow, through December 31, 1990, on a short-term unsecured revolving credit basis, up to an aggregate of $1.565 billion in principal amount at any one time outstanding. These borrowings have a maximum maturity of 270 days, are renewable at maturity and may be converted to term loans at any time at Georgia's option. Under the term-loan option, borrowings would be repaid in 12 equal quarterly installments beginning March 31, 1991 through December 31, 1993, or at an earlier date at Georgia's option.

Under each agreement, Georgia is obligated to pay a commitment fee based upon the unused portion of the Bank's commitment. The effective annual interest rates on individual borrowings will be either equal to or plus a specified number of basis points in excess of prescribed rates, as selected by Georgia. The rates available for selection by Georgia under the agreements are (a) the lender's floating prime or base rate ("Base Borrowing"), (b) the lender's certificate of deposit rate adjusted for Federal Reserve Board reserve requirements and the Federal Deposit Insurance Corporation ("FDIC") assessment imposed upon the lender ("CD Borrowing"), and (c) the LIBOR adjusted for Federal Reserve Board reserve requirements imposed upon the lender ("Eurodollar Borrowing").

Assuming a prevailing 10.75% per annum prime rate among the 11 Banks, the effective cost of the commitments for 1985 and 1986 assuming full usage would range from 10.75% to 11.063% for short-term borrowings, and 10.75% to 11.376% for term-loan borrowings. Assuming a prevailing 8% per annum certificate of deposit rate among the nine Banks providing the CD Borrowing option and 3% reserve requirements and the FDIC assessment, the effective cost of the commitments for 1985 and 1986 assuming full usage would range from 8.83% to 9.531% for both short-term and term-loan borrowings. Assuming a LIBOR of 8.40% per annum among the 11 Banks and 3% reserve requirements, the effective cost of the commitments for 1985 and 1986 assuming full usage would range from 9.035% to 9.698% for both short-term and term-loan borrowings.

Georgia also may effect short-term borrowings hereunder in connection with the financing of certain pollution control facilities through the issuance by Georgia Development Authorities ("Authority") of their revenue bond anticipation notes. Under a loan agreement with each such Authority, the Authority would loan to Georgia the proceeds of the sale of such revenue bond anticipation notes, having a maturity of not more than nine months after date of issue, and Georgia would issue its non-negotiable promissory note therefore. Georgia's note would provide for payments thereon corresponding to the revenue bond anticipation notes' payments.

The application-declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by March 28, 1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicants-declarants at the addresses specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application-declaration, as filed or as it may be amended, may be permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-5853 Filed 3-11-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-21820; File No. SR-Amex-85-2]

Self-Regulatory Organizations; Proposed Rule Change by American Stock Exchange, Inc. Relating to Rule 576

Pursuant to section 19(b)(1) of the Securities and Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on February 25, 1985, the American Stock Exchange, Inc. ("Amex") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the

self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

(a) The Amex is proposing to amend its schedule of approved member firm charges for handling proxy solicitations (Amex Rule 576), to permit the adding of a "surcharge" by member firms for start-up costs in complying with the new Commission Shareholder Identification Rule.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(a) *Purpose.* Last August, the Commission agreed to delay for one year implementation of its new Shareholder Identification Rule (Rule 14b–1(c)), which had originally been scheduled to take effect on January 1, 1985. The rule requires broker-dealers upon request and assurance of reimbursement of reasonable expenses, to provide issuers with the names, addresses, and security positions of their non-objecting customers whose securities are held in "street name."

The Commission agreed to defer the rule until January 1, 1986, largely at the behest of the brokerage community, in order to resolve certain technical problems prior to implementation. Brokers need additional time to develop operational systems to enable them to accurately survey customers, record responses, and upon request furnish the data to issuers. In addition, while the Commission rule allows for compensation to brokers for the costs incurred in obtaining and furnishing the data to issuers, it was agreed that an existing New York Stock Exchange ("NYSE") Ad Hoc Committee composed of corporate, banking, and brokerage firm representatives would determine the method and amount of reimbursement.

After several months of deliberation, the NYSE Ad Hoc Committee in December 1984 recommended that broker start-up costs—essentially for soliciting consents from "street name" holders and establishing the basic data files—estimated at between $18 to $25 million—be recouped at least in part through a surcharge on issuers of $.20 for each set of proxy materials processed by member firms during 1985 and 1986.[1] The NYSE and Amex were asked to amend their schedules of approved member firm charges for handling proxy solicitations (NYSE Rule 451 and Amex Rule 576), to provide for this surcharge.

The NYSE Ad Hoc Committee's proposal has been endorsed by the Securities Industry Association and the American Society of Corporate Secretaries, and an amendment to the applicable NYSE rule was approved by the Board in January. The proposed Amex rule amendment was endorsed by the Amex's Listed Company Advisory Committee at its December 1984 meeting and after Amex Board approval at its February 1985 meeting, is now being presented to the SEC for approval.

(b) *Basis.* The proposed amendment to Rule 576 is consistent with section 6(b) of the Exchange Act in general and furthers the objectives of sections 6(b)(4) in particular, in that it is intended to assure the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will have no impact on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were soliciated or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 5th Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the file number in the caption above and should be submitted by April 2, 1985.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 6, 1985.

John Wheeler,

Secretary.

[FR Doc. 85–5856 Filed 3–11–85; 8:45 am]

BILLING CODE 8010–01–M

[1] The Ad Hoc Committee has not yet made any recommendation regarding broker reimbursement for on-going costs of complying with the Rule.

[Release No. 21818; File No. SR–MSTC– 85–3]

Self-Regulatory Organization; Proposed Rule Change of the Midwest Securities Trust Co.; Filing and Immediate Effectiveness

March 6, 1985.

Pursuant to section 19(b) (1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 8, 1985, the Midwest Securities Trust Company ("MSTC") filed with the Securities and Exchange Commission the rule change described below. The Commission is publishing this notice to solicit comments on the rule change.

The proposed rule change modifies MSTC's bearer system for securities

processing. In particular, the proposed rule change revises the MSTC Bearer System Manual to establish a bearer bond interface with the Depository Trust Company ("DTC"). This interface is similar to the existing R System interface between MSTC and DTC for registered municipal bonds. The proposed rule change also permits MSTC participants that want to deliver bearer securities to the bearer system in advance to submit Pended and Advanced Notice Requests. Deliveries accompanied by Pended and Advanced Notice Requests will pend until they are filled, up to a maximum of five days.

MSTC states in its filing that the proposed rule change is consistent with the Act in general and with section 17A in particular. Specifically, MSTC maintains that the proposed rule change is designed to promote the prompt and accurate clearance and settlement of securities transactions and will not impose any burden on competition.

The rule change has become effective, pursuant to section 19(b (3) (A) of the Act and subparagraph (e) of Securities Exchange Act Rule 19b–4. The Commission may summarily abrogate the rule change at any time within 60 days of its filing if it appears to the Commission that abrogation is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

You can submit written comment within 21 days after notice is published in the **Federal Register**. Notice of this proposed rule change is expected to be published during the week of March 11, 1985. Please refer to File No. SR–MSTC–85–3, and file six copies of your comment with the Secretary of the Commission, Securities and Exchange Commission, 450 5–th Street, N.W., Washington, D.C. 20549. Material on the rule change, other than material that may be withheld from the public under 5 U.S.C. 552, is available at the Commission's Public Reference Room and at the principal offices of the Depository Trust Company.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

John Wheeler,
Secretary.

[FR Doc. 85–5855 Filed 3–11–85; 8:45 am]
BILLING CODE 8010–01–M

[Release No. 34–21819; File No. SR–MSRB–85–6]

Self-Regulatory Organizations; Proposed Rule Change by the Municipal Securities Rulemaking Board; Relating to Suitability, Discretionary Accounts, Supervision, and Recommendations Made During Investment Seminars and to Customer Inquiries Made in Response to Advertisement Published by a Dealer

The Municipal Securities Rulemaking Board on March 1, 1985, filed with the Securities and Exchange Commission pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

(a) The Municipal Securities Rulemaking Board ("Board") is filing amendments which would reorganize rules G–19 on suitability, G–26 on discretionary accounts, and G–27 on supervision, and an interpretation concerning the application of rule G–19 to recommendations made during investment seminars and to customer inquiries made in response to advertisements published by a dealer (hereafter referred to as "the proposed rule change"), as follows: [1]

Rule G–19.

Suitability of Recommendations and Transactions; Discretionary Accounts

(a) Account Information. Each broker, dealer, and municipal securities dealer shall obtain at or before the completion of a transaction in municipal securities with or for the account of a customer a record of the information required by rule G–8(a)(xi).

(b) Knowledge of Customer. Each broker, dealer or municipal securities dealer at or before recommending the purchase, sale or exchange of a municipal security to a customer shall have knowledge or shall inquire about the customer's financial background, tax status, and investment objectives and any other similar information.

[(a) Customer Information] *(c) Suitability of Recommendations.* No broker, dealer, or municipal securities dealer shall recommend the purchase, sale, or exchange of a municipal security to a customer unless such broker, dealer, or municipal securities dealer, after reasonable inquiry,

(i) has reasonable grounds based upon information available from the issuer of the security or otherwise for recommending a purchase, sale or other transaction in the security; and

[(i)] *(ii)(A)* has reasonable grounds to believe and does believe that the recommendation is suitable for such customer [on the basis of information furnished by such customer] *in light of* the customer's financial background, tax status, and investment objectives and any other similar information concerning the customer known by such broker, dealer, or municipal securities dealer, or

[(ii)] *(B)* has no reasonable grounds to believe and does not believe that the recommendation is unsuitable for such customer if all of such information is not furnished or known.

Notwithstanding the foregoing, if a broker, dealer or municipal securities dealer determines that a transaction in municipal securities or in specific municipal securities would not be suitable for a customer and so informs such customer, [such] *the* broker, dealer, or municipal securities dealer may thereafter respond to the customer's requests for investment advice concerning municipal securities generally or such specific securities and may execute transactions at the direction of the customer.

[(c)] *(d)* Discretionary Accounts. No broker, dealer, or municipal securities dealer shall effect a transaction in municipal securities with or for a discretionary account

(i) except to the extent clearly permitted by the prior written authorization of the customer and accepted in writing by a municipal securities principal or municipal securities sales principal on behalf of the broker, dealer, or municipal securities dealer; and

(ii) unless the broker, dealer, or municipal securities dealer first determines that the transaction is suitable for the customer as set forth in paragraph (c)[(i)](ii) of this rule or unless the transaction is specifically authorized by the customer.

[(b)] *(e)* Churning. No broker, dealer, or municipal securities dealer shall recommend transactions in municipal securities to a customer, or effect such transactions or cause such transactions to be effected for a discretionary account, that are excessive in size or frequency in view of information known to such broker, dealer, or municipal

[1] Italics indicate new language; brackets indicate deletions.

securities dealer concerning the customer's financial background, tax status, and investment objectives.

Rule G–26 [Administration of Discretionary and Other Accounts]

[delete whole rule; reserve rule G–26 for future rulemaking]

Rule G–27. Supervision

(a)–(b) No change.

(c) Written Procedures. Each municipal securities broker and municipal securities dealer shall establish, maintain, and enforce written supervisory procedures adopted by the municipal securities broker or municipal securities dealer to assure compliance with the rules of the Board and applicable provisions of the Act and the rules and regulations thereunder. Such procedures shall provide, at minimum, for

(i)–(ii) No change.

(iii) *the prompt review and written approval of each transaction in municipal securities effected with or for a discretionary account (unless the transaction is specifically authorized by the customer) introduced or carried by the municipal securities broker or municipal securities dealer and* the regular and frequent examination by the designated municipal securities principal or the designated municipal securities sales principal of customer accounts introduced or carried by the municipal securities broker or municipal securities dealer, in which transactions in municipal securities are effected, in order to detect and prevent irregularities and abuses.

Application of Suitability Requirements to Investment Seminars and Customer Inquiries Made in Response to a Dealer's Advertisements

The Board recently has been asked about the application of rule G–19 on suitability to recommendations made during investment seminars or to recommendations made to customers responding to an advertisement published by a dealer. As discussed earlier, rule G–19 prohibits a municipal securities professional from recommending transactions in municipal securities to a customer unless the professional makes certain determinations with respect to the suitability of the transactions.

The Board believes that rule G–19 applies to recommendations made by a professional at an investment seminar as follows: A dealer recommending a transaction in a particular security during the course of an investment seminar must have reasonable grounds for the recommendation in light of information about the security available from the issuer or otherwise. This duty applies to recommendations made generally to all participants in the seminar as well as to recommendations made to individual customers. In addition, a professional who makes a recommendation to a particular customer—whether during the course of the seminar or in response to an inquiry about purchasing the securities from the customer resulting from the customer's attendance at the seminar—must have reasonable grounds to believe and must believe that the recommendation is suitable for the customer in light of the customer's financial background, tax status, investment objectives and other similar information about the customer relevant to making a determination on suitability. If, after an inquiry by the professional, this information is not provided by the customer or otherwise known by the professional, the professional may make the recommendation only if he has no reasonable grounds to believe and does not believe that the recommendation is unsuitable for the particular customer.

The Board also wishes to advise the industry that the requirements of rule G–19 apply to recommendations made to customers who contact a dealer in response to an advertisement for municipal securities in the same way as they apply to all other recommendations made to customers. As summarized above, if an individual contacts a dealer for additional information concerning municipal securities that were the subject of an advertisement, a professional is permitted to recommend a particular transaction to the individual only if he has reasonable grounds for recommending the security in light of information about the security available from the issuer or otherwise. Moreover, the professional may make the recommendation to the customer only if, after making a reasonable inquiry, he has reasonable grounds to believe and does believe that the recommendation is suitable for the customer on the basis of the financial and other information provided by the customer or obtained from other reliable sources.

II. Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for, the Proposed Rule Change

A. Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) 1. *Rule G–19 on Suitability.* Rule G–19 prohibits a municipal securities professional from recommending transactions in municipal securities to a customer unless the professional makes certain determinations with respect to the suitability of the transactions. The rule also specifies standards for effecting transactions in municipal securities for a discretionary account (as defined in rule D–10) and prohibits "churning" of an account.

2. *Rule G–26 on administration of discretionary and other accounts.* Rule G–26(a) requires a dealer to obtain certain information for each customer, as specified by rule G–8(a)(xi), at or before completion (*i.e.*, settlement) of a transaction in municipal securities. Thus, a dealer is prohibited from transacting any business with a customer unless the customer provides it with the information (except for the tax identification number or social security number) specified in rule G–8(a)(xi).

Rule G–26 (b) and (c) require that a municipal seacurities principal obtain and accept written authorization from a customer for a discretionary account and that each transaction in a discretionary account be approved in writing by a principal. The rule also requires "regular and frequent" reviews of all customer accounts in which transactions in municipal securities are effected "in order to detect and prevent irregularities and abuses."

3. *Rule G–27 on supervision.* The requirement that a municipal securities principal review active customer accounts on a frequent basis is reiterated in rule G–27 which requires a municipal securities dealer to supervise the municipal securities activities of its associated persons and the conduct of its municipal securities business. Rule G–27 specifies, among other things, that a municipal securities principal must be designated in writing to supervise a dealer's municipal securities activities. In addition, the rule requires a dealer to "establish, maintain and enforce written supervisory procedures" adopted by the dealer which must include the prompt review and written approval by the designated municipal securities principal of certain specified municipal securities activities of the dealer.

The supervisory procedures also must provide for the regular and frequent examination by the designated municipal securities principal (or the designated municipal securities sales principal) of customer accounts introduced or carried by the municipal securities broker or municipal securities dealer, in which transactions in municipal securities are effected, in order to detect and prevent irregularities and abuses.

4. *Summary of Amendments.* The Board is incorporating subsections (a) and (b) of rule G–26 into rule G–19. As a result, rule G–19 will contain all of the suitability-related obligations applicable to brokers, dealers and municipal securities dealers. The Board also is revising the language of rule G–19, consistent with its previous interpretations, to require a municipal securities dealer to have reasonable grounds, based upon information available from the issuer of the security or otherwise, for recommending a purchase, sale, or other transaction in a security. This requirement is separate and apart from the current requirement that a dealer have reasonable grounds in light of financial and other information known about a customer for recommending a transaction in municipal securities to the customer.

With respect to supervision, the Board is incorporating the present provisions of rule G–26(c) into rule G–27 so that rule G–27 contains all of the supervision-related responsibilities applicable to municipal securities dealers. Rule G–26 is being withdrawn by the Board, and the rule will be reserved for future rulemaking.

The Board also is issuing an interpretation concerning the application of rules G–19 to investment seminars and inquires made in response to advertisements published by a dealer. The interpretation should dispel any confusion whether a dealer has a duty to consider the suitability of recommendations and transactions in those situations. (b) The Board has adopted the proposed rule change pursuant to section 15B(b)(2)(C) of the Act which establishes the Board's authority to adopt rules designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and to protect investors.

B. Self-Regulatory Organization's Statement on Burden on Competition.

The proposed rule change applies uniformly to all brokers, dealers, or municipal securities dealers that are engaged in municipal securities activities and is mainly technical in nature. The Board therefore believes that the proposed rule change would not impose any burden on competition

C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received from Members, Participants, or Others.

The Board has neither asked for or received any comments concerning the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by April 2, 1985.

For the Commission by the Division of Market, Regulation, pursuant to delegated authority.

Dated: March 6, 1985.

John Wheeler,

Secretary.

[FR Doc. 85–5854 Filed 3–11–85; 8:45 am]

BILLING CODE 8010–01–M

[File No. 22–13686]

Colorado-Ute Electric Association, Inc.; Application and Opportunity for Hearing

March 7, 1985.

Notice is hereby given that Colorado-Ute Electric Association, Inc. (the "Applicant") has filed an application pursuant to clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939, as amended (the "Act"), for a finding by the Securities and Exchange Commission (the "Commission") that the trusteeship of Central Bank of Denver, a banking corporation ("Central Bank") under two indentures of the Applicant described in the application is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to prevent Central Bank from acting as trustee under any such indentures.

The Applicant asserts:

The Company has issued and outstanding the following two debt securities secured by the following indentures, which are the subject of its application:

(1) $240,000,000 principal amount of Serial Facility Bonds Due 1990–2002 (the "Bonds") under a Collateral Trust Indenture dated as of December 1, 1984 (the "Indenture");

(2) Pollution Control Revenue Bonds Series 1978 (the "Series 1978 Bonds") in the aggregate principal amount of $59,000,000 under an Indenture of Trust dated as of May 1, 1978 (the "Pollution Indenture").

Section 310(b) of the Act provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest (as defined in the section), it shall, within ninety days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (b)(1) of this section provides, with certain exceptions stated therein, that a trustee under a qualified indenture of a company shall be deemed to have a conflicting interest if such trustee is trustee under another indenture under which any other securities, or certificates of interest or participation in any other securities of such company are outstanding.

The present application, filed pursuant to clause (ii) of section 310(b)(1) of the Act seeks to exclude the dual trusteeship from the operation of section 310(b)(1) of the Act.

The effect of the proviso contained in clause (ii) of section 310(b)(1) of the Act on the matter of the present application

is such that the indentures may be excluded from the operation of section 310(b)(1) of the Act if the Company shall have sustained the burden of proving, by application to the Commission and after opportunity for hearing thereon, that the trusteeship of Central Bank under the indentures is not likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Central Bank from acting as trustee under such indentures.

The Applicant asserts that the collateral securing the Bonds and the Series 1978 Bonds is different. With respect to the Bonds, the collateral held by the trustee which directly secures them consists solely of the Refunding Lessor Notes (the "Notes"). The Applicant indicates that the Refunding Lessor Notes are secured under Lease Indentures (with a different trustee than the Notes) by a Lessor Lease with the Applicant. It should be noted that the Applicant asserts that the Refunding Lessor Notes were not issued by Applicant and would not entitle the trustee as the holder thereof to pursue remedies against the Applicant. The trustee, however, has the indirect benefit of the collateral securing the Refunding Lessor Notes, in that the trustee may utilize these Notes to foreclose upon Unit 3 (the "Facilities") which is owned by five trusts ("Owner Trusts"). The Facilities have been leased to the Applicant and the lease payments due the Owner Trust have been pledged to secure the Notes which in turn secures the Bonds.

With respect to the Series 1978 Bonds the collateral consists of substantially all of the property of the Applicant none of which is collateral for the Bonds. Accordingly, the Applicant indicates that the possibility of a material conflict does not appear likely since there is separate collateral securing the Bonds and the Series 1978 Bonds. Applicant asserts that Central Bank is able to proceed against Applicant solely on behalf of the Series 1978 Bonds.

The Applicant asserts that the indentures are not likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Central Bank from acting as trustee under any one or more of the indentures. The Applicant has waived notice of hearing, hearing on the issues raised by the application, and all rights to specify procedures under the Rules of Practice of the Commission with respect to its application. For a more detailed statement of the matters of fact and law asserted, as well as additional arguments, all persons are referred to said application which is on file in the offices of the Commission at the Public Reference Room, 450 Fifth Street, NW, Judiciary Plaza, Washington, DC 20549.

Notice is further given that an order granting the application may be issued by the Commission at any time on or after March 27, 1985 unless prior thereto a hearing upon the application is ordered by the Commission, as provided in clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939, as amended. Any interested person may, not later than March 26, 1985, at 5:30 P.M., Eastern Standard Time, in writing, submit to the Commission, his or her views or any additional facts bearing upon this application or the desirability of a hearing thereon. Any such comments or requests should be addressed to: Secretary, Securities and Commission, Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting a hearing, the reasons for such request, and the issues of fact and law raised by the application which he desires to controvert.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-5852 Filed 3-11-85; 8:45 am]

BILLING CODE 8010-01-M

[File No. 81-712]

Kidder, Peabody & Co. Incorporated; Application and Opportunity for Hearing

March 6, 1985.

Notice is hereby given that Kidder, Peabody & Co. Incorporated ("Applicant") filed an application pursuant to 12(h) of the Securities Exchange Act of 1934 (the "1934 Act") for an order granting Applicant an exemption from the provisions of section 12(g) of the 1934 Act.

The Applicant states, in part:

(1) In the absence of an exemption, applicant would be required to register its common stock under section 12(g) of the 1934 Act, and comply with the Act's periodic reporting provisions, the proxy rules and the insider reporting and trading requirements.

(2) Applicant believes that the exemptive order requested is appropriate in view of the fact that most of the holders of its common stock are senior employees of the Applicant who are actively engaged in its business. There is no market for the common stock.

For a more detailed statement of the information presented, all persons are referred to the application which is on file in the offices of the Commission at 450 5th Street, NW., Washington, D.C. 20549.

Notice is further given that any interested person no later than April 1, 1985 may submit to the Commission in writing his views or any substantial facts bearing on this application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request and issues of fact and law raised by the application which he desires to controvert. At any time after said date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-5849 Filed 3-11-85; 8:45 am]

BILLING CODE 8010-01-M

[File No. 22-13649]

Household Finance Corp.; Application and Opportunity for Hearing

March 6, 1985.

Notice is hereby given that Household Finance Corporation (the "Company"), a Delaware Corporation, has filed an application pursuant to section 310(b)(1)(ii) of the Trust Indenture Act of 1939, as amended (the "Act"), for a finding by the Commission that the proposed trusteeship of the First National Bank of Chicago ("FNBC"), as substitute trustee, under an indenture of the Company qualified under the Act is not so likely to involve a material conflict of interest with the existing trusteeship of FNBC under three other indentures qualified under the Act and entered into by the Company with FNBC, as indenture trustee, as to make it necessary in the public interest or for the protection of investors to disqualify FNBC from acting as substitute trustee under the additional indenture.

Section 310(b) of the Act provides, in part, that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest (as defined in the section), it shall within ninety days after ascertaining that it has

such conflicting interest either eliminate such conflicting interest or resign. Subsection (1) of that section provides, with certain exceptions, that a trustee is deemed to have a conflicting interest if it is acting as trustee under another indenture under which any other securities of the same obligor are outstanding. However, pursuant to clause (ii) of subsection (1), there may be excluded from the operation of this provision another indenture or indentures under which other securities of such obligor are outstanding, if the issuer shall have sustained the burden of proving on application to the Commission, and after opportunity for hearing thereon, that trusteeship under the qualified indenture and such other indenture is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as trustee under any of such indentures.

The Applicant alleges that:

1. FNBC is the trustee under the following indentures qualified under the Act and entered into by the Company with FNBC, as indenture trustee:

(a) an Indenture dated as of November 1, 1964, as supplemented, under which the Company's 4¾% Debentures due 1989 are outstanding.

(b) an Indenture dated as of July 1, 1967, as supplemented, under which the Company's 6⅜% Debentures due 1988 are outstanding;

(c) an Indenture dated August 1, 1972, as supplemented, under which are outstanding the Company's

(1) 7½% Debentures, Series 1F, due August 1, 1995,

(2) 8.30% Debentures, Series 2F, due January 1, 1986,

(3) 9% Debentures, Series 3F, due July 1, 2000,

(4) 8.20% Debentures, Series 4F, due September 15, 2007, and

(5) 9% Debentures, Series 5F, due October 15, 1985.

Such Indentures are hereafter collectively referred to as the "FNBC Indentures".

2. The Northern Trust Company is presently the trustee under an Indenture dated April 1, 1974 (the "Northern Indenture"), qualified under the Act and entered into by the Company with The Northern Trust Company, as indenture trustee, under which are outstanding the Company's 8½% Debentures, Series 2N, due April 1, 2001.

3. The Northern Trust Company has advised the Company that it is resigning, effective January 21, 1985, as Trustee under the Northern Indenture. The Company proposes to have FNBC serve as substitute trustee under the Northern Indenture.

4. Acting as substitute trustee under the Northern Indenture will involve FNBC in a conflict of interest within the meaning of Section 310(b)(1) of the Act. However, the FNBC Indentures and the Northern Indenture are wholly unsecured and the securities issued and outstanding under the FNBC Indentures and the Northern Indenture are equal in rank. In the opinion of the Company, no differences exist between the provisions of the FNBC Indentures and the provisions of the Northern Indenture which are likely to involve a conflict of interest as defined in section 310(b)(1) of the Act as to make it necessary in the public interest or for the protection of investors that FNBC be disqualified from acting as substitute trustee under the Northern Indenture.

5. The Company is not in default in any respect under the FNBC Indentures or the Northern Indenture.

The Company waives notice of hearing, any right to a hearing on the issues raised by the application and all rights to specify procedures under Rule 8(b) of the Commission's Rules of Practice.

For a more detailed account of the matters of fact and law asserted, all persons are referred to said application, which is a public document on file in the offices of the Commission at the Public Reference Room, 450 Fifth Street, NW., Washington, D.C. 20549.

Notice is further given that any interested person may, not later than April 8, 1985, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of law or fact raised by such application which he desires to controvert, or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: John Wheeler, Secretary, Securities and Exchange Commission, Washington, D.C. 20549. At any time after said date, the Commission may issue and order granting the application, upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest or for the protection of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-5851 Filed 3-11-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14404; File No. 812-6015]

Application and Opportunity for Hearing; SMA Life Assurance Company, et al.

March 6, 1985.

Notice is hereby given that SMA Life Assurance Company (the "Company"), a stock life insurance company with its principal operational office in Worcester, Massachusetts, Separate Account VA-A of SMA Life Assurance Company, Separate Account VA-B of SMA Life Assurance Company, Separate Account VA-C of SMA Life Assurance Company, Separate Account VA-G of SMA Life Assurance Company, Separate Account VA-H of SMA Life Assurance Company (the latter five parties referred to as the "Accounts"), SMA Investment Trust, (the "Trust") and SMA Equities, Inc. (together referred to as "Applicants"), filed an application on December 31, 1984, and amendments thereto on February 19 and March 5, 1985, for an order of the Commission (1) pursuant to section 17(b) of the Act exempting Applicants from section 17(a) of the Act to the extent necessary to permit the sale of Trust shares in exchange for the assets of the Accounts, (2) pursuant to section 17(d) of the Act and rule 17d-1 thereunder to permit the Accounts to jointly engage in the same transaction, and (3) pursuant to section 6(c) of the Act exempting Applicants from sections 26(a)(2)(C) and 27(c) to the extent necessary to permit certain deductions from the assets of the Accounts. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and are referred to the Act for a statement of the relevant statutory provisions.

Applicants state that the Company is a wholly-owned subsidiary of State Mutual Life Assurance Company of America, a mutual life insurance company incorporated under the laws of the Commonwealth of Massachusetts, and the Accounts are registered as diversified, open-end management investment companies under the Act and are also separate accounts of the Company. The accounts fund individual variable annuity policies.

Applicants propose to convert the Accounts from diversified management investment companies into unit investment trusts to achieve economies of scale by combining similar investment portfolios of both the existing Accounts and possibly other separate accounts to be created in the future. Applicants state that the assets

of Accounts with similar investment objectives and portfolios would be combined to lower average per unit transaction costs and increase the opportunity for investing funds in accordance with their stated objectives. Pursuant to separate agreements and plans of reorganization, and subject to prior approval by a majority vote of the policy-holders of each Account, the Boards of Managers of each Account will take all action necessary to convert each managed Account into a unit investment trust investing exclusively in the shares of one of three series of the Trust that corresponds to the principal investment objective of each Account. Investments in the series of the Trust (each series is referred to as a "Fund") would be as follows: Account A will invest in the Growth Fund; Accounts B and C will invest in the Income Appreciation Fund; Account G and H will invest in the Money Market Fund. Thereafter, each of the Accounts will, on a closing date to be determined independently, transfer all of its assets to the applicable series of the Trust in exchange for shares of the series.

Applicants request an exemption from section 17(a) pursuant to section 17(b) of the Act to effect the proposed plan of reorganization. Applicants state that the Accounts and the Trust may be affiliated persons of each other by reason of common control, and that the Company and the Accounts are affiliated persons of each other because, among other things, the Company has established and maintained the Accounts and may be deemed to control the Accounts. Applicants submit that the terms of the proposed transaction are reasonable and fair and do not involve overreaching by any party, and that the proposed transaction is consistent with the investment policies of each Account and the Trust and with the purposes of the Act.

Applicants submit that the proposed transaction is fair because it will provide policyholders with stability and the benefits of an expanding asset base, thereby facilitating investment management. Applicants submit that some of the Accounts are now losing assets through net redemptions, and that the proposed transaction is expected to result in economies of scale to Account policyholders and will preserve the size of the assets under management. Further, although the Trust will pay certain expenses previously borne by the Company, including part of the investment advisory fee, fees of disinterested trustees, audit fees, and custodian fees, this increase in cost to policyholders is offset by a waiver of annual contract charges aggregating 0.60% of the average annual net asset value of each Account, so that total direct and indirect charges borne by policyholders are not expected to increase, and under certain circumstances, may be reduced. Thus, the reorganization is expected to produce better asset management with the potential for reduced expenses through economies of scale at no cost to policyholders for these benefits. Moreover, Applicants represent that all expenses of the reorganization will be borne by the Company. Applicants state that the Boards of Managers of the Accounts have determined that the reorganization is in the best interests of the policyholders and have concluded that there would be no dilution of any policyholder's interest as a result of the reorganization.

Applicants further submit that the proposed transaction is consistent with the policy of each registered investment company concerned, as recited in its registration statement and reports filed under the Act, since the investment objectives, policies, and restrictions of each of the Accounts are substantially identical to those of the applicable series of the Trust. Applicants represent that the proposed transaction is consistent with the general purposes of the Act in that it does not present a situation that is adverse to the public interest or the interest of investors and because policyholders will be presented with a proxy statement describing the reorganization. Applicants also request an order of the Commission pursuant to section 17(d) and rule 17d–1 thereunder since the Accounts may be considered affiliated persons of one another and the proposed reorganization may be viewed as a joint transaction. Further, a preliminary proxy statement submitted to the Commission for review indicated that the proposed plans of reorganization are contingent upon one another. Applicants submit that no Account will participate in the transaction on a basis different from or less advantageous than that of any other participant. Applicants indicated that the terms of the transaction will be effected on equal terms for each of the Accounts. Applicants state that the terms of the plans of reorganization provide for the acquisition by the Trust of the assets of the Accounts on the basis of the net asset values of each of the Accounts, and that the number of shares of a series of the Trust to be issued in return for the assets of a transferor Account will be valued as of the close of business on the valuation date.

Applicants also request an exemption from the provisions of sections 26(a)(2)(C) and 27(c)(2) to the extent necessary to permit payment of certain charges to the Company from the asets of the Accounts. Applicants submit that after the reorganization, the Company will make deductions for a mortality risk charge, an expense risk charge, and a charge for New York contingency reserve from the assets of the Accounts. These charges will be 0.90% of average net assets annually, which includes 0.60% for mortality risk, 0.20% for expense risk, and 0.10% for New York contingency reserve, although Applicants request to reserve the right to raise the charges to a total of 1.275%. Applicants submit that the morality and expense risk charge is a reasonable and proper insurance charge that compensates the Company for the risk that annuitants under the policies will live longer as a group than had been anticipated in setting the annuity rates guaranteed in the policies, and for the risk that the maximum charges permitted under the policies will prove insufficient to cover the administrative costs incurred in regard to the policies.

Applicants acknowledge that the sales charges assessed under the policies may be insufficient to cover the expenses of distributing the policies, and that any shortfall would be made up through the use of general account funds which may be attributed in part to profits, if any, derived from the asset change. Applicants acknowledge that this distribution financing arrangement might be deemed to involve the direct or indirect use of Account assets for distribution. Applicants represent that the proposed level of the total charge for mortality and expense risk and contingency reserve at 0.90%, and the maximum level for such charges at 1.275%, are within the range of industry practice for comparable annuity contracts, based upon a survey of the registration statements of such contracts. Applicants undertake to maintain and make available to the Commission upon request a memorandum setting forth the methodology used to support this representation. Applicants represent that the Company has determined that there is a reasonable likelihood that the Account's distribution financing arrangement will benefit the Accounts and their policyholders, and the Company will maintain and make available to the Commission upon request a memorandum setting forth the basis for this representation. Applicants further represent that the Accounts will invest only in open-end management

companies which have undertaken to have a board of directors, a majority of whom are not interested persons of the open-end management company, formulate and approve any plan under the rule 12b-1 to finance distribution expenses.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than March 26, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for such request, and the specific issues, if any, of fact or law that are disputed. Such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-5850 Filed 3-11-85; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: City of Danville and Pittsylvania County, VA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice of intent to advise the public that an environmental impact statement will be prepared for a proposed highway project in the City of Danville and Pittsylvania County, Virginia.

FOR FURTHER INFORMATION CONTACT: Robert B. Welton, District Engineer, Federal Highway Administration, P.O. Box 10045, Richmond, Virginia 23240-0045, telephone: (804) 771-2682.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Virginia Department of Highways and Transportation (VDH&T), will prepare an environmental impact statement (EIS) on a proposal to provide a four-lane divided facility from an intersection with Route 58, approximately 1.00 mile east of the Danville City Limits to an intersection with Route 29 north of Blairs, Virginia.

The proposed highway project involves extending the Route 265 Danville Expressway with a four-lane divided roadway on new location. Two alternate roadway alignments within the project corridor will be investigated for this study. Three short extensions or relocations will also be investigated: (1) Relocation of Route 360-beginning just west of the Borden Chemical Smith-Douglass plant and tying back into existing Route 360 approximately 0.8 mile northeast of Route 732; (2) Franklin Turnpike Extension-beginning on proposed Route 265 and ending on North Main Street, Business 29, opposite the existing Franklin Turnpike Intersection; (3) Falls Creek Spur-beginning on proposed Route 265 approximately 1.00 mile south of Route 721 and tying back into Route 29 approximately 1.00 mile south of its intersection with Route 721. Regardless of which alternative is selected, the proposed relocations would be approximately the same and apply to either one.

This proposal is considered necessary in order to provide a connecting link for traffic on Route 265 south of Route 58 to interconnect with Route 29 north of Danville to facilitate the more efficient movement of through-traffic, and to bypass the downtown area.

There is also the null or no-build alternative to the proposed project. This includes all elements of the Regional Transportation Plan with the exception of the proposed project.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies and to private organizations and citizens who have previously expressed interest in this proposal. No formal scoping meeting is planned at this time. The Draft EIS will be available for public and agency review and comment. Following publication of the DEIS, a public hearing will be held. Public notice will be given of the time and place of the hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the DEIS should be directed to the FHWA at the address provided above.

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The provisions of Executive Order 12372 regarding State and local review of Federal and Federally assisted programs and projects apply to this program.

Issued on March 5, 1985.

Robert B. Welton,

District Engineer, Richmond, Virginia.

[FR Doc. 85-5794 Filed 3-11-85; 8:45 am]

BILLING CODE 4910-22-M

Environment Impact Statement; Macomb County, MI

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a supplement to the draft environment impact statement (EIS) published in 1982 for the proposed improvement of a 9.8 mile section of M-59, Macomb County, Michigan will be prepared.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas A. Fort, Jr., District Engineer, Federal Highway Administration, P.O. Box 10147, Lansing, Michigan 48901, Telephone (FTS) 374-1879 or (Commercial) (517) 377-1879 or Mr. Ross E. Lowes, Manager, Social and Economic Studies Section, Bureau of Transportation Planning, Michigan Department of Transportation, P.O. Box 30050, Lansing, Michigan 48909, Telephone (517) 373-2226.

SUPPLEMENTARY INFORMATION: The Federal Highway Administration, (FHWA), in cooperation with the Michigan Department of Transportation, (MDOT), will prepare a supplement to the draft EIS for a new alternate for the proposed improvement of a 1.5 mile segment of M-59 from Mound Road to Van Dyke Road in the City of Utica. The new alternate was developed in response to local concerns with the alternates previously proposed and addressed in the draft EIS for this segment of the overall improvement of M-59 from Mound Road to I-94.

The new alternate is significantly different from the alignments shown in the draft EIS for this segment of the proposed improvement of M-59. The new alternate includes a boulevard cross-section and one-way pair using existing M-59 for the eastbound roadway and Auburn Street for the westbound roadway in this 1.5 mile segment. Additional right-of-way will be required on the south side of Auburn Street with associated displacements of homes and businesses. Other environmental impacts which may result from the new alternate will also be addressed in the supplement.

No scoping meeting is planned. The new alternate has been discussed at a public information meeting held on December 20, 1984 in the City of Utica and received generally favorable responses. The supplement to the draft EIS is scheduled for circulating in the Fall of 1985 and will be made available for public and agency review and comment. An opportunity for a public hearing will also be provided. Public notice will be given of the time and place of any public hearings.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The provisions of OMB Circular No. A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects apply to this program)

Issued on: March 5, 1985.

Jerry L. Poston,

Assistant Division Administrator, Lansing, Michigan.

[FR Doc. 85-5841 Filed 3-11-85; 8:45 am]

BILLING CODE 4910-22-M

Research and Special Programs Administration

[Inconsistency Ruling IR-10]

New York State Thruway Authority Restrictions on the Transportation of Radioactive Materials; Correction

AGENCY: Research and Special Programs Administration, Materials Transportation Bureau (MTB).

ACTION: Inconsistency ruling; correction.

SUMMARY: This document corrects an erroneous characterization of the status of a portion of the New York State Thruway which appeared in the text of inconsistency ruling no. IR-10, published November 27, 1984 (49 FR 46645). As set forth at 49 FR 46646, IR-10 contained the following paragraph:

The State of New York has not designated any alternate preferred routes. Therefore, the preferred routes in New York are Interstate System highways. The New York State Thruway, although financed by construction bonds, has been designated a part of the Interstate System of highways *with the exception of that segment of Interstate 87 between Suffern and Newburgh. With the exception of that segment,* therefore the New York State Thruway is a preferred route as defined in § 177.825(b)(1). [Emphasis Added].

The exception was noted on the basis of information provided by the Federal Highway Administration and reflects a technical distinction which is not relevant to this proceeding. By letter dated September 11, 1969, the Administrator of the Federal Highway Administration designated all of Interstate 87 in the State of New York as part of the Interstate System of highways. With the sole exception of the segment between Suffern and Newburgh, all of Interstate 87 was designated under 23 U.S.C. 103 and, therefore, charged against the statutory mileage limit and eligible for Federal funding as set forth in § 103. The segment from Suffern to Newburgh was designated under 23 U.S.C. 139 and, therefore, not charged against the statutory limitation on total mileage of the Interstate System, nor eligible for the same kind of Federal funding. Thus, for purposes of administering the Federal-Aid Highway Act, the segment of Interstate 87 between Suffern and Newburgh is accorded a status different from the rest of that highway. For purposes of compliance with operational requirements, however, all of Interstate 87 is, as its name indicates, a part of the Interstate System of highways.

Accordingly, the paragraph of IR-10 beginning on line 18, column 1, at 49 FR 46646 is amended to read as follows:

The State of New York has not designated any alternate preferred routes. Therefore, the preferred routes in New York are Interstate System highways. The New York State Thruway, although financed by construction bonds, has been designated a part of the Interstate System of Highways. Therefore, the New York State Thruway is a preferred route as defined in § 177.825(b)(1).

Signed in Washington, D.C. on March 4, 1985.

Alan I. Roberts,

Associate Director, Office of Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc. 85-5792 Filed 3-11-85; 8:45 am]

BILLING CODE 4910-60-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 48
Tuesday, March 12, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL COMMUNICATIONS COMMISSION

March 7, 1985.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, March 14, 1985, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, NW., Washington, D.C.

Agenda, Item No., and Subject

Common Carrier—1—Title: Memorandum Opinion and Order on Reconsideration in the Cellular Lottery Proceeding, CC Docket 83-1096. Summary: The Commission will consider the petitions for reconsideration filed against the Report and Order (Cellular Lottery Selection, 55 RR 2d 8) in this proceeding.

Common Carrier—2—Title: Memorandum Opinion and Order, Reconsideration of the Accounting Treatment for AT&T's Judgment and Litigation Expenses from the Litton Systems Antitrust Lawsuit. Summary: The Commission will consider petitions for reconsideration challenging the accounting treatment for AT&T's judgment and litigation costs from the Litton Systems antitrust lawsuit.

Common Carrier—3—Title: Notice of Proposed Rulemaking to amend Part 31 Uniform System of Accounts to account for judgments and other costs associated with antitrust lawsuits, and conforming amendments to the Annual Report Form M. Summary: The Commission will consider whether to adopt a Notice of Proposed Rulemaking to propose rule changes that outline the accounting treatment telephone companies shall give judgments and other costs associated with antitrust lawsuits.

Common Carrier—4—Title: "Lottery ticket" cellular applications in Columbia, SC and San Juan, PR. Summary: The Commission will consider whether to adopt By Direction letters returning certain cellular applications filed for Columbia, South Carolina and San Juan, Puerto Rico as unacceptable for filing.

Common Carrier—5—Title: Inquiry into the policies to be followed in the authorization of common carrier facilities to meet Pacific telecommunications needs during the period 1981-1995 (CC Docket No. 81-343). Summary: The Commission will consider adopting a Further Notice of Proposed Rulemaking in CC Docket No. 81-343.

Mass Media—1—Title: License renewal and assignment/transfer of control applications for Stations WHAT and WWDB (FM), Philadelphia, Pennsylvania. Summary: The Commission will consider a *Memorandum Opinion and Order* addressing petitions to deny alleging employment discrimination, illegal lottery broadcasts and other rule violations.

Mass Media—2—Title: Television Waveform Standards Concerning Horizontal and Vertical Blanking Intervals. Summary: In this Report and Order the Commission will consider amending its Rules that specify the maximum time durations for the horizontal and vertical blanking intervals transmitted as part of the video signal by television broadcast stations.

Mass Media—3—Title: Implementation of BC Docket No. 80-90 to Increase the Availability of FM Broadcast Assignments. Summary: The Commission will consider in this *Second Report and Order* whether any special consideration should be given to daytime-only licensees when they apply for new FM allotments. We will also consider procedures for accepting applications on the recent channel allotments and for new petitions to further amend the FM Table of Allotments.

Mass Media—4—Title: In the Matter of Amendment to Sections 73.3572 and 73.3573 Relating to Processing of Commercial FM and TV Broadcast Applications. Summary: The Commission will consider whether to adopt proposed rule changes for the processing of commercial TV and FM applications for new or expanded service. The proposed changes would implement a window filing—first come/first serve processing system.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Judith Kurtich, FCC Office of Congressional and Public Affairs, telephone number (202) 254-7674.

William J. Tricarico,

Secretary.

[FR Doc. 85-5908 Filed 3-8-85; 10:35 am]

BILLING CODE 6712-01-M

2

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m., March 11, 1985.

PLACE: Hearing Room One, 1100 L Street, NW., Washington, D.C. 20573.

STATUS: Closed.

MATTER TO BE CONSIDERED: Agreement No. 202-010689: Actions of the Transpacific Westbound Rate Agreement.

CONTACT PERSON FOR MORE INFORMATION: Bruce A. Dombrowski, Assistant Secretary, (202) 523-5725.

Bruce A. Dombrowski,

Assistant Secretary.

[FR Doc. 85-5931 Filed 3-8-85; 11:21 am]

BILLING CODE 6730-01-M

3

INTERNATIONAL TRADE COMMISSION

[USITC SE-85-13A]

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 50 Fed. Reg. 7869 (2/26/85).

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 11:00 a.m., Wednesday, March 13, 1985.

CHANGES IN THE MEETING: 5. Investigation 731-TA-240, 241 [Preliminary] Correct country of origin to read Republic of Korea instead of Republic of China.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 523-0161.

[FR Doc. 85-5993 Filed 3-8-85; 3:45 pm]

BILLING CODE 7020-02-M

4

INTERNATIONAL TRADE COMMISSION

[USITC SE-85-14]

TIME AND DATE: Tuesday, March 19, 1985, at 2:00 p.m.

PLACE: Room 117, 701 E Street, NW., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and Complaints. (a) Porch, Patio and Lawn Gliders—Docket No. 1163.
5. Investigation 731-TA-242 [Preliminary] (Tapered tubular steel transmission structures from the Republic of Korea)—briefing and vote.
6. Investigation 337-TA-181 (Certain Meat Deboning Machines)—briefing and vote.
7. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 523–0161.

[FR Doc. 85–5994 Filed 3–8–85; 3:45 pm]

BILLING CODE 7020–02–M

5

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9 a.m., Tuesday, March 19, 1985.

PLACE: NTSB Board Room, Eighth Floor, 800 Independence Ave., SW., Washington, D.C. 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. *Aircraft Accident Report*: Zantop International Airlines, Inc., Lockheed L188 Electra, N5523, Chalkhill, Pennsylvania, May 30, 1984.

2. *Hazardous Materials Accident Report*: Release of Hazardous Waste Acids from a Cargo Tank Truck at Orange County, Florida, on March 6, 1984.

3. *Railroad Accident Report*: Derailment of Seaboard System Railroad Freight Train FERHL at Marshville, North Carolina, April 10, 1984.

CONTACT PERSON FOR MORE INFORMATION: Sharon Flemming (202) 382–6525.

Ray Smith,

Federal Register Liaison Officer.

March 8, 1985.

[FR Doc. 85–5982 Filed 3–8–85; 2:27 pm]

BILLING CODE 7533–01–M

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federal register

Tuesday
March 12, 1985

Part II

Environmental Protection Agency

40 CFR Part 710

Partial Updating of TSCA Inventory Data Base; Production and Site Reports; Proposed Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 710

[OPTS-82015; TSH-FRL 2710-4]

Partial Updating of TSCA Inventory Data Base; Production and Site Reports

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Under the authority of section 8(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2607(a), EPA proposes to require manufacturers and importers of certain chemical substances included on the TSCA Chemical Substances Inventory to report current data on the production volume, plant site, and site-limited status of the substances. EPA will use the information collected under this rule to update the Inventory data base and to support activities associated with the implementation of TSCA. This action would not affect the status of chemical substances listed on the Inventory. EPA is requesting comments on this proposed rule.

DATE: Comments must be received by May 13, 1985.

ADDRESSES: Comments should be forwarded to: TSCA Public Information Office (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-108, 401 M Street SW., Washington D.C. 20460.

Comments must be filed in triplicate and must bear the identifying notation (OPTS-82015). All written comments filed pursuant to this notice, as well as the rulemaking record, will be available for reviewing and copying in Rm. 107, East Tower, at the address given above from 8:00 a.m. to 4:00 p.m., Monday through Friday except legal holidays.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M Street SW., Washington, D.C. 20460, toll free: [800-424-9065], in Washington, D.C.: [554-1404], outside the U.S.A.: [Operator-202 554-1404].

SUPPLEMENTARY INFORMATION:

I. Authority

The Agency is proposing this rule under section 8(a) of TSCA which authorizes the Administrator of EPA to promulgate rules under which manufacturers, importers, and processors of chemical substances must submit such information as the Administrator may reasonably require. Failure to comply fully with any provision of this rule would be a violation of section 15 of TSCA and would subject the violator to penalties of TSCA sections 16 and 17.

It is proposed that this rule be promulgated as an amendment to 40 CFR Part 710 which currently contains the Inventory Reporting Regulations. This amendment would designate existing §§ 710.1 through 710.8 as Subpart A and add a new Subpart B.

II. Summary of the Rule

EPA is proposing to require manufacturers and importers to report current data on the production volume, plant site, and site-limited status (i.e., whether a chemical substance is manufactured and processed only within a plant site and is not distributed for commercial purposes as a substance or as part of a mixture or article outside the plant site) for certain chemical substances included on the TSCA Chemical Substances Inventory. For purposes of this rule and preamble, the term "manufacturer" includes importer, unless otherwise specified. A person would be considered to be a manufacturer subject to this rule if that person has manufactured or imported a reportable substance in the United States at any time during that person's most recent complete corporate fiscal year preceding the effective date of a relevant reporting period under this rule.

This rule requires both initial reporting and subsequent reporting. During the initial reporting period, every manufacturer of a chemical substance covered by this rule, unless otherwise exempt, would be required to report on every such substance for each plant site. After the initial reporting, reporting would only be required every other year if a reportable event has occurred. Reportable events reflect what EPA considers as significant changes in production volume or site-limited status of a reportable substance. Persons who begin manufacture or import of a reportable substance at a particular plant site after the initial reporting period would be required to submit an initial report in the first subsequent reporting period.

The substances covered by this rule would include those that were initially reported for the Inventory, as well as substances added to the Inventory following TSCA section 5(a) premanufacture notification (PMN) review and the Agency's receipt of a notice of commencement of manufacture or import. EPA proposes that four categories of substances, though on the Inventory, be specifically excluded from this rule. These excluded substances are those that are identified as polymers, inorganic substances, microorganisms, and naturally occurring chemical substances, as described under § 710.4(b) of the Inventory Reporting Regulations. Low-volume substances, i.e., substances with an annual site-specific production volume (or total amount imported) of less than 10,000 pounds (4,540 kilograms), will generally also be excluded from this rule.

In addition to the proposed exclusions of substances, EPA proposes that two categories of persons be exempt from all reporting and recordkeeping requirements: Small manufacturers and persons manufacturing substances in limited circumstances.

The information reported under this rule would include data on chemical identity, plant site, annual production volume, and site-limited status of a reportable substance. For each submission, EPA would also require the name, address, and telephone number of a person who can answer technical questions related to the submission. This information would be submitted on EPA-designated reporting forms. Persons subject to this rule would be required to maintain records that support the information in their submissions or that document a decision not to report. Such records would be kept for 5 years. The format for such recordkeeping would be left up to the individual manufacturer.

III. Background

A. Establishment of Inventory Data Base

Section 8(b) of TSCA requires the establishment and maintenance of an Inventory of chemical substances in United States commerce. To meet this requirement, EPA promulgated the Inventory Reporting Regulations in December 1977. The regulations resulted in the compilation of both the Inventory of Chemical Substances in Commerce and the Inventory data base.

The Inventory of Chemical Substances in Commerce is now maintained by EPA in the Agency's Master Inventory File which includes approximately 60,000 substances originally reported for the Inventory and over 1,500 substances which have completed PMN review under section 5(a) of TSCA and for which a notice of commencement of manufacture or import has been received by EPA.

The Inventory data base compiled by EPA currently contains only 1977 production information on the approximately 60,000 chemical

substances originally reported for the Inventory, including:

1. Chemical identity data including Chemical Abstracts Service (CAS) Preferred or Index Names, CAS Registry Numbers, synonyms, and, wherever available, molecular formulas.

2. 1977 manufacturing plant site name and address for each firm that reported in 1977 as manufacturers of one or more of the 60,000 substances originally reported for the Inventory.

3. 1977 production range for each chemical substance produced by each reporting plant site.

4. 1977 manufacturing activity, i.e., whether a submitter was a manufacturer, an importer, or a processor.

5. Whether the substance was site-limited in 1977.

B. Uses of Inventory Data Base

The production volume, plant site, and site-limited status information contained in the Inventory data base have been used by EPA to support numerous TSCA activities. To implement TSCA effectively, EPA requires current knowledge of where and in what quantity chemical substances on the Inventory are manufactured. This information supports the Agency's investigations of health and environmental effects and commercial status of chemical substances and the development of regulations under TSCA.

Production volume information is an important factor in selecting chemical substances for attention because it gives preliminary indications of the potential for human and environmental exposure. In general, EPA needs production data to set priorities for further investigation, to perform first-level screening of chemical substances for testing under TSCA section 4, to estimate, along with other data, the potential for human and environmental exposure to specific substances, to support the implementation of various TSCA regulations, and to perform economic impact analyses for potential TSCA regulations.

EPA uses plant site data to identify and communicate with manufacturers and to estimate the extent and location of potential exposure. Information on whether a substance is site-limited is also used by EPA in estimating exposure. A site-limited substance is presumed to have a lower exposure potential than a substance distributed outside the manufacturing plant site.

The nonconfidential data in the Inventory data base have been used for purposes other than TSCA implementation. For example, the National Toxicology Program (NTP) uses the production data as a tool in screening chemical substances for testing and the plant site data to identify and communicate with manufacturers. The EPA Office of Solid Waste and Emergency Response has used the data base to identify manufacturers of various chemical substances under study and to estimate amounts produced. EPA Headquarters and Regional Offices use the nonconfidential data to respond to inquiries from State governments, industry, and the public, and to support TSCA compliance monitoring activities.

A more detailed discussion of the various uses of Inventory data can be found in a supporting document included in the rulemaking record for this rule.

IV. Need for Updating Inventory Data Base

Data proposed to be gathered under this rule would be used by EPA to update a portion of the Inventory data base. EPA needs an accurate and readily available source for basic information for a significant number of the substances listed on the Inventory. EPA has not been able to identify an alternate data source that can provide the Agency with adequate information in an accurate, complete, and cost-effective manner.

This rule would also enable EPA to obtain current production volume information for certain substances added to the Inventory following the completion of section 5 PMN review and the Agency's receipt of a notice of commencement of manufacture or import. At the present time, the Inventory data base contains production volume data for only the substances originally reported for the Inventory. For the substances submitted under section 5, production estimates, rather than actual production volumes, are reported. These estimates are not included in the Inventory data base. The actual production volume information that would be reported under this rule will be added to the Inventory data base and will be used by the Agency to set priorities for further investigation of these substances.

A. Age of Inventory Data Base

Since the Inventory data base contains only information from 1977, the accuracy of the data has been diminishing significantly with time. The growing obsolescence of the Inventory data base has become a matter of increasing concern to EPA. For any of the regulatory purposes previously described, it is important for the Agency to be able to determine quickly, accurately, and efficiently who produces these chemical substances, where they are produced, and in what quantities. The Inventory data base should be the logical data base from which to obtain such basic information. Unfortunately, it cannot now be relied upon for accurate information because the data have become increasingly outdated.

Over the past several years, evidence of significant changes in the production volume and plant site for many Inventory substances has been observed. For example, the Interagency Testing Committee (ITC) uses the production ranges in the Inventory data base as its first-level screening for candidate substances for testing under TSCA section 4. The ITC has found changes in both the manufacturing plant sites and production ranges for many chemical substances reviewed for testing. These changes have complicated the ITC's initial screening process and have complicated the ITC's initial screening process and have forced the ITC and EPA to spend additional time and resources verifying the data listed in the Inventory data base and attempting to obtain current information. Such efforts are not cost-effective and do not always produce adequate information.

Similarly, EPA discovered that the plant site information in the Inventory data base was not reliable when the Agency attempted to identify and contact manufacturers who would be subject to reporting under the section 8(a) Preliminary Assessment Information Rule (40 CFR Part 712). Major discrepancies were also evident when production volume data collected under the Preliminary Assessment Information Rule were compared against the corresponding production ranges reported for the Inventory data base.

There have been numerous instances in which the Inventory data base has been identified as not providing accurate information on a particular chemical substance when such information was needed by EPA for TSCA purposes. In some cases, EPA was compelled to promulgate chemical-specific section 8(a) rules to monitor the production level of these substances. The lack of readily available current production data on these substances has, therefore, complicated the Agency's investigations of chemical substances, compelled the Agency to obtain current information in a resource-intensive and inefficient manner.

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B. Alternate Sources and Their Limitations

1. *Alternate sources.* EPA has attempted to obtain current production volume and plant site information, on a case-by-case basis, directly from industry, through the use of contractors, and from other existing sources such as:

a. "The SRI Directory of Chemical Producers (DCP)."

b. "Synthetic Organic Chemicals: United States Production and Sales (SYNORG)."

c. "Chemical Economics Handbook (CEH)."

d. "Chemical Marketing Reports."

e. "Chemical Industry Notes."

f. Existing internal sources maintained by EPA and other Federal agencies.

2. *Limitations.* The use of sources other than the Inventory data base has three major limitations.

First, many existing sources of similar information, whether compiled by Government or commercial entities, often do not provide adequate information for EPA's needs under TSCA. Sources other than the Inventory usually contain information on only a limited number of substances. To use production data as a tool in chemical screening, EPA needs a data base which provides readily available information for the many thousands of substances over which EPA has jurisdiction under TSCA. A case-by-case search for information would be impractical and costly because of the large number of substances involved.

Second, the information from other sources is often not comprehensive or reliable, does not always relate to specific plant sites, often pertains to product classes rather than specific substances, and, in certain cases, represents plant capacity rather than actual production volume.

Third, certain data bases compiled by other Government agencies often contain company proprietary information which cannot be readily made available to EPA.

V. Substances Covered by the Rule

Reportable substances under this rule would include only those that are listed in the Agency's Master Inventory File as of the time of reporting and that are not specifically excluded from this rule. Substances which were originally excluded from the initial Inventory under 40 CFR 710.2 would therefore not be reportable under this rule. For example, any pesticide when manufactured, processed, or distributed in commerce for use solely as a pesticide would not be reportable.

Prior to the effective date of the final rule, EPA may publish an updated Inventory which will list most of the specific or generic chemical names of both substances initially reported for the Inventory and substances subsequently added to the Inventory. Since EPA continually adds to the Master Inventory File substances that have undergone PMN review and that are subsequently reported as manufactured or imported, the Agency may publish supplements to the Inventory from time to time covering additions to the Master Inventory File since a previous publication. Substances added to the Master Inventory File after the beginning of a reporting period would become reportable in the next reporting period, unless otherwise excluded from this rule.

VI. Substances Excluded From the Rule

EPA proposes that four categories of substances, although included on the Inventory, be excluded from reporting under this rule. The purpose of these exclusions is to focus the information collection effort under this rule on those substances for which the Agency has the greatest need for current information. The four categories of substances proposed for exclusion are polymers, inorganics, microorganisms, and naturally occurring chemical substances. These categories are described below:

A. Polymers

The Inventory covers approximately 15,500 synthetic polymers and biopolymers. Most polymers can be identified in the Inventory's "Chemical Substance Identities" section or in the Agency's Master Inventory File with the words "polymer(s)" or "polymerized," or the prefix "poly" appearing in the corresponding Chemical Abstracts Service (CAS) Index or Preferred Nomenclature for that substance. EPA believes that the overwhelming majority of the synthetic polymers and biopolymers on the Inventory can be so identified. The few synthetic substances that may be borderline polymeric are named differently on the Inventory and would not, therefore, be excluded from this rule.

However, certain biopolymers which are not always identifiable by the terms "polymer(s)," "polymerized," or "poly" would also be excluded from reporting under this rule. These substances are identified in the hierarchy of subset headings for the Inventory's UVCB section (i.e., Chemical Substances of Unknown or Variable Composition, Complex Reaction Products, and Biological Materials). These biopolymers are proteins (albumin, casein, gelatin, gluten, hemoglobin), enzymes, polysaccharides (starch, cellulose, gums), rubber, or lignin. Furthermore, biopolymers which have been chemically modified to the extent that the polymeric structure still remains substantially intact would not be reportable.

EPA's approach to identifying polymers for purposes of this exclusion is intended to be relatively simple, so that a quick determination of whether a substance is a polymer can be made. An Inventory listing of a polymer could represent a group of polymers with the same constituent monomers, irrespective of the proportion of the monomers or chain structure. A more sophisticated definition that would characterize individual polymers based on such criteria as chain structure or molecular weight variations would make a polymer determination more difficult, especially in view of how polymers are listed on the Inventory. The Agency believes that this increased administrative burden would substantially reduce the benefit of the exclusion.

EPA proposes to exclude polymers from the proposed rule for two reasons. First, only a small percentage of the polymers reported under the PMN rule are selected for detailed review because of concern about their toxicity, exposure, or use. Second, it appears unlikely that EPA will use production volume as a means to perform preliminary screening of polymers for further investigation under the existing chemicals review program. Some of the polymers that may become a matter of concern would most likely be identified by other criteria such as toxicity or use. Therefore, there is no need to use this rule to collect production volume and plant site data on all polymers listed on the Inventory, when only a small number of these substances may be assessed further under TSCA. In cases in which production volume and plant site data are needed for specific polymers, EPA could use the authority of a chemical-specific section 8(a) rule to obtain the information after those polymers have been identified.

B. Inorganic Substances

For purposes of this proposed rule, inorganic chemical substances are substances that do not contain a carbon atom, or contain carbon only in the form of carbonato, cyano, cyanato, isocyano, or isocyanato groups, or the chalcogen analogues of these groups. Inorganic substances on the Inventory can be

easily identified and include approximately 3,000 substances.

The inorganic chemical substances are proposed for exclusion for reasons somewhat similar to those for excluding polymers. The hazard potentials of many inorganic substances are relatively well-established. Thus, it is unlikely that the Agency would use production volume as a means to perform preliminary screening of inorganic substances. When production data are needed on specific inorganic substances or groups of inorganic substances, EPA could use the authority of a chemical-specific section 8(a) rule to collect the required information.

C. Microorganisms

EPA is proposing to exclude from reporting under this rule about 200 substances that are classified on the Inventory as microorganisms. For purposes of this rule, this category includes bacteria, fungi, and yeasts which are easily identifiable in the hierarchy of subset headings for the Inventory's UVCB section and are also identified on the Inventory by their corresponding CAS Preferred Names which are usually standard names for the species. Products of microorganisms are, however, reportable unless otherwise excluded.

Microorganisms are proposed for exclusion under this rule because EPA is formulating its policy in the area of biotechnology, and TSCA information requirements for microorganisms are still being determined. Therefore, it would not be necessary to collect site-specific production data for microorganisms at this time. Information requirements relative to microorganisms will be addressed under a separate rule.

D. Naturally Occurring Chemical Substances

The Inventory includes a group of substances which may be naturally occurring, as described in § 710.4(b) of the original Inventory Reporting Regulations. These substances were not reportable under the Inventory Reporting Regulations, although they are included on the Inventory. For this reason, EPA is proposing to exclude from this rule all naturally occurring chemical substances produced as described in § 710.4(b). However, persons who produce a substance in a manner other than as described in § 710.4(b) would be required to report.

This proposed exclusion would cover chemical substances which are naturally occurring and which are unprocessed or processed only by manual, mechanical, or gravitational means, by dissolution in water, by flotation, or by heating solely to remove water or which are extracted from air by any means. Examples of such substances include raw agricultural commodities, water, air, natural gas, crude oil, minerals, ores, and rocks.

E. Other Possible Exclusions

In addition to the four categories of substances proposed for exclusion, EPA is also considering excluding other categories of substances from this rule. The possible candidates for exclusion include those substances that are petroleum refinery streams and wastes, as well as other UVCB substances. EPA invites public comments on these additional categories.

VII. Persons Subject to the Rule

Except for those described in Unit VIII below, a person would be considered to be a manufacturer subject to this rule if that person has manufactured or imported for commercial purposes a reportable substance at any time during that person's most recent complete corporate fiscal year immediately preceding the effective date of the rule or any subsequent reporting period. For example, if the effective date of the initial reporting period were January 1, 1986, and a company's fiscal year begins on October 1, the most recent corporate fiscal year for that company would be October 1, 1984, through September 30, 1985.

A person who has reported manufacture or import of a reportable substance under the rule but has subsequently discontinued such manufacture or import is considered to be a manufacturer subject to this rule for the next reporting period.

This rule includes an initial reporting period and subsequent reporting periods, as discussed in Unit IX of the preamble. In general, all persons subject to the rule would be required to report for the initial reporting. Subsequent reporting will be required only when one of the reportable events, as discussed in Unit IX, occurs.

VIII. Persons Exempt From the Rule

EPA is proposing that two categories of persons be exempt from the reporting and recordkeeping requirements of this rule if they qualify for one of the proposed exemptions at the time of reporting.

A. Small Manufacturers

EPA is proposing that small manufacturers (including importers) of reportable chemical substances be exempted from all reporting and recordkeeping requirements of this rule except with respect to those who manufacture or import chemical substances regulated under TSCA section 5(e), the purpose of this exemption is to reduce the paperwork burden on small chemical manufacturers, while ensuring that EPA's basic information requirements will be satisfied.

Persons would qualify as small manufacturers under this rule if, at the time of reporting, they meet one of the two standards specified in the recently promulgated TSCA section 8(a) Small Manufacturers Exemption Rule (40 CFR Part 704). These two exemption standards are as follows:

1. *First standard.* A chemical manufacturer would qualify as "small" under this standard if the total annual sales of all plant sites that it owns or controls (together with those that are owned or controlled by its foreign or domestic parent company, if any) are less than $40 million. However, if a manufacturer with total annual sales of less than $40 million produces annually over 100,000 pounds (45,400 kilograms) of a particular chemical substance at a particular plant site, that manufacturer will not qualify as small with regard to that chemical substance at that plant site.

Under this first standard, a company that meets the sales criterion for small but does not meet the volume criterion for all of its sites will be subject to reporting or recordkeeping for a particular chemical substance only for sites producing 100,000 pounds or more of the chemical substance per year.

2. *Second standard.* A chemical manufacturer would qualify as small if the total annual sales of all plant sites that it owns or controls (together with those that are owned or controlled by its foreign or domestic parent company, if any) are less than $4 million, regardless of the quantity of chemical substances produced by that manufacturer.

For purposes of these two standards, total annual sales would mean the total revenue generated by the sale of all products, including non-chemical products, that are produced at a plant site. EPA will consider periodically adjusting, as necessary, the sales values of both standards to allow for inflation after the promulgation of this rule. The Agency will use an index from the Bureau of Labor Statistics (BLS) for this purpose: the Producer Price Index for Chemicals and Allied Products. Similarly, EPA recognizes the possibility that the sales values may also be subject to deflationary economic trends. The Agency could adjust the sales values downward if significant deflation were to occur.

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Companies would use the corporate fiscal year as the 12-month period for which both annual sales and production volume are to be calculated. In the first standard, annual production volume would mean the total amount of a chemical substance produced or imported during the designated 12 month period.

A parent manufacturing company would be one which owns or controls another company. Ownership or control would exist when one company owns 50 percent or more of another company's voting stock or other equity rights, or has the power to control the management and policies of the other company. This proposed definition is drawn from the 1977 Economic Census Report of Organization of the United States Department of Commerce.

B. Persons Manufacturing Substances in Limited Circumstances

EPA is proposing to exempt from this rule persons who manufacture reportable substances either in limited ways or through coincidental manufacture. Section 704.5(a) of the general section 8(a) rules exempts persons who manufacture or import substances solely for research and development; § 704.5(c) exempts persons who import substances as part of articles. EPA is proposing that these two exemptions apply to this rule without change.

For the original Inventory Reporting Regulations and for the PMN rule, EPA recognized that chemical substances are often manufactured incidental to another operation or upon end use of another substance or mixture. For example, a paper carton producer applies adhesives and inks during the carton-making operation and other chemical substanecs are formed coincidentally as these adhesives and inks dry. EPA has exempted such types of "manufacture" from the original Inventory reporting and from PMN requirements. Accordingly, EPA is proposing to exempt these types of "manufacture" from this rule as well, because EPA believes that it does not need information on such coincidental manufacture to update the Inventory Data Base.

Section 720.30(g) of the PMN rule would apply to this rule exempting manufacture of byproducts which are used only as a fuel, which are disposed of as a waste, or from which component chemical substances are extracted. Section 720.30 (h) would also apply, exempting manufacture of impurities and substances from reactions upon end use, as well as nonisolated intermediates.

IX. Whether To Report

A. Initial Reporting

For the initial reporting period, all manufacturers who are subject to this rule would be required to report on every reportable substance manufactured at each particular plant site. If a person later begins to manufacture or import for commercial purposes a reportable substance at a plant site, that person would submit an initial report for that substance and plant site during the next reporting period. The initial reporting would enable EPA to establish a base line of current information on those substances that are in commercial production.

B. Recurring Reporting

After the initial reporting period, reporting would be required every 2 years if one of the reportable events occurred during the most recent complete corporate fiscal year preceding a relevant reporting period. For purposes of this rule, reportable events reflect what EPA considers as significant changes in production volume, or site-limited status of a reportable substance. Based on its experience with the 1977 Inventory data, EPA estimates that approximately 12.5 percent of the production and site information in the Inventory data base would become obsolete each year. The Agency, therefore, believes that the 2-year reporting interval would be reasonable, since this would enable the Agency to maintain a relatively current data base without imposing an unreasonable reporting burden on industry.

For purposes of this proposed rule, reportable events that would trigger reporting after the initial reporting are defined as follows:

1. *Production volume.* For reportable substances with a previously reported annual production volume of 10,000 pounds or more, a reportable event would occur when the previously reported site-specific production volume or the total quantity imported of a substance increases or decreases by 5-fold or more. EPA believes that such a magnitude of change is significant in terms of exposure potential. When there is a 5-fold, i.e., 500 percent, increase in production volume of a substance, the Agency believes that such a substantial increase in production volume would result in a higher exposure potential for the substance. In the case of a 5-fold, i.e., 80 percent, decrease in production volume of a substance, the Agency believes that its concern would be reduced, and priorities for regulatory actions may change as a result.

If a reportable substance is produced at 10,000 pounds or more at a given plant site for the first time since the previous reporting period, this fact would constitute a reportable event for the next reporting period. Similarly, if production of a reportable substance ceases at a given plant site during the 2 fiscal years since the previous reporting period, that fact would be reportable for the next reporting period. No further reporting would be required unless and until commercial production of that substance has resumed at that plant site at 10,000 pounds or more.

2. *Site-limited status.* A reportable event would occur when a substance previously reported as site-limited is distributed outside that specific plant site for commercial purposes for the first time, or when a previously distributed substance covered by this rule becomes site-limited for the first time.

C. Low-Volume Threshold

EPA is proposing to establish a low-volume threshold by exempting from initial reporting substances produced at low volumes. For purposes of this rule, if the site-specific annual production volume or the total amount annually imported for a substance is below 10,000 pounds, no initial reporting would be required. If a person's site-specific annual production volume or total amount annually imported increases to 10,000 pounds or more after the close of the initial reporting period, the person would be required to comply with the reporting requirements of this rule for that substance in the first subsequent reporting period.

EPA's reason for exempting low-volume substances from this rule is based on its information need. Although EPA may need production volume information for certain low-volume substances, it appears unlikely that the Agency will need readily available production volume information as a general tool to screen these substances for further investigation. When production volume information is needed for certain low volume substances, EPA could use the authority of a chemical-specific 8(a) rule to collect the required information. EPA believes that this exemption is reasonable and consistent with the Agency's past efforts in exempting low-volume substances from the requirements of other rules promulgated under TSCA.

X. What To Report

Persons who are subject to this rule would be required to report by completing an EPA-designated reporting form. Proposed reporting forms are

included in § 710.39 of the proposed rule. Detailed instructions for filling out the reporting forms will be made available prior to the effective date of the final rule.

There are two different versions of the reporting form, each containing four parts. The first version of the form, U–1, would be used by persons reporting information on substances whose identity is not confidential at the time of reporting or will not remain confidential on the Inventory. The second version of the form, U–2, would be used only by persons reporting information on chemical substances whose identity will remain confidential on the Inventory.

Parts I, II, and III of the reporting form include the certification to be signed by the submitter and require the reporting of other basic submitter information. Part IV of the form would be used to indicate whether the submission is an initial reporting or a reporting of changes. The extent to which Part V of the form would be completed would depend on the number of chemical substances reported on that form.

EPA is also examining the feasibility of allowing certain submitters to report by computer tapes. If EPA determines that reporting in this manner is a feasible approach, it will provide, prior to the effective date of the final rule, complete instructions stipulating the format specifications for preparing such computer tapes.

The information requirements for this rule are discussed below. In most cases, a submitter would provide fiscal information for the most recent complete corporate fiscal year preceding the relevant reporting period, unless otherwise stated in this rule.

A. Chemical Identity

For each chemical substance covered by this rule, a submitter would be required to provide a specific chemical name, a CAS Registry Number, and/or other identifying numbers used on the Inventory. Persons would check the published Inventory to obtain the correct name and Registry Number for their substances. If the identity of a substance is confidential, a submitter would consult the generic names section of the published Inventory to obtain an EPA-designated Accession Number for that substance. If a person is uncertain whether a reportable substance is covered by one of the generic names, the person would have to contact EPA using the *bona fide* procedures in § 710.7(g) of the Inventory Reporting Regulations or § 720.25(b) of the PMN rule to determine whether the substance in question is reportable.

B. Plant Site

Importers would report by their United States headquarters. Each manufacturer would be required to report by specific plant site name and street address.

Certain manufacturers were permitted to report for the original Inventory by corporate headquarters, business or Post Office Box addresses, or through trade associations and other agents. EPA has found that data on specific plant sites are much more useful to the Agency. Plant site data usually enable the Ageny to develop a more accurate estimation of potentially exposed populations and to identify and communicate with manufacturers of chemical substances more easily.

C. Production Volume

Manufacturers would be required to report the quantity of the substance manufactured at each plant site in separate reports, importers would be required to report the total quantity imported, regardless of destination, and the information would be reported in pounds. Although EPA does not plan to prescribe specific accuracy ranges for reporting quantities, a submitter should provide the best available information, i.e., production figures normally maintained at a plant site for business purposes and known to, or reasonably ascertainable by, a submitter as specified in section 8(a)(2) of TSCA. Reporting of inaccurate data would constitute a violation of the rule and would subject the violator to EPA enforcement actions.

EPA is proposing that precise production data, rather than production ranges, be reported under this rule because in many applications the Agency has found that the production ranges reported for the 1977 Inventory data base create a certain degree of uncertainty in estimating exposure. This uncertainty is compounded when information from different plant sites is aggregated. Precise production data would minimize the uncertainties prevalent in the Agency's use of the 1977 Inventory production data.

The use of narrower ranges was considered by EPA as an alternative to the wide ranges used for the 1977 Inventory. EPA has not adopted that approach because the Agency believes that production data are not maintained by industry in ranges. Therefore, the reporting of precise production data would not be more burdensome to the submitters and would provide the Agency with more useful information.

D. Site-Limited Status

Manufacturers would be required to indicate whether a chemical substance manufactured at a plant site is distributed for commercial purposes outside that site, including as part of mixtures or articles. Imported substances could not be site-limited.

E. Technical Contact

Persons reporting under this rule would be required to identify the name, address, and telephone number of an individual who can answer questions concerning the information on the reporting form. This information would be used by EPA to resolve reporting errors or technical problems related to the submission.

XI. Reporting Period

As discussed above, after the initial reporting, reporting of changes would occur at two-year intervals. EPA is proposing an initial reporting period of 120 days beginning on the effective date of the rule. EPA believes that such a period will be sufficient for initial reporting. In subsequent reporting years EPA is proposing a reporting period of only 60 days because the volume and burden of reporting would be significantly reduced. Subsequent reporting periods would begin on the anniversary of the effective date of the rule every two years.

XII. Confidentiality

A. Asserting Claims

Submitters would be permitted to claim information submitted to EPA under this rule as confidential if release of the information would reveal trade secrets or confidential commercial or financial information, as provided by section 14 of TSCA. Claims of confidentiality could be asserted only at the time information is submitted to EPA and only in the manner specified in the rule. EPA's procedures for processing and reviewing confidentiality claims are set forth at 40 CFR Part 2, Subpart B.

Any information submitted under this rule could be claimed as confidential, even if the same or similar information (except chemical identity) was not so claimed during reporting for the initial Inventory. However, EPA would strongly encourage submitters to review their claims carefully to ensure that the information in question falls within the protection of section 14 of the Act and to limit claims as much as possible.

To claim information as confidential, a submitter would check the appropriate box and sign the certification statement on the reporting form. If a submitter

failed to do so, EPA would release the information to the public without further notice to the submitter. As in reporting under the initial Inventory Reporting Regulations, by signing the certification statement the submitter would certify that its claims of confidentiality are made in good faith and that the four statements on the back of the form are true for each claim. Procedures for claiming as confidential information submitted by computer tapes will be specified at the time of the final rule, if EPA determines that reporting in this manner is feasible.

Companies that assert claims of confidentiality for chemical identity would follow the procedures set forth in the next section.

B. Chemical Identity

A submitter under this proposed rule could not assert a claim of confidentiality for specific chemical identity of a substance unless the chemical identity is held confidential on the Inventory as of the time of the report. All submitters reporting information on a confidential substance would be required to use the EPA reporting form U–2 specially designed for reports on confidential substances and to check the appropriate box indicating a confidentiality claim for chemical identity. Chemical identity information reported on Form U–1 would be nonconfidential and would be released by EPA without prior notification to the submitter.

To assert a claim of confidentiality for the identity of a chemical substance which is confidential on the Inventory, the person would also be required to substantiate the claim by answering in writing certain questions in §710.39 of the proposed rule. These questions are similar to those used for substantiating claims of confidentiality for chemical identity for the original Inventory Reporting Regulations and for the PMN rule. Persons who reported for the original Inventory and persons whose substances underwent PMN review and were subsequently reported as manufactured or imported asserted and substantiated their claims of confidentiality for chemical identity at that time. Since considerable time has passed since those claims were substantiated, EPA is proposing that those original submitters, as well as any new manufacturers of a given substance who report under this rule would be required to substantiate claims of confidentiality for specific chemical identity at the time of reporting under this rule. When a person submits a report of changes in production volume or site-limited status of a substance under this rule, the person would be required to substantiate the claim again. However, if circumstances with regard to the claim of confidentiality have not changed, such a substantiation could be submission of a copy of the previous substantiation.

If a manufacturer reports under this rule a chemical substance whose identity is held confidential on the inventory, and the manufacturer does not claim the chemical identity confidential, EPA will consider the identity of that substance no longer confidential for purposes of the Inventory because the fact that someone is manufacturing or importing it for commercial purposes is not confidential. In such a situation, EPA would inform all those persons who report the substance under this rule and who reported for the Inventory or under PMN that the substance identity will no longer be held confidential on the Inventory or in the data base. This policy is consistent with the policy adopted for the original Inventory reporting.

EPA strongly encourages persons who asserted claims of confidentiality for chemical identity for substances they reported for the Inventory to reconsider the necessity of retaining those claims. If a person decides not to assert again a claim of confidentiality for the identity of a substance which is on the Inventory, that person would report information on the substance on EPA reporting form U–1.

C. Release of Data

EPA will continue to provide the public with sufficient and informative access to information collected for the Inventory data base while protecting submitters' valid proprietary interests. This will be accomplished by disclosing to the public all information reported that is not claimed as confidential and continuing to release aggregates of confidential production information. By releasing aggregate data, the Agency is able to share with the public at least general information about industry-wide production totals for Inventory substances. EPA is devising a data aggregation methodology that is sensitive to the specific production levels and changes reported under this rule.

XIII. Recordkeeping Requirements

EPA is proposing that persons subject to this rule be required to maintain records that document any information reported or a decision not to report for up to a 5-year period after the creation of these records. For example, if a person had determined that reporting was not necessary for a reporting period because the production volume of a substance did not change sufficiently to be a reportable event, that person would be required to retain records supporting that determination for a 5-year period.

EPA believes that the types of information being requested under this rule are readily available to a submitter, and that the records supporting reporting under the proposed rule will be records that the submitter would normally retain in the course of conducting business.

XIV. Economic Impact

Based on the proposed exclusions and exemptions discussed in this preamble, EPA believes that approximately 15,000 chemical substances would be covered by this rule. EPA estimates that a total of 4,600 plant sites would be required to submit an initial report and that approximately 25 percent of these sites would be required to report in a subsequent reporting period.

EPA estimates that chemical manufacturers subject to this rule will spend a maximum of $5.184 million to report for the initial reporting period. These estimates include both fixed and variable costs.

The fixed costs per plant site to comply with the initial reporting requirements of this rule are estimated at $911. This includes time to become familiar with the reporting requirements, time to determine which of the substances produced at that site is covered by the rule, and time to develop an ongoing reporting mechanism. Maximum variable costs of compliance with the initial reporting are estimated at an additional $242 per reporting form that must be submitted. The variable costs include time to gather necessary data, and time to complete and review a reporting form including a determination of whether the information should be claimed as confidential.

The fixed and variable cost estimates were based on the number of hours that would be required to complete a reporting form. EPA estimates an average of 19 hours for a submitter to become familiar with the rule, determine which of the substances produced at a plant site is reportable, and develop a reporting mechanism. An additional 4.6 hours are estimated for a submitter to gather the necessary information and to complete and review a reporting form. At an average of one report per plant site, these estimates allow 23.6 hours for an average plant site's compliance. This figure could be lower or higher depending on the number of forms involved at a plant site.

For a subsequent reporting period, all plant sites manufacturing a reportable substance would have to make a determination of whether a reportable change has occurred during the specified period. EPA estimates that only 25 percent of these plant sites would be required to report changes. The total cost to manufacturers who must report during a subsequent reporting period is estimated to be $201,000. This estimate includes both the cost for making the determination and for gathering information and completing a reporting form. Additionally, the total cost to the 75 percent of non-reporting plant sites that have to make a determination is estimated to be $418,000.

A more detailed economic impact analysis of the requirements of this rule is included in the rulemaking record.

XV. Alternatives

In developing its approach for updating the TSCA Inventory data base, EPA reviewed a number of options ranging from a complete update of the entire Inventory data base to no update. In its evaluation of the various options, EPA considered the need for current information and the cost to the Agency for obtaining the required information as well as the reporting burden on industry. EPA believes that the proposed approach will provide the Agency with adequate, but not unnecessary, information that it needs to conduct its activities under TSCA, while not imposing any unreasonable burden on industry or the Agency.

A possible alternative that EPA may consider would require manufacturers subject to this rule to submit information if a reportable event has occurred within a three year period. As compared with the proposed approach, recurring reporting under this option would occur less frequently and thus the burden imposed on manufacturers would be reduced; however, this option would result in the Inventory data base being less accurate (by the third year approximately 37.5 percent of the Inventory data base would be out of date). Thus, EPA believes that the three-year interval may not represent the most appropriate balance between maintaining a relatively current data base and minimizing excessive reporting burden.

Another alternative that EPA may consider and would require manufacturers subject to this rule to automatically submit current information all reportable substances every three years. Since recurring reporting under this option would not be triggered by the occurrence of a reportable event, there would be more reports. However, manufacturers would not have to determine whether recurring reporting is necessary and this may further simplify the recordkeeping procedures. EPA invites public comments on these reporting alternatives.

A discussion of other alternatives considered but not adopted by EPA is included in a supporting document in the rulemaking record.

XVI. Rulemaking Record

The record for this proposed rulemaking includes basic information considered by the Agency in developing this proposed rule. The following documents are included in the rulemaking record:

(1) Analysis of reporting requirements for the partial update of the TSCA Inventory Data Base.

(2) Whether and how the TSCA Inventory Data Base should be updated.

(3) Analysis of TSCA section 8(a) Small Manufacturer Exemption.

The Agency will supplement the record with the following types of additional information as they are received or developed:

1. All comments on this proposed rule.
2. All relevant support documents and studies.
3. Records of all communications between EPA personnel and persons outside the Agency pertaining to the development of this rule. (This does not include inter- or intra-agency memoranda unless specifically noted in the index of the rulemaking record.)
4. Minutes, summaries, or transcripts of any public meetings held to develop this rule.
5. Any factual information considered by the Agency in developing the rule.

EPA will identify the complete rulemaking record on or before the date of promulgation of the rule, as prescribed by section 19(a)(3) of TSCA, and will accept additional material for inclusion in the record at any time between this notice and that date.

XVII. Judicial Review

When this proposed rule is promulgated, judicial review may be available under section 19 of TSCA in the United States Court of Appeals for the District of Columbia Circuit or for the circuit in which the person seeking review resides or has his principal place of business. To provide all interested persons an equal opportunity to file a timely petition for judicial review and to avoid so-called "races to the courthouse," EPA intends to promulgate this rule for purposes of judicial review two weeks after publishing the final rule in the **Federal Register.** The effective date will be calculated from the promulgation date.

XVIII. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must determine whether a regulation is "major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this proposed regulation is not "major" because it will not have an annual effect of $100 million or more on the economy. It is not anticipated to have a significant effect on competition, costs, or prices.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

This rule contains a small manufacturer exemption which would exempt small manufacturers from all reporting requirements. Therefore, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA has determined that this rule will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

The information collection requirements contained in this proposed rule have been submitted for approval to OMB under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* Comments on the information collection request (not on the substantive content of the rule itself) should be submitted to the Office of Information and Regulatory Affairs of OMB, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements.

(Sec. 8 (a), Pub. L. 94–469, 90 Stat. 2027 (15 U.S.C. 2607))

List of Subjects in 40 CFR Part 710

Environmental protection, Chemicals, Inventory, Hazardous materials, Recordkeeping and reporting requirements.

Dated: March 3, 1985.

Lee M. Thomas,

Administrator.

PART 710—[AMENDED]

Therefore, it is proposed that Part 710 be amended as follows:

§§ 710.1—710.8 (Designated as Subpart A)

1. By designating the existing §§ 710.1 through 710.8 as Subpart A, entitled:

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Subpart A—Compilation of the Inventory

2. By adding a new Subpart B to read as follows:

Subpart B—Partial Updating of the Inventory Data Base

Sec.
710.23 Definitions.
710.25 Chemical substances to be reported.
710.27 Persons subject to this subpart.
710.28 Persons not subject to this subpart.
710.30 Reporting requirements.
710.33 Recordkeeping requirements
710.38 Confidentiality
710.39 Reporting forms.

(Sec. 8(a), Pub. L. 94-469, 90 Stat. 2027 (15 U.S.C. 2607))

Subpart B—Partial Updating of the Inventory Data Base

§ 710.23 Definitions.

The definitions in § 704.3 of this chapter and § 710.2 apply except as provided in this section.

(a) "Manufacturer" means a person who manufactures or imports a chemical substance for commercial purposes. A person who extracts a component chemical substance from a complex combination of chemical substances is a manufacturer of that component chemical substance.

(b) "Master Inventory File" means EPA's comprehensive list of chemical substances which constitute the Chemical Substances Inventory compiled under section 8(b) of the Act. It includes substances reported under Subpart A of this Part and substances reported under Part 720 of this chapter for which a Notice of Commencement of Manufacture or Import has been received under § 720.120 of this chapter.

(c) "Non-isolated intermediate" means any intermediate that is not intentionally removed from the equipment in which it is manufactured, including the reaction vessel in which it is manufactured, equipment which is ancillary to the reaction vessel, and any equipment through which the substance passes during a continuous flow process, but not including tanks or other vessels in which the substance is stored after its manufacture.

(d) "Parent company" means a company which owns or controls another company. Owership or control exists when one company owns 50 percent or more of another company's voting stock or other equity rights, or has the power to control the management and policies of the other company.

(e) "Plant site" means a contiguous property unit under the ownership or control of a manufacturer or importer. Property divided only by a public right-of-way is one plant site. There may be more than one manufacturing facility on a single plant site. For an importer, the plant site is the importers's United States headquarters.

(f) "Site-limited"means that the chemical substance in question is manufactured and processed only within a plant site and is not distributed for commercial purposes outside the plant site as a chemical substance or as part of a mixture of article. No imported chemical substance is site-limited.

(g) "Small manufacturer" means a manufacturer meeting either of the following standards:

(1) *First standard.* A manufacturer is "small" under this standard if the total annual sales of all plant sites that it owns or controls (together with those that are owned or controlled by its foreign or domestic parent company, if any) are less than $40 million. However, if a manufacturer with total annual sales of less than $40 million produces annually over 100,000 pounds (45,400 kilograms) of a particular chemical substance at a particular plant side, that manufacturer will not qualify as small with regard to that chemical substance at that plant site. (For imports, the 100,000 pound figure applies to the total amount imported.)

(2) *Second standard.* A manufacturer is small under this standard if the total annual sales of all plant sites that it owns or controls (together with those that are owned or controlled by its foreign or domestic parent company, if any) are less than $4 million, regardless of the quantity of chemical substances produced by that manufacturer.

(h) "Total annual sales" means the total annual revenue (in dollars) generated by the sale of all products of a plant site.

§ 710.25 Chemical substances to be reported.

(a) *Inclusions.* Any chemical substance which is in the Master Inventory File at the time of a reporting period specified in § 710.30(c) is subject to the reporting requirements of this subpart unless specifically excluded by paragraph (b) of this section.

(b) *Exclusions.* The following categories of chemical substances are excluded from reporting under this subpart:

(1) *Inorganic chemical substances.* Any chemical substance which does not contain carbon or contains carbon only in the form of carbonato, cyano, cyanato, isocyano, or isocyanato groups, or the chalcogen analogues of such groups.

(2) *Polymers.* (i) Any chemical substances described with the words "polymer" or "polymerized" or the prefix "poly-" in the Chemical Abstracts Service Index or Preferred Nomenclature in the Chemical Substances Identities section of the published Inventory or in the Master Inventory File; (ii) Biopolymers that are proteins (albumin, casein, gelatin, gluten, hemoglobin), enzymes, polysaccharides (starch, cellulose, gums), lignin, or rubber. This exclusion also applies to biopolymers which are chemically modified to the extent that the polymeric structure still remains substantially intact.

(3) *Microorganisms.* Combinations of chemical substances that are living organisms, such as bacteria, fungi, and yeasts. Chemical substances produced from such living organisms are reportable unless otherwise excluded.

(4) *Naturally Occurring Chemical Substances.* Any naturally occurring chemical substances, as described in § 710.4(b). This exclusion applies to the specific activities of the person who must report. Some chemical substances can be manufactured both as described in § 710.4(b) and by means other than those described in § 710.4(b). If a person subject to this subpart manufactures a chemical substance by means other than those described in § 710.4(b), the person must report regardless of whether the substance could also have been produced as described in § 710.4(b). Chemical substances produced from such naturally occurring chemical substances would be reportable unless otherwise excluded.

§ 710.27 Persons subject to this subpart.

Except as provided in § 710.28, the following persons are subject to the requirements of this subpart:

(a) *Initial reporting.* (1) Any person who manufactured for commercial purposes 10,000 pounds (4,540 kilograms) or more of a chemical substance subject to this subpart at a particular plant site during that person's last complete corporate fiscal year before (effective date of final rule).

(2) Any person who manufactured for commercial purposes 10,000 pounds (4,540 kilograms) or more of a chemical substance subject to this subpart at a particular plant site during that person's last complete corporate fiscal year before a reporting period specified in § 710.30(c)(2) for which a report was not previously submitted under § 710.30(a)(1).

(b) *Reporting of changes.* (1) Any person who manufactured for commercial purposes a chemical

substance subject to this subpart at any time during that person's last complete corporate fiscal year before a reporting period specified in § 710.30(c)(2).

(2) Any person who ceased manufacture for commercial purposes of a chemical substance subject to this subpart at a particular plant site during that person's last 2 complete corporate fiscal years before a reporting period specified in § 710.30(c)(2).

§ 710.28 Persons not subject to this subpart.

The following persons are not subject to this subpart except as otherwise noted:

(a) Persons described in § 704.5 (a) and (c) of this chapter and persons who manufacture a chemical substance subject to this subpart as described in § 720.30 (g) and (h) of this chapter.

(b) Persons who are small manufacturers, except that such persons shall be subject to this subpart with respect to those chemical substances subject to an order issued pursuant to section 5(e) of the Act, 15 U.S.C. 2604(e).

§ 710.30 Reporting requirements.

(a) *Initial reporting.* Any person described in § 710.27(a) must submit an initial report for each chemical substance subject to this subpart for each plant site at which the substance is manufactured for commercial purposes as follows:

(1) A person described in § 710.27(a)(1) must submit the report during the reporting period described in paragraph (c)(1) of this section.

(2) A person described in § 710.27(a)(2) must submit the report during the reporting period described in paragraph (c)(2) of this section which immediately follows the event described in § 710.27(a)(2).

(b) *Reporting of changes.* Any person described in § 710.27(b) must submit a report of changes for each chemical substance subject to this subpart for each plant site at which a reportable change has taken place for that substance since the person last reported on the production of the substance at that site. The report must be submitted during the reporting period described in paragraph (c)(2) of this section which immediately follows the reportable change. The following are reportable changes:

(1) For a chemical substance previously reported under this subpart with a production volume of 10,000 pounds (4,540 kilograms) or more at a particular plant site, an increase in the previously reported production volume of 500 percent or more, or a decrease in such volume of 80 percent or more, as measured by the production volume at that plant site for the most recent complete corporate fiscal year preceding the reporting period.

(2) For a chemical substance previously reported under this subpart with a production volume of greater than zero but less than 10,000 pounds (4,540 kilograms) at a particular plant site, an increase in production volume to 10,000 pounds or more, as measured by the production volume at that plant site for the most recent complete corporate fiscal year preceding the reporting period.

(3) For a chemical substance previously reported under this subpart with a production volume of 10,000 pounds (4,540 kilograms) or more at a particular plant site, cessation of manufacture at that site during the last two complete corporate fiscal years before the reporting period.

(4) for a chemical substance for which a cessation of manufacture of that substance was previously reported under this subpart at a particular plant site, manufacture of 10,000 (4,540 kilograms) pounds or more, as measured by the production volume at that plant site for the most recent complete corporate fiscal year preceding the reporting period.

(5) For a chemical substance with a production volume of 10,000 pounds (4,540 kilograms) or more at a particular plant site:

(i) A change in status from site-limited for a plant site at which it was previously reported as site-limited.

(ii) A change in status to site-limited for a plant site at which it was previously not reported as site-limited.

(c) *Reporting periods.* All reports required under this subpart must be submitted to EPA during the applicable reporting period. The reporting periods for this subpart are as follows:

• (1) The first reporting period is from (effective date) to (120 days after the effective date).

(2) The second reporting period is from (effective date plus two years) to (60 days after effective date plus two years). Subsequent reporting periods are from (effective date, without year) to (60 days after effective date, without year) at 2-year intervals thereafter.

(d) *Reporting procedures.* Reports under this subpart must be submitted on either the designated reporting forms or on computer tape as follows:

(1) *Reporting forms.* Written reports must be submitted in the form and manner set forth in either EPA Form No. U–1 or U–2 under § 710.39. Forms may be obtained from the TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. E–543, 401 M St., SW., Washington, D.C. 20460. Initial reports under paragraph (a) of this section must be submitted on separate forms from reports of changes under paragraph (b) of this section. Each form submitted must indicate whether it is an initial report or a report of changes. Form No. U–2 must be used when the specific chemical identity is claimed confidential as prescribed in § 710.38(c). Information for different plant sites must be submitted on separate forms.

(2) *Reporting by computer tape.* Reports by computer tape must be submitted in accordance with (name of guidance document to be supplied at time of final rule).

(e) *Information to be reported.* Each person required to report under this subpart must report on the production of each chemical substance subject to this subpart at each plant site, to the extent known or reasonably ascertainable by the person, as follows:

(1) A certification, signed and dated by an authorized official, that all information submitted is complete and accurate, that certain confidentiality statements are true, and that EPA will be permitted access to and copying of records to document information reported.

(2) For manufactured substances, the name, street address, city, State, and ZIP code of the plant site. For imported substances, the name, street address, city, State, and ZIP code of the United States headquarters.

(3) The name, street address, city, State, ZIP code, and telephone number of a technical contact able to answer questions about the information.

(4) The Chemical Abstracts Service Registry Number (and/or other identifying numbers including EPA-designated Accession Number for confidential substances) and specific chemical name of each chemical substance.

(5) Whether each chemical substance is manufactured or imported.

(6) The production volume in pounds, for the person's last complete corporate fiscal year, of each chemical substance manufactured or imported, reported as precisely as permitted by the person's routine business records.

(7) Whether the chemical substance was site-limited.

§ 710.33 Recordkeeping requirements.

Each person who is subject to this subpart shall maintain records that document any information reported and that support any decision not to submit a report, and shall permit access to and copying of such records by EPA officials

upon request. Records shall be retained for a period of 5 years after the creation of such records.

§ 710.38 Confidentiality.

(a) Any person submitting information under this subpart may assert a business confidentiality claim for the information, as described in the instructions for the reporting forms in § 710.39 or in the instructions for reporting by computer tape. Information claimed as confidential will be treated in accordance with the procedures in Part 2 of this title.

(b) A person may assert a claim of confidentiality for the chemical identity of a specific chemical substance only if the identity of that substance is treated as confidential in the Master Inventory File as of the time the report is submitted.

(c) To assert a claim of confidentiality for the chemical identity of a specific chemical substance, the person must take the following steps:

(1) The person must report on EPA Form No. U–2, not by computer tape.

(2) The person must submit with the report detailed written answers to the following questions signed and dated by an authorized official:

(i) What harmful effects to your competitive position, if any, do you think would result from the identity of the chemical substance being disclosed in connection with reporting under this subpart? How could a competitor use such information? Would the effects of disclosure be substantial? What is the causal relationship between the disclosure and the harmful effects?

(ii) How long should confidential treatment be given? Until a specific date, the occurrence of a specific event, or permanently? Why?

(iii) Has the chemical substance been patented? If so, have you granted licenses to others with respect to the patent as it applies to the chemical substance? If the chemical substance has been patented and therefore disclosed through the patent, why should it be treated as confidential?

(iv) Has the identity of the chemical substance been kept confidential to the extent that your competitors do not know it is being manufactured or imported for a commercial purpose by anyone?

(v) Is the fact that the chemical substance is being manufactured or imported for a commercial purpose publicly available, for example in technical journals, libraries, or State, local, or Federal agency public files?

(vi) What measures have you taken to prevent undesired disclosure of the fact that this chemical substance is being manufactured or imported for a commercial purpose?

(vii) To what extent has the fact that this chemical substance is manufactured or imported for a commercial purpose been revealed to others? What precautions have been taken regarding these disclosures? Have there been public disclosures or disclosures to competitors?

(viii) Does this particular chemical substance leave the site of manufacture in any form, as product, effluent, emission, etc.? If so, what measures have you taken to guard against discovery of its identity?

(ix) If the chemical substance leaves the site in a product that is available to the public or your competitors, can the substance be identified by analysis of the product?

(x) For what purpose do you manufacture or import the substance?

(xi) Has EPA, another Federal agency, or any Federal court made any pertinent confidentiality determinations regarding this chemical substance? If so, please attach copies of such determinations.

(3) If any of the information contained in the answers to the questions is asserted to contain confidential business information, the person must mark that information as "trade secret," "confidential," or other appropriate designation.

(d) If no claim of confidentiality accompanies information at the time it is submitted to EPA under this subpart or if substantiation required under paragraph (c) of this section is not submitted with the reporting form, EPA may make the information available to the public without further notice to the submitter.

§ 710.39 Reporting forms.

All persons subject to this subpart must use the EPA-designated forms for reporting, unless such reporting is submitted in a computer tape in accordance with § 710.30(d)(2). The EPA-designated reporting forms for this subpart follow.

BILLING CODE 6560-50-M

IMPORTANT (1) Before completing this form, carefully read the accompanying instructions. (2) Use this form for reporting if chemical identity is NOT claimed confidential

Form Approved OMB No 20xx-xxxx
Approval expires xx-xx-xx

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EPA

US ENVIRONMENTAL PROTECTION AGENCY

PARTIAL UPDATING OF TSCA INVENTORY DATA BASE PRODUCTION AND SITE REPORT

(Section 8(a) Toxic Substances Control Act 15 USC 2607)

I. CERTIFICATION STATEMENT: I hereby certify that (1) all information entered on this form is complete and accurate, and (2) the confidentiality statements on the back of this form are true as to that information for which I have asserted a confidentiality claim. I agree to permit access to, and the copying of, records by a duly authorized representative of the EPA Administrator, in accordance with the Toxic Substances Control Act, to document any information reported here.

SIGNATURE	DATE	NAME/TITLE *(Type or print)*

II. TECHNICAL CONTACT *(Name, Street address, City, State, ZIP Code)*	III. PLANT SITE *(Name, Street address, City, State, ZIP Code)*
TELEPHONE NUMBER OF TECHNICAL CONTACT	IV. ☐ Initial ☐ Report of changes

V. CHEMICAL SUBSTANCE IDENTITY/ACTIVITY/CONFIDENTIALITY

NUMBER	CAS REGISTRY AND/OR OTHER IDENTIFYING NUMBER	SPECIFIC CHEMICAL NAME	ACTIVITY: MANUFACTURE	ACTIVITY: IMPORT	PRODUCTION VOLUME (pounds)	SITE LIMITED: YES	SITE LIMITED: NO	CONFIDENTIAL CLAIMS: (a) MFGR/IMPORT	(b) SITE LIMITED	(c) PRODUCTION	(d) PLANT SITE
1											
2											
3											
4											
5											
6											
7											
8											
9											
10											

EPA Form 7740-8A (12-84)

EPA COPY

WHERE TO GET SUPPLIES	Send Completed Forms To
TSCA Section 8(a) Forms U-1 and U-2 and a copy of the instruction booklet may be obtained by contacting the TSCA Assistance Office, Office of Toxic Substances, Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, TOLL FREE 800-424-9065, in Washington, DC 202-554-1404	US Environmental Protection Agency Office of Toxic Substances PO Box

CONCERNING EPA DISCLOSURE OF INFORMATION

Any person who submits information to EPA should be aware of EPA regulations (40 CFR Part 2) which govern disclosure of such information. Those regulations provide that such person may, if he or she desires, assert a confidentiality claim covering part or all of the information submitted. Information covered by such a claim will be publicly disclosed by EPA only to the extent, and by means of the procedures, set forth in 40 CFR Part 2. However, if no such claim accompanies the information when it is received, EPA may make that information public without notifying the submitter.

CONFIDENTIALITY STATEMENTS

Information except chemical substance identity reported to EPA on the front of this form may be claimed confidential by checking the appropriate boxes under "Confidentiality Claims" of Block IV. In certifying this form, the person signing in Block 1 attests to the truth of the following four statements concerning all information (except chemical substance identity) which is claimed confidential.

1. My company has taken measures to protect the confidentiality of the information, and it intends to continue to take such measures.

2. The information is not, and has not been, reasonably obtainable without our consent by other persons (other than governmental bodies) by use of legitimate means (other than discovery based on a showing of special need in a judicial or quasi-judicial proceeding).

3. The information is not publicly available elsewhere.

4. Disclosure of the information would cause substantial harm to our competitive position.

The person signing in Block 1 also attests to the truth of the appropriate statement(s) below concerning other information specifically claimed confidential for the particular chemical substance. By checking the box under.

(a) Manufacture/Import. I assert thay my activity as a manufacturer and/or an importer of the chemical substance is confidential *(Note: if only this box is checked, plant site information is not claimed as confidential and may be disclosed)*.

(b) Site Limited: I assert that the fact that the chemical substance is not distributed for a commercial purpose outside of the plant site identified in Block II is confidential.

(c) Production: I assert that the production volume of the chemical substance for the plant site identified in Block II is confidential.

(d) Plant Site: I assert that the link of this chemical substance to the plant site identified in Block II is confidential

EPA Form 7740-8A (12-84) Reverse

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IMPORTANT (1) Before completing this form, carefully read the accompanying instructions. (2) Use this form for reporting only if chemical identity is claimed confidential

Form Approved OMB No 20xx-xxxx
Approval expires xx-xx-xx

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US ENVIRONMENTAL PROTECTION AGENCY

PARTIAL UPDATING OF TSCA INVENTORY DATA BASE PRODUCTION AND SITE REPORT

(Section 8(a) Toxic Substances Control Act 15 USC 2607)

I. CERTIFICATION STATEMENT: I hereby certify that (1) all information entered on this form is complete and accurate, and (2) the confidentiality statements on the back of this form are true as to that information for which I have asserted a confidentiality claim. I agree to permit access to, and the copying of, records by a duly authorized representative of the EPA Administrator, in accordance with the Toxic Substances Control Act, to document any information reported here.

SIGNATURE	DATE	NAME/TITLE *(Type or print)*

II. TECHNICAL CONTACT *(Name, Street address, City, State, ZIP Code)*	III. PLANT SITE *(Name, Street address, City, State, ZIP Code)*
TELEPHONE NUMBER OF TECHNICAL CONTACT	IV. ☐ Initial Report ☐ Report of changes

V. CHEMICAL SUBSTANCE IDENTITY/ACTIVITY/CONFIDENTIALITY

NUMBER	ACCESSION AND/OR OTHER IDENTIFYING NUMBER	SPECIFIC CHEMICAL NAME	ACTIVITY: MANUFACTURE	ACTIVITY: IMPORT	PRODUCTION VOLUME *(pounds)*	SITE LIMITED: YES	SITE LIMITED: NO	CONFIDENTIAL CLAIMS: (a) MFGR/IMPORT	(b) SITE LIMITED	(c) PRODUCTION	(d) PLANT SITE	(e) CHEM. ID
1												
2												
3												
4												
5												

EPA Form 7740-8B (12-84)

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EPA Form 7740-8B (12-84)

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Federal Register

Tuesday
March 12, 1985

Part III

Department of Education

Office of Special Education and Rehabilitative Services

34 CFR Parts 76, 369 and 370

Client Assistance Program; Final Regulations

VOL 50 ISS 48 MR 12 1985 UMI

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

34 CFR Parts 76, 369, and 370

Client Assistance Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary issues final regulations under section 112 of the Rehabilitation Act of 1973, as amended by Pub. L. 98–221. These regulations describe the agencies that a Governor may designate to conduct a client assistance program authorized by section 112, identify examples of authorized activities, and specify the conditions that apply to States in the operation of their client assistance programs. These regulations implement amendments to section 112 made by Pub. L. 98–221 which, among other things, changed the program from a discretionary to a formula grant program.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments, with the exception of § 370.44. Section 370.44 will become effective after the information collection requirements contained in that section have been submitted by the Department of Education and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980. If you want to know the effective date of these final regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Albert Rotundo, Rehabilitation Services Administration, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 3038) Washington, D.C. 20202. Telephone: (202) 732–1289.

SUPPLEMENTARY INFORMATION: The Client Assistance Program is authorized by section 112 of the Rehabilitation Act of 1973 (the Act), Pub. L. 93–112 (29 U.S.C. 732). The Client Assistance Program provides support to a public or private agency designated by the Governor of each State for programs that assist clients and client applicants to secure the benefits and services available to them under the Act.

These final regulations implement section 112 of the Act, as amended by Pub. L. 98–221, the Rehabilitation Amendments of 1984; and incorporate provisions of the Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 76, 77, 78, and 79). Additional regulations applicable to this and several other vocational rehabilitation service programs are contained in 34 CFR Part 369.

A notice of proposed rulemaking was published in the **Federal Register** on May 17, 1984 (49 FR 21018). The comments received in response to that notice and the Secretary's responses are summarized in the Appendix to this document.

A summary of the regulations, including significant changes adopted in response to public comments, follows:

Subpart A—General

Section 370.1 describes the program.

Section 370.2 describes who is eligible to apply for an award and what agencies the Governor of each State may designate to carry out that State's client assistance program. In accordance with section 112(e)(3)(A) and (f) of the Act, § 370.2(a) provides that any State, through its Governor, is eligible for a client assistance grant. Section 370.2(b) permits the Governor to designate any public or private agency to conduct the State's client assistance program. However, § 370.2(c) requires the Governor to designate an agency which is independent of any agency that provides treatment, services, or rehabilitation to individuals under the Act.

Section 370.2(d) provides an exception to the independence requirement of § 370.2(c) for any State which, before the enactment of Pub. L. 98–221, placed its client assistance program in an agency that was also a Federal grantee under the Act, whether under section 112 or some other provision of the Act. Thus, for example, a State that has in the past placed its client assistance program in the State vocational rehabilitation agency designated under section 101, or in a private organization that was also carrying out a vocational training project under section 302, may continue to place its client assistance program in an agency that also provides other services to handicapped individuals under the Act. Those States that have not previously carried out a client assistance program under section 112, or which have placed their program only in an agency that was not also a grantee under the Act, are subject to the independence requirement of § 370.2(c).

The independence requirement, and the exception to it contained in § 370.2(d), implement section 112(c)(1) of the Act. The Secretary interprets these statutory provisions to mean, in effect, that a State may choose not to conform to the independence requirement if it had not done so prior to the enactment of the amendments to the Act.

Section 370.3 lists the regulations that apply to the Client Assistance Program, including Parts 74, 76, 77, 78 and 79, of the Education Department General Administrative Regulations (EDGAR), and certain provisions of 34 CFR Part 369 (Vocational Rehabilitation Service Projects) that currently apply to several programs, including the Client Assistance Program.

Section 370.3(c)(2) lists certain provisions of Part 76 that do not apply to the Client Assistance Program. Those provisions, relating to three year State plans, the carryover of funds, the retention of records, and the privacy rights of students, implement sections of the General Education Provisions Act (GEPA) which, under section 427 of the Department of Education Organization Act (20 U.S.C. 3487), do not apply to programs transferred to the Department in 1980, such as the Client Assistance Program, which were not subject to GEPA before the Department's creation. To the extent that regulations on these matters are needed for the Client Assistance Program, they are contained in EDGAR Part 74 or in these regulations.

Moreover, because it is the State, rather than the designated client assistance agency, that applies for, and receives, a grant under this program, the State is the applicant and the grantee under Part 370 and EDGAR, even if the Governor designates an agency that is not a State agency to conduct a client assistance program. The State, therefore, remains responsible in all cases for ensuring that the provisions of section 112 of the Act and these regulations are carried out. In addition, because each State's client assistance program is not carried out through multiple competitive or formula-based awards, the Secretary does not regard the designated agency as a "subgrantee" as that term is used in Part 76 of EDGAR. (*See* the Note to § 370.4.) Accordingly, the provisions of EDGAR Part 76 governing the relationship between grantees and subgrantees, such as Subparts D and E of Part 76, are inapplicable to the Client Assistance Program.

Finally, the provisions of Part 76 relating to consolidated grants to Insular Areas, §§ 76.125–76.137, that implement Title V of Pub. L. 95–134, do not apply to the Client Assistance Program. Section 11 of the Rehabilitation Act of 1973, as amended, provides that Title V of Pub. L. 95–134 does not apply to Rehabilitation Act programs

Section 370.4 provides definitions that apply to the program. In addition to incorporating certain EDGAR definitions, it provides definitions of "Act", "client or client applicant", "designated agency", and "Governor".

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

Section 370.10 lists examples of activities and services that programs are authorized to carry out under this part. The list is based on former § 370.11.

Subpart C—How Does One Apply for a Grant?

Section 370.20 describes the assurances and information that each State must include in its request for funds under this program. A new paragraph (b)(2) has been added to this section. It provides that the authority to pursue administrative, legal, and other remedies must include the authority to pursue those remedies against the State vocational rehabilitation agency and other appropriate State agencies. A new paragraph (c)(1) has also been added to require that each State include in its request for assistance an assurance that it will advise all clients and client applicants in the State of its client assistance program, the services provided by the program, and how to contact the program.

Subpart D—How Does the Secretary Make a Grant?

Section 370.30 implements section 112(e)(1) of the Act and describes how the Secretary allocates funds under this program. Under § 370.30(a), the Secretary allocates available funds to the 50 States, the District of Columbia, and Puerto Rico on the basis of the relative population of each State, with a minimum allocation of $50,000 to each State. Under § 370.30(b), the Secretary allocates $30,000 each to American Samoa, Guam, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

Two new paragraphs have been added to this section. First, paragraph (d) has been added to provide that the Governor may request the Secretary to transfer the State's grant funds directly to the designated agency, but that in such a case the State remains the grantee. Second, paragraph (e) has been added to make it clear that both the State and the designated agency are accountable to the Secretary for the proper use of grant funds.

Section 370.31 provides that the Secretary reallocates funds in accordance with section 112(e)(2) of the Act.

Subpart E—What Conditions Must Be Met by a Grantee?

Section 370.40, based on former § 370.41, provides that the cost of client, client applicant, or attendant travel in connection with the provision of assistance is an allowable cost under this program.

Section 370.41 describes a conflict of interest provision that applies to employees of client assistance programs. Section 370.41(a) provides that no program employee may, while so employed, serve as a staff member of or consultant to, or receive benefits of any kind directly or indirectly from, any other rehabilitation project, program, or facility receiving assistance under the Act in the State. This provision implements section 112(g)(1) of the Act. Section 370.41(b), however, states that this conflict of interest provision does not prohibit a trainee under section 304 of the Act from serving with a client assistance program during the traineeship.

Section 370.42 requires that a client assistance program director be afforded reasonable access to policymaking and administrative personnel in the State and local rehabilitation programs, projects, or facilities. One way in which the program director may be provided that access would be to include the director among the individuals to be consulted on matters of general policy development and implementation, as required by 34 CFR 361.18. This provision implements section 112(g)(2) of the Act.

Section 370.43 requires each client assistance program to implement procedures designed to ensure that, to the maximum extent possible, mediation procedures are used by the program before it resorts to administrative or legal remedies. This provision implements section 112(g)(3) of the Act. A new paragraph (b) has been added to § 370.43 to make it clear that this section does not require the use of a third party before resorting to administrative or legal remedies.

Section 370.44 requires each designated agency to submit to the Secretary an annual report on the operation of its program during the previous year. This provision implements section 112(g)(4) of the Act.

Section 370.45 prohibits a client assistance program from bringing a class action in carrying out its responsibilities under these regulations. This provision implements section 112(d) of the Act.

Section 370.46 requires the Governor, in designating a client assistance agency under § 370.2 and in carrying out the other provisions of these regulations, to consult with the director of the State vocational rehabilitation agency (and the head of the VR agency for the blind in States with both agencies), the head of the developmental disability protection and advocacy agency, and representatives of professional and consumer organizations serving handicapped individuals in the State. This provision implements section 112(c)(2) of the Act.

Section 370.47 has been added to explain when grant funds must be obligated and how to determine when those funds have been obligated.

Technical Amendments to Parts 76 and 369

Current 34 CFR Part 369, Vocational Rehabilitation Service Projects, contains various general provisions, including selection criteria, applicable to eight discretionary programs, including client assistance projects. Because the Rehabilitation Amendments of 1984, Pub. L. 98–221, change the Client Assistance Program from a discretionary to a formula grant program, it is no longer appropriate to subject the program to all the provisions of Part 369. The Secretary therefore amends Part 369 by deleting references to the Client Assistance Program from that part. Those sections of Part 369 that the Secretary believes should continue to apply to this program are cited in § 370.3(b).

The Secretary also adds the State's request for assistance under this program to the list of "State Plans" contained in 34 CFR 76.102 in order to ensure that appropiate provisions of Part 76 apply to this program.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Paperwork Reduction Act of 1980

Information collection requirements contained in these regulations in § 370.20(a)1) and (d) have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned an OMB control number. This control number appears as a citation following the appropriate section(s).

Information collection requirements contained in these regulations in § 370.44 have been submitted to OMB for review under the provisions of the Act and will become effective after they have been approved by OMB.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objectives of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the absence of comments on this matter and the Department's own review, it has been determined that the regulations in this document do not require information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects

34 CFR Part 76

Grant programs–education.

34 CFR Part 369

Grant programs–Social programs, Vocational rehabilitation.

34 CFR Part 370

Reporting and recordkeeping requirements, Vocational rehabilitation.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these regulations.

(Catalog of Federal Domestic Assistance No. 84.128; Client Assistance Program)

Dated: March 7, 1985.

William J. Bennett,

Secretary of Education.

The Secretary amends Parts 76, 369, and 370 of Title 34 of the Code of Federal Regulations as follows:

PART 76—STATE ADMINISTERED PROGRAMS

1. Section 76.102 is amended by redesignating paragraph (x) as paragraph (y) and adding a new paragraph (x) to read as follows:

§ 76.102 Definition of "State plan" for Part 76.

* * * * *

(x) *Client Assistance Program.* The written request for assistance under section 112 of the Rehabilitation Act of 1973, as amended.

* * * * *

PART 369—VOCATIONAL REHABILITATION SERVICE PROJECTS

§ 369.1 [Amended]

2. Section 369.1 is amended by removing paragraph (b)(1) and redesignating the remaining paragraphs (b)(2) through (8) as (b)(1) through (7) accordingly.

§ 369.2 [Amended]

3. Section 369.2 is amended by removing paragraph (a) and redesignating the remaining paragraphs (b) through (h) as (a) through (g) accordingly.

§ 369.30 [Amended]

4. Section 369.30 is amended by removing the references to Part 370 and to § 370.30 from § 369.30(a).

§ 369.32 [Amended]

4. Section 369.32 is amended by removing the references to Part 370 and to § 370.30 from § 369.30(a).

§ 369.32 [Amended]

5. Section 369.32 is amended by removing the reference to Part 370.

6. Part 370 is revised to read as follows:

PART 370—CLIENT ASSISTANCE PROGRAM

Subpart A—General

Sec.

370.1 What is the Client Assistance Program?
370.2 Who is eligible for an award under the Client Assistance Program?
370.3 What regulations apply to the Client Assistance Program?
370.4 What definitions apply to the Client Assistance Program?
370.5–370.9 [Reserved]

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

370.10 What kinds of activities does the Secretary assist under this program?
370.11–370.19 [Reserved]

Subpart C—How Does One Apply for a Grant?

Sec.

370.20 What must be included in a request for a grant?
370.21–370.29 [Reserved]

Subpart D—How Does the Secretary Make a Grant?

370.30 How does the Secretary allocate funds?
370.31 How does the Secretary reallocate funds?
370.32–370.39 [Reserved]

Subpart E—What Conditions Must Be Met by a Grantee?

370.40 What are allowable costs?
370.41 What conflict of interest provision applies to program employees?
370.42 What access must the program director be afforded to policymaking and administrative personnel?
370.43 What requirement applies to the use of mediation procedures?
370.44 What reporting requirement applies to each designated agency?
370.45 What limitation applies to the pursuit of legal remedies?
370.46 What consultation requirement applies to the Governor?
370.47 When must grant funds be obligated?
370.48–370.49 [Reserved]

Authority: Sec. 112 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 732), except where otherwise noted.

Subpart A—General

§ 370.1 What is the Client Assistance Program?

The purpose of this program is to provide assistance in informing and advising clients and client applicants of all available benefits under the Act and, when requested by clients and client applicants, assist them in their relationships with projects, programs, and facilities providing services to them under the Act.

(Sec. 112(a) of the Act; 29 U.S.C. 732(a))

§ 370.2 Who is eligible for an award under the Client Assistance Program?

(a) Any State, through its Governor, is eligible for an award under this part.

(b) The Governor of each State shall designate a public or private agency to conduct the State's client assistance program under this part.

(c) Except as provided in paragraph (d) of this section, the Governor shall designate an agency which is independent of any agency which provides treatment, services, or rehabilitation to individuals under the Act.

(d) The Governor may designate an agency which provides treatment, services, or rehabilitation to handicapped individuals under the Act if, at any time before February 22, 1984,

there was an agency in the State that both—

(1) Served as a client assistance agency under section 112 of the Act by directly carrying out a client assistance program; and

(2) Was, at the same time, a grantee under section 112 or any other provision of the Act.

(e) The program conducted by the designated agency must have the authority to pursue legal, administrative, and other appropriate remedies to ensure the protection of rights of handicapped individuals who are receiving treatments, services, or rehabilitation under the Act within the State.

(Sec. 112 (a) and (c) of the Act; 29 U.S.C. 732 (a) and (c))

§ 370.3 What regulations apply to the Client Assistance Program?

The following regulations apply to this program:

(a) The regulations in this Part 370.

(b) The regulations in 34 CFR 369.43 and 369.46 through 369.48, relating to various conditions to be met by grantees.

(c) The Education Department General Administrative Regulations (EDGAR) in 34 CFR—

(1) Part 74 (Administration of Grants);

(2) Part 76 (State-Administered Programs), except for——

(i) § 76.103;

(ii) §§ 76.705 and 76.706;

(iii) § 76.734; and

(iv) §§ 76.740 and 76.741;

(3) Part 77 (Definitions that Apply to Department Regulations);

(4) Part 78 (Education Appeal Board); and

(5) Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(Sec. 112(c) of the Act; 29 U.S.C. 732(c))

§ 370.4 What definitions apply to the Client Assistance Program?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Award
EDGAR
Fiscal year
Private
Public
Secretary
State

(b) *Definitions that apply to this part.* The following definitions apply to this part:

"Act" means the Rehabilitation Act of 1973, as amended.

"Client or client applicant" means an individual receiving or seeking services under the Act.

"Designated agency" means the agency designated by the Governor under § 370.2 to conduct a client assistance program under this part.

"Governor" means the chief executive of the State.

(Sec. 112(e)(3)(B) of the Act; 29 U.S.C. 732(e)(3)(B))

(**Note.**—The funds made available to a State under this program which are transferred to a designated agency do not comprise a subgrant as that term is defined in 34 CFR 77.1. The designated agency is not, therefore, a subgrantee as that term is defined in that section.)

(Sec. 112 of the Act; 29 U.S.C. 732)

§§ 370.5—370.9 [Reserved]

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

§ 370.10 What kinds of activities does the Secretary assist under this program?

Funds made available under this part may be used for activities consistent with the purpose of this program, including—

(a) Helping clients or client applicants to understand rehabilitation services programs under the Act;

(b) Advising clients or client applicants of all benefits available to them through rehabilitation programs authorized under the Act and related Federal and State assistance programs, and their rights and responsibilities in connection with those benefits;

(c) Otherwise assisting clients and client applicants in their relationships with projects, programs, and facilities providing rehabilitation services under the Act;

(d) Helping clients or client applicants by pursuing, or assisting them in pursuing, legal, administrative, and other available remedies when necessary to ensure the protection of their rights under the Act;

(e) Advising State and other agencies of identified problem areas in the delivery of rehabilitation services to handicapped individuals and suggesting methods and means of improving agency performance; and

(f) Providing information to the public concerning the client assistance program.

(Sec. 112 of the Act; 29 U.S.C. 732)

§§ 370.12–370.19 [Reserved]

Subpart C—How Does One Apply for a Grant?

§ 370.20 What must be included in a request for a grant?

(a) Each State seeking assistance under this part shall submit to the Secretary, in writing—

(1) The name of the designated agency; and

(2) An assurance that the designated agency meets the independence requirement of § 370.2(c) or that the State is excepted from that requirement under § 370.2(d).

(b)(1) Each State shall submit to the Secretary an assurance that the client assistance program for which it seeks funds under this part has the authority to pursue legal, administrative, and other appropriate remedies to ensure the protection of rights of handicapped individuals who are receiving treatments, services, or rehabilitation under the Act within the State.

(2) The authority to pursue remedies described in paragraph (b)(1) of this section must include the authority to pursue those remedies against the State vocational rehabilitation agency and other appropriate State agencies. The designated agency meets this requirement if it has the authority to pursue those remedies either on its own behalf or by obtaining necessary services, such as legal representation, from outside sources.

(c) Each State shall also submit to the Secretary assurances that—

(1) The State will advise all clients and client applicants of the existence of the client assistance program, the services provided by the program, and how to contact the program;

(2) The client assistance program will meet each of the requirements of §§ 370.41 through 370.47; and

(3) The client assistance program will provide the Secretary the information needed to conduct evaluations and studies of the program, such as the evaluation described in section 112(h) of the Act.

(d) Each State shall specify the amount of funds requested under this part.

(Sec. 112(f) of the Act; 29 U.S.C. 732(f))

(Approved by the Office of Management and Budget under Control Number 1820–0520)

§§ 370.21–370.29 [Reserved]

Supart D—How Does the Secretary Make a Grant?

§ 370.30 How Does the Secretary Allocate Funds?

(a)(1) The Secretary allocates the funds available under this part for any fiscal year to the States on the basis of the relative population of each State, except that the Secretary allocates at least $50,000 to each State.

(2) For the purposes of paragraph (a)(1) of this section, the term "State" does not include American Samoa,

Guam, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(b) The Secretary allocates $30,000 each to American Samoa, Guam, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(c) Upon approval of a State's request for assistance under this part, the Secretary pays to the Governor of each State, from that State's allotment under paragraph (a) or (b) of this section, the amount specified in the State's approved request.

(d) The Governor may request that the Secretary transfer the State's grant directly to the designated agency. In such a case, however, the State remains the grantee.

(e) Both the State and the designated agency are accountable to the Secretary for the proper use of funds made available under this part.

(Sec. 112(e)(1), (3) of the Act; 29 U.S.C. 732(e)(1), (3))

§ 370.31 How does the Secretary reallocate funds?

The Secretary reallocates funds in accordance with section 112(e)(2) of the Act.

(Sec. 112(e)(2) of the Act; 29 U.S.C. 732(e)(2))

§§ 370.32–370.39 [Reserved]

Subpart E—What Conditions Must Be Met by a Grantee?

§ 370.40 What are allowable costs?

In addition to those allowable costs established in EDGAR, and consistent with the program activities listed in § 370.10, the cost of client, client applicant, or attendant travel in connection with the provision of assistance is also allowable under this program.

(Sec. 112 of the Act; 29 U.S.C. 732)

§ 370.41 What conflict of interest provision applies to program employees?

(a) No program employee may, while so employed, serve as a staff member of or consultant to, or receive benefits of any kind directly or indirectly from, any other rehabilitation project, program, or facility receiving assistance under the Act in the State.

(b) This section does not prohibit an individual receiving a traineeship under Section 304 of the Act from serving with a program under this part during the traineeship.

(Sec. 112(g)(1) of the Act; 29 U.S.C. 732(g)(1))

§ 370.42 What access must the program director be afforded to policymaking and administrative personnel?

The program director must be afforded reasonable access to policymaking and administrative personnel in the State and local rehabilitation programs, projects, or facilities. One way in which the program director may be provided that access would be to include the director among the individuals to be consulted on matters of general policy development and implementation, as required by 34 CFR 361.18.

(Sec. 112(g)(2) of the Act; 29 U.S.C. 732(g)(2))

§ 370.43 What requirement applies to the use of mediation procedures?

(a) Each designated agency shall implement procedures designed to ensure that, to the maximum extent possible, mediation procedures are used before resorting to administrative or legal remedies.

(b) As used in this section, "mediation" includes good faith negotiations, but this section does not require the use of a third party before resorting to administrative or legal remedies.

(Sec. 112(g)(3) of the Act; 29 U.S.C. 732(g)(3))

§ 370.44 What reporting requirement applies to each designated agency?

Each designated agency shall submit to the Secretary an annual report on the operation of its program during the previous year, including a summary of the work done and the uniform statistical tabulation of all cases handled by the program.

(Sec. 112(g)(4) of the Act; 29 U.S.C. 732(g)(4))

§ 370.45 What limitation applies to the pursuit of legal remedies?

A designated agency may not bring any class action in carrying out its responsibilities under this part.

(Sec. 112(d) of the Act; 29 U.S.C. 732(d))

§ 370.46 What consultation requirement applies to the Governor?

In designating a client assistance agency under § 370.2 and in carrying out the other provisions of this part, the Governor shall consult with the director of the State vocational rehabilitation agency (or, in States with both a general agency and an agency for the blind, the directors of both agencies), the head of the developmental disability protection and advocacy agency, and representatives of professional and consumer organizations serving handicapped individuals in the State.

(Sec. 112(c)(2) of the Act; 29 U.S.C. 732(c)(2))

§ 370.47 When must grant funds be obligated?

(a) Each designated agency must obligate funds received under this part by the end of the fiscal year for which they are made available.

(b) The designated agency is considered a State for purposes of 34 CFR 76.707.

(Sec. 112 of the Act; 29 U.S.C. 732)

§§ 370.48–370.49 [Reserved]

Appendix A—Analysis of Public Comments and Changes in the Final Regulations

Note.—This Appendix will not appear in the Code of Federal Regulations.

The following is a summary of public comments concerning the notice of proposed rulemaking for the Client Assistance Program published in the **Federal Register** on May 17, 1984 (49 FR 21018) and the Secretary's responses to those comments.

General

Comment. Several commenters recommended that, as a general matter, the regulations be much more detailed and comprehensive. Some of these commenters requested that the regulations more fully describe the powers and duties of designated agencies.

Response. No changes have been made in response to these general comments. The Secretary believes that the statute provides sufficient detail on most aspects of the Client Assistance Program and that States should generally be afforded flexibility and discretion on matters not covered by the statute or by other applicable laws and regulations. As described more fully below, the Secretary has made several changes in response to specific comments, but does not believe that it is necessary to make these regulations more detailed and comprehensive throughout.

Section 370.2

Comment. Two commenters recommended that the regulations permit the Governor to designate more than one agency within the State, and that references to the "agency" be changed to "agencies" accordingly. The commenters stated that this change is important for those States that have both a general and a blind vocational rehabilitation agency as authorized under the Title I Basic Vocational Rehabilitation program.

Response. No change has been made. The statutory use of the singular term "agency" precludes the designation of

more than one agency in a State. The designated agency may, however, use subcontracts or other administrative arrangements to ensure the effective provision of client assistance services throughout the State, including the provision of services to the blind, but there must be one designated agency that is administratively and financially responsible for the program, and that prepares the annual report to the Secretary required by section 112(g)(4) of the Act.

Comment. One commenter objected to the provision in § 370.2(d) that, in order to be exempt from the requirement to designate an independent agency, there must have been an agency in the State that was "directly carrying out" a client assistance program. The commenter recommended that "directly carrying out" be changed to "administering".

Response. No change has been made. The recommended change would mean that States in which a client assistance program has been "administered" by the State vocational rehabilitation agency, but actually carried out by an independent agency under a contract or other arrangement, would be exempt from the requirement to designate an independent agency. In effect, this change would exempt from that requirement every State that had conducted a client assistance program, whether or not the program was actually operated by the State vocational rehabilitation agency. This is clearly inconsistent with the statutory language, since it would make superfluous the additional requirement that the previous agency "received Federal financial assistance under (the Rehabilitation) Act."

Comment. One commenter recommended that if a Governor in a State that currently has a client assistance program designates an agency other than the current program agency, the regulations should require the Governor to include a justification in the State's request for a grant.

Response. No change has been made. The Secretary believes that so long as the statutory requirements pertaining to designation are met, it would be inappropriate to require a Governor to explain the selection of the designated agency to the Federal Government.

Comment. One commenter recommended that the regulations establish an appeal process for a State to contest the Department's determination that the Governor of that State must designate an independent agency to conduct the State's client assistance program.

Response. No change has been made. Any State that disagrees with the Department's determination on this matter may request the Department to explain or reconsider its determination and may submit information which it believes supports a different result. The Secretary does not believe, however, that there is a need for a formalized appeal process.

Comment. One commenter recommended that the regulations permit the Governor to revoke the designation of a client assistance agency only for "good cause shown". The commenter stated that such a provision is necessary to ensure that client assistance agencies are indeed independent and able to pursue the legal claims of their clients without fear that the Governor may revoke their designation as client assistance agencies.

Response. No change has been made. The statute affords each Governor substantial discretion in selecting an agency to carry out the State's client assistance program and in changing to a different agency in the future. The Secretary does not believe that it is appropriate to restrict that discretion in these regulations.

Section 370.10

Comment. One commenter was concerned that the use of the term "may" in the introductory paragraph of § 370.10 appeared to give discretion to the client assistance agency to determine whether or not to provide the services described in that section, and recommended that "may" be changed to "shall".

Response. No change is made. The introductory paragraph means that program funds may be used only for activities consistent with the purpose of the program, and may not be used for other activities. While the Secretary expects each client assistance program to provide the mix of services that will most effectively meet the needs of clients and client applicants in that State, the Secretary believes that it would be inappropriate, particularly in light of the limited funds available under this program, to specify the extent to which each State must provide particular services.

Comment. One commenter noted that the statute and proposed § 370.1 provide that client assistance programs are to advise clients and client applicants of "all" available benefits under the Rehabilitation Act and recommended that the word "all" be added to the corresponding language of § 370.10(b).

Response. A change has been made. The world "all" has been inserted before "benefits available" in § 370.10(b).

Comment. One commenter stated that the purpose of the Client Assistance Program overlaps that of the basic State vocational rehabilitation program under Title I of the Act, and that professional vocational rehabilitation counselors under that program already carry out all the activities listed in § 370.10. The commenter recommended that the regulations prohibit the client assistance agency from initiating "first" contact with clients and client applicants and prohibit State vocational rehabilitation agencies from routinely providing client assistance agencies with lists of clients and client applicants.

Response. No change has been made. The Secretary does not agree that vocational rehabilitation agencies already carry out all the activities listed in § 370.10. The Secretary also believes that the recommendation of the commenter could substantially interfere with the ability of client assistance agencies to carry out their responsibilities and could prevent needed cooperation between vocational rehabilitation and client assistance agencies, to the extent that such cooperation is permissible under the confidentiality requirements of 34 CFR 361.49.

Section 370.20

Comment. Several commenters recommended that § 370.20 be amended to require a State to include in its request for a grant an assurance that the authority to pursue legal remedies includes the authority to bring legal actions against the State vocational rehabilitation agency and other agencies of State government.

Response. A change has been made. A new paragraph (b)(2) has been added to § 370.20, and the other provisions of § 370.20 have been redesignated accordingly. The new provision states that the authority to pursue administrative, legal, and other remedies must include the authority to pursue those remedies against the State vocational rehabilitation agency and other appropriate State agencies. The new language also provides that the designated agency meets this requirement if it has the authority to pursue those remedies either on its own behalf or by obtaining necessary services, such as legal representation, from outside sources. The Secretary believes that this additional provision is necessary to accommodate States that are permitted to designate a State agency as the client assistance agency.

Comment. Several commenters recommended that the regulations require the State to include in its request

for a grant an assurance that it will provide clients with information about the Act and remedies available under the Client Assistance Program.

Response. A change has been made. A new paragraph (c)(1) has been added to § 370.20, to require that each State include an assurance that it will advise all clients and client applicants in the State of its client assistance program, the services provided by the program, and how to contact the program. The Secretary also notes that current regulations for the basic State vocational rehabilitation program require that each client's individualized written rehabilitation program, where appropriate, assure that the client has been provided a detailed explanation of the resources within a client assistance program (34 CFR 361.41(a)(9)).

Comment. Several commenters recommended that § 370.20 be amended to require a State to include in its request for a grant an assurance that if the Governor designates a State vocational rehabilitation agency or any other agency which provides treatment, services or rehabilitation under the Rehabilitation Act as its client assistance agency, the State must also include an assurance that the client assistance program will be placed in that agency only for administrative purposes, and that the director of that agency will not exercise any supervision, direction, or control over the program in the exercise of its responsibilities under the Act.

Response. No change has been made Those States in which the governor is free to designate an agency that provides treatment, services, or rehabilitation under the Act are expressly exempt from the statutory requirement to designate an independent agency. The Secretary believes that it would be a serious and inappropriate intrusion into a State's operation of its client assistance program to build in an independence requirement not found in the statute.

Comment. Several commenters recommended that § 370.20 be amended to require a State to include in its request for a grant a description of the specific means by which its client assistance program will provide clients with legal, administrative, and other available remedies.

Response. No change has been made. The Secretary believes that a simple assurance that each State's client assistance program has the authority to pursue these remedies is sufficient to ensure that those remedies will be made available to clients and client applicants and that it is therefore unnecessary to impose a requirement not found in the statute.

Section 370.30

Comment. Several commenters recommended that § 370.30 be amended to permit direct payment of Federal funds to private agencies designated to operate client assistance programs. Some of the commenters stated that this change would make funds available to the designated private agency more quickly than if they were paid directly to the State and then transferred by the State to the private agency.

Another commenter recommended that the regulations reflect the requirement of section 112(c)(3) of the Act that the designated agency be accountable for the proper use of funds made available under this program.

Response. Two changes have been made to § 370.30. First, paragraph (d) has been added to provide that the Governor may request the Secretary to transfer the State's grant funds directly to the designated agency, but that in such a case the State remains the grantee. Second, paragraph (e) has been added to make it clear that both the State and the designated agency are accountable to the Secretary for the proper use of grant funds. This is the case whether or not the Secretary transfers the State's grant funds directly to the designated agency.

Comment. Several commenters recommended that § 370.30 be amended to provide that if a Governor designates a private agency, but wishes to name a State agency or official as the actual payee, the payee may not be the State vocational rehabilitation agency or any other agency that provides treatment, services, or rehabilitation under the Rehabilitation Act, nor may it be an official of such an agency. Some of these commenters stated that this change was important in order to maintain the independence of designated private agencies.

Response. No change has been made. The Secretary does not believe that it is necessary at this time to restrict a State's options on administrative matters such as the determination of which State agency will be the payee under the grant.

Section 370.40

Comment. One commenter asked whether, under § 370.40, grant funds may be used for the pursuit of legal remedies and recommended that a provision be added authorizing the use of grant funds for that purpose.

Response. No change has been made. Section 370.10(d) makes it clear that grant funds may be used for, among other things, helping clients and client applicants by pursuing legal remedies.

Comment. One commenter asked whether grant funds could be used for the pursuit of legal remedies against the Federal Government under the Act, such as employment discrimination claims under section 501, in light of the provision in the Education Department General Administrative Regulations (EDGAR) cost principles prohibiting the use of grant funds for legal expenses for the prosecution of claims against the Federal Government. *See* EDGAR, Part 74, Appendix C, Part II.B.16.

Response. No change has been made. Although section 112(a) of the Act provides that client assistance programs assist clients and client applicants by advising them of "all" available benefits under the Act and in pursuing legal remedies to ensure the protection of their rights under the Act, the statute authorizes the pursuit of remedies only against those operating projects, programs, and facilities that provide services under the Act to clients and client applicants and only in connection with the provision of those services. Since the Federal Government does not operate such projects, programs, or facilities, the Act does not authorize the pursuit of remedies against the Government. A client assistance program could, however, assist a client or client applicant in pursuing a claim under section 504 of the Act against a designated State unit that provides vocational rehabilitation services under Title I of the Act if the claim involved the provision of those services.

Comment. Two commenters recommended that more detail be included in § 370.41, relating to program employee conflicts-of-interest.

Response. No change has been made. The Secretary has been able to effectively respond, on a case-by-case basis, to questions presented by the conflict-of-interest provision, which has been in section 112 of the Act since 1973. The Secretary does not believe, therefore, that these regulations need to expand on the statutory provision.

Section 370.42

Comment. One commenter recommended that § 370.42 elaborate on the meaning of "reasonable access" under this provision requiring that a client assistance program director be afforded reasonable access to policymaking and administrative personnel in the State and local rehabilitation programs, projects, and facilities. In particular, the commenter stated that, at a minimum, a client assistance program should be allowed

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to provide input into the development of major administrative and policy decisions. The commenter also recommended that a client assistance program be notified of, and be allowed to attend, any meetings of the State vocational rehabilitation consumer advisory panel, which the commenter stated is required under 34 CFR 361.18.

Response. A change has been made. Proposed § 370.42 has been expanded to include an additional sentence which suggests a way in which "reasonable access" may be provided to the client assistance program director. The additional sentence suggests "One way in which the program director may be provided that access would be to include the director among the individuals to be consulted on matters of general policy development and implementation as required by 34 CFR 361.18." The Secretary notes, however, that 34 CFR 361.18 does not require the establishment of a consumer advisory panel, as stated by the commenter. Finally, the Secretary does not believe that, aside from the suggestion now included in § 370.42, it is necessary to provide additional guidance on the "reasonable access" requirement. This requirement can be applied in a common sense manner on a case-by-case basis.

Comment. Several commenters recommended that the regulations provide that "access" include access by a client assistance program to the vocational rehabilitation agency to assist the vocational rehabilitation agency in providing information to clients and client applicants.

Response. No change has been made. The Secretary encourages vocational rehabilitation agencies to work closely with client assistance agencies in informing clients and client applicants about the Client Assistance Program, but does not believe that it is appropriate to require vocational rehabilitation agencies to follow any particular approach in providing that information. The manner in which vocational rehabilitation agencies provide information about the Client Assistance Program to clients and client applicants is, of course, one of the subjects which a client assistance program director may raise with vocational rehabilitation agencies under the "reasonable access" requirement.

Section 370.43

Comment. Several commenters objected to the use of the term "mediation" on the ground that it implies a more formal and elaborate mechanism than is necessary. Some of these commenters recommended that the term "negotiation" be used instead of, or in addition to, "mediation".

Response. A change has been made. Section 112(g)(3) of the Act uses the term "mediation", but the Secretary does not interpret this term to require the use of a third party or any other attributes of formal mediation. A sentence to this effect is therefore added to § 370.43.

Section 370.44

Comment. One commenter recommended that the regulations specify the nature of both qualitative and statistical data that each State must gather and submit in its annual report. The commenter stated that without accurate, uniform data, the Secretary will not be able to prepare the comprehensive evaluation of the Client Assistance Program that section 112(h) of the Act requires to be submitted to the Congress by February 1, 1986.

Response. No change has been made. The Department is developing a standard reporting form to be submitted by designated agencies. The Department will seek comment from designated agencies, vocational rehabilitation agencies, consumer groups, and interested individuals before the form becomes final, but the Secretary does not believe that it would be beneficial to include additional requirements in these final regulations.

Section 370.45

Comment. Several commenters recommended that this section, which prohibits a designated agency from bringing any class action in carrying out its responsibilities under the program, apply only to funds made available under this program. Several of these commenters stated that such a limitation is necessary to ensure that these regulations not unduly restrict designated agencies in using funds obtained from other sources.

Response. No change has been made. The Secretary does not believe that the recommended change is permissible under the statute. The Secretary interprets section 112(d) of the Act to prohibit a designated agency from bringing a class action, regardless of the funding source, if the effect of the class action would be to carry out the agency's client assistance responsibilities.

Section 370.46

Comment. One commenter recommended that the director of the State unit for the blind be added to the list of individuals whom the Governor must consult under this section. This commenter also recommended that the requirement that the Governor consult representatives of professional and consumer organizations serving handicapped individuals specifically refer to organizations serving the blind and visually impaired.

Response. A change has been made. Several States have designated a separate agency for the blind under the basic State vocational rehabilitation program, as authorized by section 101(a)(1)(A) of the Act. In those States, the Secretary believes that the Governor should consult with the heads of both the general vocational rehabilitation agency and the agency for the blind. Section 370.46 has been revised accordingly. The Secretary does not believe, however, that it is appropriate to specify particular disability groups in the provision requiring the Governor to consult with organizations serving handicapped individuals.

Comment. One commenter stated that the requirement for consultation is "vague" and "loose." The commenter recommended that § 370.46 require the Governor to convene periodic meetings of an advisory body composed of the individuals listed in the regulation.

Response. No change has been made. The Secretary does not believe that it is necessary to go beyond the statutory requirement by prescribing any particular method of consultation.

Comment. One commenter recommended that the regulation require the client assistance agency to have a policy which ensures that disabled people will be given a "preference" in staffing client assistance programs.

Response. No change has been made. Section 370.3(b) incorporates certain regulations applicable to several Vocational Rehabilitation Service Programs authorized by the Act. These regulations include 34 CFR 369.43, which requires each designated agency to develop and implement an affirmative action plan to employ and advance in employment qualified handicapped individuals.

Comment. Several commenters recommended that the regulations clarify the point at which grant funds are obligated. Some commenters recommended that a "flexible" approach be adopted in determining when funds are obligated.

Response. A change has been made. A new § 370.47 has been added to clarify the applicable EDGAR provision (34 CFR 76.707) in the context of the Client Assistance Program. Section 370.47 provides that each designated agency must obligate its grant funds by the end of the fiscal year for which they

were awarded, in accordance with 34 CFR 76.707.

Comment. One commenter recommended that the regulations require each client assistance program to provide the Secretary with documentation that it is complying with § 370.2(c) and §§ 370.40 through 370.46.

Response. No change has been made. The Secretary believes that the annual report submitted by each agency under § 370.44, together with information obtained through monitoring and other means, will provide sufficient information to determine whether an agency is complying with the provisions cited by the commenter.

Comment. One commenter recommended that the regulations provide that where the client assistance agency also provides other services, specifically assigned staff be assigned client assistance responsibilities.

Response. No change has been made. While the Secretary strongly encourages client assistance agencies that provide other services to establish discrete units, composed of full-time employees, to provide client assistance services, the Secretary does not believe that such an approach will necessarily be preferred in all instances or that it is appropriate to require this approach in these regulations.

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federal register

Tuesday
March 12, 1985

Part IV

Department of Education

34 CFR Parts 700, 701, 702, 703, 709, 710, 716, 718, 720, 795

Educational Research Grant Program; Proposed Rule

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DEPARTMENT OF EDUCATION

34 CFR Parts 700, 701, 702, 703, 709, 710, 716, 718, 720, and 795

Educational Research Grant Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary of Education issues proposed regulations that would consolidate ten existing regulations affecting the National Institute of Education's (NIE) direct grant programs into one regulation implementing the General Education Provisions Act (EPA) section 405, except subsections 405(f) and 405(k). These proposed regulations would streamline government administration, improve readability, and reduce the burdens on the affected public.

DATE: Comments should be received on or before April 11, 1985.

ADDRESS: Comments should be addressed to Frank Sobol, U.S. Department of Education, National Institute of Education, Mail Stop 1620, 1200 19th Street NW., Washington, D.C. 20208.

FOR FURTHER INFORMATION CONTACT: Frank Sobol, (202) 254–5510.

SUPPLEMENTARY INFORMATION:

Background

NIE was established in 1972 to fulfill a limited Federal role in American education by providing leadership in the conduct and support of scientific inquiry into the educational process. Beginning in fiscal year (FY) 1973 and continuing through FY 1983, regulations governing specific educational research programs funded by NIE were promulgated under the Institute's authorizing legislation, section 405 GEPA, as amended (20 U.S.C. 1221e).

The Secretary has reviewed the existing regulations governing programs authorized by section 405 of GEPA and proposes to amend Title 34 of the Code of Federal Regulations (CFR) by removing Parts 701, 702, 703, 709, 710, 716, 718, 720, and 795, and by revising Part 700. The proposed action will consolidate portions of existing regulations while removing others that are obsolete. The proposed regulations establishing an Educational research Grant Program define applicant eligibility; provide definitions of terms used in the regulations; specify types of grants; list authorized activities; list possible funding priorities; establish application procedures for field-initiated studies projects; establish procedures for evaluation of applications; and provide selection criteria.

Summary of Major Provisions

(1) *Program Purposes.* Section 700.1 of the proposed regulations states the purposes of the Educational Research Grant Program.

(2) *Eligible Parties.* Proposed § 700.2 identifies the agencies, organizations, or individuals eligible for awards under this program.

(3) *Applicable Regulations.* Proposed § 700.3 identifies the regulations that apply to this program. They include the Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74 to 78 and the regulations of this Part 700. However, the regulations of this Part 700 do not apply to contracts awarded under the Educational Research Grant Program. Also applicable to this program are the recently published regulations to be codified at 34 CFR Part 98 (Student Rights in Research, Experimental Activities, and Testing), which are published in the **Federal Register** at 49 FR 35318 to 35322 (September 6, 1984).

(4) *Definitions.* Section 700.4 of the proposed regulations lists definitions provided in EDGAR 34 CFR 77.1. In addition, the section provides a definition of "educational research" using terms from NIE's authorizing legislation in section 405(e)(1) of GEPA. Finally, definitions are provided for the terms "institution of higher education" and "technical assistance."

(5) *Types of Grants.* Under proposed § 700.10(a), the Secretary may set a maximum amount for a small grant application. Proposed § 700.10(a) also limits the duration of funding that may be received under a small grant to 12 months. An application requesting more than the maximum funding amount or more than 12 months of funding is treated as one for a large grant. Proposed § 700.10(b) indicates that when a maximum funding amount is set, the Secretary will establish separate competitions for large and small grants. For example, the Secretary might announce a $35,000 maximum funding limitation for a small grant on the teaching of reading. In this case an application that requests more than $35,000 for a grant on the teaching of reading is considered to be a large grant and is reviewed separately from any small grant applications received.

(6) *Types of Projects.* Under § 700.11(a) of the proposed regulations, the Secretary may restrict any competition to applications that propose one or more activity authorized by section 405(e) of GEPA. In addition, under proposed § 700.11(b), the Secretary may restrict a competition for educational research projects to one or more of the types of educational research activities listed in section 405(e)(1) of GEPA.

(7) *Funding Priorities.* Under proposed § 700.12(a), the Secretary may select among or combine specific priorities in establishing a priority or priorities for competitions under this program. For example, in one competition the Secretary could give priority to a set of topics such as teaching, educational technology, and adolescent education. In another competition, the Secretary might give priority to a single topic such as educational finance.

in addition, proposed § 700.12(b) (1) through (3) describes field-initiated studies applications that the Secretary may fund.

(8) *Preapplication Requirements.* Under proposed § 700.20, the Secretary may require or invite preapplications before an applicant submits a full application in a particular competition. Notice of such a requirement is made in **Federal Register** notice. Other requirements for the content of applications are also established by EDGAR, 34 CFR 75.107 to 75.119.

(9) *Evaluating Applications.* Under § 700.30 of the proposed regulations, the Secretary would assign up to 100 points in evaluating an application. Seventy-five of these points are distributed among the criteria in proposed § 700.31. The remaining 25 points are reserved for the Secretary to distribute among the criteria in proposed § 700.31 at the time each competition is announced in the **Federal Register.** In addition, in cases where the Secretary conducts a competition for field-initiated studies awards under proposed § 700.12(b)(2), the Secretary assigns the reserved 25 points to the selection criterion in proposed § 700.31(f) (Significance).

(10) *Selection Criteria for Educational Research Applications.* Under proposed § 700.31, the Secretary applies eight separate criteria in evaluating applications for an award under the procedures in the proposed rules in § 700.30.

(11) *Procedures Used to Select a Field-Initiated Studies Application for Funding.* Under § 700.32 of the proposed regulations, the Secretary may assemble a review board, as described in proposed § 700.32(a)(2), to review field-initiated studies applications in accordance with EDGAR, 34 CFR 75.217(b). Under proposed § 700.32(b), the Secretary may fund a field-initiated studies application without publishing an application notice pursuant to 34 CFR 75.100. Proposed § 700.32(b) permits the

Secretary, from time to time during any fiscal year, to review and to select applications for funding. An application not selected for funding is reserved for further consideration until the end of the fiscal year.

(12) *Special Considerations.* Under proposed § 700.33, the Secretary may consider the geographical distribution and the diversity of potential awards under this program in making a final selection of applications for funding. The Secretary may also decline to fund projects that are eligible for awards under other existing ED programs. Finally, under EDGAR, 34 CFR 75.217(d), which is applicable to this program, the Secretary may also consider, among other things, the applicant's prior performance under Federal educational research grant awards in light of the requirements of this program, including requirements in EDGAR, 34 CFR Parts 74 and 75.

(13) *Restrictions of Use of Funds.* Under proposed § 700.34, the Secretary may restrict the use of funds awarded under this program that can be applied to the purchase of equipment.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities.

Only a small number of awards are likely under this program, and the regulations would impose minimal burden on applicants and grantees.

Paperwork Reduction Act of 1980

The information collection requirements contained in § 700.31 of these proposed regulations will be sent to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511).

A copy of any comments that *only* concern information collection requirements should be sent to the Office of Information and Regulatory Affairs, Office of management and Budget, New Executive Office Building, Room 3208, 17th Street and Pennsylvania Avenue NW., Washington, D.C. 20503. Atention: Desk Officer for the U.S. Department of Education.

All other comments regarding these proposed regulations should be sent to the Department of Education at the address given at the beginning of this preamble.

Invitation to Comment:

Interested persons invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 723B, 1200 19th Street NW., Washington, D.C., between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except on Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, public comment is invited on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 700

Education research, Grant Programs—education, Reporting and recordkeeping requirements.

Citation of Legal Authority

A citation of statutory authority or other legal authority is placed in parentheses on the line following each substantive provision of these proposed regulations.

(Catalog of Federal Domestic Assistance number 84.117, Educational Research and Development)

Dated: March 7, 1985.

William J. Bennett,

Secretary of Education.

PARTS 701, 702, 703, 709, 710, 716, 718, 720, AND 795—[REMOVED]

The Secretary proposes to amend Title 34 of the Code of Federal Regulations by removing Parts 701, 702, 703, 709, 710, 716, 718, 720, and 795 and by revising Part 700 to read as follows:

PART 700—EDUCATIONAL RESEARCH GRANT PROGRAM

Subpart A—General

Sec.

700.1 What is the Educational Research Grant program?
700.2 What parties are eligible for an award under the Educational Research Grant Program?
700.3 What regulations apply to this program?
700.4 What definitions apply to this program?

Subpart B—What Types of Activities Does the Secretary Support Under This Program?

700.10 What types of awards does the Secretary make under this program?
700.11 What types of projects does the Secretary assist under this program?
700.12 What funding priorities does the Secretary establish for this program?

Subpart C—How Does One Apply for a Grant?

700.20 Are preapplications required?

Subpart D—How Does the Secretary Make a Grant?

700.30 How does the Secretary evaluate an application?
700.31 What selection criteria does the Secretary use to evaluate an application under this program?
700.32 What procedures may the Secretary use to select a field-initiated studies application for funding?
700.33 What special consideration may the Secretary use in selecting an application for funding?
700.34 What restrictions apply to the use of funds awarded under this program?

Authority: Section 405 of the General Education Provisions Act, as added by section 310(a)(2) of Pub. L. 92–318, 86 Stat. 328 (20 U.S.C. 121e), unless otherwise noted.

Subpart A—General

§ 700.1 What is the Educational Research Grant Program?

The Educational Research Grant Program supports scientific inquiry designed to provide more dependable knowledge about the processes of learning and education.

(20 U.S.C. 1221e(a))

§ 700.2 What parties are eligible for an award under the Educational Research Grant Program?

Parties eligible for an award under the Educational Research Grant Program are public or private organizations, institutions, agencies, or individuals.

(20 U.S.C. 1221e(e))

§ 700.3 What regulations apply to this program?

(a) The following regulations apply to awards under the Educational Research Grant Program:

(1) The Education Department General Administrative Regulations (EDGAR) established in Title 34 of the Code of Federal Regulations in Part 74 (Administration of Grants), Part 75 (Direct Grant Programs), part 77

(Definitions that Apply to Department Regulations), and Part 78 (Education Appeal Board).

(2) The regulations in this Part 700.

(b) The regulations in this part 700 do not apply to contracts awarded under the Educational Research Grant Program.

(20 U.S.C. 1221e)

§ 700.4 What definitions apply to this program?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant.
Application.
Award.
Budget.
Budget period.
Contract.
ED.
EDGAR.
Equipment.
Facilities.
Grant.
Grantee.
Local educational agency.
Nonprofit.
Private.
Project.
Project period.
Public.
Secretary.
State educational agency.

(b) *Definitions that apply to this part.* The following definitions also apply to this part:

"Educational research" means all research and related activities including, but not limited to, basic and applied research, planning surveys, evaluations, investigations, dissemination, experiments, development, and demonstrations in the field of education (including career education).

"Institution of higher education" means an institution of higher education as defined in section 1201 of the Higher Education Act of 1965, as amended.

(20 U.S.C. 1141)

"Technical assistance" means assistance provided by a grantee to others for the purpose of applying the results of educational research to resolve educational problems at the State or local level.

(20 U.S.C. 1221e)

Subpart B—What Types of Activities Does the Secretary Support Under This Program?

§ 700.10 What types of awards does the Secretary make under this program?

(a) In a notice published in the **Federal Register**, the Secretary may choose an amount between $25,000 and $50,000 as the maximum amount of a small grant in any competition under this Part 700. An application for a small grant may not rquest funding for more than 12 months. An application that requests more than the maximum amount for a small grant or requests funding for more than 12 months is considered an application for a large grant.

(b) If the Secretary announces a maximum amount for a small grant under paragraph (a) of this section, the Secretary establishes separate competitions for large and small grants.

(20 U.S.C. 1221e)

§ 700.11 What types of projects does the Secretary assist under this program?

(a) For each competition announced in the **Federal Register**, the Secretary may fund applications that include, but are not limited to, those designed to accomplish one or more of the following:

(1) Educational research.
(2) Dissemination of educational research.
(3) Training of individuals in educational research.
(4) Technical assistance.

(b) For each competition announced in the **Federal Register**, the Secretary may restrict educational research projects to one or more of the following activities:

(1) Basic research.
(2) Applied research.
(3) Surveys.
(4) Evaluations.
(5) Investigations.
(6) Dissemination.
(7) Experiments.
(8) Development.
(9) Demonstrations in the field of education.

(20 U.S.C. 1221e)

§ 700.12 What funding priorities does the Secretary establish for this program?

(a) *Priorities.* For each competition, the Secretary may select one or more funding priorities by choosing from the following list of priorities or by combining one or more of the priorities:

(1) Learning.
(2) Teaching.
(3) Educational technology.
(4) Instructional processes and materials, including textbooks and computer software for instruction.
(5) Preparation and training of educational personnel.
(6) Organization and management of schools, including effective school administration and leadership.
(7) Evaluation and school indicators, including testing and measurement.
(8) Governance of education, including school board policies and practices.
(9) Educational finance.
(10) Dissemination and knowledge utilization in education.
(11) Change and improvement processes in eudcation.
(12) Student achievement and educational standards, including students' motivation to learn, their failure to learn, and their failure to attend school and graduate.
(13) Home, family, parental choice, and community influences in education.
(14) Education, work, and careers.
(15) Desegregation, busing, and their impact on educational equity and excellence.
(16) Guidance and counseling.
(17) International education.
(18) English literacy, including reading, writing, and language skills.
(19) Disciplines of the humanities, including history, philosophy, and literature.
(20) Mathematics.
(21) Science.
(22) Foreign languages.
(23) Preschool education.
(24) Elementary education.
(25) Secondary education.
(26) Private education.
(27) Adolescent education.
(28) Postsecondary education.
(29) Adult and continuing education.
(30) Education of special populations, including the educationally disadvantaged, the handicapped, and the academically gifted and talented.

(b) *Field-initiated studies.* The Secretary may fund any field-initiated studies application that—

(1) Does not meet a priority established in accordance with paragraph (a) of this section;
(2) Is limited to activities listed in § 700.11(a)(1)–(4); and
(3) Satisfies all other requirements for funding under this program.

Note.—EDGAR establishes the method for applying priorities. See 34 CFR 75.105 (Annual priorities).

(20 U.S.C. 1221e)

Subpart C—How Does One Apply for a Grant?

§ 700.20 Are preapplications required?

As announced in the **Federal Register**, the Secretary may require or invite an applicant to submit a preapplication for a particular competition.

Note.—EDGAR establishes the procedures under which the Secretary considers a preapplication. See 34 CFR 75.130–75.134.

(20 U.S.C. 1221e)

Subpart D—How Does the Secretary Make a Grant?

§ 700.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application submitted under this

program on the basis of the selection criteria in § 700.31.

(b) The Secretary awards up to 100 points, including a reserved 25 points to be distributed in accordance with paragraph (d) of this section, based on the selection criteria in § 700.31.

(c) Subject to paragraph (d) of this section, the maximum possible points for each criterion is indicated in parentheses after the heading of each criterion.

(d) For each competition announced in the **Federal Register**, the Secretary distributes the reserved 25 points among the criteria in § 700.31. In the case of a field-initiated studies competition conducted in accordance with § 700.32(b)(1), the Secretary assigns the reserved 25 points to the selection criterion in § 700.31(f) (Significance).

§ 700.31 What selection criteria does the Secretary use to evaluate an application under this program?

The Secretary uses the following criteria in evaluating each application for an award under § 700.11:

(a) *Plan of Operation.* (10 Points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purposes of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethinic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (20 Points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience, training, and professional productivity, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (5 Points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (5 Points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. Cross-reference—See EDGAR 34 CFR 75.590 (Evaluation by the grantee).

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of the resources.* (5 Points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Significance.* (15 Points)

(1) The Secretary reviews each application for information that shows the significance of the proposed project.

(2) The Secretary looks for information that shows the project's potential to make a significant contribution to American education, as measured by factors such as—

(i) Importance of the proposed project from the standpoint of basic knowledge or of problems of American education;

(ii) The likely magnitude of the addition that will be made to knowledge or educational practices if the project is successful, including the generalizability of the results;

(iii) The extent to which the project involves creative or innovative approaches that complement or are alternatives to existing approaches to the project's problem area; and

(iv) The extent to which the project is designed to yield outcomes that can be disseminated and utilized in other settings, such as information, materials, processes, or techniques.

(g) *Technical soundness.* (15 Points)

(1) The Secretary reviews each application for information that demonstrates the technical soundness of the proposed activities.

(2) The Secretary looks for information that shows—

(i) The adequacy of the project's design, methodology, instrumentation, and data analysis plan, where applicable;

(ii) The extent to which the application exhibits a thorough knowledge of current research and development concepts, theories, and outcomes and relates these to the proposed activity; and

(iii) Evidence that, where appropriate, the perspectives of a variety of disciplines are used.

(h) *Applicant's commitment and capacity.* (0 Points)

The Secretary looks for information that shows the extent of the applicant's commitment to the project, its capacity to continue the project, and the likelihood that it will build upon the project when Federal assistance ends.

(20 U.S.C. 1221e)

§ 700.32 What procedures may the Secretary use to select a field-initiated studies application for funding?

(a)(1) Notwithstanding the provisions of 34 CFR 75.217(a), the Secretary may assemble a board to review field-initiated studies applications described at § 700.12(b).

(2) The board consists of—

(i) A program officer of the program under which that applicant wants a grant;

(ii) A Department grants officer;

(iii) A Department employee who is not a program officer of the program but

who is qualified to evaluate the application.

(3) The board reviews applications in accordance with 34 CFR 75.217(b).

(b) (1) Notwithstanding the provisions of 34 CFR 75.100, the Secretary may fund a field-initiated studies application, as described in § 700.12(b) without publishing an application notice in the **Federal Register** each fiscal year.

(2) At any time during each fiscal year, the Secretary may review all field-initiated studies applications submitted and may select applications for funding in accordance with procedures in § 700.32(a).

(3) The Secretary reserves any applications which were reviewed in accordance with (b)(1) of this section, but which were not selected for funding, for further consideration during the remainder of that fiscal year.

(4) If the Secretary selects a priority in accordance with § 700.12(a), the Secretary may reserve all applications that relate to that priority for review under a separate competition.

(20 U.S.C. 1221e)

§ 700.33 What special consideration may the Secretary use in selecting an application for funding?

(a) After evaluating applications according to the criteria contained in § 700.31, the Secretary may determine whether the most highly rated applications are broadly and equitably distributed throughout the Nation for each competition under this program. The Secretary may select other applications for funding if doing so would improve the geographical distribution of projects funded under a particular competition or under this program.

(b) The Secretary may select an application for funding to improve the diversity of activities or projects funded under a particular competition.

(c) The Secretary may decline to fund a project that is eligible for funding under a different Department of Education competition or program.

(20 U.S.C. 1221e)

§ 700.34 What restrictions apply to the use of funds awarded under this program?

Of the funds made available through an award under this program, the Secretary may restrict the amount of funds used to purchase equipment.

(20 U.S.C. 1221e)

[FR Doc. 85-5848 Filed 3-11-85; 8:45 am]
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Federal Register

Tuesday
March 12, 1985

Part V

Department of Transportation

Federal Railroad Administration

49 CFR Part 215

Railroad Freight Car Standards; Rescheduled Hearing; Proposed Rule

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 215

[FRA Docket No. RSFC-6, Notice 10]

Railroad Freight Car Standards; Rescheduled Hearing

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Announcement of change in hearing schedule.

SUMMARY: FRA announces that the public hearing scheduled for March 12, 1985 in Washington, D.C., regarding thermal abuse of freight car wheels, has been rescheduled to April 25, 1985 and may be extended for an additional day (through April 26, 1985) if necessary.

DATES: The public hearing previously announced as beginning at 1:00 p.m. on Tuesday, March 12, 1985, will not be convened until 10:00 a.m. on April 25, 1985 and, if necessary to assure adequate time for the presentation of information or views, may be reconvened at 10:00 a.m. on April 26, 1985.

ADDRESSES: The public hearing will be held in Room 8334 of the Nassif Building located at 400 Seventh Street SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Philip Olekszyk, Office of Safety, Federal Railroad Administration, Washington, D.C. 20590, telephone (202) 426–0897.

SUPPLEMENTARY INFORMATION: On December 17, 1984 FRA published in the **Federal Register** (49 FR 48952) an announcement that it was scheduling additional dates for public hearings regarding its proposal to amend FRA's regulatory provision defining freight car wheels as defective because of thermal abuse. The hearing scheduled for March 12, 1985 was focused on the concern raised by a commenter that FRA's current regulatory approach to thermally abused freight car wheels is intrinsically flawed because it continues to rely on a scientifically unjustified detection methodology.

Due to unforeseen scheduling conflicts, FRA has decided to reschedule this hearing until 10:00 a.m. on April 25, 1985. Based on the information FRA has received concerning this hearing, FRA believes that it may be necessary to extend the hearing until the following day so as to permit all interested parties to fully explain their views. Therefore, FRA is tentatively scheduling an additional day for the conduct of this hearing. If appropriate, FRA will reconvene the hearing on April 26, 1985 at 10:00 a.m. in the same location.

To assist FRA in conducting this hearing, any individual or organization desiring to present testimony is requested to notify FRA prior to the hearing and to provide FRA with the name and title of the person expected to testify as well as an estimate of the amount of time required for the presentation.

Issued in Washington, D.C. on March 8, 1985.

John H. Riley,

Administrator.

[FR Doc. 85–5991 Filed 3–11–85; 11:00 am]

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Environmental Protection Agency

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Immigration and Naturalization Service

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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

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The President

Proclamation 5307 of March 9, 1985

Women's History Week, 1985

By the President of the United States of America

A Proclamation

The history of the United States is the history of women and men working together to realize their dreams. In times of war and peace, of hardship and prosperity, we have shared disappointments and achievements.

Today there are more opportunities open to women than at any time in our history, and women are using these opportunities to excel in every field. But even before our own era, courageous and persevering women had achieved leading roles in all walks of life. Women led reform movements, including the movement for women's suffrage; they ran businesses, entered the professions, and pioneered in activites such as art, literature, and science. These achievements have not always received the recognition they deserve, and one of the purposes of Women's History Week is to encourage all Americans to remember this sometimes forgotten part of our heritage. By doing so, we will encourage the women of today to pursue their dreams wherever they lead—even to the stars, as our women astronauts have done.

But in remembering the achievements of especially talented individuals, we should not forget the immense contribution made to our Nation by millions of women whose names we will never know. These women raised families, worked part-time or full-time to support them, and passed on their love, hopes, and dreams to the next generation. They crossed deserts and mountains alongside their families and in times of national emergency, such as war, they undertook vital work in factories and on farms which enabled our Nation to survive and prosper. They were known only to their families, friends, and neighbors, but their influence on their communities was enormous. Whatever greatness our Nation has achieved, we owe in very large measure to them, and we should never overlook or forget their contribution.

In recognition of the many vital contributions of women to our Nation's history, the Congress, by House Joint Resolution 50, has designated the week beginning March 3, 1985, as "Women's History Week" and authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week beginning March 3, 1985, as Women's History Week. I invite the Governors of the States, the chief officials of local governments, the scholars of our institutions of education, and Americans everywhere to mark this occasion with appropriate ceremonies and activities recognizing the contributions of women to our Nation and our culture.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of March, in the year of our Lord nineteen hundred and eighty-five, and of the Independence of the United States of America the two hundred and ninth.

Ronald Reagan

[FR Doc. 85-6171
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Federal Register
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Wednesday, March 13, 1985

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 425

[Doc. No. 2091S]

Peanut Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Notice of extension of sales closing date.

SUMMARY: Under the authority contained in the Federal Crop Insurance Act, as amended, the Federal Crop Insurance Corporation (FCIC) herewith gives notice of the extension of the sales closing date for accepting applications for crop insurance in certain counties on peanuts, effective for the 1985 crop year. This action is necessary because of a need to clarify yield guarantees relative to maintaining uniformity in recordkeeping requirements.

The intended effect of this notice is to advise all interested parties of the extension of sales closing dates and to comply with the Peanut Crop Insurance Regulations (7 CFR Part 425) with respect to the authority of the Manager to extend sales closing dates.

EFFECTIVE DATE: March 13, 1985.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: Under the authority contained in 7 CFR 425.7, the sales closing date for accepting applications for peanut crop insurance may be extended by placing the extended date on file in the service office and by publishing a notice in the **Federal Register** upon determination that no adverse selectivity will result from such extension. If adverse conditions develop during such period, FCIC will immediately discontinue acceptance of applications.

In certain counties the closing date for accepting applications for peanuts is March 31. Because of the need to clarify and make uniform the recordkeeping requirements as they relate to yield guarantees, and to allow potential insureds an opportunity to study this issue relative to their insurance needs, FCIC is extending the sales closing date for accepting peanut crop insurance applications in all counties with a March 31 cancellation date, through the close of business on April 15, 1985, effective for the 1985 crop year only.

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 et seq.), the Federal Crop Insurance Corporation herewith gives notice that the sales closing date for accepting applications for peanut crop insurance under the provisions of 7 CFR Part 425, in all counties with a cancellation date of March 31, is extended effective for the 1985 crop year only, through the close of business on April 15, 1985.

Done in Washington, D.C., on March 6, 1985.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Dated: March 6, 1985.

Approved by:

Edward Hews,

Acting Manager.

[FR Doc. 85–5936 Filed 3–12–85; 8:45 am]

BILLING CODE 3410-08-M

Federal Grain Inspection Service

7 CFR Part 800

Restrictions on Representations

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: According to the requirements for the periodic review of existing regulations, the Federal Grain Inspection Service (FGIS or Service) has reviewed its regulations on restrictions on representations and is publishing a final rule on that subject. This action amends its regulation on "Restrictions on Representations" by clarifying and condensing the provision on restrictions with respect to designations, marks, and representations and making other miscellaneous non-substantive changes for clarity, all of which facilitate use of the regulations.

EFFECTIVE DATE: April 12, 1985.

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., Information resources Management Branch, USDA. FGIS, Room 0667 South Building, 14th Street and Independence Avenue, SW., Washington, D.C. 20250, telephone (202) 382–1738.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This final rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512–1. The action has been classified as nonmajor, because it does not meet the criteria for a major regulation established in the Order.

Regulatory Flexibility Act Certification

Kenneth A. Gilles, Administrator, FGIS, has determined that this final rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because most users of the inspection and weighing services and those entities that perform such services do not meet the requirements for small entities.

Final Action

The review of the regulations on Restrictions on Representations (7 CFR 800.55 through 800.57) included a determination of the continued need for and consequences of the regulations. An objective of the review was to assure that the regulations are serving their intended purpose, the language was clear, and the regulations were consistent with FGIS policy and authority. FGIS has determined that, in general, these regulations are serving their intended purpose, are consistent with FGIS policy and authority, are necessary, and should remain in effect.

However, in the November 20, 1984, **Federal Register** (49 FR 45751), FGIS proposed certain revisions to: (1) Revise the title of the provisions to "Descriptions" from "Restrictions on Representations"; (2) amend § 800.55, Restrictions with respect to descriptions of grain by grade by (a) revising the title to Descriptions by grade, and (b) revising the section by clarifying the

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language and adding certain provisions which appear in section 6, United States Grain Standards Act, relating to prohibited descriptions; (3) amend § 800.57, Restrictions with respect to designations, marks, and representations, by (a) revising the title to Requirements of descriptions, (b) revising the section to clarify and condense the language, and (c) incorporating paragraphs (a) through (i) into two paragraphs (a) and (b); and (4) redesignate the current § 800.57 as § 800.56.

By a final rule published in the **Federal Register** on September 14, 1984, (49 FR 36067) FGIS removed § 800.56, Official certificates, official forms, and official marks. The definitions comprising this section were moved to § 800.0(b).

No comments were received on the November 20, 1984, proposed rule. FGIS is publishing as a final rule the text of the proposed rule without change.

List of Subjects in 7 CFR Part 800

Administrative practice and procedure, Export, Grain.

PART 800—GENERAL REGULATIONS

Accordingly, §§ 800.55 and 800.57 "Restrictions on Representations" are revised as follows:

The authority citation for Part 800 reads as follows:

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

1. The centerheading which precedes § 800.55 is amended to read as follows:

Descriptions

2. Section 800.55 is revised to read as follows:

§ 800.55 Descriptions by Grade.

(a) *General.* In any sale, offer for sale, or consignment for sale, which involves the shipment of grain in interstate or foreign commerce, the description of grain, as being of a grade in any advertising, price quotation, other negotiation of sale, contract of sale, invoice, bill of lading, other document, or description on bags or other containers of the grain, is prohibited if such description is other than by an official grade designation, with or without additional information as to specified factors.

An official grade designation contains any of the following: The term "U.S.," the numerals 1 through 5, the term "Sample grade," or the name of a subclass or a special grade of grain specified in the Official United States Standards for Grain.

(b) *Proprietary brand names or trademarks.* A description of grain by a proprietary brand name or a trademark that does not resemble an official grade designation will not be considered to be a description by grade; but a description by a proprietary brand name or trademark that contains singly or in combination any of the terms referenced in paragraph (a) of this section shall be considered to resemble an official grade designation.

(c) *Use of one or more factor designations.* In interstate commerce, a description of grain by the use of one or more grade factor designations which appear in the Official United States Standards for Grain or by other criteria will not be considered to be a description by grade.

(d) *False or misleading descriptions.* In any sale, offer for sale, or consignment for sale of any grain which involves the shipment of grain from the United States to any place outside thereof, knowingly using a false or misleading description of grain by official grade designation, or other description is prohibited.

3. Section 800.57 is redesignated as 800.56 and revised to read as follows:

§ 800.56 Requirements on descriptions.

Section 13 of the Act contains certain prohibitions with respect to the use of official grade designations, official marks, and other representations with respect to grain.

(a) The use of an official grade designation, with or without factor information, or of official criteria information, or of the term "official grain standards," shall not, without additional information, be considered to be a representation that the grain was officially inspected.

(b) The use of any symbol or term listed as an official mark, at § 800.0(b)(68), with respect to grain shall be considered to be a representation of official service under the Act: Provided however, that the use of the official marks "official certificate;" "officially inspected;" "official inspection;" "officially weighed;" "official weight;" and "official weighing" shall not be considered to be a representation of official service under the Act if it is clearly shown that the activity occurred under the U.S. Warehouse Act (7 U.S.C. 241 *et seq.*): Provided further, that the use of the official mark "officially tested" with respect to grain inspection and weighing equipment shall not be considered to be a representation of testing under the Act if it is clearly shown that the equipment was tested under a State statute.

Dated: February 25, 1985.

Kenneth A. Gilles,

Administrator.

[FR Doc. 85–5946 Filed 3–12–85; 8:45 am]

BILLING CODE 3410-EN-M

Agricultural Marketing Service

7 CFR Part 1150

Dairy Promotion Program; Procedure for Conducting Referenda and Amendments to the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Dairy Research and Promotion Order was fully implemented on May 1, 1984, as required under the procedures established in Title I, subtitle B, of the Dairy and Tobacco Adjustment Act of 1983. The Act also requires that the Secretary must conduct an initial referendum among producers within the 60-day period immediately preceding September 30, 1985, to determine whether the promotion order should be continued. This rule establishes procedures for conducting the initial referendum among producers and any subsequent referenda that may be conducted in connection with the promotion order. Also, three amendments to the order are included. One is a conforming change as a result of information that may need to be obtained to conduct a referendum. The other two amendments change the name of the order to be consistent with the name of the Board and clarify that the proportion of votes necessary by the Board in conducting its business be based on the number of Board members present and voting rather than on the number of Board members present.

EFFECTIVE DATE: March 13, 1985.

FOR FURTHER INFORMATION CONTACT: Richard M. McKee, Chief, Promotion and Research Staff, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 477–6909.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding: Invitation to submit comments on proposed rules: Issued November 28, 1984; published December 5, 1984 (49 FR 47496).

This rule has been reviewed under USDA guidelines implementing Executive Order 12291 and Secretary's Memorandum 1512–1 and has been classified as a "non-major" rule. Also, William T. Manley, Deputy Administrator, Agricultural Marketing Service, certifies that this action will not

have a significant economic impact on a substantial number of small entities because it involves only procedures to conduct referenda. The proposed procedures would involve the voluntary participation of all milk producers and cooperative associations of milk producers, but only to the extent of the act of voting.

The information collection requirements that are included in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) and have been assigned OMB Control Number 0581–0147.

Preliminary Statement

Title I, subtitle B, of the Dairy and Tobacco Adjustment Act of 1983 authorized the establishment of a Dairy Research and Promotion Order to implement a national program for dairy product promotion, research and nutrition education. The promotion order was fully implemented on May 1, 1984, within the timeframe and under the procedures specified in the enabling legislation. The Act also requires that the Secretary conduct a referendum among producers within the 60-day period immediately preceding September 30, 1985, to ascertain whether the promotion order should be continued. After September 30, 1985, the Act specifies that the Secretary may conduct a referendum at any time, and shall hold a referendum on request of a representative group comprising 10 percent or more of the producers subject to the order, to determine whether producers favor the termination or suspension of the order.

In view of these requirements, proposed procedures to be followed in conducting the initial, mandated referendum, as well as any subsequent referenda that may be conducted in connection with the Dairy Research and Promotion Order, were issued on November 28, 1984. The notice of proposed rules contained a conforming amendment to the order to include the information collection and recordkeeping requirements that may be necessary of cooperative associations and other persons responsible for submitting assessments to the Board to verify and avoid a duplication of votes. The notice also included two additional amendments to the Dairy Research and Promotion Order that were proposed by the National Dairy Promotion and Research Board. One amendment would change the name of the order to be consistent with the name of the Board as defined in the Act, while the other proposal would clarify that the proportion of votes necessary by the Board in conducting its business be based on the number of Board members present and voting rather than on the number of Board members present.

The notice of the proposed referenda procedures and amendments to the order was published in the **Federal Register** on December 5, 1984 (49 FR 47496) and interested persons were invited to submit comments on the proposals by February 4, 1985.

Findings

A total of 56 comments were received in response to the invitation to submit comments on the proposed referenda procedures and amendments to the order. However, for reasons hereinafter set forth, the comments do not provide a basis for revising either the proposed amendments to the order or the proposed referenda procedures. Consequently, the proposed amendments and referenda procedures as contained in the notice of proposed rulemaking are hereby adopted as final rule, subject to one minor modification.

Only three of the comments addressed the proposed amendments to the Dairy Research and Promotion Order. One comment supported the amendments while the other two opposed the proposal that would change the voting requirement for Board actions from a majority of Board members present to a majority of those present and voting. One of these comments suggested that Board actions should require the approval of a majority of all 36 Board members while the other opposing comment suggests that the proposal raises the possibility that some producers will not be represented in actions of the Board because of abstentions from voting.

The order presently provides that a majority of Board members constitutes a quorum at a properly convened meeting and that any action of the Board shall require the concurring votes of at least a majority of those present. The proposal by the National Dairy Promotion and Research Board would change only the latter requirement to base actions on the number of Board members present and voting. Either the current or proposed procedure is acceptable under generally recognized rules governing the conduct of meetings. The proposed method, however, provides the opportunity for Board members to abstain from voting while the current procedure treats abstentions as "no" votes. Since other provisions of the order require the withdrawal from participation in deliberations, decision-making, or voting under certain circumstances, the proposed procedure appears to be more appropriate and should be adopted.

Most of the other comments (39) expressed either support for or opposition to the continuation of the promotion program. These views are not relevant to the issues which primarily involve the procedures to be used in conducting the initial, mandated referendum (and any subsequent referenda) to determine if dairy farmers favor the continuation of the program.

With respect to the referenda procedures, 13 of the comments expressed opposition to allowing cooperative associations to vote on behalf of their members (bloc voting). These, and several other comments, suggested that each dairy farmer be mailed a ballot to cast an individual vote.

With respect to bloc voting by cooperative associations, the referenda procedures must follow the requirements specified in the enabling legislation (Title I, subtitle B, of the Dairy and Tobacco Adjustment Act of 1983). The Act specifically states that the Secretary shall consider the vote of any cooperative association as the vote of the producers who are members of or under contract with such cooperative association. The Act also specifies that any cooperative association that elects to vote on behalf of its members must inform each member of the question presented in the referendum and how the cooperative association intends to vote. Such notification shall inform the producer of the procedures to follow to cast an individual ballot. The notification must be made at least 30 days prior to the referendum and shall include an official ballot. These conditions on voting by cooperative associations are recognized and incorporated in the referenda procedures by requiring a certification to the referendum agent that all of the notification requirements have been met in order for a cooperative association to cast a valid ballot on behalf of its members. Although recognizing voting by cooperative associations, the referenda procedures also carry out the Act's requirement that all producers be given the opportunity to cast an individual ballot, if they so desire. Ballots cast by members of a cooperative association will be tabulated and the vote of the cooperative association will be adjusted to reflect individual votes.

An advanced mass mailing of ballots to all individual producers is not anticipated. Ballots will be furnished to cooperative associations that elect to bloc vote so that such cooperatives will

be able to supply an individual ballot to each of their members as required by the Act. All other producers will be able to obtain ballots from county offices of the Agricultural Stabilization and Conservation Service. Ballots will also be available from the referendum agent and other persons who request ballots and elect to mail them to producers. A wide distribution of ballots will make them easily accessible to all producers without undertaking the time-consuming and costly process of developing a list identifying the names and addresses of all producers who are eligible to vote.

One comment stated that cooperative associations should not be required to mail ballots to producers as early as 30 days in advance of the referendum. Although not specifying when ballots should be mailed, the commentor contends that ballots should be furnished to producers by cooperative associations at the time when producers can take immediate action so that ballots are not lost or forgotten. This request for a later mailing of ballots cannot be accommodated since the time for cooperative associations to notify and mail ballots to producer members is specifically stated in the Act. However, in this regard, a minor modification has been made to delete the proposed rule requirement that ballots furnished to producers by cooperative associations contain the name of the cooperative association from which the ballots were mailed. Such requirement is unnecessary.

Two comments addressed § 1150.206 of the referenda procedures with respect to the timing of and requirements for any subsequent referenda that may be conducted after September 30, 1985. The referenda procedures specify that, after the initial referendum, the Secretary may hold a referendum at any time and shall hold a referendum when requested by a representative group comprising 10 percent or more of the number of producers subject to the order. These provisions of the referenda rules are specified in the Act and, therefore, the suggestion by one of the commentors to require that 30 to 40 percent of producers must request a referendum for the Secretary to take action cannot be adopted.

The other comment stated that the rules should provide for a periodic review of whether the program should be continued. The commentor contends that producer support for the advertising program would be strengthened if producers were certain that the program would be subject to periodic producer review. A time period for the calling of such subsequent referenda, however, was not specified by the commentor.

It does not appear to be necessary at this time to establish a fixed period of time for conducting subsequent referenda to periodically determine if producers favor the continuation of the program. The costs associated with conducting a national referendum are significant. Such costs attributable to conducting potentially unnecessary referenda as a result of required periodic reviews should be avoided. If necessary, future referenda may be conducted at any time at the direction of the Secretary and shall be conducted if so requested by a sufficient number of producers.

One commentor suggested that § 1150.205(c)(3) of the proposed rules be modified to assure that ballots cast by unrelated individuals for the same business units be counted in the same manner applicable to families. Such clarification is not necessary since the rules specify that if a producer is other than an individual, the business unit shall be the producer and that each producer has only one vote.

One additional comment suggested that it might be beneficial to reiterate in the referenda procedures that the order shall be continued only if the Secretary determines that it has been approved by not less than a majority of the producers voting in the referendum. This requirement is specified in the Act and will be widely publicized through press releases and instructions accompanying ballots that will be made available by the referendum agent. Thus, it does not appear necessary to incorporate such a fact within the rules that govern the procedures to be followed in conducting referenda.

Additional Findings

It is hereby found and determined that it is impractical and unnecessary to delay the effective date of these rules until 30 days after publication in the **Federal Register**. The rules are essentially the same as the proposed rules published on December 5, 1984, and an earlier effective date will not impose any additional burden on any person.

List of Subjects in 7 CFR Part 1150

Milk, Dairy products, Promotion, Research, Referenda procedures.

PART 1150—DAIRY PROMOTION PROGRAM

It is hereby determined that 7 CFR Part 1150—Dairy Promotion Program, be amended as follows:

Authority: Pub. L. 98–180, 97 Stat. 1128

1. Change the title of the subpart for §§ 1150.101 through 1150.187 from "Dairy Research and Promotion Order" to "Dairy Promotion and Research Order."

2. Revise § 1150.137(a) to read as follows:

§ 1150.137 Procedure.

(a) A majority of the members shall constitute a quorum at a properly convened meeting of the Board. Any action of the Board shall require the concurring votes of at least a majority of those present and voting. The Board shall establish rules concerning timely notice of meetings.

* * * * *

3. Revise § 1150.187 to read as follows:

§ 1150.187 Paperwork Reduction Act assigned number.

The information collection and recordkeeping requirements contained in §§ 1150.133, 1150.152, 1150.153, 1150.171, 1150.172, 1150.202, 1150.204, 1150.205, 1150.211 and 1150.273 of these regulations (7 CFR Part 1150) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Control Number 0581–0147.

4. Add "Subpart—Procedure for Conduct of Referenda in Connection with the Dairy Promotion and Research Order" to read as follows:

Subpart—Procedure for Conduct of Referenda in Connection with the Dairy Promotion and Research Order

Sec

1150.200 General.
1150.201 Definitions.
1150.202 Associations eligible to vote.
1150.203 Conduct of referendum.
1150.204 Who may vote.
1150.205 Duties of the referendum agent.
1150.206 Date of referendum.
1150.207 Notice of referendum.
1150.208 Time for voting.
1150.209 Tabulation of ballots.
1150.210 Confidential information.
1150.211 Supplementary instructions.
1150.212 Submittals or requests.

Authority: Pub. L. 98–180, 97 Stat. 1128.

Subpart—Procedure for Conduct of Referenda in Connection with the Dairy Promotion and Research Order

§ 1150.200 General.

Referenda to determine whether eligible producers favor the continuance, termination or suspension of the Dairy Promotion and Research Order shall be conducted in accordance with this subpart.

§ 1150.201 Definitions.

As used in this subpart:

(a) "Act" means Title I, Subtitle B, of the Dairy and Tobacco Adjustment Act of 1983, Pub. L. 98–180, 97 Stat. 1128, as approved November 29, 1983, and any amendments thereto.

(b) "Department" means the United States Department of Agriculture.

(c) "Secretary" means the Secretary of Agriculture of the United States or any other officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

(d) "Administrator" means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has been delegated or may hereafter be delegated to act in the Administrator's stead.

(e) "Order" means the Dairy Promotion and Research Order, as amended.

(f) "Board" means the National Dairy Promotion and Research Board established pursuant to § 1150.131 of the order.

(g) "Assessment" means the assessments that are collected and remitted to the Board pursuant to § 1150.152 of the order.

(h) "Person" means any individual, group of individuals, partnership, corporation, association, cooperative or other entity, and, for the purpose of this subpart, shall include only one member of a family that owns or operates a dairy farm business unit.

(i) "Producer" means any person engaged in the production of milk for commercial use and whose milk is subject to an assessment. In the case of a producer who is other than an individual, the business unit shall be regarded as the producer.

(j) "Cooperative association" means any cooperative marketing association of producers which is organized under the provisions of the Act of Congress of February 18, 1922, known as the "Capper-Volstead Act."

(k) "Referendum agent" means the person designated by the Secretary to conduct the referendum.

(l) "Representative period" means the period designated by the Secretary pursuant to section 115 of the Act.

§ 1150.202 Associations eligible to vote.

(a) In conducting any referendum under the Act, the Secretary shall consider the approval or disapproval by any cooperative association engaged in a bona fide manner in marketing milk or the products thereof as the approval or disapproval of the producers who are members of or under contract with such cooperative association of producers. In order to be eligible to vote in a referendum, a cooperative association must:

(1) Certify to the referendum agent, in conjunction with casting its ballot, that the association is organized under the provisions of the "Capper-Volstead Act" and that it is engaged in a bona fide manner in marketing milk or the products thereof;

(2) Certify to the referendum agent, in conjunction with casting its ballot, the number of producers on whose behalf the cooperative association is casting a ballot, that such producers are members of or under contract with the cooperative association and that the association was engaged during the representative period in marketing the milk of each of the producers for whom the cooperative association claims the right to vote;

(3) Furnish to the referendum agent, in conjunction with casting its ballot, a copy of the resolution authorizing the casting of the ballot;

(4) Certify to the referendum agent, in conjunction with casting its ballot, that the cooperative association has complied with the requirements of paragraph (b) of this section; and

(5) Agree to make available to the referendum agent necessary records and information pertaining to the representative period to validate the eligibility of the cooperative association to vote and to verify the number and identity of the producers on whose behalf the cooperative association claims the right to vote.

(b) Not later than 30 days prior to the beginning of the referendum, each cooperative association that elects to vote on behalf of its producers shall furnish each producer with the following information:

(1) A description of the question(s) upon which the referendum is being held;

(2) A statement of how the cooperative association intends to vote on each question on behalf of producers for whom it claims the right to vote;

(3) The procedure to be followed by a producer to cast an individual ballot if the producers so chooses;

(4) The time period within which individual ballots must be cast; and

(5) An official ballot for use by the producer.

(c) Not later than 30 days prior to the beginning of the referendum, each cooperative association shall notify the referendum agent as to whether or not the association intends to vote on behalf of its producers.

§ 1150.203 Conduct of referendum.

The referendum shall be conducted by mail in the manner prescribed in this subpart. The referendum agent may utilize such personnel or agencies of the Department as are deemed necessary by the Administrator.

§ 1150.204 Who may vote.

(a) Each producer shall be entitled to only one vote in each referendum, and no person who may claim to be a producer shall be refused a ballot. Any producer casting more than one ballot with conflicting votes shall thereby invalidate all ballots cast by such producer in such referendum. Each ballot cast shall contain a certification by the person casting the ballot that such person is a producer. All information required on the ballot pertinent to the identification of the person voting must be supplied and certified to as being correct for the representative period in order for the ballot to be valid.

(b) Any cooperative association meeting the requirements specified in § 1150.202 may, if it elects to do so, vote and cast one ballot for producers who are members of or under contract with such cooperative association. Any such cooperative association casting more than one ballot with conflicting votes shall thereby invalidate all ballots cast by such voter in such referendum.

(c) Voting by proxy or agent will not be permitted. However, a producer who is other than an individual may cast its ballot by a person who is duly authorized, and such ballot shall contain a certification by such person that the person on whose behalf the ballot is cast is a producer. All information required on the ballot pertinent to the identification of the person on whose behalf the ballot is cast must be supplied and certified to as being correct for the representative period in order for the ballot to be valid.

§ 1150.205 Duties of the referendum agent.

The referendum agent, in addition to any other duties imposed by this subpart, shall:

(a) Verify the eligibility of all producers and cooperative associations to vote in the referendum by reviewing all ballots cast to assure that each ballot:

(1) Is mailed within the prescribed time;

(2) Contains all certifications required attesting to the eligibility of each producer and cooperative association to vote; and

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(3) Is completed with respect to all necessary information pertinent to the identification of the person voting so that additional verification can be conducted by the referendum agent to substantiate the eligibility of each producer and cooperative association to vote.

(b) Conduct further verification, as necessary, to determine the eligibility of each producer and cooperative association to vote. Such verification may be completed by reviewing readily available sources of information, including the following:

(1) Records of the Department;

(2) Producers' records maintained and made available by persons responsible for remitting the assessment to the Board;

(3) Producers' records maintained and made available by cooperative associations; and

(4) Any other reliable sources of information which may be available to the referendum agent.

(c) Further verify ballots to avoid a duplication of votes. The following criteria shall serve as a guide:

(1) In the case of a producer that is other than an individual, the business unit shall be regarded as a producer;

(2) No person may vote more than once although such person may operate more than one farm, hold more than one health authority approval, or appear on the records of more than one person who is responsible for remitting an assessment to the Board;

(3) In the event that more than one individual of a family claims the right to vote and casts a ballot as a producer, concurring votes of such individuals shall be treated as one vote while any conflicting vote shall thereby invalidate all ballots cast by such individuals.

(4) In the event that an individual producer, who is a member of a cooperative association that votes on behalf of its members who are producers, casts an individual ballot under the circumstances specified in § 1150.202(b), the individual ballot shall be counted and the total number of producers for whom the cooperative association is voting shall be reduced accordingly; and

(5) Whenever more than one cooperative association claims the right to vote for a producer, only the cooperative association which furnishes evidence satisfactory to the referendum agent that such association was in fact marketing the milk of the producer on the date of the referendum order may vote for such producer.

§ 1150.206 Date of referendum.

A referendum shall be held:

(a) During the 60-day period immediately preceding September 30, 1985;

(b) At the direction of the Secretary at any time after September 30, 1985; or

(c) After September 30, 1985, upon the request of a representative group comprising 10 percent or more of the number of producers subject to the order. Cooperative associations that are entitled to vote on behalf of producers under § 1150.202 may file such request for a referendum.

§ 1150.207 Notice of referendum.

The referendum agent shall provide adequate notice of the referendum by:

(a) Mailing to each known cooperative association a notice of the referendum which shall include:

(1) Instructions for completing the ballot;

(2) A statement as to the time within which the ballot must be mailed to the referendum agent;

(3) A ballot containing a description of the question(s) upon which the referendum is being held;

(4) A description of the eligibility requirements for a cooperative association to vote on behalf of producers who are members of or under contract with such cooperative association;

(5) A description of the certifications that must be made by a cooperative association to cast a valid ballot on behalf of producers; and

(6) A description of the requirements of § 1150.202(b) for a cooperative association that elects to vote on behalf of its members who are producers.

(b) Generally make material and information widely available to producers through the Department and other means. Such information shall include a notice of referendum and include:

(1) Instructions for completing the ballot;

(2) A statement as to the time within which ballots must be mailed to the referendum agent;

(3) A ballot containing a description of the question(s) upon which the referendum is being held;

(4) A description of the eligibility requirements for producers to vote; and

(5) A description of the certifications that must be made by a producer to cast a valid ballot.

(c) Given public notice of the referendum:

(1) By furnishing press releases and other information to available media of public information (including but not limited to press, radio, and television facilities) announcing the time within which ballots must be completed and mailed to the referendum agent, eligibility requirements, required certifications to cast a valid ballot, where additional information, ballots and instructions may be obtained, and other pertinent information; and

(2) By such other means as the referendum agent may deem advisable.

§ 1150.208 Time for voting.

There shall be no voting except within the time specified by the referendum agent.

§ 1150.209 Tabulation of ballots.

(a) The referendum agent shall verify the validity of all ballots cast in accordance with the instructions and requirements specified in §§ 1150.202, 1150.204, 1150.205, and 1150.208. Ballots that are not valid shall be marked "disqualified" with a notation on the ballot as to the reason for the disqualification.

(b) The total number of ballots cast, including the disqualified ballots, shall be ascertained. The number of ballots cast approving and the number of ballots cast disapproving shall also be ascertained. The ballots marked "disqualified" shall not be considered as approving or disapproving, and the persons who cast such ballots shall not be regarded as participating in the referendum.

(c) The referendum agent shall notify the Administrator of the number of ballots cast, the count of the votes, and the number of disqualified ballots. The referendum agent shall seal the ballots, including those marked "disqualified," the tabulation of ballots and the count of the vote, and shall transmit to the Administrator a complete detailed report of all actions taken in connection with the referendum together with all ballots cast and all other information furnished to or compiled by the referendum agent.

(d) Announcement of the results of the referendum will be made only at the direction of the Secretary. The referendum agent, or others who assist in the referendum, shall not disclose the results of the referendum or the total number of ballots and votes cast.

§ 1150.210 Confidential information.

The ballots cast, the identity of any person who voted, or the manner in which any person voted and all information furnished to, compiled by, or in the possession of the referendum agent, shall be regarded as confidential.

§ 1150.211 Supplementary instructions.

The Administrator is authorized to issue instructions and to prescribe forms and ballots, not inconsistent with the

provisions of this subpart, to govern the conduct of referenda by referendum agents.

§ 1150.212 Submittals or requests.

Interested persons may secure information or make submittals or requests to the Administrator with respect to the provisions contained in this subpart.

Effective date: March 13, 1985.

Signed at Washington, D.C., on March 5, 1985.

Karen K. Darling,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 85-5943 Filed 3-12-85; 8:45 am]

BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Part 1980

Guaranteed Loan Programs

AGENCY: Farmers Home Administration, USDA.

ACTION: Interim rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its debt adjustment program (DAP) regulations for guaranteed operating (OL) and farm ownership (FO) loans to clarify the method for calculating how much of an interest rate reduction must be made in order to provide a farmer the same benefit as would be received if the lender were to write off 10 percent of the total principal and interest outstanding on loan(s) which the lender wants guaranteed; to reduce the minimum positive cash flow requirement under the DAP from 110 percent to 100 percent; and to permit lenders to use a combination write down of principal indebtedness along with an interest rate reduction which would equal the value of an upfront write down of existing indebtedness of at least 10 percent.

The intended effect of this action is to (1) explain what is meant by the present value of a reduction in the interest rate and (2) to provide additional assistance to both lenders and their farm borrowers in a time of financial difficulty. This action is needed to provide an opportunity to a lender to use both an interest rate reduction and a principal write-down at the same time when necessary to secure the loan and project a positive cash flow and to permit more farmers to qualify for assistance.

EFFECTIVE DATE: March 13, 1985. This interim rule is subject to revision following a comment period of 30 days from the date of publication.

ADDRESSES: Submit written comments, in duplicate, to the office of the Chief, Directives Management Branch, Farmers Home Administration, USDA, Room 6348, South Agriculture Building, 14th and Independence Avenue SW., Washington, D.C. 20250. All written comments made pursuant to this notice will be available for public inspection during regular working hours at the above address.

FOR FURTHER INFORMATION CONTACT: Chester Bailey, Senior Loan Officer, Emergency Division, Farmers Home Administration, USDA, Room 5424-S, Washington, D.C. 20250, telephone (202) 382-1632.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Secretary's Memorandum 1512-1, which implements Executive Order 12291; and it has been determined to be nonmajor because there is not substantial change from practices under existing rules, and no annual effect on the economy of $100 million or more; or a major increase in cost or prices for consumers, individual industry agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule contains one of the four Farm Credit Initiatives announced by President Ronald Reagan on September 18, 1984, which was later modified by the President on February 6, 1985, to include an interest write-down option with a maximum 90 percent guarantee of equivalent principal write down.

Discussion of Interim Rule

FmHA is implementing this interim rule immediately, via publication. It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts shall be published for comment notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. This action, however, is not published for proposed rulemaking because of the financial stress presently being experienced by agricultural lenders and their farm borrowers. It is essential that plans for continuing the farm operations be developed during the coming months in order that work out plans can be completed regarding the availability of credit so that spring crops can be planted in 1985.

Further, pursuant to the Administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this emergency final action are impracticable; and good cause is found for making this final action effective less than the 30 days after publication of this document in the Federal Register.

This regulation does not directly affect any FmHA programs or projects which are subject to intergovernmental consultation.

The catalog of Federal Domestic Assistance numbers are 10.406 Farm Operating Loans and 10.407 Farm Ownership Loans.

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, and Environmental Impact Statement is not required.

Need for Governmental Action

The FmHA programs affected by this regulation change are Farm Ownership (FO) guaranteed loans and Operating (OL) guaranteed loans. FmHA guaranteed loans are made and serviced by commercial sources such as Federal Land Banks, Production Credit Association, banks, insurance companies and savings and loan associations. FmHA may provide the lender with a guarantee not to exceed 90 percent of loss of principal and interest on a loan.

The purpose of the DAP is to provide lenders with a tool that will enable them to continue to provide credit to eligible farmers operating not larger than family-size farms during a work out period with loans which are now classified as substandard of worse, i.e., identified as problem loans by the lender or the lender's supervising agency. FmHA can provide assistance to both lenders and their customers by use of the DAP administered in conjunction with 7 CFR Part 1903, Subpart A, "Voluntary Debt Adjustment," and the guaranteed loan authorities for OL and FO loans under 7 CFR Part 1980, Subparts A and B. Lenders who wish to participate in this program must be willing to adjust their loans by permanently writing off a minimum of 10 percent of the total principal and interest outstanding on each loan which the lender wants guaranteed, by reducing the rate of interest in an amount which will provide a reduction in interest cost equal to 10

percent of the total principal and interest outstanding on each loan which the lender wants guaranteed, or by using a combination of an interest rate reduction and a write off. In addition to the required 10 percent minimum write off and/or interest rate reduction used in lieu of write off, the lender must also write off more principal and interest or reduce the rate of interest still more so that the borrower's operation projects a positive cash flow for at least a five year period. The adjusted indebtedness must be adequately secured. This interm rule clarifies the method for calculating the present value of an interest rate reduction, so that the benefit of an interest rate reduction is equal to the benefit of a write off.

Rather than to continue to use the current DAP regulations which were published on February 15, 1985 (50 FR 6880), without further change or clarification FmHA has chosen to amend the regulations to reduce the cash flow requirement under the DAP from 110 percent to 100 percent; and to permit lenders to use a combination write down of indebtedness along with an interest rate reduction which would equal the value of an upfront write down of existing indebtedness of at least 10 percent. The Agency has reconsidered the public comments received in response to Interim Regulations published on October 19, 1984, in the **Federal Register** (49 FR 21223) and believes that the proposed action will provide lenders with more flexibility to work with debtors in developing debt adjustment plans without jeopardizing the financial position of the government.

The regulations need to be changed to permit lenders to use a combination of an interest rate reduction and a write down. The current DAP regulations allow lenders to write down principal or reduce the interest rate but do not allow lenders to use a combination. Lenders will still be required to write down sufficient indebtedness to adequately secure a loan to be guaranteed. The added flexibility of allowing lenders to use both a principal write down and an interest rate reduction offers an opportunity for lenders to assist some farmers who might otherwise be forced out of farming. Likewise, requiring only 100 percent cash flow will make a greater number of farm debtors eligible for the DAP during an extremely stressful period.

List of Subjects in 7 CFR Part 1980

Loan programs—Agriculture.

PART 1980—GENERAL

Subpart B—Farmer Program Loans

Therefore, Exhibit B of Subpart B of Part 1980 Chapter XVIII, Title 7, Code of Federal Regulations is revised to read as follows:

Exhibit B—Debt Adjustment Program—Farmers Home Administration (FmHA) Guarantees of Loans with Accompanying Debt Adjustment by Lender

I General

This Exhibit provides policies and procedures for the debt adjustment program (DAP) for guaranteed operating loans (OL) described in § 1980.175 and farm ownership (FO) loans described in §1980.180 of this subpart. All sections of Subparts A and B of Part 1980 apply except as modified by Exhibit A of this subpart and this exhibit. The objective of the DAP is to provide lenders with a tool to enable them to continue to provide credit to operators of not larger than family farms who do not have the ability to repay their loan(s) and/or do not have adequate security for their loan(s) without debt adjustment. Borrowers, lenders and loan(s) guaranteed must meet all requirements for guaranteed OL and/or FO loans in this subpart. Loan guarantees under this Exhibit will only be available for loans which are classified as substandard or worse, i.e., identified as problem loans by the lender or the lender's supervising agency. A significant amount of funds for guaranteeing FO and OL loans will be made available for the DAP.

Lenders that participate in this program must write down existing indebtedness to the extent necessary to assure that the new guaranteed loan will show a positive cash flow for at least a five year period. The write down can take either of two forms or a combination of two forms:

- An upfront write off of existing indebtedness (principal and accrued interest) of at least 10 percent.
- A reduction in the interest rate, so long as the present value to the borrower is substantially the same as if the lender had written down the existing indebtedness by at least 10 percent.

Any one of these options must result in the same Federal risk exposure under the FmHA guarantee.

A. *Authority.* The authorizations in this Exhibit provide: (1) Only loans to farmers which are classified as substandard or worse, i.e., identified as problem loans by the lender or the lender's supervising agency will be considered for a guarantee; (2) the lender must actually write off, by permanent cancellation, a minimum of 10 percent of the total principal and interest outstanding on each loan which the lender wants guaranteed and/or must provide for a reduction in the interest rate, so that the present value to the borrower is substantially the same as if the lender had written down the existing indebtedness at least 10 percent. Whenever the interest rate reduction is involved, the loan guarantee will be set at a variable level so that in case of loss, the lender will be paid the same dollar amount as it would have been paid if it had used an upfront principal and interest write off.

In addition to the required 10 percent minimum write off and/or interest rate reduction used in lieu of write off, the lender must also write off more principal and interest and/or reduce the rate of interest still more so that the borrower's operation projects a positive cash flow for at least a five year period. For the purposes of this Exhibit, a cash flow projection is a listing of all the borrower's anticipated cash inflows (both farm and non-farm) for each year; and all the borrower's anticipated cash outflows (both farm and non-farm but excluding capital expenditures) including operating expenses, debt repayment, family living expenditures and tax payments. For the purposes of this Exhibit a positive cash flow is one which shows that anticipated cash inflows are at least 100 percent for a five year period of anticipated cash outflows. The adjusted indebtedness must be adequately secured.

B. *Policy.* Private lenders now hold a substantial number of farm operating and real estate loans to operators of not larger than family size farms which are classified as substandard or worse, i.e., identified as problem loans by the lender or the lender's supervising agency. The terms, conditions and amount of these loans will have to be adjusted in order to provide for a positive cash flow projection. When lenders request FmHA guarantees for such loans, the following conditions must be met before an FmHA guarantee will be issued:

(1) The lender must permanently write off a minimum of 10 percent of the total principal and interest outstanding on each loan and/or must provide for a reduction in the interest rate so that the present value to the borrower is substantially the same as if the lender had written down the existing indebtedness at least 10 percent. The present value of an interest rate reduction is substantially the same as if the lender had used a write down, so long as the annual payments are nearly equal. See Options A, B and C following this paragraph. If the lender will be charging a variable interest rate, the calculations in Options A, B and C will be based on the interest rate initially charged on the new note. In addition, the lender must permanently reduce the interest rate and/or write off sufficient additional principal and interest to produce a positive cash flow and to produce a financial position which is compatible with the borrower's total debt payment ability. This will be evidenced by taking a new note for the adjusted amount owing. Guarantees will only be issued on new notes reflecting the adjusted balance or new interest rate. The entire remaining loan amount must be adequately secured.

The following options illustrate the principal write down and interest rate reduction options available to lenders:

Option A. *Principal Write Down.* (10% Principal Reduction)

Outstanding balance	Outstanding balance with 10% principal reduction	Interest rate	Term	Annual payments
$120,000	$108,000	14.5%	7 yrs	*$25,571

*Using the FmHA amortization table, $236.77 would be needed to amortize a loan of $1,000 for 7 years at 14.5%; $236.77 multiplied by 108 is $25,571, which is the annual payment.

Option A shows that a lender chose to write off the minimum 10 percent or $12,000 from an outstanding loan of $120,000. A new loan of $108,000 can be written for 7 years at 14.5 percent with an annual payment of $25,571, provided positive cash-flow requirements can be met. More debt will have to be written off if the borrower cannot show a positive cash-flow with this annual payment.

Option B. *Interest Rate Reduction.* (No Principal Reduction)

Outstanding balance	Outstanding balance with *no* principal reduction	Interest* rate	Term**	Annual paymants
$120,000	$120,000	11⅛%	7 yrs	*$25,560

*The interest rate required with interest rate reduction is determined by dividing the outstanding balance of $120,000 into the annual payment of $25,571 shown in option A. The result is .213. The interest rate can now be obtained by seeking the amortization factor for 7 years which is closest to .213. Amortization tables show the closest factor to .213 is .21308 which has an interest rate of 11⅛ percent. The borrower's annual payment will be $25,560 (.21308 × $120,000)

**The term must be the same as shown in Option A.

Option B shows that same loan in option A being processed under the interest rate reduction option. The outstanding balance of $120,000 with no principal reduction will require an interest rate reduction from 14.5 percent to 11⅛ percent to result in an annual payment which is approximately the same as the annual payment in Option A.

Option C. *Principal Write Down and Interest Rate Reduction. (5% Principal Reduction)*

Outstanding balance	Outstanding balance with 5% principal reduction	Interest* rate	Term**	Payments
$120,000	$114,000	12¾%	7 yrs	*$25,577

*The interest rate required with a combination principal write down and an interest rate reduction is determined by dividing the reduced outstanding balance of $114,000 into the annual payment of $25,571 shown in Option A. The result is .224. The interest rate can now be obtained by seeking the amortization factor for 7 years which is closest to .224. Amortization tables show the closest factor to .224 is .22436 which has an interest rate of 12¾ percent. The borrower's annual payment will be $25,577 ($114,000 × .22436), which is approximately the same as the annual payment in Option A.

**The term must be the same as shown in Option A.

(2) The FmHA will guarantee 90 percent of the remaining adjusted indebtedness under § 1980.20 Subpart A of this part, whenever the lender writes off at least 10 percent of the outstanding principal and interest.

(3) Whenever an interest rate reduction is used in lieu of or together with a writeoff, the guarantee level will be set by determining the Government's exposure if 10 percent of the debt had been written off and dividing this by whatever the loan balance is without a writeoff. For example:

	Loan balance	Federal loan guarantee level	Government's exposure
The day of loan closing:			
With a 10% writeoff	$90,000	90%	$81,000
With interest rate reduction	$100,000	*81%	$81,000

*$81,000 ÷ $100,000 = *81%*

(4) Whenever an interest rate reduction is involved, the loss payment will be same amount as if there had been a write off and a 90 percent guarantee had been used. This will be done by determining what the beginning loan balance would have been if a write off had been used, and reapplying all payments made, using the interest rate(s) which would have been charged by the lender if a write off had been used. For example:

	Principal	Federal loan guarantee level	Government's exposure
DEFAULT 1st YEAR AFTER LOAN CLOSING:			
With a 10% write off	*$103,500	90%	$93,150

* No principal paid during the 1st year.
The $13,500 unpaid interest accrued at 15% during the 1st year plus $90,000 unpaid principal = $103,500.

With interest rate reduction	*$110,750	**84.1%	$93,141

* No principal paid during 1st year.
The $10,750 unpaid interest accrued at 10.75% during 1st year plus $100,000 unpaid principal = $110,750
** $93,150 ÷ $110,750 = 84.10%

DEFAULT 2nd YEAR AFTER LOAN CLOSING:			
With a 10% write off	* $88,103	90%	$79,023

* No principal paid during the 2nd year.
The $11,491 unpaid interest accrued at 15.00% during the 2nd year plus $76,612 unpaid principal = $88,103

With interest rate reduction	* $92,921	** 85.0%	$79,023

* No principal paid during the 2nd year.
The $9,019 unpaid interest accrued at 1.75% during the 2nd year plus $83,902 unpaid principal = $92,921
** $79,023 ÷ $92,921 = 85.04%

DEFAULT 3rd YEAR AFTER LOAN CLOSING:			
With a 10% write off	*$70,397	90%	$63,357

* No principal paid during the 3rd year.
The $9,182 unpaid interest accrued at 15.00% during the 3rd year plus $61,215 unpaid principal = $70,397

With interest rate reduction	*$73,175	**86.58%	$63,355

* No principal paid during the 3rd year.
The $7,102 unpaid interest accrued at 10.75% during the 3rd year plus $66,073 unpaid principal = $73,175.
**$63,357 ÷ $73,175 = *86.58%*.

DEFAULT 4th YEAR AFTER LOAN CLOSING:			
With a 10% write off	*$50,034	90%	$45,032

* No principal paid during the 4th year.
The $6,526 unpaid interest accrued at 15.00% during the 4th year plus $43,509 unpaid principal = $50,035.

With interest rate reduction	*$51,307	**87.77%	$45,032

*No principal paid during the 4th year.
The $4,980 unpaid interest accrued at 10.75% during the 4th year plus $46,327 unpaid principal = $51,307.
**$45,032 ÷ $51,307 = *87.77%*.

DEFAULT 5th YEAR AFTER LOAN CLOSING:			
With a 10% write off	$26,619	90%	$23,957

*No principal paid during the 5th year.
The $3,472 unpaid interest accrued at 15.00% during the 5th year plus $23,147 unpaid principal = $26,619.

With interest rate reduction	*$27,066	**88.44%	$23,957

*No principal paid during the 5th year.
The $26,619 unpaid interest accrued at 10.75% during the 5th year plus $24,459 unpaid principal = $27,066.
**$23,957 − $27,066 = *88.44%*.

Formula for adjusting the percent of loan guarantee upon liquidation settlement when interest rate reduction is used in lieu of write off.

A ÷ B = C
C ÷ D = E

A = Unpaid Principal plus interest, if a write off had been made.
B = 90%
C = Government's dollar exposure, if a write off had been made.
D = Unpaid principal plus interest at time of liquidation settlement.
E = Adjusted percent guarantee at time of liquidation settlement.

The loss payment will be calculated by multiplying D × E. The information needed to calculate the loss payment will be submitted by the lender in a letter to FmHA. Form FmHA 449–30, "Loan Note Guarantee Report of Loss," will *not* be used.

Thus, the dollar amount of the Government's loss if the interest rate is reduced must be the same as the Government's loss if principal and interest had been written off for the period of the loan guarantee.

(5) Whenever an interest rate reduction is involved, Form FmHA 449–34, "Loan Note Guarantee," will be amended to show the minimum guarantee granted. The first line under the lender's address should be changed to read "The minimum guaranteed portion of the loan is $____ which is ____ (____%) percent of loan principal. The maximum guaranteed portion of the loan is $____ which is ninety (90%) percent of loan principal." Also cross out "*AMOUNT GUARANTEED.*" Insert: "The amount to be paid in case of loss will be determined as set out in 7 CFR, Part 1980, Subpart B, Exhibit B as it is in effect today." The minimum percentage will be the guarantee level established according to Paragraph I B (3) of this Exhibit. This change will be dated and initialled by the lender's authorized agent.

When Form FmHA 449–36, "Assignment Guarantee Agreement," is used for loans where an interest rate reduction is involved, Form FmHA 449–36 will be amended by changing the second sentence of the form to read as follows: "The United States of America, acting through Farmers Home Administration (FmHA) entered into a Loan Note Guarantee (Form FmHA 449–34) with the Lender applicable to such loan to guarantee the loan at a minimum of ____% and not to exceed 90 percent of the amount of the principal advanced and any interest (including any loan subsidy) due thereon as provided therein. The amount to be paid in case of loss will be determined as set out in 7

CFR Part 1980, Subpart B, Exhibit B as it is in effect today." The minimum percentage will be the guarantee level established according to Paragraph I B (3) of this Exhibit. These changes will be dated and initialled by the lender's authorized agent.

Whenever an interest rate reduction is involved and the lender is not a participant in the Approved Lender Program (ALP), the second sentence of Form 449–35 will be amended to read "The United States of America acting through Farmers Home Administration (FmHA) has entered into a "Loan Note Guarantee" (Form FmHA 449–34) or has issued a "Conditional Commitment for Guarantee" (Form FmHA 449–14) to enter into a Loan Note Guarantee with the lender applicable to such loan to participate in a percentage of any loss on the loan not less than ____% and not to exceed 90% of the amount of the principal advance and any interest (including any loan subsidy) thereon." Section I. under *THE PARTIES AGREE:* will be amended to read "The maximum loss covered under the Loan Note Guarantee will be not less than ____% and will not exceed 90% of the principal and accrued interest including any loan subsidy on the above indebtedness. The amount to be paid in case of loss will be determined as set out in 7 CFR Part 1980, Subpart B, Exhibit B as it is in effect today." The minimum percentage will be the guarantee level established according to Paragraph I B (3) of this Exhibit. These changes will be dated and initialled by the lender's authorized agent.

(6) A guarantee will not be issued unless the farming operation shows a projected positive cash flow and the borrower is determined to be eligible for a guaranteed OL or FO loan under this subpart.

(7) Lenders who wish to participate in this debt adjustment program will be encouraged to apply for Approved Lender Program (ALP) status under Exhibit A of this subpart to expedite processing of requests for a guarantee. However, guarantees are not limited to lenders with ALP status.

II Processing Guaranteed OL and/or FO Loans With Debt Adjustments

FmHA personnel responsible for accepting, processing and approving or denying requests for Loan Note Guarantees will follow the policies, responsibilities and procedures in Part 1903, Subpart A, "Voluntary Debt Adjustment" (except § 1903.9(a)). Lenders applying for guarantees will be expected to enter into any necessary debt adjustment negotiations with the borrower's other creditors who have provided supplier or dealer type open accounts and/or secured credit.

A. When the interest rate is reduced and/or part of the debt is written off, the amount which will be saved by the borrower must be permanently cancelled by the lender and no attempt must ever be made to collect that portion of the debt. Form FmHA 403–1, "Debt Adjustment Agreement," will be executed by the borrower and the lender. Lenders will provide evidence in the form of a written certification (see Attachment 1 to this Exhibit) for the FmHA file which attests to the amount of each loan, amount of write off and/or interest rate reduction and amount of the new balance upon which the guarantee is requested.

B. Lenders must abide by limitations on loan purposes, loan limitations, interest rates, terms and security requirements as set forth for OL and FO loans in §§ 1980.175 and 1980.180 of this subpart. The interest rate to be paid by the borrower to the lender may be a fixed or variable rate agreed upon by the borrower and the lender. The rate can never exceed the rate the lender charges its best farm customers on loans for similar purposes and terms (see § 1980.175(e) and § 1980.180(f) of this subpart). If a variable rate is used, it cannot change more often then monthly. If a variable interest rate is used, the spread between that rate and the interest rate charged to its best farm customers will remain constant throughout the period of the loan guarantee. This constant factor will be identified at the time of loan closing as a condition of loan approval. The interest provisions must be clearly identified and set out in the loan documents.

C. All requests for guaranteed OL and FO loans will be processed under Part 1980 Subparts A and B, including Exhibit A of this subpart, except as modified by this Exhibit B for debt adjustment. Except as modified by Exhibit A to this subpart, FmHA personnel responsible for processing a request for guarantee under this Exhibit B will review each request for guarantee to determine that: (1) Values placed on assets by the lender are consistent with market values for the area; (2) the borrower has suitable tenure on any essential leased land, facilities or equipment; (3) operating cost(s), yields, production and prices used in the farm budget are realistic for the area and the type of operation; and (4) all conditions required in paragraph I B (1) and (3) of this Exhibit are met. Form FmHA 449–23, "Guaranteed Loan Evaluation—Farmer Programs," must be completed and must contain these four determinations. This form will be placed in the case file.

D. One lender may receive both a guaranteed OL and FO with a Loan Note Guarantee for each loan. The lender may also request a guarantee for any loans other than those considered under this Exhibit which are made to the same borrower. Such requests will be processed under Subparts A and B of Part 1980 except as modified by Exhibit A of this Subpart.

E. With the State Director's prior consent, the lender may extend the repayment term on any loan(s) previously guaranteed under this subpart by writing a new note which has an extended repayment term. The State Director's consent will be given provided:

(1) The lender provides FmHA with documentation to show that the borrower meets the eligibility and security requirements for which the initial loan was guaranteed; the borrower is cooperating in servicing the account and is maintaining the security; and such action will enable the borrower to continue farming.

(2) Any holder(s) agrees in writing to the extension of the term.

(3) The new note will not capitalize accrued interest and will not increase the amount of principal which the borrower would have been required to pay, the interest rate, or the percent of loan guarantee.

(4) A new note evidencing a loan made for farm operating purposes must be repaid within fifteen years from the date of the original note and new loans made for real estate purposes must be repaid within 40 years from the date of the original note.

(5) The new note will describe the original (guaranteed) note and will state that the indebtedness evidenced by such note is *not* satisfied. The original note will be retained by the lender for identification purposes.

(6) Additional security instruments will be required if needed to maintain lien priority or to protect the interests of the lender and FmHA.

(7) The State Director will review all documents when presented by the lender to assure all requirements are met and will contact the Regional OGC for assistance, if necessary.

(8) The State Director must make sure the following addendum is attached to the original and all copies of Form FmHA 449–34, "Loan Note Guarantee," and any Form FmHA 449–36, "Assignment Guarantee Agreement":

Based on information provided by the lender, FmHA agrees to allow this borrower's repayment term to be extended. The new term is set out in a note dated ____. The Loan Note Guarantee issued on ____ 19__, remains in effect. This guarantee remains subject to the Lender's Agreement and the provisions of 7 CFR, Part 1980. FmHA's authority to consent to this extension of the repayment term is found in 7 CFR, Part 1980, Subpart B, Exhibit B.

Date _____

State Director _____

F. The guarantee fee(s) are in § 1980.21 of Subpart A (1% initial fee, 1% substitution fee) and are paid as in § 1980.61(f) of Subpart A.

G. Applications are accepted and processed under Subparts A and B of Part 1980 except as modified by Exhibit A of this subpart.

H. The Types of Assistance Codes for DAP guaranteed loans are:

FO–33
OL–49

Attachment 1 to Exhibit B

To: County Supervisor, FmHA

_____

_____

Subject: Certification of Write Off of Indebtedness and/or Write Down of Interest Rate.

Borrower's Name: _____

This lending institution certifies that:

1. The total unpaid principal and interest balance on the original loans was $____. The new loan balance of $____ is the amount requested for a guarantee.

2. The interest rate charged on the original loan balance was __%. The (fixed/variable) interest rate to be charged on the new loan balance to the above-mentioned borrower is __%. This rate will never exceed the corresponding rate charged to our best farm customers (see 7 CFR 1980.175(e) and 1980.180(f)).

If a variable rate is used, the interest rate charged cannot change more often than monthly and the spread will remain ____% below the interest rate charged our best farm

customers as defined in FmHA regulations for the period of the guarantee.

3. The amount which this borrower will save due to the write off and/or the interest rate reduction is permanently cancelled and no attempt will ever be made to collect that portion of the debt.

4. The borrower's cash flow projections are based on our *past experience* with the borrower and demonstrate that the borrower will have a positive cash flow with the write off and/or interest rate reduction.

(Name of Lender)
By: _____
Title: _____

Lender's IRS I.D. No.
Date: _____

Authorities: 7 U.S.C. 1989; 7 CFR 2.23; 7 CFR 2.70.

Dated: March 7, 1985.

Kathleen W. Lawrence,

Acting Under Secretary, Small Community and Rural Development.

[FR Doc. 85-6070 Filed 3-12-85; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 100

Statement of Organization; Miscellaneous Amendment

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rule adds Indianapolis, Indiana to the listing of interior locations of INS service offices.

EFFECTIVE DATE: March 13, 1985.

FOR FURTHER INFORMATION CONTACT: Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street NW., Washington, D.C. 20536, Telephone: (202) 633-3048.

SUPPLEMENTARY INFORMATION: With a view toward more efficient management, the Service has established a suboffice in Indianapolis, Indiana under the jurisdiction of the Chicago, Illinois district office. Therefore, the Service is amending its listing of interior locations to include Indianapolis..

Compliance with 5 U.S.C. 553 as to notice of proposed rule making and delayed effective date is unnecessary because the rule relates to agency organization and will promote better service to the public.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule does not have a significant impact on a substantial number of small entities. This is not a rule within the definition of section 1(a) of E.O. 12291.

List of Subjects in 8 CFR Part 100

Administrative practice and procedure, Organization and functions (government agencies).

PART 100—STATEMENT OF ORGANIZATION

Accordingly, Chapter 1 of Title 8 of the Code of Federal Regulations is amended as follows:

§ 100.4 [Amended]

Section 100.4(c)(1) is amended by adding in alphabetical sequence "Indianapolis, Indiana".

(Sec. 103 of the Immigration and Nationality Act, as amended; (8 U.S.C. 1103))

Dated: March 4, 1985.

Thomas C. Ferguson,

Deputy Commissioner, Immigration and Naturalization Service.

[FR Doc. 85-5935 Filed 3-12-85; 8:45 am]

BILLING CODE 4410-10-M

8 CFR Part 214

Nonimmigrant Classes; Reopening or Reconsideration; Technical Amendment

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule makes a technical amendment to 8 CFR to reflect the transfer of appellate authority formerly held by INS regional commissioners to the Associate Commissioner, Examinations pursuant to a final rule published September 22, 1983 at 48 FR 43160.

EFFECTIVE DATE: March 13, 1985.

FOR FURTHER INFORMATION CONTACT: Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street NW., Washington, D.C. 20536, Telephone: (202) 633-3048.

SUPPLEMENTARY INFORMATION: A final rule amending 8 CFR 103.1(f) published September 22, 1983 at 48 FR 43160 transferred to the Associate Commissioner, Examinations the appellate authority formerly held by INS regional commissioners. This rule amends 8 CFR 214.4(k) to reflect this transfer of authority.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary because this rule relates to agency organization and management.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule does not have a significant impact on a substantial number of small entities. This order is not a rule within the definition of section 1(a) of E.O. 12291.

List of Subjects in 8 CFR Part 214

Administrative practice and procedure, Aliens, Students.

Accordingly, Chapter 1 of Title 8 of the Code of Federal Regulations is amended to read as follows:

PART 214—NONIMMIGRANT CLASSES

In § 214.4, paragraph (k) is revised to read as follows:

§ 214.4 Withdrawal of school approval.

* * * * *

(k) *Reopening or reconsideration.* Except as otherwise provided in this section, a motion to reopen or reconsider shall be subject to the requirement of § 103.5 of this chapter. The special inquiry officer may upon his/her own motion, or upon motion of the trial attorney or the respondent, reopen or reconsider any case in which a decision has been made, unless jurisdiction in the case is vested in an appellate authority under Part 103 of this chapter. A motion to reopen shall not be granted by a special inquiry officer unless he/she is satisfied that evidence sought to be offered is material and was not available and could not have been discovered or presented at the hearing.

(Secs. 103 and 214 of the Immigration and Nationality Act, as amended; (8 U.S.C. 1103 and 1184))

Dated: March 7, 1985.

Andrew J. Carmichael, Jr.,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 85-5958 Filed 3-12-85; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 85-009]

Brucellosis in Cattle; State and Area Classifications

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: This document affirms the interim rule which amended the

regulations governing the interstate movement of cattle because of brucellosis by changing the classification of the State of Minnesota from Class A to Class Free. This rule is necessary because it has been determined that this State meets the standards for Class Free status. The rule relieves restrictions on the interstate movement of cattle from the State of Minnesota.

EFFECTIVE DATE: March 13, 1985.

FOR FURTHER INFORMATION CONTACT: Dr. Thomas J. Holt, Cattle Diseases Staff, VS, APHIS, USDA, Room 817, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8711.

SUPPLEMENTARY INFORMATION:

Background

A document published in the Federal Register on November 29, 1984 (49 FR 46871–46872), amended the brucellosis regulations in 9 CFR Part 78 by changing the classification of the State of Minnesota from Class A to Class Free. The amendment, which was made effective November 29, 1984, relieves certain restrictions on the interstate movement of cattle from Minnesota.

Comments were solicited for 60 days after publication of the amendment. No comments were received. The factual situation which was set forth in the document of November 29, 1984, still provides a basis for the amendment.

Executive Order 12291 and Regulatory Flexibility Act

This rule has been reviewed in accordance with Executive Order 12291 and has been determined to be not a major rule. Based on information compiled by the Department, it has been determined that this rule will not have a significant effect on the economy; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this rulemaking action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

Changing the status of the State of Minnesota reduces testing requirements on the interstate movement of certain cattle. Cattle moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Testing requirements for cattle moved interstate for immediate slaughter, or to quarantined feedlots are not affected by the changes in status. Also, cattle from Certified Brucellosis-Free Herds moving interstate are not affected by these changes in status. It has been determined that the changes in brucellosis status made by this rule will not affect marketing patterns and will not have a significant economic impact on those persons affected by this document.

Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 9 CFR Part 78

Animal diseases, Brucellosis, Cattle Hogs, Quarantine, Transportation.

PART 78—[AMENDED]

Accordingly, the interim rule amending 9 CFR Part 78 which was published at 49 FR 46871–46872 on November 29, 1984, is adopted as a final rule without change.

Authority: Secs. 4, 5, 6, 23 Stat. 32, as amended; secs. 1 and 2, 32 Stat. 791–792, as amended; sec. 3, 33 Stat. 1265, as amended; sec. 2, 65 Stat. 693; and secs. 3 and 11, 76 Stat. 130, 132; 21 U.S.C. 111–113, 114a–1, 115, 120, 121, 125, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Done at Washington, D.C., this 7th day of March 1985.

K.R. Hook,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 85–5944 Filed 3–12–85; 8:45 am]

BILLING CODE 3410-34-M

FEDERAL ELECTION COMMISSION

11 CFR Parts 100 and 101

Payments Received for Testing the Waters Activities; Transmittal to Congress

AGENCY: Federal Election Commission.

ACTION: Final rule; transmittal to Congress.

SUMMARY: The Commission's regulations governing "testing the waters" activities at 11 CFR 100.7(b)(1), 100.8(b)(1) and 101.3 have been revised and transmitted to Congress pursuant to 2 U.S.C. 438(d). These regulations permit an individual to receive and expend funds to test the feasibility of a campaign for Federal office without becoming a candidate under the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. 431 *et seq.* ("the Act"). The revised rules amend §§ 100.7(b)(1) and 100.8(b)(1) to clarify that the "testing the waters" exemptions do not apply to campaign activities undertaken once an individual decides to become a candidate. The regulations also revise §§ 100.7(b)(1), 100.8(b)(1), and 101.3 to prohibit the use of funds in excess of the contribution limits or from prohibited sources under the Act for "testing the waters" activities. Finally, the new rules make minor clarifying amendments to §§ 100.7(b)(1) and 100.8(b)(1) in two areas. Further information on the revisions is provided in the supplementary information which follows.

EFFECTIVE DATE: Further action, including the announcement of an effective date, will be taken after these regulations have been before Congress for 30 legislative days pursuant to 2 U.S.C. 438(d).

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 1325 K Street, NW, Washington, D.C. 20463, (202) 523–4143 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Commission is publishing today the final text of revised rules to govern "testing the waters" activities at 11 CFR 100.7(b)(1), 100.8(b)(1), and 101.3. On July 31, 1984, the Commission issued a Notice of Proposed Rulemaking seeking comments on proposed revisions to these regulations. 49 FR 30509. One comment was received in response to the Notice from the National Republican Congressional Committee ("NRCC"). The Commission has also considered comments filed by the National Education Association ("NEA") and Wayne Lela, an independent Presidential candidate, on the issues raised in its Advance Notice of Proposed Rulemaking (49 FR 1995) issued on February 17, 1984.

2 U.S.C. 438(d) requires that any rule or regulation prescribed by the Commission to carry out the provisions of Title 2, United States Code, be transmitted to the Speaker of the House of Representatives and the President of the Senate prior to final promulgation. These regulations were transmitted to Congress on March 8, 1985.

Explanation and Justification

Under 2 U.S.C. 431(2), an individual is deemed to be a "candidate" for purposes of the Act if he or she receives contributions or makes expenditures in excess of $5,000 or gives consent to another person to receive contributions or make expenditures on his or her

behalf aggregating in excess of $5,000. The Act thus establishes automatic dollar thresholds for attaining candidate status which trigger its registration and reporting requirements.

Through its regulations, the Commission has established limited exceptions to these automatic thresholds which permit an individual to test the feasibility of a campaign for Federal office without becoming a candidate under the Act. Commonly referred to as the "testing the waters" exceptions, 11 CFR 100.7(b)(1) and 100.8(b)(1) exclude funds received and payments made to determine whether an individual should become a candidate from the definitions of "contribution" and "expenditure" respectively. An individual who undertakes "testing the waters" activities must nevertheless keep records of all funds received and payments made in connection with these activities. The Commission's regulations provide that if the person subsequently becomes a candidate, those receipts and disbursements become contributions and expenditures under the Act. Thus, under §§ 100.7(b)(1), 100.8(b)(1), and 101.3, such funds received and payments made must be reported in the first report filed by the candidate's principal campaign committee.

The revised rules amend §§ 100.7(b)(1), 100.8(b)(1), and 101.3 in three respects. First, §§ 100.7(b)(1) and 100.8(b)(1) have been amended to further clarify that the "testing the waters" exemptions do not apply to campaign activities undertaken once an individual has decided to become a candidate. A second set of revisions to §§ 100.7(b)(1), 100.8(b)(1), and 101.3 prohibit the use of funds in excess of the contribution limits or from prohibited sources for "testing the waters" activities. Finally, minor clarifying amendments have been made in §§ 100.7(b)(1) and 100.8(b)(1).

A. Scope of Permissible Activities Under the "Testing the Waters" Exemptions

The current "testing the waters" regulations are explicitly limited "solely" to activities designed to evaluate a potential candidacy. Examples of permissible activities included in the present regulations are expenses for conducting a poll, telephone calls, and travel, to determine whether an individual should become a candidate. Currently, §§ 100.7(b)(1) and 100.8(b)(1) expressly prohibit receipts and disbursements for general public political advertising, such as television or newspaper advertisements, or efforts to raise funds for use after the individual becomes a candidate. The Commission has distinguished such activities as amounting to the establishment of a campaign organization. *See* Advisory Opinions ("AO") 1979–26, 1981–32, 1982–3, and 1982–19.

Despite its attempts to limit the scope of the "testing the waters" exceptions, the Commission has concluded that the present rules could be interpreted to include activities beyond those they were originally intended to encompass. The Commission has, therefore, amended the rules to ensure that the "testing the waters" exemptions will not be extended beyond their original purpose. Specifically, these provisions are intended to be limited exemptions from the reporting requirements of the Act to permit individuals to conduct certain activities while deciding whether to become a candidate for Federal office, without making their activities immediately public.

Accordingly, the Commission has amended §§ 100.7(b)(1) and 100.8(b)(1) to set forth an expanded list of examples of activities that, dependent upon the circumstances, may be considered to indicate that an individual has decided to become a candidate and is no longer "testing the waters." The Commission believes the inclusion of examples of activities in the text of the regulations will provide greater assistance in determining when someone is undertaking permissible "testing the waters" activities than possibly vague general factors. First, the Commission has amended these sections to include as examples the activities that are specifically prohibited under the current "testing the waters" provisions. The revised rules retain use of public political advertising to publicize the individual's campaign as an example of an activity not permissible as "testing the waters" in §§ 100.7(b)(1)(ii)(A) and 100.8(b)(1)(ii)(A). Moreover, based on similar provisions in the current regulations, §§ 100.7(b)(1)(ii)(B) and 100.8(b)(1)(ii)(B) include as an example raising funds in excess of what could reasonably be expected to be used for exploratory activities or undertaking activities designed to amass campaign funds that would be spent after the individual becomes a candidate. These revisions are in accord with the Commission's determination in AOs 1979–26 and 1981–32 that to stay within the exemption, funds must be raised only for the purpose of financing the exempt activity.

Secondly, the revised rules set forth three additional examples of other activities indicating that an individual is no longer "testing the waters" that were not previously enumerated in the regulations. The Commission has concluded, on the basis of its experience and the comments received on the Notice of Proposed Rulemaking, that these examples further illustrate the line drawn between "testing the waters" activities and campaigning after an individual has decided to become a candidate.

Thus, paragraph (b)(1)(ii)(C) in §§ 100.7 and 100.8 concerns whether the individual makes or authorizes written or oral statements that refer to him or her as a candidate for a particular office. *See* AO 1981–32. Furthermore, if an individual conducts activities in close proximity to the election or over a protracted period of time, the Commission may consider such activity an indication that the individual has decided to become a candidate under §§ 100.7(b)(1)(ii)(D) and 100.8(b)(1)(ii)(D). Sections 100.7(b)(1)(ii)(E) and 100.8(b)(1)(ii)(E) contain as a final example taking action to qualify for the ballot under State law. This example utilizes NRCC's suggestion that the State filing deadline is an appropriate time for determining whether an individual has become a candidate, but does not make it the exclusive factor.

The Commission also considered including an illustrative list of factors that could be used in determining whether particular activities are permissible under the "testing the waters" exemptions. A proposed list of determinative factors was contained in the Notice of Proposed Rulemaking in recognition of the fact that activities, such as polling and travel, may be legitimate "testing the waters" activities or campaigning depending upon the surrounding circumstances. Upon further consideration, however, the Commission decided not to include these factors in the final rules. The Commission concluded that the inclusion of general, possibly vague factors would not aid in clarifying the narrow scope of the "testing the waters" provisions. This is particularly so since the determination of whether an individual has crossed the line from "testing the waters" to campaigning must be made on a case-by-case basis.

B. Applicability of Contribution Limitations and Prohibitions to "Testing the Waters" Activities

The Commission has also revised the rules to prohibit the use of funds in excess of the contribution limits or from sources prohibited under the Act to be used for "testing the waters" activities.

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Sections 100.7(b)(1), 100.8(b)(1), and 101.3 currently provide that funds received or expended for "testing the waters" become reportable contributions and expenditures if the individual becomes a candidate. Section 101.3 also currently provides that any excessive or prohibited contributions received during the "testing the waters" period must be refunded within 10 days after the individual becomes a candidate.

The Commission has reached the conclusion that the present regulations permit individuals to accept funds in excess of the contribution limits of 2 U.S.C. 441a(a) and funds from prohibited sources, such as corporations and labor organizations, for "testing the waters" activities. *See* AOs 1982–19 and 1983–9. In AO 1982–19, the Commission concluded that the prohibitions, limitations, and reporting requirements of the Act become applicable only when an individual becomes a candidate. However, pursuant to § 101.3, the Commission required that the individual repay or refund any excessive or prohibited contributions received during the "testing the waters" period within 10 days after becoming a candidate. Similarly, the Commission determined in AO 1983–9 that an individual could make loans from his personal funds to an exploratory committee in excess of the expenditure limitations of the Presidential Primary Matching Payment Account Act, 26 U.S.C. 9031 *et seq.* and still be eligible to receive primary matching funds. The Commission required pursuant to § 101.3 that funds in excess of the $50,000 expenditure limitation imposed by 26 U.S.C. § 9035(b) be repaid to him within 10 days after he declared his candidacy.

The Commission has reconsidered this issue and determined that permitting prohibited funds to be used for "testing the waters" activities extended the exemptions beyond the narrow range of activities they were originally intended to encompass. Thus, §§ 100.7(b)(1), 100.8(b)(1), and 101.3, as amended, now require that all funds received for "testing the waters" must be subject to the Act's limitations and prohibitions. The revised rules thus overrule the Commission's decisions on this question in AOs 1982–19 and 1983–9. The Commission views the amended regulations as reducing the potential for circumvention of the prohibitions and limitations of the Act. These revisions also ensure consistent application of the Act's contribution limitations and prohibitions.

Two commentors objected to the proposed rules to the extent they prohibited the use of excessive contributions and funds from prohibited sources for "testing the waters" activities. The Commission has considered these comments, but decided not to follow them in adopting the final rules. The Commission believes that the revised rules will remedy the situation that results under the present regulations when funds that are permissible when donated subsequently become illegal and must be refunded when the individual becomes a candidate. Moreover, the revised rules are intended to clear up any misconceptions that the "testing the waters" provisions may be used to raise "seed money" for prospective candidates. The current regulations are clear in prohibiting the use of the "testing the waters" exemptions to raise money for a future campaign. The Commission has reinforced its prohibition of this practice by reiterating the policy of the present regulations in its list of examples.

C. Miscellaneous Amendments

Finally, two minor amendments have been made to §§ 100.7(b)(1) and 100.8(b)(1). The regulations revise these sections to include a cross-reference to the recordkeeping the reporting requirements of § 101.3. In addition, the revisions clarify that each of these sections provides an exemption solely to the definition of either "contribution" or "expenditure" by limiting the section to either "funds received" or "payments made."

List of Subjects

11 CFR Part 100

Elections.

11 CFR Part 101

Political candidates, reporting and recordkeeping requirements, elections.

PART 100—SCOPE AND DEFINITIONS (2 U.S.C. 431)

1. 11 CFR Part 100 is amended by revising §§ 100.7(b)(1) and 100.8(b)(1) to read as follows:

§ 100.7 Contribution (2 U.S.C. 431(8)).

* * * * *

(b) * * *

(1) (i) Funds received solely for the purpose of determining whether an individual should become a candidate are not contributions. Examples of activities permissible under this exemption if they are conducted to determine whether an individual should become a candidate include, but are not limited to, conducting a poll, telephone calls, and travel. Only funds permissible under the Act may be used for such activities. The individual shall keep records of all such funds received. See 11 CFR 101.3. If the individual subsequently becomes a candidate, the funds received are contributions subject to the reporting requirements of the Act. Such contributions must be reported with the first report filed by the principal campaign committee of the candidate, regardless of the date the funds were received.

(ii) This exemption does not apply to funds received for activities indicating that an individual has decided to become a candidate for a particular office or for activities relevant to conducting a campaign. Examples of activities that indicate that an individual has decided to become a candidate include, but are not limited to:

(A) The individual uses general public political advertising to publicize his or her intention to campaign for Federal office.

(B) The individual raises funds in excess of what could reasonably be expected to be used for exploratory activities or undertakes activities designed to amass campaign funds that would be spent after he or she becomes a candidate.

(C) The individual makes or authorizes written or oral statements that refer to him or her as a candidate for a particular office.

(D) The individual conducts activities in close proximity to the election or over a protracted period of time.

(E) The individual has taken action to qualify for the ballot under State law.

* * * * *

§ 100.8 Expenditure (2 U.S.C. 431(9).

* * * * *

(b) * * *

(1) (i) Payments made solely for the purpose of determining whether an individual should become a candidate are not expenditures. Examples of activities permissible under this exemption if they are conducted to determine whether an indivdual should become a candidate include, but are not limited to, conducting a poll, telephone calls, and travel. Only funds permissible under the Act may be used for such activities. The individual shall keep records of all such payments. See 11 CFR 101.3. If the individual subsequently becomes a candidate, the payments made are subject to the reporting requirements of the Act. Such expenditures must be reported with the first report filed by the principal campaign committee of the candidate, regardless of the date the payments were made.

(ii) This exemption does not apply to payments made for activities indicating that an individual has decided to become a candidate for a particular office or for activities relevant to conducting a campaign. Examples of activities that indicate that an individual has decided to become a candidate include, but are not limited to:

(A) The individual uses general public political advertising to publicize his or her intention to campaign for Federal office.

(B) The individual raises funds in excess of what could reasonably be expected to be used for exploratory activities or undertakes activities designed to amass campaign funds that would be spent after he or she becomes a candidate.

(C) The individual makes or authorizes written or oral statements that refer to him or her as a candidate for a particular office.

(D) The individual conducts activities in close proximity to the election or over a protracted period of time.

(E) The individual has taken action to quality for the ballot under State law.

* * * * *

PART 101—CANDIDATE STATUS AND DESIGNATIONS (2 U.S.C. 432(e))

2. 11 CFR Part 101 is amended by revising § 101.3 to read as follows:

§ 101.3 Funds received or expended prior to becoming a candidate (2 U.S.C. 432(e)(2)).

When an individual becomes a candidate, all funds received or payments made in connection with activities conducted under 11 CFR 100.7(b)(1) and 11 CFR 100.8(b)(1) or his or her campaign prior to becoming a candidate shall be considered contributions or expenditures under the Act and shall be reported in accordance with 11 CFR 104.3 in the first report filed by such candidate's principal campaign committee. The individual shall keep records of the name of each contributor, the date of receipt and amount of all contributions received (see 11 CFR 102.9(a)), and all expenditures made (see 11 CFR 102.9(b)) in connection with activities conducted under 11 CFR 100.7(b)(1) and 11 CFR 100.8(b)(1) or the individual's campaign prior to becoming a candidate.

Authority: 2 U.S.C. 431(8), 431(9), 432(e)(2), and 437d(8).

Dated: March 8, 1985.

John Warren McGarry,

Chairman, Federal Election Commission.

[FR Doc. 85-6020 Filed 3-12-85; 8:45 am]

BILLING CODE 6715-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Engineering Services

AGENCY: Small Business Administration.

ACTION: Result of size standard study; decision not the change rule.

SUMMARY: SBA has reviewed, in depth, the size standard for engineering services (except for military and aerospace equipment and weapons) and decided to retain the current size standard of $7.5 million in average annual receipts which was established in 1975.

In its Final Rule of February 9, 1984 (49 FR 5023), SBA was specifically committed to make this study as well as review several other industries where there was controversy over the appropriate size standard. The study of the engineering services size standard included an examination of the industry structure, the nature and distribution of Federal contracts among engineering firms, the impact of changes to alternative size standards and the comments received from firms, associations, and Federal agencies. SBA found no persuasive reason to make any change.

FOR FURTHER INFORMATION CONTACT: Andrew A. Canellas, Director, Size Standards Staff, Small Business Administration, 1441 L Street NW., Room 500, Washington, D.C. 20416, (202) 653-6373.

SUPPLEMENTARY INFORMATION:

Background

On February 9, 1984, the Small Business Administration published a Final Rule in the **Federal Register** (49 FR 5023) in which its size standards were comprehensively revised. Almost all dollar size standards were given an 81 percent increase to adjust for inflation since they were last established in 1975. One industry in which its size standard was maintained, however, was engineering services, with the exception that an increase was implemented for engineering specifically for military and aerospace equipment and weapons. The need for further study of the engineering services (except for military and aerospace equipment and weapons) size standard became obvious when almost all comments were opposed to SBA's May 6, 1983, proposal to lower the size standard to $3.5 million. Those commenting took widely diverse positions, a majority wanting the size standard much lower than the proposed $3.5 million while almost all others wished to retain the standard at $7.5 million.

Two advance notices and one notice of proposal to revise SBA size standards were published in the **Federal Register**, 45 FR 15442, March 10, 1980; 47 FR 18992, May 3, 1982, and 48 FR 20560, May 6, 1983, and in response to each of these proposals more comments were received concerning the size standard for engineering services than for any other industry, indicating the interest in this size standard.

Industry Structure

Engineering services consists of a number of types of engineering. Approximately 84 percent of the dollar receipts of engineering service firms is for engineering design services used in construction. The engineering service industry is not highly sensitive to Federal procurements; less than 6 percent of its receipts come from Federal contracts.

There are slightly over 15,000 engineering service firms with at least one employee of which 250 firms exceed SBA's current size standard of $7.5 million. These 250 large engineering firms account for approximately 50 percent of the industry's receipts.

There is a clearly established trend for the large firms in this industry to grow in size, mostly through acquisitions and mergers with other large or intermediate size engineering firms. There was a recent increase in the number of very small firms, mostly with one or two engineers. Data showing these trends are presented in Table 1 that follows:

TABLE 1.—CONSULTING ENGINEER'S CENSUS OF FIRMS COMPARATIVE DATA—1978-1980-1982

[Encompasses firms primarily in the civil engineering field]

		Employment Size of Firm			
		1-25	26-100	Over 100	Total
Number of firms	1978	8,428	1,333	487	10,248
	1980	8,450	1,813	628	10,891
	1982	11,022	1,730	603	13,355
Percent increase	1978-1980	+0.2	+36.0	+29.0	+6.3
	1980-1982	+30.4	-4.6	-4.0	+22.6
Engineers per firm	1980	2.4	9.5	61.6	7.0
	1982	2.2	9.3	92.9	7.2

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TABLE 1.—CONSULTING ENGINEER'S CENSUS OF FIRMS COMPARATIVE DATA—1978-1980-1982—Continued

[Encompasses firms primarily in the civil engineering field]

		Employment Size of Firm			
		1-25	26-100	Over 100	Total
Number of engineers	1980	19,944	17,173	38,598	75,715
	1982	24,689	16,020	56,007	96,716
Percent increase	1980-1982	23.8	-6.7	45.1	27.7

Source: Consulting Engineer: June 1980 and June 1982.

Comments to SBA's Proposal of May 3, 1982

On May 3, 1982, SBA proposed a 150-employee size standard for all engineering services except marine engineering. General support for this proposal was received from firms providing engineering services for military and aerospace equipment and weapons. Requests for a size standard much lower than the 150-employee level proposed came from a number of firms engaged in construction-related engineering services. Although most of these were large firms, the few very small firms that commented also wished the size standard lower than that proposed.

Comments to SBA's Proposal of May 6, 1983

For the first time SBA proposed to separate engineering services for military and aerospace equipment and weapons from other engineering, each with a separate size standard. The proposal for a $13.5 million size standard for engineering services for military and aerospace equipment and weapons was well received and was later implemented in the Final Rule of February 9, 1984. A size standard of $3.5 million was proposed for engineering services other than for military equipment and weapons and was the same standard proposed for those industries with almost a universe of the smallest firms. This proposal was to reduce the engineering services size standard to less than half while the size standards of other service industries were being adjusted upwards for inflation by 81 percent.

There were 69 comments to the May 6, 1983, proposal from construction-related engineering firms of which 48 came from firms over the size standard (with over $7.5 million in annual receipts). Only five of these large firms supported the proposal for a $3.5 million size standard, while 41 other large firms wanted the size standard reduced much lower than proposed, either to $500,000, $750,000, or $1 million. The comment of one large engineering firm was vague and one other stated only that set-asides should be abolished. Four small firms, identified as having less than $2 million in annual receipts, wanted a size standard of less than $2 million. Three firms identified as having receipts close to the current $7.5 million size standard wanted the size standard increased. Eight firms with receipts between $3.5 million and $7.5 million wished the $7.5 million standard retained. The size of six firms could not be determined; three desired size standards from $1 to $2 million, two wished to retain the current size standard of $7.5 million and one wanted set-asides abolished. Industry trade associations desired a lower size standard than the $3.5 million proposed.

In summary, the above shows that large firms, predominantly, wanted the size standard lowered drastically. The firms considered small reflected mixed results, with a majority not wanting the standard lowered. SBA, however, must consider the quality of the arguments on both sides of the issue rather than simply count stated opinions. A summary of comments by construction-related engineering firms is presented in Table 2.

SUMMARY OF COMMENTS BY CONSTRUCTION-RELATED ENGINEERING FIRMS OF ALL SIZES

Position of firm commenting	Number of comments		
	March 1980 notice	May 1982 notice	May 1983 notice
Wants standard above $7.5 million	1	1	3
Wants to keep $7.5 million standard	8	5	10
Wants at least $2 million but under $7.5M	11	27	[2] 8
Wants less than $3.5 million[1]	4	35	[3] 46
Vague as to position	2	3	1
Wants set-asides abolished, no suggested size standard	0	7	1
Total	26	76	69

[1] Overlapping with size class shown on line above because levels proposed varied from notice to notice as explained in narrative preceding these tables.

[2] Five of these were large firms willing to accept a $3.5 million size standard.

[3] Of the 46 firms taking this position, 41 were identified as large firms, four as small firms, and one firm's size could not be determined.

Position of Federal Agencies

A number of Federal agencies were contacted on the May 1983 proposal for reducing the size standard to $3.5 million. In summary, a size standard of $3.5 million was acceptable for most construction-related engineering services to most agencies. In areas of high technology or construction contracts of great complexity, such as construction of nuclear facilities, the agencies desired the retention of the $7.5 million size standard.

Federal agencies opposed a reduction of the size standard to levels below $3.5 million stating that such a lowering would significantly diminish set-asides. They said that if the size standard were lowered to $1 million, they would not set aside any contracts for small business.

Federal Contracts for Engineering Services—FY 1983

The Department of Defense accounted for approximately 80 percent of all FY 1983 engineering contract dollars. Approximately 68 percent of the dollar value for DoD's FY 1983 construction-related engineering services went to small firms; 57 percent of the total dollar values being set aside for small business. For DoD initial actions of under $250,000, approximately 94 percent of all FY 1983 construction-related engineering service contract dollars went to small business. On open competition, small firms received 70 percent of such construction-related contracts of under $100,000, about half the contracts between $100,000 and $250,000 and only 30 percent of the contracts over $250,000.

For DoD engineering service contracts not related to construction, only 15 percent of all FY 1983 contract dollars went to small firms. However, many of these contracts are related to military equipment and weapons for which a separate size standard was established in the Final Rule of February 9, 1984, and is not at issue here.

In the major nondefense procuring agencies, only 40 percent of FY 1983 engineering service awards were through set-asides and 87 percent of all initial awards were under $100,000 in value. In number of total awards, small firms received 91 percent. Small firms did well in open competition with 92 percent of awards of under $100,000 and 61 percent of awards of over $100,000.

An examination of contracts to specific firms shows that there was no concentration of awards among few firms or among firms of any size class. Most firms that received awards received less than $100,000 in awards

and only one award in FY 1983. No firm received enough in Federal contracts to make it largely dependent on the Federal Government. There were 2,970 engineering service contracts issued in FY 1983, much less in number than the over 15,000 firms in the industry. Consequently, most firms did not receive even one award. Large firms that received FY 1983 awards, received several times the award dollars, on average, than that received by firms within the current $7.5 million size standard.

Federal Contracts FY 1984

Federal procurement data for FY 1984 was not available at the time of this writing. Early in the 1984 fiscal year a provision of the Department of Defense construction appropriation authorization limited set-asides for DoD construction-related engineering service contracts to contracts with a total value of no more than $85,000. The impact of this provision could not be assessed, lacking specific data.

Findings

The review of this industry and its size standard leads to these findings: 1. There is wide distribution of engineering awards among firms. No firm could be identified as being highly dependent on Federal awards or receiving an unusually large portion of awards. Most small firms that received awards in FY 1983 received awards with a total value of under $100,000 and most only one award.

2. Large firms have adequate access to the Federal market and in FY 1983 received several times the award dollars than firms below $7.5 million size standard.

3. Firms of under $7.5 million in annual receipts are successful in bidding in open competition against larger firms except for awards in excess of $250,000.

4. A lowering of the size standard to $3.5 million would not significantly change the level of set-asides since virtually all the same contracts could be set aside (exception is the few contracts requiring high technology). In FY 1983, 92 percent of initial awards were below $250,000 and 72 percent below $100,000; these are within the capabilities of firms below the recently proposed size standard of $3.5 million.

5. The 300 engineering firms that would lose eligibility if the standard were lowered to $3.5 million did not receive an abnormal amount of Federal contracts. If the standard were lowered, procurements with complex and high technology requirements would not be set aside. This would be to the advantage of large firms at the expense of the group losing eligibility.

6. A lowering of the size standard to less than $3.5 million would result in less set-asides. Virtually no set asides would be made at a size standard of $1 million. Set-asides are mandated by law and SBA cannot take any action that would counteract the Federal law by lowering the standard to a point of no set-asides.

7. There was little support for SBA's proposal of May 1983 to lower the size standard to $3.5 million. Opposition came from firms in all classes, including the very few small firms that commented.

8. Only four construction-related engineering firms commenting to SBA's 1983 proposal were identified as having annual receipts below $3.5 million. All of these firms wanted the size standard below the $3.5 million proposed. Two of these firms have been identified as recent subcontractors to larger engineering firms but there may be more. Since there are 15,000 firms in this class, the conspicuous absence of comments from the these small firms suggests their lack of concern for any level of the size standard under consideration and cannot be considered as support for lowering it from its present levels.

9. Should the size standard be lowered to a point between $3.5 and $7.5 million, no significant change would take place. A few firms at the margin would lose eligibility with no evidence that they have an undue advantage over firms of other sizes. there was no support for such a change. Under a lowering to a $5 million size standard, approximately 125 firms would lose eligibility for set-asides.

10. There is little argument to raise the size standard above the present level of $7.5 million. Only three firms commenting desired such a raise. Industry data do not support such a raise and procurement data clearly show that a sufficient share of Federal contracts can go to small firms without raising the size standard.

11. A $3.5 million size standard is used by SBA for those service industries consisting overwhelmingly of the smallest firms. Engineering services does not fit this pattern. In the field of consulting engineering, in 1983, there were 15 firms with receipts in excess of $100 million and half the industry's receipts were by the 250 firms with annual receipts in excess of $7.5 million, the current size standard.

Decision

Since there is no persuasive reason for a change, it was decided that the size standard for engineering services, except for military and aerospace equipment and except for military weapons, be retained at the current level of $7.5 million.

Accordingly, pursuant to authority contained in section 5(b)(6) of the Small Business Act, 15 U.S.C. 634, as amended, notice is hereby given that the size standard for Engineering Services in 13 CFR 121.2 will not be changed.

Dated: December 14, 1984.

James C. Sanders,

Administrator.

[FR Doc. 85-5898 Filed 3-12-85; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM 79-76-223; Arkansas-1; Order No. 412]

High-Cost Gas Produced From Tight Formations; Arkansas

Issued March 7, 1985.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: Under section 107(c)(5) of the Natural Gas Policy Act of 1978, the Federal Energy Regulatory Commission designates certain types of natural gas as high-cost gas. High-cost gas is produced under conditions which present extraordinary risks or costs and once designated may receive an incentive price. (18 CFR 271.703) (1983). Under Section 107(c)(5), the Commission issued a rule designating natural gas produced from tight formations as high-cost gas. Jurisdictional agencies may submit recommendations of areas for designation as tight formations. Here the Federal Energy Regulatory Commission adopts the recommendation of the Arkansas Oil and Gas Commission that the Arbuckle Formation in White County, Arkansas, in sections 1, 2, 11, 12, 13, and 14 of Township 8 North, Range 8 West, and Sections 6, 7, and 18 of Township 8 North, Range 7 West, be designated as a tight formation under § 271.703(d).

EFFECTIVE DATE: This rule is effective April 6, 1985.

FOR FURTHER INFORMATION CONTACT:

Robert L. Winters (202) 357-8224
Walter W. Lawson, (202) 357-8556.

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SUPPLEMENTARY INFORMATION:

Before Commissioners: Raymond J. O'Connor, Chairman; Georgiana Sheldon, A. G. Sousa, Oliver G. Richard III and Charles G. Stalon.

Based on a recommendation made by the Arkansas Oil and Gas Commission (Arkansas), the Commission amends its regulations [1] to include the Arbuckle Formation in White County, Arkansas, in Sections 1, 2, 11, 12, 13, and 14 of Township 8 North, Range 8 West, and Sections 6, 7, and 18 of Township 8 North, Range 7 West, as a designated tight formation eligible for incentive pricing. The Director of the Office of Pipeline and Producer Regulation issued a notice proposing the amendment February 10, 1984.[2]

Evidence submitted by Arkansas supports the assertion that the Arbuckle Formation, described above, meets the guidelines contained in § 271.703(c)(2). The Commission adopts this recommendation.

This amendment shall become effective April 6, 1985.

List of Subjects in 18 CFR Part 271

Natural gas, Incentive price, Tight formations.

In consideration of the foregoing, Part 271 of Subchapter H, Chapter I, *Code of Federal Regulations*, is amended as set forth below.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 271—[AMENDED]

Section 271.703 is amended to read as follows:

1. The authority citation for Part 271 reads as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432, Administrative Procedure Act, 5 U.S.C. 553.

2. Section 271.703(d) is amended by adding paragraph (186) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.*

* * * * *

(186) Arbuckle Formation in Arkansas. RM79–76–223 (Arkansas–1)

(i) *Delineation of formation.* The Arbuckle Formation is found in White County, Arkansas. The designated area includes Sections 1, 2, 11, 12, 13, and 14 of Township 8 North, Range 8 West, and Sections 6, 7, and 18 of Township 8 North, Range 7 West.

(ii) *Depth.* The Arbuckle Formation's vertical limits are defined by the Everton Formation above and the Cambrian sequence below. The depth to the top of the formation averages 8,400 feet and the gross thickness varies from approximately 1,000 to 1,500 feet.

[FR Doc. 85–5930 Filed 3–12–85; 8:45 am]

BILLING CODE 6717-01-M

[1] 18 CFR 271.703(d) (1983).

[2] 49 FR 5771, February 15, 1984. Comments on the proposed rule were invited. No comments were received; no party requested a public hearing; and no hearing was held.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 430, 436, and 442

[Docket No. 85N–0011]

Antibiotic Drugs; Sterile Ceftriaxone Sodium

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the antibiotic drug regulations to provide for the inclusion of accepted standards for a new antibiotic drug, sterile ceftriaxone sodium. The manufacturer has supplied sufficient data and information to establish its safety and efficacy.

DATES: Effective March 13, 1985; comments, notice of participation, and request for hearing by April 12, 1985; data, information, and analyses to justify a hearing by May 13, 1985.

ADDRESS: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joan M. Eckert, Center for Drugs and Biologics (HFN–815), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4290.

SUPPLEMENTARY INFORMATION: FDA has evaluated data submitted in accordance with regulations promulgated under section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357), as amended, with respect to a request for approval of a new antibiotic drug, sterile ceftriaxone sodium. The agency has concluded that the data supplied by the manufacturer concerning this antibiotic drug are adequate to establish its safety and efficacy when used as directed in the labeling and that the regulations should be amended in Parts 430, 436, and 442 (21 CFR Parts 430, 436, and 442) to provide for the inclusion of accepted standards for the product.

The agency has determined pursuant to 21 CFR 25.24(b)(22) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects

21 CFR Part 430

Administrative practice and procedure, Antibiotics.

21 CFR Part 436

Antibiotics.

21 CFR Part 442

Antibiotics, Cepha.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 507, 701 (f) and (g), 52 Stat. 1055–1056 as amended, 59 Stat. 463 as amended (21 U.S.C. 357, 371 (f) and (g))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Parts 430, 436, and 442 are amended as follows:

PART 430—ANTIBIOTIC DRUGS; GENERAL

1. Part 430 is amended:

a. In § 430.4 by adding new paragraph (a)(54) to read as follows:

§ 430.4 Definitions of antibiotic substances.

(a) * * *

(54) *Ceftriaxone.* Ceftriaxone is a semi-synthetic antibiotic substance produced by the addition of S-2-benzothiazolyl-2-(2-aminothiazol-4-yl)-2-methoxyiminothioacetate to the 7 amino group of 7-amino-3-(2,5-dihydro-2 methyl-5,6-dioxo-1,2,4-triazin-3-yl)-thiomethyl-3-cephem-4-carboxylic acid.

b. In § 430.5 by adding new paragraphs (a)(85) and (b)(87) to read as follows:

§ 430.5 Definitions of master and working standards.

(a) * * *

(85) *Ceftriaxone.* The term "ceftriaxone master standard" means a specific lot of ceftriaxone that is designated by the Commissioner as the standard of comparison in determining the potency of the ceftriaxone working standard.

(b) * * *

(87) *Ceftriaxone.* The term "ceftriaxone working standard" means a specific lot of a homogeneous preparation of ceftriaxone.

c. In § 430.6 by adding new paragraph (b)(87) to read as follows:

§ 430.6 Definitions of the terms "unit" and "microgram" as applied to antibiotic substances.

* * * * *

(b) * * *

(87) *Ceftriaxone.* The term "microgram" applied to ceftriaxone means the ceftriaxone activity (potency) contained in 1.19 micrograms of the ceftriaxone master standard.

PART 436—TESTS AND METHODS OF ASSAY OF ANTIBIOTIC AND ANTIBIOTIC-CONTAINING DRUGS

2. Part 436 is amended by adding new § 436.354 to read as follows:

§ 436.354 High-performance liquid chromatographic assay for ceftriaxone.

(a) *Apparatus.* A suitable high-performance liquid chromatograph equipped with:

(1) A suitable detection system specified in the monograph for the drug being tested;

(2) A suitable recording device of at least 25-centimeter deflection;

(3) A suitable chromatographic data managing system; and

(4) an analytical column, 3 to 30 centimeters long, packed with a material as defined in the monograph for the drug being tested.

(b) *Procedure.* Perform the assay at the temperature specified in the monograph for the drug being tested with a flow rate not to exceed 2.0 milliliters per minute, Use a detector sensitivity setting that gives a peak height for the working standard that is at least 50 percent of scale. Use the apparatus described in paragraph (a) of this section; and also, use the system suitability requirements reagents, working standard, test and sample solutions, and calculations as directed in the individual monograph for the drug being tested. Equilibrate and condition the column by passage of 10 to 15 void volumes of mobile phase followed by five replicate injections of 20 microliters each of the test solution. Allow an operating time sufficiently long to obtain satisfactory separation and elution of the expected components after each injection. Record the peak responses and calculate the prescribed system suitability requirements as described for the system suitability test in paragraph (c) of this section.

(c) *System suitability test.* Using the apparatus and procedure described in this section, test the chromatographic system for assay as follows:

(1) *Capacity factor.* Calculate the capacity factor (k) as follows:

$$k = \frac{t_R - t_M}{t_M}$$

where:

t_R = Retention time of solute; and

t_M = Retention time of solvent or unretained substance.

(2) *Resolution.* Calculate the resolution (R) as follows:

$$R = \frac{2(t_{Rj} - t_{Ri})}{w_i + w_j}$$

Where:

t_{Rj} = Retention time for a solute eluting after i (t_{Rj} is larger than t_{Ri});

t_{Ri} = Retention time for any solute;

w_i = Width of peak at baseline for any solute; and

w_j = Width of peak at baseline for any solute eluting after i.

(3) *Asymmetry factor.* Calculate the asymmetry factor (A_s), measured at a point 10 percent of the peak height from the baseline, as follows:

$$A_s = \frac{a+b}{2a}$$

where:

a = Horizontal distance from point of ascent to point of maximum peak height; and

b = Horizontal distance from point of maximum peak height to point of descent.

(4) *Efficiency of the column.* Calculate the efficiency of the column (reduced plate height) (h_r) as follows:

(i)

$$n = 5.545 \left[\frac{t_R}{w_h} \right]^2;$$

(ii)

$$h = \frac{L}{n}; \text{ and}$$

(iii)

$$h_r = \frac{h}{d_p}.$$

where:

n = Efficiency, as number of theoretical plates for column;

t_R = Retention time of solute;

w_h = Peak width at half-height;

h = Efficiency, as height equivalent to one theoretical plate;

L = Length of column; and

d_p = Average diameter of particle in column.

(5) *Coefficient of variation (relative standard deviation).* Calculate for coefficient of variation (S_R in percent) as follows:

$$\frac{S}{R} = \frac{100}{\bar{X}} \left[\frac{\sum_{i=1}^{N} (X_i - \bar{X})^2}{N - 1} \right]^{1/2}$$

where:

$\bar{X}$ is the mean of N individual measurements of X_i.

The complete operating system is acceptable for assay if it meets the system suitability requirements of the monograph for the drug being tested. If the complete operating system is acceptable, proceed as described in paragraph (b) of this section using the sample solution in lieu of the test solution. Calculate the drug content as described in the individual monograph for the drug being tested.

PART 442—CEPHA ANTIBIOTIC DRUGS

3. Part 442 is amended:

a. By adding new § 442.55a to read as follows:

§ 442.55a Sterile ceftriaxone sodium.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Ceftriaxone sodium is 5-thia-1-azabicyclo[4.2.0]oct-2-ene-2-carboxylic acid, 7-[[(2-amino-4-thiazolyl)(methoxyimino)acetyl]amino]-8-oxo-3-[[(1,2,5,6-tetrahydro-2-methyl-5,6-dioxo-1,2,4-triazin-3-yl)thio]methyl]-, disodium salt, [6*R*-[6α,7β(*Z*)]]-. It is so purified and dried that:

(i) If the ceftriaxone sodium is not packaged for dispensing, its ceftriaxone potency is not less than 795 micrograms of ceftriaxone per milligram on an anhydrous free acid basis. If the ceftriaxone sodium is packaged for dispensing, its ceftriaxone potency is not less than 776 micrograms of ceftriaxone per milligram on an anhydrous free acid basis and also, each container contains not less than 90 percent and not more than 115 percent of the number of milligrams of ceftriaxone that it is represented to contain.

(ii) It is sterile.

(iii) It is nonpyrogenic.

(iv) Its moisture content is not less than 8 percent and not more than 11 percent.

(v) Its pH in an aqueous solution containing the equivalent of 100.0 milligrams per milliliter is not less than 6.0 and not more than 8.0.

(vi) It is crystalline.

(vii) It gives a positive identity test for ceftriaxone.

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on the batch for ceftriaxone potency, and if packaged for dispensing, potency and container content, sterility, pyrogens, moisture, pH, crystallinity, and identity.

(ii) Samples, if required by the Director, Center for Drugs and Biologics:

(*a*) If the batch is packaged for repacking or for manufacturing use:

(*1*) For all tests except sterility: 10 packages, each containing approximately 500 milligrams.

(*2*) For sterility testing: 20 packages, each containing equal portions of approximately 300 milligrams.

(*b*) If the batch is packaged for dispensing:

(*1*) For all tests except sterility: A minimum of 10 immediate containers.

(*2*) For sterility testing: 20 immediate containers, collected at regular intervals throughout each filling operation.

(b) *Tests and methods of assay*—(1) *Ceftriaxone potency and container content.* Proceed as directed in § 436.354 of this chapter, using ambient temperature, an ultraviolet detection system operating at a wavelength of 270 nonometers (or 254 nanometers fixed mercury source), and a column packed with a five-micron octadecyl reverse phase packing or equivalent; and also, using the following system suitability requirements, reagents, working standard, test and sample solutions, and calculations:

(i) *System suitability requirements*—(*a*) *Capacity factor.* The capacity factor (k) for the ceftriaxone peak is satisfactory if it is not less than 2 and not more than 5.

(*b*) *Resolution.* The resolution (R) between the peak for ceftriaxone E-isomer and ceftriaxone is satisfactory if it is not less than 3.0.

(*c*) *Asymmetry factor.* The asymmetry factor (A_s) is satisfactory if it is not more than 1.6 at 10 percent of the peak height.

(*d*) *Efficiency of the column.* The efficiency of the column (h_r) is satisfactory if it is less than 20 (equivalent to a value of 1,500 or greater theoretical plates when using a 15-centimeter column with 5-micrometer-size particles).

(*e*) *Coefficient of variation.* The coefficient of variation (S_R in percent) of five replicate injections is satisfactory if it is less than 2.0 percent.

If the system suitability parameters have been met, then proceed as described in § 436.354(b) of this chapter.

(ii) *Reagents*—(*a*) *pH 7.0 phosphate buffer.* Dissolve 13.6 grams of dibasic potassium phosphate and 4.0 grams of monobasic potassium phosphate in sufficient water to make 1,000 milliliters. Adjust to pH 7.0 ±0.1 with 18*N* phosphoric acid or 10*N* potassium hydroxide.

(*b*) *pH 5.0 citrate buffer.* Dissolve 25.8 grams of sodium citrate in 500 milliliters of water. Adjust the pH to 5.0±0.1 with 20 percent aqueous citric acid, and dilute to 1,000 milliliters with water.

(*c*) *Mobile phase.* Dissolve 4.0 grams of tetraheptylammonium bromide with 500 milliliters of acetonitrile. Add 440 milliliters of water, 55 milliliters of pH 7.0 phosphate buffer, and 5 milliliters of pH 5.0 citrate buffer. Mix and dilute 800 milliliters of this solution with 200 milliliters of distilled water. Filter the mobile phase through a suitable glass fiber filter or equivalent which is capable of removing particulate contamination greater than 0.5 micron in diameter. Degas the mobile phase just prior to its introduction into the chromatograph.

(iii) *Working standard and sample solutions*—(*a*) *Preparation of working standard solution.* Dissolve an accurately weighed portion of the ceftriaxone working standard with sufficient water to obtain a solution containing approximately 180 micrograms of ceftriaxone activity per milliliter. Prepare the working standard solution just prior to its introduction into the chromatograph.

(*b*) *Preparation of test solution.* Dissolve together accurately weighed portions of the ceftriaxone working standard and the ceftriaxone sodium E-isomer reference standard with sufficient water to obtain a solution containing approximately 160 micrograms of ceftriaxone per milliliter of each standard. Prepare the test solution just prior to its introduction into the chromatograph.

(*c*) *Preparation of sample solution.* Prepare the sample solution just prior to its introduction into the chromatograph.

(*1*) *Product not packaged for dispensing (micrograms of ceftriaxone anhydrous free acid per milligram).* Dissolve an accurately weighed portion of the sample with sufficient water to obtain a concentration of 180 micrograms of ceftriaxone activity per milliliter.

(*2*) *Product packaged for dispensing.* Determine both potency (micrograms of ceftriaxone anhydrous free acid per milligram of the sample) and container content (milligrams of anhydrous free acid ceftriaxone per container). Use separate containers for preparation of each sample solution as described in paragraph (b)(1)(iii)(*b*)(*2*) (*i*) and (*ii*) of this section.

(*i*) *Micrograms of ceftriaxone anhydrous free acid per milligram.* Dissolve an accurately weighed portion of the sample with sufficient water to obtain a concentration of approximately 180 micrograms of ceftriaxone activity per milliliter.

(*ii*) *Milligrams of ceftriaxone per container.* Reconstitute the sample as directed in the labeling. Then, using a suitable hypodermic needle and syringe, remove all of the withdrawable contents if it is represented as a single-dose container; or, if the labeling specifies the potency contained in a given volume of the resulting preparation, remove an accurately measured representative portion from each container. Dilute the aliquot of the solution thus obtained with sufficient water to obtain a concentration of approximately 180 micrograms of ceftriaxone activity per milliliter.

(iv) *Calculations.* (*a*) Calculate the micrograms of ceftriaxone anhydrous free acid per milligram as follows:

$$\text{Micrograms of ceftriaxone anhydrous free acid per milligram} = \frac{A_u \times P_s}{A_s \times C_u}$$

where:

A_u = Area of the ceftriaxone peak in the chromatogram of the sample (at a retention time equal to that observed for the standard);

A_s = Area of the ceftriazone peak in the chromatogram of the ceftriaxone working standard;

P_s = Ceftriaxone activity in the ceftriazone working standard solution in micrograms of anhydrous free acid per milliliter; and

C_u = Milligrams of sample per milliliter of sample solution.

(*b*) Calculate the ceftriaxone anhydrous free acid content of the container as follows:

$$\text{Milligrams of ceftriazone anhydrous free acid per container} = \frac{A_u \times P_s \times d}{A_s \times 1{,}000}$$

where:

A_u = Area of the ceftriaxone peak in the chromatogram of the sample (at a retention time equal to that observed for the standard);

A_s = Area of the ceftriazone peak in the chromatogram of the ceftriaxone working standard;

P_s = Ceftriaxone activity in the ceftriazone working standard solution in micrograms of anhydrous free acid per milliliter; and

d = Dilution factor of the sample.

(2) *Sterility.* Proceed as directed in § 436.20 of this chapter, using the method described in paragraph (e)(1) of that section.

(3) *Pyrogens.* Proceed as directed in § 436.32(h) of this chapter, using a solution containing 20 milligrams of ceftriaxone per milliliter.

(4) *Moisture.* Proceed as directed in § 436.201 of this chapter.

(5) *pH.* Proceed as directed in § 436.202 of this chapter, using an aqueous solution containing 100 milligrams per milliliter.

(6) *Crystallinity.* Proceed as directed in § 436.203(a) of this chapter.

(7) *Identity.* Proceed as directed in § 436.211 of this chapter, using a potassium bromide disc containing 1.3 milligrams of ceftriaxone sodium in 300 milligrams of potassium bromide, prepared as described in paragraph (b)(1) of that section.

b. Adding new § 442.255 to read as follows:

§ 442.255 Sterile ceftriaxone sodium.

The requirements for certification and the tests and methods of assay for sterile ceftriaxone sodium packaged for dispensing as described in § 442.55a.

This regulation announces standards that FDA has accepted in a request for approval of an antibiotic drug. Because this regulation is not controversial and because when effective it provides notice of accepted standards, notice and comment procedure and delayed effective date are found to be unnecessary and not in the public interest. The regulation, therefore, is effective March 13, 1985. However, interested persons may, on or before April 12, 1985, submit written comments to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this final rule may file objections to it and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file (1) on or before April 12, 1985, a written notice of participation and request for hearing, and (2) on or before May 13, 1985, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 430.20. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the heading of this order and filed with the Dockets Management Branch.

The procedures and requirements governing this order, a notice of participation and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 430.20.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. March 13, 1985.

(Secs. 507, 701 (f) and (g), 52 Stat. 1055–1056 as amended, 59 Stat. 463 as amended (21 U.S.C. 357, 371 (f) and (g)))

Dated: March 5, 1985.

Daniel L. Michels,

Director, Office of Compliance, Center for Drugs and Biologics.

[FR Doc. 85–5772 Filed 3–12–85; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Parts 625 and 655

[FHWA Docket Nos. 79–31, 79–37, 80–10, 82–15, and 83–26]

National Standards for Traffic Control Devices; Manual on Uniform Traffic Control Devices

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule; Amendments to the Manual on Uniform Traffic Control Devices.

SUMMARY: This document contains notice of amendments to the Manual on Uniform Traffic Control Devices (MUTCD) which are being adopted by the Federal Highway Administrator for inclusion therein. The MUTCD is incorporated by reference in the design standards for Federal-aid highways in 23 CFR Part 625. It is also recognized in Part 655 as the national standard for traffic control devices on all public roads. The amendments affect various parts of the MUTCD and are intended to expedite traffic, improve safety and provide a more uniform application of highway signs, signals, and markings.

DATES: Effective July 22, 1985. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of April 1, 1984, and the amendments are approved as of July 22, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Philip O. Russell, Office of Traffic Operations, (202) 426–0411, or Mr. Michael J. Laska, Office of the Chief Counsel, (202) 426–0762, 400 Seventh Street SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m. e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: The MUTCD is available for inspection and copying as prescribed in 49 CFR Part 7, Appendix D. It may be purchased for $30.00 from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, Stock No. 050–001–81001–8. The purchase of a MUTCD includes a subscription service for adopted revisions.

This document contains the dispositions of proposals for changes in the MUTCD which were received or originated by the FHWA. Previous **Federal Register** actions regarding these requests are listed in the table.

Advance copies of the text changes to the MUTCD for all of the adopted requests will be distributed to everyone currently appearing on the FHWA **Federal Register** mailing list for MUTCD matters. Those wishing to receive an advance copy of the text changes or to be added to this mailing list should write to the Federal Highway Administration, Office of Traffic Operations, 400 Seventh Street SW., Washington, D.C. 20590.

Discussion of Requests

These amendments are being processed in accordance with the rulemaking procedure of the Administrative Procedure Act (5 U.S.C. 553) and the Department of Transportation's regulatory policies and procedures.

Each request is assigned an identification number which indicates by Roman numeral, the primary organizational part of the MUTCD affected and, by Arabic numeral, the order in which the request was received.

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Item	Request No.	Title	Published in Federal Register FHWA docket No.
1	II-1 (Chng.)	Specific service signs	Docket No. 83-26 (49 FR 1213, Jan. 10, 1984).
2	II-50 (Chng.)	Mandatory use of no-passing zone pennant signs	Docket No. 80-10 (45 FR 41600, June 19, 1980); 82-15 (48 FR 1075, Jan. 10, 1983).
3	II-65 (Chng.)	Service signing for liquified petroleum gas	Docket No. 83-26 (49 FR 1213, Jan. 10, 1984)
4	II-66 (Chng.)	Lane drop symbol sign	Do.
5	II-71 (Chng.)	Narrow bridge symbol sign	Do.
6	II-73 (Chng.)	Signing and marking structures with substandard vertical clearances	Do.
7	II-76 (Chng.)	Supplemental guide signs for traffic generators adjacent to freeways	Do.
8	II-77 (Chng.)	Guidelines for selection of control cities	Do.
9	II-78 (Chng.)	Library symbol sign	Do.
10	II-81 (Chng.)	Symbol for CB emergency channel	Do.
11	III-6 (Chng.)	Uses and spacing of raised pavement markers	Do.
12	III-26 (Chng.)	Delete requirement for no-passing zone markings	Do.
13	III-27 (Chng.)	Skid resistance of marking materials	Do.
14	VI-14 (Chng.)	Two-way traffic on a normally divided highway	Docket No. 79-31 (44 FR 53739, Sept. 17, 1979).
			Docket No. 79-37 (45 FR 982, Jan. 3, 1980), (47 FR 5238, Feb. 4, 1982); (48 FR 1047, Jan. 10, 1983).

The FHWA has reviewed the contents received in response to the notices and other information relating to the MUTCD and these proposals. The FHWA proposes to act on the following requests for change to the MUTCD. Each action and its basis is summarized below:

(1) Request II-1 (Chng.)—Specific Service Signs

This amendment adopts with some modification and transfers to the MUTCD, the National Standards for Specific Information Signs. These standards currently exist in 23 CFR Part 655, Subpart C and the Federal-Aid Highway Program Manual, Volume 6, Chapter 8, Section 3, Subsection 8.

Of the 23 commentors, 17 favored adoption of the standards as proposed in the Notice of Proposed Amendments (NPA). The National Committee on Uniform Traffic Control Devices (NCUTCD) Task Force on Specific Service Signs of the NCUTCD Signs Technical Committee proposed several revisions to the standards.

These revisions have been incorporated into MUTCD Section 2G-5 with the following exceptions:

1. The NCUTCD recommends that Specific Service (LOGO) Signing be limited to Freeways and Expressways. Title 23 U.S.C. 131(f) provides that the Secretary of Transportation, in consultation with the States, may provide within the right-of-way of the Primary System for areas on which signs, displays, and devices giving specific information in the interest of the traveling public may be erected and maintained. The provisions for use of Specific Service Signs on conventional roads have been included in 23 CFR Part 655 since 1979 and several States are using these types of signs on conventional roads. The FHWA feels the use of these signs should be left to the discretion of the agency with highway jurisdiction. Therefore, the signs may be used on all classes of highways.

2. Since 1979 six GAS LOGOS have been allowed on a sign. Fifteen States currently have LOGO signs installed with six LOGOS for gas and four LOGOS for other services. Therefore, the number of LOGOS for services will be six for gas and four for other services.

3. The NCUTCD recommends reducing and/or eliminating a number of the criteria a service facility must meet to be eligible for display of a LOGO panel. The FHWA in the NPA proposed making the current "shall" criteria a "should" criteria. The FHWA continues to feel these are desirable guidelines, and making them "should" conditions gives the agencies with highway jurisdiction sufficient leeway in developing their own guidelines.

The criteria for availability of services and the area where services may be signed have been relaxed. This change imposes no additional cost as the choice of using specific service information signs remains with the highway agency.

(2) Request II-50 (Chng.)—Mandatory Use of No Passing Zone Pennant Sign (W14-3)

Action on this item was deferred by FHWA Docket No. 82-15 as the NCUTCD was undertaking a user survey and literature review on this subject. The NCUTCD has completed its study and recommends that the current MUTCD language which contains a "should" condition, be retained.

Based on the comments received from FHWA Docket No. 80-10 and the NCUTCD recommendations, this request is denied.

Request II-65 (Chng.)-Service Signing for Liquified Petroleum Gas

Fourteen of the 24 commentors supported the adoption of this request. Several of those opposed felt that approval of this item would lead to signing for other fuels.

This adopted change imposes no additional costs but establishes a standard symbol for identifying LP-Gas refilling facilities for those highway agencies wishing to identify LP-Gas refilling facilities.

Request II-66 (Chng.)—Lane Drop Symbol Sign

This request to adopt a standard lane drop symbol sign was opposed by 20 of the 22 commentors. This request is denied.

Request II-71 (Chng.)—Narrow Bridge Symbol Sign

Fifteen of the 20 commentors agreed that the present symbol sign (W5-2a) was satisfactory or that the symbol proposed by the Pennsylvania Department of Transportation (Penn DOT) needed further refinement. As only four commenters favored the Penn DOT proposal, the request is denied.

Request II-73 (Chng.)—Signing and Marking Structures with Substandard Vertical Clearances

Sixteen of the 18 commentors supported the FHWA position that MUTCD Section 2C-34 provides adequate information for signing and locating vertical clearance signs.

The request to add more specific information to the MUTCD is denied.

Request II—76 (Chng.)—Supplemental Guide Signs for Traffic Generators Adjacent to Freeways

The American Association of State Highway and Transportation Officials (AASHTO) has now approved the publishing of their policy. All commentors favored adopting the request upon publication of the AASHTO Policy. The request to reference the AASHTO Policy in the MUTCD Sections 1A-7 and 2E-28 is adopted. In conjunction with this change the FHWA will relax the recommendations of MUTCD Section 2E-28 for States to develop a

supplemental signing policy and the requirement for installation of supplemental guide signs as an independent assembly.

This change will provide a reference to a source of information that will promote more uniform implementation of supplemental signed destinations and will not impose any additional costs.

Request II—77 (Chng.)—Guidelines for Selection of Control Cities

The AASHTO has now approved the publication of their guidelines. All 19 commentors favored incorporating the published guidelines into the MUTCD. This request is adopted and the guidelines will be incorporated by reference in MUTCD Section 2F–7.

This change provides better control city selection criteria and will not impose any additional costs.

Request II—78 (Chng.)—Library Symbol Sign

Nineteen cities, counties, States and professional traffic engineering groups commented on this request by the American Library Association (ALA) to adopt a white on blue symbol as an alternate to the national standard white on green LIBRARY word sign. Eighteen of these commentors opposed the adoption of the symbol sign while one State supported the adoption of a white on green symbol. Several hundred individuals, primarily librarians and educators recommended adoption of the symbol sign and many also supported the white on blue color as they felt that libraries could be classified as a motorist service.

The MUTCD contains the national standards for the shape, size, legend, and colors for all traffic control devices used on all roads open to public travel. Signs using white legend (or symbols) on a blue background have been reserved for advising travelers of those items which must be replenished to continue a trip. Thus, vehicle service stations, restaurants, traveler rest facilities (motels, rest areas, etc.) and facilities that can readily assist in lifesaving situations (telephone and hospital) are covered by the white on blue standard. Because of the location, limited hours of operations, and types of services offered by libraries, the FHWA has determined that the present white on blue symbol sign does not meet the MUTCD color standard.

Because of its widespread use and support, the ALA library symbol sign is adopted as a General Information Sign (I Series) which must be white on green. To assure that the motoring public understands the meaning of the symbol, all new library symbol signs erected shall be accompanied by a supplemental word message sign (educational plaque) for the next four years.

Allowing the symbol sign as an alternate to a word message sign imposes no additional cost. The minimal cost of supplementing the symbol sign with a word message for four years is mitigated by the higher level of understanding achieved through the use of the educational plaque.

Request II—81 (Chng.)—Symbol for CB Emergency Channel

None of the 19 commentors supported this request. The national standard sign which contains the name of the monitoring agency and the words MONITORS CB CHANNEL 9 continues to perform satisfactorily. Therefore, the request is denied.

Request III—9 (Chng.)—Uses and Spacing of Raised Pavement Markers

In FHWA Docket No. 83–26 FHWA proposed not to include additional guidance in the MUTCD concerning the placement of raised pavement markers if sufficient information were contained in the *Traffic Control Devices Handbook*[1] (TCDH). This position was supported by the docket commentors. The FHWA and the NCUTCD have reexamined the guidance contained in the MUTCD and the TCDH. The NCUTCD has informed FHWA that it now believes additional MUTCD guidance is necessary. The FHWA concludes that while the TCDH contains many illustrations of how to lay out raised pavement markings, it contains very little discussion. Therefore, the request is adopted.

This amendment of Sections 3A and 3B establishes standards for raised pavement markers, reflectorized and non-reflectorized when used to supplement or in some cases to substitute for other types of pavement markings or as positioning guides.

As engineering judgment is used to determine when raised pavement markers are used, this amendment will not impose additional costs.

Request III–26 (Chng.)—Del◦te Requirements for No-Passing Zone Markings

Twenty of the 22 commentors supported the FHWA position that the MUTCD no-passing zone marking requirements should not be changed. The request to change the MUTCD is denied.

Request III–27 (Chng.)—Skid Resistance of Marking Materials

Eighteen of the 19 commentors supported the FHWA position. The FHWA proposed that payment marking application procedures that will make highway agencies more cognizant of skidding problems associated with large painted areas should be included in the TCDH rather than in the MUTCD. The MUTCD will not be changed.

Request VI–14 (Chng.)—Two-Way Traffic on a Normally Divided Highway

The FHWA Office of Engineering and Operations requested a change with regard to the traffic control devices that would be required for a Two-Lane Two-Way Operation (TLTWO) of a normally divided highway. This traffic control technique is used when one roadway of a divided highway must be closed for maintenance or reconstruction activities and two-way traffic is maintained on the other roadway.

The FHWA has published guidance in the TCDH on which devices to use and how to use them. The FHWA believes that the actual decisions as to traffic control techniques, and where and when to use certain devices are a design function that should be determined based on a number of parameters including: Traffic volumes, traffic speeds, existing and proposed geometrics, type of facility (i.e., rural or urban), length of the TLTWO, and traffic composition. Thus the FHWA concludes that the type and kind of traffic control devices used in TLTWO is more appropriate for inclusion in the TCDH. Therefore, the request to place additional guidance in the MUTCD is denied.

In consideration of the foregoing and under the authority of 23 U.S.C. 109(d), 315, and 402(a), and the delegation of authority in 49 CFR 1.48(b), the Federal Highway Administration hereby adopts the Manual on Uniform Traffic Control Devices as amended herein and amends Part 625 of Title 23 CFR by revising § 625.3(c)(1) to read as set forth below.

The Federal Highway Administration has determined that this document contains neither a major rule under Executive Order 12291 nor a significant rule under the regulatory policies and procedures of the Department of Transportation. As stated herein the economic impact of these amendments is so minimal as not to require preparation of a full regulatory evaluation. For the same reasons and under the criteria of the regulatory Flexibility Act, it is certified that this action will not have a significant

[1] Available for sale ($20.00) from the Government Printing Office, Washington, D.C. 20402, Stock No. 050–011–00270–1. It is available for inspection at the Federal Highway Administration, Office of Traffic Operations, HTO–21, Washington, D.C. 20590.

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economic impact on a substantial number of small entities.

List of Subjects in 23 CFR Parts 625 and 655

Design standards, Grant programs-transportation, Highway and roads, Signs, Traffic regulations, Incorporations by reference.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal program and activities apply to this program)

Issued on: February 21, 1985.

R. A. Barnhart,

Federal Highway Administrator, Federal Highway Administration.

PART 625—DESIGN STANDARDS FOR HIGHWAYS

The FHWA revises § 625.3(c)(1) to read as follows:

§ 625.3 Standards, specifications, policies, guides, and references.

* * * * *

(c) *Traffic control.* (1) Manual on Uniform Traffic Control Devices for Streets and Highways, FHWA, 1978, as amended January 1985.

* * * * *

(23 U.S.C. §§ 109(d), 315, and 402(a); 49 CFR 1.48(b))

[FR Doc. 85-5942 Filed 3-12-85; 8:45 am]

BILLING CODE 4910-22-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-2-FRL-2794-8]

Approval and Promulgation of Air Programs; Implementation Plans; Connecticut; Certification of No Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is codifying the certification that no Large Petroleum Dry Cleaning sources are located in the State of Connecticut. The intended effect of this action is to provide this information in 40 CFR Part 52, as justification for the fact that the Connecticut State Implementation Plan (SIP) does not contain reasonably available control technology (RACT) requirements for these sources.

EFFECTIVE DATE: This action will be effective May 13, 1985 unless notice is received within 30 days that adverse or critical comments will be submitted.

ADDRESSES: Comments may be mailed to Louis F. Gitto, Director, Air Management Division, Room 2312, JFK Federal Building, Boston, MA 02203. Copies are available for public inspection during normal business hours at the Environmental Protection Agency, Room 2313, JFK Federal Bldg., Boston, MA 02203.

FOR FURTHER INFORMATION CONTACT: Louis Gitto at 212-264-2525.

SUPPLEMENTARY INFORMATION: EPA requires states with areas which could not attain the National Ambient Air Quality Standard for ozone by 1982 to adopt RACT on sources of volatile organic compounds (VOCs). EPA has published a series of Control Technique Guidelines (CTGs) which define RACT for various VOC source categories. In response to the CTG for Large Petroleum Dry Cleaners, the Connecticut Department of Environmental Protection has certified by a letter to EPA, dated November 5, 1984, that no sources in this category are located within the state. Along with the certification, the DEP submitted supporting documentation from the State's emission inventory data base demonstrating that the dry cleaners located within the state are not covered by the CTG. EPA is accepting the DEP's certification and codifying the information at 40 CFR 52.375 as justification for the fact that the Connecticut SIP does not contain RACT regulations for Large Petroleum Dry Cleaners.

EPA is codifying this information without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. This action will be effective 60 days from the date of this **Federal Register** unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective 60 days from today.

Final Action:

EPA is codifying information certifying that no Large Petroleum Dry Cleaners are located in the State of Connecticut at 40 CFR 52.375.

Under 5 U.S.C. 605(b), I certify that this action will not have a significant economic impact on a substantial number of small entities (see 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291. Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by 60 days from today. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Incorporation by reference.

Authority: Section 301(a) of the Clean Air Act, as amended (42 U.S.C. 7410(a) and 7601(a).

Dated: March 6, 1985.

Lee Thomas,

Administrator.

PART 52—[AMENDED]

Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart H—Connecticut

Section 52.375, is added as follows:

§ 52.375 Certification of no sources.

The State of Connecticut has certified to the satisfaction of EPA that no sources are located in the state which are covered by the following Control Technique Guidelines:

1. Large Petroleum Dry Cleaners.

[FR Doc. 85-5952 Filed 3-12-85; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[A-1-FRL-2795-2]

Air Programs; Approval and Promulgation of Implementation Plans; New Hampshire; New Source Review Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving revisions to Part (Air) 610 of Chapter 600, "Statewide Permit System" of the New Hampshire State Implementation Plan (SIP). These revisions amend New Hampshire's regulations for the preconstruction

permitting of new major sources and major modifications in nonattainment areas in accordance with Part D of the Clean Air Act. The intended effect of this action is to approve the amended New Hampshire regulations as revisions to the SIP under section 110 of the Clean Air Act.

EFFECTIVE DATE: April 12, 1985.

ADDRESSES: Copies of the submittal and EPA's evaluation are available for public inspection during normal business hours at the Environmental Protection Agency, Room 2313, JFK Federal Bldg., Boston, MA 02203; New Hampshire Air Resources Commission, Health and Welfare Bldg., Hazen Drive, Concord, NH 03301; Public Information Reference Unit, EPA Library, 401 M. Street SW., Washington, D.C. 20460; and at the Office of the Federal Register, 1100 L Street NW., Rm 8401, Washington, D.C. 20408.

FOR FURTHER INFORMATION CONTACT: Marcia L. Spink (617) 223–4868, FTS 223–4868.

SUPPLEMENTARY INFORMATION: On November 20, 1984 (49 FR 45765), EPA published a Notice of Proposed Rulemaking (NPR) for the State of New Hampshire. The NPR proposed approval of revisions to Part (Air) 610 of Chapter 600, "Statewide Permit System" of the New Hampshire State Implementation Plan (SIP). These revisions amend New Hampshire's regulations for the preconstruction permitting of new major sources and major modifications in nonattainment areas in accordance with Part D, sections 172(b)(6) and 173 of the Clean Air Act.

EPA's rationale for approving them were explained in the NPR and will not be restated here. No public comments were received on the NPR.

Final Action:

EPA is approving revisions submitted April 9, 1984 and September 10, 1984 amending the New Hampshire SIP requirements for the preconstruction permitting of new major sources and major modifications in nonattainment areas.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by 60 days from today. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).).

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations, and Incorporation by reference.

Authority: Sections 110(a) and 310 (a) of the Clean Air Act, as amended (42 U.S.C. 7410(a) and 7601(a)).

Note: Incorporation by reference of the State Implemetation Plan for the State of New Hampshire was approved by the Director of the Federal Register on July 1, 1982.

Dated: March 6, 1985.

Lee Thomas,

Administrator.

PART 52—[AMENDED]

Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart EE—New Hampshire

1. Section 52.1520, paragraph (c) is amended by adding paragraph (34) as follows:

§ 52.1520 Identification of plan.

(c) * * *

(34) Revisions to Part (Air) 610 of Chapter 600, "Statewide Permit System" for the preconstruction permitting of new major sources and major modifications in nonattainment areas submitted on April 9, 1984 and September 10, 1984 by the New Hampshire Air Resources Commission.

2. Section 52.1525, is amended by adding the following line:

§ 52.1525 EPA-approved New Hampshire State regulations.

Title/subject	State citation chapter	Date adopted by state	Date approved by EPA	Federal Register citation	§ 52.1520	Comments
• •	• •	•	•	•	•	•
Statewide Permit System.	CH (AIR) 600	1–26–84	3–13–85	3–13–85	(c) 34	
• •	• •	•	•	•	•	•

[FR Doc. 85–5950 Filed 3–12–85; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[A–5–FRL–2794–7]

Approval and Promulgation of Implementation Plans; Wisconsin

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Notice of final rulemaking.

SUMMARY: USEPA announces final approval of a revision to the Wisconsin State Implementation Plan (SIP). The revision incorporates Chapter NR 410 of the Wisconsin Administrative Code (WAC) into the Wisconsin SIP, and establishes an air permit fee system for Wisconsin. A notice of proposed rulemaking on this revision appeared in the September 26, 1984 (49 FR 37806), **Federal Register**. USEPA's action is based upon a SIP revision request that was submitted by the State on May 25, 1984. This revision meets the requirements of section 110(a)(2)(K) of the Clean Air Act, and has been adopted by the State after reasonable notice and public hearing.

EFFECTIVE DATE: This final rulemaking becomes effective on April 12, 1985.

ADDRESSES: Copies of this revision to the Wisconsin SIP are available for inspection at: The Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, D.C. 20408.

Copies of this SIP revision and other materials related to this rulemaking are available for inspection at the following addresses: (It is recommended that you telephone Colleen W. Comerford, at (312) 886–6034, before visiting the Region V Office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604

U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street SW., Washington, D.C. 20460

Wisconsin Department of Natural Resources, Bureau of Air Management, 101 South Webster, Madison, Wisconsin 53707

FOR FURTHER INFORMATION CONTACT: Colleen W. Comerford, (312) 886–6034.

SUPPLEMENTARY INFORMATION:

Background

In today's final rulemaking action, USEPA is approving a revision to the Wisconsin SIP consisting of Chapter NR 410 of the Wisconsin Administrative Code (WAC), Air Permit Fees. This

revision establishes an air permit fee system of Wisconsin, as required by section 110(a)(2)(K) of the Clean Air Act (Act). Air permit fees will allow Wisconsin to recover the costs of reviewing and acting upon permit applications, as well as the costs of implementing and enforcing the terms and conditions of such permits. NR 410 was submitted to USEPA as a SIP revision by the State on May 25, 1984.

Under this SIP revision, the air permit fees to be charged are as follows:

Type of fee	Cost
Application—Construction/Replacement of Minor Source	$1,050
Application—Modification of Minor Source	800
Application—Construction/Reconstruction/ Replacement of Major Source	2,550
Application—Modification of Major Source	1,400
Application—Additional Fee for Specific Review Action	150–1,500
Implementation/Enforcement (Annual Basis):	
—Major Source	500
—Minor Source	200

USEPA has reviewed this SIP revision and has determined that it meets the requirements of section 110(a)(2)(K) of the Clean Air Act. On September 26, 1984 (49 FR 37806), USEPA published a notice proposing to approve this SIP revision. No public comments were received on this action. Therefore, USEPA is taking final action to approve the permit fee rule, NR 410 of the WAC, as a revision to the Wisconsin SIP.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by 60 days from today. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Incorporation by reference.

Note.—Incorporation by reference of the State Implementation Plan for the State of Wisconsin was approved by the Director of the **Federal Register** on July 1, 1982.

This notice is issued under authority of sections 110 and 172 of the Clean Air Act, as amended (42 U.S.C. 7410 and 7502).

Dated: March 6, 1985.

Lee Thomas,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS—WISCONSIN

Title 40 of the Code of Federal Regulations, Chapter I, Part 52 is amended as follows:

Section 52.2570 is amended by adding new paragraph (c)(37) as follows:

§ 52.2570 Identification of plan.

* * * * *

(c) * * *

(37) On May 25, 1984, the Wisconsin Department of Natural Resources submitted a permit fee rule, Chapter NR 410, which establishes air permit application fees and air permit implementation and enforcement fees, as a revision to the SIP.

* * * * *

[FR Doc. 85–5951 Filed 3–12–85; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 180

[PP 3F2826/R742, PH–FRL 2791–4]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Monourea Sulfuric Acid Adduct

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes an exemption from the requirement of a tolerance for residues of the herbicide monourea sulfuric acid adduct in or on all raw agricultural commodities. This exemption from the requirement of a tolerance for residues of the herbicide was requested by the Union Oil Co. of California.

EFFECTIVE DATE: Effective on March 13, 1985.

ADDRESS: Written objections, identified by the document control number [PP 3F2826/R742], may be submitted to the:

Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

By mail: Robert J. Taylor, Product Manager (PM) 25, Registration Division (TS–767C), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 245, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–1800).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of April 6, 1983 (48 FR 15002), which announced that the Union Oil Co. of California, 461 South Boylston St., Los Angeles, CA 90017, had filed pesticide petition 3F2826 with the EPA. The petition proposed amending 40 CFR 180.1019 by establishing an exemption from the requirement of a tolerance for residues of the herbicide monourea sulfuric acid adduct in or on all raw agricultural commodities. The Agency is proposing establishment of 40 CFR 180.1084 since regulation under § 180.1019 is not appropriate.

No comments were received in response to the notice of filing.

The data submitted in the petition and other relevant material have been evaluated. The toxicology data considered in support of the exemption from the requirement of a tolerance include an acute oral lethal dose (LD_{50}) study in female rats with an LD_{50} of 350 milligrams (mg)/kilogram (kg), and male rats with an LD_{50} of 1,200 mg/kg, an eye irritation study, an inhalation study (LC_{60} 10.8 mg/l), and a dermal irritation study (29/kg). All other toxicology studies and a three-generation reproduction study were waived in accordance with the provisions of 40 CFR 162.45(c). The requirement of an adequate analytical method has been met. The product does not appear to present an unacceptable hazard to humans, fish, or wildlife.

The pesticide is considered useful for the purpose for which the exemption is sought. Based on the information cited above, the Agency has determined that the exemption from the requirement of a tolerance will protect the public health and is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–

354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** on May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

(Sec. 408(d)(2), 68 Stat. 512 (21 U.S.C. 346a(d)(2)))

Dated: February 28, 1985.

Steven Schatzow,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR 180.1084 is added, to read as follows:

§ 180.1084 Monourea sulfuric acid adduct: Exemption from the requirement of a tolerance.

Monourea sulfuric acid adduct is exempted from the requirement of a tolerance when used as a herbicide in or on all raw agricultural commodities.

[FR Doc. 85–5445 Filed 3–12–85; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 180

[00000./R744; FRL–2795–5]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Editorial Corrections

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; Correction.

SUMMARY: This document corrects two typographical errors that were inadvertently introduced during the automation of the Code of Federal Regulations (CFR).

EFFECTIVE DATE: March 13, 1985.

FOR FURTHER INFORMATION CONTACT: John A. Richards, Chief, Federal Register Staff (TS–788B), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E–603, 401 M Street SW., Washington, D.C. (202–382–2253).

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 25, 1971 (36 FR 22540), EPA added to 40 CFR 180.1001(c) the entry "Sodium dioctylsulfosuccinate." In the **Federal Register** of September 2, 1975 (40 FR 40161), EPA added to § 180.1001(c) the entry "Sodium monoalkyl and dialkyl (C_6–C_{16}) phenoxybenzene disulfonate mixtures containing not less than 70 percent of the monoalkylated product." Inadvertent typographical errors have been introduced into these entries in the CFR. The entry for "Sodium dioctylsulfosuccinate" appears as "Sodium dioetylsulfosuccinate," and the entry for "Sodium monoalkyl and dialkyl (C_6–C_{16}) phenoxybenzene disulfonate mixtures containing not less than 70 percent of the monoalkylated product" appears as "Sodium monoalkyl and dialkyl (C_6–C_{10}) phenoxybenzene disulfonate mixtures containing not less than 70 percent of the monoalkylated product." This document corrects the two typographical errors.

Dated: March 5, 1985.

Steven Schatzow,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, Part 180 is corrected in § 180.1001(c) as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(c) * * *

Inert ingredients	Limits	Uses
* * * * *		
Sodium dioctylsulfosuccinate		Do.
* * * * *		
Sodium monoalkyl and dialkyl (C_6–C_{16}) phenoxybenzene disulfonate mixtures containing not less than 70 percent of the monoalkylated product.		Do.
* * * * *		

* * * * *

[FR Doc. 85–5979 Filed 3–12–85; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 180

[OPP–300109A; FRL–2795–6]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; N-Methylpyrrolidone; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: This document corrects the final rule on *N*-methylpyrrolidone that was published in the **Federal Register** of January 30, 1985. This action is necessary to correct the CAS Registry No.

FOR FURTHER INFORMATION CONTACT: N. Bhushan Mandava, Registration Support and Emergency Response Branch, Registration Division (TS–767), Environmental Protection Agency, Rm. 724A, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–7700).

SUPPLEMENTARY INFORMATION: In FR Doc. 85–2426, published at page 4212 in the **Federal Register** of January 30, 1985, the following correction is made: In the entry for *N*-methylpyrrolidone in paragraph (d) of § 180.1001 *Exemptions from the requirement of a tolerance* the parenthetical entry "(CAS Reg. No. 120–94–5)" is corrected to read "(CAS Reg. No. 872–504)."

Dated: March 5, 1985.

Steven Schatzow,

Director, Office of Pesticide Programs.

[FR Doc. 85–5978 Filed 3–12–85; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 180

[OPP–300110A; FRL–2795–4]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; 2-Hydroxy-4-N-Octoxybenzophenone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule exempts the inert ingredient 2-hydroxy-4-*n*-octoxybenzophenone from the requirement of a tolerance when used as a light stabilizer in pesticide formulations applied to growing crops only. This regulation was requested by the American Hoechst Corp.

EFFECTIVE DATE: Effective on March 13, 1985.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A–110), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

By mail: N. Bhushan Mandava, Registration Support and Emergency Response Branch, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, 703–557–7700.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of January 16, 1984 (49 FR 2296), which announced that the American Hoechst Corp., Somerville, NJ 08876, had requested that 40 CFR 180.1001(d) be amended by establishing

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an exemption from the requirement of a tolerance for the inert ingredient 2-hydroxy-4-*n*-octoxybenzophenone when used as a light stabilizer in pesticide formulations applied to growing crops only.

Inert ingredients are ingredients that are not active ingredients as defined in 40 CFR 162.3(c), and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as water; baits such as sugar, starches, and meat scraps; dust carriers such as talc and clay; fillers; wetting and spreading agents; propellants in aerosol dispensers; and emulsifiers. The term "inert" is not intended to imply nontoxisity; the ingredient may or may not be chemically active.

In the proposed rule, EPA stated the basis for a determination that when used in accordance with good agricultural practices, this ingredient is useful and does not pose a harzard to humans or the environment.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The pesticide is considered useful for the propose for which the exemption is sought. It is concluded that the exemption from the requirement of a tolerance will protect the public health and is established as set forth below.

Any person adversely affected by this regulations may, within 30 days after publication of this notice in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346a(e)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: March 5, 1985.

Steven Schatzow,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR 180.1001(d) is amended by adding and alphabetically inserting the inert ingredient as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(d) * * *

Inert ingredients	Limits	Uses
* * * * *		
2-Hydroxy-4-n-octoxybenzophenone (CAS Reg No. 1843-05-6)	Not more than 0.2 pt of pesticide formulation	Light stabilizer
* * * * *		

[FR Doc. 85-5980 Filed 3-12-85; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[OPP-300111A; FRL-2795-3]

Pesticide Programs; Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Dried Grape Pomace

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule exempts dried grape pomace from the requirement of a tolerance when used as a solid diluent, carrier in pesticide formulations. This regulation was requested by the Pennwalt Corp.

EFFECTIVE DATE: Effective on March 13, 1985.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

By mail: N. Bhushan Mandava, Registration Support and Emergency Response Branch, Environmental Protection Agency, 401 M St. SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, 703-557-7700.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of January 9, 1985 (50 FR 1071), which announced that the Pennwalt Corp., Philadelphia, PA 19102, had requested that 40 CFR 180.1001(c) be amended by establishing an exemption from the requirement of a tolerance for dried grape pomace when used as a solid diluent, carrier in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest.

Inert ingredients are ingredients that are not active ingredients as defined in 40 CFR 162.3(c), and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as water; baits such as sugar, starches, and meat scraps; dust carriers such as talc and clay; fillers; wetting and spreading agents; propellants in aerosol dispensers; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

In the proposed rule, EPA stated the basis for a determination that when used in accordance with good agricultural practices, this ingredient is useful and does not pose a hazard to humans or the environment.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The pesticide is considered useful for the purpose for which the exemption is sought. It is concluded that the exemption from the requirement of a tolerance will protect the public health and is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this notice in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346a(e))

Dated: March 5, 1985.

Steven Schatzow,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR 180.1001(c) is amended by adding and alphabetically inserting the inert ingredient as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(c) * * *

Inert ingredients	Limits	Uses
Grape pomace, dried		Solid diluent, carrier

[FR Doc. 85-5976 Filed 3-12-85; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 228

[OW-FRL-2796-1]

Ocean Dumping; Interim Final Designation of Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: EPA today designates the existing dredged material disposal site located adjacent to the San Francisco main ship channel as an EPA approved ocean dumping site for the dumping of dredged material. This action is necessary to provide an acceptable ocean dumping site for the current and future disposal of dredged material resulting from the annual dredging of the San Francisco main ship channel. EPA is promulgating this designation as an interim final rule to give the public an opportunity to comment on a change to the site restriction made after the close of the comment period.

DATES: This site designation shall become effective on April 12, 1985. Comments must be submitted no later than April 12, 1985.

ADDRESSES: The file supporting this final designation is available for public inspection at the following locations:

EPA Public Information Reference Unit (PIRU), Room 2904 (rear), 401 M Street Southwest, Washington, DC
EPA Region IX, 215 Fremont Street, San Francisco, California

FOR FURTHER INFORMATION CONTACT: Mr. Paul Pan, Chief, Environmental Analysis Branch (WH-548), EPA, Washington, DC 20460, 202/755-9231.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 et seq. ("the Act"), gives the Administrator of EPA the authority to designate sites where ocean dumping may be permitted. On September 19, 1980, the Administrator delegated the authority to designate ocean dumping sites to the Assistant Administrator for Water and Waste Managment, now the Assistant Administrator for Water. This site designation is being made pursuant to that authority.

The EPA Ocean Dumping Regulations (40 CFR Chapter I, Subchapter H, § 228.4) state that ocean dumping sites will be designated by promulgation in accordance with Part 228. A list of "Approved Interim and Final Ocean Dumping Sites" was published on January 11, 1977 (42 FR 2461 et seq.) and was extended on February 7, 1983 (48 FR 5557 et seq.). That list established the San Francisco Channel Bar site as an interim site and extended its period of use until January 31, 1984. The interim designation of this site was further extended to January 31, 1985, on March 9, 1984 (49 FR 8923 et seq.), in order to provide a site necessary for the disposal of dredged material from the San Francisco area until such time as rulemaking for an ocean disposal site for continuing use can be completed.

B. EIS Development

EPA has prepared an Environmental Impact Statement (EIS) in accordance with EPA's Statement of Policy for Voluntary Preparation of EIS's (39 FR 16186, May 7, 1974; 39 FR 37119, October 21, 1974). On November 28, 1980, a notice of availability of the draft EIS for public review and comment was published in the **Federal Register**. This draft EIS envisioned restricting site use to dredged material that was composed "predominantly of sand, gravel, rock, or any other naturally occurring bottom sediment" from an area of high wave energy, and to compatible dredged material "for beach nourishment or restoration." (40 CFR 227.13(b).) A revised draft of the San Francisco Channel Bar EIS was subsequently issued recommending that disposal be allowed of other dredged material found environmentally acceptable for ocean disposal after testing as outlined at 40 CFR 227.13. As recommended by the revised draft EIS, the quantity and acceptabiltiy of material for ocean disposal at this site would be considered by EPA and the Corps of Engineers on a case-by-case basis within each project EIS or permit application evaluation.

On February 26, 1982, a notice of the availability of the revised draft EIS for public review and comment was published in the **Federal Register** (47 FR 8402). The public comment period on this revised draft EIS closed April 12, 1982. On September 10, 1982, a notice of availability of the final EIS for public review and comment was published in the **Federal Register** (47 FR 39886). The public comment period on the final EIS closed October 12, 1982. This document is available for public inspection at the addresses given above and is summarized in the following paragraphs.

The final EIS discusses the need for the action and examines ocean disposal site alternatives to the proposed action. The EIS presents the information needed to evaluate the suitability of ocean disposal areas for final designation for continuing use and is based on one of a series of disposal site environmental studies. The environmental studies and site designation process are being conducted in accordance with the requirements of the Act, the Ocean Dumping Regulations, and other applicable Federal environmental legislation.

C. Site Designation

On August 29, 1984, EPA proposed designation of this site for the continuing disposal of dredged materials from the entrance of the San Francisco main ship channel and other dredged materials meeting the requirements of 40 CFR 227.13 (49 FR 34248). The public comment period expired on October 15, 1984. No comments were received on the proposed rule.

The entrance to San Francisco Bay is through the Gulf of the Farallones and the narrow Golden Gate. The Gulf extends from Point San Pedro on the south for 34 miles to Point Reyes on the north and has a greatest width of 23 miles from the Farallon Islands on the west to the mainland.

The location of the dredged material disposal site is three nautical miles west of the San Francisco Peninsula and one nautical mile south of, and running parallel to, the San Francisco main ship channel. It is a rectangular area, 4,572 x 914 meters, with corner coordinates as follows:

37°44'55" N., 122°37'18" W.;
37°45'55" N., 122°34'24" W.;
37°44'24" N., 122°37'06" W.;
37°45'15" N., 122°34'12" W.

The site lies with its long axis at right angles to the San Francisco Channel Bar. Water depths within the site range from 14.3 meters in the southwest and northeast corners to 11 meters in the center. Historically, the site has received an annual volume of dredged material ranging from 950,000 cubic yards to 1,500,000 cubic yards.

Most of the dredged materials proposed for ocean disposal will be from required dredging operations at the entrance of the San Francisco main ship channel which is composed primarily of sand having grain sizes compatible with naturally occurring sediments at the disposal site and containing approximately 5 percent of particles

having grain sizes finer than that normally attributed to very fine sand (.075 millimeters). Other dredged materials meeting the requirements of 40 CFR 227.13 but having smaller grain sizes may be dumped at this site only upon completion of an appropriate case-by-case evaluation by the Corps and EPA of the impact of such material on the site which demonstrates that such impact will be acceptable. Maximum quantities of dredged materials to be disposed at this site are to be determined by the permitting authority.

The proposed site designation would have allowed disposal of other dredged materials if a case-by-case evaluation showed not only that the materials would have acceptable impacts, but also that they would be compatible with natural sediments at the site and would contain no more than 5 percent of particles with grain sizes finer than .075 millimeters. Just prior to proposal, however, the Corps of Engineers requested EPA to delete the specific references to compatibility and grain size. The Corps and EPA agreed that the general requirement for a case-by-case evaluation would adequately protect the site because it would prohibit disposal of materials found to be incompatible with natural sediments or to have unacceptable grain sizes. Moreover, it was consistent with both the revised draft EIS and final EIS, neither of which recommended specific restrictions on the amount of fine-grained particles.

EPA agreed to remove the more specific restrictions to the proposed designation, but inadvertently published the proposal without deleting the appropriate language. To expedite the designation of this site, EPA is promulgating today the restriction that it intended to propose. However, to give the public a chance to comment on the precise wording of the restriction, EPA is promulgating the designation as an interim final rule. EPA will consider all comments submitted within 30 days of the publication of this notice.

D. Regulatory Requirements

Five general criteria are used in the selection and approval for continuing use of ocean disposal sites. Sites are selected so as to minimize interference with other marine activities, to keep any temporary perturbations from the dumping from causing impacts outside the disposal site, and to permit effective monitoring to detect any adverse impacts at an early stage. Where feasible, locations off the Continental Shelf are chosen. If at any time disposal operations at a site cause unacceptable adverse impacts, further use of the site will be restricted or terminated. These general criteria are set forth in § 228.5 of the EPA Ocean Dumping Regulations, and § 228.6 lists 11 specific factors used in evaluating a proposed disposal site to assure that the general criteria are met.

The existing San Francisco Channel Bar dredged material disposal site satisfies the five general criteria for continuing use. As discussed below under the 11 specific factors considered in determining compliance with these criteria, use of the site does not interfere with other marine activities, studies have shown the dumping at the site has not caused impacts outside the disposal site, and the site is in a location where effective monitoring is feasible. This site is not off the Continental Shelf; however, there are minimal environmental risks associated with use of the existing site, and use of an off-the-Shelf site would increase difficulty of monitoring and increase costs of disposal without a corresponding environmental benefit.

EPA established the 11 specific factors in § 228.6 to constitute an environmental assessment of the impact of the site for disposal. The criteria are used to make critical comparisons between the alternative sites and are the bases for final site selection. The characteristics of the existing site are reviewed below in terms of these 11 criteria.

1. *Geographical position, depth of water, bottom topography and distance from coast.* [40 CFR 228.6(a)(1).]

The site is approximately a rectangle, 4,572 x 914 meters. Its corner coordinates are given above. Water depth ranges from 11 to 14.3 meters. The only prominent features on the sea floor are sand ripples.

2. *Location in relation to breeding, spawning, nursery, feeding, or passage areas of living resources in adult or juvenile phases.* [40 CFR 228.6(a)(2).]

Many species of fish and invertebrates spawn throughout the Gulf of the Farallones or within areas in the Gulf where they occur as adults; nursery areas are similarly distributed. However, few spawning of nursery grounds have been identified in the Gulf because the areas used for these purposes are usually widespread and indistinct from the general habitat of a given species. Thus the site may serve as an established, though minor, portion of the range for these activities.

Juvenile Dungeness crabs may occur in the site during disposal operations. Crabs are highly motile, however, and studies of behavior of the species as discussed in the EIS show that they should have little difficulty escaping the thin layer of sand or finer grained material deposited during disposal operations. Fine grained or highly cohesive material if deposited so as to form thick layers could possibly immobilize the crabs. However, as noted in the discussion under factor 6, the currents at this site are such that mounding which could create thick layers does not occur.

Salmon migrate through the Golden Gate during spring in order to spawn and may pass through the site. Salmon migrating into the Bay during disposal operations would be diverted from the site but would not be prevented from entering the Golden Gate. The site may also be used as a springtime spawning area by English sole, and juveniles of English sole, sanddabs, and California halibut may be found there.

Considering the extent of the region in which spawning and nursery areas occur, disposal of dredged material at this site presents no significant threat to reproducing populations of fishes. The limited area of the disposal site and the infrequency of disposal operations minimize the direct exposure of these species to dredged material. Spawning occurs in the spring, while the annual dredging and disposal operations have been historically conducted between November and January. Under optimal weather conditions, the entire disposal cycle is completed in one month.

3. *Location in relation to beaches and other amenity areas.* [40 CFR 228.6(a)(3).]

The site is approximately 3 nautical miles from the San Francisco coastline. The beaches in this region are undeveloped and experience light to moderate public use. The location of the present interim site was chosen by the Corps of Engineers in 1972 partly in anticipation that the sand disposed of at the site would build up eroding beaches south of the site.

4. *Types and quantities of wastes proposed to be disposed of, and proposed methods of release, including methods of packing the waste, if any.* [40 CFR 228.6(a)(4).]

Dredged material from the entrance of the main ship channel is the only material currently disposed at the site and is excluded from further testing in compliance with 40 CFR 227.13(b)(1). This material is composed primarily of fine- and medium-grained sands, essentially identical to the material at the site. Historically, annual volumes have ranged from 950,000 cubic yards to 1,500,000 cubic yards.

Other dredged material meeting the requirements of 40 CFR 227.13 but having smaller grain sizes may be dumped at this site only upon

completion of an appropriate case-by-case evaluation of the impact of such material on the site which demonstrates that such impact will be acceptable.

The dredged material is presently transported by a hopper dredge equipped with subsurface release mechanisms. None of the material is packaged in any manner. EPA is not aware of any plans to change the method of release.

5. *Feasibility of surveillance and monitoring.* [40 CFR 228.6(a)(5).]

The optimum surveillance range of the United States Coast Guard Vessel Traffic Service (VTS) is 16 nautical miles from Point Bonita. Thus, the site is well within radar range, and surveillance would not be difficult. Monitoring is feasible at the site.

Monitoring by the Corps of Engineers, EPA, and permittees will continue for as long as the site is used. Periodic reports of the monitoring operations will be made available to interested persons upon request. If evidence of significant adverse environmental effects is found, notice of availability of reports on such findings and proposed actions will be published in the **Federal Register**.

6. *Dispersal, horizontal transport and vertical mixing characteristics of the area, including prevailing current direction and velocity, if any.* [40 CFR 228.6(a)(6).]

Strong tidal currents are the dominant influence on water movement at the site and in the adjacent areas. The mean direction of the current alternates with the tidal cycle, between southwest and northeast, and the net water movement is to the southwest. Average current velocity is less than 1 knot.

Dredged material dumped at the site quickly reaches the bottom but is widely dispersed in the process by the strong currents, so that no mounding takes place. The settled material forms a uniform bottom layer with an average thickness of two inches.

Long-term sediment transport oscillates between inshore and offshore movements, and the site is located in an area of the California coastline which exhibits limited net littoral transport. Thus, the majority of dredged material dumped at the site would exhibit some oscillatory local movement but would remain within the region of the site. The dredged material acceptable for disposal at the site is similar to the natural sediments of this site, and any transport of the material past the actual boundaries of the disposal site would not be a matter of concern, particularly since the benthic fauna throughout the area are adapted to continuing natural sediment movement. In addition, any net littoral transport of the material toward shorelines would assist in building up eroding beaches.

7. *Existence and effects of current and previous discharges and dumping in the area (including cumulative effects).* [40 CFR 228.6(a)(7).]

The majority of the benthic fauna at the site are motile and able to withstand temporary burial. Any fish in the site vicinity would not be significantly affected by the transient post-disposal effects, such as the turbidity plume, and could escape by swimming away from the site. The Corps of Engineers concluded that there is little chance that disposal of dredged material at the site has any long-term adverse effect on the indigenous biological community of the Bar. Based on review of the information provided to EPA by the Corps of Engineers and other data reported in the EIS on the site, EPA agrees with the Corps' conclusions.

8. *Interference with shipping, fishing, recreation, mineral extraction, desalination, fish and shellfish culture, areas of special scientific importance and other legitimate uses of the ocean.* [40 CFR 228.6(a)(8).]

Extensive shipping, fishing, and recreational activities take place in the Gulf of the Farallones throughout the year. Past disposal of dredged material at the site and at other nearby disposal sites has never interfered with these activities.

9. *The existing water quality and ecology of the site as determined by available data or by trend assessment or baseline surveys.* [40 CFR 228.6(a)(9).]

Water quality at the site is influenced by San Francisco Bay and entrained ocean waters. The Corps of Engineers monitored water quality at the site following dredged material disposal in 1974 and observed that effects on salinity, pH, dissolved oxygen, and turbidity were either nonexistent or dissipated within several minutes. They noted that water ebbing from San Francisco Bay increased turbidity at the site more significantly than the disposal operations.

The material dredged from the main ship channel is nearly identical in silt content to the natural sediments of the site. Thus, the dredged material from the entrance channel would not substantially alter the natural sediments to which the endemic fauna are adapted, and a change in the benthic ecology by such effect is precluded. Large amounts of fine-grained or cohesive material from other areas, disposed in a relatively short period of time, could change the grain size composition of the site. However, because of the high energy nature of the site, the small amounts of these materials disposed over an extended period as part of predominantly sand dredged material would not be expected to materially change the grain size composition of the sites.

10. *Potentiality for the development or recruitment of nuisance species in the disposal site.* [40 CFR 228.6(a)(10).]

Nuisance species are rare in open coastal waters. The dynamic natures of many features of the marine environment seem to disrupt conditions which favor nuisance species. Physical impact of dredged material disposal alone is unlikely to promote nuisance species at the site. At the existing site, the naturally occurring sediments would not be significantly altered by the disposal of dredged material, and the original inhabitants of the site would quickly recolonize the impact area.

11. *Existence at or in close proximity to the site of any significant natural or cultural features of historical importance.* [40 CFR 228.6(a)(11).]

The Bureau of Land Management (BLM) maintains an inventory of cultural and historic resources for the Pacific Coast, including offshore areas. Based on this inventory, BLM mapped shipwreck zones for the Gulf of the Farallones. The site is in an area classified as Zone 2 (cluster of at least three shipwrecks within five nautical miles or a single shipwreck within one nautical mile). The National Maritime Museum in San Francisco determined that the only areas to be excluded from dredged material disposal by reason of shipwrecks with historical interest are Drake's Bay and the waters off Tennessee Cove in Marin County. Neither of these areas would be affected. No other natural or cultural features of historical importance exist at or near the site.

E. Action

The existing site is compatible with the criteria used for site evaluation. EPA considered whether it would be preferable to designate a different site and evaluated three others areas: An inshore area, a mid-shelf area, and a shelf-break (i.e., off the edge of the Continential Shelf) area. For the following reasons, EPA has determined that the existing site is the preferable site for the disposal of dredged material. These factors are discussed in greater detail in the EIS.

Sediment dredged from the main ship channel is nearly identical to the natural sediment of the site in grain size; thus, the suitability of site sediments for the existing types of fauna found in and around the site, or the inshore site, would not be altered.

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The benthic fauna at the existing and inshore sites are more resistent to burial than those at the mid-shelf and shelf-break sites.

The impact on fisheries would be minimized by use of the existing or inshore sites. While even a total loss of existing feeding grounds at the mid-shelf and shelf-break sites would be insignificant in comparison to the total feeding area available in the Gulf of the Farallones, such a negative impact can be avoided by designating either the existing site or the inshore site. Since the existing site has been historically used and the alternative sites offer no advantages from an environmental perspective, and since the mid-shelf and shelf-break sites have the potential for greater adverse effects, EPA is giving the existing site interim final designation.

The final EIS includes the Agency's assessment of the six comments received during the comment period on the revised draft EIS. Comments correcting facts presented in the revised draft EIS were incorporated in the text and the changes noted in the final EIS. Specific comments which could not be appropriately treated as text changes were responded to point-by-point in the final EIS, following the letters of comment. Two comments were received on the final EIS. One comment was that the concerns expressed on the draft EIS had been satisfactorily addressed. In the other comment, the National Marine Fisheries Service (NMFS) recommended that the channel bar site not be used for disposal of fine-grained material until an analysis is completed which can document that disposal of such material would not significantly impact biota at the site. EPA believes that the dredged material resulting from the operation and maintenance of existing channels would be sandy material which would be compatible with the natural sediments of the disposal site. This may include dredged material from the main ship channel itself which may be excluded from further testing, and dredged material from other areas which has been tested and found environmentally acceptable under § 227.13 and has grain sizes compatible with the natural sediments at the site.

The data presently available are not adequate to assess the impact of the disposal of fine-grained material at the proposed site. Dredged material meeting the requirements of 40 CFR 227.13 but having smaller grain sizes may be dumped at this site only upon completion of an appropriate case-by-case evaluation of the impact of such material on the site which demonstrates that such impact will be acceptable.

Based on the information reported in the EIS, EPA is designating the existing San Francisco Channel Bar site for continuing use for the ocean disposal of specified dredged material where the applicant has demonstrated compliance with EPA's ocean dumping criteria. The EIS is available for inspection at the addresses given above.

The designation of the existing San Francisco Channel Bar dredged material disposal site as a EPA Approved Ocean Dumping Site is being published as interim final rulemaking for the reasons explained above. Management authority of this site is now delegated to the Regional Administrator of EPA Region IX.

It should be emphasized that, if an ocean dumping site is designated, such a site designation does not constitute or imply EPA's approval of actual disposal of materials at sea. Before ocean dumping of dredged material at the site may commence, the Corps of Engineers must evaluate a permit application according to EPA's ocean dumping criteria. If a Federal project is involved, the Corps must also evaluate the proposed dumping in accordance with those criteria. In either case, EPA has the right to disapprove the actual dumping, if it determines that environmental concerns under the Act have not been met.

F. Regulatory Assessments

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. EPA has determined that this action will not have a significant impact on small entities since the site designation will only have the effect of providing a disposal option for dredged material. Consequently, this action does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action will not result in an annual effect on the economy of $100 million or more or cause any of the other effects which would result in its being classified by the Executive Order as a "major" rule. Consequently, this rule does not necessitate preparation of a Regulatory Impact Analysis.

This rule does not contain any information collection requirements subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

List of Subjects in 40 CFR Part 228

Water pollution control.

Authority: 33 U.S.C. sections 1412 and 1418.

Dated: March 7, 1985.

Henry L. Longest II,

Acting Assistant Administrator for Water.

PART 228—[AMENDED]

In consideration of the foregoing, Subchapter H of Chapter I of Title 40 is amended by removing paragraph (J), the San Francisco Channel Bar Dredged Material Disposal Site, from paragraph (a)(1)(i) of § 228.12 and adding to § 228.12(b) an ocean dumping site for Region IX as follows:

§ 228.12 Delegation of management authority for ocean dumping sites.

* * * * *

(b) * * *

(22) San Francisco Channel Bar Dredged Material Site—Region IX.

Location: 37°45'55" N, 122°37'18" W; 37°45'45" N, 122°34'24" W; 37°44'24" N, 122°38'06" W; 37°45'15" N, 122°34'12" W.

Size: 4,572 x 914 meters.

Depth: Ranges from 11 to 14.3 meters

Primary Use: Dredged material.

Period of Use: Continuing use.

Restriction: Disposal shall be limited to material from required dredging operations at the entrance of the San Francisco main ship channel which is composed primarily of sand having grain sizes compatible with naturally occurring sediments at the disposal site and containing approximately 5 percent of particles having grain sizes finer than that normally attributed to very fine sand (0.75 millimeter). Other dredged materials meeting the requirements of 40 CFR 227.13 but having smaller grain sizes may be dumped at this site only upon completion of an appropriate case-by-case evaluation of the impact of such material on the site which demonstrates that such impact will be acceptable.

[FR Doc. 85–5949 Filed 3–12–85; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 435, 436, 440 and 441

[BERC-182-F]

Medicaid Program; Home and Community-Based Services

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This rule amends the interim final Medicaid regulations published on October 1, 1981 that implemented section 2176 of the Omnibus Budget Reconciliation Act of 1981. The regulations permit States to offer, under a Secretarial waiver, a wide array of home and community-based services that an individual may need to avoid institutionalization. These final regulations: (1) Provide that certain facilities must meet standards, including those established under section 1616(e) of the Social Security Act, if waiver services are to be provided in the facilities, (2) revise the equation that States must use to determine the cost-effectiveness of their waiver programs, (3) clarify that these services are available, at a State's option, to both medically needy individuals and categorically needy individuals, (4) provide that all recipients who are eligible under a special income level will have their post-eligibility income treated in a comparable manner, (5) revise some aspects of the assurances and the documentation that States must provide in their waiver requests, (6) revise the effective date of an approved waiver, (7) established a federal financial participation (FFP) limit for expenditures for home and community-based services, and (8) specify the hearings procedures that apply to waiver terminations.

EFFECTIVE DATE: April 12, 1985. However, in § 441.304(a) the change specifying the effective date of an approved waiver is effective September 9, 1985. In § 441.303(g), the change requiring an independent assessment of a waiver applies only to waiver requests and requests for extensions that are received after April 12, 1985. In § 441.301(b)(6), the change requiring States to submit individual waiver requests for each target group applies only to new waiver requests that are received after April 12, 1985. Finally, the provisions discussed in section IV. of the preamble, *Applicability of Regulation Changes*, have other effective dates as specified in section IV.

FOR FURTHER INFORMATION CONTACT: Robert Wren, (301) 594-9691.

SUPPLEMENTARY INFORMATION:

I. Background

On October 1, 1981, we published an interim final rule with a comment period (46 FR 48532) implementing the provisions of section 2176 of Pub. L. 97-35, the Omnibus Budget Reconciliation Act of 1981. Those regulations established a waiver program under which States are reimbursed for providing home and community-based services to individuals who would otherwise require the level of care provided in a skilled nursing facility (SNF) or intermediate care facility (ICF).

II. Statutory Amendments

Section 2176 added a new section 1915(c) to the Social Security Act (Act) that authorizes the Secretary to waive certain Medicaid statutory requirements to allow a State to cover a broad array of home and community-based services provided to individuals as an alternative to institutionalization. It also provides that the Secretary may not approve the State's request for a waiver unless the State, at a minimum, provides satisfactory assurances to the Secretary that:

1. Necessary safeguards (including adequate standards for provider participation) have been taken to protect the health and welfare of beneficiaries provided services under the waiver and to assure financial accountability for funds spent for the services;

2. The State will provide for an evaluation of the need for the inpatient services for individuals who are entitled to and who may require the level of care provided in an SNF or ICF under the State plan; and who may be eligible for care under the home and community-based waiver;

3. Any individuals who are determined to be likely to require the level of care provided in an SNF or ICF are informed of the feasible alternatives available under the waiver, and are given the choice of the inpatient services or the alternative noninstitutional services;

4. The average per capita expenditure estimated by the State in any fiscal year for medical assistance provided to these individuals under the waiver does not exceed the average per capita expenditure that the State reasonably estimates would have been made in that fiscal year for these individuals if the waiver had not been granted; and

5. The State will provide to the Secretary annually, consistent with a data collection plan designed by the Secretary, information on the impact of the waiver on the type and amount of medical assistance provided under the State plan and on the health and welfare of its beneficiaries.

Additionally, the law specifically provides that a waiver granted under section 1915(c) of the Act may include a waiver of the requirements of sections 1902(a) (1) and (10) of the Act. Under section 1902(a)(1) of the Act, a State plan for medical assistance must be in effect throughout the State. Section 1902(a)(10) of the Act, as amended by section 2171 of Pub. L. 97-35 and section 137(b)(7) of Pub. L. 97-248, the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), sets forth certain Medicaid eligibility and service coverage requirements. It requires the plan to provide the same services (in amount, duration, and scope) to all categorically needy individuals; and also requires that the services available to the categorically needy are not less in amount, duration, and scope than those available to medically needy beneficiaries. Under the waiver, home and community-based services do not have to be provided throughout the State. Also, a State can choose to provide home and community-based services to a limited group of eligibles, such as the developmentally disabled. The State is not required to provide the services to all eligible individuals who require an ICF or SNF level of care.

Waivers granted under section 1915(c) of the Act are for an initial term of three years and may be extended for additional three-year periods. The Secretary may approve waiver extensions if a State requests an extension, the extension request meets the waiver requirements for the extended period, and the Secretary determines that the State met all the assurances discussed above for the full three years of the initial waiver. Section 1915(d) of the Act, as added by section 2175 of Pub. L. 97-35 and redesignated as section 1915(e) of the Act by section 2176 of Pub. L. 97-35, provides that the Secretary shall monitor the implementation of the waivers granted to determine if the requirements of the waivers are being met. After giving the State notice and an opportunity for a hearing, the Secretary will terminate any waivers for noncompliance with the requirements.

Under the waiver, the State may exclude those individuals for whom there is a reasonable expectation that home and community-based services would be more expensive than the Medicaid services the individual would otherwise receive.

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A waiver will also allow a State to provide for such services as case management, homemaker, home health aide, personal care, adult day health, habilitation, and respite care, and other services requested by the State and approved by the Secretary. The services must be consistent with plans of care that are subject to the State's approval.

Section 137(b)(7) of TEFRA added a new section 1902(a)(10)(A)(ii)(VI) to the Act that authorizes optional categorical eligibility to individuals who would be eligible under the State plan if they were in a medical institution and who would require the level of care provided in a hospital, skilled nursing facility or intermediate care facility but for the provision of home and community-based services described in section 1915(c) of the Act, the cost of which could be reimbursed under the State plan. Under this option, individuals must receive home and community-based services under a section 1915(c) waiver.

The report of the Conference Committee on Pub. L. 97-248 states that "The conference agreement makes explicit current law related to coverage of the optional categorically needy, as reflected in current regulations at 42 CFR 435.210 *et seq.* The conferees do not intend any change in current law through this recodification" (H.R. Report No. 97-760, p. 441). We have made technical revisions to the provisions of § 435.232, "Individuals receiving home and community-based services", and redesignated that section to reflect this statutory provision and to clarify that all categorically and medically needy recipients who would be eligible for Medicaid if institutionalized and who would otherwise require institutionalization, are eligible for services under this waiver. (See section III, *Regulation Changes*)

III. Regulation Changes

We received 32 comments on the interim final rule. We have considered those comments (discussed in detail in Section VI, *Public Comments*) and are making the following changes to the interim final rule.

A. Application of Section 1616(e) of the Act to Waivers

We are amending § 441.302(a) of the regulations to provide that board and care facilities must meet the standards established under section 1616(e) of the Act, if any waiver services are to be furnished in those facilities. Section 1616(e) of the Act, commonly referred to as the Keys amendment, requires States to establish and enforce safety and related standards for institutions, foster homes, or group living arrangements where a significant number of Supplemental Security Income (SSI) recipients are residing, or are likely to reside. This amendment was enacted on October 20, 1976 by section 505(d) of Pub. L. 94-566 as a result of concern over a series of fires in board and care facilities throughout the country. It became effective on October 1, 1977.

Section 1915(c) of the Act explicitly requires that a waiver may be approved only if the State provides us with satisfactory assurance that necessary safeguards have been taken to protect the health and welfare of the beneficiaries receiving the services. We received many public comments suggesting tighter standards, including a suggestion to devise national health and safety standards. While we remain committed to the principle of providing States with maximum flexibility, we also agree with the public comments suggesting the necessity of additional health and safety assurances. Accordingly, we have included the provision that States meet the requirements of section 1616(e) of the Act when home and community-based services are provided in facilities subject to the provisions of section 1616(e) of the Act. We believe this will assure some of the additional protection that we and the public believe is necessary. Since the requirement for Keys amendment certification has been in effect since 1977, we do not believe that we are imposing an undue burden on the States. Therefore, HCFA will not approve any waiver request where waiver services will be provided in facilities that are covered by section 1616(e) of the Act, unless the State provides us with copies of its standards applicable to those facilities and certifies in the waiver request that those facilities comply with applicable State standards.

For purposes of the home and community-based services regulations, we will impose the Keys amendment requirements on all facilities that are subject to the Keys amendment standards and that have residents who receive home and community-based services in such facilities (whether or not the services are provided by the facilities). Many of these facilities are primarily residential and do not provide health related services themselves. We believe the statutory provision requiring an assurance satisfactory to the Secretary that necessary safeguards have been taken to protect the health and welfare of individuals provided services under the waiver covers more than provider participation standards. We also want to minimize the possibility of States using the waiver to circumvent Federal health and safety standards because other avenues of care are less costly.

Further, these standards must conform to the requirements of the Keys amendment as prescribed in 45 CFR Part 1397. These provisions apply to all waivers and are effective beginning 90 days after the publication date of these final regulations. Failure to comply with the Keys amendment requirements could result in termination of the waiver under § 441.304(d) (the current § 441.304(b) has been redesignated as § 441.304(d) in these final regulations).

B. Average Per Capita Expenditures

In these final regulations, § 441.303(d) has been redesignated as § 441.303(f) and revised as noted below.

The statute and current regulations provide that the State, in its waiver request, must assure us that the average per capita expenditure for individuals under the waiver does not exceed the average per capita expenditure, as reasonably estimated by the State, that would have been made under the State plan had the waiver not been granted. The following factors were provided in the interim final regulations to compute the average per capita expenditures:

A = The estimated number of beneficiaries who would receive the level of care provided in an SNF, ICF, or ICF/MR under the waiver.

B = The estimated Medicaid payment per eligible Medicaid user of such institutional care.

C = The estimated number of beneficiaries who would receive home and community-based services under the waiver or other noninstitutional alternative services included under the State plan.

D = The estimated Medicaid payment per eligible Medicaid user of such home and community-based services.

F = The estimated number of beneficiaries who would likely receive the level of care provided in an SNF, ICF, or ICF/MR in the absense of the waiver.

G = The estimated Medicaid payment per eligible Medicaid user of such institutional care.

H = The estimated number of beneficiaries who would receive any of the noninstitutional, long-term care services otherwise provided under the State plan as an alternative to institutional care.

I = The estimated Medicaid payment per eligible Medicaid user of the noninstitutional services referred to in H.

The following equation was provided in the interim final regulations to

compare average per capita expenditures with and without a waiver:

$$\frac{(A\times B)+(C\times D)}{F+H} < \frac{(F\times G)+(H\times I)}{F+H}$$

We are modifying the equation in § 441.303(f)(1) by revising some of the factors used by States to determine the cost-effectiveness of their waiver programs. We are also including additional factors in the equation to allow comparison of total Medicaid costs with and without the waiver. Finally, we are substituting "expenditure" for "payment" wherever the word appears in the equation to clarify that the cost estimates required mean the cost of services provided during the waiver year, regardless of the year in which payment is actually made.

- We have revised factors A and B to clarify that the estimates pertains only to expenditures for SNF, ICF, or ICF/MR care *with the wavier.*

A = The estimated number of beneficiaries who would receive the level of care provided in an SNF, ICF, or ICF/MR with the waiver.

B = The estimated annual Medicaid expenditure for SNF, ICF, or ICF/MR care per eligible Medicaid user with the waiver.

- We have corrected factor C to limit properly the data in that factor to home and community-based services.

C = The estimated annual number of beneficiaries who would receive home and community-based services under the waiver.

- We have revised factor D to clarify that the estimate pertains only to expenditures for home and community-based services.

D = The estimated annual Medicaid expenditure for home and community-based services per eligible Medicaid user.

- We have revised factor G to clarify that the estimate pertains only to expenditures for SNF, ICF, or ICF/MR care *in the absence of the waiver.*

G = The estimated annual Medicaid expenditure for SNF, ICF, or ICF/MR care per eligible Medicaid user in the absence of the waiver.

- We have included the word "annual" in all factor definitions to clarify that all estimates must be on an annual basis.

The following additional factors are being included in the equation used to compute the average per capita expenditures:

A′ = The estimated annual number of beneficiaries referred to in A who would receive any of the acute care services otherwise provided under the State plan.

B′ = The estimated annual Medicaid expenditure per eligible Medicaid user of the acute care services referred to in A'.

C′ = The estimated annual number of beneficiaries referred to in C who would receive any of the acute care services otherwise provided under the State plan.

D′ = The estimated annual Medicare expenditure per eligible Medicaid user of the acute care services referred to in C'.

F′ = The estimated annual number of beneficiaries referred to in F who would receive any of the acute care services otherwise provided under the State plan.

G′ = The estimated annual Medicaid expenditure per eligible Medicaid user of the acute care services referred to in F'.

For purposes of the equation, acute care services means all services otherwise provided under the State plan that are neither SNF, ICF, or ICF/MR services, nor the noninstitutional, long-term care services referred to in H.

The revised equation that States must use to determine the cost-effectiveness of their waiver programs is as follows:

$$\frac{(A\times B)+(A'\times B')+(C\times D)+(C'\times D')+(H\times I)}{F+H} < \frac{(F\times G)+(H\times I)+(F'\times G')}{F+H}$$

The main difference is that under the revised formula, with the additional factors, we will be able to compare total Medicaid costs with and without the waiver.

Congress was concerned that the total of all medical assistance for services provided to individuals who would qualify for home and community-based care under the State plan not exceed on an average per capita basis, the total expenditures that would be incurred for such individuals if home and community-based services were not available.

Accordingly, the statute and these regulations provide that the State, in its waiver request must assure us that the average per capita expenditure under the waiver does not exceed the average per capita expenditure, as reasonably estimated by the State that would have been made under the State plan had the waiver not been granted. Congress expected that this provision would assure that aggregate costs will not be greater than they would have been without these alternative services. (H. Rept. 97–208, p. 967)

Under the interim rules, the equation used to determine average per capita expenditures did not take into account the cost of acute care services covered under a State's plan, such as physicians services and inpatient hospital care, because we though these kinds of services would be unaffected by the waiver. However, it was pointed out in public comments we received, and reinforced by our own analysis that the calculation of average per capita expenditures without acute care services did not provide a sufficient demonstration that total or aggregate costs would not increase. Services covered under a waiver may be a relatively small part of the individual's total Medicaid costs. Moreover, an individual residing in the community and receiving waiver services may use more of acute care Medicaid services than he would have, had he been in a nursing home. Accordingly, we have revised the equation so that States will be asked to provide additional information that demonstrates the provision of waiver services will not result in overall expenditures in excess of those which would have been incurred absent the waiver. The cost of physician visits, hospitalization, prescription drugs, etc., that the individual would have received will be included in the States' estimates of Medicaid expenditures in addition to the cost of SNF or ICF care. States must provide estimates that demonstrate that the total aggregate medical assistance costs for these community-based care recipients will not be greater than they would have been without these alternative services.

For purposes of the equation in these final regulations, acute care services means all services otherwise provided under the State plan that are not SNF, ICF, or ICF/MR services, or the noninstitutional, long-term care services referred to in factor H of the equation.

If the State wishes to revise its estimates at some point after a waiver is approved for example, in order to adjust for an error in the estimates or for adding an unanticipated increase in the eligible population, other factors on both sides of the equation would also have to be adjusted as necessary and the comparison would be re-examined to determine if the waiver is still cost-effective. States whose waiver requests

were approved before or during the 90-day period following the publication date of these final regulations under the original formula will be evaluated under that formula if their estimates were submitted in that form. However, the revised formula will apply to any subsequent requests for extensions. Waiver requests that have not been approved by the 90th day after the publication date of these final regulations will be subject to the revised formula.

In developing the estimates of utilization necessary to complete the above computations, the State must continue to use actual data on nursing home cost and utilization and on cost and utilization of community-based services for the most recent year before the waiver takes effect. These figures must be adjusted by the State to reflect anticipated growth in the supply of nursing home beds, availability of community-based services, and inflation.

The State's experience with utilization and cost of home and community-based services provided under title XIX, title XX, and other programs should provide a useful basis for the necessary estimates. The data must be expressed in full-year terms, and it must represent unduplicated annualized recipient counts and not bed counts. The term *unduplicated* refers to unduplicated counts for each value in the formula specified at § 441.303(f). For example, a recipient who is an inpatient in a Medicaid long-term care facility on two occasions during the year and who also receives waiver services during the year, would be counted as one unduplicated recipient under formula value A and one unduplicated recipient under formula value C (and under the prime formula values as appropriate). However, when an individual is served under any single formula value category on multiple occasions during the year, he or she would only be counted as one unduplicated recipient in the applicable single formula value category. Since recipients may be counted more than once due to their particular circumstances during the year, States should supplement their estimates with data on the number of individuals who are counted in more than one formula value category.

We have also amended § 441.303(f) to explain that States must also submit documentation with their waiver requests, showing the number of beds in Medicaid certified SNFs, ICFs, and ICF/MRs by type, and evidence of the need for additional bed capacity in the absence of the waiver. States which propose a waiver population which would exceed the capacity of presently certified beds must produce viable certificates of need and other documentation that beds would actually be built (or have been built) and would be certified absent the waiver. Where the certificate of need process is no longer in effect or no longer viable, the State must provide other convincing data that construction would actually take place or evidence of State appropriations activity.

States must also provide data that show the occupancy rates for the beds in their Medicaid certified SNFs, ICFs, and ICF/MRs by type; whether there is any excess bed capacity for these facilities by type; and if so, the number of excess beds. If the State has waiting lists for admission to these facilities, it must provide data that show the number of persons awaiting admission to each type of facility. The State must also show how long people have to wait for admission from the time they are placed on the list. States requesting a waiver of the statewideness provision (§ 431.50) that requires a State plan to be in effect throughout the State must specify the political subdivisions in which waivered services will be offered.

In order to provide further assurance that the individuals who will receive home and community-based services require the level of care provided in an SNF, ICF or ICF/MR, we have added new documentation requirements under § 441.303(f)(4). These changes are a result of our experience in dealing with waiver requests and are needed to determine whether the State's estimates are reasonable. States will be required to specify in their waiver requests the number of recipients who will actually be deinstitutionalized from certified facilities as compared with those whose admissions would be deflected or diverted because they will be receiving waiver services. Where recipients are deflected, States will be required to provide a more detailed description of their evaluation and screening procedures for recipients to assure that waiver services will be restricted to persons who would otherwise receive institutional care. For example, more stringent assessment protocols or selection only after nursing home placement has been requested. States must also specify where the diverted individuals will be coming from and how many will come from each location, e.g., hospital patients awaiting SNF or ICF placement, or persons at home.

As under current rules, the State, in its waiver request, must provide HCFA with annual per capita expenditure estimates and describe how these estimates were derived. The State must also assure HCFA that the estimates for the product of factors C × D in the computation will not be exceeded and that FFP will not be claimed for home and community-based services expenses incurred in excess of the estimates. HCFA will review all estimates very closely to determine if they are reasonable and based on statistically supportable assumptions. Further, HCFA will compare all estimates with data the State must furnish annually on its actual experience. If the approved estimates for the home and community-based services are exceeded, the waiver may be terminated. HCFA will also begin to evaluate an approved waiver after it has been in operation for 28 months, on the basis of findings made by the Health Care Financing Administration's monitoring and assessment activities, on data the State submits annually on its waiver program for the first two years of its waiver, and the results of the independent assessment of the State's waiver program. This analysis and other information will be used to determine whether an extension of the State's waiver beyond the third year is indicated.

The current regulations require States to include information on estimated utilization rates and costs for all three types of institutional groups; that is, persons who require SNF, ICF, or ICF/MR care. We have reconsidered this requirement and have decided that data on all three categories are not necessary unless the waiver request provides services to each category. For example, there is no need for a State to provide data on persons who would need SNF and ICF care if the request is limited to individuals who would otherwise require an ICF/MR level of care. Similarly, if the request does not include persons who would otherwise require an ICF/MR level of care, a State would not be required to furnish data on that group. Section 441.303(f)(3) has been added to reflect this policy.

C. Applicability of Home and Community-Based Waivers

We have revised § 435.232 and redesignated that section as § 435.217 to clarify that all States may cover, as an optional categorically needy group, individuals who would be Medicaid eligible if institutionalized and who, but for the provision of home and community-based services, would require institutionalization in an SNF, ICF, or ICF/MR facility and who will receive home and community-based

services under a waiver granted under section 1915(c) of the Act. The redesignation is necessary because §§ 435.230–435.232 relate only to aged, blind, and disabled groups of eligible individuals. The new placement in the regulations clarifies that States may include families and children in this option as well.

Section 137(b)(7) of TEFRA added a new section 1902(a)(10)(A)(ii)(VI) to the Act. This amendment did not expand, but only clarified the provisions under section 1915(c). Some commenters to the interim final rule pointed out that coverage under § 435.232 was limited to States that covered institutionalized individuals under a special income test at § 435.231.

Our revision and redesignation provides for the inclusion of individuals whose eligibility in an institutional setting would be based on requirements of either the Supplemental Security Income (SSI) program or the State's Aid to Families with Dependent Children (AFDC) program. Our revision and redesignation also permits States that have exercised the option under section 1902(f) of the Act (to use more restrictive Medicaid eligibility requirements for the aged, blind, and disabled than those used for SSI eligibility) to cover, under a home and community-based waiver, individuals who would be eligible for Medicaid under the State's more restrictive standards if they were in a medical institution.

Medicaid eligibility under § 435.217, as revised in these final regulations, is determined in accordance with State plan criteria pertaining to individuals in SNF, ICF, or ICF/MR facilities. Depending on the State plan, this could be criteria appropriate to coverage groups described at §§ 435.121, 435.132 435.231, 435.320, and 435.330 and any other groups who are eligible only when in an institutional setting. Also, individuals described at § 435.132 (institutionalized individuals who were eligible for Medicaid in December 1973) are deemed to meet the inpatient status requirement if they are receiving home and community-based services and continue to meet the other eligibility requirements of § 435.132 besides institutionalization.

In States that choose not to elect coverage under § 435.217, services under home and community-based waivers are limited to individuals who are Medicaid eligible under other coverage groups included in the Title XIX State plan.

We are also adding a new § 436.217 to specify that Guam, Puerto Rico, and the Virgin Islands may also cover the same individuals as an optional categorically needy group.

D. Assurances

We have revised § 441.302(b) to require a State to provide HCFA with an assurance that it will arrange for an independent audit of its waiver program and make this report available to the Secretary, the Comptroller General, and their designees. We are making this revision in response to a public comment that there was a need for additional fiscal controls and oversight of the State programs, and the suggestion that a specific audit requirement be included in the regulations. This requirement may be waived by us in particular cases; for example, if the cost of the audit will exceed the estimated savings of the State's waiver program. These assurances apply to all waivers and are effective beginning 90 days after the publication date of these final regulations. States that already have approved waivers are to submit these additional assurances within this 90-day time frame.

We have revised §441.302(e) to require that a State provide HCFA with assurance that the actual total expenditures for home and community-based services under the waiver will not exceed the agency's approved estimated expenditures and that the State will not claim FFP for expenditures exceeding the approved estimate. The agency's approved estimated expenditures are the same estimates required in the supporting documentation under § 441.303(f) and these assurances apply to each year of the waiver period. These assurances apply to all waivers and are effective beginning with services provided under the waiver 90 days after the publication date of these final regulations. States that already have approved waivers are to submit these additional assurances within this 90-day time frame.

Regarding these assurances, we have also redesignated current § 441.304(b) as § 441.304(d) and revised it to make it clear that HCFA may terminate a waiver, including those approved before the effective date of these final regulations, if it finds that actual expenditures exceed the agency's approved estimate. (See section G for a discussion of FFP limitations on estimated home and community-based expenditures which also presents the rational for the revised assurance requirements of § 441.302(b) and (e)).

We have further revised § 441.302(e) to require States to provide HCFA with an assurance that aggregate Medicaid expenditures for all services provided to individuals under the waiver do not exceed the aggregate Medicaid expenditures that would be incurred for these individuals in the institutional setting, in the absence of the waiver. Such services would include; for example, physician services, acute hospital services, dental care, and pharmaceutical supplies. This additional assurance is based on one of the public comments that we received on the interim final regulations and is supported by our own findings that certain acute care services may be provided more frequently (or with greater intensity) to individuals in the home and community setting than to those in the institutional setting. To the extent that this occurs, the home and community-based services would be less cost-effective than the estimates shown. Accordingly, we have also revised § 441.303(f), which contains the equation used to estimate the average per capital expenditures under the waiver, to require that such services be reflected in the State's estimates of cost and utilization.

States that already have approved waivers are to submit the additional assurance regarding aggregate Medicaid expenditures within 90 days after the publication date of these final regulations. If a State, including those with waivers approved prior to the effective date of these final regulations is found not to be in compliance with this requirement beginning 90 days after the publication date of these final regulations, HCFA may terminate the waiver. If a termination becomes necessary, HCFA will work with the State to ensure an orderly transition so that beneficiaries will not be without necessary services.

We will not grant a waiver and may terminate an existing waiver if the Medicaid agency does not provide the required satisfactory assurances within the applicable time periods.

E. Supporting Documentation

We have revised § 441.303(a) to require the State to submit a copy of the standards that it will enforce in those facilities covered by the Keys amendment when waiver services will be furnished in those facilities. We are making this revision in response to public comments that suggested closer scrutiny of the recipients' health and safety. This requirement applies to all waivers, and is effective beginning 90 days after the publication date of these final regulations. States that already have approved waivers are to submit the assurance required under § 441.302(a)(3) and a copy of the applicable standards within this 90-day time frame.

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We have revised § 441.303(c) to include a requirement that the Medicaid agency furnish us with the procedures it uses to assure reevaluation of need at regular intervals. The requirement for a reevaluation was explained in the preamble to the interim final regulations (46 FR 48535) but was inadvertently omitted from the CFR text. We have included the additional requirement that it be done at regular intervals in response to a public comment. We have added a new § 441.303(d) that requires an agency to describe how it will meet the requirement that eligible beneficiaries be informed of the feasible alternatives available under the waiver and be permitted to choose either institutional services or home and community-based services. Finally, we have revised the assurance at § 441.302(d) to clarify that beneficiaries must be given the choice of *either* the institutional or home and community-based services.

We have added a new § 441.303(e) to require an agency to explain in its waiver request the post-eligibility treatment of income and resources for those individuals who are eligible under a special income level for home and community-based services. In the preamble of the interim final rule we stated that to insure equal treatment of institutionalized beneficiaries and beneficiaries receiving home and community-based services under a waiver, we would apply similar payment rules for those beneficiaries who are eligible for home and community-based services through use of a special income level. However, we inadvertently omitted from the CFR text, the information requirement that States tell us how they plan to treat the income and resources of those individuals receiving home and community-based services who are eligible under a special income level. Through this requirement, we will know more clearly how payment is being calculated (§§ 435.217, 435.726, and 435.735).

We have revised § 441.303(f) to require the State to provide the number of beds in Medicaid certified SNFs, ICFs and ICF/MRs by type, and evidence of the need for additional bed capacity in the absence of the waiver. The interim final regulations at § 441.303 required a State to furnish us with sufficient information to support all assurances, including the assurance concerning per capita expenditures. We have concluded that evidence of bed capacity is such an integral part of the agency's explanation of estimated per capita expenditures that no waiver request would be sufficient without this documentation. States that propose a waiver population that would exceed the capacity of presently certified beds must produce viable certificates of need and other documentation that beds would actually be built (or have been built) and would be certified absent the waiver. Where the certificate of need process is no longer in effect or no longer viable the State must provide other convincing data that construction would actually take place or evidence of State appropriations activity. Accordingly, we are specifying this information as an explicit documentation element in these final regulations. States must also provide data that show the occupancy rates for the beds in their Medicaid certified SNFs, ICFs, and ICF/MRs by type; whether there is any excess bed capacity for these facilities by type; and if so, the number of excess beds. If the State has waiting lists for admission to these facilities, it must provide data that show the number of persons awaiting admission to each type of facility. The State must also show how long people have to wait for admission from the time they are placed on the list. States requesting a waiver of the statewideness provision (§ 431.50) that requires a State plan to be in effect throughout the State must specify the political subdivisions in which waivered services will be offered.

This information is needed to determine whether a State would have the capacity to provide institutional care in the absence of a waiver to those individuals who will receive home and community-based services. If the State would not have adequate bed capacity to institutionalize these individuals, its estimates may be found unreasonable.

We have added a new § 441.303(f)(4) that requires States to specify the number of waiver clients actually being deinstitutionalized from certified facilities versus those diverted from admission. Where individuals are merely diverted, States must provide additional evaluation methods to assure that services will be restricted to persons who would otherwise receive institutional care. States must also specify where the diverted individuals will be coming from and how many will come from each location, e.g., hospital patients awaiting SNF or ICF placement, or persons at home. These changes are a result of our experience in dealing with waiver requests and are needed to determine whether the State's estimates are reasonable.

Finally, we have added a new § 441.303(g) that requires a State to provide for an independent assessment of its waiver program and make the results available to HCFA prior to the end of the three-year waiver period. The assessment must evaluate the quality of care provided to recipients, access to care, and the cost-effectiveness of the waiver, and cover at least the first 24 months of the waiver period. This requirement may be waived by us in particular cases; for example, if the State's waiver program is very small (such as a model waiver) and the cost of the assessment will exceed the estimated savings of the waiver. We are making this revision to provide more information about the impact of the waiver and to assist in determining whether a State's waiver should be extended beyond the third year. These requirements apply to all waiver requests and requests for extensions that are received after April 12, 1985.

F. Duration of Waiver

We have revised § 441.304(a) to provide that after September 9, 1985, the effective date for a waiver will be established by HCFA prospectively on or after the date of approval and after consultation with the State agency. This revision is based on our program experience that most waiver requests undergo considerable revision before final approval. Accordingly, we believe that States should not commence a waiver program until all issues are resolved and we are sure that the waiver program will be operated in accordance with applicable regulations. To facilitate a smooth transition, we are retaining our current policy for waiver requests received through September 9, 1985. Our current policy provides that a waiver becomes effective on the first day that the State meets the substantive requirements for approval as determined by HCFA and continues for a three-year period from that date. A retroactive effective date, however, cannot be earlier than the first day of the quarter in which an approvable waiver request is submitted, even though a State might have met all substantive requirements before the first day of that quarter.

We have also added new §§ 441.304(b) and 441.304(c) to clarify our policy concerning renewals of existing waivers. When we receive a request to review an existing waiver, we will determine whether that request is an extension of the existing waiver or a new waiver request. In general, if a State makes significant changes in its waiver program when it requests extension of the initial waiver, we will consider the request to be a new waiver proposal. Factors that we will use to determine whether a significant change

has been made will include changes in the eligible population, services provided, service area, and statutory sections waived. If a State submits a renewal request that would add a new group to the existing group of beneficiaries covered under the waiver, we will consider it to be two requests; one as a renewal request for the existing group, and the other as a new waiver request for the new group. When a renewal request is treated as a new proposal and we formally request additional information from the State, we *may* extend the State's waiver as initially approved for up to 90 days, if the waiver is about to expire. If a State intends to request a renewal of an existing waiver, it must submit the request at least 90 days before the third anniversary of the effective date of the waiver.

G. FFP Limits

The limitations on FFP in expenditures for home and community-based services contained in § 440.180(b) are being expanded and redesignated as a new § 441.310. This expansion expresses the intent of Congress that program effectiveness result from State assurances required under the statute. We are making these revisions based on a public comment (with which we agree) noting that under the waiver, there are no safeguards to protect against rising total costs. Clearly, it was not the intent of Congress that the home and community-based services provisions result in an increase of Medicaid long-term care expenditures. Accordingly, we are excluding from the definition of medical assistance under the waiver, payments for any expenditures in excess of the State's estimates. FFP will thus be available in these expenditures only up to the agency's approved estimate of the total expenditures for home and community-based services under the waiver. This estimate is contained in the supporting documentation required under § 441.303(f) and is expressed as the product of the estimated annual number of beneficiaries who would receive home and community-based services under the waiver (factor C) and the estimated annual Medicaid expenditure for home and community-based services per eligible Medicaid user (factor D). This FFP limit applies to all home and community-based services provided under the waiver beginning 90 days after the publication date of these final regulations.

To provide an additional control for enforcement of health and safety standards, these final regulations exclude from the definition of medical assistance, services provided in facilities that do not meet the standards required under § 441.302(a). Thus, FFP will not be provided for services furnished during any period in which the facilities are found, by the Secretary, not to be in compliance with the applicable State standards described in that section. All types of providers that furnish services under the waiver must meet State health and safety standards. However, to ensure that Medicaid beneficiaries receive quality care in a safe setting, we have made the FFP limit apply to all kinds of facilities where services are furnished. This includes residential facilities subject to the Keys amendment provisions, even when the facility itself does not furnish the service. This sanction applies to all facilities that are subject to health and safety requirements; facilities subject to the Keys amendment provisions and facilities subject to other State health and safety requirements. Further, this sanction applies to all waivers beginning 90 days after the publication date of these final regulations. This sanction resulted from public comments that FFP should not be provided if a facility fails to meet health and safety requirements. Finally, we note that the FFP limits regarding expenditures and the health and safety requirements apply specifically to home and community-based services. Regular Medicaid services are not affected.

H. Miscellaneous Changes

We are adding the word "legal" to the term "recipient's representative" in § 441.302(d) to clarify our original intent that a beneficiary or his or her legal representative is involved in decisions about feasible alternatives under a waiver. This change was suggested by one commenter and we agree that adding the word "legal" is necessary to clarify the intent of this provision. The term "legal" representative is not intended to imply that the representative must be an attorney, but that the representative must be designated in accordance with the laws of the State.

We have added a new § 441.306 to specify the regulations that govern the hearings procedures for States, as suggested in the public comments. The procedures described at 45 CFR Part 213 will apply to State requests for hearings on terminations. We decided to use these particular hearings procedures because States are familiar with them regarding other Medicaid provisions. The adoption of these particular hearings procedures for waiver terminations in no way implies that HCFA believes that waivers are State plan amendments or that an adverse decision would be appealable to the United States Court of Appeals under section 1116(a)(3) of the Act.

We have revised § 440.180 to clarify that home and community-based services are those services provided under the waiver that are not otherwise provided under the State's Medicaid plan. Home and community-based services are only those services that are in addition to the Medicaid services otherwise provided under the State plan. Accordingly, States submitting waiver applications should not request authority to provide services that are already authorized under their State plan. The waiver request should seek authority only for the actual home and community-based services that will be provided under the waiver.

Although we have still not mandated that any specific form or format be used by States when submitting waiver requests, we have made an administrative change to the waiver proposal procedure. We have revised § 441.301(b) to specify that each waiver request must be limited to one of the following target groups or any subgroup thereof that the State may define:

- Aged or disabled, or both.
- Mentally retarded or developmentally disabled, or both.
- Mentally ill.

We are requiring States to submit individual waiver requests for each target group (or subgroup) to expedite the waiver review process and to avoid the need to deny a waiver request involving more than one of the three target groups when there are problems that relate only to one of those groups.

We are making several technical changes in these regulations. We are modifying the language in § 441.302(c) to reflect more accurately our original intent and the intent of the legislation that States evaluate and periodically reevaluate the recipient's need for SNF or ICF services. We are updating an obsolete citation in § 435.3 and adding paragraph headings and designations within paragraphs in § 441.302. In addition, we are clarifying in § 441.302(a) our original intent that safeguards to protect the health and welfare of recipients apply to all types of providers who provide services under the waiver.

IV. Applicability of Regulation Changes

The changes implemented by these final regulations apply to all waiver applications and are effective 30 days after the publication date of these final regulations except as noted below:

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A. Keys amendment provisions—Beginning 90 days after the publication date of these final regulations these provisions apply to all waiver requests and extensions that have been approved or that will be approved. This includes both the required assurances concerning facilities subject to the Keys amendment as well as the loss of FFP (§ 441.310) for any period in which a facility subject to health and welfare requirements is found to be out of compliance with State standards.

B. Revised formula for expenditure and utilization estimates—As previously indicated in Section III.B. of the *Regulation Changes*, States whose waiver requests were approved under the original formula before or during the 90-day period following the publication date of these final regulations, will be evaluated under that formula if their cost estimates were submitted in that form. States submitting waiver requests that have not been approved during the 90-day period following the publication date of these final regulations must submit the required estimates under the revised formula. States that request an extension of a waiver that was approved before or during the 90-day period following the publication date of these final regulations must also submit the required estimates under the revised formula.

C. Limits on FFP—These final regulations provide for FFP limits when the State's estimate of total expenitures for home and community-based services are exceeded (factors C x D in the cost-effectiveness formula). This FFP limit applies to all home and community-based services provided under the waiver beginning 90 days after the publication date of these final regulations. The FFP limit will be prorated and will not be applied retroactively because States were not aware of this requirement before these final regulations.

If a State exceeds its "C x D" estimate, it may, in addition to the FFP limit, be subject to waiver termination. Beginning ninety days after the date of publication, HCFA may terminate a waiver in any case where the State exceeds its approved estimates, even if the waiver was approved prior to the publication of these final regulations.

D. Requirement that States submit individual waiver requests for each target group—This requirement, which is specified in new § 441.301(b)(6), applies only to *new* waiver requests that we receive after April 12, 1985.

E. Assurances—The new assurances specified in §§ 441.302(a)(1), 441.302(a)(3), 441.302(b), 441.302(e)(2), and 441.302(e)(3) apply to all waivers and are effective beginning 90 days after the publication date of these final regulations.

F. Independent assessment—The new requirements for an independent assessment of a State's waiver program specified in § 441.303(g) apply to all waiver requests and requests for extensions that are received after April 12, 1985.

G. Duration of a waiver—Revised § 441.304(a) is effective after September 9, 1985, and applies to all waiver requests and requests for extension that are received after September 9, 1985.

V. Policy Clarifications

Since the publication of the implementing rules on October 1, 1981, several issues have arisen through internal staff discussions, outside correspondence and some waiver requests that were submitted. As a result, we are providing the following clarifications:

A. Coverage of Prevocational and Vocational Training and Educational Activities

Prevocational and vocational training and educational activities may not be provided under the home and community-based services waiver. Among other things, section 1915(c) of the Act requires that the proposed service may be provided only to individuals who would otherwise require the level of care provided in an SNF, ICF, or ICF/MR.

While many services could be construed as an aid to avoid institutionalization, we have concluded that qualifying services under section 1915(c) of the Act must be directly related to the ultimate goal of the home and community-based services; that is, enabling the recipients to accomplish those day-to-day tasks necessary for them to remain in the community and avoid institutionalization. We do not believe that prevocational and vocational training and educational activities are commonly furnished as a means of avoiding institutionalization. Individuals would not, in the absence of such services, require institutionalization. Therefore, in applying our regulations, which define home and community-based services, we have interpreted § 440.180 as excluding these services because they are not cost effective alternatives to institutionalization.

B. Deeming Methodology

The preamble of our October 1, 1981, interim final rule was silent as to the deeming of income when determining eligibility for home and community-based services. Deeming means that the income and resources of certain persons in an individual's family are considered as the income and resources of the individual even though not actually contributed. The following discussion is provided to clarify this issue.

In general, Medicaid institutional rules are governed by the Supplemental Security Income (SSI) eligibility rules. The SSI law requires that, when an eligible couple is separated due to institutionalization of one spouse, the resources of each spouse are considered mutually available for a period of six months after the month they cease to live together; however, the income of each is considered separately during this period. After this six-month period, the resources of each spouse are no longer considered mutually available. Rather, each spouse is treated as an individual in determining SSI eligibility and only the income and resources actually contributed by one spouse to the other are considered.

When a couple is separated due to institutionalization and only one spouse is eligible for SSI, the SSI deeming rules (which do not apply to members of an eligible couple) are applicable. These rules provide that, except for actual contributions, the income and resources of the ineligible spouse are no longer deemed available to the eligible spouse beginning with the month after the month in which they cease to live together.

Following the same deeming concept, when an eligible child is separated from his parents due to institutionalization, parental income and resources are no longer deemed available to the child and so do not affect the child's SSI eligibility beginning with the month after the month in which the child ceases to live with the parents.

Most States follow the SSI rules as required in section 1902(a)(17) of the Act of institutional deeming cases. The effect is that deeming of income and resources occurs for a relatively limited time period, thus creating an institutional bias. That is, individuals who reside in an institution are able to obtain Medicaid eligibility sooner than individuals living together in the community because of institutional deeming rules.

To reduce bias towards institutionalization, HCFA issued an interim instruction (AT 82–8) in May 1982, under which States were allowed to request a waiver to employ the deeming rules that apply to persons in institutions for the eligibility group at 42 CFR 435.232—aged, blind and disabled persons who would be eligible for

Medicaid in an institution under a special income level. This eligibility group was not a statutorily mandated group but was included in the interim final regulations published on October 1, 1981. (It has been revised and redesignated in these regulations as § 435.217.) Thereafter, section 1902(a)(10) of the Act was amended by TEFRA to specifically establish a new optional categorically needy group for home and community-based services (§ 435.217 of these regulations) that incorporated the group specified under § 435.232 into the law and expanded on it. Under this new option (§ 435.217), States have the choice of electing to cover for home and community-based services those categorically or medically needy persons who would be eligible under the State's Medicaid plan if in a medical institution. (A more complete explanation of the individuals to whom this option pertains can be found in section III.C. of the preamble.)

In determining eligibility under this new optional group, States are required to employ eligibility criteria that would be employed if the individual were in a medical institution (including the institutional deeming rules). Therefore, waivers are no longer necessary to employ the institutional deeming rules for individuals covered using the special income level. States that choose to cover individuals under § 435.217 for home and community-based services must now use the institutional deeming rules for these individuals in determining whether they would be eligible for Medicaid if they were in a medical institution. If the State wishes to apply more restrictive deeming rules to these individuals it may do so by framing the scope of the population eligible for the home and community-based services waiver under section 1915(c) of the Act in a manner that employs more restrictive deeming rules (such as those used when individuals reside in the community). This is consistent with the terms of section 1902(a)(10)(A)(ii)(VI) which applies only to individuals "who will receive home and community-based services pursuant to a waiver" under section 1915(c) of the Act.

States that cover the medically needy have an option to include medically needy individuals under § 435.217 providing those individuals would qualify for Medicaid in a medical institution as medically needy at the outset of their stay in the institution. Even if they do not exercise this option, the States may choose to employ institutional deeming rules through a waiver of section 1902(a)(10)(C)(i)(III) which requires that the methodologies of the most closely related cash assistance program be used to determine eligibility.

For groups other than those specified under § 435.217 and the medically needy, the applicable deeming rules are the rules derived from the relevant cash assistance program. For example, for SSI recipients in the community, the community deeming rules are the appropriate rules.

On September 1, 1983, we published a final rule that revised regulations at 42 CFR 435.121, 435.734, and 436.711 to reinstitute the deeming rules for categorically needy aged, blind and disabled spouses that were in effect in 1977 (47 FR 31899). The 1977 provisions prohibited section 1902(f) States from using any deeming rules that were more liberal than SSI or more restrictive than the rules in effect under the State's Medicaid plan on January 1, 1972. The 1902(f) States covering persons under the new optional categorically needy group (§ 435.217) will have to employ their institutional deeming rules. As is the case of States that have not selected the 1902(f) option, these States may apply more restrictive deeming rules (than their institutional deeming rules) for their home and community-based services populations by framing the scope of the eligible population under the section 1915(c) waiver in a manner that employs the more restrictive rules.

To assist States in utilizing the home and community-based waiver process to avoid unnecessary institutionalization and reduce expenses, a State may also submit a model waiver request in addition to or in lieu of a fuller home and community-based waiver request. Coverage under the model waiver is limited to blind and disabled children and adults who would otherwise be ineligible for Medicaid while living at home because of the SSI deeming rules. The model request relates specifically to those individuals who, as determined by the State, have or would have established eligibility for Medicaid services based on institutionalization. The sole purpose of the request is to provide authority for the State to furnish such individuals with services in the home and community setting. States are required to offer at least one home and community-based service under the model request, for example, case management services, in addition to those services that are now included in the State's Medicaid plan. Further, States are limited to a maximum of 50 cases for each model request.

We note that section 134 of TEFRA added a new section 1902(e)(3) to the Act to provide States with the Option of covering, under Medicaid, certain disabled children age 18 or under, who are living at home. These children could also be eligible for home and community-based services under a State waiver.

VI. Public Comments

We received comments from State Medicaid agencies, public and private interest groups, Congress, and individual citizens who work in the health field. Most of the 32 commenters on the interim final rule support the concept of a waiver program for home and community-based services, although many do suggest some revision to the regulations. Some commenters want the regulations to impose additional requirements before a State can qualify for a home and community-based services waiver. Although many of the comments we received are worthwhile, we do not want to impose additional requirements unless they serve a compelling Federal interest. While many of these suggestions are not incorporated in these regulations, we do anticipate that some States may, independently, decide to adopt them. In general, we believe that Congress intended to give the States maximum flexibility in operating their waiver programs. We expect this flexibility to foster initiative and to encourage States to administer cost-effective programs that meet specific local needs.

In view of the widespread interest in the home and community-based services waiver provision, we are soliciting and will give careful consideration to any comments received from the public. Comments received will be considered and may be used as the basis for future revisions of these regulations.

Statewideness

Comments: The statewideness provision, 42 CFR 431.50, requires that a State plan be in effect throughout the State; however, this requirement may be waived in the context of a home and community-based waiver program. One commenter suggests that HCFA identify the specific circumstances when single community waivers will be granted rather than waivers covering the entire State. Another commenter asserts that Congressional intent was to allow only a one-time waiver of the statewideness requirement.

Response: Section 1915(c) of the Act provides the Secretary with waiver authority to permit States to include as medical assistance (eligible for Federal financial participation) the cost of home or community-based services which meet certain conditions. Section 1915(c)(3) provides that a waiver "may

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include a waiver of the requirements of section 1902(a)(1) (relating to statewideness) and section 1902(a)(10)." It further provides that the waiver "shall be for an initial term of three years and upon the request of a State, shall be extended for additional three-year periods" unless the Secretary determines that for the previous period certain assurances were not met. This language clearly suggests that the "statewideness" waiver could continue for more than the initial three year term of the waiver. Consequently, we do not believe that the Conference Committee Report's general reference.

"The conference agreement follows the House provision," should be viewed as an endorsement of the "one-time waiver of Statewideness" which was part of the House bill. See H.R. Rept. No. 97-208, p. 968. Indeed, the House bill contained specific language which provided, "During the 12-quarter period beginning on October 1, 1981, the Secretary may waive the requirement of section 1902(a)(1) as it applies to the administration of community care plans approved under this section." This three year limit in the House bill (which is consistent with the comment) was omitted from the legislation which was passed. Therefore, we do not adopt the comment, which we believe is contrary to the statute's provision for renewal of the waiver.

We also do not believe it is appropriate to identify the specific circumstances under which statewideness will be waived. Especially, because of the differences in resources among States and the constraints inherent in meeting the statutory assurances, we believe it is appropriate to evaluate statewideness waiver applications on a case by case basis.

Objective Standards for Service Packages

Comments: One commenter recommends that States be required to develop objective written standards to determine the appropriate service package for each individual within a group.

Response: We believe this is an unnecessary requirement since we already require the States to provide a written evaluation and plan of care that must be supported by appropriate documentation.

Health and Welfare Standards

Comments: Some commenters recommend additional requirements concerning the standards for services and for those who provide the services. One commenter wants clarification as to how HCFA will ensure that all requirements are being met.

Response: Section 1915(e) of the Act specifically places the responsibility for monitoring waiver programs with the Secretary. HCFA, having the delegated authority to administer the waiver program, recognizes its obligation to ensure the establishment of necessary additional standards and compliance with all health and welfare standards required under this section of the law as well as under section 1616(e) of the Act. We believe that the regulations, as modified, contain sufficient assurances to ensure adequate compliance by virtue of the requirements for State licensure or participation standards for all providers furnishing services under the waiver (§ 441.302(a)) and the additional FFP restriction applicable to services in facilities which do not meet the standards (§ 441.310(a)).

We do not want to limit State flexibility or initiative unnecessarily by imposing requirements that result in unnecessary and expensive administrative burdens. Therefore, we have given States as much authority as possible for establishing the standards for provider participation. Each State must develop the safeguards necessary for its particular program.

However, in light of public comments received, we have added a requirement that States must meet the standards of section 1616(e) of the Act when home and community-based services are provided in facilities that fall under the purview of that provision. Those standards apply to institutions, foster homes, or other group living arrangements where a significant number of SSI recipients are residing, or are likely to reside.

Waiver Requests—General

Comments: One commenter asks if States can submit sequential or serial waiver requests. Others recommend that all waiver requests be published in the **Federal Register** with a comment period and that the Department issue a periodic report on approved waivers.

Reponse: States may submit more than one waiver request. Further, we could not publish waiver requests in the **Federal Register** and still make a Secretarial decision within the statutory 90-day period (section 1915(f) of the Act). We will, however, consider publishing a periodic report in the future. We will also determine whether there are alternate ways of making this information available. Currently, we are concentrating our resources on reviewing and processing the actual waiver requests.

Termination of Waiver

Comments: Some commenters are opposed to the threat of termination of a waiver if the program is not cost-effective in one particular year. They suggest that States should be allowed to experiment and reconcile any problems over the full three-year period.

Response: We believe that a one-year period is an equitable time frame to measure compliance with the requirements of the waiver and to terminate or continue the waiver based on our findings. By law, States must provide the Secretary with information on the impact of the waiver annually, and the law authorizes us to terminate a waiver if we find non-compliance (section 1915(e) of the Act).

We have added a new § 441.306 to specify that the procedures described at 45 CFR Part 213 will apply to State requests for hearings on terminations. We chose these particular hearings procedures because States are already familiar with them regarding other Medicaid provisions.

Definitions of Services

Comments: Some commenters want Federal criteria and guidelines issued for the definitions of services. These commenters fear that the lack of uniform standards will lead to overlapping services, low quality services, and poor fiscal accountability.

Response: The legislation is intended to provide States with the flexibility to develop and implement waiver programs that meet local needs. Although we have offered suggested definitions of services in the interim final regulations (46 FR 48533), we do not believe that it is appropriate to mandate these definitions. Further, we believe that the program contains sufficient safeguards against the possible abuses that these commenters have cited.

Services—General

Comments: Many commenters suggest that we specifically list various qualifying services in the regulations to encourage States to provide them in their waiver programs. These commenters believe that this is necessary to ensure the availability of a full range of services under the waiver program.

Response: It is not necessary nor possible to list all services in the regulations. States are free to include any type of appropriate service in their programs—hospice services, home adaptations to increase safety, nutritional assessment, counselling, etc. The law does not restrict the coverage

of appropriate services as long as the State:

(1) Demonstrates that the services are cost-effective;

(2) Demonstrates that the services are necessary to avoid institutionalization;

(3) Includes and defines the services in its waiver request; and

(4) Obtains HCFA approval.

Finally, it is not appropriate for us to encourage or discourage the use of a particular service. Each State decides what combination of services is appropriate for its particular program.

Room and Board

Comments: One commenter suggests that Medicaid should pay for room and board under residential care using the six-month limitation in title XX of the Act; and that the policy for room and board should be the same for all services. The six-month limitation under title XX of the Act provides for FFP for a maximum of six months when room and board is determined to be an integral but subordinate part of another covered service. Another commenter wants the regulations to clarify that the prohibition against payment for room and board does not apply to the medical and personal care services of foster care programs.

Response: Section 1915(c)(1) of the Act specifically excludes payment for room and board under home and community-based services. As indicated in the preamble of the interim final rule, the only exception to this prohibition that is authorized by the statute is for respite care. We see no need to include in these regulations a clarification of the status of room and board in foster care programs. The prohibition against room and board in these regulations is clearly in the context of the home and community-based services waiver programs.

Cost-Effectiveness

Comments: Besides the specific categories of qualifying services, the regulations (§ 440.180) state that other services requested by the Medicaid agency can qualify if approved by HCFA as cost-effective. One commenter recommends that HCFA approval not be required for these "other services" since the statute does not contain this requirement. The commenter suggests that the statute provides that the entire plan must be cost-effective not any particular service requested by a Medicaid agency.

Response: The statute gives the Secretary broad discretion regarding the criteria that services must meet to be considered qualifying services; particularly, those services not specifically mentioned in the legislative history. We believe it is appropriate to impose criteria for these additional services, that will ensure conformance with the statutory intent to reduce Medicaid expenditures by providing lower-cost non-institutional services under the waiver. Accordingly, we are requiring HCFA approval for "other services" on the basis of cost-effectiveness and the necessity of the service to avoid institutionalization.

Evaluation of Need

Comments: Some commenters recommend additional restrictions for the process of evaluating an individual's need for an SNF or ICF level of care. For example, one commenter wants the regulations to specify that only a State agency can perform the evaluation. One commenter wants the regulations to require periodic reassessments of the need for care. Another commenter suggested that the evaluation must include an assessment of the recipient's total needs. These commenters believe that additional restrictions will make the evaluation process more effective by maintaining uniform standards, promoting consistent application of the standards, and eliminating possible conflicts of interest in the case of private evaluations.

Response: States are required to describe their evaluation procedures and to submit their screening documents with their waiver request. They are also required to maintain written documentation of their evaluations and to have this documentation available for review.

The Congressional intent, as evidenced by House Report No. 97–158, Vol. II, pp. 319–320, is to allow the States flexibility in the development of appropriate evaluation procedures and in their implementation. We believe that the regulations provide this flexibility. States may decide who develops and conducts the evaluation of need and they may use whatever evaluation instruments are appropriate.

While we do not believe that extensive limitations on a State's options are warranted, we do agree that a periodic reevaluation of the need for care should be explicitly required in the regulations. Section 441.302(c) has been revised accordingly. We note that those States already filing waiver requests have, in fact, provided for this reevaluation in their waiver requests. To date, all of the waiver requests we have received included a provision for a fairly complete assessment of the individual's total needs.

Plan of Care

Comments: One commenter recommends that the plan of care be developed by a physician, nurse, or licensed staff member of the facility or agency. The commenter feels that this would protect recipients against inadequate care. Others suggest that the State be allowed to review the individual case plans on a sample basis to avoid unnecessary administrative expenses, and that the waiver requests contain specific and detailed information on plans of care, services, and case management to ensure efficient, effective programs.

Response: The purpose of the regulations is to give States the maximum opportunity for innovation with a minimum of Federal intervention. Accordingly, we believe that the States should decide who is responsible for developing the plan of care. The States do not have to approve the plans in advance nor review every plan. Since the States have the authority to develop their own approval process, they can indeed choose to review plans on a sample basis. As for the information in the waiver request, the preamble of the interim final regulations discussed the general nature of the information required. However, the actual material in the waiver request must contain specific, detailed, and complete information on all services, procedures, etc.

Comments: One commenter wants to know why institutions for mental diseases (IMDs) are excluded.

Response: The Congressional Committee Reports do not discuss IMDs. Section 1915(c)(1) of the Act, however, clearly limits eligibility to persons who would require SNF or ICF level of care, the cost of which would be reimbursed under the State plan. Mentally ill persons who require SNF or ICF level of care can qualify for home and community-based services. However, individuals who are between the ages of 21 and 65 and who would otherwise receive services in a hospital, skilled nursing facility, or intermediate care facility that is an IMD are not eligible to receive services under the waiver because Medicaid coverage in IMDs is not authorized for these individuals.

Choice of Alternatives

Comments: Some commenters suggest States be required to document that beneficiaries were informed of alternatives and that beneficiaries were permitted to choose the type of service desired. Others recommend that persons in institutions be allowed to request

waiver services. One commenter recommends that "representative" be changed to "legal representative" in § 441.302(d).

Response: We agree that "representative" should be changed to "legal representative" and have revised § 441.302(d) accordingly. However, we also believe that requiring States to document that beneficiaries were informed of alternatives is unnecessary and overly burdensome. The State must assure HCFA in its waiver request that the beneficiary choice requirement will be met. We have also added a new § 441.303(d) requiring that the State furnish to HCFA a description of how the beneficiary choice requirement will be met. Further, a beneficiary can request a fair hearing if he or she is denied a choice of services.

Although the regulations state that services can be furnished only to recipients who are not inpatients; this does not preclude a State from including currently institutionalized persons as one of the groups of individuals who will be offered waiver services, if this will permit these individuals to leave the institution. This option can allow certain individuals to leave the institution and receive the necessary services in the home, at a lower cost to Medicaid.

Limitation of Costs

Comments: One commenter recommends that expenditures under the waiver be permitted to exceed the limitation of comparable, institutionalized care. The commmenter states that there are many advantages in maintaining a person at home, even if it is more expensive than an institution. Other commenters are concerned about the potential for accelerating total or aggregate costs despite the average per capita limitation in the regulations. One commenter suggests that the State methodologies concerning average per capita expenditures be made part of the public record.

Response: Congress specifically included a cost limitation in the legislation. However, the legislation does provide some flexibility since the limitation is based on average per capita expenditures. This permits States to include some individuals whose maintenance costs are actually higher than the cost of comparable services in an institution.

We agree with the comment that the current requirements for a waiver do not contain adequate safeguards to protect against an increase in total Medicaid costs as a consequence of the waiver. Clearly, it was not the intent of Congress that the home and community-based services provision result in an increase in Medicaid long-term care expenditures. Therefore, the limitations on FFP in expenditures for home and community-based services contained in § 440.180(b) are being expanded and redesignated as a new § 441.310 to express the intent of Congress that program effectiveness result from State assurances required under the statute.

Under these final regulations, FFP is available in these expenditures only up to the agency's approved estimate of the total expenditures for home and community-based services under the waiver. We have also revised § 441.302(e) to require a State to provide HCFA with an assurance that aggregate Medicaid expenditures for all services provided to individuals under the waiver do not exceed the aggregate expenditures that would be incurred for these individuals in the institutional setting, in the absence of the waiver. Also, we have revised § 441.303(f) to require a State to include all Medicaid expenditures in its computation of average per capita expenditures.

Regarding the comment on State methodologies, we believe that publication is unnecessary. This information can be requested directly from the States that have submitted waiver requests.

Annual State Reports

Comments: One commenter recommends that certain specific items be included in the information that the State must submit in the annual reports. Another recommends that the State reports be available to providers and consumers.

Response: We have developed a data collection plan that will be used by the States. The plan permits us to compare a State's actual expenditures with its estimated expenditures and determine whether the State has met its assurances. Our objective is to limit State reporting requirements as much as possible, yet assure that basic program requirements are met. As we gain experience with the annual reports, we may wish to request some of the specific items that the commenter suggested.

Regarding the availability of State reports, providers and consumers could request this information directly from the State. Copies of State reports will also be subject to disclosure under the Freedom of Information Act.

Computation of Average Per Capita Expenditures

Comments: Some commenters suggest that States be permitted to use their own methods of computing average per capita expenditures, as long as they are able to demonstrate that the aggregate cost of long-term care will be reduced. Others suggested that other items such as State administrative costs be considered in the computation.

Response: As previously discussed in section III.B. of this preamble, we have made various revisions to the computation. We believe that the computation in the regulations is an appropriate reflection of Congressional intent. We also believe that it is necessary for all States to use the same computation method to meet this particular legislative requirement. To monitor the waiver programs effectively, HCFA must have the necessary information from each State in a consistent format.

The computation for average per capita expenditures should include only those cost items specifically relating to medical assistance that is covered under the Medicaid program. Cost items that may have an indirect relationship to covered medical assistance cannot be considered in the computation. We agree that items such as the following should be part of the computation—

- Cost of patients in hospital awaiting nursing home or community care placements; and
- Reduced community Medicaid costs—An agency that has other means available to cover certain services may decide not to provide these services (for example, reimbursement for prescription drugs) under the Medicaid waiver, thus lowering the average per capita cost under the waiver.

We do not believe that items such as the following should be included—

- Average per capita State agency administrative cost—These costs would generally be the same whether they were incurred in connection with institutional care or home and community-based services and would not affect the computation of per capita expenditures. Therefore, it is not necessary that they be included in the computation;
- Certain in-home costs that are part of institutional costs—Costs attributable to individuals who are not currently covered by Medicaid and who are in the home, waiting for admission to an institution. We do not at this time propose that such services be reflected in the State's estimates of cost and utilization. We believe this would result in an unnecessary burden to the States since we do not know precisely the incidence or potential cost of such an occurrence. (We will be able to develop this information more fully once we determine the impact of the waivers by analyzing the annual reports that the States must submit.) However, we do

believe that an assurance is needed from the State that the aggregate costs of all services furnished to an individual in the home or community setting will not exceed the aggregate costs that would be incurred by the individual in the institutional setting, in the absence of the home and community-based waiver. Accordingly, we have amended § 441.302(e) to require such an assurance; and

• Medicare savings—For example, when a covered individual can be discharged from a hospital to a community setting rather than remaining in the hospital to await an available bed in a long-term care institution. It is not appropriate to consider Medicare saving in the computation. The statute provides that the State's estimate of average per capita expenditures is to be limited to the cost of Medicare services.

VII. Impact Analysis

Executive Order 12291

We have determined that neither the October 1, 1981 interim final regulations nor these final regulations meet the criteria for a "major rule", as defined by section 1(b) of Executive Order 12291. That is, neither will—

• Have an annual effect on the economy of $100 million or more;

• Result in a major increase in costs or prices for consumers, any industries, any government agencies or any geographic regions; or

• Have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or import markets.

Our actuaries cannot estimate the economic effect caused by these provisions due to the uncertainties regarding the number of States that will ultimately apply for waivers; the number of waivers that will be requested; the nature of the waivers; and whether the waivers will result in reduced costs or the provision of more services for the same costs.

The costs or savings resulting from these provisions are a function of the balance between deinstitutionalization (some current residents of nursing homes could be returned to the community for less money) and new demand (some people who currently receive care from family and friends despite a medical need for nursing home care will become eligible for Medicaid outside the nursing home setting), and the number of States that choose to exercise the option. Congress indicated (H.R. Report No. 97–208, p. 967) that it expected the provisions concerning per capita costs would assure that aggregate costs are not greater than what they would have been without the home and community-based services. Moreover, the purpose of the legislative amendment was to provide the States with sufficient flexibility to develop more economical alternatives to the high cost of long-term care institutional services. To the extent that this purpose is achieved, the cost of providing the home and community-based services under the waiver will offset the cost of institutional care that would otherwise have been required. Further, by facilitating the use of other providers of care, more competition should be generated.

Regulatory Flexibility Act

The Secretary certifies under 5 U.S.C., 605(b) enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that neither the interim final regulations nor these final regulations, which amend and clarify the interim regulations, will result in a significant economic impact on a substantial number of small entities.

The primary impact of the interim final and these final regulations is on the States and beneficiaries, which are not "small entities" within the meaning of the Act. Any impact upon providers will be the result of individual State decisions, as developed in the waiver requests. We would encourage States that are developing waiver requests under these provisions, to consider their effect on small entities and to analyze alternative choices. We believe that States are best qualified to determine whether a given adverse effect on small entities is appropriate in view of the benefits offered by a waiver request that is consistent with the provisions of these regulations.

Further, in view of the provisions of section 1915 of the Act, while a State may consider the effect on small entities before submitting a request, we do not consider this effect in reviewing these requests. Therefore, a regulatory flexibility analysis is not required.

Reporting and Recordkeeping Requirements

Sections 441.302 and 441.303 contain reporting and recordkeeping requirements that are subject to the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). As required by that act, HCFA requested Office of Management and Budget (OMB) approval of these requirements. OMB has approved the data collection plan requirement in § 441.302.

The OMB approval number for the data collection plan required by § 441.302 is 0938–0268. The OMB approval number for the requirements under the model waiver request that States have the option of submitting is also 0938–0268. (The model waiver request is discussed in Part V. of the preamble, *Policy Clarifications*.)

The other reporting and recordkeeping requirements contained in §§ 441.302 and 441.303 are not effective until OMB approves them. We will publish a notice in the **Federal Register** when approval is obtained from OMB, giving the OMB approval number and the effective date of the requirements.

List of Subjects

42 CFR Part 435

Aid to Families with Dependent Children, Aliens, Categorically needy, Contracts (Agreements—State Plan), Eligibility, Grant-in-Aid program—health, Health facilities, Medicaid, Medically needy, Reporting and recordkeeping requirements, Spend-down, Supplemental security income (SSI).

42 CFR Part 436

Aid to Families with Dependent Children, Aliens, Contracts (Agreements) Eligibility, Grant-in-Aid program—health, Guam, Health facilities, Medicaid, Puerto Rico, Supplemental security income (SSI), Virgin Islands.

42 CFR Part 440

Clinics, Dental health, Drugs, Grant-in-Aid program—health, Health care, Health facilities, Health professions, Hearing disorders, Home health services, Inpatients, Laboratories, Language disorders, Lung diseases, Medicaid, Mental health centers, Occupational therapy, Personal care services, Physical therapy, Prosthetic devices, Outpatients, Opthalmic goals and services, Rural areas, Speech disorders, X-rays.

42 CFR Part 441

Abortions, Aged, Early Periodic Screening Diagnosis and Treatment (EPSDT), Family Planning, Grant-in-Aid program—health, Health facilities, Infants and children, Institutions for mental diseases (IMD), Kidney diseases, Maternal and child health, Medicaid, Mental health centers, Opthalmic goods and services, Penalties, Psychiatric facilities, Sterilizations.

42 CFR Part 435, 436, 440 and 441 are amended as follows:

PART 435—ELIGIBILITY IN THE STATES, DISTRICT OF COLUMBIA AND THE NORTHERN MARIANA ISLANDS

The authority citation for Part 435 reads as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

A. 42 CFR Part 435 is amended as follows:

1. a. In the table of contents under Subpart C, Options for Coverage as Categorically Needy, a new § 435.217—"Individuals receiving home and community-based services." is added under the center headings, *Options for Coverage of Families and Children and the Aged, Blind, and Disabled.*

b. Also, § 435.232 is removed.

2. Section 435.3 is amended by revising the last citation of 1902(a) to read as follows:

§ 435.3 Basis

* * * * *

1902(a) (second paragraph after (44)) Eligibility despite increased monthly insurance benefits under title II.

* * * * *

§ 435.232 [Redesignated as § 435.217]

3. Section 435.232 is redesignated as § 435.217 and revised to read as follows:

§ 435.217 Individuals receiving home and community-based services.

The agency may provide Medicaid to any group or groups of individuals in the community who—

(a) Would be eligible for Medicaid if institutionalized;

(b) Would require institutionalization in the absence of home and community-based services under a waiver granted under Part 441, Subpart G, of this subchapter; and

(c) Receive the waivered services.

§§ 435.726 and 435.735 [Amended]

4. Sections 435.726(b) and 435.735(b) are amended by removing the reference to "§ 435.232" and inserting "§ 435.217" in its place.

PART 436—ELIGIBILITY IN GUAM, PUERTO RICO, AND THE VIRGIN ISLANDS

The authority citation for Part 436 reads as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

B. 42 CFR Part 436 is amended as follows:

1. In the table of contents under Subpart C, *Options* for *Coverage as Categorically Needy*, a new § 436.217—"Individuals receiving home and community-based services." is added under the center heading,

Options for Coverage of Families and Children and the Aged, Blind, and Disabled

2. A new § 436.217 is added to read as follows:

§ 436.217 Individuals receiving home and community-based services.

(a) The agency may provide Medicaid to any group or groups of individuals in the community who—

(1) Would be eligible for Medicaid if institutionalized;

(2) Would require institutionalization in the absence of home and community-based services under a waiver granted under Part 441, Subpart G, of this subchapter; and

(3) Receive the waivered services.

PART 440—SERVICES: GENERAL PROVISIONS

The authority citation for Part 440 reads as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302), unless otherwise noted.

42 CFR Part 440 is amended as follows:

C. Section 440.180 is amended by removing the paragraph designation for paragraph (a) and revising the contents of that paragraph. Paragraph (b) is revised and redesignated as § 441.310. As revised § 440.180 reads as follows:

§ 440.180 Home or community-based services.

"Home or community-based services" means services, not otherwise furnished under the State's Medicaid plan, that are furnished under a waiver granted under the provisions of Part 441, Subpart G of this subchapter. Except as provided in § 441.310 the services may consist of any of the following services as defined by the agency that meet the standards specified in § 441.302(a):

(a) Case management services;

(b) Homemaker services;

(c) Home health aide services;

(d) Personal care services;

(e) Adult day health services;

(f) Habilitation services;

(g) Respite care services;

(h) Other services requested by the Medicaid agency and approved by HCFA as cost-effective.

PART 441—SERVICES: REQUIREMENTS AND LIMITS APPLICABLE TO SPECIFIC SERVICES

The authority citation for Part 441 reads as follows:

Authority: Sec. 1102 of the Social Security Act, (42 U.S.C. 1302).

D. 42 CFR Part 441 is amended as follows:

1. The Table of Contents for Part 441 is amended by adding new §§ 441.306 and 441.310 as follows:

* * * * *

Subpart G—Home and Community-Based Services: Waiver Requirements

* * * * *

Sec.

441.306 Hearings procedures for waiver terminations.

441.310 Limits on Federal financial participation (FFP).

* * * * *

2. Section 441.301 is amended by revising paragraphs (b)(4) and (5), and adding a new paragraph (b)(6) to read as follows (the introductory language of paragraph (b) is reprinted without change for the convenience of the reader):

§ 441.301 Contents of request for a waiver.

* * * * *

(b) If the agency furnishes home and community-based services, as defined in § 440.180 of this subchapter, under a waiver granted under this subpart, the waiver request must:

* * * * *

(4) Describe the services to be furnished;

(5) Provide that the documentation requirements regarding individual evaluation, specified in § 441.303(c), will be met; and

(6) Be limited to one of the following target groups or any subgroup thereof that the State may define:

(i) Aged or disabled, or both.

(ii) Mentally retarded or developmentally disabled, or both.

(iii) Mentally ill.

3. Section 441.302 is revised to read as follows:

§ 441.302 State assurances.

HCFA will not grant a waiver under this subpart and may terminate a waiver unless the Medicaid agency provides the following satisfactory assurances to HCFA:

(a) *Health and Welfare*—Assurance that necessary safeguards have been taken to protect the health and welfare of the recipients of the services. Those safeguards must include—

(1) Adequate standards for all types of providers that provide services under the waiver;

(2) Assurance that the standards of any State licensure or certification requirements are met for services or for individuals furnishing services that are provided under the waiver; and

(3) Assurance that all facilities covered by section 1616(e) of the Act, in which home and community-based services will be provided, are in compliance with applicable State standards that meet the requirements of 45 CFR Part 1397 for board and care facilities.

(b) *Financial accountability.*—The agency will assure financial accountability for funds expended for home and community-based services, provide for an independent audit of its waiver program (except as HCFA may otherwise specify for particular waivers), and it will maintain and make available to HHS, the Comptroller General, or other designees, appropriate financial records documenting the cost of services provided under the waiver, including reports of any independent audits conducted.

(c) *Evaluation of need.*—Assurance that the agency will provide for an evaluation (and periodic reevaluations) of the need for the level of care provided in an SNF, ICF, or ICF/MR, as defined by §§ 440.40 and 440.150, respectively, when there is a reasonable indication that individuals might need such services in the near future but for the availability of home and community-based services.

(d) *Alternatives*—Assurance that when a recipient is determined to be likely to require the level of care provided in an SNF, ICF, or ICF/MR, the recipient or his or her legal representative will be—

(1) Informed of any feasible alternatives available under the waiver; and (2) given the choice of either institutional or home and community-based services.

(e) *Expenditures*—Assurance that—(1) The average per capita fiscal year expenditures under the waiver will not exceed the average per capita expenditures for the level of care provided in an SNF, ICF, or ICF/MR under the State plan that would have been made in that fiscal year had the waiver not been granted. (i) These expenditures must be reasonably estimated by the agency; and (ii) The estimates must be annualized and must cover each year of the waiver period.

(2) The agency's actual total expenditures for home and community-based services under the waiver and its claim for FFP in expenditures for the services will not exceed the agency's approved estimates for these services, expressed as the product of (C×D) in the supporting documentation required under § 441.303(f), for each year of the waiver period.

(3) The agency's actual total expenditures for home and community-based and other Medicaid services provided to individuals under the waiver will not, in any year of the waiver period, exceed the amount that would be incurred by Medicaid for these individuals in an SNF, ICF, or ICF/MR, in the absence of a waiver.

(f) *Reporting.*—Assurance that annually, the agency will provide HCFA with information on the waiver's impact. The information must be consistent with a data collection plan designed by HCFA and must address the waiver's impact on—

(1) The type, amount, and cost of services provided under the State plan; and

(2) The health and welfare of recipients.

4. Section 441.303 is amended by revising and redesignating paragraph (d) as paragraph (f), adding new paragraphs (d), (e), and (g), and revising paragraphs (a) and (c), as follows:

§ 441.303 Supporting documentation required.

The agency must furnish HCFA with sufficient information to support the assurances required by § 441.302. Except as HCFA may otherwise specify for particular waivers, the information must consist of the following, at a minimum:

(a) A description of the safeguards necessary to protect the health and welfare of recipients. This information must include a copy of the standards established by the State for facilities that are covered by section 1616(e) of the Act.

* * * * *

(c) A description of the agency's plan for the evaluation and reevaluation of recipients, including—(1) A description of who will make these evaluatins and how they will be made; (2) A copy of the evaluation instrument to be used; (3) the agency's procedure to ensure the maintenance of written documentation on all evaluations and reevaluations; and (4) the agency's procedure to ensure reevaluations of need at regular intervals.

(d) A description of the agency's plan for informing eligible recipients of the feasible alternatives available under the waiver and allowing recipients to choose either institutional services or home and community-based services.

(e) An explanation of how the agency will apply the applicable provisions regarding the post-eligibility treatment of income and resources of those individuals receiving home and community-based services who are eligible under a special income level (included in § 435.217 of this chapter).

(f) An explanation with supporting documentation satisfactory to HCFA of how the agency estimated the per capita expenditures for services. This information must include but is not limited to the estimated utilization rates and costs for services included in the plan, the number of actual and projected beds in Medicaid certified SNFs, ICFs, and ICF/MRs by type, and evidence of the need for additional bed capacity in the absence of the waiver.

(1) The annual average per capita expenditure estimate of the cost of home and community-based and other Medicaid services under the waiver must not exceed the annual average per capita expenditures of the cost of services in the absence of a waiver. The estimates are to be based on the following equation:

$$\frac{(AxB) + (A'xB') + (CxD) + (C'xD') + (HxI)}{F+H} < \frac{(FxG) + (HxI) + (F'xG')}{F+H}$$

where:

A = the estimated annual number of beneficiaries who would receive the level of care provided in an SNF, ICF, or ICF/MR with the waiver.

B = the estimated annual Medicaid expenditure for SNF, ICF, or ICF/MR care per eligible Medicaid user with the waiver.

C = the estimated annual number of beneficiaries who would receive home and community-based services under the waiver.

D = the estimated annual Medicaid expenditure for home and community-based services per eligible Medicaid user.

F = the estimated annual number of beneficiaries who would likely receive the level of care provided in an SNF, ICF, or ICF/MR in the absence of the waiver.

G = the estimated annual Medicaid expenditure per eligible Medicaid user of such institutional care in the absence of the waiver.

H = the estimated annual number of beneficiaries who would receive any of the noninstitutional, long-term care services otherwise provided under the State plan as an alternative to institutional care.

I = the estimated annual Medicaid expenditure per eligible Medicaid user of the noninstitutional services referred to in H.

A' = the estimated annual number of beneficiaries referred to in A who would receive any of the acute care services otherwise provided under the State plan.
B' = the estimated annual Medicaid expenditure per eligible Medicaid user of the acute care services referred to in A'.
C' = the estimated annual number of beneficiaries referred to in C who would receive any of the acute care services otherwise provided under the State plan.
D' = the estimated annual Medicaid expenditure per eligible Medicaid user of acute care services referred to in C'.
F' = the estimated annual number of beneficiaries referred to in F who would receive any of the acute care services otherwise provided under the State plan.
G' = the estimated annual Medicaid expenditure per eligible Medicaid user of the acute care services referred to in F'.

(2) For purposes of the equation, acute care services means all services otherwise provided under the State plan that are neither SNF, ICF, or ICF/MR services, nor the noninstitutional, long-term care services referred to in H.

(3) Data on the estimated annual number of beneficiaries and expenditures for those who would otherwise receive an SNF, ICF, or ICF/MR level of care is required for all three types of institutions only if the waiver request provides that each of these groups will be offered home and community-based services. For example, if the request does not include persons who would otherwise receive an ICF/MR level of care, the State is not required to furnish data on that group.

(4) The data must show the estimated annual number of beneficiaries who will be deinstitutionalized from certified SNFs, ICFs and ICF/MRs because they would receive home and community-based services under the waiver, and the estimated annual number of beneficiaries whose admission to such institutions would be diverted or deflected because of the waiver services. For the latter group, the State's evaluation process required by § 441.303(c) must provide for a more detailed description of their evaluation and screening procedures for recipients to assure that waiver services will be limited to persons who would otherwise receive the level of care provided in an SNF, ICF, or ICF/MR.

(g) Except as HCFA may otherwise specify for particular waivers, the agency must provide for an independent assessment of its waiver that evaluates the quality of care provided, access to care, and cost-effectiveness. The results of the assessment must be submitted to HCFA at least 90 days prior to the third anniversary of the approved waiver period and cover at least the first 24 months of the waiver.

5. Section 441.304 is revised as follows:

§ 441.304 Duration of a waiver.

(a) The effective date for a waiver of Medicaid requirements to provide home and community-based services approved under this subpart is established by HCFA prospectively on or after the date of approval and after consultation with the State agency.

The waiver continues for a three-year period from the effective date. If the agency requests it, the waiver may be extended for additional three-year periods, if HCFA's review of the prior three-year period shows that the assurances required by § 441.302 of this subpart were met.

(b) HCFA will determine whether a request for extension of an existing waiver is actually an extension request or a request for a new waiver.

(1) Generally, if a State's extension request proposes a change in services provided, eligible population, service area, or statutory sections waived, HCFA will consider it a new waiver request.

(2) If a State submits an extension request that would add a new group to the existing group of beneficiaries covered under the waiver, HCFA will consider it to be two requests; one as an extension request for the existing group, and the other as a new waiver request for the new group.

(c) HCFA *may* grant a State an extension of its existing waiver for up to 90 days to permit the State to document more fully the satisfaction of statutory and regulatory requirements needed to approve a new waiver request. HCFA will consider this option when it requests additional information on a new waiver request submitted by a State to extend its existing waiver or when HCFA disapproves a State's request for extension.

(d) If HCFA finds that an agency is not meeting any of the requirements for a waiver contained in this subpart, the agency will be given a notice of HCFA's findings and an opportunity for a hearing to rebut the findings. If HCFA determines that the agency is not in compliance with this subpart after the notice and any hearing, HCFA may terminate the waiver. For example:

(1) If HCFA finds that the agency's actual total expenditures for home and community-based services under the waiver exceed the agency's approved estimates for these services, expressed as the product of (C × D) in the supporting documentation required under § 441.303(f), for any year of the waiver period, the waiver may be terminated; or

(2) The waiver may be terminated if HCFA finds that the agency's actual total expenditures for home and community-based and other Medicaid services provided to individuals under the waiver exceed, for any year of the waiver period, the amount that would be incurred by Medicaid for these individuals in an SNF, ICF, or ICF/MR, in the absence of a waiver.

6. A new § 441.306 is added to read as follows:

§ 441.306 Hearings procedures for waiver terminations.

The procedures specified at 45 CFR Part 213 are applicable to State requests for hearings on terminations.

7. A new § 441.310 is added to read as follows:

§ 441.310 Limits on Federal financial participation (FFP).

(a) FFP for home and community-based services listed in § 440.180 of this chapter is not available in expenditures for—

(1) Services provided in a facility subject to the health and welfare requirements described in § 441.302(a) during any period in which the facility is found not to be in compliance with the applicable State standards described in that section;

(2) Home and community-based services that exceed the agency's approved estimated total expenditures for these services, expressed as the product of (C × D) in the supporting documentation required under § 441.303(f) for each year of the waiver period; and

(3) The cost of room and board except when provided as part of respite care in a facility approved by the State that is not a private residence. For purposes of this provision, "board" means three meals a day or any other full nutritional regimen and does not include meals provided as part of a program of adult day health services.

(b) On or after June 11, 1985, the limits specified in paragraphs (a)(1) and (a)(2) of this section are applicable to all existing and future waiver programs under this part.

(Catalog of Federal Assistance Program No. 13.714, Medical Assistance Program)

Dated: November 26, 1984.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

Approved: January 7, 1985.

Margaret M. Heckler,

Secretary.

[FR Doc. 85-5715 Filed 3-12-85; 8:45 am]

BILLING CODE 4120-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[CC Docket No. 84-637; FCC 85-54]

Policy and Rules Concerning the Furnishing of Customer Premises Equipment; Enhanced Services and Cellular Communications Services by the Bell Operating Companies

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document permits the cellular subsidiaries of the Bell Regional Holding Companies (RHCs) to directly market cellular customer premises equipment (CPE) without resort to a separate subsidiary, thereby providing the Bell cellular companies with the same flexibility as other cellular carriers in organizing coporate functions.

EFFECTIVE DATE: The Order is effective March 21, 1985.

FOR FURTHER INFORMATION CONTACT: Mary L. Brown, Common Carrier Bureau, Federal Communications Commission, Washington, D.C. 20554 (202) 632-9342.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 22

Cellular radio service, Communications common carriers, Mobile radio service, Radio common carriers.

Report and Order

In the matter of policy and rules concerning the furnishing of customer premises equipment, enhanced services and cellular communications services by the Bell Operating Companies, CC Docket No. 84-637; FCC 85-54.

Adopted: January 31, 1985.
Released: February 12, 1985.

By the Commission:

1. In the *Notice of Proposed Rulemaking* in this docket, we proposed to eliminate the requirement that cellular companies owned or controlled by the divested Regional Holding Companies (RHCs) offer cellular customer premises equipment (CPE) through a fully separated subsidiary.[1] We tentatively found that competition in the provision of cellular services and the competitive nature of the cellular CPE market adequately protected cellular ratepayers and CPE customers from the dangers of anticompetitive practices that we sought to discourage when we created the separate subsidiary requirement. We also invited comment on whether the RHCs' cellular subsidiaries should be allowed to offer other mobile services and CPE. In addition, we requested comments on minor amendments to § 22.901 of the Commission's Rules, to reflect the changes in nomenclature of post-divestiture Bell System and the band on CPE manufacturing imposed by the *Modification of Final Judgement (MFJ)*.[2] Numerous comments and reply comments have been received in response to the *Notice*.[3] By this Order we adopt the proposals set forth in the *Notice* subject to the modifications explained below.

I. Background

2. As we discussed in the *Notice*,[4] The requirement that the RHCs' cellular companies fully separate the provision of CPE from service has its origins in the *Second Computer Inquiry (Computer II)*[5] decisions, where we found that CPE and enhanced services should be provided on a competitive, unregulated basis. Based on a finding of the probable anticompetitive consequences of allowing AT&T to enter the CPE and enhanced services market, we order AT&T to offer its unregulated CPE and enhanced services through a fully separated subsidiary. We found that the structural separation occasioned by a separate subsidiary would, in AT&T's case, protect consumers and ratepayers from potential anticompetitive practices and promote a competitive CPE marketplace. When we created the cellular service in 1981,[6] we found that AT&T's cellular operations should be organized in a subsidiary separate from basic telephone operations, consistent with the *Computer II* requirement of separation of competitive services. With respect to cellular CPE, we provided that AT&T's cellular subsidiary would be required to further separate its offering of cellular CPE.[7] Shortly before the AT&T divestiture on January 1, 1984, we evaluated the application of the *Computer II* structural separation policy as applied to the divested RHCs.[8] We elected to continue to mandate structural separation for the RHCs' CPE and enhanced services activities, subject to several modifications,[9] but found the record to be insufficient to support a judgment on whether the provision of cellular CPE should continue to be separated from cellular service.[10] Accordingly, we issued a *Notice of Proposed Rulemaking* to determine if cellular CPE could be offered by the RHCs' cellular companies without resourt to a separate subsidiary.[11] In addition to the cellular

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[1] *Notice of Proposed Rulemaking*, CC Docket No. 84-637, FCC 84-271, released June 28, 1984, 49 FR 27792 (July 6, 1984) (hereinafter *Notice*). Pursuant to § 22.901 of the Commission's Rules, cellular services offered by the RHCs must be fully separated from landline telephone services. This proceeding does not propose to amend our rules regarding structural separation between landline and cellular operations.

[2] *United States* v. *American Telephone and Telegraph Co.* 552 F. Supp. 131, 190-91 (D.D.C. 1982), *aff'd sub nom. Maryland* v. *United States*, 103 S.Ct. 1240 (1983).

[3] A list of commenting parties is attached as Appendix A.

[4] *Notice*, *supra* note 1, at paras. 2-4.

[5] *Amendment of § 64.702 of the Commission's Rules and Regulations*, 77 FCC 2d 384 (1980), *reconsideration* 84 FCC 2d 50 (1981), *further reconsideration* 88 FCC 2d 512 (1981), *aff'd sub nom Computer & Communications Indust. Ass'n* v. *FCC*, 693 F.2d 198 (D.C. Cir. 1982), *cert. denied*, 461 U.S. 938 (1983).

[6] *Cellular Communications Systems (Cellular Order)*, 86 FCC 2d 469 (1981), *reconsideration* 89 FCC 2d 58 (1982), *further reconsideration* 90 FCC 2d 571 (1982), *appeal dismissed sub nom. United States* v. *FCC*, Civ. No. 82-1256 (D.C. Cir. March 3, 1983).

[7] *Cellular Order*, 86 FCC 2d at 497, n. 65.

[8] Under the *Modification of Final Judgement*, All facilities used to provide common carrier mobile services were transferred to the RHCs. Plan of Reorganization at 385-88, *approved in United States* v. *American Telephone and Telegraph Co.* 569 F. Supp. 1057, 1102 (D.C. Cir. 1983).

[9] *Report and Order*, CC Docket No. 83-115, 95 FCC 2d 1117 (1983) (*BOC Separation Order*), *aff'd Illinois Bell Tel. Co.* v. *FCC*, 740 F.2d 465 (7th Cir. 1984), *reconsideration* FCC 84-252, released June 1, 1984, 49 FR 26056 (June 26, 1984), *appeal filed sub nom. North American Telecomm. Assoc.* v. *FCC*, No. 84-2216 (7th Cir., filed June 4, 1984). The modifications are: (1) That the operating company and its CPE subsidiary may engage in joint billing for four years; (2) the operating company may refer customers for transmission services to its CPE company provided the customer is told alternative vendors exist; (3) the companies may engage in joint installation and maintenance of single-line residential and business phones; (4) and the companies may propose to utilize some other organizational structure, such as a division, if the company can demonstrate that ratepayers can be insulated from the losses of the CPE organization and that the other structural separation conditions are met.

[10] *BOC Separation Order*, *supra* note 9, at 1147, n. 29.

[11] The Notice specifically addressed the issue of the provision of cellular CPE. As part of the Notice in this proceeding, we invited comment on any other relevant issues. No party objected to the suggestions that enhanced services, like CPE, be offered directly by the RHCs' cellular subsidiary. Ameritech Mobile at 1; BellSouth Mobility at 17; and Southwestern Bell Mobile at 10. The *Computer II* decision to separate AT&T's provision of enhanced services relied on the same grounds as the CPE decision, *i.e.*, AT&T's dominance of the local exchange and integration with manufacturing and research and development operations. Since as we have noted, the BOC cellular providers lack monopolies over the provision of cellular services, they should be equally unable to engage in effective anticompetitive conduct in the provision of enhanced mobile services. However, the *Computer*

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CPE separation issue, we also sought comment on whether the RHCs' cellular subsidiaries could offer other mobile services and CPE.

3. Pending resolution of the cellular CPE structural separation issue, we have granted interim waivers to those RHCs that requested permission to offer their cellular CPE and other mobile services and CPE without resort to a separate subsidiary. Three of these interim waivers were granted as part of the *Notice*, and other interim waives have been granted by letters subsequent to the *Notice*.

4. Pursuant to these waivers, the provision of cellular CPE among the RHCs' cellular subsidiaries falls within one of three basic organizational structures: (1) Those that offer cellular CPE through a division or company which also resells cellular service (Ameritech Mobile, Bell Atlantic Mobile, PacTel Access and Southwestern Bell Mobile); (2) those that offer cellular CPE through a separate division devoted solely to the sale and lease of cellular CPE (BellSouth Mobility and NewVector Communications); and (3) one company (NYNEX Mobile) that offers cellular CPE through a separate subsidiary.[12] None of the cellular operating companies, which actually own the plant and equipment that consititutes the cellular radiotelephone network, are involved in the sale or leasing of cellular CPE. Furthermore, in those cases where resale and cellular CPE are offered jointly, activities related to cellular CPE are accounted for separately.[13]

5. In response to our *Notice*, we received 14 comments and eight replies discussing our tentative findings. Several parties also requested that, in the event we abolish the structural separation requirement, we mandate that the RHCs offer CPE equipped with a convenient means for users to select the frequency block on which to originate or receive calls. These parties allege that this capability permits the user to select which carrier transmits the call.[14]

6. The majority of the parties submitting comments in response to the *Notice* concurred in our tentative findings. Most of the comments, in fact, merely restate the rationale advanced in the *Notice*.[15] Of those agreeing with our tentative conclusions, many are the cellular subsidiaries of the RHCs. These commenters also advanced additional reasons for the elimination of the separate subsidiary requirement, or have provided facts that support our tentative conclusions.[16] Only two commenters, one a retailer of cellular CPE and another representing the interests of some nonwireline carriers, assert that our analysis was flawed.[17]

II. Discussion

A. Structural Separation of Cellular CPE

7. In the *Notice*, we tentatively concluded that the RHCs' cellular subsidiaries need not further separate their offerings of cellular CPE.[18] WE reasoned that the competitive provision of cellular service, arising from our decision to authorize two competing systems in a market, adequately protects cellular ratepayers from the dangers of cross-subsidy [19], in which the ratepayers subsidize CPE activities, or of cost-shifting, in which the regulated firm enhances its rate base by including costs related to CPE activites in its revenue requirements.[20] In general, we found that cross-subsidization of CPE activities is unlikely because cellular operating companies will complete against each other at the wholesale level and therefore will not have access to monopoly revenues. Similarly, extensive competition exists at the retail level among resellers of service. Thus, at both the retail and wholesale levels, competition constrains the carrier's ability to subsidize the price of CPE from excess prices on transmission rates. Cost-shifting is unlikely because competitive carriers do not have an incentive to load the costs of their cellular CPE activities onto the costs of providing cellular service.

8. We also tentatively concluded that elimination of the separate subsidiary requirement would foster a more competitive cellular CPE marketplace.[21] One of the reaons we established structural separation in the *Computer II* decisions was to ensure that AT&T would not use its monopoly position in basic services to favor its own CPE over that of its competitors. In the case of cellular, however, this concern is addressed by regulatory policies other than structural separation. Unlike exchange telephone service, cellular is not a monopoly service. The RHCs' cellular subsidiaries must complete with other carriers and resellers who are able to offer "one stop shopping" for cellular service and CPE. Furthermore, cellular resellers and independent CPE vendors established their service and CPE retail operations contemporaneously with cellular wholesalers. Cellular resellers and CPE vendors are not disadvantaged, as non-cellular CPE retailers are, by the presence of a firm that has dominated the CPE market for a number of years. We also tentatively concluded that our network design disclosure requirements guard against an RHC's cellular subsidiary favoring its own cellular CPE. In addition, the RHCs are presently barred from manufacturing their own

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II requirement that any carrier's enhanced services operations obtain basic services from affiliates pursuant to tariff, will apply equally to the provision of enhanced mobile services. Accordingly, this Order governs the provision of enhanced mobile services and treats enhanced mobile services identically to cellular CPE for the purpose of deciding how enhanced mobile services should be offered.

[12] The existing corporate structures are discussed more fully *infra* paras. 20–22.

[13] In all cases, the cellular operations are fully separated from landline telephone operations, and the cellular operating companies provide cellular services to the co-owned reseller on the same terms and conditions as service is provided to other resellers. Section 22.901(c) and (d) of the Commission's Rules.

[14] *See* Section II, B *infra*.

[15] On the impact of our policies on ratepayers, see Ameritech Mobile at 3–5; Bell Atlantic Mobile at 7–11; BellSouth Mobility at 9–12; NewVector Communications at 7–10; NYNEX Mobile at 10–13; PacTel Access at 3–5; and Southwestern Bell Mobile at 4–7. On the impact on competition, see Ameritech Mobile at 5–7; Bell Atlantic Mobile at 11–14; Bell-South Mobility at 12–14; NewVector Communications at 10–12; NYNEX Mobile at 15–18; TacTel Access at 6–8; and Bell Atlantic Mobile Reply at 5–7. On the costs of a separate cellular CPE subsidiary, see Ameritech Mobile at 7–8; Bell Atlantic Mobile at 14–119; BellSouth Mobility at 15–17; NewVector Communications at 11–12; NYNEX Mobile at 13–15; PacTel Access at 6–7; Bell Atlantic Mobile Reply at 10–11; and PacTel Access Reply at 2–3.

[16] NewVector Communications and NYNEX Mobile argue that we should consider a number of factors in evaluating whether to continue the separate subsidiary requirement for cellular CPE. NewVector Communications at 6–7 and NYNEX Mobile at 4–5. These parties point out that the cost-benefit criteria developed in the *Computer II* decisions are not rigid requirements, but merely guidelines for the evaluaition of whether structural separation is necessary. We agree with this interpretation of the cost-benefit criteria, as evidenced by our wide-ranging analysis of a number of factors relating to cellular in the *Notice*. *See BOC Separation Reconsideration Order*, *supra* note 9, at para. 13, and *Notice*, *supra* note 1, at n.5.

[17] See the petitions submitted by Tandy and Telocator. In addition, Florida Cellular and MCI argued that if structural separation of cellular CPE were eliminated, further relief is necessary. *See* paras. 30–31, *infra*.

[18] Our existing policy permits the RHCs' cellular subsidiaries to offer cellular CPE through the *Computer II* subsidiary that offers non-cellular CPE or through another *Computer II* subsidiary devoted solely to cellular CPE.

[19] Landline telephone ratepayers are already protected by our requirement that cellular subsidiaries of landline telephone companies be fully separated from landline telephone operations. *See* § 22.901 of the Commission's Rules.

[20] *Notice*, *supra* note 1, at paras. 5–8.

[21] *Id.* at paras. 9–10.

CPE, pursuant to the *MFJ*.[22] We tentatively concluded that the separation requirement interferes with the RHCs' cellular subsidiaries' ability to compete in the CPE market, and that other policies appear adequate to prevent attempts by the RHCs' cellular subsidiaries to favor a particular type of equipment.

9. Furthermore, we tentatively concluded that the separate subsidiary requirement posed serious competitive disadvantages to the RHCs' cellular subsidiaries because these are the only cellular entities that cannot offer prospective customers the convenience of dealing with one firm for cellular service and CPE. We concluded this was disadvantageous in an environment where the RHCs' cellular subsidiaries are competing for a share in the cellular services and CPE markets with nonwirelines, resellers and retailers, all of whom have entered the market at approximately the same time. Thus, we found that potential for anticompetitive practices related to the provision of cellular CPE appears to be adequately deterred by various regulatory policies, and that the additional benefits to our goal of fostering a competitive cellular CPE marketplace to be gained by imposing a structural separation policy are negligible.

10. We also examined the costs of our structural separation policy and concluded that the costs of complying with our policy appeared to outweigh the benefits obtained. In comparison to their landline counterparts, cellular operations of the RHCs are small. As a result, we reasoned that these cellular companies may realize effciencies from shared staff, expenses, plant and equipment, and that any savings realized could be passed on to their customers. This Order adopts our tentative conclusions and eliminates structural separation requirements for Bell Companies' provision of cellular CPE.

11. *Effect on ratepayers.* Tandy and Telocator object to the tentative conclusion we reached in the *Notice*. These parties argue that elimination of the separate subsidiary policy for cellular CPE activities will produce anticompetitive consequences for cellular retepayers, as well as nonwireline competitors and resellers. Tandy argues that once the nonwirelines enter the market, their presence will only serve to exacerbate the incentive for the RHCs' cellular subsidiaries to engage in predatory pricing of CPE in order to leverage into a greater share of the service market.[23] Tandy and Telocator also argue that the regional operations of the RHCs' cellular subsidiaries will allow these firms to transfer revenues around their regions, concentrating the revenues in those markets where anticompetitive practices such a predatory pricing would prove advantageous.[24] Tandy also complains that the RHCs cellular subsidiaries will be able to shift costs between their CPE and service activities so as to take advantage of even the slighest alterations in prices.[25] Finally, Tandy argues that the RHCs' cellular systems have privilege access to the landline network, and that this privileged access, along with other benefits associated with their association with the RHCs', creates opportunities for these companies to engage in anticompetitive practices.[26] Telocator suggests that, in order to minimize opportunities for cost shifting, the Commission maintain the separate subsidiary requirement, although Telocator would allow the CPE subsidiary to resell cellular services.[27]

12. We reject these arguments. Tandy and Telocator have not demonstrated that our analysis was in error. The competition which we have mandated at the wholesale level through the licensing of competing systems, and which we have fostered at the retail level through the encouragement of resale, should be adequate to discourage anticompetitive practices. Tandy does not explain how, given the existence of a competing nonwireline system, the RHCs' cellular subsidiaries could sustain a policy of cross subsidization long enough to capture a majority or all of the market. Furthermore, as we discussed in the *Notice*, in a competitive environment, a cross subsidy from service activities to CPE activities would require an increase in service rates. A rate increase provides an incentive for subscribers to switch systems. So long as the competing system prices its service at cost, marketplace checks should be adequate to discourage anticompetitive abuses. This is true even if the cross subsidy allows the RHCs' cellular companies to price CPE below cost. In general, if the RHC's cellular subsidiary is to compete successfully, the total charges for service and CPE must be similar to its competitors'. We also fail to see why the RHCs' cellular companies would possess an advantage in comparison to the nonwireline firms by virtue of their regional operation. The existence of a nationwide affiliate does not, in and of itself, produce joint and common costs that can be loaded onto the rate base.[28] We are also unpersuaded by Tandy's argument that the RHCs' systems have privileged access to the landline network. The landline telephone companies owned by the RHCs are required to provide facilities and services to all cellular systems on an equal basis.[29]

13. These parties also argue that our analysis is based on the erroneous assumption that headstart is a temporary phenomenon and that competition at the wholesale level will soon become the norm. We continue to believe that the wireline headstart, to the extent it exists, will be temporary. Many of the nonwireline applicants in markets 31–90 have announced settlement agreements have been reached which would allow the Commission to grant construction permits.[30] Where full settlements have

[22] While the RHCs' cellular subsidiaries are barred from manufacturing their own equipment, many of these companies have entered into license agreements with manufacturers to provide cellular CPE that bears the corporate name of the RHCs' cellular subsidiary. *See* NYNEX Mobile at Appendix I, p. 5.

[23] Tandy at 2.

[24] Tandy Reply at 10–11. *See also* Telocator Opposition to Reconsideration in CC Docket No. 83–115 at 76 (referenced in Tandy's petition in this proceeding at 1).

[25] Tandy Reply at 11–12.

[26] Tandy Reply at 12.

[27] Telocator Comments on Interim Capitalization Plans at 15. The RHCs disagree with the positions of Tandy and Telocator, citing the rationale we proposed in the *Notice*. Ameritech Mobile Reply at 2–3; Bell Atlantic Mobile Reply at 3–5; PacTel Reply at 1–3; and Southwestern Bell Mobile at 3–4.

[28] Even if these costs could be loaded into the rate base, many of the nonwirelines are owned or controlled by nationwide corporation entities with substantial resources. For example, nonwireline companies such as MCI and Metromedia presently are licensed in four of the top 30 markets each. Furthermore, Bell Atlantic Mobile and NYNEX Mobile argue that opportunities for anticompetitive behavior have been lessened by the break-up of centralized cellular operations under AT&T into seven regional cellular entities. Bell Atlantic Mobile points out that the Central Cellular Service Organization (CCSO), that at one time was envisioned as a centralized administrative service organization for the seven companies, has been permanently dissolved and will not be reconstituted. Bell Atlantic Mobile at 12. In addition, NYNEX Moblie argues that the cellular subsidiaries do not receive any services from Bell Communications Research, Inc. (Bellcore), the landline telephone equivalent of the CCSO. NYNEX Mobile at 13, n. **. We agree that the lack of a centralized administrative organization lessens the potential for anticompetitive activity, although the dissolution of the CCSO does not, by itself, warrant the elimination of the separate subsidiary requirement.

[29] Section 22.901(c) of the Commission's Rules. It is not clear what information the landline affiliate possesses that would be available and of use to cellular companies. Tandy apparently believes there is an analogy to our concern about regulated telephone companies passing valuable customer information to their unregulated CPE affiliates to the detriment of competitors. The circumstances here, which affect only mobile telephone service, are not comparable.

[30] *See* Public Notice, Rept. No. CL–108, Mimeo 6471, released September 10, 1984 and Public Notice.

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not been reached, our adoption of the cellular lottery should further speed the licensing process.[31] In the top 30 markets, where comparative hearings are required, nine markets have competing systems, and in 17 more, the nonwirelines have received construction permits.

14. Ameritech Mobile argues that anticompetitive practices are also discouraged by the partnership agreements that most of the RHCs' cellular operating companies have entered into with non-Bell wireline companies.[32] The partnership agreements were initiated in order to resolve conflicts created by mutually exclusive applications for wireline service. Typically, the limited partners in the operating company also enter the market as resellers and CPE retailers. Ameritech Mobile contends that, as the general partner in these operations, it owes the limited partners fiduciary duties. Furthermore, Ameritech Mobile asserts that its fiduciary responsibilities can be enforced by resort to the partners' audit rights. We agree with Ameritech Mobile that in markets where a partnership is licensed to provide cellular service, there are significant incentives to encourage the competitive provision of CPE. All of the partners have an incentive to see that CPE is offered at competitive prices, because sale or lease of additional cellular CPE will encourage sale of additional cellular service.

15. Bell Atlantic Mobile and BellSouth Mobility argue that in addition to the reasons cited in the *Notice*, cost shifting will not occur because many states do not regulate wholesale or retail rates for cellular service, and therefore no "rate base" exists.[33] We are aware, however, that some states require tariffs, while others are monitoring the development of the cellular industry with a view toward considering rate regulation in the future. More importantly, evaluation of the possibility of cost shifting is relevant to a determination of whether CPE prices can be artifically lowered. Cost shifting abilities and incentives, therefore, constitutes a relevant factor in determining whether to eliminate structural separation for cellular CPE.[34]

16. *Effect on competition.* Several parties offered additional support for our tentative finding that the current separation policy does not benefit, and may in fact harm, competition in the cellular CPE market. For example, Bell Atlantic Mobile cites trade press reports on the growing number of cellular CPE vendors.[35] Severl of the cellular subsidiaries have also noted the strong competition which has developed at the retail level for cellular service and CPE.[36] These parties assert that their own resale and CPE entities compete against large numbers of affiliated and non-affiliated resellers that provide "one stop shopping" for cellular service and CPE. NYNEX Mobile has submitted a lengthy appendix containing advertisements from around the country for cellular services and CPE, demonstrating that many resellers are advertising the convenience of dealing with one firm for service and CPE as an inducement to attract customers.[37] Finally, Ameritech Mobile points out that the structural separation policy, in addition to causing inconvenience for prospective customers, also creates a degree of confusion among prospective customers that impedes the RHCs' cellular subsidiaries ability to compete.[38] These pleadings support our views, as set forth in the *Notice*, that the market for cellular CPE is becoming increasingly competitive, in part due to our resale policies, and that, absent the elimination of the separate subsidiary policy, the RHCs' cellular subsidiaries will be hampered in their ability to compete in the cellular CPE market.[39]

17. *Costs of Separation.* The RHCs' cellular companies also agree with our tentative conclusion that the separate CPE subsidiary requirement imposes costs on the RHCs' cellular subsidiaries that are not justified by their size. Ameritech Mobile, Bell Atlantic Mobile, BellSouth Mobility, NYNEX Mobile, and Southwestern Bell Mobile report that they employ between 100 and 200 people.[40] These parties assert that if cellular CPE could be provided directly by the cellular subsidiary, efficiencies in staffing and operations could be realized. Tandy, opposing the elimination of structural separation, argues that the Commission has determined on previous occasions that there are no efficiencies to be realized from the joint provision of service and CPE.[41] Tandy further argues that the RHCs' cellular subsidiaries have not supported their cost claims and have offered no explanation of why cellular could not be offered through the *Computer II* subsidiary that offers landline equipment.[42]

18. We find that the costs associated with the separate provision of cellular CPE outweigh the benefits to be obtained from maintaining our present policy. The RHCs' cellular subsidiaries correctly point out that the costs of offering cellular CPE through a separate subsidiary include the strong probability of customer confusion and the likelihood that customers will seek out those companies that provide "one stop shopping" for cellular services and CPE. Because the RHCs' cellular subsidiaries must compete with companies that offer one stop shopping for service and CPE, separation constitutes a "cost" in the form of lost business. The transaction costs associated with structural separation therefore interfere with the RHCs' cellular subsidiaries' ability to compete, and the growth of the cellular industry as a whole. Furthermore, we reject Tandy's claim that the Commission has unequivocally found that there are no efficiencies to be gained from combining service and CPE

Rept. No. CL-170, Mimeo 909, released November 19, 1984 (extending the deadline for filing agreements until January 15, 1985).

[31] *Cellular Lottery Order*, CC Docket No. 83-1008, FCC 84-150, released May 24, 1984.

[32] Ameritech Mobile at 4-5.

[33] Bell Atlantic Mobile reports that, in its service area, New Jersey, the District of Columbia and Delaware do not regulate cellular rates. Pennsylvania, Maryland and Virginia permit the filing of flexible "minimum-maximum" tariffs. According to Bell Atlantic Mobile, Maryland is the only state in its area to regulate retail rates. Bell Atlantic Mobile at 16. BellSouth Mobility states that, within its service area, Florida, Georgia and Tennessee do not regulate rates. BellSouth Mobility at 15.

[34] Bell Atlantic Mobile and BellSouth Mobility also argue that the economic structure of the cellular industry, in comparison to the landline telephone industry provides further evidence that anticompetitive practices will not occur. Bell Atlantic Mobile at 8 and BellSouth Mobility at 10. These parties argue that cellular has fewer fixed costs and serves a highly specialized market. While it is true that the ratio of fixed, to variable costs affects the ability of an industry to engage in anticompetitive practices (*i.e.*, predatory pricing), low fixed costs are not determinative of whether cross-subsidization will occur.

[35] The report cited by Bell Atlantic Mobile states that there are or will soon be 51 vendors of cellular CPE nationwide, of which 18 are presently in operation. Bell Atlantic Mobile at 12-13.

[36] Bell Atlantic Mobile reports that in its region, there are 20 authorized resale agents, eight sub-agents and five unaffiliated retailers. Bell Atlantic Mobile at 13. BellSouth Mobility reports that in its region, it competes with four reseller and seven authorized agents. BellSouth Mobility at 13-14. NYNEX Mobile has submitted a list of 13 resellers (including NYNEX Mobile) that have applied to operate or have received permission to operate in New York state. NYNEX Mobile at Appendix I, Attachment 2.

[37] NYNEX Mobile at Appendix I, Attachment 1.

[38] Ameritech Mobile at 6-7.

[39] Tandy argues that the history of anticompetitive practices associated with the Bell System compels continuation of the separate subsidiary requirements for cellular CPE. Tandy Reply at 13. Tandy's argument, however, has previously been rejected by the Commission. *Advanced Mobile Phone Service, Inc.* (*Los Angeles Order*), 93 FCC 2d 683, 694-95 (1983).

[40] Ameritech Mobile at 8; Bell Atlantic Mobile at 5; BellSouth Mobility at 3-4; NYNEX Mobile at 14-15; and Southwestern Bell Mobile at 8.

[41] Tandy at 3; Tandy Reply at 4.

[42] Tandy Reply at 4 n.3.

functions in one organization.[43] We recently held that the RHCs' *Computer II* subsidiaries could market intrastate basic telephone service, in order to decrease the costs associated with selling network services and increase the usage.[44] In the case of cellular, the RHCs' cellular subsidiaries should not be required to resort to two staffs in their efforts to promote the development and growth of cellular, where one staff would do.[45]

19. *Degree of Separation.* The *Notice* invited parties to comment on other requirements which might be advisable to impose in the event we decided to eliminate the structural separation requirement for cellular CPE. Most of the RHCs' cellular subsidiaries stated that the organizational structures and relationships established pursuant to the waiver requests that have been granted constitute the maximum degree of separation that we should impose.

20. Southwestern Bell Mobile, BellSouth Mobility, and NewVector Communications were granted waivers from the structural separations rule as part of the *Notice.*[46] The three requests involved similar organizational structures, whereby cellular service would be offered through a retail or CPE division of the cellular subsidiary. Pursuant to the interim waiver, Southwestern Bell Mobile, which functions as the central administrative organization for cellular operations, maintains a retail division to market cellular CPE. In addition, Southwestern Bell Mobile operates as a reseller of services purchased from its various cellular operating companies. Similarly, BellSouth Mobility operates a retail division to resell cellular service, a cellular CPE division, and a wholesale support division providing administrative support to the operating companies.[47] NewVector Communications also offers its CPE through one of its operating divisions, but resells cellular service obtained from its operating companies through a separate subsidiary known as NewVector Retail Service.

21. Bell Atlantic Mobile, Ameritech Mobile and PacTel Access received interim waivers to offer cellular services and CPE through one subsidiary subsequent to the issuance of the *Notice.*[48] Bell Atlantic Mobile proposed to offer its cellular CPE through a retail division similar to structures already approved on an interim basis in the *Notice.*[49] Ameritech Mobile proposed to allow its retail division, which resells cellular service, to market cellular CPE.[50] Shortly after adoption of the *Notice,* PacTel Mobile Access, which oversees the activities of its cellular operating companies, proposed a separate subsidiary known as PacTel Mobile Services, to resell cellular service and retail cellular CPE.[51] These waivers were granted by the Chief, Common Carrier Bureau.[52]

22. The only RHC cellular subsidiary that presently maintains a separate subsidiary to offer cellular CPE is NYNEX Mobile, which provides centralized administrative services to its cellular operating companies. The separate CPE subsidiary is known as Mobile Products, Inc. Another subsidiary, known as Mobile Communications Retail Co., functions as a reseller of cellular service. These two subsidiaries of NYNEX Mobile, however, share sales and support staff, office space, building services and various support services. NYNEX Mobile's organizational structure was approved as part of the *Notice.*

23. Several of the RHCs' cellular subsidiaries state that a requirement that they maintain separate books of account for cellular CPE activities is consistent with the requirements imposed on the independent telephone companies, pursuant to *Computer II.*[53] These parties make no objection to maintaining separate books of account. PacTel Access argues that separate books of account are not necessary because all of the activities of the RHCs' cellular subsidiaries are competitive.[54] We will require the RHCs to maintain separate books of account for cellular CPE activities. In those instances where the Bell cellular company has received authorization to operate in advance of its nonwireline competitor, separate accounting provides a mechanism to monitor the cellular operations and associated CPE activities during the interval before robust competiton at the wholesale level develops. Furthermore, separate accounting is necessary, in some cases, because some states regulate cellular service rates. Without separate accounting, it is impossible to price transmission service accurately because the costs associated with the provision of service cannot be separated from the costs associated with the provision of CPE. Finally, the RHCs' cellular subsidiaries, with the sole exception of PacTel Access, are not adverse to separate accounting.[55]

24. Another issue raised in this context involves the sharing of proprietary information, such as customer calling patterns, between the

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[43] *See, e.g. BOC Separation Order,* 95 FCC 2d 1117, 1138 (1983).

[44] *American Information Technologies Corp.,* ENF File No. 84–10 and ENF File No. 84–18, FCC 84–290, released July 11, 1984. The BOCs were required to show that any sales agency arrangement made available to the subsidiaries is also made available to unaffiliated vendors on the same terms and conditions which apply to the subsidiary. To further assure fair competition between subsidiaries and other CPE vendors, we required separate subsididaries to order telephone services for their customers through the same nondiscriminatory centralized operations group mechanism used by other vendors. In addition, we required retention of the capability within the regulated telephone companies to sell all of their services to customers who do not wish to deal with the CPE subsidiary.

[45] Several of the RHCs' cellular subsidiaries argue that the application of structural separation for the provision of CPE to the Bell-owned cellular companies, and not to independent wireline or nonwireline companies, is discriminatory. *See* Ameritech Mobile at 2–3; BellSouth Mobility at 14; Southwestern Bell Mobile at 4; and Bell Atlantic Mobile Reply at 6. We have already found this argument to be unpersuasive. *BOC Separation Order,* 95 FCC 2d 1117, 1138–1139 (distinguishing between the RHCs and the independents for the purposes of applying the *Computer II* rules.)

[46] The requests were made as part of the RHCs' capitalization plans that were submitted to the Commission pursuant to the *BOC Separation Order, supra,* note 8. The three proposals regarding joint provision of cellular services and cellular CPE were consolidated in File No. ENF 84–12 and placed on public notice. Public Notice, "Bell Operating Company Cellular Subsidiaries file Capitalization and Administrative Service Plans Concerning the Provision of Cellular Service Subsidiaries," Mimeo No. 3030, released March 19, 1984.

[47] Subsequent to the issuance of the *Notice,* BellSouth Mobility requested and received a waiver to market paging services and equipment on a retail basis from its cellular subsidiary. *See* Letter from Chief, Common Carrier Bureau to Martin C. Ruegsegger, December 5, 1984.

[48] Bell Atlantic Mobile and Ameritech Mobile orginally proposed to offer cellular CPE through a separate subsidiary. Their capitalization plans, as proposed, were approved in the *Notice. Notice, supra* note 1, at para. 12 and n.18. PacTel did not submit a plan that specified which of its subsidiaries would offer cellular CPE.

[49] Bell Atlantic Petition for Interim Waiver, filed July 17, 1984.

[50] Ameritech Mobile Petition for Interim Waiver, filed July 30, 1984.

[51] Petition of PacTel Mobile Services, filed June 22, 1984. On November 2, 1984, PacTel services also petitioned for an interim waiver to market paging CPE and services on a retail basis. The petition has been granted. *See* Letter from Chief, Common Carrier Bureau to Harry Quillian, December 5, 1984.

[52] Letter from Chief, Common Carrier Bureau to Raymond F. Scully, August 14, 1984 (granting Bell Atlantic Mobile's interim waiver); Letter from Chief, Common Carrier Bureau to Charles A. Zielinski, August 20, 1984 (granting Ameritech Mobile's petition for interim waiver); and Letter from Chief, Common Carrier Bureau to Harry Quillian, July 3, 1984 (granting PacTel's petition for interim waiver).

[53] Ameritech Mobile at 11–12; Bell Atlantic Mobile at 19–20; BellSouth Mobility at 17–18; NewVector Communications at 14; NYNEX Mobile at 18–19 and n.*; Southwestern Bell Mobile at 8. Pursuant to the wavier petitions granted during the pendency of this proceeding, separate books of account for cellular CPE are required. *See* notes 47, 51, *supra.*

[54] PacTel Access at 11.

[55] Accounts should be established in the manner in which we directed in our *Fifth Report and Order,* CC Docket No. 81–893, FCC 84–547, released November 20, 1984, *recon, pending.*

cellular retail entity, and its CPE operations, which could be used in furthering the sale or leasing of cellular CPE. Tandy argues that such a practice is anticompetitive because CPE retail outlets do not have access to such information.[56]

25. We reject Tandy's argument. All resellers have access to service-related information. The fact that Tandy, as a CPE retailer, does not choose to engage in resale of service is not grounds for perpetuating a policy of separation that applies to only a portion of the cellular service market—*i.e.*, the RHCs' cellular subsidiaries.[57]

B. Modifications to Cellular CPE Offered by the RHCs

26. Several parties have argued that if we decide to eliminate the structural separation policy for cellular CPE, we should require that all cellular CPE offered by the RHCs' cellular subsidiaries be equipped with a device that allows a subscriber to switch to the nonwireline frequency block.[58] While there are several different terms used to describe various methods of providing for such selection, we will use the term "A/B switch" to refer to all methods.[59] These parties argue that the CPE presently offered by the RHCs' cellular subsidiaries is not equipped to allow the cellular subscriber to switch easily from one frequency block to the other.[60] These parties further assert that, contrary to our finding that wireline headstart will prove to be a temporary phenomenon, the RHCs' cellular subsidiaries have attained a significant headstart in comparison to their nonwireline competitors. Thus, they argue that the RHCs' cellular subsidiaries can capture subscribers on the wireline frequency block merely by signing up subscribers whose CPE is tuned to the wireline frequency block. These parties assert that the cellular CPE currently offered is equipped with a programmable read-only memory (PROM) that prevents easy selection of a frequency block. Customers who desire to change cellular companies must have the PROM reprogrammed by trained technicians in order to scan the other frequency block. MCI asserts that even if we require an A/B switch, such a device is insufficient to allow the subscriber to select a frequency. MCI argues that the customer must also be able to reprogram a new telephone number at the time the switch is made.[61] Tandy further argues that, as a result of the lack of an A/B switch requirement, the effects of headstart will linger.[62]

27. The RHCs cellular subsidiaries have opposed the suggestion that we require cellular CPE sold by them to be equipped with an A/B switch.[63] These parties argue that the proposal is discriminatory, unnecessary, and at odds with the Commission policy of allowing competition in the marketplace to govern selection of features associated with CPE. These parties assert that the headstart phenomenon, to the extent it exists, is at most temporary. They argue that, in some cases, nonwirelines have a headstart over their wireline competitors and in other cases, began offering service to the public at roughly the same time as the competing wireline system.[64] In addition, the RHCs' cellular subsidiaries argue that the A/B switch issue is better addressed in a separate proceeding, and note that the Commission presently has before it a petition to require that A/B switches be installed on all cellular CPE.

28. The RHCs' cellular subsidaries also warn that adoption of an A/B switch requirement could produce economic dislocations in the cellular CPE market. BellSouth Mobility argues that only three manufacturers presently produce cellular CPE that is equipped to allow the subscriber to elect which frequency block to scan. As a result, BellSouth Mobility claims that the RHCs' cellular companies would experience delay in obtaining CPE equipped with an A/B switch if such a requirement were mandated. Further, BellSouth Mobility and NYNEX Mobile assert that reprogramming costs associated with changing cellular CPE to scan the other frequency block are minimal and should not prevent migration by wireline customers to nonwireline frequencies. NYNEX Mobile estimates that the PROM is replacable at a cost of five dollars, and that the replacement would take no more than 20 to 40 minutes. NYNEX Mobil argues that a nonwireline could provide the alteration free of charge to prospective customers as an inducement to switching cellular companies.[65]

29. We find that the record in this proceeding is insufficient to impose an A/B switch requirement. We do not have an understanding of how an A/B switch requirement would affect the competitive position of the RHCs' cellular subsidiaries or cellular CPE manufacturers.[66] As a result, we decline to impose an A/B switch requirement as part of this proceeding. In a companion Notice issued in conjunction with this Order, we are initiating a rulemaking to determine whether an A/B switch requirement should be imposed, and if so, what form such a requirement should take.

C. Provision of Other Mobile Service

30. The majority of the commentors favored allowing other common carrier mobile services, such as non-cellular mobile telephone service and paging, to be offered by the RHCs' cellular subsidiaries.[67] As in the case of cellular CPE, the RHCs' competitors may integrate their offering of cellular and non-cellular mobile services. The commentors argued that the same policy considerations that support the elimination of the separate subsidiary

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[56] Tandy Reply at 13, n.16.

[57] NYNEX Mobile and Southwestern Bell Mobile, in a related but different point, argue that the RHCs' cellular subsidiaries should be able to bill for service and CPE jointly. NYNEX Mobile at 19, n.* and Southwestern Bell Mobile at 8. Such a billing procedure is consistent with our decision here. Of course, services and CPE must be offered on an unbundled basis and billed on an unbundled basis.

[58] Florida Cellular at 1–4; MCI Cellular at 2–7; Telocator at 2–4; and Tandy Reply at 3–10.

[59] An A/B switch refers to a device that allows the subscriber to select which frequency block his cellular telephone will scan on a priority basis. Frequency block A is reserved for nonwireline use, while frequency block B is reserved for wireline use. For most of the equipment presently manufactured, the subscriber would have to return his telephone to a service center to have the telephone reprogrammed with a different A/B priority, system identification number and telephone number.

[60] Florida Cellular at 3–4; MCI at 4; and a Telocator at 4.

[61] MCI at 6–7.

[62] *Cellular Order* 86 FCC 2d at 490–91, 89 FCC 2d at 74–75.

[63] Ameritech Mobile Reply at 3–6; Bell Atlantic Mobile Reply at 7–9; BellSouth Mobility Reply at 6–9; NYNEX Mobile Reply at 5–8; PacTel Access Reply at 3–5; and Southwestern Bell Mobile Reply at 2–3.

[64] Nonwireline systems have preceded wireline systems in three markets—Washington/Baltimore, Indianapolis, and Milwaukee. Of the remaining six markets that presently have competing systems in operation, three markets, Boston, Buffalo and St. Louis, received authonzations to offer service to the public at approximately the same time.

[65] These parties also point out that the A/B switch requirement has been raised on previous occasions in connection with the headstart issue and has been rejected. *See Miami CGSA, Inc., Mimeo No. 4507*, released May 31, 1984 at n.29. While it is true that the A/B switch requirement has been raised on previous occasions, it has been raised in connection with petitions to deny or defer operating authority. These cases are limited by their facts. Those petitioning to defer licensing on headstart grounds must meet a high standard of proof. In the *Miami CGSA* Order, for example, petitioners did not prove that deferral of operating authority was warranted.

[66] For example, we are unaware of any manufacturer who presently makes portable cellular telephones equipped with an A/B switch. A requirement that the RHCs' cellular subsidiaries offer only CPE equipped with an A/B device would essentially put the RHCs' cellular subsidiaries out of the business of offering portables.

[67] Ameritech Mobile at 9–10; Ameritech Mobile Reply at 7–8; Bell Atlantic Mobile at 20–21; BellSouth Mobility at 2–3; BellSouth Mobility Reply at 2–3; NewVector Communications at 15–16; NYNEX Mobile at 20–22; Pacific Bell at 1–4; PacTel Access at 8–9; Southwestern Bell Mobile at 89; and Southwestern Bell Mobile Reply at 4–5.

for cellular CPE also support allowing the RHCs' cellular subsidiaries to offer paging, and other mobile services and CPE. These parties assert that other mobile services are more competitive than cellular, and therefore the potential for anticompetitive practices is nearly nonexistent. Of those supporting consolidation of mobile services and CPE, several parties stated that the decision of where and how to provide other mobile activities should be made in the first instance by the RHC and should not be mandated.[68]

31. Those parties opposing consolidation of all common carrier mobile services argued that consolidation should not be permitted for the same reasons that they argued for reaffirmation of structural separation policy for cellular CPE.[69] Telocator states that, while it does not oppose consolidation, other mobile services should be offered through separate subsidiaries of the RHCs' cellular subsidiary.[70]

32. Those parties objecting to consolidation have not put forth a persuasive argument as to why other mobile services and CPE should not be provided through the RHCs' cellular subsidiaries. Cellular ratepayers are already adequately protected from potential anticompetitive practices by other regulatory policies that encourage the competitive provision of these services. Paging, in particular, is a highly competitive industry, and thus could not be a source of monopoly revenue from which to fund cross subsidization. In addition, our present policy, if continued, will impede competition by preventing one sector of the cellular industry from offering the full spectrum of mobile services and CPE.[71] Furthermore, because competition is impeded, continuation of the policy imposes costs by impeding the growth and development of the mobile services industry generally, and by preventing the industry from realizing joint operating efficiencies.[72] We find, therefore, that the cost of continuing our policy of separating cellular from other mobile activities of the RHCs outweighs the benefits, and that the policy should be eliminated.[73]

D. Revisions to Part 22

33. As part of the *Notice*, we also proposed revisions to § 22.901 of the Commission's Rules to reflect changes in nomenclature and functions imposed on the Bell System as a result of the *MFJ*. The proposed rule substitutes the names of the divested RHCs in place of references to American Telephone and Telegraph in § 22.901(b) of the Commission's Rules. The second change proposed to delete the reference to manufacturing in § 22.901(c)(2) of the Commission's Rules to reflect the line of business restrictions placed on the BOCs by the *MFJ*. The proposed changes drew only one comment. Bell Atlantic Mobile argued that if we listed the seven RHCs in § 22.901(b) by name, the full corporate names should be used.[74]

34. Section 22.901(b), as originally drafted, prevented AT&T from engaging in the provision of cellular service except through a separate subsidiary, as provided in § 22.901 of the Commission's Rules. In the divestiture, all assets associated with cellular service were transferred to seven regional cellular companies, operating as subsidiaries of the seven RHCs.[75] Because the RHCs have a similar relationship to their cellular affiliates as AT&T did prior to divestiture, we will amend § 22.901(b) to refer to the RHCs. As Bell Atlantic Mobile suggests, we will use their full corporate names.[76]

III. Conclusion and Ordering Clauses

35. We have determined in this proceeding that the competitive structure of the cellular radiotelephone industry adequately protects the public from the dangers of potential anticompetitive abuse arising from the joint provision of cellular services and CPE by the RHCs' cellular subsidiaries. As a result, the policy of structurally separating cellular CPE from the RHCs' retail cellular activities is unnecessary. Moreover, structural separation may have the effect of impeding competition, and the development of the cellular industry generally, by imposing unwarranted direct and indirect costs. We have also decided that the RHCs' cellular subsidiaries should be able to offer other mobile services and CPE. Finally, we have adopted minor modifications to Part 22 to reflect the post-divestiture structure of the Bell System.

36. Accordingly, it is ordered, that pursuant to sections 4(i), 4(j), 201–202, 220, 301, and 303 of the Communications Act of 1934, as amended (47 U.S.C. 154(i), 154(j), 201, 202, 220, 221 and 303), section 553 of the Administrative Procedure Act (5 U.S.C. 553) and § 1.411 *et. seq.* of the Commission's Rules (47 CFR 1.411 *et seq.*, § 22.901 (47 CFR 22.901) is amended as set forth in Appendix B effective March 21, 1985.

37. It is further ordered, that the Motion to Accept Late-Filed Pleading, filed on behalf of PacTel Mobile Access and Pacific Bell and Nevada Bell is granted.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A

The following parties submitted comments on the Commission's proposal to eliminate the requirement that Bell Regional Holding Companies market cellular customer premises equipment through a subsidiary separate from the cellular operating companies:

Advanced Paging Services, Inc.
Ameritech Mobile Communications, Inc.
Bell Atlantic Mobile Systems, Inc. (Bell Atlantic Mobile)
Bell Atlantic Telephone Companies (Bell Atlantic)
BellSouth Mobility Inc.
Florida Cellular Telephone Company
MCI Cellular Telephone Company and MCI Airsignal, Inc.
NewVector Communications, Inc.
NYNEX Mobile Communications Company
Pacific Bell and Nevada Bell
PacTel Mobile Access (PacTel Access)
Southwestern Bell Mobile Systems, Inc.
Tandy Corporation
Telocator Network of America.

Reply comments were received from the following:

Ameritech Mobile Communications, Inc.
Bell Atlantic Mobile Systems, Inc.
BellSouth Mobility Inc.
NYNEX Mobile Communications Company
PacTel Mobile Access

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[68] Bell Atlantic Telephone at 1–3; Advanced Paging at 1–3.

[69] Tandy Reply at 14 and Telocator Reply at 2–4.

[70] Telocator at 2–4.

[71] Consistent with our discussion of accounting for cellular services and CPE, we will require that the RHCs maintain separate books of account for other mobile services although they may combine their accounting of all types of CPE.

[72] We reject, however, NewVector Communication's proposal to provide paging services on cellular frequencies. NewVector Communications at 17. As we found in the *Cellular* decision, the demand for two-way cellular service appears to be very great, and the amount of spectrum space for this service is limited. For the present, cellular frequencies may not be used to provide paging services. 89 FCC 2d 512 at n.65. *See also* Southwestern Bell Mobile Reply at 8 and Telocator Reply at 2, n.*.

[73] We have amended § 22.901(a) of the Commission's Rules in order to recognize specifically that the RHCs' provision of cellular services may be combined with other common carrier mobile services. The amended rule appears at Appendix B.

[74] Bell Atlantic Mobile at 21.

[75] *Advanced Mobile Phone Service, Inc.*, Mimeo No. 1616, released December 30, 1983.

[76] The amended rule is attached as Appendix B.

Southwestern Bell Mobile Systems, Inc.
Tandy Corporation
Telocator Network of America

PART 22—[AMENDED]

Appendix B

Section 22.901, paragraphs (b) and (c)(2) are revised to read as follows:

§ 22.901 Eligibility.

* * * * *

(b) Neither Ameritech Information Technologies Corp., Bell Atlantic Corp., BellSouth Corp., NYNEX Corp., Pacific Telesis Group, Southwestern Bell Corp., or US West, Inc., their successors in interest, nor any affiliated entity, may engage in the provision of cellular service except as provided for in paragraphs (c) and (d), or as otherwise authorized by the Commission.

(c) * * *

(2) Each such separate corporation shall operate independently in the furnishing of cellular service. It may include, as part of its operations, the furnishing of other mobile services offered pursuant to Part 22 of the Commission's Rules. Each such separate corporation shall maintain its own books of account, have separate officers, utilize separate operating, marketing, installation, and maintenance personnel, and utilize separate computer and transmission facilities in the provision of cellular services. Any research or development performed on a joint or separate basis for the subsidiary must be done on a compensatory basis; and

* * * * *

[FR Doc. 85-5731 Filed 3-12-85; 8:45 am]

BILLING CODE 6712-01-M

GENERAL SERVICES ADMINISTRATION

48 CFR Ch. 5

[APD 2800.12 CHGE 8]

General Services Administration Acquisition Regulation; Competition in Contracting

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR) Chapter 5 is amended to implement and supplement the Federal Acquisition Regulation (FAR), FAC-84-5, regarding the Competition in Contracting Act of 1984 (CICA), Title VII of Pub. L. 98-369. In addition, Part 505 is revised to address the requirements of the Small Business and Federal Procurement Competition Enhancement Act of 1984 (Pub. L. 98-577) regarding the publicizing of procurement actions in the Commerce Business Daily. This rule does not address CICA's new provisions on bid protests or CICA's implementation with respect to the acquisition of leasehold interests in real property. Separate GSAR changes will be issued on protests and the acquisition of leasehold interests in real property. Acquisition Circular AC-84-3 on Purchases under Blanket Purchase Agreements, is canceled and the contents incorporated into the regulation. In addition, miscellaneous other changes unrelated to the CICA are also included in this final rule. The intended effect is to implement CICA and provide procedures and guidance to GSA contracting activities.

EFFECTIVE DATE: April 1, 1985.

FOR FURTHER INFORMATION CONTACT: Ida Ustad, Office of GSA Acquisition Policy and Regulations (VP), (202) 523-4754.

1. The authority citation for 48 CFR Chapter 5 reads as follows:

Authority: 40 U.S.C. 486(c)

2. In 48 CFR Chapter 5 the General Structure is amended by adding Parts 506 and 517 and revising the title of Part 514 to read as follows:

General Services Administration Acquisition Regulation

General Structure

SUBCHAPTER A—GENERAL

* * * * *

Part
506 Competition Requirements
* * * * *

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

* * * * *
514 Sealed Bidding
* * * * *
517 Special Contracting Methods
* * * * *

3. In 48 CFR Chapter 5, Part 501, the title has been revised to read as follows:

PART 501—GENERAL SERVICES ADMINISTRATION ACQUISITION REGULATIONS SYSTEM

4. Part 501, Table of Contents is amended to add a new Subpart 501.7 and related sections to read as follows:

Sec.
* * * * *

Subpart 501.7—Determinations and Findings

501.700 Scope of subpart.
501.704 Content.
501.704 70 Sample formats.
501.707 Signatory authority.
501.770 Determinations and findings required.

Authority: 40 U.S.C. 486(c).

SUPPLEMENTARY INFORMATION: On December 5, 1984, the General Services Administration published in the **Federal Register** (49 FR 47516, Dec. 5, 1984) a GSAR Notice No. 5-82 inviting comments from interested parties. A response was received from the American Consulting Engineers Council. Their comments along with comments received from various GSA offices have been reviewed, reconciled, and incorporated, when applicable, into this final rule.

Impact

This is not a major rule as defined in Executive Order 12291. Therefore, preparation of a regulatory impact analysis was not necessary. The General Services Administration (GSA) certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Therefore, no regulatory flexibility analysis has been prepared. This rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et seq.

Authority: 40 U.S.C. 486(c).

List of Subjects in 48 CFR Ch. 5

Government procurement.

5. Section 501.103 paragraphs (b), (c), and (d) are revised to read as follows:

501.103 Applicability.

* * * * *

(b) Part 570 of the GSAR contains policies and procedures on the acquisition of leasehold interests in real property. Parts 501, 502, 503, 505, 506, 517, 533, 552, 553, and Subparts 504.70, 509.4, 515.1, 532.8 and 543.1 include policies and procedures which generally apply to all contracts including leases of real property. Other GSAR provisions do not apply to leases of real property unless a specific cross reference is made to the provision in Part 570.

(c) The GSAR applies to the disposal of real and personal property only to the extent explicitly stated in specific GSAR provisions. The portions of Subpart 501.6 regarding the Contracting Officer Warranty Program and legal review and assistance, and Subpart 504.70 on the uniform procurement instrument identification system apply to the disposal of real or personal property. Subpart 509.4 regarding suspension and debarment of contractors is applicable

to contracts for the disposal of personal property (see FPMR 101–45.6).

(d) Regulations in the GSAR may deviate from the FAR when a deviation has been explicitly authorized. (See FAR Subpart 1.4 and GSAR Subpart 501.4.) When the GSAR does not contain a regulation that implements the FAR, the FAR alone will govern.

6. Section 501.603–2 paragraphs (c)(3)(ii)(B), (C), (H), and (J); paragraph (c)(3)(iii); paragraph (c)(3)(v)(B); and paragraphs (c)(3)(vi)(C) and (D) Are revised to read as follows:

501.603–2 Selection.

* * * * *

(c) * * *

(3) * * *

(ii) * * *

(B) Negotiated Contracts and Negotiation Techniques—80 hours,

(C) Formal Advertising or Sealed Bidding—40 hours,

* * * * *

(H) Services Contracting—40 hours,

* * * * *

(J) Architect-Engineer Contracting—40 hours, (Applicable to personnel handling Architect-Engineer service procurements.)

* * * * *

(iii) *Senior level (over $100,000).* (Does not apply to leasing and sales).

* * * * *

(v) * * *

* * * * *

(B) Negotiated Contracts or Negotiation Techniques—24–40 hours, and

(vi) * * *

* * * * *

(C) Formal Advertising or Sealed Bidding—40 hours,

(D) Negotiated Contracts or Negotiation Techniques—40 hours, and

* * * * *

7. Section 501.670–4 paragraphs (d) and (f) are revised, and (x) and (y) are added to read as follows:

501.670–4 Legal review.

* * * * *

(d) Determinations and findings required by the FAR, GSAR, or other appropriate authority (see FAR Subpart 1.7 and GSAR Subpart 501.7) and justifications to use other than full and open competition (see FAR Subpart 6.3).

* * * * *

(f) Matters involving the disclosure of offers before opening and determinations as to whether such disclosure was made collusive intent.

* * * * *

(x) Assessment of administrative costs other than excess costs.

(y) Ratifications of unauthorized contractual commitments.

8. Section 501.670–5 paragraph (l) is revised to read as follows:

501.670–5 Legal assistance.

* * * * *

(l) Matters involving the use of special and directed sources of supply, e.g., procurement of supplies and services from Federal Prison Industries or from workshops for the blind and other severely handicapped.

* * * * *

9. Part 501 is amended by adding a new Subpart 501.7 to read as follows:

SUBPART 501.7—DETERMINATIONS AND FINDINGS

501.700 Scope of subpart.

This subpart prescribes general policies and procedures regarding the requirements for, and contents and format of determinations and findings (D&F's). The general requirements for the most commonly used D&F's are outlined in GSAR 501.770. Specific information on the various D&F's can be found in the part of the FAR or the GSAR which requires the D&F. This subpart shall not be considered to be an all inclusive listing of D&F requirements.

501.704 Content.

501.704–70 Sample formats.

(a) *Type of contract.*

(1) *Cost reimbursement contracts.* The following format is prescribed for determinations required by FAR 16.301–3, 16.302, 16.303, 16.304, 16.305, 16.306, 16.403, and 16.404.

General Services Administration
Determinations and Findings

Authority to Use Cost Reimbursement Type Contract

Findings

I hereby find that:

(1) The (Service/Office title) proposes to contract for (describe work, service, or product) (identify program or project). The estimated cost is ($———) (if contract is CPFF type, insert "plus a fixed fee of ($——— which is ——— percent of the estimated cost exclusive of fee").

(2) (Set forth facts and circumstances that show why it is impracticable to secure property or services of the kind or quantity required without the use of the proposed type of contract or why the proposed method of contracting is likely to be less costly than other methods.)

(3) These findings are made pursuant to (cite appropriate statute and/or regulation).

Determinations

I hereby determine that:

On the basis of the above findings, it is impracticable to secure the property or services of the kind or quality required without the use of a (cost, cost-sharing, or cost-plus-a-fixed-fee[1]) type of contract, or the (cost, cost sharing, or cost-plus-a-fixed-fee[2]) method of contracting is likely to be less costly than other methods.[1]

Date ———

Signature ———

(2) *Time and material or labor-hour contracts.* The format prescribed by (a)(1) above shall be followed except that the final paragraph shall read substantially as follows:

I hereby determine that:

On the basis of the above findings, no other type of contract will suitably serve for the procurement of the required work or services.

(3) *Letter contracts.* The following format is prescribed for determinations required by FAR 16.603–3:

General Services Administration
Determinations and Findings

Authority to use a letter contract

Findings

I hereby find that:

(1) The (Service/Office title) proposes to contract for (describe the work, service, or product) (identify program or project). The estimated cost is $——— (complete if possible).

(2) (Set forth facts and circumstances that show why no other contract is suitable. Explain why the Government's interests demand that the contractor be given a binding commitment so that work can start immediately, and why it is not possible to negotiate a definitive contract in time to meet the requirements.)

(3) These findings are made pursuant to (cite appropriate statute and/or regulations).

Determinations

I hereby determine that:

On the basis of the above findings, it is impracticable to secure the property or services of the kind or quality required within the time frame required without the use of a letter contract.

Date ———

———

(Signature)

(b) *Use of procedures that are less than full and open competition.*

(1) *Exclusion of source(s).* The following format is prescribed for determinations and findings made under section 303(b)(1) of the Federal Property and Administrative Services Act (41 U.S.C. 253(b)(1)) and FAR 6.202.

General Services Administration
Determinations and Findings

Authority To Exclude Source(s) From Competition on an Individual Contract Under 41 U.S.C. 253(b)(1)

Findings

I hereby find that:

(1) The (Service/Office title) proposes to procure (describe work to be performed or

[1] Use applicable word or statement.

[2] Use applicable words.

product to be delivered) (identify program or project and state estimated contract price).

(2) (Set forth the facts and circumstances which show that it is necessary to exclude a particular source(s) in order to establish or maintain an alternative source or sources for the supplies or services being acquired. Explain how this action will (a) increase or maintain competition and likely result in reduced overall costs, (b) be in the interest of national defense by having a facility available for furnishing the supplies or services in case of a national emergency or industrial mobilization, or (c) be in the interest of national defense by establishing or maintaining an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center.)

Determinations

I hereby determine that:

On the basis of the above findings, it is necessary to exclude (identify source(s)) from (identify the contract action) in order to establish or maintain an alternative source or sources for the supplies or services being acquired because to do so will (describe benefits as required by FAR 6.202).

Date _____

(Signature)

(2) *Not in public interest.* The following format is prescribed for determinations and findings made under section 303(c)(7) of the Federal Property and Administrative Services Act (41 U.S.C. 253(c)(7)) and FAR 6.302–7:

General Services Administration
Determinations and Findings

Authority not to provide for full and open competition on an individual contract under 41 U.S.C. 253(c)(7)

Findings

I hereby find that:

(1) The (Services/Office title) proposes to procure (describe work to be performed or product to be delivered) (identify program or project and state estimated contract price).

(2) (The contents of the justification prepared by the contracting officer, in accordance with FAR 6.302–7 and 6.303–2, shall be included as a part of the findings to support the determination.)

Determinations

I hereby determine that:

On the basis of the above findings, it is not in the public interest to provide for full and open competition in the procurement of (describe work to be performed or product to be delivered) (identify program or project).

Date _____

(Signature)

(c) *Advance payments.* The prescribed format for advance payments determinations and findings is set forth in FAR 32.410.

(d) *Buy American.* The prescribed format for nonavailability determinations and findings required by FAR 25.102(a)(4) and 25.202(a)(3) is set forth in GSAR 525.108–70.

501.707 Signatory authority.

When a D&F is required, it shall be signed by the appropriate official in accordance with Table 501–1 of this regulation before the solicitation is issued. Authority to sign and/or delegate signatory authority for D&F's is as shown in Table 501–1. Under the applicable statutes, the agency head may not delegate the authority to sign D&F's except as shown.

TABLE 501–1.—SIGNATORY AUTHORITY

D&F Requirement	Signatory authority
a. Determinations as to estimated cost of, and fees to be paid under, cost-plus-a-fixed-fee contract. (See 41 U.S.C. 41 U.S.C. 254(b) and FAR 16.306.).	Individual D&F's shall be signed by the head of the contracting activity, as defined in GSAR 502.170, or a designee. Class D&F's shall be signed by the head of the contracting activity.
b. Determinations that the use of cost, cost-plus-a-fixed-fee contract or an incentive type contract is likely to be less costly than other methods, or that it is impracticable to secure property or services of the kind and quality required without the use of a cost, cost-plus-a-fixed-fee contract or an incentive type contract. (See 41 U.S.C. 254(b) and FAR 16.301–3, 16.302, 16.303, 16.304, 16.305, 16.403, and 16.404.).	Individual D&F's may be signed by the head of the contracting activity or a designee. Class D&F's shall be signed by the head of the contracting activity.
c. Determinations to use a time-and-material or labor-hour type contract. (See FAR 16.601 and 16.602.).	Individual D&F's may be signed by the contracting officer. Class D&F's shall be signed by the head of the contracting activity.
d. Determinations to use a letter contract. (See FAR 16.603–3.)	Individual D&F's may be signed by the head of the contracting activity or a designee.
e. Determinations to exclude a particular source from a contract action in order to establish or maintain an alternative source or sources for supplies or services. (See 41 U.S.C. 253(b)(1) and FAR 6.202.)	Individual D&F's may be signed by the head of the contracting activity. Class D&F's are not permitted.
f. Determinations that it is not in the public interest to use full and open competition. (See 41 U.S.C. 253(c)(7) and FAR 6.302–7.).	Individual D&F's shall be signed by the Administrator. This authority may not be redelegated Class D&F's are not permitted.
g. Determinations that the making of advance payments would be in the public interest. (See 41 U.S.C. 255(c) and FAR 32.410.).	D&F's shall be signed by the head of the contracting activity. Class D&F's are not permitted.
h. Determinations with respect to waiving the requirement for submission of cost or pricing data and the certification thereof. (See FAR 15.804–3(i).)	Individual D&F's shall be signed by the head of the contracting activity. Class D&F's are not permitted.
i. Determinations with respect to waiving the requirement for the inclusion of the clauses required by FAR 52.215–22 through 52.215–25 in contracts with foreign governments or agencies thereof. (See FAR 15.804-3(i).).	Individual D&F's may be signed by the head of the contracting activity or a designee.
j. Determinations to omit the clause specified at FAR 52.215–1, Examination of Records by Comptroller General, from contracts with foreign contractors or subcontractors. (See 41 U.S.C. 254(c) and FAR 15.106–(b).).	Individual D&F's shall be signed by the Administrator with the concurrence of the Comptroller General or a designee.
k. Determinations regarding the exceptions to the restrictions of the Buy American Act. (See FAR Subpart 25.1 and GSAR Subpart 25.1.).	Individual D&F's may be signed by the head of the contracting activity or a designee.
l. Determinations under the Balance of Payments program. (See FAR Subpart 25.3.)	Individual D&F's may be signed by the head of the contracting activity or a designee.
m. Determinations under Section 302(b)(2) of the Trade Agreements Act. (See FAR Subpart 25.4 and GSAR Subpart 525.4.).	Individual D&F's may be signed by the head of the contracting activity in accordance with GSAR 525.402–71.

501.770 Determinations and findings required.

The following determinations in connection with contracts are required to be made in writing supported by written findings. This is not an all inclusive listing. It represents the most commonly required D&F's.

(a) The determination required by section 304(b) of the Federal Property and Administrative Services Act (hereafter referred to in this section as "the Act") (41 U.S.C. 254(b)) as to estimated cost of, and fees to be paid under, cost-plus-a-fixed-fee contracts. (See FAR 16.306).

(b) The determination required by section 304(b) of the Act that the use of a cost, a cost-plus-a-fixed-fee contract, or an incentive type contract is likely to be less costly than other methods or that it is impracticable to secure property or services of the kind or quality required without the use of a cost, cost-plus-a-fixed-fee contract, or an incentive-type contract. (See FAR 16.301–3, 16.302, 16.303, 16.304, 16.305, 16.403, and 16.404).

(c) The determination to use a time-and-material or labor-hour type contract. (See FAR 16.601 and 16.602).

(d) The determination to use a letter contract. (See FAR 16.603–3).

(e) The determination required by section 303(b)(1) of the Act (41 U.S.C. 253(b)(1)) to exclude a particular source from a contract action in order to establish or maintain an alternative source or sources for supplies or services. (See FAR 6.202).

(f) The determination required by section 303(c)(7) of the Act (41 U.S.C. 253(c)(7)) that it is not in the public interest to use full and open competition. (See FAR 6.302–7).

(g) The determination required by section 305(c) of the Act (41 U.S.C. 255(c)) that the making of advance payments would be in the public interest. (See FAR 32.410).

(h) The determination required with respect to waiving a requirement for the submission of cost or pricing data and the certification thereof (see FAR 15.804–3(i)) and for the inclusion of the clauses required by FAR 52.215–22 through 52.215–25 in contracts with foreign governments or agencies thereof.

(i) The determination required by section 304(c) of the Act (41 U.S.C. 254(c)) with respect to omitting the clause specified in FAR 52.215–1, Examination of Records by Comptroller General, from contracts with foreign contractors or subcontractors regarding the rights of the Comptroller General of the United States to examine the contractor's records when it is determined (1) that the omission will serve the best interests of the United States, or (2) that the public interest will be served by the omission. (See FAR 15.106–1 and 25.904).

(j) Exceptions to the restrictions of the Buy American Act (41 U.S.C. 10(a–d)), determinations under the Balance of Payments program, and waivers under section 302(b)(2) of the Trade Agreements Act. (See FAR Subparts 25.1, 25.2, 25.3, and 25.4).

10. In 48 CFR Chapter 5, Part 502 Table of Contents is amended by revising the title of 502.170 and by adding new sections 502.172 through 502.174 to read as follows:

PART 502—DEFINITIONS OF WORDS AND TERMS

Subpart 502.1—Definitions

Sec.

502.170 Head of the contracting activity (HCA).
* * * * *
502.172 Senior procurement executive.
502.173 Agency competition advocate.
502.174 Contracting activity competition advocate.

Authority: 40 U.S.C. 486(c).

11. Section 502.000 is revised to read as follows:

502.000 Scope of part.

This part defines words and terms commonly used throughout this regulation. Other terms are defined in the part or subpart with which they are particularly associated.

12. Section 502.170 is revised to read as follows:

502.170 Head of the contracting activity (HCA).

"Head of the contracting activity" means the (a) Assistant Administrator for Acquisition Policy, (b) Assistant Administrator for Federal Supply and Services (FSS), (c) Assistant Administrator for Information Resources Management (OIRM), (d) Commissioner of Public Buildings Services (PBS), (e) Commissioner of Federal Property Resources Service (FPRS), or (f) Regional Administrators. The Assistant Administrator for Acquisition Policy serves as the HCA for Central Office contracting activities outside of FSS, OIRM, PBS, and FPRS.

13. Subpart 502.1 is amended to add new sections 502.172, 502.173, and 502.174 to read as follows:

502.172 Senior procurement executive.

"Senior procurement executive" means the Assistant Administrator for Acquisition Policy.

502.173 Agency competition advocate.

"Agency competition advocate" means the Director of the Office of Acquisition Management and Contract Clearance.

502.174 Contracting activity competition advocate.

"Contracting activity competiton advocate" means the (a) Director of the Office of Acquisition Management and Contract Clearance, (b) Director, Officer of Procurement, FSS, (c) Director, Agency Liaison Office Program Division, OIRM, (d) Director, Special Projects Staff (FPRS), or (e) Regional Director, Office of Project Control and Oversight. The Director of the Office of Acquisition Management and Contract Clearance serves as the contracting activity competition advocate for Central Office contracting activities outside of FSS, OIRM, and FPRS.

14. In 48 CFR Chapter 5, Part 504 is amended in various sections as follows:

PART 504—ADMINISTRATIVE MATTERS

15. Section 504.670 paragraphs (a), (c)(4), introductory text, and (c)(4)(i) are revised to read as follows:

504.670 Notification of proposed substantial awards and awards involving Congressional interest.

(a) *Applicability.* This section applies to notification of proposed awards resulting from either sealed bid or negotiated solicitations, including contract modifications exercising options: (1) When a supply contract is involved and the dollar value exceeds or is estimated to exceed $500,000 (except for products whose points of origin are not readily identifiable or which involve foreign production points), (2) when a design (Architect/Engineer) contract or construction contract is involved and the dollar value exceed or is estimated to exceeds $100,000, (3) or when there is Congressional interest in any contract for supplies or services regardless of dollar value.

* * * * *

(c) * * *

(4) The following additional information shall be furnished on the GSA Form 2932 as applicable:

(i) Under Type of Contract insert "S" for sealed bid and "N" for negotiated. Include the applicable reference to the specific authority in parentheses for each contract awarded without providing for full and open competition; i.e., N(1) for only one responsible source.

* * * * *

16. Section 504.803 paragraphs (a) (1), (2), (3), (4), (8), (9), (10), (13), (14), (15), (19), and (21) are revised to read as follows:

504.803 Contents of contract files.

(a) * * *

(1) Requisition or request for contractual action. Where technical or requirements personnel recommend the use of other than full and open competition, the certification of the accuracy and completeness of the data to support the recommendation should be filed under this tab. (See FAR 6.303–1(b).)

(2) Specifications, drawings, and other technical documents.

(3) Acquisition plan including, where applicable, the determination required by OMB Circular A–76 and/or concurrence of the cognizant competition advocate.

(4) Determination and findings required by FAR Subpart 1.7 and GSAR Subpart 501.7, or justification required by FAR 6.303, including the certification of accuracy and completeness of the justification.

* * * * *

(8) Statement as to synopsis of proposed procurement under FAR

Subpart 5.2 or other required advertisements.

(9) Presolicitation notice.

(10) IFB/RFP and amendments.

* * * * *

(13) Field pricing report (see FAR 15.805–5 and 515.805–5 of this chapter). Where the requirement for a field pricing report of a price proposal is waived as provided in FAR 15.805–5, the waiver and documentation supporting the waiver shall be filed under this tab.

(14) Price or cost analysis report prepared under FAR 15.808. Supporting technical analyses, other than those supporting an audit report, shall be filed under this tab. The profit or fee analysis required by FAR Subpart 15.9 shall be made a part of the price or cost analysis report. In those cases where an independent Government estimate is prepared, it also shall be made a part of the price or cost analysis report.

(15) A price negotiation memorandum, as required by FAR 15.808, must be written so as to permit reconstruction of all the major events of the acquisition and placed under this tab.

* * * * *

(19) "No bid" or "no proposal" correspondence.

* * * * *

(21) Mistakes in bids and protests. This includes all correspondence and determinations relating to mistakes in bids disclosed before award and/or protests.

* * * * *

17. In 48 CFR Chapter 5, Part 505, the Table of Contents is amended by adding section 505.303, Subpart 505.4, and section 505.503 to read as follows:

PART 505—PUBLICIZING CONTRACT ACTIONS

Sec

* * * * *

505.303 Annoucement of contract awards.

Subpart 505.4—Release of Information

505.403 Requests from Members of Congress.

* * * * *

505.503 Procedures.

* * * * *

Authority: 40 U.S.C. 486(c).

18. Section 505.001 is revised to read as follows:

505.001 Policy.

In addition to the publicizing requirements of FAR 5.002, sources sought synopsis may be publicized when appropriate for the purpose of locating potential sources.

19. Section 505.101(b) is revised to read as follows:

505.101 Methods of disseminating information.

* * * * *

(b) Proposed acquisitions of leasehold interests in real property involving blocks of space of 10,000 or more square feet shall be publicized in local newspapers and/or periodicals unless exempt under FAR 5.202 or GSAR 505.202. Proposed leases of less than 10,000 square feet may be publicized in local newspapers and/or periodicals when the contracting officer determines such advertising will serve to promote competition.

20. Section 505.201 is revised to read as follows:

505.201 General.

All synopsis messages (single or consolidated) for proposed procurements shall be forwarded to the appropriate Business Service Center (BSC). Contracting activities shall ensure that internal procedures for forwarding messages to the BSC comply with FAR 5.203, Publicizing and response time. Business Service Centers will arrange for prompt submission of information concerning proposed procurements for publication in the Commerce Business Daily. Submission to the Commerce Department shall be in accordance with FAR 5.207.

21. Section 505.202 is revised to read as follows:

505.202 Exceptions.

(a) The Administrator has determined in accordance with section 18(c)(3) of the Office of Federal Procurement Policy Act, that the Commerce Business Daily (CBD) is not the appropriate vehicle for publicizing proposed acquisitions of leasehold interest in real property (except lease construction on a designated site) and that such acquisitions involving blocks of space of 10,000 or more square feet, unless otherwise exempt from publicizing by FAR 5.202 or paragraph (b) below, shall be publicized in local newspapers and/or periodicals instead of the CBD.

(b) Under section 18(c)(3) of the Office of Federal Procurement Policy Act, the Administrator has determined that it is not appropriate or reasonable to publish an advance notice of—

(1) Orders of $10,000 or more but not exceeding $50,000 under GSA nonmandatory ADP and telecommunications schedule contracts;

(2) Acquisitions of works of art, including the design, execution and installation of the artwork, under the Art-in-Architecture Program; and

(3) Supplemental agreements to leases of real property that are justified in accordance with Part 570 and involve—

(i) Building alterations;

(ii) An extension of the term of the lease, or

(iii) An increase in the amount of space leased in order to provide contiguous space to meet the needs of an agency.

505.203 [Removed]

22. Subpart 505.2 is amended to remove section 505.203:

23. Section 505.205–70 is revised to read as follows:

505.205–70 Synopses of special notices used in connection with market searches for competitive sources.

(a) *General.* The term "sources-sought synopsis" means the type of Commerce Business Daily (CBD) notice designed to identify potential sources for procurements. The sources-sought synopsis provides an opportunity for the marketplace to indicate its interest in submitting bids, offers, proposals, or quotations for future acquisitions. It is normally used to discover if more than one firm is interested and qualified to provide a particular product or service, although a solicitation is not yet available. This type of synopsis has particular application when one contractor is thought to be uniquely capable of meeting the Government's minimum requirements and verification of this opinion is needed.

(b) *Property and services.* Sources-sought notices publicizing the Government's interest in anticipated property or service procurements may be published in the CBD, using the general format outlined in GSAR 505.207, except where security considerations prohibit such publication. A sources-sought synopsis may be published in connection with market searches for sources of property or services, other than those discussed in FAR 5.205, when a sources-sought synopsis is required to test the marketplace for competitive sources. If one or more potential contractors are identified as a result of such a market search, they shall be solicited. In conjunction with that solicitation, the specific procurement of the property or service shall be publicized in the CBD as required by FAR 5.201.

24. Section 505.207 paragraphs (a) and (c), introductory text, and the first and third paragraphs of the statement are revised to read as follows:

505.207 Preparation and transmittal of synopses.

(a) Synopsis messages shall be prepared on a Standard Form 14, Telegraphic Message, when the message

is to be transmitted electronically via teletype. Informal letterhead stationery shall be used when the synopsis message is to be mailed to the Commerce Business Daily.

* * * * *

(c) Notices described in GSAR 505.205–70 as sources-sought synopses shall be titled, "Property Sources Sought" or "Service Sources Sought." This shall be followed by a statement similar to the following (modifications may be made to suit agency needs):

Concerns having the ability to furnish the following property (services) are requested to give written notification (including the telephone number for a point of contact) to the acquiring office listed in this notice within _____ calendar days (no less than 30 days should be entered) from the date of this synopsis:

* * * * *

This is not a formal solicitation. However, concerns that respond should furnish detailed data concerning their capabilities and may request to receive a copy of the solicitation when it becomes available.

25. Section 505.270 is revised to read as follows:

505.270 Synopses of amendments to solicitations.

All amendments to solicitations for offers shall be published in the Commerce Business Daily when the amendment increases the anticipated dollar amount of the contract above the dollar threshold requiring synopsis of the proposed acquisition or the amendment alters the scope of the proposed contract in a manner which would generate the interest of contractors who may not have had an interest in the acquisition as originally synopsized.

26. Section 505.301 is revised to read as follows:

505.301 General.

A notice announcing awards of all unclassified contracts, including those exempt from preaward synopsis requirements by FAR 5.202 and GSAR 505.202, shall be published in the CBD when the contract amount exceeds $25,000 and there are likely to be subcontracts awarded.

27. Section 505.302 is revised to read as follows:

505.302 Preparation and transmittal of synopses of awards.

The provisions of GSAR 505.201 and 505.207 (except 505.207(c)) regarding preaward synopses messages are equally applicable to contract award synopses messages, except that the text shall be prepared as prescribed in FAR 5.302.

28. Section 505.303 is added to read as follows:

505.303 Announcement of contract awards.

By complying with GSAR 504.670 contracting officers automatically fulfill the reporting requirements of FAR 5.303(a). When the Office of Congressional Affairs (EG) determines a contract award may be of interest to the public, it will provide the Office of Public Affairs (EX) with a copy of the GSA Form 2932, Proposed Substantial Contract Award, or otherwise communicate the information to EX for release to the public. Contracting activities may submit information directly to EX if they believe public announcement is appropriate.

29. Part 505 is amended to add Subpart 505.4 to read as follows:

Subpart 505.4—Release of Information

505.403 Requests from Members of Congress.

When responding to a congressional inquiry would result in disclosure of classified material, confidential business information, or information prejudicial to a competitive acquisition, the contracting officer shall consult with assigned legal counsel, refer the proposed reply to the head of the contracting activity and inform the Office of Congressional Affairs (EG) of the action taken. See GSAR 507.670 regarding notification of proposed substantial awards and awards involving congressional interest.

30. Section 505.502(a) is revised to read as follows:

505.502 Authority.

(a) *Newspapers.* The head of the contracting activity or the HCA's designee may approve the publication of paid advertisements in newspapers. Writtten approval is required for paid newspaper advertisements, except, when such publication is required by the FAR or the GSAR (see GSAR 505.101(b)). The contracting officer shall document the case file with the regulatory citation or written approval to support the use of paid newspaper advertisements.

* * * * *

31. Part 505 is amended to add section 505.503 to read as follows:

505.503 Procedures.

The GSA Form 300, Order for Supplies or Services, may be used instead of the Optional Form 347, Order for Supplies and Services, when the dollar amount of the acquisition does not exceed the small purchase limitation or when issuing a delivery order under a basic ordering agreement with an advertising agency for an advertisement.

32. Section 505.504 is revised to read as follows:

505.504 Use of advertising agencies.

The GSA's policy is to use the services of commercial advertising agencies whenever it is determined that the services rendered by those agencies can increase competition for GSA contracts and improve the effectiveness of GSA advertising and marketing programs.

33. 48 CFR Chapter 5, is amended to add Part 506 to read as follows:

PART 506—COMPETITION REQUIREMENTS

Subpart 506.2—Full and Open Competition After Exclusion of Sources

Sec.
506.202 Establishing or maintaining alternative sources.

Subpart 506.3—Other Than Full and Open Competition

506.302 Circumstances permitting other than full and open competition.
506.302–1 Only one responsible source.
506.302–5 Authorized or required by statute.
506.303 Justifications.
506.303–1 Requirements.
506.304 Approval of the justification.

Subpart 506.4—Sealed Bidding and Competitive Proposal

506.401 Sealed bidding and competitive proposals.

Authority: 40 U.S.C. 486(c).

Subpart 506.2—Full and Open Competition After Exclusion of Sources

506.202 Establishing or maintaining alternative sources.

Signatory authority for the determination and findings required by FAR 6.202 is delegated to the heads of contracting activities.

Subpart 506.3—Other Than Full and Open Competition

506.302–1 Only one responsible source.

A class justification has been established under the authority of section 303(c)(1) of the Federal Property and Administration Services Act (41 U.S.C. 253(c)(1)) for the acquisition of utility services as defined in FAR 6.302–1(b)(5). Contract files for these acquisitions shall site the authority contained at FAR 6.302–1(a) and shall note that a class justification is filed in the Office of GSA Acquisition Policy and Regulations (VP).

508.302–5 Authorized or required by statute.

A class justification has been established under this authority for certain acquisitions from the Federal Prison Industries (FPI) and the Government Printing Office (GPO) (see FAR Subparts 8.6 and 8.8). Contract files for these acquisitions shall cite the authority contained at FAR 6.302–5 and shall note that the appropriate class justification is filed in the Office of GSA Acquisition Policy and Regulations (VP). The class justification for FPI applies only to supplies listed in the Schedule of Products made in Federal Penal and Correctional Industries (called the Schedule).

508.303 Justifications.

508.303–1 Requirements.

(a) The contracting officer shall review the facts provided by technical and requirements personnel in support of their recommendation to use other than full and open competition. The contracting officer should satisfy himself/herself that the facts are correct before proceeding with the aquisition using other than full and open competition.

(b) When considering the establishment of a class justification, the contracting officer should determine whether the circumstances supporting the justification would be present in other GSA contracting activities. If such circumstances would be present in other contracting activities, the contracting officer should recommend that the Assistant Administrator for Acquisition Policy approve a justification for use by all GSA contracting activities. The contracting officer should forward such recommendations and supporting justification to the Assistant Administrator through approporiate channels for concurrence.

508.304 Approval of the justification.

(a) The justification for other than full and open competition (except for contracts awarded under the authority of FAR 6.302–7) shall be approved in writing by—

(1) The contracting director, as defined in GSAR 502.171, for proposed contracts for the amount of $100,000 or less, unless the contract is exempt from the review and approval requirement by FAR 6.304(a)(1).

(2) The contracting activity competition advocate, as defined in GSAR 502.174, for contracts for an amount exceeding $100,000 but equal to or less than $1,000,000. The contracting director shall coordinate on and concur in all justifications before submission to the contracting activity competition advocate for approval.

(3) The head of the contracting activity (HCA) as defined in GSAR 502.170, for contracts for an amount exceeding $1,000,000 but equal to or less than $10,000,000. The contracting activity competition advocate shall coordinate on and concur in all justifications before submission to the HCA for approval.

(4) The senior procurement executive, as defined in GSAR 502.172, for contracts for an amount exceeding $10,000,000. The agency competition advocate, as defined in GSAR 502.173, shall coordinate on and concur in all justifications before submission to the senior procurement executive for aproval.

(b) When determining the contract amount for purposes of applying the thresholds in paragraph (a) above, the value of the contract for the term of the contract plus any option periods shall be considered.

Subpart 508.4—Sealed Bidding and Competitive Proposals

508.401 Sealed bidding and competitive proposals.

The requirement to document the contract file when the contracting officer determines that sealed bidding is not the appropriate method of contracting may be fulfilled by including a statement on the limited acquisition plan. The FAR does not require the contracting officer's determination be in the form of a justification or a determination and findings.

34. 48 CFR Chapter 5, Part 508. Table of Contents is amended by adding Subpart 508.3, and new sections 508.602, 508.705–1, and 508.802 to read as follows:

PART 508—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Subpart 508.3—Acquisition of Utility Services.

Sec.
508.303 General.
• • • • •
508.602 Policy.
• • • • •
508.705–1 General.
• • • • •
508.802 Policy.
• • • • •

Authority: 40 U.S.C. 486(c).

35. Part 508 is amended by adding Subpart 508.3 to read as follows:

Subpart 508.3—Acquisition of Utility Services

508.303 General.

When utility services as defined in FAR 6.302–1(b)(5) are available from only one source, the contracting officer shall cite the authority in FAR 6.302–1 and refer to the class justification explained in GSAR 508.302–1. Where two or more suppliers serve the same geographical area, competitive procedures must be followed or a separate justification prepared, supporting the use of other than full and open competition.

36. Subpart 508.6 is amended to add section 508.602 to read as follows:

508.602 Policy.

(a) All proposed acquisitions of supplies listed in the Schedule of Products made in Federal Penal and Correctional Institutions (called the Schedule) shall be documented with the authority cited in FAR 6.302–5 and shall refer to the class justification explained in GSAR 508.302–5.

(b) A contract for services shall not be awarded to the Federal Prison Industries, Inc., (FPI) without providing for full and open competition unless the contracting officer justifies such action in accordance with FAR 6.302. FAR 6.302–5 may not be cited as a justification for the acquisition of services from FPI because 18 U.S.C. 4121–4128 does not authorize or require the procurement of services from FPI.

37. Section 508.605–70 is revised to read as follows:

508.605–70 Federal Prison Industries clearance numbers.

When products listed on the Schedule are bought from a source other than FPI, permission to make the purchase shall be obtained from FPI in the form of a clearance number. This number shall be cited in the solicitation for offers and all subsequent award documents.

38. Subpart 508.7 is amended by adding section 508.705–1 to read as follows:

508.705–1 General.

All proposed acquisitions from the blind and other severely handicapped shall be documented with the authority cited in FAR 6.302–5.

39. Section 508.705–70 is revised to read as follows:

508.705–70 Adding items to the Procurement List.

(a) When a central non-profit agency (CNA) expresses an interest in a

particular commodity or service being added to the Procurement List, the contracting officer shall provide the CNA with the most recent solicitations issued for the supply or service involved and the price(s) at which the item was awarded.

(b) The Committee for Purchase from the Blind and Other Severely Handicapped (the Committee), if requested by the CNA, may assign the supply or service to the CNA for development by a workshop and will list the item in the Committee Assignment Register. A copy of the register, updated monthly, is maintained by the Office of Small and Disadvantaged Business Utilization (AU).

(c) Before issuing a solicitation, contracting officers shall request from the CNA, the status of any item previously identified as one in which the Committee has expressed interest.

(d) The Committee may request that a procurement be delayed pending Committee action. The contracting activity shall consult with AU before rejecting such a request.

40. Section 508.705–72 is revised to read as follows:

508.705–72 Allocations and orders.

In addition to the requirements prescribed in FAR 8.705, requests for allocations and orders shall indicate the packaging, packing, or marking required if it differs from the specification cited, or otherwise provided in the Procurement List. Pricing of nonstandard requirements is covered in FAR 8.707.

41. Subpart 508.8 is amended by adding section 508.802 to read as follows:

508.802 Policy

All proposed acquisitions of Government printing and binding requirements from the Government Printing Office shall be documented with the authority cited in FAR 6.302–5 and shall refer to the class justification explained in 506.302–5.

42. Section 508.870 is revised to read as follows:

508.870 Government Printing Office (GPO).

Acquisition of items for use within the District of Columbia, which are listed in the GPO Catalog and Price List, shall be from GPO. Acquisition of these items from commercial sources is prohibited unless a waiver is granted by the Public Printer through the Printing and Distribution Branch, National Capital Region, authorizing such purchases. When so authorized, the GPO waiver number shall be shown in the contract and/or purchase order. Acquisition from GPO of such items for use outside the District of Columbia is not mandatory. See 41 CFR 101–26.703 regarding marginally punched continuous forms.

PART 509—[AMENDED]

43. Part 509 is amended by revising section 509.206–2 to read as follows:

Subpart 509.2—Qualified Products

509.206–2 Solicitation provision and contract clause.

The contracting officer shall insert one of the clauses at GSAR 552.209–73, Product Removal from Qualified Products List, in solicitations and contracts, when qualified products are to be acquired. These clauses supplement the clauses at FAR 52.209–1 and 52.209.2.

44. Section 509.270 is revised to read as follows:

509.270 Waiver of qualification requirement.

(a) When a contracting activity has a requirement for a product to be acquired under a specification which includes a qualification requirement and the contracting officer has evidence to support a conclusion that it is likely that a solicitation for a Qualified Products List (QPL) product would not produce acceptable offers or full and open competition, a request for a waiver from the qualification requirement of the specification shall be submitted by the contracting director to the Director, Commodity Management Division (FCM) or, where the specification management responsibility has been delegated to a regional office, to the appropriate regional FSS Engineering Branch. The reasons why the waiver is being requested shall be stated in the request.

(b) If a waiver is granted, it shall be stated in the solicitation that the qualification requirement of the specification does not apply. Unless a notification of waiver states otherwise, each waiver granted shall apply only to the specific acquisition for which the waiver was requested, and shall not be construed as authorizing a waiver with respect to any other acquisition.

45. In 48 CFR 5, Part 510 is amended as follows:

PART 510—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

46. Section 510.001 is revised to read as follows:

510.001 Definitions.

"Specification Manager" means an official (within the Office of Federal Supply and Services for Federal or Interim Federal Specifications, or the program office for other than Federal specifications) responsible for reviewing a contracting officer's referral of a request for a deviation from a specification.

47. Section 510.004–70 paragraphs (a) and (b)(1) are revised to read as follows:

510.004–70 Brand name products or equal.

(a) *Citing brand name products.* Brand name or equal purchase descriptions shall cite all brand name products known to be acceptable and of current manufacture. If the use of a brand name or equal purchase description results in the purchase of an acceptable brand name product which was not listed as an "equal" product, a reference to that brand name product should be included in the purchase description for later acquisitions. If a brand name product no longer applies, the reference thereto shall be deleted from the purchase description. Information on additions and deletions shall be immediately communicated to the specification manager.

(b) * * *

(1) It is imperative that brand name or equal purchase descriptions specify each physical or functional characteristic of the product that is essential to the intended use. Failure to do may result in a defective solicitation and the necessity to resolicit the requirements. (See GSAR 510.004–73.) Care must be taken to avoid specifying characteristics that cannot be shown to materially affect the intented end use and which unnecessarily restrict competition.

* * * * *

48. Section 510.004–71 is amended by revising the section heading and the text of paragraph (a) to read as follows:

510.004–71 Limitations on use of brand name or equal purchase descriptions.

(a) *General.* The use of brand name or equal purchase descriptions in solicitations is intended to promote full and open competition by encouraging the offering of products that are equal in all material respects to brand name products cited in such descriptions. Identification by brand name does not indicate a preference for the products mentioned but indicates the quality and characteristics of products that will meet the Government's needs. Where a component of an item is described in the solicitation by a brand name or equal

purchase description and the contracting officer determines that application of the clause at GSAR 552.210–74 would be impracticable, the requirement to include the entry described in GSAR 510.004–72(a), shall not apply. If the clause is included in the solicitation for other reasons, there also shall be included in the solicitation a statement to identify either the component parts (described by brand name or equal descriptions) to which the clause applies or those to which it does not apply. This also applies to accessories related to an end item where a brand name or equal purchase description of the accessories is a part of the description of an end item. Brand name or equal descriptions shall not be used to procure a particular product under the guise of competitive procurement to the exclusion of other products that would meet the actual needs.

* * * * *

49. In 48 CFR Chapter 5, Part 513, the Table of Contents is amended by revising the title of section 513.106–70 to read as follows:

PART 513—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

Sec.

* * * * *

513.106–70 Unusual and compelling urgency procurements.

* * * * *

Authority: 40 U.S.C. 486(c).

50. Section 513.106 is amended by revising paragraphs (a), (b), (c), introductory text, (c)(1), (c)(2), and (e)(2), introductory text, and by adding paragraphs (e)(2)(i) through (e)(2)(vi) to read as follows:

513.106 Competition and price reasonableness.

(a) *Purchases not over $1,000.* Purchases not exceeding $1,000 may be accomplished in accordance with GSAR 513.70 using the certified invoice procedure.

(b) *Purchases over $1,000.* Solicitation of at least three sources in accordance with FAR 13.106(b)(5) may be considered to promote competition to the maximum extent; provided, there is a reasonable expectation of obtaining quotations that will be competitive in terms of market price from two or more of the sources. If the contracting officer determines there is no reasonable expectation of obtaining two or more quotations, additional (more than three) sources should be solicited. If only one response is received, the purchase may be made provided the price is reasonable and the contractor is responsible.

(c) *Oral solicitation.* Quotations may be solicited orally under the circumstances described in FAR 13.106(b)(2) unless—

(1) A service contract, which will include a wage determination issued by the Department of Labor under the Service Contract Act, is involved; or

(2) The proposed acquisition is estimated to be $10,000 and above and must be publicized in the Commerce Business Daily.

* * * * *

(e) * * *

* * * * *

(2) The GSA Form 2010, Small Purchases Tabulation Source List/Abstract, shall be used to document written quotations received and to document oral quotations of $1,000 or more. The form may be used on an optional basis for documenting oral quotations under $1,000. If the GSA Form 2010 is not used, a record shall be maintained to document the following information, as a minimum:

(i) Name and address of the supplier solicited.

(ii) Name of the supplier's representative.

(iii) Prices quoted, including discounts.

(iv) Description of supplies or services for which the quote is provided.

(v) Name of the Government employee soliciting the quotation.

(vi) Date of the conversation.

51. Section 513.106–70 is revised to read as follows:

513.106–70 Unusual and compelling urgency procurements.

When an item or service is needed in a situation of unusual and compelling urgency, competition may be solicited by having prospective sources visit the site and by orally informing them, together, of the exact requirements, to enable the sources to prepare quotations while the written specification is being prepared by the Government for inclusion in the contract. Unusual and compelling urgency, for the purpose of this subsection, includes situations which, if not corrected immediately, will result in unnecessary expenditure of funds, property damage, personal injury, serious loss of agency efficiency in operations, or interruption of agency functions, any of which could be avoided by immediate corrective action.

52. Section 513.107 is revised to read as follows:

513.107 Solicitation and evaluation of quotations.

GSA Form 3188, Request for Quotation, is authorized for use by the Office of Federal Supply and Services with the FSS–19 system instead of the Standard Form 18, Request for Quotations.

53. Section 513.203–1 is revised to read as follows:

513.203–1 General.

(a) *Provisions required.* Blanket purchase agreements (BPA's) normally shall be documented on a purchase order form or on a GSA Form 3521, Blanket Purchase Agreement. In addition to the requirements of FAR 13.203–1(j), each blanket purchase agreement shall, when appropriate, specify the geographic area to be served under the BPA.

(b) *Requesting deliveries.* Only the contracting officer (CO) and officials authorized by a CO and designated in the BPA shall be permitted to request deliveries. Delivery (call) orders shall usually be made by telephone or in person. Before placing calls against the BPA, each requirement shall be screened for availability from mandatory sources of supply. Necessary controls shall be maintained by the person placing call orders under the BPA to ensure that any limitation stated therein is not exceeded. The BPA identification and requisition number, if any, should be specified each time a delivery is requested.

(c) *Delivery tickets.* When deliveries are made, the receiving activity will retain one copy of the related delivery ticket and return the remaining copies to the supplier; one copy which is to be signed and dated. Each delivery ticket, in addition to the requirements of FAR 13.203–1(j)(6), must contain the requisition number, if any, and the name of the person placing the call.

(d) *Invoices.* When the GSA Form 3521, Blanket Purchase Agreement, is used, invoices may be submitted by the vendor for each delivery. The office placing the order shall forward each invoice to the appropriate Finance Division for payment within five (5) days of acceptance. The invoice should be marked to indicate that purchase was made under a BPA.

54. Section 513.204 is revised to read as follows:

513.204 Purchases under Blanket Purchase Agreements.

(a) Individual purchases made against BPA's shall not exceed $5,000.

(b) Individual purchases under BPA's may exceed the $5,000 threshold in (a) above and the small purchase threshold (FAR 13.101) if the BPA has been established in accordance with FAR 13.203–1(f).

55. Section 513.7001 is amended by revising paragraphs (a), (b), introductory text, (b)(1) through (b)(3), (d)(2) and (d)(3), and, (e), and by adding paragraph (g) to read as follows:

513.7001 Certified invoice procedure.

(a) When advantageous to the Government, supplies or services may be acquired on the open market from local suppliers at the site of the work or use point, or by a supply distribution facility when authorized, using vendors' invoices instead of purchase orders. Certified invoice procedures may not be used to place orders under established contracts unless specific authorization for their use is included in the contract document.

(b) Such purchases shall be effected only in accordance with FAR Part 13 and GSAR Part 513, subject to the following:

(1) The amount of any one purchase is $1,000 or less (see FAR 13.106(a)).

(2) A purchase order is not required by either the supplier or the Government.

(3) Appropriate invoices can be obtained from the supplier.

* * * * *

(d) * * *

* * * * *

(2) Certify that the quality and quantity of items/services furnished are in accordance with the verbal agreement made with the vendor; and

(3) Document the record in accordance with FAR 13.106(c) and GSAR 513.106(e).

(e) The solicitation of quotations may be performed by authorized personnel without contracting officer warrants; however, the placement of any orders of $150 or more must be approved in advance by a warranted contracting officer. The approval shall be in writing unless geographic distances make it impracticable to obtain a written approval on the GSA Form 2010 or other documentation in which case telephonic approval may be obtained and a notation of the approval recorded.

* * * * *

(g) Upon receiving the invoice, the contracting officer shall verify the arithmetic accuracy of the invoiced amount and place the following statement on the invoice approving the payment and certifying receipt of the goods or services:

I certify that these goods and/or services were received on (date) and accepted on (date). Oral purchase was authorized and no confirming order has been issued.

Signature

Date Approved

PART 514—SEALED BIDDING

56. In 48 CFR Chapter 5, Part 514 is amended by revising the part title to read as set forth above.

57. Part 514, the Table of Contents is amended by adding and revising the section headings set forth below:

Subpart 514.2 Solicitation of Bids

Sec.

* * * * *

514.201–7 Contract clauses.

* * * * *

514.203–1 Mailing or delivery to prospective bidders.

514.205–2 Removal of names from solicitation mailing lists.

* * * * *

514.270 Bid acceptance period.

514.270–1 Standard Form 33.

514.270–2 Specifying a required bid acceptance period.

514.271 Aggregate awards.

514.271–1 General.

514.271–2 Weighting of items for aggregate award.

514.271–3 Grouping of line items for aggregate award.

514.272 Price list method.

514.272–1 Supply contracts.

514.272–2 Repair and alteration contracts.

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SUBPART 514.3 Submission of Bids

* * * * *

Subpart 514.4 Opening of Bids and Award of Contract

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514.402–3 Postponement of openings.

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514.404–1 Cancellation of invitations after opening.

* * * * *

514.407–2 Responsible bidder—reasonableness of price.

* * * * *

514.407–70 Preaward inquiries.

* * * * *

514.407–74 Preparation of documents for acceptance (only applies to FSS).

* * * * *

Authority: 40 U.S.C. 486(c).

58. Section 514.201–1 is amended by revising the prescription to read as follows:

514.201–1 Uniform contract format.

All solicitations shall include the following notice:

* * * * *

59. Section 514.201–6 is revised to read as follows:

514.201–6 Solicitation provisions.

(a) The contracting officer shall insert the provision at GSAR 552.214–71, Telecopier Submissions, Modifications or Withdrawals of Bids in all solicitations for supplies and service contracts.

(b) The provision in GSAR 552.214–72, Telegraphic Submissions, Modifications or Withdrawal of Bids received at the GSA Communication Center, shall be included in all solicitations for supply and service contracts.

(c) The contracting officer shall insert the clause at GSAR 552.214–73, "All-or-None" Offers, in solicitations when all-or-none offers will be considered.

60. Subpart 514.2 is amended by adding section 514.201–7 to read as follows:

514.201–7 Contract clauses.

(a) The contracting officer shall insert a clause substantially the same as the clause at GSAR 552.214–75, Progressive Awards and Monthly Quantity Allocations, in solicitations for stock replenishment contracts when it is determined that individual contractors may be unable to furnish the Government's monthly requirements, and that it will be expedient to make progressive awards.

(b) The contracting officer shall insert the clause at GSAR 552.215–70, Examination of Records by GSA, in solicitations and contracts subject to audit, as indicated in GSAR 501.671–3.

61. Section 514.201–70 paragraph (b) is revised to read as follows:

514.201–70 Request for brand name information—limitation.

* * * * *

(b) This limitation also applies to acquisitions described in FAR 19.502–4 (Procurements set aside for small business) and FAR Subpart 25.3 (Balance of Payments Program).

62. Section 514.201–71 paragraph (b) is revised to read as follows:

514.201–71 Fire or casualty hazards, or safety or health requirements.

* * * * *

(b) When a specification is not available or the specification to be used does not include a provision such as that described in (a) of this GSAR 514.201–71, and it is believed that such a provision should be included in the current procurement, technical advice shall be obtained from the appropriate program or technical office. If the contracting officer then determines that

the matter should be covered, an appropriate provision shall be included in the solicitation. The provision shall cite the nationally recognized standards requiring compliance. If several such standards are available, the provision shall cite all standards that are acceptable. Since compliance with such standards is normally objectively determined under regular acceptance inspection and test procedures, no requirement for bidders to submit proof of compliance with the standard shall be included in the provision.

514.201-73 [Redesignated as 514.271-3]

63. Section 514.201-73 is redesignated as section 514.271-3.

514.202-1 [Removed]

64. Section 514.202-1 is removed.

65. Section 514.202-4 is revised to read as follows:

514.202-4 Bid samples.

Paragraphs (a) through (f) of this section are applicable when it has been determined, in accordance with FAR 14.202-4, that bidders will be required to furnish bid samples. If it is determined that bid samples will not be required, but the applicable specification cited in the solicitation requires bid samples, a provision shall be included in the solicitation in accordance with FAR 14.202-4(f)(2).

(a) *Solicitation requirements.* A provision or clause containing the information described in FAR 14.202-4(e), and other pertinent details as indicated below, shall be in solicitations in conjunction with the provision at FAR 52.214-20.

(1) Samples must be from the production of the manufacturer whose products will be furnished under the resultant contract. In this connection, if it is determined by the contracting officer, in coordination with the specification and quality assurance activities, to permit bidders to reapply samples furnished under a previous solicitation (see FAR 14.201-6(o)(2) and FAR 14.202-4(f)(1)), FAR 52.214-20, Alternate II, shall be used, not Alternate I.

(2) Bidders shall be required to use GSA Form 434, Sample Record Sheet, copies of which shall be furnished with each solicitation.

(3) Normally, only subjective characteristics of bid samples will be listed in the solicitation. Objective characteristics may be listed when it has been determined, on the basis of past experience or other valid considerations, that examination of such characteristics is essential in the procurement of an acceptable product, and that it is in the best interest of the Government to require prospective contractors to exemplify such characteristics as a matter of responsiveness, rather than as a matter of responsibility (in which case an opportunity is given for a bidder or contractor to correct noted deficiencies). When both types of characteristics are listed in the solicitation, they shall be listed separately under the headings "Subjective Characteristics" and "Objective Characteristics."

(4) Because of variations in circumstances and wording as between different commodities, no standard provision can be prescribed for use in all solicitations. However, the provision at GSAR 552.214-76, Bid Sample Requirements, is provided as an example. This provision may be used in solicitations substantially as shown, or it may be changed, or different provisions may be written to fit the circumstances of the procurement.

(b) *Receipt and safeguarding of samples.* (1) Bid samples shall be received and safeguarded in a sample room. The term "sample custodian," as used herein, refers to sample room personnel.

(2) Bid samples must be received before bid opening to be considered for award. Samples are to be promptly stamped or tagged upon receipt by the sample custodian indicating the date and hour received. The sample custodian shall record whether the samples were sent by regular, registered, or certified mail, or by other delivery methods. Each sample container is to be accompanied by GSA Form 434, Sample Record Sheet, included as part of the solicitation. The regulations concerning late bids (FAR 14.304) also apply to samples received after the time set for receipt of bids.

(3) Bid samples shall be carefully protected against loss, damage, or pilferage. Each sample shall be recorded and tagged showing the firm's name and address, solicitation number, noun name, national stock number (NSN), and date of receipt. If samples or their containers arrive damaged, the sample custodian shall note the condition of the container upon receipt, and request a quality assurance specialist (QAS) to verify the actual condition of the samples involved.

(c) *Evaluation of samples.* (1) Bid samples will not normally be inspected until the bidder is being considered for award on the article(s) represented by the sample. Samples received in the Central Office shall be evaluated by a team consisting of representatives from the contracting, quality assurance, and specification management activities. In the regional offices, samples shall be evaluated by the contracting activity and the quality assurance activity. When laboratory support is required, the quality assurance specialist (QAS) will arrange for the testing, and the samples shall be hand-carried to and from the laboratory, or sent by a protected method.

(2) The samples will be evaluated with respect to the characteristics listed in the solicitation, and a written record of the findings of the evaluation shall be made. If the samples do not meet the required characteristics, the bid shall be rejected with respect to the items represented by the deficient sample(s). If the samples are found to conform to the characteristics listed in the solicitation, further determination of the prospective contractor's responsibility shall be made in accordance with agency procedures.

(d) *Other deficiencies noted.* (1) Although bid samples may be rejected only on the basis of the characteristics listed in the solicitation, the QAS may examine the samples for other specification requirements for the purpose of assisting the quality assurance activity in the region where the bidder's plant is located. A report of the evaluation of the samples, showing results with respect to all characteristics examined, shall be furnished promptly to the contracting officer.

(2) If the bid sample has been found to conform to all of the characteristics listed in the solicitation, but found deficient with respect to one or more of the unlisted characteristics, a preaward survey report shall be requested as provided in GSAR 509.105-1(c). A copy of the sample evaluation report shall be attached to the Standard Form 1404, Preaward Survey of Prospective Contractor-Technical, which shall include a request that special attention be given to the prospective contractor's ability (notwithstanding the deficiencies noted with respect to the characteristics not listed in the solicitation which were evaluated) to produce supplies fully conforming to applicable specifications. For example, can the noted deficiencies be corrected by fairly simple production or process control adjustments, or would expensive and time-consuming retooling be involved? The preaward survey report shall include a specific statement regarding the prospective contractor's ability or inability to correct each noted deficiency in objective characteristics as well as an overall appraisal of his capability.

(i) If the preaward survey report is not favorable, a determination of nonresponsibility shall be made based

upon the facts and evaluation contained in the report together with any other evidence that may be obtained in a given case bearing on the bidder's inability to meet the standards of responsibility in FAR Subpart 9.1.

(ii) If the preaward survey report is favorable, award may be made, if otherwise proper, to the low bidder whose samples conform to the characteristics listed in the solicitation. Concurrently with award, the contracting officer shall specifically, in writing, call to the attention of the contractor, the inadequacies of the sample with respect to unlisted characteristics and advise him of his responsibilities to furnish items conforming to all of the requirements of the specification. A copy of the letter shall be furnished to the appropriate quality assurance activity for use when making subsequent inspections.

(e) *Handling and disposition of approved samples.* (1) Upon award of a contract, the contracting officer shall forward a copy of GSA Form 6419, Transmittal of Contract Award Data, or a similar memorandum of record, to the sample custodian who shall tag the approved samples showing the contract number and the contract period. When there is only one sample, it shall be hand-carried or sent by an appropriate means of transportation to the manufacturing plant marked to the attention of the QAS. If there are two identical samples, one sample shall be retained in the bid sample room until performance is completed and the other shall be forwarded as stated above. The sample shall normally have the tag secured by wire wth a lead seal except when other means of identification are more appropriate. The sample custodian shall notify the Quality Assurance Branch of sample shipment by furnishing a copy of GSA Form 6334, Transmittal of Approved Samples of Items Under Contract, or a similar memorandum of record.

(2) Upon completion of all deliveries/shipments and inspections under the contract, the samples shall be returned to the supplier at the supplier's expense if so indicated on GSA Form 434, Sample Record Sheet. Other samples are to be treated as Government property for use or disposal. In those instances when the contracting officer has indicated that they may be reapplied to a succeeding solicitation, the sample shall be retained in the bid sample room.

(3) If the contracting officer anticipates that there may be a future claim regarding a contract, the bid samples shall be retained until the claim is resolved.

(f) *Disposition of other samples.* (1) Bid samples rejected or untested shall be returned to the supplier at the supplier's expense, if so indicated on GSA Form 434, Sample Record Sheet. The others will be treated as Government property for use or disposal. (See FAR 14.202–4(h).)

(2) Bid samples determined to be received late in accordance with FAR 14.304 shall be held until awards are made and returned to the offeror, freight collect, unless other disposition is requested or agreed to by the bidder.

514.202–70 [Removed]

66. Section 514.202–70 is removed.

67. Section 514.203–1 is amended by revising the title to read as follows:

514.203–1 Mailing or delivery to prospective bidders.

514.203–70 [Removed]

68. Section 514.203–70 is removed.

69. Section 514.205–1 paragraph (a) is revised to read as follows:

514.205–1

Establishment of lists.

(a) Solicitation mailing lists shall be established in accordance with FAR 14.205. Contracting officers within FSS and OIRM shall use the computerized central solicitation mailing list maintained by Region 8 for supplies and services for all procurements expected to exceed the small purchase limitations. Other GSA services/offices may maintain local lists. Services/offices that maintain local mailing lists shall inform the GSA Business Service Center of the list and provide related information regarding the list.

* * * * *

70. Section 514.205–2 is amended by revising the title and paragraph (a), introductory text, to read as follows:

514.205–2 Removal of names from solicitation mailing lists.

(a) To remove firms from solicitation mailing list (SML)—

* * * * *

71. Section 514.208 is revised to read as follows:

514.208 Amendment of invitation for bids.

The date set for bid opening shall be extended when amendments relating to wage determinations issued under the Service Contract Act or the Davis-Bacon Act are issued less than 10 days before the scheduled bid opening date.

72. Subpart 514.2 is amended by adding sections 514.270, 514.270–1, 514.270–2, 514.271, 514.271–1, 514.271–2, 514.271–3, 514.272, 514.272–1, and 514.272–2 to read as follows:

514.270 Bid acceptance period.

514.270–1 Standard Form 33.

(a) Standard Form 33 provides for the insertion by bidders of a number of calendar days after bid opening by which their bids must be accepted by the Government. However, FAR 14.201–6(j) authorizes contracting officers to specify a minimum bid acceptance period by including in the solicitation the provision at FAR 52.214–16.

(b) When the provision at FAR 52.214–16 is used, the "NOTE" above Item 12 of SF 33 renders Item 12 inapplicable. However, a problem would result if a bidder overlooked the fact that FAR 52.214–16 was included in the solicitation, and inserted in Item 12, a figure that was less than that stipulated by the Government in the provision. To avoid such problems, the contracting officer shall insert in Item 12 the entries shown below when the provision at FAR 52.214–16 is included in the solicitation.

Note: Item 12 does not apply if the solicitation includes the provisions at 52.214–16, Minimum Bid Acceptance Period.

12. In compliance with the above, the undersigned agrees, if this offer is accepted within N/A * calendar days (60 calendar days unless a different period is inserted by the offeror) from the date for receipt of offers specified above, to furnish any or all items upon which prices are offered at the price set opposite each item, delivered at the designated point(s), within the time specified in the schedule.

514.270–2 Specifying a required bid acceptance period.

(a) *Applicability.* Paragraph (b) of this 514.270–2 applies only to solicitations in which SF 33 is used. However, the guidelines and instructions in paragraph (c) generally apply to all solicitations.

(b) *Use of the provision at FAR 52.214–16.* The 60-day period stipulated in the parenthetical statement in Item 12 of SF 33 is neither a "standard" nor a request to bidders to allow such period. However, most bidders customarily offer a 60-day bid acceptance time, although they rarely offer more than 60-days, and sometimes offer less than that period. Consequently, the provision at FAR 52.214–16 should be used whenever the contracting officer determines (1) that a period of more than 60 days will be needed to finalize award(s), or (2) that a period of 60 days or less will be adequate to complete the award process, but that one or more bidders may specify an acceptance period which

* See provision 52.214–16.

is less than the projected time needed to finalize award(s).

(c) *Number of days to be stipulated.* The following guidelines shall be given consideration in determining the appropriate number of days to be stipulated for the acceptance of bids:

(1) A bid acceptance period should be no more than is reasonbly necessary for the evaluation of bids and other preaward processing. This does not mean that the period stipulated should reflect the absolute minimum time required for award(s) if there are no unexpected delays. On the other hand, the period stipulated should not be inflated to provide for numerous contingencies that may never arise.

(i) Matters which should be factored into the projected bid acceptance period are those which are known or are anticipated as likely to occur. These predictable matters include evaluation of several bids on numerous line items, complex evaluations requiring the addition of transportation cost factors, laboratory testing of bid samples, on-site inspection of bidders' production facilities, financial reports, obtaining past performance information, or security clearances and EEO clearances. After the evaluation of bids and the determination of the low bidder(s), most of the actions relating to the determination of responsibility can be conducted concurrently.

(ii) Contingencies such as late bids, mistakes in bids, protests, SBA Certificate of Competency requirements, and Walsh-Healy eligibility requirements should not be anticipated in projecting an appropriate bid acceptance period. The procedure of requesting extensions of bid acceptance time (see GSAR 514.473) is to provide for unexpected delays which may arise during the award process.

(2) The stipulated bid acceptance period should usually be a minimum of 30 days, should be stated in increments of 15 calendar days, and should not exceed 90 calendar days except in unusual situations.

(i) A period of 30 days should be adequate for the award of contracts under a solicitation covering a few line items if a plant facility report or other similar time-consuming action is not required.

(ii) A period of 45 days should be adequate for the award of contracts under a solicitation covering numerous items and requiring approvals outside of the contracting office (i.e., large dollar-value awards), but not involving plant facility reports, bid sample testing and evaluation, or similar delays.

(iii) A period of 60 days should be considered appropriate for most supply and services contracts requiring a plant facility report and other actions or reports which can be accomplished simultaneously (financial, EEO clearances, bid sample approvals, etc.).

(iv) A period of 75 to 90 days may be reasonable when the determination of the apparent low bidder(s) involves a complex evaluation process (e.g., evaluating f.o.b. origin bids to overseas ports of debarkation), and actions or reports of the type described in the preceding paragraph are also required.

(v) A period exceeding 90 days is justifiable only in unusual cases, such as when a security clearance is required.

514.271 Aggregate awards

514.271-1 General.

(a) *Definition.* An "aggregate award" means an arrangement, stipulated by the Government in the solicitation, whereby two or more separately-priced line items are combined for award to that bidder whose offer will result in the lowest total cost to the Government for all of the line items within the group, without regard to whether the prices offered by the bidder are low on each item

(b) *Justification for use.* Ordinarily, prices shall be solicited for award on an individual line-item basis. In some cases, however, it may be expendient to combine two or more line items for award in the aggregate. When items are combined for aggregate award, the contracting officer shall include the rationale for establishing an aggregate award formula in the contract file. Examples of situations which may justify the use of an aggregate method of award are set forth below:

(1) When uniformity of design, style, and finish is desired, as in the acquisition of suites of household furniture.

(2) When the articles being acquired will be assembled and used as a unit, and may not be interchangeable if acquired from different manufacturers.

(3) When the demand for certain articles is large, but the demand for other similar articles is not sufficient to attract competitive bids unless awarded in conjunction with the high-demand articles (e.g., various sizes of socket wrenches).

(4) When one location (delivery point) has a large requirement, and another location has a requirement that is too small to individually attract competitive bids.

(5) When it is impractical to award and administer numerous small contracts for similar articles or services.

(c) *Prerequisites for use.* In the absence of strong overriding factors, items shall not be grouped for award in the aggregate unless the following conditions are satisfied. In questionable cases involving a proposed aggregate group (or groups) with an actual or estimated value of $1 million or more, approval of the contacting director shall be obtained before the solicitation is issued.

(1) *Capability of accurately projecting lowest cost.* To determine the lowest cost on an aggregate group of items, it is necessary to extend unit prices by weight factors calculated to reflect the true or proportionate quantities that will be purchased under a resultant contact. Consequently, a realistic determination of the lowest bid is contingent upon the formulation of realistic weight factors. See GSAR 514.271-2, Weighting of items for aggregate award. If weight factors must be based on information that is unreliable, and the results are considered highly conjectural, the price list method described in GSAR 514.272 should be considered.

(2) *Capability of bidders to furnish articles and quantities.* It shall be stated in all solicitations involving items to be awarded on an aggregate basis that to qualify for an award on an aggregate group, a price must be submitted on each item within the group. See GSAR 514.271-3, Grouping of items for aggregate award.

(d) *Method of award provision.* When items will be awarded on an aggregate basis, an appropriate provision shall be included in the solicitation which clearly states the basis on which bids will be evaluated. A Statement as described in GSAR 514.271-1(c)(2) shall also be included unless the pricelist method described at GSAR 514.272 is used. The arrangement of items in the Schedule (identification of items to groups) and the language used in the method of award provision must be compatible.

514.271-2 Weighting of items for aggregate award.

(a) The use of accurate weight factors is essential in all solicitations providing for aggregate awards, except for situations where the same weight factor is applicable to all line items in the aggregate group. Their function is to provide a basis for determining which bid will result in the lowest overall cost to the Government for the line items included in the aggregate group(s). When the weight factors used to evaluate bids do not reflect the true ratio of purchase as between the various line items awarded as an aggregate group, the result may be that award is not made at the lowest overall cost to the Government.

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(b) Although such language as "lowest total cost to the Government" is used in this regulation and in various GAO decisions regarding the evaluation of aggregate groups of items, it is not so important that actual cost be projected in determining the low bidder; what is important is that relative proportionate cost as between line items within an aggregate group be accurately projected. Consequently, in establishing weight factors to be applied in determining the "lowest total cost to the Government" for an aggregate group of items, it is ratio that is important, rather than actual quantities.

(c) Estimated quantities that apply to indefinite quantity or requirements contracts may be reduced to smaller numbers by a common denominator to facilitate the computations involved in evaluating bids. However, the rounding off of numbers sacrifices precision, and the practice is not encouraged.

(d) The actual purchase quantities shall be used as weight factors for definite quantity acquisitions. The reason for this is that a bidder might include two or more aggregate groups, or an aggregate group and various individual line items, under an "all or none" qualification, and the result would be incorrect if proportionate weight factors were used in the evaluation process.

(e) Weight factors shall not be based on the estimated dollar value of purchases. If the dollar value of previous purchases is the only information available, and there is no recourse but to make award on an aggregate basis, the value of previous purchases shall be converted to quantities for the purpose of establishing weight factors (i.e., divide total purchases of each item by the unit price to determine number of units purchased).

(f) If reliable estimates are not available, consideration should be given to using the price list method of making awards as described in GSAR 514.272, provided the criteria for use of this method of award is satisfied.

(g) The contracting officer shall include the basis for calculating the weight factors in the contract file.

514.271–3 Grouping of line items for aggregate award.

(a) *General.*

(1) Line items should not be grouped for award on an aggregate basis if such arrangement will preclude a significant number of firms from bidding due to their inability to furnish all of the types of articles or services included in an aggregate group, or their inability to furnish the volume of supplies or services as a result of grouping numerous delivery points or service areas.

(2) Line items should not be grouped for award on an aggregate basis if such action will tend to increase overall prices to the Government due to restricting the number of eligible bidders for reasons indicated in the preceding paragraph, or for other reasons described in paragraphs (b) and (c) below.

(3) The following subparagraphs of this GSAR 514.271–3 are addressed to supply contracts (articles and delivery points), but the same principles apply to service contracts (types of services and service areas).

(4) The contracting officer shall include the rationale for establishing the aggregate groups in the contract file.

(b) *Grouping of different articles.* Only articles of a related character, normally manufactured or produced by a majority of prospective bidders, should be included in a single aggregate group. The grouping of unrelated articles tends to exclude bidders who cannot bid on all articles within an aggregate group, or results in higher prices and production problems by forcing bidders to subcontract for articles they do not manufacture or produce.

(c) *Grouping of geographic locations.* The following guidelines shall be given consideration by the contracting officer in deciding whether to group different geographic locations for aggregate award:

(1) See justifications listed in GSAR 514.271–1(b), subparagraphs (3), (4), and (5). Generally, if different delivery points have sufficient requirements so that individual shipments to each point will involve not only economic production run, but carload or truckload quantities, these points should be awarded separately, rather than in the aggregate.

(2) The types of bidders (i.e., small or large firms, manufacturers or distributors, etc.) responding to previous solicitations are an important consideration. For example, if previous bidders are distributors having franchises within certain territories, the aggregating of different territories would tend to restrict competition. (Also see, paragraph (a)(1) of this GSAR 514.271–3).

(3) A major consideration is whether transportation costs constitute a significant portion of the total cost of delivered articles. In this connection, contracting officers should obtain the advice and assistance of transportation specialists, including information regarding the location of tariff boundaries. The following matters relate to transportation considerations:

(i) The aggregating of relatively widespread geographic points may result in higher prices due to the loss of "area pricing" advantages. That is, if potential suppliers have single production points located in different parts of the country, the aggregating of delivery points located in the eastern, midwestern, and western parts of the U.S. will result in increased prices due to the transportation costs involved in shipping supplies from east to west, or vice versa.

(ii) If the articles are commercial items (e.g., hand tools, locks, etc.), manufacturers may quote the same price for delivery anywhere in the U.S. (This is a situation in which transportation costs are not a hindrance to aggregating relatively widespread geographic points).

(d) *Grouping of delivery points.* The principles in this GSAR 514.271–3 shall also be observed in connection with the combining of delivery points (e.g., GSA supply distribution facilities), states, and GSA regions for the solicitation of prices on a "zone" basis.

514.272 Price list method.

(a) *General.* The price list method of solicitation, evaluation and award may be used to avoid unbalanced bidding in requirements and indefinite quantity/indefinite delivery contracts when aggregate awards will be made and accurate estimates of anticipated quantities are unavailable. The price list method provides for the use of pre-established list prices in acquiring groups of similar items, services, or repairs and alterations. Elements of the price list method include, but are not limited to, the following:

(1) Pre-established list prices are included in the solicitation.

(2) Estimated requirements are shown in the solicitation, if available.

(3) Bids are expressed as a percentage added to or deducted from the list prices for each group. The criteria in GSAR 514.271–3 shall be followed when grouping items.

(4) The contract is awarded to the responsible and responsive bidder who submits the percentage factor that produces the most favorable price to the Government in accordance with the solicitation.

(b) *Development of pre-established list prices.* (1) In developing pre-established list prices, industry surveys should be conducted every 3 years. Before using proposed list prices for the first time, firms expected to submit bids should be given an opportunity to review the proposed list prices. In addition to the proposed list prices,

firms should be furnished with information on how the list prices will be used under the price list method. Copies of the draft solicitation may be furnished for this purpose.

(2) If industry price lists are not available for the items or services involved, pre-established list prices may be developed using the Government cost estimated for the item or service.

(3) Pre-established list prices may also be developed based on knowledge of the trade and previous contract prices. When using pre-established list prices, the contracting officer must ensure that items are properly grouped and that the list prices shown for the items within each group bear a reasonable and balanced relationship to one another. Prior contract prices resulting from awards made under the weighted item method should not be used for developing pre-established list prices until those contract prices are carefully checked to ensure that they did not result from unbalanced bidding.

514.272-1 Supply contracts.

(a) Estimated requirements for each item in a group or for the group as a whole shall be shown in the solicitation. For contracts for store stock items, estimated quantities should be shown only if estimates of demand for each item within a group can be derived from Government records (or verified contractor sales reports). All the estimates must be reviewed and updated before being used in any solicitation. If the Government's needs cannot be estimated, the solicitation may include past orders. (See CG Decision, B-209037, 82-2 CPD para 323 (1982).)

(b) Arrange the bidding schedule in each solicitation so that it is clear to bidders that only one percentage amount may be quoted for each group and that it may be quoted either as a deduction from or as an addition to the listed prices (see illustration of bidding schedule arrangement in paragraph (c) of this section).

(c) The following is an illustration of a bidding schedule arrangement for a group of items for aggregate award under the pricelist method:

Drills, Twist, High Speed, under Federal Specification (dated——) and Amendment—— (dated——), Wire gauge sizes, straight shank, short length, Type C:

GROUP 1 (ITEMS 1 THROUGH 5)

Item No	National stock No	Drill size	Estimated quantity	Unit	List price
1	5133-00-189-9246	1	2,800	Pkg	$11.16
2	5133-00-189-9247	2	2,400	Pkg	11.16
3	5133-00-189-9248	3	2,800	Pkg	10.44
4	5133-00-189-9249	4	1,600	Pkg	10.80
5	5133-00-189-9250	5	2,000	Pkg	10.60

The bid on each item above is the list price shown minus/plus——percent. (Bidder, insert "net" or a single percentage amount in the blank space and cross out minus or plus, as appropriate.)

514.272-2 Repair and alteration contracts.

(a) *Estimating prices and requirements.*

(1) *Estimated quantities and unit prices.* When developing a new solicitation, the contracting officer shall ensure that quantity estimates and unit prices are as accurate as possible. Quantity estimates should be developed from the historical data file and from information available on anticipated program requirements for the area(s) covered by the contract. Guidance on establishing unit prices may be found in industry publications such as, *The Richardson Rapid Construction Cost Estimating System; Building Construction Cost Data*, Robert Show Means Co., Inc.; or *Building Cost File*, Construction Publishing Co., Inc.

(2) *Estimated quanitity and unit price for each line item.* The solicitation should list the quantities, when available, and unit prices for work performed during normal working hours, and quantities and unit prices for work performed outside of normal working hours. The solicitation shall also contain a statement indicating the percentage of work anticipated to be performed during normal working hours and that to be performed during other than normal working hours; e.g., it is anticipated that 70 percent of the work under this contract will be performed during normal working hours. The solicitation shall specify the hours and days of the week that are considered normal.

(b) *Instruction to bidders.* (1) Bidders shall be instructed to submit one (percentage) bid to be applied to unit prices listed in the solicitation or two or more percentages to be applied to specified categories of unit prices. The percentage(s) shall be net, or a percentage above or below the unit prices to which it is applied.

(2) If separate line item unit prices have been established for work performed during normal working hours and for work performed outside normal working hours, a single percentage should be stated.

(3) If separate unit prices have not been established, two percentages are required; one to be applied to the unit prices for work performed during normal working hours and the other to be applied to unit prices for work performed outside normal working hours. In either case, the estimated percentage of work to be performed during normal working hours shall be stated in the solicitation.

(4) If unit prices are further grouped by trade or similar category, multiple percentage may be required.

(c) *Notification to bidders.* Bidders should be advised of the total expenditures for previous years or portions thereof. A statement must be included in the solicitation when estimates are provided that quantity estimates are furnished for information only and are not to be construed as guarantees or commitments to order items under the contract.

(d) *Method of evaluation and award.* (1) When separate line item unit prices are listed in the solicitation for work to be performed during both normal working hours and other than normal working hours, the bid price should be stated as a single percentage discount from, or addition to, the pre-established list price. The contract shall be awarded to the responsible and responsive bidder who submits the percentage factor that will produce the lowest unit price for each item when multipled by the pre-established price listed in the solicitation.

(2) When a particular percent is bid for work performed during normal working hours and another percent for work during other than normal working hours, the evaluated bid price shall be determined by multiplying the Government estimated total dollar amount of work to be performed during normal hours by the percentage bid for that portion of the work. The Government estimated dollar amount for the work performed during other than normal working hours shall be multiplied by the percentage bid for that portion of the work. The sum of the two evaluated prices shall be used to determine the lowest bidder.

(3) Depending on the requirements listed in the solicitation, the contracting officer may establish additional

evaluation criteria, which shall be set forth in the solicitation.

73. Section 514.301–70 paragraph (b) is revised to read as follows:

514.301–70 Telecopier bids.

* * * * *

(b) Include the clause at GSAR 552.214–71, Telecopier Submissions, Modifications, or Withdrawal of Bid, in all solicitations for supplies and services (including construction).

514–302 [Removed]

74. Section 514.302 is removed.

75. Section 514.303 paragraph (a) is revised to read as follows:

514.303 Modification or withdrawal of bids.

(a) Bid modifications received before bid opening time shall be handled in the same manner as bids and shall be attached to the related bid envelope to ensure opening at the same time. When a telegraphic modification or withdrawal of a bid is received by telephone under the circumstances described in FAR 14.303, the identity of the telegraph office employee telephoning the message shall be obtained and recorded in the solicitation file.

* * * * *

76. Section 514.304–1 is revised to read as follows:

514.304–1 General.

Upon receipt of a late bid, the bid custodian shall record it on the duplicate copy of the list of bidders and have it delivered immediately to the responsible contracting officer.

77. Section 514.370 is revised to read as follows:

514.370 Copies of bids required in submission.

Bids shall be submitted in an original and at least one copy. Additional copies may be required, if warranted. The original will be used by the contracting activity for the tabulation of bids. The copy will be retained by the Business Service Center for public information until the bid abstract is available to replace it. When information such as the GSA Form 527, Contractor's Qualifications and Financial Information, or Standard Form 24, Bid Bond, is submitted with a bid, it shall not be retained by the Business Service Center for public information.

78. Section 514.401 paragraph (a), introductory text, (a)(3), (4), (6), and (b) are revised to read as follows:

514.401 Receipt and safeguarding of bids.

(a) Bids, and modifications in response to solicitations shall be received and safeguarded by the appropriate Business Service Center until the time specified for opening. Adequate space and facilities shall be provided for the receipt and safeguarding of bids and for the holding of public bid openings. This shall include a locking-type bid box located within sight of the bid custodian and in a place where bidders or their representatives can readily deposit bids. Bids received shall be handled as follows:

* * * * *

(3) Mailed bids and modifications delivered to the bid custodian before bid opening time shall be recorded on the bidders list on the same day they are delivered and then placed in suitable locked cabinet.

(4) Hand-carried bids delivered before bid opening time will be deposited in the locked bid box in the Business Service Center. The bid custodian shall have custody of a key or combination to the bid box. In the event a hand-carried bid is not placed in the bid box by the bidder, but is handed to the bid custodian or other Business Service Center personnel, it shall be time stamped immediately and then handled in the same manner as provided for mailed bids. At least once daily (and immediately preceding the time for each scheduled bid opening),the bid custodian shall remove and time stamp the bids, record them and place them with any other bids previously received.

* * * * *

(6) For each invitation, the bid custodian shall prepare a list of the bidders whose bids are received before bid opening time using the GSA Form 1378, Record of, and Receipt for, Bids and Responses or the appropriate bid abstract form. The list shall show the invitation number and the name and address of each bidder. In addition, when a bid modification is received before bid opening time or when a bid previously recorded on this list is withdrawn, the list shall so indicate.

(b) At the scheduled bid opening time, the bid custodian shall deliver all bids received in response to the invitation, together with both copies of the list of bidders, to the authorized bid opening official or designee, who shall acknowledge receipt of the bids by signing the duplicate copy of the GSA Form 1378 or the appropriate bid abstract form and returning it to the bid custodian. The original list shall become part of the contract file.

79. Section 514.402–1 paragraph (a) is revised to read as follows:

514.402–1 Unclassified bids.

(a) Public bid openings shall be held in the Business Service Center except when determined to be impracticable by the Business Service Center, and the Contracting officer or bid opening officer. The schedule for bid openings shall be developed jointly by the Business Service Center and the bid opening officer in order to avoid conflicts. The contracting officer shall be responsible for obtaining space for bid openings which are to be held outside the Business Service Center. As soon as it is determined to hold the bid opening elsewhere, the contracting officer shall inform the Business Service Center, serving the geographic area in which the contracting office is located, of the invitation number and the location where the public bid opening will be held.

* * * * *

80. Section 514.402–3 paragraph (a) is revised to read as follows:

514.402–3 Postponement of openings.

(a) When the contracting officer postpones a bid opening (see FAR 14.402–3), an amendment (see FAR 14.208) to the solicitation should be issued and distributed to all prospective bidders by mail or telegraph as soon as possible. The new time and date set for bid opening shall be as soon as possible. Prospective bidders shall be notified of the new time and date if circumstances permit.

* * * * *

81. Section 514.403 is revised to read as follows:

514.403 Recording of bids.

The abstracting and tabulating of bids normally shall be completed within 24 hours after bid opening, and a copy shall be delivered immediately to the appropriate Business Service Center where it shall be made available for public examination for a minimum period of 30 calendar days. Late bids determined eligible for consideration shall be included on the bid abstract form. However, if eligibility is established after delivery of the original tabulation, the bids shall be recorded separately, identified as an amendment to the original tabulation, and delivered to the Business Service Center.

82. Subpart 514.4 is amended by adding section 514.404–1 to read as follows:

514.404–1 Cancellation of invitations after opening.

The head of the contracting activity is delegated the authority to cancel invitations for bid and to reject all bids received or to cancel invitations for bids and authorize the use of negotiations to complete the acquisition in accordance with FAR 14.404–1(e)(1) and 15.103. When exercising this authority, the required determination documenting the reasons for rejecting all bids and authorizing completion of the acquisition through negotiation, when applicable, shall be included in the contract file.

83. Section 514.404–2 is amended by revising the section title and paragraphs (a)(1) through (a)(4), and (c) to read as follows:

514.404–2 Rejection of individual bids.

(a) * * *

(1) Item number(s) involved.

(2) Names of low offeror(s) and proposed awardee(s).

(3) Low and proposed prices:

(i) Unit.

(ii) Totals.

(4) Differences:

(i) In total prices.

(ii) In percent.

* * * * *

(c) Explanations which involve cases of a sensitive or controversial nature shall be accompained by all supporting documentation to justify awards to other than low offerors, such as copy of the offer to be rejected, statements from (or record of conversation with) the requisitioning activity, plant facilities and/or financial responsibility reports, relevant correspondence or reports; e.g., with the Small Business Administration on Certificates of Competency matters, copies of Congressional correspondence or other high level interest, etc.

84. Section 514.406–3 is revised to read as follows:

514.406–3 Other mistakes disclosed before award.

(a) *Delegations of authority by head of the agency.* Under FAR 14.406–3(e), the heads of contracting activities (HCA's) are authorized, without power of redelegation, to make the determinations regarding corrections and/or withdrawals treated in FAR 14.406–3 (a), (b), and (c), and to make the corollary determinations not to permit withdrawal or correction for reasons indicated in FAR 14.406–3(d).

(b) *Determinations by the contracting officer.* Determinations by the contracting officer under FAR 14.406–3(g)(5) shall be approved by the contracting director.

(c) *Legal review and concurrence.* (1) With respect to cases arising in the regional offices:

(i) The concurrence of regional counsel shall be obtained in connection with determinations by the HCA to permit withdrawal of the bid, and determinations by the HCA not to permit correction or withdrawal due to lack of evidence supporting the allegation that a mistake was made.

(ii) The concurrence of the appropriate Assistant General Counsel shall be obtained in cases where the determination by the HCA is to permit the correction of a bid.

(iii) The concurrence of regional counsel shall be obtained in connection with determinations by the contracting offices under FAR 14.406–3(g)(5).

(2) With respect to cases arising in the Central Office, the concurrence of the appropriate Assistant General Counsel shall be obtained in connection with determinations by the HCA and the contracting officer.

85. Section 514.406–4 paragraph (b) is revised to read as follows:

514.406–4 Mistakes after award.

* * * * *

(b) Cases arising in the regions shall be reviewed by the HCA and regional counsel who will send them, with appropriate recommendations, to the appropriate Assistant General Counsel for approval.

* * * * *

514.406–70 and 514.407–1 [Removed]

86. Sections 514.406–70 and 514.407–1 are removed.

87. Section 514.407–2, paragraph (b) is revised to read as follows:

514.407–2 Responsible bidder—reasonableness of price.

* * * * *

(b) The reponsible contracting officer shall document the contract file to the effect that an award to the only bidder is in the best interest of the Government, and that the price is reasonable. The basis for price reasonableness shall be established, if possible, from data or information which is available to the contracting officer without contacting the bidder. (See FAR 15.805–2 for price analysis techniques and guidelines.)

88. Section 514.407–3 paragraph (b) is revised to read as follows:

514.407–3 Prompt payment discounts.

* * * * *

(b) The clause at GSAR 552.232–8(a), Discounts for Early (Prompt) Payment, shall be included in solicitations that may involve discounts for early payment instead of a clause at FAR 52.232–8.

89. Section 514.407–6 is revised to read as follows:

514.407–6 Equal low bids.

In determining which priority in FAR 14.407–6 applies to each of the equal low bidders involved in a tie-bid situation, the status of the bidders (small/large/labor surplus area) on the date the bid was signed shall be controlling.

90. Section 54.407–8 is revised to read as follows:

514.407–8 Protests against award.

See FAR Part 33 and GSAR Part 533.

91. Subpart 514.4 is amended by adding section 514.407–70 to read as follows:

514.407–70 Preaward inquiries.

Preaward inquiries from bidders (oral or written) should be handled in accordance with the following:

(a) If the inquiry concerns the status of an award and a notice of award has not be issued, the response shall be limited to a statement that final award determination has not been made.

(b) The bidder may also be advised if the case has been referred to the Small Business Administration for consideration for Certificate of Competency action, and the reasons why.

(c) No information shall be furnished concerning the status of a proposed award being processed through GSA approval channels. When pressed for information under these circumstances, bidders shall be advised that our policy and procedures do not permit the release of information about status of awards while they are in process.

(d) Any action or discussion which may create false impressions in the eyes of prospective contractors about any forthcoming award must be avoided.

92. Section 514.407–72 is revised to read as follows:

514.407–72 Extension of time for bid acceptance.

(a) It is provided in FAR 14.404–1(d) that ". . . the several lowest bidders . . . (irrespective of the acceptance period specified in the bid) should be requested, before expiration of their bids, to extend in writing the bid acceptance period . . ." This means not only the low bidders, but second-low bidders, etc., whose bids are considered acceptable, because a low bidder may be determined nonresponsible. How many bidders should be requested to extend their bids is a matter of

judgement on the part of the contracting officer.

(b) Requests for extension of bid acceptance time may be made by the use of optional form letter GSA Form 2981, or by other means. The additional time desired by the Government shall be specified in the request, and the period shall be reasonable under the circumstances.

(c) If time does not permit an exchange of correspondence, the contracting officer may request an extension by telephone or telegraph, but the extension or confirmation thereof is required to be in writing (see paragraph (a) above).

(d) A bidder shall not be requested to extend the offered bid acceptance time if the contracting officers has determined, with the concurrence of legal counsel, that the bid is unacceptable due to price or other reasons.

(e) If a Standard Form 24, Bid Bond, has been executed, the consent of the surety to an extension of the bid acceptance period is necessary if the extension(s) exceeds by more than 60 calendar days the period originally allowed for acceptance, as explained on the face of the form.

(f) If a bidder does not grant the additional bid acceptance time requested, special action shall be taken to accomplish acceptance of the bid within the time allowed by the bidder. Should it be advisable to permit the bid to expire, the contracting officer shall promptly, before expiration of the bid, refer the case to the appropriate contracting director for a decision.

(g) Appropriate legal counsel shall be consulted before an award is made when the acceptance time of an otherwise acceptable bid has expired.

93. Section 514.407–73 paragraph (a) is revised to read as follows:

514.407–73 Forms for recommending award(s) (Supplies and services).

(a) GSA Form 1535, Recommendation for Award(s), and GSA Form 1535–A, Recommendation for Award(s), Continuation Sheet, shall be used to document all proposed awards (except construction contracts) of more than $25,000 whether resulting from sealed bid or negotiated procurements. The use of the form for awards of $25,000 or less is at the discretion of the contracting activity. One or more awards may be set forth on each form. All information pertinent to the recommendation shall be furnished on the form. The checklist on the back of the form shall be completed.

* * * * *

94. Section 514.407–74 paragraphs (a)(1) (i), (ii), and (2) are revised to read as follows:

514.407–74 Preparation of documents for acceptance (only applies to FSS).

(a) * * *

(1) * * *

(i) When Standard Form 33 is used, the award portion on both the original and duplicate copies of the accepted offer shall be completed. The original contract shall be retained by the Government and the duplicate copy shall be furnished to the contractor. Also, purchase (delivery) order must be issued to provide shipping instructions and necessary information copies to others concerned.

(ii) When a purchase order form is used, enter substantially the following: "Your offer on solicitation No.—— is accepted for items listed herein." Under those procedure, the original contract consists of the original bid signed by the contractor and the paying office copy of the purchase order, signed by the contracting officer. The contractor's copy of the contract consists of the contractor's retained copy of the bid and the original purchase order, signed by the contracting officer.

(2) *Multiple consignees.* Award on Standard Form 26, Award/Contract, normally is advantageous for contracts involving more than one consignee. However, when numerous items on a single invitation for bids are awarded to one contractor, completion of the Award portion of Standard Form 33 may be more advantageous. Either method of documenting the award is authorized.

* * * * *

514.408–1 [Removed]

95. Section 514.408–1 is removed.

96. Section 514.408–70 paragraph (b) is revised to read as follows:

514.408–70 Restriction on disclosure of inspection or test data.

* * * * *

(b) Before award, no information regarding inspection or test data shall be disclosed to any bidder or individual except Government officials or employees required to have access to such information in connection with bid evaluation and determination of award.

* * * * *

97. Section 514.470–1 paragraph (d) is revised to read as follows:

514.470–1 Circumstances which warrant advance notice.

* * * * *

(d) The contract involves work of an urgent nature and it is essential that the contractor rush all preliminaries before actual starting of work.

* * * * *

98. Section 514.470–4 is revised to read as follows:

514.470–4 Content of notices.

Advance notices of award shall include all of the essential elements to identify the award, such as identification of invitation, description of the acquisition, and the contract number. No language shall be used which might, in any way, vary from the terms of the bid.

99. 48 CFR Chapter 5, Part 515, the Table of Contents is amended by adding or revising section headings to read as follows:

PART 515—CONTRACTING BY NEGOTIATION

Sec.

* * * * *

515.106–1 Examination of Records clause.

* * * * *

515.170 Authorization and approval.

* * * * *

515.501 Definition.

* * * * *

515.507 Contracting methods.

* * * * *

515.605 Evaluation factors.

* * * * *

515.608 Proposal evaluation.

* * * * *

515.805–5 Field pricing support.

* * * * *

515.905–1 Common factors.

* * * * *

Subpart 515.10—Preaward, Award, and Postaward Notifications, Protests and Mistakes

* * * * *

Authority: 40 U.S.C. 486(c).

Subpart 515.1—General Requirements for Negotiation

515.104 [Redesignated as 515.170]

100. Section 515.104 is amended by redesignating it as section 515.170.

515.105, 515.105–70 and 515.105–71 [Removed]

101. Sections 515.105, 515.105–70 and 515.105–71 are removed.

102. Section 515.106–1 is amended by revising the title to read as follows:

515.106–1 Examination of Records clause.

103. New section 151.170, redesignated from 515.104 is revised to read as follows:

515.170 Authorization and approval.

Requirements of pre-award and post-award review and approval of contracts are prescribed in the GSA Order, Contract Clearance (APD 2800.1B).

Subpart 515.2—[Removed]

104. Subpart 515.2 is removed.

105. Section 515.402 is revised to read as follows:

515.402 General.

(a) An oral solicitation is not justified solely because the acquisition is being made under the authority of FAR 6.302-2, Unusual and Compelling Urgency.

(b) Oral solicitations, other than those authorized for small purchases (see GSAR 513.106(c) and 513.106-70), shall only be used under the conditions prescribed in FAR 15.402(f), with prior approval at a level higher than the contracting officer.

515.402-70 [Removed]

106. Section 515.402-70 is removed.

107. Section 515.403 is revised to read as follows:

515.403 Solicitation mailing lists.

Source lists for negotiated acquisitions shall be established, maintained, and used in accordance with FAR 14.205 and GSAR 514.205.

108. Section 515.405-1 is revised to read as follows:

515.405-1 General.

Solicitations for information or planning purposes shall be approved by the contracting director.

109. Section 515.406-1 paragraph (b) is revised to read as follows:

515.406-1 Uniform contract format.

* * * * *

(b) All contracts, including leases of real property, shall include the following notice:

* * * * *

110. Section 515.406-2 is revised to read as follows:

515.406-2 Part I—The Schedule.

The contracting officer shall insert the provision at GSAR 552.215-75, Data Universal Numbering System (DUNS), in solicitations for supplies and services when the contract amount is expected to exceed the small purchase limitation.

515.405-5 [Removed]

111. Section 516.406-5 is removed.

112. Section 515.501 is revised to read as follows:

515.501 Definition.

"Minimum requirements" refers only to those features that are essential to meeting the Government's need.

515.503 [Removed]

113. Section 515.503 is removed.

114. Section 515.504 is revised to read as follows:

515.504 Advanced guidance.

Potential offerors shall be encouraged to make preliminary contacts, as provided in FAR 15.504, with regional contracting offices and/or the Office of GSA Acquisition Policy and Regulations before to submitting a detailed unsolicited proposal or proprietary data.

115. Section 515.506-1 paragraph (a)(1) and (b) are revised to read as follows:

515.506-1 Receipt and initial review.

(a) * * *

(1) When an unsolicited proposal is received first by the Region, Service, or Staff Office where the evaluation will be performed under FAR 15.506-2, that organization shall inform the offeror, by letter, that the proposal has been received. The letter should indicate the name, business address, and telephone number of the individual who will evaluate the proposal.

* * * * *

(b) When an unsolicited proposal is received first by a Region, Service, or Staff Office that is not in a position to evaluate it, the organization shall forward it to VP as soon as possible. VP will review the proposal for the information in FAR 15.506-1, and determine which organization will be responsible for evaluating the proposal.

* * * * *

116. Section 515.506-2 is revised to read as follows:

515.50.6-2 Evaluation.

The evaluation shall be completed under FAR 15.506-2, as soon as practicable (normally within 45 calendar days). The evaluator shall send the evaluation results plus recommended action to VP. If the proposal is rejected the evaluator shall prepare the response to the offeror for the signature of the head of the organization responsible for the evaluation. A copy shall be sent to VP.

117. Section 515.5 is amended by adding section 505.507 to read as follows:

515.507 Contracting methods.

Negotiations may not commence under an unsolicited proposal unless all of the requirements of FAR 15.507(b) are complied with.

118. Subpart 515.6 is amended by adding section 515.608 to read as follows:

515.608 Proposal evaluation.

The head of the contracting activity is authorized to reject all proposals received in response to a solicitation pursuant to FAR 15.608(b). When exercising this authority, the required determination documenting the reasons for rejecting all proposals will be included in the contract file.

119. Section 515.804-3 is revised to read as follows:

515.804-3 Exemptions from or waiver of submission of certified cost or pricing data.

(a) Pursuant to FAR 15.804-3(i), the head of the contracting activity, as defined in GSAR 502.170, is authorized to waive the statutory requirement for the submission of certified cost of pricing data.

(b) Requests for waiver will be submitted by the contracting director to the head of the contracting activity. Before submitting a waiver request, action will be taken at levels above the contracting officer, to negotiate for the submission of the required cost or pricing data or a formal determination made by the contracting director documenting the contract file with the reasons for not undertaking such higher level negotiations.

(c) The request for waiver will include a draft determination and finding that addresses: (1) Pertinent circumstances of the procurement necessitating the waiver of the requirement for certified cost or pricing data; (2) the price analysis techniques to be used if the award cannot be foregone; (3) the steps taken by higher authority to obtain the essential cost or pricing data; (4) the practicability of obtaining the Government's requirement from other sources.

120. Section 515.804-70 is revised to read as follows:

515.804-70 Refusal to provide cost or pricing data.

Whenever an offeror refuses to provide the required cost or pricing data, the contracting officer shall refer the matter to the contracting director, for resolution. Upon referral by the contracting officer, action will be taken by the contracting director to negotiate for the submission of the required cost or pricing data, unless the head of the contracting activity determines, in writing, not to undertake such higher level negotiations and the determination is documented in the contract file.

515.805–1 [Removed]

121. Section 515.805–1 is removed.

122. Subpart 515.5 is amended by adding section 515.805–5 to read as follows:

515.805–5 Field pricing support.

Contracting officers may request field pricing support, on a case-by-case basis, whenever assistance is required to evaluate price reasonableness. Within GSA "field pricing support" is provided by the Assistant Inspector General Auditing, or the Regional Inspector General—Auditing, as appropriate.

123. 48 CFR Chapter 5, is amended by adding Part 517 to read as follows:

PART 517—SPECIAL CONTRACTING METHODS

Subpart 517.2—Options

Sec.
517.201 Definitions.
517.207 Exercise of options.

Authority: 40 U.S.C. 486(c).

Subpart 517.2—Options

517.201 Definitions.

"Priced Option" means an option where the prices for the option quantities or performance periods are specified in the contract at the time of award and the option prices are not subject to renegotiation or adjustment at the time the option is exercised unless a price adjustment clause is included in the contract.

"Unpriced Option" means an option where the prices for the option quantities or performance periods are not specified in the contract at the time of award and the option prices are negotiated at the time the option is exercised.

"Evaluated Option" means an option which is considered in the award evaluation.

"Unevaluated Option" means an option that is not considered in the award evaluation.

517.207 Exercise of options.

(a) If the synopsis for the original contract action described the option provisions in sufficient detail to comply with the requirements of FAR 5.207 and the option was evaluated, a synopsis of the option before it is exercised is not required. In those instances where the synopsis of the original contracts did not describe the option provisions or when the option was unevaluated, the option must be synopsised in accordance with FAR 5.207 before the option can be exercised.

(b) Unpriced options and unevaluated options are considered to be "new procurement" and the justification requirements of FAR Subpart 6.3 must be complied with before the option is exercised. A priced evaluated option which was properly synopsised as described in (a) above meets the full and open competition requirements of FAR Subpart 6.1 or the requirements of FAR Subpart 6.2 for full and open competition after exclusion of sources.

PART 522—[AMENDED]

124. Section 522.404–2 paragraph (d) is revised to read as follows:

522.404–2 Procedure for requesting determinations.

* * * * *

(d) *Time of submission of requests.* Agencies shall submit requests for wage determinations to the Department of Labor at least 30 calendar days before they are required for use in solicitation for sealed bids or for entering into negotiations of the contract for which the determinations are sought.

* * * * *

125. Section 522.404–3 paragraph (b), introductory text, (b)(2) and (g) are revised to read as follows:

522.404–3 Wage Determinations in solicitations and contracts.

* * * * *

(b) *Sealed bid contracts.*

* * * * *

(2) When bids have been opened for a sealed bid solicitation and the wage determination will expire before award, the head of the contracting activity or a designee may submit a written request for an extension of the expiration date to the Administrator, Wage and Hour Division, Department of Labor. This action shall be taken only upon a written finding that an extension is in the public interest to prevent injustice, undue hardship, or serious impairment of the conduct of Government business. The Administrator may extend the period of effectiveness of the determination. If an extension is not requested, or if an extension is requested and denied, the contracting officer shall obtain a new wage determination. If the new determination changes the wage rates, the contracting officer shall cancel the solicitation and resolicit using the new wage rates.

* * * * *

(g) *Sealed bid solicitations without a wage determination.* When a solicitation is issued before the wage determination is obtained, notice shall be included in the solicitation that the schedule of minimum wage rates to be paid under the contract will be issued as an amendment. Under no circumstances may bids be opened until a reasonable time after the wage determination has been furnished to all bidders.

126. Section 552.404–4, the introductory text of paragraph (b)(1) is revised to read as follows:

522.404–4 Modifications of wage determinations.

* * * * *

(b) * * *

(1) Sealed bid contracts.

* * * * *

127. In 48 CFR Chapter 5, Part 525 the Table of Contents is revised by adding a section to read as follows:

PART 525—FOREIGN ACQUISITION

Sec.
525.102 Policy.

* * * * *

Authority: 40 U.S.C. 486(c).

128. Subpart 525.1 is amended by adding section 525.102 to read as follows:

525.102 Policy.

Acquisitions of supplies pursuant to FAR 25.102 and GSAR 525.105–70, 525.105–71 and 525.105–72 meet the requirements for full and open competition in FAR Subpart 6.1 if all responsible prospective contractors, as defined in FAR 9.101, are permitted to submit offers. Acquisitions of supplies without full and open competition (i.e., all otherwise responsible sources are not permitted to submit offers) shall be made under the authorities in FAR Subparts 6.2 or 6.3 and comply with the respective requirements of these FAR Subparts for Determinations and Findings or approved justifications.

129. Section 525.105 paragraph (a)(9) is revised to read as follows:

525.105 Evaluating offers.

(a) * * *

* * * * *

(9) Reasons for recommending rejection of an acceptable low foreign offer to protect essential national security interests, or rejection of any offer for other reasons of national interest, when the Trade Agreements Act of 1979 is not applicable.

* * * * *

130. Section 525.105–70 paragraph (d)(1) is revised to read as follows:

525.105–70 Evaluating offers—Hand and measuring tools for other than the Department of Defense.

* * * * *

(d) * * *

(1) Offers shall be evaluated to give preference to domestic end products

Offers offering end products manufactured in Canada shall be evaluated on the same basis as offers offering domestic end products after applicable duty is included for evaluation purposes, whether or not a duty free entry certificate is issued.

* * * * *

131. Section 525.108–70 paragraph (a), introductory text, is revised to read as follows:

525.108–70 Determination of nonavailability.

(a) Requests for determinations concerning nonavailability of domestic supplies (see FAR 25.102(a)(4), 25.202(a)(3), and 25.108) shall be submitted to the head of the contracting activity or his/her designee with an appropriate statement of facts and a proposed determination. The statement of facts shall include the following information:

* * * * *

132. Subpart 525.4 is amended by revising section 525.402 to read as follows:

525.402 Policy.

(a) Pursuant to FAR 25.402(d), acquisitions of eligible products meet the requirements for full and open competition in FAR Subpart 6.1 if all responsible prospective contractors, as defined in FAR 9.101, offering United States or designated country end products are to submit offers.

(b) Acquisitions of eligible products without full and open competition (i.e., all otherwise responsible sources are not permitted to submit offers) shall be made under the authorities in FAR Subparts 6.2 or 6.3 and comply with the respective requirements of these FAR Subparts for Determinations and Findings or approved justifications. When acquiring eligible products without full and open competition using the authorities in FAR 6.302–3(a)(2)(i) or 6.302–7, a copy of the approved justification shall be furnished to the Assistant Administrator for Acquisition Policy for subsequent transmittal to the U.S. Trade Representative.

133. Section 525.402–71 paragraph (b)(1) is revised to read as follows:

525.402–71 Delegation of limited waiver authority.

* * * * *

(b) * * *

(1) In response to a solicitation, there are no responsive sealed bids or acceptable proposals received from responsible offerors of products from the U.S. or countries designated by section 302(b)(2) of the Act, or

* * * * *

PART 528—[AMENDED]

134. In 48 CFR Chapter 5, Part 528 is amended to read as follows:

135. Section 528.202–2 paragraph (e) is revised to read as follows:

528.202–2 Individual sureties.

* * * * *

(e) In a sealed bid procurement an offeror submitting a bid guarantee executed by an unacceptable surety may not substitute an acceptable individual surety after bid opening. This holds even though the surety's acceptability is a matter of bidder responsibility. (See 61 Comp. Gen. 456 (1982).) When a negotiated procurement is involved, such a deficiency may be remedied by the offeror in a revised proposal.

* * * * *

136. Section 528.202–70 paragraph (a) is revised to read as follows:

528.202–70 Acceptability of bonds and sureties.

(a) Every bond furnished in connection with a procurement must be supported by corporate or individual sureties or by other acceptable security such as postal money orders, certified check, cashiers's check or in accordance with Treasury Department regulations, certain bonds or notes of the United States. An irrevocable letter of credit may be accepted only in connection with a bid guarantee. Upon receipt of a required bond, the contracting officer shall ascertain the acceptability of the surety.

* * * * *

137. In 48 CFR Chapter 5, Part 534 the Table of Contents is amended by adding section 534.002 and revising the entry for section 534.002–70 to read as follows:

PART 534—MAJOR SYSTEM ACQUISITION

Sec.
534.002 Policy.
534.002–70 Directives.
* * * * *

Authority: 40 U.S.C. 486(c).

138. Section 534.002 is added to read as follows:

534.002 Policy.

139. Section 534.002–70 is amended by revising the section heading, the introductory paragraph, and paragraph (b) and by adding paragraph (c) to read as follows:

534.002–70 Directives.

The policies and procedures applicable to major systems acquisition and the procedures by which the Systems Acquisition Review Council reviews these acquisitions are contained in GSA orders and the Federal Information Resources Management Regulation (FIRMR). Personnel concerned with acquiring major systems should be familiar with the following:

* * * * *

(b) *Specific regulations applicable government-wide.*

Regulations applicable to the acquisition of major ADP resource systems are prescribed in FIRMR 201–32.103.

(c) *Orders applicable to the individual service.*

Major system acquisitions in the Automated Data and Telecommunications Service, (DTS 5400.1).

140. Section 534.002–71 is revised to read as follows:

534.002–71 Definitions.

"Major system" means a combination of elements that will function together to produce the capabilities required to fulfill a mission need, which elements may include hardware, equipment, software or any combination thereof, but excludes construction or other improvements to real property. (See also 41 U.S.C. 403.) Major system acquisitions are those that are:

(a) Directed at and critical to fulfilling an agency mission;

(b) Estimated to entail the allocation of $25 million or more life cycle cost in current year dollars; or

(c) Determined by the Administrator to warrant special management attention or to be of critical importance to the agency or technologically advanced.

141. In 48 CFR Chapter 5, Part 536, in the Table of Contents, the entry for Subpart 536.3 is revised to read as follows:

PART 536—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

* * * * *

Subpart 536.3—Special Aspects of Sealed Bidding in Construction Contracting

* * * * *

142. Section 536.203 paragraph (c) is revised to read as follows:

536.203 Government estimate of construction costs.

* * * * *

(c) If the procurement is by sealed bidding, the sealed copy of the detailed Government estimate shall be stored with the bids received until bid opening. Price, a revised sealed Government estimate shall be stored with the bids until bid opening. After the bids are read and recorded, the sealed Government estimate shall be opened and retained with the Standard Form 1419, Abstract of Offers-Construction. However, the Government's estimate shall not be disclosed until after award. Immediately after award the Government estimate shall be recorded on the SF 1419 as the Independent Government Estimate.

* * * * *

143. Section 536.206 paragraph (a) is revised to read as follows:

536.206 Liquidated damages.

(a) The liquidated damages provisions shall be included in construction contracts that are expected to exceed the small purchase limitation. The provision may be included in construction contracts that are within the small purchase limits when it is in the best interest of the Government.

* * * * *

144. Subpart 536.3 title is revised to read as follows:

Subpart 536.3—Special Aspects of Sealed Bidding in Construction Contracting

145. Section 536.302–70 paragraph (c)(2) is revised to read as follows:

536.302–70 Charges and deposits for bidding documents.

* * * * *

(c) * * *

(2) When a bid document deposit is required, the presolicitation notice shall require that the deposit be made by certified check, cashier's check, or money order payable to the General Services Administration. If a deposit is not submitted as specified, a reasonable attempt shall be made to obtain the deposit in the proper form without delay. A record of the attempt shall be placed in the contract file. The document deposit will be refunded if bid documents are returned in good condition, without marks, notes, or mutilations, within 20 calendar days after bid opening. Refunds will not be made for bid documents returned more than 20 days after bid opening.

* * * * *

146. Section 536.370 paragraph (d) is revised to read as follows:

536.370 Exercise of options.

* * * * *

(d) The contract modification or other written document which notifies the contractor of the exercise of the option shall cite the option clause as authority. In addition, when exercising an unpriced and or unevaluated option cite the statutory authority permitting the use of other than full and open competition (see FAR 6.302 and GSAR 517.207).

147. In 48 CFR Chapter 5, Part 543 Table of Contents is amended by adding the entry for section 543.102 to read as follows:

PART 543—CONTRACT MODIFICATION

Sec.

* * * * *

543.102 Policy.

* * * * *

Authority: 40 U.S.C. 486(c)

148. Section 543.100 is revised to read as follows:

543.100 Scope of subpart.

This subpart sets forth policies and procedures for issuing contract modifications and for pricing modifications to leases of real property.

149. Subpart 543.1 is amended by adding section 543.102 to read as follows:

543.102 Policy.

A modification for work that is outside the scope of a contract shall be treated as a new procurement. Accordingly, such modification must be justified and approved in accordance with FAR Subpart 6.3, and must be synopsized in accordance with the requirements of FAR Subpart 5.2 and GSAR Subpart 505.2. Such a modification must be affected through a supplemental agreement by mutual action of the parties.

150. Section 543.170 is revised to read as follows:

543.170 Pricing modifications to leases of real property.

The contracting officer shall ensure that modifications to leases of real property comply with the procedures in FAR 15.804.

151. 48 CFR Chapter 5, Part 552 Table of Contents is amended by adding the following entry for section 552.214–76:

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Sec.

* * * * *

552.214–76 Bid Sample Requirements.

* * * * *

Authority: 40 U.S.C. 486(c)

152. In section 552.212–72 paragraph (a) the text preceding the clause is revised to read as follows:

552.212–72 Availability for Inspection and Testing, and Shipment/Delivery.

(a) As prescribed in GSAR 512.104(d), insert the following clause in solicitations and contracts for stock items, other than circumstances of an unusual or compelling urgency, when lengthy testing is involved and the time required for completion of these tests cannot be predetermined.

* * * * *

153. Section 552.214–71 is amended by revising the text preceding the provision to read as follows:

552.214–71 Telecopier Submissions, Modifications, or Withdrawals of Bids.

As prescribed in GSAR 514.201–6(a), insert the following provision in solicitations for supplies and services (including construction) when the contract amount is expected to exceed the small purchase limitation:

* * * * *

154. Section 552.214–72 is amended by revising the text preceding the provision, to read as follows:

552.214–72 Telegraphic Submissions, Modifications, or Withdrawals of Bids Received at the GSA Communication Center.

As prescribed in GSAR 514.201–6(b), insert the following provision in solicitations for supplies and services (including construction) when the contract amount is expected to exceed the small purchase limitation:

* * * * *

155. Section 552.214–74 is amended by revising the clause to read as follows:

552.214–74 Solicitation copies.

* * * * *

Solicitation Copies (April 1985)

To reduce costs, only a single copy of this solicitation is mailed to active bidders and to addresses on our bidder's mailing list. If additional copies are required (see Block 9, page 1, for number of bid copies to be submitted), you may reproduce them yourself, provided they are complete in every respect, or you may obtain them from the GSA Business Service Center, (*Insert address and phone number of the BSC serving the issuing office*).

(End of Notice)

156. Section 552.214–75 is amended by revising the text preceding the clause to read as follows:

552.214–75 Progressive awards and monthly quantity allocations.

As prescribed in GSAR 514.201–7(a), insert the following clause in solicitations and contracts for supplies when progressive awards might have to be made in order to meet the Government's requirements.

* * * * *

157. Subpart 552.2 is amended by adding section 552.214–76 to read as follows:

552.214–76 Bid Sample Requirements.

As prescribed in GSAR 514.202–4(a), a provision or clause shall be included in each solicitation showing detailed requirements regarding the submission of bid samples. This provision or clause is to be used in conjunction with the provision at FAR 52.214–20. The following clause is provided as an example:

Bid Sample Requirements (April 1985)

This clause supplements the provision of this solicitation entitled "Bid Samples." Samples submitted in accordance with this clause must be from the production of the manufacturer whose products will be supplied under resultant contracts.

(a) Two bid samples are required for each of the following items in this solicitation:

(b) Two representative samples shall be submitted for each of the following items upon which a bid is submitted:

Items	Acceptable representative samples

Note: (1) Bidders are not authorized to re-apply samples being retained by GSA in connection with previous solicitations and/or resultant contracts.

(2) Bidders who propose to furnish an item or group of items from more than one manufacturer must submit two samples from the production of each of those manufacturers.

(c) Samples will be evaluated to determine compliance with all characteristics listed below:

Subjective characteristics	Objective characteristics

(d) Samples shall be forwarded to the Sample Room at the address indicated below. Except for samples delivered by U.S. Mail, deliveries to the Sample Room will be received between the hours of —— Mondays through Fridays, official holidays excluded. Samples must be submitted with the original copy of the attached GSA Form 434 enclosed and properly executed.

Caution: Use proper address for method of shipment selected.

Mail and parcel post	Freight or express
(Insert Address of Bid Sample Room)	(Insert Address of Bid Sample Room)

(e) Samples applying to accepted bids will be retained during the term of the contract. If other bidders desire that the Government retain their samples for use on future procurements, or, that the Government return their samples, this may be signified by so stating on the Sample Record Sheet. Samples retained by the Government will not normally be inspected unless the bidder is in line for a contract award. Failure of the bidder to note disposition instructions on the Sample Record Sheet will be construed to mean that return of the samples is not desired. In such instances, the Government shall be relieved of all responsibility and may dispose of the samples as it deems most economical to the Government after the samples have served their purpose.

(End of Clause)

158. Section 552.215–70 is amended by revising the text preceding the clause to read as follows:

552.215–70 Examination of records by GSA.

As prescribed in GSAR 515.106–1 and 514.201–7(b), when awarding contracts (excluding small purchases), insert the following clause:

* * * * *

159. Section 552.215–74 is amended by revising paragraphs (a) and (b) of the clause to read as follows:

552.215–74 Contract award—negotiated—construction.

* * * * *

Contract Award—Negotiated—Construction (April 1985) (Deviation FAR 52.215–16)

(a) The Government will award a contract resulting from this solicitation to the responsible offeror whose offer conforming to the solicitation, will be most advantageous to the Government, cost or price and other factors, specified elsewhere in this solicitation, considered.

(b) The Government may (1) reject any or all offers if such action is in the public interest, (2) accept other than the lowest offer, and (3) waive informalities and minor irregularities in offers received.

* * * * *

160. Section 552.228–72 is amended by revising the clause date and paragraph (b) of the clause to read as follows:

552.228–72 Performance bond.

* * * * *

Performance Bond (April 1985)

* * * * *

(b) The performance bond shall be a firm commitment, supported by corporate sureties whose names appear on the list contained in Treasury Department Circular 570, individual sureties, or by other acceptable security such as postal money order, certified check, cashier's check, or, in accordance with Treasury Department regulations, certain bonds or notes of the United States.

(End of Clause)

161. Section 552.228–73 is amended by revising the clause date and paragraph (b) of the clause to read as follows:

552.228–73 Performance and Payment Bonds.

* * * * *

Performance and Payment Bonds (April 1985)

* * * * *

(b) The performance and payment bonds shall be in the form of firm commitment, supported by corporate sureties whose names appear on the list contained in Treasury Department Circular 570, individual sureties, or by other acceptable security such as postal money order, certified check, cashier's check, or, in accordance with Treasury Department regulations, certain bonds or notes of the United States.

(End of Clause)

162. Section 552.236–73 is amended by revising paragraph (a) of the provision, paragraph (a) of Alternate I, paragraph (a) of Alternate II, paragraph (a) of Alternate III to read as follows:

552.236–73 Basis of award—construction contract.

* * * * *

Basis of Award—Construction Contract (April 1985)

(a) The low bidder for purposes of award is the responsible bidder offering the lowest price for the base bid (consisting of the lump sum bid and any associated unit price bids extended by the applicable number of units shown on the bid form). See Standard Form 1442, Solicitation, Offer, and Award and the provision entitled "Contract Award—Sealed Bidding."

* * * * *

Alternate I

(a) The low bidder for purposes of award is the responsible bidder offering the lowest aggregate price for (1) the base bid (consisting of the lump sum bid and any associated unit price bids extended by the applicable number of units shown on the bid form) plus (2) all options designated to be evaluated. The evaluation of options will not obligate the Government to exercise the options. See Standard Form 1442, Solicitation, Offer, and Award and the provision entitled "Contract Award—Sealed Bidding."

* * * * *

Alternate II

(a) The low bidder for purposes of award is the responsible bidder offering the lowest aggregate price for (1) the base bid (consisting of the lump sum bid and any associated unit price bids extended by the applicable number of units shown on the bid

form) plus (2) those alternates in the order of priority listed in the solicitation that provide the most features of work within the funds available at bid opening. See the provision entitled "Contact Award—Sealed Bidding."

* * * * *

Alternate III

(a) The low bidder for purposes of award is the responsible bidder offering the lowest aggregate price for (1) the base bid (consisting of the lump sum bid and any associated unit price bids extended by the applicable number of units shown on the bid form) plus (2) those alternates in the order of priority listed in the solicitation that provide the most features of work within the funds available at bid opening plus (3) all options designated to be evaluated except those options associated with alternates which are skipped during the selection process outlined in paragraph (c) below. The evaluation of options will not obligate the Government to exercise the options. See the provision entitled "Contract Award—Sealed Bidding."

* * * * *

163. Section 552.270–11 is amended by revising paragraphs (c), (c)(1) and (c)(2) of Alternate I of the clause to read as follows:

552.270–11 Alterations by lessor.

* * * * *

Alternate I (April 1985)

* * * * *

(c) Certain Federal Acquisition Regulation (FAR) provisions also apply to all alterations projects exceeding $100,000 in cost—

(1) The Lessor must provide cost or pricing data including subcontractor cost or pricing data (48 CFR 15.804–2).

(2) The Lessor's representative, all Contractors, and subcontractors whose portion of the job exceeds $100,000 must sign and return the "Certificate of Current Cost or Pricing Data" (48 CFR 15.804–4).

* * * * *

164. 48 CFR Chapter 5, Part 553, the Table of Contents is amended by adding and revising the following sections to read as follows:

PART 553—FORMS

Sec.

553.370–1378 GSA Form 1378, Record of, and Receipt For, Bids and Responses.

* * * * *

553.370–2981 GSA Form 2981, Request for extension of bid acceptance time (Form letter).

* * * * *

553.370–3501 GSA Form 3501, Solicitation Provisions (Sealed Bid).

* * * * *

553.370–3521 GSA Form 3521, Blanket Purchase Agreement.

Authority: 40 U.S.C. 486(c).

165. Section 553.173(c) is amended by adding numerically the forms listed below and by removing GSA form No. 1821 from the list:

553.173 Responsibility for the maintenance of forms.

* * * * *

(c) * * *

GSA form No.	Responsible office
1378	V
2981	F
3521	P

* * * * *

166. Section 553.270 is revised to read as follows:

553.270 Forms containing representations and certifications, provisions, and clauses.

The GSA Forms reference in this GSAR 553.270 are for use on an optional basis. Unless otherwise indicated, the forms containing provision and clauses may either be physically included in the solicitation/contract, or may be incorporated therein by reference in accordance with GSAR 553.171.

167. Section 553.270–2(a) is revised to read as follows:

553.270–2 Solicitation provisions.

(a) GSA Form 3501, Solicitation Provisions (Sealed bid), is for use in connection with all sealed bid solicitations.

* * * * *

168. Section 553.270–3 is revised to read as follows:

553.270–3 Contract clauses.

(a) GSA Form 2166, Service Contract Act of 1965 (as Amended), is for use in connection with sealed bid and negotiated contracts for services to which the Act applies. Because the clauses contained in this form must be included in solicitations/contracts in full text, the form shall not be incorporated by reference.

(b) GSA Form 3504, Service Contract Clauses, is for use in connection with all sealed bid and negotiated contracts for services, except small purchases.

(c) GSA Form 3505, Labor Standards (Construction Contract), is for use in connection with sealed bid and negotiated contracts subject to the Davis-Bacon Act and related Acts. Because the clauses contained in this form must be included in solicitations/contracts in full text, the form shall not be incorporated by reference.

(d) GSA Form 3506, Construction Contract Clauses, is for use in connection with all sealed bid and negotiated construction contracts, except small purchases.

(e) GSA Form 3507, Supply Contract Clauses, is for use in connection with sealed bid and negotiated contracts for supplies. However, because most of the clauses contained in the form are also applicable to contracts for the rental of personal property, the form may also be used in connection with rental contracts.

169. Section 553.272(a) is revised to read as follows:

553.272 Purchase/Delivery orders.

(a) GSA Form 300, Order for Supplies or Services, a 6-part form, is required for purchases payable by GSA under the National Electronic Accounting and Reporting (NEAR) System of funds control. This form may also be used in other situations, unless a specific form is prescribed for use. GSA Form 300–A, Order for Supplies or Services (Continuation), is available for use with GSA Form 300. Pending revision of the April 1984 edition of the GSA Form 300, Block 8A of the form may be revised to delete the sentence which reads as follows: "This purchase is negotiated under the authority of:"

* * * * *

170. Section 553.274 is revised to read as follows:

553.274 Solicitation cover page.

GSA Form 1602, Notice Concerning Your Solicitation For Offers, may be used to: (a) Describe the type of contract (e.g., requirements or definite quantity), the duration of the contract, and the identity of the supplies or services being procured;

(b) Direct the attention of prospective offerors to special requirements which, if overlooked, may result in rejection of the offer;

(c) Highlight significant changes from previous solicitations covering the same commodity or service; and

(d) Include other special notices, as appropriate.

Editorial Note: GSAR Forms are not published in the **Federal Register** or the Code of Federal Regulations.

Dated: February 20, 1985.

Allan W. Beres,

Assistant Administrator for Acquisition Policy.

[FR Doc. 85–5461 Filed 3–12–85; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 107

[Docket No. HM-194; Amdt. No. 107-13]

Designation of Testing Agencies; United Nations Packagings

AGENCY: Materials Transportation Bureau (MTB), Research and Special Programs Administration, DOT.

ACTION: Final Rule.

SUMMARY: This final rule adopts a procedure by which MTB may designate third-party packaging testing agencies, for the purpose of certifying conformance of packaging designs with United Nations (U.N.) standards. Third-party testing is adopted as a means through which shippers and container manufacturers may voluntarily demonstrate the adequacy of their packagings, and possibly enhance acceptance of their use in international transportation. This procedure may help to eliminate delays of, or impositions against, U.S. exports transported in packagings not specifically approved by the Materials Transportation Bureau (acting as the National Competent Authority).

EFFECTIVE DATE: July 1, 1985. However, compliance with the regulations as amended herein is authorized as of March 13, 1985.

FOR FURTHER INFORMATION CONTACT: Thomas J. Charlton, Chief, Standards Division, Office of Hazardous Materials Regulation, Materials Transportation Bureau, Department of Transportation, Washington, D.C. 20590, telephone (202) 426-2075.

SUPPLEMENTARY INFORMATION:

Background

On October 12, 1984, MTB published a notice of proposed rulemaking (Notice No. 84-13) in the **Federal Register** (49 FR 40056). That notice proposed the adoption of a procedure by which MTB may designate third-party packaging testing agencies for the purpose of certifying conformance of packaging designs to U.N. standards. This final rule contains amendments to the Hazardous Materials Regulations (HMR) based on the proposals in Notice 84-13 and the merits of comments filed in response to that notice. Interested persons should refer to Notice 84-13 for additional background information.

In response to Notice 84-13, MTB received 35 written comments. The respondents include international exporters of hazardous materials, packaging manufacturers and packaging testing organizations. Of those commenters expressing an opinion on the overall merits of the proposal, 28 are in favor, two gave conditional support and one commenter strongly opposed the idea. The two commenters giving conditional support fail to see a need for implementing the proposed procedure. However, they indicated a willingness to support a procedure which is not keyed to "third-parties". Numerous commenters requested that the rule also permit the designation of "in-house" laboratories.

Clarification

The title of this docket is revised by replacing the word "Laboratories" with the word "Agencies" since the qualifications of a person performing the certification function is the prime factor in accomplishing the purpose of this rulemaking. Obviously, one qualification in the ability to determine the adequacy of test equipment for performance of a necessary function in his own facility (laboratory) or, for example, in the facility of a packaging manufacture.

Acknowledgement of Problem

The comments do not reflect a universal agreement that the regulatory requirements for international road and rail transport within Europe (ADR and RID, respectively) will require that packagings conforming to U.N. standards be certified by MTB or a designated approval agency. Some commenters are convinced this will occur. Other commenters contend the ADR/RID countries will come to recognize that self-certification of performance-oriented packagings standards is just as reliable as the long-accepted policy for self-certification of specification packagings.

One company which sees the ADR/RID requirement as a serious threat is Monsanto. Currently, Monsanto is having containers tested in Europe. The commenter complains "this procedure is time consuming and expensive and results in an adverse effect on exports". Another company, Olin Chemicals, takes the position that it must assume the status quo of the ADR/RID package testing requirements and, therefore, supports the proposal as a short term solution. However, Olin is one of several commenters who believe, in the long term, ADR/RID countries can be convinced that self-certification is an acceptable alternative.

The principal argument raised by commenters who fail to recognize the ADR/RID requirements as a problem for U.S. shippers centers on Paragraph 9.7.1.1. of Chapter 9 of the U.N. Recommendations. That Paragraph essentially leaves testing procedures to the discretion of the competent authority. Thus, PPG Industries, Inc. (PPG) and others contend ADR/RID countries must respect the determination of the U.S. Competent Authority on whichever system is selected.

Like most commenters to the Docket, MTB must assume that requirements promulgated by the ADR/RID countries will be fully implemented on the effective date of May 1, 1985, and it would not be appropriate to presume that U.S. shippers enjoy some privilege regarding compliance with these amendments not accorded ADR/RID member states after May 1, 1985. Consequently, the MTB believes a potential problem exists, and a positive step should be taken to minimize the negative impacts should this potential problem be realized.

Adequacy of the Proposal

Most commenters viewed the proposal as an acceptable response to the potential problem. It is characterized as a straightforward approach to a clearly defined problem; i.e., ADR/RID countries require that tests be performed by a person independent of the packaging manufacturer and the proposal provides that inspections may be conducted by third-party inspection agencies approved by the Associate Director for HMR. While some commenters argue that a non-governmental inspection agency will nevertheless be unacceptable, other commenters see evidence that this concept is taking hold in some ADR/RID countries.

Writing in opposition to the proposed rule, PPG expresses doubt that ADR/RID countries will accept the findings of approved agencies. To PPG, it is obvious that MTB can satisfy the ADR/RID countries only by testing and approving packagings in its own right.

Several other commenters cite evidence that suggests a willingness by the ADR/RID countries to accept certifications which are not issued by the national competent authority directly. For instance, although The Netherlands maintains its own national testing laboratories, it recently set a precedent by conferring authorization to conduct tests leading to packaging approval on TOPA, an independent government-approved laboratory. Similarly, the competent authority of the United Kingdom authorizes bodies qualified under the National Testing Laboratory Accreditation Scheme to undertake tests leading to packaging approval.

There is a diversity of opinion on how a packaging approval system should operate. Most commenters emphasize that the self-certification process used in the U.S. today should continue, and that whichever method develops for international traffic it should not prejudice certifications for domestic traffic. However, Natico, Inc., a drum manufacturer, concluded its comments by stating "(t)hird party testing and certification for the transportation of hazardous materials should be made mandatory."

While the Notice was specific to designation of independent third-party testing laboratories, there was some discussion of other possibilities. The National Bureau of Standards (NBS) advised MTB of its National Voluntary Laboratory Accreditation Program (NVLAP) and suggested this alternative is better than developing a separate system. NBS currently recognizes a series of nine different laboratory accreditation programs (LAP). Some of these cover the testing of insulating materials, concrete, carpeting, and paint and paper products. Accreditation is established through a demonstration, to technical experts working for NBS, of the applicant laboratory's proficiency. As each LAP looks more to the competency of a laboratory than its independence, there are many in-house testing laboratories which enjoy accreditation and apparent recognition by certain countries belonging to the International Laboratory Accreditation Conference. Thus, the concept of self-certification is given greater credibility through the accreditation program.

The NVLAP program was only recently brought to the attention of MTB and did not receive consideration prior to development of the notice of proposed rulemaking for this docket. However, the design of the NVLAP system appears to satisfy several interests. In its position as a facilitator, NBS would relieve MTB of most of the day-to-day functions necessary in the administration of an approvals program for testing agencies. Also, as the accreditation in existing LAP's includes many "in-house" laboratories, the request of numerous commenters to drop the "third-party" provision from the applicant's qualifications statement might be satisfied. The NVLAP system, however, goes considerably beyond the scope of Notice 84–13 and MTB doubts that any rulemaking would be necessary for implementation of such a program since self-certification is already permitted by the HMR.

Use of In-House Testing Facilities

Some shippers, who wish to maintain the status of their own testing laboratories, contend they meet MTB's objectivity test when testing packaging materials produced for them by an unrelated packaging manufacturer. To them, this is a form of quality assurance that adds another dimension to packaging integrity. For instance, when it wishes to ship materials in steel drums, 3M believes it can test drums made by any number of manufacturers with the same degree of objectivity as a third-party testing laboratory, but at a considerable savings of time and money. Packaging manufacturers who wish to maintain the status of their testing facilities argue very convincingly about the competency of their personnel and equipment, but their objectivity is not as apparent as that of a shipper testing a manufacturer's packaging.

It seems that a large number of commenters wrongly interpreted the requirement of § 107.402(b)(5). While that requirement specifies the agency must perform its functions independent of the manufacturers and owners of the packaging concerned, it does not prevent the agency from witnessing physical tests at a shipper or packaging manufacturer's facility. In fact, the requirements of § 107.402 were first applicable to the certification of specification intermodal portable tanks, and § 173.32a(b)(3) clearly indicates that witnessing a manufacturer's or owner's testing of tanks is acceptable. Nothing in today's final rule intends to modify that practice. Consequently, each in-house testing facility which possesses the necessary equipment and personnel may conduct the required tests, but the packaging certification must be issued under authority of a third-party designated for that purpose by the Associate Director for HMR.

Qualifications for Approval Agencies

Wyle Laboratories took exception to the proposed rule's absence of detailed criteria by which testing laboratories must operate. The commenter suggested quality-control criteria, such as traceability of calibration standards, calibration frequency and documentation, and standardization of procedures, would assure conformance to the packaging's certified level of performance.

Testing required by the U.N. Recommendations is very basic and may be adequately conducted with basic instruments. Currently, most packaging testing is performed by manufacturers and, to this date, there are no indications their instruments (pressure gauges, micrometers, scales, etc.) are so poorly maintained that MTB should establish specific requirements which assure greater accuracy. It is doubtful that independent agencies are any less competent in their knowledge or equipment.

Economic Impact

Mallinckrodt, Inc., while supporting the proposed rule only as a necessary means to avoid frustration of its export shipments, complained manufacturers and shippers of small packages (bottles inside fiberboard boxes) will bear a disproportionate burden of costs resulting from this rulemaking. Whereas steel drums are limited to a relatively small number of designs and capacities, the number of different packaging consisting of fiberboard boxes with inside glass or plastic bottles is extremely large. Thus, a greater amount of time and money is required to demonstrate that each packaging conforms to the performance standard. Due to the shortness of time available for filing comments, the commenter was unable to present data supporting this claim; however, MTB does not challenge its validity except to note that there are provisions in the U.N. Recommendations that allow the selective testing of packaging that differ only in minor respects from a tested type, and specifically provide some relief for the use of various inner packaging in a combination packaging without requiring retesting of the completed packaging. Another point Mallinckrodt wished to make is that testing would have to be performed twice; first to the satisfaction of the shipper or manufacturer developing the package, and secondly to the satisfaction of the designated certification agency. This also results in increased costs of time and money. To preclude what it considers unnecessary costs, Mallinckrodt requested that MTB push for acceptance by the ADR/RID countries of the self-certification process currently used in the U.S.

There is no disputing the commenter's statement. However, if MTB were to do nothing, international shippers would be in the even worse position of possibly having to incur additional costs by having their packaging approved in a foreign country. As indicated by other commenters, that option is probably the most undesirable.

Major Rulemaking

One commenter, PPG, took exception to MTB's determination that this is not a major rule. The commenter states:

First, this proposal could have significant economic impact on PPG and other shippers. PPG has approximately 350 detailed packaging specifications that, if this proposal were adopted, may have to be "voluntarily tested to demonstrate adequacy." The cost of this testing could easily reach one million dollars. Secondly, this proposal, if adopted, would completely change the packaging approval process in the United States. It would become apparent to ADR/RID countries that the U.S. approves of third party certification of packaging, and it would be required for all shipments to these countries.

The MTB made it quite clear the Notice represents a possible solution to a problem that will likely affect many shippers, including PPG. An overwhelming amount of support for that proposal came from the regulated community. In addition, MTB clearly indicated in the Notice that the requirements in the HMR pertaining to U.N. performance-oriented packaging standards (§ 171.2 and § 178.0–3) can be met through self-certification. Consequently, affected persons are free to choose the option which they believe is most appropriate to their circumstances. MTB emphasizes that the result of the adoption of changes to procedural rules by this amendment does not impose a new mandatory burden on any person.

One of the criteria specified in Executive Order 12291 regarding a "major rule" refers to a regulation that is likely to result in "(s)ignificant adverse effects on . . . the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets." The MTB believes this rule may facilitate the ability of U.S.-based enterprises to compete in export markets.

Summary of Amendments

Section 107.401 is revised to expand its scope to include certifications issued for packagings conforming to standards appearing in the UN Recommendations on the Transport of Dangerous Goods. Paragraph (b) is added to clearly indicate that designated agencies share authority with MTB. Accordingly, packaging manufacturers and shippers may ask the Associate Director for HMR to provide a packaging certification. In addition, the affected party may appeal to the Associate Director for HMR an adverse determination made by a designated agency.

Section 107.402 is amended in paragraphs (b)(3), (b)(4)(ii) and (b)(6) by expanding the scope of packagings covered in this section to include packagings conforming to U.N. Recommendations.

Section 107.404 is amended to indicate a designated agency issues a certification, rather than an approval certificate which is appropriate only to serially numbered intermodal portable tanks.

Subpart E, with the amendments discussed above and other conforming changes, is presented in its entirety for clarity.

OMB Control Number: 2137–0008

Paperwork Reduction Act

Reporting requirements contained in this regulation (§ 107.402) have been approved by the Office of Management and Budget under provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and assigned OMB Control Number 2137–0008.

List of Subjects in 49 CFR Part 107

Hazardous materials transportation, Administrative practice and procedure.

In consideration of the foregoing, Subpart E of 49 CFR Part 107 is revised to read as follows:

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

Subpart E—Designation of Approval and Certification Agencies

Subpart E—Designation of Approval and Certification Agencies

Sec.

107.401 Purpose and scope.
107.402 Application for designation as an approval or certification agency.
107.403 Designation of approval agencies.
107.404 Conditions of designation.
107.405 Termination of designation.

Authority: 49 U.S.C. 1804, 1805, 1808; 49 CFR 1.53; App. A to Part 1.

§ 107.401 Purpose and scope.

(a) This subpart establishes procedures for the designation of agencies to issue approval certificates and certifications for types of packagings designed, manufactured, tested, or maintained in conformance with the requirements of this subchapter, Subchapter C of this chapter, and standards set forth in the United Nations (U.N.) Recommendations (Transport of Dangerous Goods). Except for certifications of compliance with U.N. packaging standards, this subpart does not apply unless made applicable by a rule in Subchapter C of this chapter.

(b) The Associate Director for HMR may issue approval certificates and certifications addressed in paragraph (a) of this section.

§ 107.402 Application for designation as an approval or certification agency.

(a) Any organization or person seeking designation as an approval or certification agency shall apply in writing to the Associate Director for Hazardous Materials Regulation (DMT–20), Department of Transportation, 400 Seventh Street, SW., Washington D.C. 20590. Each application must be signed and certified to be correct by the applicant or, if the applicant is an organization, by an authorized officer or official representative of the organization. Any false statement or representation, or the knowing and willful concealment of a material fact, may subject the applicant to prosecution under the provisions of 18 U.S.C. 1001, result in the denial or termination of a designation.

(b) Each application for designation must be in English and include the following information:

(1) Name and address of the applicant, including place of incorporation if a corporation. In addition, if the applicant is not a resident of the United States, the name and address of a permanent resident of the United States designated in accordance with § 107.7 to serve as agent for service of process.

(2) If the applicant's principal place of business is in a country other than the United States, a copy of the designation from the Competent Authority of that country delegating to the applicant an approval or designated agency authority for the type of packaging for which a DOT designation is sought, and a statement that the Competent Authority also delegates similar authority to U.S. Citizens or organizations having designations under this subpart from the MTB.

(3) A listing, by DOT specification (or exemption) number, or UN designation, of the types of packagings for which approval authority is sought.

(4) A personnel qualifications plan listing the qualifications that the applicant will require of each person to be used in the performance of each packaging approval or certification function. As a minimum, these qualifications must include—

(i) The ability to review and evaluate design drawings, design and stress calculations;

(ii) A knowledge of the applicable regulations of Subchapter C of this chapter and, when applicable, U.N. standards; and

(iii) The ability to review and evaluate the qualification of materials and fabrication procedures.

(5) A statement that the applicant will perform its functions independent of the manufacturers and owners of the packagings concerned.

(6) A statement that the applicant will allow the Associate Director for HMR or his representative to inspect its records and facilities in so far as they relate to the approval or certification of specification packagings and shall cooperate in the conduct of such inspections.

(c) The applicant shall furnish any additional information relevant to the applicant's qualifications, if requested by the Associate Director for HMR.

§ 107.403 Designation of approval agencies.

(a) If the Associate Director for HMR determines that an application contains all the required information, the applicant is sent a letter of designation and assigned an identification code.

(b) If the Associate Director for HMR determines that an application does not contain all the required information, the application is denied and the applicant is sent a written notice containing all the reasons for the denial.

(c) Within 30 days of an initial denial of an application under paragraph (b) of this section, the applicant may file an amended application. If after considering the amended application, the Associate Director determines that it should be denied, he notifies the applicant, and the denial constitutes the final action of the Associate Director on the application. Within 60 days of receipt of the final denial the applicant may appeal the denial to the Director, MTB, setting forth in writing where the Associate Director erred in this determination.

§ 107.404 Conditions of designation.

(a) Each designation made under this subpart contains the following conditions:

(1) The designated approval or certification agency may use only testing equipment that it has determined, through personal inspection, to be suitable for the purpose.

(2) Each approval certificate and certification issued by the designated approval agency must contain the name and identification code of the approval agency.

(3) Each approval certificate and certification must be in a format acceptable to the Associate Director for HMR.

(b) The designated approval agency shall notify the Associate Director for HMR within 20 days after the date there is any change in the information submitted under § 107.402.

(c) The designated approval agency shall comply with all of the terms and conditions stated in its letter of designation under the subpart.

(d) Nothing in this part relieves a manufacturer or owner of a packaging of responsibility for compliance with any of the applicable requirements of this title.

§ 107.405 Termination of designation.

(a) Any designation issued under § 107.403 of this subchapter may be suspended or terminated if the Associate Director for HMR determines that:

(1) The application for designation contained a misrepresentation, or the applicant willfully concealed a material fact.

(2) The approval agency failed to comply with a term or condition stated in the agency's letter of designation.

(3) The Competent Authority of an approval agency of a country outside the United States has failed to initiate, maintain or recognize a qualified U.S. approval agency.

(b) Before a designation is suspended or terminated, the Associate Director for HMR shall give to the approval agency:

(1) Written notice of the facts or conduct believed to warrant suspension or termination of the designation.

(2) Sixty days in which to show in writing why the designation should not be suspended or terminated.

(49 U.S.C. 1804, 1805, 1808; 49 CFR 1.53; App. A to Part 1)

Note.—Because the requirements in this final rule relate to (a) agency practices and procedures and (b) clarifications of existing regulations and policies, the Materials Transportation Bureau determined that this final rule—(1) is not "major" under Executive Order 12291; (2) is not "significant" under DOT Regulatory Policies and Procedures (44 FR 11034; Feb. 26, 1979); and (3) does not require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321 *et seq.*). For these same reasons, I certify this final rule, as promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Washington, D.C. on March 8, 1985.

L. D. Santman,

Director, Materials Transportation Bureau.

[FR Doc. 85-6028 Filed 3-12-85; 8:45 am]

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VOL 50 ISS 49 MR 13 1985 UMI

Proposed Rules

Federal Register
Vol. 50, No. 49
Wednesday, March 13, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 25 and 95

Access to and Protection of National Security Information and Restricted Data

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations to incorporate a recently approved exception to the personnel security background investigation requirement for access to certain Communications Security (COMSEC) information; to provide a procedure to ensure that licensees obtain prior NRC approval to effect any substantive changes to a licensee's security plan; and to adopt several revisions that are strictly ministerial in nature. These proposed actions are intended to revise the regulations to reflect current agency policy and practice and to make clarifications to the regulations that past agency experience indicates are necessary.

DATE: Submit comments by May 13, 1985. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES:

Send comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, 20555. ATTN: Docketing and Service Branch.

Hand deliver comments to: Room 1121, 1717 H Street, NW, Washington, DC between 8:15 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Richard A. Dopp, Chief, Policy and Operational Support Branch, Division of Security, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 427–4549.

SUPPLEMENTARY INFORMATION: The National Communications Security Committee (NCSC) has recently granted NRC an exception to personnel security background investigation requirements relating to access by certain NRC licensee individuals to Communications Security (COMSEC) information. This exemption was granted in accordance with Section IV of NCSC–2, "National Policy on Release of Communications Security Information to U.S. Contractors and Other U.S. Nongovernmental Sources," and exempts NRC licensee facility security officers from the requirement of having a full field background investigation, current within five years, as a precondition for access to COMSEC information. All NRC licensee individuals involved currently have and will continue to possess, as a minimum, an NRC-granted "L" access authorization based on a National Agency Check (NAC) background investigation. The COMSEC information to which NRC licensee personnel may need access is limited to Confidential-National Security Information material. This exemption will be limited to fewer than ten NRC licensee and other facilities, and is based, in part, on the level of classification involved (Confidential), the short duration of classification normally experienced, and the lack of impact on other government communications. In order to implement this exception, revisions to current regulations are necessary. Specifically, the current § 25.15 and § 95.35 state that an NRC "Q" access authorization is required as a precondition for access to COMSEC information. These sections are amended to reflect that an NRC "L" access authorization is sufficient for access to COMSEC information of the level and type specifically referenced by the recent NCSC exemption decision.

In a separate matter, the NRC staff has recently recognized a need to revise its regulations to better provide for changing security conditions at approved NRC security facilities covered by Part 95. The proposed new procedure is intended to clarify NRC policy by acknowledging that certain activities planned by the licensee at a security facility (e.g., remodeling or renovation of offices, moving NRC interests from one room or building to another) require advance NRC approval. NRC proposes to add a new section to provide a procedure whereby the licensee would seek the advance approval of the NRC regarding any proposed substantive changes to the name, location, security procedures and controls, or floor plan of the security facility. The current § 95.15(d) allows the licensee to make a change in an NRC approved security plan for the safeguarding of National Security Information and/or Restricted Data without prior NRC approval, provided the change does not decrease the effectiveness of the plan. NRC staff is concerned that this section may not be sufficiently precise. Specifically, whether or not a change contemplated by a licensee to a security plan decreases the plans effectiveness is highly subjective. NRC staff believes that § 95.15(d) be deleted in favor of a new § 95.18, which sets forth, in greater detail, the circumstances under which licensees may make changes to the name, location, security procedures and controls, and/or floor plan of the approved security facility. The proposed new § 95.18(a) outlines a procedure whereby the licensee would require advance NRC approval prior to adopting revisions to the minimum security conditions upon which facility approval had originally been granted. A new § 95.18(b) now prescribes in greater detail those changes to security operations not requiring advance NRC approval but requiring prompt notification by the licensee. This proposed revision is intended to better ensure that changing conditions at a security facility, potentially impacting the protection of National Security Information and/or Restricted Data, are brought to the attention of NRC far enough in advance to provide a better opportunity to review and resolve them and avoid a situation which could affect continuing security facility approval.

Finally, NRC staff has identified several revisions that are generally ministerial in nature which should clarify and improve the effectiveness and accuracy of 10 CFR Parts 25 and 95.

Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed regulation is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed regulation.

Paperwork Reduction Act Statement

This proposed rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). This rule has been submitted to the Office of Management and Budget for review and approval of the paperwork requirements.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. Each NRC licensee or other organization which may require access to National Security Information and/or Restricted Data in connection with a license or application for a license will be impacted by this proposed rule. Only 12 entities (which include five fuel-cycle facilities, three transportation companies, one reactor and three other organizations) are currently required to meet the requirements of 10 CFR Parts 25 and 95. Since none of these has been determined to be small as defined by the Regulatory Flexibility Act of 1980, the Commission finds that this rule will not have a significant economic impact upon a substantial number of small entities.

List of Subjects

10 CFR Part 25

Classified information, Investigations, Penalty, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 95

Classified information, Penalty, Reporting and recordkeeping requirements, Security measures.

Under the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, the Independent Offices Appropriation Act of 1952 and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR Parts 25 and 95.

PART 25—ACCESS AUTHORIZATION FOR LICENSEE PERSONNEL

1. The authority citation for Part 25 continues to read as follows:

Authority: Secs. 145, 161, 68 Stat. 942, 948, as amended (42 U.S.C. 2165, 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); E.O. 10865, as amended, 3 CFR 1959–1963 COMP., p. 398 (50 U.S.C. 401, note); E.O. 12356, 47 FR 14874, April 6, 1983.

Appendix A also issued under 96 Stat. 1051 (31 U.S.C. 9701).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 25.13, 25.17(a), 25.33 (b) and (c) are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 25.13 and 25.33(b) are also issued under sec. 161o, 68 STat. 950, as amended (42 U.S.C. 2201(o)).

2. In § 25.5, the definition of "L" access authorization is revised to read as follows:

§ 25.5 Definitions.

* * * * *

"L" access authorization means an access authorization granted by the Commission which is normally based on a National Agency Check (NAC) or NAC and Inquiries (NACI) conducted by the Office of Personnel Management.

* * * * *

3. In § 25.15, paragraph (b) is revised to read as follows:

§ 25.15 Access permitted under "Q" or "L" access authorization.

* * * * *

(b) An "L" access authorization permits an individual access on a need-to-know basis to Confidential Restricted Data and Secret and Confidential National Security Information other than the categories specifically included in paragraph (a) of this section. In addition, access to certain Confidential COMSEC information is permitted as authorized by a National Communications Security Committee waiver dated February 14, 1984.

* * * * *

PART 95—SECURITY FACILITY APPROVAL AND SAFEGUARDING OF NATIONAL SECURITY INFORMATION AND RESTRICTED DATA

4. The authority citation of Part 95 continues to read as follows:

Authority: Secs. 145, 161, 68 Stat. 942, 948, as amended (42 U.S.C. 2165, 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); E.O. 10865, as amended, 3 CFR 1959–1963 COMP., p. 398 (50 U.S.C. 401, note); E.O. 12356, 47 FR 14874, April 6, 1982.

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 95.13, 95.15(a), 95.25, 95.27, 95.29(b), 95.31, 95.33, 95.35, 95.37, 95.39, 95.41, 95.43, 95.45, 95.47, 95.51, 95.53, and 95.57 are also issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)).

5. In § 95.5, the definitions of "Authorized Classifer," "Infraction" and "L" access authorization are revised to read as follows:

§ 95.5 Definitions.

* * * * *

"Authorized Classifier" means an individual authorized in writing by appropriate authority to classify, declassify or downgrade the classification of information. This term applies to authorized derivative classifiers and authorized original classifiers.

* * * * *

"Infraction" means an act or omission involving failure to comply with NRC security requirements or procedures.

* * * * *

"L" access authorization means an access authorization granted by the Commission which is normally based on a National Agency Check (NAC) or NAC and Inquiries (NACI) conducted by the Office of Personnel Management.

* * * * *

§ 95.15 [Amended]

6. In § 95.15, paragraph (d) is removed.

7. A new § 95.18 is added to read as follows:

§ 95.18 Changes to security practices and procedures.

(a) Except as specified in paragraph (b) of this section, each licensee or other person shall obtain prior NRC approval for any proposed change to the name, location, security procedures and controls, or floor plan of the approved facility. A written description of the proposed change must be furnished to the NRC Director, Division of Security, Office of Administration, Washington, D.C. 20555, with a copy of the Regional Administrator of the cognizant Regional Office listed in Appendix A of Part 73. The NRC shall promptly respond in writing to all such proposals. Some examples of substantive changes requiring prior NRC approval include:

(1) A change in the approved facility's classified mail address; or

(2) A temporary or permanent change in the location of the approved facility (e.g., moving or relocating NRC's classified interest from one room or building to another).

(b) A licensee or other person may affect a minor, nonsubstantive change to an NRC approved facility security plan for the safeguarding of National Security Information and/or Restricted Data without receiving prior NRC approval provided prompt notification of such minor change is furnished to the addressee noted in paragraph (a) of this section, and the change does not decrease the effectiveness of the plan. Some examples of minor, nonsubstantive changes to the facility security plan include:

(1) The designation/appointment of a new facility security officer; or

(2) A revision to protective personnel patrol routine, provided the new routine continues to meet the minimum requirements of this part.

8. Section 95.19 is revised to read as follows:

§ 95.19 Grant, denial or termination of security facility approval.

The Division of Security shall provide notification in writing (or orally with written confirmation) to the licensee or other organization, of the Commission's grant, denial, or termination of security facility approval. This information shall also be furnished to representatives of NRC, NRC licensees, NRC contractors, or other Federal agencies having a need to transmit National Security Information and/or Restricted Data to the licensee or other person.

9. In § 95.21, the heading is revised to read as follows:

§ 95.21 Withdrawal of requests for security facility approval.

* * * * *

10. The heading of § 95.25 is revised to read as follows:

§ 95.25 Protection of National Security Information and Restricted Data in storage.

11. Section 95.27 is revised to read as follows:

§ 95.27 Protection while in use.

While in use, matter containing National Security Information or Restricted Data must be under the direct control of an authorized individual to preclude physical, audio and visual access by persons who do not have the prescribed access authorization or other written Division of Security disclosure authorization (see § 95.36 for additional information concerning disclosure authorizations).

12. The heading of § 95.35 and paragraph (a)(1) are revised to read as follows:

§ 95.35 Access to National Security Information and Restricted Data.

(a) * * *

(1)(i) A "Q" access authorization which permits an individual access to (A) Secret and Confidential Restricted Data and (B) Secret and Confidential National Security Information which includes intelligence information, CRYPTO (i.e., cryptographic information) or other classified communications security (COMSEC) information, or

(ii) An "L" access authorization which permits an individual access to Confidential Restricted Data and Secret and Confidential National Security Information other than that noted in paragraph (a)(1)(i) of this section except that, access to certain Confidential COMSEC information is permitted as authorized by a National Communications Security Committee waiver dated February 14, 1984.

* * * * *

13. In § 95.41, the heading is revised to read as follows:

§ 95.41 Accountability for Secret matter.

* * * * *

14. In § 95.53 the heading and paragraph (b) are revised to read as follows:

§ 95.53 Termination of security facility approval.

* * * * *

(b) In any instance where security facilty approval has been terminated based on a determination of the Commission that further possession of classified matter by the facility would not be in the interest of the national security, the facility shall, upon notice from the Commission, immediately deliver all classified documents and materials to the Commission along with a certificate of nonpossession of National Security Information and Restricted Data.

15. Section 95.55 is revised to read as follows:

§ 95.55 Continued applicability of the regulations in this part.

The suspension, revocation or other termiantion of access authorization or the termination of security facility approval shall not relieve any person from compliance with the regulations in this part.

16. Section 95.59 is revised to read as follows:

§ 95.59 Inspections.

The Commission shall make inspections and surveys of the premises, activities, records and procedures of any person subject to the regulations in this part as the Commission deems necessary to effect the purposes of the Act, E.O. 12356 and/or NRC rules.

Dated at Bethesda, MD, this 15th day of February 1985.

For the Nuclear Regulatory Commission.

William J. Dircks,

Executive Director for Operations.

[FR Doc. 85-6007 Filed 3-12-85; 8:45 am]

BILLING CODE 7590-01-M

FEDERAL ELECTION COMMISSION

11 CFR Parts 2 and 3

[Notice 1985-3]

Sunshine Act Regulations: Scope and Definitions; Meetings

AGENCY: Federal Election Commission.

ACTION: Second Notice of Proposed Rulemaking and Announcement of Hearing Date.

SUMMARY: The Commission is publishing today a revised version of its proposed rules implementing the Sunshine Act. The rules have been redrafted in response to public comment, particularly with regard to the procedures for releasing transcripts or recordings of meetings on enforcement matters. Other provisions have been reworded based on Commission discussion of the proposed rules. Comments on the revised proposals are welcomed and a hearing will be held on the revised rules on Wednesday, April 24, 1985. Further information on these proposed amendments is provided in the supplementary information which follows.

DATES: Comments must be received on or before April 12, 1985. Persons interested in testifying at the hearing must so state in their written comments. A hearing will be held on Wednesday, April 24, 1985.

ADDRESSES: Please address comments to Ms. Susan E. Propper, Assistant General Counsel, 1325 K Street, N.W., Washington, D.C. 20463. The hearing will be held at the Commission's 5th floor meeting room, 1325 K Street NW, Washington, DC 20463.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, (202) 523-4143 or (800) 424-9530.

SUPPLEMENTARY INFORMATION: The Commission published a Notice of Proposed Rulemaking to revise its Sunshine Act regulations at 11 CFR Parts 2 and 3 on December 19, 1984 (49 FR 49306). The Notice of Proposed Rulemaking offered four primary areas of the regulations for amendment. It proposed to consolidate the Commission's present Sunshine regulations into one Part, provide a more complete statement of exemptions from the closed meeting requirement, clarify the procedures for closing meetings and provide new procedures for processing requests for transcripts of closed meetings when the exemptions no longer apply. Ten comments were received in response to that Notice. Several of the commentors also suggested that the Commission hold a hearing regarding these proposed rules.

The Commission has now considered the comments made and has redrafted portions of the proposed rules accordingly. Other revisions have been made based on the Commission's discussion of these proposals. In

response to the comments, the Commission will hold a hearing on the revised draft rules and welcomes any additional comments. A discussion of the proposed changes follows.

Section 2.3 General Rules

Proposed subsection (c) has been revised in two respects. The sentence purporting to limit the use of statements made by Commissioners or FEC employees has been deleted in this draft because it added little to the statements of policy contained in the two preceding sentences. The last sentence in that paragraph has been made into a new subsection (d), and has been reworded in response to commentors concerned that "approval" by the Press Officer might be exercised in an arbitrary fashion. The inclusion of new subsection (d) does not signify any change in present policy. The Commission will continue to accommodate requests to tape or film open meetings, subject to any physical limitations imposed by the Commission meeting room.

Section 2.4 Exempted Meetings

Subsection (a) has been slightly reorganized in this draft to clarify that the procedures of section 2.5 for closing meetings apply to this exemption and to indicate that the confidentiality provision of 2 U.S.C. 437g(a)(12) is an example of a statute under which the Commission must close certain meetings. New subsection (a)(1) has been redrafted to remove the cross-reference to 11 CFR 2.6. The deletion was made in response to comments interpreting the cross-reference as a decision by the Commission to halt release of transcripts regarding enforcement matters. The Commission's current policy is to release such transcripts upon request when the relevant matter is concluded. Although no change in Commission policy would have occurred due to the inclusion of that language, it has been taken out to avoid confusion.

Proposed subsection (b)(6) has been revised to remove the examples contained in the previous draft. Public comments and Commission discussion indicated that these examples may not have been helpful in interpreting this exemption.

Section 2.5 Procedure for Closing Meetings

Several proposed revisions have been made in this section to clarify the requirement that the Commission must vote separately to close the discussion of each item on an agenda. In particular, subsection (c) has been reorganized in this draft to make the voting procedure clearer and to distinguish it from the Commission's practice of scheduling meeting dates. Proposed subsection (c)(3)(i) has also been redrafted to clarify the procedures for discussing objections to recommendations to close or open the consideration of an agenda item.

Proposed subsection (e) has been revised in this Notice to permit a member of the public to claim any exemption available under section 2.4 when requesting that a matter be discussed in a closed meeting. This proposed subsection would now permit a broader range of grounds for such requests than is provided by the Sunshine Act. As redrafted, the procedures for considering such requests also have been altered to require that such requests be directed to the Chairman and to ensure that the Commission votes on each request.

Section 2.6 Transcripts and Recordings

This section has been retitled to reflect the proposed deletion of subsection (b) contained in the first draft. That provision provided the option of maintaining detailed minutes in lieu of a transcript or recording for any meeting at which litigation or other matters exempted under section 2.4(b)(7) are discussed. This exception is limited by the Sunshine Act, and requires a more detailed set of minutes than is currently prepared by the Commission. Moreover, the Commission routinely tapes its meetings and would continue to do so even for meetings covered by exemption 2.4(b)(7). It is unlikely the Commission would ever utilize this provision and it has therefore been eliminated from this draft.

Proposed subsection (b), which appeared as subsection (c) in the first Notice, was the subject of considerable comment and Commission discussion. Many commentors misread this subsection as it appeared in the first Notice to indicate a change in Commission policy regarding the release of transcripts on enforcement matters. Although no such change would have been effected, this subsection has been rewritten to more clearly reflect the Commission's current practice of releasing such transcripts on request after the matter has been closed. Other proposed changes include the deletion of the references to minutes (base on the removal of former proposed subsection (b)) and the removal of the time frames for producing transcripts of meetings. The Commission is currently considering various proposals to improve its ability to produce transcripts. When this question is resolved, the Commission will be better able to determine the time required for making these materials available.

Subsection (c), as redrafted, has been slightly reworded to indicate that transcripts and recordings will be retained for a minimum of two years or a year after the conclusion of a matter, whichever is later. While this is the minimum period required by the Sunshine Act, the Commission's practice is to maintain an institutional history by retaining such documentation indefinitely.

List of Subjects in 11 CFR Part 2

Administrative practice and procedure, Sunshine Act.

It is proposed to amend 11 CFR Chapter I as follows:

PART 3—[REMOVED]

1. Part 3 is removed.
2. Part 2 is revised to read as follows:

PART 2—SUNSHINE REGULATIONS; MEETINGS

Sec.
2.1 Scope.
2.2 Definitions.
2.3 General rules.
2.4 Exempted meetings.
2.5 Procedures for closing meetings.
2.6 Transcripts and recordings.
2.7 Announcement of meetings and schedule changes.
2.8 Annual report.

Authority: Sec. 3(a), Pub. L. 94–409, 5 U.S.C. 552b

§ 2.1 Scope.

These regulations are promulgated pursuant to the directive of 5 U.S.C. 5552b (g) which was added by section 3(a) of Pub. L. 94–409, the Goverment in the Sunshine Act, and specifically implement section 3 of that Act.

§ 2.2 Definitions

(a) *Commission.* "Commission" means the Federal Election Commission, 1325 K Street, NW., Washington, D.C. 20463.

(b) *Commissioner of Member.* "Commissioner" or "Member" means an individual appointed to the Federal Election Commission pursuant to 2 U.S.C. 437c and section 101(e) of Pub. L. 94–283 and shall also include ex-officio non-voting Commissioners or Members, the Secretary of the Senate and the Clerk of the House, but does not include a proxy or other designated representative or a Commissioner.

(c) *Person.* "Person" means an individual, including employees of the Commission, partnership, corporation, association, or public or private organization, other than an agency of the United States Government.

(d) *Meeting.* (1) "Meeting" means the deliberation of at least four voting members of the Commission in collegia where such deliberations determine or result in the joint conduct or disposition of official Commission business. For the purpose of this section, "joint conduct" does not include, for example, situations where the requisite number of members is physically present in one place but not conducting agency business as a body (e.g., at a meeting at which one member is giving a speech while a number of other members are present in the audience). A deliberation conducted through telephone or similar communications equipment by means of which all persons participating can hear each other will be considered a "meeting" under this section.

(2) The term "meeting" does not include the process of notation voting by circulated memorandum for the purpose of expediting consideration of routine matters. It also does not include deliberations to schedule a meeting, to take action to open or close a meeting, or to release or withhold information, or to change the subject matter of a meeting under 11 CFR 2.5, 2.6 and 2.7.

§ 2.3 General rules.

(a) Commissioners shall not jointly conduct, determine or dispose of Commission business other than in accordance with this Part.

(b) Except as provided in 11 CFR 2.4, every portion of every Commission meeting shall be open to public observation.

(c) No additional right to participate in Commission meetings is granted to any person by this part. A meeting is not part of the formal or informal record of decision of the matters discussed therein except as otherwise required by law. Statements of views or expressions of opinions made by Commissioners or FEC employees at meetings are not intended to represent final determinations or beliefs.

(d) Members of the public attending open Commission meetings may use small electronic sound recorders to record the meeting, but the use of other electronic recording equipment and cameras requires advance notice to and coordination with the Commission's Press Officer.

§ 2.4 Exempted meetings.

(a) *Meetings Required by Statute to be Closed.* Meetings concerning matters specifically exempted from disclosure by statutes which require public withholding in such a manner as to leave no discretion for the Commission on the issue, or which establish particular types of matters to be withheld, shall be closed to public observation in accordance with the procedures of 11 CFR 2.5.

(1) As required by by 2 U.S.C. 437g (a)(12), all Commission meetings, or portions of meetings, pertaining to any notification, or investigation that a violation of the Act has occurred, shall be closed to the public.

(2) For the purpose of this section, "any notification or investigation that a violation of the Act has occurred" includes, but is not limited to, determinations, pursuant to 2 U.S.C. § 437g, the issuance of subpoenas, discussion of referrals to the Department of Justice, or consideration of any other matter related to the Commission's enforcement activity, as set forth in 11 CFR Part 111.

(b) *Meetings Closed by Commission Determination.* Except as provided in 11 CFR 2.4(c), the requirement of open meetings will not apply where the Commission finds, in accordance with 11 CFR 2.5, that an open meeting or the release of information is likely to result in the disclosure of:

(1) Matters that relate solely to the Commission's internal personnel decisions, or internal rules and practices.

(i) This provision includes, but is not limited to, matters relating to Commission policies on working conditions, or materials prepared predominantly for internal use, the disclosure of which would risk circumvention of Commission regulations; but

(ii) This provision does not include discussions or materials regarding employees' dealings with the public, such as personnel manuals or Commission directives setting forth job functions or procedures;

(2) Financial or commercial information obtained from any person which is privileged or confidential;

(3) Matters which involve the consideration of a proceeding of a formal nature by the Commission against a specific person or the formal censure of any person;

(4) Information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(5) Investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would:

(i) Interfere with enforcement proceedings,

(ii) Deprive a person of a right to a fair trial or an impartial adjudication,

(iii) Constitute an unwarranted invasion of personal privacy,

(iv) Disclose the identify of a confidential source,

(v) Disclose investigative techniques and procedures, or

(vi) Endanger the life or physical safety of law enforcement personnel;

(6) Information the premature disclosure of which would be likely to have a considerable adverse effect on the implementation of a proposed Commission action, as long as the Commission has not already disclosed the content or nature of its proposed action, or is not required by law to disclose it prior to final action.

(7) Matters that specifically concern the Commission's participation in a civil action or proceeding, or an arbitration, or involving a determination on the record after opportunity for a hearing.

(c) Notwithstanding the applicability of any exemptions set forth in 11 CFR 2.4(b), the Commission may determine that the public interest requires a meeting to be open.

§ 2.5 Procedure for closing meetings.

(a) *General.* No meeting or portion of a meeting may be closed to the public observation under this section unless a majority of the Commissioners (not including ex officio non-voting Commissioners) votes to take such action. The closing of one portion of a meeting shall not justify closing any other portion of a meeting.

(b) *Certification.* Each time the Commission votes to close a meeting, the General Counsel shall publicly certify that, in his or her opinion, each item on the agenda may properly be closed to public observation. The certification shall state each relevant exemption provision. The original copy of the certification shall be attached to, and preserved with, the statement required by 11 CFR 2.5(d).

(c) *Voting Procedures.* (1) No meeting need be held to consider closing a meeting. The Commission may vote to close a meeting or any portion thereof by using its notation vote procedures.

(i) A separate vote shall be taken with respect to each item on an agenda proposed to be closed in whole or in part pursuant to 11 CFR 2.4, or with respect to any information proposed to be withheld under 11 CFR 2.4.

(ii) A single vote may be taken with respect to a particular matter to be discussed in a series of closed meetings, or with respect to any information concerning such series of meetings, so long as each meeting in the series is scheduled to be held no more than 30 days after the initial meeting.

(iii) This section shall not affect the Commission's practice of setting dates for closed meetings more than 30 days in advance of such meetings.

(2) The Commission Secretary shall record the vote of each Commissioner participating in the vote. No proxies, written or otherwise, shall be counted.

(3) (i) A Commissioner may object to a recommendation to close the discussion of a particular matter or may assert a claim of exemption for a matter scheduled to be discussed in an open meeting. Such objection or assertion will be discussed by the Commission at the next scheduled closed meeting, to determine whether the matter in question should be discussed in a closed meeting.

(ii) An "objection for the record only" will not cause the objection to be placed on any agenda.

(d) *Public Statement of Vote.* (1) If the Commission votes to close a meeting, or any portion thereof, under this section, it shall make publicly available within 24 hours a written statement of the vote. The written statement shall contain:

(i) A citation to the provision(s) of 11 CFR 2.4 under which the meeting was closed to public observation and an explanation of why the specific discussion comes within the cited exemption(s);

(ii) The vote of each Commissioner participating in the vote;

(iii) A list of the names of all persons expected to attend the closed meeting and their affiliation. For purposes of this section, affiliation means title or position, and name of employer, and in the case of a representative, the name of the person represented. In the case of Commission employees, the statement will reflect, through the use of titles rather than individual names, that the Commissioners, specified division heads and their staff will attend; and

(iv) The signature of the Commission Secretary.

(2) The original copy of the statement shall be maintained by the Commission Secretary. A copy shall be posted on a public bulletin board located in the Commission's Public Records Office.

(e) *Public Request to Close a Meeting.* A person whose interests may be directly affected by a portion of a meeting may request that the Commission close that portion to the public for any of the reasons referred to in 11 CFR 2.4. The following procedures shall apply to such requests:

(1) The request must be made in writing and shall be directed to the Chairman of the Commission.

(2) The request shall identify the provisions of 11 CFR 2.4 under which the requestor seeks to close all or a portion of the meeting.

(3) A recorded vote to close the meeting or a portion thereof shall be taken.

(4) Requests made under this section shall become part of the official record of the underlying matter and shall be disclosed in accordance with 11 CFR 2.6 on completion of the matter.

(5) If the Commission decides to approve a request to close, the Commission will then follow the procedures for closing a meeting set forth in 11 CFR 2.5 (a) through (d).

§ 2.6 Transcripts and recordings.

(a) The Commission Secretary shall maintain a complete transcript or electronic recording adequate to record fully the proceedings of each meeting, or portion of a meeting, closed to public observation. An electronic recording of a meeting shall be coded, or other records shall be kept in a manner adequate to identify each speaker.

(b)(1) In the case of any meeting closed pursuant to 11 CFR 2.4(b), as the last item of business, the Commission will determine which, if any, portions of the electronic recording or transcript and which if any, items of information withheld under 11 CFR 2.5 contain information which should be withheld pursuant to 11 CFR 2.4.

(2) Portions of transcripts or recordings determined to be outside the scope of any exemptions under 11 CFR 2.6(b)(1) shall be promptly placed on file in the Commission's Public Records Office. Copies of such transcripts or recordings will be made available to the public at a cost sufficient to cover the Commission's actual cost of duplication or transcription. Requests for such copies shall be made and processed in accordance with the provisions of 11 CFR Part 5.

(3) Portions of transcripts or electronic recordings not made available immediately pursuant to 11 CFR 2.6(b)(1), and portions of transcripts or recordings withheld pursuant to 11 CFR 2.4(a), will be made available on request when the relevant exemptions no longer apply. Such materials shall be requested and processed under the provisions of 11 CFR 2.6(b)(2).

(c) A complete verbatim copy of the transcript or a complete electronic recording of each meeting, or portion of a meeting, closed to the public, shall be maintained by the Commission Secretary in confidential files of the Commission, for a minimum of two years subsequent to such meeting, or a minimum of one year after the conclusion of any agency proceeding with respect to which the meeting, or portion of the meeting was held, whichever occurs later.

§ 2.7 Announcement of meetings and schedule changes.

(a)(1) In the case of each meeting, the Commission shall publicly announce and shall submit such announcement for publication in the **Federal Register** at least seven days prior to the day on which the meeting is to be called to order. The Commission Secretary shall also forward a copy of such announcement for posting in the Commission's Public Records Office.

(2) Announcements made under this section shall contain the following information:

(i) The date of the meeting;

(ii) The place of the meeting;

(iii) The subject matter of the meeting;

(iv) Whether the meeting is to be open or closed to the public; and

(v) The name and telephone number of the official designated by the agency to respond to requests for information about the meeting.

(b) The public announcement and submission for publication shall be made when required by 11 CFR 2.7(a) in the case of every Commission meeting unless a majority of the Commissioners decide by recorded vote that Commission business requires that the meeting be called at an earlier date, in which case the Commission shall make at the earliest practicable time, the announcement required by this section and a concurrent submission for publication of that announcement in the **Federal Register**.

(c) The time or place of a meeting may be changed following the public announcement required by 11 CFR 2.7 (a) or (b) only if the Commission announces the change at the earliest practicable time.

(d) The subject matter of a meeting, or the determination of the Commission to open or close a meeting, or portions of a meeting, to the public may be changed following the public announcement required by 11 CFR 2.7 (a) or (b) only if:

(1) A majority of the entire membership of the Commission determines by recorded vote that Commission business so requires and that no earlier announcement of the change was possible; and

(2) The Commission publicly announces the change and the vote of each member upon the change at the earliest practicable time. Immediately following this announcement, the Commission shall submit for publication in the **Federal Register** a notice containing the information required by 11 CFR 2.7(a)(2), including a description

of any change from the earlier published notice.

§ 2.8 Annual report.

The Commission shall report annually to Congress regarding its compliance with the requirements of the Government in the Sunshine Act and of this part, including:

(a) A tabulation of the total number of Commission meetings open to the public;

(b) The total number of meetings closed to the public;

(c) The reasons for closing such meetings; and

(d) A description of any litigation brought against the Commission under the Sunshine Act, including any costs assessed against the Commission in such litigation (whether or not paid by the Commission).

Dated: March 8, 1985.

John Warren McGarry,

Chairman.

[FR Doc. 85-6019 Filed 3-12-85; 8:45 am]

BILLING CODE 6715-01-M

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Parts 193 and 561

[OPP-300120; FRL-2794-3]

DDT and TDE; Proposed Revocation of Food and Feed Additive Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document (1) proposes the revocation of food additive regulations for residues of the insecticide DDT [a mixture of 1,1,1-trichloro-2,2-bis(*p*-chlorophenyl)ethane and 1,1,1-trichloro-2-(*o*-chlorophenyl)-2,2-(*p*-chlorophenyl)ethane] and its degradation products, TDE [or DDD 1,1-dichloro-2,2-bis(*p*-chlorophenyl)ethane)] and DDE [1,1-dichloro-2,2-bis(*p*-chlorophenyl)ethylene]; (2) proposes the revocation of food additive regulations established specifically for the residues of TDE; (3) lists the action levels which EPA intends to recommend to the Food and Drug Administration (FDA) and the U.S. Department of Agriculture (USDA) to replace the food additive regulations once the rule revoking the regulations is final; and (4) lists EPA's recommendations to FDA and USDA regarding the future status of existing action levels for processed food and feed commodities for which no food additive regulations were established. This proposed regulatory action was initiated by the Environmental Protection Agency.

DATE: Written comments, identified by the document control number [OPP-300120], must be received on or before May 13, 1985.

ADDRESS: By mail, submit comments to: Information Services Section, Program Management and support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, deliver comments to: Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Patricia Critchlow, Registration Division (TS-767), Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA. (703-557-7700).

SUPPLEMENTARY INFORMATION:

Elsewhere in this issue of the **Federal Register**, EPA has issued a related document [OPP-300120] which (1) proposes the revocation of tolerances for residues of the insecticide DDT and its degradation products, TDE and DDE; (2) proposes the revocation of tolerances established specifically for the residues of TDE; (3) lists the action levels that EPA intends to recommend to the Food and Drug Administration (FDA) and the U.S. Department of Agriculture (USDA) to replace the tolerances once the rule revoking the tolerances is final; and (4) lists EPA's recommendations to FDA and USDA regarding action levels to be set to replace existing action levels for food and feed commodities for which no tolerances were established.

Based on the information considered by the Agency and discussed in detail in the related **Federal Register** document, the Agency now proposes to revoke all existing food additive regulations for DDT and its degradation products TDE and DDE, and all existing food additive regulations established specifically for residues of TDE. The Agency has reviewed surveillance data from the FDA and the USDA and proposes that these food additive regulations be replaced with action levels which are based on residues occurring in the environment. The Agency will also recommend that existing action levels be continued at the current levels.

The following action levels for the sum of DDT, TDE, and DDE residues, expressed in parts per million (ppm), will be recommended to FDA and USDA to replace existing food additive regulations for residues of DDT, DDT's degradation products, and TDE:

TABLE 1.—RECOMMENDED ACTION LEVELS

Commodities	Existing food additive limitations (ppm)		Recommended action levels (ppm.) DDT/TDE/DDE
	DDT	TDE	
Hops (dried)	60		0.1
Manufactured dairy products	[1] 1.25		[1] [2] 1.25
Peppermint oil	100		1
Soybean oil (crude)	[3] 6		1
Spearmint oil	100		1
Tomato pomace (dried, for use in dog and cat food) products	[4] 100	[5] 100	0.5

[1] Milk-fat basis

[2] Covered by the 1.25 ppm action level in milk-fat recommended to replace the existing tolerance in milk in 40 CFR 180.147b.

[3] Includes the implied food additive level of 6 ppm DDT named in the food additive regulation of 12 ppm for combined residues of DDT and toxaphene in crude soybean oil; see 21 CFR 193.450 (toxaphene).

[4] If residues of TDE (DDD) are also present, the total of both such chlorinated compounds shall not exceed 100 PPM.

[5] If residues of DDT are also present, the total of both such chlorinated compounds shall not exceed 100 ppm.

The following existing action levels for the sum of DDT, TDE, and DDE residues, expressed in parts per million (ppm), will be recommended to FDA and USDA to continue at the current levels.

Table 2.—Action Levels to Remain in Effect

Commodities	Existing and recommended action level (ppm) DDT/TDE/DDE
Animal feed (processed)	0.5
Fish (smoked, frozen, and canned)	5

Interested persons are invited to submit written comments on the proposal to revoke (1) all food additive regulations for residues of DDT and its degradation products TDE and DDE listed in 21 CFR 193.110, 193.120,-and 561.120; (2) all food additive regulations

established specifically for residues of TDE listed in § 561.370; and (3) the food additive regulation for combined residues of toxaphene and DDT in crude soybean oil listed in § 193.450. Comments must bear a notation indicating the document control number, [OPP–300120]. Three copies of the comments should be submitted to facilitate the work of the Agency and of others interested in reviewing the comments. All written comments filed pursuant to this notice will be available for public inspection in Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA between 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

In order to satisfy requirements for analysis as specified by Executive Order 12291 and the Regulatory Flexibility Act, the Agency has analyzed the costs and benefits of this proposal. This analysis is available for public inspection in Rm. 236, at the address given above.

Executive Order 12291

Under Executive Order 12291, the Agency must determine whether a proposed regulatory action is "Major" and therefore subject to the requirements of a Regulatory Impact Analysis. The Agency has determined that this proposed regulatory action is not a major regulatory action, i.e., it will not have an annual effect on the economy of $100 million, will not cause a major increase in prices, and will not have a significant adverse effect on competition or the ability of U.S. enterprises to compete with foreign enterprises. Revocation of the food additive regulations for DDT and TDE should aid U.S. enterprises by eliminating any unfair advantage that foreign enterprises may have gained through the continuance of these tolerances.

This proposed regulatory action has been submitted to the Office of Management and Budget as required by E.O. 12291.

Regulatory Flexibility Act

This proposed regulatory action has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96–354; 94 Stat. 1164, 5 U.S.C. 601 *et seq.*) and it has been determined that it will not have a significant economic impact on a substantial number of small businesses, small governments, or small organizations.

As this regulatory action is intended to prevent the sale of foodstuffs primarily where the subject pesticide has been used in an unregistered or illegal manner, it is anticipated that little or no economic impact would occur at any level of business enterprises.

Accordingly, I certify that this regulatory action does not require a separate regulatory flexibility analysis under the Regulatory Flexibility Act.

List of Subjects in 21 CFR Parts 193 and 561

Food additives, Animal feeds, Pesticides and pests.

(Sec. 409(h) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346(h))

Dated: Feburary 28, 1985.

J.A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

Therefore, it is proposed that 21 CFR Chapter I be amended as follows:

PART 193—[AMENDED]

1. In Part 193:

§§ 193.110 and 193.120 [Removed]

a. By removing §§ 192.110 and 193.120

b. By revising § 193.450 to read as follows:

§ 193.450 Toxaphene.

A tolerance of 6 parts per million is established for residues of the insecticide toxaphene (chlorinated camphene containing 67 to 69 percent chlorine) in crude soybean oil when present therein as a result of the application of this insecticide to the growing soybean crop.

PART 561—[AMENDED]

2. In Part 561:

§§ 561:120 and 561:370 [Removed]

By removing §§ 561:120 and 561:370.

[FR Doc. 85–5696 Filed 3–12–85; 8:45 am]
BILLING CODE 6560–50–M

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21 CFR Part 561

[OPP–300118; FRL–2794–5]

1,2-Dibromo-3-Chloropropane; Proposed Revocation of Feed Additive Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes the revocation of the feed additive regulation for residues of inorganic bromides (calculated as elemental bromine) in or on dehydrated citrus pulp, resulting from carryover and concentration of residues in this feed item when present therein as a result of soil treatment with the nematocide 1,2-dibromo-3-chloropropane (DBCP) in the production of citrus fruits. This proposed regulatory action was initiated by the Environmental Protection Agency.

DATE: Written comments, identified by the document control number [OPP–300118], must be received on or before May 13, 1985.

ADDRESS:

By mail, submit comments to:
Information Services Section, Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M. St., SW., Washington, DC 20460

In person, deliver comments: Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT:

By Mail: Patricia Critchlow, Registration Division (TS–767C), Environmental Protection Agency, 401 M. St., SW., Washington, DC 20460

Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–7700)

SUPPLEMENTARY INFORMATION:

Elsewhere in this issue of the **Federal Register**, EPA has issued a related document [OPP–300117] which (1) proposes the revocation of tolerances for residues of inorganic bromides in or on various raw agricultural commodities resulting from soil treatment with 1,2-dibromo-3-chloropropane (DBCP); and (2) lists EPA's recommendation to the Food and Drug Administration (FDA) regarding existing action levels established by FDA for residues of DBCP *per se* in milk and in raw agricultural commodities other than milk.

Based on the information considered by the Agency and discussed in detail in the aforementioned **Federal Register**

document, the Agency now proposes to revoke the existing feed additive regulation for 90 parts per million (ppm) for residues of inorganic bromides (calculated as Br) in or on dehydrated citrus pulp, resulting from carryover and concentration of residues in this feed item when present therein as a result of soil treatment with the nematocide DBCP in the production of citrus fruits.

Interested persons are invited to submit written comments on this proposal to revoke the food additive regulation for residues of inorganic bromides in or on dehydrated citrus pulp. Comments must bear a notation indicating the documents control number, [OPP-300118]. Three copies of the comments should be submitted to facilitate the work of the Agency and of others interested in reviewing the comments. All written comments filed pursuant to this notice will be available for public inspection in Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA between 8 a.m. and 4 p.m., Monday through Friday, except legal holidays.

In order to satisfy requirements for analysis as specified by Executive Order 12291, and the Regulatory Flexibility Act, the Agency has analyzed the costs and benefits of this proposal. This analysis is available for public inspection in Rm. 236, at the address given above.

Executive Order 12291

Under Executive Order 12291, the Agency must determine whether a proposed regulatory action is "Major" and therefore subject to the requirements of a Regulatory Impact Analysis. The Agency has determined that this proposed regulatory action is not a major regulatory action, i.e., it will not have an adverse effect on competition or the ability of U.S. enterprises to compete with foreign enterprises. Revocation of the food addditive regulation for residues of inorganic bromides in dehydrated citrus pulp should aid U.S. enterprises by eliminating any unfair advantage that foreign enterprises may have gained through the continuance of this food additive regulation.

This proposed regulatory action has been submitted to the Office of Management and Budget as required by E.O. 12291.

Regulatory Flexibility Act

This proposed regulatory action has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96-354; 94 Stat. 1164, 5 U.S.C. 601 *et seq.*) and it has been determined that it will not have a significant economic impact on a substantial number of small businesses, small governments, or small organizations.

As this regulatory action is intended to prevent the sale of foodstuffs primarily where the subject pesticide has been used in an unregistered or illegal manner, it is anticipated that little or no economic impact would occur at any level of business enterprises.

Accordingly, I certify that this regulatory action dies not require a separate reguolatory flexibility analysis under the Regulatory Flexibility Act.

(Sec. 408(h) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346(h)))

List of Subjects in 21 CFR Part 561

Animal feeds, Pesticides and pests.

Dated: February 28, 1985.

J.A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

PART 561—[AMENDED]

Therefore, it is proposed that 21 CFR 561.260 be amended by removing paragraph (c) as follows:

§ 561.260 Inorganic bromides.

* * * * *

(c) [Removed]

[FR Doc. 85-5698 Filed 3-12-85; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Parts 625 and 655

[FHWA Docket No. 85-3]

National Standards for Traffic Control Devices; Request for Comments on Proposed Amendments to the Manual on Uniform Traffic Control Devices

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed amendments to the Manual on Uniform Traffic Control Devices; request for comments.

SUMMARY: The FHWA is inviting comments on proposed amendments to the Manual on Uniform Traffic Control Devices (MUTCD). The MUTCD is incorporated by reference in the design standards for Federal-aid highways found in Part 625 of Title 23, Code of Federal Regulations. It is also recognized in 23 CFR Part 655 as the national standard for traffic control devices on all public roads.

The amendments affect various parts of the MUTCD and are intended to expedite traffic, improve safety, and provide a more uniform application of highways signs, signals, and markings.

DATE: Comments must be received on or before July 22, 1985.

ADDRESS: Submit written comments, preferably in triplicate, to FHWA Docket No. 85-3, Federal Highway Administration, Room 4205, HCC-10, 400 Seventh Street, SW., Washington, D.C. 20590. All comments received will be available for examination at the above address between 7:45 a.m. and 4:15 p.m. ET, Monday through Friday. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard. The MUTCD is available for inspection and copying as prescribed in 49 CFR Part 7, Appendix D. It may be purchased for $30.00 from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, Stock No. 050-001-81001-8.

FOR FURTHER INFORMATION CONTACT: Mr. Philip O. Russell, Office of Traffic Operations, (202) 426-0411, or Mr. Michael J. Laska, Office of the Chief Counsel, (202) 426-0762, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: The FHWA both receives and initiates requests for amendments to the MUTCD. Each request is assigned an identification number which indicates, by Roman numeral, the organizational part of the MUTCD affected and, by Arabic numeral, the order in which the request was received.

This notice is being issued to provide the public an opportunity to comment on the desirability of proposed amendments to the MUTCD. Based upon comments received in response to this notice and upon its own experience, the FHWA will issue a final rule amending the MUTCD.

Index of Requests

1. Signs (Part II)

(a) Request II-61 (Chng.)—Traffic Control for Reversible Two-Way Left-Turn Lanes.

(b) Request II-94 (Chng.)—DEAD END and NO OUTLET Plaques.

2. Signals (Part IV)

(a) Request IV-25 (Chng.)—Speed Limit Sign Beacon.

(b) Request IV-40 (Chng.)—Pedestrian Clearance Interval During Emergency Preemption.

(c) Request IV-59 (Chng.)—Elimination of the Flashing Walk Pedestrian Signal.

(d) Request IV–62 (Chng.)—Interconnection of Reversible Lane-Use Control Signals.

3. Traffic Control for Street and Highway Construction and Maintenance Operations (Part VI)

Request VI–27 (Chng.)—Minimum Area of Reflective Barricade Rails

4. Traffic Control Systems for Railroad-Highway Grade Crossing (Part VIII)

(a) Request VIII–11 (Chng.)—Location of DO NOT STOP ON TRACKS Sign.

(b) Request VIII–12 (Chng.)—Placement of RXR Pavement Marking in Relation to Advance Warning Sign.

(c) Request VIII–14 (Chng.)—Preemption of Highway Traffic Signals.

Copies of the proposed text changes to the MUTCD will be distributed to everyone currently appearing on the FHWA mailing list for MUTCD matters. Those wishing to be added to the mailing list or receive copies of the proposed text should write to the Federal Highway Administration (FHWA), Office of Traffic Operations, 400 Seventh Street, SW., Washington, D.C. 20590 or contact Mr. Philip O. Russell (202) 426–0411.

Discussion of Requests

The FHWA proposes to act on the requests for change to MUTCD as noted below:

1. Signs (Part II)

(a) *Request II–61 (chang.) Traffic Control for Reversible Two-Way Left-Turn Lanes.* Reversible lanes and two-way left-turn lanes are two acceptable means of providing more traffic carrying capability for existing facilities. These treatments are most frequently used individually, although the combination use of these treatments has been implemented successfully. The combined use does create complexities in the handling of traffic and specific traffic control devices are needed to provide motorists with clear and concise information.

When the two uses are combined, traffic control may be needed for three separate periods during the working day; peak period, inbound; peak period, outbound, and off-peak period. For example, on a 5-lane facility, the center lane is reversible and carries traffic in the peak flow direction. During the off-peak period, the lane is used as a two-way left-turn lane.

Traffic control for this dual purpose is often handled through overhead lane use control signals. The installation of lane use control signals can be expensive. Many times local budgets are unable to handle such an outlay of funds, or conditions along the route preclude the use of the signals.

In FHWA Docket No. 81–5 (46 FR 32880, July 25, 1981) the FHWA invited comments on the operation of dual use two-way left-turn lanes and reversible flow lanes and whether this practice would be improved through signs, signals, and markings. Based on the docket comments, the results of a recently completed research study,[1] and staff review, the FHWA is proposing to amend MUTCD 2B–19(b), 3A–7. 4E–9, and 4E–10.

The proposal provides for uniformly in pavement marking for dual use of reversible lanes and two-way left turn lanes. It provides for use of either static signs or dynamic lane control signals. Provision of uniform standards will, FHWA believes, encourage greater application of this highly efficient technique for traffic operation and enhance driver understanding of the operation when it is utilized.

Specifically FHWA proposes:

A. To add a new section 2B–19(b) to provide a static sign system as an acceptable alternate to the preferrede (but more costly) lane use control signal system. The sign will consist of X, arrow and two-way left turn symbols with accompanying time periods to convey when a lane is open exclusively for a particular direction, closed to that direction, or may be used as a two-way left-turn lane.

B. To amend Section 3A–7 to require double normal broken yellow pavement markings or each side of a reversible flow two-way left turn lane.

C. To amend Sections 4E–9, and 4E–10 to delete the flashing YELLOW X (whose meaning is little understood by drivers) and provide instead for a symbolic Two-Way, Left-Turn Arrow signal, similar to that used in signs (Section 2B–19) for two-way left turn operation or single left turn arrow for single direction left-turn operation. The required dimensions of this signal are 30"x30".

The trade-offs of legibility, cost and practicality, using various type dynamic signs and signals, will be further investigated by FHWA. Comments from users and manufacturers are especially invited.

It is proposed that the marking amendment (section 3A–7) shall be applicable after two years from the date of publication in the **Federal Register**. The sign and signal amendments (sections 2B–19, 4E–9 and 4E–10) would be applicable for all new installations one year from the date of publication in the **Federal Register** and to existing installations in ten years. With this schedule, FHWA believes the proposed change will not impose any additional costs on either existing or new reversible flow two-way left-turn lane operations.

(b) *Request II–94 (Chng.)—DEAD END and NO OUTLET Plaque.* The DEAD END (W14–1) and NO OUTLET (W14–2) warning signs are intended to inform motorists of a no outlet facility which terminates at a dead end or cul-de-sac. When used, these signs are to be located so the motorist can conveniently turn around or turn onto intersecting streets.

The city of Kennewick, Washington, requests a change in the MUTCD to allow rectangular plaques of the same scale as street name signs to be used in lieu of or to supplement the standard diamond warning signs.

The FHWA proposes to amend Section 2C–37 to allow black on yellow rectangular plaques as alternates or supplements to the W14–1 or W14–2 signs. The section would also be revised to encourage placement of the diamond warning signs and/or plaques as determined by an engineering study which would consider such factors as operational efficiency, motorist convenience, and safety. This proposed change imposes no additional costs and would allow sign format and shape flexibility for warning motorists of dead end streets.

2. Signal (Part IV)

(a) *Request IV–25 (Chng.)—Speed Limit Sign Beacon.* Section 4E–2 and Section 7D–24 of the MUTCD presently permits horizontal alignment of Speed Limit Sign Beacons only when the sign is longer horizontally than vertically. The Utah Department of Transportation (DOT) has requested an amendment to the MUTCD to change this requirement. The Utah DOT requested that the MUTCD be amended to permit the use of horizontally aligned Speed Limit Sign Beacons when the sign is longer vertically than horizontally.

Three technical committees (Signals, Signs, and Railroad Grade Crossings) of the National Committee on Uniform Traffic Control Devices (NCUTCD) reviewed this request and it was the consensus that a change should be made only in regard to beacons supplementing school speed signs. The FHWA concurs with the consensus and proposes to

[1] Traffic Control for Reversible Flow Two-Way Left-Turn Lanes, 1984. Report No. FHWA/RD–85–209. Available for inspection and copying at the Federal Highway Administration, Office of Traffic Operations, Room 3419, 400 Seventh Street, SW., Washington, D.C. 20590. Available for purchase from the National Technical Information Service, Springfield, Virginia 22161.

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amend the MUTCD to incorporate this request as recommended by the NCUTCD.

The proposed change will not impose any additional cost on State and local highway agencies.

(b) *Request IV–40 (Chng.)—Pedestrian Clearance Interval During Emergency Preemption.* The city of Tucson, Arizona, requested that Sections 4B–22 and 4D–7 of the MUTCD be clarified by adding explicit language that will allow an abbreviated pedestrian clearance interval during emergency vehicle preemption. The NCUTCD concurred in this request and the FHWA proposes to adopt this request as recommended, with only minor modifications, and to amend the MUTCD accordingly.

The proposed amendment increases the latitude to shorten the Pedestrian Clearance Interval during emergency preemption, but does not impose any additional cost.

(c) *Request IV–59 (Chng.)—Elimination of the Flashing Walk Pedestrian Signal.* The city of Milwaukee, Wisconsin is proposing to amend MUTCD sections 4D–2 and 4D–7 by deleting all provisions for the use of the flashing WALK.

The FHWA research studies [2] [3] found that the flashing WALK is only understood by 3 percent of the pedestrian population. Also the flashing WALK was not found to offer any reduction in pedestrian-vehicle conflicts. Based on this research, the FHWA proposes an adoption of this provision as recommended.

This proposed change would impose minimal cost on State and local highway transportation agencies and the FHWA proposes a 5-year implementation period.

(d) *Request IV–62 (Chng.)—Interconnection of Reversible Lane-Use Control Signals.* Section 4E–12 of the MUTCD requires all lane control signals to be wired to a master controller.

In the opinion of the Alabama Highway Department (HD) modern technology provides for timing devices which are very accurate and dependable and which eliminate the need for cable interconnect and/or a master controller. When used as a timed based system each individual lane control signal operates on its own with a separate electrical interlock in each controller to prevent conflicting green arrows from occurring. In addition, each timing device has battery backup in the event of a power failure. Also communications systems are available that provide for radio communication and confirmation between the master and field installations. The Alabama HD requested a wording change to Section 4E–12 of the MUTCD to eliminate the need for cable interconnect of lane-use control signals. The FHWA agrees and proposes to adopt this request as recommended with only minor modifications, and to amend the MUTCD accordingly.

This proposed change will not impose any additional costs, but provides greater flexibility in the design and operation of reversible land-use control signals.

3. Traffic Control for Street and Highway Construction and Maintenance Operations (Part VI)

(a) *Request VI–27 (Chng.)—Minimum Area of Reflective Barricade Rails.* The American Traffic Services Association (ATSA) has proposed that the MUTCD be revised to require a minimum reflective barricade rail area for use on freeways and other high speed roadways. Their request was prompted by the findings in the National Cooperative Highway Research Project Report 236, "Evaluation of Traffic Controls for Highway Work Zones,"[4] which recommended the minimum barricade panel to be 12 inches by 24 inches.

The current MUTCD wording indicates that Type II barricades have more reflective area than Type I barricades and are intended for use on high speed roadways. Depending upon the specific dimensions used, Type II barricades do not always have more reflective area than Type I. The ATSA proposed that the MUTCD be changed to require the use of barricades having a minimum 270 square inches of reflective area when used on expressways, freeways, and other high speed roadways.

Based on ATSA's recommendation and the recommendations of Report 236 the FHWA is proposing that the minimum dimensions of a Type I Barricade rail be 12 inches by 24 inches. This would provide a minimum size of 288 sq. inches or if nominal dimensions are used a minimal size of 270 sq. inches which would meet ATSA's recommendation. FHWA further proposes that all stripes, for all these types of barricades, be at least 6 inches wide. Due to the increased visibility of the Type I Barricades the MUTCD will be further modified to remove the distinction between the application criteria for the Type I and Type II Barricades.

This proposed change will result in some additional cost but these costs will be mitigated by increased visibility of barricades and by providing an implementation period of 5 years.

4. Traffic Control Systems for Railroad-Highway Grade Crossings (Part VIII)

(a) *Request VIII–11 (Chng.)—Location of DO NOT STOP ON TRACKS Sign.* Section 8B–8 presently states that "the DO NOT STOP ON TRACKS sign (R8–8) shall normally be placed on the far right side of the grade crossing." The decision as to the need for and where to place the sign may be best determined on the basis of an engineering study of the specific railroad-highway grade crossing. The sign would then be placed at the location which provides the best visibility for the motorist to observe the sign and be able to comply with its message. The FHWA is proposing to revise Section 8B–8 to state this.

This proposed amendment will not impose any additional costs.

(b) *Request VIII–12 (Chng.)—Placement of RXR Pavement Marking in Relation to Advance Warning Sign.* This request was developed by the Railroad-Highway Grade Crossings Technical Committee of the NCUTCD. To provide standardization in this area the NCUTCD recommends the following changes in Figure 8–2, page 8B–4 of the MUTCD:

1. Show the Advance Warning Sign (W10–1) across the road from the optional No Passing Zone Sign (W14–3).
2. Remove the "variable" and dimension lines.
3. Add new dimension line between the stop line at the crossing and add "see Table II–1, Section 2C–3."

The FHWA agrees in principle with this proposal; however, the requirement that the Advance Warning Sign (W10–1) be placed before the RXR Pavement Marking should not be subtly shown in Figure 8–2 without some discussion in Sections 8B–3 and 8B–4 of the MUTCD. In addition, while the pavement marking RXR should be placed between the Advance Warning Sign (W10–1) and the crossing itself, it is too restrictive to imply that the pavement marking should

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[2] H. Douglas Robertson, "Urban Intersection Improvements for Pedestrian Safety, Volume IV Pedestrian Signal Display and Operation", December 1977, Report No. FHWA-RD–77–145.

[3] C.V. Zegeer, K.S. Opiela and M.J. Cynecki, "Pedestrian Signalization Alternatives", August 1983, Report No. FHWA–RD–83/Volumes I, II and III.

Both references are available for inspection and copying at the Federal Highway Administration, Office of Traffic Operations, Room 3419, 400 7th Street, SW., Washington, D.C. 20590. They are available for purchase from the National Technical Information Service, Springfield, VA 22161.

[4] Copies available for inspection and copying at the Federal Highway Administration, Office of Traffic Operations, HTO–21, Room 3419, 400 Seventh Street, SW., Washington, D.C. 20590

begin exactly 10 feet after the Advance Warning Sign. In the opinion of the FHWA there are sufficient locations where both the Advance Warning Sign and RXR pavement marking could be obscured to a motorist attempting to pass a large vehicle.

Also, in Section 8B–3, the placement of the Advance Warning Sign should be for Condition A "High Judgment Needed" when using Table II–I to determine warning sign placement distance. Therefore, it is proposed to modify Sections 8B–3, 8B–4 and Figure 8–2 to indicate that the Advance Warning Sign should be placed before the RXR pavement marking. The pavement marking should be closer to the Advance Warning Sign than to the crossing, but the actual location should be determined by actual site conditions. Specific comments are invited as to the language to be used in Section 8B–4 as the location of the RXR pavement marking with relation to the Advance Warning Sign and the crossing itself.

This proposed amendment will not impose additional costs.

(c) *Request VIII–14 (Chng.)—Preemption of Highway Traffic Signals.* This request from the NCUTCD recommends that Section 8C–6 of the MUTCD be changed to more clearly define the requirements for preemption of traffic control signals. The FHWA believes this proposed change to require that the electrical circuit used be on the "closed circuit principle" is technical in nature and is more appropriate for inclusion in the Traffic Control Devices Handbook (TCDH)[5] This material has been included in Section 8B–2, page 8–35 of the TCDH. Therefore, the FHWA recommends not incorporating this change into the MUTCD.

This notice of proposed amendments to the MUTCD is issued under the authority of 23 U.S.C. 109(d), 315, and 402(a), and the delegation of authority in 49 CFR 1.48(b).

The FHWA has determined that this document contains neither a major rule under Executive Order 12291 nor a significant proposal under the regulatory policies and procedures of the Department of Transportation. For the reasons stated herein under the criteria of the Regulatory Flexibility Act, it is certified that this action will not have a significant economic impact on a substantial number of small entities. Due to the preliminary nature of this inquiry, a regulatory evaluation has not been prepared at this time. The expected impact of the changes requested is so minimal that a full regulatory evaluation does not appear to be warranted. The need to further evaluate economic consequences will be reviewed on the basis of the comments submitted in response to this notice.

List of Subjects in 23 CFR Parts 625 and 655.

Design standards, Grant programs-transportation, Highways and roads, Signs, Traffic regulations, Incorporation by reference.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal program and activities apply to this program)

Issued on: February 20, 1985.

R.A. Barnhart,

Federal Highway Administrator, Federal Highway Administration.

[FR Doc. 85–5941 Filed 3–12–85; 8:45 am]

BILLING CODE 4910-22-M

[5] Available for $20.00 from the Government Printing Office, Washington, D.C. 20402, Stock No. 050–001–00270–1. Copies are also available for inspection at the Federal Highway Administration, Office of Traffic Operations, HTO–21, Washington, D.C. 20590.

DEPARTMENT OF LABOR

Office of Pension and Welfare Benefit Programs

29 CFR Part 2510

Proposed Regulation Relating to the Definition of Plan Assets; Rescheduling of Hearing Date

AGENCY: Office of Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of rescheduled hearing date.

SUMMARY: The Department of Labor (the Department) has rescheduled the date for a public hearing regarding the proposed "plan assets" regulation under the Employee Retirement Income Security Act of 1974 (ERISA).

DATE: A public hearing on the proposed regulation will be held on May 6 and (if necessary) May 7, 1985.

ADDRESS: The public hearing will be held in Conference Room N–5437, Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: John S. Hunter, Office of Regulations and Interpretations, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor, Washington, D.C. (202) 523–8671. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: On January 8, 1985, the Department published a proposed regulation describing what constitutes "plan assets" for purposes of certain provisions of Title I of ERISA and the related prohibited transaction provisions of the Code (50 FR 961). On February 15, 1985, the Department published a modification of the effective date provision contained in the proposed regulation (50 FR 6361). These notices invited all interested persons to submit written comments on the proposed regulation by March 11, 1985, and scheduled a public hearing to be held on April 10 and (if necessary) April 11, 1985.

It has become apparent that the receipt by the Department of a number of significant written comments has been delayed. In order to provide ample opportunity for all interested persons to consider the record of written comments prior to a public hearing, the Department has determined that it is appropriate to set a later date for the hearing.

As rescheduled, the public hearing on the proposed regulation will be held on May 6 and (if necessary) May 7, 1985, beginning at 9:30 a.m. in Conference Room N–5437, Frances Perkins Building, 200 Constitution Avenue, NW., Washington, D.C. Any interested person who wishes to be assured of an opportunity to present oral comments at the hearing should submit by 3:30 p.m. on April 25, 1985: (1) A written request to be heard, and (2) an outline (preferably five copies) of the topics to be discussed, indicating the time to be allocated to each topic. The request to be heard and accompanying outline should be submitted to the Office of Regulations and Interpretations, Office of Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, Washington, D.C. 20210, "Attention: Plan Assets Hearing".

The Department will prepare an agenda indicating the order of presentation of oral comments. In the absence of special circumstances, each commentator will be alloted 10 minutes in which to complete his presentation. Information about the agenda may be obtained on or after May 2, 1985, by telephoning John S. Hunter, Washington, D.C., (202) 523–8671. Individuals not listed in the agenda will be allowed to make oral comments at the hearing to the extent time permits. Those individuals who make oral comments at the hearing should be prepared to answer questions regarding their comments. The public hearing will be transcribed.

Signed at Washington, D.C., this 8th day of March, 1985.

Alan D. Lebowitz,

Acting Administrator, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 85-6005 Filed 3-12-85; 8:45 am]

BILLING CODE 4510-29-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL-2795-8]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: U.S. Environmental Protection Agency (U.S. EPA).

ACTION: Proposed rulemaking.

SUMMARY: In a February 3, 1983, **Federal Register** notice (48 FR 5118), U.S. EPA proposed to approve the carbon monoxide (CO) and ozone attainment demonstration for the Cleveland and Cincinnati urban areas. After review of the 1983 CO air quality monitoring data, U.S. EPA is today reopening the comment period on the February 3, 1983, proposal as it applies to the Cleveland CO State Implementation Plan (SIP) and is reproposing to disapprove the CO attainment demonstration for the Cleveland (Cuyahoga County) area. In addition, U.S. EPA is proposing to disapprove the State's request to rescind the 5-year extension for meeting the CO National Ambient Air Quality Standards (NAAQS) in this area. U.S. EPA took final action approving the Cincinnati CO SIP on February 23, 1984 (49 FR 6724). U.S. EPA also reproposed to disapprove the ozone attainment demonstration for the Cincinnati and Cleveland areas on July 25, 1984 (49 FR 29973).

Today's proposed action involves rulemaking on a revision which was submitted by the Ohio Environmental Agency (OEPA) to satisfy the requirements of the Clean Air Act. As a result of this proposed action, the State is required to develop and submit to U.S. EPA an approvable carbon monoxide SIP which provides for attainment and maintenance of the CO NAAQS. In addition, the extension of the attainment date for CO to 1987 and the requirement for an inspection and maintenance program remains in effect for the Cleveland area.

DATE: Comments on this revision and on the proposed U.S. EPA action must be received by April 12, 1985.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review. (It is recommended that you telephone Debra Marcantonio, at (312) 886-6088, before visiting the Region V office).

Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604

Ohio Environmental Protection Agency, Office of Air Pollution Control, 361 East Broad Street, Columbus, Ohio 43216

Comments on this proposed rule should be addressed to: (Please submit an original and five copies if possible.) Gary Gulezin, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Debra Marcantonio, Air and Radiation Branch (5AR-26), Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6088.

SUPPLEMENTARY INFORMATION: This notice presents a discussion of U.S. EPA's review of Ohio's revision to the CO attainment plan in four parts: I. Background Information; II. Air Monitoring Data; III. U.S. EPA's Screening Analysis; and IV. Proposed Action.

I. Background Information

The 1977 Clean Air Act Amendments added new Part D to Title I of the Act. Under this part, the States were required to revise their SIPs for all nonattainment areas and to submit the revisions to U.S. EPA by January 1, 1979 (sections 171-178 of the Act (42 U.S.C. 7501-7508); section 129(c) (42 U.S.C. 7502, note). The revised plans were to provide for attainment by December 31, 1982, unless the States demonstrated that they could not attain either the ozone or CO standard by that date despite the implementation of all reasonable control measures (sections 172(a)(1), 172(a)(2)).

If U.S. EPA approved a plan showing attainment could not be achieved by December 31, 1982 despite the implementation of all reasonably available control measures, the attainment date for ozone or CO could be extended up to December 31, 1987. States receiving such extensions were to submit second SIP revisions that provide for attainment by the approved attainment date and comply with all of the Part D requirements (section 172(c)). These second SIP revisions had to be submitted by July 1, 1982 (Section 129(c) (42 U.S.C. 7502, note).

On July 29, 1979, OEPA requested and on October 31, 1980 U.S. EPA granted an extension of the attainment date for the ozone and CO standards in the Cleveland area until December 31, 1987. U.S. EPA conditionally approved the 1979 plan revisions in separate actions on October 31, 1980 (45 FR 72122) and on June 18, 1981 (46 31881).

In accordance with section 129(c) of the Act, on June 9, 1982, OEPA submitted 1982 SIP revisions which they believed demonstrated that the CO and ozone standards would be attained in the Cleveland urban areas by December 31, 1982. Supplemental information was submitted on November 9, 1982, March 8, 1983, and March 16, 1983.

The June 9, 1982 and March 8, 1983, submittals also requested that the 5-year extension for meeting the Ozone and CO NAAQS, which U.S. EPA granted on October 31, 1980, be rescinded for these areas.

On February 3, 1983 (48 FR 5118), U.S. EPA proposed to approve the ozone and CO attainment demonstrations and to rescind the request for the 1987 extensions. U.S. EPA reproposed to disapprove the ozone attainment demonstration for the Cleveland area on July 25, 1984 (49 FR 29973).

As discussed further below, U.S. EPA is today reopening the comment period on the February 3, 1983, proposal as it applies to the Cleveland CO SIP and is reproposing to disapprove the CO attainment demonstration and the State's request to rescind the extension for the Cleveland CO demonstration area.

II. Air Monitoring Data

The demonstration of attainment contained in the Cleveland CO SIP was based, in part, on a rollback analysis of peak CO concentrations for 1979 thru 1981 at the 8907 Carnegie Avenue (Cleveland) monitoring site. The SIP demonstrated attainment of the eight-hour CO standard (10 milligrams per cubic meter) by December 31, 1982.

However, subsequent to the February 3, 1983 notice, U.S. EPA noted that three exceedances of the eight-hour CO standard had occurred in March 1983, at the 8907 Carnegie Avenue site. Since the National Ambient Air Quality Standard (NAAQS) is such that only one eight-hour standard exceedance is allowed in a four quarter period, a violation of the eight-hour standard occurred in 1983, after the December 31, 1982, demonstrated attainment deadline.

On December 5, 1983, the OEPA forwarded to the U.S. EPA a letter from the City of Cleveland explaining that the observed CO standard exceedances

(with a high concentration of 14.2 mg/m³ and a second-high concentration of 11.8 mg/m³) were probably due to a tire fire near North Bloomfield, Ohio, approximately 38 miles from the Cleveland monitor. The December 5, 1983, submittal indicated that the tire fire was generally upwind of the critical monitor on the days of the exceedances. Since the tire fire was an unusual event, the City of Cleveland and OEPA recommended that the 1983 standard exceedances not be considered in future U.S. EPA rulemaking. On January 9, 1984, the State forwarded another letter from the City of Cleveland giving additional data on the tire fire.

III. U.S. EPA's Screening Analysis

U.S. EPA has analyzed the possible impact of the tire fire in North Bloomfield on CO levels at the 8907 Carnegie Avenue site. This analysis was conducted using the screening model, PTDIS. The assumptions made in selecting input data for this model are summarized in the technical support document. The use of the PTDIS model indicated that the CO concentration that may be expected to be caused by the North Bloomfield fire at the Carnegie Avenue monitoring site ranges from 0 mg/m³ to 0.64 mg/m³. Comparing the peak computed concentration with the observed second-high concentration (11.8 mg/m³) in 1983, it can be seen that the tire fire contributed little to the monitored CO concentrations. The maximum computed CO concentration is significantly smaller than the difference (1.8 mg/m³) between the second high eight-hour 1983 CO concentration and the standard. This implies that the possible peak CO contribution from the tire fire was not sufficient in magnitude to have caused the observed CO standard violation.

Therefore, the screening model, which provides a conservative concentration estimate, shows that the tire fire is not the dominant source of the observed CO standard exceedances. Although the tire fire and the observed exceedances occurred during the same 3-day period, U.S. EPA cannot, given the results of the modeling analysis, approve the CO SIP for the Cleveland area.

Proposed Action

Since a CO standard violation has occurred at a Cleveland site in 1983, U.S. EPA has concluded that the attainment demonstration submitted by OEPA on June 9, 1982 (and amended on November 9, 1983, March 8, 1983, and March 16, 1983) does not support the State's contention that the area attained the CO standard by December 31, 1982. Therefore, U.S. EPA is reproposing to disapprove the State's CO demonstration of attainment for the Cleveland urban area (Cuyahoga County). In addition, U.S. EPA is proposing to disapprove the State's request to rescind the 5-year extension for meeting the CO NAAQS in this area. As a result of this disapproval, the extension of the attainment date for CO to 1987, and the requirement for an inspection and maintenance program will remain in effect for the Cleveland urban area. The construction and federal funding restrictions authorized under section 110(a)(2)(I), 176, and 316(b) are not applicable to today's proposed action.

However, if U.S. EPA takes final action disapproving the State's demonstration that the Cleveland area attained the CO standard by December 31, 1982, as proposed today, the State must promptly provide a SIP that demonstrates attainment as expeditiously as practicable but not later than December 31, 1987. The criteria for this SIP submittal is specified in the January 22, 1981 (46 FR 7182) **Federal Register**. If the State does not submit an approvable CO SIP for Cleveland, U.S. EPA will propose to disapprove the CO SIP for failure to meet the requirements of the January 22, 1981, notice. Final action to disapprove the CO SIP for the Cleveland extension area would result in a moratorium on the construction and modification of major CO stationary sources of pollution in the area for which the plan is disapproved as required by section 110(a)(2)(I) of the Clean Air Act and 40 CFR 52.24 (1981).

A final disapproval of the SIP revision we are calling for today, could also result in restrictions on Federal funding pursuant to sections 176(a) and 316(b) of the Clean Air Act. Under section 176(a), U.S. EPA and the Department of Transportation must limit funds for air quality planning and transportation projects in any nonattainment areas where transportation control measures are necessary for attainment and where U.S. EPA finds that a State has not submitted or made reasonable efforts to submit a plan meeting the requirements of section 172. Under section 316(b), the Administrator has discretion to limit sewage treatment funding in similar circumstances.

The Regulatory Flexibility Act, 5 U.S.C. 600 et seq., requires the Agency to prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. Under 5 U.S.C. 605(b), this requirement may be waived if the Agency certifies that the rule will not have a significant economic effect on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and governmental entities with jurisdiction over population of less than 50,000. Because there are no construction nor federal funding restrictions associated with today's proposal, this action will not have a significant economic impact on a substantial number of small entities.

Under Executive Order 12291, today's action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review. Any comments from OMB to U.S. EPA, and any U.S. EPA response, are available for public inspection at the U.S. EPA Region V office listed above.

(Sec. 110 of the Clean Air Act, as amended (42 U.S.C. 7410))

Dated: September 7, 1984.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 85-5975 Filed 3-12-85; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 180

[OPP-300119; FRL-2794-2]

DDT and TDE; Proposed Revocation of Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document (1) proposes the revocation of tolerances for residues of the insecticide DDT [a mixture of 1,1,1-trichloro-2,2-bis(*p*-chlorophenyl)ethane and 1,1,1-trichloro-2-(*o*-chlorophenyl)-2-(*p*-)chlorophenyl)ethane] and its degradation products, TDE [or DDD (1,1-dichloro-2,2-bis(*p*-chlorophenyl)ethane) and DDE [1,1-dichloro-2,2-bis(*p*-chlorophenyl)ethylene]; (2) proposes the revocation of tolerances established specifically for the residues of TDE; (3) lists the action levels which EPA intends to recommend to the Food and Drug Administration (FDA) and the U.S. Department of Agriculture (USDA) to replace the tolerances once the rule revoking the tolerances is final; and (4) lists EPA's recommendations to FDA and USDA regarding action levels to be set to replace existing action levels for food and feed commodities for which no

tolerances were established. This proposed regulatory action was initiated by the Environmental Protection Agency.

DATE: Written comments, identified by the document control number [OPP-300119], must be received on or before May 13, 1985.

ADDRESS: By mail, submit comments to:

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, deliver comments to: Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail:

Patricia Critchlow, Registration Division (TS-767C), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-7700).

SUPPLEMENTARY INFORMATION: EPA issued a cancellation notice for most registered uses of DDT and TDE in PR Notices 71-1, 71-3, and 71-5, dated January 15, March 12, and March 18, 1971, respectively. Following an administrative hearing, the cancellation action was affirmed in the Opinion and Order of the Administrator published in the **Federal Register** of July 7, 1972 (37 FR 13369). The following uses were excluded from the cancellation action: use by the Public Health Service and other health service officials for control of vector diseases; use by USDA or the military for health quarantine; use in drugs for controlling body lice (dispensed only by a physician); and use in the formulation for prescription drugs for controlling body lice.

Elsewhere in this issue of the **Federal Register**, the Agency has issued a related proposed regulatory action [OPP-300120] which would revoke food additive regulations in processed food or feed commodities under 21 CFR Parts 193 and 561.

The Opinion of the Administrator outlined the factual findings concerning the chemical properties, the activity in the food chain and the impact on organisms, and the toxicological effects of DDT, including the following:

1. DDT can persist in soils and aquatic ecosystems for many years. Because of its persistence, DDT is subject to transport from sites of application by drift during aerial application, by vaporization from crops and soils, or by attachment to eroding soil particles.

2. DDT is a contaminant of freshwaters, estuaries and the open ocean; it is difficult or impossible to prevent DDT from reaching aquatic areas and topography nonadjacent to and remote from the site of application.

3. DDT can be concentrated in all terrestrial or aquatic animal organisms and can be transferred through food webs; the accumulation in the food chain and crop residues results in human exposure.

4. DDT can have lethal or sublethal effects on fish, birds, many beneficial agricultural insects, and useful aquatic freshwater invertebrates, including arthropods and mollusks.

5. DDT is a potential human carcinogen, based on experiments with laboratory animals.

The ultimate findings were that DDT presents a risk to the environment, a carcinogenic risk to man, and other unknown and unquantifiable risks to man and lower organisms.

The tolerances established for the residues of DDT and TDE were not revoked concurrently with the cancellation of the pesticide registrations because of the pesticides' slow rate of degradation and their persistence in the environment. To handle the issue of persistent chemicals, the Agency developed the "Policy Statement on Revocation of Tolerances For Cancelled Pesticides" published in the **Federal Register** of September 29, 1982 (47 FR 42956). This policy statement, which was a joint agreement among the EPA, USDA, and the FDA, discussed the mechanism to be used when replacing formal tolerances for persistent pesticides with action levels. These action levels would cover unavoidable residues occurring in the U.S. food supply as a result of environmental contamination from past legal usage of the pesticides. The policy statement detailed the factors that EPA would consider when setting appropriate action levels. These same factors would be used to lower the action levels as subsequent surveillance data, reviewed periodically, indicated that the residue levels found in the environment had dissipated further.

Based on the above facts and the guidance provided in the policy statement, the Agency now proposes to revoke all existing tolerances in 40 CFR 180.147 and 180.147b for the residues of DDT and its degradation products, TDE and DDE, and to delete the related § 180.147a which discusses residues in corn feed products. The Agency also proposes to revoke all existing tolerances in 40 CFR 180.187 established specifically for TDE. In addition, § 180.138 will be revised to delete the entry for 3.5 ppm combined residues of DDT and toxaphene in or on soybeans; the toxaphene tolerance on soybeans will not be changed since § 180.138 also includes a separate entry for 2 ppm toxaphene in or on soybeans.

The Agency has reviewed surveillance data from the FDA and the USDA and proposes that these tolerances be replaced with action levels which are based on residues occurring in the environment. The Agency will also recommend replacing existing action levels with revised action levels which, where appropriate, are lower.

The following action levels for the sum of DDT, TDE, and DDE residues, expressed in parts per million (ppm), will be recommended to FDA and USDA to replace existing tolerances for residues of DDT, DDT's degradation products, and TDE:

TABLE 1.—RECOMMENDED ACTION LEVELS

Commodities	Existing tolerances (ppm)		Recommended action levels (ppm)
	DDT	TDE	DDT/TDE/DDE
Apples	0.5	7	0.1
Apricots	0.5	7	0.2
Artichokes	1	...	0.5
Asparagus	1	...	0.5
Avocados	3.5	...	0.2
Beans (dried)	0.5	[1] 7	0.2
Beans (except dried beans)	7	[1] 7	0.2
Beets (roots and tops)	1	...	0.2
Blackberries	0.5	3.5	0.1
Blueberries (huckleberries)	0.5	7	0.1
Boysenberries	0.5	3.5	0.1
Broccoli	1	1	0.5
Brussels sprouts	1	1	0.5
Cabbage	1	1	0.5
Carrots	3.5	1	3
Cauliflower	1	1	0.5
Celery	1	...	0.5
Cherries	0.5	3.5	0.2
Citrus fruits	3.5	3.5	0.1

TABLE 1.—RECOMMENDED ACTION LEVELS—Continued

Commodities	Existing tolerances (ppm) DDT	Existing tolerances (ppm) TDE	Recommended action levels (ppm) DDT/TDE/DDE
Collards	1		0.5
Corn, fresh sweet K + CWHR	3.5	3.5	0.1
Cottonseed	4		0.1
Cranberries	7		0.1
Cucumbers	0.5	7	0.1
Currants	0.5		0.1
Dewberries	0.5	3.5	0.1
Eggplants	0.5	7	0.1
Endive (escarole)	1		0.5
Fat of meat from cattle, goats, hogs, horses, and sheep	5		[2]
Gooseberries	0.5		0.1
Grapes	7	7	0.05
Guavas	0.5		0.2
Hops (fresh)	20		0.1
Kale	1		0.5
Kohlrabi	1	1	0.5
Lettuce	7	1	0.5
Loganberries	0.5	3.5	0.1
Mangoes	0.5		0.2
Melons	0.5	7	0.1
Milk	[3] 0.05		[4] 1.25
Mushrooms	1		0.5
Mustard greens	1		0.5
Nectarines	0.5	7	0.2
Okra	1		0.2
Onions (dry bulb)	1		0.2
Papayas	3.5		0.2
Parsnips (roots and tops)	1		0.2
Peaches	0.5	7	0.2
Peanuts	0.5		0.2
Pears	0.5	7	0.1
Peas	0.5	1	0.2
Peppermint hay	50		0.5
Peppers	7	7	0.1
Pineapples	7		0.2
Plums (fresh prunes)	0.5	3.5	0.2
Potatoes	1		1
Pumpkins	0.5	7	0.1
Quinces	0.5	7	0.1
Radishes (roots and tops)	1		0.2
Raspberries	0.5	3.5	0.1
Rutabagas (roots and tops)	1	[5] 1 [6] 7	0.2
Soybeans (dry)	[7] 1.5		0.2
Spearmint hay	50	1	0.5
Spinach	1	1	0.5
Squash	0.5	7	0.1
Squash, summer	0.5	7	0.1
Strawberries	0.5	3.5	0.1
Sweet potatoes	1		1
Swiss chard	1		0.5
Tomatoes	7	7	0.05
Turnips (roots and tops)	1	[5] 1 [6] 7	0.2
Youngberries	0.5		0.1

[1] Beans.
[2] Covered by the existing action level of 5 ppm in fat of calves, cattle, chickens, ducks, geese, goats, horses, rabbits, sheep, swine, and turkeys, which is recommended to continue at the current level
[3] Equivalent to 1.25 ppm in milk-fat.
[4] Fat basis.
[5] Roots.
[6] Tops.
[7] Includes the tolerance of 3.5 ppm for combined residues of DDT and toxaphene in or on soybeans (dry form), of which residues of DDT shall not exceed 1.5 ppm; see 40 CFR 180.138 (toxaphene).

The following action levels for the sum of DDT, TDE, and DDE residues, expressed in parts per million (ppm), will be recommended to FDA and USDA to replace existing action levels for residues of DDT, DDT's degradation products, and TDE:

TABLE 2.—REDUCED ACTION LEVELS

Commodities	Existing action levels (ppm) DDT/TDE/DDE	Recommended action levels (ppm) DDT/TDE/DDE
Cocoa beans, whole raw bean	[1] 2	1
Eggs	1.5	0.5

[1] DDT only.

The following existing action levels for the sum of DDT, TDE, and DDE residues will be recommended to FDA and USDA to be retained at the current levels.

TABLE 3.—ACTION LEVELS TO REMAIN IN EFFECT

Commodities	Existing and recommended action levels (ppm) DDT/TDE/DDE
Barley grain (human food)	0.5
Barley grain (animal feed)	0.5
Corn grain (animal feed)	0.5
Corn grain (human food)	0.5
Fat of calves, cattle, chickens, ducks, geese, goats, horses, rabbits, sheep, swine, and turkeys	5
Fish (raw)	5
Hay	0.5
Milo sorghum grain (animal feed)	0.5
Milo sorghum grain (human food)	0.5
Rice grain (animal feed)	0.5
Rice grain (human food)	0.5
Rye grain (animal feed)	0.5
Rye grain (human food)	0.5
Wheat grain (animal feed)	0.5
Wheat grain (human food)	0.5

Whenever possible and practical, the recommended action levels were harmonized with Codex limits set by the Codex Alimentarius Commission of the WHO/FAO Food Standards Program. Recommended levels in meat, milk, and eggs are equivalent to the Codex limits (after expressing the latter limit for milk on a fat basis). The recommended levels in small grains, based on U.S. monitoring data, are somewhat higher than the comparable Codex limit in cereal grains. The recommended levels in fruits and vegetables are consistently lower than the Codex limits, which are temporary limits pending availability of current monitoring data. The U.S. monitoring data used to determine the recommended action levels are considered to reflect the current residue situation in this country accurately. Future reassessments of both the U.S. action levels and the Codex limits, utilizing updated monitoring data, is likely to result in greater harmonization.

Any person who has registered or submitted an application under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, for the registration of a pesticide which contains DDT or TDE may request within 30 days after publication of this document in the **Federal Register** that this proposal to revoke the DDT and TDE tolerances be referred to an advisory committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposal to revoke all tolerances for residues of DDT and its degradation products TDE and DDE listed in 40 CFR 180.147 and 180.147b, all tolerances established specifically for residues of TDE listed in 40 CFR 180.187, the tolerance for combined residues of toxaphene and DDT in or on soybeans listed in § 180.138, and to delete the related DDT § 180.147a. Comments must bear a notation indicating the document control number, [OPP-300119]. Three copies of the comments should be submitted to facilitate the work of the Agency and of others interested in reviewing the comments. All written comments filed pursuant to this notice will be available for public inspection in Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, between 8 a.m. and 4 p.m., Monday through Friday, except legal holidays.

In order to statisfy requirements for analysis as specified by Executive Order 12291, and the Regulatory Flexibility Act, the Agency has analyzed the costs and benefits of this proposal. This analysis is available for public inspection in Rm. 236, at the address given above.

Executive Order 12291

Under Executive Order 12291, the Agency must determine whether a proposed regulatory action is "Major" and therefore subject to the requirements of a Regulatory Impact Analysis. The Agency has determined that this proposed regulatory action is not a major regulatory action, i.e., it will not have an annual effect on the economy of $100 million, will not cause a major increase in prices, and will not have a significant adverse effect on competition or the ability of U.S. enterprises to compete with foreign enterprises. Revocation of the tolerances for DDT and TDE should aid U.S. enterprises by eliminating any unfair advantage that foreign enterprises may have gained through the continuance of these tolerances.

This proposed regulatory action has been submitted to the Office of Management and Budget as required by E.O. 12291.

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Regulatory Flexibility Act

This proposed regulatory action has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96–354; 94 Stat. 1164, 5 U.S.C. 601 *et seq.*) and it has been determined that it will not have a significant economic impact on a substantial number of small businesses, small governments, or small organizations.

As this regulatory action is intended to prevent the sale of foodstuffs primarily where the subject pesticide has been used in an unregistered or illegal manner, it is anticipated that little or no economic impact would occur at any level of business enterprises.

Accordingly, I certify that this regulatory action does not require a separate regulatory flexibility analysis under the Regulatory Flexibility Act.

(Sec. 408(e) and (m) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346(e) and (m)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: February 28, 1985

J.A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

PART 180—[AMENDED]

Therefore, it is proposed that 40 CFR Part 180 be amended as follows:

1. In § 180.138 by removing the entry at "3.5 ppm for soybeans (dry form)" to read as follows:

§ 180.138 Toxaphene; tolerance for residues.

* * * * *

3.5 parts per million combined residues of DDT and toxaphene in or on soybeans (dry form), of which residues of DDT shall not exceed 1.5 parts per million and toxaphene shall not exceed 2 parts per million. [Removed]

* * * * *

§§ 180.147, 180.147a, 180.147b, 180.187 [Removed]

2. By removing §§ 180.147, 180.147a, 180.147b, and 180.187.

[FR Doc. 85–5694 Filed 3–12–85; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 180

[OPP–300121; FRL–2793–8]

Aldrin and Dieldrin; Proposed Revocation of Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document (1) proposes the revocation of tolerances for residues of the insecticide aldrin and its epoxidation product dieldrin, resulting from application of aldrin; (2) proposes the revocation of tolerances established specifically for the residues of dieldrin; (3) lists the action levels which EPA intends to recommend to the Food and Drug Administration (FDA) and the U.S. Department of Agriculture (USDA) to replace the tolerances once the rule revoking the tolerances is final; and (4) lists EPA's recommendations to FDA and USDA regarding action levels to be set to replace existing action levels for food and feed commodities for which no tolerances were established. This proposed regulatory action was initiated by the Environmental Protection Agency to remove tolerance regulations on the pesticides for which registered uses have been cancelled.

DATE: Written comments, identified by the document control number [OPP–300121], must be received on or before May 13, 1985.

ADDRESS:

By mail, submit comments to:

Information Services Section, Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460

In person, deliver comments to: Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Patricia Critchlow, Registration Division (TS–767C), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA. (703–557–7700)

SUPPLEMENTARY INFORMATION: On March 18, 1971, EPA issued PR Notice 71–4 which initiated cancellation proceedings for aldrin and dieldrin. These cancellation proceedings were interrupted by the commencement of suspension proceedings following the issuance of a suspension notice on August 2, 1974, published in the **Federal Register** of October 18, 1974 (39 FR 37246). The Administrative Law Judge (ALJ) issued his decision in the suspension proceeding on September 20, 1974, published in the **Federal Register** of October 18, 1974 (39 FR 37249); the Administrator's final decision on the suspension action was issued on October 1, 1974, published in the **Federal Register** of October 18, 1974 (39 FR 37265). The ALJ's accelerated decision on cancellation was issued on May 27, 1975, and the order of the Administrator declining review of the ALJ's accelerated decision was issued on July 2, 1975.

In the notice of intent to suspend registrations of aldrin and dieldrin, published in the **Federal Register** of October 18, 1974 (39 FR 37246), the Agency found that:

1. Virtually every individual in the United States had dieldrin stored in the body.

2. The available evidence indicated that dieldrin definitely caused significant increases of tumors in two and probably three different strains of mice tested. [In the opinion of the Administrator, published in the **Federal Register** of October 18, 1974 (39 FR 37265), the Agency concluded that there was no dispute that aldrin and dieldrin significantly increase the incidence of liver tumors in five different strains of mice.]

3. There was positive evidence of increased tumor incidence when dieldrin was fed in low doses to two different strains of rat.

4. Aldrin and dieldrin cause birth defects in hamsters and mice; low levels of dieldrin cause adverse effects on learning capabilities in monkeys.

5. Dieldrin causes adverse reproductive effects in male and female dogs and mice.

6. Evidence showed that the use of dieldrin posed a danger to endangered species such as the bald eagle.

The tolerances established for the residues of aldrin and dieldrin were not revoked concurrently with the cancellation of the pesticide registrations because of the pesticides' slow rate of degradation and their persistence in the environment. Existing action levels were set previously by the FDA to cover unavoidable residues of

these pesticides occurring in food and feed commodities that had no established tolerances for these pesticides.

To handle the issue of persistent chemicals, the EPA developed the "Policy Statement on Revocation of Tolerances For Cancelled Pesticides", published in the **Federal Register** of September 29, 1982 (47 FR 42956). This policy statement, which was a joint agreement among the EPA, USDA and the FDA, discussed the mechanism to be used when replacing formal tolerances for persistent pesticides with action levels. These action levels would cover unavoidable residues occurring in the U.S. food supply as a result of environmental contamination from past legal usage of the pesticides. The policy statement detailed the factors which EPA would consider when setting appropriate action levels. These same factors would be used to lower the action levels as subsequent surveillance data, reviewed periodically, indicated that the residue levels found in the environment had dissipated further.

Based on the above facts and the guidance provided in the policy statement, the Agency now proposes to revoke all existing tolerances in 40 CFR 180.135 for the residues of aldrin and its epoxidation product dieldrin, resulting from application of aldrin, and to revoke all existing tolerances in 40 CFR 180.137 established specifically for dieldrin.

The Agency has reviewed surveillance data from the FDA and the USDA and proposes that these tolerances be replaced with action levels which are based on residues occurring in the environment. The Agency will also recommend replacing existing action levels with revised action levels which, where appropriate, are lower.

The following action levels for the sum of aldrin and dieldrin residues, expressed in parts per million (ppm), will be recommended to FDA and USDA to replace existing tolerances for residues of aldrin and dieldrin:

TABLE 1.—RECOMMENDED ACTION LEVELS

Commodities	Existing tolerances (ppm)		Recommended action levels (ppm) Aldrin/dieldrin
	Aldrin [1]	Dieldrin	
Alfalfa	[1] 0(0.03)	0	0.03
Apples	0	0.1	0.03
Apricots	0	0.1	0.03
Asparagus	0.1	0.1	0.03
Bananas		0.1	0.02
Barley, grain	0.02	0.02	0.02
Barley, straw	0.1	0.1	0.03
Beans	[2] 0(0.05)	0	0.05
Beets, garden	[2] 0(0.05)	0	0.1
Beets, garden, tops	[1] 0(0.05)	0	0.05
Beets, sugar	0		0.1
Beets, sugar, tops	0		0.05
Blackeyed peas	[2] 0(0.05)	0	0.05
Broccoli	0.1	0.1	0.03
Brussels sprouts	0.1	0.1	0.03
Cabbage	0.1	0.1	0.03
Cantaloupe	0.1		0.1
Carrots	0	0.1	0.1
Cauliflower	0.1	0.1	0.03
Celery	0.1		0.03
Cherries	0.1	0.1	0.03
Clover	[2] 0(0.03)	0	0.03
Collards	[2] 0(0.05)	0	0.05
Corn, forage	[2] 0(0.03)	0	0.03
Corn, grain	[2] 0(0 03)	0	0.02
Corn, pop	[2] 0(0.03)	0	0.02
Cowpeas	[2] 0(0.05)	0	0.05
Cowpeas, hay	[2] 0(0.03)	0	0.03
Cranberries	0.1	0.1	0.05
Cucumbers	0.1	0.1	0.1
Eggplant	0.1	0.1	0.05
Endive (escarole)	[2] 0(0.05)	0	0.05
Garlic	[2] 0(0.05)		0.01
Grain sorghum	[2] 0(0.03)	0	0.02
Grain sorghum, forage	[2] 0(0.03)	0	0.03
Grapefruit	0.05	0.05	0.02
Grapes	0.1	0.1	0.05
Horseradish	0	0.1	0.1
Kale	[2] 0(0.05)	0	0.05
Kohlrabi	[2] 0(0 05)	0	0.05
Leeks	[2] 0(0.05)		0.1
Lemons	0.05	0.05	0.02
Lespedeza	[2] 0(0.03)	0	0.03
Lettuce	0.1	0.1	0.03
Limes	0.05	0.05	0.02
Mangoes	0.1	0.1	0.03
Muskmelons	0.1		[3]
Mustard greens	[2] 0(0.05)	0	0.05
Nectarines	0.1	0.1	0.03
Oats, grain	0.02	0.02	0.02
Oats, straw	0.1	0.1	0.03
Onions	0	0.1	0.1
Oranges	0.05	0.05	0.02
Parsnips	0	0.1	0.1
Peaches	0.1	0.1	0.02
Peanuts	[2] 0(0.05)		0.05
Peanuts, hay	[2] 0(0.03)		0.03
Pears	0	0.1	0.03
Peas	[2] 0(0.05)	0	0.05
Peas, hay	[2] 0(0.03)	0	0.03
Peppers	0.1	0.1	0.05
Pimentos	0.1	0.1	0.05
Pineapple	0.1		0.03
Plums (fresh prunes)	0.1	0.1	0.03
Potatoes	0.1	0.1	0.1
Pumpkins	0.1		0.1
Quinces	0	0.1	0.03
Radishes	0	0.1	0.1
Radishes, tops		0.1	0.03
Rice, grain	0.05		0.02
Rice, straw	0.1		0.03
Rutabagas	[2] 0(0.05)	0	0.1
Rye, grain	0.02	0.02	0.02
Rye, straw	0.1	0.1	0.03
Salsify, roots	0	0.1	0.1
Salsify, tops	[2] 0(0.05)	0	0.05
Shallots	[2] 0(0.05)		0.1
Soybeans	[2] 0(0.05)	0	0.05
Soybeans, hay	[2] 0(0.03)	0	0.03
Spinach	[2] 0(0.05)	0	0.05
Squash, summer	0.1	0.1	0.1
Squash, winter	0.1		0.1
Strawberries	0.1	0.1	0.05
Sweet potatoes	0.1	0.1	0.1
Swiss chard	[2] 0(0.05)	0	0.05
Tangerines	0.05	0.05	0.02
Tomatoes	0.1	0.1	0.05
Turnips	[2] 0(0.05)	0	0.1
Turnips, tops	[2] 0(0.05)	0	0.05
Watermelons	0.1		0.1
Wheat, grain	0.02	0.02	0.02
Wheat, straw	0.1	0.1	0.03

[1] Total residues of aldrin and dieldrin, resulting from application of aldrin.

[2] Total residues of aldrin and dieldrin. FDA's enforcement capabilities relative to "zero" tolerances are limited by the sensitivity of the analytical methodology; refer to FDA Compliance Policy Guide 7120.23 Part II C.

[3] Covered by the action level of 0.10 ppm which is recommended to replace the existing action level of 0.15 ppm in melons.

The following action level will be recommended to FDA and USDA to replace the existing action level for residues of aldrin and dieldrin in melons.

TABLE 2.—REDUCED ACTION LEVEL

Commodity	Existing action level (ppm) aldrin/dieldrin	Recommended action level (ppm) aldrin/dieldrin
Melons (unless otherwise specified)	0.15	0.10

The following existing action levels for residues of aldrin and dieldrin will be recommended to FDA and USDA to be retained at the current levels. Commodities affected, and listed below, include processed food and feed commodities as well as raw agricultural commodities. There are no established food additive tolerances in 21 CFR Part 193 or 561 for residues of aldrin or dieldrin which would be subject to revocation under section 409(h) of the Federal Food, Drug, and Cosmetic Act; therefore, a separate **Federal Register** notice addressing food additive tolerances or replacement action levels will not be published.

TABLE 3.—ACTION LEVELS TO REMAIN IN EFFECT

Commodities	Existing and recommended action level (ppm) aldrin/dieldrin
Animal feed (processed)	0.03
Artichokes	0.05
Blackberries	0.05
Blueberries	0.05
Boysenberries	0.05
Butter (fat basis)	0.3
Currant	0.05
Dairy products (manufactured, excluding low-fat dairy products (fat basis))	0.3
Dewberries	0.05
Eggs	0.03
Elderberries	0.05
Fat of calves, cattle, chickens, ducks, geese, goats, horses, rabbits, sheep, swine, and turkeys	0.3
Fats and oils (animal, fish, vegetables) (animal feed)	0.3
Figs	0.05
Fish, raw (edible portion)	0.3
Fish, smoked, frozen, canned	0.3
Gooseberries	0.05
Hay (animal feed)	0.03
Huckleberries	0.05
Loganberries	0.05
Milk, raw unpasteurized (fat basis)	0.3
Raspberries	0.05
Shellfish, raw (edible portion)	0.3
Shellfish, smoked, frozen, canned	0.3
Sugarbeet pulp (animal feed)	0.1
Sugarbeet pulp (human food)	0.1

Whenever possible and practical, the recommended action levels were harmonized with Codex limits set by the Codex Alimentarius Commission of the WHO/FAO Food Standards Program. A

number of the recommended action levels for various vegetables (carrots, cereal grains (except rice in the husk), cucumbers, horseradish, onions, parsnips, potatoes, radishes, and rice in the husk) are identical to the Codex limits. For compatability with Codex levels in cereal grains, the recommended action levels in individual grains are lower in some cases than the level used as an FDA Criterion for Recommending Legal Action to the Division of Regulatory Guidance.

Whereas there is a single Codex limit of 0.05 ppm on fruit as a crop category, the recommended action levels in various individual fruit cropshave been determined by analyzing available monitoring data in terms of crop groups in order to give a more accurate indication of appropriate residue levels. However, the action levels for both fruits and vegetables are being recommended in terms of individual corps rather than in terms of crop groups in order to preclude inadvertently establishing action levels for previously uncleared commodities.

The available monitoring data show the need for a 0.1 ppm action level for root crops. In some instances this level is higher than the established zero-level tolerance; however, the setting of the action level at a finite number will in no way increase thedietary exposure from environmental contamination. Recommended levels in meat, milk, and eggs are significantly different from the Codex limits. However, future reassessments of both the various U.S. action levels and the various Codex limits, utilizing updated monitoring data, is likely to result in greater harmonization between the two limits.

Any person who has registered or submitted an application under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, for the registration of a pesticide which contains aldrinor dieldrinmay request within 30 days after publication of this document in the **Federal Register** that this proposal to revoke the aldrin and dieldrin tolerances be referred to an advisory committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposal to revoke all tolerances for residues of aldrin and its epoxidation product dieldrin listed in 40 CFR 180.135 and all tolerances established specifically for residues of dieldrin listed in 40 CFR 180.137. Comments must bear a notation indicating the document control number [OPP-300121]. Three copies of the comments should be submitted to facilitate the work of the Agency and of others interested in reviewing the comments. All written comments filed pursuant to this notice will be available for public inspection in Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, between 8 a.m. and 4 p.m., Monday through Friday, except legal holidays.

In order to satisfy requirements for analysis as specified by Executive Order 12291, and the Regulatory Flexibility Act, the Agency has analyzed the costs and benefits of this psoposal. This analysis is available for public inspection in Rm. 236, at the address given above.

Executive Order 12291

Under Executive order 12291, the Agency must determine whether a proposed regulatory action is "Major" and therefore subject to the requirements of a Regulatory Impact Analysis. The Agency has determined that this proposed regulatory action is not a major regulatory action, i.e., it will not have an annual effect on the economy of $100 million, will not cause a major increase in prices, and will not have a signifcant adverse effect on competition or the ability of U.S. enterprises to compete with foreign enterprises. Revocation of the tolerances for aldrin and dieldrin should aid U.S. enterprises by eliminating any unfair advantage that foreign enterprises may have gained through the continuance of these tolerances.

This proposed regulatory action has been submitted to the Office of Management and Budget as required by E.O. 12291.

Regulatory Flexibility Act

This proposed regulatory action has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96-354; 94 Stat. 1164, 5 U.S.C. 601 *et seq.*) and it has been determined that it will not have a significant economic impact on a substantial number of small businesses, small governments, or small organizations.

As this regulatory action is intended to prevent the sale of foodstuffs primarily where the subject pesticide has been used in an unregistered or illegal manner, it is anticipated that little or no economic impact would occur at any level of business enterprises.

Accordingly I certify that this regulatory action does not require a separate regulatory flexibility analysis under the Regulatoy Flexibility Act.

(Sec. 408 (e) and (m) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346 (e) and (m)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: February 26, 1985.

J.A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

PART 180—[AMENDED]

§§ 180.135, 180.137 [Removed]

Therefore, it is proposed that 40 CFR Part 180 be amended by removing §§ 180.135 and 180.137.

[FR Doc. 85-5705 Filed 3-12-85; 8:45 am]
BILLING CODE 6560-50-M

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40 CFR Part 180

[OPP-300115; FRL-2793-6]

Terpene Polychlorinates; Proposed Revocation of Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes the revocation of the tolerance for residues of the insecticide terpene polychlorinates in or on cottonseed. This proposed regulatory action was initiated by the Environmental Protection Agency to remove a tolerance regulation on the pesticide for which registered uses have been cancelled.

DATE: Written comments, identified by the document control number [OPP-300115], must be received on or before May 13, 1985.

ADDRESS:

By mail, submit comments to: Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

In person, deliver comments to: Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for

inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Patricia Critchlow, Registration Division (TS–767C), Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington VA, (703–557–7700).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in in the **Federal Register** of June 28, 1976 (41 FR 26607), of its intention to cancel the registration of all products containing the active ingredient terpene polychlorinates (also known as Strobane). No federally registered pesticide manufacturer had reported the production of any terpene polychlorinates-containing products since 1974. In addition, the Tenneco Chemical Company, which formerly produced the active ingredient, had voluntarily withdrawn its registration. As of March 1976, it was determined that there were no holdover stocks of the unformulated product..

In the June 28, 1976, **Federal Register** publication of the Agency's notice of intent to cancel the registrations of this chemical, it was indicated that the Agency had endeavored to discuss the cancellation action with representatives of the various registrants and had been able to contact all but three of them. All of those with whom the cancellation action was discussed indicated their concurrence with the intended cancellation.

The cancellations were effective August 2, 1976. However, since the Agency determined that some existing stocks of the affected products might be in commerce at the time of the cancellation action, the sale and use of such products were allowed to legally continue until December 31, 1976.

There was only one tolerance for residues of terpene polychlorinates at the time the registrations were cancelled, 5 parts per million (ppm) in or on cottonseed. There are no action levels currently in effect for residues of this chemical in any commodity.

The Agency now proposes to revoke the existing tolerance in 40 CFR 180.164 for the residues of terpene polychlorinates in or on cottonseed.

Since strobane is only moderately persistent and its uses were cancelled over 9 years ago and no findings of residues have been reported in food samples monitored during the 7 years of monitoring (1977–1983), EPA does not anticipate residue problems due to environmental contamination. Consequently, no action level is needed to replace the established tolerance upon its revocation.

Any person who has registered or submitted an application under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, for registration of a pesticide which contains terpene polychlorinates may request within 30 days after publication of this document in the **Federal Register** that this proposal to revoke the terpene polychlorinates tolerance be referred to an advisory committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposal to revoke the tolerance for residues of terpene polychlorinates listed in 40 CFR 180.164. Comments must bear a notation indicating the document control number [OPP–300115]. Three copies of the comments should be submitted to facilitate the work of the Agency and of others interested in reviewing the comments. All written comments filed pursuant to this notice will be availabale for public inspection in Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, between 8 a.m. and 4 p.m., Monday through Friday, except legal holidays.

In order to satisfy requirements for analysis as specified by Executive Order 12291 and the Regulatory Flexibility Act, the Agency has analyzed the costs and benefits of this proposal. This analysis is availabale for public inspection in Rm. 236, at the address given above.

Executive Order 12291

Under Executive Order 12291, the Agency must determine whether a proposed regulatory action is "Major" and therefore subject to the requirements of a Regulatory Impact Analysis. The Agency has determined that this proposed regulatory action is not a major regulatory action, i.e., it will not have an annual effect on the economy of at least $100 million, will not cause a major increase in prices, and will not have a significant adverse effect on competition or the ability of U.S. enterprises to compete with foreign enterprises. Revocation of the tolerance for terpene polychlorinates should aid U.S. enterprises by eliminating any unfair advantage that foreign enterprises may have gained through the continuance of the tolerance.

This proposed regulatory action has been submitted to the Office of Management and Budget as required by E.O. 12291.

Regulatory Flexibility Act

This proposed regulatory action has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96–354; 94 Stat. 1164, 5 U.S.C. 601 *et seq.*) and it has been determined that it will not have a significant economic impact on a substantial number of small businesses, small governments, or small organizations.

As this regulatory action is intended to prevent the sale of foodstuffs primarily where the subject pesticide has been used in an unregistered or illegal manner, it is anticipated that little or no economic impact would occur at any level of business enterprises.

Accordingly, I certify that this regulatory action does not require a separate regulatory flexibility analysis under the Regulatory Flexibility Act.

(Sec. 408 (e) and (m) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346 (e) and (m)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: February 28, 1985.

J.A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

PART 180—[AMENDED]

§ 180.164 [Removed]

Therefore, it is proposed that 40 CFR Part 180 be amended by removing § 180.164.

[FR Doc. 85–5703 Filed 3–12–85; 8:45 am]
BILLING CODE 6560–50–M

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40 CFR Part 180

[OPP–300117 FRL–2794–4]

1, 2-Dibromo-3-Chloropropane; Proposed Revocation of Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document (1) proposes revocation of tolerances established for residues of inorganic bromides (calculated as elemental bromine) in or on various raw agricultural commodities grown in soil treated with the nematocide 1, 2-dibromo-3-chloropropane (DBCP); and (2) lists EPA's recommendation to the Food and Drug Administration (FDA) regarding existing action levels established by FDA for residues of DBCP *per se* in milk and in raw agricultural commodities other than milk. This proposed regulatory action was initiated by the Environmental Protection Agency.

DATE: Written comments, identified by the document control number [OPP-300117], must be received on or before May 13, 1985.

ADDRESS: By mail, submit comments to: Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, deliver comments to: Rm. 236, CM #2, 1921 Jefferson Davis Highway Arlington, VA.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Patricia Critchlow, Registration Division (TS-767C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA. (703-557-7700).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of November 3, 1977 (42 FR 57545), of intent to cancel the uses of 1,2-dibromo-3-chloropropane (DBCP) on 19 food crops. The Agency issued an amended notice, published in the **Federal Register** of September 13, 1978 (43 FR 40911), of intent to cancel, adding four crops to the list, for a total of 23 crops.

On October 29, 1979, the Administrator issued a notice of intent to cancel all uses of DBCP not previously cancelled, published in the **Federal Register** of November 9, 1979 (44 FR 65170). On March 5, 1981, the Administrator withdrew the notice of intent to cancel registrations for use of DBCP on pineapple fields in Hawaii, published in the **Federal Register** of March 31, 1981. (46 FR 19592). Further, on March 5, 1981, the Administrator accepted requests by all registrants of DBCP-containing products for voluntary cancellation of all registrations for uses other than on pineapples in Hawaii, published in the **Federal Register** March 31, 1981 (46 FR 19596).

On January 2, 1985, the Agency announced its intent to cancel the registrations of pesticide products containing DBCP for use as a soil fumigant on pineapple fields and to allow careful use of the remaining stock of DBCP in limited geographic areas until December 31, 1986, published in the **Federal Register** of January 9, 1985 (50 FR 1122). Tolerances in terms of inorganic bromides have now been determined to be inappropriate. No petition for establishment of a replacement tolerance in pineapples in terms of residues of DBCP *per se* has been received. Because deductable residues of DBCP are not expected in pineapples from use of existing stocks of the pesticide, the existing tolerance for residues of inorganic bromides in pineapples is being proposed for revocation with the other tolerances.

One DBCP registrant has very recently expressed interest in having the existing tolerances in bananas (pulp and whole) continued until such time as residue data for bananas can be generated to support a tolerance for residues of DBCP *per se* in foreign bananas intended for export to the U.S. The Agency has determined that the existing tolerances in banana pulp and in whole bananas should be revoked; residue data to support a tolerance in terms of DBCP *per se* may be submitted to the Agency in the form of a petition for tolerance at any time.

The Agency now proposes to revoke all existing tolerances listed in 40 CFR 180.197 for residues of inorganic bromides (calculated as Br) in or on raw agricultural commodities grown in soil treated with the nematocide DBCP. The following is a list of the tolerances that the Agency proposes to revoke:

Commodities	Existing tolerance (ppm) inorganic bromides
Almonds	50
Almonds, hulls	75
Apricots	5
Bananas, pulp	75
Bananas, whole	125
Beans, lima	75
Beans, snap	75
Blackberries	25
Boysenberries	25
Broccoli	50
Brussels sprouts	50
Cabbage	50
Carrots	75
Cauliflower	50
Celery	75
Cherries	15
Citrus fruits	20
Cotton, Seed	25
Cucumbers	25
Dewberries	25
Eggplant	50
Endive (escarole)	130
Figs	75
Grapes	25
Lettuce	130
Loganberries	25
Melons	50
Nectarines	5
Okra	75
Parsnips	75
Peaches	5
Peanuts	50
Peppers	50
Pineapples	50
Plums (fresh prunes)	15
Radishes	75
Raspberries	25
Soybeans	125
Squash, summer	25
Strawberries	10
Tomatoes	50
Turnips	50
Walnuts, English	10

There are no established tolerances for residues of DBCP *per se;* however, action levels have been established by FDA for residues of DBCP *per se* in milk (fat basis) at 1.5 parts per million (ppm) and in raw agricultural commodities other than milk at 0.05 ppm, published in the **Federal Register** of June 2, 1978 (43 FR 24139). The Agency hereby recommends that FDA revoke the existing action levels established for residues of DBCP *per se* in milk and in raw agricultural commodities other than milk.

DBCP is decomposed in the soil to yield inorganic bromide ions. The inorganic bromide ion residues in the crops are due to absorption of these ions, plus those originally present in the soil. Trace residues of DBCP *per se* were found in treated crops, according to a 1978 DBCP Position Document. No recent monitoring data are available; according to FDA, no samples have been analyzed for residues of DBCP in recent years. However, since DBCP *per se* is only moderately persistent in the soil, residue problems due to environmental contamination with DBCP residues (DBCP *per se* or inorganic bromides) are not anticipated after all the uses have been cancelled.

Consequently, no action levels for DBCP *per se* are needed to replace the established tolerances for inorganic bromides upon their revocation.

Elsewhere in this issue of the **Federal Register**, the Agency has issued a related proposed regulatory action [OPP–300118] which would revoke the food additive regulation for residues of inorganic bromides, resulting from use of DBCP, in or on dehydrated citrus pulp under 21 CFR 561.260(c).

Any person who has registered or submitted an application under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, for the registration of a pesticide which contains DBCP may request within 30 days after publication of this document in the **Federal Register** that this proposal to revoke all tolerances listed in 40 CFR 180.197 for residues of inorganic bromides resulting from application of DBCP be referred to an advisory committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on this proposal to revoke tolerances for residues of inorganic bromides resulting from application of DBCP. Comments must bear a notation indicating the document control number, [OPP–300117]. Three copies of the comments should be submitted to facilitate the work of the Agency and of others interested in reviewing the comments. All written comments filed pursuant to this notice will be available for public inspection in Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, between 8 a.m. and 4 p.m., Monday through Friday, except legal holidays.

In order to satisfy requirements for analysis as specified by Executive Order 12291, and the Regulatory Flexibility Act, the Agency has analyzed the costs and benefits of this proposal. This analysis is available for public inspection in Rm. 236, at the address given above.

Executive Order 12291

Under Executive Order 12291, the Agency must determine whether a proposed regulatory action is "Major" and therefore subject to the requirements of a Regulatory Impact Analysis. The Agency has determined that this proposed regulatory action is not a major regulatory action, i.e., it will not have an annual effect on the economy of at least $100 million, will not cause a major increase in prices, and will not have a significant adverse affect on competition or the ability of U.S. enterprises to compete with foreign enterprises. Revocation of the tolerances for residues of inorganic bromides resulting from application of DBCP should aid U.S. enterprises by eliminating any unfair advantage that foreign enterprises may have gained through the continuance of these tolerances.

This proposed regulatory action has been submitted to the Office of Management and Budget as required by E.O. 12291.

Regulatory Flexibility Act

This proposed regulatory action has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96–354; 94 Stat. 1164, 5 U.S.C. 601 *et seq.*) and it has been determined that it will not have a significant economic impact on a substantial number of small businesses, small governments, or small organizations.

As this regulatory action is intended to prevent the sale of foodstuffs primarily where the subject pesticide has been used in an unregistered or illegal manner, it is anticipated that little or no economic impact would occur at any level of business enterprises.

Accordingly, I certify that this regulatory action does not require a separate regulatory flexibility analysis under the Regulatory Flexibility Act.

(Sec. 408 (e) and (m) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346 (e) and (m)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: February 28, 1985.

J.A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

PART 180—[AMENDED]

§ 180.197 [Removed]

Therefore, it is proposed that 40 CFR Part 180 be amended by removing § 180.197.

[FR Doc. 85–5697 Filed 3–12–85; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 180

[OPP–300116; FRL–2793–7]

Schradan; Proposed Revocation of Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes the revocation of the tolerance for residues of the insecticide schradan (octamethylpyrophosphoramide; OMPA) in or on English walnuts. This proposed regulatory action was initiated by the Environmental Protection Agency to remove a tolerance regulation on the pesticides for which registered uses have been cancelled.

DATE: Written comments, identified by the document control number [OPP–300116], must be received on or before May 13, 1985.

ADDRESS:

By mail, submit comments to:
Information Services Section, Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M. St., SW., Washington, D.C. 20460.

In person, deliver comments to: Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Patricia Critchlow, Registration Division (TS–767C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Registration Support and Emergency Response Branch, Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–7700).

SUPPLEMENTARY INFORMATION: EPA issued a notice published in the **Federal Register** of May 28, 1976 (41 FR 21859) of its intention to cancel the registration of all products containing the active ingredient octamethylpyrophosphoramide (OMPA; schradan).

In the May 28, 1976 notice of intent to cancel the registrations of schradan, it was indicated that the Agency had discussed the cancellation action with representatives of the only registrants, Centerchem, Inc., New York, NY and

Pennwalt Corporation, Philadelphia, PA, and that both registrants had concurred with the intended cancellation.

There was only one tolerance for residues of schradan at the registrations were cancelled for English walnuts. Schradan is not registered for use on any other crops, nor have any permanent tolerances for residues of schradan been established other than the existing tolerance of 0.75 part per million in or on English walnuts.

The Agency now proposes to revoke the existing tolerance in 40 CFR 180.166 for the residues of schradan in or on English walnuts.

Since schradan is only moderately persistent and its uses were cancelled more than 8 years ago, there is no anticipation of a residue problem due to environmental contamination. Consequently, no action level is needed to replace the established tolerance upon its revocation. There are no action levels currently in effect for residues of schradan in any commodity.

Any person who has registered or submitted an application under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, for the registration of a pesticide which contains schradan may request within 30 days after publication of this document in the **Federal Register** that this proposal to revoke the schradan tolerance in English walnuts be referred to an advisory committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposal to revoke the tolerance for residues of schradan listed in 40 CFR 180.166. Comments must bear a notation indicating the document control numbers, [OPP–300116]. Three copies of the comments should be submitted to facilitate the work of the Agency and of others interested in reviewing the comments. All written comments filed pursuant to this notice will be available for public inspection in Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, between 8 a.m. and 4 p.m., Monday through Friday, except legal holidays.

In order to satisfy requirements for analysis as specified by Executive Order 12291, and the Regulatory Flexibility Act, the Agency has analyzed the costs and benefits of this proposal. This analysis is available for public inspection in Rm. 236, at the address given above.

Executive Order 12291

Under Executive Order 12291, the Agency must determine whether a proposed regulatory action is "Major" and therefore subject to the requirements of a Regulatory Impact Analysis. The Agency has determined that this proposed regulatory action is not a major regulatory action, i.e., it will not have an annual effect on the economy of at least $100 million, will not cause a major increase in prices, and will not have a significant adverse effect on competition or the ability of U.S. enterprises to compete with foreign enterprises. Revocation of the tolerance for schradan in English walnuts should aid U.S. enterprises by eliminating any unfair advantage that foreign enterprises may have gained through the continuance of this tolerance.

This proposed regulatory action has been submitted to the Office of Management and Budget as required by E.O. 12291.

Regulatory Flexibility Act

This proposed regulatory action has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96–354; 94 Stat. 1164, 5 U.S.C. 801 *et seq.*) and it has been determined that it will not have a significant economic impact on a substantial number of small businesses, small governments, or small organizations.

This regulatory action is intended to prevent the sale of foodstuffs primarily where the subject pesticide has been used in an unregistered or illegal manner. Since all schradan uses were cancelled in 1976, it is anticipated that little or no economic impact would occur at any level of business enterprises if this tolerance were revoked.

Accordingly, I certify that this regulatory action does not require a separate regulatory flexibility analysis under the Regulatory Flexibility Act.

(Sec. 408 (e) and (m) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346 (e) and (m)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: February 28, 1985.

J.A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

PART 180—[AMENDED]

§ 180.166 [Removed]

Therefore, it is proposed that 40 CFR Part 180 be amended by removing § 180.166.

[FR Doc. 85–5704 Filed 3–12–85; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 1600

Planning, Programming, Budgeting: Planning Guidance; Availability of Draft Supplemental Program Guidance

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability for public review and comment of draft supplemental program guidance.

SUMMARY: This notice is to advise the public of the availability of planning guidance setting forth proposed program specific requirements and standards for use in resource management planning. This guidance, when adopted, will supplement procedural and plan content requirements established in the Bureau of Land Management's planning regulations (43 CFR Part 1600) and related Manual Sections. The supplemental program guidance is being developed in two phases. The phase presently available for review includes the following program activities: Coal, Fire Management, Fluid Minerals, Forestry, Lands, Non-Energy Leasable Minerals, Oil Shale, Rangeland Resources, Rights-of-Way, Rights-of-Way Acquisition, Tar Sand, Wild Horses and Burros, and Wildlife.

DATE: Comments are due by April 26, 1985.

ADDRESS: Copies of the draft supplemental program guidance may be obtained by writing: Director (202) Bureau of Land Management, 1800 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Gordon Knight 202–653–8824. Christopher Muller 202–653–8830.

Robert F. Burford,

Director.

March 4, 1985.

[FR Doc. 85–5959 Filed 3–12–85; 8:45 am]

BILLING CODE 4310-84-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 83

[PR Docket No. 85–8; RM–4779]

Removal of the Requirement for Reliability Tests of Ship Radar; Correction

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a Notice of proposed Rule Making printed in the **Federal Register** on January 25, 1985 (50 FR 3576). The Notice incorrectly cited the proposed new rule. This document is intented to correct the Notice so that parties filing comments might locate the rule proposed to be amended.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Loretta J. Garcia, Private Radio Bureau, (202) 632-7175.

SUPPLEMENTARY INFORMATION:

Appendix Erratum

In the matter of amendment of Part 83 of the rules to remove the requirement for reliability tests of ship radar; PR Docket No. 85-8; RM-4779.

Released: March 7, 1985.

§ 83.465 [Corrected]

On January 18, 1985, the Commission released a Notice of Proposed Rule Making in the above-captioned proceeding. On page 3577, the third line of footnote 6 refers to 83.465(b)(4). The footnote is intended to refer to § 83.465(c)(4). Accordingly, in footnote 6 on page 3577 "83.465(b)(4)" is corrected to read "§ 83.465(c)(4)."

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85-5909 Filed 3-12-85; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 97

[PR Docket No. 85-51; FCC 85-85]

Amendment of the Amateur Radio Service Rules To Preclude Certain Persons From Participating in Third-Party Communications

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rule making.

SUMMARY: This document proposes to amend the Amateur Radio Service Rules to preclude a person whose FCC-issued amateur license has been revoked or suspended from participating in third-party communications. The proposed rule is necessary to preclude a person from avoiding the effect of the sanction of license revocation or suspension. The effect of the proposed rule is to assure that unlicensed persons will not be able to use third-party communications as a subterfuge to evade the consequences resulting from license revocation or suspension.

DATES: Comments are due by May 14, 1985, and reply comments are due by June 17, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Maurice J. DePont, Private Radio Bureau, Washington, D.C. 20554, (202) 632-4964.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 97

Penalties, Radio.

Notice of Proposed Rulemaking

In the matter of amendment of § 97.114 of the amateur radio service rules to prohibit disqualified persons from participating in third-party communications; PR Docket No. 85-51.

Adopted: February 22, 1985. Released: February 28, 1985.

By the Commission.

1. Notice of Proposed Rule Making in the above-captioned matter is hereby given.

2. An amateur station must be under the control of a licensed operator at all times. However, under conditions specified in the rules, a third party (any person) is permitted to participate in amateur communications provided that the first party (control operator) is present at the station control point and monitors and supervises the transmission of the message to the receiving station (second party). A third-party message may be oral, written, keystroked, keyed or photographed.[1] This rule permits servicemen, disaster victims and others to get word to their loved ones by way of amateur radio. While originally messages were transmitted in behalf of such persons because the practice originated when telegraphy was the sole mode of operation, it is now permissible for a third party to speak into the microphone.

3. In recent months, persons whose amateur privileges had been terminated for cause by the Commission sought to continue their activities by creating situations designed to take advantage of the third-party rule. Generally, these schemes have featured the establishment of a station licensed to an amateur in good standing on the premises of the disqualified person. The staff has advised these persons that the amateur rules did not permit them to participate in amateur communications. To allow such participation under the circumstances would, in effect, nullify the decision which revoked and suspended the station and operator licenses. Additionally, we believe that any amateur who has a license revoked, suspended or cancelled, either voluntarily oir involuntarily, because of rule violations should be precluded from participating in any amateur communications as a third party until the Commission approves such participation. We invite comments as to whether this approval should be by relicensing, by requiring the disqualified person to request and be granted written permission from the Commission to be a third party, or by some other means. The third-party rule is a convenience for non-amateurs allowing them to have non-business messages sent for them without charge over amateur radio facilities. Former amateurs who have had their licenses revoked or suspended should not be entitled to this benefit. We propose to codify this interpretation into the amateur rules to make clear that no person against whom such or other FCC enforcement sanctions have been imposed may participate in amateur communications. We also want to emphasize that any current licensee who knowingly allows a disqualified person to participate in third-party communications would be subject to appropriate sanctions for violating the proposed rule.

4. For purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previosly-filed comments in the proceeding must prepare a written summary of that presentation; on the day of the oral presentation, that written summary must

[1] All amateur stations must have the control operator present at the control point whenever they are in operation, except for certain special types of operation (repeater, auxiliary and beacon) which may be under automatic control. When under automatic control, third party participation is precluded since the control operator is not present at the control point. See News Release No. 2028, October 25, 1978.

be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation must also state by docket number the proceeding to which it relates. See generally, § 1.1231 of the Commission's Rules, 47 CFR 1.1231. A summary of the Commission's procedures governing *ex parte* contacts in informal rule makings is available from the Commission's Consumer Assistance Office, FCC, Washington, D.C. 20554, (202) 632–7000.

5. Authority for issuance of this Notice is contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r). Pursuant to applicable procedures set forth in § 1.415, 47 CFR 1.1415, of the Commission's Rules, interested persons may file comments on or before May 14, 1985, and reply comments on or before June 17, 1985. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order.

6. In accordance with § 1.419 of the Commission's Rules, 47 CFR 1.419, formal participants must file an original and five copies of their comments and other materials. Participants who wish each Commissioner to have a personal copy of their comments should file an original and eleven copies. Members of the general public who wish to express their interest by participating informally may do so by submitting one copy. All comments are given the same consideration, regardless of the number of copies submitted. Each set of comments must state on its face the proceeding to which it relates (PR Docket Number) and should be submitted to: The Secretary, Federal Communications Commission, Washington, D.C. 20554. All documents will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters in Washington, D.C.

7. In accordance with section 605 of the Regulatory Flexibility Act of 1980 (5 U.S.C. 605), the Commission certifies that these rules would not, if promulgated, have a significant economic impact on a substantial number of small entities because these entities may not use the Amateur Radio Service for commercial radiocommunication (see 47 CFR 97.3 (b)). In addition, the proposed rule concerning persons who may not participate in third-party communications would not in any way impact on the manufacturers of amateur radio equipment.

8. It is ordered, that the Secretary shall cause a copy of this Notice to be served upon the Chief Counsel for Advocacy of the Small Business Administration and that the Secretary shall also cause a copy of this Notice to be published in the **Federal Register.**

9. For information concerning this proceeding, contact Maurice J. DePont, Federal Communications Commission, Private Radio Bureau, Washington, D.C. 20554, (202) 632–4964.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

William J. Tricarico,

Secretary.

PART 97—[AMENDED]

Appendix

Part 97 of Chapter I of Title 47 of the Code of Federal Regulations would be amended, as follows:

§ 97.79 [Amended]

1. Section 97.79 would be amended by removing paragraph (d) thereof.

2. Section 97.114 would be revised to read as follows:

§ 97.114 Third-party communications.

(a) The transmission or delivery of the following amateur radiocommunications is prohibited:

(1) International third-party traffic except with countries which have assented thereto;

(2) Third-party traffic involving material compensation either tangible or intangible, direct or indirect, to a third party, a station licensee, a control operator, or any other person;

(3) Except for emergency communications as defined in this part, third-party traffic consisting of business communications on behalf of any party.

(b) The licensee of an amateur radio station transmitting third-party communication may not permit a third party to participate in amateur radiocommunications from the station if:

(1) The control operator is not present and is not continuously monitoring and supervising the radicocommunications to ensure compliance with the rules;

(2) The third party is a prior FCC licensee whose license was revoked; suspended for less than the balance of the license term; suspended for the balance of the license term and relicensing has not taken place; surrendered for cancellation following notice of revocation, suspension or monetary forfeiture proceedings; or is the subject of an FCC Cease and Desist Order which relates to amateur operation and which is still in effect.

[FR Doc. 85–5788 Filed 3–12–85 8:45 am]

BILLING CODE 3712-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 172 and 173

[Docket No. HM–196, Notice No. 85–1]

Packaging and Placarding Requirements for Liquids Toxic by Inhalation; Extension of Comment Period

AGENCY: Materials Transportation Bureau, Research and Special Programs Administration, DOT.

ACTION: Extension of time to file comments on and interpretations of a notice of proposed rulemaking.

SUMMARY: On February 7, 1985, MTB published a Notice of Proposed Rulemaking [NPRM: Docket No. HM–196, Notice No. 85–1; 50 FR 5270] proposing special packaging and more stringent placarding requirements for certain poisonous liquids based on their potential inhalation hazards. Three petitions have been received citing a need for additional time in which to evaluate and comment on the proposals in the Notice and requesting a 60-day extension of time for filing comments. MTB believes that some extension is justified and is extending the comment period approximately 30 days.

DATE: Comments on Notice No. 85–1 must be received on or before April 16, 1985.

ADDRESS: Address comments to: Dockets Branch, Materials Transportation Bureau, U.S. Department of Transportation, Washington, D.C. 20590. Comments should be submitted, if possible, in five copies. The Dockets Branch is located in Room 8426 of the Nassif Building, 400 Seventh Street, SW, Washington, D.C. Office hours are 8:30 a.m. to 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Darrell Raines, Standards Division, Office of Hazardous Materials Regulation, Materials Transportation Bureau, Department of Transportation,

400 Seventh Street, SW, Washington, D.C. 20590, (202/426–2075).

SUPPLEMENTARY INFORMATION: Three potential commenters, the Chemical Manufacturers Association (CMA), the National Agricultural Chemicals Association and Hazardous Materials Advisory Council, have requested additional time to evaluate the proposals made in the above-cited NPRM. CMA indicated that LC_{50} data are not available for some of the materials produced by its members and that additional time will be required for literature research. MTB agrees that some additional time should be allowed for this purpose but recognizes that there may be diminishing benefits from such efforts if data are not contained in sources that are readily available. However, MTB recognizes the considerable value of continuing literature research if "round-robin" exchanges of data are underway, and it is with this optimistic premise in mind that the closing date for comments on Notice No. 85–1 is extended to April 16, 1985.

MTB inadvertently omitted proposed changes to the labeling requirements specified in § 172.402 to address highly volatile materials that do not fall within the definition of a class B poison based on inhalation toxicity (§ 173.343). Certainly all materials subject to the proposed placarding and shipping paper requriements should also be subject to "POISON" labeling requirements for packages; therefore, interested persons should consider such a requirement as part of the proposal. MTB does not believe that many materials would be affected by an expanded labeling requirement taking into account the two other routes of exposure (dermal and oral) that would make a material subject to the "POISON" labeling requirements. An example of a material addressed by the NPRN that would not meet the definition in § 173.343(a)(2), would be a material with an LC_{50} value of 950 ppm, a molecular weight of 92, and a saturated vapor concentration of 17,000 ppm. Its inhalation toxicity according to the present regulations would be about 3.5 mg/1 (greater than 2 mg/1).

If no toxicity data are available on a material that is considered to be a possible candidate for being subject to the NPRM, it is not necessary to conduct all the testing required to determine its precise LC_{50} value. In order to accomplish the result that is intended by the NPRM, the saturated vapor concentration of the material at 20°C may be divided by 10 and this concentration used in the procedure described in the inhalation toxicity test for class B poisons (§ 173.343). If the test results are positive under these conditions, the liquid is subject to the NPRM. This would eliminate the necessity for costly determination of precise LC_{50} values.

For example: If a liquid has a saturated vapor concentration of 500 ppm at 20°C, the concentration used in the test described in § 73.343(a)(2) would be 50 ppm.

(49 U.S.C. 1804; 49 CFR 1.53; App. A to Part 1 and paragraph (a)(4) of App. A to Part 106)

Issued in Washington, D.C., on March 8, 1985.

Alan I. Roberts,

Associate Director for Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc. 85–6027 Filed 3–12–85; 8:45 am]

BILLING CODE 4910-60-M

VOL 50 ISS 49 MR 13 1985 UMI

Notices

Federal Register
Vol. 50, No. 49
Wednesday, March 13, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Rulemaking; Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of meetings of the Committee on Rulemaking of the Administrative Conference of the United States. The Committee will meet on Friday, March 22, 1985, and again on Monday, April 22, 1985. Both meetings will begin at 2:00 p.m. at the offices of Hughes, Hubbard & Reed, 1201 Pennsylvania Avenue, NW., Suite 300, Washington, D.C.

The main focus of these meetings will be Professor Thomas O. McGarity's study of agency implementation of regulatory analysis requirements in rulemaking. At the March 22 meeting, the Committee will consider possible recommendations based on a partial draft report that has been submitted by Professor McGarity. A complete draft report is expected prior to the April 22 meeting.

Attendance is open to the interested public, but limited to the space available. Persons wishing to attend should notify the contact person at least two days prior to the meeting. The Committee Chairman, if he deems it appropriate, may permit members of the public to present oral statements at the meeting; any member of the public may file a written statement with the Committee before, during or after the meeting.

Contact Person: Michael W. Bowers, Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, D.C. 20037 (Telephone: 202–254–7065).

Minutes of the meeting will be available on request.

Richard K. Berg,
General Counsel.
March 8, 1985.
[FR Doc. 85–6016 Filed 3–12–85; 8:45 am]
BILLING CODE 6110–01–M

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

March 8, 1985.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, D.C. 20250 (202) 447–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, ATTN: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

• Agricultural Marketing Service
Cottonseed Prices
CN 235
Weekly
Small businesses or organizations; 1,800 responses; 90 hours; not applicable under 3504(h)
Loyd R. Frazier (202) 447–2147

• Agricultural Stabilization and Conservation Service
Application for Handler-to-Handler Transfer of Contract Additional Peanuts
CCC–1006
On occasion
Businesses or other for-profit; 45,000 responses; 9,000 hours; not applicable under 3504(h)
Bob Ray (202) 382–9106

• Agricultural Stabilization and Conservation Service
Estimate of Tobacco Production
MQ 92
On occasion
Individuals or households; Farms; 750 responses; 417 hours; not applicable under 3504(h)
Jay S. Poole (202) 447–2715

Jane A. Benoit,
Departmental Clearance Officer.
[FR Doc. 85–5947 Filed 3–12–85; 8:45 am]
BILLING CODE 3410–01–M

Animal and Plant Health Inspection Service

[Docket No. 85–016]

Disqualification Under the Horse Protection Act

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of disqualification.

SUMMARY: This notice is to advise the general public and the horse industry of an individual who has been disqualified under the Horse Protection Act, for specified terms, from showing or exhibiting any horse, and from judging or managing any horse show, exhibition, sale, or auction.

FOR FURTHER INFORMATION CONTACT: Dr. M.R. Crane, Chief Staff Veterinarian, Interstate Inspection and Compliance Staff, VS, APHIS, USDA, Room 806, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8282.

SUPPLEMENTAL INFORMATION: Section 6(c) of the Horse Protection Act (15 U.S.C. 1825(c)) provides authority for

disqualifying persons from showing or exhibiting any horse, and from judging or managing any horse show, exhibition, sale, or auction. This document gives notice that the following individual has been disqualified, for the term specified, from showing or exhibiting any horse, and from judging or managing any horse show, exhibition, sale, or auction:

Name: Truman Volkart
Address: Hastings, MN
Disqualification Period: October 1, 1984, through September 30, 1985

Any person who knowingly fails to obey a disqualification order shall be subject to a civil penalty of not more than $3,000 for each violation. Any horse show, exhibition, sale, or auction, or its management, which knowingly allows any disqualified person to judge, manage, or participate in a horse show, exhibition, sale, or auction in violation of a disqualification order shall be subject to a civil penalty of not more than $3,000 for each violation.

Done at Washington, D.C., this 7th day of March 1985.

K.R. Hook,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 85-5945 Filed 3-12-85; 8:45 am]

BILLING CODE 3410-34-M

Forest Service

Apache National Forest Grazing Advisory Board; Open Meeting

The Apache National Forest Grazing Advisory Board will meet at 10:30 a.m., April 8, 1985 at the Alpine Ranger District Office in Alpine, Arizona.

The purpose of the meeting is to include a discussion of expenditures of range betterment funds for the Apache National Forest. A discussion of allotment management planning will be included.

The meeting will be open to the public. Persons who wish to attend should notify the Forest Supervisor, P.O. Box 640, Springerville, Arizona 85938, (602)-333-4301. Written statements may be filed with the Board before or after the meeting.

The Board has established the following rules for public participation; any interested persons besides the Advisory Board Members are welcome to attend, and will be afforded the opportunity to speak after being duly recognized by the Chairman of the Board.

Dated: March 5, 1985.

Miles P. Hanrahan,

Acting Forest Supervisor.

[FR Doc. 85-5911 Filed 3-12-85; 8:45 am]

BILLING CODE 3410-11-M

COMMISSION ON CIVIL RIGHTS

California Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the California Advisory Committee to the Commission will convene at 7:30 p.m. and will end at 9:30 p.m. on March 22, 1985, and on March 23, 1985, at 9:15 a.m. and will end at 12:00 p.m., at the Miyako Hotel, 1625 Post Street, San Francisco, California. The purpose of the meeting is to obtain information on police-community relations in San Mateo and to discuss proposed project plans.

Persons desiring additional information, or planning a presentation to the Committee, should contact Advisory Committee Chairperson Helen Hernandez or Philip Montez in the Western Regional Office (213) 688-3437.

The Meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, DC., March 1, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-5897 Filed 3-12-85; 8:45 am]

BILLING CODE 6335-01-M

District of Columbia Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the District of Columbia Advisory Committee to the Commission will convene at 2:30 p.m. and will end at 4:30 p.m., on March 28, 1985, at the Channel Inn, 650 Water Street, NW., Room 250, Washington, D.C. The purpose of the meeting is to discuss program plans for the remainder of the year.

Persons desiring additional information, or planning a presentation to the Committee, should contact Advisory Committee Chairperson Walter Washington or Edward Rutledge of the Mid-Atlantic Regional Office at (202) 254-6717.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., March 1, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-5894 Filed 3-12-85; 8:45 am]

BILLING CODE 6335-01-M

Kansas Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Kansas Advisory Committee to the Commission will convene at 11:00 a.m. and will end at 4:00 p.m. on March 26, 1985, at the Emporia State University, Memorial Union Street, PDK Room, Emporia, Kansas. The purpose of the meeting is to plan future program activities and to hear from residents of Emporia about the status of civil rights in the city.

Persons desiring additional information, or planning a presentation to the Committee, should contact Advisory Committee Chairperson Jaclyn Gossard or Melvin Jenkins in the Central States Regional Office (816) 374-5253.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., March 1, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-5895 Filed 3-12-85; 8:45 am]

BILLING CODE 6335-01-M

West Virginia Advisory Committee; Agenda for Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the West Virginia Advisory Committee to the Commission will convene at 1:00 p.m. and will end at 3:00 p.m., on March 27, 1985, at the Heart-O-Town Hotel, Conference Room, Broad/Washington Streets, E., Charleston, West Virginia. The purpose of the meeting is for the Advisory Committee to plan its activities for fiscal year 1985-86 related to the West Virginia Human Rights Commission and local human rights commissions in West Virginia, and other civil rights matters.

Persons desiring additional information, or planning a presentation to the Committee, should contact Advisory Committee Chairperson Donald Pitts or Edward Rutledge of the Mid-Atlantic Regional Office at (202) 254-6717.

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The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., March 1, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-5896 Filed 3-12-85; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review; Application for an Amendment; United Export Trading Association

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of application for an amendment to an export trade certificate of review.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an amendment to an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the certificate should be issued.

FOR FURTHER INFORMATION CONTACT: James V. Lacy, Director, Office of Export Trading Company Affairs (OETCA), International Trade Administration, 202/377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (Pub. L. 97-290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A certificate of review protects its holder and the members identified in it from private treble damage actions and from civil and criminal liability under Federal and state antitrust laws for the export conduct specified in the certificate and carried out during its effective period in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a certificate should be issued. An original and five (5) copies should be submitted not later than April 2, 1985 to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington D.C. 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Amendment No. 1, Export Trade Certificate of Review, Application 83-00023." The OETCA has received the following application for an amendment to Export Trade Certificate of Review No. 83-00023 which was issued on February 21, 1984 and published in the **Federal Register** on February 27, 1984 (49 FR 7135).

Summary of Application

Applicant: United Export Trading Association IH 35 at International Boulevard, Laredo, Texas 78401

Application No.: 83-00023

Date Deemed Submitted: February 28, 1985

Members in Addition to Applicant: International Bonded Warehouses, Inc.; Ayoub Exports, Inc.; Hidalgo Custom Bonded Warehouse, Inc. d/b/a Brady's; Universal Bonded Stores, Inc.; Capin's Duty Free Warehouse, Inc.; States Import-Export, Inc.; Hugo's International Liquors Co., Inc.; and Ronnie Guerra's International Traders, Inc.

Amendment to Export Trade

United Export Trading Association seeks to amend Export Trade Certificate of Review No. 83-00023 to add as a member King Mart Export, Inc., a Texas Corporation at address P.O. Box 632, Brownsville, Texas 78520.

Dated: March 8, 1985.

Richard H. Shay,

Acting General Counsel.

[FR Doc. 85-6018 Filed 3-12-85; 8:45 am]

BILLING CODE 3510-DR-M

Export Trade Certificate of Review; Notice of Issuance; Sealaska Timber Corp.

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of issuance of an export trade certificate of review.

SUMMARY: The Department of Commerce has issued an export trade certificate of review to Sealaska Timber Corporation ("STC") notice summarizes the conduct for which certification has been granted.

ADDRESS: The Department requests public comments on the certificate. Interested parties should submit their written comments, original and five (5) copies, to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington, D.C. 20230.

Comments should refer to the certificate as "Export Trade Certificate of Review, application number 84-00037."

FOR FURTHER INFORMATION CONTACT: James V. Lacy, Director, Office of Export Trading Company Affairs, International Trade Administration, 202-377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. 97-290) authorizes the Secretary of Commerce to issue expert trade certificates of review. The regulations implementing the Act are found at 15 CFR Part 325 (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.5(b), which requires the Secretary of Commerce to publish in the **Federal Register** a summary of each certificate issued. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade

1. *Products.* The following wood products originating from Alaska: Round logs, wood chips, logs, cants and flitches, and similarly processed wood products, dimensional (milled) lumber, pulp, pulpwood, wood shavings, saw dust, sawlogs, in all grades and all sizes, derived from the following species of timber: Spruce, hemlock, red cedar and other timber species found in Alaska.

2. *Related Services.* Services (consulting; international market research; advertising; marketing; insurance; product research and design, exclusively for export; legal assistance; transportation, including trade documentation and freight forwarding; communication and processing of foreign orders; warehousing; foreign exchange; financing; and taking title to goods) in connection with the foregoing Products.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the

Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

1. STC may enter into agreements with individual and multiple Suppliers of Products and Related Services whereby STC agrees to serve as the exclusive Export Intermediary for Products and Related Services in any Export Market and, the Supplier(s) may agree not to sell, directly or indirectly, through any other Export Intermediary, into the Export Market in which STC exclusively represents the Supplier(s) as an Export Intermediary. These agreements may also give STC the exclusive right to choose whether to respond to bids, invitations or requests for bids, or other sales opportunities, on a joint or individual basis.

2. STC may enter into exlusive agreements with other Export Intermediaries whereby the Export Intermediary agrees not to represent STC's competitors in the sale of Products and Related Services in any Export Market, and/or not to buy Products and Related Services from STC's competitors for resale in any Export Markets. STC may also enter into agreements with customers of Products and Related Services located in any Export Market wherby the customer agrees not to purchase Products and Related Services from STC's competitors.

The agreements described in paragraphs 1 and 2 above may give STC exclusive right to determine the price at which Products and Related Services will be sold in the Export Markets, and also may give STC the right to specify the terms for any export sale, including the quantities, territories and customers, regardless of whether a joint or individual bidding process is used.

3. For each bid, invitation or request for bid, or other sales opportunity in any Export Market, STC and its Suppliers may meet to negotiate and agree on the terms of their participation in the bid or sale, including, but not limited to, the prices at which the Products and Related Services will be sold and the amount of Products or Related Services that each; Supplier will commit to the sale and, in order to negotiate those terms, may exchange:

(a) Information (other than information about the costs, inventories, domestic prices, domestic sales, domestic orders, terms of domestic marketing or sales, or U.S. business plans, strategies or methods of any Suppliers of the same or similar goods) that is already generally available to the trade or public;

(b) Information (such as selling strategies, prices, projected demand, and customary terms of sale) solely about the Export Markets, including, but not limited to, reports and forecasts of sales, prices, terms, customer needs, and product specifications by geographic area in the Export Markets and reports and forecasts of product specifications by customers in the Export Markets;

(c) Information on expenses specific to exporting to the Export Markets (such as ocean freight, inland freight to the terminal or port, terminal or port storage, wharfage and handling charges, insurance, agents' commissions, export sales documentation and service, and export sales financing);

(d) Information on U.S. and foreign legislation and regulations affecting sales to the Export Markets; and

(e) Information on STC's activities in the Export Markets, including, but not limited to, customer complaints and quality problems, visits by customers in the Export Markets, reports by foreign sales representatives, selection of new foreign sales representatives, and matters concerning the contract(s) between STC and its Suppliers.

4. For each bid, invitation or request for bid, or sales opportunity in the Export Market, STC may respond individually to the bid, invitation or request for bid or other sales opportunity, and may contact and/or meet individually with its Suppliers to negotiate and agree on the terms of their participation in the bid or sale including, but not limited to, the prices of the Products and Related Services that are Supplier will commit to the sale, and may:

(a) Distribute separately to each Supplier subject to Terms and Conditions (a) below, information about the bid, bid requirements, bidding dates, purchase specifications and any other information necessary in order for STC to compile a responsive bid; and

(b) Solicit and receive, separately from each Supplier, independent quotations for the Products and Related Services, provided STC does not reveal to any Supplier the quotation of any other Supplier or the indentity of the Supplier that provided the quotation.

Member

Sealaska Corporation of Juneau, Alaska is a "member" within the meaning of § 325.2(1) of the Regulations.

A copy of each certificate is available for inspection and copying in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230.

Dated: March 8, 1985.

Richard H. Shay,

Acting General Counsel.

[FR Doc. 85-6017 Filed 3-12-85; 8:45 am]

BILLING CODE 3510-DR-M

National Telecommunications and Information Administration

Frequency Management Advisory Council; Open Meeting

In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2, notice is hereby given that the Frequency Management Advisory Council (FMAC) will meet from 9:00 a.m. to 3:00 p.m. on April 10, 1985, in Room 1605 at the United States Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, D.C. (Public entrance to the building is on 14th Street, between Pennsylvania and Constitution Avenue.)

The Council was established on July 19, 1965. The objective of the Council is to advise the Secretary of Commerce on radio frequency spectrum allocation matters and means by which the effectiveness of Federal Government frequency management may be enhanced. The Council consists of 15 members whose knowledge of telecommunications is balanced in the functional areas of manufacturing, analysis and planning, operations, research, academia and international negotiations.

The principal agenda items for the meeting will be:

(1) Preparation for the first session of the World Administrative Radio Conference on the use of geostationary satellite orbit and the planning of the space services utilizing it.

(2) High-Definition Television.

(3) Preparation for the second session of the World Administrative Radio Conference for the planning of HF bands allocated to the broadcasting service.

(4) Discussion of recent developments relative to radio frequency radiation side effects.

(5) Briefing on planning for U.S. space station and discussion of the spectrum management implications.

The meeting will be open to public observations; and a period will be set aside for oral comments or questions by the public which do not exceed 10 minutes each per member of the public. More extensive questions or comments should be submitted in writing before April 8, 1985. Other public statements

regarding Council affairs may be submitted at any time before or after the meeting. Approximately 10 seats will be available for the public on a first-come first-served basis.

Copies of the minutes will be available on request 30 days after the meeting.

Inquiries may be addressed to the Executive Secretary, FMAC, Mr. Charles L. Hutchinson, National Telecommunications and Information Administration, Room 4706, U.S. Department of Commerce, 14th Street and Pennsylvania Avenuue, NW., Washington, D.C. 20230, telephone 202–377–0805.

Dated: March 8, 1985.

Charles L. Hutchinson,

Executive Secretary, FMAC, National Telecommunications and Information Administration.

[FR Doc. 85–5986 Filed 3–12–85; 8:45 am]

BILLING CODE 3510-60-M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number, if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

Extension

CHAMPUS CHOICE Enrollment Form, CHAMPUS Form 606

The CHAMPUS CHOICE Enrollment Form is used by prospective CHAMPUS CHOICE enrollees. The requested information establishes the eligibility of enrollees, the plan selected, the method of payment and the effective date of participation in the prepaid health care plan.

Individuals or households and businesses or other for profit.

Responses 800.

Burden Hours 264.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, Suite 1204, 1215 Jefferson Davis Highway, Arlington, VA 22202–4302, telephone (703) 746–0664.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Ms. Jane Bomgardner, OCHAMPUS, Aurora, Colorado, 80045–6900, telephone (303) 361–3509.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

March 7, 1985.

[FR Doc. 85–5984 Filed 3–12–85; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number, if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

Extension

CHAMPUS CHOICE Screener Card

The CHAMPUS CHOICE Screener Card is attached to the CHAMPUS CHOICE Brochure. The brochure is mailed to eligible beneficiaries in specific test site areas. The brochure provides a comparision of benefits offered by particular Health Maintanence Organizations. Additional information is obtained by completing and forwarding the card to OCHAMPUS.

Individuals or households.

Responses 4,400.

Burden Hours 2,200.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DoD Clearance Office, WHS/DIOR, Suite 1204, 1215 Jefferson Davis Highway, Arlington, VA 22202–4302, telephone (703) 746–0664.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Ms. Jane Bomgardner, OCHAMPUS, Aurora, Colorado 80045–6900, telephone (303) 361–3509.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

March 7, 1985.

[FR Doc. 85–5985 Filed 3–12–85; 8:45 am]

BILLING CODE 3810-01-M

Department of the Navy

Naval Research Advisory Committee; Working Group on Amphibious Operations; Cancellation of Meeting

This notice is given to advise of the cancellation of the meeting of the Naval Research Advisory Committee Working Group on Amphibious Operations on March 13, 1985 as published in the issue of February 26, 1985 (50 FR 7813).

Dated: March 8, 1985.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 85–5983 Filed 3–12–85; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF ENERGY

Office of Assistant Secretary for International Affairs and Energy Emergencies

International Atomic Energy Agreements; Civil Uses; Proposed Subsequent Arrangement; European Atomic Energy Community

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreements involves approval of the following sale: Contract Number S–EU–839, to Brandhurst Co., Ltd., England, 60,000 curies of tritium gas, for use in the production of microlight tritium light sources.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Dated: March 7, 1985.

For the Department of Energy.

Harold Jaffe,

Acting Deputy Assistant Secretary for International Affairs.

[FR Doc. 85–5948 Filed 3–12–85; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

[Docket No. ERA–FC–84–020; OFP Case No. 55338–9256–01–12]

Order Granting to Willamette Industries an Exemption From the Prohibitions of the Powerplant and Industrial Fuel Use Act of 1978

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice that it has granted to Willamette Industries (Willamette), a permanent emergency purposes exemption from the prohibitions of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* ("FUA" or "the Act") for a new package, emergency standby natural gas/oil-fired boiler, a major fuel burning installation (MFBI), to be located at its corrugated medium mill in Hawesville, Kentucky. The exemption granted permits the use of petroleum or natural gas as the primary energy source for the emergency standby unit.

The final exemption order and detailed information on the proceeding are provided in the **SUPPLEMENTARY INFORMATION** section below.

DATES: The order and its provisons shall take effect on May 13, 1985.

The public file containing a copy of this order and order documents and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E–190, Washington, D.C. 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m.

FOR FURTHER INFORMATION CONTACT:

Ken Workman, Office of Fuels Programs, Economic Regulatory Administration, Forrestal Building, Room GA–093, 1000 Independence Avenue, SW., Washington, D.C. 20585, Phone (202) 252–1730

Steven E. Ferguson, Office of the General Counsel, Department of Energy, Forrestal Building, Room 6D–033, 1000 Independence Avenue, SW., Washington, D.C. 20585, Phone (202) 252–6947

SUPPLEMENTARY INFORMATION: On August 21 1984, Willamette filed a petition with ERA requesting a permanent emergency purposes exemption for a new boiler from the prohibitions of Title II of FUA.[1] The petition requests an exemption to permit the use of petroleum or natural gas as the primary energy source in the proposed new package, emergency standby boiler to be located at its corrugated medium mill in Hawesville, Kentucky. The new emergency standby unit will operate during periods when either of the two boilers at the existing facility are shutdown or turned down in order to ensure continued facility production which would otherwise be reduced due to interruption of alternate fuel supplies, equipment failures, imminent equipment failures, temporary environmental restrictions, and other qualifying emergency conditions. The unit will generate 175,000 lbs/hr steam at 625 psig.

Basis for Exemption Order

The permanent exemption granted by ERA to the new boiler is based upon Willamette's certification, pursuant to section 212(e) of FUA and 10 CFR 503.39(a), that:

1. It will operate and maintain the proposed unit for emergency purposes only; and

2. The use of a mixture of petroleum or natural gas and an alternate fuel in the proposed boiler for which an exemption under 10 CFR 503.38 would be available, would not be economically or technically feasible.

In accordance with the evidentiary requirements of § 503.39(c) (and in addition to the certifications discussed above), Willamette has included as part of its petition:

1. Exhibits containing the basis for the certifications described above, and

2. Environmental certifications, as required under 10 CFR 503.13(b).

Procedural Requirements

In accordance with the procedural requirements of section 701(c) of FUA and 10 CFR 501.3(b), ERA published its Notice of Acceptance of Petition for Exemption and Availability of Certification relating to the proposed unit in the **Federal Register** on October 2, 1984 (49 FR 38979), commencing a 45-day public comment period pursuant to section 701(c) of FUA. As required by section 701 (f) and (g) of the Act, ERA provided copies of the petition to the Environmental Protection Agency and the Federal Trade Commission, respectively, for comments. During this period, interested persons were also afforded an opportunity to request a public hearing. The period for submitting comments and for requesting a public hearing closed on November 16, 1984. No comments were received and no hearing was requested.

NEPA Compliance

On February 23, 1982, DOE published in the **Federal Register** (47 FR 7976) a notice of the amendment to its guidelines for compliance with the National Environmental Policy Act of 1969 (NEPA). Pursuant to the amended guidelines, the grant or denial of certain FUA permanent exemptions, including the permanent exemption for emergency purposes, is among the classes of actions the DOE has categorically excluded from the requirement to prepare an Environmental Impact Statement or an Environmental Assessment pursuant to NEPA (categorical exclusion).

This classification raises a rebuttable presumption that the grant or denial of the exemption will not significantly affect the quality of the human environment. Willamette has certified that it will secure all applicable permits and approvals prior to commencement of operation of the new unit under exemption. ERA has reviewed the completed environmental checklist submitted by Willamette pursuant to 10 CFR 501.15(b), together with other relevant information, and has determined that the granting of the requested exemption does not constitute a major federal action significantly affecting the quality of the human

[1] Title II of FUA prohibits the use of petroleum and natural gas as a primary energy source in new powerplants and certain new major fuel burning installations. Final rules setting forth criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503. Final rules governing the emergency purposes exemption are found at 10 CFR 503.39.

environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969.

Order Granting Permanent Emergency Purposes Exemption

Based upon the entire record of this proceeding, ERA has determined that Willamette has satisfied the eligibility requirements for the requested exemption as set forth in 10 CFR 503.39(a). Therefore, pursuant to section 212(e) of FUA, ERA hereby grants a permanent emergency purposes exemption to Willamette to permit the use of natural gas or petroleum as the primary energy source for its new emergency standby boiler to be located at its mill at Hawesville, Kentucky.

Pursuant to section 702(c) of the Act and 10 CFR 501.69, any person aggreived by this action may petition for judicial review thereof at any time before the 60th day following the publication of this order in the **Federal Register.**

Issued in Washington, D.C., February 26, 1985.

Robert L. Davies,

Director, Coal and Electricity Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 85-6021 Filed 3-12-85; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. TA85-1-1-003]

Alabama-Tennessee Natural Gas Co.; Proposed PGA Rate Adjustment

March 7, 1985.

Take notice that on February 25, 1985, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee), Post Office Box 918, Florence, Alabama 35631, tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheet: Second Substitute Second Revised Sheet No. 4

This tariff sheet is proposed to become effective January 1, 1985. Alabama-Tennessee states that the purpose of this filing is to reflect a reduction in rates filed by Tennessee Gas Pipeline Company in accordance with the Commission's Letter Order of December 12, 1984.

The tariff sheet submitted herewith provides for the following rates:

Rate schedule	Rates after current adjustment
G-1:	
Demand	D_1 $7.53 D_2 08.26¢
Commodity	12.85¢
Gas	348.63¢
SG-1:	
Commodity	21.41¢
Gas	398.08¢
I-1:	
Commodity	16.71¢
Gas	370.53¢

Alabama-Tennessee states that copies of the tariff filing have been mailed to all of its jurisdictional customers and affected States Regulatory Commissions.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 15, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-5918 Filed 3-12-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-6-20-002]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

March 7, 1985

Take notice that Algonquin Gas Transmission Company ("Algonquin Gas") on February 25, 1985 tendered for filing the following tariff sheets to its FERC Gas Tariff Second Revised Volume No. 1:

Substitute Sixth Revised Sheet No. 201 proposed to be effective March 1, 1985
Alternate Third Revised Sheet No. 203, proposed to be effective February 13, 1985
Fourth Revised Sheet No. 203, proposed to be effective March 1, 1985
Fourth Revised Sheet No. 211, proposed to be effective February 13, 1985
Alternate Twelfth Revised Sheet No. 213, proposed to be effective March 1, 1985
Thirteenth Revised Sheet No. 213, proposed to be effective March 1, 1985
Substitute First Revised Sheet No. 241, proposed to be effective March 1, 1985
Substitute Second Revised Sheet No. 311, proposed to be effective March 1, 1985
Second Revised Sheet No. 404, proposed to be effective February 13, 1985
Second Revised Sheet No. 405, proposed to be effective February 13, 1985
Second Revised Sheet No. 424, proposed to be effective February 13, 1985
Second Revised Sheet No. 425, proposed to be effective February 13, 1985

Algonquin Gas states that such tariff sheets are being filed to reflect changes in the underlying rates of its pipeline supplier, Texas Eastern Transmission Corporation ("Texas Eastern") that were placed into effect by a motion filed February 8, 1985 effective February 13, 1985 under its major rate increase filing in Docket No. RP84-108. Such motion rates filed by Texas Eastern also include the revised purchased gas cost reflected in its December 31, 1984 PGA filing.

Algonquin Gas requests that the Commission accept the above-mentioned tariff sheets to be effective as proposed.

Algonquin Gas requests that the Commission grant such special permission as may be necessary to adjust the next month's billing subsequent to the Commission approval to effectuate the rate changes under its Rate Schedules F-2, STB and S-IS as of February 13, 1985.

Algonquin Gas notes that a copy of this filing is being served upon each affected party and interested State commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 15, 1985. Protest will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-5919 Filed 3-12-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GT85-13-000]

Arkla Energy Resources, a Division of Arkla, Inc.; Filing of Tariff Sheets Reflecting Company Name Change

March 8, 1985.

Take notice that on February 28, 1985, Arkla Energy Resources, a division of Arkla, Inc. (Arkla) tendered for filing the following sheets to its FERC Gas Tariff, First Revised Volume No. 1:

Third Revised Sheet No. 2
Original Sheet No. 2a

Arkla also filed Second Revised Cover Sheets to its First Revised Volume Nos. 1, 2, and 3. Arkla states that these sheets are filed to reflect the company's change of name from Arkansas Louisiana Gas Company to Arkla Energy Resources.

Arkla requests waiver of any requirements that might otherwise be applicable to the filing of revised tariff sheets in order that these sheets may become effective on the date of their filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 15, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plum,

Secretary.

[FR Doc. 85-5920 Filed 3-12-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-112-000]

Boundary Gas, Inc.; Change in FERC Gas Tariff

March 8, 1985.

Take notice that on March 5, 1985, Boundary Gas, Inc. ("Boundary") submitted for filing, as part of Original Volume No. 1 of its FERC Gas Tariff, revised tariff sheets to be effective April 1, 1985.

Boundary states that the purpose of this filing is to facilitate implementation of the renegotiated Gas Purchase Contract between Boundary and its supplier, TransCanada PipeLines Limited.

Boundary requests a waiver of the thirty day notice requirement. As good cause therefor, Boundary states that implementation of the renegotiated Gas Purchase Contract will reduce the costs borne by its customers by $1.10 per MMBtu during the month of April 1985.

A copy of this filing has been mailed to the affected Boundary customers and interested state regulatory agencies.

Any person desiring to be heard or protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 15, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-5921 Filed 3-12-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP85-267-000, et al.]

Columbia Gas Transmission Corp. et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Columbia Gas Transmission Corporation

Docket No. CP-85-267-000

March 7, 1985.

Take notice that on February 5, 1985, Columbia Gas Transmission Corporation (Columbia Transmission), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, and Columbia Gulf Transmission Company (Columbia Gulf), 3805 West Alabama Avenue, Houston, Texas 770727, hereinafter referred to jointly as Applicants, filed in Docket No. CP85-267-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Monsanto Company (Monsanto) under their certificates issued in Docket Nos. CP83-76-000 and CP83-496-000, respectively, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in their request which is on file with the Commission and open to public inspection.

Applicants propose to transport up to 5 billion Btu equivalent of natural gas per day on behalf of Monsanto through June 30, 1985. Columbia Gulf, it is said, would recieve the quantities at existing points of receipt in Louisiana and redeliver to Columbia Transmission which would redeliver to Cincinnati Gas and Electric Company (Cincinnati) for ultimate delivery to Monsanto.

Columbia Gulf states that it would charge one of the rates in its Rate Schedule T-2 for its transportation service: Offshore to Kentucky—23.92 cents per dt equivalent of gas and retain 1.69 percent of the total quantity of gas delivered into its system for company-use and unaccounted-for gas; lateral onshore to Kentucky—14.28 cents per dt equivalent of gas and retain 1.50 percent; Rayne, Louisiana, to Kentucky—12.76 cents per dt equivalent of gas and retain 1.50 percent; Corinth, Mississippi, to Kentucky—6.38 cents per dt equivalent of gas and retain 0.75 percent.

Columbia Transmission states that it would charge one of the rates in its Rate Schedule TS-1 for its transportation service: Gas received from Columbia Gulf at Leach, Kentucky—21.16 cents per dt equivalent and gas received from Columbia Gulf at receipt points other than Leach, Kentucky—29.93 cents per dt equivalent provided the volumes are within Cincinnati's total daily entitlements (TDE's). However, Columbia Transmission states, it would charge 32.50 cents per dt equivalent for gas it receives from Columbia Gulf at Leach, Kentucky, and 41.27 cents per dt equivalent for gas received from receipt points other than Leach, Kentucky, if the volumes are in excess of Cincinnati's TDE's. Columbia Transmission further states it would retain 2.43 percent of the total quantity of gas delivered into its system for company-use and unaccounted-for gas. In addition, Columbia Transmission states it would collect the General R & D Funding Unit of the Gas Research Institute for all quantities transported under the transportation arrangement.

Applicants also requests flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by the end-user. The flexible authority requested would apply only to points related to sources of gas supply, not to delivery points in the market area. Applicants would file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities

herein and not to increase those quantities.

Comment date: April 22, 1985, in accordance with Standard Paragraph G at the end of this notice.

2. Northern Natural Gas Company, Division of InterNorth, Inc.

Docket No. CP85–277–000

March 6, 1985.

Take notice that on February 11, 1985, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP85–277–000 a request pursuant to §157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to realign the delivery of contract demand and seasonal service volumes among existing delivery points for its utility customer, Wisconsin Gas Company (Wisconsin Gas) under the certificate issued in Docket No. CP82–401–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection and the Appendix hereto.

Northern proposes to realign volumes of gas which it sells to Wisconsin Gas under Rate Schedules CD–1 and SS–1 of Northern's FERC tariff. It is indicated that Northern was authorized to render natural gas service to Wisconsin Gas under Rate Schedule CD–1 in Docket No. CP80–135–000 on September 25, 1981, and under Rate Schedule SS–1 in Docket No. CP82–145–000 on September 16, 1982. By letter dated February 27, 1984, Wisconsin Gas advised Northern that it wished to realign certain volumes purchased under Rate Schedules CD–1 and SS–1 among existing delivery points commencing with the 1984–1985 contract year, it is stated. Subsequent negotiations between Northern and Wisconsin Gas resulted in the realignment of volumes under Rate Schedules CD–1 and SS–1, it is further stated.[1] Northern avers that the realignment of volumes between existing delivery points is within the firm entitlement presently authorized for Wisconsin Gas and that no changes are proposed by Northern for volumes sold and delivered to Wisconsin Gas under Rate Schedules WPS–1 and PS–1. Northern also avers that the end use of the gas is for residential heating and commercial and industrial base load. It is stated that the proposed realignment would not impact on Northern's peak day and annual deliveries.

[1] See Appendix.

Appendix

RATE SCHEDULE CD–1 ENTITLEMENTS

Delivery point	Existing contract demand	Proposed contract demand	net change + or (–)
Subgroup D			
Rate Zone 3:			
Cuba City	[1] 1,100	750	(350)
Shullsburg	512	500	(12)
Subtotal group D	1,612	1,250	(362)
Rate Zone B:			
Albany	460	415	(45)
Belleville	541	450	(91)
Boscobel	947	1,050	103
Broadhead	1,085	975	(110)
Browntown South Wayne	188	175	(13)
Evansville	1,049	1,275	226
Fennimore	868	750	(118)
Lancaster	1,486	1,125	(361)
Monroe	2,383	3,501	1,118
Monticello	259	350	91
Muscoda	444	550	106
New Glarus	480	550	70
Richland Center	1,968	2,050	82
Subtotal group D	12,158	13,216	1,056
Total group D	13,770	14,466	696
Subgroup E–F			
Rate Zone B			
Alemena	147	218	71
Amery	917	1,060	143
Arkansas	90	110	20
Augusta	595	420	(175)
Baldwin Woodville	787	840	53
Balsam Lake	288	269	(19)
Bangor	302	210	(92)
Barron	982	876	(86)
Black River Falls	300	1,260	960
Jackson County Iron Co	2,100	0	(2,100)
Blair	385	400	15
Bloomer	948	805	(143)
Bruce	480	350	(130)
Cameron	444	431	(13)
Cashton	297	300	3
Centuna	168	229	61
Chetek	627	560	(67)
Clayton	202	150	(52)
Clear Lake	506	539	33
Cumberland	752	840	88
Durand	570	780	210
Ellsworth	826	700	(126)
Elmwood	349	320	(29)
Frederic	524	496	(28)
Hager City	288	386	98
Hixton	106	146	40
Ladysmith	2,036	1,536	(500)
Luck	537	440	(97)
Milltown	152	199	47
New Auburn	205	140	(65)
Osceola	387	569	182
Osseo	428	470	42
Pigeon Falls	64	50	(14)
Plum City	137	158	21
Rice Lake	244	1,249	1,005
St. Croix Falls	598	588	(10)
Sparta	1,940	2,100	160
Spring Valley	377	420	43
Star Prairie	64	60	(4)
Taylor	102	159	57
Tomah	2,341	1,910	(431)
Tunnel City	33	35	2
Turtle Lake	361	406	45
West Salem	433	510	77
Weyerhauser	166	175	9
Subtotal group E	24,565	23,869	696
Utility total	38,335	38,335	0

[1] All volumes are in Mcf.

RATE SCHEDULE SS–1 ENTITLEMENTS

Delivery point	Existing seasonal demand	Proposed seasonal demand	Net change + or (–)
Subgroup D			
Rate Zone 3:			
Cuba City	21	106	85
Shullsburg	107	35	(72)
Subtotal group D	128	141	13
Rate Zone B:			
Albany	83	43	(40)
Belleville	63	54	(9)
Boscobel	146	116	(30)
Broadhead	33	91	58
Browntown South Wayne	–	–	–
Evansville	337	167	(170)
Fennimore	29	47	18
Lancaster	33	141	108
Monroe	836	1,041	205
Monticello	109	39	(70)
Muscoda	134	108	(26)
New Glarus	184	84	(100)
Richland Center	250	293	43
Subtotal group D	2,237	2,224	(13)
Total group D	2,365	2,365	0
Subgroup E–F			
Rate Zone B:			
Alemena	91	90	(1)
Amery	554	450	(104)
Arkansaw	37	50	13
Augusta	161	180	19
Baldwin Woodville	339	360	21
Balsam Lake	119	120	1
Bangor	0	90	90
Barron	107	370	263
Black River Falls	1,742	540	(1,202)
Jackson County Iron Co	–	–	–
Blair	205	150	(55)
Bloomer	254	345	91
Bruce	20	150	130
Cameron	167	180	13
Cashton	111	100	(11)
Centuna	100	100	0
Chetek	296	240	(56)
Clayton	85	70	(15)
Clear Lake	70	230	160
Cumberland	447	360	(87)
Durand	390	330	(60)
Ellsworth	322	300	(22)
Elmwood	142	130	(12)
Frederic	149	210	61
Hager City	50	160	110
Hixton	55	60	5
Ladysmith	160	660	500
Luck	181	190	9
Milltown	52	80	28
New Auburn	60	60	0
Osceola	225	240	15
Osseo	288	200	(88)
Pigeon Falls	26	20	(6)
Plum City	40	70	30
Rice Lake	1,551	546	(1,005)
St. Croix Falls	200	250	50
Sparta	781	900	119
Spring Valley	257	180	(77)
Star Prairie	20	20	0
Taylor	82	70	(12)
Tomah	0	820	820
Tunnel City	5	5	0
Turtle Lake	70	170	100
West Salem	18	210	192
Weyerhauser	102	75	(27)
Subtotal group E	10,131	10,131	0
Utility total	12,496	12,496	0

Comment date: April 22, 1985, in accordance with Standard Paragraph G at the end of this notice.

3. Northwest Pipeline Corporation

Docket No. CP85-141-000

March 7, 1985.

Take notice that on February 7, 1985, Northwest Pipeline Corporation (Applicant), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP-85-141-000, an amendment to its pending application in Docket No. CP85-141-001, pursuant to section 7(c) of the Natural Gas Act so as to reflect certain additional changes in the liquefaction and storage service provided under its existing Rate Schedule LS-1, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

In its pending application filed December 3, 1984, Applicant proposed to modify its Rate Schedule LS-1 to allow Rate Schedule LS-1 customers the option of nominating less than their storage capacity volume of gas for liquefaction and storage on or before March 1 of each year.

By the amendment, Applicant proposes additional modification of its Rate Schedule LS-1 which would allow LS-1 customers to (1) designate a nominated storage volume on or before April 1 (instead of March 1 as originally proposed), (2) redesignate, during the liquefaction period, upon ten-days notice, the nominated storage volume to any level between the buyer's storage capacity balance, at the time of redesignation, and buyer's storage capacity volume, and (3) nominate storage gas for vaporization during the withdrawl period.

Applicant states that the proposed additional modifications to Rate Schedule LS-1 would provide LS-1 customers with greater flexibility in utilizing the liquefaction and storage service. Applicant further states that modifications would not affect the storage demand volumes and storage capacity volumes which are committed to its LS-1 customers or the associated monthly demand and capacity charges which are designed to recover the fixed costs for LS-1 service.

Comment date: March 28, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

4. Panhande Eastern Pipe Line Company and Trunkline Gas Company

Docket No. CP85-288-000 and Docket No. CP85-289-000

March 7, 1985.

Take notice that on February 15, 1985, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP-85-288-000 and Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP85-289-000 applications pursuant to section 7(c) of the Natural Gas Act for certificates of public convenience and necessity authorizing Panhandle and Trunkline to transport and redeliver natural gas for Consolidated Gas Transmission Corporation (Con Gas), all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Panhande states that Con Gas is purchasing natural gas from CNG Producing Company (CNG), which gas is produced in Vermilion Block 318, offshore Louisiana, pursuant to the terms of a September 27, 1984, gas purchase contract. Panhandle further states that CNG would transport the gas for Con Gas from Vermilion Block 318 to an existing point of interconnection between CNG and Panhandle at a subsea tap in Vermilion Block 340. Panhandle requests authorization to transport and redeliver up to 16,500 Mcf of gas per day on a firm basis and up to 8,500 Mcf of gas per day on an interruptible basis for Con Gas pursuant to the terms of a November 13, 1984, transportation agreement between Panhandle and Con Gas. It is indicated that Panhandle would receive the gas from Con Gas at the subsea tap in Vermilion Block 340 and redeliver the gas to Trunkline at an existing interconnection between Panhandle and Stringray Pipeline Company (Stingray) in Vermilion Block 321. Panhandle states that it has commenced this transportation service pursuant to Subpart G of Part 284 of the Commission's Regulations on November 15, 1984. Panhandle states that the service was reported to the Commission in Docket No. ST85-255. It is indicated that the agreement would remain in full force and effect for five years from the date of first delivery and from year to year thereafter; however, at the end of the term either party may terminate the agreement by giving the other party six months notice. Con Gas would pay a monthly charge of $36,465 for the firm volumes tranported by Panhandle and a unit transportation charge of 7.27 cents per Mcf for the interruptible volumes transported, it is averted.

Trunkline proposes to receive an initial quantity of up to 25,000 Mcf of gas per day from Panhandle in Vermilion Block 321 and, utilizing its capacity in the Stingray system and the system of Natural Gas Pipeline Company of America, Trunkline would transport the gas into its own system for redelivery to Transcontinental Gas Pipeline Corporation (Transco) for Con Gas' account. It is indicated that Trunkline would redeliver the gas to Transco at an existing interconnection between Trunkline's and Transco's facilities in Beauregard Parish, Louisiana, or to Transco at the onshore terminus of U-T Offshore System (UTOS) in Cameron Parish Louisiana. Trunkline would deliver equivalent volumes of its own supplies which are transported through the UTOS system in order to redeliver the gas at the UTOS terminus, it is stated. It is further indicated that Transco would make the final delivery to Con Gas. Trunkline states that it has commenced this transportation service pursuant to Subpart G of Part 284 of the Commission's Regulations on November 15, 1984. Trunkline states that the service was reported to the Commission in Docket No. ST85-253. It is indicated that the agreement would remain in full force and effect from the date of first deliveries and from year to year thereafter; however, at the end of the term either party may terminate the agreement by giving the other party six months notice. Con Gas would pay a monthly charge of $76,877 for the firm volumes transported by Trunkline and a unit transportation charge of 15.34 cents per Mcf for the interruptible transportation volumes it is averred. Trunkline avers that 16,500 Mcf of the gas per day it would transport for Con Gas would be on a firm basis and 8,500 Mcf of the gas per day would be on an interruptible basis.

Trunkline avers that Transco is providing its portion of the transportation service under an existing arrangement with Con Gas under Rate Schedule X-56, as approved in Docket No. CP78-328.

This notice does not consolidate the applications.

Comment date: March 28, 1985, in accordance with Standard Paragraph F at the end of this notice.

5. Transcontinental Gas Pipe Line Corporation

Docket No. CP85-294-000

March 7, 1985.

Take notice that on February 15, 1985, Transcontinental Gas Pipe Line Corporation (Applicant), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP85-294-000 an application pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of pipeline looping facilities and the sale and transportation of natural gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it requests authority to construct and operate the following pipeline loops which would cost approximately $23,000,000:

(1) 5.44 miles of 42-inch loop on the main line in Georgia between MP 1131.32 and MP 1136.76

(2) 4.13 miles of 36-inch loop on the Caldwell lateral in New Jersey between Caldwell MP 1812.36 and MP 1816.39.

(3) 3.44 miles of 24-inch loop on the Trenton-Woodbury line in New Jersey between MP 4.79 and MP 8.23.

Applicant states that the cost of facilities would be financed initially through revolving credit arrangements, short-term loans and funds on hand.

Applicant states that these proposed facilities would be used in conjunction with the capacity to be made available by the proposed partial abandonment of service to Columbia Gas Transmission Corporation (Docket No. CP85–264–000) to increase deliveries by 80,436 Mcf per day to six customers in the Philadelphia/New York City area.

Applicant requests authority to render firm sales and/or transportation to the following customers:

(1) The Brooklyn Union Gas Company at 11, 125 Mcf per day.

(2) Elizabethtown Gas Company at 2,337 Mcf per day.

(3) Long Island Lighting Company at 3,974 Mcf per day.

(4) Philadelphia Electric Company at 13,740 Mcf per day.

(5) Philadelphia Gas Works at 19,565 Mcf per day.

(6) Public Service Electric and Gas Company at 29,695 Mcf per day.

Applicant states that the sales would be under its current Rate Schedule CD and transportation service would be rendered under its Rate Schedule FT pending authorization in Docket No. CP85–190–000.

Applicant states that its proposal to render increased service is competitive with a proposal of Texas Transmission Corporation pending in Docket No. CP84–429–001.

Comment date: March 28, 1985, in accordance with Standard Paragraph F at the end of this notice.

6. Trunkline Gas Company

Docket No. CP84–577–004

March 6, 1985.

Take notice that on February 14, 1985, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77001, filed in an amendment in Docket No. CP84–577–004 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to make an off-system sale of natural gas. The request is pursuant to authorization received by the Commission's order issued October 29, 1984, in Docket No. CP84–577–000, authorizing a sales for take-or-pay relief program (STOPR), all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Trunkline proposes to make an off-system sale of gas to Mid Louisiana Gas Company (Mid La) pursuant to a gas sales contract dated February 6, 1984, between Mid La and Trunkline (contract). It is explained that the contract provides for Trunkline to deliver up to 15,000 Mcf of gas per day on an interruptible basis for Mid La's general system supply for resale with Mid La's service areas. Trunkline states it would deliver the gas to an existing point of interconnection between Trunkline and Mid La located in Richland Parish, Louisiana. It is stated that the sales price which Mid La would pay Trunkline is $3.1538 per dt equivalent of gas. The sales price consists of Trunkline's current average cost of gas, the GRI Surcharge, and an added margin pursuant to the authorization received in the STOPR order, it is indicated. Further, it is stated that this service is conditioned upon the availability of capacity sufficient to provide service without detriment or disadvantage to Trunkline's existing customers which are dependent on Trunkline's general system supply. The term of the service requested herein would be from the date of first delivery, with termination to coincide with the expiration under the STOPR program, it is stated.

Comment date: April 22, 1985, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–5783 Filed 3–12–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA85–2–33–000; TA85–2–33–001]

El Paso Natural Gas Co.; Proposed Change in Rates Pursuant to Purchased Gas Cost Adjustments

March 7, 1985.

Take notice that on March 1, 1985, El Paso Natural Gas Company ("El Paso") tendered for filing a notice of change in rates for jurisdictional gas service rendered to customers served by its interstate gas transmission system under rate schedules affected by and subject to section 19, Purchased Gas Cost Adjustment Provision ("PGA"), contained in the General Terms and

Conditions of El Paso's FERC Gas Tariff, First Revised Volume No. 1, which section 19 also applies to certain special rate schedules contained in El Paso's FERC Gas Tariff, Third Revised Volume No. 2 and Original Volume No. 2A.

The filing reflects a decrease in the purchased gas cost of $.0246 per dth and a decrease of $.0783 per dth in the surcharge rate for a total downward adjustment in El Paso's currently effective sales rates of $.1029 per dth attributable to the PGA.

To implement the instant notice of change in rates, El Paso tendered for filing the following revised tariff sheets to its FERC Gas Tariff:

Tariff volume	Tariff sheet
First Revised Volume No. 1	Substitute Third Revised Sheet No. 100; Third Revised Sheet No. 540.
Third Revised Volume No. 2	Substitute Twenty-eighth Revised Sheet No. 1-D.
Original Volume No. 2A	Substitute Twenty-ninth Revised Sheet No. 1-C.

El Paso requests that the Commission grant waiver of its applicable rules, regulations and orders as may be necessary to permit the tendered revised tariff sheets to become effective on April 1, 1985.

El Paso further states that it is tendering First Revised Sheet No. 365 of its FERC Gas Tariff, First Revised Volume No. 1 to be effective January 1, 1985 pursuant to ordering paragraph (C) of the Commission's order issued September 28, 1984 at Docket No. RP84-85-000 which serves to revise the provisions of section 20 of said Tariff (Gas Research Institute General Research, Development and Demonstration Funding Unit Adjustment Provision) to provide that all Gas Research Institute ("GRI") payments received by El Paso shall be remitted to the GRI within fifteen (15) days of receipt.

El Paso states that the filing has been served upon all interstate pipeline system customers of El Paso and all interested state regulatory commissions.

And person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C., 20426, in accordance with §§ 385.214 and 385.211 of 18 CFR. All such motions or protests should be filed on or before March 15, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-5922 Filed 3-12-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-2-34-000; TA85-2-34-001]

Florida Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

March 7, 1985.

Take notice that on March 1, 1985, Florida Gas Transmission Company (FGT), P.O. Box 44, Winter Park, Florida 32790 tendered for filing the following tariff sheets to its F.E.R.C. Gas Tariff to be effective April 1, 1985.

First Revised Volume No. 1

3rd Revised Sheet No. 8
2nd Revised Sheet No. 9

Original Volume No. 2

26th Revised Sheet No. 128

Reason for Filing

3rd Revised Sheet No. 8 and 26th Revised Sheet No. 128 contain revisions to FGT's Rate Schedules G and I and Rate Schedule T-3 respectively to:

(i) Adjust the Primary adjustment to reflect changes in the average cost of gas purchased for sale and company use, net of amounts to be recovered through Incremental Pricing Surcharges; and

(ii) Adjust the Balancing adjustment to amortize over the six-month adjustment period, the balance in the current period Unrecovered Purchase Gas Cost Account as of December 31, 1984.

2nd Revised Sheet No. 9 contains the estimated incremental pricing surcharges for the adjustment period.

The above-mentioned changes are being made pursuant to section 15 (Purchase Gas Adjustment and Incremental Pricing Provision) of the General Terms and Conditions of FGT's FERC Gas Tariff, First Revised Volume No. 1 and § 154.38 *et seq.* of the Commission's Regulations (18 CFR 154.38, *et seq.*)

The net effect of the adjustments being filed for Rate Schedules G and I is to decrease the currently effective rates by .002¢/therm. The net effect on the adjustments being filed for Rate Scheudle T-3 is an increase of .21¢/Mcf.

FGT states that a copy of its filing has been served on all customers receiving gas under its FERC Gas Tariff, First Revised Volume No. 1 and Original Volume No. 2 and interested State Commissions and is being posted.

Any person desiring to be heard or to make any protests with reference to said filing should on or before March 15, 1985, file with the Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make protestants parties in the proceeding. Any person wishing to become a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-5923 Filed 3-12-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ES85-31-000]

Indianapolis Power & Light Co.; Application

March 8, 1985.

Notice is hereby given that on February 27, 1985, Indianapolis Power & Light Company (Applicant) filed an application with the Commission seeking authority under section 204 of the Federal Power Act, to issue from time to time, up to $100,000,000 principal amount of unsecured short-term promissory notes and other short-term obligations with a final maturity date of not later than June 30, 1987.

Any person desiring to be heard or to protest the application should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests would be filed on or before April 1, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-5924 File 3-12-85; 8:45 am]

BILLING CODE 6717-01-M

VOL 50 ISS 49 MR 13 1985 UMI

[Docket No. TA85-1-16-003]

National Fuel Gas Supply Corp.; Compliance Filing

March 8, 1985.

Take notice that on February 28, 1985, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Substitute Second Revised Sheet No. 4, superseding Substitute First Revised Sheet No. 4, and Second Revised Sheet No. 67, superseding First Revised Sheet No. 67, proposed to be effective February 1, 1985 and September 30, 1984, respectively.

National also submits for filing a complete substitute, for the convenience of the Commission, of Schedule 1, Revised Schedule 4, and Pages 107, 108, and 109 of Revised Schedule A to the original filing.

National states that the purpose of these revised tariff sheets and schedules is to comply with the Commission's order dated January 31, 1985, requiring National to, *inter alia*, file revised rates to track any reduction in pipeline supplier rates reflected in the original filing and to delete the reference to "final and nonappealable" language in its First Revised Sheet No. 67.

National also respectfully requests a waiver of any of the Commission's rules and regulations as well as the provisions of its tariff, that may be required in order to permit these tariff sheets to be effective on the designated dates, respectively.

It is stated that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 15, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-5925 Filed 3-12-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-110-000]

Northern Natural Gas Co., Division of InterNorth, Inc., Filing

March 8, 1985.

Take notice that on March 4, 1985, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern) tendered for filing to become a part of its FERC Gas Tariff, Third Revised Volume No. 1.

Substitute 37th Revised Sheet No. 4e.
Original 37th Sheet No. 4e.1
Substitute 38th Revised Sheet No. 4e
Original 38th Sheet No. 4e.1
Substitute 39th Revised Sheet No. 4e.
Original 39th Sheet No. 4e.1
Substitute 40th Revised Sheet No. 4e.
Original 40th Sheet No. 4e.1
Substitute 41st Revised Sheet No. 4e.
Original 41st Sheet No. 4e.1
Substitute 42nd Revised Sheet No. 4e.
Original 42nd Sheet No. 4e.1

The substitute sheets are being filed to effectuate the PGA rates approved in Docket No. TA85-1-59-002 pursuant to Northern's Flexible Pricing—Large Volume Contract Service Rate Schedule.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with the Commission's Rule of Practice (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 15, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene.

Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-5926 Filed 3-12-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA85-2-38-000; TA85-2-38-001]

Ringwood Gathering Co.; Tariff Filing

March 8, 1985.

Take notice that on February 28, 1985, Ringwood Gathering Company (Ringwood) tendered for filing Thirty-Fourth Revised Sheet to its FERC Gas Tariff, Original Volume. Ringwood states that this tariff sheet will revise its Base Tariff Rate to reflect the increase in the system cost of purchased gas and recover the balance accumulated in the unrecovered purchased gas cost account. The proposed effective date for the tariff sheet is April 1, 1985.

Ringwood further states that copies of its filing have been mailed to Northwest Central Pipeline Corporation, Westar Transmission Company and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 15, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-5927 Filed 3-12-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No TA85-2-7-000; TA85-2-7-001]

Southern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

March 7, 1985.

Take notice that Southern Natural Gas Company (Southern) on March 1, 1985 tendered for filing proposed changes to its FERC Gas Tariff, Sixth Revised Volume No. 1, to become effective April 1, 1985. Such filing is pursuant to section 17 (Purchased Gas Adjustment) of the General Terms and Conditions of Southern's FERC Gas Tariff, Sixth Revised Volume No. 1. The proposed changes reflect a net increase in Southern's rate of approximately 1.742¢ per Mcf as a result of the following items:

(1) A Current Adjustment pursuant to section 17.3 of the General Terms and Conditions of Southern's tariff, reflecting an annual decrease in the cost of purchased gas to jurisdictional customers of $5,850,705 or approximately 1.309¢ per Mcf.

(2) A Surcharge Adjustment for unrecovered purchased gas costs of 11.387¢ per Mcf, which is an increase of 3.046¢ per Mcf from the present Surcharge Adjustment.

(3) A Surcharge Adjustment for estimated Demand Charge Credits pursuant to section 9.6(3) of the General

Terms and Conditions of Southern's tariff of (.004¢) per Mcf, which reflects an increase of .005¢ per Mcf from the present DCC Surcharge Adjustment.

Pursuant to § 282.601 (a) (1) (ii) of the Commission's Regulations, Southern is also filing Eleventh Revised Sheet No. 45R with a proposed effective date of April 1, 1985. Such tariff sheet reflects Southern's projected incremental pricing surcharge for the six-month period beginning April 1, 1985, to be zero.

Southern has also proposed in its First Revised Sheet No. 45M to eliminate from its tariff the provision applicable to the Louisiana First Use Tax surcharge, which it states is no longer necessary.

Copies of the filing were served upon the Company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protests should be filed on or before March 15, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-5928 Filed 3-12-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-2-42-000; TA85-2-42-001]

Transwestern Pipeline Co.; Proposed Changes in FERC Gas Tariff

March 8, 1985.

Take notice that Transwestern Pipeline Company (Transwestern) on March 1, 1985 tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following sheets:

Twenty-eighth Revised Sheet No. 5
Twenty-sixth Revised Sheet No. 6
Eleventh Revised Sheet No. 6A

The above tariff sheets are issued pursuant to Transwestern's Purchased Gas Cost Adjustment provision set forth in Article 19 of the General Terms and Conditions of Transwestern's FERC Gas Tariff, Second Revised Volume No. 1. The Purchased Gas Cost Adjustment reflected in these sheets is a decrease of $.1630/dth.

The rate change therein consists of:

(1) A decrease in the cost of Gas Adjustment of $.1078/dth based upon decreases in the projected gas costs; and

(2) A decrease in the Surcharge Adjustment of $.0552/dth due to a decrease in the balance in the Gas Cost Adjustment Account as of December 31, 1984.

The proposed effective date of the above tariff sheets is April 1, 1985.

Copies of the filing were served on Transwestern's jurisdictional customers and interested state Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 15, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-5929 Filed 3-12-85; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-30000/44A; PH-FRL 2791-5]

Initiation of Special Review of Registrations of Pesticide Products Containing Alachlor; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has extended the period for submission of comments in regard to the Notice of Initiation of Special Review of Registrations of Pesticide Products Containing Alachlor.

DATE: The comment period closes on April 9, 1985.

ADDRESS: Three copies of comments, identified by "OPP 30000/44A," should be sent to:

Information Services Section, Program Management and Support Division (TS-767C), Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, bring comments to: Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

The record is available for review at the address given above.

FOR FURTHER INFORMATION CONTACT:

By mail: Diane Ierley, Registration Division (TS-767C), Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 711, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-7451).

SUPPLEMENTARY INFORMATION: On January 9, 1985, EPA issued a Notice of Initiation of Special Review of Registrations of Pesticide Products Containing Alachlor. This notice was published in the **Federal Register** of January 9, 1985 (50 FR 1115). The deadline for submitting comments in the Notice was February 25, 1985. Requests for an additional 60 days in which to submit comments to EPA have been received from the registrant and others who were affected by the determination. They have specified a need for additional time to respond to the risk/benefit analysis set forth in the Alachlor Position Document 1 (PD 1). The Agency also believes granting a limited extension of time will best serve the interest of the Agency and other persons involved in completing the Special Review as soon as possible. Therefore, all registrants, applicants for registration, and other interested persons shall have until April 9, 1985, to submit comments or information. These submissions should be sent to the Document Control Officer at the address given above. All comments should bear the identifying notation "OPP-30000/44A." Comments received on or before April 9, 1985, will be considered before the Agency decides to issue a notice of proposed regulatory action. Comments received after April 9, 1985 shall be considered to the extent feasible. .

All written comments filed will be available for public inspection in the office of the Document Control Officer at the above address from 8 to 4 p.m. Monday through Friday, excluding legal holidays. See the January 9 notice for information on submitting confidential business information.

Dated: February 27, 1985.

Steven Schatzow,

Director, Office of Pesticide Programs.

[FR Doc. 85-5446 Filed 3-12-85; 8:45 am]

BILLING CODE 6560-50-M

VOL 50 ISS 49 MR 13 1985 UMI

[OPP-240060; PH-FRL 2791-6]

Arizona et al.; State Registration of Pesticides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received notices of registration of pesticides to meet special local needs under section 24(c) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, from 17 States. A registration issued under this section of FIFRA shall not be effective for more than 90 days if the Administrator disapproves the registration or finds it to be invalid within that period. If the Administrator disapproves a registration or finds it to be invalid after 90 days, a notice giving that information will be published in the **Federal Register**.

DATE: The last entry for each item is the date the State registration of that product became effective.

FOR FURTHER INFORMATION CONTACT:

Sandra English, Registration Division, (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C.

Office location and telephone number: Rm. 726A, CM #2, 1921 Jefferson Davis Highway, Arlington, VA. (703-557-7116).

SUPPLEMENTARY INFORMATION: Most of the registrations listed below were received by the EPA in December 1984. Receipts of State registrations will be published periodically. Of the following registrations, seven involve a changed-use pattern (CUP). The term "changed-use pattern" is defined in 40 CFR 162.3(k) as a significant change from a use pattern approved in connection with the registration of a pesticide product. Examples of significant changes include, but are not limited to, changes from a nonfood to food use, outdoor to indoor use, ground to aerial application, terrestrial to aquatic use, and nondomestic to domestic use.

Arizona

EPA SLN No. AZ 84 0006. FMC Corp. Registration is for AMMO 2.5EC to be used on Bermudagrass to control fulgorids (insects) in Bermudagrass grown for seed. December 26, 1984.

California

EPA SLN No. CA 84 0215. California Dept. of Food and Agriculture Pest Detection. Registration is for Ethylene Dibromide to be used on citrus fruit post-harvested and destined for export only to control fruit flies. December 26, 1984.

EPA SLN No. CA 84 0225. San Benito County Agricultural Commissioner Registration is for Starling and Blackbird Bait Starlicide Mealworm Solution (1.92%) to be used on outside feed bunkers, preferably in alleyways, out of paths of feed trucks to control starlings and blackbirds. November 14, 1984.

EPA SLN No. CA 84 0241. Rohm and Haas Co. Registration is for Goal 1.6E Herbicide to be used on clover (ladino and red) to control clover grown for seed. December 17, 1984.

Florida

EPA SLN No. FL 84 0029. E.I. du Pont de Nemours. Registration is for DuPont Benlate Fungicide to be used on dandelions to control white mold. December 27, 1984.

Georgia

EPA SLN No. GA 84 0008. FMC Corp. Registration is for Furadan 4F (tank mix w/Nemacur 3SC) to be used on tobacco to control insects. November 5, 1984.

Hawaii

EPA SLN No. HI 84 0008. FMC Corp. Registration is for Wettable Sulphur to be used on papya to control mites. December 27, 1984

EPA SLN No. HI 84 0009. FMC Corp. Registration is for Wettable Sulphur to be used on macadamia nuts to control mites. December 11, 1984.

Idaho

EPA SLN No. ID 84 0013. PureGro Co. Registration is for PureGro Preharvest Dessicant to be used on hops to control downy mildew and broadleaf weeds. December 7, 1984.

EPA SLN No. ID 84 0014. Mobay Chemical Co. Registration is for Sencor 4 Flowable to be used on dry field peas to control chickweed, shepherdspurse, dog fennel, henbit, lambsquarters, wild mustard, and field pennycress (banweed). (CUP) December 7, 1984.

EPA SLN No. ID 84 0015. Mobay Chemical Co. Registration is for Sencor DF 75% Dry Flowable to be used on dry field peas to control chickweed, dog fennel, henbit, lambsquarters, wild mustard, field pennycress (banweed), and shepherdspurse. (CUP) December 7, 1984.

Illinois

EPA SLN No. IL 84 0006. Dow Chemical Co. Registration is for Tordon 10K Pellets Herbicide to be used on permanent grass pastures and rangelands to control unwanted woody plants and various broadleaf weeds. October 11, 1984.

EPA SLN No. IL 84 0007. Lipha Chemicals, Inc. Registration is for Rozol Paraffinized Pellets to be used on orchards to control mice. October 7, 1984.

Louisiana

EPA SLN No. LA 84 0020. ICI Americas, Inc. Registration is for Actellic 5E to be used on grain to control insects. December 26, 1984.

Minnesota

EPA SLN No. MN 84 0004. Hopkins Agricultural Chemical Co. Registration is for Sodium TCA Weed Killer to be used on birdsfoot trefoil grown for seed to control annual grasses such as green and yellow foxtail, alsike, and red clover. December 6, 1984.

Mississippi

EPA SLN No. MS 84 0019. Chevron Chemical Co. Registration is for Ortho Paraquat Plus to be used on alfalfa to control weeds between cuttings. (CUP) December 12, 1984.

EPA SLN No. MS 84 0020. Chevron Chemical Co. Registration is for Ortho Paraquat Plus to be used on fescue and mixed grasses to control weeds. (CUP) December 12, 1984.

Montana

EPA SLN No. MT 84 0008. Lipha Chemicals, Inc. Registration is for Rozol Paraffinized Pellets to be used on orchards to control mice. (CUP) December 6, 1984.

Nebraska

EPA SLN No. NE 84 0009. Dow Chemical Co. Registration is for Tordon 22K Weed Killer (Picloram) to be used on rangeland and pastures to control leafy spurge, musk thistle, and broadleaf weeds. December 19, 1984.

New Jersey

EPA SLN No. NJ 84 0021. SDS Biotech Corp. Registration is for Daconil 2787 Flowable Fungicide to be used on turf to control anthracnose. November 19, 1984.

EPA SLN No. NJ 84 0022. SDS Biotech Corp. Registration is for Daconil 2787 to be used on turf to control anthracnose. November 18, 1984.

Oregon

EPA SLN No. OR 84 0051. Chevron Chemical Co. Registration is for Ortho Lindane No. 200 Spray to be used on forest nurseries to control cone seed insects (*Dioryctria spp.*) December 31, 1984.

EPA SLN No. OR 84 0052. USDA Forest Service. Registration is for MCH–#10 CFR to be used as a controlled-release formulation on wind-felled and standing Douglas fir trees to control Douglas fir beetles. December 11, 1984.

Texas

EPA SLN No. TX 84 0023. Nalco Chemical Co. Registration is for Nalco 7330 to be used on oilfield injection waters to control slime-forming bacteria and sulfate-reducing bacteria. December 19, 1984.

EPA SLN No. TX 84 0024. ICI Americas, Inc. Registration is for Acetellic 5E to be used on stored grain to control seed rotting, mold, and bacteria. December 20, 1984.

EPA SLN No. TX 84 0025. NL Treating Chemicals. Registration is for Surflo–B315W to be used on oil field wells to control microbes. December 27, 1984.

EPA SLN No. TX 84 0026. NL Treating Chemicals. Registration is for Surflo–B315 to be used on oil field wells to control microbes. December 27, 1984.

Virginia

EPA SLN No. VA 84 0007. FMC Corp. Registration is for Furadan 4F to be used on strawberries to control root weevils. December 6, 1984.

EPA SLN No. VA 84 0008. Velsicol Chemical Corp. Registration is for Diphacinone (Ramik Green) to be used on fruit orchards to control meadow voles and pine voles. (CUP) December 19, 1984.

Washington

EPA SLN No. WA 84 0072. Tri-River Chemical Co. Registration is for Chem Hoe 135 & Glean to be used on fallow land to be planted with winter wheat to control weeds. (CUP) March 11, 1984.

(Sec. 24, as amended, 92 Stat. 835 (7 U.S.C 136))

Dated: February 27, 1985.

Steven Schatzow,

Director, Office of Pesticide Programs.

[FR Doc. 85–5447 Filed 3–12–85; 8:45 am]

BILLING CODE 6560–50–M

[OPP–50632 FRL–2794–1]

Issuance of Experimental Use Permits; FMC Corp. et al.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

FOR FURTHER INFORMATION CONTACT: By mail, the product manager cited in each experimental use permit at the address below: Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 402 M Street SW., Washington, D.C. 20460.

In person or by telephone: Contact the product manager at the following address at the office location or telephone number cited in each experimental use permit: 1921 Jefferson Davis Highway, Arlington, VA.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits:

279–EUP–78. Extension. FMC Corporation, 2000 Market St., Philadelphia, PA 19103. This experimental use permit allows the use of 4,599 pounds of the insecticide carbosulfan on alfalfa to evaluate the control of various alfalfa insects. A total of 1,533 acres are involved; the program is authorized only in the States of Arizona, California, Colorado, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Michigan, Minnesota, Missouri, Mississippi, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin, and Wyoming. The experimental use permit is effective from November 1, 1984 to February 5, 1986. This permit is issued with the limitation that all treated crops are destroyed or used for research purposes only. (Jay Ellenberger, PM 25, Rm. 202, Cm#2, (703–557–2386))

279–EUP–79. Extension. FMC Corporation, 2000 Market St., Philadelphia, PA 19103. This experimental use permit allows the use of 491.25 pounds of the insecticide carbosulfan on citrus to evaluate the control of various citrus insects. A total of 65 acres are involved; the program is authorized only in the States of Arizona, California, Florida, and Texas. The experimental use permit is effective from November 1, 1984 to February 13, 1986. This permit is issued with the limitation that all treated crops are destroyed or used for research purposes only. (Jay Ellenberger, PM 25, Rm. 202, Cm#2, (703–557–2386))

279–EUP–87. Extension. FMC Corporation, 2000 Market St., Philadelphia, PA 19103. This experimental use permit allows the use of 1,624 pounds of the insecticide carbosulfan on surghum to evaluate the control of various sorghum insects. A total of 454 acres are involved; the program is authorized only in the States of Arizona, California, Colorado, Iowa, Kansas, Missouri, Nebraska, New Mexico, Oklahoma, South Dakota, and Texas. The experimental use permit is effective from November 5, 1984 to February 22, 1986. This permit is issued with the limitation that all treated crops are destroyed or used for research purposes only. (Jay Ellenberger, PM 25, Rm. 202, Cm#2, (703–557–2386))

279–EUP–89. Extension. FMC Corporation, 2000 Market St., Philadelphia, PA 19103. This experimental use permit allows the use of 2,112 pounds of the insecticide carbosulfan on apples to evaluate the control of various apple insects. A total of 132 acres are involved; the program is authorized only in the States of California, Georgia, Idaho, Indiana, Maine, Maryland, Michigan, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, South Carolina, Virginia, Washington, West Virginia, and Wisconsin. The experimental use permit is effective from November 5, 1984 to March 5, 1986. This permit is issued with the limitation that all treated crops are destroyed or used for research purposes only. (Jay Ellenberger, PM 25, Rm. 202, CM#2 (703–557–2386))

279–EUP–95. Extension. FMC Corporation, 2000 Market St., Philadelphia, PA 19103. This experimental use permit allows the use of 1,617 pounds of the insecticide carbosulfan on field corn to evaluate the control of various insects. A total of 539 acres are involved; the program is authorized in the States of Arizona, Colorado, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Missouri, Nebraska, New Jersey, New Mexico, New York, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin, and Wyoming. The experimental use permit is effective from November 5, 1985 to March 1, 1986. This permit is issued with the limitation that all treated crops are destroyed or used for research purposes only. (Jay Ellenberger, PM 25, Rm. 202, CN#2 (703–557–2386))

8730–EUP–17. Issuance. Health-Chem Corporation, 1107 Broadway, New York, NY 10010. This experimental use permit allows the use of 99 pounds of the biological insecticide (*Z*)-11-hexadecenal on field and sweet corn to evaluate the control of *Heliothis* species. A total of 300 acres are involved; the program is authorized only

in the State of Arizona. The experimental use permit is effective from February 6, 1985 to April 6, 1985. A temporary exemption from the requirement of a tolerance for residues of the active ingredient in or on field and sweet corn has been established. (Timothy Gardner, PM 17, Rm 207, CM#2 (703–557–2690))

707–EUP–95. Extension. Rohm and Haas Company, Independence Mall west, Philadelphia, PA 19105. This experimental use permit allows the use of 33,000 pounds of the chemical hybridizing agent potassium 1-(p-chlorophenyl)-1,4-dihydro-6-methyl-4-oxopyridazine-3-carboxylate on wheat to evaluate its hybridizing potential. A total of 33,000 acres are involved; the program is authorized only in the States of Alabama, Arkansas, Colorado, Georgia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Minnesota, Mississippi, Missouri, Nebraska, North Carolina, North Dakota, Ohio, Oklahoma, South Carolina, Tennessee, Texas, and Virginia. The experimental use permit is effective from March 1, 1985 to March 1, 1986. A temporary tolerance for residues of the active ingredient in or on wheat (second generation, grown out of the hybrid seed and untreated male parent) has been established. (Robert Taylor, PM 25, Rm. 245, CM#2 (703–557–1900))

Persons wishing to review these experimental use permits are referred to the designated product managers. Inquiries concerning these permits should be directed to the persons cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

(Sec. 5, Pub. L. 95–396; 92 Stat. 828 (7 U.S.C. 136c))

Dated: February 28, 1985.

Robert V. Brown,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 85–5708 Filed 3–12–85; 8:45 am]

BILLING CODE 6560–50–M

[PF–405; PH–FRL #2794–6]

Certain Companies; Pesticide Tolerance Petitions; SDS Biotech Corp. et al.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received pesticide, food, and feed additive petitions relating to the establishment and/or amendment of tolerances for certain pesticide chemicals in or on certain raw agricultural commodities.

ADDRESS: By mail, submit comments identified by the document control number (PF–405) and the petition number, attention Product Manager (PM) named in each petition, at the following address: Information Services Section (TS–757C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

In person, bring comments to: Information Services Section (TS–757C), Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed in response to this notice will be available for public inspection in the Information Services Section office at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (TS–767C), Attn: (Product Manager (PM) named in each petition), Environmental Protection Agency, Office of Pesticide Programs, 401 M Street SW., Washington, D.C. 20460.

In person: Contact the PM named in each petition at the following office location/telephone number:

Product manager	Office location/ telephone number	Address
PM–17, Timothy A. Gardner	Rm. 207, CM # 2 (703–557–2690)	EPA, 1921 Jefferson Davis Hwy, Arlington, VA 22202
PM–23, Richard Mountfort	Rm. 247, CM # 2 (703–557–1830)	Do
PM–21, Henry Jacoby	Rm. 227, CM # 2 (703–557–1900)	Do

SUPPLEMENTARY INFORMATION: EPA has received pesticide (PP), food, and feed additive petitions (FAP) relating to the establishment and/or amendment of tolerances for certain pesticide chemicals in or on certain agricultural commodities.

I. Initial Filing

PP 5F3222. SDS Biotech Corp., P.O. Box 348, Painesville, OH 44077. Proposes amending 40 CFR 180.379 by establishing tolerances for the residues of the insecticide cyano (3-phenoxyphenyl)methyl-4-chloro-alpha-(1-methylethyl) benzeneacetate in or on the following commodities:

Commodities	Parts per million (ppm)
Fat of cattle, goats, hogs, horses, and sheep	2.0
Meat of cattle, goats, hogs, horses, and sheep	1.6
Meat byproducts of cattle, goats, hogs, horses and sheep	1.7
Milk	0.4
Milk fat	8.0

The proposed analytical method for determining residues is gas chromatography. (PM–17)

II. Amended Petitions

1. *PP 4F3122.* Zoecon Corp., A Sandoz Co., 975 California Ave., Palo Alto, CA 94304. EPA issued a notice, published in the **Federal Register** of October 17, 1984 (49 CFR 46059), which announced that Zoecon Corp. had submitted PP 4F3122 to the Agency proposing to amend 40 CFR 180.356 by establishing tolerances for the combined residues of the herbicide norflurazon [(4-chloro-5-methyl-amino)-2-(alpha, alpha, alpha-trifluoro-*m*-tolyl)-3(2*H*)-pyridazinone)] and its desmethyl metabolite in or on the following:

Commodities	Parts per million (ppm)
Alfalfa hay, meal and seed	3.0
Small fruits and bernes group (boysenberry, currant, dewberry, elderberry, gooseberry, huckleberry, loganberry, olallie berry, and youngberry)	0.1
Tree nuts (beech nut, brazil nut, butternut, cashew, chestnut, chinquapin, hickory nut, and macadamia nut	0.1

Zoecon Corp. has amended the petition by:

a. Increasing the tolerance level on alfalfa hay and meal from 3.0 ppm to 5.0 ppm; and adding alfalfa forage at 2.0 ppm.

b. Increasing the tolerance level for the small fruits and berries group from 0.1 ppm to 0.2 ppm.

The proposed analytical method for determining residues is gas chromatography. (PM–23)

2. *PP 4F3148 & FAP 4H5443.* Mobay Chemical Corp., Agricultural Chemical Division, P.O. Box 4913, Kansas City, MO 64120. EPA issued a notice, published in the **Federal Register** of January 16, 1985 (50 FR 2340), which

announced that Mobay Chemical Corp. had submitted PP 4F3148 and FAP 4H5443 to the Agency proposing to amend 40 CFR 180.410 (raw agricultural commodities) and 21 CFR Parts 193 (food) and 561 (feed) by establishing tolerances for the combined residues of the fungicide 1-(4-chlorophenoxy)-3,3-dimethyl-1-(1*H*-1,2,4-triazol-1-yl)-2-butanone and its metabolite beta-(4-chlorophenoxy)-alpha-(1,1-dimethylethyl)-1*H*-1,2,4-triazol-1-ethanol in or on the commodities as follows:

Petition ID	CFR affected	Commodities	Parts per million (ppm)
PP 4F3148	40 CFR 180.410.	Tomatoes	0.2
FAP 4H5443	21 CFR Part 193.	Tomato catsup	1.0
		Tomato paste	1.0
FAP 4H5443	21 CFR Part 561.	Tomato dry pomace.	4.0
		Tomato wet pomace.	2.0

Mobay Chemical Corp. has amended the petition by revising the tolerance expression to include two of its metabolites to read: "1-(4-chlorophenoxy)-3,3-dimethyl-1-(1*H*-1,2,4-triazol-1-yl)-2-butanone and its metabolites beta-(4-chlorophenoxy)-alpha-(1,1-dimethylethyl)-1*H*-1,2,4-triazol-1-ethanol, and 4-(4-chlorophenoxy)-2,2-dimethyl-4-(1*H*-1,2,4-triazol-1-yl)-1,3-butanediol."

The proposed analytical method for determining residues is gas liquid chromatography. (PM–21)

(Secs. 408(d)(2) 68 Stat. 512 (21 U.S.C. 346a(d)(2)); 409(c)(1), 72 Stat. 1786 (21 U.S.C. 348(c)(1)))

Dated: March 1, 1985.

Robert V. Brown,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 85–5692 Filed 3–12–85; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–59183A; FRL–2795–7]

Certain Chemicals; Approval of Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for a test marketing exemption (TME), TME–85–20 under section 5(h)(6) of the Toxic Substances Control Act (TSCA). The test marketing conditions are described below.

EFFECTIVE DATE: March 5, 1985.

FOR FURTHER INFORMATION CONTACT: Anna Coutlakis, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–613B, 401 M St. SW., Washington, D.C. 20460, (202)–382–2252.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use and disposal of the substance for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby approves TME 85–20. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions (if any) specified below, will not present any unreasonable risk of injury to health or the environment. The volume imported must not exceed that specified in the application. All other conditions and restrictions described in this notice must be met. The following additional restrictions apply. A bill of lading accompanying each shipment must state that use of the substance is restricted to that approved in the TME. The Company may not manufacture the substance in the United States. The Company may provide the TME substance only to the one customer identified in the application. A Material Safety Data Sheet (MSDS) must accompany shipment, and workers are required to wear specified protective equipment. In addition, the following records must be maintained until five years after the date they are created, and shall be made available for inspection or copying in accordance with section II of TSCA:

1. Records of the quantity of the TME substance imported.

2. The customer receiving the TME substance must maintain records of names of persons who wear respirators during the processing and use of the TME substance.

3. Records of the dates of shipment to the customer specified in TME 85–20 and the quantities supplied in each shipment.

4. Copies of the bill of lading that accompanies each shipment of the TME substance.

T. 85–20

Date of Receipt: January 15, 1985.

Notice of Receipt: January 25, 1985 (50 FR 3594).

Applicant: Confidential.

Chemical: (G) 2-[alpha-(2-hydroxy-3-sulfo-5-ethenylsulfonylphenylazo)-benzylidenehydrazino]-5-substituted, cuprate, sodium salt.

Use: (G) Textile dye.

Production Volume: 300 kilograms.

Number of Customers: One.

Worker Exposure: Processing and use: Dermal and inhalation, a total of 4 workers, up to 6 hrs/day, and less than 129 days/yr.

Test Marketing Period: 6 months.

Commencing on: March 5, 1985.

Risk Assessment: The Agency has identified potential adverse health effects associated with exposure to substances analogous to the TME substance. However, under the conditions outlined above and the restrictions below, the estimated worker exposure to the test market substance will not be significant. The Agency has also identified potential environmental effects associated with releases of the TME substance to surface waters. However, under the conditions of use, the releases are not expected to be significant. Therefore, the test market substance will not pose any unreasonable risk of injury to health or the environment during use.

Additional Restrictions: The Company is prohibited from manufacturing the test market substance in the United States. In addition, the workers are required to wear the protective equipment outlined in the Material Safety Data Sheet which was submitted by the Company with the TME application.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: March 5, 1985.

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 85–5977 Filed 3–12–85; 8:45 am]

BILLING CODE 6560–50–M

VOL 50 ISS 49 MR 13 1985 UMI

[OPTS-51560; FRL-2786-8]

Certain Chemicals; Premanufacture Notices

Correction

In FR Doc. 85-4997, beginning on page 8390 in the issue of Friday, March 1, 1985, make the following corrections:

1. On page 8391, second column, the twenty-fourth line should read, "p 85-523".

2. On page 8392, third column, the ninth through the twenty-second lines should be removed.

BILLING CODE 1505-01-M

[OPTS 140059; BH-FRL 2796-7]

Asbestos; Disclosure of Confidential Business Information to Congress

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Subcommittee on Oversight and Investigations of the Committee on Energy and Commerce of the House of Representatives has requested information from EPA concerning the submission of two draft proposed rules on asbestos to the Office of Management and Budget (OMB) in 1984 and the withdrawal of the draft proposed rules in 1985 to allow for the implementation of section 9 of the Toxic Substances Control Act (TSCA). To comply with this request, EPA will provide the Subcommittee copies of numerous documents surrounding the development of the draft asbestos rules and the decision to invoke section 9. One of those documents contains information which has been claimed as confidential by asbestos miners, importers, and processors.

DATE: Documents containing information claimed as confidential will be provided to the Subcommittee no sooner than March 23, 1985.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW, Washington, D.C. 20466, Toll-Free: (800-424-9065), In Washington, D.C.: (554-1404), Outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION: In a letter to EPA dated February 25, 1985, the Chairman of the Subcommittee on Oversight and Investigations of the House Committee on Energy and Commerce stated that the Subcommittee has initiated an inquiry into the circumstances surrounding EPA's submission of two draft proposed rules on asbestos to the Office of Management and Budget in 1984, the withdrawal of those rules in early 1985, and the subsequent referral of potential asbestos regulation to the Occupational Safety and Health Administration under section 9 of TSCA. As part of that inquiry, the Chairman requested information and copies of documents relating to the drafting of the proposed asbestos rules and to communications among EPA, OMB, and other Federal agencies concerning the draft proposed asbestos rules.

Included in the documents responsive to the Chairman's request in the Regulatory Impact Analysis (RIA) for the draft proposed asbestos rules. That document contains detailed information on all aspects of the asbestos industry, including figures on asbestos consumption, production, importation, pricing, and exposure. Much of this information was obtained directly from asbestos producers and processors under the authority of section 8(a) of TSCA. Some of this information submitted to the Agency and incoporated into the RIA has been claimed confidential by is submitters

Under 40 CFR 2.306(h), EPA is required to provide confidential business information to a congressional subcommittee in response to a written request by its chairman. Before providing that information, however, 40 CFR 2.209(b) requires that the submitters of the information be notified of the proposed disclosure at least 10 days in advance of its occurrence. This **Federal Register** notice is being published to provide notification to all asbestos producers and processors who have submitted asbestos information to EPA under section 8(a) of TSCA that the Agency will permit the House Subcommittee on Oversight and Investigations to have access to the RIA containing information claimed confidential. This access will occur no sooner than 10 days after publication of this notice.

Before being provided access to confidential business information, the Subcommittee staff members designated by the Chairman to have access will be briefed on the appropriate security procedures to be followed and will be informed of the provisions of section 14 of TSCA, which set criminal penalties for unlawful disclosure of confidential business information. Portions of the document containing information claimed confidential will be clearly designated.

The Subcommittee has not indicated where it will review the TSCA confidential business information.

Dated: March 11, 1985.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 85-6143 Filed 3-12-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

C & P Broadcasting et al.; Erratum

In the matter of Applications of:

Peter J. Sautter and Charles J. Sultzman], d.b.a. C&P Broadcasting, Bountiful, UT Req. 99.5 MHz, Channel 258C, 45 kW (H&V), 762 meters.	MM Docket No. 84-1263, File No. BPH-820904A0.
Bountiful Communications of Utah, Inc., Bountiful, UT. Req. 99.5 MHz, Channel 258C, 29 kW (H&V), 1107 meters.	MM Docket No. 84-1264, File No. BPH-820806AF
Bountiful Wireless Corp., Bountiful, UT Req. 99.5 MHz, Channel 258C, 25 kW (H&V), 1161 meters.	MM Docket No. 84-1265, File No. BPH-821117AK.
Shuriee Elliott Tischner, Boutiful, UT. Req. 99.5 MHz, Channel 258C, 30 kW (H&V), 1085 meters.	MM Docket No. 84-1266, File No. BPH-821118AC.
Red Dog Broadcasting, Inc., Woods Cross, UT. Req. 99.5 MHz, Channel 258C, 25 kW (H&V), 1128 meters.	MM Docket No. 84-1267, File No. BPH-821117AI.
Mountain Radio Media, Inc., Layton, UT Req. 99.5 MHz, Channel 258C, 25.07 (V), 29 (H) kW (H&V), 315 meters.	MM Docket No. 84-1268, File No. BPH-821117AP.

For Construction Permit for a new FM Station.

Erratum.

Released: January 28, 1985.

1. By Hearing Designation Order released December 20, 1984, the above-captioned mutually exclusive applications for new stations were designated for hearing. Inadvertently, however, 307(b) and comparative issues were included.

2. Accordingly, it is ordered, That Opinion Paragraph 13 is Applicable, Paragraph 14 is inapplicable and Paragraph 15 is inapplicable.

3. It is further ordred, That Issue Paragraphs 2 and 3 are deleted; the comparative issue is added and is numbered 3.

Federal Communications Commission.

W. Jan Gay,

Assistant Chief,

Audio Services Division, Mass Media Bureau.

[FR Doc. 85-5910 Filed 3-12-85; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL HOME LOAN BANK BOARD

[No. AC-427]

East Texas Savings and Loan Association, Tyler, TX; Final Action Approval of Conversion Application

Dated: March 7, 1985.

Notice is hereby given that on February 13, 1985, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of East Texas Savings and Loan Association, Tyler, Texas, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of said Corporation, 1700 G Street, NW., Washington, D.C. 20552 and at the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of Dallas, 500 East John Carpenter Freeway, P.O. Box 619026, Dallas/Fort Worth, Texas 75261-9026.

By the Federal Home Loan Bank Board.

J. J. Finn,

Secretary.

[FR Doc. 85-5970 Filed 3-12-85; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-426]

The Federal Savings Bank of Evangeline Parish, Ville Platte, LA; Final Action Approval of Conversion Application

Dated: March 7, 1985.

Notice is hereby given that on January 31, 1985, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of The Federal Savings Bank of Evangeline Parish, Ville Platte, Louisiana, for permission to convert to the stock form or organization. Copies of the application are available for inspection at the Secretariat of the Board, 1700 G Street, NW., Washington, D.C. 20552, and at the Office of the Supervisory Agent of the Federal Home Loan Bank of Dallas, Post Office Box 619026, Dallas, Texas 75261-9026.

By the Federal Home Loan Bank Board.

J.J. Finn,

Secretary.

[FR Doc. 85-5974 Filed 3-12-85; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-425]

First Federal Savings and Loan Association of Longview, Longview, TX; Final Action Approval of Conversion Application

Dated: March 7, 1985.

Notice is hereby given that on February 12, 1985, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of First Federal Savings and Loan Association of Longview, Longview, Texas, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of the Board, 1700 G Street, NW., Washington, D.C. 20552, and at the Office of the Supervisory Agent of the Federal Home Loan Bank of Dallas, Post Office Box 619027, Dallas, Texas 75261-9027.

By the Federal Home Loan Bank Board.

J.J. Finn,

Secretary.

[FR Doc. 85-5971 Filed 3-12-85; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-424]

Home Federal Savings and Loan Association of Oklahoma City, Oklahoma City, OK; Final Action Approval of Conversion Application

Dated: March 7, 1985.

Notice is hereby given that on February 12, 1985, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Home Federal Savings and Loan Association of Oklahoma City, Oklahoma City, Oklahoma, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of the Board, 1700 G Street, NW., Washington, D.C. 20552, and at the Office of the Supervisory Agent of the Federal Home Loan Bank of Topeka, Post Office Box 828, Topeka, Kansas 66601.

By the Federal Home Loan Bank Board.

J.J. Finn,

Secretary.

[FR Doc. 85-5972 Filed 3-12-85; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-423]

North Wilkesboro Federal Savings and Loan Association, North Wilkesboro, NC; Final Action Approval of Conversion Application

Dated: March 7, 1985.

Notice is hereby given that on February 12, 1984, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of North Wilkesboro Federal Savings and Loan Association, North Wilkesboro, North Carolina for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of the Board, 1700 G Street, NW., Washington, D.C. 20552, and at the Office of the Supervisory Agent of the Federal Home Loan Bank of Atlanta, 260 Peachtree Street, NW., Atlanta, Georgia 30343.

By the Federal Home Loan Bank Board.

J.J. Finn,

Secretary.

[FR Doc. 85-5973 Filed 3-12-85; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL RESERVE SYSTEM

First National Vermont Corp. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement why a written

presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 4, 1985.

A. **Federal Reserve Bank of Boston** (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *First National Vermont Corporation*, Springfield, Vermont; to acquire 100 percent of the voting shares of The Caledonia National Bank of Danville, Danville, Vermont.

B. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Chemung Financial Corporation*, Elmira, New York; to become a bank holding company by acquiring 100 percent of the voting shares of Chemung Canal Trust Company, Elmira, New York.

C. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Liberty Bancorp, Inc.*, Carbondale, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of Liberty Discount and Savings Bank, Carbondale, Pennsylvania.

D. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, IL 60609:

1. *Dentel Bancorporation*, Victor, Iowa; to become a bank holding company by acquiring at least 80 percent of the voting shares of Victor State Bank, Victor, Iowa, and American Savings Bank, Tripoli, Iowa.

E. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Commerce National Corporation*, Winter Park, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of National Bank of Commerce, Winter Park, Florida, a *de novo* bank.

2. *First Atlanta Corporation*, Atlanta, Georgia; to merge with Bankshares of Georgia, Inc., Montezuma, Georgia, thereby indirectly acquiring Bank of Macon County, Macon, Georgia.

F. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Interstate Bancshares, Inc.*, Houston, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Interstate Bank North, Houston, Texas, a *de novo* bank.

Board of Governors of the Federal Reserve System, March 7, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-5954 Filed 3-12-85; 8:45 am]

BILLING CODE 6210-01-M

MCORP; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 5, 1985.

A. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *MCORP*, Dallas, Texas; to acquire an additional 0.2 percent of the outstanding shares of MTECH, Dallas, Texas, a subsidiary currently held under section 4(c)(5) of the Act, from subsidiary banks of MCORP and to continue to engage in permissible data processing activities.

Board of Governors of the Federal Reserve System, March 7, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-5955 Filed 3-12-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 84N-0102]

Cumulative List of Orphan Products Designations

Correction

In FR Doc. 85-2736, beginning on page 4914 in the issue of Monday, February 4, 1985, make the following correction on page 4915:

In the table in the first column of the page, "Biological Producer Designations", third line in the "Proposed use" column, "belpharospasm" should have read "blepharospasm".

2. In the table in the second column of the page "Drug Product Designations", first line of the sixth entry under "Proposed use" "Generic" should have read "Genetic".

3. In the same table, in the third column of the page, second line of the sixth entry under "Name of drug product trienthylene" should have read "triethylene".

BILLING CODE 1505-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Colorado; Filing of Plats of Survey

March 4, 1985.

The plats of survey of the following described land will be officially filed in the Colorado State Office, Bureau of Land Management, Denver, Colorado, effective 10:00 a.m., March 4, 1985.

The plat, in 6 sheets, representing the dependent resurvey of a portion of Silverton Townsite, and certain boundaries of mineral claims and the survey of Tract 38, in T. 41 N., R. 7 W., New Mexico Principal Meridian, Colorado, Group No. 661, was accepted February 13, 1985.

This survey was executed to meet certain administrative needs of this Bureau.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2020 Arapahoe Street, Denver, Colorado 80205.

Jack A. Eaves,

Acting Chief Cadastral Surveyor for Colorado.

[FR Doc. 85–5934 Filed 3–12–85; 8:45 am]

BILLING CODE 4310–84–M

[NM 59420; out of NM 52335]

New Mexico; Proposed Continuation of Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of Defense proposes that a 39,878.74 acre withdrawal for the Air Force continue for an additional 25 years. The lands will remain closed to surface entry and mining but will be opened to mineral leasing.

DATE: Comments should be received by June 11, 1985.

ADDRESS: Comments should be sent to: Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 1449, Santa Fe, NM 87501.

FOR FURTHER INFORMATION CONTACT: Pauline T. Brown, New Mexico State Office, 505–988–6326.

The Department of Defense proposes that the existing land withdrawal made by Public Land Order 833 of 5–21–52, be continued for a period of 25 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

New Mexico Principal Meridian

T. 16 S., R. 7 E.,
  Secs. 1, 11–14, 23–26, 35, 36: all.
T. 15 S., R. 8 E., NMPM,
  Sec. 1, E½SE¼, SW¼SE¼ and that portion of SE¼SW¼, and the NW¼SE¼ lying southeast of a diagonal line extending from the SW corner of the SE¼SW¼ to the NE corner of the NW¼ SE¼.
  Secs. 10 and 11: all;
  Sec. 12, W½E½, W½;
  Sec. 13, S½NE¼, SE¼, W½;
  Secs. 14, 15, 22, 23, 24, 25, 26, 27: all;
  Sec. 33, that portion lying SE of a diagonal line extending from the SW corner of the section to the SE corner of the NE¼ NE¼;
  Secs. 34, 35, 36: all.
T. 16 S., R. 8 E., NMPM,
  Sec. 1, NE¼NE¼, W½NE¼, NW¼SE¼, SW¼SW¼, N½SW¼, NW¼;
  Secs. 3, 4, 5, 6, 7, 8, 9, 10: all;
  Sec. 11, NE¼, W½SE¼, W½;
  Sec. 12, NW¼NW¼;
  Sec. 13, E½, SW¼, S½NW¼;
  Sec. 14, W½NE¼, SE¼, W½;
  Secs. 15, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30: all;
  Sec. 31, NE¼, N½SE¼, SW¼SE¼, W½;
  Secs. 33 and 34: all.
T. 17 S., R. 8 E.,
  Secs. 1, 3, 4, 9–12, 14, 15;
  Sec. 22, E½NE¼;
  Sec. 23, W½NW¼.

Containing approximately 39,878.74 acres.

The purpose of the withdrawal is for use in connection with Holloman Air Force Base. The withdrawal segregates the land from operation of the public land laws generally, including the mining laws, and the mineral leasing laws. The lands will be opened to the mineral leasing laws to the extent consistent and compatible with military operations.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Chief, Branch of Lands and Minerals Operations, in the New Mexico State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Dated: March 1, 1985.

Charles W. Luscher,

State Director.

[FR Doc. 85–5933 Filed 3–12–85; 8:45 am]

BILLING CODE 4310–FB–M

Montana; Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Pub. L. 97–451, a petition for reinstatement of oil and gas lease M 55518, Madison County, Montana, was timely filed and accompanied by the required rental accruing from the date of termination, January 1, 1985.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $10 per acre and 18⅔% respectively. Payment of a $500 administration fee has been made.

Having met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective as of the date of termination, subject to the original terms and conditions of the lease, the increased rental and royalty rates cited above, and reimbursement for cost of publication of this notice.

Dated: March 1, 1985.

Cynthia L. Embretson,

Chief Fluids Adjudication Section.

[FR Doc. 85–5897 Filed 3–12–85; 8:45 am]

BILLING CODE 4310–ON–M

Public Meetings and Extensions of Comment Period; Draft Revision, Royalty Reduction Guidelines for Federal Coal, Phosphate, Potassium, Sodium, Sulphur, and Tar Sand Leases

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of public meeting, request for public comments and notice of extension of comment period.

SUMMARY: This notice sets forth the date and time for a public meeting to obtain comments on the Draft Royalty Reduction Guidelines for Federal Coal, Phosphate, Potassium, Sodium, Sulphur, and Tar Sand Leases published in the **Federal Register** on February 13, 1985 (50 FR 6062), with a 30-day comment period. The Department of the Interior is extending the comment period to allow the public to develop an appropriate response. Therefore, the comment period is hereby extended for a period of 30 days.

DATES AND ADDRESSES: The meeting will be held as follows: Clarion Hotel, Denver Airport, 3203 Quebec Street, Denver, Colorado 80207, (303) 321–3333, April 3, 1985, 8:30 a.m. Comments should be submitted by April 14, 1985. Comments received or postmarked after that date may not be considered as part of the decisionmaking process on the final guidelines. Comments should be sent to: Director (606), Bureau of Land Management, 18th and C Streets, NW., Washington, D.C. 20240.

SUPPLEMENTARY INFORMATION: Section 39 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 209), provides the authority to reduce royalties below the minimums established by statute and the rate specified in a lease. The regulations at 43 CFR 3485.2(c)

implement that statutory authority for Federal coal leases. The regulations at 43 CFR 3503.3–2(d) implement that authority to act on royalty reduction applications for Federal phosphate, potassium, sodium, and sulphur leases. For tar sand in Federal combined hydrocarbon leases, that authority is implemented at 43 CFR 3140.4 (c)(3), 43 CFR 3141.5–3(b), and 43 CFR 3103.3–1, in accordance with procedures contained at 43 CFR 3503.3–2(d). Regulations which will implement section 39 of the Mineral Leasing Act of 1920, as amended, regarding royalty reductions for oil shale, gilsonite, and hardrock leasable minerals are scheduled for publication as proposed rulemaking by the Bureau of Land Management during 1985. The Bureau of Land Management State Director is authorized to act on royalty reduction applications under the existing and prospective regulations.

The Department has been processing royalty reductions utilizing guidelines promulgated in 1980. Those guidelines are being revised for reasons of consistency among solid leasable minerals, simplification, and policy conformance. These proposed guidelines apply to all solid leasable minerals and dispense with the discounted-cash-flow anlaysis of the 1980 guidelines. Also, the guidelines: Require annual operating costs to exceed annual revenues; strengthen approval criteria; provide for a royalty reduction of up to 3 years with annual recertification of conditions that warranted a royalty reduction in the first year; and, provide for analysis of the applicant's submitted accounting and financial data by the Minerals Management Service. All actions on royalty reduction applications are suspended until publication of final guidelines.

Purpose of the Meeting

The purpose of the meeting is to provide a forum for public comments on the Draft Royalty Reduction Guidelines for Federal Coal, Phosphate, Potassium, Sodium, Sulphur, and Tar Sand Leases.

Recommendations from States, Indian tribes or allotees, industry, interest groups, and other concerned parties will be considered in the development of the final guidelines. Any interested party may make an oral presentation, not to exceed 15 minutes, on aspects of the guidelines implementing the mandate of section 39 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 209).

Those wishing to make a presentation at the public meeting should contact Lisa Everett of the Solid Mineral Operations Division 18th and C Streets, NW., Washington, D.C. 20240; telephone: (202) 343–7722, or FTS 343–7722. There will also be a sign-up sheet for speakers at the meeting room. Persons making oral presentations should bring 10 copies of their testimony to the public meeting. Interested parties not wishing to make an oral presentation may file a written statement with Chief, Solid Mineral Operations Division, at the above address prior to the close of the public comment period on April 14, 1985.

A transcript of each meeting will be available within 30 days for public inspection at the following location: Department of the Interior, Room 3411, 18th and C Streets, NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Mr. Paul W. Politzer, Chief, Solid Mineral Operations Division, (202) 343–7722, FTS 343–7722; or, Mr. Harry Moritz, Chief, Branch of Technical Support, (202) 343–7753, FTS 343–7753.

Dated: March 8, 1985.

James M. Parker,

Acting Director, Bureau of Land Management

[FR Doc. 85–6025 Filed 3–12–85; 8:45 am]

BILLING CODE 4310–84–M

Public Meetings; Draft Guidelines; Mineral Leasing Act, and Request for Public Comments

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Public Meetings. Request for Public Comments.

SUMMARY: This notice sets forth a schedule of public meeting to obtain comments on the adequacy of the draft guideline on section 2(a)(2)(A) of the Act of February 25, 1920, as amended (otherwise known as the Mineral Leasing Act (MLA)) (30 U.S.C. 201(a)(2)(A)).

DATES AND ADDRESSES: The meetings will be held as follows: Department of the Interior, Room 7000–B, 18th and C Streets, NW., Washington, D.C. 20240, March 27, 1985, 8:30 a.m.; Clarion Hotel, Denver Airport, 3203 Quebec Street, Denver, Colorado 80207, (303) 321–3333, April 2, 1985, 8:30 a.m.

SUPPLEMENTARY INFORMATION: Section 2(a)(2)(A) of MLA provides that any entity that holds and has held a Federal coal lease for 10 years when such entity is not, except as provided for in section 7(b) of MLA, producing coal from the lease deposits in commerical quantities, cannot be issued a Federal lease on or after August 4, 1986.

The Bureau of Land Management has proposed guidelines (50 FR 6398) that detail the interrelationships of the section 2(a)(2)(A) prohibition to other aspects of MLA, as codified at 43 CFR Part 3400. The Bureau of Land Management is studing the following aspects of the language of section 2(a)(2)(A): What does the term "producing in commerical quantities" mean in terms of amount of production and time over which it must be produced; should the Secretary refuse to accept relinquishment or approve assignment (or make an assignment irrevocable by disapproving reassignments) of Federal coal leases which would otherwise become subject to the section 2(a)(2)(A) prohibition; what criteria should the Secretary consider in determining what constitutes an "affiliate" under section 2(a)(2)(A) and what types of factual tests should the Secretary employ in making the determination that an entity is "controlled by or under common control with" another entity; and, must the Bureau of Land Management amend its corporate qualification and disclosure regulations to obtain additional information, or current information, on the stock ownership of bidders and lease applicants in order to implement this provision?

Purpose of the Meetings

The purpose of these meetings is to provide a forum for public comments on these issues and to ensure that the comments are evaluated for inclusion in the publication of the final guidelines in the **Federal Register**.

Recommendations from States, Indian tribes or allottees, industry, interest groups, and other concerned parties will be considered in the development of the final guidelines. Any interested party may make an oral presentation, not to exceed 15 minutes, on aspects of the draft guidelines for section 2(a)(2)(A).

Those wishing to make a presentation at either public meeting should contact Lisa Everett of the Solid Mineral Operations Division (660), 18th and C Street, NW., Washington, D.C. 20204; Telephone: (202) 343–7722, or FTS 343–7722. There will also be a sign-up sheet for speakers at the meeting room. Persons making an oral presentation should bring 10 copies of their testimony to the public meeting. Interested parties not wishing to make an oral presentation may file a written statement with the Chief, Solid Mineral Operations, Division, at the above address prior to the close of the public comment period on April 16, 1985.

A transcript of each meeting will be available within 30 days for public inspection at the following location: Department of the Interior, Room 3411,

18th and C Streets, NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Mr. Paul W. Politzer, Chief, Solid Mineral Operations Division, (202) 343–7722, FTS 343–7722.

Dated: March 8, 1985.

James M. Parker,

Acting Director, Bureau of Land Management.

[FR Doc. 85–6026 Filed 3–12–85; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

DEPARTMENT OF ENERGY

Western Area Power Administration

Colorado-Big Thompson Pumped-Storage Unit, CO; Solicitation of Non-Federal Participation in Proposed Planning Investigation Public Information Forum and Expression of Peaking Power Needs

In accordance with current Administration policy, the Bureau of Reclamation, Department of the Interior, and Western Area Power Administration, Department of Energy, are inviting non-Federal agencies and organizations to indicate interest in cost-sharing as partners on a planning investigation for the Colorado-Big Thompson Pumped-Storage Unit.

This invitation is part of the Administration's goal to achieve a viable cost-sharing partnership between Federal and non-Federal interests in all phases of water and energy resource planning. The investigation is presently being considered for future planning activities contingent upon a 50 percent non-Federal cost-sharing goal. Planning could begin as early as March 1985 depending upon cost-sharing interest.

The Western Energy Expansion Study conducted by the Bureau of Reclamation in 1976 and 1977 recommended further evaluation of pumped-storage facilities for the Colorado-Big Thompson Project. The Colorado-Big Thompson Pumped-Storage Unit investigation would take 3 years to complete and would evaulate the feasibility of obtaining an additional 108 megawatts of peaking capacity by constructing two 53 megawatt units. The Pumped-Storage Unit may be integrated within the Pick-Sloan Missouri Basin Program. A special report completed by Reclamation's Lower Missouri Region in April 1978 identified the pumped-storage potential in the project.

Should the Colorado-Big Thompson Pumped-Storage facilities be constructed, they would provide an alternate means of supplying water to Carter Lake should the pumping unit sustain a failure or malfunction during the pumping season. In addition, a potential cost saving may result because the cost of pumping would not be incurred to move water directly to Carter Lake. The 3-year plan formulation study costs are estimated at $540,000. Advance planning and construction would require an additional 6 or 7 years.

A partnership of Federal and non-Federal interests in both the planning and construction phases of water and energy is a primary objective in current Federal policy on resource development. Study participation may consist of inkind services and/or funding by the non-Federal partners. Selection of study participants will be accomplished by Bureau of Reclamation and Western Area Power Administration in accordance with preference provisions outlined in section 9c of the Reclamation Project Act of 1939. Study participants would have first right of refusal to participate in the construction of the project, but will be required to provide 100 percent upfront financing for their share of the project.

As noted above, the Colorado-Big Thompson Pumped-Storage Unit may be operationally and financially integrated with the Western Division, Pick-Sloan Missouri Basin Program Power System. If the project is authorized by Congress, those amounts advanced by non-Federal power contractors would be financially integrated as capital costs with other project costs for ratesetting purposes, and would be returned to those purchasers advancing funds throughout the contract period through credits which include interest costs incurred by such purchasers for funds contributed to the Secretary of the Interior for construction of the Colorado-Big Thompson Pumped-Storage Unit. Other options may be considered during negotiation of cost-sharing agreements.

In accordance with Administration policy on Federal and non-Federal participation in resource planning, Reclamation and Western will utilize the public process to identify participants and needs that may be associated with peaking power development in the Pick-Sloan Missouri Basin Program at the pumped-storage site. Reclamation and Western will, therefore, hold a public information forum on March 28, 1985, at 9:30 a.m. in the Holiday-Northglenn, Northglenn, Colorado, to fully explain the project and process and a public comment forum to receive public input on the proposal. Reclamation and Western will then contract with interested parties for advancement of funds or contribution of services to Reclamation or Western, as the case may be, of at least one-half the costs of the required preliminary planning investigations.

Letters of interest in participating in this planning investigation are invited and should be sent by April 20, 1985, to Regional Director, Lower Missouri Regional Office, Bureau of Reclamation, Attention: Code LM–700, P.O. Box 25247, Denver, Colorado 80225.

Entities that are not certain at this time about committing to participate in the project through the planning process are requested to indicate estimated peaking capacity needs in the 1990–2010 timeframe so that the optimum project can be evaluated. Western, pursuant to existing statutory marketing authority, will determine final allocations of the entire output of the powerplant, subject to a recognition of the planning study participants' rights of first refusal to acquire a proportionate share of the project (if constructed), and, if necessary, establish power rates sufficient to recover the annual costs of operating the facility. In addition, Western will coordinate among participants regarding planning, design, and construction of transmission systems; related power transmission operation activities; and the market analysis of that share of the project financed by the United States during the planning process. Western will also conduct an additional marketing process for any remaining uncommitted capacity in the project and will seek additional participants who would be interested in purchasing such capacity if third party financing can be made available.

Please contact L.L. Nelson, telephone (303) 236–0510 or FTS 776–0510 at the same address for additional information concerning this investigation. Power marketing questions should be directed to John F. Scott of Western's Loveland/Fort Collins Area Office at (303) 330–7327.

Dated: March 8, 1985.

Robert A. Olson,

Acting Commissioner, Bureau of Reclamation.

Dated: March 1, 1985.

William H. Clagett,

Acting Administrator, Western Area Power Administration.

[FR Doc. 85–5956 Filed 3–12–85; 8:45 am]

BILLING CODE 4310–09–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Development Operations Coordination Document; Texaco USA

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Texaco USA has submitted a DOCD describing the activities it proposes to conduct on Lease OCS 0310, Block 229, South Marsh Island Area, offshore Louisiana. Proposed plans for the above area provided for the development and production of hydrocarbons with support activities to be conducted from onshore bases located at Louisa and Morgan City, Louisiana.

DATE: The subject DOCD was deemed submitted on March 1, 1985.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 835-0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: March 1, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-5912 Filed 3-12-85; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Texaco USA

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Texaco USA has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 5182, Block 202, West Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from onshore bases located at Cameron and Morgan City, Louisiana.

DATE: The subject DOCD was deemed submitted on March 1, 1985. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the DOCD from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, *Attention OCS Plans*, Post Office Box 44396, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 835-0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: March 1, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-5913 Filed 3-12-85; 8:45 am]

BILLING CODE 4310-MR-M

Mobil Oil Exploration and Producing Southeast Inc.; Development Operations Coordination Document

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Mobil Oil Exploration and Producing Southeast Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 4200, Block 618, West Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Cameron, Louisiana.

DATE: The subject DOCD was deemed submitted on March 4, 1985. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the DOCD from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, *Attention OCS Plans*, Post Office Box 44396, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Mr. Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the

public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Mangement Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: March 5, 1985

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-5988 Filed 3-12-85; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

San Antonio Missions Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the San Antonio Missions Advisory Commission will be held at 1:30 p.m., Monday, April 1, 1985, at the Federal Building, Room A-206, 727 E. Durango Boulevard, San Antonio, Texas.

The San Antonio Missions Advisory Commission was established pursuant to Pub. L. 95-629, Title II, November 10, 1978. The purpose of the commission is to advise the Secretary of the Interior or his designee on matters relating to the park and with respect to carrying out the provisions of the statute establishing the San Antonio Missions National Historical Park.

Matters to be discussed at this meeting include:

—Minutes of Previous Meeting
—Recognition of outgoing commission members (Dr. Felix Almaraz, Mrs. Elizabeth Barnes, Mr. Brad Breuer, Mr. Henry Guerra, and Mrs. Alice Wyatt)
—Park Operations Update
—Los Compadres Update
—Archdiocesan Report
—City Report
—County Report
—Open Remarks

The meeting will be open to the public, however, facilities and space for accommodating members of the public will be limited and persons will be accommodated on a first-come, first-serve basis.

Any member of the public may file a written statement concerning the matters to be discussed with the Superintendent, San Antonio Missions National Historical Park.

Persons wishing further information regarding this meeting or who wish to submit a written statement may contact Jose A. Cisneros, Superintendent, 727 E. Durango, Room A612, San Antonio, Texas 78206, Telephone (512) 229-6009.

Minutes of the meeting will be available for public review approximately four weeks after the meeting at the office of the San Antonio Missions National Historical Park.

Dated: March 5, 1985.

Robert I. Kerr,

Regional Director, Southwest Region.

[FR Doc. 85-5992 Filed 3-12-85; 8:45 am]

BILLING CODE 4310-70-M

Availability of Scoping Document and Notice of Public Scoping Workshops, Prince William Forest Park

Pursuant to the preparation of a General Management Plan and a Land Protection Plan, the National Park Service has prepared a scoping document that briefly identifies issues that need resolution to insure protection of park resources and provide for visitor use

Public workshops will be held to solicit various opinions and concerns on these issues. Meeting times and places are as follows: April 10, 1985 at 7:30 p.m. in the cafeteria of Potomac Senior High School, 16706 Jefferson Davis Highway, Dumfries, Virginia; and April 11, 1985 at 7:30 p.m. at the Town Hall of Dumfries, 101 Main Street, Dumfries, Virginia. Please contact the superintendent of Prince William Forest Park at 703-221-7181, 5 days prior to the meeting if an interpreter is needed for the hearing impaired.

Written comments on this scoping document are invited and will be accepted until Arpil 30, 1985. Written comments should be sent to: Superintendent, Prince William Forest Park, P.O. Box 209, Triangle, Virginia 22172.

Copies of the scoping document are available by writing to the above address.

Dated: March 8, 1985.

Manus J. Fish, Jr.,

Regional Director, National Capital Region.

[FR Doc. 85-5957 Filed 3-12-85; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency For International Development

Mission Director in Egypt; Amendment to Redelegation No. 113.8

The following amendment is made to a document published in the **Federal Register** on December 17, 1984 (49 FR 49001) and corrected on March 1, 1985 (50 FR 8404).

1. I hereby amend Redelegation of Authority No. 113.8 by deleting paragraph 12 in its entirety and by inserting the following paragraph 12 in its place:

"12. The authorities contained herein may be further redelegated as follows:

(a) The authorities contained in Section 1 with respect to project and non-project assistance not to exceed $20 million over the approved life of the project and the authorities contained in Section 2 not to exceed a cumulative life of project funding of $30 million may be exercised by an officer serving as "Acting Mission Director" and may also be redelegated to the Mission Director's principal deputy;

(b) With the exception of the authority to approve trust fund agreements and to approve project and non-project assistance agreements (both loan and grant) and amendments thereto, the authorities contained in Sections 3, 4, and 5 may be exercised by an officer serving as "Acting Mission Director" and may also be redelegated to the Mission Director's principal Deputy. With the exception of the authority to approve and execute trust fund and project and non-project assistance agreements, the authorities contained in Sections 3, 4 and 5 may be further redelegated under the general supervision of the Mission Director;

(c) The authorities contained in Sections 6(a) and 6(b) not to exceed $500,000 per transaction (exclusive of transportation costs) may be exercised by an officer serving as "Acting Mission Director" and may be further redelegated under the general supervision of the Mission Director;

(d) The authorities contained in Section 7 not to exceed $100,000 for services and $25,000 (exclusive of transportation costs) for commodities may be exercised by the "Acting Mission Director" and may be further redelegated under the general supervision of the Mission Director;

(e) The authorities contained in Section 8 for transactions not to exceed $500,000 may be exercised by the

"Acting Mission Director" and may be further redelegated under the general supervision of the Mission Director;

(f) The authorities contained in Section 9 to extend terminal dates for signing project agreements, and meeting initial and additional conditions precedent for a cumulative period of not to exceed 180 days for each, and to extend terminal dates for requesting disbursement dates and Project Assistance Completion Dates (PACDs) for a cumulative period of not to exceed 365 days for each may be exercised by an officer serving as "Acting Mission Director" and may be further redelegated under the supervision of the Mission Director."

2. All other terms, conditions and provisions of the Redelegation remain in full force and effect.

Dated: January 22, 1985.

W. Antoinette Ford,

Assistant Administrator, Agency for International Development.

[FR Doc. 85-5940 Filed 3-12-85; 8:45 am]

BILLING CODE 6116-01-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-199]

Certain Anodes for Cathodic Protection and Components Thereof; Initial Determination Terminating Respondents on the Basis of Settlement Agreement

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondents on the basis of a settlement agreement: Harco Corporation, Hugh Jennings & Co., Ltd., and Jennings Winch & Foundry, Ltd.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on March 4, 1985.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

Written Comments

Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street, NW., Washington, D.C. 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202-523-0176.

Issued: March 4, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-6001 Filed 3-12-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-154]

Certain DOT Matrix Line Printers and Components Thereof; Issuance of Action and Order Provisionally Accepting Motion for Modification of Consent Order Agreement and Declassification of Information Under Protective Order; Delegation of Motion to Chief Administration Law Judge

AGENCY: International Trade Commission.

ACTION: Issuance of Action and Order provisionally accepting motion for modification of consent order agreement and declassification of information under protective order, subject to Article V of the consent order agreement, and delegation of motion to the Chief Administrative Law Judge.

SUMMARY: The Commission has provisionally accepted the motion of complainant Printronix, Inc. for modification of consent order agreement in the above-captioned investigation and for declassification of information under protective order, subject to Article V of the consent order agreement, and has delegated the matter to the Chief Administrative Law Judge.

FOR FURTHER INFORMATION CONTACT: Brenda A. Jacobs, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-1627

SUPPLEMENTARY INFORMATION: Provisional acceptance means that the motion has been accepted for processing in accordance with the procedure contained in § 211.57 of the Commission's rules and practice and procedure (19 CFR 211.57), not that the motion has been tentatively granted. Pursuant to the Action and Order and § 211.57 of the Commission's rules, copies of the Action and Order, the motion, and this notice shall be served upon each former party to the investigation. Further, the Commission has delegated this matter to the Chief Administrative Law Judge for submission of a recommended determination to the Commission as soon as practicable, preferably within 30 days of the issuance of the Commission's action and order.

By order of the Commission.

Issued: March 8, 1985.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-5995 Filed 3-12-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-184]

Certain Foam Earplugs; Issuance of Exclusion Order

AGENCY: International Trade Commission.

SUMMARY: Issuance of a general exclusion order.

ACTION: The Commission has issued a general exclusion order in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Carol McCue Verratti, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0079.

SUPPLEMENTARY INFORMATION: The administrative law judge (ALJ) issued an initial determination on November 30, 1984, in which he determined that there has been a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the unauthorized importation and sale of certain foam earplugs which infringe claims 1 and 11 of U.S. Letters Patent Re 29,487. In accordance with the Commission's notice of January 30, 1985

(50 FR 4277), a violation of section 337 exists in the unauthorized importation and sale of certain foam earplugs the tendency of which unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States. Pursuant to section 337(g), the Commission has determined that 325 percent of the entered value is the appropriate bond requirement for entry of infringing foam earplugs during the 60-day Presidential review period.

Copies of the Commission's Action and Order, its Opinion, the nonconfidential version of the ALJ's ID, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

By order of the Commission

Issued: March 4, 1985.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–6003 Filed 3–12–85; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–204]

Certain Golf Carts and Wheels Therefor; Initial Determination Terminating Respondents on the Basis of Settlement Agreement

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondents on the basis of a settlement agreement. Diversified Products Corporation (DP) and Glotex International, Inc. (Glotex).

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on March 6, 1985.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

Written Comments

Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street, NW., Washington, D.C. 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202–523–0176.

By order of the Commission.

Issued: March 6, 1985.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–5998 Filed 3–12–85; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–200]

Certain Ink Jet Printing Systems and Components Thereof; Commission Decision not to Review Initial Determination Terminating Investigation on the Basis of a Settlement Agreement

AGENCY: International Trade Commission.

ACTION: Termination of investigation on the basis of settlement agreement.

SUMMARY: The U.S. International Trade Commission has determined not to review an initial determination (ID) terminating the above-captioned investigation on the basis of a settlement agreement. On January 18, 1984, complainant A.B. Dick Company and respondents American Technologies, Inc., Domino Printing Sciences, Ltd., and Charles Bucolt (individually and doing business as Franchise Mailing Systems), filed a joint motion to terminate the above-referenced investigation on the basis of a settlement agreement among the parties. On January 30, 1984, the administrative law judge issued an ID granting the joint motion and terminating the investigation on the basis of the settlement agreement.

FOR FURTHER INFORMATION CONTACT: Judith M. Czako, Esq., Office of the General Counsel, U.S. International Trade Commisison, telephone 202–523–0359.

SUPPLEMENTARY INFORMATION: This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission §210.53 (19 CFR 210.53). Notice of the ID was published in the **Federal Register** of February 6, 1985 (50 FR 5137). No petitions for review of the ID were filed, nor were any comments received from Government agencies or the public.

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commisison, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161.

By order of the Commission.

Issued: March 4, 1985.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–6002 Filed 3–12–85; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–210]

Certain Motor Graders With Adjustable Control Consoles and Components Thereof; Initial Determination Terminating Respondents on the Basis of Settlement Agreement

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondents on the basis of a settlement agreement: Komatsu Ltd. and Komatsu America Corp.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of

the initial determination. The initial determination in this matter was served upon the parties on March 6, 1985.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161

Written Comments

Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street, NW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202–523–0176.

By order of the Commission

Issued: March 6, 1985.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–5999 Filed 3–12–85; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 731–TA–183 (Final)]

Large-Diameter Carbon Steel Welded Pipes From Brazil

AGENCY: International Trade Commission.

ACTION: Termination of investigation.

SUMMARY: On March 1, 1985, petitioner in the subject investigation (Berg Steel Pipe Corporation) withdrew its petition stating, with respect to the cited investigation, that ". . . Berg is withdrawing its petition in this proceeding . . . ." On March 1, 1985, Commerce terminated its investigation Accordingly, pursuant to § 207.40(a) of the Commission's rules of practice and procedure (19 CFR 207.40(a)), the following investigation is terminated: Large-Diameter Carbon Steel Welded Pipes from Brazil (investigation No. 731–TA–183 (Final)).

EFFECTIVE DATE: March 4, 1985.

FOR FURTHER INFORMATION CONTACT: Valerie Newkirk (202–523–0339), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436.

Authority: This investigation is being terminated under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.40 of the Commission's rules (19 CFR 207.40).

By order of the Commission

Issued: March 5, 1985

Kenneth R. Mason,

Secretary.

[FR Doc. 85–6000 Filed 3–12–85; 8:45 am]

BILLING CODE 7020–02–M

[332–207]

Monthly Reports Providing Information on the U.S. Auto Industry

AGENCY: International Trade Commission.

ACTION: Institution of investigation under section 332(b) of the Tariff Act of 1930 (19 U.S.C. 1332(b)) to provide monthly data on the U.S. automobile industry.

EFFECTIVE DATE: March 6, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. James McElroy or Mr. John Creamer, Machinery and Equipment Division, Office of Industries, U.S. International Trade Commission, Washington, D.C. 20436 (telephone 202–523–0258 and 202–523–0299, respectively).

Background

At the request of the Subcommittee on Trade, Committee on Ways and Means, U.S. House of Representatives, and in accordance with the provisions of section 332(b) of the Tariff Act of 1930, the Commission has instituted investigation No. 332–207, for the purpose of providing monthly data on the U.S. automobile industry. The monthly reports will include data on automobile production, imports, exports, inventories, retail sales, price adjustments, and employment. The report will also include retail prices of selected comparable Japanese and U.S. produced automobiles on a monthly basis.

The reports issued under this investigation will be similar in scope to those issued under recently completed investigation No. 332–177, of like title. Notice of investigation No. 332–177 was published in the **Federal Register** of February 1, 1984 (49 FR 4049).

By order of the Commission

Issued: March 7, 1985

Kenneth R. Mason,

Secretary.

[FR Doc. 85–5997 Filed 3–12–85; 8:45 am]

BILLING CODE 7020–02–M

Termination of Countervailing Duty Investigations Concerning Oleoresins from Spain and India

AGENCY: International Trade Commission.

ACTION: Termination of countervailing duty investigation under section 104(b)(1) of the Trade Agreements Act of 1979, with regard to oleoresins from Spain and India.

EFFECTIVE DATE: March 5, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Tedford Briggs, Office of Investigations, telephone number (202) 523–4612.

SUPPLEMENTARY INFORMATION: The Trade Agreements Act of 1979, subsection 104(b)(1), requires the Commission in the case of a countervailing duty order issued under section 303 of the Tariff Act of 1930, upon the request of a government or group of exporters of merchandise covered by the order, to conduct an investigation to determine whether an industry in the United States would be materially injured, or threatened with material injury, or whether the establishment of such an industry would be materially retarded, if the order were to be revoked. On June 17, 1982, the Commission received a request from the Government of Spain for the review of the countervailing duty order on oleoresins from Spain (T.D. 79–71). Notice of this countervailing duty order was published on February 28, 1979, in the **Federal Register** (44 FR 11214). On December 28, 1982, the Commission received a similar request from the Government of India for the review of the countervailing duty order on oleoresins from India (T.D. 79–107). Notice of this countervailing duty order was published on April 9, 1979, in the **Federal Register** (44 FR 21009).

The Commission received a letter on January 7, 1985, from Kalsec, Inc., the original petitioner for the countervailing duty orders, stating that it withdraws its requests for the imposition of countervailing duties under the above-referenced countervailing duty orders.

While there is no provision in the Trade Agreements Act of 1979, or in its legislative history, permitting termination of a transition case investigation, termination of a properly

instituted countervailing duty investigation is permitted under section 704(a) of the Tariff Act of 1930. That section directs the Commission to solicit public comment prior to termination and approve such termination only if it is in the public interest. Termination authority is explicit in cases based on newly filed countervailing duty petitions; it is implied with respect to existing countervailing duty orders.

On January 24, 1985, the Commission published a notice in the **Federal Register** (50 FR 3422) requesting public comment by February 25, 1985, on the proposed termination of the Commission's investigations on oleoresins from Spain and India. No adverse comments were received in response to the Commission's notice

The Commission is therefore terminating its investigations on oleoresins from Spain (T.D. 70–71) and India (T.D. 79–104). The termination of these investigations has the same effect as determinations that an industry in the United States would not be materially injured, or threatened with material injury, nor would the establishment of such an industry be materially retarded, if the countervailing duty orders were to be revoked.

In addition to publishing this **Federal Register** notice, the Commission is serving a copy of this notice on all persons who have written the agency in connection with these investigations and is also notifying the Department of Commerce of its action in these cases.

By order of the Commission
Issued: March 7, 1985.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–5996 Filed 3–12–85; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF JUSTICE

Office of Justice Programs; Crime Victim Compensation Grants; Program Guidelines

AGENCY: Office of Justice Programs, Justice.

ACTION: Notice of Program Guidelines.

SUMMARY: The Office of Justice Programs is publishing for public comment a guideline to implement the crime victim compensation grant provisions of the Victims of Crime Act of 1984.

DATE: Comments are due on or before April 12, 1985.

ADDRESS: Send comments to Charles M Hollis, Office for Victims of Crime, Office of Justice Programs, 633 Indiana Avenue, NW., Washington, D.C. 20531.

FOR FURTHER INFORMATION CONTACT: Charles M. Hollis (202) 724–5947.

SUPPLEMENTARY INFORMATION: On October 12, 1984, the President signed into law the Victims of Crime Act of 1984, Pub. L. 98–473, Title II, Chap. XIV The Act establishes a Crime Victims Fund in the Treasury that can receive up to $100 million annually from four sources: Criminal fines collected from convicted Federal defendants; new penalty assessments imposed on convicted Federal defendants; forfeited appearance bonds, bail bonds, and collateral security posted by Federal criminal defendants; and literary profits due certain convicted Federal defendants. The Act authorizes deposits in the Fund through September 30, 1988.

The Act authorizes the Attorney General to make annual grants from the Fund. Fifty percent of the amount in the Fund is allocated for grants to State crime victim compensation programs. Funds permitting, compensation programs will receive 35% of their prior year's victim compensation awards. The remaining 50% of the Fund is allocated for grants to the States for crime victim assistance programs. The Attorney General may take up to 5% of the Fund from the portion allocated for victim assistance grants and expend it for the purpose of providing services to victims of Federal crimes.

This guideline is intended to implement the crime victim compensation grant provisions of the Act. Guidelines for the victim assistance provisions will be issued separately in the near future.

Comment is specifically invited on the definition of "mental health counseling and care" in section III B. of the guideline. The proposed definition reads as follows:

"Mental health counseling and care" means the assessment, diagnosis, and treatment of an individual's mental and emotional functioning that is required to alleviate psychological trauma resulting from a compensable crime. Such intervention must be provided by a person who meets such standards as may be set by the State for victim mental health counseling and care.

Crime victim compensation programs must provide benefits for such counseling and care to be eligible for grants after Federal FY 1985. The proposed definition seeks to ensure that crime victims will be provided care by qualified professsionals to relieve the psychological effects of victimization. OJP also intends to assure that funds awarded under the Act are used to support mental health counseling that is based on current research and experience regarding the needs of crime victims. A State's failure to set standards for victim mental health counselors does not relieve it of its obligation to provide compensation benefits for mental health counseling and care as a condition of eligibility for post-FY 1985 grants under the Act.

A subsidiary issue appropriate for comment is how to best assure that funds under the Act are not used to subsidize mental health counseling for problems unrelated to the victimization incident, e.g., family problems existing prior to the incident.

OJP especially welcomes the comments of State compensation programs that have had experience in providing benefits for mental health counseling.

This guideline does not constitute a "major" rule as defined by Executive Order 12291 because it does not result in: (a) An effect on the economy of $100 million or more; (b) a major increase in any costs of prices; or (c) adverse effects on competition, employment, investment, productivity, or innovation among American enterprises.

In addition, because the guideline will not have significant economic impact on a substantial number of small entities, no analysis of the impact of these rules on such entities is required by the Regulatory Flexibility Act, 5 U.S.C. 601, et seq.

The collection of information requirements contained in section VI of the guideline have been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act, 44 U.S.C. 3504(h). Comments on these requirements should be directed to OJP and the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Justice.

Guideline for Crime Victim Compensation Grants

I. Overview of the Statute

The Act provides that, funds permitting, the Attorney General will make an annual grant to an eligible crime victim compensation program in an amount equal to 35% of the amount paid from State funds by the program as compensation to victims of crime (excluding amounts paid to compensate victims for property damage) during the preceding fiscal year. Section 1403(a)(1). If the amount of money in the Fund is insufficient to award each State 35% of its prior year compensation payouts, all States will be awarded the same percentage of their prior year payouts out of available funds. Section

1403(a)(2). For purposes of the victim compensation provisions of the Act, "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and any other possession or territory of the United States. Section 1403(d)(4).

Section 1403 of the Act prescribes the conditions and eligibility criteria related to crime victim compensation grants. Section 1403(c), of the Act, however, is a "grandfather" clause that, in effect, permits each State with a compensation program that was awarding benefits in Federal fiscal year (FY) 1984 to receive a grant during FY 1985 even if the program does not conform to the Act's criteria. The clause allows those States one regular legislative session after the first grants are made to conform their laws to the Act. States not in compliance with the Act at the time subsequent grants are made will be ineligible for those grants.

II. Program Requirements for FY 1985 Grants

In order to be eligible for awards under the Act in FY 1985, therefore, the program need only provide evidence that it was "in effect" on the date the first grants are to be made. This will require submission of only the following information and assurance:

(1) A statement certified by the chief executive of the State of the total amount of money spent by the program for crime victim compensation awards in the preceding Federal fiscal year (October 1, 1983–September 30, 1984);

(2) The amount of such compensation paid for "property damage";

(3) The total amount and each source of revenue for the program in FY 1984;

(4) A certified copy of the State statute or other legal authority establishing the program; and

(5) An assurance that funds received under the Act will not be used to supplant State funds otherwise available for crime victim compensation.

For the purpose of requirement (1), the amount to be certified is only the amount actually spent by the program to compensate victims of crime in Federal FY 1984. Amounts expended for administration of the program or other types of victim assistance are to be excluded, as are amounts appropriated or collected for the purpose of victim compensation which were not expended.

For the purpose of requirement (2), the term "property damage" is defined by the Act to exclude damage to prosthetic devices and dental devices. Therefore, State may include payments made for damage to those devices in the amount reported under requirement (1) as compensation to victims of crime. Compensation paid to reimburse crime victims for damages to, or loss of, any other real or personal property must be reported under requirement (2).

For the purpose of requirement (4), certification may be effected by the chief executive, the State Attorney General, or the clerk of the State legislature.

With respect to requirement (5), the Act prohibits States from using the Federal funds made available under the Act to supplant State funds otherwise available for crime victim compensation. Section 1403(b)(3). This prohibition, however, is one of the statutory eligibility criteria rendered inapplicable to FY 1985 compensation grants by the "grandfather" clause found in section 1403(c) of the Act. Nevertheless, OJP is adopting the nonsupplantation clause as a statement of policy applicable to FY 1985 grants.

The nonsupplantation provision is fundamentally intended to assure that the States use the Federal funds provided under the Act to augment, not replace, otherwise available State funding for victim compensation. More specifically, the States may not decrease their financial commitment to crime victim compensation solely because they are receiving Federal funds for the same purpose.

The requested information and assurance may be provided in a letter attached to Standard Form 424, "Application for Federal Assistance". Eligible programs must also provide the information and assurances explained in the Civil Rights and Financial sections of the Guideline below (See Sections IV and V).

III. Program Requirements: Future Fiscal Year Grants

After FY 1985, State crime victim compensation programs must meet the statutory criteria set forth below:

A crime victim compensation program is an eligible crime victim compensation program for the purposes of this section if--

(1) Such program is operated by a State and offers compensation to victims of crime and survivors of victims of crime for—

(A) Medical expenses attributable to a physical injury resulting from compensable crime, including expenses for mental health counseling and care;

(B) Loss of wages attributable to a physical injury resulting from a compensable crime; and

(C) Funeral expenses attributable to a death resulting from a compensable crime;

(2) Such program promotes victim cooperation with the reasonable requests of law enforcement authorities;

(3) Such State certifies that grants received under this section will not be used to supplant State funds otherwise available to provide crime victim compensation;

(4) Such program, as to compensable crimes occurring within the State, makes compensation awards to victims who are nonresidents of the State on the basis of the same criteria used to make awards to victims who are residents of such State;

(5) Such program provides compensation to victims of crimes occurring within such State that would be compensable crimes, but for the fact that such crimes are subject to Federal jurisdiction, on the same basis that such program provides compensation to victims of compensable crimes; and

(6) Such program provides such other information and assurances related to the purposes of this section as the Attorney General may reasonably require. Section 1403(b)

The Act defines certain terms used in section 1403(b) as follows:

(1) The term "Property damage" does not include damage to prosthetic devices or dental devices;

(2) The term "medical expenses" includes, to the extent provided under the eligible crime victim compensation program, expenses for dental services and devices and prosthetic devices and for services rendered in accordance with a method of healing recognized by the law of the State;

(3) The term "compensable crime" means a crime the victims of which are eligible for compensation under the eligible crime victim compensation program; and

(4) The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and any other possession or territory of the United States. Section 1403(d).

A. *Eligible Program Generally*. The fundamental criterion of eligibility is an operational State-administered crime victim compensation program. Although an authorized program that has not actually paid out compensation benefits would be technically eligible under subsection 1403(b)(1), the program would not be entitled to any Federal funds because it had not awarded any benefits that the Federal government could match (up to 35%) under subsection 1403(a)(1). Federal funds may not be used as "start-up" funds for a new State program.

B. *Compensation Criteria* (Section 1403(b)(1)). The Act requires as a condition of eligibility that a crime victim compensation program offer compensation for crime-related medical expenses (including mental health counseling and care), lost wages, and funeral expenses. This criterion does not require the payment of all these expenses without limitation; rather, it requires that the State offer compensation in each area, subject to such limitations and conditions as the State deems appropriate.

"Mental health counseling and care" means the assessment, diagnosis, and treatment of an individual's mental and emotional functioning that is required to alleviate psychological trauma resulting from a compensable crime. Such intervention must be provided by a person who meets such standards as may be set by the State for victim mental health counseling and care.

C. *Cooperation With Law Enforcement* (Section 1403(b)(2)). This criterion requires that a State program promote victim cooperation with the reasonable requests of law enforcement authorities. The States may impose such reasonable requirements as they see fit, but must, at a minimum, require a victim to report the crime to the appropriate criminal justice agency and assist in the identification of the suspect.

D. *Nonsupplantation* (Section 1403(b)(3)). As noted under section II above, this criterion requires the State to certify that the Federal funds received under the Act will not supplant State funds otherwise available for victim compensation. The discussion of the nonsupplantation provision under Section II is applicable in full to post-FY 1985 grants.

E. *Nondiscrimination Against Nonresidents* (Section 1403(b)(4)). This provision is intended to assure that nonresidents of a State who are victimized in a State that has an eligible compensation program are provided the opportunity to apply for and receive the same compensation benefits that are available to residents of the State. The maintenance of reciprocal agreements with certain other State, or foreign compensation programs will not suffice to meet this criterion. Eligibility for Federal funding will require the program to extend its coverage to all nonresidents victimized in the State.

F. *Coverage of Victims of Federal Crimes* (Section 1403(b)(5)). This criterion will require States to compensate victims of crimes committed within their borders that are subject to exclusively Federal jurisdiction in the same manner as they would compensate victims of State crimes. For example, a victim of a rape occurring on a Federal reservation inside the State must be afforded the same benefits that would be available to her if the rape were committed elsewhere in the State.

G. *Other Information and Assurances* (Section 1403(b)(6)). Pursuant to this subsection, the Department of Justice may make reasonable requests for other information and assurances pertinent to the statute, e.g., the civil rights, financial, and program information requested below. This criterion will not be used to impose substantive conditions or requirements on State compensation programs. The information and assurances requested under this provision will be only those needed to effectively administer the program or to prepare the statutorily-required report to Congress on the Act's effectiveness. See section 1407(b).

IV. Financial Requirements

A. *Payment of Grant Funds*—1. *Annual Requirement Under $120,000.* Grantees whose annual fund requirement is less than $120,000 will receive Federal funds on a "Check Issued" basis. Upon receipt, review and approval of a Request for advance or reimbursement, H–3 Report (Form 7160/3) by the grantor agency, a voucher and a schedule for payment is prepared for the amount approved. This schedule is forwarded to the U.S. Treasury requesting issuance and mailing of the check directly to the grantee or its designated fiscal agent. A request must be limited to the grantee's immediate cash needs and submitted at least monthly.

2. *Annual Requirement Over $120,000.* Grantees whose annual fund requirement exceeds $120,000 generally receive Federal funds by utilizing the "Letter of Credit" procedures. This funding method is a cash management process prescribed by the U.S. Treasury for all major grant-in-aid recipients.

3. *Check Issuance.* All checks drawn for the payment of fund requests, either under the "Check Issued" or the "Letter of Credit" process, are prepared and disbursed by the U.S. Treasury and not by the grantor agency.

4. *Termination of Advance Funding.* If a grantee organization receiving cash advances by letter of credit or by direct Treasury check demonstrates an unwillingness or inability to establish procedures that will minimize the time elapsing between cash advances and disbursement the grantor agency may terminate advance financing and require the grantee organization to finance its operations with its own working capital. Payments to the grantee will then be made by the direct Treasury check method to reimburse the grantee for actual cash disbursements. It is essential that grantee organizations maintain a minimal amount of cash on hand and that drawdowns of cash are made only when necessary for disbursement.

B. *Cost Allowability.* The following costs are the only costs allowable under crime victim compensation grants:

(1) Medical expenses attributable to a physical injury resulting from compensable crime, including expenses for mental health counseling and care;

(2) Loss of wages attributable to a physical injury resulting from a compensable crime; and

(3) Funeral expenses attributable to a death resulting from a compensable crime.

Amounts expended for administration of the program (including the performance of audits under section IV C. below) are not allowable costs.

C. *Financial Status Report.* A Financial Status Report (Form H –1) is required for all grants. This report shall be submitted by the grantee within 45 days after the end of the calendar quarter. Final reports are due 90 days after the end date of the grant. Failure to comply with this requirement may result in administrative action such as the withholding of payments, cancellation of a Letter of Credit, or noncertification of new grant awards. In lieu of using the standard H–1 Report, grantees may satisfy the financial reporting requirements by completing an H–1 turnaround document. This document is a facsimile of the H–1 extracted from the grantor agency's computer files and sent directly to each grantee. Pertinent information such as grantee name and address, grant number and the previously submitted financial information (if any) is printed on the form by the computer.

D. *Audit Responsibilities.* Pursuant to Office of Management and Budget Circular A–102, "Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments," (Attachment P), grantees, subgrantees and subrecipients have the responsibility to provide for an audit of their activities. These audits usually will be made annually, but not less frequently than every two years. Grantees, as well as their subgrantees, contractors or other organizations under cooperative agreements or purchase of service contracts are to arrange for examinations in the form of independent audits in conformance with OMB Circular A–102. These audits shall be conducted in accordance with the General Accounting (GAO) Standards for Audit of Governmental Organizations, Programs, Activities and Functions, the GAO Guidelines for Financial and Compliance Audits of Federally Assisted Programs, any OMB approved compliance supplement and generally accepted auditing standards established by the American Institute of Certified Public Accountants.

The required audits are to be an organization-wide basis as opposed to a grant-by-grant basis. The audit reports must include:

(1) The financial statements of the recipient organization, including identification of the various projects under which the organization received Federal Funds and the amount of the awards received; and

(2) The auditor's comments on the organization's systems of internal control, and systems established to ensure compliance with the terms of agreements as well as major laws and regulations affecting the expenditure of Federal funds.

E. Audit Objectives. Grants and other agreements are awarded subject to conditions of fiscal, program and general administration to which the recipient expressly agrees. Accordingly, the audit objective is to review the recipient's administration of grant funds and required non-Federal contributions for the purpose of determining whether the recipient has:

(1) Established an accounting system integrated with adequate internal fiscal and management controls to provide full accountability for revenues, expenditures, assets and liabilities

(2) Prepared financial statements which are presented fairly in accordance with generally accepted accounting principles.

(3) Prepared Federal financial reports (including Financial Status Reports, Cash Reports, and Claims for Advances and Reimbursements) which contain accurate and reliable financial data, and are presented in accordance with the terms of applicable agreements and with Attachment H of OMB Circular A–102.

(4) Expended Federal funds in accordance with the terms of applicable agreements and those provisions of Federal law or regulations that could have a material effect on the financial statements, or on the awards tested.

F. *Audit Implemantation.* Grantees are required to specify their arrangement for complying with the provision of OMB Circular A–102 and include in their grant application, to the extent possible, the following information:

(1) The identity of the organization that will conduct the audit.

(2) Approximate timing of when the audit will be performed.

(3) Audit coverage to be provided. Where the audit will not provide the coverage requirements as specified previously, the audit policy or procedure must describe the specific arrangements for obtaining audit services that will meet the requirements.

(4) An identification of the audit standards, if any, with which the grantees will not comply.

(5) Receipt and appropriate distribution of the resultant audit report, and;

(6) Audit resolution policies and procedures to be followed in resolving the audit report.

G. *Fund Suspension or Termination.* If, after notice and opportunity for a hearing, OJP finds that a State has failed to substantially comply with the Victims of Crime Act or any implementing regulations or guidelines, OJP must suspend or terminate funding to the State, or take other appropriate action. Only States may request a hearing; subgrantees in the State may not.

H. *Grant Application.* The "Application for Federal Assistance" (Standard form 424 (4000/3)) should be used in the formal application for crime victim compensation projects. Only the face sheet of the application form need be submitted. An orignial and two copies are required.

V. Civil Rights

A. *General.* The Act provides that no person shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in connection with any activity receiving funds under the Act on the basis of race, color, religion, national origin, handicap, or sex. Section 1407(e). Recipients of funds under the Act are also subject to Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d (prohibiting discrimination in Federally-funded programs on the basis of race, color, or national origin), section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794 (prohibiting discrimination in such programs on the basis of handicap), the Age Discrimination Act of 1975, 42 U.S.C. 6101, et seq., and the Department of Justice Nondiscrimination Regulations, 28 CFR Part 42, Subparts C, D, and G.

B. *Required Assurances and Information.* To be eligible for funding under the Act, a crime victim compensation program must submit the following assurances and information:

(1) An assurance that the program will comply with all applicable nondiscrimination requirements;

(2) An assurance that in the event a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process hearing, on the ground of race, color, religion, national origin, sex or handicap against the program, the program will forward a copy of the finding to the OJP Office of Civil Rights Compliance (OCRC); and

(3) The name of a civil rights contact person who has lead responsibility in insuring that all applicable civil rights requirements are met and who shall act as liaison in civil rights matters with OCRC.

VI. Reporting Requirements

A crime victim compensation program receiving funds under the Act will be required to submit an annual performance report to OJP on the effect the Federal funds had on the program. OJP will prepare a form for the annual report for the purpose of soliciting the information required in the most convenient manner possible. The report will be due in OJP by December 1 each year and must report on activities for the prior Federal fiscal year (October 1–September 30).

It is projected that the program will be asked to provide the following information:

1. Copies of any amendments to the State victim compensation statute and regulations indicating the changes made in the program since the receipt of funds under the Act, e.g., higher benefit limits, modified eligibility criteria;

2. The amount and each source of revenue for the program;

3. Claim statistics and analysis, i.e., the number of claims, awards, and denials, average amounts of awards, and the number of awards for mental health counseling; and

4. Victim statistics and analysis, i.e., the number of claims, awards, and denials by race, sex, national origin, and handicap.

Proposed reporting forms will be distributed to recipient programs for comment prior to adoption of a final form.

Lois Haight Herrington,

Assistant Attorney General, Office of Justice Programs.

[FR Doc. 85-5900 Filed 3-12-85; 8:45 am]

BILLING CODE 4410-01-M

MERIT SYSTEMS PROTECTION BOARD

Cessation of Board Publication of Decisions Volumes and Availability of Similar Service From Other Sources

Correction

In FR Doc. 85-5120 beginning on page 8684 in the issue of Monday, March 4, 1985, "Services", appearing in the heading, should have read "Sources". The correct heading is set forth above.

BILLING CODE 1505-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Music Advisory Panel (Composers Prescreening Section); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Composers Prescreening Section) to the National Council on the Arts will be held on March 26–28, 1985 from 9:30 a.m.–9:30 p.m. in Room 714 on March 28, 1985 and in Room 730 on March 26–27, 1985 of the Nancy Hanks Center, 1100 Pennsylvania Ave, NW, Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

February 28, 1985.

[FR Doc. 85–5938 Filed 3–12–85; 8:45 am]

BILLING CODE 7537-01-M

Music Advisory Panel (Composers Prescreening Section); Meeting

Pursuant to section 10 (a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Composers Prescreening Section) to the National Council on the Arts will be held on April 2, 1985 from 9:30 am—9:00 pm in Room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20560.

This meeting is for the purpose of Panel review, discussion, evaluation and recommendation on application for financial assistance under the National Foundation on the Arts and the Humanities of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9 (b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

February 28, 1985.

[FR Doc. 85–5939 Filed 3–12–85; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Document Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision or extension: Revision.

2. The title of the information collection: Reporting Changes to Security Practices and Procedures at NRC Security Facilities, 10 CFR Part 95.

3. The form number, if applicable: Not Applicable.

4. How often the collection is required: On occasion.

5. Who will be required or asked to report: NRC licensees and other organizations affected by 10 CFR Part 95.

6. An estimate of the number of responses: 24

7. An estimate of the total number of hours needed to complete the requirement or request: 96

8. An indication of whether section 3504(h), Pub. L. 96–511 applies: Not applicable.

9. A new reporting requirement contained in 10 CFR 95.18 would require the reporting of any proposed major change to a licensee's or other organization's security plan prior to adopting such a change, to provide the NRC Division of Security an opportunity to assess and evaluate the merits of the modification and determine whether or not such major modification adversely impacts on the protection required for NRC classified information. Minor changes to the security plan are to be promptly reported after the change has been adopted.

ADDRESSES: Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 1717 H Street, NW., Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Comments and questions should be directed to the OMB reviewer, Jefferson B. Hill, (202) 395–7430. NRC Clearance Officer is R. Stephen Scott, (301) 492–8585.

Dated at Bethesda, Maryland this 7th day of March 1985.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Director, Office of Administration.

[FR Doc. 85–6009 Filed 3–12–85; 8:45 am]

BILLING CODE 7590-01-M

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a proposed revision to a guide in its Regulatory Guide Series together with a draft of the associated value/impact statement. This series has been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems of postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

The draft, temporarily identified by its task number, FC 408–4 (which should be mentioned in all correspondence concerning this draft guide), is proposed Revision 2 to Regulatory Guide 10.5, "Guide for the Preparation of Applications for Type A Licenses of Broad Scope." The guide is being revised to provide guidance on the preparation of applications in conformance with the new NRC Form 313 for Type A licenses of broad scope.

This draft guide and the associated value/impact statement are being issued to involve the public in the early stages of the development of a regulatory

position in this area. They have not received complete staff review and do not represent an official NRC staff position.

Public comments are being solicited on both drafts, the guide (including any implementation schedule) and the draft value/impact statement. Comments on the draft value/impact statement should be accompanied by supporting data. Comments on both drafts should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washigton, D.C. 20555, Attention: Docketing and Service Branch, by May 15, 1985.

Although a time limit is given for comments on these drafts, comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. Requests for single copies of draft guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Technical Information and Document Control. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Silver Spring, Maryland, this 6th day of March 1985.

For the Nuclear Regulatory Commmission.

Robert B. Minogue,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 85-6008 Filed 3-12-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-261]

Carolina Power and Light Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of Appendix R to 10 CFR Part 50 to Carolina Power and Light Company (the licensee), for the H.B. Robinson Steam Electric Plant, Unit No. 2, located in Darlington County, South Carolina.

Environmental Assessment

Identification of Proposed Action

The exemption would relieve the licensee from providing oil collection systems for the reactor coolant pumps. In lieu of oil collection systems, the licensee's existing fire suppression system, with the proposed additional modifications, would provide an acceptable level of protection equivalent to that required by Section III.0 of Appendix R.

The exemption would be responsive to the licensee's application for the exemption dated January 19, 1981, as supplemented by letters dated July 30, 1982, January 7, 1983, June 7 and 23, 1983, and October 5, 1983, with additional information supplied by letters dated November 16 and 26, 1980.

The Need for the Proposed Action

The exemption is needed because: (1) The licensee would incur about 517 man-rem due to installation of a collection system, (2) the components within each pump bay are not necessary for maintaining safe shutdown condition, (3) components outside the pump bay should not be damaged, and (4) the present suppression system in conjunction with proposed modification would be capable of providing fire protection equivalent to that provided by an oil collection system.

Environmental Impacts of the Proposed Action

The proposed exemption will provide a degree of fire protection that is equivalent to that required by Appendix R for other areas of the plant such that there is no increase in the risk of fires at this facility. Consequently, the probability of fires has not been increased, and the post-accident radiological releases will not be greater than previously determined, nor does the proposed exemption otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed exemption.

With regard to potential non-radiological impacts, the proposed exemption involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemption.

Alternative Use of Resources

This action involves no use of resources not previously considered in the Final Environmental Statement for the H.B. Robinson Steam Electric Plant, Unit No. 2.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for the exemption dated January 19, 1981, as supplemented by letters dated July 30, 1982, January 7, 1983, June 7 and 23, 1983 and October 5, 1983, with additional information supplied by letters dated November 16 and 26, 1980 which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Hartsville Memorial Library, Home and Fifth Avenue, Hartsville, South Carolina 29550.

Dated at Bethesda, Maryland this 7th day of March 1985.

For the Nuclear Regulatory Commission.

Gus C. Lainas,

Assistant Director for Operating Reactors, Division of Licensing.

[FR Doc. 85-6010 Filed 3-12-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-331]

Iowa Electric Light and Power Co.; Withdrawal of Application for Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Iowa Electric Light and Power Company (the licensee) to withdraw its June 24, 1983 application for proposed amendment to the Duane Arnold Energy Center, located in Linn County, Iowa. The proposed amendment would have revised the provisions in the Technical Specifications to permit reactor operation up to 50% of rated thermal power with one recirculation loop out of service. The Commission issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on November 16, 1983

(48 FR 52142). By letter dated February 8, 1985, the licensee withdrew its application for the proposed amendment.

For further details with respect to this action, see (1) the application for amendment dated June 24, 1983; (2) the licensee's letter dated February 8, 1985, withdrawing the application for license amendment; and (3) the Commission's letter granting the withdrawal dated March 5, 1985. All of the above documents are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Cedar Rapids Public Library, 426 Third Avenue, SE., Cedar Rapids, Iowa 53401.

Domenic B. Vassallo,

Chief, Operating Reactors Branch No. 2, Division of Licensing.

March 7, 1985.

[FR Doc. 85-6011 Filed 3-12-85; 8:45 am]

BILLING CODE 7590-01-M

POSTAL RATE COMMISSION

[Order No. 605; Docket No. A85-16]

Boyds, Washington 99107 (Mrs. W. E. Welles, et al., petitioners); Order Accepting Appeal and Establishing Procedural Schedule

Issued: March 5, 1985.

Before Commissioners: Janet D. Steigher, Chairman; Henry R. Folsom, Vice-Chairman; John W. Crutcher; James H. Duffy; Bonnie Guiton.

Docket No. A85-16.

Name of Affected Post Office: Boyds, Washington 99107.

Name(s) of Petitioner(s): Mrs. W. E. Wells, et al.

Type of Determination: Closing.

Date of Filing of Appeal Papers: February 25, 1985.

Categories of Issues Apparently Raised:

1. Effect on the community [39 U.S.C. 404(b)(2)(A)].

2. Effect on postal services [39 U.S.C. 404(b)(2)(C)].

Other legal issues may be disclosed by the record when it is filed; or, conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition within the 120-day decision schedule [39 U.S.C. 404(b)(5)] the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the Petitioner. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memorandum previously filed.

The Commission orders:

(A) The Secretary shall publish this Notice and Order and Procedural Schedule in the **Federal Register.**

By the Commission

Charles L. Clapp,

Secretary.

Appendix

February 25, 1985, Filing of Petitions
March 5, 1985, Notice and Order of Filing of Apepal
March 22, 1985, Last day for filing of petitions to intervene [*See* 39 CFR 3001.111(b)]
April 1, 1985, Petitioners' Participant Statement or Initial Brief [*See* 39 CFR 3001.115(a) and (b)]
April 22, 1985, Postal Service Answering Brief [*See* 39 CFR 3001.115(c)]
May 7, 1985, (1) Petitioners' Reply Brief should petitioners choose to file one [*See* 39 CFR 3001.115(d)]
May 14, 1985, (2) Deadline for motions by any party requesting oral argument. The Commission will exercise its discretion, as the interest of prompt and just decision may require, in scheduling or dispensing with oral argument [*See* 39 CFR 3001.116]
June 25, 1985, Expiration of 120-day decisional schedule [*See* 39 U.S.C. 404(b)(5)]

[FR Doc. 85-5932 Filed 3-12-85; 8:45 am]

BILLING CODE 7715-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-14406; 812-5984]

Boettcher Venture Capital Partners, L.P. et al.; for an Order Application for Exemption

March 7, 1985.

Notice is hereby given that Boettcher Venture Capital Partners, L.P., ("BVCP") a limited partnership formed under the Delaware Revised Uniform Limited Partnership Act, Boettcher Institutional Partners, L.P., ("Institutional Partners") a proposed Delaware limited partnership, and Boettcher & Company, Inc. ("Boettcher") (collectively, "Applicants"), 828 Seventeenth Street, Denver, Colorado 80201, filed an application on November 15, 1984, and an amendment thereto on February 19, 1985, pursuant to section 6(c) of the Investment Company Act of 1940 ("Act"), for an order of the Commission exempting Applicants from the provisions of section 57(a)(4) of the Act and Rule 17d-1 thereunder and permitting (1) the concurrent investment by Institutional Partners with BCVP in various prospective portfolio investments, and (2) Boettcher to refer investment opportunities to certain limited partners of Institutional Partners who will invest in various prospective portfolio investments along with Institutional Partners and BCVP, on the terms and conditions set forth herein. All interested persons are referred to the application on file with the Commission for a statement of the representations made therein, which are summarized below, and to the Act and Rules for complete text of all pertinent provisions.

Applicants state that BCVP was formed in September, 1983, and has elected to be treated under the Act as a business development company. BCVP's investment objective is capital appreciation through venture capital investments ("Portfolio Securities"). Portfolio Securities, Applicants state, are liquidated at maturity, which typically is from four to eight years after investment. BCVP, Applicants state, made a registered public offering under the Securities Act of 1933 that closed in September, 1984, with 1,621 limited partners contributing $10,690,000 in capital subscriptions. Substantially all of BCVP's limited partners are natural persons or their individual retirement accounts.

Boettcher, an investment banking firm, is the managing general partner of BCVP, and subject to the supervision of four individual general partners ("Individual General Partners"), and is responsible for locating, evaluating, structuring, monitoring and liquidating BCVP's Portfolio Securities. On February 15, 1984, BCVP and Boettcher were granted an order of the Commission declaring, *inter alia*, that the Individual General Partners were not interested persons of BCVP as defined in section 2(a)(19) of the Act solely by reason of their status as general partners. (Investment Company Act Release No. 13774, February 15, 1984). Applicants represented, pursuant to that order, that the Individual General Partners functioned in a manner similar to independent directors of a corporation.

Institutional Partners (collectively with BCVP, the "Partnerships") is similar in many respects to BCVP. Applicants state that the Partnerships will have the same managing general partner, organizational structure, management fees, indentical ratios for allocations of partnership income, gain and loss among the managing general

partner and limited partners, and similar investment objectives and strategies. Limited partners of Institutional Partners will be only institutional investors who must make a minimum investment of approximately $1 million, a price which may be reduced to a minimum of $500,000 per subscriber. Applicants expect the aggregate capitalization of Institutional Partners to be in the range of $6 to $10 million. Sale of limited partnership interests will be restricted in accredited investors in transactions not involving a public offering pursuant to Regulation D, promulgated under the Securities Act 1933. Boettcher, as sole general partner, will perform all management functions for Institutional Partners, which will include those functions that it now performs for BCVP. Applicants represent that no affiliated person of Institutional Partners will be a limited partner of BCVP.

Applicants state that Boettcher believes that favorable investment opportunities would be more numerous or advantageous to the Partnerships if they invested in tandem in Portfolio Securities rather than individually. It is also stated that by a cooperative investment program ("Joint Investment Progam") the Partnerships can invest larger amounts of capital in appropriate Portfolio Securities, thus enabling each Partnership to achieve greater portfolio diversification. Applicants further state that the ability to make larger investments will permit the Partnerships to invest on more favorable terms and to exercise greater influence in the management, operations, business objectives and policies of the issuers of Portfolio Securities ("Portfolio Companies").

According to the application, the Joint Investment Progam will encompass all investments in Portfolio Securities made by either Partnership after the commencement date of such program. Neither BCVP nor Institutional Partners will, unless permitted by order of the Commission, sell, exchange or otherwise dispose of any interest in any Portfolio Security acquired pursuant to the Joint Investment Program unless each makes such disposition at the same time, for the same consideration, and in amounts proportional to the respective holdings by the Partnerships. In every instance, Applicants state, the initial decision to sell, exchange or otherwise dispose of any interest in a Portfolio Security subject to the Joint Investment Program will be made by Boettcher consistent with its determination of the needs and best interests of BCVP. Applicants also state that Boettcher will maintain at its offices written records of the factors of consideration in any decision and the records will be available for inspection by the Commission at any time.

The relative amount each Partnership invests pursuant to the Joint Investment Program will be a function of a predetermined ratio ("Investment Ratio") derived by comparing the total available capital ("Total Available Capital") of BCVP with Institutional Partners. Total Available Capital is defined, with respect to each Partnership, as the total capital contributions made in cash to that Partnership by its partners, less all amounts paid for transaction costs, administrative fees (to the extent paid from capital contributions and not income from short-term investments and annual realized gains), selling commissions, and the cost of all investments in Portfolio Securities (to the extent paid from capital contributions). Institutional Partners' obligation under the Joint Investment Program will equal the percentage determined by dividing its Total Available Capital by the Total Available Capital of both Partnerships at that time. BCVP's obligation will be for the balance of the investment and in no instance will the Investment Ratio for BCVP be less than 40%.

Applicants state that the Joint Investment Program has been approved by both a majority of the general partners of BCVP who have no financial interest in the transaction (other than by virtue of an investment as an Individual General Partner or a limited partner of BCVP) and a majority of the general partners of BCVP who are not interested persons of BCVP. The general partners deemed the Joint Investment Program as fair and reasonable to the partners of both BCVP and Institutional Partners and as not involving overreaching of BCVP, Institutional Partners, or any of their respective partners on the part of any party concerned.

As presently constituted, BCVP's limited partnership agreement provides for an annual administrative fee of 3% on the first $10 million of investments and 2% on any additional investments. Applicants represent that if and when an order of exemption is granted by the Commission approving the Joint Investment Program, the administrative fee will be amended by the Individual General Partners to provide for a reduced fee such that the administrative fee charged by Boettcher will, on the average, be the same as if the investment in Institutional Partners had been made directly in BCVP. The administrative fee for Institutional Partners will also equal the amended administrative fee for BCVP; thus Boettcher's total compensation from the Partnerships will be the same as if the capitalization of Institutional Partners were added to BCVP and BCVP's current administrative fee was applied to such total capitalization.

Applicants assert that the proposed Joint Investment Program meets the standards for granting exemption from the provisions of section 57(a)(4) and Rule 17d–1 of the Act because the Joint Investment Program and the transactions included therein are consistent with the provisions, policies and purposes of the Act, and because each of the Partnerships would participate in the transactions on an identical basis in the proportions set by the Investment Ratio. Applicants seek exemption pursuant to section 6(c) of the Act because an exemption from section 57(a) involves only individual, prospective transactions and Applicants seek exemption for a class of transactions under the Joint Investment Program. Applicants contend that it would be impractical for the Joint Investment Program to operate with separate applications for exemptive orders because: (1) Negotiations concerning the details of a transaction often continue until the time of closing; (2) participation by the Partnerships in certain investment opportunities may be precluded because of the time delay involved in obtaining separate exemptive orders; and (3) use of an escrow account pending an exemptive order is not a viable alternative because Portfolio Companies must have the assurance that the funds will be available in the future and are not subject to contingencies. Applicants also contend that the Joint Investment Program is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicants also seek an order, pursuant to section 6(c) of the Act, to exempt from the provisions of section 57(a) of the Act and Rule 17d–1 certain transactions between Boettcher and certain individual limited partners of Institutional Partners. Applicants state that by virtue of its position as general manager of the Partnerships, Boettcher acquires knowledge of investment opportunities that are suitable for large, institutional investors. In addition, those institutions have substantial capital to invest beyond the amounts to be invested in Institutional Partners. To fulfill the needs of these limited partners for ongoing exposure to venture capital

investment opportunities, and because such opportunities will represent investments that exceed the amounts that Boettcher determines is prudent for the Partnerships to invest in a Portfolio Security, Applicants request an exemption to permit Boettcher to refer additional investment opportunities to individual limited partners of Institutional Partners and to permit such limited partners to coinvest with BCVP in certain Portfolio Securities ("Referral Transactions"). Applicants represent that it would be inappropriate to communicate such opportunities in Referral Transactions to limited partners of BCVP, who do not have the same investment need or financial ability that limited partners of Institutional Partners possess. Moreover, Applicants state that it is impractical to include BCVP limited partners in the Referral Transactions because there are in excess of 1600 BCVP limited partners. Applicants conclude that Boettcher would not be able to attract institutional investors as limited partners of Institutional Partners unless it can offer the Referral Transactions services to limited partners of Institutional Partners.

Applicants agree that any order authorizing and exempting the Joint Investment Program will be subject to the following conditions: (1) All purchases and sales of Portfolio Securities subject to the Joint Investment Program will be made in the Investment Ratio and in accordance with the terms of the Joint Investment Program and in no event will the Investment Ratio for BCVP be less than 40%;

(2) Boettcher will initially determine whether the Partnerships sell, exchange or dispose of securities subject to the Joint Investment Program based on the needs and best interests of BCVP. Boettcher will maintain records of the factors evaluated and such records will be available for inspection by the Commission at any time;

(3) Each Joint Investment Program investment will be made by BCVP and Institutional Partners at the same unit price in securities of the same class;

(4) Unless otherwise permitted by order of the Commission, exercise by BCVP or Institutional Partners of warrants, conversion privileges and other rights acquired under the Joint Investment Program will be at the same time and upon the same terms and conditions;

(5) Neither BCVP nor Institutional Partners, unless otherwise permitted by order of the Commission, will acquire any further interest in or securities of Portfolio Companies, or in any affiliated person of the Portfolio Companies, subject to the Joint Investment Program, other than interest in all respects dictated by the Investment Ratio and in accordance with the Joint Investment Program;

(6) BCVP's partnership agreement will be amended to provide for a reduced administrative fee at a level which actually charged will, on the average, be the same as if the investments in Institutional Partners had been made directly into BCVP, and that Institutional Partners will have the same administrative fee arrangement as BCVP;

(7) None of the general partners of BCVP or Institutional Partners will be a party to or have a financial interest in any transaction pursuant to the Joint Investment Program other than as an owner of partnership interests in BCVP or Institutional Partners;

(8) At each quarterly meeting of the Individual General Partners of BCVP, all material factors relating to the operation of the Joint Investment Program, including the purchase and sales of Portfolio Securities pursuant thereto, during the period since the prior review thereof by the Individual General Partners, will be reviewed by the Individual General Partners. The Joint Investment Program will continue thereafter only if at least a majority of the Individual General Partners determine, based upon such monitoring, that BCVP's participation in the Joint Investment Program continues to be in the best interests of BCVP and its limited partners and does not involve overreaching of BCVP or its limited partners on the part of any person concerned. The Individual General Partners will record their minutes and preserve in their records, for periods required under section 31(a) of the Act, a description of the Joint Investment Program's operation during the period monitored, their findings, and the information and materials on which their findings are based and the basis therefor.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than April 1, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-5962 Filed 3-12-85: 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14407; File No. 812-6026]

Application and Opportunity for Hearing; Monarch Life Insurance Co. et al.

March 7, 1985.

Notice is hereby given that Monarch Life Insurance Company ("Monarch"), 1250 State, Street, Springfield, Massachusetts 01133, and Variable Account B of Monarch Life Insurance Company, registered under the Investment Company Act of 1940 ("Act") as a unit investment trust (the "Account") (collectively known as "Applicants"), as issuers of certain single premium variable life insurance contracts funded by the Account, filed an application on January 18, and an amendment thereto on March 6, 1985, for an order pursuant to section 6(c) of the Act, exempting Applicants from the provisions of sections 12(d)(1), 26(a)(2), and 27(c)(2) of the Act to the extent necessary to permit transactions described in the application, and pursuant to sections 11(a) and 11(c) of the Act approving the terms of certain exchange offers. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and are referred to the Act and rules thereunder for a statement of the relevant provisions.

Section 11

Applicants propose to permit the owners of existing contracts to exchange their contracts for "attained age" single premium contracts. Under the exchange, a single premium contract currently being offered by Monarch will be issued at the insured's then current age and with a contract date equal to the date of exchange. This exchange would be permitted at a time selected by the contractowner, subject to Monarch's rules. The exchange would require no evidence of insurability. Applicants state that while Monarch is currently proposing to issue only single premium contracts, it may in the future offer

annual premium contracts, and exchanges of these contracts would be permitted only if no premiums are due and unpaid. Applicants further state that upon any exchange, Monarch will deduct a "risk charge" of 1.5% of assets transferred to cover the risks associated with establishing a new guaranteed minimum death benefit.

Applicants state the exchange privilege may be exercised in two general circumstances. First, the contractowner may, during the lifetime of the insured, change from an existing contract to a new contract, using the existing contract's net cash value to purchase the new contract. Applicants represent that the use of the exchange privilege in this fashion gives contractowners increased flexibility to deal with changing insurance or financial needs, and to obtain the advantages of newly developed products, without taking the risk of changed insurability; Applicants represent that as a result of the exchange, contractowners can alter the correlation between the death benefit and cash value of the contract, changing the investment orientation of the contract. Applicants state that, as a result of the exchange, a contractowner will convert any positive investment experience under the old contract (which "purchased" variable insurance amounts) into a guaranteed death benefit. In addition, Applicants represent that those contractowners who may in the future convert from an annual premium contract to a single premium contract will be able to eliminate the need for any future premium payments. Applicants state that under this type of exchange, the new contract will have a face amount (and guaranteed insurance amount) generally equal to that of a contract that could be purchased by applying the old contract's net cash value as a single premium under the new contract at the insured's age on the date of change, less a 1.5% risk charge to cover the risk associated with establishing a new guaranteed insurance amount and the contingency that the insured may die at a time when that amount exceeds the death benefit that would have been payable in the absence of the guarantee.

Applicants state that exchanges would also be permitted to allow a beneficiary, upon the death of the insured, to apply the death benefit proceeds from the old contract to the purchase of a new single premium contract insuring him or herself, provided that the beneficiary currently has a contract insuring him or herself. Applicants state that the new contract will have a face amount (and guaranteed insurance amount) equal to the face amount of insurance that could be purchased for the beneficiary of the old contract under a single premium contract, given his or her current age, using the death benefit proceeds, less a 1.5% risk charge designed to cover the risk associated with establishing a guaranteed insurance amount of the new insured. Applicants state that the exchange privilege used in this manner gives contractowners an efficient methods of providing for survivor's insurance.

Applicants state that under either use of the exchange privilege, a term insurance rider may be added to the new single premium contract, using the net cash value of the old contract, or the death benefit proceeds if applicable, to purchase the rider. Applicants state that no commissions will be paid to agents for inclusion of the rider on the exchanges. Applicants further state, however, that the rider, itself, provides a right to totally or partially convert to a single premium contract, and this conversion right does not waive the usual sales load.

Applicants assert that none of the dangers or abuses for which section 11 of the Act was enacted to prevent would arise as a result of the exchange privilege. Applicants submit that there will be no incentive to encourage contractowners to exchange one contract for another since no additional commissions will be generated by the exchange. Applicants represent that aside from any applicable state premium taxes, the only charge level on the exchange of contracts will be the risk charge, which Applicants contend is necessary because Monarch undertakes a new risk when it establishes a new minimum death benefit guarantee. Applicants state that the exchange privilege is equitable to all contractowners and will be offered to all contractowners, providing them with flexibility and guaranteed insurability, all without an additional sales change.

Sections 12(d)(1), 26(a)(2) and 27(c)(2)

Under Applicants' proposed structure, the Account would invest at new asset value in either shares issued by Oppenheimer Variable Life Funds ("Funds"), an open-end company, or units of investment trust, the Oppenheimer Zero Coupon U.S. Treasuries Trust, Series A ("Trust"), to be established by Oppenheimer Investor Services, Inc. ("Oppenheimer"). The Trust is registered under the Act and will be composed of multiple series ("Series"), each comprised of U.S. Treasury securities which have been stripped of their coupons, interest coupons which have been stripped from U.S. Treasury securities, and receipts and certificates for such stripped obligations and coupons ("zero coupon bonds"). The Account will purchase units of each Series based upon the net transactions by contractowners. Applicants state that the total offering price of Trust units placed in the Account, whether they are sold to the Account in the primary or secondary market, will include a "transaction charge. "At the time of purchase, the Account will pay that portion of the total price of the units equal to their "net asset value." Monarch will directly pay to Oppenheimer out of its general assets a transaction charge, which is currently designed to range from 1–2% of the offering price depending upon the maturity of the Series for which securities are purchased. Thereafter, Monarch will seek to be reimbursed for the amounts advanced by assessing a charge on the assets of the Account held in the investment divisions investing in the Trust. Applicants represent that this charge may vary, but will reflect only actual costs. These actual costs will include an element of interest compensating Monarch for the delay in recouping amounts advanced. Applicants state that the rate of interest will be based on the current yield for U.S. Treasury bonds having a maturity equal to the weighted average maturity of the bonds held in the Trust. Applicants represent that the total charge against account assets will never exceed an annual rate of .50 percent of the average daily net assets of each of the Account's investment divisions investing in the Trust.

Monarch and the Account seek relief from the provisions of section 12(d)(1) to allow the Account to acquire the units of the Trust and from sections 26(a)(2) and 27(c)(2) to the extent necessary to permit Monarch to recover through an asset charge the amounts paid by it to Oppenheimer in connection with the Account's acquisition of Trust units. In support of their applications, Applicants assert that this proposed structure does not raise legal or policy issues materially different from the common separate account structure in which a unit investment trust invests solely in shares of an underlying open-end management investment company, which Applicants assert is permitted by section 12(d)(1)(E) of the Act, and that this relief is similar to that previously granted to Separate Account A of Monarch. Moreover, Applicants note that by permitting the investment divisions of the Account to be allocated

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to the Trust, which invests in zero coupon bonds, contractowners will have available an investment vehicle that will have a fixed yield for a specified period of time. Applicants contend that the proposed transaction does not run counter to the statutory purposes underlying section 12. In this regard, Applicants state that the transaction is not a method for leveraging control or assessing overlapping charges. Applicants claim that the compensation received by Oppenheimer is necessary to induce Oppenheimer to create the Trust, to implement the operational procedures for the Trust, and to enter into a contractual agreement with Monarch to maintain a secondary market in Trust units, and, thus, is a necessary acquisition cost. In this connection, Applicants note that the secondary market here, unlike the case of most publicly offered unit investment trusts, is not merely a desirable feature designed to avoid disruption of the Trust's portfolio; it is necessary to maintain the stabilized rate of return on the funds in an investment division. Applicants also represent that the compensation will reimburse Oppenheimer for operational and overhead expenses, and legal, accounting and evaluator's fees, and that none of this compensation is designed as reimbursement of distribution expenses or compensation for sales efforts. Monarch believes that allocating a proportionate share of the acquisition expenses to all contractowners who allocate premiums to the investment divisions investing in the Trust, rather than permitting the expenses borne by individual contractowners to vary based upon the timing of their particular allocation, benefits contractowners by stabilizing yield and by creating more equitable results among contractowners.

Applicants also believe that the proposed asset charge is a reasonable and proper charge designed to cover expenses that are properly viewed as a cost of operating and administering the Account. Moreover, Applicants point out that Oppenheimer is neither an affiliated person nor a principal underwriter for the Account; therefore the negotiations between Oppenheimer and Monarch and its Account in setting the amount of the compensation were at arm's length and are presumed to have yielded fair values. Finally, Applicants assert that the agreement between Monarch and Oppenheimer in establishing this structure will require that the terms of the transactions will be at least as good, if not better, than the Account could receive from other parties. Applicants note that unit investment trusts offering units to the public charge a sales load of 3 to 5% of purchases while the maximum transaction charge assessed by Openheimer is .5%, although Oppenheimer, because units of the Trust will be offered solely to the Account, will bear no distribution expenses.

Applicants assert it is appropriate to recover interest costs through deduction of the proposed asset charge. Monarch expects to advance large amounts in the early years in connection with the purchase of units of interest in the Trust, but considerably less in later years because purchases of units (and tranasction charges) will diminish since later purchase by contractowners will be offset by redemptions. Because the asset charge will be designed to recover these charges over the life of each of the Trust series (thus spreading the costs among contractowners purchasing early in the life of each series and those purchasing later), Applicants represent that a significant portion of the cost to Monarch is the loss of interest on monies advanced caused by the delay in recovery. Given that Monarch anticipates recovery of the transaction costs over the life of each Trust series, Applicants believe that a rate of interest associated with the weighted average maturity of the bonds held by the Trust series is the fair and reasonable measure of the time value of the monies advanced by Monarch. Applicants represent that as to each investment division, the rate of interest will be applied to the amounts by which the transaction charges for the division for each quarter exceed the asset charges collected as reimbursement for such charges, plus any amounts (including interest) that were unrecovered at the end of the prior quarter. Applicants further represent that Monarch will monitor the cumulative amounts collected for each division through this asset charge in comparison with the amounts paid by Monarch and will not charge any division of the Account more than actual costs.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than April 1, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request.

Persons who request a hearing will receive any notices and orders issued in this matter. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 5961 Filed 3-12-85; 8:45 am]

BILLING CODE 8010-01-M

[File No. 22-13667]

Chesebrough-Pond's Inc. (a New York Corporation); Application and Opportunity for Hearing

March 7, 1985.

Notice is hereby given that Chesebrough-Pond's Inc., a New York corporation (the "Company"), has filed an application pursuant to clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939, as amended (the Act"), for a finding by the Securities and Exchange Commission (the "Commission") that the successor trusteeship of Citibank, N.A. ("Citibank") under (i) the indenture of the Company dated as of July 15, 1980 (the "1980 Indenture") and (ii) the indenture of Chesebrough-Pond's Finance Corporation, a Delaware corporation ("Finance Corporation"), dated as of June 1, 1984 (the "1984 Indenture") and the trusteeship of Citibank under the indenture of the Company dated as of January 15, 1985 (the "1985 Indenture") is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Citibank from acting as successor trustee under the 1980 or 1984 Indenture. The 1980 and 1984 Indentures were heretofore qualified under the Act.

In support of its application the Company alleges that:

1. The Company has outstanding as of February 8, 1985 $100,000,000 aggregate principal amount of its 12% Notes due 1993 (the "12% Notes") issued under the 1985 Indenture between the Company and Citibank. Inasmuch as the 12% Notes were offered and sold outside the United States, its territories and possessions to non-U.S. persons, the 12% Notes were not registered under the Securities Act of 1933, as amended (the "Securities Act"), and the 1985 Indenture was not qualified under the Act.

2. The Company has outstanding as of January 31, 1985 $69,200,000 aggregate principal amount of its 10⅝% Notes due July 15, 1990 (the "10⅝% Notes") issued under the 1980 Indenture between the Company and Morgan Guaranty Trust Company of New York ("Morgan Guaranty"). The 10⅝% Notes were registered under the Securities Act (File No. 2–68426), and the 1980 Indenture was qualified under the Act (File No. not available).

3. As of February 8, 1985, no debt securities have been issued under the 1984 Indenture among Finance Corporation, Morgan Guaranty and the Company, as Guarantor. The 1984 Indenture is an open-end indenture to issue debt securities guaranteed by the Company (the "Guaranteed Notes") under a Rule 415 shelf registration statement. The Guaranteed Notes were registered under the Securities Act (File No. 2–91351), and the 1984 Indenture was qualified under the Act (File No. not available).

4. Morgan Guaranty, on January 4, gave written notice to the Company of its intention to resign as trustee under the 1980 and 1984 Indentures. The Company has requested Citibank to accept appointment as successor trustee under the 1980 and 1984 Indentures.

5. Section 7.11 of the 1980 Indenture provides in part as follows:

No successor trustee shall accept appointment as provided in this § 7.11 unless at the time of such acceptance such successor trustee shall be qualified under the provisions of § 7.08 and eligible under the provisions of § 7.09

Section 7.08 of the 1980 Indenture provides in part as follows:

(c) For the purposes of this § 7.08 the Trustee shall be deemed to have a conflicting interest if

(1) the Trustee is trustee under another indenture under which any other securities . . . of the Company are outstanding . . . *provided* that there shall be excluded from the operation of this paragraph (1) any indenture or indentures under which other securities . . . of the Company are outstanding if (A) this Indenture and such other indenture or indentures are wholly unsecured and such other indenture or indentures are hereafter qualified under the Trust Indenture Act of 1939, unless the Securities and Exchange Commission shall have found and declared by order pursuant to subsection (b) of section 305 or subsection (c) of section 307 of the Trust Indenture Act of 1939 that differences exist between the provisions of this indenture and the provisions of such other indenture or indentures which are so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Trustee from acting as such under this Indenture and such other indenture or indentures, or (B) the Company shall have sustained the burden of proving, on application to the Securities and Exchange Commission and after opportunity for hearing thereon, that the trusteeship under this Indenture and such other or indentures is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Trustee from acting as such under one of such indentures;

6. Section 611 of the 1984 Indenture provides in part as follows:

(d) No successor Trustee shall accept its appointment unless at the time of such acceptance such successor Trustee shall be qualified and eligible under this Article.

Section 608 of the 1984 Indenture provides in part as follows:

(c) For the purposes of this Section, the Trustee shall be deemed to have a conflicting interest with respect to the Securities of any series if:

(1) the Trustee is trustee under this Indenture with respect to the Outstanding Securities of any series other than that series or is trustee under another indenture under which any other securities * * * of the Company are outstanding * * * *provided* that there shall be excluded from the operation of this paragraph this Indenture with respect to the Securities of any series other than that series or any indenture or indentures under which other securities . . . of the Company are outstanding, if

(i) this Indenture and such other indenture or indentures are wholly unsecured and such other indenture or indentures are hereafter qualified under the Trust Indenture Act, unless the Commission shall have found and declared by order pursuant to section 305(b) or section 307(c) of the Trust Indenture Act that differences exist between the provisions of this Indenture with respect to Securities of that series and one or more other series or the provisions of such other indenture or indentures which are so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Trustee from acting as such under this Indenture with respect to the Securities of that series and such other series or under such other indenture or indentures, or

(ii) the Company shall have sustained the burden of proving, on application to the Commission and after opportunity for hearing thereon, that trusteeship under this Indenture with respect to the Securities of that series and such other series or such other indenture or indentures is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Trustee from acting as such under this Indenture with respect to the Securities of that series and such other series or under such other indenture or indentures;

and *provided further*, that there shall be excluded from operation of this paragraph, the indenture, dated as of July 15, 1980, between * * * [Chesebrough-Pond's Inc.] and the Trustee, under which the 10⅝% Notes due July 15, 1990 of * * * [Chesebrough-Pond's Inc.] are outstanding.

7. Citibank's successor trusteeship under the 1980 Indenture is permitted by section 608 of the 1984 Indenture because of the explicit reference to the 1980 Indenture contained in the 1984 Indenture. Citibank's successor trusteeship under the 1984 Indenture is permitted by § 7.08 of the 1980 Indenture because both of these indentures are wholly unsecured and the 1984 Indenture was qualified after the date of the 1980 Indenture.

8. Acceptance by Citibank of the appointment as successor trustee under the 1980 Indenture and the 1984 Indenture may involve Citibank in a conflict of interest within the meaning of § 7.08 of the 1980 Indenture and section 608 of the 1984 Indenture with respect to the 1985 Indenture since the 1985 Indenture has not been qualified under the Act and is not the subject of any other proceeding of the Commission.

9. The Company's obligations with respect to the 10⅝% Notes, the Guaranteed Notes and the 12% Notes are wholly unsecured and rank on parity with each other. The only material differences between the provisions of the 1980 and 1984 Indentures and the 1985 Indenture, and between the rights of holders of the 10⅝% Notes and the prospective holders of the Guaranteed Notes and the holders of the 12% Notes, relate to the fact that the Company is the Guarantor with respect to the Guaranteed Notes but is the primary obligor under the 1980 and 1985 Indentures, and also relate to the aggregate principal amounts, dates of issue, events of default, maturity and interest payment dates, interest rates, redemption provisions, sinking fund provisions, Trustee's reports, restrictions on transferability provisions relating to the non-United States offering of the 12% Notes, and other provisions of a similar nature. Any such differences and any other differences in the provisions of the 1980 and 1984 Indentures and the 1985 Indenture are unlikely to cause any conflict of interest among the respective trusteeships of Citibank under said Indentures.

10. The Company is not in default under the 1980, 1984 or 1985 Indenture.

11. The Company has waived (a) notice of hearing, (b) hearing on the issues by its application and (c) all rights to specify procedures under the Commission's Rules of Practice with respect to the application.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to said application which is on file in the offices of the

Commission at 450 Fifth Street, NW., Washington, D.C. 20549.

Notice is further given that an order granting the application may be issued by the Commission at any time on or after April 3, 1985, unless prior thereto a hearing upon the application is ordered by the Commission, as provided in clause (ii) of section 310(b)(1) bf the Act. Any interested person may, not later than April 2, 1985 at 5:30 P.M., Eastern Standard Time, in writing, submit to the Commission his views or any additional fact bearing upon this application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting a hearing, the reasons for such request, and the issues of fact and law raised by the application which he desires to controvert.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-5969 Filed 3-12-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IA-958 (File No. 803-36)]

First Investors Management Co., Inc.; Application

March 4, 1985.

Notice is hereby given that First Investors Management Company, Inc. ("Applicant"), 120 Wall Street, New York, New York 10005, registered as an investment adviser under the Investment Advisers Act of 1940 ("Act"), filed an application on February 22, 1984, and an amendment thereto on February 14, 1985, requesting an order of the Commission persuant to section 206A of the Act exempting Applicant (1) from the prohibitions of section 205(1) of the Act, to the extent necessary to permit Applicant to engage in certain advisory fee arrangements with limited partnerships to be established by Applicant, and (2) from the recordkeeping requirements of Rule 204-2(b) and (c) under the Act to the extent those provisions require separate records to be maintained for each limited partner in the partnerships. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and rules thereunder for the complete text of the applicable provisions.

Applicant proposes to form one or more limited partnerships ("Partnerships") comprised of fewer than one hundred limited partners, each of which will purchase a partnership interest as an accredited investor pursuant to a private offering under the Securities Act of 1933. Applicant will act as sole general partner and investment adviser of each Partnership. According to the application, the Partnerships will invest principally in relatively small emerging public companies whose securities offer potential for significant long-term appreciation, including companies whose securities may not be actively traded.

According to the application, each of the investors in the first Partnership will be required to make a minimum contribution of $250,000. The application states that Applicant, acting as general partner, will contribute the greater of the minimum amount required of any investor for purchasing a limited partnership interest, or 1% of the aggregate capital contributions, to any such Partnership.

Each subscriber for a Partnership interest must warrant that he meets the standards set forth in the subscription agreement, he has the ability and experience, directly or through his purchaser representative, to analyze the merits and risks of the investment, and he has received and read a copy of a Partnership's private placement memorandum. Each investor must also represent that he has read and become familiar with the schedule of fees to be paid to Applicant by the Partnership, and warrant that he or his qualified representative is fully aware of the level of those fees in relation to other partnerships, discretionary accounts, and mutual funds generally available in the market place. Each investor will be required to have a net worth of $500,000. In addition, each investor may not subscribe for a number of units equal to or greater in value than 20% of the amount of all his assets in which he has a beneficial interest.

Although Applicant will only contribute a minimum of $250,000 to any Partnership, it will receive the benefits of capital gain and other income as if it owned a 20% interest in the Partnership. Applicant will be allocated a 20% share of all net operating income and realized and unrealized capital gains and, subject to the limits described below, a 20% share of all net operating and realized and unrealized capital losses of each Partnership. Each partner (limited and general) will be allocated a share of the remaining 80% of the profits and losses of the Partnership, based on the proportion which his partnership capital account bears to the capital accounts of all that Partnership's partners.

Applicant, as general partner, will value the marketable securities held by each Partnership quarterly and will value securities that are not publicly traded (or are infrequently traded) only annually, unless facts come to the attention of Applicant that would cause it to believe that the value of such a security has materially changed. Applicant represents that the limited partner of each Partnership shall have the right to demand an independent review of any quarterly valuation of their Partnership's assets upon the request of 30% in interest of the limited partners, or of four or more limited partners holding at least 20% in interest of that Partnership. Applicant further represents that, upon each valuation, the capital account of each partner will be adjusted to reflect his allocable share of Partnership income, gains, and losses. However, Applicant's capital account in each Partnership shall not be reduced below zero. Losses that would reduce Applicant's capital account below zero shall be allocated to the limited partners as contingent losses. Such contingent losses shall be restored to the limited partners out of the first subsequent gain and net income that would have been allocated to Applicant's capital account.

Applicant proposes to maintain the designated books and records for each Partnership rather than for each limited partner. Applicant also states, however, that it will maintain capital accounts for each limited partners reflecting his contribution, allocations, distributions, and withdrawals. Applicant represents that it will assure that, as part of the preparation of certified annual financial statements, the Partnership's independent public accountants will reconcile the capital accounts of the limited partners. This, it is contended, will satisfy the limited partners' need for individual records.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than March 28, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be

issued unless the Commission orders a hearing upon requst or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to a delegated authority

John Wheeler,

Secretary.

[FR Doc. 85-5963 Filed 3-12-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14399 (File No. 813-61)]

Partners' Growth Fund et al.; Application for Order Exempting an Employees Securities Company

March 4, 1985.

Notice is hereby given that Partners' Growth Fund and Partners' Deferral Fund (collectively, the "Applicants" or the "Funds"), 1251 Avenue of the Americas, Room 904, New York, N.Y. 10020, filed an application on August 15, 1984, and an amendment thereto on January 8, 1985, for an order pursuant to section 6(b) of the Investment Company Act of 1940 ("Act") exempting them and their future Annual Pools from all provisions of the Act, or, alternatively, from sections 8(b), 10(a), 10(b)(2), 14(a), 15(a), 15(c), 16(a), 17(a), 17(d), 17(f), 17(g), 17(j), 18(a)(1), 18(i), 19(b), 23(c), 30(a), 30(b), 30(d), and 30(f) of the Act. The application further requests an order pursuant to section 45(a) of the Act granting confidential treatment to certain reports filed with the Commission under section 30 of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations made therein, which are summarized below, and to the Act for its relevant provisions.

Applicants state that each of them is a general partnership established pursuant to the Partnership Law of the State of New York whose partners are partners or principals (collectively, "Partners") of Coopers & Lybrand (the "Firm"). Each Annual Pool of each of the Funds intends to register under the Act as a closed-end, non-diversified management investment company if required to do so. Applicants represent that the purpose of the Funds is to enable the Partners of the Firm to pool their investment resources and to receive the benefit of investment opportunities that come to the attention of the Firm. Applicants state further that participation in the Funds will be mandatory for all Partners of the Firm ("Participants"), who may also make voluntary capital contributions to the Funds. Capital contributions to the Funds will be made annually; each year's contributions and investments made with those contributions will be accounted for separately as an "Annual Pool" designated by year. Each Annual Pool of a Fund will be invested only once and the proceeds will be distributed to the partners of the Fund within a reasonable time after the sale or other disposition or termination of each investment (generally after seven to ten years).

Applicants represent that the Managing General Partners ("Managing Partners") of each Fund, all of whom will be Participants, will manage the business of the Fund and will make all investment decisions for the Fund. According to the application, neither the Managing Partners nor the Firm will be compensated by the Funds for their services to the Funds.

Applicants state that the Participants are required to make annual contributions as long as they continue as Partners of the Firm. Upon withdrawing from the Firm for any reason, a Participant will remain a Participant (but may not make additional contributions) unless the Managing Partners judge that his or her continuation would, in view of his or her subsequent business activities, cause the Firm to lose or appear to lose its "independence" with respect to one or more business clients from whom it is required to remain "independent," or the Executive Committee of the Firm requires withdrawal. The Funds and the Firm have undertaken that the Executive Committee will not require withdrawal without the consent of the Participant, if a Participant dies, the estate may continue as a Participant with respect to Annual Pools previously invested in by the Partner, or withdraw from the Fund and receive the value of the Partner's interest. Except for transfers upon a Participant's death, interests in the Funds may not be transferred without the prior written consent of the Managing Partners. Transfers will be permitted only to Participants and members of their immediate families. Transferees will be permitted to hold the Participant's interest in Annual Pools established prior to the transfer, but not to make contributions to subsequent Annual Pools. Applicants represent that each Participant will receive annually the financial statements of each Fund, information as to his or her share of the net income or net loss of the Fund, and all required tax information.

Applicants assert that participation in each of the Funds will be limited to Partners of the firm, former Partners, and members of their immediate families. Applicants further assert that: (i) All Participants in the Funds will be experienced and sophisticated in accounting and financial matters or in fields related thereto as evidenced by their having achieved partnership in a major public accounting firm, (ii) all the Participants are equipped by experience and education to understand the structure and management of the Funds, and (iii) by virtue of their professional affiliation with the other Participants, including the Managing Partners, a substantial community of interest exists among the Participants which obviates the need for the protections provided by the Act.

Applicants assert that each of the Funds is, and each of the Annual Pools will be, an "employees' securities company" as defined in section 2(a)(13) of the Act and should, as such, be exempted from all provisions of the Act. Alternatively, Applicants request that the Commission issue an order pursuant to section 6(b) of the Act exempting the Funds and each Annual Pool, to the extent discussed below, from the following provisions of the Act:

Section 8(b). Applicants assert that the filing of the detailed registration statement required by section 8(b) and annual amendments thereto is not necessary because (i) participation in the Funds will be mandatory for Partners of the Firm, (ii) the rights of the Participants and the material terms of the investment are contained in the partnership agreements, copies of which will be provided to each Participant, (iii) the Managing Partners will be chosen by the Executive Committee of the Firm (the "Executive Committee"), whose members, as Participants in the Funds, have every incentive to choose wisely, (iv) even entry level partners have considerable financial sophistication and are equipped to take the risks which they may decide are in their own best interests, (v) there will be no trading market for interests in the Funds, and (vi) each Fund will furnish annual reports to all Participants.

Section 10(a). Applicants request an exemption to permit all of the Managing Partners to be Participants and, thus, "interested persons" of each Fund.

Section 10(b)(2). Applicants request an exemption to permit the Managing Partners, the Executive Committee, or the Firm to sell the partnership interests in the Funds.

Section 14(a). Applicants request an exemption to permit the sale of partnership interests to Participants prior to the time a Fund or Annual Pool has a net worth of $100,000. Applicants assert that the protections provided by section 14(a) are unnecessary where all

members of the Firm will be investing together on a mandatory basis.

Section 15(a) and 15(c). Applicants request an exemption to permit the Managing Partners and other partners and employees of the Firm to provide investment advisory services to the Fund without a written contract, and to permit the Managing Partners to retain investment advisors unrelated to the Firm without a vote of the Participants. Applicants state that the protection intended to be afforded by section 15(a) is not necessary in the first context because such persons will not be separately compensated for investment advisory services, nor is it necessary in the second context because the Managing Partners, as Fund Participants, can be expected to act in the interest of the other Participants.

Section 16(a). Applicants request an exemption to permit the Executive Committee to designate the Managing Partners to each Fund without a vote of the Participants. Applicants assert that, as Fund Participants, the Managing Partners will maintain shared interests with the other Participants and that since the Executive Committee is itself elected by the Firm's partners through the Firm Council, the Participants effectively do elect the Fund's management.

Sections 17(a) and 17(d). Applicants seek an exemption to permit the Funds and each Annual Pool (i) to purchase from the Firm or from other partnerships sponsored by the Firm either as investment vehicles for its Partners or as extensions of the Firm's business, including Annual Pools of the Funds ("Sponsored Partnership"), or from corporations in which the Firm or a Sponsored Partnership has a significant ownership interest ("Affiliated Corporations"), securities or interests in properties previously acquired for the account of the Firm, a Sponsored Partnership or an Affiliated Corporation, (ii) to sell to the Firm or Sponsored Partnerships or Affiliated Corporations securities or interests in properties, (iii) to purchase or sell interests in a company or other investment vehicle in which the Firm and/or Sponsored Partnerships or Affiliated Corporations already own 5% or more of the voting securities or otherwise control such vehicle, and (iv) to engage in transactions in which one or more of the Firm or a Sponsored Partnership or Affiliated Corporation also participate, provided that any such concurrent investment would be made by the Fund and the other person on the same basis.

The Applicants undertake that the transactions for which exemption is sought will only be effected upon a determination by the Managing Partners of the Fund that the terms of the transaction are reasonable and fair to the Participants of each Annual Pool of the Fund and do not involve overreaching of the Participants or the Fund or any Annual Pool on the part of any person concerned. Applicants assert that that requirement will provide sufficient internal controls and review to insure that such transactions, if entered into, will be fair to the Funds, each Annual Pool, and any affiliated participating entities. Applicants further undertake that in the case of any concurrent investment by the funds and the Firm or a Sponsored Partnership or Affiliated Corporation, the Firm or such Sponsored Partnership or Affiliated Corporation will not dispose of its investment without giving sufficient, but not less than one day's, notice to the Managing Partners of the Fund so that the Fund has the opportunity to dispose of its investment in the joint investment prior to or concurrently with and on the same terms as the Firm or the Sponsored Partnership or Affiliated Corporation.

The Applicants agree that the Managing Partners will be subject to section 36 of the Act and will comply with the requirements of sections 57(f)(3) and 57(h) of the Act with respect to all transactions for which the approval of the Commission would have been required under section 17(a) or 17(d) of the Act were the Applicants not granted an exemption therefrom. In addition, Applicants represent that minutes of meetings of the Managing Partners in which such matters are considered, including all procedures adopted by the Managing Partners in connection with their evaluation of investments, will be available for inspection by Participants. Applicants state that the Managing Partners will review each co-investment situation for which exemption is requested in the application and make a determination that any such investment by the Firm or a Sponsored Partnership or Affiliated Corporation would not disadvantage the Fund in the making of such investment, maintaining its investment position, or disposing of such position.

Section 17(f) and Rule 17f–2. Applicants request an exemption to the extent a written contract is required if a Fund acts as its own custodian pursuant to Rule 17f–2. Applicants request further that compliance with Rule 17f–2 be deemed effected if (i) under paragraph (d) of the Rule employees and Partners of the Firm who are not Managing Partners of the Fund are deemed employees of the Fund and Managing Partners are deemed to be officers of the Funds and (ii) instead of the verification procedure under paragraph (f) of the Rule, verification be effected quarterly by two Partners or employees of the Firm who are not Managing Partners. According to the application, the Funds do not intend to have any employees of their own.

Section 17(g) and Rule 17g–1. Because of all of the Managing Partners may be deemed to "interested persons" of the Funds, Applicants seek an exemption to the extent necessary to permit the Managing Partners of the Funds to take the actions and make the determinations set forth in the Rule, and to permit Managing Partners to threat all the Annual Pools of each Fund together as a single Fund for purposes of making determinations under section 17(g) and Rule 17g–1. Applicants state that, exept for these exemptions, the Funds will comply with section 17(g) and Rule 17g–1.

Section 17(j) and Rule 17j–1. Applicants undertake that they will adopt a more stringent code of ethics than is required under section 17(j) and Rule 17j–1 thereunder, to the effect that no Participant may individually make any investment in an investment vehicle in which he or she knows that the Fund has an investment or is considering making an investment. Based on that undertaking, Applicants request an exemption from Rule 17j–1 to the extent that Rule requires the code of ethics to contain reporting requirements with respect to transactions which are not prohibited by the undertaking.

Section 18(a)(1). Applicants seek an exemption from this section to the extent necessary to permit the Funds (i) to effect non-recourse borrowings without compliance with the asset coverage, voting and default requirements of this Section, and (ii) to disregard their non-recourse borrowings in computing the asset coverage of each Annual Pool. Applicants assert that the Participants do not require the protection of this Section with respect to non-recourse borrowings since any non-recourse lender would be precluded from looking beyond the property securing the indebtedness to the assets of the Fund or its Participants. In addition, Applicants state the partnership agreements require any recourse loans to be approved by both the Managing Partners and the Executive Committee, thus providing an additional level of review by persons likely to be among those in the Firm with the greatest personal resources and thus the greatest sensitivity to the risks of recourse borrowings.

Section 18(i). Applicants request an exemption to the extent necessary to

permit Participants to have only those voting rights that result from the partnership agreements of the Funds.

Section 19(b). Applicants request an exemption from this section to permit each Fund to distribute the proceeds of its investments, a part of which could reflect long-term capital gains, more frequently than once every twelve months.

Section 23(c). Applicants seek an exemption to permit the Funds to repurchase the partnership interests of Participants who withdraw from the Fund in accordance with the terms of the partnership agreements. Applicants assert that they are unable, or that it would be impracticable or burdensome, to comply with paragraphs (a) (4), (6), (7), (10) and (11) of Rule 23c–1(c) under the Act, which recites the conditions under which a closed-end investment company may repurchase its shares without having to obtain an exemptive order from section 23(c)(3).

Sections 30(a), 30(b) and 30(d). Applicants seek an exemption from these provisions to exempt the Funds from filing quarterly and annual reports with the Commission. Because the Funds will not be trading a portfolio of securities but rather will hold relatively few, large, non-public, non-traded investments which may not be valued more frequently than annually, Applicants also request an exemption from section 30(d) to the extent necessary to permit the Funds to report annually to Participants as provided in the partnership agreements.

In addition, Applicants seek an exemption from the requirement that the financial statements of the Funds be audited by independent public accountants. Applicants assert that the financial statements of the Funds will be prepared by Participants who are accounting partners of the Firm and will be subject to internal audit procedures to be conducted by the Firm's staff.

Applicants will file with the Commission a copy of the annual report required to be provided to Participants pursuant to the partnership agreements. Applicants request that filings of the partnership agreements of the Funds, annual report to Participants and other filings under section 30 (other than filings on any replacement for Form N–1R) which may be made be afforded confidential treatment under section 45(a) of the Act.

Section 30(f). Because the Managing Directors of each Fund and other persons may be deemed to be officers, directors or members of an advisory board of the Funds, Applicants seek an exemption from the requirement under section 30(f) that subjects those persons to section 16(a) of the Securities Exchange Act of 1934 and in accordance therewith requires them to file with respect to their ownership interests in the Funds on Form 3 and with respect to changes in ownership on Form 4. Applicants assert that because there will be no trading market for securities issued by the Funds, and the transferability of those securities is extremely limited, the information which would be disclosed on those Forms would be meaningless to the Commission and to investors and would protect no one.

Applicants state that the above exemptions are necessary given the nature of the Funds as employees' securities companies and their intended manner of operation. Moreover, Applicants assert that a substantial community of interest exists between the Managing Partners (who are themselves Participants) and the other Participants which obviates the need for the protections provided by the Act. On the basis of the foregoing, Applicants submit that an order pursuant to section 6(b) of the Act exempting the Funds from all provisions of the Act or, in the alternative, from those sections referred to above, and an order granting confidential treatment pursuant to section 45(a) of the Act, would be consistent with the protection of investors,

Notice is further given that any interested person wishing to request a hearing on the application may, not later than March 29, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85–5964 Filed 3–12–85, 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Cincinnati Stock Exchange

March 6, 1985.

The above named national securities Exchange has filed applications with the Securities and exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following stocks:

Arvin Industries, Inc.
Common Stock, $2.50 Par Value, File No. 7–8326

Augat Inc.
Common Stock, $.10 Par Value, File No. 7–8327

C3, Inc.
Common Stock, $.01 Par Value, File No. 7–8328

Daniel Industries, Inc.
Common Stock, $1.25 Par Value, File No. 7–8329

Perry Drug Stores, Inc.
Common Stock, $.05 Par Value, File No. 7–8330

River Oaks Industries, Inc.
Common Stock, $.01 Par Value, File No. 7–8331

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 27, 1985, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85–5965 Filed 3–12–85; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

March 6, 1985.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following stocks:

Radice Corporation
Common Stock, No Par Value, File No. 7–8342
Continental Information Systems Corporation
Common Stock, $.03 Par Value, File No. 7–8343
Gemini II
Capital Shares, $1.00 Par Value, File No. 7–8344
Paine Webber Group
$2.25 Cum. Conv. Exchangeable Pref., File No. 7–8345
Adobe Oil and Gas
Common Stock, $.30 Par Value, File No. 7–8346
Fries Entertainment
Common Stock, $.01 Par Value, File No. 7–8347
Material Sciences
Common Stock, $.02 Par Value, File No. 7–8348

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 27, 1985, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85–5967 Filed 3–12–85; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–21826; SR–NYSE–85–3]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Filing and Order Granting Accelerated Approval of Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 21, 1985, the New York Stock Exchange, Inc. ("NYSE") filed with the Securities and Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The NYSE is proposing to extend its pilot program [1] relating to implementation of a system for the execution, processing and reporting of standard odd-lot market orders to purchase or sell shares in American Telephone & Telegraph Co. ("AT&T") and the equity shares created as a result of the AT&T divestitue [2] from its scheduled expiration date of February 21, 1985 to February 21, 1986.

In its original filing implementing the pilot (SR–NYSE–83–49) the NYSE noted that, in light of the increase in odd-lot order volume anticipated as a result of the divestiture, the Exchange was implementing procedures to ensure maximum capacity for odd-lot order processing as well as to provide for efficient clearance and settlement of these transactions. The Exchange has stated in its filing that the procedures detailed in its original filing will remain in effect without change for the duration of the extended pilot program.

Under the NYSE procedures, standard odd-lot market orders to purchase or sell shares of AT&T and the equity issues created as a result of the divestiture which are received prior to the opening of trading are processed through the Exchange's Opening Automated Report Services ("OARS") and executed at the opening price. No odd-lot differential is charged on these orders. Standard odd-lot market orders which are received after the opening are routed to the NYSE's Designated Order Turnaround ("DOT") System. Execution prices of these orders are based on the prevailing NYSE quotation in the stock in which the order is entered at the time the order reaches the system. No odd-lot differential is charged on these orders. In the event of a DOT system failure, standard odd-lot market orders in the AT&T issues may be routed to the Exchange's Pricing and Reporting System ("APARS") which is the system presently used for the pricing and reporting of all odd-lot orders executed on the Exchange. The orders will be executed at the price of the next round-lot sale which occurs after the order is received, plus or minus any differential.

The Exchange stated in its most recent filing (SR–NYSE–84–30) that its experience to date has indicated that member firms are generally satisfied with the quality and timeliness of odd-lot executions as well as with the timeliness of reports in the AT&T divestiture issues. However, at the present time, the Exchange is requesting an additional one-year extension of the pilot program to enable the NYSE to further study the effectiveness and economy of this odd-lot procedure on the overall trading on the Exchange. In addition, the Exchange has stated in its filing that it is evaluating the appropriateness of certain systems enhancements to provide for more efficient handling and processing of all odd-lot orders. The NYSE has stated that, after completion of this study, it will make a determination as to what formal codifications are appropriate in this area. The NYSE states that, in providing for efficient execution, reporting, clearance and settlement of odd-lot orders, the proposed rule change is consistent with sections 11(A)(a)(i) and 17(A)(a)(i) of the Act which encourage the use of new data processing and communications techniques, creating the opportunity for more efficient and effective market operations.

Interested persons are invited to submit written data, views and arguments concerning the proposed rule change within 21 days after the date of publication in the **Federal Register**. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securites and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549. Reference should be made to File No. SR–NYSE–85–3.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those which

[1] The Commission approved the adoption of the pilot program (SR–NYSE–83–49) on November 18, 1983 (Securities Exchange Act No. 20400; 48 FR 53827, November 28, 1983). Most recently on August 31, 1984, the Commission approved an extension to the pilot until February 21, 1985 (SR–NYSE–84–30) (Securities Exchange Act No. 21280, August 31, 1984; 49 FR 35458, September 7, 1984).

[2] The following issues are affected by the pilot procedures under the pilot program: American Information Technologies Corporation, American Telephone & Telegraph Co., Bell Atlantic Corporation, Bell South Corporation, NYNEX Corporation, Pacific Telesis Group, Southwestern Bell Corporation, and U.S. West Inc.

may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 5th Street, NW., Washington, D.C. Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6 and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof, in that the pilot program was scheduled to expire on February 21, 1985. An extension of the pilot program will provide the Exchange with the additional time necessary to study and evaluate the efficiencies achieved by the pilot program as well as to determine whether to submit a formal codification of procedures under the pilot. Therefore, the Commission believes it is appropriate to extend the pilot program until February 21, 1986.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change referenced above be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

John Wheeler,

Secretary.

March 6, 1985.

[FR Doc. 85-5960 Filed 3-12-85; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Pacific Stock Exchange, Inc.

March 6, 1985.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Prime Computer
Common Stock, $.05 Par Value, File No. 7-8332

Northern Telecom, Ltd.
Common Stock, No Par Value, File No. 7-8333

Melville Corporation
Common Stock, $1.00 Par Value, File No. 7-8334

Medtronic Incorporated
Common Stock, $1.00 Par Value, File No. 7-8335

Super Value Stores
Common Stock, $1.00 Par Value, File No. 7-8336

Ogden Corporation
Common Stock, $.50 Par Value, File No. 7-8337

American District Telegraph
Common Stock, $1.00 Par Value, File No. 7-8338

Wisconsin Power and Light
Common Stock, $5.00 Par Value, File No. 7-8339

Rykoff-Sexton, Inc.
Common Stock, $.10 Par Value, File No. 7.8340

Tech-Sym Corporation
Common Stock, $.10 Par Value, File No. 7-8341

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 27, 1985, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-5968 Filed 3-12-85; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Application No. 05/05-5201]

Rubber City Capital Corp.; Application for a Small Business Investment Company License

An application for a license to operate a small business investment company under the provisions of section 301(d) of the Small Business Investment Act of 1958, as amended (15 U.S.C. 661 et seq.) has been filed by Rubber City Capital Corporation, 1144 East Market St., Akron, Ohio 44316 with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1984).

The officers, directors and their shareholder of the Applicant are as follows:

W.R. Miller, Vice President, The Goodyear Tire and Rubber Co., 1144 E. Market St., Akron, Ohio 44316—President and Chairman of Board of Directors

M.L. Brown, Manager, Minority Dealer Development, The Goodyear Tire and Rubber Co., 1144 E. Market St., Akron, Ohio 44316—Vice President and Director

J.M. Ross, Assistant General Counsel and Assistant Secretary, The Goodyear Tire and Rubber Co., 1144 E. Market St., Akron, Ohio 44316—Vice President and Director

D.C. Goldinger, Section Manager, Tire Division Finance, The Goodyear Tire and Rubber Co., 1144 E. Market St., Akron, Ohio 44316—Secretary, Assistant Treasurer and General Manager

R.M. Gossett, Assistant Comptroller, The Goodyear Tire and Rubber Co., 1144 E. Market St., Akron, Ohio 44316—Comptroller and Director

C.R. Brown, Assistant Treasurer, The Goodyear Tire and Rubber Co., 1144 E. Market St., Akron, Ohio 44316—Treasurer and Director

D.E. Salyers, General Manager Sales, Tire Division, The Goodyear Tire and Rubber Co., 1144 E. Market St., Akron, Ohio 44316—Vice President

Rubber City Capital Corporation, a Delaware Corporation, is a wholly owned Subsidiary of Goodyear Tire and Rubber Company, 1144 East Market Street, Akron, Ohio 44316 and will have a private capitalization of $1,000,000.

Initially the Applicant will conduct its operations principally in the State of Ohio. It will provide assistance to qualified socially or economically disadvantaged small business concerns in various industries.

As a small business investment company under section 301(d) of the Act, the Applicant has been organized and chartered solely for the purpose of performing the functions and conducting the activities contemplated under the Act, as amended from time to time, and will provide assistance solely to small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered

because of social or economic disadvantages.

Matters involved in SBA's consideration of the application include the general business reputation and character of shareholders and management, and the probability of successful operation of the company in accordance with the Act and Regulations.

Notice is further given that any person may, not later that 30 days from the date of publication of this Notice, submit written comments on the proposed Applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" St., NW., Washington, DC 20416.

A copy of this notice shall be published in a newspaper of general circulation in Akron Ohio.

(Catalog of Federal Domestic Assistance Program No. 59.011. Small Business Investment Companies)

Dated: February 28, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85–5900 Filed 3–12–85; 8:45 am]

BILLING CODE 8025–01–M

[Designation of Disaster Loan Area #6285]

Connecticut; Designation of Disaster Loan Area

The City of Hamden, New Haven County, Connecticut constitutes a disaster area because of a fire which occurred on January 24, 1985. Eligible small businesses may file applications for economic injury assistance until the close of business on December 6, 1985, at the address listed below:

Disaster Area 1 Office, Small Business Administration, 15–01 Broadway, Fair Lawn, New Jersey 07410.

or other locally announced locations. The interest rate for eligible applicants is 4 percent.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: March 6, 1985.

Robert A. Turnbull,

Acting Administrator.

[FR Doc. 85–5901 Filed 3–12–85; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area No. 2184]

Oklahoma; Declaration of Disaster Loan Area

Ottawa and Tulsa Counties and the adjacent County of Osage in the State of Oklahoma constitute a disaster area because of damage caused by heavy rainfall and flooding which occurred on February 22–25, 1985. Applications for loans for physical damage may be filed until the close of business on May 6, 1985, and for economic injury until the close of business on December 6, 1985, at the address listed below:

Disaster Area 3 Office, Small Business Administration, 2306 Oak Lane, Suite 110, Grand Prairie, TX 75051.

or other locally announced locations.

Interest rates are:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses without credit available elsewhere	4.000
Businesses (EIDL) without credit available elsewhere	4.000
Other (non-profit organizations including charitable and religious organizations)	11.125

The number assigned to this disaster is 218406 for physical damage and for economic injury the number is 628600.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: March 6, 1985.

Robert A. Turnbull,

Acting Administrator.

[FR Doc. 85–5899 Filed 3–12–85; 8:45 am]

BILLING CODE 8025–01–M

Michigan; Region V—Advisory Council; Public Meeting

The U.S. Small Business Administration Region V Advisory Council, located in the geographical area of Detroit, Michigan, will hold a public meeting at 9:30 a.m., March 28, 1985, at the Hilton Inn, 7501 W. Saginaw Highway, Lansing, Michigan, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Raymond L. Harshman, District Director, U.S. Small Business Administration, 477 Michigan Avenue, Detroit, Michigan 48226, 313—226–7240.

Jean M. Nowak,

Director, Office of Advisory Councils.

March 1, 1985.

[FR Doc. 85–5904 Filed 3–12–85; 8:45 am]

BILLING CODE 8025–01–M

Minnesota; Region V—Advisory Council; Public Meeting

The U.S. Small Business Administration Region V Advisory Council, located in the geographical area of Minnesapolis/St. Paul, will hold a public meeting at 4:00 p.m., on Monday, March 25, 1985, at 610–C Butler Square, 100 North Sixth Street, Minneapolis, MN, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Celso C. Moreno, District Director, U.S. Small Business Administration, 610–C Butler Square, 100 North Sixth Street, Minneapolis, MN 55403, 612/349–3530.

Jean M. Nowak,

Director, Office of Advisory Councils.

March 1, 1985.

[FR Doc. 85–5906 Filed 3–12–85; 8:45 am]

BILLING CODE 8025–01–M

New York; Region II—Advisory Council; Public Meeting

The U.S. Small Business Administration Region II Advisory Council, located in the geographical area of New York City, will hold a public meeting at 4:00 p.m ., on Tuesday, March 26, 1985, at the Jacob K. Kavits Federal Building, 26 Federal Plaza, Room 2208 (22nd Floor), New York, New York, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Bert X. Haggerty, District Director, U.S. Small Business Administration, 26 Federal Plaza, New York, New York 10278, (212) 264–1318.

March 6, 1985.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 85–5905 Filed 3–12–85; 8:45 am]

BILLING CODE 8025–01–M

North Dakota; Region VIII—Advisory Council; Public Meeting

The U.S. Small Business Administration Region VIII Advisory Council, located in the geographical area of Fargo, North Dakota, will hold a public meeting at 9:30 a.m., Wednesday, April 10, 1985, at the Federal Building, Room 319, 657—2nd Avenue North, Fargo, North Dakota, to discuss such matters as may be presented by members, the staff of the U.S. Small Business Administration, or others attending.

For further information, write or call Robert L. Pinkerton, District Director, U.S. Small Business Administration, 657—2nd Avenue North, Fargo, North

Dakota 58102—(701) 237–5771, extension 5131.

Jean M. Nowak,

Director, Office of Advisory Councils.

March 1, 1985.

FR Doc. 85–5903 Filed 3–12–85; 8:45 am]

BILLING CODE 8025–01–M

Texas; Region VI—Advisory Council; Public Meeting

The U.S. Small Business Administration Region VI Advisory Council, located in the geographical area of Dallas, Texas, will hold a public meeting at 9:30 a.m., on Thursday, April 25, 1985, in the Tanglewood Lodge, P.O. Box 265, (Hwy 120), Pottsboro, Texas 75076, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present. For further information, write or call James S. Reed, District Director, U.S. Small Business Administration, 1100 Commerce Street, Room 3C36, Dallas, Texas, 75242, telephone (214) 767–0600.

Jean M. Nowak,

Director, Office of Advisory Councils.

March 4, 1985.

[FR Doc. 85–5902 Filed 3–12–85; 8:45 am]

BILLING CODE 8025–01–M

[Designation of Disaster Loan Area No. 2183]

New Jersey; Declaration of Disaster Loan Area

The area affected is bordered on the north by 9th St., on the south by 7th St., on the east by Madison St. and on the west by Jackson St. in the City of Hoboken, Hudson County, New Jersey. This consututes a disaster area because of damage resulting from a fire which occurred on January 15, 1985. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on May 2, 1985, and for economic injury until the close of business on December 4, 1985, at the address listed below:

Disaster Area 1 Office, Small Business Administration, 15–01 Broadway, Fair Lawn, New Jersey 07410.

or other locally announced locations.

Interest rates are:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses without credit available elsewhere	4.000
Businesses (EIDL) without credit available elsewhere	4.000
Other (nonprofit organizations including charitable and religious organizations)	11.125

The number assigned to this disaster is 218305 for physical damage and for economic injury the number 628400.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: March 4, 1985.

Robert A. Turnbull,

Acting Administrator.

[FR Doc. 85–5907 Filed 3–12–85; 8:45 am]

BILLING CODE 8025–01–M

[License No. 09/09–5330]

Fook Wah Co., Inc.; Surrender of License

Notice is hereby given that Fook Wah Company, Inc., 220 Bush Street, San Francisco, California 94104 has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). Fook Wah Company, Inc. was licensed by the Small Business Administration on August 30, 1983.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender was accepted on March 4, 1985, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: March 6, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85–5989 Filed 3–12–85; 8:45 am]

BILLING CODE 8025–01–M

[License No. 04/05–0011]

Vicksburg Small Business Investment Co.; Application for Approval of Conflict of Interest Transaction Between Associates

Notice is hereby given that Vicksburg Small Business Investment Company (VSBIC), 302 First National Bank Building, Vicksburg, Mississippi 39180, a Federal Licensee under the Small Business Investment Act of 1958, as amended, has filed an application with the Small Business Administration (SBA) pursuant to § 107.903 of the Regulations governing Small Business Investment Companies, 13 CFR 107.903 (1985) for approval of a conflict of interest transaction.

VSBIC proposes to loan $100,000 to RBH Equipment Company (RBH), P. O. Box 1736, Vicksburg, Mississippi 39180.

The conflict of interest arises because W. T. Bill Harris, a one third partner in RBH, is a member of the Board of Directors of VSBIC. As a result, VSBIC's financing of RBH falls within the purview of § 107.903(b)(1) of the Regulations and requires prior written approval of SBA. Mr. Harris does not own any stock of VSBIC.

Notice is hereby given that any person may, not later than 15 days from the date of publication of this Notice, submit written comments to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, D.C. 20416.

A copy of this notice will be published in a newspaper of general circulation in Vicksburg, Mississippi area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: March 6, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85–5990 Filed 3–12–85; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Materials Transportation Bureau; International Standards on the Transport of Dangerous Goods; Meeting

AGENCY: Materials Transportation Bureau (MTB), Research and Special Programs Administration, Department of Transportation (DOT).

ACTION: Notice of public meeting.

SUMMARY: This notice sets forth the venue and proposed agenda for a public meeting which will review the recent activities of the MTB relating to the development of international standards for the transport of dangerous goods.

DATE: May 8, 1985, 9:30 a.m. to 1.00 p.m.

ADDRESS: Room 4234, Nassif Building, 400 7th Street, SW., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Edward A. Altemos, International Standards Coordinator, Office of Hazardous Materials Regulation, Materials Transportation Bureau, Department of Transportation, Washington, D.C. 20590. (202) 426–0656.

SUPPLEMENTARY INFORMATION: Particular topics to be reviewed at this meeting will include:

1. Results of the December 1984 meeting of the United Nations'

Committee of Experts on the Transport of Dangerous Goods.

2. Status of the development of the International Civil Aviation Organization's (ICAO) dangerous goods regulations and results of the ninth meeting of the ICAO Dangerous Goods Panel.

3. Recent decisions of the RID/ADR Joint Meeting with respect to the transport of dangerous goods by rail and road in Europe.

4. Results of the working group meeting of the UN Group of Experts on Explosives examining the allocation of proper shipping names and the revision of the Technical glossary.

Interested persons are invited to attend and participate in this meeting. Persons planning to attend the meeting are cautioned that this meeting is intended to review the most recent activities and decisions of international organizations governing the transport of dangerous goods. Therefore, it is recommended attendees be familiar with these organizations, their functions and the standards issued by them.

Issued in Washington, D.C., on March 6, 1985.

Alan I. Roberts,

Associate Director for Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc. 85-6029 Filed 3-12-85; 8:45 am]

BILLING CODE 4910-60-M

VETERANS ADMINISTRATION

Administrator's Educational Assistance Advisory Committee; Meeting

The Veterans Administration gives notice that a meeting of the Administration's Educational Assistance Advisory Committee, authorized by section 1792, title 38, United States Code, will be held at the Veterans Administration Central Office, 810 Vermont Avenue, NW, Washington, D.C., on April 18, 1985, at 9 a.m. in the Omar N. Bradley Conference Room. The meeting will be for the purpose of reviewing term-by-term certification by institutions of higher learning, other provisions of educational assistance requirements and making appropriate recommendations thereon.

The meeting will be open to the public up to the seating capacity of the conference room. Because of the limited seating capacity and the need for building security, it will be necessary for those wishing to attend to contact Ms. Mary F. Leyland, Deputy Director, Education Service (221), Veterans Administration Central Office (phone 202-389-2152), before April 11, 1985. Interested persons may attend, appear before or file statements with the committee. Statements, if in written form, may be filed before or within 10 days after the meeting. Oral statements will be heard at 2:30 p.m. on April 18, 1985.

Dated: March 5, 1985.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 85-5804 Filed 3-12-85; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 49
Wednesday, March 13, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3)

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	Item
Federal Mine Safety and Health Review Commission	1
Federal Reserve System	2
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Nuclear Regulatory Commission	4
Postal Service	5

1

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

March 8, 1985.

TIME AND DATE: 10:30 a.m., Friday, March 15, 1985.

PLACE: Room 600, K Street, NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Robert K. Roland V. Secretary of Labor, Mine Safety and Health Administration (MSHA), Docket No. WEST 84-46-DM(A). (Issues include whether the Secretary of Labor may be a respondent in the discrimination case.)

Any person intending to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Thus, the Commission may subject to the limitations of 29 CFR 2706.150(a)(3) and 2706.160(e), ensure access for any handicappted person who gives reasonable advance notice.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen, (202) 653-5632.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 85-6085 Filed 3-11-85; 2:12 pm]

BILLING CODE 6735-01-M

2

FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, March 18, 1985.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: March 8, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-6014 Filed 3-8-85; 4:35 pm]

BILLING CODE 6210-01-M

3

INTER-AMERICAN FOUNDATION

TIME AND DATE:

March 21, 1985—6:00-9:00 p.m.
March 22, 1985—9:00 a.m.-12:00 p.m.

PLACE: 1515 Wilson Boulevard, fifth floor, Rosslyn, Virginia 22209.

STATUS: Open.

MATTERS TO BE CONSIDERED:

March 21, 1985

1. The Chairman's Report
2. The President's Report
3. Approval of the Minutes of the Meeting of November 8-9, 1984
4. Review of the Consultants' Recommendations

March 22, 1985

5. Continuation of the Review of the Consultants' Recommendations
6. Report of the Audit Committee
7. Report of the Director for Administration and Finance
8. Board Travel
9. Costa Rica Country Plan for Funding and Monitoring
10. Other Business

CONTACT PERSONS FOR MORE INFORMATION: Robert W. Mashek, Secretary to the Board of Directors, (703) 841-3844; Charles M. Berk, General Counsel, (703) 841-3812.

Dated: March 11, 1985.

Alejandro J. Palacios,

Sunshine Act Officer.

[FR Doc. 85-6108 Filed 3-11-85; 2:42 pm]

BILLING CODE 7025-01-M

4

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of March 11, 18, 25, and April 1, 1985.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, D.C.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of March 11

Monday, March 11

2:00 p.m.
Briefing by Staff on Use of Check Pilot Approach for Reactor Operator Requalification (Public Meeting) Moved from March 12)

Thursday, March 14

10:00 a.m.
Briefing on Further Actions on Source Term (Public Meeting)
2:00 p.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6) (Tentative)
3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Friday, March 15

9:30 a.m.
Discussion of Pending Investigation (Closed—Ex. 5 & 7) (postponed from March 6)
10:30 a.m
Discussion/Possible Vote on full Power Operating License for Waterford-3 (Public Meeting) (postponed from March 6)

Week of March 18—Tentative

Wednesday, March 20

10:00 a.m.
Discussion of Proposed Revisions of Part 35 (Public Meeting)
2:00 p.m.
Briefing by NUMARC on Status of NUMARC Initiatives (Public Meeting)

Thursday, March 21

2:00 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of March 25—Tentative

Tuesday, March 26

10:00 a.m.
Discussion of Environmental Qualification of Electrical Equipment—Status of Compliance with Rule (Public Meeting)
2:00 p.m.
Discussion of Motion to Disqualify in TMI-1, Restart Case (Closed—Ex. 10)

Thursday, March 28

10:00 a.m.
Briefing on NRC Training in Foreign Countries (Public Meeting)
2:00 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of April 1—Tentative

Wednesday, April 3

10:00 a.m.
Briefing on Source Term (Public Meeting)
2:00 p.m.
Briefing by IDCOR on Evaluation of Nuclear Power Plant Accident Risk (Public Meeting)

Thursday, April 4

10:00 a.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6) (if needed)
2:00 p.m.
Briefing on Design Basis Threat Statement (Closed—Ex. 1) (tentative)
3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

ADDITIONAL INFORMATION: Affirmation of "Licensee Hearing Request in Civil Penalty Case" and "Final Amendments to 10 CFR Part 2, Subpart H, 'Exceptions to Notice and Comment Rulemaking' " (Public Meeting) were held on March 7.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (202) 634–1498.

CONTACT PERSON FOR MORE INFORMATION: Julia Corrado (202) 634–1410.

Dated: March 7, 1985.

Andrew L. Bates,

Office of the Secretary.

[FR Doc. 85–6013 Filed 3–8–85; 4:35 pm]

BILLING CODE 7590-01-M

5

POSTAL SERVICE

Vote to Close Meeting

At its meetings on March 4, 1985, the Board of Governors of the United States Postal Service unanimously voted to close to public observation its meeting scheduled for April 1, 1985, in Hartford, Connecticut. The meeting will involve a discussion of personnel matters.

The meeting is expected to be attended by the following persons: Governors Babcock, Camp, Griesemer, Mckean, Peters, Ryan, Sullivan and Voss; Postmaster General Carlin; Deputy Postmaster General Strange; Secretary to the Board Harris; General Counsel Cox; Senior Assistant Postmaster General Coughlin; and Counsel to the Governors Califano.

The Board of Governors has determined that, pursuant to section 552b(c)(6) of Title 5, United States Code, and § 7.3(f) of Title 39, Code of Federal Regulations, the discussion of personnel matters is exempt from the open meeting requirement of the Government in the Sunshine Act (5 U.S.C. 552b(b)), because it is likely to disclosed information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy. The Board also determined that the public interest does not require that the Board's discussion of this matter be open to the public.

In accordance with section 552b(f)(1) of Title 5, United States Code, and § 7.6(a) of Title 39, Code of Federal Regulations, the General Counsel of the United Sates Postal Service has certified that in his opinion the meeting to be closed may properly be closed to public observation, pursuant to sections 552b(c)(6) of Title 5 United States Code, and § 7.3 of Title 39, Code of Federal Regulations.

David F. Harris,

Secretary.

[FR Doc. 85–6112 Filed 3–11–85; 2:59 pm]

BILLING CODE 7710-12-M

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1985

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federal register

Wednesday
March 13, 1985

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Parts 1, 43, 45, 61, 91, 133, and 135

Rotorcraft Regulatory Review Program Notice No. 5; Proposed Rule

VOL 50 ISS 49 MR 13 1985 UMI

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 1, 43, 45, 61, 91, 133, and 135

[Docket No. 24550; Notice No. 85-8]

Rotorcraft Regulatory Review Program Notice No. 5

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This is Notice No. 5 of a series of notices to be issued as part of the FAA's comprehensive Rotorcraft Regulatory Review Program. This notice contains proposals which would amend and update the operations and maintenance requirements pertaining to rotorcraft and would establish a new Class D rotorcraft-load combination. This notice is based on a number of proposals discussed at the Rotorcraft Regulatory Review Conference held December 10–14, 1979, in New Orleans, LA, and the Rotorcraft Regulatory Review Meeting held August 18–20, 1980, in Washington, D.C. These proposals offer regulatory alternatives which could result in changes to present operations and maintenance regulations that the public and the FAA believe are necessary.

DATE: Comments must be received on or before July 10, 1985.

ADDRESS: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–204), Docket No. 24550; 800 Independence Avenue, SW., Washington, D.C. 20591, or delivered in duplicate to: Room 916, 800 Independence Avenue, SW., Washington, D.C. 20591. Comments delivered must be marked: Docket No. 24550.

Comments may be inspected at Room 916 between 8:30 a.m. and 5:00 p.m.

Comments regarding proposed reporting or recordkeeping requirements should be submitted to the Office of Information and Regulatory Affairs, Attn: Desk Officer for the Federal Aviation Administration, Office of Management and Budget, Washington, D.C. 20503. Please send a copy of your comments to the FAA Rules Docket.

FOR FURTHER INFORMATION CONTACT: Roger Baker, Operations Branch (AFO–820), General Aviation and Commercial Division, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, D.C. 20591; Telephone (202) 426–8194.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rules by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, or economic impact that might result from adopting the proposals contained in this notice are invited. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket. Commenters wishing to have the FAA acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments on Docket No. 24550." The postcard will be dated, time stamped, and returned to the commenter.

For convenience, each proposal in this notice is numbered separately. The FAA requests that interested persons, when submitting comments, refer to proposals by these numbers and by the section to which they relate.

Availability of This Notice

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administrator, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue SW., Washington, D.C. 20591, or by calling (202) 426–8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should request a copy of Advisory Circular No. 11–2, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

Background

On January 5, 1979, the FAA gave notice of its Rotorcraft Regulatory Review Program and invited all interested persons to submit proposals for consideration during its forthcoming Rotorcraft Regulatory Review Conference (Notice 79–1; 43 FR 23925). The FAA received 613 proposals in response to Notice 79–1, of which 569 were placed on the conference agenda. The remaining 44 proposals were excluded because they fell outside the scope of the review program or for other reasons outlined in Notice 79–1.

In Notice 79–1A, published March 2, 1979, the FAA extended the period for submitting proposals relating to Notice 79–1 to May 31, 1979. This action was in response to a Helicopter Association of America (HAA) letter dated February 12, 1979, which stated that they did not have sufficient manpower to translate the grassroots comments into constructive proposals and justifications within the time alloted. This action was further supported by a letter from the United Kingdom Civil Aviation Authority (CAA) dated February 14, 1979, which stated that staffing limitations prevented anything more than a broad survey of the proposals.

In light of these comments, the FAA concluded that it was in the public interest to encourage a thorough review of the regulations and that good cause existed for extending the date for submitting proposals.

On October 22, 1979, the FAA announced the Rotorcraft Regulatory Review Conference and stated that conference agenda and compilation of proposals were available (Notice 79–1B; 43 FR 60747). Over 155 persons attended the conference which convened in New Orleans, Louisiana, on December 10, 1979. A transcript of those discussions is contained in Docket 18689.

On March 24, 1980, the FAA received a letter from the Helicopter Association of America (which changed its name to the Helicopter Association International) and the Aerospace Industries Association of America, Inc., requesting a meeting to present material to the FAA in an effort to assure themselves that the industry logic was understood by the Rotorcraft Review Team. The FAA gave careful consideration to the request and determined it would be in the best interest of all concerned to provide the requested meeting. The FAA also felt that all interested persons should be afforded the same opportunity to listen to and comment on the industry logic. Accordingly, Notice 79–1D (44 FR 43202; June 26, 1980) announced a Rotorcraft Review Meeting which was held August 18–20, 1980, in Washington, D.C. A copy of the transcript is in Docket 18689.

The FAA plans for the Rotorcraft Regulatory Review Program include publishing five notices of proposed rulemaking. The first notice included proposals dealing with the applicability sections of Parts 27 and 29 of the Federal Aviation Regulations (FAR), plus IFR certification and icing criteria. These were subsequently adopted as a final rule effective March 2, 1983 (48 FR 4374; January 31, 1983. The second notice covered flight and systems proposals. The third notice will cover powerplant proposals. The fourth notice will cover the airframe proposals. This fifth notice covers operations and maintenance proposals. Conference proposals relating to § 121.13 and Part 127 will be addressed in a separate notice.

The Proposals

This notice is part of the ongoing regulatory review program of the FAA to upgrade operations and maintenance standards for rotorcraft consistent with the advancing state-of-the-art. It deals with the operations and maintenance rules in Parts 43, 45, 61, 91, 133, and 135 and a related definition in Part 1 that is applicable to rotorcraft. The proposals are meant to strengthen or clarify existing rules. In addition, Appendix A contains conference proposals which the FAA, after careful deliberation, proposes to withdraw for the reasons stated.

Regulatory Evaluation and Regulatory Flexibility Determination

The FAA conducted an evaluation of the economic impact of these regulatory changes. A copy of the evaluation has been placed in the docket and is summarized here.

A large number of the proposed regulatory changes contained in Notice No. 5 was determined to have a negligible or no economic impact. Many of the proposals are either editorial or clarifying in nature. Table 1 lists these changes along with the assessment of their economic impacts as based on current industry practice, agency experience, and the explanations given under each rule change in the preamble for this notice.

TABLE 1.—PROPOSALS HAVING NEGLIGIBLE OR NO ECONOMIC IMPACT

Section	Economic Impact
Part 1: 1.1	No impact—definition.
Part 43:	
43.3	Impact considered with Part 43, Appendix A.
43.15	Negligible costs.
Part 45: 45.14	Do.
Part 61:	
61.55	No impact—clarification.
61.57	Negligible cost.
61.67	Do.
61.105	Do.
61.107	Do.
61.113	Do.
61.125	Do.
61.127	No impact.
61.131	Negligible costs.
61.159	No impact.
61.161	Negligible savings.
61.163	Negligible costs.
61.165	No impact.
Appendix A	No impact—clarification.
Appendix B	Negligible costs.
Part 91:	
91.2	No impact.
91.116	Negligible savings.
91.171	Negligible costs.
Part 133:	
133.1	Negligible savings.
133.11	No impact—clarification.
133.13	Do.
133.23	Negligible savings.
133.25	No impact—clarification (see § 133.51).
133.27	No impact—clarification (see § 133.25).
133.31	No impact—clarification.
133.33	Do.
133.35	Negligible savings.
133.37	No impact—optional standard (see § 133.1).
133.39	No impact.
133.45	Negligible savings.
133.47	No impact—clarification (see § 133.45).
Part 135:	
135.1	Negligible savings.
135.23	No impact—clarification.
135.39	Negligible savings.
135.23	No impact—clarification.
135.117	Do
135.167	Negligible costs.
135.181	Negligible savings.
135.223	Do.
135.227	No impact—clarification.

The FAA, however, invites specific public comments concerning the economic impact of the following two proposed rule changes summarized in Table 1.

1. *Section 45.14 Identification of Critical Components.*

The current rule affects all aircraft parts for which a replacement time, inspection interval, or related procedure is specified. To carry out the intent of the regulation requires that the usage and history of the specific parts be traceable. The proposed change simply clarifies the intent of the existing regulation and requires only that the identification markings be permanent and legible through the normal service life of a part under normal conditions.

Since the current industry markings on most critical aircraft components remain readable and reasonable methods are available that would ensure identification of the part through its normal service life, only negligible costs should result from this proposal. However, the FAA invites comments on this assumption and specific comments in regard to how many and which kinds of critical components are not now permanently and legibly indentified. Also, how many and which kinds of such critical components could not be permanently and legibly marked by a reasonable method that would ensure identification? What would be the expected identification? What would be the expected costs to ensure such identification?

2. *Section 135.167 Emergency Equipment: Extended Overwater Operations.*

The current rule affects both rotorcraft and fixed-wing operations under Part 135. By requiring rafts and life preservers with survivor locator lights, the proposed change reduces location and survivor water retrieval times. It provides a higher level of safety for the flying public and provides for the development of survival kits that are appropriate for the routes flown. Negligible industry costs would result from this proposal.

Queries to industry indicate that over 80 percent of the Part 135 airplane and rotorcraft operators actively conducting extended overwater operations already have life preservers and life rafts that are equipped with survivor locator lights. The remainer have rafts and preservers but may not be equipped with locator lights. For these operators, lights would be relatively inexpensive to acquire. All operators are equipped with survival kits and the change in kit regulations should have no impact except for new entrants into extended overwater operations. These new entrants may gain small savings if the survival kit appropriate for the route flown was less costly than the detailed kit required under the current rule. The FAA invites specific comments concerning the cost savings, other benefits, or unknown costs that could result from this proposed rule change.

The remainder of this summary discusses the benefits and costs of the eight proposed operations and maintenance changes that were determined to have the impacts shown in Table 2. The costs and savings data are derived from estimates obtained by industry research on representative operator groups which comprise the rotorcraft industry. The principal costs to the helicopter operators occur only because the operating exemptions given to them under the present rule will not be renewed if the proposed rule changes are adopted. Some small benefit gains and losses to service consumers or service providers, due to the proposed rule changes, could not be quantified. These savings and costs are primarily

the value of time delay to the consumers and increased service opportunities for the operators, and they are qualitatively discussed in the regulatory evaluation in the docket in the sections on the specific rule changes. The FAA does not have the data to determine their true value and public comment is invited on their assessment and also on any other industry impact of the eight proposed rule changes which are summarized in Table 2.

TABLE 2.—COST AND SAVING OF NOTICE NO. 5 PROPOSALS HAVING AN ECONOMIC IMPACT

Proposal	Industry cost (savings)	Principal reason(s)
Part 43, Appendix a: Major alterations major repairs, and preventive maintenance.	($413,000 recurring annual cost decrease) ($23,000 annual profit increase)	Reduce expense to transport and use mechanics in remote areas; reduced rotorcraft downtime.
Section 91.23 Fuel requirements for IFR flight	($485,000 recurring annual cost decrease)	Reduced operational cost from carrying less fuel.
Section 133.21 Personnel	($481,000 recurring annual cost decrease) ($481,000 recurring annual cost decrease)	Reduced cost from not having to transport chief pilot to field locations.
Section 133.41 Flight characteristics requirements	($340,000 recurring annual cost decrease) ($2,000 annual profit increase)	Reduced number of operational flight checks.
Section 133.51 Airworthiness certification	($104,000 annual cost decrease) ($9,000 annual profit increase)	Reduced paperwork and administrative costs.
Section 135.159 Equipment Requirements	$610,000 one time cost increase $63,000 recurring annual cost $3,000 one time lost profit $16,000 annual lost profit	Purchase and installation of Attitude and Heading indicators for rotorcraft now operated under Exemption 2695B. Maintenance cost for instruments; one time loss for down time associated with installation; annual loss for some operators stopping night flight instead of purchasing instruments.
Section 135.173 Airborne thunderstorm detection equipment requirements.	$137,000 one time cost increase $14,000 recurring annual cost See footnote [1]	Purchase, installation and maintenance of minimum thunderstorm detection (TDX). It is equipment meeting intent and requirement of rule change for rotorcraft now operating under Exemption 2695B. See footnote [1]
Section 135.429 Required inspection personnel	$105,000 one time cost. See footnote [2] ($252,000 recurring annual cost decrease) or ($235,000 net annualized cost decrease—10 Years, 10% capital recovery).	Relieved work requiremetns for work done at remote areas or sites. One time cost for some operators to install more extensive system of maintenance. See Footnot.[2]

[1] This estimate can vary from no cost to industry estimate shown. The decision to install TDX equipment or to cease flying depends on the prevailing thunderstorm weather occurrence in the area of normal operations and the flexibility an operator has to delay revenue flights until weather improves and to reschedule them into other time periods.

[2] The one time cost accrues to a limited number of operators currently utilizing Exemption 2695B which permits maintenance under § 135.411(a)(1) instead of § 135.411(a)(2). If only the exemption itself were removed, industry may have recurring cost increases. However, the proposed change provides the primary benefit of the exemption to § 135.411(a)(2) and almost all of the expected recurring costs for them would not be incurred. Industry is invited to comment regarding the combined impact of the exemption and the proposed change to § 135.429.

1. Part 43, Appendix A: Major Alterations, Major Repairs, and Preventive Maintenance

Benefits. Annual recurring cost savings of $413,000 will accrue to the industry from not having to transport mechanics to remote areas to perform the preventive maintenance items proposed in this rule change. In addition, reducing downtime could produce an industry annual profit increase of about $23,000.

Regulatory Flexibility Determination. Industry research indicates that the fleet size distribution of Part 135 operators is skewed toward small fleets, with over ⅔ of these operators falling in the four-or-fewer-rotorcraft category. The maximum average economic impact per small operator is low enough ($1,217), relative to the threshold of economic significance, that it appears unlikely that ⅓ or more of the potentially affected small operators would be impacted to an extent greater than the threshold.

2. Section 91.23 Fuel Requirements for IFR Flight

Benefits. This proposal could provide an annual recurring cost savings of $485,000 to the industry through either increased payload capability for operations at or near gross weight or decreased operating costs when operating at lower weights.

Regulatory Flexibility Determination. An estimated 393 Part 91 operators are potentially affected by this proposal. All such operators that are aviation service providers may be considered "small." (Data needed to estimate the size distribution of non-aviation businesses operating proprietary helicopters is not available.) Benefits to operators may be assumed to be roughly proportional to fleet size. Therefore, to the extent that small operators have smaller fleets than large ones, the total of $485,000 in expected annual cost savings amounts to a maximum average of $1,234 per potentially affected small operator.

Industry research indicates that the fleet size distribution of operators subject to Part 91 (and not to Part 135 as well) has an even more pronounced orientation toward small fleets than that of Part 135 operators. Over ¾ of Part 91 operators have only one rotorcraft. The maximum average economic impact per operator is low enough, relative to the threshold of economic significance, that it appears unlikely that ⅓ or more of the potentially affected operators would be impacted to an extent greater than the threshold.

3. Section 133.21 Pilots

Benefits. This proposal would allow an operator to designate qualified pilots as assistant chief pilots to perform the functions of the chief pilot in areas where the chief pilot is not readily available. Operators who operate in diverse areas could achieve cost reductions and an annual recurring cost savings of $481,000 could accrue to the industry if this proposal were implemented.

Regulatory Flexibility Determination. The objective of these proposals is to eliminate external-load accidents due to inadequate pilot competence in performing particular operations. Two methods of attempting to ensure such pilot competence (which can be combined) are to require experience, such as through a "trainee" pilot working a certain amount of time with a "qualified" pilot and through pilot testing by a qualified examiner. Pilot testing might be carried out by FAA employees, designated examiners, or individuals within the particular company performing the external-load operation. Present regulations provide for such testing by a single Chief Pilot. This proposal would allow the Chief Pilot's duties to be delegated to Assistant Chief Pilots to relieve some of the compliance cost burden.

An estimated 179 external-load operators are potentially affected by this proposal. Almost all may be assumed to be small. Benefits may be considered roughly proportional to fleet size, although variations may be expected due to operating territory and other factors. Therefore, to the extent that small operators have smaller fleets than large ones, the $481,000 projected annual cost savings may be expected to average no more than $2,687 per affected operator.

Industry research indicates that over 40 percent of Part 133 certificate holders also hold Part 135 certificates. The total fleet size distribution of Part 133

operators is unknown. Regardless of whether it resembles the distribution of Part 135 or non-Part 135 operators, the relatively high maximum average impact suggests that the threshold of economic impact significance could very well be exceeded by ⅓ of the potentially affected small operators.

4. Section 133.41 Flight Characteristics Requirements

Benefits. This proposal would allow external-load operators to use operational flight checks demonstrated previously to show that rotorcraft-load combinations are satisfactory. By reducing the number of operational flight checks performed by the certificate holder, an annual recurring cost savings of $340,000 and an annual profit increase of $2,000 could accrue to the industry if this proposal were implemented.

Regulatory Flexibility Determination. The objective of these proposals is to reduce accidents resulting from the use of particular combinations of rotorcraft models with certain external loads and external-load attaching devices. Many such combinations of rotorcraft models, external loads, and external-load attaching devices pose a significant risk of accident even when under the control of a competent pilot. The FAA concludes that such confidence can only be maintained when each possible rotorcraft-load combination is successfully demonstrated at least once.

An estimated 164 external-load rotorcraft certificate holders are potentially affected by this proposal. Almost all may be considered small. Benefits may be considered roughly proportional to fleet size, although variations may be expected due to fleet diversity and other factors. Therefore, to the extent that small operators have smaller fleets than large ones, the $340,000 projected annual cost savings and $2,000 annual profit increase may be expected to be no greater than $2,085 per potentially-affected small operator, on average.

As stated previously, industry research indicates that somewhat over 40 percent of Part 133 certificate holders also hold Part 135 certificates. The size of the average impact, however, suggests that the threshold of economic impact significance could well be exceeded by ⅓ of the potentially affected small operators. Section 133.41 is closer to the borderline in this regard than § 133.21.

5. Section 133.51 Airworthiness Certification

Benefits. This proposal, along with the clarification of § 133.25, Amendment of Certificate, allows an external-load operator to add or delete a rotorcraft from its fleet by submitting a revised list to the FAA for approval. Eliminating unnecessary paperwork, time delays, and other administrative costs could achieve an annual recurring cost savings of $104,000 and an annual profit increase of $9,000 to the industry if this proposal were implemented.

Regulatory Flexibility Determination. An estimated 177 operators subject to Part 133 are potentially affected by this proposal. Almost all such operators may be considered small. Therefore, to the extent that small operators have smaller fleets than large ones, the total of $109,000 expected annual cost savings and $9,000 potential profit improvement may be expected to amount to no more than $667 per potentially affected small operator, on the average. Given this average impact, it would be mathematically impossible for ⅓ of the potentially affected small operators to be impacted to an extent greater than the threshold.

6. Section 135.159 Equipment Requirements

Benefits. There is no justification to show that operations conducted at night in helicopters require less instrumentation than airplanes to acquire the level of safety for passengers that is expected of air carriers. The average annual safety benefit accruing to society would range from $194,000 to $741,000 if relatively few (1 to 4) accidents per year under poor light conditions could be avoided. The minimum safety benefit expected over a 10-year period is $1,200,000 and the maximum is $4,600,000.

Costs. Compliance to the proposed rule change does involve a cost to those operators who use the exemption to conduct VFR night operations without the instruments required by the present regulation. An initial industry cost of $610,000 could be incurred by the operators of the affected aircraft to purchase and install the required instruments as well as recurring annual maintenance of $63,000 and a one-time lost profit of $3,000 for downtime to allow for installation. The annual lost profit associated with the possibility that some operators would cease night flying instead of purchasing and installing instruments is estimated to be $16,000.

Regulatory Flexibility Determination. An estimated 286 small rotorcraft operators conduct night operations and would be affected by removing the exemption allowing night flights without the required instruments. Sixty-nine of them use the exemption and are significantly affected. Since they do not comprise a substantial number of the affected small entities (less than one-third), an IRFA is not required for the removal of the exemption.

7. Section 135.173 Airborne Thunderstorm Detection Equipment Requirements

Benefits. This proposed rule change will maintain a level of safety comparable to those airplanes in Part 135 service that are equiped with thunderstorm detection equipment. The average annual safety benefit accruing to society would be $96,000 if less than one accident per year could be avoided by installing equipment. The maximum safety benefit over a 10-year period is $590,000.

Costs. Even though the proposed rule change relieves most rotorcraft operators of the burden of compliance with the current rule, some who now operate under exemption could be affected because they could not delay flight under night VFR during forecasted hazardous weather conditions. The average one-time costs for this industry group could be $137,000 to purchase and install the required equipment, with annual maintenance costs of $14,000.

Regulatory Flexibility Determination. Forty-one small operators utilize rotocraft with 10 passenger seats or more and would be affected by removing the exemption. Six of them use the exemption and are significantly affected. Since they do not comprise a substantial number of the affected small entities (less than one-third), an IRFA is not required.

8. Section 135.429 Required Inspection Personnel

Benefits. The proposed rule change will reduce operator costs of rotorcraft operators who do not now use the exemption to the requirements of § 135.411(a)(2). An annual cost savings of $252,000 would be achieved by the industry should the proposal be adopted.

Costs. Removing the exemption to operate under the requirements of § 135.411(a)(1) instead of § 135.411(a)(2) could cause incurrence of one-time industry costs of $105,000 for a limited number of affected operators to install a more extensive system of maintenance for 10-plus passenger rotorcraft. However, corresponding proposed changes to § 135.429 would retain most of the annual savings benefit that these operators achieved under the exemption and a net savings would accrue to the industry. Industry is invited to comment regarding the combined impact of the

exemption and the proposed rule change.

Regulatory Flexibility Determination. Forty-one small operators utilize rotorcraft with 10 passenger seats or more and would be affected by removal of the exemption. It is estimated that only six use the exemption to § 135.411(a)(2). If all six were significantly affected, they still would not comprise a substantial number (less than one-third) of the affected small entities and an IRFA is not required.

The costs of these proposed rule changes were compared to accident data that were the most closely associated with the specific rule change. Based on the accident data available, the costs were studied with respect to an average number of accidents that could have been avoided if the rule changes were adopted. It was concluded in the analysis that the costs to industry for these rule changes are at a level that is low enough to justify the cost with relatively few accidents prevented. Table 3 shows the low and high ranges for the benefit-to-cost ratios obtained for these changes.

TABLE 3.—BENEFIT-TO-COST RATIOS FOR PROPOSED RULES HAVING SIGNIFICANT COSTS

Proposed change to	Benefit to cost ratios	
	Low	High
Section 135.159	1.1	4.2
Section 135.173	0.0	2.6

The proposed changes to Part 43, Appendix A, and §§ 91.23, 133.21, 133.41, 133.51, 135.159, 135.173, and 135.429 refer to different, but partially overlapping, categories of operators.

(1) Part 43, Appx. A—Part 135 operators serving remote areas.

(2) § 91.23—Part 91 operators (not holding Part 135 certificates) flying to some extent under IFR.

(3) § 133.21—Part 133 operators in general.

(4) § 133.41—Part 133 operators in general.

(5) § 133.51—Part 133 operators in general.

(6) § 135.159—Part 135 operators flying to some extent VFR at night.

(7) § 135.173—Part 135 operators using rotorcraft with 10 seats or more.

(8) § 135.429—Part 135 operators using rotorcraft with 10 seats or more.

Although the first and second categories are, by definition, separate from each other, there exists no operator survey data that would allow the determination or reliable estimation of the actual extent to which each of the other categories overlap. It is possible to estimate, however, whether or not it is likely, given the (separate) distributions of fleet size for Part 135 and non-Part 135 operators, that the number of operators experiencing a significant cumulative net economic impact (positive or negative) from all eight of these proposals would constitute ⅓ or more of the total of individual potentially affected operators, if operator impact were proportional to operator fleet size. To provide the highest possible chance that this number will constitute ⅓ or more, the total of individual operators potentially affected by any of the proposals may be estimated as follows:

Part 135 operators, including all in proposal categories (1), (6), (7), and (8), and 42 percent of those in categories (3), (4), and (5). NOTE.—It is estimated that 42.4 percent of Part 133 operators also hold Part 135 certificates	358
Non-Part 135 certificate holders, including 57.6 percent of those in proposal categories (3), (4), and (5)	393
Total	751

This estimate maximizes the extent of "overlapping" among relevant categories and increases the chance of ⅓ or more of the total individual operators' experiencing a significant cumulative net impact. It may be noted that such overlapping is not necessarily the most likely representation of actual practice. For example, Part 91 operators that fly under IFR may well not also engage in Part 133 operations, which are generally carried out under VFR.

Even with maximum overlapping of potentially affected small operator categories and given the relatively large number of non-Part 135, and even Part 135, operators that have single-craft or very small fleets, an estimated 217 out of 751 would be expected to bear a significant cumulative impact from the eight proposals. The remaining 534 would not be significantly impacted. The number of small operators expected to be impacted would be less than ⅓ of the total of such operators unless at least 120 of those operators were eliminated by being designated "large" operators. Therefore, it is reasonable to expect that the cumulative net economic impact (positive or negative) of these proposals would not reach significant levels for ⅓ or more potentially affected small operators.

However, the unknown number of proposal category (2) operators that might be eliminated as "large" entities and that might have been expected to be insignificantly impacted could reach as high as 270. Also, those proposal category (2) operators not eliminated might have atypically large fleets and could be significantly affected by proposal (2) alone. Therefore, the possibility exists that the total number of potentially affected small operators could be low enough so that over ⅓ of them would experience a significant cumulative net impact.

Impact on International Trade

The FAA cannot discern what impact, if any, this proposed regulation would have on international trade and invites public comments.

Reporting and Recordkeeping Requirements

Any reporting or recordkeeping requirements contained in these proposed rules have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1980. Comments concerning these requirements are invited and should be submitted to the Office of Information and Regulatory Affairs, Attention: Desk Officer for the Federal Aviation Administration, Office of Management and Budget, Washington, D.C. 20503. Please send a copy of your comments to the FAA Rules Docket.

Conclusion

These proposals would upgrade rotorcraft certification and operational requirements and allow operators to utilize rotorcraft more fully. Therefore, the FAA has determined that these proposals, if adopted, are not major under Executive Order 12291 or significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Based on the Regulatory Flexibility Determinations discussed in this document, I certify that these proposals will not have a significant economic impact on a substantial number of small entities. A draft regulatory evaluation is contained in the docket. A copy may be obtained by contacting the person identified under "**FOR FURTHER INFORMATION CONTACT.**"

List of Subjects

14 CFR Part 1

Air safety, Safety, Aviation safety, Air Transportation, Air Carriers, Aircraft, Rotorcraft, Helicopters.

14 CFR Part 43

Air carriers, Air transportation, Aircraft, Aviation safety, Safety.

14 CFR Part 45

Air safety, Safety, Aviation safety, Air transportation, Transportation, Helicopters, Rotorcraft.

14 CFR Part 61

Airmen, Aircraft pilots, Pilots, Transportation, Air safety, Safety, Aviation safety, Air transportation, Aircraft, Helicopters, Rotorcraft.

14 CFR Part 91

Air carriers, Aviation safety, Safety, Aircraft, Aircraft pilots, Pilots, Air Transportation, Cargo.

14 CFR Part 133

Aircraft, Airworthiness, Pilots.

14 CFR Part 135

Air carriers, Aviation safety, Safety, Air transportation, Air taxi, Airworthiness, Cargo, Pilots, Airmen, Aircraft, Transportation, Helicopters.

The Proposed Amendments

The FAA proposes to amend 14 CFR Parts 1, 43, 45, 61, 91, 133, and 135, as follows:

PART 1—DEFINITIONS AND ABBREVIATIONS

1. By amending §1.1 by revising the introductory paragraph of the definition of "Rotocraft-load combination" and by adding a new paragraph (4) to read as follows:

§ 1.1 General definitions.

* * * * *

"Rotorcraft-load combination" means the combination of a rotorcraft and an external load, including the external load attaching means. Rotorcraft-load combinations are designated as Class A, Class B, Class C, and Class D, as follows:

* * * * *

(4) "Class D rotorcraft-load combination" means one in which the external load is other than a Class A, B, or C and has been specifically approved by the Administrator for that operation.

* * * * *

Explanation: This proposal would amend the existing definitions in Part 1 and add the definition of Clas D rotorcraft-load combination.

This proposal will allow more flexibility to those operators certificated under the provisions of Part 133 who wish to conduct certain approved external-load operations that do not meet the current definition of an external load. For example, externally lifting and transporting a harbor pilot to or from a tanker ship could be an approved Class D rotorcraft-load operation under this proposal.

Ref: Proposals 4, 506, 507, 526, 527, 532, and 534; Committee III.

PART 43—MAINTENANCE, PREVENTIVE MAINTENANCE, REBUILDING, AND ALTERATION

2. By amending § 43.3 by redesignating paragraph (h) as paragraph (i) and by adding a new paragraph (h) to read as follows:

§ 43.3 Persons authorized to perform maintenance, preventive maintenance, rebuilding, and alterations.

* * * * *

(h) Notwithstanding the provisions of paragraph (g) of this section, the Administrator may approve a certificate holder under Part 135, operating rotorcraft in a remote area, to allow a pilot to perform specific preventive maintenance items provided—

(1) The items of preventive maintenance are a result of a known or suspected mechanical difficulty or malfunction that occurred en route to or in a remote area;

(2) The pilot has satisfactorily completed an approved training program and is authorized in writing by the certificate holder for each item of preventive maintenance that the pilot is authorized to perform;

(3) There is no certificated mechanic available to perform preventive maintenance;

(4) The certificate holder has procedures to evaluate the accomplishment of a preventive maintenance item that requires a decision concerning the airworthiness of the rotorcraft; and

(5) The items of preventive maintenance authorized by this section are those listed in paragraph C of Appendix A of this part.

* * * * *

Explanation: Proposed § 43.3(h) would allow an appropriately trained and authorized pilot of a Part 135 certificate holder that operates rotorcraft in remote sites to perform preventive maintenance as defined in Part 1 of this chapter and as listed in Appendix A to Part 43.

The FAA has granted numerous exemptions to offshore rotorcraft operators to allow a pilot to remove, check, and reinstall magnetic chip detectors in rotorcraft engines for the past 7 years. These exemptions were issued on the basis that certain rotorcraft operations related to energy development and production require rotorcraft to fly over remote areas. Engines that are equipped with a chip detector warning system may require a pilot to land in a remote area where a mechanic would not be available. The experience gained over the past 7 years under the authority of these exemptions substantiates that a properly qualified and trained pilot in communication with a maintenance facility can properly perform this type of preventive maintenance. This proposal is not intended to allow a pilot to perform preventive maintenance on a routine basis, nor is it intended to allow a pilot to perform inspections or maintenance that is a part of a certificate holder's required inspection or maintenance program. The pilot would be allowed to perform only preventive maintenance which resulted from an "unforeseen maintenance difficulty" and would not be authorized by Part 43 to perform a repair that may be needed in a remote area.

Ref: Proposal 424; Committee III.

3. By amending § 43.15 by revising the introductory text of paragraph (c)(2) and by adding a new paragraph (c)(3) to read as follows:

§ 43.15 Additional performance rules for inspections.

* * * * *

(c) * * *

(2) Each person approving a reciprocating-engine-powered aircraft for return to service after an annual or 100-hour inspection shall, before that approval, run the aircraft engine or engines to determine satisfactory performance in accordance with the manufacturer's recommendations of—

* * * * *

(3) Each person approving a turbine-engine-powered aircraft for return to service after an annual or 100-hour inspection shall, before that approval, run the aircraft engine or engines to determine satisfactory performance in accordance with the manufacturer's recommendations.

* * * * *

Explanation: The proposed change would require that turbine and reciprocating engines be operated to determine satisfactory performance in accordance with the manufacturer's specifications before returning an aircraft to service after an annual or 100-hour inspection. The present § 43.15 specifies run-up requirements that imply that only reciprocating engines need to be operated to determine satisfactory performance, thereby imposing no engine run-up requirement for turbine engines. The requirement is intended to provide the opportunity to discover any potential malfunction or defect such as deterioration of power and abnormal EGT (ITT) before returning an aircraft to service after an annual or 100-hour inspection.

This proposal merely formalizes the current industry practice and would

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impose an additonal requirement only on those operators who currently do not follow the common industry practice.

Ref: Proposal 429; Committee III.

4. By amending Part 43, Appendix A, by revising paragraph (c)(23) and by adding new paragraph (c)(29) to read as follows:

Appendix A—Major Alterations, Major Repairs, and Preventive Maintenance

* * * * *

(c) * * *

(23) Cleaning or replacing fuel and oil strainers or filter elements.

* * * * *

(29) Removing, checking, and replacing magnetic chip detectors.

* * * * *

Explanation: This proposal would amend Appendix A by adding routine checks or replacement of fuel and oil strainers and filters and magnetic chip detectors under the category of preventive maintenance.

Replacing fuel and oil strainers and filters is proposed as a preventive maintenance item because the present rule only provides for the cleaning of fuel and oil filters. The majority of aircraft in use today incorporate throw-away filters in the fuel and oil systems. This proposal would add the provision in Appendix A regarding replacement or cleaning of fuel and oil filters which has been needed since throw-away filters were introduced and installed in aircraft.

The proposal to include checking and replacing chip detector plugs as items of preventive maintenance is nothing more than formal recognition of current industry practice which currently requires an exemption. Experience by operators in accomplishing this procedure has revealted no compromise in safety while easing the maintenance burden for operations in remote areas.

Ref: Proposals 431 and 432; Committee III.

PART 45—IDENTIFICATION AND REGISTRATION MARKING

5. By revising § 45.14 to read as follows:

§ 45.14 Identification of critical components.

Each person who produces a part for which a replacement time, inspection interval, or related procedure is specified in the Airworthiness Limitations section of a manufacturer's maintenance manual or Instructions for Continued Airworthiness shall permanently and legibly mark that component with a part number (or equivalent) and a serial number (or equivalent).

Explanation: This proposal would require a person who provides a part for which a replacement time or inspection interval is specified in an Airworthiness Limitations Section of a manufacturer's maintenance manual or Instructions for Continued Airworthiness to mark the part with a serial number and part number that will not become unreadable during normal service wear. There have been some parts marked in such a manner that identification has become impossible after short periods of normal service. One commenter expresses concern that it may be impossible to place an identification plate on many items. This proposal requires that parts be marked by a reasonable method to ensure identification during its normal service life. It does not specifically require an identification tag.

Parts listed in the Airworthiness Limitations Section of a manufacturer's maintenance manual or Instructions for Continued Airworthiness are those for which a specific life limit or overhaul time is specified. Often life limit or overhaul time is specified because of a fatigue limit, and operating the aircraft beyond the specified time could result in an unsafe condition. This proposal is safety related and is intended to ensure that all such parts are properly identified and that the identification is readable through the normal service life of the part.

Ref: Proposal 433; Committee III.

PART 61—CERTIFICATION: PILOTS AND FLIGHT INSTRUCTORS

§ 61.21 [Amended]

5(A). By amending § 61.21 by removing the word "airplane" and inserting the word "aircraft" in its place each time it appears in the section (three replacements).

Explanation: This proposal would specify the duration of Category II pilot authorizations for helicopter operators. This proposal is necessary in conjunction with the proposed change to § 91.2, which would allow helicopter operators to conduct Category II instrument approaches.

6. By amending § 61.55 by revising the section heading, the introductory text of (a), introductory text of (b), (b)(1), (b)(2)(i) and (ii), and (d)(1) through (d)(3) to read as follows:

§ 61.55 Second-in-command qualifications.

(a) Except as provided in paragraph (d) of this section, no person may serve as second in command of an aircraft type certificated for more than one required flight crewmember unless that person holds—

* * * * *

(b) Except as provided in paragraph (d) of this section, no person may serve as second in command of an aircraft type certificated for more than one required flight crewmember unless, since the beginning of the 12th calendar month before the month in which the pilot serves, the pilot has, with respect to that type of aircraft,—

(1) Become familiar with all information concerning the aircraft's powerplant, major components and systems, major appliances, performance and limitations, standard and emergency operating procedures, and the contents of the approved aircraft flight manual or approved flight manual material, placards, and markings.

(2) * * *

(i) Three takeoffs and three landings to a full stop in an aircraft as the sole manipulator of the flight controls; and

(ii) Engine-out procedures and maneuvering with an engine out while executing the duties of a pilot in command. This requirement may be satisfied in an aircraft simulator acceptable to the Administrator.

* * * * *

(d) * * *

(1) Meets the pilot-in-command proficiency check requirements of Part 121, 125, 127, or 135 of this chapter;

(2) Is designated as the second in command of an aircraft operated under the provisions of Part 121, 125, 127, or 135 of this chapter; or

(3) Is designated as the second in command of an aircraft for the purpose of receiving flight training required by this section and no passengers or cargo are carried on that aircraft.

* * * * *

Explanation: This proposal would extend the second-in-command pilot qualifications to include helicopters that are type certificated for more than one required flight crewmember. The current rule provides only for second-in-command pilot qualifications for operations of large airplanes or turbojet-powered multiengine airplanes type certificated for more than one pilot.

The operating complexities of helicopters that are type certificated for more than one pilot are comparable to large airplanes or turbojet-powered multiengine airplanes and the requirement for an additional pilot crewmember is mandatory and is included in the operating limitations of the flight manual.

This proposal would align helicopter second-in-command qualification and

currency requirements with the requirements currently applicable to large airplanes or turbojet-powered multiengine airplanes type certificated for more than one required flight crewmember. It would also exclude pilots operating under Part 127 from meeting the qualifications and proficiency check requirements of § 61.55.

The rapid increase in the number of helicopter type certificated for more than one required flight crewmember indicates the need to update the current rule to provide second-in-command pilot qualification and proficiency check requirements. Safety would be increased through specific training and flight testing of pilots before they serve as second in command on helicopters type certificated for more than one required flight crewmember.

Ref: Proposal 438; Committee III.

7. By amending § 61.57 by adding the word "calendar" before the word "months" in the flush paragraph following (a)(2) and in paragraphs (e)(1) and (e)(2) and by revising introductory text of paragraph (a) to read as follows:

§ 61.57 Recent flight experience: Pilot in command.

(a) *Flight review.* No person may act as pilot in command of an aircraft unless, within the preceding 24 calendar months, that person has—

* * * * *

Explanation: This proposal would delete the expired applicability date of November 1, 1974, from § 61.57(a) since this date has no further significance to the flight review requirement. Further, to remain consistent with other regulatory provisions, the word "calendar" would be inserted before the word "months" wherever it appears in this section. This would cause all compliance dates for recency of experience to become due at the end of the month.

§ 61.67 [Amended]

7(A). By amending § 61.67 by removing the word "airplane" and inserting the word "aircraft" in its place each time it appears in the section as follows:

§ 61.67(a)(2) three replacements
§ 61.67(c)(1)(ii) one replacement
§ 61.67(c)(2)(ii) one replacement
§ 61.67(d)(2) five replacements

Explanation: This proposal would specify the Category II pilot authorization requirements for helicopter operators. These provisions are the same as for airplane operators. The proposal is necessary in light of the proposed change to § 91.2, which would allow helicopter operators to conduct Category II instrument approaches.

8. By amending § 61.87 by redesignating paragraphs (c)(2)(v), (vi), and (vii) as paragraphs (c)(2)(vi), (vii), and (viii), respectively; by revising the paragraph heading of (c)(2), by revising (c)(2)(ii); by adding a new paragraph (c)(2)(v); and by revising redesignated paragraph (c)(2)(viii) and paragraph (c)(3) to read as follows:

§ 61.87 Requirements for solo flight.

* * * * *

(c) * * *

(1) * * *

(2) *In rotorcraft other than single-place gyroplanes.*

(i) * * *

(ii) Ground maneuvering and runups;

* * * * *

(v) Rapid decelerations (helicopters only);

* * * * *

(viii) Simulated emergency procedures, including autorotational descents with a power recovery or running landing in gyroplanes, a power recovery to a hover in single-engine helicopters, or approaches to a hover or landing with one engine inoperative in multiengine helicopters.

* * * * *

(3) *In single-place gyroplanes.*

(i) Flight preparation procedures, including preflight inspection and powerplant operation;

(ii) Ground maneuvering and runups;

(iii) Straight and level flight, turns, climbs, and descents;

(iv) Navigation by ground references, airport traffic patterns, and collision avoidance procedures;

(v) Normal takeoffs and landings;

(vi) Simulated emergency procedures, including autorotational descents with a power recovery or a running landing; and

(vii) At least three successful flights in a gyroplane under the observation of a qualified instructor.

Items in paragraphs (c)(3) (iii) and (iv) of this section may be accomplished in a dual-control helicopter or gyroplane. Instruction must be given by a flight instructor who is authorized to give instruction in helicopters or gyroplanes, as appropriate.

* * * * *

Explanation: This proposal would add ground maneuvering to the training requirements in § 61.87 for rotorcraft, including single-place gyroplanes, would add rapid deceleration maneuver for helicopters, and would expand simulated emergency procedures for rotorcraft, including autorotational descents appropriate to the type and class of rotorcraft. It further would amend the title of paragraph (c)(2) to clarify that this paragraph does not apply to single-place gyroplanes. It also would require instruction in single-place gyroplanes to be given by a flight instructor who is authorized to give instruction in helicopters or gyroplanes, as appropriate.

The current rule does not require training in ground maneuvering for rotorcraft, although this training is required before solo flight in airplanes. It is equally important for a student pilot to be able to safely ground maneuver a rotorcraft. Training in rapid decelerations is not required for helicopters in the current rule. This is a basic training maneuver involving coordinating all helicopter flight controls, which has a direct relationship to coordinating the flight controls for performing autorotational descents in actual or simulated emergencies. This training maneuver is needed to develop more comprehensive knowledge and skill in the pre-solo phase. Expanding procedures for performing autorotational descents is necessary to provide adequate training in the type and class of aircraft involved. Since the successful outcome of an actual or simulated emergency involving an autorotational descent depends upon the pilot's reaction, knowledge, and skill, a change to the current rule is needed to require specific training appropriate to the type and class of rotorcraft.

The current rule for pre-solo training in single-place gyroplanes does not require training in ground maneuvering and flight maneuvers in free flight. It appears that the student pilot does not receive adequate preparation and training before solo flight, nor is the public provided adequate protection. This additional training would involve some negligible increase in cost, but the safety benefits should justify the cost increase.

If the current rule is changed to reflect the additional training proposed for single-place gyroplanes, a change in flight instructor authorization would also be necessary. Since the proposed training would involve inflight training, the flight instructor would be required to be appropriately rated in the class of rotorcraft used for the training. The student pilot would have the option of receiving the inflight training in either a helicopter or a gyroplane that has more than one pilot seat, while the performance of ground procedures would be required in a single-place gyroplane.

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The phrase "towed from the ground" would be removed to recognize other methods of achieving flight. This editorial change will have no effect on the current practices utilized by instructors in tow operations.

In summary, these additional training requirements are needed to provide for more preparation before solo flight and to improve flight proficiency during the pre-solo training phase.

Ref: Proposals 442, 443, and 444; Committee III.

9. By amending § 61.105 by revising paragraph (a); by removing paragraph (b); by redesignating paragraphs (c), (d), and (e) as (b), (c), and (d), respectively, to read as follows:

§ 61.105 Aeronautical knowledge.

* * * * *

(a) *Airplanes and rotorcraft.* (1) The accident reporting requirements of the National Transportation Safety Board and the Federal Aviation Regulations applicable to private pilot privileges, limitations, and flight operations for airplanes or rotorcraft, as appropriate, the use of the "Airman's Information Manual," and FAA advisory circulars;

(2) VFR navigation using pilotage, dead reckoning, and radio aids;

(3) The recognition of critical weather situations from the ground and in flight, the procurement and use of aeronautical weather reports and forecasts;

(4) The safe and efficient operation of airplanes or rotorcraft, as appropriate, including high-density airport operations, collision avoidance precautions, and radio communication procedures; and

(5) Basic aerodynamics and the principles of flight which apply to airplanes or rotorcraft, as appropriate.

* * * * *

Explanation: This proposal would delete the rotorcraft aeronautical knowledge requirements in § 61.105(b) and consolidate those requirements with the current airplane aeronautical knowledge requirements in § 61.105(a). It would retitle § 61.105(a) "Airplanes and rotorcraft" and would require instruction in basic airplane or rotorcraft aerodynamics and principles of flight, as appropriate. This would effectively require rotorcraft applicants to receive instruction in the use of the "Airman's Information Manual" and FAA advisory circulars.

Since the aeronautical knowledge requirements in the current rule are almost identical for airplanes and rotorcraft, including those requirements in one section would consolidate and simplify the rule. While rotorcraft and airplanes are significantly different in flight characteristics, there are many elements of basic aeronautical knowledge which would apply equally to both categories of aircraft. The current rule for rotorcraft does not require instruction in the use of the Airman's Information Manual and FAA advisory circulars, even though information contained in these publications applies to the operation of both airplanes and rotorcraft. Instruction in basic aerodynamics and principles of flight is not included in the current rule for airplanes or rotorcraft. Since there are questions on these subjects in the private and commercial pilot written tests, a specific instructional requirement is needed to prepare the applicant for the written test and the practical demonstration in the aircraft. Knowledge of these subjects is essential to the safe operation of airplanes and rotorcraft. This proposal is not intended to change the knowledge requirements for airplanes but to update the rotorcraft knowledge requirements and to consolidate them into the airplane section for clarity and brevity.

Ref: Proposals 445 and 446; Committee III.

10. By amending § 61.107 by revising paragraphs (b)(4), (5) and (6) and by adding new paragraph (b)(7) to read as follows:

§ 61.107 Flight proficiency.

* * * * *

(b) * * *

(4) Cross-country flying, using pilotage, dead reckoning, and radio aids, including one 1-hour flight;

(5) Operations in confined areas and on pinnacles, rapid decelerations, landings on slopes, high-altitude takeoffs, and run-on landings;

(6) Night flying, including takeoffs, landings, and VFR navigation; and

(7) Simulated emergency procedures, including aircraft and equipment malfunctions, approaches to a hover or landing with an engine inoperative in a multiengine helicopter, or autorotational descents with a power recovery to a hover in single-engine helicopters.

* * * * *

Explanation: This proposal would incorporate additional flight training maneuvers to the flight proficiency requirements of § 61.107(b). It would provide for flight instruction to be given in confined area and pinnacle operations, slope landings, and night flying to include takeoffs, landings, and VFR navigation. It also would clarify the cross-country requirement and expand emergency procedures in the current rule to include aircraft and equipment malfunctions, autorotational descents with power recovery to a hover in single-engine helicopters, and approach and landing procedures with one engine inoperative in multiengine helicopters.

Flight training in certain basic maneuvers is needed for the private pilot as well as the commercial pilot. The current rule does not require training in confined area and pinnacle operations or slope landings and does not differentiate between single-engine and multiengine helicopters for performing autorotational descents. Also, it does not require training in night flying including takeoffs, landings, and VFR navigation. Since the private pilot may well be performing these maneuvers and procedures, it is necessary that this training be provided to improve flight proficiency for the safe and efficient operation of present-day, single-engine and multiengine rotorcraft.

Ref: Proposal 447; Committee III.

11. By revising § 61.113 to read as follows:

§ 61.113 Rotorcraft rating: Aeronautical experience.

An applicant for a private pilot certificate with a rotorcraft category rating must have at least the following aeronautical experience:

(a) *For a helicopter class rating,* 40 hours of flight instruction and solo flight time in aircraft, including at least—

(1) 20 hours of flight instruction from an authorized flight instructor, 15 hours of which must be in a helicopter, including—

(i) 3 hours of cross-country flying in helicopters;

(ii) 3 hours of night flying in helicopters, including 10 takeoffs and landings, each of which must be separated by an en route phase of flight;

(iii) 3 hours in helicopters in preparation for the private pilot flight test within 60 days before that test; and

(iv) A flight in a helicopter with a landing at a point other than an airport; and

(2) 20 hours of solo flight time, 15 hours of which must be in a helicopter, including at least—

(i) 3 hours of cross-country flying in helicopters, including one flight with a landing at three or more points, each of which must be more than 25 nautical miles from each of the other two points; and

(ii) Three takeoffs and landings in helicopters at an airport with an operating control tower, each of which must be separated by an en route phase of flight.

(b) *For a gyroplane class rating,* 40 hours of flight instruction and solo flight time in aircraft, including at least—

(1) 20 hours of flight instruction from an authorized flight instructor, 15 hours of which must be in a gyroplane, including—

(i) 3 hours of cross-country flying in gyroplanes;

(ii) 3 hours of night flying in gyroplanes, including 10 takeoffs and landings; and

(iii) 3 hours in gyroplanes in preparation for the private pilot flight test within 60 days before that test; and

(2) 20 hours of solo flight time, 10 hours of which must be in a gyroplane, including—

(i) 3 hours of cross-country flying in gyroplanes, including one flight with a landing at three or more points, each of which must be more than 25 nautical miles from each of the other two points; and

(ii) Three takeoffs and landings in gyroplanes at an airport with an operating control tower.

(c) An applicant who does not meet the night flying requirement in paragraph (a)(1)(ii) or paragraph (b)(1)(ii) of this section is issued a private pilot certificate bearing the limitation "night flying prohibited." This limitation may be removed if the holder of the certificate demonstrates compliance with the requirements of paragraph (a)(1)(ii) or paragraph (b)(1)(ii) of this section, as appropriate.

Explanation: This proposal would specify aeronautical experience requirements for a private pilot applicant seeking a rotorcraft category and class rating. It would not increase the total hours presently required for a rotorcraft category and class rating.

Current § 61.113 requires an applicant for a rotorcraft category and helicopter class rating to have at least a total of 40 hours of flight instruction and solo flight time in aircraft, with at least 15 hours of solo flight in helicopters or at least 10 hours of solo flight in gyroplanes, as appropriate to the rating sought.

This proposal adds a requirement for 15 hours of flight instruction in rotorcraft in the class for which application has been made. The current rule does not specify a requirement in the category and class of helicopter or gyroplane. However, this minimal instructional requirement is reasonable and is in keeping with current industry practices to ensure an acceptable level of safety. No additional cost would be incurred since most applicants for these ratings exceed the proposed flight time minimums at the time of certification.

The proposed aeronautical experience requirements were discussed at the conference and it was the consensus that these specific experience requirements are needed to adequately train and prepare a private pilot experience requirements are needed to adequately train and prepare a private pilot applicant for a class rating in present-day rotorcraft. Accordingly, this proposal would provide a higher level of aeronautical experience and thereby increase levels of safety. The cost factor is considered negligible.

Ref: Proposals 448, 449, and 450; Committee III.

12. By amending § 61.125(b) by removing the word "and" in paragraph (b)(3); by removing the period at the end of paragraph (b)(4) and inserting "; and" in its place; and by adding a new paragraph (b)(5) to read as follows:

§ 61.125 Aeronautical knowledge.

* * * * *

(b) * * *

(5) Basic aerodynamics and principles of flight which apply to rotorcraft and the significance and use of performance charts.

* * * * *

Explanation: This change would provide for additional instruction in basic aerodynamics and principals of flight for rotorcraft and in the use of the rotorcraft's performance charts. The use of these charts will assist the pilot in better planning and the safer operation of the rotorcraft by using the parameters established by the manufacturer for optimum performance.

Ref: Proposals 445, 446, and 451; Committee III.

13. By amending § 61.127 by removing the word "and" at the end of paragraph (b)(7); by revising paragraphs (b) (5) and (8); and by adding a new paragraph (b)(9) to read as follows:

§ 61.127 Flight proficiency.

* * * * *

(b) * * *

* * * * *

(5) Rapid descent with power (settling with power) and recovery;

* * * * *

(8) Operations in confined areas and on pinnacles, rapid decelerations, landing on slopes, high-altitude takeoffs, and run-on landings; and

(9) Simulated emergency procedures, including failure of an engine or other component or system, and approaches to a hover or landing with one engine inoperative in multiengine helicopters, or autorotational descents with a power recovery to a hover in single-engine helicopters.

* * * * *

Explanation: This proposal would revise the flight proficiency requirements in § 61.127 for a commercial pilot applicant by adding the words "(settling with power)" to § 61.127(b)(5) to clarify the term "rapid descent with power." It also would revise § 61.127(b)(8) by including only those maneuvers that are considered to be non-emergency-related and would add a new emergency procedures paragraphs to include emergency-type maneuvers and procedures that would be appropriate to present-day, single-engine and multiengine helicopters.

It was the consensus at the conference that specific maneuvers listed in current § 61.127(b)(8) are not considered to be emergency-related and should be listed as normal maneuvers. These maneuvers include high-altitude takeoffs and run-on landings, rapid decelerations, confined area and pinnacle operations, and landing slopes. The proposed new emergency procedures paragraph contains meneuvers and procedures that parallel emergency maneuvers and procedures for other aircraft of similar complexity.

Ref: Proposal 453; Committee III.

14. By revising § 61.131 to read as follows:

§ 61.131 Rotorcraft ratings: Aeronautical experience.

An applicant for a commercial pilot certificate with a rotorcraft category rating must have at least the following aeronautical experience as a pilot:

(a) *For a helicopter class rating,* 150 hours of flight time, including at least 100 hours in powered aircraft, 50 hours of which must be in a helicopter, including at least—

(1) 40 hours of flight instruction from an authorized flight instructor, 15 hours of which must be in a helicopter, including—

(i) 3 hours of cross-country flying in helicopters;

(ii) 3 hours of night flying in helicopters, including 10 takeoffs and landings, each of which must be separated by an en route phase of flight;

(iii) 3 hours in helicopters preparing for the commercial pilot flight test within 60 days before that test; and

(iv) Takeoffs and landings at three points other than airports; and

(2) 100 hours of pilot-in-command flight time, 35 hours of which must be in a helicopter, including at least —

(i) 10 hours of cross-country flying in helicopters, including one flight with a landing at three or more points, each of which must be more than 50 nautical miles from each of the other two points; and

(ii) Three takeoffs and landings in helicopters, each of which must be separated by an en route phase of flight,

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at an airport with an operating control tower.

(b) *For a gyroplane class rating,* 150 hours of flight time in aircraft, including at least 100 hours in powered aircraft, 50 hours of which must be in a gyroplane, including at least—

(1) 40 hours of flight instruction from an authorized flight instructor, 15 hours of which must be in a gyroplane, including at least—

(i) 3 hours of cross-country flying in gyroplanes;

(ii) 3 hours of night flying in gyroplanes, including 10 takeoffs and landings; and

(iii) 3 hours in gyroplanes preparing for the commercial pilot flight test within 60 days before that test; and

(2) 100 hours of pilot-in-command flight time, 35 hours of which must be in a gyroplane, including at least—

(i) 10 hours of cross-country flying in gyroplanes, including one flight with a landing at three or more points, each of which is more than 50 nautical miles from each of the other two points; and

(ii) Three takeoffs and landings in gyroplanes at an airport with an operating control tower.

Explanation: This proposal would revise the aeronautical experience requirements in § 61.131 for commercial pilot applicants seeking rotorcraft class ratings. It would not increase the total flight hours presently required for any rating, but would change specific requirements to parallel the aeronautical experience standards of the International Civil Aviation Organization (ICAO) for a commercial pilot helicopter class rating.

This proposal also would change the current rule regarding gyroplane class ratings. The proposed changes would decrease the required 200 hours of pilot time to 150 hours. This is consistent with the current rule requiring 150 hours of pilot flight time for a helicopter class rating. It also would change the requirement for 75 hours of the flight time in gyroplanes to 35 hours of flight time as pilot in command. The cross-country flight time experience is introduced in this proposal to align these minimums with ICAO standards.

The current rule of 10 hours of pilot-in-command time for commercial rotorcraft applicants is outdated and the proposed 35 hours of pilot-in-command time is consistent with ICAO and clearly is reasonable for operations conducted by individuals accepting remuneration or reward. This proposal may be viewed as increasing the burden on individuals applying for this certificate. As the prominent leader in training helicopter pilots and as individuals holding U.S. airman certificates are utilized more and more around the world, the FAA is obligated to ensure the terms of the ICAO convention are met. Additionally, these proposed changes are in keeping with the current FAA policy of reducing the number of differences that are on file with ICAO in Annex I.

The additional cost associated with this proposal is considered negligible because of the overall reduction in the flight hour requirement for individuals seeking a commercial gyroplane rating.

Ref: Proposal 454; Committee III.

15. By revising § 61.159 to read as follows:

§ 61.159 Rotorcraft rating: Aeronautical knowledge.

An applicant for an airline transport pilot certificate with a rotorcraft category and a helicopter class rating must pass a written test on—

(a) So much of this chapter as relates to air carrier rotorcraft operations;

(b) Rotorcraft design, components, systems, and performance limitations;

(c) Basic principles of loading and weight distribution and their effect on rotorcraft flight characteristics;

(d) Air traffic control systems and procedures relating to rotorcraft;

(e) Procedures for operating rotorcraft in potentially hazardous meteorological conditions;

(f) Flight theory as applicable to rotorcraft; and

(g) The items listed under paragraphs (b) through (m) of § 61.153 of this chapter.

Explanation: This proposal reorganizes paragraphs (a)(1) through (a)(6) without substantive change. Additionally, this is one of a group of proposals that would delete the airline transport pilot (ATP) gyroplane and VFR helicopter class ratings from ATP certification. This proposal would delete the gyroplane and VFR helicopter class ratings in paragraph (a) and the reference to the VFR helicopter class rating in paragraph (b). The ATP VFR helicopter class rating has little value in helicopter operations due to the advanced state-of-the-art of IFR-equipped helicopters. Furthermore, there are no rotorcraft operations presently being conducted that require an ATP certificate with a VFR helicopter class rating or a gyroplane class rating and none are anticipated in the future.

Ref: Proposals 434, 456, 458, 459, 462, and 466; Committee III.

16. By revising § 61.161 to read as follows:

§ 61.161 Rotorcraft rating: Aeronautical experience.

(a) An applicant for an airline transport pilot certificate with a rotorcraft category and helicopter class rating must hold a commercial pilot certificate, or a foreign airline transport pilot or commercial pilot certificate with a rotorcraft category and helicopter class rating issued by a member of ICAO, or be a pilot in an armed force of the United States whose military experience qualifies him for the issuance of a commercial pilot certificate under § 61.73 of this chapter.

(b) An applicant must have had at least 1,200 hours of flight time as a pilot, including at least—

(1) 500 hours of cross-country flight time;

(2) 100 hours of night flight time, of which at least 15 hours are in helicopters;

(3) 200 hours in helicopters, including at least 75 hours as pilot in command performing as second in command performing the duties and functions of a pilot in command under the supervision of a pilot in command, or any combination thereof; and

(4) 75 hours of instrument time under actual or simulated instrument conditions of which at least 50 hours were completed in flight with at least 25 hours in helicopters as pilot in command, or as second in command, or the duties of a pilot in command under the supervision of a pilot in command, or any combination thereof.

Explanation: This proposal would allow pilots holding licenses issued by ICAO members and military pilots who are qualified for commercial pilot certificates to qualify as applicants for a rotorcraft Airline Transport Pilot (ATP) certificate. This is consistent with requirements currently established in § 61.155 for airplane ATP certification.

It was the consensus at the conference that the existing requirement for the 1,200 hours of flight time to be obtained within the preceeding 8-year period was much too restrictive for rotorcraft ATP certification, since there is no corresponding time limit placed on the flight time for airplane ATP applicants. It also was the consensus of the committee on pilot requirements that 5 hours of helicopter flight time within 60 days prior to the flight test serves no particular purpose for an individual possessing the experience of an airline transport pilot applicant. When an individual reaches these qualifications, he or she should be able to pass judgement on the skills associated with the ATP certificate. The FAA agrees with these comments and therefore proposes that these requirements be deleted.

In addition, this proposed regulation no longer includes the reference to "a

helicopter class rating limited to VFR." By eliminating the ATP helicopter class rating limited to VFR and requiring a showing of instrument competency for all ATP certification in rotorcraft, this proposal would upgrade rotorcraft ATP standards.

Ref: Proposals 459, 460, and 461; Committee III.

17. By revising § 61.163 to read as follows:

§ 61.163 Rotorcraft rating: Aeronautical skill.

(a) An applicant for an airline transport pilot certificate with a rotorcraft category and helicopter class rating, or additional aircraft rating, must pass a practical test on those maneuvers set forth in Appendix B of this Part in either a helicopter, an approved rotorcraft simulator or training device, or a combination of these devices and a helicopter. The FAA inspector or designated examiner may modify or waive any maneuver where necessary for the reasonable and safe operation of the rotorcraft being used and may combine any maneuvers and permit their performance in any convenient sequence to determine the applicant's competency.

(b) Whenever an applicant for an airline transport pilot certificate with a rotorcraft category and helicopter class rating does not already have an instrument rating, the applicant shall, as part of the practical test, comply with § 61.65(g).

Explanation: This proposal is one of a group of proposals dealing with rotorcraft airline transport pilot (ATP) certification requirements. It would remove the rotorcraft gyroplane and VFR helicopter class ratings from the ATP aeronautical skill requirements in § 61.163 and provide for the use of approved rotorcraft simulators and training devices in demonstrating competence. Additionally, the listing of maneuvers and procedures to be demonstrated for helicopter ATP certification would be revised and detailed in proposed new Appendix B.

The ATP gyroplane and VFR helicopter class ratings have no practical use in present-day rotorcraft operations. There are no rotorcraft operations being conducted that require ATP certification for gyroplanes or helicopters limited to VFR and none are anticipated in the future.

This proposal also provides for use of approved rotorcraft simulators or training devices in the applicant's demonstration of competence. The state-of-the-art of helicopter simulators and training devices has been developed to a degree that would allow selected maneuvers and procedures to be demonstrated in these approved devices instead of an actual aircraft.

The maneuvers and procedures contained in Appendix A were written specifically for airplanes and allow the use of simulators and training devices. Those maneuvers would not apply to helicopter ATP certification in all instances, and it would be inappropriate to incorporate helicopters in Appendix A in its present form) Therefore, the maneuvers and procedures to be demonstrated during the practical test for an ATP certificate with a rotorcraft category and helicopter class rating would be incorporated into a new Appendix B.

In addition, proposed § 61.163(b) would require an applicant for an ATP certificate who does not already hold an instrument rating to demonstrate additional instrument proficiency consistent with § 61.65(g). This change is compatible with the deletion of the VFR helicopter class rating.

Ref: Proposal 434, 456, 458, 463, 464, 466, and 471 through 480; Committee III.

18. By amending § 61.165 by removing paragraph (b); by redesignating paragraph (c) as (b); and by revising the introductory text of both paragraphs (a) and redesignated (b) to read as follows:

§ 61.165 Additional category ratings.

(a) *Rotorcraft category with a helicopter class rating.* The holder of an airline transport pilot certificate (airplane category) who applies for a rotorcraft category with a helicopter class rating must meet the applicable requirements of §§ 61.159, 61.161, and 61.163, and—

* * * * *

(b) *Airplane rating.* The holder of an airline transport pilot certificate (rotorcraft category) who applies for an airplane category must comply with §§ 61.153, 61.155 (except § 61.155(b)(1)), and 61.157, and—

* * * * *

Explanation: This proposal would delete the VFR helicopter and gyroplane class ratings from the requirements for an additional ATP category rating in § 61.165. Rotorcraft airline transport pilot certificates with VFR helicopter or gyroplane class ratings have little application in current rotorcraft operations. This is one of several proposals that would delete those ratings from rotorcraft ATP certification requirements. See the explanation for the proposed change to § 61.159.

Ref: Proposals 434, 456, 458, 459, 462, and 466; Committee III.

19. By amending Part 61 by revising the title of Appendix A to read as follows:

Appendix A—Practical Test Requirements for Airplane Airline Transport Pilot Certificates and Associated Class and Type Ratings

* * * * *

Explanation: This proposal would amend the title of Part 61, Appendix A, to clarify that the practical test requirements pertain to applicants for airplane ATP certificates and associated class and type ratings. A new Appendix B is proposed to outline the practical test requirements for rotorcraft ATP certificates with a helicopter class rating and associated type ratings.

20. By amending Part 61 by adding a new Appendix B to read as follows:

Appendix B—Practical Test Requirements for Rotorcraft Airline Transport Pilot Certificates with a Helicopter Class Rating and Associated Type Ratings

Throughout the maneuvers prescribed in this appendix, good judgement commensurate with a high level of safety must be demonstrated. In determining whether such judgement has been shown, the FAA inspector or designated pilot examiner who conducts the check considers adherence to approved procedures, actions based on analysis of situations for which there is no prescribed procedure or recommended practice, and qualities of prudence and care in selecting a course of action. The successful outcome of a procedure or maneuver will never be in doubt.

Maneuvers/Procedures

The maneuvers and procedures in this appendix must be performed in a manner that satisfactorily demonstrates knowledge and skill with respect to—

(1) The helicopter, its systems, and components;

(2) Proper control of airspeed, direction, altitude, and attitude in accordance with procedures and limitations contained in the approved Rotorcraft Flight Manual, checklists, or other approved material appropriate to the rotorcraft type; and

(3) Compliance with approved en route, instrument approach, missed approach, ATC, and other applicable procedures.

I. Preflight

(a) *Equipment examination (oral).* The equipment examination must be repeated if the flight maneuvers portion is not satifactorily completed within 60 days. The equipment examination must cover—

(1) Subjects requiring a practical knowledge of the helicopter, its powerplants, systems, components, and operational and performance factors;

(2) Normal, abnormal, and emergency procedures and related operations and limitations; and

(3) The appropriate provisions of the approved helicopter Flight Manual or manual material.

(b) *Preflight inspection.* The pilot must—

(1) Conduct an actual visual inspection of the exterior and interior of the helicopter, locating each item and explaining briefly the purpose of inspecting it; and

(2) Demonstrate the use of the prestart checklist, appropriate control system checks, starting procedures, radio and electronic equipment checks, and the selection of proper navigation and communications radio facilities and frequencies before flight.

(c) *Taxiing.* This maneuver includes ground taxiing, hover taxiing (including performance checks), and docking procedures, as appropriate, in compliance with instructions issued by ATC, the FAA inspector, or the designated pilot examiner.

(d) *Powerplant checks.* As appropriate to the helicopter type in accordance with the operating limitations.

II. Takeoffs

(a) *Normal.* One normal takeoff from a stabilized hover which begins when the helicopter is taxied into position for takeoff.

(b) *Instrument.* One takeoff with instrument conditions simulated at or before reaching 100 feet above airport elevation.

(c) *Crosswind.* One crosswind takeoff from a stabilized hover, if practical under the existing meteorological, airport, and traffic conditions.

(d) *Powerplant failure.* (1) For single-engine rotorcraft, one normal takeoff with simulated powerplant failure.

(2) For multiengine rotorcraft, one normal takeoff with simulated failure of one engine—

(i) At an appropriate airspeed that would allow continued climb performance in forward flight; or

(ii) At an appropriate airspeed that is 50 percent of normal cruise speed, if there is no published single-engine climb airspeed for that type of helicopter.

(e) *Rejected.* One normal takeoff that is rejected after simulated engine failure at a reasonable airspeed, determined by giving due consideration to the helicopter's characteristics, length of landing area, surface conditions, wind direction and velocity, and any other pertinent factors that may adversely affect safety.

III. Instrument Procedures

(a) *Area departure and arrival.* During each of these maneuvers, the applicant must—

(1) Adhere to actual or simulated ATC clearances (including assigned bearings or radials); and

(2) Properly use available navigation facilities.

(b) *Holding.* This maneuver includes entering, maintaining, and leaving holding patterns.

(c) *ILS and other instrument approaches.* The instrument approach begins when the helicopter is over the initial approach fix for the approach procedure being used (or turned over to the final controller in case of a ground control approach) and ends when the helicopter terminates at a hover or touches down or where transition to a missed approach is completed. The following approaches must be performed:

(1) At least one normal ILS approach.

(2) For multiengine rotorcraft, at least one manually controlled ILS approach with a simulated failure of one powerplant. The simulated engine failure should occur before initiating the final approach course and continue to a hover or touchdown or through the missed approach procedure.

(3) At least one nonprecision approach procedure that is representative of the nonprecision approach procedure that the applicant is likely to use.

(4) At least one nonprecision approach procedure on a letdown aid other than the approach procedure performed under subparagraph (3) of this paragraph that the applicant is likely to use.

(d) *Circling approaches.* At least one circling approach must be made under the following conditions:

(1) The portion of the circling approach to the authorized minimum circling approach altitude must be made under simulated instrument conditions.

(2) The approach must be made to the authorized minimum circling approach altitude followed by a change in heading and the necessary maneuvering (by visual reference) to maintain a flight path that permits a normal landing on a runway at least 90° from the final approach course of the simulated instrument portion of the approach.

(3) The circling approach must be performed without excessive maneuvering and without exceeding the nomal operating limits of the rotorcraft. The angle of bank should not exceed 30°.

(e) *Missed approaches.* Each applicant must perform at least two missed approaches with at least one missed approach from an ILS approach. At the discretion of the FAA inspector or designated examiner, a simulated powerplant failure may be required during any of the missed approaches. These maneuvers may be performed either independently or in conjunction with maneuvers required under section III or V of this Appendix. At least one must be performed inflight.

IV. Inflight Maneuvers

(a) *Steep turns.* At least one steep turn in each direction must be performed. Each steep turn must involve a bank angle of 30° with a heading change of at least 180° but not more than 360°.

(b) *Settling with power.* One entry into and recovery from settling with power must be performed. For the purpose of this maneuver, the required settling with power condition is reached when the helicopter is descending vertically at a rate of descent of 300 feet per minute or greater and a sufficient amount of engine power is applied to induce a perceptible buffet or other response to the initial rotor blade stall. (This maneuver will be performed under VFR.)

(c) *Powerplant failure.* In addition to the specific requirements for maneuvers with simulated powerplant failures, the FAA inspector or designated examiner may require a simulated powerplant failure at any time during the check.

(d) *Recovery from unusual attitudes.*

V. Approaches and Landings

(a) *Normal.* One normal approach to a stabilized hover or to the ground must be performed.

(b) *Instrument.* One approach to a hover or to a landing in sequence from an ILS instrument approach.

(c) *Crosswind.* One crosswind approach to a hover or to the ground, if practical under the existing meteorological, airport, or traffic conditions.

(d) *Powerplant failure.* For a multiengine rotorcraft, maneuvering to a landing with simulated powerplant failure of one engine.

(e) *Rejected.* Rejected landing, including a normal missed approach procedure at approximately 50 feet above the runway. This maneuver may be combined with instrument or missed approach procedures but instrument conditions need not be simulated below 100 feet above the runway or landing area.

(f) *Autorotative landings.* Autorotative landings in a single-engine helicopter. The applicant may be required to accomplish at least one autorotative approach and landing from any phase of flight as specified by the FAA inspector or designated examiner.

VI. Normal and Abnormal Procedures

Each applicant must demonstrate the proper use of as many systems and devices listed below as the FAA inspector or designated examiner finds are necessary to determine that the applicant has a practical knowledge of the use of the systems and devices appropriate to the helicopter type:

(a) Anti-icing or deicing systems.

(b) Autopilot or other stability augmentation devices.

(c) Airborne radar devices.

(d) Hydraulic and electrical systems failures or malfunctions.

(e) Landing gear failures or malfunctions.

(f) Failure of navigation or communications equipment.

(g) Any other system appropriate to the helicopter as outlined in the approved Rotorcraft Flight Manual.

VII. Emergency Procedures

Each applicant must demonstrate the proper emergency procedures for as many of the emergency situations listed below as the FAA inspector or designated examiner finds are necessary to determine that the applicant has adequate knowledge of, and ability to perform, such procedures:

(a) Fire or smoke control in flight.

(b) Ditching.

(c) Evacuation.

(d) Operation of emergency equipment.

(e) Emergency descent.

(f) Any other emergency procedure outlined in the approved Rotorcraft Flight Manual.

Explanation. This proposal establishes a new Appendix B which details the maneuvers and procedures required for helicopter ATP certification.

Current § 61.163 contains maneuvers and procedures that are no longer applicable to instrument flight within our present-day navigation airspace and approach systems. Terms such as "beam

bracketing" and "cone (station) identification" are obsolete and it was agreed at the rotorcraft conference that these items should be deleted from the current rule. The proposed change is needed to update the current rule to require knowledge and skill in the maneuvers and procedures more appropriate to our present-day IFR environment. It takes into account the advances in technology and instrumentation of modern-day helicopters.

This proposed change satisfies the intent of proposals 471 through 480 to incorporate helicopter ATP certification in the airplane ATP certification requirements contained in Appendix A of Part 61.

See the explanation for the proposed changes to § 61.163.

Ref: Proposals 434, 456, 458, 463, 464, 466, and 471 through 480; Committee III.

PART 91—GENERAL OPERATING AND FLIGHT RULES

§ 91.2 [Amended]

21. By amending § 91.2 by adding the words "helicopters and" after the phrase "for the operation of" and changing the word "find" to "finds" after the phrase "Category II operations, if he".

Explanation: This proposal would afford helicopter operators the opportunity of applying for Category II instrument approach authorization. It would impose no additional cost but rather it would expand the sphere of possible operations of helicopters. Technological advances in helicopter design and performance have demonstrated that helicopters are at least as capable of safely conducting Category II instrument operations as are small airplanes. The change to the word "find" is a typographical correction and has no substantive effect.

Ref: Proposals 481 and 482; Committee III.

22. By revising § 91.23(a)(3) and (b)(2)(i) and (ii) to read as follows:

§ 91.23 Fuel requirements for flight in IFR conditions.

(a) * * *

(3) Fly after that for 45 minutes at normal cruising speed or, for helicopters, to fly after that for 30 minutes at normal cruising speed.

(b) * * *

(2) * * *

(i) The ceiling will be at least 1,000 feet above the airport elevation for helicopters or at least 2,000 feet above the airport elevation for other aircraft; and

(ii) Visibility will be at least 1 mile for helicopters or at least 3 miles for other aircraft.

Explanation: This proposal would reduce the IFR fuel requirements for helicopters from 45 minutes to 30 minutes. It also would lower the ceiling from 2,000 feet to 1,000 feet and lower the visibility minimum from 3 miles to 1 mile as criteria for determining if an alternate airport is needed.

This proposal highlights the differences between helicopters and airplanes in the IFR environment. While on the surface it would appear that IFR fuel reserves should be the same for airplanes and helicopters, the differences in aircraft become apparent in the capabilities and limitations of the two categories.

Current § 91.23 requires 45 minutes of reserve fuels for all aircraft operating in IFR conditions, and a ceiling and visibility requirement of 2,000 feet and 3 miles, among other requirements, for determining if an alternate airport is needed. The helicopter has the unique ability to reduce airspeed on approach to as low as 40 knots and is provided reduced visibility minimums in Part 97. The minimums in Part 97 for helicopters are, in some cases, the same as Category II minimums for airplanes. Alternate airport minimums are the same for both categories of aircraft.

The helicopter being dispatched must carry a larger percentage of its fuel capacity as reserve than the normal airplane. Because the helicopter, with its reduced minimums, has a better probability of completing the flight to the planned destination, it should be given this recognition by allowing for a reduced fuel reserve. Often helicopters are denied the ability to initiate flights simply because too much fuel is required to be carried for reserve.

The FAA has gained sufficient experience in SFAR 29 operations to conclude that reducing the required fuel reserve to 30 minutes for helicopters will not reduce the level of safety that has been maintained.

This proposal would allow operators greater flexibility and utilization of their helicopters in the IFR environment.

Ref: Proposals 483 and 484; Committee III.

23. By amending § 91.116 by revising the first clause in the introductory text of (f), revising (f)(1) and adding (f)(3) to read as follows:

§ 91.116 Takeoff and landing under IFR: General.

* * * * *

(f) *Civil airport takeoff minimums.* Unless otherwise authorized by the Administrator, no person operating an aircraft under Part 121, 125, 127, 129, or 135 of this chapter * * *

(1) For aircraft, other than helicopters, having two engines or less—1 statute mile visibility.

* * * * *

(3) For helicopters—½ statute mile visibility.

* * * * *

Explanation: This proposal would add a reference to Part 127 in § 91.116(f), and woud effectively include this part, along with Parts 121, 125, 129, and 135, under the takeoff minimum requirements authorized in this section. It also would establish civil airport takeoff minimums for helicopters.

Current § 91.116(f) includes takeoff minimum requirements for persons operating aircraft under Parts 121, 125, 129, or 135. Since Part 127 requires an operating certificate, it would be appropriate to include it in the current rule to provide consistency in the type of operators who are authorized takeoff minimums under this section.

The takeoff minimums specified in current § 91.116(f) apply to all aircraft. This proposal would also establish a separate takeoff minimum of ½-mile visibility for helicopters. The helicopter is highly maneuverable and is capable of sustaining flight at lower airspeeds. Because of its unique flight capabilities, it can safely maneuver in lower takeoff visibility conditions than the current rule allows.

It was the consensus at the rotorcraft review conference that helicopters should be authorized lower takeoff minimums from civil airports, consistent with the lower approach minimums allowed for helicopters in § 97.3(d)(1). One-half-mile visibility as a standard takeoff minimum for helicopters is appropriate when considering the maneuverability and flight capabilities of these aircraft. There are existing provisions, which are still applicable, to allow lower-than-standard takeoff minimums to air carriers when approved by the certificate-holding district office. Adopting this proposal would reduce helicopter operational delays with no adverse effect on safety and increase service to the traveling public.

Ref: Proposal 494; Committee III.

§ 91.171 [Amended]

24. By amending § 91.171 by inserting the words "or helicopter" after the word "airplane" each time it appears in paragraphs (a), (b)(1), (b)(2)(iv), and (d).

Explanation: This proposal would require that helicopters be subject to the altimeter system tests and inspections required in § 91.171. The proposal originally called for amending § 91.170;

however, that section was redesignated as § 91.171 and revised in Operations Review Program Amendment No. 12 (47 FR 41076; September 16, 1982).

Helicopter systems and equipment are as critical for IFR flight as are the systems and equipment in airplanes. Therefore, similar standards should apply for testing and inspecting those systems. It was the consensus at the rotorcraft conference that the proposed change be adopted. The cost, as detailed in the regulatory evaluation, is considered to be negligible.

Ref: Proposal 497; Committee III.

PART 133—ROTORCRAFT EXTERNAL-LOAD OPERATIONS

25. By revising § 133.1(b) and adding (c) and (d) to read as follows:

§ 133.1 Applicability.

* * * * *

(b) Operating and certification rules governing the conduct of rotorcraft external-load operations in the United States by any person.

(c) The certification rules of this part do not apply to—

(1) Rotorcraft manufacturers when developing external-load attaching means;

(2) Rotorcraft manufacturers demonstrating compliance of equipment utilized under this Part or appropriate portions of Part 27 or Part 29 of this Chapter;

(3) Operations conducted by a person demonstrating compliance for the issuance of a certificate or authorization under this part;

(4) Training flights conducted in preparation for the demonstration of compliance with this part;

(5) Operations conducted as an air carrier; or

(6) A Federal, State or local government conducting operations with public aircraft.

(d) For the purpose of this Part, a person other than a crewmember or a person who is essential and directly connected with the external-load operation may be carried only in approved Class D rotorcraft-load combinations.

Explanation: This proposal would delete the "nonpassenger-carrying" provision from § 133.1(b), exclude certain operations from the certification requirements of Part 133, and establish a new class of rotorcraft external-load operations.

These changes would establish a Class D rotorcraft-load combination and allow persons lifted as a Class D load to be carried as passengers during those operations. The current rule prohibits persons from being carried, except those who perform an essential function in connection with the external-load operation. Hoisting of persons into and out of helicopters has become a common practice in other nations of the world, and many present-day helicopters have the performance capabilities that provide an adequate level of safety for these operations.

A special committee was formed at the rotorcraft conference to discuss the proposed changes to Part 133 and the committee made the following recommendations:

1. Class D loads should be authorized for hoisting persons into and out of rotorcraft.

2. No passengers would be carried, except as part of a Class D load combination.

3. Multiengine Category A rotorcraft should be used for Class D load operations.

4. The rotocraft should have no lateral movement relative to the pickup point.

5. The hoisting device should be approved and made "man safe," but jettisonable. (Communication capability between crewmembers was assumed.)

6. The rotorcraft would be certificated under Part 27, Part 29, or their predecessor parts.

7. An initial and recurrent training program should be required for Class D load operations.

Deleting the "nonpassenger-carrying" provision is in keeping with related proposals which would allow persons (other than crewmembers or persons who are essential and directly connected with the external-load operation) to be carried is approved Class D rotorcraft-load combinations.

The "operations conducted as an air carrier" provision excepts air carriers from the requirement to hold a Rotorcraft External-Load Operator Certificate. The intent is to allow these operators to conduct more than one kind of operation under their air carrier certificates, in accordance with approved operations specifications.

The current rule requires persons who conduct civil rotorcraft external-load operations to obtain a certificate. Several rotorcraft manufacturers have requested relief from this requirement when conducting external-load operations for developing external-load attaching equipment and demonstrating certification compliance of that equipment. This proposed change would provide regulatory and economic relief to rotorcraft manufacturers by eliminating the manpower and resources required to obtain and keep current a Rotorcraft External-Load Operator Certificate. However, this relief would not allow manufacturers to operate with an external-load combination for the purpose of sales demonstrations or customer acceptance flights. A current Rotorcraft External-load Operator Certificate would be required by the manufacturer for these operations.

Relief has also been incorporated into the proposed rule by excluding the requirement for certifiction as a preface to demonstrating compliance with Part 133 for the issuance of a certificate or authorization. The exclusions also include the training necessary to accomplish this demonstration.

Ref: Proposals 4, 506, 507, 526, 527, 532, and 534; Committee III.

26. By revising § 133.11(b) to read as follows:

§ 133.11 Certificate required.

* * * * *

(b) No person holding a Rotorcraft External-Load Operator Certificate may conduct rotorcraft external-load operations subject to this part under a business name that is not on that certificate.

Explanation: This proposal would remove current § 133.11(b) and recodify existing § 133.21(a) to a more appropriate subpart.

As currently written, § 133.11(b) allows a person who did not hold a Rotorcraft External-Load Operator Certificate to conduct certain external-load operations until December 9, 1977. Since this date has expired, § 133.11(b) is not longer applicable and should be deleted from the current rule.

Paragraph (b), as proposed, is recodified from current § 133.21(a) without change since its location is more appropriate in Subpart B.

Ref: Proposal 508; Committee III.

§ 133.13 [Amended]

27. By amending § 133.13 by placing a period after the word "renewed" and by removing the phrase ", except that a certificate issued before June 25, 1977 expires on August 10, 1979."

Explanation: This proposal would remove obsolete dates. Since certificates issued before June 25, 1977, have expired, this editorial change imposes no burden on any operator.

28. By amending the title of § 133.21; by revising paragraph (b); and by adding new paragraph (c) to read as follows:

§ 133.21 Personnel.

* * * * *

(b) The applicant must designate one pilot, who may be the applicant, as chief pilot for rotorcraft external-load operations. The applicant also may

designate qualified pilots as assistant chief pilots to perform the functions of the chief pilot when the chief pilot is not readily available. The chief pilot and assistant chief pilots must be acceptable to the Administrator and each must hold a current Commercial or Airline Transport Pilot Certificate, with a rating appropriate for the rotorcraft prescribed in § 133.19.

(c) The holder of a Rotorcraft External-Load Operator Certificate shall report any change in designation of chief pilot or assistant chief pilots immediately to the FAA certificate-holding office. The new chief pilot must be designated and must comply with § 133.23 within 30 days or the operator may not conduct further operations under the Rotorcraft External-Load Operator Certificate unless otherwise authorized by the FAA certificate-holding office.

Explanation: This proposal would provide for a rotorcraft external-load operator to designate qualified pilots as assistant chief pilots to perform the functions of the chief pilot in areas of operations where the chief pilot is not readily available. The assistant chief pilots would be authorized to conduct the knowledge and skill test requirements of § 133.23 (b) and (c) and perform other chief pilot duties as appropriate to a specific area of operation. The proposal also recodifies current § 133.31(c) as § 133.21(c) and would be amended to allow operators an additional 15 days to designate new chief pilots.

It is possible for an external-load operator simultaneously to conduct operations in remote or widely scattered areas. Since one of the chief pilot's functions is to conduct the knowledge and skill test requirements for pilots to be used by the operator, it is questionable if the chief pilot can carry out his or her duties and responsibilities at each base of operations without causing unnecessary delays. At the present time, the chief pilot, of necessity, has to be current in several different types of helicopters used by an operator to conduct the skill tests required for each class of rotorcraft-load authorized for an operator. A change to the current rule would reduce operational costs by allowing the use of assistant chief pilots, thereby obviating the need to transport the chief pilot to remote or widely scattered locations.

Proposed paragraph (c) recodifies current § 133.31(c) into Subpart B, which contains provision for designating chief pilots. Additionally, the requirement is amended to provide relief to operators by extending the 15-day requirement to 30 days for a rotorcraft external-load operator to designate a new chief pilot. The requirement in the current rule could cause a hardship in instances where a qualified chief pilot is not available for employment within the 15 days time frame. This proposal would allow external-load operators an additional 15 days to designate a new chief pilot without having to discontinue operations, and would result in less of an economic burden for the operators.

Ref: Proposals 511 and 519; Committee III.

29. By amending § 133.23 by adding a new paragraph (b)(5); by revising the introductory text of (c), by removing the introductory text of paragraph (c)(6); by removing "; and" in paragraph (c)(6)(i) and inserting a period in its place; by redesignating amended paragraph (c)(6)(i) and (c)(6)(ii) as (c)(6) and (c)(7), respectively to read as follows:

§ 133.23 Knowledge and skill.

* * * * *

(b) * * *

(5) Appropriate rotorcraft-load combination flight manual.

(c) The test of skill requires appropriate maneuvers for each class requested. The appropriate maneuvers for each load class must be demonstrated in the rotorcraft prescribed in § 133.19 of this part.

* * * * *

Explanation: This proposal would add the rotorcraft-load combination flight manual to the test of knowledge requirements in § 133.23(b) and delete the requirement in § 133.23(c) that the skill test be demonstrated at the rotorcraft's maximum certificated weight. Paragraph (c) would be reworked for clarity.

The rotorcraft-load combination flight manual is an FAA-approved document prepared by an external-load operator and contains information that is essential to safety while conducting external-load operations. Accordingly, it should be included in the knowledge test requirements.

Current § 133.23(c) requires the pilot's skill test to be demonstrated at the maximum certificated weight for external loads. Aircraft performance decreases proportionally as altitude and/or temperature increases. These factors have a limiting effect on the total weight a rotorcraft can lift, and it would not be possible under various atmospheric conditions or altitudes for the skill test to be demonstrated as maximum certificated weight. One commenter at the rotorcraft conference was opposed to a less-than-maximum certificated weight for the skill demonstrated, but several commenters supported the proposed change. The FAA agrees that the skill test can be demonstrated adequately at a less-than-maximum certificated weight. This change would relieve a regulatory burden in that enternal-load operators would not have to transport personnel, equipment, and rotorcraft to locations where the rotorcraft would be capable of performing at maximum certificated weight and is consistent with similar rules involving the demonstration of pilot skills. This could result in a substantial cost savings for external-load operators.

Ref. Proposals 512 and 513; Committee III.

30. By amending § 133.25 by designating the current undesignated text as paragraph (a); by removing from paragraph (a) the phrase "a rotorcraft or" after the words "amendment of the applicant's certificate, to add or delete"; by amending paragraph (a) by removing the phrase "§§ 133.19, 133.21, and 133.23," and inserting the phrase "§§ 133.19, 133.49," in its place; and by adding a new paragraph (b) to read as follows:

§ 133.25 Amendment of certificate.

* * * * *

(b) The holder of a rotorcraft external-load certificate may apply for an amendment to add or delete a rotorcraft authorization by submitting to the certificate-holding FAA district office a new list of rotorcraft, by registration number, with the classes of rotorcraft-load combinations for which authorization is requested.

Explanation: This proposal would provide a simplified procedure for a certificated external-load operator to add rotorcraft to, or delete them from, its certificate. The current rule requires the same certificate amendment procedure as for original certification and changing rotorcraft-load combination classes. This proposed change would allow an operator to amend its certificate by simply submitting a new list of specified rotorcraft with the classes of rotorcraft-load combinations for which authorization is requested to the certificate-holding FAA district office. This change will eliminate unnecessary paperwork and time delays, thereby resulting in cost savings for certificated external-load operators.

Ref. Proposals 510, 514, 515, 516, 517, and 520; Committee III.

31. By revising § 133.27(a) to read as follows:

§ 133.27 Availability, transfer, and surrender of certificate.

(a) Each holder of a rotorcraft external-load operator certificate shall keep that certificate and a list of authorized rotorcraft at the home base of operations and shall make it available for inspection by the Administrator upon request.

* * * * *

Explanation: This proposal would add to current § 133.27 a requirement that a rotorcraft external-load operator maintain at its home base of operations a list of authorized rotorcraft. A related proposal to change § 133.25 would establish a new and simplified procedure for rotorcraft external-load operators who desire to add or delete rotorcraft from their operating certificates. This proposed change is necessary to ensure a current list of authorized rotorcraft is maintained and to provide consistent requirements in §§ 133.25 and 133.27. The two sections taken together would add no new requirements and are relieving in nature. See the explanation for the proposed change to § 133.25.

Ref. Proposals 514, 515, and 516; Committee III.

32. By revising § 133.31 to read as follows:

§ 133.31 Emergency operations.

(a) In an emergency involving the safety of persons or property, the certificate holder may deviate from the rules of this part to the extent required to meet that emergency.

(b) Each person who, under the authority of this section, deviates from a rule of this part shall notify the Administrator within 10 days after the deviation. Upon the request of the Administrator, that person shall provide the certificate-holding FAA office a complete report of the aircraft operation involved, including a description of the deviation and reasons for it.

Explanation: This proposal would allow certificate holders to deviate from Part 133 during emergencies. Current Part 133 does not provide for a deviation to meet emergencies relating to aircraft, equipment, weather minimums, and safety of persons or property. This change would allow those deviations and would be consistent with similar authorizations in §§ 91.3 and 135.19.

Ref: Proposal 536; Committee III.

33. By redesignating 133.33 as 133.39 without change and by adding a new § 133.33 to read as follows:

§ 133.33 Operating rules.

(a) No person may conduct a rotorcraft external-load operation without, or contrary to, the Rotorcraft-Load Combination Flight Manual prescribed in § 133.47.

(b) No person may conduct a rotorcraft external-load operation unless—

(1) The rotorcraft complies with § 133.19; and

(2) The rotorcraft and rotorcraft-load combination are authorized under the Rotorcraft External-Load Operator Certificate.

(c) Before a person may operate a rotorcraft with an external-load configuration that differs substantially from any that person has previously carried with that type of rotorcraft (whether or not the rotorcraft-load combination is of the same class), that person must conduct, in a manner that will not endanger persons or property on the surface, such of the following flight-operational checks as the Administrator determines are appropriate to the rotorcraft-load combination:

(1) A determination that the weight of the rotorcraft-load combination and the location of its center of gravity are within approved limits, that the external load is securely fastened, and that the external load does not interfere with devices provided for its emergency release.

(2) Make an inital liftoff and verify that controllability is satisfactory.

(3) While hovering, verify that directional control is adequate.

(4) Accelerate into forward flight to verify that no attitude (whether of the rotorcraft or of the external load) is encountered in which the rotorcraft is uncontrollable or which is otherwise hazardous.

(5) In forward flight, check for hazardous oscillations of the external load, but if the external load is not visible to the pilot, other crewmembers or ground personnel may make this check and signal the pilot.

(6) Increase the forward airspeed and determine an operational airspeed at which no hazardous oscillation or hazardous aerodynamic turbulence is encountered.

(d) Notwithstanding the provisions of Part 91 of this chapter, the holder of a Rotorcraft External-Load Operator Certificate may conduct (in rotorcraft type certificated under and meeting the requirements of Part 27 or Part 29 of this chapter, including the external-load attaching means) rotorcraft external-load operations over congested areas if those operations are conducted without hazard to persons or property on the surface and comply with the following:

. (1) The operator must develop a plan for each complete operation, coordinate this plan with the FAA district office having jurisdiction over the area in which the operation will be conducted, and obtain approval for the operation from that district office. The plan must include an agreement with the appropriate political subdivision that local officials will exclude unauthorized persons from the area in which the operation will be conducted, coordination with air traffic control, if necessary, and a detailed chart depicting the flight routes and altitudes.

(2) Each flight must be conducted at an altitude, and on a route, that will allow a jettisonable external load to be released, and the rotorcraft landed, in an emergency without hazard to persons or property on the surface.

(e) Notwithstanding the provisions of Part 91 of this chapter, and except as provided in § 133.45(d), the holder of a Rotorcraft External-Load Certificate may conduct external-load operations, including approaches, departures, and load positioning maneuvers necessary for the operation, below 500 feet above the surface and closer than 500 feet to persons, vessels, vehicles, and structures, if the operations are conducted without creating a hazard to persons or property on the surface.

(f) No person may conduct rotorcraft external-load operations in IFR conditions unless specifically approved by the Administrator. However, under no circumstances may a person may be carried as part of the external-load in IFR conditions.

Explanation: This proposal recodifies the provisions of current § 133.33 as § 133.39 without charge. It also recodifies current § 133.31(b), (c), (d) (except (d)(3) and (4)), (e), (f), and (g) without change into new § 133.33. Proposed paragraph (f) would prohibit external-load operations in IFR conditions unless specifically approved by the Administrator and would prohibit carrying persons externally in IFR conditions.

A review of current § 133.31 indicates that some of its provisions are not appropriate in Subpart C, Operating Rules and Related Requirements. Therefore, this notice proposes to redesignate § 133.31(a) and (c) as §§ 133.11(b) and 133.21(c), respectively, and incorporate the provisions of current § 133.31(d)(3) and (4) into proposed § 133.37. Existing § 133.33 would be redesignated as § 133.39.

This proposal would provide flexibility in conducting external-load operations in IFR conditions. Certain operations may be approved to operate en route IFR over remote routes while in a load-combination configuration. This would eliminate the need for an

operator to delay trip in remote areas when IFR weather conditions prevail.

To ensure an appropriate level of safety, this proposal would prohibit external-load operations in IFR conditions when a person is being carried externally. This is considered necessary to ensure the safety of that person.

34. By adding a new § 133.35 to read as follows:

§ 133.35 Carriage of persons.

(a) No certificate holder may allow a person to be carried during rotorcraft external-load operations unless that person—

(1) Is a flight crewmember;

(2) Is a flight crewmember trainee;

(3) Performs an essential function in connection with the external-load operation; or

(4) Is necessary to accomplish the work activity directly associated with that operation.

(b) No certificate holder may allow more than one person to be carried as a Class D load or allow that person to be carried more than 10 nautical miles.

(c) The pilot in command shall ensure that all persons are briefed before takeoff on all pertinent procedures to be followed (including normal, abnormal, and emergency procedures) and equipment to be used during the external-load operation.

Explanation: This proposal provides for the carriage of persons during external-load operations and limits the number of persons that can be carried as an external load and the distance the person can be carried. It also provides for briefing persons carried during external-load operations.

Current § 133.45(a) (proposed § 133.35(a)) was the subject of special concern by both operators and manufacturers during the conference because of economic hardships and reported inconsistencies in application by various FAA offices. Industry representatives raised valid arguments that favor limited carriage of persons during Class A external-load operations, but generally agreed that there is a significant increase in the danger level and that nonessential persons should not be carried.

This proposal would continue to limit the carriage of persons during external-load operations to those persons essential to the operation or needed to accomplish work activity associated with that operation. To ensure the highest level of safety in air transportation, the FAA must continue to require passengers to be carried under the provisions of Part 121, 127, or 135, except when the passengers are carried under the limited provisions as a Class D external-load.

Paragraph (b) would be included to prohibit operators from conducting long-range transportation of persons while in a Class D configuration. While considered to be limiting in distance, the FAA has determined this limitation is necessary to ensure the safety of the person being transported.

The requirement that persons be briefed before takeoff is necessary to ensure the safety of all persons carried during the operation.

Ref: Proposal 532; Committee III.

35. By adding a new § 133.37 to read as follows:

§ 133.37 Crewmember training, currency, and testing requirements.

(a) No certificate holder may use, nor may any person serve, as a pilot in operations conducted under this Part unless that person—

(1) Has successfully demonstrated to the Administrator knowledge and skill with respect to the rotorcraft-load combination in accordance with § 133.23. In the case of a pilot other than the chief pilot or an assistant chief pilot who has been designated in accordance with § 133.21(b), this demonstration may be made to the chief pilot or assistant chief pilot; and

(2) Has in his or her personal possession a letter of competency or an appropriate logbook entry indicating compliance with paragraph (a)(1) of this section.

(b) No certificate holder may use, nor may any person serve, as a crewmember or other operations personnel in Class D operations conducted under this Part unless, within the preceeding 12 calendar months, that person has successfully completed either an approved initial or recurrent training program.

(c) Notwithstanding the provisions of paragraph (b) of this section, a person who has performed a rotorcraft external-load operation of the same class and type within the past 12 calendar months need not undergo recurrent training or testing.

Explanation: This proposal recodifies current § 133.31(d) (3) and (4) and amends these provisions to allow designated assistant chief pilots to conduct the pilot's knowledge and skill test. It also would require external-load operators to establish and maintain FAA-approved initial and recurrent training programs to ensure crewmember competency.

Proposed paragraphs (a)(1) (ii) and (iii) are in keeping with the proposal to allow and external-load operator to designate qualified assistant chief pilots in areas of operation where the chief pilot would not be readily available. (See proposal 5–28).

The current rule does not provide for crewmember training, testing, or currency once a pilot has shown competency in each rotorcraft-load combination. With the authorization to carry passengers as loads under Class D, currency and competency for all persons associated with the operation are essential for the safety of the passenger. The proposal would allow substituting currency in the class of operation for the recurrent testing and training requirements.

36. By amending § 133.41 by revising the first sentence of paragraph (a) and the introductory text of (c) and by revising paragraph (c)(5) to ready as follows:

§ 133.41 Flight characteristics requirements.

(a) The applicant must demonstrate to the Administrator, by performing the operational flight checks prescribed in paragraphs (b), (c), and (d) of this section, as applicable, that the rotorcraft-load combination has satisfactory flight characteristics, unless these operational flight checks have been demonstrated previously and the rotorcraft-load combination flight characteristics were satisfactory. * * *

* * * * * *

(c) *Class B & D rotorcraft-load combinations:* The operational flight check must consist of at least the following maneuvers:

* * * * * *

(5) Demonstrating appropriate lifting device operation.

Explanation: This proposal would delete the requirement for a rotorcraft external-load operator to demonstrate the operations flight check prescribed in § 133.41(b), (c), and (d) if those checks have been demonstrated previously and the rotorcraft-load combination flight characteristics were satisfactory. This proposal also adds the operational flight check requirements for a new Class D rotocraft-load combination as required by § 133.41(c).

Most helicopter manufacturers perform load combination operational flight tests with various external-load attaching devices during the rotorcraft certification process and include this information in the supplement section of the FAA-approved flight manual for that rotorcraft. This proposal relieves a regulatory burden by reducing the number of operational flight checks that a rotorcraft external-load applicant or a

certificated external-load operator is required to demonstrate to the Administrator. This could result in a significant cost savings to the operator.

In addition, revised § 133.41(c) establishes the flight maneuvers required for demonstrating satisfactory flight characteristics required in paragraph (a) for the new Class D rotorcraft-load combination. The current rule prohibits the external lifting of persons with a hovering helicopter. It was the consensus at the conference that a new Class D rotorcraft-load combination should be authorized to accomplish this function. For further definition of the Class D rotorcraft-load combination, see the explanation for the proposed changes to Part 1, Definitions, and § 133.1, Applicability.

Ref: Proposals 526 and 527; Committee III.

37. By amending § 133.45 by removing paragraph (a); by redesignating paragraphs (b), (c), (d), and (e) as paragraphs (a), (b), (c), and (d), respectively; and by adding a new paragraph (e) to read as follows:

§ 133.45 Operating limitations.

* * * * *

(e) The rotorcraft-load combination of Class D may be conducted only in accordance with the following:

(1) The rotorcraft to be used must have been type certificated under transport Category A for the operating weight and provide hover capability with one engine inoperative at that operating weight and altitude.

(2) The rotorcraft must be equipped to allow direct radio intercommunication among required crewmembers.

(3) The personnel lifting device must be FAA approved.

(4) The lifting device must have an emergency release requiring two distinct actions.

Explanation: This proposal establishes airworthiness requirements for conducting Class D operations.

The provisions of this proposal were recommended by the special committee formed during the conference. For further discussion, refer to the **Explanation** of proposed § 133.1

38. By revising § 133.47(c)(2) to read as follows:

§ 133.47 Rotorcraft-load combination flight manual.

* * * * *

(c) * * *

(2) Precautionary advice regarding static electricity discharges for Class B, Class C, and Class D rotorcraft-load combinations; and

* * * * *

Explanation: This proposal would add Class C and the proposed new Class D rotocraft-load combinations to the current flight manual requirements regarding static electricity discharges.

The current rule requires that precautionary advice regarding static electricity discharges for a Class B rotorcraft-load combination be listed in the information section of the Rotocraft-Load Combination Flight Manual. Since Class C and the proposed New Class D load combinations also would be subject to static electricity buildup, it would be appropriate to include those classes in the information section of the manual.

Ref: Proposals 4 and 534; Committee III.

39. By revising § 133.51 to read as follows:

§ 133.51 Airworthiness certification.

A Rotocraft External-Load Operator Certificate is a current and valid airworthiness certificate for each rotorcraft type certificated under Part 27 or Part 29 of this chapter (or their predecessor parts) and listed by registration number on a list attached to the certificate, when the rotorcraft is being used in operations conducted under this part.

Explanation: The proposal would provide for a change in § 133.51 by authorizing a list of rotorcraft by registration number to be attached to a rotorcraft external-load operator certificate, which would, in effect, make that certificate a current and valid airworthiness certificate for each rotorcraft being used in operations under this part. The current rule requires that rotorcraft be listed by registration number on the rotorcraft external-load operator certificate for that certificate to be a current and valid airworthiness certificate for those rotorcraft. A related proposal to change § 133.25 would provide for an external-load operator to submit for approval a list of rotorcraft by registration number when adding or deleting rotorcraft from a certificate. Another related proposal to change § 133.27 would require that the list be kept at the certificate holder's home base of operations. This proposed change is necessary for consistency with the proposed changes to §§ 133.25 and 133.27. See the explanation for the related proposals.

Ref: Proposals 510, 514, 515, 516, and 535; Committee III.

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

40. By revising § 135.1(b)(4)(vi) to read as follows:

§ 135.1 Applicability.

* * * * *

(b) * * *

(4) * * *

(vi) Powerline pipeline patrol, or similar types of patrol approved by the Administrator;

* * * * *

Explanation: This proposal would exclude patrol operations from the requirements of Part 135. The current rule excludes powerline and pipeline patrols but allows a general interpretation to include other types of patrol. Similar types of patrols, such as patrols of rail lines, are similar to poweline or pipeline patrols and can be conducted with equal safety under similar conditions. The proposed § 135.1(b)(4)(vi) retains adequate control by requiring operators to obtain FAA approval for similar types of patrols. This proposal does not change the intent of the rule, but is clarifying in nature and relaxes economic burdens on operations of this type.

Ref: Proposals 538; Committee III.

41. By revising § 135.23(a) to read as follows:

§ 135.23 Manual contents.

* * * * *

(a) The name of each management person required under § 135.37(a) who is authorized to act for the certificate holder, the person's assigned area of responsibility, the person's duties, responsibilities, and authority, and the name and title of each person authorized to exercise operational control under § 135.77;

* * * * *

Explanation: Section 135.77 requires listing in the operator's manual the names and titles of persons authorized to exercise operational control. Section 135.23 currently does not reflect the same requirement. This proposal would resolve the inconsistency and possible misunderstanding between §§ 135.77 and 135.23 and provide Part 135 operators with a clearer statement of the regulatory requirement to list management personnel.

Ref: Proposal 541; Committee III.

42. By revising § 135.39(b)(2)(i) to read as follows:

§ 135.39 Management personnel qualifications

* * * * *

(b) * * *

(2) * * *

(i) Hold a current, commercial pilot certificate with an instrument rating. If an instrument rating is not required for the pilot in command under this Part, the

chief pilot must hold a current, commercial pilot certificate; and

* * * * *

Explanation: Under this proposal, regulatory relief would be provided by establishing the same certificate requirements for the chief pilot as for the certificate holder's pilots in command. Current management personnel qualifications require the chief pilot of a certificate holder who is not conducting operations for which the pilot in command is required to hold an Airline Transport Pilot Certificate to hold a commercial pilot certificate with an instrument rating. This rule is restrictive for rotorcraft operators conducting VFR operations exclusively.

The proposed rule change would be consistent with the intent of this rule to ensure the operational background of management is consistent with the types of operations being conducted. Although deviation authority from this requirement exists in § 135.39(d), this proposal would relieve the rotorcraft operator from a potentially time-consuming deviation process.

Ref: Proposal 542; Committee III.

43. By revising § 135.117(c) and by adding new paragraphs (d), (e), and (f) to read as follows:

§ 135.117 Briefing of passengers before flight.

* * * * *

(c) The oral briefing required by paragraph (a) of this section shall be given by the pilot in command or a crewmember.

(d) Notwithstanding the provisions of paragraph (c) of this section, for aircraft certificated to carry 19 passengers or less, the oral briefing required by paragraph (a) of this section shall be given by the pilot in command, a crewmember, or other qualified person designated by the certificated holder and approved by the Administrator.

(e) The oral briefing required by paragraph (a) shall be supplemented by printed cards which must be carried in the aircraft in locations convenient for the use of each passenger. The cards must—

(1) Be appropriate for the aircraft on which it is to be used;

(2) Contain a diagram of, and method of operating, the emergency exists; and

(3) Contain other instructions necessary for the use of emergency equipment on board the aircraft.

(f) The briefing required by paragraph (a) may be delivered by means of an approved recording playback device that is audible to each passenger under normal noise levels.

Explanation: The proposal would allow passenger briefings for certain aircraft operations to be conducted by qualified persons other than the pilot in command or crewmembers. It also would allow the use of an approved recording playback device for the passenger briefing before flight, provided the device used is audible and understandable in the aircraft cabin or facility where the briefing is conducted.

The intent of this section is to ensure that the passengers are briefed before flight. This can be accomplished through the use of an approved recording device. For aircraft certificated to carry 19 passengers or less, the briefing can be conducted by an approved, qualified person other than a crewmember. This would reduce the pilot-in-command workload, particularly in helicopter operations where short stage lengths are frequently encountered. The proposal would not relieve the pilot in command of his or her responsibility under § 135.117(a) to ensure that all passengers are briefed.

Ref: Proposal 550; Committee III.

44. By amending § 135.159 by revising paragraph (a) and by adding new paragraphs (g) and (h) to read as follows:

§ 135.159 Equipment requirements: Carrying passengers under VFR at night or under, VFR over-the-top conditions.

* * * * *

(a) A gyroscopic rate-of-turn indicator combined with a slip-skid indicator except that helicopters having a maximum certification takeoff weight of 6,000 pounds or less require only a slip-skid indicator;

(g) Notwithstanding the provisions of paragraph (b) of this section, helicopters having a maximum certificated takeoff weight of 6,000 pounds or less may be operated until (1 year after the effective date) under visual flight rules at night without a bank-and-pitch indicator, subject to the route of flight being approved by the certificate-holding district office.

(h) Notwithstanding the provisions of paragraphs (a) and (c) of this section, helicopters having a maximum certificated takeoff weight of 6,000 pounds or less may be operated until (1 year after the effective date) under visual flight rules at night without a slip-skid or direction indicator.

Explanation: This proposal would delete the requirement for helicopters to have a turn indicator and allow a 1–year period from the effective date of this proposed rule to acquire and install attitude, heading, and slip-skid instruments. VFR night and over-the-top helicopter operations can be conducted safely with attitude, heading, and slip-skid indicators. These instruments have been required in airplanes since 1964 and they provide the pilot instantaneous cockpit information on aircrasft control. To provide an acceptable level of safety in passenger-carrying operations, a helicopter must be controllable during loss of visual ground reference.

Helicopter air taxi operators are presently authorized by exemption (No. 2695B; August 29, 1980) to conduct VFR night operations without the instruments required by § § 135.159 (a) and (c). This temporary exemption was granted to avoid undue economic burden while standards are presented and examined in the rotorcraft review.

On conference proposal recommends that the gyroscopic flight instruments required by § 135.159 not apply to helicopters for night VFR operations. There are many areas of operations, such as over water or sparsely populated terrain, where there is a lack of visual reference for aircraft control. The gyroscopic flight instruments required by § 135.159 provide the pilot with positive and immediate flight attitude and heading information, thereby ensuring a higher level of safety for operations conducted under this part. Moreover, no justification is presented by the proponent to show that operations conducted at night in helicopters require less instrumentation than airplanes to acquire the level of safety expected of air carriers.

Ref: Proposal 552; Committee III.

45. By amending § 135.167 by redesignating paragraph (b) as (c); by revising paragraphs (a)(1) and (2) and adding a new paragraph (b) to read as follows:

§ 135.167 Emergency equipment: Extended overwater operations.

* * * * *

(a) * * *

(1) An approved life preserver equipped with an approved survivor locator light for each occupant of the aircraft. The life preserver must be easily accessible to each seated occupant.

(2) Enough approved life rafts of a rated capacity and buoyancy to accomodate the occupants of the aircraft.

(b) Each life raft required by paragraph (a) of this section must be equipped with or contain at least the following:

(1) One approved survivor locator light.

(2) One approved pyrotechnic signaling device.

(3) Either—

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(i) One approved survival kit, appropriately equipped for the route to be flown; or

(ii) One canopy (for sail, sunshade, or rain catcher);

(iii) One radar reflector;

(iv) One life raft repair kit;

(v) One bailing bucket;

(vi) One signaling mirror;

(vii) One police whistle;

(viii) One raft knife;

(ix) One CO_2 bottle for emergency inflation;

(x) One inflation pump;

(xi) Two oars;

(xii) One 75-foot retaining line;

(xiii) One magnetic compass;

(xiv) One dye marker;

(xv) One flashlight having at least two size "D" cells or equivalent;

(xvi) A 2-day supply of emergency food rations supplying at least 1,000 calories per day for each person;

(xvii) For each two persons the raft is rated to carry, two pints of water or one sea water desalting kit;

(xviii) One fishing kit; and

(xix) One book on survival appropriate for the area in which the aircraft is operated.

* * * * *

Explanation. Section 135.167 currently requires operators conducting extended overwater operations to carry an approved life preserver with an approved survivor locator light or an approved flotation means for each occupant of the aircraft. It also requires operators to carry enough life rafts to carry all occupants of the aircraft and specifies survival and rescue equipment that must accompany each life raft.

This proposal would eliminate the provision that allows carriers to provide flotation devices other than life preservers with an approved survivor locator light during extended overwater operations. The proposal also would require life rafts be of an approved type and that each be equipped with a survivor locator light, a pyrotechnic signaling device, and either a survival kit appropriately equipped for the route to be flown or specifically identified survival equipment. This aligns the Part 135 requirements with those of part 121.

A National Transportation Safety Board recommendation cited a night ditching of an air carrier aircraft with 8 crewmembers and 68 passengers abroad. The only light available outside the aircraft was a flashlight carried by the captain. Passengers had difficulty locating the rafts and one another in the water. Had the raft been lit and there been a light installed on each life jacket, more passengers and crewmembers may have survived.

Response time and number of rescuers, availability of artificial light, and varied climatic conditions associated with water rescue attempts affect the efforts of rescuers. Often the length of survivor exposure to the environment is a critical element in the relative success of these rescue operations. Locator lights on preservers and rafts will likely reduce the amount of time associated with finding and retrieving survivors from water and increase their chances of survival with a minimal economic impact on air carriers.

The proposed rule change also would allow operators, who are most familiar with their areas of operation, to develop survival kits that will enhance their usefulness in a particular environment. Present regulatory requirements for survival kits prescribe equipment that may not serve a useful purpose in some geographical locations.

This proposal would provide greater flexibility in developing survival kits required under § 135.167 and provide a higher level of safety to the flying public. Adequacy of the survival kit is ensured by FAA inspection of the contents for appropriateness in a particular operation. Adopting this proposal will align the Part 135 requirements with those of Part 121 and relieve operators of the economic burdens of requiring survival equipment not appropriate to their area of operation.

Ref: Proposal 555; Committee III.

46. By amending § 135.173 by redesignating paragraphs (b), (c), (d), and (e) as (c), (d), (e), and (f), respectively; by amending redesignated paragraph (c) by inserting the phrase "or (b)" after the words "required by paragraph (d)"; by revising paragraph (a), and adding a new paragraph (b) to read as follows:

§ 135.173 Airborne thunderstorm detection equipment requirements.

(a) No person may operate an aircraft that has a passenger seating configuration, excluding any pilot seat, of 10 seats or more in passenger-carrying operations, except a helicopter operating under day VFR conditions, unless the aircraft is equipped with either approved thunderstorm detection equipment or approved airborne weather radar equipment.

(b) After (1 year after the effective date), no person may operate a helicopter that has a passenger seating configuration, excluding any pilot seat, of 10 seats or more in passenger-carrying operations, under night VFR when current weather reports indicate that thunderstorms or other potentially hazardous weather conditions that can be detected with airborne thunderstorm detection equipment may reasonably be expected along the route to be flown, unless the helicopter is equipped with either approved thunderstorm detection equipment or approved airborne weather radar equipment.

* * * * *

Explanation: Current § 135.173 requires all small multiengine aircraft having a passenger seating configuration of 10 or more that are used in passenger-carrying operations to have approved thunderstorm detection equipment installed in the aircraft.

The words "small multiengine" would be removed to ensure all aircraft with a passenger seating configuration of 10 seats or more that are not required to meet the provisions of § 135.175 have thunderstorm detection equipment installed. Current regulatory requirements do not allow single-engine airplanes with 10 passenger seats or more to conduct operations under Part 135.

The proposal also would allow helicopter operators to perform short-range, VFR operations at an appropriate level of safety without the additional expense of installing thunderstorm detection devices.

Under the proposed § 135.173(a), the requirement for thunderstorm detection equipment would not apply to helicopters in VFR conditions during the day. The requirement for thunderstorm detection equipment for helicopters in VFR conditions at night also would be deleted, except when current weather reports indicate that thunderstorms or other potentially hazardous weather conditions that can be detected with an airborne weather detection device may reasonably be expected along the route to be flown. Under night VFR conditions, the certificate holder has the option to delay the flight until the weather improves or use helicopters equipped with either approved thunderstorm detection or approved airborne weather radar equipment.

Helicopters are highly maneuverable and have the capability to adjust altitude and direction rapidly. If thunderstorms or adverse weather is encountered, the helicopter can change its altitude, airspeed, and direction rapidly to circumnavigate or avoid the thunderstorm. Although the helicopter also has the ability to land in small areas and can use this ability to avoid hazardous weather conditions, this advantage is not significant during VFR night operations when a landing option may not be available, such as when over water, forests, mountainous or

congested areas, or when visibility is restricted.

Ref: Proposal 557; Committee III.

47. By amending § 135.181 by redesignating paragraphs (b) and (c) as (c) and (d), respectively; and by adding a new paragraph (b) to read as follows:

§ 135.181 Performance requirements: Aircraft operated over-the-top or in IFR conditions.

* * * * *

(b) Notwithstanding the restrictions in paragraph (a)(2) of this section, multiengine helicopters carrying passengers off shore may conduct such operations in over-the-top or in IFR conditions at a weight that will allow the helicopter to climb at least 50 feet per minute with the critical engine inoperative when operating at the MEA of the route to be flown or 1,500 feet MSL, whichever is higher.

* * * * *

Explanation: The proposed rule will allow a decrease in the performance requirements for multiengine helicopters operating in connection with energy exploration and development in the offshore environment in over-the-top or IFR conditions.

The current rule requires all multiengine aircraft to be operated at a weight which allows for at least a 50-foot-per-minute climb with the critical engine inoperative at 5,000 feet MSL or the MEA, whichever is higher. Under this proposed rule, multiengine helicopters must still meet the climb performance of 50 feet per minute with the critical engine inoperative; however, the altitude for computation is adjusted to 1,500 feet MSL of the MEA of the route to be flown, whichever is higher.

The current requirement for computing performance objective using 5,000 feet MSL in an environment where typically MEA's of 1,500 feet exist imposes an economic penalty on operators by requiring an adjustment of payload to meet the higher performance objective. The FAA believes that it is in the public interest to allow the proposed relaxation of performance requirements considering the overwater en route structures with low minimum en route altitudes.

The present rule was established to provide for a minimum performance in multiengine IFR aircraft. Provisions were added to require stricter performance if the MEA's involved were higher than 5,000 feet. This rule penalizes the helicopter used exclusively in offshore operations. It is obvious that a helicopter with the critical engine inoperative that has a climb capability of 50 feet per minute at 1,500 feet MSL will avoid obstacles over water. This is generally true for all coastal areas where the helicopter begins or terminates its offshore flights. If the MEA in the coastal area is over 1,500 feet, the performance requirements of the helicopter are raised to the appropriate MEA.

This proposal further recognizes the unique environment where helicopters are conducting operations in conjunction with offshore exploration/development of energy supplies and makes appropriate allowances in multiengine performance requirements with the critical engine inoperative. IFR operations offshore in support of oil and gas drilling and production activities are expanding with the accelerated petroleum exploration program. In addition to being in the public interest, this proposal will provide economic relief to operators by allowing better utilization of the existing fleet without compromising safety.

48. By revising § 135.223(a)(3) to read as follows:

§ 135.223 IFR: Alternate airport requirements.

(a) * * *

(3) Fly after that for 45 minutes at normal cruising speed or, for helicopters, to fly after that for 30 minutes at normal cruising speed.

* * * * *

Explanation: This proposal would reduce the IFR fuel requirements for helicopters from 45 minutes to 30 minutes.

This proposal highlights the differences between helicopters and airplanes in the IFR environment. While on the surface it would appear that IFR fuel reserves should be the same for airplanes and helicopters, the differences in aircraft become apparent in the capabilities and limitations of the two categories.

The helicopter has the unique ability to reduce airspeed on approach to as low as 40 knots and is provided reduced visibility minimums in Part 97. The minimums in Part 97 for helicopters are, in some cases, the same as Category II minimums for airplanes. Criteria to determine if an alternate airport is required are contained in the proposed change to § 91.23.

The helicopter being dispatched must carry a larger percentage of its fuel capacity as reserve than the normal airplane. Because the helicopter, with its reduced minimums, has a better probability of completing the flight to the planned destination, it should be given this recognition by allowing for a reduced fuel reserve. Often helicopters are denied the ability to initiate flights simply because too much fuel is required to be carried for reserve.

The FAA has gained sufficient experience in SFAR 29 operations to conclude that reducing the required fuel reserve to 30 minutes for helicopters will not compromise safety.

This proposal would allow operators greater flexibility and utilization of their helicopters in the IFR environment.

Ref: Proposal 562; Committee III.

49. By amending § 135.227 by redesignating paragraphs (c) and (d) as (d) and (e), respectively; by amending newly designated paragraph (e) by inserting the phrase "the restrictions in paragraphs (b), (c), and (d)" in place of "the restrictions in paragraphs (b) and (c)"; and by adding a new paragraph (c) to read as follows:

§ 135.227 Icing conditions: Operating Limitations.

* * * * *

(c) No pilot may fly a helicopter under IFR into known or forecast icing conditions or under VFR into known icing conditions unless it has been type certificated and appropriately equipped for operations in icing conditions.

* * * * *

Explanation: There are no provisions currently in § 135.227 to allow helicopters to fly in icing conditions. Testing and developing ice protection equipment is currently being conducted by helicopter manufacturers. Although no helicopters are now certificated for operations in icing conditions, Rotorcraft Review Program Amendment No. 1 provides the mechanism for this certification. Therefore, it is appropriate to amend the operating rule to allow the use of these helicopters when they are available.

Ref: Proposal 564; Committee III.

50. By amending § 135.429 by redesignating paragraph (d) as (e) and by adding a new paragraph (d) to read as follows:

§ 135.429 Required inspection personnel.

* * * * *

(d) In the case of rotorcraft that operate in remote areas or sites, the Administrator may approve procedures for the performance of required inspection items by a pilot when no other qualified person is available, provided—

(1) The pilot is employed by the certificate holder;

(2) It can be shown to the satisfaction of the Administrator that each pilot authorized to perform required inspections is properly trained and qualified;

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(3) The required inspection is a result of a mechanical interruption and is not a part of a certificate holder's continuous airworthiness maintenance program;

(4) Each item is inspected after each flight until the item has been inspected by an appropriately certificated mechanic other than the one who originally performed the item of work; and

(5) Each item of work that is a required inspection item that is part of the flight control system shall be flight tested and reinspected before the aircraft is approved for return to service.

* * * * *

Explanation: This proposal allows rotorcraft operators to have inspection items required by § 135.427(b)(2) inspected by properly trained and qualified pilots in remote areas or sites.

Current § 135.429 sets forth the requirements for inspection personnel and prohibits a person from performing a required inspection if that person performed the work that is required to be inspected.

Discussions during the conference indicate that circumstances may exist that relate to rotorcraft operations at remote offshore sites and continued operation for significant periods of time in remote areas where housing is not available. The location or size of the site does not make it readily accessible by ground, sea, or air transportation. This proposal is not intended to delete the need for a certificate holder to identify and accomplish required inspection items. It is intended to allow a certificate holder the opportunity to provide a system that will accomplish the same level of safety as required by § 135.429(c) when an unscheduled malfunction occurs and inspection is accomplished under the direct control of the certificate holder's inspection unit.

It was recommended at the conference that § 135.411(a)(2) be deleted for all rotorcraft, which also would delete the requirements of §§ 135.427(b)(2) and 135.429(c) for all rotorcraft, regardless of passenger carrying capability or the area of operation. Designating required inspection items and ensuring their proper performance are necessary for the safe operation of an aircraft. The proponent did not present sufficient justification to delete these requirements. For an explanation of the disposition of these comments, refer to the discussion of proposed § 135.411(a)(2) in Appendix I—Miscellaneous Proposals Removed From Further Consideration from the Rotorcraft Regulatory Review Program.

Ref: Proposal 568: Committee III.

Appendix A—Miscellaneous Proposals Removed From Further Consideration From the Rotorcraft Regulatory Review Program

Based on the FAA's review of the discussions at the Rotorcraft Regulatory Review Conference, the Rotorcraft Review Meeting, and the information submitted by interested persons, the following proposals considered at the conference are removed from further consideration for the reasons listed below:

14 CFR (FAR section)	Proposal No.	Committee	Proponent
Section 27.801	85		NTSB
Section 29.801	255		NTSB
Section 43.3(e)	421	III	HAA.
Section 43.3(f)	422	III	HAA.
Section 43.3	423	III	HAA.
Section 43.3	425	III	HAA.
Section 43.9	426	III	HAA.
Section 43.15	427	III	FAA.
Section 43.15(b)	428	III	HAA.
Part 43, Appx. A	431	III	FAA.
Part 61, Subpart F	434	III	I.D. Farmington.
Section 61.3	437	III	Hynes Helicopter, Inc.
Section 61.57	439	III	HAA.
Section 61.65	440	III	FAA.
Section 61.65(d)(4).	441	III	Hynes Helicopter, Inc.
Section 61.131	455	III	Mr. Peter Greenlaw.
Section 61.183	467	III	Hynes Helicopter, Inc.
Section 61.191	468	III	Hynes Helicopter, Inc.
Section 61.193	469	III	Hynes Helicopter, Inc.
Section 61.195	470	III	Hynes Helicopter, Inc.
Section 91.24(b)	485	III	HAA.
Section 91.28(b)(3).	486	III	HAA.
Section 91.116(b)	493	III	HAA.
Section 121.13	498	III	FAA.
Section 127.81	499	III	FAA.
Section 127.103	500	III	ALPA.
Section 127.105	501	III	ALPA.
Section 127.109(c).	502	III	FAA.
Section 127.110 (New).	503	III	FAA.
Section 127.143	504	III	ALPA.
Section 127.147 New	505	III	FAA.
Section 133.17	510	III	HAA.
Section 133.31(d)(3)	521	III	HAA.
Section 133.45(e)	533	III	HAA.
Section 135.1(b)(4)(v).	537	III	HAA.
Section 135.1(b)(4)(vii)	539	III	HAA.
Section 135.1(b)(7).	540	III	HAA.
Section 135.73(b)	543	III	HAA.
Section 135.73(c)	544	III	HAA.
Section 135.99	546	III	HAA.
Section 135.113	547	III	HAA.
Section 135.15(a)	548	III	HAA.
Section 135.15(c)	549	III	HAA.
Section 135.121(c)	551	III	HAA.
Section 135.165(b), (d).	554	III	HAA.
Section 135.175(a), (b).	558	III	HAA.
Section 135.225(a)(3).	563	III	HAA.
Section 135.293(b), (c)	565	III	NTSB.
Section 135.411(a)(2)	566	III	HAA and AIA
Section 135.415(c).	567	III	HAA.
Section 135.431(a)	569	III	HAA.
Section 43.23(b)	571	III	HAA and AIA.
Section 45.27(a)(2).	572	III	HAA and AIA.
Section 45.29(b)(3)	573	III	HAA and AIA.

Proposals 85 and 255. These proposals would have amended §§ 27.801 and 29.801 to require underwater locating devices on rotocraft used in extended overwater operations. Although Parts 27 and 29 contain certification rules, these proposals would be more appropriately located in operating rules and therefore are addressed in this notice.

Part 135 currently an emergency locator transmitter to be attached to each required liferaft when aircraft are used in extended overwater operations. While this proposal may aid in locating submerged aircraft wreckage, the current rules provide an acceptable level of safety and the proponent has not sufficiently justified its position.

Proposals 421 and 422. These proposals would have amended § 43.3 to authorize repair stations under Part 145 and air carriers and commercial operators under Parts 121, 127, and 135 to perform rebuilding operations. The proponent states that since there is no definition of the term "rebuilding" in the regulations, it is unclear when a major repair becomes a rebuilding operation.

Repair stations are presently authorized to perform major repairs as now defind in Part 1 and Appendix A of Part 43. It is recognized by the FAA that repair stations and air carriers perform major and complex repairs to aircraft. The present regulations allow these persons to restore these aircraft to an airworthy condition using procedures recommended by the manufacturers and, in the case of major repairs, procedures are approved by the FAA. The present regulations only allow the manufacturer of a product to rebuild that product. In light of the proposed changes referred to above, there is insufficient justification to warrant revising § 43.3 as proposed.

In response to the proponent's concerns regarding the definition of "rebuilt," this was addressed in Operations Review Program Amendment No. 12 (47 FR 41076; September 16, 1982), which defines "rebuilt" in § 43.2.

Proposals 423 and 425. These proposals would have amended §§ 43.3 and 43.7 to allow Part 135 operators to perform maintenance, preventive maintenance, and alterations as listed in

Part 43, Appendix A, and to approve aircraft, airframes, aircraft engines, propellers, or appliances for return to service. The intent of these proposals was accomplished in Operations Review Program Amendment No. 12 and no further action is necessary.

Proposal 426. This proposal would exempt Part 135 operators with aricraft type certificated for 10 or more passenger seats from the general maintenance recordkeeping requirements of § 43.9(a). Operations Review Program Amendment No. 12 also accomplished this intent and no further action is necessary.

Proposals 427 and 428. These proposals would have amended § 43.15 by deleting specific sections requiring inspection during 100-hour, annual, or progressive inspections and requiring the rotocraft to be inspected in accordance with the type certificate holder's instructions. This requirement also was included in Operations Review Program Amendment No. 12.

Proposal 431. This proposal would have amended Part 43, Appendix A, to inlcude under powerplant major repairs "disassembly of a turbine engine and associated gear reduction systems."

Since this FAA proposal was made, the FAA issued a notice of proposed Advisory Circular (AC), Aircraft Major Repairs, in an attempt to define those repairs. Substantial public controversy resulted from that notice and subsequent meetings with industry. Comments suggest that a better approach is necessary regarding major repairs. Consequently, the notice was withdrawn to allow the FAA time to develop a better approach to resolving this problem. In light of these efforts, the proposal is dropped from consideration under the Rotocraft Review Program.

Proposal 434. This proposal would have deleted all references to the gyroplane class rating from the Airline Transport Pilot (ATP) certification requirements in Subpart F of Part 61. Several related proposals provided for this change by proposing to delete the gyroplane class rating from the individual sections of Subpart F that have requirements for ATP gyroplane certification. These proposals satisfy the intent of proposal 434, thereby making it unnecessary.

Proposals 437, 469, and 470. This group of proposals would have amended §§ 61.3(d), 61.193(b)(3), and 61.195(d) and adding a new flight instructor provision to each of these sections that would authorize the holder of a flight instructor certificate in powered aircraft to endorse a student pilot's logbook for cross-country flights in either airplanes or helicopters. The current rule requires a flight instructor to be appropriately rated in the category of aircraft to enforse a student pilot's logbook for cross-country flights. Several commenters at the conference, including the FAA, oppose these proposals due to significant difference in performance and flight characteristics between airplanes and helicopters. Factors such as slower airspeeds, lower flight altitudes, relatively short flights due to limited fuel capacity, and the effect of winds on fuel consumption were discussed. The flight instructor authorized to make this kind of endorsement should be aware of the conditions that are unique to helicopters. The current rule provides an acceptable level of safety for student pilots conducting cross-country flights. The proponent does not sufficiently justify the proposed changes to the current rule.

Proposal 439. This proposal would have amended § 61.57(e)(1)(i) to require at least three of the six instrument approaches needed to maintain currency to be conducted in the category of aircraft. The FAA does not agree. This proposal would remove the flexibility from the current rule and would constrain operators from exercising the various regulatory options available to maintain IFR currency. The FAA is not aware of any safety comprise associated with current practice.

Proposal 440. This proposal would have deleted the requirement for 50 hours of cross-country flying in the category of aircraft for which the instrument rating is sought and add the requirement that the cross-country flying be in a powered aircraft. Amendment 61–70, which was published and became effective January 25, 1982 (47 FR 3486), accomplished the intent of this proposal and therefore no further action is necessary.

Proposal 441. This proposal would have revised § 61.65(d)(4) by deleting the requirement for VOR, NDB, and ILS instrument approaches to be demonstrated by an applicant seeking a helicopter instrument rating. The proposed change would allow an applicant to demonstrate compentency by executing either a VOR, NDB, or ILS insturment approach in place of all three approaches now required for helicopter instrument certification at the commercial pilot level. The FAA does not agree with the proposed change, since this is the only time that an applicant is required to demonstrate competency in all three approaches to be Administrator. The proponent states that the requirement to show competency in all three approaches is an undue burden on the operator to equip a helicopter with three types of radio equipment. Such is not the case. Current practices allow an applicant to demonstrate instrument competency in a helicopter, simulator, or training device provided at least one approach is accomplished in flight. This flexibility allows the operator to equip the helicopter with appropriate navigational equipment to conduct either all the approaches or only the single approach in the aircraft.

Proposal 455. This proposal would have revised § 61.131 by changing the total flight time required to obtain a commercial pilot's certificate with a helicopter class rating and to require all flight time to be in helicopters. The current rule requires a total flight time of 150 hours, of which 50 hours must be in helicopters. The proposed change would require a total flight time of 250 hours, all of which would be required in helicopters. Four commenters at the conference, including the FAA, oppose all points of the proposal citing an adverse economic impact with no apparent increase in safety. The proponent does not identify any significant benefits from the proposed change. The present requirement of 150 hours of flight time provides an adequate level of safety for commercial pilot certification in helicopters.

Proposals 467 and 468. These proposals would amended §§ 61.183 and 61.191 to require an applicant for a flight instructor certificate or additional rating on that certificate to have at least 15 hours as a pilot in command in the category and class of aircraft appropriate to the flight instructor rating sought after obtaining a commercial or airline transport pilot certificate in that category. These proposals would increase the pilot-in-command experience level of the applicant so that individual is more comfortable, relaxed, and accustomed to any operating peculiarities of an aircraft before teaching other persons. The FAA does not agree that requiring additional flight time is justified. Commercial pilots have a minimum of 100 hours of pilot-in-command time, which often is in the same category of aircraft for which the flight instructor rating is sought. Requiring an additional 15 hours of flight time in each category and class of aircraft would impose a severe economic burden on the industry.

Proposal 485. This proposal would have deleted the requirement of § 91.24(b) that non-transponder helicopter flights at or below 1,000 feet AGL in a terminal control area (TCA) be conducted under a letter of agreement. The proponent states it is extremely

difficult, if not impossible, for a helicopter operator, especially a transient, to obtain in advance a letter of agreement with a local tower. Moreover, the proponent fails to see what a letter would accomplish since flight below 1,000 feet AGL probably would be below radar surveillance coverage.

Terminal control areas are established to provide positive control within busy, high-density airport areas. This concept depends upon aircraft being subject to certain operating rules and pilot/equipment requirements. The transponder requirement was suspended for non-transponder helicopter operations below 1,000 feet AGL; however, to provide for continuity of positive control in a TCA, letters of agreement are required.

The letter of agreement provides air traffic control (ATC) an additional effective means of exercising positive control. The agreements form the critical base of understanding between ATC and the helicopter pilot/operator regarding non-transponder, low-altitude operations within a high-density area. Depending on local needs, the agreements may stipulate in advance the routes that will be flown, altitudes to be used, holding points, emergency or special call signs, expected radio frequencies to be used, entry and departure points of a TCA, and any special procedure to be implemented. In effect, these letters of agreement serve as tools with which ATC may identify and consequently separate non-transponder helicopter operations from the flow of other traffic in the TCA. This information is effective whether or not radar surveillance can be maintained. Where necessary, those non-transponder helicopter operations that cannot be conducted under a letter of agreement usually can be accommodated on an individual basis under § 91.24(c), "ATC authorized deviations."

Proposal 486. This proposal would have deleted the term "of U.S. manufacture" from § 91.28(b)(3) to allow a foreign manufacturer to obtain a special flight authorization. Amendment 91-178 (47 FR 13312; March 29, 1982) revised § 91.28 and incorporates the intent of the proposal. Therefore, no further action is necessary.

Proposal 493. This proposal would have revised the landing minimums prescribed in § 91.116 by authorizing pilots operating helicopters under IFR to reduce the landing minimums and lower the ceiling minimums contained in Part 91 for standard instrument approach procedures not limited to helicopters. It would reduce the landing visibility minimums by 50 percent and lower the ceiling minimums for decision height (DH) or minimum descent altitude (MDA) to not less than 100 feet above field elevation for helicopters. During the discussion at the conference, the proponent requested that the phrase "MDA may not be lower than 100 feet" be removed from the proposal. The proponent agreed to amend the proposal by dropping "MDA" and retaining "DH may not be lower than 100 feet."

The proposed changes were based on the premise that the DH for helicopters could be less than for airplanes due to factors such as instant power response, no change in flight configuation for a missed approach, and the helicopter 's capability to quick-stop and hover in V_{MC}. The FAA recognizes these substantially different flight characteristics and has authorized reducing landing visibility minimums by 50 percent for helicopters only in Chapter II of the Terminal En Route Procedures (TERPS) Manual for Part 97 standard instrument approach procedures. However, a general reduction of the decision height for helicopters cannot be done. Of the approximately 750 published ILS approach procedures in the United States, only 65 have been demonstrated to be of sufficient reliability to conduct operations below 200 feet above airport elevation. Before helicopters would be allowed to use the reduced ceiling minimums, each of the ILS approach facilities are required to be flight checked for accuracy down to those reduced minimums and must meet the integrity and continunity of service requirements for Type II ILS equipment and be published as an approved "copter procedure." The 65 approved approaches are classified as Type II or Type III ILS facilities and would be authorized for approval of Category II approaches. Section 91.2 of this notice proposed to allow helicopters to apply for Category II authorizations at these facilities. Since published Cateogy I ILS instrument approach procedures do not contain information concerning the accuracy and reliability of the ILS system below 200 feet above airport elevation, the proposed change could place helicopters in a hazardous situation when executing ILS instrument approaches at facilities which have not been demonstrated to be reliable below 200 feet. The current rule and the proposed change to § 91.2 provide an adequate level of safety and this recommended change does not sufficiently justify reducing that level of safety.

Proposals 498 through 505. These proposals to amend § 121.13 and Part 127 would have upgraded existing regulations and added provisions to require shoulder harnesses and flight attendants for helicopter operations under these parts. Part 127, however, is the subject of other rulemaking and § 121.13 will be amended in that regulatory effort. Therefore, these proposals will not be considered a part of the Rotocraft Regulatory Review Program but will be addressed in the proposal to amend Part 127.

Proposal 510. This proposal would have deleted the requirement in § 133.17 that specific rotorcraft be authorized when issuing a Rotorcraft External-Load Operator Certificate. The proposed change would authorize rotorcraft to be listed only by type. Since the airworthiness requirements in Subpart D of Part 133 require satisfactory demonstration of rotorcraft-load combination flight characteristics, it is necessary to retain the provision in § 133.17 for specific rotorcraft to be listed to provide a means of identification. However, Proposal 515 would revise § 133.25 by allowing an operator to add or delete a specific rotorcraft by submitting a new list of rotorcraft by "N" number and rotorcraft-load combintion to the FAA district office. Also, Proposal 526 would delete the requirement in § 133.41 for satisfactory demonstration of the rotorcraft-load combination flight characteristics, provided they have been previously demonstrated. These two proposed changes would be relieving by simplifying the certification and amendment process, thus reducing time delays for external-loan operators. The intent of Proposal 510 would be satisfied by these two proposals.

Proposal 521. This proposal would have revised § 133.31(d)(3) by authorizing the chief pilot for an external-load operator to conduct the knowledge and skill test required of pilots employed by the company. It would also delete the requirement in the current rule for an entry to be made in the pilot's logbook concerning his competency as a pilot to conduct external-loan operations and would require this information to be kept within the certificate-holder's records. The current rule provides for the knowledge and skill test to be demonstrated to the Administrator or to the company's chief pilot and for an entry to be made in the pilot's logbook. The proposed change would, the effect remove the authority of the Administrator to conduct any knowledge and skill tests and place a regulatory requirement on the individual external-load operator to conduct all of

these tests. The FAA disagrees with the proposed change. The current rule provides an acceptable level of safety and no change is necessary.

Proposal 533. This proposal would have revised § 133.45(e) by authorizing restricted category rotorcraft to conduct external-load operations over a densly populated area, in a congested airway, or within a terminal control area or control zone subject to permission of the appropriate air traffic control facility. The current rule prohibits restricted category rotorcraft from conducting operations over a densly populated area, in a congested airway, or near a busy airport where passenger transport operations are conducted. The rule has never provided for the use of restricted category rotorcraft in these areas. However, a limited number of exemptions were issued in the past to allow restricted category rotorcraft to operate in these areas. Issuing those exemptions was considered in the public interest at the time because the services provided were beyond the capability of standard category rotorcraft. None of these exemptions is in effect today. The rotorcraft industry has grown to the state where the use of restricted category rotorcraft in the areas proposed is not in the public interest. This proposal received only one favorable comment at the conference. The current rule provides an adequate level of safety for the public.

Proposals 537 and 539. These proposals recommend deleting the phrase "(but not including transportation to and from the site of operations)" from § 135.1(b)(4)(v). Helicopters performing construction or repair work do not have to comply with the provisions of Part 135. The proponent states that transporting persons to and from the construction or repair site also should be excluded from meeting Part 135 requirements.

The FAA recognizes that some aerial work operations are not intended to be included under this section. However, transportation to and from the site of operations are air taxi operations and are included within the parenthetical statement that the proponent desires to drop. The applicability section of § 135.1(a), plus many legal interpretations and policy guidance documents, all state that transportation for compensation or hire of persons and/or property in an aircraft size identified in Part 135 is an air taxi or commercial operation.

The proponent also recommends allowing any other aerial work operation specified or approved by the Administrator to be conducted without compliance with Part 135. This could allow operations outside the scope of a rule without public comment and could be contrary to the Administrative Procedures Act.

Proposal 540. This proposal would delete § 135.1(b)(7) which excludes certain helicopter flights from meeting the reguirements of Part 135. Considering the limited number of operations that fall under this exclusion and the high economic impact these operators would incur if required to comply with the requirements of Part 135, it is not appropriate to consider deleting paragraph (b)(7) at this time.

Proposal 543. The proponent recommends a rule that would prohibit the Administrator from removing a paying passenger or necessary crewmember for the purpose of conducting inspections or tests, including en route inspections. This proposal is dropped because the ability of the FAA to conduct inspections or tests is necessary in the interest of safety. One purpose of the inspection or test is to observe the required crewmembers performing their duties. The FAR do not allow an FAA inspector to remove a required crewmember. The required crewmembers are identified in Part 135 and the aircraft certification requirements. The words "necessary crewmember" may or may not have the same meaning.

Proposal 544. This proposal recommends that the certrificate holder not be required to install a headset, speaker, or forward observer seat for use by the FAA during en route inspection if the certificate holder has to modify the aircraft. It is essential that these items be provided so that the FAA may properly perform en route inspections and thus ensure a continuing level of safety for the public.

Proposal 546. This proposal would have allowed helicopters with initial or amended type certificates issued before December 31, 1981, to operate without a second in command in VFR, non-commuter operations with an approved autopilot or stability augmentation system. After reviewing the proposal and comments, the FAA concludes that the aircraft and crew requirements imposed on airplanes are valid for all aircraft configured for 10 or more passenger seats. The FAA is responsible for ensuring as high a level of safety as practicable for the traveling public. This responsibility is not limited to passengers purchasing tickets on a large scheduled or commuter air carrier. The helicopter is no less demanding than an airplane which requires two pilots for similar operations. These operators are playing an increasingly important role in the air transportation industry and have demonstrated a strong growth rate.

Proposal 547. This proposal would have authorized any employee of a Part 135 certificate holder or any airman authorized by the certificate holder to occupy a pilot seat of an air taxi aircraft with more than eight passenger seats, excluding any pilot seat. The stated intent was to provide transportation and training for personnel employed by the certificate holder. Sufficient justification was not presented to warrant further consideration.

The FAA has consistently held that flight training may not be conducted in air carrier passenger operations. The air carrier approved pilot training program must be completed before assigned pilot duties on an air taxi flight. If adopted, this proposal would erode the operator's training program for new pilots. Sections 135.53 and 135.113 limit the occupancy of the other pilot seat in these aircraft to the personnel stated in the rule.

Proposal 548 and 549. This proposal would have allowed any pilot employed by the Part 135 certificate holder to manipulate the controls of an aircraft in air taxi service even though the pilot training and testing program had not been completed and the person was not qualified in the aircraft. The air taxi rule was specifically changed to prohibit this. Before the change the FAA received numerous pasasenger complaints which stated that persons other than the pilot were manipulating the controls on passenger-carrying air taxi flights, resulting in erratic aircraft performance, particularly during takoffs and landings. The passengers state that they should not be subjected to this unsafe performance on air taxi flights. Part 135 was changed to upgrade the level of safety to specifically prohibit this action.

Proposal 551. The proposal would modify § 135.121(c) to prohibit the boarding on an aircraft of persons under the influence of drugs. Section 91.11(b) prohibits a person from carrying a person obviously under the influence of drugs. Therefore, the intent of this proposal is already being accomplished.

Proposal 554. This proposal would have reduced the radio communications and navigation equipment required for helicopters engaged in overwater operations provided the operations are conducted under VFR conditions. The equipment proposed for extended overwater operations is more lenient than present § 135.165 and does not provide for any backup radio navigation or communications equipment to provide an additional level of safety in case of partial radio failure. A key

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requirement of the rule which this proposal would eliminate is that the radio communications and navigation equipment to be used must be capable of transmitting to, and receiving from, at any place on the route, at least one ground facility. Therefore, this proposal would not provide the air taxi passenger the level of safety previously required or currently envisioned by the FAA in considering the mandate in the Airline Deregulation Act of 1978 that air taxis operate with the highest feasible level of safety.

Proposal 558. The proponent suggests that a large transport category helicopter be allowed to operate in VFR conditions without meeting the requirement to have airborne weather radar installed. Part 135 was expanded to incorporate provisions of Part 121 for operations of large transport category aircraft having a maximum passenger seating configuration of 30 seats or less and a maximum payload capacity of 7,500 pounds or less. These requirements have resulted in the high level of safety enjoyed by air carriers operating under Part 121. Airborne radar has been one of these requirements. It is a valuable aid to locating thunderstorm and precipitation areas during VFR and IFR flights.

The proponent does not show that a large transport category helicoper conducting VFR operations, particularly at night would require less instrumentation than a large transport category airplane to achieve the level of safety expected of air carrier/air taxi operations.

Proposal 563. This proposal would have allowed point-in-space approaches to use a weather reporting source at a location approved by the Administrator. Section 135.213(b) presently provides this authorization.

Proposal 565. This proposal would have expanded crewmember testing to include pinnacle operations, confined area work, and the hazards of operating in snow and dust. The proposal also would require demonstrating these operations when substituting the instrument competency check for the competency check.

On January 14, 1980, the Office of Flight Operations issued General Notice N8430.322. This notice provides guidance in air taxi flight tests and identifies maneuvers required. Helicopter pinnacle and rooftop approaches and landings are required when applicable to the certificate holder's operations. The notice also states that alternating instrument proficiency checks may be conducted toward fulfulling the competency check requirements provided the pilot is tested on any additional items required by the competency check.

The FAA has taken the action requested by the NTSB on the items in the proposal with the exception of covering the hazard of operating in snow and dust. The FAA also has issued instructions to the field to request that certificate holders modify their ground training programs under § 135.345 to incorporate these items.

Proposal 566. This proposal would have amended § 135.411(a)(2) by deleting the requirements for helicopters that are type certificated to carry 10 or more passengers to be maintained under a continuous airworthiness maintenance program. The proponent presents two issues which it believes the FAA did not consider regarding the impact this rule would have on the helicopter industry. The first time cited was that because the NTSB did not include helicopters in their air taxi safety study, the recommendations made by the NTSB do not apply to helicopters. The primary objective of the FAA is to upgrade the level of safety for all air taxi operations regardless of the size and type of aircraft, and helicopters were considered during development of this rule. The NTSB study contained 20 recommendations in its report, the majority of which related to the requirements for a properly managed maintenance program, trained personnel, and clearly defined maintenance responsibilities and functions. A review of maintenance-related accidents involving helicopters of all types indicates factors for helicopters that are similar to airplanes. The proponent states that there has not been an accident in the past 15 years involving a helicopter that carries 10 or more passengers where maintenance personnel or maintenance procedures were listed as a causal factor and the requirement of § 135.411(a)(2) would have prevented the accident. To illustrate the aircraft and related accident causal factors, the following are helicopters that carry 10 or more passengers where maintenance-related items were cited. On January 23, 1973, a Bell Model 205A, N–40496, was involved in an accident that indicated that an operation was attempted with known differences in equipment. On August 8, 1964, a Sikorsky S62A, N–987, was involved in an accident. The probable causes were listed as improper maintenance and inadequate inspection by maintenance personnel. The FAA has also considered accidents where the causal factors were maintenance related for helicopters carrying nine or less passengers. The sample included all types of helicopters, including the latest turbine-powered helicopter. There were several accidents where maintenance and maintenance personnel were cited as factors. The FAA, in promulgating the requirements of Part 135, considered the relationship of the passenger-carrying capability in establishing the maintenance requirements. All factors were considered and it was determined that passengers using helicopters should be assured of the same safety aspects as those passengers using airplanes. The proponent also states that there were no commuter helicopters, so the NTSB concern for commuter operations does not apply to helicopters. The FAA records indicate that helicopters have been involved in commuter operations from 5 of the 7 years between 1970 through 1977 when this rule was being developed. It is also interesting to note that although the NTSB Air Taxi Safety Study did not include helicopters, it did provide data relative to helicopter accidents.

In the second issue the proponent states that the FAA failed to properly assess the cost impact of § 135.411(a)(2) on the helicopter industry in accordance with Executive Order 12044. The FAA complied with Executive Order 12044 in assessing the cost impact on the helicopter industry and made reference to this report in Docket No. 16097, Revision to Part 135. The preamble in revised Part 135 states that full documentation of the study and its associated data basis were provided in a three volume report "Cost Impacts of FAR Part 135, Changes to Commuter and Air Taxi Industries," May 1978, by the Aerospace Corporation, and is a part of the docket. The fact that this report did consider helicopters was also stated during the Rotorcraft Review Conference. This report contains economic data in the same specific impact areas as those affecting airplanes. It is assumed the proponent intended to provide a safety parallel by recommending deleting the present maintenance requirements for 10-or-more-passenger-seat helicopters in favor of the maintenance requirements for helicopters that carry nine or less passengers. Section 135.411(a)(2) provides additional maintenance management requirements that are not required for aircraft that carry nine or less passengers. The additional provisions afford a passenger using these aircraft with safety considerations similar to airplane operations under Part 121 or helicopter operations under Part 127. These requirements have proven satisfactory in aircrft used under Part 135 and the proponent has not submitted any justification to warrant changing the

rule to delete the present maintenance requirements for aircraft that carry 10 or more passengers.

Proposal 567. This proposal would have amended § 135.415(c) by deleting the word "shall" and adding the word "encouraged" in its place. The word "shall" in this rule makes it mandatory for an operator to make a determination of a safety item. To "encourage" would only require an operator to submit those items listed and not items that affect safety even if the operator believes safety is affected by a known defect or trend of defects.

Proposal 569. This proposal would have revised § 135.431(a) by removing the requirement for a certificate holder to establish and maintain a system for the continuing analysis and surveillance of the performance and effectiveness of its inspection and maintenance program. The proponent states that continually reviewing a program establishes an effective alternative to determine the effectiveness of an operator's inspection and maintenance program. The FAA does not agree. The proposed review may not be systematic and would only confuse an operator regarding responsibility under this section. To review a program without a requirement to establish a system may prove meaningless and generate nothng more than wasted time and paperwork as sugggested in the proposal. The proponent has not shown sufficient justification to modify maintenance and inspection programs based on its experience in the maintenance and operating environment.

Proposal 571. This proposal would have amended § 45.23(b) to allow an aircraft doing a market survey to be marked "Market Survey" instead of "Restricted," "Experimental," or other already stablished categories, each of which has specific certification rules that must be met. This would, in essence, create a new category of aircraft and no criteria for that category were presented in the proposal. Moreover, a need has not been established to create a new category for market survey aircraft. The term "Market Survey" can be displayed on the aircraft as long as it does not conflict with the other markings required by this section and other sections of this chapter.

Proposals 572 and 573. These proposals would have removed the requirement for the size of markings on the bottom of rotorcraft and would allow the side markings based on the size of surface they were to be affixed to. It also would allow the markings to be placed on the tail cone or vertical fin. On February 14, 1983, Amendment No. 45-14 was issued which accomplished the intent of this proposal (48 FR 11390; March 17, 1983).

Appendix B—Summary of Regulatory Flexibility Analysis

An Initial Regulatory Flexibility Analysis has been prepared for those items with a beneficial economic impact and is contained in the docket. This appendix summarizes that analysis.

Section 133.21 Personnel

The objective of these proposals is to eliminate external-load accidents due to inadequate pilot competence in performing particular operations. Two methods of attempting to ensure such pilot competence (which can be combined) are to require experience, such as through a "trainee" pilot working a certain amount of time with a "qualified" pilot, and through pilot testing by a qualified examiner. Pilot testing might be carried out by FAA employees, designated examiners, or individuals within the particular company performing the external-load operation. Present regulations provide for such testing by a single Chief Pilot. This proposal would allow the Chief Pilot's duties to be delegated to Assistant Chief Pilots to relieve some of the compliance cost burden.

An estimated 179 external-load operators are potentially affected by this proposal. Almost all may be assumed to be small. Benefits may be considered roughly proportional to fleet size, although variations may be expected due to operating territory and other factors. Therefore, to the extent that small operators have smaller fleets than large ones, the $481,000 projected annual cost savings may be expected to average no more than $2,687 per affected operator.

Industry research indicates that over 40 percent of Part 133 certificate holders also hold Part 135 certificates. The total fleet size distribution of Part 133 operators is unknown. Regardless of whether it resembles the distribution of Part 135 or non-Part 135 operators, the relatively high maximum average impact suggests that the threshold of economic impact significance could very well be exceeded by ⅓ of the potentially affected small operators.

Section 133.41 Flight Characteristics Requirements

The objective of these proposals is to reduce accidents resulting from the use of particular combinations of rotorcraft models with certain external loads and external-load attaching devices. Many such combinations of rotorcraft models, external loads, and external-load attaching devices pose a significant risk of accident even when under the control of a competent pilot. The FAA concludes that such confidence can only be maintained when each possible rotorcraft-load combination is successfully demonstrated at least once.

An estimated 164 external-load rotorcraft certificate holders are potentially affected by this proposal. Almost all may be considered small. Benefits may be considered roughly proportional to fleet size, although variations may be expected due to fleet diversity and other factors. Therefore, to the extent that small operators have smaller fleets than large ones, the $340,000 projected annual cost savings and $2,000 annual profit increase may be expected to be no greater than $2,085 per potentially-affected small operator, on average.

As stated previously, industry research indicates that somewhat over 40 percent of Part 133 certificate holders also hold Part 135 certificates. The size of the average impact, however, suggests that the threshold of economic impact significance could well be exceeded by ⅓ of the potentially affected small operators. Section 133.41 is closer to the borderline in this regard than § 133.21.

Cumulative Economic Impact

The proposed changes to Part 43, Appendix A, and §§ 91.23, 133.21, 133.41, 133.51, 135.159, 135.173, and 135.429 refer to different, but partially overlapping, categories of operators.

(1) Part 43, Appx. A—Part 135 operators serving remote areas.

(2) § 91.23—Part 91 operators (not holding Part 135 certificates) flying to some extend under IFR.

(3) § 133.21—Part 133 operators in general.

(4) § 133.41—Part 133 operators in general.

(5) § 133.51—Part 133 operators in general.

(6) § 135.159—Part 135 operators flying to some extent VFR at night.

(7) § 135.173—Part 135 operators using rotorcraft with 10 seats or more.

(8) § 135.429—Part 135 operators using rotorcraft with 10 seats or more.

Although the first and second categories are, by definition, separate from each other, there exists no operator survey data that would allow the determination or reliable estimation of the actual extent to which each of the other categories overlap. It is possible to estimate, however, whether or not it is likely, given the (separate) distributions of fleet size for Part 135 and non-Part 135 operators, that the number of

operators experiencing a significant cumulative net economic impact (positive or negative) from all eight of these proposals would constitute ⅕ or more of the total of individual potentially affected operators, if operator impact were proportional to operator fleet size. To provide the highest possible chance that this number will consititute ⅕ or more, the total of individual operators potentially affected by any of the proposals may be estimated as follows:

Part 135 operators, including all in proposal categories (1), (6), (7), and (8), and 42 percent of those in categories (3), (4), and (5). Note: It is estimated that 42.4 percent of Part 133 operators also hold Part 135 certificates.	358
Non-Part 135 certificate holders, including 57.6 percent of those in proposal categories (3), (4), and (5).	393
Total	751

This estimate maximizes the extent of "overlapping" among relevant categories and increases the chance of ⅕ or more of the total individual operators' experiencing a significant cumulative net impact. It may be noted that such overlapping is not necessarily the most likely representation of actual practice. For example, Part 91 operators that fly under IFR may well not also engage in Part 133 operations, which are generally carried out under VFR.

Even with maximum overlapping of potentially affected small operator categories and given the relatively large number of non-Part 135, and even Part 135, operators that have single-craft or very small fleets, an estimated 217 out of 751 would be expected to bear a significant cumulative impact from the eight proposals. The remaining 534 would not be significantly impacted. The number of small operators expected to be impacted would be less than ⅕ of the total of such operators unless at least 120 of those operators were eliminated by being designated "large" operators. Therefore, it is reasonable to expect that the cumulative net economic impact (positive or negative) of these proposals would not reach significant levels for ⅕ or more potentially affected small operators.

However, the unknown number of proposal category (2) operators that might be eliminated as "large" entities and that might have been expected to be insignificantly impacted could reach as high as 270. Also, those proposal category (2) operators not eliminated might have atypically large fleets and could be significantly affected by proposal (2) alone. Therefore, the possibility exists that the total number of potentially affected small operators could be low enough so that over ⅕ of them would experience a significant cumulative net impact.

(Sec. 313(a), 601, 603, and 604 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, 1423, and 1424) and 49 U.S.C. 106(g) (Revised, Pub. L. 97-449; January 12, 1983)

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Acting Director of Flight Operations.

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March 13, 1985

Part III

Office of Management and Budget

Cumulative Report on Budget Rescissions and Deferrals; Notice

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

March 1, 1985.

This report is submitted in fulfillment of the requirements of Section 1014(e) of the Impoundment Control Act of 1974 (Pub. L. 93–344). Section 1014(e) provides for a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to the Congress.

This report gives the status as of March 1, 1985, of 242 rescission proposals and 64 deferrals contained in the first seven special messages of FY 1985. These messages were transmitted to the Congress on October 1, October 31, and November 29, 1984; and January 4, February 6 (two special messages), and March 1, 1985.

Rescissions (Table A and Attachment A)

As of March 1, 1985, rescission proposals totaling $1,805.9 million were pending before the Congress. Attachment A shows the history and status of each rescission proposal reported during FY 1985.

Deferrals (Table B and Attachment B)

As of March 1, 1985, $10,463.3 million in 1985 budget authority was being deferred from obligation and $9.1 million in 1985 outlays was being deferred from expenditure. Attachment B shows the history and status of each deferral reported during FY 1985.

Information from Special Messages

The special messages containing information on the rescission proposals and deferrals covered by this cumulative report are printed in the **Federal Registers** listed below:

Vol. 49, FR p. 39464, Friday, October 5, 1984
Vol. 49, FR p. 44870, Friday, November 9, 1984
Vol. 49, FR p. 47804, Thursday, December 6, 1984
Vol. 50, FR p. 1420, Thursday January 10, 1985
Vol. 50, FR p. 6582, Friday, February 15, 1985
Vol. 50, FR p. 6648, Friday, February 15, 1985
Vol. 50, FR p. 9410, Thursday, March 7, 1985

David A. Stockman,
Director Office of Management and Budget.

BILLING CODE 3110-01-M

TABLE A

STATUS OF 1985 RESCISSIONS

	Amount (In millions of dollars)
Rescissions proposed by the President	$1,805.9
Accepted by the Congress	0
Rejected by the Congress	0
Pending before the Congress	$1,805.9

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TABLE B

STATUS OF 1985 DEFERRALS

	Amount (In millions of dollars)
Deferrals proposed by the President	$14,722.6 a/
Routine Executive releases through March 1, 1985 (OMB/ Agency Releases of $4,413.4 million and cumulative adjustments of $163.1 million)	-4,250.2
Overturned by the Congress	0
Currently before the Congress	$10,472.4

a/ This amount includes $9.1 million in outlays for a Department of the Treasury deferral (D85-13).

Attachments

Attachment A - Status of Rescissions - Fiscal Year 1985

As of March 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
FUNDS APPROPRIATED TO THE PRESIDENT								
Appalachian Regional Development Programs	R85-1		99,000	2-6-85				
International Development Assistance Functional development assistance program	R85-2		5,168	2-6-85				
Peace Corps Peace Corps operating expenses	R85-3		1,231	2-6-85				
Overseas Private Investment Corporation Overseas Private Investment Corporation	R85-4		838	2-6-85				
DEPARTMENT OF AGRICULTURE								
Office of the Secretary Office of the Secretary	R85-5		114	2-6-85				
Departmental Administration Departmental Administration	R85-6		149	2-6-85				
Office of Governmental and Public Affairs Office of Governmental and Public Affairs	R85-7		497	2-6-85				
Office of the Inspector General Office of the Inspector General	R85-8		41	2-6-85				
Office of the General Counsel Office of the General Counsel	R85-9		24	2-6-85				
Agricultural Research Service Agricultural Research Service	R85-10		1,313	2-6-85				
Buildings and facilities	R85-11		16,950	2-6-85				
	R85-12		20,950	2-6-85				
Cooperative State Research Service Cooperative State Research Service	R85-13		151	2-6-85				
Extension Service Extension Service	R85-14		310	2-6-85				

Attachment A - Status of Rescissions - Fiscal Year 1985

As of March 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
National Agricultural Library								
National Agricultural Library.....	R85-15		11	2-6-85				
Statistical Reporting Service								
Salaries and expenses.....	R85-16		206	2-6-85				
Economic Research Service								
Salaries and expenses.....	R85-17		132	2-6-85				
World Agricultural Outlook Board								
World Agricultural Outlook Board.....	R85-18		32	2-6-85				
Foreign Agricultural Service								
Foreign Agricultural Service.....	R85-19		424	2-6-85				
Office of International Cooperation and Development								
Salaries and expenses.....	R85-20		52	2-6-85				
Scientific activities overseas (special foreign currency program).....	R85-21		9	2-6-85				
Agricultural Stabilization and Conservation Service								
Salaries and expenses.....	R85-22		100	2-6-85				
Dairy indemnity program.....	R85-23		88	2-6-85				
Federal Crop Insurance Corporation								
Administrative and operating expenses...	R85-24		1,906	2-6-85				
Commodity Credit Corporation								
Commodity Credit Corporation fund.....	R85-25		31	2-6-85				
Office of Rural Development Policy								
Salaries and expenses.....	R85-26		36	2-6-85				
Rural Electrification Administration								
Salaries and expenses.....	R85-27		288	2-6-85				
Reimbursement to the Rural Electrification and Telephone revolving fund.....	R85-28		215,964	2-6-85				
Purchase of Rural Telephone Bank capital stock.....	R85-29		30,000	2-6-85				

Attachment A - Status of Rescissions - Fiscal Year 1985

As of March 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
Farmers Home Administration								
Salaries and expenses	R85-30		1,315	2-6-85				
Soil Conservation Service								
Conservation operations	R85-31		5,174	2-6-85				
River basin surveys and investigations	R85-32		235	2-6-85				
Watershed planning	R85-33		133	2-6-85				
Watershed and flood prevention operations	R85-34		918	2-6-85				
Great plains conservation program	R85-35		126	2-6-85				
Resource conservation and development	R85-36		164	2-6-85				
Animal and Plant Health Inspection Service								
Salaries and expenses	R85-37		1,464	2-6-85				
Federal Grain Inspection Service								
Salaries and expenses	R85-38		94	2-6-85				
Agricultural Marketing Service								
Marketing services	R85-39		150	2-6-85				
Office of Transportation								
Office of Transportation	R85-40		18	2-6-85				
Food Safety and Inspection Service								
Salaries and expenses	R85-41		2,473	2-6-85				
Food and Nutrition Service								
Food stamp administration	R85-42		684	2-6-85				
Food stamp program	R85-43		8,762	2-6-85				
Human Nutrition Information Service								
Human Nutrition Information Service	R85-44		34	2-6-85				
Packers and Stockyards Administration								
Packers and Stockyards Administration	R85-45		117	2-6-85				
Agricultural Cooperative Service								
Salaries and expenses	R85-46		50	2-6-85				

Attachment A - Status of Rescissions - Fiscal Year 1985

As of March 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
Forest Service								
Forest research	R85-47		923	2-6-85				
State and private forestry	R85-48		463	2-6-85				
National forest system	R85-49		12,134	2-6-85				
Construction	R85-50		1,922	2-6-85				
Land acquisition	R85-51		68	2-6-85				
DEPARTMENT OF COMMERCE								
General Administration								
Salaries and expenses	R85-52		3,700	2-6-85				
	R85-53		499	2-6-85				
Economic Development Administration								
Salaries and expenses	R85-54		120	2-6-85				
Economic development assistance programs	R85-55		24,000	2-6-85				
	R85-56		179,000	2-6-85				
Bureau of the Census								
Salaries and expenses	R85-57		241	2-6-85				
Periodic censuses and programs	R85-58		791	2-6-85				
Economic and Statistical Analysis								
Salaries and expenses	R85-59		433	2-6-85				
International Trade Administration								
Operations and administration	R85-60		2,783	2-6-85				
	R85-60A		18,750	2-6-85				
Participation in United States expositions	R85-61		6	2-6-85				
Minority Business Development Agency								
Minority business development	R85-62		305	2-6-85				
United States Travel and Tourism Administration								
Salaries and expenses	R85-63		468	2-6-85				
	R85-63A		3,417	2-6-85				

Attachment A - Status of Rescissions - Fiscal Year 1985

As of March 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
National Oceanic and Atmospheric Administration								
Operations, research, and facilities....	R85-64		4,140	2-6-85				
	R85-64A		100,200	2-6-85				
Fisheries loan fund.....	R85-65		1,550	2-6-85				
Patent and Trademark Office								
Salaries and expenses.....	R85-66		1,472	2-6-85				
National Bureau of Standards								
Scientific and technical research and services.....	R85-67		1,019	2-6-85				
National Telecommunications and Information Administration								
Salaries and expenses.....	R85-68		183	2-6-85				
Public telecommunications facilities, planning and construction.....	R85-69		32	2-6-85				
	R85-69A		9,968	2-6-85				
DEPARTMENT OF DEFENSE - CIVIL								
Corps of Engineers - Civil								
General investigations.....	R85-70		2,000	2-6-85				
Construction, general.....	R85-71		4,000	2-6-85				
Operation and maintenance, general.....	R85-72		8,000	2-6-85				
General expenses.....	R85-73		1,200	2-6-85				
Flood control, Mississippi River and tributaries.....	R85-74		1,000	2-6-85				
Revolving fund.....	R85-75		3,900	2-6-85				
DEPARTMENT OF EDUCATION								
Office of Elementary and Secondary Education								
Special programs.....	R85-76		80,000	2-6-85				
Office of Bilingual Education and Minority Languages Affairs								

Attachment A - Status of Rescissions - Fiscal Year 1985

As of March 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
Grants to schools with substantial numbers of immigrants.....	R85-77		30,000	2-6-85				
Office of Postsecondary Education Higher education.....	R85-78		59,750	2-6-85				
Departmental Management Salaries and expenses.....	R85-79		4,189	2-6-85				
DEPARTMENT OF ENERGY								
Atomic Energy Defense Activities Atomic energy defense activities.....	R85-80		8,280	2-6-85				
Energy Programs General science and research activities.	R85-81		38	2-6-85				
Energy supply, research and development activities.....	R85-82		2,676	2-6-85				
Uranium supply and enrichment activities	R85-83		968	2-6-85				
Fossil energy research and development..	R85-84 R85-85		3,276 860	2-6-85 2-6-85				
Naval petroleum and oil shale reserves..	R85-86		181	2-6-85				
Energy conservation.....	R85-87		931	2-6-85				
Strategic petroleum reserve.....	R85-88		156	2-6-85				
Energy Information Administration.....	R85-89		846	2-6-85				
Emergency preparedness.....	R85-90		51	2-6-85				
Economic regulation.....	R85-91		156	2-6-85				
Federal Energy Regulatory Commission....	R85-92		204	2-6-85				
Alternate fuels production.....	R85-93		23	2-6-85				
Power Marketing Administration Operation and maintenance, Alaska Power Administration.....	R85-94		29	2-6-85				

Attachment A - Status of Rescissions - Fiscal Year 1985

As of March 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
Operation and maintenance, Southeastern Power Administration	R85-95		15	2-6-85				
Operation and maintenance, Southwestern Power Administration	R85-96		243	2-6-85				
Construction, rehabilitation, operation and maintenance, Western Area Power Administration	R85-97		432	2-6-85				
Departmental Administration Departmental administration	R85-98		2,786	2-6-85				
DEPARTMENT OF HEALTH AND HUMAN SERVICES								
Food and Drug Administration Salaries and expenses	R85-99		2,194	2-6-85				
Health Resources and Services Administration Health resources and services	R85-100		2,263	2-6-85				
Indian health	R85-101		161	2-6-85				
Centers for Disease Control Disease control	R85-102		2,261	2-6-85				
National Institutes of Health National Cancer Institute	R85-103		4,362	2-6-85				
National Heart, Lung and Blood Institute	R85-104		1,401	2-6-85				
National Institute of Dental Research	R85-105		166	2-6-85				
National Institute of Arthritis, Diabetes, and Digestive and Kidney Diseases	R85-106		1,171	2-6-85				
National Institute of Neurological and Communicative Disorders	R85-107		462	2-6-85				
National Institute of Allergy and Infectious Diseases	R85-108		428	2-6-85				
National Institute of General Medical Sciences	R85-109		211	2-6-85				

Attachment A - Status of Rescissions - Fiscal Year 1985

As of March 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
National Institute of Child Welfare and Human Development	R85-110		309	2-6-85				
National Eye Institute	R85-111		173	2-6-85				
National Institute of Environmental Health Sciences	R85-112		542	2-6-85				
National Institute on Aging	R85-113		196	2-6-85				
Research resources	R85-114		250	2-6-85				
John E. Fogarty International Center	R85-115		241	2-6-85				
National Library of Medicine	R85-116		354	2-6-85				
Office of the Director	R85-117		182	2-6-85				
Alcohol, Drug Abuse, and Mental Health Administration								
Alcohol, drug abuse, and mental health	R85-118		3,972	2-6-85				
Office of Assistant Secretary for Health								
Public health service management	R85-119		493	2-6-85				
Health Care Financing Administration								
Program management	R85-120		1,540	2-6-85				
Human Development Services								
Human development services	R85-121		1,334	2-6-85				
Family social services	R85-122		396	2-6-85				
Community services block grant	R85-123		34	2-6-85				
Departmental Management								
General departmental management	R85-124		1,246	2-6-85				
Office of the Inspector General	R85-125		496	2-6-85				
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT								
Public and Indian Housing Programs								
Payments for operation of low income housing projects	R85-126		253,138	2-6-85				

Attachment A - Status of Rescissions - Fiscal Year 1985

As of March 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
Management and Administration								
Salaries and expenses.....	R85-127		6,919	2-6-85				
DEPARTMENT OF INTERIOR								
Bureau of Land Management								
Management of lands and resources.....	R85-128		5,778	2-6-85				
Oregon and California grant lands.....	R85-129		679	2-6-85				
Working capital fund.....	R85-130		2,951	2-6-85				
Minerals Management Service								
Minerals and royalty management.....	R85-131		1,764	2-6-85				
Office of Surface Mining Reclamation and Enforcement								
Regulation and technology.....	R85-132		546	2-6-85				
Abandoned mine reclamation fund.....	R85-133		333	2-6-85				
	R85-133A		2,900	2-6-85				
Bureau of Reclamation								
Construction program.....	R85-134		2,571	2-6-85				
General investigations.....	R85-135		209	2-6-85				
Operation and maintenance.....	R85-136		1,540	2-6-85				
General administrative expenses.....	R85-137		1,468	2-6-85				
Geological Survey								
Surveys, investigations and research....	R85-138		4,519	2-6-85				
Bureau of Mines								
Mines and minerals.....	R85-139		1,355	2-6-85				
United States Fish and Wildlife Service								
Resource management.....	R85-140		3,869	2-6-85				
Construction.....	R85-141		40	2-6-85				
National Park Service								
Operation of the national park system...	R85-142		8,598	2-6-85				

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As of March 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
National recreation and preservation....	R85-143		94	2-6-85				
Construction.....	R85-144		397	2-6-85				
Land acquisition and state assistance.....	R85-145		52	2-6-85				
	R85-146		30,000	2-6-85				
Bureau of Indian Affairs Operation of Indian programs.....	R85-147		5,570	2-6-85				
Office of Territorial Affairs Administration of territories.....	R85-148		107	2-6-85				
DEPARTMENT OF JUSTICE								
General Administration Salaries and expenses.....	R85-149		166	2-6-85				
Working capital fund.....	R85-150		3,000	2-6-85				
Legal Activities Salaries and expenses, General Legal Activities.....	R85-151		470	2-6-85				
Salaries and expenses, Antitrust Division.....	R85-152		65	2-6-85				
Salaries and expenses, United States Attorneys and Marshals.....	R85-153		889	2-6-85				
Fees and expenses of witnesses.....	R85-154		309	2-6-85				
Salaries and expenses, Community Relations Service.....	R85-155		43	2-6-85				
Federal Bureau of Investigation Salaries and expenses.....	R85-156		3,505	2-6-85				
Drug Enforcement Administration Salaries and expenses.....	R85-157		876	2-6-85				
Immigration and Naturalization Service Salaries and expenses.....	R85-158		947	2-6-85				

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As of March 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
Federal Prison System								
Salaries and expenses	R85-159		451	2-6-85				
National Institute of Corrections	R85-160		894	2-6-85				
Buildings and facilities	R85-161		13	2-6-85				
Office of Justice Programs								
Justice assistance	R85-162		2,031	2-6-85				
DEPARTMENT OF LABOR								
Employment and Training Administration								
Program administration	R85-163		218	2-6-85				
	R85-163A		1,703	2-6-85				
Training and employment services	R85-164		11,447	2-6-85				
	R85-164A		244,291	2-6-85				
Labor-Management Services Administration								
Salaries and expenses	R85-165		1,678	2-6-85				
Employment Standards Administration								
Salaries and expenses	R85-167		1,635	2-6-85				
	R85-167A		600	2-6-85				
Occupational Safety and Health Administration								
Salaries and expenses	R85-168		1,694	2-6-85				
Mine Safety and Health Administration								
Salaries and expenses	R85-169		1,776	2-6-85				
Bureau of Labor Statistics								
Salaries and expenses	R85-170		765	2-6-85				
	R85-170A		5,000	2-6-85				
Departmental Management								
Salaries and expenses	R85-171		728	2-6-85				
Inspector General salaries and expenses	R85-172		3,766	2-6-85				
Special foreign currency program	R85-173		20	2-6-85				

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As of March 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
DEPARTMENT OF STATE								
Administration of Foreign Affairs Salaries and expenses.....	R85-174		2,432	2-6-85				
DEPARTMENT OF TRANSPORTATION								
Federal Highway Administration Motor carrier safety.....	R85-175		164	2-6-85				
National Highway Traffic Safety Administration OPerations and research.....	R85-176		767	2-6-85				
Trust fund share of operations and research.....	R85-177		408	2-6-85				
Highway traffic safety grants.....	R85-178		250	2-6-85				
Federal Railroad Administration Office of the Administrator.....	R85-179		100	2-6-85				
Railroad research and development.....	R85-180		170	2-6-85				
Rail service assistance.....	R85-181		90	2-6-85				
Railroad safety.....	R85-182		140	2-6-85				
Northeast corridor improvement program..	R85-183		200	2-6-85				
Urban Mass Transportation Administration Urban mass transportation fund, administrative expenses.....	R85-184		265	2-6-85				
Federal Aviation Administration Operations.....	R85-185		18,888	2-6-85				
Headquarters administration.....	R85-186		1,065	2-6-85				
Operation and maintenance, Washington metropolitan airports.....	R85-187		17	2-6-85				
Facilities and equipment (Airport and airway trust fund)..,.....	R85-188		10,000	2-6-85				

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As of March 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
Coast Guard								
Operating expenses	R85-189		14,724	2-6-85				
Acquisition, construction and improvements	R85-190		500	2-6-85				
Reserve training	R85-191		441	2-6-85				
Research, development, test, and evaluation	R85-192		135	2-6-85				
Maritime Administration								
Operations and training	R85-193		888	2-6-85				
Office of the Inspector General								
Salaries and expenses	R85-194		300	2-6-85				
Office of the Secretary								
Salaries and expenses	R85-195		435	2-6-85				
Transportation planning, research and development	R85-196		65	2-6-85				
DEPARTMENT OF THE TREASURY								
Office of the Secretary								
Salaries and expenses	R85-197		969	2-6-85				
Office of Revenue Sharing								
Salaries and expenses	R85-198		90	2-6-85				
Federal Law Enforcement Training Center								
Salaries and expenses	R85-199		75	2-6-85				
Financial Management Service								
Salaries and expenses	R85-200		972	2-6-85				
Bureau of Alcohol, Tobacco and Firearms								
Salaries and expenses	R85-201		397	2-6-85				
United States Customs Service								
Salaries and expenses	R85-202		1,223	2-6-85				

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Bureau of the Mint								
Salaries and expenses	R85-203		87	2-6-85				
Bureau of the Public Debt								
Administering the public debt	R85-204		52	2-6-85				
Internal Revenue Service								
Salaries and expenses	R85-205		198	2-6-85				
Processing tax returns and executive direction	R85-206		781	2-6-85				
Examinations and appeals	R85-207		1,588	2-6-85				
Investigation, collection, and taxpayer service	R85-208		1,633	2-6-85				
United States Secret Service								
Salaries and expenses	R85-209		1,465	2-6-85				
ENVIRONMENTAL PROTECTION AGENCY								
Salaries and expenses	R85-210		1,863	2-6-85				
Research and development	R85-211		4,125	2-6-85				
Abatement, control, and compliance	R85-212		7,413	2-6-85				
GENERAL SERVICES ADMINISTRATION								
Real Property Activities								
Federal buildings fund	R85-213		3,204	2-6-85				
Personal Property Activities								
Operating expenses	R85-214		300	2-6-85				
General supply fund	R85-215		30,848	2-6-85				
Office of Information Resources Management								
Operating expenses	R85-216		45	2-6-85				
Consumer information center fund	R85-217		63	2-6-85				
Federal telecommunications fund	R85-218		415	2-6-85				

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Automatic data processing fund.....	R85-219		145	2-6-85				
Federal Property Resources Activities								
Operating expenses.....	R85-220		207	2-6-85				
Expenses, disposal of surplus real and related personal property.....	R85-221		1,832	2-6-85				
General Activities								
General management and administration, salaries and expenses.....	R85-222		403	2-6-85				
Office of the Inspector General.....	R85-223		35	2-6-85				
Allowances and staff for former Presidents.....	R85-224		19	2-6-85				
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Research and program management.....	R85-226		4,000	2-6-85				
OFFICE OF PERSONNEL MANAGEMENT								
Salaries and expenses.....	R85-227		1,161	2-6-85				
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Medical and prosthetic research.....	R85-230		323	2-6-85				
Medical administration and miscellaneous operating expenses.....	R85-231		2,109	2-6-85				
General operating expenses.....	R85-232		4,334	2-6-85				

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As of March 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
Construction, minor projects.....	R85-233		377	2-6-85				
OTHER INDEPENDENT AGENCIES								
ACTION Operating expenses.....	R85-234		1,139	2-6-85				
Federal Emergency Management Agency Salaries and expenses.....	R85-235		786	2-6-85				
Emergency management planning and assistance.....	R85-236		1,287	2-6-85				
National Archives and Records Administration Operating expenses.....	R85-237		166	2-6-85				
National Labor Relations Board Salaries and expenses.....	R85-238		1,070	2-6-85				
National Science Foundation Research and related activities.....	R85-239		2,002	2-6-85				
Nuclear Regulatory Commission Salaries and expenses.....	R85-240		4,329	2-6-85				
Tennessee Valley Authority Tennessee Valley Authority fund.....	R85-241		1,538	2-6-85				
United States Information Agency Salaries and expenses.....	R85-242		433	2-6-85				
Subtotal, rescissions.....			1,805,913					

Attachment B - Status of Deferrals - Fiscal Year 1985

As of March 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 3-1-85
FUNDS APPROPRIATED TO THE PRESIDENT									
Appalachian Regional Development Programs									
Appalachian regional development programs..	D85-1	10,000		10-1-84					10,000
International Security Assistance									
Foreign military sales credit.....	D85-24	4,939,500		11-29-84	-1027000				3,912,500
Economic support fund.....	D85-2	280,500		10-1-84					
	D85-2A		3,826,000	11-29-84					
	D85-2B		73,233	1-4-85	-2274069				1,905,664
Military assistance.....	D85-3	18,500		10-1-84					
	D85-3A		782,770	11-29-84	-413900				387,370
International military education and training.....	D85-25	55,521		11-29-84	-55521				0
Peacekeeping operations.....	D85-38	7,000		1-4-85					7,000
African Development Foundation									
African Development Foundation.....	D85-40	2,287		2-6-85					2,287
DEPARTMENT OF AGRICULTURE									
Forest Service									
Timber salvage sales.....	D85-4	9,704		10-1-84					
	D85-4A		3,471	3-1-85	-5000				8,175
Expenses, brush disposal.....	D85-5	55,850		10-1-84					
	D85-5A		22,063	3-1-85					77,913
Soil Conservation Service									
Watershed and flood prevention operations.....	D85-59	8,365		3-1-85					8,365
DEPARTMENT OF COMMERCE									
Patent and Trademark Office									
Salaries and expenses.....	D85-41	15,993		2-6-85					15,993

Attachment B - Status of Deferrals - Fiscal Year 1985

As of March 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 3-1-85
DEPARTMENT OF DEFENSE - MILITARY									
Military Construction									
Military construction, all services.....	D85-6	300,008		10-1-84					824,756
	D85-6A		906,322	11-29-84	-381574				
Family Housing									
Family housing, all services.....	D85-26	230,790		11-29-84	-100				230,690
DEPARTMENT OF DEFENSE - CIVIL									
Wildlife Conservation, Military Reservations									
Wildlife conservation.....	D85-7	1,127		10-1-84				135	1,177
	D85-7A		64	1-4-85	-150				
DEPARTMENT OF ENERGY									
Energy Programs									
Fossil energy research and development.....	D85-27	4,871		11-29-84					48,397
	D85-27A		43,525	2-6-85					
Fossil energy construction.....	D85-28	2,165		11-29-84					5,137
	D85-28A		2,973	2-6-85					
Naval petroleum and oil shale reserves.....	D85-29	23		11-29-84					155,667
	D85-29A		155,644	2-6-85					
Energy conservation.....	D85-30	3,398		11-29-84					3,398
Strategic petroleum reserve.....	D85-31	401		11-29-84					270,738
	D85-31A		270,337	2-6-85					
SPR petroleum account.....	D85-42	827,028		2-6-85					827,028
Energy security reserve and alternative production.....	D85-32	852		11-29-84					1,149
	D85-32A		297	2-6-85					

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As of March 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 3-1-85
Power Marketing Administrations									
Southeastern Power Administration,									
Operation and maintenance	D85-16	12,467		10-31-84					
	D85-16A		3,494	2-6-85					15,961
Southwestern Power Administration,									
Operation and maintenance	D85-17	7,260		10-31-84					
	D85-17A		1,514	2-6-85					8,774
Western Area Power Administration,									
Construction, rehabilitation, operation and maintenance	D85-18	3,000		10-31-84					
	D85-18A		27,300	2-6-85					30,300
Departmental Administration									
Departmental administration	D85-43	8,501		2-6-85					8,501
DEPARTMENT OF HEALTH AND HUMAN SERVICES									
Office of Assistant Secretary for Health									
Scientific activities overseas									
(special foreign currency program)	D85-8	424		10-1-84					
	D85-8A		590	1-4-85					1,013
Social Security Administration									
Limitation on administrative expenses									
(construction)	D85-9	15,488		10-1-84					
	D85-9A		224	3-1-85					15,712
Limitation on administrative expenses									
(information technology systems)	D85-44	81,926		2-6-85					81,926
DEPARTMENT OF THE INTERIOR									
Bureau of Land Management									
Payments for proceeds, sale of water, Mineral Leasing Act of 1920, sec. 40 (d)	D85-10	49		10-1-84					49
National Park Service									
Construction (trust fund)	D85-45	38,172		2-6-85	-3500				34,672

Attachment B - Status of Deferrals - Fiscal Year 1985

As of March 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 3-1-85
Bureau of Indian Affairs Construction	D85-33	8,918		11-29-84	-893				8,025
DEPARTMENT OF JUSTICE									
General Administration Salaries and expenses	D85-46	3,890		2-6-85					3,890
Legal Activities Support of United States prisoners	D85-47	5,319		2-6-85					5,319
Federal Prison System Buildings and facilities	D85-19	44,534		10-31-84					44,534
Office of Justice Programs Justice assistance	D85-60	13,026		3-1-85					13,026
DEPARTMENT OF LABOR									
Employment and Training Administration Program administration	D85-61	162		3-1-85					162
State unemployment insurance and employment service operations	D85-34	3,767		11-29-84					3,767
	D85-34A			3-1-85					37,000
	D85-62	37,000		3-1-85					119
Unemployment trust fund (veterans employment and training)	D85-63	119		3-1-85					228
Pension Benefit Guaranty Corporation Pension Benefit Guaranty Corporation	D85-64	228		3-1-85					0
Bureau of Labor Statistics Salaries and expenses	D85-35	5,000		11-29-84	-5000				

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As of March 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 3-1-85
DEPARTMENT OF STATE									
Other									
United States emergency refugee and migration assistance fund.....	D85-20	32,928		10-31-84					
	D85-20A		153	1-4-85	-24905				8,175
DEPARTMENT OF TRANSPORTATION									
Federal Highway Administration									
Limitation on general operating expenses...	D85-48	2,155		2-6-85					2,155
Federal Railroad Administration									
Rail service assistance.....	D85-49	413		2-6-85					413
Northeast corridor improvement program.....	D85-50	30,000		2-6-85					30,000
Railroad rehabilitation and improvement financing funds.....	D85-51	7,200		2-6-85					7,200
Urban Mass Transportation Administration									
Research, training and human resources.....	R85-52	25,206		2-6-85					25,206
Federal Aviation Administration									
Construction, metropolitan Washington airports.....	D85-53	910		2-6-85					910
Facilities and equipment (airport and airway trust).....	D85-11	537,205		10-1-84					
	D85-11A		652,957	1-4-85					
	D85-11B		93,731	2-6-85	-163000		163,000		1,283,894
Maritime Administration									
Operations and training.....	D85-54	8,500		2-6-85					8,500
Office of the Secretary									
Salaries and expenses.....	D85-55	800		2-6-85					800

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As of March 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 3-1-85
DEPARTMENT OF THE TREASURY									
Office of Revenue Sharing									
Local government fiscal assistance trust fund	D85-12	55,400		10-1-84	-32458				22,942
	D85-13	19,900		10-1-84	-10802				9,098
GENERAL SERVICES ADMINISTRATION									
National Archives and Records Service									
Operating expenses	D85-36	4,700		11-29-84					4,700
OTHER INDEPENDENT AGENCIES									
Board for International Broadcasting									
Grants and expenses	D85-21	4,408		10-1-84	-4408				0
National Science Foundation									
Science and engineering education activities	D85-56	31,450		2-6-85					31,450
Panama Canal Commission									
Operating expenses	D85-37	6,346		11-29-84	-6086				260
Pennsylvania Avenue Development Corporation									
Land acquisition and development fund	D85-14	14,300		10-1-84	-5000				9,300
Railroad Retirement Board									
Milwaukee railroad restructuring, administration	D85-15	108		10-1-84					115
	D85-15A		7	2-6-85					
Limitation on administration	D85-57	3,098		2-6-85					3,098
Limitation on Railroad Unemployment Insurance Administration fund	D85-58	502		2-6-85					502
U. S. Information Agency									
Salaries and expenses	D85-22	2,433		10-31-84					2,433

Attachment B - Status of Deferrals - Fiscal Year 1985

As of March 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 3-1-85
Salaries and expenses, special foreign currency program.....	D85-23	852		10-31-84					852
U.S. Institute of Peace U.S. Institute of Peace.....	D85-39	4,000		1-4-85					4,000
TOTAL, DEFERRALS.....		7,855,945	6,866,670		-4,413,366	0		163,135	10,472,384

Notes: All of the above amounts represent budget authority except the Local Government Fiscal Assistance Trust Fund (D85-13) of outlays only.

The Bureau of Labor Statistics deferral of $5.0 million (D85-35) was released and the funds were proposed for rescission as part of R85-170A.

[FR Doc. 85-6113 Filed 3-12-85; 8:45 am]
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Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 52

United States Standards for Grades of Canned Sweetpotatoes

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this final rule is to amend the voluntary United States Standards for Grades of Canned Sweetpotatoes. This final rule was developed by the U.S. Department of Agriculture (USDA) at the request of the canned sweetpotato industry. This rule revises the voluntary grade standards to: (1) Determine uniformity of size by basing this factor on the 95 percent, by count, most uniform units, disregarding five percent or one unit, whichever is greater, instead of using 90 percent most uniform units; and (2) incorporate minor editorial changes in § 52.2052 "Factors of quality" and in Tables III and IV of § 52.2053, "Requirements for grades". The effect of this final rule will be to improve the grade standards and promote orderly and efficient marketing.

EFFECTIVE DATE: April 15, 1985.

FOR FURTHER INFORMATION CONTACT: Harold A Machias, Processed Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-6247.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA procedures and Executive Order 12291 and has been designated as a "nonmajor" rule. It will not result in an annual effect on the economy of $100 million or more. There will be no major increase in cost or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions. It will not result in significant effects on competition, employment, investments, productivity, innovations, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act, Pub. L. 96-354 (5 U.S.C. 601), because it reflects current marketing practices.

On September 16, 1983, a final rule was published in the **Federal Register** (48 FR 41571), effective October 17, 1983, which revised U.S. Standards for Grades of Canned Sweetpotatoes. The revision based determination of uniformity of size on the 90 percent most uniform units, removed the factor of "shape" as a quality criterion, established "whole and pieces" as a designated style, included pathological or insect injury as part of the definition of blemishes, provided a uniform format, consolidated allowances listing various quality factors into two tables, and incorporated minor editorial changes.

Between October 1983 and January 1984, some segments of industry indicated a desire to change the criterion for determination of uniformity of size. Consequently, a meeting was held on February 12, 1984, in Washington, D.C. between major segments of the canned sweetpotato industry and USDA Fruit and Vegetable Division officials which was chaired by the National Food Processors Association. The purpose of the meeting was to allow various segments to discuss U.S. grade standards. Representatives of several sweetpotato processors as well as representatives from the Louisiana Sweet Potato Commission and the North Carolina Yam Commission were present. The majority of industry indicated that basing determination of uniformity of size on 90 percent most uniform units was not acceptable and notified USDA officials that they would submit petitions requesting revision of the U.S. grade standards.

From April 1984 through July 1984, the USDA received seven requests to reconsider the U.S. grade standards. Three of the requests were in the form of petitions, each of which suggested different numerical percentages for the determination of uniformity of size. The North Carolina Yam Commission [which indicated it represents three sweetpotato processing plants, 40,000 acres of sweetpotatoes, and 40 percent of the total U.S. production] petitioned for basing unformity of size on the 98 percent most uniform units. The Louisiana Sweet Potato Commission [which indicated that it represents five sweetpotato processing plants, 28,000 acres of sweetpotatoes, and about 28 percent of the total U.S. production] petitioned that determination be based on the 97 percent most uniform units. Case Swayne Company, Incorporated, Santa Ana, California, the third petitioner, requested that no less than seven percent be set aside when determining uniformity of size (or the 93 percent most uniform units).

On August 17, 1984, a proposed rule was published in the **Federal Register** (49 FR 32855) to revise the criterion for determining uniformity of size by basing this factor on the 95 percent most-uniform units (§ 52.2045). This was a solution which sought to equitably address the various concerns of the entire industry. Comments were to be filed through the Hearing Clerk until September 17, 1984.

Comments were received within the prescribed time from the Louisiana Sweet Potato Commission and KMC Foods, Incorporated, Cheriton, Virginia.

The Louisiana Sweet Potato Commission supported the proposed revision. The Commission represents processors who indicate they produce a sizeable portion of the national pack (approximately one-half the total amount of sweetpotatoes canned in the United States).

KMC Foods, Incorporated, opposed the proposed rule on the basis that current U.S. grade standards for canned sweetpotatoes have been in effect less than one year. They did not see a compelling or urgent need for USDA to make another change after such a short period of time, and suggested that the current standards should have an opportunity to be further evaluated.

Although current U.S. grade standards for canned sweetpotatoes have been in effect for a relatively brief period, significant objections were made soon after issuance. Major segments of the canned sweetpotato industry indicated

a desire to change the numerical percentage for determining uniformity of size, and have pursued their concern with formal petitions.

A late comment was received from the California League of Food Processors (CLFP), which contended that the grade standards in effect were valid; i.e., determination of uniformity of size should be based upon 90 percent most uniform units. They further contended that the proposed rule attempted to invalidate current standards because it did not significantly address the issue of eliminating bias among different can sizes.

The USDA does not agree that changing the criterion for uniformity of size from a 90 percent to a 95 percent basis would invalidate the objective of eliminating bias between container sizes. Such bias was eliminated when the standards were revised in September 1983, to adopt a percentage basis for determining uniformity rather than a weight comparison basis as incorporated in previous standards. The consideration now relates to the degree of most uniform units. While the current 90 percent most uniform units criterion has a few advocates, the consensus of the industry expertise is that a stricter standard is necessary. The 95 percent level adopted herein will adequately serve all segments of the industry.

A minor editorial changed is necessary in this final rule that would list "Flavor and Odor" in § 52.2052 "Factors of quality" and in Table III and Table IV of § 52.2053, "Requirements for grades". This unscored prerequisite quality factor is defined under § 52.2045, "Definitions of terms", and was inadvertently omitted from these sections during the last revision. This is not a substantive change from the requirements which have been in effect for many years.

After review of comments received and other information and in order to promote orderly marketing of canned sweetpotatoes, USDA hereby revises the grade standards for canned sweetpotatoes to:

(1) Determine uniformity of size based on the 95 percent, by count, most uniform units, disregarding five (5) percent or one (1) unit, whichever is greater; and

(2) Incorporate minor editorial changes.

List of Subjects in 7 CFR Part 52

Fruits, Vegetables, Food grades and standards.

PART 52—[AMENDED]

Accordingly, the Subpart—United States Standards for Grades of Canned Sweetpotatoes (7 CFR 52.2041–52.2060) is revised as follows:

1. In § 52.2045, paragraphs (s) (1) and (2) are revised to read as follows:

§ 52.2045 Definitions of terms.

* * * * *

(s) *Uniformity of Size*—(1) *Practically uniform in size* means, of the 95 percent (by count) most uniform units [disregarding five (5) percent or one (1) unit, whichever is greater], the largest unit does not exceed the weight of the smallest unit by more than a ratio of 3 to 1.

(2) *Reasonably uniform in size* means, of the 95 percent (by count) most uniform units [Disregarding five (5) percent or one (1) unit, whichever is greater], the largest unit does not exceed the weight of the smallest unit by more than a ratio of 4 to 1.

2. In § 52.2052, paragraph (e) is revised and paragraph (f) is added to read as follows:

§ 52.2052 Factors of quality.

* * * * *

(e) Character;
(f) Flavor and Odor.

§ 52.2053 [Amended]

3. In § 52.2053, the top portion of Table III is amended by adding, immediately after and directly below the last line entitled "Score" and immediately prior to the section where "Max per sample unit, Max sample average, etc." begins, the following line:

* * * * *

Flavor and Odor.	Good [4]	Reasonably good [1]

4. in § 52.2053, the following footnote is added at the end of Table III:

* * * * *

[4] Cannot be graded U.S. Grade A, regardless of total score, unless there is good flavor and odor.

5. In § 52.2053, Table IV is amended by adding, immediately after the lines entitled "Character" and "Score", the following line:

* * * * *

Flavor and Odor.	Good [2]	Reasonably good [1]

* * * * *

6. In § 52.2053, the following footnote is added at the end of Table IV:

* * * * *

[2] Cannot be graded U.S. Grade A, regardless of total score, unless there is good flavor and odor.

(Agricultural Marketing Act of 1946, Sec. 203, 205, 60 Stat. 1087, as amended, 1090, as amended (7 U.S.C. 1622, 1624))

Done at Washington, D.C. on March 8, 1985.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 85-6132 Filed 3-13-85; 8:45 am]

BILLING CODE 3410-02-M

Federal Crop Insurance Corporation

7 CFR Part 402

[Amdt. No. 3; Doc. No. 2045S]

Raisin Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Interim rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby amends the Raisin Crop Insurance Regulations (7 CFR Part 402), effective for the 1985 crop year only, by changing the date for filing contract changes specified in the policies for insuring such crop. The intended effect of this rule is to provide additional time in which to file changes made in the policy for insuring raisins. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

DATES: *Effective Date:* March 14, 1985.

Comment Date: Written comments, data, and opinions on this interim rule must be submitted not later than May 13, 1985, to be sure of consideration.

ADDRESS: Written comments on this interim rule should be sent to the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation No. 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. Merritt W. Sprague, Manager, FCIC, has determined that this action (1) Is not a major rule as defined by Executive Order No. 12291 (February 17, 1981), because it will not result in: (a) An annual effect on the economy of $100

million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) will not increase the Federal paperwork burden for individuals, small businesses, and other persons.

The title and number of the Federal Assistance Program to which this interim rule applies are: Title—Crop Insurance; Number 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart, V, published at 48 FR 29115 (June 24, 1983).

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Section 17 of the policy for insuring raisins provides that any changes in the contract must be placed on file in the service office by a certain date. The contract consists of the application, the policy, and the actuarial table. Due to a delay in processing a revision and reissuance of the regulations for insuring raisins, it is necessary to extend the date for filing such changes to the contract an additional 15 days in order to conform to the date for filing changes. It has been determined that the date is extended to May 15, 1985, effective for the 1985 crop year only.

Merritt W. Sprague, Manager, FCIC, has determined that an emergency situation exists which warrants publication of this rule without providing for a period for public comment before such publication. Program changes necessary to maintain the actuarial integrity of the raisin crop insurance program require a number of changes in the crop insurance policy. Without these changes, the statutory mandate that the program be actuarially sound could not be met. The workload involved in these changes will not permit filing in the counties by the present contract date of April 30. There is not sufficient time to provide for public comment and implement these changes prior to April 30. It has been determined that the date by which such changes are required to be placed on file in the service office shall be extended from April 30, 1985, until May 15, 1985, and made effective for the 1985 crop year only. All policyholders should be aware of the additional time provided for FCIC to file such changes.

FCIC is soliciting public comment on this rule for 60 days after publication in the **Federal Register**. This rule will be scheduled for review in order that any amendment made necessary by public comment may be published in the **Federal Register** as quickly as possible.

List of Subjects in 7 CFR Part 402

Crop insurance, Raisins.

Interim Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends the Raisin Crop Insurance Regulations (7 CFR Part 402), effective for the 1985 crop year only, in the following instances:

1. The Authority Citation for 7 CFR Part 402 is:

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77 as amended (7 U.S.C. 1506, 1516).

§ 402.7 [Amended]

2. 7 CFR 402.7(d)17 is revised to read as follows:

* * * * *

(d) * * *

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17. Contract changes.

We may change any terms and provisions of the contract from year to year. If the amount of insurance you selected is no longer offered, the actuarial table will provide the amount of insurance which you will be deemed to have elected. All contract changes will be available at your service office by April 30 preceding the cancellation date except that, for the 1985 crop year only, all contract changes will be available at your service office by May 15, preceding the cancellation date. Acceptance of any changes will be conclusively presumed in the absence of any notice from you to cancel the contract.

Done in Washington, D.C., on February 15, 1985.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Dated: March 8, 1985.

Approved by:

Edward Hews,

Acting Manager.

[FR Doc. 85–6090 Filed 3–13–85; 8:45 am]

BILLING CODE 3410-08-M

7 CFR Part 433

[Doc. No. 1905S]

Dry Bean Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby Revises and reissues the Dry Bean Crop Insurance Regulations (7 CFR Part 433), effective for the 1986 and succeeding crop years to provide for: (1) Removing the Premium Adjustment Table; (2) Adding as a cause of loss the unadvoidable failure or irrigation water supply; (3) changing the method of computing indemnities when acreage, share or practice is underreported; (4) changing the method of crediting the replanting payments; and (5) deleting Appendix A. The intended effect of this rule is to comply with the provisions of Departmental Regulation 1512–1 with regard to review of regulations issued by FCIC for need, currency, clarity, and effectiveness. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: December 1, 1985.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation No. 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is August 1, 1989.

Merritt W. Sprague, Manager, FCIC, has determined that this action: (1) Is not a major rule as defined by Executive Order No. 12291 (February 17, 1981), because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) will not increase the Federal paperwork burden for individuals, small businesses, and other persons.

The title and number of the Federal Assistance Program to which this rule applies are: Title—Crop Insurance; Number 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Other than minor changes in language and format, the principal changes in the dry bean policy are:

1. *Section 1.a.*—Add the failure of irrigation water supply because of unavoidable cause as an insurable cause of loss. This clarifies intent since it is implied as a cause of loss in section 2.f.

2. *Section 2.g.*—Add a new subsection concerning acreage cultivation and insurability to be consistent with other policies containing similar provisions.

3. *Section 5.a.*—Remove the Premium Adjustment Table. Insureds with good loss experience who are now receiving a premium discount are protected since they will retain any discount under the present schedule through the 1989 crop year or until their loss experience causes them to lose the advantage, whichever is earlier. Since those insureds with good loss ratios and premium reduction stayed in the program while those with premium increases because of poor loss ratio tended to drop out, the premium structure under the premium adjustment table made actuarial projection difficult.

4. *Section 5.*—Remove the provisions for the transfer of insurance experience and for premium computation when participation has not been continuous. Deletion of the premium adjustment table eliminates the need for these provisions.

5. *Section 6*—Specify that the replanting payment will only be applied to payment of the premium if the billing date has passed. In cases when the billing date for a crop has passed on the date replanting payment is made, the replanting payment will be applied to payment of the billed premium. This is a change from the premium practice of applying the replanting payment to the outstanding premium in all cases.

6. *Section 9.e.*—Allow the guarantee only on the acreage, share, or practice reported but credit production on the acreage, share, or practice actually planted if the acreage, share or practice reported results in a premium less than the acreage, share or practice actually planted. When acres are underreported, the production from all acres will be applied against the reported acres in calculating indemnities. This change will reduce the indemnities when acres are underreported and will reduce the complexity of calculations.

7. *Section 9. c. and g.*—Delete the requirement that a replanting payment be considered an indemnity. This change allows an insured to collect a replanting payment in addition to an indemnity equal to the total liability for the unit in the event of a total loss. Previously the total of any replanting payment and indemnity could not exceed the FCIC liability on the unit in the event of partial loss.

8. *Section 17.g.*—Add a definition for the term "Loss ratio" to clarify its use in Section 5.

9. In addition to the policy changes FCIC also eliminates the codification of Appendix A. The FCIC service offices will be able to advise a producer if dry bean insurance is offered in any county.

On Friday, December 14, 1984, FCIC published a notice of proposed rulemaking in the **Federal Register** at 49 FR 48733, to revise and reissue the Dry Bean Crop Insurance Regulations for the 1985 and succeeding crop years. The public was given 30 days in which to submit written comments, data, and opinions on the proposed rule, but none were received. However, time constraints do not allow for publication is time for the 1985 crop year. Therefore, with the exception of minor corrections to language and format, the proposed rule as published in hereby adopted as a final rule, effective for the 1986 and succeeding crop years.

List of Subjects in 7 CFR Part 433

Crop insurance, Dry bean.

Final rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby revises and reissues the Dry Bean Crop Insurance Regulations (7 CFR Part 433), and removes Appendix A, effective for the 1986 and succeeding crop years, to read as follows:

PART 433—DRY BEAN CROP INSURANCE REGULATIONS

Subpart—Regulations for the 1986 and Succeeding Crop Years

Sec.

433.1 Availability of dry bean crop insurance.
433.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.
433.3 OMB control numbers.
433.4 Creditors.
433.5 Good faith reliance on misrepresentation.
433.6 The contract.
433.7 The application and policy.

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77 as amended (7 U.S.C. 1506, 1516).

Subpart—Regulations for the 1986 and Succeeding Crop Years

§ 433.1 Availability of dry bean crop insurance.

Insurance shall be offered under the provisions of this subpart on dry beans in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

§ 433.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for dry beans which will be included in the actuarial table on file in applicable service offices for the county and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant will elect a coverage level and price at which indemnities will be computed from among those levels and prices contained in the actuarial table for the crop year.

§ 433.3 OMB control numbers.

The information collection requirements contained in these regulations (7 CFR Part 433) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Nos. 0563–0003 and 0563–0007.

§ 433.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the

holder of the interest to any benefit under the contract.

§ 433.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the dry bean insurance contract, whenever: (a) An insured under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation; (1) is indebted to the Corporation for additional premiums; or (2) has suffered a loss to a crop which is not insured or for which the insured is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured believed to be insured, or believed the terms of the insurance contract to have been complied with or waived; and (b) the Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000.00, finds that: (1) An agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice: (2) said insured relied thereon in good faith; and (3) to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured shall be granted relief the same as if otherwise entitled thereto. Application for relief under this section must be submitted to the Corporation in writing.

§ 433.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the dry bean crop as provided in the policy. The contract shall consist of the application, the policy, and the county actuarial table. Any changes made in the contract shall not affect its continuity from year to year. The forms referred to in the contract are available at the service offices.

§ 433.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation may be made by any person to cover such person's share in the dry bean crop as landlord, owner-operator, or tenant. The application shall be submitted to the Corporation at the service office on or before the applicable closing date on file in the service office.

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk is excessive and also, for the same reason, may reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the closing date for submitting applications in any county, by placing the extended date on file in the applicable service offices and publishing a notice in the **Federal Register** upon the Manager's determination that no adverse selectivity will result during the period of such extension. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1986 and succeeding crop years, a contract in the form provided for in this subpart will come into effect as a continuation of a dry bean contract issued under such prior regulations, without the filing of a new application.

(d) The application for the 1986 and succeeding crop years is found at Subpart D or Part 400—General Administrative Regulations (7 CFR 400.37, 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Dry Bean Insurance Policy for the 1986 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Dry Bean—Crop Insurance Policy

(This is a continuous contract. Refer to Section 15.)

AGREEMENT TO INSURE: We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, "you" and "your" refer to the insured shown on the accepted Application and "we," "us" and "our" refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of loss.

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;
(2) Fire;
(3) Insects;
(4) Plant disease;
(5) Wildlife;
(6) Earthquake;
(7) Volcanic eruption; or
(8) Failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9f(5).

b. We will not insure against any loss of production due to:

(1) The neglect, mismanagement, or wrongdoing of you, any member of your household, your tenants or employees;

(2) The failure to follow recognized good bean farming practices;

(3) The impoundment of water by any governmental, public or private dam or reservoir project; or

(4) Any cause not specified in section 1a as an insured loss.

2. Crop, acreage, and share insured.

a. The crop insured will be dry beans ("beans") and will consist of:

(1) Dry edible beans, planted for harvest as dry beans, of a class designated in the actuarial table; or

(2) Bush varieties of garden seed beans, planted for harvest as seed and grown under a contract with a seed company executed before the acreage reporting date;

which are grown on insured acreage and for which a guarantee and premium rate are provided by the actuarial table.

b. An instrument in the form of a "lease" under which you retain control of the acreage on which the insured beans are grown and which provides for delivery of the beans under certain conditions and at a stipulated price will, for the purpose of this contract, be treated as a contract under which you have the share in the beans.

c. The acreage insured for each crop year will be beans planted on insurable acreage as designated by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we elect.

d. The insured share will be your share as landlord, owner-operator, or tenant in the insured beans at the time of planting.

e. We do not insure any acreage:

(1) Of bush varieties of garden seed beans not grown under contract or excluded from the contract for, or during, the crop year;

(2) If the farming practices carried out are not in accordance with the farming practices for which the premium rates have been established;

(3) Which is irrigated and an irrigated practice is not provided for by the actuarial table unless you elect to insure the acreage as nonirrigated by reporting it as insurable under section 3;

(4) Which is destroyed, it is practical to replant to beans, and such acreage was not replanted;

(5) Initially planted after the final planting date contained in the actuarial table, unless you agree in writing on our form to coverage reduction;

(6) Of volunteer beans;

(7) Planted to a class of dry edible beans or a bush variety of garden seed beans not established as adapted to the area or excluded by the actuarial table;

(8) Which does not meet the rotation requirements designated by the actuarial table; or

(9) Planted with a crop other than beans.

f. If insurance is provided for an irrigated practice:

(1) You will report as irrigated only the acreage for which you have adequate

facilities and water to carry out a good bean irrigation practice at the time of planting; and

(2) Any loss of production caused by failure to carry out a good bean irrigation practice, except failure of the water supply from an unavoidable cause occurring after the beginning of planting, will be considered as due to an uninsured cause. The failure or breakdown of irrigation equipment or facilities will not be considered as a failure of the water supply from an unavoidable cause.

g. Unless otherwise provided by the actuarial table, insurance will attach only on acreage initially planted in rows far enough apart to permit cultivation but, if insured acreage is destroyed and replanted, whether in the same manner or by broadcasting, drilling, or in rows too close to permit cultivation, it will be regarded as insured acreage and not as acreage put to another use.

h. Any acreage of beans which is destroyed and replanted to an insurable class of dry edible beans or bush varieties of garden seed beans will be regarded as insured acreage and not as acreage put to another use.

i. Acreage which is planted for the development or production of hybrid seed or for experimental purposes is not insured unless we agree, in writing, to insure such acreage.

j. We may limit the insured acreage to any acreage limitation established under any Act of Congress, if we advise you of the limit prior to planting.

3. Report of acreage, share, and practice.

You must report on our form:

a. All the acreage of beans in the county in which you have a share;

b. The practice;

c. Your share at the time of planting;

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any beans planted in the county. This report must be submitted annually on or before the reporting date established by the actuarial table. All indemnities may be determined on the basis of information you have submitted on this report. If you do not submit this report by the reporting date, we may elect to determine by unit the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Production guarantees, coverage levels, and prices for computing indemnities.

a. The production guarantees, coverage levels, and prices for computing indemnities will be contained in the actuarial table.

b. Coverage level 2 will apply if you do not elect a coverage level.

c. You may change the coverage level and price election on or before the closing date for submitting applications for the crop year as established by the actuarial table.

5. Annual premium.

a. The annual premium is earned and payable at the time of planting. The amount is computed by multiplying the production guarantee, times the price election, times the premium rate, times the insured acreage, times your share at the time of planting.

b. Interest will accrue at the rate of one and one-half percent (1½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

c. If you are eligible for a premium reduction in excess of 5 percent based on your insuring experience through the 1984 crop year under the terms of the Experience Table contained in the dry bean policy for the 1985 crop year, you will continue to receive the benefit of that reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1989 crop year;

(2) The premium reduction will not increase because of favorable experience;

(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the 1985 policy;

(4) Once the loss ratio exceeds .80 no further premium reduction will apply; and

(5) Participation must be continuous.

6. Deductions for debt.

Any unpaid amount due us may be deducted from any indemnity payable to you, or from a replanting payment if the billing date has passed on the date you are paid the replanting payment, or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies.

7. Insurance period.

Insurance attaches when the beans are planted and ends at the earliest of:

a. Total destruction of the beans;

b. Combining, threshing, or removal from the field;

c. Final adjustment of a loss; or

d. November 15 of the calendar year in which the beans are normally harvested.

8. Notice of damage or loss.

a. In case of damage or probable loss:

(1) You must give us written notice if:

(a) You want our consent to replant beans damaged due to any insured cause (To qualify for a replanting payment, the acreage replanted must be at least the lesser of 10 acres or 10 percent of the insured acreage on the unit);

(b) During the period before harvest, the beans on any unit are damaged and you decide not to further care for or harvest any part of them;

(c) You want our consent to put the acreage to another use; or

(d) After consent to put acreage to another use is given, additional damage occurs.

Insured acreage may not be put to another use until we have appraised the beans and given written consent. We will not consent to another use until it is too late to replant. You must notify us when such acreage is replanted or put to another use.

(2) You must give us notice at least 15 days before the beginning of harvest if you anticipate a loss on any unit.

(3) If probable loss is later determined, immediate notice must be given. A representative sample of the unharvested beans (at least 10 feet wide and the entire length of the field) must remain unharvested for a period of 15 days from the date of notice, unless we give you written consent to harvest the sample.

(4) In addition to the notices required by this section, if you are going to claim an indemnity on any unit, we must be given notice not later than 30 days after the earliest of:

(a) Total destruction of the beans on the unit;

(b) Harvest of the unit; or

(c) The calendar date for the end of the insurance period.

b. You may not destroy or replant any of the beans on which a replanting payment will be claimed until we give consent.

c. You must obtain written consent from us before you destroy any of the beans which are not to be harvested.

d. We may reject any claim for indemnity if any of the requirements of this section or section 9 are not complied with.

9. Claim for Indemnity.

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the beans on the unit;

(2) Harvest of the unit; or

(3) The calendar date for the end of the insurance period.

b. We will not pay any indemnity unless you:

(1) Establish the total production of beans on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit of dry edible beans by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of dry edible beans to be counted (see section 9f);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this result by your share.

d. The amount of indemnity for any unit of bush varieties of garden seed beans will be determined by substracting the value of production from the dollar amount of insurance and multiplying the remainder by the insured share.

(1) The value of production is obtained by multiplying, by variety, the total production to be counted by the applicable price per pound at which indemnities will be computed. The applicable price per pound at which indemnities will be computed will be the lesser of the amount designated by:

(a) The actuarial table; or

(b) The contract with the seed company.

(2) The dollar amount of insurance is obtained by multiplying, by variety, the production guarantee per acre by the insured acreage, by the price per pound at which indemnities will be computed. The price per pound at which indemnities will be computed will be the lesser of the amount designated by:

(a) The actuarial table; or

(b) The contract with the seed company.

e. If the information reported by you under section 3 of the policy results in a lower premium than the actual premium determined to be due, the production guarantee on the unit will be computed on the information reported and not on the actual information

determined. All production from insurable acreage, whether or not reported as insurable will count against the production guarantee.

f. The total production (pounds) to be counted for a unit will include all harvested and appraised production.

(1) Mature dry edible bean production:

(a) Which otherwise is not eligible for quality adjustment will be reduced .12 percent for each .1 percentage point of moisture in excess of 18.0 percent; or

(b) Which is threshed and of the classes of pea and medium white with a pick in excess of 4 percent due to insurable causes and of any other classes which, due to insurable causes, do not grade No. 2 or better, in accordance with the Official United States Grain Standards, will be adjusted by multiplying the number of pounds of such beans by the conversion factor designated by the actuarial table for the applicable grade or pick; or

(c) Which, due to insurable causes, does not meet any U.S. Grade or pick shown in the actuarial table or would not meet these requirements if properly handled or, if a conversion factor is not designated by the actuarial table, any threshed beans which do not grade No. 2 or better in accordance with the Official United States Grain Standards will be adjusted by:

(i) Dividing the value per hundredweight of such beans by the price per hundredweight of U.S. No. 2 beans (except that for the classes of pea and medium white, the price shall be the local market price per hundredweight for these classes with a 4 percent pick); and

(ii) Multiplying the result by the number of pounds of such beans.

The applicable price for No. 2 beans will be the local market price on the earlier of the day the loss is adjusted or the day such beans were sold.

(2) Appraised production to be counted will include:

(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes and failure to follow recognized good bean farming practices;

(b) Not less than the guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause; and

(c) Any appraised production on unharvested acreage.

(3) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage is:

(a) Not put to another use before harvest of beans becomes general in the county;

(b) Harvested; or

(c) Further damaged by an insured cause before the acreage is put to another use.

(4) The amount of production of any unharvested beans may be determined on the basis of field appraisals conducted after the end of the insurance period.

(5) When you have elected to exclude hail and fire as insured causes of loss and the beans are damaged by hail or fire, appraisals will be made in accordance with Form FCI–78, "Request to Exclude Hail and Fire".

(6) The commingled production of units will be allocated to such units in proportion to our liability on the harvested acreage of each unit.

g. A replanting payment may be made on any insured beans replanted after we have given consent and the acreage replanted is at least the lesser of 10 acres or 10 percent of the insured acreage for the unit.

(1) No replanting payment will be made on acreage:

(a) On which our appraisal exceeds 90 percent of the guarantee;

(b) Initially planted prior to the date established by the actuarial table; or

(c) On which a replanting payment has been made during the current crop year.

(2) The replanting payment per acre will be your actual cost per acre for replanting but will not exceed the product obtained by multiplying 100 pounds times the price election times your share.

If the information reported by you results in a lower premium than the actual premium determined to be due, the replanting payment will be reduced proportionately.

h. You must not abandon any acreage to us.

i. You may not bring suit or action against us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under the provisions of 7 U.S.C. 1506(c). You must bring suit within 12 months of the date notice of denial is mailed to and received by you.

j. We have a policy for paying your indemnity within 30 days of our approval of our claim, or entry of a final judgment against us. We will, in no instance, be liable for the payment of damages, attorney's fee, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim. We will pay simple interest, however, computed on the net indemnity ultimately found to be due to you by us or by a final judgment from and including the 61st day after the date the insured signs, dates and submits to use the properly completed claim for indemnity form, if the reason for non-payment is not due to your failure to provide information or other material necessary for the computation or payment of the idemnity. The interest rate will be that established by the Secretary of the Treasury under Section 12 of the Contract Disputes Act (41 U.S.C. 611) and published in the **Federal Register**. This rate is published semi-annually on or about January 1 and July 1. The interest rate to be paid on any indemnity will vary with the rate announced by the Secretary of the Treasury. Interest will be paid in accordance with this section beginning with the 1985 crop year.

k. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the beans are planted for any crop year, any indemnity will be paid to the person(s) we determine to be beneficially entitled thereto.

l. If you have other fire insurance, and fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of:

(1) The amount of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) The amount by which the loss from fire exceeds the indemnity paid or payable under such other insurance. For the purposes of this section, the amount of loss from fire will be difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment or fraud.

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract, and such voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of right to indemnity on insured share.

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

12. Assignment of indemnity.

You may assign to another party your right to an indemnity for the crop year, only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. Subrogation. (Recovery of loss from a third party.)

Because you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve any such rights. If we pay you for your loss then your right of recovery will at our option belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

14. Records and access to farm.

You must keep, for two years after the time of loss, records of the harvesting, storage, shipment, sale or other disposition of all beans produced on each unit including separate records showing the same information for production from any uninsured acreage. Any person designated by us will have access to such records and the farm for purposes related to the contract.

15. Live of contract: Cancellation and Termination.

a. This contract will be in effect for the crop year specified on the application and may not be canceled by you for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due:

(1) If deducted from an indemnity will be the date you sign such claim; or

(2) If deducted from payment under another program administered by the United States

Department of Agriculture will be the date both such payment and set-off are approved.

d. The cancellation and termination dates are:

State	Cancellation and termination dates
California	March 31
All other states	April 15

e. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

f. The contract will terminate if no premium is earned for five consecutive years.

16. Contract changes.

We may change any of the terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by December 31 preceding the cancellation date. Acceptance of any changes will be conclusively presumed in the absence of any notice from you to cancel the contract.

17. Meaning of terms.

For the purposes of dry bean crop insurance:

a. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding dry bean insurance in the county.

b. "County" means the county shown on the application and any additional land located in a local producing area bordering on the county, as shown by the actuarial table.

c. "Crop year" means the period within which the beans are normally grown and will be designated by the calendar year in which the beans are normally harvested.

d. "Harvest" means the completion of combining or threshing of beans on the unit.

e. "Insurable acreage" means the land classified as insurable by us and shown as such by the actuarial table.

f. "Insured" means the person who submitted the application accepted by us.

g. "Loss ratio" means the ratio of indemnity(ies) to premium(s).

h. "Person" means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

i. "Pick" means the percentage, on a weight basis, of the defects such as splits, damaged (including discolored) beans, contrasting classes and foreign material remaining in the beans after dockage has been removed by the proper use of screens or sieves.

j. "Replanting" means performing the cultural practices necessary to replant insured acreage to dry beans.

k. "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

l. "Tenant" means a person who rents land from another person for a share of the beans or a share of the proceeds therefrom.

m. "Unit" means all insurable acreage of either dry edible beans or bush varieties of garden seed beans in the county on the date of planting for the crop year:

(1) In which you have a 100 percent share; or

(2) Which is owned by one entity and operated by another entity on a share basis.

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the beans on such land shall be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office or by written agreement with us. We will determine units as herein defined when the acreage is reported. Errors in reporting units may be corrected by us to conform to applicable guidelines when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having having an interest therein.

18. Descriptive headings.

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any provisions of the contract.

19. Determinations.

All determinations required by the policy will be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those determinations in accordance with Appeal Regulations.

20. Notices.

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

Done in Washington, D.C., on January 15, 1985.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Approved by:

Edward Hewe,

Acting Manager.

Dated: March 8, 1985.

[FR Doc. 85-6091 Filed 3-13-85; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Part 979

Melons Grown in South Texas; Amendment No. 4 to Handling Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule further amends continuing regulation § 979.304 to permit the regular shipment of honeydew melons in bulk containers of specified sizes. It allows shippers to better serve their customers by providing a container desired by many retailers and thus enhance orderly marketing. Without the change the competitive position of production area shippers could be eroded.

EFFECTIVE DATE: May 1, 1985.

FOR FURTHER INFORMATION CONTACT: Robert F. Matthews, Vegetable Branch, F&V, AMS, USDA, Washington, D.C. 20250, (202) 447-5764.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Secretary's Memorandum 1512-1 and Executive Order 12291 and has been designated a "nonmajor" rule. Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

Notice was given in the January 28, 1985, **Federal Register** (50 FR 3797) affording interested persons until February 27, 1985, to submit written comments. None was received.

Marketing Agreement No. 156 and Order No. 979 regulate the handling of melons grown in designated counties in South Texas. The program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The South Texas Melon Committee, established under the order,

is responsible for its local administration.

Because requirements under this program have changed infrequently, in December 1981 the committee recommended, and the Secretary approved, a regulation which would continue in effect from marketing season to marketing season indefinitely unless modified, suspended or terminated by the Secretary upon recommendation submitted by the committee or other information available to the Secretary.

At its public organizational meeting at McAllen, Texas, on November 14, 1984, the committee recommended that the handling regulation continue but that provision be made under paragraph (c) *Containers* for permitting the shipment of honeydew melons in bulk bins of specified sizes. For several seasons the use of such bulk containers has been permitted under the provisions of special purpose shipments. The bulk bin used is one which can be used in the retail establishment as a bulk display for melons. The committee believes that using the bin as both a shipping container and a retail display tends to increase the efficiency of honeydew melon marketing.

Although the regulation is effective for an indefinite period, the committee will continue to meet prior to or during each season to consider recommendations for modification, suspension, or termination of the regulation. Prior to making any such recommendations, the committee will submit to the Secretary a marketing policy for the season including an analysis of supply and demand factors having a bearing on the marketing of the crop. Committee meetings are open to the public and interested persons may express their views at these meetings or may file comments with the Fruit and Vegetable Division before March 1 each year. The Department will evaluate committee recommendations and information submitted by the committee, and other available information, and determine whether modification, suspension or termination of the regulations on shipments of South Texas melons would tend to effectuate the declared policy of the act.

Findings

After consideration of all relevant matters, including the proposal set forth in the notice, it is hereby found that the following amendment, as hereinafter set forth, will tend to effectuate the declared policy of the act.

List of Subjects in 7 CFR Part 979

Marketing agreements and orders, Melons, Texas.

PART 979—MELONS GROWN IN SOUTH TEXAS

Section 979.304 (47 FR 13118, 47 FR 24109, 48 FR 21881 and 15541) is hereby further amended by redesignating paragraph (b)(4) as (b)(5) and adding a new (b)(4), by revising (e)(3), and by removing paragraph (f)(5) as follows:

§ 979.304 Handling regulation.

* * * * *

(b) *Container-requirements.* * * *

(4) Honeydew melons may be packed in bulk containers of 48 inches long by 40 inches wide by 24 inches deep or similar dimensions.

* * * * *

(e) * * *

(3) Upon approval of the committee, shipments of honeydew melons may be made in pony cartons having dimensions of 17 inches long by 14½ inches wide by 5⅝ inches deep. Container requirements of paragraph (b) of this section shall not apply, but such shipments shall meet all other applicable requirements of this section.

* * * * *

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: March 8, 1985, to become effective May 1, 1985.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 85-6130 Filed 3-13-85; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

12 CFR Parts 3 and 7

[Docket No. 84-29]

Minimum Capital Ratios; Issuance of Directives

AGENCY: Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency is adopting a final regulation and interpretive ruling on capital requirements for national banks. This regulation and interpretive rule implement section 908 of the International Lending Supervision Act of 1983 (Pub. L. 98-181, Title IX, 97 Stat. 1153) codified at 12 U.S.C. 3907, which directs the Comptroller of the Currency to establish minimum levels of capital for national banks and to require them to achieve and maintain adequate capital. The Office also is required to analyze capital adequacy in taking action on various types of applications such as mergers and branches and in conducting the Office's supervisory activities related to the safety and soundness of individual banks and the banking system. A proposed regulation was published for comment on September 4, 1984 (49 FR 34838) and several changes have been made in response to the comments. The final regulation: (a) Defines capital; (b) establishes required minimum capital ratios; (c) establishes procedures to set higher required minimum capital ratios for an individual bank; and (d) establishes procedures for issuing a directive to require a national bank to achieve and maintain the minimum capital ratios applicable to it.

DATE: This regulation is effective April 15, 1985.

FOR FURTHER INFORMATION CONTACT: Susan K. Fetner, National Bank Examiner, or John H. Noonan, Director, Commercial Examinations Division (202 447-1164), or Dorothy A. Sable, Senior Attorney (202 447-1880).

SUPPLEMENTARY INFORMATION: The final regulation generally is similar to the regulation proposed for comment with respect to required capital ratios and procedures for establishing higher required ratios for individual banks and for issuing directives. The major changes contained in the final regulation are: (1) The treatment of intangible assets (mortgage servicing rights are included in primary capital in their entirety, while all other intangible assets are deducted from capital); (2) grandfathering the treatment of all funding instruments and intangible assets previously allowed as capital by the Office; and (3) retaining the 50% limit on secondary capital contained in the former 12 CFR 7.1100, while discontinuing required amortization of subordinated debt. These changes and others are discussed in the relevant sections of the preamble which follow.

Background

The Office of the Comptroller of the Currency (Office) has always had a strong concern for the maintenance of adequate capital in individual banks and in the banking system. The protection of depositors and fostering of stability in the financial system are critical to the mission of the Office and capital adequacy plays a key role in the policies and programs used in performing the Office's supervisory functions. A determination of capital adequacy is one of the major objectives of a bank examination and is one of the five components which form the basis of

the Uniform Financial Institutions Rating System used by the Office in determining the condition of individual banking institutions.

Additionally, by enacting the International Lending Supervision Act of 1983 (12 U.S.C. 3901 *et seq.*) (ILSA) Congress has explicitly recognized the importance capital adequacy assumes in the safe and sound operation of the nation's banking system.

Several factors have emerged over the past few years which are accentuating the potential demands on bank capital. The decrease in banks' net interest margins, together with a weakening of loan portfolios brought about by shocks in the domestic and world economy have caused a decline in bank profitability and increased levels of risk within the system. The competition for financial services has intensified on both an intraindustry and interindustry basis, placing additional pressures on bank profitability. Further, because of the growing interdependency within the system, problems in one institution can have repercussions on other institutions, arguing for stronger capital levels in both individual banks and the system as a whole. Increasing levels of off-balance sheet risks are also a factor in the need for higher capital.

Section 908 of ILSA (12 U.S.C. 3907) directs the federal banking agencies to ". . . cause banking institutions to achieve and maintain adequate capital by establishing minimum levels of capital for such banking institutions and by such other methods as the appropriate Federal banking agency deems appropriate." Therefore, pursuant to the Office's authority under ILSA and the authority contained in the National Banking Act, the Office proposed a regulation on capital requirements.

The Federal Reserve Board ("FRB") and the Federal Deposit Insurance Corporation ("FDIC") also issued similar capital proposals for comment. The Office's regulation was published for comment on September 4, 1984, and 85 comments were received; the majority from national banks and their representatives. The comments covered a wide range of issues. The Office has carefully reviewed all of the comments and has adopted a number of recommendations in the final regulation. An explanation of the changes to the proposed regulation and a discussion of the comments are contained in subsequent sections of this preamble.

Generally, the final regulation is intended to foster further improvement in bank capital ratios and eliminate the disparities in treatment of federally regulated banks with respect to capital adequacy. The regulation also sets forth the procedures, pursuant to the authority contained in ILSA, for issuing directives to require banks to achieve and maintain adequate capital.

This regulation will supplement, rather than replace, the Office's supervisory evaluations of capital adequacy. The process of determining the adequacy of bank's capital on an ongoing basis begins with a qualitative evaluation of the critical variables that directly bear on the institution's overall financial condition. These variables include the quality, present value, type and diversification of assets; historical and prospective earnings; liquidity (with emphasis on asset/liability management); the quality of management; and the existence of other activities that may expose the bank to risks, including off-balance sheet items, the degree of leverage, and risks undertaken by the parent company or other affiliates and institutions with which the bank has significant financial relationships, including chain banking organizations. Banks with significant weaknesses in one or more of these areas will be expected to maintain higher capital levels than the minimums set forth in the regulation. In addition, the Office stresses that the capital requirements set forth in this regulation are minimums and all banks are encouraged to maintain higher levels of capital in order to provide protection against unforeseen adversities.

General Issues

The regulation applies to national banks and banks located in the District of Columbia. It does not apply to bank holding companies; however, when considering the condition of or an application from banks which are subsidiaries of holding companies, the activities and condition (including capital adequacy) of the holding company will be taken into account by the Office. The minimum capital ratio requirements set forth in the regulation do not apply to federal branches and agencies; however, the Office is studying what change in the capital equivalency deposit requirement for federal branches and agencies would be necessary to make this requirement comparable to the capital ratios required for domestic banks. The procedural portions of the regulation (Subparts C, D, and E, §§ 3.9—3.21) will be made applicable to federal branches and agencies through amendment of 12 CFR Part 28. (See discussion of Issues for Comment, No. 10.)

Like the proposal, the final regulation sets the minimum acceptable ratio of total capital to adjusted total assets at six (6) percent (%) and the minimum ratio of primary capital to adjusted total assets at five and one-half (5½) percent (%). These ratios would apply to well-managed banks of all sizes which have no material weaknesses. Based on the September 30, 1984 Call Reports, approximately 95% of all national banks had a primary capital ratio in excess of 6%, a level which would exceed the primary capital requirement established by this regulation. In addition, most of the larger multinational and regional banks (which generally have lower capital ratios than smaller banks) had primary and total capital ratios which would exceed the minimum requirements.

Fifty-five comments concerned the regulation and/or the ratios generally. The first major topic of these comments was the issue of whether the ratios should be contained in guidelines as proposed by the Federal Reserve Board, rather than in a regulation as proposed by both the Office and the FDIC. The Federal Reserve Board approach was overwhelmingly favored by those commenting on this issue because of its flexibility. Several commentors pointed out the need to retain flexibility as new forms of capital are developed. Only one respondent favored a regulation. Four of the commentors urged that capital requirements be imposed on a bank-by-bank basis.

While guidelines would provide greater flexibility, the Office has determined that capital is of such importance that minimum capital ratios should be a legal requirement and not merely an exhortation set out in guidelines. A regulatory requirement also provides some protection to the industry since it insures that the Office will not change the minimums without public notice and an opportunity for comment. The regulation contains several provisions which preserve flexibility in the case of individual banks with respect to new capital instruments that may be developed in the future.

The commentors overwhelmingly urged that there be uniform rules among the three agencies. However, two commentors argued that uniformity should not prevail over more sensible rules adopted by an individual agency. The agencies have attempted to adopt uniform rules and, with the exception of procedural requirements, the Office's final rule generally will be similar to that of the FDIC.

There was considerable support for the new minimums. However, there was also opposition to the overall emphasis on capital as well as to the new requirements. Several commentors

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argued that the higher minimum requirements are not needed since 95% of banks already meet these requirements. They believe that it is more important to address banks' overall strength. One commentor believed that the requirements were ill-advised because minimums shortly become the maximum. Others argued that capital is irrelevant to failures and several pointed out that the higher ratios may be counterproductive in that they may lead to riskier asset portfolios as banks seek to increase profits on limited assets.

While this regulation is concerned with, and thus emphasizes, capital, the Office has been and will continue to be, equally concerned about the other factors, such as asset quality, liquidity and management strength, which determine the overall soundness of a bank. The ratios in the regulation were adopted in consideration of banks' existing ability to meet the required and it is stressed that the requirement ratios are minimums which all banks are urged, and some will be required, to exceed. In particular, there is no incentive for banks to reduce liquidity, increase off-balance sheet activity, or structure riskier asset portfolios, since doing so will result in a requirement to maintain higher capital ratios.

There was extensive support for the notion of a level playing field *i.e.*, uniform requirements for both large and small banks. This is embodied in the final regulation. Many commentors pointed out the continuing inequality between banks and savings and loan associations and urged the agencies to work with the Federal Home Loan Bank Board to achieve equal capital requirements for all financial institutions. The Office agrees that capital requirements should be similar for all types of depository institutions. However, concern for competitive equality cannot overrule concern for the soundness of the banking system. The Office will continue to work for increases in the capital required for other types of financial institutions that compete with banks.

Several commentors urged that the agencies provide adequate time for institutions to reach the new minimum requirements. One believed that the time allowed should be set forth in guidelines and another recommended that banks be given three years to reach the new minimums. Since "adequate time" will depend on how much capital an individual bank must raise, as well as extraneous factors such as market conditions, no universal deadline can be set. The Office will consider the circumstances of each bank and intends to allow each bank adequate time to reach the required minimums.

There was some disagreement on the specific ratios and on whether the emphasis should be on primary capital or total capital. One commentor argued that the emphasis should be on equity capital since it is the major source of market discipline. Another believed that a ratio of 5.5% primary capital would be sufficient and that there should be no secondary capital requirement. Three commentors stated that the 6% total capital ratio was appropriate but that the regulation placed too much emphasis on primary capital. One of these commentors argued that a higher percentage of secondary capital should be allowed because it protects depositors and creditors. Moreover, it is difficult to sell new stock and new stock sales pose the problem of diluting existing shareholders' equity. It was suggested that the ratios instead be 5% primary capital and 1% secondary capital. The Office has emphasized primary capital because of its permanence, as well as the protection that it affords to depositors and creditors. As noted, most banks already meet or exceed the 5⅓% primary capital requirement and for those which do not, retained earnings offer an alternative to the sale of new stock to meet the requirements.

Finally, many commentors were disturbed by the frequency of changes in the agencies' requirements for capital because it is difficult to plan or operate efficiently with frequent changes in capital requirements. These commentors urged that this change be the last for some time. While the Office is aware of the problems which too frequent changes in capital requirements may pose, unforeseen conditions may necessitate change in the requirements in the future.

Primary Capital Definition

The major change in the final regulation is the inclusion of purchased mortage servicing rights in primary capital. This change and other issues pertaining to intangible assets are discussed in the section dealing with specific issues for comment (Issue No. 3).

Primary capital is defined in the regulation as the total of common and perpetual preferred stock, capital surplus, undivided profits, contingency and other capital reserves (excluding accrued dividends on perpetual and limited life preferred stock), net worth certificates issued pursuant to 12 U.S.C. 1823(i), minority interests in consolidated subsidiaries, and the allowance for loan and lease losses; minus intangible assets except those representing purchased rights to service mortgage loans. Primary capital also includes mandatory convertible debt to the extent of 20% of the above components. The amount of mandatory convertible debt included in primary capital is limited because such debt does not represent equity until actually converted. Mandatory convertible debt means subordinated debt instruments which unqualifiedly require the issuer to exchange either common or perpetual preferred stock for such instruments by a date at or before the maturity of the instrument. The definition intentionally does not include subordinated debt that merely requires the issuer to sell stock in sufficient amounts to replace the debt obligation, even though these instruments are considered as primary capital under OCC's present guidelines. This form of mandatory convertible debt does not provide the same assurance that at maturity common or perpetual preferred stock will, in fact, be present to replace the debt. Those instruments approved by the Office as primary or secondary capital and issued prior to the effective date of this regulation will continue to be included in a bank's primary or secondary capital to the extent previously authorized, during the original term of the instrument.

Secondary Capital Definition

Secondary capital includes limited life preferred stock, subordinated notes and debentures and mandatory convertible debt that is not included in primary capital to the extent that the total of these items does not exceed 50% of the bank's primary capital. A bank may issue mandatory convertible debt, other subordinated debt or limited life preferred stock exceeding this 50% limitation, but such stock or debt will not be considered for capital adequacy or statutory purposes without the written approval of the Office. The final regulation changes this section of the proposal by deleting intangible assets from the definition of secondary capital and by imposing a 50% limit on secondary capital relative to primary capital. The reasons for these changes are discussed under the specific issues for comment (Issues Nos. 3, 5, and 6).

Minimum Capital Ratios

The regulation requires banks to have and maintain a ratio of total capital to adjusted total assets (as defined) of at least 6% and a ratio of primary capital to adjusted total assets of at least 5⅓%. These ratios apply to all national banks, regardless of size. However, the Office

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retains the right to establish higher ratios for individual banks whose circumstances warrant a stronger capital base. In addition, banks which have entered into, or subsequently enter into a written agreement or which are or become subject to a cease and desist order under 12 U.S.C. 1818 (b) or (c) requiring higher minimum capital ratios for the bank, must achieve and maintain those higher ratios. Similarly, if higher minimum capital ratios have been or are required as a condition for approval of an application, the bank will be governed by those ratios.

The ratios must be achieved as of each Call Report date and will be calculated in terms of the bank's reported total and primary capital to its reported average adjusted total assets. Actual, end-of-quarter figures are to be used in computing the ratios with the exception of the figure for adjusted total assets. Instead, the average adjusted total assets figure should be used unless the bank is instructed otherwise by the Office. If adjusted total assets increase, on average, during the following quarter, the bank must increase its capital (unless it is already above the minimum) before the upcoming Call Report date, in order to be in compliance with the required ratios as of the Call Report date for that quarter.

Banks that are not able to achieve the ratios by the effective date of the rule will be required to submit to the Office an acceptable plan to achieve the minimum capital ratios within a reasonable time. The plan itself must be submitted within 60 days after the effective date of the rule and must set forth the means and time frames in which the bank will achieve the minimum ratios. The Office understands that banks that will need to raise or generate a substantial amount of capital to achieve the ratios will require a reasonable period of time in which to do so and the Office will take this into account in reviewing individual bank plans. Rather than a formal approval or acceptance process, the rule provides that the bank may consider its plan acceptable to the Office unless it is notified to the contrary. It should be noted, however, that under this provision, the Office may subsequently require changes in a bank's plan, such as an acceleration of the time schedule, in the event of changed circumstances. Because not all banks will have the required ratios at the time the final rule becomes effective, or be able to achieve the ratios quickly thereafter, the rule provides that a bank in compliance with an acceptable plan to achieve the ratios will not be considered to be in violation of the regulation.

Two commentors argued that the regulation does not provide sufficient time to formulate a capital plan. One believed that it should be more than 60 days, perhaps as much as six months, while the other urged that the time period be 120 days. Because capital planning already should be an on-going process, the Office believes that the 60-day period is sufficient. One commentor stated that it is impossible to raise capital quickly enough to meet the ratio by the next call report day and another that the ratios for a single period should not automatically trigger enforcement action; rather, the Office should look to a period of at least four quarters. The Office points out that the ratios can be met by reducing assets as well as raising capital. In addition, non-compliance for a single period will not automatically trigger enforcement action, although it will result in some supervisory response from the Office.

Finally, the Office has reserved the authority to permit a bank to operate with capital ratios below the minimum when, in the opinion of the Office, the circumstances justify such action. This provision might apply, for example, to a situation in which a bank in compliance with the minimum ratios would not be in compliance if it undertook a proposed acquisition that would dilute its capital or increase its assets. Such an acquisition, however, may be necessary or desirable to alleviate a troubled or emergency situation involving another bank. In such circumstances, when the Office believes that the acquisition should be approved, it may specifically authorize the acquiring bank to have capital ratios below the minimums during a specified period of time, *i.e.*, the time necessary for the bank to absorb the acquisition and increase its capital to again meet the minimums specified in the regulation. This provision is not intended to authorize banks below the required minimums to continue to operate with lower capital ratios or to authorize banks to reduce their capital.

Higher Capital Requirements for an Individual Bank

The minimum capital ratios set forth in the regulation are intended to apply to sound banks without any significant risks or problems. More capital may be appropriate or necessary for individual banks depending upon their circumstances. The International Lending Supervision Act specifically provides the Comptroller with the authority "to establish such minimum level of capital for a banking institution as the [Office], in its discretion, deems to be necessary or appropriate in light of the particular circumstances of the banking institution." 12 U.S.C. 3907(a)(2). Higher minimum ratios may be established for a bank and required as a part of a written agreement or a cease and desist order under 12 U.S.C. 1818 (b) or (c), or as a condition for approval of an application. In addition, the final rule adopts the procedure in the proposed rule for setting higher required minimum capital ratios for an individual bank. Only two comments were received on the procedural aspects of the regulation. One supported the enforcement provisions overall and another concurred that the Office should be able to set higher requirements based on the circumstances of individual banks.

This part of the rule sets out examples of situations when higher minimum capital ratios may be necessary or appropriate and examples of the factors which the Office may consider in deciding what a bank's minimum capital ratios should be. These examples are not intended to be all inclusive because it is not possible to predict in advance each situation in which higher capital ratios may be necessary or every factor which should be considered in a particular situation. Generally, higher capital levels are necessary and will be required for banks exposed to greater than normal risks or requiring special supervisory attention.

The procedure provides for written notice from the Office to the bank indicating the capital ratios that the Office believes are appropriate for the bank, the date when they should be achieved, and an explanation of why those ratios are considered appropriate. The bank will have thirty days in which it may respond to the Office in writing. After the close of the bank's response period, or after the bank's response is received, if sooner, the Office will consider any response from the bank. Unless further information or clarification of the bank's response is required, or the time period is extended for good cause, the Office will reach a decision after the close of the response period. The 30-day time period for the Office's decision that was contained in the proposal has been deleted from the final rule. A required time frame for the Office's decision was determined to be unnecessary because in these cases, when the Office believes that higher capital ratios are necessary for a bank, the Office has an incentive to decide the matter as soon as possible. Moreover, a bank would not be prejudiced by a delay in the Office's decision because

delay preserves the status quo in favor of the bank.

After a decision, the Office will advise the bank in writing whether higher capital ratios are required for it and, if so, what those ratios are and when they must be achieved. The Office also may require the bank to submit an acceptable plan to achieve the required ratios established for it. This procedure is intended to provide an informative and fair, but relatively uncomplicated and prompt method of addressing an individual bank's need for higher capital levels.

Directives

A directive is a form of order specifically authorized under the International Lending Supervision Act, 12 U.S.C. 3907(b)(2). Issuance of a directive is discretionary when a bank does not have or maintain capital at or above the level required for it, whether under the general minimum capital ratios set forth in the rule, under a decision establishing higher minimum capital ratios for the bank, under the terms of a written agreement under 12 U.S.C. 1818(b), or as a condition for approval of an application. A directive also may be issued when a bank has failed to submit or is not in compliance with an acceptable plan to achieve its required minimum capital ratios.

The final rule adopts the procedures in the proposal without change, except for deletion of the 30-day time period for an Office decision. The time period was deleted here for the same reasons set forth in the proceeding section. The rule provides that the Office will notify a bank in writing of the Office's intention to issue a directive to the bank. The notice will include reasons for the action and the contents of the proposed directive. The bank will have thirty days in which to respond in writing to the notice. The response may state why a directive should not be issued; may propose alternative provisions for the directive; and/or may include a plan to achieve the bank's required minimum capital ratios. The response should include any information which the bank would have the Office consider in deciding whether to issue a directive or what the provisions of the directive should be. Failure to respond within the allotted time period will be deemed to be a waiver of any objections to the proposed directive. After the close of the bank's response period, or after receipt of the bank's response, if sooner, the Office will consider the bank's response and will decide whether or not to issue a directive, and if one is to be issued, whether it should be as originally proposed or in modified form. Unless the time period is extended by the Office, for example, in cases where additional information or a clarification of the bank's response is needed, the Office will issue the directive, or notify the bank that a directive will not be issued, after the close of the bank's response period.

The terms of the directive will vary in each individual case. The directive may order the bank to achieve and maintain its required minimum capital ratios by a specified date; comply with a previously submitted plan to achieve those ratios; submit and comply with an acceptable plan to achieve the ratios; reduce assets or the rate of growth of assets, or restrict dividends in order to achieve its required capital ratios; or a combination of any of the above or similar actions.

A directive, or any plan submitted pursuant to a directive, is enforceable to the same extent as an effective and outstanding order issued pursuant to 12 U.S.C. 1818(b) which has become final. In addition, violation of a directive may result in civil money penalties against the bank or its officers, directors, employees, or other persons participating in the conduct of its affairs.

Because of the critical importance of adequate capital to the soundness of a bank's operations, the procedure for issuance of a directive has been designed to reach a resolution in a prompt, but fair manner and the Office intends to actively seek enforcement of directives in the event of noncompliance.

Discussion of the Specific Issues for Comment

The proposed rule specifically requested comment on ten numbered issues. A discussion of the comments received on each issue and the Office's resolution of the issues follows.

(1) Whether the definitions of capital and its components should be the same for the purposes of determining capital adequacy and for statutory purposes, such as the lending limits in 12 U.S.C. 84. The 29 commentors on this issue all agreed that the definition of capital should be the same for both capital adequacy and statutory purposes. One of the commentors, however, would include all secondary capital for capital adequacy purposes even if it is decided to exclude it from capital for statutory purposes. Two of the commentors believed that the definition of capital for statutory purposes could be based on primary capital alone if primary capital were to include mandatory convertible debt and intangibles.

The Office adopted one definition for both purposes in former Interpretive Ruling 12 CFR 7.1100 and believes that the definitions in this regulation and its accompanying interpretive ruling also should govern the determination of capital for both supervisory and statutory purposes since a common definition avoids complexity and confusion.

(2) Whether higher minimum capital ratios are appropriate or feasible. The Office received 30 comments on this issue with a substantial majority of the commentors opposed to any further increases, beyond those proposed, now or in the next year or two. Many of these respondents argued that the Office should not require more capital for banks in good condition. These commentors focused on the current low values of bank stocks in the markets and on the general crowding in the equity markets. They felt it would not be possible to raise significant additional capital externally under current conditions. Some argued that higher capital ratios would be counterproductive because they would reduce returns on equity and increase the cost of incremental capital. This, they felt, would encourage greater risk *e.g.*, reductions in liquid, low return assets to maintain profitability within the constraints on leverage. Additional problems with increased capital requirements which were cited included higher borrowing costs, reduced control of the Federal Reserve over the money supply, higher concentrations in the banking industry due to cost advantages and reduced credit availability. Several commentors suggested that higher primary capital requirements would be a disadvantage to U.S. banks versus foreign bank competitors. Only two comments endorsed higher capital levels and one of those believed they should be required before the next period of economic downturn. If higher capital is required in the future, several commentors suggested that it be in the form of secondary capital.

The Office recognizes the differing views of what constitutes adequate capital. There is general agreement, however, that capital in a bank should be sufficient to maintain public confidence in the institution; support the volume, type and character of the business conducted; provide for the possibilities of loss inherent therein; and permit the bank to continue to meet the reasonable credit requirements of the area served. The quantification of these factors into an appropriate ratio is the center of the controversy.

The Office feels strongly that the minimum capital levels imposed in this regulation are the most appropriate for the current economic environment in

which national banks compete. The negative aspects of a further increase in the capital requirements are recognized and will be considered as the issue of capital adequacy continues to be studied.

The Office considered the effect this regulation may have on the equity markets. Call Report data for September 30, 1984, indicates that of the 4,900 national banks, 72 will have, at a minimum, a $1.8 billion shortfall in primary capital. Additionally, 86 of those 72, plus 54 others will have, at a minimum, a $1.3 billion shortfall in total capital. The Office anticipates that most of this additional capital will come from retained earnings rather than the equity markets. For instance, over the three years ending 12/31/83, an average $2.3 billion per year was added to the capital accounts from retained earnings and additions to the loan loss reserves and only $246 million per year from equity markets.

(3) Whether the proposed regulation should "grandfather" capital components now considered primary capital but which would not be included in primary capital under the proposed regulation. This issue provoked the largest number of comments (58). The greatest matter of concern was the proposal to define all intangible assets as secondary capital rather than primary capital. The commentors overwhelmingly urged that all or some portion of intangible assets be included in primary capital.

Many commentors urged that if intangible assets are not included in primary capital, they should at least be grandfathered. Several commentors suggested that the Office follow GAAP in including intangibles in primary capital since GAAP requires the recording and amortization of intangibles, and exclusion of intangibles results in loss of value to shareholders and dilution through new equity. Many of the commentors argued that if intangibles are eliminated it will inhibit sound acquisitions and failing bank takeovers and create a disadvantage for banks *vis a vis* nonbank competitors. A common suggestion was that the Office should consider the composition of intangible assets noting, for example, that mortgage servicing rights have an objectively measurable market value and marketability. Many comments argued in favor of, and a few argued against, the inclusion in capital of specific intangible assets such as core deposits, goodwill, moratgage servicing rights and credit card franchises.

The Office carefully reviewed its position on intangible assets. It is fully recognized that there are substantial differences between the types of intangible assets in terms of the quality and marketability of the values they represent.

Intangible assets are characterized as indentifiable or unidentifiable. In banks, the former typically includes core deposit intangibles, mortgage servicing rights, and favorable leases whereas the latter is simply goodwill.

Core deposit intangibles are a form of intangible asset which can be acquired as a result of the purchase of assets and assumption of liabilities from one or more branch offices of another depository institution or as part of a business combination with another depository institution that has been accounted for as a purchase. Core deposit intangibles represent the value asssigned to the acquisition of a base of stable, low-cost deposits that can be used to fund earning assets. However, a bank cannot sell the core deposit intangibles it holds as an asset separately from the entire institution itself or some substantial part of it (i.e., one or more branch offices).

Mortgage servicing rights represent the right to preform the servicing function for a specific group or mortgage loans that are owned by others. In addition to being acquired in a purchase of all or part or another business enterprise, mortgage servicing rights can be acquired by themselves as a single asset. Accordingly, a bank can dispose of mortgage servicing rights, regardless of the manner in which they were obtained, either through the sale of the rights by themselves on in conjunction with the sale of a segment of the bank's business. One of the factors that distinguishes mortgage servicing rights from other intangible assets is the certainty and predictability of the cash flows coming in to the servicer. These cash flows form the basis for establishing the value of the mortgage servicing rights acquired. There exists today a fairly active market for servicing rights so that the actual sales price for mortgage servicing transactions in this market also helps to confirm the values ascribed to the rights carried on the bank's books. This secondary market also adds liquidity to the mortgage servicing rights, providing the mortgage servicers with the opportunity to dispose of all or a portion of their servicing portfolios separately from the remainder of their business assets. This marketability feature represents a key difference between mortgage servicing rights and other classes of intangibles.

Favorable leases are a type of intangible assets that would be acquired as part of the purchase of all or a segment of another business enterprise that leases property in the conduct of its business. This asset can be disposed of in conjunction with the transfer of the business that uses the leased property or by subleasing the property to another party, unless of course, the bank uses the property in the conduct of its business.

In either case, however, the disposal of this intangible asset can only be accomplished by effectively relinquishing the right to use the property—that is, the intangible cannot be sold by itself. This illustrates one major difference between favorable leases and mortgage servicing rights in that the servicing rights can be sold by themselves whereas the "favorable lease" intangible cannot.

Goodwill can be acquired as a result of a business combination accounted for as a purchase or through the acquisition of a significant part of another company's business (such as a branch network). Similarly, in order to dispose of goodwill, a bank would have to be a target company in a purchase business combination or it would have to sell branch offices or some major segment of its business activities. Hence, a bank cannot sell goodwill separate and apart from itself.

Based on the preceding descriptions of intangible assets, the principal considerations in evaluating their quality for purposes of capital adequacy would appear to be: (1) Whether the asset can be separated from the remainder of the bank's assets and sold or otherwise disposed of apart from the bank as a whole, or a portion of the bank's business; (2) the marketability of the intangible asset; and (3) the certainty of the cash flows represented by the asset.

In this regard, mortgage servicing rights are the most favorable class of intangibles when evaluated against the three considerations mentioned above and, in some aspects, possess attributes very similar to certain items treated as tangible assets. Core deposit intangibles, goodwill and favorable leaseholds cannot be sold separately by an institution. These classes of intangibles are not marketable to the same extent as mortgage servicing rights nor do they have the same degree of certainty of cash flows. For this reason, the OCC has decided to allow national banks to count 100% of mortgage servicing rights as primary capital at the bank level; all other intangible assets are being deducted from primary capital because they lack the combination of separability, marketability and certainty of cash flow which would result in the support that a component of capital

must be able to provide. However, the Office has determined that intangible assets previously accounted for in accordance with the Office's instructions may continue to be included in primary capital to the extent of 25% of tangible primary capital. (If mortgage servicing rights already exceed this figure, however, other intangibles may not be included in primary capital.)

Equity commitment notes, a form of mandatory convertible security, were to be eliminated from primary capital and considered to be secondary capital under the proposal. Equity commitment notes require that the convertible debt be repaid solely from the proceeds of sale of common or perpetual preferred stock. Eight comments were received urging that equity commitment notes be included in primary capital. Additional comments suggested that various percentage limitations be imposed. The grandfathering of these instruments received overwhelming support, mainly because the Office previously approved their inclusion in primary capital up to 10% of primary capital, exclusive of mandatory convertible securities.

After careful review of the comments, the Office has decided to no longer allow equity commitment notes to qualify as primary capital. This form of mandatory convertible debt does not provide the same assurance that at maturity common or perpetual preferred stock will, in fact, be present to replace the debt.

If the market in a bank's stock ceases to exist, for all intents and purposes, then the bank cannot market the stock as originally planned. This would prevent these notes from fulfilling the element of permanence necessary in primary capital. However, recognizing that this change would have potentially significant adverse impact on national banks that have used this instrument in the past as a means of raising large amounts of capital, the Office will continue to include in primary capital previously approved equity commitment notes during the effective term of the instruments.

(4) *Whether the reserve for loan and lease losses should be excluded from capital.* Thirty-nine respondents addressed this issue with 35 strongly favoring continued inclusion of the entire reserve for loan and lease losses in primary capital. They noted particularly that inclusion of the loan loss reserve encourages banks to establish and maintain adequate reserves. In addition, several commentors noted that the reserve has the characteristics of permanence and subordination.

The Office believes that the allowance for possible loan and lease losses should be considered as part of primary capital because it is: (1) A first reserve against which losses may be charged; (2) created by charges against bank earnings which would otherwise be added to the equity accounts; and (3) because it reinforces public confidence in the banking system by protecting against future uncertainty. Thus, the final regulation will continue the OCC's current practice of including all of the reserve for loan and lease losses in primary capital.

(5) Whether limits should be placed on the amount of subordinated notes and debentures and limited life preferred stock that is included in secondary capital. The Office received 28 comments on this issue covering both the general issue of whether restrictions were appropriate or not, as well as comments on specific restrictions. Four commentors agreed generally that there should be restrictions on subordinated debt. Seven commentors agreed generally with the current restrictions. However, four commentors argued that there should be no restrictions. Maturity and discounting appeared to be the most significant issues. Several commentors felt that a minimum maturity requirement should allow flexibility in response to market conditions. Two banks opposed the five-year amortization schedule and recommended that all subordinated debt and limited life preferred stock be included in total capital so long as the bank has a plan to replace the capital (if the bank would otherwise fall below the minimum requirements) according to *pro forma* schedules of reductions in capital ratios based on the maturity dates of the secondary capital.

After consideration of the alternatives, the Office has concluded that discounting to maturity for secondary capital instruments is no longer necessary. The capital plans proposed by individual banks to replace maturing instruments will be considered by the Office in assessing the capital adequacy of an individual bank. A bank must be cognizant of future capital needs, including the replacement of maturing instruments, to remain in compliance with the minimum capital ratios.

The seven year average weighted maturity restriction will remain in place. The Office has concluded that the test of permanence, albeit finite, is best met by requiring such a minimum maturity. Although specific characteristics in each bank determine the best maturity structure for that institution, such an approach would be impossible to administer given the 4,900 national banks the Office supervises.

The other existing requirements for subordinated debt are considered necessary for debt which will be included in capital. These requirements are contained in the interpretive ruling which acccompanies the regulation.

(6) Whether limits should be placed on the amount of secondary capital that can be included in total capital. The Office received 33 comments on this issue. Nine commentors agreed with the current policy that secondary capital should be limited to 50% of the amount of primary capital. Three commentors agreed generally that there should be a limitation on the amount of secondary capital. By far the greater number of commentors, however, argued that secondary capital should not be limited because if provides significant protection for depositors and creditors and is inherently limited by the market. If there is a limit, it should be applied only for 12 U.S.C. 84 or other similar purposes, but not for the purpose of capital adequacy. Four respondents noted that secondary capital increases bank liquidity and reduces market risks. Therefore, the Office should emphasize total capital and not merely primary capital.

The Office recognizes the fact that the issuance of such instruments is largely a managerial function and does not wish to needlessly impose constraints on banker's efforts to acquire funds in the most economically prudent manner. Escalating competition from traditional and nontraditional sources, inflation and other developments in financial markets underscore the propriety of banks securing funds at reasonable costs in order to enhance liquidity and improve earnings. Notwithstanding the Office's belief that use of these instruments can be beneficial and that they exhibit many capital characteristics, it must be stressed that they lack permanence. In order to satisfy these prudential concerns for capital, the Office will restrict the total amount of secondary capital that may be included as capital for capital adequacy and statutory purposes to 50% of primary capital unless written approval is received from the Office. In addition, the Office believes that a single definition of capital for adequacy and statutory limitation purposes is desirable to eliminate confusion. However, the Office encourages prudent liquidity and liability management that may dictate that a particular bank should issue secondary capital

instruments totaling more than the 50% limitation.

(7) Whether the minimum capital requirements should be tailored to the risk composition and liquidity of assets. The Office received 39 comments on this issue. Many of the commentors supported the notion that capital ratios should be based on risk assets. In their view, it would be fairer than an across-the-board ratio. Some commentors specifically noted that the Office should require additional capital for higher risk and/or lower liquidity. Other commentors agreed that a capital-to-risk assets ratio is ideal. But they also all noted that it would be difficult to implement. In particular, several commentors noted that it would be hard to determine the quality of assets impartially and others concluded that such a system would be too complicated. The most favored solution appeared to be agency consideration of the mix of assets and liabilities in assessing an individual bank's capital adequacy rather than a regulatory formula. Many comments were received on specific items of a risk asset/liquidity capital ratio. Three stated that the Office must consider off-balance sheet risk. Most of the specific comments, however, focused on assets considered to be "risk-free" which should be subtracted from the asset side of the ratio. Three commentors argued generally that risk free or liquid assets should be excluded or discounted from total assets for purposes of computing the ratios.

The Office appreciates the view that a strict capital/asset ratio does not account for the great differences in banks' balance sheet composition and off-balance sheet risks. While the Office has traditionally recognized that certain types of banks require higher capital ratios, e.g., newly chartered institutions, banks receiving special supervisory attention, those institutions experiencing rapid growth, or banks which may be affected adversely due to the activities or condition of their holding company and affiliates; it is also apparent that more capital may be necessary when a bank has a high proportion of off-balance sheet risk, is exposed to a high degree of asset depreciation, interest rate, funding or transfer risk or has a low level of liquid assets in relation to short term liabilities.

The Office proposes to study the various methods of deriving a ratio based on risk assessment to determine the feasibility of either using a risk asset ratio in conjunction with the traditional capital/asset ratio or possibly as a substitute. Until such time as this study is complete, the Office will continue to assess the risk exhibited in an individual bank's balance sheet to determine if that bank should maintain capital ratios above the minimums set forth in the regulation.

(8) Whether the capital ratios should be calculated on the basis of average or actual total assets. The Office received 35 comments on this issue with the commentors almost unanimously endorsing the average total assets figure on the grounds that it is fairer and that it smooths out the "bumps" in bank assets. Two believed that the total assets figure should be adjusted by subtracting average, rather than end-of-period intangibles and reserves for losses. One commentor stated that the ratio should be based on the average of the last four call reports in order to take account of seasonal fluctuations. One dissenting commentor argued that the total assets figure should be used since it is the only relevant figure if a bank does encounter problems. Moreover, that figure is better understood by bank analysts and depositors.

The final rule uses the average total assets figure as proposed. However, it clarifies that all other figures used in computing the ratios, such as the figures for capital, intangible assets, and the allowance for loan and lease losses should be the actual end-of-quarter figures. The Office does not want to require banks at the margin to make calculations prior to each increase in their asset portfolios. Similarly, the Office wishes to minimize the likelihood of inadvertent or technical violations. Therefore, in order to avoid these problems, yet assure that the ratios are maintained on a relatively constant basis, total and primary capital would be computed as of each Call Report date and the capital ratios calculated based on average total assets for the Call Report period. Use of the average total assets figure should eliminate the potential for inadvertant violations and simplify banks' internal procedures for compliance. End-of-quarter figures should be used for components of the ratios other than average total assets, because these components are less subject to fluctuation than assets. All of these figures already are required to be stated in Call Reports, and the report form likely will be amended to include a statement of the capital ratios.

Compliance on a quarterly basis is not unduly burdensome. Banks experiencing seasonal fluctuations in average total assets should plan for those variances by maintaining capital at a level sufficient to meet the required ratios during quarters when asset growth is expected to be high.

The Office is concerned that some banks may have total assets as of the Call Report dates or otherwise that are substantially higher than their average total assets so that the bank, while technically in compliance with the regulation, actually is defeating its purpose, *i.e.*, to assure that banks have the minimum adequate level of capital to support their operations. Therefore, Call Report and examination data on total assets will be reviewed and compared with the reported average total assets figure. Where there is significant disparity between these figures on a repeated basis, the final rule allows the Office to require the bank to maintain its minimum capital ratios in relation to its actual total assets.

(9) Whether the zone concept provides useful guidance to banks. Comments were received on this issue from 28 respondents. The majority of the commentors supported continuation of the zone guidelines. Eight commentors stated that the zones are appropriate and useful. Six other commentors noted that the zones are particularly useful because they relate to the overall management and condition of the bank. Five commentors remarked that the zone concept is appropriate because of its flexibility but that the Office should retain the minimum capital requirements and the zones should be applied consistently. On the other hand, ten commentors were opposed to continuation of the zone system. Of these, six contended that the zones are not useful; that they are confusing and too discretionary. Five commentors stated that if the zones are retained they should be guidelines only and the Office should take action against individual banks on a case-by-case basis and not automatically by virtue of the zone concept.

After careful consideration of the issue and the intent of the regulation, the Office has decided to discontinue the use of the zone concept for assessing adequacy of total capital. The regulation is intended to set basic minimums for primary and secondary capital and provide for bank-by-bank analysis to determine if higher minimums are appropriate for a particular institution. This premise is clouded by the inclusion of zones which may be construed to imply that a bank is adequately capitalized because it falls within a particular zone, when in fact an analysis by this Office indicates that higher capital is necessary for the safe and sound operation of the bank. The regulation indicates the range of

administrative and supervisory actions which the Office may take if a bank does not have the minimum capital ratios required for it or has not submitted or complied with an acceptable plan to achieve those ratios. Since the appropriate supervisory action must be determined on a case-by-case basis, the zone concept is no longer considered particularly helpful.

(10) Whether the minimum capital requirement should apply to federal branches and agencies. The Office received 18 comments on this issue. Domestic banks and others commented that in the interest of fairness and competitive equality, the minimum requirements should apply to federal branches and agencies. However, two federal branches and the Institute of Foreign Bankers urged for varying reasons that the requirements not be imposed on federal branches and agencies. One federal branch argued that working capital already includes cash balances of the head office and other branches, retained earnings and reserves. Another commentor stated that the requirement should not be imposed because the capital of the branch is important only with respect to the assets available in the U.S. if the parent fails and there is no evidence of a deficiency in the protection of U.S. customers of foreign banks. There would be no across-the-board competitive advantage to branches if this requirement was not imposed, since there are differing capital requirements for their parent banks.

The Office has determined that the capital ratios required by the regulation should not apply to federal branches and agencies because they already are subject to a parallel statutory requirement of a capital equivalency deposit based upon liabilities. Under 12 U.S.C. 3102(g), federal branches and agencies are required to maintain capital equivalency deposits which, at a minimum, equal 5% of liabilities with certain adjustments. However, the International Banking Act of 1978 (IBA) also mandates competitive equality between national banks and federal branches and agencies. Because the operations of federal branches and agencies are not inherently either more or less risky than those of national banks, the Office believes that federal branches and agencies should be subject to comparable capital adequacy requirements. However, since the IBA requires that the capital equivalency deposit consist of cash or investment securities and be computed as a percent of liabilities, a capital-to-assets ratio would be inappropriate for federal branches and agencies. Therefore, the Office is studying what increase, if any, in the capital equivalency-to-liabilities ratio would be comparable to the capital-to-assets ratio required for domestic banks. Such an increase, if necessary, will be proposed for comment before being adopted. Meanwhile, because a capital equivalency deposit higher than the statutory minimum may be appropriate for an individual federal branch or agency, due to its or its parent bank's condition or circumstances, 12 CFR Part 28 will be amended so that the procedural sections of this regulation (Part 3), but not the minimum capital-to-assets ratios, will apply to federal branches and agencies.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601 *et seq.)* the Comptroller of the Currency has certified that this regulation will not have a significant economic impact on a substantial number of small entities since nearly all small banks (those with total assets of less than $1 billion) already meet or exceed the primary and total capital ratios required by the regulation.

Executive Order 12291

The Comptroller of the Currency has determined that this regulation is a "major rule" and a regulatory impact analysis has been performed in connection with the Office's consideration of this rule. In reviewing the impact of the rule, the analysis considered that:

(1) 72 national banks have a shortfall, at a minimum, of $1.8 billion in primary capital;

(2) 66 of those banks, plus an additional 54, have a shortfall, at a minimum, of $1.3 billion in secondary capital;

(3) 389 national banks meet both minimums, but face credit and other risks that warrant higher capital ratios (the amount of capital they must raise cannot be easily estimated);

(4) Underwriting costs associated with raising needed capital could approach $185 million, the precise amount depending on the volume of funds raised in capital markets as opposed to the use of retained earnings; and

(5) Until capital ratios are met, national banks could reduce dividend payments below historical averages.

However, OCC believes the costs of the minimum capital ratios mandated by the rule are outweighed by the benefits. These benefits cannot be easily quantified, but include:

(1) An increased capacity, especially among large banks, to withstand losses associated with credit and other risks that are a normal part of banking;

(2) Increased stability in our financial system; and

(3) Increased capacity to fund economic growth.

A copy of the regulatory impact analysis may be obtained from the Office's Communications Division under procedures set fourth in 12 CFR 4.17 and 4.17a.

Paperwork Reduction Act

The paperwork burdens contained in this rule pertaining to: (1) The preparation of a written plan to increase capital by a national bank that does not have the minimum capital ratios specified in the regulation or individually required for it; and (2) the written response that a bank may make to the Office when notified that higher minimum capital ratios may be required for it; have been approved by the Office of Management and Budget pursuant to 44 U.S.C. 3504(h) and assigned control number 1557–0166.

Memorandum of Law Required by Section 4(a) of Executive Order 12291 for a "Major Rule"

This regulation is authorized by, and consistent with the intent of Congress as expressed in, the International Lending Supervision Act of 1983 (12 U.S.C. 3901 *et seq.*) The Act provides in pertinent part that:

> Each appropriated Federal banking agency shall cause banking institutions to achieve and maintain adequate capital by establishing minimum levels of capital for such banking institutions and by using such other methods as the appropriate Federal banking agency deems appropriate.

12 U.S.C. 3907(a)(1). The Comptroller of the Currency is the appropriate Federal banking agency for national banks (12 U.S.C. 3902; 12 U.S.C. 1813(q)) and is authorized by 12 U.S.C. 3909, as well as other existing authority (12 U.S.C. 1 *et seq.*, 93a, 1818) to issue regulations and interpretive rules defining "capital" and other related terms and carrying out the purpose of section 3907.

List of Subjects

12 CFR Part 3

Banks, Banking, Primary, Secondary and total capital, Minimum capital ratios, Procedures for establishing higher minimum capital ratios for an individual bank, Enforcement of minimum capital ratios, Issuance of directives.

12 CFR Part 7

National banks, Management and ownership rights, Other powers.

Authority and Issuance

Accordingly, pursuant to authority under 12 U.S.C. 93a, 3907, and 3909, the Comptroller of the Currency hereby amends Title 12 of the Code of Federal Regulations by adding a new Part 3 and amending Part 7 as follows:

PART 7—INTERPRETIVE RULINGS

1. The authority for Part 7 is:

Authority: R.S. 324 *et seq.*, as amended; 12 U.S.C. 1 *et. seq.*

2. By revising § 7.1100 to read as follows:

§ 7.1100 Capital and surplus.

(The text of this section has been superseded by 12 CFR Part 3. Any reference in this chapter to § 7.1100 shall be considered to be a reference to 12 CFR Part 3.)

3. By adding a new Part 3 to read as follows:

PART 3—MINIMUM CAPITAL RATIOS; ISSUANCE OF DIRECTIVES

Subpart A—Authority and Definitions

Sec.

3.1 Authority.
3.2 Definitions.
3.3 Transitional Rules.
3.4 Reservation of authority.

Subpart B—Minimum Capital Ratios

3.5 Applicability.
3.6 Minimum capital ratios.
3.7 Plan to achieve minimum capital ratios.
3.8 Reservation of authority.

Subpart C—Establishment of Minimum Capital Ratios for an Individual Bank

3.9 Purpose and scope.
3.10 Applicability.
3.11 Standards for determination of appropriate Individual Capital Ratios.
3.12 Procedures.
3.13 Relation to other actions.

Subpart D—Enforcement

3.14 Remedies.

Subpart E—Issuance of a Directive

3.15 Purpose and scope.
3.16 Notice of intent to issue a directive.
3.17 Response to notice.
3.18 Decision.
3.19 Issuance of a directive.
3.20 Change in circumstances.
3.21 Relation to other actions.

Interpretations

3.100 Capital and surplus.

Authority: 12 U.S.C. 1 *et seq.;* 12 U.S.C 93a, 161, 1818; and 12 U.S.C. 3907 and 3909.

Subpart A—Authority and Definitions

§ 3.1 Authority.

This part is issued under the authority of 12 U.S.C. 1 *et. seq.*, 93a, 161, 1818; and the International Lending Supervision Act of 1983 (Pub. L. 98–181, Title IX, 97 Stat. 1153), 12 U.S.C. 3907 and 3909.

§ 3.2 Definitions.

For the purposes of this part:

(a) "Adjusted total assets" means the average total assets figure required to be computed for and stated in a bank's most recent quarterly "Consolidated Report of Condition and Income" (Call Report), plus the end-of-quarter allowance for loan and lease losses, minus end-of-quarter intangible assets not included in primary capital. The Office reserves the right to require a bank to compute and maintain its capital ratios on the basis of actual, rather than average, total assets when necessary to carry out the purposes of this regulation.

(b) "Bank" means a national banking association or a District of Columbia bank.

(c) "Primary capital" means the sum of (c) (1), (2) and (3) of this section.

(1) Common stock, perpetual preferred stock, capital surplus, undivided profits, reserves for contingencies and other capital reserves (excluding accrued dividends on perpetual and limited life preferred stock), net worth certificates issued pursuant to 12 U.S.C. 1823(i), minority interests in consolidated subsidiaries, and allowances for loan and lease losses; minus intangible assets;

(2) Purchased mortgage servicing rights; and

(3) Mandatory convertible debt to the extent of 20% of the sum of (c) (1) and (2) of this section.

(d) "Secondary capital" means the sum of (d) (1) and (2) of this section, to the extent that this figure does not exceed 50% of the bank's primary capital: (1) Mandatory convertible debt that is not included in primary capital; and (2) limited life preferred stock and subordinated notes and debentures. These instruments must meet the requirements set forth in 12 CFR 3.100 or otherwise published by the Office (A bank may issue mandatory convertible debt, other subordinated debt or limited life preferred stock in amounts exceeding the limitation in this paragraph, but such stock or debt shall not be considered capital for capital adequacy or statutory purposes without the written approval of the Office.).

(e) "Total capital" means the sum of primary capital and secondary capital. The end-of-quarter figures as of the Call Report date shall be used in computing the bank's capital ratios.

§ 3.3 Transitional Rules.

(a) Instruments approved by the Office as primary or secondary capital and issued prior to the effective date of this regulation may continue to be included in a bank's primary or secondary capital to the extent previously authorized, during the original effective term of the instrument.

(b) Intangible assets (other than mortgage servicing rights) purchased prior to the effective date of this regulation and accounted for in accordance with the instructions of the Office, may continue to be included in primary capital up to 25% of the sum of § 3.2(c)(1).

§ 3.4 Reservation of Authority.

Notwithstanding the definitions of "primary capital" and "secondary capital" in § 3.2 (c) and (d), the Office may find that a particular type of purchased intangible asset or a newly developed or modified capital instrument constitutes or may constitute "primary capital" or "secondary capital," and the Office may permit one or more banks to include all or a portion of such intangible asset or funds obtained through such capital instrument as primary or secondary capital, permanently or on a temporary basis, for the purposes of compliance with this Part or for other purposes. Similarly, the Office may find that a particular asset or primary or secondary capital component has characteristics or terms that diminish its contribution to a bank's ability to absorb losses, and the Office may require the discounting or deduction of such asset or component from the computation of primary or secondary capital.

Subpart B—Minimum Capital Ratios

§ 3.5 Applicability.

This subpart is applicable to all banks unless the Office determines, pursuant to the procedures set forth in Subpart C, that different minimum capital ratios are appropriate for an individual bank based upon its particular circumstances, or unless different minimum capital ratios have been established or are established for an individual bank in a written agreement or a temporary or final order pursuant to 12 U.S.C. 1818 (b) or (c), or as a condition for approval of an application.

§ 3.6 Minimum capital ratios.

A bank must have and maintain total capital equal to a least 6 percent of adjusted total assets and primary

capital equal to at least 5½ percent of adjusted total assets.

§ 3.7 Plan to achieve minimum capital ratios.

Any bank having total or primary capital ratios less than the minimums set forth in § 3.6 shall, within 60 days of the effective date of this regulation, submit to the Office a plan describing the means and schedule by which the bank shall achieve the minimum capital ratios. The plan may be considered acceptable unless the bank is notified to the contrary by the Office. A bank in compliance with the acceptable plan to achieve the minimum capital ratios will not be deemed to be in violation of § 3.6.

§ 3.8 Reservation of authority.

When, in the opinion of the Office the circumstances so require, a bank may be authorized to have less than the minimum capital ratios in § 3.6 during a time period specified by the Office.

Subpart C—Establishment of Minimum Capital Ratios for an Individual Bank

§ 3.9 Purpose and scope.

The rules and procedures specified in this subpart are applicable to a proceeding to establish required minimum capital ratios for an individual bank above the ratios that would otherwise be applicable to the bank under § 3.6. The Comptroller is authorized under 12 U.S.C. 3907 (a)(2) to establish such minimum capital requirements for a bank as the Office, in its discretion, deems necessary or appropriate in light of the particular circumstances of that bank. Proceedings under this subpart also may be initiated to require a bank having capital ratios above those set forth in § 3.6, or other legal authority to continue to maintain those higher ratios.

§ 3.10 Applicability

Higher minimum capital ratios may be required for an individual bank when the Office believes that the bank's capital is or may become inadequate in view of its circumstances. For example, higher capital ratios may be appropriate for:

(a) A newly chartered bank;

(b) A bank receiving special supervisory attention;

(c) A bank which has or is expected to have losses resulting in capital inadequacy;

(d) A bank having a high proportion of off-balance sheet risks, especially standby letters of credit; or exposed to a high degree of asset depreciation or interest rate, funding, transfer, or similar risks; or having a low level of liquid assets in relation to short term liabilities;

(e) A bank that is growing rapidly, either internally or through acquisitions; or

(f) A bank that may be adversely affected by the activities or condition of its holding company, affiliate(s), or other persons or institutions including chain banking organizations, with which it has significant business relationships, including concentrations of credit.

§ 3.11 Standards for determination of appropriate individual minimum capital ratios.

The appropriate minimum capital ratios for an individual bank cannot be determined solely through the application of a rigid mathematical formula or wholly objective criteria. The decision is necessarily based in part on subjective judgment grounded in agency expertise. The factors to be considered in the determination will vary in each case and may include, for example:

(a) The conditions or circumstances leading to the Office's determination that higher minimum capital ratios are appropriate or necessary for the bank;

(b) The exigency of those circumstances or potential problems;

(c) The overall condition, management strength, and future prospects of the bank and, if applicable, its holding company and/or affiliate(s);

(d) The bank's liquidity, capital, risk asset and other ratios compared to the ratios of its peer group; and

(e) The views of the bank's directors and senior management.

§ 3.12 Procedures.

(a) *Notice.* When the Office determines that minimum capital ratios above those set forth in § 3.6 or other legal authority are necessary or appropriate for a particular bank, the Office will notify the bank in writing of the proposed minimum capital ratios and the date by which they should be reached (if applicable), and will provide an explanation of why the ratios proposed are considered necessary or appropriate for the bank.

(b) *Response.* (1) The bank may respond to any or all of the items in the notice. The response should include any matters which the bank would have the Office consider in deciding whether individual minimum capital ratios should be established for the bank, what those capital ratios should be, and, if applicable, when they should be achieved. The response must be in writing and delivered to the designated OCC official within 30 days after the date on which the bank received the notice. The Office may shorten the time period when, in the opinion of the Office, the condition of the bank so requires, provided that the bank is informed promptly of the new time period, or with the consent of the bank. In its discretion, the Office may extend the time period for good cause.

(2) Failure to respond within 30 days or such other time period as may be specified by the Office shall constitute a waiver of any objections to the proposed minimum capital ratios or the deadline for their achievement.

(c) *Decision.* After the close of the bank's response period, the Office will decide, based on a review of the bank's response and other information concerning the bank, whether individual minimum capital ratios should be established for the bank and, if so, the ratios and the date the requirements will become effective. The bank will be notified of the decision in writing. The notice will include an explanation of the decision, except for a decision not to establish individual minimum capital requirements for the bank.

(d) *Submission of plan.* The decision may require the bank to develop and submit to the Office, within a time period specified, an acceptable plan to reach the minimum capital ratios established for the bank by the date required.

(e) *Change in circumstances.* If, after the Office's decision in paragraph (c), there is a change in the circumstances affecting the bank's capital adequacy or its ability to reach the required minimum capital ratios by the specified date, either the bank or the Office may propose to the other a change in the minimum capital ratios for the bank, the date when the minimums must be achieved, or the bank's plan (if applicable). The Office may decline to consider proposals that are not based on a significant change in circumstances or are repetitive or frivolous. Pending a decision on reconsideration, the Office's original decision and any plan required under that decision shall continue in full force and effect.

§ 3.13 Relation to other actions.

In lieu of, or in addition to, the procedures in this subpart, the required minimum capital ratios for a bank may be established or revised through a written agreement or cease and desist proceedings under 12 U.S.C. 1818 (b) or (c) (12 CFR 19.0–19.21), or as a condition for approval of an application.

Subpart D—Enforcement

§ 3.14 Remedies.

A bank that does not have or maintain the minimum capital ratios applicable to it, whether established in Subpart B of

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this regulation, in a decision pursuant to Subpart C, in a written agreement or temporary or final order under 12 U.S.C. 1818 (b) or (c), or in a condition for approval of an application, or a bank that has failed to submit or comply with an acceptable plan to attain those ratios will be subject to such administrative action or sanctions as the Office considers appropriate, including issuance of a Directive pursuant to Subpart E, other enforcement action, assessment of civil money penalties, and/or the denial, conditioning, or revocation of applications. Failure to achieve or maintain the minimum primary capital ratio also may be the basis for an action by the Federal Deposit Insurance Corporation to terminate federal deposit insurance. See 12 CFR 325.4(c).

Subpart E—Issuance of a Directive

§ 3.15 Purpose and scope.

This subpart is applicable to proceedings by the Office to issue a directive under 12 U.S.C. 3907(b)(2). A directive is an order issued to a bank that does not have or maintain capital at or above the minimum ratios set forth in § 3.6, or established for the bank under subpart C, by a written agreement under 12 U.S.C. 1818(b), or as a condition for approval of an application. A directive may order the bank to (a) achieve the minimum capital ratios applicable to it by a specified date; (b) adhere to a previously submitted plan to achieve the applicable capital ratios; (c) submit and adhere to a plan acceptable to the Office describing the means and time schedule by which the bank shall achieve the applicable capital ratios; (d) take other action, such as reduction of assets or the rate of growth of assets, or restrictions on the payment of dividends, to achieve the applicable capital ratios; or (e) a combination of any of these or similar actions. A directive issued under this rule, including a plan submitted under a directive, is enforceable in the same manner and to the same extent as an effective and outstanding cease and desist order which has become final as defined in 12 U.S.C. 1818(k). Violation of a directive may result in assessment of civil money penalties in accordance with 12 U.S.C. 3909(d).

§ 3.16. Notice of intent to issue a directive.

The Office will notify a bank in writing of its intention to issue a directive. The notice will state:

(a) Reasons for issuance of the directive; and

(b) The proposed contents of the directive.

§ 3.17. Response to notice.

(a) A bank may respond to the notice by stating why a directive should not be issued and/or by proposing alternative contents for the directive. The response should include any matters which the bank would have the Office consider in deciding whether to issue a directive and/or what the contents of the directive should be. The response may include a plan for achieving the minimum capital ratios applicable to the bank. The response must be in writing and delivered to the designated OCC official within 30 days after the date on which the bank received the notice. The Office may shorten the 30-day time period (1) when, in the opinion of the Office, the condition of the bank so requires, provided that the bank shall be informed promptly of the new time period; (2) with the consent of the bank; or (3) when the bank already has advised the Office that it cannot or will not achieve its applicable minimum capital ratios. In its discretion, the Office may extend the time period for good cause.

(b) Failure to respond within 30 days or such other time period as may be specified by the Office shall constitute a waiver of any objections to the proposed directive.

§ 3.18. Decision.

After the closing date of the bank's response period, or receipt of the bank's response, if earlier, the Office will consider the bank's response, and may seek additional information or clarification of the response. Thereafter, the Office will determine whether or not to issue a directive, and if one is to be issued, whether it should be as originally proposed or in modified form.

§ 3.19 Issuance of a directive.

(a) A directive will be served by delivery to the bank. It will include or be accompanied by a statement of reasons for its issuance.

(b) A directive is effective immediately upon its receipt by the bank, or upon such later date as may be specified therein, and shall remain effective and enforceable until it is stayed, modified, or terminated by the Office.

§ 3.20 Change in Circumstances.

Upon a change in circumstances, a bank may request the Office to reconsider the terms of its directive or may propose changes in the plan to achieve the bank's applicable minimum capital ratios. The Office also may take such action on its own motion. The Office may decline to consider requests or proposals that are not based on a significant change in circumstances or are repetitive or frivolous. Pending a decision on reconsideration, the directive and plan shall continue in full force and effect.

§ 3.21 Relation to other administrative actions.

A directive may be issued in addition to, or in lieu of, any other action authorized by law, including cease and desist proceedings, civil money penalties, or the conditioning or denial of applications. The Office also may, in its discretion, take any action authorized by law, in lieu of a directive, in response to a bank's failure to achieve or maintain the applicable minimum capital ratios.

Interpretations

§ 3.100 Capital and surplus.

(a) *Capital.* The term "capital" as used in provisions of law relating to the capital of national banking associations shall include the amount of common stock outstanding and unimpaired plus the amount of perpetual preferred stock outstanding and unimpaired.

(b) *Capital Stock.* The term "capital stock" as used in provisions of law relating to the capital stock of national banking associations, other than 12 U.S.C. 101, 177 and 178, shall have the same meaning as the term "capital" set forth in paragraph (a) of this section.

(c) *Surplus.* The term "surplus" as used in provisions of law relating to the surplus of national banking associations means the sum of (c) (1), (2), (3) and (4) of this section:

(1) Capital surplus; undivided profits; reserves for contingencies and other capital reserves (excluding accrued dividends on perpetual and limited life preferred stock); net worth certificates issued pursuant to 12 U.S.C. 1823(i); minority interests in consolidated subsidiaries; and allowances for loan and lease losses; minus intangible assets;

(2) Purchased mortgage servicing rights;

(3) Mandatory convertible debt to the extent of 20% of the sum of paragraphs (a) and (c) (1) and (2) of this section;

(4) Other mandatory convertible debt, limited life preferred stock and subordinated notes and debentures to the extent set forth in paragraph (f)(2) of this section.

(d) *Unimpaired Surplus Fund.* The term "unimpaired surplus fund" as used in provisions of law relating to the unimpaired surplus fund of national banking associations shall have the same meaning as the term "surplus" set forth in paragraph (c) of this section.

(e) *Definitions.* (1) "Allowance for loan and lease losses" means the balance of the valuation reserve on December 31, 1968, plus additions to the reserve charged to operations since that date, less losses charged against the allowance net of recoveries.

(2) "Capital surplus" means the total of those accounts reflecting (i) amounts paid in in excess of the par or stated value of capital stock; (ii) amounts contributed to the bank other than for capital stock; (iii) amounts transferred from undivided profits pursuant to 12 U.S.C. 60; and (iv) other amounts transferred from undivided profits.

(3) "Intangible assets" means those purchased assets that are to be reported as intangible assets in accordance with the "Instructions—Consolidated Reports of Condition and Income" (Call Report).

(4) "Limited Life preferred stock" means preferred stock which has a maturity or which may be redeemed at the option of the holder.

(5) "Mandatory convertible debt" means subordinated debt instruments which unqualifiedly require the issuer to exchange either common or perpetual preferred stock for such instruments by a date at or before the maturity of the instrument. The maturity of these instruments must be 12 years or less. In addition, the instrument must meet requirements (i) through (v) for subordinated notes and debentures contained in paragraph (f)(1) of this section or other requirements published by the Office.

(6) "Minority interest in consolidated subsidiaries" means the portion of equity capital accounts of all consolidated subsidiaries of the bank that is allocated to minority shareholders of such subsidiaries.

(7) "Mortgage servicing rights" means the bank-owned rights to service for a fee mortgage loans that are owned by others.

(8) "Perpetual preferred stock" means preferred stock that does not have a stated maturity date and cannot be redeemed at the option of the holder.

(f) *Requirements and Restrictions: Limited Life Preferred Stock, Mandatory Convertible Debt, and Other Subordinated Debt*—(1) *Requirements.* Issues of limited life preferred stock and subordinated notes and debentures (except mandatory convertible debt) must have original weighted average maturities of at least seven (7) years to be included in the definition of "surplus." In addition, a subordinated note or debenture must also:

(i) Be subordinated to the claims of depositors;

(ii) State on the instrument that it is not a deposit and is not insured by the FDIC;

(iii) Be approved as capital by this Office;

(iv) Be unsecured;

(v) Be ineligible as collateral for a loan by the issuing bank;

(vi) Provide that once any scheduled payments of principal begin, all scheduled payments shall be made at least annually and the amount repaid in each year shall be no less than in the prior year; and

(vii) Provide that no accelerated payment by reason of default or otherwise may be made without the prior written approval of the Office.

(2) *Restrictions.* The total amount of mandatory convertible debt not included in paragraph (c)(3) of this section, limited life preferred stock, and subordinated notes and debentures considered as surplus is limited to 50 percent of the aggregate amount of primary capital, as defined in 12 CFR 3.2(c), unless specifically approved in writing by the Office.

(3) *Reservation of Authority.* The OCC expressly reserves the authority, in exigent circumstances, to waive the minimum maturity requirement and the percentage restriction set forth in paragraphs (f) (1) and (2) of this section, in order to allow the inclusion of other limited life preferred stock, mandatory convertible notes and subordinated notes and debentures in the capital base of any national bank for capital adequacy purposes. The OCC further expressly reserves the authority in exigent circumstances, to impose more stringent conditions than those set forth in paragraphs (f) (1) and (2) of this section in order for any component of primary or secondary capital to be included, in whole or in part, as part of a national banking association's capital and surplus for any purpose.

(Approved by the Office of Management and Budget under control number 1557–0166.)

Dated: February 12, 1985.

C.T. Conover,

Comptroller of the Currency.

[FR Doc. 85–6127 Filed 3–13–85; 8:45 am]

BILLING CODE 4810-33-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 84–ASW–47; Amdt. 39–5008]

Airworthiness Directives; Sikorsky Model S–76A Helicopters Certificated in All Categories.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the **Federal Register** and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of Sikorsky S–76A helicopters by individual telegrams. This AD requires inspections of the engine compartment center firewall for proper installation, fit, and clearance with the rotating tail rotor driveshaft and prescribes corrective modifications and repairs if unsafe conditions are found. This AD is needed to prevent damage to the tail rotor driveshaft and subsequent loss of directional control of the helicopter which may occur if the engine compartment center firewall is not correctly installed.

EFFECTIVE DATE: Effective March 7, 1985, as to all persons except those persons to whom it was made immediately effective by telegraphic AD Nos. T84–19–51 issued September 27, 1984, and T84–19–51 R–1 issued October 15, 1984, which contained this amendment.

ADDRESSES: The applicable customer service notices (CSN), alert service bulletin (ASB), and appropriate sections of the maintenance manual (MM) may be obtained from United Technologies Corporation, Sikorsky Aircraft Division, North Main Street, Stratford, Connecticut 06601.

Copies of the CSN, ASB, and sections of the MM are contained in the Rules Docket, Office of the Regional Counsel, FAA, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas 76106.

FOR FURTHER INFORMATION CONTACT: Donald F. Thompson, Airframe Branch, Boston Aircraft Certification Office, Aircraft Certification Division, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273–7113 or (617) 273–7001.

SUPPLEMENTARY INFORMATION: On September 27, 1984, telegraphic AD No. T84–19–51 was issued and made effective immediately as to all known

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U.S. owners and operators of Sikorsky S–76A helicopters. The telegraphic AD required: (1) A one-time inspection of the engine compartment center firewall for missing fasteners in helicopters that have incorporated either the modification prescribed by optional Sikorsky CSN 76–111A or the factory-installed engine compartment center firewall, (2) a one-time inspection for clearance between the center firewall and the tail rotor driveshaft, and (3) a one-time inspection for a positive closure of the engine aft cowling in the area of the center firewall apex. The AD also prescribes repairs and/or modifications if unacceptable conditions are found. Telegraphic AD action was necessary to prevent loss of directional control of the helicopter which could occur if damaged or improperly installed firewall components contact and damage the rotating tail rotor driveshaft.

On October 15, 1984, telegraphic AD No. T84–1951 R1 was issued and made effective immediately as to all known U.S. owners and operators of Sikorsky S–76A helicopters. The revision was issued to correct an error in the identification of a part number and to add an alternate telephone number to the paragraph entitled **FOR FURTHER INFORMATION CONTACT** in previously issued telegraphic AD T84–19–51.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to public interest, and good cause existed to make the AD effective immediately by individual telegrams issued September 27, 1984, and October 15, 1984, to all known U.S. owners and operators of Sikorsky S–76A helicopters. These conditions still exist, for helicopters manufactured with serial numbers prior to 760340, after which corrective action to alleviate the need for inspections and modifications has been accomplished by the manufacturer. Therefore, the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of Part 39 of the Federal Aviation Regulations to make it effective as to all persons.

The FAA has determined that this regulation only involves a modification and inspection cost of $400 per helicopter applicable to a fleet of 282 helicopters for a total cost of $112,800. Therefore, I certify that this action: (1) Is not a "major rule" under Executive Order 12291, and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption **FOR FURTHER INFORMATION CONTACT.**

List of Subjects 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new AD:

Sikorsky Aircraft: Applies to Model S–76A helicopters Serial Numbers 76006, 76007, 760001 through 760339 certificated in all categories.

Compliance is required prior to further flight, unless already accomplished.

To prevent operation with damaged, bent, or fractured center firewall support stiffeners or doublers which could cut into the tail rotor driveshaft and cause loss of directional control of the helicopter, accomplish the following:

(a) Inspect the forward center firewall sections for missing fasteners and proper fit, as required in paragraphs E(1) through E(5)(C) of Sikorsky Alert Service Bulletin (ASB) 76–53–25 or FAA approved equivalent.

(b) If doubler, Part Number (P/N) 76070–20057–101, is cracked or fails to conform to the firewall contour or to the limits specified in ASB 76–53–25, paragraph E(5)(B), remove and replace as per paragraph E(5)(D) or FAA approved equivalent.

(c) If the rivets are not installed as required in paragraph (a) above, comply with paragraph E(5)(E) of ASB 76–53–25 or FAA approved equivalent.

(d) Remove the core section from the horizontal seal, P/N 76304–07003–127 or 76304–07003–137, on the aft engine cowl center section fixed or adjustable firewall assembly, P/N 76304–07003–041 or 76304–07003–044, respectively.

(e) Inspect stiffeners and doublers used to support the center firewall installation for fractures, distortions, or damage. Assure that the forward edges of the removable center firewall are properly engaged in the slots.

(f) Inspect the area between the number 1 section of the tail rotor driveshaft called out in Sikorsky Maintenance Manual (MM) SA 4047–76–2, Section 66–40–00, Figure 401, and the engine compartment center firewall for clearance in accordance with section 5–50–00 of the Airworthiness and Inspection Requirement Manual. If inadequate clearance is found, contact the Boston Aircraft Certification Office (617) 273–7113 or (617) 273–7001 prior to further flight.

(g) Helicopters not modified in accordance with Sikorsky Customer Service Notice 76–111 are required to accomplish the inspection of paragraph (f) of this AD only.

(h) Special flight permits may be issued in accordance with FAR §§ 21.197 and 21.199 to operate helicopters to a base for accomplishment of this AD.

(i) Alternate repairs, modifications, or other means of compliance with the AD which provide an equivalent level of safety may be approved by the Manager, Boston Aircraft Certification Office, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); 14 CFR 11.89)

This amendment becomes effective March 7, 1985, as to all persons except those persons to whom it was made immediately effective by telegraphic AD's T84–19–51 issued September 27, 1984, and T84–19–51R1 issued October 15, 1984, which contained this amendment.

Issued in Forth Worth, Texas, on Feburary 20, 1985.

F.E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 85–6032 Filed 3–11–85; 10:34 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 436 and 440

[Docket No. 85N–0012]

Antibiotic Drugs; Sterile Amdinocillin

Correction

In FR Doc. 85–4587 beginning on page 7764 in the issue of Tuesday, February 26, 1985, make the following corrections:

§ 436.353 [Corrected]

1. On page 7765, first column, seventh line "t^{R}" should read "t_R"; and in the eighth line, "w^{R}" should read "w_R".

§ 440.2a [Corrected]

2. On the same page, third column, paragraph (b)(1), seventh line, "(3)" should read "(3 ".

BILLING CODE 1505–01–M

21 CFR Parts 520 and 556

Oral Dosage Form New Animal Drugs Not Subject to Certification; Tolerances for Residues of New Animal Drugs in Food; Clorsulon Drench

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Merck Sharp & Dohme Research Laboratories,

providing for safe and effective use of clorsulon drench for treating cattle for immature and adult liver fluke infestations and to provide for a tolerance for residues of clorsulon in foods.

EFFECTIVE DATE: March 14, 1985.

FOR FURTHER INFORMATION CONTACT: Adriano R. Gabuten, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4913.

SUPPLEMENTARY INFORMATION: Merck Sharp & Dohme Research Laboratories, Division of Merck & Co., Inc., P.O. Box 2000, Rahway, NJ 07065, filed NADA 136–742 providing for safe and effective oral use of Curatrem™ (clorsulon) 8.5 percent drench for the treatment of immature and adult liver fluke (*Fasciola hepatica*) infestations in cattle. The NADA is approved and the regulations are amended to reflect the approval. The basis for approval is discussed in the freedom of information summary. In addition, a tolerance for residues of clorsulon in food and safe concentrations for residues in certain edible tissues are established.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The Center for Veterinary Medicine has carefully considered the potential environmental effects of this action and has concluded that the action is not expected to have a significant impact on the human environment and that an environmental impact statement therefore will not be prepared. The Center's finding of no significant impact and the evidence supporting this finding, contained in an environmental impact analysis report (pursuant to 21 CFR 25.1(j)), may be seen in the Dockets Management Branch (address above), between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 520

Animal drugs—oral use.

21 CFR Part 556

Animal drugs, Foods, Residues.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commission of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.83), Parts 520 and 556 are amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. Part 520 is amended by adding new § 520.462 to read as follows:

§ 520.462 Clorsulon drench.

(a) *Specifications.* The drug is a suspension containing 8.5 percent clorsulon (85 milligrams per milliliter).

(b) *Sponsor.* See No. 000006 in § 510.600(c) of this chapter.

(c) *Conditions of use. Cattle*—(1) *Amount.* One-quarter fluid ounce per 200 pounds of body weight (7 milligrams per kilogram or 3.2 milligrams per pound of body weight).

(2) *Indications for use.* For the treatment of immature and adult liver fluke (*Fasciola hepatica*) infestations in cattle.

(3) *Limitations.* Using dose syringe, deposit drench over back of tongue. Do not treat cattle within 8 days of slaughter. Because a withdrawal time in milk has not been established, do not use in female dairy cattle of breeding age. Consult your veterinarian for assistance in the diagnosis, treatment, and control of parasitism.

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

2. Part 556 is amended by adding new § 556.163 to read as follows:

§ 556.163 Clorsulon.

Tolerances are established for residues of clorsulon in cattle as follows:

(a) The tolerance for clorsulon (market residue) in kidney (target tissue) is 1.0 part per million. A marker residue of 1.0 part per million corresponds to a total residue of 3.0 parts per million in kidney.

(b) The safe concentrations for total clorsulon residues in uncooked edible cattle tissues are: muscle, 1.0 part per million; liver, 2.0 parts per million; kidney, 3.0 parts per million; and fat, 4.0 parts per million.

Effective date. March 14, 1985.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))

Dated: March 8, 1985.

Gerald B. Guest,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 85–6030 Filed 3–13–85; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 601 and 602

[T.D. 8011]

OMB Control Numbers Assigned Pursuant to the Paperwork Reduction Act

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations; amendment of the Statement of Procedural Rules.

SUMMARY: This document provides final regulations that implement requirements of the regulations promulgated by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, which require that agencies display control numbers assigned by that Office to the agency's regulations that solicit or obtain information from the public. By displaying these control numbers, these regulations provide necessary guidance to taxpayers subject to reporting or recordkeeping requirements.

DATES: The amendments to the regulations are effective March 14, 1985.

FOR FURTHER INFORMATION CONTACT: Susan Thompson Baker of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224 (Attention: CC:LR:T) (202–566–3294).

SUPPLEMENTARY INFORMATION: On March 31, 1983, the Office of Management and Budget published final regulations under the Paperwork Reduction Act of 1980 (48 FR 13689). Sections 1320.12, 1320.13, and 1320.14 of those regulations require that agencies display control numbers assigned by the Office of Management and Budget to certain of the agency's regulations that solicit or obtain information from ten or more members of the public. These regulations set forth these control numbers in tabular form.

Non-Application of Executive Order 12291

The Treasury Department has determined that this regulation is not subject to review under Executive Order 12291 or the Treasury and OMB implementation of the Order dated April 29, 1983.

Regulatory Flexibility Act

Because this regulation relates merely to an agency procedure for carrying out the requirement that OMB control numbers be displayed, the Internal

Revenue Service has concluded that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, this regulation is not subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Drafting Information

The principal author of this regulation is Susan Thompson Baker of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service participated in developing the regulation, both substantively and stylistically.

List of Subjects

26 CFR Part 601

Administrative practice and procedure, Aged, Alcohol and alcoholic beverages, Arms and munitions, Cigars and cigarettes, Claims, Freedom of Information, Taxes.

26 CFR Part 602

OMB control numbers, Paperwork Reduction Act, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, Subchapter H of Chapter 1 of 26 CFR is amended as follows:

PART 601—[AMENDED]

Paragraph 1. A new Subpart I is added at the end of Part 601 immediately following Subpart H. New Subpart I reads as follows:

Subpart I—OMB Control Numbers Under the Paperwork Reduction Act

§ 601.9000 OMB control numbers for the statement of procedural rules.

(a) *Purpose.* This section collects and displays the control numbers assigned to Internal Revenue Service collections of information in the Statement of Procedural Rules (26 CFR Part 601) by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. The Internal Revenue Service intends that this section (together with 26 CFR Part 602) comply with the requirements of § 1320.7(f), 1320.12, 1320.13, and 1320.14 of 5 CFR Part 1320 (OMB regulations implementing the Paperwork Reduction Act of 1980) for the display of control numbers assigned by OMB to collections of information of the Internal Revenue Service in the Statement of Procedural Rules. This section does not display control numbers assigned by OMB to collections of information of the Bureau of Alcohol, Tobacco, and Firearms in the Statement of Procedural Rules.

(b) *Cross-reference.* For display of control numbers assigned by the Office of Management and Budget to collections of information of the Internal Revenue Service in regulations elsewhere than in the Statement of Procedural Rules, see 26 CFR Part 602.

(c) *Display.*

26 CFR 601 section where identified and described	Current OMB control number
§ 601.105(e)	1545-0091
§ 601.201(a)	1545-0819
§ 601.201(l)	1545-0819
§ 601.201(j)	1545-0019
§ 601.201(n)	1545-0019
§ 601.201(o)	1545-0019
§ 601.401	1545-0257
§ 601.401	1545-0023
§ 601.402 (c) and (d)	1545-0257
§ 601.402(e)	1545-0014
§ 601.403	1545-0257
§ 601.403(c)	1545-0023
§ 601.403(d)	1545-0024
§ 601.404 (d) and (f)	1545-0012
§ 601.504	1545-0150
§ 601.601	1545-0800

PART 602—[AMENDED]

Par. 2. A new Part 602 is added immediately following Part 601. Part 602 reads as follows:

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

§ 602.101 OMB control numbers

(a) *Purpose.* This part collects and displays the control numbers assigned to collections of information in Internal Revenue Service regulations by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. The Internal Revenue Service intends that this part (together with 26 CFR § 601.9000) comply with the requirements of §§ 1320.7(f), 1320.12, 1320.13, and 1320.14 of 5 CFR Part 1320 (OMB regulations implementing the Paperwork Reduction Act), for the display of control numbers assigned by OMB to collections of information in Internal Revenue Service regulations. This part does not display control numbers assigned by the Office of Management and Budget to collections of information of the Bureau of Alcohol, Tobacco, and Firearms.

(b) *Cross-reference.* For display of control numbers assigned by the Office of Management and Budget to Internal Revenue Service collections of information in the Statement of Procedural Rules (26 CFR Part 601), see 26 CFR 601.9000.

(c) *Display*

26 CFR part or section where identified and described	Current OMB control number
§ 1.1-1	1545-0067
§ 1.31-2(a)	1545-0074
§ 1.37-1(c)	1545-0074
§ 1.37-3(b)	1545-0074
§ 1.41-4 (b) and (c)	1545-0074
§ 1.43-2(b)	1545-0074
§ 1.44A	1545-0068
§ 1.44A-3(a)	1545-0074
§ 1.44B-1	1545-0219
§ 1.44C	1545-0214
§ 1.44C-5 and 1.44C-6	1545-0780
§ 1.46-6	1545-0155
§ 1.46-1(p)	1545-0123
§ 1.47-1(b)	1545-0166
§ 1.47-1(e)(1)	1545-0166
§ 1.47-1(e)(3)	1545-0166
§ 1.47-1(h)	1545-0155
§ 1.47-3(d)	1545-0166
§ 1.47-3(f)	1545-0155
§ 1.47-3(h)	1545-0155
§ 1.47-4(a)	1545-0123
§ 1.47-5(a)	1545-0092
§ 1.47-6	1545-0099
§ 1.50A-1 through 1.50A-7	1545-0189
§ 1.50B-1 through 1.50B-5	1545-0189
§ 1.51-1(c)(3)	1545-0241
§ 1.52-1(b)	1545-0219
§ 1.52-1 through 1.52-3	1545-0219
§ 1.52-4	1545-0074
§ 1.56-1 through 1.56-5	1545-0174
§ 1.57-5 (a) and (b)	1545-0227
§ 1.58-1 (b)(2) and (c)	1545-0175
§ 1.61-2T	1545-0907
§ 1.61-4	1545-0187
§ 1.61-15	1545-0074
§ 1.62-1	1545-0139
§ 1.63-1	1545-0074
§ 1.71-1T	1545-0074
§ 1.72-4	1545-0074
§ 1.72-17(e)	1545-0074
§ 1.72-17A(c)	1545-0074
§ 1.72-17A(e)	1545-0074
§ 1.72-18(b)	1545-0074
§ 1.79-2	1545-0074
§ 1.79-3	1545-0074
§ 1.83-2 (b), (c), and (e)	1545-0074
§ 1.83-5(b)	1545-0074
§ 1.103-10(b)(2)(v)(a)	1545-0123
§ 1.103-10(c)	1545-0123
§ 1.103-15AT	1545-0720
§ 1.103(n)-2T	1545-0874
§ 1.103(n)-4T	1545-0874
§ 1.105-4 through 1.105-10	1545-0069
§ 1.106(a)-1 and (a)-2	1545-0046
§ 1.119-1	1545-0067
§ 1.120-3(b)(1)	1545-0057
§ 1.120-3(d)(1)	1545-0057
§ 1.121-1 through 1.121-5	1545-0072
§ 1.127-2	1545-0768
§ 1.132-1T	1545-0907
§ 1.151-1(d)(3)	1545-0074
§ 1.152-3(c)	1545-0071
§ 1.152-4	1545-0074
§ 1.152-4T	1545-0074
§ 1.162-1 through 1.162-20	1545-0139
§ 1.163-5	1545-0786
§ 1.165-1 through 1.165-11	1545-0177
§ 1.165-11	1545-0786
§ 1.165-11(e)	1545-0074
§ 1.165-12	1545-0786
§ 1.166-4(c)	1545-0123
§ 1.167(a)-7(c)	1545-0172
§ 1.167(a)-11(a)	1545-0172
§ 1.167(a)-11(f)	1545-0172
§ 1.167(a)-11(g)(2)	1545-0152
§ 1.167(a)-12(e)	1545-0172
§ 1.167(d)-1	1545-0172
§ 1.167(e)-1(b)	1545-0172
§ 1.167(e)-1(c) (1) and (2)	1545-0172
§ 1.167(e)-1(d) (1) and (2)	1545-0172
§ 1.167(e)-2(h)	1545-0172
§ 1.167(j)-3(b)(5)	1545-0172
§ 1.167(j)-3(c)(2)	1545-0172
§ 1.167(k)-3(b)	1545-0074
§ 1.167(k)-4(a)(1)	1545-0074
§ 1.167(k)-4(b)	1545-0074
§ 1.167(k)-4(d)(1)	1545-0074
§ 1.167(l)-1(h)(5)	1545-0172
§ 1.167(e)-2(h)	1545-0172
§ 1.169-4(a)	1545-0172
§ 1.169-4(b)(1)	1545-0172
§ 1.170-1(a)(3) (ii) and (iii)	1545-0074

26 CFR part or section where identified and described	Current OMB control number
§ 1.170–2(a)(7)	1545–0074
§ 1.170–3(b)	1545–0123
§ 1.170A–1(a)(2) (ii) and (iii)	1545–0074
§ 1.170A–2(a)(4)	1545–0074
§ 1.170A–4A(b)	1545–0123
§ 1.170A–8(d)(2)(c)(iii)	1545–0074
§ 1.170A–9(e)(5)	1545–0052
§ 1.170A–9(g)	1545–0074
§ 1.170A–11(b)(2)	1545–0123
§ 1.170A–12	1545–0029
§ 1.170A–12(c)	1545–0074
§ 1.170A–12(e)(3)	1545–0074
§ 1.170A–13	1545–0754
§ 1.170A–13T	1545–0908
§ 1.171–3(a)	1545–0172
§ 1.172–1(c)	1545–0172
§ 1.172–11	1545–0074
§ 1.173–1(c)	1545–0172
§ 1.174–3(b)	1545–0152
§ 1.175–3	1545–0187
§ 1.175–6(d)	1545–0152
§ 1.177–1(a)(4)	1545–0172
§ 1.177–1(c)	1545–0172
§ 1.179–4 (a) and (b)	1545–0172
§ 1.180–2	1545–0074
§ 1.182–6	1545–0074
§ 1.183–1 through 1.183–4	1545–0196
§ 1.185–3(a)	1545–0172
§ 1.185–3(b)	1545–0152
§ 1.190–3 (a) and (c)	1545–0074
§ 1.194–2	1545–0735
§ 1.194–4	1545–0735
§ 1.213–1(d)(2)	1545–0074
§ 1.213–1(h)	1545–0074
§ 1.215–1T	1545–0074
§ 1.217	1545–0052
§ 1.243–3(b)	1545–0123
§ 1.243–4(c)	1545–0123
§ 1.243–4(e) (1) and (3)	1545–0123
§ 1.243–5(d)(3)(iv)	1545–0123
§ 1.243–5(f)(4)	1545–0123
§ 1.248–1(c)	1545–0172
§ 1.250–1(d)	1545–0132
§ 1.263(e)–1(a)(3)	1545–0123
§ 1.263(e)–1(e)	1545–0123
§ 1.265–1	1545–0074
§ 1.265–2	1545–0123
§ 1.266–1	1545–0123
§ 1.267(f)–1T	1545–0685
§ 1.268–1	1545–0184
§ 1.274–1 through 8	1545–0139
§ 1.274–5 (b) and (c)	1545–0771
§ 1.274–5 (e), (f), and (g)	1545–0771
§ 1.274–5T	1545–0074
§ 1.274–6T	1545–0074
§ 1.280F–3T	1545–0074
§ 1.281–4(b)(2)(v)	1545–0123
§ 1.302–4(b)	1545–0074
§ 1.305–3(d)(2)	1545–0123
§ 1.370–2	1545–0074
§ 1.312–15(d)	1545–0172
§ 1.316–1(b)(5)	1545–0123
§ 1.331–1(d)	1545–0074
§ 1.332–4	1545–0036
§ 1.332–4(a)	1545–0123
§ 1.332–6	1545–0123
§ 1.333–3	1545–0123
§ 1.333–6(a)	1545–0123
§ 1.337–5(d)	1545–0123
§ 1.337–6 (a) and (b)	1545–0123
§ 1.337–6(c) (1), (2), and (3)	1545–0123
§ 1.338–1T through 1.338–3T	1545–0702
§ 1.341–7(b)	1545–0123
§ 1.341–7(c) (1) and (2)	1545–0123
§ 1.341–7(d) (1) and (2)	1545–0123
§ 1.341–7(e)(3)	1545–0123
§ 1.341–7(f) (3) and (4)	1545–0123
§ 1.341–7(g) (1) and (5)	1545–0123
§ 1.351–3 (a), (b), and (c)	1545–0074
§ 1.355–5 (a) and (b)	1545–0123
§ 1.358–5(e)	1545–0123
§ 1.362–2	1545–0123
§ 1.368–3 (a), (b), and (c)	1545–0123
§ 1.371–1(c) (1) and (2)	1545–0123
§ 1.371–2(d) (1) and (2)	1545–0123
§ 1.374–3 (a) and (b)	1545–0123
§ 1.381(b)–1(b) (2) and (3)	1545–0123
§ 1.381(b)–1(c)	1545–0123
§ 1.381(c)(4)–1(a)	1545–0123
§ 1.381(c)(4)–1(b)(1)	1545–0123
§ 1.381(c)(4)–1(b)(2)	1545–0123
§ 1.381(c)(4)–1(b)(3)	1545–0123
§ 1.381(c)(4)–1(d)(2)	1545–0123
§ 1.381(c)(5)–1(b)(1)	1545–0123
§ 1.381(c)(5)–1(b)(2)	1545–0123
§ 1.381(c)(5)–1(b)(3)	1545–0123
§ 1.381(c)(5)–1(d)(2)	1545–0152
§ 1.381(c)(6)–1(a)(2)	1545–0152
§ 1.381(c)(6)–1(c)	1545–0152
§ 1.381(c)(6)–1(e)	1545–0123
§ 1.381(c)(8)–1(a)	1545–0123
§ 1.381(c)(10)–1(b)(2)	1545–0123
§ 1.381(c)(11)–1(k)	1545–0123
§ 1.381(c)(13)–1(c)(2)	1545–0123
§ 1.381(c)(17)–1(c)	1545–0045
§ 1.381(c)(25)–1(c)	1545–0045
§ 1.382–2 (a), (b), (c), and (d)	1545–0123
§ 1.383–1(b)	1545–0074
§ 1.401–1	1545–0710
§ 1.401–1	1545–0020
§ 1.401–1(e)	1545–0197
§ 1.401(f)–1(c)(1)(i)	1545–0710
§ 1.401–12(n) (2) and (3)	1545–0806
§ 1.401–12(n)(6)(iii)(C)	1545–0806
§ 1.401–12(n)(6)(vii)	1545–0806
§ 1.401–12(n)(7)(iv)	1545–0806
§ 1.401–12(n)(8)(iii)	1545–0806
§ 1.401–12(n)(8)(v)(B)	1545–0806
§ 1.401–14(c)(2)	1545–0710
§ 1.401(a)–(11)(c)	1545–0774
§ 1.401(b)–1(e)	1545–0197
§ 1.402(e) –2, –3 and –14	1545–0183
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§ 1.404(a)–12(b)(3)	1545–0710
§ 1.408–2(b)(2)(ii)	1545–0390
§ 1.408–2(c) (2), (3), and (4)	1545–0390
§ 1.408–5(a)	1545–0747
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§ 1.408–5(c)	1545–0710
§ 1.408–5(c)(2)	1545–0052
§ 1.408–5(f)	1545–0710
§ 1.408–6(a)(1)	1545–0390
§ 1.408–6(d)(4)	1545–0390
§ 1.408–7(a)	1545–0119
§ 1.408–7(c)	1545–0119
§ 1.408–7(d)	1545–0119
§ 1.410(a)–2(d)(3)	1545–0710
§ 1.410(d)–1(a)	1545–0710
§ 1.410(d)–1(b)	1545–0710
§ 1.410(d)–1(c)	1545–0710
§ 1.412(b)–5 (b) and (e)	1545–0710
§ 1.412(c)(1)–2(a)(1)	1545–0710
§ 1.412(c)(1)–2(e)	1545–0710
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§ 1.412(c)(2)–1 (b) and (e)	1545–0710
§ 1.412(c)(3)–2 (c) and (d)	1545–0710
§ 1.415–2(b)(7)(ii)	1545–0710
§ 1.415–6(e)(iii)	1545–0710
§ 1.441–1(a)	1545–0123
§ 1.441–2(c) (1), (2), and (3)	1545–0123
§ 1.442–1	1545–0134
§ 1.442–1(a) (1) and (2)	1545–0152
§ 1.442–1(b) (1), (2), and (3)	1545–0152
§ 1.442–1(c) (1) and (3)	1545–0123
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§ 1.443–1(b)(2) (i) and (v)	1545–0123
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§ 1.451–6(a) (1) and (2)	1545–0074
§ 1.451–6(b)(1)	1545–0074
§ 1.451–6(b)(2)	1545–0074
§ 1.451–7(a)	1545–0074
§ 1.451–7 (g) and (h)	1545–0074
§ 1.453–1(f)	1545–0152
§ 1.453–2 (c) and (d)	1545–0152
§ 1.453–8(a)	1545–0152
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§ 1.454–1(a)	1545–0074
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§ 1.456–7(b)	1545–0123
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§ 1.471–2 (c) and (d)	1545–0123
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§ 1.472–1(h)	1545–0152
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§ 1.472–3	1545–0042
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§ 1.481–4(d)(2)	1545–0152
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§ 1.501(c)(9)–5(a)	1545–0047
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§ 1.507–2(c)(2)(i)(b)	1545–0052
§ 1.507–2(c)(2)(ii)(b)	1545–0052
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This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: February 25, 1985.

Ronald A. Pearlman,

Assistant Secretary of the Treasury.

[FR Doc. 85-6015 Filed 3-13-85; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD13 84-12]

Drawbridge Operation Regulations; Duwamish Waterway, WA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the regulations governing the operation of the highway drawbridge across the Duwamish West Waterway at Southwest Spokane Street and the highway drawbridge across the Duwamish Waterway at First Avenue South, both in Seattle, Washington, by decreasing the three hour morning and evening closed periods by one hour each and providing exemptions to the closed periods for certain classes of vessels. This change provides that, subject to certain exceptions, the draws of these bridges need not open for the passage of vessels between the hours of 6:30 a.m. and 8:30 a.m. and between 3:45 p.m. and 5:45 p.m., Monday through Friday, except for federal holidays. The draws of the Southwest Spokane Street bridge will open at any time for a vessel of 1,000 gross tons and over, a vessel towing a vessel of 1,000 gross tons and over, and a vessel proceeding to pick up a vessel of 1,000 gross tons and over for towing. The draws of the First Avenue South bridge will open at any time for a vessel of 5,000 gross tons and over, a vessel towing a vessel; of 5,000 gross tons and over, and a vessel proceeding to pick up a vessel of 5,000 gross tons and over for towing. This change is being made because the opening to traffic of all lanes of the new West Seattle Freeway bridge provides an alternate route for uninterrupted vehicular traffic between West Seattle and destinations across the Duwamish Waterway to the east. This action will accommodate the needs of vehicular traffic and reduce the burden of lengthy closed periods on marine traffic.

EFFECTIVE DATE: These regulations become effective on April 15, 1985.

FOR FURTHER INFORMATION CONTACT: John E. Mikesell, Chief, Bridge Section, Aids to Navigation Branch (Telephone: (206) 442-5864).

SUPPLEMENTARY INFORMATION: On December 7, 1984, the Coast Guard published proposed rules (49 FR 47872) concerning this amendment. The Commander, Thirteenth Coast Guard District, also published the proposal as a Public Notice dated December 20, 1984. In each notice interested persons were given until January 22, 1985 to submit comments.

Drafting Information

The drafters of this notice are: John E. Mikesell, project officer, and Lieutenant Commander Judith M. Hammond, project attorney.

Discussion of Comments

Four responses were received in response to the **Federal Register** and Guard Public Notice. Two respondents, one federal and one local governmental agency, offered no objection to the proposed change. The local port authority, and an association representing waterway users offered comments in support of the proposed change.

Before publishing a notice of proposed rulemaking, the Coast Guard temporarily changed the regulations governing the operation of the Southwest Spokane Street and First Avenue South bridges to conform with the proposed action in order to test the proposal. The temporary regulations are currently in effect. No comments have been received regarding the existing temporary regulations.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact is expected to be so minimal that a full regulatory evaluation is unnecessary. This is based on the improvement to vehicular traffic flow brought about by the new high level bridge between Seattle and West Seattle, and the fact that the high level bridge provides an alternate, uninterrupted route for vehicular traffic during periods when the other bridges across the waterway may be required to open for the passage of vessels. Based on the foregoing, closed period openings of the Southwest Spokane Street and First Avenue South bridges for the authorized classes of vessels should not have a significant effect on vehicular traffic movement. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

PART 117—DRAWBRIDGE OPERATION REGULATIONS

In consideration of the foregoing, Part 117 of Title 33 Code of Federal Regulations, is amended by revising § 117.1041(a)(1) to read as follows:

§ 117.1041 Duwamish Waterway.

(a) * * *

(1) The draws of the Southwest Spokane Street bridge, mile 0.3, and the First Avenue South bridge, mile 2.5, need not be opened for the passage of vessels from 6:30 a.m. to 8:30 a.m. and 3:45 p.m. to 5:45 p.m., Monday through Friday, except Federal holidays, except as follows:

(i) The draws of the Southwest Spokane Street bridge shall open at any

time for a vessel of 1,000 gross tons and over, a vessel towing a vessel of 1,000 gross tons and over, and a vessel proceeding to pick up a vessel of 1,000 gross tons and over for towing.

(ii) The draws of the First Avenue South bridge shall open at any time for a vessel of 5,000 gross tons and over, a vessel towing a vessel of 5,000 gross tons and over, and a vessel proceeding to pick up a vessel of 5,000 gross tons and over for towing.

* * * * *

(33 U.S.C. 499; 49 CFR 1.46(c)(5); 33 CFR 1.05-1(g)(3))

Dated: March 4, 1985.

H.W. Parker,

Rear Admiral, U.S. Coast Guard Commander, 13th Coast Guard District.

[FR Doc. 85-6099 Filed 3-13-85; 8:45 am]

BILLING CODE 4910-14-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-20

[FPMR Temp. Reg. D-69, Supp. 3]

Federal Employee Parking; FPMR Temporary Regulation

AGENCY: Public Buildings Service, GSA.

ACTION: Temporary regulation.

SUMMARY: This supplement extends to September 30, 1985, the expiration date of FPMR Temporary Regulation D-69. D-69 sets forth revised policies and procedures concerning Federal employee parking. The regulation was developed as part of an effort to review and streamline GSA's property management regulations.

DATES:

Effective date: April 1, 1985.
Expiration date: September 30, 1985.

FOR FURTHER INFORMATION CONTACT: John H. Quigley, Director, Space Management Division (202-566-1875).

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this rule is not a major rule for the purpose of E.O. 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. Therefore, a Regulatory Impact Analysis has not been prepared. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 101-20

Government property management.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c))

PART 101—[AMENDED]

41 CFR Chapter 101 is amended by adding the following temporary regulation to the appendix at the end of Subpart D.

Federal Property Management Regulations, Temporary Regulation D-69, Supplement 3

February 20, 1985.

To: Head of Federal agencies
Subject: Federal Employee Parking

1. *Purpose.* This supplement extends the expiration date of FPMR Temporary Regulation D-69.

2. *Effective date.* April 1, 1985.

3. *Expiration date.* This supplement expires on September 30, 1985.

4. *Explanation of changes.* The expiration date in paragraph 3 of FPMR Temporary Regulation D-69 is revised to September 30, 1985.

Ray Kline,

Acting Administrator of General Services.

[FR Doc. 85-6055 Filed 3-13-85; 8:45 am]

BILLING CODE 6820-23-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6650]

List of Communities Eligible for the Sale of Insurance Under the National Flood Insurance Program; New York, et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain flood plain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The date listed in the fourth column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at: P.O. Box 457, Lanham, Maryland 20706, phone: (800) 638-7418.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, 500 C Street, Southwest, FEMA, Room 509, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local flood plain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fifth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

The Director finds that delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance."

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 64

Flood insurance, Flood plains.

Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

§ 64.6 List of eligible communities.

State and county	Location	Community	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard areas identified
New York: Clinton	Clinton, town of	361380	Feb. 4, 1985, Emerg	1-24-75
South Dakota: McPherson	Eureka, city of	460173A	do	7-16-76, 8-22-78
California:				
Lake	Clearlake, city of	060714—New	Feb. 7, 1985, Emerg	
Contra Costa	Danville, city of	060707	do	
Oklahoma: Canadian	Piedmont, city of	400027B	Feb. 4, 1985, Emerg., Feb. 4, 1985, Reg	1-19-77, 2-17-82
New York: Dutchess	Red Hook, town of	361143B	May 19, 1975, Emerg., Oct. 18, 1984, Reg., Oct. 18, 1984, Susp., Feb. 7, 1985, Rein.	10-18-74, 8-6-76
Alabama: Colbert	Sheffield, city of	010048C	Jan. 10, 1974, Emerg.; Dec. 15, 1977, Reg.; Jan 28, 1985, Withdrawn.	3-22-74, 10-22-76, 12-15-77, 3-18-83
Oklahoma: Canadian	Unincorporated areas	400485	Feb. 11, 1985, Emerg	8-13-82
Texas: Hunt	Celeste, city of	480365A	do	6-21-74, 8-22-75, 5-24-77, 10-31-78
Missouri: Madison	Cobalt, village of	290601	Feb. 12, 1985, Emerg	3-26-76
Michigan: Oakland	White Lake, township of	260479	Feb. 11, 1985, Emerg., Feb. 11, 1985, Reg	5-27-77, 2-1-85
Idaho: Bannock	Downey, city of	160165B	Feb. 8, 1985, Emerg., Feb. 8, 1985, Reg	1-9-79, 9-16-81
West Virginia: Mercer	Unincorporated areas	540124B	Dec. 23, 1975, Emerg., Feb. 1, 1985, Reg.; Feb. 1, 1985, Susp., Feb. 8, 1985, Rein.	12-13-74, 8-26-77
Kansas: Sedgwick	Bel Aire, city of	200964—New	Feb. 15, 1985, Emerg	
North Carolina: Dare	Kitty Hawk, town of [1]	370439	Feb. 22, 1985, Emerg., Feb. 22, 1985, Reg	
Missouri: Carroll	Wakenda, town of	290473A	Sept. 10, 1975, Emerg., Feb. 1, 1985, Reg., Feb. 1, 1985, Susp., Feb. 22, 1985, Rein.	10-18-74
Colorado: Weld	Greeley, city of	080184B	Oct. 15, 1974, Emerg.; July 16, 1979, Reg.; July 16, 1979, Susp., Feb. 28, 1985, Rein.	6-21-74, 1-16-76, 7-16-76
West Virginia: McDowell	Gary, city of	540117B	May 20, 1975, Emerg., Feb. 1, 1985, Reg.; Feb. 1, 1985, Susp., Feb. 28, 1985, Rein.	7-19-74, 6-18-76
Region I				
Maine: York	Limerick, town of	230194B	Feb. 1, 1985, Suspension Withdrawn	1-10-75, 6-15-79
Do	North Berwick, town of	230197C	do	2-21-75, 10-15-76, 7-6-79
Do	Waterboro, town of	230199C	do	2-21-75, 10-15-76, 8-17-79
Massachusetts: Essex	Lynn, city of	250088B	do	6-28-74, 9-17-76
Region II				
New York: Dutchess	Rhinebeck, village of	361999B	do	1-5-84
Region V				
Illinois: LaSalle and Grundy	Seneca, village of	170407B	do	3-15-74, 6-4-76, 4-22-83
Region VII				
Iowa: Blackhawk	Cedar Falls, city of	190017B	do	4-12-74, 9-12-75
Region I				
Connecticut: New London	Lisbon, town of	090172A	Feb. 15, 1985, Suspension Withdrawn	1-31-75
Rhode Island: Newport	Little Compton, town of	440035D	do	7-19-74, 12-24-76, 8-17-81, 10-1-83
Region II				
New Jersey: Hunterdon	Readington, township of	340514B	do	6-28-74, 7-8-77
Region IV				
North Carolina: Onslow	Jacksonville, city of	370178B	do	5-10-74, 5-13-77
Pamlico	Unincorporated areas	370344B	do	10-29-76, 10-1-83
Tennessee: Knox	Farragut, town of	470387A	do	7-23-71, 7-1-74, 3-18-77

State and county	Location	Community	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard areas identified
Region V				
Illinois: Whiteside	Erie, village of	170689D	do	5-3-74, 1-30-76, 12-19-80
Indiana: Knox	Unincorporated areas	180422C	do	3-10-78, 6-22-79
Wisconsin: Sauk	Loganville, village of	550397B	do	9-6-74, 4-9-76
Region VII				
Kansas: Sedgwick	Colwich, city of	200484	do	9-26-75, 7-11-78
Region IX				
California: Santa Cruz	Santa Cruz, city of	060355B	do	3-8-74, 4-23-76
Region X				
Alaska: Bethel Division	Bethel, city of	020104B	do	6-28-74, 3-16-76

Code for reading 4th column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension, Rein.—Reinstatement.
[1]This is a newly incorporated community that was participating in the Regular Program as an unincorporated area of Dare County. The Town has adopted by reference the County's maps for insurance and floodplain management purposes. Dare County's latest effective FIRM date is 10-1-83, Community Number 3753488.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Administrator, Federal Insurance Administration)

Issued: March 8, 1985.

Jeffrey S. Bragg,

Administrator Federal Insurance Administration.

[FR Doc. 85-6062 Filed 3-13-85; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 90 and 94

[PR Docket No. 84-30, RM-4444; FCC 85-84]

Amendment of the Commission's Rules and Regulations to Reserve Frequencies for Emergency Electrical Alarm Protection

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends Parts 90 and 94 of the Commission's Rules to include "grandfathering" provisions for existing licensees on frequencies now allocated for exclusive central station alarm use. It also relaxes the frequency tolerance for remote alarm units operating in the 952–960 MHz band and clarifies rule language concerning allowable antenna height. The action is taken in response to a Petition for Reconsideration filed by the Central Committee on Telecommunications of the American Petroleum Institute.

EFFECTIVE DATE: April 4, 1985.

FOR FURTHER INFORMATION CONTACT: Eugene Thomson, Private Radio Bureau, (202) 634-2443.

SUPPLEMENTARY INFORMATION:

List of Subjects

47 CFR Part 90

Private Land Mobile Radio Services Radio.

47 CFR Part 95

Radio.

Memorandum Opinion and Order (Proceeding Terminated)

In the Matter of Amendment of Part 90 of the Commission's Rules and Regulations to Reserve Frequencies for Emergency Electrical Alarm Protection (PR Docket No. 84-30, RM-4444).

Adopted: February 22, 1985.
Released: February 26, 1985.

By the Commission.

1. On September 26, 1984, the Commission adopted a *Report and Order* in the above matter which allocated four offset frequency pairs at 460/465 MHz for exclusive use by central station electrical alarm companies. [1] Previous to this action, these offset frequencies had been available to alarm companies and other eligibles in the Business Radio Service. The four offset frequencies are located between five primary frequencies that were already allocated for the exclusive use of alarm companies. In the *Report and Order*, the Commission found that compatible operations on both the offset and primary channels would allow for more intensive use of the channels in urban areas. The Central Station Electrical Protection Association (CSEPA) was designated coordinator for these channels. Finally, the Commission declined to make available an exclusive allocation at 900 MHz for central station eligibles.

2. Subsequently, the Central Committee on Telecommunications of the American Petroleum Institute (Central Committee) filed a Petition for Reconsideration requesting the Commission to reconsider the *Report and Order* and indicate that existing licensees on the offset channel would be allowed to remain on them indefinitely. [2] The Central Committee expressed concern that the absence of a "grandfathering" provision in the Rules could cause unnecessary confusion in later years as business radio eligibles licensed on the offset frequencies before the effective date of the *Report and Order* seek renewal of their existing authorizations.

3. We agree with the Central Committee that business radio licensees authorized on the four offset frequencies before the reallocation took effect should be allowed to remain on the channels indefinitely. No party in this proceeding has offered arguments to the contrary. Accordingly, we are revising § 90.75(c)(41) of the Rules, as indicated in the Appendix, to include a "grandfathering" provision for licensees authorized on the four offset frequencies before September 26, 1984.

4. We have also re-examined the technical standards for central station alarm operation at 900 MHz. Central station alarm providers are eligible for 900 MHz authorizations on a shared

[1] *Report and Order*, PR Docket No. 84-30, 49 FR 40177, October 15, 1984.

[2] *Petition for Reconsideration*, PR Docket No. 84-30, filed by the Central Committee on Telecommunications of the American Petroleum Institute on November 14, 1984.

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basis with other eligibles. Radio alarm equipment utilized in a multiple address system and operating near 956 MHz is subject to a frequency tolerance of .00015%.[3] CSEPA pointed out that the .00015% tolerance for a master control station presented no problem, but that the many remote units that would be used by subscribers could not meet this tolerance and still be manufactured economically. Remote units would operate at low power levels and since the principal reason for the tighter frequency tolerance was to prevent harmful interference to other systems, low power units could be permitted a relaxed frequency tolerance.

5. Upon reconsideration, we feel that a less stringent tolerance for low powered remote central station alarm units that are part of multiple address systems operating in the 952–960 MHz band would be in the public interest. A lower tolerance would result in lower equipment costs to the user. Accordingly, we are amending our Rules as listed in the Appendix to permit remote units operating at 2 watts or less, installed as part of a multiple address central station system in the 952–960 MHz band, to operate with a frequency tolerance of 0.0005%.[4]

6. CSEPA in their comments on the Petition for Reconsideration,[5] points out an ambiguity in the Rules as amended in the *Report and Order*. They state that although the Commission removed antenna height restrictions on the 460/465 MHz offset frequencies allocated for use by central stations, it did not state clearly that this antenna height relief was limited to central stations.[6][7]

7. It was our intention to remove the 20 foot above ground restriction on the offset frequencies only when they are used by central station licensees. We felt that in the circumstance where there were alarm stations on both the offsets and the primary channels, that a greater antenna height was possible because the confined geographic area and a single coordinating body could control the likelihood of interference. We agree that the rule as amended may be interpreted to allow any station operating on frequencies subject to the limitation of 90.75(c)(27) to exceed the 20 foot antenna height limitation. We are therefore amending 90.267(a)(6)(ii) to clarify the fact that only central station licensees will be permitted antenna heights greater than 20 feet above gound.

8. Accordingly, it is ordered that, effective April 4, 1985, Part 90 of the Commission's Rules is Amended as shown in the Appendix, pursuant to the authority contained in Sections 4(i) and 303 of the Communications Act of 1934, as amended. It is further ordered that the Petition for Reconsideration in this proceeding is granted to the extent indicated herein and that this proceeding is terminated.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

47 CFR Parts 90 and 94 are amended to read:

PART 90—[AMENDED]

1. A new 90.75(c)(41) is added to read:

§ 90.75 Business Radio Service.

* * * * *

(c) * * *

(41) Stations authorized on this frequency prior to September 26, 1984 will continue to be authorized as licensed on their existing authorization.

* * * * *

2. § 90.267(a)(6)(ii) is revised to read:

§ 90.267 Assignment and use of 12.5 kHz frequency offsets.

(a) * * *

(6) * * *

(ii) Only sea-based stations, and central alarm stations operating on frequencies allocated for central station protection operations, may utilize antennas mounted not more than 7 m. (20 ft.) above the man-made supporting structure, including antenna structures.

* * * * *

3. The table in 90.267(b) entitled "Offset Channels Available in Services Indicated" is amended by revising the limitations on the frequencies 460.9125 and 465.9125 MHz as follows:

§ 90.267 Assignment and use of 12.5 kHz frequency offsets.

* * * * *

(a) * * *

(b) Frequencies available for assignment under this section are as follows:

Offset Channels Available in Services Indicated

* * * * *

460.8875	IB	
460.9125	IB	Listed Central Station Protection Services.
		Limitations: 90.75(c)(27)(41).
460.9375	IB	Do.
460.9625	IB	Listed Central Station Protection Services.
460.9875	IB	Do.
461.0125	IB	Do.

* * * * *

465.8875	IB	
465.9125	IB	Listed Central Station Protection Services.
		Limitations: 90.75(c)(27)(41).
465.9375	IB	Do.
465.9625	IB	Listed Central Station Protection Services.
465.9875	IB	Do.
466.0125	IB	Do.

* * * * *

PART 94—[AMENDED]

4. In the Table in 94.67(a) the tolerance column for the 952–960 MHz band and footnotes 1 and 5 are revised to read:

§ 94.67 Frequency tolerance.

* * * * *

Frequency band (MHz)	Tolerance as percentage of assigned frequency
928–929	0.0005
952–960	(1)(5)

* * * * *

[1] Transmitters authorized prior to January 1, 1981 at remote sites as part of a central protection alarm system are permitted a tolerance of .002%. Such stations may continue to operate as licensed until January 1, 1991.

* * * * *

[5] For point-to-point systems, with channels greater than or equal to 50 kHz bandwidth, .0005; for multiple address point-to-multipoint systems, regardless of bandwidth, .00015; for remote units in central station alarm systems, .0005.

5. The Table in 94.73(a)(1) is amended by adding footnote 8 and its references as follows:

§ 94.73 Power limitations.

* * * * *

[3] 47 CFR 94.67(a).

[4] In a similar matter, the Commission has recently proposed in PR Docket No. 83–1311 that low powered mobile units used for seismic telemetry be allowed to operate with a less stringent frequency tolerance than fixed transmitters in the same frequency range. It stated that 1–5 watt mobile transmitters typically have 20 to 30 dB less power than base stations operating in the same frequency bands, have a smaller transmission duty cycle, and thus have little potential for interference with other operations. See *Notice of Proposed Rule Making*, 49 FR 48950, December 17, 1984.

[5] *Comments*, PR Docket No. 84–30, filed by the Central Station Electrical Protection Association on December 31, 1984.

[6] See § 90.267(a)(6)(ii) and § 90.75(c)(27).

[7] Section 90.75(c)(27) allows use of certain frequencies to be shared in areas of less than 200,000 population by central station alarm and all other Business Radio Service licensees.

Frequency band	Maximum transmit output power (watts)
* * *	* * *
* * *	5
952–960MHz	20 [18]

* * * * *

[8] Remote alarm units that are part of a multiple address central station protection system are authorized a maximum of 2 watts.

[FR Doc. 85–6051 Filed 3–13–85; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Ch. 1

[Federal Acquisition Circular 84–5]

Federal Acquisition Regulation; Correction

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule; correction.

SUMMARY: This document corrects an interim rule implementing the Competition in Contracting Act of 1984 published in the **Federal Register** on Friday, January 11, 1985 (50 FR 1726).

FOR FURTHER INFORMATION CONTACT: Roger M. Schwartz, Director, FAR Secretariat, Room 4041, GS Building, Washington, D.C. 20405, telephone (202) 523–4755.

SUPPLEMENTARY INFORMATION: In FR Doc. 85–806 published Friday, January 11, 1985, make the following correction:

1. On page 1736, in the second column, in 10.001 the third sentence of the definition of "Standards" is corrected to read as follows:

10.001 Definition.

* * * * * *

* * * Standards may be used in specifications, invitations for bids, requests for proposals, and contracts.

* * * * * *

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2453(c).

List of Subjects in 48 CFR Part 10

Government procurement.

Dated: March 8, 1985.

Roger M. Schwartz,

Director, FAR Secretariat.

[FR Doc. 85–6043 Filed 3–13–85; 8:45 am]

BILLING CODE 6820–61–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1048

[Ex Parte No. MC–37 (Sub-No. 36)]

Houston, TX Commercial Zone

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: In response to a petition by the Port of Galveston seeking redefinition and expansion of the Houston, TX, commercial zone, the Commission instituted this proceeding [noticed at 49 FR 11693, March 26, 1984] inviting comments on a proposed supplement to the commercial zone regulations that would provide that the contraction of municipal boundaries would not disturb established commercial zones. The Commission has adopted the proposed supplement.

EFFECTIVE DATE: The new rule will be effective April 15, 1985.

FOR FURTHER INFORMATION CONTACT: Thomas J. Barry, (202) 275–7540
or
Howell I. Sporn, (202) 275–7691

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. Infosystems, Inc., Room 2227, Interstate Commerce Commission, Washington, D.C. 20423, or call 289–4357 (D.C. Metropolitan area) or toll free (800) 424–5403.

Regulatory Flexibility Analysis

We affirm our preliminary conclusion that adoption of the proposed rule will not have a significant economic impact on a substantial number of small entities. The sole purpose of the rule is to maintain the *status quo* of commercial zones so as to ensure that changes in political boundary lines do not disturb commercial shipping patterns or competitive relationships.

Energy and Environment

This action will not significantly affect either the quality of the human environment or conservation of energy resources.

Adoption of Rule

We adopt the rule set forth in the appendix to this decision. This rule will be codified in the Code of Federal Regulations, Title 49, Part 1048, § 1048.102, as new paragraph (c).

The action in this proceeding is taken pursuant to 49 U.S.C. 10321 and 10526, and 5 U.S.C. 553.

List of Subjects in 49 CFR Part 1048

Motor carriers, Commercial zones.

Decided: March 1, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley, and Strenio.

James H. Bayne,

Secretary.

PART 1048—[AMENDED]

Title 49 of the Code of Federal Regulations, Part 1048, is amended by adding a new paragraph (c) to § 1048.102 to read as follows:

§ 1048.102 Controlling distances and population data.

* * * * * *

(c) Contraction of municipal boundaries will not alter the size of commercial zones.

[FR Doc. 85–6111 Filed 3–13–85; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 671

[Docket No. 41154–4154]

Tanner Crab off Alaska; Season Closure

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of season closure.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that a fishery closure is necessary to protect Tanner crab stocks in the South Peninsula and Chignik Districts of Registration Area J. The Secretary of Commerce (Secretary) therefore issues this notice closing fishing for Tanner crab in those districts by vessels of the United States. This action is intended as a management measure to conserve Tanner crab stocks.

DATES: This notice is effective 12:00 noon, Alaska Standard Time (AST), March 10, 1985. Public comments on this notice of closure are invited until March 25, 1985.

ADDRESSES: Comments should be sent to Robert W. McVey, Director, Alaska

Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802. During the 15-day comment period, the data on which this notice is based will be available for public inspection during business hours (8:00 a.m. to 4:30 p.m. AST, weekdays) at: (1) The NMFS Kodiak Field Office, Gibson Cove, Kodiak, Alaska, and (2) the NMFS Alaska Regional Office, Federal Building, Room 453, 709 West Ninth St., Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Raymond E. Baglin (Fishery Management Biologist, Kodiak Field Office, NMFS), 907–486–3298.

SUPPLEMENTARY INFORMATION:

Background

The Fishery Management Plan for the Commercial Tanner Crab Fishery off the Coast of Alaska (FMP), which governs this fishery in the fishery conservation zone under the Magnuson Fishery Conservation and Management Act (Magnuson Act), provides for inseason adjustments of season and area openings and closures. Implementing rules at § 671.27(b) specify that notices of these adjustments will be issued by the Secretary under criteria set out in that section.

Section 671.26(f) establishes six districts within Registration Area J in order to prevent overfishing of individual Tanner crab stocks by allowing closure or partial closure of a particular district when the desired harvest level is reached. For the South Peninsula, the preseason desired harvest level was based on historical catch data because adequate survey data were not available; for the Chignik District the level was based on a trawl index survey. The 1985 fishing season for these districts began on January 15. Reasons for the closures in these districts follow:

South Peninsula District. A portion of the South Peninsula District was closed on February 13, 1985 (50 FR 6954, February 19, 1985). Historical catch data indicated that 550,000 pounds of crabs would be available in the remainder of the South Peninsula District open to Tanner crab fishing. Twenty-three vessels have delivered approximately 180,500 pounds of crabs through February 28, 1985. The catch of crabs has declined from an average of about 11 to 4 crabs per pot in this area. Reports of soft shell and molting crabs have been received. The reduced catch indicates that crabs are not available in sufficient numbers to harvest 550,000 pounds. Additional fishing effort on molting crabs which must be discarded will cause additional mortality and wastage of the resource. The remainder of the South Peninsula District therefore will close to Tanner crab fishing at 12:00 noon, AST, on March 10, 1985.

Chignik District. The population estimate of legal-size crabs from a trawl survey indicated an allowable harvest of 400,000 pounds during the 1985 commercial fishing season. Fourteen vessels have landed 256,382 pounds of Tanner crabs from this district since the season opened on January 15, 1985. Initial catch rates of 13 crabs per pot in January have declined to less than 5 crabs per pot in most areas. All productive areas of the district have been fished to some extent. Fishery performance and sample data indicate that the 400,000-pound guideline is excessive. Therefore, the Chignik District will close to Tanner crab fishing at 12:00 noon, AST, on March 10, 1985, at which time approximately 325,000 pounds will have been landed.

In light of this information, the Regional Director, in accordance with § 671.27(b), has determined that:

1. actual conditions of Tanner crab stocks in the above sections are substantially different from conditions anticipated at the beginning of the fishing year; and

2. these differences reasonably support the need to protect those Tanner crab stocks by closing the remainder of the South Peninsula District as defined in § 671.26(f)(1)(ii) and the Chignik District as defined in § 671.26(f)(1)(iii). These districts are therefore closed to all fishing for Tanner crabs from 12:00 noon, AST, March 10, 1985, until 12:00 noon, ADT, May 15, 1985, at which time the closures of these districts prescribed in § 671.26(f)(2) (ii) and (iii) will begin.

This closure is effective after this notice is filed for public inspection with the Office of the Federal Register and the closure is publicized for 48 hours through procedures of the Alaska Department of Fish and Game, under § 671.27(a)(2). Public comments on this notice of closure may be submitted to the Regional Director at the address stated above the 15 days immediately following the effective date. If comments are received, the necessity of this closure will be reconsidered and a subsequent notice will be published in the **Federal Register**, either confirming this notice's continued effect, modifying it, or rescinding it.

Other Matters

Tanner crab stocks in the above sections will be subject to damage by overfishing unless these closures take effect promptly. The Agency therefore finds for good cause that advance opportunity for public comment on this notice is contrary to the public interest, and that no delay should occur in its effective date.

This action is taken under the authority of § 671.27, and complies with Executive Order 12291. It is not subject to the requirements of the Regulatory Flexibility Act. It does not contain any collection of information request, as defined in the Paperwork Reduction Act.

List of Subjects in 50 CFR Part 671

Fisheries.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 8, 1985.

William G. Gordon,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 85–6024 Filed 3–11–85; 9:32 am]

BILLING CODE 3510-22-M

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50 CFR Part 672

[Docket No. 41162–4162]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency interim rule.

SUMMARY: An emergency rule is in effect through March 11, 1985, concerning the amount of Pacific halibut caught incidentally in the domestic groundfish fishery being conducted in the Gulf of Alaska. The Secretary of Commerce (Secretary) is extending this rule because of the emergency conditions still exist. The extension is necessary to avoid underutilization of the groundfish resources known to be available and is intended to promote full achievement of the desired harvest level of certain groundfish species.

EFFECTIVE DATES: March 11, 1985, through May 31, 1985.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg (Fishery Management Biologist, NMFS), 907–586–7230.

SUPPLEMENTARY INFORMATION: The Secretary published an emergency rule in the **Federal Register** (49 FR 48049, December 10, 1984) that increased the incidental catch limits of Pacific halibut to 270 metric tons (mt) and 768 mt in the Western and Central Regulatory Areas of the Gulf of Alaska, respectively. The reasons for these increases and the issues involved are explained in the preamble to that rule. If either of these amounts is taken, the area would be closed to bottom trawling, and domestic trawlers would be restricted to the use of off-bottom gear only. The conditions inducing the initial promulgation of the emergency rule still exist. The Council has expressed its agreement that the

emergency regulations should remain in effect through May, and the Secretary extends the rule in its entirety through May 31, 1985.

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that extension of this emergency rule is necessary to respond to an emergency situation and that this extension is consistent with the Magnuson Fishery Conservation and Management Act and other applicable law. It will avoid the adverse consequences in the groundfish fisheries described in the preamble to the original emergency rule.

The emergency rule is exempt from the normal review procedures of Executive Order 12291 as provided in section 8(a)(1) of that order. The rule was reported to the Director of the Office of Management and Budget.

List of Subjects in 50 CFR Part 672

Fish, Fisheries, Reporting and recordkeeping requirements.

Dated: March 8, 1985.

William G. Gordon,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

PART 672—GROUNDFISH OF THE GULF OF ALASKA

For the reasons set out in the preamble, the emergency rule at 49 FR 48049 (December 10, 1984) is effective until May 31, 1985, in its entirety. Accordingly, Part 672 is amended as follows:

1. The authority citation for Part 672 reads as follows:

Authority: 16 U.S.C. 1801 *et seq.*

§ 672.20 [Amended]

2. In § 672.20 paragraph (e)(1) continues in suspension and paragraph (e)(3) is extended through May 31, 1985.

[FR Doc. 85-6022 Filed 3-11-85 9:46 am]

BILLING CODE 3510-22-M

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Proposed Rules

Federal Register
Vol. 50, No. 50
Thursday, March 14, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 53 and 54

Standards for Grades of Carcass Beef and Standards for Grades of Slaughter Cattle

AGENCY: Agricultural Marketing Service (AMS), USDA.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On November 8, 1984, the Agricultural Marketing Service (AMS) published a proposal to amend the official U.S. standards for grades of beef carcasses and the related standards for grades of slaughter cattle by eliminating the consideration of kidney, pelvic, and heart (KPH) fat in the determination of yield grade AMS is extending the comment period to May 1, 1985, because an industry organization requested additional time to carefully evaluate the proposed rule and the impact it could have on the industry.

DATE: Comments must be received on or before May 1, 1985.

ADDRESS: Written comments to: Standardization and Review Branch, Livestock and Seed Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2649, South Building, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Dr. Michael L. May, Chief, Standardization and Review Branch, Livestock and Seed Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447–4486.

SUPPLEMENTARY INFORMATION: On November 8, 1984, AMS published a proposed rule in the **Federal Register** (49 FR 44724) to amend the beef carcass (7 CFR Part 54) and slaughter cattle (7 CFR Part 53) standards by eliminating the consideration of KPH fat in the determination of yield grade. The comment period was originally scheduled to end on February 1, 1985. Upon request of an industry trade organization, the original comment period was extended to March 15, 1985, in the January 15, 1985, issue of the **Federal Register** (50 FR 2055). An additional extension of the comment period has been requested by another industry trade organization in order to more carefully evaluate the proposed rule and the impact it could have on the industry. AMS has determined that there is sufficient justification for further extending the comment period until May 1, 1985.

Done at Washington, D.C., on: March 11, 1985.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 85–6131 Filed 3–13–85; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 1030

[Docket No. AO–361–A22]

Milk in the Chicago Regional Marketing Area; Decision and Termination of Proceeding on Proposed Amendments to Marketing Agreement and to Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Termination of proceeding.

SUMMARY: This decision denies a proposal by dairy farmer cooperative associations to require minimum shipments to pool distributing plants from pool reserve supply plants through February 1985. The decision concludes that fluid milk handlers are obtaining adequate supplies of milk for Class I use without the proposed change. The order accompanying the decision terminates the proceedings in this matter.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, Dairy Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C. 20250, (202) 447–4829.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

Prior documents in this proceeding:

Notice of Hearing: Issued October 11, 1984; published October 15, 1984 (49 FR 40183).

Recommended Decision: Issued December 12, 1984; published December 18, 1984 (49 FR 49099).

Correction to Recommended Decision: Published January 3, 1985 (50 FR 280).

Preliminary Statement

A public hearing was held upon proposed amendments to the marketing agreement and the order regulating the handling of milk in the Chicago Regional marketing area. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice (7 CFR Part 900), at Arlington Heights, Illinois, on October 18 and 19, 1984. Notice of such hearing was issued on October 11, 1984 and published October 15, 1984 (49 FR 40183).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Acting Administrator, on December 12, 1984, filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. In this regard, it is noted that this decision provides for no change in the current provisions of the Chicago Regional order.

The material issues, findings and conclusions, rulings, and general findings of the recommended decision are hereby approved and adopted and are set forth in full herein.

Thirteen paragraphs comprising a discussion of the exceptions received are added at the end of issue No. 1.

The material issues on the record of the hearing relate to:

1. Temporary shipping requirements for reserve supply plants.

2. Whether emergency marketing conditions exist in the Chicago Regional marketing area that warrant the omission of a recommended decision and the opportunity to file written exceptions thereto.

Findings and Conclusions

The following findings and conclusions on the material issues are

based on evidence presented at the hearing and the record thereof:

1. Temporary Shipping Requirements for Reserve Supply Plants

The order should not be amended to require that reserve supply plants make minimum shipments of milk to pool distributing plants through February 1985. The order now provides that each reserve supply plant must ship to a pool distributing plant one tank truck load (at least 47,000 pounds) of milk anytime during the months of September through December in order to be a pool plant for the month of December. Otherwise, no shipments are required under the order unless the market administrator issues a "call." If a call is issued, reserve supply plants then would have to ship milk to distributing plants to comply with the call, or give up status as a pool plant. Order amendments providing for pool reserve supply plants and the related "call" provisions became effective September 1, 1984.

The order also provides that a handler may elect to pool a supply plant by shipping a specified percentage of the plant's milk receipts to distributing plants each month. In September, the first month that these new provisions were in operation, handlers pooled 104 plants as pool reserve supply plants and only 14 plants as regular supply plants.

Three dairy farmer cooperative associations proposed that the Chicago Regional order be amended to require minimum shipments by reserve supply plants. As proposed, handlers that operate reserve supply plants would have to ship to pool distributing plants five percent of each such reserve supply plant's receipts of Grade A milk, or four tanker loads (minimum of 47,000 pounds each) of milk, whichever was greater, each month through February 1985. Under the cooperatives' proposal, a handler could form a unit comprised of reserve supply plants owned and operated by the handler. Also, the Director of the Dairy Division would be given authority to raise or lower the temporary shipping requirements by up to five percentage points to obtain needed shipments of milk or to avoid unnecessary shipments.

Proponents' Presentation

The proposal to require a minimum shipment from reserve supply plants was submitted by Associated Milk Producers, Inc. (AMPI), Consolidated Badger Cooperative, and Wisconsin Dairies Cooperative. Seven other cooperatives added their support to the proposal. The seven supporting cooperatives are Alto Cooperative Creamery; Lake to Lake, Division of Land O'Lakes, Inc.; Outagamie Producers Cooperative; Manitowoc Milk Producers Cooperative; Mid-West Dairymen's Company, Milwaukee Cooperative Milk Producers; and Golden Guernsey Dairy Cooperative. All ten cooperatives are members of the Central Milk Producers Cooperative (CMPC), a group consisting of 14 cooperatives who collectively price milk that they sell to handlers and were jointly represented. Alto, Lake to Lake, Outagamie and Wisconsin Dairies, collectively known as Chicagoland Dairy Sales, Inc., were additionally represented by a second spokesman. Manitowoc, Mid-West Dairymen's and Milwaukee Milk Producers, which together comprise the Lakeshore Federated Dairy Cooperative, also were additionally represented by a second spokesman.

The proposal also was supported by representatives from Dean Foods Company and Hawthorn-Mellody, Inc.

The 12 handlers in total account for 48 of the 144 pool plants on the Chicago Regional milk order, with 33 percent of the order's reserve supply plants, 43 percent of the supply plants, and 31 percent of the distributing plants. The CMPC cooperatives represent 81 percent of the order's producers.

The following paragraphs summarize the testimony offered by witnesses for the above mentioned parties in support of the proposals:

1. The Milk Diversion Program (MDP), which will expire on March 31, 1985, has caused production to decline. The MDP involves 2,446 Order 30 producers. In September 1984, average daily delivery per producer was down 39 pounds (2 percent) under Order 30 from the previous year, and producer milk pooled under Order 30 was down 17.55 million pounds (1.6 percent). This downward movement in production is expected to continue and accelerate due to yet unfilled MDP contracts. However, production is expected to increase as it has traditionally after the end of February. It was noted that over the past six years, production of milk in March has averaged 121.1 million pounds greater than February production.

The cooperatives noted also that a corollary of the MDP has been the increased shipments from areas of surplus to deficit areas. Order 30 handlers' shipments to other Federal order areas in September 1984 amounted to 18,910,895 pounds, 72 percent greater than such shipments a year earlier. It was projected that as production increases in the spring in these other areas, these shipments should no longer be required. Thus, the amendments proposed would be needed only for a temporary period.

2. The bulk of the shipments from reserve supply plants has come from too few handlers, according to proponents, who noted that in September 1984, 69 of the 104 reserve supply plants pooled that month shipped less than five percent of their producer milk receipts to Order 30 distributing plants. Shipments from these 69 reserve supply plants totaled 5,258,837 pounds, or only four percent of the total shipments made by all 104 reserve supply plants to Order 30 distributing plants. These 69 reserve supply plants pooled 45 percent of the total milk pooled that month; yet 41 of the plants did not ship any milk to Order 30 distributing plants.

AMPI pointed out that its facilities pooled 11 percent of the total milk pooled, and shipped 59,743,618 pounds to fluid handlers (48 percent of the total reserve supply plant shipments) during September 1984. These shipments represented more than 49 percent of AMPI's total receipts and over 80 percent of its milk in receiving stations. Reserve supply plants operated by the Chicagoland group shipped at least the supply plant shipping percentage (23 percent) in September and it is anticipated that shipments from its reserve supply plants during the five month period of October through February will be in excess of the supply plant shipping requirement.

The cooperatives that are shipping believe that they cannot meet any additional demands made of them because increased tanker orders from the fluid handlers would force the close-down of some surplus outlets operated by the cooperatives. AMPI, in an effort to make more milk available, ceased operations in September at two manufacturing plants. It was noted that when operations are halted, fixed costs still must be paid.

3. Fluid handlers have not been able to obtain all of the milk they ordered. Due to the decline in producer milk, the cooperatives have not been able to meet the orders of distributing plants. From September 2 through October 13, AMPI said it had not been able to supply an average of 75 loads per week (19 percent of the orders by fluid handlers), totaling approximately 14.1 million pounds per month. Hawthorn-Mellody said that it was not able to obtain all the milk it ordered in September and came up 102 loads short, approximately 4.8 million pounds.

AMPI testified that its inability to fill orders is greatest in the middle of the week. For example, during the first week of September a total of 59 orders were not filled Tuesday through Thursday; yet a total of only ten loads were not filled

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on Friday and Saturday. The previous Sunday, all orders were filled. It was pointed out that without tanker shipments to supplement Mid-West Dairymen's regular shipments of producer milk to the Muller-Pinehurst bottling plant, the plant's normal five-day bottling program would be disrupted. Moreover, union wage demands of time-and-a-half at night and double-time on Saturday and Sunday make weekend production cost inefficient.

4. All producers in the entire market share in the higher prices paid for Class I milk use, and to a lesser extent Class II use, through the pooling system; therefore, every plant that these producers ship to should have a minimal obligation to share in the overall supply needs of the market. The proponents pointed out that Class I utilization, and to a lesser extent Class II utilization, add value above the basic Minnesota-Wisconsin price, which when divided by Grade A pounds pooled raises the blend price. Thus, all reserve supply plants share in the pool whether they ship or not. As an example, in September reserve supply plants in Zone 7 drew 21.4 cents per hundredweight from the pool on Class III use to help pay producers. At the same time, Class I use at plants in Zone 7 contributed 79 cents per hundredweight to the total value of the pool.

It was maintained that shipments totaling five percent of each reserve supply plant's producer receipts per month would be sufficient to deal with the shortage. If such a requirement had been in place during September, an additional 18.8 million pounds would have been shipped to distributing plants from those 69 reserve supply plants that shipped less than five percent of their producer receipts.

The proponents stated the view that the minimum level of shipments for any plant should be four loads of not less than 47,000 pounds each. However, they acknowledged that there were 33 reserve supply plants that ha[illegible] total monthly producer milk receipts of 3.76 million pounds or less. Even though four loads would represent more than 5 percent of such a plant's receipts, this was held to be the minimum satisfactory level of shipments.

5. The current call provision is inadequate. The Order 30 call provision in reality applies only to the four distributing plants that have 90 percent or greater Class I utilization. Twenty-two other distributing plants do not meet the 90 percent qualification and thus are excluded from asking for a call when fluid milk is needed. Accordingly, those who favored the proposal maintained that "fluid needs" should include both Class I and Class II needs, because Class I handlers must offer their customers a full line of products. A full product line, in addition to fluid products, would include cottage cheese, yogurt, and sour cream. (There was some contention whether or not ice cream and condensed milk should be included.) It was claimed that all of these products require Grade A milk. Hawthorn-Mellody noted that it has not been able to obtain a sufficient volume for Class II products; and as a result, has lost customers.

Supporters of the proposal pointed out that neighboring markets' supply plant performance standards require Grade A milk to be transferred to pool distributing plants without knowledge of the use made of such milk. Several examples were noted as follows: The Southern Michigan milk order requires shipments of 30 percent of receipts during October through March; The Ohio Valley and Indiana milk orders require shipments of 50 percent during September through February. The Iowa milk order requires shipments of 35 percent during September through November and 20 percent during December through August.

6. Some supporters contended that each plant should have the right to utilize its direct-shipped milk receipts any way it wishes, as long as something is given to the market. Thus, it was their view that Class I operators should be able to use thier direct-shipped milk in any class product, and then require reserve supply plants to ship milk to them. Similarly, Class I handlers should not be required to use all of their Class II milk in Class I before they can expect reserve supply plants to ship milk to the market. This, the view that, as a matter of equity, all of the handlers should actively participate in the pool by either contributing funds for others to share (as in the case of Class I and Class II handlers) or making minimal shipments (as should be required of Class III manufacturers). Thus, no plants would be able to draw the blend price without participating one way or another in supplying the market's fluid needs.

7. Pool handlers maintained that to pay a higher price (relative to current prices) for supplies of milk to meet their Class II needs would put them at a competitive disadvantage with competing nearby markets. They indicated that Class II manufacturers have been competing intensely for milk supplies due to a healthy market for cheese. During the first week of October, it was noted, Commodity Credit Corporation (CCC) purchases decreased 90.1 percent from those made during the corresponding week in 1983. The pool handlers pointed out that, to maintain their milk supplies, operators of cheese facilities have been offering premiums to their producers. In order for fluid handlers to purchase spot or supplemental loads of milk for Class II uses, they have been paying up $1.50 per hundredweight, plus transportation, above the Class II price due to competition for supplies from cheese plants.

8. Sham lease operations should not be allowed to be included in a handler's unit. Legitimate leasing arrangements may be included in units. The proponents believe that units may be formed by handlers who own and operate two or more reserve supply plants. They also held that units may be formed by handlers who lease two or more reserve supply plants provided that the leasee: (1) Is the responsible person who pays producers, (2) has the plant's Board of Health permit to operate in his/her name, and (3) pays the employees who reload the milk or perform duties at the leased facility. They favored formation of units by handlers who both own and operate reserve supply plants and legitimately lease reserve supply plants.

Sham leases would be prohibited from being part of a unit. Proponents described a sham lease as one formed when a regulated handler leases a receiving room from a reserve supply plant at a nominal contractual rate of one dollar per year; and thus, the reserve supply plant becomes part of the handler's unit. The reserve supply plant in such a situation is able to retain most or all of its milk for manufacture without losing its pool plant status. They testified that the regulated handler may request shipments from the plant when needed, and is paid a fee per hundredweight from the manufacturing plant on milk received at the leased facility.

9. The lack of reserve supply plant shipping requirements will lead to chaotic conditions in the market. The proponents stated that without a five percent shipment from all reserve supply plants, distributing plant operators will seek milk from other sources to supplement the shipments from normal supply channels when these shipments are short. Handlers will raid other plants of their producers by offering higher premiums, and thus disrupt existing routes in direct producer procurement, in proponents view.

Opponents' Presentation

The proposal was opposed by the Farmers Union Milk Marketing

Cooperative, the National Farmers Organization (NFO), Marigold Foods, Inc., Kolb-Lena Cheese, Universal Foods, the Trade Association of Proprietary Plants (TAPP), Wisconsin Cheese Makers Association (WCMA), and Kraft, Inc.

Farmers Union is an association of more than 7,100 producers in five Mid-Western states. In September 1984, Farmers Union members supplied 12 percent of the milk marketed under the Chicago Regional milk order.

NFO leases 10 reserve supply plants throughout the Order 30 market.

Marigold Foods owns a distributing plant in Kewaskum, Wisconsin.

Klob-Lena Cheese, located in Lena, Illinois, is a reserve supply plant that manufactures cheese. Its Grade A receipts per month are approximately 1.3 million pounds.

Universal Foods has an association with Cedarburg Dairy, Inc., a supply plant located in Cedarburg, Wisconsin. Both are members of TAPP.

TAPP is a group of operators of 30 plants which mainly manufacture cheese. TAPP also has one bottling plant member. Of the 30 plants, 28 are located in Wisconsin and two in Illinois. Fourteen of the Wisconsin members operate reserve supply plants and one Wisconsin member is a supply plant. The remaining plants are qualified through other supply plants.

WCMA represents 135 Wisconsin plants and eight Illinois plants purported to be affected by adoption of the proposal.

Kraft operates six reserve supply plants fully regulated under the Chicago Regional order.

These groups opposed the proposal on the following bases:

1. It was alleged by opponents to the proposal that there is no urgent need for additional milk for Class I use under Order 30. They pointed to the fact that in September 1984, twenty-three percent of producer milk receipts were used in Class I, which is equal to the Class I percentage of a year earlier; and that in total pounds Class I producer milk has declined 11.3 million pounds from a year earlier.

2. Another issue raised by the opponents was that under the current order provisions, reserve supply plants are only obligated to supply the Class I needs of handlers. Thus, according to the new rules, which were implemented on September 1, 1984, those plants that selected reserve supply status must ship at least one tank truck load (not less than 47,000 pounds) of Grade A fluid milk products to a pool distributing plant during any month of September through December of the same year, and must comply with any announcement by the market administrator calling for a minimum level of shipments which may not exceed twice the Class I utilization percentage for the same month in the previous year.

Therefore, it was stated that shipments made in excess of the order's requirement are made by choice. Cooperatives choose to develop a producer milk supply designated for Class I use, and manufacturing facilities choose to designate their milk for Class III use.

In addition, it was alleged that CMPC payments do not encourage small shipments made on a spot basis. Small shipments, those under five percent of a handler's producer receipts, receive the basic handling charge of 34–50 cents per hundredweight. No additional superpool payments are made on such shipments.

3. A further point made by opponents to the proposal was that all distributing plants were able to obtain enough milk for Class I uses. The witnesses for Marigold Foods, Dean Foods, and Hawthorn-Mellody testified that they were able to adequately supply their customers with Class I products. In addition, no call for Class I was issued. However, it was alleged that if any orders went unfilled, then they were for Class II use, which is not provided for under the Federal order provisions.

4. The opponents stated that requiring shipments for Class II entails a change in policy which up to this point only assured adequate supplies of Grade A milk for Class I purposes. The call provision only applies when Class I supplies are needed. Furthermore, the Class II differential is not high enough for this class of product to be given priority over Class III, as evidenced in September 1984, when the Class II differential was zero. Also, cheese plants are paying up to $2.25 per hundredweight over the Class III price for spot loads of milk, and not want to release their regular supplies only to have to replace them at such a price.

5. One more point made by the opponents was that milk should move because of price incentives, not because of order requirements. It was alleged that forced shipments of milk to meet Class II needs reduces competitive forces. The shipping requirements would force an additional 18.8 million pounds of milk to be shipped (if shipments from reserve supply plants to Order 30 distributing plants approximate those made during September 1984), which must be physically received by distributing plants or the shipping handlers would lose pool plant status. Consequently, it was suggested that the glut of milk will reduce the returns that producers receive relative to what they would receive if prices were allowed to allocate resources.

Furthermore, milk is available for Class II use if handlers are willing to pay the competitive price.

Also pointed out was that with regulatory requirements to move milk, some Class I handlers may receive supplies beyond their needs and sell back those supplies to manufacturers at a profit.

6. Lastly, some opponents to the proposal said the leasing arrangements must be included in units if the proposal is adopted. They alleged that to require each reserve supply plant to ship milk would be a return to inefficient movements of milk. Also, to allow only units consisting of fully owned and operated reserve supply plants would ignore many reserve supply plants not protected by such arrangements and would create market inequities.

Discussion of the Issues

This testimony indicates that under current conditions in this market strong competition exists for milk supplies not needed to meet the demand for Class I (fluid, or bottled) uses. These competing uses are the so-called "soft" products generally associated with bottling plants (Class II milk) and the "hard" products, primarily butter, nonfat dry milk, and cheese (Class III milk), but mostly cheese. Some handlers that produce soft products have ordered tanker loads of milk from certain cooperatives that the cooperatives have not provided. It must be noted here that a supply of milk for such Class II uses will not be required under the call provisions that went into effect on September 1.

The handlers that want the order to require shipments of milk for all the uses that they view as total fluid demand (Class I and most Class II uses) argue that they must provide a full line of ship products in order to service and maintain their fluid milk customer accounts. If the order will not require such supplies to be made available, then those handlers' alternatives include soliciting additional supplies of producer milk, or paying higher prices to entice the milk away from other users of Class II or III milk. Handlers are concerned that if the price that will attract milk gets too high, they will be unable to compete for sales with handlers that make these soft products under other federal orders.

On the other hand, the operators of some pool reserve supply plants (which include many cheese plants) are unwilling to ship milk to distributing plants for Class II uses. They can utilize

the milk in their own operations or in another plant that they supply with milk. Apparently, commercial outlets for cheese plants are currently taking virtually all of the output from such plants. As a result, cheese plant operators are reluctant to give up their milk supplies to other plants for Class II use. In fact, some of the proponents of the proposal under consideration (who operate reserve supply plants) as well as a distributing plant operator supporting the proposal's adoption, control supplies of milk that are either being sold for fluid use in other markets, or used in manufacturing uses.

Some cheese plants have paid prices above the order's minimum Class I price for spot loads of milk. The costs of replacement supplies, keeping customers' orders filled, and maintaining customer accounts are factors involved when cheese plant operators decide whether to make milk available for Class II uses, and the price level at which those supplies will be available. In the short run, some cheese plant operators may not give up any of their milk supplies at any price.

The proponents maintain that pool reserve supply plants have an obligation to ship milk to meet fluid milk handlers' Class II needs, because these handlers' contributions to the pooled value of milk provide the monies that reserve supply plants draw from the pool to help pay their producers a competitive price.

The reserve supply plant operators, on the other hand, claim that their obligation is to supply only the Class I needs of fluid handlers. They contend that these needs are being met, and that if more milk is needed, then the call provision should be used.

There is no evidence in the record of this proceeding that indicates a shortage of milk for Class I needs. The market administrator received one request to initiate a call in September, but the request subsequently was withdrawn. To the extent that handlers' orders for tanker milk have not been filled, it is the Class II uses that have been curtailed, if they have been curtailed. The record shows that some handlers have obtained supplies from other sources when their orders for milk from cooperatives went unfilled. Moreover, a witness for one handler testified that his Class I plant had no real problems in obtaining sufficient milk for Class I uses. Another handler witness indicated that no attempt had been made to obtain milk from other sources after being informed that some of his orders for tanker milk would not be filled.

Data provided in exhibits indicate that Class I use of producer milk in September 1984 was about four percent below a year earlier. Part of this decline was due to the recent closing of two plants and the shift to plants regulated under other federal orders of Class I sales previously distributed from those closed plants. Thus, the demand for Class I milk (based on only one months' data) is down, but increasing seasonally. September's Class I use of producer milk was about 6.8 percent above that for August on a daily average basis. In September 1983, daily average use of Class I producer milk was 9.7 percent above the average for August. In 1982, the August to September change was 10.7 percent. Total Class I producer milk during January through September 1984 was about two percent below the same period of 1983.

Class II use of producer milk, which usually declines seasonally in the fall, averaged 10 percent less on a daily basis in September than in August 1984. However, producer milk assigned to Class II uses during January through September 1984 was about two percent above the same period in 1983.

Meanwhile, total producer milk receipts also declined about 2.5 percent (daily average basis) from August to September. In 1983, producer milk receipts averaged about four percent less in September than in August. During the first nine months of 1984 total producer milk receipts were about one percent less than during the same months in 1983, on a daily average basis.

These data on Class I and II producer milk use and total producer milk receipts indicate that there has not been, so far, any really substantial change in the supply-use relationships in the market. The changes show, for example, a percentage decline in Class I use in September about twice the percentage decline in total producer milk, compared to a year ago. Thus, despite the claims of proponents, there has been no substantial change in the supply-demand picture for milk in this market. Any such changes have been minimal and seasonal changes are about what would normally be expected.

The question in this proceeding is whether the order will require milk to be shipped to distributing plants for Class II uses? The answer, based on this proceeding, must be that such shipments will not be required. The record shows that handlers want and expect cooperatives to supply producer milk for their Class II operations. And, although not documented, testimony at the hearing indicates that some uses of Class II milk in the Chicago order area require the use of Grade A milk. Nevertheless, the order does not currently provide that supply plants or reserve supply plants must ship milk to handlers for Class II use.

There are compelling reasons why the proposed action should not be taken. One of these is that the Class II milk price was not designed to induce dairy farmers to produce milk for Class II uses.[1] Rather, although the Class II price differential reflects some additional value over Class III uses, it nevertheless is fixed at a level intended to help assure that the market is cleared of milk not needed for Class I uses. The Class II differential also was intended to be not so high as to induce handlers to substitute other source milk and dairy products for producer milk in making Class II products. Although the Class II price for some time was fixed at 10 cents per hundredweight above the Class III price for each month, the price difference now can vary from zero to more than 10 cents per hundredweight due to actions taken later to provide a form of advanced notice of Class II prices to handlers.[2] During the period of October 1983 through September 1984, the Class II milk price averaged 12 cents per hundredweight above the Class III milk price.

In contrast, the Class I milk price differential is $1.26 per hundredweight in Zone 1 (Chicago). Again, due to advanced determination of the Class I price, the difference between the Class I price and the Class III price for the given month may not be exactly $1.26. However, for the 12 months from October 1983 through September 1984, the Class I price did average $1.26 per hundredweight above the Class III price. That level of price differential is set for the purpose of achieving a blend price that will assure the market of adequate supplies of milk. The Class I price adds generally about 30 cents per hundredweight to the basic value of the pooled milk. By contrast, the uniform price typically is only about two cents per hundredweight higher due to the higher price for Class II milk.

Moreover, while the order will assure an adequate supply for Class I use, it also provides adjustments to reflect the location value of Class I milk and producer milk in each zone. However, no such adjustments are provided for Class II milk. Thus, the order's pricing

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[1] Official notice is taken of the Assistant Secretary's final decision, issued February 19, 1974, on proposed amendments to seven Federal milk marketing orders, including the Chicago Regional order (39 FR 8202).

[2] Official notice is taken of the final order amending 29 Federal orders, including the Chicago Regional order, issued August 25, 1981, by the Assistant Secretary, effective on September 1, 1981 (46 FR 43377).

mechanism does not reflect the cost to handlers for shipping milk to a plant for Class II use. For this reason also, the order should not require the operator of a reserve supply plant to ship milk to bottling plants for Class II use.

There was testimony that competitive problems would result if prices outside the order's pricing mechanism rose high enough to attract milk for Class II uses. However, this argument must carry limited weight on the basis of factual evidence contained in the record. The record is deficient in this regard in two critical areas: (1) The record does not disclose the actual prices being paid by handlers to obtain Class II milk in nearby or adjacent orders; and further, (2) There is no evidence that plant operators in nearby or adjacent markets have the capacity to provide the Class II milk needs of consumers in the Chicago Regional order marketing area. Absent such information, it is not possible to conclude that if handlers must pay a price which reflects the competitive value of Class II milk vs. Class III milk in this market, that it will in fact result in any substantial loss of Class II sales to other orders or unregulated handlers. Even if it did, it could be interpreted that if the Class II needs of the Chicago marketing area can be met with a lower cost supply of milk from elsewhere, then perhaps it should be.

Another point argued was that in other nearby markets, the supply plant pool performance standards require milk to be moved to distributing plants without any consideration of the use made of such milk. While this is a true statement, it nevertheless is not the whole story. Those provisions in the Southern Michigan, Ohio Valley, Indiana, Iowa, and Central Illinois orders require supply plant shipments that are either equal to or less than the basic Class I performance standards that distributing plants must meet to gain pool plant status in those orders. Such provisions should not be interpreted as requiring supply plants to ship milk to distributing plants for Class II use. Nevertheless, such provisions do not provide as direct a tie between Class I needs and supply plant shipping requirements as was indicated for application of the Chicago order's "call" provision.

The cooperatives that requested the hearing also are concerned about equity of performance in supplying the fluid handlers' needs. As noted earlier, AMPI, in September, shipped nearly one half of the supply of milk received at its plants to distributing plants. Others have also shipped substantial percentages of their supplies. At the same time, there were 41 pool reserve supply plants that did not ship any milk to pool distributing plants during September. There were another 28 plants that shipped less than five percent of their receipts. The proponent cooperatives contend that under current supply conditions, any reserve supply plant that has shipped less than five percent of its receipts has not done its fair share to supply the Class I and Class II needs of fluid milk handlers.

Equity of performance with respect to supplying the Class II needs of handlers is not an issue within the current purview of the order. Those cooperatives or other plant operators that agree to ship milk to a bottling plant for Class II uses do so at their own initiative. Presumably, a decision to ship such milk is based on whether or not it is economically feasible to make those shipments. However, the order does not impose any obligation to ship milk for Class II uses.

Moreover, adoption of the proposal could have a negative impact on returns to producers. Requiring more milk to move to distributing plants via a shipping requirement could lessen the ability of cooperatives to obtain over-order prices for the milk so shipped. Also, a shipping requirement could result in a cooperative having to forego the opportunity to produce a profitable manufactured product on a portion of its milk supply, or to be unable to supply milk to another market at a higher price. In either case, the order would not require a higher price for the milk shipped for Class II uses. This is in sharp contrast to the Class I price differential and location adjustment provisions, which are intended to reflect the costs associated with moving milk to the market for Class I uses. It would not be appropriate to change the order as proposed if the end result is to lower returns to producers.

The testimony of the proponents uses the terminology "fluid demand" to mean the milk ordered and used by a fluid handler in a distributing plant. Proponents also seek to define "associated fluid milk products" to mean cottage cheese, ice cream, sour cream, and other cultured products, all of which are Class II uses of milk. Thus, the desired application would be that a distributing plant's "fluid demand" would be comprised of the milk needed for Class I uses plus some of the milk needed for Class II uses. Milk used to produce bulk condensed milk, which is Class II if it is not used in a Class III product, would not be included in the suggested associated fluid milk products category.

The discussion of "fluid demand" and "associated fluid milk products" is essentially irrelevant to the proposals in this proceeding. The order does not recognize these concepts and such a radical change in approach would not seem to be appropriate for a problem for which only a temporary provision is requested. Another problem is that no evidence was presented that would allow a determination of how much additional milk would be needed by distributing plants to cover the uses specified. Also, there is no indication about the quantities of such products made in pool plants vs. nonpool plants. In short, the basic question of whether supply plants whould be required to supply Class II milk to distributors is not resolved by a discussion of what constitutes fluid demand by distributing plants.

The record indicates that the problem of unfilled orders for tanker milk is greater on some days than on other days. If there is any connection between this issue and the need for milk to meet Class I uses, it is probably in this regard. Because bottling plants are unable to obtain all the milk they want on certain days of the week, there has been, and may continue to be for some unspecified period of time, a need for such plants to receive and process milk on days that they would prefer not to operate. Such situations add to costs due to overtime considerations, etc.

There is no assurance that the proposed changes would completely resolve this concern, unless reserve supply plant operators were specifically required by the order to ship milk on certain days. The likelihood that some handlers may have to receive and process milk on days other than their preferred schedule will probably continue so long as the demand for Grade A milk for Class III uses remains as strong as it apparently is at this time.

It should be noted here also that adoption of the proposed shipping requirement (which is a minimal requirement) would not necessarily guarantee that any more milk would actually be shipped to fluid milk plants. Such a requirement would likely result in plants shipping milk that did not do so in September. However, there are two resons why it does not necessarily follow that a minimal shipping requirement will bring forth as much milk as proponents envision.

One reason is that plants that have been shipping more than five percent could choose to ship only the minimum amount required. For example, in September there were 41 reserve supply plants that shipped no milk. Those that

did ship, however, shipped a combined total equal to 21 percent of their total receipts (about 124 million pounds of milk) to pool distributing plants. If each reserve supply plant had shipped only five percent of its receipts, the total shipments to distributing plants would have been only 46 million pounds. At a five percent rate, the plants that shipped less than five percent in September would have shipped about 24 million pounds rather than the 5.2 million pounds that they actually shipped. If a minimum shipping percentage were imposed, and the other plants cut back on their shipments, then the end result could be short of the shipments level the proponents are seeking. Whether such a situation would actually occur is purely a matter of speculation. However, nothing in the order or in the proposed changes would prevent any plant that shipped more than five percent in September from shipping a smaller percentage in the future.

Another possibility is that a reserve supply plant operator would decide to forego pool status for one or more plants. One reserve supply plant operator testified that under the current market situation, the imposition of even a minimal shipping requirement could result in a decision to choose nonpool plant status. The witness indicated that such a move would not jeopardize the plant's ability to keep a Grade A supply of milk sufficient to maintain operation. Obviously, any plant withdrawn from pool status would not have to ship any milk. The record does not reveal how many other plant operators might have the same view.

The fact that reserve supply plant operators may consider dropping out of the pool a viable option to shipping milk demonstrates the dilemma that the market faces. Obviously, if milk shipments are forced, there is more than enough milk produced in the area to supply the Class I and Class II needs of the market. Otherwise, the competitive pressures are so strong that milk will not be moved for Class II uses unless the pricing structure that exists outside the order makes it economically feasible.

It is not possible, on the basis of this proceeding, to amend the order to make it economically feasible for reserve supply plants to ship milk to distributing plants for Class II uses. Therefore, the conclusion is that the proposed shipping requirements should not be adopted.

Statements present at the hearing, and also in briefs, maintained that adoption of the proposal would represent a major policy change and urged that such a decision not be based on an emergency hearing as was held in this proceeding. As has been stated already, the proposal is denied. Therefore no further comment about policy is needed.

Two aspects of the proposal have not yet been addressed. One would have provided the Director of the Dairy Division the authority to temporarily adjust by up to five percentage points the shipping requirments that were proposed. The other feature of the proposal would have allowed a handler to form a unit comprised of pool reserve supply plants owned and operated by the handler, if located in the area specified in defining reserve supply plants. Since the proposal to require minimal shipments by reserve supply plants is denied herein, there is no need to give further consideration to these related provisions of the proposals.

Discussion of Exceptions

Dean Foods Company took exception to the finding in the recommended decision that there is no shortage of milk for Class I needs in the Chicago milk marketing area. The exception concedes that the facts in the record corroborate this finding when considered on a monthly basis according to the definitions and guidelines set forth in the preceding decision to amend the order. However, the exception notes that fluid customers demand milk on specific days according to daily requirements, which may be for fluid milk or cream products. Consequently, according to the exception, on specific days the fluid handlers may be short of milk for Class I use because some of their milk supplies are committed to Class II products.

The issue addressed in the proceeding concerned mandatory shipments for Class I usage. The fact that Dean's exception conceded that there were sufficient receipts of milk at distributing plants to meet Class I needs confirms rather than diminishes the Department's finding in the recommended decision. Accordingly, the exception is denied.

Dean also took exception to the Department's finding that there has not been any really substantial change in the supply-use relationship in the market. The exception agreed that the volume of milk has not changed since last year; however, the exception argues that the sources of milk for Class I and II uses have changed, causing the price for milk supplies to increase. The exception further claims that due to the competition from outside milk in the Chicago marketing area, all increased milk costs have been absorbed by the the fluid handlers.

The order provisions implemented on September 1, 1984, eliminated mandatory shipments from supply plants qualifying for reserve supply plant status so that market inefficiencies could be eliminated. Thus, it is not surprising that there have been some changes in the sources of milk for fluid handlers. The recommended decision was merely noting that Class I use still represents about the same percentage of producer milk supplies as before the changes effective September 1, 1984. Currently, only if the Class I needs are unfilled will action be taken to obtain additional shipments of milk. Shipments for Class II needs are not included and should not be included for the reasons spelled out in the recommended decision. In connection with the issue of outside competition, this also was addressed in the recommended decision. Therefore, the exception is denied.

Dean also took exception to the finding that there was a lack of evidence concerning the price being paid by handlers to obtain Class II milk in the surrounding milk marketing areas, and in essence turning the whole record of the hearing to the Class II issue and not to the issue of supplying the market. Dean suggested that the Secretary check with market administrator offices for the needed information. Dean's exception included November 1984 data on Class II over-order charges to support its position. Such data cannot be accepted at this stage of the proceeding. Further, it must be noted that the proponent(s), not the Secretary, bears the burden of proof at the time of the hearing. Accordingly, the exception is denied.

Another Dean exception was to the finding that the shipping percentages in other Federal orders are less than or equal to the performance standards for pool distributing plants. Dean maintained that any shipment made in other orders, no matter how the milk was ultimately used, was a qualifying shipment. Dean added that the shipping percentage proposed would call for minimal amounts to be shipped so that all could qualify. Dean's exception raises no points that were not already considered in reaching the conclusions on this issue. Consequently, the exception is denied.

Dean also took exception to the finding that equity of performance may not be within the current purview of the order. The exception argued that equity became an issue when the Secretary removed the shipping requirement for (reserve) supply plants. Dean's exception maintained that equity is nonexistent when one group of plants provides a majority of the market with milk while all plants draw from the pool on an equal basis. Again, the exception alludes to the issue of Class II shipments. Also, an exception filed by

Central Milk Producers Cooperative (CMPC) expressed concern that the recommended decision had treated the question of equity too lightly.

As the recommended decision explained, the hearing in this proceeding was called on short notice on the basis that an emergency situation existed with regard to obtaining adequate supplies of milk for fluid handlers. A temporary shipping requirement was proposed, although the Dean Foods representative did propose at the hearing that the shipping requirement should be a permanent change. As noted in the recommended decision, major changes in the order had been in effect less than two months when this proceeding was initiated. The preceding action did deal extensively with the questions of equity and efficiency. The market had hardly had time to adjust to the new pooling provisions for supply plants. If there is a need, and there may be, to further consider the equity of performance/efficiency/pool benefits relationship, it will have to be considered in another proceeding. Accordingly, these exceptions are denied.

The Dean exception also alleged that the Secretary is involved in preserving superpool premium prices. The exception stated that since the removal of provisions requiring shipments from supply plants pooled under the Chicago milk order, the only factor moving milk has been the superpool. Dean concluded that if the superpool moves milk, then a milk order may not be necessary.

The current order provides for the movement of milk for Class I purposes if a need arises. Any shipping requirements imposed at this time would force milk from Class III uses to Class II uses at no advantage to producers for the reasons already stated in the recommended decision. This matter was thoroughly reviewed in the recommended decision. Consequently, the exception is denied.

Another exception by Dean was to the Department's finding that shipping requirements would not solve the basic problem of fluid handlers, which is receiving an adequate supply of Grade A milk on the specific days it is needed in order to coincide with consumer and union demands. Dean holds the view that if each supply plant and reserve supply plant had a minimum shipping requirement, then sufficient milk would be available each day of the week. As stated in the recommended decision, requiring minimal shipments from all reserve supply plants without stipulating the day of shipment would not necessarily assure delivery of milk on the days it was needed, and would not assure that adequate volumes would be shipped. The exception provides no basis to change this conclusion and is therefore, denied.

Finally, Dean took exception to the finding that should a shipping requirement be placed back into the order, then some reserve supply plants may forego pool status. Dean stated that those plants that provide the milk to the plants that build the blend price would benefit from such a reduction of non-shippers because the blend would increase. Perhaps. However, as stated in the recommended decision, plants that withdraw from pool status would no longer be required to ship any milk. It cannot be anticipated how many plants would choose such action; and thus, predictions as to how much milk wold move, via the requirement, cannot be made. Accordingly, this exception also is denied.

CMPC took exception to what was perceived as a finding that fluid handlers do not require milk for Class II uses. We think that the recommended decision was misinterpreted in that regard. The record clearly shows (and the recommended decision so stated) that fluid handlers want milk for Class II uses. But recognition of that fact does not command a conslusion that the order should force a supply of milk to move from other non-fluid milk uses to the fluid handlers for Class II uses absent a pricing mechanism in the order that recognizes the costs involved. The Consideration of the issue in the recommended decision is affirmed and the exception is denied.

2. Whether Emergency Marketing Conditions Exist in the Chicago Regional Marketing Area That Warrant the Omission of a Recommended Decision and the Opportunity To File Written Exceptions Thereto

The proponents of the proposals considered at the hearing, and others that testified in favor of the proposals, urged the Secretary to omit a recommnended decision and the opportunity to file written exceptions. This action was needed, they claimed, to facilitate amending the order as quickly as possible so that more milk would be required to move to pool distributing plants.

The recommended decision concluded that the proposed amendments should not be adopted. Accordingly, it was appropriate to afford the opportunity to file written exceptions to the decision.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision. It is noted here that several briefs contained data or other information not adduced on the record at the hearing. As required by 7 CFR 900.9((b), all such information was disregarded in reaching this recommended decision.

Rulings on Exceptions

In arriving at the findings and conclusions, each of the exceptions received was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conslusions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Termination order

In view of the foregoing, it is hereby determined that the proceeding with respect to proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Chicago Regional marketing area should be and is hereby terminated.

List of Subjects in 7 CFR Part 1030

Milk marketing orders, Milk, Dairy Products.

(Sec. 1–19, 48 Stat. 31, as amended, 7 U.S.C. 601–674)

Signed at Washington, D.C. on March 7, 1985.

Karen Darling,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 85–6056 Filed 3–13–85; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 225 and 277

[Docket Nos. RM80–8–001; RM80–8–002; Rm80–8–003; RM80–8–004; RM80–8–005]

Bona Fide Offers; Right of First Refusal; Request for Additional Comments

Issued: March 11, 1985.

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AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of Request for Additional Comments.

SUMMARY: The Federal Energy Regulatory Commission is requesting additional comments on issues raised by petitions for rehearing, reconsideation, and clarification of Order No. 95. In that order, the Commission adopted regulations which implement section 315(b) of the Natural Gas Policy Act of 1978. That section requires sellers of certain natural gas, before selling the gas to a third party, to (1) make a bona fide offer to the original purchaser to continue to sell the gas and (2) allow the original purchaser an opportunity to match the offer of a third party. The Commission requests additional comments primarily to obtain the views of interested parties concerning whether and how recent changes in the natural gas market, including the January 1, 1985, price-deregulation of section 102(c) and some section 103(c) gas, should affect the Commission's disposition of the issues raised on rehearing.

The Commission will accept comments on all issues raised by the petitions for rehearing, reconsideration, and clarification of Order No. 95.

DATE: Comments must be received on or before April 15, 1985.

ADDRESS: Comments should be addressed to Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, and should refer to Docket Nos. RM80–8–001 through RM80–8–005. An original and 14 exact copies of all comments should be filed.

FOR FURTHER INFORMATION CONTACT: Richard Howe, Jr., Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357–8270.

SUPPLMENTARY INFORMATION:

I. Introduction

The Federal Energy Regulatory Commission (Commission) is requesting additional comments on issues raised by applications to rehear Order No. 95.[1] The final rule adopted by that order implemented section 315(b) of the Natural Gas Policy Act of 1978 (NGPA).[2] That section requires a seller of certain categories of natural gas, for which the existing contract expires, (1) to make a bona fide offer to the original purchaser to continue to sell that gas and, (2) if the bona fide offer is rejected, to extend to the purchaser the right of first refusal of the gas on the basis of a third party offer. The three petitions for rehearing, one petition for reconsideration, and one petition for clarification raise numerous issues concerning Order No. 95. The Commission is requesting additional comments primarily in order to obtain the views of interested parties concerning whether and how recent changes in the natural gas market, including the January 1, 1985, price-deregulation of section 102(c) and some section 103(c) gas, should affect our disposition of the issues raised on rehearing.

II. Background

Section 315(b) of the NGPA modifies the effect of the removal of certain gas from Natural Gas Act (NGA) jurisdiction by NGPA section 601(a)(1)(B). The gas so removed is gas committed or dedicated to interstate commerce on November 8, 1978, which is also (1) high-cost natural gas as defined in NGPA section 107(c)(1)–(4), (2) new natural gas as defined in NGPA section 102(c), or (3) natural gas produced from any new, onshore production well as defined in NGPA section 103(c). Without section 601(a)(1)(B), the seller of such gas would be required to continue to make sales to the original purchaser, even after a contract expires, until the Commission authorized abandonment of service under section 7(b) of the NGA.[3]

Section 315(b), by giving the original purchaser of gas removed from NGA jurisdiction the right to accept a bona fide offer from the seller or to match the terms of a third party offer, provided a substitute form of protection.

In Order No. 95, the Commission established Part 277 of its regulations in order to implement section 315(b). Section 277.205 of Part 277 requires a seller of gas covered by NGPA section 315(b) to make a bona fide offer to the original purchaser for the continued sale of gas.[4] The bona fide offer shall not be make more than 18 months or less than 20 days before the expiration of the subject contract.[5] The purchaser may accept or reject the bona fide offer. If the purchaser accepts the bona fide offer, the seller has no further obligations to the purchaser under section 315(b).

If, however, the purchaser rejects the bona fide offer, § 277.206 requires the seller to extend to the purchaser a right of first refusal of such natural gas before the seller may sell the gas to a third party. The right of first refusal gives the original purchaser the right to match the terms of a third party's offer to purchase the natural gas. The third party offer must be sufficiently firm that a binding contract between the seller and third party will result if the original purchaser rejects the offer.[6] The third party offer also must have been made in an "arms-length transaction," which the final rule defined as excluding transactions between affiliates of family members.[7] The original purchaser may accept the third party offer but determine to receive the gas at the delivery point and under the physical conditions of delivery in its original contract even though the offer contains other terms.[8] However, if the original purchaser in its acceptance alters any terms of the offer other than its delivery terms, he is deemed to have rejected the offer. Once the gas is sold to a third party pursuant to an offer rejected by the original purchaser, the seller has no further obligation under section 315(b) to the original purchaser.

III. Issues on Rehearing

The applications for rehearing, reconsideration and clarification raise a number of issues. Some applicants contend that the final rule misinterpreted section 315(b) as requiring that both a bona fide offer and an opportunity to reject a third party offer be given in all instances. They contend that only a right of first refusal need be given when an existing contract expires. The applicants also contend

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[1] Bona Fide Offers: Right of First Refusal, 45 FR 53,116 (Aug. 11, 1980) (Order No. 95) (codified at 18 CFR 277.201–10).

[2] 15 U.S.C. 3375 (1982).

[3] 15 U.S.C. 717f (1982). *See* Sunray Mid-Continent Oil Co. v. FPC, 364 U.S. 137 (1960). Under the NGA, neither producer nor pipeline may cease deliveries to their respective customers without complying with section 7. California v. Southland Royalty Co., 436 U.S. 519, 527 (1978). The NGA service obligation does not extend, however, to production and gathering activities. Shell Oil Co. v. FERC, 566 F.2d 536 (5th Cir. 1978).

[4] Section 277.203(c) defines bona fide offer, to mean, in part, a "written offer by the seller to the original purchaser which would be legal for such purchaser to accept under the Natural Gas Act . . ." This language is from the NGPA Conference Report. H.R. Rep. No. 1752, 95th Cong., 2d Sess. 111, *reprinted in* 1978 U.S. Code Cong. & Ad. News 8983, 9027. In Order No. 95, the Commission stated that this wording applied to bona fide offers the legal restrictions of § 154.93 of the Commission's NGA rules (18 CFR 154.93 (1984)). That section invalidates indefinite price escalation clauses, such as most favored nation clauses.

[5] If an NGPA well detemination is made less than 45 days before contract expiration, the bona fide offer shall not be made later than 20 days after that determination.

[6] 18 CFR 277.203(e) and 277.206(a) (1984).

[7] 18 CFR 277.203(b) and 277.206(a) (1984).

[8] 18 CFR 277.206(d) (1984).

that the Commission erred in holding that the provisions in the definition of bona fide offer that the offer be legal for such purchaser to accept under the NGA applies to bona fide offers the legal restrictions in § 154.93 of the Commission's NGA rules. The applicants contend that this holding improperly imposes what is effectively NGA regulation on sales of gas which NGPA section 601(a)(1)(B) remove from NGA sales jurisdiction.

The applicants also attack a number of the specific procedural requirements in the regulations adopted by Order No. 95. Some applicants contend that the requirement that a bona fide offer be made not later than 20 days before expiration of the contract or, if an NGPA well determination is made less than 45 days before contract expiration, not later than 20 days after that determination should be eliminated. The applicants argue that the Commission has no statutory authority to impose deadlines on making a bona fide offer. Also, the final rule provided that the seller continue deliveries until the later of contract expiration or rejection of a bona fide offer. In situations when this provision required deliveries to be continued after expiration of the contract, the final rule provides that the deliveries be made under the terms and conditions in effect on the last day of the expired contract.[9] Some applicants contend that this provision unlawfully limits the price payable after expiration of the contract to a price less than the otherwise applicable maximum lawful or deregulated price.

The applicants attack the final rule's provisions concerning third party offers on a number of grounds. Some contend that the final rule requires that the third party offer include too complete an agreement concerning the terms of a contract between the seller and third party and improperly prohibits third party offers from affiliates. Some applicants contend that the final rule improperly provides that a seller is not released from its section 315(b) obligation to give the original purchaser a right of first refusal until the seller has actually sold natural gas to a third party purchaser under terms rejected by the original purchaser. The applicants believe that a seller's obligation should terminate at the time the original purchaser rejects a third party offer. Finally, some applicants contend that the final rule improperly allows the original purchaser to alter the provisions in the third party offer concerning the place and physical conditions of delivery and provides insufficient compensation to the seller when such changes are made. The applicants argue that the provisions for the original purchaser to alter delivery terms unjustifiably abridges the contracting process by overriding the seller's ability to negotiate such non-price terms of the contract as delivery, treating, conditioning, and compression.

One party has filed an application for clarification. It requests that the Commission clarify that the requirements (1) that bona fide offers be made no more than 18 months before expiration of a contract and (2) that the original purchaser may not waive its bona fide offer and right of first refusal rights more than one year before expiration of a contract do not apply to implied contracts. Such contracts, for purposes of Part 277, arise upon expiration of a contract for the sale of gas subject to the NGA. The party also requests that the Commission clarify that a purchaser's exercise of its rights under a "market-out" or similar clause [10] constitutes an expiration or termination of the contract for purposes of triggering the purchaser's rights under section 315(b).

IV. Request for Comment

The Commission has reviewed the issues raised in the petitions for rehearing, reconsideration, and clarification, and it requests comments concerning how recent changes in the natural gas market, including the January 1, 1985, price-deregulation of certain categories of gas, affect those issues. In particular, the Commission seeks comments addressing the following specific issues.

A. Delivery Terms Under an Accepted Third Party Offer (§ 277.206(d))

As previously stated, the final rule provided the original purchaser may alter the delivery terms of a third party offer so as to receive the gas at the delivery point and under the physical conditions of delivery in the original contract even though the offer contains other terms (§ 277.206(d)). If the original purchaser exercises this option, the seller may apply to the Commission for compensation for increased costs incurred under the new contract provided that any maximum lawful price is not exceeded. The Commission believes that these provisions should be re-examined in light of recent developments in the gas market, including the January 1, 1985, deregulation of section 102(c) and some section 103(c) gas. That deregulation, combined with the July 1, 1979, price-deregulation of section 107(c)(1) through (4) gas, means that all gas subject to section 315(b), except certain section 103(c), gas is now price-deregulated.

Allowing the original purchaser to hold the seller to the original delivery conditions may deprive the seller of his right to negotiate such contract terms and therefore may prevent market conditions from fully affecting the transaction. Accordingly, it is arguable that giving the original purchaser the right to alter the delivery terms of a third party offer is inconsistent with deregulation. The Commission seeks comments on this issue. Also, comments may address the question whether, even if § 277.206(d) is inconsistent with deregulation, such inconsistency is justified in order to give the original purchaser a meaningful right of first refusal under section 315(b) of the NGPA.

Deregulation also raises questions concerning the ability of the Commission to provide the seller with compensation for increased costs incurred as a result of the original purchaser's altering the delivery terms of the third party offer. Any compensation that the Commission granted could be viewed as a regulated add-on to a deregulated price. Commenters may address the question whether in a deregulated environment there is any sound economic basis on which to compensate a seller for its increased costs. In Order No. 406 the Commission held that allowances for production-related costs under section 110 of the NGPA are not available for deregulated gas. The Commission stated, "It makes little economic sense to keep one component of the price of gas subject to a ceiling while deregulating another component." [11] Does the Commission's general reasoning in Order No. 406 also apply in the present context? Or are there methods of granting a seller compensation for its increased costs which would avoid the difficulty of essentially giving the seller a regulated add-on to a deregulated price? If so, what are those methods? What increased costs should the seller be permitted to recover, and how should the Commission determine those costs? Is there a generic method to determine

[9] 18 CFR 277.207 (1984).

[10] Under such a clause a purchaser may release the seller from any further obligation to deliver all or a portion of the gas.

[11] Deregulation and Other Pricing Changes on January 1, 1985, under the Natural Gas Policy Act, 49 FR 46874, 46882 (Nov. 29, 1984); 49 FR 50637 (Dec. 31, 1984) (Order denying rehearing in part, granting rehearing in part, denying stay and making technical corrections).

such costs, or must the costs be determined on a case-by-case basis? Commenters may also address the question whether, if there is no appropriate method to grant a seller compensation for its increased costs, it would be equitable to allow the original purchaser to alter delivery terms.

The Commission originally adopted § 277.208(d) in order to remove potential physical obstacles to the original purchaser's acceptance of the third party offer. It stated that the third party offer might contain delivery terms under which the original purchaser could not take the gas. The Commission was concerned that in such circumstances not allowing the original purchaser to alter the delivery terms could render his right of first refusal meaningless. The Commission seeks comments on how serious this problem is in today's market. The Commission understands that, in many cases, the original purchaser is taking the gas under the only delivery terms which are practicable given the physical configuration of the seller's system because the original purchaser's system is already connected to the seller's, often at the wellhead. In such cases the terms of delivery in the third party offer must be the same as those in the original contract, and the original purchaser need not alter those terms in order to accept the third party offer. The Commission seeks information as to how common this situation is. Is this the situation in most instances where third party offers are made pursuant to section 315(b)?

Even in those cases where the original purchaser cannot take the gas directly under the terms of the third party offer, it may be possible for it to negotiate with another party to deliver the gas to it under the necessary conditions. Do such transactions offer a realistic means in most cases of allowing the original purchaser to accept a third party offer even though it cannot physically take the gas directly under the delivery terms of that offer? Finally, given the current surplus in the gas market, would a purchaser be significantly harmed if he were unable to accept a third party offer because of its delivery terms? Is it reasonable to conclude that in today's market the purchaser should be able to obtain any necessary gas elsewhere?

To summarize, the Commission seeks comments concerning (1) whether permitting the original purchaser unilaterally to change delivery terms is consistent with deregulation, (2) whether in a deregulated environment there is a sound economic basis on which to compensate sellers for increased costs resulting from changed delivery terms, and (3) whether as a general matter original purchasers need the right to alter delivery terms in order to have a meaningful right of first refusal.

B. Terms Legal Under the Natural Gas Act

Some applicants contend that the final rule improperly reimposes NGA jurisdiction on gas subject to section 315(b) by its interpretation of certain language in the definition of bona fide offer. Section 277.203(c), using conference report language,[12] defines bona fide offer as an offer to the original purchaser "which would be legal for such purchaser to accept under the Natural Gas Act." Order No. 95 stated that this provision applied to bona fide offers the legal restrictions in § 154.93 of the Commission's NGA rules (§ 154.93), invalidating indefinite price escalation clauses. In 1981, the court in *Pennzoil v. FERC*[13] held that the Commission cannot apply § 154.93 to existing interstate contracts for the sale of committed or dedicated gas subject to NGPA sections 102(c), 103(c), or 107(c)(1)–(4) because section 601(a)(1)(B) removed that gas from NGA jurisdiction. The Commission requests comments as to whether the same principle applies to new contracts covering gas removed from NGA jurisdiction—the contracts governed by the provisions of section 315(b). Also, commenters may discuss the issue whether prohibiting indefinite price escalators in bona fide offers would be inconsistent with the current price-deregulation of section 102(c) and 107(c)(1)(4) and some section 103 gas.

C. Implied Contracts and Voluntary Releases

The December 14, 1984, petition for clarification raises two new issues not raised in the earlier petitions for rehearing and reconsideration. First, the petition requests that the Commission clarify that a purchaser's exercise of its rights under a "market out" clause should be treated as an expiration of the contract for purposes of triggering the purchaser's rights under section 315(b). The petition states that otherwise a seller could only seek an alternate purchaser for the period between the release and final expiration of the contract since at that time the purchaser would be entitled to its rights under section 315(b).

The Commission has tentatively concluded that it cannot state that a purchaser's exercise of its rights under a "market out" clause necessarily constitutes a termination of the contract. In some cases a purchaser may release the seller from its obligation to deliver gas only for a part of the remaining term of the contract and then later recommence taking gas under a contract. In such a case, the purchaser's exercise of its rights under a "market out" clause should not terminate the contract. Nevertheless, it may be possible to satisfy the concern about a seller's ability to find an alternate purchaser for gas when a purchaser exercises a "market out" clause so as to release the seller from his obligation to deliver any gas for the entire remaining term of the contract by treating such an exercise of a "market out" clause as a waiver by the purchaser of its section 315(b) rights.

The purpose of section 315(b) is to provide a mechanism to protect the continued access of the original purchaser to sufficient gas supplies. It may make little economic sense to grant a purchaser a right to receive section 315(b) rights when it has determined it no longer requires the gas in question. The Commission requests comments as to whether this is an appropriate method to deal with the concern raised by the petition for clarification or what other methods there may be for dealing with that concern.

Commenters may also address the petition for clarification's second contention that the requirements (1) that bona fide offers be made no more than eighteen months before expiration of a contract and (2) that the original purchaser may not waive its bona fide offer and right of first refusal rights more than one year before contract expiration do not apply to implied contracts.

D. New Tight Formation Gas and Section 315(b)

Paragraph (1) of section 315(b) provides that that section applies to new natural gas under section 102(c), gas from new onshore, production wells under section 103(c), and high cost gas under section 107(c)(1)–(4) which was committed or dedicated to interstate commerce on November 8, 1978. Paragraph (1) does not make section 315(b) applicable to section 107(c)(5) gas, including new tight formation gas. However, in the Commission's recent rulemaking implementing the January 1, 1985, deregulation of section 102(c) and some section 103 gas (as well as other

[12] H.R. Rep. No. 1752, 95th Cong., 2d Sess. 111, *reprinted in* 1978 U.S. Cod. Cong. & Ad. News 8983, 9027.

[13] 645 F. 2d 360, 381 (5th Cir. 1981), *cert. denied*, 454 U.S. 1142 (1982).

types of gas),[14] the Commission observed that a determination that gas is new tight formation gas includes gas which qualifies either as section 102 or section 103(c) gas. This is because in order to qualify as new tight formation gas a producer must file the same information, in addition to other information, that would be filed to qualify as section 102 or section 103(c) gas.[15]

The Commission concluded that in order to qualify as new tight formation gas under section 107(c)(5), the gas must meet section 102 or section 103 qualification requirements as a threshold to obtaining a section 107(c)(5) determination. This meant that new tight formation gas was price-deregulated since the applications for determination of such gas as new tight formation gas contained the data and met the requirements for section 102(c) or the appropriate section 103 gas. The Commission seeks comment as to whether the same principle should apply in the context of section 315(b) so that when applications for determinations that gas is new tight formation gas contain the data and meet the requirements for section 102(c) or 103(c), that gas should be considered section 102(c) or 103(c) gas for purposes of section 315(b).

While the primary thrust of this notice for additional comments is to request comments on the four topics discussed above, the Commission is willing to consider additional comments on any of the other issues raised by the petitions for rehearing, reconsideration, and clarification.

IV. Comment Procedures

Interested persons are invited to submit written comments, data, views or arguments with respect to the issues raised in this request. Comments should be submitted to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol St., NE., Washington, DC 20426. An original and 14 exact copies should be filed. All comments received on or before April 15, 1985, will be considered by the Commission. Comments should indicate the name, title, mailing address, and telephone number of the persons to whom communications concerning the request may be addressed. Comments should reference Docket Nos. RM80–8–001 through RM80–8–005 on the outside of the envelope and all documents submitted to the Commission. Written comments will be placed in the Commission's public files and will be available for public inspection at the Commission's Office of Public Information, Room 1000, 825 North Capitol St., NE., Washington, D.C. 20426 during regular business hours.

[14] Deregulation and other Pricing Changes on January 1, 1985, Under the Natural Gas Policy Act, 49 FR 46874 (Nov. 29, 1984) (Order No. 406); 49 FR 50637 (Dec. 31, 1984) (Order denying rehearing in part, granting rehearing in part, denying stay and making technical corrections).

[15] 18 CFR 274.205(e)(1)(i)(A) or (B) and 271.703(b)(2) (1984).

List of Subjects

18 CFR Part 225

Preservation of records of natural gas companies.

18 CFR Part 277

Continental shelf, Narual gas, Wage and price controls.

(Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Executive Order 12009, 3 CFR 142 (1978); Natural Gas Policy Act, 15 U.S.C. 3301–3432 (1982); Natural Gas Act, 15 U.S.C. 717–717w (1982); Federal Power Act, 16 U.S.C. 792–828c (1982))

In consideration of the foregoing, the Commission requests additional comments on issues raised by the petitions for rehearing, reconsideration, and clarification of Order No. 95.

By the direction of the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–6120 Filed 3–13–85; 8:45 am]

BILLING CODE 6717–01–M

RAILROAD RETIREMENT BOARD

20 CFR Part 200

Regulation To Provide for General and Specific Exemptions for Systems of Records Under the Privacy Act

AGENCY: Railroad Retirement Board.

ACTION: Proposed rule.

SUMMARY: The Railroad Retirement Board (Board) proposes to amend § 200.4 of its regulations, which implement the Privacy Act, to provide for general and specific exemptions to certain provisions of the Privacy Act, and to exempt a new proposed system of records, RRB–44, Investigation Files, from those requirements of the Privacy Act consistent with the specific exemption provision of the act at 5 U.S.C. 552a(k)(2).

DATE: Comments must be submitted on or before May 13, 1985.

ADDRESS: Send written comments to Beatrice Ezerski, Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: LeRoy Blommaert, Privacy Act Officer, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751–4548 (FTS 387–4548).

SUPPLEMENTARY INFORMATION: The Railroad Retirement Board proposes to exempt, under the specific exemption provisions of 5 U.S.C. 552a(k)(2), the following proposed RRB records system: RRB–43, Investigation records, maintained by the Bureau of Audit and Investigation. (See notice of this proposed system of records published elsewhere in this issue of the **Federal Register**.) In addition, the Board proposes to add a paragraph to the same section of its regulations to address the possible future exemption of this proposed system of records (and others) under the general exemption provisions of 5 U.S.C. 552a(j)(2).

The Board has determined that this is not a major rule for purposes of Executive Order 12291. Therefore, no Regulatory Impact Analysis is required.

List of Subjects in 20 CFR Part 200:

Railroad retirement, railroad unemployment insurance, Privacy.

PART 200—[AMENDED]

Title 20 CFR, Chapter II, is proposed to be amended by redesignating paragraphs (f) through (n) as paragraphs (h) through (p) and adding new paragraphs (f) and (g) to § 200.4 to read as follows:

§ 200.4 Protection of privacy of records maintained on individuals.

* * * * *

(f) *General exemptions.* No Agency records system or systems as such are exempted from the provisions of 5 U.S.C. 552a as permitted under certain conditions by 5 U.S.C. 552a(j) except as may be designated by rules promulgated by the Railroad Retirement Board and published in the **Federal Register** as required.

(g) *Specific exemptions*—(1) *Systems of records subject to investigatory material exemption under 5 U.S.C. 552a(k)(2).* RRB–43, Investigation Files, a system containing information concerning alleged violations of law, regulation, or rule pertinent to the administration of programs by the RRB or alleging misconduct or conflict of interest on the part of RRB employees in the discharge of their official duties.

(2) *Privacy Act provisions from which exempt.* The system of records described in this paragraph is exempt from subsections (c)(3) (Accounting of Certain Disclosures), (d) (Access to Records), (e)(1), 4G, H, and I (Agency

Requirements), and (f) (Agency Rules) of 5 U.S.C. 552a.

(3) *Reasons for exemptions.* The system of records described in this section is exempt for one or more of the following reasons:

(i) To prevent the subject of the investigations from frustrating the investigatory process.

(ii) To protect investigatory material complied for law enforcement purposes.

(iii) To fulfill commitments made to protect the confidentiality of sources and to maintain access to necessary sources of information.

(iv) To prevent interference with law enforcement proceedings.

* * * * *

Dated: March 8, 1985.

By authority of the Board.

For the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 85-6097 Filed 3-13-85; 8:45 am]

BILLING CODE 7905-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 97

[DOD Directive 5405.xx]

Release of Official Information in Litigation and Testimony by Department of Defense Personnel as Witnesses

ACTION: Proposed rule.

SUMMARY: This proposed rule established policies, practices, responsibilities and procedures for the release of official DoD information in litigation and for the appearance of and testimony by DoD personnel as witnesses during litigation. This rule is procedural in nature. Although not required to do so, the Department of Defense is voluntarily publishing this matter for public comment.

DATE: Written comments must be received by April 15, 1985.

ADDRESS: Assistant General Counsel for Legal Counsel, Office of the Secretary of Defense, Department of Defense, Room 3E988, The Pentagon, Washington, DC 20301-1600.

FOR FURTHER INFORMATION CONTACT: Ms. Kathleen A. Buck, telephone (202) 697-2714.

SUPPLEMENTARY INFORMATION: This rule does not impose a burden under the Paperwork Reproduction Act of 1980, 44 U.S.C. 3501 *et seq.*

This rule is not subject to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

Although exempt under section 1.(a)(2) of E.O. 12291, the Department of Defense does not consider this rule to be a major rule under section 1.(b), E.O. 12291.

List of Subjects in 32 CFR Part 97

Courts, Government employees, Law.

Accordingly, 32 CFR is amended by adding a new Part 97 reading as follows:

PART 97—RELEASE OF OFFICIAL INFORMATION IN LITIGATION AND TESTIMONY BY DOD PERSONNEL AS WITNESSES

Sec.

97.1 Purpose.
97.2 Applicability and scope.
97.3 Definitions.
97.4 Policy.
97.5 Responsibilities.
97.6 Procedures.

Authority: 5 U.S.C. 31; 10 U.S.C. 133.

§ 97.1 Purpose.

This part establishes policy, assigns responsibilities, and prescribes procedures for the release of official DoD information in litigation and for testimony by DoD personnel as witnesses during litigation.

§ 97.2 Applicability and Scope.

(a) This part applies to the Office of the Secretary of Defense (OSD), the Military Department's, the Organization of the Joint Chiefs of Staff (OJCS), the Unified and Specified Commands, and the Defense Agencies (hereafter referred to as "DoD Components"), and to all personnel of such DoD Components.

(b) This part does not apply to the release of official information or testimony by DoD personnel in the following situations:

(1) before courts-martial convened by the authority of the Military Departments or in administrative proceedings conducted by or on behalf of DoD Component;

(2) pursuant to administrative proceedings conducted by or on behalf of the Equal Employment Opportunity Commission or the Merit Systems Protection Board, or pursuant to a negotiated grievance procedure under a collective bargaining agreement;

(3) in response to requests by Federal government counsel in litigation conducted on behalf of the United States;

(4) as part of the assistance required pursuant to DoD Directive 5220.6, "Industrial Personnel Security Clearance Program," December 20, 1976; or,

(5) pursuant to disclosure of information to Federal, state, and local prosecuting and law enforcement authorities, in conjunction with an investigation conducted by a DoD criminal investigative organization.

(c) This part does not supersede or modify existing laws or DoD programs governing the testimony of DoD personnel or the release of official DoD information during grand jury proceedings, the release of official information not involved in litigation, or the release of official information pursuant to the Freedom of Information Act, 5 U.S.C. 552, or the Privacy Act, 5 U.S.C. 552a, nor does this part preclude treating any written request for agency records that is not in the nature of legal process as a request under the Freedom of Information or Privacy Acts.

(d) This part is not intended to infringe upon or displace the responsibilities committed to the Department of Justice in conducting litigation on behalf of the United States.

(e) This part does not preclude official comment on matters in litigation in appropriate cases.

(f) This part is intended only to provide guidance for the internal operation of the Department of Defense and is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law against the United States or the Department of Defense.

§ 97.3 Definitions.

(a) *Demand.* Subpoena, order, or other demand issued by a court of competent jurisdiction, or other specific authority, for the production, disclosure, or release of official DoD information or for the appearance and testimony of DoD personnel as witnesses.

(b) *DoD Personnel.* U.S. military personnel; Service Academy cadets and midshipmen; and civilian employees and former employees of any Component of the Department of Defense, including nonappropriated fund activity employees; non-U.S. nationals who perform service overseas, under the provisions of status of forces agreements, for the United States Armed Forces; and other specific individuals hired through contractual agreements by or on behalf of the Department of Defense.

(c) *Litigation.* All pretrial, trial, and post-trial stages of all existing or reasonably anticipated judicial or administration actions, hearings, investigations, or similar proceedings before civilian courts, commissions, boards (including the Armed Services Board of Contract Appeals), or other tribunals, foreign and domestic. This

term includes responses to discovery requests, depositions, and other pretrial proceedings, as well as responses to formal or informal requests by attorneys or others in situations involving litigation.

(d) *Official Information.* All information of any kind, however stored, that is in the custody and control of the Department of Defense, relates to information in the custody and control of the Department, or was acquired by DoD personnel as part of their official duties or because of their official status within the Department while such personnel were employed by or on behalf of the Department or on active duty with the United States Armed Forces.

§ 97.4 Policy.

It is DoD policy that official information should generally be made reasonably available for use in federal and state courts and by other governmental bodies unless the information is classified, privileged, or otherwise protected form public disclosure.

§ 97.5 Responsibilities.

(a) The *General Counsel, Department of Defense,* shall provide general policy and procedural guidance by the issuance of supplemental instructions or specific orders concerning the release of official DoD information in litigation and the testimony of DoD personnel as witnesses during litigation.

(b) The *Heads of DoD Components* shall issue appropriate regulations to implement this part and to identify official information that is involved in litigation.

§ 97.6 Procedures.

(a) *Authority to Act.* (1) In response to a litigation request or demand for official DoD information or the testimony of DoD personnel as witnesses, the General Counsels of DoD, Navy, and the Defense Agencies; the Judge Advocates General of the Military Departments; and the Chief Legal Advisors to the JCS and the Unified and Specified Commands, with regard to their respective Components, are authorized—after consultation and coordination with the appropriate Department of Justice litigation attorneys—to determine whether official information many be released in litigation; whether DoD personnel may be interviewed, contacted, or used as witnesses concerning official DoD information or as expert witnesses; and what, if any, conditions will be imposed upon such release, interview, contact, or testimony. Delegation of this authority, to include the authority to invoke appropriate claims of privilege before any tribunal, is permitted.

(2) Notwithstanding the provisions of paragraph (a)(1) of this section, the General Counsel, DoD, in litigation involving terrorism, espionage, nuclear weapons, intelligence means or sources, or otherwise as deemed necessary, may notify Components that General Counsel, DoD, will assume primary responsibility for coordinating all litigation requests and demands for official DoD information or testimony of DoD personnel, or both; consulting with the Department of Justice; and taking final action on such requests and demands.

(b) *Factors to Consider.* In deciding whether to authorize the release of official DoD information or the testimony of DoD personnel concerning official information (hereafter referred to as "the disclosure") pursuant to paragraph 97.6(a) of this section, DoD officials should consider the following types of factors:

(1) Whether the request or demand is unduly burdensome or otherwise inappropriate under the applicable court rules;

(2) Whether the disclosure, including release *in camera,* is appropriate under the rules of procedure governing the case or matter in which the request or demand arose;

(3) Whether the disclosure would violate a statute, executive order, regulation, or directive;

(4) Whether the disclosure, including release *in camera,* is appropriate or necessary under the relevant substantive law concerning privilege;

(5) Whether the disclosure, except when *in camera* and necessary to assert a claim of privilege, would reveal information properly classified pursuant to DoD 5200.1–R, "Information Security Program Regulation," August 1982; unclassified technical data withheld from public release pursuant to DoD Directive 5230.25, "Withholding of Unclassified Technical Data from Public Disclosure," November 6, 1984; or other matters from unrestricted disclosure; and,

(6) Whether disclosure would interfere with ongoing enforcement proceedings, compromise constitutional rights, reveal the identity of an intelligence source or confidential informant, disclose trade secrets or similarly confidential commercial or financial information, or otherwise be inappropriate under the facts surrounding the request or demand.

(c) *Decisions on Litigation Requests and Demands.* (1) Subject to paragraph (c)(5) of this section, DoD personnel shall not, in response to a litigation request or demand, produce, disclose, release, comment upon, or testify concerning any official DoD information without the prior written approval of the appropriate DoD official designated in paragraph (a) of this section. Oral approval, in exceptional cases, may be granted, but a record of such approval will be made and retained.

(2) If official DoD information is sought, through testimony or othewise, by a litigation request or demand, the individual seeking such release or testimony must set forth, in writing and with as much specificity as possible, the nature and relevance of the official information sought. Subject to paragraph (c)(5) of this section, DoD personnel may only produce, disclose, release, comment upon, or testify concerning those matters that were specified in writing and properly approved by the appropriate DoD official designated in paragraph (a) of this section. *See United States ex rel. Touhy v. Ragen,* 340 U.S. 462 (1951).

(3) Whenever a litigation request or demand is made upon DoD personnel for official DoD information or for testimony concerning such information, the personnel upon whom the request or demand was made shall immediately notify the appropriate DoD official designated in paragraph (a) of this section for the Component to which the individual contacted is or was last assigned. The responsible DoD official shall immediately notify the Civil Division of the Department of Justice of all such requests and demands and shall, after consultation and coordination with the Department of Justice, determine whether the individual is required to comply with the request or demand. Thereafter, the DoD official shall notify the requestor or the court or other authority of the determination reached.

(4) If, after DoD personnel have received a litigation request or demand and have in turn notified the appropriate DoD official in accordance with paragraph (c)(3) of this section, a response to the request or demand is required before instructions from the responsible official are received, the responsible official designated in paragraph (a) of this section shall furnish the requestor or the court or other authority with a copy of this part and applicable implementing Regulations, inform the requestor or the court or other authority that the request or demand is being reviewed, and seek a stay of the request or demand pending a final determination by the Component concerned.

(5) If a court of competent jurisdiction or other appropriate authority declines to stay the effect of the request or demand in response to action taken pursuant to paragraph (c)(4) of this section, or if such court or other authority orders that the request or demand must be complied with notwithstanding the final decision of the appropriate DoD official, the DoD personnel upon whom the request or demand was made shall notify the responsible DoD official of such ruling or order. If the DoD official determines that no further legal review of or challenge to the court's order or ruling will be sought, the affected DoD personnel shall comply with the request, demand, or order. If directed by the appropriate DoD official, however, the affected DoD personnel shall respectfully decline to comply with the demand. *See United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951).

(d) *Fees.* Consistent with the guidelines in DoD Instruction 7230.7, "User Charges," June 12, 1979, the appropriate officials designated in subsection 97.6(a) are authorized to charge reasonable fees, as established by regulation and to the extent not prohibited by law, to parties seeking, by request or demand, official DoD information not otherwise available under DoD 5400.7–R, "DoD Freedom of Information Act Program," March 24, 1980. Such fees, in amounts calculated to reimburse the government for the expense of providing such information, may include the costs of time expended by DoD employees to process and respond to the request or demand; attorney time for reviewing the request or demand and any information located in response thereto and for related legal work in connection with the request or demand; and expenses generated by materials and equipment used to search for, produce, and copy the responsive information. *See Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340 (1978).

(e) *Expert or Opinion Testimony.* DoD personnel shall not provide, with or without compensation, opinion or expert testimony concerning official DoD information, subjects, or activities, except on behalf of the United States or a party represented by the Department of Justice. Upon a showing by the requestor of exceptional need or unique circumstances and that the anticipated testimony will not be adverse to the interests of the Department of Defense or the United States, the appropriate DoD official designated in paragraph (a) of this section may, in writing, grant special authorization for DoD personnel to appear and testify at no expense to the United States. If, despite the final determination of the responsible DoD official, a court of competent jurisdiction, or other appropriate authority, orders the appearance and expert or opinion testimony of DoD personnel, the personnel shall notify the responsible DoD official of such ruling. If the DoD official determines that no further legal review of or challenge to the court's ruling will be sought, the affected DoD personnel shall comply with the order. If directed by the appropriate DoD official, however, the affected DoD personnel shall respectfully decline to comply with the demand. *See United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951).

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

March 11, 1985.

[FR Doc. 85–6124 Filed 3–13–85; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD13 85–01]

Drawbridge Operation Regulations; Duwamish Waterway at Seattle, WA

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the King County Department of Public Works, the Coast Guard is considering a change to regulations governing the Fourteenth (Sixteenth) Avenue South highway bridge across the Duwamish Waterway, mile 3.8, at Seattle, Washington, by changing morning closed period times to conform with changes in peak flows of vehicular traffic. This proposal is being made because peak periods of vehicular traffic have shifted slightly since the original closed periods were established. This action should accommodate the needs of vehicular traffic and should still provide for the reasonable needs of navigation.

DATE: Comments must be received on or before April 29, 1985.

ADDRESS: Comments should be mailed to Commander (oan), Thirteenth Coast Guard District, 915 Second Avenue, Seattle, Washington 98174. The comments and other materials referenced in this notice will be available for inspection and copying at 915 Second Avenue, Room 3564. Normal office hours are between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: John E. Mikesell, Chief, Bridge Section, Aids to Navigation Branch, (Telephone: (202) 442–5864).

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Thirteenth Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in the light of comments received.

Drafting Information

The drafters of this notice are: John E. Mikesell, project officer, and Lieutenant Commander Judith M. Hammond, project attorney.

Discussion of Proposed Regulations

In 1956, due to increasing vehicular traffic congestion during morning and afternoon peak traffic periods, closed periods were authorized for the Fourteenth (Sixteenth) Avenue South bridge. The regulation provided that the draws need not open for the passage of vessels from 7:00 a.m. to 8:00 a.m. and 3:30 p.m. to 5:00 p.m., Monday through Friday. The regulation was later changed to also exempt Federal holidays from closed period restrictions. Because of a gradual shift and an increase in the morning peak traffic flow, King County has requested that the morning closed period be extended by one half hour to run from 6:30 a.m. to 8:00 a.m.

The Fourteenth Avenue South bridge is a double bascule span and has four lanes for vehicular traffic. The bridge has an average daily traffic flow of 18,010 vehicles with about 9,190 in the north bound direction and about 8,820 in the south bound direction. Peak traffic flows are greater in the morning in the north bound direction and greater in the afternoon in the south bound direction. Morning north bound peak traffic flows average about 1,700 vehicles per hour and afternoon south bound peak flows average about 1,600 vehicles per hour.

The bridge averages about 5 openings per day for the passage of vessels.

Navigation which requires openings consists of commercial tugs and barges, fishing vessels, and various recreational craft. The proposed extension of the morning closed period by one-half hour should not have any noticeable effect on navigation.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulations and non-significant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. With an average of only five openings a day, the extension of the existing morning closed period by one-half hour is expected to have little or no economic impact on vessels using the waterway. Over a three-month period, only nine openings occurred during the period from 6:30 a.m. to 7:00 a.m., an average of three openings per month. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

PART 117—DRAWBRIDGE OPERATION REGULATIONS

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33 Code of Federal Regulations by revising § 117.1041(a)(2) to read as follows:

§ 117.1041 Duwamish Waterway.

(a) * * *

(2) The draws of the Fourteenth (Sixteenth) Avenue South highway bridge, mile 3.8, need not be opened for the passage of vessels from 6:30 a.m. to 8:00 a.m. and 3:30 p.m. to 5:00 p.m., Monday through Friday, except Federal holidays.

* * * * *

(33 U.S.C. 499; 49 CFR 1.46(c)(5); 33 CFR 1.05–1(g)(3))

Dated: February 22, 1985.

R. R. Garrett,

Captain, U.S. Coast Guard, Commander, 13th Coast Guard District Acting.

FR Doc. 85–6103 Filed 3–13–85; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 117

[CGD3 85–04]

Drawbridge Operation Regulations; Raccoon Creek, NJ

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of New Jersey Department of Transportation, the Coast Guard is considering a change to the regulation governing the Route 130 Bridge across Raccoon Creek at Bridgeport, New Jersey by permitting restricted operation of the draw between 7 a.m. and 11 p.m. from 30 November to 1 March. This proposal is being made because of the bridge and because the bridge logs show relatively few openings from 7 a.m. to 11 p.m. during 1982 through 1984. This action should relieve the bridge owner of the burden of having a person constantly available to open the draw and should still provide for the reasonable needs of navigation.

DATE: Comments must be received on or before April 29, 1985.

ADDRESS: Comments should be submitted to and are available for examination from 8 a.m. to 4:30 p.m., Monday through Friday, except holidays, at the Office of the Commander (oan-br), Third Coast Guard District, Bldg. 135A, Governors Island, NY 10004. Comments may also be hand delivered to this address.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Bridge Administrator, Third Coast Guard District (oan-br), Governors Island, New York 10004, (212) 668–7994.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rule making by submitting written views, comments, data, or arguments. Persons submitting comments should include their name and address, identify the bridge, and give reasons for concurrence with or for any recommended change in the proposal. Persons desiring acknowledgement that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Third Coast Guard District will evaluate all communications received and will determine a final course of action on this proposal. The proposed regulations may be changed based on comments received.

Drafting Information

The principal persons involved in drafting this proposal are: Luke Dlhopolsky, Project Manager, and Mary Ann Arisman, Project Attorney, Third Coast Guard District Aids to Navigation Branch and Legal Office, respectively.

Discussion of the Proposed Regulations

The Route 130 regulations are being changed to conform with those of the CONRAIL bridge because of the two bridges' close proximity. The CONRAIL drawbridge regulations were recently revised in the **Federal Register** of January 22, 1985 (50 FR 2785). Coast Guard analysis of the Route 130 bridge logs show that there were 0, 4, and 2 openings of the bridge between 7 a.m. and 11 p.m. between 30 November and 1 March in 1982, 1983, and 1984, respectively. These openings were for commercial vessels who came in and left a couple of hours later. Openings for these vessels will be provided if at least four hours advance notice is given.

Since the regulations for the two draw bridges are being made identical, the whole section is being revised to simplify and consolidate the regulations. No substantive change is being proposed for the CONRAIL railroad bridge.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The limited commercial activity during the winter months will be accommodated by the four hours advance notice. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

PART 117—DRAWBRIDGE OPERATION REGULATIONS

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, of the Code of Federal Regulations by revising § 117.741 to read as follows:

§ 117.741 Raccoon Creek.

The draw of the Route 130 highway bridge, mile 1.8 and the CONRAIL

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railroad bridge, mile 2.0, both at Bridgeport shall open on signal March 1 through November 30 from 7 a.m. to 11 p.m. At all other times, the draws shall open on signal if at least four hours notice is given. The draws shall open at all times as soon as possible for passage of a public vessel of the United States.

(33 U.S.C. 499; 49 CFR 1.46(c)(2); 33 CFR 1.05-1(g)(3))

Dated: March 1, 1985.

P.A. Yost,

Vice Admiral, U.S. Coast Guard Third Coast Guard District.

[FR Doc. 85-6102 Filed 3-13-85; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Parts 140, 141, 142, 143, 144, 145, and 146

[CGD 84-098]

Revision of the Regulations on Outer Continental Shelf Activities

Correction

In FR Doc. 85-5503 beginning on page 9290 in the issue of Thursday, March 7, 1985, make the following corrections:

1. On page 9290, in the second column, in the **SUMMARY**, in the ninth line, "numberous" should read "numerous"; also, in the **SUMMARY**, in the thirteenth line, "appl, icable" should read "applicable".

2. On page 9292, in the second column, in paragraph e, in the second line, "named?" should read "manned?"

BILLING CODE 1505-01

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 220, 227, 228, and 234

[OW-FRL-2796-3]

Ocean Incineration Regulation; Public Hearing

AGENCY: Environmental Protection Agency.

ACTION: Notice of public hearings.

SUMMARY: EPA is conducting a series of public hearings to facilitate comments on the proposed Ocean Incineration Regulation published on 2/28/85 (50 FR 8222).

DATES: Public hearings will be held on April 18, 23, 25, 30, and May 2. See **SUPPLEMENTARY INFORMATION** below, for a complete listing of dates, times, locations and agenda.

FOR FURTHER INFORMATION CONTACT: Linn D. Speers, Criteria and Standards Division (WH-585), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, 202-755-0100.

SUPPLEMENTARY INFORMATION: On February 28, 1985, EPA published the proposed Ocean Incineration Regulation in the **Federal Register** (50 FR 8222). EPA will hold a series of public hearings on the dates listed below to receive public comments on the proposed rule.

Each public hearing will be conducted in accordance with this general agenda:

8:00 a.m.—Registration
9:00-9:30 a.m.—Introduction and Overview of Proposed Ocean Incineration Regulation by EPA
9:30 a.m.-1:00 p.m.—Receipt of public comments
1:00-2:00 p.m.—Lunch
2:00-3:30 p.m.—Receipt of public comments
3:30-3:45 p.m.—Break
3:45-5:00 p.m.—Receipt of public comments
5:00-7:00 p.m.—Break
7:00-7:30 p.m.—Introduction and Overview of Proposed Ocean Incineration Regulation by EPA
7:30 p.m.-adjournment—Receipt of public comments.

Note 1.—All times listed are approximate.

Note 2.—In San Francisco only, the hearing hours will be one-half hour later than shown above; registration will begin at 8:30 a.m.

Copies of the proposed Ocean Incineration Regulation, 50 FR 8222 are available from the person listed above. Supplementary information on the proposed rule may be found in the Incineration-at-Sea public docket located in PIRU Section of the EPA Library at the address listed below: U.S. Environmental Protection Agency, PIRU M 2904, 401 M Street SW., Washington, D.C. 20460.

The purpose of these public hearings is to receive public views and comments on the proposed Ocean Incineration Regulation. EPA officials will present a short overview of the Regulation to facilitate public comment. In addition, other related documents on incineration including the Science Advisory Board's Report on Incineration of Liquid Hazardous Wastes and the Agency's Incineration Study and Research Strategy will be available prior to the hearing to further facilitate public comment on the proposed Regulation. These documents may be cited or referenced in testimony at the public hearing in so far as they relate to the proposed Regulation. However, they will not themselves be the subject of this hearing.

Participants are encouraged to submit formal written statements on the proposed rule to the Hearing Officer. Verbal statements will be limited to five minutes to allow opportunity for everyone to participate. Those persons wishing to make statements at the public hearings should contact the person listed above.

The dates and locations for the public hearings are as follows:

Date: April 18, 1985
Place: Woodrow Wilson Auditorium, Monmouth College, West Long Branch, New Jersey 07764

Date: April 23, 1985
Place: Council Chamber of City Hall, 1300 Perdido, New Orleans, Louisiana, 70112

Date: April 25, 1985
Place: Jacob Brown Auditorium, Civic Center, Brownsville, Texas 75270

Date: April 30, 1985
Place: Room 1194 (Auditorium), California State Building, 350 McAllister Street, San Francisco, California 94102

Date: May 2, 1985
Place: Mobile Municipal Auditorium, West Exhibit Hall, 401 Auditorium Drive, P.O. Box 369, Mobile, Alabama 36601.

Dated: March 6, 1985.

Jack E. Ravan,

Assistant Administrator for Water.

[FR Doc. 85-6089 Filed 3-13-85; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Ch. 201

Implementation of Public Laws 98-369 and 98-577 Regarding Competition in the Acquisition of Information Resources

AGENCY: Office of Information Resources Management, GSA.

ACTION: Notice of proposed rulemaking.

SUMMARY: The General Services Administration proposes to amend the FIRMR as required to implement the Competition in Contracting Act of 1984 (Pub. L. 98-369) and the Small Business and Federal Procurement Competition Enhancement Act of 1984 (Pub.L 98-577). Special category procurement provisions for automatic data processing and telecommunications resources contained in the FIRMR, as well as related management provisions, require revision. The intent of the amendment is to implement the purpose of the statutes. Other changes are made in provisions that are effected by statutory implementation actions. The purposes of this notice is to solicit the views of

Federal agencies and the public on this matter.

DATES: Comments are due April 15, 1985.

ADDRESS: Requests for a copy of draft amendment (Project 84.64) should be made by mail or telephone: General Services Administration (KMPP), Washington, DC 20405; telephone (202) 566–0194 or FTS, 566–0194.

FOR FURTHER INFORMATION CONTACT: Mr. William R. Loy, Policy Branch, Office of Information Resources Management, telephone (202) 566–0194 or FTS, 566–0194.

SUPPLEMENTARY INFORMATION:

1. The draft amendment will be distributed without receipt of a specific request to the usual contacts in Federal agencies who regularly receive GSA, OIRM regulatory proposals. All other interested parties should make a request to the address listed above. In view of the effective dates in the statutes, responses must be received within 30 days of the date of publication of this notice.

2. FIRMR regulatory implementation of GSA Board of Contract Appeals Rules of Procedure for ADP Protest Resolution (Reference: Sec. 2713 of Pub. L. 98–369) is not included in this action.

3. The General Services Administration has determined that this rule is not a major rule for purposes of Executive Order 12291 of February 17, 1981. GSA decisions are based on adequate information concerning the need for, and the consequences of the rule. The rule is written to ensure maximum benefits to Federal agencies. This is a Government-wide management regulation that will have little or no net cost effect on society.

List of subjects in 41 CFR Ch. 201

Government information resources activities, Government procurement.

Authority: (Sec. 205(c), 64 Stat. 390; 40 U.S.C. 486(c)).

Dated: February 15, 1985.

Fred L. Sims,

Acting Deputy Assistant Administrator for Federal Information Resources Management.

[FR Doc. 85–6137 Filed 3–13–85; 8:45 am]

BILLING CODE 6820-25-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–6648]

Proposed Flood Elevation Determinations; Alabama, et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations and proposed modified base flood elevations listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATE: The period for coment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: John L. Matticks, Acting Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of base (100-year) flood elevations and modified based flood elevations for selected locations in the nation, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a).

These elevations, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under Section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the flood plain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts flood plain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the flood plain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The proposed base (100-year) flood elevations for selected locations are:

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
ALABAMA	
Unincorporated areas of Autauga County	
Alabama River:	
Just upstream of Confluence of Mulberry Creek	*131
At eastern county boundary	*161
Autauga Creek:	
At mouth	*159
About 0.7 mile upstream of Illinois Central Gulf Railroad	*278
Bear Creek:	
At mouth	*154
About 3.6 miles upstream of confluence of Hany Branch	*220
Breakfast Creek:	
At mouth	*211
About 75 feet downstream of County Highway 57	*238
Just upstream of County Highway 57	*244
About 250 feet downstream of County Highway 59	*306
About 100 feet upstream of County Highway 59	*318
About 0.6 mile upstream of County Highway 59	*337
Haney Branch:	
At mouth	*159
About 0.8 mile upstream of Farm Road	*211
Molly Branch: At mouth	*149
Noland Creek:	
At mouth	*158
About 1.2 miles upstream of confluence of Rogers Branch	*304
Rogers Branch:	
At mouth	*248
About 0.7 mile upstream of Farm Road	*393
Swift Creek:	
At confluence with Alabama River	*151
About 3.6 miles upstream of State Highway 14	*180
About 3.0 miles downstream of U.S. Highway 82	*232
About 700 feet upstream of Illinois Central Gulf Railroad	*280
White Water Creek:	
At confluence with Swift Creek	*151
About 1.7 miles upstream of State Highway 14	*177
Yellow Water Creek	
At confluence with Swift Creek	*151
About 1.4 miles upstream of State Highway 14	*155
Maps available for inspection at the Autauga County Courthouse, Prattville, Alabama.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	# Depth in feet above ground. Elevation in feet (NGVD)
Send comments to Honorable Jim Corley Probate Judge, Autauga County, Autauga County Courthouse, P.O. Box 488, Prattville, Alabama 36067	
Town of Autaugaville, Autauga County	
Swift Creek:	
About 800 feet downstream of State Highway 14	*151
About 1.0 mile upstream of State Highway 14	*152
White Water Creek	
About 900 feet downstream of Dam	*151
About 1,450 feet upstream of State Highway 14	*154
Yellow Water Creek	
About 1,500 feet downstream of State Highway 14	*151
About 2,000 feet upstream of State Highway 14	*154
Maps available for inspection at City Hall, Autaugaville, Alabama.	
Send comments to Honorable Curtis Jackson, Mayor, Town of Autaugaville, City Hall, P.O. Box 26, Autaugaville, Alabama 36003.	
Unincorporated areas Elmore County	
Alabama River:	
About 6.0 miles downstream of Interstate 65	*162
At confluence of Coosa River	*168
Coosa River:	
At confluence with Alabama River	*168
About 2.0 miles upstream of confluence of Yellow Water Creek	*189
Tallapoosa	
At confluence with Coosa River	*168
About 5.3 miles upstream of confluence of Chubbehatchee Creek	*185
Coosada Creek:	
About 0.51 mile upstream of mouth	*168
About 1.27 miles upstream of Airport Road	*216
Cottonland Creek:	
Just upstream of State Highway 14	*169
About 2.27 miles upstream of County Highway 3	*281
Grandview Branch:	
At mouth	*226
About 1.31 miles upstream of mouth	*304
Mortar Creek:	
At mouth	*168
Just upstream of State Highway 14	*169
Gravel Pit Creek:	
At mouth	*169
About 3.0 miles upstream of mouth	*319
Graveyard Creek:	
About 0.44 mile downstream of East Patton Street	*312
About 1.99 miles upstream of East Patton Street	*414
Jackson Lake Tributary:	
Within county	*167
Stiff Creek:	
At mouth	*164
About 0.76 mile upstream of Grandview Road	*256
Lewis Creek:	
About 0.79 mile upstream of mouth	*234
About 3.31 miles upstream of mouth	*349
Mill Creek:	
At mouth	*164
About 0.66 mile upstream of Old State Highway 14	*265
Maps available for inspection at the Elmore County Courthouse, Wetumpka, Alabama. Send comments to Honorable Ed Enslen, Probate Judge, Elmore County, Elmore County Courthouse, Wetumpka, Alabama 36092.	
COLORADO	
Carbondale (town) Garfield County	
Crystal River:	
450 feet west from the intersection of Greystone Drive and Crystal Road	*6142
Maps available for inspection at Planning Department, 76 South 2nd Street, Carbondale, Colorado.	
Send comments to the Honorable Bill Grey, 76 South 2nd Street, Carbondale, Colorado 81623.	
Garfield County (unincorporated areas)	
Colorado River (at Rifle): 750 feet upstream from the center of State Highway 13	*5,304
Colorado River (at New Castle): 1,080 feet upstream from the confluence with Alkali Creek	*5,528
Colorado River (at Glenwood Springs): 80 feet upstream from the center of Access Road M	*5,721
Roaring Fork River:	
630 feet upstream from the confluence with Threemile Creek	*5,793
40 feet upstream from the center of County Road 109	*5,903
80 feet upstream from the center of County Road 100	*6,270
Crystal River:	
At the center of the Freeman S. James Bridge	*6,103
100 feet upstream from the center of Mt. Sopris Ranch Road	*6,227
Cattle Creek: 10 feet upstream from the center of the Denver and Rio Grande Western Railroad	*6,007
Fourmile Creek: 70 feet upstream from the center of Fourmile Road	*6,066
Threemile Creek: 80 feet upstream from the center of Midland Avenue	*5,881
Mitchell Creek: 40 feet upstream from the center of U.S. Highway 6	*5,704
Rifle Creek:	
At the center of County Road 291	*5,468
320 feet upstream from the center of County Road 251	*5,626
Rifle Creek Spillflow: 30 feet upstream from the center of County Road 291	*5,462
Hubbard Gulch: 40 feet upstream from the center of State Highway 13 Bypass	*5,440
Government Creek: 330 feet southeast from the intersection of County Road 242 and State Highway 13	*5,544
Helmer Gulch: 100 feet south of the center of the east bound lane of Interstate Highway 70, approximately 4,000 feet west of its intersection with State Highway 13	#1
Ramsey Gulch: 100 feet south of the center of the eastbound lane of Interstate Highway 70, approximately 2,000 feet east of its intersection with State Highway 13	#1
Alkali Creek: 40 feet upstream from the center of County Road 336	*5,583
Maps available for inspection at the Planning Department, 109 8th Street, Glenwood Springs, Colorado.	
Send comments to the Honorable Robert Richardson, 109 8th Street, Glenwood Springs, Colorado 81601.	
ILLINOIS	
City of Mattoon, Coles County	
Kickapoo Creek:	
About 0.32 mile downstream 6th Street	*702
About 450 feet upstream of Lake Land Boulevard	*711
Maps available for inspection at the City Courts Office, City Hall, 209 North 19th Street, Mattoon, Illinois.	
Send comments to Honorable Rodger W. Detpor, Mayor, City of Mattoon, City Hall, 209 North 19th Street, Mattoon, Illinois 61938.	
KANSAS	
Unincorporated areas of Sedgwick County	
Arkansas River:	
Just upstream of State Highway 53	*1,223
About 0.7 mile upstreamof Washington Street	*1,252
About 1.85 miles downstream of 47th Street South	*1,258
Just downstream of Kansas Turnpike	*1,273
About 2.15 miles downstream of State Highway 96	*1,322
About 0.3 mile upstream of State Highway 96	*1,329
Spring Creek:	
At mouth	*1,236
About 0.6 mile upstream of Woodlawn Avenue	*1,261
Dry Creek:	
Just downstream of Madison Road	*1,266
About 840 feet downstream of Farm Road	*1,287
About 1250 feet upstream of Farm Road	*1,293
Dry Creek Tributary	
About 1600 feet downstream of Windmill Road	*1,282
Just downstream of Windmill Road	*1,293
Cowskin Creek:	
About 2,000 feet upstream of Pawnee Avenue	*1,308
About 0.53 mile downstream of Maple Street	*1,314
Just downstream of Maple Street	*1,319
Just upstream of Central Avenue	*1,328
Just downstream of 21st Street North	*1,345
About 6,850 feet downstream of State Highway 256	*1,366
About 6,400 feet upstream of State Highway 256	*1,376
Cowskin Creek South:	
About 2,700 feet downstream of 95th Street South	*1,243
Just upstream of Seneca Street	*1,259
Calfskin Creek	
About 3,400 feet upstream of mouth	*1,318
Just downstream of US Highway 54	*1,322
North Fork Calfskin Creek:	
At mouth	*1,320
About 1.2 miles upstream of confluence of Middle Fork Calfskin Creek	*1,340
Middle Fork Calfskin Creek:	
About 370 feet upstream of mouth	*1,324
About 4,400 feet upstream of mouth	*1,340
Big Slough North:	
Just upstream of 13th Street North	*1,317
Just downstream of 45th Street North	*1,337
Just downstream of 53rd Street North	*1,346
Big Slough South:	
Just upstream of Hydraulic Avenue	*1,264
Just downstream of 56th Street South	*1,267
Little Slough:	
At mouth	*1,332
Just downstream of 53rd Street North	*1,342
Chisholm Creek:	
Just upstream of Interstate 35	*1,350
Just upstream of 77th Street North	*1,370
West Branch Chisholm Creek:	
At mouth	*1,332
About 0.45 mile upstream of 77th Street North	*1,343
West Fork, Chisholm Creek:	
At mouth	*1,357
Just downstream of 77th Street North	*1,363
Middle Branch, Gypsum Creek:	
About 3,150 feet downstream of 13th Street North	*1,350
About 4,050 feet upstream of 13th Street North	*1,364
Fourmile Creek	
Just downstream of Harry Street	*1,268
Just upstream of Central Avenue	*1,317
About 400 feet upstream of Burlington Northern Railroad	*1,345
West Fork, Fourmile Creek:	
At mouth	*1,321
Just downstream of Burlington Northern Railroad	*1,348
Just upstream of Burlington Northern Railroad	*1,354
About 2,650 feet upstream of Burlington Northern Railroad	*1,355
Brookhaven Creek.	
At mouth	*1,290
Just downstream of Interstate 35	*1,321
Just upstream of Interstate 35	*1,329
Just downstream of 13th Street North	*1,332
Middle Fork, Chisholm Creek:	
About 1.0 mile above mouth	*1,332
Just downstream of State Highway 254	*1,339
Just downstream of State Highway 254 (upstream crossing)	*1,361
East Fork, Chisholm Creek:	
About 550 feet downstream of Woodlawn Avenue	*1,357

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	# Depth in feet above ground. ^Elevation in feet (NGVD)
About 1,350 feet upstream of Woodlawn Avenue	^1,361
Just upstream of 45th Street North	^1,377
About 1,300 feet upstream of 53rd Street North	^1,403
Gypsum Creek:	
About 1,100 feet downstream of Harry Street	^1,319
Just downstream of Harry Street	^1,320
Center Drain East Tributary:	
About 3,700 feet downstream of 37th Street North	^1,332
About 6,300 feet upstream of Hillside Avenue	^1,373
Spring Branch:	
Just upstream of 159th Street East	^1,290
About 3,000 feet upstream of Greenwich Road	^1,340
Spring Branch Tributary No. 1:	
At mouth	^1,291
Just downstream of Pawnee Avenue	^1,309
Spring Branch Tributary No 4:	
At mouth	^1,294
About 200 feet downstream of Interstate 35	^1,324
Just upstream of Interstate 35	^1,332
Just downstream of Earth Dam	^1,335
Just upstream of Earth Dam	^1,342
About 1,750 feet upstream of Earth Dam	^1,343
Wichita Valley Center Floodway:	
Just downstream of Seneca Street	^1,270
About 0.6 mile downstream of Zoo Boulevard	^1,317
About 2.3 miles upstream of Missouri Pacific Railroad	^1,324
Clearwater Tributary 1	
About 1,300 feet downstream of Tracy Avenue South	^1,262
About 650 feet upstream of Ross Avenue	^1,269
Pleasant Valley Tributary: Within Unincorporated Area	^1,327
West Branch, Gypsum Creek: Within Unincorporated Area	^1,357
Little Arkansas River:	
About 1.0 mile upstream of confluence with Wichita-Valley Center Floodway	^1,325
About 2,700 feet upstream of Hoover Street	^1,364
At upstream County Boundary	^1,374
Shallow Flooding (ponding from rainfall):	
At intersection of Seneca Street and 63rd Street South	^1,265
About 2,600 feet west of intersection of Broadway and 63rd Street South	^1,265
About 1,200 feet south of 63rd Street South, just west of Broadway	^1,265

Maps available for inspection at the Sedgwick County Building, Sedgwick County Public Works Department, Wichita, Kansas.

Send comments to Honorable Jack Spratt, Chairman of the Board of County Supervisors, Sedgwick County Building, 525 North Main, Wichita, Kansas 67203.

MAINE

Boothbay Harbor, town, Lincoln County

Atlantic Ocean (Linekin Bay):	
Shoreline at eastern corporate limits	^14
Shoreline at Wall Point Road (extended)	^12
Shoreline at Spruce Point	^19
(Boothbay Harbor):	
Shoreline approximately 400 feet south of Factory Cove Road (extended)	^26
Shoreline approximately 400 feet southeast of Commercial Street (extended)	^17
(Townsend Gut):	
Shoreline at Juniper Point	^16
Shoreline at western corporate limits	^10
Southwestern shoreline of Isle of Springe	^21
Shallow Flooding: Dunes in the vicinity of Factory Cove Road	#2

Maps available for inspection at the Boothbay Harbor Town Hall, Boothbay Harbor, Maine.

Send comments to Honorable Donald Wooten, Chairman of the Board of Selectmen for the Town of Boothbay Harbor, McKnown Street, Boothbay Harbor, Maine 04538.

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	# Depth in feet above ground. ^Elevation in feet (NGVD)
MASSACHUSETTS	
Cohasset, town Norfolk County	
Massachusetts Bay:	
Shoreline at Deep Run (extended)	^26
Entire shoreline of Sandy Cove	^16
At intersection of Nichols Road and Atlantic Avenue	^11
Shallow Flooding: Areas of sheetflow along Massachusetts Bay	#1 & #2
The Gulf:	
Shoreline approximately 400 feet south of River Road (extended)	^8
Western shoreline of Government Island south of Border Street	^11
Straits Pond: Entire shoreline within community	^9
Walnut Hill Stream:	
Approximately 400 feet downstream of Main Street	^8
Approximately 100 feet upstream of Beechwood Street	^32
Rattlesnake Run:	
AT confluence with Straits Pond	^9
Approximately 1,350 feet upstream of Jerusalem Road	^25
Turkey Hill Run:	
Downstream corporate limits	^18
Upstream corporate limits	^36
James Brook:	
Upstream side of Smith Place	^11
Approximately 100 feet upstream of abandoned railroad	^20
Lily Pond Stream:	
At confluence with Lily Pond	^45
Approximately 1,056 feet upstream of Tupelo Road	^63
Bound Brook:	
At downstream corporate limits	^32
Approximately 1,600 feet downstream of Beechwood Street	^32
Richardsons Brook: Approximately 1,000 feet upstream of Jerusalem Road	^11

Maps available for inspection at the office of Christine Bassett, Chairman of the Planning Board, Town Hall, Cohasset, Massachusetts.

Send comments to Honorable Clifford Mitman, Chairman of the Board of Selectmen of the Town of Cohasset, Cohasset Town Offices, 41 Highland Avenue, Cohasset, Massachusetts 02025.

Essex, town, Essex County

Atlantic Ocean, affecting Essex Bay	
Shoreline at east side of Dilly Island	^14
Shoreline at Middle Road near Conomo Point (extended)	^12
Entire shoreline of Bull Island	^10
Shoreline of Castle Neck River at State Route 133	^10
Shoreline of Essex River at State Route 133	^10

Maps available for inspection at the Essex Library and Essex Selectman's Office, Town Hall, Essex, Massachusetts.

Send comments to Honorable Harold Addison, Chairman of the Board of Selectmen for the Town of Essex, Martin Street, Town Hall, Essex, Massachusetts 01929.

MISSOURI

City of Jackson, Cape Girardeau County

Hubble Creek:	
At confluence of Goose Creek	^399
About 1.08 miles upstream of North High Street	^451
Goose Creek:	
At mouth	^399
About 1.85 miles upstream of East Main Street	^470
Rocky Branch:	
Just upstream of County Highway PP	^410
About 140 feet downstream of State Highway 72	^426
About 150 feet upstream of State Highway 72	^433

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	# Depth in feet above ground. ^Elevation in feet (NGVD)
About 170 feet downstream of Oak Street	^435
Just upstream of Oak Street	^443
About 230 feet downstream of County Highway D	^462
Just upstream of County Highway D	^468
Neal Creek:	
At mouth	^427
About 1,200 feet upstream of Shawnee Avenue	^464

Maps available for inspection at City Hall, 225 South High, Jackson, Missouri.

Send comments to Honorable Carlton G. Meyer, Mayor, City of Jackson, City Hall, 225 South High, Jackson, Missouri 63755.

NEW YORK

Carthage, village, Jefferson County

Black River:	
Downstream corporate limits	^685
Upstream side of Carthage State Dam	^732
Upstream corporate limits	^735

Maps available for inspection at the Village Hall, Carthage, New York.

Send comments to Honorable Warren Kennehan, President of the Village of Carthage, Jefferson County, 120 South Mechanic Street, Carthage, New York 13619.

Goshen, village, Orange County

Rio Grande:	
At downstream corporate limits	^412
Approximately 520 feet upstream of Greenwich Avenue	^433

Maps available for inspection at the Village Hall, Goshen, New York.

Send comments to Honorable Stephen Hopkins, Mayor of the Village of Goshen, Orange County, 276 Main Street, Goshen, New York 10924.

Herrings, village, Jefferson County

Black River:	
Downstream corporate limits	^664
Downstream side of Herrings Dam	^668
Upstream corporate limits	^686

Maps available for inspection at the Village Fire Hall, Herrings, New York.

Send comments to Honorable Leroy Slye, Mayor of the Village of Herrings, Jefferson County, 36 First Street, Herrings, New York 13653.

Norwich, city, Chenango County

Chenango River:	
Confluence of Canasawacta Creek	^992
Approximately 100 feet upstream of Hale Street	^995
Approximately 100 feet upstream of State Route 23	^1002
Approximately 100 feet west of CONRAIL at northern corporate limits	^1006
Canasawacta Creek:	
Confluence with Chenango River	^992
Approximately 50 feet upstream of State Route 12	^996
Upstream side of West Main Street	^1018
Upstream side of Pleasant Street	^1028
Approximately 200 feet downstream of State Route 23	^1037
Most upstream corporate limits	^1045

Maps available for inspection at the City Hall, East Main Street, Norwich, New York.

Send comments to Honorable Casey Jones, Mayor of the City of Norwich, Chenango County, P.O. Box 430, Norwich, New York 13815.

West Carthage, village, Jefferson County

Black River:	
Downstream corporate limits	^680
Upstream side of Carthage State Dam	^732
Upstream corporate limits	^734

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	# Depth in feet above ground. ^Elevation in feet (NGVD)
Maps available for inspection at the Village Hall, 10 North Jefferson Street, Carthage, New York. Send comments to Honorable Gerald Caldwell, Mayor of the Village of West Carthage, Jefferson County, 10 North Jefferson Street, Carthage, New York 13619.	
St. Armand, town, Essex County	
Saranac River:	
Approximately 450 feet downstream of Sewage Disposal Plant Access Road	^1515
Upstream corporate limits	^1522
Maps available for inspection at the Town Hall, Main Street, Bloomingdale, New York. Send comments to Honorable Joyce Morency, Town Supervisor of the Town of St. Armand, P.O. Box 227, Bloomingdale, New York 12913.	
NORTH CAROLINA	
Town of Holden Beach, Brunswick County	
Atlantic Ocean:	
Along southern shoreline of Intracoastal Waterway from Boyd Street to Halstead Street	^13
Along shoreline from western corporate limits to Scotch Bonnet Drive	^20
Maps available for inspection at the Town Hall, Holden Beach, North Carolina. Send comments to Honorable Robertson W. Buck, Town Administrator, Town of Holden Beach, 110 Rothchild Street, Holden Beach, North Carolina 28463.	
Town of Long Beach, Brunswick County	
Atlantic Ocean:	
About 300 feet south of Ocean Highway from eastern corporate limits to 25th Street West	^12
Along Yacht Drive from eastern corporate limits to 27th Street West	^12
At confluence of Elizabeth River with Intracoastal Waterway	^14
Along shoreline	^19
Maps available for inspection at the Town Hall, Long Beach, North Carolina. Send comments to Honorable Ben C. Thomas, Jr., Mayor, Town of Long Beach, P.O. Box 217, Long Beach, North Carolina 28461.	
Ocean Isle Beach (town), Brunswick County	
Atlantic Ocean:	
At north end of NC 904 bridge over Intracoastal Waterway	^13
At intersection of Craven and Concord Streets	^13
Along southern shoreline of Intracoastal Waterway north of Shallotte Sound	^15
Along shoreline	^20
Maps available for inspection at the Town Hall, Ocean Isle Beach, North Carolina. Send Comments to Honorable La Dane W. Bullington, Mayor, Town of Ocean Isle Beach, Rt. #2, P.O. Box 0-8, Ocean Isle Beach, North Carolina 28459.	
City of Southport, Brunswick County	
Intracoastal Waterway/Cape Fear River:	
Just downstream of SR 1528 bridge over Prices Creek	^10
At confluence of Dutchman Creek	^14
Bonnetts Creek	
Just upstream of Brown Street	^10
About 950 feet upstream of Brown Street	^11
Bonnetts Creek Tributary:	
At confluence with Bonnetts Creek	^11
Just upstream of Leonard Street	^19
Maps available for inspection at the Town Hall, Southport, North Carolina. Send comments to Honorable Nelson Smith, City Manager, City of Southport, 201 East Moore Street, Southport, North Carolina 28461.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	# Depth in feet above ground. ^Elevation in feet (NGVD)
Town of Sunset Beach Brunswick County	
Atlantic Ocean:	
At intersection of Sunset Boulevard and Main Street	^13
At intersection of Canal Avenue and Shore Line Drive	^13
Along Calabash River shoreline from NC 179 to about 1.75 miles upstream	^13
At south end of Sunset Boulevard bridge over Intracoastal Waterway	^15
Along shoreline	^20
Maps available for inspection at the Town Hall, Sunset Beach, North Carolina. Send comments to Honorable Ed Gore, Mayor Pro/Tem, Town of Sunset Beach, Rt. #1, P.O. Box 274, Sunset Beach, North Carolina 28459.	
Town of Yaupon Beach, Brunswick County	
Atlantic Ocean:	
At the intersection of Norton Street and Ocean Drive	^12
At the intersection of NC 133 and Oak Island Drive	^12
At the intersection of NC 133 and northern corporate limits	^14
Along shoreline	^12
Maps available for inspection at the Town Hall, Yaupon Beach, North Carolina. Send Comments to Honorable Robert H. Wilson, Mayor, Town of Yaupon Beach, 518 Yaupon Drive, Yaupon Beach, North Carolina 28461.	
NORTH DAKOTA	
Harwood (township), Cass County	
Sheyenne River: 100 feet upstream of the centerline of Interstate Highway 29	^892
Maps available for inspection at Township Hall, Route 1, Harwood, North Dakota. Send comments to the Honorable Wayne Freedland, Route 1, Harwood, North Dakota 58042.	
Reed (township), Cass County	
Sheyenne River: 100 feet upstream of the centerline of County Highway 17	^895
County Drain 21: At the confluence with Sheyenne River	^898
Maps available for inspection at Township Hall, Rural Route 2, Fargo, North Dakota. Send comments to the Honorable Gene Johnson, Rural Route 2, Fargo, North Dakota 58102.	
VERMONT	
Brattleboro, city, Windham County	
Connecticut River	
At downstream corporate limits	^229
At upstream corporate limits	^259
West River	
At confluence with Connecticut River	^236
Approximately 1 mile upstream of Interstate Route 91	^240
At upstream corporate limits	^259
Whetstone Brook	
At confluence with Connecticut River	^233
Approximately 200' upstream of Elm Street	^264
Approximately 300' upstream of Interstate Route 91 (south)	^340
Upstream side of Guilford Street	^410
Upstream side of George F. Miller Drive	^443
Upstream side of Country Drive	^505
Approximately 100' upstream of Sunset Lake Road	^544
Ames Hill Brook	
At confluence with Whetstone Brook	^454
Approximately 120 feet upstream of State Route 9	^467
Upstream side of Abbott Road	^596
Upstream side of Hinesburg Road	^641

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	# Depth in feet above ground. ^Elevation in feet (NGVD)
Approximately 75' upstream of Ames Hill Road (most upstream crossing)	^710
Maps available for inspection at the office of Christine Hart, Brattleboro Town Planner, Brattleboro, Vermont. Send comments to Honorable Corwin Elwett, Town Manager of Brattleboro, Municipal Offices, 230 Main Street, Brattleboro, Vermont 05301.	
WEST VIRGINIA	
Bancroft, town, Putnam County	
Kanawha River: Entire shoreline within community	^582
Maps available for inspection at the Town Hall, Bancroft, West Virginia. Send comments to Honorable James Legg, Mayor of the Town of Bancroft, P.O. Box 177, Bancroft, West Virginia 25011.	
Buffalo, town Putnam County	
Kanawaha River:	
At downstream corporate limits	^573
At upstream corporate limits	^574
Cross creek:	
At confluence with Kanawha River	^573
At upstream corporate limits	^573
Maps available for inspection at the Town Hall, Buffalo, West Virginia. Send comments to Honorable H. B. Hill, Mayor of the Town of Buffalo, P.O. Box 217, Buffalo, West Virginia 25033.	
Poca, town, Putnam County	
Kanawha River:	
At downstream corporate limits	^583
At upstream corporate limits	^584
Pocatalico River:	
At confluence with Kanawha River	^583
At upstream corporate limits	^583
Maps available for inspection at the Town Hall, Poca, West Virginia. Send comments to Honorable Larus Casto, Mayor of the Town of Poca, P.O. Box 586, Poca, West Virginia 25159.	

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Administrator)

Issued: March 4, 1985.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 85–5915 Filed 3–13–85; 8:45 am]

BILLING CODE 6718–03–M

44 CFR Part 67

[Docket No. FEMA–6649]

Proposed Flood Elevation Determinations; Alabama, et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations and proposed modified base flood elevations listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESS: See table below.

FOR FURTHER INFORMATION CONTACT: John L. Matticks, Acting Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of base (100-year) flood elevations and modified base flood elevations for selected locations in the nation, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a).

These elevations, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the flood plain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts flood plain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the flood plain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The proposed base (100-year) flood elevations for selected locations are:

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS

Source of flooding and location	#Depth in feet above ground. ^Elevation in feet (NGVD)
ALABAMA	
City of Selma, Dallas County	
Alabama River:	
About 4.0 miles downstream of U.S. Highway 80	^117
About 0.75 mile upstream of Louisville and Nashville Railroad	^122
Beach Creek: Within community	^121
Jones Creek:	
At confluence with Valley Creek	^118
About 3,100 feet upstream of Chambliss Drive	^128
Valley Creek:	
At confluence with Alabama River	^118
About 2.1 miles upstream of Highland Avenue	^129
Maps available for inspection at the City Hall, 222 Broad Street, Selma, Alabama. Send comments to Honorable Joe T. Smitherman, Mayor, City of Selma, City Hall, Selma, Alabama 36701.	
ARKANSAS	
Bono City, Craighead County	
Whaley Slough Ditch:	
At downstream corporate limits	^256
Upstream side of St. Louis-San Francisco Railroad	^262
Middle Drain:	
At confluence with Whaley Slough Ditch	^262
At upstream corporate limits	^277
Maps available for inspection at 103 College, Bono, Arkansas. Send comments to Honorable Ralph Lee, Mayor of the City of Bono, P.O. Box 127, Bono, Arkansas 72416.	
CALIFORNIA	
Agoura Hills (city) Los Angeles County	
Lindero Canyon (Above Medea Creek): 50 feet upstream from the center of Kanan Road	^822
Lindero Canyon (Above Lake Lindero): 315 feet upstream from the center of Thousand Oaks Boulevard	^970
Medea Creek (Above Mulholland Highway): Intersection of the stream and the center of Sideway Road	^834
Medea Creek (Above Ventura Freeway: 550 feet upstream from the center of Canwood Street	^853
Cheseboro Creek: 40 feet upstream from the center of Driver Avenue	^907
Palo Comado Creek: 280 feet upstream from the center of Balkins Drive	^967
Maps available for inspection at the Planning Department, 30313 Canwood, Unit 25, Agoura Hills, California. Send comments to the Honorable Carol Sahm, 30313 Canwood, Unit 25, Agoura Hills, California 91301	
Moorpark (city) Ventura County	
Arroyo Simi: 50 feet upstream from the center of New Los Angeles Avenue	^527
Peach Hills Wash: 80 feet upstream from the center of Beltramo Ranch Road	^477
Maps available for inspection at Public Works Department, 799 Moorpark Avenue, Moorpark, California. Send comments to the Honorable Albert Prieto, 799 Moorpark Avenue, Moorpark, California 93021.	
COLORADO	
Aspen (city) Pitkin County	
Roaring Fork River:	
75 feet upstream from the center of Cemetery Lane	^7,709
75 feet upstream from the center of East Cooper Avenue (State Highway 82)	^7,938
Castle Creek. 90 feet upstream from the center of West Hallam Street (State Highway 82)	^7,837
Maroon Creek: 40 feet downstream from the center of State Highway 82	^7,777
Maps available for inspection at the Engineering Department, 130 South Galena, Aspen, Colorado. Send comments to the Honorable William Stirling, 130 South Galena, Aspen, Colorado 81611.	
Pueblo (city), Pueblo County	
Arkansas River: 50 feet downstream from the center of Interstate Highway 25 (U.S. Highways 85 and 87)	^4,648
Fountain Creek:	
20 feet upstream from the center of the Atchison, Topeka and Santa Fe Railway	^4,660
30 feet downstream from the center of State Highway 47	^4,737
Intersection of 3rd Street and Grand Avenue	^4,661
Intersection of 6th Street and Grand Avenue	#1
Fountain Creek East Bank Overflow: Intersection of Fountain Avenue and 7th Street	^4,682
University Park Tributary: 20 feet upstream from the center of Jerry Murphy Road	^4,760
Wild Horse-Dry Creek: 20 feet upstream from the center of 18th Street	^4,703
Lake Minnequa:	
Center of Lakeshore Avenue, 200 feet north from its intersection with Iowa Avenue	^4,082
Center of Lakeshore Avenue 100 feet north from its intersection with Minnequa Avenue	#2
Maps available for inspection at the Zoning and Public Works Department, 211 East D Street, Pueblo, Colorado. Send comments to the Honorable Mike Salardino, Box 1427, Pueblo, Colorado 81002.	
CONNECTICUT	
Essex, town, Middlesex County	
Falls River:	
Upstream side of Falls River Pond Dam	^14
Approximately 150 feet upstream of Connecticut Valley Railroad	^25
Approximately 100 feet upstream of Farm Estate Road	^44
Shoreline of Wrights Pond at upstream corporate limits	^131

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground *Elevation in feet (NGVD)
Maps available for inspection at the Town Clerk's Vault, Town Hall, Essex, Connecticut. Send comments to Honorable Richard Riggio, First Selectman of the Town of Essex, Town Hall, P.O. Box 8, West Avenue, Essex, Connecticut 06426	
Norwalk, city, Fairfield County	
Long Island Sound:	
Shoreline at Roton Avenue (extended)	*17
At Calf Pasture Beach Road (extended)	*14
At intersection of Water Street and Fort Point Street	*11
Norwalk River:	
Downstream side of Wall Street	*12
At confluence of Silvermine River	*54
At upstream corporate limits	*124
Silvermine River:	
At confluence with Norwalk River	*54
Upstream side of Merritt Parkway	*83
At upstream corporate limits	*122
Five Mile River:	
Upstream side of Cudlipp Street	*12
Upstream side of Connecticut Turnpike	*46
Approximately 100 feet upstream of Fillow Street	*103
At upstream corporate limits	*143
Keilers Brook:	
At confluence with Five Mile River	*29
Upstream side of Flax Hill Raod	*60
Approximately 1,000 feet upstream of Connecticut Turnpike	*89
Stony Brook:	
At downstream corporate limits	*94
Upstream side of Field Street	*123
Betts Pond Brook:	
At confluence with Norwalk River	*11
Downstream side of Cannon Street	*37
Approximately 0.5 mile upstream of Boke Street	*68
Maps available for inspection at the Code Coordination Office of the Department of Code Enforcement, City Hall Annex, Roger's Square, East Norwalk, Connecticut. Send comments to Honorable William A. Collins, Mayor of the City of Norwalk, City Hall, 41 North Main Street, South Norwalk, Connecticut 06854	
Westbrook, town, Middlesex County	
Long Island Sound:	
Shoreline at Grove Beach Point	*15
Shoreline at Gerard Avenue (extended)	*14
Shoreline of western corporate limits	*16
Patchogue River at CONRAIL bridge	*10
Menunketesuck River:	
Menunketesuck River at Old Clinton Road and corporate lat	*7
Upstream side of Old Clinton Road	*12
Falls River:	
At downstream corporate limits	*104
Upstream side of Wright's Pond Dam	*131
Downstream side of Messerschmidt Pond Dam	*164
Maps available for inspection at the Clerk's Vault, Town Hall, Westbrook, Connecticut. Send comments to Honorable Eileen M. Daily, First Selectman of the Town of Westbrook, Town Hall, Boston Post Road, Westrook, Connecticut 06498	
FLORIDA	
Milton, city, Santa Rosa County	
Blackwater River:	
Just downstream of Lousville and Nashville Railroad	*9
About 0.56 mile upstream of U.S. Route 90	*14
Blackwater Bay: Along Blackwater River about 0.66 mile downstream of Lousville and Nashville Railroad	*11

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at the City Hall, 601 Alabama Street, Milton, Florida. Send comments to Honorable Russ Harber, City Manager, City of Milton, City Hall, P.O. Box 909, Milton, Florida 32572	
City of Niceville, Okaloosa County	
Swift Creek	
About 400 feet downstream of State 20	*5
About 4,200 feet upstream of State Road20	*10
Turkey Creek	
At mouth	*5
About 6,000 feet upstream of State Road 85	*10
Choctawhatchee Bay	
Along shoreline of Shirk Bayou	*5
At mouth of Mill Creek	*5
At shoreline of Rocky Bayou at State Road 20 bridge	*5
Along shoreline of Rocky Bayou at mouth of Bolton Branch	*7
At shoreline of Boggy Bayou about 650 feet west of intersection of Bay Shore Drive and Cross Street	*7
At shoreline of Boggy Bayou just west of intersection of Bay Shore Drive and 27th Street	*8
Maps available for inspection at the City Building, 208 North Partin Street, Niceville, Florida 32578. Send comments to Honorable Lannie Corbin, City Manager, City of Niceville, 208 North Partin Street, Niceville, Florida 32578	
Unincorporated areas of Okaloosa County	
Yellow River	
About 1.5 miles downstream of confluence of Mullgan Creek	*28
About 0.85 mile upstream of confluence of Davis Mill Creek	*78
Shoal River	
At mouth	*50
About 2900 feet upstream of confluence of Bends Creek	*88
Garnier Creek:	
At mouth	*5
About 2.8 miles upstream of State Road 189	*41
Lightwood Knot Creek:	
At mouth	*5
About 2.73 miles upstream of confluence of West Branch	*50
West Branch	
At mouth	*10
About 1.27 miles upstream of mouth	*24
Swift Creek	
About 4,480 feet downstream of State Route 285	*8
About 3,600 feet downstream of State Route 285	*10
Gulf of Mexico	
About 1,000 feet south of the intersection of U.S. Route 98 and Benning Drive	*4
Along southern shoreline of Santa Rosa Island from the western county boundary to about 1,000 feet south of the intersection of Amberjack Drive and Santa Rosa Boulevard	*7
Along southern shoreline of Santa Rosa Island from about 1.0 mile west of East Pass to about 4.1 miles east of East Pass	*9
Santa Rosa Sound	
Along southern shoreline from western county boundary to Miracle Strip Parkway bridge over The Narrows	*6
Along northern shoreline from western county boundary to about 2.8 miles east of western county boundary	*9
Choctawatchee Bay	
Along southern shoreline from the eastern county boundary to Indian Bayou	*3
At Grass Lake	*3
Along shoreline of Rocky Bayou east of State Road 20	*5
At Bens Lake Outlet	*6
Along shoreline of Cinco Bayou west of State Road 85	*6

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground *Elevation in feet (NGVD)
About 200 feet south of the intersection of North View Drive and South View Drive	*8
About 600 feet south of the intersection of Sherwood Drive and Blenheim Road	*8
Maps available for inspection at the Planning and Zoning Office, 10 First Avenue, Ft. Walton Beach, Florida. Send comments to Honorable Larry Anchors, Chairman, Okaloosa County Board of Commissioners, Courthouse Annex, Shalimar, Florida 32579	
ILLINOIS	
Adams County	
Tributary No. 2:	
At mouth	*576
About 0.9 miles upstream of mouth	*634
Mississippi River	
About 10.1 miles downstream of confluence of Mill Creek	*475
About 4.0 miles upstream of Lock and Dam No 20	*495
Emery Creek	
About 0.5 mile downstream of State Street	*589
Just downstream of State Street	*598
Curns Creek	
At mouth	*485
About 200 feet downstream of State Route 96	*625
About 0.9 miles upstream of State Route 96	*660
Cedar Creek	
About 0.59 mile downstream of 5th Street	*487
About 0.20 mile upstream of 12th Street	*553
Tributary No. 3:	
About 1000 feet downstream of Burlington Northern railroad	*606
About 0.43 miles upstream of 30th Street	*632
Maps available for inspection at the County Clerks Office, Adams County Courthouse, Quincy, Illinois. Send comments to Honorable Robert Encson, Chairman, Adams County Board, Adams County Courthouse, Quincy, Illinois 62301	
Unincorporated Areas of Cass County	
Illinois River	
About 13.2 miles downstream of State Route 100 (downstream county boundary)	*447
About 10.5 miles upstream of State Route 100 (upstream county boundary)	*450
Maps available for inspection at the County Clerks Office, County Courthouse, Virginia, Illinois. Send comments to Honorable Raymond L. Robinson, Chairman, Cass County Board, Cass County Courthouse, Virginia, Illinois 62691.	
Village of East Cape Girardeau, Alexander County	
Mississippi River	
About 0.6 mile downstream of State Route 146	*355
About 0.8 mile upstream of State Route 146	*356
Maps available for inspection at the Witz Village Barbecue Restaurant, East Cape Park, East Cape Illinois. Send comments to Honorable Joe Aden, Village President, Village of East Cape Girardeau, 106 David Street, East Cape, Illinois 62957	
Unincorporated Areas of Greene County	
Illinois River	
About 3.0 miles downstream of State Route 100	*440
About 4.9 miles upstream of Illinois Central Gulf Railroad	*443
Hurricane Creek South:	
At mouth	*441
About 300 feet upstream of Bluff Street	*452

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at the Office of the Supervisor of Assessments, Greene County Courthouse, Carrollton, Illinois. Send comments to Honorable Charles Barnett, Chairman, Greene County Board of Supervisors, Green County Courthouse, Carrollton, Illinois 62016.	
Unincorporated Areas of Schuyler County	
Illinois River:	
At confluence of La Moine River	*448
About 2,400 feet upstream of confluence of Wilson Creek	*452
Maps available for inspection at the County Clerks Office, Schuyler County Courthouse, Rushville, Illinois. Send comments to Honorable Donald Lerch, Chairman, Schuyler County, Schuyler County Courthouse, Rushville, Illinois 62681.	
KANSAS	
City of New Cambria, Saline County	
Saline River:	
About 0.64 mile upstream of confluence with Smoky Hill River	*1,197
About 1.06 miles downstream of Union Pacific Railroad	*1,199
Smoky Hill:	
At confluence of Saline River	*1,197
About 2.70 miles upstream of confluence of Saline River	*1,199
Maps available for inspection at the City Building, New Cambria, Kansas. Send comments to Honorable Gary Base, Mayor, City of New Cambria, City Building, P.O. Box 38, New Cambria, Kansas 67470.	
City of Salina, Saline County	
Saline River	
About 1,400 feet downstream of North Fifth Street	*1,219
About 2,200 feet upstream of North Ninth Street	*1,224
Smoky Hill River:	
About 1,500 feet downstream of Missouri Pacific Railroad	*1,206
About 9,100 feet upstream of Crawford Street	*1,236
Mulberry Creek:	
At confluence with Saline River	*1,219
About 4,600 feet upstream of North Ninth Street	*1,225
Dry Creek:	
Just upstream of Union Pacific Railroad	*1,230
About 3,100 feet upstream of Schilling Road	*1,245
The Slough:	
At confluence with Old Smoky Hill River Channel	*1,225
Just upstream of Cloud Street	*1,232
Magnolia Road Ditch:	
About 150 feet upstream of Interstate 135	*1,240
About 1,500 feet upstream of Neal Avenue	*1,243
Mulberry Creek Overflow:	
About 1,650 feet downstream of North Fifth Street	*1,217
About 130 feet upstream of North Fifth Street	*1,220
Maps available for inspection at the City County Building, City Planning Department, Salina, Kansas. Send comments to Honorable John Burgess, Mayor, City of Salina, City County Building, 300 West Ash, Salina, Kansas 67401	
Unincorporated Areas Saline County	
Smoky Hill River;	
At eastern county boundary	*1,170
About 2.54 miles upstream of confluence of Solomon River	*1,173
About 2.2 miles downstream of confluence of Saline River	*1,195
Just downstream of County Road located about 0.35 mile downstream of confluence of Old Smoky Hill River Channel	*1,210
Just upstream of County Road located about 0.35 mile downstream of confluence of Old Smoky Hill River Channel	*1,215
About 0.37 mile upstream of confluence of Dry Creek Diversion	*1,256
Saline River:	
At confluence with Smoky Hill River	*1,198
About 3.6 miles upstream of U.S. Highway 81	*1,237
Mulberry Creek:	
At confluence with Saline River	*1,219
About 1.2 miles upstream of County Highway 1710	*1,239
Mulberry Creek Overflow:	
At confluence with Saline River	*1,205
Just downstream of North Fifth Street	*1,219
Dry Creek:	
At confluence with Mulberry Creek	*1,228
Just downstream of County Road located about 2.1 miles upstream of Schilling Road	*1,247
Just upstream of County Road located about 2.1 miles upstream of Schilling Road	*1,253
About 2.6 miles upstream of Schilling Road	*1,253
Dry Creek Diversion:	
At confluence with Smoky Hill River	*1,255
About 1,200 feet upstream of State Highway 104	*1,264
Gypsum Creek:	
About 2.0 miles downstream of Missouri Pacific Railroad	*1,226
About 1.6 miles upstream of State Highway 4	*1,242
Solomon River:	
About 0.45 mile upstream of confluence with Smoky Hill River	*1,171
About 350 feet upstream of County Road	*1,172
Magnolia Road Ditch:	
At confluence with Dry Creek	*1,240
About 0.31 mile upstream of Neal Avenue	*1,243
Maps available for inspection at the City County Building, County Planning Department, 300 West Ash, Salina, Kansas. Send comments to Honorable Roy Allen, Chairman of the Board of County Commissioners, City County Building, 300 West Ash, Salina, Kansas 67401.	
KENTUCKY	
Unincorporated Areas of Martin County	
Calf Creek: Within county	*610
Calf Creek Tributary:	
At mouth	*610
About 0.85 mile upstream of mouth	*722
Turkey Creek:	
At mouth	*612
At confluence of Long Fork	*655
Long Fork:	
At confluence with Turkey Creek	*655
About 0.16 mile upstream of the confluence of Pigeonroost Branch	*682
Big Creek: Within county	*652
Big Elk Creek: Within county	*613
Buck Creek:	
About 1.0 mile upstream of mouth	*624
At confluence of Right Fork Buck Creek	*630
Right Fork Buck Creek:	
At confluence with Buck Creek	*630
About 0.25 mile upstream of State Route 2031	*645
Emily Creek:	
At mouth	*628
About 0.5 mile upstream of White Oak Creek Road	*638
Wolf Creek:	
At mouth	*628
About 0.70 mile upstream of confluence of Little Rockcastle Creek	*641
Flutylick Branch: Within county	*609
Friendship Tributary: Within County	*609
Tug Fork:	
About 1.8 miles downstream of confluence of Flutylick Branch	*607
At confluence of Big Creek	*652
Rockhouse Fork:	
About 0.3 mile downstream of the confluence of Williamson Branch	*650
About 0.24 mile upstream of confluence of Stafford Fork	*672
Middle Fork:	
About 1.0 mile downstream of Saltwell Branch Road	*634
About 1.0 mile upstream of confluence of Saltwell Branch	*653
Coldwater Fork:	
About 0.36 mile downstream of confluence of Blacklog Fork	*648
About 0.65 mile upstream of confluence of Collins Branch	*686
Blacklog Fork:	
At mouth	*651
About 2.11 miles upstream of confluence of Little Blacklog Fork	*688
White Oak Fork:	
At mouth	*629
About 0.87 mile upstream of mouth	*653
Pigeonroost Fork:	
At mouth	*635
About 1.28 miles upstream of Norfolk Southern Railway	*642
Maps available for inspection at the Martin County Courthouse, Inez, Kentucky. Send comments to Honorable John B. Callaham, County Judge Executive, Martin County Courthouse, Inez, Kentucky 41224.	
MAINE	
Brunswick, town, Cumberland County	
Casco Bay:	
Shoreline at confluence of Bunganuc Stream	*13
Shoreline of Maquoit Bay at Maquoit Road (extended)	*10
East shoreline of Merepoint Neck	*11
Shoreline of Crow Island	*9
Shoreline of Ocean Drive (extended)	*10
Shoreline of Harpswell Cove	*10
Shoreline of Lower Coombs Island	*9
New Meadows River:	
Shoreline at Thomas Bay	*9
Shoreline at Old Bath Road	*10
Androscoggin River:	
At downstream corporate limits	*10
At Bay Bridge Road (extended)	*10
Downstream side of Main Central Railroad (downstream crossing)	*16
Upstream side Central Maine Power Company Dam	*51
At Interstate 95	*58
Upstream side of dam located approximately 0.5 mile upstream of confluence of Simpson Brook	*79
At Androscoggin-Cumberland County boundary	*81
Maps available for inspection at the Town Manager's Office, Municipal Building, Brunswick, Maine.	
Send comments to Honorable Robert C. Shephard, Chairman of Brunswick Town Council, Municipal Building, 28 Federal Street, Brunswick, Maine 04011.	
MARYLAND	
Kent County	
Chesapeake Bay:	
Shoreline at Cedar Point	*10
Shoreline at Wilson Point	*10
Entire shoreline of Short Cove	*7
Shoreline at Napley Green Road (extended)	*11
Shoreline at Allan Lane (extended)	*11
At confluence with Tavern Creek	*11
Shoreline at Tolchester Beach Raod	*12
Shoreline west of end of Barnhardt Boulevard	*12
Shoreline at Worton Point	*13
Shoreline at at Meeks Point	*13
Shoreline at Hawell Point	*14
Sassafras River:	
Shoreline at confluence with Chesapeake Bay	*14

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground *Elevation in feet (NGVD)
Approximately 2.2 miles upstream of confluence with Chesapeake Bay approximately 250 feet south of shoreline	*11
Approximately 0.70 mile upstream of confluence of Gut Marsh	*14
Downstream side U.S. Route 301 bridge	*11
Chester River	
At confluence of Hall Creek	*10
Shoreline at Bells Bar Point	*9
At confluence of Grays Inn Creek	*7
Shoreline at State Route 661 (extended)	*7
At confluence of Dam Creek	*7
Shoreline at Collins Road (extended)	*7
At confluence of Morgan Creek	*8
Shoreline at State Route 290	*8
Shoreline at confluence of Mills Branch	*10
Downstream corporate limits of Town of Millington	*13
At confluence of Andover Branch	*16
Radcliffe Creek	
At confluence with Chester River	*7
Upstream side of State Route 20	*12
At confluence with Subdivision Tributary	*16
Upstream side of CONRAIL bridge	*46
Approximately 280 feet upstream of Mary Morris Road	*65
West Fork Tributary to Radcliffe Creek	
At confluence with Radcliffe Creek	*20
Upstream side of Steward Road	*34
Upstream side Mary Morris Road	*64
East Fork Tributary to Radcliffe Creek	
At confluence with Radcliffe Creek	*19
Upstream side of CONRAIL bridge	*39
Approximately 0.93 mile upstream of confluence with Radcliffe Creek	*50
Tributary No. 1	
At confluence with West Fork Tributary to Radcliffe Creek	*45
Upstream side of Mary Morris Road	*64
Subdivision Tributary	
At confluence with Radcliffe Creek	*16
Upstream side of Kennedy Drive	*34
East Fork Langford Creek	
State Route 446 (extended)	*7
Downstream side of Langford-Brices Mill Road	*9
Approximately 60 feet downstream of Chestertown Farlee Road	*24
Approximately 0.85 mile upstream of Chestertown Farlee Road	*31
Upstream side of Stockton Starrt Road	*49
East Fork Langford Creek Tributary	
At confluence with East Fork Langford Creek	*37
At upstream side of Pond Dam	*48
Swan Creek	
At confluence with The Haven	*10
Approximately 0.5 mile upstream of confluence with The Haven	*8
Upstream side of Swan Creek Road	*8
Approximately 50 feet downstream of Remington Pond Dam	*23
Jaggard Pond Tributary	
At confluence with Swan Creek	*8
At Jaggard Pond Dam	*14
Second Tributary	
At confluence with Swan Creek	*10
At Farm Pond Dam	*23
Tavern Creek	
At confluence with Chesapeake Bay	*11
0.5 mile upstream of confluence with Chesapeake Bay	*8
At Swan Creek Road	*8
Upstream side of most downstream Pond Dam	*11
Approximately 0.72 mile upstream of most upstream Pond Dam	*21
Grays Inn Creek	
Entire shoreline from confluence with Chester River to approximately 4.55 miles upstream of confluence with Chester River	*7
Approximately 0.19 mile upstream of Rock Hill Road	*12
Grays Inn Creek Tributary	
At confluence with Grays Inn Creek	*7
Approximately 0.36 mile upstream of Eastern Neck Island Road	*8

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground *Elevation in feet (NGVD)
Cypress Branch	
At confluence with Chester River	*16
At State Route 291	*16
Maps available for inspection at the Planning Office, County Courthouse, Chestertown, Maryland	
Send comments to Honorable Mary Roe Walker, President of County Commissioners, Kent County, County Courthouse, Chestertown, Maryland 21620	
MASSACHUSETTS	
Quincy, city, Norfolk County	
Furnace Brook	
Upstream of Furnace Brook Parkway	*11
At confluence with Cunningham Brook	*39
Upstream side of Crescent Street	*50
Approximately 850 feet upstream of Hayden Street	*81
Town Brook	
Upstream side of Elm Street	*12
Upstream side of Water Street	*30
Upstream of second crossing of CONRAIL	*35
Cunningham Brook	
At confluence with Furnace Brook	*39
Downstream side of Stedman Street	*39
Quincy Bay	
Shoreline at Monmouth Street (extended)	*11
Shoreline at Sunrise Road (extended)	*17
Shoreline at Ashworth Street (extended)	*15
Shoreline at Bromfield Street (extended)	*15
Sheetflow between Brunswick Street and Bay Street	*#2
Shoreline at Hobomack Road (extended)	*16
Sheetflow between Webster Street and channing Street along Quincy Shore Drive	*#2
Dorchester Bay	
Shoreline at Shoreham Street (extended)	*11
Shoreline at Victory Road (extended)	*15
Fore River	
Confluence with Town River Bay	*15
Shoreline at Washington Street Bridge	*14
At Edge Water Drive and Rock Island Road intersection	*12
Town River Bay	
Confluence with Fore River	*15
Shoreline at Roach Street	*12
Shoreline at Delano Avenue (extended)	*13
Shoreline at Cherry Street (extended)	*15
Maps available for inspection at the Office of Planning and Community Development, City Hall, Quincy, Massachusetts	
Send comments to Honorable Francis X. McCauley, Mayor of the City of Quincy, City Hall, 1305 Hancock Street, Quincy, Massachusetts 02169	
MINNESOTA	
City of Buffalo Wright County	
Buffalo Lake: At shoreline	*922
Maps available for inspection at City Hall, 212 Central Avenue, Buffalo, Minnesota 55313	
Send comments to Honorable Gerald Melgard, Mayor of the City of Buffalo, City Hall, 212 Central Avenue, Buffalo, Minnesota 55313	
Unincorporated areas of Redwood County	
Minnesota River	
About 2.5 miles downstream of County Highway 11	*823
About 1.1 miles upstream of County Highway 7	*874
Maps available for inspection at the Redwood County Courthouse, Redwood Falls, Minnesota	
Send comments to Honorable Richard Jacobsen, Chairman, County Board of Commissioners, Redwood County Courthouse, P.O. Box 4, Redwood Falls, Minnesota 56283	
Unincorporated areas of Swift County	
Lac Qui Parle: Within community	*943

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground *Elevation in feet (NGVD)
Minnesota river	
About 1,700 feet downstream of State Highway 119	*943
Just downstream of Marsh Lake Dam	*944
Marsh Lake: Within community	*946
Pomme de Terre River	
About 2.2 miles downstream of Chicago, Milwaukee, St. Paul and Pacific Railroad	*972
About 2.4 miles upstream of Burlington Northern railroad	*1002
Maps available for inspection at the Swift County Courthouse, 301 14th Street North, Benson, Minnesota.	
Send comments to Honorable John Langon, Chairman, County Board of Commissioners, Swift County Courthouse, P.O. Box 288, Benson, Minnesota 56215.	
MONTANA	
Anaconda-Deer Lodge County (unincorporated areas)	
Warm Springs Creek	
At center of North Cable Road	*5364
150 feet upstream of Interstate Highway 90	*4818
Maps available for inspection at the Office of Disaster Emergency Services, 800 South Main, Anaconda, Montana.	
Send comments to the Honorable Jim Edwards, 800 South Main, Anaconda, Montana 59711.	
Richland County (unincorporated areas)	
Lone Tree Creek: 150 feet upstream from the center Fourteenth Street (County Route 488)	*1936
Maps available for inspection at County Surveyor's Office, 221 5th Street, SW., Sidney, Montana.	
Send comments to the Honorable Bing C. Poff, P.O. Box 986, Sidney, Montana 59270.	
SIDNEY (CITY), RICHLAND COUNTY	
Lone Tree Creek: 120 feet downstream from center of Ninth Avenue Southwest	*1945
NEVADA	
Churchill County (Unincorporated areas)	
Carson River: At intersection of Carson River and center of U.S. Alternate 95/U.S. Highway 50 (Reno Highway)	*3972
Maps available for inspection at Building Department, 190 West 1st Street, Fallon, Nevada.	
Send comments to Honorable Melba Alldredge, 10 West Williams, Fallon, Nevada 89406.	
NEW HAMPSHIRE	
Hampton, Town, Rockingham County	
Atlantic Ocean:	
Shoreline at southern corporate limits	*14
Area west of shoreline at southern corporate limits and east of Ocean Drive	*12
West side of U.S. Route 1A bridge over Hampton Harbor	*9
Downstream of Towle Farm Road bridge over Taylor River	*9
Area east of U.S. Route 1A and west of shoreline approximately 1.0 mile north of southern corporate limits	*11
Shoreline at North Beach	*20
Shoreline approximately 0.3 mile south of northern corporate limits	*24
Shoreline at northern corporate limits	*14
Shallow Flooding:	
Area between shoreline of Hampton Harbor inlet and southern corporate limits	#2
Area west of Great Boars Head on U.S. Route 1A	#1
Area west of shoreline and east of Meadow Pond	#1

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PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Area approximately 0.34 mile south of northern corporate limits west of shoreline and east of Ocean Boulevard	#1
Area west of shoreline and east of Ocean Boulevard	#1
Maps available for inspection at the Town Clerk's Office, Hampton, New Hampshire. Send comments to Honorable Phillip G. Richards, Town Manager of Hampton, 136 Winnacunnet Road, Hampton, New Hampshire 03842.	
New Castle, town, Rockingham County	
Atlantic Ocean:	
Shoreline on east side of Jaffrey Point	*18
Shoreline at Ocean Avenue (extended)	*14
North shoreline of Goat Island	*11
Shoreline at Laurel Lane	*9
Entire shoreline of Campbells Island	*9
Maps available for inspection at the Clerk's Vault, Town Hall, New Castle, New Hampshire. Send comments to Honorable Peter Gamester, Chairman of the Board of Selectmen for the Town of New Castle, P.O. Box 367, Town Hall, New Castle, New Hampshire 03854.	
North Hampton, town, Rockingham County	
Winnicut River:	
At downstream corporate limits	*41
Upstream side of Walnut Avenue	*49
Upstream side of North Hampton Road	*53
At upstream corporate limits	*57
Little River:	
Upstream side of Woodland Road	*10
Approximately .5 mile upstream of Woodland Road	*17
Approximately 80 feet downstream of upstream dam	*27
Upstream side of upstream dam	*35
Approximately 65 feet upstream of Mill Road	*39
Shallow Flooding:	
Southeast of intersection of Appledore Avenue with Ocean Boulevard	#1
West side of Ocean Boulevard from intersection with Willow Avenue to Northern corporate limits	#1
Atlantic Ocean:	
Area in the vicinity of Philbrick Pond	*9
Area in the vicinity of Little River downstream of Woodland Road	*9
Shoreline at northern corporate limits	*19
Shoreline approximately 500 feet south of northern corporate limits	*23
Shoreline at Atlantic Avenue (extended)	*19
Shoreline at southern corporate limits	*14
Maps available for inspection at the Town Clerk's Office, Town Hall, North Hampton, New Hampshire. Send comments to Honorable Robert Southworth, Chairman of the Board of Selectmen for the Town of North Hampton, P.O. Box 71, North Hampton, New Hampshire 03862.	
NORTH CAROLINA	
Town of Bayboro, Pamlico County	
Atlantic Ocean/Pamlico Sound/Bay River: Within Community	*8
North Prong River: Within Community	*8
South Prong River: Within Community	*8
Maps available for inspection at the Pamlico County Courthouse, Bayboro, North Carolina. Send comments to Honorable I. Lee Whorton, Mayor, Town of Bayboro, P.O. Box 519, Bayboro North Carolina 28515	
Unincorporated areas, Bertie County	
Atlantic Ocean/Albemarle Sound/Chowan River: Along shoreline from the northern county boundary to about 0.8 mile downstream of the U.S. Highway 17 bridge	*8

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Albemarle Sound/Batchelor Bay:	
At Black Walnut Point	*7
At Morgan Swamp	*8
Cashie River:	
About 1.7 miles downstream of SR 1301	*11
About 1.6 miles upstream of U.S. Highway 13	*15
About 2,400 feet downstream of SR 1208	*80
About 2,100 feet upstream of SR 1208	*95
Cashie River Tributary:	
About 1.6 miles downstream of NC 11	*49
Just downstream of NC 11	*60
Just upstream of NC 11	*65
Just upstream of SR 1201	*71
Cashie Swamp:	
Just downstream of SR 1204	*72
Just upstream of NC 308	*80
Chiska Creek:	
At confluence with Cashie River	*15
Just upstream of SR 225	*20
About 0.5 mile upstream of NC 308	*48
Cricket Swamp:	
At confluence with Salmon Creek	*13
Just upstream of NC 45	*14
Eastmost Swamp:	
At confluence with Salmon Creek	*13
Just downstream of SR 1354	*44
Eastmost Swamp Tributary No. 1:	
At confluence with Eastmost Swamp	*30
Just upstream of SR 1355	*36
Eastmost Swamp Tributary No. 2:	
At confluence with Eastmost Swamp	*33
Just upstream of NC 45	*42
Eastmost Swamp Tributary No. 3:	
At confluence with Eastmost Swamp	*38
Just downstream of SR 1354	*45
Jacks Branch:	
About 2,500 feet downstream of SR 1120	*54
Just downstream of NC 11	*70
Salmon Creek:	
At confluence with Chowan River	*7
At confluence of Cricket Swamp	*13
Unnamed Tributary No. 1:	
At confluence with Salmon Creek	*9
Just downstream of NC 45	*11
Just upstream of U.S. Highway 17	*22
Unnamed Tributary No. 2:	
At confluence with Unnamed Tributary No. 1	*22
Just upstream of U.S. Highway 17	*36
Maps available for inspection at the County Courthouse, Dundee Street, Windsor, North Carolina. Send Comments to Honorable John E Whitehurst, Manager, Bertie County, County Courthouse, P.O. Box 530, Windsor, North Carolina 27983.	
Unincorporated areas, Camden County	
Albemarle Sound: Along shoreline from about 2 miles south of Miles Point to Camden Point	*7
Intracoastal Waterway:	
Along shoreline of Indiantown Creek from SR 1147 to U.S. Highway 158	*6
Along Crooked Creek shoreline from the mouth to SR 1107	*7
Along shoreline from Camden Point to confluence of Crooked Creek	*7
Pasquotank River:	
Along shoreline from about 1.2 miles upstream of SR 1205 to about 0.3 miles west of intersection of Whitehall Road and Holly Drive	*6
Along Sawyers Creek downstream of SR 1203	*6
About 0.2 mile west of intersection of NC 343 and SR 1138	*6
Along shoreline from about 1.0 mile upstream of Treasure Point to about 2.0 miles south of Miles Point	*7
Along Areneuse Creek from mouth to NC 343	*7
At confluence of Raymond Creek	*7
Along Portohonk Creek downstream of SR 1148	*7

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at the County Courthouse, Camden, North Carolina. Send comments to the Honorable J.C. Roundtree, Chairman, Board of County Commission, Rt. 1, Box 86, South Mills, North Carolina 27976.	
Unincorporated areas, of Dare County	
Atlantic Ocean:	
At the intersection of NC 12 and SR 1241	*6
Along shoreline from northern county boundary to Oregon Inlet	*12
Atlantic Ocean/Pamlico Sound:	
About 1,000 feet south of U.S. Highway 264 from the bridge over Long Shoal River to the bridge over Deep Creek	*5
At the intersection of NC 12 and Forest Road	*9
Atlantic Ocean/Roanoke Sound:	
At the intersection of Dogwood Circle and Scuppernong Road	*9
At the intersection of SR 1141 and SR 1143	*11
Atlantic Ocean/Croatan Sound:	
At the intersection of SR 1111 and SR 1112	*7
At Manns Harbor Ferry Landing	*9
Atlantic Ocean/Oregon Inlet/Davis Channel/Croatan Sound/Roanoke Sound: Entire shoreline of Smith Island	*9
Atlantic Ocean/Currituck Sound:	
At the intersection of Duck Road and Dune Road	*7
At Martin Point	*8
Atlantic Ocean/Albemarle Sound:	
Along SR 1113 near Mashoes	*7
At Caroon Point	*10
Atlantic Ocean/Albemarle Sound/Croatan Sound/Pamlico Sound:	
Along Alligator River shoreline between Cypress Point and Bay Point	*4
At Ned Bees Point	*7
Maps available for inspection at the County Administration Building, Budleigh Street, Manteo, North Carolina. Send comments to the Honorable Jack W. Cahoon, County Manager, Dare County, County Administration Building Budleigh Street, Manteo, North Carolina 27954	
Town of Kill Devil Hills, Dare County	
Atlantic Ocean:	
About 50 feet west of shoreline from northern corporate limits to Lake Drive	*11
Along shoreline	*12
Atlantic Ocean/Roanoke Sound/Colington Creek:	
Along shoreline on western corporate limits	*9
Along Virginia Dare Trail from Archdale Street to southern corporate limit	*9
Maps available for inspection at the Town Hall, Kill Devil Hills, North Carolina. Send comments to Honorable Lowell Parry, Mayor, Town of Kill Devil Hills, Town Hall, P.O. Box 719, Kill Devil Hills, North Carolina 27948.	
Town of Kitty Hawk, Dare County	
Atlantic Ocean:	
About 150 feet west of Shoreline between East White Avenue and Tateway Road	*8
Along shoreline	*12
Atlantic Ocean/Currituck Sound/Kitty Hawk Bay: Along Currituck Sound and Kitty Hawk Bay shoreline within community	*9
Maps available for inspection at the Town Hall, Kitty Hawk, North Carolina. Send comments to Honorable Carlton P. Smith, Mayor, Town of Kitty Hawk, Town Hall, P.O Box 549, Kitty Hawk, North Carolina 27949.	
Town of Manteo, Dare County	
Roanoke Sound:	
Along Corporate Limits west of Virginia Dare Road	*9
Along Ananias Dare Street about 1,600 feet from the intersection with Queen Elizabeth Avenue	*10

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at the Town Hall, Manteo, North Carolina.	
Send comments to Honorable Harry Schiffman, Mayor, Pro/Tem, Town of Manteo, Town Hall, P.O. Box 246, Manteo, North Carolina 27954	
Town of Nags Head, Dare County	
Atlantic Ocean:	
About 200 feet west of shoreline from East Curlew Street to about 600 feet south of East Hollowell Street	*9
About 150 feet west of shoreline from East Dune Street to about 700 feet south of East Forrest Street	*9
About 200 feet west of shoreline from East Hargrove Street to about 300 feet north of East Ida Street	*9
About 150 feet west of shoreline from East Indigo Street to about 200 feet north of East June Street	*9
About 175 feet west of shoreline from about 600 feet north of East Jacob Street to East Juncos Street	*9
About 175 feet west of shoreline from East Surfside Drive to about 250 feet south of East Seagull Drive	*9
Along shoreline	*12
Roanoke Sound:	
At intersection of East Abalone Street and South Memorial Avenue	*9
Along shoreline	*9
At intersection of West Sound Side Road and South Croatan Highway	*9
At intersection of Hawksnest Street and South Virginia Dare Trail	*9
Along western corporate limits from East Gulfstream Street to southern corporate limits	*9
At intersection of East Gull Street and South Virginia Dare Trail	*9
Maps available for inspection at the Town Hall, Nags Head, North Carolina.	
Send comments to Honorable Donald W. Bryan, Mayor, Town of Nags Head, Town Hall, P.O. Box 99, Nags Head, North Carolina 27959	
Town of Oriental, Pamlico County	
Atlantic Ocean/Pamlico Sound/Neuse River Within extraterritorial limits	*8
Morris Creek Within extraterritorial limits	*8
Maps available for inspection at the Pamlico County Courthouse, Bayboro, North Carolina.	
Send comments to Honorable Dennis Barkley Acting Mayor, Town of Oriental, P.O. Box 472, Oriental, North Carolina 28571	
Unincorporated areas of Pasquotank County	
Little River	
Just downstream of SR 1197	*7
About 1.44 miles upstream from U.S. Highway 17	*10
Atlantic Ocean/Albemarle Sound/Little River	
At the intersection of SR 1115 and SR 1116	*5
At Hobbs Landing	*5
At mouth of Halls Creeks	*7
Atlantic Ocean/Knobbs Creek Just downstream of SR 1332 bridge over Knobbs Creek	*7
Atlantic Ocean/Albemarle Sound/Pasquotank River	
Entire shoreline of Goat Island	*6
At the intersection of SR 1101 and SR 1116	*6
At mouth of Bettys Creek	*6
At the intersection of SR 1203 and SR 1204	*7
Maps available for inspection at the County Courthouse, Elizabeth City, North Carolina.	
Send comments to Honorable W. David Harris, County Manager, Pasquotank County, County Courthouse, Box 39 Elizabeth City North Carolina 27909	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Town of Stonewall, Pamlico County	
Atlantic Ocean/Pamlico Sound/Bay River/Trent Creek:	
Along Alligator Creek from NC 55 to Trent Creek	
Along Trent Creek from Alligator Creek to Bay River	*7
Atlantic Ocean/Pamlico Sound/Bay River/South Prong Bay River Along shoreline of Bay River and South Prong Bay River from about 1.2 miles downsteram of Center Street to NC 55	*7
Maps available for inspection at the Pamlico County Courthouse, Bayboro, North Carolina.	*8
Send comments to Honorable Robert Cowden, Mayor, Town of Stonewall, P.O. Box 96, Stonewall, North Carolina 28583	
Town of Vandemere, Pamlico County	
Atlantic Ocean/Pamlico Sound/Bay River Within Community	*8
Maps available for inspection at Pamlico County Courthouse, Bayboro, North Carolina.	
Send comments to Honorable Billy W. Harris, Mayor, Town of Vandemere, P.O. Box 338, Vandemere, North Carolina 28587	
OHIO	
City of Springfield, Clark County	
Mad River:	
At Confluence of Mill Creek	*903
About 0.52 mile upstream of U.S. Route 68	*909
Buck Creek:	
At mouth	*906
About 0.55 mile upstream of Belmont Avenue	*954
Maps available for inspection at the City Building, 76 East High Street, Springfield, Ohio	
Send comments to Honorable W. Gregg LaMar, City Manager, City of Springfield, City Building, 76 East High Street, Springfield, Ohio 45502	
RHODE ISLAND	
Pawtucket, city, Providence County	
Seekonk River:	
At Bishop Street (extended)	*19
Western shoreline at Ridge Avenue (extended)	*18
At Englewood Avenue (extended)	*18
Approximately 150 feet west of western shoreline at Lyman Street (extended)	*17
At I-95	*16
Shoreline at corporate limits	*19
Shoreline at Exeter Avenue (extended)	*18
Approximately 150 feet west of western shoreline at Lyman Street (extended)	*17
Shoreline at Arnold (extended)	*18
Maps available for inspection at the Office of City Engineer, 3rd Floor, Pawtucket City Hall Planning Department, 200 Main Street, Pawtucket, Rhode Island.	
Send comments to Honorable Henry S. Kirch, Mayor of the City of Pawtucker, City Hall, 137 Roosevelt Avenue, Pawtucket, Rhode Island 02860	
South Kingston, town, Washington County	
Saugatucket River:	
At Silver Lake Road	*10
Approximately 250 upstream of Church Street	*17
Upstream side of Saugatucket Pond Dam	*32
Upstream side of Saugatucket Road	*35
Block Island Sound:	
Shoreline at west corporate limits	*18
Area at south end of Rose Briar Avenue	*12
Area at south end of Moonstone Beach Road	*15
Sheet flow area along south end of Matunuck Beach Road	#2
Shoreline at east corporate limits	*19
Area at south end of Dory Court (extended approximately 100 feet)	*10

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Shoreline at Jerry Brown Farm Road (extended)	*12
Entire shoreline of Silver Spring Cove	*11
Rhode Island Sound: Entire shoreline of Pettaquamscutt River within community	*11
Maps available for inspection at the Town Planning Office, Town Hall, South Kingston, Rhode Island.	
Send comments to Honorable Gilbert Indeglia, President of the Town Council of South Kingston, Town Hall, 66 High Street, Wakefield, Rhode Island 02879	
TENNESSEE	
City of Waverly, Humphreys County	
Trace Creek:	
About 1.7 miles downstream of Brown Town Road	*441
Just downstream of upstream U.S. Highway 70 crossing	*585
Tributary A:	
Mouth at Trace Creek	*508
Just upstream of the Louisville and Nashville Railroad	*515
About 3,400 feet upstream of Louisville and Nashville Railroad	*556
Tributary B	
Mouth at Trace Creek	*519
Just downstream of the upstream Little Richland Road Crossing	*566
Tributary C	
Mouth at Trace Creek	*531
About 0.8 mile upstream of North Railroad Street	*587
Tributary D:	
Mouth at Trace Creek	*572
About 1.6 miles upstream of the Louisville and Nashville Railroad	*662
Maps available for inspection at the City Hall, 103 East Main Street, Waverly, Tennessee	
Send comments to Honorable Roy Bell, Mayor, City of Waverly, City Hall, P.O. Box 71, Waverly, Tennessee 37185.	
TERRITORY OF GUAM	
Harmon Sink: Intersection of Marine Drive (Route 1) and Simon Sanchez Street	*93
Tamuning Drainageway: Intersection of the stream and the center of Serenu Avenue	*8
Agana River:	
Intersection of the stream and the center of Marine Drive (Route 1)	*11
Center of West Soledad Avenue, 160 feet west of its intersection with Aspinall Avenue	*10
Fonte River: 100 feet upstream from the center of Marine Drive (Route 1)	*12
Asan River: Intersection of the stream and the center of Asan Ocean View Drive (Route 1)	*14
Calecag River: 520 feet upstream from the center of Ramona Street	*14
Taguag River: 330 feet upstream from the center of Marine Drive (Route 1)	*9
Masso River:	
Intersection of the stream and the center of Assumption Drive	*16
Center of Marian Peling Street, 140 feet east of its intersection with Tuncap Street	*9
Togcha River:	
Intersection of the stream and the center of Marine Drive (Route 2)	*12
Center of North Penno Street, 800 feet north of its intersection with Chalan Obispo Olana	*9
Salinas River: Intersection of the stream and the center of Marine Drive (Route 2)	*11
Finile Creek: 500 feet upstream from the center of Marine Drive (Route 2)	*11
Guan River: 50 feet upstream from the center of Marine Drive (Route 2)	*11
Ausu Creek: 1,050 feet upstream from the center of Marine Drive (Route 2)	*11
Chaigan Creek: 430 feet upstream from the center of Marine Drive (Route 2)	*10

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Taleyfac River: 30 feet upstream from the center of Marine Drive (Route 2)	*11
Umatac River: 40 feet upstream from the center of South San Dimisio Drive (Route 4)	*10
Madog River: 30 feet upstream from the confluence with Laelae River and Umatac River	*18
Laelae River: 460 feet upstream from the confluence with Umatac River and Madog River	*20
Geus River: 25 feet downstream from the center of Espinosa Avenue	*50
Manell River: 50 feet northeast along Joutan Lane from the intersection of Joutan Lane and Chalan Canton Tasi (Route 4)	*2
Unnamed Stream 1M: 520 feet upstream from the center of Chalan Canton Tasi (Route 4)	*8
Unnamed Stream 2M: 850 feet upstream from the center of Chalan Canton Tasi (Route 4)	*8
Inarajan River: 900 feet upstream from the center of Pale Duenas Street (Route 4)	*9
Agana Bay: Intersection of Tan Marian Coatta Loop and Trankilo Street	*8
Asan Bay: 130 feet north of the intersection of Asan Ocean View Drive and Ramona Street	*10
Piti Bay: Intersection of Marine Drive (Route 1) and J. Sn. Quenga Street	*10
Agat Bay: Intersection of Marine Drive (Route 2) and Umang Road	*11
Umatac Bay: 150 feet downstream from the center of South San Dimisio Drive	*10
Cocos Lagoon: Intersection of Chalan Canton Tasi (Route 4) and Guinene Road	*8
Inarajan Bay: Intersection of Belen Avenue and Famaayan Street	*9
Maps available for inspection at Department of Civil Defense, Emergency Services Office, Aguana, Guam	
Send Comments to the Honorable Ricardo Bordallo, P.O. Box 2950, Aguana, Guam 97910	
TEXAS	
Springtown, city, Parker and Wise Counties	
Dry Branch	
At downstream corporate limits	*843
At upstream corporate limits	*884
Walnut Creek	
At downstream corporate limits	*824
At confluence of Browders Creek	*828
Approximately 100 feet upstream of State Route 51	*853
Approximately 550 feet upstream of upstream corporate limits	*878
Browders Creek	
At confluence with Walnut Creek	*828
Approximately 100 feet upstream of State Route 199	*849
Approximately 50 feet upstream of FM 1542	*866
Approximately 1,000 feet upstream of State Route 51	*877
Stream WC(SP) 1	
At confluence with Walnut Creek	*853
At corporate limits	*859
Maps available for inspection at City Hall, Springtown, Texas	
Send comments to Honorable Wayne Lacave, Mayor of the City of Springtown, Parker and Wise Counties, P.O. Box 444, Springtown, Texas 76082.	
VERMOUNT	
Bennington, town, Bennington County	
Walloomsac River:	
At downstream corporate limits	*517
Downstream side of Henry Covered Bridge	*540
Downstream side of Murphy Road	*553
Upstream side of Paper Mill Bridge	*562
Upstream side of Robinson Covered Bridge	*587
Upstream side of Hicks Avenue Foot Bridge	*610
Confluence With Roaring Branch	*618
South Stream:	
Confluence with Roaring Branch	*618
Approximately 65 feet upstream of Hunt Street	*625
Upstream side of Leonard Street	*642
Upstream side of Benmont Avenue	*661
Upstream side of U.S. Route 7	*681
Upstream side of Park Street	*699
Upstream side of State Route 9	*734
Approximately .08 mile upstream of State Route 9	*752
Roaring Branch:	
Confluence with Walloomsac River	*618
Upstream side of Park Street	*665
Upstream side of Brooklyn Drive	*750
Upstream side of State Route 9	*914
Approximately 0.5 mile upstream of State Route 9	*970
Furnace Brook:	
Confluence with Walloomsac River	*575
Downstream side of Morse Borrow Pit Bridge	*578
Upstream side of Orchard Road	*613
Upstream side of Park Street	*650
Approximately 1,400 fee upstream of Park Street	*664
Maps available for inspection at the Zoning Administration Office, Bennington, Vermont.	
Send comments to Honorable James Colvin, Town Manager of Bennington, Town Hall, Bennington, Vermont 05201.	
WISCONSIN	
Village of Dallas, Barron County	
Upper Pine Creek.	
About 700 feet downstream of confluence of Bass Creek	*1046
Just downstream of Mill Dam	*1048
Just upstream of Mill Dam	*1055
About 4,000 feet upstream of Dallas Street	*1056
Bass Creek:	
At mouth	*1047
At divergence from Upper Pine Creek	*1055
East Branch Upper Pine Creek.	
At confluence with Upper Pine Creek	*1055
About 1,050 feet downstream from 3rd Avenue	*1056
Maps available for inspection at the Village President's Office, Village Hall, Dallas Street, Dallas, Wisconsin.	
Send comments to Honorable Harlow Berg, Village President, Village of Dallas, Village Hall, Dallas Street, Dallas, Wisconsin 54733.	
Unincorporated areas of Shawano County	
Oconto River:	
At downstream county boundary	*757
At upstream county boundary	*774
Pensaukee River:	
At county boundary	*773
Just downstream of Nichols Drive	*784
Wolf River:	
Just upstream of County Highway CCC	*791
Just downstream of Shawano Dam	*798
Just upstream of Shawano Dam	*804
Just downstream of Upper Shawano Dam	*810
Just upstream of Upper Shawano Dam	*821
At upstream of county boundary	*821
Red River:	
About 2.5 miles downstream of County Highway A	*830
Just downstream of Geider Road	*878
About 1.5 miles upstream of Weed Dam	*899
Duchess Creek:	
At mouth	*804
About 1.6 miles upstream of County Highway H	*817
Tributary to Duchess Creek:	
At mouth	*809
Just downstream of County Highway H	*812
East Unnamed Tributary to Shawano Lake:	
At mouth	*804
Just downstream of State Highway 22	*813
West Unnamed Tributary to Shawano Lake:	
At mouth	*804
Just downstream of Shady Lane	*811
Washington Lake: Entire shoreline	*804
Loon Lake: Entire shoreline	*806
Lulu Lake: Entire shoreline	*808
Shawano Creek-Shawano Lake: Within community	*804
Rose Brook:	
At mouth	*797
About 1.7 miles upstream of Rose Brook Road	*818
Shioc River:	
About 1,300 feet downstream of County Highway W	*790
About 2,200 feet upstream of County Highway W	*799
Middle Branch Embarrass River at Caroline:	
Just upstream of Caroline Dam	*901
About 4.0 miles upstream of Caroline Dam	*932
South Branch Embarrass River:	
At mouth	*902
About 1,700 feet upstream of County Highway M (near Caroline)	*905
About 3,400 feet downstream of Lenz Road	*943
About 700 feet upstream of County Highway M (near Tigerton)	*956
North Branch Embarrass River:	
Just upstream of Grant Road	*853
About 4,400 feet upstream of North Town Line Road	*900
Just upstream of County Highway D	*945
Just downstream of Tilleda Dam	*947
About 2,900 feet upstream of Tilleda Dam	*980
About 3,000 feet downstream of Regina Road	*1100
Just downstream of Regina Road	*1114
Just upstream of Regina Road	*1126
About 3,000 feet upstream of Regina Road	*1127
Embarrass River:	
At county boundary	*801
About 0.3 mile upstream of State Highway 22	*808
About 1,200 feet downstream of County Highway D	*838
Just upstream of Stoney Hill Road	*847
About 2.6 miles upstream of Stoney Hill Road	**51
About 3,800 feet downstream of County Highway G	*890
Just upstream of County Highway G	*895
South Branch Pigeon River:	
At county boundary	*933
About 0.6 mile upstream of Tauferner Road	*987
South Branch Pigeon River Tributary	
At mouth	*957
About 0.9 mile upstream of Chicago and Northwestern Railroad (upstream crossing)	*983
Tributary to South Branch Pigeon River Tributary	
At mouth	*958
Just downstream of Nero Dam	S*997
Maps available for inspection at the Zoning Administrative Office, Shawano County Courthouse, 311 North Main Street, Shawano, Wisconsin 54166.	
Send comments to Honorable Harry Bauman, Chairman, Shawano County Board of Commissioners, Shawano County Courthouse, 311 North Main Street, Shawano, Wisconsin 54166	

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Administrator)

Issued: March 1, 1985.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 85–5914 Filed 3–13–85; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 154

[CGD 77-069]

Proposed Safety Standards for Existing Self-Propelled Vessels Carrying Bulk Liquefied Gases

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise U.S. regulations for existing gas ships carrying bulk liquefied gases in U.S. waters by adopting certain standards of the IMO Existing Gas Ship Code that are not currently in U.S. regulations. The proposed rule would make U.S. regulations for existing gas ships compatible with the internationally accepted standard. The proposed rule would improve the level of safety associated with the transport of liquefied gases, and would streamline Coast Guard certification procedures by reducing plan review.

DATE: Comments must be submitted on or before June 12, 1985.

ADDRESSES: Comments should be submitted to Commandant (G-CMC/21) (CGD 77-069), U.S. Coast Guard, Washington, D.C. 20593. Comments may be delivered to and will be available for inspection and copying at the Marine Safety Council (G-CMC/21), Rm 2110, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, D.C. between the hours of 7:30 a.m. and 4:00 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Anthony L. Rowek, Office of Merchant Marine Safety (G-MTH-1/12), Rm 1208, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, D.C. 20593 (202-426-1217) between 7:15 a.m. and 3:45 p.m., Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Each comment should include the name and address of the person submitting the comment, the docket reference number (CGD 77-069), the specific section of the proposal to which each comment applies, and sufficient support for each comment. If an acknowledgement is desired, a stamped, addressed postcard or envelope should be enclosed. The rules may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held at a time and place to be set in a subsequent notice in the Federal Register if written requests for a hearing are received from interested persons raising valid issues and the Coast Guard determines that the opportunity to make oral presentations will aid the rulemaking process.

On November 12, 1975 the International Maritime Organization (IMO) adopted the *Code for the Construction and Equipment Ships Carrying Liquefied Gases in Bulk*, Resolution A.328(IX) (New Gas Ship Code). Coast Guard regulations based on this code were promulgated in May 3, 1979 (44 FR 25986). Both the New Gas Ship Code and U.S. regulations were limited to "new" ships, as defined in the documents. Recognizing that there existed a large number of gas ships, already in service, that would not fall under the applicability of the New Gas Ship Code, IMO in October 1976 adopted the *Code for Existing Ships Carrying Liquefied Gases in Bulk* (Existing Gas Ship code). Generally, this code applies to vessels constructed and delivered prior to July 1, 1980.

On June 30, 1977 (42 FR 33353), the Coast Guard published an Advance Notice of Proposed Rulemaking (ANPRM) which advised the public of our intention to adopt safety standards of the Existing Gas Ship Code that were not currently in U.S. regulations for existing gas ships. The ANPRM solicited comments and economic information concerning the impact of these international standards. Seven responses were received representing four interested parties. The comments were of 4 general types:

1. Economic information relative to the implementation of these international standards.

2. Comments supportive of the Coast Guard's efforts to improve the level of safety in transporting liquefied gases.

3. Identification of areas where specific gas ships did not comply with these international standards.

4. Comments on the feasbility, practicality and benefit of modifying an existing ship to meet these international standards.

The economic information received was used to develop the draft Economic Evaluation for this proposed rulemaking. The commnets concerning the feasibility, practicality, and benefit of the proposed rulemaking are discussed below.

Three comments on the ANPRM were received requesting a delay in the effective date of the rulemaking. It was stated that this would allow owners and operators sufficient lead time to schedule drylocking, procure the necessary materials, obtain Coast Guard certification, and accomplish the necessary modifications. While there was some merit to this position when the Existing Gas Ship Code was not fully implemented, the Coast Guard does not now plan to extend the effective date of the rulemaking past the normal time, i.e. usually 90 days after publication in the Federal Register. There are several reasons for this decision:

1. As of October 31, 1982, the 2 and 6 year requirements of the Existing Gas Ship Code are in effect for all ships subject to that Code.

2. Ship owners have had ample notice of the Coast Guard's intent to incorporate certain requirements of the Existing Gas Ship Code.

3. The proposed revisions would only need to be met when the vessel's Certificate of Inspection or Letter of Compliance is renewed, which could be up to 2 years after the publication of the final rule.

One comment on the ANPRM was received asking if the proposed rulemaking applied only to U.S. flag ships. The proposed rulemaking would apply to U.S. flag liquefied gas ships and those foreign flag liquefied gas ships trading in U.S. ports.

Two comments on the ANPRM were received on paragraph 3.2.4 of the Existing Gas Ship Code. Both requested clarification of the degree of tightness expected of closing devices. This IMO recommendation is incorporated by proposing a reference to § 154.330(e), which requires ". . . metal closures that pass a tightness test with a fire hose at not less than 207 kPa gauge (30 psig)". The water hose test is used as a measure of gas tightness since true gas tightness tests of these closing devices are impractical on a vessel.

One comment on the ANPRM was received on paragraph 3.5.1 of the Existing Gas Ship Code. It asked whether the Coast Guard was going to require that existing gas ships meet the access hole dimensions for new gas ships in § 154.340. The comment indicated that the economic impact of enlarging these access holes to meet that requirement would be prohibitive. Paragraph 3.5.1 of the Existing Gas Ship Code does not specify dimensions for the access holes, stating only that they must be large enough to permit "the possibility of entry and inspection of any such space or its equipment by personnel wearing protective clothing and breathing apparatus and in the event of injury to allow unconsious personnel to be removed from that

space." If this can be shown to the satisfaction of the administration, it is acceptable to the Coast Guard.

Two comments on the ANPRM were received on paragraph 5.2.5 of the Existing Gas Ship Code. The first stated that the Coast Guard should reconsider the practice of allowing liquid relief valves to discharge into a cargo tank because cold LNG could be discharged into a warm or gas-free tank without anyone being aware of it. This design is an alternative to discharging the relieved liquid into the vent mast. It is an allowed alternative under the Existing Gas Ship Code, the New Gas Ship Code, and current U.S. regulations for liquefied gas ships. The Coast Guard is not aware of any incidents where it has caused a problem, nor of any installations where good design practice could not overcome the potential hazard. Therefore, no change will be made.

The second comment on paragraph 5.2.5 of the Existing Gas Ship Code requested clarification of acceptable methods for disposing of LNG that has accumulated in the vent mast. It stated that draining the LNG to a cargo tank is not possible when the tank is under pressure. Under these circumstances any method that would enhance the vaporization of the accumulated LNG in the vent mast, while not releasing liquid to the environment would be acceptable. Examples of acceptable methods are: spraying the mast with water from a fire hose (sugested in the comment) or the vessel's water spray system, or, use of steam heating coils around the outside of the vent mast. Examples of unacceptable methods are: draining the LNG into a drip tray, or, draining the LNG over the side of the ship or onto the deck.

One comment on the ANPRM was received on paragraph 8.2.11 of the Existing Gas Ship Code. Like the previous comment it requested clarification of the acceptable methods for disposing of LNG that has accumulated in the cargo vent piping. See the discussion in this preamble on paragraph 5.2.5 of the Existing Gas Ship Code.

One comment on the ANPRM was received on paragraph 8.4.3 of the Existing Gas Ship Code. It stated that vacuum relief valves should only vent cargo or inert gas into a cargo tank to relieve internal vacuum, and that air should only be used as a last resort. The three alternatives, cargo, inert gas, or air, are allowed by the New Gas Ship Code, the Existing Gas Ship Code, U.S. regulations for new gas ships, 46 CFR 154.804, and for existing gas ships. The intent was to provide immediate relief of cargo tank vacuums to protect the tank from rupture or damage. The three alternatives will continue to be allowed for existing gas ships.

Finally, three comments on the ANPRM were received requesting that existing installations on board ships be considered equivalent to the corresponding standards of the Existing Gas Ship Code when those existing installations meet the intent or spirit of the Code. These comments were not critical of present Coast Guard or Existing Gas Ship Code standards. Equivalence is determined on a case-by-case basis. The procedures to be followed and standards to be met are contained in proposed § 154.32. A general equivalence or "grandfathering" of existing installations is not included in this proposal.

The Coast Guard also discussed this rulemaking at a public meeting of the Chemical Transportation Advisory Committee's (CTAC) Subcommittee on Liquefied Gas Vessels held on February 1, 1983 at U.S. Coast Guard Headquarters, Washington, D.C. At the meeting the Coast Guard presented the objectives of this rulemaking, described the proposed changes to the certification procedures for foreign flag existing gas ships, and explained the benefits to be derived from it. The Coast Guard solicited the subcomittee's comments on a draft of the proposed rulemaking and its economic impact on the industry. The minutes of the meeting have been placed in the public docket and a tape recording is available for listening in Room 2110, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, D.C. 20593. The subcommittee's comments on a draft of the proposed rulemaking are discussed in the following paragraphs.

One comment from CTAC concerned the draft list of additional requirements an existing gas ship would meet (see proposed § 154.12(e)). The subcommittee suggested that the list would contain requirements in excess of those contained in the Existing Gas Ship Code. This was not the Coast Guard's intention. The Coast Guard explained at the meeting that the intent was to include only those standards of the Existing Gas Ship Code that were not in U.S. regulations. The list was reviewed and revised to meet that concept.

Several comments from CTAC were received suggesting editorial changes to the definitions for "flammable range", "public spaces", and "remote group alarms" which are currently in 46 CFR Part 154. These suggested changes have been made in the definitions in this proposal.

Two comments from CTAC were received which suggested that two terms currently in 46 CFR Part 154, "design temperature" and "vapor density", be changed to "minimum allowable temperature" and "design specific gravity", respectively. It was suggested that these are more descriptive terms. The suggestion was not accepted since the present terms are used in the remaining Subparts of Part 154, which are not proposed for revision in this rulemaking. The suggested changes will be considered in a future proposed rulemaking.

One comment from CTAC stated that the current definition in 46 CFR Part 154 of "cargo area" should exclude all ballast tanks, not just those fore and aft. The suggestion was not accepted. The definition is the same as the definition in the New Gas Ship and Existing Gas Ship Codes. Exclusion of wing ballast tanks from the cargo area would be considered under "Equivalents" in proposed § 154.32, but only after a detailed review of the specific containment system design.

One comment from CTAC stated that subparagraph (1) of the current definition in 46 CFR Part 154 of "gas-dangerous spaces" should clarify that ballast tanks and voids in the cargo area are not considered gas-dangerous. This is not correct. In general these spaces are considered gas-dangerous. Specific approval as a gas-safe space is only given after a detailed review of the specific containment system design. The approval would be given under "Equivalents" in proposed § 154.32. The clarification was not accepted.

One comment from CTAC recommended that the current definition in 46 CFR Part 154 of "interbarrier space" be modified to indicate that it exists only when there is a *complete* secondary barrier. This is not correct. The Coast Guard under its "Concept Approval" review procedure has examined containment system designs with partial secondary barriers extending to the tank top. Although not complete, interbarrier spaces do exist. The comment was not accepted.

One commenf from CTAC questioned whether an existing gas ship that currently has a Certificate of Inspection or a Letter of Compliance is considered to have been issued a "document", and therefore would be regulated under proposed § 154.12(b). That is correct provided the Certificate of Inspection or Letter of Compliance was—

1. Issued before the effective date of the final rule for this proposed rulemaking; and

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2. Was endorsed for the carriage of a liquefied gas listed in Table 4 of 46 CFR 154.

One comment from CTAC stated that proposed § 154.12(b)(2) was inconsistent with proposed § 154.12(b)(1) since compliance with paragraph (b)(2) would, in certain aspects, cause a ship to no longer be in compliance with the approved construction standard, as required in proposed § 154.12(b)(1). As written, proposed § 154.12(b)(2) requires each existing gas ship to meet the list of proposed standards in § 154.12(e)(1) thru (37). Several of these are upgrades of construction standards. Meeting an upgraded standard does not mean non-compliance with the previously accepted standard. The Coast Guard reviewed the list in proposed § 154.12(e) and did not identify any potential inconsistencies.

One comment from CTAC stated that proposed § 154.19(a)(4), by requiring a ship to meet all of the Existing Gas Ship Code, was inconsistent with proposed § 154.12(b). Proposed § 154.19 states the standards for issuance of an IMO Certificate of Fitness to a U.S. flag liquefied gas carrier. To have an IMO Certificate of Fitness issued, the ship must comply with the appropriate IMO Code. This proposed rulemaking does not require a U.S. flag ship to have an IMO Certificate of Fitness. That is the choice of the ship's owner or operator.

One comment from CTAC was received on proposed § 154.12(e)(7). It stated that all of § 154.519 should be required rather than just the alternative provided in § 154.519(a)(2). The Coast Guard does not agree. Both alternatives are already allowed for existing gas ships in 46 CFR 38.20–1(i). This rulemaking proposes certain additional safety standards for one of the alternatives.

One comment from CTAC was received on proposed § 154.12(e)(23) stating that the Existing Gas Ship Code requires a gas tight door rather than a water tight door. The Coast Guard agrees, but does not know of any gas tightness test that would be practical on a vessel. The water hose test is used as a measure of gas tightness. It is recognized that this is an interior space in or adjacent to the main machinery space, and public comment detailing alternate tightness tests for this isolation door is encouraged.

One comment from CTAC was received on proposed § 154.12(e)(27) concerning the number of independent dry chemical powder units that would be required. It was stated that for ships of cargo capacity between 1000m³ and 2500m³, the Existing Gas Ship Code recommends only one unit if the ship has an existing fixed unit of the required capacity. This is correct as long as the ship already has the fixed unit installed. Ships in this cargo capacity range that are equipped with a portable dry chemical powder unit of 100 kg capacity, must install two fixed dry chemical powder units. The proposed section was revised to agree with IMO.

One comment from CTAC concerned the certification procedures for those existing foreign flag gas ships which have not completed Coast Guard plan review prior to the effective date of the final rule. The comment is discussed in detail below in the section entitled "Existing Gas Vessels that have not Completed Coast Guard Plan Review—Proposed § 154.5 and § 154.12(a)."

Drafting Information

The principle persons involved in drafting this proposal are: Dr. Anthony L. Rowek, Project Manager, Office of Merchant Marine Safety, and Mr. Stanley M. Colby, Project Attorney, Office of Chief Counsel.

Discussion of the Proposed Rulemaking

General

This proposed rulemaking would revise *Subpart A—General* of 46 CFR Part 154. It proposes to revise the applicability of Part 154 to include existing gas ships as well as new gas ships. To accomplish this, one new section would be added, proposed § 154.12 *Existing gas vessel: Endorsements and Requirements*, and two sections revised, proposed § 154.5 *Applicability* (formerly § 154.1) and proposed § 154.22 *Foreign flag vessel: Letter of Compliance endorsement application* (formerly § 154.5). It also proposes to revise several of the remaining sections in Subpart A to clarify their intent and to provide a more logical organization of the subpart. The substance of these sections has not changed. The following table is a cross-reference listing of the proposed regulations to the existing regulations now in *Subpart A* of 46 CFR Part 154.

Proposed regulation (section)	Existing regulation (section)
154.1	154.13
154.2	New.
154.3	New
154.5	154.1
154.7	154.3
154.9	154.2.
154.12	New
154.15	154.4.
154.17	154.6(a).
154.19	154.6(b).
154.22	154.5 (a)&(b).
154.24	Footnote to 154.5
154.30	154.12.
154.32	154.8.
154.34	154.9.
154.36	154.5(c).

The Coast Guard will continue to issue the special "Letter of Compliance" to foreign flag ships meeting all U.S. requirements for the carriage of liquefied gases. This certification is required under 46 U.S.C. 3711 for all foreign flag vessels carrying oil or hazardous materials. The Coast Guard has chosen to continue issuing the special "Letter of Compliance" to maintain continuity in its regulation of hazardous material transportation in the U.S., and to avoid unnecessary confusion for owners and operators of these vessels.

Profile of World's Existing Gas Ship Fleet

An existing gas vessel is defined in the proposed rule as a self-propelled vessel that—

1. Is delivered on or before October 31, 1976; or

2. Is delivered between October 31, 1976 and June 30, 1980 and is not a new gas vessel as defined in § 154.7.

Clarkson's *Liquefied Gas Carrier Register*, 1982, identified 725 gas ships in the world fleet (constructed and on-order). 169 of these are new gas ships, and therefore, are not affected by these proposed regulations. Of the 556 existing gas ships, 202 are foreign flag ships in the Letter of Compliance program, and 12 are U.S. flag ships. (The Letter of Compliance program includes all foreign flag ships that have contacted the Coast Guard concerning obtaining a Letter of Compliance.) The final 342 are existing foreign flag ships that have never contacted the Coast Guard nor carried liquefied gases in U.S. waters. Approximately 290 of these ships are under 3000 m³ cargo capacity and are not expected to enter into U.S. trade.

Of the 12 U.S. flag existing gas ships, 11 meet paragraph 2 of the above definition. 10 of these are approved for the carriage of liquefied natural gas (LNG); the 11th is approved for the carriage of propane and anhydrous ammonia. The one U.S. ship meeting paragraph 1 of the above definition is a combination bulk chemical and liquefied gas ship, with 4 tanks approved for the carriage of butadiene and vinyl chloride monomer.

There are 202 existing gas ships in the Letter of Compliance program. 157 of these ships either currently have a valid Letter of Compliance or have had a Letter of Compliance in the past. 17 other gas ships, although never receiving a Letter of Compliance, have completed

plan review. The remaining 28 ships have not completed plan review.

U.S. Regulations vs. IMO Existing Gas Ship Code

In 1975 IMO adopted the New Gas Ship Code for ships to be built after the effective date of that code. Drawing on the expertise gained in developing this document, and recognizing that certain of these standards could be required of vessels already in service with only minor retrofit, IMO developed the Existing Gas Ship Code. Prior to the development of the Existing Gas Ship Code an international standard for the design of existing gas ships did not exist.

The United States actively participated in the development of the Existing Gas Ship Code and considered adopting that Code in its entirety. If this was implemented, an IMO Certificate of Fitness issued under the Existing Gas Ship Code could then be used to indicate compliance with U.S. regulations during initial certification. This would significantly reduce the plan review procedures and reduce the time it takes an existing foreign flag ship to obtain Coast Guard certification. However, upon comparing the draft Existing Gas Ship Code with 46 CFR Part 38, it was noted that the Code in many areas, most notably cargo tank design and piping system design, was silent or recommended a standard below the corresponding U.S. standard. This occurred because the Existing Gas Ship Code was developed for vessels already in service. To require major structural modification of the cargo containment system or cargo piping system would not be cost effective and could result in taking a vessel out of service. The United States notes these differences at IMO and reserved its position with respect to adopting the entire Existing Gas Ship Code. This proposal would incorporate only those standards that provide an increased level of safety over existing U.S. regulations in Part 38. Examples of these standards are: ship arrangement, inert gas system, and special requirements for LNG boil-off utilization systems. This proposed rulemaking aligns U.S. regulations with the accepted international standard while preserving those areas of our regulations where more stringent safety requirements are needed.

Existing Gas Vessels with Documents—Proposed § 154.12(b) and (c)

A document is defined in this proposed rulemaking as a Certificate of Inspection or a Letter of Compliance.

The proposed rule would require existing foreign flag gas ships issued a Letter of Compliance for the carriage of liquefied gases, prior to the effective date of the final rule, to show compliance with the standards in proposed § 154.124). To facilitate the certification procedure for these ships, it is proposed that the IMO Certificate of Fitness for existing gas ships be submitted to show compliance.

Generally, these ships were accepted on the basis of Coast Guard plan review using the standards in effect at the time of their construction. 46 CFR Part 38 formed the basis for this review. Besides meeting the revised standards, they must continue to meet the design, construction, and equipment standards approved during plan review. An IMO Certificate of Fitness, issued under the Existing Gas Ship Code, is only used as an indication of compliance with the standards proposed in this rulemaking, since as explained earlier the standards used for Coast Guard plan review generally exceed the other standards in the Existing Gas Ship Code.

Compliance with the standards in proposed § 154.12(e) is not required until the ship's current Letter of Compliance expires or is revoked. The expiration date is listed on the Letter of Compliance. After that time, to obtain a Letter of Compliance, the ship's IMO Certification of Fitness must be submitted. The ship is then examined by Coast Guard personnel to determine that—

1. The ship still meets the standards originally approved by the Coast Guard; and

2. The ship meets the standards if proposed § 154. 12(e).

Upon a satisfactory examination, the Coast Guard reissues the ship a Letter of Compliance endorsed for the carriage of those liquefied gases on the previous Letter of Compliance.

Major modifications or alterations, or authorization to carry a cargo other than the ones listed on the former Letter of Compliance, must be done in accordance with the regulations in 46 CFR Part 154. This is in keeping with the Coast Guard's past policy, as stated in 46 CFR 30.01–10, to use, insofar as possible, new construction standards for major vessel conversions. Classification Society certification that the ship complies with the appropriate sections of the New Gas Ship Code is generally acceptable.

Existing Gas Vessels Without Documents that have Completed Coast Guard Plan Review—Proposed § 154.12(d).

The proposed rule would treat ships that have completed Coast Guard plan review for the carriage of liquefied gases prior to the effective date of the final rule, but have not undergone a satisfactory Coast Guard examination, nor received a Letter of Compliance, in a manner similar to those ships previously issued a Letter of Compliance. These ships must possess a letter from the Coast Guard indicating that review of the ship's plans for carriage of liquefied gases is complete or that the ship's IMO Certificate of Fitness, endorsed for the carriage of liquefied gases, is acceptable.

Briefly, to obtain a Letter of Compliance for the carriage of liquefied gases these ships must—

1. Meet the standards under which they were originally reviewed; normally accomplished by continuing to meet the Coast Guard approved plans for the ship:

2. Meet the standards proposed in this rulemaking, indicated by submitting to the Coast Guard a valid IMO Certificate of Fitness; and

3. Undergo a satisfactory Coast Guard examiniation the first time they call at a U.S. port to confirm that they meet the standards described above.

These ships are not required to meet the design, construction, and equipment standards in Subpart C of Part 154, nor need they undergo plan review— again. Ships that submitted an IMO Certificate of Fitness in lieu of plan review must continue to meet the standards under which the certificate was issued.

Existing Gas Vessels that have not Completed Coast Guard Plan Review—Proposed § 154.5 and § 154.12(a)

The proposed rule would require that existing gas ships, that have not completed Coast Guard plan review prior to the effective date of the final rule, meet the same standards as new gas ships, i.e., 46 CFR Part 154. Review and certification procedures are identical to those for new gas ships. Under no circumstances would an IMO Certificate of Fitness, issued under the Existing Gas Ship Code, be acceptable for certification of these ships. This is explained in detail in this preamble in the paragraphs entitled "U.S. Regulations vs. IMO Existing Gas Ship Code' and "Plan Review."

As discussed earlier, there are approximately 28 ships currently in the Letter of Compliance program in this

category. The extent of plan review completed and the date of their last contact with the Coast Guard vary. Many of these ships have only made initial contact with the Coast Guard. Generally, most have shown no interest in completing plan review in the past 5–7 years.

All existing gas ships will have the time period between publication of this proposed rulemaking and the effective date of the Final Rule to complete plan review. The Coast Guard expects this to be approximately 9–12 months. As a practical matter, unless plan review is essentially complete prior to the publication of this NPRM, it is unlikely that plan review can be completed by the effective date of the final rule. Owners desiring to complete plan review for future U.S. trade are encouraged to contact Commandant (G-MTH), as soon as possible, to determine the outstanding plan review items.

Finally, once plan review is completed, there is no time limitation in the proposed rulemaking for the ship to call at a U.S. port and undergo a Coast Guard examination for issuance of a Letter of Compliance.

Plan Review

The proposed rulemaking would significantly reduce the Coast Guard's plan review procedure for existing gas ships. It does this by using an IMO Certificate of Fitness in lieu of plan review as evidence of compliance with—

1. The standards of this proposed rulemaking; and

2. For existing gas ships that have not completed plan review prior to the effective date of the Final Rule, the new gas ship standards in 46 CFR Part 154.

Presently, all existing gas ships undergo Coast Guard plan review unless they submit an IMO Certificate of Fitness under the New Gas Ship Code. All areas of the cargo containment system are reviewed using current U.S. standards. This procedure takes approximately ¼–½ man year per ship to perform. The exact time depends on the amount and quality of the information initially submitted, and the extent of correspondence needed to verify compliance with U.S. requirements.

To facilitate the certification procedure for existing foreign flag ships, and to reduce the expected time period between contact and Coast Guard certification, the Coast Guard proposes to use the IMO Certificate of Fitness in lieu of plan review, whenever possible. For existing ships having a Letter of Compliance, or a letter from the Coast Guard indicating that plan review is complete, an IMO Certificate of Fitness, issued in accordance with the Existing Gas Ship Code, would be adequate indication of compliance with the proposed standards in this rulemaking. However, since the Existing Gas Ship Code allows a design, construction and equipment standard lower than that in U.S. regulations for existing ships, sole certification under that code, for ships not previously plan reviewed under 46 CFR Part 38, would allow those ships to be accepted under a standard not currently considered adequate. In order to maintain an acceptable level of safety while still avoiding long delays for certification, it is proposed that existing gas ships that have not completed plan review submit an IMO Certificate of Fitness issued under the New Gas Ship Code as an indication of compliance with current U.S. standards.

Under this procedure plan review would then only be done for those ships whose flag administrations do not issue IMO Certificates of Fitness. These ships would be plan reviewed in a manner similar to that for U.S. flag ships. Each ship owner or operator is encouraged to avoid this detailed, time consuming procedure by obtaining and submitting, if at all possible, the necessary IMO certification.

Evaluation and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 and non-significant under "Department of Transportation Policies and Procedures for Simplification, Analysis, and Review of Regulations", (DOT Order 2100.5 of May 22, 1980). A draft evaluation has been prepared and placed in the public docket and may be inspected or copied at the Office of the Marine Safety Counsel, Room 2100, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, D.C. 20593.

The draft evaluation estimates a cost of approximately $681,000 to completely upgrade an affected vessel, assuming that none of the design features required by the proposed standards have previously been installed. A review of the plans of 10 affected U.S. flag vessels which are of similar design, indicates that actual costs for each of these vessels should be under $20,000. For the remaining two affected U.S. vessels it is assumed that the cost would not exceed 50% of the cost of complete conversion, or $340,500 per vessel, making the total estimated cost for U.S. flag vessels $881,000.

There are 202 foreign flag vessels that have applied for or have received Letters of Compliance. Of these 84 already meet the proposed standards and 28 are unlikely to complete the steps necessary to trade at U.S. ports. We expect that the remaining 90 vessels are in various stages of compliance with the proposed standards of this rulemaking since it is likely that many owners of existing gas ships have anticipated the adoption of the Existing Gas Ship Code by their administrations. To determine the extent of compliance for each vessel would require: 1. a review of each vessel's plans on-hand, and 2. contacting each owner to determine what vessel modifications have been made since Coast Guard approval. Since this is impractical, we have assumed that each of the remaining 90 vessels would incur approximately 50% of the total cost of modification under this proposed rulemaking, or $340,500 per vessel. The actual costs could be considerably less, depending on the degree to which these vessels already meet the proposed standards.

Based on these assumptions the economic evaluation for this proposed rulemaking shows that over a 10 year period the proposal would result in the following:

1. A decreased expenditure of approximately $36,000/per year by the federal government, and no significant impact on state and local governments.

2. An expenditure of up to $31.5 million in the two years following the effective date of the regulations by the maritime industry, resulting from the need for ship modifications to meet the internationally accepted safety standards. These costs would be amortized over the remaining useful life of the vessels and would be eventually passed on to the consumer.

3. No significant impact on energy consumption, important materials or employment.

The benefits to the public of the proposed rulemaking include:

1. A consolidation in one part of the design and equipment standards for all liquefied gas ships.

2. The implementation of internationally agreed upon design and equipment safety standards for existing gas ships, which will facilitate vessel movement.

3. A consolidation into one part of the certification procedures for all liquefied gas ships.

4. Improved safety of existing liquefied gas ships.

A quantitative analysis of the safety benefits to the public is difficult to assess due to the excellent safety record of liquefied gas ships. 46 CFR Part 38 was first published in 1966 and was based upon service experience, construction techniques, and technical

expertise at that time. The IMO Existing Gas Ship Code was developed based upon the state-of-the-art for vessels in 1976. During those intervening years, substantial advances in cargo containment system technology and continual examination of potential hazards occurred. Thus, the Existing Gas Ship Code was able to address areas in addition to those in Part 38. The standards proposed in this rulemaking for existing gas ships, having been derived from the Existing Gas Ship Code, should reduce or eliminate these potential hazards. Since liquefied gas vessels have the potential for causing extensive damage and loss of life if a major failure of the cargo containment system were to occur, these improvements have been accepted internationally as benefiting those involved in the bulk shipment of liquefied gases and the communities served by these vessels.

Under the Regulatory Flexibility Act of 1980 "small entities" includes "small businesses" as defined in the Small Business Act:

> A small business concern shall be deemed to be one which is independently owned and operated and which is not dominant in its field of operation.

No guidelines useful to the marine industry were provided. The Coast Guard is attempting to develop specific guidelines for this determination. Accordingly, the Coast Guard obtained data from the Brookings Institute which broke out by Subject Identification Code (SIC) the size, number of employees, average annual sales, and other economic information about businesses regulated by the Coast Guard. From this information, the Coast Guard determined what the equal market share would be for each SIC area. A business whose actual market share fell below this cut-off was considered a small business. Comparing the groups of small businesses between SIC areas, the Coast Guard found that a general criteria could be used to identify the same group of small businesses within each SIC code. The general criteria defining a small business was:

1. A business with 10 or fewer employees; or
2. A business with annual sales of $1.0 Million or less.

The liquefied gas shipping industry is characterized by single ship companies, with no dominant companies in the field. Using the above criteria of an annual revenue of $1.0 Million or 10 employees, as the upper limit for a small business, the Coast Guard found that there were no small entities that would be affected by these rules. Therefore, in accordance with section 605(b) of the Regulatory Flexibility Act (94 Stat. 1164), it is certified that these rules, if promulgated, will not have a significant economic impact on a substantial number os small entities.

This proposed rulemaking would have no significant impact on the foreign trade of the United States. All vessels, U.S. or foreign flag, carrying liquefied gases in U.S. waters would be subject to the same standards. While it is possible that some foreign flag vessels would elect to shift trading patterns in lieu of meeting the proposed standards, the standards are based on internationally accepted minimums and the impact is expected to be negligible.

This proposed rulemaking contains information collection and recordkeeping requirements. These items have been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act (Pub. L. 96–511, 44 USC 3501 et seq) and have been approved by OMB. The section numbers and the corresponding OMB approval number are as follows: Section Numbers—§§ 154.15, 154.22, and 154.34; OMB Approval Number—2115–0113.

List of Subjects in 46 CFR Part 154

Natural gas vessels, Gases, Hazardous materials transportation, Marine safety.

In accordance with the preceding, it is proposed to amend Chapter I of Title 46, Code of Federal Regulations as follows:

PART 154—SAFETY STANDARDS FOR SELF-PROPELLED VESSELS CARRYING BULK LIQUEFIED GASES

1. By revising the authority citation for Part 154 to read as follows:

Authority: 46 U.S.C. 3703; E.O. 12234, 3 CFR, 1980 Comp. p. 277, 49 CFR 1.46 (b) and (n)(4).

2. By revising Subpart A to read as follows:

Subpart A—General

Sec.

154.1 Incorporation by reference.
154.2 Information collection approvals.
154.3 Purpose.
154.5 Applicability.
154.7 Definitions, acronyms, and terms.
154.9 Issuance of documents.
154.12 Existing gas vessel: endorsements and requirements.
154.15 U.S. flag vessel: Endorsement application.
154.17 U.S. flag vessel: Certificate of Inspection endorsement.
154.19 U.S. flag vessel: IMO Certificate issuance.
154.22 Foreign flag vessel: Letter of Compliance endorsement application.
154.24 Foreign flag vessel: IMO Certificate.
154.30 Liquefied gases not included in Table 4.
154.32 Equivalents.
154.34 Special approval: requests.
154.36 Correspondence and vessel information submission.

* * * * *

Authority: 46 U.S.C. 3703; E.O. 12234, 3 CFR, 1980 Comp. p. 277, 49 CFR 1.46 (b) and (n)(4).

Subpart A—General

§ 154.1 Incorporation by reference.

(a) Certain materials are incorporated by reference into this part with the approval of the Director of the Federal Register. The Office of the Federal Register publishes a table "Material Approved for Incorporation by Reference," which appears in the Finding Aids section of this volume. In that table is found the date of the edition approved, citations to the particular sections of this part where the material is incorporated, addresses where the material is available, and the date of the approval by the Director of the Federal Register. To enforce any edition other than the one listed in the table, notice of change must be published in the **Federal Register** and the material made available. All approved material is on file at the Office of the Federal Register, Washington, D.C. 20408, and at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division, Washington, D.C. 20593.

(b) The materials approved for incorporation by reference in this part are:

American Bureau of Shipping

Rules for Building and Classing Steel Vessels, 1981

American National Standards Institute

ANSI Z89.1–69 Safety Requirements for Industrial Head Protection
ANSI Z87.1–79 Practice for Occupational and Educational Eye and Face Protection

American Society for Testing and Materials

ASTM A20–78 Steel Plates for Pressure Vessels

International Maritime Organization

Resolution A.328(IX), Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk, 1975
Code For Existing Ships Carrying Liquefied Gases In Bulk, 1975
Medical First Aid Guide for Use in Accidents Involving Dangerous Goods

Underwriters Laboratories, Inc.

UL No. 783–79 Flashlights and Lanterns, Electric, for Use in Hazardous Locations, Class 1, Groups C and D

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§ 154.2 Information collection approvals.

This Part contains information collection requirements which have been approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96–511. OMB Approval Number 2115–0113 has been assigned. The sections containing information collection requirements are:

(a) Section 154.15
(b) Section 154.22
(c) Section 154.30
(d) Section 154.32
(e) Section 154.34
(f) Section 154.151
(g) Section 154.1801
(h) Section 154.1802
(i) Section 154.1809
(j) Section 154.1810
(k) Section 154.1816
(l) Section 154.1820
(m) Section 154.1846
(n) Section 154.1852
(o) Section 154.1862

§ 154.3 Purpose.

The purpose of this part is to prescribe rules for new and existing gas vessels.

§ 154.5 Applicability.

This part applies to each self-propelled vessel that has on board bulk liquefied gases as cargo, cargo residue, or vapor, except Subpart C does not apply if the vessel meets § 154.12(b), (c), or (d).

§ 154.7 Definitions, acronyms, and terms.

As used in this part:

" 'A' Class Division" means a division as defined in Regulation 3 of Chapter II–2 of the 1974 Safety Convention.

"Accommodation spaces" means public spaces, corridors, lavatories, cabins, offices, hospitals, cinemas, game and hobby rooms, pantries containing no cooking appliances and spaces used in a similar fashion.

"Boiling point" means the temperature at which a cargo's vapor pressure is equal to atmospheric barometric pressure.

"Breadth" (B) is the maximum width of the vessel in meters measured amidships to the moulded line of the frame in a ship with a metal shell and to the outer surface of the hull in a ship with a shell of any other material.

"Cargo area" means that part of the vessel that contains the cargo containment system, cargo pump rooms, cargo compressor rooms, and the deck areas over the full beam and length of the vessel above them, but does not include the cofferdams, ballast spaces or void spaces at the after end of the aftermost hold space or the forward end of the forwardmost hold space.

"Cargo containment system" means the arrangement for containment of cargo including a primary and secondary barrier, associated insulation and any intervening spaces and adjacent structure that is necessary for the support of these elements.

"Cargo service space" means a space within the cargo area that is more than 2m² (21.5 ft.²) and used for work shops, lockers, or store rooms.

"Cargo tank" means the liquid tight shell that is the primary container of the cargo.

"Cofferdam" means the isolating space between two adjacent steel bulkheads or decks, which could be a void space or ballast space.

"Contiguous hull structure" includes the inner deck, the inner bottom plating, longitudinal bulkhead plating, transverse bulkhead plating, floors, webs, stringers, and attached stiffeners.

"Control space" means those spaces in which the vessel's radio or main navigating equipment or the emergency source of power is located or in which the fire control equipment, other than firefighting control equipment under §§ 154.1140 to 154.1170, is centralized.

"Design temperature" means the minimum cargo temperature the Coast Guard allows for loading, unloading or carriage.

"Design vapor pressure" (P_o) means the maximum gauge pressure at the top of the cargo tank for the design of the cargo tank.

"Document" means a Certificate of Inspection for a U.S. flag vessel or a Letter of Compliance for a foreign flag vessel.

"Existing gas vessel" means a self-propelled vessel that—

(a) is delivered on or before October 31, 1976; or

(b) is delivered between October 31, 1976 and June 30, 1980, and is not a new gas vessel as defined in this section.

"Flammable cargoes" means the following liquefied gases from Table 4:

Acetaldehyde
Butadiene
Butane
Butylene
Dimethylamine
Ethane
Ethylamine
Ethyl chloride
Ethylene
Ethylene oxide
Methane (LNG)
Methyl acetylene-propadiene mixture
Methyl bromide
Methyl chloride
Propane
Propylene
Vinyl chloride

"Flammable range" means the concentrations of vapor in air between the minimum (the lower flammable limit or lower explosive limit) and maximum (the upper flammable limit or upper explosive limit) concentrations that will burn.

"Gas-dangerous space" means the following spaces:

(a) A space in the cargo area without arrangements to provide a safe atmosphere at all times.

(b) An enclosed space outside the cargo area through which any piping that may contain liquid or gaseous cargo passes, or within which such piping terminates, without arrangements to prevent gas from escaping into the space.

(c) A cargo containment system and cargo piping.

(d) A hold space where cargo is carried in a cargo containment system that is required by this part to have a secondary barrier.

(e) A hold space where cargo is carried in a cargo containment system that is not required by this part to have a secondary barrier.

(f) A space separated from the hold space in subparagraph (4) of this definition by a single gastight boundary.

(g) A cargo pumproom and a cargo compressor room.

(h) A zone on the weather deck, or semi-enclosed space on the weather deck, within 3.05m (10 ft.) of any cargo tank outlet, gas or vapor outlet, cargo pipe flange, cargo valve, or of entrances and ventilation openings to a cargo pump room or a cargo compressor room.

(i) The weather deck over the cargo area and 3.05m (10 ft.) forward and aft of the cargo area on the weather deck to 2.4m (8 ft.) above the weather deck.

(j) A zone within 2.4m (8 ft.) of the outer surface of a cargo containment system where the surface is exposed to the weather.

(k) An enclosed or semi-enclosed space in which there is piping containing cargo, except those—

(1) with gas sampling lines for gas detection equipment under § 154.1350(n); or

(2) in which boil-off gas is used as fuel under § 154.703.

(l) A space for storage of cargo hoses.

(m) An enclosed or semi-enclosed space having an opening into any gas-dangerous space or zone.

"Gas-safe space" means a space that is not a gas-dangerous space.

"Hold space" means the space enclosed by the vessel's structure in which there is a cargo containment system.

"IMO" stands for the International Maritime Organization.

"IMO Certificate" means a Certificate of Fitness for the Carriage of Liquefied Gases in Bulk issued under the IMO—

(a) *Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk*, adopted November 12, 1975 by Assembly Resolution A.328(IX), as amended;

(b) *Code For Existing Ships Carrying Liquefied Gases In Bulk*, adopted November 12, 1975, as amended; or

(c) *Recommendations Concerning Ships Not Covered By The Code For The Construction And Equipment Of Ships Carrying Liquefied Gases In Bulk (Resolution A.328(IX))*, adopted November 12, 1975 by Assembly Resolution. A.329(IX).

"Independent tank" is a cargo tank that is permanently affixed to the vessel, is self-supporting, and is not part of the hull or essential to the strength or integrity of the hull.

"Independent tank type A" is an independent cargo tank designed primarily using classification society classical ship structural analysis procedures.

"Independent tank type B" is an independent cargo tank designed from model tests, refined analytical tools and analysis methods to determine stress levels, fatigue life and crack propagation characteristics.

"Independent tank type C" (pressure tank) is an independent cargo tank meeting pressure vessel criteria where the dominant stress producing load is design vapor pressure.

"Insulation space" means a space, that could be an interbarrier space, occupied wholly or in part by insulation.

"Integral tank" means a cargo tank that is a structural part of the vessel's hull and is influenced in the same manner and by the same loads that stress the adjacent hull structure.

"Interbarrier space" means the space between a primary and a secondary barrier with or without insulation or other material.

"Length" (L) is ninety-six percent of the total length in meters on a waterline at eighty-five percent of the least molded depth measured from the top of the keel, or the length from the foreside of the stem to the axis of the rudder stock on that waterline, whichever is greater. In vessels having a rake of keel, the waterline is parallel to the design waterline.

"Letter of Compliance" means a letter issued by the Coast Guard to a foreign flag vessel for compliance with Sec. 5(8) of the Port and Tanker Safety Act of 1978 (92 Stat. 1486; 46 U.S.C. 391a).

"Liquefied gas" means a cargo having a vapor pressure of 172 kPa (25 psia) or more at 37.8°C (100°F).

"MARVS" stands for the Maximum Allowable Relief Valve Setting.

"Membrane tank" is a cargo tank that is not self-supporting and consists of a thin layer (membrance) supported through insulation by the adjacent hull structure.

"New gas vessel" means a self-propelled vessel that—

(a) is constructed under a building contract awarded after October 31, 1976;

(b) in the absence of a building contract, has the keel laid or is at a similar stage of construction after December 31, 1976;

(c) is delivered after June 30, 1980; or

(d) has undergone a major conversion for which—

(1) the building contract is awarded after October 31, 1976;

(2) in the absence of a building contract, conversion is begun after December 31, 1976; or

(3) conversion is completed after June 30, 1980.

"Permeability of a space" means the ratio of the volume of water within a space to the total volume of the space.

"Primary barrier" means the inner boundary that contains the cargo when the cargo containment system includes two boundaries.

"Process pressure vessel" means a pressure vessel that is used in a reliquefaction, cargo heating, or other system that processes cargo.

"Public spaces" means those portions of the accommodations that are used as passageways, foyers, dining rooms, lounges and similar permanently enclosed communal spaces.

"Remote group alarm" means an audible and visual alarm that alerts when an alarm condition exists but does not identify that condition.

"Secondary barrier" means the liquid resisting outer boundary of a cargo containment system when the cargo containment system includes two boundaries.

"Semi-membrane tank" is a cargo tank that is not self-supporting when loaded and consists of flat surfaces, supported through insulation by the adjacent hull structure, and shaped corners that connect the flat surfaces that can expand and contract due to thermal, hydrostatic, and pressure loadings.

"Service space" means a space outside the cargo area that is used for a gallery, pantry containing cooking appliances, locker or store room, workshop except those in machinery spaces, and similar spaces and trunks to those spaces.

"Shut-off valve" is a valve that closes a pipeline and provides nominal metal to metal contact between the valve operating parts, including the disc and gate, and the valve body.

"Specific gravity" ( ) means the ratio of the density of the cargo at the design temperature to the density of water at 4°C (39°F).

"Tank cover" is the protective structure for those parts of the cargo containment system that protrude through the weather deck, and serves both to protect those parts from damage and to provide continuity to the deck structure.

"Tank dome" means the uppermost portion of the cargo tank. For below deck cargo containment systems, it means the uppermost portion of the cargo tank that protrudes through the weather deck or through the tank cover.

"Toxic cargoes" means the following liquefied gases from Table 4:

Acetaldehyde
Ammonia, Anhydrous
Dimethylamine
Ethylamine
Ethyl chloride
Ethylene oxide
Methyl bromide
Methyl chloride
Sulfur dioxide
Vinyl chloride

"Vapor density" means the ratio of the weight of vapor to the weight of an equal volume of dry air at standard conditions of temperature and pressure.

"Vapor pressure" means the absolute equilibrium pressure of the saturated vapor above the liquid (kPa(psia)) at a specific temperature.

"Void space" means an enclosed space in the cargo area outside of the cargo containment system, except a hold space, ballast space, fuel oil tank, cargo pump or compressor room, or any space used by personnel.

"1974 Safety Convention" stands for the International Convention on Safety of Life at Sea, 1974, done at London, November 1, 1974.

§154.9 Issuance of documents.

The Coast Guard issues an endorsed Certificate of Inspection to a U.S. flag gas vessel or an endorsed Letter of Compliance to a foreign flag gas vessel that meets this part.

§154.12 Existing gas vessel: endorsements and requirements.

(a) Except existing gas vessels under paragraph (b), (c), or (d) of this section, an existing gas vessel must meet Subpart C of this Part if the owner desires a document endorsed for the carriage of a cargo listed in Table 4.

(b) If an existing gas vessel is issued a document by the Coast Guard before (*effective date of the final rule is inserted*), that is endorsed for the carriage of a cargo listed in Table 4, and the owner desires the same endorsement on a reissued document, the vessel must—

(1) continue to meet the same design and construction standards under which the Coast Guard issued the original document; and

(2) meet paragraph (e) of this section;

(c) If an existing gas vessel is issued a document by the Coast Guard before (*effective date of the final rule is inserted*), that is endorsed for the carriage of a cargo listed in Table 4, and the owner desires an endorsement for a different cargo listed in Table 4, the vessel must—

(1) continue to meet the same design and construction standards under which the Coast Guard isued the original document;

(2) meet paragraph (e) of this section;

(3) meet Subpart D for the different cargo; and

(4) meet any additional requirements of this part that the Commandant (G–MTH) determines to be necessary for safety.

(d) If an existing gas vessel does not meet paragraph (b) or (c) of this section and the owner desires a document endorsed for the carriage of a cargo listed in Table 4, the vessel must—

(1) have a letter from the Coast Guard dated before (*effective date of the final rule is inserted*) stating that—

(i) review of the vessel's plans for carriage of that cargo is complete; or

(ii) the vessel's IMO Certificate endorsed for the carriage of that cargo is accepted;

(2) meet the plans that were reviewed and marked "Examined" or "Approved" by the Coast Guard, or meet the standards under which the IMO Certificate was issued;

(3) meet paragraph (e) of this section; and

(4) meet any additional requirements of this part that the Commandant (G–MTH) determines to be necessary for safety.

(e) Each existing gas vessel under paragraphs (b), (c), or (d) must meet the requirements in each of the following:

(1) Section 154.310(d) and (e).
(2) Section 154.320(b) and (c).
(3) Section 154.330(a) through (e).
(4) Section 154.340(d).
(5) Section 154.345(a), (b)(1) through (b)(5), (b)(7) and (c).
(6) Section 154.476(a).
(7) Section 154.519(a)(2).
(8) Section 154.534.
(9) Section 154.538.
(10) Section 154.540(c) and (d).
(11) Section 154.556.
(12) Section 154.558.
(13) Section 154.560.
(14) Section 154.562.
(15) Section 154.703.
(16) Section 154.705.
(17) Section 154.706.
(18) Section 154.707.
(19) Section 154.708.
(20) Section 154.709.
(21) Section 154.904.
(22) Section 154.906.
(23) Section 154.908(a), unless the space is separated from the accommodation, service or control space by a steel door that—

(i) Is watertight when tested with a fire hose at not less than 207 kPa gauge (30 psig);

(ii) Has a means to self-close without latches or other devices that hold it open; and

(iii) Has an audible and visual alarm on both sides of the door which is actuated when the door is open.

(24) Section 154.910.
(25) Section 154.912.
(26) Sections 154.1110 through 154.1130, except §§ 154.1115(b), 154.1120(b), and 154.1125(c), and (f).
(27) Section 154.1145, except an existing gas vessel with a cargo carrying capacity of less than 2500 m^3 (88,200 ft^3) may have only one self-contained dry chemical storage unit, if that unit—

(i) Is installed before (*effective date of the final rule is inserted*); and

(ii) Has the capacity to meet §§ 154.1145(d) and (e), and 154.1170(e).

(28) Section 154.1150(a) and (b).
(29) Section 154.1155.
(30) Section 154.1160.
(31) Section 154.1165 (a), (b), (d), and (f).
(32) Section 154.1170 (b) through (f).
(33) Section 154.1200 (a), (b)(1) and (b)(2).
(34) Section 154.1205(f).
(35) Section 154.1325.
(36) Section 154.1335(e).
(37) Section 154.1350 (u), (e), (f), (i), and (o).

§ 154.15 U.S. flag vessel: endorsement application.

(a) A person who desires the endorsement under § 154.1801 for a U.S. flag vessel must submit an application for an endorsement of the vessel's Subchapter D Certificate of Inspection under the procedures in § 91.55–15 of this chapter.

(b) The person requesting an endorsement under paragraph (a) of this section must submit to the Coast Guard if requested—

(1) calculations for hull design required by § 154.215;

(2) the plans and information listed in §§ 54.01–18, 56.01–10, 91.55–5 (a), (b), (d), (g), and (h), and 110.25–1 of this chapter;

(3) plans for the dry chemical supply and distribution systems, including the controls; and

(4) any other vessel information, such as plans, design calculations, test results, certificates, and manufacturer's data, needed to determine whether or not the vessel meets the standards of this part.

§ 154.17 U.S. flag vessel: Certificate of Inspection endorsement.

The Certificate of Inspection for a U.S. flag vessel allowed to carry a liquefied gas listed in Table 4 has the following endorsement for each cargo with its corresponding carriage requirement data inserted:

Inspected and approved for the carriage of ——— at a maximum allowable relief valve setting of ——— kPa gauge (———psig) with an F factor of ———, a maximum external pressure of ——— kPa gauge (——— psig), a minimum service temperature of ——— °C (———°F), and a maximum specific gravity of ———. Hull type ———.

§ 154.19 U.S. flag vessel: IMO Certificate issuance.

(a) The Coast Guard Officer in Charge, Marine Inspection, issues an IMO Certificate to a U.S. flag vessel when requested by the owner or representative, if—

(1) the vessel meets the requirements of this part; and

(2) it is a new gas vessel, it meets the IMO *Resolution A.328(IX), Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk*, 1975; or

(3) it is an existing gas vessel, it meets the IMO *Code For Existing Ships Carrying Liquefied Gases in Bulk*, 1975.

(b) The IMO Certificate expires on the same date that the vessel's Certificate of Inspection expires.

§ 154.22 Foreign flag vessel: Letter of Compliance endorsement application.

(a) A person who desires an endorsed Letter of Compliance to meet § 154.1802(a) for a foreign flag vessel, whose flag administration issues IMO Certificates, must submit to the Commandant (G–MTH), U.S. Coast Guard, 2100 Second Street SW, Washington, D.C. 20593, an application that includes the following:

(1) The vessel's valid IMO Certificate.

(2) A description of the vessel.

(3) Specifications for the cargo containment system.

(4) A general arrangement plan of the vessel.

(5) A midship section plan of the vessel.

(6) Schematic plans of the liquid and vapor cargo piping.

(7) A firefighting and safety plan.

(8) If the applicant is requesting an endorsement for the carriage of ethylene oxide, a classification society certification that the vessel meets § 154.1725(a) (4), (5) and (7).

(9) If the vessel is a new gas vessel, or an existing gas vessel that does not meet § 154.12 (b), (c), or (d)—

(i) A certification from a classification society that the vessel—

(A) Has enhanced grades of steel meeting §§ 154.170 (b)(1) and (b)(2) for crack arresting purposes in the deck stringer, sheer strake, and bilge strake; and

(B) Meets § 154.701, or if the vessel carries methane, meets § 154.703, by having the capability of cargo tank pressure and temperature control without venting; and

(ii) The vessels's valid SOLAS Cargo Ship Safety Construction Certificate and Cargo Ship Safety Equipment Certificate.

(10) Any additional plans, certificates, and information needed by the Commandant (G-MTH) to determine whether or not the vessel meets this part.

(b) A person who desires an endorsed Letter of Compliance to meet § 154.1802(b) for a foreign flag vessel, whose flag administration does not issue IMO Certificates, must submit to the Commandant (G-MTH) the plans, calculations, and information under § 154.15(b).

§ 154.24 Foreign flag vessel: IMO Certificate.

(a) An IMO Certificate issued under the IMO *Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk*, Resolution A.328(IX), is usually sufficient evidence of compliance with this part for the Coast Guard to endorse a foreign flag vessel's Letter of Compliance with the name of each cargo in Table 4 that is listed on the IMO Certificate, if—

(1) The information listed in item 3 of the IMO Certificate shows that—

(i) The design ambient temperatures meet §§ 154.174 and 154.176;

(ii) The cargo tank design stress factors and resulting MARVS of independent tanks type B or C meet §§ 154.447 or 154.450; and

(ii) The cargo tank MARVS of a type IIPG ship meets § 154.215(c).

(b) If a foreign flag existing gas vessel meets § 154.12(b), (c) or (d), the vessel's IMO Certificate, as defined in § 154.7, is usually sufficient evidence of compliance with the requirements of § 154.12(e) for the Coast Guard to endorse the Letter of Compliance with the name of each cargo in Table 4 that is listed on the IMO Certificate.

(c) An IMO Certificate issued under the IMO *Code for Existing Ships Carrying Liquefied Gases in Bulk* is not acceptable evidence of compliance with the requirements of this part for the endorsement of a Letter of Compliance of a foreign flag existing gas vessel that does not meet § 154.12(b), (c), or (d).

§ 154.30 Liquefied gases not included in Table 4.

(a) A liquefied gas not appearing in Table 4 must be specially approved by the Commandant (G–MTH) for carriage in bulk in U.S. waters.

(b) A person who desires to ship a liquefied gas in bulk that is not listed in Table 4, must submit to the Commandant (G-MTH) a completed form CG–4355. This form may be obtained from Commandant (G-MTH) or any Officer in Charge, Marine Inspection (OCMI).

(c) The Commandant (G-MTH) notifies the submitter by letter whether or not the liquefied gas is specially approved for carriage in bulk in U. S. waters and the minimum requirements for that carriage. If the liquefied gas is not specially approved, the reasons why the special approval is not granted are included.

§ 154.32 Equivalents.

(a) A vessel that fails to meet a certain standard in this part for an endorsement on a Certificate of Inspection or Letter of Compliance may meet an alternate standard if the Commandant (G-MTH) finds that the alternate standard provides an equivalent or greater level of protection for the purpose of safety.

(b) The Commandant (G-MTH) considers issuance of a finding of equivalence to a standard required by this part if the person requesting the finding submits a written application to the Commandant (G-MTH) that includes—

(1) A detailed explanation of the vessel's characteristics that do not meet the requirements in this part; and

(2) An explanation of how each substituted standard enables the vessel to meet a level of safety equivalent to or greater than the standard in this part.

(c) Operational methods or procedures may not be substituted for a particular fitting, material, appliance, apparatus, item or type of equipment, required in this part.

§ 154.34 Special approval: requests.

Each request for special approval must be in writing to the Commandant (G-MTH) and mailed as follows: Commandant (G-MTH), U.S. Coast Guard, 2100 Second Street SW, Washington, D.C. 20593.

§ 154.36 Correspondence and vessel information: submission.

Correspondence to the Coast Guard and all vessel information submitted to the Coast Guard must be in English, except—

(a) IMO Certificates may be in French; and

(b) SOLAS Certificates may be in the official language of the flag administration.

3. By revising § 154.340(b) introductory text to read as follows:

§ 154.340 Access to tanks and spaces in the cargo area.

* * * * *

(b) Each access into and through a void space or other gas-dangerous space in the cargo area, except spaces under subparagraph (6) of the definition for "gas-dangerous space" in § 154.7, must—

* * * * *

4. By revising § 154.530(a) introductory text to read as follows:

§ 154.530 Valves: cargo tank MARVS 69 kPa gauge (10 psig) or lower.

(a) Except connections for tank safety relief valves and except for liquid level gauging devices other than those under §§ 154.536 and 154.1310, liquid and vapor connections on a cargo tank with a MARVS of 69 kPa (10 psig) or lower must have shut-off valves, that—

* * * * *

5. By revising § 154.544(a) to read as follows:

§ 154.544 Quick-closing shut-off valves.

* * * * *

(a) Be a shut-off valve:

* * * * *

6. By revising § 154.1802 (a)(2) and (b)(2) to read as follows:

§ 154.1802 Certificates, letters, and endorsements: Foreign flag vessels.

(a) * * *

(2) Special approval under § 154.30.

(b) * * *

(2) Special approval under § 154.30.

* * * * *

L.N. Hein,

Captain, U.S. Coast Guard, Acting Chief, Office of Merchant Marine Safety.

March 11, 1985.

[FR Doc. 85–6100 Filed 3–13–85; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[CC Docket No. 83-1145, Phase 1, FCC 85-69]

Investigation of Access and Divestiture Related Tariffs

Correction

In FR Doc. 85-5515 beginning on page 9462 in the issue of Friday, March 8, 1985, make the following corrections:

1. On page 9466, third column, line sixteen, "April 14" should read "April 4".

2. On page 9467, second column, paragraph 29, ninth line, "April 14, 1985" should read "April 4, 1985".

BILLING CODE 1505-01-M

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47 CFR Part 76

[MM Docket No. 85-30; RM-4875]

Adding Ashland, KY to the Charleston-Huntington, WV Television Market

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes to amend the Table of Major Television Markets by including Ashland, Kentucky, in the Charleston-Huntington, West Virginia, hyphenated market in response to a Petition for Rule Making filed by Tri-State Family Broadcasting, Inc.

DATE: Comments must be filed on or before April 29, 1985, and reply comments must be filed on or before May 14, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Arthur D. Scrutchins, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 76

Television broadcasting.

Notice of Proposed Rule Making

In the matter of amendment of § 76.51, major television markets, (Charleston-Huntington, West Virginia, Ashland, Kentucky); MM Docket No. 85-30, RM-4875.

Adopted: February 1, 1985.
Released: March 8, 1985.

By the Chief, Policy and Rules Division.

1. Before the Commission is the petition for rule making filed by Tri-State Family Broadcasting, Inc., licensee of television Station WTSF (TV), Channel 61, in Ashland, Kentucky, requesting that the Commission revise its list of the top 100 television markets set forth in § 76.51 of its cable television rules by including Ashland, Kentucky, in the market now designated Charleston-Huntington, West Virginia (#36). Tri-State specifically proposes a Charleston-Huntington, West Virginia-Ashland, Kentucky, hyphenated market designation.

2. Tri-State argues that Ashland should be added to the Charleston-Huntington market designation due to the relative location of the communities and the mutuality of coverage from their respective stations. Tri-City states that Huntington is 9.5 miles from Ashland and is completely within Ashland's 35 mile zone (See § 76.5 of the Commission's Rules) while Charleston is located 42.2 miles from Huntington and 55.4 miles from Ashland. Tri-City argues that the distance between Ashland to Charleston and Huntington distinguishes the instant case from *Television Muscle Shoals*, 48 R.R. 2d 1191 (1980) where the distances were much greater. Tri-City further argues that it is not a requirement that all of the designated communities in a hyphenated market be within one another's 35 mile specified zone.

3. Tri-City claims that Ashland is within the Grade B contours of all of the commercial television stations licensed to Charleston and Huntington. The Grade B contours of all Charleston stations encompass Huntington and vice versa. However, WTSF's predicted Grade B encompasses all of Huntington and most of Charleston. Tri-City asserts that the overlapping signal coverage of the stations in the Tri-City area is an indication that the stations do and logically can expect to obtain revenue from all three cities, citing *Melbourne, Florida*, 49 FR 7414, published February 29, 1984. According to Tri-City, the geographic proximity and economic interdependence of these cities makes them a single unified population center in which all television stations in the three communities are mutually dependent for economic support. Tri-City states that Ashland is considered part of the Charleston-Huntington television market by Arbitron and the Census Bureau, and that Rand-McNally treats Charleston-Huntington and Ashland as a unified demographic and economic area. Tri-City further states that program syndicators regard Charleston-Huntington and Ashland as a single market for purposes of program fees and exclusivity. Tri-City points out that while Ashland is not included in the Charleston-Huntington market in § 76.51 syndicators accord the same rate to WTSF as to the Charleston-Huntington stations. Tri-City also notes under § 76.61 of the Commission's Rules, Charleston-Huntington stations are entitled to must-carry rights on the Ashland cable system, but WTSF is not entitled to reciprocal rights. Tri-City argues that cable penetration is the critical factor in the market because the rough terrain results in unacceptable over-the-air reception. Consequently, Tri-City's market share is reduced and its financial condition is unstable because of its inability to compete in the market or reach Charleston viewers via cable.

Discussion

4. Section 76.51 of the Commission's Rules (the major market list) is used to determine, among other things, the mandatory coverage obligations of the cable systems operating within a particular market. The Commission originally based its major market list on Arbitron's 1970 prime time household ranking. *Cable Television Report and Order*, 36 F.C.C. 2d 143 (1972). Regarding "hyphenated markets," the Commission noted that certain markets were characterized by more than one major population center supporting all communities in the market but with different stations licensed to different cities within the market. See, *New York, New York-Linden-Paterson, New Jersey and Newark, New Jersey*, 47 F.C.C. 2d 752 (1974).

5. The question of hyphenation depends on whether Charleston-Huntington and Ashland constitute a single market. Tri-City has made a prima facia showing that Ashland is within the Grade B contours of all of the television stations licensed to Huntington and Charleston and that WTSF's predicted Grade B encompasses all of Huntington and most of Charleston. Furthermore, the stations allegedly rely on all three communities for advertising revenue, and business and advertisers in the area consider Ashland as a part of their natural market.

6. In light of the above showing, the Commission solicits comments on the proposal to amend § 76.51 by adding Ashland to the Charleston-Huntington designation as set forth below. Accordingly, the Commission proposes to amend the Table of Major Television Markets, §76.51 of the Commission's Rules as follows:

Present	Proposed
#36 Charleston-Huntington, West Virginia.	#36 Charleston-Huntington, West Virginia—Ashland, Kentucky.

8. Authority for the action taken herein is contained in sections 4(i), and 303 (g) and (r) of the Communications Act of 1934, as amended.

9. Interested parties may file comments on or before April 29, 1985, and reply comments on or before May 14, 1985, and are advised to read the Appendix for the proper procedures.

10. The Commission has certified that the provisions of the Regulatory Flexibility Act do not apply to rule making proceedings to amend §76.51 of the Commission's Rules. See *Melbourne, Florida,* 50 FR 2565, published January 17, 1985.

11. For further information concerning this proceeding, contact Arthur D. Scrutchins, Mass Media Bureau (202) 634–6530. However, members of the public should note that from the time a *Notice of Proposed Rule Making* is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contracts are prohibited in Commission proceedings, such as this one, which involve specific market designations. An *ex parte* contract is a message (spoken or written) concerning the merits of appending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s), who filed the comment to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(e)(i), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expects to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to appply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filing in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 85–6052 Filed 3–13–85; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 97

[PR Docket No. 84–960; RM–4781, RM–4784]

Allocation of Additional Frequencies for the Amateur Radio Service, the Amateur Civil Emergency Service and the Amateur Satellite Service

AGENCY: Federal Communications Commission.

ACTION: Proposed Rule; Extension of time to file Reply Comments.

SUMMARY: The period of time in which to file reply comments is hereby extended in this proceeding concerning amendment of the Commission's rules to implement allocation of additional frequencies for three Amateur Services. This action is necessary as a result of administrative backlog.

DATE: Interested parties may file reply comments on or before March 12, 1985.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: John J. Borkowski, Private Radio Bureau, Washington, D.C. 20554, (202) 632–4964.

SUPPLEMENTARY INFORMATION:

Order

In the Matter of Amendment of Part 97 of the Commission's rules to implement allocation of additional frequencies for the Amateur Radio Service, the Amateur Civil Emergency Service and the Amateur Satellite Service, PR Docket No. 84–960; RM–4781, RM–4784.

Adopted: March 6, 1985.
Released: March 7, 1985.

By the Chief, Private Radio Bureau.

1. In the *Notice of Proposed Rule Making* in this matter, 49 FR 40611 (October 17, 1984), the Commission set deadlines of December 17, 1984 for comments and January 16, 1985 for reply comments.

2. On January 16, 1985, Corwin D. Moore, Jr., filed a *Petition for Extension of Time to File Reply Comments* in this proceeding. This request for extension of time is granted due to administrative backlog in our Dockets Branch.

3. It is ordered, that the date through which interested persons may file reply comments is extended until March 12, 1985.[1]

(Secs. 4, 303, 48 stat., as amended 1066, 1082; 47 U.S.C. 154, 303)

[1] For good cause shown, the procedural requirements of 47 CFR 1.46(b) and 1.415(e) are waived, and this *Petition* is accepted for filing.

Federal Communications Commission

Robert S. Foosaner,

Chief, Private Radio Bureau.

[FR Doc. 85-6053 Filed 3-13-85; 8:45 am]

BILLING CODE 6712-01-M

GENERAL SERVICES ADMINISTRATION

48 CFR Part 533

[GSAR Notice No. 5-82g]

Disputes and Appeals

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice invites written comments of a proposed change to the General Services Administration Acquisition Regulation (GSAR), which supplements FAR Part 33, Protests, Disputes and Appeals, by providing agency procedures for processing protests that are filed with the General Accounting Office (GAO) or with the General Services Administration Board of Contract Appeals. The proposed change also incorporates the contents of Acquisition Circular AC-84-8, regarding the arrangement of documents in appeal files, into the regulation.

DATES: Comments are due in writing not later than April 15, 1985.

ADDRESS: Requests for a copy of the proposal and comments should be addressed to Ms. Ida M. Ustad, Office of GSA Acquisition Policy and Regulations, 18th and F Streets NW., Room 4027, Washington, D.C. 20405.

FOR FURTHER INFORMATION CONTACT: Ida M. Ustad, Office of GSA Acquisition Policy and Regulations on (202) 523-4754.

SUPPLEMENTARY INFORMATION: The proposed rule is not a "major rule" as defined by Executive Order 12291. Therefore, no regulatory impact analysis has been prepared. The General Services Administration (GSA) certifies that this document will not have significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.). Therefore, no regulatory flexibility analysis has been prepared. The rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et. seq.

List of Subject in 48 CFR Part 533

Government procurement.

Dated: January 30, 1985.

Richard H. Hopf, III,

Director, Office of GSA Acquisition, Policy and Regulations.

[FR Doc. 85-6150 Filed 3-13-85; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period on Proposed Endangered Status and Critical Habitat for the Bay Checkerspot (Butterfly Euphydryas Editha Bayensis)

AGENCY: Fish and Wildlife Services, Interior.

ACTION: Reopening of comment period.

SUMMARY: The U.S. Fish and Wildlife Service gives notice that the comment period on the proposed determination of endangered status and critical habitat for the bay checkerspot butterfly *(Euphydryas editha bayensis)* is reopened. This butterfly was historically known from the San Francisco Peninsula and outer coast range to the south and east of the peninsula. Of the 16 known colonies, only five remain. The reopening of the comment period will allow any additional comments on this proposal to be submitted from all interested parties.

DATES: The comment period on the proposal, which was extended to accommodate a public hearing on November 13, 1984 (49 FR 43076), is reopened. The comment period, which closed on November 23, 1984, now closes May 17, 1985.

ADDRESSES: Written comments and materials should be sent to the Regional Director, U.S. Fish and Wildlife Service, Lloyd 500 Building, 500 NE. Multnomah Street, Suite 1692, Portland, Oregon 97232. Comments and materials received will be available for public inspection during normal business hours, by appointment, at the Regional Endangered Species Division at the above Regional Office address.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne S. White, Chief, Division of Endangered Species, at the address above or 503/231-6131 (FTS 429-6131).

SUPPLEMENTARY INFORMATION:

Background

The bay checkerspot butterfly has suffered a reduction in number and range. Of 16 known colonies, five remain. Habitat alterative has resulted from highway and subdivision construction, overgrazing by livestock, and introduction of non-native plants. A proposal of endangered status and critical habitat for the butterfly was published in the **Federal Register** on September 11, 1984 (49 FR 35665) and a public hearing held on November 13, 1984 (49 FR 43076).

On February 12, 1985, counsel for United Technologies Corporation (UTC) requested that the comment period for this proposed rule be reopened. Because the UTC request raises significant issues concerning the proposal and because other parties have also indicated a desire to present significant additional comments on the proposal, the Service has decided to reopen the comment period. Written comments may now be submitted until May 17, 1985, to the Service Office in the Addresses section. Depending on the nature of the comments received, a further extension of the comment period may be considered.

Author

The primary author of this notice is Ms. Carolyn A. Bohan, U.S. Fish and Wildlife Service, Lloyd 500 Building, 500 NE. Multnomah Street, Suite 1692, Portland, Oregon 97232 (503/231-6131 or FTS 429-611).

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*.; Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish and Marine mammals, Plants (agriculture).

Dated: March 7, 1985.

William F. Shake,

Acting Assistant Regional Director-Federal Assistance.

[FR Doc. 85-6077 Filed 3-13-85; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 20

Migratory Bird Hunting; Proposed 1985-86 Migratory Game Bird Hunting Regulations (Preliminary)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rulemaking.

SUMMARY: The Service proposes to establish hunting seasons, daily bag and possession limits, and shooting hours for designated groups or species of migratory game birds in the contiguous

United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands during 1985–86. The Service annually prescribes migratory bird hunting regulations. These regulations provide hunting opportunity, a popular form of outdoor recreation, to the public and aid Federal and State governments in the management of migratory game birds.

DATES: The comment period for proposed regulatoins frameworks for Alaska, Hawaii, Puerto Rico, and the Virgin Islands will end on June 20, 1985; for other early season proposals (seasons opening before October 1) on July 15, 1985; and for late season proposals (seasons opening on or about October 1 or later) on August 19, 1985. Public Hearings: Early Season Regulations, including those for Alaska, Hawaii, Puerto Rico, and the Virgin Islands—June 20, 1985, at 9 a.m.; Late Season Regulations—August 1, 1985, at 9 a.m. Both public hearings will be held in the Auditorium, Interior Department Building, 18th and C Streets, NW., Washington, D.C.

Meetings: March 17, 1985

—Atlantic Flyway Council, 10 a.m.
—Mississippi Flyway Council, 9 a.m.
—Central Flyway Council, 8:30 a.m.
—Pacific Flyway Council, 8:30 a.m.
—National Waterfowl Council, 3 p.m.

ADDRESSES: Council meetings will be held at The Shoreham Hotel, Washington, D.C., as follows:

Atlantic Flyway Council, Executive Room, Upper Lobby Level
Mississippi Flyway Council, Calvert Room, Upper Lobby Level
Central Flyway Council, Diplomat Room, Upper Lobby Level
Pacific Flyway Council, Embassy Room, Upper Lobby Level
National Waterfowl Council, Hampton Room, Upper Lobby Level

Comments and requests to testify may be mailed to Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240. Comments received may be inspected from 8 a.m. to 4 p.m. at the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Room 536, Matomic Building, 1717 H Street, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240 (202) 254–3207.

SUPPLEMENTARY INFORMATION: The Fish and Wildlife Service proposes to establish hunting seasons, bag and possession limits, and shooting hours for migratory game birds during 1985–86 under §§ 20.101 through 20.107 of subpart K of 50 CFR Part 20.

"Migratory game birds" are those migratory birds so designated in conventions between the United States and several foreign nations for the protection and management of these birds. During the 1985–86 hunting season, regulations are proposed for certain designated members of the avian families *Anatidae* (ducks, geese, brant, and swans); *Columbidae* (doves and pigeons); *Gruidae* (cranes); *Rallidae* (rails, coots, and gallinules); and *Scolopacidae* (woodcock and snipe). These proposals are described under Proposed 1985–86 Migratory Game Bird Hunting Regulations (Preliminary) in this document.

On June 5, 1984, the Fish and Wildlife Service published a proposed rule to revise the List of Migratory Birds (50 CFR Part 10 Subpart B § 10.13) in the **Federal Register** (49 FR 23197–23202). These revisions are occasionally necessary as new records are established and as taxonomic classifications change. The proposed revision of the list of migratory birds adopts, as a uniform system, the taxonomy and nomenclature of the American Ornithologists Union's Checklist of North American Birds (6th Ed., 1983). these revisions, when implemented by a final rule, will make certain changes in the classification, common or scientific names of migratory game birds subject to the hunting regulations proposed herein. These changes are as follows:

Dove, White-fronted, will be dove, White-tipped
Duck, Black, will be Duck, American Black
Duck, Mexican, *Anas diazi*, deleted (merged with *A. platyrhynchos*)
Pintail, Bahama, will be Pintail, White-cheeked
Scoter, White-winged, *Melanitta deglandi*, will be *M. fusca*
Teal, Common, will be Teal, Green-winged
Gaullinule, Common, will be Moorhen, Common
Goose, Emperor, *Philacte canagica*, will be *Chen canagica*
Goose, White-fronted, will be Goose, Greater White-fronted
Snipe, Common, *Capella gallinago*, will be *Gallinago gallinago*
Swan, Whistling, will be Swan, Tundra

Notice of Intention To Establish Open Seasons

This notice announces the intention of the Director, U.S. Fish and Wildlife Service, to establish open hunting seasons, daily bag and possession limits, and shooting hours for certain designated groups or species of migratory game birds for 1985–86 in the contiguous United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands.

Factors Affecting Regulations Process

This is the first in a series of proposed and final rulemaking documents for migratory bird hunting regulations. Proposed season frameworks, shooting hours, and daily bag and possession limits are set forth for various groups of migratory game birds for which these regulations ordinarily do not vary significantly from year to year.

The proposals set forth here and the schedule by which more detailed proposals for these and other species will be developed depend upon a number of factors. Among these are the times when various annual population, habitat, and harvest surveys are conducted and results are available for analysis; times of migration and other biological considerations; and times during which hunting may be allowed. The regulatory process for migratory game birds is strongly influenced by the times when the best and latest information is available for consideration in the development of regulations. For these reasons, the overall regulations process for hunting seasons and limits is divided into the following segments: (1) Regulations for migratory game birds in Alaska, Puerto Rico, the Virgin Islands, and Hawaii; (2) seasons in the remainder of the United States opening prior to October 1 (early seasons); and (3) seasons opening in the remainder of the United States about October 1 and later (late seasons). Regulations development for each of the three categories will follow similar but independent schedules. Proposals relating to the harvest of migratory game birds that may be initiated after publication of this proposed rulemaking will be made available for public review in supplemental proposed rulemakings to be published in the **Federal Register**. Also, additional supplemental proposals will be published for public comment in the **Federal Register** as population, habitat, harvest, and other information becomes available.

Because of the late dates when certain of these data become available, it is anticipated that comment periods on some proposals will necessarily be abbreviated. Special circumstances that limit the amount of time which the Service can allow for public comment are involved in the establishment of these regulations. Specifically, two consideration s compress the time in which the rulemaking process must

operate: the need, on one hand, to establish final rules at a time early enough in the summer to allow State agencies to adjust their licensing and regulatory mechanisms and, on the other hand, the lack before late July of current data on the status of most waterfowl.

Publication of Regulatory Documents

The establishment of migratory bird hunting regulations in the United States involves a series of regulatory announcements published in the **Federal Register** in accordance with the Administrative Procedure Act. The publication of these documents is divided into three phases, as follows:

1. *Proposed rulemakings*—proposals to amend Subpart K (and other subparts when necessary) of 50 CFR Part 20, including supplementary proposed migratory game bird hunting regulations, and/or regulations frameworks which prescribe season lengths, bag and possession limits shooting hours, and outside dates within which States may make season selections.

2. *Final rulemakings—frameworks.* Final migratory game bird regulations frameworks which prescribe season lengths, bag and possession limits, shooting hours, and outside dates within which States may make season selections.

3. *Final rulemakings—season selections.* Amendments to the various specific sections of Subpart K (and other subparts when necessary) of 50 CFR Part 20 based on the final regulations frameworks and on season selections communicated by the States to the Service.

Major steps in the 1985–86 regulatory cycle relating to public hearings and **Federal Register** notifications are illustrated in the accompanying diagram.

BILLING CODE 4310-55-M

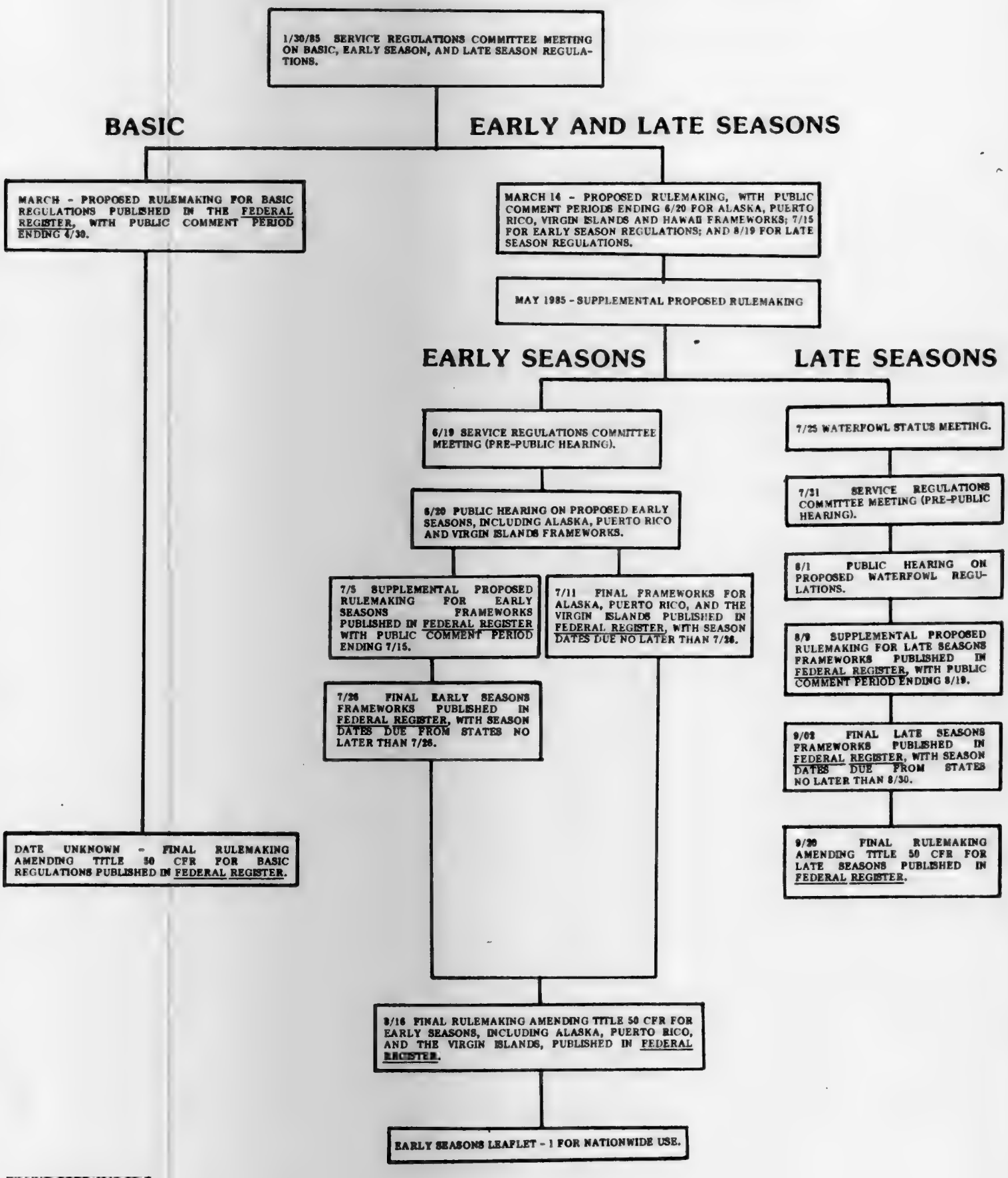
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1985 SCHEDULE OF REGULATIONS MEETINGS AND FEDERAL REGISTER PUBLICATIONS



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All dates shown for frameworks and seasons in the Service's regulatory documents are inclusive.

Non-toxic shot regulatory proposals and final regulations are published separately under § 20.21 of subpart C and § 20.108 of Subpart K.

Objectives of the Migratory Bird Hunting Regulations The objectives of these annual regulations are as follows:

1. To provide an opportunity to harvest a portion of certain migratory game bird populations by establishing legal hunting seasons.

2. To limit harvest of migratory game birds to levels compatible with their ability to maintain their populations.

3. To avoid the taking of endangered or threatened species so that their continued existence is not jeopardized, and their conservation is enhanced.

4. To limit taking of other protected species where there is a reasonable possibility that hunting is likely to adversely affect their populations.

5. To provide equitable hunting opportunty in various parts of the country within limits imposed by abundance, migration, and distribution patterns of migratory game birds.

6. To assist, at time and in specific locations, in preventing depredations on agricultural crops by migratory game birds.

The management of migratory birds in North America is international in scope, and involves other nations, notably Canada and Mexico. Within the United States, other Federal agencies, State conservation agencies, national and regional conservation groups, universities, and the public provide much support to the achievement of these objectives.

Data Used in Regulatory Decisions

The establishment of hunting regulations for migratory game birds in the United States during the 1985–86 season will take into consideration available population information, data from harvest surveys, and information on habitat conditions. Consideration will also be given to accumulated data and trends. The main sources of data result from operational surveys conducted by the U.S. Fish and Wildlife Service in cooperation with the Canadian Wildlife Service, Direccion General de la Flora y Fauna Silvestres of Mexico, State and Provincial wildlife agencies, and others. The Service will also consider technical information provided by consultants of the four waterfowl flyway councils. The information from these sources will be analyzed by the U.S. Fish and Wildlife Service with an opportunity for the public to review and provide comments on management rationales and proposed regulations, either in public hearings, by correspondence, or other communications.

Various surveys are used to ascertain the status, condition, and trends of migratory game bird populations. These include annual surveys of major waterfowl wintering habitats in the United States and in portions of Mexico each January; aerial surveys of major waterfowl production areas in the United States and Canada in May and early June for breeding population data, and again in July for production information; nationwide surveys in the United States and Canada of waterfowl hunters and the waterfowl harvest, including their geographical and temporal distributions, and species, age, and sex composition of the harvest; and band recovery information. Waterfowl breeding pair and production surveys also provide information on the abundance, duration, and quality of water and other habitat conditions in major production areas. Information on waterfowl populations and habitat conditions outside the aerial survey area is furnished by cooperating State, Provincial, and private agencies. Banding information provides insight into shooting pressures sustained by migratory game bird populations under different population levels and type of regulations. When viewed over many years, information on harvests and regulations is useful for predicting approximate harvest levels which may result from various regulation changes.

Many of the surveys conducted primarily for ducks also provide information on geese. In addition, satellite imagery is used to monitor the rate at which snow and ice disappear from subarctic and arctic breeding grounds traditionally used by most species and the greatest numbers of North American geese. Field observations of geese in the fall and winter also provide information on the production success of the past breeding season. Special population surveys are undertaken for many identifiable populations of geese throughout the year.

An annual call-count survey conducted nationwide in the United States in late May and early June provides information on the breeding population of mourning doves. Information from past years and the current year is used to establish population trends. An annual singing-ground survey is conducted throughout the woodcock breeding range in the eastern United States and Canada. Insight into production success is obtained from wing-collection surveys of woodcock hunters in the United States and Canada; data from these surveys indicate the age and sex composition of the harvest and its geographical and temporal distribution. Accumulated and current data are examined for possible long-term trends in population size and productivity. Information on white-winged dove populations in Texas and the Southwest is provided by cooperating State agencies. Spring surveys of sandhill cranes are conducted annually with emphasis on the key staging area of the species along the Platte River in central Nebraska. The Service also solicits information on these and other species from knowledgeable individuals. Last year the Service continued the study to determine if its Waterfowl Harvest Survey can be adjusted to measure harvest trends in migratory shore and upland game birds.

Definitions of Flyways

Flyways are administrative units with broad biological-ecological similarities frequently used for reference in setting hunting regulations on many migratory game birds. These are defined as follows:

Atlantic Flyway: Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

Mississippi Flyway: Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

Central Flyway: Kansas, Nebraska, North Dakota, Oklahoma, South Dakota, and Texas; Colorado and Wyoming east of the Continental Divide; Montana east of Hill, Chouteau, Cascade, Meagher and Park Counties; and New Mexico east of the Continental Divide but outside the Jicarilla Apache Indian Reservation.

Pacific Flyway: Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington; those portions of Colorado and Wyoming lying west of the Continental Divide; New Mexico west of the Continental Divide plus the Jicarilla Apache Indian Reservation; and in Montana, the counties of Hill, Chouteau, Cascade, Meagher, and Park, and all counties west thereof. Flights of most migratory game birds breeding or produced in Alaska are more strongly oriented to this flyway than to the other flyways.

Definitions of Mourning Dove Management Units

Mourning dove Management Units are administrative units based upon a reasonable delineation of independent mourning dove population segments encompassing the principal breeding, migration, and United States wintering areas for each population. They are used for reference in setting mourning dove hunting regulations and are defined as follows:

Eastern Management Unit: Alabama, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, and Wisconsin.

Central Management Unit: Arkansas, Colorado, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming.

Western Management Unit: Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington.

Hearings

Two public hearings pertaining to 1985–86 migratory bird hunting regulations are scheduled. Both meetings will be conducted in accordance with 455 DM 1 of the Departmental Manual. On June 20 a public hearing will be held at 9 o'clock in the Auditorium of the Department of the Interior Building, on C Street, between 18th and 19th Streets, NW., Washington, D.C. This hearing is for the purpose of reviewing the status of mourning doves, woodcock, band-tailed pigeons, white-winged and white-tipped doves, rails, gallinules, common snipe, and sandhill cranes. Proposed hunting regulations will be discussed for these species plus regulations for migratory game birds in Alaska, Puerto Rico, and the Virgin Islands; mourning doves in Hawaii; September teal seasons in the Mississippi and Central Flyways; special September waterfowl seasons in designated States; special sea duck seasons in the Atlantic Flyway, and special falconry seasons. On August 1 a public hearing will be held at 9 o'clock in the Auditorium of the Department of the Interior Building, address above. This hearing is for the purpose of reviewing the status and proposed regulations for waterfowl not previously discussed at the June 20 public hearing. The public is invited to participate in both hearings.

Persons wishing to participate in these hearings should write the Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240, or telephone (202) 254–3207. Those wishing to make statements should file copies of them with the Director before or during each hearing. Public Comments Solicited

Based on the results of current migratory game bird studies and having due consideration of all data and views submitted by interested parties, the amendments resulting from these proposals will specify open seasons, shooting hours, and bag and possession limits for doves, pigeons, rails, gallinules, woodcock, common snipe, coots, cranes, and waterfowl; coots, cranes, common snipe and waterfowl in Alaska; migratory game birds in Puerto Rico and the Virgin Islands; and mourning doves in Hawaii.

The policy of the Department of the Interior is, whenever practicable, to afford the public an opportuntiy to participate in the rulemaking process. Accordingly, interested persons are invited to submit written comments, suggestions, or recommendations regarding the proposed amendments.

The Director intends that finally adopted rules be as responsive as possible to all concerned interests. He therefore desires to obtain the comments and suggestions of the public, other concerned governmental agencies, and private interests on these proposals.

Final promulgation of migratory bird hunting regulations will take into consideration all comments received by the Director. Such comments, and any additional information received, may lead the Director to adopt final regulations differing from these proposals. Interested persons are invited to participate in this rulemaking by submitting written comments as follows:

For comments on Proposed 1985–86 Migratory Game Bird Hunting Regulations (Preliminary) write to: Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240.

Comments received on the proposed annual regulations will be available for public inspection during normal business hours at the Service's office in Room 536, Matomic Building, 1717 H Street, NW, Washington, D.C. The Service will acknowledge but may not respond in detail to each comment. Specific comment periods will be established for each of the three series of proposed rulemakings. All relevant comments will be accepted through the closing date of the last comment period on the particular proposal under consideration. As in the past, the Service will summarize all comments received during the comment period and respond to them.

Flyway Council Meetings

The Service published a final rule in the **Federal Register** dated December 22, 1981 (46 FR 62077) which established certain procedures in the development of the annual migratory bird hunting regulations. This rule took effect on January 21, 1982. One provision is to publish notification of meetings of waterfowl flyway councils where Department officials will be in attendance. In this regard, Departmental representatives will be present at the following spring meetings of the various flyway councils:

Date: March 17, 1985.

—Atlantic Flyway Council, 10 a.m.
—Mississippi Flyway Council, 9 a.m.
—Central Flyway Council, 8:30 a.m.
—Pacific Flyway Council, 8:30 a.m.
—National Waterfowl Council, 3 p.m.

Address: Council meetings will be held at The Shoreham Hotel, Washington, D.C., as follows:

—Atlantic Flyway Council, Executive Room, Upper Lobby Level
—Mississippi Flyway Council, Calvert Room, Upper Lobby Level
—Central Flyway Council, Diplomat Room, Upper Lobby Level
—Pacific Flyway Council, Embassy Room, Upper Lobby Level
—National Waterfowl Council, Hampton Room, Upper Lobby Level

NEPA Consideration

In 1975 the Service determined that the annual migratory bird hunting regulations constituted a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969. Consequently, the "Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES 75–54)" was prepared and filed with the Council on Environmental Quality on June 6, 1975, and notice of availability was published in the **Federal Register** on June 13, 1975 (40 FR 25241). In addition, several environmental assessments have been prepared or specific matters which serve to supplement the material in the Final Environmental Statement. These have addressed regulations for various species of migratory game birds and hunting strategies. The 1975 FES is out of print but copies of the various environmental assessments which supplement it are available upon request from the Office of Migratory Bird Management (address given previously).

Endangered Species Act Consideration

Prior to issuance of the 1985–86 migratory game bird hunting regulations, consideration will be given to provisions of the Endangered Species Act of 1973, as amended, (16 U.S.C. 1531–1543; hereinafter the Act) to insure that hunting is not likely to jeopardize the continued existence of any species designated as endangered or threatened or modify or destroy its critical habitat and is consistent with conservation programs for those species. Consultations under Section 7 of this Act may cause changes to be made to proposals in this and future supplemental proposed rulemaking documents.

Regulatory Flexibility Act, Executive Order (E.O.) 12291, and the Paperwork Reduction Act

In complying with these requirements during the 1981–82 regulatory development cycle, and with Office of Management and Budget concurrence, the Service prepared a Determination of Effects, a Preliminary Regulatory Impact Analysis (PRIA), a Final Regulatory Impact Analysis (FRIA), and a Memorandum of Law. For further information see the **Federal Register**: March 25, 1981, at 46 FR 18669; August 17, 1981, at 46 FR 41739; August 21, 1981, at 46 FR 42643; and September 18, 1981, at 46 FR 46543. The rules for the 1981–82 hunting season were determined to be "major," because the expenditures arising from these regulations exceed $100 million annually and represent a major Federal action.

An updated FRIA, focusing on waterfowl hunting, was completed by the Service on March 3, 1983. New economic information was utilized from the *1980 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation* which indicated that hunters expended $638 million for migratory bird hunting in 1980. The Service estimated the expenditures for waterfowl hunting in 1980 to be $317 million (adjusted to 1981 dollars).

A Determination of Effects approved by the Assistant Secretary, Fish and Wildlife and Parks, on February 20, 1985 concluded that the hunting frameworks being proposed for 1985–86 were "major" rules, subject to regulatory analysis. In accordance with Office of Management and Budget instructions, the Service recently prepared an update of the 1981 Final Regulatory Impact Analysis for use in the development of the 1985–86 migratory bird hunting regulations to incorporate new economic information and waterfowl hunter activity and harvest information from the 1983–84 season. The summary of the 1985 update of the 1981 FRIA follows:

Stabilized regulations were again in effect during the 1984–85 season. New information which can be compared to that appearing in the 1984 update of the 1981 FRIA includes estimates of the 1983 fall flight of ducks from surveyed areas, and hunter activity and harvest information from the 1983–84 hunting season. The data indicate that fall flights increased in the Pacific Flyway, and remained the same in the Atlantic, Mississippi, and Central Flyways. Hunter activity, both in numbers of hunters and hunter days, decreased, while there was no change in the total fall flight. This again demonstrates that non-regulatory factors, e.g., weather, local availability of ducks, habitat conditions, and local economy, affect hunter participation and the resulting benefits of duck hunting to the economy.

Copies of the supplemental FRIA are available upon request from the Office of Migratory Bird Management, Fish and Wildlife Service, Department of the Interior, 18th and C Streets, NW., Washington, D.C. 20240.

The Department of the Interior has determined that this document is a major rule under E.O. 12291 and certifies that this document will have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *se seq.*). This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

The Service plans to issue its Memorandum of Law for the migratory bird hunting regulations at the time the first of these rules is finalized.

Authorship

The primary author of the proposed rules on annual hunting regulations is Morton M. Smith, Office of Migratory Bird Management, working under the direction of Rollin D. Sparrowe, Chief, (202) 254–3207.

List of Subjects in 50 CFR Part 20

Hunting, Wildlife, Exports, Imports, Transportation.

The rules that eventually will be promulgated for the 1985–86 hunting season are authorized under the Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703 et seq.) as amended.

Proposed 1985–86 Migratory Game Bird Hunting Regulations (Preliminary)

In regard to possible regulations changes, attention is invited to the Notice of Intent Published in the February 15, 1985, **Federal Register** (50 FR 6366), regarding Duck Harvest Strategies. In that Notice, the Service announced an intent to review potential management strategies for ducks prior to establishment of regulations for the 1985–86 hunting season. All elements of duck hunting regulations, including special seasons and options, were opened to review and comment. Responses to this notice will be accepted through April 15, 1985, and subsequently considered by the Service before supplementary regulatory proposals are developed. No comments resulting from the Notice were available at the time this document was developed. Therefore, the potential of the Notice to subsequently effect change in the proposals offered here should be recognized.

The following general frameworks and guidelines for hunting certain waterfowl, sandhill cranes, mourning doves, white-winged doves, white-tipped doves, Zenaida doves, scaly-naped pigeons, moorhens, band-tailed pigeons, gallinules, rails, coots, common snipe, and woodcock during the 1985–86 season are proposed. Changes or possible changes, when noted, are in relation to 1984–85 final frameworks or regulations. In this respect, minor date changes due to annual variation in the calendar dates of specific days of the week, are regarded as "no change." All mentioned dates are inclusive. In connection with certain items, information is provided about proposals for change already submitted to the Service or expected to be submitted in the near future. Service views on these and other items in this proposed rulemaking are subject to change depending on public comments, and additional data and information that may be received later. These and the Service's responses or comments follow the frameworks being proposed.

Stabilized Regulations for Duck Hunting. In 1979, a five-year program of stabilized waterfowl hunting regulations was initiated in Canada through the cooperation of the Canadian Wildlife Service and the 3 Prairie Provinces. In 1980 the U.S. Fish and Wildlife Service, with support form the Flyway Councils and other organizations, agreed to join Canada in this program by stabilizing season lengths and bag limits for a 5-year period beginning with the 1980–81 season at the 1979–80 hunting season level. During this period, Canada and the United States have cooperated in investigating the relationship between duck populations and ducks harvests continentally in the absence of annual changes in season lengths and bag limits. The July 1, 1980, **Federal Register** (at 45 FR 44546) advised that the Service planned to take this action in connection

with an evaluation program to be conducted in cooperation with the Canadian Wildlife Service. The immediate goal of the study is to develop a strategy to manage duck harvests. The long-term goal is to identify management steps to maintain North American duck populations.

Cooperative U.S.-Canadian investigations of the stabilized regulations program have focused on the mallard. The 1984–85 hunting season marked the final harvest period in the program. However, field activities, including banding, radio-telemetry, and nesting studies will continue through 1985. Because of these continuing field studies as well as time required for analysis and interpretation of data collected, a final, comprehensive report on the evaluation of stabilized regulations will not be available prior to 1986. In the interim, a progress report is being prepared, based on information available to date.

The Service proposes to amend 50 CFR Part 20 as follows:

1. *Shooting hours.* (No change.) Basic shooting hours beginning one-half hour before sunrise and ending at sunset are proposed with the option that more restrictive shooting hours within this framework may be selected by the States or may be established for special seasons.

2. *Framework dates for ducks and geese in the continental United States* (No change.) The Service proposes that these frameworks are to be generally the same as during the 1984–85 season: From October 1, 1985, to January 20, 1986, for the Atlantic Flyway; from the Saturday nearest October 1, 1985, to January 20, 1986, for the Mississippi Flyway; from the Saturday nearest October 1, 1985, through the Sunday nearest January 20, 1986, for the Central and Pacific Flyways with the following exceptions:

A. Experimental extension of the duck season framework closing date: Mississippi conducted an experimental extension of the framework closing date for duck hunting from January 20 to January 31 during the 1979–80 through 1984–85 hunting seasons. The final report of the study is to be available to the Service and Mississippi Flyway Council states prior to the 1985 summer Council meeting (July).

B. Sea ducks: see item 5.

C. September teal season: see item 6.

D. Experimental September duck seasons: see item 8.

E. Special scaup season: see item 9.

F. Snow (including blue) and Greater white-fronted geese: In Louisiana, between October 1, 1985, and February 14, 1986, in zones established for duck hunting seasons.

G. Snow geese: In the Atlantic Flyway, October 1, 1985, through January 31, 1986. In the Central Flyway, except New Mexico, September 28, 1985, through February 17, 1986. In the Central Flyway portion of New Mexico, September 28, 1985, through February 28, 1986.

H. Canada geese: Atlantic Flyway—In New York (including Long Island), Rhode Island, Connecticut, New Jersey, Delaware, the Delmarva Peninsula portions of Maryland and Virginia, a designated area in southeastern Pennsylvania, North Carolina, and South Carolina the Canada goose season framework extends to January 31, 1986. Mississippi Flyway—In Kentucky, Tennessee, and Mississippi the Canada goose season framework extends to January 31, 1986.

I. Alaska waterfowl: see item 25.

Additional information. By letter dated January 20, 1985, a California waterfowl hunter expressed concern that the duck season in southern California opens and closes too early, and recommended setting waterfowl seasons for the area extending into February and establishing a duck hunting zone for Lake Baldwin in the San Bernardino Mountains. The letter was accompanied by the signatures of twenty-seven licensed California waterfowl hunters.

By letter dated January 28, 1985, Alabama requested their duck season framework closing date be extended from January 20, to January 31. State officials indicated a January 31 closing date would improve the low duck harvest in Alabama but would not significantly impact the Mississippi Flyway harvest, and would help decrease the disparity in Alabama's duck harvest with other Flyway states.

Response. The Service will consider the recommendations of the California sportsmen along with comments from other individuals, States, flyway councils, and interested organizations in establishing the 1985–86 waterfowl hunting season frameworks.

In recent years requests for a January 31 closing date for duck hunting have not been approved by the Service because of the strong sentiment expressed by the Flyway Councils that action on such requests should be deferred pending the outcome of a study in Mississippi to evaluate the effects of a late season on duck populations. The 1984–85 season was the last year of the Mississippi study and the final report is due this year. Until the report is evaluated by the Mississippi Flyway Council and the Service, action is deferred on any request for an extension of the closing date for duck seasons.

Further, the Service again notes its intent to review the need for more conservative harvest strategies for ducks as discussed in 50 FR 6366 dated February 15, 1985.

3. *American black ducks.* (No change) No changes in seasons and bag limits from those in effect since 1983–84 are proposed at this time pending a review of the 1984–85 American black duck harvest. Evaluation of American black duck hunting regulations is a continuing objective of the Service and has been in progress for several years. In 1983 a program to further restrict harvest of American black ducks was developed and initiated in cooperation with State wildlife agencies, Flyway Councils, and private organizations. The program and alternatives were discussed in an Environmental Assessment, *Proposed Hunting Regulations on Black Ducks, 1983,* which is available upon request to the U.S. Fish and Wildlife Service (MBMO), Washington, D.C. 20240.

4. *Wood ducks.* (No change.) In 1977 regulations for this species were changed to permit southeastern States the option of an early October hunting season during which no special bag and possession limits applied under conventional regulations; under point system regulations, the species was placed in the mid-point category. The criteria for such seasons were described in the **Federal Register** dated May 25, 1977 (42 FR 26669), and are summarized and updated for informational purposes:

The southeastern United States is defined as Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee and Virginia. The Service proposes to again consider regulations aimed at additional wood duck harvest in the southeastern States only within the following guidelines:

A. In 1985 States in the southeastern United States may split their regular duck hunting season in such a way that a hunting season not to exceed 9 consecutive days occurs between October 1 and October 15.

B. During this period under conventional regulations, no special restrictions within the regular daily bag and possession limits established for the Flyway in 1985 shall apply to wood ducks, and under the point system, the point value for wood ducks shall be reduced from the high to the mid-point category. For other species of ducks daily bag and possession limits shall be the same as established for the Flyway under conventional or point system regulations.

C. In addition, the extra teal option available to States in the Atlantic and Mississippi Flyways that select conventional regulations and do not have a September teal season may be applied during the period.

D. This exception to the daily bag and possession limits for wood ducks shall not apply to that portion of the duck hunting season that occurs after October 15.

E. This special provision for wood ducks shall be regarded as experimental, and subject to annual and final evaluations by participating States of population, harvest, banding, and other available information.

F. The experiment shall be conducted for a specified time period to be agreed upon between the Service and participating States.

The Service proposes to retain this option for the 1985 season.

5. *Sea ducks.* (No change.) A maximum open season of 107 days for taking scoter, eider, and oldsquaw ducks is proposed during the period between September 15, 1985, and January 20, 1986, in all coastal waters and all waters of rivers and streams seaward from the first upstream bridge in Maine, New Hampshire, Massachusetts, Rhode Island, and Connecticut; in those coastal waters of New York laying in Long Island and Block Island Sounds and associated bays eastward from a line running between Miamogue Point in the town of Riverhead to Red Cedar Point in the town of Southampton, including any ocean waters of New York lying south of Long Island; in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 1 mile of open water from any shore, island, and emergent vegetation in New Jersey, South Carolina, and Georgia; and in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 800 yards of open water from any shore, island, and emergent vegetation in Delaware, Maryland, North Carolina, and Virginia. Such areas shall be described, delineated, and designated as special sea duck hunting areas under the hunting regulations adopted by the respective States. In all other areas of these States and in all other States in the Atlantic Flyway, sea ducks may be taken only during the regular open season for ducks.

The daily bag limit is 7 and the possession limit is 14, singly or in the aggregate of these species. During the regular duck season in the Atlantic Flyway, States may set, in addition to the regular limits, and daily bag limit of 7 and a possession limit of 14 scoter, eider, and oldsquaw ducks, singly or in the aggregate of these species.

Any State desiring its sea duck season to open in September must make its selection no later than July 26, 1985. Those States desiring their sea duck season to open after September may makes their selection at the time they select their waterfowl seasons.

6. *September teal season.* (No change.) An open season on all species of teal may be selected by Alabama, Arkansas, Colorado (Central Flyway portion only), Illinois, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, New Mexico (Central Flyway portion only), Ohio, Oklahoma, Tennessee, and Texas in areas delineated by State regulations.

Shooting hours are from sunrise to sunset daily. The season may not excess 9 consecutive days between September 1 and September 30, 1985, with a bag limit of 4 teal daily and 8 in possession. States must advise the Service of season dates and special provisions to protect non-target species by July 26, 1985.

Additional information. By letter dated December 28, 1984, Maine indicated consideration was being given to requesting a September teal season for 1985 or 1986. The State noted that establishment of such a season is of growing interest to local duck hunters and probably stems from the decreased hunting opportunity caused by recent hunting restrictions of American black ducks.

Response. September teal seasons are not currently offered to Atlantic Flyway States. However, those States not selecting the point system may select an extra teal limit of no more than 2 blue-winged teal or 2 green-winged teal or 1 of each daily and no more than 4 singly or in the aggregate in possession for 9 consecutive days during the regular duck season. These limits are in addition to the regular duck bag and possession limits. The Service does not favor expanding the September Teal Season option.

7. *Extra teal option.* (No change.)

A. States in the Atlantic Flyway (except Florida), not selecting the point system may select an extra teal limit of no more than 2 blue-winged or 2 green-winged teal or 1 of each daily and no more than 4 singly or in the aggregate in possession for 9 consecutive days during the regular duck season.

B. States in the Mississippi and Central Flyways selecting neither a teal or early duck season in September nor the point system may select an extra daily bag and possession limit of 2 and 4 blue-winged teal, respectively, for 9 consecutive days designated during the regular duck seasons.

These extra limits are in addition to the regular duck bag and possession limits.

8. *Experimental September Duck Seasons.* Kentucky, Tennessee, and Florida conducted experimental duck seasons during the 1981–83 waterfowl seasons. Regulatory provisions in effect during the studies were continued through 1984 with each State's final report due May 15, 1985.

1984 was the sixth and final year of the experimental duck season in Iowa. A preliminary report on results of the 1979–83 waterfowl seasons is due June 1, 1985, prior to the time the 1985–86 early season hunting regulations are established. The final report is due by the 1986 winter meeting of the Mississippi Flyway Council Technical Section.

Additional information. By letter dated December 18, 1984, Florida requested operational status of their experimental September duck hunting season.

Response. The Service defers action on Florida's request pending receipt of the final report of their study and Atlantic Flyway Council recommendations.

9. *Special scaup season.* (No change.) States in the Atlantic, Mississippi, and Central Flyways may select a special scaup-only hunting season not to exceed 16 consecutive days, with daily bag and possession limits of 5 and 10 scaup, respectively, subject to the following conditions:

A. The season must occur between October 1, 1985, and January 31, 1986, all dates inclusive.

B. The season must occur outside the open season for any other ducks except sea ducks.

C. The season is limited to areas mutually agreed upon between the State and the Service prior to August 31, 1985, and

D. These areas must be described and delineated in State hunting regulations.

E. In lieu of a special scaup-only season, Vermont may, for the Lake Champlain Area, select a special scaup and goldeneye season not to exceed 16 consecutive days, with a daily bag limit of 3 scaup or 3 goldeneyes or 3 in the aggregate, and a possession limit of 6 scaup or 6 goldeneyes or 6 in the aggregate, subject to the same provisions that apply to special scaup seasons elsewhere.

Additional information. On January 3, 1985, New York expressed interest in establishing a special scaup-goldeneye only season in the northwest part of the State.

Response. A scaup-goldeneye only season is not an option annually offered to States. The Service seeks additional information from New York on their interest.

10. *Extra scaup option.* (No change.) As an alternative to a special scaup-only season, States, in the Atlantic, Mississippi, and Central Flyways, except those selecting the point system, may select an extra daily bag and possession limit of 2 and 4 scaup, respectively, during the regular duck hunting season, subject to conditions c and d listed for special scaup seasons. These extra limits are in addition to the regular duck limits and apply during the entire regular duck season.

11. *Mergansers.* (No change.) States in the Atlantic and Mississippi Flyways may select separate bag limits for mergansers in addition to the regular duck bag limits during the regular duck season. The bag limit is 5 mergansers daily and 10 in possession. Elsewhere, mergansers are included within the regular daily bag and possession limits for ducks. The restriction on hooded mergansers of 1 daily and 2 in possession is continued in the Atlantic, Mississippi, and Central Flyways.

12. *Canvasback and redhead ducks.* (No change.) No changes in seasons and bag limits from those in effect since 1983–84 are proposed at this time pending review of canvasback harvest during the 1984–85 hunting season. The Service previously initiated a program whereby the focus of harvest regulations was changed from one of area closures to one of restrictive bag limits, and an experimental canvasback season was implemented in portions of the closed area in the Atlantic Flyway when established criteria were met. These actions and alternatives were presented in an Environmental Assessment, *Proposed Hunting Regulations on Canvasback Ducks, 1983,* which is available upon request to the U.S. Fish and Wildlife Service (MBMO), Washington, D.C. 20240.

13. *Duck Zones.* (No change.) States of the Atlantic, Mississippi, and Central Flyways may divide their States into zones for establishing different duck hunting seasons in accordance with criteria described in the **Federal Register** dated May 25, 1977 (42 FR 26671). The criteria for zoning are as follows:

A. The establishment of any of these zones shall be considered experimental until the effects of the zoning are more clearly defined and understood.

B. The primary purpose of the zoning shall be to provide more equitable distribution of harvest opportunity for hunters throughout a State.

C. Proposed zones and season dates shall not substantially change the pattern of harvest distribution among the States within a flyway.

D. Zoning shall not detrimentally change the harvest distribution pattern among species or populations at either the State or Flyway level.

E. Each zoning proposal shall include a detailed evaluation plan describing how changes in harvest will be measured, and what steps will be taken to compensate for any significant changes that might occur.

F. Each zoning proposal shall include an evaluation of anticipated changes due to zoning. If on the basis of this evaluation the Service and the State agree that no significant increase in harvest is likely, the zoning experiment may be conducted without a reduction in season length for each zone, pending further evaluation. If the evaluation indicates that a significant increase in harvest is likely, an appropriate reduction in season length compared to what would be permitted without zoning shall be made for each zone.

G. Where two or more adjoining States in a flyway may be involved simultaneously in zoning experiments, consideration shall be given to the possiblity of consolidating zones.

Memoranda of Agreement have been signed between the Service and each State participating in experimental zoning.

States in all Flyways may split their waterfowl season into two segments. States in the Atlantic and Central Flyways, in lieu of zoning, may split their season for ducks and geese into two or three segments.

In the June 13, 1984, **Federal Register** (at 49 FR 24421) the Service proposed the following for Louisiana: apply Central Flyway duck season length to the West Zone, Mississippi Flyway duck season length in the East Zone, and Mississippi Flyway bag limits in both zones. The proposal was made during the 1984–85 regulations process but the Service stated no changes in duck hunting regulations in Louisiana would be made until the 1985–86 hunting season.

In the September 14, 1984, **Federal Register** (at 49 FR 32677) the Service noted that 25 comments on the Louisiana proposal had been received: 3 (1 State and 2 individuals) in support and 22 (18 States, 2 organizations, and 2 individuals) in opposition. In view of the source and nature of those comments the Service announced that further action on the proposal was deferred pending additional consultation particularly with the Central and Mississippi Flyway Councils.

The Service continues to seek additional consultation on this issue.

Additional information. Kansas, by letter dated January 8, 1985, advised the Service of their interest in experimentally zoning the Low Plains portion of the State for duck hunting. The letter indicated a proposal will be developed and available for review in March should they decide to proceed with their interest.

The Lake Champlain Fish and Wildlife Policy Committee provided notice that Vermont may seek to zone the State in order to assure continuation of a unified season on the New York and Vermont portions of Lake Champlain.

Reponse. The Service awaits additional information from Kansas and Vermont concerning these preliminary notices of interest.

Further, the Service again notes its intent to review the need for more conservative harvest strategies for ducks as discussed in 50 FR 6366 dated February 5, 1985.

14. *Goose and brant seasons.* The Canadian Wildlife Service, State conservation agencies, the four Waterfowl flyway councils, and others traditionally provide population and harvest information useful in setting annual regulations for geese and brant. The midwinter survey, the past season's waterfowl harvest surveys, and satellite imagery and ground studies for May and June of 1985 will provide additional information.

Atlantic Flyway. (No change.) Seasons and bag limits are to be generally the same as last year pending receipt of additional information and recommendations. No significant changes from those in effect in 1984–85 are anticipated at this time.

Mississippi Flyway. (No change.) Seasons and bag limits are to be generally the same as last year pending receipt of additional information and recommendations.

Harvests of the Eastern Prairie and Mississippi Vally Populations (MVP) of Canada geese in this flyway are controlled by quota allocations and harvest objectives. Specific quotas will be established after population management objectives, recent population information, probable production, and expected fall flights have been taken into consideration. It is intended that the entire quota can be safely taken without detriment to the population, and that such harvests are appropriate considering population objectives. Goose seasons in quota areas end when the quota has been achieved and the season terminated by State action, emergency order under

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Section 20.26 of CFR 50, or when the permissible number of hunting days has expired. Specific procedural information for season closures of quota areas will be included in the final regulations.

The Mississippi Flyway Council is currently considering a revised management plan for MVP Canada geese. Any proposed regulatory changes that may result from the revision will be described in a supplemental proposed rulemaking. The intent of the Service is to support the goal of rebuilding this flock. It is expected the general restrictive regulations developed for MVP geese during the 1984–85 season will be continued. Proposals for change will be considered during the 1985–86 regulations development process.

Additional information. In a letter dated January 18, 1985, the Director of the Michigan Department of Natural Resources reiterated the State's views concerning the goose regulations established for Michigan's 1984–85 hunting season. The State believes that the regulations designed to protect MVP geese were unnecessarily restrictive in Michigan and curtailed the State harvest of other goose flocks. Further, Michigan questioned the absence of similar restrictions in some States where MVP geese appear to be harvested in numbers comperable to the Michigan harvest.

Similar concerns regarding MVP Canada geese regulations were expressed by the Michigan Duck Hunters Association in a letter dated January 22, 1985.

By letter dated January 28, 1985, the State of Wisconsin requested the season length for Canada geese in their Mississippi River Zone be increased from the 35 days allowed in 1984–85 to 70 days. They indicated the annual Canada goose harvest in the zone is quite small and includes MVP, Eastern Prairie Population, and Giant Canada geese. State officials feel the change would alleviate the disparity between the Canada goose hunting opportunity provided for across the Mississippi River in Minnesota and Iowa.

Response. It is expected the Mississippi Flyway Council will address these and other concerns during their dileberations on a revised management plan for MVP geese. The Service seeks recommendations on MVP management from the Council for consideration in the development of goose hunting regulations.

Central Flyway. (No change.) Seasons and bag limits are deferred pending additional information and recommendations. No significant changes from those in effect in 1984–85 are anticipated at this time.

Additional information. Kansas, by letter dated January 8, 1985, advised the Service of their interest in zoning the State for snow goose hunting. The letter indicated a proposal will be developed and available for review in March should they decide to proceed with their interest.

Response. The service awaits further information from Kansas concerning this notice of interest.

Pacific Flyway. As a result of available information indicating that substantial declines in populations of dusky Canada Geese, Pacific Flyway Greater whitefronted geese, cackling Canada geese and Pacific brant had occurred in recent years, the Service initiated various harvest restrictions on these species in 1984.

No significant changes from the restrictive regulations in effect in 1984–85 are anticipated at this time. Specific season frameworks, season lengths, and daily bag limits for geese are deferred pending additional information and recommendations.

15. *Tundra Swan.* (No change.) The following frameworks for tundra swans are proposed. In Utah, Nevada, Montana (Central and Pacific Flyways), North Dakata, and South Dakota an open season for taking a limited number of tundra swans may be selected subject to the following conditions:

A. except in the Central Flyway portion of Montana, the season must run concurrently with the duck season; in the Central Flyway portion of Montana, the season must run concurrent with the goose season;

B. in Utah, no more than 2,500 permits may be issued authorizing each permittee to take 1 tundra swan;

C. in Navada, no more than 650 permits may be issued authorizing each permittee to take 1 tundra swan in either Churchill, Lyon, or Pershing Counties;

D. in Montana (Pacific Flyway portion only), no more than 500 permits may be issued authorizing each permittee to take 1 tundra swan in either Teton or Cascade Counties;

E. in Montana (Central Flyway portion only), no more than 500 permits may be issued authorizing each permittee to take 1 tundra swan;

F. in North Dakota, no more than 1,000 permits may be issued authorizing each permittee to take 1 tundra swan;

G. in South Dakota, no more than 500 permits may be issued authorizing each permittee to take 1 tundra swan;

H. States must employ a method to assure that hunters validate their harvest. In North Carolina an experimental season for taking a limited number of tundra swans may be selected subject to the following conditions:

A. The season may be 90-days and must run concurrently with the snow goose season.

B. The State agency must issue permits and obtain harvest and hunter participation data.

C. No more than 1,000 permits may be issued, authorizing each permittee to take 1 tundra swan.

16. *Sandhill cranes.* (No change.) Pending evaluation of harvest data from the 1984–85 season, seasons for hunting sandhill cranes may be selected within specified areas in Arizona, Colorado, Kansas, New Mexico, Texas, Oklahoma, North Dakota, South Dakota, Montana, and Wyoming with no substantial change in dates from the 1984–85 seasons. The daily bag limit will be 3 and the possession limit 6 sandhill cranes, except in experimental season areas in Arizona and Wyoming where the limit is 2 cranes per season for 200 and 250 permit holders, respectively, and in the experimental season areas of New Mexico where the limit is 3 cranes per season for 345 permit holders. The provision for a Federal sandhill crane hunting permit is continued in all the above areas except experimental season areas in Arizona, New Mexico, and Wyoming.

Additional information. On January 9, 1985, Wyoming transmitted the final report of their 3-year (1982–84) experimental September hunting season on sandhill cranes and Canada geese. State officials recommend the experimental hunt be granted operational status and that the framework dates be extended one day from September 1–14 to September 1–15.

Response. The Service defers action on Wyomings recommendations pending Service evaluation of the report and receipt of Pacific Flyway Council recommendations.

17 *Coots.* (No change.) Within the regular duck season, States in the Atlantic, Mississippi, and Central Flyways may permit a daily bag limit of 15 and a possession limit of 30 coots; States in the Pacific Flyway may permit 25 coots daily and in possession, singly or in the aggregate with gallinules.

18. *Common Moorhens (formerly Common Gallinules) and Purple Gallinules.* (No change.) States in the Atlantic and Mississippi Flyways may select hunting seasons between September 1, 1985, and January 20, 1986, of not more than 70 days. Central Flyway States may select hunting seasons between September 1, 1985 and January 19, 1986, of not more than 70 days. Any state may split its moorhen/

gallinule season without penalty. The daily bag and possession limits may not exceed 15 and 30, respectively. States may select moorhen/gallinule seasons at the time they select their waterfowl seasons. In this case, daily bag and possession limits will remain the same.

States in the Pacific Flyway must select their moorhen/gallinule hunting seasons within the waterfowl seasons. A moorhen/gallinule season selected by any State of portion thereof in the Pacific Flyway may be the same as but not exceed its waterfowl season, and the daily bag and possession limits may not exceed 25 coots and moorhens, singly or in the aggregate of the two species.

19. *Rails.* (No change.) The States included herein may select seasons between September 1, 1985, and January 20, 1986, on clapper, king, sora, and Virginia rails as follows:

The season length for all species of rails may not exceed 70 days, and any State may split its rail season into two segments without penalty.

Clapper and King Rails

A. In Rhode Island, Connecticut, New Jersey, Delaware, and Maryland, the daily bag and possession limits may not exceed 10 and 20 clapper and king rails, respectively, singly or in the aggregate of these two species.

B. In Texas, Louisiana, Mississippi, Alabama, Georgia, Florida, South Carolina, North Carolina, and Virginia, the daily bag and possession limits may not exceed 15 and 30 clapper and king rails, respectively, singly or in the aggregate of the two species.

C. The season will remain closed on clapper and king rails in all other States.

Sora and Virginia Rails

In addition to the prescribed limits for clapper and king rails, daily bag and possession limits not exceeding 25, singly or in the aggregate of sora and Virginia rails, may be selected in States in the Atlanic, Mississippi, and Central Flyways, and portions of Colorado, Montana, New Mexico, and Wyoming in the Pacific Flyway. No hunting season is proposed for rails in the remainder of the Pacific Flyway.

20. *Common snipe.* (No change.) States in the Atlantic, Mississippi, and Central Flyways may select hunting seasons between September 1, 1985, and February 28, 1986, not to exceed 107 days, except that in Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, and Virginia the season must end no later than January 31. Seasons between September 1, 1985, and February 28, 1986, not exceeding 93 days, may be selected in the Pacific Flyway portions of Montana, Wyoming, Colorado, and New Mexico.

All States in the Pacific Flyway, except those portions of Colorado, Montana, New Mexico, and Wyoming in the Pacific Flyway, must select their snipe season to run concurrently with their regular duck season. In these Pacific Flyway States, except portions of the four States noted previously, it will be unlawful to take snipe when it is unlawful to take ducks.

Daily bag and possession limits may not exceed 8 and 16, respectively. Any State may split its snipe season into two segments.

States or portions thereof in the Atlantic, Mississippi, and Central Flyways may defer selection of snipe seasons until they choose their waterfowl seasons in August. In that event, the daily bag and possession limits will remain the same but shooting hours must conform with those for waterfowl.

21. *Woodcock.*

A. Central and Mississippi Flyways. (No change.)

States in the Central and Mississippi Flyways may select hunting seasons of not more than 65 days with daily bag and possession limits of 5 and 10, respectively, to occur between September 1, 1985 and February 28, 1986. States may split their woodcock season without penalty.

B. Atlantic Flyway. (Change).

The number of woodcock in the Atlantic Flyway has significantly declined since the 1960s. In 1982, the Service implemented an October 1 framework opening date for woodcock hunting in the Atlantic Flyway in order to provide additional protection to woodcock populations. The October 1 opening was continued in 1983 and 1984. Definitive information does not exist to either confirm of deny relationships among regulations, harvest, and the continued decline of eastern woodcock. The Service believes, however, that some adjustment of hunting regulations is necessary to bring harvest opportunities to a level commensurate with the current population status. For the 1985–86 hunting season in the Atlantic Flyway the Service proposes the following: States in the Atlantic Flyway may select hunting seasons of not more than 45 days with daily bag and possession limits of 3 and 6, respectively, to occur between October 1, 1985 and January 31, 1986. States may split their woodcock season without penalty.

New Jersey may select woodcock hunting seasons by north and south zones divided by State Highway 70. The season in each zone may not exceed 35 days.

The February 5, 1985, **Federal Register** (at 50 FR 4994) announced the availability of, and solicited public review, comments, and suggestions on the Service's draft Environmental Assessment "Proposed Hunting Regulations on Eastern Population of Woodcock, 1985" which discusses the regulations changes presented above. Information and comments received are presently being reviewed.

22. *Band-tailed pigeons.* (No change.)

Pacific Coast States (California, Oregon, and Washington) and the *Nevada* counties or Carson City, Douglas, Lyon, Washoe, Humboldt, Pershing, Churchill, Mineral and Storey. These States may select hunting seasons not to exceed 30 consecutive days between September 1, 1985, and January 15, 1986. The daily bag and possession limits may not exceed 5 band-tailed pigeons.

California may zone by selecting hunting seasons of 30 consecutive days for each of the following two zones:

A. In the counties of Alpine, Butte, Del Norte, Glenn, Humboldt, Lassen, Mendocino, Modoc, Plumas, Shasta, Sierra, Siskiyou, Tehama, and Trinity; and

B. The remainder of the State.

In *Nevada* each hunter must have in possession a valid band-tailed pigeon hunting permit.

Four-Corners States (Arizona, Colorado, New Mexico, and Utah). These States may select hunting seasons not to exceed 30 consecutive days between September 1 and November 30, 1985. The daily bag and possession limits may not exceed 5 and 10, respectively. The season shall be open only in the areas delineated by the respective States in their hunting regulations. New Mexico may divide its State into a North and a South Zone along a line following U.S. Highway 60 from the Arizona State line east to Interstate Highway 25 at Socorro and along Interstate Highway 25 from Socorro to the Texas State line. Between September 1 and November 30, 1985, in the North Zone, and October 1 and November 30, 1985, in the South Zone; hunting seasons not to exceed 20 consecutive days in each zone may be selected.

23. *Mourning doves.* (No change.) Beginning in 1982, a program of generally uniform frameworks was implemented in all 3 mourning dove management units. For the 1983 season,

States were offered an option of a season length of 70 half or full days with a daily bag and possession limit of 12 and 24, respectively, or a season length of 60 half or full days with a daily bag and possession limit of 15 and 30, respectively. States were allowed to select hunting zones without penalty and to split the season into not more than 3 time periods.

The Service proposes to offer these options again during the 1985 hunting season, pending results of the call-count survey and receipt of additional information and recommendations.

Between September 1, 1985, and January 15, 1986, except as othewise provided, States may select hunting seasons and bag limits as follows:

Eastern Management Unit: All States east of the Mississippi River and Louisiana.

A. Shooting hours between one-half hour before sunrise to sunset daily.

B. Hunting seasons of not more than 70 full or half days with daily bag and possession limits not to exceed 12 and 24 doves, respectively. As an alternative, seasons not exceeding 60 full or half days and limits of 15 and 30 doves, respectively, may be selected. Under either option, the season may run consecutively or be split into not more than three time periods.

C. As an option to the above, Alabama, Georgia, Illinois, Louisiana, and Mississippi may elect to zone their States as follows:

a. Two zones per State as described in 48 FR 35103.

b. Within each zone, these States may select hunting seasons of not more than 70 days (or 60 under the alternative) which may run consecutively or be split into not more than three periods.

c. The hunting seasons in the South Zones of these States may commence no earlier than September 20, 1985.

Central Management Unit: Arkansas, Colorado, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming.

A. Shooting hours between one-half hour before sunrise to sunset daily.

B. Hunting seasons of not more than 70 days with daily bag and possession limits not to exceed 12 and 24 doves, respectively. As an alternative, seasons not exceeding 60 days, and limits of 15 and 30 doves, respectively, may be selected. Under either option, the season may run consecutively or be split into not more than three periods.

C. In New Mexico, daily bag and possession limits of mourning and white-winged doves may not exceed 12 and 24 (or 15 and 30 under the alternative), singly or in the aggregate of the two species.

D. In addition to the basic framework and the alternative, Texas may divide the State into three zones for purposes of dove hunting in accordance with zoning proposals previously approved by the Service and the Central Flyway Council. The various zones are described in 49 FR 31424.

a. The hunting seasons may be split into not more than two periods except as noted below.

b. The North and Central Zones may have seasons of not more than 70 (or 60 under the alternative) days between September 1, 1985, and January 25, 1986.

c. The South Zone may have a season of not more than 70 (or 60 under the alternative) days between September 20, 1985, and January 25, 1986. In the special white-winged dove portion of the South Zone, a limited mourning dove season may be held concurrently with the 4-day white-winged dove season and with shooting hours coinciding with those for white-winged doves. However, the remaining 66 (or 56 under the alternative) days must be within the September 20, 1985, through January 25, 1986 period.

d. The daily bag limit may not exceed 12 (or 15 under the alternative) mourning, white-winged, and white-tipped doves in the aggregate, no more than two of which may be white-winged doves nor 2 of which may be white-tipped doves; the possession limit may not exceed 24 (or 30 under the alternative) doves in the aggregate including no more than 4 white-winged and 4 white-tipped doves.

Western Management Unit: Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington.

A. Shooting hours of one-half hour before sunrise to sunset daily.

B. Hunting seasons of not more than 70 full days with daily bag limits not to exceed 12 and 24 doves, respectively, which may run consecutively or be split into not more than three periods.

C. As an alternative, except in Arizona, seasons not exceeding 60 days and limits of 15 to 30 doves, respectively, may run consecutively or be split into not more than 3 periods.

24. *White-winged and white-tipped doves.* (No change). Arizona, California, Nevada, New Mexico, and Texas may select hunting seasons between September 1 and December 31, 1985, and daily bag limits as stipulated below.

Arizona may select a hunting season of not more than 29 consecutive days running concurrently with the first period of the split mourning dove season. The daily bag limit may not exceed 12 mourning and white-winged doves in the aggregate, no more than 6 of which may be white-winged doves, and a possession limit twice the daily bag limit after the opening day.

Nevada, in the counties of Clark and Nye, and in the *California* counties of Imperial, Riverside, and San Bernardino, the daily bag and possession limits of mourning and white-winged doves may not exceed 12 and 24, respectively, singly or in the aggregate, with a 70-day season, or 15 and 30 if the 60-day option for mourning doves is selected; however, in either season, the bag and possession limits of white-winged doves may not exceed 10 and 20, respectively.

New Mexico may select a hunting season with daily bag and possession limits not to exceed 12 and 24 (or 15 and 30 if the 60-day option for mourning doves is selected) white-winged and mourning doves, respectively, singly or in the aggregate of the 2 species. Dates, limits, and hours are to conform with those for mourning doves.

Texas may select a hunting season of not more than 4 days for the special white-winged dove area of the South Zone. The daily bag limit may not exceed 10 white-winged, mourning, and white-tipped doves in the aggregate, including no more than 2 mourning doves and 2 white-tipped doves; and the possession limit may not exceed 20 white-winged, mourning, and white-tipped doves in the aggregate including no more than 4 mourning doves and 4 white-tipped doves in possession.

In addition, Texas may also select a hunting season of not more than 70 (or 60 under the alternative) days to be held between September 1, 1985, and January 25, 1986, and coinciding with the mourning dove season. The daily bag limit may not exceed 12 white-winged, mourning, and white-tipped doves (or 15 under the alternative) in the aggregate, of which not more than 2 may be white-winged and not more than 2 of which may be white-tipped doves. The possession limit may not exceed 24 white-winged, mourning, and white-tipped doves (or 30 under the alternative) in the aggregate, of which not more than 4 may be white-winged doves and not more than 4 of which may be white-tipped doves.

Florida may select a white-winged dove season of not more than 70 (or 60 under the alternative) days to be held between September 1, 1985, and January 15, 1986, and coinciding with the mourning dove season. The daily bag limit of both species in the aggregate may not exceed 12 (or 15 under the alternative), of which not more than 4 may be whitewings. The possession limit of both species in the aggregate

may not exceed 24 (or 30 under the alternative) of which not more than 8 may be whitewings.

25. *Migratory bird hunting seasons in Alaska.* (No change.) In 1977, by mutual agreement, the Service and the Alaska Department of Fish and Game initiated a study of stabilized hunting regulations for the 5-year period, 1977 through 1981. Background information on this experiment was given in the **Federal Register** dated March 10, 1977 (42 FR 13317). Alaska submitted its final report of the study on December 31, 1981, and requested that it be permitted to continue setting stabilized regulations in conjunction with the stabilized duck hunting experiment underway in the remainder of the Pacific Flyway. The 1982–83 Alaska frameworks contained the stabilization feature. The Service proposes to allow Alaska to maintain stabilized duck hunting frameworks during the 1985–86 season.

Proposed Frameworks for Selecting Open Season Dates for Hunting Migratory Birds in Alaska, 1985–86

Outside Dates: Between September 1, 1985, and January 26, 1986, Alaska may select seasons on waterfowl, snipe, and sandhill cranes, subject to the following limitations:

Shooting Hours: One-half hour before sunrise to sunset daily.

Hunting Seasons:

Ducks, geese, and brant—107 consecutive days in each of the following: North Zone (State Game Management Units 11–13 and 17–26); Gulf Coast Zone (State Game Management Units 5–7, 14–16, and 10-Unimak Island only); Southeast Zone (State Game Management Units 1–4); Pribilof and Aleutian Islands Zone (State Game Management Unit 10—except Unimak Island); Kodiak Zone (State Game Management Unit 8). The season may be split without penalty in the Kodiak Zone. Exception: The season is closed on Canada geese from Unimak Pass westward in the Aleutian Island chain.

Snipe and sandhill cranes—An open season concurrent with the duck season.

Daily Bag and Possession Limits:

Ducks—Except as noted, a basic daily bag limit of 7 and a possession limit of 21 ducks. Daily bag and possession limits in the North Zone are 10 and 30, and in the Gulf Coast Zone they are 8 and 24, respectively. In addition to the basic limit, there is a daily bag limit of 15 and a possession limit of 30 scoter, eider, oldsquaw, harlequin, and American and red-breasted mergansers, singly or in the aggregate of these species.

Geese—A basic daily bag limit of 6 and a possession limit of 12, of which not more than 4 daily and 8 in possession may be Greater white-fronted (white-fronted) or Canada geese, singly or in the aggregate of these species. In addition to the basic limit, there is a daily bag limit of 4 and a possession limit of 8 Emperor geese.

Brant—A daily bag limit of 4 and a possession limit of 8.

Common snipe—A daily bag limit of 8 and a possession limit of 16.

Sandhill cranes—A daily bag limit of 2 and a possession limit of 4.

26. *Migratory game birds in Puerto Rico and doves and pigeons in the Virgin Islands.* (No change.)

Proposed Frameworks for Selecting Open Season Dates for Hunting Migratory Birds in Puerto Rico, 1985–86

Shooting hours: Between one-half hour before sunrise and sunset daily.

Ducks, Coots, Moorhens, Gallinules, and Snipe

Outside Dates: Between November 5, 1985, and February 28, 1986, Puerto Rico may select hunting seasons as follows:

Hunting Seasons: Not more than 55 consecutive days may be selected for hunting ducks, common moorhens (common gallinules), and common snipe. The season may be split into 2 segments.

Daily Bag and Possession Limits:

Ducks—Not to exceed 4 daily and 8 in possession, except that the season is closed on the ruddy duck *(Oxyura jamaicensis)*; the White-cheeked pintail *(Anas bahamensis)*; West Indian whistling (tree) duck *Dendrocygna arborea)*; fulvous whistling (tree) duck *Dendrocygna bicolor)*, and the masked duck *(Oxyura dominica)*, which are protected by the Commonwealth of Puerto Rico.

Coots—There is no open season on coots, i.e., common coots *(Fulica americana)* and Caribbean coots *(Fulica carabaea)*.

Common Moorhens—Not to exceed 6 daily and 12 in possession, except that the season is closed on purple gallinules *(Porphyrula martinica)*.

Common snipe—Not to exceed 6 daily and 12 in possession.

Closed Areas: No open season for ducks, gallinules, and snipe is prescribed in the Municipality of Culebra and on Desecheo Island.

Doves and Pigeons

Outside Dates: Puerto Rico may select hunting seasons between September 1, 1985, and January 15, 1986, as follows.

Hunting Seasons: Not more than 60 days for Zenaida, mourning, and white-winged doves, and scaly-naped pigeons.

Daily Bag and Possession Limits: Not to exceed 10 doves of the species named herein, singly or in the aggregate, and not to exceed 5 scaly-naped pigeons.

Closed Areas: No open season for doves and pigeons is prescribed in the following areas:

Muncipality of Culebra and Desecheo Island—closed under Commonwealth regulations.

Mona Island—closed to protect the reduced population of white-crowned pigeon *(Columba leucocephala)*, known locally as "Paloma cabeciblanca."

El Verde Closure Area—consisting of those areas of the municipalities of Rio Grande and Loiza delineated as follows: (1) All lands between Routes 956 on the west and 186 on the east, from Route 3 on the north to the juncture of Routes 956 and 186 (Km 13.2) in the south; (2) all lands between Routes 186 and 966 from the juncture of 186 and 966 on the north, to the Caribbean National Forest Boundary on the south; (3) all lands lying west of Route 186 for one (1) kilometer from the juncture of Routes 186 and 956 south to Km 6 on Route 186; (4) all lands within Km 14 and Km 6 on the west and the Caribbean National Forest Boundary on the east; and (5) all lands within the Caribbean National Forest Boundary whether private or public. The purpose of this closure is to afford protection to the Puerto Rican parrot *(Amazona vittata)* presently listed as an endangered species under the Endangered Species Act of 1973.

Cidra Municipality and Adjacent Closure Areas—consisting of all of Cidra Municipality and portions of Aguas Buenas, Caguas, Cayey, and Comerio Municipalities as encompassed within the following boundary: beginning on Highway 172 as it leaves the Municipality of Cidra on the west edge, north to Highway 156, east on Highway 156 to Highway 1, south on Highway 1 to Highway 765, south on Highway 765 to Highway 763, south on Highway 763 to the Rio Guavate, west along Rio Guavate to Highway 1, southwest on Highway 1 to Highway 14, west on Highway 14 to Highway 729, north on Highway 729 to Cidra Municipality, and westerly, northerly, and easterly along the Cidra Municipality boundary to the point of beginning. The purpose of this closure is to protect the Plain (Puerto Rican plain) pigeon *(Columba inornata wetmorei)*, locally known as "Paloma Sabanera," which is present in the above locale in small numbers and is presently listed as an endangered species under the Endangered Species Act of 1973.

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Proposed Framework for Selecting Open Season Dates For Hunting Migratory Birds in the Virgin Islands, 1985–86

Shooting Hours: Between one-half hour before sunrise and sunset daily.

Ducks

Outside Dates: Between December 1, 1985, and January 31, 1986, the Virgin Islands may select a duck hunting season as follows:

Hunting Seasons: Not more than 55 consecutive days may be selected for hunting ducks.

Daily Bag and Possession Limits: Not to exceed 4 daily and 8 in possession, except that the season is closed on the ruddy duck (*Oxyura jamaicensis*); White-cheeked pintail (*Anas bahamensis*); West Indian whistling (tree) duck (*Dendrocygna arborea*); fulvous whistling (tree) duck (*Dendrocygna bicolor*), and the masked duck (*Oxyura dominica*).

Doves and Pigeons

Outside Dates: The Virgin Islands may select hunting seasons between September 1, 1985, and January 15, 1986, as follows:

Hunting Seasons: Not more than 60 days for Zenaida doves and scaly-naped pigeons throughout the Virgin Islands.

Daily Bag and Possession Limits: Not to exceed 10 Zenaida doves and 5 scaly-naped pigeons.

Closed Seasons: No open season is prescribed for common ground-doves or quail doves, or other pigeons in the Virgin Islands.

Local Names for Certain Birds.

Zenaida dove (*Zenaida aurita*)—mountain dove.

Bridled quail dove (*Geotrygon mystacea*)—Barbary dove, partridge (protected).

Common Ground-dove (*Columbina passerina*)—stone dove, tobacco dove, rola, tortolita (protected).

Scaly-naped pigeon (*Columba squamosa*)—red-necked pigeon, scaled pigeon.

27. *Migratory game bird seasons for falconers.* (No change.)

Proposed Special Falconry Frameworks

Extended Seasons: Falconry is a permitted means of taking migratory game birds in any State meeting Federal falconry standards in 50 CFR 21.29(k). These States may select an extended season for taking migratory game birds in accordance with the following:

Framework Dates: Seasons must fall within the regular season framework dates and, if offered and accepted, other special season framework dates for hunting.

Daily Bag and Possession Limits: Falconry daily bag and possession limits for all permitted migratory game birds shall not exceed 3 and 6 birds, respectively, singly or in the aggregate, during both regular hunting seasons and extended falconry seasons.

Regulations Publication: Each State selecting the special season must inform the Service of the season dates and publish said regulations.

Regular Seasons: General hunting regulations, including seasons, hours, and limits, apply to falconry in each State listed in 50 CFR 21.29(k) which does not select an extended falconry season.

Note.—In no instance shall the total number of days in any combination of duck seasons (regular duck season, sea duck season, September teal season, special scaup season, special scaup and goldeneye season, or falconry season) exceed 107 days for a species in one geographical area.

28. *Hawaii mourning doves.* (No change.) The mourning dove is the only migratory game bird occurring in Hawaii in numbers to permit hunting. It is proposed that mourning doves may be taken in Hawaii in accordance with regulations set by the State of Hawaii as has been done in the past and subject to the applicable provisions of Part 20 of Title 50 CFR. Such a season must be within the constraints of applicable migratory bird treaties and annual regulatory frameworks. These constraints provide that the season must be within the period of September 1, 1985, and January 15, 1986, the length may not exceed 60 full days; and the daily bag and possession limits may not exceed 10 and 20 doves, respectively. Other applicable Federal regulations relating to migratory game birds shall also apply.

29. *Migratory Bird Hunting on Indian Reservations.* In the March 23, 1984, **Federal Register** (49 FR 11125–11126), the Service published proposed guidelines for migratory bird hunting regulations for tribal members on Federal Indian reservations. The proposed guidelines would seek to accommodate reserved hunting rights of Indians and would permit them to select hunting season dates within Federal frameworks but on different dates than those selected by the surrounding State(s). The tribes generally supported the Service's efforts to accommodate the reserved hunting rights of Indians. However, their letters reflected a desire for greater flexibility than the Service proposed. In contract, most States raised a number of concerns regarding the potential impacts of the published guidelines.

The question of special migratory bird hunting regulations for Indians is complex, and it is clear that the Service must develop a broader policy to address Indian hunting rights, while ensuring that the migratory bird resource is not adversely affected. The Service intends to work closely with Indian tribes, States, and interested conservation organizations during the coming months in developing appropriate criteria that can be applied in the 1985–86 hunting season.

Dated: March 1, 1985.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85-6114 Filed 3-13-85; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 663

Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Services (NMFS), NOAA, Commerce.

ACTION: Notice of receipt of experimental fishing permit applications and request for comments.

SUMMARY: This notice acknowledges receipt of seventeen additional applications for experimental fishing permits (EFTs) to harvest groundfish with set nets in the Pacific Ocean north of 38° N. latitude in 1985. These applications were submitted in response to a notice announcing the receipt of one application and that applications would be accepted until February 15, 1985. If granted, an EFP would allow fishing which otherwise would be prohibited by Federal regulations.

DATE: Comments on these applications must be received by March 15, 1984.

ADDRESS: Send comments to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten, 206–526–6150.

SUPPLEMENTARY INFORMATION: The Pacific Coast Groundfish Fishery Management Plan (FMP) and implementing regulations at 50 CFR Part 663 specify that EFPs may be issued to authorize fishing that would otherwise be prohibited by the FMP and regulations. The procedures for issuing EFPs are contained in the regulations at § 663.10. A notice (50 FR 4545, January 31, 1985) announced that an application

for an EFP to harvest groundfish with set nets in the Pacific Ocean north of 38° N. latitude during 1985 had been received. It also announced that other applications would be accepted until February 15, 1985. The notice requested comments by March 15, 1985, on EFPs for fishing for groundfish using set nets north of 38° N. latitude.

Seventeen aditional applications were received by February 15, 1985. Some of these applications were incomplete and the applicants were notified that they must submit additional information on their applications would not be considered. Three applicants were fishermen who had obtained EFPs to fish for groundfish with set nets in 1984.

The regulations prohibit fishing for groundfish using set nets north of 38° N. latitude because the Pacific Fishery Management Council (Council) was concerned about (1) the potential for an unacceptably high incidental catch of salmon, (2) the lack of information on the potential incidental catch of other species such as halibut and protected groundfish species, (3) the ability of set nets to continue fishing indefinitely if lost or unattended, (4) the introduction of a new fishery when the stocks were already fully utilized by existing gear, and (5) the potential for conflict between fixed and mobile gear if used in the same area. This restriction is consistent with historic State groundfish regulations.

Three EFPs for fishing with set nets for groundfish north of 38° N. latitude were issued in 1984. Most of the experimental ofishing occurred in a small area off the northern Washington coast. Sablefish was the target species and 377 metric tons (mt) was landed. Lingcod (137 mt) and rockfish (59 mt) were also landed. The incidental catch of salmon was negligible as only one salmon was observed in 1984. The incidence of halibut was higher, with an average of five halibut caught per vessel-day in 1984. Low incidental catches were observed in 1983 when two vessels fished for groundfish using set nets under an EFP in the same area. As most of the fishing effort using set nets for groundfish has been confined to a few fishermen in a small area, there is still a lack of information on incidental catches of salmon and halibut in sets nets in other areas of the North Pacific and on the potential for gear conflicts and loss if greater numbers of fishermen used such gear in any area.

The eighteen applications received this year are available for public review in the office of the Director at the address above. All of the applicants proposed to use nets in the North Pacific to harvest groundfish, targeting on sablefish, lingcod, and rockfish. Most of the applicants propose to fish primarily off northern Washington. The proposed gear is essentially the same as the gear used under the EFPs issued in 1983 and 1984.

Advice on whether to approve or deny all or some of the applications will be sought from the Council at its March 12–15 meeting in Portland, Oregon. Considerations toward a decision will include recommendations made by the Council at its March meeting and comments received from the public. EFPs are issued to obtain information about the use of set nets to determine whether they can be allowed by the FMP without undue negative impact on the resource or on other fishermen. Sablefish, the target species of these proposed EFPs, is currently fully utilized by fishermen using gear which is allowed by the FMP. Information on use of set net gear in a confined area off northern Washington was obtained during 1983 and 1984, and further information from this area in 1985 may not be necessary. In order to obtain a broad base of information, EFPs may restrict fishing to specific areas other than a broad base off northern Washington where the past experimental effort was concentrated. The number of EFPs issued may also be limited by the funds available to pay for observers to collect experimental data and to monitor permit compliance. Only three permits were issued in 1984 because of limited funds. It is possible that no EFPs will be granted in 1985 because of resource and allocation concerns.

After a decision is made on how many, if any, EFPs will be issued in 1985, a selection among applicants will be made. The selection will be based on the proposals best suited to achieve the purpose of the EFP with regard to obtaining needed information on the use of set net gear. The evaluation will consider the applicants' experience and ability to comply with the conditions of the experiment which will be specified in the permits. Willingness to fish in any or all areas may improve an applicant's chance of being selected. If objective evaluation does not sufficiently limit the number to be considered, a random drawing may be used to select successful applicants. If applicants do not voluntarily achieve an acceptable area distribution, area assignments may be imposed as conditions of the permits.

(16 U.S.C. 1801 *et seq.*)

Dated: March 8, 1985.

William G. Gordon,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 85–6023 Filed 3–11–85; 9:46 am]

BILLING CODE 3510–22–M

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Notices

Federal Register
Vol. 50, No. 50
Thursday, March 14, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Member of the Performance Review Board

AGENCY: U.S. Department of Agriculture.

ACTION: Notice.

SUMMARY: This document amends the list of Performance Review Board members published June 18, 1984, 49 FR No. 118, pg. 24910.

EFFECTIVE DATE: Upon publication in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Fran Lopes, Chief, Employment and Executive Resources Staff, Office of Personnel, U.S. Department of Agriculture, 14th and Independence Avenue, SW., Washington, D.C. 20250 (202/447-6905).

The membership of the U.S. Department of Agriculture's Performance Review Board is amended by adding the name of Thomas O. Kay.

John R. Block,

Secretary.

March 8, 1985.

[FR Doc. 85-6054 Filed 3-13-85; 8:45 am]

BILLING CODE 3410-01-M

Soil Conservation Service

Pasquale Road RC&D Measure, CA; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Notice: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council of Environmental Quality Guidelines, (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Pasquale Road RC&D Measure, Nevada County, California.

The environmental assessment of this Federal action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Eugene E. Andreuccetti, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

This measure concerns a plan for critical area treatment. The planned works of improvement include erosion control practices such as retaining walls, subsurface drain system, minor grading and shaping, and revegetation of exposed and critically eroding areas.

The Notice of a Finding of No Significant Impact (FNSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental evaluation are on file and may be reviewed by contacting Mr. Eugene E. Andreuccetti, State Conservationist, Soil Conservation Serivce, 2828 Chiles Road, Davis, California 95616, (916) 449-2848. A combined environmental assessment and finding of no significant impact has been prepared and sent to various Federal, State and local agencies and interested parties. A limited number of copies of the finding of no significant impact are available to fill single copy requests at the above address.

Implementations of the proposal will not be initiated until thirty days after the date of this publication.

(Catalog of Federal Domestic Assistance Program No. 10.901, REsource Conservation and Development Program-Pub. L. 87-703, 16 U.S.C. 590 a-f, q.)

Paul H. Calverley,

Deputy State Conservationist.

March 6, 1985.

[FR Doc. 85-6084 Filed 3-13-85; 8:45 am]

BILLING CODE 3410-16-M

Bluff Irrigation District Farm Irrigation RC&D Measure, WY; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Bluff Irrigation District Farm Irrigation RC&D Measure in Washakie County, Wyoming.

FOR FURTHER INFORMATION CONTACT: Mr. Frank S. Dickson, Jr., State Conservationist, Soil Conservation Service, Room 3124, 100 East B Street, Casper, Wyoming 82601, telephone 307-261-5201.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the projects will not cause significant local, regional, nor national impacts on the environment. As a result of these findings, Mr. Frank S. Dickson, Jr., State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure plan includes replacing an existing canal and underpass on Little Gooseberry Creek with an inverted siphon and installing a wasteway structure at the inlet to the siphon.

The Finding of No Significant Impact (FONSI) and Environmental Assessment Summary (EAS) have been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI and the EAS are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr, Frank S. Dickson, Jr.

No administrative action on implementation of the proposal will be

taken until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Executive Order No. 12372 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable.)

Dated: March 4, 1985.

Frank S. Dickson,,

State Conservationist.

[FR Doc. 85–6073 Filed 3–13–85; 8:45 am]

BILLING CODE 3410–16–M

Rebel Flat Creek Watershed, WA; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended; the Council on Environmental Quality NEPA Regulations (40 CFR Part 1500–1508); and the Soil Conservation Service NEPA Procedures (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Rebel Flat Creek Watershed, Whitman County, Washington.

FOR FURTHER INFORMATION CONTACT: Lynn A. Brown, State Conservationist, Soil Conservation Service, W. 920 Riverside, Room 360, Spokane, Washington, 99201–1080, telephone 509–456–3711.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impact on the environment. As a result of these findings, Lynn A. Brown, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for soil conservation and improvement of soil resources and water quality. The planned works of improvement include onfarm land treatment practices, streambank corridor management, and wildlife habitat plantings.

The Notice of a Finding of No Significant Impact (FONSI) as been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Lynn A. Brown.

No administrative action on implementaiton of the proposal will be taken until 30 days after the date of this publicaiton in the **Federal Register.**

Dated: March 1, 1985.

Lynn A. Brown,

State Conservationist

[FR Doc. 85–6081 Filed 3–13–85; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: International Trade Administration
Title: Request for and Notice of Amendment Action
Form No: Agency—ITA–685P; OMB—0625–0003
Type of request: Extension of the expiration date of a currently approved collection
Burden: 8,000 respondents; 2,000 reporting hours
Needs and uses: This form is used by exporters to amend an export license due to changes that have taken place in the original transaction, provided that the change is not of such significance as to constitute a new transaction
Affected public: Businesses or other for-profit institutions, small businesses or organizations
Frequency: On occasion
Respondent's obligation: Required to obtain or retain a benefit
OMB desk officer: Sheri Fox, 395–3785

Agency: International Trade Administration
Title: Notification of Delivery Verification Requirement
Form No.: Agency—ITA–648P; OMB—0625–0005
Type of request: Extension of the expiration date of a currently approved collection
Burden: 1,440 respondents; 240 reporting hours
Needs and uses: This form (ITA–648P) is used to notify exporters that they must ask their foreign consignee to supply the Office of Export Administration with a certification that the U.S. commodities were actually delivered to the foreign cosignee. ITA–648P was developed as a result of the efforts of the U.S. and other free world countries to increase the effectiveness of their controls over international trade in strategic commodities.
Affected public: Businesses or other for-profit institutions, small businesses or organizations
Frequency: On occasion
Respondent's obligation: Required to obtain or retain a benefit
OMB desk officer: Sheri Fox, 395–3785

Agency: International Trade Administration
Title: Foreign Availability Procedures and Criteria
Form No.: Agency—N/A; OMB—N/A
Type of request: New collection
Burden: 500 respondents; 1,000 reporting hours
Needs and uses: information will be used to develop a foreign commodity availability data base
Affected public: Businesses or other for-profit institutions; small businesses or organizations
Frequency: On occasion
Respondent's obligations: Voluntary
OMB desk officer: Sheri Fox, 395–3785

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals (202) 377–4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to Sheri Fox, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

Dated: March 7, 1985.

Edward Michals,

Departmental Clearance Officer.

[FR Doc. 85–6142 Filed 3–13–85; 8:45 am]

BILLING CODE 3510–CW–M

International Trade Administration

[A–475–404]

Tubular Steel Framed Stacking Chairs From Italy; Preliminary Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We have preliminarily determined that tubular steel framed stacking chairs (stacking chairs) from Italy are being, or are likely to be, sold

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in the United States at less than fair value. We also preliminarily determined that critical circumstances do not exist. We have notified the U.S.International Trade Commission (ITC) of our determination. We have directed the U.S. Customs Service to suspend the liquidation of entries of the subject merchandise as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by May 22, 1985.

EFFECTIVE DATE: March 14, 1985.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Shimabukuro, Office of Investigation, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377-5332.

Preliminary Determination

We have preliminary determined that stacking chairs from Italy are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The margins range from zero percent to 20.56 percent, and the weighted-average margins for the four respondents are shown in the section under "Suspension of Liquidation".

Case History

On August 10, 1984, we received a petition from Frazier Engineering, Inc., on behalf of the domestic stacking chair industry. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petitioner alleged that imports of stacking chairs from Italy are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are materially injuring, or are threatening to materially injure, a United States industry. The petitioner also alleged that "critical circumstances" exist. After reviewing the petition we determined that it contained sufficient grounds on which to initiate an antidumping duty investigation. We notified the ITC of our action and initiated such an investigation on August 30, 1984 (49 FR 174). On September 24, 1984, the ITC preliminarily determined that there is reasonable indication that imports stacking chairs from Italy are materially injuring a U.S. industry.

Based on available import information we presented questionaires to Ellisse, Division della A & T europe S.p.A. (Ellisse), and EMU S.p.A. (EMU), for the investigation in late September and early October of 1984. Two unknown manufacturers, Omim Industriale, S.p.A. (Omim), and Stilganden, S.p.A. (Stilgarden), indicated that they wished to responded to the questionaire. Response were received on the following dates:

Ellisse, December 3, 1984
EMU, November 16, 1984 (revision on January 3, 1985)
Omim, November 27, 1984
Stilgarden, Novermber 14, 1984

The response from Stilgarden was incomplete. Sales of one chair model were not reported in half of the period of investigation for either market. Different qualities were also not reported for either market for any of the chairs. Certain other information could not be verified. Therefore, we are basing our determination on the best information available, which was determined to be the margin of the respondent with the highest margin.

On December 17, 1984, the petitioner requested that the Department postpone the preliminary determination until not later than March 8, 1985. The Department granted the request on December 21, 1984 (50 FR 308).

Scope of the Investigation

The product covered by this investigation is tubular steel framed stacking chairs, including stacking chairs with plastic slats or expanded metal mesh, as well as of wire grid, as currently classifiable in the Tariff Schedules of the United States, Annotated (TSUSA) under item number 727.7065.

This investigation covers sales made during the period from August 1, 1983, through July 31, 1984. The period was expanded from the normal period (March 1, 1984, through August 31, 1984) because of the seasonal nature of sales of the merchandise. The four respondents are the only known producers of this merchandise who export to the United States.

Fair Value Comparison

To determine whether sales of the subject merchandise to the United States were made at less than fair value, we compared the United States price with the foreign market value.

United States Price

As provided in section 772(b) of the Act, the purchase price of the subject merchandise was used to represent the United States price because the merchandise was sold to unrelated U.S. purchasers prior to its importation into the United States. EMU had some sales to a related importer but since they did not account for a significant portion of the total sales to the United States we did not include those sales in our calculations.

Calculations for purchase price were based on FOB, or ex-works, packed prices to the unrelated United States purchasers. Deductions were made, as appropriate, for inland freight and rebates.

Foreign Market Value

Sales of such or similar merchandise in the home market were used to represent foreign market value, as provided for in section 773(a)(1)(A) of the Act. Comparisons were made using sales to the same level of trade as the U.S. sales. Calculations for foreign market value were based on FOB, or ex-works, packed prices to unrelated purchasers in the home market. Deductions were made, as appropriate, for inland freight. Further adjustments for differences in commissions and credit expenses, as appropriate, were made. Claims for adjustment for differences in circumstances of sale, made by Omim under § 353.15 of the Regulations, were denied because they were not directly related to the sales in question. A claim for advertising expenses made by EMU was denied because they did not clearly establish that the expenses were for stacking chairs. Packing costs were identical, for both markets, for all respondents.

In calculating foreign market value we made currency conversions from Italian lire to United States dollars in accordance with § 353.56(a)(1) of our regulations, using the daily exchange rate certified by the U.S. Federal Reserve.

Verification

In accordance with section 776(a) of the Act we verified the information provided by the respondents using standard verification procedures, which included on-site inspection of the merchandise and examination of relevant sales and financial records of the company.

Preliminary Negative Determination of Critical Circumstances

The petitioner also alleged that imports of stacking chairs from Italy present "critical circumstances." Under section 733(e)(1) of the Act critical

circumstances exist when the Department finds that:

(1) There have been massive imports of the merchandise under investigation over a relatively short period; and (2)(a) there is a history of dumping in the United States or elsewhere of the class or kind of merchandise under investigation; or (b) the person by whom or for whose account the merchandise was imported knew or should have known that the exporter was selling the merchandise under investigation at less than its fair value.

In determining whether there have been massive imports over a relatively short period, we considered the following factors: (1) Recent import penetration levels; (2) changes in import penetration since the date of the ITC's preliminary affirmative determination of injury; (3) whether imports have surged recently; (4) whether recent imports are significantly above the average calculated over several years; and (5) whether the patterns of imports over the last several years may be explained by seasonal swings. Based on our analysis of the information, we have determined that imports of the products covered by this investigation were not massive over a relatively short period.

We, therefore, did not need to consider whether there is a history of dumping of stacking chairs, or whether the person by whom or for whose account these products were imported knew or should have known that the exporters were selling these products at less than fair value.

For the reasons described above, we have determined that "critical circumstances" do not exist with respect to stacking chairs from Italy.

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-confidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine whether these imports are materially injuring, or threaten to materially injure, a U.S. industry before the later of 120 days after we make our preliminary affirmative determination or 45 days after we make an affirmative final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to suspend liquidation of all entries of the subject stacking chairs from Italy, which are entered, or withdrawn from warehouse, for consumption on or after the date this notice is published in the **Federal Register**. The U.S. Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price. This suspension of liquidation will remain in effect until further notice. The weighted-average margins are as follows:

	Margin (percent)
Effiese	5.92
EMU	5.24
Omim	9.50
Stilgarden	9.50
All other producers and exporters	8.00

Public Comment

In accordance with § 353.47 of the Commerce Department Regulations, we will hold, if requested, a public hearing at 2:00 p.m. on April 8, 1985, to afford interested parties an opportunity to comment on this preliminary determination, at the U.S. Department of Commerce, Room 6802, 14th Street and Constitution Avenue, NW. Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room B099, at the above address within 10 days of this notice's publication.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by April 1, 1985. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46 within 30 days of this notice's publication, at the above address and in at least 10 copies.

C. Christopher Parlin,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-6141 Filed 3-13-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-583-402]

Tubular Steel Framed Stacking Chairs From Taiwan; Preliminary Determination of Sales at Not Less Than Fair Value

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: We have preliminarily determined that Tubular Steel Framed Stacking Chairs (stacking chairs) from Taiwan are not being, nor are likely to be, sold in the United States at less than fair value.

EFFECTIVE DATE: March 14, 1985.

FOR FURTHER INFORMATION CONTACT: Steven Lim, Office of Investigations, International Trade Administration, U.S. Department fo Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377-1776.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We have preliminarily determined that stacking chairs from Taiwan are not being, nor are likely to be, sold in the United States at less than fair value, as provided in section 733(b) of the Tariff Act of 1930, as amended (19 U.S.C. 1673b(b)) (the Act). We have preliminarily found that the margins for all companies investigated are zero or *de minimis*.

If this investigation proceeds normally, we will make final determination by May 22, 1985.

Case History

On August 10, 1984, we received a petition in proper form from counsel for Frazier Engineering, Inc., Greenfield, Indiana on behalf of the U.S. industry producing stacking chairs. In accordance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that stacking chairs from Taiwan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are materially injuring, or are threatening material injury to, a U.S. industry. The petition also alleged that critical circumstances existed in the case.

After reviewing the petition, we determined it contained sufficient grounds to inititate an antidumping investigation. We notified the U.S. International Trade Commission (ITC) of our action and initiated such an investigation on Septembert 6, 1984 (49

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FR 35166). The ITC subsequently found, on September 24, 1984, that there is a reasonable indication that imports of stacking chairs from Taiwan are materially injuring a United States industry. On December 17, 1984, the petitioner requested the Department to extend the preliminary determination until not later than March 8, 1985. On December 21, 1984, we granted the request (50 FR 308).

Scope of the Investigation

The products covered by this investigation are tubular steel framed stacking chairs, including stacking chairs with plastic slats or expanded metal mesh, as well as of wire grid, as currently classifiable in the *Tariff Schedules of the United States, Annotated* (TSUSA) under item number 727.7065. We investigated sales of these stacking chairs which were made by three Taiwanese producers and sold to the United States during the period of investigation, August 1, 1983, through July 31, 1984. The firms investigated were Taiwan Lounge Chair Industry Co., Ltd., Taiwan Hsin Yeh Enterprise Co., Ltd., and Lu Kuang Enterprise, Co., Ltd. Sales by the above firms accounted for approximately 63 percent of all stacking chairs sold to the United States during the period of investigation.

Fair Value Comparison

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value. In the case of Taiwan Lounge Chair Industry Co. and Lu Kuang Enterprise Co., we compared United States price based on purchase price with foreign market value based on the constructed value of the imported merchandise. For Taiwan Hsin Yeh Enterprise Co., we compared United States price based on purchase price with foreign market value based on the price to third countries.

United States Price

For Taiwan Lounge Chair, Taiwan Hsin Yeh and Lu Kuang, we used the purchase price of the subject merchandise to represent the United States price, as provided in section 772(b) of the Act, because the merchandise is sold to unrelated purchasers prior to its importation into the United States. We calculated the purchase price on the f.o.b. or c. & f. price to unrelated purchasers in the United States or to unrelated trading companies for sale to the United States. We made deductions, where appropriate, for inland freight, ocean freight, brokerage charges, bank charges, export promotion fees and stamp tax. We made additions for import duties which were rebated, or not collected, by reason of the exportation of the merchandise to the United States, pursuant to sections 772(d)(1)(B) of the Act.

Foreign Market Value

In all cases, there were either no sales, or insufficient sales, in the home market to use as a basis for foreign market value. For Taiwan Hsin Yeh, we selected sales for export to a country other than the United States (third countries) as a basis for foreign market value pursuant to section 773(a)(1)(B) of the Act. We used third country sales to Australia because Taiwan Hsin Yeh's sales to Australia were adequate in volume for comparison with U.S. sales. We calculated third country price on the basis of the f.o.b. or c. & f. price to unrelated trading companies for sale to Australia. We made deductions, where appropriate, for inland freight, brokerage charges, export bank charges and stamp tax. Where appropriate, we also made additions for import duties which were rebated or not collected by reason of the exportation of the merchandise, equal to those amounts added to the United States price. An adjustment was also made, where appropriate, for the difference between commissions on sales to the United States and Australia in accordance with § 353.15(c) of the Commerce Regulations. We adjusted for differences in packing; and we also adjusted for physical differences in the merchandise in accordance with § 353.16 of the Commerce Regulations.

In accordance with section 773 of the Act, we calculated constructed value, where appropriate, by adding the costs of materials, fabrication, general expenses and profit. For materials and fabrication, we used the appropriate producer's actual cost figures. The amount added for general expenses was the statutory minimum of 10 percent of the sum of material and fabrication costs or the actual general expenses, whichever was higher, as prescribed in section 773(e)(1)(B) of the Act. The amount added for profit was the statutory minimum of 8 percent of the sum of materials, fabrication costs, and general expenses because the companies had no home market sales of merchandise of the same class or kind and we are unable to determine how much of the companies overall profit was related to sales to countries other than the U.S.

In calculating foreign market value, we made currency conversions from Taiwan New Dollars to United States dollars in accordance with § 353.56(a)(1) of our regulations, using certified daily exchange rates as furnished by the Federal Reserve Bank of New York.

Critical Circumstances

Petitioners alleged the existence of critical circumstances in this case. As our preliminary determination is negative, this issue is moot.

Verification

We have verified the data used in reaching the preliminary determination in this investigation, by using standard verification procedures, including on-site inspection of the manufacturers' operations and examination of accounting records and randomly selected documents. We will verify all data used in reaching a final determination.

Preliminary Results

The preliminary results of our investigation are as follows:

Manufacturer/seller/exporter	Weighted-average margin (percentage)
Taiwan Lounge Chair	0
Taiwan Hsin Yeh	0.39
Lu Kuang	0

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determinations. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to these investigations. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine whether these imports are materially injuring or threaten to materially injure a U.S. industry before the latter of 120 days after the Department makes its preliminary affirmative determination of 45 days after the Department makes its final affirmative determination.

Public Comment

In accordance with § 353.47 of the Commerce Regulations, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on these preliminary determinations at 10:00 a.m. on April 1, 1985, at the U.S. Department of

Commerce, room 1851, 14 Street & Constitution Avenue, NW., Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room 3099B, at the above address within ten days of this notice's publication. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs in at least ten copies must be submitted to the Deputy Assistant Secretary by March 25, 1985. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within thirty days of publication of this notice, at the above address in at least 10 copies.

Dated: March 8, 1985.

C. Christopher Parlin,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-6140 Filed 3-13-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-421-501]

Certain Expansion Tanks and Parts Thereof From the Netherlands; Initiation of Antidumping Duty Investigation

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping duty investigation to determine whether certain expansion tanks and parts thereof from the Netherlands are being, or are likely to be, sold in the United States at less than fair value. Critical circumstances have been alleged. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of these products are causing material injury, or threaten material injury, to a United States industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before April 1, 1985, and the Department of Commerce will make its preliminary determination on or before July 24, 1985.

EFFECTIVE DATE: March 14, 1985.

FOR FURTHER INFORMATION CONTACT: Karen L. Sackett, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377-3798.

SUPPLEMENTARY INFORMATION

The Petition

On February 14, 1985, we received a petition in proper form from AMTROL, Inc., filing on behalf of the U.S. industry producing certain expansion tanks. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleges that imports of the subject merchandise from the Netherlands are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are causing material injury, or threaten material injury, to a United States industry. Critical circumstances have also been alleged under section 733(e) of the Tariff Act of 1930, as amended (19 U.S.C. 1673b(e)) (the Act).

The petitioner bases the United States price on list prices of the U.S. importer minus stated discounts for the last quarter of 1984 and those currently in effect. From the price after discount, petitioner also deducts ocean freight and the standard industry mark-up, which includes credit, insurance, Dutch inland freight, profit, general and administrative expenses, warehousing and inventory, sales expenses and promotional expenses. From this price, petitioner deducts customs duty and brokerage fees to arrive at the estimated F.O.B. sales price.

Foreign market value is based on the ex-factory selling prices of the manufacturers in both the home market and West Germany, as the home market for expansion tanks is believed to be small.

Based on comparison of prices calculated using the foregoing methodology, the petitioner alleges an average dumping margin of 12.4 to 60.5 percent for expansion tanks from the Netherlands.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and whether it contains information reasonably available to the petitioner supporting the allegation.

We examined the petition on certain expansion tanks and have found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether certain expansion tanks and parts thereof from the Netherlands are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally we will make our preliminary determination by July 24, 1985.

Scope of Investigation

The products covered by this investigation are expansion tanks and parts thereof for closed water systems from the Netherlands.

The term "expansion tanks" covers expansion or compression tanks, the primary device in pressurizing and maintaining pressure control in a closed water system. Expansion tanks are also known as hydro-pneumatic tanks. Expansion tanks may be provided for in the *Tariff Schedules of the United States, Annotated* under item numbers 657.25, 653.52, 711.78, 681.39, 678.50, or alternative item numbers. The proper classification of expansion tanks under the Tariff Schedules is currently under review.

Notification of the ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by the ITC

The ITC will determine by April 1, 1985, whether there is a reasonable indication that imports of certain expansion tanks and parts thereof from the Netherlands are causing material injury, or threaten material injury, to a United States industry. If the ITC determination is negative the investigation will terminate; otherwise, it will proceed according to the statutory procedures.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-6057 Filed 3-13-85; 8:45 am]

BILLING CODE 3510-DS-M

VOL 50 ISS 50 MR 14 1985 UMI

National Oceanic and Atmospheric Administration

Marine Mammals; Modification No. 1 to Permit No. 487; Kolmardens Djurpark

Notice is hereby given that pursuant to the provisions of §§ 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), Public Display Permit No. 487 issued to Kolmardens Djurpark, S–618 00 Kolmarden, Sweden on November 30, 1984 (49 FR 48083), is modified as follows:

Section B–2 is modified by substituting the following:

"2. This Permit is valid with respect to the taking authorized herein until December 31, 1987."

This modification became effective on March 6, 1985.

The Permit as modified and documentation pertaining to the modification are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.;

and

Regional Director, National Marine Fisheries Service, Southeast Region, 9450 Koger Boulevard, Duval Building, St. Petersburg, Florida 33702.

Dated: March 8, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85–6128 Filed 3–13–85; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collecton and Form Number, if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact whom a copy of the information proposal may be obtained.

Extension

Services and/or Supplies Provided by Civilian Hospitals, DA 1863–1.

The DA Form 1863–1 is used by CHAMPUS beneficiaries and health care providers to file for payment of health care services. The requested information is used to determine eligibility, appropriateness and cost of care, and whether services received are benefits.

Individuals or households, state or local governments, businesses or other for-profit, Federal agencies or employees, non-profit institutions and small businesses or organizations.

Responses 97,226.

Burden Hours 48,613.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, Suite 1204, 1215 Jefferson Davis Highway, Arlington, VA 22202–4302, telephone (703) 746–0664.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Ms. Jane Bomgardner, OCHAMPUS, Aurora, Colorado 80045–6900, telephone (303) 361–3509.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

March 11, 1985.

[FR Doc. 85–6123 Filed 3–13–85; 8:45 am]

BILLING CODE 3810–01–M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

March 7, 1985.

The USAF Scientific Advisory Board Tactical Cross-Matrix Panel will meet at Headquarters Tactical Air Command, Langley AFB, VA, 9–10 April 1985 (8:00 a.m.–5:00 p.m.) to review Tactical Air Forces modernization, command and control communications programs, and research, development and acquisition program priorities. This meeting will involve classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

Norita C. Koritko,

Air Force Federal Register Liaison Officer.

[FR Doc. 85–6071 Filed 3–13–85; 8:45 am]

BILLING CODE 3910–01–M

USAF Scientific Advisory Board; Meeting

March 7, 1985.

The USAF Scientific Advisory Board Arnold Engineering Development Center Advisory Group will meet at the Arnold Engineering Development Center, Arnold Air Force Station, TN, on April 1 (8:00 a.m.–4:00 p.m.) and April 2 (8:00 a.m.–2:30 p.m.) 1985 in the A&E Building Conference Room to review selected ground test support requirements and programs. This meeting will involve classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

Norita C. Koritko,

Air Force Federal Register Liaison Officer.

[FR Doc. 85–6072 Filed 3–13–85; 8:45 am]

BILLING CODE 3910–01–M

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Comittee Meeting:

Name of the committee: Army Science Board (ASB).

Dates of meeting: Monday & Tuesday, 1 & 2 April 1985.

Times of meeting: 0830–1700 hours, both days (Closed).

Place: Fort Huachuca, Arizona.

Agenda: The Army Science Board Ad Hoc Subgroup on U.S. Army Signals Warfare Laboratory (SWL) Effectiveness Review will meet for classified briefings and discussions. The first day's agenda will cover the TRADOC (U.S. Army Training and Doctrine Command) user; the second day will be devoted to panel discussions, including formats and assignments. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be

contacted for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 85–6125 Filed 3–13–85; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Comittee Meeting:

Name of the committee: Army Science Board (ASB).

Dates of meeting: Tuesday & Wednesday, 2 & 3 April 1985.

Times of meeting: 0830–1700 hours, both days (Closed).

Place: Moffett Field, California.

Agenda: The Army Science Board Ad Hoc Subgroup on U.S. Army Research and Technology Laboratories Effectiveness Review will meet for classified briefings and discussions. The panel will interact with representatives from industry and the TRADOC (U.S. Army Training and Doctrine Command) user community and then meet in an Executive Session to discuss findings and outline the report. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 85–6126 Filed 3–13–85; 8:45 am]

BILLING CODE 3710-08-M

Corps of Engineers, Department of the Army

Intent to Prepare a Draft Environmental Impact Statement (EIS) for a Regulatory Permit Action for the Proposed Construction of the North-South Tollway in DuPage and Will Counties, IL

AGENCY: Army Corps of Engineers, DOD.

ACTION: Notice of Intent to prepare a Draft Environmental Impact Statement (DEIS).

1. A Department of the Army permit pursuant to section 404 of the Clean Water Act will be required for the construction of the North-South Tollway (formerly F.A.P. 431), proposed by the Illinois State Toll Highway Authority, from Bolingbrook to Addison, Illinois. The Chicago District, U.S. Army Corps of Engineers, has jurisdiction over the discharge of fill material into wetlands along the tollway corridor and into tributary streams of the East Branch of the DuPage River.

2. Alternatives to be considered and studies in detail are:

(a) The proposed tollway with and without mitigation measures.

(b) The existing road system as well as planned future improvements and the potential widening of State Route 53.

(c) Permit denial (or no action), which would preclude construction of the tollway on lands under Corps of Engineers' permit authority.

3. Public involvement has included issuance of a public notice in August 1984 announcing the Toll Authority's intent to apply for a permit and the need to prepare an EIS for the proposed North-South Tollway. Coordination meetings on the proposal were held in September and November 1984 and January and February 1985. Agencies and parties expressing interest were invited to attend. Additional coordination meetings will be held periodically. In addition, the Toll Authority is initiating a public involvement program for disseminating information and answering questions on the proposed tollway.

4. Significant issues to be analyzed in depth are: Effects of tollway traffic on air quality and noise levels; land use changes; effects of deicing salt aerosols; destruction of wetlands and other biological resources; and the tollway's impact on the Morton Arboretum (a privately endowed, nonprofit research and education facility and botanical park).

5. The Corps of Engineers is the lead federal agency. The U.S. Environmental (USEPA) Protection Agency, U.S. Fish and Wildlife Services (USFWS) and Federal Highway Administration (FHWA) will serve as cooperating agencies, assisting in the review and evaluation of environmental data submitted by the Toll Authority for the EIS. Their primary areas of concern and expertise are: USEPA— air quality and noise, USFWS—biological resources; and FHWA—the proposed interchange link with Interstate 55 at the tollway's southern terminus.

6. The purpose of the periodic coordination meetings is scoping of environmental issues. Agencies and parties expressing interest will be notified of the time and place of future meetings. The next meeting is expected to be held in April 1985.

7. The DEIS is expected to be available to the public in November 1985.

8. Questions regarding the proposed action and DEIS may be directed to: Mr. Thomas Slowinski, U.S. Army Corps of Engineers, Chicago District, Regulatory Fuctions Branch, 219 South Dearborn Street, Chicago, Illinois 60604–1797 (312/353–6428).

Frank R. Finch,

LTC, Corps of Engineers, District Engineer.

[FR Doc. 85–6078 Filed 3–13–85; 8:45 am]

BILLING CODE 3710-HN-M

DEPARTMENT OF ENERGY

Procurement and Assistance Management Directorate; Restriction of Eligibility for Grant Award

AGENCY: Department of Energy (DOE)

ACTION: Notice.

SUMMARY: DOE announces that, pursuant to 10 CFR 600.7(b), it intends to award on a restricted eligibility basis a continuation grant to the National Academy of Sciences in support of the Solid State Sciences Committee. The DOE support under this grant will be $75,000 over a three year period.

Procurement Request No. 01–85ER10844.001.

Project Scope: The Solid State Sciences Committee will carry out studies of timely concern and importance to the Materials Science Community. U.S. and world-wide efforts in specific areas of solid state physics, metalurgy, ceramics, materials chemistry, and polymers, are expected to be considered by the committee in terms of trends and opportunities. These evaluations will be open to scientific endeavors which will be available to the entire U.S. and world-wide condensed matter communities. Eligibility for this continuation is restricted to the National Academy of Sciences, charted by Congress to conduct scientific research for the Government, to permit continuance of effort initiated several years ago.

FOR FURTHER INFORMATION CONTACT: James P. Beiriger, MA–452.1, U.S. Department of Energy, Office of Procurement Operations, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Telephone (202) 252–1024.

Issued in Washington, D.C., on March 11, 1985.

Ben Goldman,

Director Contract Operations, Division "A", Office of Procurement Operations.

[FR Doc. 85–6138 Filed 3–13–85; 8:45 am]

BILLING CODE 6450-01-M

VOL 50 ISS 50 MR 14 1985 UMI

Office of Conservation and Renewable Energy

National Energy Extension Service Advisory Board; Cancellation of Meeting

This notice is given to advise of the cancellation of the meeting of the National Energy Extension Service Advisory Board (March 18, 19, and 20, 1985) as published in the issue of March 1, 1985 (50 FR 8366). The meeting will be rescheduled at a later date.

Issued at Washington, D.C. on March 12, 1985.

Howard H. Raiken,

Deputy Advisory Committee Management Officer.

[FR Doc. 85-6173 Filed 3-13-85; 10:55 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Project No. 6433-003, et al]

Hydroelectric Applications (Warren B. Nelson, et al.); Applications Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1 a. Type of Application: Major License.

b. Project No: 6433-003.

c. Date Filed: June 7, 1984.

d. Applicant: Warren B. Nelson.

e. Name of Project: Riordan Creek Hydro.

f. Location: On Riordan Creek in Valley County, Idaho, within Boise National Forest.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Joseph B. Nelson, 3410 Montvue Drive, Meridian, Idaho 83842.

i. Comment Date: May 3, 1985.

j. Description of Project: The proposed project would consist of: (1) A 6-foot-high, 30-foot-long aluminum and concrete diversion dam with crest elevation 6,050 feet; (2) a 26-inch-diameter, 9,000-foot-long steel penstock; (3) a log powerhouse at elevation 4,950 feet containing 3 generating units with a total rated capacity of 2,175 kW and an average annual output of 10.2 GWh; (4) a buried corrigated aluminum tailrace with a stilling basin; and (5) a 525-foot-long, 69-kV transmission line. A fish ladder would be installed at the diversion site. The estimated cost of the project, as of June 1984, is $1,300,000, with construction planned to start within 24 months, and be completed within 42 months, from license issuance.

k. Purpose of Project: Project output will be sold to the Idaho Power Company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C and D1.

2 a. Type of Application: Preliminary Permit.

b. Project No: 8802-000.

c. Date Filed: December 14, 1984.

d. Applicant: Birch Power Company.

e. Name of Project: Pines Grazing.

f. Location: On Springs tributary to the Pahsimeroi River, in Custer County, Idaho.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Ted Sorenson, Consulting Engineer, 550 Linden Drive, Idaho Falls, Idaho 83401.

i. Comment Date: May 6, 1985.

j. Description of Project: The proposed project would consist of: (1) A 6-foot-high diversion structure at elevation 5,600 feet; (2) a 29,400-foot-long feeder ditch; (3) a 6,100-foot-long, 34-inch-diameter steel penstock; (4) a powerhouse containing a single generating unit with a capacity 900 kW and an average annual generation of 5,500,000 kWh; and (5) a 0.05-mile-long transmission line.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 24 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $45,000. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: The project power would be sold to Idaho Power.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C and D2.

3 a. Type of Application: Transfer of License.

b. Project No: 5667-003.

c. Date Filed: December 31, 1984.

d. Applicant: East Coast Engineering (Licensee) and Northeast Hydro Development Associates-I (Transferee).

e. Name of Project: Weare Reservoir.

f. Location: On the Piscataquog River, Hillsborough County, New Hampshire.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. S. James Boumil, Esq., 100 Summit Street, Lowell, Massachusetts 01852.

i. Comment Date: April 12, 1985.

j. Description of Project: On December 31, 1984, East Coast Engineering (Licensee), and Northeast Hydro Development Associates-I (Transferee), filed a joint application for transfer of a minor license for the Weare Reservoir Project No. 5667.

The purpose of the proposed transfer of the license is to facilitate the financing of the licensed project. The Transferee would sell limited partnership interests to a small number of investors. Limited partners would have no ownership of or control over the project.

The proposed transfer would not result in any changes in the proposed development or any change in control of the development. No equipment has been contracted for or required to date. All engineering, design and feasibility studies performed would be transferred to the Transferee.

The Transferee states that it would comply with all the terms and the conditions of the license. Construction is required to commence by October 20, 1985.

k. This notice also consists of the following standard paragraphs: B and C.

4 a. Type of Application: License.

b. Project No: 8050-000

c. Date Filed: February 6, 1984

d. Applicant: Westmoreland County, Pennsylvania *et. al.*

e. Name of Project: Loyalhanna.

f. Location: On Loyalhanna Creek, in Conemaugh and Derry Townships, in Westmoreland County, Pennsylvania.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Edward H. Curland, 1700 Broadway, Suite 2501, New York, New York 10019.

i. Comment Date: May 6, 1985.

j. Description of Project: The proposed project would utilize the existing U.S. Army Corps of Engineers' Loyalhanna Dam, Lake, and outlet works and would consist of: (1) A proposed 11-foot-diameter, 200-foot-long Steel-lined penstock; (2) a proposed concrete powerhouse housing two turbine units with a total installed capacity of 3.6 MW; (3) a proposed 1,700-foot-long, 25-kV transmission line; and (4) appurtenant facilities. Applicant estimates that the average annual generation would be 12.86 GWh.

k. Purpose of Project: The Applicant anticipates that project energy will be sold to the West Penn Power Company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

5 a. Type of Application: 5 MW Exemption.

b. Project No.: 8732-000.

c. Date Filed: November 21, 1984.

d. Applicant: City of Manassas, Department of Public Works.

e. Name of Project: Broad Run Hydroelectric.

f. Location: On Broad Run at Lake Manassas, in Prince William County, Virginia.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980 (16 U.S.C. 2705 and 2708, *as amended*).

h. Contact Person: Mr. Clyde D. Wimmer, Department of Public Works, City of Manassas, P.O. Box 512, Manassas, Virginia 22110.

i. Comment Date: April 15, 1985.

j. Description of Project: the proposed project would consist of: (1) an existing dam with a total length of approximately 636 feet and a maximum height of 72 feet; (2) an existing reservoir (Lake Manassas), with water surface area of 1,050 acres and storage capacity of 23,000 acre-feet at normal maximum water surface elevation of 285.0 feet, m.s.l.; (3) an existing 48 inch penstock approximately 30 feet long; (4) a proposed powerhouse, 32 feet by 28 feet, which will house two turbine/generating units with a total installed capacity of 1,000 kW; (5) a proposed tailrace about 40 feet long, and varying from 12 feet to 20 feet in width; (6) a proposed 12,470 volt transmission line approximately 12 miles long; and (7) appurtenant facilities. The Applicant estimates that the average annual energy production to be 1,491,000 kWh. The dam and reservoir are owned by the City of Manassas, Virginia.

k. Purpose of Project: The Applicant anticipates that project energy would be utilized within the City's existing electrical grid system.

l. This notice also consists of the following standard paragraphs: A1, A9, B, C, and D3a.

m. Purpose of Exemption: An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

6 a. Type of Application: Exemption (5 MW or Less).

b. Project No.: 8417–001.

c. Date Filed: December 3, 1984.

d. Applicant: Thomas L. Yale and P. Andre LeMaistre.

e. Name of Project: Old Sparhawk Mill.

f. Location: On the Royal River in Cumberland County, Maine.

g. Filed Pursuant to: Energy Security Act of 1980, Section 408, 16 U.S.C. 2705 and 2708 as amended.

h. Contact Person: Thomas L. Yale, Old Sparhawk Mill, 25 Bridge Street, Yarmouth, Main 04096.

i. Comment Date: April 15, 1985.

j. Description of Project: The proposed project would consist of: (1) the existing 8-foot-high, 140-foot-long dam; (2) the existing 9-acre reservoir; (3) a proposed 215-foot-long, 7-foot-diameter steel penstock; (4) a proposed powerhouse which will contain 3 generating units, each 90–kW, for a total installed capacity of 270 kW; (5) the existing 18-foot-wide, 80-foot-long tailrace channel will be dredged; (6) a proposed 100-foot-long, buried transmission line; and (7) appurtenant facilities.

The Applicant estimates the average annual energy production to be 1.0 GWh.

k. This notice also consists of the following standard paragraphs: A1, A9, B, C and D3a.

l. Purpose of Project: An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

7 a. Type of Application: Major License (Over 5 MW).

b. Project No.: 8261–000.

c. Date Filed: April 24, 1984.

d. Applicant: Hawkeye Hydro Partners I.

e. Name of Project: Red Rock Dam Hydroelectric Project.

f. Location: On the Des Moines River in Marion County, Iowa.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Bruce Wrobel, Hawkeye Hydro Partners I, 91 Newbury Street, Boston, Massachusetts 01226.

i. Comment Date: April 12, 1985.

j. Competing Application: Project No. 7706, Filed October 7, 1983.

k. Description of Project: The Applicant would utilize an existing dam and lands under the jurisdiction of the U.S. Army Corps of Engineers. The proposed project would consist of: (1) A proposed headrace channel, which would be approximately 3,600 feet long and 150 feet wide and 40 feet deep. The headrace will be cut through the right abutment of the existing dam; (2) a proposed reinforced concrete powerhouse containing two generating units rated at 13.4 MW each and one generating unit rated at 3.4 MW, for a total installed capacity of 30.2 MW; (3) a proposed concrete gravity intake dam which would be connected to the powerhouse. The top of the intake dam would be 20 feet wide and would serve as a service road; (4) a proposed tailrace channel, which would be approximately 2,300 feet long and 150 feet wide and 40 feet high; (5) a proposed access road, which would be located adjacent to the left side of the powerhouse; (6) a proposed 69–kV transmission line; and (7) appurtenant facilities.

The estimated average annual energy output for the project is 90,600,000 kWh.

l. Purpose of Project: Power produced at the project would be sold to the Iowa Power and Light Company.

m. This notice also consists of the following standard paragraphs: A3, A9, B, C, D1.

8 a. Type of Application: Minor License.

b. Project No.: 8396–000.

c. Date Filed: June 26, 1984.

d. Applicant: Great Bear Hydropower, Inc.

e. Name of Project: Columbia Hydroelectric.

f. Location: On the Paulins Kill River in Knowlton Township, Warren County, New Jersey.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Frederick Lapin, Young, Rose & Millspaugh, 65 Livingston Avenue, Roseland, New Jersey 07068.

i. Comment Date: April 19, 1985.

j. Description of Project: The proposed project would consist of: (1) An existing 16-foot-high, 330-foot-long concrete dam with the reinstallation of 2-foot-high flashboards; (2) a proposed 43-acre reservoir with a total storage capacity of 275 acre-feet at elevation 288.0 feet M.S.L.; (3) an existing powerhouse which will contain an installed generating capacity of 400 kW; (4) an existing tailrace channel; and (5) appurtenant facilities. The project would generate up to 1.7 GWh annually. The dam is owned by the State of New Jersey.

k. Purpose of Project: The Applicant proposes to sell the power to and directly connect with the New Jersey Power and Light Company and/or the New Jersey Board of Public Utilities.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

a. Type of Application: Preliminary Permit.

b. Project No.: 8862–000.

c. Date Filed: January 3, 1985.

d. Applicant: Coffeeville Hydroelectric Partners.

e. Name of Project: Cooffeville Hydro Project.

f. Location: Tombigbee River near Coffeeville, Clarke County, Alabama.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Bruce Wrobel, 91 Newbury Street, Boston, Massachusetts, 02116.

i. Comment Date: April 15, 1985.

j. Competing Application: Project No. 8813–000, Date Filed: December 24, 1984; Comment Due Date: April 1, 1985.

k. Description of Project: The proposed project would utilize the U.S. Army Corps of Engineers' Coffeeville Lock and Dam, and would consist of: (1) A proposed powerhouse located on the north side of the river in the diversion channel housing one 3.5-generator and one 15.0–MW generator for a total installed capacity of 18.5 MW; (2) a proposed 69–kV transmission line approximately 2 miles long interconnecting with Alabama Power Company's transmission system; and (3) appurtenant facilities. The Applicant estimates that the average annual generation would be 55 GWh. All project energy would be sold to Alabama Power Company.

9l. This notice also consists of the following standard paragraphs: A8, A9, B, C, and D2.

9. m. Proposed Scope of Studies Under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 24 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant could decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $100,000.

10 a. Type of Application: Preliminary Permit.

b. Project No.: 8856–000.

c. Date Filed: January 2, 1985.

d. Applicant: Cook Electric, Inc.

e. Name of Project: North Fork Clackamas.

f. Location: In Mount Hood National Forest, on the North Fork of the Clackamas River, in Clackamas County, Oregon.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Dale Hatch, Cook Electric, Inc., P.O. Box 1071, Twin Falls, Idaho 83303–1071.

i. Comment Date: May 6, 1985.

j. Description of Project: The proposed project would consist of: (1) A 72-inch-high inlet structure at elevation 1,350 feet; (2) a 10,560-foot-long, 54-inch-diameter penstock (3) a powerhouse containing four generating units with a combined capacity of 2,500 kW and an average annual generation of 15,838,900 kWh; and (4) a 10,800-foot-long transmission line.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $32,250. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: Project power would be sold to Portland General Electric.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C and D2.

11 a. Type of Application: Preliminary Permit.

b. Project No.: 8829–000.

c. Date Filed: December 24, 1984.

d. Applicant: Mega Renewables.

e. Name of Project: Pit Falls Project.

f. Location: On Pit River in Shasta County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Fred Castagna, 2576 Hartnell Avenue, Redding, California 96002.

i. Comment Date: May 6, 1985.

j. Description of Project: The proposed project would consist of: (1) A diversion dam on Pit River at elevation 2,994 feet; (2) a 1,500-foot-long, 16-foot-diameter tunnel; (3) four 400-foot-long and 72-inch-diameter penstocks; (4) a powerhouse at elevation 2,946 feet with a total installed capacity of 3,000 kW; and (5) a 60–kV, 7000-foot-long transmission line connecting with an existing Pacific Gas and Electric Company (PG&E) transmission line.

A preliminary permit if issued, does not authorize construction. Applicant has requested a 36-month permit to conduct feasibility studies and prepare a license application at a cost of $80,000.

k. Purpose of Project: The estimated 13.0 million kWh produced annually by the project would be sold to PG&E.

l. This notice also consists of the following standard paragraphs: A, A6, A7, A9, B, C and D2.

12 a. Type of Application: Preliminary Permit.

b. Project No. 8830–000.

c. Date Filed: December 24, 1984.

d. Applicant: Chilco, Inc.

e. Name of Project: Aikens Creek.

f. Location: On Aikens Creek in Humboldt County, California; within the Six Rivers National Forest.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: H. L. Childers, 9200 Shanley Lane, Auburn, California 95603.

i. Comment Date: May 10, 1985.

j. Description of Project: The proposed project would consist of: (1) A 4-foot-high diversion dam on Aikens Creek at elevation 700 feet; (2) a 24-inch-diameter, 2,870-foot-long conduit; (3) a 24-inch-diameter, 580-foot-long penstock; (4) a powerhouse with a total installed capacity of 500 KW and (5) a 12-kV, 500-foot-long transmission line connecting with an existing Pacific Gas and Electric Company (PG&E) transmission line.

A preliminary permit if issued, does not authorize construction. Applicant has requested a 18-month permit to conduct feasibility studies and prepare a license application at a cost of $15,000.

k. Purpose of Project: The estimated 2.0 million kWh produced annually by the project would be sold to PG&E.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C and D2.

13 a. Type of Application: Preliminary Permit.

b. Project No. 8826–000.

c. Date Filed: December 24, 1984.

d. Applicant: Mega Renewables.

e. Name of Project: Young Falls Project.

f. Location: On Pit River in Lassen County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Fred G. Castagna, 2576 Hartnell Avenue, Redding, California 96002.

i. Comment Date: May 3, 1985.

j. Description of Project: The proposed project would consist of: (1) an existing intake structure of Mr. Steve Albaugh on Pit River at elevation 3,300 feet; (2) an existing 5,000-foot-long canal owned by Mr. Steve Albaugh which would be upgraded; (3) a 69-inch-diameter, 1000-foot-long penstock; (4) a powerhouse at elevation 3,250 feet with a total installed capacity of 1000 KW; and (5) a 12-kV, 1000-foot-long transmission line connecting with an existing Pacific Gas and Electric Company (PG&E) transmission line.

A preliminary permit if issued, does not authorize construction. Applicant has requested a 36-month permit to conduct feasibility studies and prepare a license application at a cost of $80,000.

k. Purpose of Project: The estimated 2.2 million kWh produced annually by the project would be sold to PG&E.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

14 a. Type of Application: Preliminary Permit.

b. Project No. 8693–000.

c. Date Filed: October 30, 1984.

d. Applicant: Northeast Hydrodevelopment Corporation.

e. Name of Project: West Hennicker Contoocook River.

f. Location: On the Contoocook River in Merrimack County, New Hampshire.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. Contact Person: Mr. Normand Herbert, President, Northeast Hydrodevelopment Corporation, 6 Able Street, Hudson, New Hampshire 03051.

i. Comment Date: April 15, 1985.

j. Competing Applications: Projects Nos. 8351–000, 8460–000. Dates Filed: June 6, 1984, July 23, 1984, respectively.

k. Description of Project: The proposed project would consist of: (1) A 20-foot-high, 200-foot-long existing concrete dam owned by Contookcook Valley Paper Company, at elevation 427 feet msl; (2) an existing reservoir with a surface area of 10-acres, and a gross storage capacity of 70 acre-feet; (3) installation of 3 feet of flashboards raising the crest elevation to 430 feet msl; (4) an existing 1,400-foot-long canal system of varying widths and depths; (5) a proposed powerhouse containing three generating units and an additional generating unit just downstream of the gate structure with a combined project capacity of 1,440-kW; (6) a proposed 300-foot-long transmission line tying into the Public Service Company of New Hampshire system; and (7) a proposed 250-foot-long tailrace. The Applicant estimates a 8,500,000 kWh average annual energy production.

l. Proposed Scope of Studies under Permit: A preliminary permit if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 30-months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $40,000.

m. This notice also consists of the following standard paragraphs: A8, A9, B, C, and D2.

15 a. Type of Application: Amendment of License.

b. Project No. 1715–000.

c. Date Filed: March 28, 1984.

d. Applicant: City of Springville, Utah.

e. Name of Project: Spring Canyon.

f. Location: Spring Canyon in Utah County, Utah.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Honorable J. Brent Haymond, Mayor, City of Springville, 50 South Main, Springville, Utah 84663.

i. Comment Date: April 15, 1985.

j. Description of Project: The Applicant proposes to amend its license by: (1) Increasing the water supply by reason of newly developed springs and collection system; (2) replacing the present 12-inch pipeline penstock with a new 24-inch one from the existing upper 2-million-gallon culinary water supply tank; (3) constructing a new powerhouse to contain a turbine-generator unit having a rated capacity of 500 kW and abandoning the existing powerhouse with the 138 kW capacity, increasing average annual energy output from 397 MWh to an estimated 3,810 MWh; (4) discharging flows from the new powerhouse into two lower culinary water supply tanks, an existing one of 1.5-million-gallon capacity and a proposed new one of 2.0-million-gallon capacity; (5) connecting the new powerhouse to a nearby existing transmission line; and (6) providing appurtenanit new facilities. All project works are located on City of Springville, Utah (City) property.

k. Purpose of Project: The project will operate in conjunction with the City's culinary water supply system; water may be pumped from the lower storage tanks to the upper one when necessary for city water supply and/or for pumped-storage generation. Project energy will be utilized by the City.

l. This notice also consists of the following standard paragraphs: B, C and D1.

16 a. Type of Application: Preliminary Permit.

b. Project No: 8723–000.

c. Date Filed: November 16, 1984.

d. Applicant: Belmont Real Estate and Power, Inc.

e. Name of Project: Tioga River.

f. Location: Tioga River in Belknap County, New Hampshire.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Walter Steere, President, Belmont Real Estate and Power, Inc., P.O. Box 519, Belmont, New Hampshire 03220.

i. Comment Date: May 6, 1985.

j. Description of Project: The proposed would consist of: (1) An existing 16-foot-high, 80-foot-long masonry and granite block dam; (2) a reservoir with a surface area of 4 acres storage capacity of 35 acre-feet, and a normal water surface elevation of 746.2 feet m.s.l; (3) an existing intake structure at the right abutment; (4) an existing 48-inch-diameter, 800-foot-long buried penstock along the right bank then a new 1,200-foot-long buried penstock which would diagonally cross the river; (5) a new steel surge tank; (6) a new powerhouse containing one generating unit with a capacity of 75 kW and one generating unit with a capacity of 150 kW for a total installed capacity of 225 kW; (7) an existing 15-foot-wide, 75-foot-long and 10-foot-deep tailrace; (8) a new transmission line, 200 feet long; and (9) appurtenant facilities. The Applicant estimates the average annual generation would be 595,000 kWh. The existing dam is owned by Belmont Real Estate and Power, Inc.

k. Purpose of Project: Project power would be sold to the Public Service Company of New Hampshire.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $10,000.

17 a. Type of Application: Minor License.

b. Project No.: 8657–000.

c. Date Filed: October 10, 1984.

d. Applicant: Greenwood Ironworks.

e. Name of Project: Harvell Dam.

f. Location: On the Appomattox River in Dinwiddle and Chesterfield Counties, Virginia.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Joshua Greenwood, 420 Grove Avenue, Petersbury, Virginia 23803.

i. Comment Date: May 6, 1985.

j. Description of Project: The proposed project would consist of: (1) An existing concrete dam about 400 feet long and maximum height of 9 feet; (2) an existing reservoir with a water surface area of seven acres and an estimated storage capacity of 49 acre-feet at elevation 12.63 feet, m.s.l; (3) a new powerhouse and fishway integral with the dam, about 25 feet long by 18 feet wide, which will house one new generating unit with an installed capacity of 150 KW; (4) a section of the existing powerhouse will be demolished. The remaining powerhouse structure, approximately 52 feet long by 27 feet wide, will house two additional generating units, each rated at 300 kW. The total installed project capacity (both powerhouses) will be 750 kW; (5) an existing headgate structure; (6) an existing concrete headrace, 170

feet long, and varying in width from seven feet to 13 feet; (7) new trashracks; (8) modifications to the existing tailrace with the addition of a walkway and fish screens; (9) about 270 feet of new transmission line at 2,300 volts, connecting the two powerhouses; (10) about 130 feet of new transmission line at 13,200 volts to interconnect with the VEPCO substation; and (11) appurtenant facilities. Owner of the dam and other project facilities is Virginia Electric Power Company. Applicant estimates that the average annual energy generation would be 2,930.220 kWh.

k. Purpose of Project: The applicant anticipates that project energy will be sold to Virginia Electric Power Company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

18 a. Type of Application: Conduit Exemption.

b. Project No: 8514–000.

c. Date Filed: August 13, 1984.

d. Applicant: Borough of North East, PA.

e. Name of Project: North East Water Department Hydroelectric facility.

f. Location: Filtration Plant of the Borough of North East, PA, in Erie County, Pennsylvania.

g. Filed Pursuant to: F.P.A. (Act) [16 U.S.C. 823(a)].

h. Contact Person: Mr. Kenneth E. Maas, Borough Secretary 58 East Main St., North East, Pennsylvania 16428.

i. Comment Date: April 15, 1985.

j. Description of Project: The proposed project would consist of replacing a pressure reducing value in a 12-inch pipe with a generating unit with a rated capacity of 70-kW. The energy generated would be utilized by the Borough of North East, PA water filtration plant, with the excess being sold to Pennsylvania Electric Company. The Applicant estimates a 264,780 KWh average annual energy production.

k. Purpose of Exemption: An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D3b.

19 a. Type of Application: Minor License.

b. Project No: 8863–000.

c. Date Filed: January 7, 1985.

d. Applicant: Northeast Hydrodevelopment Corporation.

e. Name of Project: Buck Street.

f. Location: Suncook River in Merrimack County, New Hampshire.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Normand E. Hebert, President, Northeast Hydrodevelopment Corporation, 6 Able Street, Hudson, New Hampshire 03051.

i. Comment Date: May 6, 1985.

j. Description of Project: The proposed project would consist of: (1) An existing 9-foot-high, 32-foot-long stone and masonry gravity dam (east) and an existing 12-foot-high, 144-foot-long stone and earth dam (west); (2) a three existing intake gates located at the east dam; (3) a new 30-foot-long power canal at the east dam; (4) a new powerhouse at the east dam containing one generating unit with a capacity of 41 kW, one generating unit with a capacity of 108 kW, and one generating unit with a capacity of 245 kW for a total installed capacity of 394 kW; (5) a new 200-foot-long tailrace; (6) a new transmission line, 150 feet long; and (7) appurtenant facilities. The Applicant estimates that the average annual generation would be 1,750,000 kWh. The existing dams are owned by the New Hampshire Water Resources Board, Concord, New Hampshire.

k. Purpose of Project: Project power would be sold to the Public Service Company of New Hampshire.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

20 a. Type of Application: Preliminary Permit.

b. Project No.: 8805–000.

c. Date Filed: December 17, 1984.

d. Applicant: Hydro Financing Company.

e. Name of Project: Falls Creek.

f. Location: In Gifford Pinchot National Forest, on Falls Creek, in Skamania County, Washington.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Michael J. Hall, 5318 46th Ave. S.W., Seattle, Washington 98136.

i. Comment Date: May 6, 1985.

j. Description of Project: The proposed project would consist of: (1) A 10-foot-high diversion dam at elevation 2,300 feet; (2) a 2,500-foot-long, 56-inch-diameter low-head conveyance pipe; (3) a 10-foot-diameter, 60-foot-high surge tank; (4) a 5,300-foot-long, 48-inch-diameter penstock; (5) a powerhouse containing a single generating unit with a capacity of 9,400 kW and an average annual generation of 32,946,650 kWh; and (6) a 4.15-mile-long transmission line.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $100,000. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: Project power would be sold to utilities.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C and D2.

21 a. Type of Application: Preliminary Permit.

b. Project No.: 8735–000.

c. Date Filed: November 23, 1984.

d. Applicant: Lawrence A. Gamble.

e. Name of Project: Souadabscook II.

f. Location: Souadabscook Stream in Penobscot County, Maine.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Lawrence A. Gamble, 35 Western Avenue, P.O. Box 250, Hampden, Maine 04444.

i. Comment Date: May 6, 1985.

j. Description of Project: The proposed project would consist of: (1) An existing 75-foot-long, 9-foot-high concrete dam owned by the Town of Hampden; (2) proposed 2-foot-high flashboards; (3) a proposed 0.5-acre increase to the existing 2-acre reservoir at elevation 52 feet M.S.L.; (4) a proposed powerhouse at the dam containing one 125-kW turbine/generator unit and one 50-kW turbine/generator unit; (5) a proposed 200-foot-long underground transmission line; (6) a proposed Denil fishway; and (7) appurtenant facilities. The estimated average annual generation is 900 MWh.

k. Purpose of Project: Project power would be sold to Bangor Hydro-Electric Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C & D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 24 months during which time it would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $2,000.

Competing Applications

A1. Exemption for Small Hydroelectric Power Project under 5MW

Capacity—Any qualified license or conduit exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license or conduit exemption application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such an application. Any qualified small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license, conduit exemption, or small hydroelectric exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A2. Exemption for Small Hydroelectric Power Project under 5MW Capacity—Any qualified license or conduit exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license or conduit exemption application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license or conduit exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit and small hydroelectric exemption will not be accepted in response to this notice.

A3. License or Conduit Exemption—Any qualified license, conduit exemption, or small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license, conduit exemption, or small hydroelectric exemption application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license, conduit exemption, or small hydroelectric exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

This provision is subject to the following exception: if an application described in this notice was filed by the preliminary permittee during the term of the permit, a small hydroelectric exemption application may be filed by the permittee only (license and conduit exemption applications are not affected by this restriction).

A4. License or Conduit Exemption—Public notice of the filing of the initial license, small hydroelectric exemption or conduit exemption application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing applications for license, conduit exemption, small hydroelectric exemption, or preliminary permit, or notices of intent to file competing applications, must be filed in response to and in compliance with the public notice of the initial license, small hydroelectric exemption or conduit exemption application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit: Existing Dam or Natural Water Feature Project—Anyone desiring to file a competing application for preliminary permit for a proposed project at an existing dam or natural water feature project, must submit the competing application to the Commission on or before 30 days after the specified comment date for the particular application (see 18 CFR 4.30 to 4.33 (1982)). A notice of intent to file a competing application for preliminary permit will not be accepted for filing.

A competing preliminary permit application must conform with 18 CFR 4.33(a) and (d).

A6. Preliminary Permit: No Existing Dam—Anyone desiring to file a competing application for preliminary permit for a proposed project where no dam exists or where there are proposed major modifications, must submit to the Commission on or before the specified comment date for the particular application, the competing application itself, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 60 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.33(a) and (d).

A7. Preliminary Permit—Except as provided in the following paragraph, any qualified license, conduit exemption, or small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license, conduit exemption, or small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent to file a license, conduit exemption, or small hydroelectric exemption application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

In addition, any qualified license or conduit exemption applicant desiring to file a competing application may file the subject application until: (1) a preliminary permit with which the subject license or conduit exemption application would compete is issued, or (2) the earliest specified comment date for any license, conduit exemption, or small hydroelectric exemption application with which the subject license or conduit exemption application would compete; whichever occurs first.

A competing license application must conform with 18 CFR 4.33(a) and (d).

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications on notices of intent. Any competing preliminary permit application, or notice of intent to file a competing preliminary permit application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing preliminary permit applications or notices of intent to file a preliminary permit may be filed in response to this notice.

Any qualified small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent to file a small hydroelectric exemption application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

In addition, any qualified license or conduit exemption applicant desiring to file a competing application may file the subject application until: (1) a

preliminary permit with which the subject license or conduit exemption application would compete is issued, or (2) the earliest specified comment date for any license, conduit exemption, or small hydroelectric exemption application with which the subject license or conduit exemption application would compete; whichever occurs first.

A competing license application must conform with 18 CFR 4.33(a) and (d).

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a license, small hydroelectric exemption, or conduit exemption application, and be served on the applicant(s) named in this public notice.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules and Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Project Management Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. *Agency Comments*—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88-29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments with the Commission within the time set for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D2. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. *Agency Comments*—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in Section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coorination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. *Agency Comments*—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in Section 30 fo the Federal Power Act, t file within 45 days from the date of issuance of this notice appropriate terms and conditioins to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If any agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: March 8, 1985.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-6039 Filed 3-13-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF85-228-000, et al.]

Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications; etc.; Cogentrix of North Carolina, et al.

Comment date: Thirty days from the publication on the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

March 8, 1985.

Take notice that the following filings have been made with the Commission:

1. Cogentrix of North Carolina, Inc.

[Docket No. QF85-228-000]

On January 31, 1985, Cogentrix of North Carolina, Inc., (Applicant) of Two Parkway Plaza, Suite 290, Charlotte, North Carolina 28210, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No

determination has been made that the submittal constitutes a complete filing.

The 50 MW topping-cycle cogeneration facility will be located at Union Camp Corporation, 2051 N. Lane Avenue, Jacksonville, Florida. It will consist of three stoker-fired boilers and one extraction-condensing steam turbine generating unit. Extraction steam produced will be used both to supply feedwater heating and provide process steam for the Union Camp Corporation chemical manufacturing plant. The facility is scheduled to operate in June 1987. The primary energy source for the facility will be coal.

2. Corn Products

[Docket No. QF85-225-000]

On January 28, 1985, Corn Products, (Applicant) a Division of CPC International, Incorporated, International Plaza, Englewood Cliffs, New Jersey 07623, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 49.9 MW topping-cycle cogeneration facility is to be located in Stockton, California. The facility will consist of a circulating fluidized bed boiler and an extraction-condensing steam turbine generating unit. The primary energy source for the facility will be either coal or petroleum coke. Extraction steam produced from the facility will be used in existing plant processes. The facility is expected to begin in the summer of 1985.

3. The Greater Detroit Resource Recovery Authority

[Docket No. QF85-236-000]

On February 8, 1985, The Greater Detroit Resource Recovery Authority, (Applicant) of 1110 City-County Building, Two Woodward Avenue, Detroit, Michigan 48226, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 63 MW topping-cycle facility will be located at the northeast corner of the intersection of Russell Street and E. Ferry Avenue in Detroit. The primary energy source for the facility will be municipal solid waste. Extracted steam produced from the facility will be piped for sale to the Detroit Edison Company's heating system. Installation of the facility is scheduled to begin by the end of the first quarter, 1985.

4. The Greater Detroit Resource Recovery Authority

[Docket No. QF85-236-001]

On February 8, 1985, The Greater Detroit Resource Recovery Authority, (Applicant) of 1110 City-County Building, Two Woodward Avenue, Detroit, Michigan 48226, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 63 MW topping-cycle cogeneration facility will be located at the northeast corner of the intersection of Russell Street and E. Ferry Avenue in Detroit. The primary energy source for the facility will be municipal solid waste. Extracted steam produced from the facility will be piped for sale to the Detroit Edison Company's heating system. Installation of the facility is scheduled to begin by the end of the first quarter, 1985.

5. MARMAC

[Docket No. QF85-192-000]

On February 12, 1985, MARMAC, (Applicant) of 6415 Katella Avenue, Cypress, California 90630, submitted for filing an amendment to its original application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. Notice of the original application was previously published in the **Federal Register** on February 13, 1985. No determination has been made that the submittal constitutes a complete filing.

The amendment changes the total amount of electricity output of the small power production facility from 22.5 MW to 49.5 MW. All other aspects of the original application are to remain intact.

6. Time Energy Systems, Inc.

[Docket No. QF85-253-000]

On February 19, 1985, Time Energy Systems, Inc., (Applicant) of 2900 Wilcrest Drive, Houston, Texas 77042, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 5.6 MW small power production facility will be located at Crisstad Enterprises, Inc., Oregon State Highway 237, La Grande, Oregon. The primary energy source for the facility will be wood (Lo-BTU wood-gas produced by a wood gasification system). The facility is scheduled for start-up in the first quarter of 1986.

7. Zephyr Park Ltd.

[Docket No. QF85-252-000]

On February 19, 1985, Zephyr Park Ltd. (Applicant), of 18 Eastwood Court, Oakland, California 94611 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility is located on Tehachapi-Willow Springs Road, Tehachapi, California. The facility consists, in part, of wind turbine/generators with a current electric power production capacity of 2.6 MW. The planned capacity of the facility is approximately 7 MW. The primary energy source is wind. The facility is interconnected with Southern California Edison Company.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-6040 Filed 3-13-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ST79-36-003, et al.]

Houston Pipe Line Co., et al.; Extension Reports

March 8, 1985.

The companies listed below have filed extension reports pursuant to section 311 of the Natural Gas Policy Act of 1978 (NGPA) and Part 284 of the Commission's regulations giving notice of their intention to continue transportation and sales of natural gas

for an additional term of up to 2 years. These transactions commenced on a self-implementing basis without case-by-case Commission authorization. The sales may continue for an additional term if the Commission does not act to disapprove or modify the proposed extension during the 90 days preceding the effective date of the requested extension.

The table below lists the name and addresses of each company selling or transporting pursuant to Part 284; the party receiving the gas; the date that the extension report was filed; and the effective date of the extension. A letter "B" in the Part 284 column indicates a transportation by an interstate pipeline which is extended under § 284.105. A letter "C" indicates transportation by an intrastate pipeline extended under § 284.125. A "D" indicates a sale by an intrastate pipeline extended under § 284.146. A "G" indicates a transportation by an interstate pipeline pursuant to § 284.221 which is extended under § 284.105. The following symbols are used for transactions pursuant to a blanket certificate issued under § 284.222 of the Commission's Regulations: A "G(HT)", "G(HS)" or "G(HA)", respectively, indicates transportation, sale or assignments by a Hinshaw pipeline; a "G(LT)" indicates transportation by a local distribution company, and a "G(LS)" indicates sales or assignments by a local distribution company.

Any person desiring to be heard or to make any protests with reference to said extension report should on or before March 29, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants party to a proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,
Secretary.

Docket No.	Transporter seller	Recipient	Date filed	Part 284 subpart	Effective date
ST79-36-003 [1]	Houston Pipe Line Co., P.O. Box 1188, Houston, TX 77001	United Gas Pipe Line Co.	02-13-85	D	05-11-85
ST81-257-002 [1]	Northwest Pipeline Corp., P.O. Box 1526, Salt Lake City, UT 84110	Northern Natural Gas Co.	02-04-85	G	04-24-85
ST81-287-002	Natural Gas Pipeline Co. of America, P.O. Box 1208, Lombard, IL 60148	Entex, Inc.	02-06-85	B	05-10-85
ST81-293-002	Natural Gas Pipeline Co. of America, P.O. Box 1208, Lombard, IL 60148	United Gas Pipe Line Co.	02-15-85	G	05-18-85
ST83-343-001 [1]	Trunkline Gas Co., P.O. Box 1642, Houston, TX 77001	ANR Pipeline Co.	02-06-85	G	03-31-85
ST83-363-001 [1]	Rocky Mountain Natural Gas Co., Inc., 1600 Sherman St., Denver, CO 80203	Northwest Pipeline Corp.	02-01-85	C	04-06-85
ST83-389-001 [1]	ANR Pipeline Co., 500 Renaissance Center, Detroit, MI 48243	Producer's Gas Co.	02-07-85	B	05-05-85
ST83-435-001	Northern Natural Gas Co., 2223 Dodge St., Omaha, NE 68102	Westar Transmission Co.	02-06-85	B	05-20-85
ST83-440-001	Northern Natural Gas Co., 2223 Dodge St., Omaha, NE 68102	Western Gas Interstate Co.	02-06-85	G	05-16-85
ST83-441-001 [1]	Producer's Gas Co., 4925 Greenville Ave., Dallas, TX 75206	Southern Natural Gas Co.	02-01-85	C	06-01-85
ST83-449-001 [1]	Texas Eastern Transmission Corp., P.O. Box 2521, Houston, TX 77001	Brooklyn Union Gas Co.	02-05-85	B	05-05-85
ST83-462-001	Natural Gas Pipeline Co. of America, P.O. Box 1208, Lombard, IL 60148	Texas Eastern Transmission Corp.	02-15-85	G	05-20-85
ST83-466-001	Northern Natural Gas Pipeline Co., 2223 Dodge St., Omaha, NE 68102	Intratex Gas Co.	02-14-85	B	06-01-85
ST83-553-001	Northern Natural Gas Co., 2223 Dodge St., Omaha, NE 68102	El Paso Hydrocarbons Co.	02-14-85	B	06-24-85
ST83-560-001	Trunkline Gas Co., P.O. Box 1642, Houston, TX 77001	South Texas Gathering Co.	02-04-85	B	05-05-85
ST83-562-001	Columbia Gulf Transmission Co., P.O. Box 683, Houston, TX 77001	Producer's Gas Co.	02-14-85	B	06-22-85
ST83-759-001 [1]	Mississippi River Transmission Corp., 9900 Clayton Rd., St. Louis, MO 63124	KN Energy, Inc.	02-04-85	G	05-01-85
ST84-162-001 [1]	Delhi Gas Pipeline Corp., Co., 1700 Pacific Ave., Dallas, TX 75201	United Gas Pipe Line Co.	01-30-85	C	04-25-85

[1] These extension reports were filed after the date specified by the Commission's Regulation, and shall be the subject of a further Commission order.
Note: The noticing of these filings does not constitute a determination of whether the filings comply with the Commission's Regulations.

[FR Doc. 85-6115 Filed 3-13-85; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TA85-3-5-002]

Midwestern Gas Transmission Co.; Tariff Filing

March 8, 1985.

Take notice that on March 1, 1985, Midwestern Gas Transmission Company (Midwestern) filed the following sheets to its FERC Gas Tariff:

Original Volume No. 1

Ninth Revised Sheet No. 8
Substitute Original Sheet No. 169-B
Substitute First Revised Sheet No. 169-A
Substitute Fourteenth Revised Sheet No. 6

Midwestern requests effective dates of November 1, 1984 for Substitute Sheet Nos.169-A and 169-B and April 1, 1985 for Substitute Sheet No. 6 and Revised Sheet No. 8. Upon acceptance of these substitute sheets, Midwestern requests the Commission to withdraw Original Sheet No. 169-B, First Revised Sheet No. 169-A and Fourteenth Revised Sheet No. 6 filed in Docket Nos. RP85-102 and TA85-3-5-001.

Midwestern states that the purpose of this filing is (1) to reflect the reduced off-peak rates under the Amended TransCanada Contracts effective April 1, 1985 in Rate Schedules CR-2, CRL-2, SR-2 and I-2 (Midwestern's Other Customers) pursuant to section 2 of the Northern System PGA clause as revised in Midwestern's February 20, 1985 tariff filing in Docket Nos. TA85-3-5-000, TA85-3-5-001 and RP85-102-000, (2) to withdraw the transitional surcharge of 4.10 cents per Dkt reflected in Fourteenth Revised Sheet No. 8 proposed to be effective February 1, 1985, and (3) to amortize the Other Customers' share of the unrecovered Purchased Gas Cost Account as of October 31, 1984 and the accumulated balances for the period November 1984 through January 1985 through the regular Demand and Gas Surcharges for Amortizing the Unrecovered Purchased Gas Cost Account, which under the revised Northern System PGA clause in Midwestern's February 20th filing will be effective April 1 through October 31, 1985. Midewestern states that the current Purchased Gas Cost Adjustment reflected on Substitute Fourteenth Revised Sheet No. 6 consists of Unit Demand Rates Changes of $0.11 per Mcf for Rate Schedules CR-2 and CRL-2, 0.9 cents per Mcf for Rate Schedule SR-2, 0.36 cents per Mcf for Rate Schedule I-2

and a negative Unit Gas Rate Change of 42.60 cents per Dkt.

Midwestern states further that the Unit Rate Changes are based upon the demand and commodity gas rates under the Amended TransCanada Contracts effective April 1, 1985, and Midwestern's estimated sales billing units and system fuel requirements for the April-October 1985 PGA period.

Midwestern states that Substitute Sheet Nos. 169–A and 169–B revise section 3.5(b) and (c) of the Northern System PGA clause included in Midwestern's February 20th filing to recover the portion of the Northern System Unrecovered Purchased Gas Cost Account as of October 31, 1984 allocated to Midwestern's Other Customers and the accumulated balances in the Unrecovered Account for November, December and January through the Demand and Gas Surcharges for Amortizing the Unrecovered Purchased Gas Cost Account effective April 1, 1985. Substitute Fourteenth Revised Sheet No. 6 implements this change through a negative Demand Surcharge of $.31 per Mcf and a Gas Surchagre of 12.48 cents per Dkt.

Midwestern states that it is proposing to change the timing of the recovery of Unrecovered Purchased Gas Costs attributable to Midwestern's Other Customers because it has been advised that a number of its small customers cannot reflect in their rates in a timely manner the Transitional Surcharge that Midwestern proposed in its February 20th filing to make effective February 1, 1985. Midwestern notes that the revisions to section 3.5(c) of the Northern System PGA clause do not affect the amount of the recovery of Unrecovered Purchased Gas Costs from Midwestern's Other Customers.

In order to permit Substitute Sheet Nos. 169–A and 169–B to become effective November 1, 1985 as proposed, Midwestern respectfully requests waiver of §§ 1.2 and 1.3 of Article XVIII of the General Terms and Conditions, § 154.38(d)(4)(iv)(a) of the Commission's Regulations, and the 30-day notice provisions of § 154.22 of the Regulations. Although Midwestern believes that no other waivers are required to make this filing effective as proposed as long as the Commission allows the tariff sheets filed on February 20, 1985 to become effective as proposed, Midwestern respectfully requests that the Commission grant any waivers it deems necessary for acceptance of this filing.

Midwestern states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 15, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–6116 Filed 3–13–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP84–325–002]

Natural Gas Pipeline Co. of America; Second Amendment

March 8, 1985.

Take notice that on February 15, 1985, Natural Gas Pipeline Company of America (Applicant), 701 East 22nd Street, P.O. Box 1208, Lombard, Illinois 60148, filed in Docket No. CP84–325–002 a second amendment to its pending application filed on March 29, 1984, as substantially amended on May 16, 1984, in docket Nos. CP84–325–000 and CP84–325–001, respectively, pursuant to section 7 of the Natural Gas Act. Such second amendment application seeks authorization to construct and operate certain facilities and to provide transportation service as a competitive alternative to two other transportation systems proposed by other parties, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Applicant proposes to construct and operate:

(a) Approximately 146 miles of forty-two inch pipeline to be located from the terminus of Northern Border Pipeline Company's system near Ventura, Iowa, through Hancock, Cerro Gordo, Franklin, Hardin, Grundy, Marshall, Tama, Poweshiek, Iowa, and Keokuk Counties, Iowa, to Applicant's Amarillo Line at Compressor Station No. 109. Proposed capacity for this segment is 890,100 Mcf of gas per day.

(b) Approximately 52.5 miles of thirty-six inch pipeline looping of Applicant's Oklahoma extension in Beckham, Washita, and Kiowa Counties, Oklahoma; approximately 83.3 miles of forty-two inch pipeline looping of Applicant's Oklahoma extension in Kiowa, Caddo, Grandy, Stephens, and Carter Counties, Oklahoma; and 8,000 horsepower of additional compression and certain modifications of existing units at Applicant's compressor station No. 156 in Kiowa County, Oklahoma.

(c) Approximately 239 miles of forty-two inch pipeline to be located in Carter and Love Counties, Oklahoma, and Cooke, Grayson, Fanning Hunt, Delta, Hopkins, Franklin, Titus, Morris, and Cass Counties, Texas; and related compression (totaling 28,500 horsepower) at new compressor stations to be located in Carter County, Oklahoma, and Grayson County, Texas. Proposed capacity of this segment is 890,100 Mcf of gas per day. This segment is known as the Texas Crossover.

(d) Certain minor facilities consisting of taps and meters to be located on Applicant's Gulf Coast system in Jefferson and San Jacinto Counties, Texas, and Cameron Parish, Louisiana, as well as certain piping modifications (to permit reversal of gas flow) at Compressor stations on Applicant's system in Gage County, Nebraska, Ford County, Kansas, Kiowa, Dewey, and Woodward Counties, Oklahoma, Hutchinson, Gray, Harrison, Angelina, Montgomery, and Liberty Counties, Texas, and Cameron Parish, Louisiana.

Applicant states that all of the facilities above are to be known as the MIDCONtinental Transportation System.

Applicant states that the estimated cost of the proposed pipeline and compressor facilities to be constructed over a two-year period, including $3.6 million in non-jurisdictional facilities, is $506.3 million, which cost would initially be financed with funds on hand, borrowings under Applicant's revolving credit arrangements or short-term financing.

Applicant proposes to transport the following volumes of gas by means of a two-year build-up:

Shippers	Nov. 1, 1987	Nov. 1, 1988
Tennessee	244,500	407,500
Boundary (Phase II)	31,500	52,500
Texas Eastern	90,663	151,105
Algonquin	30,587	50,979
Transco	150,493	253,822
Sub-total	547,743	912,906
Less Northern Border Fuel @ 2.5 percent	(13,693)	(22,823)
Total	534,050	890,083

Such system, and the transportation service performed thereby, is said by Applicant to be competitive with, and

alternative to the proposed Can-Am Pipeline Project, formerly known as the U.S. Route, which has been described in the applications of Ohio Interstate Pipeline Company Docket No. CP84–318–000, March 26, 1984, ANR Pipeline Company, Docket No. CP84–363–000, April 24, 1984, and Northern Border Pipeline Company, Docket No. CP84–407–000, May 11, 1984.

Applicant also states that its proposal is a competitive alternative to a project involving U.S. facilities described in the applications of Niagara Interstate Pipeline System, Docket No. CP83–170–001, March 23, 1983, and Great Lakes Gas transmission Company, Docket No. CP84–540–001, October 12, 1984. Applicant maintains that its proposal would be less costly and would make better use of existing pipeline systems.

By virtue of the Commission orders of July 5, 1983 (24 FERC ¶ 61,003), and October 2, 1984 (29 FERC ¶ 61,008) this amended application is consolidated in ongoing hearing proceedings in Docket No. CP81–107, *et al.*

Any person desiring to be heard or to make any protest with reference to said amendment should on or before March 29, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. All persons who are parties to the proceeding in Docket No. CP81–107, *et al.*, need not file again.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–6117 Filed 3–13–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP85–245–000]

Texas Gas Transmission Corp.; Request Under Blanket Authorization

March 8, 1985.

Take notice that on January 24, 1985, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP85–245–000, as supplemented on February 12, 1985, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for an eligible end-user under the certificate issued in Docket No. CP82–407–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Gas proposed to transport up to 7.5 billion Btu's of natural gas per day on an interruptible basis on behalf of Memphis Light, Gas and Water Division (Memphis), as Agent for E. I. du Pont de Nemours and Company (DuPont), pursuant to a gas transportation agreement dated December 11, 1984.

Texas Gas states this transportation service commenced on December 14, 1984, pursuant to the automatic provisions of § 157.209(a)(2) of the Commission's Regulations. Texas Gas states that the volumes of gas are being purchased from Cal Gas Corporation and transported from the tailgate of the Beacon gasoline plant located in Webster Parish, Louisiana, and redelivered to Memphis, as agent for DuPont, at the existing Germantown sales station located in Shelby County, Tennessee, for redelivery to the DuPont plant in Memphis, Tennessee, by Memphis. Texas Gas states that DuPont has advised that there is an intermediary fee of 3.0 cents per million Btu that would be charged by U.S. Natural Gas Clearinghouse and that Texas Gas would charge Memphis its Rate Schedule TSC–1 for Rate Schedule G sales customers plus the GRI funding unit of 1.25 cents per million Btu.

It is explained that the term of the transportation agreement for this service may be extended from June 30, 1985, to October 31, 1985, provided such transportation service is authorized by Commission Regulations. Texas Gas indicates the end use of the gas is for feedstock, process heat, and boiler fuel.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–6118 Filed 3–13–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA85–2–52–000; TA85–2–52–001; RP84–77–002]

Western Gas Interstate Co.; Proposed Out-of-Period PGA Rate Adjustment

March 8, 1985.

Take notice that on March 1, 1985, Western Gas Interstate Company ("Western") submitted for filing Fourth Revised Sheet No. 3A, Second Revised Sheet No. 3B, and First Revised Sheet No. 24 to its FERC Gas Tariff, Alternate Revised Volume No. 1. Said tariff sheets are proposed to become effective on February 1, 1985.

Western states the proposed change in rates reflected on Fourth Revised Sheet No. 3A is being filed in accordance with its Tariff's PGA clause which permits the recovery of increases in the cost of gas and of unrecovered purchased gas costs. Western further states Fourth Revised Sheet No. 3A provides for: (1) A decrease in Western's total rate under its Rate Schedule G–N from $3.5187 to $3.4570; (2) an increase in Western's total rate under its Rate Schedule G–S from $3.6706 to $3.9848; and (3) no change in Western's total rate under its Rate Schedule G–R. These changes are based on Western's cost of purchased gas from August 1, 1984 through December 31, 1984. The decrease in the total rate under Western's Rate Schedule G–N results from a combination of factors including lower gas costs due to gas supply contract renegotiations. The increase in the Rate Schedule G–S rate results from the effect of underrecoveries of purchased gas costs, all as more fully described in Western's filing which is on file with the Commission and open to public inspection.

Western also states that First Revised Sheet No. 24 would change Western's semi-annual purchased gas adjustment dates from May 1 and November 1 to February 1 and August 1 in an effort to be more responsive to the needs of its irrigation customers.

Western states that copies of this filing were served upon Western's transmission system customers and the interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal

Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20428, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before March 15, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-6119 Filed 3-13-85; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-53069; FRL-2772-3]

Premanufacture Notices; Monthly Status Report for December 1984

Correction

In FR Doc. 85-2953 beginning on page 5125 in the issue of Wednesday, February 6, 1985, make the following corrections:

1. On page 5126, in Table 1, in entry 85-297, in the second column, "di isocyanate" should read "diisocyanate"; in entry 85-324, in the second column, "heteromonocyclic" should read "heteromonocyclic phenol".

2. On page 5127, in Table II, in entry 85-104, in the second column, "ether" should read "alkenyl ether"; in entry 85-105, in the second column "alkenyl ether" should read "ether"; in entry 85-151, in the second column, "Fluoranthennediamine-" should read "Fluoranthenediamine-"

3. On page 5128, in Table II, in entry 85-193, in the second column, "-methoxybenzeensulfonate" should read "-methoxybenensulfonate"

4. On page 5128, in Table III, in entry 84-341, in the second column, in the first line, "-demethyl-" should read "-dimethyl-".

5. On page 5129, in Table III, in entry 85-7, in the second column, "Spiro[sobenzofuran" should read "Spiro[isobenzofuran".

6. On page 5130, in Table IV, in entry 84-179, in the second column, in the first line, "-penyl-" should read "-phenyl-"

7. On page 5131, in Table V, in entry 84-901, in the second column, "Bis(tetrabromobispheno" should read "Bis(tetrabromobisphenol".

BILLING CODE 1505-01-M

[OPTS-53068; FRL-2769-4]

Premanufacture Notices; Monthly Status Report for November 1984

Correction

In FR Doc. 85-2563 beginning on page 4898 in the issue of Monday, February 4, 1985, make the following corrections:

1. On page 4899, in the table, in entry 85-112, in the second column, "anhydride" should read "anhydride copolymer"; in entry 85-115, in the second column, "polyisocyanate" should read "polyisocyanate adduct"; in entry 85-122, in the second column, "sale" should read "salt"; in entry 85-148, in the last column, "Feb. 1985." should read "Feb. 13, 1985.".

2. On page 4902, in Table III., in entry 84-1107, in the second column, "Cooper" should read "Copper".

3. On page 4903, in Table IV, in entry 83-728, in the last column, "Oct. 1984." should read "Oct. 30, 1984."; in entry 84-336, in the second column, "methly" should read "methyl"; in entry 84-387, in the second column, "benzly" should read "benzyl"; in entry 84-420, in the second column, in the first line, "-1h/pyrazol-" should read "-1H-pyrazol-"; in the second line "acid-triplotassium" should read "acid-tripotassium"; in entry 84-580, in the second column, "Isoproply" should read "Isopropyl"; in entry 84-843, in the third column, "FR 2576" should read "FR 25676".

4. On page 4904, in Table IV, in entry 84-1033, in the third column, "(32113)" should read "(32112)"; in entry 84-1069, in the second column, "either" should read "ether".

5. Also on page 4904, in Table V, the entry now reading "84-655" should read "84-665"; in entry 84-738, in the second column, "Clycol" should read "Glycol".

6. On page 4905, in Table V, in entry 84-881, in the second column, "ploymer" should read "polymer".

BILLING CODE 1505-01-M

[OPP-50630; RL-2788-6]

Issuance of Experimental Use Permits; American Hoechst Corp., et al.

Correction

In FR Doc. 85-5133 beginning on page 9124 in the issue of Wednesday, March 6, 1985, make the following corrections:

1. On page 9124, in the third column, in paragraph "52300-EUP-1", in the sixth line, "2−10^{11}, should read "2×10^{11}.

2. On page 9125, in the first column, in the authority, in the first line, "95-369" should read "95-396".

BILLING CODE 1505-01-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

February 21, 1985

On January 17, 1985, the Federal Communications Commission published a Notice of Proposed Rulemaking in the **Federal Register** (50 FR 2596) which proposed to revise a collection of information requirement in the Commission's rules. The Commission has submitted the collection of information requirement contained in the proposed rule to OMB for review under Section 3504(h) of the Paperwork Reduction Act of 1980, P.L. 96-511.

Copies of the submission are available from Terry Johnson, Agency Clearance Officer, (202) 634-1535. Persons wishing to comment on this proposed information collection should contact David Reed, Office of Management and Budget, Room 3235 NEOB, Washington, D.C. 20503, (202) 395-7231.

Title of Rulemaking: MM Docket No. 85-5, Amendment of Part 73 of the Commission's Rules concerning the filing of network affiliation and transcription contracts

Title of Information Collection: Section 73.3613, Filing of Contracts

OMB Number: 3060-0185

Action: Revision

Respondents: Licensees of commercial or noncommercial AM, FM, TV, or International broadcast stations

Estimated Annual Burden: 16,603 Responses; 8,752 Hours

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85-6050 Filed 3-13-85; 8:45 am]

BILLING CODE 6712-01-M

Circle L, Inc. et al.; Hearing Designation Order

In re Applications of:

Circle L, Inc	MM Docket No. 85-50; File No. BRCT-830531KP.
For renewal of license of Station KCRL-TV, Reno, Nevada.	

Washoe Broadcasting Co..... File No. BPCT-830901KM.

For construction permit, Reno, Nevada.

Adopted: February 21, 1985.
Released: March 12, 1985.

By the Chief, Video Services Division.

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned application for renewal of the license of Station KCRL–TV, Channel 4, Reno, Nevada, filed by Circle L, Inc.; the mutually exclusive application of Washoe Broadcasting Company (Washoe) for a construction permit for a new television station to operate on Channel 4 in Reno; a Motion to Dismiss the Washoe application, filed by Circle L; and related pleadings.

2. On March 12, 1984, Circle L filed a motion to dismiss Washoe's application on the grounds that, at the time the Washoe application was filed, it was patently not in accordance with Section 73.636 (now Section 73.3555(a)(1)) of the Commission's Rules, relating to multiple ownership. The motion is based on the fact that, at the time the TV application was filed, Washoe's principals had an application pending for a new FM radio station in Carson City, Nevada, and Carson City would be within the predicted City Grade contour of the proposed television station. Thus, Circle L argues, the Washoe TV application should not have been accepted for filing because it was in clear violation of the so-called "one-to-a-market" rule. On September 26, 1984, however, less than a month after Washoe filed its TV application and more than five months before Circle L filed its motion to dismiss, Washoe voluntarily dismissed its Carson City FM application. In similar situations, where the same applicant has co-pending applications which conflict with the rules so that only one of them can be granted consistent with the multiple ownership rules, the Commission has allowed the applicant to elect which one of the conflicting applications it wished to prosecute, making it clear that both could not be prosecuted simultaneously. See *RKO General, Inc. (WHBQ–TV)*, Memorandum Opinion and Order, released November 23, 1984, FCC 84–535. Had Washoe chosen to prosecute both applications, Commission policy would have compelled an election and, having made an election, the applicant would have been free to prosecute the surviving application. Here, Washoe made its election by dismissing the Carson City FM application and, in harmony with the Commission's policy, is free to prosecute the TV application. Accordingly, Circle L's motion to dismiss will be dismissed as moot.

3. No determination has been reached that the tower height and location proposed by Washoe would not constitute a hazard to air navigation. Accordingly, an issue regarding this matter will be specified.[1]

4. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since these applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant would serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issue specified below.

5. Accordingly, it is ordered, that pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether there is a reasonable possibility that the tower height and location proposed by Washoe Broadcasting Company would constitute a hazard to air navigation.

2. To determine which of the proposals would, on a comparative basis, better serve the public interest.

3. To determine, in light of the evidenced adduced pursuant to the foregoing issues, which of the applications should be granted.

6. It is further ordered, that the Federal Aviation Administration is made a party respondent to this proceeding with respect to issue 1.

7. It is further ordered, that the Motion to Dismiss filed by Circle L, Inc. IS DISMISSED as moot.

8. It is further ordered, that to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issue specified in this Order.

9. It is further ordered, that the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 85–6049 Filed 3–13–85; 8:45 am]

BILLING CODE 6712-01-M

[1] We are not in receipt of the Federal Aviation Administration's determination for Washoe.

Florida Coast Communications Co., et al.; Hearing Designation Order

In re Applications of:

Florida Coast Communications Co.	MM Docket No. 85–57; File No. BPCT–840830KK.
Ralph W. Gabbard.....	File No BPCT–841031KH.
Qualivision of Lee County, Inc.	File No. BPCT–841031KK.
Tice Television Co.....	File No. BPCT–841031KL.
Florida Telecasting, Inc.....	File No. BPCT–841031KN.
Reginald L. Duff.....	File No. BPCT–841031KO.

For construction permit, Tice, Florida.

Adopted: February 25, 1985.
Released: March 8, 1985.

By the Chief, Video Services Division.

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications for a new commercial television station to operate on Channel 49, Tice, Florida; and a motion for leave to amend and an accompanying amendment filed by Tice Television Company.[1]

2. The effective radiated visual power, antenna height above average terrain and other technical data submitted by the applicants indicate that there would be a significant difference in the size of the area and population that each proposes to serve. Consequently, the areas and populations which would be within the predicted 64 dBu (Grade B)

[1] The deadline for filing amendments to the above-captioned applications was December 19, 1984. Tice Television Company filed a motion for leave to amend and an amendment to its application on January 31, 1985. The amendment establishes Tice Television's financial qualifications. The motion and the amendment have been reviewed and good cause exists for accepting the amendment. Therefore, the motion will be granted and the amendment accepted for filing. On February 11, 1985, Florida Telecasting, Inc. (FTI) filed comments on Tice Television's petition for leave to amend. FTI states that Tice Television should be required to provide complete information concerning any changes in its ownership structure that may occur as a result of its financial arrangements. We agree with FTI that any such changes must be reported to the Commission pursuant to Section 1.65 of the Rules.

contour, together with the availability of other television service of Grade B or greater intensity, will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to any of the applicants.

3. No determination has been reached that the tower height and location proposed by each of the applicants would not constitute a hazard to air navigation. Accordingly, an issue regarding this matter will be specified.[2]

4. The overall height above ground (OHAG) of the tower specified by Reginald L. Duff in Section V–C, item 6, FCC Form 301, does not agree with the OHAG specified in Section V–G, item 5. Mr. Duff will be required to submit an amendment to his application to provide the correct OHAG of his tower, to the presiding Administrative Law Judge, within 20 days after this Order is released.

5. Section 73.3580 of the Commission's Rules requires that applicants for construction permits for new broadcast stations give local notice of the filing of their applications in a daily newspaper of general circulation in the community which the station is to serve. Completion of the publication may occur within 30 days before or after tendering of the application for filing. Compliance or intent to comply with the public notice requirement must be certified in Section VII, FCC Form 301. Mr. Duff has not completed Section VII. Therefore, Mr. Duff will be required to submit his response to Section VII, to the presiding Administrative Law Judge, within 20 days after this Order is released.

6. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since the applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant will serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

7. Accordingly, it is ordered, that pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine, with respect to each of the applicants, whether the tower height and location proposed by each would constitute a hazard to air navigation.

2. To determine which of the proposals would, on a comparative basis, best serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

8. It is further ordered, that the Federal Aviation Administration is made a party respondent with respect to issue 1.

9. It is further ordered, that Tice Television Company's January 31, 1985, motion for leave to amend is granted and the accompanying amendment is accepted for filing.

10. It is further ordered, that Reginald L. Duff shall submit an amendment which provides the correct overall height above ground of his tower, to the presiding Administrative Law Judge, within 20 days after this Order is released.

11. It is further ordered, that Reginald L. Duff shall amend his application to include a response to Section VII, FCC Form 301, to the presiding Administrative Law Judge within 20 days after this Order is released.

12. It is further ordered, that to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

13. It is further ordered, that the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 85–6048 Filed 3–13–85; 8:45 am]

BILLING CODE 6712–01–M

[2] We have not received a copy of the Federal Aviation Administration's determination for Florida Coast Communications.

Mobile Communications, Inc., and Gulf Coast Electronics, Inc.; Order Designating Applications for Hearing

In re applications of:

Mobile Communications, Inc.	CC Docket No. 85–59, file No. 24551–CD–P–1–82.
For construction permits to add new locations to operate on frequency 454.025 MHz for Station KUC926 in the Public Land Mobile Service at Wallisville, and Vidor, Texas	File No. 20609–CD–P–1–83.
Gulf Coast Electronics, Inc.	
For a construction permit for an additional location for Station WXS216 to operate on frequency 454.025 in the public Land Mobile Service at Mauriceville, Texas.	File No. 24752–CD–P–1–82.

Adopted February 27, 1985.

Released March 12, 1985.

By the Common Carrier Bureau.

1. On August 20, 1982, Mobile Communications, Inc. (Mobile) filed an application for a new location in Wallisville, Texas (File No. 24551–CD–P–1–82). The application was accepted for filing by Public Notice of September 8, 1982. On September 21, 1982, Gulf Coast Electronics, Inc. (Gulf Coast) filed the captioned mutually exclusively application. This application was accepted for filing in the Public Notice of October 6, 1982. Mobile, the original applicant in the market, filed another application (File No. 20609–CD–P–1–83) on November 24, 1982, for an additional location to operate on frequency 454.025 MHz in Vidor, Texas. Since Gulf Coast's application is for an additional facility, these applications are not subject to lottery selection. *Random Selection Lotteries*, Gen. Docket No. 81–768, 93 FCC 2d 952 (1983), recon. granted in part, FCC 84–596, released December 4, 1984.

2. After careful examination of the applications and the informal objections and responses filed, we find the first Mobile application (File No. 24551–CD–P–1–82) and the application filed by Gulf Coast were timely filed and that both applicants are legally, technically, and otherwise qualified to construction and operate the proposed facilities. Further, we find that these applications are electrically mutually exclusive and should be designated for comparative hearing to determine which applicant would better serve the public interest. We also find that the second application filed by Mobile for a station in Vidor, Texas (File No. 20609–CD–P–1–83) was filed more than 60 days after Public Notice of its original application and thus was not timely under section 22.31 of the Commission's rules. See *Berks*

County Communications, Inc., Mimeo No. 4435, released June 8, 1982.[1]

3. Accordingly, IT IS ORDERED, pursuant to Section 22.31 of the Commission's rules, that the second application filed by Mobile Communications, Inc., File No. 20609–CD–P–1–83, is DISMISSED as unacceptable for filing.

4. Further, IT IS ORDERED, pursuant to Section 309 of the Communications Act of 1934, as amended, that the application of Mobile Communications, Inc., File No. 24551–CD–P–1–82, and the application of Gulf Coast Electronics, Inc., File No. 24752–CD–P–1–82, to operate on frequency 454.025 MHz are designated for hearing in a consolidated proceeding upon the following issues:

(a) To determine on a comparative basis, the nature and extent of service proposed by each applicant, including the rates, charges, maintenance, personnel, practices, classifications, regulations, and facilities pertaining thereto;

(b) To determine on a comparative basis, the areas and populations that each applicant will serve within the prospective interference-free area within the 39 dBu contours,[2] based upon the standards set forth in § 22.504(a) of the Commission's Rules,[3] and to determine and compare the relative demand for the proposed services in said areas; and

(c) To determine, in light of the evidence adduced pursuant to the foregoing issues, what disposition of the reference applications would best serve the public interest, convenience, and necessity.

5. It is further ordered, that the hearing shall be held at a time and place and before an Administrative Law Judge to be specified in a subsequent Order.

6. It is further ordered, that the Chief, Common Carrier Bureau, is made a party to the proceeding.

7. It is further ordered, that the applicants may avail themselves of an opportunity to be heard by filing with the Commission pursuant to § 1.221 of the rules within 20 days of the release date hereof, a written notice stating an intention to appear on that date for a hearing and present evidence in the issues specified in the Memorandum Opinion and Order.

8. This order is issued under § 0.291 of the Commission's Rules and is effective upon its release date. Petitions for reconsideration will be entertained. See § 1.106(a)(1) of the rules. Applications for review will be entertained pursuant to § 1.115(e)(3). See also § 1.4(b)(2).

9. The Secretary shall cause a copy of this order to be published in the Federal Register.

Federal Communications Commission.

Michael Deuel Sullivan,

Chief, Mobile Services Division, Common Carrier Bureau.

[FR Doc. 85–6046 Filed 3–13–85; 8:45 am]

BILLING CODE 6712–01–M

Puget Television, et al.; Hearing Designation Order

In re Applications of:

Jacque Hodges, et al., d/b/a Puget Television.	MM Docket No. 85–58; File No. BPCT–840822KE.
Duane Tomko, a partnership.	File No. BPCT–840807KE.
Seattle Channel 45 Broadcasting, Inc..	File No. BPCT–840809KG.
Allen E. Hom.....	File No. BPCT–840809KL.

For Construction Permit for New Television Station, Seattle, Washington.

Adopted: February 26, 1985.

Released: March 12, 1985.

By the Chief, Video Services Division.

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications for authority to construct a new commercial television station on Channel 45, Seattle, Washington.[1]

2. The effective radiated visual power, antenna height above average terrain and other technical data submitted by the applicants indicate that there would be a significant difference in the size of the area and population that each proposes to serve. Consequently, the areas and populations which would be within the predicted 64 dBu (Grade B) contour, together with the availability of other television service of Grade B or greater intensity, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

3. No determination has been reached that the tower heights and locations proposed by Duane Tomko and Seattle Channel 45 would not each constitute a hazard to air navigation. Accordingly, an issue regarding this matter will be specified.

4. In Section I, Item 1, FCC Form 301, Duane Tomko indicates that the applicant is a general partnership, but in Section II, Item 5(a), he refers to limited partners. Consequently, it is unclear whether the applicant is a general partnership or a limited partnership. The application further shows that Mr. Tomko has a 51% interest in the partnership and unidentified limited partners will have the remaining 49%, but the application does not identify any other partners, limited or otherwise. Section 73.3514(a) of the Commission's Rules requires an applicant to provide all information called for by FCC forms, unless the information is inapplicable. Consequently, the required information must be furnished. If the applicant is a limited partnership, however, the attribution principles articulated in *Attribution of Ownership Interests)* 55 RR 2d 1465 (1984), (rconsideration pending) apply. In that document, the Commission stated that henceforth limited partnership interests were not attributable for the purposes of the multiple ownership rules, if the applicant certifies that the limited partnership agreement conforms in all relevant respects to the Uniform Limited Partnership Act (ULPA) and "if the limited partner is not involved in any material respect in the business or operation of the station." *Id.* at 1485 and § 73.3515(a)(2). Further, the Commission directed that Form 301, among others, be amended to conform to the new attribution standards. *Id.* at 1493. Although changes in the form have not yet been made, there may be no need to provide information as to the limited partners if Tomko can submit the necessary certification. If the certification is not appropriate, of course, the limited partners would be considered to have attributable interests, and the necessary information as to them would have to be filed as an amendment. Further, the Commission

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[1] On March 15, 1983, Gulf Coast filed an informal request that the Commission dismiss or defer action on Mobile's second application (File No. 20609–CD–P–83) pending the negotiation of a compromise between the applicants. Mobile responded on April 5, 1983, that there was no basis for dismissal of its application and that Gulf Coast's informal objections should have been presented earlier. We find no need to address these arguments in light of our disposition of this application.

[2] For the purpose of this proceeding, the interference-free area is defined as the area within the 39 dBu contour as calculated from Section 22.504, in which the ratio of desired-to-undesired signal is equal to or greater than R in FCC Report No. R–6404, equation 8.

[3] Section 22.504(a) of the Commission's Rules and Regulations describes a field strength contour of 39 decibels above one microvolt per meter as the limits of the reliable service area for base stations engaged in two-way communications service on frequencies in the 450 MHz band. Propagation data set forth in § 22.504(b) are the proper bases for establishing the location of service contours F(50,50) for the facilities involved in this proceeding. (The applicants should consult with the Bureau counsel with the goal of reaching joint technical exhibits.)

[1] On October 16, 1984, after the "B" cut-off date, Seattle Channel 45 Broadcasting, Inc., filed an amendment to its application. The amendment contained updated ownership information required by Section 1.65 of the Rules. The amendment will be accepted for 1.65 purposes only.

retained the cross-interest policy as to other attributable media interests in the same area. *Id.* at 1490. Accordingly, Mr. Tomko will be required either to state that the limited partners have no other media interests subject to the cross-interest policy or identify the limited partners with such interests, identify the other local media and state the nature and extent of the limited partners' interests. If the applicant is a general partnership, the applicant must furnish all required information on each partner.

5. Seattle Channel 45 and Allen E. Hom each proposes to operate from a site located within 250 miles of the Canadian border with maximum visual effective radiated power (ERP) of more than 1000 kilowatts. The proposals pose no interference threat to United States television stations; however, they contravene an agreement between the United States and Canada which limits the maximum visual ERP of United States television stations located within 250 miles of Canada to 1000 kilowatts. *Agreement Effectuated by Exchange of Notes,* T.I.A.S. 2594 (1952). In the event of a grant of either of these applications, the construction permit shall contain a condition precluding station operation with maximum visual ERP in excess of 1000 kilowatts, absent Canadian consent. *South Bend Tribune,* 8 RR 2d 416 (1966).

6. The proposed antenna for Seattle Channel 45 is to be mounted on the tower of AM Radio Station KMPS, Seattle, Washington. Consequently, any grant of a construction permit to Seattle Channel 45 will be conditioned to ensure that KMPS's radiation pattern is not adversely affected by the construction of the proposed station.

7. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since the applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant will serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

8. Accordingly, it is ordered, that pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine with respect to Duane Tomko and Seattle Channel 45 Broadcasting, Inc., whether the tower height and location proposed by each would constitute a hazard to air navigation.

2. To determine which of the proposals would, on a comparative basis, best serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

9. It is further ordered, that, in the event of a grant of the application of Seattle Channel 45 Broadcasting, Inc., the construction permit shall be conditioned as follows:

Prior to construction of the tower authorized herein, permittee shall notify AM Station KMPS, Seattle, Washington, so that, if necessary, the AM station may determine operating power by the indirect method and request temporary authority from the Commission in Washington, D.C. to operate with parameters at variance in order to maintain monitoring point field strengths within authorized limits. Permittee shall be responsible for the installation and continued maintenance of detuning apparatus necessary to prevent adverse effects upon the radiation pattern of the AM station. Both prior to construction of the tower and subsequent to the installation of all appurtenances thereon, a partial proof of performance, as defined by Section 73.154(a) of the Commission's Rules, shall be conducted to establish that the AM array has not been adversely affected and, prior to or simultaneous with the filing of the application for license to cover this permit, the results submitted to the Commission.

10. It is further ordered, that in the event of a grant of the application of Seattle Channel 45 Broadcasting, Inc. or Allen E. Hom, the construction permit shall be conditioned as follows:

Subject to the condition that operations with effective radiated visual power in excess of 1000 kW is subject to the consent of Canada.

11. It is further ordered, that Duane Tomko shall submit the information and documents required by Paragraph 5, *supra,* regarding the nature and composition of the applicant partnership, to the presiding Administrative Law Judge within 20 days after this Order is released.

12. It is further ordered, that the Federal Aviation Administration is made a party respondent to this proceeding with respect to issue 1.

13. It is further ordered, that to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

14. It is further ordered, that the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division; Mass Media Bureau.

[FR Doc. 85-6047 Filed 3-13-85; 8:45 am]

BILLING CODE 6712-01-M

Tequesta Broadcasting Corp.; et al.; Hearing

In re Applications of:

Tequesta Broadcasting Corp.	MM Docket No. 85-60, file No. BPCT-840920KI.
Southern Florida Broadcasting Company.	File No. BPCT-840927KF
Tequesta Television, Inc	File No. BPCT-841129KE
William H. Dilday, Jr. and Ruth Sperling, et al d/b/a Tequesta Television Partners Limited Partnership.	File No. BPCT-841129KI
Triple J. Properties, Inc	File No. BPCT-841129KL
Tequesta Coastal Broadcasting Limited.	File No. BPCT-841129KO
Zephyr Broadcasting Corporation.	File No. BPCT-841129KP
Old Salt Broadcasting Company, Inc.	File No. BPCT-841129KQ
Martin Telecommunications, Inc.	File No. BPCT-841129KR
G and I Ltd	File No. BPCT-841129KS
Sprit Broadcasting Corporation.	File No. BPCT-841129KT
Rodriguez-Barnett and Associates, Ltd.	File No. BPCT-841129KU

For Construction Permit Tequesta, Florida.

Adopted: February 28, 1985.

Released: March 12, 1985.

By the Chief, Video Services Division.

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive aplications for a new commercial television station to operate on Channel 25, Tequesta, Florida, and a late-filed amendment submitted by Rodriguez-Barnett and Associates, Ltd. (Rodriguez-Barnett).[1]

[1] Rodriguez-Barnett filed and amendment to its application on January 16, 1985, the "B" cut-off date, but the amendment did not contain an original signature. On January 17, 1985, the applicant filed an amendment, which was not accompanied by a motion for leave to amend, correcting the omission.

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2. The effective radiated visual power, height above average terrain and other technical data submitted by the applicants indicate that there would be a significant difference in the size of the area and population that each proposes to serve. Consequently, the areas and populations which would be within the predicted 64 dBu (Grade B) contour, together with the availability of other television service of Grade B or greater intensity, will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accure to any of the applicants.

3. No determination has been reached that the tower height and location proposed by Southern Florida Broadcasting Company (SFBC), Tequesta Television Partners Limited Partnership, Old Salt Broadcasting (Old Salt), and Rodriguez-Barnett, each would not constitute a hazard to air navigation. Accordingly, an issue regarding this matter will be specified.[2]

4. Section 73.685(f) of the Commission's Rules requires an applicant proposing to use a directional antenna to include a tabulation of relative field pattern, oriented so that 0 degrees corresponds to True North and tabulated at least every 10 degrees plus any minima or maxima. Old Salt has not supplied this data. Rodriguez-Barnett has provided that tabulation but it was not tabulated in accordance with § 73.685(f). Accordingly, the applicants will each be required to submit an amendment with the appropriate information, to the presiding Administrative Law Judge and copies to the Chief, Television Branch and Chief, Hearing Branch, Mass Media Bureau, within 20 days after this Order is released.

5. Section II, item 10, FCC Form 301, inquires whether documents, instruments, agreements or understandings for the pledge of stock of a corporate applicant, as security for loans or contractual performance, provide that (a) voting rights will remain with the applicant, even in the event of default on the obligation; (b) in the event of default, there will be either a private or public sale of the stock; and (c) prior to the exercise of stockholder rights by the purchaser at such sale, the prior consent of the Commission (pursuant to 47 U.S.C. 310(d)) will be obtained. Triple J. Properties, Inc. (Triple J) did not answer item 10. Accordingly, Triple J. will be given 20 days from the release date of this Order to submit an amendment with its response to item 10, to the presiding Administrative Law Judge.

6. Rodriguez-Barnett is a limited partnership. The general partners have been identified; however, the applicant indicates that the limited partners are to be admitted later. Section 73.3514(a) of the Commission's Rules requires an applicant to provide all information called for by FCC forms, unless the information is inapplicable. However, in *Attribution of Ownership Interests*, 97 FCC 2d 997 [1984], the Commission stated that henceforth limited partnership interests were not attributable for the purpose of the multiple ownership rules, if the applicant certifies that the limited partnership agreement conforms in all relevant respects to the Uniform Limited Partnership Act (ULPA) and shows that the limited partners will "not be involved in any material respect in the management or operation of" the proposed station. *Id.* at 1485. Further, the Commission directed that Form 301, among others, be amended to conform to the new attribution standards. *Id.* at 1493. Although changes in the form have not yet been made, there is now no need to provide information as to the limited partners if Rodriguez-Barnett can sumit the necessary certification and showing. If the certification or showing is not appropriate, of course, the limited partners would be considered to have attributable interests, and the necessary information as to them would have to be filed as an amendment. Further, the Commission retained the cross-interest policy as to other attributable media interest in the same area. *Id.* at 1490. Accordingly, Rodriguez-Barnett, upon determining its limited partners, will be required either to state that its limited partners have or will have no other media interests subject to the cross-interest policy or identify the limited partners with such interest, identify the other local media and state the nature or extent of the ownership interest.

7. G and I Ltd. (G & I) is also a limited partnership. G & I has certified that its limited partnership agreement conforms to the ULPA and that its limited partners will "not be involved in any material respect in management or operation" of the proposed station. Therefore, we can determine that the limited partners have no attributable interests for the purposes of our multiple ownership rules. However, G & I has not stated that its limited partners have no other media interests subject to the Commission's cross interest policy. See paragraph 6, *supra*. Therefore, G & I will be required to submit an amendment which states that its limited partners do not have any other media interests subject to the cross-interest policy or identify the partners with such interest, identify the other local media and state the nature or extent of the ownership interest.

8. Section 73.1125 of the Commission Rules requires that the main studio of a television station be located within the city of license, but that, upon a showing of good cause, the Commission may allow the main studio to be located outside the community. Rodriguez-Barnett has indicated that it proposes to locate its main studio outside of Tequesta. However, it has not demonstrated that such operation would be consonant with the public interest. Accordingly, an issue will be specified to determine if good cause exists for locating the studio outside the city of license and whether to do so would be consistent with the public interest.

9. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since the applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant will serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

10. Accordingly, it is ordered, that pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine with respect to those applicants in paragraph 3, *supra*, whether there is a reasonable possibility that the tower height and location proposed by each would constitute a hazard to air navigation.

2. To detemine with respect to Rodriguez-Barnett and Associates, Ltd., whether good cause exists for locating its main studio outrside the city of license and whether to do so would be consistent with the public interest.

3. To determine which of the proposals would, on a comparative basis, best serve the public interest.

4. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

Since all of the parties had timely notice of the contents of the amendment, none were prejudiced and we believe that the equities favor accepting the amendment.

[2] The Commission has not received a copy of the Federal Aviation Administration's (FAA) study for SFBC. Old Salt must notify FAA of its proposed construction.

11. It is further ordered, that the Federal Aviation Administration is made a party respondent to this proceeding with respect to issue 1.

12. It is further ordered, that the amendment of January 17, 1985, filed by Rodriguez-Barnett and Associates, Ltd. IS ACCEPTED.

13. It is further ordered, that Old Salt Broadcasting Company Inc., Rodriguez-Barnett and Associates, Ltd. shall each submit an amendment providing the information required by Section 73.685(f) of the Commission's Rules, to the presiding Administrative Law Judge and copies to Chief, TV Branch and Chief, Hearing Branch, Mass Media Bureau, within 20 days after this Order is released.

14. It is further ordered, that Triple J. Properties, Inc. shall submit an amendment containing its response to Section II, item 10, FCC Form 301, to the presiding Administrative Law Judge, within 20 days after this Order is released.

15. It is further ordered, that Rodriguez-Barnett and Associates, Ltd. shall submit the certification, statement and/or information required by paragraph 7, *supra*, to the presiding Administrative Law Judge, within 20 days after this Order is released.

16. It is further ordered, that G and I Ltd. shall submit the statement or information required by paragraph 7, *supra*, to the presiding Administrative Law Judge, within 20 days after this Order is released.

17. It is further ordered, that to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

18. It is further ordered, that the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and the manner prescribed in such Rule and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 85-6045 Filed 3-13-85; 8:45 am]

BILLING CODE 6712-01-M

Telecrafter Corp. et al.; Memorandum Opinion and Order

In the matter of:

In re Applications of:	CC Docket No. 85-31
Telecrafter Corporation	File No. 50197-CM-P-82.
and	
Broadcast Data Corp.	File No. 50274-CM-P-82.

For Construction Permit in the Multipoint Distribution Service for a new station at Carlsbad, New Mexico.

Adopted February 4, 1985
Released March 5, 1985.

By the Common Carrier Bureau.

1. For consideration are the above-referenced applications. These applications are for construction permits in the Multipoint Distribution Service and they propose operations on Channel 1 at Carlsbad, New Mexico. The applications are therefore mutually exclusive and, under present procedures, require comparative consideration. There are no petitions to deny or other objections under consideration.

2. Upon review of the captioned applications, we find that these applicants are legally, technically, financially, and otherwise qualified to provide the services which they propose, and that a hearing will be required to determine, on a comparative basis, which of these applications should be granted.

3. Accordingly, it is hereby ordered, that pursuant to section 309(e) of the Communications At of 1934, as amended, 47 U.S.C. 309(e) and § 0.291 of the Commission's Rules, 47 CFR 0.291, the above-captioned applications are designated for hearing, in a consolidated proceeding, at a time and place to be specified in a subsequent Order, to determine, on a comparative basis, which of the above captioned applications should be granted in order to best serve the public interest, convenience and necessity. In making such a determination, the following factors shall be considered:[1]

(a) The relative merits of each proposal with respect to efficient frequency use, particularly with regard to compatibility with co-channel use in nearby cities and adjacent channel use in the same city;

(b) The anticipated quality and reliability of the service proposed, including installation and maintenance programs; and

(c) The comparative cost of each proposal considered in context with the benefits of efficient spectrum utilization and the quality and reliability of service as set forth in issues (a) and (b).

4. It is further ordered, that Telecrafter Corporation Broadcast Data Corp. and the Chief of Common Carrier Bureau, are made parties to this proceeding.

5. It is further ordered, that parties desiring to participate herein shall file their notices of appearance in accordance with the provisions of § 1.221 of the Commission's Rules, 47 CFR 1.221.

6. It is further ordered, that any authorization granted to Broadcast Data Corp., a wholly-owned subsidiary of Graphic Scanning Corporation, as a result of the comparative hearing shall be conditioned to the following:

(a) Without prejudice to, reexamination and reconsideration of that company's qualifications to hold an MDS license following a decision in the hearing designated in *A.S.D. ANSWERING Service, Inc., et al*, FCC 82-391, released August 24, 1982, and shall be specifically conditioned upon the outcome of that proceeding.

(b) Without prejudice to, reexamination and reconsideration of that company's qualifications to hold an MDS license following a decision in the hearing in *Cellular Mobile Systems of Texas, Inc., et al.*, CC Docket No. 83-660, and shall be specifically conditioned upon the outcome of that proceeding.

7. This Order is effective on its release date. Petitions for reconsideration under § 1.106 or applications for review under § 1.115 of the Rules may be filed within the time limits specified in those sections. See also *Rule 1.4(b)(2)*.

8. The Secretary shall cause a copy of this Order to be published in the **Federal Register.**

James R. Keegan,

Chief, Domestic Facilities Division, Common Carrier Bureau.

[FR Doc. 85-5937 Filed 3-13-85; 8:45 am]

BILLING CODE 6712-01-M

[1] Consideration of these factors shall be in light of the Commission's discussion in *Frank K. Spain*, 77 FCC 2d 20 (1980).

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance

with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Extension of 3067–0024.
Title: General Admission Class Attendance Roster.
Abstract: This form is used to collect certain basic information from students who are attending National Fire Academy Field courses for inclusion into the student recordkeeping system which has the capability of producing a student transcript for accreditation and the student's personal use.
Type of Respondents: Individuals or Households.
Number of Respondents: 15,000.
Burden Hours: 500.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 287–9906, 500 C Street SW., Washington, D.C. 20472.

Comments should be directed to Mike Weinstein, Desk Officer for FEMA, Office of Information and Regulatory Affairs, OMB, Rm. 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: March 6, 1985.

Walter A. Girstantas,

Director, Administrative Support.

[FR Doc. 85–6061 Filed 3–13–85; 8:45 am]

BILLING CODE 6718–01–M

FEDERAL HOME LOAN BANK BOARD

Western Community Savings and Loan Association, El Cerrito, CA; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in § 406(c)(1)(B)(i)(I) of the National Housing Act, 12 U.S.C. § 1729(c)(1)(B)(i)(I) (1982), the Federal Home Loan Bank Board appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Western Community Savings and Loan Association, El Cerrito, California on March 8, 1985.

Dated: March 11, 1985.

John M. Buckley, Jr.

Acting Secretary.

[FR Doc. 85–6096 Filed 3–13–85; 8:45 am]

BILLING CODE 6720–01–M

FEDERAL RESERVE SYSTEM

Firstway Financial, Inc.; Correction

This notice corrects a previous **Federal Register** document (FR Doc. No. 85–4945), published at page 8395 of the issue for Friday, March 1, 1985.

Firstway Financial, Inc., Waynesboro, Pennsylvania has applied to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank and Trust Company, Waynesboro, Pennsylvania.

Board of Governors of the Federal Reserve System, March 8, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85–6066 Filed 3–13–85; 8:45 am]

BILLING CODE 6210–01–M

Louisiana Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 4, 1985.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *Louisiana Bancshares, Inc.*, Baton Rouge, Louisiana; to acquire 100 percent of the voting shares of The Raceland Bank & Trust Company, Raceland, Louisiana:

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *KEECO, INC.*, Chicago, Illinois; to acquire 11.02 percent of the voting shares of Round Lake Bankcorp, Inc., Round Lake, Illinois.

2. *Kingsley Banc Corp*, Kingsley, Iowa; to become a bank holding company by acquiring 89.2 percent of the voting shares of Kingsley State Bank, Kingsley, Iowa.

3. *Round Lake Bankcorp, Inc.*, Round Lake, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of First State Bank of Round Lake, Round Lake, Illinois.

C. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Independent Community Financial Corp.*, Dallas, Texas; to acquire 51 percent of the voting shares of Coppell Financial Corporation, Coppell, Texas, thereby indirectly acquiring Coppell Bank, N.A., Coppell, Texas.

D. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Ameriwest Bancor, Inc.*, Phoenix, Arizona; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Paradise Valley, Phoenix, Arizona.

2. *Banco de Crédito del Perú*, Lima, Perú, *Bethel Investments, Inc.*, Panama City, Panama, *Crédito del Perú Holding Corporation*, Georgetown, Cayman Islands, British West Indies, and *CDP Holding (Delaware), Inc.*, Wilmington, Delaware; to become a bank holding company by acquiring 100 percent of the voting shares of Valencia Bank, Santa Ana, California.

Board of Governors of the Federal Reserve System, March 8, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85–6067 Filed 3–13–85; 8:45 am]

BILLING CODE 6210–01–M

Provident Bancorp, Inc.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the

application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 2, 1985.

A. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Provident Bancorp, Inc.,* Cincinnati, Ohio; to engage *de novo,* in the activity of making, acquiring or servicing loans, or other extensions of credit for the company's account or for the account of others.

Board of Governors of the Federal Reserve System, March 8, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-6068 Filed 3-13-85; 8:45 am]

BILLING CODE 6210-01-M

Security Pacific Corp.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR § 225.23(a)(2) or (f) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y (12 CFR § 225.21(a) of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 4, 1985.

A. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President), 101 Market Street, San Francisco, California 94105:

1. *Security Pacific Corporation,* Los Angeles, California; to acquire substantially all of the manufactured housing, mobile home and recreational vehicle retail finance assets of the West Region and the Manufactured Housing Financing Department of General Electric Credit Corporation, Stamford, Connecticut, and engage in: making or acquiring, for its own account or for the account of others, and servicing, loans and other extensions of credit, including making consumer installment, personal loans, and purchasing consumer installment sales finance contracts; acting as agent or broker for the sale of credit life insurance and credit property insurance which is related to the making or acquiring of such loans and extensions of credit. These activities will be conducted by Security Pacific Housing Services, Inc., a subsidiary of Security Pacific Corporation, from offices in the cities of Anaheim and San Jose, California; Reno, Nevada; and Vancouver, Washington; serving the State of California, Idaho, Montana, Nevada, Oregon and Washington. Applicant also proposes to engage in underwriting and reinsuring credit life insurance with respect to extensions of credit made by Security Pacific Corporation and its affiliates. These activities will be conducted by General Fidelity Life Insurance Company, a subsidiary of Security Pacific Corporation, from its offices in San Diego, California, serving the States of Montana and Nevada.

Board of Governors of the Federal Reserve System, March 8, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-6069 Filed 3-13-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Annual Revision of the Poverty Income Guidelines

Correction

In FR Doc. 85-5714 beginning on page 9517 in the issue of Friday, March 8, 1985, make the following corrections:

On page 9518, second column, paragragh following "Poverty Income Guidelines For Hawaii", second line, "$2,250" should read "$2,070".

BILLING CODE 1505-01-M

Food and Drug Administration

[Docket No. 85F-0058]

The B.F. Goodrich Co.; Filing of Food Additive Petition

Correction

In FR Doc. 85-4590 appearing on page 7837 in the issue of Tuesday, February 26, 1985, make the following correction: In the first column, **FOR FURTHER INFORMATION CONTACT,** third line, "NFF-334" should read "HFF-334".

BILLING CODE 1505-01-M

Advisory Committee Meeting; Amendment of Notice

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is amending an advisory committee meeting notice to reflect the addition of one agenda item, the deletion of one agenda item, and the rescheduling of the open public hearing. The announcement of the Oncologic Drugs Advisory Committee meeting, which was published in the **Federal Register** of February 15, 1985 (50 FR 6393), is revised to read as follows:

Oncologic Drugs Advisory Committee

Date, time, and place. March 28 and 29, 8.30 a.m., Conference Rm. E,

Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open committee discussion, March 28, 8:30 a.m. to 4:30 p.m., March 29, 8:30 a.m. to 3:45 p.m.; open public hearing, March 29, 3:34 p.m. to 4:45 p.m.; David F. Hersey, Center for Drugs and Biologics (HFN–32), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in cancer patients.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the contact person.

Open committee discussion. The committee will discuss: (1) New drug application for Novantrone (Lederle); (2) new drug application for Epirubicin (Adria); (3) new drug application for Leuprolide (TAP/Abbott); (4) labeling for safe handling of cancer drugs; and (5) lymphoma clinical trials.

Dated: March 7, 1985.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 85–6038 Filed 3–11–85; 11:17 am]

BILLING CODE 4160–01–M

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meetings: The following advisory committee meetings are announced:

Anesthesiology and Respiratory Therapy Devices Panel

Date, time, and place. April 3, 11 a.m., Conference Rm. 1207, 8757 Georgia Ave., Silver Spring, MD 20910.

Type of meeting and contact person. This meeting will take the form of a conference telephone call. A speaker phone will be provided in the conference room to allow public participation in the open session of the meeting. Open public hearing, 11 a.m. to 12 m.; open committee discussion, 12 m. to 3 p.m.; Michael S. Gluck, Center for Devices and Radiological Health (HFZ–430), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7226.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before March 11, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of the proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss information contained in a premarket approval application for a transcutaneous carbon dioxide monitor.

Cardiovascular and Renal Drugs Advisory Committee

Date, time, and place. April 11 and 12, 9 a.m., Auditorium, Lister Hill Center, National Library of Medicine, 8600 Rockville Pike, Rockville, MD.

Type of meeting and contact person. Open public hearing, April 11, 9 a.m. to 10 a.m.; open committee discussion, April 11, 10 a.m. to 5 p.m.; April 12, 9 a.m. to 5 p.m.; Joan C. Standaert, Center for Drugs and Biologics (HFN–110), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4730.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in cardiovascular disorders.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the committee contact person.

Open committee discussion. The committee will discuss Isoptin Tablets (verapamil HC1) for anti-supraventricular arrhythmia (NDA 18–593/S–004) Knoll Pharmaceutical; Isoptin Tablets (verapamil HC1) for hypertension (NDA 18–593/S–006) Knoll Pharmaceutical; Isoptin Sustained Release Tablets for angina (NDA 19–152) Knoll Pharmaceutical; and guidelines for study of anti-anginal agents.

Arthritis Advisory Committee

Date, time, and place. April 29 and 30, 9 a.m., Auditorium, Lister Hill Center, National Library of Medicine, National Institutes of Health, 8600 Rockville Pike, Bethesda, MD.

Type of meeting and contact person. Open public hearing, April 29, 9:40 a.m. to 10:40 a.m.; open committee discussion, 10:40 a.m. to 5 p.m.; open committee discussion, April 30, 9 a.m. to 4 p.m.; David F. Hersey, Center for Drugs and Biologics (HFN–32), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in arthritis and related diseases.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the committee contact person.

Open committee discussion. The committee will continue its discussion of Adverse Drug Reactions (ADR's) to Non-steroidal Anti-inflammatory Drugs (NSAID's) focusing on acute allergic reactions and upper gastrointestinal reactions. Also, the committee will discuss NSAID labeling and change in colchicine labeling.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairman determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline concerning the policy and procedures for electronic media

coverage of FDA's public administrative proceedings. This guideline was published in the **Federal Register** of April 13, 1984 (49 FR 14723). These procedures are primarily intended to expedite media access to FDA's public proceedings, including hearings before a public advisory committee conducted pursuant to Part 14 of the agency's regulations. Under this guideline, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including the presentation of participants at a public hearing. Accordingly, all interested persons are directed to the guideline, as well as the **Federal Register** notice announcing issuance of the guideline, for a more complete explanation of the guideline's effect on public hearings.

Meetings of advisory committees shsall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairman's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be requested from the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, between the hours of 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: March 7, 1985.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 85–6037 Filed 3–11–85; 11:17 am]

BILLING CODE 4160–01–M

Social Security Administration

Statement of Organization, Functions and Delegations of Authority; Office of the Regional Commissioner

Part S of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (HHS) covers the Social Security Administration (SSA). Sections SDB.10 and SDB.20 describe the organization and functions of the Office of the Regional Commissioner.

Notice is given that Sections SDB.10 and SDB.20 are revised to eliminate the subordinate components of the Field Assessment Office and their functional statements. This reflects a realignment of the structure of the Field Assessment Office and an adjustment of the functional statement of that component to agree with the other components of the Office of the Regional Commissioner.

The Office of the Regional Commissioner material is revised as follows:

Section SDB.10 The Office of the Regional Commissioner—(Organization)

G. The Field Assessment Office (SDIE–SDXE).

Omit the sentence "The Field Assessment, under leadership of the Director, includes:" and all of the material following.

Section SDB.20 The Office of the Regional Commissioner—(Functions)

G. The Field Assessment Office (SDIE–SDXE).

Omit the last sentence of the functional statement which reads, "It includes the following components and functions:" and all of the material following.

Dated: February 12, 1985.

Nelson J. Sabatini,

Acting Deputy Commissioner for Management and Assessment.

[FR Doc. 85–6059 Filed 3–13–85; 8:45 am]

BILLING CODE 4190–11–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–85–1513]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ADDRESS: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: Robert Neal, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410, telephone (202) 755–6050. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposals should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirements are described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Certification of Compliance with HUD's Tenant Eligibility and Rent Procedures (Basic Forms and Worksheets)
Office: Housing
Form Number: HUD–50059/A/B/C/D/EZ/F/G and FEF-A/B/C/D/F

Frequency of Submission: Annually
Affected Public: Individuals or Households and Businesses or Other For-Profit
Estimated Burden Hours: 2,998,333
Status: Revision
Contact: Judy Lemeshewsky, HUD, (202) 755–6870, Robert Neal, (202) 395–7316

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: February 28, 1985.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Housing Voucher Program
Office: Housing
Form Number: HUD–52517A and 52646
Frequency of Submission: On Occasion
Affected Public: State or Local Governments
Estimated Burden Hours: 24,640
Status: New
Contact: Mrya Newbill, HUD, (202) 755–7707, Robert Neal, OMB, (202) 395–7316

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: February 21, 1985.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Section 106(b) Nonprofit Sponsor Assistance "Seed Money" Loan Application
Office: Housing
Form Number: HUD–92290
Frequency of Submission: On Occasion
Affected Public: Non-Profit Institutions
Estimated Burden Hours: 200
Status: Extension
Contact: Evelyn Berry, HUD, (202) 755–5866, Robert Neal, OMB, (202) 395–7316

Authority: Sec. 3507 of the Paperwork Reduction Act, 44, U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated; February 21, 1985.

Dennis F. Geer,

Director, Office of Information Policies and Systems

[FR Doc. 85–6148 Filed 3–13–85; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Alaska Land Use Council; Invitation to Public

As required by the operating procedures of the Alaska Land Use Council, which was established under the Alaska National Interest Lands Conservation Act (ANILCA), the Council invites the public to submit, for its consideration, projects and issues they believe should be considered by the Council. In submitting a potential project or issue please include a brief description of the work to be accomplished, the completion date, the anticipated product, and the nature of the Council's involvement. The Co-chairmen, after consultation with the Council's Staff Committees, will prepare a recommended work program considering the requirements of ANILCA, projected Council resources, special requests, and recommendations from the public, the Council's Land Use Advisors committee, and Council members. The proposed work program will be submitted in May to the Council for adoption. Any interest parties having a proposed work program item should submit the information to the Co-chairman prior to April 24, 1985. Submittals should be sent to: Governor Bill Sheffield, State Co-chairman, Vernon R. Wiggins, Federal Co-chairman, Alaska Land Use Council, P.O. Box 100120, Anchorage, Alaska 99510–0120.

Anyone having questions regarding the Council's work program may call the Council office at (907) 272–3422.

Dated: March 11, 1985.

William P. Horn,

Deputy Under Secretary.

[FR Doc. 85–6149 Filed 3–13–85; 8:45 am]

BILLING CODE 4310–10–M

Bureau of Land Management

[NM 58275]

Zuni Salt Lake Exchange, Catron County, NM

Correction

In FR Doc 85–1849, beginning on page 3417 in the issue of Thursday January 24, 1985, on page 3418 second column, the third line should read: "under the act of August 30, 1890."

BILLING CODE 1505–01–M

Realty Action; Recreation and Public Purposes Classification; Minnesota

AGENCY: Bureau of Land Managment, Interior.

ACTION: Land Classification for Recreation and Public Purposes, Scott County, ES–28402.

SUMMARY: The following public islands have been examined and found to be suitable for classification and sale under the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869):

Fifth Principal Meridian, Minnesota

ES–28402, Scott County: T. 115 N., R. 22 W., Sec. 19, Island Numbers 008 (1.50 acs.) and 009 (.50 acs.); Sec. 30, Island Numbers 011 (3.40 acs.), 012 (.40 acs.) and 013 (1.30 acs.) 5 islands in O'Dowd Lake.

The City of Shakopee Parks and Recreation Department applied for these islands so they can be added to and designated as a part of O'Dowd Lake Park.

The islands are physically suited to the proposed use and are not of national significance. Since the islands are valuable for a local porgram they are considered chiefly valuable for public purposes and therefore suitable for cassification and sale under the Recreation and Public Purposes Act.

This action is consistent with local and Federal government plans, programs and policies.

Any patent issued under this notice shall be subject to the provisions in 43 CFR 2741.8. In the event of noncompliance with the terms of the patent, title to the land will revert to the United States.

The classification of these islands will segregate them from all appropriation except as to applications under the mineral leasing laws and the Recreation and Public Purposes Act. Segregation will terminate upon issuance of a patent; or eighteen (18) months from the date of this notice; or upon publication of a notice of termination, whichever occurs first.

Comments

For a period of 45 days from the date of first publication of this notice, interested parties may submit comments to: District Manager, Milwaukee District Office, Bureau of Land Management, P.O. Box 631, Milwaukee, Wisconsin 53201–0631. Any adverse comments will be evaluated by the District Manager who may vacate or modify this classification. In the absence of any action by the District Manager, this Realty Action will become the final determination of the Department of Interior.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning this application is available for review at the Milwaukee District Office, Suite 225, 310, W. Wisconsin Avenue, Milwaukee,

Wisconsin 53201, or by calling Paulette Francis at (414) 291–4415.

Chuck Steele,
District Manager

[FR Doc. 85–6086 Filed 3–13–85; 8:45 am]
BILLING CODE 4310–DN–M

Coeur d'Alene District Office; Sales of Public Lands; Idaho; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, Competitive, and Direct Sale Offerings of Public Lands in Bonner, Kootenai, Shoshone, Idaho and Latah Counties, Idaho; correction.

SUMMARY: In FR Doc. 85–3554 beginning on page 6061 in the issue of Wednesday, February 13, 1985, make the following correction: On page 6061, third column in the table, under legal description, the fifth line (Sec. 7) should read (Sec. 6); also in the table under Tract No., the seventh entry (I–6–177) should read (I–6–171).

Dated: March 7, 1985.

Wayne Zinne,
District Manager.

[FR Doc. 85–6083 Filed 3–13–85; 8:45 am]
BILLING CODE 4310–GG–M

[Serial No. I–15466]

Proposed Continuation of Withdrawal; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Forest Service proposes that a 20-acre withdrawal for the California Bar Administrative Site be continued for an additional 20 years. The lands would remain closed to surface entry and mining but have been and would remain open to the mineral leasing laws.

DATE: Comments should be received within 90 days of the date of publication of this notice.

ADDRESS: Comments should be sent to: Chief, Branch of Land Operations, Bureau of Land Management, 3380 Americana Terrace, Boise, ID 83706.

FOR FURTHER INFORMATION CONTACT: William E. Ireland, Idaho State Office, 208–334–1597.

The Forest Service proposes that the existing land withdrawal made by the Secretarial Order of October 29, 1907, be continued for a period of 20 years pursuant to Section 204 of the Federal Land Policy and Managment Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

Boise Meridian

T. 21 N., R. 20 E.,
Sec. 6, a metes and bounds description within the NW¼.

The area described contains 20 acres in Lemhi County.

The purpose of the withdrawal is to protect a historical ranger station dwelling and other building improvements, which have an estimated replacement value of about $50,000. The withdrawal segregates the land to the extent described in the summary paragraph. No change is proposed in the purpose or segregative effect of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Chief, Branch of Land Operations, in the Idaho State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand of the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Dated: March 8, 1985.

Vincent S. Strobel,
Chief, Branch of Land Operations.

[FR Doc. 85–6075 Filed 3–13–85; 8:45 am]
BILLING CODE 4310–GG–M

[Serial No. I–14894]

Idaho; Notice of Proposed Continuation of Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation proposes that a 123.42 acre withdrawal for the Boise Irrigation Project continue for an additional 100 years. The lands will remain closed to surface entry and mining but have been and will remain open to mineral leasing.

DATE: Comments should be received by June 12, 1985.

ADDRESS: Comments should be sent to: Idaho State Director, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho 83706.

FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, Idaho State Office, 208–334–1735.

SUPPLEMENTARY INFORMATION: The Bureau of Reclamation proposes that the existing land withdrawal made by the Secretarial Order of April 21, 1942, be continued for a period of 100 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

Boise Meridian

T. 2 N., R. 3 E.,
Sec. 10, lot 1, NW¼NE¼;
Sec. 11, lots 5, 9.

The area described contains 123.42 acres in Ada County.

The purpose of the withdrawal is to protect the Boise Irrigation Project. The withdrawal segregates the land from operation of the public land laws generally, including the mining laws, but not the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Idaho State Director of the Bureau of Land Management.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued and, if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such determination is made.

Dated: March 7, 1985.

William E. Ireland,
Chief, Realty Operations Section.

[FR Doc. 85–6074 Filed 3–13–85; 8:45 am]
BILLING CODE 4310–GG–M

Minerals Management Service

Outer Continental Shelf; Development Operations Coordination Document; Union Oil Company of California

AGENCY: Minerals Mangement Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Union Oil Company of California has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 2647, Block 160, East Breaks Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Surfside, Texas.

DATE: The subject DOCD was deemed submitted on March 6, 1985.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie Gobert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipline Section; Exploration/Development Plans Unit; Phone (504) 838–0876.

SUPPLEMENTARY INFORMATION: The purpose for this notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR..

Dated: March 6, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85–6105 Filed 3–13–85; 8:45 am]

BILLING CODE 4310–MR–M

Oil and Gas Lease Operations; Alaska, Atlantic, Gulf of Mexico, and Pacific Regions; Amendment to OCS Order No. 12

AGENCY: Minerals Management Service, Interior.

ACTION: Notice.

SUMMARY: This document changes Minerals Management Service's (MMS) form item numbers of information exempt from public release. The new item numbers are necessary due to revisions in MMS forms. There is no change in the information exempt from public release.

EFFECTIVE DATE: April 15, 1985.

FOR FURTHER INFORMATION CONTACT: David A. Schuenke; Chief, Branch of Rules, Orders, and Standards; Offshore Rules and Operations Division; Minerals Management Service; 12203 Sunrise Valley Drive; Mail Stop 646; Reston, Virginia 22091; Telephone (703) 860–7916, (FTS) 928–7916.

SUPPLEMENTARY INFORMATION: Forms MMS–152, Monthly Report of Operations; MMS–330, Well-Completion or Recompletion Report and Log; MMS–331, Sundry Notices and Reports on Wells; and MMS–331C, Application for Permit to Drill, Deepen, or Plug Back have been revised and the new versions are in use by Outer Continental Shelf (OCS) lessees. Revision of the forms has not resulted in a change to the information which is subject to public disclosure under OCS Order No. 12. However, some of the item numbers which identify information which is subject to disclosure have changed. This order amends OCS Order No. 12 for all OCS Regions to correct the form item numbers.

Publication of this order as proposed is unnecessary since the change is solely a correction to avoid confusion to the lessee. This is not a substantive amendment since there is no change in information which is protected from public disclosure.

The Department of the Interior has determined that the changes are not major rules under Executive Order 12291. Since the amendment will not affect the information subject to disclosure, there will be no economic effect on industry, nor will it have any significant effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). For the same reason, this order is not likely to result in an annual effect on the economy of $100 million or more, a major increase in costs to consumers or others, or significant adverse effects.

Paperwork Reduction Act

This amendment does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

Author

This document was prepared by John V. Mirabella, Offshore Rules and Operations Division, Minerals Management Service.

(43 U.S.C. 1334)

Dated: February 12, 1985.

William D. Bettenberg,

Director, Minerals Management Service.

For the reasons set out above, OCS Order No. 12 for the Alaska, Atlantic, Gulf of Mexico, and Pacific OCS Regions is amended as set forth below.

Paragraphs 2.2, 2.3, and 2.4 of OCS Order No. 12 are revised to read as follows:

2.2 *Form MMS 330, Well-Completion or Recompletion Report and Log.*

2.2.1 *Prior to Commencement.* Prior to commencement of production, all information contained on this form shall be available except—

a. Item 1a, Type of Well;

b. Item 4, Location of Well, at top production interval and at total depth;

c. Item 20, If Multiple Completion, how many;

d. Item 21, Producing Interval;

e. Item 23, Type Electric and Other Logs Run;

f. Item 25, Casing Record;

g. Item 26, Liner Record;

h. Item 27, Tubing Record;

i. Item 28, Perforation Record;

j. Item 29, Acid, Fracture, Cement Squeeze, etc;

k. Item 30, Production;

l. Item 35, Summary of Porous Zones; and

m. Item 36, Geologic Markers.

2.2.2 *After Commencement of Production.* After commencement of production, all information shall be available except Item 35, Summary of Porous Zones, and Item 36, Geologic Markers, unless previously made available under subparagraph 3.2b and 30 CFR 250.3(b).

2.2.3 *5-Years' Elapsed Time.* If production has not commenced after an elapsed time of 5 years from the date of filing Form MMS 330 as required in 30 CFR 250.38(b), excluding the total time that operations and production are suspended by direction of the Secretary of the Interior or the Secretary's duly authorized representative, and further excluding the total time that operations and production are stopped or

prohibited by court order, all information contained on this form shall be available except Item 35, Summary of Porous Zones, and Item 36, Geologic Markers, unless previously made available under subparagraph 3.2b and 30 CFR 250.3(b). Within 90 days prior to the end of the 5-year period, exclusive of exceptions noted above, the lessee shall file a Form MMS 330 containing all information requested on the form except Item 35, Summary of Porous Zones, and Item 36, Geologic Markers, to be available for public inspection. Objection to the release of such information may be submitted with the completed Form MMS 330.

2.3 *Form MMS 331, Sundry Notices and Reports on Wells.*

2.3.1 *"Request for Approval to:"* When used as a "Request for Approval to:" Conduct operations, all information contained on this form shall be available except Item 4, Location of Well, at top production interval and at total depth, and Item 16, Describe Proposed or Completed Operations.

2.3.2 *"Subsequent Report of:"* When used as "Subsequent Report of:" Operations, and after commencement of production, all information contained on this form shall be available, except information contained in Item 16 pertaining to subsurface locations and measured and true vertical depths for all markers and zones not placed on production.

2.4 *Form MMS 331C, Application for Permit to Drill, Deepen, or Plug Back.* All information contained on this form and the location plat attached thereto shall be available except Item 4, Location of Well at Proposed Production Zone, and Item 20, Proposed Casing and Cementing Program.

[FR Doc. 85-5916 Filed 3-13-85; 8:45 am]

BILLING CODE 4310-MR-M

Outer Continental Shelf; Proposed Development and Production Plan; Availability of Draft Environmental Impact Statement and Intent To Hold Public Hearings

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of availability and public hearing for Environmental Impact Statement/Environmental Impact Report.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969, the Minerals Management Service, Santa Barbara County, and California State Lands Commission have jointly prepared a draft Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for proposed development in the Central Santa Maria Basin, offshore Santa Barbara County, California. The Draft EIS/EIR includes an evaluation of the potential effects of proposed developments by Union Oil Company and Exxon Company, USA, as well as anticipated future development of oil and gas resources in the Central Santa Maria Basin area. Single copies of the Draft EIS/EIR can be obtained from Santa Barbara County, Resource Management Department, Energy Division, 123 East Anapamu Street, Santa Barbara, California 93101. Technical appendices may be obtained individually or as a unit by forwarding a written request to the above address. When requesting an individual appendix, refer to the following titles:

A. Geology
B. Air Quality
C. Onshore Water Resources
D. Marine Water Resources
E. Marine Biology
F. Terrestrial and Freshwater Biology
G. Cultural Resources
H. Visual Resources
I. Onshore Noise/Vibration
J. Commercial Fishing, Kelp Harvest, and Mariculture
K. Socioeconomics
L. Traffic
M. Systems Safety and Reliability

Copies of the Draft EIS/EIR will also be available for review in the following public libraries:

County of Los Angels, Public Library, Govt. Pub. Unit, 330 W. Temple, Los Angeles, CA 90012
State Library, Govt. Pub. Sec., Attn: Beverly Pettijohn, P.O. Box 2037, Sacramento, CA 95814
San Luis Obispo, City/County Library, 1354 Bishop Street, San Luis Obispo, CA 93406
Main Library, Vandenberg Air Force Base, CA 93437
County of Ventura Library, Documents Section, P.O. Box 771, Ventura, CA 93001
Santa Barbara Public Library, 40 E. Anapamu Street, Santa Barbara, CA 93101
University of California Library, Santa Barbara Campus, Main Library, Santa Barbara, CA 93106
U.S. DOI Natural Resource Library, 18th and "C" Streets NW., Washington, D.C. 20240

Joint Federal/State/County public hearings are scheduled from 6 P.M. to 9 P.M. on April 17, 1985, at the City Hall, Council Chambers, 100 Civic Center Plaza, Lompoc, California. The purpose of the hearings is to receive oral and written testimony regarding the Draft EIS/EIR. The hearing will provide the Minerals Management Service (MMS) with additional information to help evaluate the potential effects associated with these aspects of the project subject to their approval.

Written comments on this EIS/EIR will be accepted at the Santa Barbara County address listed above until May 6, 1985. These comments will be addressed by the MMS, Santa Barbara County, and California State Lands Commission in the Final EIS/EIR. Agencies, interested groups, or individuals needing further information should contact Donna Cooksey Brewer at 213-688-4480.

After testimony and comments have been reviewed and analyzed, a Final EIS/EIR will prepared.

Dated: March 15, 1985.

William E. Grant,

Regional Director Pacific OCS Region.

[FR Doc. 85-6076 Filed 3-13-85; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Mining Plan of Operations at Wrangell-St. Elias National Park and Preserve; Availability

Notice is hereby given that pursuant to the provisions of Section 2 of the Act of September 28, 1976, 16 U.S.C. 1901 et seq., and in accordance with the provisions of § 9.17 of 36 CFR Part 9A, Alaska Mineral Resources Company has filed a plan of operations in support of proposed mining operations on lands embracing CALAMITY MINE #1 and #2 Placer Mining Claims within the Wrangell-St. Elias National Park and Preserve. These plans are available for inspection during normal business hours at the Alaska Regional Office, National Park Service, 2525 Gambell Street, Anchorage, Alaska.

Robert Peterson

Acting Regional Director, Alaska Region.

[FR Doc. 85-6145 Filed 3-13-85; 8:45 am]

BILLING CODE 4310-10-M

Big Cypress National Preserve; Intent To Prepare a Draft Environmental Impact Statement

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of Intent to prepare a draft Environmental Impact Statement for the General Management Plan and Minerals Mangement Plan for Big Cypress National Preserve.

SUMMARY: This notice announces the initiation of a General Management

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Plan, Minerals Management Plan, and accompanying Draft Environmental Impact Statement for Big Cypress National Preserve in Collier, Monroe, and Dade Counties, Florida. To assist the National Park Service in defining issues and management alternatives, public workshops have been scheduled. Notices concerning these workshops are appearing in local newspapers.

ADDRESS: Comments or inquiries concerning planning and environmental analysis should be addressed to: Superintendent, Big Cypress National Preserve, P.O. Box 1247, Naples, Florida 33939.

Dated: March 8, 1985.

C.W. Ogle,

Acting Regional Director, Southeast Region.

[FR Doc. 85-6144 Filed 3-13-85; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-174]

Certain Woodworking Machines; Decision Not To Review Initial Determinations Granting Intervention and Termination of Three Parties; Issuance of Consent Orders

Correction

In FR Doc 85-4791, appearing on page 7969 in the issue of Wednesday, February 27, 1985, the Investigation number in the heading should read as set forth above.

BILLING CODE 1505-01-M

[Investigation No. 337-TA-180]

Certain X-Ray Image Intensifier Tubes; Extension of Deadline for Concluding Investigation

AGENCY: International Trade Commission.

ACTION: Extension of deadline for concluding investigation.

SUMMARY: The Commission has changed the administrative deadline for concluding the above-captioned investigation from March 15, 1985, to April 12, 1985.

FOR FURTHER INFORMATION CONTACT: P.N. Smithey, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0350.

SUPPLEMENTARY INFORMATION:

Background

The investigation was instituted to determine whether there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation of certain X-ray image intensifer tubes into the United States, or in their sale. The proceedings were initiated on the basis of a complaint filed by Varian Associates, Inc., alleging infringement of two U.S. patents owned by Varian. The respondents are the Dutch corporation N.V. Philips Gloeilampenfabrieken and the related U.S. companies North American Philips Corp. and Philips Medical Systems, Inc. (See 49 FR 4046 (Feb. 1, 1984), as amended at 49 FR 6416 (Feb. 21, 1984).)

On January 23, 1985, complainant Varian moved to terminate the investigation, explaining that the parties had entered into a patent licensing agreement and a related letter agreement (Motion No. 180-6"C"). Although all parties wished to have the investigation terminated, there is a dispute regarding confidentiality of the licensing agreement and the application of Commission rule § 210.51(b)(1), which requires that nonconfidential copies of licensing and other agreements accompany the motion for termination. (See 19 CFR 210.51(b)(1), as amended at 49 FR 46123 (Nov. 23, 1985).)

On January 28, 1985, the respondents filed a motion requesting that the Commission (1) withhold from public inspection Varian's purportedly nonconfidential version of the agreement, and (2) grant confidential treatment to the agreement in its entirety, or, in the alternative, grant confidential treatment to the extent indicated in Philips' provisionally nonconfidential copy of the agreement (Motion No. 180-7"C"). Varian and the Commission investigative attorney filed responses opposing that motion.

The Commission decided to certify the motions to a Commission administrative law judge for an initial determination to be issued by March 11, 1985. In addition, the administrative deadline for concluding the investigation was extended from March 15, 1985, to April 12, 1985.

Public inspection

The motions, the Commission's Action and Order, and all nonconfidential documents on the record of the investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, Docket Section, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-0471.

By order of the Commission.

Issued: March 8, 1985.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-6034 Filed 3-13-85; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 458]

Railroad Cost of Capital—1984

AGENCY: Interstate Commerce Commission.

ACTION: Extension of time of file non-railroad statements and railroad rebuttal statements in notice of institution of limited revenue adequacy proceeding.

SUMMARY: In the **Federal Register** of March 5, 1985 (50 FR 8799), the due date for the submission of initial statements by the railroads was extended two weeks to March 15, 1985. That Notice should have also extended, by two weeks, the April 1, 1985 due date for the submission of statements by non-railroad parties and the April 22, 1985 due date for the submission of railroad rebuttal statements. An extension of these other due dates is necessary to allow the parties the same amount of time for comment as that set forth in the original Notice. Accordingly, the due date for the submission of statements by non-railroad parties is extended from April 1, 1985 to April 15, 1985 and the due date for railroad rebuttal statements is extended from April 22, 1985 to May 6, 1985.

DATES: Statements by non-railroad parties are due April 15, 1985 and railroad rebuttal statements are due May 6, 1985.

ADDRESSES: Send an original and 15 copies of comments to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Ward L. Ginn, Jr., (202) 275-7489.

Dated: March 7, 1985.

By the Commission, Reese H. Taylor, Jr., Chairman.

James H. Bayne,

Secretary.

[FR Doc. 85-6110 Filed 3-13-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Proposed Consent Decree Pursuant to the Clean Water Act; Larry Goolsbey and David Anstett

In accordance with departmental policy, 28 CFR 50.7, notice is hereby given that on February 26, 1985, a proposed Stipulation and Consent Decree in *United States* v. *Larry Goolsbey and David Anstett,* Civil Action No. A84–320, was lodged with the United States District Court for the District of Alaska.

The proposed Stipulation and Consent Decree requires the defendants to comply with section 301 of the Clean Water Act and to refrain from all discharges of pollutants without the authorization of a National Pollutant Discharge Elimination System (NPDES) permit. The Decree also requires defendants to perform reclamation work at their Friday Creek mining site. The reclamation work must be completed by June 30, 1985. The defendants must pay stipulated penalties for any failure on their part to either obtain appropriate NPDES permits or to comply with their reclamation obligations.

The defendants also must pay a civil penalty of $5,000 for their past violations of the Clean Water Act. $2,500 is to be paid within thirty days of the entry of the decree, and the remaining $2,500 is to be paid in six equal payments at nine percent interest rate on the diminishing balance with the first payment due within 60 days of the date of entry of this Decree and the remaining payments due by the 15th of each succeeding month.

The Decree will terminate two years after its entry by the Court or at such time when the United States has collected all stipulated civil penalties accruing during the two year period, whichever is later.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Larry Goolsbey and David Anstett,* D.J. NO. 90–5–1–1–2159.

The proposed Consent Decree may be examined at the office of the United States Attorney, Federal Building & U.S. Courthouse, 701 C Street, Room C–252, Mail Box 9, Anchorage, Alaska 99513; and at the Environmental Protection Agency, Region X, 1200 Sixth Avenue, Seattle, Washington 98101; and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please refer to the case and decree and enclose a check in the amount of $1.40 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 85–6079 Filed 3–13–85; 8:45 am]

BILLING CODE 4410–01–M

NATIONAL COMMISSION ON AGRICULTURAL TRADE AND EXPORT POLICY

Open Meeting

March 11, 1985.

The National Commission Agricultural Trade and Export Policy will hold its next meeting at 9 a.m. on March 29, 1985, in the State Room of the Mayflower Hotel, Washington, D.C.

The meeting is expected to discuss major policy issues for inclusion in the initial report to Congress. The meeting is open to the public.

Kenneth L. Bader,

Chairman.

[FR Doc. 85–6129 Filed 3–13–85; 8:45 am]

BILLING CODE 3410–05–M

NATIONAL SCIENCE FOUNDATION

Charge-Coupled Device Detectors; Astronomical Instrumentation and Development

ACTION: Notice.

SUMMARY: This notice is to inform you of the opportunity to obtain a limited number of Charge-Coupled Device detectors for use in astronomical research. Developed under National Aeronautics and Space Administration sponsorship by Texas Instruments, Inc., these detectors have been made available to NSF for distribution to the U.S. astronomical community.

The following provides information on the detectors, eligibility requirements, and procedures for proposal submission and evaluation.

Laura P. Bautz,

Director, Division of Astronomical Sciences.

DATE: March 14, 1985.

ADDRESS: Dr. G. Wayne van Citters, Jr., Program Director, Astronomical Instrumentation and Development, Division of Astronomical Sciences, National Science Foundation, 1800 G Street NW., Washington, D.C. 20550, Telephone: (202) 357–9793.

Proposal Submission Deadline: May 1, 1985.

Announcement

Under sponsorship of the National Aeronautics and Space Administration (NASA), a 3-phase, 800 × 800 pixel Charge-Coupled Device (CCD) detector was developed by Texas Instruments, Inc. for low-light-level imaging. NASA has identified a number of these detectors, in various stages of completion, that would not be suitable for flight use buy may be excellent detectors for use in ground-based astronomy. NASA has transferred these devices to NSF for such use. This announcement details the availability of the detectors, provides a summary of their characteristics, and provides guidelines for preparation of proposals for their acquisition.

Availability and Characteristics

It is the intention of the Division of Astronomical Science to provide the astronomical community with packaged, tested devices. However, at the present time, the CCDs are in various stages of completion. A few are already thinned and packaged, though of unknown quality. Some are thinned but not bonded or packaged. Most are unthinned. The yields during each of the steps necessary to package the CCDs are uncertain, as are the characteristics of the final products. The expected characteristics of most of the CCDs are given in Table 1. Figure 1 is the expected quantum efficiency of front-illuminated, unthinned chips and Figure 2 that for the thinned devices after ultraviolet flooding.

Table 1

Readout noise $7e^-$ at 25.6μs/pixel
Full well $->50ke^-$/pixel
Deferred charge $-<300e^-$
No residual images
800 × 800, 15μ pixels.

Approximately 10 packaged devices will be available within about 9 months of the start of the program. Full distribution is estimated to take 24 months.

All devices will be accompanied by a full set of test data, including optimized voltages and wave forms, a tested CCD driver board to be used inside the CCD dewar, circuit diagrams, a mechanical sample, a dewar design, and a PC data-

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acquisition system design. Arrangements will be made for technical consultation in solving start-up problems.

Eligibility and Limitations on Use

Proposals for astronomical use of these detectors will be accepted from U.S. colleges universities, and privately-supported observatories, NSF-supported National Astronomy Observatories, other Federally-funded research and development centers, and Government laboratories. Observatories or corporations located in the U.S. but operated principally for the benefit of non-U.S. astronomers are not eligible. Proposers should also note that statutory export restrictions may limit the transport of such devices outside the United States.

Title to devices distributed as a result of successful proposals will remain with the National Science Foundation. A preliminary progress report on the implementation of the detector will be required 6 months after its receipt. Twenty-four months after receipt of a detector, the proposing institution will be required to submit a final report detailing the use of the detector. On receipt of the final report, the National Science Foundation will make a determination of where title will rest.

Proposal Submission and Evaluation

Proposals should detail the plans for scientific use of the detectors, provide a clear statement of the number of CCDs required, their specifications, and an implementation schedule. *No funds will be awarded as a result of this competition*, so it is essential that sponsoring institutions provide evidence of adequate resources for implementation of the detectors.

Proposals should be prepared following the guidelines in NSF 83–57, "Grants for Scientific and Engineering Research." The cover page should list the date of this announcement in the space reserved for "Program Announcement/Solicitation No." No budget page is required. Proposals will be evaluated using the criteria for the selection of research projects detailed on page 9 of NSF 83–57. Copies of NSF 83–57 may be obtained by contacting the program office listed below.

Proposals must be postmarked by May 1, 1985. A panel peer review will be conducted, and successful candidates will be notified on or about August 15, 1985.

Additional information can be obtained from G. Wayne van Citters, Jr., Program Director for Astronomical Instrumentation and Development, Division of Astronomical Sciences, National Science Foundation, Washington, D.C. 20550 (telephone number 202/357–9793).

Note.—The National Science Foundation has TDD (Telephonic Device for the Deaf) capability which enables individuals with hearing impairment to communicate with the Division of Personnel and Management for information relating to NSF programs, employment, or general information. This number is 202/357–7492.

The National Science Foundation provides awards for research in the sciences and engineering. The awardee is wholly responsible for the conduct of such research and preparation of the results for publication. The Foundation, therefore, does not assume responsibility for such findings or their interpretation.

The Foundation welcomes proposals on behalf of all qualified scientists and engineers, and strongly encourages women and minorities to compete fully in any of the research and research-related Programs described in this document.

In accordance with Federal statutes and regulations and NSF policies, no person on grounds of race, color, age, sex, national origin, or physical handicap shall be excluded from participation in, denied the benefits of, or be subject to discrimination under any program or activity receiving financial assistance from the National Science Foundation.

Catalog of Federal Domestic Assistance Number 47.050.

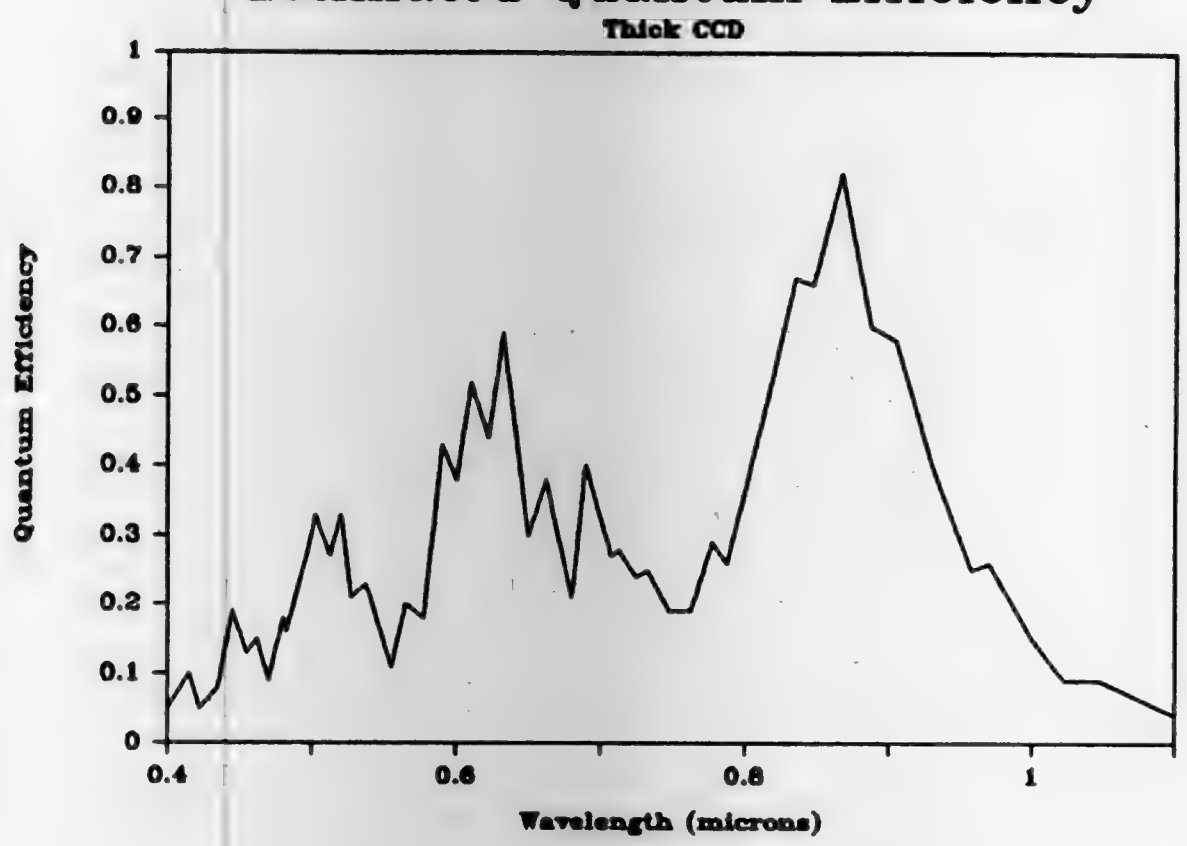
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Quantum Efficiency

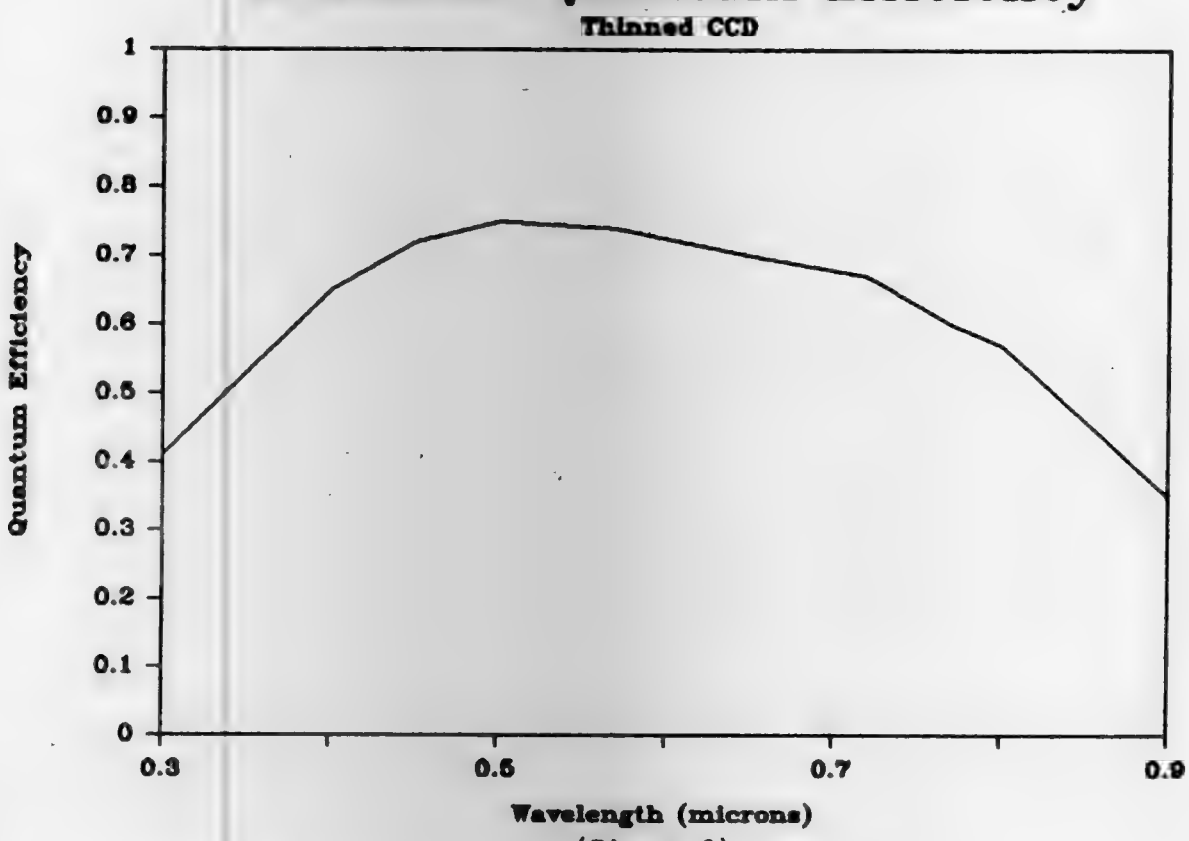
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(Figure 1)



(Figure 2)

[FR Doc. 85-6065 Filed 3-13-85; 8:45 am]
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Advisory Panel for Ecosystem Studies; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92–463, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Ecosystem Studies.

Date and time: March 28 and 29, 1985–8:30 a.m. to 5:00 p.m. each day.

Place: Room 1141, National Science Foundation, 1800 G St., NW., Washington, D.C. 20550.

Type of meeting: Closes.

Contact person: Dr. James R. Gosz, Program Director, Ecosystem Studies (202) 357–9596, Room 1140, National Science Foundation, Washington, D.C. 20550.

Purpose of Panel: To provide advice and recommendations concerning support for research in ecosystem studies.

Agenda: Review and evaluation of research proposals and projects as part of the selection process of awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

March 7, 1985.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 85–6035 Filed 3–13–85; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee on Class 9 Accidents; Meeting

The ACRS Subcommittee on Class 9 Accidents will hold a meeting on March 27, 1985, Room 1046, 1717 H Street NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, March 27, 1985—8:30 a.m. until the conclusion of business

The Subcommittee will continue the review of the suite of NRC severe accident codes. The codes to be reviewed will be the containment codes and MELCOR.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. A. Wang (telephone 202/634–3267) between 8:15 a.m. and 5:00 p.m., EST. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: March 11, 1985.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 85–6133 Filed 3–13–85; 8:45 am]

BILLING CODE 7590-01-M

Applications for Licenses to Export Nuclear Facilities or Materials

Pursuant to 10 CFR 110.70(b) "Public notice of receipt of an application" please take notice that the Nuclear Regulatory Commission has received the following applications for export licenses. Copies of the applications are on file in the Nuclear Regulatory Commission's Public Document Room located at 1717 H Street, NW., Washington, D.C.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, the Secretary, U.S. Nuclear Regulatory Commission, and the Executive Secretary, U.S. Department of State, Washington, D.C. 20520.

In its review of applications for licenses to export production or utilization facilities, special nuclear materials or source material, noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the facility or material to be exported. The table below lists all new major applications.

Dated this 7th day of March 1985 at Bethesda, Maryland.

For the Nuclear Regulatory Commission.

James V. Zimmerman,

Assistant Director, Export/Import and International Safeguards, Office of International Programs.

NRC EXPORT APPLICATIONS

Name of applicant, date of applicant, date received, application No.	Material type	Material in kilograms		End-use	Country of destination
		Total element	Total isotope		
Transnuclear, Inc., Feb. 22, 1985 to Feb. 25, 1985 XSNMO2197.	U–233	9.200	9.020	Reactor physics experiments and measurements in the ZED–2 reactor	Canada.

[FR Doc. 85–6134 Filed 3–13–85; 8:45 am]

BILLING CODE 7590-01-M

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a proposed revision to a guide in its Regulatory Guide Series together with a draft of the associated value/impact statement. This series has been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants certain of the information needed by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

The draft, temporarily identified by its task number, WM 404–4 (which should be mentioned in all correspondence concerning this draft guide), is proposed Revision 1 to Regulatory Guide 4.17 and is entitled "Standard Format and Content of Site Characterization Plans for High-Level-Waste Geologic Repositories." The guide is being revised to reflect provisions of the Nuclear Waste Policy Act and to make other changes that the NRC staff believes necessary.

This draft guide and the associated value/impact statement are being issued to involve the public in the early stages of the development of a regulatory position in this area. They have not received complete staff review and do not represent an official NRC staff position.

Public comments are being solicited on both drafts, the guide (including any implementation schedule) and the draft value/impact statement. Comments on the draft value/impact statement should be accompanied by supporting data. Comments on both drafts should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, by May 15, 1985.

Although a time limit is given for comments on these drafts, comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. Requests for single copies of draft guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Technical Information and Document Control. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Silver Spring, Maryland, this 7th day of March 1985.

For the Nuclear Regulatory Commission.

Karl R. Goller,

Director, Division of Radiation Programs and Earth Sciences, Office of Nuclear Regulatory Research.

[FR Doc. 85–6135 Filed 3–13–85; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–461]

Illinois Power Station, Unit 1; Order Extending Construction Completion Dates

Illinois Power Company on behalf of itself, and as agent for Soyland Power Cooperative, Inc. and Western Illinois Power Cooperative, Inc., (the Permittees) are holders of Construction Permit No. CPPR–137 issued by the Nuclear Regulatory Commission on February 24, 1976, for the Clinton Power Station, Unit 1. This facility is presently under construction at the applicant's site in DeWitt County approximately six miles east of the city of Clinton, Illinois.

By letter dated August 22, 1984, the Illinois Power Company on behalf of the permittees filed a request for an extension of the construction completion date. This request is to extend the latest completion date for the facility from October 1, 1984, to October 1, 1986.

The Illinois Power Company stated that this extention is requested because construction has been delayed due to the following:

1. A series of stop work orders and recovery programs initiated by Illinois Power in 1982 to implement corrective action and improve construction programs for several areas of construction.

2. An Overinspection Program and Record Verification Program initiated by Illinois Power in 1982 to verify the quality of construction of large portions of CPS.

Furthermore, the time required to lift the stop work orders and complete the recovery programs, Overinspection Program, and the Record Verification Program was not accounted for in previous request for an extension of the construction permit for Clinton Power Station.

The staff has performed an evaluation of the request for extension. Based on this review, the staff had determined that the above factors have resulted in significant delays in construction completion and that the request is for a reasonable period of time when considering the nature of the delays, the bases from which are set forth in the staff's evaluation of the request for extension.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.55(b) an extension is authorized by law and will not endanger life or property of the common defense and security and is otherwise in the public interest.

Pursuant to 10 CFR 50.32, the Commission has determined that the issuance of this extension will have no significant impact on the environment (50 FR 7244).

The NRC staff's evaluation of the request for extension of the construction permit is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. 20555, and at the local public document room established for the Clinton Power Station, at the Warner Vespasian Library, Clinton, Illinois.

It is hereby ordered that the latest completion date for Construction Permit No. CPRR–137 is extended from October 1, 1984 to October 1, 1986.

Date of Issuance: March 8, 1985.

For the Nuclear Regulatory Commission.

Hugh Thompson,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 85–6136 Filed 3–13–85; 8:45 am]

BILLING CODE 7590–01–M

PENSION BENEFIT GUARANTY CORPORATION

Request for Extension of Approval Under the Paperwork Reduction Act of the Information Collection Requirement Contained in 29 CFR Part 2673

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for OMB approval of extension.

SUMMARY: The Pension Benefit Guaranty Corporation has requested approval by the Office of Management and Budget for an extension of the expiration date of a currently approved information collection requirement (1212–0020) without any change in the substance or in the method of collection. The information collection, which is scheduled to expire on May 31, 1985, is contained in PBGC's regulation on Notice of Termination for Multiemployer Plans, 29 CFR Part 2673.This regulation prescribes the contents and procedures for a notice of termination that must be filed when a multiemployer plan has terminated either by plan amendment or by mass withdrawal of all employers. The effect of this notice is to advise the public of PFGC's request for OMB approval of this extension.

ADDRESSES: All written comments (at least three copies) should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Pension Benefit Guaranty Corporation, 3208 New Executive Office Building, Wasington, D.C. 20503. The request for extension will be available for public inspection at the PBGC Communications and Public Affairs Department, Suite 7100, 2020 K Street, NW., Washington, D.C. 20006, between the hours of 9:00 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: John Carter Foster, Attorney, Multiemployer Regulations Group, Corporate Policy and Regulatory Department (611), 2020 K Street, NW., Washington, D.C. 20006; telephone 202–254–4860 (202–254–8010 for TTY and TDD). These are not toll-free numbers.

Issued at Washington, D.C., on this 1st day of March 1985.

C.C. Tharp,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 85–6092 Filed 3–13–85; 8:45 am]

BILLING CODE 7708–01–M

RAILROAD RETIREMENT BOARD

Privacy Act of 1974; New System of Records

AGENCY: Railroad Retirement Board.

ACTION: Notice of a new system of records.

SUMMARY: The Railroad Retirement Board proposes to establish a new system of records subject to the Privacy Act. The system notice for this new system of records is published below.

DATES: This new system of records, with the exception of the proposed routine uses and claimed exemption, will become effective as proposed without further notice in 60 calendar days from the date of this publication unless OMB approves the RRB request for a waiver of the 60-day advanced notice requirement of new or altered system reports, in which case the system, with the exception of the routine uses and the claimed exemptions, will become effective as of the date the waiver is granted. If the waiver is granted, the routine uses will be effective not earlier than 30 calendar days from the date of this publication unless comments are received before this date which would result in a contrary determination. If the waiver is not granted, the routine uses will become effective 60 days from the date of this publication unless comments are received which would result in a contrary determination. Regardless of the OMB action on the waiver, the claimed exemption will not be effective for this system until a final rule is published in the **Federal Register**.

ADDRESS: Send comments to Beatrice Ezerski, Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: LeRoy Blommaert, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, Telephone 312–751–4548.

SUPPLEMENTARY INFORMATION: A professional investigator has been hired in the RRB's Bureau of Audit and Investigation to conduct investigations of alleged violations of law, regulation, or rule pertinent to the administration of programs by the RRB as well as alleged misconduct or conflict of interest on the part of RRB employees in the discharge of their duties. The development of investigation files requires the establishment of a system of records under the Privacy Act.

On March 8, 1985, the Railroad Retirement Board filed a new system report for this system with the Speaker of the House of Representatives, the President of the Senate and the Office of Management and Budget. This was done to comply with Section 3 of the Privacy Act of 1974 and OMB Circulars No. A–108, Transmittal Memorandum No. 1, dated September 30, 1975, and Transmittal Memorandum No. 3, dated May 17, 1976.

By the Authority of the Board.

Dated: March 8, 1985.

Beatrice Ezerski,

Secretary to the Board.

RRB–43

SYSTEM NAME:

Investigation Files.

SYSTEM LOCATION:

U.S. Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any of the following categories of individuals on whom a complaint is made alleging a violation of law, regulation, or rule pertinent to the administration of programs by the RRB, or, with respect to RRB employees, alleging misconduct or conflict of interest in the discharge of their official duties: current and former employees of the Railroad Retirement Board; contractors; subcontractors; consultants; applicants for, and current and former recipients of, benefits under the programs administered by the Railroad Retirement Board; officials and agents of railroad employers; members of the public who are alleged to have stolen or unlawfully cashed RRB benefit or payroll checks or assisted in such activity; and others who furnish information, products, or services to the RRB.

CATEGORIES OF RECORDS IN THE SYSTEM:

Letters, memoranda, and other documents alleging a violation of law, regulation or rule, or alleging misconduct, or conflict of interest; reports of investigations to resolve allegations with related exhibits, statements, affidavits or records obtained during the investigation; recommendations on actions to be taken; transcripts of, and documentation concerning requests and approval for, consensual telephone monitoring; reports from law enforcement bodies; prior criminal or noncriminal records as they relate to the investigation; reports of actions taken by management personnel regarding misconduct; reports of legal actions resulting from violations referred to the Department of Justice for prosecution.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Inspector General Act of 1978, Pub. L. 95–452, 5 U.S.C. App., as amended by the Railroad Solvency Act, Publ. L. 98–76; Railroad Unemployment Insurance Act, as amended, Sec. 9 (a), (b) and (c), and Sec. 12(a); Railroad Retirement Act

of 1974, as amended, Sec. 7(b) (3) and (6) and Sec. 13(a.)

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

a. Records may be disclosed to the Department of Justice in connection with actual or potential criminal prosecution or civil litigation initiated by the RRB, or in connection with requests by RRB for legal advice.

b. Records may be disclosed to a Federal agency which has requested information relevant or necessary to its hiring or retention of an employee or the issuance of a security clearance, provided that the subject individual is not an individual on whom the RRB has obtained information in conjunction with its administration of the Railroad Retirement Act, the Railroad Unemployment Act, the Milwaukee Railroad Restructuring Act, or the Rock Island Railroad Transition and Employee Assistance Act.

c. Disclosure may be made to a congressional office from the record of an individual in rsponse to an inquiry for the congressional office made at the request of that individual, provided that the subject individual would not be denied access to the requested information.

d. Disclosure may be made to an attorney representing the subject individual upon receipt of a written letter or declaration stating the fact of representation, provided that the subject individual would not be denied access to the requested information.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper, word processing and/or personal computer diskette.

RETRIEVABILITY:

Name; assigned case number cross-referenced to name of subject of investigation.

SAFEGUARDS:

General access is restricted to the director of Audit and Investigation and members of the director's investigatory staff; disclosure within the agency is on a limited need-to-know basis; records are maintained in locked file cabinets.

RETENTION AND DISPOSAL:

Retention period and disposal instructions have not yet been officially established.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Audit and Investigation, U.S. Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

NOTIFICATION PROCEDURE:

Requests for information regarding an individual's record should be in writing addressed to the System Manager identified above, including the full name, claim number, and social security number of the individual. Before information about any record will be released, the System Manager may require the individual to provide proof of identity or require the requester to furnish an authorization from the individual to permit release of information. Many records in this system are exempt from the notification requirements under 5 U.S.C. 552a(k). To the extent that records in this system of records are not subject to exemption, they are subject to notification. A determination whether an exemption applies shall be made at the time a request for notification is received.

RECORD ACCESS PROCEDURES:

Requests for access to the record of an individual and requests to contest such a record should be in writing addressed to the System Manager identified above, including the full name, claim number, and social security number of the individual. Before information about any record will be released, the System Manager may require the individual to provide proof of identity or require the requester to furnish an authorization from the individual to permit release of information. Many records in this system are exempt from the records access and contesting requirements under 5 U.S.C. 552(k). To the extent that records in this system of records are not subject to exemption, they are subject to acccess and contest requirements. A determination as to whether an exemption applies shall be made at the time a request for access or contest is received.

CONTESTING RECORD PROCEDURES:

See notification section above.

RECORD SOURCE CATEGORIES:

The subject individual, the complainant, other third parties, including employers and local, state, and federal agencies, and other RRB record systems.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(k)(2) records in this system of records which consist of investigatory material compiled for law enforcement purposes are exempted from the notice, access, and contest requirements under 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G),(H) and (I), and (f); however, if any individual is denied any right, privilege, or benefit to which the individual would otherwise be eligible as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence.

The reasons why the head of the Railroad Retirement Board decided to exempt this system of records under 5 U.S.C. 532a(k) are given in a rule published elsewhere in this **Federal Register.**

[FR Doc. 85-6098 Filed 3-13-85; 8:45 am]
BILLING CODE 7905-1-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-23626; 70-7084]

Eastern Utilities Associates; Proposed Increase in Authorized Common Shares and Order Authorizing Solicitation of Proxies

March 8, 1985.

Eastern Utilities Associates ("EUA"), P.O. Box 2333, Boston, Massachusetts 02107, a registered holding company, has filed a declaration with this Commission pursuant to Sections 6(a), 7, and 12(e) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 62 promulgated thereunder.

EUA proposes to increase the authorized number of its common shares of $5 par value from 12,000,000, as now provided in the Declaration of Trust, to 16,000,000. It is stated that the additional shares are needed for the EUA System's three shareholder and employee common share purchase plans and to meet unforeseen events. EUA intends to submit the proposal to its shareholders for their approval at the annual meeting to be held on April 22, 1985. In connection therewith EUA proposes to solicit proxies of its common shareholders to be voted at the meeting.

The declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by April 2, 1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a

copy on the declarant at the address specified above. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the declaration, as amended or as it may be further amended, may be permitted to become effective with respect to the proposed increase in authorized shares.

It appearing to the Commission that EUA's declaration regarding the proposed solicitation of proxies should be permitted to become effective forthwith pursuant to Rule 62:

It is ordered that the declaration with respect to the proposed solicitation of proxies be, and it hereby is, permitted to become effective forthwith pursuant to Rule 62 and subject to the terms and conditions prescribed in Rule 24 under the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-6063 Filed 3-13-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-21827; SR-OCC-83-22]

Self-Regulatory Organizations; Filing of Amendments to a Proposed Rule Change of Options Clearing Corp.

Pursuant to section 19(b) of the Securities Exchange Act of 1934 (the "Act"), notice is hereby given that on January 7, 1985, the Options Clearing Corporation ("OCC") filed with the Commission an amendment to the above-captioned proposed rule change. Notice of the proposal was published in the **Federal Register** on October 3, 1983 (48 FR 50187). The Commission is publishing this notice to solicit comments on the amendments to the proposal.

The original proposal sets forth rules and standards for clearing members that have facilities management arrangements. Under a typical facilities management agreement, an OCC clearing member (the "managing clearing member") agrees to provide certain services for another OCC clearing member (the "managed clearing member") for a fee. The managed clearing member relies on the managing clearing member's performance of its duties under the facilities management contract to meet OCC's membership requirements of operational capability, experience, and competence. OCC's amendments to its proposed facilities management standards are described below.

OCC has amended paragraph 4 of its Interpretation to OCC Bylaw Article V, Section 1 (the "Interpretation"), to provide that facilities management agreements must be in a form acceptable to OCC. As previously proposed, the Interpretation required facilities management agreements to be approved by OCC. OCC states in its filing that the amendment clarifies that OCC will not approve formally facilities management agreements, but will review them to see that they comply with OCC's proposal.

OCC's amendment also would delete paragraphs 4(c) and 4(d) of the Interpretation. These paragraphs would have required a facilities management agreement to allocate liabilities between the managing and managed clearing members and between those clearing members and OCC. OCC states in its amendment that it now believes the allocation of liabilities between the managing and managed clearing members should be a matter of contract negotiation between the members. Regarding clearing members' liability to OCC, OCC states that its protections against financial exposure (*e.g.*, OCC margin and clearing fund requirements) adequately protect it from financial exposure from clearing members.

OCC's amendment does not affect the original proposed Interpretation's requirement that a facilities management agreement provide for termination of the agreement if OCC no longer approves the managing clearing member to act as a managing clearing member and that a managing clearing member continue to satisfy OCC that it has requisite net capital, operational capability, and experienced staff. OCC's proposed amendment to the Interpretation, however, clarifies that OCC can conduct reviews of managing clearing members periodically and when a managing clearing member expands its facilities management activities. The above provision has been renumbered as paragraph 4(c), formerly 4(f), of the Interpretation. OCC's amendments also changed the last sentence of paragraph 4(c) to require all facilities management agreements to meet OCC's requirements and to be in a form acceptable to OCC within 120 days after the effective date of OCC's proposal.

OCC's amendment has amended OCC Rule 309 to enable OCC to limit a clearing member's facilities management activities when necessary to protect OCC, its members, or the public. OCC believes that this amendment should reduce risks posed by clearing members' facilities management activity. The amendment also moves paragraph 4(e) of the Interpretation to OCC Rule 309. That provision states that if a facilities management agreement is terminated, the managed clearing member must withdraw from OCC membership. Withdrawal need not occur if OCC's membership committee determines that the managed clearing member has the operational capacity, experience and competence to perform the managed services or that the managed clearing member has entered into a new and acceptable facilities management agreement. OCC believes that this provision should be a condition for continued OCC membership rather than a provision of a facilities management agreement. In addition, OCC has deleted the last sentence of old paragraph 4(e) of the Interpretation, which required a managed clearing member to consent to its summary suspension as an OCC member if it failed to withdraw from OCC membership.

Finally, OCC states in its filing that it does not intend the net capital and other requirements of its proposal to apply to arrangements where a clearing member performs purely ministerial functions for another clearing member when such arrangements do not raise issues of increased risk or liability.

Copies of all documents relating to the proposal, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, may be inspected and copied at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. and at OCC's principal offices.

To assist the Commission in determining whether to approve the proposal or to institute disapproval proceedings, comments are invited within 21 days from the date of publication in the **Federal Register**. Please file six copies of your comments with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549, by April 4, 1985. Your comments should refer to File No. SR-OCC-82-22.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

John Wheeler,

Secretary.

March 8, 1985.

[FR Doc. 85-6064 Filed 3-13-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-21833; File No. SR-PHLX 85-3]

Self-Regulatory Organizations; Proposed Rule Change by Philadelphia Stock Exchange, Inc., Relating to Bid/Ask Differentials

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on February 19, 1985. Philadelphia Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange, Inc. ("PHLX") proposes to amend subparagraph (c)(i)(A) of Rule 1014. The text of the proposed rule change follows with brackets indicating deletions and italic indicating additions.

Bidding and/or offering so as to create differences of no more than ¼ of $1 between the bid and the offer for each option contract for which the last preceding transaction price was $.50 or less, no more than ⅛ of $1 where the last preceding transaction price was more than $.50 but did not exceed $10, no more than ¾ of $1 where the last preceding transaction price was more than $10 but less than $20, and no more than $1 where the last preceding transaction price was $20 or more, provided that the Exchange may establish differences other than the above for one or more series or classes of options. The bid-ask differentials as stated above shall apply to [all but the longest term series of options open for trading in each class] *series of less than nine months.* For *all other* series, the bid-ask differential shall be twice that stated above.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for the Proposed Rule Change

The purpose of the proposed rule change is to conform the language in subparagraph (c)(i)(A) of Rule 1014 to Rule 1012 which permits the trading of foreign currency options series with a twelve month expiration period. The proposed rule change clarifies language in subparagraph (c)(i)(A) of Rule 1014 by specifying the bid-ask differentials for options with expiration periods of nine months or longer.

The statutory basis for the proposed rule change is found in Section 6(b)(5) of the Securities Exchange Act of 1934 ("Act") which provides, in pertinent part, that the rules of the Exchange be designed to facilitate transactions in securities and to protect investors and the public interest.

B. Self-Regulatory Organizations Statement on Burden on Competition

The PHLX believes that the proposed rule change will not impose any burden on competition.

C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approved such proposed rule change, or,

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by April 4, 1985.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

March 11, 1985.

[FR Doc. 85-6146, Filed 3-13-85; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice CM-8/830]

Secretary of State's Advisory Committee on Private International Law, Study Group on the Law Applicable to International Sales; Meeting

There will be a meeting of the Study Group on the Law Applicable to International Sales, a study group of the subject Advisory Committee, at 9:30 A.M. on Friday, March 29, 1985 in Room 1205 of the Department of State in Washington, D.C. Members of the general public may attend up to the capacity of the meeting room and participate in the discussion subject to instructions of the chairman.

The Study Group will review the work of the expert Special Commission of the Hague Conference on Private International Law that has prepared a draft convention on the law applicable to contracts for the international sale of goods. The draft convention sets out rules to govern the law applicable to international sales contracts when the parties have specified applicable law in their contract and when they have not. The Study Group will review draft written comments prepared for the Department of State by Professor Arthur T. von Mehren of Harvard Law School, who has attended the several meetings of the Special Commission on behalf of the United States. The written

comments, in final form, will be submitted to the Permanent Bureau of the Hague Conference in early April and will subsequently be disseminated with the comments of other governments on the draft convention. The draft convention will be reviewed at the extraordinary session of the Hague Conference in October, 1985, which is expected to adopt the convention in final form. The United States expects to participate at the extraordinary session with a delegation.

Entry to the Department of State building at 22nd and C Streets, NW. is controlled and members of the general public planning to attend should, prior to March 28, 1985, notify the Office of the Assistant Legal Adviser for Private International Law, Department of State, (telephone (202) 632–8134) of their name, affiliation, address, and and phone number.

Peter H. Pfund,

Assistant Legal Adviser for Private International Law, and Vice Chairman, Secretary of State's Advisory Committee on Private International Law.

[FR Doc. 85–6109 Filed 3–13–85; 8:45 am]

BILLING CODE 4710–08–M

SUSQUEHANNA RIVER BASIN COMMISSION

Buffalo Creek Watershed Plan and Similar U.S. Soil Conservation Service Land Treatment Project; Proposed Comprehensive Plan Addition; Hearing

The Susquehanna River Basin Commission (SRBC) will hold a public hearing to receive comments from citizens, government agencies and others on the proposed addition of the Buffalo Creek Watershed Plan and similar U.S. Soil Conservation Service (SCS) land treatment projects to its *Comprehensive Plan for the Management and Development of the Water Resources of the Susquehanna River Basin*. The hearing has been scheduled for Thursday, April 11, 1985, at the Commission headquarters building, 1721 North Front Street, Harrisburg, Pennsylvania, following the regular meeting of the Commission which begins at 9:00 A.M.

The Susquehanna River Basin Compact, Pub. L. 91–575, 84 Stat. 1509 et seq., requires the Commission to maintain a Comprehensive Plan for the immediate and long-range use, management and development of the water and related resources of the basin. Initially adopted in December 1973, the Plan provides a basinwide strategy to guide the Commission and others in the management, use and conservation of the basin's resources. The Plan is also used to evaluate proposed water resource developments that the Commission must, by law, approve. Federal agencies must exercise their powers in a manner that does not substantially conflict with the Comprehensive Plan.

Buffalo Creek is a tributary of the West Branch of the Susquehanna River and covers a watershed area of 85,760 acres in Union County, Pa. The Buffalo Creek Watershed Plan is a SCS land treatment project, sponsored by the Union Conservation District, which includes measures to reduce erosion and sediment on agricultural land, soil nutrient losses, sediment and nutrient loading of streams and agricultural pollutants from livestock wastes. Total project cost is estimated to be $1,287,800 of which $721,900 is to be borne by Pub. L. 566 funds and $565,900 by project sponsors and landowners.

The Buffalo Creek Watershed Plan represents one component of SCS's overall authorized mission under Pub. L. 566 to reduce erosion, soil nutrient losses and agricultural pollution. Pursuant to this mission, SCS anticipates a series of land treatment projects similar in purpose and scope throughout the Susquehanna Basin. The Clover Creek Watershed Plan is another such project which the Commission adopted into its Comprehensive Plan on May 12, 1983. At its regular meeting on February 7, 1985, the Commission agreed to consider the Buffalo Creek Project for adoption into the SRBC Comprehensive Plan. The Commission also agreed to consider the incorporation of a statement in the Comprehensive Plan which would allow SCS land treatment projects similar in purpose to the Clover Creek and Buffalo Creek Watershed Plans to be incorporated into the Comprehensive Plan on a generic basis. Adoption into the Comprehensive Plan will affirm the projects' compliance with the Compact and the goals and objectives of the Comprehensive Plan, thus clearing the way for implementation by the Federal Government and local sponsors.

The April 11th hearing will be informal in nature. Interested parties are invited to attend the hearing and to participate by making oral or written statements presenting their data, views and comments on the proposed addition. Those wishing to personally appear to present their views are urged to notify the Commission in advance that they desire to do so. However, any person who wishes to be heard will be given opportunity to be heard whether or not they have given such notice. After the hearing, the Commission will evaluate all relevant material and decide whether to adopt the proposed addition into the Comprehensive Plan.

A background report on the Buffalo Creek Watershed Plan is available upon request from the Secretary, Susquehanna River Basin Commission, 1721 North Front Street, Harrisburg, Pa. 17102–2391, 717/238–0423. Additional information may also be obtained through the Soil Conservation Service, P.O. Box 985, Federal Square Station, 228 Walnut Street, Harrisburg, Pa. 17103, 717/782–4453.

Dated: March 8, 1985.

Robert J. Bielo,

Executive Director.

[FR Doc. 85–6104 Filed 3–13–85; 8:45 am]

BILLING CODE 7040–01–M

TENNESSEE VALLEY AUTHORITY

Paperwork Reduction Act of 1980; Forms Under Review by the Office of Management and Budget

AGENCY: Tennessee Valley Authority.

ACTION: Forms Under Review by the Office of Management and Budget.

SUMMARY: The Tennessee Valley Authority (TVA) has sent to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

Requests for information, including copies of the forms proposed and supporting documentation, should be directed to the Agency Clearance Officer whose name, address, and telephone number appear below. Questions or comments should be directed to the Agency Clearance Officer and also to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, Attention: Desk Officer for Tennessee Valley Authority, 395–7313.

Agency Clearance Officer: Cheryl C. Thomas, Tennessee Valley Authority, 100 Lupton Building, Chattanooga, TN 37401; (615) 751–2522, FTS 858–2522.

Type of Request: Regular submission of a new collection
Title of Information Collection: Rebate Processing Form/Sales Data Form
Frequency of Use: On occasion
Type of Affected Public: Individuals; small businesses
Small Businesses or Organizations Affected: Yes
Federal Budget Functional Category Code: 271
Estimated Number of Annual Responses: 4,035
Estimated Total Annual Burden Hours: 295.9

Need For and Uses of Information: Increasing use of high-efficiency air-conditioners (HEAC) in the Tennessee Valley must be encouraged to mitigate

the costliness of high load growth on TVA's power system. TVA is encouraging consumer purchase of HEAC's through a rebate offering. These forms allow TVA to provide, monitor, and evaluate the rebate program.

Dated: March 6, 1985.

John W. Thompson,

Manager of Corporate Services, Senior Agency Official.

[FR Doc. 85-6080 Filed 3-13-85; 8:45 am]

BILLING CODE 8120-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Petition for Exemption; Summary of Petitions Received Dispositions of Petitions Issued

[Summary Notice No. PE-85-4]

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: April 3, 1985.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. ——, 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION:

The petition, any comments received and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 916, FAA headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-3644.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on March 8, 1985.

John H. Cassady,

Assistant Chief Counsel, Regulations and Enforcement Division.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought
24478	Global Int'l Airways Corp	14 CFR 91.303	To allow petitioner to operate one Stage 1 Boeing 707 airplane in noncompliance with the operating noise limits until hush kits are installed.
24481	Fast Air Carrier LTDA	14 CFR 91.303	To allow petitioner to operate a Stage 1 Boeing 707 airplane to Stewart International Airport in New York until hush kits are installed.
24450	Baron Aviation	14 CFR 135.179	To allow you to operate single-engine Cessna 208A aircraft utilizing the provisions of a minimum equipment list.
24497	Kaiser Steel Corp	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list.
24498	Guilford Mills, Inc	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list.
24499	The Kelly Springfield Tire Company	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list.
24500	Contel Service Corp	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list.
24501	GTE Service Corp	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list.
24502	AMCA International	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list.
24503	Digital Switch Corp	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list.
24504	State Street Corp	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list.
24506	Cities Service Oil & Gas Corp	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list.
24508	Ashland Oil, Inc	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list.
24509	Mercury Flight, Inc	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list.
24516	U.S. Epperson Underwriting Co	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list.
24521	Florida Federal Savings & Loan Assoc	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list.
24523	United States Fidelity and Guaranty Company	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list.
24524	Corning Glass Works	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list.
24514	Peabody Coal Co	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list.
24513	Forbes, Inc	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list.
24512	American Can Co	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list.
24511	Ziegler Inc	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list

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PETITIONS FOR EXEMPTION—Continued

Docket No.	Petitioner	Regulations affected	Description of relief sought
25410	Outboard Marine Corp.	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list.
24450	Frakes Aviation	14 CFR 21.19(b)(1)	To allow petitioner to remove the two Wright 1820 piston engines and install four turbojet engines on the Grumman Albatross aircraft without obtaining a new type certificate.
23521	Singapore Airlines	14 CFR 21.181	To amend Exemption No. 3768, as amended, by adding two B-747-312 airplanes and by extending the 5/31/85 termination date. That exemption allows petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list.
24445	Cammacorp	14 CFR 145.71	To allow a foreign repair station under contract to petitioner; to modify DC-8 aircraft to comply with Part 36 noise limitations.
24446	Air Transport Assoc. of America	14 CFR 121.485	To allow member carriers to conduct flag operations on the understanding that § 121.485 only applies to an operation which requires three or more pilots and an additional flight crewmember.
24452	Guardsman Chemicals	14 CFR 21.181	To allow petitioner to operate a Beech King Air 200 aircraft utilizing the provisions of a minimum equipment list.
22872	Air Transport Assoc. of America	14 CFR Portions of Part 61, Appendix A & Part 121, Appendix E.	To allow member carriers to permit the actual static airplance preflight inspection training and checking requirements for a pilot candidate for a rating in a two-member flightcrew airplane to be accomplished by using an advanced and approved pictorial means.
24459	Embraer, S.A.	14 CFR 135.157(b)(2)	To allow petitioner to comply with the oxygen supply requirements of § 121.333(e)(1) and (2) instead of § 135.157(b)(2).
24458	American Airlines	14 CFR Portions of Part 121, Appendix H	To allow petitioner to conduct B-747 and DC-10 Phase IIA training in a Phase I simulator until June 1, 1986.
24457	Flight Training Devices	14 CFR 63.37	To provide relief from the 5 hours of flight training requirement for a turbojet flight engineer certificate applicant who holds a commercial pilot certificate with an instrument rating, subject to certain conditions.
24409	Pellerin Milnor Corp.	14 CFR 21.181	To allow petitioner and Pellerin Laundry Machinery Sales Company to operate a Beech Model 200 aircraft utilizing the provisions of a minimum equipment list.
24377	Pittsburg & Shawmut Coal Company	14 CFR 21.181	To allow petitioner to operate a Citation II aircraft utilizing the provisions of a minimum equipment list.
23139	Wylie Aircraft Corp.	14 CFR 91.31(e)(3)	To allow petitioner to operate two DC-6B cargo aircraft with a 5 percent increase in zero fuel and landing weights.
24526	Jeno's, Inc.	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list.
24437	Reaction Research Society, Inc.	14 CFR 101.23(b)	To permit petitioner to operate unmanned rockets in controlled airspace in the vicinity of Randsbury, California.

Disposition of Petitions for Exemption

Docket No.	Petitioner	Regulations affected	Description of relief sought, disposition
24365	Lineas Aereas Paraguayas	14 CFR 91.303	To exempt petitioner from the January 1, 1985, noise level compliance date contained in 14 CFR Part 91, Subpart E. *Amended grant 2/26/85.*
24252	Dept. of Air Force	14 CFR 101.13(a)(2)	To allow the 1st Special Operations Wing to conduct training with the Fulton Recovery System. *Grant 2/20/85.*
24345	Varig, S.A.	14 CFR 91.303	To exempt petitioner from the January 1, 1985, noise level compliance date contained in 14 CFR Part 91, Subpart E. *Amended grant 2/19/85.*
23979	Starling Airways A/S	14 CFR 91.303	To exempt petitioner from the January 1, 1985, noise level compliance date. *Amended partial grant 2/15/85.*
23883	Florida Express, Inc.	14 CFR 91.307	To allow operation in the United States, under a service to small communities exemption, of specified two-engine airplanes identified by registration and serial number, that have not been shown to comply with the applicable operating noise limits as follows: Until not later than January 1, 1988, 6 BAC 1-11: N455OT *Granted 2/12/85.*
24289	Buffalo Airways, Inc.	14 CFR 91.303	To exempt petitioner from the January 1, 1985, noise level compliance date. *Amended grant 2/12/85.*
24370	Hawaiian Airlines, Inc.	14 CFR 91.303	To allow petitioner to operate two Stage 1 DC-8 aircraft in noncompliance with the operating noise limits between Vancouver and Honolulu, Salt Lake City, Las Vegas and San Francisco until hush kits are installed. *Denied 1/31/85.*
24396	American Trans Air	14 CFR 91.303	To exempt petitioner from the January 1, 1985, noise level compliance date. *Granted 2/7/85.*
24034	Aerovias Colombianas, LTDA	14 CFR 91.303	To exempt petitioner from the January 1, 1985, noise level compliance date. *Partial grant 2/7/85.*
24350	Varig, S.A.	14 CFR 91.303	To allow petitioner to operate Stage 1 Boeing 707 aircraft to New York, Los Angeles and Anchorage until June 30, 1985, in noncompliance with the operating noise limits. *Denied 2/8/85.*
24326	Hawaiian Airlines, Inc.	14 CFR 91.303	To exempt petitioner from the January 1, 1985, noise level compliance date. *Partial grant 2/8/85.*
24373	Transportes Aereos Mercantiles Panamericanos S. A.	14 CFR 91.303	To exempt petitioner from the January 1, 1985, noise level compliance date. *Grant 2/8/85.*

[FR Doc. 85-6033 Filed 3-13-85; 8:45 am]
BILLING CODE 4910-13-M

Federal Railroad Administration

Petitions for Exemption or Waiver of Compliance; Indiana Transportation Museum, et al,

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received requests for an exemption from or waiver of compliance with certain requirements of its safety standards. The individual petitions are described below, including the party seeking relief, the regulatory provisions involved, and the nature of the relief being requested.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate

scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number RST–84–21) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590.

Communications received before May 1, 1985 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590.

The individual petitions seeking an exemption or waiver of compliance are as follows:

Indiana Transportation Museum

[Waiver Petition Docket Number RSGM–84–28]

The Indiana Transportation Museum (ITMZ) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for three F–7 type diesel electric locomotives. The ITMZ states that installation of the windshield glazing is proceeding without problem, but feels the alterations necessary to install safety glazing in the side windows would radically affect the historical appearance of the locomotives, and accordingly, requests authority not to install the required glazing in these side windows. The ITMZ claims that these locomotives are operated only in the summer months for excursion service and in areas where incidents of vandalism are low; therefore, there is little or no safety risk for operating personnel.

Kewash Railroad Incorporated

[Waiver Petition Docket Number RSGM–84–29]

The Kewash Railroad Incorporated (KEWH) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for one locomotive. The KEWH operates on approximately 15 miles of track between Washington and Keota, Iowa, in areas which are principally rural. The KEWH feels that the possibility of an act of vandalism against them is remote, because they operate in a lightly populated area, generally away from highways and secondary roads.

Vandalia Railroad Company

[Waiver Petition Docket Number RSGM–84–31]

The Vandalia Railroad Company (VRRC) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for one locomotive. The VRRC claims that they operate in a rural area over 2.54 miles of track in Vandalia, Illinois, and feels that the cost of complying with the Safety Glazing requirements would be an unnecessary financial burden.

Blue Rock Transportation Company

[Waiver Petition Docket Number RSGM–84–32]

The Blue Rock Transportation Company seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for one locomotive. The Blue Rock Transportation Company indicates that they operate trains five to ten times per week on 4.2 miles of track in a rural area near Greenfield, Ohio. The Blue Rock Transportation Company contends their use of the locomotive and the area in which it is operated, make compliance with FRA safety glazing requirements unnecessary.

Great Southwest Railroad, Inc.

[Waiver Petition Docket Number RSGM–84–34]

The Great Southwest Railroad, Inc. (GSW) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for two switching locomotives. The GSW operates on 26 miles of track, primarily in switching service, through nonresidential areas near Grand Prairie, Texas. The GSW indicates that they have never had problems with vandalism on their property and feels that safety would not be adversely affected by the granting of a waiver.

Indiana Harbor Belt Railroad Company

[Waiver Petition Docket Number RSGM–84–35]

The Indiana Harbor Belt Railroad Company (IHB) seeks a temporary waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for 20 cabooses.

The IHB seeks a temporary waiver of compliance to allow additional time to obtain and apply FRA safety glazing and also in consideration for the financial impact to the railroad. The IHB seeks a one-year extension and indicates all will be done to bring their active fleet into compliance.

Appanoose County Community Railroad

[Waiver Petition Docket Number RSGM–84–36]

The Appanoose County Community Railroad seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for one locomotive. The Appanoose County Community Railroad operates on 11 miles of track in rural areas between Centerville and Moulton, Iowa, and because of the areas in which it works, feels that compliance with FRA glazing requirements is unnecessary.

J&J Railroad, Inc.

[Waiver Petition Docket Number RSGM–84–37]

The J&J Railroad, Inc. (JJRD) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for their one locomotive. The JJRD operates over 9 miles of track near Hardin, Kentucky, with inconsistent frequency. The JJRD feels that the installation of FRA certified glazing is unnecessary because of the area in which they operate.

The Alaska Railroad

[Waiver Petition Docket Number RSGM–84–38]

The Alaska Railroad (ARR) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for nine locomotives. The ARR indicates the locomotives are scheduled to be retired from service and are only used in limited service for four to five months of the year. ARR seeks a waiver of compliance because of the short remaining operational life of the locomotives and the limited use to which they are put.

E.I. DuPont De Nemours and Company, Inc.

[Waiver Petition Docket Number RSGM–85–1]

The DuPont Company seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for four locomotives and one caboose.

DuPont states that the locomotives are used to switch cars within their plant and to deliver shipments of coal to Atlantic City Electric over 3 miles of track owned by Conrail.

DuPont contends that while this track extends outside of their plant fence, it is on property owned by DuPont and is not

a part of the general railroad system. DuPont also states that there will be no railroad employees riding on their equipment, that access to the track is limited, and that there has been no history of vandalism along the track.

Allied Corporation

[Waiver Petition Docket Number RSGM–85–2]

The Allied Corporation seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for nine locomotives. Allied Corporation operates five of these locomotives at their facility in Solvay, New York, and two locomotives at each of their facilities in Hopewell, Virginia, and Jamesville, New York. The Allied Corporation states that their locomotives are primarily used to switch rail cars within manufacturing facilities, but do have cause to enter upon local railroad tracks for the purpose of picking up and delivering cars. The corporation indicates the cost to install certified glazing would be significant to the operation of these locomotives.

Minnesota Valley Transportation Company, Inc.—Southwest

[Waiver Petition Docket Number RSGM–85–3]

The Minnesota Valley Transportation Company, Inc.—Southwest (MNVA) seeks a waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for four locomotives. The MNVA states that they operate on 95 miles of track, all but eight of which are in a rural environment in the vicinity of Morton, Minnesota. The MNVA feels that the retrofitting of equipment to comply with FRA safety glazing standards, to protect against situations they do not encounter, would impose an undue financial burden on them.

Issued in Washington, D.C., on March 7, 1985.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 85–6042 Filed 3–13–85; 8:45 am]

BILLING CODE 4910–06–M

National Highway Traffic Safety Administration

[Docket No. EX85–1; Notice 1]

British Coach Works Ltd.; Petition for Temporary Exemption From Federal Motor Vehicle Safety Standards

British Coach Works, Ltd., of Arnold, PA, a division of Perfect Plastics Industries, has petitioned for temporary exemption from several Federal motor vehicle safety standards. The basis of the petition is that compliance would cause substantial economic hardship.

Notice of receipt of the petition is published in accordance with National Highway Traffic Safety Administration regulations on this subject (49 CFR 555.7) and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Petitioner has for some time produced kits used by vintage automobile enthusiasts to transform existing automobiles into physical replicas of classic automobiles. The company has decided to produce a finished replica of the 1952 MG TD to be known as the "BCW 52 T-Series Replicar". A 52T will be built by removing the body of a new Chevrolet Chevette and replacing it "with a new frame and the body of the MG TD. The engine, drive train, braking system, suspension system, steering column, and so forth" will therefore have been manufactured in accordance with Federal motor vehicle safety standards. However, the company has petitioned for temporary exemption from several of the standards on grounds that compliance would cause it substantial economic hardship, either because it lacks the funds for testing, or because compliance would involve changing the design of the vehicle so as to make it no longer marketable as an authentic replica of the MG TD.

British Coach Works seeks exemptions of three years from the following standards, for the reasons indicated.

1. Standard No. 107 *Reflection Surfaces.* Petitioner states that the interior of its vehicle is an authentic replica of the MG TD, using materials similar or identical to those used in the original, and that the limited production level and use of the car "would tend to minimize any potential risk raised by non-compliance".

2. Standard No. 108 *Lamps, Reflective Devices, and Associated Equipment.* Petitioner believes that "side marker lamps (and reflectors) * * * would radically alter the exterior of the automobile in terms of its authenticity"; however, the parking lamps and taillamps are visible from the side of the vehicle. Petitioner believes that the car will not be operated to any great extent at night, and that any risk created by the noncompliance is insignificant.

3. Standard No. 201 *Occupant Protection in Interior Impact.* Petitioner requests exemption from the head impact test requirements of paragraph S3.1 (instrument panels), and the energy absorption tests of S3.4 (sun visors) and S3.5 (arm rests). It avers that the head impact test "may not be met" because the interior replicates that of the original MG TD, and full compliance would "radically alter the authenticity of the interior". Limited resources mitigate against testing.

4. Standard No. 202 *Head Restraints.* The original TD did not have them. Limited production and usage of the replica "would tend to minimize any potential risks caused by non-compliance".

5. Standard No. 206 *Door Lock and Door Retention Components.* The door latches provided have "a fully latched and secondary latch position in compliance with the requirements of the standard", but they do not lock. The latches and hinges "are authentic replicas" and longitudinal, transverse and inertia load requirements may not be met. To change them "would radically affect the authenticity of the automobile".

6. Standard No. 208 *Occupant Crash Protection.* The replica will be fitted with "standard lap seat belts, utilizing the seat belt assemblies and installations provided on the Chevrolet Chevette", but not the shoulder harness portion since the replica is a convertible. Due to the different configuration of the replica interior from that of the Chevette "the 52T may not meet all of the performance requirements * * *," such as S5, S8, S10, and S11.

7. Standard No. 214 *Side Door Strength.* The doors are fiberglass replicas of those of MG TD and "may not be able to meet" all the performance requirements of the standard. Significant alterations would affect the authenticity of the replica design. Due to the company's limited resources, testing of the door strength is not economically feasible.

If the exemption is granted, petitioner's present plans are to build 30 automobiles with an additional 20 to 30 units should market conditions warrant. Petitioner and its parent "are small businesses with only 30 employees and very limited production capacity, research and development facilities, testing equipment and other sophisticated instrumentation * * *." Petitioner's parent Perfect Plastics had a total of $205,000 in retained earnings as of the end of 1983, running a cumulative net loss of $3,000 for the two calendar years ending December 31, 1983.

Petitioner argues that the exemption would be in the public interest because it is located in a depressed part of the country and if a market develops for its product it will be able to hire up to 10 more workers. It purchases supplies

from 37 different suppliers "almost all of them local", a positive effect. An exemption would be consistent with traffic safety objectives because the vehicles are likely to be used only occasionally; purchasers of its replicar kits "have reported annual mileage ranging from a few hundred miles up to a maximum of 2,000 miles, with the automobiles used primarily for special occasions and ceremonial or promotional purposes".

Interested persons are invited to submit comments on the petition of British Coach Works, Ltd. described above. Comments should refer to the docket number and be submitted to: Docket Section, Room 5109, National Highway Traffic Administration, 400 Seventh Street, SW., Washington, D.C. 20590. It is requested but not required that all five copies be submitted.

All comments received before the close of business on the comments considered. The application and supporting materials, and all comments received, are available for examination in the docket both before and after the closing date. Comments received after the closing date will also be filed and will be considered to the extent possible. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: April 15, 1985.

(Sec. 3, Pub. L. 92-548, 86 Stat. 1159 (15 U.S.C. 1410); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on March 8, 1985.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 85-6139 Filed 3-13-85; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: March 8, 1985.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB (listed by submitting bureau(s)), for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of these submissions may be obtained by calling the Treasury Bureau Clearance Officer listed under each bureau. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of each bureau's listing and to the Treasury Department Clearance Officer, Room 7221, 1201 Constitution Avenue, NW., Washington, D.C. 20220.

Internal Revenue Service

OMB No.: New
Form No.: IRS Letter 1998(SC)
Type of Review: New
Title: Information Letter to Tax year 1984 Magnetic Media Waiver Recipients

OMB No.: 1545-0224
Form No.: IRS Form 6248
Type of Review: Revision
Title: Credit or Refund of Windfall Profit Tax to Certain Trust Beneficiaries for Windfall Profit Tax Paid by a Trust

OMB No.: 1545-0055
Form No.: IRS Form 1001
Type of Review: Revision
Title: Withholding on Items of Income Covered by an Income Tax Convention

OMB No.: 1545-0232
Form No.: IRS Form 6497
Type of Review: Revision
Title: Information Return of Nontaxable Energy Grants or Subsidized Energy Financing

Clearance Officer: Garrick Shear, (202) 566-6150, Room 5571, 1111 Constitution Avenue, N.W., Washington, D.C. 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Financial Management Service

OMB No.: 1510-0024
Form No.: TFS 1503
Type of Review: Extension
Title: Return Notice of Claim Against the U.S. for the Proceeds of a Government Check

Clearance Officer: Doug Lewis, (202) 287-4500, Financial Management Service, Room 163, Liberty Loan Building, 401 14th Street, NW., Washington, D.C. 20228.

OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Joseph P. Maty,

Departmental Reports Management Office.

[FR Doc. 85-6044 Filed 3-13-85; 8:45 am]

BILLING CODE 4810-25-M

Customs Service

[T.D. 85-42]

Recordation of Trade Name; Gerber Products Company

AGENCY: Customs Service, Treasury.

ACTION: Notice of Recordation.

SUMMARY: On December 17, 1984, a notice of application for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "GERBER PRODUCTS COMPANY" was published in the **Federal Register** (49 FR 49014). The notice advised that before final action was taken on the application, consideration would be given to any relevant data, views, or arguments submitted in opposition to the recordation and received not later than February 15, 1985. No responses were received in opposition to the notice.

Accordingly, as provided in § 133.14, Customs Regulations (19 CFR 133.14), the name "GERBER PRODUCTS COMPANY" is recorded as the trade name used by Gerber Products Company, a corporation organized under laws of the State of Michigan, located at 445 State Street, Fremont, Michigan 49412. The trade name is used in connection with plush toys, crib toys and other merchandise intended for use by infants and small children, manufactured in Hong Kong, Taiwan, Malaysia, West Germany, Japan and Thailand.

DATE: March 14, 1985.

FOR FURTHER INFORMATION CONTACT: Harriet Lane, Entry, Licensing and Restricted Merchandise Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-5765).

DATED: March 8, 1985.

Edward T. Rosse,

Acting Director, Entry Procedures and Penalties Division.

[FR Doc. 85-6094 Filed 3-13-85; 8:45 am]

BILLING CODE 4820-02-M

Application for Recordation of Trade Name, Supreme Import Export Co., Inc.

AGENCY: Customs Service, Treasury.

ACTION: Notice of Application for Recordation of Trade name.

SUMMARY: Application has been filed pursuant to § 133.12, Customs Regulations (19 CFR 133.12), for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "SUPREME IMPORT EXPORT CO., INC." used by Supreme Import Export Co., Inc., a corporation organized under the laws of the State of New York, located at 900 Broadway, New York, New York 10003.

The application states that the trade name is used in connection with the following merchandise manufactured in Hong Kong, Korea, Japan, Taiwan and

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the Philippines: playing cards; cigarette lighters; cellophane tape; toothbrushes; padlocks; cassette tapes; pens; batteries; sunglasses; cameras and curling irons.

Before final action is taken on the application, consideration will be given to any relevant data, views, or arguments submitted in opposition to the recordation of this trade name. Notice of the action taken on the application for recordation of this trade name will be published in the **Federal Register.**

DATE: Comments must be received on or before May 13, 1985.

ADDRESS: Written comments should be addressed to the Commissioner of Customs, Attention: Entry, Licensing and Restricted Merchandise Branch, 1301 Constitution Avenue, NW., Room 2417, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT:
Harriet Lane, Entry, Licensing and Restricted Merchandise Branch, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202–566–5765).

Dated: March 8, 1985.

Edward T. Roose,

Acting Director, Entry Procedures and Penalties Division.

[FR Doc. 85–6095 Filed 3–13–85; 8:45 am]

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Sunshine Act Meetings

Federal Register
Vol. 50, No. 50
Thursday, March 14, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 50 FR 8434.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9:30 AM (Eastern Time) Tuesday, March 12, 1985.

CHANGE IN MEETING: Cancellation of Meeting.

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer, Executive Secretariat, (202) 634–6748.

Dated: March 8, 1985.

Cynthia C. Matthews,

Executive Officer.

This Notice Issued March 8, 1985.

[FR Doc. 85–6157 Filed 3–12–85; 10:33 am]

BILLING CODE 6750-06-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting.

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 3:35 p.m. on Friday, March 8, 1985, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to: (1) Receive bids for the puchase of certain assets of and the assumption of the liability to pay deposits made in Citizens State Bank, Arapahoe, Nebraska, which was closed by the Director of Banking and Finance for the State of Nebraska on Friday, March 8, 1985; (2) accept the bid for the transaction submitted by Farmers and Merchants Bank, Edison, Nebraska, an insured State nonmember bank; (3) approve the application of Farmers and Merchants Bank, Edison, Nebraska, for consent to purchase certain assets of and to assume the liability to pay deposits made in Citizens State Bank, Arapahoe, Nebraska, and to establish the sole office of Citizens State Bank as a branch of Farmers and Merchants Bank; and (4) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to effect the purchase and assumption transaction.

At that same meeting, the Board also considered a recommendation with respect to an administrative enforcement action against a certain individual in connection with an insured bank (name of individual and name and location of bank authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii))).

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Mr. H. Joe Selby, acting in the place and stead of Director C. T. Conover (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(6), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: March 11, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85–6182 Filed 3–12–85; 1:41 pm]

BILLING CODE 6714-01-M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting.

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:10 p.m. on Saturday, March 9, 1985, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to: (1) Receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in Commercial State Bank, Afton, Iowa, which was closed by the Superintendent of Banking for the State of Iowa on Friday, March 8, 1985; (2) accept the bid for the transaction submitted by Citizens Savings Bank, Afton, Iowa, a newly-chartered State nonmember bank subsidiary of CSB Bancorporation, Inc.; (3) approve the applications of Citizens Savings Bank, Afton, Iowa, for Federal deposit insurance, for consent to purchase certain assets of and to assume the liability to pay deposits made in Commercial State Bank, Afton, Iowa, and for consent to establish the sole branch of Commercial State Bank as a branch of Citizens Savings Bank; (4) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction; and (5) grant a request for an exemption pursuant to section 348.4(b)(2) of the Corporation's rules and regulations governing management official interlocks to permit certain individuals to serve as management officials of Citizens Savings Bank while also serving as management officials of The First National Bank in Creston, Creston, Iowa.

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. H. Joe Selby, acting in the place and stead of Director C.T. Conover (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: March 11, 1985.
Federal Deposit Insurance Corporation.
Hoyle D. Robinson,
Executive Secretary.
[FR Doc. 85-6183 Filed 3-12-85; 1:41 pm]
BILLING CODE 6714-01-M

4

FEDERAL DEPOSIT INSURANCE CORPORATION

Change in Subject Matter of Agency Meeting.

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 2:00 p.m. on Monday, March 11, 1985, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director C.T. Conover (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of a summary audit report regarding the Corporation's Liquidation Asset Management Information System development project.

By the same majority vote, the Board further determined that no earlier notice of this change in the subject matter of the meeting was practicable.

Dated: March 11, 1985.
Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.
[FR Doc. 85-6184 Filed 3-12-85; 1:41 pm]
BILLING CODE 6714-01-M

5

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting.

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Monday, March 18, 1985, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b(c)(2), (c)(6), (c)(8), and (c)(9)(A)(ii) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administration enforcement proceedings, (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550-17th Street, NW., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389-4425.

Dated: March 11, 1985.
Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.
[FR Doc. 85-6185 Filed 3-12-85; 1:41 pm]
BILLING CODE 6714-01-M

6

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting.

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Monday, March 18, 1985, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Application for Federal deposit insurance:

First Fidelity Thrift and Loan Association, an operating noninsured industrial bank located at 18021 Cowan, Irvin, California.

Application for consent to merge and establish one branch:

Sumter Bank and Trust Company, Americus, Georgia, an insured State nonmember bank, for consent to merge, under its charter and title, with Farmers & Merhants Bank, Leslie, Georgia, and to establish the sole office of Farmers & Merchants Bank as a branch of the resultant bank.

Application for consent to convert into a non-FDIC-insured institution:

Dixie National Bank of Dade County, Coral Gables, Florida.

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Memorandum and Resolution re: Community Bank Hartford, South Dakota

Memorandum and resolution re: Final amendments to Parts 303 and 308 of the Corporation's rules and regulations, entitled "Applications, Requests, Submittals, Delegations of Authority, and Notices of Acquisition of Control" and "Rules of Practice and Procedures," respectively, which: (1) Delegate to the Corporation's Board of Review the authority (a) to issue civil money penalties for failing to comply with such a directive in violation of the International Lending Supervision Act of 1983, and (b) to enter into certain written agreements; (2) delegate to the Corporation's Executive Secretary the authority to issue an order terminating, by consent, the Federal deposit insurance of a bank that has ceased to accept deposits other than trust funds; (3) redesignate the legal officer with certain authority to take specified action in certain enforcement proceedings; and (4) make certain technical changes.

Reports of committees and officers:

Minutes of actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications, requests, or actions involving administrative enforcement proceedings approved by the Director or an Associate Director of the Division of Bank Supervision and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Report of the Director, Division of Liquidation:

Memorandum re: Quarterly Report for Actions Approved under Delegated Authority as of December 31, 1984.

Reports of the Director, Office of Corporate Audits and Internal Investigations:

Summary Audit Report re: The Corning Bank, Corning, Arkansas, AP-396 (Memo dated February 7, 1985)
Summary Audit Report re: The Tucker County Bank, Parsons, West Virginia, AP-372 (Memo dated February 5, 1985)
Summary Audit Report re: Chicago Regional Office, Liquidation Cost Center 3200, (Memo dated February 20, 1985)
Summary Audit Report re: Audit of Selected Liquidation Assets, Costa Mesa Subregional Office (Memo dated February 6, 1985)
Memorandum re: Status of Auditee Corrective Actions

Discussion Agenda:

No matters scheduled.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389-4425.

Dated: March 11, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-6186 File 3-12-85; 1:41 pm]

BILLING CODE 6714-01-M

7

FEDERAL ELECTION COMMISSION

[Federal Register No. 85-5587]

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, March 14, 1985, 10:00 a.m.

THE FOLLOWING ITEM HAS BEEN CONTINUED FROM THE MEETING OF MARCH 7, 1985: 1985 legislative recommendations.

* * * * * *

DATE AND TIME: Tuesday, March 19, 1985, 10:00 a.m.

PLACE: 1325 K Street, NW., Washington, D.C. (fifth floor)

STATUS: This Meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance. Litigation. Audits. Personnel.

* * * * * *

DATE AND TIME: Thursday, March 21, 1985, 10:00 a.m.

PLACE: 1325 K Street, NW., Washington, D.C.

STATUS: This Meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of dates of future meetings
Correction and approval of minutes
Eligibility for candidates to receive Presidential primary matching funds
Draft advisory opinion #1984-62—Daniel H. Lowenstein, on behalf of Berman and D'Agostino Campaigns, Inc.
Clearinghouse, memorandum to the Commission
Reclassification: Special asst. to the Deputy General Counsel, routine administrative matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, 202-523-4065.

Majorie W. Emmons,

Secretary of the Commission.

[FR Doc. 85-6211 Filed 3-12-85; 3:42 p.m.]

BILLING CODE 6715-01-M

8

INTERNATIONAL TRADE COMMISSION

[USITC SE-84-12A]

Government in the Sunshine: Emergency Amendment of Notice

In its notice for the meeting of Friday, March 8, 1985, the Commission indicated that its discussion of agenda item No. 1—Investigation 731-TA-239 [Preliminary] (Rock Salt from Canada)—briefing and vote, would be held in open session. However, by recorded vote, a majority of the entire membership of the Commission voted to close a portion of the discussion under this agenda item to the public. Commissioners Stern, Liebeler, Eckes, Lodwick and Rohr voted, pursuant to 19 CFR 201.37(b) that Commission business required the change in the determination of the Commission to open or close this portion of the meeting and that no earlier announcement of the change was possible.

Pursuant to the specific exemptions of 5 U.S.C. 552(c)(4) and in conformity with 19 CFR 201.36(b)(4), Commissioners Stern, Liebeler, Eckes, Lodwick and Rohr voted to hold a portion of the discussion with respect to Item No. 1 in closed session.

A majority of the entire membership of the Commission felt that this portion of the meeting should be closed to the public since the information discussed in such portion would be likely to disclose confidential business information.

The Commissioners, their assistants, the recording secretaries attended the closed session. Certain staff members responsible for the agenda item were also present.

The Assistant General Counsel to the Commission certified that it is her opinion that the Commission's action in closing this portion of its discussion was properly taken by a vote of a majority of the entire membership of the Commission pursuant to 5 U.S.C. 552b(d)(1) and in conformity with 19 CFR 201.36(d). The discussion held in the closed session is within the specific exemption of 5 U.S.C. 552b(c)(4) and 19 CFR 201.36(b)(4).

By order of the Commission.

Issued: March 8, 1985.

Gracia M. Berg,

Assistant General Counsel.

Kenneth P. Mason,

Secretary.

[FR Doc. 85-5917 Filed 3-12-85; 9:26 am]

BILLING CODE 7020-02-M

9

LEGAL SERVICES CORPORATION COMMITTEE ON APPROPRIATIONS AND AUDIT

Addition of Item to the March 7, 1985 Agenda.

TIME AND DATE: The meeting will commence at 3:30 p.m. on Thursday, March 7, 1985 and continue until all official business is completed.

PLACE: Ramada Renaissance Hotel, 1143 New Hampshire Avenue NW., La Martine Room, Washington, D.C. 20037.

STATUS OF MEETING: Open.

SUBJECT: 4. Reconsideration of Budget Mark for FY 1986.

SUPPLEMENTARY INFORMATION: Board Member Paul B. Eaglin requested that the Committee reconsider the Budget Mark for FY 1986. Because of the need to act expediently on this matter due to Appropriations Committee meetings being held in the House of Representatives during the week of March 10, 1985, a majority of the Members of the Board voted on March 7, 1985 to add this item to the March 7, 1985 agenda and that no earlier announcement of this addition was possible. The Board Members voted as follows:

For: Chairman William Clark Durant III, Paul B. Eaglin, Hortencia Benavidez, Thomas F. Smegal, Basile J. Uddo, Michael B. Wallace
Against: Robert A. Valois.
Abstaining: LeaAnne Bernstein, Pepe J. Mendez
Not Participating: Lorain Miller, Claude G. Swafford

CONTACT PERSON FOR MORE INFORMATION: Dennis Daugherty, Executive Office, (202) 272-4040.

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Dated issued: March 8, 1985.

Dennis Daugherty,

Acting Secretary.

[FR Doc. 85-6158 Filed 3-12-85; 10:33 am]

BILLING CODE 6820-35-M

10

NATIONAL TRANSPORTATION SAFETY BOARD

[NM-85-6]

TIME AND DATE: 9 a.m., Thursday, March 21, 1985.

PLACE: NTSB Board Room, Eighth Floor, 800 Independence Ave., SW., Washington, D.C. 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. *Railroad Accident Report:* Head-On Collision of Burlington Northern Freight Trains Nos. 163 and 100, Wiggins, Colorado, April 13, 1984, and Rear-End Collision of Burlington Northern Freight Trains Nos. 7843 and 7883, Newcastle, Wyoming, April 22, 1984.

2. *Aircraft Accident Report:* United Airlines Flight 665, Boeing 727-222, N7647U, Denver, Colorado, May 31, 1984.

3. *Recommendation* to the Federal Aviation Administration regarding wind shear training and cockpit management.

CONTACT PERSON FOR MORE INFORMATION: Sharon Flemming (202) 382-6525.

Dated: March 11, 1985.

Ray Smith,

Federal Register Liaison Officer.

[FR Doc. 85-6151 Filed 3-12-85; 9:37 am]

BILLING CODE 7533-01-M

11

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of March 18, 1985.

An open meeting will be held on Monday, March 18, 1985, at 2:30 p.m., in Room 1C30, followed by a closed meeting.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meeting may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10).

Commissioner Peters, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the open meeting scheduled for Monday, March 18, 1985, at 2:30 p.m., will be:

Consideration of whether to propose for public comment amendments to Rule 15c3-3 under Section 15(c)(3) of the Securities Exchange Act of 1934. The proposed amendments will, for purposes of the debit items of the Reserve Formula: (1) exclude the debit balances of household members and other persons related to broker-dealer principals or affiliated in a certain way with a broker-dealer; (2) exclude, under certain circumstances, the debit balances of accounts in which "principals" of a broker-dealer have ownership interests; and (3) exclude the amount by which a broker-dealer's margin account receivable with a single customer exceeds twenty-five percent of tentative net capital of the broker-dealer. The net effect of the proposed amendments may be to require that greater deposits be made in the Reserve Bank Accounts of some broker dealers. For further information, please contact Steven Gray at (202) 272-2807.

The subject matter of the closed meeting scheduled for Monday, March 18, 1985, following the 2:30 p.m. open meeting, will be:

Formal orders of investigation.
Subpoena enforcement action.
Institution of injunctive action.
Institution of administrative proceeding of an enforcement nature.
Settlement of administrative proceeding of an enforcement nature.
Opinion.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: David Wescoe at (202) 272-2092.

Dated: March 11, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-6147 Filed 3-11-85; 4:14 pm]

BILLING CODE 8010-01-M

12

SYNTHETIC FUELS CORPORATION

Meeting of the Board of Directors.

ENTITY: United States Synthetic Fuels Corporation.

ACTION: Notice of Meeting.

SUMMARY: Interested members of the public are invited to attend and observe the meeting of the Board of Directors of the United States Synthetic Fuels Corporation to be held at the time, date and place specified below. This public announcement is made pursuant to the open meeting requirements of Section 116(f)(1) of the Energy Security Act (94 Stat. 611, 637; 42 U.S.C. 8701, 8712(f)(1)) and Section 4 of the Corporation's Statement of Policy on Public Access to Board meetings. During the meeting, the Board of Directors will consider a resolution to close a portion of the meeting pursuant to Article II, Section 4 of the Corporation's By-laws, Section 116(f) of the said Act and Sections 4 and 5 of the said policy.

MATTERS TO BE CONSIDERED:

Open Session

I. Call to Order—Chairman's Opening Remarks
II. Approval of Board Minutes and Consideration of Closed Portions of Board Minutes
III. Report of Board Committees
IV. Coal-Water Solicitation
V. Solicitation Options
  1. Coal Project—Fixed Bed Gasification, Slagging
  2. Other Options
VI. Financial Interests of Directors—Review of Federal Agency Waiver Standards
VII. Scrubgrass Petition for Reconsideration as a Qualified Project—Fourth General Solicitation
VIII. Milestones for Fourth General Solicitation
IX. Letter of Intent Review
  1. Hop Kern
  2. Forest Hill
  3. Northern Peat
  4. Kentucky Tar Sands
X. Programmatic Review of Enpex Project
XI. Resolution to Close Meeting

Closed Session

XII. Letter of Intent Review—Confidential and Proprietary Material
XIII. Status Reports
  1. Cathedral Bluffs
  2. Great Plains
  3. Seep Ridge

TIME AND DATE: 9:45 a.m., March 19, 1985.

PLACE: 2121 K Street, NW., Room 503, Washington, D.C. 20586.

PERSON TO CONTACT FOR MORE INFORMATION: If you have any questions regarding this meeting, please contact Mr. March Coleman, Assistant General Counsel—Corporate & Litigation, at (202) 822-6571.

United States Synthetic Fuels Corporation.

Len Rawicz,

Vice President, General Counsel & Secretary.

March 12, 1985.

[FR Doc. 85-6188 Filed 3-12-85; 1:41 pm]

BILLING CODE 6450-01-M

federal register

Thursday
March 14, 1985

Part II

Office of Science and Technology Policy

Chemical Carcinogens; A Review of the Science and Its Associated Principles, February 1985

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OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Chemical Carcinogens; A Review of the Science and Its Associated Principles, February 1985

AGENCY: Office of Science and Technology Policy, Executive Office of the President.

ACTION: Final document.

SUMMARY: The Office of Science and Technology Policy has prepared this document to be used as a framework for regulatory agencies in assessing cancer risks from chemicals. The document does not attempt to formulate policy or develop standardized methods of risk assessment. It tries to define principles, based upon current scientific information, to serve as guidelines in certain matters when considering carcinogens. The present document is the culmination of drafts extensively reviewed by governmental and non-governmental scientists.

Jerry D. Jennings,

Executive Director.

March 8, 1985.

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MEMBERS OF THE INTERAGENCY STAFF GROUP

The Interagency Staff Group on Chemical Carcinogenesis consisted of:

Dr. Ronald W. Hart, Chairman, National Center for Toxicological Research, Food and Drug Administration
Dr. Richard Adamson, Division of Cancer Cause and Prevention, National Cancer Institute, National Institutes of Health
Dr. Donald Barnes, Office of Pesticides and Toxic Substances, Environmental Protection Agency
Dr. Margaret Chu, Carcinogen Assessment Group, Office of Research and Development, Environmental Protection Agency
Mr. Colin Church, Health Sciences, Consumer Product Safety Commission
Dr. W. Gary Flamm, Office of Toxicological Sciences, Center for Food Safety and Applied Nutrition, Food and Drug Administration
Dr. Allen Heim, Office of the Commissioner, Food and Drug Administration
Dr. Richard Hill, Office of Pesticides and Toxic Substances, Environmental Protection Agency
Dr. David Hoel, Biometry and Risk Assessment Branch, National Institute of Environmental Health Sciences, National Institutes of Health
Dr. Michael Hogan, Biometry and Risk Assessment Branch, National Institute of Environmental Health Sciences, National Institutes of Health
Dr. Zdenka Horakova, Food Safety and Inspection Service, Department of Agriculture
Mr. John Martonik, Health Standards Program, Occupational Safety and Health Administration, Department of Labor
Dr. John A. Moore, Office of Pesticides and Toxic Substances, Environmental Protection Agency
Dr. Peter Preuss, Health Sciences, Consumer Product Safety Commission
Dr. Robert Scheuplein, Office of Toxicological Sciences, Center for Food Safety and Applied Nutrition, Food and Drug Administration
Dr. Raymond Tennant, National Toxicology Program, National Institute of Environmental Health Sciences, National Institutes of Health
Dr. Angelo Turturro, National Center for Toxicological Research, Food and Drug Administration
Dr. Elizabeth Weisburger, Division of Cancer Cause and Prevention, National Cancer Institute, National Institutes of Health
Dr. Paul White, Health Sciences, Consumer Product Safety Commission
Dr. Alvin Young, Office of Science and Technology Policy, Executive Office of the President, The White House.

A number of people were members of the Group at different times in its deliberations for various tenures. They included:

Dr. Andrew Jovanovich, Environmental, Office of Pesticides and Toxic Substances, Environmental Protection Agency
Dr. Carl Leventhal, Office of Science and Technology Policy, Executive Office of the President, The White House
Dr. Denis Prager, Office of Science and Technology Policy, Executive Office of the President, The White House
Dr. John Todhunter, Office of Pesticides and Toxic Substances, Environmental Protection Agency.

Document Preparation

Understanding that "Science is built up with facts as a house with stones. But a collection of facts is no more a science than a heap of stones is a house", the building process in the case of this document was truly a united effort, with stones being set into place by *all* hands. A number of people, in addition to the committee, were extremely helpful in this effort. They include:

Dr. Joseph F. Fraumeni, Environmental Epidemiology Branch, National Cancer Institute, National Institutes of Health
Dr. Robert Hoover, National Institutes of Health, National Cancer Institute, National Institutes of Health
Dr. Robert Langenbach, Cellular and Genetic Toxicology Branch, National Institute of Environmental Health Sciences, National Institutes of Health, and National Toxicology Program
Dr. Michael Shelby, Cellular and Genetic Toxicology Branch, National Institute of Environmental Health Sciences, National Institutes of Health, and National Toxicology Program
Dr. Errol Zeiger, Callular and Genetic Toxicology Branch, National Institute of Environmental Health Sciences, National Institutes of Health, and National Toxicology Program

Finally, the whole document was edited (in alphabetical order) by Drs R.W. Hart, A. Turturro and E. Weisburger.

INTRODUCTION

I. BACKGROUND

Over the years, agencies and programs have been established to deal with hazardous substances, with recent focus on deleterious long-term effects, such as cancer, of these substances. A detailed analysis of the legislative acts enacted by the Congress concerning toxic substances (Table 1) reveals an evolution of thought in that each reflects the scientific views that existed at the time of enactment. Consequently, these acts are not uniform in their view of disease, the role chemical substances might play in its incidence, and what ought to be done about potential toxic substances and potential carcinogens.

TABLE 1—FEDERAL LAWS RELATED TO EXPOSURES TO TOXIC SUBSTANCES

Legislation	Agency	Area of Concern
Food, Drug and Cosmetics Act (1906, 1938, amended 1958, 1960, 1962, 1968, 1976).	FDA	Food, drugs, cosmetics, food additives, color additives, new drugs, animal and feed additives, and medical devices
Federal Insecticide, Fungicide and Rodenticide Act (1948, amended 1972, 1975, 1978)	EPA	Pesticides
Dangerous Cargo Act (1952)	DOT, USCG	Water shipment of toxic materials
Atomic Energy Act (1954)	NRC	Radioactive substances
Federal Hazardous Substances Act (1960, amended 1981)	CPSC	Toxic household products
Federal Meat Inspection Act (1967)	USDA	Food, feed, color additives and pesticide residues
Poultry Products Inspection Act (1968)		

TABLE 1—FEDERAL LAWS RELATED TO EXPOSURES TO TOXIC SUBSTANCES—Continued

Legislation	Agency	Area of Concern
Egg Products Inspection Act (1970)		
Occupational Safety and Health Act (1970)	OSHA, NIOSH	Workplace toxic chemicals
Poison Prevention Packaging Act (1970, amended 1981)	CPSC	Packaging of hazardous household products
Clean Air Act (1970, amended 1974, 1977)	EPA	Air pollutants
Hazardous Materials Transportation Act (1972)	DOT	Transport of hazardous materials
Clean Water Act (formerly Federal Water Control Act) (1972, amended 1977, 1978)	EPA	Water pollutants
Marine Protection, Research and Sanctuaries Act (1972)	EPA	Ocean dumping
Consumer Product Safety Act (1972, amended 1981)	CPSC	Hazardous consumer products
Lead-based Paint Poison Prevention Act (1973, amended 1976)	CPSC, HEW (HHS), HUD	Use of lead paint in federally assisted housing
Safe Drinking Water Act (1974, amended 1977)	EPA	Drinking water contaminants
Resource Conservation and Recovery Act (1976)	EPA	Solid waste, including hazardous wastes
Toxic Substances Control Act (1976)	EPA	Hazardous chemicals not covered by other laws, includes pre-market review
Federal Mine Safety and Health Act (1977)	DOL, NIOSH	Toxic substances in coal and other mines
Comprehensive Environmental Response, Compensation, and Liability Act (1981)	EPA	Hazardous substances, pollutants and contaminants

Most abbreviations are same as below Additional ones are:

DOL - Department of Labor;
DOT - Department of Transportation;
HEW (HHS)- Department of Health, Education and Welfare (many functions assumed by HHS- Department of Health and Human Services);
HUD - Department of Housing and Urban Development;
NIOSH - National Institute of Occupational Safety and Health;
NRC - Nuclear Regulatory Commission;
USCG - United States Coast Guard

II. THE PURPOSE OF THIS REPORT

The purpose of this document is to: 1) articulate a view of chemical carcinogenesis that scientists generally hold in common today (Part II); and 2) draw upon this understanding to compose, as was done here by senior scientists from a number of Federal agencies, a series of general principles that can be used to establish guidelines for assessing carcinogenic risk (Part I). Because of present gaps in understanding, the principles contain judgmental (science policy) decisions on unresolved issues as well as statements of what is generally accepted as fact. There has been, however, an attempt to clearly distinguish between the different types of information presented (and also provide to all interested parties specific reference to the analysis upon which they are based).

The principles can serve as the basis for consistent regulatory cancer guidelines that the federal agencies can tailor to meet the requirements of the legislative acts they are charged to implement. Similar documents, with varying degrees of specificity, have been produced in the past, *e.g.*, in the late 1970s and early 1980s several agencies of the federal government produced statements directed toward providing a consistent basis for a general federal cancer policy. This document should be seen, in the broad view, as part of an ongoing process, on behalf of the federal government, that strives to periodically update and review current understanding of this aspect of carcinogenesis and the scientific process of how this understanding is utilized.

This document is the result of the combined efforts of senior scientists from the following Federal health-related units, operating in the Interagency Staff Group, under the direction of the Office of Science and Technology Policy (OSTP):

Center for Food Safety and Applied Nutrition (CFSAN) (formerly Bureau of Foods), Food and Drug Administration (FDA)
Consumer Product Safety Commission (CPSC)
Environmental Protection Agency (EPA)
Office of the Commissioner (OC), FDA
Food Safety and Inspection Service (FSIS) of the United States Department of Agriculture (USDA)
National Cancer Institute (NCI), National Institutes of Health (NIH)
National Center for Toxicological Research (NCTR), FDA
National Institute of Environmental Health Sciences (NIEHS), NIH
National Toxicology Program (NTP)
Occupational Safety and Health Administration (OSHA)

III. The Context of This Report

This document is written in light of a decision-making process used by many of the regulatory agencies, which involves the assessment of carcinogenic risks posed by chemical substances. The scientific inputs to these evaluations can be best appreciated by examining the decision-making process in some detail.

Risk can be conceived of as being composed of two aspects, each of which can be addressed by science: hazard* and exposure. Although other definitions have been used historically, this document conforms to present usage and "hazard" generally refers to the toxicity of the substance (for some toxic endpoint) and is deduced from a wide array of data including: epidemiological evaluation of long-term animal studies, short-term tests, information on mechanisms, and the results of structure/activity relationships. "Exposure" generally refers to the amount of the substance that people come in contact with. The "risk," in a quantitative risk assessment, is estimated by coupling the results of the exposure and hazard assessments. As either the hazard or exposure approaches zero, the risk also approaches zero.

As a first step in assessing the cancer risk associated with the use of a particular chemical substance, the qualitative evidence that a given chemical substance is likely to be a human carcinogen must be evaluated. In this step, as in the whole process, a number of assumptions and approximations must be made in order to deal with inherent limitations found in the existing data bases. Then, estimates of human exposure, and distribution of exposures likely to be encountered in the population are made. Next, one or more methods for estimating the dose-response relationship at doses below those generally used experimentally must also be evaluated. Finally, the exposure assessment is combined with the dose-response relationship to generate an estimate of risk. The various ways in which these steps are conducted and combined and their attendant uncertainties treated, constitute what is generally referred to as "cancer risk assessment," although an assessment can be terminated at different stages to estimate risk for different purposes.

Some legislation calls for action in the presence of any risk. Other forms of legislation use the concept of unreasonable risk, defined, in some acts, as a condition in which the risks outweigh the benefits; *e.g.*, the Toxic Substances Control Act (TSCA) and the Federal Insecticide, Fungicide and

*The European community uses the term "risk" where we have used the term "hazard" and vice versa.

Rodenticide Act (FIFRA). A spectrum of approved responses, from simply informing the public of a risk through restricted use to a complete ban, may be available to bring the risks and benefits into appropriate balance.

This document does not perform a risk assessment nor does it suggest that one method of cancer risk assessment is better than another; but, rather, it attempts to review the science of chemical carcinogenesis and develops from this review a set of general principles. It is not a comprehensive treatise; nor a document written for the lay public but is rather a semi-technical review which tries to evaluate the impact of scientific findings of the last decade on general assumptions or principles important to risk assessment. This is based upon the belief of the group that elucidation of the basic mechanisms underlying cancer and the identification of cancer-causing agents and conditions, when coupled to research aimed at identifying and evaluating the problems created by such agents, should provide the optimal administrative bases for making sound and reasonable judgments. These overlapping approaches to evaluating the problems of cancer, we believe, should form one of the strongest foundations upon which a technologically-based society could base its decisions.

IV. The Content of This Report

This document is composed of two parts. Part I presents a set of general principles that may be used by regulatory agencies as they review their own specific guidelines for performing cancer risk assessments. Part II addresses the current state-of-the-science concerning carcinogenesis and cancer risk assessment and forms the underlying scientific basis of Part I.

The general principles in Part I, as has been suggested for similar guidelines in the National Academy of Sciences (NAS) report on Risk Assessment in the Federal Government**, can be useful despite an inherent tendency towards oversimplification and the mixing of scientific knowledge with risk assessment science policy. Many components of the risk assessment process lack definitive scientific bases. Often a choice must be made among several different scientifically plausible options. The above cited NAS report identified approximately 50 components where the uncertainty in the science requires, in part, scientific judgments and science policy decisions to go from one component to the next to reach a decision. This document attempts to leave the majority of these necessary scientific inferences to the scientific regulatory agencies. However, some are so important and fundamental to all cancer risk assessment procedures, regardless of the source of hazard or the different statutory provisions of the agencies, that they are included in some of the principles. Where this has occurred, we have attempted to indicate, both in Part II and the wording of the principle itself, that a public health science policy decision is embodied in it. For example, Principle 8 defers to the statement that it is reasonable to treat an animal carcinogen as if it were a human carcinogen. Many scientists would agree that, while there is a significant amount of evidence to support qualitative animal to human extrapolation for carcinogenesis, the evidence falls short of establishing this proposition as a scientific fact (when determining the response of different species to chemicals, many chemicals appear to be carcinogenic in one species or strain and not in another, even when only rodents are being compared). Nonetheless, this principle has been accepted by all health and regulatory agencies and is regarded widely by scientists in industry and academia as a justifiable and necessary inference. It is not possible to draw a sharp distinction in every instance between principles which are based solely on science and those which embody a choice based also on science policy. However, several of the principles, *e.g.* Principles 8, 11 and 26, clearly reflect certain aspects of science policy.

Part II of this document is divided into six separate chapters, each discussing the current information in an area of science used in the cancer risk assessment process.

Chapter 1 highlights some of the recent advances in our understanding of the mechanisms of carcinogenesis. A general consensus has evolved which describes cancer as a multi-stage process involving a variety of events which can include metabolic conversion, initiation, promotion, and proliferation. The chapter highlights some advances in our understanding that have implications in the way we assess cancer risk. At the same time, the chapter also identifies some of the vast amount of information that remains to be collected and analyzed.

Chapter 2 examines short-term testing and the relationship between genetic toxicity and carcinogenicity. Tests for gene mutation, chromosomal aberration, DNA damage and repair, and cellular (morphologic) transformation have provided valuable information on the potential for chemical substances to cause cancer. This field is currently characterized by a great deal of activity, and the data generated must be carefully analyzed and verified before use in cancer risk assessment.

The third chapter contains an evaluation of long-term animal tests, which have been a major factor in past assessments of cancer risk. A review of the usefulness in cancer risk assessment of the data developed via this approach to chemical evaluation is made, and potential limitations and pitfalls of such data relative to extrapolation to human populations are discussed.

The fourth chapter examines the current state of epidemiological knowledge relating to human cancer. Data collected during the past 50 years permit the analysis of trends in cancer incidence/mortality and provide information related to the various etiologies of cancer. Recent developments in cancer epidemiology are highlighted and their potential impact on risk assessment pointed out. Much of the discussion concentrates on the methods to be used in such studies in attempting to overcome past, often cited, limitations of this approach.

In addition to these chapters which examine factors associated with hazard assessment, Part II also contains a discussion of exposure assessment. As Chapter 5 points out, the field of exposure assessment has been marked by significant progress in the areas of monitoring data, computer modeling, transformation and transport of chemicals, and laboratory approaches to determining the behavior of chemicals in the environment. At the same time uncertainties remain, and any risk assessment will necessarily be affected by these limitations.

Chapter 6 concludes Part II of the document. It discusses hazard or dose-response assessment and gives a comprehensive framework for integrating this with hazard and exposure elements as inputs into the qualitative and quantitative risk assessment processes. This chapter depends heavily on all the other chapters of this volume and attempts to make clear the various approaches that are used in risk assessments, noting both the limitations and advantages of each. Common themes within each chapter are the uncertainty, the gaps in data, and the questions of interpretation associated with some aspects of the scientific information used in the risk

**Managing the Process: Risk Assessment in the Federal Government National Academy of Sciences, Washington D.C., 1983

assessment process. A critical evaluation of this information comprises Part II of the document and led to the principles listed in Part I. These general principles were developed to provide interim guidance in areas of uncertainty until such time that additional scientific experimentation provides the required information needed to improve estimations of risk in human populations. As a note of caution, it should be recognized that the chapters of Part II, taken *in toto*, provide the underlying support for the principles articulated in Part I. To read Part I without a full appreciation of the material in Part II is to invite oversimplification and misinterpretation.

Finally, a note is needed, chiefly addressed to specialists on the various topics that are briefly discussed in Part II. If reports of a broad nature are to be written at all, and general reports are often necessary to present organized thought on subjects of vital interest, it is inevitable that those who write them must spend less time on a topic than someone who concentrates almost exclusively on one specific interest. Therefore, there are certain to be areas which some authorities think are not discussed enough, others which some feel go on *ad infinitum*. Also, since the chapters in Part II of this document are an attempt to provide a balanced account of what is generally accepted, derived from a vast amount of information involving the work of thousands of individuals, citing relatively few, some must be slighted.

Both problems are inevitable in a work of this type. Hopefully, deficiencies in the choice of topic for emphasis or failures to acknowledge contributions have not been egregious.

PART I--PRINCIPLES

PREFACE

The principles contained within this segment were derived from the information detailed in Part II by the members of the Interagency Staff Group. This section attempts to provide, in a non-technical form, some important general statements relevant to the evaluation of the role of chemicals in carcinogenesis. These statements are intended to serve as a bridge connecting the basic science as expounded in Part II and the multifaceted process of risk assessment.

Since there are gaps in the information available, differences in evaluations and in scientific opinion may exist about certain of the points highlighted as principles. However, these principles derive from a *weltanschauung* utilizing a balanced approach with an appreciation of all elements of the problem, from hazard identification and estimation through exposure and risk assessment. It is clearly understood that new information and newly emerging concepts may modify some of these statements. Indeed, an unstated "zeroth" principle is that regulatory judgments should embody an openness to advances in science and emerging scientific understanding. As a consequence, it is necessary that the process which led to this document be a continuing one, with periodic updates as new advances in science dictate. For the time being, however, as a result of an arduous cooperative effort these statements, we believe, represent an up-to-date summary on a number of important topics.

I. Principles Derived From The Mechanisms of Carcinogenesis

1. Carcinogenesis is a multistage phenomenon that may involve the genome both directly and indirectly. These stages of carcinogenesis may be, to varying degrees, influenced by a number of variables such as age at exposure, diet, hormonal status, intra- and interspecies variability, which should be considered when trying to predict human response to potentially carcinogenic agents (Chapter 1, Section VI).

2. Appropriate *in vitro* and *in vivo* tests can indicate that an agent has a certain action such as genetic toxicity or promotion. Such information is valuable and may be useful in evaluating mechanism(s) of cancer induction. However, in the evaluation of human risk, the attribution of observed findings of carcinogenicity to a particular biological effect must rest upon sound evidence that the effect is responsible for the cancer induction. It must be kept in mind that a chemical may contribute to carcinogenesis in multiple ways (Chapter 1, Section VI).

3. At the present stage of knowledge, mechanistic considerations such as DNA repair and other biological responses, in general, do not prove the existence of, the lack of existence of, or the location of a threshold for carcinogenesis. The presence or absence of a threshold for one step of the carcinogenic process does not necessarily determine the presence or absence of a threshold for the whole process (Chapter 1, Section V, Part A).

4. The carcinogenic effects of agents may be influenced by non-physiological responses (such as extensive organ damage, radical disruption of hormonal function, saturation of metabolic pathways, formation of stones in the urinary tract, saturation of DNA repair with a functional loss of the system) induced in the model systems. Testing regimes inducing these responses should be evaluated for their relevance to the human response to an agent (Chapter 1, Section V, Part B) and evidence from such a study, whether positive or negative, must be carefully reviewed.

II. Principles for Tests of Cancer Induction

A. Short-Term Tests

5. Short-term tests, such as assays for point mutations, chromosomal aberrations, DNA damage, and *in vitro* transformation are useful in: 1) screening for potential carcinogens; 2) reaching a judgment on the carcinogenicity of a chemical; and 3) providing information on carcinogenic mechanisms (Chapter 2, Section IV, Part B).

6. Short-term tests are presently limited in their ability to predict the presence or absence of carcinogenicity and cannot supplant data from long-term animal studies or epidemiological investigations since the tests do not necessarily screen for all potential means of cancer induction and do not necessarily mimic all reactions that would occur *in vivo*. Additional research is required to improve existing tests and develop ones that identify chemicals which act by genetic mechanisms not yet determined or which act by other, non-genetic mechanisms (Chapter 2, Section IV, Part C).

7. Short-term tests should be carefully selected to ensure they have been adequately validated. Several tests with different endpoints may be required to characterize a chemical's response.

B. Long-term Tests

8. In the evaluation of long-term test results, the term carcinogen should be used in a broad sense, i.e. a substance which is capable under appropriate test conditions (Principles 10-13) of increasing the incidence of neoplasms (combining benign and malignant when scientifically defensible) or decreasing the time it takes for them to develop. Careful consideration to the relevant issues cited in Principles 4, 9 and 14 should be given prior to a determination that a chemical is an animal carcinogen (Chapter 3, Sec. I, Part A and Sec. II, Part B).

Deference should be given to the IARC principle: "*that in the absence of*

adequate data in humans, it is reasonable, for practical purposes, to regard chemicals for which there is sufficent evidence of carcinogenicity in animals as if they presented a carcinogenic risk to humans."

However, this presumption is evaluated along with other relevant information (Principle 25) in making a final judgment concerning human carcinogenicity (Chapter 6, Sec. II, Part B) and should not foreclose further inquiry into the human relevance of animal carcinogens.

9. Some experimental animal models ordinarily have high incidences of certain tumors. The evaluation of tumor data from such animals can pose special problems. For example, the interpretation of cancer incidence in some strains of rats with testicular or mammary tumors, or in some strains of mice with lung or liver tumors, must be approached carefully in the light of other biological evidence bearing on potential carcinogenicity (Chapter 3, Section II, Part C).

10. Protocols for long-term tests should be designed to achieve an appropriate balance between the two essential characteristics of a biological assay: adequate biological and statistical sensitivity (a low false negative rate) and adequate biological and statisitical specificity (a low false positive rate) (Chapter 3, Part II, Section D, Number 2). The absence of biases in selection and allocation of animals between control and treatment groups as regards diet, husbandry, necropsy, pathology, and from insufficent quality control, is crucial (Chapter 3, Part I, Section B, Number 2).

11. It is appropriate to use test doses that generally exceed human exposure levels in order to overcome the inherent insensitivity of the traditional design of the long-term animal test. The highest dose should be selected after an adequate prechronic study and after evaluating other relevant information, as necessary, to determine the highest dose consistent with predicted minimal target organ toxicity and normal lifespan, except as a consequence of the possible induction of cancer (Chapter 3, Section I, Part B, Number 4 and Section II, Part B, Number 1).

12. The diagnosis of pathologic lesions is complicated and requires judgment and appropriate experience. Diagnoses can differ depending on the tissues and species involved and can change with time as techniques improve and data on bioassays accumulate. Accurate interpretation of tumor data is contingent upon careful attention to gross observation, tissue sampling, slide preparation and histologic examination. Diagnosis of tumors should be guided by evidence of their histogenic origin and stage of progression (Chapter 3, Section II, Part C).

13. Appropriate statistical analysis should be performed on data from long-term studies to help determine whether the effects are treatment related or possibly due to chance. These should include a statistical test for trend and a test based on pairwise comparisons, including appropriate correction for differences in survival. The weight to be given to the level of statistical significance (the p-value) and to other available pieces of information is a matter of overall scientific judgment (Chapter 3, Section II, Part D).

14. Decisions on carcinogenicity of chemicals in animals should be based on consideration of relevant biological and biochemical data (Chapter 3, Section II, Part B, Number 3) and include the following (Chapter 3, Part II):

(a) Use of background or recent historical control incidence of tissue specific tumors can be an aid, in addition to concurrent controls, in the evaluation of tumor data. Care should be exercised when combining different control groups.

(b) Evidence of probable reproducibility is important. This evidence can consist of independent confirmation of the original findings or may be derived from intergroup comparisons of tumor incidence data, between dose groups, sexes, strains or species.

(c) Evidence of dose-response increases confidence that the effect is treatment-related; similarly lack of an observed dose-response may reduce the likelihood that the effect is associated with the treatment.

(d) Confidence is increased when: 1) the incidence of tumors is markedly elevated in the treated groups compared to controls; 2) tumor incidence is significantly increased at multiple anatomical sites; and 3) tumor latency is significantly reduced.

(e) In addition to tumor incidence at specific sites, the stage in the development of neoplasia should be evaluated. For example, the finding that the majority of neoplastic lesions at a specific site is more advanced in a treated group compared to its control may provide additional evidence of a treatment-related effect. Conversely, the finding that the control group lesions are more advanced might argue that a marginal elevation of tumor incidence is not treatment-related.

(f) The incidence of preneoplastic lesions in treatment or control groups may, in certain instances, provide evidence for the biological plausibility of a neoplastic response and contribute to the interpretation of a bioassay.

(g) Identification of effects from prechronic studies on the target organ(s) can aid in the evaluation of long-term studies.

(h) Information on the the activity of chemicals at the physiological, cellular and molecular level may be important to the evaluation of carcinogenicity data on a case-by-case basis.

III. Principles for Epidemiology

15. The major strength of the epidemiological method is that it is the only means of assessing directly the carcinogenic risk of environmental agents in humans. However, the observational (non-experimental) nature of most epidemiological studies, as well as the frequent paucity of relevant data, can impose serious limitations on the method (Chapter 4, Section II).

16. Descriptive epidemiological studies (based on the measurement of disease rates for various populations), including correlational studies (in which the rate of disease in a population is compared with the spatial or temporal distribution of suspected risk factors), are useful to generate and refine hypotheses, or provide supporting evidence in evaluating relationships detected by other means, but rarely, if ever, provide information allowing a causal inference (Chapter 4, Section IV, Part A).

17. Well designed, conducted and evaluated analytic epidemiological investigations of either the case-control or cohort variety can provide the basis for causal inferences especially useful for public health decisions (Chapter 4, Section IV, Part B).

18. Elements in interpreting the likely causality of epidemiological observations include the magnitude of the risk estimates (strength of associations); the possibility of their being due to chance (statistical significance); the rigor of the study design to avoid various kinds of bias, including those related to selection, confounding, classification and measurement; dose-response relationships; the temporal relationships between exposure and disease; the specificity of the associations; their biological plausibility; and the reproducibility of the findings (Chapter 4, Section III).

19. A high-quality negative epidemiological study, while useful, cannot prove the absence of an association between chemical exposure and human cancer. Within the scope of the study, specifically for the

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populations studied (including concomitant exposures), for the levels and durations of exposure to the agents evaluated and for the time assessed following exposure, a likely range can be determined for the estimates of risk and the statistical likelihood of the study to detect an effect can be assessed.

IV. Principles for Exposure Assessment

20. It is desirable that exposure routes employed in animal health effects studies are comparable to human exposure routes both for the simplification of risk assessment and because there may be important route-dependent differences in molecular, biochemical and physical parameters in organs (Chapter 1, Sections II and III).

21. At present, a single generally applicable procedure for a complete exposure assessment does not exist. Therefore, in the near term, it is expected that integrated exposure assessments (utilizing monitoring data, results from physical and chemical models, and considerations of all routes of exposure through all media) will be conducted on a case-by-case basis (Chapter 5, Section II, Part D).

22. The depth and accuracy of an exposure assessment should be tailored to provide the degree of knowledge required to support analytical needs. A preliminary assessment using available crude data can often shed light on the upper or lower bounds of potential risks (Chapter 5, Section II, Part D).

23. An exposure assessment should describe the strengths, limitations and uncertainties of the available data and models and should indicate the assumptions made to derive the exposure estimates (Chapter 5, Section III, Part F).

24. In general, an array or range of exposure values is preferable to a single numerical estimate (Chapter 5, Section III, Part F).

V. Principles for Risk Assessment

25. Decisions on the carcinogenicity of chemicals in humans should be based on considerations of relevant data, whether they are indicative of a positive or negative response, and should use sound biological and statistical principles. This weight of evidence approach should include consideration of all relevant factors and should give appropriate weight to each on a case-by-case basis (Chapter 6, Section II, Part A). Examples of the types of information that should be taken into account include:

(a) Findings from long-term animal studies (see Principle 14);

(b) Results from epidemiological studies (see Principles 16-19);

(c) Results from *in vivo* and *in vitro* short term tests (see Principles 5 and 6);

(d) Data from studies of mechanism, including factors such as structure-activity relationships, and known similarities and differences in metabolic and kinetic profiles for different species (see Principles 1-4).

26. No single mathematical procedure is recognized as the most appropriate for low-dose extrapolation in carcinogenesis. When relevant biological evidence on mechanism of action (*e.g.* pharmacokinetics, target organ dose) exists, the models or procedures employed should be consistent with the evidence. However, when data and information are limited, and when much uncertainty exists regarding the mechanisms of carcinogenic action, models or procedures which incorporate low-dose linearity are preferred when compatible with the limited information (Chapter 6, Section II, Part C).

27. The quantification of the various sources of uncertainty involved in cancer risk assessment can be as important as the projection of the risk estimate itself. The sources that might be addressed include (Chapter 6, Section II, Part D):

(a) The statistical uncertainty associated with the given risk estimate (often expressed as upper and lower confidence bounds);

(b) The variability introduced by the selection of a particular low-dose extrapolation procedure (often expressed as an envelope of risk estimates from a variety of plausible models);

(c) When risk estimation is based on laboratory generated data, the biological variability associated with the use of a particular test organism and its scaling or extrapolation to man.

28. An estimate of cancer risk for humans exposed to an agent can be no more accurate than an exposure assessment that it utilizes. Lack of adequate exposure data is frequently a major limiting factor in evaluation of carcinogenic risks for humans (see Principles 20-24) (Chapter 6, Section II, Part B).

29. While several considerations often enter the risk assessment process, it is important to try to maintain a clear distinction among facts (statements supported by data), consensus (statements generally held in the scientific community), assumptions (statements made to fill data gaps), and science policy decisions (statements made to resolve points of current controversy) (Chapter 6, Section II, Part D).

30. Differences in human susceptibility, and variable and extreme exposures to chemicals suggest the likelihood that there are subpopulations that are at greater than average risk (Chapter 1, Section III, Part C and Chapter 5, Section II, Part C). Consideration should be given to the identification of high risk populations.

31. Because of the uncertainties associated with risk assessment, a full evaluation of risk to humans should include a qualitative consideration of the basic strengths and weaknesses of the available hazard and exposure data, in addition to any numerical estimations that are made (Chapter 6, Section II, Part D).

PART II - STATE-OF-THE-SCIENCE PREFACE

Preface

This segment contains the details about the topics emphasized in Part I, and, as such, is a summary of the current science in a number of fields important to adequate risk assessment. Special emphasis has been placed on those areas considered to be particularly relevant to estimation of hazard and risk.

This section of the document is composed of six chapters. A chapter on the mechanisms of cancer induction is followed by two on testing, one each for short-term and long-term testing. These methods of hazard evaluation are complemented by a chapter summarizing a number of aspects of epidemiology, which estimates human hazard. There is a chapter on exposure assessment, a critical problem in assessing human risk, followed by the last chapter, which discusses hazard or dose-response assessment, and risk characterization and, drawing on all the other chapters, discusses risk assessment as a whole. It is clear that the limited space available in this review does not allow a totally comprehensive treatise on the various subjects involved, and specialists in the various fields may disagree with the importance of certain aspects of the discussion. The focus has been on a balanced presentation of what is consensus in the various fields discussed as they intersect with the need to understand the effects of chemical agents.

Chapter 1--Current Views on the Mechanisms of Carcinogenesis

I. Introduction

A. Philosophical Perspectives

Underlying the elucidation of mechanisms in carcinogenesis is the search for causality in this biological phenomenon in order to better evaluate and control it. Since science is continually advancing, our understanding must be periodically re-evaluated in light of new, generally agreed upon findings. Such a review is especially important in rapidly advancing, highly specialized and interdisciplinary areas that are of significance to public health. The mechanisms underlying induction of cancer represent such an area and are re-examined here in light of the findings of the last few years.

This chapter first places the understanding of the mechanisms of cancer induction in a historical perspective and provides a synopsis of some current commonly held beliefs. The bulk of the text follows, which focuses on the interaction of cancer-related agents with factors both external and internal to an organism and the consequences of such interactions at the molecular, cellular, tissue and organismic levels relative to the development of cancer. The sequence of events presented is not written to advance any specific mechanism of cancer induction, but simply to organize the presentation of the response of various levels of biological organization to cancer-related agents. It should also be appreciated that the data presented have been obtained from studies using various research model systems (*e.g.*, cell-free, cellular, whole animal) to isolate various components of the process and are derived from various strains and species treated under a great variety of experimental conditions. This comprehensive approach to the study of cancer is generally accepted for many reasons, primarily the belief that, while biological systems vary, the degree of similarity at the level of their basic processes is greater than at higher levels of integration.

B. Historical Perspectives

Studies in paleopathology have indicated that cancers occurred in pre-historic times *(1)*. The frequency of occurrence of the disease (its incidence) is hard to quantitate in antiquity, however, over approximately the last century, a relatively well-documented period, total cancer incidence *per capita* has increased *(2)*. The increase in the mean lifespan as a result of prevention and treatment of other diseases is a significant factor in this increase in incidence, however, exposure to carcinogens (*e.g.*, by smoking) is also important *(2)*. Less clear are the effects of other factors, *e.g.* increasing urbanization *(2,3)*, which would result in reducing exposure to certain agents (*e.g.*, mycotoxins, mutagens in raw sewage), while increasing exposure to others (*e.g.*, asbestos, benzene). The study of the process of carcinogenesis is at least 300 years old, with studies during the first 200 years being primarily descriptive. The influence of occupation and life-styles in cancer occurrence was first observed by Ramazzini in 1700, who noted that nuns exhibited a higher frequency of breast cancer than other women *(4)*. Subsequently, in 1761 Hill associated the use of tobacco snuff with cancer of the nasal passage *(5)* and in 1775 Pott noted the occurrence of soot-related scrotal cancer in chimney sweeps *(6)*. Based upon observations in developing systems, Weismann, in 1881, suggested an association between the "germplasm" (the reproductive or life principle) and cancer *(7)*, one of the first experimentally based theories concerning the mechanism of cancer induction. In 1895, Rehn published evidence that aromatic amines were associated with bladder cancer *(8)*, while Unna, in 1894, and Dubreuilh, in 1896, associated sunlight exposure with skin cancer *(9,10)*. In the following 50 years, with the development of appropriate models, numerous agents were found to induce cancer in experimental animals. Over the last 30 years, there has been an increased emphasis on understanding the mechanisms of carcinogenesis and, recently, on the role of factors such as diet in the enhancement or inhibition of tumor formation *(2,11-13)*. Consequently, in the last decade, more progress has been made in understanding the overall mechanisms of carcinogenesis than at any other time in history.

C. Current Beliefs

From the mass of data on carcinogenesis, a consensus has emerged on a number of important scientific issues:

First, cancer can be induced by radiation, biological, "physical" and/or chemical agents.

Second, on a biochemical and molecular level, there are important similarities among mammalian species.

Third, an estimate of the potency of carcinogens may never be exact and may vary with life style, habits, age, sex, individual genetic differences, ethnic background, test strain and/or species, diet, dose rate, route of administration, vehicle or solvent used (if any) as well as the presence or absence of other agents, and the environmental conditions prior to, during, or after exposure.

Fourth, cancer development is a multi-stage process that may involve the genome, both indirectly (frequently termed epigenetic events) and directly, which may include the participation of chemicals or viruses, and which may be modulated by higher order functions, *i.e.* at the organ and organismic level.

Fifth, numerous factors may alter the frequency of cancer induction by altering one or more of these stages.

Sixth, the genesis of a cancer appears to require an alteration in the ability of a cell to elaborate its appropriate genetic program, *i.e.*, in its information processing capacity, with the subsequent fixation and propagation of that alteration.

Seventh, we still lack an in-depth understanding of the mechanisms and stages of cancer induction and expression.

Eighth, only by understanding the stages of tumorigenesis and carcinogenesis, the substances and processes which modulate them, and how these may differ among cells, organs, individuals, strains and species will we ultimately understand the role of substances, radiations, viruses and/or life-style factors in human cancer.

II. PREABSORPTION MODIFICATION OF CARCINOGENS

Human exposure to carcinogens usually occurs by dermal contact, inhalation, ingestion, or a combination of these routes of exposure. Depending on route of exposure, an agent can be altered as a result of interaction with factors that are in association with, but not actually part of, an organism. These factors include: 1) direct transformation of chemicals by environmental factors (*e.g.*, solar radiation interacting with an agent on the surface of the skin [14]); 2) interaction with cellular secretions (*e.g.*, certain inhaled carcinogens being "coated" with lung secretions [15]); and 3) metabolic conversions by microorganisms (*e.g.*, gut microflora acting on ingested agents [16-23]). An illustration of the impact that these factors can have is exemplified by the role of the gut microflora in the metabolism of xenobiotics. It has been suggested that the potential for metabolism in the gastrointestinal tract is similar to that of the liver *(19)*. However, hepatic metabolism of non-

nutrients is predominantly oxidative and synthetic (conjugations), while reactions by intestinal microflora are mostly of a hydrolytic and reductive nature *(19)*. It also appears that intestinal microbial metabolism is most important for polar compounds that are not well absorbed from the gut and for those that are excreted, free or conjugated, in the bile *(19)*. Examples of this include the metabolism of cycasin to a carcinogenic aglycone *(18)* and enzymatic reduction of a number of azo dyes by numerous genera of anaerobic gut bacteria *(23)*. Intestinal microfloral metabolism can give rise to competition or cooperation between mammalian and microbial enzyme systems in sequential reactions in the cells and in the entero-hepatic circulation.

Intra- and interspecies comparisons of microfloral metabolism of xenobiotics have been rare. In one study, rat, monkey and human intestinal microflora exhibited the capacity to reduce several benzidine and benzidine-congener based dyes to potentially carcinogenic aromatic amines under test conditions *(16)*. Since there is a similarity between the biological effects of these dyes and the effects of benzidine on humans *(24)*, this study suggested that, for these dyes at least, gut microfloral metabolism may play a significant role in the etiology of urinary bladder cancer. Diet composition has also been shown to affect microbial metabolism. Diets with high pectin content can alter the metabolic activities of bacteria in the gut, thus directly affecting hepatic covalent binding of carcinogens *(25)*. Further studies in this area, especially in regard to the relation between gut microflora in animals with different feeding habits, *e.g.* carnivore, herbivore and omnivore, and the animal's susceptibility to certain classes of carcinogens would be of interest. Species and individual differences in microfloral composition could quantitatively and qualitatively alter the nature of the agent to which the animal is ultimately exposed and, thus, the biological response.

III. ORGANISMIC AND CELLULAR METABOLISM

A. Activation, Detoxification and Reactivation

Carcinogens include biological agents, such as some viruses *(26)*, radiations, such as X-rays and ultraviolet light *(27)*, "physical agents," such as plastic surfaces and wounding *(28)*, chemical agents, both organic and inorganic *(29)*, and combinations thereof. Chemical carcinogens occur in a number of chemical classes including polycyclic aromatic hydrocarbons and their derivatives, aromatic amines, azo dyes, nitrosamines, nitrosamides, halogenated hydrocarbons, alkylating agents and metals, their salts and metal complexes, as well as in plant and microbial products *(29)*. Ordinarily, not all chemicals belonging to any class are carcinogenic, nor are all those compounds within a class which exhibit carcinogenicity equally potent. Carcinogens may be naturally-occurring *(30,31)* (*e.g.*, in food [32]), result from industrial processes *(31,33,34)*, or represent the consequences of social activities *(35)*. With the exception of a few direct-acting agents, the organic carcinogens *(36)* and, possibly, some of the metal complexes *(37)* require metabolic activation in order to exert their cancer-inducing properties. In general, by whatever route chemicals enter the body, the enzymes involved in biotransformation of a chemical to carcinogenically active (as well as to a number of carcinogenically inactive) metabolites are part of the same mechanisms responsible for detoxication of drugs. Included in this interpretation of the detoxication mechanism is the partitioning of a compound and its metabolites into various body compartments and the effects of differing physiology (blood pH, blood flow to various organs, etc.) on the distribution of the compound and its metabolites. For example, the prolonged retention of acidic urine in dog and man, compared to the rat, can result in a very different profile of aromatic amine metabolites than in the rat, due to the effect of a lower urine pH over a longer time on N-hydroxyarylamine conjugates *(38)*. Realistic modeling can be very useful to understand the mechanisms of the effects of an agent, however: 1) a detailed analysis (*e.g.*, pharmacokinetics) can become quite involved and the simplifying assumptions used in deriving tractable equations may be inimical to realistically modeling the *in vivo* situation; 2) the data required for modeling are often unavailable; and 3) care should be taken in defining the "effective dose" when the mechanisms of carcinogenic action are unknown *(39)*. Also included in considering metabolism is the *total* metabolic potential of the organism. For instance, nasal epithelium can activate chemical carcinogens *(40)*, a consideration especially important to understanding the effects of exposure by inhalation.

The enzyme systems involved in biotransformation can be divided for convenience into two groups that convert a compound into either a phase 1 or phase 2 metabolite. Phase 1 metabolites are primary oxidation or reduction products, which are usually more water soluble than the parent compound and thus may generally be more easily eliminated from the body. These metabolites may be then conjugated with various soluble intracellular constituents, forming glucuronides or sulfates, to become even more water soluble and available for excretion from the body. These conjugated metabolites constitute the phase 2 metabolites *(41)*, which are usually excreted. However, deconjugation prior to excretion may release an active carcinogen at a site distant from the site of conjugation *(38,42)*.

The reactions that occur in the formation of either phase 1 or phase 2 metabolites require specific enzymes for their conversion (some of the better characterized of which are listed in Table 2). Interactions between a chemical carcinogen and these metabolizing systems may form a large spectrum of phase 1 and phase 2 metabolites. A generally accepted mechanism for the reaction of metabolically activated agents with the cell has been proposed by Miller and Miller *(36)*, namely that the ultimate carcinogenic forms of organic chemical carcinogens are electrophilic (electron deficient) reactants that bind with target intracellular nucleophilic (electron-rich) macromolecules such as DNA and proteins. The reactive metabolites formed may also react with other nucleophiles such as glutathione or water *(43-44)*. Through these latter processes, the effects of agents can be neutralized by forming less biologically reactive metabolites that are very polar and may be more easily excreted. The efficiency of this neutralization is an important factor in tumor induction. For example, if detoxification by glutathione is efficient, the effective local concentration of the active metabolites of the agent is usually reduced, which results in decreased binding to macromolecules. However, the electrophilic properties of some chemicals may be enhanced by glutathione conjugation *(45)* (although this is exceptional). Thus, determining the details of chemical biotransformation is desirable when assessing the impact of a chemical.

Understanding the metabolism of chemical carcinogens is often complicated by the diversity of the enzymatic reactions. For example, while for aromatic amines and related compounds, the N-hydroxy derivatives may be the only phase 1 metabolites

needed for generation of the nitrenium ion-species that bind with target intracellular macromolecules *(38,46)*, the common metabolic activation of nitrosamines and nitrosamides occurs via the formation of diazo intermediates, which subsequently decompose to molecular nitrogen and active alkyl carbonium ions *(29)*. To illustrate the complexity of metabolism of a chemical carcinogen, most of the known metabolic pathways and the phase 1 metabolites formed from benzo(a)pyrene, one of the most ubiquitous of environmental animal carcinogens, are shown in Figure 1. Many of these metabolites can be converted to different conjugates by phase 2 enzymes. Also, the enzymes cytochrome P-450 and epoxide hydrolase exhibit high selectivity for a particular molecular region and its local conformation *(47)*. This results in arene oxides, *trans*-dihydrodiols and *trans*-dihydrodiol-epoxides being formed as specific optically active isomers (enantiomers). These enantiomers exhibit markedly different biological activities *(48)*.

TABLE 2 - SOME ENZYMES NEEDED FOR PHASE 1 AND PHASE 2 REACTIONS

phase 1

(1) Enzyme systems containing cytochrome P-450 and the FAD-containing monooxygenase catalyze epoxidation of aromatic rings or olefinic double bonds, produce hydroxylation of aromatic rings or alkyl chains, perform oxidative dealkylation, and N-oxidation *(44)*. This system occurs mainly in the endoplasmic reticulum of liver, kidney, lung and intestine. The enzymes may occur in multiple forms and exhibit different or overlapping substrate-specificity *(44)*.

(2) Epoxide hydrolase catalyzes the hydrolysis of arene oxides and alkene oxides into *trans*-dihydrodiols.

(3) Dehydrogenases, flavin-containing cytochrome P-450 reductases and xanthine oxidase catalyze the reduction of nitroaromatics to nitrosoarenes, N-hydroxyarylamines, and arylamines, and the reduction of azo compounds to amines.

phase 2

(1) Glutathione S-transferases catalyze the conjugation reaction between glutathione and a variety of electrophilic compounds such as arene oxides (these enzymes are known to exist in multiple forms) *(44)*.

(2) UDP-glucuronyltransferases catalyze the conjugation reactions between glucuronic acid with substrates such as phenol and bilirubin. These enzymes are also found in multiple forms *(44)*.

(3) Sulfotransferases catalyze sulfate ester formation.

(4) N-Acyltransferases and N,O-acyltranferases catalyze N-acetylation and N,O-acyltransfer of aromatic amines and arylhydroxamic acids.

Simply knowing the identity of the major metabolites of a compound may not always allow prediction of its hazard. For example, metabolism of polycyclic aromatic hydrocarbons to *trans*-dihydrodiols was long known, but thought to be a pure detoxification process *(49)*. However, identification of the anti-isomer of the dihydrodiol-epoxide of benzo(a)pyrene, which is derived from the *trans*-7,8-dihydrodiol (Figure 1), as the electrophilic metabolite of benzo(a)pyrene which binds DNA (ultimate carcinogen) has proven that some *trans*-dihydrodiol metabolites can be enzymatically activated *(50-51)*.

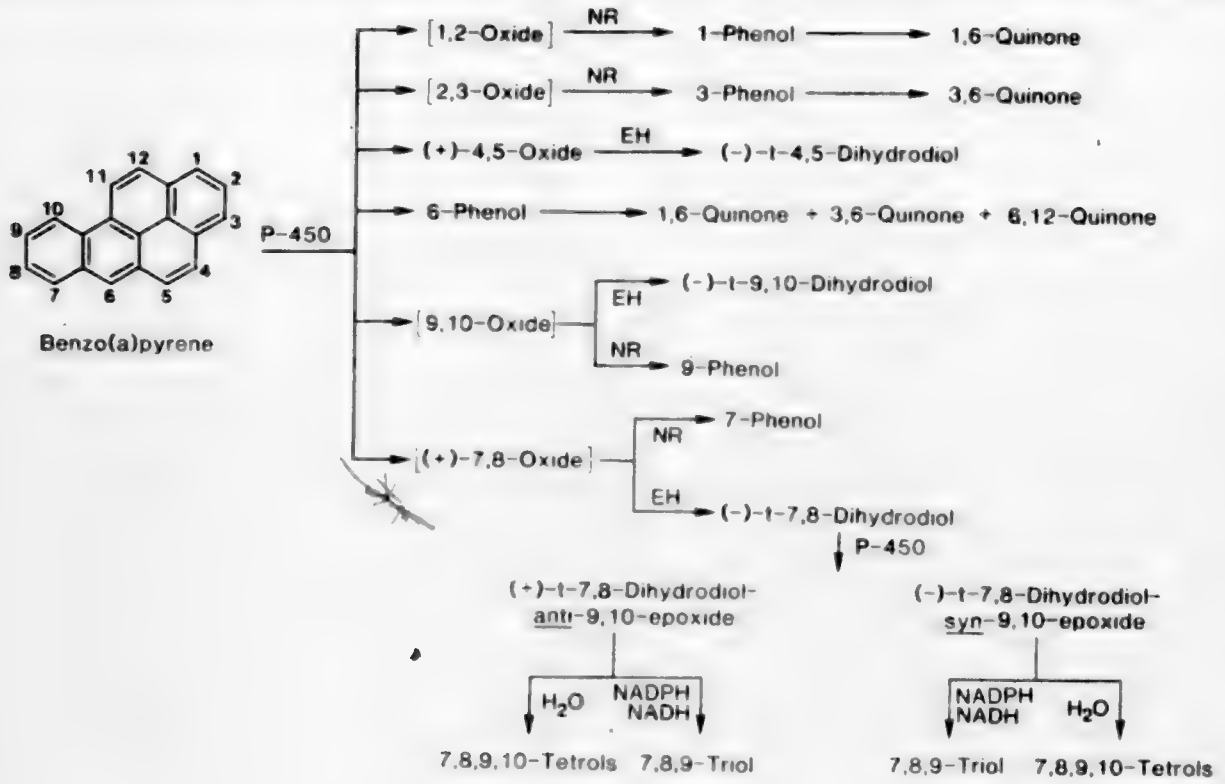


Figure 1. Metabolic pathways and metabolites of benzo(a)pyrene obtained from metabolism by rat liver microsomes. Abbreviations: P-450, Cytochrome P-450 containing enzymes together with cofactors. EH, Epoxide hydrolase; NR, Non-enzymatic rearrangement; t, *trans*

Additionally, detoxified metabolites formed in the liver may be reactivated in other organs, *e.g.* the bladder *(38)*. The metabolic fate of a compound is a function of a number of processes occurring together (activation, deactivation, and reactivation), whose dynamic interaction results in the local concentration and lifetime of the active metabolite(s). The combination of whole animal, organ and cellular processes results in a local variable dose-rate of active species with time. These changes may be significant factors in producing the biological effects seen with a particular agent.

B. Modulation of Metabolism

Compound metabolism is a function of the processes in tissues described above, in combination with the cellular, organ and whole animal distribution and excretory processes. This dynamic interaction can be modulated by a number of factors. Such factors include enzyme inhibitors, enzyme inducers, metabolite scavengers (see below), starvation, age, sex, stress, tissue ablations, nutritional factors, individual genetic differences, and hormonal status *(44,52)*. Various synthetic chemical agents have been shown to act as inhibitors, inducers, or scavengers *(53)* and this diversity of effects has been suggested as well for some commonly eaten foods, which contain naturally occurring inhibitors or inducers, and which also appear to modulate metabolism *(2,32)*. Briefly, there are three general mechanisms accounting for the modulation of metabolism by inhibitors or inducers *(53)*: 1) Stimulation of cellular metabolism which results in an increased deactivation and/or activation. For example, a wide range of compounds including polycyclic aromatic hydrocarbons, phenobarbital, flavones, halogenated hydrocarbons, and indoles induce an increase in monooxygenase activity and changes in the relative proportions of the different isozymes. Other enzymes, such as glutathione S-transferases, may simultaneously be enhanced. Affinity constants may be altered. As a consequence of any and all these changes, the relative proportions of various metabolites may change, thereby influencing the ratio of metabolic activation to deactivation *(54)*. 2) Interference with enzymatic activation of chemical carcinogens to form the ultimate carcinogenic metabolite(s). For example, disulfiram is thought to inhibit dimethylhydrazine induced neoplasia of the large bowel by directly reducing the rate of conversion of the agent into a reactive metabolite *(53)*. 3) Alteration of scavenging

(neutralization) of the reactive metabolites by nucleophiles, such as glutathione, or other defense systems, such as superoxide dismutase. For example, starvation, other nutritional imbalances, or compounds such as butylated hydroxyanisole may drastically alter glutathione levels *(55-56)*. Decreases in glutathione levels may lead to a decreased proportion of the reactive metabolite being detoxified. Conversely, the increased levels of glutathione and glutathione transferase produced by butylated hydroxyanisole may indicate greater detoxification of a reactive metabolite, provided that the glutathione conjugate products are not reactivated.

However, it is the balance between the activation, detoxification and reactivation systems for a chemical carcinogen, and their interaction over time, rather than the change in one of these processes *per se*, which is important. If monooxygenase activity has been stimulated, resulting in increased reactive metabolite formation, a greater proportion of biologically available carcinogen will result only if the detoxification mechanisms cannot compensate. An example of compensation using another toxic endpoint involves low doses of acetaminophen, whose reactive metabolite reacts with glutathione, and which will not be hepatotoxic *(57)*. However, larger doses will deplete the glutathione pool and result in hepatotoxicity. Alternatively, if glutathione levels are decreased, concentrations of electrophilic metabolites may increase.

The use of various chemical modulators has contributed significantly to our understanding of the metabolism and disposition of chemical carcinogens. With extended research into the mechanism of action of these agents, the use of such modulators may, in the future, aid in the treatment of individuals accidentally exposed to high doses of certain chemical carcinogens. However, at present, it would be premature to state that modulators will be generally effective in preventing cancer induction by some chemicals or that such agents could ever be used as an alternative to reducing or preventing exposure to identified carcinogens. An indication for caution is the demonstration that coadministration of aspirin, which modulates the metabolism of N-[4-(5-nitro-2-furyl)-2-thiazolyl]formamide (FANFT), a potent rat urinary bladder carcinogen, will decrease the number of bladder tumors induced by FANFT, however, at the same time, it will increase the number of forestomach tumors produced *(58)*.

C. Organ and Species Differences

Because the total enzyme level and substrate specificity of the phase 1 and phase 2 metabolizing enzymes exhibit organ, individual, and species differences *(52)*, the metabolic patterns of both activation and deactivation of a particular agent could also differ markedly. Examples of this are the differences in the monooxygenase activities in nasal epithelium in different species *(59)*. Also, there exist multiple forms of cytochrome P-450 enzymes, each of which exhibits its own specificity toward the substrate metabolized *(44)*. Since glutathione S-transferases and UDP-glucuronyltransferases also occur in multiple forms *(44)*, their particular form in different tissues, strains, individuals or species may also vary. Moreover, the activity of each metabolizing enzyme in a specific tissue of the same strain could vary widely depending on age, sex, nutritional factors, hormonal status, or other factors *(31)*. For these reasons, unless one knows the rates of the activation-deactivation processes and the participating isozymes responsible for these reactions, it is impossible to predict quantitatively the metabolic activation of chemical carcinogens from an *in vitro* to an *in vivo* system, or from laboratory animals to humans. Metabolic comparisons between animal species and humans, when the metabolic pathways are similar, could be useful for qualitative assessments of the relevance of a specific animal test system to human risk. Presently, however, a paucity of comparative metabolism data on either induced or noninduced systems exists since most studies are based on an ontogenetic rather than a molecular-evolutionary approach *(60)* and are therefore of limited use for extrapolation of data between species and organs. There is also expected to be, because of these variabilities, a wide range of responses in different members of a species, leading to individuals with different levels of sensitivity to agents.

IV. MACROMOLECULAR INTERACTIONS

A. Alterations in Genetic Information

Modification of the information content of cells is believed to be one of the events involved in the onset of carcinogenesis *(61)*. Although macromolecules such as RNA *(36)*, protein *(62)*, and lipid-containing membranes *(63)* will be altered by many carcinogens, and may be important at different stages in carcinogenesis, it is believed that the primary initial site for cancer induction is the DNA. The evidence for this hypothesis rests on a number of observations: 1) the great majority of biological carcinogens that have been examined interact with the DNA of the host cell *(64)*; 2) many, but not all, radiations and chemical carcinogens are mutagens and mutations result from alterations in the DNA *(65)*; 3) individuals with certain genetic diseases which are characterized by defective DNA repair, such as xeroderma pigmentosum, are prone to cancer at a number of sites and cells from these individuals have increased sensitivity to several radiations and chemical mutagens *(66-68)*; 4) ultraviolet (254 nm) light-induced tumor formation in the gynogenetic fish, *Poecilia formosa*, is directly related to the amount of DNA damage remaining after different levels of photoreactivation repair of the DNA *(69)*. Factors which influence the expression of cancer cells may or may not act on the DNA during different stages. These factors will be referred to throughout the text, but especially in the subsequent sections on promotion, progression and multiple agents.

The changes in information content of DNA can take many forms such as integration into DNA of viral information for biological carcinogens, chromosomal alterations with radiations, and changes in the base sequence after replication as a result of adduct formation with many chemical carcinogens.

1. Biological Carcinogens. Many viruses will induce cancer in various organs of one or more species *(70)*. The most progress made recently in understanding the mechanisms of viral carcinogenesis relevant to human cancer involves *onc* genes, expression control elements, dominant transforming genes and human viruses.

a. *Onc* genes

Studies on oncogenic RNA viruses have provided the background for detailed investigations of genes in the cell with oncogenic potential and for development of methodologies enabling identification and isolation of dominant transforming genes in human tumor cells *(71-84)*. This approach has helped identify genetic elements that may be responsible for certain types of cancer. A major class of RNA tumor viruses, known as retroviruses, has been particularly useful in providing new insight into the cancer process. Retroviruses are unique among animal

viruses in their mode of transmission and their intimate association with a wide variety of vertebrate species *(85)*, factors which may have allowed them to become oncogenic in a number of species. Certain members of this group, the acute transforming retroviruses, appear to have arisen by recombination of the viral genome with cellular genes. The acquisition by these viruses of cellular genes, termed *onc* (for oncogenic) genes *(86)*, is associated with the ability of these viruses to induce rapid neoplastic disease in newborn animals and to transform cells in culture, an *in vitro* model for carcinogenesis. These genes (the number isolated, at present about two dozen, is steadily increasing) appear to be of major importance to the cells since some have been conserved in widely divergent species *(87)*. The RNA tumor viruses containing them can be thought of as vectors that carry isolated cellular-derived genes critical for malignant neoplastic disease.

The genes in the normal genome of a cell which appear to have given rise to the *onc* genes, presumably as a result of viral infection, are termed proto-oncogenes. There are human genes homologous to retrovirus *onc* genes *(88-92)* and specific *onc* genes can be identified in many different human cancer cells *(93)*. Some *onc* genes are rarely expressed, some are expressed chiefly in specific kinds of cells derived from malignant tumors, and some appear to be expressed only in cells of certain lineage or differentiation states *(94-95)*. The specific cellular functions coded by most *onc* genes are unknown, although a variety of activities has been found. The gene product of one family of oncogenes, *src*, is a protein kinase, usually tyrosine specific *(96)*, similar to the kinase often activated by binding of a number of growth factors to their receptors. Interestingly, phorbol tetradeconate acetate (TPA) (an important model compound in tumor promotion) (see below), may substitute for diacylglycerol and permanently activate protein kinase C, a tyrosine specific protein kinase *(97)*, which phosphorylates insulin and somatomedin receptors *(98)*. *ras* p21 protein seems to have a guanosine triphosphatase activity *(99)*. Sometimes, only pieces of a cellular protein are coded, *e.g.*, *erb*-b codes for the integral membrane and large interior portions of the epidermal growth factor receptor *(100)* and *fgr* seems to produce a hybrid protein resulting from the recombination of actin and part of a tyrosine specific protein kinase *(101)*. The *onc* gene of simian sarcoma virus was probably derived from genetic material encoding platelet-derived growth factor (PDGF), which is a growth factor in the type of tissue which becomes cancerous as a result of this virus *(102)*, while *c-myc* seems to mediate the mitogenic response to platelet-derived growth factor *(103)* by localizing in the nucleus, perhaps by its DNA-binding properties *(104)*. This is especially interesting in that it has been shown that at least two oncogenes, *ras* and *myc*, can work together to transform primary fibroblasts in culture *(105)* (although *Ha-ras-1* can be effective alone if it is mutated [106]). When an *onc* gene is expressed at high levels, an increase in gene dosage or expression has been correlated with the transforming activity of the virus *(89)*. Alternatively, there is some evidence that the removal of a suppressor or regulatory gene, with the possible involvement of an oncogene as a second step, may be important in human retinoblastoma *(107)*, while *erbA* (similar to carbonic anhydrase) blocks differentiation of immature erythrocytes and potentiates the effects of *erbB (108)*. It appears that any step in the growth regulation of cells, from receptor through kinase and nuclear changes, can be affected by different oncogenes.

These data also suggest that there is a two part model for transformation. The first part centers around the stimulation of some growth factor, and the second, an alteration in the cell nucleus. The first part may also involve the interaction of a cell with other cells, as growth factors can be elaborated *(109)*, and the second may be an intrinsic change in the cell itself. Although this is a speculation, and there are important gaps in information, a general picture of the mechanism of viral carcinogenesis is starting to emerge which also may be very important in understanding chemical carcinogenesis since activated oncogenes are seen in chemically induced rodent tumors (*e.g.*, *ras* in rat nitrosomethylurea induced tumors [110]).

b. Expression control elements

Some normal cell *onc* genes can be activated when linked with expression control elements (ECE) derived from the retroviruses *(71,111-112)*. The ECE regulate the level of expression or gene dosage of the retrovirus genome in an infected cell and can be used to "switch on" expression of other genes. Recent studies suggest that when the ECE is linked to an *onc* gene it activates the gene's transforming potential by increasing the gene's level of expression *(111)*. *In vivo*, the same two factors, *onc* and ECE, which appear to link by chance, have been shown to be responsible for oncogenesis in animals infected with certain retroviruses *(111)*.

The viruses from which the acute transforming retroviruses seem to have originated, the leukemia retroviruses, usually cause leukemias or lymphomas, but can also cause a variety of other neoplastic diseases in animals after long latent periods *(85)*. When these viruses infect a large population of cells, viral genetic information can integrate at many loci in the host genome. The stable integrated form of the virus (called the provirus) is bracketed by the same ECE described above. These ECE are virus specific and are generated during the integration process *(113)*. In some instances these viruses will integrate at loci in the host chromosome adjacent to cellular *onc* genes and will cause neoplastic disease *(114)*. Similar to the situation described above for the acute transforming retroviruses, this specific integration results in elevated levels of expression of a specific cellular *onc* gene which becomes regulated by the viral ECE. The long latent period required for neoplastic disease induced by these viruses may be associated with the frequency of or time to specific integration in the host chromosome adjacent to a cellular *onc* gene of the viral ECE.

Some radiations and chemical carcinogens might enhance either the frequency of initial integration of the virus or subsequent rearrangement of viral material by inducing chromosomal translocations. In Burkitt's lymphoma, a characteristic portion of human chromosome 8 (carrying *c-myc*) is translocated to chromosome 14, and the site of immunoglobulin heavy chains *(113-115)*. This *onc* gene is the same one activated by a retrovirus transcription control element in avian bursal lymphoma disease *(116-117)*. Also, *c-abl* is translocated in chronic myelocytic leukemia patients with a Philadelphia chromosome (a translocation of the gene from chromosome 9 to chromosome 22 adjacent to an immunoglobulin light chain cluster of genes) *(115)*. Such translocations might conceivably result in the juxtaposition of an *onc* gene and an ECE, altering *onc* gene expression. The same result might arise from direct genetic insult (*via* some carcinogen) to the ECE which normally regulates expression of the cellular *onc* gene.

Considerable study is now being focused on ECE. It has been known for some time that certain nucleotide sequences which bracket structural genes are associated with the initiation and termination of gene expression *(119)*. However, it was first shown with transforming genes that a region termed

"enhancer" must be present in order for these start and stop signals to be recognized *(71,111,120,121)*. Although it is not yet known how enhancers function, appently they can be located in a number of different positions surrounding the structural gene. Moreover, even though the few that have been examined bear no sequence homology, the enhancer sequences from retroviruses have been shown to function and allow expression of a DNA tumor virus, SV40 *(121)*. Also, the sequences seem to be utilized in normal differentiation, as shown by the evidence that immunoglobulin heavy-chain class switching in a pre-B cell line is accompanied by gene rearrangement *(122)*, and, in the development of Burkitt's lymphoma, the activation of the translocated c-myc gene seems to occur by an enhancer in the heavy-chain immunoglobulin locus *(123)*. It is possible that translocation into a region controlled by an enhancer or mutations in gene enhancer or activator sequences of cellular *onc* genes could participate in expression of a transforming phenotype.

c. Dominant transforming genes

Another area of considerable study during the past two years has been the direct isolation of dominant transforming genes from human tumor cell lines (82-84). A biological assay referred to as transfection was used early in tumor virology to demonstrate that host genomic DNA containing dominant viral *onc* genes could be transferred to normal cells *(85)*. The early studies were developed and refined using cells transformed with acute transforming retroviruses; they demonstrated clearly that the integrated provirus could be transferred as part of the cellular genomic DNA into specific cell lines capable of assimilating foreign DNA into their chromosomes. By using this technology it has been possible to transfer dominant transforming genes from a variety of tumor cell lines from different species, including human. These include genes from humen lung cancer, colon cancer, bladder cancer, and breast cancer cell lines *(82-84,124-126)*. Utilizing recombinant DNA techniques, it has also been possible to identify and isolate (in certain instances) these dominant transforming genes from the transformed recipient cell and to show that these isolated genes are of human origin *(82-84)*. In the molecular cloned state, the genes have high oncogenic potential. It is of particular importance that some of these genes (for example, genes associated with human bladder, lung, and colon cancers) are related to a specific family of retroviral *onc* genes *(127-129)*. In the case of a human bladder cancer gene, a single base change in a normal human gene results in expression of its oncogenic potential *(130-131)*. Also, in the case of chemically induced tumors, there is suggestive evidence that the activation of an oncogene can occur by a single base change *(110)*. The study of RNA tumor viruses has provided an initial understanding of how viral *onc* genes cause cellular transformation. The correlation with human *onc* genes provides an enormous leap in our understanding of causal factors in human neoplastic disease.

d. Human viruses

Recently, retroviruses of the kind that cause leukemia in animals have been isolated from humans. These human leukemia viruses (HTLV) are known to be associated with several types of T-cell leukemias in man *(133-134)*. When they are transmitted to normal human T-cells, they induce a morphology, behavior, and phenotype similar to those naturally occurring in transformed cells isolated from individuals with T-cell leukemia and lymphomas *(135)*. This virus, the presence of which correlates with clusters of the disease, thus may represent a true human cancer virus *(136-137)*. Other viruses, such as herpes viruses, especially Epstein-Barr virus (EBV), hepatitis B virus, and papilloma viruses, have also been associated with human cancers *(138)*. Although these viruses do not fit all the presently recognized criteria for a true human tumor virus, they may nonetheless influence the development of certain human cancers. Thus, EBV appears to be a stimulus for proliferation of B-cells which may be an early event in the development of African Burkitt lymphoma *(139)*. Herpes simplex, a DNA virus, is associated with cervical cancer *(140)*, and hepatitis B virus to liver cancer *(141)*. Papilloma viruses cause benign skin growths (warts) and some strains have recently been shown to be associated with squamous cell carcinoma *(142)*. Much current work is focused on a possible similar role for papilloma viruses in cancers of the genital tract and accessory organs *(143-144)*. How, and even whether, these and other viruses play a role in various types of cancer or interact with various "physical" and chemical carcinogens is poorly understood; but the belief that DNA is a critical target for the biological carcinogens is strongly supported by current studies. New methodology to prepare antibody - using chemically synthesized peptides from nucleic acid sequences - makes it possible to generate antibodies against several different *onc* gene products *(145)* and to characterize the molecular properties of the transforming proteins in transformed cells. This method should aid in developing a better understanding of how chemicals and viruses interact with one another.

2. Radiation. Radiations, both ionizing (the corpuscular radiations and X and gamma-ray photons) and non-ionizing (ultraviolet light [UV]), have been shown to act as carcinogens *(27)*. Ionizing radiations are ubiquitous, with cosmic rays and naturally-occurring radioisotope decay being examples of major sources of background radiation. UV is also ubiquitous, being a component of sunlight.

Carcinogenesis by ionizing radiations is generally related to the spatial distributions within cells of the ionizations they produce *(27)* as well as total dose, dose rate and fractionation, and target tissue *(146)*. The deposition of energy which results from the interaction of radiation with biological media creates ions, free radicals and excited molecules *(146)*. The free radicals are thought to be most important product since: 1) hydroxyl free radicals are involved in some of the biological effects of radiation *(147)*; 2) chemicals that are cellular free radical scavengers inhibit the ability of ionizing radiations to transform cells *in vitro (148)*; and 3) chemicals involved in protection from free radicals (*e.g.* selenium, which is important in the action of glutathione peroxidase, an endogenous scavenger system) inhibit radiation-induced transformation *(146)* (these data also indicate a role for modulators of metabolism in radiation-induced carcinogenesis, since enzyme systems may be modified by metabolic changes). Free radicals will react with many cellular macromolecules, but the production of DNA single-strand breaks, double-strand breaks, chromosomal aberrations, and the production of mutations by ionizing radiation, argue that the DNA is the critical cellular target for the biological effects (although the relationship of any of these phenomena with carcinogenesis is not definitive)*(146)*. Although experimental dosimetry is much better defined for radiation compared to most chemical agents, the molecular lesion(s) significant for carcinogenesis is (are) unknown and may be different for different radiations (one example of a possibly significant lesion is the reaction of the hydroxyl radical with the deoxyribose in DNA, which results in DNA strand breakage [129], although many other lesions are formed). The absence of "radiolabelled adducts,"

common for many chemical agents, has hampered analysis.

UV photocarcinogenesis is wavelength dependent with UVB (photons with a wavelength of 280-320 nm) being most effective on mouse skin *(150)*. Although the photoproducts produced by UV irradiation in cells are myriad *(151)*, reaction with the DNA has been shown to be the critical factor in carcinogenesis. There are a number of lines of evidence which suggest this: 1) in patients with actinic keratoses (a premalignant condition) the DNA repair capacity for UV-induced damage (UV excision repair) in lymphocytes was found to be less than in matched controls *(152)*; 2) individuals with xeroderma pigementosum, who exhibit a predisposition for sunlight-related cutaneous malignancies (although having a number of genetic complementation groups) were found to be deficient in the ability to repair damage induced by UV *(67)*; 3) by use of antibodies, DNA has been shown to be altered immediately and directly by UV irradiation *(153)*; 4) the persistence of UV photoproducts after photoreactivation, a repair mechanism which specifically corrects pyrimidine dimers in the DNA induced by UV, is directly correlated with the capacity of UV-irradiated tissue to develop into tumors *(69)*; 5) the action spectrum (relationship of intensity of a biological response to frequency) of UVB photons is the same for their carcinogenic action and the production of pyrimidine dimers in mouse skin *(154)*.

It is important when making estimations of risk for chemical agents that we realize that many of the tenets upon which these estimations are made are based upon information from radiation carcinogenesis. For example, the hypothesized mechanisms of the action of radiation, while not the primary concern of this document, have served, and continue to serve, as the basis for some of the primary models for chemical carcinogenesis *(155–156)*. Much evidence that damage to the cellular DNA is a step in the induction of tumors comes from studies using radiation. Similarly, various models for high-dose to low-dose extrapolation have their origins in studies using radiation and the best data for these models have been obtained from such studies.

3. Chemical Carcinogens. The interaction of chemical electrophiles with DNA, as discussed in the section on metabolism, may lead to covalently bound adducts, intercalations, strand breaks, phosphotriesters, crosslinks, apurinic sites, apyrimidinic sites, deaminations, and/or hydrations, all of which are forms of DNA damage that may alter genetic information *(53,157-169)*. Studies of chemical carcinogenesis have focused on covalent adducts. Examples of this are the observations that: 1) simple alkylating agents can methylate or ethylate any of the nitrogens or oxygens in either of the four bases in the DNA as well as the sugar residues and phosphate backbone of the DNA *(170)*; 2) the epoxide derivatives of aflatoxin can attack the N-7 position of guanine *(171)* (as well as other sites); 3) activated aromatic amines attack the C-8 and N-2 position of guanine *(172-173)*; and 4) the dihydrodiol epoxide derivatives of benzo(a)pyrene and certain other polynuclear aromatic hydrocarbons attack the N-2 position of guanine and, to a lesser extent, form adducts with adenine and cytosine *(174-175)*. Activated derivatives of these and other carcinogens form similar lesions in the DNA of a number of diverse tissues and species *(175-176)*.

The biological significance of these alterations in the DNA is not always clear, and different alterations may have very different biological effects. Some alterations may cause mutations *(177-178)*. For example, certain modifications of the O-6 position of guanine will cause this base to be misread, during DNA replication, as adenine *(179)*. Also, the major guanine adduct of benzo(a)pyrene, through a transversion, may be misread as a cytosine or thymine in replication *(180-181)*. Alterations in the control of DNA are possible. The amount of methylation of DNA, which may be used in the control of genetic expression *(182)*, can also be altered by some agents. Some of the carcinogenic metal complexes may work through alteration of the enzyme that replicates DNA (DNA polymerase) to cause alterations in the genome through miscoding of DNA bases after replication (this will be discussed in detail in the section on fidelity/infidelity of replication).

4. "Physical" Carcinogens. This class of carcinogens encompasses a number of very diverse phenomena including skin abrasion, scar formation, implantation of non-reactive materials (foreign bodies), schistosomiasis, etc. (the term physical carcinogen also is sometimes used to refer to radiation, *i.e.* a physical agent). Common factors of this class seem to be: 1) the need for the development of a chronic fibrosis, or at least an inflammatory response; and 2) the observation that chemical properties, *e.g.* of a foreign body, are not important *(28)*. An interesting mechanism, with a number of steps, proposed for foreign body carcinogenesis may be relevant to the whole class. During tumor induction, there is an acute inflammatory response with an outgrowth of capillaries as cells adhere to the surface of the foreign body. This response is induced by a number of substances (including mitotic stimuli similar in some ways to growth factors), elaborated by cells in the vicinity of the foreign body. Fibroblasts increase in number, which leads to tissue deposition of collagen (fibrosis). After a latent period, uncontrolled proliferation begins *(183)*. The initiation event seems to occur away from the foreign body surface, inducing an initiated cell through changing the environment of the cells in the vicinity of the foreign body *(28)*. However, the inflammatory response results in an active cellular proliferation of a number of vascular-derived cells (this step can also occur in the inflammatory response generated by the other "physical" carcinogens). By its presence, the foreign body causes the macrophages to become quiescent and the reactive tissue to develop into a chronic fibrotic state, so that there is surface-independent maturation of the initiated cell *(28)*. Asbestos, which is frequently considered a member of this class, may induce cancer by a different pathway since, unlike other "foreign bodies", fragments of asbestos fiber are incorporated into and activate macrophages, as well as slowly dissolve components *(184)*. However, the end result is a fibrosis, *i.e.* asbestosis, which, though more diffuse, is similar in many ways to fibrosis induced by the foreign bodies *(28)*. The size of the asbestos fiber and the possibility of chemical effects because of fiber dissolution of adsorbed molecules make direct comparison with foreign body cancers difficult.

It is not clear how, if at all, this class of carcinogens interacts with the genome. Speculations include: 1) no interaction with the genome, with the recruitment of omnipresent previously initiated cells by a proliferative stimulus into neoplasia; 2) the environment of the inflammatory response, especially the production of free radicals by macrophages, causes chromosomal damage and rearrangement resulting in transformation; and 3) a stimulation of proliferation may result in mutation as a result of infidelity of replication (see below); however, there is little information in the area.

5. General Statements. The interaction of electrophiles, or the products of irradiation, with DNA can play a role in the induction of a tumorigenic

phenotype through either of two mechanisms: 1) directly by altering genetic material through a somatic mutation *(177)*; or 2) indirectly by altering gene expression *(182)*. Somatic mutation, for example, can arise from the direct interaction of DNA with electrophiles, free radicals derived from carcinogens, or with activated oxygen produced by metabolism of the agent. The alteration of gene expression can arise from either: 1) a direct mutational event in a regulatory gene controlling expression (*e.g.*, base transition) *(177,185)*; 2) changes in gene expression resulting from an increased rate of abnormal base incorporation due to enhanced DNA synthesis, or abnormal methylation of nucleic acid bases *(182)*; or 3) induction of genetic transpositions or gaps in the DNA leading to an alteration in gene expression (higher order alterations) *(189)*. Direct alterations in the informational content of cells seem to be common for many carcinogens. The potential involvement of an *onc* gene with either direct or indirect alteration of the genome has been discussed in a previous section.

Understanding the significance of these changes may now be possible with the recent development of new methods to determine the structural alterations caused in DNA by chemical carcinogens and radiation *(187)*. This has occurred as a result of recent advances in spectroscopic and spectrometric instrumentation, especially in the areas of nuclear magnetic resonance spectroscopy and mass spectrometry. Significant progress has also been made in understanding the effect of carcinogens upon DNA's higher-order structure *(188-190)*. For example, recent studies have demonstrated that while methylating and ethylating agents do not induce major steric changes in DNA, aromatic amines induce "base displacement" *(191)*. Additionally, the carcinogen 2-acetylaminofluorene appears to induce a flip from a conventional right-handed DNA helix to the left-handed Z form *(174,191)*, which may induce changes in gene regulation *(190)*. Such changes, while not induced by all chemical carcinogens could, if they occur *in vivo*, suggest mechanisms by which chemicals induce major steric alterations in the structure of DNA. The biological consequences of such changes, however, are uncertain. Even newer techniques are being developed, such as radioimmunoassays using monoclonal antibodies against specific forms of DNA damage *(192)* and reversed labeling methods that are able to detect a single damaged base per cell *(193)*, that may eventually allow routine estimation of DNA damage in humans and better estimation of its biological effects.

V. MODULATION OF ALTERED GENETIC INFORMATION

For many carcinogens, it is necessary for cellular proliferation to occur before the damage induced by a given agent is expressed. For instance, a cell replication must occur within 48 hours to express X-ray induced transformation in cell culture *(194)*. Replication must also occur *in vivo* in liver *(195)*. One way to think about the process is that a cell is first "primed" for alteration by interaction with a carcinogen; cell replication then results in at least one daughter initiated cell, *i.e.* a cell irreversibly altered so that it can interact with the proper stimulus to form a malignant cell.

The alteration of genetic information that produces the initiated cell is modulated by a number of factors. Two of the most important are: 1) the amount of DNA damage (adducts, strand-breaks, etc.) that is removed from the "primed" cell and its daughters (DNA repair); and 2) the accuracy of DNA synthesis (fidelity/infidelity of replication), both as a result of damage to the genome and as a result of changes in cellular parameters (ion concentrations, etc.).

A. DNA Repair

DNA damage is believed to be one of the primary factors in chemical carcinogenesis. The bulk of evidence for this assertion comes from studies implicating UV and ionizing radiation as etiologic agents in cancer induction *(197,* see also Section IV. A, this chapter). For example, as discussed above, individuals with xeroderma pigmentosum who are defective in repair of UV-induced and some forms of chemically-induced DNA damage *(67)* exhibit a high incidence of light-related cancers *(198)*. More generally, the available data are equivocal as to whether there is an increased risk of development of cancer of the internal organs *(68, 199)*. Problems with interpretation of these observations include: 1) chemically-induced and UV-induced damage may induce cancer by different means; 2) organ specific differences exist for cancer induction; and 3) the time to tumor may differ significantly between organs and death of the individual due to complications arising from the skin tumor prior to the onset of cancer in an internal organ or tissue. Also, however, the databases may have been too small to support any conclusion and a larger study may resolve any problems.

Because of the importance of DNA damage, a number of short term bioassay systems that measure it, directly or indirectly, have been developed to screen for potential carcinogens (see Chapter 2, this volume). One of the most important modulators of the amount of DNA damage an agent causes, DNA repair, has been studied in numerous *in vitro* and *in vivo* biological systems *(200)*.

From these studies, various pathways for repair of numerous forms of DNA damage have been identified (Table 3) *(204-250)*. Many of the processes of repair in mammalian cells are similar to those described in bacteria and thus it is assumed that these systems have been conserved during the course of evolution. It has been speculated that the primary role of these systems in evolution was to protect the genetic information of the species from both endogenous and naturally occurring exogenous DNA damaging agents, especially long enough for the organism to replicate *(248)*. All species examined thus far possess at least one form of DNA repair *(218)*.

Since the nature of DNA lesions formed by agents which are genetically toxic, and the methods of their repair, are so similar across species, the use of prokaryotes to screen for this particular form of genetic toxicity seems reasonable. However, the greater complexity of the mammalian systems requires that care must be exercised in the interpretation of bacterial data. For example, chromatin structure in mammalian cells appears to make some regions of the DNA more accessible, and others less accessible, to adduct formation and repair *(249- 251)*. Furthermore, significant differences in the repair efficencies between tissues *(252)* and species *(253-263)* have been observed. In terms of general understanding of the significance of these differences, it is known that among the placental mammals there is a good correlation between the maximum achievable lifespan of a species and the ability of primary fibroblast cell cultures from these species to perform unscheduled DNA synthesis following UV exposure *(261,263)*. It is not known whether there is any such relationship for DNA damage induced by chemical electrophiles. Also, in animals, the organization of cells into tissues presents other complicating factors. One example, based on tissue interactions, involves the complex effects of xenobiotic liver metabolism on the activated agent concentrations in other

tissues. Another involves tissues that are less active mitotically than others. The longer cells are given to perform DNA repair prior to DNA replication, the less likely it is that a transformation event will occur *(198,260)*. Still another example may be the maintenance of many cells in stationary phase (G_0 in a tissue. Those cells could be triggered into DNA replication, and run the risk of mutagenesis, by an agent delivered in a dose sufficently high to induce cell killing (see below, section on hyperplasia) *(266)*. Since the latter possibility has been used to explain the apparent threshold effects seen in various long term low-dose vs. high-dose carcinogensis experiments using nitrosamines (by presuming that the high dose induces cell killing and resultant division leading to effects that are only seen with a high dose [in 264]) understanding factors such as these are important in assessing risk. Other complicating whole animal effects include diet, age, and hormonal status, all of which impact on DNA repair *(265-267)*.

Table 3 - Mammalian DNA Repair Mechanisms

1. Nucleotide excision repair - a mechanism that removes bulky, noncoding lesions from the DNA in a manner similar to, but not identical with, bacterial nucleotide excision repair *(167,201-207)*.
2. Base excision repair - a mechanism that permits reinsertion of the proper base into the gap left in the DNA by the action of enzymes that effect the excision of inappropriate bases from DNA as the free base (DNA glycosylases), avoiding scission of the DNA backbone *(208-209)* as well as a system similar to the bacterial one requiring strand scission *(212-217)*. Included as part of this form of repair, following Setlow *(218)*, are direct demethylation by transfer of a methyl group to an acceptor protein *(219-220)* and AP site repair (direct repair of a removed base) *(209-211,221)*.
3. Strand break repair - the process by which single and double-strand breaks are rejoined with the addition of few or no additional nucleotides through the action of a sealing enzyme *(222-226)*.
4. Photoreactivation - a light activated enzymatic mechanism specific for the breakage of the UV-induced covalent bond attaching two pyrimidines in a cyclobutane-type ring *(226-234)*.
5. Recombination repair (post-replication repair) - a system once believed to occur in mammalian systems, although now controversial, by which bulky, noncoding lesions were transferred to DNA synthesized after damage *(235-238)*.
6. Replication bypass (post-replication repair) - a process that may function in mammalian cells as an alternative to recombination repair in which the bulky lesions are bypassed and the gap created filled *(239-240)*.
7. Inducible DNA repair systems - the most recently described and still speculative (for mammalian systems) repair system in which DNA damage triggers the induction of enzyme systems to remove the damage *(241-247)*.

Many biochemical mechanisms are involved in the repair of DNA damage, and many factors may modify their effectiveness. One mechanism is a nuclear enzyme system which polymerizes activated ADP-ribose residues to form poly(ADP-ribose) *(268)*. The biological function of ADP-ribosylation is not clear, however, there is a relationship between it, DNA damage and DNA repair, which may involve the capacity of the system, demonstrated *in vitro*, to utilize damaged DNA *(269)*. This system also seems to influence the production of sister chromatid exchanges *(270)* and has some relationship to mutagenesis and carcinogenesis, although not a simple one *(269)*. Another mechanism, recently brought to light by the identification of a series of enzymes (collectively referred to as the DNA glycosylases [213-217,271-277]) active in base excision repair (Table 3), has indicated that there is much greater specificity for the various kinds of DNA damage than was previously thought. Over a dozen of these enzymes have been isolated from bacterial and mammalian systems, each involved in the repair of a specific form of DNA damage. The apparent lack of nonspecific DNA damage recognition enzymes in adult mammalian tissues and the high degree of specificity of those repair systems that have been studied suggest that there is specific repair of many forms of DNA damage, including those induced by man-made substances. Another recently discovered mechanism involves an inducible antimutagenesis repair system in bacteria *(278)*. An inducible system, considered part of post-replication repair, was also found in mammalian cells *(242, but see 243)*. Low doses of certain mutagenic agents appear to induce a response in the liver that enhances the repair of damage subsequently induced by those agents. For example, in rat liver, an inducible protein transfers the intact methyl group, added to the guanine base by the potent carcinogen dimethylnitrosamine, from the DNA to a cysteine residue. Pre-stimulation of the animal with small doses of the compound can enhance this inducible repair system by as much as 3-fold *(220)*.

As an example of the relation between knowledge of mechanisms and resolution of science policy questions, one can consider the relationship of DNA repair systems and a threshold phenomena in carcinogenesis. In simple terms, the threshold concept maintains that there is a level of exposure to an agent below which there is either no observable effect and/or no adverse biological effect, usually as a result of some reserve (*e.g., see 279*). The practical manifestation of this concept is a dose-response curve which does not appreciably differ from zero response at some non-zero dose. The concept is used to evaluate many toxic phenomena, but has been a source of controversy in the evaluation of carcinogenicity. The existence of DNA repair systems has been used by some authors to support speculation that a threshold exists for the biological effects of chemical carcinogens, by suggesting that low levels of DNA damage could be totally removed, thereby removing the effects of a low dose of carcinogenic agent. Such an extrapolation is not supported by present data, as is shown below.

The following analysis will concentrate on the question of a threshold for DNA damage and it must clearly be recognized that DNA damage is only one part of a complex chain of events leading to carcinogenesis which may be effected in multiple ways by an agent. A threshold, or lack of threshold, for DNA damage does not necessarily determine a threshold, or lack of threshold, for carcinogenesis.

First, no DNA repair system reduces DNA damage to zero. Consistent with this observation is the observation that DNA damage accumulates in postmitotic tissue, as a function of age even in the absence of known chemical exposure *(281)*. The repair proficient systems found in dividing *Escherichia coli*, when fully induced, can reduce mutagenesis by up to 5,000-fold, but the mutation rate in exposed cultures is still 10 times that which is produced spontaneously *(282)*. The fragmentary data from mammalian cells suggests that there may be an inducible system *(281)*, but it would be unreasonable to assume that replicating eukaryotic cells would be at less risk than prokaryotic cells from low doses of a mutagen. Second, not all DNA repair systems are error-free. While the data on inducible error-prone bypass mechanisms in mammalian systems are meager *(281)*, virus reactivation, which is likened to a mutagenic effect, has been well established in eukaryotes *(244,281)*. This suggests that mammalian cells also possess an error-prone bypass system. Third, major variations in DNA repair efficiency occur between cells, tissues, strains and species exposed to similar doses of the same carcinogen *(253-267)*.

This heterogeneity limits generalizations about the effectiveness of repair systems, constitutive or inducible, relative to the completeness of repair or the notion of a "safe" threshold. Tissue differences in repair might result in a dose-response relationship indicating a threshold for repair in one tissue, but a relationship indicating no threshold for repair in another, thereby providing little hope for uniform protection within an organism. In tissue or cell culture, repair appears to vary between cells. Thus, even if biochemical analyses, which normally measure the average repair capacity of a heterogenous population of cells, demonstrate that a tissue or cell culture is repair proficient, the possibility of repair deficient subpopulations cannot be disregarded.

It is clear that DNA repair will not produce a threshold for DNA damage. However, it is not clear what the significance is of the DNA damage which results from exposure to exogenous agents. Since some damage results from normal metabolism and, probably, exposure to chemicals in foodstuffs *(32)* over the life of the animal, the importance of the additional burden induced by a carcinogen above this background is hard to determine. As noted above, since DNA damage is only a part of the complex process leading to the production of cancer, this determination probably can only be made when a clear understanding of the mechanism(s) of carcinogenesis is achieved.

B. Fidelity/Infidelity of DNA Replication

Another modulator of the alteration of genetic information is the fidelity of DNA replication. Although it is not proven that the role of DNA replication in initiation is to stabilize incorporation of the effects of DNA damage in the genome ("fixation") *(282)*, it remains the most attractive possibility. The fidelity of DNA replication *(283)* will help determine the integrity of genetic information in the initiated cell.

Before one considers the ways fidelity can be altered, it is important to understand the consequences of error accumulation in DNA in nondividing somatic cells *(248)*. In dividing cells, one is concerned with replicative error propagation; that is, the transmission of mistakes from one generation to the next. Mechanisms that enhance the frequency of such mistakes could involve alterations in the DNA synthetic apparatus and have been referred to as intrinsic mutagenesis *(284)*. In nondividing cells, one is concerned about the effect of accumulated unrepaired DNA damage on cell function. When considering mechanisms in carcinogenesis, attention is normally limited to either dividing cells or to resting cells destined to undergo at least one further division cycle. With our present understanding, a cell which fails to undergo further division is not usually considered pivotal with respect to neoplasia. However, if amitotic cells become, through some mechanism, able to divide, or if nondividing cells are involved in the control of dividing cell populations, the accumulation of damage in them can be significant. For instance, nondividing neurons control the level of thyroxine, and it has been shown that this hormone is an important factor in X-ray transformation of cells *(285)*. Therefore, although usually not appreciated, the effects of agents on nondividing cells should not be ignored.

In dividing cells, a repaired or inadequately repaired DNA lesion, such as an adduct, when present on the DNA template at the time of replication, could result in a genetic alteration, *e.g.* base substitution, such as replacing a guanine with a cytosine. However, damaged DNA need not always cause significant base substitutions during DNA replication. First, parental cells containing the damaged DNA may fail to divide and thus be progressively diluted during cellular proliferation. Second, due to the redundancy of the genetic code, as well as other factors, approximately 25% of incorrect base substitutions may not result in amino acid substitutions. On the other hand, a number of modifications of the DNA template or of the DNA polymerases have been shown to cause incorrect substitutions during copying by DNA polymerases *in vitro (286-287)*. If these modifications are not corrected by subsequent DNA repair, it is a reasonable expectation that the unrepaired lesions will in time result in either mutations or cessation of cell reproduction *(262)*. Alkylating agents and carcinogens have been shown to induce misincorporation *in vitro* by modification of DNA templates and by removal of purines from the DNA *(288-293)*. Also, the induction of an error-prone repair pathway (SOS) may cause problems since the underlying concept of this repair pathway is that it can alleviate potentially lethal damage only at the expense of inducing mutations *(278)*.

Even if the template is undamaged, other factors which can be altered by carcinogens, both directly and/or indirectly, may cause the template to be copied incorrectly. Table 4 lists some factors that have been found to diminish the fidelity of DNA synthesis *in vitro* in two different systems, *(288)* and may have to be considered *in vivo*.

During replication, the fidelity of DNA synthesis is altered by certain changes in the reaction conditions. The error rate of mammalian DNA polymerases *in vitro* has been shown to be dependent on the ratio of correct to incorrect nucleotides with both polynucleotide and natural DNA templates *(294-295)*. There is evidence that alterations in cellular nucleotide pool sizes and content are mutagenic *(296-298)*, and the cellular homeostatic mechanisms for precise maintenance of deoxyribonucleotide concentrations may be altered by various chemicals. Furthermore, agents may directly alter some of the nucleotides in the pools available for replication, leading to possible misincorporation *(299-300)*.

Table 4 - Changing Reaction Conditions That Diminish the Fidelity of DNA Synthesis

1. Ratio of incorrect to correct nucleotide substrates (294-300).
2. Type of incorrect nucleotide substrates (296-300).
3. Different metal activators for DNA polymerase (288,291,295).
4. Nonactivating metal mutagens and/or carcinogens (288).
5. Depurination of template (293).

Lindahl and Nyberg *(301)* estimated that the *in vivo* rate constant for thermal depurination is approximately 3×10^{-11} sec-1 suggesting that as many as 10,000 purines may be lost from the genome of a mammalian cell per generation time (20 hours). Furthermore, this rate constant may be significantly increased after alteration of bases by alkylating agents *(301)*. The intensity of this formation of damage suggests that during replication, the cellular mechanisms for correcting depurinated sites on DNA might not be able to repair every site before the polymerase complex involved in replication encounters a damage site. Thus, replication over a damaged site may be a secondary result of cellular interaction with a carcinogen. Lastly, mutagenic/carcinogenic metals can affect the fidelity of DNA synthesis *in vitro (288)*. Thus, various agents that do not damage DNA directly or enhance the production of metabolites that can induce such damage may exert their effect by altering the fidelity of DNA replication. Methods to assess or screen for such agents in mammalian cells are generally lacking. The end result of these processes is that a daughter cell can have an irreversible alteration in genetic information *(282)* even though the cell which interacts directly with the agent does not. This altered cell may be

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similar to normal cells in many respects, but may be capable of giving rise to a cancer, *i.e.* be initiated, and may lead to carcinogenesis if, during the life span of the animal, it encounters an appropriate stimulus.

As previously noted, it is not clear what role DNA synthesis has in initiation, although it has been shown that manipulation of the rate of cellular proliferation can modify tumor incidence. This has been demonstrated: 1) in partial hepatectomy for animals treated with methylnitrosourea, dimethylnitrosamine *(282)*, benzo(a)pyrene and radioactive particles that localize in the liver *(302)*; 2) with chemical treatment combined with diet changes, drugs or natural physiological agents such as hormones or bile acids which alter proliferation rates *(282)* (*e.g.*, retinoids, which stabilize the differentiated nondividing state of epithelial cells among their other biological effects, have been used to inhibit mammary and colon carcinogenesis [303,304]); and 3) in stimulated hyperplasia resulting from a toxic effect *(305)*; and 4) regeneration in skin using skin abrasion *(306)* (much of these data are hard to evaluate, however, because the treatments induce a chronic inflammatory response and it is not clear whether one is studying the effects of proliferation or the inflammatory response).

Cytotoxicity could be a stimulus for cellular proliferation which may result in hyperplasia *(307)* (usually termed restorative or reactive hyperplasia). A chemical which may work through such a mechanism is carbon tetrachloride, which is carcinogenic in mice but which has little or no activity in tests which measure alteration of the genome (the compound was positive in yeast, but only at doses which were almost lethal, casting doubt on the relevance of the result) *(308)*. Replication may act to "fix" changes in cells previously "primed" by some unknown stimulus or it may result in replication errors through some of the mechanisms suggested above. The possibility that hyperplasia can lead to carcinogenesis has led to the speculation that a cytotoxic mechanism is of primary importance in the carcinogenic effect of all carcinogens which do not appear to act directly on the DNA that are tested at a high dose *(309)*, with a suggestion that a dose which does not lead to cytotoxicity would have no toxic effect. This hypothesis overlooks the obvious problem that cytotoxicity is by no means the only way an agent which does not appear to act directly on DNA can alter either replication or gene expression. Certain compounds can stimulate hyperplasia without significant cytotoxicity *(310)*. Furthermore, it has been shown many times that neither the induced hyperplasia *(311)* nor the irritant properties resulting from promoters, such as PMA *(312)*, are sufficent to explain the promotion effect. Thus, a cytotoxic action should be considered simply as an additional possible mechanism of carcinogenesis and not equated to an explanation for carcinogenesis for all non-directly acting agents tested at high dose.

Whatever mechanism(s) is (are) important in the formation of initiated cells, it is clear that cells irreversibly altered in a heritable fashion are induced during this process and that these are the progenitors of further new cell populations during the carcinogenic process. The properties of these cell populations are discussed in the next section.

VI. CANCER FORMATION

How initiated cells with altered genetic information result in a cancer seems to be the least understood area of carcinogenesis. The process can be divided into two operational stages, promotion and progression. Promotion will be used to describe the process(es), usually initially reversible in test systems, but later irreversible *(313)*, that results in cellular proliferation and terminates when one or more neoplastic cells, *i.e.* cells with the ability to grow autonomously, is (are) formed. Neoplastic progression will refer to the next step(s) in which cells become able to form tumors and become malignant with some potential to metastasize.

A. Promotion

1. Promoter Action. A promoter is experimentally defined as an agent which results in an increase in cancer induction after long-term application subsequent to treatment of an animal with an initiator. Under otherwise identical conditions, neither initiator nor promoter alone induces many tumors, nor does a regimen with reversed order (treatment with promoter followed by an initiator) *(311)*. At a particular dose level and treatment schedule, a carcinogen that does not require supplemental promoter activity is termed complete. Many or all complete carcinogens act as both an initiator and promoter in their interaction with the organism and some act as initiator or promoter for different tissues in the same organism at the same time *(314,315)*. Also, the promoter action of a complete carcinogen may not act by the same mechanism as promoters used in initiator-promoter paradigms *(312)*. Separation of these two aspects of carcinogenic action is frequently difficult. However, the term remains a convenient description for one part of an experimentally isolated complex process. For the most part, the phenomenon of tumor promotion has been most carefully delineated in skin and liver carcinogenesis. It remains to be established more firmly with cancer at other sites though there is suggestive work in colon, breast, kidney, central nervous system *(282)* and bladder *(310,316)* carcinogenesis. At present, given the lack of information on mechanisms of carcinogenesis in humans and the myriad interactions of tissue and the biological effects of promoters demonstrated in experimental systems, it is premature to designate agents as acting through only a promotion-type mechanism, although a number of agents seem to have some promoter action.

This experimental definition will not clearly differentiate between promotion and progression since it measures only the production of a malignant tumor. In practice, however, laboratory studies of promoter action are usually ended after a focal mass of cells (*e.g.*, papilloma, nodule) is observed *(310)*. The appearance of the first neoplastic cells has been proposed as a definition of the end of promotion *(282)*. This definition is useful since it emphasizes the frequently seen reversible effects of promotion, *i.e.*, regression of the direct results of a promoter (*e.g.*, papilloma) with termination of its use, while clearly indicating that the role a promoter has in carcinogenesis is to induce a presumably irreversible event, a neoplastic cell. A similar definition is suggested by the separation of promotion into two stages, based on work in skin promotion in mouse *(313)*. Stage one is partially reversible, while stage two, which requires cell proliferation, is initially reversible and then becomes irreversible. When induced, many of the focal masses are reversible, especially in skin and liver *(282)*. How these non-neoplastic masses originate is not completely known, but they seem to arise through the differential stimulation of cells altered by the initiator to respond to the promoter *(282)*. Of the persistent masses, in all systems in which they are induced, almost all do not become neoplastic *(195)*.

Promoters are usually thought of as exogenous compounds. Many of them are plant products (310,317) such as certain of the phorbol esters (*e.g.*, 12-O-tetradecanoylphorbol-13-acetate [TPA]

or phorbol tetradeconate acetate [see Section IV.A.1], which is also known as phorbol myristate acetate [PMA]). However, there is also evidence that certain compounds normally present in the body (endogenous) may also be promoters *(318,319)*. Promotion by such endogenous compounds may be difficult to demonstrate since production of the compound in the body must usually be altered (which normally has many physiological ramifications) to observe an effect, as opposed to exogenous compounds, whose levels are controlled by direct application to a tissue. Another type of interaction that seems to have promoter action occurs in foreign body tumorigenesis *(196)*. Although it has been claimed that a single event determines the sarcoma which results from the implantation *(182)*, it is clear that there is a step where preneoplastic cells of probable vascular origin (produced in a surface-contact independent step) require a surface-contact dependent step to become neoplastic *(182)*. Like other promoters, removal of a foreign body before the last step will, as a rule, prevent the sarcoma from developing. Thus some surfaces, as well as exogenous and endogenous compounds, seem to be able to act as promoters.

Despite recent significant progress, the mechanism of action of PMA, the model promoter, is not completely clear. There is good evidence PMA binds to a receptor *(320,321)*, that activates protein kinase C *(100,322)* (or that may activate the kinase permanently through similarity to diacylglycerol [97]) similar to a number of growth factors (see section IV. A. 1. a). Other promoters also interact with a cell receptor *(310,323)*, *e.g.*, estrogens, suggested to be promoters of mammary and liver tumorigenesis *(324)*, are known to produce their main biological actions through receptors *(325)*.

PMA produces profound biological effects *in vivo*, including edema, erythema, inflammation and cellular proliferation (a property which allows the promoter to participate in "fixation" if given within a short enough time after the initiator dose). But these same effects can be produced by agents that are not promoters *(310)*. By stimulating specific separate effects of PMA in other ways, one can define at least two stages in promotion *(313,326,327)*, supporting the hypotheses that cancer is a multistep process and that more than one aspect of PMA may be important in promotion. *In vitro*, promoters have been shown to induce an array of diverse morphological and biochemical changes *(310, 324,328)*. An important one may be the interaction of PMA and other promoters with cells to generate free radicals *(329-331)*. A similar stimulation is seen with the use of either ionizing radiation or activated oxygen *(331)*, agents which damage the DNA. The capacity to stimulate radicals seems to be correlated with promoter potency to generate tumors *(329)* and varies in a dose dependent manner for the strong promoter PMA *(331)*. PMA can also: 1) cause dedifferentiation or inhibit terminal differentiation *(333)*; 2) stimulate cellular differentiation *(334)*; 3) alter macrophages *(335)*; 4) induce chromosomal alterations *(336)* and sister chromatid exchanges (SCE) *(337)*; and 5) induce virus synthesis *(338)*. It is not known which, if any, of these effects are central to the role of promoters in carcinogenesis since evidence for all models of promotion is indirect. However, the effects on chromosomes may be especially relevant.

PMA can induce chromosomal anomalies such as SCE, although the concentrations (100 ng/ml) required for this effect are quite high *(337)*. The activated oxygen species produced by the promoters, perhaps through an interaction with membrane components, can induce chromosomal damage and a soluble substance which induces chromosomal abnormalities (a clastogen) in nearby cells *(336)*. However, the promotional effects of PMA are reversible unless it is given for a fairly long time while a chromosomal change, such as an aberration, is almost certainly not reversible. This suggests that a chromosomal alteration could be an event, induced by prolonged exposure to the promoter, which terminates the reversible period in promotion *(190,311)*. This suggestion is consistent with the observation that papillomas, which emerge in a common response to promoter action in skin carcinogenesis during the stage when it is reversible, are primarily associated with a diploid karyotype whereas malignant tumors usually have karyotypic alterations *(339, 340)*. The selection process for cellular characteristics important to neoplasia may occur during the entire promotion process (indeed selection may be important even during initiation [282]). Also, the need for prolonged exposure, leading to a relatively large cumulated dose, may be why such high doses have to be given to observe the effect in short-term experiments *in vitro*.

Chromosomal changes, although not proven to be responsible for growth independence of neoplastic cells, are implicated in transformation [341].

For example, SK-L7 human lymphoid cells markedly increase their cloning efficiency in soft agar and decrease their doubling time from 30 hours to 14 hours upon introduction of an additional chromosome 15 *(342-344)*. More directly, a clastogenic effect is produced by cells from an individual with Bloom's syndrome, a clinical entity in which there is usually a high cancer incidence *(336)*. Specific chromosomal transpositions, as seen in the case of Burkitt's lymphoma (see this chapter, Section IV.A.1.b), can be associated with changes in the regulation of gene expression and also could be associated with phenotypic changes such as differences in antigenic expression and unresponsiveness to regulators of cell growth (it must be remembered, however, that this analysis is drawing general conclusions about malignancy from the pathogenesis of rare diseases in persons with a limited lifespan, which may not be appropriate).

The hypothesis that a chromosomal change is a causal factor in cancer induced by promoters is attractive, especially when viewed with the evidence concerning the effects of transposition in oncogenes (see Section IV.A.1); however, few data directly support this contention *(198)*. Although there is a lack of methods to measure such changes readily in vertebrates, this hypothesis is interesting since such genetic alterations: 1) are much more drastic than localized changes in base sequences; 2) may be either site-specific or non-site-specific; 3) do occur at different frequencies; 4) appear to affect the stability of neighboring genes; and 5) are virtually irreversible. In rapidly multiplying bacterial cells, conventional mutagens do not enhance the frequency of transposition *(345)*; however, factors that trigger transpositions or govern their rate of movement are not yet understood well enough to determine whether mutagens enhance transposition in mammalian cells *in vivo*. Large-scale changes, such as rearrangements and deletions, rather than the small changes repairable by excision repair that can be detected in the usual tests for mutagenicity may be more important to predicting human cancer *(198)*. It appears that localized lesions in DNA can be carcinogenic *(54,346)*, it is not clear whether such lesions might act either independently or through induction of direct or indirect induction of major genetic alterations or through a combination of both factors *(347)*.

Evidence is starting to accumulate that both oncogene activation and treatment by some promoters have some

aspects in common, *i.e.* the activation of some growth factor-like stimulus. Interesting in this regard is the discovery that metallothionein gene induction by heavy metal ions (such as cadmium) and glucocorticoid receptors both work by activation of "enhancer-like" elements, which leads to the speculation that the direct interaction of certain metal complexes with DNA may have effects similar to hormone or growth-factor induction for gene expression. In some cases, the primary stimulus seems to need some second factor, another oncogene involving a nuclear protein in the case of oncogenes, or Phase II promoters, involving replication, to cause transformation. In this light, chromosomal changes might be seen as merely a possible, but not obligatory, method to accomplish the same end, with the final chromosomal change equivalent to the second oncogene activation or the effect of proliferation and other changes in the case of the PMA stimulation.

Cancers in humans from causes such as exposure to cigarette smoke or exposure to benzidine in the workplace have a very long latent period. It is not clear whether this long period is the time from exposure to the production of a neoplastic cell (promotion) or the time necessary to go from a neoplastic cell to a malignant tumor (progression). Evidence that the carcinogenic risk of cigarette smoking declines with the length of time after smoking stops *(349)*, suggests that most of the latent period is partially "reversible" and therefore probably occupied by a phenomenon similar to promotion.

This is also suggested by a recent model for the development of Burkitt's lymphoma, which seems to be a virally produced cancer *(350)*. According to this model: a) a lymphoma clone develops in one or more steps from B lymphocytes that have acquired neoplastic characteristics due to EBV transformation; and b) the fully malignant phenotype occurs only when the lymphoblastoid cells acquire a specific chromosomal translocation that involves the immunoglobin locus. The long latency period seen in the disease has been suggested to arise from the need for a promoter-like stimulus that may cause proliferation and interfere with the differentiation of the long-lived initiated B cells *(340)*.

Since neither initiator nor promoter alone is sufficient to cause tumors and since promotion appears to be involved in the carcinogenic process, especially in time to tumor induction, low-level exposure to certain carcinogens may only become significant after subsequent exposure to promoters. This bears on the question of a threshold for tumor promoters. Although it has been stated that promoters have a threshold *(309)*, there is little good evidence for this. Studies of the dose-response curves for promoters (*e.g.* PMA [351]) have clearly been inadequate for the purpose of defining a threshold, as is usually acknowledged by the authors involved. Also, there is a question of interpretation. For instance, recent work has shown that bladder stone formation by high doses of melamine is correlated to the carcinogenic effect of this agent in rats *(352)* (the significance of this observation for carcinogenesis has been brought into question by the discovery that mice, with similar propensity to develop stones, and induce tumorigenesis by bladder implantation, have little melamine-induced bladder cancer), and this has been taken by some authors as indicating a threshold for "promotion". Alternatively, the dose used in the assay can be considered to have induced a significant pathological effect (other than tumorigenesis) that was important in generating the cancer seen. Similar considerations are appropriate for agents which induce other functional pathological effects only in high dose, *e.g.*, immunosuppression. It must be remembered, though, that agents which induce these pathological effects may have other actions (*e.g.*, azathioprine is mutagenic as well as immunosuppressive [308]), which could contribute to carcinogenesis at lower doses. Also, it must be kept in mind that the tendency to induce a pathological effect may vary with the well documented variations in individual human response to agents. Important factors in tumor promotion such as dose, dosing schedule, tissue specificity, interaction with initiating stimulus, etc., create substantial uncertainty about any general statements regarding thresholds.

Generally, animal bioassay studies, because of their design and the conditions under which they are conducted, fail to distinguish between initiating or promoting activity or between a direct or indirect action by the agent on the genome. Although it may be useful to group compounds with some criteria; *e.g.*, mutagenic, or having a particular biological effect in a particular strain, one should be careful about implying that something is known about the mechanism of action. The grouping, since it is not based on knowledge of carcinogenic mechanism *in vivo*, may have no relationship to the multiple routes by which carcinogenesis could be induced in a particular instance *(353)*. It is difficult to be clear about what is the target of a particular agent when the mechanism of effect of any agent is still unknown. However, it is still important to define the kinds of promoters and to examine the patterns of exposure to them to help elucidate mechanism.

2. Specificity/antipromotion. Tumor promoters often display tissue specificity, having primary effects on only one or a limited number of tissues in a particular species. For example, estrogens seem to be promoters in breast *(318)* and liver *(319)* in animal models. Mouse skin and bladder are also specifically responsive to certain promoters *(310)*. An interesting sidelight to this aspect of promotion is that the PDGF-like material stimulated by the *sis* oncogene is active specifically for the tissue which develops the sarcoma produced by the virus *(101)*. Since some promoters seem to be simulating growth factors, and many growth factors tend to be fairly tissue specific, this may be an important source for the tissue-specificity seen.

The potential for any tissue to give rise to a tumor after initiation may be partly determined by inherent biological processes; treatment to prevent disease may be designed to interfere with those processes, especially with endogenous tumor promotion. Such inherent processes may be altered by diet, stress, or other conditions such as individual genetic differences or altering physiological function. For example, a number of experimental animal studies suggest that a high fat diet can promote carcinogenesis in breast and colon, while epidemiological studies show a positive relationship between dietary fat and breast cancer in some populations *(354)*. However, to confirm that a low fat diet will decrease these types of cancer *(12)*, additional studies need to be conducted in countries with a wide genetic diversity where a high proportion of the population's caloric intake comes from fats. It must be kept in mind that the total carcinogenic response should be considered. For instance, there are certain populations, with certain life styles and diets, such as the Japanese, which have a low incidence of one cancer, such as colon cancer, when compared with other cultures (*e.g.*, Americans). However, they frequently have a high incidence of some other type of cancer, such as stomach cancer, which has a low incidence in other populations *(2)*.

Studies have also revealed several compounds, called antipromoters, that inhibit responses to PMA *in vitro (147)* and prevent tumor promotion *in vivo*

(355). Antipromoters are effective during different phases of the multistep process of promotion. Although "pure" promotion has not been conclusively demonstrated in humans, the existence of antipromoters in other systems has been used to suggest that it may be possible to design cancer prevention methodology based on the interference of promotion with a putative antipromoter in humans. Clinical studies are currently underway to test the therapeutic efficacy of some antipromoters (*e.g.*, synthetic retinoids [356]).

While cell culture methods offer possibilities for screening for tumor promoters and antipromoters, it will first be necessary to determine which functions altered *in vitro* by promoters are critical to the promotion process and which are secondary. The species and tissue specificity of tumor promoters make it likely that a number of different cell types will be required for any screening procedure.

B. Neoplastic Progression

The progression of a neoplastic cell into a malignant tumor, which does not occur to every neoplastic cell, is the last major stage of cancer formation and is probably accomplished through a number of steps. Many cancers have more than the normal numbers of chromosomes and exhibit poorly controlled and sometimes higher rates of growth, invasiveness and anaerobic glycolysis, factors that may be important to their survival in the animal.

The route by which a neoplastic cell becomes a cancer may entail a sequence of interactions between tumor cells and both specific and non-specific host defenses *(357)*, as well as a series of events that result in the cell acquiring more of the characteristics of cells in a malignant neoplasm *(282)*. These selection processes are non-exclusive of each other and may involve karyotypic changes *(358)*. The factors that are important in neoplastic progression, especially in the pre-malignant stage after neoplastic cells emerge and before a malignant neoplasm is formed, may be similar to those in tumor dormancy, a phenomenon in which tumor cells reappear many years after apparently successful treatment. The major mechanisms of tumor dormancy seem to be: 1) inhibition of cell division; and 2) cell division accompanied by cell lysis. Mitotic control can be exercised by macrophages *(359)*, soluble factors such as lymphokines *(360)* and interferon *(361)*, nutrient depletion *(362)*, or a hormonal requirement for growth *(363)*. Continuing cell division in a tumor, the major characteristic of a neoplasm, can continue without much effect if daughter cells are lysed about as fast as they are produced. This can result from immunological lysis, nutritional deprivation or very slow tumor cell production. Any or all these factors may lose their effectiveness during the selection processes for malignancy described above, perhaps in a number of steps.

An interesting model for the mechanism of progression of a neoplasm to malignancy is the one proposed by Gersten, Fidler and Hart *(359,364)*. After a primary tumor is established, there is tumor vascularization, by an angiogenic factor *(362)*, with invasion of surrounding tissue and blood vessels. This invasion seems to be accomplished through tissue damage by a number of different enzymes, such as collagenase *(360)* and cathepsin B *(361)*, although the role of tumor cell motility is not clear *(364)*. The widespread dissemination of cancer cells occurs by the lymphatic (carcinomas) and hematogenous (mesenchymal tumors) routes. During lymphatic spread, the regional lymph node is involved in the host immune responses to neoplasia *(367)*. During hematogenous spread, release of tumor emboli in the bloodstream results in most tumor cells being destroyed by interaction with a number of blood elements *(368)*. However, the more that are released, the greater chance of survival to form metastases. Arrest and subsequent growth of circulating tumor cells or implantation in another site seem to be a function of tissue and metastasis, and there are some data that the site is selected by the membrane properties of the metastatic cells *(369)*. Metastatic cells then leave the blood vessel and form micrometastases which induce blood vessel proliferation leading to metastatic growth *(364)*.

Progression seems to be modulated by a number of factors. Important among these is the immunological system. Many tumors induced by physical and chemical agents are antigenically distinct *(370-372)*. To overcome the immunological defenses of an immunocompetent individual, the tumor could: 1) simply not be immunogenic, *e.g.*, contain only antigens expressed normally in the body; or 2) suppress the immunological response. Lack of immunogenicity seems to be very common in spontaneous tumors in animals *(372-373)*. This also seems to be the case for humans since, at present, only cells from presumably viral induced tumors, such as Burkitt's lymphoma *(374)*, may be considered to be truly immunogenic (although there is evidence of some specific antigens associated with cells from human tumors grown in culture [*e.g.*, colorectal tumor cells] [375]) *(376)*. A tumor could also induce immunodeficiency, either general or selective. Immunosuppression could be accomplished by a variety of mechanisms, including production of circulating immune complexes *(377)* (to inhibit antibody response) or a rise in suppressor T-cells *(378)* (to inhibit T-cell response). Production of an immunodeficiency seems to be important for highly immunogenic tumors, such as UV induced tumors (which are decisively affected by suppressor T-cells in the formation of primary tumors [378]) and viral tumors (which are profoundly influenced by immunocompetence [138,379]). The immunodeficiency associated with UV-induced tumors is a selective one, perhaps because of a UV-induced deficit in antigen processing by a macrophage-like cell that subsequently produces the T-cell response *(378)*.

Clinically, the term "immunodeficiency" usually refers to a more general type of immunodeficiency that can occur during the later stages of carcinogenesis *(380)*. This may be of importance mainly in metastasis since it has been shown that immunosuppressive treatments and agents greatly increase the incidence of distant metastases in rats with highly immunogenic tumors (though the effect is reversed for tumors with low immunogenicity [381]). Its role may be wider, however, since it has been suggested, from evidence about lymphoma in immunosuppressed individuals, that the immune system may be important in the selection of a particular chromosomal alteration, *i.e.* may be involved in promotion *(138)*.

Implicit in this analysis is the fact that factors that can alter modulators of progression can also alter progression. For example, factors such as stress that result in a mild immunodeficiency, may also mimic the effects of immunosuppression in production of lymphoma. A cancer is a product of a long series of events and it is a reasonable assumption that modulators may interact in a positive or negative fashion with this sequence at any point.

An interesting approach to this complex problem was the development of a general model for the temporal development of tumors, rooted in evolutionary theory. Based upon the observation of tumor heterogeneity, even when derived from a single clone, the "shifting balance" theory, which emphasizes that many genes, with multiple pleiotropic effects mediate the

expression of tumor genotype, was applied to tumor evolution *(382)*. This "micro-evolution" maintains the flexibility for rapid population adjustment to conditions because of a wide variety of phenotypes. "Macro-evolution" occurs when a new niche is available, after survival of a "catastrophe" for the cancer cells (resulting from clinical treatment or immunological attack), or when a new adaptive level emerges from previous "micro-evolutionary" changes. The implications of this theory are intriguing, and suggest that cancer prevention may be more effective than cure.

VII. MULTIPLE AGENTS

Since people are exposed to many different agents at the different times in different sequences, the effect of multiple agents on carcinogenesis is of major concern. However there is little information of general import in the field. Models for interaction are generally limited by lack of information on dose-response curves for carcinogens in the area of interest *(383)*. The great number of permutations of possible agents and doses makes understanding interaction of multiple agents very difficult.

In general, the action of two or more agents can be additive (if the agents are given in a dose range where the biological response is a linear function of dose) or multiplicative (if the response is a simple exponential response to dose), synergistic (greater than expected) or antagonistic (less than expected) *(383,384)*.

One obvious example of synergism is the tumor initiator-promoter interaction described above. Tumor incidence is much less when either agent is given separately than when the two agents are given in the proper order. Another possible example is the relation between cigarette smoking and asbestos exposure in carcinogenesis. The effect of both carcinogens is much greater than a simple additive model would predict and is closer to multiplicative *(385)*. Although the mechanism for this phenomenon is not known, possibilities include: 1) asbestos increases the uptake of the carcinogenic substances in cigarette smoke (as shown when benzo(a)pyrene is used as a model compound [386]); 2) asbestos stimulates metabolism of carcinogen(s) in smoke (which has been shown for benzo(a)pyrene, one component of smoke) *(387)*; 3) asbestos works as a promoter with cigarette smoking the initiator *(388)*; or 4) some combination of the above mechanisms *(389)*.

One example of antagonism is the interaction of 3'-methyl-4-dimethylamino-azobenzene (an azo dye) and certain polycyclic aromatic hydrocarbons (PAH), such as 3-methylcholanthrene (MCA) *(390-391)*. Some carcinogenic PAH, by stimulating metabolism, inhibit azo dye carcinogenesis. Although the study and understanding of the interaction(s) of multiple agents is not easy, it becomes much more difficult (conceptually as well as experimentally) when it is not clear whether more than one agent is involved. An example is the interaction of immunosuppressive agents and EBV. Although immunosuppressive agents are presumed not to induce tumors, their use may allow the expression of EBV-induced carcinogenesis, as has been suggested for renal transplant patients who have a substantially raised incidence of tumors, especially lymphomas *(138)*. Since EBV is ubiquitous, exposure to an immunosuppressive might result in an increased number of tumors in a bioassay (*i.e.*, be carcinogenic) although in fact it is simply allowing expression of tumors that arise from a viral infection. Other agents may alter the modulators at any stage in carcinogenesis and result in either more intense effects of a ubiquitous agent or the expression of a tumor derived from long-lived irreversibly initiated cells.

These examples illustrate just a few of the possibilities of interaction. Some agents may stimulate metabolism, interact chemically with other agents, or be so cytotoxic that tumors induced by another agent are killed. Other agents may alter modulators of different stages of carcinogenesis or stimulate the expression of tumors that would normally not be expressed in the lifetime of the animal. At present, in the absence of a well established and comprehensive theory of carcinogenesis, the complex interaction of agents is best understood by elucidating the action of each compound. Then the effects of each compound on the organism can be evaluated and their interaction estimated.

VIII. SUMMARY

Although the study of the phenomenology of cancer was initiated many years ago, analysis of the mechanisms involved in carcinogenesis was started much more recently, and the level of activity has risen significantly in the last decade. This review has attempted to place much of the data concerning cancer into a broad perspective. Exposure to a carcinogen begins at the interface of an animal with its environment, and an agent can be modified by factors associated with an organism at that interface. An example of this is the reduction of benzidine-based azo dyes to carcinogenic benzidine by gastrointestinal microflora. Since the microflora can vary with species as well as with food habits, this provides one source of variation in the activation of agents.

There is a wide variety of processes that are involved in the activation and detoxification of most agents. The complexity of these processes is illustrated by the major products of the metabolism of benzo(a)pyrene, a carcinogen which needs activation. Life style, exogenous agents, diet, age, etc. can act on several levels to alter the balance of activation and deactivation. Examples of this are the stimulation of cellular metabolism producing more reactive species, the inhibition of a particular pathway resulting in a smaller amount of reactive moiety, and the alteration of cell scavengers that absorb reactive metabolites produced by metabolism, and lower the overall concentration of reactive moiety. Activation and deactivation are functions of species, tissue, and even individuals, providing another source of variation in response to a carcinogen.

The interactions of carcinogens with DNA, which seem to be important for the carcinogenic action of many initiators and complete carcinogens, vary across the different classes of carcinogens. Biological carcinogens, such as the acute transforming retroviruses, seem to insert genetic information which allows the expression of certain cellular *onc* genes whose products are important for transformation. Some of these products seem to have effects like certain growth factors. The discovery that the dominant transforming genes of certain human cancer-derived cells are similar to certain classes of *onc* genes derived from the acute transforming retroviruses has been a breakthrough in understanding certain causal factors in human neoplasia. Radiations damage DNA, but, with the exception of ultraviolet-light (UV) irradiation, the irradiation products are not very well characterized and the role of the damage is not clear. It has been shown that a particular DNA damage is involved in the carcinogenic action of UV light, but how this occurs is also not clear. The specific damage that many chemical carcinogens produce in DNA is much better characterized, but which lesions are important in carcinogenesis and how a lesion can interact to produce a cancer are not known. "Physical"

carcinogens include a number of very different agents and processes which seem to have in common the production of a chronic fibrotic reaction.

Two modulators of DNA damage are DNA repair and fidelity of replication, which help to determine the effects of a carcinogenic stimulus that survives through replication in initiated cells. Recent work on DNA repair has suggested the importance of the ADP-ribosylation system and has determined that there is a set of enzymes, the DNA glycosylases, that confer specificity in base excision repair for different types of DNA damage. Also, post-replication repair has been found to be more complex than thought previously, which may help explain how a specific lesion influences DNA. Since DNA repair is modified by many factors, and is tissue and species specific, this provides another source of variation in the final response of the organism to a carcinogen. An example of how knowledge about mechanisms impacts on risk assessment is the question of how DNA repair is related to biological thresholds for effects of carcinogens. Statements that DNA repair results in a threshold for carcinogenesis cannot be substantiated.

The fidelity of DNA replication can be altered by a damaged template or, more indirectly, through changes in the reaction conditions that result in miscoding. Any of the reaction conditions could be altered by a carcinogen or by a change in physiological state induced by a carcinogen, providing a route by which the DNA could be altered without the formation of direct binding between the DNA and a carcinogen derivative.

Cancer is a phenomenon with many steps. In an experimental paradigm, two major stages can be demonstrated: initiation, the induction of an irreversible alteration of genetic information, and promotion, a reversible process terminated by the final irreversible alteration of initiated cells into neoplastic cells. Each stage can be subdivided. The progression of neoplastic cells into a cancer, which has not been easy to separate experimentally from promotion, is the final stage in carcinogenesis.

Promotion can occur with both exogenous and endogenous compounds (and, perhaps, certain surfaces) and is characterized in a number of systems by a focal proliferation of cells of which a small fraction will persist after the promoter stimulus is removed. Few focal proliferations in any experimental system will become neoplastic. Although the aspect of tumor promotion which is critical for tumorigenesis is not entirely clear, an interesting possibility is the induction of chromosomal alterations. The relationship of this process to viral carcinogenesis and the mechanisms by which alterations may lead to a neoplasm are explored. However, a causal relationship of chromosomal changes to carcinogenesis has not been proven. Tumor promoters are tissue and species specific, perhaps providing some insights into how various tissues and species are differentially affected by carcinogens.

Neoplastic progression, the process in which a neoplastic cell becomes a malignant tumor, seems to involve several steps, none of which is yet well understood. In that complex process, the role of the immunological system as one of the important modulators of progression is discussed. An interesting recent approach has been to consider the progression of tumors from an evolutionary, ecological point of view.

Evaluation of the effect of a number of agents acting concurrently has barely begun. Models for summation, potentiation, or inhibition of effects are poorly developed, especially when considering the range of effects that agents have on a number of metabolic and physiological endpoints. Variation with species, tissue and individual at every stage in carcinogenesis produces the added uncertainty if two or more compounds interact at many levels.

IX. REFERENCES

1. Zimmerman MR. An experimental study of mummification pertinent to the antiquity of cancer. Cancer 1977; 40:1358-1362.
2. Doll R, Peto R. The causes of cancer: Quantitative estimates of avoidable risks of cancer in the United States today. J Natl Cancer Inst 1981; 66:1193-1308.
3. Levin ML, Haenszel W, Carroll BE, Gerhardt PR, Handy VH, Ingraham II SC. Cancer incidence in urban and rural areas of New York State. J Natl Cancer Inst 1960; 24:1243-57.
4. Ramazzini B. Diseases of Workers. 1700:191. [Translation of the Latin text of 1713 by Wilmer Cage Wright (1940), University of Chicago Press, Chicago, IL].
5. Hill J. Cautions Against the Immoderate Use of Snuff. London: Baldwin and Jackson 1761:30-31.
6. Pott P. Chirurgical Observations Relative to the Cataract, the Polypus of the Nose, the Cancer of the Scrotum, the Different Kinds of Ruptures, and the Mortification of the Toes and Feet. London:Hawes, Clarke and Collins. 1775:63-68.
7. Weismann A. Essays Upon Heredity and Kindred Biological Problems, Vol. 2. In: Poulton EB, Shipley AE. (authorized translation), Oxford:Clarendon Press 1882:1-222.
8. Rehn L. Blasengeschwulste bei Fuchsin-Arbeitern. Arch Klin Chir 1895; 50:588-600.
9. Unna PG. Die Histopathologie der Hautkrankheiten. Berlin: A. Hirschwald 1894:725.
10. Dubreuilh W. Des Hyperkeratoses Circonscrites (1); In: Ann Dermatol Syphilig, 3rd Series 1896; 7:1158-1204.
11. Mulvihill JJ. Congenital and Genetic Diseases. In: Fraumeni JF Jr, ed. Persons at High Risk of Cancer: An Approach to Cancer Etiology and Control. New York: Academic Press 1975:3-37.
12. Committee on Diet, Nutrition and Cancer/Assembly of Life Sciences, National Research Council. Diet, Nutrition and Cancer. Washington DC: National Academy of Sciences, 1982.
13. Doll, R. Strategy for detection of cancer hazards to man. Nature 1977; 265:589-596.
14. Logani MK, Austin WA, Davies RE. Photooxygenation of 7,12-dimethylbenz(a)-anthracene. Tetrahedron Letts 1977; 29:2467-70.
15. Richards RJ, George G, Hunt J, Tetley TD. The relationship between the haemolytic potential of certain particulates and their reactivity at the lung surface *in vivo*. In: Brown RC. Chamberlain, Davies R, Gormley IP, eds. The *In Vitro* Effects of Mineral Dusts. New York: Academic Press 1980:323-332.
16. Cerniglia CE, Freeman JP, Franklin W, Pack LD. Metabolism of benzidine and benzidine-congener based dyes by human, monkey and rat intestinal bacteria. Biochem Biophys Res Comm 1982; 107:1224-1229.
17. Vesell ES. On the significance of host factors that affect drug disposition. Clin Pharmacol Therap 1982; 31:1-7.
18. Morgan RW, Hoffmann GR. Cycasin and its mutagenic metabolites. Mutat Res 1983; 114:19-58.
19. Goldman P. Biochemical pharmacology of the intestinal flora. Ann Rev Pharmacol Toxicol 1978; 18:523-539.
20. Lynn RK, Donielson DW, Ilias AM, Kennish JM, Wong K, Matthews HB. Metabolism of bisazobiphenyl dyes derived from benzidine, 3,3'-dimethylbenzidine or 3,3'-dimethoxybenzidine to carcinogenic aromatic amines in the dog and rat. Toxicol Appl Pharmacol 1980; 56:248-258.
21. Nony CR, Bowman MC, Cairns T, Lowry LK, Tolos WP. Metabolism studies of an azo dye and pigment in the hamster based on analysis of the urine for potentially carcinogenic aromatic amine metabolites. J Anal Toxicol 1980; 4:132-140.
22. Martin CN, Kennelly JC. Rat liver microsomal azoreductase activity on four azo dyes derived from benzidine, 3,3'-dimethylbenzidine or 3,3'-dimethoxybenzidine. Carcinogenesis 1981; 2:307-312.
23. Cerniglia CE, Freeman JP, Franklin W, Pack LD. Metabolism of azo dyes derived from benzidine, 3,3'-dimethylbenzidine and 3,3'-dimethoxybenzidine to potentially carcinogenic aromatic amines by intestinal bacteria. Carcinogenesis 1982; 3:1255-1260.
24. Goldwater LJ, Rosso AJ, Kleinfeld M. Bladder tumors in a coal tar dye plant. Arch Environ Health 1965; 11:814-817.
25. DeBethizy JD, Sherrill JM, Kickent DE, Hamm TE Jr. Effects of pectin-containing diets on the hepatic macromolecular covalent

binding of 2,6-dinitro-[^{3}H]toluene in Fischer 344 rats. Toxicol Appl Pharm 1983; 69:369-376.

28. Klein, G. Viral Oncology. Raven Press, N.Y. 1980.

27. Upton AC. Physical carcinogensis: Radiation- history and sources. In: Becker FF, ed. Cancer A Comprehensive Treatise. Vol. 1, Etiology: Chemical and Physical Carcinogenesis 2nd Ed. New York:Plenum Press. 1982:551-568.

28. Brand KG. Cancer associated with asbestosis, schistosomiasis, foreign bodies and scars. In: Becker FF, ed. Cancer A Comprehensive Treatise Etiology: Chemical and Physical Carcinogenesis. Vol. 1, 2nd Ed. New York Plenum Press 1982: 661-692.

29. Searle CE, ed. Chemical Carcinogens. American Chemical Society Monograph, No. 173, Washington D.C.: American Chemical Society 1976.

30. Schoental R. Carcinogens in plants and microorganisms. In: Searle CE, ed. Chemical Carcinogens. American Chemical Society Monograph, No. 173, Washington D.C.: American Chemical Society 1976:626-689.

31. Grasso P, O'Hare C. Carcinogens in food. In: Searle CE, ed. Chemical Carcinogens. American Chemical Society Monograph, No. 173, Washington D.C.: American Chemical Society 1976:701-729.

32. Ames B. Dietary carcinogens and anticarcinogens. Science 1983; 221: 1256-1263.

33. Parkes HG. The epidemiology of the aromatic amine cancers. In: Searle CE, ed. Chemical Carcinogens. American Chemical Society Monograph, No. 173, Washington D.C.: American Chemical Society 1976:462-480.

34. Foucar K, McKenna RW, Bloomfield CD, Bowers TK, Brunning R.D. Therapy-related leukemia. A panmyelosis. Cancer 1979; 43:1285-1296.

35. Higginson J. Cancer and environment. Science 1979; 205:1363-1368.

36. Miller EC, Miller JA. The metabolism of chemical carcinogens to reactive electrophiles and their possible mechanisms of action in carcinogenesis. In: Searle CE, ed. Chemical Carcinogens. American Chemical Society Monograph, No. 173, Washington D.C.: American Chemical Society 1976:737-762.

37. Jennette KW. The role of metals in carcinogenesis: Biochemistry and metabolism. Environ Health Perspect 1981; 40:233-252.

38. Young JF, Kadlubar FF. A pharmacokinetic model to predict exposure of the bladder epithelium to urinary N-hydroxyarylamine carcinogens as a function of urine pH, voiding interval, and resorption. Drug Metabol Disp 1982.

39. Paxton MB, Siegel DM, Nisbet ICT. Comments on the pharmacokinetic dose-response model of Gehring and Blau and its applicability to carcinogenic risk assessment. Report for Natural Resource Defense Council, by Clement Associates, Inc., Arlington Va. February 17, 1984.

40. Dahl AR, Hadley WM, Hahn FF, Benson JM, McClellan RO. Cytochrome P-450-dependent monooxygenases in olfactory epithelium of dogs: Possible role in tumorigenicity. Science 1982: 216:57-59.

41. Williams RT. Detoxification Mechanisms, 2nd ed. London: Chapman and Hall. 1959.

42. Powell GM, Curtis CG. Sites of sulphation and the fates of sulphate esters. In: Aitio A, ed. Conjugation Reactions in Drug Biotransformation. N. Holland: Elsevier 1978:409-416.

43. Sims P, Grover PL. Epoxides in polycyclic aromatic hydrocarbon metabolism and carcinogenesis. Adv Cancer Res 1974; 20:165-274.

44. Lu AYH. Multiplicity of liver drug metabolizing enzymes. Drug Metabolism Rev 1979; 10:187-208.

45. Caldwell J. Conjugation reactions in foreign-compound metabolism: definition, consequences, and species variations. Drug Metabol Rev 1982; 13:745-777.

46. Radomski JL. The primary aromatic amines: their biological properties and structure-activity relationships. Annu Rev Pharmacol Toxicol 1979; 19:129-157.

47. Jerina DM, Yagi H, Thakker DR, Karle JM, Mah HD, Boyd DR, Gadaginamath G, Wood AW, Buening M, Chang RL, Levin W, Conney AH. Stereoselective metabolic activation of polycyclic aromatic hydrocarbons. Adv Pharmacol Therap 1979; 9:53-62.

48. Slaga TJ, Bracken WJ, Gleason G, Levin W, Yagi H, Jerina DM and Conney AH. Marked differences in the skin tumor-initiating activities of the optical enantiomers of the diastereomeric benzo(a)pyrene 7,8-diol-9,10-epoxides. Cancer Res 1979; 39:67-71.

49. Hutson DH. Mechanisms of biotransformation. In: Foreign Compound Metabolism in Mammals, Vol. 4, Margate, England: Thanet Press, 1976; 4:259-346.

50. Conney AH. Induction of microsomal enzymes by foreign chemicals and carcinogenesis by polycyclic aromatic hydrocarbons. Cancer Res 1982; 42:4875-4917.

51. Yang SK, McCourt DW, Roller PP, Gelboin HV. Enzymatic conversion of benzo(a)pyrene leading predominantly to the diol-epoxide r-7,t-8-dihydroxy-t-9,10-oxy-7,8,9,10-tetrahydrobenzo(a)pyrene through a single enantiomer of r-7,t-8-dihydroxy-7,8-dihydrobenzo(a)pyrene. Proc Natl Acad Sci USA 1976; 73:2594-2598.

52. Hart RW, Fu PP, Chang MJW. Comparative removal of polycyclic aromatic hydrocarbon-DNA adducts in vivo; In: Cooke WM, Dennis AJ, Fisher GL, eds. Sixth International Symposium on Polynuclear Aromatic Hydrocarbons: Physical and Biological Chemistry. eds. Columbus, Ohio: Battelle Press, 1982:39-72.

53. Wattenberg LW. Inhibitors of chemical carcinogens. J Environ Pathol Toxicol 1980; 3:35-52.

54. Thakker DR, Levin W, Buening M, Yagi H, Lehr RE, Wood AW, Conney AH, Jerina DM. Species-specific enhancement by 7,8-benzoflavone of hepatic microsomal metabolism of benzo(e)pyrene 9,10-dihydrodiol to bay-region diol-epoxide. Cancer Res 1981; 41:1389-1396.

55. Tateishi N, Higashi T, Shinya S, Naruse A, Sakamoto Y. Studies on the regulation of glutathione level in rat liver. J Biochem (Tokyo) 1974; 75:93-103.

56. Lam LKT, Sparnins VL, Hochalter JB, Wattenberg LW. Effects of 2- and 3-tert-butyl-4-hydroxyanisole on glutathione S-transferase and epoxide hydrolase activities and sulfhydryl levels in liver and forestomach of mice. Cancer Res 1981; 41:3940-3943.

57. Hinson JA, Monks TJ, Hong M, Hight RJ, Pohl CR. 3-(glutathion-S-yl) acetaminophen: a biliary metabolite of acetaminophen. Drug Metabol Disp 1982; 10:47-51.

58. Murasaki G, Zenser TZ, Davis BB, Cohen SM. Inhibition by aspirin of N-[4-(5-nitro-2-furyl)-2-thiazolyl]formamide-induced bladder carcinogenesis and enhancement of forestomach carcinogenesis. Carcinogenesis 1984; 5:53-55.

59. Hadley WM, Dahl AR. Cytochrome P-450-dependent monooxygenase activity in the nasal membrane of 6 species. Drug Metabol Disp 1983; 11:275-276.

60. Hart RW, Turturro A. Species longevity as an indicator for extrapolation for toxicity data among placental mammals. J Am Col Toxicol 1983; 2(3):235-243.

61. Miller EC. Some current perspectives on chemical carcinogenesis in humans and experimental animals: Presidential address. Cancer Res 1978; 38:1479-1496.

62. Ketterer B. Interactions between carcinogens and proteins. Br Med Bull 1980; 36:71-78.

63. Carroll KK. Lipids and carcinogenesis. J Environ Pathol Toxicol 1980; 3:253-271.

64. Weinberg RA. Oncogenes of spontaneous and chemically induced tumors. Adv Cancer Res 1982; 36:149-163.

65. Poirier LA, deSerres FJ. Initial National Cancer Institute studies on mutagenesis as a prescreen for chemical carcinogens: An appraisal. J Natl Cancer Inst 1979; 62:919-926.

66. Bridges BA. Some DNA-repair-deficient human syndromes and their implications for human health. Proc R Soc Lond B 1981; 212:263-278.

67. Maher VM, Rowan LA, Silinskas KC, Kateley SA, McCormick JJ. Frequency of UV-induced neoplastic transformation of diploid human fibroblasts is higher in xeroderma pigmentosum cells than in normal cells. Proc Natl Acad Sci USA 1982; 79:2613-2617.

68. Kraemer KH, Lee MM, Scotto J. Diseases of environmental-genetic interaction: Preliminary report on a retrospective study of neoplasia in 268 xeroderma pigmentosum patients. In Sugimura T, Kondo S, Takebe H, (eds.) Environmental Mutagens and Carcinogens. NY:A.R. Liss 1982:605-612.

69. Hart RW, Setlow RB, Woodhead AD. Evidence that pyrimidine dimers in DNA can give rise to tumors. Proc Natl Acad Sci USA 1977; 74:5574-5578. 70. Zur Hausen H. The role of viruses in human tumors. Adv Cancer Res 1980; 33:77-107.

71. Oskarsson M, McClements WL, Blair DG, Maizel JV, Vande Woude GF. Properties of a normal mouse cell DNA sequence (sarc) homologous to the src sequence of Moloney sarcoma virus. Science 1980; 207:1222-1224.

72. Ellis RW, DeFeo D, Maryak JM, Young HA, Shih TY, Chang EH, Lowy DR, Scolnick EM. Dual evolutionary origin for the rat genetic sequences of Harvey murine sarcoma virus. J Virol 1980; 36:408-420.

73. Roussel M, Saule S, Lagrou C, Rommens C, Beug H, Graf T, Stehelin D. Three new types of viral oncogene of cellular origin specific for haematopoietic cell transformation. Nature 1979; 281:452-455.

74. Sherr CJ, Fedele LA, Donner L, Turek LP. Restriction endonuclease mapping of unintergrated proviral DNA of Snyder-Theilen feline sarcoma virus: Localization of sarcoma-specific sequences. J Virol 1979; 32:860-r875.

75. Spector DH, Varmus HE, Bishop JM. Nucleotide sequences related to the transforming gene of avian sarcoma virus are present in DNA of uninfected vertebrates. Proc Natl Acad Sci USA 1978; 75:4102-4106.

76. Witte ON, Rosenberg NE, Baltimore D. A normal cell protein cross-reactive to the major Abelson murine leukaemia virus gene product. Nature 1979; 281:396-398.

77. Shih C, Shilo B-Z, Goldfarb MP, Dannenberg A, Weinberg RA. Passage of phenotypes of chemically transformed cells via transfection of DNA and chromatin. Proc Natl Acad Sci USA 1979; 76:5714-5718.

78. Krontiris TG, Cooper GM. Transforming activity of human tumor DNAs. Proc Natl Acad Sci USA 1981; 78:1181-1184.

79. Shih C, Padhy LC, Murray M, Weinberg RA. Transforming genes of carcinomas and neuroblastomas introduced into mouse fibroblasts. Nature 1981; 290:261-264.

80. Perucho M, Goldfarb M, Shimizu K, Lama C, Fogh J, Wigler M. Human tumor-derived cell lines contain common and different transforming genes. Cell 1981; 27:467-476.

81. Murray MJ, Shilo B-Z, Shih C, Cowing D, Hsu HW, Weinberg RA. Three different human tumor cell lines contain different oncogenes. Cell 1981; 25:355-361.

82. Goldfarb M, Shimizu K, Perucho M, Wigler M. Isolation and preliminary characterization of a human transforming gene from T24 bladder carcinoma cells. Nature 1982; 296:404-409.

83. Shih C. Weinberg RA. Isolation of a transforming sequence from a human bladder carcinoma cell line. Cell 1982; 29:161-169.

84. Pulciani S, Santos E, Lauver AV, Long LK, Robbins KC, Barbacid M. Oncogenes in human tumor cell lines: Molecular cloning of a transforming gene from human bladder carcinoma cells. Proc Natl Acad Sci USA 1982; 79:2845-2849.

85. Weiss RA, ed. RNA tumor Viruses: Molecular Biology of Tumor Viruses, 2nd Ed. New York:Cold Spring Harbor, 1982.

86. Coffin JM, Varmus HE, Bishop JM, Essex M, Hardy WD Jr, Martin GS, Rosenberg NE, Scolnick EM, Weinberg RA, Vogt PK. Proposal for naming host cell derived inserts in retrovirus genomes. J Virol 1981; 40:953-957.

87. Shilo B-Z, Weinberg RA. DNA sequences homologous to vertebrate oncogenes are conserved in *Drosophila melanogaster*. Proc Natl Acad Sci USA 1981; 78:6789-6792.

88. Dalla Favera R, Gelmann EP, Gallo RC, Wong-Staal F. A human *onc* gene homologous to the transforming gene (v-sis) of simian sarcoma virus. Nature 1981; 292:31-35.

89. Trus MD, Sodroski JG, Haseltine WA. Isolation and characterization of a human locus homologous to the transforming gene (v-fes) of feline sarcoma virus. J Biol Chem 1982; 257:2730-2733.

90. Dalla-Favera R, Franchini G, Martinotti S, Wong-Staal F, Gallo RC, Croce CM. Chromosomal assignment of the human homologues of feline sarcoma virus and avian myeloblastosis virus *onc* genes. Proc Natl Acad Sci USA 1982; 79:4714-4717.

91. Franchini G, Gelmann EP, Dalla Favera R, Gallo RC, Wong-Staal F. Human gene (c-fes) related to the *onc* sequences of Snyder-Theilen feline sarcoma virus. Mol Cell Biol 1982; 2:1014-1019.

92. Prakash K, McBride OW, Swan DC, Devare SG, Tronick SR, Aaronson SA. Molecular cloning and chromosomal mapping of a human locus related to the transforming gene of Moloney murine sarcoma virus. Proc Natl Acad Sci USA 1982; 79:5210-5214.

93. Cooper GM. Activation of transforming genes in neoplasms. Br J Cancer 1984; 50:137-143.

94. Gonda TJ, Metcalf D. Expression of *myb*, *myc*, and *fos* proto-oncogenes during the differentiation of a murine myeloid leukaemia. Nature 1984; 310:249-251.

95. Lachman HM, Skoultchi AI. Expression of *c-myc* changes during differentiation of mouse erythroleukaemia cells. Nature 1984; 310:592-594.

96. Barker WC, Dayhoff MO. Viral *src* gene products are related to the catalytic chain of mammalian cAMP-dependent protein kinase. Proc Natl Acad Sci USA 1982; 79:2836-2839.

97. Nishizuka Y. The role of protein kinase C in cell surface signal transduction and tumour promotion. Nature 1984; 308:693-698.

98. Jacobs S, Sahyoun NE, Saltiel AR, Cuatrecasas P. Phorbol esters stimulate the phosphorylation of receptors for insulin and somatomedin C. Proc Natl Acad Sci USA 1983; 80:6211-6213.

99. McGrath JP, Capon DJ, Goeddewl DV, Levinson AD. Comparative biochemical properties of normal and activated human *ras* p21 protein. Nature 1984; 310:644-649.

100. Downward J, Yarden Y, Mays E, Scrace G, Totty N, Stockwell P, Ullrich A, Schlessinger J, Waterfield MD. Close similarity of epidermal growth factor receptor and *v-erb-B* oncogene protein sequences. Nature 1984; 307:521-530.

101. Naharro G, Robbins KC, Reddy EP. Gene product of *v-fgr onc*: Hybrid protein containing a portion of actin and a tyrosine-specific proteinkinase. Science 1984; 223:63-66.

102. Doolittle RF, Hunkapiller MW, Hood LE, Devare SG, Robbins KC, Aaronson SA, Antoniades HN. Simian sarcoma virus *onc* gene, *v-sis*, is derived from the gene (or genes) encoding a platelet-derived growth factor. Science 1983; 221:275-277.

103. Amelin HA, Armelin MCS, Kelly K, Stewart T, Leder P, Cochran BH, Stile CD. Functional role for *c-myc* in mitogenic response to platelet-derived growth factor. Nature 1984; 310:655-660.

104. Persson H, Leder P. Nuclear localization and DNA binding properties of a protein expressed by human c-myc oncogene. Science 1984; 225:718-721.

105. Land H, Parada LF, Weinberg RA. Tumorigenic conversion of primary embryo fibroblasts requires at least two cooperating oncogenes. Nature 1983; 304:596-602.

106. Spandidos DA, Wilkie NM. Malignant transformation of early passage rodent cells by a single mutated human oncogene. Nature 1984; 310:469-475.

107. Murphree AL, Benedict WF. Retinoblastoma: Clues to human oncogenesis. Science 1984; 223:1028-1033.

108. Debuire B., Henry C, Benaissa M, Biserte G, Claverie JM, Saule S, Martin P, Stehelin D. Sequencing the erbA gene of avian erythroblastosis virus reveals a new type of oncogene. Science 1984; 224:1456-1459.

109. Owen AJ, Pantazis P, Antoniades HN. Simian sarcoma virus-transformed cells secrete a mitogen identical to platelet-derived growth factor. Science 1984; 225:52-56.

110. Sukumar S, Notario V, Martin-Zanca D, Barbacid M. Induction of mammary carcinomas in rats by nitroso-methylurea involves malignant activation of *H-ras-1* locus by single point mutations. Nature 1983; 306:658-661.

111. Blair DG, Oskarsson M, Wood TG, McClements WL, Fischinger PJ, Vande Woude GF. Activation of the transforming potential of a normal cell sequence: A molecular model for oncogenesis. Science 1981; 212:941-943.

112. DeFeo D, Gonda MA, Young HA, Chang EH, Lowy DR, Scolnick EM, Ellis RW. Analysis of two divergent rat genomic clones homologous to the transforming gene of Harvey murine sarcoma virus. Proc Natl Acad Sci USA 1981; 78:3328-3332.

113. Varmus HE. Form and function of retroviral proviruses. Science 1982; 216:812-820.

114. Klein G. The role of gene dosage and genetic transpositions in carcinogenesis. Nature 1981; 294:313-318.

115. Taub R, Kirsch I, Morton C, Lenoir G, Swan D, Tronick S, Aaronson S, Leder P. Translocation of the *c-myc* gene into the immunoglobulin heavy chain locus in human Burkitt's lymphoma and murine plasmacytoma cells. Proc Natl Acad Sci USA, in press.

116. Hayward WS, Neel BG, Astrin SM. Activation of a cellular *onc* gene by promoter insertion in ALV-induced lymphoid leukosis. Nature 1981; 290:475-480.

117. Payne GS, Bishop JM, Varmus HE. Multiple arrangements of viral DNA and an activated host oncogene in bursal lymphomas. Nature 1982; 295:209-214.

118. Bartram CR, de Klein A, Hagemeijer A, van Agthoven T, van Kessel AG, Bootsma D, Grosveld G, Ferguson-Smith MA, Davies T, Stone M, Heisterkamp N, Stephenson JR, Groffen J. Translocation of c-abl oncogene correlates with the presence of a Philadelphia chromosome in chronic myelocytic leukaemia. Nature 1983; 306:277-280.

119. Darnell JE, Jr. Variety in the level of gene control in eukaryotic cells. Nature 1982; 297:365-371.

120. Blair DG, McClements WL, Oskarsson MK, Fischinger PJ, Vande Woude GF. Biological activity of cloned Moloney sarcoma virus DNA: terminally redundant sequences may enhance transformation efficiency. Proc Natl Acad Sci USA 1980; 77:3504-3508.

121. Levinson B, Khoury G, Vande Woude GF, Gruss P. Activation of SV40 genome by 72-base pair tandem repeats of Moloney sarcoma virus. Nature 1982; 295:568-572.

122. Burrows PD, Beck-Engeser CB, Wabl MR. Immunoglobulin heavy-chain class

switching in a pre-B cell line is accompanied by DNA rearrangement. Nature 1983; 306:243-246.

123. Hayday AC, Gillies SD, Saito H, Wood C, Wiman K, Hayward WS, Tonegawa S. Activation of a translocated human *c-myc* gene by an enhancer in the immunoglobulin heavy-chain locus. Nature 1984; 307:334-340.

124. Lane M, Sainten A, Cooper GM. Activation of related transforming genes in mouse and human mammary carcinomas. Proc Natl Acad Sci USA 1981; 78:5185-5189.

125. Cooper GM, Okenquist S, Silverman L. Transforming activity of DNA of chemically transformed and normal cells. Nature 1980; 284:418-421.

126. Cooper GM, Neiman PE. Transforming genes of neoplasms induced by avian lymphoid leukosis viruses. Nature 1980; 287:656-659.

127. Der CJ, Krontiris TG, Cooper GM. Transforming genes of human bladder and lung carcinoma cell lines are homologous to the ras genes of Harvey and Kirsten sarcoma viruses. Proc Natl Acad Sci USA 1982; 79:3637-3640.

128. Parada LF, Tabin CJ, Shih C, Weinberg RA. Human EJ bladder carcinoma oncogene is homologue of Harvey sarcoma virus ras gene. Nature 1982; 297:474-478.

129. Santos E, Tronick SR, Aaronson SA, Pulciani S, Barbacid M. T24 human bladder carcinoma oncogene is an activated form of the normal human homologue of BALB- and Harvey-MSV transforming genes. Nature 1982; 298:343-347.

130. Tabin CJ, Bradley SM, Bargmann CI, Weinberg RA, Papageorge AG, Skolnick EM, Dhar R, Lowy DR, Chang EH. Mechanism of activation of a human oncogene. Nature 1982; 300:143-149.

131. Reddy EP, Reynolds RK, Santos E, Barbacid M. A point mutation is responsible for the acquisition of transforming properties by the T24 human bladder carcinoma cell oncogene. Nature 1982; 300:149-152.

132. Taparowsky E, Suard Y, Fasano O, Shimizu K, Goldfarb M, Wigler M. Activation of the T24 bladder carcinoma transforming gene is linked to a single amino acid change. Nature 1982; 300:762-765.

133. Poiesz BJ, Ruscetti FW, Gazdar AF, Bunn PA, Minna JD, Gallo RC. Detection and isolation of type C retrovirus particles from fresh and cultured lymphocytes of a patient with cutaneous T-cell lymphoma. Proc Natl Acad Sci USA 1980; 77:7415-7419.

134. Poiesz BJ, Ruscetti FW, Reitz MS, Kalyanaraman VS, Gallo RC. Isolation of a new type C retrovirus (HTLV) in primary uncultured cells of a patient with Sezary T-cell leukaemia. Nature 1981; 294:268-271.

135. Gallo RC, Wong-Staal F. Current thoughts on the viral etiology of certain human cancers: The Richard and Hinda Rosenthal Foundation Award Lecture. Cancer Res 1984; 44:2743-2749.

136. Robert-Gurroff M, Nakao Y, Notake K, Ito Y, Sliski A, Gallo RC. Natural antibodies to human retrovirus HTLV in a cluster of Japanese patients with adult T-cell leukemia. Science 1982; 215:975-978.

137. Kalyanaraman VS, Sarngadharan MG, Nakao Y, Ito Y, Aoki T, Gallo RC. Natural antibodies to the structural core protein (p24) of the human T-cell leukemia (lymphoma) retrovirus found in the sera of leukemia patients in Japan. Proc Natl Acad Sci USA 1982; 79:1653-1657.

138. Essex M, Todar G, Zur Hausen H, eds. Viruses in Naturally Occuring Cancers. New York: Cold Spring Harbor Press 1980.

139. Purtilo DT. Immune deficiency predisposing to Epstein-Barr virus-induced lymphoproliferative diseases: The X-linked lymphoproliferative syndrome as a model. Adv Cancer Res 1981; 34:279-312.

140. McDougall JK, Crum LP, Fenoglio LM, Goldstein LC, Galloway DA. Herpes virus-specific RNA and protein in carcinoma of the uterine cervix. Proc Natl Acad Sci USA 1982; 79:3853-3857.

141. Popper H, Gerber, Thung SN. The relationship of hepatocellular carcinoma to infection with hepatitis-B and related viruses in man and animals. Hepatology 1982; 2:1S-9S.

142. Gisser SD. Papovavirus and squamous cell carcinoma. Hum Path 1981; 12:190-193.

143. Medical News. Papilloma virus and cervical dysplasia. J Am Med Assn 1981; 245:2483.

144. Murad T, Contesso G, Mouriesse H. Papillary tumors of large lactiferous ducts. Cancer 1981; 48:122-33.

145. Papkoff J, Lai MH-T, Hunter T, Verma IM. Analysis of transforming gene products from Moloney murine sarcoma virus. Cell 1981; 27:109-119.

146. Ward JF. Some biochemical consequences of the spatial distribution of ionizing-produced free radicals. Radiat Res 1981; 86:185-195.r147. Borek C. Radiation oncogenesis in cell culture. Adv Cancer Res 1982; 37:195-232.

148. Miller RC, Geard CR, Osmak RS, Rutledge-Freeman M, Ong A, Mason H, Napholz A, Perez N, Harisiadis L, Borek C. Modification of sister chromatid exchanges and radiation-induced transformation in rodent cells by the tumor promoter 12-O-tetradecanoylphorbol-13-acetate and two retinoids. Cancer Res 1981; 41:655-659.

149. Ward JF. Molecular mechanisms of radiation-induced damage to nucleic acids. Adv Rad Biol 1977; 5:181-239.

150. Forbes PD, Davies RE, Urbach F. Aging, environmental influences and photocarcinogenesis. J Invest Dermatol 1979; 73:134.

151. Patrick MH, Radin RO. Photochemistry of DNA and polynucleotides: Photoproducts. In Yang SY, ed. Photochemistry and Photobiology of Nucleic Acids vol II. New York Academic Press 1976:35-95.

152. Abo-Darub JM, Mackie R, Pitts JD. DNA repair deficiency in lymphocytes from patients with actinic keratoses. Bull Cancer 1978; 65:357-362.

153. Sutherland BM, Harber LC, Kochevar IE. Pyrimidine dimer formation and repair in human skin. Cancer Res 1980; 40:3181-5.

154. Cooke A, Johnson BE. Dose response, wavelength dependence and rate of ultraviolet radiation-induced pyrimidine dimers in mouse skin. Biochem Biophys Acta 1978; 517:24-30.

155. Advisory Committee on the Biological Effects of Ionizing Radiations. The effects on populations of exposure to low levels of ionizing radiation. Wrash DC:National Academy of Sciences 1972.

156. Upton AC. Environmental standards for ionizing radiation: Theoretical basis for dose-response curves. Environ Health Perspect 1983; 52:31-39.

157. Drake JW, Baltz RH. The biochemistry of mutagenesis. Annu Rev Biochem 1976; 45:11-37.

158. Shooter KV. DNA phosphotriesters as indicators of cumulative carcinogen- induced damage. Nature 1978; 274:612-614.

159. Arlett CF, Lehmann AR. Human disorders showing increased sensitivity to the induction of genetic damage. Annu Rev Genet 1978; 12:95-115.

160. Hart RW, Hall KY, Daniel FB. DNA repair and mutagenesis in mammalian cells. Photochem Photobiol 1978; 28:131-155.

161. Lindahl T. DNA glycosylases, endonucleases for apurinic-apyrimidinic sites and base-excision repair. Prog Nucl Acid Res 1979; 22:135-192.

162. Thibodeau L, Verly WG. Cellular localization of the apurinic/apyrimidinic endodeoxyribonucleases in rat liver. Eur J Biochem 1980; 107:555-563.

163. Roberts JJ. Cellular responses to carcinogen-induced DNA damage and the role of DNA repair. Br Med Bull 1980; 36:25-31.

164. Ornstein RL, Rein R. Molecular models of induced DNA premutational damage and mutational pathways for the carcinogen 4-nitroquinoline 1-oxide and its metabolites. Chem Biol Interact 1980; 30:87-103.

165. Pullman B, Pullman A. Nucleophilicity of DNA. Relation to chemical carcinogenesis. In: Pullman B, Ts'o POP, Gelboin H, eds. Carcinogens: Fundamental Mechanisms and Environmental Effects. Amsterdam: Reidel 1980:55-66.

166. Gelboin H. Benzo(a)pyrene metabolism, activation, and carcinogenesis: Role and regulation of mixed-function oxidases and related enzymes. Physiol Rev 1980; 1107-1166.

167. Friedberg EC, Bonura T, Love JD, McMillan S, Radany EH, Schultz RA. The repair of DNA damage: Recent developments and new insights. J Supramol Struct Cell Biochem 1981; 16:91-103.

168. Grunberger D, Weinstein IB. Biochemical effects of the modification of nucleic acids by certain polycyclic aromatic carcinogens. Prog Nucl Acid Res Mol Biol 1979; 23:105-149.

169. Waring MJ. DNA modification and cancer. Annu Rev Biochem 1981; 50:159-192.

170. Singer B, Kroger M. Participation of modified nucleotides in translation and transcription. Prog Nucl Acid Res Mol Biol 1979; 23:151-94.

171. Lin J-K, Miller JA, Miller EC. 2,3-Dihydro-2-(guan-7-yl)-3-hydroxy-aflatoxin B1, a major acid hydrolysis product of aflatoxin B1-DNA or ribosomal RNA adducts formed in hepatic microsome-mediated reactions and in rat liver in vivo. Cancer Res 1977; 37:4430-4438.

172. Kriek E, Westra JG. Metabolic activation of aromatic amines and amides and interactions with nucleic acids. In: Grover PL, ed. Chemical Carcinogens and DNA. Boca Raton FL: CRC Press 1979:1-28.

173. Beland FA, Beranek DT, Dooley KL, Heflich RH, Kadlubar FF. Arylamine-DNA

adducts in vitro and in vivo: Their role in bacterial mutagenesis and urinary bladder carcinogenesis. Environ Health Perspect 1983; in press.

174. Grunberger D, Weinstein IB. Conformational changes in nucleic acids modified by chemical carcinogens. In: Grover PL, ed., Chemical Carcinogens and DNA. Boca Raton FL: CRC Press 1979:59-93.

175. Jeffrey AM, Kinoshita T, Santella RM, Grunberger D, Katz L, Weinstein IB. The chemistry of polycyclic aromatic hydrocarbon-DNA adducts. In: Pullman B, Ts'o POP, Gelboin H, eds. Carcinogens: Fundamental Mechanisms and Environmental Effects. Amsterdam: Reidel 1980: 565-579.

176. Harris C, Trump BF, Grafstrom R, Autrup H. Differences in metabolism of chemical carcinogens in cultured human epithelial tissue and cells. In: Harris C, Cerutti P, Fox CF. Mechanisms of Chemical Carcinogenesis. New York: A. Liss Co. 1982:289-292.

177. Radman M, Villani G, Boiteux S, Defais M, Caillet-Fauquet P, Spadari S. On the mechanism and genetic control of mutagenesis induced by carcinogenic mutagens; In: Watson JD, Hiatt H, eds. Origins of Human Cancer: Mechanisms of Carcinogenesis,Vol. 4, 1977:903-922.

178. Magee PN. The relationship between mutagenesis, carcinogenesis and teratogenesis. In: Progress in Genetic Toxicology. Scott D, Bridges BA, Sorbels FH. Amsterdam: Elsevier/North Holland Biomedical Press 1977:15-27.

179. Gerchman LL, Ludlum DB. The properties of 06-methylguanine in templates for RNA polymerase. Biochim Biophys Acta 1973; 308: 310-316.

180. Eisenstadt E, Warren AJ, Porter J, Atkins D, Miller JH. Carcinogenic epoxides of benzo(a)pyrene and cyclopenta(cd)pyrene induce base substitutions via specific transversions. Proc Natl Acad Sci USA 1982; 79:1945-1949.

181. Swenson DH, Kadlubar FF. Properties of chemical mutagens and chemical carcinogens in relation to their mechanisms of action. In: Felkner IC, ed. Microbial Testers. Probing Carcinogenesis. New York:Dekker 1981:3-33.

182. Razin A, Friedman J. DNA methylation and its possible biological roles. Prog Nucl Acid Res Mol Biol 1981; 25:33-52.

183. Brand KG, Buoen LC, Johnson KH, Brand I. Etiologic factors, stages, and the role of the foreign body in foreign body tumorigenesis: a review. r Cancer Res 1975; 35:279-286.

184. Miller K, Weintraub Z, Kagan E. The effect of asbestos on macrophages. In: Brown RC, Chamberlain M, Davies R, Gormley IP, eds. The In Vitro Effects of Mineral Dusts. New York: Academic Press 1980:305-312.

185. Trosko JE, Chang C-C. Genes, pollutants and human diseases. Quart Rev Biophys 1978; 603-627.

186. Newmark P. Cancer genes--processed genes--jumping genes. Nature 1982; 296:393-394.

187. Grover PL, ed. Chemical Carcinogens and DNA. Vols I and II, Boca Raton FL:CRC Press 1979.

188. Neidle S. Carcinogens and DNA. Nature 1980; 283:135.

189. Cohen JS. DNA: is the backbone boring? Trends Biochem Sci 1980; 5:58-60.

190. Lipetz PD, Galsky AG, Stephens RE. Relationship of DNA tertiary and quaternary structure to carcinogenic processes. Adv Cancer Res 1982; 36:165-210.

191. Weinstein IB. Current concepts and controversies in chemical carcinogenesis. J Supramol Struct Cell Biochem 1981; 17:99-120.

192. Poirier MC. Antibodies to carcinogen-DNA adducts. J Natl Cancer Inst 1981; 67:515-519.

193. Randerath K, Reddy MV, Gupta RC. 32P-labeling test for DNA damage. Proc Natl Acad Sci USA 1981; 78:6126-6129.

194. Terzaghi M, Little JB. X-radiation-induced transformation in a C3H mouse embryo-derived cell line. Cancer Res 1976; 36:1387-1374.

195. Farber E. Chemical carcinogenesis: a current biological perspective. Carcinogenesis 1984; 5:1-5.

196. Farber E. Sequential aspects of chemical carcinogenesis. In: Becker FF, ed. Cancer A Comprehensive Treatise Etiology: Chemical and Physical Carcino genesis. Vol 1, 2nd Ed. New York: Plenum Press 1982:485-506.

197. Farber, E. Chemical carcinogenesis. New Engl J Med 1981; 305:1379-1389.

198. Maher VM, McCormick JJ. DNA repair and carcinogenesis. In: Grover PL. ed. Chemical Carcinogens and DNA. Vol I, Boca Raton FL:CRC Press 1979:133-158.

199. Cairns J. The origin of human cancers. Nature 1981; 289:353-357.

200. Larsen KH, Brash D, Cleaver JE, Hart RW, Maher VM, Painter RB, Sega GA. DNA repair assays as tests for environmental mutagens. A report of the U.S. EPA Gene-Tox program. Mutat Res 1982; 98:287-318.

201. Regan JD, Trosko JE, Carrier WL. Evidence for excision of ultraviolet-induced pyrimidine dimers from the DNA of human cells in vitro. Biophys J 1968; 8:319-325.

202. Cleaver JE. Defective repair replication of DNA in xeroderma pigmentosum. Nature 1968; 218:652-6.

203. Lieberman MW, Dipple A. Removal of bound carcinogen during DNA repair in nondividing human lymphocytes. Cancer Res 1972; 32:1855-1860.

204. Ahmed FE, Setlow RB. Excision repair in mammalian cells. In: Hanawalt PC, Friedberg EC, Fox CF, eds. DNA Repair Mechanisms. New York: Academic Press 1978:333-336.

205. Grossman L. Enzymes involved in the repair of damaged DNA. Arch Biochem Biophys 1981; 211:511-522.

206. Ikenaga M. Excision repair of DNA damage produced by 4-nitroquinoline-1-oxide in cultured mammalian cells: Its relation to carcinogenesis. Gann Monogr Cancer Res 1982; 27:21-32.

207. Takebe H, Ishiyaki K, Yagi T. Genetic aspects of DNA repair deficiency. Gann Monogr Cancer Res 1982; 27:13-19.

208. Sekiguchi M, Hayakawa H, Makino F, Tanaka K, Okada Y. A human enzyme that liberates uracil from DNA. Biochem Biophys Res Comm 1976: 73:293-299.

209. Livneh Z, Elad D, Sperling J. Enzymatic insertion of purine bases into depurinated DNA in vitro. Proc Natl Acad Sci USA 1979; 76:1089-1093.

210. Linn S, Kuhnlein U, Deutsch A. Enzymes from human fibroblasts for the repair of AP DNA. In: Hanawalt PC, Friedberg EC, Fox CF, eds. DNA Repair Mechanisms. New York: Academic Press 199-203.

211. Deutsch WA, Linn S. DNA binding activity from cultured human fibroblasts that is specific for partially depurinated DNA and that inserts purines into apurinic sites. Proc Natl Acad Sci USA 1979; 76:141-144.

212. Verly WG, Paquette Y. An endonuclease for depurinated DNA in rat liver. Can J Biochem 1973; 51:1003-1009.

213. Craddock VM, Henderson AR. The activity of 3-methyladenine DNA glycosylase in animal tissues in relation to carcinogenesis. Carcinogenesis 1982, 3:747-750.

214. Margison GP. Chronic or acute administration of various dialkylnitrosamines enhances the removal of 06-methylguanine from rat liver DNA in vivo. Chem Biol Interact 1982; 38:189-201.

215. Laval J, Pierre J, Laval F. Release of 7-methylguanine residues from alkylated DNA by extracts of *Micrococcus luteus* and *Escherichia coli*. Proc Natl Acad Sci USA 1981; 78:852-855.

216. Singer B, Brent TP. Human lymphoblasts contain DNA glycosylase activity excising N-3 and N-7 methyl and ethyl purines but not 06-alkylguanines or 1-alkyladenines. Proc Natl Acad Sci USA 1981; 78:856-860.

217. Margison GP, Pegg AE. Enzymatic release of 7-methylguanine from methylated DNA by rodent liver extracts. Proc Natl Acad Sci USA 1981; 78:861-865.

218. Setlow RB. DNA repair pathways. In: Generoso WM, Shelby MD, de Serres FJ, eds. DNA Repair and Mutagenesis in Eukaryotes. New York: Plenum Press 1980:45-54.

219. Bogden JM, Eastman A, Bresnick E. A system in mouse liver for the repair of O6-methylguanine lesions in methylated DNA. Nucl Acid Res 1981; 9:3089-3104.

220. Pegg AE, Scicchitano D, Dolan ME. Comparison of the rates of repair of O6-alkylguanines in DNA by rat liver and bacterial O6-alkyl-guanine-DNA alkyltransferase. Cancer Res 1984; 44:3806-3811.

221. Lindahl T, Rydberg B, Hjebnigren T, Olsson M, Jacobson A. Cellular defense mechanisms against alkylation of DNA. In: Lemontt J, Generoso WM, eds. Molecular and Cellular Mechanisms of Mutagenesis. NY: Plenum Press 1982:89-102.

222. Lett JT, Caldwell I, Dean CJ, Alexander P. Rejoining of X-ray induced breaks in the DNA of leukaemia cells. Nature 1967; 214:790-792.

223. Corry PM, Cole A. Double strand rejoining in mammalian DNA. Nature (New Biol) 1973; 245:100-101.

224. Cole A, Shonka F, Corry P, Cooper WG. CHO cell repair of single-strand and double-strand DNA breaks induced by gamma and alpha radiations. In: Hanawalt PC, Setlow RB, eds. Molecular Mechanisms for Repair of DNA. New York: Plenum Press 1975:665-676.

225. Steiner ME, Woods WG. Normal formation and repair of gamma radiation-

induced single and double strand DNA breaks in Down syndrome fibroblasts. Mutat Res 1982; 95:515-523.

226. Woods WG, Lopez M, Kalvonjian SL. Normal repair of gamma radiation-induced single-strand and double-strand DNA breaks in retinoblastoma fibroblasts. Biochim Biophys Acta 1982; 698:40-48.

227. Nordenskjold M, Jernstrom B. Induction and repair of DNA strand breaks in cultured human fibroblasts exposed to various phenols and dihydrodiols of benzo(a)pyrene. Chem Biol Interact 1982; 41:155-168.

228. Kelner A. Effect of visible light on the recovery of *Streptomyces griseus* conida from ultraviolet irradiation injury. Proc Natl Acad Sci USA 1949; 35:73–79.

229. Dulbecco R. Experiments on photoreactivation of bacteriophages inactivated with ultraviolet radiation. J Bacteriol 1950; 59:329-347.

230. Sutherland BM. Photoreactivating enzyme from human leukocytes. Nature 1974; 248:109-112.

231. Sutherland BM, Runge P, Sutherland JC. DNA photoreactivating enzyme from placental mammals. Origin and characteristics. Biochemistry 1974; 13:4710-4715.

232. Meneghini R, Hanawalt P. T4-endonuclease V-sensitive sites in DNA from ultraviolet-irradiated human cells. Biochim Biophys Acta 1976; 425:428-437.

233. Meneghini R, Mench CFM. Pyrimidine dimers in DNA strands of mammalian cells synthesized after UV-irradiation. In: Hanawalt PC, Friedberg EC, Fox CF, eds. DNA Repair Mechanisms. New York: Academic Press 1978:493-497.

234. D'Ambrosio SM, Whetstone JW, Slazinski L, Lowney E. Photorepair of pyrimidine dimers in human skin *in vivo*. Photochem Photobiol 1981; 34:461-464.

235. D'Ambrosio SM, Setlow RB. On the presence of UV-endonuclease sensitive sites in daughter DNA of UV-irradiated mammalian cells. In: Hanawalt PC, Friedberg EC, Fox CF, eds. DNA Repair Mechanisms. New York: Academic Press 1978:499-503.

236. Bowden GT, Giesselbach B, Fusenig NE. Post-replication repair of DNA in ultraviolet light-irradiated normal and malignantly transformed mouse epidermal cell cultures. Cancer Res 1978; 38:2709-2718.

237. Waters R. Repair of DNA in replicated and unreplicated portions of the human genome. J Mol Biol 1979; 127:117-127.

238. Fornace Jr A. Recombination of parent and daughter strand DNA after UV-irradiation in mammalian cells. Nature 1983; 552-554.

239. Fujiwara Y, Tatsumi M. Replicative bypass repair of ultraviolet damage to DNA of mammalian cells: caffeine sensitive and caffeine resistant mechanisms. Mutat Res 1976; 37:91-110.

240. Higgins NP, Kato K, Strauss B. A model for replication repair in mammalian cells. J Mol Biol 1976; 101:417-425.

241. Sirover MA. Induction of the DNA repair enzyme uracil-DNA glycosylase in stimulated human lymphocytes. Cancer Res 1979; 39:2090-2095.

242. D'Ambrosio, SM, Setlow, RB. Enhancement of postreplication repair in Chinese hamster cells. Proc Natl Acad Sci USA 1976; 73:2396-2400.

243. Painter RB. Does ultraviolet light enhance post-replication repair in mammalian cells? Nature 1978; 275:243-245.

244. Sarasin AR, Hanawalt PC. Carcinogens enhance survival of UV-irradiated simian virus 40 in treated monkey kidney cells: Induction of a recovery pathway? Proc Natl Acad Sci USA 1978; 75:346-350.

245. Montesano R, Bresil H, Margison GP. Increased excision of 06-methylguanine from rat liver DNA after chronic administration of dimethylnitrosamine. Cancer Res 1979; 39:1798-1802.

246. Lindahl T. DNA repair enzymes. Annu Rev Biochem 1982; 51:61-87.

247. Mehta JR, Ludlum DB, Renard A, Verly WG. Repair of 06-ethylguanine in DNA by a chromatin fraction from rat liver: Transfer of the ethyl group to an acceptor protein. Proc Natl Acad Sci USA 1981; 78:6766-6770.

248. Hart RW, Turturro A. Evolution and longevity-assurance processes. Naturwissenschaften 1981; 68:552-557.

249. Wilkins RJ, Hart RW. Preferential DNA repair in human cells. Nature 1974; 247:35-36.

250. Oleson FB, Mitchell BL, Dipple A, Lieberman MW. Distribution of DNA damage in chromatin and its relation to repair in human cells treated with 7-bromomethylbenz(a)anthracene. Nucl Acid Res 1979; 7:1343-1361.

251. Cerutti P. Persistence of carcinogen-DNA adducts in cultured mammalian cells. In: Harris CC, Cerutti PA, eds. Mechanism of Chemical Carcinogenesis. New York: AR Liss 1982:419-427.

252. Sheikh YM, Joyce NJ, Daniel FB, Oravec CT, Cazer FD, Raber J, Mhaskar D, Witiak DT, Hart RW, D'Ambrosio SM. Strain differences in organ selective DMBA-induced carcinogenicity: Comparative binding of dimethylbenz(a)- anthracene and its 2-fluoro analogue in Sprague-Dawley and Long-Evans rats; In: Dennis AJ, Cooke WM, eds. Polynuclear Aromatic Hydrocarbons. Columbus: Battelle Press 1981:625-639.

253. Cleaver JE, Thomas GH, Trosko JE, Lett JT. Excision repair (dimer excision, strand breakage and repair replication) in primary cultures of eukaryotic (bovine)cells. Exp Cell Res 1972; 74:67-80.

254. Brown HS, Jeffrey AM, Weinstein IB. Formation of DNA adducts in 10T½ mouse embryo fibroblasts incubated with benzo(a)pyrene or dihydrodiol oxide derivatives. Cancer Res 1979; 39:1673-1677.

255. Cerutti P, Shinohara K, Remsèn J. Repair of DNA damage induced by ionizing radiation and benzo(a)pyrene in mammalian cells. J Toxicol Environ Health 1977; 2:1375-1386.

256. Eastman A, Mossman BT, Bresnick E. Formation and removal of benzo(a)pyrene adducts of DNA in hamster tracheal epithelial cells. Cancer Res 1981; 41:2605-2610.

257. Shinohara K, Cerutti PA. Excision repair of benzo(a)pyrene-deoxyguanosine adducts in baby hamster kidney 21/C13 cells and in secondary mouse embryo fibroblasts C57BL/6J. Proc Natl Acad Sci USA 1977; 74:979-983.

258. Feldman G, Remsen J, Shinohara K, Cerutti P. Excisability and persistence of benzo(a)pyrene DNA adducts in epithelioid human lung cells. Nature 1978; 274:796-798.

259. Dipple A, Roberts JJ. Excision of 7-bromomethylbenz(a)-anthracene-DNA adducts in replicating mammalian cells. Biochemistry 1977; 16:1499-1503.

260. Ikenaga M, Ishii Y, Tada M, Kakunaga T, Takebe H, Kondo S. Excision-repair of 4-nitroquinoline-1-oxide damage responsible for killing, mutation, and cancer. In: Hanawalt PC, Setlow RB, eds. Molecular Mechanisms for Repair of DNA, Part B. New York: Plenum Press 1975:763-771.

261. Hart RW, Setlow RB. Correlation between deoxyribonucleic acid excision-repair and life-span in a number of mammalian species. Proc Natl Acad Sci USA 1974; 71:2169-2173.

262. Sacher GA, Hart RW. Longevity, aging and comparative cellular and molecular biology of the house mouse, *Mus musculus*, and the white-footed mouse, *Peromyscus leucopus*. In: Bergsma D, Harrison D, eds. Genetic Effects on Aging. New York: Alan R. Liss National Foundation 1978; 14:71-96.

263. Turturro A, Hart RW. DNA repair mechanisms in aging. In: Sciapelli DG, Migaki G, eds. Comparative Biology of Major Age-Related Diseases: Current Status and Research Frontiers. New York: AR Liss 1984:19-45.

264. Cairns J. Summary. In: Harris CC, Cerutti PA, eds. Mechanism of Chemical Carcinogenesis. New York: AR Liss 1982:559-562.

265. Brash D, Hart RW. DNA damage and repair in vivo. J Environ Pathol Toxicol 1978; 2:79-114.

266. Walford, R.L. Multigene families, histocompatibility systems, transformation, meiosis, stem cells, and DNA repair. Mech Ageing Dev 1979; 9:9-26.

267. Janss DH, Ben TL. Age-related modification of 7,12-dimethylbenz(a)-anthracene binding to rat mammary gland DNA. J Natl Cancer Inst 1978; 60:173-177.

268. Sugimura T. Poly(adenosine diphosphate ribose). Prog Nucleic Acid Res Mol Biol 1973; 13:127-151.

269. Sugimura T, Miwa M. Poly(ADP-ribose) and cancer research. Carcinogenesis 1983; 4:1503-1506.

270. Oikawa A, Tohda H, Kanai M, Miwa M, Sugimura T. Inhibitors of poly(adenosine diphosphate ribose) polymerase induce sister chromatid exchanges. Biochem Biophys Res Commun 1980; 90:1147-1152.

271. Breimer L, Lindahl T. A DNA glycosylase for Escherichia coli that releases free urea from a polydeoxyribonucleotide containing fragments of base residues. Nucl Acid Res 1980; 8:6199-6211.

272. Demple B, Linn S. DNA-glycosylases and UV repair. Nature 1980; 287:203-208.

273. Lloyd RS, Hanawalt PC. Expression of the denV gene of bacteriophage T4 cloned in Escherichia coli. Proc Natl Acad Sci USA 1981; 78:2796-2800.

274. Gombar CT, Katz EJ, Magee PN, Sirover MA. Induction of the DNA repair enzymes uracil DNA glycosylase and 3-methyladenine DNA glycosylase in

regenerating rat liver. Carcinogenesis 1981; 2:595-599.

275. Krokan H, Wittwer CU. Uracil DNA-glycosylase from HeLa cells: General properties, substrate specificity and effect of uracil analogs. Nucl Acid Res 1981; 9:2599-2613.

276. Karran P, Lindahl T. Hypoxanthine in deoxyribonucleic acid: generation by heat-induced hydrolysis of adenine residues and release in free form by a deoxyribonucleic acid glycosylase from calf thymus. Biochemistry 1980; 19:6005-6011.

277. Karran P, Lindahl T, Ofsteng I, Evenson GB, Seeberg E. Escherichia coli mutants deficient in 3-methyladenine-DNA glycosylase. J Mol Biol 1980; 140:101-127.

278. Witkin EM. Ultraviolet mutagenesis and inducible DNA repair in Escherichia coli. Bacteriol Rev 1976; 40:869-907.

279. Stara JF, Mukerjee D, McGaughy R, Durkin P, Dourson ML. The current use of studies on promoters and cocarcinogens.in quantitative risk assessment. Environ Health Perspect 1983; 50:359-368.

280. Wani AA. DNA damage due to the spontaneous lability of nucleophilic agents. In: Schimke RT, ed. Biological Mechanisms in Aging Conference Proceedings, June 1980, NIH Publication No 81-2194. 1981:211-225.

281. Schendel PF. Inducible repair systems and their implications for toxicology. CRC Critical Rev Toxicol 1981; 8:311-362.

282. Farber E, Cameron R. The sequential analysis of cancer development. Adv Cancer Res 1980; 31:125-226.

283. Loeb LA, Sirover MA, Weymouth LA, Dube DK, Seal G, Agarwal SS, Katz E. Infidelity of DNA synthesis as related to mutagenesis and carcinogenesis. J Toxicol Environ Health 1977; 2:1297-1304.

284. Burnet FM. Intrinsic mutagenesis: A genetic basis of ageing. Pathology 1974; 6:1-11.

285. Guernsey DL, Ong A, Borek C. Thyroid hormone modulation of X ray-induced in vitro neoplastic transformation. Nature 1980; 288:591-592.

286. Loeb LA, Weymouth LA, Kunkel TA, Gopinathan KP, Beckman RA, Dube DK. On the fidelity of DNA replication. Cold Spring Harbor Symp Quant Biol 1979; 43:921-7.

287. Sirover MA, Loeb LA. Metal-induced infidelity during DNA synthesis. Proc Natl Acad Sci USA 1976; 73:2331-2335.

288. Loeb LA, Silber JR, Fry M. Infidelity of DNA replication in aging. In: Schimke RT, ed. Biological Mechanisms in Aging Conference Proceedings, June 1980, NIH Publication No. 81-2194. 1981:270-278.

289. Kroger M, Singer B. Ambiguity and transcriptional errors as a result of methylation of N-1 of purines and N-3 of pyrimidines. Biochemistry 1979; 18:3493-3500.

290. Mehta JR, Ludlum DB. Synthesis and properties of 06-methyldeoxyguanylic acid and its copolymers with deoxycytidylic acid. Biochim Biophys Acta 1978; 521:770-778.

291. Dube DK, Loeb LA. Manganese as a mutagenic agent during in vitro DNA synthesis. Biochem Biophys Res Commun 1975; 67:1041-1046.

292. Saffhill R. The effect of ionising radiation and chemical methylation upon the activity and accuracy of E. coli DNA polymerase I. Biochem Biophys Res Commun 1974; 61:802-808.

293. Shearman CW, Loeb LA. Effects of depurination on the fidelity of DNA synthesis. J Mol Biol 1979; 128:197-218.

294. Battula N, Loeb LA. The infidelity of avian myeloblastosis virus deoxyribonucleic acid polymerase in polynucleotide replication. J Biol Chem 1974; 249:4086-4093.

295. Kunkel TA, Loeb LA. On the fidelity of DNA replication. Effect of divalent metal ion activators and deoxyribonucleoside triphosphate pools on in vitro mutagenesis. J Biol Chem 1979; 254:5718-5725.

296. Peterson AR, Landolph JR, Peterson H, Heidelberger C. Mutagenesis of Chinese hamster cells is facilitated by thymidine and deoxycytidine. Nature 1978; 276:508-510.

297. Meuth M, Heureax-Huard NL, Trudel M. Characterization of a mutator gene in Chinese hamster ovary cells. Proc Natl Acad Sci USA 1979; 76:6505-6509.

298. Weinburg G, Ullman B, Martin Jr DW. Mutator phenotypes in mammalian cell mutants with distinct biochemical defects and abnormal deoxyribonucleoside triphosphate pools. Proc Natl Acad Sci USA 1981; 2447-2451.

299. Topal MD, Baker MS. DNA precursor pool: A significant target for N-methyl-N-nitrosourea in C3H/l0T1/2 clone 8 cells. Proc Natl Acad Sci USA 1982; 79:2211-2215.

300. Topal MD, Hutchison CA III, Baker MS. DNA precursors in chemical mutagenesis: A novel application of DNA sequencing. Nature 1982; 298:863-865.

301. Lindahl T, Nyberg B. Rate of depurination of native deoxyribonucleic acid. Biochemistry 1972; 11:3610-3618.

302. Brooks AL, Benjamin SA, James RK, McClellan RO. Interaction of 144Ce and partial hepatectomy in the production of liver neoplasms in the Chinese Hamster. Radiat Res 1982; 91:573-588.

303. Mehta RG, Moon RC. Inhibition of DNA synthesis by retinyl acetate during chemically induced mammary carcinogenesis. Cancer Res 1980; 40:1109-1111.

304. Narisawa T, Reddy BS, Wong C-Q, Weisburger JH. Effect of vitamin A deficiency on rat colon carcinogenesis by N-methyl-N'-nitro-N- nitrosoguanidine. Cancer Res 1976; 36:1379-1383.

305. Stott WT, Reitz RH, Schumann AM, Watanabe PG. Genetic and nongenetic events in neoplasia. Food Cosmet Toxicol 1981; 19:567-576.

306. Argyris TS. Epidermal tumor promotion by regeneration. In: Hecker E, Fusenig NE, Kunz W, Marks F, Thielmann HW, eds. Carcinogenesis: A Comprehensive Survey. Vol. 7, New York: Raven Press 1982:43-48.

307. Marks F. Epidermal growth control mechanism, hyperplasia, and tumor promotion in the skin. Cancer Res 1976; 36:2636-2643.

308. IARC. Chemicals, industrial processes and industries associated with cancer in humans. IARC Monographs, Supplement 4. 1982.

309. Stott WT, Watanabe PG. Differentiation of genetic versus epigenetic mechanisms of toxicity and its application to risk assessment. Drug Metabol Rev 1982; 13:853-873.

310. Diamond L, O'Brien TG, Baird WM. Tumor promoters and the mechanism of tumor promotion. Adv Cancer Res 1980; 32:1-74.

311. Berenblum I. Sequential aspects of chemical carcinogenesis: skin. In: Becker FF, ed. Cancer A Comprehensive Treatise Etiology: Chemical and Physical carcinogenesis. Vol 1, 2nd Ed. New York: Plenum Press 1982:451-484.

312. Verma AK, Conrad EA, Boutwell RK. Differential effects of retinoic acid and 7,8-benzoflavone on the induction of mouse skin tumors by the complete carcinogenesis process and by the initiation-promotion regimen. Cancer Res 1982; 3519-3525.

313. Slaga TJ. Overview of tumor promotion in animals. Environ Health Perspect 1983; 50:3-14.

314. Littlefield NA, Farmer JH, Gaylor DW, Sheldon WG. Effects of dose and time in a long-term, low-dose carcinogenic study. J Environ Pathol Toxicol 1979; 3:17-34.

315. Littlefield NA, Greenman DL, Farmer JH, Sheldon WG. Effects of continuous and discontinued exposure to 2-AAF on urinary bladder hyperplasia and neoplasia. J Environ Pathol Toxicol 1979; 3:35-54.

316. Hicks RM. Effect of promoters on the incidence of bladder cancer in experimental animal models. Environ Health Perspect 1983; 50:37-49.

317. Van Duuren BL. Tumor-promoting and co-carcinogenic agents in chemical carcinogenesis. In: Searle CE, ed. Chemical Carcinogens, American Chemical Society Monograph, No. 173, Washington, DC: American Chemical Society 1976:737-762.

318. Leclercq G, Heuson JC. Physiological and pharmacological effects of estrogens in breast cancer. Biochim Biophys Acta 1979; 560:427-455.

319. Yager JD Jr, Yager R. Oral contraceptive steroids as promoters of hepatocarcinogenesis in female Sprague-Dawley rats. Cancer Res 1980; 40:3680-3685.

320. Solanki V, Slaga TJ. Specific binding of phorbol ester tumor promoters to intact primary epidermal cells from SENCAR mice. Proc Natl Acad Sci USA 1981; 78:2549-2553.

321. Dunphy WG, Delclos KB, Blumberg PM. Characterization of specific binding of (3H)phorbol 12,13-dibutyrate and (3H)phorbol 12-myristate 13-acetate to mouse brain. Cancer Res 1980; 40:3635-3641.

322. Castagna M, Takai Y, Kaibuchi K, Sano K, Kikkawa U, Nishizuka Y. Direct activation of calcium-activated phospholipid-dependent proteinkinase by tumor-promoting phorbol esters. J Biol Chem 1982; 257:7847-7851.

323. Poland A, Glover E. 2,3,7,8-Tetrachlorodibenzo-p-dioxin: Segregation of toxicity with the Ah locus. Mol Pharmacol 1980; 17:86-94.

324. Slaga TJ, Fischer SM, Weeks CE, Klein-Szanto AJP. Cellular and biochemical mechanisms of mouse skin tumor promoters. Rev Biochem Toxicol 1981; 3:231-281.

325. Clark JH, Peck EJ Jr. Female Sex Steroids: Receptors and Function. New York: Springer/Verlag 1979.

326. Boutwell RK. Some biological aspects of skin carcinogenesis. Prog Exp Tumor Res 1964; 4:207-250.

327. Slaga TJ, Fischer SM, Nelson K, Gleason GL. Studies on the mechanism of

skin tumor promotion: Evidence for several stages in promotion. Proc Natl Acad Sci USA 1980; 77:3659-3663.

328. Weinstein IB, Mufson RA, Lee L-S, Fisher PB, Laskin J, Horowitz AD, Ivanovic V. Membrane and other biochemical effects of the phorbol esters and their relevance to tumor promotion. In: Pullman B, Ts'o POP, Gelboin H, eds. Carcinogens: Fundamental Mechanisms and Environmental Effects. Amsterdam: Reidel 1980:543-563.

329. Goldstein BD, Witz G, Amoruso M, Stone DS, Troll W. Stimulation of human polymorphonuclear leukocyte superoxide anion radical production by tumor promoters. Cancer Lett 1981; 11:257-262.

330. Slaga TJ, Klein-Szanto ASP, Triplett LL, Yotti LP, Trosko JE. Skin tumor-promoting activity of benzoyl peroxide, a widely used free radical-generating compound. Science 1981; 213:1023-1025.

331. Borek C, Troll W. Modifiers of free radicals inhibit in vitro the oncogenic actions of x-rays, bleomycin and the tumor promoter 12-O-tetradecanoylphorbol 13-acetate. Proc Natl Acad Sci 1983; 80:1304-1307.

332. Birnboim HC. DNA strand breakage in human leukocytes exposed to a tumor promoter, phorbol myristate acetate. Science 1982; 215:1247-1249.

333. Rovera G, O'Brien TG, Diamond L. Tumor promoters inhibit spontaneous differentiation of Friend erythroleukemia cells in culture. Proc Natl Acad Sci USA 1977; 74:2894-2898.

334. Miao RM, Fieldsteel AH, Fodge DW. Opposing effects of tumour promoters on erythroid differentiation. Nature 1978; 274:271.

335. Greenberger JS, Newberger PE, Karpas A, Moloney WC. Constitutive and inducible granulocyte-macrophage functions in mouse, rat and human myeloid leukemia-derived continuous tissue culture lines. Cancer Res 1978; 38:3340-3348.

336. Emerit I, Cerutti P. The tumor promoter phorbol-12-myristate-13-acetate induces chromosome aberrations in human lymphocytes via indirect action. In: Harris CC, Cerutti PA, eds. Mechanism of Chemical Carcinogenesis. New York: AR Liss 1982:495-498.

337. Nagasawa H, Little JB. Effect of tumor promoters, protease inhibitors, and repair processes on x-ray-induced sister chromatid exchanges in mouse cells. Proc Natl Acad Sci USA 1979; 76:1943-1947.

338. Zur Hausen H, O'Neill FJ, Freese UK, Hecker E. Persisting oncogenic herpesvirus induced by the tumour promoter TPA. Nature 1978; 272:373-375.

339. Harnden DG, Taylor AMR. Chromosomes and neoplasia. Adv Human Genet 1979; 9:1-70.

340. Klein G. Lymphoma development in mice and humans: Diversity of initiation is followed by convergent cytogenetic evolution. Proc Natl Acad Sci USA 1979; 76:2442-2446.

341. Rowley JD. Human oncogene locations and chromosome aberrations. Nature 1983; 301:290-291.

342. Clarkson BD, Fried J, Chou T-C, Strife A, Ferguson R, Sullivan S, Kitahara T, Oyama A. Duration of the dormant state in an established cell line of human hematopoietic cells. Cancer Res 1977; 37:4506-4522.

343. Clarkson B, Strife A, DeHarven E. Continuous culture of seven new cell lines (SK-L1 to 7) from patients with acute leukemia. Cancer Res 1987; 20:926-947.

344. Todo A, Strife A, Fried J, Clarkson BD. Proliferative kinetics of human hematopoietic cells during different growth phases in vitro. Cancer Res 1971; 31:1330-1340.

345. Saedler H, Starlinger P. 06 mutations in the galactose operon in E. coli. Mol Gen Genet 1967; 100:178-189.

346. Goth R, Rajewsky MF. Persistence of 06-ethylguanine in rat brain DNA: Correlation with nervous system specific carcinogenesis by ethylnitrosourea. Proc Natl Acad Sci 1974; 71:639-643.

347. Radman M, Kinsella AR. Chromosomal events in carcinogenic initiation and promotion: Implications for carcinogenicity testing and cancer prevention strategies. IARC Sci Publ 1980; 27:75-90.

348. Karin M, Haslinger A, Holtgreve H, Richards RI, Krauter P, Westphal HW, Beato M. Characterization of DNA sequences through which cadmium and glucocorticoid hormones induce human metallothionein-IIA gene. Nature 1984; 308:513-519.

349. Doll R. An epidemiological perspective of the biology of cancer. Cancer Res 1978; 38:3573-3583.

350. Nilsson K, Klein G. Phenotypic and cytogenetic characteristics of human B-lymphoid cell lines and their relevance for the etiology of Burkitt's lymphoma. Adv Cancer Res 1982; 37:319-380.

351. Van Duuren BL, Sivak A, Segal A, Seidman I, Katz C. Dose-response studies with a pure tumor-promoting agent, phorbol myristate acetate. Cancer Res 1973; 33:2166-2172.

352. Melnick R, Boorman G, Haseman J, Montali R, Huff J. Urolithiasis and bladder carcinogenicity of melamine in rodents. Toxicol Appl Pharmacol 1984; 72:292-303.

353. Perera FP. The genotoxic epigenetic distinction: Relevance to cancer policy. Environ Res, in press; vol 34.

354. Hankin JH, Rawlings V. Diet and breast cancer: a review. Am J Clinical Nutr 1978; 31:2005-2016.

355. Schwarz JA, Viaje A, Slaga TJ, Yuspa SH, Hennings H, Lichti U. Fluocinolone acetonide: A potent inhibitor of mouse skin tumor promotion and epidermal DNA synthesis. Chem Biol Interact 1977; 17:331-347.

356. Graham S. Epidemiology of retinoids and cancer. J Natl Cancer Inst 1984; 1423-1428.

357. Hart IR, Fidler IJ. Cancer invasion and metastasis. Quart Rev Biol 1980; 55:121-142.

358. Sandberg AA. The Chromosomes in Human Cancer and Leukemia. Amsterdam: Elsevier/North-Holland 1980.

359. Hopper KE, Harrison J, Nelson DS. Partial characterization of anti-tumor effector macrophages in the peritoneal cavities of concomitantly immune mice and mice injected with macrophage-stimulating agents. J Reticuloendothel Soc 1979; 26:259-271.

360. Farrar WL, Elgert KD. Suppressor cell activity in tumor-bearing mice. II Inhibition of DNA synthesis and DNA polymerases by TBH splenic suppressor cells. J Immunol 1978; 120:1354-1361.

361. Ratner L, Nordlund JJ, Lengyel P. Interferon as an inhibitor of cell growth: Studies with mouse melanoma cells. Proc Soc Exp Biol Med 1980; 163:267-272.

362. Gimbrone MA Jr, Cotran RS, Leapman SB, Folkman J. Tumor growth and neovascularization: An experimental model using the rabbit cornea. J Natl Cancer Inst 1974; 52:413-427.

363. Mueller GC, Kajiwara K, Kim UH, Graham J. Proposed coupling of chromatin replication, hormone action and cell differentiation. Cancer Res 1978; 38:4041-4045.

364. Fidler IJ, Gersten DM, Hart IR. The biology of cancer invasion and metastasis. Adv Cancer Res 1978; 28:149-250.

365. Liotta LA, Tryggvason K, Garbisa S, Hart I, Foltz CM, Shafie S. Metastatic potential correlates with enzymatic degradation of basement membrane collagen. Nature 1980; 284:67-68.

366. Poole AR, Tiltman KJ, Recklies AD, Stoker TAM. Differences in secretion of the proteinase cathepsin B at the edges of human breast carcinomas and fibroadenomas. Nature 1978; 273:545-547.

367. Van De Velde CJH, Van Putten LM, Zwaveling A. A new metastasizing mammary carcinoma model in mice: Model characteristics and applications. Eur J Cancer 1977; 13:555-565.

368. Warren BA. Platelet-tumor cell interactions: Morphological studies. In: Gaetano GD, Garattini S, eds. Platelets: A Multidisciplinary Approach. New York: Raven Press 1978:427-445.

369. Poste G, Nicolson GL. Arrest and metastasis of blood-borne tumor cells are modified by fusion of plasma membrane vesicles from highly metastatic cells. Proc Natl Acad Sci USA 1980; 77:399-403.

370. Baldwin RW, Price MR. Neoantigen expression in chemical carcinogenesis. In: Becker FF, ed. Cancer A Comprehensive Treatise Etiology: Chemical and Physical carcinogenesis. Vol 1, 2nd Ed. New York: Plenum Press 1982:507-548.

371. Kripke ML. Antigenicity of murine mouse skin tumors induced by ultraviolet light. J Natl Cancer Inst 1974; 53:1333-1336.

372. Hewitt HB. The choice of animal tumors for experimental studies of cancer therapy. Adv Cancer Res 1978; 27:149-200.

373. Embleton MJ, Middle JG. Immune responses to naturally occurring rat sarcomas. Br J Cancer 1981; 43:44-52.

374. McKhann CF. Tumor immunology: Past, present and future. In: Fortner JG, Rhoads JE, eds. Accomplishments in Cancer Research 1981. Philadelphia: Lippincott 1982: 125-137.

375. Herlyn M, Steplewski Z, Herlyn D, Koprowski H. Colo-rectal carcinoma specific antigen: detection by means of monoclonal antibodies. Proc Natl Acad Sci USA 1979; 76:1438.

376. Levine AJ. Transformation-associated tumor antigens. Adv Cancer Res 1982; 37:75-109.

377. Theofilopoulos AN, Dixon FJ. Immune complexes in human diseases: A review. Amer J Pathol 1980; 100:531-594.

378. Kripke ML. Speculations on the role of ultraviolet radiation in the development of malignant melanoma. J Natl Cancer Inst 1979; 63:541-548.

379. Klein G. Immune and non-immune control of neoplastic development: Contrasting effects of host and tumor evolution. Cancer 1980; 45:2486-2499.

380. Lee Y-TN, Sparks FC, Eilber FR, Morton DL. Delayed cutaneous hypersensitivity and peripheral lymphocyte counts in patients with advanced cancer. Cancer 1975; 35:748-755.

381. Fidler IJ, Gersten DM, Kripke ML. Influence of immune status on the metastasis of three murine fibrosarcomas of different immunogenicities. 1979; Cancer Res 39:3816-3821.

382. Heppner GH. Tumor heterogeneity. Cancer Res 1984; 44:2259-2265.

383. Reif AE. Synergism in carcinogenesis. Cancer Res 1984; 73:25-36.

384. Berenbaum MC. Criteria for analyzing the interactions between biologically active agents. Adv Cancer Res 1981; 35:269-335.

385. Selikoff IJ, Hammond EC, Churg J. Asbestos exposure, smoking and neoplasia. J Am Med Assn 1968; 204:106-112.

386. Lakowicz JR, Englund F, Hidmark A. Particle-enhanced membrane uptake of a polynuclear aromatic hydrocarbon: A possible role in cocarcinogenesis. J Natl Cancer Inst 1978; 61:1155-1159.

387. Kandaswami C, O'Brien PJ. Effects of asbestos on membrane transport and metabolism of benzo(a)pyrene. Biochem Biophys Res Commun 1980; 97:794-801.

388. Mossman BT, Craighead JE, MacPherson BV. Asbestos-induced epithelial changes in organ cultures of hamster trachea: Inhibition by retinyl methyl ether. Science 1980; 207:311-313.

389. Mossman BT, Craighead JE. Mechanisms of asbestos carcinogenesis. Environ Rres 1981; 25:269-280.

390. Miller EC, Miller JA, Brown RR. On the inhibitory action of certain polycycrlic hydrocarbons on azo dye carcinogenesis. Cancer Res 1952; 12:282-283.

391. Conney AH, Miller EC, Miller JA. The metabolism of methylated aminoazo dyes V. Evidence for induction of enzyme synthesis in the rat by 3-methylcholanthrene. Cancer Res 1956; 16:450-460.

CHAPTER 2 - Short-Term Tests for Potential Carcinogens

I. INTRODUCTION

Cancer can be induced by a variety of radiations, biological, "physical" and chemical agents, and is manifested in a variety of phenotypes. Notwithstanding our lack of understanding of the mechanisms by which cancer is induced and expressed (see Chapter 1 of this document) there is an urgent need to identify the agents that cause and promote these diseases. The rapid identification of potential chemical carcinogens is one of the major goals of short-term testing.

The hypothesis that conversion of normal cells to neoplastic cells results from heritable genetic changes--the somatic mutation theory of cancer - was proposed early in this century *(1)* and forms a basis for the development of many short-term tests. The relationship of mutation and carcinogenesis has been stressed for some time *(2)*. However, early studies relating mutagenesis and carcinogenesis were generally unsuccessful due in part to the need for metabolic activation of most carcinogens. Pioneering studies by the Millers and associates *(3)* on metabolic activation of chemicals and the coupling of metabolic activation systems and mutable targets *(4,5)* allowed further elucidation of the possible relationship between mutagenicity and carcinogenicity. During the past 15 years, many short-term systems that detect mutagenesis and other genetic effects have been developed and attempts have been made to correlate the results of these tests with carcinogenesis. The tremendous number of chemicals that remain to be evaluated for potential hazard and the mounting cost of currently acceptable rodent carcinogenesis assays amply justify the continued effort to develop and utilize short-term tests, and to establish a mode for their application in assessing the potential of chemicals to induce cancer.

The search for tests with the capability to identify potential chemical carcinogens has yielded a variety of assay systems with a diversity of endpoints. The existence of such a large number of assay systems (approximately l00 have been described [6,7]) reflects both limitations and differences between assays, as well as our uncertainty about the mechanisms of induction and progression of carcinogenesis. As described in Chapter 1, the induction of cancer may have many potential mechanisms (gene or chromosomal mutation, heritable changes in DNA transcription reflected in induction or cessation of gene expression, etc.), but no causal relationship has yet been established between any mechanism of induction and any specific neoplasia. In addition, a variety of factors or conditions such as tumor promoters, hormonal levels, rate of cell proliferation, cell type specificity, genetic predisposition, etc. are known to influence the expression of neoplasia, regardless of the nature of the inducing agent. Because of the relatively small number of known human carcinogens, the predictive capability of the short-term assays is usually assessed by validation with the many more chemicals which are carcinogenic in long-term animal tests.

This chapter describes the major categories of short-term assays for chemical carcinogens, attempts to evaluate the assay systems, and recommends further studies required to define their predictive ability. The term "genetic toxicity" is used in this chapter to indicate any effect that can be attributed to an interaction between the test agent and the genetic material of the test organism. There have been attempts to classify carcinogens on the basis of whether they show evidence of direct interaction with DNA or act by some indirect effect ("epigenetic") *(8)*. However, the assay systems conventionally used to make this distinction may not detect all types of chemical-DNA interactions, nor do they adequately accommodate the tissue or cell-specific metabolism or target specificity which many carcinogens demonstrate. So it is not possible to conclusively make a clear distinction between genetically toxic and "epigenetic" on the basis of currently available *in vitro* tests. However, the fact that certain factors or substances do appear to induce tumors without appearing to react directly with the DNA indicates a need for development of short-term tests complementary to those which detect direct effects on the DNA if all types of chemical carcinogens are to be detected.

Many of the tests for genetic toxicity are also useful in the identification of potential germ cell mutagens; however, this represents a distinct application of the tests, and the reader is referred to the recent report of the National Academy of Sciences *(9)* for further information on this subject. In addition, screening of chemicals for genetic activity can identify agents that may be involved in the aging process or atherosclerosis *(10,11)*.

II. THE SHORT-TERM TEST SYSTEMS

There have been numerous descriptions of the assays that have been developed and evaluated for their capability to detect potential carcinogens, but the details of these systems will not be discussed herein. The reader is directed to the EPA Gene-Tox Evaluations *(12-40)*, the International Collaborative Program *(41)* and the review by Hollstein *et al. (6)* for details and further references to the individual systems. The four principal biological endpoints represented by the available tests are gene mutation, chromosomal effects, general DNA damage and neoplastic transformation. Some frequently used assays are listed in Table 5.

A. Gene Mutation

Although it is possible to assay for chemically induced mutation with a variety of methods in a number of organisms and cells, the greatest amount

of information on tests for potential carcinogens is derived from a relatively few systems. The system in which the largest number of chemicals has been evaluated is the *Salmonella*/microsome test (Ames test) *(42,43)* where several strains of the bacterium *Salmonella typhimurium* have been genetically altered in order to provide increased sensitivity to potential mutagens. In the Ames assay, reverse mutations in the histidine locus (*i.e.* from a histidine requirement to independence) are detected. By virtue of the sensitivity, ease and relatively low cost of performance and duration of the test (48-72 hours), this assay has been used worldwide to test for chemical mutagens. Other microbial systems can also be used (Table 5) but have not been used nearly as extensively as the Salmonella assay. Cultured mammalian somatic cells (which are genetically more similar to cells as they exist in humans than to bacteria) such as the mouse lymphoma (L5178Y) *(39)*, Chinese hamster ovary (CHO) *(14)*, and Chinese hamster lung cells (V79) *(18)*, have also been used to detect gene mutations induced by a variety of chemical agents and radiations. The various systems that have been developed are capable of detecting forward and/or reverse mutations. However, none of the specific gene loci conventionally used in the bacterial or mammalian cell mutagenesis systems (his, tk, oua, hgprt, etc., Table 5) appear to be related in any way to the cellular changes that occur in the induction of neoplasia. These loci are used to measure the capability of a chemical to interact with the DNA of an organism in such a way as to give rise to mutagenic effects. Although it has been widely assumed and theorized that neoplasia arises from mutation, it is known that heritable phenotypic changes also occur in mammalian cells in the process of differentiation and growth and such changes arise without the induction of gene mutation. Consequently, it is necessary to use additional biological endpoints that reflect the capacity of chemicals to cause changes through other types of interactions with the genetic material.

TABLE 5 - CONVENTIONALLY USED SHORT TERM ASSAYS

Type of Assay	Endpoint	Reference
Mutation		
a) Microbial Systems		
Salmonella typhimurium.	Histidine reversion	42
Escherichia coli	Tryptophan reversion	12
b) Mammalian Cell Systems		
Mouse lymphoma (L5178Y)	Thymidine kinase (Bromodeoxyuridine or Trifluorothymidine (TFT) resistance)	39
Chinese hamster ovary (CHO)	Hypoxanthine guanine phosphonbosyl transferase (6-thioguanine (6TG) resistance).	14
Chinese hamster lung (V79)	Hypoxanthine guanine phosphonbosyl transferase (6TG resistance)	18
	Na/K ATPase (Ouabain resistance)	
Human lymphoblasts.	Thymidine kinase (TFT resistance)	44
	hypoxanthine guanine phosphonbosyl ribosyl transferase (6TG-resistance).	
Chromosome Effects		
Many cell types in vitro and in vivo	Chromosomal aberrations.	17,19
	Sister chromatid exchanges.	
	Micronuclei	
	Chromosome gain or loss	
	Translocation	
DNA Damage		
Unscheduled DNA Synthesis (UDS)	Radioactive nucleoside incorporation.	40
Repair deficient bacteria	Differential growth inhibition	20
Mammalian Cell Transformation		
Cellular		35
Syrian hamster embryo (SHE), Balb/c 3T3, C3H/10T1/2	Altered cellular morphology and growth pattern, growth in soft agar, tumorigenicity in appropriate host	35
Viral enhanced/ mediated Syrian hamster embryo (SHE)/ Simian adenovirus type 7 (SA7), Fischer rat embryo cells/ Rausher leukemia virus.		

B. Chromosome Effects

Changes in the structure or number of chromosomes occur frequently in tumor cells *(45)* and cells from individuals exposed to radiation show evidence of chromosome damage *(46)*. Cytogenetic short-term tests have demonstrated that a number of carcinogens can cause structural alterations of chromosomes (aberrations) in the bone marrow of exposed animals or in cultured cells derived from various tissues *(19)*. There is increasing evidence that associates specific chromosomal rearrangements (translocations) with specific neoplastic phenotypes *(47)*. Although no definitive causal associations have been delineated, the use of molecular and recombinant DNA techniques promises to aid in resolving the relationship between translocation of large segments of chromosomes and the specific DNA sequences involved. Another assay often used in conjunction with the search for chromosomal aberrations is the induction of sister chromatid exchanges (SCEs) *(48,49)* that are believed to result from the induction of recombination by DNA damage. However, the association between an increase in the frequency of SCEs in cells *in vitro* or *in vivo* and heritable changes has not not been clearly defined.

It is also possible to identify the production of chromosome fragments (micronuclei) in reticulocytes or erythrocytes *(50)*. Induction of micronuclei has been associated with chemical exposure and is also believed to be indicative of the ability of chemicals to induce chromosomal aberrations, but it is also not yet clear that the induction of micronuclei is related to heritable changes in cellular phenotypes.

A long-range potential value of tests for chromosomal effects is that they may be used to assess the comparative (*trans*-species) toxicity of chemicals. Since the sampling for cells is non-destructive to the exposed animal or individual, and because the assays can be conducted on cultured cells, comparisons are possible between various species and humans. However, such comparisons must be conducted with the understanding that chemical disposition (pharmacokinetics) may vary with species thus giving rise to species-dependent target cell populations. Additionally, the monitoring of human blood cells for chromosomal effects may be a valuable method to assess human exposure to hazardous chemicals *(51)*.

C. DNA damage and repair

These tests do not measure mutation *per se*, but DNA damage, or the cellular repair of such damage, induced by the chemical treatment of microbial or mammalian cells. The most extensively used method is to detect non-S phase DNA synthesis (unscheduled DNA synthesis - UDS) in hepatocytes *(40,52)*, although other cell lines *(40)* have also been used. Techniques that measure DNA strand breaks *(23)* or binding of chemicals to cellular DNA *in vivo* or *in vitro (53)* are also used as assays for DNA damage. Other assays use strains of *E. coli* or *B. subtilis* and are based on differential growth inhibition of DNA repair proficient and deficient strains *(20,54)*.

D. Cellular transformation

Exposure of cultured mammalian cells from a variety of tissues and species to

carcinogens (biological, chemical and radiations) has been shown to result in certain heritable phenotypic changes. A variety of these changes has been described *(35,55)*, but some specific morphological changes have been shown to be highly associated with the capacity of the cells to induce tumors when inoculated into appropriate recipient animals. Because of this ability of transformed cells to produce tumors in recipient hosts, these assays have been considered by some to be the short-term systems most relevant to detection of chemical carcinogens *(6,35,51)*. Several cellular systems derived from rodent embryos have been used to identify chemical carcinogens (Table 5), some of which use concomitant infection with transforming or nontransforming viruses *(35,55)*. There is no clear understanding of the mechanism of *in vitro* transformation, and it is likely that the various heritable alterations can occur through one of several possible mechanisms. Recent innovative advances at the cellular and molecular level are having a major impact on our understanding of this process *(56,57)*. As the implications of studies on oncogenes and transfected transforming genes become better understood and are incorporated into methods for detecting carcinogens (see Chapter 1), there is the promise of significant improvement in the accuracy with which these systems can be used to detect carcinogenic chemicals.

E. In vitro promotion systems

The existence of chemicals which appear to cause (or promote) cancer by mechanisms which may or may not directly involve the genome (see Chapter 1) has necessitated the development of short-term systems that can detect these types of chemicals. However, it should be emphasized that chemicals may have both initiating and promoting activity, and the two properties are not mutually exclusive. The V79-metabolic cooperativity assay *(58)* has been the most thoroughly studied *in vitro* system developed to detect chemicals with promoting activity. A basis for this assay has been attributed to the interruption of cell-to-cell communication, although the exact mechanism is unknown. Further studies with this and other promotion systems are needed before they could be reliably used as test systems to detect chemicals that act as promoters of tumorigenesis.

F. In vivo short-term bioassays

Several short-term *in vivo* bioassays to detect carcinogens and/or promoters have been developed. Of these assays, the mouse skin papilloma system and the strain A mouse lung adenoma have been used for testing while the liver foci bioassay is still in developmental stage. These systems are generally viewed as intermediate in biological relevance between *in vitro* systems and the long-term animal bioassay because *in vivo* metabolism and/or chemical disposition are provided for by *in vivo* exposure. However, as with the *in vitro* tests, the relevance of the endpoints measured to the development of malignant tumors remains an open question.

The mouse skin papilloma system, first reported by Berenblum *(59)*, is based on a multistage (initiation and promotion) hypothesis of cancer induction and has been developed further in other laboratories *(60-64)*. The system relies on the induction of benign papillomas, although carcinomas do develop in the later course of the assay. Variations in experimental test design reportedly allow chemicals to be classified as: initiating carcinogens, promoters, complete carcinogens (chemicals with both initiating and promoting activity), co-carcinogens, and co-promoters *(64)*. Several strains of mice have been used in the assay, but the SENCAR stock appears particularly sensitive *(64)*. The mouse skin papilloma assay is the *in vivo* system in which the greatest numbers of chemicals have been tested *(65)*; however, many of the chemicals investigated have been polycyclic aromatic hydrocarbons, and the usefulness of the system to test other classes of chemicals, or chemicals with organ specificity other than skin, is not presently clearly known.

The strain A mouse lung adenoma system was developed by Shimkin and colleagues *(66-69)*. Although lung adenomas do occur spontaneously in mice, the strain A mouse, unlike other strains, has nearly a 100% lifetime incidence *(69)*. Therefore, the assay appears to rely on decreasing the time-to-tumor onset by the test chemical, although Stoner and Shimkin consider the test chemical to be inducing rather than accelerating the process *(68,69)*. A wide spectrum of chemical classes has been tested in the lung system (for review, see 69) and good correlations of results and the tumorigenicity of the chemicals have been reported although one study using diverse coded chemicals did not find a high correlation *(70)*. The system has been criticized because the adenoma is a benign growth and an analogous tumor does not appear in humans.

The induction of altered foci in rat liver systems has also been studied for use as short-term *in vivo* assays for carcinogens and promoters. However, these systems are relatively new and are still in a developmental stage compared to the mouse skin papilloma and lung adenoma assays. The rodent liver systems have been used by Peraino *et al. (71)*, Pitot *et al. (72)*, and Solt and Farber *(73)*, to study the initiation/promotion phenomena. The endpoints that have been measured include the appearance of foci in the liver which have increased gamma-glutamyl transpeptidase, basophilia, or diaphorase; or foci with decreased glucose-6-phosphatase, adenosine triphosphatase or iron storage (see 74 for review). Chemicals can be tested either for initiating or promoting activity in the liver assays. Since defined protocols have not yet emerged, further development is required before the possible value of the approach in a routine testing program can be assessed. In addition the relationship of the altered liver foci to hepatocellular neoplasms remains to be determined.

III. FACTORS IN TEST EVALUATION

A. Metabolic Activation

Most target cells used in short-term tests have limited endogenous metabolic capability for xenobiotics and, therefore, must be supplemented with an exogenous metabolic activation system. The metabolic activation systems employed in short-term tests may be one of the major limitations in these assay systems, because a chemical may show a different metabolic profile *in vitro* from what would occur *in vivo*. From a testing point of view, a major concern is that specific activating enzymes or pathways may be decreased or lost during preparation of the metabolic activation system, thereby giving a false negative result with the test chemical. Alternatively, enhanced activation of certain chemicals would also be possible (false positive). Essentially, three types of metabolic activation systems have been used with target organisms - host-mediated *(24,75)*, intact cells *(76,77)*, and organ homogenates (usually 9000 x g supernatants called S9 [10,43]). Most short-term assays have used rat liver S9 preparations because of the ease of preparation and storage, capability to activate many chemical classes, and the relative compatibility (nontoxicity) with most target organisms used in genetic toxicity testing. However, it is also known that liver S9 preparations may cause different responses *in vitro* from what would occur *in vivo* due to factors such as: organotropic differences, chemical induction of S9 preparations, and

destruction of certain activation enzymes during S9 preparation, decrease in conjugation capability, etc. Therefore, the inability of S9 preparations to mimic *In vivo* activation has provided the impetus to modify S9 utilization and/or investigate other metabolic activation systems.

Intact cells are another exogenous metabolic activation system used in short-term tests *(77)*. These cells can be primary cultures prepared from various organs (liver is most common), embryonic cells that have been cultured only a short time, or in certain cases, established cell lines. For such an activation system to function, the test chemical must be taken up by the activating cell, be metabolized, and the activated product be transferred to the indicator cell. Thus, a negative response with a cellular system may be a function of the uptake of the test substance and the transfer and stability of active metabolites. Since most cells lose significant metabolic capability with time in culture, certain enzyme systems may be functional at reduced levels. However, this loss of activation capability can be at least partially overcome by the use of freshly prepared primary cells.

In the host-mediated assay, the indicator organism is introduced into the peritoneal cavity or injected into the circulatory system of an intact mammal *(24,75)*. The animal is then treated with the substance under test, sacrificed, and the test organism removed and examined for mutation induction. A wide range of indicator organisms has been used *(24)*. Because an organism foreign to the host is commonly used as the indicator organism, problems arise such as: 1) interaction between the host and the indicator organism, including immunological interactions; and 2) the limited time the indicator organism can be kept in the animal. Therefore, this system is unable to detect many carcinogens and chemicals which show *in vitro* mutagenesis.

Attempts to improve metabolic activation systems are certainly worthwhile and have increased our ability to detect carcinogens using *in vitro* methods. One must accept, however, that it is not possible to mimic *in vivo* metabolism in a petri plate and that negative *in vitro* results may represent "false negatives" and positive *in vitro* results may represent "false positives." These possibly erroneous test results due to metabolic activation can sometimes be resolved through the use of short-term *in vivo* rodent assays. A testing scheme has been proposed by Ashby *(78)* whereby short-term rodent assays are employed to study further chemicals falsely identified in the *in vitro* systems.

B. Statistical Evaluation of Short-term Test Data

The overwhelming majority of short-term test data in the literature has not been statistically evaluated. In general, decisions of "positive" and "negative" are made on a subjective basis or on the basis of simple statistical procedures. Recently, several statistical procedures have been proposed for the Salmonella assays *(79-81)*, the mammalian cell mutation *(82)* assays, and discussions of statistical approaches appear in the respective Gene-Tox reports, but there is no consensus as to which particular procedures should be used for data evaluation.

C. Factors in the Correlation of Assays with Carcinogenesis

Because short-term tests for carcinogens employ neither the organism (humans) or the biological endpoint (cancer) of concern, there is a need for a great deal of extrapolation of test results, and hence the demand for proving the validity of the tests is great. However, after more than a decade of effort to demonstrate the utility of short-term tests in predicting carcinogenicity, it is still difficult to find sufficient test results to assess: 1) the performance of an assay within or among chemical classes; 2) the activity of a chemical in a variety of tests; or 3) the performance of a group of the tests on even a small group of chemicals. This deficiency in the existing data results largely from two factors. First, there has not been enough of an effort to evaluate systematically a large number of chemicals in a group of selected assays, and second, there is a marked deficiency of genetic toxicity results on noncarcinogens. This latter point presents an immediate obstacle to the evaluation of short-term tests for carcinogens, since in the absence of an adequate data base on noncarcinogens, it is not possible to determine the performance of a single test or group of tests in discriminating between carcinogens and non-carcinogens.

1. Definition of Some Terms. The reliability of a short-term test system may be defined as its ability to predict accurately a chemical's *in vivo* carcinogenicity. The standard against which short-term test results are most often compared is the rodent cancer bioassay. A short-term test which correctly identifies, when used without bias, a high percentage of known carcinogens and noncarcinogens is assumed to be capable of predicting the carcinogenicity of chemicals of unknown activity with the same degree of accuracy. The short-term assay's performance can be expressed by three criteria: sensitivity, specificity, and accuracy. Sensitivity is the proportion of carcinogens giving positive results; specificity is the proportion of non-carcinogens giving negative results; and accuracy is the overall proportion of correct results. Unfortunately many, if not all, previous test system evaluations have been characterized by an inadequate number of non-carcinogens, and, hence, a determination of specificity and accuracy is severely limited. Also, the accuracy of short-term tests could be altered by the ratio of carcinogens and non-carcinogens in the test sample *(83)*. Additionally, the expected accuracy of a test battery (see below) is influenced by the number of tests in the battery and the number of individual tests required to be positive before the chemical is considered to be positive in the battery *(84)*.

2. Non-carcinogens and Test Analysis. The inadequate identification of, as well as the use of, non-carcinogens, as has been noted, is one of the key problems. Many chemicals have been identified as non-carcinogenic merely on the basis of their chemical structure or perfunctory carcinogenesis tests. To date, relatively few chemicals used as non-carcinogens in short-term tests have been tested in lifetime studies using adequate chemical exposures. A major source of information on noncarcinogens is that of the NCI/NTP rodent bioassay where two sexes/species are exposed at sufficient concentration of the chemical and for sufficient duration to insure that the chemical has been tested adequately. However, few of these non-carcinogens have been tested in most genetic toxicity assays *(85)*. In addition, factors that determine a "positive" or "negative" short-term test response for a test chemical can vary from laboratory to laboratory or even experiment to experiment within a laboratory. Often parameters such as control background levels, acceptable range of positive control responses, statistical significance of test chemical response, etc., all of which are important in determining whether a chemical is "positive" or "negative", can be subjective. Such uncertainties could lead to an inaccurate estimation of the sensitivity and specificity of short-term tests.

3. Test Endpoints and Carcinogenicity. The development of the Ames test and subsequent short-term tests were predicated on the assumption

that most carcinogens were mutagens and, conversely, that mutagenic chemicals will be carcinogenic. Implicit in this reasoning is the hypothesis that nonmutagens will not be carcinogenic. However, this conclusion put forth by Ames *et al. (5)* and supported by others *(86-90)*, that carcinogens are mutagens and the majority of non-carcinogens are not mutagens, may be based on biased data. The majority of the data used to justify this statement comes from studies where the identity of the chemicals and their carcinogenicity were known to the investigators before they were tested. Because the investigators knew the identity of the chemicals and their "expected" mutagenicity, the test protocols could be modified until the desired results were obtained. While these practices may lead to a true picture of the mutagenicity of a chemical, and are necessary for the assay system development, they probably tend to overestimate the carcinogenicity/ mutagenicity correlations.

The correlation of data obtained for other endpoints (*i.e.* UDS, cell transformation, SCE induction, etc.) with carcinogenesis data also is subject to the same limitations. However, the correlations between results from these other systems and carcinogenesis are further complicated by the lack of an adequate data base on chemicals of different classes, and, in some cases, a lack of demonstrated interlaboratory reproducibility of test results.

A method which may establish more objectively the correlations between short-term test results and rodent (or human) carcinogenicity is one where chemicals, coded so their identity is unknown to the persons conducting the assay, are tested, and all the test results are judged by the same criteria. Thus, the one conducting the test does not know whether the short-term test results and conclusions are "right" or "wrong" until after a determination is made. This approach may minimize the proportion of carcinogens detected, but it also eliminates preconceptions about the activity of the chemical. In actual practice, however, additional testing using modified protocols can be done on chemicals whose structure would lead one to believe that the original test conditions were not appropriate. For example, some benzidine-based dyes require reducing conditions, followed by an oxidative system, rather than a strictly oxidative system for their activation. Therefore, choice of test systems should vary with chemical class or nature of the test chemical, but determinations of response should be independent of knowledge of the chemical's identity.

4. Attempts to Evaluate Short-term Test Performance. Though not definitive, there have been several systematic efforts to evaluate the short-term assays, singly or in combination, for their ability to detect or predict chemical carcinogens. The largest effort to date was conducted by the Gene-Tox Program of the U.S. Environmental Protection Agency and is a multi-phased effort to review and evaluate selected bioassays for mutagenicity and related endpoints using the published literature. Initially, the literature published from 1969-1979 was reviewed to assess test system performances, to determine the chemicals tested, and the ability of the various systems to discriminate between carcinogens and non-carcinogens. Reports on the individual systems have been published in Mutation Research *(12-40)*. During the second phase, a computerized data base of over 2600 chemicals is being analyzed to determine which tests or combination of tests may: 1) be used for routine screening or need further development; 2) determine if specific types of genetic damage are related to chemical class; 3) discriminate between carcinogens and non-carcinogens; and 4) predict heritable mutagenic risk. To aid in evaluating system performance, the Gene-Tox Program convened a panel to review and evaluate the literature on chemicals designated as carcinogenic and to develop a list of carcinogens and non-carcinogens which could be used in determining system performance.

The International Program for the Evaluation of Short-Term Tests for Carcinogenicity *(41)* was a coordinated effort designed to determine and compare the ability of a series of short-term tests to identify carcinogens and noncarcinogens. Sixty laboratories participated, using their own laboratory protocols, to test coded samples of chemicals supplied from a common source. Test results from this collaborative study led to the following general conclusions. First, while short-term tests are useful in the assessment of potential carcinogenicity, no single test or group of tests was capable of detecting correctly all carcinogens and noncarcinogens. Secondly, there are *in vitro* eukaryotic assays that may complement the bacterial tests by identifying carcinogens not detected in bacteria.

Following the completion of the collaborative study discussed above, a subsequent study was initiated to focus specifically on the evaluation of *in vitro* eukaryotic assays with potential for identifying carcinogens not detected, or poorly detected, in bacterial mutation tests *(91)*.

Other systematic attempts to evaluate the short-term assays include an analysis of their ability to detect pesticides *(92)* and a series of reports prepared for the International Commission for Protection Against Environmental Mutagens and Carcinogens (ICPEMC) *(78,93)*. The NIH/NTP is currently conducting a systematic genetic toxicity assay of chemicals, both carcinogens and non-carcinogens, tested or under test in the rodent, two sexes/species carcinogenesis assay. The major categories of genetic toxicity are represented, and the chemicals are tested under code.

IV. PRACTICAL ASSAY UTILIZATION

A. Assay Selection

The proposed use of short-term tests to detect or predict chemical carcinogens is based on two factors: first, that they require less time to conduct than a rodent carcinogenicity study; and, second, that they are less costly. Currently used tests require from a few days to several weeks to conduct, and the costs may range from 1000 to 20,000 dollars per chemical.

Since there has been little success in establishing a cause-effect relationship between specific genetic changes and cancer, all categories of induced genetic change may be potential mechanisms by which cancers arise, and this is reflected in the variety of endpoints detected by short-term tests. Current short-term testing practices generally involve groups of tests selected on the basis of theoretical prudence rather than on an empirical demonstration of their ability to predict carcinogenicity. By theoretical prudence, it is meant that a range of organisms (bacteria, yeasts, cultured mammalian cells, intact rodents) and endpoints (gene mutations, chromosomal damage, DNA damage, and *in vitro* neoplastic transformation) are employed in an attempt not to miss any effect that might be related to the carcinogenicity of the test agent. However, until the time that basic research on mechanisms of cancer induction provides us with a better understanding of the process, it will be necessary to base testing strategies on a combination of theoretical prudence and correlative evidence obtained by comparing short-term test results with carcinogenicity test results.

In the selection of short-term tests, factors other than ability to discriminate between carcinogens and

noncarcinogens must be considered. Reproducibility of test results is a paramount consideration that applies not only to reproducibility within a laboratory but also to agreement of test results among laboratories. When testing chemicals, the ability to reproduce test results qualitatively is more important than quantitative reproducibility. Quantitative differences in test responses represent the degree of response and may be attributed to protocol variables. However, qualitative differences are more serious and affect the judgment of whether a test chemical is "positive" or "negative." Therefore, short-term test selection should be based on reproducibility as well as reliability, sensitivity, specificity, and accuracy. In addition, the degree of development of a particular assay system should also be taken into consideration when selecting tests for use in a screening program. This includes a consideration of the number of laboratories performing the assay, degree of protocol standardization, and a consideration of the number of chemicals and chemical classes which have been tested in the assay.

B. Assay Application

The application of short-term tests to chemical safety evaluation raises questions at several levels of the process. As discussed above, assay performance must be known to determine which tests are useful. Next, it must be decided how many tests to use and in what scheme or order they will be utilized. Tier and Battery testing approaches have been proposed. In the Tier approach, the choice of assay system varies depending on the activity of the chemical in the previous system, beginning usually with the *S. typhimurium* assay. Therefore, decisions are made after each test result is obtained. With the Battery approach, the test chemical is assayed in a group (battery) of systems and a decision on the activity of the chemical made when all results have been obtained.

Once test results from the short-term test scheme have been obtained, it must then be decided how to utilize the results. Within the framework of testing or evaluating chemicals for potential carcinogenicity, where possible regulatory action on the chemical may be involved, short-term test results can be used to influence the process at numerous points including:

(a) The nomination and/or selection of the chemical for prechronic and chronic studies;

(b) The selection of prechronic studies to be conducted;

(c) The decision, used in combination with prechronic results, to proceed with chronic studies;

(d) The evaluation of chronic toxicity results, as a source of additional information;

(e) The design of postchronic studies, again as an additional source of information, to further elucidate mechanisms of activity.

In the industrial setting, short-term tests can be (and are) used extensively in product development, process improvements, product registration, evaluation of occupational environments, etc.

It is generally agreed that a scheme employing multiple tests is a better approach to carcinogen screening than the use of a single test. The tests used should not be limited to prokaryotic or lower eukaryotic test systems and should include assays for more than one genetic endpoint. A problem that is immediately encountered when multiple test systems are used, however, is a mixture of positive and negative results. The resolution of this problem is not easy, and several authors *(94-96)* have attempted to deal with the issue. For the present, there are at least three approaches to dealing with such conflicting test results. One may: 1) use a weight-of-evidence approach to call a chemical positive by some predetermined criterion; 2) use one's best scientific-judgment to reach a conclusion on a chemical-by-chemical basis; or 3) simply postpone judgment until the time that a sufficiently large data base is available to permit an unequivocal conclusion from any pattern of positive and negative results. This last choice is rarely acceptable, and current practice generally utilizes some combination of the first two. The systematic accumulation of additional knowledge on cross-system testing of various classes of chemicals should provide insight into the proper choices of short-term systems in assessing potential carcinogenic activity.

C. Future Directions

Short-term tests for genetic toxicity and other effects continue to hold promise of improving our ability to identify potential chemical carcinogens. However, there is at present insufficient data available to justify the use of current tests to supplant animal bioassays. To improve the interpretation of short-term test results, there is a need for a systematic effort to obtain across-test results using *optimal* test protocols and coded chemicals, with particular emphasis on non-carcinogens. It is clear from available results that no one assay system is adequate, but it is not yet possible to determine which combination of test systems is most appropriate for most carcinogens. Studies are needed to determine if human cells or tissues would be better predictors of human carcinogenicity than the currently used rodent systems. Some carcinogens, by virtue of their intrinsic mechanism of action, will not be identified by available tests, and we must continue to search for assay systems that accommodate the various molecular mechanisms. Concomitantly, we must continue to improve our understanding of the results of rodent assays for carcinogens. Where there is a dichotomy of results between genetic toxicity or other short-term test systems and the results of rodent carcinogenicity, appropriate follow-up studies in the appropriate systems should be conducted to determine the basis for such differences.

V. SUMMARY

While many assay systems have been developed and proposed to detect or assess the genetic toxicity of chemicals, they can be generally grouped into four categories: gene mutation, chromosome effects, DNA damage, and transformation. The internal momentum of the field has resulted in the emergence of a few systems or tests in each category that have been used extensively to assess potential carcinogenicity, and the various assays within each grouping have characteristic strengths and weaknesses. The test systems must be demonstrated to have reliability, sensitivity, specificity and accuracy and to be reproducible both within and between laboratories. The various systems also measure different biological endpoints, and there is no reason to expect that all chemicals will cause an effect in all systems. Since no causal relationship has been established between any specific mechanism of induction and any specific type of neoplasia, we are presently limited in our ability to predict potential carcinogenicity of a chemical, particularly when there is apparent disagreement between different *in vitro* test results.

The consensus of available information suggests that short-term tests, when properly used and validated, can provide strong indications of potential carcinogenicity. However, based upon our limited knowledge of the mechanisms of cancer induction, it appears that there will be classes of carcinogens that are not detected by currently available short-term tests.

Chemicals which act by a genetic mechanism but which have a high degree of organ, species, or sex specificity may be predictably difficult to detect in any *in vitro* genetic toxicity system since the short-term system may not adequately simulate the basis for these specificities. Additionally, chemicals which appear to act by non-genetic mechanisms would not be detected in currently available short-term tests.

VI. REFERENCES

1. Boveri T. The origin of malignant tumors. Baltimore: Williams and Wilkins 1929.
2. Burdette WJ. Significance of mutation in relation to the origin of tumors: a review. Cancer Res 1955; 15:201-226.
3. Miller JA. Carcinogenesis by chemicals: an overview. Cancer Res 1970; 30:559-576.
4. Malling HV. Dimethylnitrosamine: formation of mutagenic compounds by interations with mouse liver microsomes. Mutat Res 1971; 13:425-429.
5. Ames BN, Durston WE, Yamasaki E, Lee FD. Carcinogens are mutagens: a simple test system combining liver homogenates for activation and bacteria for detection. Proc Natl Acad Sci USA 1973; 70:2281-2285.
6. Hollstein J, McCann J, Angelosanto F, Nicols W. Short-term tests for carcinogens and mutagens. Mutat Res 1979; 65:133-226.
7. Purchase IFH. An appraisal of predictive tests for carcinogenicity. Mutat Res 1982; 99:53-71.
8. Weisburger JH, Williams GM. In: Basic science of poisons. Doull J, Klaassen CD, Amdur MO, eds. Toxicology. 2nd ed. New York:MacMillan, 1970.
9. Committee on Chemical Environmental Mutagens; National Research Council. Identifying and estimating the genetic import of chemical mutagens. Wash DC, National Academy Press, 1983.
10. Ames BN. Dietary carcinogens and anticarcinogens. Science 1983; 221:1256-1264.
11. Hartman PE. Mutagens: some possible health impacts beyond carcinogenesis. Environ Mut 5:139-152.
12. Brusick DJ, Simmon VF, Rosenkranz KS, Ray VA, Stafford RS. An evaluation of the *Escherichia coli* WP425 and WP425 uvrA reverse mutations assay. Mutat Res 1980; 76:169-190.
13. Generoso WM, Bishop JB, Gosslee DG, Newell GW, Sheu CJ, Von Halle E. Heritable translocation test in mice. Mutat Res 1980; 76:191-215.
14. Hsie AW, Casciano DA, Couch DB, Krahn DF, O'Neill JP, Whitfield BL. The use of Chinese hamster ovary cells to quantify specific locus mutation and to determine mutagenicity of chemicals. A report of the Gene-Tox Program. Mutat Res 1981; 86:193-214.
15. Russell LB, Selby PB, Von Halle E, Sheridan W, Valcovic L. The mouse specific-locus test with agents other than radiations: interpretation of data and recommendations for future work. Mutat Res 1981; 86:329-354.
16. Russell LB, Selby PB, Von Halle E, Sheridan W, Valcovic L. Use of the mouse spot test in chemical mutagenesis: interpretation of past data and recommendations for future work. Mutat Res 1981; 86:355-379.
17. Latt SA, Allen J, Bloom SE, Carrano A, Falke E, Kram D, Schneider E, Schreck R, Tice R, Whitfield B, Wolff S. Sister-chromatid exchanges: a report of the Gene-Tox Program. Mutat Res 1981; 87:17-62.
18. Bradley MO, Bhuyan B, Francis MC, Langenbach R, Peterson A, Huberman E. Mutagenesis by chemical agents in V79 Chinese hamster cells: a review and analysis of the literature. A report of the Gene-Tox Program. Mutat Res 1981; 87:81-142.
19. Preston RJ, Au W, Bender MA, Brewen JG, Carrano AV, Heddle JA, McFee AF, Wolff S, Wassom JS. Mammalian in vivo and in vitro cytogenetic assays: A report of the U.S. EPA Gene-Tox Program. Mutat Res 1981; 87:143-188.
20. Leifer Z, Kada T, Mandel M, Zeiger E, Stafford R, Rosenkranz HS. An evaluation of tests using DNA repair-deficient bacteria for predicting genotoxicity and carcinogenicity. A report of the U.S. EPA Gene-Tox Program. Mutat Res 1981; 87:211-297.
21. Kafer E, Scott BR, Dorn GL, Stafford R. *Aspergillus nidulans*: systems and results of tests for chemical induction of mitotic segregation and mutation. I. Diploid and duplication assay systems. A report of the U.S. EPA Gene-Tox Program. Mutat Res 1981; 98:1-48.
22. Scott BR, Dorn GL, Kafer E, Stafford R. *Aspergillus nidulans*: systems and results of tests for induction of mitotic segregation and mutation. II. Haploid assay systems and overall response of all systems. A report of the U.S. EPA Gene-Tox Program. Mutat Res 1981; 98:49-94.
23. Larsen (Mavournin) KH, Brash D, Cleaver JE, Hart RW, Maher VM, Painter RB, Sega GA. DNA repair assays as tests for environmental mutagens. A report of the U.S. EPA Gene-Tox Program. Mutat Res 1982; 98:287-318.
24. Legator MS, Bueding E, Batzinger R, Conner TH, Eisenstadt E, Farrow MG, Ficsor G, Hsie A, Seed J, Stafford RS. An evaluation of the host-mediated assay and body fluid analysis. A report of the U.S. EPA Gene-Tox Program. Mutat Res 1982; 98:319-374.
25. Constantin MJ, Owens, ET. Introduction and perspectives of plant genetic and cytogenetic assays. A report of the U.S. EPA Gene-Tox Program. Mutat Res 1982; 99:1-12.
26. Constantin MJ, Nilan RA. Chromosome aberration assays in barley (*Hordeum vulgare*). A report of the U.S. EPA Gene-Tox Program. Mutat Res 1982; 99:13-36.
27. Constantin MJ, Nilan R. The chlorophyll-deficient mutant assay in barley (*Hordeum vulgare*). A report of the U.S. EPA Gene-Tox Program. Mutat Res 1982; 99:37-49.
28. Redei GP. Mutagen assay with Arabidopsis. A report of the U.S. EPA Gene-Tox Program. Mutat Res 1982; 99:243-255.
29. Ma T-H. Vicia cytogenetic tests for environmental mutagens. A report of the U.S. EPA Gene-Tox Program. Mutat Res 1982; 99:257-271.
30. Grant WF. Chromosome aberration assays in Allium. A report of the U.S. EPA Gene-Tox Program. Mutat Res 1982; 99:273-291.
31. Ma T-H. Tradescantia cytogenetic tests (root-tip mitosis, pollen mitosis, pollen mother-cell meiosis). A report of the U.S. EPA Gene-Tox Program. Mutat Res 1982; 99:293-302.
32. Van't Hof J, Schairer LA. Tradescantia assay system for gaseous mutagens. A report of the U.S. EPA Gene-Tox Program. Mutat Res 1982; 99:303-315.
33. Plewa MJ. Specific-locus mutation assays in *Zea mays*. A report of the U.S. EPA Gene-Tox Program. Mutat Res 1982; 99:317-337.
34. Vig BK. Soybean (*Glycine max* (L.) merrill) as a short-term assay for study of environmental mutagens. A report of the U.S. EPA Gene-Tox Program. Mutat Res 1982; 99:339-347.
35. Heidelberger C, Freeman AE, Pienta RJ, Sivak A, Bertram JS, Casto BC, Dunkel VC, Francis MW, Kakunage T, Little JB, Schechtman LM. Cell transformation by chemical agents; a review and analysis of the literature. A report of the U.S. EPA Gene-Tox Program. Mutat Res 1983; 114:283-385.
36. Wyrobek AJ, Gordon LA, Burkhart JG, Francis MW, Kapp Jr. RW, Letz G, Malling HV, Topham JC, Whorton MD. An evaluation of the mouse sperm morphology test and other sperm tests in nonhuman mammals. A report of the U.S. EPA Gene-Tox Program. Mutat Res 1983; 115:1-72.
37. Wyrobek AJ, Gordon LA, Burkhart JG, Francis MW, Kapp Jr. RW, Letz G, Malling HV, Topham JC, Whorton MD. An evaluation of human sperm as indicators of chemically induced alterations of spermatogenic function. A report of the U.S. EPA Gene-Tox Program. Mutat Res 1983; 115:73-148.
38. Loprieno N, Barale R, Von Halle ES, von Borstel RC. Testing of chemicals for mutagenic activity with Schizosaccharomyces pombe. A report of the U.S. EPA Gene-Tox Program. Mutat Res 1983; 115:215-223.
39. Clive D, McCuen R, Spector JFS, Piper, C, Mavournin KH. Specific gene mutations in L5178Y cells in culture. A report of the U.S. EPA Gene-Tox Program. Mutat Res 1983; 115:225-251.
40. Mitchell AD, Casciano DA, Meltz ML, Robinson DE, San RHC, Williams GM, Von Halle ES. Unscheduled DNA synthesis tests. A report of the U.S. EPA Gene-Tox Program. Mutat Res 1983; 123:363-410.
41. de Serres FJ, Ashby J, eds. Evaluation of short-term tests for carcinogens: Report of the International Collaborative Program. New York:Elsevier/North Holland, 1981.
42. Maron DM, Ames BN. Revised methods for the Salmonella mutagenicity test. Mutat Res 1983; 113:173-215.
43. Ames BN, McCann J, Yamasaki E. Methods for detecting carcinogens and mutagens with the Salmonella/mammalian-microsome mutagenicity test. Mutat Res 1982; 99:53-71.
44. Thilly WG, DeLuca JG, Furth EE, Hoppe H, IV, Kaden DA, Krolewski Liber HL, Skopek TR, Slapikoff SA, Tizard RJ, Penman BW. Gene locus mutation assays in diploid human lymphoblast lines. In: de Serres FJ and Hollaender A, eds. Chemical Mutagens, vol 6, New York:Plenum Press, 1980.
45. Rowley JD. Chromosome abnormalities in cancer. Cancer Genet Cytogenet 1980; 2:175-198.

46. Sankaranarayanan K. Genetic effects of ionizing radiation in multicellular eukaryotes and the assessment of genetic radiation hazards in man. Amsterdam:Elsevier Biomedical Press, 1982.

47. Yunnis JJ. The chromosomal basis of human neoplasia. Science 1983; 221:227-236.

48. Tayler JH, Woods PS, Hughes WL. The organization and duplication of chromosomes as revealed by autoradiographic studies using tritium-labelled thymidine. Proc Natl Acad Sci USA 1957; 43:122-127.

49. Latt SH. Microfluorometric detection of DNA replication in human metaphase chromosomes. Proc Natl Acad Sci USA 1973; 70:3395-3399.

50. Heddle, JA, Hite M, Kirkhart B, Mavournin K, MacGregor JT, Newell GW, Salamone MF. The induction of micronuclei as a measure of genotoxicity. A report of the U.S. EPA Gene-Tox Program. Mutat Res 1983; 123:61-118.

51. Brusick D. Principles of genetic toxicology. New York:Plenum Press, 1980.

52. Williams GM. Carcinogen induced DNA repair in primary rat liver cell cultures: a possible screen for chemical carcinogens. Cancer Lett 1976; 1:231-236.

53. Lutz WK. In vivo covalent binding of organic chemicals to DNA as a quantitative indicator in the process of chemical carcinogenesis. Mutat Res 1979; 65:289-356.

54. Slater EE, Anderson MD, Rosenkranz HS. Rapid detection of mutagens and carcinogens. Cancer Res 1971; 31:970-973.

55. Heidelberger C. Chemical carcinogenesis. Annu Rev Biochem 1975; 44:79-121.

56. Weinberg RA. Oncogenes of spontaneous and chemically induced tumors. Adv Cancer Res 1982; 36:149-163.

57. Bishop JM. Retroviruses and cancer genes. Adv Cancer Res 1982; 37:1-28.

58. Yotti LP, Chang CC, Trosko JE. Elimination of metabolic cooperation in Chinese hamster cells by a tumor promotor. Science 1979; 206:1089-1091.

59. Berenblum I. The cocarcinogenic action of croton resin. Cancer Res 1941; 1:44-48.

60. Boutwell RK. Some biological aspects of skin carcinogenesis. Prog Exp Tumor Res 1964; 4:207-250.

61. Van Duuren BL, Sivak A, Segal A, Seidman I, Katz C. Dose-response studies with a pure tumor-promoting agent, phorbol myristate acetate. Cancer Res 1973; 33: 2166-2172.

62. Hecker E. Structure-activity relationships in diterpene esters irritant and cocarcinogenic to mouse skin. In: Slaga TJ, Sivak A, Boutwell RK, eds. Mechanisms of Tumor Promotion and Cocarcinogenesis. Carcinogenesis, vol 2. New York:Raven Press, 1978.

63. Slaga TJ. Overview of tumor promotion in animals. Environ Health Perspect 1983; 50:3-14.

64. Slaga TJ, Fischer SM, Triplett LL, Nesnow S. Comparison of complete carcinogenesis and tumor initiation and promotion in mouse skin: the induction of papillomas by tumor initiation - promotion of a reliable short-term assay. J Am Coll Toxicol 1982; 1:83-99.

65. Pereira MA. Mouse skin bioassay for chemical carcinogenesis. J Am Coll Toxicol 1982; 1:47-82.

66. Shimkin MB. Induced pulmonary tumors in mice: II. Reaction of lungs of strain A mice to carcinogenic hydrocarbons. Arch Pathol 1940; 29:239-255.

67. Andervont HB, Shimkin MB. Biologic testing of carcinogens: II. Pulmonary-tumor-induction technique. J Natl Cancr Inst 1941; 1:225-239.

68. Shimkin MB, Stoner GD. Lung tumors in mice: application to carcinogenesis bioassay. Adv Cancer Res 1975; 21:1-58.

69. Stoner GD, Shimkin MB. Strain A mouse lung tumor bioassay. J Am Coll Toxicol 1982; 1:145-169.

70. Maronpot RR, Witsch HP, Smith LH, McCoy JL. Recent experience with the strain A mouse pulmonary tumor bioassay model. In: Waters MD, Sandhu SS, Lewtas J, Claxton L, Chernoff N, Nesnow S, eds. Short-term Bioassays in the Analysis of Complex Environmental Mixtures III. New York:Plenum Press, 1983.

71. Peraino C, Fry RJM, Staffeldt E. Reduction and enhancement by phenobarbital of hepatocarcinogenesis induced in the rat by 2-acetylaminofluorene. Cancer Res 1971; 31:1506-1512.

72. Pitot HC, Barsness L, Goldsworthy T, Kitagawa T. Biochemical characterization of stages of hepatocarcinogenesis after a single dose of diethylnitrosamine. Nature 1978; 271:456-457.

73. Solt E, Farber E. New principle for the analysis of chemical carcinogenesis. Nature 1976; 263:701-703.

74. Pereira MA. Rat liver foci bioassay. J Am Coll Toxicol 1982; 1:101-117.

75. Gabridge MG, Legator MS. A host-mediated assay for the detection of mutagenic compounds. Proc Soc Exp Biol Med 1969; 130:831-834.

76. Huberman E, Sachs L. Cell-mediated mutagenesis of mammalian cells with chemical carcinogens. Int J Cancer 1974; 13:326-333.

77. Langenbach R, Oglesby L. The use of intact cellular activation systems in genetic toxicology assays. In: de Serres FJ, ed. Chemical Mutagens, vol. 8. New York:Plenum Press, 1982.

78. Ashby J. The unique role of rodents in the detection of possible human carcinogens and mutagens. Mutat Res 1983; 115:177-213.

79. Margolin BH, Kaplan N, Zeiger E. Statistical analysis of the Ames Salmonella/microsome test. Proc Natl Acad Sci USA 1981; 78:3779-3783.

80. Bernstein L, Kaldor J, McCann J, Pike MC. An empirical approach to the statistical analysis of mutagenesis data from the Salmonella test. Mutat Res 1982; 97:267-281.

81. Stead AG, Hasselblad V, Creason JP, Claxton L. Modeling the Ames test. Mutat Res 1981; 85:13-27.

82. Snee RD, Irr JD. Design of a statistical method for the analysis of mutagenesis at the hypoxanthine-guanine phosphoribosyl transferase locus of cultured Chinese hamster ovary cells. Mutat Res 1981; 85:77-93.

83. Purchase IFH. ICPEMC working paper 2/6: An appraisal of predictive tests for carcinogenicity. Mutat Res 1982; 99:53-71.

84. Heinze JH, Poulsen NK. The optimal design of batteries of short-term tests for detecting carcinogens. Mutat Res 1983; 117:259-269.

85. McCann J, Choi E, Yamasaki E, Ames B. Detection of carcinogens as mutagens in the Salmonella/microsome test: assay of 300 chemicals. Proc Natl Acad Sci USA 1975; 72:5135-5139.

86. Shelby MD, Stasiewicz S. Chemicals showing no evidence of carcinogenicity in long-term, two-species rodent studies: their use in short-term test evaluations. Environ Mut 1984; 6:871-878.

87. Rinkus SJ, Legator MS. Chemical characterization of 465 known or suspected carcinogens and their correlation with mutagenic activity in the *Salmonella typhimurium* system. Cancer Res 1979; 39:3289-3318.

88. Bartsch H, Malaveille C, Camus AM, Martel-Planche G, Brun G, Hautefeuille A, Sabadie N, Barbin A, Kuroki T, Drevon C, Piccoli C, Montesano R. Validation and comparative studies on 180 chemicals with Salmonella typhimurium strains and V79 Chinese hamster cells in the presence of various metabolizing systems. Mutat Res 1980; 76:1-50.

89. Sugimura T, Sato S, Nagao M, Yahagi T, Matsushima T, Seino Y, Takechi, M, Kawachi T. Overlapping of carcinogens and mutagens. In: Magee PN *et al.*, eds. Fundamentals in Cancer Prevention. Tokyo: University of Tokyo Press, 1976.

90. Purchase IFH, Longstaff E, Ashby J, Styles JA, Anderson D, Lefevre PA, Westwood FR. An evaluation of six short-term tests for detecting organic chemical carcinogens. Br J Cancer 1978; 37:873-959.

91. Ashby J, de Serres, FJ, Draper MH, Ishidate M, Matter BE, Shelby M. The two IPCS collaborative studies on short-term tests for genotoxicity and carcinogenicity. Mutat Res 1983; 109:123-126.

92. Waters M, Sandhu S, Simmon V, Mortelmans K, Mitchell A, Jorgenson T, Jone s D, Valencia R, Garret D. Study of pesticide genotoxicity. In: Fleck RA, Hollaender A, eds. Genetic toxicology and agricultural perspectives. Basic Life Sciences, Vol 21. New York: Plenum Press, 1982.

93. Sobels FH. Editorial introduction to papers produced by the new committee 1 of ICPEMC on "The development and implementation of a scheme to analyze and interpret short-term genetic test battery results." Mutat Res 1983; 115:175-176

94. Brusick D. Unified scoring system and activity definitions for results from *in vitro* and submammalian mutagenesis test batteries. In: Richmond Cr, Walsh PJ, Copenhaver ED, eds. Health risk analysis: Proceedings of the third life sciences symposium. Philadelphia: The Franklin Institute Press, 1981.

95. Squire RA. Ranking animal carcinogens: a proposed regulatory approach. Science 1981; 214:877-880.

96. Weisburger JH, Williams GA. Carcinogen testing: current problems and new approaches. Science 1981; 214:401-407.

CHAPTER 3--LONG-TERM CARCINOGEN BIOASSAY

I. LONG-TERM CARCINOGEN BIOASSAY: GUIDELINES FOR PROTOCOLS

A. Background

The current carcinogen bioassay in rodents has its origins in research efforts, begun in the 1920s, that sought to determine the carcinogenic potential of chemicals as well as to delineate the mechanism by which they produce cancer *(1,2)*. Animal strains were developed and tested for their specific sensitivity or resistance to certain types of cancer. These studies had as their central focus the understanding of the mechanism of carcinogenesis *(1,2)*. While these experiments led to the induction of cancer in laboratory animals and revealed many new carcinogens, most of the investigators did not intend their highly specialized test systems to be used as routine methods for testing large numbers of chemicals. Only in the mid 1960s, with the advent of the bioassay program at the National Cancer Institute (NCI), did large-scale systematic testing using a relatively standard protocol really begin *(3)*. As a consequence, only recently has there been a reasonably adequate data base on a large number of diverse chemicals tested in a relatively uniform way *(4,5)*. The lack of such a data base, during the earlier developmental period, contributed to some degree of confusion and speculation as to how carcinogens should be tested and how the results from such tests should be interpreted. One finding was clear; known human carcinogens, with the single exception of arsenic, are carcinogenic in appropriately conducted studies in some animal system (arsenic has recently been reported to produce carcinomas of the respiratory tract in hamsters [6]). This does not mean that all chemicals found carcinogenic in animals will turn out to be carcinogenic in humans. Because of differences in the production of critical metabolites and because of other differences between species, a given carcinogen may not produce cancer in all species or in all strains of rodents. Many substances are known that seem to be carcinogenic in one animal species but not in another. But a finding of carcinogenicity in rodents is proof that the chemical is carcinogenic in a mammalian species. And "in the absence of adequate data on humans, it is reasonable, for practical purposes, to regard chemicals for which there is sufficent evidence of carcinogenicity in animals as if they presented a carcinogenic risk to humans" (Preamble, IARC monographs, *e.g.*, ref. 7) The knowledge and experience accumulated over the last decade, while by no means answering all questions, have helped to focus the issues and have provided a basis for developing some common procedures for conducting and interpreting long-term bioassays.

B. Critical Design Criteria

Several national and international groups have published guidelines on the design and conduct of long-term bioassays *(7-18)*, and the issue continues to be pursued. For example new guidelines are currently being developed by the NTP Ad Hoc Panel on Chemical Carcinogenesis Testing and Evaluation *(19)*. Essentially, the long-term test involves testing compounds in animals to obtain information relevant to humans. When assessing the results of toxicological testing of any chemical, the limitations of the tests must be borne in mind. Of necessity, animal systems are used and the results then extrapolated to humans. Such extrapolations may not always be accurate either qualitatively or quantitatively. In some areas of cancer testing, uncertainty still exists concerning the most appropriate experimental design. For example, there are varying opinions on the optimum duration of a study and the number and types of species of test animals that are considered appropriate. It is probably unwise to adopt rigid "standard" test methods for all chemicals; judgment must be exercised to select an appropriate model for a particular chemical *(15)*. Obviously, due to limitations of sample size (the number of animals on test), low incidence effects can go unrecognized. Consequently, although the results of carcinogenicity testing will, in many cases, give good indications of possible hazard, they do not eliminate the need for continuing careful observations of humans *(8)*. In fact, most known human carcinogens, such as 2-naphthylamine and chlornaphazine, were first discovered by observing humans, and only later were they found carcinogenic in animals. The reverse was true for other compounds such as diethylstilbestrol (DES), vinyl chloride, or bis(chloro-methyl)ether.

The following constitutes a series of major issues which should be carefully considered in the design of a carcinogen bioassay.

1. Species and Strain of Animal. Ideally, the appropriate animal species and strain is one, which, for the chemical tested, is able to predict human response accurately. However, the fact is that only three species have been routinely used in carcinogen bioassay *(20)*. All three are rodents: the mouse, the rat and the hamster. Only these species generally meet the requirements that the animals be readily available, that the bioassays are likely to be relevant to humans, and that the bioassays be cost effective and relatively quickly performed. Included in these requirements are: 1) the life span of the species must be of reasonable length, long enough to allow time for tumors to develop and short enough to be economically feasible (2-3 years); 2) the animal should be small and should live and breed well in captivity; 3) there should be similarity to humans in regard to metabolism and pathology responses; 4) strains should be those most likely to be susceptible to cancer from the particular chemical yet not hypersensitive. Only these three species and a few strains currently meet these specifications, however, there are potentially many more inbred or hybrid strains which can provide a wide range of diversity in their metabolism of and response to carcinogens or carcinogenic precursors. There is still no scientific consensus over whether inbred or outbred strains of rodents are better for long-term studies *(20-25)*. While the use of inbred strains may produce more precise and more stable biological responses, more prosaic strains may more accurately reflect human response, are less expensive, often hardier and are less prone to deterioration due to genetic drift. The NTP Ad Hoc Panel on Chemical Carcinogenesis Testing and Evaluation strongly recommended but did not insist 'that NTP bioassays be restricted to inbred or hybrid strains' *(19)*. When the test substance is chemically related to other human carcinogens, the strain chosen can be that used for the carcinogenic chemical analogue. Extensive experience in using a particular strain is often a strong reason for continuing its use despite its acknowledged limitations *(17-26)*. One major advantage is the availability of abundant data on spontaneous tumor rates at specific organ sites.

Because of genetic differences in tumor susceptibility the use of only a single strain of animal rather than an array of strains represents an experimental compromise, but an essential one given the large cost of a single long-term study. The possibility of a false negative result is reduced by the current recommendation to use two species instead of one in a carcinogen bioassay. More than 90% of the time these species are the rat and mouse. The Fischer inbred (F344) rat and the B6C3F1 hybrid mouse are commonly chosen for carcinogen bioassay, in large part

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because of the experience gained by the NCI from their use *(4,19,27)*. Despite its long history, the continued use of the B6C3F1 hybrid mouse by the NTP is currently under review because of the difficulty in interpreting the significance of proliferative liver lesions *(4,8,9,19,28-30)*. The merits of using only a rat strain instead of both a rat and a mouse strain have also been recently discussed *(30)*. This issue and others relating to species selection are considered in the NTP Ad Hoc Panel's Report *(19)*.

2. Animal Care and Diet. Stringent control of environmental conditions and proper animal care techniques are mandatory for meaningful results *(12)*. Access to animal facilities should be limited to essential personnel to prevent excessive traffic and the transmission of disease. Factors such as housing conditions, intercurrent disease, drug therapy, impurities in diet, air, water, and bedding, and animal care facilities can significantly influence the outcome of animal experiments.

The control of intercurrent infectious diseases or parasites is facilitated if rodents are bred and maintained in conditions free from specific pathogenic organisms. Animals from outside sources should not be placed on test without an adequate period of quarantine. Bedding to be used in long-term studies should be absorbent, sterilizable and free of pesticides, other toxic contaminants, or enzyme inducing substances. Animals should be housed in quiet, well-ventilated rooms, having controlled lighting, temperature and humidity. It is advisable to balance dose groups over rows, columns and racks to allow for potential location effects across dosage levels. Alternatively it may be advisable to rotate cages or racks periodically to balance potential sources of variability. Eye lesions (retinal and lenticular degeneration) have been observed with animals kept in cages in closest proximity to light. Experiments should not be initiated until animals have been allowed a one to two week period of acclimatization to environmental conditions.

The absence of biases in selection and allocation of animals between control and treatment groups, as regards diet, husbandry, necropsy and pathology is crucial *(31)*. Since mice are reservoirs of asymptomatic viral disease, it is best to house mice and rats separately where possible. However, it is acceptable practice to house rats and mice in the same room if: 1) they are free of disease; 2) they come from the same supplier; and 3) they are being treated with the same chemical. It is preferable not to mix animals from different suppliers or from two locations of the same supplier. Housing disease-free animals in the same room reduces the chance for differences due to environmental variables. If a population of animals is diseased, then consideration must be given to aborting the study and starting over. Drug therapy should be avoided in bioassays since it is a confounding factor.

Control animals and test animals should be housed in the same room unless there is a possibility of cross-exposure. The availability of hoods, laminar air flow rooms, caging devices and personnel practices all affect the extent to which experiments should be separated or combined. To minimize the chance for inadvertent cross-exposure of animals to the test substance, it is advisable to test only one chemical in each room. If more than one chemical is tested in a room, the actual cross-contamination of chemicals within the room must be measured. Good laboratory practice need not rule out all flexibility nor restrict the use of judgment or impose unnecessary expenses *(32,33)*.

Cages, racks and other equipment must be regularly and thoroughly cleaned. Periodic analysis of the basal diet should be conducted for both nutrients and unintentional contaminants, including carcinogens. The results from such analyses should be retained and included in the final report on each test substance. The essential dietary requirements of rodents are relatively high in protein and low in calories derived from fat (about 2-4% of calories). In the administration of substances by gavage using vegetable oils, the amount of fat ingested in rats can reach 30% *(34)*. These facts, coupled with emerging data on the influence of dietary protein and fat on cancer incidence, and the presence of trace levels of carcinogens in animal diets may be important to future re-evaluation of bioassay results. Furthermore, the quality of the agricultural crops that go into animal feed can vary seasonally. Varying amounts of naturally occurring enzyme inducers from plant material in animal feeds may affect the course of a long-term test for carcinogenicity. It is therefore important to document and retain pertinent information on diet source and quality.

When the test substance is administered in long-term studies, stability tests are essential. Properly conducted stability and homogeneity tests, prior to the chronic study, should be used to establish the frequency of diet preparation and monitoring required. Similar monitoring is required of the atmosphere within a chamber in inhalation tests to determine the necessity of rotating animals within the exposure chamber and the frequency of monitoring required. The stability of the neat chemical, if it is to be used for a long time, as in long-term skin-painting studies, should also be determined.

If diets are sterilized, the effects of such procedures on the test substance and dietary constituents should be known. Appropriate adjustments to nutrient levels should be made.

During carcinogenicity tests, investigators should be aware of potential chemical contaminants in the water used. Although water approved for human consumption is generally satisfactory, the investigator should determine the levels of potential contaminants that are likely to influence the outcome of the study. The analyses of the water supply should be included in the reports of these studies.

3. Test and Control Groups. The number of animals to use has been the subject of great concern because of the fact that the test animals may be serving as surrogates for more than 200 million people in the U.S., and potentially for far more worldwide. While it is desirable to enhance the sensitivity of the test, it is not feasible to use very many animals. Furthermore, a moderate increase in the group size provides relatively little increase in the statistical power of the test. Therefore, careful attention must be paid to experimental design to assure the maximum reliability of the study and that the results are amenable to statistical evaluation. The use of adequate randomization procedures for the proper allocation of animals to test and control groups is of particular importance. A sufficient number of animals should be used so that at the end of the study enough animals from each group are available for thorough pathological evaluation. For such reasons, it has been recommended that each dose group and concurrent control group should contain at least 50 animals of each sex *(4,14,15, 19)*. If interim sacrifice(s) is included in the study plan, the initial number should be increased by the number of animals scheduled for the interim sacrifice(s).

At least one concurrent untreated control group, identical in every respect to the exposed groups, except for exposure to the test substance, should be used. In certain studies, such as with inhalation exposures that require unique housing conditions, it may also be appropriate to include an additional concurrent control group housed under conventional conditions.

Occasionally a positive concurrent control group is useful, particularly when there is reason to believe that the strain of animals may be resistant to the particular class of carcinogens or that a previously sensitive strain has become insensitive because of genetic drift. A positive control can also provide some information on the relative carcinogenic potency of the tested chemical. In routine carcinogenicity testing, no positive controls need be used *(4,14)*.

4. Dose Levels, Frequency and Route of Exposure. If a single bioassay is to be used both for detection and for risk assessment, at least three dose levels in addition to the concurrent control group are recommended. The question of what maximum dose should be administered may be the most controversial issue concerning bioassays *(13,19,33)*.

The highest dose currently recommended is that which, when given for the duration of the chronic study, is just high enough to elicit signs of minimal toxicity without significantly altering the animal's normal life span due to effects other than carcinogenicity *(19)*. This dose, sometimes called the maximum tolerated dose (MTD), is estimated in a subchronic study (usually of 90 days duration) primarily on the basis of adverse pathology signs, toxicity, mortality, and pathology criteria. The MTD should not produce toxicity of a severity that would interfere with the interpretation of the study. Nor should it comprise so large a fraction of the animal's diet that the nutritional composition of the diet is altered, leading to nutritional imbalance.

The MTD was initially based on a weight gain decrement observed in the subchronic study; *i.e.*, the highest dose that caused no more than a 10% weight gain decrement *(10)*. More recent studies and the evaluation of many more bioassays indicate refinement of MTD selection on the basis of a broader range of biological information *(19)*. Alterations in body and organ weight and clinically significant changes in hematologic, urinary, and clinical chemistry measurements may be useful in conjunction with the usually more definitive toxic, gross or histopathologic endpoints. The 1984 Report of the NTP Ad Hoc Panel (19) contains a helpful discussion of the use of such corroborative information to more reliably determine the MTD (see pages 126-145 of the NTP Report). The rationale for the dose selection, including the data elements used, should be clearly stated in the final bioassay report.

The Report of the NTP Ad Hoc Panel also discusses the kind of data which may be helpful in selecting the spacing of doses below the MTD (page 126 and 128). Such doses are ordinarily simple fractions of the MTD; *e.g.*, (1/2, 1/3, etc.). Dose selection is influenced primarily by one or more of these types of information: 1) observations in the subchronic studies, particularly the dose-response curve; 2) pharmacokinetic data, particularly the presence of non-linear behavior and the doses at which this occurs; and 3) anticipated human exposure levels or relevant exposure guidelines (such as TLV's).

The important contribution of pharmacokinetic studies to the selection of doses below the MTD is the information such studies may provide on the presence of dose-dependent and time-dependent processes affecting the disposition of substances in the body *(19,35-41)*. Such information may also identify changes in the internal concentrations of the chemical or its metabolites that are not directly proportional to administered dose, and may also indicate if accumulation of the chemical or its metabolites occurs with repeated exposures. To be of maximum use in the dose selection process this information should be obtained early, before or during the prechronic phases of the bioassay. However, because pharmacokinetic data may also reveal distinct changes in the animals' treatment of the chemical at low as compared to high doses, such data may also aid in the interpretation of the bioassay.

Because of cost, a single long-term study may be utilized to obtain data on chronic toxicity, on carcinogenic potential and for carcinogenic risk assessment. The present discussion envisions the combination of both the qualitative objective of a carcinogen bioassay, *the detection of carcinogenic potential*, and the quantitative objective, *obtaining dose-response data for risk assessment*, into a single bioassay. If only one of these objectives is sought, it may be advisable to select the doses differently. The purpose of using the MTD is to provide maximum opportunity for the detection of a neoplastic response. The purpose of several lower doses is to provide adequate information on the shape of the dose-response curve for risk assessment and to ensure a meaningful comparison with the controls even if the MTD was unfortunately selected at too high a level. The pathological responses observed in the subchronic study and the slope of the subchronic dose-response curve should aid in the selection of the range and number of doses for the long-term study. For example, a steep dose-response curve would suggest closer spacing of intermediate doses than a shallow dose-response curve. The existence of metabolic saturation (as indicated by pharmacokinetic data) at doses well below those identified by pathological criteria suggest a spacing of doses designed to determine both whether the highest dose has any carcinogenic effect and to adequately define the dose-response curve for the saturable process. This may require additional doses. Generally four doses including the control, (occasionally three) will be necessary to adequately define the dose-response curve, assuming an appropriately chosen MTD. Since the MTD is an estimate at best, the value of additional doses is generally difficult to judge. If the estimated MTD eventually produces moderately high or excessively high tumor incidence, additional lower doses may aid in defining the shape of the dose-response curve and may even salvage a study when the MTD is overestimated. If the estimated MTD produces no tumors, or a low incidence of tumors, the additional doses will have been unnecessary as regards carcinogenicity but can help establish safe non-toxic doses. As indicated above, the best guide to the number of doses is the acquisition of knowledge on the pathological and pharmacokinetic criteria upon which a sound, scientific judgment can be based. The National Toxicology Program (NTP) has published more detailed recommendations for prechronic testing and dose selection from its Ad Hoc Panel on Chemical Carcinogenesis Testing and Evaluation *(19)*.

Interruptions in the administered dose may permit some cellular repair and reduce the sensitivity of the test. Therefore, if the chemical is administered in the drinking water or mixed in the diet, it should be continuously available. The frequency of exposure may vary according to the route chosen or may be adjusted according to the toxicokinetic profile or stability of the test substance (see Sec. 2 above). Protocols for inhalation or for dermal exposure are usually subject to special constraints *(14)*.

The route of administration used for the bioassay is critical for both its qualitative and quantitative objectives - but in different ways. If the route of administration results in the absorption, distribution and metabolic activation (if required) of the substance, it is reasonable to regard the test as relevant for a *qualitative* demonstration of human carcinogenic hazard. This comparison is obviously most directly made when the route used in the test and the route of human exposure are the

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same, but as long as the criteria above are satisfied, the results of animal studies are generally considered qualitatively meaningful.

If, because of its palatability, solubility, stability or volatility, a substance can not be given in feed or water, oral gavage may have to be considered. This is clearly less desirable, however, since single large boluses can result in absorption and pharmacokinetic patterns different from those anticipated from human exposures (see also Section 2). Sometimes, the use of gavage can be avoided by gradually increasing dietary concentration of the test substance to gain acceptance, by altering other dietary components to increase the palatability or by microencapsulation.

Certain site specific tumors, *e. g.*, bladder carcinoma following bladder implantation and subcutaneous sarcomas following injection, may not be relevant for human oral exposure. The presence of tumors remote from the site of administration and a knowledge of site-specific metabolism play a significant role in the final evaluation. Some routes of administration may fail to provide adequate metabolic activation or exposure of target tissues and therefore lead to false negative results *(14)*. Such data require careful evaluation.

When an assessment of human risk is desired, it is desirable to obtain sufficient data to permit a reasonably accurate estimate of the dose of the carcinogen reaching the target tissue. In some instances, *e.g.*, for substances used on the skin, this may require a bioassay to detect tumorigenic potential and a separate study of the substance's permeability across the skin to measure the amount absorbed. In inhalation studies, this may require a separate study for determining the amount of inhaled material deposited on, or absorbed by the respiratory tract.

5. Duration of Study. Test animals should be exposed for the majority of their normal life spans. While there are certain animal test systems which offer the possibility of inducing cancer within only a few weeks or months, such systems at the present time are useful mainly as research tools to explore specific, well-defined questions. They cannot be relied upon to test unknown substances for carcinogenicity and are insufficient as a primary basis for regulation.

Treatment is preferably begun as soon after weaning as possible and continued for the major portion of the animals' lifespans. This is at least 18 months for mice and hamsters and 24 months for rats. In some instances where the cumulative mortality at the planned time of sacrifice is still very low, *e.g.*, less than 10%, a longer duration may be appropriate. Some protocols call for treatment soon after birth (neonatal) or during fetal development (*in utero*). The rationale is based on the greater susceptibility of certain organ systems to carcinogens during their early development. However, there are logistical problems which preclude using neonatal or *in utero* systems for routine bioassays.

Termination of the study is ordinarily acceptable when the number of survivors in the low dose or control group is reduced to 20-25%. Generally, because of difficulties produced by naturally occurring tumors, long-term studies are conventionally terminated by week 100 for hamsters, 120 for mice and by week 130 for rats, regardless of mortality. When there is an apparent sex difference in response, each sex should be considered a separate study *(12)*. If the high dose group dies prematurely from obvious toxicity, this should not trigger termination of the lower dose groups or controls. A negative test is ordinarily accepted by regulatory agencies if: 1) no more than 10% of any group is lost due to autolysis, cannibalism or management problems; and 2) survival of all groups (per sex per dose) is no less than 50% at 80 weeks for hamsters, 96 for mice and at 104 weeks for rats *(15)*.

Rigid rules for termination are not helpful, the best guide is professional judgment, experience and careful observation of the condition of the animals. The longer the test continues, the greater the opportunity for the development of tumors *(42,43)*. On the other hand, the sensitivity of bioassays decreases with time, because of the natural appearance of age-related tumors in the controls. In theory, it is necessary to know both the incidence and growth rate of naturally occurring tumors and experimentally induced tumors at various organ sites in the sex and strain of animal used in order to determine the optimal time for termination. This information is ordinarily not available until the end of the test and while serial sacrifices are useful, they are considered too expensive for routine testing of chemicals.

6. Data Collection and Reporting. Animals should be checked carefully at least twice each day. Observations should be sufficient to detect onset and progression of all toxic effects, as well as to minimize loss due to diseases, autolysis, or cannibalism. Body weights should be recorded individually for all animals once a week during the first 13 weeks of the test period and at least once every four weeks thereafter. Loss of body weight should trigger careful clinical examination of the animal and its sacrifice, if necessary. Food intake should be determined weekly during the first 13 weeks of the study and then at approximately monthly intervals, unless health status or body weight changes dictate otherwise *(15)*.

Clinical signs and mortality should be recorded for all animals. Special attention must be paid to clearly visible tumor development; the time of onset, location, dimensions, appearance and progression of each grossly visible or palpable tumor should be recorded.

The pathological examination, macroscopic, as well as microscopic, is the cornerstone of the carcinogenicity study. A thorough gross necropsy with subsequent selection of appropriate lesions for histopathology is mandatory. It is vital that the sampling among the test and control tissues be uniform so that no bias is introduced into the comparisons. Microscopic examination of both test and control tissues is required. While an all-inclusive microscopic examination of all tissues is theoretically desirable, the resource limitations may dictate a more selective approach such as the one recently proposed by the National Toxicology Program or earlier by the National Cancer Institute *(44,45)*. The quality, extent and completeness of the documentary record of the bioassay are of critical importance in establishing its validity for scientific and regulatory purposes. It is crucial that the physical evidence, *e.g.*, the original tissue sections and slides, is accurately prepared and maintained. Sponsors of bioassays that are to be submitted to regulatory agencies should be familiar with additional requirements of GLP's (Good Laboratory Practice) *(32)*.

II. INTERPRETATION AND EVALUATION OF LONG-TERM CARCINOGEN BIOASSAYS

A. Background

Several attempts have been made over the last 10 years to construct a suitable operational definition for a chemical carcinogen *(9, 10,13,14,46,47)*. Though none of these have succeeded fully, there is common agreement that a chemical carcinogen is a substance which induces cancer by some chemical/biological mechanism. A chemical carcinogen may be a substance which either significantly increases the incidence of cancer in animals or humans or significantly decreases the time it takes a naturally occurring

(spontaneous) tumor to develop relative to an appropriate background or control group. Either phenomenon is said to represent the effects of a carcinogen *(13)*.

The interpretation of carcinogencity data has evolved considerably in the last decade. In past years, there were no standardized protocols for testing carcinogens. Typically an identified carcinogen was used as a research tool to study the mechanisms of carcinogenesis, so that many experiments were performed with the compound. This intense study usually dispelled any doubt as to whether the substance was actually a carcinogen. This degree of confirmation gradually decreased as more of the experimentation turned from research on the process of carcinogenesis to detecting as many chemicals as possible that might pose a cancer risk to humans. For this latter purpose, which began in earnest in the mid 1960s with the "screening" bioassays conducted by NCI, it was necessary to devise decision rules" by which to declare a chemical a carcinogen *(3)*. Since then, considereable progress has been made in refining basic principles and criteria to guide the interpretation of carcinogenicity *(4,5,14,15)*. Experience has taught that these criteria should be regarded as general guidelines in evaluating rather than rigid rules and that final decisions are best made after careful communication between pathologists, toxicologists and statisticians. Most useful to the process is the experience and the data derived from large numbers of recent tests using a uniform protocol.

With some oversimplification, the task of the pathologist and toxicologist is to decide whether a lesion is cancerous or pre-cancerous and whether it is related to exposure to the test chemical. The statistician, on the other hand, has the task of determining whether any observed tumors are more likely to have occurred by chance or as a result of treatment. Neither of these tasks is simple or completely independent of the other and, most importantly, each requires experience and judgment if sensible decisions are to be made.

B. Toxicological Issues in Bioassay Evaluation

1. Use of the Maximum Tolerated Dose (MTD). Largest doses (*i.e.* doses far exceeding human exposure levels) have been strongly recommended by several national and international bodies in order to overcome the inherent low sensitivity of bioassays *(14,15,19)*. These recommendations have been controversial because high doses may themselves produce altered physiologic conditions which can qualitatively affect the induction of malignant tumors. Normal physiology, homeostasis and detoxification or repair mechanisms may be overwhelmed and cancer, which otherwise might not have occurred, is induced or promoted. Normal metabolic activation of carcinogens may possibly also be altered and carcinogenic potential reduced as a consequence. If qualitatively different distribution, detoxification or elimination of the test chemical is produced at the highest dose, a toxic response at this dose may not be indicative of effects at low exposure levels. The cancers which arise from high doses of corticosteroids, estrogens, certain sulfonamide compounds and from some instances of bladder implantation may result from such "secondary" effects (*48*, and see Chapter 1). This concern is not easily resolved, for if the dose is not high enough, carcinogens may remain undetected by traditional bioassays.

The concept and operational definition of the MTD have undergone modification during the last several years in response to some of these concerns. The 1971 FDA Advisory Committee on Protocols recommended that: *"Testing should be done at doses and under experimental conditions likely to yield maximum tumor incidence" (9)*. However, as the use of those tests for human risk assessment increased, it became vital not only to detect carcinogens qualitatively (*i.e.*, avoid false negatives), but also to estimate effects at low dose levels. Both the National Cancer Advisory Board Subcommittee (NCAB) (1977) *(47)* and the Interagency Regulatory Liason Group (IRLG) (1979) *(14)* cautioned against the use of a dose so high that it produced *"unwanted toxic side effects"* (IRLG) or *"unphysiologic conditions [which] may in themselves enhance tumor formation"* (NCAB). Recent publications have emphasized the need to select the doses not only on the basis of the results of subchronic toxicity studies, but also on the basis of what is known about the pharmacokinetics and metabolism of the test substance *(13,19,33)*. Better techniques to observe and detect significant differences in metabolism and pharmacokinetics throughout the dose range used are being developed; these should help in a better determination of the MTD *(35-41)*. The desirable goal is that the dose used meets the objectives of maximally enhancing the sensitivity of the test without introducing qualitative distortions in the results.

2. Promoters vs. Initiators, Current Experimental Status. In Chapter 1 of this report, the evidence for the belief that cancer occurs through at least a two stage process consisting of initiation and promotion was discussed. The basic question of whether tumor promotion is a general feature of carcinogenesis or is only characteristic of some organ systems is still debatable, although more and more evidence for the initiation-promotion process in a variety of organs is becoming available (*49* and Chapter 1). The question naturally arises as to whether such promoting agents can reliably be distinguished from initiators by traditional bioassays.

A number of examples of promoting agents are well documented; most of the work on their mechanism has been done on skin, *e.g.*, the phorbol esters in epidermal carcinogenesis. Other examples are butylated hydroxyanisole in pulmonary carcinogenesis, phenobarbital in hepatocarcinogenesis and estrogenic hormones in breast cancer. Some known promoting agents also have weak tumorigenic activity and some are also initiators, *i.e.* complete carcinogens. Carcinogens may act as promoters at some tissue sites and initiators at others. It is very difficult both in principle and in practice to confirm the claim that a given chemical acts by promotion alone. If such a mechanism is postulated for a specific chemical, data on the purported mechanism at the affected tissue sites and dose response data would be needed to support the proposition.

3. Need for Biological Significance, Other Data. There is no simple or generic solution to the problems which arise when attempting to interpret carcinogenicity data. Over recent years, review groups charged with the responsibility to evaluate carcinogenicity data and come to some decision regarding the carcinogenicity of a chemical have recognized the need to consider all of the available scientific information which may bear on such a decision *(8,9,13,47)*. In addition to statistical significance (Sec. D), there should be biological significance as well. The use of a variety of biological information on dose response, tumor progression, tumor latency, tumor multiplicity, findings in other studies, etc. can add confidence to the final assessment. Other often useful information includes historical data on control animals, information from *in vitro* mutagenicity or neoplastic transformation systems, toxicological information which might indicate that

the organ or tissue which is at risk for carcinogenicity appears to be a target for the toxicity of the compound. Mutagenicity, DNA repair and neoplastic transformation studies can sometimes be used in aiding judgments on carcinogens *(50)*. For example, if the data indicating carcinogenicity are of only marginal significance, negative findings in properly designed and well-conducted *in vitro* tests, depending upon their relevance to the specific situation, may lead to a conclusion that the chemical is probably not carcinogenic. On the other hand, were the results from *in vitro* testing clearly positive, and if evidence existed to show that the organ in which the cancer question arose was also the toxicological target of the chemical, the conclusion is likely to be that the chemical is carcinogenic. To make these judgments, it is important that there be a good interaction and deliberation among scientists from different disciplines.

4. Human Relevance of Rodent Tumors. The inference stated earlier, "that in the absence of adequate data on humans it is reasonable to regard chemicals that are carcinogenic in laboratory animals as if they were also carcinogenic to humans," should be given great deference as a general principle. But this need not foreclose further scientific inquiry in individual cases if experimental evidence on the mechanism of tumor formation in the animal is available. As science advances, and more sophisticated studies are done, it may become possible to demonstrate the existence of unique susceptibilities to chemical carcinogenesis in rodents that have no relevance for humans. All the available scientific information should be used in attempting to reach the most likely correct scientific conclusion. The inferential relevance of observed animal carcinogenesis to potential carcinogenic risk in humans is obviously justifiable in the absence of such mechanistic information.

C. Issues of Pathology in the Interpretation of Tumor Data

1. Tumor Number, Type and Site in the Assessment of Incidence. As mentioned earlier, a carcinogen may be defined as a substance which increases the incidence of cancer above the background rate (Section II, Part A). However, from a practical point of view, the most important question is: How does one estimate or deduce cancer incidence from tumor data? For instance, should all cancers in the animal be combined and the total number of tumors in treatment groups compared to total cancers in the untreated controls? Alternatively, should carcinomas be separated from sarcomas since they are derived from different tissue? Should the comparisons between treated and controls be restricted to specific organ sites and, if so, should all tumors be combined, or only certain types? Other questions are: should benign and malignant tumors be separated or combined; if tumors occur at multiple organ sites, can they be combined and how should it be done; should cancers which shorten the life of the animal be separated from those which do not? These questions and many more must be answered before cancer incidence(s) can be estimated. Unfortunately, there is no universal agreement among experts in the field relevant to the rules for calculating cancer incidence that is applicable to "all" carcinogens "all" of the time. Generally, most experts agree that the incidence of total tumors at all organ sites is not a very useful expression of cancer incidence, nor is the calculation of the incidence of total benign or total malignant tumors. Most useful appears to be the number of histologically unique tumors at specific organ sites *(51)*.

The grouping of lesions for evaluation should be based on commonality of histogenetic origin. Therefore, sarcomas should not be combined with carcinomas for the purpose of establishing a value for the incidence of cancer at a specific organ site. It is often necessary, at least in the judgment of many pathologists, to combine certain benign tumors with malignant ones occurring in the same tissue and at the same organ site. This practice can make the total neoplastic response (benign and malignant) clearly significant despite the lack of statistical significance in the tumors diagnosed as malignant. These pathologists believe that truly benign tumors in rodents are rare and that most tumors diagnosed as benign really represent a stage in the progression to malignancy. For some tissue sites, this view is widely accepted. Examples of this are adenomas versus adenocarcinomas in the pituitary, thyroid, lung, kidney tubules, and according to some experts, in mouse liver. In each of these cases, it is argued that the judgment of the pathologist as to whether the lesion is an adenoma or an adenocarcinoma is so subjective that it is essential they be combined for statistical purposes. It is also argued, in these specific cases, that the adenoma is a precursor of the adenocarcinoma. Indeed, the Subcommittee on Environmental Carcinogenesis of the National Cancer Advisory Board recommended in 1976 that these lesions be combined for statistical purposes *(47)*. Most U.S. regulatory agencies have followed this recommendation. Ordinarily the tumor or cancer incidence is calculated as the number of tumor-bearing animals having tumors at a specific organ site divided by the total number of animals that survived long enough on experiment to have been at risk for that specific type of tumor. For reasons discussed in the statistical part of this section, life shortening tumors should not be combined with non-life shortening tumors.

2. Time-to-tumor. A positive result in a carcinogenesis bioassay can be based on evidence of a substantially decreased latency period, as well as on the induction of an increased incidence of malignant tumors. A good discussion of the precautions that should be observed in order to establish decreased latency is given in the 1979 IRLG report *(14)*. Such data, in conjunction with incidence data, can be useful to distinguish between the relative potencies of carcinogens.

3. Problems in Tumor Diagnosis. A major problem facing those who must make either scientific or public health policy decisions based on carcinogenicity data is that the diagnosis of pathological lesions is subjective and pathologists may disagree on diagnosis. Frequently, the disagreement is not as serious or far-ranging as it may appear to non-pathologists. The disagreement may be focused on an issue where neither pathologist is absolutely certain and each is forced to offer his "best opinion." In practice, for most compounds, NCI and NTP have used panels composed of 2 to 4 pathologists to review and analyze the lesions that have been observed *(44,51)*. This procedure helps to provide consistency in diagnosis, but it may not solve all the problems. For instance, most pathologists do not review the microslides "blind." They know which slides come from control animals and which from treated animals. The extent to which this information leads to bias in diagnosis is not known *(44)*.

A common problem with the interpretation of pathological data concerns the selection of the tissues at necropsy, how the tissues were prepared, the slides mounted and so on. For instance, a few years ago most investigators did not open the skulls and carefully examine the brain. In other cases, only brains appearing abnormal were examined in detail. Currently, the

brain as well as other tissues such as nasal turbinates are routinely examined histologically *(42,51)*, though the techniques vary somewhat. As a consequence, spontaneous tumors of these tissues are now being reported. Depending upon how extensively these tissues are being sectioned for histological analysis the observed incidence may vary from low to moderately high. Such modifications in the pathology protocol, if not recognized and understood, could lead to serious errors in judgment concerning the carcinogenicity of a chemical.

Critical to decisions about carcinogens is the biological significance and human relevance of certain types of tumors, particularly the liver tumors in the mouse. This matter has been the subject of heated debate for the past 15 years. Some scientists are certain that the mouse liver is overly sensitive and will respond to almost any toxic insult by developing cancer. Other scientists are just as certain that the mouse liver is a reliable indicator of carcinogenicity and as good a predictor of potential human risk as any indicator available. In one review, 61 of 85 chemicals (73%) that increased the incidence of liver tumors in mice also induced tumors in other tissues of mice and/or in rats *(27)*. Some toxicologists believe that part of the problem stems from work on C3H strains of mice where the background liver tumor incidence is high and false positive errors are possible (see below Sec. D). Generally, there is consensus that the mouse liver model in principle does have significance in terms of human risk, but unambiguous diagnosis between "benign" or "hyperplastic" liver nodules and malignant neoplasia remains elusive and there is no apparent scientific consensus. A recent review of this issue has emphasized the need for judgment on a case-by-case basis and the possible relevance of other toxicological information *(52)*.

In addition to liver tumors, other tumors, including lymphomas in the mouse, which appear to be of viral origin, have been questioned as to their relevance to human cancer. As a general matter, toxicologists must question the relevance to humans of any experimental tumor which has a known viral background where the virus may be unique to the animal. This includes a variety of lymphomas and sarcomas in rats and mice, as well as mammary tumors in the mouse. Likewise, the relevance to human exposures of the induction of bladder cancer in rodents which are shown to have bladder stones and crystaluria only at high doses of the test substance is questionable.

D. Evaluation of Statistical Significance

1. Statistical Tests and Procedures. For the analysis of tumor incidence data, a widely-used method for comparing experimental and control groups is Fisher's exact test *(53)*. This analysis is generally carried out in conjunction with a Cochran-Armitage trend test *(54,55)* which examines the relationship between tumor incidence and dose. The trend test has the advantage of utilizing cancer incidence data for all doses and as a result is somewhat more sensitive than pairwise comparisons to the detection of carcinogenic effects.

The statistical procedures mentioned above for the analysis of tumor incidence data do not take survival differences into account *(31)*. This can be a problem with chemicals that produce a life-shortening effect. Although "survival-adjusted" tumor incidence analyses *(31,56,57)* are more complex, they have the advantage of adjusting for intercurrent mortality and of being sensitive to shortened latency period as well as to increased tumor incidence. These procedures require the determination of whether tumors in individual animals are "lethal" or "incidental" with respect to the underlying cause of death. This determination may be difficult if not impossible to make for many animals, but experimentalists should try to distinguish in their records between lethal and incidental tumors.

While it is customary practice in the conduct of bioassays to regard an increased tumor incidence that is statistically significant (*e. g.* $p<0.05$) as reasonable assurance that the effect is real and not due to chance alone, the final judgment regarding a compound's carcinogenicity is rarely based on a single finding of statistical significance *(57)*. One must be assured that the effects observed are biologically significant as well. Other factors that must be taken into account include: 1) the reproducibility of the effect in other doses and/or in other sexes or species; 2) the historical incidence of the tumor in question; 3) the survival histories of dosed and control animals; and 4) evidence of hyperplasia, metaplasia or other signs of an ongoing carcinogenic process.

The 0.05 p-value is a reasonable statistical bench mark with a history of use in the bioassay field. It would be imprudent to disregard it as an index of significance without good reason. It would be equally unwise to regard it as an absolute requirement or a *sine qua non* without considering the weight of biological evidence. For example, doubling or tripling the incidence of a tumor that occurs at low incidence in the controls may not be statistically significant, but may indicate a biological effect that should not be dismissed. Similarly, the finding of nominal statistical significance ($p=0.05$) at a single tumor site may be less important to the final evaluation than knowledge of the target site and the lack of consistency with related biological findings. As stated by IARC (15):

"The p-value from a good experiment is an objective fact, subject to public agreement. The weight to be given it and to the available pieces of information is not."

2. Problem of False Positives and False Negatives. Because of the time and expense involved, most chemicals, if tested at all, are tested in only one bioassay. It is vital that this test have good sensitivity since otherwise many true carcinogens would remain undetected (a false negative). The test must also possess a high degree of *specificity* since there are economic losses as well as disincentives for testing if safe, useful substances are mistakenly declared carcinogens (a false positive).

a. False negatives.

The typical bioassay, due to inherent limitations (low number of animals and biological variation) cannot reliably detect an increased tumor incidence of much less than 10-15% over background. High test doses are one way around this limitation, but as discussed above (Sec. II, Part B, 1), this can introduce confounding factors if the dose is too high. In addition, the possibility always exists that for a specific substance, the most sensitive species may be inappropriate for qualitative extrapolation to humans. Until more is known concerning the mechanism of cancer and the similarity in response between man and animal, this uncertainty will persist.

Confidence in an apparently negative bioassay increases with: 1) the number of animals used; 2) the adequacy of the doses; 3) the extent to which its duration approaches the animals' expected lifetime; and 4) the adequacy of the gross and histological examination of both control and treated groups. Corroborative evidence such as experimentally consistent biological results in different species or sexes, or at different doses, strengthens the likelihood that the bioassay is correctly interpreted. Rigid rules or definitions are

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not very useful. The ultimate decision must be based on the knowledge of experienced pathologists and toxicologists, the weight of corroborative evidence and a careful statistical evaluation.

The spontaneous tumor incidence can be of considerable importance in the interpretation of results from carcinogenicity studies. If, for example, the effect of a chemical is to double or triple the background tumor incidence, tissue sites with low spontaneous tumor rates are more likely to yield false-negative results than are sites with high spontaneous tumor rates. For example, if a tumor is a rare tumor even a slight increase in incidence may be biologically significant and may be considered adequate evidence of carcinogenicity *(53)*. This factor must be taken into account in the overall evaluation of the data. For such tumors (*e. g.*, with spontaneous tumor rates of 1% or less), the utilization of historical control data may be particularly useful in increasing the sensitivity of the study for detecting carcinogenic effects. All recent work emphasizes the fact that the evaluation of the bioassay is not a simple nor routine statistical exercise, but a multidisciplinary process requiring the interaction of toxicologist, pathologist and statistician.

b. False positives.

Appropriate precautions in the design and evaluation of bioassays can minimize the chance of false positive results. The test substance must be free of carcinogenic contaminants and appropriate doses and routes of exposure must be used. However, careful attention to these and to other factors cannot eliminate entirely the possibility of either false positive or false negative results. These problems are fundamental to the process of drawing inferences from observed sample data.

Many investigators familiar with data from bioassays believe that in practice the overall false positive rate does not greatly exceed 0.05 *(53,54)*. Others are not as certain, and all admit that this is an important problem area that must be considered in the interpretation of carcinogenesis bioassay data. The very effort to be as thorough and as complete as possible in the selection of tissue at necropsy, and in the detection of responses from various doses, increases the chance for a false positive error. Typical bioassay protocols require sectioning and analysis of tissues from 20-30 sites in two-species, in two-sexes, and, at the least, two dosage levels. It has been suggested that the multiple tests for significance applied to these many sites produce an unacceptably high overall false positive rate. (The argument is that if 'n' independent tests are conducted at the 'a' significance level, the probability of finding a significance somewhere [the false positive rate] is $[1-(1-a)^n]$. For $n=20$ and $p=0.05$ for a single dose-sex comparison, this probability is about 0.64.)

However, recent investigators have shown that this argument overestimates the likely false positive rate of the bioassay. Gart, *et al. (52)*, using historical incidence rates for B6C3F1 mice, found the probability of at least one significant result at the 0.05 level at some site in at least one sex was only about 8%. In a commonly used strain of rat (F344) the same probability was approximately 21%. These findings are well below the 64% value cited above. One reason for this difference is that tumor incidences are discrete count data, and in this situation, the actual significance level of test procedures comparing tumor rates is always less than the nominal level, often considerably less.

This is particularly true for tumors having a low spontaneous incidence. Even the estimated false positive rates reported by Gart, *et al. (53)* may be too high, since (as noted earlier) the final judgment that a compound is carcinogenic is rarely based on a single isolated "significant" increase in tumor incidence. Generally more stringent evidence is required, such as the reproducibility of the effect in other doses and/or other sexes or species. For example, if a chemical is judged carcinogenic only if it is positive ($p<0.05$) at some tissue site for *both* the low and high doses, the overall false positive rate for a two-sex, two-species experiment has been estimated to be 5.1% *(59)*.

In a recent examination of 25 NTP feeding studies, a simple statistical rule was derived by Haseman *(58)* which appears to mimic closely the scientific judgment process used in these experiments. This "rule" was as follows: Regard as carcinogenic any chemical that produces a high-dose increase in a common tumor that is statistically significant at the 0.01 level or a high-dose increase in an uncommon tumor that is statistically significant at the 0.05 level. The overall false positive rate associated with this particular decision rule (which appears to approximate closely the overall evaluation process) was estimated by Haseman and found to be no more than 7-8% for the current NTP two-sex, two-species protocol *(60)*.

In summary, in the interpretation of tumor incidence data an investigator should be aware of the false positive issue. In the overall evaluation process, one should be guided by (but not rely exclusively upon) the statistical significance of an observed tumor increase. This awareness will help minimize the likelihood of a false positive result.

3. Use of Historical Controls. It is extremely important for the interpretation of a bioassay that the variability of the incidence of spontaneous tumors in the strain of animals used be established with the highest precision possible. These variations present problems in interpreting the results of bioassays. NTP has recognized this problem and has continued to accumulate data from untreated and corn-oil gavage control groups for the strains of animals used *(25,26)*. With such data, the toxicologist may conclude that a study yielding statistical significance is not biologically significant or conversely that an effect is real, even though there is no "significant" difference between test and concurrent controls. Of 27 bioassay study reports issued by the NCI from 1978-1980, historical controls were used in 14 studies to show that an apparent increase of a specific tumor was not related to treatment *(60)*. In 13 studies, the use of historical controls showed that an increase in tumors was related to treatment. Historical control data can be valuable when used appropriately, especially when the differences in incidence rates between treated and concurrent negative controls are small and can be shown to be within the anticipated historical incidence. However, the use of historical control data is not without its own problems. Over the course of time, the thoroughness of pathologic evaluations has improved and pathologic diagnosis has evolved and nomenclature has changed. There is also the possibility that the genetic susceptibility of the strain has shifted. The sources of variability in historical control data should be identified and, if possible, controlled. Obviously one has more confidence in the most recent historical control data from the same laboratory conducting the current study than in a compilation of pooled older data from other laboratories. Several procedures have recently been proposed for utilizing historical control data in a formal testing framework *(60-63)*. The relative merits of these methodologies are currently being investigated by the NTP.

III. SUMMARY

Although the identification of carcinogenic substances has long been of interest to the scientific community, until the 1960s the focus of most studies was research, not testing for substances which may pose a public hazard. The National Cancer Institute, and later the National Toxicology Program, have conducted a number of test-oriented studies, the chronic bioassays, and have also attempted to standardized many important parameters in conducting these studies. Type and number of animals, dose level and route, and study duration are fairly uniform in an effort to make the data base as comparable as possible from test to test.

Certain issues remain as problems. One of these is the use of the maximum tolerated dose (MTD) in long-term studies and the appropriateness of dose route, schedule, and length of exposure. Use of the MTD, if not an ideal solution to the problem of bioassay sensitivity, is appropriate if it is properly determined. Another problem is the interpretation of tumor data. This includes tumor number, type, time to tumor, tumor diagnosis, etc. and the significance of certain tumors. General guidelines have been recommended, with the proviso that they are to be used in conjunction with sound judgment.

Furthermore, although several methods of statistical analyses of long-term test results have been developed, the questions of false negatives and false positives and the use of historical controls, suggest that the evaluation of a long-term test is not a routine statistical exercise, but is instead a multidisciplinary process requiring the interaction of toxicologist, pathologist, and statistician. The utilization of long-term animal studies for quantitative human risk assessment has accentuated and focused attention on the real scientific uncertainties involved in high-to-low dose and animal-to-human cancer risk extrapolations. Nonetheless such animal studies, with all their limitations, remain the best way of predicting effects in humans when epidemiological data are unavailable.

IV. REFERENCES

1. Berenblum I. Early studies of carcinogenesis. In: Carcinogenesis as a Biological Problem. Holland: North-Holland Press, 1974:1-66.
2. Pitot HC. "Fundamentals of Oncology," 2nd Ed. New York:Marcel Dekker, 1981.
3. Weisburger EK. History of the bioassay program of the National Cancer Institute. Prog Exp Tumor Res 1983; 26:167-201.
4. Chu KC, Cueto C, Ward JM. Factors in the evaluation of 200 National Cancer Institute carcinogen bioassays. J Toxicol Environ Health 1981; 8:251-280.
5. Griesemer RA, Cueto C. Toward a classification scheme for degrees of experimental evidence for the carcinogenicity of chemicals for animals. In: Montesano R, Bartsch H, Tomatis L (eds.) Molecular and Cellular Aspects of Carcinogen Screening Tests. IARC Scientific Publ. ε 27 Lyon, France: IARC 1980:259-281.
6. Pershagin G, Nordbert G, Bjorklung NE. Carcinomas of the respiratory tract in hamsters given arsenic trioxide and/or benzo(a)pyrene by the pulmonary route. Environ Res 1984; 34:227-241.
7. International Agency for Research on Cancer. Polynuclear Aromatic Compounds, Part 2, Carbon Blacks, Mineral Oil and Some Nitroarenes 1984; 33:19.
8. WHO. Principles for the Testing and Evaluation of Drugs for Carcinogenicity - WHO Technical Report Series No. 426. Geneva: WHO, 1969.
9. Food and Drug Administration Advisory Committee on Protocols for Safety Evaluation, Panel on Carcinogenesis. Report on Cancer Testing in the Safety of Food Additives and Pesticides. Toxicol Appl Pharmacol 1971; 20:419-438.
10. Carcinogenesis Bioassay Program, Division of Cancer Control and Prevention, United States National Cancer Institute. Guidelines for Carcinogen Bioassay in Small Rodents. Bethesda, MD:NCI, 1974.
11. National Academy of Sciences (US). Principles and Procedures for Evaluating the Toxicity of Household Substances. Washington DC:NAS, 1977.
12. WHO. Environmental Health Criteria 6, Principles and Methods for Evaluating the Toxicity of Chemicals, Part I. Geneva:WHO, 1978.
13. Food Safety Council, Chronic Toxicity Testing. Proposed system for food safety assessment. Food Cosmet Toxicol 1978; 16 (Suppl 2): 97-108.
14. Interagency Regulatory Liaison Group, Work Group on Risk Assessment. Scientific bases for identification of potential carcinogens and estimation of risks. J Natl Cancer Inst 1979; 63:242-268.
15. Report 1 Basic Requirements for Long-Term Assays for Carcinogenicity. In: Long-Term and Short-Term Screening Assays for Carcinogens: A Critical Appraisal. IARC Monograph Series, 1980; Supplement 2:21-84.
16. Health and Environmental Studies Program (HESP), Oak Ridge National Laboratory. Scientific Rationale for the Selection of Toxicity Testing Methods: Human Health Assessment. ORNL/EIS-151, EPA-560/1-80-001, 1980.
17. Committee on Carcinogenicity of Chemicals in Food, Consumer Products and the Environment. Guidelines of the Testing of Chemicals for Carcinogenicity. Report on Health and Social Subjects ε25. London: Department of Health and Social Security, 1982.
18. Sontag JM. Aspects in carcinogen bioassay. In: Hiatt H, Watson J, Winsten J, eds. Origins of Human Cancer. 1977:1327-1338.
19. Board of Scientific Counselors, National Toxicology Program. Report of the NTP Ad Hoc Panel on Chemical Carcinogenesis Testing and Evaluation. DHHS, August 17, 1984.
20. Zwickey RE, Davis KJ. Carcinogenicity screening. In: Appraisal of the Safety of Chemicals in Foods, Drugs and Cosmetics. Washington DC:FDA, DHEW 1959:79-82.
21. Shimkin M, Triolo VA. History of chemical carcinogenesis: Some prospective remarks. Prog Exp Tumor Res 1969; 11:1-20.
22. Shimkin MB. Report of the discussion group No. 1: Species and strain selection. In Goldberg L, ed. Carcinogenesis Testing of Chemicals. Cleveland, OH:CRC Press 1974:15.
23. Shubik P. Use of the Syrian Golden Hamster in chronic toxicity testing. Prog Exp Tumor Res 1972; 16:176-184.
24. Novell MJ, Wolff GL (eds.). NCTR/NCI Symposium on the use of inbred and outbred animals in toxicological testing. J Tox Environ Health 1979; 5:1-169.
25. Festing MFW. Inbred Strains and Factorial Experimental Design in Toxicological Screening. Utrecht, Holland: ICLA Symposium 1979.
26. Huff J. Carcinogenesis bioassay results from the National Toxicology Program. Environ Health Perspect 1982; 45:185-198.
27. Ward JM, Griesemer RA, Weisburger EK. The mouse liver tumor as an endpoint in carcinogenesis tests. Toxicol Appl Pharmacol 1979; 51:389-397.
28. Newberne PM. Assessment of the hepatocarcinogenic potential of chemicals: Response of the liver. In: Plaa G, Hewitt WR, eds. Toxicology of the Liver. New York: Raven Press 1982.
29. Vesselinovitch SD. Liver tumor induction. Toxicol Pathol 1982; 10:110-118.
30. von Wittenau MS, Estes PC. The redundancy of mouse carcinogenicity bioassays. Fund Appl Toxicol 1983; 3:361-369.
31. Peto R, Pike M, Day N, Gray R, Lee P, Parish S, Peto J, Richard S, Wahrendorf J. Guideline for simple, sensitive, significant tests for carcinogenic effects in long-term animal experiments. In: Long-term and Short-term Screening Assays for Carcinogens. A Critical Appraisal. IARC Monograph Series 1980; Suppl. 2:311-426.
32. Good Laboratory Practice for Nonclinical Laboratory Studies, Title 21, CFR, Part 58, p. 203, revised as of April 1982.
33. Munro IC. Considerations in chronic toxicity testing: the chemical, the dose, the design. J Environ Pathol Toxicol 1977; 1:183-197.
34. Kraft PL, Bieber MA. The use of dietary fats in animal studies. Spring Symposium of the Mid-Atlantic Chapter of the Society of Toxicology, Wilmington, Delaware, May 21, 1983.
35. Gehring PJ, Blau GE. Mechanisms of carcinogenesis: dose-response. J Environ Pathol Toxicol 1977; 1:163-179.
36. Gehring PJ, Wantanabe PG, Park CN. Resolution of dose-response toxicity data for chemicals requiring metabolic activation: example - vinyl chloride. Toxicol Appl Pharmacol 1978; 44:581-591.
37. Ramsey JC, Gehring PJ. The integration and applications of pharmacokinetic principles in realistic estimates of risk. In: Richmond CR, Walsh PJ, Copenhaver ED, eds. Health Risk Analysis, Proceedings of the

Third Life Sciences Symposium. Philadelphia: Franklin Institute Press, 1981.

38. Tsuchiya T, Levy G. Relationship between dose and plateau level of drugs eliminated by parallel first-order and capacity-limited kinetics. J Pharm Sci 1972; 61:541-544.

39. O'Flaherty EJ. Toxicants and Drugs: Kinetics and Dynamics. New York: Wiley and Sons, 1981.

40. Gibaldi M, Pervier D. Pharmacokinetics. 2nd Ed., New York: M. Dekker, 1982.

41. Dayton PG, Sanders JE. Dose dependent pharmacokinetics: Emphasis on Phase 1 metabolism. Drug Metabol Rev 1983; 14:347-405.

42. Ward JM. Background data and variations in tumor rates of control rats and mice. Prog Exp Tumor Res 1983; 26:241-258.

43. Solleveld HS, Haseman J, McConnell EE. The natural history of body weight gain, survival and neoplasia in the Fischer 344 rat. J Natl Cancer Inst 1984; 72:929-940.

44. Ward JM, Reznik G. Refinements of rodent pathology and the pathologists' contribution to evaluation of carcinogenesis bioassays. Prog Exp Tumor Res 1983; 26:266-291.

45. Fears TR, Douglas JF. Suggested procedures for reducing the pathology workload in a carcinogen bioassay program. Environ Pathol Toxicol 1977; 1:125-137.

46. Report of the Chronic Toxicity and Carcinogenicity Panel. United States Food and Drug Administration, December 19, 1977.

47. Report of the Subcommittee on Environmental Carcinogenesis. National Cancer Advisory Board. J Natl Cancer Inst 1977; 58:461-465.

48. Special Problems with Toxicology Protocols. Proc Toxicology Forum, Feb, 1978; 86.

49. Berenblum I. Historical perspective. In: Slaga TL, Sivak A, Boutwell RK, eds. Carcinogenesis, Vol 2, Mechanisms of Tumor Promotion and Cocarcino genesis. NY: Raven Press, 1978.

50. Weisburger JH, Williams GM. Carcinogen testing - Current problems and new approaches. Science 1981; 214:401-407.

51. Ward JM, Goodman DG, Griesemer RA, Hardisty JF, Schueler RL, Squire RA, Strandberg JD. Quality assurance for pathology in rodent carcinogenesis tests. J Environ Pathol Toxicol 1978; 2:371-378.

52. International Expert Advisory Committee to the Nutrition Foundation. The Relevance of Mouse Liver Hepatoma to Human Carcinogenic Risk. Washington DC:Nutrition Foundation 1983.

53. Gart JJ, Chu KC, Tarone RE. Statistical issues in interpretation of chronic bioassay tests for carcinogenicity. J Natl Cancer Inst 1979; 62:957-974.

54. Armitage P. Tests for linear trends in proportions and frequencies. Biometrics 1955; 11:375-386.

55. Cox DR. The regression analysis of binary sequences (with discussion). J Roy Stat Soc B 1958; 20:215-242.

56. Breslow N. A generalized Kruskal-Wallis test for comparing K samples subject to unequal patterns of censorship. Biometrika 1970; 57:579-594.

57. Cox DR. Regression models and life tables (with discussion). J Roy Stat Soc B 1972; 34:187-220.

58. Haseman JK. A re-examination of false positive rates for carcinogenesis studies. Fundamen Appl Toxicol 1983; 3:334-339.

59. Fears TR, Tarone RE, Chu KC. False-positive and false-negative rates for carcinogenicity screens. Cancer Res 1977; 37:1941-1945.

60. Task Force of the Past Presidents of the Society of Toxicology. Animal data in hazard evaluation: Paths and pitfalls. Fundamen Appl Toxicol 1982; 2:101-107.

61. Dempster AP, Selwyn MD, Weeks BJ. Combining historical and randomized controls for assessing trends in proportions. J Amer Stat Assn 1983; 78:221-227.

62. Hoel DG. Conditional two-sample tests with historical controls. In: Contributions to Statistics: Essays in Honor of Norman L. Johnson. Holland:North Holland Publishing Co (in press).

63. Tarone RE. The use of historical control information in testing for a trend in proportion. Biometrics 1982; 215-220.

Chapter 4—Current Views on Epidemiological Methods

I. INTRODUCTION

Epidemiology is generally defined as the study of the distribution and determinants of disease in human populations, and thus it involves two major approaches *(1)*. Descriptive studies examine the "distribution" of disease and are usually employed to generate etiologic hypotheses, while analytical studies are used mainly to test hypotheses and identify the "determinants" of disease. A primary objective of epidemiology is to identify and quantify relationships between exposure to environmental agents and deleterious health effects. These associations may lead to causal inferences *(2)*, which in turn provide the basis for instituting preventive measures for various diseases.

II. STRENGTHS AND LIMITATIONS OF EPIDEMIOLOGY

A. Strengths

In contrast to studies in other biological systems, epidemiology directly evaluates the experience of human populations and their response (risk of disease) to various environmental exposures and host factors. Thus, it is often possible to evaluate the consequences of an environmental exposure in the precise manner in which it occurs and will continue to occur in human populations. This includes such important considerations as dose, route of exposure and concomitant exposures to other exogenous and endogenous factors. Through epidemiological studies human cancer has been linked to a number of lifestyle and other environmental hazards, including tobacco products and alcohol, ultraviolet and ionizing radiation, certain occupational and medicinal chemicals, dietary factors, and some infectious agents *(3-5)*.

Epidemiology has played a central role in detecting carcinogenic exposures, and it has complemented studies in laboratory animals in clarifying the carcinogenic potential of specific agents *(6)*. Another strength of the epidemiologic approach is its ability to provide insights into the mechanisms of human carcinogenesis. Thus, epidemiological observations have complemented experimental evidence that carcinogenesis is a multi-stage process, and that many cancers may result from the cumulative effect of environmental and host factors that accelerate or retard the transition rates at various stages of carcinogenesis *(7)*.

B. Limitations

Although epidemiology is the only means of assessing directly the carcinogenic risks of environmental agents in humans, the method has several limitations that are difficult to overcome *(1,8)*. One problem is that evidence of an environmental hazard is usually obtained from persons with high or intermediate levels of exposure. Just as for studies in laboratory animals, detecting causal relationships at low exposure levels is difficult, since the observed associations with disease are usually less pronounced and may have alternative explanations, including those related to chance, errors, biases or confounding variables. To provide a valid basis for risk estimates, large numbers of human subjects are often needed, especially if the exposure is low or rare, or if the excess risk is small compared to that of the baseline incidence rate. Another obstacle to epidemiology is the long latency period between exposure and the development of cancer. This complicates the detection of relationships and, of course, makes it impossible to identify the carcinogenic risks to humans of agents newly introduced into the environment. Another common problem in epidemiology is that of exposure assessment. Often the specific exposure of interest cannot be measured directly so that surrogate measures must be used (*e. g.*, occupation, place of residence). Since exposure data are usually derived from historical records generated for other purposes or from the recollections of subjects, opportunities for either random or biased misclassification of exposure are frequently encountered. In addition, appropriate study groups are

often simply unavailable or inaccessible. Furthermore, it may be difficult to implicate specific carcinogens when the environmental hazards involve complex exposures to a variety of agents, the effects of which are difficult to disentangle. Still another difficulty is the inability of epidemiological studies to adjust for unknown risk factors, since control can be introduced only when the risk factors are already recognized. Thus, when a particular factor is related to exposure and disease outcome, it may be confounding and give the appearance of an association when in fact none exists, or it may inflate or decrease the magnitude of an association. In view of these difficulties, it is not surprising that epidemiological data exist for only a small proportion of the many chemicals that have been shown to be carcinogenic in laboratory animals.

III. DETERMINING CAUSALITY

In interpreting epidemiological findings, one is guided by the magnitude of the risk estimates, their statistical significance (likelihood of being due to chance), and the rigor of the study design to avoid various kinds of bias, including those related to selection, confounding, classification, and measurement *(2,9)*. A determination of causality in epidemiology is bolstered by dose-response relationships, the consistency and reproducibility of results, the strength and specificity of the association, its biological plausibility, and other considerations. Thus inferences from epidemiology, as from other methods of inquiry, are not made in isolation, but should take into account all relevant biological information. Although epidemiological and other observations can accumulate to the point that a causal hypothesis is likely, it is not possible to ever prove causality (in the strict sense, a hypothesis can only be disproven). Nevertheless, a causal hypothesis can be sufficiently probable, as in the case of cigarette smoking and lung cancer, to provide a reasonable and even compelling basis for preventive and public health action.

IV. EPIDEMIOLOGICAL INVESTIGATIONS

A. Descriptive and Correlational Studies

Descriptive (or demographic) studies are concerned with identifying the distribution or patterns of disease in populations *(1)*. It is a basic tenet of epidemiology that diseases, including cancer, do not occur randomly, but fluctuate according to factors such as age, sex, race, time and geographical location. The use of rates as measures of disease frequency is fundamental in describing patterns of cancer among these population groups. Prevalence, incidence and mortality rates of cancer define the levels of risk prevailing in different populations and permit comparisons between groups. Descriptive surveys of cancer occurrence have been valuable in stimulating etiological hypotheses and providing direction for analytical studies, which are then necessary to establish whether risks are associated with particular exposures *(10)*.

Thus, important leads to etiology have come from population-based cancer surveys, which have revealed substantial international variations in cancer incidence, shifts in risk among migrant populations, changes in risk over time, and geographic peculiarities from mapping cancer mortality at the county level *(4)*.

Descriptive studies may utilize the correlational (or ecological) approach, in which the rate of disease in a population is compared with the spatial or temporal distribution of suspected risk factors *(10)*. This type of study may be particularly helpful in developing or refining hypotheses about carcinogenic risks, but falls short of establishing causal relationships. Correlational studies have the advantage of being much less expensive and time-consuming than analytical studies, because they often utilize mass statistics previously collected for another purpose *(9)*. The primary weakness of such studies, as with descriptive studies generally, is that data are collected on populations, rather than individuals. In other words, the rate of disease and the prevalence of exposures to variables of interest are known for various population groups, but information on the exposure status of persons who have the disease and those who do not within each population is not known. Thus, one cannot infer from the correlations of the population levels that the exposure of concern is associated with the risk of developing disease within each population *(9)*. For example, in early surveys of lung cancer, the international variation in mortality rates and temporal increases among males appeared consistent with the reported patterns of cigarette smoking, but these correlations by themselves may have been circumstantial rather than causal, since a variety of other exposures (*e. g.*, occupational hazards, air pollution) also varied concomitantly with the patterns of lung cancer. It took the analytical studies that pursued these leads to establish the cause-and-effect relationships between smoking and lung cancer. Correlational studies also may provide supporting evidence in evaluating relationships detected by analytical studies or laboratory data. This is illustrated by the more recent temporal increases in lung cancer among females, who have lagged about 20 years behind males in their adoption of smoking habits. Another example is the temporal variation in endometrial cancer incidence, showing a rise and fall in rates associated with the usage of estrogenic drugs for menopausal symptoms *(11)*. Because correlational studies deal with aggregate exposures and disease occurrence at the population level, they are also often seriously limited by the imprecise measurements of exposure and the many potentially confounding variables. However, occasionally the correlational approach may provide evidence that strongly suggests a causal relationship, as with aflatoxin, which has been linked to primary liver cancer based on concomitant geographic variation with the intake of contaminated foodstuffs.

B. Analytical Studies

In order to test etiological hypotheses and to identify and quantify carcinogenic risks to man, it is necessary to conduct analytical epidemiological studies *(9-10)*. These studies are the principal means for determining the human health hazards of specific environmental exposures and agents. In contrast to descriptive surveys, data are obtained on disease occurrence and putative risk factors for specific individuals, using mainly the case-control or cohort method. Thus, by grouping exposed individuals and comparing them to those unexposed, after controlling for all other relevant variables, the risk of disease associated with exposure can be estimated. While it is important not to impose unnecessary constraints on epidemiological investigation, there are some methodological guidelines to consider in designing a study. In particular, the study groups should be sufficiently large, and the time intervals between initial exposure and tumor onset sufficiently long, to identify the lowest excess risk considered important to detect. Reliable and valid estimates of exposure should be sought, with quantitative measurements to permit dose-response evaluations.

Studies should be designed in a manner that minimizes potential sources of bias, and permits detection and

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control of confounding variables. Because the putative exposure may act either at an early stage or at a late stage of carcinogenesis (or both), it is possible to provide insight into the mechanisms of action by examining risk in relation to several temporal aspects of exposure. The studies should also strive to identify interactions of a particular exposure with other risk factors that may contribute to the carcinogenic process.

Analytical epidemiological investigations are essential to achieve a better understanding of the causes and means of preventing cancer. These studies cover a broad range of exposures with special relevance to public policy. Occupational studies have been a time-tested means of identifying carcinogens, but they require further emphasis to assess industrial hazards suspected on the basis of experimental, clinical, and field observations. Radiation studies also need increased emphasis to clarify the effects of low-level exposure and the shape of the dose-response curve. Drug studies have been useful both for direct evidence of risk associated with taking certain medications and also for insights into mechanisms of human carcinogenesis. They require an expanded effort to evaluate the late effects of estrogenic compounds, immunosuppressive and cytotoxic agents, and other medications suspected of having carcinogenic activity. Because of increasing clues to nutritional risk factors, emphasis is needed to clarify the role of dietary components including fat, fiber, micronutrients, trace elements, and food additives as well as cooking practices. The influence of general environmental pollutants remains an epidemiological challenge and requires more intensive evaluation through analytical studies, some of which may integrate appropriate environmental and body-burden measurements. Finally, multidisciplinary projects combining epidemiological and experimental approaches to chronic disease have recently gained impetus, and should be encouraged to evaluate the influence of oncogenic viruses, dietary and metabolic factors, host susceptibility, general environmental pollution, and other causative factors that may continue to elude detection by traditional observational methods.

1. Case-control Studies. These studies start by identifying persons with a particular disease (cases) and a group of similar persons without the disease (controls). Information on past exposure to known or suspected risk factors is then collected from interviews, questionnaires, medical records, occupational logs, or other sources. The frequency of a particular exposure among the cases is compared with that in the control group, after making appropriate adjustments for other relevant differences between the two groups. If the proportion of cases with a certain exposure is significantly greater than that of the controls, an association between exposure and disease may be indicated. The case-control approach is especially well-suited to studying relatively rare conditions, such as most cancers, where the putative exposure is common in the general population (*e. g.*, menopausal estrogens and endometrial cancer), or when the exposure is rare but accounts for a large portion of a particular cancer (*e. g.*, vinyl chloride and liver angiosarcoma) *(12)*.

2. Cohort Studies. These start by identifying a group of individuals with a particular exposure and a similar group of unexposed persons and following both groups over time to determine subsequent health outcomes. The rates of disease in the exposed and unexposed groups are then compared. Information on disease frequency and other factors may be identified from medical records, occupational records, physical examinations, questionnaires, tumor registries, or death certificates. An association between exposure and disease may be indicated if the rates of disease are greater in the exposed group than in the unexposed group. These investigations may be based on current exposure and future health outcomes (prospective cohort study), but more commonly they utilize past exposure information and disease occurrence (retrospective cohort study). Instead of an unexposed comparison group, general population mortality or incidence rates (specific for age, sex, race, and calendar time) are often used to determine the expected number of cases of disease. This method assumes that in the absence of specific exposure the study group would have had the same probability of developing the disease as the general population, but differences in ethnic, socio-economic and other variables must be considered in evaluating the validity of this assumption. The cohort approach is used mainly when it is possible to evaluate heavy exposures in clearly defined subgroups of the population. Thus it has been especially helpful in assessing the carcinogenic risk from occupational hazards or medical exposures such as radiation and certain drugs.

The statistical measures of association most often used in analytical studies are the odds ratio and the relative risk. The odds ratio is usually associated with the case-control study and represents the odds or probability of disease occurrence in the exposed compared with unexposed individuals. An odds ratio of 1 indicates no association between exposure and disease, assuming that proper adjustments for confounding factors have been made. The relative risk is a measure of association in cohort studies and is defined as the ratio of the disease rate in the exposed group to that in the unexposed group. For this reason it is also known as the rate ratio, and it permits a direct estimate of the risk of disease associated with a particular exposure. When the disease is rare, when incident cases are collected, and when cases and controls are representative of the same populations, the odds ratio is a good estimate of the relative risk *(12)*. The magnitude of the odds ratio or relative risk is a measure of the strength of an association, although they are both subject to unknown or unmeasured biases which may distort their true value. Another term often used in epidemiology is the population attributable risk or etiological fraction, which is the absolute amount of disease contributed or caused by a specific exposure.

Both the case-control and cohort methods are characterized as having certain strengths and weaknesses, although they complement each other in the testing of specific etiological hypotheses. Case-control studies provide a more efficient means of studying rare diseases, with fewer individuals needed for study as compared with the cohort approach; a shorter time period for study completion and generally lower costs as compared with the cohort method; an opportunity to evaluate simultaneously several causal hypotheses as well as interactions (the extent and manner in which two or more risk factors modify the strength of one another); and a capacity to evaluate the effects of common exposures as well as those rare exposures which may account for a large proportion of the cases. On the other hand, the case-control approach has some problems in directly estimating the risk associated with a particular exposure, except in special circumstances noted above; in reducing certain biases (*e. g.*, selection, historical recall) that affect the comparability of cases and controls; and in providing detailed and precise information on exposures occurring in the past (1). Such investigations also, by definition, can only evaluate one disease or outcome at a time.

The advantages of cohort studies are their capacity to estimate directly the risks attributed to a particular exposure, since incidence or mortality from disease is actually being measured; to reduce subjective biases by obtaining information before the disease develops; to determine associations between a particular exposure and multiple health outcomes; and to evaluate temporal relationships such as latency period and duration of effect. However, cohort studies are usually expensive and complex undertakings. They require large numbers of exposed individuals, particularly when relatively rare events such as most cancers are being investigated; long periods of follow-up to accommodate the latency period for chronic diseases such as cancer; and special handling of problems associated with persons lost to follow-up and with biased estimates of risk as from the "healthy worker effect" of occupational studies *(1)*.

3. Intervention Studies. Also referred to as experimental studies *(7)*, these represent a third strategy of analytical epidemiology, which is especially useful in confirming causal relationships suggested by case control or cohort studies. This approach may be applied in programs designed, for example, to reduce cigarette smoking and alcohol intake, modify diet, control occupational pollutants, or evaluate candidate preventatives (*e. g.*, vitamin A supplements, hepatitis-B vaccine). Ethical considerations are obviously critical when developing this approach, and after intervention the statistical procedures resemble those employed for cohort studies.

V. BIOCHEMICAL EPIDEMIOLOGY

It seems likely that some limitations of cancer epidemiology may be overcome by incorporating laboratory methods in analytical investigations. This has been a valuable routine practice in infectious disease epidemiology for the past century. This approach, sometimes called biochemical or molecular epidemiology *(13)*, has only recently been developed in cancer epidemiology. There is current enthusiasm for these kinds of investigations, since they merge the strengths of observational human studies with newly developed experimental probes to derive information that could not be developed by epidemiology or laboratory study alone. The laboratory aspect may make it possible to define past exposures and subclinical or preclinical response to initiators, promoters, and inhibitors of carcinogenesis, or to evaluate host-environmental interactions. There is special interest at present in using this technique to clarify carcinogenic risks associated with nutritional influences or specific environmental agents that can be detected in tissues or body fluids. Opportunities are also available to assess specific host factors that influence susceptibility to carcinogenesis, including endocrine parameters, immunocompetence, and genetic markers. Techniques are being refined to detect and quantify particular carcinogens or their metabolites in tissues or body fluids through chemical analyses, mutagenesis assays or immunological detection techniques. It is already possible to measure the interaction of specific agents with cellular target molecules, for example, through adduct formation with proteins and nucleic acids, excretion levels of excised adducts, or markers of altered gene expression *(13)*. The task of identifying the effects of lifestyle and other environmental and host factors is obviously formidable. Biochemical epidemiology represents an innovative approach that may help to elucidate further the causes of cancer and the actual mechanisms of carcinogenesis.

VI. IMPLICATIONS OF NEGATIVE STUDIES

Epidemiological observations often provide regulatory agencies with health information which is helpful in establishing sound, defensible rules governing workplace exposures as well as exposure to general environmental contaminants. The clinical and laboratory observations, and subsequent epidemiological confirmation, linking hepatic angiosarcoma and exposure to vinyl chloride led directly to safeguarding of workers by regulatory limitation of permissible exposure levels. Although, as in other areas of science, epidemiological studies can never "prove" the absence of an association, sufficiently large and well-controlled studies that fail to detect a hazard can also be useful. Specifically, for the types of populations studied, for the doses and duration of exposure to the putative agent, and for the assessed time following exposure, likely upper and lower bounds on the estimates of risk can be made, as well as the statistical likelihood of the study to identify an effect. As an example, the results of a large collaborative study of bladder cancer and artificial sweeteners were interpreted as indicating that saccharin use was not a significant public health problem *(14)*.

The likelihood of a study to identify an effect, if one is really present, is referred to as the statistical "power" of the study. Its estimation involves consideration of the size of the study group, the number of subjects exposed, and the level of excess risk which is considered important not to miss. With this information, the power of case-control and cohort studies can be calculated and thus some index of confidence can be attached to the observation of no association. The statistical power of "negative" investigations should be routinely considered when such studies are reviewed.

Regulatory agencies are often in the position of making decisions not simply on the effect of an exposure on the "average" exposed population, but on the effects among particularly susceptible subgroups of this population (*e. g.*, the concern over the acute effects of air pollution on infants, the very old, and the infirm). The risk of malignancy following exposure to a carcinogen is rarely uniform across all subpopulations but is routinely modified by genetic constitution, demographic characteristics (*e. g.*, age, race, sex), and exposures to other substances. Such risk modifiers can act either to enhance risk, such as the capacity of cigarette smoking to multiply the risk of lung cancer associated with asbestos exposure, or to reduce risk, such as the recently emerging evidence that certain dietary factors may inhibit the carcinogenic process. Epidemiological data are particularly, and often uniquely, relevant to these issues. Because of this, analyses of risk among subgroups of an exposed population are particularly germane to regulatory agencies. At the same time, these types of analyses are challenging to interpret, since variation between groups can easily occur due to chance or the differential operation of some type of bias.

Because of the central importance of epidemiology in cancer risk assessment, it is important to develop and strengthen programs of epidemiological research, and to ensure the conduct of studies to look for and measure (if detected) health effects whenever relevant human exposure has occurred. Collaborative studies among Federal agencies and other groups are needed to evaluate urgent issues involving scientific, regulatory or public policy concerns, as well as to stimulate the epidemiological application of technical and data resources that are used by the government and other institutions for different purposes. Because of the

international peculiarities in cancer occurrence, collaborative studies with investigators in other countries should also receive greater emphasis to pursue a wide variety of etiologic leads. These national and international collaborative studies can occasionally profitably include intelligent combined analysis of data already obtained from existing studies. In addition, further statistical investigation is needed to develop and test multi-cause and multi-stage models of carcinogenesis, and to clarify the many issues involved in extrapolating results from experimental testing to the human experience.

VII. SUMMARY

Epidemiological investigations comprise one of the major strategies in creating the scientific base necessary for regulatory decision-making. Descriptive epidemiological studies, including ecological or correlational approaches are useful in generating and refining hypotheses about potential cancer risk factors. Well-designed, well-conducted, and well-evaluated analytical epidemiological studies of either the case-control or cohort variety can test such hypotheses and provide the basis for causal inferences that are especially useful for public health decisions. The strengths of these studies lie in their capacity to assess directly the carcinogenic risks of environmental agents in humans (often with the dose levels and manners of exposure that are most relevant) and in their ability to provide insights into mechanisms of human carcinogenesis that can assist in extrapolation of risk estimates to dose levels or similar agents not yet studied. The lack of evidence of a hazard from an epidemiological investigation can also be useful in that, within the scope of the study, a likely range can be determined for the estimates of risk, as well as an estimation of the statistical power of the study to have detected an effect, if one were really present. However, the epidemiological method is often hampered by the long latent period that exists between exposure to a carcinogenic agent and the development of cancer, by the inability to control for the confounding influences of unknown risk factors, by problems in assessing specific agents when the human exposures are to mixtures, by the frequent absence of appropriate groups for study, and by a variety of difficulties associated with accurate and unbiased historical exposure assessment or disease ascertainment. In addition, the epidemiological method shares in the difficulties encountered by experimental studies in the direct detection of relatively low-level risks. In general, the strengths and weaknesses of the epidemiological method form a useful complement to the strengths and weaknesses of laboratory approaches to carcinogenesis. This, coupled with the direct assessments of risks and the results of interventions allowed by epidemiology, makes a strong argument for the conduct of epidemiological studies and inclusion of their results in regulatory decision-making, whenever relevant exposure has occurred in human populations.

VIII. REFERENCES

1. MacMahon B, Pugh TF. Epidemiology: Principles and Methods. Boston: Little, Brown and Co. 1970.

2. Rothman KJ. Causation and causal inference. In: Schottenfeld D, Fraumeni JF Jr. eds. Cancer Epidemiology and Prevention. Philadelphia, WB Saunders, 1982:15-22.

3. Doll R, Peto R. The causes of cancer. J Natl Cancer Inst 1981; 66:1191-1308.

4. Fraumeni JF Jr. Epidemiologic approaches to cancer etiology. Annu Rev Public Health 1982; 3.85-100.

5. MacLure RM, MacMahon B. An epidemiologic perspective of environmental carcinogenesis. Epidemiol Rev 1980; 2:19-48.

6. Tomatis L, Breslow NE, Bartsch H. Experimental studies in the assessment of cancer risk. In: Schottenfeld D, Fraumeni JF Jr. eds. Cancer Epidemiology and Prevention. Philadelphia: WB Saunders, 1982:44-73.

7. Day NE, Brown CC. Multistage models and primary prevention of cancer. J Natl Cancer Inst 1980; 64:977-989.

8. Hutchison GB. The epidemiologic method. In: Schottenfeld D, Fraumeni JF Jr, eds. Cancer Epidemiology and Prevention. Philadelphia: WB Saunders, 1982:3-14.

9. Lilienfeld A, Pederson E, Dowd JE. Cancer epidemiology: Methods of Study. Baltimore: Johns Hopkins Press, 1967.

10. Doll R. The epidemiology of cancer. Cancer 1980; 45:2475-2485.

11. Austin PF, Roe KM. The decreasing incidence of endometrial cancer: Public health implications. Amer J Publ health 1982; 72:65-68.

12. Cole P. Introduction. The analysis of case-control studies. In: Breslow NE, Day NE, eds. Statistical Methods in Cancer Research: Vol 1, Lyon: International Agency for Research on Cancer, 1980:14-40.

13. Perera FP, Weinstein IB. Molecular epidemiology and carcinogen-DNA adduct detection: New approaches to studies of human cancer causation. J Chron Dis 1982; 35:581-600.

14. Hoover RN, Strasser PH. Artificial sweeteners and human bladder cancer. Lancet 1980; 837-840.

CHAPTER 5--Chemical Exposure Assessment

I. INTRODUCTION

For the purpose of this document, a chemical exposure assessment is that process which seeks to define the quantity of a chemical which comes into contact, or may come into contact, with human populations.

This information then can be coupled with toxicity data to allow estimates of the potential risk from a carcinogen. Exposure assessments may also be used to identify and predict the effects of prospective control options or to measure the effectiveness of intervention activities designed to limit exposure. An assessment may address sources of human exposure, the intensity, routes and conditions of exposure, the frequency and duration of exposure, and the segments of population exposed. In certain simple situations an assessment may only need to consider well defined individual exposures that can be measured directly. In more complicated circumstances, broad systematic surveys and extensive mathematical computations may prove necessary *(1-3)*. Exposure assessment is often the most resource demanding portion of the evaluations of chemical risks performed by the various federal agencies.

"Many authorities agree that the weakest link in our understanding of the environmental health studies is our knowledge of human exposure." (4)

The great diversity of different sources and routes of chemical exposure complicates a review of this area. In the federal government, the source of a specific chemical exposure has served as a guiding principle in defining the responsibilities of different regulatory agencies. Separate responsibilities exist for exposure to chemicals through the ambient environment (air, water, and waste sites), food, drugs, consumer products, and the workplace environment. In each area an array of specialized estimating techniques, data sources, and expertise have been developed. The hundreds of thousands of possible combinations of factors which might be included in a specific exposure assessment make it extremely unlikely that any two exposure assessments of the same chemical will be identical. Each federal agency tends to focus on those aspects of exposure which are relevant to the laws which it administers *(5-25)*. This chapter addresses some of the common considerations in methodology, as well as the broad issues and difficulties that are relevant to exposure assessments. Three appendices provide more detail on aspects of exposure assessments dealing with food, consumer products, and potential carcinogens in the environment.

Despite the overall grouping according to source of exposure, it is important to

recognize that the path that a chemical follows from its source to the exposed target can be quite complex and may involve a number of different media. For example:

(a) chemicals released into one medium (*e. g.*, the air) may later transfer to other media (*e. g.*, soil or water);

(b) Low ambient levels of a compound may be magnified through bioaccumulation of the compound through the food chain;

(c) Chemicals may be degraded and new compounds formed during environmental transport and disposition;

(d) A chemical used in an article may be released into the environment years later when the article is disposed of as waste; and,

(e) Workers may carry a chemical home on their work clothing leading to a continuing exposure of their families.

II. METHODOLOGY OF EXPOSURE ASSESSMENT

There is a diversity of procedures for estimating exposure *(26)*. Although exposure estimating techniques are becoming more sophisticated at this time there is no universally accepted minimum set of specifications for the reliable estimation of exposure *(27)*. Exposure assessment is rapidly developing as a technical speciality, and even recent major reports on risk assessment only mention exposure briefly *(28-32)*. There are, however, a number of general approaches discussed below which may be applicable to the conduct of most exposure assessments.

As a useful simplification, exposure assessment studies can be divided among those that rely more heavily on direct measurement of chemical exposure and those where exposure is predicted, or "modeled."

A. Monitoring Studies

The direct monitoring approach is exemplified by the development of practical personal monitors which measure directly concentrations of chemicals in the air which individuals breathe *(33,34)*. An exposure assessment can be based on the range of personal exposure data generated by these monitors when used with an appropriate study group. However, it should be noted that the detection limits attained by personal monitors may pose limits in some studies and that most personal monitoring techniques currently provide information on average exposure but not on the time course or peak levels of exposure.

Monitoring of pollutants in the air and water has probably generated the greatest quantity of data among all exposure study approaches.

Some examples of these types of studies include:

(a) Carbon monoxide exposure has been examined extensively using personal and population monitoring *(35-42)*;

(b) Air pollution in the city of St. Louis was studied for several years *(43-44)*, producing over one million data points per day during much of the program;

(c) The plume from a power plant *(45)*, was studied intensively to define the transport and chemical transformation of the emissions from a single point source;

(d) Other techniques have been used to monitor emissions from entire cities to refine our understanding of the atmospheric transport of chemicals over large geographic distances *(46)*;

(e) Significant monitoring studies have also been conducted for a wide range of organic and inorganic compounds in marine, freshwater, and surface environments *(47-60)*;

(f) Extensive studies have been conducted to determine the levels of bioaccumulated pesticides and other chlorinated compounds in edible fish and shellfish.

In the workplace monitoring is the principle methodology for determining the levels of exposure to specific chemicals. The monitoring is usually site-specific, and generally is not used to estimate the total exposure of the entire workforce. The Occupational Safety and Health Administration (OSHA) and the National Institute of Occupational Safety and Health (NIOSH) have established data management systems for assimilating and aggregating data from workplace measurements. At times, these two agencies collaborate in the preparation and publication of occupational health surveys that describe exposures to certain chemicals across broad segments of an industry or occupation.

There is no monitoring system in place for determining the levels of exposure to substances in consumer products. Exposure estimates are generally based on *ad hoc* short-term surveys, laboratory studies and mathematical modeling. For example, monitoring systems have provided for many years extensive information on the levels of pollutants in the ambient air from the combustion of fossil fuel. No such parallel exists for these same pollutants generated from the combustion of fuel indoors. However, several monitoring studies of indoor air pollutants have now generated data on exposures to combustion products from gas or kerosene appliances in the home *(61-63)*.

Chemical contaminants in the U.S. food supply are monitored through the FDA's Total Diet Studies, an annual program which involves purchase and analysis of approximately 200 foods in grocery stores across the United States. Other monitoring systems used to measure exposure to chemicals in food are described in Appendix A entitled "FDA Information Sources for Exposure Estimates" (Sec. IV A).

Chemicals are also monitored in humans as a means of exposure evaluation *(64-74)*. In a national program, human tissue has been analyzed on a regular basis to monitor selected, persistent chemicals such as DDT and PCBs *(75,76)*. Tissue, secreta or excreta, or any combination of these, can be assessed and compared to an appropriate reference *(77)*. Such data can be used not only as a measure of overall individual exposure, but also as a measure of the effectiveness of regulatory actions when the monitoring is conducted for sufficiently long times to reveal trends. Chemicals or classes of substances for which there is some evidence that biological monitoring may be useful for detecting evidence of a substantial internal dose on an individual or group basis include: inorganic and organometallic substances, aliphatic, alicyclic and aromatic hydrocarbons, aromatic amines, ketones, aldehydes, phenols and pesticides *(77-80)*. In summary, monitoring can provide estimates of individual exposure and data to define the connection between the sources of a chemical and exposure to humans. Monitoring activities can encompass studies of the sources of chemicals, the ambient environment, the human environment of the home and workplace, the food and water consumed, as well as the doses absorbed and retained by the human body.

B. Modeling

Modeling is a second broad approach utilized in exposure assessment. Here the term modeling is used broadly to describe the construction of a methodology through which diverse data on different factors can be combined to predict levels of human exposure in the absence of complete monitoring data. Models are predictive tools used when direct measurement of exposure would be prohibitively time-consuming and expensive, and when the relationship between the sources of a chemical and the eventual exposure is complex. A

model may be constructed both to allow interpolation between experimental observations and to make predictions of exposure and circumstances that have not yet been experimentally studied.

Models often begin as an effort to describe and generalize theoretically a phenomenon observed in the laboratory or field. Monitoring data bases are used to construct mathematical relationships among variables of concern *(e. g.,* meteorological parameters and the temporal/special distribution of chemicals emitted from a source). For example, the air monitoring data from the St. Louis and the power plant plume studies cited above have been used to build and refine modeling tools for predicting population exposure to contaminants in the air.

Given the wide variety of possible situations requiring exposure assessment, it is not surprising that many different models have been developed. A recent catalogue of the models available for use in regulatory decision-making identified 156 models, most of which can be applied to exposure assessments *(81-83)*. A review of these models is beyond the scope of this chapter, but descriptions of various types of models are informative and can be found in the references *(17,27,60,84-111)*.

In general, models are most helpful when average, or idealized estimates of exposure are satisfactory. Even though the level of sophistication of a particular model may be high, the predictions may still be crude, because any model is a simplified description of the natural phenomenon it depicts. There is a need for more research to validate most models, since the accuracy of their predictions is often unknown or only roughly known. In addition, the accuracy of the exposure estimates made by models can be no better than the quality of the input data used. The use of models does not compensate for poor data, and in certain instances, may obscure the uncertainty inherent in the exposure predictions. The use of scientific judgment in interpreting results is essential.

C. Microcosms

The use of microcosms to study pollutant behavior provides an approach that combines features of both monitoring and modeling studies. The transport and transformation processes which occur between the source of a chemical and the eventual human exposure can be difficult and expensive to study in nature, and in the absence of data on these processes, models cannot be constructed. Microcosms, which attempt to recreate portions of the environment in the laboratory, can provide an alternate means for defining these processes. They have the added advantage that many variables can be controlled. Ideally, a microcosm, when properly validated, faithfully mimics the processes occurring in nature. By adding a chemical to such a system, its subsequent partitioning amongst the components of the environment, together with the associated chemical and biological conversions, can be studied in a single integrated experiment.

Marine, freshwater, terrestrial, subsurface or aquifer, and atmospheric microcosms have been studied *(84,112-130)*. For example, the laboratory microcosm concept has received increasing attention recently in studies which seek to predict residential exposure to products of combustion or air pollutants *(131,132)*. Limited validation of predicted, versus measured, levels of products of combustion in a residence has shown such predictions to be useful in assessing exposure *(129, 130)*.

D. Human Factors

In exposure studies using monitoring, modeling, or a combination of approaches, the actual behavior of the human population under study must be taken into consideration. Some examples illustrate this: 1) the amount of time that an individual spends indoors compared with outdoors will affect the risks associated with either outdoor or indoor air pollution; 2) failure of workers to wear protective equipment can increase their occupational exposure to hazardous compounds; and, 3) consumer exposure to vapors during the use of various products will decrease proportionally with increases in the amount of ventilation provided in the home.

Human behavior is often evaluated using information gathering techniques somewhat similar to opinion polls or marketing studies. In such a study, a randomly selected population is asked a series of questions that define aspects of their behavior that can affect chemical exposure. On an occupational setting "time-motion" studies of the periods of employee contact with varying work environments can contribute to an exposure assessment.

The exposure to direct and indirect food additives is monitored by the FDA using a number of complex studies of human eating habits. Surveys of food additive use have been undertaken since 1973 with the help of the National Academy of Sciences, as have studies of the migration of chemicals from packaging materials into foods *(15,19,23,25)*. Other related work has determined the frequency of consumption of individual foods and individual food serving sizes, with the data compiled in such a way as to be compatible with the population data found in the U.S. Census *(22)*. These surveys and studies have produced a complex array of information which then is converted by the FDA into estimates of population exposure to direct and indirect additives in human food *(16,24,135)*. Some of the same data are used by EPA in setting tolerances for pesticide residues in food crops *(14)*.

E. Structure-Activity Relationships

Data now exist on the chemical, physical, and toxicological characteristics of a large number of chemicals, as does information on their transport, transformation, and environmental fate. Thus, some correlations now can be made between the structures of certain chemicals and the properties they exhibit, a process called structure-activity analysis. Under favorable conditions, these correlations allow rough predictions to be made of the characteristics of chemicals which have not been studied, reducing the amount of testing necessary to make at least an initial judgment of the risks which they may pose *(99,136-142)*. Structure-activity relationships can be used to delineate the general properties of interest, but they are not generally a substitute for actual measurements.

The use of structure-activity relationships may allow preliminary exposure estimates to be made even when there is a scarcity of data on a specific chemical. Structure-activity analysis is a relatively new field, and the available tools are still crude. The user must exercise scientific judgment in interpreting the results, because substantial work remains to be done in refining and validating these techniques.

F. Integrated Exposure Assessments

Most assessments performed in support of rule-making consider only a single source or route of exposure. Such assessments are appropriate in the case when only one source or route of exposure is significant. However, certain recent exposure assessments on chemicals with multiple routes of exposure have considered all routes simultaneously *(144)*. In a pilot effort, an exposure assessment has been prepared which considers six related halogenated solvents and all routes of exposure simultaneously *(145,146)*. This

assessment, in combination with hazard data, attempts to provide a risk assessment data base for all six solvents and all routes of exposure. Using this approach, all regulatory options and combinations of options may be considered in seeking the most effective means of reducing risk.

The preparation of such integrated exposure assessments for widely used chemicals is very difficult and resource intensive and requires the contributions of specialists in many disciplines. The difficulty and expense of integrated assessments may limit the broad application of these valuable tools.

Monitoring of the levels of chemical contamination in human tissue, blood and urine, as discussed above, can provide a second method of assessing the total human exposure to certain chemicals depending on metabolism and persistence in the body.

G. Data Bases and Data Management

Research by the Federal regulatory agencies on human exposure has produced a large body of data which can be used in performing assessments. One recent index identified 319 data bases, many of which could be of value in exposure assessment *(82)*. For example, monitoring data are reported regularly for National Pollution Discharge Elimination System (NPDES) permits, issued under the Clean Water Act, thereby affording information on 133,000 sources of chemicals found in surface waters *(147)*. Monitoring data on air emissions from many sources and ambient air quality data from over 4,000 active air monitoring sites across the country are included in the Aerometric and Emissions Reporting System (AEROS) *(148)*. In addition, many major research efforts (*e. g.*, the St. Louis air pollution study) generate large data bases useful in exposure assessment *(43,44)*.

Many data bases which do not deal directly with chemicals are also useful. The data of the U.S. Census provide information helpful to determine populations at risk. The National Climatic Center maintains detailed weather records, while the U.S. Geological Survey has a massive data base on water on a regional and state basis *(149,150)*. The EPA has been constructing a comprehensive data base on organic chemical manufacturing *(151)*.

As the number of data bases and models available for exposure assessment grows, it will become increasingly difficult to access and manipulate the large quantities of information and broad assortment of techniques without computer systems. Preliminary exposure assessments, reviews of the relative effectiveness of regulatory control options, and many other assessment-related tasks, which in the past required effort, can be accomplished rapidly with limited accuracy at a computer terminal, calling upon data bases and models as needed *(152-156)*.

III. BROAD ISSUES AFFECTING EXPOSURE ASSESSMENTS

A. Extrapolation and Non-Representative Systems

Exposure assessments, in a manner often analogous to risk assessments, may require extrapolation from a limited number of sites, to a large population. Such extrapolations carry with them uncertainties that need to be reflected in the final assessment.

In some cases, the exposure measured may not correlate well with the actual experience of the larger populations. In such cases, the non-representative nature of the exposure measurement may give rise to an assessment that is inaccurate. Such errors can arise especially when microcosm measurements and models are used instead of extensive monitoring networks.

B. Quality Assurance

Measurements of chemicals at the trace levels of concern, as needed for many exposure assessments, are difficult exercises in analytical chemistry and can lead to errors and uncertainties which should be considered in preparing an assessment. Until recently, extensive quality assurance information was not a routine part of most research, testing, and monitoring programs. To improve this situation some agencies have instituted quality assurance procedures which require that records be maintained on the accuracy and reliability of every chemical measurement associated with research, monitoring, and compliance enforcement *(157,158)*. Two examples of such state-of-the-science projects are the EPA-Chemical Manufacturers Association Joint Study on water treatment systems and the Love Canal Monitoring Study *(159,160)*.

The quality assurance portion of the Love Canal Monitoring Study provided information on the accuracy and reliability of the analyses of chemicals at trace levels in air, water, and soil. The results demonstrated the limitations inherent in the measurement of complex mixtures in a variety of matrices. The overall results in the Love Canal studies suggest that the most advanced analytical techniques correctly identify trace levels of an organic chemical in complex environmental mixtures with approximately 70 percent certainty.

To date, the major efforts on quality assurance have been devoted to chemical analyses of environmental materials. As discussed, other data contribute to the exposure assessment, *e. g.*, information generated through microcosm studies, human behavior, or modeling. There is a need for further validation of such tools to assure their accuracy and reliability in estimating exposure *(161-164)*.

C. High Risk Populations

Subgroups of the population may be particularly at risk from exposure to a chemical. These groups may be exposed to unusually high levels of a chemical or may be especially sensitive to the toxic properties of a compound. The existence of subgroups of either type could lead to a compound producing a substantial risk even though the average exposed individual may experience little, if any, risk. A thorough exposure assessment needs to consider the possibility that high risk populations or situations exist. Many, or most, current exposure assessments do not have enough data to allow an evaluation of the effects of a chemical on high risk populations.

D. Refinement of Assessments

At the initial consideration of a chemical, only crude data relating to exposure will generally exist. Such crude data may allow a rough estimate of likely exposure; this preliminary estimate may be useful to decision makers in assigning priorities and resources. It is also possible that crude data may allow an estimate of the maximum or minimum exposure that may be expected to occur. Such an analysis may effectively rule out, or indicate the presence of, a significant risk. Specifically, a "worst case" estimate, where all assumptions are chosen so as not to underestimate the possible exposure, may indicate that little risk exists if significant exposures are not predicted.

As more resources are devoted to an exposure assessment and more studies conducted, a refined assessment is generated. Often there will be several stages of refinement of an assessment, and the degree of refinement and accuracy finally required will be related to the certainty needed to enable risk management decisions.

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E. Relationships to Biological Dose

The data generated in an exposure estimate must ultimately be coupled with biological data on the hazards presented by a chemical in order to determine the actual risk presented by the exposure. In order to achieve this coupling, the estimated human dose must be related to the doses received in the human or experimental studies that generated the information on the biological hazard. The type of exposure data needed can vary for different risk estimation procedures. For example, for risk estimation using a dose-response relationship that is not linear in the range of human exposure, information on the frequency distribution of different exposure levels in the population is needed, instead of simply an estimate of the average exposure.

This comparison can be complicated by differences in the frequency, duration, intensity, and route by which the two doses were received. This is particularly relevant since human exposures to a single chemical may follow many different patterns ranging from a high single exposure to a low level lifetime exposure. Humans will also often be exposed through several routes: ingestion, inhalation and dermal. Because of the diversity of human exposures, frequently there will not be toxicological data available obtained under the same exposure conditions. In those cases, careful review and expert judgment enter into the application of the exposure data.

Recently, there has been considerable interest in the possibility of relating human chemical exposures to hazard studies by utilizing biological indices of the effects of the different exposures. Specifically, it has been suggested that the quantity of a carcinogen reaching and interacting with DNA be directly compared in exposure and hazard studies. This topic receives fuller discussion in Chapters 1 and 4 of this document. It should be noted that at the present time, data to allow such comparisons are generally not available, and considerable research still is needed in order to assess the practical applicability of this approach.

F. Overall Limitations of Exposure Assessments

Many exposure assessments are unable to distinguish all of the parameters that are important in determining possible health effects. These include variations of exposure with time, including, peak versus average exposures, and annual versus daily exposures. In addition, exposure assessments rarely, if ever, are able to estimate the dose that actually reaches a biological site where an effect may occur. As a consequence, some information is often available about the magnitude, frequency, or duration of exposure, but rarely is information available that is adequate to determine accurately all three. In addition, the population whose exposure is being assessed will often be exposed by more than one route from a number of different sources. As a result, estimates addressing single routes or sources of exposure are often inadequate to represent what is actually occurring. Environmental monitoring data, models, and microcosms may sometimes be inadequate, and of limited value, and may lead to a false sense of security if broadly applied without consideration and enumeration of their limitations.

Finally, there are a number of factors that are a part of both a hazard assessment and an exposure assessment which usually are not completely determined. These factors include the age distribution of the exposed population, special sub-populations that may be particularly sensitive to low doses, cumulative exposures, latency, host factors, or populations which may be exposed to particularly high concentrations. As a result, there are generally unknown data and uncertainties associated with exposure assessments at many points. It is important that the assessor describe the data that are missing, the associated uncertainties at each step of the assessment, and the assumptions made when filling in the gaps.

At present, therefore, there is a great deal that can be improved in carrying out exposure assessments. Informed decision making often requires consideration of a complex array of information, rather than a single numerical estimate of exposure. To the extent possible the ultimate use of the data should be defined, and the exposure assessment tailored accordingly. The limits of the assessment, both conceptual and methodological, need to be described, and all the uncertainties enumerated. Quality assurance programs and efforts should be included as well as a description of efforts made to validate laboratory studies and mathematical modeling: in general, careful scientific review of all elements of an exposure assessment should be stressed.

IV. APPENDICIES

A. Appendix A.--FDA Information Sources for Exposure Estimates

Survey, epidemiological, toxicological, and analytical data used by the Bureau of Foods in determining the human health consequences of exposure to many of the categorical agents which the agency regulates are derived from a variety of sources. For example, NIOSH and OSHA provide data on occupational exposure and CDC provides data for a variety of exposure sources. The scientific literature and various reports provide a wide variety of animal and human data. In addition, data are obtained on types and amounts of foods eaten, concentration of food contaminants and human health effects.

1. Food Consumption. Some principle sources of food consumption data include: 1) the U.S. Department of Agriculture (USDA) Nationwide Food Consumption Survey (NFCS); 2) National Health and Nutrition Examination Survey (NHANES); and 3) Market Research Corporation of America (MRCA) survey data. Sources of food compositon data include: 1) USDA: Handbook 456, Handbook 8, National Nutrient Data Bank file; 2) NHANES: Model Gram and Nutrient Composition files; and 3) MRCA: Lead content of foods and methylxanthine content of foods (based on data from Total Diet Study and industry). Additional information on some of these sources is provided in the following discussions:

a. Nationwide Food Consumption Survey. The results of the Nationwide Food Consumption Survey (NFCS) 1977-78 provide data on the kinds and quantities of foods and nutritive values of diets ingested by men, women and children of different ages classified by various household characteristics. Dietary information obtained for individuals included the kind and amount of each food eaten; the time the food was eaten, the type of service, and the cost. Individuals were also asked if the day's intake was typical and if they were on a special diet, were vegetarians, or took vitamins, minerals or other supplements. Reported are average intakes per day and per eating occasion for foods most commonly eaten by individuals who participated for three days in the NFCS conducted by the U.S. Department of Agriculture.

b. National Health and Nutrition Examination Survey. Data were collected for NHANES II through response to questionnaires on medical history, food consumption, and health-related behavior. Data also were collected through direct medical examination. NHANES II was conducted on a nationwide probability sample of approximately 20,000 persons ages six months to 74 years from the civilian non-institutionalized population

of the United States. Food consumption data is of the form of quantities of food consumed and frequency of eating in a 24-hour recall period.

c. Market Research Corporation of America Surveys. One of the largest proprietary surveys of food intake is one conducted by the Market Research Corporation of America (MRCA). This corporation conducts the Menu Census survey which is designed to collect detailed information for one year on the ultimate disposition of all food products in terms of their consumption by individuals or their use in preparation of other dishes consumed by the individuals. Only information on frequency of eating is reported; that is, quantities are not included. Each Menu Census consists of 4,000 households. Each household reports all food preparation and consumption at home and away from home for 14 consecutive days in daily diaries. Brands and food packaging materials are also described. The sample is balanced within each quarter as closely as possible to the U.S. Census by various demographic characteristics, including region, household size, household income and other socioeconomic variables. Pertinent comparisons among these three data sources are given in the following table:

TABLE A1—NATIONAL FOOD CONSUMPTION SURVEYS

Characteristic	USDA NFCS 1977-78	NHANES 11 1976-80	MCRA MENU CENSUS VI 1977-78
Sample size	30,770	20,322	11,150
Length of dietary survey	3 days	1 day	14 days
Dietary methodology	24-hr. recall (one day) records (two days)	24-hr/recall	Daily diary
Collection methodology	Recall: interviewer recor self-administered	Interviewer	Self-Administered via mail
Reporter	individual subject	individual subject	main food preparer
Place of Recording	Home	mobile exam center	Home
Food quantities	yes	yes	no
Drinking water	yes	no	no
Processing/Packaging information.	no	no	yes
Other surveys in this series	1965-66	1971-74	1957-75

2. Total Diet Studies. The Food and Drug Administration uses several surveillance and regulatory programs to monitor the amount of chemical contaminants in the U.S. food supply. Most of these programs measure contaminants in raw or unprocessed foods.

The Total Diet Studies monitor levels of chemical contaminants and essential minerals in table ready food and consider dietary intake of these substances by various age-sex groups. The Total Diet Study is an annual program which involves the purchase of approximately 200 foods in grocery stores across the United States and the analysis of these foods for essential minerals, toxic elements, radionuclides, industrial chemicals and pesticides. The food list and diets, beginning in April 1982, were revised to reflect the present food supply and the current food consumption habits. The number of age-sex groups was increased to eight (infants, young children, male and female teenagers, male and female adults, and male and female older persons) in order to expand the coverage of the U.S. population. Foods were analyzed individually, rather than in commodity groups, to obtain information on the contribution of specific foods to the daily intake of minerals and contaminants.

The diets are based on data from the 1977-78 USDA Nationwide Food Consumption Survey (NFCS) and the Second National Health and Nutrition Examination Survey (NHANES II) carried out by the National Center for Health Statistics in 1976-80. Two hundred and thirty-four foods are collected from four geographic regions (northeast, south, west, and north central) and analyzed by the Kansas City Field Office Laboratory for 11 essential minerals and more than 120 chemical contaminants. The essential minerals analyzed for are: copper, iron, magnesium, manganese, potassium, phosphorus, calcium, sodium, iodine, selenium, and zinc. The daily intake by weight of these 234 foods has been weighted to represent 100% of the usual diet for the eight age-sex groups. These estimated food intakes are used to assess daily contaminant and mineral intake.

3. Food Additives

a. National Academy of Science Survey Data. The NAS surveys provide the agency with a data base for the concentration of additives used in food. To ensure confidentiality the NAS maintains the raw data from the surveys. These data have been obtained from mailed questionnaires that have been sent to over 2000 firms with approximately 1100 responding. The values obtained from the NAS are used as the substance concentration value in estimating intakes.

The surveys approach the question of usage of food additives from two directions: 1) how much poundage is used annually; and 2) what is the level of use in each of the firms' products.

b. Bureau of Foods Data Base. The Bureau of Foods' database for food additives comprises food additive safety information for substances added directly to food in the United States. Nearly 1600 items (over 1300 synthetic flavoring substances, nearly 300 direct additives, and some 70 color additives and color diluents) supply data on human exposure levels, chemical structure, and toxicological parameters. The computer database is searchable by software programs that permit sorting of the data on many parameters, including lowest effect levels, test animal species, toxicological effects and organ sites, as well as exposure and chemical structure categories.

This database comprises one module of the Bureau's SIREN (Scientific Information Retrieval and Exchange Network) system, the other two being the food additive information system (FAIS) and the new animal drug information system (NADIS) containing over 1/2 million indexed records across two FDA bureaus.

4. Census Data. Census data on the count and characteristics of the population are obtained from the Bureau of the Census. The agency has census files for 1960 and 1970 for the total population counts for each U.S. county or county equivalent, such as independent city, and within each county equivalent by sex, race, and 5-year age interval. These data are used in calculating rates in the population. Population estimates for the years 1971-1978 are available.

5. Fish Intake Data. Fish intake data are important to FDA in regulating food safety and has been used in evaluating the hazard of mercury, dioxins, and other contaminants of fish. The sources of national fish production data are the National Marine Fisheries Service (NMFS) and the USDA. NMFS calculates an annual estimate of the *per capita* consumption of seafood from data on the total catch of commercial seafood. The estimate does not include commercial fresh water fish, recreationally caught fish or marine fish sold at roadside stands. The NMFS also supplies a database on the mercury

content found in fish. The USDA calculates annual *per capita* fish intake by adding an estimate of recreationally caught fish and the other type of data to the commercial seafood production to calculate the total fish consumption.

6. Natural Toxicants. A computerized natural toxicants literature file is maintained which contains reprints of articles relative to the occurrence and health effects of mycotoxins, including plant and marine toxins. In addition, information is maintained on the level of mycotoxins in various commodities in the U.S.

7. Elemental Analyses. Data from the U.S. Geological Survey on elemental analysis of soils, waters, and vegetation provide background information on geographic differences in elements likely to be in the human diet.

8. Special Studies. Consumer interview surveys are conducted periodically on topics of special interest, which may grow out of immediate or potential health risks to the public or the need for information not currently available in areas of regulatory concern to the agency. The studies are designed internally, executed under extramural contract and the data are delivered on computer tape for internal tabulation and analysis.

9. Literature. A bibliography file of articles written by FDA employees is maintained. This file together with a computerized cross index contains articles on such subjects as analytical methods and food contaminant levels.

B. Appendix B.--Exposure Assessment at EPA

1. Introduction. An exposure assessment is that process which seeks to define the quantity of a chemical which comes into contact, or may come into contact, with human populations. This integral portion of the risk assessment is a growing technical speciality whose complexity has long been noted but has only recently been addressed using the sophisticated scientific tools available *(28,29)*.

The process involves consideration of the magnitude, frequency and duration of encounters between individuals and the chemical in question. In some instances (*e. g.*, prescribed dosing with drugs), the information is rather precisely known. In the case of exposure to chemicals of environmental concern, however, the assessment process is often associated with a dearth of data and assumptions/approximations must be made to fill in the gaps. For example, while some data may be available on the "direct exposure" from the emissions of a manufacturing plant, estimates of the "indirect exposure" resulting from potential bioaccumulation in the food chain may be less precisely known.

In recent years, data bases have been compiled, computer models developed, laboratory/field measurement taken and "standard operating procedures" adopted *(30-32)* that have narrowed the uncertainty associated with some of these estimates.

2. Defining the Exposure Assessment. Before beginning an exposure assessment, it is necessary to define clearly the product needed in terms of purpose, breadth, depth and approach. This conceptual scheme is being developed in detail by the EPA *(26,27)*.

Depending on the answers provided to these questions, different resources are available to construct the exposure assessment. Some of the more important resources are discussed below.

3. Monitoring. In many cases, site-specific monitoring is performed in order to generate qualitative or quantitative data for an exposure assessment - *e. g.*, more than 5000 water, soil, and sediments samples have been analyzed for the presence of 2,3,7,8-tetrachlorodibenzo-p-dioxin in the state of Missouri; groundwater and vertical soil cores have been analyzed for ethylene dibromide in Hawaii, California, and Georgia; and stack emissions have been sampled for heavy metals.

In addition to site-specific information, qualitative and quantitative exposure information is available from the various monitoring networks which have operated over the years to collect data on chemicals in different environmental media. For example, the Mussel Watch Program *(53,59)* has analyzed shellfish in the U.S. estuarine waters for a variety of pollutants. Shellfish are filter feeders and are generally efficient bioconcentrators of water contaminants; the residues in these organisms serve as sensitive markers for upstream pollution of waters which feed the estuaries.

In addition, great quantities of analytical chemical information on U.S. waters can be accessed through the computer data base, STORET. These data represent information gathered over the past years from every major watershed in the U.S.

Increasingly, the problem of groundwater contamination is of concern. Little systematically collected information on this environmental compartment is available at this time, although more effort is being expended to identify and quantitate levels of certain chemicals such as aldicarb and ethylene dibromide at selected sites.

EPA has gathered information on atmospheric pollutants for many years. As part of the national efforts to the quality of the ambient air, innumerable measurements have been made at various times and locations on certain pollutants, namely carbon monoxide, sulfur oxides, nitrogen oxides, particulates, hydrocarbons, and photochemical oxidants. Much of this information is available in computer files maintained by EPA, Office of Air Programs in Research Triangle Park, NC.

In a broader perspective of "monitoring" -- where the chemical is in the environment -- EPA's Office of Toxic Substances maintains and has access to files which identify chemical substances which are manufactured in or imported into the U.S. Some types of geototal production figures are generally available, along with graphic information on the location of production sites. This information is useful in generating a "material balance" of a chemical (a complete accounting of sources and disposition of a chemical in the environment).

EPA often relies on data generated by other Federal agencies (*e. g.*, FDA, NIOSH and the Department of Labor) to estimate the exposures likely to be encountered from eating food or being in the workplace.

Increasingly, interest is expressed in determining more direct measurement of human exposure to environmental pollutants. For years, EPA has maintained the National Human Adipose Tissue Network which collects adipose tissue from selected cadavers in such a way as to obtain a rigorous statistical sample of the U.S. population. These tissue samples are analyzed for a variety of organic chemical residues so that trends and potential problem chemicals can be identified. Further, the Agency publishes a summary of studies which has appeared in the scientific literature on residues in humans.

An ambitious program underway at the EPA, called the Total Exposure Assessment Methodology (TEAM) study *(66-71)*, combines personal monitor results *(34)* with analyses of food, beverages, water, human blood plasma and serum, urine, breath and mothers' milk to characterize the individual exposure of large test populations to a variety of organic chemicals over extended periods of time. Such data also will be useful in determining what portion of a particular chemical is actually absorbed by the body and how absorption varies from one individual to another at different exposure levels. The actual dose of a chemical which determines the health outcome from the

exposure is often different from the apparent exposure level *(165)*. The goal of the TEAM program is to develop an individual exposure monitoring methodology for use in estimating population exposures, including analytical chemical techniques of proven accuracy and reliability, tools for conveniently collecting detailed information on the activities of individuals on a 24-hour a day basis, and tools for managing, analyzing, and interpreting the data produced by such studies.

In sum, the Agency has broad environmental monitoring data on a number of chemical substances in various media. The information too often is not sufficient in depth, detail, and validation to provide precise data in a given exposure situation. Further uncertainties are introduced when attempts are made to extrapolate these data to absorbed dose. Therefore, while the Agency is indeed building an exposure data base, the range of uncertainty surrounding any exposure situation can be significant.

4. Modeling. The questions of "indirect exposure" often center on the transformation, transport, and ultimate fate of a chemical once it is released into the environment. While direct monitoring can provide some data in this regard, important detailed questions of chemical kinetics, distribution between media, potential uptake by biological organisms, and the like cannot easily be derived from such information. Two approaches to filling this gap are through the use of microcosms and through the use of mathematical modeling.

a. Microcosms. A microcosm is a recreation of a portion of the environment in the laboratory -- a physical model of nature. Ideally, the microcosm faithfully mimics the processes occurring in nature. By adding a chemical to such a system, its subsequent partitioning amongst the components of the environment, together with the associated chemical and biological conversion, can be studied in a single integrated experiment.

Marine, freshwater, terrestrial, atmospheric and subsurface or aquifer microcosms are available and have demonstrated utility. Much of our knowledge of the chemistry which occurs in the atmosphere has been generated using smog chambers *(80,112)*, *i.e.* atmosphere microcosms. Marine microcosms are now being used to understand the complex processes which affect the fate of a chemical in the ocean where it can be transformed by the benthate community, and eventually concentrated up the food chain leading to human food *(113-116)*. Terrestrial microcosms are being used to define more precisely the fate of a chemical in soil-plant-water systems *(127-129)*. Subsurface or aquifer microcosms have been created using special drilling techniques which allow a column of material to be removed from an aquifer in an undisturbed and uncontaminated state *(130)*. Such columns are then used to study the chemical and biological conversions underground.

One of the continuing questions raised about microcosms is how well do their results actually mimic what would occur in the "real" environment itself. In recent years, increased effort has been aimed at validating these systems and gaining an appreciation of the limitations of their data. At this time, however, the risk assessor must recognize this inherent potential source of error.

b. Mathematical modeling. One of the most frequently used tools in exposure assessment is mathematical modeling. Most such models begin as an effort to describe theoretically the phenomena observed in the laboratory or field. Large monitoring data bases are used to construct mathematical relationships between variables of concern (*e. g.*, meteorological parameters and the temporal/spacial distribution of chemicals emitted from a source). These relationships constitute the model which, because of the inherent complexity, often requires a computer for its use. Models are predictive tools used when direct measurement of exposure would be prohibitively time consuming and/or expensive and when the relationship between the sources of a chemical and the eventual exposure is complex.

Given the wide variety of possible situations requiring exposure assessments, it is not surprising that many different models have been developed. A recent catalogue of the models available for use in regulatory decision-making *(81)* identified 156 models, most of which can be applied to exposure assessments *(82,83)*. A description of the general features of some advanced models is informative *(85)*.

Ambient air modeling has reached the highest level of complexity with a capability for considering numerous point, line, and area emission sources simultaneously *(86-88)*. Several models *(84)* predict the complex chemical conversions occurring in air during transport of pollutants. One model allows prediction of the half-life and reaction products for an organic chemical in air *(89)*. Models currently under development address the problems of predicting exposure on a regional basis *(90)* and in areas with rough terrain *(91)*. **THE HANDBOOK FOR PERFORMING EXPOSURE ASSESSMENTS** *(166)* lists a number of routinely used air models available through NTIS.

Models are also available for the indoor air environment. The breadth and complexity of such modeling varies in proportion to the complexity of the environment being modeled. Even a single room or residence model may become quite complex when considerations of air filter efficiencies, particulate agglomeration/plating-out, nonspecific heterogeneous decay of reactive pollutants, multiple sources, sinks and varying source-strengths are encountered. Additional difficulties of assessing infiltration rates and the partitioning of ventilation rates among discrete volumes in a building have led to the use of compartmented models *(92)*. The contribution of varying levels of ambient pollutants to the indoor environment has been evaluated by a time-segmented model which has undergone limited field validation *(134)*.

As a result of the Great Lakes research program *(93-97)* and research into the environmental fate of pesticides *(98,99)*, models are available which describe the movement of chemicals in fresh water aquatic environments. Studies on the ocean disposal of municipal wastes have led to models for chemicals in coastal waters *(100-102)*. Recent work on terrestrial microcosms has provided input data for a terrestrial model *(103)* which includes consideration of plant uptake. A number of models are available which describe leaching and runoff of chemicals to streams *(81)*. The newest areas of modeling are ground water *(60,104-108)*, human micro-environments and activity patterns *(109-111)*, food consumption *(17)* and multimedia environmental partitioning *(167,168)*.

As models increase in complexity, the ability to predict exposure generally becomes more accurate. This additional accuracy, however, is purchased at the price of additional input data *(135)*. The choice of models available for a particular assessment may be reduced by a limited data base.

In general, models are most helpful when rough estimates of exposure are required. Even though the level of sophistication of a particular model may be high, the predictions are still crude because any model is an oversimplified description of the natural phenomenon it depicts. There is a need for more research to validate most models, since the accuracy of the exposure estimates

made by models can be no better than the quality of the input data. The use of models does not compensate for poor input data, but in certain instances may obscure the true uncertainty inherent in the exposure predictions. In sum, from modeling as well as monitoring, the Agency can obtain valuable information. At the same time it needs to be recognized that this information might be accompanied by potential significant uncertainties. Nevertheless, the use of scientific judgment in interpreting results is essential.

C. Appendix C--Chemical Exposure Assessment for Consumer Products

Assessing human exposure to toxic chemicals from consumer products is a vital part of CPSC's chemical hazard work and is the element which most distinguishes CPSC's efforts from the activities of other Federal agencies. The range of uses of chemical compounds in consumer products is great and the ways that consumers utilize a single product may vary considerably. For example, the techniques required for assessing exposure to a gas that may be emitted from building materials into home air and for a dye or other agent contained in cloth that may contact the skin have little in common. Most experience in exposure assessment from products has been gained over the past few years. Because of this, CSPC approaches exposure assessments on a case-by-case basis with each study in general requiring original experimental or theoretical work. Nonetheless, the general activity of exposure assessment can be described as a four step process:

(1) Determine the fact of the release of a compound from products and estimate the quantity of release. The degree of difficulty of this step can vary greatly. For example, it is straightforward if the compound of interest is contained in an aerosol product. It may require extensive experimental study if the compound is contained in a plastic matrix that is subjected to a variety of uses. More often than not in CPSC's experience, experimental studies are required. The presence of a compound in a consumer product does not imply that release actually occurs.

(2) Relate the quantity of release with the level of human exposure (to the outside of the body) from use of the products. A series of analyses are required for this step. First, use patterns for the products must be determined; both the most typical use patterns and those that could lead to lower or higher degrees of exposure must be considered. Experience of staff, information from industry, and consumer surveys can provide this information. Then, for each specific use, the data on chemical release must be used to estimate the actual amount of contact the user has with the chemical. For a chemical emitted into the home air, data on release rate, use patterns, home volume, and air exchange rate can be combined in a mathematical model to estimate the average and peak levels in the air. On the other hand an experimental study could be conducted to measure actual air levels from a certain product use. As another example the quantity of a liquid that comes into contact with skin can be measured.

(3) Determine the entry of the material into the body. This step can be straightforward if the toxicity information on a chemical was obtained by a route of exposure comparable with consumer use. On the other hand, particularly in the case of dermal exposures, data on entry of a compound into the body are frequently lacking. In that case experimental studies, such as painting the skin of an experimental animal with a radio labeled quantity of the compound of interest, may be conducted.

(4) Combine the data in steps 1 through 3 for a complete estimate of human exposure to a compound. This estimate can then be combined with health hazard information (toxicity) in evaluating human risks; it can serve as the basis required for a mathematical estimation of risk.

These steps are presented as one sequence, however, exposure estimation is often an interactive procedure. One uses available, limited information to make preliminary estimates of risk that may (if sufficiently conservative) eliminate concern about an exposure or may be successively refined by gathering data where it is most needed.

In addition, in certain studies, some of the above steps may be combined rather than considered separately. For example, a chemically treated cloth may be placed in contact with the skin of an experimental animal and the amount of uptake of the chemical by the animal measured. This experiment provides information that could separately be obtained by measuring both quantities released from the cloth and rates of penetration of the chemical through the skin. As another example, personal air monitoring can take into account both release rates from products and patterns of product use.

Exposure assessment for chemicals in consumer products is a developing science which makes innovative use of standard physical and chemical data, demands development of new experimental procedures, and combines relatively "hard" experimental data with "soft" data on widely varying human behavior patterns. While each exposure assessment is now a new undertaking, certain basic techniques (such as air level modeling) are finding repeated application. In the next several years the knowledge now being gained should lead to more readily standardized and more easily performed exposure assessments.

V. SUMMARY

Exposure assessment is a co-equal component, along with hazard assessment, in the evaluation of human risk. The assessment of exposure to chemicals by direct routes (*e. g.*, breathing emissions from an industrial stack) and indirect routes (*e. g.*, pollutants accumulating through the food chain) depends upon analytical chemical monitoring data, results of modeling estimates, and assumptions needed to fill data gaps. The field of exposure assessment is rapidly developing and only recently have attempts been made to develop systematic approaches to the problem. Although current efforts are often associated with considerable uncertainty, the increasing sophistication being brought to bear on the issue holds the promise of greater confidence in these estimates in the future.

Methodologies can be broken up into two broad categories, monitoring studies, which depend more on the measurement of exposure, and mathematical modeling, which use analysis to define the exposure. Microcosms, as samples of the environment, provide data for both approaches. Human factors, however, are important and must be considered.

An important part of the assessment process is the marshaling of the appropriate data bases, and some of the data bases used by three regulatory agencies are listed in apppendices.

Broad issues affecting assessments include the question of extrapolation from representative systems to large populations, quality assurance, the question of high-risk populations; and the approach of coupling exposure data to actual biological dose to improve assessments, are emphasized, with a discussion of the limitations of assessment as it is being done today.

VI. REFERENCES

1. U.S. Environmental Protection Agency. Methodology for Assessing Occupational Exposure to Toxic Chemicals. Contract 68-01-

6271, Task 10. Draft 6/18/82, appendices 4/7 and 4/7/82, Wash DC, 1982.

2. U.S. Environmental Protection Agency. Methodology for Assessing Exposures from Disposal of Toxic Substances. Contract 68-01-6271, Task 11, Draft 5/28/82, Wash DC, 1982.

3. U.S. Environmental Protection Agency. Methodology for Assessing Exposures to Toxic Chemicals in the Ambient Environment. Contract 68-01-6271, Task 13, Draft 5/28/82, 4 Vols., Wash DC, 1982.

4. Task Force on Environmental Cancer and Heart and Lung Disease. Summary of the Workshop on Exposure to Environmental Agents, Their Metabolism and Mechanisms of Toxicity, Research Needs. Project Group on Exposure and Metabolic Mechanisms, report to Congress, Wash DC, 1981.

5. Kang HK, Infante PF. Preliminary risk assessment for asbestos. Occupational Safety and Health Administration Docket No. H-033.

6. Hogan MD, Hoel DG. Estimated cancer risk associated with occupational asbestos exposure. Risk Analysis 1981; 1:67-76.

7. White MC, Infante PF, Chu KC. A quantitative estimate of leukemia mortality associated with occupational exposure to benzene. Risk Analysis (in press).

8. 48 Fed. Reg., 1864-1903. Occupational exposure to inorganic arsenic; Supplemental statement of reasons for final rule. 1983.

9. Jones ML, Saito EC. Supporting document: Occupational exposure to Toxaphene, assumptions, use patterns and calculations. Office of Pesticide Programs, U.S. Environmental Protection Agency, Wash DC, 1982.

10. Office of Pesticide Programs. Toxaphene: Decision document. U.S. Environmental Protection Agency, Wash DC, 1982.

11. Severn DJ. Use of exposure data for risk assessment. Presented at Symposium on Determination and Assessment of Pesticide Exposure, October 29, 1980, Hershey, Pennsylvania. 1980.

12. Jensen JK. The assumptions used for exposure assessment. Presented at Symposium on Determination and Assessment of Pesticides Exposures, October 30, 1980, Hershey, Pennsylvania. 1980.

13. Severn DJ. Exposure assessment for agricultural chemicals. In: Genetic Toxicology An Agricultural Perspective. NY:Plenum Press, 1982:235-242.

14. Paynter OE, Cummings JG, Rogoff MH. United States Pesticide Tolerance System. Unpublished paper by the Office of Pesticide Programs, U.S. Environmental Protection Agency, Wash DC, 1983.

15. Arthur D. Little, Inc. A study of indirect food additive migration. Unpublished data obtained under U.S. FDA Contract 223-77-2360, Wash DC, Ongoing work.

16. U.S. Food and Drug Administration. Procedures for estimating exposure to indirect food additives. Unpublished guidelines, Wash DC, 1982.

17. Beloian A. Use of a food consumption model to estimate human contaminant intake. Environ Monitoring Assessment 1982; 2:115-127.

18. Robert Williams Technical and Economic Service, Inc. Packaging in 1980 materials and markets. Unpublished data obtained under U.S. FDA Contract 22177-0195, Wash DC, 1980.

19. Schwartz PS, Schroeder LW, McKay TJ. Indirect additives - exposure estimates - II. Unpublished report, U.S. Food and Drug Administration, Wash DC, 1980.

20. C.H. Kline and Co., Inc. Plastic packaging 1979. Unpublished report, U.S. Food and Drug Administration, Wash DC, 1979.

21. Arthur D. Little, Inc. Food contact polymers and polymer additives used in packaging. Unpublished data obtained under U.S. FDA Contract 223-77-2360, Mod. No. 2, Wash DC. 1979.

22. Abrams IJ. Access to menu census VI data from July 1, 1977 - June 30, 1978. Unpublished data obtained under U.S FDA Contract 223-77-2046, Market Research Corporation of America, Chicago, Illinois. 1978.

23. Committee on GRAS List Survey - Phase III, Food and Nutrition Board, NAS-NRC. The 1977 survey of industry on the use of food additives. Food and Drug Administration, Wash DC, 1979.

24. Committee on GRAS List Survey - Phase III, Food and Nutrition Board, NAS-NRC. Estimating distribution of daily intakes of certain GRAS Substances. Food and Drug Administration, Wash DC, 1976.

25. Subcommittee on Review of the GRAS List (Phase II), Food Protection Committee, NAS-NRC. A comprehensive survey of industry on the use of food chemicals Generally Recognized as Safe (GRAS). NTIS Report PB-221-949, Springfield, Virginia. 1973.

26. Callahan M. Planning and exposure assessment. Prepublication draft, Office of Toxic Substances, U.S. Environmental Protection Agency, Wash DC, 1982.

27. Versar, Inc. Methods for assessing exposure to chemical substances. Prepared for the Office of Toxic Substances, US-EPA, Wash DC, 1981.

28. Office of Technology Assessment. Assessment of technologies for determining carcinogenic risks from the environment. Congress of the United States, Pub. No. OTA-H-138, Wash DC, 1981.

29. American Industrial Health Council. Chronic health hazards: Carcinogenesis, mutagenesis, teratogenesis, A framework for sound science in Federal decision making. Scarsdale, New York, 1981.

30. National Research Council, National Academy of Sciences. Risk assessment in the Federal government: Managing the process. Wash DC:National Academy of Sciences Press, 1983, 191 pp.

31. Davis DL, Gusman S. Exposure assessment: New frontier, Old problems. Toxic Substances J 1982; 4:-3.

32. Davis DL, Gusman S. Exposure assessment introduction. Toxic Substances J 1982; 4:4-11.

33. Wallace LA. Recent progress in developing and using personal monitors to measure human exposure to air pollutants. Environ International 1981; 5:73-75.

34. Wallace LA, Ott W. Personal monitors: A state-of-art survey. J Air Poll Control Assoc 1982; 32:601-610.

35. Environmental Monitoring Systems Laboratory. Interim report of field activities pertaining to the measurement of carbon monoxide exposure of residents of Washington, D.C., and Denver, Colorado. Research Triangle Park, NC, 1983.

36. Ott W, Blacker S, Akland G. Research plan for population exposure monitoring methodology: Vehicular air pollutants. U.S. Environmental Protection Agency, Wash DC, 1981.

37. Flachsbart PG. Field survey procedures for measuring carbon monoxide exposures of commuters in the Washington Metropolitan Area. Report under Cooperative Agreement No. CR-810344-01-0, U.S. Environmental Protection Agency, Environmental Monitoring Systems Laboratory, Research Triangle Park, NC, 1982.

38. Flachsbart PG, Ott WR. Field surveys of carbon monoxide in commercial settings using personal exposure monitors. Draft report, U.S. Environmental Protection Agency, Office of Research and Development, July 1981.

39. U. S. Environmental Monitoring Systems Laboratory. Carbon monoxide concentrations in four U. S. Cities during the winter of 1981. Research Triangle Park, NC, draft report, 1983.

40. Ott WR, Willits NH. CO exposures of occupants of motor vehicles: Modeling the dynamic response of the vehicle. SIMS Technical Report No. 48, Stanford University, Department of Statistics, Stanford, CA.

41. Akland GG. CO exposures in Washington, D.C. and Denver, Colorado. Draft report, U.S. Environmental Protection Agency, Environmental Monitoring Systems Laboratory, Research Triangle Park, NC, 1983.

42. Holland DM. Carbon monoxide levels in microenvironment types of four U. S. cities. Environ International (submitted).

43. Schiermeier FA. Air monitoring milestones: RAPS field measurements are in. Environ Sci Technol 1978; 12:644-651.

44. Strothmann JA, Schiermeier FA. Documentation of the regional air pollution study (RAPS) and related investigations in the St. Louis air quality region. U.S. Environmental Protection Agency, Pub. No. EPA-600/4-0761, Wash DC, 1979.

45. Schiermeir FA, *et al.* Sulfur transport and transformation in the environment (STATE): A major EPA research program. Bull Am Meteor Soc 1979; 60:1303-1312.

46. Possiel NC, *et al.* Recent EPA urban and regional scale oxidant field programs in the northeastern U.S. Presented at Annual Meeting of the Air Pollution Control Association, June 20-25, 1982, New Orleans, Louisiana, 1982.

47. Glass GE, *et al.* The waters of Lake Huron and Lake Superior, Vol. III (Part B). Lake Superior. Report to the International Joint Commission by the Upper Great Lakes Reference Group, Windsor, Ontario, pp. 417-429 and 499-502, 1977.

48. Poldoski JE, Glass GE. Methodological considerations in Western Lake Superior water-sediment exchange studies of some trace elements. National Bureau of Standards Special Publication 422, Wash DC, 1976, pp. 1073-1088.

49. Veith GD, Kuehl DW, Puglisi FA, Glass GE, Eaton JG. Residues of PCBs and DDT in the Western Lake Superior ecosystem. Arch Environ Contam Toxicol 1977; 5:487-499.

50. Welch KJ *et al.* Background hydrocarbon residues in fishes from the

Great Lakes and eastern Montana. Bull Environ Contam Toxicol 1981; 26:724-728.

51. McNaught DC, *et al.* Proceedings of the Symposium on atmospheric inputs of pollutants to the Great Lakes. Great Lakes Res 1982; 8:239-375.

52. Callaway RJ, *et al.* Preliminary analysis of the dispersion of sewage sludge discharged from vessels to New York Bight waters. Draft report, Environmental Protection Agency, Corvallis, Oregon, 1982.

53. Callaway RJ. Flushing study of South Beach Marina, Oregon. J of the Waterway, Port, Coastal and Ocean Division, ASCE, 107 (WWZ), Proc. Paper 16265; 1981, pp. 47-58.

54. Swartz RC, Lee H. II Biological processes affecting the distribution of pollutants in marine biodegradation and migration. Contaminants and Sediments, Vol 2. Ann Arbor: Ann Arbor Science Publishers, 1980:533-553.

55. Lee H, II Swartz RC. Biological processes affecting the distribution of pollutants in marine sediments. Part II. Biodeposition and Bioturbation. Contaminants and Sediments, Vol 2. Ann Arbor: Ann Arbor Science Publishers, 1980:555-606.

56. Gossett RW, *et al.* DDT, PCB, and benz(a)pyrene levels in white croaker (Genyonemus lineatus) from Southern California. Marine Poll Bull (in press).

57. Puffer HW, *et al.* Consumption rates of potentially hazardous marine fish catch in the Metropolitan Los Angeles area. Final report on EPA Grant no. 807-120010, Environmental Research Laboratory, U.S. Environmental Protection Agency, Corvallis, Oregon, 1981.

58. Veith GD, *et al.* Fish, wildlife and estuaries. Pestic Monit J 1979; 13:1-11.

59. Keeley JW. Guest editorial: New directions in international groundwater research. Groundwater 1982; 20:138-141.

60. Wilson JT, Piwoni MD, Dunlap WJ. Transport and fate of organic pollutants in the subsurface environment. Prepublication draft, Groundwater Research Branch, Robert S. Kerr Environmental Research Laboratory, U.S. Environmental Protection Agency, Ada, Oklahoma, 1982.

61. Fausett RS, Pressler CL. Kerosene heaters: Project status report and staff recommendations. US-CPSC, Wash DC, 1983.

62. Eberle S. Indoor air quality: Fuel-fired appliances: Briefing materials on unvented gas space heaters. US-CPSC, Wash DC, 1983.

63. National Academy of Sciences Committee on Indoor Pollutants. Indoor Pollutants. Wash DC, National Academy Press, 1981.

64. Ott WR. Human activity patterns: A review of the literature for estimation of exposures to air pollution. U.S. Environmental Protection Agency, Office of Research and Development, Draft Report 1982.

65. Spengler JD, Letz R, Ozkaynak H, Soczek ML. Feasibility of predicting personal or population exposures utilizing ambient air quality models and human activity data. Final report for Project 1D639ONASA. Strategies and Standards Division, U.S. Environmental Protection Agency, Research Triangle Park, N.C.

66. Wallace L, Zweidinger R, Erickson M, Cooper S, Whitaker D, Pellizzari E. Monitoring individual exposure-measurements of volatile organic compounds in breathing zone air, drinking water and exhaled breath. Environ Intern 1982; 8:269-282.

67. Wallace L, Pellizzari E, Hartwell T, Rosenzweig M, Sparacino C, Zelon H. Individual human exposure to volatile organic compounds encountered during normal daily activities. Work Plan, Office of Research and Development, U.S. Environmental Protection Agency, Washington, D.C., 1982.

68. Wallace LA, Pellizzari E, Hartwell T, Rosenzweig M, Erickson M, Spracino C, Zelon H. Personal breathing zone air, drinking water, food and exhaled breath. Environ Res (submitted).

69. Pellizzari ED, *et al.* Total Exposure Assessment Methodology (TEAM) study, Phase II, Part I: Formulation of an exposure and body burden monitoring program. Work Plan, Office of Research and Development, U.S. Environmental Protection Agency, Wash DC, 1982.

70. Pellizzari ED, *et al.* Study on toxic chemicals in environmental and human samples, Part II: Protocols for environmental and human sampling and analysis. Work Plan, Office of Research and Development, U.S. Environmental Protection Agency, Wash DC, 1982.

71. Handy RW, Pellizzari ED. Total Exposure Assessment Methodology (TEAM) Study: Phase II, Part III: Quality Assurance Project Plan Draft Work Plan. Office of Research and Development, U.S. Environmental Protection Agency, Wash DC, 1982.

72. Kutz FW, Murphy RS, Strassman SC. Survey of pesticide residues and their metabolites in urine from the general population. In: Rao KR, ed. Pentachlorophenol. NY:Plenum, 1978:363-369.

73. National Center for Health Statistics. Plan and operation of the Second National Health and Nutrition Examination Survey, 1976-1980. Vital and Health Statistics, Series 1, No. 15, PHS Pub. No. 81-1317, Public Health Service, Wash DC: U.S. Government Printing Office, 1981.

74. Murphy RS, Kutz FW, Strassman SC. Selected pesticide residues or metabolites in blood and urine specimens from a general population survey. Proceedings of the Conference on Research Needs for Evaluation of Health Effects of Toxic Chemical Waste Dumps, National Institute of Environmental Health Sciences, Research Triangle Park, North Carolina, October 27-28, 1981.

75. Kutz FW, Yobs AR, Strassman SC, Viar JF, Jr. Pesticides in people. Pesticide Monitoring J 1977; 11:61-63.

76. Lucas RM, Iannocchione VG, Melroy DK. Polychlorinated biphenyls in human adipose tissue and mother's milk. Final report under contract number 6801-5848, U.S. Environmental Protection Agency, Wash DC, 1982.

77. Berlin A, Yodaiken RE, Henman BA, eds. Assessments of Toxic Agents in the Workplace: Roles of Ambient and Biological Monitoring. Netherlands: Nijhoff, 1984.

78. Lauwerys RR, ed. Industrial Chemical Exposure: Guidelines for Biological Monitoring. California: Biomedical, 1983.

79. Aitio A, Riihimaki V, Vainio H, eds. Biological Monitoring and Surveillance of Workers Exposed to Chemicals. Wash D.C., Hemisphere, 1983.

80. Miller S. A monitoring report. Environ Sci Tech 1983; 17:343A-346A.

81. U.S. Environmental Protection Agency. EPA environmental modeling catalogue. Draft report, prepared under Contract No. 68-07-4723, Wash D.C., 1982.

82. U.S. Environmental Protection Agency. EPA Environmental Data Base and Model Index, Index Summary. EPA Information Clearinghouse, Office of Planning and Management, Wash DC, 1981.

83. U.S. Environmental Protection Agency. Models Survey, Questionnaire. EPA Form 3700-1A, EPA Information Clearinghouse, Office of Planning and Management, Wash DC, 1980.

84. Whitten GZ, Hugh H, Kilus JP. The carbon bond mechanism for photochemical smog. Environ Sci Technol 1980; 14:690-700.

85. Eschenroeder A. Dynamic modeling for assessment of exposure. Toxic Substances J 1982; 4:38-54.

86. Goodin WR. Advanced air quality modeling. Engin Bull 1981; 58.21-36.

87. Shreffler JH, Schere KL. Evaluation of four urban-scale photochemical air quality simulation models. Draft report, Meteorology and Assessment Division, Environmental Sciences Research Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, NC, 1982.

88. Schere KL, Shreffler JH. Final evaluation of urban-scale photochemical air quality simulation models. Metreorology and Assessment Division, Environmental Sciences Research Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, NC, 1982.

89. Hendry DG, Kenley RA. Atmospheric reaction products of organic compounds. SRI International, EPA Contract No. 68-01-5123, report No. EPA-560/12-79-001, U.S. Environmental Protection Agency, Wash DC, 1979.

90. Lamb RG. A regional scale (100km) model photochemical air pollution, Part I: Theoretical formulation. Draft report, Meteorology and Assessment Division, Environmental Sciences Research Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, NC, 1982.

91. Leavery TF, *et al.* EPA complex terrain model development. Final Report, EPA Contract No. 68-02-3421, Report No. EPA-600/3-82-036. U.S. Environmental Protection Agency, Wash DC, 1982.

92. National Academy of Science, National Research Council. Indoor Pollutants. U.S. Environmental Protection Agency, Pub. No. EPA-600/6-82-001, NTIS Pub. No. PB82180563. Wash DC, 1982.

93. Paul JF, Patterson RL. Hydrodynamic simulation of movement of larval fishes in Western Lake Erie and their vulnerability to power plant entrainment. Highland HJ, *et al.*, eds. Proceeding of the 1977 Winter Simulation Conference, Dec. 5-7, 1977, Gaithersburg MD: National Bureau of Standards 1979.

94. Bierman V Jr, Dolan DM. Modeling of phytoplankton-nutrient dynamics in Saginaw

Bay, Lake Huron. J Great Lakes Res 1981; 7:409-439.

95. Bierman VJ, Swain WR. Mass balance modeling of DDT dynamics in Lakes Michigan and Superior. Environ Sci Technol 1982; 16:572-578.

96. Paul JF, Kasprzyk R, Lick W. Turbidity in the Western Basin of Lake Erie. J Geophys Res 1982; 87(C8):5779-5784.

97. Dolan DM, Bierman VJ Jr. Mass balance modeling of heavy metal in Saginaw Bay, Lake Huron. J Great Lakes Res 1982; 8:676-694.

98. Ingfle SE, Kenisten JA, Schults DW. REDEQL-EPAK, Aqueous Chemical Equilibrium Computer Program. Report No. EPA-600/3-80-049, Environmental Research Laboratory, U.S. Environmental Protection Agency, Corvallis, Oregon, 1980.

99. Burnes LA, Cline DM, Lassiter RR. Exposure Analysis Modeling System (EXAMS): User manual and system documentation. Pub. No. EPA-600/2-82-023, U.S. Environmental Protection Agency, Wash DC, 1982.

100. Callaway RJ. Surface horizontal dispersion of pollutants in open coastal waters. Presented at International Symposium on Discharge of Sewage from Sea Outfalls, London, 2 Sept. 1974, HM 6661 Dd 196552 600 6/74 McC3309, London: H[illegible] Majesty's Stationary Office, McCorguodale Printers LTD, 1974.

101. Lick W, Paul J, Sheug YP. The dispersion of contaminants in the near-shore region. Modeling Biochemical Process In Aquatic Ecosystems. Ann Arbor:Ann Arbor Science Publishers, 1976:93-111.

102. Teeter AM, Baumgartner DJ. Prediction of initial mixing for municipal ocean discharges. Environmental Research Laboratory, U.S. Environmental Protection Agency, Corvallis, Oregon, 1979.

103. Overton WS. A model for terrestrial exposure assessment. Draft annual report, Environmental Research Laboratory, U.S. Environmental Protection Agency, Corvallis, Oregon, 1982.

104. INTERA Environmental Consultants, Inc. Hydrologic modeling of aldicarb transport to ground water on Long Island. Prepared for South Carolina Pesticide Epidemiology Study Center, Medical University of South Carolina, Houston, Texas, 1980.

105. Wilson JT, Enfield CG, Dunlop WJ, Cosby RL, Foster DA, Baskin, LB. Transport and fate of selected organic pollutants in sandy soil. J Environ Qual 1981; 10:501-506.

106. Offutt CK, Severn DJ. Assessment and prediction of pesticides in groundwater. Workshop on Pesticides in Soil and Groundwater, June 15-16, 1982, Univ. of Cal., Davis, California, 1982.

107. Enfield CG, Carsel RF, Cohen SZ, Phanm T, Walters DM. Approximating pollutant transport to groundwater. U.S. Environmental Protection Agency, Ada, Oklahoma. Ground Water 1982; 20:711-722.

108. U.S. Environmental Protection Agency. Environmental fate summaries for 26 pesticides. Memo from Stuart Cohen to Peter McGrath, Dec. 1979, Office of Pesticides Programs, U.S. Environmental Protection Agency, Wash DC, 1979.

109. Fugav M. Assessment of total exposure to an air pollutant. Proceedings of the International Conference on Environmental Sensing and Assessment, September, 1975, Wash DC, 1975.

110. Moschandreas DJ. Geomet Report EF-688, 1978.

111. Wallace LI. Briefing papers on ORD activities in modeling, microenvironments and activity patterns, July, 1982, Office of Research and Development, U.S. Environmental Protection Agency, Wash DC, 1982.

112. Falls AH, Seinfeld JH. Continued development of a kinetic mechanism for photochemical smog. Environ Sci Technol 1978; 12:1398-1406.

113. Perez KT, *et al.* The importance of physical and biotic scaling to the experimental simulation of a coastal marine ecosystem. Helgolander Wiss Meeresunters 1977; 30:144-162.

114. U.S. Environmental Protection Agency. Experimental marine microcosm test protocol, An assessment of the ecological effects, fate and transport of chemicals in a site-specific marine ecosystem, draft paper, Environmental Research Laboratory, Narragansett, Rhode Island, 1982.

115. Perez KT, Dywer RL. An experimental examination of ecosystem linearization. Amer Nat 1983; 21:305-323.

116. Perez KT, *et al.* Environmental assessment of a Phthalate ester, di-(2-ethylhexyl)phthalate (DEHP), derived from a marine microcosm. Aquatic Toxicology and Hazard Assessment:Sixth Symposium Special Technical Pub. 802, American Society for Testing and Materials, Philadelphia, Pennsylvania, 1983.

117. Metcalf RL, *et al.* Design and evaluation of a terrestrial model ecosystem. Final report of EPA Cooperative Agreement R803249, Pub. No. 600/3-79-004, Environmental Research Laboratory, U.S. Environmental Protection Agency, Corvallis, Oregon, 1977.

118. Gile JD, Gillett JW. Fate of selected fungicides in terrestrial laboratory ecosystem. J Agric Food Chem 1979; 27:1159-1164.

119. Gile JD, Gillett JW. Fate of 14C Dieldrin in a simulated terrestrial ecosystem. Arch Environ Contam Toxicol 1979; 8:107-124.

120. Gile JD, Collins JC, Gillett JW. Fate of selected herbicides in a terrestrial laboratory microcosm. Environ Sci Technol 1980; 14:1124-1128.

121. Gile JD, Collins JC, Gillett JW. Fate and impact of wood preservatives in a terrestrial microcosm. J Agric Food Chem 1982; 30:295-301.

122. Goodman ED, *et al.* Ecosystem responses to alternative pesticides in the terrestrial environment: A system approach. Final report of EPA Coop. Agreement R805624, Michigan State University, East Lansing, Michigan, 1982.

123. Gile JD. 2,4-D -- Its distribution and effects in a ryegrass ecosystem. Draft report, Environmental Research Laboratory, U.S. Environmental Protection Agency, Corvallis, Oregon, 1982.

124. Gile JD, Gillett JW. Transport and fate of organophosphate insecticides in a laboratory model ecosystem. J Agric Food Chem 1981; 29:616-621.

125. Gile JD. Research brief, biological effects and interactions of pesticides in a soil-plant-water microcosm. Unpublished, Environmental Research Laboratory, U.S. Environmental Protection Agency, Corvallis, Oregon, 1982.

126. Eaton JG. Recent developments in the use of laboratory bioassays to determine 'safe' levels of toxicants for fish. Bioassasy Techniques and Environmental Chemistry. Ann Arbor:Ann Arbor Science Publishers, 1983.

127. Brungs WA, *et al.* Effects of pollution on freshwater fish. J Water Poll Cont Fed 1977; 49:1415-1493.

128. McKin JM, Eaton JG, Holcombe GW. Metal toxicity to embryos and larvae of eight species of fresh water fish - II: Copper. Bull Environ Contam Toxicol 1978; 19:608-616.

129. Kopperman HL, Kuehl DW, Glass GE. Chlorinated compounds found in waste-treatment effluents and their capacity to bioaccumulate. Jolley RL, ed. Proceedings of the Conference on the Environmental Impact of Water Chlorination, Oak Ridge, Tennessee, Oct. 22-4, 1975, U.S. Government Printing Office, Pub. No. 1976669979/196, Wash DC, 1975.

130. Wilson JT, Nooran MJ, McNabb JF. Biodegradation of contaminants in the subsurface environment. Draft report, Robert S. Kerr Environmental Research Laboratory, Ada, Oklahoma, 1982.

131. Girman JR. Pollutant emission rates from indoor combustion appliances and cigarette smoke. Envir Int 1982; 8:213-221.

132. Duan N. Microenvironment types: A model for human exposure to air pollution, SIMS Technical Report No. 47, Department of Statistics, Stanford University, Stanford, CA, 1981.

133. Traynor GW. The effects of ventilation on residential air pollution due to emissions from a gas fired range. Lawrence Berkeley Laboratory, Pub. No. LBL-12563, Berkeley, CA, 1981.

134. Moschandreas DJ. Indoor air pollution in the residential environment. U.S. Environmental Protection Agency, Pub. No. EPA600/7-78-229a, Wash DC, 1978.

135. Oser BL, Hall RL. Criteria employed by the expert panel of FEMA for the GRAS evaluation of flavoring substances. Food Cosmet Toxicol 1977; 15:457.

136. Lyman WS, Reehl WF, Rosenblatt DH, eds. Handbook of Chemical Property Estimation Methods Environmental Behavior of Organic Compounds. NY: McGraw-Hill Book Company, 1982.

137. Veith GD. Structure-activity research at the Environmental Research Laboratory - Duluth. Unpublished, Environmental Research Laboratory, U.S. Environmental Protection Agency, Duluth MN, 1983.

138. Chiou CT, Schmedding DW, Block JH, Correlation of water solubility with octanol-water partition coefficient. J Pharmacol Sci 1981; 70:1176-1177.

139. Chiou CT, Schmedding DW. Partitioning of organic compounds in octanol-water systems. Environ Sci Technol 1982; 16:4-10.

140. Veith GD, Austin NM, Morris RT. A rapid method for estimating log P for organic chemicals. Water Res 1979; 13:43-47.

141. Veith GD, DeFoe DL, Berg BV. Measuring and estimating the

bioconcentration factor of chemicals in fish. J Fish Res Board Can 1979; 36:1040-1048.

142. Veith GD, Call DJ, Brooke LT. Structure-toxicity relationships for the fathead minnow, I. Narcotic industrial chemicals. Unpublished, Environmental Research Laboratory, U.S. Environmental Protection Agency, Duluth, MN, 1982.

143. Enslein K, Lander TR, Tomb ME, Craig PN. A predictive model for estimating rat LD50 values. A monograph prepared by Health Designs, Inc., Rochester, New York, 1983.

144. Versar, Inc. Draft Exposure Assessment for Formaldehyde. Prepared for Office of Toxic Substances, U.S. Environmental Protection Agency, Wash DC, 1983.

145. TSPC Solvents Work Group ¢2. Draft Executive Summary for TSPC solvents exposure assessment. U.S. Environmental Protection Agency, Wash DC, 1982.

146. TSPC Solvents Work Group ¢2. Draft exposure assessment for TSPC solvents, U.S. Environmental Protection Agency, Wash DC, 1982.

147. U.S. Environmental Protection Agency. Permit Compliance System (PCS), Wash DC, 1982.

148. National Air Data Bank. AEROS Manual Series, Vol. 3, Summary and Retrieval. U.S. Environmental Protection Agency, Pub. No. EPA 450/2-76-0096, Wash DC, 1981

149. National Climatic Center, Index of Original Surface Weather Records (Hourly Synoptic and Autographic), 52 Vols., National Climatic Center, Ashville, North Carolina.

150. U.S. Geological Survey. Catalog of information on water data. Office of Water Data Coordination, Wash DC. 151. U.S. Environmental Protection Agency. Organic Chemical Manufacturing, Pub. No. EPA-450/3-80-023-6, Wash DC, 1980.

152. Hall LH. The OTS Graphical Exposure Modeling System (GEMS). Prepublication draft, Office of Toxic Substances, U.S Environmental Protection Agency, Wash DC, 1982.

153. Anderson GE. Modeling of Human Exposure to Airborne Toxic Materials. Paper presented at the American Chemical Society Meeting, Sept. 1982, Kansas City, Missouri, 1982.

154. Johnson T, Paul RA. The NAAQS Exposure Model (NEM) Applied to Carbon Monoxide. Draft, prepared for Strategies and Air Standards Division, Office of Air Quality Planning and Standards Division, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina.

155. Ott W.R. Exposure estimates based on computer generated activity patterns. Paper No. 81-57.6 presented at the 74th Annual Meeting of the Air Pollution Control Association, Philadelphia, PA, June 21-26, 1981.

156. Cheng CK, Thomas J, Ott W, Mage D, Wallace L. Sensitivity analysis of the enhanced Simulation of Human Air Pollution Exposure (SHAPE) Model. Project Report for Contract No. 68-01-6595, General Software Corporation, U.S. Environmental Protection Agency, Wash DC, 1983.

157. U.S. Environmental Protection Agency. Mandatory quality assurance program. administrative Book I. Internal File on Administrative Correspondence, Office of Research and Development, Wash DC, 1982.

158. U.S. Environmental Protection Agency. Mandatory quality assurance program, QA guidelines, Book II. Internal File on Correspondence, Office of Research and Development, Wash DC, 1982.

159. Engineering-Science, Inc. CMA/EPA five-plant study. Prepared for Chemical Manufacturers Association, Wash DC, 1982.

160. U.S. Environmental Protection Agency. Environmental Monitoring at Love Canal, Vol. 1. Pub. No. EPA-600/4-82-038a, Wash DC, 1982.

161. Mount DI. Present Approaches to Toxicity Testing -- A Perspective. In: Aquatic Toxicology and Hazard Evaluation. Special Technical Pub. 634, American Society for Testing and Materials, Philadelphia, PA, 1977:5 14.

162. Brungs WA, Mount DI. Introduction to a discussion of the use of aquatic toxicity tests for evaluation of effects of toxic substances. In: Aquatic Toxicology and Hazard Evaluation Special Technical Pub. Philadelphia, PA, 1978:15-26.

163. Mount DI. Margins of safety for aquatic communities. Aquatic Toxicology and Hazard Assessment: Fourth Conference. Special Technical Pub. 737, American Society for Testing and Materials, 1981:5-9.

164. Kross RD, Lewis SC. Environmental analysis - Are we becoming too sensitive? Environmental Forum 1983; 1:15-19.

165. Calabrese EJ. The role of exposure data in standard setting. Toxic Substances Journal 1982; 4:12-22.

166. U.S. Environmental Protection Agency. Handbook for Performing Exposure Assessments. Draft, Office of Health and Environmental Assessment, Office of Research and Development, Washington, D.C., 1983.

167. Aravamudan K, Bonazountas M, Eschenroeder A. Environmental partitioning model for risk assessment of chemicals: Part 2. Narrative description of the methodology. EPA Contract No. 68-01-3857, Task Order 17, 2 Vol., U.S. Environmental Protection Agency, Wash DC, 1980.

168. Aravamudan K, Bonazountas M, Eschenroeder A. Environmental Partitioning model for risk assessment of chemicals: Part 2 User Workbook. Contract No. 68-013857, Task Order 17, U.S. Environmental Protection Agency, Wash DC, 1980.

Chapter 6--Utilizing Scientific Data in Assessing Human Cancer Risk Associated With Chemical Exposure

I. INTRODUCTION

Assessment of human cancer risk associated with some specified chemical exposure is a complicated scientific endeavor that requires careful review of all pertinent information by appropriately trained individuals. This process relies heavily on information derived from epidemiological, clinical, and long-term animal studies. Short-term test results and information on structure-activity relationships, comparative metabolism, pharmacokinetics and mechanisms of action also contribute, in varying degrees, to the assessment.

While there is general agreement within the scientific community about the steps involved in the risk assessment process, a number of specific issues related to these various steps are still unresolved; *e. g.*, the methodology for combining positive and negative data when evaluating carcinogenic potential and the selection of a dose-response model for making low-dose risk projections. The execution of any given risk assessment may also be hampered by the existence of critical gaps in the data underlying the assessment. Because these issues and data gaps can be pivotal in the process, it may be necessary to make judgments about these unresolved issues and assumptions to adjust for deficiencies in the underlying data base that will permit risk assessments to be completed. These judgments and assumptions should be plausible and, to the extent possible, be based on the scientific information on hand. However, the validity of these judgments and assumptions often cannot be conclusively established, so the risk assessment process should not be viewed as strictly "scientific" in the usual sense of the word. Instead, risk assessment involves a complex blend of current scientific data, reasonable assumptions and scientific judgments that permit decisions to be made in the absence of complete information.

With the passage of time the scientific data base grows, information gaps are filled, and perceptions change. This process of evolution and maturation results in a need for periodic reformulations and restatements of the appropriate guidelines for risk assessment.

The present chapter describes the basic framework for carcinogenic risk assessment and attempts to reflect what general agreement currently exists within the scientific community. It is intended to provide a bridge between the scientific data base on carcinogenicity developed in previous chapters and the various federal regulatory agencies that are charged with the responsibility of protecting the general public from exposures to carcinogenic agents.

II. STEPS IN THE ASSESSMENT PROCESS

There are four steps or components *(1)* that are typically involved in carcinogenic risk assessment. The first, which is often referred to as hazard

identification, entails a qualitative evaluation of both the data bearing on an agent's ability to produce carcinogenic effects and the relevance of this information to humans. The second, exposure assessment, is concerned with the number of individuals who are likely to be exposed and with the types, magnitudes, and durations of their anticipated exposures. The third component, hazard or dose-response assessment, uses the information on carcinogenicity from the hazard identification phase together with mathematical modeling techniques to estimate the magnitude or an upper bound on the magnitude of the carcinogenic effect at any given dose level. Finally, one may combine the information from the first three components or steps to characterize the carcinogenic risk associated with the expected human exposure to the compound of interest.

A. Hazard Identification

Due to the lack of complete information, there may be some uncertainty involved in determining whether or not an agent poses a carcinogenic hazard to humans. While information on human exposures and effects is particularly valuable, too often such data either do not exist or are inadequate, and one must rely primarily on information from long-term animal bioassays in assessing the potential for carcinogenic response in humans. In reviewing data, each relevant study must be evaluated as to the limits of inference implied by the experimental design, the results, and the conclusions. Although strict criteria for evaluating carcinogenicity data have not been developed for all circumstances, there seems to be reasonably good agreement among scientific groups as to the general elements to be included as a part of qualitative carcinogenic assessments (see also Chapter 1) *(2-8)*.

Epidemiological studies can, under certain circumstances, provide direct measures of carcinogenic effects in humans (see also Chapter 4). For example, some epidemiological investigations are able to associate cancer incidence or mortality with exposure to specific chemicals, industrial processes, or components of an individual's life style. Analytical studies, *i. e.*, case control and cohort studies, are especially important indicators of possible human carcinogenic risk, but case reports and descriptive studies may also be supportive. Consistent results in independent studies, freedom from bias and confounding factors, reliable exposure data, reasonable follow-up time, dose related responses and high levels of statistical significance are among the factors leading to increased confidence in a conclusion of carcinogenicity. Even if an epidemiological investigation fails to demonstrate an increased incidence of carcinogenicity among the exposed study members, upper and lower confidence limits on the risk measure used in the study can indicate a range of probable risk that could be incurred by a similarly composed segment (*i. e.*, in terms of age, race, sex, etc.) of the general population.

Evidence from long-term animal bioassays (see also chapter 3) constitutes the second major class of information bearing on the carcinogenicity of chemicals. The primary factors that are considered in the evaluation of carcinogenicity are higher tumor incidence and shorter latency in treated groups relative to controls. Findings are strengthened by the existence of positive effects in more than one treated group or sex. Additional support comes from positive results observed with different routes of exposure, in replicated experiments, in different animal strains and species, and in multiple organs or tissues. Attention is also given to the magnitude of tumor increase in treated animals, the existence of dose-related trends, the degree and extent of malignancy at a given site as a function of dose and time, the evaluation of concurrent non-neoplastic pathology in treated animals, and the finding of even a limited number of rare tumors in the exposed group(s). In addition the similarity, or lack of it, between contemporary and historical control tumor rates can affect the carcinogenicity evaluation.

Beyond these two major types of evidence, additional information bearing on the qualitative identification of carcinogenic potential may be gained from short-term test results (see also Chapter 2), including genotoxicity testing, macromolecular binding and *in vitro* transformation; short-term *in vivo* tests such as skin painting experiments; comparative metabolism studies among species; review of known physiological, pharmacological, biochemical and toxicological properties of the chemical (see also Chapter 1); evaluations of contaminants, degradation products and metabolites of the chemical under study; and consideration of the carcinogenic potential of structurally related compounds. At the present time these latter categories of information will often play a supporting or confirmatory role in the process of human cancer hazard identification. However, when specific information on comparative metabolic and kinetic data, exposure route-dependent responses, etc. is available, and its relevance demonstrated, it may be useful in determining the likelihood of possible human cancer hazard.

The relevant data discussed above are reviewed and assessed to determine if the chemical is likely to be carcinogenic in humans. The greater the consistency of the information, the greater the confidence that the agent poses or does not pose a carcinogenic hazard for humans.

B. Exposure Assessment (see also Chapter 5)

Without exposure, there obviously is no risk to the human population, regardless of the potency of the carcinogen under consideration. Thus, exposure evaluation is a critical component of the risk assessment process. One of the most frequently encountered problems when attempting to use epidemiological data in cancer risk assessment is the lack of appropriate historical exposure information.

In an exposure analysis, a group or groups of individuals are identified and described with respect to their population size and composition, and the route (*e. g.*, inhalation, dermal, ingestion), magnitude, frequency, and duration of their exposures. In addition, consideration must be given to both direct exposures (*e. g.*, drugs or occupation) and indirect exposures (*e. g.*, food or air) that result from a chemical's transport through various environmental compartments before impacting on humans.

For a given exposure source the concentration or amount of the chemical in that medium is determined by measurement, estimated by modeling, calculated from physical-chemical properties and other information on the agent, or projected from data on surrogate chemicals. Common values might include ambient airborne concentrations given as parts of chemical per million parts of air or the number of milligrams of a drug per dose. Measurements, estimates or assumptions then need to be made concerning the exposure of humans to the chemical through a given medium; *e. g.*, the frequency of consumption of a specific food containing a pesticide residue or the frequency, pattern, duration and conditions of use of a consumer product containing a cleaning solvent. Next, assimilation of the chemical into the body is considered:

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again there is reliance on whatever pharmacokinetic data or estimates are available. Values may be expressed in a number of ways such as the percentage of dose absorbed from the gastrointestinal tract, the movement of so many micrograms of chemical across a given area of skin over a certain time period, or the percent of the inhaled material absorbed in the respiratory tract.

All the above information, *i. e.*, population identification and characterization, chemical concentration in a given medium, the nature and pattern of exposure and finally the assimilation of the chemical into the body is assembled and analyzed. Information on multiple sources of exposure may then be combined into a single measure of overall exposure.

In some instances, it may not be possible to identify or isolate the particular chemical or chemicals in a complex mixture or manufacturing process that are likely to pose a carcinogenic risk to humans, and so detailed exposure quantitation becomes difficult. Furthermore, tremendous variability in exposure exists among members of a population. People change jobs or place of residence, convert from well water to municipal water, occasionally take prescription/non-prescription drugs, etc. Each of these differences among persons contributes to the uncertainty associated with any exposure value. To the extent possible, the degree of uncertainty in exposures should be discussed and estimated. Characterization of uncertainty may involve calculation of a "worst-case" exposure or upper bound on exposures, consideration of a range of likely or possible exposure values, or even the computation of confidence bounds associated with a specific model-based exposure estimate.

C. Hazard or Dose-Response Assessment

Hazard or dose-response assessment is a quantitative exercise that attempts to describe the expected human response to any given level of a carcinogenic exposure. The response is typically characterized in terms of either a specific risk estimate or an upper bound on the underlying risk. This step in the risk assessment process relies heavily on data from exposed humans and on observations of animals employed in long-term cancer studies. Long-term animal screening studies have traditionally focused on the detection of carcinogenic potential. As a result, they are usually based on exposures at or near the test animal's maximum tolerated dose level. Since these doses are often orders of magnitude higher than those encountered by humans, some form of mathematical low-dose extrapolation procedure is required to estimate the expected response at the exposure levels typically of concern in the environment. In addition a species extrapolation or scaling factor is usually employed when estimating anticipated human cancer risk from experimental data. Low-dose extrapolation may also be an important consideration for epidemiologically-based assessments, since the available human data may often involve relatively high level occupational exposures.

1. Low-dose Extrapolation. Low-dose carcinogenic risk estimation is based on mathematical modeling that attempts to characterize explicitly the unknown, underlying relationship between exposure and response or to place an upper bound on the dose-response relationship.

Linear extrapolation procedures are often employed for estimating the low-dose risk. In the absence of background response a commonly used approach is to draw a straight line from an upper (binomial) confidence limit on the observed response rate at the study exposure level to the origin. If background is present, the procedure can be modified by making specific assumptions about the nature of background in order to take its effect into account *(9,10)*. Two of the more appealing features of this procedure are that it is easy to apply and that it will generate an upper bound on the unknown, underlying cancer risk in most instances. The most frequent criticisms directed against it are that it may be unduly conservative and that it fails to utilize all of the study data if several exposure levels are employed. Recently, an interesting modification of the linear extrapolation procedure has been proposed by a number of investigators *(11,12)*. They suggested that some type of mathematical dose-response model should be fit to the experimental data, that the estimated response and associated model-based confidence limit for a preselected level of exposure should be determined, and that linear extrapolation should then be used to determine an upper bound on risk for the low-dose level of interest.

When low-dose extrapolation is based on an attempt to characterize the underlying dose-response relationship, one of three general classes of models (i.e. tolerance distribution models, mechanistic models, or time-to-tumor models) is usually employed.

The tolerance distribution models assume that each member of a population has a threshold or tolerance level below which that individual will not respond to the exposure in question. It is also presumed that the variability among individual threshold levels can be described in terms of a probability distribution. For this class of models the probability that a particular individual will exhibit a carcinogenic response when exposed at dose level d is the same as the probability that the individual's tolerance level is less than d. The familiar probit, logit, and Weibull dose-response models can all be generated by adopting different probability distributions to describe the population's tolerance variability *(13)*. The best known of the low-dose extrapolation techniques based on tolerance distribution models is the Mantel Bryan procedure *(14,15)*, which employs a probit model. Although the Mantel-Bryan procedure was originally regarded as a conservative approach to the estimation of low-dose risk since it employs a fixed, presumably conservative estimate of slope and extrapolates from an upper confidence limit on the observed experimental response, subsequent research *(16)* has shown that in the low-dose region the probit model tends to produce relatively high "safe-dose" estimates when compared to other extrapolation procedures. As a result of this characteristic and other criticisms that have been raised against the Mantel-Bryan procedure *(16)*, its use in quantitative risk assessment has markedly declined.

The class of mechanistic models, *i. e.*, the one-hit, multistage, and multi-hit models, derives its name from the presumed mechanism of carcinogenesis upon which the models in the class are based. Each of these models reflects the assumption that a tumor originates from a single cell that has been damaged by either the chemical or one of its metabolites.

The simplest of the mechanistic models is the one-hit model *(13)* which assumes that damage to the target cell sufficient to cause a tumor results from a single "chemical hit." This model is essentially linear in the low-dose region. Since it has only a single parameter other than background, it will not always provide an adequate fit to the experimental observations.

The multistage model, developed by Armitage and Doll *(17)*, is perhaps the most frequently employed of all low-dose extrapolation models currently in use. It reflects the observation that a developing tumor goes through several

different stages, which can be affected by the carcinogen in question, before it is clinically detectable. The multistage model will often be approximately linear in the low-dose region, and so its risk estimates are sometimes regarded as being relatively conservative. Furthermore, the procedures most commonly used to generate upper confidence bounds for the multistage model lead to estimates that are linear at low doses *(18)*.

The multi-hit model *(13,19)* assumes that the target cell must absorb at least k chemical hits before the cell achieves its carcinogenic potential. Some investigators regard the generalized multi-hit model, where k can be any non-negative value, as being more flexible than the multistage model; and its use in risk assessment has been recommended *(20)*. However, there are research results *(21)* that indicate a number of important, practical problems associated with its application, such as the fact that model hyperlinearity may produce extremely conservative estimates of safe dose levels, or that the multi-hit model can also indicate a "safe dose" at levels higher than some doses that actually produced deleterious effects.

The last class of models employed in low-dose extrapolation is the time-to-tumor models. These models, which attempt to describe the complex relationship between dose, tumor latency, and cancer risk, include the lognormal distribution (9), the Weibull distribution *(22)*, and the Armitage-Doll *(17)* and the Hartley-Sielken *(23)* models. While time-to-tumor models can lead in many instances to a more complete characterization of the underlying carcinogenic process, the quality of the available data may not permit their application or, at the very least, is often not sufficient to allow any discrimination among such models using goodness-of-fit criteria. Furthermore, a recent analysis *(24)* of a simulated data base containing information on time-to-tumor occurrence indicated that low-dose risk estimates generated by a variety of extrapolation procedures occasionally differed from the actual risk by three or more orders of magnitude even when this additional information was included in the modeling process. It also appeared that, on the whole, incorporation of time-to-tumor data did not substantially increase the precision of low-dose risk estimation relative to modeling based only on quantal response information.

When data on the time of tumor occurrence or detection are available, some investigators have proposed that alternative measures or risk based on the concept of time-to-tumor, such as the "mean-free" dose or "late-risk" dose *(25)*, be used in the cancer assessment process. However, a detailed evaluation of these measures *(26)* indicated that they suffer from a number of shortcomings and are probably most meaningful when used in combination with the more traditional measures, like the lifetime probability of tumor.

As the preceding discussion has indicated, uncertainties are involved in the use of any of the commonly employed extrapolation models. Furthermore, goodness-of-fit to the experimental observations is not an effective means of discriminating among models *(27)*. Thus, no single low-dose extrapolation procedure has yet gained universal acceptance within the scientific community.

Model selection is further complicated when background tumor incidence is present and presumed to be induced by a mechanism or mechanisms distinct from that associated with the chemical under study. In this instance the various mathematical models may fit the observable data equally well and still generate low-dose risk estimates that may differ by many orders of magnitude. On the other hand if background additivity is assumed, *i. e.*, if it is presumed that there is a common mechanism of tumor induction, then all models are essentially linear in the low-dose region *(28)*. Even if only a small portion of the background incidence is associated with the same mechanistic process as the study chemical, linearity will tend to prevail at sufficientiy low doses *(29)*.

All of the preceding discussion has implicitly assumed that the carcinogenic dose-response relationship of interest is that which associates the probability of tumor onset with the administered dose or exposure levels. However, in the case of experimentally-derived data, saturation of critical enzyme systems may occur at high dose levels, and so the real dose of interest may be the biologically effective dose that reaches the actual target site. Since the relationship between the effective dose and the administered dose may be non-linear, pharmacokinetic considerations can significantly modify low-dose risk estimates regardless of the model employed *(30-33)*. Incorporation of mechanistic and pharmacokinetic data as well as information on target organ dose, when it is available, may, therefore, significantly enhance the usefulness of mathematical modeling procedures. In addition, consideration of any data on dose-dependent changes and differences in metabolism and repair, and appropriate adjustment for partial lifetime and intermittent exposure and competing risks might also reduce uncertainty associated with the mathematical modeling process.

2. Other Estimation Procedures. Traditionally, the approach to quantitative hazard evaluation for non-carcinogenic, toxicological endpoints has been based on the use of safety factors. With a safety factor approach an "acceptable" exposure level is determined by dividing the no observed effect level (NOEL) from laboratory-based chronic toxicity tests by an appropriately chosen safety factor. In theory the safety factor that is selected attempts to reflect both the possibility of an increased sensitivity of humans relative to laboratory animals and the variation in susceptibility within the human population.

In spite of its common use, there are a number of potential problems associated with the safety factor approach. The observation of no treatment-related effects at a given dose level may depend, at least in part, on the number of animals exposed at that particular level. Furthermore, the determination of a NOEL ignores the shape of the dose-response curve, even though it would seem that a curve that has a shallow slope in the experimental NOEL region potentially represents a greater toxicological hazard than one that rises steeply in this region. In addition, there is no biological justification for the general use of any specific safety factor. Another important consideration that would argue against the use of a safety factor approach in cancer risk assessment is the fact that this approach assumes the existence of a true population threshold below which no adverse effects can occur. Even if the concept of individual thresholds could be supported, the well-recognized genetic variability in the human population would effectively prevent the estimation of a general population threshold value. Moreover, given the high level of background cancer present in the human environment, it seems unlikely that one could rule out the possibility that a new chemical exposure, however limited, might augment an already ongoing mechanistic process and thereby produce a collective or additive exposure that exceeds the unknown threshold level *(34)*. While recent attempts to categorize carcinogens as acting directly or indirectly on the genome have renewed interest in the possible use of the safety factor approach, most scientists believe that

there is not sufficient biological understanding of these processes to make such classifications for the carcinogenic effect of an agent on the total organism at the present time *(35)* (see also Chapter 1). Even if this distinction is made, however, the implementation of a safety factor approach would still be problematical because of the various limitations of this procedure that have been discussed above.

Another measure that is occasionally proposed for use in cancer hazard evaluation is the relative potency index. Relative potency calculations are based on standard measures of toxicity, such as the ED50. Such measures are limited from an extrapolation viewpoint in that they attempt to compress an entire dose-response curve into a single number suitable for comparative purposes. Therefore, depending upon which toxicological measure underlies its derivation, a relative potency index may offer little insight into the relative risk in the low-dose region.

3. Extrapolation of Low-dose Risk Estimates to Target Populations. Low-dose risk estimates derived from laboratory animal data still must be extrapolated to the human population. This process is complicated by a variety of factors that differ among species and potentially affect the response to carcinogenic exposures. Included among these factors are differences between humans and experimental test animals with respect to life span, body size, genetic variability or population homogeneity, existence of concurrent disease, pharmacokinetic effects such as metabolism and excretion patterns, and exposure regimen (see also Chapter 1).

The traditional approach to the species extrapolation issue has been to use some standardized baseline for making interspecies comparisons. Commonly employed standardized dosage scales include mg/kg (body weight)/day, ppm in the diet or water, mg/m^2 (body surface area)/day, and mg/kg (body weight)/ lifetime. The choice of a particular dosage scale will obviously affect the magnitude of the projected risk. For example, calculating average daily dose on a body weight rather than a surface area basis can reduce the estimated human risk by approximately 6-fold when rat data are used for modeling human response and up to 14-fold for mouse data *(7)*. A number of studies *(36-38)* have used the few epidemiologic and laboratory data sets available in the literature involving comparable carcinogenic exposures to evaluate the relative reliability of these various scales for animal-to-human extrapolation. While no single scale emerged as the clear choice in all cases, it does appear that the best agreement between observed and predicted human cancer risk is often obtained when a mg/kg/day or a mg/m^2/day dosage scale is employed *(37,38)*. However, it must be emphasized that experience in this area is very limited and that the use of any standardized dosage scale for species scale-up is only a crude approximation to a more detailed adjustment that considers the spectrum of factors that can lead to differential species responses. Furthermore, recent research *(39)* into this issue has indicated that the previously observed *(38)* strong quantitative correlation of various agents' carcinogenic potencies in mice and rats may be explained by a corresponding correlation of maximum tolerated dose levels for these same agents. The general implications of this finding for quantitative species extrapolation are not fully understood at this time.

In addition to the empirical comparisons discussed above, there are a number of biological issues that bear on the choice of a particular dosage scale in species scale-up. For example, it may be important to know whether the parent compound, one or more of its metabolites, or some combination of the two, is responsible for the observed carcinogenic activity. Similarly, the nature of the biochemical target site and the various factors determining the rate, duration, and extent of the toxicologic reaction may be relevant to the selection process. However, while any meaningful information on the underlying carcinogenic mechanism(s) should, if possible, be taken into account when choosing a dosage scale, such specific information often will not be available.

While no extrapolation across species is involved when epidemiological data are used in risk estimation, the marked variability in human sensitivity must be taken into account. Furthermore, there are a number of other problems that may be encountered with attempting to use epidemiological data to construct estimates of lifetime risk for a subset of the general population. In the absence of specific knowledge about the synergistic or antagonistic potential of the exposure of interest, additivity of effects is often assumed. This assumption can lead to either an under or over estimation of the true carcinogenic risk presented by the exposure under consideration.

Epidemiological investigations are often conducted for only a limited period of time,and failure to adjust properly for incomplete follow-up of subjects can significantly affect the estimation of lifetime risk. Similarly, estimation of lifetime cancer risks is also complicated if the available epidemiological data involve exposures that fall far short of a normal lifespan. For example, if a multistage mechanism is assumed, then the effect of early termination of exposure will be dependent on the stages of the carcinogenic process that are influenced by the exposure *(40,41)*.

D. Risk Characterization

The final step in the risk assessment process, risk characterization, typically involves a multidisciplinary evaluation of all relevant data including the qualitative evidence regarding the likelihood that the chemical in question poses a human cancer hazard, available information on potential or actual human exposure, and the quantitative results of dose-response and species extrapolation modeling. The strengths and weaknesses, the biological relevance, and the quality of all data used to develop the characterization of the human cancer risk associated with anticipated or known exposures should be considered, and an attempt to qualify or quantify the various uncertainties in the characterization of risk should be made when possible.

As discussed earlier, the qualitative evidence is evaluated by a weight-of-the-evidence approach. Uncertainties in the data are resolved using best scientific judgment. While no overall measure can be given of the uncertainty, the decision-maker needs to be aware of the strengths and limitations of the qualitative data involved in the risk characterization process. The results of a total risk assessment should be expressed in such a way that there is a clear distinction drawn between a chemical for which the qualitative evidence is overwhelming and a chemical for which the qualitative evidence is only marginally persuasive.

As developed in Chapter 5, the exposure assessment may contain numerous uncertainties. For example, the assessment may reflect inherent limitations, such as those associated with analytical monitoring or modeling techniques. Further, assumptions are sometimes necessary in the absence of data in order to generate an assessment; *e. g.*, the amount of soil ingested by a child. In many such instances, "worst case" assumptions are made in an attempt to err on the side of public safety. The exposure assessment should be expressed in such a way that these uncertainties and assumptions are evident to the decision-maker.

Description of uncertainty is also important in the development of the quantitative estimates from dose-response and species extrapolation modeling. Unfortunately, the description of uncertainty in this step of the assessment process has often been limited to a description of the statistical uncertainty involved in low-dose extrapolation as expressed through the calculation of confidence limits for risk estimates.

As has already been noted, the choice of a particular low-dose extrapolation model can have a pronounced influence on the estimated low-dose risk. Therefore, it has been proposed *(42)* that an indication of the variability introduced by model selection be obtained by considering the range in the magnitude of low-dose risk estimates associated with the more commonly employed models.

Furthermore, if laboratory data are utilized in estimating low-dose risk, some attempt can be made to describe the biological variability associated with the process of species scale-up by contrasting estimates based on different dosage scales and animal test systems.

Finally, it is important in the characterization of human cancer risk to summarize briefly any judgments or assumptions that may have entered into the risk assessment process to insure that they are clearly differentiated from scientific fact *(1)*.

III. EMERGING AREAS OF SCIENCE EXPECTED TO IMPACT ON REGULATORY ACTIONS

Although no one can predict with certainty what and when major breakthroughs will occur in science, many emerging areas of science can be expected to significantly affect cancer risk assessment and related regulatory decisions in the future.

Greater knowledge of the metabolic pathways of chemical compounds and the pharmacokinetics of such agents in various animal species should help regulatory agencies to ascertain better whether carcinogenicity tests have been performed in an animal assay system which is relevant to man. Information on metabolic pathways for activation of a chemical carcinogen known to be important in humans but not present in the animal assay system used will influence the data evaluation and interpretation for human risk estimation. Similarly, factors such as diet, age, stress, sex, hormonal status, etc. can influence the metabolic conversion of chemicals to ultimate carcinogens and may be important in hazard evaluations conducted on proposed compounds.

DNA adducts remaining in organs *in vivo*, in the absence of tumors in a test animal species, may be innocuous; may indicate physiological peculiarities in the test system that prevent progression to overt tumors; or may suggest that overt manifestation to neoplasm has yet to take place. Such inhibitory factors may or may not be present in other assay systems or in man. Alternatively, failure to demonstrate tumor formation may indicate the need for promoter activity or interaction with other modifying agents. Substantial adduct formation without resulting biological manifestations may suggest either that the lesions induced are innocuous or dictate that more testing is needed to access the human exposure experience (*i. e.*, multiple exposure factors, promoting agents, nutrition, etc.). In any event, it is evident that additional research is required to define more precisely what DNA adduct formation means in term of human risk.

Most prescreen assays for chemical carcinogens presently rely primarily on chemical interaction with DNA (point mutation assays, DNA damage and repair). This approach may be inadequate since certain chemicals may not induce cancer by direct interaction with the DNA. New assays for carcinogenicity are being developed to include animal models where these factors can be taken into consideration in the evaluation of chemical agents.

Since tumor induction is generally considered to be a multi-stage process, each stage may be under independent genetic control. Test systems are being developed and used that are based on animals believed to be defective in genetic factors similar to those defects that predispose humans to cancer induction. Such test systems may also be used to screen sensitivity to selected carcinogens for subpopulations of humans with similar genetic characteristics.

A relationship seems to exist between altered DNA and carcinogenesis. The presence of carcinogen-altered DNA is being explored as a possible test system to detect persistent damage at the molecular level after exposure to suspect carcinogenic chemicals. Such a system could be used to screen exposed human populations for altered DNA bases using monoclonally-derived specific antibodies to modified bases. Such assays may also help place in perspective effects on the DNA arising from endogenous vs. exogenous DNA damaging agents. This screening would be an example of using a marker for altered cells important to the carcinogenic process. Additional biomarkers should be developed for cells in all stages of carcinogenesis. Such tests might be expected to identify the carcinogenic potential of suspect agents and the population(s) at risk for possible future development of cancers.

Certain DNA base alterations may occur in regions of the genome that currently seem to be unimportant for carcinogenesis. It is important to know which alterations are necessary for initiation of a tumor cell and which are masked or not expressed. Information is being assimilated on types of alterations in "control" regions and the relationship of the number of altered bases in these regions to tumor formation. These data should provide information needed to differentiate those insults to DNA that are critical from those that are not. If multi-critical sites must be altered in a particular manner, this approach may be used to examine multi-stage phenomena of cancer. The measurement of risk from particular carcinogens at the cellular level would then be based on a more selective effect than the level of total DNA adducts.

Other areas of research that may in time have an effect on regulatory decisions include the development of model systems to assay for compounds influencing promotion and progression of initiated populations, elucidation of factors controlling cellular differentiation, and tests for chromosomal rearrangements and oncogene activities and the development of computer-based techniques for both the identification of the portions of molecules that are important in carcinogenesis and the modeling of animal (the "computer mouse") and human response to tumor induction. Each of these areas of study will not only expand our knowledge of mechanisms but may also permit a more realistic assessment of risk. Besides improving assessment, increased knowledge of mechanism may also result in a greater ability to render carcinogenic agents biologically innocuous, removing hazards.

IV. SUMMARY

The assessment of human cancer risk associated with different chemical exposures is seen to be a complex mixture of currently available scientific data, assumptions and judgments based on prevailing scientific thought, and policy decisions. The process involves the identification of potential human cancer hazards, usually based on epidemiological, clinical, and long-term animal studies, the determination of potential human exposure profiles, the estimation of the unknown, underlying

relationship between exposure and response, and, finally, the combination of the results of these exercises to characterize the expected human cancer risk. Some degree of uncertainty is involved in all phases of this process, and as a result, no simple, standardized format has yet been developed for evaluating human cancer risk, even though a number of basic principles have emerged. It is apparent that human cancer risk assessment is still in an evolutionary state and that a number of emerging areas of science will impact on this process in the future.

V. REFERENCES

1. Committee on the Institutional Means for Assessment of Risks to Public Health, Commission on Life Sciences, National Research Council. National Academy Press, Washington, DC, 1983. Risk Assessment in the Federal Government: Managing the Process.

2. International Agency for Research on Cancer. IARC monographs on the evaluation of the carcinogenic risk of chemicals to humans: Chemicals, industrial processes and industries associated with cancer in humans. IARC Monographs 1982; volumes 1 to 29, Supplement 4.

3. Food Safety Council. Proposed system for safety assessment. Food Safety Council. Washington, D.C., 1980.

4. Griesemer RA, Cueto C. Toward a classification scheme for degree of experimental evidence for the carcinogenicity of chemicals for animals. In: Montesano R, Bartsch H, Tomatis L. (eds.) Molecular and Cellular Aspects of Carcinogen Screening Tests. International Agency for Research on Cancer, 1980; 27:259-281.

5. Interagency Regulatory Liaison Group. Scientific bases for identification of potential carcinogens and estimation of risks. Report written by the workgroup on risk assessment. Fed Reg 1979; 44:39858-39879.

6. National Cancer Advisory Board. General criteria for assessing the evidence for carcinogenicity of chemical substances. Report of the subcommittee on environmental carcinogenesis, National Cancer Advisory Board, P. Shubik, chairman. J Natl Cancer Inst 1977; 58:461-465.

7. Office of Technology Assessment. Assessment of technologies for determining cancer risks from the environment. Washington, DC: U.S. Government Printing Office, 1981.

8. Squire RA. Ranking animal carcinogens: A proposed regulatory approach. Science 1981; 214:877-880.

9. Hoel DG, Gaylor DW, Kirschstein RL, Saffiotti U, Schneiderman MA. Estimation of risks of irreversible delayed toxicity. J Toxicol Environ Health 1975; 1:133-151.

10. Gaylor DW, Shapiro RE. Extrapolation and risk estimation for carcinogenesis. In: Mehlman MA, Shapiro RE, Blumenthal H, eds. Advances in Modern Toxicology (Vol.1). New Concepts in Safety Evaluation (part 2). NY:John Wiley and Sons, 1979:65-87.

11. Gaylor DW, Kodell RL. Linear interpolation algorithm for low-dose risk assessment of toxic substances. J Environ Pathol Toxicol 1980; 4:305-312.

12. Van Ryzin J. Quantitative Risk Assessment. J Occup Med 1980; 22:321-326.

13. Krewski D, Van Ryzin J. Dose response models for quantal response toxicity data. In: Csorgo D, Dawson R, JNK, Saleh E. eds. Statistics and Related Topics. Amsterdam:North Holland, 1981:201-231.

14. Mantel N, Bryan WR. "Safety" testing of carcinogenic agents. J Natl Cancer Inst 1961; 27:455-470.

15. Mantel N, Bohidar NR, Brown CC, Ciminera JL, Tukey JW. An improved "Mantel-Bryan" procedure for "safety testing" of carcinogens. Cancer Res 1975; 35:865-872.

16. Crump KS. Response to open query: Theoretical problems in the modified Mantel-Bryan procedure. Biometrics 1977; 33:752-757.

17. Armitage P, Doll R. Stochastic models for carcinogenesis. In: Lecam L, Neyman J, eds. Proceedings of the Fourth Berkeley Symposium on Mathematical Statistics and Probability. Berkeley: University of California Press, 1961: 4:19-38.

18. Crump KS, Hoel DG, Langley CH, Peto R. Fundamental carcinogenic processes and their implications for low dose risk assessment. Cancer Res 1976; 36:2973-2979.

19. Rai K, Van Ryzin JA. A generalized multihit dose-response model for low dose extrapolation. Biometrics 1981; 37:341-352.

20. Scientific Committee of the Food Safety Council. Quantitative risk assessment. Food Cosmet Toxicol 1978; 16 (Supplement 2):109-136.

21. Haseman JK, Hoel DG, Jennrich RI. Some practical problems arising from the use of the gamma multihit model for risk estimation. J Toxicol Environ Health 1976; 8:379-386.

22. Whittemore A, Altschuler B. Lung cancer incidence in cigarette smokers: Further analysis of Doll and Hill's data for British physicians. Biometrics, 32:805-816.

23. Hartley HO, Sielken RL. Estimation of "safe doses" in carcinogenic experiments. Biometrics 1977; 33:1-30.

24. Krewski D, Crump KS, Farmer J, Gaylor DW, Howe R, Portier C, Salsburg D, Sielken RL, Van Ryzin J. A comparison of statistical methods for low dose extrapolation utilizing time-to-tumor data. Fund Appl Toxicol 1983; 3:140-160.

25. ED01 Task Force of the Society of Toxicology. Re-examination of the ED01 study. Fund Appl Toxicol 1981; 1:28-128.

26. Hoel DG. Statistical measures of risk. Drug Metab Rev 1982; 13:829-838.

27. FDA Advisory Committee on Protocols for Safety Evaluation. Panel on carcinogenesis report on cancer testing in the safety evaluation of food additives and pesticides. Toxicol Appl Pharmacol 1971; 20:419-438.

28. Crump KS, Hoel DG, Langley CH, Peto R. Fundamental carcinogenic processes and their implications for low dose risk assessment. Cancer Res 1976; 36:2973-2979.

29. Hoel DG. Incorporation of background in dose-response models. Federation Proc 1980; 39:73-75.

30. Gehring PJ, Blau GE. Mechanisms of carcinogenesis: Dose response. J Environ Pathol Toxicol 1977; 1:163-179.

31. Gehring PJ, Watanabe PG, Park CN. Resolution of dose-response toxicity data for chemicals requiring metabolic activation: Example--vinyl chloride. Toxicol Appl Pharmacol 1978; 44:581-591.

32. Anderson MW, Hoel DG, Kaplan NL. A general scheme for the incorporation of pharmacokinetics in low-dose risk estimation for chemical carcinogenesis: Example--vinyl chloride. Toxicol Appl Pharmacol 1980; 55:154-161.

33. Hoel DG, Kaplan NL, Anderson MW. The implication of nonlinear kinetics on risk estimation in carcinogenesis. Science 1983; 219:1032-1037.

34. State of California, Department of Human Services. Carcinogen Identification Policy: A statement of science as a basis of policy. Section 2: Methods for estimating cancer risks from exposures to carcinogens, 1982.

35. Weinstein IB. Letter: Carcinogen policy at EPA. Science 1983; 219:794-795.

36. Consultative Panel on Health Hazards of Chemical Pesticides. Pest Control (Volume 1): An Assessment of Present and Alternative Technologies, National Academy of Sciences, Washington, DC, 1975.

37. Hoel DG, Low-dose and species-to-species extrapolation for chemically induced carcinogenesis. In: Cold Spring Harbor Laboratory, Report No. 1: Assessing Chemical Mutagens: The Risk to Humans. New York: Banbury, 1979:135-145.

38. Crouch E, Wilson R. Interspecies comparison of carcinogenic potency. J Toxicol Environ Health 1978; 5:1095-1118.

39. Bernstein L, Gold LS, Ames BN, Pike MC and Hoel DG. Some tautologous aspects of the comparison of carcinogenic potency in rats and mice. Fund Appl Toxicol, in press.

40. Whittemore AS. The age distribution of human cancer for exposures of varying intensity. Am J Epidemiol 1977; 106:418-432.

41. Day NE, Brown CC. Multistage models and primary prevention of cancer. J Natl Cancer Inst 1980; 64,977-989.

42. Hoel DG. Comment: Carcinogenic risk. Risk Analysis 1981; 1:63-64.

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Thursday
March 14, 1985

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Parts 11 and 121

Emergency Medical Equipment; Proposed Rule

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 11 and 121

[Docket No. 21369; Notice No. 85-9]

Emergency Medical Equipment

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to require certificate holders to provide medical kits containing equipment and drugs for use in the treatment of injuries or medical emergencies that might occur during flight time. The notice further proposes to require each certificate holder to report such medical emergencies and describe how the medical kit was used, by whom, and the outcome of the medical emergency annually for 2 years after implementation of the rule. The intended effect of this proposal is to enhance the potential for diagnosis and initial treatment of medical emergencies during flight time.

DATE: Comments must be received on or before July 12, 1985.

ADDRESS: Comments on this proposal are to be marked "Docket No. 21369" and mailed in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Docket No. 21369, 800 Independence Avenue, SW., Washington, D.C. 20591; or deliver comments in duplicate to: Room 916, 800 Independence Avenue, SW., Washington, D.C. Comments may be inspected at Room 916 on weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Lawrence Bedore, Project Development Branch, (AFO-240), Air Transportation Division, Office of Flight Operations, telephone (202) 426-8096, or Andrew F. Horne, Biomedical and Behavioral Sciences Division, (AAM-510), Office of Aviation Medicine, telephone (202) 426-3433, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, or economic impacts that might result from adoption of the proposals contained in this notice are invited. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 21369." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426-8056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

Background

By letter and petition dated March 3, 1981, Sidney M. Wolfe, M.D., and Eve Bargmann, M.D., Public Citizen Health Research Group of the Aviation Consumer Action Project (ACAP), 2000 P Street, NW., Washington, D.C. 20036, petitioned to amend §§ 21.309(d) and 121.333(e)(3) of the Federal Aviation Regulations to require the carriage of emergency medical equipment on commercial flights. That petition was published verbatim in the **Federal Register** on August 20, 1981 (46 FR 42278). The FAA received comments from 370 interested persons on that petition for rulemaking.

Those commenters expressing support of the proposal indicate that U.S. air carriers should be required to have on board their airplanes emergency medical equipment and medication that would enable crewmembers and/or medically qualified passengers to respond to any in-flight medical emergency.

A number of physicians describe their involvement in in-flight medical emergencies. Those emergencies include such conditions as myocardial infarction, allergic reaction to food, acute asthma, epileptic seizures, and childbirth. Several commenters provide suggestions as to the specific types of emergency equipment and medication that should be carried.

Those commenters opposing the proposal express concern about the potential added cost to the traveler and the possible use of medical equipment and/or medication by unqualified individuals.

The FAA analyzed the comments and concluded that under the provisions of the Federal Aviation Act of 1958, the agency had the authority to require air carriers to provide reasonable medical equipment and medicine necessary for the treatment of those injuries or illnesses likely to be caused or induced by flight. However, the FAA noted that if the proposals presented in the ACAP petition were adopted, air carriers would be required to provide equipment and medicine to handle general health emergencies unrelated to flight or not shown to affect aviation safety. Although carriers were free to add this equipment if they wished, the agency did not have the authority to promulgate such a broad rule.

In addition, even if the FAA had the authority to make it mandatory for air carriers to supply their aircraft with medicine and equipment to treat general health emergencies, the wisdom of such a regulation appeared at that time to be questionable. In a report published in "Aviation, Space and Environmental Medicine" in March 1982, the Commission on Emergency Medical Services of the American Medical Association stated that the addition of potent drugs and surgical instruments to first-aid kits on board aircraft would create a potential for misuse by unqualified persons during in-flight emergencies.

After a thorough analysis of the ACAP petition and the comments received in response to that petition, the FAA concluded that rulemaking, as proposed, was not justified. A Denial of Petition was issued to ACAP on May 19, 1982.

Thereafter, the petitioners requested the United States Court of Appeals for the District of Columbia Circuit to review the issue of whether the FAA lacks statutory authority to institute rulemaking to upgrade the quality of first-aid kits currently carried on board

commercial aircraft. In its decision (Eve Bargmann, M.D., et al., v. FAA, 715 F.2d, 638 (D.C. Cir. 1983)) the court held that the FAA has the statutory authority to proceed with rulemaking on the subject if it deems that such action is advisable based on merit.

Discussion

As a result of the court's decision, the FAA has again reviewed the ACAP petition and the comments received in response to its publication in the **Federal Register.** The majority of physicians who commented on the ACAP petition agree that the first-aid kits now required on aircraft by Part 121 of the Federal Aviation Regulations are inadequate for purposes of diagnosing and treating most in-flight medical emergencies. These physicians strongly recommend that diagnostic equipment be provided on all flights as well as equipment and medication that may be used for the treatment of medical emergencies that may be expected to occur. Many of these physicians indicate the need for "Good Samaritan" legislation to protect those that use the medical equipment to treat in-flight medical emergencies from liability. While such protection may be desirable, the absence of this legislation should not diminish the effectiveness of this proposal, if adopted. Notably, such legislation is beyond the scope of an FAA proposal since it is a legislative matter.

Upon reconsideration, the FAA now believes that additional medical equipment and frequently required medications should be available for use on passenger flights, during flight time, by qualified persons who may be called upon by crewmembers to provide assistance in initial treatment when medical emergencies occur. One proposed medical kit would be required on each passenger-carrying flight and should contain equipment and drugs required to provide basic life support during medical emergencies that might occur during flight time, such as myocardial infarction, severe allergic reactions, acute asthma, insulin shock, protracted seizures, and childbirth. Accordingly, the medical kit should include the following equipment and medication:

1. Diagnostic equipment
   a. Sphygmomanometer
   b. Stethoscope
   c. Flashlight
2. Airway equipment
   a. Oropharyngeal airways (3 sizes)
   b. Equipment necessary to establish a tracheal airway
3. Surgical equipment
   a. Alcohol sponges
   b. Hemostats (2)
   c. Scalpel
   d. Scissors
4. Syringes and needles (those necessary to administer required drugs)
5. Intravenous administration set
6. Drugs, parenteral
   a. Analgesic: Morphine sulfate
   b. Antiarrhythmic
      (1) Lidocaine hydrochloride
      (2) Atropine sulfate
   c. Drug for acidosis: Sodium bicarbonate
   d. Anticonvulsant/Anxiolytic
      (1) Amobarbital
      (2) Diazepam
   e. Antiemetic: Prochlorperazine
   f. Drugs for acute allergic reaction and bronchospasm
      (1) Epinephrine
      (2) Diphenhydramine hydrochloride
      (3) Adrenocortical steroid
      (4) Aminophylline
   g. Drug for hypoglycemic shock: 50% dextrose injection
   h. Intravenous fluid for drug administration: 5% dextrose injection, 250cc
7. Drug for oral administration: Antianginal: Nitroglycerine, sublingual
8. Basic instructions for use of the drugs in the kit

The medical kit will contain drugs with expiration dates and battery-powered equipment. The kit, therefore, must be maintained appropriately through inspection, in accordance with Part 121, Subpart L, at intervals required for replacement of drugs before the expiration date and to assure that the equipment is working properly.

Since a requirement to report airline passenger medical emergencies unrelated to flight does not exist, substantial data are not available to the FAA regarding the present incidence of in-flight medical emergencies, the types of emergencies that occur, treatment provided, and the results of treatment. This notice, therefore, proposes that each certificate holder must maintain records on each medical emergency occurring during flight time resulting in use of the required emergency medical kit, diversion of the aircraft, or death of a passenger or crewmember for a period of 24 months commencing with the effective date of any amendment resulting from this proposal. These records will include a description of how the required emergency medical kit was used, by whom, and the outcome of the medical emergency. The notice further proposes that the certificate holder must submit these records, or a summary thereof, to its assigned FAA Principal Operations Inspector within 30 days after the end of each such 12-month period.

In making this proposal, the FAA recognizes that complex issues remain regarding any medical kits to be carried in operations conducted under Part 121 of the regulations. Issues requiring regulatory consideration that are not addressed by ACAP in its petition, nor by public comment in the **Federal Register** publication, include determining who would be considered qualified to use the proposed kit, the user's licensing requirements, and whether or not the kits should be required on all flights or limited to flights of long duration where diversion to a surface facility is not possible. This proposal does not address these issues; however, public comment on these issues is invited.

Paperwork Reduction Act Approval

The recordkeeping and reporting requirements contained in this proposal (121.715) have been submitted to OMB for review. Comments on the requirements should be submitted to the Office of Information and Regulatory Affiars (OMB), New Executive Office Building, Room 3001, Washington, D.C. 20503; Attention: FAA Desk Officer (Telephone 202–395–7340). A copy should be submitted to the FAA Docket.

Economic Evaluation

The total costs of implementing the proposal to require energency medical kits include the cost of equipping existing passenger aircraft which will become subject to the rule, the installation of emergency medical kits in new aircraft manufactured during the 10-year period covered by this evaluation, the fuel penalty resulting from the added weight of the emergency medical kits, and the maintenance costs.

The assumption is that each aircraft will be equipped with one emergency medical kit regardless of the number of individual first-aid kits on the aircraft. The FAA has estimated that such emergency medical kits can be purchased and installed for approximately $300 per unit. The cost of equipping existing passenger aircraft with emergency medical kits has been estimated to be approximately $700,000 (2,333 aircraft × $300).

Indications are that approximately 140 aircraft will be deliverd annually for Part 121 passenger operations during the 10-year period following implementation of the proposal. The total discounted present value is approximately $271,000 for equipping newly manufactured aircraft with emergency medical kits.

To determine the fuel costs for the additional weight of the emergency medical kits, the FAA Estimates that

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during each year of the 10-year period following implementation of the proposal, an average of 3,103 emergency medical kits will be aboard passenger aircraft operated under Part 121. Each emergency medical kit weighs approximately 10 pounds, and each additional pound weight will result in an estimated average fuel consumption of 15 gallons per year per aircraft. Based on a fuel price of 89.4 cents per gallon, each emergency medical kit will result in an average additional fuel cost of slightly more than $134 per year. The present value cost of the additional fuel consumption during the 10-year period is estimated to be $2,681,000.

Maintenance costs for the emergency medical kits are based on an average requirement of 2 person-hours in labor annually, assuming that the average wage rate (including benefits) will be $35 per hour and that 10 percent of the emergency medical kits will require replacement at a unit cost of $300. The present value of maintenance cost is estimated to be approximately $2 million.

Modification of the requirements for instruction in the handling of emergency situations under § 121.417(b)(3)(iv), to include familiarization with the emergency medical kit, results in a negligible increment of training time. Therefore, no additional cost is ascribed to this modification.

The costs for creating and maintaining records on how the required emergency medical kit was used, by whom, and the outcomes of medical emergencies are based on an expected average requirement of 1 person-hour in labor per medical emergency. The costs for submitting these records or a summary to the FAA is a negligible amount of time and expense for postage and handling of the reports. Although the proposed additional 121.715 requires record maintenance for 2 years, FAA anticipates that after 2 years these records will continue to be created and maintained voluntarily for other reasons, including standard policies and procedures relating to liability insurance and handling of controlled substances. Assuming that the average wage rate (including benefits) will be $35 per hours, and that an average of 2,500 medical emergencies would occur in flight per year, the present value of in-flight medical emergency costs for creating and maintaining records is estimated to be approximately $564,000.

The present value of all estimated costs resulting from the emergency medical kit proposal during the 10-year period following the implementation is $6,216,000.

The FAA cannot estimated easily the prospective number of lives that may be saved or the reduction of in-flight morbidity by providing additional equipment and medications, but some insight into the potential benefits can be gained from a major air carrier's experiences with in-flight deaths and in-flight medical emergencies. A major commercial air carrier under part 121 had tracked in-flight deaths for approximately 4 decades.

The FAA has estimated the number of in-flight deaths occurring annually for all carriers by calculating the proportion of the annual number of deaths in flight to the annual number of passengers carried by the major carrier. Then, the same proportion of annual "estimated in-flight deaths" is applied to the total annual number of passengers carried by all Part 121 carriers.

Using this method of analysis, the FAA estimates that over a period of 4 decades, approximately 840 in-flight deaths occurred on all carriers. Moreover, the number of deaths in flight, as a proportion of passengers carried, has grown progressively smaller in successive years as the number of annual enplanements has increased at a rapid rate. The annual in-flight deaths vary in number within a small range, and the FAA further estimates that approximately 21 deaths currently occur in flight annually. These estimates are based upon historical information provided to the FAA by an air carrier.

Public estimates of in-flight deaths range to 100 annually. (See Docket No. 21369.)

From historical information, the FAA estimates that a great majority of the in-flight passenger deaths are elderly people suffering from terminal illnesses such as cancer and heart disease. Many of these in-flight deaths occur quietly and without others being aware of the onset of the medical emergency. However, some in-flight deaths can be prevented with the proposed rules. The number who might be saved is uncertain, but based on fragmentary information obtained from airline data, the estimate is about 10 percent of in-flight deaths. This, according to FAA estimates (21) and public estimates (100), about 10 percent of the annual in-flight deaths, or 2 to 10 persons, might have been helped annually by an emergency medical kit.

For purposes of economic studies, the FAA values a life at $650,000 in 1983 dollars. The expected number of lives that could be saved over the 10-year period is 21 to 100. The expected present discounted value of the lives that could be saved over the 10-year period ranges from $8.4 million to $41.9 million. This is derived by discounting the value of life at a 10 percent rate.

Based on these estimates, the benefit/cost ratio ranges from a low value of 1.35 ($8.4 million ÷ $6.2 million) to a hight of 6.75 ($41.9 million ÷ $6.2 million). The FAA's preliminary judgment is that the lower ratio will prevail. Clearly, information furnished in the comments to this NPRM will help in refining estimates about future costs and benefits.

Trade Impact

The proposals will have little or no impact on trade for both U.S. firms doing business in foreign countries and foreign firms doing business in the United States. The proposals will affect only U.S. air carriers because foreign air carriers are not subject to Part 121. Foreign air carriers are prohibited from operating between points within the United States; therefore, they will not gain any competitive advantage over the domestic operations of U.S. carriers. In international operations, foreign air carriers would realize some minor cost advantages over U.S. air carriers if the foreign countries do not require similar emergency medical equipment. However, these costs are negligible in comparison to the overall costs of providing international passenger services; therefore, the proposed rule change will essentially have no trade impact.

Regulatory Flexibility Determination

The small entities affected by the proposal are the small air carriers which are regulated under Part 121. The FAA has published a size threshold of nine or fewer operating aircraft as a standard for small air carriers. According to FAA data for the period ending April 1983, 45 passenger air carriers which were subject to Part 121 operated nine or fewer aircraft.

The impact on small entities will be in direct proportion to the number of aircraft they will be required to equip with the emergency medical kit. The average annualized net compliance cost for a small carrier to meet the emergency medical kit requirements is estimated to be approximately $308 per aircraft. The FAA has adopted threshold values that define small entities and significant economic impact, and these values are stated in FAA Order 2100.14. The threshold values for economic impact are adjusted for inflation and are expressed here in 1983 dollars. The threashold value for small entity carriers is a maximum number of nine aircraft owned or operated. The threshold

values for significant economic impact are an annualized cost of $47,506 for scheduled carriers and $3,314 for unscheduled carriers.

Since the annualized cost per aircraft is $308 per year, a small entity carrier with the maximum number of aircraft, nine, would not meet the cost impact criteria for either scheduled or unscheduled air carriers (9×$308 is less than $3,314). Therefore, this proposal is not expected to have a signficant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required.

Conclusion

Since the proposal contained in this document would enhance the potential for diagnosis and initial treatment of in-flight medical emergencies, and the proposal could possibly save two lives per year, the estimated benefits exceed the estimated costs of implementing this proposal. For the reasons discussed above, I certify that under the criteria of the Regulatory Flexibility Act, these proposals, if adopted, would not have a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required. In addition, for the same reasons, the proposal does not involve a major rule under Executive Order 12291. Because it involves important DOT policy, the proposal is considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the draft regulatory evaluation for this regulatory action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

List of Subjects

14 CFR Part 11

Reporting and recordkeeping requirements.

14 CFR Part 121

Aviation safety, Safety, Air carriers, Air Transportation, Aircraft, Aircraft pilots, Airmen, Airplanes, Narcotics, Drugs, Pilots, Transportation, Common carriers.

The Proposed Rule

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Parts 11 and 121 of the Federal Aviation Regulations (14 CFR Parts 11 and 121) as follows:

PART 11—GENERAL RULEMAKING PROCEDURES

1. By amending § 11.101 by adding a new OMB Control Number to the table in paragraph (b), as follows:

§ 11.101 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b)***

121.715	2120–XXXX

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

2. By amending § 121.309 by revising paragraph (d) to read as follows:

§ 121.309 Emergency equipment.

* * * * *

(d) *First-aid emergency medical equipment.* Approved first-aid kits and, on passenger flights, an emergency medical kit for treatment of injuries or medical emergencies that might occur during flight time or in minor accidents must be provided and must meet the specifications and requirements of Appendix A.

* * * * *

3. amending § 121.417 by revising paragraph (b)(3)(iv) as follows:

§ 121.417 Crewmember emergency training.

* * * * *

(b) * * *

(3) * * *

(iv) Illness, injury, or other abnormal situations involving passengers or crewmembers to include familiarization with the emergency medical kit; and

* * * * *

4. By adding a new § 121.715 as follows:

§ 121.715 In-flight medical emergency reports.

(a) For a period of 24 months commencing with the effective date of this rule, each certificate holder shall maintain records on each medical emergency occurring during flight time resulting in use of the emergency medical kit required under Appendix A, diversion of the aircraft, or death of a passenger or crewmember. These records shall include a description of how the medical kit was used, by whom, and the outcome of the medical emergency.

(b) The certificate holder shall submit these records, or a summary thereof, to its assigned FAA Principal Operations Inspector within 30 days after the end of each 12-month period during the 24 months specified in paragraph (a) of this section.

5. By amending Appendix A to Part 121 by revising the title, by adding a subheading before the current text, and by adding a new subheading and text as follows:

5. By amending Appendix A to Part 121 by revising the title, by adding a subheading before the current text, and by adding a new subheading and text as follows:

Appendix A—First-Aid Kits And Emergency Medical Kits

First-Aid Kits

* * * * *

Emergency Medical Kits

The approved emergency medical kit required by § 121.309 for passenger flights must meet the following specifications and requirements:

(1) Approved emergency medical equipment shall be stored securely so as to keep it free from dust, moisture, and damaging temperatures.

(2) One approved emergency medical kit shall be provided for each aircraft during each passenger flight and shall be located so as to be readily accessible to crewmembers.

(3) The approved emergency medical kit must contain, as a minimum, the following appropriately maintained contents in the specified quantities:

Contents	Quantity
Sphygmomanometer	1
Stethoscope	1
Flashlight	1
Surgical scissors	1
Scalpel	1
Hemostats	2
Airways, oropharyngeal (3 sizes)	3
Tracheal airway set (Tracheostomy or endotracheal intubation)	1
Syringes (sizes necessary to administer required drugs)	4
Needles (sizes necessary to administer required drugs)	6
Intravenous administration set	1
5% Dextrose injection, 250cc	1
50% Dextrose injection, 50cc	1
Morphine sulfate injection, single dose ampule or equivalent	2
Lidocaine HCl injection, single dose ampule or equivalent	2
Atropine sulfate injection, single dose ampule or equivalent	2
Sodium bicarbonate injection, single dose ampule or equivalent	1
Epinephrine 1:1000, single dose ampule or equivalent	2
Adrenocortical steroid injection, single dose ampule or equivalent	1
Diphenhydramine HCl injection, single dose ampule or equivalent	2
Aminophylline injection, single dose ampule or equivalent	1
Prochlorperazine injection, single dose ampule or equivalent	1
Amobarbital injection, single dose ampule or equivalent	1
Diazepam injection, single dose ampule or equivalent	2
Nitroglycerine tablets	10
Basic instructions for use of the drugs in the kit	

(Secs. 313(a), 601, and 604 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, and 1424), 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 2, 1983); 14 CFR 11.45)

Issued in Washington, D.C., on September 20, 1984.

John S. Kern

Acting Director of Flight Operations.

[FR Doc. 85–6031 Filed 3–13–85; 8:45 am]

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Part IV

Department of Labor

Employment and Training Administration

Department of Agriculture

Food and Nutrition Service

Department of Health and Human Services

Social Security Administration
Health Care Financing Administration

Income and Eligibility Verification Procedures for Food Stamps, Aid to Families With Dependent Children, State Administered Adult Assistance, Medicaid and Unemployment Compensation Programs; Proposed Rules

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DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 603

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 271, 272, 273, and 275

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

Health Care Financing Administration

45 CFR Parts 205, 206 and 232

42 CFR Parts 431 and 435

Income and Eligibility Verification Procedures for Food Stamps, Aid to Families With Dependent Children, State Administered Adult Assistance, Medicaid and Unemployment Compensation Programs

AGENCIES: Employment and Training Administration, Labor; Food and Nutrition Service, USDA; Social Security Administration and Health Care Financing Administration, HHS.

ACTION: Proposed rules.

SUMMARY: The Secretary of Health and Human Services, the Secretary of Labor and the Secretary of Agriculture jointly propose rules to implement section 2651 of the Deficit Reduction Act (DEFRA) of 1984 (Pub. L. 98–369). This section requires State agencies that administer the Unemployment Compensation program, the Food Stamp program, the Aid to Families with Dependent Children (AFDC) program, the adult assistance programs (Titles I, X, XIV and XVI (AABD) of the Social Security Act) and the Medicaid program to develop an income and eligibility verification system which meets certain statutory requirements.

DATES: Comments must be received on or before April 29, 1985. Comments should be sent to the address specified in the agency regulations.

FOR FURTHER INFORMATION CONTACT:

For AFDC and Adult Programs: Barbara M. Levering, Office of Family Assistance, Social Security Administration, 2100 Second Street, SW., Washington, D.C. 20201, (202) 245–2637.

For Medicaid: Joyce G. Somsak, Director, Office of Quality Control Programs, BQC, Health Care Financing Administration, DHHS, Room 239, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21203, (301) 597–1354.

For Food Stamps: Bonny O'Neil, Director, Program and Planning, Development and Support Division, Family Nutrition Program, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302, (703) 756–3414.

For Unemployment Compensation: Carolyn M. Golding, Director, Unemployment Insurance Service, Employment and Training Administration, U.S. Department of Labor, 601 D Street, Room 6112, Washington, D.C. 20201, (202) 376–6636.

SUPPLEMENTARY INFORMATION: We are proposing separate regulations for the AFDC and Adult Assistance programs, the Medicaid program, the Food Stamps program, and the Unemployment Compensation program. Four sets of proposed rules are being published concurrently. Each of these proposed rules includes a discussion of issues and proposed regulatory revisions as they apply to the specific program. In addition, there are a number of issues which are common to the four programs. These issues are discussed in the common preamble section that follows.

The SSI program, by virtue of its role in the determination of eligibility of a large number of Medicaid applicants and recipients, becomes a significant participant in the system of eligibility verification. While not issuing separate regulations, the SSI program is in the process of implementing programmatic changes utilizing income and wage data that will affect its applicant and recipient eligibility verification determination process. The common preamble briefly mentions these actions.

The requirements of the Adult Assistance programs are identical to the requirements of the AFDC program. For purposes of readability this discussion of common issues does not make specific references to the Adult Assistance programs. Specific references are made in regulatory text and preamble section governing these programs, but it should be understood that its applies to the OAA, AB, APTD and AABD the same as to AFDC.

Regulatory Impact

Executive Order 12291 requires that a regulatory impact analysis be performed for any "major" rule. A "major" rule is one which would result in annual effect on the economy of $100 million or more; result in a major increase in costs or prices; or have significant adverse impacts on competition, employment, or productivity.

These provisions of the Deficit Reduction Act will have two types of impact. First, they will reduce Federal and State costs in the covered programs through identification of ineligible cases and through more accurate benefit determination. Second, they will create adminstrative costs necessary to perform required computer matching. Overall, computerized income and eligibility verification procedures are a highly cost-effective means of improving the accuracy of eligibility and benefit determination in these programs. Present efforts in this area, primarily by State welfare agencies, are already very substantial, and most States can accommodate these provisions with relatively minor modification.

We estimate that the Federal progam savings attributable to these provisions will be approximately $200 million annually once fully implemented. State savings will exceed $100 million annually. The President's Private Sector Survey on Cost Control (the Grace Commission) and the Congressional Budget Office both estimated even higher annual savings from improving income and other resource verification. However, these estimates did not distinguish between savings resulting from current reform efforts and new inititives, or reflect the latest and best technical data.

Regardless, these impacts are due, for the most part, to the impact of section 2651 of the Deficit Reduction Act. The discretionary latitude afforded the Federal agencies is very small, and these proposed rules would not create substantial requirements not mandated by law. Therefore, these impacts are not the result of these proposed rules, and the proposed rules do not meet the definition of major of E.O. 12291.

The regulatory Flexibility Act requires that a regulatory flexibility analysis be performed for each proposed rule with a significant economic impact on a substantial number of small entities. For the reasons given above, and because the principal impacts are on individuals and States, not small entities, such an analysis is not required for these proposed rules.

Although we believe that the implementation costs of these proposed rules will be small relative to current matching costs, we invite comment on any alternatives which might reduce unnecessary burden or improve the effectiveness of the proposed systems.

A. Background and Objectives

DEFRA amended the Social Security Act, the Food Stamp Act and the Internal Revenue Code for the purpose

of establishing procedures for requesting and using income and eligibility information in the administration of certain Federally assisted benefit programs. Section 2651 of DEFRA makes the requirement effective April 1, 1985. Such requests, exchanges and uses are to be made to the extent that the information may be useful in verifying eligibility and benefit amounts. This statutory provision augments the requirement for wage matching for the Food Stamp and AFDC Programs by including the Medicaid and Unemployment Compensation Programs and requiring access to and use of other sources of data.

The broader State Income Eligibility Verification System (SIEVS), in this proposed rule, requires State Wage Information Collection Agencies (SWICAs) to provide wage and benefit data, the Social Security Administration (SSA) to provide wage, benefit and other income data, and the Internal Revenue Service (IRS) to provide unearned income data. Programs required to exchange information are: The Food Stamp Program (FSP); Aid to Families with Dependent Children AFDC); Unemployment Compensation (UC); Medicaid; and the adult assistant programs (Titles I, X, XIV and XVI (AABD) the Social Security Act).

Information about wages, unearned income and benefits can be extremely useful to State agencies administering these benefit programs if periodically provided, independent of applicant or recipient reports. These rules propose requirements designed to ensure that State agencies avail themselves of that information and use it effectively. These proposed rules recognize the need for differently structured verification systems State-to-State by allowing State agencies to work out procedures, within the constraints of their existing and planned resources and administrative structure, which will help to ensure the accurate determination of eligibility and amount of benefits.

In the early 1970s, a number of States instituted systems for matching their AFDC caseloads with wage information obtained by the State Employment Security Agencies (SESAs). Shortly thereafter, the Federal government added to this momentum by conducting some computer matches of its own. Particularly significant in this regard was Project Match, carried out in 1977 by the Department of Health, Education and Welfare which compared Federal employee files with AFDC and Medicaid files. The success of this match gained national attention and helped to spread awareness of how computer matching could be used effectively to detect and prevent error and fraud in benefit programs.

Subsequently, Congress mandated that all States conduct wage matching first in the AFDC program in October 1979 and later in the Food Stamp Program as of January 1983. During the same period, many States became interested not only in wage matching but in other types of matching as well. As caseloads increased and technology improved, computer matching with other government agencies and private institutions, such as employers and banks, came to be perceived as a valuable and efficient tool in the management of the benefit programs.

The income and eligibility verification provisions of DEFRA are derived from the success of these matching activities and the findings of numerous studies by the General Accounting Office (GAO), the President's Council on Integrity and Efficiency (PCIE), the Inspectors General of the various Federal government departments and the President's Private Sector Survey on Cost Control. Congress has recognized the need to provide State benefit programs with all available information about wages and other sources of income collected by certain government agencies. DEFRA gives the Secretaries of Health and Human Services, Agriculture, Labor and Treasury the authority to specify how this information should be used and safeguarded. In drafting these proposed rules, we have reviewed the findings of all the parties listed above.

The purpose of using available information to verify program participant elibilility is to improve the accuracy of program eligibility and benefit determination. In so doing the agencies will be able to improve program integrity by directing limited resources to those individuals who are legally eligible for program benefits. This improved program integrity will result in a general public and participant perception that the welfare programs are fair and equitable. Finally, when fully operational the income and eligibility verification procedures will aid in the reduction of the budget deficit.

As in any administrative procedure that involves the use of automated systems, there is the potential danger that information gained through the use of these systems will be misused and result in a violation of client rights. The program's intent to protect the rights of the individual participant is reaffirmed by regulations that are meant to assist the States in affording adequate protection of a participant's right to privacy and due process. For example, the regulations provide for notice to participants prior to any reduction or termination of benefits. The regulations also provide the participant the opportunity for a fair hearing.

DEFRA requires that each State have a Statewide Income and Eligibility Verification System (SIEVS). This implies a level of consistency among programs and across States not previously achieved. The Conference Report adds that Congress did not intend that all States have identical systems. Although the legislation itself does not contain a description of the kind of system Congress envisioned, it is clear from the recommendations of the President's Private Sector Survey of Cost Control and other studies which prompted Congressional action that Congress envisioned a SIEVS in each State that would assure the timely and efficient exchange of information among programs. We view the statutory requirement for a SIEVS as mandating a logical process and not necessarily a specific physical system.

DEFRA explicitly requires that the programs participating in the verification system must adhere to standardized formats and procedures established by the Secretary of Health and Human Services in consultation with the Secretary of Agriculture for purposes of exchanging information with each other and for providing information to administrators of the Child Support Enforcement (CSE), Old Age Survivors and Disability Insurance (OASDI) and the Supplemental Security Income (SSI) Programs.

Even without this requirement, the confidential nature of the information which benefit programs are required to use and the potential volume of such information and costs of acquiring it would require States to develop coordinated approaches to the access, maintenance and use of the information. Some uniformity among State systems will also occur because of the need to access IRS and SSA information in accordance with specific guidelines defined by those agencies.

The needs based programs (AFDC, Food Stamps and Medicaid) recognize that all States currently have systems for acquiring information and exchanging it among programs. This exchange need not be automated and, in States where a single caseworker is verifying the eligibility of an individual or household for more than one program, the exchange occurs only in the sense that the caseworker uses all available information in determing eligibility.

The needs based programs also recognize that many States regularly

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use, in the management of benefit programs, information not encompassed by DEFRA, including States motor vehicle and vital statistics records. While these regulations do not address the extent to which States should integrate State information sources and SIEVS, we believe that State should explore ways of consolidating currently utilized information sources for presentation to eligibility workers. Moreover, an increasing number of States provide income and eligibility information to the caseworker with a speed and frequency not required in this current proposed rule, through techniques such as on-line access to State wage and unemployment compensation files. The needs based programs have not mandated such techniques because we wish to give States the flexibility to design the most effective systems to meet their needs. The needs based programs believe that States need to make use of the most cost efficient techniques available.

The needs based programs believe that Congress intended that States develop such coordinated and responsive systems and that the Federal government is obligated to assist them in this activity. At the direction of the President's Council on Managment Improvement (PCMI), officials representing the programs covered by this legislation are working together to develop further guidelines for States to use in designing and enhancing their systems to improve the responsiveness of Federal data sources to State needs. The guidelines are expected to include a General System Design document for a SIEVS. We plan to test the use of these systems guidelines including methods of prioritizing and tracking case actions in a number of States. We do not anticipate further regulatory action in this regard.

The needs based programs have prescribed in the proposed rule those SIEVS requirements specified in the law. Although the law itself is silent on which benefit program or programs should house eligiblity and income data, the Conference Committee Report suggests that it is Congress' intent that States attempt to minimize the duplication of data exchanges. The Conference Report requires that, with respect to unearned income data from IRS, a single State agency should provide the point of access.

The needs based programs expect that States will take all cost effective steps to minimize or eliminate redundancy in accessing information and exchanging it among programs.

Costs for systems development and operations to support receiver agency SIEVS requirements will be allocated by program under an approved cost allocation plan and will be reimbursed at each program's appropriate Federal matching rate. Agencies must seek prior approval according to Federal guidelines and regulations. Guidelines will be published which will identify how other income and eligibility functions are to be incorporated into an existing or planned Management Information System (MIS).

The Department of Labor's regulations place requirements on the State agencies which administer the State Unemployment Compensation (UC) laws. The substance of and approach to these regulations are necessarily different from the other Departments' regulations. Unlike the other programs, UC is not needs-based. This difference also reflects the nature of the UC agencies' participation in the SIEVS and is due to the fact that under Federal law, the State agencies have wide latitude for determining eligibility and benefit amounts in accordance with State Unemployment Compensation Laws. Since these State agencies are primarily sources of information to other participating agencies, the Department of Labor's regulations focus on Unemployment Compensation agency requirements for providing and safeguarding information.

Other major new requirements of DEFRA are:

—As a condition of eligiblity for the participating programs, each applicant and recipient must furnish his or her social security number(s). States must use the SSN(s) to associate the individual's records. These are new requirements for Medicaid and adult assistance programs administered under Titles I, X, XIV and XVI (AABD);

—Effective September 30, 1988, employers must make quarterly wage reports to a State agency unless the State has an alternative system that is as effective and timely. Currently, eight States do not have quarterly wage reporting by employers.

—Adequate safeguards must be in effect to ensure that: (1) Data exchanged by the State agencies are made available only to the extent necessary to assist in the administrative needs of the program receiving the information, and (2) IRS data are exchanged only with agencies authorized to receive information and (3) The data are adequately protected against unauthorized disclosure for other purposes;

—SIEVS program data will be available to SSI, OASDI and Child Support Enforcement Programs;

—The data are to be used in ways most likely to be productive in identifying and preventing ineligibility and incorrect payments;

—All applicants and recipients must be notified at the time of application, and periodically thereafter, that data available through the system will be obtained and used; and,

—Accounting systems must be used to assure that programs providing data receive appropriate reimbursement from the programs obtaining and using the data.

In addition to issuing these regulations, Federal agencies are taking a number of steps to implement the new DEFRA requirements:

—The Social Security Administration will issue instructions on accessing its files through the Program Operations Manual System (POMS);

—In the SSI program, SSA will begin using IRS unearned income data to determine eligibility and benefit amount in 1985;

—The Internal Revenue Service will publish a *Revenue Procedure* which will give detailed instructions on application for inclusion in the program, input and output specifications for tape files, limitations on the data, and agreements covering reimbursable services. An existing IRS publication, *Tax Information Security Guidelines for Federal, State and Local Agencies,* describes in detail procedures agencies must follow to fulfill the requirement that IRS data will be adequately protected against unauthorized disclosure. Copies of this guideline are available from IRS; and

—The DHHS Office of Child Support Enforcement will issue instructions to implement the new requirements through a "Dear Colleague Letter."

B. Statewide Income and Eligibility Verification System (SIEVS)

1. Access and Use of Source Information

(a) *State Wage Information Collection Agency (SWICA).* (1) In regard to State wage data DEFRA requires that by September 30, 1988, employers in all States make quarterly reports. Employers may make quarterly wage reports to the State UC agency or another agency. The requirement for quarterly reporting may be waived if the Secretary of Labor in consultation with the Secretary of Health and Human Services and Secretary of Agriculture

determines that a State has an alternative system which is as effective and timely for providing employment related income and eligibility data for purposes of verifying eligibility and benefits. As a consequence of this legislation all States are now required to have and use wage data from employers in their particular States.

The Federal agencies, except DOL, have agreed on common criteria for SWICAs which are not UC agencies. The rules would require that such SWICAs would collect the social security number (SSN), full name (last name, first name and middle initial), quarterly wages and employer's name address and identifier. All these items are already available from UC agencies in wage report States except in some States the wage earner's full name is not available. We would require collection of the full name to facilitate wage matching. In addition to requiring it for SWICAs which are not UC agencies, we urge that newly established SWICAs which are UC agencies maintain the full name with the wage and other information. In addition, we encourage State agencies to work with UC agencies to improve established State wage data to include the full name of wage earners.

In addition, the rules propose several criteria for approval of SWICAs which are not UC agencies; these criteria are currently met by UC agencies.

First, employers would be required to report to the SWICA within 30 days of the end of the quarter covered by this report. Second, a SWICA which is not a UC agency would be required to collect wage information from those employers covered by the State's UC law. Such employers are defined in sections 3306 and 3309(a)(1) of the Internal Revenue Code. The SWICA would be expected to consult with State UC officials in developing specifications for which employers would be required to report to the SWICA.

The SWICA would be be required to accumulate earnings by calendar quarter. The rules would also require that the SWICA maintain wage information in a machine readable format so that accurate information can be obtained promptly. Finally, the rules would require that the information in a SWICA must be accessible to other State agencies for interstate wage matching. Wage information maintained by UC agencies currently must be accessible for interstate matching, and we believe that this should be a standard for all SWICAs.

(2) All programs, exept UC, participating in SIEVS would obtain and use wage information from SWICAs as part of the process of determining the eligibility of applicants. SSA will access wage information for the programs it administers to the extent it is cost effective and administratively feasible.

(b) *Internal Revenue Service (IRS).* (1) Unearned income (interest, dividend and other unearned income information), as described in the *IRS Revenue Procedure*, will be available to those programs required to participate in the SIEVS and to the SSI program. The data will be derived from the IRS 1099 form submitted by financial institutions and constitutes an important source of independent information. Institutions submit 1099 forms annually to IRS where they are input to a file which is usually complete by early fall following the end of the tax year. States will be required to submit to IRS a file containing identifying information on applicants and recipients of affected programs. IRS will match these files with its 1099 file and provide the matched information to the States. If a State wishes to secure the most recent data it should make its annual submission to IRS shortly after the IRS file is complete. IRS expects it will take three to five weeks to process requests.

(2) The requirement to access IRS unearned income is a new requirement for all programs, except UC. The AFDC, Medicaid, and Food Stamp Programs will obtain and use unearned income information during the application period from IRS for applicants and for recipients on a yearly basis. The Department of Labor does not plan to require UC agency use of the IRS unearned income information. The SSI program plans to obtain the IRS unearned income on an annual basis.

The technical requirements for obtaining information from IRS will be specified in an IRS *Revenue Procedure* scheduled for publication in March 1985.

(c) *Social Security Administration (SSA).* (1) Wage, income, and other information maintained in Social Security Administration files will be available to those programs required to participate in the SIEVS. That information consists of the following items: Net earnings from self-employment; wages reported either for purposes of OASDI or for purposes of Federal Income Tax; and payment of retirement income from OASDI, from pensions and of related types of retirement income, SSI benefits and payments of railroad retirement.

(2) All programs except UC are required by regulation to obtain SSA data at application in a manner prescribed by the Commissioner of Social Security. The Commissioner will issue guidelines to the States governing access to SSA data. There guidelines will be distributed to State agencies prior to the effective date of these rules. States will have access to SSA information in several ways:

—Through the Beneficiary and Earnings Data Exchange (BENDEX) System. We expect agencies participating in SIEVS to use BENDEX routinely for initial and on-going receipt of information from SSA;

—Through the State Data Exchange (SDX). We except State SIEVS to make SDX data available to particpating agencies; and,

—Through the Third Party Query (TPQY) system. We expect States to use TPQY only in cases where sensitive, time critical conditions are evident.

(d) *Exchange of Information Among the Federally Assisted Benefit Programs Required to Participate in the SIEVS.* (1) Income and eligibility information is available to all of the programs required to participate in the SIEVS.

(2) All programs in the SIEVS will access income and eligibility information from one another in accordance with interstate and intrastate agreements in effect and as appropriate to the requesting program's verification and eligibility factors.

The federal agencies recognize the need to facilitate the exchange of information among States and are exploring options. For example, under consideration is the feasibility of using the existing SESA Internet system or a similar type system.

We request comments and ideas for the interstate exchange of information.

In particular, the AFDC, Medicaid and Food Stamp programs will access Unemployment Compensation (UC) benefits for all applicants in connection with eligibility decisions.

(e) *Access to Alternative Sources.* The sources of income information cited in the law and these regulations are, to our knowledge, unique in the following respects:

The SSA Earnings file is a nationwide file of wages, including those paid by the Federal government, earnings from self employment, and pension benefits. Matches can be routinely conducted and reported twice a month. The file is based on reports by independent sources of information.

The State Wage Information Collection Agency file is a Statewide file, updated quarterly, that includes reports from all private employers.

The IRS Information Return Processing file includes nationwide information on interest, dividends, and

other earned income. Matches can be routinely conducted and reported once a month. The file is based on reports by independent sources of information.

The regulations provide authority for the Departmental Secretaries to approve the use of alternative sources of information if the States can show that the alternative sources are as timely, effective and useful as the source required by law and regulation. At a minimum, alternative sources must meet or equal the capabilities listed above.

We request comments from the State agencies on possible alternative sources of information that are know to exist or potential possible alternative sources contemplated by State agencies. We also request from the States any criteria that they feel might be useful in evaluating alternative sources of information.

(f) *Uses of Information.* For recipients, information received through the State Income and Eligibility Verification System (SIEVS) will be used by the State agency within twenty days of receipt of such information. This information will be used to determine whether the State agency will notify the client of any necessary case action to revise eligibility or benefit amount. During this twenty day period the State agency will be responsible for performing appropriate and necessary verification before taking any adverse case action.

For applicants, information received through the SIEVS will be used by the State agency within 30–45 days of the application date. The State agency is again responsible for performing the appropriate and necessary verification before taking any adverse case action.

2. Procedural Requirements

(a) Furnishing and Verification of SSNs

(1) *Furnishing of SSN.* DEFRA requires that each applicant for and recipient of AFDC, adult assistance, Food Stamps, Medicaid, Unemployment Compensation and other related benefit programs included in the Act, must furnish his or her social security number(s) (SSN) as a condition of eligibility for the appropriate program. Each benefit program must use that SSN(s) as one of the key identifiers in the administration of the program and for the purpose of associating the records pertaining to the applicant and recipient with his or her SSN(s). The AFDC, adult assistance, Food Stamp and Unemployment Compensation programs currently require that all applicants or recipients provide their SSNs as a condition of eligibility. The proposed Medicaid rules implement the new legislation by requiring the furnishing of the SSN by all applicants and recipients and the use of it in the SIEVS.

Each of the involved programs, except UC, currently has a procedure which assists the applicant or recipient in applying for a Social Security number.

(2) *Verification of SSNs.* The proposed rules require State agencies administering AFDC, adult assistance, Food Stamps and Medicaid to verify applicants' SSNs at time of application and recipients's SSNs at the time of their next redetermination or recertification but, in no case later than April 1, 1986. While each applicant and recipient SSN must be verified, there are several different routes an agency can take to accomplish this. First if the client did not have an SSN and the agency assisted that client in applying for one the number received can be considered to be a verified number.

Second, if an agency submits client identifying data through BENDEX or against a received through SDX and the submitted data matches SSA data, then these sources will provide verification of the client's number.

Finally, if neither of the above methods produces a verified number, or in cases where large files must be verified, then the agency may verify the client's number through the Social Security Administration Enumeration Verification (EVS) system

In the event that verification cannot be accomplished because of discrepancies existing between SSA records and the information provided by the State agency, the State agency must be prepared to make every effort to provide additional identifying information to SSA.

The Commissioner of Social Security will publish detailed verification instructions for State use before the effective date of this provisions.

In no case will an agency deny benefits to a client duing the process of verifying an SSN. If an SSN cannot be verified after diligent efforts have failed, States may take action to terminate benefits followng regular fue process procedures.

The Unemployment Compensation program does not propose to require the verification of SSNs in the proposed rules. However, the Department of Labor suggests to the respective State UC agencies that verification may be an effective procedure in reducing the number of ineligibles or fraudulent claims.

(b) Standardized Formats and Procedures

The legislation requires that program participating in the SIEVS must adhere to standardized formats and procedures established by the Secretary of Health and Human Services in consultation with the Secretaries of Agriculture and Labor for purposes of exchanging information with each other and for providing information to administrators of the Child Support Enforcement, OASDI and SSN Programs.

Under the aegis of the President's Council on Intergrity and Efficiency (PCIE) a work group comprised of representatives from State and Federal agencies developed Standardized Computer Matching Formats in four areas: assistance programs, wage and earnings, Unemployment Compensation and medical payments. The provisions in DEFRA pertaining to use of standardized procedures for puposes of exhanging data is a direct outgrowth of this initiative.

The Health and Human Services/ Office of the Inspector General is currently field testing the formats. The test began in October 1983 and will be completed in April 1985. Test results will be evaluated and a final set of formats and guidelines for using them will be developed.

(c) Reports

The proposed rules require that each of the State agencies, except UC, participating in the SIEVS must provide reports, as prescribed by the respective departments. These reports will contain information that can be used to determine the State agencies' compliance with the regulations and provide for evaluation of the effectiveness of the States' Income and Eligibility Verification System (SIEVS). At a minimum the reports will include the number of applicants and recipients subjected to matching procedures, the number of matches that result, the outcome of verification, the number of follow up actions taken and the number of case benefit modifications.

The following types of information would be considered in developing the Departmental reporting requirements:

—Data file matched against (e.g., SWICA wages, IRS unearned income or the SSA wage and benefit file)
—Time period covered by the match
—Date match initiated
—Date raw match results received
—Number of records submitted
—Time period covered by the match
—Number of cases terminated due to the match

—Dollar value of all erroneous payments detected due to the match
—Number of cases where benefits were increased due to the match
—Number of fraud referrals made due to the match.

(d) Safeguards

The statute and the proposed regulations would rigorously protect the confidential and sensitive nature of the information exchanged about individuals. The statute specifically requires that adequate safeguards be in effect to assure (1) that information is made available only to the extent necessary to assist in the valid administrative needs of the agency receiving the information and that the unearned income data from IRS is exchanged only with those agencies authorized to receive it; and, (2) that the information is adequately protected against unauthorized disclosure.

Current program regulations on disclosure, except in UC, specify the uses for which a State agency may release data and the types of data to be safeguarded and require the State agencies at publicize safeguard requirements. The proposed rules would modify current rules, and add rules for UC, as necessary to include information obtained under DEFRA. The proposed rules would standardize requirements and procedures for safeguarding information through agreements between providing and receiving agencies.

(e) Notice to Applicants and Recipients

DEFRA requires the agencies to notify applicants at application and periodically thereafter that information about them will be exchanged and used to verify income and eligibility. Periodically is defined in the individual program regulations. All the proposed rules require the agencies to notify applicants in writing at application but not necessarily on the application form.

(f) Reimbursement for Cost of Providing Data

The Act requires accounting systems to be utilized that assure that programs providing data receive reasonable reimbursement from the agency receiving the data. The rule would require that all agreements for the exchange of income and eligibility information must include provision for determining appropriate reimbursement from the requesting agency for the reasonable cost incurred in providing the data.

We would expect all State agencies to coordinate with each other to make single requests for data and to share the information obtained and the cost of obtaining it.

(g) Independent Verification of Information Prior to Taking Adverse Action.

DEFRA requires independent verification of unearned income information released by the Department of Treasury before terminating, denying, suspending or reducing any benefits. All the proposed rules (except for DOL because Unemployment Compensation agencies will not obtain unearned income information) require independent verification of IRS data, and were essentially guided by the House Conference Report language. The agencies would verify the information relating to:

—The amount of the resource and income involved;
—Whether the applicant/recipient actually has (or had) access to the resource or income or both for his or her own use; and,
—The period or periods when the individual actually had the resource of income; or both,

by either providing the applicant/recipient with an opportunity to verify or rebut the information or by direct contact with the provider of the income or holder of the asset.

As provided under current program rules the applicant/recipient would be (1) notified of any adverse action based on the independently verified unearned income and (2) be given an opportunity for a fair hearing.

Although Congress did not indicate that the State agencies must independently verify all information, we expect that all agencies will continue to conduct all appropriate and necessary verification of information it receives.

(h) Agreements

Current rules concerning wage matching require that, prior to accessing wage information from SSA and/or UC agencies, AFDC and Food Stamp agencies must execute agreements. These agreements must detail the procedures for requesting and providing wage information. These proposed rules would extend these requirements to adult assistance, State Medicaid and UC programs and add the requirement that State agencies execute agreements with IRS. The rules would require that any State agency that directly obtains information from a source agency must have a written agreement with that agency.

C. Delay of Effective Date

The law provides that the Secretary of each Department may grant a delay in the effective date, April 1, 1985, but not beyond September 30, 1986 if the State agency submits a plan describing a good faith effort to come into compliance with the requirements of Section 1137 of the Act. Federal agencies will coordinate review of such plans.

The Secretaries may not waive the effective date of the provisions concerning procedures for protecting individuals with respect to the use of unearned income information from IRS.

D. Requirement for Quarterly Wage Reporting by Employers

The Secretary of Labor (in consultation with the Secretary of Health and Human Services and the Secretary of Agriculture) may waive the provision that employers in a State are required to make quarterly wage reports to a State agency if he determines that the State has in effect an alternative system which is as effective and timely for purposes of providing employment related income and eligibility data for the purposes described in section 1137 of the Social Security Act. Criteria for such waiver and the data required from States for receiving such waiver will be issued, if necessary, by the Department of Labor and published for comment in the **Federal Register.**

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 603

Federal-State Unemployment Compensation Program; Income and Eligibility Verification System

ADDRESS: Submit comments to Carolyn M. Golding, Director, Unemployment Insurance Service, U.S. Department of Labor, Room 7112, Patrick Henry Building, 601 D Street NW., Washington D.C. 20213.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Labor, 601 D Street NW., Room 7112, Washington, D.C. 20213. Telephone: 202–376–6636. Carolyn M. Golding, Director, Unemployment Insurance Service, Employment and Training Administration.

SUPPLEMENTARY INFORMATION: The Employment and Training Administration (ETA) is proposing to issue regulations to provide for the participation of the State employment security agencies in an income and eligibility verification system. The Deficit Reduction Act of 1984 amended the Social Security Act to require income and eligibility verification exchange among State and local

agencies administering various federally-assisted programs including the Federal-State unemployment compensation program. Under prescribed conditions, wage, income and benefit information on individuals will be exchanged among the agencies administering the identified programs. The disclosure and exchange of information is limited to program purposes and must be safeguarded against unauthorized disclosure

Section 2651, the Deficit Reduction Act of 1984 (Pub. L. 98–369), amended title XI of the Social Security Act by adding a section 1137 which establishes an income and eligibility verification system for the exchange of information among State agencies administering specified programs. The programs are: aid to families with dependent children (AFDC), Medicaid, Food Stamps, supplemental security income (SSI), unemployment compensation (UC) and any State program under a plan approved under title I, X, XIV, or XVI of the Social Security Act. Programs participating in the income and eligibility verification system are required to share information to assist in the child support program and to assist the Secretary of Health and Human Services in verifying eligibility amounts under titles II and XVI of the Social Security Act.

Section 2651 of the Deficit Reduction Act of 1984 also amended section 303 of title III of the Social Security Act to require the State agency charged with administering the unemployment compensation law to participate in the income and eligibility verification system. Secton 303 has previously required only that State unemployment compensation agencies disclose certain specified information to Federal and State Food Stamp agencies, and State and local child support agencies.

Under the new verification system, employers will be required to make quarterly wage reports to a State agency (which may be the State unemployment compensation agency) except that the requirement may be waived if an alternate system for providing employment-related income and eligibility data is approved by the Secretary of Labor (in consultation with the Secretaries of Health and Human Services and Agriculture). The wage data will be available for all of the participating programs under the income and eligibility verification system. All agencies will also have access to information on income and earnings of individuals from the Social Security Administration and unearned income from the Internal Revenue Service.

The Employment and Training Administration's regulations do not contain specific requirements as to the extent to which information must be utilized in verifying eligibility and benefit amounts. Eligibility and benefit amounts are determined under State, rather than Federal, unemployment compensation laws. The State unemployment compensation agencies already employ a variety of techniques to verify eligibility prior to the first payment of a claim, during the claim series and as a post-audit. These States agencies, with the direct responsibility for administering the State unemployment compensation law, have considerable latitude under Federal law in determining the usefulness and effectiveness of various sources of information.

The Employment and Training Administration continues to work with State unemployment compensation agencies on improved methods for ensuring correct and timely payments of benefits. For example, a State-Federal work group has developed pilot procedures for verifying eligibility prior to the first unemployment compensation payment. These procedures will be tested in several States. To the extent these procedures prove effective, the Department of Labor will issue them as technical assistance guides for State use consistent with State unemployment compensation laws.

The Employment and Training Administration is also developing a quality control (QC) program for use by State agencies. The objective of QC is to enable State agencies to assess the causes of inappropriate payments and to take corrective action by providing sufficient and timely data. The Employment and Training Administration also plans to issue further guidance, as appropriate, with respect to utilizing the sources of information identified in these regulations.

Drafting Information

This document was prepared under the direction and control of the Director of the Unemployment Insurance Service, Employment and Training Administration, U.S. Department of Labor, 601 D Street NW., Washington, D.C. 20213; telephone (202) 376–6636 (this is not a toll free number).

Classification—Executive Order 12291

The proposed rule in this document is not classified as a "major rule" under Executive Order 12291 on Federal Regulation, because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, no regulatory impact analysis is required.

Paperwork Reduction

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the reporting and recordkeeping provisions in this proposed rule will be submitted to the Office of Management and Budget (OMB) and would not be effective until OMB has approved them.

Regulatory Flexibility Act

The Department believes that this proposed rule will have no "significant economic impact on a substantial number of small entities" within the meaning of 5 U.S.C. 605(b). This rule implements an income and eligibility verification system and has no economic impact on any small entities. The Under Secretary of Labor has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. Accordingly, no regulatory flexibility analysis is required.

List of Subjects in 20 CFR Part 603

Unemployment compensation, Labor.

Words of Issuance

For the reasons set forth in the preamble, it is proposed that a new Part 603 be added to Chapter V of Title 20 of the Code of Federal Regulations as set out below.

Signed at Washington, D.C. on February 25, 1985.

Ford B. Ford,

Under Secretary of Labor.

It is proposed to add a new Part 603 to Chapter V of Title 20 of the Code of Federal Regulations to read:

PART 603—INCOME AND ELIGIBILITY VERIFICATION SYSTEM

Sec.

603.1 Purpose.

Subpart A—Income and Eligibility Verification System

603.2 Definitions.
603.3 Eligibility condition for claimants.
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Authority: Sec. 1102, Social Security Act, ch. 531, 49 Stat. 647, as amended (42 U.S.C. 1302); Reorg. Plan No. 2 of 1949, 63 Stat. 1065, 14 FR 5225.

§ 603.1 Purpose.

(a) Section 2651 of Pub. L. 98–369 (the Deficit Reduction Act of 1984) amended title XI of the Social Security Act to include a requirement that States have an income and eligibility verification system in effect which would be used in verifying eligibility for, and the amount of, benefits available under several Federally assisted programs including the Federal-State unemployment compensation program. The Act requires that employers in each State make quarterly wage reports to a State agency, which may be the State unemployment compensation agency, and that wage information and benefit information obtained from other agencies be used in verifying eligibility for benefits. The requirement of quarterly wage reporting may be waived if the Secretary of Labor (in consultation with the Secretary of Health and Human Services and the Secretary of Agriculture) determines the State has in effect an alternative system which is as effective and timely as quarterly wage reporting for the purposes of providing employment related income and eligibility data.

(b) Section 2651(d) of Pub. L. 98–369 added a new section 303(f) of the Social Security Act (42 U.S.C. 503(f)), to provide that the agency charged with the administration of the State unemployment compensation law shall provide that information shall be requested and exchanged for purposes of income and eligibility verification in accordance with a State system which meets the requirements of section 1137 of the Social Security Act, as added by Pub. L. 98–369. The regulations in this part are issued to implement this requirement.

Subpart A—Income and Eligibility Verification System

§603.2 Definitions.

For the purposes of this Part:

(a) "State unemployment compensation agency" means the agency charged with the administration of the unemployment compensation law approved by the Secretary of Labor under section 3304 of the Internal Revenue Code of 1954 (26 U.S.C. 3304).

(b) "Wage information" means information about wages as defined in the State's unemployment compensation law and includes the Social Security Account Number (or numbers, if more than one) and quarterly wages of an employee, and the name, address, State, and (when known) Federal employer identification number of an employer reporting wages under a State unemployment compensation law, except that in a State in which wages are not required to be reported under the unemployment compensation law, "wage information" means:

(1) That wage information which is reported under provisions of State law which fulfill the requirements of section 1137 of the Social Security Act; or

(2) That information which is obtained through an alternative system which fulfills the requirements of section 1137 of the Social Security Act.

(c) "Claim information" means information regarding:

(1) Whether an individual is receiving, has received or has applied for unemployment compensation;

(2) The amount of compensation the individual is receiving or is entitled to receive;

(3) The individual's current (or most recent) home address; and

(4) Whether the individual has refused an offer of work and, if so, a description of the job offered including the terms, conditions, and rate of pay.

(5) Any other information contained in the records of the state unemployment compensation agency which the requesting agency determines is useful in verifying eligibility for, and the amount of, benefits.

(d) "Requesting agency" means:

(1) Any State or local agency charged with the responsbility of enforcing the provisions of the Aid to Families with Dependent Children program under a State plan approved under part A of title IV of the Social Security Act;

(2) Any State or local agency charged with the responsbility of enforcing the provisions of the Medicaid program under a State plan approved under title XIX of the Social Security Act;

(3) Any State or local agency charged with the responsiblilty of enforcing the provisions of the Food Stamp program under the Food Stamp Act of 1977;

(4) Any State or local agency charged with the responsibility of enforcing a program under a plan approved under title I, X, XIV, or XVI of the Social Security Act;

(5) Any State or local child support enforcement agency charged with the responsibility of enforcing child support obligations under a plan approved under part D of title IV of the Social Security Act; and

(6) The Secretary of Health and Human Services in establishing or verifying eligibility or benefit amounts under titles II and XVI of the Social Security Act (Section 1137(a)).

§ 603.3 Eligibility condition for claimants.

(a) The State unemployment compensation agency shall require, as a condition of eligibility for unemployment benefits, that each claimant for benefits furnish to the agency his/her social security account number (or numbers if he/she has more than one such number), and the agency shall utilize such account numbers in the administration of the unemployment compensation program so as to associate the agency's records pertaining to each claimant with the claimant's social security number(s).

(b) If the State agency determines that a claimant has refused or failed to provide a Social Security Account Number, then that individual shall be ineligible to participate in the unemployment compensation program.

(c) Any claimant held ineligible for not supplying a social security account number may become eligible upon providing the State agency with such number retroactive to the date of filing an initial claim (Sec. 1137(a)(1)).

§ 603.4 Notification to claimants.

Claimants shall be notified at the time of filing an initial claim for benefits through a written statement on or provided with the initial claim form and periodically thereafter that information available through the income and eligibility verification system will be requested and utilized by requesting agencies as defined in § 603.2(d) Section 1137(a)(6)).

§ 603.5 Disclosure of information.

The State unemployment compensation agency will disclose to authorized requesting agencies, as defined in § 603.2(d), which have entered into an agreement in accordance with this part, wage and claim informaton as defined herein contained in the records of such State agency as is deemed by the requesting agency to be useful in verifying eligibility for, and the amount of, benefits. Standardized formats established by the Secretary of Health and Human Services (in consultation with the Secretary of Agriculture) will be adhered to by the State unemployment compensation agency; such standardized formats for State unemployment compensation

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agencies will be issued by the United States Department of Labor and published in the **Federal Register** for comment (Sec. 1137(a)(4)).

§ 603.6 Agreement between State unemployment compensation agency and requesting agency.

(a) The State unemployment compensation agency will enter into specific written agreements with any requesting agency as defined in this Part.

(b) The agreements will include, but need not be limited, to the following:

(1) The purposes for which requests will be made and the specific information needed;

(2) Identification of all agency officials, by position, with authority to request information;

(3) Methods and timing of the requests for information, including the format to be used, and the period of time needed to furnish the requested information;

(4) Basis for establishing the reporting periods for which information will be provided;

(5) Provisions for determining appropriate reimbursement from the requesting agency for the costs incured in providing data, including any new developmental costs associated with furnishing data to the requesting agency and calculated in accordance with the provisions of OMB Circular A–87;

(6) Safeguards to ensure that information obtained from the State unemployment compensation agency will be protected against unauthorized access or disclosure. At a minimum, such procedures will comply with the requirements of § 603.7.

(c) The requirements in paragraph (a) and (b) of this section shall also apply to requesting agencies receiving information from a State unemployment compensation agency in another State and shall be administered by the State unemployment compensation agency disclosing the information section 1137(4) and (a)(7)).

§ 603.7 Protection of confidentiality.

(a) State unemployment compensation agencies shall require requesting agencies receiving information under this Part to comply with the following measures to protect the confidentiality of the information against unauthorized access or disclosure:

(1) The information shall be used only to the extent necesary to assist in the valid administrative needs to the program receiving such information and shall be disclosed only for these purposes as defined in this agreement;

(2) The requesting agency shall not use the information for any purposes not specifically authorized under an agreement that meets the requirements of § 603.6;

(3) The information shall be stored in a place physically secure from access by unauthorized persons;

(4) Information in electronic format, such as magnetic tapes or discs, shall be stored and processed in such a way that unauthorized persons cannot retrieve the information by means of computer, remote terminal or other means;

(5) Precautions shall be taken to ensure that only authorized personnel are given access to on-line files;

(6) (i) The requesting agency shall instruct all personnel with access to the information regarding the confidential nature of the information, the requirements of this Part, and the sanctions specified in State unemployment compensation laws against unauthorized disclosure of information covered by this part, and any other relevant State statutes, and

(ii) Each individual shall sign a written acknowledgment of these instructions including an affirmation of the individual's willingness to abide by the requirements.

(b) Any requesting agency is authorized to redisclose the information only as follows:

(1) Any wage or claim information may be given to the individual who is the subject of the information;

(2) Information about an individual may be given to an attorney or other duly authorized agent representing the individual if the information is needed in connection with a claim for benefits against the requesting agency; and

(3) Any wage or claim information may be given to another requesting agency as defined in this Part or to any criminal or civil prosecuting authorities acting for or on behalf of the requesting agency if provision for such redisclosure is contained in the agreement between the requesting agency and the State unemployment compensation agency.

(c) The requesting agency shall permit the State unemployment compensation agency and the United States Department of Labor (and other authorized Federal officials) to make onsite inspections to ensure that the requirements of State unemployment compensation laws and Federal statutes and regulations are being met (section 1137(a)(5)(B)).

§ 603.8 Obtaining information from other agencies and crossmatching with wage information.

(a) The State unemployment compensation agency shall obtain such information from the Social Security Administration and any requesting agency as may be useful in verifying eligibility for, and the amount of, benefits.

(b) To the extent that such information shall be determined likely to be productive in identifying ineligibility for benefits and preventing incorrect payments, the State unemployment compensation agency shall crossmatch quarterly wage information with unemployment benefit payment information (section 1137(a)(2)).

(c) To the extent necessary, the United States Department of Labor may amplify on the requirements for State compliance with this section in instructions issued and published for comment in the **Federal Register** under the provisions of section 1137(a)(2) of the Social Security Act.

§ 603.9 Effective date of rule.

The effective date of this Subpart A rule is April 1, 1985, except that the Secretary of Labor, after consultation with the Secretary of Health and Human Services and the Secretary of Agriculture, may by waiver grant a delay in this effective date if the State submits within 90 days of publication of this rule in final form a plan describing a good faith effort to comply with the requirements of section 1137(a) and (b) of the Social Security Act through but not beyond September 30, 1986.

Subpart B—Quarterly Wage Reporting

§ 603.20 Effective date of the rule.

The requirement that employers in a State report quarterly wage information to a State agency (which may be the State unemployment compensation agency), if effective September 30, 1988 (section 1137(a)(3)).

§ 603.21 Alternative system.

The Secretary of Labor (in consultation with the Secretary of Health and Human Services and the Secretary of Agriculture) may waive the provision that employers in a State are required to make quarterly wage reports to a State agency if the Secretary determines that the State has in effect an alternative system which is as effective and timely for purposes of providing employment related income and eligibility data for the purposes described in section 1137 of the Social Security Act. Criteria for such waiver and the date for submitting requests for such waiver will be issued, if necessary, by the United States Department of Labor and published for comment in the **Federal Register**.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 271, 272, 273 and 275

[Amdt. No. 264]

Food Stamp Program; Deficit Reduction Act

ADDRESS: Comments should be submitted to Bonny O'Neil, Director, Program Planning, Development and Support Division, Family Nutrition Programs, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302. All written comments will be open to public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5:00 p.m. Monday through Friday) at 3101 Park Center Drive, Alexandria, Virginia, Room 711.

SUPPLEMENTARY INFORMATION: This rule would amend the Food Stamp Program regulations published October 17, 1978 (43 FR 47846), as amended, which implemented the Food Stamp Act of 1977, as amended. It would implement recent legislation by providing requirements for State income and eligibility verification systems. In so amending Food Stamp Program regulations, the rule would help ensure that benefits are issued only to eligible households and in correct amounts.

Classification

Executive Order 12291

This proposed rule has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1512–1 and has been classified "not major." The rule will not have an annual effect on the economy of $100 million or more, nor is it likely to result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Because this rule will not affect the business community, it will not result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Executive Order 12372

This proposed program activity is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See 7 CFR Part 3015, Subpart V (48 FR 29112, June 24, 1983).

Regulatory Flexibility Act

This proposed rule has also been reviewed with regard to the requirements of Pub. L. 96–354, and Robert E. Leard, Administrator of the Food and Nutrition Service, has certified that it will not have a significant economic impact on a substantial number of small entities. This rule would change Federal regulations to comply with Pub. L. 98–369 by requiring State agencies to implement a system for verifying income and eligibility and would set standards for certain State agency actions. State agencies would be affected in varying degrees by the need to develop new administrative procedures. Households would be affected to the extent that information obtained from the verification system and standards for follow-up action increase State agency effectiveness in identifying and taking appropriate action on households which are ineligible or are receiving excess benefits.

Justification for 45-day Comment Period

Legislation specifies an April 1, 1985 effective date for these provisions, subject to good faith compliance waivers until September 30, 1986. Thus, in order to have final rules in place as close to the April 1985 deadline as possible, some modification of routine Department procedure is required. Although these proposed rules will require some new State agency activities, many State agencies currently conduct variations of these activities. As the requirements are not completely new, the Department does not believe participation in this rulemaking by States or other interested parties will be significantly affected by a 45-day rather than a 60-day comment period.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the reporting and recordkeeping provisions in this proposed rule will be submitted to the Office of Management and Budget (OMB) and would not be effective until OMB has approved them.

Background

As discussed in the general preamble, the Deficit Reduction Act of 1984 (Pub. L. 98–369, s2651) requires that State agencies implement systems to request and exchange information with certain agencies and other programs. Such requests and exchanges are to be made to the extent that the information may be useful in verifying eligibility and benefit amounts. This statute retains current wage matching requirements within a broader system of third party information. The broader system, the State Income and Eligibility Verification System (SIEVS), involves wage and other information provided by the several agencies identified in the general preamble: State wage information collection agencies (SWICAs), the Social Security Administration (SSA), and the Internal Revenue Service (IRS). Programs required to exchange information are: the Food Stamp Program (FSP); Aid to Families with Dependent Children (AFDC); Unemployment Compensation (UC); Medicaid; and State administered adult programs in Puerto Rico, Guam and the Virgin Islands. Information about such household circumstances as wages, unearned income and benefits can be extremely useful to State agencies administering the Food Stamp Program by periodically providing reliable information independent of household reports. This rule proposes requirements designed to assure that State agencies avail themselves of that information and use it. As mentioned in the general preamble, the rule recognizes the need for differently structured verification systems State-to-State by allowing State agencies to work out procedures which, within the constraints of their resources, will best achieve the objectivers of the SIEVES and help assure the accurate issuance of food stamp benefits. (See 7 CFR 272.8(a).)

Information Sources

The general preamble discusses the legislative requirements and the details of the proposed regulatory provisions for SWICAs, which are common to all the information-sharing programs using SIEVS. The SWICA is the State UC agency or other agency through which quarterly wage date from State employers are made available to the SIEVS. The rules would require State agencies to obtain and use SWICA data for applicant households and quarterly for recipients.

Current Food Stamp Program rules require State agencies to request wage information from the Social Security Administration (SSA) unless they are wage report States, in which case they must use wage and other income information from UC agencies. Under the new law, all State agencies must request and use wage and benefit information that is available pursuant to section 6103(1)(7) of the Internal Revenue Code from SSA. As described in the general preamble, that information comes from Federal income tax returns and, as under current rules,

consists of the following items: net earnings from self employment; wages reported either for purposes of Old Age, Survivors and Disability Insurance (OASDI) or for purposes of Federal income tax; and payments of retirement income from OASDI, from pensions and of related types of retirement income, and payments of railroad retirement. These rules would require that State agencies obtain and use SSA data for applicants and use updated SSA data for recipients as it is provided.

As discussed in the general preamble, the Deficit Reduction Act requires that the various programs request and use unearned income information from IRS. The Food Stamp rules would require that State agencies make such requests for all applicants and annually for recipients. IRS is requesting that States submit a single monthly request, combining inquiries from all programs.

The proposed food stamp rule would require the use of Unemployment Insurance Benefits (UIB). The rule would require that all State agencies request and use UIB information because UIB is income for food stamp purposes. The legislation specifically requires that in addition to what information they obtain through the verification system from UC agencies, Food Stamp Program State agencies would be required to also request and utilize any additional information available from UC agencies to the extent permitted under section 303(d) of the Social Security Act. The rule would require such information use, although wage data from SWICAs and UC benefit information should in most cases include all information available from UC agencies. (See 7 CFR 272.8(a)).

Child Support and Other Program Information Sharing

As discussed in the general preamble, in addition to the flow of information among AFDC, FSP, Medicaid and UC programs, the law requires that these programs provide information to the Child Support Program and the Old Age, Survivors, and Disability Insurance (OASDI) Program, and the Supplemental Security Income (SSI) program. A recent proposed rulemaking concerning disclosure of information obtained from Food Stamp households (48 FR 16834, dated April 19, 1983) discussed providing access to food stamp casefile information to "means tested" programs. Comments on that proposal indicated belief that access should be provided to the Child Support Program. DEFRA authorizes the Department to allow such access. Food Stamp casefile information, including the addresses of non-supporting absent parents, would be made available to either State level child support enforcement officials or appropriate Federal personnel, such as those associated with the Parent Locator Service. Access would also be provided to OASDI and SSI.

Current food stamp rules require action on information reported to the AFDC program as though it had been reported for food stamp purposes. Therefore, no new exchange of information between Food Stamps and AFDC is required by these rules. However, it is expected that State agencies will take this opportunity to make any needed improvements in the accessibility of AFDC case information for food stamp case actions. Also, the rule would not prescribe information which all State agencies must provide other programs. Other programs participating in SIEVS in a State wanting Food Stamp Program information would be expected to negotiate concerning it, and any arrangements for providing it would be included in agreements governing data exchange which are discussed later in this preamble. (See 7 CFR 272.1(c) and 272.8(e)(4).

Alternate Data Sources

As already mentioned, the new legislation provides that requests for information are to be made to the extent that information is useful for verifying eligibility and benefits. The Department believes that this standard of utility should be included in the rules and therefore would provide for State agencies to apply for alternate data bases. There may be situations in which a State agency has access to a State data base which is as effective and useful as one specified in the rules, or situations in which one data base specified in the legislation can be substituted for another. One example might be the use of a SWICA instead of wage data from SSA. The rule would allow State agencies to apply for approval of such alternate data sources in connection with submittal of the attachment to the Plan of Operation concerning SIEVS, as discussed later in this preamble. The basic requirement for approval of such a source would be that it provides timely and accurate information that is as useful for verifying eligibility and benefit amounts as the other source. Prior to approving the use of any alternate data source, the Department would consult with the Departments of Health and Human Services, and of Labor. (See 7 CFR 272.8(c).)

Agreements, Safeguards, Uses

Current rules concerning wage matching require that, prior to accessing wage information from SSA and/or UC agencies, State agencies must execute agreements with those agencies which detail the procedures for requesting and providing wage information. These proposed rules include these requirements, extend them to include IRS, and add the requirement that the agreements be submitted as part of State agency Plans of Operation. In addition, in accordance with the legislative requirements, the rule would require that the agreements specify reimbursement arrangements, as appropriate. Reimbursement agreements may include new developmental costs provided those costs are necessary for the furnishing of the data to the user agencies. Such costs for example might be for computer software needed to meet the format requirements of the requesters.

As does the current rule, the proposed rule would require that the agreements between State agencies include safeguard provisions which would assure compliance with the requirements of provider agencies. The specific references to Sections 6103(l) and 7213 of the Internal Revenue Code of 1954 and the IRS publication *Tax Information and Security Guidelines* are retained. (State agencies wanting more background information about safeguards should refer to the proposed and final wage match rules at 47 FR 19943, dated May 7, 1982; and 47 FR 50180, dated November 5, 1982.) Current rules require State agencies to use wage match information to verify eligibility and benefits, to investigate the possibility of the issuance of benefits to households not entitled to them, and to substantiate information which will be used in criminal or civil prosecutions based on receipt of food stamp benefits to which participating households were not entitled. The proposed rule would apply the current uses of wage match information to information obtained from the SIEVS. (See 7 CFR 272.8(a)(4) and (5).)

Standard Formats

The general preamble discusses standard formats. The proposed food stamp rules would require that request to SWICAs, UC agencies and other States be in formats prescribed by the Secretary, and that requests to SSA and IRS be in formats prescribed by the respective Commissioners. As also mentioned in the general preamble, SSA and IRS are issuing instructions relating to obtaining the information they are authorized to provide. The Department would add that, until they are provided, State agencies would be expected to use

whatever formats best facilitate information requests and usages at the State and local level. (See 7 CFR 272.8(d).)

Automation

This rule does not require an overrall, computerized system, as is pointed out in the general preamble. Nonetheless, since matching is difficult without computer use, State agencies are encouraged to use computers to the maximum extent in developing efficient methods of matching. Lack of computer capacity would not be a reason to excuse project areas from the matching requirements. Study results are available that indicate that a mostly manual system with only minimum computerization support can be cost-effective, if carefully managed.

Independent Verification

Under current rules, third party confirmation of information provided by a food stamp applicant household, other than confirmation under routine use agreements, may only be made with the consent of the household. If a State agency designates a collateral contact, it must notify the household prior to making the contact. Upon notice, the household has three options available to it: 1) Consent to the contact; 2) provide acceptable verificaiton in another form; or 3) withdraw its application. If the household refuses to choose one of these options, its application is denied for failure to provide requested verification. (See 7 CFR 273.2(f)(4)(ii).)

The provisions of the current rules requiring advance notice resulted from the Department's interpretation of section 11(e)(8) of the Food Stamp Act (7 U.S.C. 2020(e)(8)) which limits the disclosure of information obtained from households to persons who administer the Food Stamp Program, persons who administer certain other Federal and State assistance programs, the Comptroller General of the United States, and Federal and State law enforcement officials for specified purposes. The Department's interpretation was based on the view that, absent the applicant's prior consent, section 11(e)(8) would not permit the inadvertent though unavoidable disclosure of an applicant or participant's name when contact was made with a third to verify information provided in the application. (See 47 FR 53313 (1982).) This effort to implement DEFRA has necessitated a closer analysis of Congressional intent regarding the relationship between program integrity and the concern for individual privacy as expressed in the Food Stamp Act and DEFRA.

The Department now believes for the reasons explained below that the current rules interpret section 11(e)(8) of the Act more broadly than in necessary. For this reason, the proposal provides more limited notice requirements which would bring Food Stamp Program policy in line with the current and proposed policy of the other agencies involved in SIEVS and permit a more effective and consistent administration of DEFRA across program lines.

DEFRA requires that prior to taking adverse action based on information about unearned income obtained from the IRS, the State agency must take appropriate steps to independently verify that information. In explaining this requirement, the Conference Committee report states at page 1412 (H.R. REP. NO. 8651, 98th Cong., 2nd Session. 1412 (1982)):

> The agency may use one of two approaches to verify unearned income return information that it has received from IRS. It may contact the financial institution or corporation that submitted the information to the IRS, requesting its cooperation in verifiying the information. If the institution verifies the information, the agency must send the individual notice of denial, reduction, suspension, or termination of benefits (whichever is applicable), including information on the right to appeal the action. If the action is not appealed, the agency may proceed to take the appropriate action, based on the verified information.
>
> Alternatively, the agency may contact the individual directly by letter informing him of the information that it has received, and requesting that the individual respond within a specified period. The conferees expect that the agency's letter to the recipient will be unintimidating in tone, and will clearly explain the information that the agency has, and the possible relevance of the information to the individaul's eligibility for (and amount of) any past or future benefits. If the individual responds by verifying the information, the agency will take the appropriate case action. If the individual indicates that the information is not correct or is incomplete, the agency must obtain evidence (from the individual or institution involved or otherwise) to substantiate any negative case action that it may take. If the individual fails to respond after reasonable efforts to contact him, the agency will take steps to close or deny the case on the basis of the individuals' failure to cooperate.
>
> In all cases involving reduction, suspension, or termination of benefits, the recipient must be sent notice of the action to be taken, including information on the right to appeal and opportunity for a hearing.

While the statement of Congressional intent does not appear to require any notice to applicants when the State agency adopts the first alternative, DEFRA does provide protection of individual privacy interests by requiring that all applicants for and recipients of benefits under programs included in SIEVS be notified at the time of application and periodically thereafter that information available through the system will be requested and utilized. (See Pub. L. 98–369, Sec. 2651, 98 Stat. 1147.) As discussed later in this preamble in connection with Social Security numbers, this proposed rule would require such notice as part of the application process. Because applications are used for recertifications, households would therefore be periodically notified. (See 7 CFR 273.2(b).)

The Department believes that the notice required by DEFRA fully satisfies the purposes of the privacy interest established by section 11(e)(8) of the Food Stamp Act. It comes in advance of any actual contact with employers, banking institutions and the like and provides the applicant the opportunity to elect to forego program benefits rather than permit disclosure to persons not involved in the administration or enforcement of the various benefit programs of the fact that the application has been made. Therefore, this rule would eliminate the requirement that State agencies obtain prior permission from applicants and recipients before contacting third parties for verification. Because the current rules concerning systems of records to which State agencies have routine access (§ 273.2(f)(4)(ii) were necessary because of the rule on prior permission, this rule would also eliminate those rules. (See 7 CFR 273.2(f)(4)(ii).)

As mentioned above, the law requires that information about unearned income obtained from IRS must be independently verified prior to any adverse action being taken. The Department believes that certain other SIEVS information should also be subject to independent verification. This information is wage information from SWICAs and SSA. The Department believes that independent verification is needed in all of these instances because the information indicates a discrepancy but does not itself carry verification of circumstances warranting an adverse action. Accordingly the rule would require independent verification for SIEVS information considered to be unverified. Current rules require such verification. (See 7 CFR 273.2(f)(4)(iv).)

There is some information which would be obtained through SIEVS which can be considered verified upon receipt and so does not require any further inquiry by the State agency prior to initiating an adverse action. This is information about social security and SSI benefits obtained from SSA, and

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AFDC benefit and UIB information obtained from agencies administering those programs. The proposed rules would require action on such verified SIEVS information upon its receipt, including proper notices to households and an opportunity for a fair hearing. (See 7 CFR 273.2(f)(9).)

In addition, the rule would modify current rules on contacting households to resolve discrepancies between information they have provided and information obtained from a third party. The rule would permit, in conformance with the expanded collateral contact authority, resolution either with the household or through third party verification. A specific reference to SIEVS information is included. (See 7 CFR 273.2(f)(4)(iv).)

Timeframes for Obtaining and Using Information

State agencies generally would be required to obtain and use information from SIEVS within the 30-day application period for applicant households and within 20 days of its receipt for recipient households. Obtaining and using SIEVS information within the application period would entail a prompt request to the various provider agencies, prompt return of information or a signal that there is none on file, a determination of whether a discrepancy is indicated and any necessary resolution of it with the household, as is currently required. State agencies are encouraged to develop as fast an exchange environment as possible to meet this timeframe. The rule would provide that if the information has not been obtained by the time the State agency is otherwise able to make an eligibility decision, that decision should not be delayed. In those situations, when the information is received, it would be used under the provisions pertaining to recipient households discussed just below. State agencies would continue in all cases to comply with the 30-day standard for providing an opportunity to participate, as specified in current rules and as required by the Food Stamp Act.

Obtaining and using SIEVS information on recipient households within 20 days of its receipt would entail three actions. First State agencies would review the information and, by means of priorities described later in this preamble as part of the Plan of Operation, identify which information indicates a discrepancy warranting case record review. Second, State agencies would review case records and contact households and/or collateral contacts to resolve the discrepancies. Third, State agencies would be required to send notices of adverse action if warranted. State agencies would then take action according to current rules on reductions, etc., and claim determinations.

The Department believes that the more automated the procedures for requesting, obtaining and reviewing SIEVS data, the easier compliance with the above timeframes will be. We recognize that some State agencies may already have this capacity in whole or part. We are particularly interested in the feasibility of the proposed timeframes and documentation showing State agency experience with this facet of matching activities. (See 7 CFR 272.8 (e) and (f).)

Obtaining and Using Information From Sources

The timeframes and actions just described would apply to SWICA information for applicants using the most recent SWICA wage data available. Recipient households would be matched at quarterly intervals, and include all households which participated in any month of the quarter covered by the wage data.

The timeframes and actions would also apply to SSA information for applicants and recipient households. If State agencies use BENDEX to request SSA data for an applicant, no further match would be required because once an individual is entered into BENDEX, the State agency will automatically receive any new information on entered households. If the Third Party Query (TPQY) system is used, State agencies would need to input the applicant's information into BENDEX. The Commissioner of SSA will be publishing instructions on how to access SSA data. The 20-day timeframe would apply to information received from SSA as an update to an earlier request on the BENDEX file. State agencies are expected to promptly put applicants on BENDEX if the TPQY is used at application.

As already mentioned, in addition to obtaining and using IRS information for applicants, the rules would require that it be obtained and used annually for recipient households, and the 30-day and 20-day timeframes would apply.

AFDC and Food Stamp Program matching regulations in regard to requests for UIB information have been made as uniform as possible. Information would be obtained and used for applicants during the 30-day application period and for each of the three subsequent months or until UIB receipt is shown, whichever is earlier. The purpose of the requirement for requests for those subsequent months, if the result of the initial request is negative, is to discover the receipt of UIB after application but which the household has not reported. The rule would also require a UIB match whenever a household loses a job and a continuance of monthly inquiries to UIB after a household has been identified as having UIB benefits. The reasons for these latter two requirements are that households losing a job may be eligible for and receive UIB shortly thereafter, and that the amount of UIB benefit may change from month to month, particularly if a household is employed part-time while receiving UIB benefits.

Our most current information indicates that earned income exists in 17.6 percent of Food Stamp Program households while receipt of UIB benefits exists in only 1.6 percent. Earned income in those households averages $450 per month while UIB averages $416. Our quality control data indicate that unreported earnings constitute the largest dollar source of all QC errors. It is anticipated that unreported UIB may also constitute an error source commensurate with its frequency of receipt by food stamp households. Even though a smaller percentage of households receive UIB benefits, it has been noted that UIB matches are easier to perform since the UIB data, once accessed, does not need independent verification. The Department would appreciate comments on this proposed rule provision with respect to the advantages and disadvantages of this consistency of policy between AFDC and the Food Stamp Program relative to cost considerations.

To provide for any differences between information available from different State UC agencies, the rule would require that if a UC agency has information in addition to what these rules would require, that State agencies obtain it if that information would be useful in verifying eligiblity and benefits. State agencies would be required to request this information periodically according to agreements with their respective UC agencies. As distinct from other requests for and exchanges of information, the legislation does not require that requests for additional information from UC agencies be made through the SIEVS. Nonetheless, to assure that State agencies develop adequate procedures for complying with this requirement, the rule would require that State agencies include procedures for requesting this information in their Plans of Operation pertaining to the SIEVS unless they present compelling reasons that some other method of obtaining approval would be more efficient.

Social Security Numbers

As discussed in the general preamble, the legislation requires that each applicant or recipient furnish his social security number (SSN) to the State and that the State use that SSN in the administration of the program to associate the records pertaining to the applicant or recipient. Curent food stamp rules already require that all household members provide their SSNs as a condition of eligibility, that they be entered into State agencies' automated data bases, and that they be used to prevent duplicate participation. Furthermore, current rules provide that State agencies may use SSNs to access information about SSI participants from the State Data Exchange (SDX), and encourage State agencies to use SSNs to facilitate mass changes and to determine the accuracy and/or reliability of information given by households. The proposed rule would add the requirement that State agencies use SSNs in requesting and obtaining information through SIEVS.

Because of the importance of correct SSNs in obtaining information through the SIEVS which actually pertains to the household member in question, the rule would require the State agency to submit SSNs to SSA for verification. The current provision allowing verification by observing a social security card or any official document containing the SSN would be deleted. Experience has shown that this method does not adequately determine if a person is using his or her own SSN or detect counterfeit social security cards.

The proposed rule would not necessarily require a special submission to SSA solely to validate the SSN. Rather, validation may be accomplished at the same time requests to SSA are made for social security benefit or wage or other information, or for SSI information on applications. The key input information is name and SSN. If these do not *both* match, the SSA systems would indicate this, and the eligibility workers would need to resolve the discrepancy with the household. If these systems report information for the individual, then the SSN has been validated and does not have to be verified independently. The proposed rule would retain the current provisions that certification cannot be delayed solely to submit the SSN for validation. However, as is the case now, discrepancies in SSNs (such as ones provided by households and ones on wage stubs) which are discovered prior to certification must be resolved before the household can be found eligible. Because of the new procedures for verifying SSNs with SSA, the provision requiring verifcation by the next recertification would be removed. The proposed rule would continue to require that State agencies permanently annotate their files to indicate verified SSNs and accept as verified those SSNs which are verified by similar programs, specifically those participating in the SIEVS. This would avoid the cost of reverifying an SSN after either the State agency or another program has verified it.

Current rules concerning obtaining an SSN specify that if a household member does not have an SSN and the State agency has an enumeration agreement with SSA then the State agency can either require the individual to apply for an SSN through the State agency or can provide the individual a choice between applying through the State agency or through SSA. The proposed rule would require that State agencies with enumeration agreements complete the application for the SSN. Application through the State agency will facilitate determinations of good cause for any delay in application and assure prompt notice to the State agency of the SSN when it is issued. The rule would retain the requirement that State agencies which have an enumeration agreement with SSA for AFDC and Medicaid renegotiate that agreement to offer this service to food stamps applicants and participants. The proposed rule would also retain the requirement that if there is no enumeration agreement, individuals must apply at an SSA office.

Current rules provide that a household member without an SSN shall be allowed to participate for 30 days after the first day of the first full month of participation while awaiting receipt of the SSN. Individuals refusing or failing without good cause to provide an SSN are ineligible. Good cause for failure to privide an SSN is currently based on information from the household, SSA or the State agency. Evidence that the household has applied for an SSN would be grounds for good cause. Such a finding would extend the individual's eligibility for an additional 30 days. After one extension, the household member without an SSN would be ineligible regardless of good cause. FNS has had to grant numerous States waivers to this rule based on documentation that large numbers of applicants are unable to obtain an SSN within the time permitted, through no fault of their own. The proposed rule would modify these requirements. First, once an application has been filed, the State agency would permit the household member to participate pending receipt of the SSN regardless of how long it takes to receive the SSN. This change would eliminate the problems associated with individuals having timely applied for an SSN but not have received it within the 30-day extension period. To help assure prompt inclusion of the individual's SSN in the food stamp case record once it is issued, the rule would require that State agencies arrange with SSA to be directly notified of the SSN when it is issued to the individual. State agencies should check with SSA offices on the exact procedures for this direct notification, but in general they involve providing the applicant a case identification number which the applicant in turn can provide SSA who will then identification number which the applicant in turn can provide SSA who will then use that number to notify the State agency of the SSN. SSNs obtained either by enumeration or by direct notification to the State agency are verified and need not be verified again.

Second, the rule provide that good cause does not include delays due to illness, lack of transportation or temporary absences because SSA provides for mail-in applcations. Third, a showing of good cause for not applying timely will allow the individual to participate for one month in addition to the month of application. For participation to continue, good cause for failure to apply must be determined at the end of each month of participation. As in the current rules, State agencies would be asked to help obtain documentation if that were the problem with submitting the application. These goods cause provisions would also apply to households certified under expedited service. (See 7 CFR 273.2(f)(1)(v) and 273.6.)

Notification of the Use of SSNs

The legislation requires that all applicants for and recipients of benefits under the programs participating in the SIEVS must be notified at the time of application and periodically thereafter that information available through the SIEVS will be requested and used. The proposed rule would implement this notice requirement by a written statement provided on or with the application. Since the application is used at recertification, this procedure would also periodically notify households about the use of SIEVS. Notification language on the application for food stamps will be revised to conform to DEFRA requirements. (See 7 CFR 273.2(b).)

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Plan of Operation

The rule would require that in an attachment to their Plan of Operation State agencies describe the procedures they will use in SIEVS, and provide copies of forms and agreements with other agencies. In addition this document would include a description of priorities which State agencies would use to determine which information obtained from the SIEVS is most likely to be useful in verifying eligibility and benefits. The description would include how the priorities would be used and how they would be reviewed periodically and modified based on experience with the operation of SIEVS. The Department expects that in developing priorities State agencies will consider two particular aspects of household circumstances. The first is whether the household is participating when the information is received. The Department places a great deal of importance on assuring that current benefits are correct. The second is the size of the apparent discrepancy. The Department believes that many apparently minor discrepancies are not actual discrepancies at all or have no impact on eligibility or benefits. Notwithstanding these general guidelines, the Department also believes that some discrepancies for households which are no longer participating warrant follow up, and we encourage State agencies to include some criteria for action on such households. Finally, as already discussed, the Plan of Operation would include any application for alternate data bases. Submission of SIEVS through the Plan of Operation permits FNS review and approval and assures compliance with the objectives and timeframes of the legislation. (See 7 CFR 272.8 (g) and (h).)

State Agency Reporting of Match Success

As mentioned in the general preamble, there would be certain reporting requirements pertaining to SIEVS. In order to obtain State agency comment on these requirements the Department is using this proposed rule to describe the details of what it is considering. An annual report would be required detailing match results: the number of claims established and their dollar value, and the number of households terrminated and reduced through quarterly wage, SSA information, IRS unearned income, and UIB matches respectively. Also required would be the number of referrals (number of SSNs sent to the data base), the number of raw hits (positive returns showing earnings, etc.) and number of "priority hits" as defined by each State Plan of Operation. Success data for each match data base would be reported separately for applicant and recipient matches. This and other success data would be evaluated to determine whether regulatory changes to FNS matching provisions are needed in the future. Through the use of profiling and other data analysis, FNS may identify certain matches which may prove more cost effective than others. Therefore, the types of data bases matched and/or the frequency of certain matches may need to be increased or decreased. A new form or other method of reporting would be developed by FNS.

FNS expects that in order to report, State agencies would have to collect other match success measures in addition to those reported. The Department is considering requiring that whenever a State agency performs a match to any data base, the following information would be collected regarding that particular match:

(1) The data file matched against (e.g., SWICA quarterly wage file, or the IRS unearned income file);

(2) Time period covered by the match;

(3) Date match initiated;

(4) Date raw match results received;

(5) Number of files (SSNs) submitted;

(6) Number of raw matches returned (number of SSN hits returned by the data provider agency);

(7) Number of households terminated due to the match;

(8) The cumulative dollar value of all past overpayments discovered on terminated cases;

(9) Actions that were completed by the 180th day;

(10) The number of households for whom benefits were decreased;

(11) The cumulative dollar value of all past overpayments discovered on households for which benefits were reduced;

(12) Number of *applicant* households for which pending applications were denied (do *not* include here households being recertified—only those new to the Food Stamp Program);

(13) The number of households for whom benefits were increased; and

(14) Number of fraud referrals made.

The above information would be retained in State agency records and provided to appropriate staff as requested; e.g., it would be made available to FNS Management Evaluation reviewers and to auditors and investigators from the Office of the Inspector General and the General Accounting Office. the Department is interested in comments about these reporting and recordkeeping requirements. (See 7 CFR 272.8(i).)

Review by FNS

Current rules provide for FNS review of actions taken on wage match information and for the possibility of FNS requiring additional action to ensure that such information is used to protect the integrity of the Food Stamp Program. This rule would delete that provision because State agencies would develop plans of operation incorporating standards for action. FNS would review actions taken as part of Management Evaluation reviews.

Quality Control

The rule would require that the field investigation of each quality control active sample case include a review of any information pertinent to the case which might be available through SIEVS. This would be required to help assure an accurate error rate. (See 7 CFR 275.12(c).)

Implementation

As stated in the general preamble, the legislation mandates an effective date of April 1, 1985, with the possibility of waivers to September 30, 1986 if good faith efforts to comply are documented. Food Stamp Program rules would continue this effective date and require that State agencies be fully implemented within 90 days of final rules or submit by that date a request for good faith waivers. If implementation is not complete, the attachment to the Plan of Operation described earlier in this preamble must specify an implementation schedule identifying how and when implementation of the various component of the SIEVS will be accomplished. In no event shall implementation schedules beyond September 1986 be approved, except as necessary to accomodate a SWICA. Any request for a delay would be accompanied by documentation of good faith efforts to comply. These good faith efforts would have to include a demonstration of compliance with current wage match requirements, assurances of maintenance of these efforts, and documentation that the proposed implementation schedule is as fast as the State agency can reasonably implement. The Plan of Operation and implementation plans would be submitted not later than 90 days from the date of publication of the final rule. The Secretary would consult with the Secretaries of Health and Human Services, and of Labor prior to approving any Plans of Operation documenting good faith efforts. No delay

of the provisions for SIEVS notification of households would be allowed beyond the date the State implemented any of the SIEVS provisions. With respect to State SWICAs, State agencies which do not have one or April 1, 1985 would be required to have one as soon as possible but in any event would be required to have one in operation so that wage information will be reported by employers starting with the month of October 1988. (See 7 CFR 272.1(g)(70).)

Textual Reorganization

Current rules contain pertinent material on wage matching in paragraph 273.21(f)(9), which deals with verification. Because of the substantial revisions to this material and because it involves State agency level procedures, most of the material on the SIEVS would be placed in a new section, § 272.8.

List of Subjects

7 CFR Part 271

Administrative practice and procedure, Food stamps, Grant programs-social programs.

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs-social programs, Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Food stamps, Fraud, Grant programs-social programs, Penalties, Reporting and recordkeeping requirements, Social security, Students.

7 CFR Part 275

Administrative practice and procedure, Food stamps, Reporting and recordkeeping requirements.

Therefore, 7 CFR Parts 271, 272, 273, and 275 are proposed to be amended as follows:

PART 271—GENERAL INFORMATION AND DEFINITIONS

1. In § 271.2, the definitions of "State Income and Eligibility Verification System" (SIEVS) and "State Wage Information Collection Agency" (SWICA) are added in alphabetical order to read as follows:

271.2 Definitions.

* * * * *

State Income and Eligibility Verification System (SIEVS)—means a system of information acquisition and exchange for purposes of income and eligibility verification which meets the requirements of Section 1137 of the Social Security Act, generally referred to as the SIEVS.

State Wage Information Collection Agency (SWICA)—means the State agency administering the State unemployment compensation law, another agency administering a quarterly wage reporting system, or a State agency administering an alternative system which has been determined by the Secretary of Labor, in consultation with the Secretary of Agriculture and the Secretary of Health and Human Services, to be as effective and timely in providing employment related income and eligibility data as the two just mentioned agencies.

* * * * *

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. In § 272.1, paragraph (c) is revised and paragraph (g) is amended to add a new paragraph (70) in numerical order. The revision and addition read as follows:

272.1 General terms and conditions.

* * * * *

(c) *Disclosure.* (1) Use or disclosure of information obtained from food stamp applicant or recipient households shall be restricted to:

(i) Persons directly connected with the administration or enforcement of the provisions of the Food Stamp Act or regulations, other Federal assistance programs, federally-assisted State programs providing assistance on a means-tested basis to low income individuals, or general assistance programs which are subject to the joint processing requirements in § 273.2(j)(2).

(ii) Persons directly connected with the administration or enforcement of the programs specified in § 272.8(a)(2), which programs are required to participate in the State income and eligibility verification system (SIEVS), to the extent the food stamp information is useful in establishing or verifying eligibility or benefit amounts under those programs;

(iii) Persons directly connected with the administration of the Child Support Program under Part D Title IV of the Social Security Act in order to assist in the administration of that program, and employees of the Secretary of Health and Human Services as necessary to assist in establishing or verifying eligibility or benefits under Titles II and XVI of the Social Security Act;

(iv) Employees of the Comptroller General's Office of the United States for audit examination authorized by any other provision of law; and

(v) Local, State, or Federal law enforcement officials, upon their written request, for the purpose of investigating an alleged violation of the Food Stamp Act or regulation. The written request shall include the identity of the individual requesting the information and his authority to do so, the violation being investigated, and the identity of the person on whom the information is requested.

(2) Recipients of information released under paragraph (c)(1) of this section must adequately protect the information against unauthorized disclosure to persons or for purposes not specified in this section. In addition, information received from third party sources through the SIEVS must be protected from unauthorized disclosure as required by regulations established by the information provider. Information released to the State agency pursuant to Section 6103(l) of the Internal Revenue Code of 1954 shall be subject to the safeguards and restrictions established by the Secretary of the Treasury as specified in Sections 6103(l) and 7213 of the Internal Revenue Code and implemented by the Internal Revenue Service in its publication, *Tax Information and Security Guidelines.*

* * * * *

(g) Implementation. * * *

(70) *Amendment 264.* These rules are effective April 1, 1985. Within 90 days of publication State agencies are required to submit the attachment to their State Plan of Operation specified in §272.2 and in § 272.8(h), documenting either full implementation of these rules or describing good faith efforts to implement them. To be approvable, a plan describing good faith efforts shall, at a minimum, document that the State agency is currently in compliance with wage match criteria as specified in the final rulemaking of November 5, 1982 (47 FR 50180), assure that such compliance will continue at current levels until such time as these provisions are implemented, and provide an implementation schedule that reflects full compliance in the minimum amount of additional time. Implementation schedules beyond September 30, 1986 are not approvable, with the exception of SWICA's discussed below. The Secretary shall consult with the Secretary of the Department of Health and Human Services and with the Secretary of the Department of Labor prior to the approval of Plans of Operation documenting good faith efforts. In no event shall the Secretary approve a delay of the provisions of individual notification in § 273.2(b)(9) beyond the initial implementation date

of any of these new provisions. If on April 1, 1985 no SWICA exists in a particular State, the provisions of this rule as they relate to SWICAs shall be effective upon the designation of a SWICA. Implementation of a SWICA after April 1, 1985 shall take place as soon thereafter as possible but in any event no later than September 30, 1988. All SWICAs with delayed implementation shall be in operation so that wage information is reported to them starting with the month of October 1988.

3. In § 272.2 the seventh sentence of paragraph (a)(2) is revised, and a new paragraph (d)(1)(iv) is added. The revision and addition read as follows:

§ 271.2 Plan of operation.

(a) *General Purpose and Content.*

* * *

(2) * * * The Plan's attachments include the Quality Control Sample Plan, the Disaster Plan (currently reserved), the optional Nutrition Education Plan, and the plan for the State Income and Eligibility Verification System. * * *

* * * * *

(d) *Planning documents.* (1) * * *

(iv) A plan for the State Income and Eligibility Verification System required by § 272.8.

* * * * *

4. A new section, § 272.8, is added to read as follows:

§ 272.8 State Income and Eligibility Verification System.

(a) *General.* (1) State agencies shall maintain and use an income and eligibility verification system (SIEVS), as specified in this section. By means of the SIEVS State agencies shall request wage and benefit information from certain agencies and use that information to the extent that it is useful in verifying eligibility for and the amount of food stamp benefits due to eligible households. The wage and benefit information and agencies are:

(i) State wage information maintained by the State Wage Information Collection Agency (SWICA):

(ii) Information about such items as net earnings from self-employment, wages, payments of retirement income maintained by the Social Security Administration (SSA) and available pursuant ot section 6103(1)(7)(A) of the Internal Revenue Service (IRS) Code, and Federal retirement, survivors, disability, SSI an related benefit information available from SSA;

(iii) Unearned income information from the IRS available pursuant to section 6103(1)(7)(B) of the IRS Code; and

(iv) Any additional information available from agencies administering State unemployment compensation laws subject to the provisions of Section 303(d) of the Social Security Act, subject to the limitations specified in that Section.

(2) Also by means of the SIEVS State agencies shall exchange with State agencies administering certain other programs in the SIEVS information about food stamp household circumstances which may be of use in establishing or verifying eligibility or benefit amounts under those programs. State agencies shall exchange such information with these agencies in other States when the same objectives are likely to be met. These programs are:

(i) The Aid to Families with Dependent Children (AFDC);

(ii) Medicaid;

(iii) Unemployment Compensation (UC);

(iv) Food Stamps; and

(v) Any State program administered under a plan approved under Title I, X, or XIV (the adult categories), or Title XVI of the Social Security Act.

(3) Under the conditions specified in paragraph (f)(5) of this section, State agencies shall request and use information available from UC agencies other than information about unemployment compensation to the extent useful for verifying eligibility and benefits.

(4) *Agreements.* Prior to requesting or exchanging information with other agencies, State agencies shall execute with those agencies data exchange agreements which shall specify the information to be exchanged and the procedures which will be used in the exchange of information. These agreements shall be part of the State agency's Plan of Operation, as required by paragraph (h) of this section. These agreements shall cover at least the following areas:

(i) Identification of positions of all agency officials with authority to request wage information;

(ii) Methods and timing of the requests for and types of information, including the formats to be used;

(iii) The safeguards limiting release or redisclosure as required by Federal or State law or regulation as discussed in § 272.1(c); and

(iv) Reimbursement agreements, as appropriate, including new developmental costs associated with the furnishing of data to receiver agencies as defined in this regulation.

(5) *Uses of data.* The State agency shall use information obtained by means of the SIEVS system for the purposes of:

(i) Verifying a household's eligibility;

(ii) Verifying the proper amount of benefits;

(iii) Investigating to determine whether participating households received benefits to which they were not entitled; and

(iv) Substantiating information which will be used in conducting criminal or civil prosecutions based on receipt of food stamp benefits to which participating households were not entitled.

(b) *State Wage Information.* The wage information maintained by a State Wage Information Collection Agency (SWICA) which is not a UC agency shall:

(1) Contain the Social Security Number (SSN), full name, wages earned for the period of the report for each employee, and an identifier of the employer such as name and address;

(2) Include all employers covered by the State's UC law;

(3) Be accumulated by employers for no longer periods than calendar quarters and shall be reported by employers to the SWICA within 30 days of the end of ech quarter;

(4) Be machine readable; and

(5) Be accessible to agencies in other States which have executed agreements as required in paragraph (a)(4) of this section.

(c) *Alternate data sources.* The Secretary may, upon application from a State agency included in the attachment to the Plan of Operation specified in paragraph (h) of this section, permit a State agency to request and use income information from an alternate source or sources in order to meet any requirement of paragraph (a) of this section. The application shall document that the alternate source or sources provides accurate and timely information that is as useful for verifying eligibility and benefit amounts. State agencies shall comply with the requirements specified in paragraph (a) of this section unless this application for an alternate source has been approved. The Secretary shall consult with the Secretary of the Department of Health and Human Services and with the Secretary of the Department of Labor prior to approval of any alternate data source.

(d) *Form of data requests and exchanges.* Requests for wage and benefit information and exchanges of eligibility and benefit information with the programs specified in paragraph (a) of this section shall be in the formats required by the Secretary for SWICA,

UC and other State, and in the formats prescribed by the Commissioners of SSA and IRS for SSA and IRS requests.

(e) *Obtaining and using information.* State agencies shall obtain and use information from the following sources according to the following timeframes; except as noted in paragraph (e)(6) of this section:

(1) Information from the SWICA for all household members shall be obtained and used to determine eligibility during the 30-day application period and obtained and used quarterly to adjust benefits as appropriate for recipients.

(i) Requests for applicant matches shall access the most recent SWICA wage data available.

(ii) For quarterly requests the food stamp data base shall include all households which participated in any month of the quarter.

(2) Information from SSA shall be obtained and used to determine eligibility and benefits for all households at application within the 30-day timeframe for application processing specified in § 273.2(g). The requests shall be submitted by means prescribed by the Commissioner of SSA. Information received from SSA as updates to requests to SSA files shall be used to adjust benefits of recipient households as appropriate.

(3) Information from IRS shall be obtained and used to determine eligibility and benefits for all households at application during the 30-day application period and shall be obtained and used to revise benefits as appropriate annually for recipients. The requests shall be submitted by means prescribed by the Commissioner of IRS.

(4) Exchanges of information with other programs as specified in paragraph (a) of this section shall be made as the State agency and other programs may agree, except that to determine eligibility and benefits and revise benefits as appropriate all State agencies shall obtain and use information about Unemployment Insurance Benefits (UIB) from the agency administering that program as follows:

(i) For all members of households applying for benefits, within the 30-day timeframe for application processing specified in § 273.2(g);

(ii) For all such members about whom such requests indicate no receipt of UIB at application, for the three months subsequent to the month of application or until the receipt of UIB is reported, whichever is earlier;

(iii) For all such members who report a loss of employment, in each of the three months after the member reports; and

(iv) For any recipient receiving UIB, in each month until UIB are exhausted.

(5) If UC agencies have information other than UIB information which State agencies determine would be useful in verifying eligibility or benefits, State agencies shall request such information by methods and at the periodic intervals to which they and the UC agencies agree for those households for which State agencies determine it appropriate.

(6) If a State agency is otherwise able to make an eligibility determination, that decision shall not be delayed while awaiting receipt of information from one of these sources of information. Such information obtained after an eligibility determination shall be used as specified in paragraph (f) of this section.

(f) *Actions on recipient households.* (1) Within 20 days of receiving information about recipient households from the sources specified in paragraphs (e)(1) through (4) of this section, State agencies shall:

(i) Review the information and, by means of the priorities established as specified in paragraph (g) of this section, identify which information indicates discrepancies warranting case record review;

(ii) Review case record information and contact the households and/or collateral contacts to resolve discrepancies as specified in § 273.2(f)(4)(iv) and § 273.2(f)(9)(iii) and (iv); and

(iii) If discrepancies warrant reducing benefits or terminating eligibility, send notices of adverse action. Such action would be effective according to § 273.12(c)(2) or the retrospective budgeting provisions at § 273.21.

(2) When the actions specified in paragraph (f)(1) of this section substantiate an overissuance, State agencies shall establish and take actions on claims as specified in § 273.18.

(g) *Priorities.* State agencies shall review the information obtained as required in paragraph (e) of this section and give priority to action on this information most likely to be useful in verifying eligibility for food stamps and the amount of food stamp benefits due to eligible households. State agencies shall include in the attachment to their Plan of Operation specified in paragraph (h) of this section a description of their priorities, how these priorities will be used, and how those priorities will be periodically reviewed and modified as appropriate based on operation of the SIEVS.

(h) *Plan of Operation.* The requirements for the SIEVS specified in this section shall be included in an attachment to the State agency's Plan of Operations as required in § 272.2(d). This document shall include a description of procedures used, copies of forms, priorities as specified in paragraph (g) of this section, and agreements with the other agencies and programs specified in paragraph (a) of this section, including steps taken to meet requirements for limiting disclosure of information obtained from food stamp households and third parties as specified in § 277.1. This document shall also include any of the material concerning alternate data sources as specified in paragraph (c) of this section.

(i) *Reports to FNS.* The State agency shall provide reports as the Secretary prescribes for the purpose of determining compliance with the requirements of this section and evaluating the effectiveness of the SIEVS.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

5. In § 273.2, paragraph (b) is amended by the addition of a sentence at the end; paragraph (f)(1)(v) is revised; paragraph (f)(4)(ii) is amended by removing everything after the fourth sentence; paragraph (f)(4)(iv) is revised; the title and contents of paragraph (f)(9) are revised; and the sixth sentence of paragraph (i)(4)(i)(B) is revised. The amendments and revisions read as follows:

§ 273.2 Application processing.

* * * * *

(b) *Food stamp application form.* * * * All applicants for food stamp benefits shall be notified at the time of application through a written statement on or provided with the application from that information available through the income and eligibility verification system (SIEVS) will be requested and used by the State agency and that such information may affect the household's eligibility and level of benefits.

* * * * *

(f) *Verification.* * * *

(1) *Mandatory verification.* * * *

(v) *Social Security Numbers.* The State agency shall verify the Social Security Number(s) (SSN) reported by the household by submitting them to the Social Security Administration (SSA) for verification according to procedures established by SSA. The State agency shall not delay the certification for or issuance of benefits to an otherwise eligible household solely to verify the SSN of a household member. Once an SSN has been verified, the State agency shall make a permanent annotation to

its file to prevent the unnecessary reverification of the SSN in the future. The State agency shall accept as verified an SSN which has been verified by another program participating in the SIEVS described in § 272.8. An SSN shall be considered verified if an inquiry to SSA for social security benefit or wage or other information, or for SSI information has provided wage, benefit or other information associated with the SSN. If an individual is unable to provide an SSN or does not have an SSN, the State agency shall require the individual to submit Form SS–5, Application for a Social Security Number, to the SSA in accordance with procedures in § 273.6. Once an SSN is provided, it shall be verified as required by this paragraph.

* * * * *

(4) *Sources of verification.* * * *

(iv) *Discrepancies.* Where unverified information from a source other than the household contradicts statements made by the household, the household shall be afforded a reasonable opportunity to resolve the discrepancy prior to a determination of eligibility or benefits. The State agency may, if it chooses, verify the information directly and contact the household only if such direct verification efforts are unsuccessful. If the unverified information is received through the SIEVS, as specified in § 272.8, the State agency may obtain verification from a third party as specified in paragraph (f)(9)(v) of this section.

* * * * *

(9) *Use of SIEVS.*

(i) The state agency shall use information obtained through the SIEVS to verify the eligibility and benefit level of applicant and participating households, in accordance with procedures specified in § 272.8.

(ii) The State agency may access data through the SIEVS provided the disclosure safeguards and data exchange agreements required by Part 272 are satisfied.

(iii) The state agency shall take action, including proper notices to households, to terminate, deny, or reduce benefits based on information obtained through the SIEVs which is considered verified upon receipt. This information is social security and SSI benefit information obtained for SSA, and AFDC benefit information and UIB information obtained from the agencies administering those programs.

(iv) Prior to taking action to terminate, deny, or reduce benefits based on unverified information obtained through the SIEVS, state agencies shall independently verify the information. Such unverified information is unearned income information from IRS, and wage information from SSA and SWICAs. Independent verification shall include verification of the amount of the asset or income involved, whether the household actually has or had access to such asset or income such that it would be countable income or resources for food stamp purposes, and the period during which such access occurred.

(v) The State agency shall obtain independent verification of unverified information obtained from SIEVS by means of contacting the household and/or the originator of the information. If the State agency chooses to contact the household, it must do so in writing, informing the household of the information which it has received, and requesting that the household respond within a specified time. If the household fails to respond timely, the State agency shall send it a notice indicating the expiration of its certification period and the necessity to reapply timely. If the household refuses to provide the requested verification, the state agency shall terminate its eligibility for failure to cooperate. The State agency may contact the originator of the information by the means best suited to the situation. When the household or originator of the information provides the independent verification, the State agency shall properly notify the household of the action it intends to take and provide the household with an opportunity to request a fair hearing prior to any adverse action.

* * * * *

(i) *Expedited service.* * * *

(4) *Special procedures for expediting service.* * * *

(i) * * *

(B) * * * Those household members unable to provide the required SSN's or who do not have one prior to the first full month of participation shall be allowed to continue to participate only if they satisfy the good cause requirements in accordance with § 273.6(d). * * *

6. Section 273.6 is revised in its entirety to read as follows:

§ 273.6 Social security numbers.

(a) *Requirements for participation.* The State agency shall require that a household participating or applying for participation in the Food Stamp Program provide the State agency with the social security number (SSN) of each household member or apply for one before certification. If individuals have more than one number, all numbers shall be required. The State agency shall explain to applicants and participants that refusal or failure without good cause to provide an SSN will result in disqualification of the individual for whom an SSN is not obtained.

(b) *Obtaining SSNs for food stamp household members.* (1) For those individuals who provide SSNs prior to certification, recertification or at any office contact, the State agency shall record the SSN and verify it in accordance with § 273.2(f)(1)(v).

(2) For those individuals who do not have an SSN, the State agency shall:

(i) If an enumeration agreement with SSA exists, complete the application for an SSN, Form SS–5. State agencies which have such an agreement with SSA for AFDC and Medicaid shall be required to renegotiate these agreements for food stamp purposes as soon as possible in order to offer this service to food stamp applicants and participants. To complete Form SS–5, the State agency must document the verification of identity, age, and citizenship or alien status as required by SSA and forward the SS–5 to SSA. The State agency can complete the SS–5 only when this renegotiated agreement between SSA and the State exists.

(ii) If no enumeration agreement exists, an individual must apply at the SSA, and the State agency shall arrange with SSA to be notified directly of the SSN when it is issued. The State agency shall inform the household where to apply and what information will be needed, including any which may be needed for SSA to notify the State agency of the SSN. The State agency shall advise the household member that proof of application from SSA will be required prior to certification. SSA normally uses the Receipt for Application for a Social Security Number, Form SSA–5028, as evidence that an individual has applied for an SSN. State agencies may also use their own documents for this purpose.

(3) The State agency shall follow the procedures described in paragraphs (b)(2) (i) and (ii) of this section for individuals who do not know if they have an SSN, or are unable to find their SSN.

(c) *Failure to comply.* If the State agency determines that a household member(s) has refused or failed without good cause to provide an SSN, then that individual shall be ineligible to participate in the Food Stamp Program. The disqualification applies to the individual(s) for which the SSN is not provided and not to the entire household. The earned or unearned income of an individual disqualified from the household for failure to comply with this requirement shall be counted as household income to the extent

specified in § 273.9(b)(3) of these regulations.

(d) *Determining good cause.* In determining if good cause exists for failure to comply with the requirement to apply for or provide the State agency with an SSN, the State agency shall consider information from the household member, the Social Security Administration and the State agency (especially if the State agency was designated to send the SS–5 to SSA and either did not process the SS–5 or did not process it in a timely manner). Documentary evidence or collateral information that the household has applied for the number or made every effort to supply SSA with the necessary information shall be considered good cause for not complying timely with this requirement. Good cause does not include delays due to illness, lack of transportation or temporary absences, because SSA makes provisions for mail-in applications in lieu of applying in person. If the household member(s) can show good cause why an application for an SSN has not been completed in a timely manner, they shall be allowed to participate for one month in addition to the month of application. If the household member(s) applying for an SSN has been unable to obtain the documents required by SSA, the State agency caseworker should make every effort to assist the individual(s) in obtaining these documents. Good cause for failure to apply must be determined at the end of each month of participation, and if shown, the household member may continue to participate. Once an application has been filed, the State agency shall permit the member to continue to participate pending notification of the State agency of the household member's SSN.

(e) *Ending disqualification.* The household member(s) disqualified may become eligible upon providing the State agency with an SSN.

(f) *Use of SSN.* The State agency is authorized to use social security numbers in the administration of the Food Stamp Program. To the extent determined necessary by the Secretary and the Secretary of Health and Human Services, State agencies shall have access to information regarding individual Food Stamp Program applicants and participants who receive benefits under Title XVI of the Social Security Act to determine such a household's eligibility to receive assistance and the amount of assistance, or to verify information related to the benefit of these households. State agencies shall use the State Data Exchange (SDX) to the maximum extent possible. The State agency should also use the SSNs to prevent duplicate participation, to facilitate mass changes in Federal benefits as described in § 273.12(e)(3) and to determine the accuracy and/or reliability of information given by households. In particular, SSNs shall be used by the State agency to request and exchange information on individuals through the SIEVS as specified in § 272.8.

(g) *Entry of SSNs into automated data bases.* State agencies with automated food stamp data bases containing household information shall enter all social security numbers obtained in accordance with § 273.6(a)(1) into these files.

PART 275—PERFORMANCE REPORTING SYSTEM

7. In § 275.12, paragraph (c) is amended by the addition of a sentence following the first sentence. The new sentence reads as follows:

§ 275.12 Review of active cases.

* * * * *

(c) *Field investigation* * * * A full field investigation shall include a review of any information pertinent to a particular case which is available through the State Income and Eligibility Verification System (SIEVS) as specified in § 272.8.

* * * * *

(91 Stat. 958 (7 U.S.C. 2011–2029))

(Catalog of Federal Domestic Assistance Programs No. 10.551, Food Stamps)

Dated: February 8, 1985.

Robert E. Leard,

Administrator, Food and Nutrition Service.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

45 CFR Parts 205, 206 and 232

Aid to Families With Dependent Children; Adult Assistance Programs

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21203, or delivered to the Office of Family Assistance, Social Security Administration, Room B–448, Transpoint Building, 2100 Second Street, SW., Washington, D.C. 20201, between 8:00 a.m. and 4:30 p.m., on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Levering, Office of Family Assistance, Social Security Administration, Transpoint Building, 2100 Second Street, SW., Washington, D.C. 20201, telephone (202) 245–2637.

SUPPLEMENTARY INFORMATION: The Social Security Administration is proposing to amend regulations relating to the Aid to Families with Dependent Children (AFDC) program under title IV–A and the adult assistance programs under titles I, X, XIV and XVI (AABD) of the Social Security Act. This action is being taken to implement section 2651 of the Deficit Reduction Act of 1984 (Pub. L. 98–369) regarding income and eligibility verification procedures. Specifically, we propose to amend 45 CFR Parts 205, 206 and 232.

The Office of Family Assistance (OFA), in the Social Security Administration (SSA), is proposing amendments to existing regulations under title IV–A and titles I, X, XIV and XVI (AABD) of the Social Security Act in order to implement section 2651 of the Deficit Reduction Act of 1984 (DEFRA) (Pub. L. 98–369). This section amended the Social Security Act, the Food Stamp Act and the Internal Revenue Code for the purpose of establishing uniform procedures for obtaining and using income and eligibility information in the administration of federally-funded benefit programs, including the Aid to Families with Dependent Children (AFDC) program under title IV–A of the Social Security Act and the adult assistance programs under titles I, X, XIV and XVI (AABD) of the Social Security Act.

We propose to implement those sections of the Social Security Act added by section 2651 of DEFRA which affect the AFDC and adult assistance programs. Section 402(a)(25), as amended, requires the State plan for title IV–A to provide that information is requested and exchanged for purposes of income and eligibility verification in accordance with a State system that meets the requirements of section 1137 of the Act. Sections 2(a)(11), 1002(a)(14), 1402(a)(13) and 1602(a)(15) extend this requirement to the adult assistance programs.

The requirements of the statute and these proposed regulations are discussed in the general preamble. In summary this statute supersedes the requirement for wage matching for the AFDC program but retains wage matching as a key element in the broader Statewide Income and Eligibility Verification System (SIEVS). This information includes wage and other information provided by the

several agencies identified in the general preamble: State Wage Information Collection Agencies, as defined in the proposed regulations, State unemployment compensation agencies, the Social Security Administration (SSA), and the Internal Revenue Service (IRS). Programs required to exchange information are: the Food Stamp program, Unemployment Compensation (UC), Medicaid, the AFDC program and State administered adult assistance programs in Puerto Rico, Guam and the Virgin Islands.

The proposed regulations are designed to ensure that State agencies administering the AFDC and adult assistance programs avail themselves of that information and use it. Additional authority for these requirements exists in section 402(a)(5) of the Social Security Act, which allows the Secretary to prescribe methods of administration found by the Secretary to be necessary for the proper and efficient operation of a State's plan. Section 402(a)(6) of the Act also allows the Secretary to require State agencies to report certain information and comply with provisions necessary to assure the correctness of the information reported. Comparable sections are contained in the adult assistance program statutory provisions.

For the purpose of extending these requirements to all of these benefit programs, DEFRA deletes the sections of the Social Security Act requiring wage matching in the AFDC program and requiring applicants for title IV–A to furnish SSNs. New requirements for wage matching and furnishing SSNs are included among other statutory requirements in a new section 1137 of the Social Security Act. Therefore, we have attempted to retain the organization of the current regulations in these areas and modify them only as appropriate to meet the additional requirements of the new statute.

Although the discussion of current rules includes some requirements which apply only to AFDC, the proposed rules apply equally to the adult assistance programs under title I, X, XIV, and XVI (AABD) of the Social Security Act (the Act), except with respect to proposed amendments to the regulations regarding the quality control system.

Regulatory Procedures

Executive Order 12291

Executive Order 12291 requires that a regulatory impact analysis be performed for any rule that is a major rule. A major rule is one that: has an annual effect on the economy of $100 million or more; results in a major increase in costs or prices; or has significant adverse effects on competition, employment, investment, productivity, or innovation.

The legislation and regulations considered here may have an annual effect of more than $100 million. For the most part, these program costs and savings are the direct result of the Deficit Reduction Act and not the discretionary latitude of the Secretary. Therefore these regulations do not constitute a "major rule" and an impact analysis describing potential benefits of the regulations and alternative approaches and their costs and benefits is not required.

Paperwork Reduction Act

The proposed amendments to the State Plan requirements contained in 45 CFR 205, 206 and 232 are subject to Office of Management and Budget (OMB) review. As required by section 3504(h) of the Paperwork Reduction Act of 1980, we will submit a copy of this proposed rule to OMB for its review and approval of these requirements. A notice will be published in the **Federal Register** when approval is obtained. Other organizations and individuals desiring to submit comments on these requirements should direct them to the agency official designated for this purpose whose name appears in this preamble, and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building (Room 3208), Washington, D.C. 20503, ATTN: Robert J. Fishman.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act (Pub. L. 96–354) requires the Federal government to anticipate and reduce the impact of regulations and paperwork requirements on small businesses. For each particular regulation with a "significant impact on a substantial number of small entities" (e.g., small businesses) we must publish an initial analysis describing the regulation's impact on them. This analysis is to indicate the purpose and reason for the regulation and the number of small businesses to which it would apply, to anticipate reporting and recordkeeping requirements, to identify possible overlap and conflict with other Federal regulations and to describe possible alternative means of accomplishing the stated objectives which would minimize the impact on small businesses.

We certify that these regulations will not have any significant economic impact on a substantial number of small entities because the primary impact of these regulations is on State governments and individuals. We do not believe that any provision will have direct impact on small businesses or other small entities within the intent of the Regulatory Flexibility Act and, therefore, a regulatory flexibility analysis is not required.

Discussion of Major Provisions

Statewide Income and Eligibility Verification System (SIEVS)

Section 2651 of DEFRA amends titles I, IV–A, X, XIV and XVI (AABD) to require that a State plan provide that information necessary for verification of income and eligibility is requested and exchanged in accordance with a State system which meets the requirements of section 1137 of the Social Security Act. We have termed this the Statewide Income and Eligibility Verification System (SIEVS); we propose to include the SIEVS as a new State plan requirement at section 205.51(a).

Under this proposed regulation, the State agency must participate in a State system that ensures coordination among federally-funded benefit programs in obtaining and exchanging information. The purpose of imposing this State plan requirement is to ensure that by the effective date of this provision, each State has such a system and that the State agency participates in it. The proposed regulations recognize the need for differently structured verification systems State-to-State by allowing the benefit programs in each State to work out procedures which, within the constraints of their resources, will achieve the objectives of the SIEVS and help assure the accurate determination of eligibility and benefit amounts. We are not proposing a new, separate system to carry out the provisions of the law and regulations. Rather, we expect State agencies to carry out these provisions within existing eligibility and information systems, making modifications only as necessary to meet the new requirements. The general preamble discusses the SIEVS in detail, and interested parties should reference that section for further information.

Access and Use of Information by Source

(a) Wage Information

Current regulations at § 205.56 require the AFDC State agency to request wage information about all current applicants and recipients on a quarterly basis from the agency administering the State's unemployment compensation (UC) program, commonly referred to as the State Employment Security Agency (SESA or UC agency), if that agency collects such information. If the SESA does not collect quarterly wage

information, the State agency is requried to obtain wage information semi-annually from the Social Security Administration. In forty-three States, the SESA currently provides wage information to the AFDC State agency. The remaining States are required to use SSA wage data and the adult assistance programs in the territories are not subject to the wage matching requirement.

Section 2651(b)(2) of DEFRA repeals section 402(a)(29) of the Social Security Act, which was the statutory basis for this requirement; however, section 2651(a) of DEFRA includes a new requirement that the AFDC and adult assistance programs in all States and territories obtain and use through the SIEVS wage information available from three sources:

(1) The agency administering the State unemployment compensation program (SESA), effective April 1, 1985;

(2) A State agency to which employers are required to report quarterly wages (which may be the SESA) by September 30, 1988 (unless the Secretary of Labor, in consultation with the Secretary of Agriculture and the Secretary of Health and Human Services, has determined that the State has an alternative system which is as effective and timely); and

(3) The Social Security Administration, effective April 1, 1985.

The proposed requirements for State agency use of wage data from the Social Security Administration are contained in a separate section of this preamble which discusses the use of all available employment and benefit related information from SSA.

For the 43 States in which the SESA currently collects quarterly wage reports from employers and provides this information to the State agency, the other two statutory wage matching requirements are effectively a single requirement. We interpret the requirement that the State agency use all available wage information from the SESA, separate from the requirement to use wage information from a quarterly wage reporting system by September 30, 1988, as an emphasis of Congressional intent that those States must continue wage matching. Although we have been more specific in these proposed rules regarding the use of this information for both applicants and recipients, we expect that in those 43 States there will be no interruption in the wage matching process, despite this change in statutory authority.

We recognize that in those States in which the SESA does not collect wage information from all employers (commonly referred to as wage request States), the SESA does maintain some wage information which could be made available to the State agency under this statutory provision. This would include, and may be limited to, wage information on individuals currently receiving unemployment compensation benefits in the State. Congress has directed that the use of all of the income and eligibility information made available under the statute should be targeted to those uses which are most productive in identifying ineligibility and incorrect payments. We have determined that the improvements necessary to obtain this information would not generally be the most productive use of resources in those States. Those resources should be dedicated to the timely development of a system for obtaining quarterly wage information (or acceptable alternative), as required by the statute. We have, therefore, chosen not to regulate specifically on this statutory provision as it affects wage request States, although we would note that the statute would authorize a State agency to request from the SESA any wage information that it determined to be useful in specific circumstances. We would expect, for example, that in a case where an applicant or recipient is simultaneously collecting unemployment compensation, the State agency in a wage request State may also want to obtain a wage history to help determine whether income exceeds the standard of need and whether erroneous welfare payments have been made.

To implement the statutory requirement that the State agency use wage information from an agency administering a quarterly wage reporting system (or acceptable alternative), we propose two related State plan requirements. First, we intend to revise section 205.51(b) for the purpose of adding a State plan requirement that the State have by September 30, 1988 a source of such information. This provision is intended to make it incumbent upon the State to have a system which meets the requirement of section 2651 of DEFRA which adds new section 1137(a) (2) and (3) to the Special Security Act.

Because we intend, through the second related State plan requirement, to prescribe a single set of requirements for obtaining and using State wage data, regardless of its source, we refer in the proposed rules to a single term for the source of State wage information. As defined in the proposed regulations, the State Wage Information Collection Agency (SWICA) can be the SESA, another State agency, if that agency collects quarterly wage reports from all employers covered by the State's unemployment compensation (UC) laws, or an acceptable alternative.

The purpose of this proposed State plan requirement is to provide an effective and timely source of wage data in every State available to the State AFDC agency and adult assistance program agency.

The proposed regulations at § 205.51(b) list those criteria for a SWICA which we believe are important to its effectiveness and timeliness. These include: (1) The necessary identifying information for each employee record; (2) a requirement that the information include, at a minimum, wages paid by all employers covered by the State's UC law and be reported within 30 days of the end of each quarter; (3) the frequency (at least quarterly) at which the information from an employer must be posted to an employee's record; (4) a requirement that the employee record system be machine readable; and (5) the accessibility of this information to the State agency and State agencies in other States for income and eligibility verification.

A State which currently maintains a quarterly wage reporting system, either through a SESA or through another State agency, or has an acceptable alternative would be required to declare that system as the SWICA, for purposes of meeting the State wage matching requirements.

In those 43 States in which the SESA collects wage data, the proposed State plan requirement for a SWICA would be met, as long as the SESA continues to collect such data and provides it to the State agency.

Any other States which elects to meet the new statutory requirement by requiring employers to report wage information to its SESA would also meet this State plan requirement.

As discussed in the common preamble, those SESAs which curreptly provide wage information to State agencies generally meet the SWICA criteria we have specified. The Department of Labor is encouraging all States to improve their procedures to fully meet the criteria where they do not. Some SESAs with older systems, for example, do not capture all employee information, such as full name. We believe, however, that it would not be prudent to require these agencies to change existing systems solely to meet the requirements of section 1137.

We do intend to review through the State plan approval process the method by which any other State might propose to meet this requrement. Whether this is a State agency which is not a SESA, but

which collects quarterly wage data, or is an alternative system appoved by the Secretary of Labor, we would apply the SWICA criteria listed in the proposed rules to our review prior to approval of the State plan amendment. Consultation with respect to alternative systems among the Departments of Labor, Agriculture and Health and Human Services would ensure that this source of wage data would meet the needs of all of the federally-assisted benefit programs which must use it.

In those States in which wage data is now collected by an agency other than the SESA (such as the Revenue Department), a change in procedures may be necessary before the agency would qualify as a SWICA. We encourage any State which is considering the use of such an agency as the SWICA to review its current procedures, including access to wage information by federally-assisted benefit programs in other States, with respect to these criteria. We believe that these requirements should be imposed in those systems developed for the purpose of providing wage data to the State agency and that they are necessary for the effective implementation of the income and eligibility verification system.

The second related State plan requirement proposed in these rules prescribes the use of State wage information by the State agency. We would require at § 205.55(a)(1) that State wage information be obtained by the State agency through the SIEVS from the SWICA for all applicants and, on a quarterly basis, for all recipients.

We have monitored the implementation of quarterly wage matching in those States which currently perform such matching. The General Accounting Office has also studied the process in selected States. We believe that the proven effectiveness of quarterly matching justifies the extension of this requirement to all States. Consistent with the requirements for timely use of all information obtained through the SIEVS, the State agency would be required to use this information within forty-five (45) days of the date of application for applicants and within twenty (20) days of receipt for recipients. The proposed use requirement is discussed further in this preamble.

(b) Internal Revenue Service (IRS)

Section 2651(k)(1) of DEFRA amends section 6103(1)(7) of the Internal Revenue Code to require IRS to make current interest, dividend and other information available for use by certain State agencies. Section 1137(a)(2) of the Social Security Act, which was added by section 2651(a) of DEFRA, also requires States to obtain this information to the extent it may be useful in verifying eligibility of all applicants and recipients. This data might not only verify the unearned income being reported but might also assist State agencies in identifying bank deposits and other significant resources available to the individual or the assistance unit which were not reported. Although this source of information has not been previously available to States, some State agencies are effectively using unearned income information provided by banks and other institutions in identifying undeclared resources. IRS maintains a separate file of unearned income information reported by institutions on the "1099" and other forms for each tax year. For the purpose of providing information to States for income and eligibility verification, IRS will make available the annual file for the most recent calendar year for which the tax returns have been posted.

Upon execution of an agreement between IRS and the State agency, IRS will accept the State agency's request for information from this unearned income file. The State must provide via magnetic tape a file including identifying information on individuals from whom it is requesting unearned income data. After processing the request, IRS will provide the State via magnetic tape any unearned income data pertaining to those individuals. We will furnish each State agency with the *Revenue Procedure* which IRS will publish, specifying the technical and procedural requirements for obtaining this information. The proposed rules at § 205.55(a)(4) would require State agencies to request through the SIEVS unearned income information from IRS for all applicants and, on an annual basis, for all recipients.

We intend to provide further instructions to State agencies regarding procedures for the initial submission of current recipients to permit State agencies to best use existing staffing and computer resources. The instructions will provide further technical and procedural guidance, but would impose no substantive requirements on State agencies, beyond those discussed in these proposed regulations.

Consistent with the requirement for timely use of all information obtained through the SIEVS, the State agency would be required to use this information within forty-five (45) days of the date of application for applicants and within twenty (20) days of receipt for recipients.

Interested parties may also wish to reference SSA Information Memorandum 83–11 (September 20, 1983, "Welfare Recipient Bank Match Information Package"), issued by OFA, for further information on current State uses of unearned income information.

(c) Social Security Administration (SSA)

The new statutory provisions and the proposed regulations at section 205.55(a)(3) require the State agency to request available employment, pension and benefit information from the Social Security Administration. Current AFDC regulations require only State agencies in those States without a State quarterly wage reporting system to obtain and use SSA data, and that requirement is limited to wage information from SSA's national wage file. Many other States, however, have been requesting and using information on title II and title XVI (SSI) and other Federal benefits from SSA in determining AFDC eligibility for benefits.

Because of the demonstrated usefulness of this source of information, the proposed regulations at § 205.55(a)(3) require the State agency to request SSA information through the SIEVS for all applicants in the manner set forth by the Commissioner of Social Security.

This information will include wage and self-employment information (which would supplement the more current SWICA wage information), as well as Federal benefit and private pension data. The State agency may request SSA information at application either through the Beneficiary and Earnings Data Exchange (BENDEX) system or through the Third Party Query (TPQY) system. We expect State agencies to use the TPQY system only in cases where sensitive, time critical conditions are evident. If the State agency uses the TPQY system at application, it must accrete the individual to the BENDEX system when the individual becomes a recipient.

The BENDEX system provides State agencies with updated information on current recipients whenever such information is available. Updated wage and other income data is provided when it is posted to the SSA files and benefit data is provided whenever there is a change made in the benefit amount. We anticipate no immediate change in current procedures for obtaining this information through the twice-monthly cycle of the BENDEX system, but we have written the proposed regulations to give the Commissioner flexibility to revise the manner of obtaining information as future changes in the

volume of requests or advances in technology warrant.

Consistent with the requirements for timely use of all information obtained through the SIEVS, the State agency would be required to use this information within forty-five (45) days of the date of application for applicants and within twenty (20) days of receipt for recipients.

The proposed regulations also require that the State agency begin requesting this information for current recipients who have not already been accreted to the BENDEX system. We invite comments on the most efficient methods for phasing in current recipients.

(d) Exchanges Between Agencies and Between States

The statute requires State agencies administering the AFDC, adult assistance, Food Stamps, Medicaid and UC benefit programs, to exchange information with one another to the extent this information is useful and productive. With respect to the AFDC and adult assistance programs, we interpret this exchange to include both the obtaining of information from other programs for income and eligibility verification and the release of information to other programs for that purpose. Our proposed regulations would exercise the Secretary's authority under the Social Security Act to determine the usefulness of certain information. The proposed regulations, as discussed below, would require the State agency: (1) To request and use unemployment compensation benefit information under certain circumstances; (2) to request other information, as necessary; and (3) to provide information in its possession to other programs for similar purposes.

Unemployment Compensation. The proposed regulations require the State agency to request unemployment compensation (UC) benefit information through the SIEVS from the State SESA. Many State welfare agencies have already found this to be an especially valuable source of information because of the frequency with which it is updated.

The proposed rules at § 205.55(a)(2) would require the State agency to request and use this information: (1) In the month of application for all applicants, and (2) at the time a report is made by any recipient indicating a loss of employment. In both cases the agency would also be required to request the information for the three following months, unless the individual were found ineligible for aid under the State plan. Where the individual was found to be receiving UC benefits but remains eligible under the title IV–A or an adult assistance program, the State agency would be required to obtain UC information until these benefits were exhausted. We would require a continuing request in this limited circumstance because the level of UC benefits could change during the benefit period with a consequent effect on welfare eligibility or benefit amount.

These rules are intended to target the required use of UC information to those cases for which the information is most likely to be productive. However, a State agency may choose to regularly extend this match for a longer period of time after application or reported loss of employment and should, of course, request UC information in any other specific situation where it determines that the information might be useful.

Consistent with the requirements for timely use of all information obtained through the SIEVS, the State agency would be required to use this information within forty-five (45) days of the date of application for applicants and within twenty (20) days of receipt for recipients.

The requirement for obtaining this information for four months represents what we believe to be a period of time in which an individual who is eligible for UC could reasonably be expected to apply for such benefits. Together with the requirement for obtaining quarterly State wage information, we believe that this approach would provide the State agency with timely and comprehensive information on individuals with employment related income that would affect eligibility or benefit amounts. We solicit comments from interested parties on the proposed frequency of this data exchange and the required use of the information.

Other inter-program and inter-State data exchanges. Section 205.55(a)(5) of the proposed rules directs the State agency to request information through the SIEVS from other Federally-assisted benefit programs covered by section 1137 of the Act in the State and from the same programs in other States, as necessary. States within multi-State metropolitan areas and States in which a significant number of people work for an out-of-State employer have performed such matches with success. We propose to leave with the State agency the determination of the utility and frequency of matches with other States and with other assistance programs within the State. We would require, however, that the information acquired in this manner be treated in the same manner as other information requested pursuant to section 1137 and be subject to the same privacy and security safeguards.

We emphasize that the proposed requirements at §§ 205.55 and 205.56 are minimal reqirements. A State agency that currently obtains and uses information from sources other than those mentioned in the regulations or with more frequency than the regulations specify may continue to do so, to the extent that these verifications are effective and not redundant.

Requirements for Providing Income and Eligibility Infomation to Other Agencies. The proposed regulations at § 205.55(b) follow the statute and would require as part of the provision governing the exchange of information that the State agency make information in its possession available through the SIEVS to: (1) The AFDC, adult assistance, Food Stamps, Medicaid or UC programs in the State and in other States; (2) any Federal, State or local agency for purposes of administering the Child Support Enforcement program under title IV–D of the Social Security Act; and (3) the Social Security Administration for purposes of administering the OASDI and SSI programs.

This provision is intended to make two types of information available to be exchanged with other benefit programs through the SIEVS. The first type of information is eligibility information maintained by the State agency that may be requested by other programs covered by section 1137 of the Act for the purpose of identifying unreported benefits. Where an individual is eligible or applying for benefits in more than one federally-assisted benefit program (such as AFDC and Food Stamps), we expect the State agency and other agencies involved in the exchange of data to minimize costs by sharing the data through the SIEVS. This information may also be exchanged with a title IV–A program in another State for the purpose of identifying situations of improper receipt of dual benefits.

The second type of information which the provision would permit the State agency to exchange with the other agencies covered by section 1137 of the Act is income and benefit information obtained from the SWICA, UC agency, SSA and IRS on behalf of these agencies. We anticipate, for example, that the Food Stamps, Medicaid and AFDC programs in a State (and adult assistance programs in the territories) would pool their requests for information from these sources. This might be in the form of a single magnetic tape transmission including records of individuals eligible for these benefit

programs. The information on data exchanges from these cases might be returned to one of the programs which would then provide relevant information to the other programs. Such a procedure would help reduce the extra costs and delays associated with redundant requests.

The role which the State agency will play in supplying or receiving such information and exchanging it with other programs will vary from State to State, depending upon technical capabilities and organizational relationships. We expect that in some States the State agency will be responsible for transmitting these requests, and providing the responses to the programs which requested this data, and in other States the State agency will be making its requests through another program.

The proposed regulation would expressly permit the State agency to share the information that it receives with agencies and programs covered by section 1137 of the Act and to provide identifying information on AFDC and adult assistance program recipients to any other federally-assisted benefit program for the purpose of obtaining income and eligibility information.

(e) Uses of Information

The proposed rules are intended to fulfill the statutory directive that information obtained through the SIEVS be targeted at the most productive uses and to amplify current regulation at § 205.56(a) which sets forth the different circumstances for which such information may be used. Studies of computer matching in benefit programs have consistently demonstrated that the greatest cost savings are realized when ineligibility is indentified during the processing of the application before an overpayment is ever made; furthermore, recovery of those overpayments which are made is most successful when the individual is still a recipient and while the amount of the overpayment is relatively small. Because Congress clearly intended that the States and Federal government would maximize the potential cost savings to be derived from the information available under the new law, we believe it is necessary to impose the most stringent requirements practicable on the timely use of this information for both applicants and recipients.

With respect to applicants, the proposed rules at § 205.55 would require that the State agency obtain income and eligibility information and use it within forty-five (45) days of the date of application. We intend that information be obtained as soon as possible after initial application, used in processing the application, and that States will attempt to complete necessary follow-up before erroneous payments are made. The State eligibility determination, however, must meet the standard of promptness, as specified in current regulations. The State agency may not hold a pending application solely to await information which it has requested unless it has reason to believe that information reported by the applicant is not accurate. If the individual has become a recipient when the information is received, the State must complete its follow-up in the timeframe prescribed for recipients.

With respect to recipients, the proposed regulations at § 205.55(a)(6) would require the State agency to make an administrative decision regarding necessary case action on any information obtained through the SIEVS and to initiate a notice of findings to the recipient within twenty (20) days of receipt. During that period the State agency must complete any investigation or collateral verification of the information that it determines necessary or appropriate (including the required independent verification of unearned income information from IRS).

As specified in current regulations at § 205.10(a), the applicant or recipient must be given an opportunity for a hearing before the State agency could proceed to take appropriate action to deny, terminate, reduce or suspend benefits.

Prior to publication of the final rule, we intend to survey selected States regarding current methods for ensuring timely follow-up information obtained through wage matching and other activities. We are interested in determining how this requirement can be most effectively implemented. We recognize the significance of this timeframe in terms of the workload already placed on caseworkers and in terms of the State agency's primary responsibility for serving those in need. We invite State agencies to submit any relevant data that might suggest other reasonable standards for the timeliness of follow-up. To assist in the management of this workload, we propose two related actions that would require the evaluation of information received through the SIEVS and priorities for follow-up.

Proposed § 205.56(b) would require the State agency to compare the information obtained from each data exchange with any information obtained directly from the applicant or recipient and with other information in the case file. This requirement is intended to ensure that information obtained through data exchanges is evaluated prior to any case action. Such an evaluation would identify those cases requiring further contact with the source to ensure that the information is correct and to ensure that the information has not already been reported by the applicant or recipient, or has not been received from another source.

We also propose at § 205.56(c) to require the State agency to then give priority to acting upon the data most likely to be productive in preventing or identifying erroneous eligibility determinations and payments. This would permit the State agency to most quickly pursue those match results which represent the largest potential erroneous expenditures. This provision would provide flexibility to State agencies so that they can use techniques such as error prone profiles in prioritizing cases for follow-up.

To ensure that we can determine if the State agency is taking proper action, we would also require at § 205.56(c) that the State agency include in its State plan the methodology it will use in prioritizing data for case action. This methodology would cover all sources of information specified in these proposed rules. We emphasize, however, that the State agency must follow up on all information from all sources specified in the proposed rules which indicates potential ineligibility or erroneous payment within the timeframes specified in the proposed rules regardless of the priority assigned. The State agency would continue to be responsible for any eligibility or payment error identified by the quality control system.

We propose to amend the regulations implementing the quality control system at §§205.40 and 205.44 to make clear that the State AFDC agency is requrired to make information to which the State has access under section 1137 available to the Department as part of the Federal QC review process and to emphasize the availability of this information for State QC purposes. The use of all available income and eligibility information in the QC review process, as a source of verification, is essential to the ability of State agency management to effectively prioritize and target case actions. For this reason, we have deviated from our usual practice of specifying these sources only in the Quality Control Manual. We invite comments from State QC managers and other interested parties on how these requirements should be specified in the manual and in the final rules. The regulations at § 205.44 currently provide that, in a case where a State fails to complete a valid and timely QC sample,

the State will have an opportunity to negotiate a solution regarding the timely completion of the sample. The regulations prescribe the actions the Department may take in order to measure the State's error rate if the State is unable to negotiate a solution or fails to carry it out. Because of the significance of State error rate measurement in the computation of potential disallowances of Federal financial participation, we also solicit State comments on the possible effect of the proposed requirement on a State's ability to negotiate or carry out a solution for timely sample completion.

Finally, proposed § 205.60(b) would require that the State agency maintain a reporting system to track the current status and final disposition of all match results. We expect that this information on case status and disposition will be regularly reported to and used by agency management for the purpose of identifying situations in which timely action has not taken place and ensuring that appropriate action is ultimately taken. While DEFRA contains no specific requirement for a system for case tracking, we believe that the proper and efficient administration of the program requires that agency management be regularly informed of the status of follow up activities. We invite comments regarding the need for case tracking and alternative methods of maintaining this information.

Additional Procedural Requirements

(a) Furnishing and Verifying Social Security Numbers (SSNs)

Furnishing the SSN. Section 1137(a)(1) of the Act provides that the State shall require that each applicant and recipient in the AFDC, adult assistance, Food Stamps, Medicaid and UC programs be required to furinish his or her social security number (SSN) and that this number be used in income and eligibility verification. For the title IV–A program, this requirement is in § 232.10 of current regulations. For the adult assistance programs, however, this is a new requirement. We propose to redesignate current § 232.10 as § 205.52 and to make revisions necessary to newly designated § 205.52 so that the requirement would also apply to the adult assistance programs.

Verification of SSN. To implement section 1137(a)(1) of the Act the proposed rules would require the verification of the SSN for all applicants and recipients of assistance, in both the AFDC and adult assistance programs. This new requirement at proposed § 205.52(g) is intended to ensure that the SSN which is being used to obtain and exchange income and eligibility information is both valid and correct. Under the proposed rules at § 205.52(g) the State agency would be required to verify the SSN of an individual unless: (1) The State agency had received the SSN directly from SSA when the individual was enumerated; or (2) the SSN was reported as verified by another program participating in the SIEVS. Verification by the State agency would be conducted according to procedures set forth by the Social Security Administration. These procedures would include: (1) The conditions under which the SSN would be considered verified based on a response received through the BENDEX or TPQY system; (2) the method by which the State agency would transmit an SSN for verification through the SSA Enumeration Verification System (EVS); and (3) the steps to be taken by the State agency to assist SSA in the event an SSN cannot be immediately verified.

Applicants who apply for assistance on or after April 1, 1985 would have their SSNs verified during application, as described in the general preamble. However, the State agency would not be permitted under these proposed regulations to withhold approval of the application or to delay any of the required data exchanges during the verification process solely because the SSN has not been verified. The State agency would not be required to verify the SSN(s) of any recipients who became eligible before April 1, 1985, until the agency made a redetermination of eligibility.

In view of the new requirements for verification of SSNs, we are proposing to delete § 206.10(a)(9)(iii) (A) and (B). This section currently provides for checking the case record for the presence of an SSN and verification of the SSN, if necessary, during AFDC redetermination.

Proposed amendments to § 205.57 extend the requirement for the maintenance of an automated file containing the name and SSN of each applicant and recipient to adult assistance programs. We expect, although we do not require, that the State agency will maintain on the automated file an indicator that the SSN has been verified. This indicator would assist States in identifying unverified numbers and eliminating unnecessary retransmission of previously verified numbers. We intend to provide State agencies with further instructions for verification including the procedures to be issued by the Social Security Administration. These instructions will include the technical and procedural information necessary for verification but will not impose any substantive requirements beyond those proposed in these regulations.

(b) Standardized Formats and Procedures

Section 1137 of the Social Security Act requires that standardized formats and procedures be used in the exchange of income and eligibility information. Standardized formats and procedures can ensure the efficient exchange of information by eliminating incompatible record layouts and other obstacles. We propose to implement this provision by requiring that: (1) State agencies maintain an automated data file and that they use such file for data exchange purposes; (2) State agencies agree to use formats and procedures established by IRS and SSA in obtaining information from those sources and (3) State agencies co-ordinate with other federally-assisted benefit programs covered by section 1137 of the Act in the development of common formats and procedures for the sharing of information among those programs.

Agencies must use the record formats provided for in their written agreements with the SWICA, UC agency, IRS and SSA in requesting and obtaining information from those sources. As previously discussed, IRS and SSA will issue instructions on formats and procedures to be used in obtaining information from their files and we will transmit these instructions to State agencies.

We also propose to implement the provision for standardized formats by including in the State plan requirement for a SIEVS at § 205.51(a)(3) that the State agency use standardized formats for exchanging information with other programs covered by section 1137 of the Act. We intend to furnish State agencies guidelines for the use of standardized record formats and procedures to be used in exchanging information. These guidelines will be based on the conclusions and recommendations from the Inspector General's current pilot study, discussed in the general preamble. In developing these guidelines, we will work closely with IRS and SSA to ensure consistency between the formats and procedures for exchanging information within the SIEVS and for obtaining information from IRS and SSA.

(c) Reports and Maintenance of Records

Under authority of section 402(a)(6) of the Social Security Act, the proposed rules would amend § 205.60(c) to require the State agency to maintain statistical

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records and provide reports on the use of information received from the various data exchanges, in accordance with guidelines to be issued by the Secretary. The proposed provision deletes the current reference to specific statistical records AFDC State agencies are now required to keep. We will provide State agencies with further instructions on the statistical information which must be maintained and the frequency of reporting of this information. We invite comment from State agencies on the types of statistical information they have found to be useful in managing and evaluating matching activities.

(d) Safeguards

Use and Disclosure of Information. The statute specifically requires that adequate safeguards be in effect to ensure that:

(1) Information is made available only to the extent necessary to assist in the valid administrative needs of the agency receiving the information and that the unearned income data from IRS is exchanged only with those agencies authorized to receive it: and (2) the information is adequately protected against unauthorized disclosure. We believe that current regulations adequately specify requirements to safeguard information and need only technical revisions to § 205.50 to address the additional sources of information available under the legislation. In addition to extending the requirement for safeguarding data from wage information to all income and other information received pursuant to matches conducted under § 205.55, we propose to add the unemployment compensation program to the list of programs to which disclosure of information is permitted.

Prompt Action. Current regulations at § 206.10(a)(3)(ii) require the State agency to take action on the application, pursuant to a reasonable State-established time standard. These regulations also prohibit the State agency from using that standard as a waiting period before granting assistance, or as a basis for denial of an application or for terminating assistance. When the wage matching requirement for AFDC agencies was instituted, § 206.10(a)(5)(ii) was added specifically to ensure that assistance would not be denied, delayed or discontinued by the State pending receipt of wage information, if other evidence established the individual's eligibility. We propose to amend this section to apply it to all sources of income and other information that the State agency is required to use under these proposed rules and to apply it to the adult assistance programs as well. This requirement reflects our concern that assistance to a needy individual not be delayed pending receipt of information from collateral sources where the State agency has no reason to believe that the individual has withheld information concerning income or resources.

(e) Notice to Applicants and Recipients

DEFRA requires that all applicants for and recipients of benefits under the programs participating in the income and eligibility verification system created pursuant to section 1137 must be notified at the time of application and periodically thereafter that information available through such system will be requested and used. The proposed rules at § 206.10(a)(2)(iii) would implement this provision by requiring that, at application and at every redetermination, individuals be notified in writing that information will be requested from certain specified sources to determine eligibility and benefit amounts. State agencies may wish to include this notice on the application form.

We also propose amending § 205.50(a)(3)(iii) to specifically permit State agencies to exchange information with other agencies, as specified in section 1137 of the Social Security Act, without express permission of the applicant or recipient. Applicants and recipients would only have to be notified of the data exchanges at application and redetermination as provided under section 206.10(a)(2)(iii).

(f) Reimbursement for Costs of Providing Data

Section 1137(a)(7) of the Act requires accounting systems to be utilized that ensure programs providing data receive appropriate reimbursement from the agency receiving the data. We propose to include at § 205.55 (d) and (e) a State plan requirement that State agencies reimburse other agencies, as appropriate, for costs incurred in providing information. The costs might include the necessary computer time for running the match program and generating output for the State agency. Reimbursement may also be made for computer software and other developmental costs associated with the furnishing of information. These costs, however must be for new development and must be directly related to the furnishing of data to the State agency.

We expect that those costs will be allocated among the programs in the State covered by section 1137 that are using the information obtained by the State agency. Costs that the State agency incurs would be pooled with all other eligibility related costs and distributed according to the agency's approved cost allocation plan.

Each State agency would be expected to maintain an accounting system to keep track of exchanges of information so that appropriate costs can be determined.

(g) Independent Verification of Information Prior to Taking Adverse Action

Because the unearned income information available from IRS is generally only a lead for the State agency to use in identifying bank deposits and other resources, Congress specified extra precautions concerning the verification of this information. Consistent with the Conference Committee's language regarding this subject, we propose to require at § 205.56(d) that the State agency verify the information by either sending the applicant or recipient a letter requesting verification of the asset or amount of the unearned income or by asking the source of the unearned income to verify the asset or the amount. If the State agency asks the applicant or recipient to verify the information, it must do so by letter; the letter should request that the individual respond within a certain period of time and it must clearly explain the information the agency has and its relevance to the eligibility of the individual or assistance unit. We emphasize our intent that State agencies would provide each individual with a reasonable opportunity to respond and would take into account special circumstances (including physical incapacity and language barriers) in implementing this provision.

This letter does not, however, constitute notice of termination or other action. If the individual were to fail to respond timely to the letter requesting verification, the State agency would have to proceed to take appropriate action to deny, terminate, reduce, or suspend benefits. The proposed regulations would follow the statute and require the State agency to notify the applicant or recipient of its findings, in case of adverse action based on its findings, and give an opportunity for a hearing (in accordance with existing notice and hearing requirements). We believe that the current provisions for notice and hearing at § 205.10(a) are adequate for this purpose and we are proposing no further changes.

Although Congress did not indicate that States must independently verify information other than unearned income information from IRS, we expect State

agencies to verify any information they receive that is not current or where their experience would otherwise indicate that independent verification is necessary. Failure to verify information that is not current might result in inappropriate action to deny, reduce or terminate benefits.

(h) Agreements

The new section 1137(a)(5) of the Social Security Act requires that safeguards be in effect to ensure that the information obtained for income and eligibility verification is protected from unauthorized or inappropriate disclosure. We propose to amend the current AFDC requirement at § 205.58 that the State agency maintain agreements with agencies supplying income and eligibility information to require that: (1) Agreements also be negotiated with agencies providing information other than wage data; and (2) the agreements specify the purpose of the request and the type of information to be provided. As in the current regulations, a State agency would have to outline in these agreements the measures it would take to safeguard information received and indicate what measures it would require other agencies to take if they in turn receive data from the State agency. Each agreement must also include the methods and timing of the request for information, the machine readable format to be used, and the time needed to furnish the requested information (including the basis for establishing this time period). The agreements must also specify the reimbursement to be provided to the agency furnishing the information, as described in the section on reimbursement in this preamble.

As discussed in the general preamble, DEFRA requires that programs participating in the verification system adhere to standardized formats and procedures for the purpose of exchanging information. Until we issue instructions and guidelines for the use of standardized formats and procedures, State agencies are expected to specify existing formats and procedures in any continued, renegotiated, or new agreements. That is, we do not anticipate that State agencies would modify existing format and procedure requirements until instructions and guidelines for standardized formats are issued. Once issued, State agencies would amend agreements to specify standardized formats and procedures in accordance with instructions.

State agencies should be aware that IRS will require additional documentation and certifications of data security as part of its agreement to provide unearned income information and should consult *Tax Information Security Guidelines for Federal, State and Local Agencies*, (Publication 1075; Rev. 7–83), published by IRS.

Use of Alternate Sources of Information

DEFRA provides that the income and eligibility information obtained by the State agency should be targeted to those uses likely to be productive in peventing incorrect payments. Thus, the statute envisions some flexibility in the application of these requirements. Under the proposed rules, the State agency would be required to obtain and use income and eligibility information available from the SWICA, IRS, SSA, and the unemployment compensation agency. Proposed § 205.55(c) would permit the State agency to obtain the information from an alternate source after it has demonstrated to the Department that the alternate source (or sources) furnishes information as timely, complete and useful for verifying eligibility. Prior to approval of the use of an alternate source, the Department would consult with the Departments of Agriculture and Labor to ensure that appropriate information is made available to all of the federally-assisted benefit programs that must use it.

Effective Dates

Except as otherwise noted, the requirements of Section 1137 of the Act are effective April 1, 1985. However, as permitted by section 2651(l)(2) of the statute, the Secretary may grant a delay not beyond September 30, 1986 in the effective date of any regulatory provision, except the provision requiring independent verification of IRS unearned income information, as specified in § 205.56(d). To be considered for such a delay, the State agency must submit within ninety days after publication of the final rule as plan describing a good faith effort to come into compliance with the requirements of section 2651 of Public Law 98–369 and the implementing regulations. The Secretary will consult with the Secretaries of Agriculture and Labor to ensure uniform application of this provision, where appropriate.

The asterisks used throughout the regulatory text represent material within a codified paragraph or section that is not being amended by these proposed rules.

These regulations are issued under the authority of section 1102 of the Social Security Act, as amendaed, 49 Stat. 647, as amended, 42 U.S.C. 1302.

(Catalog of Federal Domestic Assistance Programs No. 13.808 Public Assistance Maintenance Assistance (State Aid)

List of Subjects

45 CFR Part 205

Administrative practice and procedure, Aid to families with dependent children, Family assistance, Grant programs-social programs, Public assistance programs, Reporting requirements.

45 CFR Part 206

Aid to families with dependent children, Family assistance, Grant programs-social programs, Public assistance programs.

45 CFR Part 232

Aid to families with dependent children, Child support, Child welfare, Family assistance, Grant programs-social programs.

Nelson Sabatini,

Acting Deputy Commissioner for Management and Assessment.

Approved: December 4, 1984

Margaret M. Heckler,

Secretary of Health and Human Services.

PART 205—GENERAL ADMINISTRATION—PUBLIC ASSISTANCE PROGRAMS

Part 205 of Chapter II, Title 45, Code of Federal Regulations is proposed to be amended as set forth below:

1. Section 205.40 is amended by revising paragraph (b)(1)(v) to read as follows:

§ 205.40 Quality Control System.

* * * * *

(b) *State plan requirements.* * * *

(1) * * *

(v) It shall assure access by HHS staff to State and local records relating to public assistance, to recipients, and to third parties, including information available under § 205.55.

* * * * *

2. Section 205.44 is amended by revising paragraph (d)(2) to read as follows:

§ 205.44 Reduction in Federal financial participation (FFP) for incorrect payments made by States after September 1984.

* * * * *

(d) *How we will measure a State's performance.* * * *

(2) If a State fails to complete a valid and reliable sample in accordance with the prescribed QC procedures and deadlines, which includes obtaining and using information available under § 205.55, as required by § 205.40, for any assessment period, we will notify the State of its failure and provide the State the opportunity to negotiate a solution regarding the timely completion of its

sample. Where a State is unable to negotiate a solution or fails to carry out a negotiated solution we will assign to the State an error rate based on the best data reasonably available, including data obtained from any one or more of the following methods, error rate information for past sample periods, a partially completed State sample, a Federal subsample of completed State cases, a supplemental Federal sample, a Federal audit, and an audit conducted through a contractual agreement with a third party.

* * * * *

3. Section 205.50 is amended by adding paragraph (a)(1)(i)(F) and by revising paragraphs (a)(2)(i)(B) and (a)(3) (ii) and (iii) to read as follows:

§ 205.50 Safeguarding information for the financial assistance programs.

(a) *State plan requirements.* * * *

(1) * * *

(i) * * *

(F) The administration of a State unemployment compensation program.

* * * * *

(2) * * *

(i) * * *

(B) Information related to the social and economic conditions or circumstances of a particular individual including information obtained from any agency pursuant to § 205.55; information obtained from the Internal Revenue Service (IRS) and the Social Security Administration (SSA) must be safeguarded in accordance with procedures set forth by those agencies;

* * * * *

(iii) Except in the case of information requested pursuant to §§ 205.55 and 205.56, or in the case of an emergency situation when the individual's prior consent for the release of information cannot be obtained, the family or individual is informed whenever possible of a request for information from an outside source, and permission is obtained to meet the request. In an emergency situation when the individual's consent for the release of information cannot be obtained, the individual will be notified immediately.

* * *

(3) * * *

(ii) All information obtained pursuant to the income and eligibility verification requirements at §§ 205.55 and 205.56 will be stored and processed so that no unauthorized personnel can acquire or retrieve the information by any means.

(iii) All persons with access to information obtained pursuant to the income and eligibility verification requirements under §§ 205.55 and 205.56 will be advised of the circumstances under which access is permitted and the sanctions imposed for illegal use or disclosure of the information.

* * * * *

4. Section 205.51 is revised to read as follows:

§ 205.51 Income and eligibility verification requirements.

(a) A State plan under title I, IV–A, X, XIV or XVI (AABD) of the Social Security Act must provide that there be a Statewide Income and Eligibility Verification System in the State. Statewide Income and Eligibility Verification System (SIEVS) means a system through which the State agency:

(1) Co-ordinates data exchanges with other Federally-assisted benefit programs covered by section 1137(b) of the Act;

(2) Requests and uses income and benefit information as specified in section 1137(a)(2) of the Act and §§ 205.55 and 205.56; and

(3) Adheres to standardized formats and procedures in exchanging information with the other programs and agencies and in providing such information as may be useful to assist Federal, State and local agencies in the administration of the child support program and the Social Security Administration in the administration of the title II and title XVI (SSI) programs. The State agency request information from the State Wage Information Collection Agency, as described in paragraph (b) of this section, the agency administering the State's unemployment compensation program under section 3304 of the Internal Revenue Code, and agencies in other States cited in § 205.55(a)(5), as set forth by the Secretary, from SSA, as set forth by the Commissioner of Social Security; and from IRS, as set forth by the Commissioner of Internal Revenue.

(b) A State plan under title I, IV–A, X, XIV or XVI (AABD) of the Social Security Act must provide that, as part of its Statewide Income and Eligibility Verification System, there be a State Wage Information Collection Agency in the State. State Wage Information Collection Agency (SWICA) means the State agency receiving quarterly wage reports from employers in the State (which may be the agency administering the State's unemployment compensation program), or an alternative system which has been determined by the Secretary of Labor, in consultation with the Secretary of Agriculture and the Secretary of Health and Human Services, to be as effective and timely in providing employment related income and eligibility information.

(c) Except where the SWICA is the agency administering the State's unemployment compensation program under section 3304 of the Internal Revenue Code, wage information maintained by a SWICA as required under paragraph (b) shall:

(1) Contain the social security number, first and last name and middle initial, wages earned for the period of the report, and an identifier of the employer (such as name and address) for each employee;

(2) Include all emplyers covered by the State's UC law and require such employers to report wage information (as specified above) for each employee within 30 days from the end of each calendar quarter;

(3) Accumulate earnings reported by employers for periods no longer than calendar quarters;

(4) Be machine readable; i.e., maintained in a fashion that permits automated processing; and

(5) Be available to other agencies in the State and to agencies in other States, pursuant to agreements as required in § 205.58.

5. A new § 205.55 is added to read as follows:

§ 205.55 Requirements for obtaining and using eligibility and income information.

A State plan under title I, IV–A, X, XIV, or XVI (AABD) of the Social Security Act must provide that:

(a) The State agency will obtain through the SIEVS and use to revise benefits where necessary:

(1) Wage information from the SWICA for all applicants and, on a quarterly basis, for all recipients.

(2) Unemployment compensation information from the agency administering the State's unemployment compensation program under section 3304 of the Internal Revenue Code of 1954 and section 303 of the Act as follows:

(i) At application and in each of the first three months in which the individual is receiving aid, unless the individual is found to be receiving unemployment compensation, in which case the information will be requested until benefits are exhausted; and

(ii) In each of the first three months following any recipient-reported loss of employment, unless the individual is found to be receiving unemployment compensation, in which case the information will be requested until the benefits are exhausted.

(3) All available information maintained by the Social Security Administration for all applicants and recipients in the manner set forth by the

Commissioner of Social Security. The State agency will also obtain and use such information for all individuals who are recipients as of the effective date of this provision for whom such information has not previously been requested.

(4) Unearned income information from the Internal Revenue Service available under section 6103(1)(7)(B) of the Internal Revenue Code of 1954, for all applicants and, on a yearly basis, for all recipients. The request shall be made at the time and in the manner set forth by the Commissioner of Internal Revenue.

(5) As necessary, any income or other information affecting eligibility available from agencies in the State or other States administering:

(i) An AFDC progrm (in another State) under title IV–A of the Social Security Act;

(ii) A Medicaid program under title XIX of the Social Security Act;

(iii) An unemployment compensation program (in another State) under section 3304 of the Internal Revenue Code of 1954;

(iv) A Food Stamp program under the Food Stamp Act of 1977, as amended;

(v) Any State program administered under a plan approved under title I, X, XIV, or XVI (AABD) of the Social Security Act; and

(vi) A SWICA (in another State).

(6) Information from sources specified in paragraphs (1)–(5) will be used where appropriate, by the State agency as follows:

(i) In the cse of applicants, to determine eligibility within forty five (45) days of the date of application; and

(ii) In the case of recipients, within twenty days (20) of receipt to determine eligibility and to initiate a notice of necessary case action.

(b) The State agency must furnish, when requested, income, eligibility and benefit information to:

(1) Agencies in the State or other States administering the programs cited in paragraph (a)(5) of this section, in accordance with specific agreements as described in § 205.58;

(2) The agency in the State or other States administering a program under title VI–D of the Social Security Act; and

(3) The Social Security Administration for purposes of establishing or verifying eligibility or benefit amounts under title II and XVI (SSI) of the Social Security Act.

(c) The Secretary may, based upon application from a State, permit a State to obtain and use income information from an alternate source or sources in order to meet any requirement of paragraph (a) of this section. The State agency must demonstrate to the Secretary that the alternate source or sources is as timely, complete and useful for verifying eligibility and benefit amounts. The Secretary will consult with the Secretary of Agriculture and the Secretary of Labor prior to approval of a request. The State must continue to meet the requirements of this section unless the Secretary has approved the request.

(d) The State agency must, upon request, reimburse another agency for reasonable costs incurred in furnishing income and eligibility information as prescribed in this section, including new developmental costs associated with furnishing such information, in accordance with specific agreements as described in § 205.58.

6. Section 205.56 is revised to read as follows:

§ 205.56 Additional requirements governing the use of income and eligibility information.

A State plan under title I, IV–A, X, XIV, or XVI (ABD) of the Social Security Act must provide that:

(a) The State agency will use the information obtained under § 205.55, in conjunction with other information, for:

(1) Determining individuals' eligibility for assistance under the State plan;

(2) Determining the amount of assistance;

(3) Investigations to determine whether recipient received assistance under the State plan to which they were not entitled; and

(4) Criminal or civil prosecutions based on receipt of assistance under the State plan to which recipients were not entitled.

(b) The agency must compare the information obtained from each data exchange against information on applicants and recipients maintained in the agency's files.

(c) The State agency will give priority to action on the information from each data exchange that is most likely to be productive in identifying and preventing erroneous eligibility determinations. The State agency must establish priorities and the State plan must specify the methods for reviewing and determining the priority to be accorded to different types of information.

(d) With respect to the information received under § 205.55 from the Internal Revenue Service concerning unearned income of an applicant or recipient:

(1) The agency shall not terminate, deny, suspend, or reduce benefits to the individual based on that information until it has taken the appropriate steps to independently verify the information, relating to:

(i) The amount of the resource or income involved;

(ii) Whether the applicant or recipient actually has (or had) access to the resource or income for his or her own use; and

(iii) The period or periods when the individual actually had the resource or income.

(2) The agency must verify the information by either:

(i) Requesting the entity from which the individual received the unearned income to verify the fact and amount of the unearned income or the resource; or

(ii) Sending the applicant or recipient a letter informing the individual of the information received and asking him or her to respond within a specified period. The letter must clearly explain the information the agency has, its relevance to the individual's eligibility or benefit, and what action the agency will take in the event the individual fails to respond to the letter.

(3) If the agency intends to reduce, suspend, terminate or deny benefits as a result of the actions taken pursuant to subparagraph (d)(2), the agency must provide notice and the opportunity for a fair hearing in accordance with § 205.10(a).

7. Section 205.57 is amended by revising the section title, the introductory text and paragraphs (a) and (b) to read as follows:

§ 205.57 Maintenance of a machine readable file; requests for income and eligibility information.

A State plan under title I, IV–A, X, XIV, or XVI (AABD) of the Social Security Act must provide that:

(a) The State agency will maintain a file which is machine readable, i.e., which is maintained in a fashion that permits automated processing, and which contains the first and last name and verified social security number of each person applying for or receiving assistance under the plan.

(b) The State agency will use this file to exchange data with other agencies pursuant to § 205.55.

8. Section 205.58 is amended by revising the section title and paragraphs (a) and (b) to read as follows:

§ 205.58 Income and eligibility information; specific agreements required between the State agency and the agency supplying the information.

(a) A state plan under title I, IV–A, X, XIV, or XVI, (AABD) of the Social Security Act must provide that, in carrying out the requirements of §§ 205.55 and 205.56, the State agency will enter into specific written

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agreements as described in paragraph (b) with those agencies providing income and eligibility information. The agreements will contain the procedures to be used in requesting and providing information.

(b) These agreements will include, but need not be limited to, the following:

(1) Purpose of the request;

(2) Identification of all agency officials, by positon, with authority to request information;

(3) Methods and timing of the requests for information, including the machine readable format to be used, the period of time needed to furnish the requested information and the basis for establishing this period;

(4) The type of information and reporting periods for which information will be provided;

(5) Safeguards limiting release or redisclosure as required by Federal or State law or regulation, including the requirements of § 205.50; and

(6) Reimbursement, if any, for the costs of furnishing the information requrested by the State agency, including new developmental costs associated with furnishing such information.

9. Section 205.60 is revised to read as follows:

§ 205.60 Reports and maintenance of records.

A State plan under title I, IV–A, X, XIV or XVI (AABD) of the Social Security Act must provide that:

(a) The State agency will maintain or supervise the maintenance of records necessary for the proper and efficient operation of the plan, including records regarding applications, determination of eligibility, and the provision of financial assistance. Under this requirement, the agency will keep individual records which contain pertinent facts about each applicant and recipient. The records will include information concerning the date of application and the date and basis of its disposition; facts essential to the determination of initial and continuing eligibility, (including the individual's social security number, need for, and provision of financial assistance); and the basis for discontinuing assistance.

(b) The State agency will also maintain a record on the current status and final disposition of all cases for which income and eligibility information has been obtained pursuant to § 205.55.

(c) The agency will establish and maintain statistical records regarding the use of information received from agencies pursuant to § 205.55 and provide reports, in accordance with guidelines issued by the Secretary for the purpose of determining compliance with the requirements of §§ 205.55 and 205.56 and evaluating the effectiveness of these requirements.

10. A new section 205.62 is added as follows:

§ 205.62 Delay of effective date.

(a) If the agency submits, by [90 days after publication of the final rule], a plan describing a good faith effort to come into compliance with the requirements of section 1137 of the Act and these implementing regulations, the Secretary may grant a delay in the effective date of any provision of §§ 205.55 through 205.60 and § 206.10 implementing section 1137 (a) and (g) of the Act. The Secretary shall consult with the Secretary of Agriculture and the Secretary of Labor prior to approval of any plan describing a good faith effort and may not grant a delay of the effective date of any provision beyond September 30, 1986.

(b) The Secretary may not grant a delay of the effective date of section 1137(c) of the Act, which is implemented by § 205.56. (The provisions of these statutory and regulation sections require the agency to follow certain procedures before taking any adverse actions based on information from the Internal Revenue Service concerning unearned income.)

PART 206—APPLICATION, DETERMINATION OF ELIGIBILITY AND FURNISHING ASSISTANCE—PUBLIC ASSISTANCE PROGRAMS

Part 206 of Chapter II, Title 45, Code of Federal Regulations is amended as set forth below:

11. Section 206.10 is amended by removing paragraphs (a)(9)(iii) (A) and (B), by adding a new paragraph (a)(2)(iii), and by revising paragraph (a)(5)(ii) to read as follows:

§ 206.10 Application, determination of eligibility and furnishing of assistance.

(a) *State plan requirements.* * * *

(2) * * *

(iii) All applicants for and recipients of assistance shall be notified in writing at the time of application and on redetermination that eligibility and income information will be regularly requested from agencies specified in § 205.55 and will be used to aid in determining their eligibility for assistance.

* * * * * *

(5) * * *

(ii) Assistance will not be denied, delayed, or discontinued pending receipt of income or other information requested under § 205.55, if other evidence establishes the individual's eligibility for assistance.

* * * * * *

PART 232—SPECIAL PROVISIONS APPLICABLE TO TITLE IV–A OF THE SOCIAL SECURITY ACT

Part 232 of Chapter II, Title 45, Code of Federal Regulations is proposed to be amended as set forth below:

12. Section 232.10 is redesignated as new § 205.52. Newly designated § 205.52 is revised to read as follows:

§ 205.52 Furnishing of social security numbers.

The State plan under title I, IV–A, X, XIV, or XVI (AABD) of the Social Security Act must provide that:

(a) As a condition of eligibility, each applicant for or recipient of aid will be required:

(1) To furnish to the State or local agency a social security account number, hereinafter referred to as the SSN (or numbers, if more than one has been issued); and

(2) If he cannot furnish a SSN (either because such SSN has not been issued or is not known), to apply for such number through procedures adopted by the State or local agency with the Social Security Administration. If such procedures are not in effect, the applicant or recipient shall apply directly for such number, submit verification of such application, and provide the number upon its receipt.

(b) The State or local agency will assist the applicant or recipient in making applications for SSNs and will comply with the procedures and requirements established by the Social Security Administration for application, issuance, and verification of social security account members.

(c) The State or local agency will not deny, delay, or discontinue assistance pending the issuance or verification of such numbers if the applicant or recipient has complied with the requirements of paragraph (a) of this section.

(d) The State or local agency will use such account numbers, in addition to any other means of identification it may determine to employ, in the administration of the plan.

(e) "Applicant" and "recipient" include for the purposes of this section the individuals seeking or receiving assistance and any other individual whose needs are considered in determining the amount of assistance.

(f) The State or local agency shall notify the applicant or recipient that the furnishing of the SSN is a condition of

eligibility for assistance required by section 1137 of the Social Security Act and that the SSN will be utilized in the administration of the program.

(g) The State agency will submit all unverified social security numbers to the Social Security Administration (SSA) for verification. The State agency may accept as verified a social security number provided directly to the State agency by SSA or by another Federal or federally-assisted benefit program which has received the number from SSA or has submitted it to SSA for verification.

(Sec. 1102, 49 Stat. 647; 42 U.S.C. 1302, unless otherwise noted)

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 431 and 435

[BERC-321-P]

Medicaid Program; Income and Eligibility Verification

ADDRESS: Address comments in writing to: Health Care Financing Administration, Department of Health and Human Services, Attention: BERC-321-P, P.O. Box 28676, Baltimore, Maryland 21207.

Please address a copy of comments on information collection requirements to: Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503, Attention: Faye Iudicello.

If you prefer, you may deliver your comments to Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, D.C., or to Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

Comments will be available for public inspection as they are received, beginning approximately three weeks after today in Room 309-G of the Department's offices at 200 Independence Ave., SW., Washington, D.C., on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202-245-7890).

FOR FURTHER INFORMATION CONTACT: Joyce G. Somsak, 301-597-1354.

SUPPLEMENTARY INFORMATION: HCFA proposes to amend regulations in order to implement section 2651 of the Deficit Reduction Act of 1984 (Pub. L. 98-369), which concerns income and eligibility verification procedures to be developed and used by the State Medicaid agencies.

HCFA proposes to implement section 2651 of the Deficit Reduction Act of 1984 (DEFRA) (Pub. L. 98-369) by establishing in regulations standards and procedures for Medicaid State agencies (including Medicaid agencies in the Mariana Islands, Puerto Rico, Guam and the Virgin Islands) for exchanging information with other agencies and for using information received to make determinations as to Medicaid eligibility and the amount of medical assistance payments. We propose to implement two of the sections added by section 2651 of DEFRA: Section 1137 and section 1902(a)(46), the latter of which requires the State plan to provide that information is requested and exchanged for purposes of income and eligibility verification in accordance with a State system that meets the requirements of section 1137 of the Act. Additional authority for these regulations exists in section 1902(a)(4) of the Act, which allows the Secretary to prescribe methods of administration found by the Secretary to be necessary for the proper and efficient operation of a State's Medicaid plan.

We are not proposing a new, separate system to carry out the provisions of the law and regulations. Rather, we expect State Medicaid agencies to carry out the provisions of the law within existing eligibility and information systems, making modifications only as necessary to meet the new requirements.

HCFA's regulations implementing section 2651 of DEFRA are basically organized in the same manner as the legislation. Below we discuss the provisions of the law, our proposed revisions to current regulations, and our proposed method of implementation.

Our regulations would apply to the State Medicaid agency only when it determines Medicaid eligibility. In those cases in which Medicaid eligibility is determined by the Federal agency administering SSI, the State agency administering State supplemental payments under section 1616 of the Act, or the State agency administering AFDC, the regulations and guidelines applying to those agencies would govern the verification of income and eligibility. The Medicaid agency remains responsible for determinations affecting the amount of medical assistance payments for reasons other than eligibility.

Currently, the Medicaid program does not require its State agencies to collect SSNs or to exchange or verify data with any other agencies. In fact, if a State did not have a statute or regulation as of January 1, 1975 requiring mandatory disclosure of a SSN by a recipient to verify his or her identity, the State Medicaid agency could not require an individual to disclose his or her SSN. Because of some automated procedures, SSNs are usually verified, but until these proposed regulations are published as final rules, we have no requirements regarding verifying data except that State Medicaid agencies are liable for incorrect eligibility determinations and incorrect medical assistance payments.

We emphasize that the proposed requirements constitute the minimum that would have to be followed. A State Medicaid agency that currently obtains and uses information from other sources than those mentioned in the regulations should continue to do so, to the extent that these verifications are useful and not redundant. The State Medicaid agency may also determine it would be useful to request and use the information at more frequent intervals than those specified. The State Medicaid agency may use the information at times and for purposes other than for determining initial eligibility and for redeterminations. For example, the State Medicaid agency may use the relevant information for the identification of legally liable third party payers of medical expenses. Similarly, while this regulation would require that only unearned income information from IRS be independently verified with the applicant or receipient or with the source of the income and resource (§ 435.955), the State Medicaid agency may have a requirement to verify other types of information independently. The agency's experience should guide its decision on whether to exceed these regulatory requirements on income and eligibility verification. The State Medicaid agency will continue to be responsible for the accuracy of its eligibility determinations and the amount of medical assistance payments.

A. General

We are proposing to revise a number of regulation sections, where necessary, to bring them into conformance with the law, and we are proposing to add several new sections at the end of Part 435, Subpart J, Eligibility in the States and District of Columbia. These new sections would be separated from the existing sections of Subpart J (to emphasize the existence of coexisting, related requirements) by an undesignated heading entitled "Income and Eligibility Verification". These provisions would also apply to the territories (Guam, Puerto Rico and the Virgin Islands): Part 436, which concerns eligibility in the territories, incorporates the eligibility requirements of Part 435.

We propose to have a basis and scope section, § 435.940, that summarizes the statutory requirements for State

Medicaid agencies, and that introduces the substance of the other new sections.

B. Obtaining SSNs

To implement section 1137(a)(1) of the Act, we propose changing § 435.910. Use of social security numbers, to require Medicaid State agencies to (1) obtain (rather than request, as currently provided) as a condition of eligibility, the SSN(s) of each individual for whom Medicaid services are requested (§ 435.910(a)); (2) obtain from SSA any previously issued SSN (instead of merely verifying a SSN) if the applicant or recipient does not recall his or her SSN (§§ 435.910(e) and 435.910(e)(3)); and (3) verify, in the manner prescribed by the Commissioner of SSA (§ 435.910(g)), the SSN of each applicant and recipient with SSA to ensure that the SSN was issued to that individual. We also propose to revise § 435.920(b) to require the State Medicaid agency to obtain and verify as required by § 435.910 at redetermination the SSN of any recipient for whom there is no verified SSN(s). We would consider the SSN verified if it were obtained through the SSA numeration process or if the applicant or recipient is receiving benefits under his or her own SSN under title II (retirement, survivors and disability) or XVI (SSI) of the Act. The Commissioner of SSA would prescribe these and any other methods for verifying SSNs in other instructions. We also would change a misprinted "sent" to "send" in § 435.910(e)(3).

The State Medicaid agency would not be required to obtain and verify the SSN(s) of recipients who become eligible before April 1, 1985, until the agency makes a redetermination, or until April 1, 1986, whichever comes first. Applicants who apply for Medicaid on or after April 1,1985 would have their SSN's verified during the application period.

C. Use of SSNs

Section 1137(a)(1) of the Act also requires the State Medicaid agencies to use SSNs to associate an applicant's or recipient's records with his or her SSN. We propose that each State Medicaid agency maintain data elements on each applicant and recipient, which would contain the individual's name and SSN to allow data to be obtained using the SSN (§ 435.960, Standardized formats for obtaining and using information for verifying income and eligibility). In order to obtain data from other agencies under the provisions of Section 1137 of the Act, the State Medicaid agency would have to provide a SSN.

D. Exchange of Data

To implement Sections 1137(a)(4) and 1902(a)(4) of the Act:

1. Our proposed regulations (in a new section, § 435.945, General requirements) list SWICA, IRS, SSA, and all the State-administered programs from which a State Medicaid agency would have to request data. The State Medicaid agency would be required to request the following:

a. From SWICA—State wage information;

b. From SSA—Information about net earnings from self-employment, wages and payment of retirement income and other information available under Section 6103(l)(7)(A) of the Internal Revenue Code of 1954, and benefit and other information available under titles II and XVI;

c. From IRS—Unearned income information available under Section 6103(l)(7)(B) of the Internal Revenue Code of 1954;

d. Information about benefits and wages, and other information available from agencies administering State unemployment compensation laws under the provisons of 3304 of the Internal Revenue Code and Section 303 of the Act; and

e. Any additional income, resource or eligibility information relevant to determinations concerning eligibility or amount of medical assistance available from agencies in the State or in other States administering AFDC, Medicaid, UC, State-administered supplemental payment programs, food stamps, and titles I (assistance to the aged), X (aid to the blind), XIV (aid to the permanently and totally disabled) and XVI (aid to the aged, blind and disabled in Puerto Rico, Guam, and the Virgin Islands) of the Act as necessary to establish or verify eligibility.

In proposed § 435.945 we would require a State Medicaid agency to obtain the information from these agencies but we also intend to permit the State Medicaid agency to obtain the information from alternate sources if it can demonstrate to the Secretary that the alternate sources can furnish information as timely, complete and useful for verifying eligibility and the amount of medical assistance payments, or both if the alternate source is to be used for both purposes. The Secretary would consult with the Secretary of Agriculture and the Secretary of Labor before deciding whether the agency could use an alternate source.

We would require the State Medicaid agency to obtain and use information on applicants and recipients according to a timetable. From SWICA, it would have to obtain and use information, at minimum, for applicants during the application period, for recipients who are not institutionalized on a quarterly basis, and for institutionalized recipients, because of the small probability of their receiving wages, yearly only. (The application period is the period from the date of application to the date the agency mails notice of its decision to the applicant. This application period is generally 45 days for regular applicants and 60 days for applicants for disability). Similarly, it would have to obtain and use UC information from the State UC agency for applicants during the period of application and for each of the subsequent three months, unless the individual is institutionalized. (For purposes of these regulations, an individual is "institutionalized" when he or she is required to apply his or her income to the cost of medical care as required by §§ 435.725, 435.733 and 435.832). If the applicant is institutionalized, the agency would have to obtain and use the date only during the application period, unless the applicant is receiving UC benefits.

For institutionalized individuals, the probability that the individual is receiving UC may be too small for it to be useful for the State Medicaid agency to continue to obtain data after the request made during the application period, unless the applicant is receiving UC benefits. Therefore, we propose to allow the State Medicaid agency to decide whether to obtain and use UC data more frequently than yearly after the application period request. The decision would be based on experience showing the cost of obtaining and using the data relative to the benefits gained.

The agency would be required to obtain and use UC information for recipients at the time the recipient reports a loss of employment.

If the applicant or recipient is found to be receiving UC benefits, the State Medicaid agency would have to continue to request information until the benefits were reported to be exhausted. We would require requests to continue for any applicant or recipient who is receiving UC benefits because the level of UC benefits could change during the benefits period.

The State Medicaid agency would not be required to request UC information on recipients whose eligibility was established before Arpil 1, 1985.

The State Medicaid agency would have to obtain and use unearned income information from IRS, and wage and other information from SSA for applicants during the application period,

and for recipients on a yearly basis. (This would allow the State Medicaid agency to complete one data match with IRS and SSA for recipients after IRS and SSA update their records, or, in most cases, to wait until the point of redetermination.)

States would also be required to obtain and use benefit and other information available from SSA under titles II and XVI of the Social Security Act. States currently have the authority to gain access to benefit and other information and in most cases obtain and use it. Usually this access occurs through the Beneficiary and Earnings Data Exchange (BENDEX) and States Data Exchange (SDX) systems. These regulations propose that State *must* obtain and use this information at application, and yearly thereafter.

Aside from the specified minimum intervals, the State Medicaid agency would be responsible for requesting data more often as necessary. It would, however, have the flexibility to develop a plan (which would be required as part of its State plan) on how it will order the information for follow-up. (See section E, Targeting the Use of Information.)

The IRS will make specified information available only under IRS-specified circumstances; details may be obtained from the IRS. The IRS will honor only requests for specific information.

Since the State Medicaid agency would not know in advance whether it would need any data from other agencies, we would require the State Medicaid agency to described in its State plan how it would determine when to request data from these other agencies.

2. Section 435.945 also would require a State Medicaid agency to furnish upon request data to the above agencies, to SSA for aged, blind and disabled benefits (title II of the Act), for supplemental security income (title XVI of the Act) and to the child support program (Part D of title IV of the Act).

3. State Medicaid agencies would be required to furnish reports to the Secretary for purposes of determining compliance with these regulations and of evaluating the effectiveness of the income and eligibility verification system (§ 435.945(f)). The reports would include the number of applicants and recipients subjected to verification of a given type of data; the number of matches that occur in that verification; the number of followup actions taken because of the matches; the results of the followup actions; and the estimated savings and costs associated with the verification. We plan to issue further instructions concerning these reports in the State Medicaid Manual.

State Medicaid agencies would also be required to make these specific records and the use of these records available to HHS in accordance with established regulations at 45 CFR 74.24. These records would also be required to be used in completing Medicaid quality control (MQC) reviews in accordance with 42 CFR 431.800 and 42 CFR 431.804. Accordingly, the State Medicaid agency would be required to make all information contained in these records or information to which the State has access under Section 1137 available to HHS in accordance with 42 CFR 431.800(f) as part of the MQC review. Similarly, failure to include this information in the MQC review would be considered a failure to cooperate in completing the MQC sample in accordance with 42 CFR 431.804(c)(6) and would subject the State to remedies contained in that section and recovery of costs contained in 42 CFR 431.804(c)(7). The regulations sections would be modified to reflect the addition of Section 1137 information.

4. We also propose to amend § 435.4, Definitions and use of terms, to include SWICA for two reasons: to indicate the words for which the initials stand and to show the criteria an agency must meet to be considered a SWICA. SWICA is the State agency administering the State unemployment compensation law (a UC agency), a separate agency administering a quarterly wage collection system, or a State agency administering an alternative system which has been determined by the Secretary of Labor, in consultation with the Secretary of Agriculture and the Secretary of Health and Human Services, to be effective and timely in providing employment related income and eligibility data (Section 1137(a)(3)).

The wage information maintained by a SWICA that is not a UC agency must:

(1) Contain the SSN, full name, wages earned for the period of the report, and an identifier of the employer;

(2) Include all employers covered by the States' UC law;

(3) Accumulate earnings reported by employers for no longer periods than calendar quarters;

(4) Is reported to the SWICA within 30 days after the end of the quarter;

(5) Be machine readable; and

(6) Be accessible to agencies in other States and to the Federal government that have executed agreements as required in § 431.306(g).

5. In accordance with paperwork burden regulations (5 CFR 1320) and our procedures, State Medicaid agencies would be required to retain records obtained under Section 1137 of the Act for three years.

E. Targeting the Use of the Information

To implement section 1137(a)(4)(C) of the Act, we intend for the information received to be targeted to uses most likely to identify and prevent erroneous eligibility determinations and incorrect Medicaid payments. This means that while the data matches must be made, the State Medicaid agency would have the flexibility to develop a plan (to be required as part of its State plan) on how best to follow up on information from the matches. Of course, the State Medicaid agency would be liable for erroneous medical assistance payments as it is now. We consider it important that the requests for information be made upon application or as early in the process as possible to insure correct determinations and to prevent long periods of erroneous eligibility or incorrect medical assistance payments.

We are proposing that State Medicaid agencies be required to obtain and use information from SSA, IRS, SWICA, and UC agencies during the application period and periodically thereafter (according to the timetable discussed in Section D. above). This would ensure that State Medicaid agencies would have information available to use at the time of eligibility determinations and redeterminations (or soon after), and more often in the case of SWICA and UC data. We consider it reasonable to require that information be requested on all applicants and recipients, as the cost of incremental requests would be very small. As with current policy, the State Medicaid agency would not be able to delay onset or continuation of Medicaid benefits because the information is not received in time for an eligibility determination (§ 435.911).

We propose in § 435.945(c) to require that, if information obtained under proposed § 435.945 affects a recipient's eligibility or amount of medical assistance payments, the State Medicaid agency must formally notify the recipient, within 20 days of receipt of the information, of any adverse action it proposes to take. The formal notification would be that required by § 435.919 concerning a recipient's right to a fair hearing when eligibility or amount of medical assistance payments is affected adversely. If the agency verifies eligibility or income information, because the agency's experience has shown verification to be useful, or if it would be required to verify unearned income information received from IRS under § 435.955 (see section "K" below), the agency would have to verify the

information within the same 20 day period. The requirements of the proposed paragraph (c) would not relieve the agency of its liability for erroneous payments that occurred during the period before the agency received the information.

We propose to require the State Medicaid agency to review the information it has received on all applicants and recipients and give priority to acting upon the data most likely to be productive in preventing erroneous eligibility determinations and incorrect amounts of Medicaid payments (§ 435.945(d)). This would permit the State Medicaid agencies to pursue the most productive match first. The State Medicaid agency would be responsible for identifying the relevant data to follow up on. The State Medicaid agency would continue to be responsible for any eligibility or medical assistance payment error, whether or not it followed up on the information.

The State Medicaid agency would be required to develop and submit, as part of its State plan, a plan that outlines its method for reviewing and determining the priority of its information and its ordering of information for followup action (§ 435.945(d)).

F. Standardized Formats

To implement section 1137(a)(4) of the Act, we propose, in proposed § 435.960(a), the State Medicaid agency maintain the SSN, name and other data elements in a specified format on each applicant and recipient in order to be able to exchange the required information. The regulations propose that the State Medicaid agency must request the data in the manner and format prescribed in instructions issued by the Commissioners of IRS and SSA and by the Secretary of HHS for data from IRS, SSA and State agencies, respectively. In proposed § 435.960(b), we state that State Medicaid agencies must exchange data with SWICA, SSA and IRS in an automated fashion.

In proposed § 435.960(c), we would require the State Medicaid agency to compare the information obtained from each data exchange with data on file to eliminate superfluous information before forwarding the data to the caseworker for any followup action.

G. Written Agreements

Our proposed revision to § 431.306, Release of information, would add a new paragraph (g) that would require that the State Medicaid agency have a written agreement with any agency with which it exchanges data under Section 1137 of the Act (agreeing that information would be limited to that relevant to purposes directly connected with the administration of the Medicaid State plan). A State Medicaid agency would have to outline measures it would take to safeguard information to be received and to indicate what measures it would require the other agencies to take if it received data from the State Medicaid agency; the agreement must also specify how it will reimburse reasonable costs to the agency providing the information. However, the specifics would be worked out between the two agencies.

H. Safeguarding of the Information

Given the confidential nature of the information received under these provisions and the need to protect the privacy of applicants, recipients and former recipients, we propose to revise Subpart F, Safeguarding Information on Applicants and Recipients, § 431.300, Information on Applicants and Recipients, Basis and Purpose, by adding a new paragraph that reiterates the safeguarding requirements of Section 1137(a)(5) of the Act. That is, State Medicaid agencies would be required to (1) make available information under Section 1137 of the Act only to the extent necessary to assist in the valid administrative needs of the program receiving the information; (2) to assure that data received from the IRS on unearned income is exchanged only with agencies authorized to receive it under 6103(l) of the Internal Revenue Code of 1954; and (3) to protect the data adequately against unauthorized disclosure for other purposes, in accordance with regulations established by the Secretary of HHS.

Section 431.301 requires a State to provide, under a State statute that imposes legal sanctions, safeguards restricting the use or disclosure of information to purposes directly connected with administration of the plan. Section 431.302 gives four of the purposes that are directly related to plan administration: (1) Establishing eligibility; (2) determining the amount of medical assistance; (3) providing services for recipients; and (4) conducting or assisting in an investigation, prosecution or civil or legal proceeding relating to the administration of the plan. Section 431.303 requires the State Medicaid agency to have the authority to implement and enforce the regulations. Section 431.305 specifies that the data to be safeguarded must include at least names and addresses, medical services provided, social and economic conditions, agency evaluation of personal information, and medical data. Section 431.306 requires the State Medicaid agency to have criteria for specifying the conditions for use and release of data, to restrict access to personal information to persons subject to standards of confidentiality comparable to those of the agency; to not publish names of applicants or recipients; to obtain consent, whenever possible, from a family or individual, before responding to a request for data from an outside source; to apply its policies to *all* requests for information from outside sources; and, in response to a subpoena for data or testimony, inform the court of the applicable statutory provisions, policies, and regulations restricting disclosure of information.

We believe that these current regulations adequately specify requirements to safeguard information and need very little revision to protect information received specifically under Section 1137 of the Act. However, we do propose to add a section to cover the statutory requirement concerning written agreements, as discussed above in "G". In order to further conform regulations to the law, we also propose to revise § 431.305(b). Types of information to be safeguarded, by adding a new subparagraph (6) to show that data received under Section 1137 of the Act is to be safeguarded as well as the types of information already listed. (SSA and IRS, when disclosing wage and other income information available under 6103(l) of the Internal Revenue Code, would impose their own safeguarding requirements on the State Medicaid agency.) The agency must abide by these requirements in addition to Medicaid regulations. We would also revise § 431.306(d) to show that the State Medicaid agency does not need to obtain consent from an individual or family to obtain data to verify income, eligibility, and the amount of medical assistance payments required by section 1137 of the Act.

I. Notice to Applicants and Recipients.

Section 1137(a)(6) of the Act requires the State Medicaid agency to notify applicants and recipients at the time of application and periodically thereafter that information about them will be exchanged and used to verify income, eligibility, and medical assistance payments. We propose in § 435.945(c) to require a State Medicaid agency to notify, in writing, new applicants at application and recipients at redetermination. We do not propose that the State Medicaid agencies notify all current recipients when the law becomes effective; a State may wait

until the next redetermination is made, but no later than April 1, 1986 (12 months after the effective date of the legislation).

J. Reimbursement for Cost of Data

Section 1137(a)(7) of the Act requires accounting systems to be utilized that assure programs providing data receive appropriate reimbursement from the agency receiving the data. We expect State Medicaid agencies to reimburse programs for reasonable costs incurred, including new developmental costs, for providing information under Section 1137 of the Act. (New developmental costs are those associated with the furnishing of data to the agencies entitled to receive the information under the proposed regulations.) Each State Medicaid agency would be expected to maintain an accounting system to keep track of exchanges of information so that appropriate costs and reimbursement amount can be calculated. As usual, the agency must allocate costs incurred in obtaining and using information across all programs that utilize the data for eligibility verification and benefit determinations.

We would require each State Medicaid agency to specify how it would reimburse reasonable costs when entering into an agreement with another agency with which it exchanges data (§§ 431.306(g) and 435.945(e)).

We also expect State Medicaid agencies and other agencies involved in the exchange of data to minimize costs by sharing the data and the cost of it. Agencies within a State should coordinate with each other to make requests and share the information.

Costs that the State Medicaid agency incurs for purposes of SIEVS development and operation required under these regulations would be subject to Federal financial participation at the normal administrative matching rate and would be pooled with all other eligibility-related costs and distributed according to the agency's approved cost allocation plan. Agencies must seek prior approval according to Federal guidelines and regulations (e.g., 45 CFR 95.601 ff.) for automated data processing costs related to implementation and operation. If no changes are needed, the State Medicaid agency would have to work within appropriate existing systems.

K. Special Requirements for Use of IRS Data

In order to protect individuals, Congress specified extra precautions concerning the use of unearned income information received from IRS. Section 1137(c) of the Act requires the State Medicaid agency to verify, independently, unearned income before terminating, denying, suspending or reducing any benefits, to inform the individual of the agency's findings (if there is to be an adverse action), and to give an opportunity for a hearing.

Although Congress did not indicate that the State Medicaid agency must independently verify all information (rather than just unearned income information), we expect that a State Medicaid agency will continue to verify information it receives where its experience indicates that independent verification is necessary.

Our proposed revisions add a new section § 435.955, Additional requirements regarding the use of information released by the Department of the Treasury, which parallels Section 1137 of the Act concerning which data must be verified. To implement procedures for verifying the data, we propose in § 435.955(b) to follow the proposals of the Conference Committee. (H. Conf. Rep. No. 98–861, 98th Congress, 2d Session 1411 (1984).) Section 435.955(b) would require the State Medicaid agency to verify the information by asking the applicant or recipient to verify the amount of the unearned income and resource that generated that unearned income or by asking the source of the unearned income to verify the amount if income resource. If the State Medicaid agency were to ask the applicant or recipient to verify the information, it should specify that the individual respond within a certain period of time and it would have to explain clearly the information the agency has and its possible relevance on benefits and be as unintimidating in tone as possible. Under proposed § 435.955(c)(2) if the individual were to fail to respond timely to the notice, the State Medicaid Agency would have to proceed to deny, terminate, reduce, or suspend benefits based on the failure to cooperate.

Proposed § 435.955(c)(1) would implement Section 1137(c)(2) of the Act by requiring the State Medicaid agency to notify the applicant or recipient of its findings in case of adverse action and give an opportunity for a hearing (in accordance with §§ 431.200 through § 431.250). The State Medicaid agency will continue to notify an applicant or recipient of its findings in case of an adverse action and of his or her rights to a hearing, as required by §§ 431.200–431.250, when the adverse action stems from a cause other than verified unearned income.

L. Delay of Effective Date

The requirements of Section 1137 of the Act are effective April 1, 1985. However, as permitted by Section 2651(l)(2) of Pub. L. 98–369, under proposed regulation § 435.965(a), Delay of Effective Date, the Secretary may grant a delay in the effective date (but not beyond September 30, 1986) if the State Medicaid agency submits, within 90 days of the effective date of the final rule, a plan describing a good faith effort to come into compliance with the requirements of Section 1137 of the Act.

The Secretary may not, however, delay the effective date of the provisions concerning procedures for protecting individuals *vis a vis* the use of unearned income information from the IRS (§ 435.965(b)).

Corresponding Technology Revisions

In addition to the revisions above, we are proposing to make the following technical revisions to correspond to the major revisions and statute:

A. §§ 435.912 and 435.919

We propose to revise the titles of these sections to be more specific concerning their respective subjects. We would do this because both titles refer generally to notices and the new regulations would require two additional notices, as required by law. The title of § 435.912 would be "Notice of agency's decision concerning eligibility" instead of "Adequate notice"; the title of § 435.919 would read "Timely and adequate notice concerning adverse actions" rather than "Timely and adequate notice."

B. Section 435.910

(1) Because we would now require the State Medicaid agency to require SSNs as a condition of eligibility subparagraph (b)(1) and paragraph (c) and (d), which contain requirements for implementing Section 7 of the Privacy Act of 1974 , Pub. L. 93–579 (5 U.S.C. 552a, note), would be removed and reserved. Those provisions:

(a) require a State Medicaid agency to inform an applicant or recipient whether disclosure of his or her SSN is required or voluntary;

(b) Prohibit the State Medicaid agency from requiring the SSN unless it meets certain stated criteria;

(c) when disclosure of the SSN is voluntary, prohibit the State Medicaid agency from denying eligibility based on the applicant not furnishing the SSN when its disclosure is voluntary; and

(d) require the State Medicaid agency to inform the applicant that he or she is

not required to disclose or apply for an SSN.

(2) Paragraph(b)(3) requires the State Medicaid Agency to inform the applicant of the uses the State Medicaid agency will make of the SSN. We propose to include specifically in paragraph (b)(3) the use of the SSN for verifying income and eligibility, and the amount of medical assistance payments, under § 435.940 because of the statutory requirement (Section 1137(a)(6) of the Act) that applicants and recipients be advised that information about income and eligibility will be verified.

(3) Paragraph (e), which discusses what the State Medicaid agency must do when an applicant wishes to secure an SSN, would have removed from it the phrase regarding the applicant's desire to secure a SSN, since he or she would have no objection.

Regulatory Impact Statements

Introduction

As discussed both in the joint preamble and below, we have determined that neither a regulatory impact analysis nor a regulatory flexibility analysis is required for these proposed regulations. Nevertheless, we recognize that commenters on these proposals will be concernd with potential impacts, and that the largest savings would occur in the Medicaid program and would eventually exceed $100 million annually. Therefore, we have provided a voluntary impact analysis. We invite comments on this analysis, especially from the States and State agencies that would be affected by these proposals, and will respond in the final rule to comments received on this analysis and these proposed rules.

We wish to point out that these proposed regulations relate only to verification of information that applicants and recipients are currently requested to provide under existing eligibility rules. We are *not* proposing to change the criteria and standards under which eligibility is determined. We are only proposing to implement systems that will ensure that the information provided is complete and accurate, and that eligibility determinations are made correctly. We are very concerned that benefits not be granted or terminated inappropriately, and are therefore providing that appropriate notice, appeals, and confidentiality procedures are followed. In addition, because we are concerned that the information is adequately safeguarded against unauthorized disclosure, we are also expanding Medicaid requirments to include safeguard specified by SSA and IRS

Executive Order 12291

Executive Order 12291 (E.O. 12291) requires that a regulatory impact analysis be performed and made available on any major rule. A "major rule" is defined as one that would result in:

1. An annual effect on the national ecopomy of $100 million or more;
2. A major increase in costs or prices for consumers, any industries, any government agencies, or any geographic regions; or
3. Significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or import markets.

These proposed rules would result in a reduction of Federal and State program expenditures and an increase in Federal and State administrative costs. These savings would potentially exceed $100 million annually, but they result from the statutory requirements of section 2651 of Pub. L. 98–369, not from these rules. The amount of costs would depend on decisions made on how to implement the statutory requirements operationally, and thus are subject to our discretionary authority. However, we do not expect these costs to exceed $100 million annually or meet any of the other criteria for major rules. Therefore, we have determined that a regulatory impact analysis is not required.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) requires that a regulatory flexibility analysis be performed and made available for each proposed rule unless the Secretary certifies that the rule would not have a significant economic impact on a substantial number of small entities. Under the RFA, small entities include small businesses, nonprofit organizations that are not dominant in their field, and governmental jurisdiction of less than 50,000 population. States and individuals are not treated as small entities under the RFA. Since these proposed rules would affect States and individuals, we have determined, and the Secretary certifies in accordance with 5 U.S.C. 605(b), that they would not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required.

Potential Medicaid Savings

To the extent that implementation of integrated State income and eligibility verification system results in identification of Medicaid applicants and recipients whose ineligibility for Medicaid benefits would otherwise not be discovered, these proposed rules could result in Federal and State savings related to Medicaid program expenditures. HCFA actuaries estimate that implementation of payment integrity and income verification systems eventually could save about $100 million a year in Federal Medicaid program expenditures once the State systems are fully operational. Initial implementation and ongoing operational costs would have to be subtracted from the program savings to determine the net costs or savings of this proposal. We do not expect savings to be substantial in the first two years after these regulations becomes effective, because of the difficulties in setting up and implementing such complex systems.

The Federal Medicaid program savings would result from three aspects of the total income and eligibility verification system:

- $50 million would occur without action by HCFA or State Medicaid agencies as a direct result of termination of ineligible individuals from the SSI and AFDC programs, as a result of new or expanded data matches on unearned income.
- $20 million in Federal savings would result from matching by States of Medicaid program eligibility and income data against other data on unearned income and taking action to terminate ineligible individuals from medical assistance-only programs.
- An additional $30 million in Federal Medicaid program savings might result from implementation of a data match system for wages; i.e., the potential availability of health insurance through employment, or the potential to purchase insurance through employment related programs. This would enable increased savings from third-party liability initiatives.

We expect that it would take three years to achieve the $70 million of annual Federal savings related to matching on unearned income. However, the quarterly reporting data match system for wages is not required to be in place until September 1, 1988. Consequently, the full savings would probably not be achieved until FY 1989 or FY 1990.

Potential Medicaid Implementation and Operating Costs

As discussed earlier in this preamble, the results of testing formats will not be available until April, 1985, and other aspects of potential system guidelines are still under development. In the

absence of detailed guidelines and system requirements, we cannot estimate the costs of implementing or operating State income and eligibility verification systems. However, we can indicate a number of factors that would affect the magnitude of the ultimate costs.

First, we expect States would modify existing State eligibility and information systems, rather than develop new systems. However, Wyoming and Puerto Rico now have no automated Medicaid data processing at all, and may have to develop new systems to access information in an automated fashion.

Where there are existing systems, those systems would have to be converted to us Social Security numbers as required by these proposed rules, and would have to be converted to use the standard formats developed. This would result in implementation costs and increased operating costs beyond what States currently expend. For each State, the actual increase in administrative costs would be dependent on the current level of automated systems and wage and income matching in the State. Currently 17 States have integrated their Medicaid eligibility determination systems with eligibility determinations for other means-based programs that would be covered under these proposed eligibility and income verification requirements.

Further, each of the following activities and procedures would require design, development, and implementation costs:

- Data matching.
- Data management.
- Data security.
- Determination of the meaning of successful matches.
- Investigation and independent verification of meaningful matches.
- Applicant and recipient notification and follow-up.

Once implemented, each of these activities and procedures would require on-going operating costs, which would also be incurred for tape exchanges and legal services.

Depending on the particular decisions that are made on how to implement these proposed regulations operationally, the resulting costs could be very large or relatively small. We believe the necessary changes can be done at relatively low cost, primarily making minor modifications to existing systems. Nonetheless, the costs of such systems raise the likelihood that the savings resulting from implementation of these proposals could be exceeded by the costs for at least the first years, during which implementation costs would be at their highest, while savings would depend on the success and intensity of the implementation effort, and would occur later. Due to the risk of adverse cost outcomes, we expect the costs and benefits of implementing these proposals would be closely monitored by the States and by the Federal agencies involved.

Potential Changes in Medicaid Enrollment

Many recipients participate in more than one of these programs, and eligibility for one program is often related to eligibility for other programs. For example, AFDC and most SSI recipients are usually eligible for Medicaid. However, eligibility requirements are not indentical between any two programs. Therefore, even if an individual or family loses eligibility under one program, they may retain eligibility or be eligible on another basis for other programs.

It is estimated the matching on unearned income would eliminate about 30,000 individuals from the SSI rolls. Many of these individuals would also lose their categorically needy Medicaid eligibility, but some could be expected to be eligible for Medicaid under the medically needy option that 34 States currently follow. Similarly, some of the individuals eliminated from the AFDC rolls would come back onto the Medicaid rolls under the medically needy option.

Address for Comments

Address comments concerning the Medicaid provisions in writing to: Health Care Financing Administration, Department of Health and Human Services, Attention: BVERC–321–P, P.O. Box 26676, Baltimore, Maryland 21235.

Please address a copy of comments on information collection requirements to: Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building Washington, D.C. 20503, Attention: Faye Iudicello.

If you prefer, you may deliver your comments to Room 309–G Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, D.C. or to Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

Comments will be available for public inspection as they are received, beginning approximately three weeks after publication, in Room Room 309–G of the Department's offices at 200 Independence Ave., SW., Washington, D.C. 20201, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (202–245–7890).

Paperwork Burden

In Title 42, §§ 431.306(g), 435.910, 435.919, 435.920, 435.940, 435.945, 435.955, 435.960 and 435.965 of this rule contain information collection requirements. HCFA will request approval of these information collection requirements under Section 3504(h) of the Paperwork Reduction Act of 1980. A notice will be published in the **Federal Register** when approval is obtained.

List of Subjects

42 CFR Part 431

Administrative practice and procedure, Contracts (Agreements), Fair hearings, Federal financial participation, Grant-in-Aid program—health, Health facilities, Health maintenance organizations (HMO), Indians, Information (Disclosure), Medicaid, Mental health centers, Prepaid health plans, Privacy, Quality control, Reporting requirement.

42 CFR Part 435

Aid to Families with Dependent Children, Aliens, Categorically needy, Contracts (Agreements—State Plan), Medicaid, Medically needy, Reporting requirements. Spend-down, Supplemental security income (SSI).

A. 42 CFR Chapter IU, Part 431 is proposed to be amended as set forth below:

PART 431—STATE ORGANIZATION AND GENERAL ADMINISTRATION

1. Subpart F is amended as set forth below:

Subpart F—Safeguarding Information on Applicants and Recipients

The authority citation for Subpart F reads as follows:

Authority: Sec. 1102 of the Social Security Act, (42 U.S.C. 1302), unless otherwise noted.

a. Section 431.300 is revised by designating the current contents as paragraph (a) and adding a new paragraph (b) as follows:

§ 431.300 Basis and purpose.

(a) Section 1902(a)(7) of the Act requires that a State plan must provide safeguards that restrict the use or disclosure of information concerning applicants and recipients to purposes directly connected with the administration of the plan. This subpart specifies State plan requirements, the types of information to be safeguarded, the conditions for release of safeguarded information, and restrictions on the distribution of other information.

(b) Section 1137 of the Act, which requires agencies to exchange information in order to verify the income and eligibility of applicants and recipients (see § 435.940ff.), requires State agencies to have adequate safeguards to assure that—

(1) Information exchanged by the State agencies is made available only to the extent necessary to assist in the valid administrative needs of the program receiving the information, and information received under section 6103(l) of the Internal Revenue Code of 1954 is exchanged only with agencies authorized to receive that information under that section of the Code; and

(2) The information is adequately protected against unauthorized disclosure for other purposes, in accordance with regulations established by the Secretary.

b. The introductory language of § 431.305(b) is repeated for the reader's convenience and a new subparagraph (b)(6) is added as follows:

§ 431.305 Types of information to be safeguarded.

* * * * *

(b) This information must include at least—

* * * * *

(6) Any information received for verifying income eligibility and amount of medical assistance payments (see § 435.940ff.). Income information received from SSA or the Internal Revenue must be safeguarded according to the requirements of the agency that furnished the data.

c. Section 431.306 is amended by revising paragraph (d) and adding a new paragraph (g) as follows:

§ 431.306 Release of information.

* * * * *

(d) The agency must obtain permission from a family or individual, whenever possible, before responding to a request for information from an outside source, unless the information is to be used to verify income, eligibility and the amount of medical assistance payment under section 1137 of this Act and §§ 435.940–435.965 of this chapter.

If, because of an emergency situation, time does not permit obtaining consent before release, the agency must notify the family or individual immediately after supplying the information.

* * * * *

(g) Before requesting or exchanging information with other agencies to verify income, eligibility and the amount of medical assistance payments under § 435.940–435.965 of this chapter, the agency must execute data exchange agreements with those agencies. The agreements, at a minimum, must specify—

(1) The information to be exchanged;

(2) All agency officials with the authority to request income and eligibility information;

(3) The methods, including the formats to be used, and the timing for requesting and providing the information;

(4) The safeguards limiting the use and disclosure of the information as required by Federal or State law or regulations; and

(5) The method the agency will use to reimburse reasonable costs of furnishing the information.

2. Subpart P is amended as set forth below:

Subpart P—Quality Control

The authority citation for Subpart F reads as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302), unless otherwise noted.

a. Section 431.800 is amended by revising paragraph (f) as follows:

§ 431.800 Medicaid quality control (MQC) system.

* * * * *

(f) *Access to records.* The agency, upon request, must provide HHS staff with access to all records pertaining to its MQC reviews to which the State has access, including information available under Part 435, Subpart J, of this chapter.

b. Section 431.804 is amended by revising paragraph (c)(6) as follows:

§ 431.804 Disallowance of Federal financial participation for erroneous State payments (effective January 1, 1984).

* * * * *

(c) Setting of State's payment error rate.

* * * * *

(6) If a State fails to cooperate in completing a valid MQC sample or individual reviews in a timely and appropriate fashion as required, which includes obtaining and using information available under Part 435, Subpart J, of this chapter, HCFA will establish the State's payment error rate based on either—

(i) A special sample or audit

(ii) The Federal subsample; or

(iii) Other arrangements as the Administrator may prescribe.

B. 42 CFR Chapter IV, Part 435 is proposed to be amended as set forth below:

PART 435—ELIGIBILITY IN THE STATES, DISTRICT OF COLUMBIA AND THE NORTHERN MARIANA ISLANDS

Suppart J is amended as set forth below:

Suppart J—Eligibility in the States and District of Columbia

1. The table of contents for Supbart J is amended by revising the titles of §§ 435.912 and 435.919, by adding a new undesignated centered heading immediately following the title of § 435.930, and by adding titles for new §§ 435.940, 435.945, 435.955, 435.960, and 435.965 as follows:

Suppart J—Eligibility in the States and District of Columbia

* * * * *

Sec.

435.912 Notice of agency's decision concerning eligibility

* * * * *

435.919 Timely and adequate notice concerning adverse actions.

* * * * *

Furnishing Medicaid

435.930 Furnishing Medicaid.

Income and Eligibility Verification

435.940 Basis and scope.
435.945 General requirements.
435.955 Additional requirements regarding the use of information released by the Department of the Treasury.
435.960 Standardized formats for maintaining information for verifying income and eligibility.
435.965 Delay of effective date.

Authority Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. In § 435.4, the definition of "SWICA" is added, alphabetically after "SSI," as follows:

§ 435.4 [Amended]

* * * * *

"SWICA" means State wage information collection agency under Section 1137(a) of the Act. It is the State agency administering the State unemployment compensation law; a separate agency administering a quarterly wage reporting system; or a State agency administering an alternative system which has been determined by the Secretary of Labor, in consultation with the Secretary of Agriculture and the Secretary of Health and Human Services, to be as effective and timely in providing employment related income and eligibility data.

A SWICA that is not a UC agency maintains wage information that:

(1) Contains the SSN, full name, wages earned for the period of the report, and an identifier of the employer;
(2) Includes all employers covered by the States' UC law;
(3) Accumulates earnings reported by employers for no longer periods than calendar quarters;
(4) Is reported to the SWICA within 30 days after the end of the quarter;
(5) Is machine readable; and
(6) Is accessible to agencies in other States that have executed agreements as required in § 431.306(g) of this chapter.

3. In § 435.910, the introductory language to paragraph (b) is repeated for the convenience of the reader, paragraphs (a), (b)(3), the introductory language of paragraphs (e), and (e)(3) are revised to read as follows, paragraphs (b)(1), (c) and (d) are removed and reserved, and a new paragraph (g) is added as follows:

§ 435.910 Use of social security number.

(a) The agency must obtain, as a condition of eligibility, the social security number (SSN) of each individual (including children) for whom Medicaid services are requested.
(b) The agency must advise the applicant of—
(1) [Reserved]
* * * * *
(3) The uses the agency will make of the SSN, including its use for verifying income, eligibility, and amount of medical assistance payments under § 435.940.
(c) [Reserved]
(d) [Reserved]
(e) If an applicant cannot recall his SSN or has not been issued a SSN the agency must—
* * * * *
(3) Either send the application to SEA or, if there is evidence that the applicant has previously been issued a SSN, request SSA to furnish the number.
* * * * *
(g) The agency must verify the SSN of each applicant and recipient with SSA, as prescribed by the Commissioner, to insure that the SSN was issued to that individual.

4. The title of § 435.912 is revised as follows:

§ 435.912 Notice of agency's decision concerning eligibility.

5. Section 435.919 is revised as follows:

§ 435.919 Timely and adequate notice concerning adverse actions.

(a) The agency must give recipients timely and adequate notice of proposed action to terminate, discontinue, or suspend their eligibility or to reduce or discontinue services they may receive under Medicaid.
* * * * *

6. Section 435.920 is amended by revising paragraph (b) as follows:

§ 435.920 Verification of SSNs.
* * * * *
(b) If the case record does not contain the required SSNs, the agency must obtain them and meet other requirements of § 435.910.
* * * * *

7. A new undesignated centered heading and § 435.940 is added as follows:

Income and Eligibility Verification Requirements

§ 435.940 Basis and scope.

(a) Section 1137 of the Act requires certain Federally-funded, State-administered public assistance programs to establish procedures for obtaining, using and verifying information relevant to determinations as to eligibility and the amount of medical assistance payments. Section 1902(a)(4) of the Act allows the Secretary to prescribe methods of administration found necessary for the proper and efficient operation of a State's Medicaid plan.
(b) The agency must maintain information, as enumerated in § 435.960, to exchange for the purpose of enabling any agency listed in § 435.945 to verify income, eligibility of, and the amount of medical assistance payments for, its applicants and recipients.

8. A new § 435.945 is added as follows:

§ 435.945 General requirements.

(a) The agency must obtain and use information from the sources described in this paragraph for verifying Medicaid eligibility and the amount of medical assistance payments unless the agency can demonstrate to the Secretary that it has alternate sources of information that furnish information as timely, complete and useful for verifying Medicaid eligibility and the amount of medical assistance payments as that described below; the Secretary will consult with the Secretary of Agriculture and the Secretary of Labor before determining whether the agency may use an alternate source. The information that must be obtained and used, the timetable to follow, and the sources from which to request it, are:
(1) Except as provided in paragraph (a)(7) of this section, State wage information maintained by the SWICA during the application period and on a quarterly basis;
(2) Information about net earnings from self-employment, wages and payment of retirement income maintained by SSA and available under Section 6103(l)(7)(A) of the Internal Revenue Code of 1954, during the application period and on a yearly basis;
(3) Information about benefit and other eligibility related information available from SSA under titles II and XVI of the Social Security Act during the application period and on a yearly basis;
(4) Unearned income information from the Internal Revenue Service available under Section 6103(l)(7)(B) of the Internal Revenue Code of 1954, during the application period and on a yearly basis;
(5) Except as provided in paragraph (a)(7) of this section, unemployment compensation information maintained by the agency administering State unemployment compensation laws (under the provisions of Section 3304 of the Internal Revenue Code and Section 303 of the Act) as follows:
(i) For institutionalized applicants, during the application period;
(ii) For all other applicants, during the application period and for each of the three subsequent months;
(iii) For any recipient that reports a loss of employment, at the time the recipient reports that loss and for each of the three subsequent months.
(iv) For any applicant (including an institutionalized applicant) or recipient that is found to be receiving unemployment compensation benefits, for each month until the benefits are reported to be exhausted.
(6) Any additional income, resource, or eligibility information relevant to determinations concerning eligibility or amount of medical assistance payments available from agencies in the State or other States administering the following programs as provided in the agency's State plan:
(i) AFDC;
(ii) Medicaid;
(iii) State-administered supplementary payment programs under Section 1616(a) of the Act;
(iv) SWICA;
(v) Unemployment compensation;
(vi) Food stamps; and
(vii) Any State program administered under a plan approved under Title I (assistance to the aged), X (aid to the blind), XIV (aid to the permanently and totally disabled), or XVI (aid to the aged, blind, and disabled in Puerto Rico,

Guam, and the Virgin Islands) of the Act.

(7) *Exception:* In cases where the individual is institutionalized, the agency needs to obtain and use information from SWICA only during the application period and on a yearly basis, and from unemployment compensation agencies only druing the application period. An individual is institutionalized for purposes of this section when he or she is required to apply his or her income to the cost of medical care as required by §§ 435.725, 435.733, and 435.832.

(b) The agency must furnish to other agencies in the State and in other States and to Federal programs income and medical assistance payment information for verifying eligibility or benefit amounts for the programs listed in paragraph (a)(6) of this section. In addition, the agency must furnish income and eligibility information to—

(1) The child support program under part D of title IV of the Act; and

(2) SSA for old age, survivors and disability benefits under title II and for SSI benefits under title XVI of the Act.

(c) If information obtained in accordance with this section affects a recipient's eligibility or amount of medical assistance payments, the agency must, within 20 days of receipt of the information, formally notify the recipient, in accordance with § 435.919, of any adverse action it proposes concerning the recipient's eligibility or amount of medical assistance payments. If the agency verifies information, either as determined appropriate by agency experience or as required by § 435.955, it must do so within the same 20 days period. The requirements of this paragraph do not relieve the agency of its liability for erroneous payments, as defined by §§ 431.800(b) and 431.804(b) of this chapter, that occurred during the period before the agency's receipt of the information.

(d) The agency must review the information (obtained under §§ 435.940 through 435.960) and give priority to action on the information most likely to be productive in identifying and preventing erroneous eligibility and medical assistance payment determinations. The agency must develop and submit a plan (as part of its State plan) that describes its methods for reviewing and determining the priority of information and its ordering of information for follow-up action.

(e) The agency must inform all applicants in writing at the time of application that the agency will obtain and use information available to it under Section 1137 of the Act to verify income, eligibility and amount of medical assistance payments. The agency must give each recipient the same notice yearly or whenever it redetermines eligibility, but in no case may the initial notice to recipients be given later than April 1, 1986.

(f) The agency must, upon request, reimburse another agency in paragraph (a) of this section for reasonable costs incurred in furnishing information, including new developmental costs associated with furnishing the information to another agency.

(g) The agency must provide reports as the Secretary prescribes for the purposes of determining compliance with these regulations and evaluating the effectiveness of the income and eligibility verification system.

9. A new § 435.955 is added as follows:

§ 435.955 Additional requirements regarding the use of information released by the Department of the Treasury.

(a) Based on information concerning an applicant's or recipient's unearned income the agency receives from the Department of Treasury (Internal Revenue Service) (under Section 6103(l)(7)(B) of the Internal Revenue Code of 1954), the agency may not terminate, deny, suspend, or reduce benefits to that individual until it has taken appropriate steps to verify the information, independently, relating to—

(1) The amount of the income and resource that generated the income involved;

(2) Whether the applicant or recipient actually has (or had) access to the resource or income (or both) for his or her own use; and

(3) The period or periods when the individual actually had the resource or income or both.

(b) The agency must verify the information by either—

(1) Requesting the entity from which the individual received the unearned income to verify the fact and amount of the unearned income and resource that generated the income; or

(2) Sending the applicant or recipient a letter informing that individual of the information received and asking him or her to respond within a specified period. The letter must clearly explain the information the agency has and its possible relevance to the individual's past or future eligibility, and be as neutral in tone as possible.

(c)(1) If the source of the unearned income or the applicant or recipient verifies the information, and the agency intends to reduce, suspend, terminate or deny medical assistance payments based on the information, the agency must send the applicant or recipient a notice of the action to be taken and include information on the right to appeal and opportunity for a hearing under §§ 431.200 through 431,.250 of this chapter (see also § 435.912 and 435.919).

(2) If the applicant or recipient fails to respond after reasonable attempts to contact him or her, the agency must proceed to deny, terminate, reduce or suspend benefits based on the applicant or recipient's failure to cooperate.

(3) If the applicant or recipient disputes the information, the agency must obtain evidence (from the source of the unearned income, applicant or recipient, or otherwise) to substantiate any negative case action that it may take.

10. A new § 435.960 is added as follows:

§ 435.960 Standardize formats for obtaining and using information for verifying income and eligibility.

(a) The agency must maintain for all applicants and recipients within an agency file the SSN, surname and other data elements in a format that at a minimum allows the agency to obtain and use eligibility and income information from the agencies listed in §435.945. The agency must request information from—

(1) SWICA, unemployment compensation agencies, and agencies of other States, as prescribed by the Secretary;

(2) SSA, as prescribed by the Commissioner of SSA; and

(3) The Internal Revenue Service, as prescribed by the Commissioner of the Internal Revenue Service.

(b) Exchanges of eligibility and income information with other agenices in the State and in other States must be made in the manner prescribed by the Secretary and must be completed in a timely manner.

(c) The agency must compare the information obtained from each data exchange against respective information on applicants and recipients before producing and disseminating reports to be utilized for verification.

(d) The agency must also maintain a reporting system on the disposition of all cases for which income and eligibility information was received to assure the timely and efficient utilization of the information.

11. A new § 435.965 is added as follows:

§ 435.965 Delay of effective date.

(a) If the agency submits, by [90 days after publication of the final rule], a plan describing a good faith effort to come into compliance with the requirements

of Section 1137 of the Act and of §§435.910 and 435.940 through 435.960 of this subpart, the Secretary may, after consultation with the Secretary of Agriculture and the Secretary of Labor, grant a delay in the effective date of §435.910 and §§435.940 through 435.960, but not beyond September 30, 1986.

(b) The Secretary may not grant a delay of the effective date of Section 1137(c) of the Act, which is implemented by §435.955 (a) and (c). (The provisions of these statutory and regulation sections require the agency to follow certain procedures before taking any adverse actions based on information from the Internal Revenue Service concerning unearned income.)

(Catalog of Federal Domestic Assistance Porgram No. 13.774, Medical Assistance)

Dated: November 7, 1984.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

Approved: December 4, 1984.

Margaret M. Heckler,

Secretary.

[FR Doc. 85-6082 Filed 3-13-85; 8:45 am]

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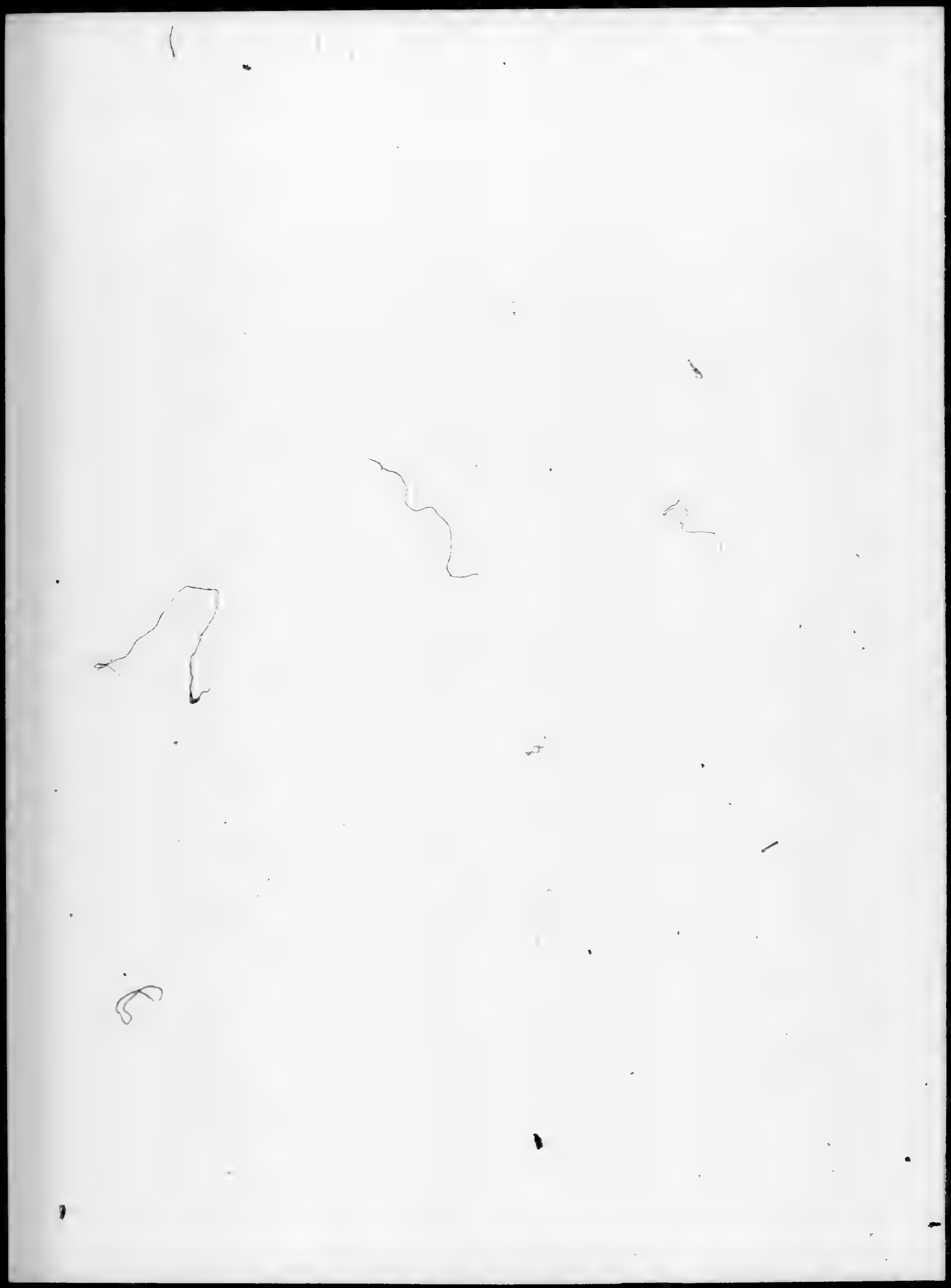
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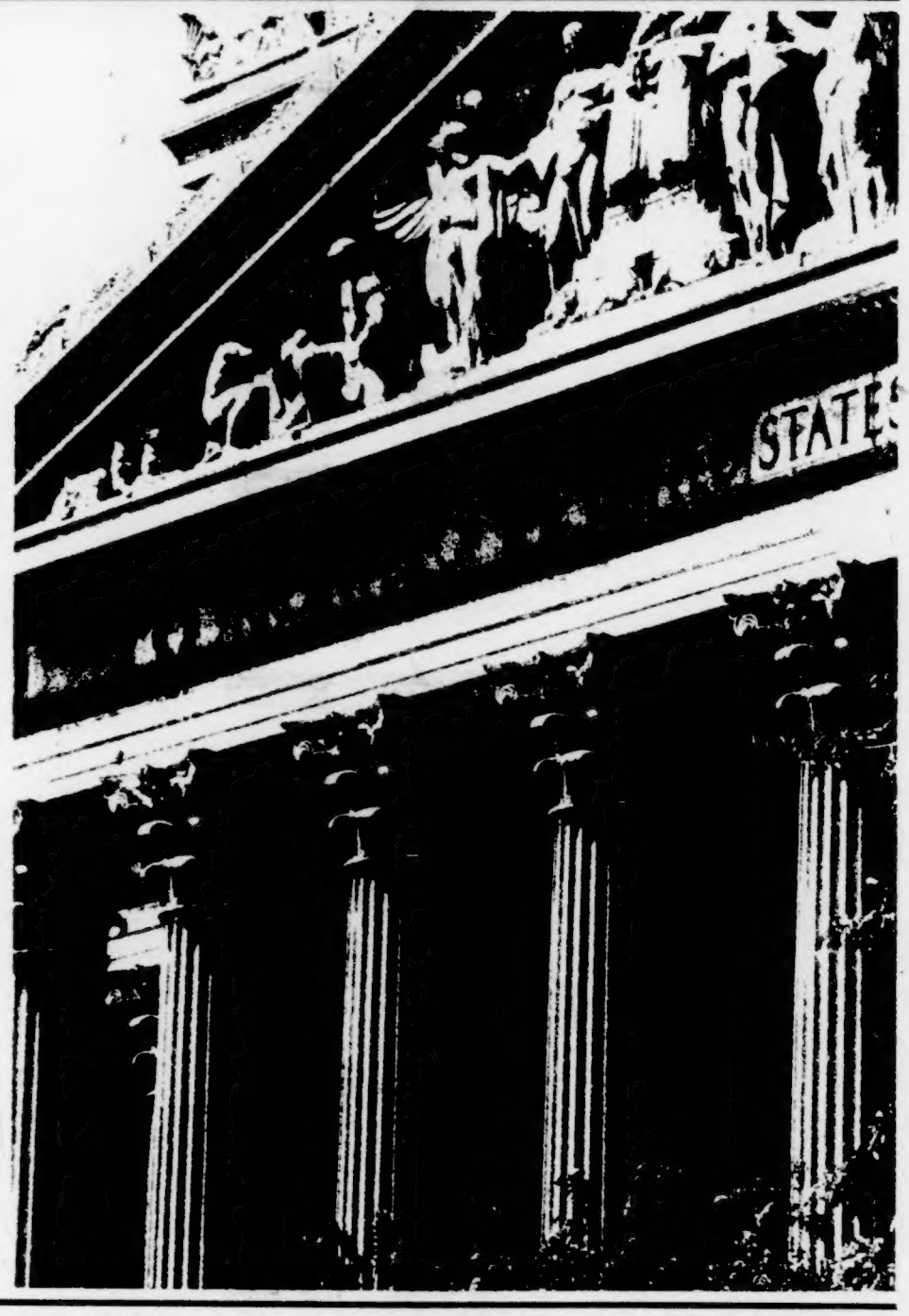
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